IN THE COURT OF APPEALS
STATE OF GEORGIA

GARLAND FAVORITO et al.,
APPELLANTS,

v. **CASE NO.: A26A1596**

ALEX WAN et al.,
APPELLEES.

APPELLANTS' BRIEF

COME NOW, THE APPELLANTS, by and through their attorney of record to file their Appellants' Brief, as follows:

PART ONE

A. STATEMENT OF PROCEEDINGS BELOW.

The Appellants filed their original petition for relief on 12/23/2020. (R at 17-48). The Appellants filed their first amended petition for relief on January 13, 2021. (R at 234-248). The Appellees filed their answer to the original petition on January 27, 2021. (R at 310-337). The Appellees filed numerous motions to dismiss on May 26, 2021. (R at 780-832). The Appellants filed their second amended petition for relief on June 21, 2021. (R at 1017-1050). The Appellants filed their third amended petition for relief on July 2, 2021. (R at 1135-1161). The Appellees filed their answer to the third amended petition on August 12, 2021. (R at 1424-1452). 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 2018-2031). The Appellants filed an appeal of the order to dismiss on standing grounds to the Georgia Court of Appeals on February 18, 2022. The Appellees filed their response on March 14, 2022. The Appellants replied on April 1, 2022. The Court of Appeals affirmed the lower court dismissal on July 1, 2022.

The Appellants filed a writ of certiorari for the Court of Appeals order to the Georgia Supreme Court on July 19, 2022. The Appellees responded in August of 2022. The Appellants filed a motion to expedite on November 15, 2022. The Supreme Court ordered Appellees to respond on November 16, 2022 and the Appellees responded by November 18, 2022. The Supreme Court then reversed the lower courts, holding that the Petitioners did have standing, and remanded the case to the Court of Appeals on December 20,2022. The Court of Appeals remanded Appellants case to the lower court on May 11, 2023.

Trial court Judge Brian Amero, transferred the case to Judge Robert McBurney on May 12, 2023 (R at 2792). The Appellants filed a motion to recuse Judge McBurney on May 16, 2023 (R at 2793-2818). The Appellees replied on November 9, 2023 (R at 2934-2944). Fulton Superior Court Judge Melanie Lefridge denied the motion to recuse on December 7, 2023 (R at 2945-2952). Judge McBurney held a hearing on June 24, 2024, where he heard the Appellants motion to substitute updated parties for new Fulton County Board of Registrations

and Elections members, Appellees motion to dismiss, Appellees motion for fees and Clerk Appellee motion to destroy ballots. Judge McBurney granted Appellees motion to dismiss and motion for fees while dismissing as moot Appellants motion to substitute parties on Feb 4, 2026. (R at 3138-3151)

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 Fulton County. (R at 1135-1136). 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 1136). The Appellants pled that Appellant Garland Favorito's vote was not counted in the Official Statement of Votes Cast or the published hand count audit results or the recount results. (R at 1135). The Appellants further pled that Susan Voyles personally observed, as a senior poll manager and hand count auditor, what she believed were fraudulent or fabricated absentee ballots during the November 14, 2020 hand count audit. The suspect absentee mail-in ballots were not creased from being mailed, nor marked with a writing instrument, and appeared to be of a different paper stock than other ballots. (R at 66-75). The Appellants also 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,

nor marked with a writing instrument. (R at 72). These witnesses along with others provided sworn affidavits attesting to the above facts, which were filed into the record on December 23, 2020 (R at 50-125).

On December 3, 2020 a video of Fulton County absentee ballot processing on Election Night became publicly known. The video clearly showed that absentee ballots were processed without legally required monitors being present as well as evidence of ballots being double scanned although they were not subject to paper jamming or any type of scanning malfunction.

Upon learning these facts, the Appellants filed the instant suit, citing Equal Protection and Due Process claims and alleging that the weight of their vote was diluted or even nullified by the inclusion and counting of fabricated and fraudulent absentee ballots and by unequal treatment in ballot processing (R at 28-29). The Appellants further argued that Due Process claims by the unlawful processing of absentee ballots (R at 29-30). The Appellants have maintained these substantive declaratory judgement claims throughout their amended complaints (R at 1145-1146) and requested specific future relief to alleviate the concerns that their votes will be counted lawfully in subsequent elections. (R at 1159-1160).

The trial court, after a hearing on the Appellees' Motion to Dismiss, improperly found that the Appellants had not pled a cognizable claim because they alleged no future harm and raised no justiciable issue. (R at 3138-3151) The Appellants'

claims were preserved for appeal by way of the final and appealable order entered by the trial court.

PART TWO

A. JURISDICTION.

The Court of Appeals of Georgia has jurisdiction to hear this case pursuant to O.C.G.A. § 15-3-3.1 (2020), and the Georgia Constitution of 1983, Article VI, Section VI, Paragraphs II-III.

