**Case Nos. S25A0362 and S25A0490**

# In the Supreme Court of Georgia

**STATE OF GEORGIA,**
**REPUBLICAN NATIONAL COMMITTEE, and**
**GEORGIA REPUBLICAN PARTY**
*Consolidated Appellants*

**v.**

**ETERNAL VIGILANCE ACTION, *et al.***
*Appellees*

On Appeal from the Superior Court of Fulton County
Civil Action No. 24CV011558



## STATE OF GEORGIA'S REPLY BRIEF

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## INTRODUCTION

Plaintiffs spend most of their briefs on issues this Court has no basis to consider. Standing matters. And Plaintiffs' almost complete reliance on *federal* standing doctrine does not demonstrate they have standing under Georgia law. Thus, there is no basis for this Court to even reach the merits of the State Election Board (SEB) rules challenged in this appeal. And the superior court should not have intervened in the first place. Even with the benefit of additional time and briefing, Plaintiffs cannot show they have standing or have sufficient uncertainty to receive declaratory relief. This Court should reverse.

## ARGUMENT

While Plaintiffs give lip service to standing, they rely heavily on federal standing cases that have no relevance here. Plaintiffs have not shown they have a cognizable injury related to their right to vote or any other actionable private right. As a result, they may only invoke this Court's jurisdiction through community-stakeholder standing. But to the extent any Plaintiffs possess this public right, they cannot use it as a basis to attack the actions of *State agencies*.

To fully respond to Plaintiffs' arguments that they have standing to bring this action, this brief begins with a detailed discussion of the treatment of the right to vote as a public and private right over time in Georgia, then applies that background to Plaintiffs. This brief then addresses the next problem: even if Plaintiffs have standing, they still have not shown any uncertainty that would be sufficient to obtain declaratory relief. And without declaratory relief, the superior court should never have entered the injunction. Finally, the SEB has the authority to pass rules, contrary to Plaintiffs' contentions.

## I. Plaintiffs lack standing under Georgia law.

Plaintiffs begin with federal law on the right to vote and claim that it is sufficient to afford them standing in Georgia courts. EVA.App.Br.20.[1] They then assume that the individual nature of the right to vote can be cleanly imported into Georgia law. *Id.* at 21. This approach misreads the applicable law and misunderstands the differences between public rights and the individualized private rights associated with denials of the right to vote.

This Court has been clear in recent decisions: it no longer engages in a "borrowing practice" of applying federal constitutional standing doctrine to Georgia courts, even though some "leftovers remain" to be dealt with. *See Wasserman v. Franklin County,* No. S23G1029, 2025 WL 309390, at *3 (Ga. Jan. 28, 2025). In a series of recent cases, the Court explained the precise scope of its jurisdiction under the Georgia Constitution and cast aside its past practice of grafting federal standing case law into Georgia cases. *Sons of Confederate Veterans v. Henry County Board of Commissioners*, 315 Ga. 39 (2022) ("*SCV*"); *Wasserman*, 2025 WL 309390 at *3. Previously, the Court "uncritically adopted federal jurisprudence on the question of standing." *Id.* at 45 (citing *Black Voters Matter Fund v. Kemp*, 313 Ga. 375, 392 (2022) ("*BVMF*")). The change in practice stems from the fact that the judicial power conferred on federal courts by Article III of the United States Constitution is not the mirror image of the power granted to Georgia courts by the Georgia Constitution, which vests the "judicial power of the state" in its state judiciary. GA. CONST. Art. VI, Sec. I, Para. I ("Judicial Power Paragraph").



[1] All page references are to the court-generated page numbers at the top of each page.

As this Court has explained, the context informing the meaning of Georgia's Judicial Power Paragraph derives from English common law: "The reach of the 'judicial power' is informed in the first instance by the legal backdrop against which it was first granted to Georgia courts in 1798." *Wasserman*, 2025 WL 309390 at *4 (citing *SCV,* 315 Ga. at 46). The Court's recent articulation of the limits of its own authority provides litigants with a clear understanding of the contours of this Court's power. With that understanding in mind, this brief focuses on why none of the Plaintiffs have standing under Georgia law.

### A. Georgia standing law on public and private rights.

As a general matter, "only plaintiffs with a cognizable injury can bring a suit in Georgia courts." *SCV,* 315 Ga. at 39. And "[a] plaintiff with standing is necessary to invoke a court's judicial power to resolve a dispute…" *Id.* at 44. Historically, litigants could assert a "cognizable injury" through two vehicles: "actions to resolve private rights, and actions to resolve public rights." *Wasserman*, 2025 WL 309390 at *4. But the key was that "the proper inquiry for whether the plaintiff could maintain the action was simply 'whether there has been the *violation of a right.*'" *Id.* at *8 (quoting (*Hendrick v. Cook,* 4 Ga. 241, 261 (1848) (emphasis original)).

