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

PROJECT VOTE, INC.,	)	
Plaintiff,	)	CIVIL ACTION NO. 1:16-cv-2445-WSD
v.	)	
BRIAN KEMP, *In His Official Capacity as Georgia Secretary of State and Chief Election Official for the State of Georgia,*	)	
Defendant.	)	

PLAINTIFF'S OPPOSITION TO MOTION TO DISMISS

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PRELIMINARY STATEMENT

Plaintiff Project Vote respectfully submits this brief in opposition to the Motion to Dismiss filed by Defendant Brian Kemp on August 3, 2016 (Dkt. 20). Project Vote alleges that Defendant's refusal to make certain records relating to the reasons Defendant rejected, canceled, or otherwise did not add voter registration applicants to the voter roll available for public inspection violated the disclosure provision of the National Voter Registration Act ("NVRA"), 52 U.S.C. § 20507(i) (the "Public Disclosure Provision"). Following two years of fruitless negotiations, Project Vote filed this action to compel Defendant to make those records available for inspection, and shortly thereafter filed a Motion for Preliminary Injunction (Dkt. 12).

Defendant's Motion to Dismiss presses the same flawed arguments raised in his Opposition to Project Vote's Motion for Preliminary Injunction. As before, Defendant's arguments are disconnected from the actual facts of the case or any statutory language, legislative history, or case law. Instead, Defendant relies on a baseless interpretation of unrelated provisions of the Help America Vote Act ("HAVA"), 52 U.S.C. § 21083, and narrowly construes the NVRA's Public Disclosure Provision in an apparent attempt to put his office's voter roll maintenance activities beyond public oversight. Not only is Defendant incorrect

with respect to all of the above, his arguments would absolve state officials everywhere from adherence to current federal law.

Project Vote is entitled to inspect the requested voter registration records as required under the NVRA's Public Disclosure Provision, 52 U.S.C. § 20507(i). Defendant's motion provides no credible basis for denying Project Vote's requested relief, and accordingly his Motion to Dismiss should be denied.

FACTUAL BACKGROUND

The Requested Records, as defined in Project Vote's Complaint and Motion for Preliminary Injunction,[1] are maintained by Defendant and largely kept in the "Georgia Voter Registration System" ("GVRS") database created pursuant to HAVA. Defendant uses records contained in GVRS to ensure the accuracy and currency of the voter roll by verifying the eligibility of voter registration applicants. Compl. ¶¶ 28-37 (Dkt. 1).[2] That verification process begins by taking

[1] Georgia's process for verifying voter registration applicants and Project Vote's two-year saga to inspect the Requested Records were thoroughly recounted in Project Vote's prior briefing (Dkt. 12-1) and are not fully repeated here to avoid unnecessary repetition. Because Defendant raised almost identical arguments in his Opposition to Project Vote's Motion for Preliminary Injunction, Project Vote respectfully incorporates herein by reference its briefing in support of the Motion for Preliminary Injunction.

[2] Defendant's verification process was described in detail in Exhibit A to the Declaration of Brian Mellor (Dkt 12-3). Exhibit A contains a document entitled "Process for Entering New Voter Registration Application Information Into the

information provided on registration applications received from county registrars and comparing it to information contained in certain databases maintained by or at the direction of the Georgia Department of Driver Services ("DDS") or Social Security Administration ("SSA"). *Id.* ¶¶ 28-31. For applicants who list a driver's license number on their applications, the information provided in their applications must "exactly match" the same information in the DDS database for Georgia to consider the application "verified in its entirety" and to add the applicant to the voter roll. *Id.* ¶ 31. SSN applicants are likewise added to the roll only if a query of the SSA database using the information provided on an application does not return a response code of "invalid," "no match found," or that all persons with matching information are "deceased." *Id.* ¶ 32.

