IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

GARLAND FAVORITO *et al.*, Petitioners vs. ALEX WAN *et al.*, Respondents	CIVIL ACTION 2020CV343938

ORDER ON THE MANY PENDING MOTIONS

In December 2020, Petitioners sued Fulton County's Election Director and the members of the County's Board of Elections following the 2020 general election, seeking declaratory and injunctive relief concerning alleged missteps in the handling and tallying of ballots. For reasons unclear to the undersigned, the case was transferred to another judicial circuit for adjudication.[1] After many months of convoluted procedural wrangling that included Petitioners thrice amending their petition and twice replacing the entire roster of Respondents -- and Respondents consistently and persistently seeking dismissal of all claims -- the assigned judge on 13 October 2021 entered an Order dismissing the case, finding that Petitioners lacked standing to bring their claims.[2]

[1] The Chief Judge for this Circuit transferred the case to the Sixth Judicial Administrative Circuit on 4 January 2021, apparently construing it as an electoral contest case requiring such a transfer pursuant to O.C.G.A. § 21-2-523(d). However, as Petitioners observed in their 4 January 2021 objection to the transfer, their suit is *not* an electoral contest case challenging the outcome of any particular race; rather, it seeks declaratory and injunctive relief related to the manner in which the election was conducted.

[2] That judge actually entered *two* dismissal orders. The first, dated 24 June 2021, dismissed the various "entity" Respondents (*e.g.*, Fulton County, Fulton County Board of Registration and Elections, etc.) on sovereign immunity grounds but saved the Petition from an early demise by simultaneously returning the original individual Respondents (*i.e.*, the Elections Director and the members of the Board of Elections) to the Petition. Dizzy yet?

A similarly serpentine appellate process ultimately resulted in the October 2021 dismissal order being partly affirmed and partly vacated, with the claims of the four Fulton County resident petitioners -- Favorito, Jeffords, Peck, and Terris -- reinstated so that the trial court could consider whether they enjoyed "community stakeholder" standing as articulated in *Sons of Confederate Veterans v. Henry Cnty. Bd. of Commrs.*, 315 Ga. 39 (2022) -- a case decided during the pendency of the appeal.[3] *Favorito v. Wan*, 367 Ga. App. 642 (2023). Onward to that consideration.[4]

STANDING

The notion of community stakeholder standing as expressed in *Sons of Confederate Veterans* recognizes that while

> only plaintiffs with a cognizable injury can bring a suit in Georgia courts ... that injury need not always be individualized; sometimes it can be a generalized grievance shared by community members, especially other residents, taxpayers, voters, or citizens.

315 Ga. at 39 (2022). Such a generalized grievance or injury can arise when local government officials refuse or otherwise fail to follow a legal duty, as community stakeholders

[3] Petitioners originally lodged their appeal with the Supreme Court, but that court transferred the case to the Court of Appeals on 11 February 2022 upon concluding that the basis of the appeal was a challenge to the trial court's ruling on standing and not any constitutional questions of due process or equal protection. The Court of Appeals in turn affirmed the trial judge in *Favorito v. Wan*, 364 Ga. App. 745 (2022), only to have that opinion vacated on appeal to the Supreme Court with direction to consider Petitioners' claims in light of *Sons of Confederate Veterans v. Henry Cnty. Bd. of Commrs.*, 315 Ga. 39 (2022). That reconsideration yielded the second *Favorito v. Wan* opinion that now controls this case.

[4] Petitioners also brought several claims under the Open Records Act (ORA), O.C.G.A. § 50-18-70 *et seq.*, concerning the County's alleged non-compliance, late compliance, and/or incomplete compliance with various ORA requests made by several of the Petitioners. Those claims were all resolved by the judge to whom this case was assigned when it was shipped out of circuit. His ORA rulings were not appealed and so remain in full force and effect.

> have a legal right for the local government to fulfill that duty. The violation of that legal right gives standing to a stakeholder, even if the stakeholder in the case neither faces nor has suffered any individualized injury distinct from that to the community at large.

