IN THE SUPREME COURT
STATE OF GEORGIA

GARLAND FAVORITO et al.,
APPELLANTS,

v. **CASE NO.:**

ALEX WAN et al.,
APPELLEES.

APPELLANTS' PETITION FOR CERTIORARI

COME NOW, THE APPELLANTS, by and through their attorney of record to petition the Court for certiorari pursuant to Rule 38, as follows:

PART ONE

A. STATEMENT OF PROCEEDINGS BELOW.

The Appellants filed their original petition for relief on 12/23/2020. (R at 36-37). The Appellants filed their first amended petition for relief on January 13, 2021. (R at 256-270). The Appellees filed their answer to the original petition on January 27, 2021. (R at 332-359). The Appellants filed their second amended petition for relief on June 21, 2021. (R at 1020-1028). The Appellants filed their third amended petition for relief on July 2, 2021. (R at 1157-1183). The Appellees filed their answer to the third amended petition on August 12, 2021. (R at 1446-1580). The Appellees filed numerous motions to dismiss. The trial court conducted a hearing on the motions to dismiss on September 20, 2021. The trial court entered an order granting the Appellees' motion to dismiss on standing grounds, on

October 13, 2021. (R at 2040-2053). The Appellant appealed this order to the Court of Appeals of Georgia on February 18, 2022. Oral arguments were presented on May 4, 2022. The Court of Appeals affirmed the trial court's order on July 1, 2022. It is this order that the Appellants are seeking to appeal.

B. FACTS RELEVANT TO APPEAL.

The Appellants were entitled to vote, and did vote, in the November 3, 2020 general election and live in various counties throughout the State of Georgia, including Fulton County. (R at 1157-1158). The Respondents, at the time of the original petition, were members of the Fulton County Board of Elections, and were sued in their individual capacities. (R at 1158).

The Appellants pled that Susan Voyles personally observed, as a hand count auditor, what she believed were fraudulent or fabricated absentee ballots, because the suspect absentee ballots were not creased, were not marked with a writing instrument, or appeared to be of a different paper stock than other ballots. (R at 1160). The Appellants pled that Barbara Hartman personally observed, as a hand count auditor, what she believed were fraudulent or fabricated absentee ballots, because the suspect absentee ballots were not creased, were not marked with a writing instrument, or appeared to be of a different paper stock than other ballots. (R at 1160).

The Appellants also pled that Dr. Sonia Francis-Rolle personally observed, as a hand count auditor, what she believed were fraudulent or fabricated absentee ballots, because the suspect absentee ballots were not creased, were not marked with a writing instrument, or appeared to be of a different paper stock than other ballots. (R at 1160-1161). The Appellants also pled that Gordon Rolle personally observed, as a hand count auditor, what he believed were fraudulent or fabricated absentee ballots, because the suspect absentee ballots were not creased, were not marked with a writing instrument, or appeared to be of a different paper stock than other ballots. (R at 1161).

These witnesses provided sworn affidavits attesting to the above facts, which were filed into the record on December 23, 2020 (R at 90-126). Upon learning these facts, the Appellants filed the instant suit, alleging that the weight of their vote was diluted or even nullified by the inclusion and counting of fabricated and fraudulent absentee ballots (R at 1157-1183). The trial court, after a hearing on the Appellees' Motion to Dismiss, improperly found that the Appellants lacked standing to assert a claim for vote dilution, stating that the Appellants' vote being diluted in this fashion was a generalized grievance, and not a particularized injury as is required for standing purposes. (R at 2040-2053). The Appellants' claims were preserved for appeal by way of a final and appealable order entered by the trial court. (R at 2040-2053).

PART TWO

A. JURISDICTION.

The Supreme Court of Georgia has jurisdiction to hear this case pursuant to O.C.G.A. § 15-2-8 (2020), and the Georgia Constitution of 1983, Article VI, Section VI, Paragraphs II-III.

