

UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA

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GEORGIA STATE CONFERENCE OF THE  
NATIONAL ASSOCIATION FOR THE  
ADVANCEMENT OF COLORED PEOPLE  
and COALITION FOR THE PEOPLES’  
AGENDA,

Index No. \_\_\_\_\_

Plaintiffs,

**COMPLAINT**

v.

BRIAN KEMP, in his official capacity as  
Secretary of State, and CLYDE L. REESE, III,  
in his official capacity as Commissioner of the  
Georgia Department of Human Services,

Defendants.

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Plaintiffs Georgia State Conference of the National Association for the Advancement of Colored People (“Georgia NAACP”) and Coalition for the Peoples’ Agenda (“Peoples’ Agenda”), through their undersigned counsel, for their Complaint against defendants Brian Kemp, in his official capacity as Secretary of State, and Clyde L. Reese, III, in his official capacity as Commissioner of the Georgia Department of Human Services (“DHS”) allege, upon knowledge as to their own conduct and information and belief as to the conduct of others:

## **Introduction**

1. This action seeks declaratory and injunctive relief to redress defendants' past and ongoing violations of their obligations under Section 7 of the National Voter Registration Act of 1993 (the "NVRA"), 42 U.S.C. § 1973gg-5. The NVRA was adopted with widespread bipartisan support as part of an effort to make voter registration more widely available and accessible, thereby increasing the number of properly registered eligible voters for federal elections. 42 U.S.C. § 1973gg(b)(1). The statute also reflects Congress' intent to combat the disproportionate harm to voter participation by various groups, including racial minorities, caused by discriminatory and unfair registration laws and procedures. 42 U.S.C. § 1973gg(a)(3).

2. Section 7 of the NVRA requires that all public assistance offices, in states subject to the NVRA, distribute a voter registration application with each application for public assistance, and each recertification, renewal, or change of address relating to an individual's receipt of public assistance. It further mandates that all public assistance offices in a covered state assist clients in completing a voter registration application (unless a client declines such assistance), provide a form that

asks clients whether they wish to register to vote and includes certain specified information concerning the voter registration process, and accept completed voter registration forms for delivery to the appropriate elections authority. Section 7 of the NVRA reflects Congress's objective to ensure that registration "will be convenient and readily available [for] the poor and persons with disabilities who do not have driver's licenses and will not come into contact with the other principle [sic] place to register under this Act [motor vehicle agencies]." H. R. Rep. No. 103-66, at 15 (1993) (House-Senate Conference Report).

3. Defendant Brian Kemp, Georgia Secretary of State and "chief elections official," is responsible for ensuring Georgia's compliance with the NVRA, including Section 7, and has not fulfilled his responsibilities for ensuring that Georgia provides the voter registration services mandated by the NVRA to its public assistance clients. Defendant Clyde L. Reese, III, Commissioner of DHS, the state agency responsible for administration of public assistance programs in Georgia, also has failed to ensure implementation of policies and procedures to make voter registration available through agency offices, as mandated by Section 7. Indeed, the Secretary has admitted in response to plaintiffs' pre-Complaint notice that

the DHS did not have consistent policies for the implementation of Section 7 at public assistance offices, but has nevertheless steadfastly refused to take appropriate corrective action to remedy past violations and prevent future violations by implementing appropriate registration procedures, and appropriate training, oversight and monitoring of DHS personnel and offices.

4. As a result of these ongoing violations, thousands of Georgia's low-income citizens who apply for and/or receive public assistance, including members of the Georgia NAACP and members of the Peoples' Agenda's constituent organizations, have not been and are not being offered the opportunity to register to vote or to change their voter address upon moving to a new residence. Plaintiffs have expended and continue to expend substantial time and resources in an effort to make voter registration available to these low-income citizens – which would have been unnecessary had defendants complied with the law. Thousands of eligible voters remain unregistered and effectively disenfranchised as a result of defendants' actions and inaction.

