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

COMMUNICATION WORKERS OF AMERICA LOCAL 3204, COMMUNICATION WORKERS OF AMERICA LOCAL 3204 RETIRED MEMBERS COUNCIL, and BLACK VOTERS MATTER FUND, *Plaintiffs,* v. BRAD RAFFENSPERGER, in his official capacity as Secretary of State for the State of Georgia, *Defendant.*	Civil Action File No.: 1:26-cv-01170-VMC

BRIEF IN SUPPORT OF SECRETARY RAFFENSPERGER'S MOTION TO DISMISS

I. INTRODUCTION

In July 2025, the Secretary announced that as part of his voter list maintenance efforts, the Secretary of State's office would send cancellation notices to over 477,000 electors on Georgia's inactive voter list. *See* Compl., Ex. A at 1. Electors may be moved to the inactive voter list if they are identified by the Electronic Registration Information Center ("ERIC") as having moved out of state, filed a national change of address ("NCOA") with the United States Postal Service, have no contact with their elections office for five calendar

years, or have mail from their local elections office returned as undeliverable. *See id.* at 2; *see also* O.C.G.A. § 21-2-234. Electors receive a confirmation notice when they are moved to the inactive list. *See* O.C.G.A. § 21-2-234(a)–(c). A qualified voter may be restored to the active list by responding to that notice, appearing to vote, or registering a change of address. *See* O.C.G.A. § 21-2-235.

Georgia law provides that once an elector has been on the inactive voter list for two consecutive federal election cycles with no contact, that elector is removed from the inactive list and thereby has their voter registration cancelled. *See* O.C.G.A. § 21-2-235(b). However, before an elector is removed, he must receive notice between 30 to 60 days in advance of his cancellation. *See id.* As a part of this procedure, the Secretary published a public list of every elector slated to receive a cancellation notice. *See* Compl., Ex. A at 1 & n.1; *id.*, Ex. B. The list included the reason each elector was inactive, their residential address, and their mailing address. *See* Compl., Ex. A at 1–2; *id.*, Ex. B.

Plaintiffs are two Georgia union organizations, Communication Workers of America Local 3204 ("Local 3204") and Communication Workers of America Local 3204 Retired Members Council ("CWA RMC"), and Black Voters Matter Fund. Plaintiffs filed this suit to challenge the Secretary's response to Plaintiffs' request for records under Section 8(i) of the National Voting Rights Act ("NVRA"), which provides for public disclosure of records concerning the implementation of Georgia's list maintenance program. 52 U.S.C. § 20507(i).

Plaintiffs lack standing to pursue a claim under the NVRA. Although the NVRA does provide a private right of action, the Supreme Court has made clear that a plaintiff alleging an informational injury must still demonstrate that he has suffered a concrete and particularized injury in fact by alleging that the informational injury had some "downstream consequences." *TransUnion LLC v. Ramirez*, 594 U.S. 413, 442 (2021). Every Circuit court that has considered standing in the context of NVRA disclosure has held that plaintiffs must allege a nexus among those downstream consequences, the alleged harm, and the interest that Congress sought to protect in enacting the NVRA. Plaintiffs cannot meet this burden. Although Plaintiffs allege that they need the requested information to identify their members who may have been improperly removed, the information that the Secretary has already produced suffices. Plaintiffs' only other alleged injuries relate to their generalized desires to conduct voter registration or education programs. But the Complaint does not explain how the alleged violation harms those programs, and educational programs are not one of the NVRA's enumerated aims.

Even if Plaintiffs had standing, they fail to state a claim under the NVRA as to several of their requests. Plaintiffs request records that are outside the scope of the NVRA, contain uniquely sensitive information or information prohibited from public disclosure by state law, would require the Secretary to

create new records, or have already been produced. Moreover, Plaintiffs' sweeping requests seek records outside the NVRA's two-year retention period.

