

MAR 10, 2025 02:03 PM

Niki Sewell

Niki Sewell, Clerk
Coweta Superior Court

IN THE SUPERIOR COURT OF COWETA COUNTY
STATE OF GEORGIA

VOTERGA,
PETITIONER,

vs.

CIVIL ACTION NO.: SUV2022001314

COUNTY OF COWETA, COUNTY OF COBB,
AND COUNTY OF FORSYTH,
RESPONDENTS.

**PETITIONER'S RESPONSE TO MOTION TO DISMISS OR,
IN THE ALTERNATIVE, MOTION FOR SUMMARY JUDGMENT**

COMES NOW, THE PETITIONER, and by and through his attorney and files this his Response to Forsyth County's motion to dismiss or, in the alternative, motion for summary judgment and shows this Honorable Court as follows:

The Petitioner contends that there are genuine issues of material fact and denies that Respondent County of Forsyth is entitled to relief. Instead, the Petitioner moves this Honorable Court to deny the motion to dismiss or, in the alternative, motion for summary judgment pursuant to O.C.G.A. § 9-11-56 (b) on the grounds that disputed facts require a trial, as a matter of law. In support of this Response, the Petitioner submits its Statement of Disputed Material Facts, Brief in Support containing legal argument and authority, and supporting documentation.

WHEREFORE, THE PETITIONER prays that Forsyth County's motion to dismiss or, in the alternative, motion for summary judgment be **DENIED** in its entirety.

Respectfully submitted this the 10th day of March, 2025.

HARDING LAW FIRM, LLC

/S/ Todd A. Harding

Todd A. Harding, For the Firm
Ga. Bar No.: 101562
Attorney for Petitioner

Harding Law Firm, LLC
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**STATEMENT OF DISPUTED MATERIAL FACTS
IN SUPPORT OF SUMMARY JUDGMENT**

COMES NOW, THE PETITIONER, by and through its attorney of record and pursuant to Uniform Superior Court Rule 6.5, submits the following Statement of Disputed Material Facts to which there is a genuine issue to be tried:

1. Respondent County of Forsyth has failed to provide digital images of the initial count for the 2020 General Election per the Petitioner's ORA request.
2. The Petitioner did not seek the recount images of the 2020 General Election.
3. Respondent County of Forsyth has failed to independently scan the original ballots from 2020 General Election and provide them to the Petitioner.
4. Respondent County of Forsyth has failed to allow the Petitioner to scan the original ballots of the 2020 General Election.

Respectfully submitted this the 10th day of March, 2025.

HARDING LAW FIRM, LLC

/S/ Todd A. Harding

Todd A. Harding, For the Firm

Ga. Bar No.: 101562

Attorney for Petitioner

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ARGUMENT AND CITATION OF AUTHORITY

A. SERVICE ISSUE.

The Petitioner is actively attempting service on the proper designee.

**B. FORSYTH COUNTY DID NOT COMPLY WITH PETITIONER'S OCTOBER 20,
2020 ORA REQUEST.**

The Petitioner contends that Respondent County of Forsyth did not comply with the Petitioner's ORA request, as a matter of law and fact. The Petitioner clearly sought the original images that were produced by the initial count of the original ballots in the 2020 General Election. The Petitioner did not request the recount images, but the original images from the initial count in the 2020 General Election. The Petitioner sought the initial count images because those images contain meta data, e.g. time stamps and security stamps. The Petitioner contends that there is no way to determine if the recount images are identical to the initial count images. Hence, the Petitioner contends that Respondent County of Forsyth did not comply with the Petitioner's ORA request, as a matter of law.

