

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

AMERICAN OVERSIGHT and)	
JOHN DOE,)	
Plaintiffs,)	
)	
v.)	CIVIL ACTION
)	FILE NO. 24cv009124
THE GEORGIA STATE)	
ELECTION BOARD; JANICE)	
JOHNSTON, in her individual)	
capacity and official capacity as a)	
Member of the Georgia State)	
Election Board; RICK JEFFARES,)	
in his individual capacity and official)	
capacity as a Member of the Georgia)	
State Election Board; JANELLE KING,)	
in her individual capacity and official)	
capacity as a Member of the Georgia)	
State Election Board; JOHN FERVIER,)	
in his official capacity as the Chairman)	
of the Georgia State Election Board;)	
SARA TINDALL GHAZAL, in her)	
official capacity as a Member of the)	
Georgia State Election Board;)	
)	
Defendants.)	

**DEFENDANTS' ANSWER AND DEFENSES TO
PLAINTIFFS' COMPLAINT**

Defendants, by and through counsel, Christopher M. Carr, Attorney General for the State of Georgia, submits this Answer and Defenses to the Verified Complaint for Injunctive Relief, Declaratory Relief, and Damages. Defendants deny all factual allegations set forth in the Complaint unless expressly admitted. Any admission herein is limited to the express language

of the response and shall not be deemed an implied admission of additional facts.

Defendants assert their defenses as follows:

FIRST DEFENSE

The Complaint fails to state a claim upon which relief can be granted. See O.C.G.A. § 9-11-12(b)(6).

SECOND DEFENSE

The Complaint contains matters that should be stricken from the Complaint pursuant to O.C.G.A. § 9-11-12(f). Plaintiffs lack standing to bring their claims.

THIRD DEFENSE

Plaintiffs have made an *admission in judicio* that the Open Meetings Act does not apply to the July 12 gathering by alleging that there was not a quorum of members of the State Election Board present at that gathering.

FOURTH DEFENSE

Without waiving the above defenses or any other defense to which Defendants may be entitled, Defendants respond to the individual paragraphs of the Complaint, as alleged, as follows:

INTRODUCTION¹

1.

Defendants admit that Defendants Johnston, Jeffares and King scheduled and held a gathering on July 12, 2024. Defendants deny any remaining allegation contained in ¶1.

2.

Defendants move to strike from ¶2 all references to advice allegedly given by the Attorney General's office to Defendants, as such advice would be protected by the attorney-client privilege. Defendants admit that Defendants Johnston, Jeffares and King scheduled a gathering for 4:00 p.m. on a Friday and that they were aware that Chairman Fervier and Member Tindall Ghazal were unavailable to attend and that Defendant Johnston would be unable to attend in person but would appear virtually. Defendants state that notice of the gathering was given 24 hours in advance of the gathering and that notice was posted . Defendants admit that email notices of the gathering were not issued and that notice of the gathering was not published on the State Election Board's website, but denies that any such notice was required. Defendants further admit that notice was posted for at least 24 hours at the

¹ For clarity, Defendants use the section titles that appear in the Complaint. However, that should not be construed to mean Defendants accept or agree with any allegation or inference that may be contained in the section titles.

place of the State Election Board's regular meetings, and that notice was not published in the legal organ for Fulton County as such legal organ is published less often than four times per week. Defendants admit that the notice of the gathering was prepared and signed by Defendant Jeffares and that he signed the notice on behalf of Defendants King and Johnston with express permission to do so. Any remaining allegation contained in ¶2 not specifically responded to herein is denied.

3.

Denied.

4.

Defendants admit that ¶2 accurately quotes text from the case of *EarthResources, LLC v. Morgan County*, 281 Ga. 396, 399 (2006). Defendants deny any remaining allegations contained in ¶4.

5.

Defendants state that no proposals were approved at the July 12 gathering. Defendants deny any remaining allegations contained in ¶5.

6.

Defendants move to strike the allegations of ¶6 in their entirety in that they reference advice allegedly given to Defendants by the Attorney General's office, which would be subject to the attorney-client privilege. To the extent any further response is required, Defendants deny the allegations of ¶6.

7.

