

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,)

vs.)

FULTON COUNTY, ALEX WAN,)
VERNETTA KEITH NURIDDIN,)
KATHLEEN RUTH,)
AARON JOHNSON, AND)
MARK WINGATE)
in their individual capacities,)
Respondents.)

CIVIL ACTION FILE NO.:
2020CV343938

ORDER GRANTING MOTION TO DISMISS

On August 12, 2021, a motion to dismiss was filed by three of the Respondents, Alex Wan, Vernetta Nuriddin, and Aaron Johnson, arguing, *inter alia*, Petitioners lack standing to bring their state constitutional equal protection and state constitutional due process claims.¹ After appearing before the Court for a hearing on the matter on September 20, 2021, the Court finds that Petitioners have failed to allege a particularized injury. Thus, they lack standing to bring their claims, and the three Respondents' motion to dismiss is granted. Because Petitioners similarly lack standing as to the other two Respondents, the claims against Respondents Ruth and Wingate are also dismissed.

Petitioners filed a petition for declaratory and injunctive relief on December 23, 2020, amended later on January 13, 2021 (the "Initial Petition"), alleging violations of their state

¹ Two of the Respondents, Kathleen Ruth and Mark Wingate, have not joined in the motion to dismiss.

constitutional equal protection and due process rights, and violations of the Open Records Act, Ga. Code Ann. § 50-18-70 *et seq.* (the “ORA”).² In their Initial Petition, Petitioners claimed that fraudulent ballots had been counted in the General Election. In support, they offered affidavits from individuals who participated in the ballot counting process who averred that there were large numbers of absentee ballots that looked as if they had been marked by machine rather than by hand.³ Further, two of these individuals averred that, while other absentee ballots “showed obvious use”,⁴ there was at least one batch of absentee ballots that was pristine and printed on different paper stock.⁵ The fact these ballots contained no creases or other indicia of being folded to be put in envelopes and mailed out caused one individual to believe that there had been additional absentee ballots added in a fraudulent manner.⁶

Petitioners therefore sought the production of scanned ballot images and physical copies of every mail-in and absentee ballot that was counted, audited, and recounted in the November 3, 2020 general election (the “General Election”) in Fulton County. Petitioners pursued the production of such documents through the discovery process and through several Open Records Requests (“ORRs”) made pursuant to the ORA. The parties appeared before the Court on January 6, 2021 and January 15, 2021 to argue the merits of these ORRs. On February 10, 2021, Petitioners filed a consolidated motion to unseal the paper ballots, and the parties then appeared before the Court on March 15, 2021 for the initial hearing on the motion to unseal. At this hearing, the Court requested that Petitioners submit a written plan explaining the logistics of how

² As part of the Initial Petition, Petitioners also submitted Exhibits A through U, which included nine affidavits, the Petitioners’ open records requests, and two links to a State Farm Arena security video.

³ Initial Petition, Exhibit C, ¶ 2; Exhibit D, ¶ 2; Exhibit E, ¶ 16; Exhibit F, ¶¶ 3-4.

⁴ Initial Petition, Exhibit E, ¶ 14.

⁵ Initial Petition, Exhibit E, ¶ 15; Exhibit F, ¶ 3.

⁶ Initial Petition, Exhibit E, ¶ 28.

the ballots would be handled and reviewed.⁷ Then, the Court set a hearing to determine whether the proposed plan should be adopted.

On April 13, 2021, the parties appeared for this second hearing on Petitioners' motion to unseal. At the hearing, Fulton County consented to the production of scanned ballot images⁸ so as to allow Petitioners to determine whether these scanned ballot images could be a substitute for a more onerous, expensive, and time-consuming production.⁹ The Court also orally granted Petitioners' motion to sever claims.¹⁰ Shortly thereafter, consistent with the agreement of the parties, the Court issued an order on April 16, 2021, directing Fulton County to produce all scanned absentee ballot images in electronic format with the original metadata for each ballot.

