IN THE SUPREME COURT
STATE OF GEORGIA

GARLAND FAVORITO, TREVOR TERRIS, and CHRISTOPHER PECK,
PETITIONERS,

v. **CASE NO.:**

ALEX WAN, VERNETTA KEITH NURRIDDIN, KATHLEEN RUTH, AARON JOHNSON, and MARK WINGATE, in their individual capacities,
RESPONDENTS.

PETITIONERS' PETITION FOR CERTIORARI

COME NOW, THE PETITIONERS, by and through their attorney of record to petition the Court for certiorari regarding questions of utmost public importance that seek clarification for Georgia litigation including the fundamental right to vote pursuant to Rules 38-41, as follows:

QUESTIONS PRESENTED

A. Do voters who argue substantive, meaningful future claims of harm to their fundamental right to vote have sufficient claims that entitle them to seek substantive future relief pursuant to Court precedents?

B. Can a Georgia court declare constitutional equal-protection and due-process claims abandoned, when the Petitioners identify substantive future claims, plead violations of fundamental voting rights, allege future injury, and argue

that the substance of the pleading, not its declaratory-judgment nomenclature, control?

C. Are equal protection claims sufficiently pled under Article I, Section I, Paragraph II of the Georgia Constitution when they allege that state actors failed to apply state law and uniform ballot-processing procedures to similarly situated electors, which diluted or disenfranchised qualified electors' votes, thereby treating voters differently according to the time and place their ballots were processed?

D. Are due process claims sufficiently pled under Article I, Section I, Paragraph II of the Georgia Constitution when they allege that state actors failed to apply state law and standard ballot-processing protections which denied due-process of qualified electors' votes?

E. Do Georgia's notice-pleading principles require a trial court, at the pleading stage, to evaluate the substance of allegations asserting constitutional injuries, rather than dismissing those claims based on the label selected for the requested declaratory or injunctive remedy?

STATEMENT OF PROCEEDINGS BELOW

The Petitioners return to this Court a second time, seeking to pursue their substantive claims of Equal Protection and Due Process violations after being denied discovery ever since this Court awarded the Petitioners standing on

December 20, 2022. Upon remittitur to the trial court in late 2023, the case sat for many more months until after the November 2024 election. The Petitioners moved to realign the Parties on or about May 14, 2024. The Respondents opposed such motion. Counsel on both sides were substituted in 2024 and 2025. The trial court issued its order dismissing these Petitioners' claims on or about February 4, 2026, while retaining only one (1) Petitioner, who had separately pled state equal protection claims. (Exhibit A). The Petitioners filed their appeal to the Georgia Court of Appeals on May 4, 2026. The Court of Appeals rendered their decision on or about October 26, 2026, affirming the trial court's decision to dismiss their claims. This Petition for Certiorari is to appeal that order. (Exhibit B).

INTRODUCTION

This case meets the criteria for certiorari set forth in Rule 40, because it concerns the Petitioners' claims that officials responsible for administering the November 2020 general election failed to follow legally required ballot-processing procedures, and thereby impaired the due process, equal weight and lawful treatment of the Petitioner' votes. Since 2020 in particular, voters have developed a growing distrust of the election process, not just in Georgia but nationwide. To mitigate that distrust, voters need to know that their concerns about infringements to this fundamental right do not go unheard. The Supreme Court of the United States stated many years ago that voting rights and election-integrity claims [such

as here] are important because they preserve all other rights. Harper v. Va. State Bd. of Elections, 383 U.S. 663, 667 (1966).

Here, the Petitioners sought declaratory and injunctive relief for violations of the Georgia Constitution's equal-protection and due-process guarantees. The trial court dismissed the Petitioners' remaining claims in an order entered in February of 2026. (Exhibit B). A state equal protection claim by a separate Petitioner in that case justifiably survived, while the operative facts and the substance of arguments of both sets of Petitioners are fundamentally the same. The Petitioners appealed in Case No. A26A1596. The Court of Appeals affirmed the dismissal of the Petitioners' declaratory-judgment, due-process, and equal-protection claims, holding that the Petitioners had failed to advance any meaningful argument and had therefore abandoned those claims. (Exhibit B). The Court of Appeals reasoned that the Petitioners cited only basic authority and, concerning the state due-process and equal-protection claims, cited no authority. (Exhibit B).

This Petition seeks review of the abandonment ruling and of the pleading-stage issue that ruling left unresolved: whether the Petitioners' Third Amendment to their Petition for Relief ("Third Amendment", Exhibit C) alleged cognizable state constitutional claims when construed favorably to the Petitioners. As voting is a fundamental right, the Petitioners claims to the infringement of that sacred right should be examined by this Court, who should grant this Petition for Certiorari.