Defendants move to strike any allegations of ¶7 that reference advice allegedly given to Defendants by the Attorney General's office, which would be subject to the attorney-client privilege. Defendants admit that some members of the public contacted the Board and that some of those members may have claimed that the July 12 gathering violated Georgia Law. Defendants deny any remaining allegations contained in ¶7.

8.

Denied.

9.

Defendants deny that Plaintiffs are entitled to any of the relief requested in ¶9.

PARTIES, JURISDICTION, AND VENUE

10.

Defendants lack sufficient knowledge or information to form a belief as to the truth or falsity of the allegations contained in ¶10 of Plaintiffs' Complaint and, as such, deny the allegations.

11.

Defendants lack sufficient knowledge or information to form a belief as to the truth or falsity of the allegations contained in ¶11 of Plaintiffs' Complaint and, as such, deny the allegations.

12.

Defendants admit that the Georgia State Election Board (“Board”) is a Georgia State Board. Defendants deny that the Board is a division of the office of the Secretary of State and states that it is a separate and distinct budget unit attached to the office of the Secretary of State for administrative purposes only. *See* O.C.G.A. § 21-2-30(g). Defendant admits that the Board conducts business in Fulton County and that its principal office address is 2 Martin Luther King, Jr. Drive, Suite 802, Floyd West Tower, Atlanta, GA 30334. The Board admits that it is comprised of five voting members, including one chairperson. The Board admits that it is entrusted with the powers and duties conveyed upon it by the Georgia election code, O.C.C.A. § 21-2-30 *et seq.* and state that to the extent that Plaintiffs’ description of said powers and duties differ in any way from those bestowed upon the Board by statute, any such allegation is hereby denied.

13.

Defendants admit that Janice Johnston is a Member of the Board and that Plaintiffs’ Complaint names her as defendant in her individual and official capacity (but denies that she has any liability to Plaintiff in any capacity). Defendants admit that she participates in Board operations as a Member and has responsibilities and authority as defined by the Georgia election code. To the extent Plaintiffs’ description of those responsibilities and

authority differ in any way from any provision of the election code, Defendants deny such allegation. Defendants admit that the Board conducts its business in Fulton County and that Defendant Johnston is sometimes (but not always) present in Fulton County when participating in Board business. Any remaining allegation contained in ¶13 not specifically responded to herein is denied.

14.

Defendants admit that Rick Jeffares is a Member of the Board and that Plaintiffs' Complaint names him as defendant in his individual and official capacity (but denies that he has any liability to Plaintiff in any capacity). Defendants admit that he participates in Board operations as a Member and has responsibilities and authority as defined by the Georgia election code. To the extent Plaintiffs' description of those responsibilities and authority differ in any way from any provision of the election code, Defendants deny such allegation. Defendants admit that the Board conducts its business in Fulton County and that Defendant Jeffares is sometimes (but not always) present in Fulton County when participating in Board business. Any remaining allegation contained in ¶14 not specifically responded to herein is denied.

15.

Defendants admit that Janelle King is a Member of the Board and that Plaintiffs' Complaint names her as defendant in her individual and official

capacity (but denies that she has any liability to Plaintiff in any capacity).

Defendants admit that she participates in Board operations as a Member and has responsibilities and authority as defined by the Georgia election code. To the extent Plaintiffs' description of those responsibilities and authority differ in any way from any provision of the election code, Defendants deny such allegation. Defendants admit that the Board conducts its business in Fulton County and that Defendant Jeffares is sometimes (but not always) present in Fulton County when participating in Board business. Any remaining allegation contained in ¶15 not specifically responded to herein is denied.

16.

Admitted; however, Defendants deny that they are liable to Plaintiffs for any legal or equitable relief, civil fines, or attorneys' fees or expenses.

17.

Admitted.

18.

Defendants admit that John Fervier is the Chairman of the Board and that Plaintiffs' Complaint names him as a nominal defendant in his official capacity (but denies that he has any liability to Plaintiff in any capacity). Defendants admit that he participates in Board business alongside the four other members. Defendants admit that O.C.G.A. § 21-2-30(e) provides that meetings are to be held on the call of the chairperson or whenever any two of

its members so request, and that the chairperson shall give to each member of the Board prior notice of the time and place of each meeting of the Board. Any remaining allegation contained in ¶18 not specifically responded to herein is denied.

19.

