IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

WILLIAM T. QUINN AND DAVID CROSS, *Plaintiffs,* v. BRAD RAFFENSPERGER, in his official capacity as Secretary of State of Georgia, *Defendant.*	Civil Action File No.: 1:24-cv-04364-SCJ

SECRETARY RAFFENSPERGER'S RESPONSE IN OPPOSITION TO GALEO LATINO COMMUNITY DEVELOPMENT FUND, INC.'S AND COMMON CAUSE GEORGIA'S MOTION TO INTERVENE, MOTION FOR PRELIMINARY INJUNCTION, AND MOTION FOR JUDGMENT ON PLEADINGS

Brad Raffensperger, in his official capacity as Georgia Secretary of State (the "Secretary"), files this Response in Opposition to Galeo Latino Community Development Fund, Inc.'s and Common Cause Georgia's (together, "Movants") Motion to Intervene (Doc. 10) and their Motion for Judgment on the Pleadings and Request for Emergency Treatment Under Local Rule and Motion for Preliminary Injunction (Doc. 19). [1]

[1] Because Movants have not yet been admitted as parties, the Secretary will refer to filings using Docket numbers throughout this Response.

The Secretary submits this Response to address specifically Movants' claim that Movants' intervention would not prejudice or delay the adjudication of the Secretary's rights.[2] (Doc. 10 at 12–13.) Movants' proposed crossclaim, (Doc. 10-2,) and proposed Motion for Judgment on the Pleadings and Request for Emergency Treatment Under Local Rule and Motion for Preliminary Injunction, (Doc. 19,) would prejudice the adjudication of the Secretary's rights. Accordingly, Movants' Motion to Intervene should be denied or, if granted, their crossclaim should be dismissed and their motion for preliminary injunction should be denied. Should Movants dismiss their crossclaim and preliminary injunction motion, the Secretary would withdraw his objection to Movants' Motion to Intervene.[3]

To permit Movants to intervene would be to unduly prejudice the Secretary by complicating this straightforward matter at a time when all of the Secretary's time and resources should be devoted to the administration of the November 5, 2024 General Election, which is now only 11 days away. As

[2] The Secretary does not join Plaintiffs' response in opposition to the intervention motion but notes that Plaintiffs have addressed other arguments against Movants' intervention as of right and permissive intervention in their response. (*See* Doc. 25.)

[3] Although the Secretary's Response addresses Movants' proposed crossclaim, and proposed Motion for Judgment on the Pleadings and Request for Emergency Treatment and Motion for Preliminary Injunction (none of which are yet properly before this Court), the Secretary reserves the right to respond more fully to the merits of those filings should this Court grant Movants' Motion to Intervene.

the Secretary has explained in his Motion to Dismiss, (*see* Docs. 30, 30-1,) Plaintiffs: (1) lack standing to bring their claims; (2) have brought claims that are barred by the Eleventh Amendment; (3) have failed to state a claim under the National Voter Registration Act or O.C.G.A. § 21-2-233; and (4) are not entitled to mandamus relief. Accordingly, this matter should be easily resolved at the motion to dismiss stage. Introducing a crossclaim against the Secretary over which this Court has no jurisdiction and a meritless motion for a preliminary injunction will delay resolution of this matter on the eve of the November 5, 2024 General Election.

ARGUMENT

Federal Rule of Civil Procedure 24 provides that a Court may permit a party to intervene where that party "has a claim or defense that shares with the main action a common question of law or fact[.]" Rule 24(b)(1)(B). However, "[i]n exercising its discretion, the court must consider whether the intervention will unduly delay or prejudice the adjudication of the original parties' rights." Rule 24(b)(3). Because permissive intervention is "wholly discretionary with the court . . . even though there is a common question of law or fact, or the requirements of Rule 24(b) are otherwise satisfied, the court may refuse to allow intervention." *Worlds v. Dep't of Health & Rehab. Servs.*, 929 F.2d 591, 595 (11th Cir. 1991).