If a voter registration application cannot be "verified in its entirety" by comparison to the DDS or SSA database, the application is categorized as "incomplete" and the Georgia board of registrars must notify the applicant in writing of the reason why his or her application was not verified and explain how the applicant can provide corrected information. *Id.* ¶¶ 33-36. Prior to sending such a notice, however, the county registrar checks GVRS to ensure that there were

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Statewide Voter Registration System," which was submitted as an exhibit to Georgia's "Submission Under Section 5 of the Voting Rights Act" to the DOJ on August 17, 2010.

no data processing or data entry errors in the information submitted to DDS or SSA, and if such errors are found, the application must be resubmitted for verification. *Id.* ¶ 34.

Project Vote's Request to Inspect Records. Beginning in May 2014, Project Vote requested certain voter registration records to determine if Georgia was improperly requiring proof of citizenship to register to vote or before some voters were able to vote. *Id.* ¶¶ 38-43. Project Vote subsequently requested all records related to any voter registration applicants who were not added to the voter roll and the reasons for their not being added after concerns arose that large numbers of applicants were being improperly rejected. *Id*. ¶¶ 44-50. In October 2014, Project Vote further requested records related to "canceled" voters. *Id*. ¶ 55.

In October 2014, Defendant produced a report of "non-verified" voter registration applicants, but failed to include records sufficient to determine the reason for applicants' rejections or not being added, as expressly requested by Project Vote. *Id.* ¶¶ 52-53. Project Vote subsequently engaged in a long series of negotiations with Defendant's office to obtain the Requested Records. In April 2015, Project Vote received a second report listing "canceled voters," but again the records made available did not include records sufficient to determine the reason why those voters were rejected or canceled. *Id.* ¶¶ 60-61. Notably, the same day

Defendant made the list of canceled voters available, he announced that the former Georgia Elections Director had resigned after an internal investigation concluded she changed the status of almost 8,000 voters from inactive to canceled within 90 days of a federal election in violation of the NVRA, 52 U.S.C. § 20507(c)(2)(A). *Id.* ¶¶ 3, 62.

Notice of Violation. After continued efforts to obtain the Requested Records failed, on July 6, 2015 Project Vote notified Defendant pursuant to Section 11(b) of the NVRA that he had violated the NVRA by failing to make the Requested Records available to Project Vote for inspection. Ex. L to Decl. of Jonathan Ference-Burke ¶ 2 (Dkt. 1-13) (the "Notice Letter"). In particular, the Notice Letter stated that Project Vote sought, *inter alia*, "***any*** records explaining or reflecting the reasons for [an applicant's] rejection, cancelation, or not being added" to the voter roll, and that Defendant's refusal to make those records available was a violation of the NVRA. *Id.* (emphasis added). The letter provided detailed descriptions of Requested Records still outstanding, as well as detailed descriptions of the reasons why the previously provided records were insufficient.

Defendant responded on August 25, 2015, acknowledging that his office had failed to provide critical records but representing that Defendant would be willing to satisfy Project Vote's outstanding requests. Compl. ¶ 30. Project Vote then

negotiated with Defendant without success, with Defendant ignoring Project Vote's communications for months at a time. *Id.* ¶¶ 68-79.

Finally, in July 2016, Project Vote filed the instant suit seeking declaratory and injunctive relief requiring Defendant to make the Requested Records available for public inspection. Among other relief, Project Vote seeks a declaratory judgment affirming that the Requested Records are subject to inspection under the NVRA, as well as an order requiring Defendant to make the Requested Records available on an ongoing basis. *Id.* at pp. 36-40.

Shortly thereafter, on July 20, 2016, Defendant made certain records available to Project Vote (Dkt. 31). Although he refused to provide such data for over two years, Defendant was able to provide some of the Requested Records within just two weeks of the filing of this suit. However, as explained in Project Vote's Motion for Expedited Discovery and submission to the Court on August 11, 2016 (Dkts. 24 & 26)—and by the Defendant's own admission, *see* Second Declaration of Merritt Beaver ¶ 14 (Dkt. 18-2)—the July 20, 2016 production falls short of satisfying Project Vote's request for records. In particular, Defendant's production contains undefined and indecipherable codes, omits critical information, and does not include critical records relating to Defendant's voter registration programs and activities. Moreover, Defendant continues to insist that

Project Vote is not entitled to inspect any records beyond a narrowly-defined category of "list maintenance records," and further that Project Vote is in fact prohibited from accessing information contained in the GVRS database (despite the fact Defendant provided some of that allegedly prohibited information on July 20, 2016). As such, Defendant has not agreed to make the Requested Records available on an ongoing basis, as requested and as required under the NVRA.