On April 20, 2021, the Court entered a final order finding Fulton County had violated the ORA by failing to give timely and sufficient responses to Petitioners Favorito and Jeffords' ORRs.

The parties then appeared before the Court on May 21, 2021 for a final hearing on the motion to unseal. At the hearing, Petitioners presented the expert witness testimony of two experts: Mr. David Sawyer, a certified fraud examiner and former partner at Ernst and Young who previously worked with the forensic units at PricewaterhouseCoopers and Ernst and Young;¹¹ and Dr. Lisa Detter-Hoskin, a paper and ink forensic analysis expert who worked with the Federal Bureau of Printing and Engraving to help design currency.¹² She also had previously

⁷ Hr'g Tr. 37, Mar. 15, 2021.

⁸ During the course of this action, the Georgia legislature amended the Open Records Act to include ballot image scans produced by voting machines authorized under Georgia law as producible public records. See Ga. Code Ann. § 50-18-71(k) (effective May 10, 2021).

⁹ Hr'g Tr. 42, Apr. 13, 2021.

¹⁰ Hr'g Tr. 60, Apr. 13, 2021. This created two groups of Petitioners: Petitioners Favorito, Scupin, Terris, Draime, Doran, Peck, and Taylor (the "Favorito Petitioners"), and Petitioners Jeffords and Sotir (the "Jeffords Petitioners").

¹¹ Hr'g Tr. 9, 25, May 21, 2021.

¹² Hr'g Tr. 61, May 21, 2021.

worked as the head of the Georgia Tech Research Institute Materials Analysis Center, and, while at Georgia Tech, she was funded by the Defense Administration Research Projects Agency (“DARPA”) and the U.S. Department of Defense, thereby receiving top-secret clearance.¹³

Mr. Sawyer testified that he viewed the information provided on the Georgia Secretary of State’s website from the risk limiting audit¹⁴ and compared that data with the scanned ballots provided by Fulton County pursuant to the Court’s April 16, 2021 order. He testified that there were 1,539 batches¹⁵ of scanned ballot images produced pursuant to the Court’s April 16, 2021 order, but only 1,283 batches were counted in the Secretary of State’s risk limiting audit.¹⁶ He further testified that in his analysis of the data, he observed that the Secretary of State’s risk limiting audit included combined batches, i.e. batches that contained more than 100 ballots in each batch;¹⁷ sequence breaks in the number of batches that indicated there were missing batches;¹⁸ and batches that were counted twice.¹⁹ Based on these observations, Mr. Sawyer concluded there should have been approximately 1,630 batches of ballots counted – 347 more batches than the number reported in the Secretary of State’s risk limiting audit.²⁰ To Mr. Sawyer, these irregularities indicated a ballot scanning error rate of about 21 percent.²¹

In her testimony, Dr. Detter-Hoskin testified that the provided scanned images of the ballots were insufficient to obtain the necessary forensic information to determine how the ovals

¹³ Hr’g Tr. 9, 54-55, May 21, 2021.

¹⁴ See Hr’g Tr. 28-29, May 21, 2021. The copies of the hand tally sheets from the risk limiting audit by the Secretary of State were admitted into evidence over the objection of Respondents’ counsel. The counsel for the Secretary of State was given an opportunity to be recognized so as to respond but declined. Hr’g Tr. 33, May 21, 2021.

¹⁵ Each batch contains 100 ballots. Hr’g Tr. 30, May 21, 2021.

¹⁶ Hr’g Tr. 35, May 21, 2021.

¹⁷ Hr’g Tr. 36, May 21, 2021.

¹⁸ Hr’g Tr. 36, May 21, 2021.

¹⁹ Hr’g Tr. 38, May 21, 2021.

²⁰ Hr’g Tr. 39, May 21, 2021.

