

voters from the County rolls just weeks before the November 3 general election. Petitioners' demand for these challenge hearings is an illegal attempt to circumvent the requirements of the National Voter Registration Act of 1993 (the "NVRA"), which has long secured the right to vote by Georgia citizens against arbitrary and discriminatory impositions on that right. The Proposed Intervenor seek to join this action as parties to oppose the Petition on various grounds including, but not limited to, the fact that the NVRA prohibits any such challenge hearings and the purge of thousands of Georgia voters from the voting rolls under these circumstances.

The Proposed Intervenor are entitled to join this action pursuant to O.C.G.A. § 9-11-24 both as a matter of right under subsection (a) of the intervention statute and, alternatively, under the permissive prong set forth in subsection (b) of the intervention statute.

First, the Proposed Intervenor must be permitted to intervene as a matter of right because each organization is actively engaged in large voter registration and get-out-the-vote efforts throughout Fulton County, and each organization has a direct interest in the last-minute purge of thousands of voters in the County. Such a purge would thwart, at least in part, their efforts to encourage voter participation in the November 2020 election and beyond.¹ If the challenge hearings proceed, both organizations will have to divert considerable resources to educate and assist impacted eligible Fulton County voters to make sure that they are not purged from the rolls and can participate in the upcoming elections. (See Exs. A and B, at ¶ 10).

Second, the Proposed Intervenor should also be permitted to intervene on a permissive basis because the proposed bases for their opposition to the Petition share inherently common questions of law and fact with the underlying action. An order permitting intervention is

¹ (See Affidavit of James "Major" Woodall, attached hereto as Exhibit A, at ¶ 9; Affidavit of Helen Butler, attached hereto as Exhibit B, at ¶ 9).

particularly ripe when this action is barely a month old, no hearing has been held, and the Proposed Intervenor are prepared to attend the hearing set for September 28, 2020, and oppose the Petition. As a result, the Proposed Intervenor have not delayed in filing this Motion, and the parties will suffer no prejudice from this Court allowing their intervention to oppose the Petition.

II. STATEMENT OF THE CASE

A. Petitioners' Unsubstantiated Demand Letters to Remove Voter Registrations.

Prior to commencing this action, Petitioners claim to have sent several letters to the Fulton County Board of Registration and Elections (the "Board") demanding that the Board convene voter challenge hearings and/or remove 14,346 voters from the County voter registration list (the "Demand Letters"). (See Petition at Exs. A-C, E, G). Petitioners' Demand Letters assert various unsubstantiated bases for purging these voters, including the following purported reasons: (1) 366 voters allegedly are not living in the County or acknowledged to registering to vote elsewhere; (2) 144 voters allegedly do not reside at the address associated with their voter registrations according to a current occupant; (3) 54 voters allegedly do not reside at the address associated with their voter registration according to a leasing manager at the premises; (4) 246 voters are allegedly registered elsewhere according to other purported "proof"; and (5) 13,542 voters allegedly matched to a National Change of Address database (NCOA), which Petitioners assert proves that the voter moved from the district or precinct associated with their voter registration. (See *id.* at Ex. B, pp. 1-2). Whether these allegations are true or not with respect to any particular voter remains to be determined, but that question is not outcome determinative in any event under the circumstances present here, particularly given that Petitioners' proposed purges would violate the NVRA.

B. Responses to Petitioners' Unsubstantiated Demand Letters.

The Director of the Board, Respondent Richard Barron, as well as a Senior Assistant Fulton County Attorney, Cheryl Ringer, respectively responded to the Petitioners' Demand Letters. (See id. at Exs. D, F). On July 29, 2020, Mr. Barron explained by letter that his office assigned a staff member to review the list of 14,346 voters. (See id. at Ex. D). Mr. Barron's letter correctly noted that if the National Voter Registration Act of 1993 (the "NVRA") prohibited the Board from removing any of these 14,346 voters, holding a challenge hearing would be pointless. (Id.).

On July 31, 2020, Ms. Ringer separately informed Petitioners by letter that the Board would be required to follow the NVRA with respect to any challenges based upon alleged changes in residential addresses. (See Petition at Ex. F). Ms. Ringer also stated that due to the NVRA's prohibition on conducting any maintenance on voter lists within 90 days of a federal election, the Board could not commence any challenge hearings to remove voters as Petitioners demanded before January 2021—after the completion of the November 3, 2021 general election and any Congressional runoff elections scheduled in January 2021. (Id.).

These responses, while correct, do not cover all of the legal reasons why the relief sought by Petitioners is violative of the NVRA and why the petition must be denied.

C. Petitioners' Claims in this Case.

Unmoved by the fact that the relief they seek is illegal under the NVRA, Petitioners filed their Petition with this Court two weeks later. (Id.). The Petition asserts that the Board is required under Georgia law to set a hearing on Petitioners' challenges to the eligibility of 14,346 voters. (Id. at ¶ 6, 10, Exs. A-C, E, G). The Petition seeks an order compelling the Board to conduct challenge hearings for each of the 14,346 voters before the November 3, 2020 general election. (Id. at pp. 8-9).

As of the filing of the Petition on August 13, 2020, only 82 days remained before the general election. This Court has since set a Rule Nisi hearing on the Petition for September 28, 2020, when a mere 36 days will remain before the general election. (See Rule Nisi dated 9/1/2020).

D. The Proposed Intervenor's Missions and How Petitioners' Actions Injure Their Missions and Their Members.

The Georgia NAACP works to protect voting rights through litigation, advocacy, legislation, communication, and outreach, including work to promote voter registration, voter education, get out the vote efforts, election protection and census participation. (See Ex. A at ¶¶ 4-5, 7). The Georgia NAACP regularly conducts voter registration drives and assists many voters with submitting registration applications to Fulton County elections officials. (See id. at ¶ 7).

The GCPA similarly encourages voter registration and participation, particularly among African-American and other underrepresented communities. (See Ex. B at ¶¶ 4-7). The GCPA's support of voting rights is central to its mission. (Id.). The organization regularly commits its time and resources to conducting voter registration drives, voter education, voter ID assistance, "Souls to the Polls" operations, and other get-out-the-vote operations in Fulton County. (Id. at ¶ 4).

Petitioners' voter purge efforts harm both of the Proposed Intervenor's missions and cause each to divert a portion of their financial and other educational resources to educating voters about Petitioners' proposed purge and assisting eligible voters who may be the target of those purges. (See Ex. A at ¶¶ 10-11; Ex. B at ¶¶ 10-11). As a result, the Proposed Intervenor has and will have fewer resources to dedicate to their other organizational activities unless Petitioners are defeated, and further prevented and enjoined from continuing their efforts to illegally purge voters from the rolls. (See Ex. A at ¶ 12; Ex. B at ¶ 12).

Both the Georgia NAACP and the GCPA also believe, given the large number of potentially affected voters, that some of their respective members in Fulton County may well be

directly affected. (See Ex. A at ¶ 13; Ex. B at ¶ 13). The Georgia NAACP currently has approximately 10,000 members. (See Ex. A at ¶ 6). The GCPA is a coalition of more than 30 organizations, which collectively have more than 5,000 individual members. (See Ex. B at ¶ 3). Many of these members reside in Fulton County. (See Ex. A at ¶¶ 6, 13; Ex. B at ¶¶ 3, 13). An investigation in to this latter point is underway. (See Ex. A at ¶ 13; Ex. B at ¶ 13).

III. ARGUMENT AND CITATION TO AUTHORITY

A. Legal Standard for Intervention.

The Proposed Intervenors should be allowed to intervene in this proceeding to advocate for the interest of both their organizations and the members of those organizations in opposing the Petition. Georgia courts have defined intervention as “the procedure by which a third person, not originally a party to a suit, but claiming an interest in the subject matter, comes into the case, in order to protect his right or interpose his claim.” AC Corp. v. Myree, 221 Ga. App. 513, 515 (1996). The standard for allowing intervention in a civil case is set forth in O.C.G.A. § 9-11-24, which permits intervention both as a matter of right (see § (a)) and on a permissive basis (see § (b)). Generally, so long as the motion for intervention is timely and the party seeking to intervene meets the requirements set forth in O.C.G.A. § 9-11-24, courts should allow intervention. Id. at 515; see also Baker v. Lankford, 306 Ga. App. 327, 330 (2010) (holding that “[w]here intervention appears before final judgment, where the rights of the intervening party have not been protected, and where the denial of intervention would dispose of the intervening party’s cause of action, intervention should be allowed and the failure to do so amounts to an abuse of discretion”).

As set forth below, the Proposed Intervenors have satisfied the requirements for both intervention as a matter of right and permissive intervention under O.C.G.A. § 9-11-24.

B. The Georgia NAACP and GCPA May Intervene as a Matter of Right.

Pursuant to O.C.G.A. § 9-11-24(a), there are three requirements for intervention as a matter of right: (1) interest in the subject matter, (2) impairment resulting from an unfavorable decision, and (3) inadequate representation. See Baker, 306 Ga. App. at 329. The Proposed Intervenor has satisfied the requirements for intervention as a matter of right under Georgia law because (1) they have a clear interest in opposing Petitioners' demands, (2) their interests will be impaired by an unfavorable decision, and (3) the named respondents do not share those interests and are not adequately incentivized or equipped to represent those interests in this case. Each is addressed in turn below.

1. *The Proposed Intervenor is interested in preventing Petitioners' proposed purging of Fulton County voter rolls.*

An intervening party has an interest in the case when the litigation is "of such a direct and immediate character that he will either gain or lose by the direct effect of the judgment, and such interest must be created by the claim in suit, or a claim to a lien upon the property, or some part thereof, which is the subject matter of the litigation." Rossville Fed. Sav. & Loan Ass'n v. Chase Manhattan Bank, 223 Ga. 188, 189 (1967). The Proposed Intervenor's interests in the litigation are readily apparent and provide them with both organizational and associational standing to pursue an independent remedy against the actions of Petitioners.