II. LEGAL STANDARDS

A complaint must be dismissed pursuant to Federal Rule of Civil Procedure 12(b)(1) where the district court lacks subject-matter jurisdiction. "[B]ecause a federal court is powerless to act beyond its statutory grant of subject matter jurisdiction, a court must zealously insure that jurisdiction exists over a case[.]" *Smith v. Gte Corp.*, 236 F.3d 1292, 1299 (11th Cir. 2001) (citations omitted). A defendant may challenge subject-matter jurisdiction facially or factually. *See Douglas v. United States*, 814 F.3d 1268, 1274–75 (11th Cir. 2016). A facial attack requires the court to examine the complaint, taking its allegations as true, to determine whether the plaintiff has established that the court has jurisdiction. *See Lawrence v. Dunbar*, 919 F.2d 1525, 1529 (11th Cir. 1990). To establish jurisdiction, a plaintiff must demonstrate he has standing. *See TransUnion*, 594 U.S. at 423–24.

A complaint must also be dismissed if it fails to state a claim pursuant to Federal Rule of Civil Procedure 12(b)(6). To survive such a motion, "a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). A claim is plausible on its face if the complaint alleges sufficient facts to "allow[ ] the court

to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.* (citation omitted). The Court must "take the factual allegations in the complaint as true and construe them in the light most favorable to the plaintiffs," but the Court is not required to accept allegations that are merely legal conclusions. *Edwards v. Prime, Inc.*, 602 F.3d 1276, 1291 (11th Cir. 2010).

III. BACKGROUND

A. The National Voter Registration Act

Congress enacted the NVRA with two sets of goals in mind. The first set of goals was "to establish procedures that will increase the number of eligible citizens who register to vote in elections for Federal office" and "to make it possible for Federal, State, and local governments to implement [the NVRA] in a manner that enhances the participation of eligible citizens as voters in elections for Federal office." 52 U.S.C. § 20501(b)(1)–(2). In recognition of the fact that "easing registration barriers could threaten the integrity of our elections," *Bellitto v. Snipes*, 935 F.3d 1192, 1198 (11th Cir. 2019), the NVRA also articulated its second set of goals: "to protect the integrity of the electoral process" and "to ensure that accurate and current voter registration rolls are maintained." 52 U.S.C. § 20501(b)(3)–(4). As the Eleventh Circuit observed, Congress sought to balance the competing interests of "easing barriers to registration and voting, while at the same time protecting electoral integrity and the maintenance of accurate voter rolls." *Bellitto*, 935 F.3d at 1198.

Section 8(a) of the NVRA requires the states to "conduct a general program that makes a reasonable effort to remove the names of ineligible voters from the official lists of eligible voters[.]" 52 U.S.C. § 20507(a)(4). Section 8(i) provides for public inspection of "all records concerning the implementation of programs and activities conducted for the purpose of ensuring the accuracy and currency of official lists of eligible voters[.]" *Id.* § 20507(i)(1). States must maintain such records for two years. *See id.* Section 8(i)(2) provides that records must "include lists of the names and addresses of all persons to whom notices described in subsection (d)(2) are sent, and information concerning whether or not each such person has responded to the notice as of the date that inspection of the records is made." *Id.* § 20507(i)(2).

B. Factual Background

On July 10, 2025, the Secretary published a press release announcing that the Secretary's office would be sending cancellation notices to over 477,000 electors on Georgia's inactive voter list who have held inactive status for two federal general election cycles. *See* Compl., Ex. B; *see also Secretary Raffensperger Continues Multi-Step List Maintenance Audit*, Ga. Sec'y of State (July 10, 2025), https://sos.ga.gov/news/secretary-raffensperger-continues-

multistep-list-maintenance-audit ("Press Release").[1] That announcement included a link to an excel file containing the names, residential addresses, and mailing addresses of all inactive electors who would receive a cancellation notice (the "Inactive Voter List"). *See* Compl., Ex. A at 1–2; Press Release. It also listed the reason that each elector had been moved to the *inactive* list. *See id.* at 2; Press Release. Plaintiffs refer to this list as the "purge list." Compl. ¶ 4. The announcement further explained that each elector had previously been sent a notice by mail when they were moved to the inactive list. *See* Press Release. Per the Georgia Election Code, electors "remain on such list until the day after the second November general election held after the elector is placed on the inactive list of electors." O.C.G.A. § 21-2-235(b). If the elector makes no contact within that time period, the elector is removed from the inactive list. *Id.* However, the voter must receive a cancellation notice between 30 and 60 days prior to removal. *Id.* In accordance with that provision, the Secretary announced his intention to send cancellation notices to all electors on the Inactive Voter List. Compl., Ex. A at 1; Press Release.

