In the Superior Court of Fulton County

State of Georgia

Fulton County Republican Party,
Plaintiff
versus
Fulton County Board of Commissioners et al,
Defendants

Case № 25CV008083

ORDER GRANTING WRIT OF MANDAMUS

The court heard this matter on August 1, 2025. The plaintiff Fulton County Republican Party (GOP) filed its petition on June 1, 2025 seeking to force the Fulton County Board of Commissioners (BOC) to appoint the two individuals nominated by the plaintiff.

Counsel agreed there are no questions of fact for the court to decide.

It is undisputed that Stephanie Endres is the chairwoman of the Fulton County GOP. She duly nominated Jason Frazier and Julie Adams for the July 1, 2025 to June 30, 2027 term of the BOE.

It is undisputed that Frazier and Adams are electors and residents of Fulton County, and that they are not candidates for any elected office.

It is not disputed that the Fulton County GOP is entitled to submit its nominees.

It is undisputed that the BOC refused at its meeting held on May 21, 2025, to appoint Frazier and Adams for a variety of reasons other than the lack of the qualifications set out in the local legislation that created the Fulton County Board of Registration and Elections (BOE).

The local legislation creating the Fulton County BOE appears in 1989

Ga.Laws, p. 4577, as amended by 2019 Ga.Laws p. 4181 § 2.

The 1989 version Section 1 provides:

> Pursuant to Code Section 21-2-40 of the O.C.G.A., there is created the Fulton County Board of Elections and Registration, which shall have the powers and duties election superintendent of Fulton County relating to the conduct of elections and the powers and duties of the board of registrars relating to the registration of voters and absentee balloting procedures.

Section 1 of the 2019 act provides:

> The board shall be composed of five members, each of whom shall be an elector and resident of Fulton County, **who shall be appointed in the following manner**:
> (1) Two members shall be appointed by the governing authority of Fulton County from nominations made by the chairperson of the county executive committee of the political party whose candidates at the last preceding regular general election held for the election of all members of the General Assembly received the largest number of votes in this state for members of the General Assembly;
> (2) Two members shall be appointed by the governing authority of Fulton County from nominations made by the chairperson of the county executive committee of the political party whose candidates at the last preceding regular general election held for the election described in paragraph (1) of this section received the second largest number of votes; and
> (3) One member shall be appointed by the governing authority of Fulton County, which member shall be designated permanent chairperson of the board.

The amendment changed "chairman" to "chairperson." The court did not find any other revisions.

Section (3) of the 1989 legislation provides that no person who holds elective public office shall be eligible to serve as a member of the board during

the term of such office, and the position of any member of the board shall be vacant upon such member qualifying as a candidate for elective public office. This is not an issue in this case.

Section (4) of the 1989 legislation imposes an affirmative time mandate:

> The appointment of each member shall be made no later than 30 days preceding the date at which such member is to take office by notifying the clerk of the Superior Court of Fulton County in writing of the name and address of the person appointed. The clerk of the Superior Court of Fulton County shall make a record of each such notification on the minutes of the court, certify such appointments to the Secretary of State, and provide for the issuance of appropriate commissions, within the same time and in the same manner as provided by law for registrars. In the event the appointing authority fails to make a regular appointment within the time specified in this section or fails to make an interim appointment within the time specified in this section or fails to make an interim appointment to fill a vacancy within 90 days after the creation of such vacancy, such regular or interim appointment shall be made forthwith by the governing authority.

There is no dispute that these are the provisions of the local legislation that apply to the appointment process.

The respondent BOC contends the "shall" is not mandatory, but rather "directory", and that the county commissioners can exercise discretion to reject any nominee for any reason. Its pleadings provide a number of such reasons.

Counsel in their oral arguments correctly focused on the pivotal issue in this case, and that is how this court should interpret General Assembly's use of the word "shall" in the local legislation creating the Fulton County BOE.

Since this is a matter of interpretation of legislative language, this court looks to the following cases.

On July 2, 2025 the Georgia Court of Appeals made this finding:

The word "shall" appears seven times in subsection (k) and it appears three times in the two sentences at the end of the subsection that specifically apply to certification by the superintendent. As the Supreme Court emphasized in Eternal Vigilance, —— Ga. at —— (6) (c) (iii), —— S.E.2d ——, 2025 WL 1633792, at 24 (6) (c) (iii), 2025 Ga. LEXIS 131, at 67 (6) (c) (iii), "[t]he word 'shall' is generally construed as a word of command. The import of the language is mandatory." Hall County Bd. of Tax Assessors v. Westrec Properties, 303 Ga. 69, 75 (3), 809 S.E.2d 780 (2018). Based on the foregoing, Adams' contention that the trial court erred by declaring she had a mandatory duty to certify election results is without merit. See Eternal Vigilance, —— Ga. at —— (6) (c) (iii), —— S.E.2d ——, 2025 WL 1633792, at 24 (6) (c) (iii), 2025 Ga. LEXIS 131, at 67 (6) (c) (iii) ("[a]llowing election officials to delay certification to conduct an undefined 'reasonable inquiry' into the validity of the results is incompatible with the clear requirements of OCGA § 21-2-493.").[1]