**Parties**

5. Plaintiff Georgia NAACP is an unincorporated association affiliated with the National Association for the Advancement of Colored People, with its principal place of business located in Atlanta, Georgia. The Georgia NAACP has more than 1,300 members, including members who receive and/or will receive, and/or have applied and/or will apply for, public assistance benefits in Georgia, including the Supplemental Nutrition Assistance Program (“Food Stamps”), Medicaid, and Temporary Assistance for Needy Families (“TANF”). Georgia NAACP encourages voter registration and participation, particularly among minority and low-income citizens, and has committed and continues to commit time and personnel to conducting voter registration drives in the State of Georgia (including, for example, conducting more than 500 voter registration drives in Georgia since 2008). Those voter registration efforts focus on registering voters in low-income neighborhoods, including the registration of individuals who receive or apply for public assistance benefits. Moreover, the voter registration efforts include updating the voter registration address of previously registered voters who have moved. Although Georgia NAACP encourages its members to register to vote, Georgia NAACP has members

who have applied and/or will apply for, and/or receive and/or will receive, public assistance benefits who are not registered to vote or will have moved since registering to vote and will not have updated their voter registration address.

6. Plaintiff Peoples' Agenda is a Georgia not-for-profit corporation with its principal place of business located in Atlanta, Georgia. Peoples' Agenda is a coalition of more than 30 organizations, and those organizations collectively have more than 5,000 individual members. The organizations that form Peoples' Agenda have members who receive and/or will receive, and/or have applied and/or will apply for, public assistance benefits in Georgia, including Food Stamps, Medicaid, and TANF. Peoples' Agenda encourages voter registration and participation, particularly among minority and low-income citizens, and has committed and continues to commit time and resources to conducting voter registration drives in the State of Georgia (including, for example, conducting more than 300 voter registration drives in Georgia since 2008). Those voter registration efforts focus on registering voters in low-income neighborhoods, including the registration of voters who apply for or receive public assistance benefits. Moreover, the voter registration efforts include updating the voter

registration address of previously registered voters who have moved.

Although the organizations that form the Peoples' Agenda encourage their members to register to vote, those organizations have members who apply and/or will apply for, and/or receive and/or will receive, public assistance benefits who are not registered to vote or will have moved since registering to vote and will not have updated their voter registration address.

7. Defendant Brian Kemp is the Secretary of State of Georgia. Defendant Kemp is the chief elections official in the State of Georgia and is responsible for overseeing the elections process. In this capacity, he issues instructions by directives and advisories regarding the proper methods for conducting elections; prescribes the form of registration cards; investigates election fraud and irregularities; trains election officials; promulgates rules, practices and procedures to implement laws regarding Georgia elections; and compels the observance of Georgia's election laws. Moreover, defendant Kemp "is designated as the chief state election official to coordinate the responsibilities of [the State of Georgia] under the [NVRA]." Ga. Code Ann. § 21-2-210.

8. Defendant Clyde L. Reese, III, is the Commissioner of the Georgia Department of Human Services. DHS administers public assistance

programs subject to the requirements of the NVRA, including, but not limited to, Food Stamps, Medicaid and TANF.

### **Jurisdiction and Venue**

9. This case arises under the NVRA, a law of the United States. This Court has subject matter jurisdiction of this action pursuant to 28 U.S.C. § 1331 and 28 U.S.C. § 1343(a).

10. This Court has jurisdiction to grant both declaratory and injunctive relief under 28 U.S.C. §§2201 and 2002.

11. This Court has personal jurisdiction over each of the defendants because each is a citizen of the State of Georgia.

12. Venue in this district is proper under 28 U.S.C. 1391(b) because a substantial part of the events giving rise to the claim occurred in this district.

### **Factual Allegations**

#### **National Voter Registration Act of 1993**

13. The National Voter Registration Act of 1993, 42 U.S.C. § 1973gg et seq., has as its purpose “establishing procedures that will increase the number of eligible voters who register to vote in elections for Federal office.” 42 U.S.C. § 1973gg(b)(1).