First, the Georgia NAACP and GCPA have organizational standing to pursue such a claim. Organizations engaged in get-out-the-vote activities have standing to sue when a party illegally impairs those activities, forcing the organization to divert resources of time, money, and staff to educate and assist impacted voters. Arcia v. Fla. Sec'y of State, 772 F.3d 1335, 1341-42 (11th Cir. 2014); see also Common Cause/Ga. v. Billups, 554 F.3d 1340, 1350-51 (11th Cir. 2009) (Georgia NAACP has standing to challenge photo ID statute because it needed to divert resources to educate

and assist voters); Ga. State Conf. of the NAACP v. DeKalb Cnty., 1:20-CV-00879-ELR, 2020 WL 5239127, at *4 (N.D. Ga. Sept. 2, 2020) (citations omitted) (holding that “an organization suffers and injury in fact when a statute compels it to divert more resources to accomplishing its goals” and “the fact that the added cost has not been estimated and may be slight does not affect standing, which requires only a minimal showing of injury”); Fair Fight Action, Inc. v. Raffensperger, 413 F. Supp. 3d 1251, 1267 (N.D. Ga. 2019) (holding that “diverting resources from general voting initiatives or other mission[s] ... to programs designed to address the impact of the specific conduct” is sufficient); Ga. Coalition for People’s Agenda, Inc. v. Kemp, 347 F. Supp. 3d 1251, 1258 (N.D. Ga. 2018) (concluding that Georgia NAACP and GCPA have standing based upon diversion of resources);.

In short, requiring an organization to divert additional resources that hinders the organization’s mission of promoting voter advocacy and voter turnout “is sufficient . . . to demonstrate an immediate and concrete injury” to the organization. See Gwinnett Cnty. NAACP v. Gwinnett Cnty. Bd. of Registration & Elections, 446 F. Supp. 3d 1111, 1119 (N.D. Ga. 2020).²

The interest in the right to vote is germane to the purpose of both the Georgia NAACP and the GCPA. Here, both the Georgia NAACP and the GCPA engage in large voter registration and

² See also Havens Realty Corp. v. Coleman, 455 U.S. 363, 379 (1982) (holding drain on organization’s resources constitutes concrete and demonstrable injury to organization’s activities); Fla. State Conference of NAACP v. Browning, 522 F.3d 1153, 1165 (11th Cir. 2008) (“[A]n organization suffers an injury in fact when a statute compels it to divert more resources to accomplishing its goals. . . . [T]he fact that the added cost has not been estimated and may be slight does not affect standing, which requires only a minimal showing of injury.” (internal citations and punctuation omitted) (citing Crawford v. Marion Cnty. Election Bd., 472 F.3d 949, 951 (7th Cir. 2007))); Martin v. Kemp, 341 F. Supp. 3d 1326, 1334 (N.D. Ga. 2018) (“Defendants cite to no authority that an organizational plaintiff *must* explain exactly how its resources will be diverted from one endeavor to another before sufficient injury can be shown.”).

get-out-the-vote efforts throughout Fulton County. (See Ex. A at ¶¶ 3-7; Ex. B at ¶¶ 3-7).³ If the Petition is successful and challenge hearings are convened to consider purging 14,436 voters from the voting rolls, the Proposed Intervenors would have to invest substantial resources—in addition to those already expended to encourage voter registration and voter engagement this year—to quickly identify the affected voters and assist them in protecting their eligibility to vote in the upcoming general election that will be held in a matter of days. (See Ex. A at ¶¶ 8-12; Ex. B at ¶¶ 8-12). Both organizations are already diverting resources to obtaining the list of challenged voters and to educating them about voter caging and about steps they can take to protect their voter registration status and cast a ballot that will count in the upcoming election. (See Ex. A at ¶ 10; Ex. B at ¶ 10).

Second, both the Georgia NAACP and GCPA believe that they will be able to demonstrate associational standing based upon the substantial number of members within Fulton County and the large number of voters sought to be purged. Because Petitioners have not identified those voters who they seek to purge in the pleadings filed to date, the Proposed Intervenors can make no such determination as yet. Nonetheless, the courts have held that an organization is also injured when “at least one member faces a realistic danger of suffering an injury.” *Gwinnett Cnty.*, 446 F. Supp. 3d at 1119-20 (quoting *Arcia*, 772 F.3d at 1342). An organizational plaintiff has associational standing “when its members would otherwise have standing to sue in their own right,

³ A central goal for the Georgia NAACP in 2020 is registering the 381,380 African American voters currently unregistered in Georgia. See Georgia NAACP, Secure Your Vote, WWW.NAACPGA.ORG, <https://www.naacpga.org/georgia-elections> (last visited Sept. 20, 2020). Similarly, the GCPA’s “Agenda” includes voter registration, which “emphasizes education throughout the state[,]” and their “Get Out The Vote Campaign[,]” which “is utilized in central locations through[out] each region to accomplish mass voter turnout.” See Georgia Coalition for the People’s Agenda, Voter Empowerment, WWW.THEPEOPLESAGENDA.ORG, <http://www.thepeoplesagenda.org/voting-empowerment.html> (last visited Sept. 20, 2020).

the interests at stake are germane to the organization's purpose, and neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit." Friends of the Earth, Inc. v. Laidlaw Envtl. Servs. (TOC), Inc., 528 U.S. 167, 181 (2000). An organization needs to establish only "that at least one member faces a realistic danger of [injury]." Browning, 522 F.3d at 1163. This is particularly true for organizations with high membership rates. See Arcia, 772 F.3d at 1342 (citing Browning, 522 F.3d at 1163).

Here, the Georgia NAACP and GCPA have significant numbers of members in Fulton County, some of whom are likely to be directly impacted by Petitioners' request to purge large numbers of voters from the rolls. It is axiomatic that these voters have a federal and constitutional right not to be illegally purged from the voting rolls. "The right to vote is fundamental, forming the bedrock of our democracy." Favorito v. Handel, 285 Ga. 795, 796 (2009) (quoting Wexler v. Anderson, 452 F.3d 1226, 1232 (11th Cir. 2006)). Petitioners seek to illegally deny 14,346 people of this right in violation of the NVRA. The loss of this right is an indisputable injury to any of the 14,346 voters who are members of either or both of the Proposed Intervenor organizations.⁴

Accordingly, Proposed Intervenors hold clear interests in the Petition and the illegal relief it demands both on their own account and through their individual members.

2. *An unfavorable disposition will impair the Proposed Intervenors' interests.*

The second requirement is whether an unfavorable disposition of the instant case would impair an intervenor's own interests. See Liberty Mut. Fire Ins. Co. v. Quiroga-Saenz, 343 Ga. App. 494, 499-500 (2017); see also Bibb Cnty. v. Monroe Cnty., 294 Ga. 730, 740 (2014) (finding

⁴ Petitioners currently insist the named respondents must purge these 14,346 voters without identifying the individuals actually subject to injury and the loss of the right to vote. (See Petition at Ex. A (referencing an attached list that is not included with the Petition)).

that “disposition . . . could impair [intervenor’s] ability to protect its interest” in a mandamus proceeding).

Here, Petitioners’ action directly attacks and seeks to undo and neutralize the good work of both Proposed Intervenors. An unfavorable disposition of this action will impair the Proposed Intervenors’ currently planned get-out-the-vote, voter protection, and outreach efforts throughout Fulton County in the coming weeks. (See Ex. A at ¶ 9; Ex. B at ¶ 9). Additionally, the Petition may very well unwind the Proposed Intervenors’ existing voter registration efforts if voters they previously assisted in registering are now purged from the rolls just days before the November 3 general election. Indeed, this would require the Proposed Intervenors to focus their already limited resources on protecting the rights of voters who they already registered to vote or assisted with the voter registration process. (See Ex. A at ¶¶ 8, 10-12; Ex. B at ¶¶ 8, 10-12). This attack on and unwinding of the Proposed Intervenors’ extensive efforts in Fulton County form the bedrock of the independent remedy the Intervenors seeks against Petitioners. The Proposed Intervenors, therefore, have an interest in the subject of this litigation to oppose the Petition that seeks to compel the Board to violate its duties and purge voters from the rolls in violation of the NVRA in the days before the November 2020 general election.

3. *The named respondents will not adequately represent the Proposed Intervenors.*

The final issue to be determined is whether the interests of the intervening parties are adequately represented by the current parties to the action. See Sw. Georgia Prod. Credit Ass’n v. Wainwright, 241 Ga. 355, 356 (1978) (“The issue of adequacy of representation is a question of fact which must be ruled on by the trial court in considering the application for intervention, assuming the other requirements are met.”). The interests of the Proposed Intervenors also are not adequately represented by the named respondents.

First, as county officials, respondents are charged with representing the interests of all Fulton County citizens, including those of Petitioners. The duty to represent *every other citizen* in Fulton County in itself indicates that the respondents cannot adequately represent the interests of the Proposed Intervenors. Clark v. Putnam Cnty., 168 F.3d 458, 461-62 (11th Cir. 1999). In short, respondents must represent Petitioners, as well as the 14,346 voters whose registrations Petitioners seek to purge. The respondents cannot adequately represent the Proposed Intervenors when this inherent divergence exists between the citizens for whom the respondents must concurrently represent. Id.

Second, the respondent Board is comprised of individuals appointed by elected officials who, like all such officials, have an interest in “remain[ing] politically popular and effective leaders[,]” and, as such, they also have an incentive to compromise. Id. See also Meek v. Metropolitan Dade County, Fla., 985 F.2d 1471, 1478 (11th Cir. 1993). As county officials appointed by elected individuals, the respondent Board may thus have a disincentive to zealously represent the interest of the Proposed Intervenors and their members. Id. While the respondents may assert that they will adequately represent the interest of Proposed Intervenors, there is no reason to believe that respondents can do so in the same zealous, unconflicted manner as the Proposed Intervenors. Only the Proposed Intervenors, whose mission is to protect zealously the interests of minority voters, to the exclusion of all other interests, can adequately do so.

