

IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

Phil Chen et al,

Case № 2022CV365755

Plaintiffs

Versus

Fulton County Board of
Registration and Elections et al,
Defendants

ORDER DENYING MOTIONS TO DISMISS

The court heard the plaintiffs' evidence on Thursday, October 13, 2022. After the plaintiffs rested, the defendants both moved to dismiss under O.C.G.A. § 9-11-41(b).¹

The testimony of plaintiff Phil Chen was that he reviewed the spreadsheet list of all the individuals who voted in the recent Fulton County primary in which he was a candidate. The spreadsheet shows the address of each person who voted. He testified that there were 113 individual who voted in that primary whose addresses are not in Fulton County's 7th school board district based upon his examination of the content of that spreadsheet.

While Mr. Chen was tendered as an expert witness in the analysis of spreadsheet data, the testimony he gave on this issue was fact testimony.

¹ "After the plaintiff, in an action tried by the court without a jury, has completed the presentation of his evidence, the defendant, without waiving his right to offer evidence in the event the motion is not granted, may move for dismissal on the ground that upon the facts and the law the plaintiff has shown no right to relief."

That is, he looked at the listed address for the voter and determined from a map whether that address is in fact in Fulton County School Board District Seven.

He also testified to seeing odd reports from local news media that indicated that a candidate who had withdrawn had received 3000+ votes, however, there was nothing in final tally to indicate that the withdrawing candidate received any votes. The court deemed those reports to be inadmissible hearsay.

For the motion to dismiss, the court has to take his non-hearsay testimony as true.

The margin of separation between the winning candidate (Defendant Dr. Morancie) and Mr. Chen was 116. If 113 people voted improperly, those ballots must be disregarded.

[The court notes that this is not evidence of any voter misconduct since the electronic voting system dictates candidate options a specific voter will see on the ballot screen. The court views any error in this to be attributable to the failure of the system to provide the voters with the correct candidates for that voter's school board district.]

Plaintiff Chen testified that he received 6053 votes while defendant Morancie received 6169 votes. The total tally was therefore 12,222.

O.C.G.A. § 21-2-495 provides:

Whenever the difference between the number of votes received by a candidate who has been declared nominated for an office in a primary election or who has been declared elected to an office in an election or who has been declared eligible for a run-off primary or election and the number of votes received by any other candidate or candidates not declared so nominated or elected or eligible for a runoff shall be not more than one-half of 1 percent of the total votes which were cast for such office therein, any such candidate or candidates receiving a sufficient number of votes so that the difference between his or her vote and that of a candidate declared nominated, elected, or eligible for a runoff is not more than one-half

of 1 percent of the total votes cast, within a period of two business days following the certification of the election results, shall have the right to a recount of the votes cast, if such request is made in writing by the losing candidate.

One-half of one percent of the total count is 61.

We obviously do not know what candidate these 113 voters selected. However, if they all voted for Dr. Morancie, that would reduce the margin of difference to only three votes in which event the court.

The court is also concerned that there was a systemic error that caused some to vote in the wrong school district.

That would call the validity of the election for this school district into question.

The court therefore denies the motions to dismiss.

So ordered this October 16, 2022.



David Emerson
Senior Judge of Superior Courts
Presiding in FULTON County

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