[1] The Court may consider documents outside the complaint when "(1) the plaintiff mentions the document(s) at issue in the complaint; (2) the document is central to the claim; and (3) … the document's authenticity is unquestioned." *Edwards v. Dothan City Schs.*, 82 F.4th 1306, 1311 (11th Cir. 2023). The Complaint quotes from and describes the Press Release, *see* Compl. ¶¶ 2–4, 44–45; *id.*, Ex. A at 1–2, and Exhibits A and B link to it, *see id.*, Ex. A at 1 n.1; *id.*, Ex. B. The contents of the Press Release are clearly central to Plaintiffs' requests, and the authenticity of the Press Release is unquestioned.

On September 22, 2025, Plaintiffs sent a request for records under the NVRA's disclosure provision to the Secretary. *See* Compl. ¶ 41; *id.*, Ex. A. Plaintiffs requested extensive records concerning the personal information, notice history, registration history, and voting history of each elector on the Inactive Voter List. *See* Compl., Ex. A at 3–4. Plaintiffs also requested a list reflecting similar information, but not the underlying records, for all individuals who "were sent mailings or notices in the last five years." *Id.* at 4. Plaintiffs further requested documents reflecting the Secretary's methodology for determining the reason each elector appeared on the Inactive Voter List. *See id.* at 5. Several requests sought records containing electors' sensitive information or information prohibited from public disclosure under state law. *See id.* at 3–5.

On October 9, 2025, the Secretary responded by producing the responsive documents that could be publicly disclosed consistent with law, including a file containing the names, unique voter ID numbers, residential addresses, mailing addresses, and reason each elector became inactive for each individual on the Inactive Voter List. *See* Compl. ¶¶ 44–47 ; *id.*, Ex. B. The Secretary also produced a file listing voters from the Inactive Voter List who were actually removed, which indicated the registration status of each elector. *See* Compl., Ex. B. The Secretary also pointed Plaintiffs to the statute governing the methodology for determining whether an elector has been "no contact" with

any elections office for five years. *Id.* The Secretary objected to producing electors' dates of birth or records reflecting information gathered from ERIC, pursuant to O.C.G.A. § 21-2-225(d)(5). *See id.*

On October 24, 2025, Plaintiffs sent a letter to the Secretary alleging that the Secretary's production was deficient under the NVRA. *See* Compl., Ex. D. Plaintiffs filed this Complaint on February 27, 2026.

IV. ARGUMENT

A. Plaintiffs lack standing to bring a claim under the NVRA.

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 561). Where, as here, the alleged injury in fact is an "informational injury," *i.e.*, a "fail[ure] to receive required information," the plaintiff must allege that he has suffered some kind of "'downstream consequences' from failing to receive the required information." *TransUnion*, 594 U.S. at 442 (quoting *Trichell v. Midland Credit Mgmt., Inc.*, 964 F.3d 990, 1004 (11th Cir. 2020)). Absent such consequences,

an "asserted informational injury that causes no adverse effects cannot satisfy Article III." *Id.* (quoting *Trichell*, 964 F.3d at 1004).

Plaintiffs have not shown that they suffered a concrete injury in fact. For standing, it is insufficient that Plaintiffs plead that they have been denied the documents. In *TransUnion*, the Supreme Court distinguished between "cases [that] involv[e] a denial of information subject to public-disclosure or sunshine laws that entitle all members of the public to certain information" and cases that do not. 594 U.S. at 441. The Third Circuit, which recently considered standing for informational injuries under the NVRA, held this distinction to mean that denial of information under a statute like FOIA would "easily be met because public availability of information is itself the interest that Congress seeks to protect under such statutes." *Pub. Int. Legal Found. v. Sec'y Commonwealth of Pennsylvania*, 136 F.4th 456, 464 (3d Cir. 2025), *cert. denied sub nom. Pub. Int. Legal Found v. Schmidt*, No. 25-379, 2026 WL 568366 (U.S. Mar. 2, 2026). By contrast, where a plaintiff alleges a "violation of a statute that contains a public disclosure aspect as part of its overall scheme," such as the NVRA, the plaintiff must "establish a nexus among a downstream consequence, his alleged harm, and the interest Congress sought to protect." *Id.* at 465; *accord Trichell*, 964 F.3d at 1004.