Here, Movants lack standing to bring their proposed crossclaim against the Secretary. Movants' claim for declaratory judgment requests an advisory opinion from this Court, which does not satisfy the requirements of Article III. And Movants' requests for permanent and injunctive relief amount to abstract orders that the Secretary follow the law. Such an injunction is not enforceable and impermissible under the law of this Circuit. To admit Movants would delay resolution of this action and force the Secretary to expend additional resources and time defending against Movants' meritless claims. The Court should thus deny Movants' Motion to Intervene.

I. Defending against a crossclaim that Movants' lack standing to bring will prejudice the Secretary.

First, should the Court permit Movants to intervene, the Secretary will be prejudiced in having to defend against Movants' proposed crossclaim, over which this Court has no jurisdiction.[4] Movants proposed crossclaim seeks: (1) a declaratory judgment "[d]eclar[ing] that Plaintiffs' requests to Defendant SOS . . . are unlawful under the NVRA"; and (2) seeks a permanent injunction enjoining the Secretary from "undertaking any systematic activities within 90 days of a federal primary or general election—either voluntarily or pursuant to a privately initiated mass challenge—to identify, remove, declare 'inactive,'

[4] The Secretary does not take a position on whether the Court has jurisdiction over Movants' proposed counterclaim.

or otherwise change the 'active' status of registered voters who are suspected of having become ineligible to vote based on a change of their residence to a place outside of their registered jurisdiction." (Doc. 10-2 at 20–21 (Prayer for Relief).) Neither request satisfies the requirements of Article III.

Article III courts do not render advisory opinions. *United Public Workers v. Mitchell*, 330 U.S. 75, 89 (1947). Article III limits federal courts to the consideration of "Cases" and "Controversies." U.S. Const. Art. III, § 2, cl. 1. The standing doctrine "is an essential and unchanging part of the case-or-controversy requirement of Article III." *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560 (1992). To satisfy the standing inquiry, the plaintiff "must prove (1) an injury in fact that (2) is fairly traceable to the challenged action of the defendant and (3) is likely to be redressed by a favorable decision." *Jacobson v. Fla. Sec'y of State*, 974 F.3d 1236, 1245 (11th Cir. 2020) (citing *Lujan*, 504 U.S. at 560–61).

With respect to Movants' prayer for declaratory or injunctive relief clarifying that the Secretary cannot take the action requested in Plaintiffs' Complaint, Movants' crossclaim cannot satisfy the injury requirement. "The binding precedent in this circuit is clear that for an injury to suffice for prospective relief, it must be imminent." *Elend v. Basham*, 471 F.3d 1199, 1207 (11th Cir. 2006). Past conduct does not itself show a present case or controversy for injunctive relief "if unaccompanied by any continuing, present adverse

effects." *Id.* (citation omitted). Movants allege neither past nor imminent future conduct on the part of the Secretary. Plaintiffs admit that "[t]hus far, the SOS has not acted upon Plaintiffs' entreaties[.]" (Doc. 10-2 ¶ 6.) And they do not allege any facts to suggest that the Secretary *will* or even *might* do so. Movants fear that "Plaintiffs hope to pressure the SOS into changing the registration status of thousands of registered Georgia voters from 'active' to 'inactive,'" (Doc. 10-2 ¶ 4,) and fear that the Secretary's obligations are "uncertain," (*id.* ¶ 34); neither is true. The Secretary has appeared before this Court to defend against Plaintiffs' action, filed a motion to dismiss, and given no indication that the Secretary intends to accede to Plaintiffs' request. For clarity, the Secretary does not (unless of course he is ordered to do so by this Court).

Movants argue that "given these Plaintiffs' efforts and those of their allies in copycat actions across the state, coupled with the SOS's failure to quash those efforts and issue clear guidance to all election officials that such challenges are prohibited by the NVRA, a controversy has arisen concerning the respective rights and responsibilities of Plaintiffs, the SOS, and Defendant-Intervenors." (Doc. 10-2 ¶ 6.) But the Secretary is actively defending against this challenge—it is unclear what other efforts to "quash" this action the Secretary could take. Nor does the Secretary need to issue generic "guidance" to county election officials as to the interpretation of federal laws. These

allegations certainly do not suggest that the Secretary is imminently preparing to comply with Plaintiffs' request. Accordingly, Movants have failed to allege that they are imminently expected to experience an injury-in-fact. To issue a declaration that the Secretary cannot comply with Plaintiffs' request or enjoining the Secretary against doing so would be nothing more than an advisory opinion.

