

IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

AMERICAN OVERSIGHT and JOHN DOE,)

Plaintiffs,)

v.)

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,)

GEORGIA REPUBLICAN PARTY, INC,)

Intervenor Defendant.)

CIVIL ACTION FILE

NO. 24CV009124

**GEORGIA REPUBLICAN PARTY, INC.'S RESPONSE TO PLAINTIFFS' MOTION
FOR LEAVE TO DROP JOHN FERVIER AND SARA TINDALL GHAZAL AS
DEFENDANTS IN THIS ACTION**

COMES NOW, the Georgia Republican Party, Inc. ("GAGOP"), an intervenor defendant in the above-styled caption, by and through the undersigned counsel, and hereby files this Georgia Republican Party, Inc.'s Response to Plaintiffs' Motion for Leave to Drop John Fervier and Sara Tindall Ghazal as Defendants in This Action ("Motion to Drop Parties"), and shows this Honorable Court the following:

I. INTRODUCTION

Under Georgia law, Plaintiffs cannot be granted leave to drop John Fervier (“Defendant Fervier”) and Sara Tindall Ghazal (“Defendant Ghazal”) as parties because the proper procedural remedy is dismissal of the entire action pursuant to the Georgia Supreme Court holding of *Lovell v. Raffensperger*, 318 Ga. 48 (2024). Plaintiffs sued Defendants Fervier and Ghazal, as well as Janice Johnson, Rick Jeffares, Janelle King, in their individual and official capacities as Members of the Georgia State Election Board. No waiver of sovereign immunity applies in this case. Subject to *Lovell* and the Georgia State Constitution in Paragraph V (b)(2), since the action was brought and named some of the defendants in their official capacities and did not exclusively name the “State of Georgia” as the named defendant, the entire case shall be dismissed. See Ga. Const. Art. I, Sec. II, Par. V (b)(2). For the same reasons expressed by the GAGOP in its Motion to Dismiss Plaintiffs’ Verified Complaint¹ (“Motion to Dismiss”), the GAGOP opposes and requests this Court to deny Plaintiffs’ Motion to Drop Parties because it is too little too late due to deficiencies in their original complaint warranting dismissal of the entire action under *Lovell*.

II. ARGUMENT AND CITATION TO AUTHORITY

A. Legal Standard.

The GAGOP incorporates by reference as if fully stated herein verbatim the “Argument and Citation of Authority” section of its Motion to Dismiss for the legal authority and findings of fact since they apply the same to the GAGOP’s response to Plaintiffs’ Motion to Drop Parties herein. For the Court’s convenience, the GAGOP has restated below the pertinent citations to legal authority contained in its Motion to Dismiss.

¹ See Proposed Intervenor Georgia Republican Party, Inc.’s Motion to Dismiss Plaintiffs’ Verified Complaint For Injunctive Relief, Declaratory Relief and Damages and Incorporated Brief in Support Thereof.

The Georgia State Constitution in Paragraph V (b)(2) provides:

Actions 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 against any county, consolidated government, or municipality of the state or officer or employee thereof shall be brought exclusively against such county, consolidated government, or municipality and in the name of such county, consolidated government, or municipality. **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**. [Emphasis and italics added.] See Ga. Const. Art. I, Sec. II, Par. V (b)(2).

Actions seeking declaratory relief against the Georgia State Election Board, must be brought exclusively against the “State of Georgia” (or local government) and only in the name of the State of Georgia, otherwise the case “shall” be dismissed. See Ga. Const. Art. I, Sec. II, Par. V (b)(2). In *State v. SASS Group, LLC*, 315 Ga. 893 (2023), the Georgia Supreme Court held that Ga. Const. Art. I, Sec. II, Par. V(b) required dismissal of a lawsuit seeking declaratory relief against both the State of Georgia and a district attorney. The Georgia Supreme Court concluded:

Accordingly, if a lawsuit is filed against the State pursuant to Paragraph V and that suit includes an independent claim against another party not specified in that paragraph’s waiver provision, then the entire lawsuit must be dismissed. [. . .] Thus, the presence of a named defendant to whom Paragraph V’s waiver does not apply is fatal to an “action” that relies on Paragraph V’s waiver of sovereign immunity.