STANDARD OF REVIEW

When reviewing Defendant's motion to dismiss, the Court must take the allegations of Project Vote's complaint as true, and must construe those allegations in the light most favorable to Project Vote. *See Rivell v. Private Health Care Sys., Inc.*, 520 F.3d 1308, 1309 (11th Cir. 2008). A complaint need only allege "'enough factual matter (taken as true) to suggest' the required element[s]" and to "raise a reasonable expectation that discovery will reveal evidence" of a cause of action. *Watts v. Fla. Int'l Univ.*, 495 F.3d 1289, 1295-96 (11th Cir. 2007) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 556 (2007)).

ARGUMENT

I. PROJECT VOTE'S COMPLAINT STATES A CLAIM FOR RELIEF

Project Vote's complaint states a claim for relief requiring Defendant to make the Requested Records available for public inspection because those records

are subject to disclosure under the plain terms of the NVRA. The NVRA mandates that Defendant make available for public inspection and copying "***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." 52 U.S.C. § 20507(i)(1) (emphasis added). Here, the Requested Records relate to voter registration applicants who Defendant rejected, canceled, or otherwise did not add to the voter roll, including the ***reason*** such applicants were rejected, canceled, or not added to the voter roll. The Requested Records thus concern the implementation of Georgia's process of compiling and maintaining an accurate and updated voter roll.

Case law affirms that the Requested Records are subject to disclosure under the NVRA. For example, in *Project Vote/Voting for America v. Long*, the Fourth Circuit Court of Appeals held that completed voter registration applications "are clearly 'records concerning the implementation of programs and activities conducted for the purpose of ensuring the accuracy and currency of official lists of eligible voters.'" 682 F.3d 331, 335 (4th Cir. 2012) (Wilkinson, J.) (quoting 52 U.S.C. § 20507(i)(1)). The Fourth Circuit found that the "***process*** of reviewing voter registration applications" is a "'program' and an 'activity'" because it is "carried out in the service of a specified end—maintenance of the voter rolls" and

is performed by state election employees. *Id.* (emphasis added). Such a process, moreover, was "plainly" done for the purpose of ensuring the accuracy and currency of the voter roll. *Id.*; *see also True the Vote v. Hosemann*, 43 F. Supp. 3d 693, 723-28 (S.D. Miss. 2014) (concluding records relating to the "process of compiling, maintaining, and reviewing the voter roll" subject to disclosure). The Fourth Circuit further found that the requested voter registration applications clearly "concern" that process. *Long*, 682 F.3d at 335-36. Given that the NVRA's Public Disclosure Provision applies to "***all*** records," the Court reasoned that the provision should be construed to have "an expansive meaning because 'all' is a term of great breadth." *Id.* at 336 (emphasis added).

Similarly, there is no credible argument that the Requested Records are not "records" relating to a "program" or "activity" performed by state election officials for the purpose of "ensuring the accuracy and currency of official lists of eligible voters." 52 U.S.C. § 20507(i)(1). Defendant's process of reviewing voter registration applications and determining applicants' eligibility—*i.e.*, whether to reject, cancel, or otherwise not add voter registration applicants to the voter roll—is a "program and activity" within the meaning of the NVRA. *See Long*, 682 F.3d at 335; *True the Vote*, 43 F. Supp. 3d at 723-28. This program and activity is conducted for the purpose of ensuring the accuracy and currency of the voter roll,

and the Requested Records unquestionably "concern" this program and activity. *See Long*, 682 F.3d at 335 ("[V]oter lists are not 'accurate' or 'current' if eligible voters have been improperly denied registration or if ineligible persons have been added to the rolls."). The reasons why Defendant rejects, cancels, or otherwise does not add a voter registration applicant to the voter roll—including the data Defendant relies on, Defendant's record of that data, and the algorithm or criteria used to determine whether the applicant is to be rejected, canceled, or not added by Defendant or other state officials—are by definition critical to this program. *Id.* at 335-36.