The Court of Appeals also made this finding in a separate case:

As noted above, the relevant statute provides that "[a] petition alleging dependency shall be verified[.]" OCGA § 15-11-152. As used in a statute, the term "shall" is recognized as a command, meaning that a requirement preceded by that word is mandatory. See City of Milton v. Chang, 373 Ga. App. 667, 679 (3) (a), 906 S.E.2d 784 (2024) (when interpreting a statute, "[t]he general rule is that 'shall' is recognized as a command, and is mandatory"); In the Interest of I. P., 371 Ga. App. 790, 793 (1), 903 S.E.2d 184 (2024) (holding that the use of the term "shall" in the juvenile code "denotes mandatory conduct"). And when applying a statute, this Court cannot construe it to "add to, take from, or vary the meaning of unambiguous words" contained therein. In the Interest of I. P., 371 Ga. App. at 793 (1), 903 S.E.2d 184.[2]

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[1] Adams v. Fulton Cnty., A25A0685, 2025 WL 1822293, at 4 (Ga. Ct. App. July 2, 2025).

[2] Interest of Ha. H., 374 Ga. App. 468, 474, 913 S.E.2d 107, 113 (2025).

In Clark v. State, the Supreme Court reversed the Court of Appeals ruling that the language of O.C.G.A. § 17-10-1(a)(1)(B) was "directory" as opposed to mandatory. Justice Shawn LaGrua reminded us that:

> In statutory interpretation cases such as this, it is well settled that a statute draws its meaning from its text. When interpreting a statute, we must give the text its plain and ordinary meaning, view it in the context in which it appears, and read it in its most natural and reasonable way. For context, we may look to other provisions of the same statute, the structure and history of the whole statute, and the other law – constitutional, statutory, and common law alike – that forms the legal background of the statutory provision in question. When we construe such statutory authority on appeal, our review is de novo.[3]

She went on to observe: "At issue here is whether the term 'shall'—as used throughout the pertinent provisions of the statute—demonstrates that these procedures are meant to be mandatory or are merely directory."

The Clark opinion also notes that the Court of Appeals used this rule of statutory construction to find that the language in issue was directory:

> Language contained in a statute which commands the doing of a thing within a certain time, when not accompanied by any negative words restraining the doing of the thing afterward, will generally be construed as merely directory and not as a limitation of authority, and this is especially so where no injury appeared to have resulted from the fact that the thing was done after the time limited by the plain wording of the Act.... A statutory provision is generally regarded as directory where a failure of performance will result in no injury or prejudice to the substantial rights of interested persons, and as mandatory where such injury or prejudice will result.

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[3] Clark v. State, 321 Ga. 35, 40, 912 S.E.2d 593, 597 (2025).

Justice LaGrua continued:

> We disagree with the Court of Appeals that the statute is merely directory. First, the term "shall" is generally construed as mandatory *unless there is a contextual reason to think it is merely permissive.* [Emphasis added.] See Bell v. Hargrove, 313 Ga. 30, 33-34 (2), 867 S.E.2d 101 (2021). See also Carr v. State, 303 Ga. 853, 856-857 (2), 865 (5) (a) n.15, 815 S.E.2d 903 (2018) ("Although the word 'shall' is generally construed as a mandatory directive, this Court has explained that it need not always be construed in that fashion, if the context in which it is used indicates a permissive instruction.") There is no such contextual reason here; to the contrary, the context suggests that "shall" is mandatory. Among other things, the statute prescribes hard deadlines for both DCS and the trial court to carry out their tasks.

This court notes the failure to make these appointments leaves the two slots of one fo the two political parties vacant when their term should have begun on July 1, 2025.

The courts finds the lack of these appointments harms the election process and deprives the nominating party of representation on the BOE.

The court also does not find anything in the context of this local legislation to support a conclusion that the "shall" in the appointment clause is directory only. The language in Section (4) sets a timetable for the completion of the appointment process. That timetable enables the appointees to serve their full term of office on the BOE.

The existence of a statutory timetable parallels the finding made by the Supreme Court in Clark v. State which is that the statute itself imposes deadlines for the performance of the duties by the BOC.

The court also notes that the appointment statute contains no provision to support the respondents' position that it should have the power to veto any

given nominee and force the county chairperson to submit other nominees.

There is nothing in the statute to support the BOC theory that the county commissioners can veto the chairperson's nominees other than for failure of the nominee to meet the two qualifications and one restriction (be a county resident, be an elector, and cannot be a holder of elected office).

The court finds that the "shall" as used here is mandatory, and the BOC does not have discretion to disapprove an otherwise qualified nominee.

The court grants the petitioner's request for a writ of mandamus directing the BOC to comply with the statute: The Board shall appoint the two members as nominated by the county executive committee chairperson. Those nominees are Jason Frazier and Julie Adams.

The court notes that this court does not view this ruling as doing anything other than complying with the statutory mandate to appoint the persons nominated. The General Assembly placed the discretion in the county executive committee chairperson.

It is up to the Fulton County Commission to follow the law and honor that person's nominations. The Writ of Mandamus is granted.

So ordered this August 3, 2025.

David Emerson
Senior Judge of Superior Courts
Presiding in Fulton Superior Court

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