B. ENUMERATION OF ERRORS.

1. **THE COURT OF APPEALS OF GEORGIA COMMITTED REVERSIBLE ERROR WHEN IT FOUND THAT THE APPELLANTS LACKED STANDING TO ASSERT THEIR VOTE DILUTION CLAIMS.**

PART THREE

A. STANDARD OF REVIEW.

Here, the Appellants contend that the appropriate standard of review on a motion to dismiss is de novo. This Court has held that "[t]his Court reviews the grant of a motion to dismiss de novo." Edible Ip, LLC v. Google, LLC., 313 Ga. 305, 308 (2022).

Further, the Appellants contend that the appropriate standard of review on a question of law is also de novo. This Court has held where a question of law is at issue, that "the appropriate standard of review is de novo." Mayor & Aldermen of Savannah v. Batson–Cook Co., 291 Ga. 114, 119 (2012). Since no deference is owed to the Court of Georgia's ruling on a legal question, the de novo standard of review is applied.

B. ARGUMENT AND CITATIONS OF AUTHORITY.

The Appellants assert that they have a cause of action, and the standing to assert said cause of action. To assert standing, a litigant must show "(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 decision. Granite State Outdoor Advertising, Inc. v. City of Roswell, 283 Ga. 417 (2008). One's vote is personal and sacred to each person, and the dilution of one's vote diminishes that person's personal right, and dissuades the individual from exercising their right and ability to participate in the political process.

Numerous courts over the years have recognized that persons whose vote was diluted or debased through some action, be it by gerrymandering, ballot box stuffing, or prohibitions on the freedom to exercise their right to vote, have standing to assert a claim for their grievances. In doing so, the United States Supreme Court reasoned that "[c]onfidence in the integrity of our electoral processes is essential to the functioning of our participatory democracy. Voter fraud drives honest citizens out of the democratic process and breeds distrust of our government. Voters who fear their legitimate votes will be outweighed by fraudulent ones will feel disenfranchised." Purcell v. Gonzales, 549 U.S. 1 (2006).

As such, a direct infringement upon one's fundamental right to vote is a direct, personal and particularized attack and thus automatically confers standing

on anyone wishing to challenge such a direct infringement to vindicate the infringement upon their constitutional rights. The Appellants, having had their vote diluted, have pled state due process and state equal protection claims that definitively show standing to assert their claims.

1. THE COURT OF APPEALS OF GEORGIA COMMITTED REVERSIBLE ERROR WHEN IT FOUND THAT THE APPELLANTS' CLAIMS OF EQUAL PROTECTION AND DUE PROCESS VIOLATIONS WERE GENERALIZED GRIEVANCES.

The Appellants meet all the elements of standing. As previously stating, standing requires "(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 decision. Granite State Outdoor Advertising, Inc. v. City of Roswell, *supra*. Furthermore, the injury in fact must be "concrete and particularized" to the individual(s) asserting the grievance. Atlanta Taxicab Co. Owners Ass'n v. Atlanta, 281 Ga. 342 (2006). Because the trial court and Court of Appeals of Georgia centered their discussion and based their decision upon the factor of particularization, and characterized the Appellants' injuries as mere generalized grievances, the other factors need not be addressed at this time.

a). PARTICULARIZATION OF INJURY.

Voting is a well-established fundamental and constitutional right, and that right includes the right to ensure that one's vote is not debased or diluted by fraud. The Appellants have suffered an injury in fact because they contend the weight and

value of their votes have been, and will in the future, be affected by the insertion of counterfeit ballots into elections result. This insertion of counterfeit ballots has and will continue to dilute and debase the Appellants' vote value. Thus, their personal stake in the political process is minimized or possibly completely nullified.

Georgia law holds that

> [a] trial court is not authorized to grant a motion to dismiss for failure to state a claim upon which relief may be granted unless: (1) the allegations of the complaint disclose with certainty that the claimant would not be entitled to relief under any state of provable facts asserted in support thereof; and (2) the movant establishes that the claimant could not possibly introduce evidence within the framework of the complaint sufficient to warrant a grant of the relief sought.

Edible Ip, LLC v. Google, LLC., 313 Ga. 305 (2022). To assert standing, "[a]s a general rule, a litigant has standing to challenge the constitutionality of a law [an act] only if the law [the act] has an adverse impact on that litigant's own rights." Feminist Women's Health Center v. Burgess, 282 Ga. 433, 434 (1) (2007). Additionally, "a prerequisite to attacking the constitutionality of a statute [an act], the complaining party must show that it is hurtful to the attacker." Parker v. Leeuwenburg, 300 Ga. 789 (2017) (citing Agan v. State, 272 Ga. 540, 542 (1) (2000)).