Defendants admit that Sara Tindall Ghazal is a Member of the Board and that Plaintiffs' Complaint names her as defendant in her official capacity as a nominal defendant (but denies that she has any liability to Plaintiff in any capacity). Defendants admit that she participates in Board operations as a Member and has responsibilities and authority as defined by the Georgia election code. To the extent Plaintiffs' description of those responsibilities and authority differ in any way from any provision of the election code, Defendants deny such allegation. Any remaining allegation contained in ¶19 not specifically responded to herein is denied.

GENERAL ALLEGATIONS

The Open Meetings Act, O.C.G.A. § 50-14-1, and other Relevant Legal Provisions

20.

Defendants admit that ¶20 contains a correct statement of law, but denies any allegation or inference that the July 12 gathering was a "closed meeting" as described in ¶20.

21.

Defendants admit that O.C.G.A. § 50-14-1 requires that a “meeting” as defined by O.C.G.A. § 50-14-1(a)(3)(A) are to be open to the public, subject to the exceptions, limitations, or exclusions found in any provision of Georgia law, including but not limited to O.C.G.A. § 50-14-1(a)(3)(B), O.C.G.A. § 50-14-2, and O.C.G.A. § 50-14-3. Any remaining allegation contained in ¶21 not specifically responded to herein is denied.

22.

Defendant admits that it is a board subject to the Open Meetings Act and that ¶22 contains a correct quotation from O.C.G.A. § 50-14-1(a)(1)(A) but denies the allegations of ¶22 to the extent it purports to suggest that the Open Meetings Act is applicable to unknown entities not a party to this Complaint.

23.

Defendants state that ¶23 contains legal conclusions or argument to which no response is required. However, to the extent a response is required, Defendants admit that the Open Meetings Act contains requirements for gatherings of a covered entity that meet the Act’s description of a “meeting,” and that the purpose of the Act is to eliminate closed meetings. Any remaining allegation contained in ¶23 not specifically responded to herein is denied.

24.

Admitted; however, Defendants deny that the July 12 gathering was a “meeting” to which the Open Meetings Act applies.

25.

Admitted; however Defendants deny that the July 12 gathering was a “meeting” to which the Open Meetings Act applies.

26.

Admitted; however, Defendants deny that the July 12 gathering was a “meeting” of any kind as defined by the Open Meetings Act, and specifically denies that it was a regularly-scheduled meeting requiring one week advance notice.

27.

Admitted; however, Defendants deny that these requirements were applicable to the July 12 gathering as it was not a “meeting” as defined by the Open Meetings Act.

28.

Admitted; however, Defendants deny that these requirements were applicable to the July 12 gathering as it was not a “meeting” as defined by the Open Meetings Act.

29.

Admitted; however, Defendants deny that these requirements were applicable to the July 12 gathering as it was not a “meeting” as defined by the Open Meetings Act.

30.

Defendants admit that O.C.G.A. § 50-14-1(g)(3) requires a quorum to be present in person for agencies covered by this subsection of the Open Meetings Act. Defendants deny that the July 12 gathering was a “meeting” as defined by the Open Meetings Act.

***The Regularly Scheduled July 9 Meeting,
Continuation, and Postponement***

31.

Admitted.

32.

Admitted.

33.

Admitted; however, Defendants state that the exact time of delivery of the subject email may vary by recipient. Defendants further state that the Agenda did not specify that the meeting might extend to more than one day but merely contained the following language that has appeared regularly on

the Board's agendas at which public comments are expected: "Public comments will be heard at the beginning of the meeting and only on the first day, should the meeting extend to more than one day."

34.

Admitted; however, Defendants deny that any rules forwarded by Jeffares to the Board were required to be included on the July 9 meeting agenda or to be publicly disseminated at that time.

35.

Defendants admit that Chairman Fervier recessed the July 9 meeting after a lengthy period of public comment and before all agenda items could be addressed, and that he announced that the Board would reconvene on July 10, 2024 at 9:00 a.m. Defendants further admit that no Board member made an objection to that announcement during the meeting. Defendants deny the remaining allegations contained in ¶35 and state that there appears to have been some misunderstanding between the Board members as to the availability of various members to attend the meeting on July 10.

36.

Admitted; however, Defendants state that the exact time of delivery of the subject email may vary by recipient.

