

IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

GARLAND FAVORITO, MICHAEL
SCUPIN, TREVOR TERRIS, SEAN
DRAIME, CAROLINE JEFFORDS,
STACY DORAN, CHRISTOPHER
PECK,
ROBIN SOTIR and BRANDI
TAYLOR,
Petitioners,

v.

FULTON COUNTY, FULTON
COUNTY
BOARD OF REGISTRATION AND
ELECTIONS, and FULTON
COUNTY
CLERK OF SUPERIOR AND
MAGISTRATE COURTS,

Respondents.

CIVIL ACTION NO.
2020CV343938

**MOTION ON BEHALF OF THE FULTON COUNTY BOARD
OF REGISTRATION AND ELECTIONS TO
DISMISS BY SPECIAL APPEARANCE**

The Fulton County Board of Registration and Elections (hereinafter “BRE”) has previously filed a motion to stay the proceedings in this case until such time as it is properly served with the complaint and is afforded an opportunity to file an Answer, Affirmative Defenses and dispositive motions. Though the BRE has not

been served and has not formally appeared in this case, the BRE alerts the court that it will file a Motion to Dismiss at the appropriate in order to terminate these proceedings.

As other Respondents have recently filed Motions to Dismiss, the BRE will not repeat all the arguments they have advanced in their pleadings. The BRE, however, raises the following arguments in support of its preliminary Motion to Dismiss:

1.

Because the BRE has never been served with the Complaint in this case or been afforded an opportunity to file an Answer, Affirmative Defenses and dispositive pleadings, the Complaint should be dismissed, or in the alternative, as the BRE moved previously, this action should be stayed until such time as the Petitioners properly serve the BRE. OCGA § 9-11-12(b)(5); § 9-11-12(d).

2.

Suing the BRE is barred by sovereign immunity. The 2021 Constitutional Amendment, as fully set forth (but not properly highlighted) in the Petitioners' Motion to Substitute Parties, requires that any lawsuit against any agency of the county, or employee of a county *must* be filed *in the name of the County* and not against any department, agency or individual employee of the County. *See* § (b)(2) of Ga. Const. Art. I, § 2, ¶ V:

*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.***

3.

The Complaint (that has not been served on the BRE) seeks a Declaratory Judgment, but fails to state a claim upon which relief may be granted. There are no rights between the parties that need to be adjudicated. Nowhere in the Complaint is there even a hint that the Petitioners are uncertain about their rights or about the legality of some anticipated action they intend to take. There is no allegation about any uncertainty regarding the course of action that either party is

required to take. The purpose of a declaratory judgment is to adjudicate claims between the parties. Declaratory relief will not be granted where the petition fails to disclose a substantial controversy *between the parties* having adverse legal interests of such immediacy and reality as to warrant such. A declaratory judgment may not be granted or to serve merely as an advisory opinion, or for the sole purpose of adjudicating and enforcing rights already accrued. *See Sexual Offender Registration Review Board v. Berzett*, 301 Ga. 391 (2017). The Declaratory Judgment statute applies where a legal judgment is sought that would *control or direct future action*, and it requires the presence in the declaratory action of a party with an interest in the controversy adverse to that of the petitioner. *Larolla Industries, Inc. v. Hess*, 325 Ga. App. 256 (2013). Where in the Complaint have the Petitioners revealed any future action that they intend to take, but are uncertain about the propriety of the course of action? Nowhere.

Pursuant to the Declaratory Judgment Act, superior courts are authorized to enter a declaratory judgment in cases of “actual controversy” and to determine and settle by declaration any justiciable controversy of a civil nature where it appears to the court that the ends of justice require that such should be made for the guidance and protection of the petitioner, and when such a declaration will relieve the petitioner from uncertainty and insecurity with respect to his rights, status, and legal relations. *East Beach Properties, Ltd. v. Taylor*, 250 Ga. App. 798 (2001). A

party seeking a declaratory judgment must establish that it is necessary to relieve himself of the risk of taking some future action that, without direction, would jeopardize his interests. A declaratory judgment action will not lie where the rights between the parties have already accrued, because there is no uncertainty as to the rights of the parties or risk as to taking future action. *Atlanta Nat. League Baseball Club, Inc v. F.F.*, 328 Ga. App. 217 (2014); *Baker v. City of Marietta*, 271 Ga. 210 (1999).

This complaint does not even hint at the propriety of a declaratory judgment. The Complaint should be summarily dismissed.

For the foregoing reasons, as well as the reasons set forth in the Motions to Dismiss filed by Fulton County and the Clerk of Courts, this Court should dismiss the Complaint.¹

RESPECTFULLY SUBMITTED,

GARLAND, SAMUEL & LOEB, P.C.

/s/ Donald F. Samuel

DONALD F. SAMUEL
Georgia Bar No. 624475

/s/ Amanda Clark Palmer

AMANDA CLARK PALMER
Georgia Bar No. 130608

¹ The Complaint's allegations regarding Open Records Act violations have already been resolved by the Court and the prayer for injunctive relief (preserve the ballots) is uncontested and has also been adjudicated.

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REGISTRATION AND ELECTIONS

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CERTIFICATE OF SERVICE

I hereby certify that I have electronically filed this MOTION ON BEHALF OF THE FULTON COUNTY BOARD OF REGISTRATION AND ELECTIONS TO DISMISS BY SPECIAL APPEARANCE using the ODYSSEY eFileGA system which will automatically send email notification of such filing to all attorneys and parties of record.

This the 27th day of May, 2021.

RESPECTFULLY SUBMITTED,

GARLAND, SAMUEL & LOEB, P.C.

/s/ Donald F. Samuel

DONALD F. SAMUEL

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