Indeed, officials in other Georgia counties have acquiesced and convened challenge hearings in short proximity to an election in the recent past. See, e.g., Ga. State Conf. of the NAACP, 2020 WL 5239127; see also Consent Decree, Ga. State Conf. of the NAACP v. Hancock Cnty. Bd. of Elections and Registration, No. 5:15-cv-414, Doc. 67-1 at 2-3 (M.D. Ga. Mar. 1, 2017). These facts together show that the respondents’ representation of the Proposed Intervenors

“may be” inadequate; and “that is enough to entitle the [Proposed Intervenor] to intervene.” Trbovich v. United Mine Workers, 404 U.S. 528, 538 n.10 (1972); Clark, 168 F.3d at 461-62.

Accordingly, this Court should grant the Proposed Intervenor’s Motion to Intervene as a matter of right under O.C.G.A. § 9-11-24(a) because they have demonstrated an interest in the matter, they would be impaired by an unfavorable decision, and the named respondents do not adequately represent their interests in this action.

C. The Court Should Permit the Georgia NAACP and GCPA to Intervene.

The Proposed Intervenor has also satisfied the requirements for permissive intervention under Georgia law because there are undeniably common questions of law and fact shared between the underlying Petition and the relief the Proposed Intervenor will seek in opposing that Petition.

Under O.C.G.A. § 9-11-24(b), a court may allow intervention on a permissive basis where the Proposed Intervenor’s interests share common questions of law or fact with the underlying action. See DeLoach v. Floyd, 160 Ga. App. 728, 730 (1981) (affirming grant of intervention). Intervention is appropriate when such common questions exist and the intervention will not unduly delay or prejudice the original parties. See O.C.G.A. § 9-11-24(b).

Here, the Proposed Intervenor’s interests arise from and are threatened by the exact same facts as the Petition, and the relief the Proposed Intervenor seeks is specifically opposed to the relief Petitioners seek—preventing the holding of the requested challenge hearings because those hearings would violate the NVRA and negatively impact the Proposed Intervenor’s voter protection, voter registration, get-out-the-vote, voter education, and advocacy initiatives. Additionally, intervention will not cause delay or prejudice to the parties because the Petition was filed on August 13, barely over a month ago, and a hearing has yet to be held. Indeed, the Proposed Intervenor is fully prepared to appear at the hearing scheduled for September 28, 2020 to oppose the Petition. The Proposed Intervenor, therefore, did not unduly delay in filing this Motion.

Intervention only a month after Petitioners first filed this action and before any hearing will cause no delay or prejudice to the parties.

Accordingly, and in the alternative to intervention as a matter of right, the Proposed Intervenors have satisfied the requirements for this Court to allow their permissive intervention under O.C.G.A. § 9-11-24(b).

IV. CONCLUSION

The Georgia NAACP and the GCPA respectfully request that the Court grant their Emergency Motion to Intervene for all the reasons set forth above. A proposed Order is attached hereto as Exhibit C. Pursuant to O.C.G.A. § 9-11-24(c),⁵ the Georgia NAACP and the GCPA's proposed initial pleadings, both the Motion to Dismiss Verified Petition for Writ of Mandamus with Memorandum in Support, and Verified Answer to Petition for Writ of Mandamus, are respectively attached hereto as Exhibit D and Exhibit E.

Respectfully submitted this 23rd day of September, 2020.

/s/ William V. Custer

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⁵ Under § (c), “[t]he motion shall . . . be accompanied by a pleading setting forth the claim or defense for which intervention is sought.”

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EXHIBIT A

IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

WARREN MATHEW SCHMITZ, JR., and
JEFFRY ALAN KUNKES,

Petitioners,

v.

FULTON COUNTY BOARD OF
REGISTRATION AND ELECTIONS,
RICHARD L. BARRON, in his official
capacity as Director of Fulton County Board
of Registration and Elections, and RALPH
JONES, in his official capacity as Registration
Chief of Fulton County Board of Registration
and Elections,

Respondents,

GEORGIA STATE CONFERENCE OF THE
NAACP and GEORGIA COALITION FOR
THE PEOPLE'S AGENDA,

Proposed Intervenors.

CIVIL ACTION FILE
NO. 2020CV339337

AFFIDAVIT OF JAMES MAJOR WOODALL

STATE OF GEORGIA)
) ss.
COUNTY OF FULTON)

I, James Major Woodall, having been duly sworn, do hereby swear and affirm as follows:

1. I am the President of the Georgia State Conference of the National Association for the Advancement of Colored People ("Georgia NAACP"), I am over 18 years of age and I am competent to make this affidavit.

2. I have personal knowledge of the matters stated herein and would testify to the same if called as a witness in Court.

3. The NAACP was founded on February 12, 1909, and is the oldest, largest, and most widely recognized grassroots-based civil rights organization.

4. The Georgia NAACP, is a state conference of the NAACP, and is the oldest and one of the largest, most significant organizations promoting and protecting the civil rights of African Americans and other racial and ethnic minorities in Georgia.

5. The Georgia NAACP is a non-partisan, interracial, nonprofit membership organization with a mission to “secure the political, educational, social, and economic equality of rights in order to eliminate race-based discrimination and ensure the health and well-being of all persons.” In furtherance of this mission, the Georgia NAACP has engaged in extensive efforts to increase voter registration and voter participation and to protect voting rights in Fulton County.

6. The Georgia NAACP has branches in counties across the state of Georgia, including an active branch in Fulton County that is involved in voter registration, voter assistance, voter education, and election protection and get-out-the-vote efforts. As of 2020, the Georgia NAACP has approximately 10,000 members in Georgia, many of whom reside in Fulton County. These totals include numerous registered voters.

7. The Georgia NAACP works to protect voting rights through litigation, advocacy, legislation, communication, and outreach, including work to promote voter registration, voter education, get out the vote efforts, election protection and census participation. The Georgia NAACP regularly conducts voter registration drives and submits many voter registration applications to Fulton County elections officials.

8. Petitioners’ voter purge efforts have harmed and will continue to harm the Georgia NAACP’s mission by causing the Georgia NAACP to divert a portion of its financial and other

educational resources to responding to this litigation, preparing to educate and inform voters about petitioners' purge efforts and to assist eligible voters who may be the target of those efforts.

9. Such a purge would thwart, at least in part, the Georgia NAACP's efforts to encourage voter participation in the November 2020 election and beyond.

10. The Georgia NAACP is already diverting resources by attempting to obtain the list of challenged voters. The Georgia NAACP is preparing to reach out to challenged voters to educate them about voter caging and the potential impact of the voter challenges, all the while seeking to prevent any chilling effect on voter participation. The NAACP is also undertaking additional efforts to educate Fulton County voters about steps that they can take to protect their voter registration status and ensure that they will be able to cast a ballot that will count in the upcoming election in light of the voter challenges.

11. If the challenge hearings proceed, the Georgia NAACP will have to divert additional resources to educate and assist eligible Fulton County voters who have been challenged to make sure that they are not purged from the rolls and can participate in the upcoming election.

12. As a result of these remedial anti-purging efforts, the Georgia NAACP has and will have fewer resources for its other organizational activities, such as its advocacy, fundraising, and election protection efforts, unless the Petitioners are further prevented and enjoined from continuing their efforts to convene challenge hearings for the purpose of removing voters illegally from the rolls.

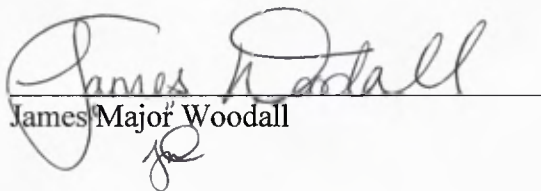
13. The Georgia NAACP also believes, given its large membership totals and the fact that more than 14,000 Fulton County registered voters have been challenged, that some of its members in Fulton County may be included among the challenged voters and are therefore at risk

of being purged from the rolls if the relief sought in the petition is granted. An investigation into this point is underway.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

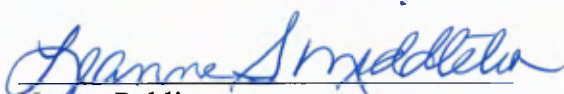
FURTHER, AFFIANT SAYETH NOT.

Executed this 22nd day of September, 2020, in Atlanta, Georgia.


James Major Woodall

Sworn to and subscribed before me

This 22nd day of September, 2020.


Notary Public

My commission expires: 7/23/2022



EXHIBIT B

IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

WARREN MATHEW SCHMITZ, JR., and
JEFFRY ALAN KUNKES,

Petitioners,

v.

FULTON COUNTY BOARD OF
REGISTRATION AND ELECTIONS,
RICHARD L. BARRON, in his official
capacity as Director of Fulton County Board of
Registration and Elections, and RALPH
JONES, in his official capacity as Registration
Chief of Fulton County Board of Registration
and Elections,

Respondents,

GEORGIA STATE CONFERENCE OF THE
NAACP and GEORGIA COALITION FOR
THE PEOPLE'S AGENDA,

Proposed Intervenors.

CIVIL ACTION FILE
NO. 2020CV339337

AFFIDAVIT OF HELEN BUTLER

STATE OF GEORGIA)
) ss.
COUNTY OF FULTON)

I, Helen Butler, being duly sworn, do hereby swear and affirm as follows:

1. I am Executive Director of the Georgia Coalition for the People's Agenda ("GCPA"), over 18 years of age and am competent to make this declaration.
2. I have personal knowledge of the matters stated herein and would testify to the same if called as a witness in Court.

3. The GCPA is a Georgia not-for-profit corporation with its principal place of business located in Atlanta, Georgia. The GCPA is a coalition of more than 30 organizations, which collectively have more than 5,000 individual members, which include numerous Fulton County registered voters.

4. The GCPA encourages voter registration and participation, particularly among Black and other underrepresented communities. The GCPA's support of voting rights is central to its mission. The organization has committed, and continues to commit, time and resources to conducting voter registration drives, voter education, voter assistance, election protection, and other get-out-the-vote efforts in Georgia, such as "Souls to the Polls," "Pews to the Polls," and other initiatives designed to encourage voter registration and voter turnout in Fulton County.

5. Fulton County is a focus community for the GCPA, as it is home to large populations of Black and other underrepresented residents. The GCPA plans to engage in these significant efforts to encourage voter participation in Fulton County for the November 2020 general election.