However, the alleged injury must be particularized to the individual. "A particularized injury is one that 'affect[s] the plaintiff in a personal and individual way.'" Wood v. Raffensberger, 981 F.3d 1307 (11th Cir. 2020). Jurisprudence over

the years has shown that "[a] citizen's right to a vote *free of arbitrary impairment by state action* has been judicially recognized as a right secured by the Constitution when such impairment resulted from dilution by a false tally, *cf.* United States v. Classic, 313 U. S. 299 (emphasis added)...; or by a refusal to count votes from arbitrarily selected precincts, *cf.* United States v. Mosley, 238 U. S. 383..., or *by a stuffing of the ballot box*, *cf.* Ex parte Siebold, 100 U. S. 371...; United States v. Saylor, 322 U. S. 385...." Baker v. Carr, 369 U.S. 186, 208 (1962) (emphasis added). Even a Georgia Supreme Court justice has stated, "*we have long held that voters — by virtue of being voters — can have standing to constitutionally challenge election laws.* Our rationale has been that 'the denial of the right [to elect public officials] is such an injury to the personal right of any voter as would authorize him to attack the constitutionality of an act[.]' Black Voters Matter Fund, Inc. v. Kemp, S21A1262, slip opinion 11-15 (March 8, 2022) (emphasis added); *see also* Manning v. Upshaw, 204 Ga. 324, 327 (1948). A voting rights infringement "still requires a showing of a kind of injury, even though that showing may be more relaxed than in other contexts." Id.

Further expanding on one's vote in relation to the particularization of an injury, "the Supreme Court has made clear that 'a person's right to vote is *individual and personal in nature*,' so 'voters who allege facts showing disadvantage to themselves as individuals have standing to sue.'" Jacobson v. Fla.

Sec'y of State, 974 F.3d 1236 (11th Cir. 2020) (quoting Gill v. Whitford, 138 S. Ct. 1916, 1929 (2018) (emphasis added). The Court determined that voters "have an interest in their ability to vote and *in their vote being given the same weight as any other*." Id., at 1246 (emphasis added). Furthermore, the Court also concluded that "*absent any evidence of vote dilution* or nullification, a citizen is not injured by the simple fact that a candidate for whom she votes loses or stands to lose an election." Id., at 1247 (emphasis added).

The Court of Appeals of Georgia, as well as the trial court, relied on the persuasive authority of Wood v. Raffensberger, *supra*, rather than the mandatory authority of prior Supreme Court of Georgia cases or Court of Appeals of Georgia cases. In Wood, the Appellant was an aggrieved elector who sued Secretary of State Brad Raffensperger, among others, in federal court over how Georgia conducted the November 2020 election and for the general enforcement of election laws. That Appellant did not distinguish his position from that of any other voter, and did not claim or formulate an equal protection argument. The Court determined that the Appellant had based "his standing on the interest in 'ensur[ing that] … only lawful ballots are counted''', and that such a grievance was a generalized grievance. Wood, at 1314. The Appellant also claimed that his vote was diluted but failed to provide a point of comparison. Id. The Court dismissed this case on standing and other grounds. Wood, at 1313.

Wood attempted to claim Article III standing in federal court on state law claims, and asserted the general enforcement of the election laws. Distinguished from Wood, the present case was properly brought in state court. In the case at bar, the Appellants brought equal protection and due process claims, which particularized them as individual voters, who were individually injured, unlike Wood. In this case, the Appellants clearly state that only those voters in Georgia whose votes have been diminished would have standing to sue, unlike as in Wood, who alleged erroneously that *anyone*, even persons outside the state, could bring this claim. The alleged injury in fact in Wood is generalized because *all* Georgia voters could assert this cause of action, which differentiates the case at bar from Wood. Specifically, this case is to about the Appellants' votes being diluted, and not given the full weight of value to be afforded a valid vote within the context of the political process. The insertion of counterfeit ballots into an election result amounts to stuffing the ballot box, which violates state equal protection and state due process, and creates two classes of ballots, which violates equal protection and due process. Counterfeit ballots lessen the value of the one groups' vote, while simultaneously increasing the value of another groups' vote.

