

Superior or State Court of Cherokee County

For Clerk Use Only

Date Disposed 11-07-2022 Case Number 22CVE-1890

MM-DD-YYYY

Case Style Verified Complaint for Declaratory and Injunctive Relief

Plaintiff(s)	Defendant(s)					
Portillo Lori	Raffensperger, Brad					
Last First Middle I. Suffix Prefix	Last First Middle I. Suffix Prefix	Last First Middle I. Suffix Prefix	Last First Middle I. Suffix Prefix	Last First Middle I. Suffix Prefix	Last First Middle I. Suffix Prefix	Last First Middle I. Suffix Prefix
Cherokee County Board of Elections	Cherokee County Board of Elections					

Reporting Party Ann S. Brumbaugh

Plaintiff's Attorney Lori Portillo State Bar Number _____ Self-Represented

Defendant's Attorney Ann S. Brumbaugh for Cherokee State Bar Number 090598 Self-Represented

Manner of Disposition
 Check Only One

Jury Trial

Bench/Non-Jury Trial

Non-Trial Disposition, such as:

Alternative Dispute Resolution

- Check if any party was self-represented at any point during the life of the case.
- Check if the court ordered an interpreter for any party, witness, or other involved individual.
- Check if the case was referred/ordered to a court-annexed alternative dispute resolution process.

IN THE SUPERIOR COURT OF CHEROKEE COUNTY
STATE OF GEORGIA

----- X
LORI PORTILLO, : CIVIL ACTION
 : FILE NO.: 22CVE-1890
Petitioner, :
 :
v. :
 :
BRAD RAFFENSPERGER in his :
official capacity as the Georgia :
Secretary of State, :
 :
CHEROKEE COUNTY BOARD :
OF ELECTIONS, :
Alan Shinall; Mike Byrd; :
Rachel Kinsey; Cindy Castello; :
and Donald Sams. :
 :
Respondents. :
----- X

ORDER

The above-styled action came before the Court on November 7, 2022 for a noticed hearing. The Petitioner appeared in person, pro se. Respondent Cherokee County Board of Elections (“Board”) appeared through counsel, Ann S. Brumbaugh. Respondent Brad F. Raffensperger did not appear.¹ The Court finds, and ORDERS, as follows:

A. Procedural History

The Petitioner commenced this action with the filing of her Complaint for Declaratory Judgment and Injunctive Relief on October 18, 2022 at 11:41 a.m. The Petitioner thereafter filed a Petition for Ex Parte Temporary Restraining Order filed on October 26, 2022 at 12:20 p.m.

The undersigned was provided with a copy of a letter from the Cherokee County Clerk of Courts addressed to the Ninth District Court Administrator which

¹ Brad F. Raffensperger was not served with process.

was dated November 3, 2022. The letter requests assignment of a “Judge from outside the Blue Ridge Judicial Circuit to hear an election Petition for Verified Complaint for Declaratory Judgment and Injunctive Relief, case number 22CVE1890” pursuant to O.C.G.A. § 21-2-32(c).²

On November 3, 2022, Tenth Judicial Administrative District Administrative Judge R. Timothy Hamil executed an Order of Assignment appointing the undersigned to preside in this matter pursuant to O.C.G.A. § 21-2-523(c).³ Judge Hamil noted that “upon the filing of the petition in this matter on October 18, 2022, [he] should have received an immediate request from the Cherokee Clerk of Superior Court for the assignment of a Judge from outside the circuit.”

The undersigned did not receive notice of the assignment in this action until the mid-afternoon of Friday, November 4, 2022. Upon receipt of the pleadings and Judge Hamil’s Order of Assignment, the undersigned executed and filed a Rule Nisi scheduling a preliminary hearing to occur on November 7, 2022 for the purpose of reviewing the status of service or process upon the Respondents, scheduling issues, and any emergency relief being sought.

Prior to the hearing the Board filed and served its Motion to Dismiss, a Response in Opposition to Petition for Ex Parte Temporary Restraining Order, and its Answer and Responsive Pleading of Respondent [Board] to Verified Complaint for Declaratory Judgment and Injunctive Relief.

Charlene S. McGowan, Assistant Attorney General on behalf of Brad Raffensperger responded by letter indicating that the Secretary would not attend

² Even though the Petitioner cites to this Code section in her Petition, the State Election Board is not a party to this action and is not seeking to intervene. The cited Code section is not applicable to this action.

