

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

**GARLAND FAVORITO, MICHAEL SCUPIN,  
TREVOR TERRIS, SEAN DRAIME,  
CAROLINE JEFFORDS, STACEY DORAN,  
CHRISTOPHER PECK, ROBIN SOTIR,  
and BRANDI TAYLOR,  
PETITIONERS,**

v.

**CIVIL ACTION NO.: 2020CV343938**

**MARY CAROLE COONEY, VERNETTA  
KEITH NURIDDIN, KATHLEEN RUTH,  
AARON JOHNSON, MARK WINGATE,  
and RICHARD BARRON  
in their individual capacities,  
RESPONDENTS.**

**ORDER GRANTING OPEN RECORDS CLAIMS**

The Court called the case for a regularly set hearing on 01/15/202 at 10:00 a.m. The Petitioners were represented by Todd A. Harding, J.D., Robert Cheeley, Esq., and Charles Bundren, Esq. The Respondents were represented by Cheryl Ringer, Esq. The Petition was filed on 12/22/2020. The Respondents were personally served with Petition and Summons on 12/28/2020. The Petitioners filed their 1<sup>st</sup> Amendment to Petition on 01/13/2021. The Court makes findings of fact and conclusions of law pursuant to Ga. Code Ann. § 9-11-52 (a), as follows:

**FINDINGS OF FACT**

1.

The Court finds by a preponderance of the evidence from the record, the testimony, and the documentary evidence admitted at the hearing that Petitioner Garland Favorito submitted an open records request via email on 11/05/2020 to Respondents Mary Carole Cooney, Katherine Ruth, Aaron Johnson, Vernetta Nuriddin, Mark Wingate, and Richard Barron. (Plaintiff's Exhibit 1).

2.

The Court finds by a preponderance of the evidence from the record, the testimony, and the documentary evidence admitted at the hearing that Petitioner Garland Favorito submitted a follow up email to his 11/05/2020 open records request via email on 11/12/2020 to Respondents Mary Carole Cooney, Katherine Ruth, Aaron Johnson, Vernetta Nuriddin, Mark Wingate, and Richard Barron. (Plaintiff's Exhibit 1).

3.

The Court finds by a preponderance of the evidence from the record, the testimony, and the documentary evidence admitted at the hearing that Petitioner Garland Favorito submitted an additional open records request via email on 12/03/2020 to Respondents Mary Carole Cooney, Katherine Ruth, Aaron Johnson, Vernetta Nuriddin, Mark Wingate, Mariska Bodison, and Richard Barron. (Plaintiff's Exhibit 2).

4.

The Court finds by a preponderance of the evidence from the record, the testimony, and the documentary evidence admitted at the hearing that Petitioner Garland Favorito submitted a follow up email to his 12/03/2020 open records request via email on 12/07/2020 to Respondents Mary Carole Cooney, Katherine Ruth, Aaron Johnson, Vernetta Nuriddin, Mark Wingate, and Richard Barron. (Plaintiff's Exhibit 2).

5.

The Court finds by a preponderance of the evidence from the record, the testimony, and the documentary evidence admitted at the hearing that Petitioner Garland Favorito submitted a follow up email to his 12/03/2020 open records request via email on 12/09/2020 to Respondents Mary Carole Cooney, Katherine Ruth, Aaron Johnson, Vernetta Nuriddin, Mark Wingate, and Richard Barron. (Plaintiff's Exhibit 2).

6.

The Court finds by a preponderance of the evidence from the record, the testimony, and the documentary evidence admitted at the hearing that Steven Rosenberg did admit that Petitioner Garland Favorito's open records requests were legally sufficient. (Rosenberg, 1/16/2021 Hearing Tr. at 76-77).

7.

The Court finds by a preponderance of the evidence from the record, the testimony, and the documentary evidence admitted at the hearing that the Steven Rosenberg is not the designated custodian of records for the Fulton County Board of Registrations and Elections (Defendants' Exhibits 4, 5, and 6).

8.

The Court finds by a preponderance of the evidence from the record, the testimony, and the documentary evidence admitted at the hearing that the Fulton County Board of Registrations and

Elections does not require a citizen to submit an open records request through the Fulton County portal. (Petitioners' Supplemental Brief).

9.