B. ENUMERATION OF ERRORS.

1. **THE TRIAL COURT ERRED BY DISMISSING APPELLANTS' DECLARATORY JUDGMENT CLAIMS FOR LACK OF A JUSTICIABLE CONTROVERSY BECAUSE APPELLANTS CLEARLY PLED CLAIMS CONCERNING FUTURE CONDUCT.**

2. **THE TRIAL COURT ERRED BY DISMISSING THE CASE FOR FAILURE TO STATE A CLAIM OF ANY JUSTICABLE ISSUE OF LAW OR FACT BECAUSE APPELLANTS CLEARLY PLED SUBSTANTIVE VIOLATIONS TO THEIR DUE PROCESS AND EQUAL PROTECTION RIGHTS.**

3. **THE TRIAL COURT ERRED IN AWARDING AN UNTMELY CLAIM FOR ATTORNEY FEES AGAINST APPELLANTS FOR FILING A COURT APPROVED, UNOPPOSED, GOOD FAITH FIRST IMPRESSION MOTION CONCERNING NEW GEORGIA LAW.**

    a. **THE TRIAL COURT ERRED IN AWARDING ATTORNEYS' FEES UNDER O.C.G.A. § 9-15-14(a), BECAUSE APPELLANTS' POSITIONS WERE NOT SHOWN TO HAVE A "COMPLETE ABSENCE OF ANY JUSTICIABLE ISSUE OF LAW OR FACT" UNDER THE CONTROLLING STANDARD.**

b. THE TRIAL COURT ERRED BY AWARDING FEES UNDER O.C.G.A. § 9-15-14(a), FOR WORK ATTRIBUTABLE TO A LEGITIMATE PROCEDURAL REQUEST THAT RESULTED IN AN UNOPPOSED SUBSTITUTION BY COURT ORDER.

c. THE TRIAL COURT ERRED IN AWARDING ATTORNEYS' FEES UNDER O.C.G.A. § 9-15-14(a), ON GROUNDS OF A "COMPLETE ABSENCE OF ANY JUSTICIABLE ISSUE OF LAW OR FACT" BECAUSE APPEALLNTS REPEATEDLY RECEIVED RELIEF DURING THE CASE.

d. THE TRIAL COURT ERRED IN AWARDING ATTORNEYS' FEES THAT IGNORED O.C.G.A. § 9-15-14(c) WHICH PROHIBITS FEES TO BE ASSESSED FOR ACTIONS BROUGHT IN GOOD FAITH FIRST IMPRESSION INTERPRETATIONS OF NEW LAW.

e. THE TRIAL COURT ERRED IN AWARDING ATTORNEYS' FEES UNDER O.C.G.A. § 9-15-14(b), BECAUSE THE RECORD AND FINDINGS DO NOT ESTABLISH THAT APPELLANTS' ACTION "LACKED SUBSTANTIAL JUSTIFICATION" OR WAS INTERPOSED FOR DELAY, HARASSMENT, OR IMPROPERLY EXPANDED.

f. THE TRIAL COURT ERRED IN PERMITTING FULTON COUNTY'S FEE MOTION TO BE TREATED AS TIMELY VIA NUNC PRO TUNC FILING WHERE "ATTEMPTED FILING" WAS REJECTED BY THE E-FILING SYSTEM.

PART THREE

A. STANDARD OF REVIEW.

Here, the Appellants contend that the appropriate standard of review on a motion to dismiss is de novo. Pursuant to Walker County v. Tri-State Crematory, 284 Ga. App. 34 (2007), the case states in pertinent part, "[f]inally, we review the

dismissal de novo, construing the complaint's allegations and all possible inferences therefrom in favor of the plaintiff."

Further, the Appellants contend that the appropriate standard of review on a question of law is also de novo. Pursuant to Suarez v. Halbert, 246 Ga. App. 822, 824 (1) (2000), a legal question is reviewed de novo or independently reviewed on appeal. Since no deference is owed to the trial court's ruling on a legal question, the "plain legal error" standard of review is applied.

B. ARGUMENT AND CITATIONS OF AUTHORITY.

1. THE TRIAL COURT ERRED BY DISMISSING APPELLANTS' DECLARATORY JUDGMENT CLAIMS FOR LACK OF A DECLARATION CONCERNING FUTURE CONDUCT BECAUSE APPELLANTS CLEARLY PLED CLAIMS CONCERNING FUTURE CONDUCT.

In addition to the below arguments, the Appellants incorporate by reference the arguments made in Caroline Jeffords' appellant and reply briefs, A26A1739, in their entirety, as if restated herein verbatim.