In *Julie Adams v. Fulton County Board of Elections and Registration, a/k/a Fulton County Board of Registration and Elections, and Nadine Williams, in her official capacity as Elections Director*, the Court considered whether to dismiss the entire action based on the plaintiff naming one of the defendants in her official capacity.² The plaintiff filed her complaint for declaratory

² See *Julie Adams, in her official capacity as a member of the Fulton County Board of Elections and Registration, a/k/a Fulton County Board of Registration and Elections v. Fulton County Board of Elections and Registration, a/k/a*

relief, interlocutory injunctive relief, and permanent injunctive relief. See Complaint in *Julie Adams*. The plaintiff attempted to correct naming one of the defendants in her official capacity, *inter alia*, by filing a Motion to Correct Misnomer, Drop a Party, and Amend the Caption. See Motion to Correct Misnomer, Drop a Party, and Amend the Caption in *Julie Adams*. The defendants argued that sovereign immunity, pursuant to *Lovell* and Paragraph V of the Georgia Constitution, precluded the plaintiff from correcting a misnomer, dropping a party, and amending the caption and that the proper procedural remedy was dismissal of the entire case. See Defendants' Response to Plaintiff's Motion to Correct Misnomer, Drop a Party, and Amend the Caption in *Julie Adams*. While not binding precedent on this case, Judge McBurney of Fulton County Superior Court agreed, he ruled in favor of the defendants, and he dismissed the plaintiff's case in its entirety on the basis that Paragraph V, *Lovell*, and other similar and applicable case law required the case to be dismissed because the case was not brought exclusively against the State or local government only.³ Judge McBurney noted that dismissing the case for plaintiff's failure to properly name the defendant "may seem like an unnecessary drill, but it was also an entirely unavoidable one". See

Exhibit A.

B. The GAGOP opposes Plaintiffs' Motion to Drop Parties because Georgia law requires the Court should dismiss case in its entirety.

In the instant case, Plaintiffs brought their claims against the Georgia State Election Board, and Defendants Fervier, Ghazal, Janice Johnson, Rick Jeffares, Janelle King in their official capacities as Members of the Georgia State Election Board. Plaintiffs did not bring their case

Fulton County Board of Registration and Elections, and Nadine Williams, in her official capacity as Elections Director, Fulton County Superior Court, Case No. 24CV006566.

³ A true and correct copy of Judge McBurney's Order is attached hereto as **Exhibit A** and incorporated herein by reference.

exclusively in the name of the “State of Georgia” or the local government. Therefore, pursuant to Paragraph V and *Lovell*, this case must be dismissed.

The instant case has stronger facts for dismissal than *Julie Adams*. Here, Plaintiffs are only attempting to drop Defendants Fervier and Ghazal as defendants, which still leaves Janice Johnson, Rick Jeffares, Janelle King in their official capacities as Members of the Georgia State Election Board and the Georgia State Election Board as the named defendants. Plaintiffs are not addressing the procedural issues raised by Paragraph V or *Lovell* for naming the correct governmental entity in their Motion to Drop Parties. On this basis alone, the Court should dismiss Plaintiffs’ complaint. Further, the relief sought by Plaintiffs as pled in their original complaint is the same as in *Julie Adams*: injunctive relief and declaratory relief. Plaintiffs argue that they are withdrawing Count I of their Complaint, which requests injunctive and declaratory relief; however, this is too little too late under Georgia law. Paragraph V is clear that the plaintiff’s action “shall be ***brought*** exclusively against the state and in the name of the State of Georgia”. See Ga. Const. Art. I, Sec. II, Par. V (b)(2). Since Plaintiffs did not bring their original complaint against the “State of Georgia” or local government exclusively and requested injunctive and declaratory relief, this Court should dismiss the case in its entirety pursuant to Paragraph V, *Lovell*, and *Julie Adams*.

