

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

**REPUBLICAN NATIONAL COMMITTEE, a national political party committee; and the GEORGIA STATE REPUBLICAN PARTY, INC., a state political party committee,**

**Plaintiffs,**

**v.**

**STATE ELECTION BOARD, an agency of the State of Georgia; BRAD RAFFENSPERGER, in his official capacities as the Secretary of State of Georgia and the Chairman of the State Election Board; REBECCA N. SULLIVAN, in her official capacity as the Vice Chair of the State Election Board; DAVID J. WORLEY, in his official capacity as a member of the State Election Board; MATTHEW MASHBURN, in his official capacity as a member of the State Election Board; and ANH LE, in her official capacity as a member of the State Election Board,**

**Defendants,**

**and**

**DEMOCRATIC PARTY OF GEORGIA, INC. and the DSCC,**

**Intervenor-Defendants.**

**CIVIL ACTION FILE NO.: 2020CV343319**

**HON. KIMBERLY M. ESMOND ADAMS**

**FINAL ORDER DISMISSING PLAINTIFFS' MOTION FOR TEMPORARY  
RESTRAINING ORDER OR INTERLOCUTORY INJUNCTION AND  
DISMISSING INTERVENOR-DEFENDANTS' MOTION TO DISMISS AS MOOT**

The above-styled case came before the Court on Plaintiffs' Motion for Temporary Restraining Order or Interlocutory Injunction filed on December 11, 2020, and Intervenor-Defendants' Motion to Dismiss filed on December 22, 2020. Pursuant to O.C.G.A. § 9-11-65 and

O.C.G.A. § 9-10-2, the Court set this matter for an emergency hearing at the earliest possible opportunity on December 24, 2020. The parties appeared and presented oral argument. Leave was granted to the African Methodist Episcopal Church, Latino Community Fund, Inc., and the Black Alliance for Just Immigration to file an Amicus Curiae brief on December 23, 2020. The Georgia State Conference of the NAACP, Georgia Coalition for the People’s Agenda, Inc., and the League of Women Voters of Georgia also moved for leave to file an Amicus Curiae brief. However, because their Motion for Leave to File an Amicus Curiae Brief (“Motion for Leave”) was not filed until after business hours on December 23, 2020, the Superior Court Clerk’s Office did not accept the filing until 8:31 a.m. on December 28, 2020, following the two-day Christmas holiday. Consequently, the Court was unable to consider the Motion for Leave or the matters raised in the amicus brief before rendering its ruling in this matter from the bench in open court on December 24, 2020. Hence, NAACP’s Motion for Leave is **DISMISSED AS MOOT**. Turning back to the case at bar, upon consideration of the entire record, applicable authority, and the argument of Counsel, Plaintiffs’ Motion for Temporary Restraining Order or Interlocutory Injunction is hereby **DISMISSED** for lack of subject matter jurisdiction and Intervenor-Defendants’ Motion to Dismiss is **DISMISSED AS MOOT**.

### **FACTUAL BACKGROUND**

This action arises out of alleged violations of procedural and statutory safeguards that ensure an orderly, fair, non-partisan and uniform elections process throughout the State of Georgia. Plaintiffs Republican National Committee and the Georgia State Republican Party, Inc. contend that during early voting and Election Day voting for the November 4, 2020 General Election (hereinafter “2020 Election Period”) (1) poll watchers were prohibited from observing the conduct of the election and the counting and recording of votes as permitted by O.C.G.A. § 21-2-408; (2)

the use of ballot “drop boxes” by voters outside of the Board of Registrars or Absentee Ballot Clerk’s normal business hours violated O.C.G.A. § 21-2-385; and (3) the public’s inability to obtain surveillance video recordings of various drop box locations upon request, as permitted by State Election Board Rule 183-1-14-0.8-.14(5)<sup>1</sup>, violated the Rule as well as the Open Records Act as promulgated in O.C.G.A. § 50-18-71(b)(1)(A).

As a result of these alleged failures during the 2020 Election Period, Plaintiffs sought emergency relief to enjoin the State Elections Board, Defendant Raffensperger, as the Secretary of State, and four other members of the State Election Board, Rebecca N. Sullivan, David Worley, Matthew Mashburn and Anh Le, (collectively “State Defendants”) from continuing these alleged prohibited practices during early voting and Election Day voting for the January 5, 2021 Run-off Election (hereinafter, “2021 Run-off Election Period”). Plaintiffs also move for the issuance of an injunction requiring the State Defendants, led by Secretary Raffensperger, to prepare and disseminate training materials or similar guidance and instruction to county registrars and election superintendents in order to eliminate the alleged failures cited by Plaintiffs with respect to poll watchers and absentee ballot boxes during the 2020 Election Period.

State Defendants contend that the Court lacks subject matter jurisdiction because Plaintiffs’ claims are barred by the doctrine of sovereign immunity. Alternatively, the State Defendants posit that Plaintiffs’ claims should be barred by the doctrine of laches and further that Plaintiff’s claims must fail, in any event, because Plaintiffs are unable to satisfy the four (4) requirements necessary to obtain injunction relief.