14. In furtherance of that goal, the NVRA mandates that “each state shall designate as voter registration agencies – (A) all offices in the state that provide public assistance.” 42 U.S.C. § 1973gg-5.

15. At each of these voter registration agencies, Section 7 of the NVRA requires that “the following services shall be made available:

- (i) Distribution of mail voter registration application forms . . . .
- (ii) Assistance to applicants in completing voter registration application forms, unless the applicant refuses such assistance.
- (iii) Acceptance of completed voter registration application forms for transmittal to the appropriate State election official.

42 U.S.C. § 1973gg-5(a)(4). These services must be made available “with each application for . . . [public] assistance, and with each recertification, renewal, or change of address form relating to . . . [public] assistance.” 42 U.S.C. § 1973gg-5(a)(6).

16. Section 7 of the NVRA also requires that voter registration agencies distribute with each application for services, and with each recertification, renewal or change of address form a “voter preference form” providing certain specified information regarding the voter registration process and asking whether the client would like to register to vote. The

specified information includes, for example, an explanation to the client that the decision to register will not affect the client's eligibility for public assistance or the amount of benefits available.

17. The NVRA requires that “[e]ach State shall designate a State officer or employee as the chief State election official to be responsible for coordination of State responsibilities” under the NVRA. 42 U.S.C. § 1973gg-8.

18. To ensure state compliance, the NVRA provides a private right of action to “a person aggrieved by a violation” of the NVRA. 42 U.S.C. § 1973gg-9. The NVRA generally requires that, at least 90 days prior to bringing an action to enforce the NVRA, an aggrieved person or organization must provide written notice to the state-designated “chief election official” in order to identify the violation and to provide the state an opportunity to cure the violation prior to the commencement of litigation.

**Georgia’s Failure to Offer  
Voter Registration to Public Assistance Clients**

19. The State of Georgia is subject to the requirements of the NVRA. The NVRA applies to all States except a limited few who qualify for one of the limited exclusions contained in the Act. 42 U.S.C. § 1973gg-2. The State of Georgia does not qualify for any of the exclusions.

20. Georgia has designated the Secretary of State – defendant Kemp – as the “chief election official” who coordinates the State’s responsibilities under the NVRA. Ga. Code Ann. § 21-2-210. As such, defendant Kemp is charged with ensuring that registration opportunities are available in the manner prescribed by the NVRA, including registration through offices where persons apply for, recertify, renew, or change their address for public assistance, including Food Stamps, Medicaid or TANF.

21. Georgia has designated each office that provides public assistance as a voter registration agency. Ga. Code Ann. § 21-2-222(b).

22. DHS is a state agency responsible for the administration of public assistance in the State of Georgia, including, but not limited to, the administration of the Food Stamp, Medicaid, and TANF programs. As a result, Georgia DHS local offices are mandatory voter registration agencies under Section 7 of the NVRA. Defendant Reese, as Commissioner of DHS, is a state official responsible for ensuring that the registration opportunities mandated by Section 7 of the NVRA are available through DHS.

23. There is widespread ongoing noncompliance with the requirements of Section 7 with regard to the administration of public assistance programs by the State of Georgia, through its DHS public

assistance offices. Defendants have failed to fulfill the State's obligations under Section 7 of the NVRA by failing to ensure that all clients who apply, recertify, renew, or change an address in connection with public assistance benefits be provided with a voter preference form, a voter application form, and assistance in completing a voter application form.

24. Georgia's own report to the U.S. Election Assistance Commission ("EAC") reveals that Georgia public assistance offices received only 21,762 voter registration applications in 2007-2008. This represents a 79 percent decline since 1995-1996, when Georgia reported 103,942 registrations from public assistance offices. By contrast, following recent reforms in Ohio and Missouri to comply with the NVRA, public assistance agencies in those states have dramatically increased voter registration to an average of more than 15,000 per *month* in Ohio and more than 10,000 per *month* in Missouri.