6. For instance, the GCPA will be offering voters transportation to polling places in several counties across the state, including in Fulton County.

7. The GCPA has also sought, and will continue to seek, to assign poll monitors to poll sites in Fulton County to troubleshoot problems voters might encounter, including long lines. When the GCPA learns of long lines, the organization tries to find the cause of the issue and address the problem directly with election officials.

8. Petitioners' proposed purges of voters has harmed and will harm GCPA and its mission of encouraging minority voter registration and participation. Petitioners' proposed purges are causing GCPA to divert a portion of its financial and other organizational resources to

opposing the relief sought in the petition, preparing to educate and inform voters about respondents' proposed voter challenge hearings and to assist voters who may be the target of those challenges.

9. If the Fulton County Board of Registration and Elections convenes challenge hearings and purges voters, it would thwart, at least in part, the GCPA's efforts to encourage voter participation in the November 2020 election and beyond.

10. The GCPA is already diverting resources by attempting to obtain the list of challenged voters. The GCPA is preparing to reach out to challenged voters to educate them about voter caging and the potential impact of the voter challenges, all the while seeking to prevent any chilling effect on voter participation. The GCPA is also undertaking additional efforts to educate Fulton County voters about steps that they can take to protect their voter registration status and ensure that they will be able to cast a ballot that will count in the upcoming election in light of the voter challenges.

11. If the challenge hearings proceed, the GCPA will have to divert additional resources to educate and assist eligible Fulton County voters who have been challenged to make sure that they are not purged from the rolls and can participate in the upcoming election.

12. As a result of these remedial anti-purging efforts, the GCPA has and will have fewer resources for its other organizational activities, such as its advocacy, fundraising, and election protection efforts, unless the Petitioners are further prevented and enjoined from continuing their efforts to convene challenge hearings for the purpose of removing voters illegally from the rolls.

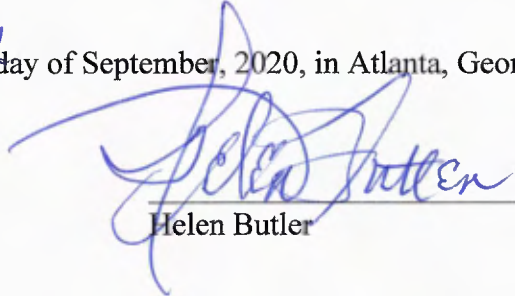
13. The GCPA also believes, given its large membership totals and the fact that more than 14,000 Fulton County registered voters have been challenged, that some of its members in Fulton County may be included among the challenged voters and are therefore at risk of being

purged from the rolls if the relief sought in the petition is granted. An investigation into this point is underway.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

FURTHER, AFFIANT SAYETH NOT.

Executed this 23rd day of September, 2020, in Atlanta, Georgia.


Helen Butler

Sworn to and subscribed before me

This 23rd day of September, 2020.


Notary Public

My commission expires: 7/23/2022



EXHIBIT C

IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

WARREN MATHEW SCHMITZ, JR., and
JEFFRY ALAN KUNKES,

Petitioners,

v.

FULTON COUNTY BOARD OF
REGISTRATION AND ELECTIONS, et al.,

Respondents,

and

GEORGIA STATE CONFERENCE OF THE
NAACP, and GEORGIA COALITION FOR
THE PEOPLE'S AGENDA,

Intervenor Respondents.

CIVIL ACTION FILE
NO. 2020CV339337

[PROPOSED] ORDER GRANTING EMERGENCY MOTION TO INTERVENE

The Georgia State Conference of the National Association for the Advancement of Colored People and the Georgia Coalition for the People's Agenda (collectively, the "Proposed Intervenor"), having moved on an emergency basis for an order permitting intervention in the above-styled action, and it appearing to the court that the Proposed Intervenor has an interest in the above-styled action, the Proposed Intervenor will be impaired from an unfavorable disposition, and no other party can adequately represent the Proposed Intervenor, it is hereby ORDERED that the Emergency Motion to Intervene by the Georgia State Conference of the National Association for the Advancement of Colored People and the Georgia Coalition for the

People's Agenda is hereby GRANTED and they are hereby made and designated intervenor respondents to this action, that thereafter the style of this action shall be shown above.

It is further ORDERED that the proposed pleadings attached as Exhibits "D" and "E" to the Memorandum in Support of the Emergency Motion to Intervene shall constitute the initial pleadings of the Proposed Intervenors, and shall be deemed to have been filed this date.

This _____ day of _____, 2020.

JUDGE JANE C. BARWICK
Superior Court of Fulton County

ORDER PREPARED BY:

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EXHIBIT D

IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

WARREN MATHEW SCHMITZ, JR., and	)	
JEFFRY ALAN KUNKES,	)	
	)	
Petitioners,	)	
	)	
v.	)	
	)	
FULTON COUNTY BOARD OF	)	
REGISTRATION AND ELECTIONS, et al.,	)	CIVIL ACTION FILE
	)	NO. 2020CV339337
Respondents,	)	
	)	
GEORGIA STATE CONFERENCE OF THE	)	
NAACP, and GEORGIA COALITION FOR	)	
THE PEOPLE'S AGENDA,	)	
	)	
Proposed Intervenor.	)	
	)	

**MOTION TO DISMISS VERIFIED PETITION FOR WRIT OF MANDAMUS AND
MEMORANDUM IN SUPPORT BY PROPOSED INTERVENORS THE GEORGIA
STATE CONFERENCE OF THE NATIONAL ASSOCIATION FOR THE
ADVANCEMENT OF COLORED PEOPLE AND THE GEORGIA COALITION FOR
THE PEOPLE'S AGENDA¹**

Proposed Intervenor Georgia State Conference of the NAACP and Georgia Coalition for the People's Agenda respectfully file this Motion to Dismiss the Verified Petition for Writ of Mandamus filed by Petitioners Warren M. Schmitz, Jr. and Jeffrey A. Kunkes in the above-styled action pursuant to O.C.G.A. § 9-11-12(b)(6).² Petitioners, invoking O.C.G.A. §§ 21-2-229 and

¹ The Proposed Intervenor respectfully request leave from the Court to file this Motion to Dismiss Verified Petition for Writ of Mandamus with Memorandum in Support, and Verified Answer to Petition for Writ of Mandamus as Intervenor's initial pleadings, which shall be deemed to have been filed as of this date.

² Proposed Intervenor ask that, in the alternative, the Court consider the instant motion to be a motion for judgment on the pleadings pursuant to O.C.G.A. § 9-11-12(c).

21-2-230, seek to compel the Fulton County Board of Registration and Elections, its Director, Richard L. Barron, and its Registration Chief, Ralph Jones (“Respondents”), to hold hearings concerning Petitioners’ unprecedented and legally unsupportable mass challenges to the qualifications of 14,346 Fulton County registered voters on the eve of the November 2020 election.

The Petition must be dismissed for failure to state a claim because federal law prohibits Respondents from taking the extreme, dangerous, and potentially disenfranchising actions Petitioners have demanded, rendering a writ of mandamus nugatory and fruitless under O.C.G.A. § 9-6-26. Further, Petitioners lack a clear legal right to relief under §§ 21-2-229 and 21-2-230 because there is no evidence that the written voter challenges served upon Respondents meet the requirements of either statute. Even if Petitioners had met those requirements, Respondents have discretion in carrying out the duties imposed by § 21-2-229, and practical considerations strongly support the reasonable manner in which Respondents have responded to the challenges. Finally, Petitioners are not entitled to a hearing under § 21-2-230 because the statute does not require convening a challenge hearing under the current circumstances. The Petition for Writ of Mandamus must therefore be dismissed.

I. PROCEDURAL AND FACTUAL BACKGROUND

Ray S. Smith III, a self-described former “Fulton Election Board Member” and counsel for Petitioners (see Petition at Ex. A at p. 2) sent several demand letters to Fulton County election officials beginning in July demanding that they convene voter challenge hearings and remove 14,346 voters from the voter registration list. In his initial July 8, 2020 letter, Mr. Smith asserted that those voters should be removed because they moved out of the jurisdiction. (See Petition at

Ex. A). Mr. Smith asserted that he was in possession of information supporting this contention but he did not provide it with his demand letter and it is also not included in the Petition.³

In his second letter, dated July 16, 2020, Mr. Smith states that the list of 14,346 voters was attached to the letter. The copy of the letter filed with the Petition, however, does not include this list and the Petition does not otherwise identify the 14,346 registered voters they seek to challenge. Mr. Smith asserted that 13,542 voters allegedly match with the National Change of Address database (NCOA), indicating the voter moved from the district or precinct associated with their voter registration, while the remaining approximately 800 voters are purportedly ineligible because there was some unidentified proof they registered in another jurisdiction, a leasing manager or current resident allegedly acknowledged that the voter changed addresses, or the voter allegedly stated that they do not live in Fulton County. (*Id.* at Ex. B at pp. 1-2). None of the evidence supposedly supporting these allegations appears to have been provided to the County officials with the letter and none was attached to the Petition.⁴

On July 28, 2020, Fulton County Elections Director Richard Barron responded that his office was preparing for the August 11, 2020 runoff election but had assigned a staff member to begin reviewing the list of 14,346 voters to determine whether they are still registered to vote in Fulton County, whether the Board of Registration and Elections (the “Board”) had received sufficient independent vital records information (i.e., death, incapacity or felony conviction) to remove any of the 14,346 voters without a hearing; and whether the Board could remove any of

³ In his demand letters of July 8, July 16, July 24, July 29, 2020 to Fulton County election officials, Mr. Smith did not identify Petitioners as the challengers nor were they identified as his clients. Instead, it appears Mr. Smith was making the challenges himself until his final demand letter of August 7, 2020, in which he asserted that he was representing Petitioners and that he was submitting the final demand letter on their behalf.