Republican Nat'l Comm. v. Eternal Vigilance Action, Inc., 321 Ga. 771, 781 (2025). This lesser standing requirement -- *i.e.*, the lack of need to demonstrate an individualized injury -- (re)opens the doors of the courthouse to Petitioners Favorito, Jeffords, Peck, and Terris in this case. They are all Fulton County voters who have alleged in their various iterations of their petitions that local election officials failed to follow the law in their administration of the 2020 general election -- and that suffices to bestow standing upon them. *Sons of Confederate Veterans*, 315 Ga. at 60 ("[v]oters may be injured when elections are not administered according to the law"); *see also Barrow v. Raffensperger*, 308 Ga. 660, 667 (2020) (voter had standing to challenge Secretary of State's decision to cancel election).

DECLARATORY JUDGMENT CLAIMS

Victory is temporary here. For, beyond seeking dismissal for lack of standing, Respondents have also sought dismissal on the merits of Petitioners' claims. Consistent with this case's theme of making litigation as complicated as possible, Petitioners are now proceeding on *separate* (!) complaints (and have promised to make different arguments using different experts if their claims make it to trial). Petitioners Favorito, Peck, and Terris travel together; Petitioner Jeffords flies alone. All of them seek declaratory judgment in one form or another. What unites them here is that none of their declaratory judgment claims seeks an actual declaration of rights or obligations concerning *future* conduct, which is fatal to their cause.

"To proceed under a declaratory judgment a party must establish that it is necessary to relieve himself of the risk of taking some future action that, without direction, would jeopardize his interests." *Porter v. Houghton*, 273 Ga. 407, 408 (2001). That is, a petitioner must establish that he is in a position of uncertainty as to his future actions or else the declaratory action must be dismissed. *Atlanta Nat. League Baseball Club v. F.F.*, 328 Ga. App. 217, 221 (2014).

Here, Petitioners face none of the future uncertainty necessary to maintain their declaratory judgment actions. The 2020 election is over.[5] The due process and equal rights violations supposedly visited upon Petitioners by Respondents' allegedly flawed execution of election processes have already accrued.[6] A declaratory judgment is never a remedy for a past wrong. There is nothing for this Court to declare that would enable Petitioners to make better, more informed decisions about *future* actions. Because Petitioners do not present any actual or justiciable controversies in their various demands and prayers for declaratory relief, those claims must be dismissed.[7] *See Baker v. City of Marietta*, 271 Ga. 210, 214 (1999) ("Where the party seeking declaratory judgment does not show it is in a position of uncertainty … dismissal of the declaratory judgment action is proper").

[5] So, too, are the 2022 and 2024 elections, about which Petitioners have curiously raised no concerns, given the parade of horribles they forecast should wholesale changes not be made to the manner in which the County (mis)manages its elections.

[6] This backward-looking focus is best typified by Petitioner Jeffords' prayers for relief in which she asks the Court to declare "that the Respondents *have violated* the Georgia state equal protection clause" and "the Georgia state due process clause." (Jeffords Third Amended Petition at 89-90; emphasis added to present perfect tense).

[7] That means Counts I – VI and XII – XVII for the Favorito Petitioners and Count II for Petitioner Jeffords.

EQUITABLE RELIEF

Both sets of Petitioners also seek equitable relief. Jeffords in Count V seeks "judicial involvement in the process to get rid of employees who have brought down the legitimacy of elections in Fulton County." (Jeffords Third Amended Petition at ¶ 370; *see also* Prayer for Relief (l)). Count VI in the Jeffords Petition seeks temporary and permanent injunctive relief but never articulates what Jeffords wishes the Court to enjoin -- although it appears from the subsequent Prayer for Relief section that the equitable intervention sought is an order preserving the ballots and related election materials from the 2020 election.