25. For the year 2010, according to Georgia's own data, voter registrations through DHS offices had fallen to just 4,430. Moreover, Georgia's registration data revealed that 39 of Georgia's 159 counties failed to register a single voter through DHS offices for at least one out of the past seven years (one county failed to register even a single voter during the

entire seven-year span), and 95 counties averaged registering 25 or fewer voters per year through DHS during that seven-year period.

26. Surveys of public assistance clients conducted at DHS offices confirm widespread non-compliance with Section 7 of the NVRA among DHS offices. Specifically, none of the eleven DHS offices visited by investigators in September 2010 included a voter registration form with the benefits application, and eight of the eleven offices could not even provide a voter registration application upon request.

27. Moreover, the September 2010 surveys revealed the following: 44 out of the 50 DHS clients interviewed after completing NVRA-covered transactions in nine of the DHS offices visited reported that they were not offered voter registration; almost none of the 50 had been provided a voter preference form; and none of the 23 DHS clients who had met with a caseworker during their visit to the DHS office had been offered the opportunity to register to vote by the caseworker.

28. A comparison of federally-collected data regarding the number of persons registering to vote at public assistance offices in Georgia and the number of persons receiving benefits under just one of the public assistance programs subject to the NVRA further confirms that Georgia public

assistance agencies are not providing voter registration services as required by the NVRA.

| <b>Fiscal Year</b> | <b>Food Stamp Applications<sup>1</sup><br/>(monthly average)</b> | <b>Agency Voter Registration Applications<sup>2</sup><br/>(monthly average)</b> |
|--------------------|--|---|
| 1997               | 25,416   | 4,331   |
| 1998               | 20,868   |   |
| 1999               | 18,686   | 1,715   |
| 2000               | 30,156   |   |
| 2001               | 32,455   | 1,492   |
| 2002               | 37,055   |   |
| 2003               | 40,622   | 2,162   |
| 2004               | 44,169   |   |
| 2005               | 44,169   | 1,489   |
| 2006               | 49,549   |   |
| 2007               | 50,460   | 907   |
| 2008               | 56,284   |   |
| 2009               | 67,236   | n/a   |

<sup>1</sup> Monthly average number of initial SNAP applications. United States Department of Agriculture Food Stamp Application Data, FY 1997-2009.

<sup>2</sup> Federal Election Commission, *The Impact of the National Voter Registration Act, 1997-1998 (1999)*; Federal Election Commission, *The Impact of the National Voter Registration Act, 1999-2000 (2001)*; Federal Election Commission, *The Impact of the National Voter Registration Act, 2001-2002 (2003)*; U.S. Election Assistance Commission, *The Impact of the National Voter Registration Act, 2003-2004 (2005)*; U.S. Election Assistance Commission, *The Impact of the National Voter Registration Act, 2005-2006 (2007)*; U.S. Election Assistance Commission, *The Impact of the National Voter Registration Act, 2007-2008 (2009)*.

29. Additionally, low and moderate income families change their residence more than wealthier families, and therefore even those low- and moderate-income citizens who are registered to vote have an interest in being able to update their voter registration address, and receiving information and assistance regarding changing their voter registration address, through DHS offices.

30. Defendants either have disregarded or ignored the steady decline in registration of voters through DHS offices and the very low number of persons applying to register to vote through these offices. Indeed, had defendants been following appropriate practices and procedures for implementation and monitoring of Georgia's responsibilities under the NVRA, defendants would have discovered that county DHS offices simply have not been offering voter registration services and would have taken steps to remedy these widespread violations long ago.

31. Compounding this problem, Georgia state law and internal DHS policies do not comply with the NVRA. For example, Georgia state law limits offering voter registration applications to in-person applications for public assistance, renewals, recertifications, and changes of address. Ga. Code Ann. § 21-2-222(f). Under the NVRA, however, voter registration

applications must be distributed with all applications for public assistance, and all renewals, recertifications, and changes of address for public assistance.