⁴ On July 24, 2020 letter, Mr. Smith sent a follow-up demand letter. (See Petition at Ex. C).

the voters for alleged moves under Section 8 of the National Voter Registration Act of 1993 (NVRA), 52 U.S.C. § 20507. (See Petition at Ex. D). Mr. Barron pointed out that conducting challenge hearings would be pointless if the NVRA prohibited the Board from removing the voters. He further stated, “[o]nce the assigned staff has culled through the list of 14,346 names and determined whether hearings are necessary, we will then need to coordinate with the Board of Registration and Elections members to determine when they are available for hearings.” (Id.).

On July 29, 2020, Mr. Smith responded that he was aware of the NVRA and added that “I possess the requisite information and evidence via sworn affidavits [sic] necessary to comply with (some small sample are attached herewith) said code section and Georgia Law.” (Petition at Ex. E).⁵ Mr. Smith demanded that Fulton County officials set a voter challenge hearing date by August 1, 2020, or else he would file a Petition for a Writ of Mandamus to compel those hearings, as well challenge as the results of the November election if the County failed to comply with his demands. (See id.).

On July 31, 2020, counsel for Respondents replied that the Board could not commence any hearings to remove voters for alleged address changes until after the completion of the November 3rd general election and any runoff elections in January 2021 due to the NVRA’s prohibition on list maintenance processes conducted within 90 days of a federal election. (See Petition at Ex. F). That letter also noted the Board would be required to follow the NVRA with respect to any residency-based challenges. (Id.).

After sending one last demand letter on August 7, Petitioners, Warren Schmitz and Jeffrey Kunkes, filed the instant Petition for a Writ of Mandamus on August 13. The petition seeks an

⁵ Although Petitioners’ counsel claimed he included “some small sample” of the evidence supporting his demand, it was not attached to the version of the letter attached to the Petition.

order compelling Fulton County election officials to “immediately and fully comply” with O.C.G.A. §§ 21-2-229 and 230, including by setting a hearing before the Board to determine Petitioners’ Challenges; and for an award of their attorneys’ fees and expenses. (See Petition at 9, ¶¶ c-d). Respondents filed a motion to dismiss the petition on September 17, 2020.

II. ARGUMENT AND CITATION OF AUTHORITY

Petitioners seek to compel Respondents to comply with purported requirements of O.C.G.A. §§ 21-2-229 and 21-2-230 in a manner that would not only twist the meaning of those statutes beyond recognition but would result in flagrant violations of federal law and throw the November 2020 election into chaos. Petitioners are not entitled to a writ of mandamus to enforce either statute.

A motion to dismiss should be granted where “the allegations of the complaint, when construed in the light most favorable to the plaintiff, and with all doubts resolved in the plaintiff’s favor, disclose with certainty that the plaintiff would not be entitled to relief under any state of provable facts.” Penny v. McBride, 282 Ga. App. 590, 590 (2006).

A. A Writ of Mandamus to Enforce O.C.G.A. §§ 21-2-229 and 21-2-230 Would Be Nugatory and Fruitless Because the Relief Sought Is Barred by Federal Law.

Georgia’s mandamus statute provides in relevant part that “[a]ll official duties should be faithfully performed, and whenever, from any cause, a defect of legal justice would ensue from a failure to perform or from improper performance, the writ of mandamus may issue to compel a due performance if there is no other specific legal remedy for the legal rights.” O.C.G.A. § 9-6-20. “Mandamus is a remedy for improper government inaction—the failure of a public official to perform a clear duty.” Bibb Cnty. v. Monroe Cnty., 294 Ga. 730, 734 (2014) (quoting Southern LNG, Inc. v. MacGinnitie, 294 Ga. 657, 661 (2014)). “The writ of mandamus is properly issued

only if (1) no other adequate legal remedy is available to effectuate the relief sought; and (2) the applicant has a clear legal right to such relief.” Id. (quoting Richard C. Ruskell, Davis & Shulman’s Ga. Practice & Procedure, § 29:2 (2013–2014 ed.)). “A clear legal right to the relief sought may be found only where the claimant seeks to compel the performance of a public duty that an official or agency is required by law to perform.” Id. at 735 (citing Bland Farms, LLC v. Ga. Dep’t of Agric., 281 Ga. 192, 193 (2006)).

However, “[m]andamus will not be granted when it is manifest that the writ would, for any cause, be nugatory or fruitless.” O.C.G.A. § 9-6-26; see Barrow v. Raffensperger, 842 S.E.2d 884, 898 (Ga. May 14, 2020); Sotter v. Stephens, 291 Ga. 79, 81 (2012). In other words, mandamus is inappropriate when ordering the relief the petitioner seeks would be futile. For example, in Halpern Properties, Inc. v. Newton County Board of Equalization, the Georgia Supreme Court affirmed the denial of a mandamus petition seeking to compel a member of a tax equalization board to indicate his vote on a tax assessment as required by law. 245 Ga. 728, 728 (1980). Because the other two members had voted to approve the assessment, it was “a futile exercise” to require the final member to vote; “even if the writ were granted,” it was “clear that its issuance would be ‘nugatory or fruitless.’” Id.; see also Barrow v. Raffensperger, 842 S.E.2d at 899 (stating that “mandamus will not lie when the thing or things sought would be unnecessary, fruitless, unavailing or nugatory”) (quoting Hall v. Staunton, 55 W. Va. 684 (1904)).

Granting a writ of mandamus would be a similarly futile exercise here because the relief Petitioners seek under both statutes is barred and preempted by federal law. The Georgia Supreme Court has explained the doctrine of federal preemption:

The Supremacy Clause of the United States Constitution mandates that federal law will preempt a state law that is inconsistent with it. U. S. Const., Art. VI, cl. 2. Such preemption may be either express or implied, and “is ‘compelled whether Congress’[s] command is explicitly stated in the statute’s language or implicitly

contained in its structure and purpose.” ... And, “[w]hen a federal statute unambiguously precludes certain types of state [law], we need go no further than the statutory language to determine whether the state [law] is preempted.”

Reis v. OOIDA Risk Retention Grp., Inc., 303 Ga. 659, 660 (2018) (alterations in original) (citations and quotations omitted). “The preemption doctrine of the Supremacy Clause may apply: (1) where there is direct conflict between state and federal regulation; (2) where state law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress; or (3) where Congress has occupied the field in a given area so as to oust all state regulation.” Hernandez v. State, 281 Ga. 559, 561 (2007) (quoting Aman v. State, 261 Ga. 669, 671 (1991)).

The Petitioners’ proposed voter removals facially violate the NVRA’s mandate forbidding purging voters immediately due to a change of address, as well as the statute’s prohibition on conducting a systematic voter removal program within ninety days of a federal election. Petitioners’ proposed voter challenge hearings also raise significant concerns under the NVRA’s provision barring non-uniform and discriminatory voter removals.

1. *Removal of voters from the registration rolls for an alleged change of address is governed by Section 8 of the NVRA.*

Section 8 of the NVRA strictly prohibits the Fulton County Board from immediately removing registered voters based upon alleged changes of address unless the voter personally requests removal or confirms they are no longer eligible to vote in the county in writing. See 52 U.S.C. § 20507(d)(1). The requirements of Section 8(d) of the NVRA are mandatory, straightforward, and unequivocal, as the Seventh Circuit and other courts have recognized:

[Section 8(d)] forbids a state from removing a voter from that state’s registration list unless: (1) it hears directly from the voter via a “request” or a “confirm[ation] in writing” that the voter is ineligible or does not wish to be registered; or (2) the state goes through the statutorily prescribed process of (a) notifying the voter, (b) giving the voter an opportunity to respond, and (c) then waiting two inactive

election cycles before removing a suspected ineligible voter who never responds to the notice. Both of these avenues focus on direct contact with the voter. The accuracy or lack thereof of the state's information concerning the voter's change in residence makes no difference under the NVRA. The statute does not set an accuracy threshold; it relies instead on follow-up with the individual voter.

Common Cause Indiana v. Lawson, 937 F.3d 944, 959 (7th Cir. 2019) (quoting 52 U.S.C. § 20507(a)(3), (d)); see also U.S. Student Ass'n Found. v. Land, 546 F.3d 373, 381 (6th Cir. 2008) (holding that "States may not remove 'registrants' from an official list of eligible voters based on a change in residence unless . . . the specified criteria of [Section 8(d)] are met"); Common Cause New York v. Brehm, 432 F. Supp. 3d 285, 318-19 (S.D.N.Y. 2020) (holding the same).

Federal courts have struck down a number of list maintenance procedures that, regardless of their relative merits, removed voters who had allegedly changed addresses from the list of eligible voters without complying with the NVRA's mandatory two election cycle notice-and-waiting-period requirement. See, e.g., Lawson, 937 F.3d at 959-62 (affirming preliminary injunction because statute "allows Indiana election officials to remove a person from the rolls based on Crosscheck *without direct notification of any kind*"); Land, 546 F.3d at 386, 389 (denying stay of preliminary injunction of statute that required cancelling new voters' registration if voter ID cards mailed to them were returned back as undeliverable); Brehm, 432 F. Supp. 3d at 318 (New York cannot remove voters who have been sent confirmation notices "until they fail to vote in two consecutive federal general elections").

Courts have applied Section 8 to voter challenge-initiated purges like those sought by the Petitioners in this case. Before the 2016 general election, for example, four individuals in Beaufort County, North Carolina challenged 138 registered voters "on the grounds that the challenged voters were not residents of the precinct and/or municipality." N.C. State Conf. of NAACP v. Bipartisan Bd. of Elections and Ethics Enf't, No. 1:16CV1274, 2018 WL 3748172, at *4

(M.D.N.C. Aug. 7, 2018). Voters made similar challenges to registered voters' eligibility on residency grounds in Cumberland and Moore Counties. Id. at *8-9. The court ruled that those county election boards "violated § 20507(d) of the NVRA in sustaining challenges to voter registrations based on change of residence ... without complying with the prior notice and waiting period requirement in § 20507(d)." See, e.g., id. at *4.

