

IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

CAROLINE JEFFORDS and ROBIN
SOTIR,

Petitioners,

v.

Civil Action No. 2020CV343938

FULTON COUNTY, FULTON
COUNTY BOARD OF REGISTRA-
TION AND ELECTIONS, and FUL-
TON COUNTY CLERK OF SUPERIOR
AND MAGISTRATE COURTS,

Respondents.

**PETITIONERS JEFFORDS AND SOTIR’S POST-HEARING
BRIEF IN OPPOSITION TO RESPONDENT FULTON COUNTY’S
UNTIMELY MOTION TO DISMISS**

“[A]t the core,” the Court has explained, this is a “governmental transparency case.”—Chief Judge Brian J. Amero (Hr’g Tr. 6:6-7, May 21, 2021).

Immunity. Respondent Fulton County says that it is above the law. It claims sovereign immunity—that relic of monarchy dubiously declaring that the king may do no wrong. It’s an odd position to take in a case about ballots in a democratic election. In any event, the County has no immunity here for two reasons.

First, under the Georgia Constitution, “Sovereign immunity is hereby waived for actions in the superior court seeking declaratory relief from acts of . . . any county . . . or officer or employee thereof . . . in violation of the laws or the Constitution of this state or the Constitution of the United States.” Ga. Const. Art. I, § II, ¶ V(b)(1).

This is an action in the superior court seeking declaratory relief for the County and its employees' constitutional violations. The Georgia Constitution thus obviates the County's immunity argument.

The County tries to avoid that waiver by arguing that it does not apply to anything that happened before January 1, 2021. But that's incorrect. The amendment says, "Such waiver of sovereign immunity under this Paragraph *shall apply to past, current, and prospective acts* which occur on or after January 1, 2021." *Id.* Under the last-antecedent rule of interpretation, the phrase "which occur on or after January 1, 2021" only modifies the phrase "prospective acts" because there is no comma after "acts." *See, e.g., Am. Int'l Grp., Inc. v. Bank of Am. Corp.*, 712 F.3d 775, 781-82 (2d Cir. 2013). It does not modify "past" or "current." *See id.* So the waiver applies to "past . . . acts." This reading makes sense because past acts typically aren't also future acts. Besides, under any other reading, the phrase "shall apply to past" and "current . . . acts" would be mere surplusage. And "fundamental [interpretative] rules" mandate that courts "avoid a construction that makes some language mere surplusage." *See, e.g., Truist Bank v. Stark*, 854 S.E.2d 784, 786-87 (Ga. Ct. App. 2021).

Second, O.C.G.A. § 21-2-500(a) also waives sovereign immunity by allowing superior courts to "direct[]" that the County unseal the ballots here and make them available for inspection. Petitioners have asked for that relief. By constitutional amendment and by statute, then, the people of Georgia and its legislature have decided that the king may well do wrong especially when it comes to elections—as the County has here.

Declaratory Judgment. The County’s arguments about declaratory judgments are likewise overstated. It says the Court has no power here. But under Georgia law, “the respective superior courts of this state . . . *shall have power*, upon petition or other appropriate pleading, *to declare rights and other legal relations of any interested party petitioning for the declaration*, whether or not further relief is or could be prayed, in any civil case in which it appears to the court that the ends of justice require that the declaration should be made.” O.C.G.A. § 9-4-2(b) (emphasis added). Petitioners petitioned for, among other things, declaratory judgments that the County violated their constitutional rights. Under O.C.G.A. § 9-4-2(b), the Court may grant Petitioners the declaratory relief that they seek—indeed, “the ends of justice require” that it do so. Otherwise, the same bad actors will keep control over the County’s elections.

The Court should deny the County’s motion to dismiss.

Dated: June 23, 2021

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 23rd day of June, I electronically filed the within and foregoing Amended And Recast Complaint For Declaratory Judgement, For Mandamus And Equitable Relief with the Clerk of Court using the Odyssey eFile/GA system which will provide automatic notification to the following counsel of record:

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**[PROPOSED] ORDER DENYING RESPONDENT
FULTON COUNTY'S MOTION TO DISMISS**

Respondent Fulton County moved to dismiss Petitioner Caroline Jeffords and Robin Sotir's claims against it. Petitioners oppose the motion. Having considered the motion, pleadings, briefs, law, and arguments of counsel, the Court hereby denies the County's motion to dismiss.

SO ORDERED this _____ day of _____, 2021.

Brian J. Amero, Chief Judge
Superior Court of Henry County
Flint Judicial Circuit
By Designation, a Fulton County
Superior Court Judge

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