Plaintiffs cannot establish such a nexus. First, Plaintiffs allege that Local 3204 and CWA RMC intended to use the requested information to ensure

that their members registrations were not improperly cancelled and potentially re-register any member who was properly removed due to some curable defect. *See* Compl. ¶¶ 19–20, 23–25. However, the Complaint does not explain how the lack of certain requested records impedes this investigation. As the Complaint concedes, the Secretary made public a spreadsheet including the names of all inactive electors who would receive a cancellation notice, which included the reason for their presence on the list, their residential address, and their mailing address. *See id.* ¶¶ 2–4; Press Release. The Secretary also produced a list of all electors whose registrations were actually cancelled, which also gave Plaintiffs the means to determine which electors responded to the cancellation notice to remain on the voter list. *See* Compl. ¶ 44; *id.*, Ex. B. Surely Plaintiffs can identify their own members on these lists and simply contact any member whose registration was cancelled or who received a cancellation notice to determine whether the elector was properly removed.

Second, Local 3204 and CWA RMC contend that the alleged denial of certain requests have injured their ability to conduct programs to encourage voter registration and engagement, not only among their own members but also the larger Georgia population. *See* Compl. ¶¶ 21–25. Both claim that without the requested information, they are unable to "adapt [their] voter registration activities based on information about what prompted voters to be

subject to the purge or what steps voters could have taken to avoid having their registrations cancelled." *Id.* ¶ 25; *see also id.* ¶¶ 21, 23. Similarly, BVMF alleges that one of its missions is to "educat[e] the public about their rights as voters." *Id.* ¶ 26. But again, the Complaint fails to explain how the alleged partial denial of Plaintiffs' requests harms their voter registration and education initiatives. Plaintiffs have been provided with a file listing the reason for each proposed cancellation, *see* Compl. ¶ 44; *id.*, Ex. B, as determined by state law, O.C.G.A. §§ 21-2-233–235, and any qualified individual on the list could have prevented the cancellation of his or her registration by simply—among other ways—responding to either notice. *See, e.g.*, O.C.G.A. § 21-2-234(e)–(f); *id.* § 21-2-235(b). There are no allegations, for example, that explain how Plaintiffs' ability to access certain requested information, such as electors' dates of birth, voting history, or dates on which they were mailed notices, would affect their voter registration efforts. And if there is a voter who, for whatever reason, is qualified to vote in Georgia but who chose not to respond to either the Secretary's initial notice or later cancellation notice, they may register again so long as they remain qualified.[2]

[2] The removal of an inactive but otherwise qualified voter is not necessarily improper. For example, state law requires that during each odd-numbered year, the Secretary send confirmation notices to electors who have made no contact for five years and who have not registered a change of address in that time. *See* O.C.G.A. § 21-2-233(a)(1)–(2). Failure to respond means that the

Moreover, the Complaint fails to explain how records reflecting the Secretary's methodology or process for cancelling voter registrations impact Plaintiffs' voter registration, turnout, or education programs.[3] Regardless of the Secretary's list maintenance processes, the qualification requirements and process for voter registration remains the same: a qualified voter must simply submit his or her voter registration application and any required documentation. *See* O.C.G.A. §§ 21-2-216, 220. "[W]hat steps voters could have taken to avoid having their registrations cancelled," Compl. ¶ 25, are laid out in detail in state law, *see* O.C.G.A. §§ 21-2-233–235. Similarly, the reasons that an elector might be moved to the inactive list in the first place are also determined by state law. *See id.* The "methodology" by which the Secretary identifies and moves individuals to the inactive list, to the extent that that request differs from the methodology laid out in state law, does not change the criteria for inactive voters as set out by the General Assembly. As to Plaintiffs' educational programs, the Third Circuit recently rejected a similar argument that plaintiffs suffered an informational injury under the NVRA as a result of their inability to further their voter education goals. *See PILF*, 136 F.4th at

elector must be moved to the inactive list, *id.* § 21-2-233(c)(2), and after two consecutive federal election cycles, the elector is removed from the voter list, *id.* § 21-2-235(b), even if the elector is otherwise qualified.

