

**IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA**

**STATE ELECTION BOARD,
Petitioner,**

v.

**TRUE THE VOTE, INC.,
Respondent.**

Civil Action No. 2023CV382520

**RESPONDENT TRUE THE VOTE INC.'S MOTION TO DISMISS PETITION FOR
ORDER TO COMPEL RESPONSE TO STATE ELECTION BOARD'S SUBPOENA**

Respondent True the Vote, Inc. ("TTV"), by way of Special Appearance Only, and without waiving its objections to the jurisdiction and venue of this Court¹, files this Motion to Dismiss the Petition for Order to Compel Response to State Election Board's Subpoena filed by Petitioner State Election Board ("the SEB" or "Petitioner").

INTRODUCTION

There are numerous deficiencies in the SEB's Petition requiring it to be dismissed. *First*, the SEB failed to comply with the state of Texas' procedures for domesticating an out-of-state subpoena. *Second*, this Court lacks personal jurisdiction over TTV because there is no cause of action giving the SEB long-arm statutory administrative authority, nor has TTV had the requisite contacts with Georgia. *Third*, the subpoena itself is overbroad, unduly burdensome, and costly, seeks information that's both irrelevant and not in TTV's possession, custody, or control, and the documents sought are more readily available from the SEB's fellow Georgia agencies.

¹ This Court does not have personal jurisdiction over Respondent True the Vote. As such, Respondent files its Motion to Dismiss by way of limited special appearance to seek its dismissal from the case and respectfully does not thereby consent to the jurisdiction of this Court or waive any objection to the exercise of jurisdiction.

PROCEDURAL HISTORY

In late March 2021, TTV gave a complete set of data in support of their project, including geospatial cell phone data, to agents from the Federal Bureau of Investigation San Antonio field office, who, in turn, upon information and belief, provided that dataset to their regional counterparts, including in Atlanta, Georgia, and to the Georgia Bureau of Investigation (GBI). According to the first page of a September 30, 2021, letter from GBI Director Reynolds, the GBI received the following trove of information from TTV via the FBI:

Dear Mr. Shafer and Mr. Phillips:

I have had the opportunity to review and discuss, with agents and experts, the information you provided at the meeting you requested a few months back. Additionally, this week Assistant Director John Melvin and I met with the FBI to review the entirety of their case file which consisted of a mirrored image of the hard drive, purportedly from Texas, that had been turned over to them.

The mirrored hard drive contained the contents of commercially available cell site location information (CSLI) which, according to our discussion, True the Vote purchased for the time frame of October 1, 2020, through January 5, 2021. Someone¹ had culled down the 25 terabytes of information representing 1.2 trillion mobile signals to provided spreadsheets under the following headings:

- ACLED USA_2020_Dec12 (appears to be a Associated Actors)
- ATL Dropboxes and Days of Interest
- Devices within 100 feet of Org or Dropbox by Day
- GA 279 Devices Nationwide 10.1.2020 to 1.5.2021
- GA Devices of Interest 1.14.2021.csv
- Ga_dropbox_locations-output copy
- TTV – GA 207 of 279 Devices Pass 1 Address
- UPS Locations

Specific to the Georgia election, the file *Georgia Devices of Interest* is a spreadsheet listing approximately 1,048,575 Mobile Device Identification Numbers and their geolocation from October 1, 2020, to January 5, 2021.

In May of 2021, TTV also met with a team representing the Georgia Governor, as well as the GBI and including Director Reynolds. TTV made a comprehensive presentation, during which it went over at some length the cell-phone database that had been shared with the GBI. After the meeting, the GBI stopped answering TTV's inquiries and offers to supplement what it had initially provided.

Then, on September 30, 2021, GBI Director Reynolds addressed the letter excerpted above to David Shafer, then the Georgia GOP Chairman, and TTV contractor Gregg Phillips — not to TTV itself — dismissing *TTV's* concerns. In response to TTV's time-sensitive discoveries, which had cost TTV, as of July 2021, over \$1.5 million to research among various jurisdictions, it appears GBI did nothing else, suggesting the matter had been closed as far as GBI was concerned.²

Shortly thereafter, TTV met with the Secretary of State's staff ("SOS") in what TTV understood to be an "off-the-record" meeting. The SOS instructed TTV to put its information in the form of a complaint, so it could be "reacted to." So, in an emailed letter titled "Complaint," dated November 30, 2021, TTV reiterated to the Georgia Secretary of State³ the apparent election irregularities it wanted to bring to the state's attention,⁴ including possible ballot trafficking during the General Election of November 2020 and the Runoff Election of January 2021, which constituted possible violations of O.C.G.A. § 21-2-385(a).⁵ *See* Petition Ex. 2.

During TTV's confidential meeting with the SOS, TTV also shared with the Secretary of State what had reportedly happened to an informant, John Doe (with whom TTV did not interact

² On October 21, 2021, counsel for TTV sent a letter to Georgia Governor Brian Kemp that alerted him that the Georgia Bureau of Investigation had apparently provided the letter from D. Victor Reynolds to the media.

³ *See* GA Code § 21-2-30(d) (2021) (providing that the Secretary of State is "an ex-officio nonvoting member" of the five-member SEB).

⁴ As the Complaint made clear in footnote 5, "In filing this Complaint, True the Vote makes no assessment of the legality of any activity seen in the data or surveillance video but merely provides this information for official State use as deemed appropriate by your agency."

⁵ In separately filed complaints also dated November 30, 2021, TTV detailed how Fulton and Gwinnett counties had evidently failed to retain video footage of dropbox locations as required by the State Election Board's own Rule 183-1-14-0.6-.14(5), which states, "Video recordings of the dropbox locations must be retained by the county registrars for 30 days after the final certification of the election, or until the conclusion of any contest involving an election on the ballot in the county jurisdiction, whichever is later..."^d asked for such footage, or whether it had been provided. *See* TTV Complaint, November 30, 2021, "Missing Ballot Dropbox Surveillance Video - General Election 2020. County: Fulton, Gwinnett". To date, TTV is unaware of the SEB expressing any concern about these violations of its Rules.

directly) the previous December. TTV told the SOS it had learned that shortly after leaving a meeting with one of TTV's contractors, John Doe was severely beaten and admitted to a hospital ICU, and that TTV's contractor went to see John Doe in the hospital and met his mother.

In its November 30 Complaint, TTV made one thing clear: because it could not protect its sources as the state could, it had no intention of revealing their identities:

It is imperative that True the Vote maintain confidentiality agreements made with persons willing to speak openly with the organization. First and foremost, True the Vote is primarily concerned for the safety of individuals willing to come forward to speak about such sensitive topics. True the Vote is not a law enforcement agency, we do not have the resources of the State, and ***we are unable to provide any safety guarantees to those individuals willing to provide information other than to keep our word that their identity will not be disclosed.*** Furthermore, for the same reason law enforcement agencies do not disclose the identities of their confidential informants, True the Vote must also maintain such confidences. To do otherwise would greatly inhibit future efforts of the organization as individuals would no longer be willing to speak openly about such matters. Finally, ***to the extent an individual admits to conduct constituting a crime, True the Vote is unable to offer immunity from prosecution.*** Informants would not be honest in their discussions if they lacked confidence that any admissions made would be held in the strictest of confidences and would not subject them to criminal prosecution in the future.