STATEMENT OF FACTS

The Petitioners' Third Amendment alleged that electors whose ballots were processed at State Farm Arena on or immediately after November 3, 2020 did not have state law applied to their ballot processing, and that Georgia voters were treated differently depending on when and where their ballots were processed. (Exhibit C, Pages 16-17, Paragraphs 124-128). For the same-county equal-protection claim, the Third Amendment further alleged that electors in the same precinct did not receive treatment similar to ballots processed at the specified location and time, and that the Respondents failed to apply uniform procedures to similarly situated electors within the county. (Exhibit C, Page 14, Paragraph 103; Page 17, Paragraph 129; Page 19, Paragraph 147).

For the within-state equal-protection claim, the Petitioners alleged that the Respondents failed to implement uniform procedures for ballot-processing visibility and transparency, and failed to ensure uniform treatment of absentee ballots statewide. The Petitioners again alleged that ballots processed at the identified location and time were not subjected to state law, and that voters were treated differently based on the time and place of processing. (Exhibit C, Pages 16-17, Paragraphs 124-128). The Petitioners further alleged that similarly situated electors within the state were not treated uniformly. (Exhibit C, Page 17, Paragraph 129).

The Third Amendment alleged that the right to vote includes the right to have one's vote treated equally with other voters, and that the Respondents' implementation or failure to implement the Georgia Election Code constituted state action. (Exhibit C, Page 15, Paragraph 110; Page 18, Paragraph 136; Page 20, Paragraph 151). The Petitioners alleged that the Respondents' failure to comply with state law in ballot processing diluted qualified Georgia electors' votes. (Exhibit C, Page 12, Paragraphs 87-88).

The Third Amendment also alleged that nonuniform ballot processing created two (2) classes of voters subject to different standards. (Exhibit C, Page 13, Paragraph 96; Page 16, Paragraph 122; Page 19, Paragraph 143). It alleged that the same state action and unlawful ballot-processing failures disenfranchised qualified Georgia electors. (Exhibit C, Page 15, Paragraph 113; Page 18, Paragraph 139; Page 20, Paragraph 153). Finally, the Petitioners further alleged specific audit-related irregularities: inclusion of votes from fraudulent or fabricated ballots in the election results (Exhibit C, Page 15, Paragraphs 112-113; Page 18, Paragraphs 138-139), failure to uphold the oath taken by state actors to prevent fraud, deceit or abuse (Exhibit C, Page 9, Paragraphs 64-65), failure to count Petitioner Favorito's specific Presidential vote (Exhibit C, Pages 10-11, Paragraphs 77-81), discrepancies in reported votes in approximately 923 mail-ballot batch files; the omission of more than 50,000 tally sheets from originally published hand-count-

audit results; the exclusion of more than 200 mail ballots from hand-count-audit results; approximately 4,255 redundantly added votes in audit results; and missing drop-box transfer forms for at least three (3) pickup days involving approximately 5,000 ballots. (Exhibit C, Pages 23-25, Paragraphs 214-222).

JURISDICTION

The Supreme Court of Georgia has jurisdiction to hear this case pursuant to O.C.G.A. § 15-2-8 (2024), and the Georgia Constitution of 1983, Article VI, Section VI, Paragraphs II-III.

STANDARD OF REVIEW

Here, the Petitioners contend that the appropriate standard of review on a motion to dismiss is de novo. This Court has held that "[t]This Court reviews the grant of a motion to dismiss de novo." Edible Ip, LLC v. Google, LLC., 313 Ga. 305, 308 (2022). All pleadings must be construed most favorably to the filing party, and all doubts must be resolved in that party's favor. Austin v. Clark, 294 Ga. 773, 775 (2014). Georgia also follows notice pleading. A pleading need only provide fair notice and state the claim's elements plainly and succinctly; allegations characterized as conclusions may be considered in deciding whether a complaint states a claim. Ledford v. Meyer, 249 Ga. 407, 408 (1982).

Further, the Petitioners 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 Georgia Court of Appeals ruling on a legal question, the de novo standard of review is applied.

SUMMARY OF ARGUMENT

The Court of Appeals' conclusion conflicts with the governing distinction between a genuinely unsupported enumeration and an argument that, although concise or technically imperfect, gives the court a meaningful basis to address the issue. The Petitioners' brief identified the constitutional claims, linked them to the Petitioners' Third Amendment (Exhibit C), asserted future voting harm, and argued that substance controls over nomenclature. That was sufficient to preserve the issue for review.

The Third Amendment also gave fair notice of discrete equal-protection and due-process claims. Each equal-protection count identified: 1). state action, 2). similarly situated electors, 3). unequal ballot-processing treatment, and 4). resulting vote dilution or disparate standards. Each due-process count identified: 1). state action, 2). a fundamental voting interest, 3). noncompliance with governing election procedures, and 4). the asserted deprivation, dilution, or disenfranchisement of qualified electors. At the pleading stage, the Petitioners

were not required to prove the allegations or produce evidence establishing every asserted irregularity.