A violation of private rights occurs through "an infringement or privation of the private or civil rights belonging to individuals, considered as individuals[.]" *Id.* (quoting Blackstone, Commentaries on the Laws of England *2 (1768)). In other words, claims made pursuant to a party's private rights can only be brought if the alleged injury is *individualized* and *specific* to the person bringing the action. "Given that actions in court [under English common law] were understood as the way to settle disputed private rights, the minimum requirement to maintain such an action is not surprising: a plaintiff needed to

assert that *her* rights had been invaded." *Wasserman*, 2025 WL 309390 at *5 (emphasis added).

On the flip side, public rights involve those "rights and duties, which affect the whole community, considered as a community." *Id.* Thus, at least with respect to most public rights, the "injury need not be unique to the plaintiff when a member of the relevant community seeks relief." *SCV*, 315 Ga. at 49. However, under this lesser standard, community members had civil standing for the more limited purpose of pursuing a remedy "involving the ancient prerogative writs," which are "mandamus, injunction, habeas corpus, [and] prohibition." *Id.* at 48–49.

A third category of injury somewhat blends these two concepts by maintaining the requirement of a particularized harm, even in the context of enforcement of public rights, when the challenge a plaintiff brings involves the constitutionality of a state statute. "The Georgia Constitution might impose a higher requirement when a plaintiff challenges the constitutionality of a statute; we have long held that in such cases, the plaintiff must show an actual, individualized injury." *Id.* at 39. And this injury is "similar to the injury-in-fact required federally." *Id.* at 54 n.13. Due to the nature of the claims in this case, an analysis under all three standards is required.



### 1. Voting and voting rights are both private and public rights.

The voting context represents a unique aspect of Georgia's standing jurisprudence. At various times, rights related to voting have been categorized as *both* a private right and a public right. Earlier this year, this Court unanimously noted the historical practice of classifying "the right to vote… as [a] private right[]…." *Wasserman*, 2025 WL 309390 at *4. Yet that case relied heavily on this Court's decision in *SCV,* where voters were characterized as

"community stakeholders," possessing public rights: "in cases involving a public duty, these types of cases reflect that community stakeholders—citizens, residents, *voters*, and taxpayers—are injured when their local governments do not follow the law." 315 Ga. at 61 (emphasis added). At first blush, these cases may seem in conflict with one another. But on closer inspection, they acknowledge a careful balancing of interests between the common law norms imported to the Georgia Constitution through the Judicial Power Paragraph and the strict separation of powers mandated by Georgia's Constitution. GA. CONST. Art. I, Sec. II, Para. III. Reading these two cases together brings home that point.

In *SCV,* the Court considered whether organizations and an individual community member had standing to seek an injunction against the Henry County Board of Commissioners for its vote to remove historic monuments from public places in violation of a Georgia statute. 315 Ga. at 41–42. Analyzing the standing of the organizational plaintiffs and individual plaintiff, this Court acknowledged that "[f]ederal law does not control standing requirements in state courts," and embarked on a Georgia-focused "review [of] what standing is and how we have treated it historically." *Id.* at 43–44. As part of that review, this Court noted that voters were historically viewed as "community stakeholders" to whom "a *local* government owes a legal duty…" *Id.* at 53 (emphasis added). But when a litigant is *not* a community stakeholder possessing a public right, "a local government's duty to follow the law is not owed to the plaintiff; the plaintiff suffers no cognizable injury as a result of a violation of that duty; and the uninjured plaintiff cannot bring suit for the violation." *Id.* Thus, "the underlying principle is that people with a meaningful stake in their community are injured when their local governments violate the legal duty to follow the law." *Id.* at 54.

But this Court has been careful not to dispense this principle of community-based standing wholesale. As already mentioned, the Court has "long held that Georgia courts may not decide the constitutionality of statutes absent an individualized injury to the plaintiff." *Id.* at 54 n.13. And beyond the constitutional context, this Court has not allowed broad community standing when a plaintiff challenges *state* action. To be sure, the general rule is that "[w]here a public duty is at stake, a plaintiff's membership in the community provides the necessary standing to bring a cause of action to ensure a local government follows the law." *Id.* at 61. But that "reasoning and [the Court's] holding regarding standing [is] limited to suits against *local* governments." *Id.* at 61 n.19 (emphasis added). This limitation on the community standing doctrine stems from its tension with "the Georgia Constitution's Separation of Powers Provision…" *Id.*

In sum, *SCV* established that "from the earliest days of this Court, we understood the power of courts—the judicial power—to be limited to cases involving actual controversies, which requires a showing of some form of injury." *Id.* at 62. For injuries affecting public rights (*i.e.*, community-based injuries) by a local government, it is sufficient that a plaintiff be a member of the community and allege that the government failed to follow the law. These community-based rights extend to voting rights. *Id.* at 39–40. But those actions have thus far been cabined to suits against *local governments*. *Id.* And this limitation is rooted both in the common law, which "permitted proceedings to control the actions of the Crown *subordinates* that harmed the sovereign," *id.* at 53 (emphasis added), and in Georgia's structural separation of powers, *id.* at 61 n.19.