See Petition Ex. 2 (emphases added). However, TTV also made clear that it believed that the State of Georgia's law enforcement agencies were equally, and in many ways better, equipped to determine the identities of individuals with relevant information themselves; they needed only to examine the data TTV had provided:

While True the Vote will not directly identify the individual who made the admission, the organization is able to provide the publicly available data we used in our research. As an office possessing investigative powers and the resources of the State, ***the identity of any individual who may have information pertinent to your efforts is discoverable in the data set now available to you.*** Working in conjunction with law enforcement, ***the State, in their discretion, can provide the necessary and appropriate safety guarantees and immunity protections for cooperating witnesses should that become necessary.***

See *id.* (emphases added).

While it had been the SOS staff who had instructed TTV to file the complaint, once the SOS received the complaint, it took no further action aside from requesting from TTV the identity

of the same John Doe whose identity TTV had already made clear it could not reveal. TTV thus understood that all avenues with Georgia state government were exhausted.

It is in this context that Georgia’s State Election Board, in an April 21, 2022, subpoena it tried to issue upon a non-profit, *in Texas*, demanded from TTV the same data and documentation TTV had provided the GBI long ago. But the SEB did not follow proper procedures for subpoenaing an out-of-state party, including but not limited to one where there is no pending proceeding. The SEB also demanded in the subpoena information beyond the scope of the initial complaint the SOS had asked TTV to file, much of it already in the possession of Georgia state entities, potentially presenting both greater danger to TTV’s participating informants and greater financial cost to TTV, none of which the SEB offered to defray.

Thus, in a May 5, 2023, letter from counsel, TTV withdrew its complaints. Though no authority permits the SEB to prolong a withdrawn complaint (here, made only to the SOS), SEB refused to honor TTV’s withdrawal and insisted TTV answer its subpoena. On June 14, 2023, TTV responded to SEB’s subpoena, stating that (1) TTV had already provided much of the requested information to the GBI (while the video evidence sought by the SEB had come from Georgia’s own county governments in response to open records requests), (2) it had no additional responsive documents to other requests outside the scope of the complaint⁶, and (3) some of the requests sought information about confidential informants to whom TTV had pledged confidentiality.

On July 24, 2023, Petitioner purported to “serve” its Petition through Registered Agents, Inc. dba Harbor Compliance, a company that offers registered agent services — but not to TTV in Georgia, as demonstrated in the following screenshot from the Corporations Division website of

⁶ For example, per the Complaint’s footnote 6: “This raw and unedited data purchased by True the Vote does not include any analysis conducted by True the Vote or its contractors nor does it include any list of specific IMEI devices of interest. Furthermore, this data does not include any identifying information about any individuals other than commercially available, anonymized, IMEI data in its original form.”

ecorp.sos.ga.gov/BusinessSearch

GEORGIA SECRETARY OF STATE
BRAD RAFFENSPERGER

HOME

BUSINESS SEARCH RESULTS

Business Name	Control Number	Business Type	Principal Office Address	Registered / Designated Agent Name	Status
TRUE THE VOTE, INC.	12069186	Foreign Nonprofit Corporation	PO BOX 131768, HOUSTON, TX, 77219, USA	CORPORATION SERVICE COMPANY	Withdrawn
True the Vote, Inc.	21208402	Foreign Nonprofit Corporation	PO Box 3109 #19128, Houston, TX, 77253, USA	Registered Agents, Inc.	Revoked

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TTV’s lack of a registered agent, or corporate registration, in Georgia will soon become quite relevant. But we begin with another problem with the SEB’s Petition.

LEGAL STANDARD

I. The SEB Did Not Follow Set Procedures to Domesticate the Out-of-State Subpoena It Served on a Texas Corporation.

Texas had not adopted the Uniform Interstate Depositions and Discovery Act. Accordingly, under Texas law, to serve a subpoena from out of state upon a Texas corporation, the requesting party, here, the SEB, must hire a Texas attorney to "domesticate" the subpoena in a Texas court. This requirement is commonly accepted. *See Att’y Grievance Comm’n of Maryland v. Mixer*, 441 Md. 416, 429, 109 A.3d 1, 9 (2015) (“Because the subpoena powers of the State of Maryland stop at the state line, when the deposition of, and/or documents from, a non-party outside of Maryland is sought, the dictates of the place where the deposition is held must be followed”) (internal citations omitted). Domestication in Texas usually entails opening a miscellaneous case in a Texas court (often the county where the person or entity to be served resides) and then seeking the court’s approval of the out-of-state subpoena. The subpoena must be domesticated *by court action* so that it may be enforced *by courts*.

Texas Rule of Civil Procedure 201.2 governs issuance of subpoenas from outside Texas. “[T]he Texas rules of civil procedure apply to a request originating from another state for a Texas deposition.” *In re Issuance of Subpoenas Depositions of Bennett*, 502 S.W.3d 373, 377 (Tex.

App.—Houston [14th Dist.] 2016, no pet.); *see also In re Prince*, No. 14-06-00895-CV, 2006 WL 3589484, at *2 (Tex. App.—Houston [14th Dist.] Dec. 12, 2006, orig. proceeding) (mem. op.) (“The request for a deposition, even though originating from a case pending in California, is governed by the Texas rules. *See* TEX.R. CIV. P. 201.2”); *In re Reed*, No. 03-09-00361-CV, 2009 WL 2058911, at *1 (Tex. App. July 10, 2009) (holding that the Texas trial court did not have the power to order a nonparty witness to produce documents in Minnesota “other than as specified by the Texas Civil Practices and Remedies Code and the Texas Rules of Civil Procedure”); *accord* Tex. Civ. Prac. & Rem. Code Ann. § 20.002 (West).

Texas Rule of Civil Procedure 201.2 makes clear that, for an out-of-state entity to take a deposition or subpoena documents in Texas, a “court of record” must “issue[] a mandate, writ, or commission”:

If a court of record of any other state or foreign jurisdiction issues a mandate, writ, or commission that requires a witness’s oral or written deposition testimony in this State, the witness may be compelled to appear and testify in the same manner and by the same process used for taking testimony in a proceeding pending in this State.

Therefore, when a party like the SEB seeks to enforce a subpoena against a Texas resident, it must do so either *through a Texas court* or through a letter rogatory (also known as a letter of request) *issued by that party’s state court to a court in Texas*. *See In re Gutierrez*, No. 01-22-00188-CV, 2023 WL 3356701, at *1 (Tex. App. May 11, 2023) (in which a Louisiana court issued a letter rogatory asking a Harris County, Texas court to issue a subpoena for the deposition of Mauricio Gutierrez, a Texas resident). In short, the board of an administrative agency in Georgia has no power to issue subpoenas directly upon residents of other states. The Texas Appeals Court in *Prince* explained it well:

Because Prince resides in Houston, the California court in which the divorce proceeding is pending *did not have the power to issue a subpoena to compel Prince to appear* for a deposition. On September 16, 2005, *the California court accordingly issued a commission*

requesting a Harris County [Texas] court to issue a subpoena for the production of documents and for Prince's appearance for an oral deposition.