**C. RECORDS SOUGHT PURSUANT TO THE ORA WERE IN EXISTENCE AT THE
TIME THE REQUEST WAS MADE.**

The Petitioner contends that the records sought by the Petitioner were in the Respondent County of Forsyth's custody, as a matter of law and fact. Respondent County of Forsyth contends it was under no obligation to respond to the Petitioner's ORA request because no records existed. This patently ignores the plain language of the ORA because Respondent County of Forsyth had the original paper ballots in its' custody and control at the time of the ORA request. "At the time of inspection, any person may make photographic copies or other electronic reproductions of the records using suitable portable devices brought to the place of inspection." Ga. Code § 50-18-71 (2021). A digital copy could have been made by Respondent County of Forsyth of the records in

its; custody and control. Respondent County of Forsyth cannot have responsive records in its; custody and control and then refuse to provide them based upon the format. The Petitioner could have assisted with the copying of the original ballots by providing high speed scanning equipment to expedite the scanning process. Therefore, the Petitioner contends that the records sought by the Petitioner were in the Respondent County of Forsyth's custody, as a matter of law and fact.

D. RETAINING BALLOT IMAGES, WHICH ARE A COPY OF PAPER BALLOTS WAS EXPLICITLY REQUIRED AT THE TIME OF THE NOVEMBER 2020 GENERAL ELECTION.

The original ballots images requested by the Petitioner were required to be retained, as a matter of state and federal law. The general rule in Georgia for retention is that: "All primary and election documents on file in the office of the election superintendent of each county, municipal governing authority, superintendent, registrar, committee of a political party or body, or other officer shall be preserved therein for a period of at least 24 months and then the same may be destroyed unless otherwise provided by law." Ga. Code § 21-2-73 (2020). The federal equivalent is that: "Every officer of election shall retain and preserve, for a period of twenty-two months from the date of any general, special, or primary election of which candidates for the office of President, Vice President, presidential elector, Member of the Senate, Member of the House of Representatives, or Resident Commissioner from the Commonwealth of Puerto Rico are voted for, all records and papers which come into his possession relating to any application, registration, payment of poll tax, or other act requisite to voting in such election..." 52 U.S.C. § 20701. Thus, the paper ballots are still available, and the Respondent County of Forsyth could have easily allowed scanning access to the paper ballots by seeking an order from the superior court to unseal the paper ballots for scanning. See Ga. Code § 21-2-500 (2020). Thus, the original ballots images requested by the Petitioner were required to be retained, as a matter of state and federal law.

E. THERE IS A JUSTICIABLE CONTROVERSY TO JUSTIFY THE GRANT OF A DECLARATORY JUDGMENT.

The Respondent County of Forsyth contends there is no justiciable controversy before the Court. Respondent County of Forsyth argues that it has no duty to preserve original ballot images. The issues of what is required to be preserved in an actual case and controversy. The

Court can give future direction as to what images are to be required to be preserved going forward. Ergo, the Respondent County of Forsyth contends there is no justiciable controversy before the Court. Respondent County of Forsyth argues that it has no duty to preserve original ballot images.

F. ON JANUARY 1, 2025, PAPER BALLOTS BECAME SUBJECT TO ORA AND COST ESTIMATE WAS PROVIDED TO PETITIONER.

The Petitioner contends that Respondent County of Forsyth should provide the paper ballot images for free because of its failure to retain the initial, original paper ballot images, as required by law. Or in the alternative, Respondent County of Forsyth could cooperate with the Petitioner to let the Petitioner provide high speed scanners to substantial lower the cost.

Respectfully submitted this the 10th day of March, 2025.

HARDING LAW FIRM, LLC

/S/ *Todd A. Harding*

Todd A. Harding, For the Firm

Ga. Bar No.: 101562

Attorney for Petitioner

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CERTIFICATE OF SERVICE

This is to certify that I have served this day a copy of the foregoing **PETITIONER'S
RESPONSE TO MOTION TO DISMISS OR, IN THE ALTERNATIVE, MOTION FOR
SUMMARY JUDGMENT** by court approved electronic service to ensure delivery as follows:

Patrick D. Jaugstetter (Forsyth County)
patrickj@jarrand-davis.com

Karen Pachuta (Forsyth County)
kpachuta@jarrand-davis.com

Respectfully submitted this the 10th day of March, 2025.

HARDING LAW FIRM, LLC

/S/ Todd A. Harding

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