[3] As explained further *infra*, the Secretary has responded to Plaintiffs' requests concerning his list maintenance methodology.

468. The Third Circuit explained that "the facilitation and creation of educational materials is not a purpose of the NVRA." *Id.* Nor could the plaintiffs show that the alleged NVRA violation prevented them from publishing their materials. *See id.* Accordingly, plaintiffs could not draw the required nexus between the injury, downstream consequences, and purpose of the NVRA. *See id.* The Sixth Circuit also recently held that plaintiffs lack an informational injury under the NVRA based on plaintiffs' "research, educational, and remedial activities" where plaintiffs could not identify any specific educational initiative and the ways in which it was harmed by the alleged violation. *Pub. Int. Legal Found. v. Benson*, 136 F.4th 613, 631 (6th Cir. 2025), *cert. denied*, No. 25-437, 2026 WL 568298 (U.S. Mar. 2, 2026). The court held that such allegations were, "at most, a vague and unspecific injury." *Id.*

So too here. The Complaint does not explain how the Secretary's alleged NVRA violation impedes any of Plaintiffs' voter registration or educational efforts, as the Secretary has made public his reason for cancelling each registration, *see* Compl. ¶¶ 3–4; *id.*, Ex. B, as set out in the Georgia Election Code, *see* O.C.G.A. §§ 21-2-234–235. Plaintiffs' only allegations concerning their voter registration and education efforts are vague and unspecific, and Plaintiffs' voter education programs do not further a goal of the NVRA.

Third, Plaintiffs assert that the alleged partial denial of their document requests have injured their abilities to generally assess compliance with the

NVRA's requirements for removal procedures or to "advocat[e] on behalf of the impacted voters[.]" Compl. ¶ 27; *see also id.* ¶¶ 24–25. All three Circuits to have considered whether harm to broad, organizational goals or general monitoring and enforcement of the NVRA's disclosure provisions can constitute an informational injury sufficient for standing have held that they do not. *See Benson*, 136 F.4th at 631 (impairment of organization's general "research, educational, and remedial activities" not sufficient for standing); *Campaign Legal Ctr. v. Scott*, 49 F.4th 931, 937 (5th Cir. 2022) (organization's alleged statutory right to visibility into Secretary's processes did not constitute a concrete and particularized harm); *PILF*, 136 F.4th at 467 (organization's desire to evaluate the accuracy of voter lists and "study and analyze" records not sufficient for standing); *see also 1789 Found., Inc. v. Schmidt*, 781 F. Supp. 3d 282, 319 (M.D. Pa. 2025) (no organizational standing under NVRA based on general allegations that the organization's purpose was "frustrat[ed]" by defendant's failure to produce records). Similarly, Plaintiffs do not explain how the alleged violation has caused particularized, concrete harm to any of their organizational goals, beyond the generalized interest all Georgians shared in the accuracy of the Secretary's list maintenance procedures. And as the Fifth Circuit remarked, that lack of concrete harm "is reinforced because not a single Plaintiff is a [Georgia] voter, much less a voter wrongfully identified as

ineligible, and the Plaintiffs have not claimed organizational standing on behalf of any [Georgia] voter members." *Campaign Legal Ctr.*, 49 F.4th at 937.[4]

Because the Complaint does not allege that Plaintiffs suffered a concrete injury in fact, the court should dismiss the Complaint for lack of standing.