Indeed, records explaining the reason why and method by which Defendant rejects, cancels, or otherwise does not add a voter applicant to the roll are precisely the type of records that the Public Disclosure Provision was intended to make available. These records are essential for allowing the public to evaluate whether Defendant is properly performing his obligations. *Id.* at 339 ("State officials labor under a duty of accountability to the public in ensuring that voter lists include eligible voters and exclude ineligible ones in the most accurate manner possible"); *see* 52 U.S.C. § 20501(b)(4) (express statutory purpose includes "ensur[ing] that accurate and current voter registration rolls are maintained").

Further, after Defendant refused to make the records available, Project Vote provided the required 90-day notice to Defendant in its July 6, 2015 Notice Letter, thereby giving Defendant a sufficient opportunity to correct his violations of the NVRA. Defendant failed to comply, and therefore, Project Vote is entitled to sue for relief ordering the Requested Records be made available for public inspection—Project Vote's complaint is that suit.

Project Vote's complaint plainly establishes "enough factual matter" that the Requested Records fall within the NVRA's terms for purposes of a motion to dismiss. *Watts*, 495 F.3d at 1295. Defendant can make no credible argument otherwise, and his motion should therefore be denied.

II. DEFENDANT'S USE OF AN ELECTRONIC DATABASE DOES NOT IMMUNIZE HIM FROM DISCLOSURE OBLIGATIONS

Project Vote's complaint states a claim for relief. As explained below, each of Defendant's arguments for dismissing this case are without merit and fall apart when subjected to the slightest scrutiny.

A. HAVA Did Not Repeal the NVRA's Public Disclosure Provision

Defendant's Motion should be denied because he is wrong on the law. Defendant's initial argument is that the Help America Vote Act, 52 U.S.C. § 21083, affirmatively prohibits disclosure of information contained in the GVRS database, an interpretation that would eviscerate the Public Disclosure Provision

entirely. Mot. 12-13. Defendant bases this claim on the fact that HAVA, which requires states to maintain a centralized voter registration database, requires state election officials to take "adequate technological security measures" to prevent "***unauthorized*** access" to the database. 52 U.S.C. § 21083(a)(3) (emphasis added); Mot. 13. This argument borders on frivolous.

First, Defendant simply ignores the actual language of the statute. HAVA requires states to create a centralized voter registration database and states that the computerized list "shall serve as the official voter registration list." 52 U.S.C. § 21083(a)(1)(A)(viii). HAVA further requires that election officials ensure the voter list is "***accurate*** and [] ***updated*** regularly" and requires them to establish "[s]afeguards to ensure that eligible voters are not removed in error." *Id.* § 21083(a)(4) (emphasis added). The NVRA, meanwhile, requires that "all records concerning the implementation of programs and activities" conducted to ensure the "***accuracy*** and ***currency***" of the voter roll must be made available for public inspection. *Id.* § 20507(i)(1) (emphasis added). In other words, the database is the record of the official voter list, and Defendant's verification efforts are "programs and activities" conducted to ensure the accuracy and currency of that official voter list. *Id.* Plainly then, the NVRA's disclosure provision covers the records stored in the database mandated by HAVA, because that database

constitutes the "official list of eligible voters" and it must be "accurate and [] updated." *Id.* § 21083(a)(4)(A). If Defendant were correct that HAVA's "technological security" provision simultaneously ***prohibited*** public inspection of the GVRS database, the NVRA's Public Disclosure Provision must have been impliedly repealed by HAVA.