III. CONCLUSION

The GAGOP respectfully requests this Court to deny Plaintiffs’ Motion for Leave to Drop John Fervier and Sara Tindall Ghazal as Defendants in This Action because Paragraph V of the Georgia State Constitution and *Lovell* provide that this case shall be dismissed. Even if Plaintiffs’ Motion to Drop Parties were granted by this Court, there remains three members of the Georgia State Election Board as named defendants who are being sued in their official capacities. Plaintiffs’ original complaint was brought not naming the “State of Georgia” or the local government

exclusively and sought injunctive and declaratory relief. Any attempts at this point in the litigation to repair those mistakes at the onset of their case is futile to avoid dismissal according to Georgia law. Therefore, the GAGOP opposes Plaintiffs' Motion to Drop Parties and requests this Court to dismiss Plaintiffs' case in its entirety. The GAGOP further requests this Court for its actual costs, attorneys' fees, and such other relief as the Court may deem just and proper under the circumstances.

Respectfully submitted, this 25th day of September, 2024.

**CHALMERS, ADAMS, BACKER &
KAUFMAN, LLC**

/s/ Alex B. Kaufman _____

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CERTIFICATE OF SERVICE

I hereby certify that on this day, a true and correct copy of the foregoing **GEORGIA REPUBLICAN PARTY, INC.’S RESPONSE TO PLAINTIFFS’ MOTION FOR LEAVE TO DROP JOHN FERVIER AND SARA TINDALL GHAZAL AS DEFENDANTS IN THIS ACTION** was electronically filed and served to the following counsel of record via the Court’s efiling system, STATUTORY ELECTRONIC SERVICE (O.C.G.A. 9-11-5 et seq.) and/or with postage prepaid via First Class U.S. Mail addressed to the following:

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This 25th day of September, 2024.

**CHALMERS, ADAMS, BACKER &
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Exhibit A

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IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

JULIE ADAMS, Plaintiff	*	
	*	CIVIL ACTION
	*	
v.	*	24CV006566
	*	
FULTON COUNTY BOARD OF REGISTRATION AND ELECTIONS <i>et al.</i> , Defendants	*	Judge McBurney
	*	
	*	

ORDER ON PLAINTIFF’S MOTION TO CORRECT MISNOMER *ET AL.*

On 22 August 2024, Plaintiff filed a motion seeking to correct a misnomer in the style of the case, to drop a party (without prejudice), and to amend the caption of this case. Given the time-sensitive nature of the legal questions presented in this litigation, the Court directed Defendants to file a response by 3 September 2024, which they did. In their response, Defendants opposed all requested relief and obliquely renewed their still-pending call for dismissal. For the reasons discussed below, the Court DENIES Plaintiff’s motion and DISMISSES Plaintiff’s amended complaint.

In both her original and amended complaint, Plaintiff seeks declaratory relief concerning the nature of her statutorily defined role as an “election superintendent” on the Fulton County Board of Registration and Elections. Several years ago, our Supreme Court determined that such claims were barred by the sovereign immunity our local and state governments enjoy. *Lathrop v. Deal*, 301 Ga. 408 (2017). In November 2020 -- a momentous election on many legal fronts -- the people of Georgia approved an amendment to the Georgia Constitution that created a limited waiver of sovereign immunity for claims such as Plaintiff’s, in which an aggrieved party seeks a judicial declaration of the meaning (or constitutionality) of some statutory provision. Ga. Const. of

1983, Art. I, Sec. II, Para. V(b) (“Paragraph V”). With that waiver came several draconian (but very plainly stated) pleading requirements: any complaint seeking relief pursuant to Paragraph V must be brought against the State (or local government) *only* and no other claims for any other form of relief can be included in that complaint. Failure to comply with either requirement is fatal: the non-compliant complaint “shall be dismissed.” Ga. Const. of 1983, Art. I, Sec. II, Para. V(b)(2); *Lovell v. Raffensperger*, 318 Ga. 48 (2024) (affirming dismissal of complaint brought pursuant to Paragraph V because it named agency head instead of State of Georgia); *State v. SASS Grp., LLC*, 315 Ga. 893, 894 (2023) (reversing trial court for failing to dismiss suit that brought Paragraph V claim against both the State of Georgia and a local District Attorney and which had non-Paragraph V claims).