37.

Defendants admit that he informed meeting attendees on the morning of July 10 that the meeting would have to be rescheduled. Defendants admit that Fervier received a message that alerted him that King would not be able to appear at the meeting. Any remaining allegation not responded to herein is denied.

38.

Defendants admit that King did not appear in person on July 10. Defendants admit that the Chairman then determined that the Board lacked a quorum for the Continued Meeting and therefore informed meeting attendees that the meeting would be rescheduled. Any remaining allegation not responded to herein is denied.

39.

Admitted; however, Defendants state that the exact time of delivery of the subject email may vary by recipient.

40.

Defendants move to strike this paragraph in its entirety as it references alleged communications between the Office of the Attorney General and the Chairman of the Board, which would be subject to protection

under the attorney-client privilege. To the extent a response to this paragraph is required, Defendants deny the allegations.

Scheduling of the July 12 [Gathering]

41.

Admitted.

42 — 48

Defendants move to strike these paragraphs in their entirety as they reference alleged communications between the Office of the Attorney General and the Chairman of the Board, which would be subject to protection under the attorney-client privilege. To the extent a response to these paragraphs are required, Defendants deny the allegations.

49.

Defendants admit that Jeffares created a meeting notice dated July 11 and containing the language described in ¶49. Defendants deny any allegation or inference that the creation or posting of this notice was somehow unlawful.

50.

Admitted; however, Defendants deny any allegation or inference that the notice, signatures, or notation were somehow unlawful.

51.

Defendants admit that the notice was not disseminated through the email list, but denies that Defendants bore any legal obligation to do so.

52.

Defendants admit that the notice was not posted to the website but deny that Defendants bore any legal obligation to do so.

53.

Defendants admit that the notice was posted outside the Board's usual meeting location at the Capitol. Defendants deny that they had any legal obligation to publish such notice in the County's legal organ or to a newspaper of general circulation.

54.

Defendants admit that the notice was posted outside the Board's usual meeting room at the Capitol. Defendants deny that there was no other distribution and state that the notice was posted to a variety of social media accounts. Defendants deny any allegation or inference that any Defendant breached any legal obligation with regard to the dissemination of the notice.

55.

Admitted; however Defendants deny any allegation or inference that Defendants were legally required to do so.

56.

Admitted; however Defendants deny any allegation or inference that Defendants were legally required to do so.

57.

Admitted; however Defendants deny any allegation or inference that Defendants were legally required to do so.

58.

Admitted; however Defendants deny any allegation or inference that Defendants were legally required to do so.

59.

Admitted.

60.

The allegations of this Paragraph contain legal conclusions or argument to which no response is required. However, to the extent that such a response is required, Defendants deny that the July 12 gathering is properly described as meeting the definition of a “meeting” under the Open Meetings Act.

The July 12 [Gathering]

61.

Admitted.

62.

Admitted.

63.

Denied.

64.

Admitted.

65.

Admitted.

66.

Denied. Defendants state that they have agreed and officially confirmed that the Board has taken no action on the rules discussed at the July 12 gathering, and that all incomplete agenda items from the July 9 meeting were reset for the Board's August 6 meeting.

67.

Defendants admit that the proposed rule described in ¶67 was discussed at the July 12 gathering, but denies that any official action was taken at that time.

68.

Defendants admit that the proposed rule described in ¶68 was not listed on the July 9 agenda, but denies that any official action was taken on this proposed rule at the July 12 gathering.

69.

Defendants lack sufficient knowledge or information as to which members of the public did receive a copy of the text of the rule described in ¶69 but admit that there may have been members present at the July 12 gathering that did not receive a copy of the proposed rule. Any remaining allegation not specifically responded to herein is denied.

70.

Defendants admit that the Individual Defendants planned to discuss the proposed rule at the July 12 gathering. Defendants deny that the gathering was an “unlawful meeting” and deny any remaining allegation contained in ¶70 not specifically responded to herein.

71.

Defendants move to strike this paragraph in its entirety as it references alleged communications between the Office of the Attorney General and the Chairman of the Board, which would be subject to protection under the attorney-client privilege. To the extent a response to these paragraphs are required, Defendants deny the allegations.

72.