The trial court erred by dismissing the Appellants' declaratory judgment claims for lack of a justiciable controversy, based solely on the completion of the 2020 election, and the conclusion that no future directed declaration could be entered. (R-3141). In dismissing the case, the court concluded:

> "What unites them here is that none of their declaratory judgment claims seeks an actual declaration of rights or obligations concerning future conduct, which is fatal to their cause."

The court claimed that the Appellants had not pled future harms, where a simple reading of the Appellants' complaint and amendments clearly show that future harms were pled nearly thirty (30) times, including 15 times alone in Appellants 3rd Amended Complaint. (R at 1135-1161) This includes three (3) specific prayers for future relief (R at 1159-1160), six (6) specific future declaratory judgement claims in paragraphs 82-88 (R at 1146-1147) and six (6) additional future declaratory judgement claims in Count XI paragraphs 204-212 (R at 1156-1157).

The trial court applied an overly categorical justiciability rule to the Appellants' declaratory judgment claims, which is clearly improper. The issue here is whether the trial court correctly applied Georgia's Declaratory Judgment Act requirement of an "actual controversy" and the "future action/uncertainty" test when it dismissed the Appellants' declaratory judgment claims based solely because the 2020 election was completed, while failing to acknowledge the real substance of the Appellants' complaint, which alleges state due process and state equal protection violations to the Appellants' voting rights.

The general rule for declaratory judgments in Georgia is found in O.C.G.A. § 9-4-2. The Georgia Supreme Court has explained this statute, stating

> Our Declaratory Judgment Act, OCGA § 9–4–2, provides that the superior courts may declare rights and other legal relations of any parties petitioning for declaratory relief in "cases of actual controversy," or when "the ends of justice require that the declaration should be

> made." The purpose of the Act is "to settle and afford relief from uncertainty and insecurity with respect to rights, status, and other legal relations." OCGA § 9–4–1. The proper scope of declaratory judgment is to adjudge those rights among parties upon which their future conduct depends.

SJN Props., LLC v. Fulton Cnty. Bd. of Assessors, 296 Ga. 793 (2015), *quoting* Fourth St. Baptist Church of Columbus v. Bd. of Registrars, 253 Ga. 368, 369(1) (1984). Furthermore, the nomenclature of a complaint must yield its substance, for Georgia law holds that "[t]he cases are too numerous to cite in full which hold that there is no magic in the nomenclature given a pleading, but **it is the substance of the pleadings that determines its nature.**" Hayes v. Superior Leasing Corp., 136 Ga. App. 98 (1975) (emphasis added). "It matters not by what name any pleading is called, the court will look to the substance rather than to the name. It is elementary that a misnomer of proceedings does not prevail over the substance." Waller v. Morris, 78 Ga. App. 821 (1949).

Here, the trial court's order reasoned that the Appellants' declaratory judgment claims were fatal because they supposedly did not seek a declaration concerning future conduct, because the 2020 election is over, and the alleged violations had already accrued. That reasoning tracks the advisory-opinion limitation, but it does not complete the required analysis: the trial court was to determine whether the requested declaration would have an immediate legal effect on the Parties' conduct, and whether the Appellants faced uncertainty about a future act properly incident to their

alleged rights. By leaping to the categorical conclusion that the completion of the 2020 election ends all declaratory judgment jurisdiction, collapses the "actual controversy" inquiry into a bright-line "past event" rule, even though Georgia law frames the inquiry in terms of whether the declaration will guide and protect against uncertainty regarding future conduct and have an immediate effect. The proper appellate inquiry should be whether, on the pleadings and the record as framed, the Appellants alleged circumstances requiring guidance for future conduct with immediate legal effect, not merely whether the underlying factual episode occurred in the past.

Because the trial court's order (as excerpted) resolves justiciability by reference to the election's completion, rather than by analyzing whether the requested declaration would guide future conduct and immediate legal effect, this Court should **REVERSE** and **REMAND** this case to the trial court for the controlling "actual controversy/future conduct/immediate legal effect" test and adjudication, rather than the as-applied "the election is over" rule.

2. THE TRIAL COURT ERRED BY DISMISSING THE CASE FOR LACK OF JUSTICABLE CONTROVERSY, BECAUSE APPELLANTS CLEARLY PLED SUBSTANTIVE VIOLATIONS TO THEIR DUE PROCESS AND EQUAL PROTECTION RIGHTS.

In addition to the below arguments, the Appellants incorporate by reference the arguments made in Caroline Jeffords' appellant and reply briefs, A26A1739, in their entirety, as if restated herein verbatim.

The trial court erred by dismissing the Appellants' declaratory judgment claims for lack of a justiciable legal or factual controversy. (R-3141). The trial court found in its order that:

> "Because Petitioners do not present any actual or justiciable controversies in their various demands and prayers for declaratory relief, those claims must be dismissed."