The Court finds by a preponderance of the evidence from the record, the testimony, and the documentary evidence admitted at the hearing that Steven Rosenberg asserted that the records were exempt under Ga. Code Ann. § 21-2-500, in an untimely response to Petitioner Garland Favorito's open records requests. (Plaintiff's Exhibit 3).

10.

The Court finds by a preponderance of the evidence from the record, the testimony, and the documentary evidence admitted at the hearing that Petitioner Caroline Jeffords, through counsel, caused to be submitted an open records request via the county portal email on 12/28/2020. (Plaintiff's Exhibit 7).

11.

The Court finds by a preponderance of the evidence from the record, the testimony, and the documentary evidence admitted at the hearing that Petitioner Caroline Jeffords, through counsel, caused to be submitted an open records request via the county portal on 12/29/2020. (Plaintiff's Exhibit 7).

12.

The Court finds by a preponderance of the evidence from the record, the testimony, and the documentary evidence admitted at the hearing that the county responded to Petitioner's Caroline Jeffords 12/28/2020 and 12/29/2020 open records requests. (Plaintiff's Exhibit 7).

13.

The Court finds by a preponderance of the evidence from the record, the testimony, and the documentary evidence admitted at the hearing that the county's response to Petitioner Caroline Jeffords' two (2) open records requests was 636 pages. (Plaintiff's Exhibit 7).

14.

The Court finds by a preponderance of the evidence from the record, the testimony, and the documentary evidence admitted at the hearing that the county's 636 pages response did not assert any valid or applicable exemption. (Plaintiff's Exhibit 7).

15.

The Court finds by a preponderance of the evidence from the record, the testimony, and the documentary evidence admitted at the hearing that the county's 636 pages response was not responsive to Petitioner Caroline Jeffords' 12/28/2020 and 12/29/2020 open records requests. (Plaintiff's Exhibit 7).

16.

The Court finds by a preponderance of the evidence from the record, the testimony, and the documentary evidence admitted at the hearing that the actual paper mail in ballots may be sealed and in the custody of the Clerk of Court.

17.

The Court finds by a preponderance of the evidence from the record, the testimony, and the documentary evidence admitted at the hearing that the Respondents and Fulton County have acted with negligence in processing Petitioners Garland Favorito and Caroline Jeffords open records requests by failing to ensure a protocol in timely responses.

18.

The Court finds by a preponderance of the evidence from the record, the testimony, and the documentary evidence admitted at the hearing that Fulton County, Georgia has acted negligently when it failed to follow its own open records request protocol. (Petitioners' Supplemental Brief).

### **CONCLUSIONS OF LAW**

19.

The Court concludes, from the controlling law, that the Fulton County Board of Registration and Elections is a separate legal entity from Fulton County, Georgia pursuant to Ga. Code Ann. § 21-2-40, as a matter of law.

20.

The Court concludes, from the controlling law, that the open records requests were submitted to the proper designees or custodians pursuant to Ga. Code Ann. § 50-18-71, as a matter of law.

21.

The Court concludes, from the controlling law, that the Superior Court has authority to unseal the paper mail in ballots pursuant to Ga. Code Ann. § 21-2-500 (a), as a matter of law.

22.

The Court concludes, from the controlling law, that the items requested in Petitioners Garland Favorito and Caroline Jeffords' open records requests are not exempt pursuant to Ga. Code Ann. § 50-18-72 or any other state statutory scheme, as a matter of law.

23.

The Court concludes, from the controlling law, that the Open Records Act allows for two (2) types of remedies: 1). Enforcement and attorney fees and 2). Penalties pursuant to Ga. Code Ann. § 50-18-73 and Ga. Code Ann. § 50-18-74, respectively, as a matter of law.

24.

The Court concludes, from the controlling law, that it has authority to enforce and compel compliance with the provisions the Open Records Act to include but not limited to compelling production and access to government records and documents that shall be accessible and not exempt under state law, as a matter of law. Ga. Code Ann. § 50-18-73 (a) (2019).

25.

The Court concludes, from the controlling law, that an open records request may be submitted by email or facsimile, as a matter of law. Ga. Code Ann. § 50-18-71 (b) (1) (B) (2) (2019).

26.

The Court concludes, from the controlling law, that open records request may seek files or documents stored in an electronic format, as a matter of law. Ga. Code Ann. § 50-18-71(f) (2019).