But Movants' prayer for relief against the Secretary goes further—it seeks an injunction permanently enjoining the Secretary:

> from undertaking *any systematic activities* within 90 days of a federal primary or general election—*either voluntarily or pursuant to a privately initiated mass challenge*—to identify, remove, declare "inactive," or otherwise change the "active" status of registered voters who are suspected of having become ineligible to vote based on a change of their residence to a place outside of their registered jurisdiction.

(Doc. 10-2 at 20–21 (Prayer for Relief) (emphasis added).) That request goes far beyond any issue raised by the Plaintiffs' action.[5] No controversy has been raised about the Secretary's ability to conduct voluntary activities that are not encompassed within Plaintiffs' claims. And Movants can point to no allegations in the Complaint or Movants' Proposed Counterclaim and Crossclaim that raise that issue. It is purely a hypothetical concern that can sustain neither a

[5] As explained in the Secretary's Motion to Dismiss, (Doc. 30,) the Secretary argues that Plaintiffs have not satisfied Article III's case or controversy requirement.

declaratory judgment claim nor a prayer for injunctive relief because speculative or hypothetical injuries are not "redressed by a favorable decision" and therefore cannot satisfy the standing requirement. *Lujan*, 504 U.S. at 561 (citation omitted).

To pursue a declaratory judgment and injunctive relief, Movants must establish that they have a "specific live grievance" against the Secretary voluntarily conducting a systematic voter removal program within 90 days of the election, and not just an "abstract disagreement[t]" over the scope of permissible activities with the 90-day provision of under 52 U.S.C. § 20507(c)(2)(A). *Lewis v. Continental Bank Corp.*, 494 U.S. 472, 479–80 (1990) (citation omitted). Plaintiffs may not maintain a declaratory or injunctive relief action that "amounts to a request for advice as to 'what the law would be upon a hypothetical state of facts' . . . or with respect to 'contingent future events that may not occur as anticipated, or indeed may not occur at all." *Id.* (citations omitted). A prayer for declaratory relief about what the NVRA *would* permit the Secretary to do *if* he were attempting to voluntarily implement a systematic voter removal program in the 90 days before an election is precisely that type of "request for advice." And any injunction to that effect would amount to an abstract order that the Secretary "obey the law." *Elend*, 471 F.3d at 1209. "It is well-established in this circuit that an injunction demanding that a party do nothing more specific than 'obey the law' is impermissible." *Id.*

Such orders are not enforceable under Federal Rule of Civil Procedure 65(d), and therefore Movants' alleged "injury" (to the extent that there is one) could not be redressed by such an order. *Id.* at 1209–10 (abstract injunctions to obey the law do not comply with Rule 65(d) and cannot satisfy the redressability requirement).

Accordingly, Movants' prayer for declaratory and injunctive relief as pertains to Plaintiffs' request in the Complaint or to the Secretary's larger obligations to comply with the NVRA does not satisfy the requirements of Article III. The Court therefore has no jurisdiction to hear Movants' proposed crossclaim against the Secretary. Should Movants be permitted to intervene and assert this crossclaim, defending against it will serve only to burden the Secretary at an incredibly busy and important moment for the State of Georgia.[6]

II. The Secretary will be further prejudiced by defending against Movants' unnecessary preliminary injunction motion.

To obtain preliminary injunctive relief, a plaintiff must show "(1) a substantial likelihood that [s]he will ultimately prevail on the merits; (2) that [s]he will suffer irreparable injury unless the injunction issues; (3) that the threatened injury to the movant outweighs whatever damage the proposed

[6] For the same reasons that Movants' lack standing to bring the proposed crossclaim, they also cannot show that they have satisfied Article III's ripeness requirement. *See Elend*, 471 F.3d at 1210–11.

injunction may cause to the opposing party; and (4) that the injunction, if issued, would not be adverse to the public interest." *In re Ga. Senate Bill 202*, 622 F. Supp. 3d 1312, 1325 (N.D. Ga. 2022) (quoting *Sofarelli v. Pinellas Cnty.*, 931 F.2d 718, 723–24 (11th Cir. 1991)).