In one recent case in Georgia, Hancock County officials entered into a consent decree subjecting them to outside monitoring after organizations contested a series of voter challenge proceedings conducted by the board in 2015. See Consent Decree, Ga. State Conf. of the NAACP v. Hancock Cty. Bd. of Elections and Registration, No. 5:15-cv-414, Doc. 67-1 at 2-3 (M.D. Ga. Mar. 1, 2017) ("[A]fter assessing the application of the NVRA and its provisions concerning change of residency, and recognizing the supremacy of federal law... Plaintiffs and Defendants have concluded that this lawsuit should be settled in accordance with this Decree."). In another recent case involving voter challenges and purges, DeKalb County officials withdrew their 12(b)(6) motion to dismiss the plaintiffs' NVRA claim at oral argument. See Ga. State Conf. of the NAACP v. DeKalb Cty. Bd. of Registration and Elections, No. 1:20-CV-00879-ELR, 2020 WL 5239127, at *2 n.4 (N.D. Ga. Sept. 2, 2020).

Georgia officials have publicly acknowledged that the NVRA bars the types of voter purges sought by Petitioners. Georgia's Director of Elections, Chris Harvey, sent an Official Election Bulletin (OEB) to Georgia's county election officials in August 2017 explaining that they were required to comply with the NVRA's address confirmation process when removing registered voters from the registration list based upon alleged changes of address unless the voter personally requested removal or notified the Board that they moved out of the county. A copy of Director Harvey's OEB is attached hereto as Exhibit 1.

Here, the Petitioners unlawfully seek to purge 14,346 Fulton County registered voters from the registration rolls immediately based on alleged address changes without sending them a confirmation notice or waiting for two election cycles to pass. Unless a voter confirms in writing that he or she has moved, this practice is clearly proscribed by Section 8 of the NVRA. Section 8 therefore preempts O.G.C.A. §§ 21-2-229 and 21-2-230 to the extent those statutes permit county officials to remove voters from the rolls immediately. Accordingly, Petitioners lack a clear legal right to relief under either statute and the Petition should therefore be denied.

2. *Forcing the Fulton County Board to systematically purge voters within 90 days of a federal election would violate the NVRA*

The Fulton County Board would also violate the NVRA for a second reason if they conducted widespread voter challenge hearings and systematically removed voters from the rolls within ninety days of a federal election. This is because Section 8(c)(2)(A) of the NVRA requires states to “complete, not later than 90 days prior to the date of a primary or general election for Federal office, any program the purpose of which is to systematically remove the names of ineligible voters from the official lists of eligible voters.” 52 U.S.C. § 20507(c)(2)(A) (the “90 Day Provision”). This provision plainly applies to the purges that would result from the voter challenge hearings sought by the Petitioners in this case.

The Eleventh Circuit has held that “the phrase ‘any program’ suggests that the 90 Day Provision has a broad meaning” in a case interpreting Section 8(c)(2)(A) of the NVRA. Arcia v. Fla. Sec’y of State, 772 F.3d 1335, 1344 (11th Cir. 2014). The Arcia Court found that the 90 Day Provision is triggered when a voter removal program “d[oes] not rely upon individualized information or investigation to determine which names from the voter registry to remove.” Id. (holding that citizen removal program qualified because it “used a mass computerized data-

matching process to compare the voter rolls with other state and federal databases, followed by the mailing of notices”).

A federal court in North Carolina applied the 90 Day Provision to issue a preliminary injunction prohibiting voter removals resulting from challenge proceedings very similar to those sought by the Petitioners in this case. See generally N.C. State Conf. of the NAACP v. N.C. State Board of Elections, No. 1:16CV1274, 2016 WL 6581284 (M.D.N.C. Nov. 4, 2016). In that case, several voters challenged more than 4,500 voters spanning three North Carolina counties shortly before the November 2016 general election based on mailings that were returned undeliverable. Id. at *1-2. The challengers asserted that, based on these mailings, the challenged voters were no longer residents of the jurisdiction and therefore not eligible to vote. Id. at *2. The court held that conducting these removals violated the 90 Day Provision:

Here, there is little question that the County Boards’ process of allowing third parties to challenge hundreds and, in Cumberland County, thousands of voters within 90 days before the 2016 General Election constitutes the type of “systematic” removal prohibited by the NVRA. A very small number of third parties targeted these voters, mailing them correspondence and submitting the correspondence that came back undeliverable to the County Boards as part of their large scale voter challenge efforts. There is no evidence in the record that these third parties that challenged the voters had any reliable first-hand evidence specific to the voters challenged.

Id. at *5. This holding and Arcia demonstrate that voter challenges based on USPS national change of address information constitute precisely the kind of systematic voter removal program that triggers the 90 Day Provision. Other bases for challenges cited by the Fulton County Petitioners—such as the “proof of registration in another jurisdiction” or surveys of leasing managers of apartment complexes or of local residents—also trigger the 90 Day Provision, as they involve the sort of voter caging efforts that have been routinely condemned by courts.

Voter caging involves challenging the registration status of voters and calling into question the legality of allowing them to vote. Sometimes, it involves sending direct mail to the addresses of registered voters and compiling a list of addressees from which the mail is returned undelivered. If the mail is returned, it is seen as proof that the person does not live there. The list is then used to purge or challenge voters' registrations on the grounds that the voters do not legally reside at the registered addresses. Voter caging has a long history in the United States, most notably leading to the consent decree in RNC v. DNC, No. 81-3876, Dkt. 43-5 (D.N.J. Nov. 1, 1982), which was invoked numerous times over the course of decades by the parties and by others. The consent decree expired in 2017.

In sum, to the extent O.G.C.A. §§ 21-2-229 and 21-2-230 permit systematic voter removal within 90 days of a federal election, Section 8(c)(2)(A) directly conflicts with and therefore preempts them. The 90 Day Provision thus bars Respondents from holding the challenge hearings Petitioners seek in advance of the November 2020 election. Petitioners therefore lack a clear legal right to relief and their Petition should be denied.

3. *Petitioners' selective targeting of Fulton County Voters for removal raises concerns about the potential for non-uniform and discriminatory removals of voters in violation of the NVRA*

Section 8(b)(1) of the NVRA, codified at 52 U.S.C. § 20507(b)(1), provides that “[a]ny State program or activity to protect the integrity of the electoral process . . . shall be uniform, nondiscriminatory, and in compliance with the Voting Rights Act of 1965.” The term “uniform” is intended to mean “that any purge program or activity must be applied to an entire jurisdiction.” H.R. Rep. No. 103-9, at 15-16, reprinted in 1993 U.S.C.C.A.N. 105, 119-20. The fact that Petitioners declined to attach the list of 14,346 challenged voters to the Petition raises concerns that these voters were identified in a non-uniform or discriminatory manner due in part to the

partisan affiliations of the Petitioners and their counsel. A Ring residential security camera video indicates that canvassers were going door-to-door in a predominantly Latino neighborhood in Sandy Springs asking residents to sign affidavits indicating that certain voters no longer resided at the address in question, which raises concerns that the Petitioners may be targeting predominantly-minority communities and neighborhoods.⁶ Under Section 8(b)(1) and its preemptive effect on O.C.G.A. §§ 21-2-229 and 21-2-230, voter challenge hearings cannot proceed until Petitioners can demonstrate that they will not result in the arbitrary removal of voters in a non-uniform or discriminatory manner.

B. Petitioners Have Not Met the Requirements of O.C.G.A. §§ 21-2-229 and 21-2-230.

Even if the NVRA did not preempt the Georgia statutes at issue, Petitioners would not be entitled to a writ of mandamus to enforce O.C.G.A. §§ 21-2-229 and 21-2-230 because they lack the requisite clear legal right to relief under both statutes. Petitioners lack the right to enforce O.C.G.A. §§ 21-2-229 and 21-2-230 because they have failed to demonstrate to this Court that they complied with the requirements of either statute. Respondents therefore are not required by law to fulfill the public duties the Petitioners assert those statutes impose.

O.C.G.A. § 21-2-229(a) provides that “[a]ny elector of a county or municipality may challenge the qualifications of any person applying to register to vote in the county or municipality and may challenge the qualifications of any elector of the county or municipality whose name appears on the list of electors. Such challenges shall be in writing and shall *specify distinctly* the grounds of the challenge” (emphasis added). Pursuant to O.C.G.A. § 21-2-229(c), challengers also

⁶ Available at <https://ring.com/share/4d4501ef-201c-4da9-8283-ecf2b2ee731a>.

have the burden of proving that the person being challenged is not qualified to remain on the list of electors.

Similarly, challenges made pursuant to O.C.G.A. § 21-2-230(a) “shall be in writing and specify distinctly the grounds of such challenge.” Only if these requirements are satisfied may county election officials convene a challenge hearing or consider a challenge. Compare id. at § 21-2-229(b) (“Upon such challenge being filed with the board of registrars, the registrars shall set a hearing on such challenge.”), with § 21-2-230(b) (“Upon the filing of such challenge, the board of registrars shall immediately consider such challenge . . .”).

In establishing that a challenged voter is not eligible to remain on the Fulton County voter registration rolls, Petitioners must prove that the challenged voter had the tacit or explicit intention to change their domicile and were not only temporarily absent from the jurisdiction. *See* O.C.G.A. § 21-2-217(a); Cook v. Bd. of Registrars of Randolph Cnty., 320 Ga. App. 447, 448-54 (2013).

Petitioners have failed to provide the Court with any evidence that their written voter challenges satisfied the requirements of §§ 21-2-229 or 21-2-230, including that each challenged voter intended to change their domicile to locations outside of Fulton County under O.C.G.A. § 21-2-217(a) and Cook. In the most detailed of the demand letters to Respondents, Mr. Smith offered only a summary “breakdown” into five categories of the 14,346 voters whose registrations they seek to challenge. (Petition at Ex. B at pp. 1-2). The generic allegations that certain voters “[a]re exact matches per the National Change of Address data base (NCOA), where the voter moved from the district, or the voter no longer resides in the precinct,” or that there is “[p]roof of registration in another jurisdiction” without further explanation let alone any documentation, or that the voter’s landlord or a person at their registration address allegedly told an unspecified person that the voter no longer lives there, are inadequate to trigger hearings under §§ 21-2-229 or

21-2-230. (Id.). Petitioners have failed to file with the Court the actual voter list or a representative sample, making it impossible for the Court to discern whether Petitioners' submission challenges "specify distinctly the grounds" of their challenge to each voter's registration. O.C.G.A. § 21-2-229(a). Mr. Smith's repeated claim that he was "in possession of a variety of written backup information and affidavits, which supports the elimination of these voters from the rolls," does not suffice as a substitute for the apparent failure to link the alleged grounds for ineligibility specifically to individual voters.