²¹ Hr’g Tr. 40, May 21, 2021.

on the ballot forms were filled in,²² or if the absentee ballots had in fact been folded.²³ For that reason, Dr. Detter-Hoskin stated she required access to higher resolution scans of the ballots as an initial step, which would allow her to determine with a high degree of confidence whether the ballots were printed by machine or filled out by hand.²⁴ Further, Dr. Detter-Hoskin testified she also required access to the physical ballots,²⁵ since different variables such as the environment in which the ballots were stored might affect what method of forensic testing she would use.²⁶ However, without having seen the physical ballots, she could not suggest a protocol for examining them.²⁷

Following the hearing, the Court granted Petitioners' motion to unseal on May 21, 2021 and ordered counsel for the parties to appear on May 28, 2021 at the location where the ballots were being stored for an organizational meeting to determine the protocols and practices under which Petitioners could inspect and scan the ballots.²⁸

Respondents then filed motions to dismiss on May 26, 2021 and May 27, 2021, arguing in pertinent part that sovereign immunity barred Petitioners' state equal protection and state due process claims. The parties appeared before the Court on June 21, 2021 on those motions. On June 24, 2021, the Court granted the motions to dismiss, and the Fulton County Board of Registration and Elections and the Fulton County Superior and Magistrate Clerk were dismissed. Further, upon considering the record as a whole, the Court granted Petitioners' request to add the

²² Hr'g Tr. 60-61, May 21, 2021.

²³ Hr'g Tr. 57, May 21, 2021.

²⁴ Hr'g Tr. 68, May 21, 2021.

²⁵ Hr'g Tr. 60, May 21, 2021.

²⁶ Hr'g Tr. 63, May 21, 2021.

²⁷ Hr'g Tr. 63, May 21, 2021.

²⁸ May 21, 2021 Order to Unseal.

current Respondents, Alex Wan, Mark Wingate, Kathleen Ruth, Vernetta Nuriddin, and Aaron Johnson.

On June 21, 2021, both sets of Petitioners filed second amended petitions for declaratory and injunctive relief. The Favorito Petitioners added a request for a permanent injunction to “enjoin and prohibit the Respondents from counting counterfeit ballots in future elections”,²⁹ alleging they were uncertain as to the weight their votes would be given in future elections if there was a “continued insertion of counterfeit ballots.”³⁰ The Jeffords Petitioners alleged additional facts and included as an exhibit a report prepared on November 13, 2020 by Carter Jones, a monitor “authorized and required to observe Fulton County election procedures” for the General Election pursuant to an agreement between the Attorney General’s Office and Fulton County after the county’s “voluminous elections violations” during the June 2020 primary election.³¹

On July 2, 2021 and July 14, 2021, the Favorito Petitioners and the Jeffords Petitioners respectively filed third amended petitions. The Favorito Petitioners alleged further violations to their state equal protection and due process rights, averring that a number of ballots had been incorrectly reported or were excluded from the Secretary of State’s risk limiting audit.³² Similarly, the Jeffords Petitioners incorporated Mr. Sawyer’s analysis of the “inordinate

²⁹ Favorito Second Amended Petition, Page 9.

³⁰ Favorito Second Amended Petition, ¶¶ 84(d), 84(g).

³¹ Jeffords Second Amended Petition, ¶ 192.

³² The Favorito Petitioners alleged about 923 of the 1,539 mail-in ballot batches contained incorrectly reported votes. Favorito Third Amended Petition, ¶ 214. Specifically, they pointed at seven batches that were incorrectly reported as 850 votes for Joe Biden, 0 votes for Donald Trump, and 0 votes for Jo Jorgenson, when in fact the correct number of votes was 554 votes for Joe Biden, 140 votes for Donald Trump, and 11 votes for Jo Jorgenson. *Id.* at ¶ 216. Further, the Favorito Petitioners alleged over 200 Fulton County mail-in ballots were not included in the risk limiting audit, *id.* at ¶ 220, and that a total of 4,255 extra votes were “redundantly” added in the risk limiting audit results. *Id.* at ¶ 222.

