

**IN THE SUPREME COURT
FOR THE STATE OF GEORGIA**

Jeffords, et al.,

Petitioner

v.

Case Number: S22C1299

Fulton County, et al.,

Respondents.

Favorito, et al.,

Petitioners

v.

Case Number: S22C1285

Alex Wan, et al.,

Respondents

**RESPONDENTS' RESPONSE TO THE PETITIONERS'
REQUEST FOR EXPEDITED CONSIDERATION OF
PETITION FOR WRIT OF CERTIORARI**

Respondents have previously filed a response to the Petitioner's petition for a writ of certiorari, explaining why this Court should deny the petition for numerous reasons. The Petitioners do not have standing to bring this case (and nothing in the recent *Sons of Confederate Veterans v. Henry County Board of Commissioners*, --- Ga. ---, 2022 WL 14147669 (Oct. 25, 2022), case diminishes

the strength of that argument). Moreover, the relief sought by the Petitioners demonstrates that they have no standing to pursue this litigation. Thus, Respondents maintain that the Petition should be denied and that the reasons set forth by the Petitioners do not merit expedited consideration of their Petition.

ARGUMENT

As explained in Respondents' opposition to the Petition, the parties seeking relief are for the most part not residents (or voters) in Fulton County. The Petitioners who do vote in Fulton County actually voted, and had their vote counted in the 2020 election; further they have offered no suggestion that they did not also vote in 2021 and 2022. They have failed *not only* to demonstrate the type of harm that would be cognizable pursuant to *Confederate Veterans*; they have failed to allege any cognizable harm to themselves at all. They have not alleged that there was a procedure in place in 2021 or 2022 that diminished their vote or that needed to be addressed in any future election. They have not even alleged any procedure, law, regulation, or policy that they have standing to contest or address in a declaratory judgment action.

Standing to Contest Past Election Counting Errors

Even if the Petitioners could offer a shred of evidence that there were errors in the 2020 election count in Fulton County, that does not confer standing on them to pursue a declaratory judgment action. There is no ongoing dispute. There is no

basis for seeking relief in a declaratory judgment for past conduct. Declaratory judgments are designed (and limited) to addressing the current or future relationship between the parties, not as a vehicle to address past grievances.

There is also no basis for the Petitioners to have standing to seek injunctive relief. In *Confederate Veterans*, this Court held that a member of the community may seek injunctive relief to prevent imminent violations of state law – that is, *future* violations. There was no doubt that the alleged violation was about to occur (i.e., the removal of the statues). Thus, the plaintiff had standing because there was a cognizable event that was about to occur. It is true that the plaintiffs in that case, like all other citizens of the county, would “suffer” from this event (or so they claimed). Whether the event violated the law was yet to be decided. But it was clear on the face of the complaint that the event *was about to occur*. They were not seeking to enjoin some event that might someday happen at some undetermined time in the future. Which is exactly what the petitioners in this case are seeking.

There is no event regarding any election that is “about to occur” that would injure any of the Petitioners (either Fulton County residents/voters, or any other person in Georgia). Thus, the opening lines of the *Confederate Veterans* opinion is fatal to the Petitioners’ standing argument in this case:

[A] plaintiff must have a cognizable injury **that can be redressed by a judicial decision**. Courts are not vehicles for engaging in merely academic debates or deciding purely theoretical questions. We “say what the law is” only as needed to resolve an **actual controversy**. To that end, only plaintiffs with a cognizable injury can bring a suit in Georgia courts. *Id.* at *1.

Nothing about this Court’s subsequent caveat to that principle alters the foundational requirement:

Unlike federal law, however, that injury need not always be individualized; sometimes it can be a generalized grievance shared by community members, especially other residents, taxpayers, voters, or citizens. *Id.*

The “voter cases” that this Court noted later in the *Confederate Veterans* case also provide no support for the Petitioners. Those cases involve local governments that had either refused to conduct an election (i.e., in the future) that was required by law, or had adopted some procedure (implemented for future elections) that allegedly violated the law. *Id.* at *14. There was an ongoing violation, or an imminent violation that was not speculative in those cases. If those cases conferred standing on voters all over the state (as the Petitioners apparently are suggesting), then every time there is *any* impropriety in any election in one county, all voters throughout the State of Georgia can file a lawsuit, claim to have been injured, and insist on some form of relief for the *next* election, even absent any evidence whatsoever that the impropriety is likely to occur again.

In this case, the Petitioners seek declaratory relief – they want the lower court to declare that there was something improper that occurred in the past. They

also seek injunctive relief, urging the court to fire public employees and officials, or enjoin any illegal acts in the future – also beyond the power of a trial court.¹

The Petitioners’ problem in this case is not that the injury they predict is not “individualized” – the problem is that they are only predicting about what will happen at some undetermined time in the future at some future election in Fulton County. The injury is theoretical; it is a speculative event that is incapable of being redressed by anything this court is authorized to remedy. There is no relief this Court can meaningfully address other than to declare: “Follow the law.” The Court will not fire employees or publicly appointed officials. The Court will not supervise future Fulton County elections.

The Petitioners have no standing to demand that certain employees of Fulton County be fired. In fact, many of the employees are no longer employed by the Fulton County Election Board and several of the appointed Election Board members are no longer on the Board.

There is no mystery about the Petitioners’ design in this case. They have been pursuing their claim that the 2020 election was “stolen” for two years. Yet, they never filed an election challenge. They did not claim that any election “theft” occurred during the 2021 election. They have voiced no claim (or raised no

¹ The Petitioners also implore the trial court to supervise future elections (or at least the 2021 election, though we assume the Petitioner will amend the complaint and ask the judge to supervise the 2024 election).

objection) to the vote count in the 2022 election. There is, in short, no relief being sought by the Petitioners and this void further demonstrates their lack of standing to pursue the discovery that they seek (i.e., an examination of the original absentee ballots that were counted in the 2020 election).

Because the Petitioners fail to identify any imminent injury or event that will harm them or hurt their claim in any way, their request to have their Petition expedited should be rejected. But the Petition surely should be denied in the regular course of this Court's schedule.

This 18th day of November, 2022.

RESPECTFULLY SUBMITTED,

GARLAND, SAMUEL & LOEB, P.C.

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CERTIFICATE OF COMPLIANCE

I hereby certify that this RESPONDENTS' RESPONSE TO THE PETITIONERS' REQUEST FOR EXPEDITED CONSIDERATION OF PETITION FOR WRIT OF CERTIORARI is in 14-point Times New Roman type and contains 1,200 words.

This 18th day of November, 2022.

GARLAND, SAMUEL & LOEB, P.C.

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CERTIFICATE OF SERVICE

THIS IS to certify that I have this date caused to be served a true and correct copy of the foregoing RESPONDENTS' RESPONSE TO THE PETITIONERS' REQUEST FOR EXPEDITED CONSIDERATION OF PETITION FOR WRIT OF CERTIORARI upon opposing counsel, by First Class U.S. Mail properly addressed as follows:

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This 18th day of November, 2022.

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