B. The Complaint should be dismissed for failure to state a claim.

Even if Plaintiffs had standing, the Complaint should be dismissed because Plaintiffs have failed to state a claim for violation of the NVRA. Plaintiffs bring only one claim against the Secretary, but that claim encompasses a large number of records requests. Plaintiffs' various requests include requests for documents and information beyond the scope of the NVRA's disclosure provision, Georgians' uniquely sensitive information that the Secretary rightfully protected, and new records not maintained in the Secretary's ordinary course of business, while dismissing the records that the Secretary has produced. Accordingly, a number of Plaintiffs' records requests

[4] Although the Complaint alleges that Plaintiffs would take remedial action on behalf of any allegedly improperly removed electors, *see* Compl. ¶ 27, it does not allege that Plaintiffs have associational standing on behalf of any affected members. Nor could it. Plaintiffs can only speculate that there may potentially be those among their memberships who have been improperly removed but have not identified any such members, notwithstanding the Secretary having published a list of cancelled voter registrations. *See Campaign Legal Ctr.*, 49 F.4th at 938–39 (holding plaintiffs' intention to "at some future date seek to vindicate the specific interests of third party voters whom they … do not represent" too speculative and not concrete).

either seek records or information that the Secretary is not obligated to produce or have been fulfilled and should therefore be dismissed.

1. Certain of the requested records exceed the scope of the NVRA's disclosure provision.

Plaintiffs argue that "courts construe the NVRA's public inspection requirement broadly to ensure that the public can obtain access to records relevant to determining whether voters have been erroneously purged from a state's voter list." Compl. ¶ 39 (citing *Project Vote, Inc. v. Kemp*, 208 F. Supp. 3d 1320, 1336 (N.D. Ga. 2016)). But the *Project Vote* court did not endorse a reading of the NVRA that would require states to produce records to the public beyond those related to the state's implementation of list maintenance efforts. Rather, the court explained that the NVRA's use of "all records" is broadly construed for the purposes of what constitutes a "record" under the NVRA. *See id.* (holding that information contained in electronic databases could constitute a record under the NVRA). In fact, the court acknowledged that the NVRA limits what would be an otherwise broad provision and "interpret[ed] 'implementation' as restricting the scope of the records required to be disclosed." *Id.* at 1339. And the court further parsed each request to determine whether it fell under the disclosure requirements of the NVRA. *See id.* at 1343.

Several of Plaintiffs' requests fall outside the scope of the NVRA's disclosure provision because they do not concern the implementation of the

Secretary's list maintenance efforts. First, dates of birth are not relevant to the reason that an elector on the Inactive Voter List was cancelled, and the Complaint does not plead otherwise.[5] Plaintiffs do not, for example, seek records to determine whether the Secretary cancelled any voter registrations due to age. *See Project Vote*, 208 F. Supp. 3d at 1345 n.40. Not all information that appears on voter registrations is subject to the NVRA's disclosure requirement. For example, in *Project Vote*, this court held that a request for telephone numbers listed on voter registration applications did not fall in the ambit of the NVRA's disclosure requirement because they were irrelevant to voter eligibility. *See id.* So too here. In addition to being uniquely sensitive information, *see infra* Sec. IV.B.3, electors' dates of birth do not serve any purpose in determining whether those on the Inactive Voter List were properly flagged and removed. They would not even help Plaintiffs identify any of their own members on the Inactive Voter List. Plaintiffs already have names, residential addresses, mailing addresses, and unique voter ID numbers for all individuals on the Inactive Voter List. *See* Compl., Ex. B; *see also id.*, Ex. D. at 3–4 (not listing addresses or voter ID numbers as part of the allegedly missing records). That should be more than sufficient to identify their own members.

[5] As explained *infra*, even if dates of birth were within scope, the Secretary is still entitled to withhold them as uniquely sensitive information.

Second, Plaintiffs seek records sufficient to show the date of the last election in which the electors on the Inactive Voter List voted. As an initial matter, voter history files and absentee voter files listing electors who voted in previous elections are available online on the Secretary's website. *See* Voter Participation History Files, Ga. Sec'y of State, https://mvp.sos.ga.gov/s/voter-history-files (last visited Mar. 27, 2026); Voter Absentee Files, Ga. Sec'y of State, https://mvp.sos.ga.gov/s/voter-absentee-files (last visited Mar. 27, 2026).[6] But as to the specific electors who were moved to the inactive list because ERIC identified those electors as having moved out of state, the electors filed an NCOA with USPS, or the electors' mail was returned to their local elections office as "undeliverable," the date of the last election in which each voted is not relevant to the reason why those electors were designated "inactive." Accordingly, the date of the last election in which they voted would not tell Plaintiffs anything about why these voters were "being flagged as potentially ineligible." Compl. ¶ 20. Moreover, all electors on the Inactive Voter List were there because, pursuant to Georgia law and in accordance with the NVRA, they had no contact with any Georgia elections office for two consecutive federal election cycles. *See* O.C.G.A. § 21-2-235(b); 52 U.S.C.