amount”³³ of inconsistencies between the number of batches reported in the Secretary of State’s risk limiting audit and the scanned ballot images produced by Fulton County to further support their claims that Respondents had violated Petitioners’ equal protection rights by engaging in election manipulation and thereby diluting the votes of Fulton County voters.³⁴

On August 12, 2021, Respondents Alex Wan, Vernetta Nuriddin, and Aaron Johnson filed answers to Petitioners’ petitions,³⁵ and, on the same day, collectively filed a motion to dismiss. On September 13, 2021, the Petitioners filed separate responses to the Respondents’ motion. The parties appeared before the Court on September 20, 2021 for a final hearing on the Respondents’ motion to dismiss. At the hearing, the Court invited the Secretary of State and the Georgia Bureau of Investigation to file amicus briefs regarding past or current investigations into the allegations that counterfeit ballots were counted during the General Election. The Secretary of State filed a substantive and detailed response on October 12, 2021.

LEGAL DISCUSSION

In determining whether to grant a motion to dismiss, the Court must construe the pleadings in the light most favorable to the non-movant, with all doubts resolved in the non-movant’s favor. *Kelly v. Lewis*, 221 Ga. App. 506, 507, 471 S.E.2d 583 (1996). In doing so, the Court may also consider exhibits attached to and incorporated into the pleading. *Love v. Fulton County Board of Tax Assessors*, 348 Ga. App. 309, 311 (2018). Dismissal may only be granted if the allegations in the complaint disclose with certainty that the plaintiff would not be entitled to relief under any state of facts that could be proved in support of the claim. *Id.* (citing *DeKalb*

³³ Hr’g Tr. 47, May 21, 2021.

³⁴ Jeffords Third Amended Petition, ¶¶ 303-307.

³⁵ Respondents Wan, Nuriddin, and Johnson filed a collective answer to the Favorito Petitioners’ petitions, but while Respondents Nuriddin and Johnson collectively filed an answer to the Jeffords Petitioners’ petitions, Respondent Wan filed a separate answer to the Jeffords Petitioners’ petitions.

County v. Ga. Paperstock Co., 226 Ga. 369, 370 (1) (1970)). Thus, the Court now turns to Petitioners' pleadings.

Throughout this action, Petitioners have filed a total of four amended petitions with corresponding exhibits, alleging facts in a timeline that covers the initial ballot count from November 3, 2020, to November 7, 2020;³⁶ Fulton County's county-specific ballot hand recount on November 14, 2020, and November 15, 2020;³⁷ the state-wide risk limiting audit conducted by the Georgia Secretary of State;³⁸ actions by state officials during the pendency of this action;³⁹ and testimony given by Petitioners' experts at the hearings before the Court.

Petitioners alleged Respondents' failure to follow state law and properly supervise their agents, including staff of Happy Faces Personnel Group, Inc. ("Happy Faces"), an organization that contracted with Fulton County to assist in counting ballots, resulted in the insertion and counting of counterfeit ballots during the General Election, thereby diluting the votes of qualified Georgia voters.

According to Petitioners, during the initial ballot count at State Farm Arena, Respondents failed to follow state law by failing to ensure full visibility in the ballot processing area in State Farm Arena;⁴⁰ allowing a skirted table to be brought into the ballot processing area, which further obstructed the observers' view as to what was under the table;⁴¹ and also allowing ballots to continue to be scanned at State Farm Arena after observers and the media were told ballot processing had ceased for the night on November 3, 2020.⁴² The report prepared by Mr. Carter

³⁶ Jeffords Second Amended Petition, Exhibit V, Pages 4-29.

³⁷ See Initial Petition, ¶ 83.

³⁸ See Jeffords Third Amended Petition, ¶ 306; see also Initial Petition, ¶ 84.

³⁹ See, e.g., Jeffords Second Amended Petition, ¶¶ 190-91.

⁴⁰ Initial Petition, ¶¶ 41-42.

⁴¹ Initial Petition, ¶ 44.