The Court of Appeals instead accepted a characterization of the claims as only declaratory-judgment requests about completed conduct. That approach overlooks the pleaded substance: constitutional claims arising from alleged unequal and unlawful state administration of elections, coupled with a request for prospective protection against repetition. Georgia pleading law requires that substance, not nomenclature, control at the pleading stage.

ARGUMENT AND CITATIONS OF AUTHORITY

A. THE COURT OF APPEALS IMPROPERLY FOUND THE STATE CONSTITUTIONAL CLAIMS ABANDONED.

The Court of Appeals deemed Petitioners' state equal-protection and due-process claims abandoned because it concluded that the Petitioners cited only general authority and offered no authority specifically supporting the constitutional claims. That conclusion warrants certiorari because it treats a brief's asserted deficiency as an absolute bar to review, despite the Petitioners' presentation of a discernible constitutional theory grounded in their pleaded allegations.

The general rule in Georgia is that "enumerations of error [are] deemed abandoned when not supported in the brief by citation of authority *or* argument." American Central Ins. Co. v. Lee, 273 Ga. 880, 883 (2001) (emphasis in original) ("American Central"). The rule is disjunctive, meaning that the Court is "obligated

to apply to appeals procedures 'so as to bring about a decision on the merits of every case appealed and to avoid ... refusal to consider any points raised therein.'" Id., quoting O.C.G.A. § 5-6-30 (2024). The Court further explained that a party does not abandon an enumeration when the brief contains meaningful argument supporting it. American Central, at 884. Furthermore, a plaintiff's factual assertions and evidentiary disputes may be developed later and do not themselves require dismissal for failure to state a claim. Ikomoni v. Bank of America, N.A., 330 Ga. App. 776, 777 (2015). The pleading standard does not demand evidentiary proof or a final accounting before discovery.

The trial court dismissed the Petitioners' declaratory and injunctive relief claims, but allowed a separate petitioner who had pled due process and equal protection claims to remain, despite both groups of Petitioners having pled similar arguments based on the same operative facts. (Exhibit A). A simple reading of the Third Amendment clearly shows that the essence of these Petitioner's claims were state constitutional due process and equal protection claims. (Exhibit C). On appeal, the Petitioners argued this point, that the substance of the pleading controls over its nomenclature, to no avail.

The Petitioners' appellate brief did not merely restate an enumeration. It argued that the Third Amendment pleaded substantive state due-process and equal-protection violations, identified allegations that the Petitioners' votes had been

diluted or debased by unlawful ballot processing, asserted that the claimed injury would recur in future elections, and argued that the substance of the pleadings controlled over their declaratory-judgment label. The appellate brief had eight (8) citations to the record where the Petitioners tied their brief to the complaint and its three amendments. This shows that the Petitioners cited the Due Process and Equal Protection Clauses of the Georgia Constitution, as well as higher court decisions, as authority. The Petitioners tied their legal theory to the Third Amendment's allegations of unlawful ballot processing, failure to prevent fraud, deceit or abuse, nonuniform ballot processing, vote dilution, failure to count Petioner Favorito's Presidential vote and prospective injury. Their argument is materially superior to one containing only rhetoric, an undeveloped statement of law, or a recitation of facts without applying legal principles. Compare Podlin v. Cichowski, A25A0365 (Ga. App. May 2025) with Jenkins v. State, A26A0958 (Ga. App. August 28, 2026).

The Petitioners' appellate brief tied its legal theory regarding state due process and equal protection violations to the Petitioners' Third Amendment. The Court of Appeals decision acknowledged the Petitioners due process and equal protection claims that were plead. (Exhibit B, Page 5). That brief clearly pled each essential component of state constitutional claims. The Third Amendment alleged that the Respondents, acting as election officials and agents responsible for ballot

processing, failed to apply lawful ballot processing procedures in allowing votes on fraudulent or fabricated ballots to be counted. (Exhibit C, Page 15, Paragraphs 112-113; Page 18, Paragraphs 138-139). The Third Amendment alleged that they failed to prevent fraud, deceit and abuse pursuant to their oaths. (Exhibit C, at page 9, paragraphs 64-65). The Third Amendment also alleged that they failed to count Petitioner Favorito's Presidential vote, thus disenfranchising him and denying him due process. (Exhibit C, Pages 10-11, Paragraphs 77-81). The Third Amendment further alleged that said officials and agents failed to apply uniform ballot processing procedures. (Exhibit C, Pages 13-14, Paragraphs 95-102; Pages 16-17, Paragraphs 121-128). The Third Amendment alleged that the right to vote is fundamental and includes the right to have one's vote treated equally with other voters in the State. (Exhibit C, Page 14, Paragraph 109; Page 18, Paragraph 135; Page 20, Paragraph 150). It also alleged that implementation or failure to implement the Georgia Election Code by the Respondents and their agents constituted state action. (Exhibit C, Page 15, Paragraph 110; Page 18, Paragraph 136; Page 20, Paragraph 151). The Petitioners alleged that electors who vote in person were similarly situated to electors whose absentee ballots were processed at State Farm Arena during the stated time period. (Exhibit C Page 13, Paragraph 101; Page 16, Paragraph 124). The Petitioners alleged that electors whose ballots were processed at that location and time did not have state law applied to their

ballot processing and that voters were treated differently according to when and where their ballots were processed. (Exhibit C, Pages 16-17, Paragraphs 124-128).