HAVA itself states otherwise. Congress expressly provided that "nothing in [HAVA] may be construed . . . to supersede, restrict, or limit the application of [the NVRA.]" 52 U.S.C. § 21145(a). Even ignoring that provision, the implied repeal of a statute is strongly disfavored absent a clear expression of congressional intent. *See, e.g.*, *Tug Allie–B, Inc. v. United States*, 273 F.3d 936, 959 (11th Cir. 2001) (Black, J., concurring) (noting the "principles of judicial restraint and separation of powers which underlie the particularly high standard required for an implicit repeal"). Moreover, the minimum requirement for finding an implied repeal is an actual ***conflict*** between the provisions of the two statutes. Courts "follow the long established rule, that 'a new[er] statute will not be read as wholly or even partially amending a prior one unless there exists a positive repugnancy . . . that cannot be reconciled.'" *Id.* at 941 (quoting *Reg'l Rail Reorganization Act Cases*, 419 U.S. 102, 133-34 (1974)).

Here, both statutes can easily be construed harmoniously: while HAVA

mandates information security measures to prevent ***unauthorized*** access, the Public Disclosure Provision simultaneously ***authorizes*** the public to inspect voter registration records. In short, there is no need to conclude that HAVA impliedly repeals the NVRA when both statutes can and indeed should be read together. *See Miccosukee Tribe of Indians of Fla. v. United States Army Corps of Eng'rs*, 619 F.3d 1289, 1299 (11th Cir. 2010) ("If any interpretation permits both statutes to stand, the court must adopt that interpretation, 'absent a clearly expressed congressional intention to the contrary.'" (citation omitted)). Given that HAVA itself expressly affirms the primacy of the NVRA and rejects an implied repeal, and nothing in the text, language, or legislative history suggests otherwise, Defendant's claim that HAVA prohibits inspection of the voter database must be rejected.

B. The NVRA's Plain Language Defeats Defendant's Frivolous Theory of Congressional Intent

Defendant's interpretation of the NVRA's Public Disclosure Provision is likewise defeated by simply reading the plain language of the statute. Defendant ignores that language in favor of a hodgepodge of reasons to interpret the words "***all*** records" to mean only "Records Pertaining to List Maintenance Processes." Mot. 14. Therefore, Defendant reasons, records relating to the "verification process" mandated by HAVA fall outside of the NVRA's scope. *Id.* at 15-16.

The entirety of Defendant's argument depends on his claim that data contained in the GVRS database is not a "record." He bases this argument not on any statutory language, court authority, or even a reasoned explanation—he simply asserts it. Except nothing in the language, purpose, or legislative history of the statute supports Defendant's proposed construction. Indeed, Defendant never directly explains why the verification records Project Vote seeks, which HAVA mandates to ensure that the "***official list*** of eligible voters" is "***accurate*** and [] ***updated***," 52 U.S.C. § 21083(a)(4)(A) (emphasis added), are not precisely the records concerning "programs and activities" conducted for "ensuring the ***accuracy*** and ***currency*** of ***official lists*** of eligible voters" covered by the NVRA. *Id.* § 20507(i)(1) (emphasis added). Nor does Defendant explain what purpose HAVA's verification procedures would serve if not for ensuring the accuracy and currency of the voter list, the very purpose stated in the statute. *See id.* § 21083(a)(4)(A).

Defendant's reading would lead to the nonsensical result that public officials could shield their activities from scrutiny merely by choosing to use a computerized record system. That exemption would fatally undermine the stated purposes of the NVRA, which include "protect[ing] the integrity of the electoral process" and "ensur[ing] that accurate and current voter registration rolls are

maintained." 52 U.S.C. § 20501(b).

Defendant instead recites the same arguments raised in his prior papers. First, he suggests the NVRA's passage ten years before HAVA must mean that records created pursuant to HAVA's verification requirements cannot be "records" subject to disclosure. Mot. 15. Unsurprisingly, Defendant does not cite any actual authority to support this argument because there is none. What is more, common sense and plain interpretation of the statute suggest there is no reason to hold that information contained in an electronic database is not a "record."