⁴² Initial Petition, ¶¶ 46-53.

Jones further noted chain of custody issues, duplicate counting of votes, insecure storage of ballots, and the “suspicious movement of too many ballots” at State Farm Arena during the initial ballot count.⁴³ The report further detailed how Mr. Jones had been told a poll watcher had overheard an exchange between Happy Faces staff, one telling the other, “I’m ready to f*ck sh*t up.”⁴⁴

Petitioners alleged Respondents’ failure to properly manage and oversee the ballot processing continued during the Fulton County recount. Petitioners offered the affidavits of three volunteer auditors for the recount who noted that several other auditors were permitted to recount ballots alone, disregarding the typical two-person confirmation process.⁴⁵ Petitioners alleged this breach of protocol therefore made it possible for fraudulent ballots to be inserted and counted in the General Election, which Petitioners alleged in fact happened. To support their allegations, Petitioners submitted the affidavits from four individuals who were either volunteer auditors or observers who noticed suspiciously uniform ballots during the Fulton County ballot recount.⁴⁶ Further, pursuant to Mr. Sawyer’s testimony, Petitioners noted there were several discrepancies between the number of ballots reported in the Secretary of State’s risk limiting audit and the number of scanned ballot images produced by Fulton County pursuant to this Court’s consent order.⁴⁷ They also provided the scanned images of one ballot which appeared to have been counted twice.⁴⁸

⁴³ Jeffords Second Amended Petition, ¶ 194.

⁴⁴ Jeffords Second Amended Petition, Exhibit V, Page 13.

⁴⁵ See Initial Petition, Exhibit E, ¶ 23; Exhibit G, ¶ 8; Exhibit H, ¶ 6. The allegedly correct process to count the ballots was to have one person initially read aloud the name of the candidate selected on the ballot, then give the ballot to another person who would proceed to also read the ballot’s selection aloud to confirm the selection was correct. See Initial Petition, Exhibit G, ¶ 6.

⁴⁶ See Jeffords Third Amended Petition, Exhibits C, D, E, F

⁴⁷ Jeffords Third Amended Petition, ¶¶ 304-306. See also Favorito Third Amended Petition, ¶¶ 213-22.

⁴⁸ See Jeffords Third Amended Petition, ¶ 290.

Petitioners also alleged that without corrective action being taken by the Court, this same harm would occur in future elections.⁴⁹ Petitioners pointed to the fact that the Fulton Board of Registration and Elections voted to terminate Richard Barron, the Fulton County Elections Director, who Petitioners alleged negligently oversaw and managed the ballot processing for the General Election.⁵⁰ However, the Board of Commissioners for Fulton County overruled the decision, thus allowing him to remain in that position.⁵¹ Therefore, Petitioners alleged because of the “continued employment” of the same individuals who oversaw and managed the General Election, counterfeit ballots would continue to be inserted in future elections.⁵²

However, as discussed more fully below, even if the Court construes the allegations in Petitioners’ pleadings, including their attached affidavits and exhibits, in the light most favorable to them, the Court is constrained to conclude that Petitioners lack standing to pursue their state equal protection and state due process claims.

I. Petitioners lack standing to pursue their state equal protection and state due process claims.

Georgia courts have frequently turned to U.S. Supreme Court case law concerning Article III standing to resolve issues of standing for claims brought in Georgia’s courts. *Atlanta Taxicab Co. Owners Ass’n, Inc. v. City of Atlanta*, 281 Ga. 342, n.1 (Ga. 2006); see also *Sons of Confederate Veterans v. Newton County Board of Commissions*, 2021 WL 3087576, at *5 (Ga. Ct. App. July 22, 2021). Under both federal and Georgia law, the three requirements plaintiffs must meet to have standing are “(1) an injury in fact; (2) a causal connection between the injury and the causal conduct; and (3) the likelihood that the injury will be redressed with a favorable

⁴⁹ See Favorito Third Amended Petition, ¶ 88; Jeffords Third Amended Petition, ¶ 306.