In Jacobson v. Fla. Sec'y of State, *supra*, the Appellant sued the Florida Secretary of State over how candidates were listed on ballots. In that case, the Appellant claimed that listing the incumbent first, which in recent years has mostly

been Republicans, violated the First and Fourteenth Amendments, because some voters tend to vote for the first candidate listed, regardless of party. Jacobson, at 1241. The Appellant contended that she would be injured because such placement could cause her preferred candidate to lose. Id., at 1246. The Court ruled that the Appellant had not only not shown specific facts to show any such injury, but that the alleged injury could "neither be fairly traceable to the Secretary nor redressable by a judgment against her [the Secretary]…." Id., at 1241.

Jacobson is distinguished from the present case because that case shows that no one has a right of action based solely on the outcome of an election. The "injury" alleged in Jacobson supposedly lessened her preferred candidate's chances of prevailing in an election, without specific facts to support such a position. The harm of her candidate not winning was not an injury in fact because one does not have a right to have their preferred candidate win. Thus, her supposed injury was not personal to her individual constitutional rights. However, the case at bar is not based upon the *outcome* of an election, but upon how the Appellants' votes were diluted by the insertion of counterfeit ballots, which gave rise to the Appellants' state due process and state equal protection arguments. Furthermore, whereas no specific evidence was produced in Jacobson to support a claim, the Appellants *have* put forth sufficient evidence to support their allegations of ballot stuffing, and certainly enough to prevail against a motion to dismiss. Jacobson also specifically

points out that one *does* have a right of action for their vote being diminished or debased, which is exactly what the Appellants' assert. Vote dilution, the very act alleged by the Appellants, is a particularized injury for which the Appellants have standing to assert.

b). GENERALIZED GRIEVANCE.

The trial court and the Court of Appeals of Georgia mischaracterize the difference between a particularized injury and a generalized grievance. In his dissenting opinion from Federal Election Comm'n v. Akins, 524 U.S. 11 (1998), Justice Scalia explains the distinction:

> What is noticeably lacking in the Court's discussion of our generalized-grievance jurisprudence is all reference to two words that have figured in it prominently: "particularized" and "undifferentiated." … "Particularized" means that "the injury must affect the plaintiff in a personal and individual way." … If the effect is "undifferentiated and common to all members of the public," … the plaintiff has a "generalized grievance" that must be pursued by political rather than judicial means. **These terms explain why it is a gross oversimplification to reduce the concept of a generalized grievance to nothing more than 'the fact that [the grievance] is widely shared,' … thereby enabling the concept to be dismissed as a standing principle by such examples as 'large numbers of individuals suffer[ing] the same common-law injury (say, a widespread mass tort), or . . . large numbers of voters suffer[ing] interference with voting rights conferred by law,'** …. The exemplified injuries are widely shared, to be sure, but **each individual suffers a particularized and differentiated harm**. One tort victim suffers a burnt leg, another a burnt arm-or even if both suffer burnt arms they are *different* arms. **One voter suffers the deprivation of *his* franchise, another the deprivation of *hers*. With the generalized grievance, on the other hand, the injury or deprivation is not only widely shared but it is *undifferentiated*….**

Federal Election Comm'n v. Akins, 524 U.S. 11 (1998) (emphasis added).

Here, the Appellees claim that because roughly four million people arguably are in the same position as the Appellants, their claim is a mere generalized grievance. The mere fact that millions of people could possibly be affected does not reduce an injury to a generalized grievance. If so, then how do victims in a class-action damages suit have their claims heard? How did voters in Tennessee whose votes were debased bring equal protection claims before the United States Supreme Court? How did Roe bring her claim in 1973?