Plaintiff’s first complaint seeking Paragraph V relief was brought against the Fulton County Board of Registration and Elections (FCBRE) and its Director. Neither is a proper party for such a suit and the original complaint should have been dismissed -- as Defendants argued in their 22 July 2024 motion to dismiss.¹ In response to the motion to dismiss, Plaintiff amended her complaint and began the process of trying to recast her claims as ones being brought exclusively against Fulton County. That was too little, too late; the fatal pleading flaw cannot be undone.²

Lest this outcome be deemed harsh, two things should be considered. First, the pleading requirements for seeking relief pursuant to Paragraph V are both simple and

¹ The original complaint (as well as the amended complaint) also commingles non-Paragraph V claims with the declaratory relief claim against the government. This, too, is fatal to Plaintiff’s efforts, as Paragraph V claims must stand alone. *SASS Grp.*, 315 Ga. at 904.

² It is an open question, presently before the Supreme Court, whether a party that recognizes that it has failed to comply with Paragraph V’s simple pleading requirements can amend its complaint and avoid an early demise to its declaratory relief claim. See *Cobb County et al. v. Ray Murphy*, S24A1297. (In the *Murphy* case, there was not the additional pleading deficiency of a non-Paragraph V claim, distinguishing it from the current case, which would still suffer from a fatal pleading error even if Plaintiff were permitted to swap in Fulton County for the Board of Registration and Elections.) Until the Supreme Court provides additional guidance, this Court will take that Court at its word in *SASS Grp.*

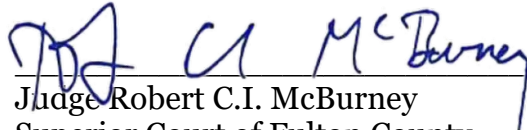
very public. The plain language of Paragraph V tells us what (and what not) to do. Moreover, in case that plain language was not clear (and it is), the Supreme Court over a year before Plaintiff filed her initial complaint confirmed that the constitutional language meant what it said: a claim for relief against the State or a local government that seeks to have a judge declare that a law (or rule or ordinance) is unconstitutional, that a law (or rule or ordinance) means this or that, that a statutorily defined role is ministerial or discretionary, or that products containing Delta-8-THC and Delta-10-THC are “hemp products” can be brought *only* against the government, be it the State, a county, or a municipality. *SASS Grp.*, 315 Ga. at 897. What this Court is enforcing today is not new law in Georgia.

Second, Plaintiff’s claims are not forfeited; they are merely dismissed -- for now. This action is done, but there can be another. Plaintiff can refile, name the correct party, and we will pick up where we left off, likely with all the same lawyers and certainly with the same substantive arguments. If Plaintiff moves with alacrity, the merits of her claim that the role of an election superintendent -- in particular when certifying the results of an election -- is discretionary rather than ministerial can still be considered alongside the related claims set forth in *Abhiraman et al. v. State Board of Elections*, 24CV010786.³ This may seem like an unnecessary drill, but it was also an entirely unavoidable one.

³ In the *Abhiraman* case, Petitioners seek declaratory relief concerning various rules promulgated by a state agency, the State Election Board. However, in that case, in which Petitioners did *not* name the State of Georgia as Respondent, there is a jurisdictional hook other than Paragraph V: O.C.G.A. § 50-13-10. That statute is a waiver of sovereign immunity for actions “alleging necessity of a declaratory judgment on [the] validity of rules of state agencies.” *Burton v. Composite State Bd. of Med. Examiners*, 245 Ga. App. 587, 589 (2000).

Plaintiff's case is DISMISSED without prejudice.⁴

SO ORDERED this 9th day of September 2024.



Judge Robert C.I. McBurney
Superior Court of Fulton County
Atlanta Judicial Circuit

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⁴ Plaintiff failed to comply with the constitutionally prescribed requirements to establish a waiver of sovereign immunity to seek declaratory relief against a local government. If sovereign immunity was not waived, this Court lacks jurisdiction over this matter. *2200 Atlanta Inv'rs, LLC v. DeKalb Cnty.*, 369 Ga. App. 537, 539 (2023). Dismissal on the grounds of lack of jurisdiction is always without prejudice. *Murray v. Lexington Park of Fulton Cnty. Cmty. Ass'n, Inc.*, --- Ga. App. ---, 904 S.E.2d 119, 125 (2024); *Pinnacle Benning, LLC v. Clark Realty Capital, LLC*, 314 Ga. App. 609, 614-615 (2012). Defendants' request that Director Williams (or this case) be dismissed *with* prejudice is therefore DENIED.