The Petitioners alleged that the Respondents failed to apply uniform procedures for similarly situated electors within Fulton County. (Exhibit C, Page 14, Paragraph 103; Page 19, Paragraph 147). They expressly alleged that this systemic failure of uniformity violated the Georgia Constitution. (Exhibit C, Page 14, Paragraph 104; Page 17, Paragraph 130; Page 19, Paragraph 148). The Petitioners alleged senior poll managers observed that fraudulent or fabricated ballots entered the challenged ballot-processing stream and were included in the count of the votes. (Exhibit C, Pages 4-5, Paragraphs 22-33). The Petitioners alleged that the failure to follow state law diluted qualified Georgia electors' votes. (Exhibit C, Page 12, Paragraphs 87-88). The Petitioners alleged that noncompliant ballot processing created two (2) classes subject to two (2) different standards. (Exhibit C, Page 13, Paragraph 96; Page 16, Paragraph 122; Page 19, Paragraph 143). Taken as true and construed in the Petitioners' favor, the allegations state that qualified electors were not afforded substantive due process or equal application of election law in the county. The Third Amendment thus supplied fair notice of who allegedly acted, the unlawful and unequal procedures alleged, the similarly situated electors affected, and the constitutional injury claimed.

The Third Amendment alleged additional violations of state equal protection and due process arising from audit errors, false audit reporting, audit results without ballots, ballots omitted from audit results, duplicate votes in audit results, and missing chain-of-custody forms. (Exhibit C, Pages 23-25, Paragraphs 214-222). Those counts alleged concrete irregularities affecting the reporting, inclusion, duplication, and traceability of ballots: discrepancies in approximately 923 batch files, more than 50,000 initially missing tally sheets, more than 200 ballots excluded from hand-count-audit results, approximately 4,255 redundant votes, and missing transfer forms for ballots associated with at least three pickup days. (Exhibit C, Pages 23-25, Paragraphs 214-222). At minimum, those allegations reinforced the Petitioners' central constitutional theories: qualified electors were entitled to lawful, uniform, and nonarbitrary treatment of ballots and votes. These facts show that the Petitioners did not abandon their claims, for they cited both authority *and* argument.

The Court of Appeals did not hold that the Petitioners had failed to enumerate the constitutional claims. Nor did it identify a defect preventing it from understanding the claims the Petitioners made. Rather, the decision found that the constitutional claims received insufficient legal development. Under the disjunctive abandonment rule set forth in American Central, however, meaningful argument independently defeats abandonment.

B. THE COURT OF APPEALS FAILED TO APPLY ITS OWN PRECEDENTS THAT SUBSTANCE OVER NOMENCLATURE CONTROLS AT THE PLEADING STAGE.

The trial court failed to apply higher court precedents that the substance of a pleading controls over its nomenclature. (Exhibit A). The trial court should have easily seen that the substance of the Third Amendment was state due process and equal protection claims, for it allowed the one (1) petitioner that had pled a separate equal protection claim to remain. (Exhibit C). But the Court of Appeals failed to apply its own precedents and affirmed the trial court decision.

Georgia law holds that "substance, rather than nomenclature, governs pleadings." In re Interest of M.F., 298 Ga. 138 (2015). "It has long been the rule in Georgia that substance and not mere nomenclature controls in determining the nature of pleadings." Mickas v. Mickas, 229 Ga. 10 (1972). The Petitioners' Third Amendment styled the challenged counts as requests for declaratory judgment. But the substance of the allegations was constitutional: state officials allegedly denied lawful due process and equal treatment in ballot processing and deprived qualified electors of the lawful weight and treatment of their votes. (Exhibit C, Page 12-20, Paragraphs 90-155).

Georgia's notice-pleading rule turns on whether the pleading gives fair notice and states the elements of the claim plainly and succinctly, rather than on whether allegations are denominated facts or conclusions. Ledford v. Meyer, 249

Ga. 407, 408 (1982). The pleading standard likewise requires dismissal only where it appears to a certainty that the claimant could obtain no relief under any state of provable facts within the complaint's framework. Austin v. Clark, 294 Ga. 773, 775 (2014).