But this Court has previously—including just recently—categorized voting as a *private* right as well. In *Wasserman,* the Court noted that prior to the

adoption of the first Georgia Constitution in 1798, "rights held by individuals, like… *the right to vote*, were classified as private rights…" 2025 WL 309390 at *4 (emphasis added); *see also Manning v. Upshaw,* 204 Ga. 324, 327 (1948) ("the right of a voter to vote" is a "personal right, the denial of which would be an injury…").

*Wasserman* involved this Court's reexamination of its third-party standing doctrine. The Court concluded there, as it had before in *SCV,* that "questions about standing to invoke the judicial power of Georgia courts must be answered by construing and applying the Georgia Constitution, not by borrowing federal standing doctrine…" *Id.* at *3. Though much of the decision extends the logic of *SCV* to the issue of third-party standing, the characterization of voting rights as "private" and "individual" in *Wasserman* and elsewhere needs to be harmonized with their public character as identified in *SCV.*

This Court in *Wasserman* traced its classification of voting as a private right to Lord Holt's dissenting opinion in an early 18th century English vote denial case, *Ashby v. White,* as interpreted in a concurring opinion by Justice Frankfurter. *Wasserman,* 2025 WL 309390 at *4. Justice Frankfurter approvingly cited Lord Holt's opinion and remarked that it was "permeated with the conception that a voter's franchise is a personal right." But *Ashby* involved an actual and individualized vote *denial. See generally* 92 Eng. Rep. 126, 2 Ld. Raym. 938 (K.B. 1703). And this is an important distinction that demonstrates how *SCV* and *Wasserman* are consistent on standing in voting cases.

"Public wrongs" are a 'breach and violation of public rights and duties, which affect the whole community considered as a community.'" *Wasserman,* 2025 WL 309390 at *4 (citing 3 Blackstone, Commentaries on the Laws of England *2 (1768)). But *denying* someone the right to vote is different and is a private wrong because it affects the individual as an individual. As such, the

actual *exercise* of the franchise is a private right that is "held by individuals." *Id.* Thus, when the complainant in *Ashby* alleged that a constable *physically prevented* him from casting his vote, that was a private wrong experienced by the complaining party in an individual and particularized way. This was sufficient to afford him a right to seek redress in the courts of England for his personal injury.

But a government's failure to effect voting rights more generally—like failing to follow laws related to voting or that are tangential to the exercise of the franchise, are public wrongs shared by the community as a whole. Short of an actual denial of the right to vote to an individual, the public is generally harmed when government does not follow laws relating to voting. And as "community stakeholders," voters need not experience the harm directly or personally because "the violation of that legal duty constitutes an injury that our case law has recognized as conferring standing to those community stakeholders…" *SCV,* 315 Ga. at 39; *see also id.* at 60 (it was unsurprising to extend the logic behind citizen-taxpayer generalized grievance standing to voters "because they, like citizens and taxpayers, are community stakeholders. Voters may be injured when elections are not administered according to the law").



But because community-stakeholder standing dispenses standing to everyone in an entire community, even when a member doesn't possess the particularized harm required to assert other, private rights, this Court has limited those actions to local government officials. *Id.* at 48. This is in keeping with the longstanding practice of the Crown ensuring its *subordinate* officials acted in accordance with the law. *Id.* This distinction matters. Allowing community standing against state officials would give every voter standing to challenge any statewide law or regulation related to voting. Not only would this raise

serious separation of powers concerns, but it would also virtually guarantee that the Court would be required to issue advisory opinions.

In contrast, maintaining the distinction between state and local actions protects this Court and state officials from violating the constitutional directive that the branches of government "shall forever remain separate and distinct." GA. CONST. Art. I, Sec. II, Para. III. Because there is no *statewide* community-stakeholder right recognized in Georgia, community members cannot invoke this Court's jurisdiction solely because they disagree with the method in which state government carries out its duties: "We are aware of no line of authority supporting the idea that Georgia courts have the authority to resolve a dispute where no rights are violated or injury suffered." *SCV*, 315 Ga. at 62. To the contrary, such a "requirement would run afoul of the strict prohibition against issuing advisory opinions." *Id.* And entertaining cases that present no controversy "would encroach upon the powers reserved for the other co-equal branches of government." *Id.*

Put differently, generalized community-stakeholder standing creates no separation of powers concerns when the courts are merely requiring the State's *subordinate* levels of government to follow the law the State itself made. As discussed above, this concept dates back to well before the founding era. But no such extensive pedigree exists for exercising a similar authority against a *coordinate* branch of government—whether it be executive or legislative. Such action would be advisory and would violate the strict separation of powers codified in the Georgia Constitution, which applies to the State. *Building Authority of Fulton County v. State,* 253 Ga. 242, 247 (1984).