⁵⁰ See Jeffords Second Amended Petition, ¶ 190; Jeffords Third Amended Petition, ¶ 15.

⁵¹ Jeffords Second Amended Petition, ¶ 191.

⁵² Jeffords Third Amended Petition, ¶ 306. See Favorito Third Amended Petition, ¶ 88.

decision.” *Sons of Confederate Veterans*, 2021 WL 3087576, at *5. A plaintiff suffers an injury in fact when the injury is both “concrete and particularized” and “actual or imminent, not conjectural or hypothetical.” *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992) (internal quotations omitted).

Petitioners allege their votes have been diluted due to the “substantial likelihood” that fraudulent ballots were introduced during ballot processing for the General Election.⁵³ They reason that Respondents’ failure to properly implement state election laws and their negligent oversight of Happy Faces staff and other agents who assisted in counting ballots at all stages of ballot processing resulted in the introduction and counting of counterfeit ballots.⁵⁴ They also allege that the issue will persist in future elections if not corrected.⁵⁵

However, regardless of the veracity of these allegations, the Court finds Petitioners have still failed to allege a particularized injury.

A. Petitioners have failed to allege a particularized injury.

An injury is particularized when it “affects the plaintiff in a personal and individual way.” *Wood v. Raffensperger*, 981 F.3d 1307, 1314 (11th Cir. 2020) (internal citations and styling omitted). Petitioners’ allegations are, in sum, that their state equal protection and due process rights were violated because their votes, and the votes of other Georgia voters, were diluted as a result of the inclusion of fraudulent ballots that were counted because Respondents negligently oversaw the ballot processing for the General Election.

The 11th Circuit in *Wood* found substantially similar allegations of voter dilution insufficient to confer standing. *Wood*, the appellant, alleged that “irregularities in the hand

⁵³ See, e.g., Initial Petition, ¶ 100.

⁵⁴ Initial Petition, ¶¶ 76-79, 100; Jeffords Third Amended Petition, ¶¶ 180-81, 200-04.

⁵⁵ Favorito Third Amended Petition, ¶ 204; Jeffords Third Amended Petition, ¶ 263.

recount violated his rights under the Due Process Clause of the Fourteenth Amendment.” *Id.* at 1312. He asserted he had basis for standing because “the inclusion of unlawfully processed absentee ballots diluted the weight of his vote.” *Id.* at 1314.

The 11th Circuit, in a unanimous opinion written by Chief Judge William Pryor, disagreed. Although it recognized that vote dilution could be a basis for standing, such as in malapportionment and gerrymandering cases, the 11th Circuit also noted that these cases typically required the plaintiffs to be compared to another group of voters. *Id.* at 1314 (“[V]ote dilution occurs when voters are harmed compared to ‘irrationally favored’ voters from other districts.”). “By contrast, no single voter is specifically disadvantaged if a vote is counted improperly, even if the error might have a mathematical impact on the final tally and thus on the proportional effect of every vote.” *Id.* (citing *Bognet v. Sec’y Commonwealth of Pa.*, 980 F.3d 336, 356 (3d Cir. Nov. 13, 2020), *cert. granted, judgment vacated by Bognet v. Degraffenreid*, 2021 WL 1520777 (Apr. 19, 2021) *with instructions to dismiss case as moot*) (internal quotations omitted). Thus, the 11th Circuit found Wood had alleged only a generalized grievance. *Id.* at 1314-15.

Other cases that have tangled with the issue of vote dilution in this context have concluded similarly. See *Bowey v. Ducey*, 506 F.Supp.3d 699, 711-12 (D. Az. Dec. 9, 2020) (finding that theory of vote dilution as a result of alleged voting fraud and manipulation does not confer standing); *Moore v. Circosta*, 494 F.Supp.3d 289, 312-13 (M.D.N.C. Oct. 14, 2020) (finding that possibility of unlawful ballots being counted is insufficient to have standing to bring vote dilution claims under the federal equal protection clause); *Martel v. Condos*, 487 F.Supp.3d 247, 254 (D. Ver. Sept. 16, 2020) (stating possible vote dilution caused by hypothetical “third-party’s fraudulent vote” is generalized injury).