The Petitioners' appellate brief expressly raised this principle, arguing that there is no "magic" in pleading nomenclature and that a trial court must examine a pleading's substance. The appellate brief had two (2) citations of authority referencing the principle that the substance of a complaint is outweighed by its nomenclature. The Court of Appeals decision acknowledged the Petitioners' declaratory judgement citations regarding substance over nomenclature precedents (Exhibit B, Page 5), but nonetheless deemed the constitutional claims abandoned without addressing whether the pleaded substance stated viable state constitutional claims. The Court of Appeals nonetheless deemed the constitutional claims abandoned without addressing whether the pleaded substance stated viable state constitutional claims. That result threatens to convert form into substance at precisely the stage where Georgia law demands the opposite. A litigant who alleges state action, unequal treatment of similarly situated voters, unlawful departure from election procedures, and resulting vote dilution or disenfranchisement has pled constitutional claims, even if the requested form of relief is declaratory and injunctive.

WHEREFORE, THE PETITIONERS pray:

a) That the Court **GRANTS** the Petitioners' Petition for Writ of Certiorari;

AND

b) For any other relief this Court **DEEMS** just and proper.

This submission complies with the rules imposed by Rule 26.

Respectfully submitted this the 16th day of November, 2026.

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ALEX WAN, VERNETTA KEITH NURRIDDIN, KATHLEEN RUTH, AARON JOHNSON, and MARK WINGATE, in their individual capacities,

RESPONDENTS.

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 **PETITIONERS' PETITION FOR WRIT OF CERTIORARI** via the Georgia Supreme Court's E-filing system, to the following addresses:

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Respectfully submitted this the 16th day of November, 2026.

SIGNATURES ON PAGE 19

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Fulton County Superior Court
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Date: 2/4/2026 11:02 AM
Che Alexander, Clerk

EXHIBIT "A"

IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

GARLAND FAVORITO *et al.*, Petitioners vs. ALEX WAN *et al.*, Respondents	CIVIL ACTION 2020CV343938

ORDER ON THE MANY PENDING MOTIONS

In December 2020, Petitioners sued Fulton County's Election Director and the members of the County's Board of Elections following the 2020 general election, seeking declaratory and injunctive relief concerning alleged missteps in the handling and tallying of ballots. For reasons unclear to the undersigned, the case was transferred to another judicial circuit for adjudication.[1] After many months of convoluted procedural wrangling that included Petitioners thrice amending their petition and twice replacing the entire roster of Respondents -- and Respondents consistently and persistently seeking dismissal of all claims -- the assigned judge on 13 October 2021 entered an Order dismissing the case, finding that Petitioners lacked standing to bring their claims.[2]

[1] The Chief Judge for this Circuit transferred the case to the Sixth Judicial Administrative Circuit on 4 January 2021, apparently construing it as an electoral contest case requiring such a transfer pursuant to O.C.G.A. § 21-2-523(d). However, as Petitioners observed in their 4 January 2021 objection to the transfer, their suit is *not* an electoral contest case challenging the outcome of any particular race; rather, it seeks declaratory and injunctive relief related to the manner in which the election was conducted.

[2] That judge actually entered *two* dismissal orders. The first, dated 24 June 2021, dismissed the various "entity" Respondents (*e.g.*, Fulton County, Fulton County Board of Registration and Elections, etc.) on sovereign immunity grounds but saved the Petition from an early demise by simultaneously returning the original individual Respondents (*i.e.*, the Elections Director and the members of the Board of Elections) to the Petition. Dizzy yet?

A similarly serpentine appellate process ultimately resulted in the October 2021 dismissal order being partly affirmed and partly vacated, with the claims of the four Fulton County resident petitioners -- Favorito, Jeffords, Peck, and Terris -- reinstated so that the trial court could consider whether they enjoyed "community stakeholder" standing as articulated in *Sons of Confederate Veterans v. Henry Cnty. Bd. of Commrs.*, 315 Ga. 39 (2022) -- a case decided during the pendency of the appeal.[3] *Favorito v. Wan*, 367 Ga. App. 642 (2023). Onward to that consideration.[4]

STANDING

The notion of community stakeholder standing as expressed in *Sons of Confederate Veterans* recognizes that while

> only plaintiffs with a cognizable injury can bring a suit in Georgia courts ... 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.

315 Ga. at 39 (2022). Such a generalized grievance or injury can arise when local government officials refuse or otherwise fail to follow a legal duty, as community stakeholders

[3] Petitioners originally lodged their appeal with the Supreme Court, but that court transferred the case to the Court of Appeals on 11 February 2022 upon concluding that the basis of the appeal was a challenge to the trial court's ruling on standing and not any constitutional questions of due process or equal protection. The Court of Appeals in turn affirmed the trial judge in *Favorito v. Wan*, 364 Ga. App. 745 (2022), only to have that opinion vacated on appeal to the Supreme Court with direction to consider Petitioners' claims in light of *Sons of Confederate Veterans v. Henry Cnty. Bd. of Commrs.*, 315 Ga. 39 (2022). That reconsideration yielded the second *Favorito v. Wan* opinion that now controls this case.

