

**THIRD DIVISION
DOYLE, P. J.,
MARKLE and PADGETT, JJ.**

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October 28, 2025

**NOT TO BE OFFICIALLY
REPORTED**

In the Court of Appeals of Georgia

A25A1316. AMERICAN OVERSIGHT et al. v. THE GEORGIA
STATE ELECTION BOARD et al.

MARKLE, Judge.

American Oversight and John Doe brought claims for declaratory and injunctive relief, and for an award of civil penalties and attorney fees against the Georgia State Election Board and its members¹ (collectively, “the Board”) for alleged violations of the Open Meetings Act (“the Act”), OCGA § 50-14-1 (2024) et seq. The trial court permitted the Georgia Republican Party, Inc. (“GRP”) to intervene, and granted its motion to dismiss the complaint. The trial court concluded that this action was brought pursuant to the waiver of sovereign immunity in Article I, Section II,

¹ The Board members named in the complaint are Janice Johnston, Rick Jeffares, and Janelle King, in their individual and official capacities; and John Fervier and Sara Tindall Ghazal, in their official capacities.

Paragraph V (b) of the Georgia Constitution (“Paragraph V”), and that Plaintiffs had violated that Paragraph’s exclusivity provision by failing to name the State as the sole defendant.² Ga. Const. of 1983, Art. I, Sec. II, Para. V (b) (2). On appeal, Plaintiffs contend that Paragraph V does not apply to this action as their claims were brought

² As relevant to this appeal, Paragraph V provides a waiver of sovereign immunity

for actions in the superior court seeking declaratory relief from acts of the state or any agency, authority, branch, board, bureau, commission, department, office, or public corporation of this state . . . 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. Sovereign immunity is further waived so that a court awarding declaratory relief pursuant to this Paragraph may, only after awarding declaratory relief, enjoin such acts to enforce its judgment.

Ga. Const. of 1983, Art. I, Sec. II, Par. V (b) (1). Under the exclusivity provision,

[a]ctions filed pursuant to this Paragraph against this state or any agency, authority, branch, board, bureau, commission, department, office, or public corporation of this state or officer or employee thereof shall be brought exclusively against the state and in the name of the State of Georgia. . . . Actions filed pursuant to this Paragraph naming as a defendant any individual, officer, or entity other than as expressly authorized under this Paragraph shall be dismissed.

Id. at (b) (2).

under the independent waiver of sovereign immunity implicit in the Open Meetings Act. We agree, and therefore we vacate in part and reverse in part.

“[Q]uestions concerning the application of sovereign immunity are legal questions subject to de novo review.” *McBrayer v. Scarbrough*, 317 Ga. 387, 388 (1) (893 SE2d 660) (2023).

The complaint alleges that the Board and its members held a meeting on July 12, 2024 that violated the Open Meetings Act, and asserts claims for declaratory and injunctive relief, as well as others. GRP filed a motion to intervene, which the trial court granted. GRP moved to dismiss the complaint, contending that, because the complaint stated a claim for declaratory action against a governmental entity, it invoked the waiver of sovereign immunity under Paragraph V (b) (1); and, since Plaintiffs failed to name the State as the sole defendant, the complaint violated the exclusivity provision under Paragraph V (b) (2). Plaintiffs moved for leave to drop two Board members from the suit. Following a hearing, the trial court granted GRP’s motion to dismiss, concluding the complaint offended Paragraph V. It also denied the motion for leave to drop the two defendants, concluding that it would not cure the exclusivity provision violation. This appeal followed.

1. Plaintiffs claim the trial court erred by granting the motion to dismiss under Paragraph V because this action was brought under an independent waiver of sovereign immunity implicit in the Open Meetings Act. We agree.