Defendants admit that they received the letter described in ¶72 and that the contents of the letter are accurately described. Defendants deny that the July 12 gathering violated the Georgia Open Meetings Act or any other provision of Georgia law. Any remaining allegation not specifically responded to herein is denied.

73.

Denied.

COUNT I

Interlocutory Injunctive and Declaratory Relief for Violations of the Georgia Open Meetings Act (against all Defendants)

74.

Defendants hereby incorporate their affirmative defenses and responses to Paragraphs 1—73 as though fully set forth herein.

75.

Defendants admit that the Open Meetings Act is accurately quoted and fairly described but deny any violation thereof.

76.

Defendants admit that the cited provision of the Open Meetings Act is accurately quoted and fairly described but deny any violation thereof.

77.

Defendants admit that the cited provision of the Open Meetings Act is fairly described but deny any violation thereof.

78.

Defendants admit that the cited provision of the Open Meetings Act is accurately quoted and fairly described but deny any violation thereof.

79.

Defendants admit that the cited provision of the Open Meetings Act is accurately quoted and fairly described but deny any violation thereof.

80.

Denied. Defendants regularly make efforts beyond those required by law to inform the public of its activities, but deny that these efforts are required by law or that they are “procedural norms” that the Board is obligated to meet.

81.

Defendants move to strike the reference in this Paragraph to guidance allegedly provided by the Office of the Attorney General to the Board, which would be protected by the attorney-client privilege. Defendants deny all remaining allegations of ¶81.

82.

Denied.

83.

Denied.

84.

Denied.

85.

Denied.

86.

Denied.

87.

Denied.

COUNT II

**Willful and Knowing Violation of the Georgia Open Meetings Act
(against Defendants Johnston, Jeffares, and King,
in their individual capacities)**

88.

Defendants hereby incorporate their affirmative defenses and responses to Paragraphs 1—87 as though fully set forth herein.

89.

Admitted.

90.

Denied.

91.

Defendants move to strike this Paragraph in its entirety in that it contains references to guidance allegedly provided by the Office of the Attorney General to the Board, which would be protected by the attorney-client privilege. To the extent that a response to this Paragraph is required, the allegations are denied.

92.

Defendants acknowledge that members of the public have contacted Defendants to allege that the July 12 gathering violated the Open Meetings Act, but denies that such allegations are correct. Any remaining allegation is hereby denied.

93.

Denied.

94.

Denied.

95.

Denied.

96.

Defendants admit that the Open Meetings Act contains the quoted provision but denies that such penalties should be imposed against any Defendant.

97.

Denied.

COUNT III

Attorneys' Fees and Expenses

(against Defendant State Election Board)

98.

Defendants hereby incorporate their affirmative defenses and responses to Paragraphs 1—98 as though fully set forth herein.

99.

Defendants admit that the statutory provision is correctly quoted but denies any breach thereof.

100.

Denied.

101.

Denied.

102.

Denied. The Board has expressly confirmed that no official action has been taken at the July 12 gathering and Plaintiffs have no further need for any remedies.

103.

Denied.

Denied.

WHEREFORE, the Defendants respectfully pray as follows:

- a. that the Petition be dismissed in its entirety;
- b. that all relief requested by Plaintiffs be denied;
- c. that judgment be entered in favor of the Defendants;
- d. that all costs of this action be borne by Plaintiffs; and
- e. that the Court grant such other relief in favor of the Defendants as it deems just and proper.

This 18th day of September, 2024.

Respectfully submitted,

CHRISTOPHER M. CARR 112505
Attorney General

BRYAN K. WEBB 743580
Deputy Attorney General

/s/ Elizabeth T. Young
ELIZABETH T. YOUNG 707725
Senior Assistant Attorney General

Attorneys for Defendants

Please serve:

Elizabeth T. Young
Senior Assistant Attorney General
40 Capitol Square, SW
Atlanta, Georgia 30334-1300
(404) 404-458-3425
eyoung@law.ga.gov

CERTIFICATE OF SERVICE

I hereby certify that I have this day electronically filed the foregoing **ANSWER AND DEFENSES** with the Clerk of Court using the Odyssey e-filing system, which will send notification of such filing to the parties of record via electronic notification.

Dated: September 18, 2024.

/s/Elizabeth T. Young
Elizabeth Young
Senior Assistant Attorney General

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