The Appellants' Complaint (R at 17-48) and its three (3) amendments (R at 234-248), (R at 971-979), (R at 1135-1161) each clearly assert that the Appellants seek declaratory relief for violations to their state due process and state equal protection rights. Each document also includes a prayer for relief for the same. The 3rd Amended Complaint explicitly describes in Paragraph 82 (R at 1146) a justiciable and actual controversy regarding the discovery of counterfeit ballots:

> The Favorito Petitioners have a justiciable and actual case or controversy concerning the weight and value given to their votes during elections, because of the debasement and dilution of the value and weight of their votes by the insertion of counterfeit ballots during future elections in which they will participate.

The complaint further describes legal controversies in Paragraphs 49 and 50 (R at 1141) paragraphs 93 through 115 (R at 1147-1149) and cites legal interests in paragraphs 64 through 67 (R at 1142).

The Appellants asserted that their state due process and state equal protection rights were violated by the insertion of counterfeit ballots in the November 2020 election. They asserted that if the Respondents' actions were to continue in future elections that they would suffer future harm to their state due process and state equal

protection rights, that their lawful votes in what is supposed to be a free and fair election process would be devalued by the unlawful insertion of counterfeit ballots, in an effort to tip the scales to the Respondents' preferred candidate. They asserted that their votes would be debased and devalued, or even discarded, thus taking their voice away from the ballot box. These facts clearly show that the Appellants pled an actual controversy, one which the Appellants seek relief in that their votes in future elections will not be diluted by the insertion of counterfeit ballots. The Appellants future voting conduct depends on such resolution. So, quite clearly, the Appellants are in a position of uncertainty, and an actual controversy exists and remains. Therefore, taking the complaint and its amendments at face value, the trial court clearly and unjustly erred in determining that the Appellants had not pled that future harms would occur without the court's intervention.

Alternatively, in reading the Appellants' complaint and amendments, the trial court should have recognized that the underlying substance of the Appellants' complaint and amendments were violations to their state due process and state equal protection rights. Instead, the trial court determined that because the November 2020 election was in the past, there was no justiciable controversy for the trial court to decide. To support its erroneous conclusion, the trial court's order drips of snide comments that allude to the past 2022 and 2024 elections as proof that "[t]he due process and equal rights violations supposedly visited upon Petitioners by

Respondents' allegedly flawed execution of election processes have already accrued", and the "parade of horribles" of how the Respondents "(mis)manages its elections" do not warrant a justiciable controversy. (R-3141 at fn 5). Those statements clearly show that the trial court recognized that, at its heart, the Appellants were really pleading violations to their state due process and state equal protection rights by the insertion of illegal ballots, and that an actual, justiciable controversy existed. Based on this recognition, the trial court should have noted that substance of a complaint controls, rather than its nomenclature, and determined that a viable claims for state equal protection and state due process violations had been pled. To not note that substance was error that should be overturned.

Because the trial court's order (as excerpted) resolves justiciability by the nomenclature of the Appellants claims rather than the substance of the Appellants' complaint and its subsequent amendments showing that the Appellants had pled state due process and state equal protection violations to their fundamental voting rights, this Court should **REVERSE** and **REMAND** this case to the trial court for the controlling "actual controversy/future conduct/immediate legal effect" test and adjudication, rather than the as-applied "the election is over" rule.

3. THE TRIAL COURT ERRED IN AWARDING AN UNTIMELY CLAIM FOR ATTORNEY FEES AGAINST APPELLANTS WHO FILED A COURT APPROVED, UNOPPOSED, GOOD FAITH FIRST IMPRESSION MOTION CONCERNING NEW GEORGIA LAW.

In addition to the below arguments, these Appellants incorporate by reference the arguments made in Caroline Jeffords' appellant and reply briefs, A26A1739, in their entirety, as if restated herein verbatim.

a. THE TRIAL COURT ERRED IN AWARDING ATTORNEYS' FEES UNDER O.C.G.A. § 9-15-14(a), BECAUSE APPELLANTS' POSITIONS WERE NOT SHOWN TO HAVE A "COMPLETE ABSENCE OF ANY JUSTICIABLE ISSUE OF LAW OR FACT" UNDER THE CONTROLLING STANDARD.

The trial court erred in awarding attorneys' fees, because the Appellants' positions were not shown to have a "complete absence of any justiciable issue of law or fact" under the controlling standard. Georgia law requires that the trial court show factual findings that support the conclusion that such sanctions are mandated by law. The issue presented in this enumeration of error is whether the trial court properly applied O.C.G.A. § 9-15-14(a) in awarding fees on the theory that the Appellants' claims had a complete absence of any justiciable issue of law or fact.