[6] The Court may take judicial notice of both websites for the fact that voter history files and absentee voter files are publicly available without converting the Secretary's motion to dismiss to a motion for summary judgment. *See U.S. ex rel. Osheroff v. Humana Inc.*, 776 F.3d 805, 811 n.4 (11th Cir. 2015).

§ 20507(b)(2)(B). The exact dates on which each last voted is irrelevant; it matters only that they had not voted for two consecutive federal election cycles.

Third, the NVRA's disclosure provision requires the Secretary to maintain documents concerning the implementation of his list maintenance procedures for two years. *See* 52 U.S.C. § 20507(i)(1). To the extent that Plaintiffs' requests seek underlying records outside that window, such records may have been destroyed in accordance with the Secretary's document retention policies and therefore do not have to be produced.

2. The Secretary is not required to create new, custom documents for Plaintiffs.

Plaintiffs allege that the Secretary either failed to respond fully to Plaintiffs' Request 2(g) or alternatively that the Secretary failed to comply with his NVRA document retention obligations. *See* Compl., Ex. D at 3–4. Not so. Request 2 specifically seeks a record in the form of a "list." As the Secretary explained, other than the voter history and absentee voter reports available online, the only list maintained by the Secretary's office that contains dates of electors' last vote is the public Georgia voter list. *See* Compl., Ex. B. As individuals whose registrations have been cancelled are no longer on the voter list, there is no list maintained in the Secretary's regular course of business that reflects dates of cancelled individuals' last vote. Section 52 U.S.C. § 20507(i)(1) requires the Secretary to "maintain for at least 2 years … records

concerning the implementation of programs and activities conducted for the purpose of ensuring the accuracy and currency of official lists of eligible voters[.]" It does not obligate him to create records that do not already exist.

3. The Secretary is entitled to withhold Georgians' sensitive information and information that cannot be published under Georgia law.

Plaintiffs argue that the NVRA entitled them to records reflecting dates of birth for electors included on the Inactive Voter List. *See* Compl., Ex. D at 4. As this court recognized in *Project Vote*, privacy principles are embedded both in Georgia state and federal law. *See* 208 F. Supp. 3d at 1344–45 (citing the Voting Rights Act of 1965, 42 U.S.C. § 1973 *et seq.*; the Freedom of Information Act, 5 U.S.C. § 552 *et seq.*; the Privacy Act of 1974, 5 U.S.C. § 552a *et seq.*; O.C.G.A. § 50-18-72(20)(A)). Georgia law provides for the redaction of months and days of birth, *see* O.C.G.A. § 50-18-72(20)(A), while the Federal Rules of Civil Procedure permit the redaction of birth years, *see* Fed. R. Civ. P. 5.2(a); *see also Project Vote*, 208 F. Supp. 3d at 1344–45.

Plaintiffs concede that the "NVRA does not preclude the redaction of highly sensitive voter data[.]" Compl., Ex. D at 5 n.3, while contending that they are entitled to electors' birth years, *see id.* at 4. However, multiple courts, including this court, have recognized that dates of birth are "uniquely sensitive," especially when combined with full names and addresses, and have ordered such dates to be redacted from NVRA disclosures. *See, e.g.*, *Project*

Vote, 208 F. Supp. 3d at 1345 & n.40 (ordering redaction of full dates of birth as "uniquely sensitive" information); *True the Vote v. Hosemann*, 43 F. Supp. 3d 693, 736 (S.D. Miss. 2014) (same).

Here, Plaintiffs requested and were provided with full names and addresses of individuals on the Inactive Voter List. To permit Plaintiffs to obtain dates of birth for these same individuals exposes them to significant privacy risks. Accordingly, the Secretary properly withheld dates of birth.