[4] Petitioners also brought several claims under the Open Records Act (ORA), O.C.G.A. § 50-18-70 *et seq.*, concerning the County's alleged non-compliance, late compliance, and/or incomplete compliance with various ORA requests made by several of the Petitioners. Those claims were all resolved by the judge to whom this case was assigned when it was shipped out of circuit. His ORA rulings were not appealed and so remain in full force and effect.

> have a legal right for the local government to fulfill that duty. The violation of that legal right gives standing to a stakeholder, even if the stakeholder in the case neither faces nor has suffered any individualized injury distinct from that to the community at large.

Republican Nat'l Comm. v. Eternal Vigilance Action, Inc., 321 Ga. 771, 781 (2025). This lesser standing requirement -- *i.e.*, the lack of need to demonstrate an individualized injury -- (re)opens the doors of the courthouse to Petitioners Favorito, Jeffords, Peck, and Terris in this case. They are all Fulton County voters who have alleged in their various iterations of their petitions that local election officials failed to follow the law in their administration of the 2020 general election -- and that suffices to bestow standing upon them. *Sons of Confederate Veterans*, 315 Ga. at 60 ("[v]oters may be injured when elections are not administered according to the law"); *see also Barrow v. Raffensperger*, 308 Ga. 660, 667 (2020) (voter had standing to challenge Secretary of State's decision to cancel election).

DECLARATORY JUDGMENT CLAIMS

Victory is temporary here. For, beyond seeking dismissal for lack of standing, Respondents have also sought dismissal on the merits of Petitioners' claims. Consistent with this case's theme of making litigation as complicated as possible, Petitioners are now proceeding on *separate* (!) complaints (and have promised to make different arguments using different experts if their claims make it to trial). Petitioners Favorito, Peck, and Terris travel together; Petitioner Jeffords flies alone. All of them seek declaratory judgment in one form or another. 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.

"To proceed under a declaratory judgment a party must establish that it is necessary to relieve himself of the risk of taking some future action that, without direction, would jeopardize his interests." *Porter v. Houghton*, 273 Ga. 407, 408 (2001). That is, a petitioner must establish that he is in a position of uncertainty as to his future actions or else the declaratory action must be dismissed. *Atlanta Nat. League Baseball Club v. F.F.*, 328 Ga. App. 217, 221 (2014).

Here, Petitioners face none of the future uncertainty necessary to maintain their declaratory judgment actions. The 2020 election is over.[5] The due process and equal rights violations supposedly visited upon Petitioners by Respondents' allegedly flawed execution of election processes have already accrued.[6] A declaratory judgment is never a remedy for a past wrong. There is nothing for this Court to declare that would enable Petitioners to make better, more informed decisions about *future* actions. Because Petitioners do not present any actual or justiciable controversies in their various demands and prayers for declaratory relief, those claims must be dismissed.[7] *See Baker v. City of Marietta*, 271 Ga. 210, 214 (1999) ("Where the party seeking declaratory judgment does not show it is in a position of uncertainty ... dismissal of the declaratory judgment action is proper").

[5] So, too, are the 2022 and 2024 elections, about which Petitioners have curiously raised no concerns, given the parade of horribles they forecast should wholesale changes not be made to the manner in which the County (mis)manages its elections.

[6] This backward-looking focus is best typified by Petitioner Jeffords' prayers for relief in which she asks the Court to declare "that the Respondents *have violated* the Georgia state equal protection clause" and "the Georgia state due process clause." (Jeffords Third Amended Petition at 89-90; emphasis added to present perfect tense).

[7] That means Counts I – VI and XII – XVII for the Favorito Petitioners and Count II for Petitioner Jeffords.

EQUITABLE RELIEF

Both sets of Petitioners also seek equitable relief. Jeffords in Count V seeks "judicial involvement in the process to get rid of employees who have brought down the legitimacy of elections in Fulton County." (Jeffords Third Amended Petition at ¶ 370; *see also* Prayer for Relief (l)). Count VI in the Jeffords Petition seeks temporary and permanent injunctive relief but never articulates what Jeffords wishes the Court to enjoin -- although it appears from the subsequent Prayer for Relief section that the equitable intervention sought is an order preserving the ballots and related election materials from the 2020 election.

Jeffords bats .500 with her equitable claims. She cites no law -- nor is the Court aware of any -- that imbues the judicial branch with the equitable power to "get rid of employees." Courts interpret and apply laws; they do not manage the HR departments of other agencies or entities. As for preserving the 2020 election records -- mission accomplished. Those remain preserved and protected, under seal per court order.[8]

The Favorito Petitioners similarly seek injunctive relief to preserve the 2020 election materials (Count VII) -- relief which they have obtained. They also seek a permanent injunction barring Fulton County election officials from "counting counterfeit ballots" in future elections (Count XI). Given that such conduct is

[8] The records do in fact remain under seal. The judge to whom this case was initially assigned entered an order dated 21 May 2021 purporting to unseal the records, but this unsealing was contingent upon the judge issuing a separate order detailing the "protocols and practices" that would ensure the integrity of the original records. That second order has never been entered.

inconsistent with our electoral law, there is no need for a court order to that effect. The Legislature has already spoken; it does not need the Judiciary to echo it.