32. Other NVRA violations in Georgia state law or DHS policy include or have included, without limitation, a statewide policy restricting the circumstances under which DHS offices offer voter registration. Specifically, under DHS policy, voter registration was not offered to a client during an NVRA-covered transaction if the client, during the course of a previous transaction, informed DHS in writing that he or she did not wish to register to vote at that time. This policy violates the language and structure of Section 7, including the requirement that designated state agencies “shall” conduct voter registration “with each application for . . . service or assistance, and with each recertification, renewal, or change of address form relating to such service or assistance.” 42 U.S.C. § 1973gg-5(a)(6)(A). A client who declined to register on a particular occasion may wish to register during a subsequent covered transaction, whether because of a change of address or because of a simple change of heart. The required registration opportunity must be provided with each covered transaction, and Georgia



cannot withhold this opportunity merely because of a declination months or years before.

33. On January 25, 2011, counsel for plaintiff Georgia NAACP sent a letter to defendant Kemp in order to “provide written notice of the violation to the chief election official of the State,” as required by the NVRA. 42 U.S.C. § 1973gg-9. This letter stated that in the absence of a plan to remedy Georgia’s failures to implement the NVRA, the Georgia NAACP would have no choice but to commence litigation. A copy of the January 25, 2011 letter is attached hereto as Exhibit 1. Defendant Reese also was sent a copy of this letter. The violations of the NVRA have not been cured to date.

34. In further correspondence, Vincent Russo of the Secretary of State’s Office responded to the January 25 letter, indicating that his office had initiated an internal review of DHS’s NVRA compliance and requested additional information to assist its review. The Secretary of State’s letter conceded that its ability to “conduct an internal review for NVRA compliance is severely limited,” an admission that speaks volumes about the widespread violations and non-compliance by DHS offices throughout the

State and, in particular, the Secretary's failure to ensure NVRA compliance, as required by the NVRA.

35. Counsel for the Georgia NAACP provided the additional information requested by the Secretary of State's Office, and offered to meet with state officials to discuss the specific policies and procedures needed to bring Georgia into compliance with the NVRA.

36. The Secretary's counsel responded, acknowledging that DHS "did not have consistent policies for the TANF, Medicaid and Food Stamp programs," but not identifying any actions the Secretary intended to take to remedy those violations. Moreover, the Secretary confirmed that – in direct contravention of the guidance provided by the Department of Justice on implementation of the NVRA ([http://www.justice.gov/crt/about/vot/nvra/nvra\\_faq.php](http://www.justice.gov/crt/about/vot/nvra/nvra_faq.php)) – the State will continue to limit provision of voter registration services to in-person applications for public assistance, renewals, recertifications, and changes of address.

37. Subsequent correspondence from the Secretary of State failed to show that the State of Georgia has rectified its violations of the NVRA. The

Secretary of State even failed to accept plaintiffs' offers to meet to discuss changes necessary to bring Georgia into compliance with the NVRA.

38. As a result of defendants' continuing failure to ensure implementation of Section 7 of the NVRA through Georgia's public assistance offices, persons applying for and receiving public assistance are not being offered the opportunity to register to vote, in violation of the NVRA.

**Harm to the Georgia NAACP's  
Voter Registration Efforts and Its Members**

39. As a means of building stronger communities, the Georgia NAACP has been a strong advocate for citizens to participate in the electoral process. The Georgia NAACP regularly has conducted and continues to conduct voter registration drives in the State of Georgia.

40. Due to defendants' ongoing violations of the NVRA, the Georgia NAACP and its members have expended additional resources, including staff and volunteer time, on efforts to assist individuals with voter registration (including updating prior voter registration) who should have been offered voter registration through Georgia's public assistance offices. The Georgia NAACP reasonably anticipates, based on defendants' ongoing violations of the NVRA, that this diversion of resources to registration of

individuals who should have been offered registration through public assistance offices will continue. These diverted resources otherwise would have been and would be spent on other activities of the Georgia NAACP, including voter education and election day voter mobilization efforts. These injuries to the Georgia NAACP will continue in the future until defendants' violations of their NVRA obligations are remedied.