To reduce state due process and state equal protection claims in which the Appellants have provided evidence of ballot stuffing to a generalized grievance is a slap in the face to those four million voters. The mere fact that millions of people could possibly be affected does not reduce an injury to a generalized grievance. In each voting infringement case brought before this Court, such as Manning v. Upshaw, 204 Ga. 324, 327 (1948), Favorito v. Handel, 285 Ga. 795 (2009), and Rhoden v. Athens-Clarke County Bd. of Elections, 310 Ga. 266, 267 (2020), or even federal cases such as Baker v. Carr, 369 U.S. 186, 208 (1962), Reynolds v. Sims, 377 U.S. 533, 555 (1964), or Purcell v. Gonzalez, 549 U.S. 1 (2006), there were potentially millions of people affected by some sort of governmental action or inaction. Were those cases tossed out as generalized grievances? By failing to follow prior Court of Appeals of Georgia and Supreme Court of Georgia

precedence and affirming the trial court decision, the Court of Appeals of Georgia is essentially saying that if unscrupulous actors dump thousands of counterfeit ballots into the mix of legitimate ballots, and are not caught by the authorities in charge of managing the election, that such behavior is OK, because *NO ONE* has standing to assert a claim! Such a holding effectively legalizes ballot stuffing!

Voting is a fundamental right, and an infringement upon one voter's franchise is an injury that is particularized and differentiated to that voter. An infringement to another voter's franchise is an injury that is particularized and differentiated to that voter. The insertion of counterfeit ballots, supported by numerous affidavits from observers, weakens one group's vote, while strengthening another group's vote, thereby creating two classes of ballots, which gives rise to the Appellants' equal protection and due process arguments. Therefore, an articulable injury to one's vote, be it by law or other nefarious means, is particularized and differentiated to these Appellants and support standing to assert their claims.

c). PUBLIC POLICY.

The Court of Appeals of Georgia applied the rationale of Wood v, Raffensberger, *supra*, to the facts of the case at bar, rather than Court of Appeals of Georgia and Supreme Court of Georgia precedents, and as such is inconsistent with the prior Court holdings of this Court. Past Supreme Court of Georgia holdings are mandatory authority that is binding on lower courts, while federal holdings are

merely persuasive, and are to be applied only where this Court has not spoken on the matter. However, it seems even this Court has given different holdings on the applicability of standing.

Justice Peterson, in his concurrence opinion of Black Voters Matter Fund, Inc. v. Kemp, *supra*, cited the inconsistencies and the lack of clarity in the application of a clear standing doctrine in Georgia, and urges the Court to clearly define such a doctrine for Georgia courts to follow. The justice argues "that [it is] well past time to consider the source and nature of Georgia's standing doctrine, and the extent to which our reliance on federal standing jurisprudence really is appropriate in interpreting and applying Georgia standing doctrine." Black Voters Matter Fund, Inc., at page 38.

Recently, this Court has granted certiorari to the case of Sons of Confederate Veterans v. Newton County Board of Commissioners, 360 Ga. App. 798 (2021), presumably to address the standing argument in that case. That case was whether the citizens of the state can have standing conferred by statute to bring suit against a Georgia county for the removal of a Confederate statue, which was allegedly removed for reasons not delineated within a statute supposedly enacted for their protection and preservation. The decision in that case could well bring clarity and direction regarding standing in that context for lower Georgia courts to follow.

It stands to reason that this Court should grant certiorari in the present case

for the same reason. Numerous Georgia cases, as well as federal cases, have been heard and decided over the years without even the hint of debate of standing. Georgia cases such as Manning v. Upshaw, *supra*, Favorito v. Handel, *supra*, and Rhoden v. Athens-Clarke County Bd. of Elections, *supra*, were brought by voters alleging similar infringements upon their vote before this honorable Court, and none of these cases were dismissed by this Court for the lack of standing. Standing is a jurisdictional question, and a trial or appellate court is charged with establishing it has jurisdiction. Further, a trial court or appellate court shall inquire into its' jurisdiction *sua sponte*. Yet standing was never brought into issue in the above cases, despite the fact at least one of these cases brought similar claims, state due process and state equal protection claims, as the present case. The ruling by the trial court and Court of Appeals of Georgia is therefore baffling.