DEPRIVATION OF EQUAL RIGHTS

Petitioner Jeffords alleges in Count I of her third amended petition that Respondents "negligently, willfully, wantonly, outwardly [?] and unapologetically violated the Equal Protection rights of the Petitioners" and other voters by failing to implement uniform ballot counting procedures in Fulton County.[9] (Jeffords Third Amended Petition at 64). Jeffords goes on to claim that this lack of uniformity in ballot counting procedures resulted in Respondents treating electors differently depending on "when and where their ballots were processed." (*Id.* at 71). More specifically, Jeffords contends that the manner in which Respondents authorized and allowed ballots to be counted at State Farm Arena the night of 3 November 2020 and early morning of 4 November 2020 caused some ballots to be counted (perhaps more than once) and others to be excluded without cause. These supposedly intentional ballot counting errors were, Jeffords asserts, the product of Respondents' negligence, mismanagement, and "unlawful actions."

[9] Interestingly, some of the most damning allegations are reserved for individuals whom Jeffords lists as "New Respondents" (Jeffords Third Amended Petition at 6-14) but who were never legally added to this litigation, as a petitioner cannot add parties without leave of court. *Connie v. Garnett*, 360 Ga. App. 24, 25 (2021) ("an amendment to a complaint adding a new party without first obtaining leave of the court is without effect"). The docket of this case shows no request for leave of court to add them nor any ruling from the Court allowing the addition of these "New Respondents." They are thus not a part of this case.

While some Respondents[10] have pointed out that these alleged negligent and bad acts are not clearly or directly attributed to them in the complaint, this lack of attribution is not fatal at this juncture. The Civil Practice Act requires "only that a complaint give the defendant fair notice of what the claim is and a general indication of the type of litigation involved; the discovery process bears the burden of filling in details." *McLeod v. Costco Wholesale Corp.*, 369 Ga. App. 717, 723 (2023) (punctuation and citation omitted). "Put another way, if, within the framework of the complaint, evidence may be introduced which will sustain a grant of relief to the plaintiff, the complaint is sufficient." *Campbell v. Ailion*, 338 Ga. App. 382, 385 (2016) (citation omitted).

Count I of Jeffords' third amended petition clears that very low bar -- barely. But close clearance is clearance enough. Respondents know what the claim is: through their alleged negligence and intentional misconduct, they caused some electors' ballots to be treated differently than others. Whether that actually happened and the specifics of how it did (and who did it) can be developed through discovery. Respondents can demand through requests for admission, interrogatories, and requests for production the details of Jeffords' claims as well as any proof thereof -- should it exist. *After* that process, all parties (and the Court) will be properly positioned to assess whether, as a matter of law, the claim can be resolved short of trial.[11] For now, however, Count I

[10] *See, e.g.*, Respondents Wan, Nuriddin, and Johnson's 12 August 2021 motion to dismiss at 21, arguing that Jeffords' third amended complaint is "unburdened with any facts that would demonstrate that any of the three Respondents personally violated the rights of any Petitioner." Indeed, none of the acts that *are* described in Count I can possibly have been committed by one of the named Respondents, as he (Wan) was not serving in any official electoral capacity with the County at the time of the 2020 election.

[11] Count 1 also sufficiently alleges conduct that falls outside the ambit of Respondents' official immunity. Negligent ministerial acts are not protected by official immunity nor are discretionary acts performed

persists, although not as to Respondent Wan, who was not a member of the County's Board of Registration and Elections at the time of the 2020 election and who therefore is dismissed from this case.

ATTORNEY'S FEES

Both Fulton County and the Clerk of Superior and Magistrate Courts -- former Respondents in this case -- filed motions pursuant to O.C.G.A. § 9-15-14 seeking attorney's fees from Petitioners for what the two parties contend were frivolous claims propounded by Petitioners that needlessly dragged them into this litigation. O.C.G.A. § 9-15-14 mandates the award of reasonable attorney's fees (and litigation costs) in certain situations and authorizes a trial court to award them in other situations. An award is *mandated* if the trial court finds that the non-moving party (here, Petitioners)

> asserted a claim, defense, or other position with respect 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, defense, or other position.

O.C.G.A. § 9-15-14(a). An award is *authorized* but not required if the court 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....

O.C.G.A. § 9-15-14(b). The statute defines the phrase "lacked substantial justification" as being "substantially frivolous, substantially groundless, or substantially vexatious."