Second, Defendant claims that because the NVRA requires records to be ***maintained*** for "at least" two years, Congress must have intended "record" to mean "documents that can be ***destroyed*** after two years." *Id*. at 16 (emphasis added). The statute, however, says nothing about destroying documents. And even if it did, electronic data can be deleted after a specified timeframe just as paper documents can be shredded. Defendant's attempt to read congressional intent to limit the scope of "all records" is fundamentally flawed and without statutory support.

Third, Defendant argues that because the NVRA requires that records be made available for photocopying, the term "record" must mean only a paper document. *Id.* at 16-17. But the NVRA requires that certain records be made

available for "public inspection and, where available, photocopying at a reasonable cost." 52 U.S.C. § 20507(i). Nothing in that language suggests that the provision ***only*** applies to paper documents. The fact that Congress referred to the technology generally available when the NVRA was enacted is not a basis to eviscerate the statute because storage technology has evolved.

Fourth, Defendant argues that Project Vote's interpretation would make the terms "concerning" and the inclusion of "list maintenance records" as subject to disclosure "superfluous." Mot. 17-18. Defendant misses the mark: the Requested Records fall within the very topic to which the disclosure provision's "concerning" limitation applies—records relating to "programs and activities" conducted to ensure the "accuracy and currency of the voter roll." 52 U.S.C. § 20507(i). Likewise, the statute states only that the records subject to disclosure "shall ***include***" lists of persons to whom removal notices are sent; nothing in the text suggests that an inclusion is also an exclusive limitation. 52 U.S.C. § 20507(i)(2). In fact, such an interpretation would make the more comprehensive language superfluous, essentially reading the provision out of the statute. Defendant barely attempts to raise this argument, and for good reason.

Finally, Defendant offers a new theory that the "statutory context" of the NVRA supports ignoring the actual language of the Public Disclosure Provision in

favor of Defendant's preferred limitations. In particular, Defendant points out that other NVRA provisions establish guidelines or requirements for certain state "programs" or "activities" relating to maintenance of the voter roll, and therefore these "list maintenance" activities are the only "programs and activities" covered by the NVRA. Mot. at 18-19. Yet Defendant never establishes the predicate to his own argument: that verification of voter registration applicants added to the state's "official list of eligible voters" are not "list maintenance activities." As noted above, records relating to Defendant's verification processes plainly fall within even that definition. *See supra* p. 15. Moreover, even if there were a distinction, Defendant's argument is a non-sequitur. The NVRA's reference to "programs" and "activities" related to voter list maintenance does not limit the applicability of the Public Disclosure Provision. That provision requires inspection of records concerning ***any*** "programs" and "activities" conducted for the purpose of ensuring the "accuracy and currency" of the voter list—exactly what the statute ***says***. Defendant's "statutory context" argument is an attempt to avoid the plain meaning of the relevant language of the statute, and the argument should be rejected.

C. Defendant's Arguments Were Expressly Rejected by the Fourth Circuit

Defendant's only remaining argument is to resurrect his "congressional intent" argument a second time by resorting to a baffling interpretation of

"Statutory History." Defendant provides a block quote from the House and Senate Committee Reports that reproduce almost verbatim the exact same language found in the statute. Mot. 19-20. Like the statute, these reports say nothing about limiting the disclosure provision to "list maintenance records." Defendant then proclaims that these reports "make clear" that Congress intended to limit the disclosure provision to list maintenance records. *Id.* at 20.