Nor was standing brought into play at the federal level, in cases such as Baker v. Carr, *supra*, Reynolds v. Sims, *supra*, or Purcell v. Gonzalez, *supra*. Each of these cases were brought by voters alleging an injury to their vote or voting rights. Each of these cases was heard and decided by the courts without issue of standing. Each of the federal cases have had justices cite language indicating that voters have a judicially recognized right to be free of arbitrary impairment by state action that is secured by the Constitution. The incongruity in the application of standing between these cases and the present case is frightening, and deserves to

have clarity and direction. This honorable Court would do well to take up this case and clarify the issue once and for all.

The American court system has consistently treated voting rights cases as of utmost importance and worthy of comprehensive evidentiary hearings because of their direct bearing on the Constitutional rights of citizens. The importance of such cases increased dramatically after the November 2020 General Election as evidence continues to surface of election fraud, errors and irregularities that could have changed the outcome of the Presidential election. There is still great concern of the public as to the integrity of our election processes. Georgia is widely considered to be the "tip of the spear" of that public concern.

The gravity of these cases continues to escalate as petitioners attempting to adjudicate election fraud evidence are often turned away by courts for dubious technicalities before the evidence can even be presented. The courts inconsistent application of standing doctrine regarding the treatment of petitioners' Constitutional rights inhibits the very election transparency that is sorely needed to ensure that all voters have confidence in the results of the elections in which they voted. The resulting dichotomy of rhetoric regarding 2020 election fraud has created a growing division in America that is threatening to rip the fabric of our great country in two. The lack of the courts in giving citizens full transparency into the 2020 election has set up a double standard of justice that calls into question the

credibility of the entire American judicial system.

The instant case is just such an example of this double standard of justice. The Appellants provided sworn affidavits from four (4) senior poll managers and two (2) audit monitors indicating there were thousands of counterfeit ballots found in the Fulton County November, 2020 election audit. In addition, they contended that the State Farm arena video they provided of Election Night ballot processing showed up to a half dozen violations of Georgia election law. They argued that their individual state Equal Protection and state Due Process rights had been violated by ballot box stuffing.

Yet these claims have been deemed a generalized grievance, based upon the reliance of not the mandatory authority of the Supreme Court of Georgia decisions, but by the persuasive authority of a federal court decision. Suddenly, nearly seventy-five years of jurisprudence is ignored because of the misplaced reliance on this one federal case, which does not square with the holdings of numerous state and federal holdings, none of which have been overturned. Such reliance is misplaced and conflicts with Georgia jurisprudence.

In conclusion, because of the inconsistency in the application of standing to the variety of voting related cases brought before this Court, the Court should use this case to determine a sound policy of standing to be applied in such cases, and **GRANT** the Petitioner's Writ of Certiorari.

C. CONCLUSION.

The Appellants have pled state equal protection and state due process claims for injury to their votes in the November 2020 election and future elections. They allege that thousands of counterfeit ballots were inserted into batches of genuine ballots, in an effort to dilute one group's vote count, while strengthening another group's vote count. Such ballot stuffing created two classes of ballots, which gives rise to equal protection and due process claims. These claims were supported by multiple affidavits from persons that witnessed such activity. The trial court and the appeals court erroneously decided that these claims were mere generalized grievances, and not a particularized injury to support standing. The Appellants assert that said injuries are particularized and differentiated to them as voters in that and future elections, and deserve to have their claims heard. The Appellants humbly petitions this honorable Court to **GRANT** the Petitioner's Writ of Certiorari.

This submission does not exceed the page count limit imposed by Rule 20.

Respectfully submitted this the 19th day of July, 2022.

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CERTIFICATE OF SERVICE

This is to certify that I have this day served the Parties via their counsels of record, a true and correct copy of the **PETITION FOR WRIT OF CERTIORARI** via U.S. Mail, to the following addresses:

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Respectfully submitted this the 19th day of July, 2022.

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FIFTH DIVISION
MCFADDEN, P. J.,
GOBEIL and PINSON, JJ.

NOTICE: Motions for reconsideration must be *physically received* in our clerk's office within ten days of the date of decision to be deemed timely filed.
https://www.gaappeals.us/rules

July 1, 2022

In the Court of Appeals of Georgia

A22A0939. FAVORITO et al. v. WAN et al.