A preliminary injunction "is an extraordinary and drastic remedy not to be granted unless the movant clearly establishes the burden of persuasion as to each of the four prerequisites." *Id.* (quoting *Siegel v. LePore*, 234 F.3d 1163, 1176 (11th Cir. 2000)). The failure to show any of the four factors is fatal to the request for a preliminary injunction. *Am. C.L. Union of Fla., Inc. v. Miami-Dade Cnty. Sch. Bd.*, 557 F.3d 1177, 1198 (11th Cir. 2009). "Mandatory preliminary relief, which goes well beyond simply maintaining the status quo pendente lite, is particularly disfavored, and should not be issued unless the facts and law clearly favor the moving party." *Martinez v. Mathews*, 544 F.2d 1233, 1243 (5th Cir. 1976).

Movants seek a two-pronged preliminary injunction that mirrors the request for permanent injunctive relief in their proposed cross claim: (1) "a preliminary injunction preventing Plaintiffs' requested relief of having [the Secretary' to engage in list maintenance activities within 90 days of a federal election"; and (2) "a preliminary injunction . . . [the Secretary] enjoining him from undertaking any systematic list maintenance activity within 90 days of a federal primary or general election and ordering him to instruct local county

registrars to refrain from conducting any such activity during that period." (Doc. 19-4 at 1.)

The Secretary will be prejudiced by having to defend against Movants' preliminary injunction motion, should Movants be permitted to intervene. Movants cannot show that they are likely to prevail on the merits of their proposed crossclaim against the Secretary because this Court lacks jurisdiction to hear their claim or order relief. Similarly, Movants have failed to show that they will suffer any injury—let alone an irreparable injury—absent an injunction. The balance of equities favors the Secretary, as such an injunction could open the flood gates to contempt suits and follow-on actions. Finally, a vague, unenforceable injunction cannot serve the public interest.

A. Movants are unlikely to succeed on the merits of their declaratory judgment claim and prayer for injunctive relief.

Movants dedicate four pages of their motion to explaining why their interpretation of the NVRA's 90-day provision is the correct one. (*See* Doc. 19-4 at 13–16.) It is irrelevant. Regardless of whether Movants are correct in their interpretation of Section 20507(c)(2)(a), they cannot succeed on the merits of their crossclaim against the Secretary because this Court does not have jurisdiction to hear the claim. As explained, the Court cannot issue an advisory declaration or a general injunction ordering the Secretary to "obey the law."

See supra Sec.I. Movants' request for injunctive relief is no more successful as a request for preliminary injunction as for a permanent injunction.

B. Movants will not suffer an irreparable injury absent an injunction.

Similarly, Movants cannot show that they are likely to suffer an injury—let alone an irreparable injury—absent a preliminary injunction. Again, Movants explain in detail the injuries they *might* suffer *if* the Secretary were to accede the Plaintiffs' demands. (*See* Doc. 19-4 at 17–18.) But as explained, the Secretary has not done so and has done nothing to suggest that he will. The Secretary has moved to dismiss Plaintiffs' claim and does not intend to comply with Plaintiffs' demands absent an order from this Court. Nor are there any facts to suggest that the Secretary is imminently preparing to conduct any kind of voluntary list maintenance in the 90 days before the election.

Moreover, even if the Secretary were to engage in the list maintenance requested by Plaintiffs, voluntarily or not—and he is not doing so—any injury to Movants or their members would not be irreparable. If the Secretary were ordered to send notices today, voters would not be required to return those notices until November 24, 2024. *See* O.C.G.A. § 21-2-233(c). At that time, the November 5, 2024 General Election and certification dates would have passed before any voter could be transferred to the inactive list. And even then, were a voter moved to the inactive list, they would have ample time to be returned

to the official voter list before the 2026 midterm election. *See* O.C.G.A. § 21-2-235.