Georgia law holds that attorneys' fees may be awarded in civil cases "to which there existed such a complete absence of any justiciable issue of law or fact that it could not be reasonably believed that a court would accept the asserted claim…." O.C.G.A. § 9-15-14(a) (2024). Further, "'the trial court must limit the

fees award to those fees incurred because of the sanctionable conduct…' Thus, lump sum or unapportioned fees are not permitted in Georgia, and the court's order must show 'the complex decision making process necessarily involved in reaching a particular dollar figure.'" Portman v. Zipperer, A23A0213, A23A0214 (Ga. App. Jun 16, 2023).

Fulton County's fee theory is that the Appellants' claims, as to the County, had a complete absence of any justiciable issue of law or fact and could not reasonably be believed acceptable. But the trial court's own merits discussion reflects that dismissal turned on doctrinal prerequisites for declaratory relief (future-directed uncertainty and advisory-opinion limits), not on a finding that the Appellants' legal theories were wholly nonexistent or irrational. Where the dispositive question is the scope of declaratory judgment- that is to say, whether the pleadings present an "actual controversy" and whether the requested declaration would have an immediate legal effect- Georgia law recognizes that the appellate court must independently assess that legal question when reviewing a subsection (a) fee award premised on the state of the law. Because the declaratory judgment standard itself is nuanced (requiring analysis of uncertainty, future conduct, and immediate legal effect), the existence of a litigable dispute about whether the Appellants' pleadings satisfy that standard precludes a finding that no reasonable litigant could believe a court might accept the claim. Accordingly, the

mandatory fee award under subsection (a) must be **REVERSED** and **REMANDED**.

b. THE TRIAL COURT ERRED BY AWARDING FEES UNDER O.C.G.A. § 9-15-14(a), FOR WORK ATTRIBUTABLE TO A LEGITIMATE PROCEDURAL REQUEST THAT RESULTED IN AN UNOPPOSED SUBSTITUTION BY COURT ORDER.

The Respondents Fulton County and the Clerk of Superior Court, in her official capacity, were added to secure preservation and production of records vital to proving the Appellants' claims. The trial court ordered these parties added on April 21, 2021. (R at 647-648) That order was in response to a motion to substitute parties filed on January 27, 2021 (R at 338-344), and oral arguments were heard on March 15, 2021, in which the Respondents did not oppose said motion as explained in the April 21, 2021 order. As such, the trial court's February 4, 2026 order (R at 3138-3151), finding their addition as being frivolous within the meaning of O.C.G.A. § 9-15-14(a), essentially sanctions the Appellants for pursuing an unopposed claim that was ordered by the trial court. To be found liable for sanctions under O.C.G.A. § 9-15-14(a), it must be shown that "it could not be reasonably believed that a court would accept the asserted claim, defense or other position." Although the trial court attempted to refute this contention in its order (R-3146 at fn 9), the plain language of the statute controls. It follows naturally that liability should be precluded if the trial court accepts the position, as it did here, and especially so because the Respondents did not oppose the motion. Therefore,

as a matter of law, the trial court's order must be **REVERSED** and **REMANDED** pursuant to subsection (a) because the trial court accepted the Appellants' unopposed claims and ordered the County and the Clerk to be added as parties.

c. THE TRIAL COURT ERRED IN AWARDING ATTORNEYS' FEES UNDER O.C.G.A. § 9-15-14(a), ON GROUNDS OF A "COMPLETE ABSENCE OF ANY JUSTICIABLE ISSUE OF LAW OR FACT" BECAUSE APPELLANTS REPEATEDLY RECEIVED RELIEF DURING THE CASE.

In addition to the April 21, 2021 order to add parties, the Court also ordered preservation and unsealing of the ballots, which were both forms of relief sought by the Appellants. Over the past five (5) years of litigation in this case, the Appellants have sought and been granted relief for their prayers, motions, and actions eight (8) times, including relief previously sought and obtained from this court on May 11, 2023, and the Georgia Supreme Court on December 20, 2022.

On January 7, 2021, the trial court granted a temporary injunction to preserve all Fulton County 2020 General Election ballots (R at 231-233). On April 16, 2021, the trial court issued an order compelling Fulton County to produce scanned ballot images, which they were already required to be produced by Georgia law (Act 9), but had refused to do so (R at 630-631). On April 20, 2021, the trial court issued an order upholding Appellants' Open Records Request claims (R at 637-646). On April 21, 2021, the trial court granted the motion to add the county and clerk as the Defendants, in response to Georgia's Constitutional

Amendment for sovereign immunity that became effective on January 1, 2021 (R at 647-648). On May 21, 2021, the trial court ordering the unsealing of the Fulton County 2020 election ballots for inspection and copying by the Appellants (R at 751).