### 2. Constitutional challenges to state action require a particularized injury.

Further, the "long-standing precedent that, in order to challenge the constitutionality of *state* statutes, the Georgia Constitution requires a more particularized injury similar to the federal Article III injury-in-fact requirement," *Cobb County v. Floam,* 319 Ga. 89, 92 (2024) (emphasis original), also applies when plaintiffs challenge the constitutionality of state *action*. In those cases, a voter must similarly possess an individualized injury.

Plaintiffs claim that they are "challenging rules that would require local election officials to act in violation of the Election Code, *not* the constitutionality of a state statute." EVA.App.Br.33 (emphasis in original). But they are not suing local election officials. They are suing the State for actions taken by an executive-branch agency. That matters.

As discussed above, the requirement of a more-particularized injury has "long been rooted in principles of separation of powers." *Floam*, 319 Ga. at 92. Although *Floam* referenced only whether constitutional challenges to state *statutes* require a plaintiff with individualized harm, the fact that the additional standing requirement derives from the constitutional mandate to preserve a strict separation of powers between the co-equal branches of government ensures that the principle applies with equal force to state agency *actions*. *Id*. And of course, agency rulemaking of the kind at issue here is in many ways a legislative act. *See Long v. State,* 202 Ga. 235, 327 (1947).

Applying these standards to Plaintiffs here demonstrates they have no standing to bring this action. This Court should reverse the superior court and dismiss the case for lack of standing pursuant to Georgia's Constitution.

### B. Application of Georgia's law on standing to each of the individual and organizational plaintiffs.

This action includes a total of five plaintiffs. Three of the plaintiffs are organizations and two are individuals, with one of the individual plaintiffs also bringing suit in his capacity as a member of the Chatham County Board of Elections. This brief first addresses the lack of standing for the individual plaintiffs under Georgia law. It then turns to all of the organizational plaintiffs: Eternal Vigilance Action and Intervenor-Appellees Georgia State Conference of the NAACP ("GA NAACP") and the Georgia Coalition for the People's Agenda ("GCPA").[2]

#### 1. The individual plaintiffs have not shown they have standing as voters.

As already discussed in great detail, voters can have standing through an infringement on either a private or public right. Voters may have community-based standing to attack *local* government action, or individual standing in cases alleging a *denial* of their right to vote. *See* Section I.A. above. Plaintiffs here seek to establish standing on both grounds. Although they couch their purported injury in terms of both individual and community standing, they have only provided evidence of injury consistent with a theory of community-stakeholder standing. That is not sufficient to confer standing to bring an action against the State.

The individual voter plaintiffs have "expressed genuine concern and uncertainty as to whether the new SEB rules will impair their right to vote and

[2] The State did not raise issues with the standing of GA NAACP or GCPA in its principal brief because the superior court did not rule on the standing of either entity. *See Efficiency Lodge, Inc. v. Neason*, 316 Ga. 551, 567 (2023). But because Plaintiffs raised this issue in their briefs, this brief responds to those points.

that their votes 'will not be accurately counted or certified.'" EVA.App.Br.22. This "genuine concern" is not an allegation of vote denial. Indeed, the allegation is not even particular or personal to them. Rather, they generally *fear* that one day they *may* suffer some impairment to their right to vote as a result of the challenged SEB rules. V3-30–46. Of course, they allege nothing special or unique as to the way the challenged SEB rules might affect *them* negatively in a manner distinct from other voters. Thus, they have not alleged nor proven they have been individually denied their right to vote. All they can aver is that *if* new regulations are contrary to law and *if* they are carried out, then they *might* lack confidence that their vote will be counted properly.

This reality is confirmed in the litany of possible injuries they outline in their brief. For the Reasonable Inquiry Rule, Plaintiffs claim this *could* mean votes would be improperly counted. EVA.App.Br.24. For the Examination Rule, they are afraid someone *might* invalidate their votes, but cannot say for sure. *Id*. For the Absentee Ballot Return Rule, they say the rule *might* have limited their options. *Id*. at 25. For the Video Surveillance Rule, the only injury alleged is a *possible* removal of drop boxes they might have wanted to use or *maybe* that votes might not be counted. *Id*. For the Poll Watcher Rule, they are just worried that their votes *might* not be counted correctly because someone *might* get confused. *Id*. at 26. For the Daily Reporting Rule, they are afraid their local election officials *might* not review some election materials. *Id*. And for the Hand Count Rule, their concern is just that their votes *might* be delayed or discounted.[3] *Id*. But no individual voter is specifically harmed "if a vote is counted improperly, even if the error might have a 'mathematical impact on



[3] While Plaintiff Hall also points to potential uncertainty involving his role as a member of a Board of Elections, he alone is not the majority of the Board and there is no Board plaintiff in this case.

the final tally and thus on the proportional effect of every vote.'" *Wood v. Raffensperger*, 981 F.3d 1307, 1314–15 (11th Cir. 2020) (quoting *Bognet v. Sec'y Commonwealth of Pa.*, 980 F.3d 336, 356 (3d Cir. Nov. 13, 2020) (internal quotation marks omitted)). In other words, this action is an attempt to vindicate a public right under community-stakeholder standing, seeking to have State officials follow Plaintiffs' view of the law—not as an individual voter alleging a specific denial of their right to vote.