41. Georgia NAACP members who have not been and will not be offered the opportunity to register to vote through DHS offices are harmed by defendants' violations of the law, and will continue to be so harmed until defendants are required to comply with Section 7 of the NVRA. This includes Georgia NAACP members who are not registered to vote and members who are registered to vote but have subsequently changed their residence address and thus have an interest in promptly receiving information and assistance regarding changing their voter registration to match their new address.

42. Georgia NAACP also encourages civic and voter participation by conducting political forums, voter registration drives at high schools, voter education workshops, voter mobilization on election day, and letter writing campaigns, canvassing neighborhoods, and observing and

monitoring voting polls. As a result of defendants' NVRA violations, the Georgia NAACP has been required and will continue to be required to divert resources, including staff and volunteer time, away from these other activities.

**Harm to Peoples' Agenda's Voter Registration Efforts and  
Members of its Constituent Organizations**

43. The Peoples' Agenda has likewise been a strong advocate for citizen participation in the electoral process, and increasing voter registration has been a central goal uniting its member organizations.

44. The Peoples' Agenda itself regularly has conducted and continues to conduct voter registration drives in Georgia. Due to defendants' ongoing violations of the NVRA, the Peoples' Agenda and its members have expended additional resources, including staff and volunteer time, on efforts to assist individuals with voter registration (including updating prior voter registration) who should have been offered voter registration through Georgia's public assistance offices. The Peoples' Agenda reasonably anticipates, based on defendants' ongoing violations of the NVRA, that this diversion of resources to voter registration efforts will continue. These diverted resources otherwise would have been and would be spent on other activities of the Peoples' Agenda, including such activities

as voter education and election day voter mobilization efforts. These injuries to the Peoples' Agenda will continue in the future until defendants' violations of their NVRA obligations are remedied.

45. Members of the Peoples' Agenda's constituent organizations who have not been and will not be offered the opportunity to register to vote at DHS offices are harmed by defendants' violations of the law, and will continue to be so harmed until defendants are required to comply with Section 7 of the NVRA. This includes members of the Peoples' Agenda's constituent organizations who are not registered to vote, and members who are registered to vote but have subsequently changed their residence address and thus have an interest in promptly receiving information and assistance regarding changing their voter registration to match their new address.

46. The Peoples' Agenda also encourages civic and voter participation by conducting voter education, voter mobilization and issue advocacy. As a result of defendants' NVRA violations, the Peoples' Agenda has been required and will continue to be required to divert resources, including staff and volunteer time, away from these other activities.

**Claim For Relief**  
**(Violation of Section 7 of the National Voter Registration Act of 1993)**

47. Plaintiffs incorporate by reference the allegations contained in paragraphs 1 through 46 as if fully set forth herein.

48. Because of the failure to provide the voter information and registration opportunities and assistance required by Section 7 of the National Voter Registration Act of 1993, 42 U.S.C. § 1973gg-5, defendants have violated and continue to violate the NVRA.

49. Plaintiffs have been aggrieved by defendants' past and ongoing violations of the NVRA and have no adequate remedy at law for defendants' violations of their rights. Declaratory and injunctive relief are required to remedy defendants' current and past violations of the NVRA and to secure ongoing compliance with the NVRA.

**Prayer For Relief**

WHEREFORE, plaintiffs respectfully request that the Court enter an Order:

- (i) Declaring, pursuant to 28 U.S.C. § 2201 and 42 U.S.C. § 1973gg-9(b)(2), that defendants have violated and are continuing to violate Section 7 of the National Voter Registration Act of 1993 , 42 U.S.C. § 1973gg-5, by failing to

provide voter registration services as required by the NVRA through agencies that provide public assistance;

(ii) Permanently enjoining defendants, their agents and successors in office, and all persons working in concert with them, from implementing practices and procedures that violate Section 7 of the NVRA, 42 U.S.C. § 1973gg-5;

(iii) Directing defendants, under a court-approved plan with appropriate reporting and monitoring requirements, to take all appropriate measures necessary to remedy the harm caused by their non-compliance with Section 7 of the NVRA, including without limitation, ensuring that individuals affected by defendants' non-compliance with Section 7 of the NVRA are provided immediate opportunities to register to vote or change their voter registration address;