C. The balance of equities favors the Secretary.

Movants contend that there is "*no* harm or burden" on the Secretary should this Court enter the requested injunction. (Doc. 19-4 at 19 (emphasis in original).) Not so. In fact, a "vague and open-ended injunction might pose an unnecessary burden on [the Secretary] who would face an additional threat of contempt sanctions for violating a law that they were already supposed to follow." *Mancha v. Immigr. & Customs Enf't*, No. CIVA1:06-CV-2650-TWT, 2007 WL 4287766, at *3 (N.D. Ga. Dec. 5, 2007) (raising due process concerns implicated by broad injunctions instructing a defendant to obey the law); *see also S.E.C. v. Goble*, 682 F.3d 934, 949 (11th Cir. 2012) ("We have repeatedly questioned the enforceability of obey-the-law injunctions . . . ."); *Fair Fight Action, Inc. v. Raffensperger*, 413 F. Supp. 3d 1251, 1280 (N.D. Ga. 2019) ("obey the law" injunctions "do not give the restrained party fair notice of what conduct will risk contempt"). Nor does the requested injunction "alleviate the administrative burden of resolving the Plaintiffs' frivolous request . . . ." (Doc. 19-4 at 19.) The Secretary's Motion to Dismiss already achieves that end, and all Movants' motion for summary judgment and motion for a preliminary injunction do is place additional burden and risk on the Secretary.

The two cases to which Movants cite do not support their argument. (Doc. 19-4 at 19.) The first concerned an injunction that would have required the Secretary to process 64 more voter registration applications of a type it already processed. *See Charles H. Wesley Educ. Found., Inc. v. Cox*, 324 F. Supp. 2d 1358, 1368 (N.D. Ga. 2004). Accordingly, the court found the burden on the Secretary to be relatively small. *See id.* Here, Movants have done the opposite. They have requested preliminary injunctive relief so broad as to require the Secretary to obey Section 20507(c)(2)(a) of the NVRA. The burden in Movants' case comes from the overbreadth and vague nature of the injunction, something absent in *Cox*. Movants' second case, *Fish v. Kobach*, 189 F. Supp. 3d 1107, 1145 (D. Kan. 2016), concerned an injunction preventing enforcement of a Kansas law that imposed additional documentary requirements for voter registration. The law in that case was actively being enforced. *See id.* at 1145 ("There is uncontroverted evidence that thousands of qualified . . . voter registration applicants have not been registered to vote by county elections officials solely based on their failure to submit [the additional documentation]."). It did not address what Movants seek here—preliminary relief ordering the Secretary not to engage in activity he has not and is not engaged in and relief ordering the Secretary to obey the NVRA.

D. An abstract "obey the law" injunction does nothing to serve the public interest.

As explained, Movants' requested injunction is impermissible and unenforceable. The public cannot have an interest in an unenforceable injunction. Moreover, the Secretary's office is currently in the home stretch of assisting Georgia's counties with administering the November 5, 2024 General Election. It would not serve—and could harm—the public's interest in the orderly administration of that election to divert the Secretary's interest even further to enter an injunction that invites follow-on litigation or possible contempt sanctions, against which the Secretary would have to defend.

* * *

Plaintiffs' claims, which the Secretary agrees are frivolous, have already cost the Secretary time and resources. It serves no purpose but to further prejudice the Secretary, during an incredibly important period before the election, to admit an intervenor who intends to bring an equally frivolous crossclaim and motion for preliminary injunction.

CONCLUSION

For the foregoing reasons, the Court should deny Movants' Motion for Intervention.

This 25th day of October, 2024.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

Pursuant to L.R. 7.1(D), the undersigned hereby certifies that the foregoing has been prepared in Century Schoolbook 13, a font and type selection approved by the Court in L.R. 5.1(C).

/s/ Alexandra M. Noonan
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CERTIFICATE OF SERVICE

I hereby certify that I have this day electronically filed the foregoing **SECRETARY RAFFENSPERGER'S RESPONSE IN OPPOSITION TO GALEO LATINO COMMUNITY DEVELOPMENT FUND, INC.'S AND COMMON CAUSE GEORGIA'S MOTION TO INTERVENE, MOTION FOR PRELIMINARY INJUNCTION, AND MOTION FOR JUDGMENT ON PLEADINGS** with the Clerk of Court using the CM/ECF e-filing system, which will send notification of such filing to the parties of record via electronic notification.

Dated: October 25, 2024.

/s/ Alexandra M. Noonan
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