Jeffords bats .500 with her equitable claims. She cites no law -- nor is the Court aware of any -- that imbues the judicial branch with the equitable power to "get rid of employees." Courts interpret and apply laws; they do not manage the HR departments of other agencies or entities. As for preserving the 2020 election records -- mission accomplished. Those remain preserved and protected, under seal per court order.[8]

The Favorito Petitioners similarly seek injunctive relief to preserve the 2020 election materials (Count VII) -- relief which they have obtained. They also seek a permanent injunction barring Fulton County election officials from "counting counterfeit ballots" in future elections (Count XI). Given that such conduct is

[8] The records do in fact remain under seal. The judge to whom this case was initially assigned entered an order dated 21 May 2021 purporting to unseal the records, but this unsealing was contingent upon the judge issuing a separate order detailing the "protocols and practices" that would ensure the integrity of the original records. That second order has never been entered.

inconsistent with our electoral law, there is no need for a court order to that effect. The Legislature has already spoken; it does not need the Judiciary to echo it.

DEPRIVATION OF EQUAL RIGHTS

Petitioner Jeffords alleges in Count I of her third amended petition that Respondents "negligently, willfully, wantonly, outwardly [?] and unapologetically violated the Equal Protection rights of the Petitioners" and other voters by failing to implement uniform ballot counting procedures in Fulton County.[9] (Jeffords Third Amended Petition at 64). Jeffords goes on to claim that this lack of uniformity in ballot counting procedures resulted in Respondents treating electors differently depending on "when and where their ballots were processed." (*Id.* at 71). More specifically, Jeffords contends that the manner in which Respondents authorized and allowed ballots to be counted at State Farm Arena the night of 3 November 2020 and early morning of 4 November 2020 caused some ballots to be counted (perhaps more than once) and others to be excluded without cause. These supposedly intentional ballot counting errors were, Jeffords asserts, the product of Respondents' negligence, mismanagement, and "unlawful actions."

[9] Interestingly, some of the most damning allegations are reserved for individuals whom Jeffords lists as "New Respondents" (Jeffords Third Amended Petition at 6-14) but who were never legally added to this litigation, as a petitioner cannot add parties without leave of court. *Connie v. Garnett*, 360 Ga. App. 24, 25 (2021) ("an amendment to a complaint adding a new party without first obtaining leave of the court is without effect"). The docket of this case shows no request for leave of court to add them nor any ruling from the Court allowing the addition of these "New Respondents." They are thus not a part of this case.

While some Respondents[10] have pointed out that these alleged negligent and bad acts are not clearly or directly attributed to them in the complaint, this lack of attribution is not fatal at this juncture. The Civil Practice Act requires "only that a complaint give the defendant fair notice of what the claim is and a general indication of the type of litigation involved; the discovery process bears the burden of filling in details." *McLeod v. Costco Wholesale Corp.*, 369 Ga. App. 717, 723 (2023) (punctuation and citation omitted). "Put another way, if, within the framework of the complaint, evidence may be introduced which will sustain a grant of relief to the plaintiff, the complaint is sufficient." *Campbell v. Ailion*, 338 Ga. App. 382, 385 (2016) (citation omitted).

Count I of Jeffords' third amended petition clears that very low bar -- barely. But close clearance is clearance enough. Respondents know what the claim is: through their alleged negligence and intentional misconduct, they caused some electors' ballots to be treated differently than others. Whether that actually happened and the specifics of how it did (and who did it) can be developed through discovery. Respondents can demand through requests for admission, interrogatories, and requests for production the details of Jeffords' claims as well as any proof thereof -- should it exist. *After* that process, all parties (and the Court) will be properly positioned to assess whether, as a matter of law, the claim can be resolved short of trial.[11] For now, however, Count I

[10] *See, e.g.*, Respondents Wan, Nuriddin, and Johnson's 12 August 2021 motion to dismiss at 21, arguing that Jeffords' third amended complaint is "unburdened with any facts that would demonstrate that any of the three Respondents personally violated the rights of any Petitioner." Indeed, none of the acts that *are* described in Count I can possibly have been committed by one of the named Respondents, as he (Wan) was not serving in any official electoral capacity with the County at the time of the 2020 election.

[11] Count 1 also sufficiently alleges conduct that falls outside the ambit of Respondents' official immunity. Negligent ministerial acts are not protected by official immunity nor are discretionary acts performed

persists, although not as to Respondent Wan, who was not a member of the County's Board of Registration and Elections at the time of the 2020 election and who therefore is dismissed from this case.