(iv) Directing defendants, under a court-approved plan, to take all steps necessary to ensure ongoing compliance with the requirements of Section 7 of the NVRA, 42 U.S.C. § 1973gg-5, including, without limitation, procedures for distribution of voter registration applications and voter preference forms, and



training and monitoring personnel to ensure that designated agencies are distributing voter registration application forms to each person who applies for public assistance benefits, and each person who recertifies, renews, and changes address for benefits, inquiring of all such persons, in writing, whether they would like to register to vote or change their voter registration address and providing to them the NVRA-required information concerning the voter registration process, assisting such persons in completing voter registration applications to the same degree that assistance is provided with other public assistance forms, accepting completed voter registration forms, and timely transmitting completed registration forms to the appropriate election authority;

(v) Awarding plaintiffs the costs and disbursements incurred in connection with this action, including, without limitation, their reasonable attorneys' fees and costs pursuant to 42 U.S.C. §§ 1973gg-9(c) and 1988;

- (vi) Retaining jurisdiction over this action to ensure that  
defendants continue to comply with their obligations under the  
NVRA; and
- (vii) Awarding such other equitable and further relief as the Court  
deems just and proper.

Dated: Atlanta, Georgia  
June 6, 2011

AMERICAN CIVIL LIBERTIES  
UNION FOUNDATION

By: s/ M. Laughlin McDonald  
M. Laughlin McDonald  
Georgia Bar No.: 489550  
Nancy Abudu  
Georgia Bar No.: 001471  
Jonathan L. Sherman\*  
230 Peachtree Street, NW, Suite 1440  
Atlanta, GA 30303  
Telephone: (404) 523-2721  
Fax: (404) 653-0331  
[lmcdonald@aclu.org](mailto:lmcdonald@aclu.org)  
[nabudu@aclu.org](mailto:nabudu@aclu.org)  
[jsherman@aclu.org](mailto:jsherman@aclu.org)

Of Counsel:  
Neil A. Steiner\*  
Robert W. Topp\*  
DECHERT LLP  
1095 Avenue of the Americas  
New York, New York 10036

Telephone: (212) 698-3500  
Fax: (212) 698-3599  
neil.steiner@dechert.com  
robert.topp@dechert.com

Nicole K. Zeitler\*  
Niyati Shah\*  
PROJECT VOTE  
737 ½ 8th Street SE  
Washington, DC 20003  
Telephone: (202) 546-4173 Ext. 302  
Fax: 202-629-3754  
nzeitler@projectvote.org  
nshah@projectvote.org

Robert A. Kengle\*  
Mark A. Posner\*  
LAWYERS COMMITTEE FOR CIVIL RIGHTS UNDER LAW  
1401 New York Avenue, N.W., Suite 400  
Washington, DC 20005  
Telephone: (202) 662-8389  
Fax: (202) 628-2858  
bkengle@lawyerscommittee.org  
mposner@lawyerscommittee.org

Brenda Wright\*  
DĒMOS: A NETWORK FOR IDEAS AND ACTION  
358 Chestnut Hill Avenue, Suite 303  
Brighton, Massachusetts 02135  
Telephone: (617) 232-5885  
bwright@demos.org

Allegra Chapman\*  
DĒMOS: A NETWORK FOR IDEAS AND ACTION  
220 Fifth Avenue, 5<sup>th</sup> Floor  
New York, New York 10001  
Telephone: (212) 419-8772  
achapman@demos.org

Kim Keenan\*

Anson Asaka\*

NATIONAL ASSOCIATION FOR

THE ADVANCEMENT OF COLORED PEOPLE, INC.

NAACP National Office

4805 Mt. Hope Drive

Baltimore, MD 21215

Telephone: (410) 580-5792

Fax: (410) 358-9350

kkeenan@naacpnet.org

aasaka@naacpnet.org

\*to be admitted pro hac vice