It is therefore inconceivable that the trial court could then determine that the Appellants' complaints, amendments, and prayers presented no justiciable controversies. The record clearly shows that justiciable controversies were pled, with relief of some sort granted in favor of the Appellants, which must preclude liability for sanctions as a matter of law under O.C.G.A. § 9-15-14(a). Therefore, the trial court's order must be **REVERSED** and **REMANDED** because the Appellants cannot be sanctioned for an unopposed motion granted by the trial court.

d. THE TRIAL COURT ERRED IN AWARDING ATTORNEYS' FEES THAT IGNORED O.C.G.A. § 9-15-14(c) WHICH PROHIBITS FEES TO BE ASSESSED FOR ACTIONS BROUGHT IN GOOD FAITH FIRST IMPRESSION INTERPRETATIONS OF NEW LAW.

Attorneys' fees and sanctions should not be awarded to Respondents Fulton County and the Clerk because, at the time the Respondents were added as parties, Paragraph V of the Georgia Constitution ("Paragraph V"), which waives sovereign immunity against government agencies, was brand-new, and presented many questions as to its applicability. In addition, that amendment requires the addition

and naming of the county. In cases where a statute has not been interpreted by the appellate courts and the party's position was arguable, sanctions under § 9-15-14(a) are legal error because the matter is an issue of first impression. This Court has stated

> Our Supreme Court has reversed awards of attorney fees under OCGA § 9-15-14 where a party relied on a statute that had not been interpreted by any court and the language of the statute arguably supported the appellants' contention. The precedents are controlling in this case. Fox's claim, based on her interpretation of the statute, was not so devoid of a justiciable issue "that it could not be reasonably believed that a court would accept" it. Similarly, we conclude that the trial court abused its discretion in holding that Fox's interpretation of the statute "lacked substantial justification."

Fox v. City of Cumming, 298 Ga. App. 134, 136 (2009), citing Campbell v. Dept. of Corrections, 268 Ga. 408, 411(3) (1997). Furthermore, Georgia law clearly states that

> No attorney or party shall be assessed attorney's fees as to any claim or defense which the court determines was asserted by said attorney or party in a good faith attempt to establish a new theory of law in Georgia if such new theory of law is based on some recognized precedential or persuasive authority.

O.C.G.A. § 9-15-14(c) (2024).

Here, as previously stated, the Respondents were added to secure preservation and production of records vital to proving the Appellants' claims as explained in Appellants January 27, 2021 motion (R at 338-344). At that time, it was believed that the Respondents were necessary and

indispensable parties because of the plain language of the new constitutional amendment. There was no interpretive guidance from higher courts on the application of Paragraph V until a full two (2) years later, in State v. SASS Group, LLC, 315 Ga. 893 (2023), long after these Respondents were removed from the case. Penalizing the Appellants for adding such parties is also contrary to the language of O.C.G.A. § 9-15-14(c), which allows lawyers to put forth positions in unsettled areas of the law. Paragraph V was clearly unsettled law at that time, and the Respondents were added in a good faith attempt to follow the necessary procedures and protocol towards furthering the Appellants' claims.

Furthermore, there is a sizeable difference in the framing of the 'acts' between the Appellants, Respondents, and the trial court, as contemplated by Paragraph V. The trial court and the Respondents would have this Court believe that these parties were added for 'acts' that occurred prior to the applicable start date of January 1, 2021 under Paragraph V. That is factually incorrect. The Appellants added the Respondents for prospective relief, to bind them nunc pro tunc to the trial court order of January 7, 2021, which preserved all election materials (R at 231-233). Such addition was believed necessary because, by operation of law, after the certification of the election, custody of the ballots would then transfer to the Clerk. The clerk, then having possession of the ballots, would

then be bound to provide the requested relief, which are prospective acts clearly allowed under Paragraph V. This concept has been examined by the Georgia Supreme Court in Starship Enterprises of Atlanta, Inc. v. Gwinnett County, 319 Ga. 293 (2024).

In Starship, the Appellant sued Gwinnett County about the constitutionality of an ordinance passed by the County in 2015. Because the ordinance was passed in 2015, the County's position was that any complained-of 'act' occurred well before the passage of Paragraph V, and the trial court agreed. But "the trial court should have considered other 'things' the County has 'do[ne]' or could 'do[ ].' Id., at 60. The Supreme Court held that enforcement of the ordinance were prospective, complained-of acts contemplated by Paragraph V. Id., at 62. Here, as in Starship, there is a similar disconnect of understanding of the prospective acts that would occur after January 1, 2021, which resulted in the trial court's incorrect interpretation, and should be reversed.

In summation, based on the foregoing, the trial court erred in awarding sanctions upon the Appellants when it ignored the express prohibitions for such sanctions delineated in O.C.G.A. § 9-15-14 (c), and this Court should **REVERSE** and **REMAND** the trial court's decision regarding attorneys' fees and sanctions.

e. THE TRIAL COURT ERRED IN AWARDING ATTORNEYS' FEES UNDER O.C.G.A. § 9-15-14(b), BECAUSE THE RECORD AND FINDINGS DO NOT ESTABLISH THAT APPELLANTS' ACTION "LACKED SUBSTANTIAL JUSTIFICATION" OR WAS INTERPOSED FOR DELAY, HARASSMENT, OR IMPROPERLY EXPANDED.