ATTORNEY'S FEES

Both Fulton County and the Clerk of Superior and Magistrate Courts -- former Respondents in this case -- filed motions pursuant to O.C.G.A. § 9-15-14 seeking attorney's fees from Petitioners for what the two parties contend were frivolous claims propounded by Petitioners that needlessly dragged them into this litigation. O.C.G.A. § 9-15-14 mandates the award of reasonable attorney's fees (and litigation costs) in certain situations and authorizes a trial court to award them in other situations. An award is *mandated* if the trial court finds that the non-moving party (here, Petitioners)

> asserted a claim, defense, or other position with respect to which there existed such a complete absence of any justiciable issue of law or fact that it could not be reasonably believed that a court would accept the asserted claim, defense, or other position.

O.C.G.A. § 9-15-14(a). An award is *authorized* but not required if the court finds that

> an attorney or party brought or defended an action, or any part thereof, that lacked substantial justification or that the action, or any part thereof, was interposed for delay or harassment, or if it finds that an attorney or party unnecessarily expanded the proceeding by other improper conduct....

O.C.G.A. § 9-15-14(b). The statute defines the phrase "lacked substantial justification" as being "substantially frivolous, substantially groundless, or substantially vexatious."

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with malice. *Barnett v. Caldwell*, 302 Ga. 845, 847-848 (2018). Here, Jeffords claims both. Whether such acts were ministerial or discretionary, negligent or malicious -- and who performed (or failed to perform) them -- can be developed during discovery.

Id. Both the complained-of litigant and that litigant's attorney(s) can be held liable for an award under this code section. The cost to the aggrieved party of pursuing such sanctions may also be awarded. O.C.G.A. § 9-15-14(d).

Any motion brought pursuant to this Code section must be filed "not later than 45 days after the final disposition of the action." O.C.G.A. § 9-15-14(e). The Court of Appeals has defined "final disposition of the action" to mean "final judgment" as that term is used in O.C.G.A. § 5–6–34(a)(1) -- "that is to say, where the case is no longer pending in the court below." *Kim v. Han*, 339 Ga. App. 886, 888 (2016) (citation omitted); *see also Cook-Rose v. Waffle House, Inc.*, 320 Ga. 567, 570 (2024).

County. Fulton County ("County") was added to this litigation pursuant to a motion filed by Petitioners on 27 January 2021.[12] Per the trial judge's 21 April 2021 Order, the County was substituted, along with the Clerk of Superior and Magistrate Courts ("Clerk"), and the County Board of Registration and Elections, for the various individual Respondents originally named by Petitioners. On 26 May 2021, the County filed a motion to dismiss the petition, asserting as grounds for dismissal failure to serve, improper party, deficiencies in Petitioners' declaratory judgment claims, and failure to comply with election contest requirements. On 16 June 2021, the County filed a supplemental motion to dismiss in which it set forth two additional bases for dismissal:

[12] In opposing an award of fees pursuant to § 9-15-14, Petitioners disingenuously deflect responsibility for the addition of the County (and the Clerk) to their litigation as being the product of an order of the court and not anything of their doing. Technically, of course, this is true, as parties cannot be added without an order from the court. *McArthur v. Beech Haven Baptist Church of Athens*, 368 Ga. App. 525, 527 (2023). But that order was not some *sua sponte* offering from the court but rather the execution of *Petitioners'* request to add the County (and the Clerk). The County and the Clerk were (briefly) in this case at Petitioners' behest and no one else's.

lack of standing and sovereign immunity.[13] This last minute addition proved fruitful, as the trial judge granted the motion to dismiss on the basis of sovereign immunity in an Order dated 24 June 2021, finding that Petitioners had identified no applicable waiver of the County's immunity.[14]

The County filed its § 9-15-14 motion and brief on 30 November 2021. The next day the County filed a motion pursuant to Uniform Superior Court Rule 36.16(F) seeking to have its motion filed *nunc pro tunc* to 29 November 2021. This one-day shift back is significant, as the 45th day following the entry of the 13 October 2021 Order dismissing the entire case was 27 November 2021 -- a Saturday. This made the County's due date 29 November 2021.[15] The Court finds that the County met that deadline. The County has provided an unrebutted affidavit averring that a paralegal for the County Attorney's Office timely e-filed the motion and brief on 29 November 2021 and received electronic notice that same day that her filings had been accepted. It was only the next day that the Court's e-filing system alerted the County Attorney that the filings had been rejected

[13] The County also elaborated on its earlier grounds challenging the adequacy of Petitioners' declaratory judgment claims and the failure to comply with election contest requirements.