To begin, “[t]he doctrine of sovereign immunity, as enshrined in our Constitution, bars suits against the State and its employees in their official capacities unless a statute or the Constitution itself specifically waives that immunity.” (Citation omitted.) *Roberts v. Cuthpert*, 317 Ga. 645, 648 (2) (893 SE2d 73) (2023); *State v. SASS Group*, 315 Ga. 893 (885 SE2d 761) (2023); Ga. Const. of 1983 Art. I, Sec. II, Par. IX (e) (“The sovereign immunity of the state and its departments and agencies can only be waived by an Act of the General Assembly which specifically provides that sovereign immunity is thereby waived and the extent of such waiver.”). The party asserting a waiver of a governmental entity’s sovereign immunity bears the burden of proof. *McBrayer*, 317 Ga. at 392 (2) (a).

Sovereign immunity is a jurisdictional issue and, thus, a threshold issue. *McBrayer*, 317 Ga. at 392 (2) (a). Accordingly, the trial court properly addressed any waiver of the Board’s sovereign immunity at the outset. It erred, however, in

concluding Paragraph V barred the claims here, as they were authorized under the waiver of sovereign immunity implicit in the Open Meetings Act.

Paragraph V “waives sovereign immunity for certain actions seeking declaratory relief for alleged constitutional violations by state entities, officials, and employees specifically listed therein.” (Punctuation omitted.) *SASS Group*, 315 Ga. at 896 (II); Ga. Const. of 1983, Art. I, Sec. II, Para. V (b) (1). Actions filed under this specific waiver must “be brought exclusively against the state and in the name of the State of Georgia,” and are subject to dismissal if they are not. Ga. Const. of 1983, Art. I, Sec. II, Para. V (b) (2); *Lovell v. Raffensperger*, 318 Ga. 48, 50 (2) (a) (897 SE2d 440) (2024); *SASS Group*, 315 Ga. at 896-897 (II).

Notably, the complaint makes no mention of Paragraph V, nor is there any indication that it was brought pursuant to that Paragraph. Rather, the complaint plainly seeks relief solely under the Open Meetings Act, seeking (1) a declaration that any actions taken at the July 12 meeting are void, as well as injunctive relief, pursuant to OCGA §§ 50-14-1 (b) (2) and 50-14-5; (2) the imposition of civil penalties against

certain of the Board members in their individual capacities, pursuant to OCGA §§ 50-14-6; and (3) an award of attorney fees, pursuant to OCGA § 50-14-5 (b).³

GRP argues that there is no *express* waiver of sovereign immunity in the Open Meetings Act.⁴ This is true. See OCGA § 50-14-1, et seq. And, while it is also true that “implied waivers of governmental immunity should not be favored, this does not

³ OCGA § 50-14-1 (b) (2) provides, in pertinent part: “Any resolution, rule, regulation, ordinance, or other official action of an agency adopted, taken, or made at a meeting which is not open to the public as required by this chapter shall not be binding.”

OCGA § 50-14-5 (b) provides, in pertinent part:

In any action brought to enforce the provisions of this chapter in which the court determines that an agency acted without substantial justification in not complying with this chapter, the court shall, unless it finds that special circumstances exist, assess in favor of the complaining party reasonable attorney’s fees and other litigation costs reasonably incurred.

And OCGA § 50-14-6 authorizes the imposition of civil fines against individuals who “negligently violate[]” the Act’s procedures. See *Lue v. Eady*, 297 Ga. 321, 331-332 (3) (b) (773 SE2d 679) (2015) (noting the addition of private citizens’ right of action for civil penalties under the 2012 amendment to the Act); *Williams v. DeKalb County*, 308 Ga. 265, 276 (4) (a) (840 SE2d 423) (2020) (Open Meetings Act “plainly contemplates that a private person (or firm, corporation, or other entity) can bring an action to enforce the Act to protect the public from closed-door politics.”).