Prince, 2006 WL 3589484, at *1 (emphases added).⁷ There is a reason for this legal requirement. It provides a framework within which any disputes might be adjudicated, including perhaps most importantly between persons and entities residing in different states. This is critical where, as here, True the Vote insists it has an obligation not to disclose the identity of confidential sources, out of concern for their physical safety.⁸ Because the SEB has not followed the standard and accepted procedure, the SEB's Petition must be dismissed at this juncture.

II. The Court Should Dismiss the Petition Because in the Absence of a Cause of Action the Court Lacks Both General and Specific Personal Jurisdiction over TTV.

This Court has neither general nor specific jurisdiction over TTV. Petitioner has the burden to “affirmatively allege facts demonstrating the existence of jurisdiction.” *Taylor v. Appleton*, 30 F.3d 1365, 1367 (11th Cir. 1994). Petitioner has not met this burden. Petitioner has stated no grounds for jurisdiction, but it *appears* to believe that because TTV (1) has a registered agent in Georgia (it does not), or (2) once had a corporate registration in Georgia, now expired, *see* Petition at 2 n.1, or (3) filed letter-complaints with a different Georgia governmental entity, that is, the

⁷ Similarly, the party issuing a subpoena followed proper procedures in *Centennial Psychiatric Assocs., LLC v. Cantrell*, No. 14-17-00380-CV, 2017 WL 6544283, at *3 (Tex. App. Dec. 21, 2017), where a Tennessee court entered a commission stating, “Defendants are hereby COMMISSIONED to seek the deposition of and to subpoena documents from [Texas-based] Ryan Cantrell” and a defendant “subsequently issued a subpoena to Ryan in Texas seeking the production of documents”). *See also In re ASICS Am. Corp.*, No. 05-22-00994-CV, 2023 WL 333711, at *2 (Tex. App. Jan. 20, 2023) (noting “ASICS filed [in Texas] a Rule 201.2 petition for recognition and enforcement of the [California] subpoena and requested that the [Texas] court compel compliance pursuant to Rule 215.1”).

⁸ While a “foreign court with jurisdiction over the underlying case determines the relevance and materiality of the evidence sought by the party seeking the Texas deposition under letters rogatory,” it falls to Texas courts to “protect the witness's legal rights, including, for example, the witness's right to avoid compelled production of privileged evidence.” *Gutierrez*, 2023 WL 3356701, at *4 (citation omitted); *see also In re Issuance of Subpoenas Depositions of Bennett*, 502 S.W.3d 373, 379–80 (Tex. App.—Houston [14th Dist.] 2016, no pet.) (considering whether movants for protective order met burden to show harassing effect of subpoena requested in Wyoming letters rogatory). “This overarching principle promotes comity toward other states’ courts while vesting Texas trial courts with authority to protect Texas residents subjected to depositions for out-of-state lawsuits.” *Gutierrez*, 2023 WL 3356701, at *4.

Secretary of State, nearly two years before the SEB filed the instant Petition, its burden is satisfied. It is not. These allegations (the first of which is plainly wrong) do not constitute “continuous and systematic” contacts, the Due Process requisite for the exercise of general personal jurisdiction. Nor do they remedy the even more problematic lack of any extant underlying “cause of action,” which bars the exercise of both general and specific personal jurisdiction.

A. The Petition Asserts No Basis for this Court to Exercise General Personal Jurisdiction in the Absence of a Cause of Action.

Setting aside for the moment, SEB’s Due Process problem, while general personal jurisdiction, unlike specific personal jurisdiction, does not require that a cause of action be “directly related to” the defendant’s contacts in the forum state, *see Consol. Dev. Corp. v. Sherritt, Inc.*, 216 F.3d 1286, 1292 (11th Cir. 2000) (“General personal jurisdiction, on the other hand, arises from a defendant’s contacts with the forum that are unrelated to the cause of action *being litigated*”), ***general jurisdiction does require a cause of action in the first place***. *See, e.g., id.*; *Stubbs v. Wyndham Nassau Resort & Crystal Palace Casino*, 447 F.3d 1357, 1360 (11th Cir. 2006) (same) (emphasis added).

We see the same over and over in the caselaw: "A court may assert general jurisdiction over foreign (sister-state or foreign-country) corporations *to hear any and all claims against them* when their affiliations with the State are so ‘continuous and systematic’ as to render them essentially at home in the forum State." *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 919 (2011) (emphasis added). The Georgia Court of Appeals similarly made clear that whether we are talking about general or specific personal jurisdiction, there must be a *defendant* and a *suit*: "When a State exercises personal jurisdiction over a defendant *in a suit* not arising out of or related to the defendant's contacts with the forum, the State has been said to be exercising general jurisdiction over the defendant. Conversely, when a State exercises personal jurisdiction

over a defendant *in a suit* arising out of or related to the defendant's contacts with the forum, the State is exercising specific jurisdiction over the defendant." *Pascarelli v. Koehler*, 346 Ga. App. 591, 595 at n. 2 (2018) (citation omitted; emphases added). Because there is no cause of action here, the State Election Board's Petition in its "hearing" has to be dismissed.

B. An Expired Corporate Registration Doesn't Confer General Personal Jurisdiction.

Even if there were a cause of action here, which there is none stated, the Petition does not allege that TTV has the required "continuous and systematic business contacts" with Georgia, *Mitsubishi Motors Corp. v. Colemon*, 290 Ga. App. 86, 89 (2008) (emphasis added), which means "additional factors *over and above the mere minimum contacts* required to constitutionally exercise personal jurisdiction." *Maier v. Green Eyes USA, Inc.*, No. CV409-172, 2011 WL 13153111, at *3 (S.D. Ga. Sept. 9, 2011) (emphasis added). According to *Mitsubishi*,

factors relevant to the existence of [general] jurisdiction include *regularly* doing business in the state, deriving *substantial revenue* from goods or services in the state, *having agents or employees in the state, maintaining an office* in the state, and *having subsidiaries* or business affiliates in the state.

290 Ga. App. at 89 (emphases added). The Petition does not allege, and Petitioner is unlikely to be able to allege, that any of these factors applies to TTV.

Moreover, under the general jurisdiction analysis, the defendant's contacts with the state must be so "continuous and systematic" as to render the defendant "essentially at home in the forum state." *Daimler AG v. Bauman*, 571 U.S. 117 (2014). "The 'paradigm all-purpose forums' in which a corporation is at home are the corporation's place of incorporation and its principal place of business. Outside of these two exemplars, a defendant's operations will 'be so substantial and of such a nature as to render the corporation at home in that State' *only in an 'exceptional case.'*" *Waite v. All Acquisition Corp.*, 901 F.3d 1307, 1317 (11th Cir. 2018) (emphasis added;

quoting *BNSF Ry. Co. v. Tyrrell*, 581 U.S. 402, 413 (2017) (other internal quotation marks omitted)). This is not that case.