[14] Petitioners had tried to rely on the then-recent Constitutional amendment that added Paragraph V(b) to Section 2 of Article 1. That provision waives sovereign immunity for "actions in the superior court seeking declaratory relief from acts of the state or … any county … or officer or employee thereof outside the scope of lawful authority or in violation of the laws or the Constitution of this state or the Constitution of the United States." Ga. Const. art. I, § 2, ¶ V(b)(1). That waiver *would* have applied to Petitioners' declaratory relief claims but for the final sentence of the paragraph: "Such waiver of sovereign immunity under this Paragraph shall apply to past, current, and prospective *acts which occur on or after January 1, 2021*." *Id.* (emphasis added). In this case, the complained-of actions occurred in November 2020, placing Petitioners' claims firmly outside the reach of this new Constitutionally-enshrined waiver.

[15] Petitioners argue that the proper start date for § 9-15-14's 45-day countdown was 24 June 2021, when the order dismissing the County (and the Clerk) was entered. That order, however, was not a final judgment. It did dismiss some parties, but it also added others and the case carried forward. Indeed, the case remained pending for four more months until the 13 October 2021 order dismissed all claims against all remaining Respondents.

because of a missing slash in the electronic signature (meaning that what should have been "/s/" was entered as "s/"). This classic scrivener's error, flagged for the County only the day *after* the timely filing attempt, is a scenario contemplated by Rule 36.16(F) and this Court's standing order for e-filing in effect at that time (2018EX001350[16]) -- both of which authorize judges to enter an order permitting the e-filed document to be filed *nunc pro tunc* to the date it was first attempted to be transmitted.[17] From this set of uncontested facts, the Court finds it appropriate to GRANT the County's motion to have the 30 November 2021 pleadings filed *nunc pro tunc* to 29 November 2021.

Having found that the County's motion was timely filed, the Court now turns to the merits of its claim for fees. As the County made clear at the hearing on its motion, it is seeking fees only for the time spent defending against Petitioners' due process and equal protection claims -- and not the Open Records Act claims (for which Petitioners were partially successful). The billing information submitted matches that timeline, as the record entries and affidavit figures all post-date the entry of the order that resolved the Open Records claims. Following that order, litigation focused on the motions to dismiss and the merits of Petitioners' declaratory and injunctive relief claims. Given that the County enters litigation sheathed in sovereign immunity -- and the only possible waiver of that immunity Petitioners identified was a constitutional provision which on its face plainly did not apply, given the start date written into the Constitution (and,

[16] That order allowed judges to enter *nunc pro tunc* orders when an e-filing was delayed by "an error in the transmission of the E-Document to eFileGA which was unknown to the sending party."

[17] *See also S. T. C., Inc. v. Ralph + Rita Venture, LLC*, 376 Ga. App. 130 (2025).

awkwardly for Petitioners, quoted in their own motion to substitute the County and the Clerk as Respondents) -- the Court concludes that Petitioners' addition of the County to litigation from which the County was plainly constitutionally exempt introduced into this case claims which suffered from a "complete absence of any justiciable issue of law or fact." That is, Petitioners' claims presented zero factual or legal questions concerning the County's liability for due process or equal protection violations because the County was immune to such claims. There was nothing to litigate. At all. Because Petitioners knew -- or should have known -- that, they are liable for the County's attorney's fees, both under O.C.G.A. § 9-15-14(a) and under O.C.G.A. § 9-15-14(b). And because the County's legal fees associated with defending against these claims for which it enjoyed immunity were reasonable, the Court awards them all and finds Petitioners jointly and severally liable[18] for $29,285.