⁴ Interestingly, the Board conceded the Open Meetings Act waived its immunity to the specific forms of relief provided therein.

mean that the General Assembly must use specific magic words such as ‘sovereign immunity is hereby waived’ in order to create a specific statutory waiver of sovereign immunity.” (Citation and punctuation omitted.) *Roberts*, 317 Ga. at 650 (2); *City of Union Point v. Greene County*, 303 Ga. 449, 453 (1) (812 SE2d 278) (2018), disapproved on other grounds in *City of College Park v. Clayton County*, 306 Ga. 301, 313 (2), n. 7 (830 SE2d 179) (2019). As we have explained, “Georgia courts recognize implied waivers when the implication necessarily arises.” (Citation and punctuation omitted.) *Lewis v. City of Brunswick*, 375 Ga. App. 56, 59 (1) (a) (913 SE2d 755) (2025). But, “it must be clear from the statute that immunity is waived and the extent of such waiver.” (Citation and punctuation omitted.) *Id.*

The language of the Open Meetings Act necessarily implicates such a waiver of the Board’s sovereign immunity.⁵ As our Supreme Court has explained, its purpose is “to protect the public—both individuals and the public generally—from ‘closed

⁵ In *Williams*, 308 Ga. at 279 (4) (d), our Supreme Court held that the Act abrogates legislative immunity to the extent it creates rights of action for civil and criminal penalties against individual governmental officials. See OCGA § 50-14-6. This issue is not specifically addressed by any party to this appeal even though Plaintiffs state a claim under this provision.

door' politics and the potential abuse of individuals and the misuse of power such policies entail. Therefore, the Act must be broadly construed to effect its remedial and protective purposes.” (Citation omitted.) *EarthResources v. Morgan County*, 281 Ga. 396, 399 (3) (638 SE2d 325) (2006). The Act thus provides, in pertinent part:

Except as otherwise provided by law, all meetings shall be open to the public. All votes at any meeting shall be taken in public after due notice of the meeting and compliance with the posting and agenda requirements of this chapter. . . . Any resolution, rule, regulation, ordinance, or other official action of an agency adopted, taken, or made at a meeting which is not open to the public as required by this chapter shall not be binding.

OCGA § 50-14-1 (b) (1) - (2).

The Act defines the term “agency” broadly, to include “[e]very state department, agency, board, bureau, office, commission, public corporation, and authority,” as well as school districts, counties, cities, municipal corporations, and their departments, offices, commissions, and other political subdivisions. OCGA § 50-14-1 (a) (1) (A) - (D).

OCGA 50-14-5 (a) creates a right of action in the superior court, “that may be brought by any person, firm, corporation, or other entity,” as well as the Attorney General, “to enforce compliance with the provisions of [the Act], including the power

to grant injunctions or other equitable relief.” And, OCGA § 50-14-5 (b) subjects the governmental agency to an assessment of the opposing party’s attorney fees and expenses if the court determines its noncompliance with the Act was “without substantial justification,” and no “special circumstances” exist.

“Because the General Assembly is presumed to intend something by passage of an act, we must construe its provisions so as not to render it meaningless.” (Citation omitted.) *City of Union Point*, 303 Ga. at 454 (1) (a); *City of Rincon v. Ernest Communities*, 356 Ga. App. 84, 86 (1) (846 SE2d 250) (2020). It follows that,

where, as here, the Legislature has specifically created a right of action against the government that would otherwise be barred by sovereign immunity, and has further expressly stated that an aggrieved party is entitled to collect money damages from the government in connection with a successful claim under the statute, there can be no doubt that the Legislature intended for sovereign immunity to be waived with respect to the specific claim authorized under the statute.

Colon v. Fulton County, 294 Ga. 93, 95–96 (1) (751 SE2d 307) (2013), overruled on other grounds by *Rivera v. Washington*, 298 Ga. 770, 778, n. 7 (784 SE2d 775) (2016); see also *City of Union Point*, 303 Ga. at 454 (1) (a) (“Indeed, in order for the [Service Delivery Strategy Act] to have any meaning at all here, it can only be interpreted as

creating a waiver of sovereign immunity.”) (citation omitted); *SJN Properties v. Fulton County Bd. of Assessors*, 296 Ga. 793, 799 (2) (b) (ii), n. 6 (770 SE2d 832) (2015) (Absent an implied waiver of sovereign immunity, “mandamus actions, which by their very nature may be sought only against public officials, would be categorically precluded by sovereign immunity.”); *City of Rincon*, 356 Ga. App. at 86 (1) (declaratory judgment regarding validity of city ordinance was not barred by sovereign immunity due to implied waiver under OCGA § 9-4-7 (b), otherwise the statute would be rendered meaningless).