But even if TTV had a registered agent in Georgia — and it does not — TTV’s appointment of a registered agent would not be an exceptional case: “a defendant’s appointment of an agent for service of process in a state [does] not confer general jurisdiction over a defendant there.” *Waite*, 901 F.3d at 1317. Indeed, “[a]fter *Daimler*, there is “little room” to argue that compliance with a state’s “bureaucratic measures” render a corporation at home in a state.” *Id.* at 1318 (quoting *Brown v. Lockheed Martin Corp.*, 814 F.3d 619, 629, 639 (2d Cir. 2016)). Nor does *Cooper Tire & Rubber Co. v. McCall*, 312 Ga. 422, 437, 863 S.E.2d 81, 92 (2021), *cert. denied*, 143 S. Ct. 2689 (2023) lend itself to a different outcome here; that case held with some reluctance only that the *active* corporate registration in that case was sufficient to confer general personal jurisdiction, and the *Cooper* court acknowledged this minority position was “in tension” with the Supreme Court’s restrictive view of general jurisdiction. *Id.* at 424.

In any event, what is clear is that in the absence of a cause of action, when a party is served despite having no registered agent in a state, and that party has no corporate registration in a state, there can be no general personal jurisdiction over a nonresident defendant. In *U.S. Sec. Assocs., Inc. v. Lumby*, No. 1:18-CV-5331-TWT, 2019 WL 8277263, at *5 (N.D. Ga. Sept. 25, 2019), the court held that “[f]or a corporation to be ‘essentially at home’ in the forum state, due process requires more than registering to do business in that forum and maintaining a registered agent there.” In that case, the defendant’s “Atlanta office, a Georgia security services license, and an agent for service of process in Georgia who was served in this case” were collectively insufficient to confer upon the state court system general jurisdiction. Indeed, the Supreme Court in *Daimler* acknowledged by illustration the heavy burden of establishing general jurisdiction, holding the

German corporation there was not “essentially at home” in California even though its subsidiary had multiple facilities in California and was “the largest supplier of luxury vehicles to the California market.” *Daimler*, 571 U.S. at 123. As we will show below,⁹ TTV’s contacts with Georgia do not even meet the lower standard of “minimum contacts”. Even if TTV had a registered agent in Georgia, without more substantial connections *and a cause of action*, that would not meet the at-home-in-Georgia standard.

C. Because There is No “Cause of Action” Here, Georgia’s Long-Arm Statute Does Not Confer Specific Personal Jurisdiction Over TTV.

As for specific personal jurisdiction, Section 21-2-33 grants the SEB no long-arm jurisdictional authority over out-of-state actors at all, and Georgia’s Long-Arm Statute cannot bestow jurisdiction over the Petition because the statute only applies to (1) *causes of action* implicating out-of-state actors who have (2) “transacted business” in Georgia.

The Georgia Long-Arm Statute, O.C.G.A. § 9-10-91, states, in pertinent part,

“A court of this state may exercise personal jurisdiction over any nonresident¹⁰ . . . , *as to a cause of action* ...;

(1) *Transacts any business within this state . . .*”

(Emphasis added).

⁹ The Eleventh Circuit not long ago rejected the argument that a state statute that imposes “the same duties, restrictions, penalties, and liabilities” on registered foreign corporations as on domestic corporations means the foreign corporation “consents to general jurisdiction . . . when it registers to do business there.” *Waite v. All Acquisition Corp.*, 901 F.3d 1307, 1321 (11th Cir. 2018). The Fifth Circuit has indeed held that the appointment of an agent for process and the registration to do business within the state, without more, does not satisfy the criteria for the exercise of general jurisdiction. *See Wenche Siemer v. Learjet Acquisition Corp.*, 966 F.2d 179, 182 (5th Cir. 1992); *Dominion Gas Ventures, Inc. v. N.L.S., Inc.*, 889 F. Supp. 265, 268 (N.D. Tex. 1995) (holding that “maintaining an agent for service of process in Texas is of no special weight in evaluating general personal jurisdiction” because “mere act of registering an agent does not create a general business presence in Texas, nor does it act as consent to being hauled into a Texas court”); *see also Perkins v. Benguet Consol. Min. Co.*, 342 U.S. 437, 445, (1952) (existence of registered agent is “helpful but not a conclusive test”).

¹⁰ It’s clear that TTV was a “nonresident” when the Petition was filed: Petitioner states that TTV’s corporate registration was revoked on October 28, 2022. *See* Petition at 2.

A fundamental problem with the SEB's Petition is that it ignores the lack of any "cause of action" applicable to TTV. There is none. Instead, the SEB filed its Petition based solely on letter-complaints sent by TTV to the Georgia Secretary of State several years ago. They have at the same time been withdrawn. Neither those letter-complaints nor the SEB's Petition constitute anything that could be characterized as "a cause of action". For this reason alone, the Court lacks jurisdiction over the Petition. But the Petition also fails to state TTV has "transacted business" in Georgia.

D. The Petition Fails to Allege Facts Demonstrating TTV's "Minimum Contacts" with Georgia and Fairness in Exercising Jurisdiction Over TTV.

But that's not all. Even if the Petitioner had satisfied the provisions of the Long-Arm Statute, because *assuming arguendo* the Petitioner had identified a cause of action and pointed to business transacted in the state, the exercise of jurisdiction would be proper only if all three of the following were true:

(1) the nonresident defendant has purposefully done some act or consummated some transaction in this state, (2) if the cause of action arises from or is connected with such act or transaction, and (3) if the exercise of jurisdiction by the courts of this state does not offend traditional fairness and substantial justice.

Aero Toy Store, LLC v. Grieves, 279 Ga. App. 515, 517-18, 631 S.E.2d 734, 737 (2006). But Petitioner (1) points to no such acts or transactions, (2) there is, as stated, no cause of action, and (3) exercising jurisdiction in such a situation would offend notions of fairness and justice. It is well-settled that a nonresident defendant may be subject to specific jurisdiction in a particular forum only when, in addition to satisfying the long-arm statute, (1) he has purposefully established minimum contacts with the forum state and (2) the exercise of jurisdiction will not offend traditional notions of fair play and substantial justice. *Francosteel Corp., Unimetal-Normandy v. M/V Charm, Tiki, Mortensen & Lange*, 19 F.3d 624, 627 (11th Cir. 1994).

1. There Can Be No Minimum Contacts Without an Underlying Cause of Action.

The absence of a cause of action comes into play in yet another way. The test for minimum contacts by a foreign nonresident corporation is as follows: “(1) The nonresident must purposefully avail himself of the privilege of doing some act or consummating some transaction with or in the forum.... (2) The plaintiff *must have a legal cause of action against the nonresident, which arises out of, or results from, the activity or activities of the defendant within the forum;* and (3) If (and only if) the requirements of Rules 1 and 2 are established, a ‘minimum contact’ between the nonresident and the forum exists.” *Pratt & Whitney Canada, Inc. v. Sanders*, 218 Ga. App. 1, 3, 460 S.E.2d 94, 96 (1995).

Here, however, Rule 2’s standard for minimum contacts exposes the same — and again dispositive — deficiency in the Petition: the SEB does not have a “legal cause of action” against TTV. That alone is the end of the matter. “Hearings” of state boards simply do not trigger personal jurisdiction over out-of-state defendants. But let us assume again for the sake of argument that there were a cause of action. There are more problems.