Here, Petitioners allege a basis for standing similar to that asserted in *Wood*. However, as in *Wood*, Petitioners' arguments are not enough to give rise to a particularized injury. Vote dilution as a result of allegedly unlawfully processed ballots is "a paradigmatic generalized grievance." *Wood*, at 1315 (citation omitted). See also *Paher v. Cegavske*, 457 F.Supp.3d 919, 926 (D. Nev. Apr. 30, 2020) ("But Plaintiffs' purported injury of having their votes diluted due to ostensible election fraud may be conceivably raised by any Nevada voter. Such claimed injury therefore does not satisfy the requirement that Plaintiffs must state a concrete and particularized injury."). "[A] generalized grievance, no matter how sincere, cannot support standing." *Wood*, at 1314 (citing *Hollingsworth v. Perry*, 570 U.S. 693, 706 (2013)) (internal quotations omitted).

Accordingly, the Court concludes the Petitioners have not alleged a particularized injury, and therefore, do not have standing.⁵⁶

Having considered the evidence submitted, the arguments of counsel, and the record as a whole in the light most favorable to Petitioners, it is hereby **ORDERED** that the motion to dismiss by Respondents Alex Wan, Vernetta Nuriddin, and Aaron Johnson is **GRANTED**.

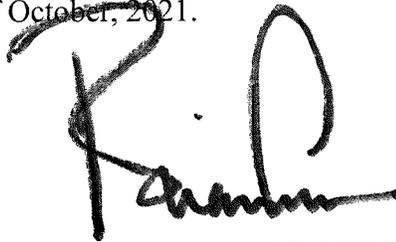
IT IS FURTHER ORDERED that, due to the similar lack of standing, the claims against Respondents Kathleen Ruth and Mark Wingate be, and hereby are, also **DISMISSED**.⁵⁷

⁵⁶ One of the cases Petitioners use to argue they have standing is *Curling v. Kemp*, 334 F.Supp.3d 1303 (N.D. Ga. Sept 17, 2018), in which the district court found standing for plaintiffs based on arguments that use of Direct Recording Electronic voting machines ("DREs") violated plaintiffs' federal constitutional rights to equal protection and due process by diluting the weight of their votes due to the easily-hackable nature of the DREs. In doing so, *Curling* implicitly offers another injury-in-fact analysis through which to consider standing in a vote dilution case by focusing on whether there has been concrete, *direct* harm. See *id.* at 1314-15. However, this analysis appears to be out of step with the standing framework utilized by the 11th Circuit. See *Wood*, *supra*. But see *Curling v. Secretary of Georgia*, 761 Fed.Appx. 927, 935 (11th Cir. 2019) (affirming *Curling* court's interlocutory order denying motion to dismiss on Eleventh Amendment immunity and legislative immunity grounds, but not reaching merits of standing analysis on such interlocutory appeal).

⁵⁷ A plaintiff with standing is a prerequisite for the existence of subject matter jurisdiction and is therefore a threshold issue for the Court's determination which the Court has a duty to address. *Parker v. Leeuwenburg*, 300 Ga. 789, 790 (Ga. 2017); *In re Haney*, 355 Ga. App. 658, 660, 845 S.E.2d 380 (Ga. Ct. App. 2020).

IT IS FURTHER ORDERED that, because the Court's final order on April 20, 2021 fully adjudged Petitioners' ORA claims, no further relief may be accorded to Petitioners under the ORA, and therefore, Respondent Fulton County is also **DISMISSED**.

SO ORDERED this 13th day of October, 2021.

A handwritten signature in black ink, appearing to read "B. Amero", written over a horizontal line.

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