Because this case is a public-rights challenge, the individual voters may only bring cases against local governments. *Compare Barrow v. Raffensperger*, 308 Ga. 660 (2024) (individual vote denial case involving a mandamus action against the Secretary of State to order an election legally required for a Justice of the Supreme Court) *with Rothschild v. Columbus Consol. Govt.,* 285 Ga. 477, 478-79 (2000) (public right standing found for plaintiffs in mandamus action making general allegations as referendum voters that local governments failed to follow the law when carrying out a voter approved SPLOST project). And *Camp v. Williams*, 314 Ga. 699 (2022), is not to the contrary, as Plaintiffs claim. That case recognized the interest being vindicated was a "public right," but it involved the actions of *local* officials in placing an unqualified candidate on the ballot. *Id.* at 708. This Court also relied on other mandamus cases for the same concept. *Id.*

As discussed above, this is because public-right standing in the voting context is limited to *community standing*. And as already explained, while such standing does not require a particularized harm, it does not extend wholesale to State officials due to its potential intrusion into the separation of powers of co-equal branches of State government.[4]

[4] When vote denial claims implicate a private right, however, it is an injury to a "*personal* right…" *Upshaw,* 204 Ga. at 326 (emphasis added). Thus, the

### 2. Even if the individual voter plaintiffs could challenge state action, they are limited to seeking mandamus relief.

As noted in the State's principal brief, voter standing based on community-stakeholder status is limited to challenges to local government action. State.Br.18. But even if public voting rights could be vindicated at the state level under Georgia law, this Court has only ever extended them in mandamus actions. And this makes good sense under Georgia's standing law, because "the common law recognized several 'prerogative' (or extraordinary) writs," including mandamus. *SCV,* 315 Ga. at 48. Thus, it would have made sense that the "judicial power of the state" could include such actions, even when they involved state authority. Indeed, the argument can be made that a mandamus action forcing a state entity to follow the law actually *supports* the separation of powers among the co-equal branches of government by ensuring the will of the legislature is carried out and that the executive fulfills its obligation to "take care that the laws are faithfully executed." GA. CONST. Art. V, Sec. II, Para. II. And the narrower scope of relief provided by mandamus that merely "procure[s] the enforcement of a public duty," O.C.G.A. § 9-6-24, ensures one branch does not unduly trample the authority of another.

But Plaintiffs did not bring a mandamus action. They brought a declaratory-judgment action and so they cannot rely on their status as community stakeholders to provide standing to challenge State action.

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individualized injury occasioned by vote *denial* cases challenging state action through a prerogative writ like mandamus similarly satisfies the limitation found in constitutional cases that, "Georgia courts may not decide the constitutionality of statutes absent an individualized injury to the plaintiff." *SCV,* 315 Ga. at 54 n.13. Indeed, the "separation of powers questions" raised by applying community standing to suits against state government entities is alleviated in the same way by requiring an individual and particularized harm on the part of the plaintiff. *Id.* at 61 n.19.

### 3. Plaintiff Hall as a Board of Elections member has not demonstrated the violation of any right sufficient to afford him standing under Georgia law.

Having properly understood standing in Georgia courts as requiring the violation of an underlying private or public *right,* the allegations set forth by Plaintiff James Hall in his capacity as a member of the Chatham County Board of Elections are similarly insufficient. The trial court's opinion on the subject is largely unhelpful, because it only stated in a conclusory fashion that Plaintiff Hall had standing because he is "concerned about his role as a member of the Chatham County Board of Elections regarding whether to follow the SEB's rules or the Election Code." V3-49. And the trial court considered persuasive, apparently for Declaratory Judgment Act purposes, that "absent clarification on this issue, he is exposing himself personally to legal liabilities and public opprobrium or scorn related to the actions he takes." *Id.* It is not clear what *right* Plaintiff Hall is seeking to vindicate in this capacity.