2. TTV’s Emails, Visits, and Former Maintenance of a Registered Agent Do Not Comprise Requisite Business Transactions or Meaningful Purposeful Availment of Georgia’s Laws.

Here, TTV did not purposefully avail itself of the privileges of Georgia by virtue of its sending emails to the SOS and visiting Georgia to discuss suspected election irregularities with state agencies. A non-resident’s phone, fax, or email contact with Georgia is insufficient to establish minimum contacts.¹¹ Nor are a nonresident’s visits to Georgia sufficient to show minimum contacts. *See Pratt & Whitney*, 218 Ga. App. at 3 (“Visits to Georgia by the agents of a

¹¹ *See HTL Sp. Z O.O. v. Nissho Corp.*, 245 Ga. App. 625, 626 (2000); *Catholic Stewardship Consultants, Inc. v. Ruotolo Associates, Inc.*, 270 Ga. App. 751, 757 (2004) (“Although employees of [a corporation] directed telephonic and electronic mail contacts to Georgia from outside the state, this type of contact, in and of itself, has consistently been held insufficient to establish the jurisdiction of the Georgia courts over a nonresident defendant.”).

nonresident foreign corporation have also been held to be insufficient contacts to Georgia to support jurisdiction in breach of contract actions”); *HTL*, 245 Ga. App. at 626.; *see also Gee v. Reingold*, 259 Ga. App. 894 (2003). “Although individual presence is still a sufficient basis for jurisdiction when dealing with a person, when dealing with a corporation, more is required.” *Pratt & Whitney*, 218 Ga. App. at 3.

There is another reason TTV’s letters to the Secretary of State do not establish minimum contacts sufficient to hale TTV into Georgia courts, and that is the “government contacts” exception. That exception to minimum contacts established by the Supreme Court of Georgia in *Lamb v. Turbine Design, Inc.*, 273 Ga. 154, 155 (2000), has been extended to contacts with state agencies in certain instances by *Maier v. Green Eyes USA, Inc.*, No. CV409-172, 2011 WL 13153111 (S.D. Ga. Sept. 9, 2011). In *Maier*, the plaintiff argued that the defendants were “doing business” in Georgia “by requesting information on Georgia motor vehicle records.” *Maier*, 2011 WL 13153111 at *4. But the court determined that “[u]nder [the government contacts] exception, if a nonresident's contact is with a ‘governmental entity that is located only within the jurisdiction, the contact is not counted in a personal jurisdiction analysis.’” *Id.* (quoting *Lamb v. Turbine Design, Inc.*, 273 Ga. 154, 155 (2000)). The Georgia Court of Appeals in *Hicks v. Universal Health Servs., Inc.*, 364 Ga. App. 769, 781, 874 S.E.2d 877, 887 (2022), *reconsideration denied* (July 8, 2022), *cert. denied* (Apr. 4, 2023), reasoned similarly, stating that mere mention of the defendant’s initials “in a [state] lobbyist registration is insufficient to demonstrate contacts with Georgia for purposes of long arm jurisdiction.” This rule is consistent with the requirement that “to establish the purposeful activity with Georgia required by the Long Arm statute . . . the defendant must have purposefully directed his activities *at residents of the forum*” — not merely government entities there. *Brandenburg v. City of Vidalia*, 366 Ga. App. 51, 59, 880 S.E.2d 625, 632 (2022).

3. Exercising Personal Jurisdiction Here Would Be Unfair and Was Not Reasonably Foreseeable.

Because neither the SEB nor this Court has personal jurisdiction over TTV under Georgia's Long-Arm Statute, choosing to assert personal jurisdiction would violate the Due Process Clause and should not be allowed. In situations where there *is* a proper cause of action (unlike here), and a defendant (which TTV is not) is not present in the forum state, the defendant must still "have certain minimum contacts with the [forum state] *such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.'*" *Bradenburg*, 2022 WL 16645325 (citing *Cooke v. Cooke*, 277 Ga. 731, 732-33 (2004)) (emphasis added). Thus, a party must have "fair warning that a particular activity may subject them to the jurisdiction of a foreign sovereign." *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 472 (1985) (citing *Shaffer v. Heitner*, 433 U.S. 186, 218 (1977)); *see also Allegiant Physicians Servs., Inc. v. Sturdy Mem'l Hosp.*, 926 F. Supp. 1106, 1113 (N.D. Ga. 1996).

What does fair warning mean? Without a proper cause of action, the principles of fair warning can't even be sensibly applied.¹² "First, the contacts must be related to the plaintiff's cause of action or have given rise to it." *Allegiant Physicians Servs*, 926 F. Supp. at 1113 (cleaned up). But, as we have seen several times now, there is no plaintiff here, nor any cause of action; thus, any "contacts" the SEB could cite could not be related to any "plaintiff's cause of action." "Second,

¹² Once it has been established that a defendant purposefully established minimum contacts within the forum State," there are "other factors" to be considered, to determine whether the assertion of personal jurisdiction would comport with 'fair play and substantial justice,'" *Burger King v. Rudzewicz*, 471 U.S. 462, 476, 105 S.Ct. 2174, 2184, 85 L.Ed.2d 528 (1985) (quoting *International Shoe Co. v. Washington*, 326 U.S. 310, 320, 66 S.Ct. 154, 160, 90 L.Ed. 95 (1945)), but these other factors *make even less sense in the absence of a proper cause of action*, or lawsuit. "These 'other factors' include the burden on the defendant in defending the lawsuit, the forum state's interest in adjudicating the dispute, the plaintiff's interest in obtaining convenient and effective relief, the interstate judicial systems's interest in obtaining the most efficient resolution of controversies and the shared interest of the states in furthering fundamental social policies." *Allegiant Physicians*, 926 F. Supp. at 1113-14.

the contacts must involve some act by which the defendant purposefully avails itself of the privilege of conducting activities within the forum, thus invoking the benefits and protections of its laws.” *Id.* But TTV, as noted above, has not purposefully availed itself of the “benefits and protections” of Georgia’s laws; to the contrary, TTV simply asked *Georgia* to give its *own* citizens the benefits and protections of Georgia’s election laws. “Third, the defendant’s contacts with the forum must be such that the defendant should reasonably anticipate being haled into court there.” *Id.* But it is not reasonable to anticipate being haled into court for merely having provided information to Georgia governmental bodies.

Thus, TTV did not purposefully avail itself of the benefits and protections of Georgia’s laws. It did not, for example, set up offices in Georgia or advertise and sell products there, thus arguably availing itself of Georgia’s contract laws. TTV merely sent letters to a Georgia governmental body, the Secretary of State, and attempted, without success, to assist its law enforcement in investigating elections matters from which TTV stood to obtain no material benefit. These are glaringly absent such contacts as would make it fair or reasonable to assert jurisdiction over TTV. Indeed, being haled into Georgia courts over such assistance was not something TTV could “reasonably anticipate.”

But as we have noted, even if there were jurisdiction here, Petitioner’s allegations, if assumed as true, do not establish that there is a cause of action here, that is, that there is a claim on which the relief of compelling responses to a subpoena could be granted.