A22A1097. JEFFORDS et al. v. FULTON COUNTY et al.

MCFADDEN, Presiding Judge.

Garland Favorito, Caroline Jeffords, and seven other Georgia residents petitioned for declaratory judgment and injunctive relief against five members of the Fulton County Board of Registration and Elections in their individual capacities, claiming that votes cast by the petitioners during the 2020 general election were diluted by the inclusion of allegedly unlawful ballots in Fulton County. Jeffords and one other petitioner also claimed that Fulton County had violated the Georgia Open Records Act.[1] Three of the respondent board members filed a motion to dismiss the

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[1] All nine petitioners originally filed a single petition together. But after the trial court granted a motion to sever, two separate amended petitions alleging related claims were filed, with Favorito and six others filing one amended petition, while

petitions based on the petitioners' lack of standing. The trial court granted the three board members' motion and dismissed the claims against them, finding that the petitioners lacked standing due to their failure to allege a particularized injury. The court further ordered that the claims against the other two board members also be dismissed due to the same lack of standing of the petitioners. The court also dismissed Fulton County from the case, finding that the Open Records Act claims against it had already been fully adjudged in a prior order.

The petitioners appeal from the dismissal order, with Favorito and six others appealing in Case No. A22A0939, and Jeffords and another petitioner appealing in Case No. A22A1097. We consider the appeals together since they arise from the same order and both challenge the trial court's lack of standing ruling.

Because the petitioners' claims of vote dilution did not allege particularized injuries, the trial court correctly dismissed their claims against the five board members due to lack of standing. And an additional argument regarding standing to bring the Open Records Act claims against Fulton County presents nothing for review since the trial court did not dismiss Fulton County from the case based on the petitioners' lack of standing. So we affirm the order of the trial court in both appeals.

Jeffords and another petitioner filed the other amended petition.

1. *Standing.*

"Standing is . . . a jurisdictional issue that must be considered before reaching the merits of any case, and is a doctrine rooted in the traditional understanding of a case or controversy." *Sons of Confederate Veterans v. Newton County Bd. of Commrs.*, 360 Ga. App. 798, 803 (2) (861 SE2d 653) (2021) (citations and punctuation omitted). "[L]itigants must establish their standing to raise issues before they are entitled to have a court adjudicate those issues[.]" *Sherman v. City of Atlanta*, 293 Ga. 169, 172 (2) (744 SE2d 689) (2013). To establish standing, under both Georgia and federal law,[2] a litigant must demonstrate,

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[2]We note that two members of our Supreme Court have opined that it is "well past time to consider the source and nature of Georgia's standing doctrine, and the extent to which our reliance on federal standing jurisprudence really is appropriate in interpreting and applying Georgia standing doctrine." *Black Voters Matter Fund v. Kemp*, 313 Ga. 375, 393 (870 SE2d 430) (2022) (Peterson J., concurring). And that court has granted certiorari to address standing in *Sons of Confederate Veterans*, supra, cert. granted, S22C0039, 22C0045, S22G0045 (Mar. 8, 2022).

"Article III of the [United States] Constitution limits the jurisdiction of federal courts to adjudicating actual 'Cases' and 'Controversies.' To determine whether a dispute satisfies Article III's case-or-controversy requirement, courts have established[, among other justiciability doctrines,] the standing doctrine." *Mack v. USAA Cas. Ins. Co.*, 994 F3d 1353, 1356 (III) (11th Cir. 2021).

But as the *Black Voters Matter* concurring opinion explains, "[n]o such concrete qualification appears in the Georgia Constitution's only provision that explicitly mentions the state judicial power. See Ga. Const. of 1983, Art. VI, Sec. I, Par. I ('The judicial power of the state shall be vested exclusively in the following classes of courts. . . .')." *Black Voters Matter*, supra at 392 (Peterson, J., concurring).

> (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 decision. An injury in fact is one that is both concrete and particularized. . . . The Supreme Court of the United States has explained that, for an injury to be particularized, it must affect the plaintiff in a personal and individual way.

