

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA**

THE NEW GEORGIA PROJECT	X	
et al.,	X	
	X	
Plaintiffs,	X	CIVIL ACTIO NO.
	X	1:21-cv-01229-JPB
vs.	X	
	X	
BRAD RAFFENSPERGER, et al.,	X	
	X	
Defendant.	X	
	X	

**REPLY BRIEF OF THE SPALDING DEFENDANTS TO PLAINTIFFS’
RESPONSE TO THE SPALDING DEFENDANT’S MOTION TO DISMISS**

I. Introduction

The Spalding Defendants move to dismiss Plaintiffs’ First Amended Complaint for improper service, failure to join indispensable parties, and because Plaintiffs lack standing. This motion should be granted.

A. Plaintiffs failed to serve Defendants properly.

Plaintiffs concede that they have not personally served any of the Spalding Defendants individually. Instead, they contend that service on former Elections Supervisor Marcia Ridley is sufficient under O.C.G.A § 9-11-4(e)(5). The burden of establishing service of process ultimately falls on the plaintiff. *Moore v. McCalla Raymer, LLC*, 916 F. Supp. 2d 1332, 1340 (N.D. Ga. 2012).

The question for the Court is whether the former Elections Supervisor is a “Chief Executive Officer or clerk” under § 9-11-4(e)(5). No case, code, or bylaw cited by the Plaintiffs establishes that the Elections Supervisor is authorized to accept service on behalf of Board members in Spalding County. The fact that Ridley represented herself as able to accept service on behalf of the Spalding Defendants does not change the statutory requirements for serving a governmental entity. *See Holmes v. Georgia*, 2010 U.S. Dist. LEXIS 147275 (M.D. Ga. Mar. 4, 2010); *Contra Northwester Nat’l Ins. Co. v. Kennesaw Transp., Inc.*, 168 Ga. App. 701, 702 (1983) (finding representations an employee could accept service sufficient in context of service on corporation). The Spalding Defendants should be dismissed because of improper service.

B. The Incorrect Parties are before the Court

At the time the Plaintiffs filed their First Amended Complaint, three of the Spalding Defendants (Bentley, Henley, and McIntosh) were no longer members of the Board of Elections and Voter Registration. As the Spalding Defendants noted in their initial brief, the proper parties are not before the Court and substitution is the appropriate remedy. However, that substitution can only be made upon proper service of the Defendants, which is challenged here.

While Plaintiffs agree substitution is necessary, they complain that they have not been able to determine the identities of the new board members because said information is not readily available online. Presumably, sophisticated organizations like Plaintiffs, and a concerned Spalding County citizen like Plaintiff Solomon, would have ample ways of finding out this information aside from online resources. Regardless, for the sake of clarity, the sitting board members as of the filing of this brief consist of Roy McClain, Alfred Jester, James D. Newland, Ben Johnson, and James A. O'Brien. Should the Court find service proper, these Defendants should be substituted as parties to the suit. Even then, Plaintiffs' First Amended Complaint cannot stand, as they lack standing or otherwise fail to state a claim.

C. Plaintiffs lack standing.

Both Plaintiffs and the Spalding Defendants have incorporated by reference prior briefing on this matter by themselves and others.¹ The Spalding Defendants do the same here and would also note that they adopt and incorporate the State Defendant's Reply Brief [Dkt. # 66] on the issue of standing and join and incorporate

¹ The Spalding Defendants further anticipate that the Supreme Court of the United States' recently issued opinion, *Brnovich v. Democratic National Committee*, Nos. 19-1257 and 19-1258, 2021 U.S. LEXIS 3568 (U.S. July 1, 2021) speaks to issues raised by Plaintiffs' suit and further briefing addressing its impact may be warranted.

the Fulton County Defendants' Motion to Dismiss [Dkt. #61] and accompanying brief as well.

II. CONCLUSION

For the reasons set forth above, Plaintiff's First Amended Complaint should be dismissed.

Respectfully submitted this the 12th day of July, 2021.

BECK, OWEN, & MURRAY
Attorneys for the Spalding Defendants

By: /s/ Karl P. Broder
Karl P. Broder
Ga. State Bar No. 185273

Address: One Griffin Center, Suite 600
100 South Hill St.
Griffin, Georgia 30223
Phone No. (770) 227-4000
Fax No. (770) 229-8524
kbroder@beckowen.com

Local Rule 7.1 Certification

The undersigned certifies that this motion and memorandum of law have been prepared using Time New Roman 14-point font as approved by the Court in Local Rule 5.1B.

CERTIFICATE OF SERVICE

I hereby certify that I have this day served this pleading via CM/ECF, which constitutes service on all parties to this case.

This 12th day of July, 2021.

BECK, OWEN, & MURRAY
Attorneys for the Spalding Defendants

By: /s/ Karl P. Broder
Karl P. Broder
Ga. State Bar No. 185273

Address: One Griffin Center, Suite 600
100 South Hill St.
Griffin, Georgia 30223
Phone No. (770) 227-4000
Fax No. (770) 229-8524
kbroder@beckowen.com