Defendant-Intervenors Democratic Party of Georgia, Inc. and the DSCC opposed

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<sup>1</sup> See 183-1-14-0.8-.14 Secure Absentee Ballot Drop Boxes, Ga. Sec’y of State, <https://sos.ga.gov/admin/uploads/SEB%20Rule%20183-1-14-0.8-.14.pdf>.

Plaintiffs' Motion for TRO and sought dismissal based on their contention that the law in Georgia and the State Election Board Rules do not provide the relief Plaintiffs seek absent a complete revamping of the elections procedures currently in place in the midst of early voting.

### **LEGAL ANALYSIS**

The State Defendants seek dismissal of Plaintiffs' Complaint based on a lack of subject matter jurisdiction pursuant to O.C.G.A. § 9-11-12(b)(1). Because a motion to dismiss asserting sovereign immunity is based upon the trial court's lack of subject matter jurisdiction rather than the merits of the litigant's claim, the party seeking to benefit from the waiver of sovereign immunity has the burden to establish waiver. Evans v. Gwinnett County Public Schools, 337 Ga. App. 690, 692, 788 S.E.2d 577, 580 (2016). Sovereign immunity of a state agency is not an affirmative defense, therefore, the merits of the case cannot be addressed and only the issue of the trial court's jurisdiction to hear the case is before the court. Dep't of Transp. v. Dupree, 256 Ga. App. 668, 671, 570 S.E.2d 1, 5 (2002). In the absence of subject matter jurisdiction, dismissal of the lawsuit is mandatory. McConnell v. Dep't of Labor, 302 Ga. 18, 18, 805 S.E.2d 79, 80 (2017)(Because the question of sovereign immunity is a jurisdictional one, a finding by a court that sovereign immunity bars a litigant's claims warrants dismissal.). As a result, the State Defendants' contention that the Court lacks subject matter jurisdiction is a procedural matter that must be addressed first, before considering the merits of Plaintiffs' Motion for TRO or Defendant-Intervenors' Motion to Dismiss. Id.

Here, Plaintiffs move for immediate injunctive relief against the State Election Board, the Secretary of State as well as four other State Election Board members in their official capacities. A lawsuit against a state agency and/or a state officer in his official capacity amounts to a lawsuit against the State itself and the doctrine of sovereign immunity bars lawsuits against the State where

the State has not consented. Lathrop v. Deal, 301 Ga. 408, 425, 801 S.E.2d 867, 880 (2017). Consent to be sued can only be given by the Constitution itself or by an act of the General Assembly. Id.

The State in this case has not waived sovereign immunity or consented to be sued. Furthermore, the State Defendants have introduced evidence that none of Plaintiffs' claims arise out of statutes or laws where there has been a constitutional waiver. Plaintiffs', as the party seeking to benefit from the waiver of sovereign immunity, also failed to reach their burden of establishing that the State Defendants waived sovereign immunity. Evans, 337 Ga. App. at 692, 788 S.E.2d at 580. Additionally, the fact that Plaintiffs seek injunctive relief or declaratory relief against the State Defendants does not alter the implications of sovereign immunity. Georgia Dep't of Nat. Res. v. Ctr. for a Sustainable Coast, Inc., 294 Ga. 593, 596, 755 S.E.2d 184, 188 (2014) ("sovereign immunity is a bar to injunctive relief"); Lathrop v. Deal, 301 Ga. 408, 408, 801 S.E.2d 867, 869 (2017) (the doctrine of sovereign immunity and its preclusion that courts cannot consider lawsuits against the State without its consent "likewise extends to suits for declaratory relief" even if constitutional claims are raised).

"[L]ong-standing statutory and case law requir[es] courts to dismiss an action 'whenever it appears, by suggestion of the parties or otherwise, that the court lacks jurisdiction of the subject matter.'" Dep't of Transp. v. Kovalcik, 328 Ga. App. 185, 190, 761 S.E.2d 584, 588 (2014). Because the Court has found that sovereign immunity serves as a bar to Plaintiffs' claims, the Court is precluded from considering the merits of Plaintiffs' request for injunctive and declaratory relief or the merits of Defendant-Intervenor's Motion to Dismiss. Georgia Association of Professional Process Servers v. Jackson, 302 Ga. 309, 311, 806 S.E.2d 550, 553 (2017). Accordingly, Plaintiffs' Complaint fails based on a lack of subject matter jurisdiction and, as such,

must be dismissed.

**CONCLUSION**

For the reasons discussed herein, Plaintiffs' Motion for Temporary Restraining Order or Interlocutory Injunction is hereby **DISMISSED** for lack of subject matter jurisdiction and Intervenor-Defendants' Motion to Dismiss is hereby **DISMISSED AS MOOT**.

**SO ORDERED**, this 29<sup>th</sup> day of December, 2020.

  
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HONORABLE KIMBERLY M. ESMOND ADAMS  
SUPERIOR COURT OF FULTON COUNTY  
ATLANTA JUDICIAL CIRCUIT

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