Where this "clear" meaning is derived from is uncertain. Nothing in the quoted history actually supports any of Defendant's favored limitations. Indeed, no court has adopted such an interpretation, and as Defendant admits, an almost identical argument was expressly rejected by the Fourth Circuit in *Long*. In that case, Judge Wilkinson carefully examined the meaning and scope of the NVRA's Public Disclosure Provision and concluded that the statute's reference to "all" records suggests an "expansive meaning." *Long*, 682 F.3d at 335. The difference between the Fourth Circuit's and Defendant's interpretations is that Defendant asserts hidden implications of congressional intent from his own selective reading of history. The Fourth Circuit in *Long*, on the other hand, found the ***language*** of the Public Disclosure Provision broadly applicable and rejected a state's position (similar to Defendant's) that disclosure under the NVRA is limited to removal records. *Id.* Defendant's only response to *Long*, which he acknowledges

contradicts his position, is that he "respectfully submits that [*Long*] is contrary to congressional intent." Mot. 16 n.5. Defendant nowhere explains why *Long* is incorrect, nor bothers to grapple with the Fourth Circuit's carefully reasoned decision to explain why this Court should not reach the same conclusion.

In short, Defendant's theory of this case has no support in the actual language of the NVRA. His conclusory arguments about "congressional intent," "statutory context," and purported "history" are baseless and ignore the relevant statutory language. This Court, like the Fourth Circuit, should hold that the statute mandates disclosure of all of the Requested Records, including those maintained in Georgia's centralized voter registration database.

III. PROJECT VOTE PROVIDED SUFFICIENT NOTICE THAT IT SOUGHT ALL OF THE REQUESTED RECORDS

Last, Defendant raises an argument that Project Vote failed to provide the required statutory notice to Defendant for certain records—in particular, copies of notices sent to "not verified" voter registration applicants.

The NVRA's notice provision requires only that an aggrieved party provide "written notice of the violation," 52 U.S.C. § 20510(b), so that a Defendant has an "opportunity to attempt compliance with its mandates before facing litigation." *Ga. State Conference of the NAACP v. Kemp*, 841 F. Supp. 2d 1320, 1335 (N.D. Ga. 2012). A notice is sufficient so long as it "sets forth the reasons for [the]

conclusion" that a Defendant failed to comply with the NVRA, and when "read as a whole, [it] makes it clear that [the sender] is asserting a violation of the NVRA and plans to initiate litigation if its concerns are not addressed in a timely manner." *Judicial Watch, Inc. v. King*, 993 F. Supp. 2d 919, 922 (S.D. Ind. 2012).

Here, Project Vote's July 6, 2015 Notice Letter informed Defendant that Project Vote sought "***any*** records explaining or reflecting the reasons for [an applicant's or voter's] rejection, cancelation, or not being added" to the voter roll, and that Defendant's refusal to make those records available was a violation of the NVRA. Notice Letter at 2. The implication of Defendant's argument is that Project Vote must specifically identify every document it seeks to inspect. Nothing in the statute requires such specificity—nor could it given that only Defendant is in a position to know what records are within his custody and control. The Notice Letter was sufficient to notify Defendant that Project Vote sought all records reflecting the reasons for the rejection or removal of voters—including the very notices of non-verification that Georgia claimed were sent to applicants in its submission to the Department of Justice. The letter was clear that if Defendant did not make the Requested Records available for inspection, Project Vote would seek legal redress.

Further, Defendant had an entire year to remedy the violations laid out in

Project Vote's Notice Letter. He simply chose not to do so. Rather than make sincere efforts to resolve Project Vote's outstanding requests, Defendant continued to stonewall and obfuscate until this lawsuit was filed. Defendant's limited objection to Project Vote's provision of notice is meritless.

CONCLUSION

Project Vote respectfully requests that the Court **DENY** Defendant's Motion to Dismiss.

DATED this 22nd day of August, 2016

Respectfully submitted,

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RULE 7.1 CERTIFICATION

I hereby certify that the foregoing Plaintiff's Opposition to Motion to Dismiss was prepared in accordance with the font and point selections approved by the court in Local Rule 5.1B.

Dated: August 22, 2016

/s/ James W. Cobb
James W. Cobb

CERTIFICATE OF SERVICE

I hereby certify that on the 22nd day of August 2016, I electronically filed the foregoing Plaintiff's Opposition to Motion to Dismiss under Local Rule 7.2(B) with the Clerk of the Court using the CM/ECF system, which will send a notification of such filing to all counsel of record.

/s/ James W. Cobb
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