Plaintiff Hall is not characterizing his work as an election administrator as a *voter's* right of either the private or public variety. At best, he is arguing that he is part of a larger board that makes collective decisions arguably affected by the challenged rules and that there is uncertainty as to what those rules require. But this does not support standing on this record. Plaintiff Hall has not alleged any personal *right* to be vindicated. Instead, he pursues a Declaratory Judgment Act claim as a single member of the Chatham County Board of Elections. The *Board*, whose responsibility it is to carry out the SEB rules, has not alleged any degree of uncertainty here to warrant adjudication under the DJA. In essence, what Plaintiff Hall brings is a third-party standing claim on behalf of the Chatham County Board of Elections.

But earlier this year, this Court specifically excised third-party standing doctrine from its jurisprudence. *Wasserman*, 2025 WL 309390 at *14.

Accordingly, even if Plaintiff Hall faced some uncertainty as to his legal obligations, it is the Board as a whole to whom any such certainty is owed. And it is the Board that must bring a Declaratory Judgment Act action, not Plaintiff Hall in his individual member capacity.[5]

#### 4. None of the organizational plaintiffs have adequately demonstrated standing under Georgia law.

The two Plaintiff briefs in this action and analysis of the trial court focus the entirety of their organizational standing inquiry on federal standing doctrine. As discussed in some detail already, federal standing doctrine does not and cannot control here. And under Georgia law, none of the organizational plaintiffs possess the requisite injury to maintain standing in this action. The "common law rules were the main legal backdrop against which our Constitution granted the 'judicial power' to Georgia courts in 1798." *Wasserman,* 2025 WL 309390 at *8. And under the common law, the standing inquiry centered on "whether there has been a *violation of a right*." *Hendrick,* 4 Ga. at 261 (emphasis added). As discussed above, Georgia law recognizes private rights and a limited class of public rights. None of the organizations here can assert either.



When the trial court analyzed organizational standing, it focused on the federal "diversion of resources" standard. But that was error. And the intervenors' efforts to revive federal organizational standing doctrine in their brief are

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[5] To the extent Plaintiffs rely on the federal "one good plaintiff" rule, EVA.App.Br.19 n.2, that rule is inapplicable in Georgia. Plaintiffs' citation to *BVMF* for this proposition is not to the holding. *See* 313 Ga. at 378. And justiciability must be confirmed as to "each claim raised by each plaintiff," not a blanket grant of standing after one plaintiff cleared the mark. *Sentinel Offender SVCS., LLC v. Glover*, 296 Ga. 315, 321 (2014). *See also* Chris Conrad, *Judicial Power in the Laboratory: State Court Treatment of the One Good Plaintiff Rule*, 108 GEO. L.J. 767, 784 (2020).

unavailing. As this Court recently reaffirmed: "*SCV* made clear that question about standing to invoke the judicial power of Georgia courts must be answered by construing and applying the Georgia Constitution, not by borrowing federal standing doctrine…" *Wasserman*, 2025 WL 309390 at *3. And Plaintiffs' reliance on the diversion of resources standard articulated in *BVMF*, EVA.App.Br.34–35, NAACP.App.Br.26, makes little sense after this Court cited precisely that case as an example of its now discarded practice of "uncritically adopt[ing] federal jurisprudence on the question of standing." *SCV,* 315 Ga. at 45. Properly applying Georgia's polished and independent doctrine of constitutional standing demonstrates that none of the organizations have standing.[6]

*a. Organizational standing doctrine.*

In *SCV,* organizations failed to establish standing in their own right. As this Court noted, the various groups "did not allege that they are citizens, residents, or taxpayers" of the relevant jurisdiction they sued. *Id.* at 66. And they "have set forth no allegations showing that they are community stakeholders, such that the duty created by [the historical monument statute] is owed to them." *Id.* Accordingly, any violation of the law "does not result in a cognizable injury to the Sons of Confederate Veterans groups; and as a result, they do not have independent, direct standing as an organization." *Id.*



[6] Plaintiffs discuss *Havens Realty Corp. v. Coleman*, 455 U.S. 363 (1982) in detail, including the recent clarification from the U.S. Supreme Court in *FDA v. Alliance for Hippocratic Medicine*, 602 U.S. 367 (2024). *See* EVA.App.Br.36–38, NAACP.App.Br.24–27. But none of that matters, because Plaintiffs continue to try to import federal standing requirements into Georgia law. Further, *BVMF* did not "affirm" or "clarify" *Havens*, because it uncritically imported federal standing law, which this Court prohibits. *Wasserman*, 2025 WL 309390 at *3. And even if it mattered, *FDA* limited the application of diversions of resources to establish standing by clarifying that direct organizational injury—not just spending to communicate a different message—was required even under federal law. 602 U.S. at 394–95.