We conclude, then, that the Board’s sovereign immunity to this action is waived under the Open Meetings Act. OCGA §§ 50-14-1 (a) (1) (A); 50-14-5 (a), (b); 50-14-6. As set forth above, the complaint seeks only remedies that are available under the Act;⁶ it may thus proceed under that waiver. See *Lewis*, 375 Ga. App. at 59 (1) (a). And, because the complaint was not “filed pursuant to” Paragraph V, the trial court

⁶ Claims for declaratory and injunctive relief are available under the Act. See, e.g., *Cardinale v. City of Atlanta*, 290 Ga. 521, 527 (722 SE2d 732) (2012) (allowing plaintiff’s claims for declaratory and injunctive relief to proceed under Open Meetings Act); Lonnie E. Griffith, Jr., 8 Ga. Proc. Special Remedies and Proceedings § 10:212 (2025); OCGA § 50-14-5 (a).

erred in dismissing it under the exclusivity provision.⁷ Ga. Const. of 1983, Art. I, Sec. II, Para. V (b) (2); compare *Warbler Investments v. City of Social Circle*, 321 Ga. 125, 126 (2) (913 SE2d 674) (2025) (Paragraph V invoked where, in addition to claims under the Open Records Act, plaintiff stated separate claims for declaratory judgment, injunctive relief, mandamus, and a writ of certiorari); *Lovell*, 318 Ga. at 50 (2) (a) (“[B]ecause Appellants relied, at least partially, on Paragraph V’s waiver of sovereign immunity in pursuing their actions, Appellants filed their actions pursuant to Paragraph V.”); see also *City of Rincon*, 356 Ga. App. at 86 (1) (rejecting plaintiff’s argument that city’s immunity was waived under OCGA § 36-33-1 (a), but concluding there was an applicable implied waiver in the Declaratory Judgment Act).

⁷ The Board argues that the Open Meetings Act does not apply to the subject meeting because there was no quorum as required by OCGA § 50-14-1 (a) (3) (A); thus, we should affirm the trial court’s judgment as right for any reason. See *Schoen v. Cherokee County*, 242 Ga. App. 501, 502 (3) (530 SE2d 226) (2000). Notably, the trial court did not rule on the Board’s motion to dismiss for failure to state a claim on this ground. “As we are a court for the correction of errors, we decline to consider this issue in the first instance.” *Ga. Power Co. v. Campbell*, 360 Ga. App. 422, 432 (3) (861 SE2d 255) (2021). Upon remand, the trial court may consider the viability of this alternate ground for dismissal.

2. Plaintiffs next argue that the trial court erred by denying their motion for leave to drop two individual Board members from the suit.⁸ We agree. The trial court based its decision solely on the ground that doing so would not cure the perceived defects in the complaint under Paragraph V.⁹ In light of our decision above that Paragraph V is inoperative here, we vacate the trial court's order.

Judgment reversed in part and vacated in part. Doyle, P. J., and Padgett, J., concur.

⁸ Plaintiffs maintain that the request to drop the Board members was not an attempt to comply with Paragraph V, but was due to the withdrawal of their claims for declaratory and injunctive relief in light of the Board's subsequent reversal of acts taken at the allegedly unlawful meeting — leaving no claims against these two defendants.

⁹ Recently, our Supreme Court has explained that the exclusivity provision, Paragraph V (b) (2), is not a jurisdictional rule, but a procedural one; therefore, a plaintiff may amend an offending complaint pursuant to the Civil Practice Act. *Warbler Investments*, 321 Ga. at 130 (3) (a), 133 (3) (b) (ii); OCGA § 9-11-21 (“Misjoinder of parties is not ground for dismissal of an action. Parties may be dropped or added by order of the court on motion of any party or of its own initiative at any stage of the action and on such terms as are just.”).