"The word 'case' does appear elsewhere in Article VI of the Georgia Constitution, although only in provisions with limited application." *Id. at* 392, n. 23 (Peterson, J., concurring). Citing his concurring opinion in *Black Lives Matter*, Justice Peterson has opined that "it is quite doubtful that the actual use of 'case' in Article VI is a limitation generally on judicial power in the way that the case-and-controversy language in Article III of the United States Constitution limits the federal judicial power." *McAlister v. Clifton*, 2022 Ga. LEXIS 156 **15-16 (Case No. S22A0144, decided May 17, 2022) (Peterson, J., concurring).

On the other hand, "at least one such provision is about jurisdiction[.]" *Black Voters Matter*, supra at 392, n. 23 (Peterson, J. concurring). Our state constitution provides in part: "The superior courts shall have jurisdiction in all cases, except as otherwise provided in this Constitution." Ga. Const. of 1983, Art. VI, Sec. IV, Par. I. That provision "establishes the superior courts as courts of general jurisdiction[.]" *Mosley v. Lancaster*, 296 Ga. 862, 866 (2) (770 SE2d 873) (2015).

So the jurisdiction of the superior courts to exercise the judicial power is over cases. And the jurisdictions of every other class of court to exercise that power is arguably derivative of the jurisdiction of the superior courts. Courts of limited jurisdiction are vested with portions of that general jurisdiction. And, with the sole exception of the Supreme Court's certified-question jurisdiction, the jurisdiction of the Supreme Court and Court of Appeals is appellate and certiorari jurisdiction over that general jurisdiction. Moreover, "[i]t is a settled principle of Georgia law that the jurisdiction of the courts is confined to justiciable controversies[.]" *Fulton County v. City of Atlanta*, 299 Ga. 676, 677 (791 SE2d 821) (2016).

Regardless, "our past precedent relying on federal case law — even if wrongly decided — is precedent binding on lower courts[.]" *Black Voters Matter,* supra at 394 (Peterson, J., concurring). So in our decision today we must apply the existing law.

Sons of Confederate Veterans, supra at 803-804 (2) (citations and punctuation omitted).

In another case which, like the instant cases, also involved a lawsuit claiming vote dilution based on allegedly unlawful ballots in Georgia during the 2020 general election, a federal appellate court applied the same three-part standing test recited above and found that the plaintiff lacked standing because he had failed to allege a particularized injury. See *Wood v. Raffensperger*, 981 F3d 1307 (11th Cir. 2020). "Although the federal court decision is not binding on this court, we find the analysis in that decision to be persuasive." *Bing v. Zurich Svcs. Corp.*, 332 Ga. App. 171, 172 (1) (770 SE2d 14) (2015). In finding that the vote dilution claim based on allegedly unlawful ballots was not a particularized injury, the federal court in *Wood* explained:

> To be sure, vote dilution can be a basis for standing. But it requires a point of comparison. For example, in the racial gerrymandering and malapportionment contexts, vote 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. Vote dilution in this context is a paradigmatic generalized grievance that cannot support standing.

Wood, supra at 1314 (III) (A) (citations and punctuation omitted).

In the instant appeals, as in *Wood*, the petitioners' "interest in ensuring that only lawful ballots [were] counted" was a "generalized grievance . . . undifferentiated and common to all members of the public" that, "no matter how sincere, cannot support standing." *Wood*, supra (citations and punctuation omitted). The trial court therefore did not err in dismissing the petitioners' claims against the five individual board members for lack of standing. See *Sons of Confederate Veterans*, supra at 806 (2) ("because each of the appellants lacked standing, the trial courts correctly dismissed all of these actions").

2. *Fulton County.*

The appellants in Case No. A22A1097 also challenge the dismissal of Fulton County from their case by arguing that they were not required to have standing to make a request for documents under the Georgia Open Records Act. But the dismissal of Fulton County was not based on a finding that the appellants lacked standing to make an open records request. Rather, the trial court ruled that because a prior court order had "fully adjudged [the Open Records Act] claims, no further relief may be accorded to Petitioners under the [Act], and therefore, Respondent Fulton County is also dismissed." Since the argument made on appeal does not address the dismissal ruling actually made by the trial court, it presents nothing for review.

Judgments affirmed. Gobeil and Pinson, JJ., concur.