The trial court erred in awarding attorneys' fees under O.C.G.A. § 9-15-14(b), because the record and court findings do not establish that the Appellants' action "lacked substantial justification", or was interposed for delay, harassment, or improperly expanded. Georgia law requires that the trial court show factual findings that support the conclusion that such sanctions are permitted by law. The issue presented in this enumeration of error is whether the trial court abused its discretion in awarding fees under O.C.G.A. § 9-15-14(b).

Georgia law holds that fees under O.C.G.A. § 9-15-14(b) are discretionary, and that

> The court may assess reasonable and necessary attorney's fees and expenses of litigation in any civil action in any court of record if, upon the motion of any party or the court itself, it finds that an attorney or party brought or defended an action, or any part thereof, that lacked substantial justification or that the action, or any part thereof, was interposed for delay or harassment, or if it finds that an attorney or party unnecessarily expanded the proceeding by other improper conduct….

Under this statute, "lacked substantial justification" means that the claim was substantially frivolous, substantially groundless, or substantially vexatious. Id. "An award of sanctions pursuant to OCGA § 9–15–14(b) is reviewed under an

abuse of discretion standard." Bankston v. Warbington, 319 Ga. App. 821 (2013). Further, an award for sanctions under O.C.G.A. § 9-15-14(b) is based on the conduct of the parties that unnecessarily expanded the proceedings, and the trial court must discern specific allegations of that conduct consistent with the statute to award such sanctions. Cohen v. Rogers, 341 Ga. App. 146 (2017).

Here, the Appellants adopt their previous arguments against sanctions under O.C.G.A. § 9-15-14(a), and incorporate it into this argument in its entirety, because many of the same arguments discussed in that section are applicable here, and because the trial court did not differentiate between the two (2) statutes. Secondly, there is nothing in the trial court's order that shows that the Appellants lacked substantial justification to bring their claims against the Respondents, or that they conducted themselves to delay, harass, or unnecessarily expand the proceedings.

All of the Appellants' claims were substantially justified, and attributable to substitution-related proceedings where the Appellants' substitution requested was a legitimate procedural request that was unopposed by these Respondents, and were the product of a court order. The fact that the substitution of these Respondents required a court order, which was unopposed and granted, undermines any claim that the substitution request was per se improper or frivolous. The excerpts provided show that Fulton County sought fees based on the asserted frivolousness of the Appellants' claims, and the associated burdens of motions practice. But

subsection (b) requires findings tied to one of the statutory predicates (substantial frivolousness, groundlessness, vexatiousness, delay/harassment, or improper expansion), not merely the fact of dismissal. To the extent the fee award rested on the "election is over" rationale used to (wrongly) dismiss declaratory relief, that does not in itself establish that the action was substantially frivolous, groundless, vexatious, interposed for delay or harassment, particularly where the governing declaratory-judgment test turns on whether a declaration would guide future conduct and have immediate legal effect. Because the order must specify the conduct authorizing fees, and because the record excerpts do not reflect the required express findings and conclusions for a subsection (b) award, fees attributable to defending substitution cannot stand under subsection (b), and this Court should **REVERSE** and **REMAND** the trial court's decision on attorneys' fees under O.C.G.A. § 9-15-14 (b).

f. THE TRIAL COURT ERRED IN PERMITTING FULTON COUNTY'S FEE MOTION TO BE TREATED AS TIMELY VIA NUNC PRO TUNC FILING WHERE THE "ATTEMPTED FILING" WAS REJECTED BY THE E-FILING SYSTEM DUE TO FAULT OF THE DRAFTER.

The trial court erred in permitting Fulton County's fee motion to be treated as timely via a nunc pro tunc filing, where the motion was filed one (1) day late, on November 30, 2021, because the "attempted filing" was rejected by the Odyssey E-filing system. The issue presented in this enumeration is whether the trial court

had the authority to treat Fulton County's fee motion as timely filed via nunc pro tunc based on an e-filing rejection that was not the fault of the system, but the fault of the drafter.

The rule in Georgia is that motions for attorney's fees under O.C.G.A. § 9-15-14 must be filed not later than 45 days after final disposition. "Attorney's fees and expenses under this Code section may be requested by motion at any time during the course of the action but not later than 45 days after the final disposition of the action." O.C.G.A. § 9-15-14(e). The statutory deadline is mandatory, and timeliness is a prerequisite to relief under O.C.G.A. § 9-15-14. Where a filing arrives late, the "trial court has broad discretion to correct clerical errors including a clerk's failure to mark a document as filed on the date that document is actually delivered to the clerk." Barbour v. Sangha, 346 Ga. App. 13 (2018). Uniform Superior Court Rule 36.16 (F) grants the trial court the power to allow the nunc pro tunc filing as a means to 'enter appropriate relief' in cases in which 'electronic filing or service is prevented or delayed **because of a failure of the electronic filing system**.'" Id. (emphasis added).