³ The cited Code section concerns a “contest case.” A contest case arises to contest the *results* of any primary or election. The election is on-going. The Petitioner is not presently challenging the *results* of the election. This Code section is also inapplicable. The undersigned this interpretation to the parties to explain how the undersigned was presiding, by assignment, in this action. Neither party objected or voiced opposition at any time.

the emergency hearing on November 7 because the Court had failed to provide the Secretary with at least five-days advance notice as required by O.C.G.A. § 9-10-2.

B. Conclusions of Law

The Petitioner took exception to the Court's failure to rule on her request for ex parte relief under OCGA § 9-11-65(b), when the motion was filed. While it is the undersigned's practice to expeditiously rule on all TRO requests, the Court also finds that the Petitioner failed to press the Superior Court for a ruling prior to assignment to the undersigned. Moreover, even if Petitioner had pressed the Court for an earlier ruling, for the reasons that follow, the Petitioner would have still failed to prove her case.

Because the Petitioner seeks to have this Court declare the Dominion ICX voting machines illegal and to enjoin the use of electronic Dominion ICX voting systems in Cherokee County on November 8, 2022, the Court finds it necessary and appropriate to advance the hearing to a hearing on the merits pursuant to O.C.G.A. § 9-11-65(a)(2). To delay a ruling on the Petitioner's claims would render the claims moot given the mid-term elections occurring on November 8, 2022.

The Court provided the Petitioner with an opportunity to present her claim for interlocutory relief under O.C.G.A. § 9-11-65(a). The Petitioner provided a lengthy opening statement and cited to various alleged reports and results of tests conducted on the Dominion ICX voting machines and ballot marking devices. The Petitioner contends that the electronic voting system produces a QR code on the face of the paper ballot, which is read by a scanning device, which (a) cannot be understood or interpreted by the voter and (b) inaccurately tabulates votes cast. The Petitioner therefore request the Court enjoin the use of these electronic voting systems and instead resort to the use of paper ballots and hand counting of paper ballots.

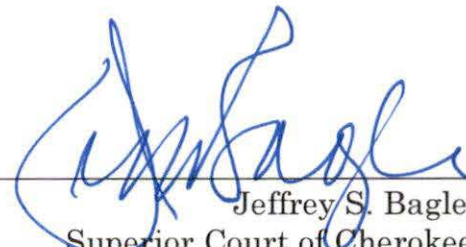
The Petitioner provided no proof to support her claims. The only evidence the Petitioner submitted consisted of two affidavits. These affidavits were executed by Petitioner and are identical, having been filed on October 26, 2022 and October 28, 2022, respectively. The Petitioners' affidavits contain nothing more than self-service

statements, alleged conclusions of law, and fail to provide proof of her claim for emergency injunctive relief. The Petitioner, in her affidavits, alleges that the electronic voting system used in Cherokee County has “proven defects.” Petitioner has failed to introduce admissible evidence to support this allegation or any other claim asserted in her Petition.

Petitioner also includes alleged affidavits of Tore Maras and J. Alexa Halderman. Neither of these purported affidavits contain a jurat. The purported affidavits are probative of nothing and do not constitute record evidence. Pursuant to O.C.G.A. § 9-10-113, “[a]ll affidavits, petitions . . . or other proceedings required to be verified or sworn to under oath shall be held to be sufficient when the same are sworn to before any notary public, magistrate, judge of any court, or any other officer of the state or county where the oath is made who is authorized to administer the same.” Thus, in the absence of a valid jurat, the Petitioner’s Petition has not been properly verified nor are the affidavits submitted in support of her Petition and ex parte petition for injunctive relief admissible for consideration by the Court.

The Court DENIES the Petitioner’s Petition requesting declaratory and injunctive relief as well as her request for ex parte temporary restraining order. No additional claims remain for adjudication. The Clerk of Court shall mark this civil action file CLOSED. The Board, as the prevailing party, is reminded of its obligation to submit to the Clerk of Court a civil action file case final disposition form as required by O.C.G.A. § 9-11-58(b).

It is SO ORDERED this 8th day of November, 2022 nunc pro tunc to November 7, 2022.



Jeffrey S. Bagley, Judge
Superior Court of Cherokee County
(Sitting by Order of Assignment)

Distribution List

Original: Clerk of Court

cc: Lori Portillo, pro se (via EFSP)
Charlene S. McGowan, SAAG (via cmcgowan@law.ga.gov)
Ann S. Brumbaugh, Esq. (via EFSP)

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