III. The Subpoena is Overbroad, Unduly Burdensome, and Seeks Documents Readily Available from the Same Georgia Agencies Whose Information Precipitated the SEB’s Subpoena in the First Place.

The SEB’s subpoena is overly broad, unduly burdensome, and seeks documents more readily available from Georgia governmental entities in the first place. As noted above, TTV

provided the Georgia Bureau of Investigation with a copy of the documents and data requested for all reasonable intents and purposes.

But yet here are many more problems with the subpoena.

A. TTV’s Rights Against Unduly Burdensome or Invasive Subpoenas Can Only Be Evaluated by Texas Courts Applying Texas Law.

“Texas courts have held that the out-of-state court with jurisdiction over the underlying case” — jurisdiction this Court does not yet have, due to the deficiency of the subpoena — “in a Rule 201.2 action is generally charged with determining the relevancy and materiality of evidence sought by a party seeking a deposition in Texas, while the Texas court has the obligation to protect the witness's legal rights.” *In re ASICS Am. Corp.*, No. 05-22-00994-CV, 2023 WL 333711, at *4 (Tex. App. Jan. 20, 2023); *Gutierrez*, 2023 WL 3356701, at *4 (citation omitted); *see also In re Issuance of Subpoenas Depositions of Bennett*, 502 S.W.3d 373, 379–80 (Tex. App.—Houston [14th Dist.] 2016, no pet.) (considering whether movants for protective order met burden to show harassing effect of subpoena requested in Wyoming letters rogatory). “This overarching principle promotes comity toward other states’ courts while vesting Texas trial courts with authority to protect Texas residents subjected to depositions for out-of-state lawsuits.” *Gutierrez*, 2023 WL 3356701, at *4.

In other words, this Court lacks jurisdiction to compel TTV’s response to the SEB’s Petition (because the subpoena was deficient). To the extent this Court believes it may examine the subpoena’s reasonableness, the Texas Rules of Civil Procedure will apply.

B. The SEB Has Taken No Reasonable Steps to Avoid Imposing Undue Burden or Expense.

Texas Rule of Civil Procedure 176.7, titled “Protection of Person from Undue Burden and Expense,” states as follows:

A party causing a subpoena to issue *must take reasonable steps to avoid imposing undue burden or expense* on the person served. In ruling on objections or motions for protection, the court must provide a person served with a subpoena an adequate time for compliance, *protection from disclosure of privileged material or information, and protection from undue burden or expense*. The court may impose reasonable conditions on compliance with a subpoena, including compensating the witness for undue hardship.

Tex. R. Civ. P. 176 (emphases added). Furthermore, Texas Rule of Civil Procedure 192.4, entitled “Limitations on Scope of Discovery,” provide as follows:

The discovery methods permitted by these rules should be limited by the court if it determines, on motion or on its own initiative and on reasonable notice, that:

- (a) the discovery sought is unreasonably cumulative or duplicative, *or is obtainable from some other source that is more convenient, less burdensome, or less expensive*; or
- (b) *the burden or expense of the proposed discovery outweighs its likely benefit*, taking into account the needs of the case, the amount in controversy, the parties' resources, the importance of the issues at stake in the litigation, and the importance of the proposed discovery in resolving the issues.

Tex. R. Civ. P. 192.4 (emphases added).

Parties like the SEB must thus exhaust reasonable alternatives *before* unduly burdening non-parties, including by seeking documents internally. Indeed, that is their burden.¹³ The GBI has conceded that it has a trove of data from TTV (some of which even TTV no longer possesses). Before burdening TTV with demands to incur costs collecting or retrieving and reloading enormous amounts of data, the SEB should lean out into the hallway and consult with fellow governmental bodies. With the GBI, SOS, and Georgia counties in possession of all the relevant information here, the SEB has not exhausted reasonable alternatives — not in the 15 months since it emailed to TTV’s counsel its deficient subpoena.

The SEB in issuing and pursuing its subpoena now that the underlying complaint has been

¹³ *New England Teamsters & Trucking Industries Pension Fund v. New York Times Co.*, 2014 WL 1567297 at *3 (S.D. N.Y. 2014) (citing *Gonzales v. National Broadcasting Co., Inc.*, 194 F.3d 29, 36 (2d Cir. 1999)); see also *Jeffcoat Enterp., Inc. v. Charter Comm’s, Inc.*, 2020 WL 2104732 at *2 (E.D.Mo. 2020).

withdrawn has failed to abide by nearly all the principles discussed above. TTV summarizes the SEB's failures below, where quotations originate either from the subpoena itself (in parentheses) or the June 14, 2023, letter of TTV counsel that the SEB attached as Exhibit 9 to its Petition:

Request No. 1 (seeking “detailed account of coordinated efforts to collect and deposit ballots in drop boxes across metro Atlanta”)

TTV already provided the requested documents to the State of Georgia but does not possess or control the voluminous underlying data.

Request No. 2 (The identity and contact information of the “several individuals regarding personal knowledge, methods, and organizations involved in ballot trafficking in Georgia”)

TTV has no responsive documents, aside from video of ballot dropboxes, which is already in the possession of the pertinent Georgia counties and which TTV already provided to the State of Georgia. TTV, whose Complaint had already made clear that it did not have phone numbers for any individuals, has also explained to the Georgia AG that contact information individuals of persons involved in ballot trafficking could be subpoenaed by law enforcement using “marketing app signals identified only by a phone’s International Mobile Equipment Identity (IMEI) number”.

Request No. 3 (“The identity and contact information of the ‘contracted team of researchers and investigators’ referenced in the Complaint”)

Particularly after various branches of the State of Georgia had already leaked confidential information provided by TTV previously, TTV declined to identify such people due to the risk to which such identification could expose them.

Requests Nos. 4 (“The identity and contact information for John Doe referenced in Complaint”) and **5** (“The identity and contact information for John Doe’s mother”)

These requests seek irrelevant information about John Doe’s mother, who was never referenced in any TTV Complaints, and the request itself is the fruit of the SOS’s rotten tree of betraying the confidence of a private meeting. Both requests seek confidential information whose further irresponsible exposure by Georgia governmental bodies would endanger people. In any event, TTV stated it had no documents responsive to these requests.

Request No. 6 (“Any recordings, transcripts, voicemails, summaries, notes, or other documents from True the Vote’s Georgia Election Integrity Hotline, tip line, or other hotline regarding allegations of ballot harvesting in Georgia”)

TTV has already stated it no longer possesses “recordings, transcripts, voicemails, or notes from the Georgia Election Integrity Hotline. The Hotline was operational

from approximately December 2020, until January 6, 2021. A summary of number of calls can be provided.”

Request No. 7 (“Any receipts, invoices, bills, or other documents evidencing any medical payments you made for the John Doe referenced in the Complaint”)

See response to Requests 4 and 5. TTV has also stated it does not possess any such records, while this cynical request seeks to violate John Doe’s medical privacy.