The same is true here because all organizations focus their respective arguments on the alleged injury from responding to regulations with which they disagree. *See, e.g.*, NAACP.App.Br.25 (describing the injury of GA NAACP and GPCA as "diverting resources from their core activities because of the Rule[s]"); EVA.App.Br.34–40 (articulating a diversion of resources argument based on the inapplicable federal standard). But as already discussed, that is not the salient question under Georgia standing law. At best, this organizational diversion of resources is an injury without a right. And does not provide standing in Georgia because a plaintiff asserting "only that she had suffered some real-world harm or damage was not a sufficient basis for maintaining an action." *Wasserman*, 2025 WL 309390 at *6; *see also SCV,* 315 Ga. at 50 ("For an actual controversy to exist, a party must have some *right* at stake that requires adjudication to protect it"). The parties have demonstrated no such right, so they cannot have direct organizational standing.

*b. Associational standing doctrine.*

Intervenor-Plaintiffs also argue in their brief that they have associational standing, focusing the entirety of their argument on this distinctly federal concept. NAACP.Br.27–30. But no such form of standing can proceed under Georgia standing law. It is simply another "uncritically adopted" doctrine of federal law. *SCV*, 315 Ga. at 45. But that practice has ended, "however convenient [it] might have been." *Wasserman*, 2025 WL 309390 at *3. Moreover, the requirement "that a plaintiff must assert a violation of *her* rights to maintain an action in Georgia courts is not a prudential rule subject to judge-made exceptions; it is the bedrock requirement for invoking the judicial power granted by the Georgia Constitution." *Id*. at *10 (emphasis added).

Accordingly, this Court should decline Plaintiffs' invitation to install the federal doctrine of associational standing as part of Georgia's constitutional

standing jurisprudence. It has no basis in the Georgia Judicial Power Paragraph or in Georgia's common law history. And this Court recently explained that "it is doubtful that [associational standing] can properly remain a part of Georgia law." *Id.* at *14 n.14. For all these reasons, the organizational plaintiffs do not have standing to bring this action.

## II. Even if Plaintiffs had standing, they lack the requisite uncertainty to maintain an action under the Declaratory Judgment Act, meaning their claims are not justiciable.

Even where parties make serious arguments, courts are not "empowered to decide those arguments merely because an actual controversy exists; the plaintiffs before [this Court] must also seek relief of the right kind." *Floam,* 319 Ga. at 89. Here, all Plaintiffs seek declaratory relief as a vehicle to obtain injunctive relief. But even if they had standing, they cannot obtain a declaratory judgment and thus cannot obtain injunctive relief.

Under the Declaratory Judgment Act, courts may "declare rights and other legal relations of any interested party petitioning for such declaration…" O.C.G.A. § 9-4-2(a). When this Court first considered the scope of the Act, it observed that its purpose was to provide protection for parties that "differ between themselves as to what their rights are, and who wish to find them out before taking some dangerous step which might or might not be authorized." *Shippen v. Folsom,* 200 Ga. 58, 67 (1945). Thus, the Court must be able to alleviate the uncertainty related to future conduct of the party bringing the action. *See Floam,* 319 Ga. at 99 (citing *SJN Props v. Fulton County Bd. Of Assessors,* 296 Ga. 793, 803 (2015)). In other words, "the relief sought by a plaintiff must have some immediate legal effect on the parties' conduct, rather than simply burning off an abstract fog of uncertainty." *City of Atlanta v. Atlanta Indep. Sch. Sys.,* 307 Ga. 877, 880 (2020). But an "abstract fog of uncertainty" is all Plaintiffs have here.

Initially, Plaintiffs point to no conduct *of their own* that needs governing. The organizations do not count ballots. The individual voters likewise do not. And Plaintiff Hall is a single vote on a Board of Elections. Thus, no ruling could have an "immediate legal effect" on their conduct. *Id.*

This is underscored by their lack of any threat of future injury. In the Intervenor-Appellee response brief, for example, the organizations claim to have "faced an imminent threat of future injury because of the Hand Count Rule" in two ways. First, because "Hand counting is unreliable," and "could result in accidental deliberate counting delays that threaten the timely certification of election returns." NAACP.App.Br.31. Even if this were all true, that says nothing about their *own uncertainty* as to the organization's future actions. Indeed, the Hand Count Rule does not create any uncertainty whatsoever for the organizations, because it simply doesn't apply to them. This fails the standard articulated in *Floam,* where Plaintiffs must "allege that *they* are at risk of taking some undirected future action incident to their rights and that such action might jeopardize their interests." 319 Ga. at 100 (emphasis original).



The second purported future injury actionable under the Act fares no better. Intervenor-Appellees claim they proved "that their voting members faced uncertainty about how they could act to avoid disenfranchisement if the rule remained in place." NAACP.App.Br.31.