Plaintiffs also sought "reports, records, or data [the Secretary] received from ERIC." Compl., Ex. D at 3. Georgia law prohibits public disclosure of information received from ERIC. *See* O.C.G.A. § 21-2-225(d)(5). Plaintiffs seem to suggest that the NVRA preempts O.C.G.A. § 21-2-225(d)(5). *See* Compl., Ex. D at 4. Plaintiffs cite no authority for that proposition. The NVRA does not have an express preemption clause concerning its disclosure provision. And as explained, this court interpreted the disclosure provision to include exceptions for certain confidential information in the name of protecting electors' privacy. *See Project Vote*, 208 F. Supp. 3d at 1345. Those are the same privacy interests protected by O.C.G.A. §21-2-225(d)(5), as data received from ERIC includes highly sensitive information, such as social security numbers. Even courts holding that the disclosure provision preempts state law have done so where the state law "hinders the realization of the NVRA's enumerated purposes." *Jud. Watch, Inc. v. Lamone*, 399 F. Supp. 3d 425, 445 (D. Md. 2019). By

contrast, protecting voters' privacy is essential to the NVRA's purposes. *See Project Vote*, 208 F. Supp. 3d at 1344. Accordingly, the Secretary properly objected to producing any records concerning information received from ERIC.

4. The Secretary has otherwise complied with Plaintiffs' requests.

As to the requests seeking records that can be publicly disclosed, the Secretary has responded to Plaintiffs' requests. The Secretary publicly released a file containing the names, unique voter ID numbers, residential addresses, mailing addresses, and reason each elector became inactive. *See* Compl. ¶¶ 44–47 ; *id.*, Ex. B. This list reflects inactive electors to whom the Secretary sent a cancellation notice. *See* Press Release. The Secretary also produced a file containing the same information but listing voters whose registrations were actually cancelled. *See* Compl. ¶ 44. This second list included registration status for each elector. *Id.* From these two lists, Plaintiffs can see the reason each elector was moved to the inactive list, determine whether each elector responded to the cancellation notice to remain on the voter list, and identify any members whose registrations were cancelled. Those are precisely the records identified in the NVRA's disclosure provision. *See* 52 U.S.C. § 20507(i)(2). And as explained, voter history and absentee voter files are publicly available on the Secretary's website.

As to Plaintiffs' requests concerning the Secretary's various methodologies, the Secretary understands the requests to seek records related to the criteria and methods the Secretary used to identify electors who should be moved to the inactive list because ERIC identified those electors as having moved out of state, the electors filed an NCOA with USPS, the electors' mail was returned to their local elections office as "undeliverable," or the electors had no contact with their election office for five years. *See* Compl., Ex. D at 3. Those criteria are determined by state law. *See* O.C.G.A. § 21-2-233–235.

To the extent that Plaintiffs seek records related to the granular processing of information related to electors on the Inactive Voter List, the Secretary does not understand that to be encompassed in "methodology." For example, Plaintiffs requested "[a]ll records reflecting [the Secretary's] methodology in determining which voters had no contact with their election office for the last 5 calendar years[.]" Compl., Ex. D at 3. The Secretary responded that the methodology for determining which electors have had "no contact" is laid out in O.C.G.A. § 21-2-234. *See* Compl., Ex. B. Section 21-2-234 even lays out the process by which the Secretary must move "no contact" electors to the inactive list. *See id.* § 21-2-234(a)(2), (c). To the extent that Plaintiffs intended to request, for example, records reflecting communications

with local boards regarding specific electors, that is not what Plaintiffs ultimately requested.[7]

* * *

For the foregoing reasons, the Court should dismiss the Complaint for lack of jurisdiction or failure to state a claim.

Respectfully submitted this 27th day of March, 2026.

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[7] Records responsive to Request 3, *see* Compl., Ex. A at 5, appear to have been inadvertently omitted from the Secretary's production. The Secretary has communicated to Plaintiffs' counsel that he intends to produce promptly exemplar notices.

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
ALEXANDRA M. NOONAN 733236
Assistant Attorney General

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing **BRIEF IN SUPPORT OF SECRETARY RAFFENSPERGER'S MOTION TO DISMISS** with the Clerk of Court using the CM/ECF system which will automatically send email notification of such filing to all counsel of record.

This 27th day of March, 2026.

/s/ Alexandra M. Noonan
ALEXANDRA M. NOONAN 733236
Assistant Attorney General