Bringing valid voter challenges requires more than Petitioners have provided to Respondents or to the Court. Georgia law does not confer a clear legal right, enforceable with a writ of mandamus, upon Petitioners to drop a paper list of more than fourteen thousand voters on the doorstep of the election board, proclaim on cursory and nonspecific grounds that those voters must be struck from the rolls, demand that the board grant them an immediate opportunity to air those unsubstantiated allegations in a public forum, and force the board to notify voters and immediately convene voter hearings on the eve of a major election. Petitioners' request for a writ of mandamus should therefore be dismissed.

C. O.C.G.A. § 21-2-229 Grants Discretion to Boards of Registrars.

Even if Petitioners had met the requirements of O.C.G.A. § 21-2-229(a) or their challenges did not violate federal law, they would not be entitled to a writ of mandamus commanding that Respondents hold a hearing immediately because the statute vests discretion in boards of registrars to respond to challenges and Respondents have not grossly abused that discretion. As the Georgia Supreme Court has explained, "[e]ven where official action of some sort is required . . . where the action involves the exercise of discretion, mandamus will not lie to dictate the manner in which the action is taken or the outcome of such action." Bibb Cnty., 294 Ga. at 737. A petitioner only

has a clear legal right to relief in such situations when “the official or agency commits a gross abuse of discretion.” Id. at 735.

Petitioners seek mandamus to dictate the manner in which Respondents fulfill the requirements of § 21-2-229. Mandamus therefore “will not lie.” Id. at 737. While § 21-2-229(a) specifies that the board of registrars “shall set a hearing” when a challenge is filed, it does not require that the hearing be scheduled within a specific time period or conducted in a specific manner. Moreover, Respondents are acting on Petitioners’ request. Respondent Barron’s July 28 letter indicates that Respondents have selected a staff member to review the 14,346 voter names Petitioners provided for challenge. (Petition at Ex. D at p. 1). The staff member will verify whether the challenged persons indeed remained registered, whether Respondents had received information from the Fulton County Department of Vital Records to make a hearing unnecessary, and whether federal law bars cancellation of the voter’s registration. (Id.). The staff member will coordinate with the members of the Board to schedule hearings and send notices to any voters for whom hearings will be held. (Id. at p. 2).

Respondents thus answered Petitioners’ letter in a timely manner with a reasonable plan for complying with § 21-2-229 in light of their election administration responsibilities, all of which undoubtedly require more resources in light of the COVID-19 pandemic. Since Petitioners did not provide the list of 14,346 voters whom they seek to challenge in electronic format, Respondents need time to process the list, consider the eligibility of voters, and determine whether hearings are necessary. Respondents’ timely and responsive reply to Petitioners’ challenge cannot be viewed as a gross abuse of discretion that could entitle Petitioners to a writ of mandamus. Petitioner’s request should therefore be dismissed.

D. O.C.G.A. § 21-2-230 Does Not Require Convening Challenge Hearings Under the Current Circumstances.

Petitioners ask this Court to order the Fulton County Board to “set[] a hearing before the Board to determine Petitioners’ Challenges” pursuant to § 21-2-230. (Petition at 9 at ¶ c). However, § 21-2-230 only permits a board to convene a voter challenge hearing in one of two circumstances. The first situation is if the challenged voter casts an absentee ballot in an ongoing election. See O.C.G.A. §§ 21-2-230(e), (g) (“If the challenged elector cast an absentee ballot and the challenge is based upon grounds that the challenged elector is not qualified . . . the board of registrars shall proceed to conduct a hearing...”). The second situation is if the challenged voter appears at the polls to vote in an election and it is feasible to hold a hearing before polls close. See id. § 21-2-230(h) (“If the challenged elector appears at the polls to vote and it is practical to conduct a hearing on the challenge prior to the close of the polls, the registrars shall conduct such hearing . . .”).

Neither event that could trigger § 21-2-230 has materialized. Petitioners have not presented any information to Respondents or the Court indicating that any challenged voter has cast a ballot in the November 2020 election. This is for good reason; Georgia election officials are just beginning to mail absentee ballots to voters, while in-person early voting does not begin until October 12, 2020. Petitioners therefore lack a clear legal right to convene a hearing to challenge the legitimacy of any voter’s ballot in the November election pursuant to O.C.G.A. § 21-2-230. Their mandamus petition to compel such a hearing must be dismissed.

III. CONCLUSION

For the foregoing reasons, this Court should grant Proposed Intervenor’s Motion to Dismiss the Verified Petition for Writ of Mandamus or grant Proposed Intervenor’s Motion for Judgment on the Pleadings.

Respectfully submitted this 23rd day of September, 2020.

/s/ William V. Custer

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OFFICIAL ELECTION BULLETIN

August 18, 2017

TO: County Election Officials and County Registrars
FROM: Chris Harvey, Elections Division Director
RE: NVRA and Change of Residency Challenges

The National Voting Registration Act (52 U.S.C. § 20507(d)) limits when a jurisdiction can remove an elector from the voter rolls due to moving outside of the jurisdiction or due to a change of address. The statute prohibits removal unless:

1. There is written confirmation of the change in residency by the elector; or
2. The NVRA Confirmation Notice Process (NOACT2GE), described in 52 U.S.C. § 20507(d)(2), is followed.

O.C.G.A. § 21-2-228 allows county boards of registration to conduct hearings in order to determine the qualification of electors. O.C.G.A. § 21-2-229 allows electors of the county or municipality to challenge, in writing, the qualifications of any elector who appears on the list of electors. These challenge hearings for qualifications cannot, however, result in a voter being *removed from the list of electors* for any change of address. The NVRA does not prohibit removing an elector from the list of electors for other disqualifications such as citizenship, felony sentence, judicially declared mental incompetence, or insufficient age.

Options for Counties with Knowledge of a Change of Address: If a county has reason to believe a person has changed their address and hasn't updated their voter registration record, it is reasonable for the county to mail the elector a letter at their registered address to let the elector know that the county believes the elector may have moved and for the elector to provide a current address. Usually, the more specific you can be in the letter the better. There can be no consequence if the elector does not respond to the letter as none is provided by law. If the elector completes and returns the letter with a new address, the county now has written confirmation of a change in residency that it can act upon consistent with NVRA. However, if the letter is returned undeliverable, this would begin the "returned mail" list maintenance process and a confirmation notice would be issued to the elector. Because state law specifies instances when confirmation notices are to be sent, a county should not send a confirmation notice outside of the instances in state law (Returned Mail, NCOA, No Contact). Further, there is no current mechanism in eNet for a county to cause a confirmation notice to be printed by the print vendor outside

of those 3 list maintenance processes. If the elector then fails to respond to the confirmation notice as required by law, the elector's status will then become "Inactive."

National Voter Registration Act Citation

52 U.S.C. § 20507(d) *Removal of names from voting rolls.*

(1) A State shall not remove the name of a registrant from the official list of eligible voters in elections for Federal office on the ground that the registrant has changed residence unless the registrant--

(A) confirms in writing that the registrant has changed residence to a place outside the registrar's jurisdiction in which the registrant is registered; or

(B) (i) has failed to respond to a notice described in paragraph (2); and

(ii) has not voted or appeared to vote (and, if necessary, correct the registrar's record of the registrant's address) in an election during the period beginning on the date of the notice and ending on the day after the date of the second general election for Federal office that occurs after the date of the notice.

I encourage you to review this information with your boards and county attorneys and to make sure that any cancellation of voters from the electors lists, or change in status to inactive, is done in compliance with this federal law. I also encourage you to share this information with any municipalities within your county as they prepare for municipal elections in November.

IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

WARREN MATHEW SCHMITZ, JR., and	)	
JEFFRY ALAN KUNKES,	)	
	)	
Petitioners,	)	
	)	
v.	)	
	)	
FULTON COUNTY BOARD OF	)	
REGISTRATION AND ELECTIONS, et al.,	)	CIVIL ACTION FILE
	)	NO. 2020CV339337
Respondents,	)	
	)	
GEORGIA STATE CONFERENCE OF THE	)	
NAACP and GEORGIA COALITION FOR	)	
THE PEOPLE'S AGENDA,	)	
	)	
Proposed Intervenors.	)	
	)	

CERTIFICATE OF SERVICE

This is to certify that on this date, I caused to be served a true and correct copy of the MOTION TO DISMISS VERIFIED PETITION FOR WRIT OF MANDAMUS AND MEMORANDUM IN SUPPORT BY PROPOSED INTERVENORS THE GEORGIA STATE CONFERENCE OF THE NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE AND THE GEORGIA COALITION FOR THE PEOPLE'S AGENDA by electronic filing to:

Ray S. Smith, III
Smith & Liss, LLC
Five Concourse Parkway, Suite 2600
Atlanta, Georgia 30328

Eugene Fuller, Jr.
Office of the County Attorney
141 Pryor Street, SW, # 4038
Atlanta, Georgia 30303

This 23rd day of September, 2020.

/s/ William V. Custer

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EXHIBIT E

IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

WARREN MATHEW SCHMITZ, JR., and
JEFFRY ALAN KUNKES,

Petitioners,

v.

FULTON COUNTY BOARD OF
REGISTRATION AND ELECTIONS, et al.,

Respondents,

GEORGIA STATE CONFERENCE OF THE
NAACP and GEORGIA COALITION FOR
THE PEOPLE'S AGENDA,

Proposed Intervenors.