As an initial matter, the organizations are not the proper party to bring such a claim to this Court, because Georgia law does not recognize associational standing. *See* Section I.B.4.b. But even if the individual members were before the court, an action for declaratory judgment still would not lie. Plaintiffs attempt to cabin *Floam's* applicability to elections that "had already occurred." NAACP.App.Br.31; EVA.App.Br.43. But this Court in *Floam* plainly

addressed future elections as well. The issue instead centered on whether the *party* bringing the action was at risk of "taking some undirected future action incident to their rights and that such action might jeopardize their interests." 319 Ga. at 100. Plaintiffs assert this uncertainty on behalf of their members that "had to decide whether to vote on Election Day, when the Hand Count Rule would have applied, or to instead endeavor to vote during in-person advanced voting or apply to vote by mail." NAACP.App.Br.32. But this is not uncertainty as to a right possessed by their members. It is simply a choice. Of course, selecting one course of action over another might make Plaintiffs' members feel more confident about the status of their vote. But "whether they can participate in their [] government affairs 'confidently' is simply insufficient to warrant declaratory relief." *Floam,* 319 Ga. at 100.

Likewise for the individual voters, no action for declaratory relief lies. They similarly rely on *possible* injuries and point out *possible* future harm in future elections. EVA.App.Br.42–43. But that kind of uncertainty was not enough even when the Floams had future elections where they did not think their vote would count in the correct district. *Floam*, 319 Ga. at 100. Just as the members of the Intervenor-Appellees face a choice in how to cast their vote that could produce varying degrees of confidence, so too do the individual voter plaintiffs. But that is not sufficient uncertainty to invoke the Declaratory Judgment Act. Finally, Plaintiff Hall cannot invoke the Declaratory Judgment Act as a sole member of a Board of Elections that has not itself brought a claim alleging actionable uncertainty of the Board itself.

In sum, even if some or all of the plaintiffs had standing, they have not alleged sufficient uncertainty as to their conduct to warrant declaratory relief.

## III. There is no basis to find Plaintiffs' claims justiciable under Georgia law.

None of the plaintiffs have sufficiently alleged or proven an injury of right capable of affording them standing under Georgia law. The individual voters have not alleged vote denial or other particularized and private right based voter injury, so this Court must uphold the separation of powers principles in the Georgia Constitution and refrain from directing a coordinate branch of government without a showing of particularized harm. The voter plaintiffs may have community standing, but that does not extend beyond the realm of local government action. And even if this Court were inclined to test the bounds of the separation of powers, it should only do so through mandamus, which the Plaintiffs never sought here.

Similarly, Plaintiff Hall has no standing to bring an action challenging the regulations in his capacity as a member of the Board of Elections of Chatham County. He advanced no private-injury basis for securing standing, and he clearly has no public right to vindicate as a Board Member. At best, he has brought a claim of third-party standing on behalf of the entire Board, which this Court does not recognize.

The organizational plaintiffs fare no better. They have premised their theory of standing on a doctrine this Court no longer adheres to. They have alleged no private or community-based right to bring this action.

## IV. Without standing for declaratory relief, there is no basis to enter an injunction.

Because Plaintiffs do not have standing for declaratory relief, the superior court should never have entered an injunction. When a plaintiff has "no standing to pursue" declaratory relief, "[c]onsequently, they have no standing to pursue injunctive relief, either." *Gaddy v. Ga. Dep't of Revenue*, 301 Ga. 552, 560 (2017). As a result, this Court need not reach any of the merits-based

questions about whether the challenged rules conflict with the Election Code or the Constitution, or whether the SEB could promulgate any rules at all.

## V. The SEB has the authority to promulgate rules governing the election process.

Even if this Court considers the merits, Plaintiffs also claim the SEB could not promulgate *any* rules, not just the ones they challenge here. EVA.App.Br.65–69, NAACP.App.Br.14–18. Not only is this incorrect, it calls into question rules like those governing free voter ID cards, Ga Comp. R. & Regs. 183-1-20-.01; voting equipment security, Ga Comp. R. & Regs. 183-1-12-.05; pre-election testing, Ga Comp. R. & Regs. 183-1-12-.08; and the display of candidate names on the ballot, Ga Comp. R. & Regs. 183-1-11-.02. State agencies have the ability to promulgate rules because the legislature "cannot find all facts and make all applications of legislative policy." *Dep't of Transp. v. City of Atlanta*, 260 Ga. 699, 703 (1990). The legislature provided that authority, *see* State.Br.38–39, and there is no basis to eliminate all SEB rules through this challenge.



## CONCLUSION

This Court should reverse the trial court's injunction.

Respectfully submitted this 7th day of February, 2025.

## CERTIFICATION OF WORD COUNT

This submission does not exceed the word-count limit imposed by Rule 20.

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## CERTIFICATE OF SERVICE

This is to certify that I have this day filed the foregoing **STATE OF GEORGIA'S REPLY BRIEF** with the Court's e-filing system which will provide service to all counsel of record.

I certify that there is a prior agreement with all parties to allow documents in a PDF format sent via e-mail to suffice for service under Supreme Court Rule 14.

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This 7th day of February, 2025.

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