Here, the motion was filed on November 30, 2021, and the County sought nunc pro tunc treatment to November 29, 2021, based on an asserted technical rejection (R at 2580-2600). The trial court's February 4, 2026 order upheld a four-year-old December 1, 2021 County motion made pursuant to Uniform Superior

Court Rule 36.16(F), to allow the motion for fees to be entered nunc pro tunc to November 29, 2021 due to a filing error. The trial court's decision was based on an affidavit from a paralegal who was never called as a witness and the Appellants received no opportunity to cross examine the paralegal. The trial court cited no evidence from the filing system that the motion for fees was in fact, entered on November 29, 2021.

Barbour is easily distinguished from the case at bar. In Barbour, the defendant's answer was properly filed, but supporting documents filed with the answer did not contain the same signatures as the answer. Id. Here, the motion was not properly signed by the drafter. That means the error was in the content of the submitted and rejected document, and not in other accompanying documents that were filed contemporaneously, as distinguished from Barbour. The few cases where this Court has upheld the use of nunc pro tunc filings under the Uniform Superior Court Rules shows that where a filing was properly prepared and timely submitted to the clerk of court, it was a failure of the clerk to properly mark the document as timely submitted. In this case, the document was not properly signed, and rejected by the electronic filing system, as the system is designed. Thus, this was not an error of the *electronic filing system*, this was an error of the *drafter*, and is beyond the permissibility contemplated by the Uniform Superior Court Rules. This lesson harkens back to law school, where professors drilled into their students

to not wait until the last minute to attempt to file court documents. Murphy's law prevails, as anything that can go wrong, will, and at the most inopportune moment. Million-dollar cases have been lost because of untimely filings. If the trial court is allowed to change the rules every time an attorney or their charges waits until the last minute to file their briefs, such exceptions will swallow the rule, rendering it meaningless. In addition, because these Respondents are government entities, they should be given no deferential treatment. It is the responsibility of the Clerk and the County to correct any filing errors and to timely file their motions.

On this record, the trial court's timeliness ruling turns on whether the November 29 submission constituted a filed motion for purposes of the 45-day deadline, notwithstanding later rejection. Because provided authorities do not include Uniform Superior Court Rule 36.16(f) text, or a controlling appellate decision on this precise e-filing scenario, the appropriate disposition is to remand for application of the statutory deadline to the established facts and for findings explaining how the court concluded that the motion was filed within the required 45 days. As such, the nunc pro tunc timeliness ruling should be **REVERSED** and **REMANDED** for findings and application of the statutory 45-day deadline.

C. CONCLUSION

In conclusion, taking the facts as pled in this civil action as true, the trial court unjustly erred in dismissing the Appellants' claims. There has been an actual

dilution and debasement of the Appellants' votes, and it is imminent that such actions will occur in future elections. The Appellants have pled sufficient facts in support of their claims for declaratory judgments that their state due process and state equal protection rights have been violated, and will continue to be violated into the future, and requested prospective relief. Alternatively, because substance, rather than nomenclature controls, the Court can obviously infer from the pleadings that the substance of the Appellants' complaint is really state due process and state equal protection violations, for which the Respondents enjoy no sovereign immunity for constitutional violations.

The trial court further egregiously erred when it allowed sanctions for attorneys' fees under O.C.G.A. § 9-15-14(a) and (b), despite there being no facts to indicate a complete absence of any justiciable issue of law or fact, or that the Appellants' claims lacked substantial justification, was interposed for delay or harassment, or to unnecessarily expand the proceedings. Additionally, the trial court abused its discretion in ignoring the prohibition on fee awards for good faith first impression actions under O.C.G.A. § 9-15-14(c) and for circumventing the filing deadline mandated by O.C.G.A. § 9-15-14(e) by allowing the nunc pro tunc filing of the motion for attorneys' fees based on a drafter's error, instead of an electronic filing program error contemplated by the Uniform Superior Court Rules.

Therefore, based on the foregoing, the Court must **REVERSE** and **REMAND** this case to the trial court, consistent with this Court's direction.

This submission does not exceed the word count limit imposed by Rule 24.

Respectfully submitted this the 4th day of May, 2026.

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IN THE COURT OF APPEALS
STATE OF GEORGIA

GARLAND FAVORITO et al.,
APPELLANTS,

v. **CASE NO.: A26A1596**

ALEX WAN et al.,
APPELLEES.

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 **APPELLANTS' BRIEF**, to the following addresses via U.S. Postal Service:

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