CIVIL ACTION FILE
NO. 2020CV339337

**VERIFIED ANSWER TO PETITION FOR WRIT OF MANDAMUS BY THE GEORGIA
STATE CONFERENCE OF THE NATIONAL ASSOCIATION FOR THE
ADVANCEMENT OF COLORED PEOPLE AND THE GEORGIA COALITION FOR
THE PEOPLE'S AGENDA**

The Georgia State Conference of the National Association for the Advancement of Colored People ("Georgia NAACP") and the Georgia Coalition for the People's Agenda ("GCPA") (collectively, the "Intervenors"), by and through their counsel, hereby respectfully file this answer to the plaintiff's petition for writ of mandamus.¹

First Defense

The Petitioners' claims are barred because they fail to state a claim for relief that can be granted.

¹ The Proposed Intervenors respectfully request leave from the Court to file this Verified Answer to Petition for Writ of Mandamus, which shall be deemed to have been filed as of this date.

Second Defense

The Petitioners' claims are barred because the relief sought is barred and preempted by federal law.

Third Defense

The Petitioners' claims are barred because the relief requested would be futile and fruitless, and thus is not allowed under Georgia law.

Fourth Defense

The Petitioners' claims are barred because the proposed voter removals violate Section 8 of the National Voter Registration Act of 1993 (NVRA), 52 U.S.C. § 20507, which forbids purging voters immediately due to a change of address, and conducting a systematic voter removal program within ninety days of a federal election. See 52 U.S.C. § 20507(d)(1).

Fifth Defense

The Petitioners' claims are barred because the relief requested does not comply with the NVRA's mandatory two election cycle notice-and-waiting-period requirement.

Sixth Defense

The Petitioners' claims are barred because they lack the requisite clear legal right to relief under O.C.G.A. §§ 21-2-229 and 21-2-230.

ANSWER

1.

Responding to Paragraph 1 of the Petition, the Intervenor's admit that the terms of the statutes cited therein speak for themselves. The Intervenor's deny that plaintiffs are entitled to the relief they request. The Intervenor's deny any remaining allegations contained in Paragraph 1 of the Petition.

2.

Responding to Paragraph 2 of the Petition, the Intervenor's admit that the terms of the statutes cited therein speak for themselves. The Intervenor's deny that plaintiffs are entitled to the relief they request. The Intervenor's deny any remaining allegations contained in Paragraph 2 of the Petition.

3.

Responding to Paragraph 3 of the Petition, the Intervenor's admit that the terms of the statutes cited therein speak for themselves. The Intervenor's deny that plaintiffs are entitled to the relief they request. The Intervenor's deny any remaining allegations contained in Paragraph 3 of the Petition.

4.

The Intervenor's are without information or knowledge sufficient to admit or deny the allegations contained in Paragraph 4 of the Petition, and accordingly, deny the same.

5.

The Intervenor's are without information or knowledge sufficient to admit or deny the allegations contained in Paragraph 5 of the Petition, and accordingly, deny the same.

6.

The Intervenor deny that the Petitioners are entitled to the relief set forth in Paragraph 6 of the Petition, and deny any remaining allegations contained in Paragraph 6 of the Petition.

7.

The Intervenor are without information or knowledge sufficient to admit or deny the allegations contained in Paragraph 7 of the Petition, and accordingly, deny the same.

8.

Responding to Paragraph 8 of the Petition, the Intervenor admit that the statutes and laws set forth therein speak for themselves. The Intervenor are without information or knowledge sufficient to admit or deny the remaining allegations contained in Paragraph 8 of the Petition, and accordingly, deny the same.

9.

The Petitioners admit the allegations contained in Paragraph 9 of the Petition.

10.

The Intervenor are without information or knowledge sufficient to admit or deny the allegations contained in Paragraph 10 of the Petition, and accordingly, deny the same.

11.

The Intervenor are without information or knowledge sufficient to admit or deny the allegations contained in Paragraph 11 of the Petition, and accordingly, deny the same.

12.

The Intervenor are without information or knowledge sufficient to admit or deny the allegations contained in Paragraph 12 of the Petition, and accordingly, deny the same.

13.

The Intervenor is without information or knowledge sufficient to admit or deny the allegations contained in Paragraph 13 of the Petition, and accordingly, deny the same.

14.

The Intervenor is without information or knowledge sufficient to admit or deny the allegations contained in Paragraph 14 of the Petition, and accordingly, deny the same.

15.

The Intervenor is without information or knowledge sufficient to admit or deny the allegations contained in Paragraph 15 of the Petition, and accordingly, deny the same.

16.

The Intervenor is without information or knowledge sufficient to admit or deny the allegations contained in Paragraph 16 of the Petition, and accordingly, deny the same.

17.

The Intervenor is without information or knowledge sufficient to admit or deny the allegations contained in Paragraph 17 of the Petition, and accordingly, deny the same.

18.

The Intervenor is without information or knowledge sufficient to admit or deny the allegations contained in Paragraph 18 of the Petition, and accordingly, deny the same.

19.

The Intervenor is without information or knowledge sufficient to admit or deny the allegations contained in Paragraph 19 of the Petition, and accordingly, deny the same.

20.

The Intervenor is without information or knowledge sufficient to admit or deny the

allegations contained in Paragraph 20 of the Petition, and accordingly, deny the same.

21.

The Intervenor is without information or knowledge sufficient to admit or deny the allegations contained in Paragraph 21 of the Petition, and accordingly, deny the same.

22.

The Intervenor incorporates their responses to paragraphs 1-21 as if fully set forth herein.

23.

The Intervenor denies the allegations contained in paragraph 23 of the Petition.

24.

The Intervenor admits that the terms of the statutes cited in Paragraph 24 of the Petition speak for themselves, and that Petitioners purport to demand a hearing under those statutes. The Intervenor denies that Petitioners are entitled to the relief they request and deny any remaining allegations contained in Paragraph 24 of the Petition.

25.

The Intervenor admits that the terms of the statutes cited in Paragraph 25 of the Petition speak for themselves. The Intervenor denies that Petitioners are entitled to the relief they demand and deny any remaining allegations contained in Paragraph 25 of the Petition.

26.

The Intervenor admits that the terms of the statutes cited in Paragraph 26 of the Petition speak for themselves. The Intervenor denies that Petitioners are entitled to the relief they demand and deny any remaining allegations contained in Paragraph 26 of the Petition.

27.

The Intervenor is without information or knowledge sufficient to admit or deny the

allegations contained in Paragraph 27 of the Petition, and accordingly, deny the same.

28.

The Intervenors deny the allegations contained in Paragraph 28 of the Petition.

29.

The Intervenors deny the allegations contained in Paragraph 29 of the Petition.

30.

The Intervenors deny the allegations contained in Paragraph 30 of the Petition.

31.

The Intervenors are without information or knowledge sufficient to admit or deny the allegations contained in Paragraph 31 of the Petition, and accordingly, deny the same.

32.

The Intervenors admit that the terms of the statutes set forth in Paragraph 32 of the Petition speak for themselves, but deny that Petitioners are entitled to the relief sought therein.

33.

The Intervenors deny the allegations contained in paragraph 33 of the Petition.

34.

The Intervenors incorporate their responses to Paragraphs 1-33 as if fully set forth herein.

35.

The Intervenors deny the allegations contained in Paragraph 35 of the Petition.

36.

The Intervenors deny the allegations contained in Paragraph 36 of the Petition.

37.

The Intervenors deny the allegations contained in Paragraph 37 of the Petition.

The Intervenor deny all allegations contained in the Prayer for Relief and deny that Petitioners are entitled to the relief requested therein.

The Intervenor deny all allegations in the Petition not specifically admitted above.

WHEREFORE, The Intervenor respectfully demand that the Petition be dismissed and that costs and fees of this action, including attorneys' fees be cast upon the Petitioners.

Respectfully submitted this 23rd day of September, 2020.

/s/ William V. Custer

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This 23rd day of September, 2020.

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Verification

Comes now, James Major Woodall, who deposes and states that he is the authorized representative of the Georgia State Conference of the National Association for the Advancement of Colored People, intervening defendant in this action. The undersigned has reviewed this Verified Answer to Petition for Writ of Mandamus by the Georgia State Conference of the National Association for the Advancement of Colored People and the Georgia Coalition for the People's Agenda and states that the allegations contained in the Verified Answer are true and correct where derived from his own knowledge and, where derived from the knowledge of others, he believes them to be true and correct.

This 22nd day of September, 2020.

James Woodall
James "Major" Woodall

Sworn to and subscribed before me
this 22nd day of September, 2020

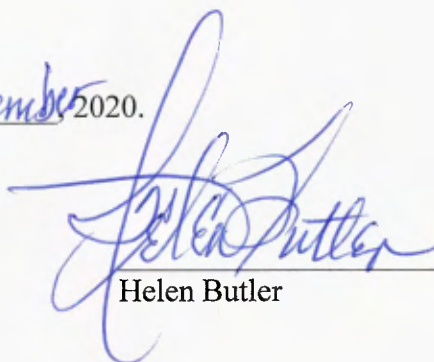
Leanne S. Middleton
Notary Public



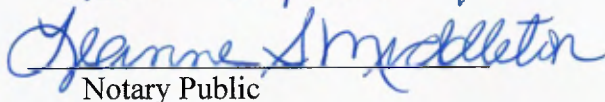
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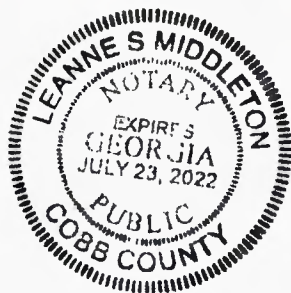
Comes now, Helen Butler, who deposes and states that she is the authorized representative of the Georgia Coalition for the People's Agenda, intervening defendant in this action. The undersigned has reviewed this Verified Answer to Petition for Writ of Mandamus by the Georgia State Conference of the National Association for the Advancement of Colored People and the Georgia Coalition for the People's Agenda and states that the allegations contained in the Verified Answer are true and correct where derived from her own knowledge and, where derived from the knowledge of others, she believes them to be true and correct.

This 23rd day of September, 2020.


Helen Butler

Sworn to and subscribed before me
this 23rd day of September, 2020


Notary Public



This 23rd day of September, 2020.

/s/ William V. Custer

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