Request No. 8 (“The identities of the ‘network of non-governmental organizations that worked together to facilitate a ballot trafficking scheme in Georgia’ that John Doe allegedly described and any recordings, transcripts, testimonies, statements, summaries, witness interviews, notes, or other documents evidencing those statements”)

TTV has stated “the responsive requested items in [its] possession, custody, or control have already been provided to the state of Georgia, specifically to the Georgia Bureau of Investigation.”

Request No. 9 (“The identities of the ‘ten hubs’ in Atlanta that you allege participated in a ballot harvesting scheme in Georgia”)

TTV stated “the responsive requested items in [its] possession, custody, or control have already been provided to the state of Georgia, specifically to the Georgia Bureau of Investigation.”

Request No. 10 (“The identity and contact information for the ‘bartender who came in from South Carolina’ to help with the alleged ballot harvesting scheme in Georgia and any recordings, transcripts, testimonies, statements, summaries, witness interviews, notes or other documents supporting this allegation”)

This odd request comes with quotes unattached to any speaker (“bartender who came in from South Carolina”), and clearly does not relate to anything in any of the TTV complaints. It is thus irrelevant on its face. But as TTV has explained, it does not know the identities or contact information of persons associated with its cell phone data.¹⁴

¹⁴ Once again proving the dangers of members of the SEB attempting to turn hearsay disclosures from the SOS into political fodder, this request appears to refer to a *hypothetical example* that TTV mentioned in its private meeting with the SOS. In any event, in response to this Request, TTV’s counsel has already stated TTV did not know:

the identities and contact information of the cell phone owners referenced in their complaints. The geospatial research of cell phone travel patterns was conducted using data acquired from telemetric data aggregation companies, which compile marketing app signals identified by a phone’s International Mobile Equipment Identity (IMEI) number. Law enforcement can subpoena cell phone companies for the phone owner identities matching the IMEI’s.

Request No. 11 (“Any Non-disclosure agreements or confidentiality agreements you are relying on to withhold the disclosure of any documents or information being requested by this subpoena”)

TTV stated it was "not relying on any such documents in their responses to these subpoenas.”

In summary:

- TTV has **no documents** responsive to 6 of 11 requests. Requests 2, 4, 5, 7, 10, 11 may be disposed of immediately.
- 2 requests are **utterly irrelevant** to potential elections irregularities (Requests 5 and 7),
- 3 requests **exceed the boundaries** of any TTV complaint that could even arguably give the SEB jurisdiction (Requests 5, 7, 10),
- 6 requests ask for **information already in Georgia’s possession** or that Georgia law enforcement may **discern as easily as TTV from geospatial cellphone data** (Requests 1-2, 4, 8-10), and
- 7 requests seek **sensitive information** of the sort the SEB, SOS, or GBI have already abused (Requests 3-5, 7-10).

The following table gives a fuller picture of the multiple deficiencies (highlighted in red) of each of the subpoena’s requests:

Request No.	Exceeds the Boundaries of TTV’s Complaint	Provided to the Georgia Bureau of Investigations	Now in TTV’s Possession, Custody, or Control?	Risk of Yet Another Improper Disclosure by Georgia?
1 – Detailed account	No	Yes	Mostly no	n/a
2 – Ballot traffickers	No	In provided wireless carriers’ geospatial data law enforcement may subpoena	No (except video from counties)	n/a
3 – Identity of TTV’s	Yes	No	Yes	Yes

Contracted Team				
4 – Identity of John Doe	Yes	In provided geospatial data	No	Yes, if TTV had possession
5 – John Doe’s mother	Yes	No	No	Yes, if TTV had possession
6 - Hotline	No	No	No, except summaries	n/a
7 – John Doe’s medical bills	Yes	No	No	Yes, if TTV had possession
8 – Ballot network	No	In provided geospatial data	Potentially only after costly analysis	Yes, if TTV had possession
9 – Ten hubs	No	In provided geospatial data	Potentially only after costly analysis	Yes, if TTV had possession
10 - Bartender	Yes	Potentially in provided geospatial data	Potentially only after costly analysis	Yes, if TTV had possession
11 - NDAs	No	n/a	No	n/a

Here, there is no question that the Georgia SEB has failed to “take reasonable steps to avoid imposing undue burden or expense on the person served.” The SEB can procure the data requested in Requests 1, 2, 4, and 8-10 “from some other source that is more convenient, less burdensome, or less expensive,” such as the GBI, while it can obtain video from Georgia’s counties and other previously-produced information from the Georgia Secretary of State.

The subpoena is also unduly burdensome. Texas Rule 192.4(b) has a proportionality requirement requiring courts to consider “whether the burden or expense of the proposed discovery outweighs its likely benefit.” For this subpoena, Petitioner has asked Respondent to provide documents and communications for 11 separate requests for production (some, like Request No. 9, seek information on ten entities). This has all the markings of a typical discovery request between parties to an existing lawsuit, which TTV is not. Any one of the requests could cost TTV a significant amount of time and money to comply with (including legal fees), in excess of what would be reasonable for a non-party to a lawsuit. When discovery is sought from nonparties, its

scope must be even more restricted. Nonparties are “strangers” to the litigation, and since they have ‘no dog in [the] fight,’ they have ‘a different set of expectations’ from the parties themselves.” *Virginia Dept. of Corrections v. Jordan*, 921 F.3d 180, 189 (4th Cir. 2019) citing *Cusumano v. Microsoft Corp.*, 162 F.3d 708, 717 (1st Cir. 1998). And several subpoena requests are simply irrelevant, yielding no benefit for the cost.

The SEB is attempting to treat TTV like an actively engaged party to properly-instituted litigation who is subject to unduly burdensome discovery demands, not just because the SEB’s demands would require costly production by a nonparty, or are in many cases irrelevant, but because they are—even more wastefully—duplicative of information already in the possession of Georgia governmental bodies, counties and the Georgia executive branch. “Where, as here, discovery is sought from a non-party, courts have wide latitude in deciding motions regarding non-party subpoenas, and courts are directed to give special consideration in assessing whether the subpoena subjects a non-party to annoyance or an undue burden or expense.” *Gregg v. B&G Transportations, LLC*, 2021 WL 1598969, at *2 (E.D. Mo. Apr. 23, 2021) (citation omitted).

C. In the Alternative, Petitioner Should Advance the Expected Costs and Pay Any Significant Costs That May Arise.

Aside from modifying a subpoena like Petitioner’s, the only plausible alternative to quashing it is to make Petitioner bear the burden, particularly as against a non-party with lesser resources.¹⁵ The expense borne by the nonparty normally should not be significant, but here, Petitioner is asking TTV to engage in both uncompensated production of documents, not including fees of legal counsel, and to turn over portions of work product valued at over \$1.5 million in their entirety. Moreover, the Court should (1) require Petitioner to advance that amount to TTV, as well

¹⁵ See FRCP 45(d)(1)(D); *The Hunte Corp. v. Martinelli*, 2010 WL 4813849 (W.D. Mo. 2010) (rather than quashing subpoena of nonparty, district court shifted expenses to plaintiff).

as (2) order Petitioner to pay TTV for unexpected but significant costs that may arise.¹⁶ Accordingly, this Court should deny production of documents and data if Petitioner fails to demonstrate how it will compensate Respondent or otherwise protect it from undue expense.