Clerk. The analysis of the Clerk's § 9-15-14 motion is similar but simpler. The Clerk was added to this litigation at the same time and in the same manner as the County (order of court in response to motion from Petitioners). The Clerk was dismissed for the same reason (sovereign immunity) and at the same time as the County. Unlike the County, however, the Clerk filed her § 9-15-14 motion on 22 November 2021, so it was timely *ab initio,* having been filed with 45 days of the final judgment in this case.

As with their claims against the County, the claims Petitioners pursued against the Clerk suffered from a "complete absence of any justiciable issue of law or fact."

[18] At the time of the motion to substitute the County and the Clerk, Petitioners remained a united front with a single petition. They even jointly filed their motion to substitute.

Only it was a three-fold "complete absence" for the Clerk. First, the Clerk, like the County, enjoys sovereign immunity and the only waiver to that immunity that Petitioners ever proffered -- Ga. Const. art. I, § 2, ¶ V(b)(1) -- was time-barred. Second, had the Constitutional waiver of immunity upon which Petitioners sought to rely in fact applied to the conduct at issue, the *only* proper party to the suit would have been the County; neither the Clerk nor any other County official, elected or otherwise, can be sued pursuant to Ga. Const. art. I, § 2, ¶ V(b)(1). *Lovell v. Raffensperger*, 318 Ga. 48, 52 (2024). Third and final, the Clerk played no role in the oversight and management of the 2020 general election and so could not have been part of any effort to dilute votes, deny due process, or prevent equal protection of the laws.[19]

Thus, just as with their claims against the County, Petitioners' claims against the Clerk presented zero factual or legal questions concerning the Clerk's liability for due process or equal protection violations. The Clerk was immune to such claims and also played no role in the alleged misconduct that supposedly supports such claims. Because Petitioners knew -- or should have known -- all of this, they are liable for the Clerk's attorney's fees, both under O.C.G.A. § 9-15-14(a) and under O.C.G.A. § 9-15-14(b). And because the Clerk's legal fees associated with defending against these baseless (as to her) claims were reasonable, the Court awards them all and finds Petitioners jointly and severally liable for $9,575.

[19] Indeed, per Petitioners' own admission, the sole reason the Clerk was added to this litigation was that she is the custodian of the election materials to which Petitioners seek access as part of their discovery efforts. That is what third party requests for production and subpoenas are designed to accomplish. Adding the Clerk-as-Custodian to this case needlessly (and frivolously) generated litigation expenses for the Clerk, the County, and the taxpayer.

RECAP

Petitioners Favorito, Jeffords, Peck, and Terris, registered Fulton County voters each, have standing -- specifically, community stakeholder standing -- to press their remaining post-appeal claims. Unfortunately for the Favorito Petitioners (Favorito, Peck, and Terris), those remaining claims are now all dismissed. Petitioner Jeffords's equal protection claim persists (although not as to Respondent Wan); all other claims are dismissed. All four petitioners have until 9 February 2026 to collectively remit $29,285 to counsel for the County and $9,575 to counsel for the Clerk. The County and the Clerk should notify the Court immediately if these payments are not timely made. Counsel for Jeffords is invited to attend the hearing in *Allen v. State of Georgia*, 24CV014632, on 9 March 2026 at 9:00am, at which time those parties will be discussing access to and duplication of many of the same electoral discovery materials sought in this case. After that hearing, the Court will convene the remaining parties in this case to discuss deadlines for discovery and trial.[20]

SO ORDERED this 4th day of February 2026.

Judge Robert C.I. McBurney
Superior Court of Fulton County

[20] Petitioner Favorito had pending two motions to substitute parties -- one filed 14 May 2024 (Doc 16) and one filed 12 December 2025 (Doc 45). Both are denied as moot, given the dismissal of Favorito's petition. Petitioner Jeffords adopted Favorito's first motion on 24 June 2024 (Doc 22); that motion is also denied because the only surviving claim in Jeffords' amended petition is one dealing with the conduct of the 2020 election -- making the addition of members of the Board of Registration and Elections who were not serving at the time of that election illogical (hence Respondent Wan's dismissal). Plus, the current Respondents were sued in their individual capacity, making substitution under either O.C.G.A. § 9-11-25(c) or (d) legally improper.