27.

The Court concludes, from the controlling law, that the Court has inherent and statutory authority to control or order the Clerk of Court or other officers of the Court to comply with provisions of an order, as a matter of law. Ga. Code Ann. § 15-1-3 (4) (2019).

28.

The Court concludes, from the controlling law, that the Clerk of Court is obligated to attend to the needs of the Court as enumerated by law and to comply with a court order pursuant to Ga. Code Ann. § 15-6-61 (2) (2019).

29.

The Court concludes, from the controlling law, that the Georgia General Assembly's legislative intent for the Open Records Act was to provide a strong public policy in favor of open government, as a matter of law. Ga. Code Ann. § 50-18-70 (a) (2019).

30.

The Court concludes, from the controlling law, that the Georgia General Assembly's legislative intent with the Open Records Act was "that open government is essential to a free, open, and democratic society", as a matter of law. Ga. Code Ann. § 50-18-71(1) (2019).

31.

The Court concludes, from the controlling law, that Georgia General Assembly found "that there is a strong presumption that public records should be made available for public inspection without delay. This article should be broadly construed to allow the inspection of governmental records. The exceptions set forth in this article, together with any other exception located elsewhere in the Code, shall be interpreted narrowly to exclude only portions of records addressed by such exception." Ga. Code Ann. § 50-18-71(1) (2019).

### **ORDER OF THE COURT**

#### **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT:**

- a). the Court **GRANTS** Petitioners Garland Favorito and Caroline Jeffords claims of Open Records Act violations in counts eight, nine, and ten of the Petition and its amendment;
- b). the Court **ORDERS** the November 2020 General Election paper spoiled, adjudicated, absentee, and mail in, and original and reproduced Uniformed and Overseas Citizens Absentee Voting Act ballots unsealed for purposes of visual inspection and for purposes of non-destructive scanning by the Petitioners and at the Petitioners' expense;
- c). the Court **ORDERS** the Clerk of Court to make the November 2020 General Election paper spoiled, adjudicated, absentee, and paper mail in ballots available for physical inspection and non-destructive scanning by the Petitioners and at the Petitioners' expense within three (3) days of the entry of this order;

d). the Court **ORDERS** the Respondents to allow access to the documents, items, and records enumerated herein:

1). From the Dominion electronic election management system or other electronic election management system used by Fulton County, Georgia, the November 2020 General Election:

- a) Dominion or other Electronic Cast Vote Record;
- b) Ballot Images - Raw Images;
- c) Ballot Images - Ballot Audit and Review;
- d) Vote-by-Mail Ballot Report;
- e) Provisional Ballot Report;
- f) Conditional Voter Registration Ballot Report;
- g) Cast Vote Record (Raw data) - JSON;
- h) ImageCast Central Logs;
- i) Ballot Scanning/Tabulation Machine Logs;
- j) Ballot Scanning/Tabulation Machine Tape;
- k) Ranked-Choice Voting: Board of Supervisors, Final Detailed Report;
- l) Report of all spoiled ballots;
- m) Report of all the adjudicated ballots; and
- n) The original and reproduced Uniformed and Overseas Citizens Absentee Voting Act ballots.

These systems generated reports should be provided as (a) an XML file, and (b) a JSON file, and (c) a TXT file.

e). the Court **ORDERS** the Respondents to make available all electronic devices used in the November 2020 General Election for electronic forensic imaging by the Petitioners at the Petitioners expense and Respondents shall provide all passwords to open and process the electronic devices; **AND**

f). the Court **ORDERS** the Respondents to compensate the Petitioners the civil penalty amount of \$1,000.00 USD for the 12/03/2020 offense, \$2,500.00 USD for the 12/28/2020 offense, and \$2,500.00 USD for the 12/29/2020 offense, which the Court determines is \$6,000.00 USD for all three (3) Open Records Violations.

**SO ORDERED** this the \_\_\_\_ day of January, 2021.

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**BRIAN J. AMERO, CHIEF JUDGE  
HENRY COUNTY SUPERIOR COURT  
FLINT JUDICIAL CIRCUIT  
SITTING BY DESIGNATION AS A  
FULTON COUNTY SUPERIOR COURT JUDGE**

Order prepared by:

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