If this were to proceed in any fashion, the substantial costs of responding to Petitioner's subpoena (except for the identities of confidential sources, which TTV will never voluntarily disclose unless ordered to do so in camera) must be shifted to Petitioner because: (1) the scope of the requests is overly broad; (2) the requests are highly invasive; (3) TTV will incur costs separating confidential material and data; (4) TTV has no financial interest in this matter; and (5) the relative resources of TTV, a non-profit, and Petitioner, the state of Georgia, militate toward Petitioner assuming the reasonable costs of its own investigation.¹⁷

D. The Subpoena Improperly Seeks Documents at Issue in Pending Litigation.

Currently pending in the Northern District of Georgia is a multi-party lawsuit involving the same hazards of relying on ballot drop-boxes and their impact on election integrity. *See Mark Andrews v. Dinesh D'Souza, True the Vote, Inc., Catherine Engelbrecht, Gregg Phillips, et al.*; Case No. 1:22-CV-04259; in the Northern District of Georgia, Atlanta Division. Discovery has not begun. Motions to dismiss grounded on Federal Rule of Civil Procedure 12(b) are set for oral argument on August 24, 2023. If the case survives those initial motions, discovery undoubtedly will involve many of the same issues raised in the subpoenas. To the extent disclosures are not already limited by standing court orders, there likely will be a protective order limiting production

¹⁶ *See Rhea v. Apache Corp.*, 833 Fed. Appx. 186, 191 (10th Cir. 2020) (holding district courts should evaluate whether the expenses incurred will be significant, ideally by fixing costs in advance of production, or when that is not feasible by directing the subpoenaing party to reimburse for any significant expenses).

¹⁷ *See Tessera, Inc. v. Micron Tech., Inc.*, No. C06-80024MISC-JW(PVT), 2006 WL 733498 at *10 (N.D. Cal. Mar. 22, 2006); *In re Application of the Law Firms of McCourts & McGrigor Donald*, No. M. 19-96, 2001 WL 345233 (S.D.N.Y. Apr. 9, 2001); The Sedona Conference Commentary on Rule 45 Subpoenas to Non-Parties, Second Edition, 22 SEDONA CONF.J.1 (2021).

to third parties regardless of who they may be. Engaging in parallel discovery at different levels and departments of government invites inconsistent and confusing rulings on, among other things, assertions of privilege and privacy.

In the similar context of transferring motions to compel or quash, courts have expressed concern about disrupting the discovery schedules of courts already hearing the same issues, or of handing down conflicting rulings. The court already hearing a case in its fullness should be allowed to rule on such discovery matters because such court “has significantly more knowledge of the case than this court, and therefore that court is better positioned to make a just and speedy determination of [the] motion to quash.” *Mueting, Raasch, & Gebhardt, P.A. v. PPG Indus., Inc.*, No. 18-MC-62 (JNE/TNL), 2018 WL 3971945, at *2 (D. Minn. Aug. 20, 2018), *see also* Notes to FRCP 45(f); *see also United States v. Gilead Scis., Inc.*, No. 21-MC-09005-SRB, 2021 WL 619761, at *2 (W.D. Mo. Feb. 17, 2021) (transferring motions where the “potential for inconsistent rulings on ten separate (but nearly identical) motions compelling compliance weighs heavily in favor of transfer” and “serves the interests of judicial economy”); *Exist, Inc. v. Shoreline Wear, Inc.*, No. 15-61917-MC, 2015 WL 13694080, at *3 (S.D. Fla. Oct. 16, 2015) (citing “the real potential for disruption in the underlying litigation caused by potentially conflicting rulings, a number of courts have found exceptional circumstances in similar situations”).

Courts should strive to “avoid piecemeal rulings by different judges, reaching different conclusions, in resolving identical disputes.” *Leon v. N. Nat'l Gas Co.*, No. 21-MC-0042 (WMW/ECW), 2021 WL 4452874, *5 (D. Minn. Sept. 29, 2021) (citations omitted); *see also CSS, Inc. v. Herrington*, 354 F.Supp.3d 702 (N.D.Tex. 2017) (transferring motion to quash subpoena “to avoid disrupting the issuing court's management of the underlying ... case”); *Hoog v. PetroQuest, LLC*, 338 F.R.D. 515, 519 (S.D. Fla. 2021) (transferring to “avoid any possibility of

inconsistent rulings ... as well as relevancy and proportionality determinations”); *Bogard Constr. Inc. v. Oil Price Info. Serv., LLC*, No. 8:21-CV-03005-PX, 2022 WL 1213307, at *2 (D. Md. Apr. 25, 2022) (holding that because “the prime concern animating [Rule 45(f)] is to avoid burdening ‘local nonparties subject to subpoenas,’” the subpoenaed person’s consent “alone ends the matter”).

TTV is committed to election integrity and the rule of law. It believes the best course is to allow the pending legal proceedings in the Northern District of Georgia to run their course.

CONCLUSION

For the reasons set forth above, by way of Special Appearance Only, and without submitting themselves to the jurisdiction and venue of this Court, Respondent respectfully asks the Court to grant its Motion to Dismiss under Rule 12(b)(2) and (6).

Respectfully submitted this 18th day of August, 2023.

/s/ David E. Oles
DAVID E. OLES
Georgia Bar No. 551544
Attorney for Petitioner

LOCAL COUNSEL FOR TRUE THE VOTE, INC.

By: /s/ Michael J. Wynne*
Michael J. Wynne
Texas State Bar No. 785289
Cameron Powell*
D.C. Bar No. 459020
GREGOR WYNNE ARNEY, PLLC
4265 San Felipe Street, Suite 700
Houston, TX 77027
Telephone: 281-450-7403
Facsimile: 832-390-2655
mwynne@gwafirm.com
cpowell@gwafirm.com

ATTORNEYS FOR TRUE THE VOTE, INC.

**Pro Hac Vice application pending*

**IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA**

**STATE ELECTION BOARD,
Petitioner,**

v.

**TRUE THE VOTE, INC.,
Respondent.**

Civil Action No. 2023CV382520

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day served the foregoing RESPONDENT TRUE THE VOTE INC.'S MOTION TO DISMISS PETITION FOR ORDER TO COMPEL RESPONSE TO STATE ELECTION BOARD'S SUBPOENA, which is being filed by way of special appearance, on all counsel of record by filing same electronically and by depositing a true and correct copy thereof in the United States Mail, in a properly addressed envelope with adequate postage thereon as follows:

Elizabeth Vaughan
Assistant Attorney General
Georgia Department of Law
40 Capitol Square, S.W.
Atlanta, Georgia 30334-1300
evaughan@law.ga.gov

John P. Smith
Assistant Attorney General
Georgia Department of Law
40 Capitol Square, S.W.
Atlanta, Georgia 30334-1300
jsmith@law.ga.gov

THIS 18th day of August, 2023.

OLES LAW GROUP

/s/ David E. Oles

DAVID E. OLES

Georgia Bar No. 551544

Attorney for Petitioner

5755 Northpoint Parkway

Suite 25

Alpharetta, GA 30022