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with malice. *Barnett v. Caldwell*, 302 Ga. 845, 847-848 (2018). Here, Jeffords claims both. Whether such acts were ministerial or discretionary, negligent or malicious -- and who performed (or failed to perform) them -- can be developed during discovery.

Id. Both the complained-of litigant and that litigant's attorney(s) can be held liable for an award under this code section. The cost to the aggrieved party of pursuing such sanctions may also be awarded. O.C.G.A. § 9-15-14(d).

Any motion brought pursuant to this Code section must be filed "not later than 45 days after the final disposition of the action." O.C.G.A. § 9-15-14(e). The Court of Appeals has defined "final disposition of the action" to mean "final judgment" as that term is used in O.C.G.A. § 5–6–34(a)(1) -- "that is to say, where the case is no longer pending in the court below." *Kim v. Han*, 339 Ga. App. 886, 888 (2016) (citation omitted); *see also Cook-Rose v. Waffle House, Inc.*, 320 Ga. 567, 570 (2024).

County. Fulton County ("County") was added to this litigation pursuant to a motion filed by Petitioners on 27 January 2021.[12] Per the trial judge's 21 April 2021 Order, the County was substituted, along with the Clerk of Superior and Magistrate Courts ("Clerk"), and the County Board of Registration and Elections, for the various individual Respondents originally named by Petitioners. On 26 May 2021, the County filed a motion to dismiss the petition, asserting as grounds for dismissal failure to serve, improper party, deficiencies in Petitioners' declaratory judgment claims, and failure to comply with election contest requirements. On 16 June 2021, the County filed a supplemental motion to dismiss in which it set forth two additional bases for dismissal:

[12] In opposing an award of fees pursuant to § 9-15-14, Petitioners disingenuously deflect responsibility for the addition of the County (and the Clerk) to their litigation as being the product of an order of the court and not anything of their doing. Technically, of course, this is true, as parties cannot be added without an order from the court. *McArthur v. Beech Haven Baptist Church of Athens*, 368 Ga. App. 525, 527 (2023). But that order was not some *sua sponte* offering from the court but rather the execution of *Petitioners'* request to add the County (and the Clerk). The County and the Clerk were (briefly) in this case at Petitioners' behest and no one else's.

lack of standing and sovereign immunity.[13] This last minute addition proved fruitful, as the trial judge granted the motion to dismiss on the basis of sovereign immunity in an Order dated 24 June 2021, finding that Petitioners had identified no applicable waiver of the County's immunity.[14]

The County filed its § 9-15-14 motion and brief on 30 November 2021. The next day the County filed a motion pursuant to Uniform Superior Court Rule 36.16(F) seeking to have its motion filed *nunc pro tunc* to 29 November 2021. This one-day shift back is significant, as the 45th day following the entry of the 13 October 2021 Order dismissing the entire case was 27 November 2021 -- a Saturday. This made the County's due date 29 November 2021.[15] The Court finds that the County met that deadline. The County has provided an unrebutted affidavit averring that a paralegal for the County Attorney's Office timely e-filed the motion and brief on 29 November 2021 and received electronic notice that same day that her filings had been accepted. It was only the next day that the Court's e-filing system alerted the County Attorney that the filings had been rejected

[13] The County also elaborated on its earlier grounds challenging the adequacy of Petitioners' declaratory judgment claims and the failure to comply with election contest requirements.

[14] Petitioners had tried to rely on the then-recent Constitutional amendment that added Paragraph V(b) to Section 2 of Article 1. That provision waives sovereign immunity for "actions in the superior court seeking declaratory relief from acts of the state or … any county … or officer or employee thereof outside the scope of lawful authority or in violation of the laws or the Constitution of this state or the Constitution of the United States." Ga. Const. art. I, § 2, ¶ V(b)(1). That waiver *would* have applied to Petitioners' declaratory relief claims but for the final sentence of the paragraph: "Such waiver of sovereign immunity under this Paragraph shall apply to past, current, and prospective *acts which occur on or after January 1, 2021*." *Id.* (emphasis added). In this case, the complained-of actions occurred in November 2020, placing Petitioners' claims firmly outside the reach of this new Constitutionally-enshrined waiver.

[15] Petitioners argue that the proper start date for § 9-15-14's 45-day countdown was 24 June 2021, when the order dismissing the County (and the Clerk) was entered. That order, however, was not a final judgment. It did dismiss some parties, but it also added others and the case carried forward. Indeed, the case remained pending for four more months until the 13 October 2021 order dismissed all claims against all remaining Respondents.

because of a missing slash in the electronic signature (meaning that what should have been "/s/" was entered as "s/"). This classic scrivener's error, flagged for the County only the day *after* the timely filing attempt, is a scenario contemplated by Rule 36.16(F) and this Court's standing order for e-filing in effect at that time (2018EX001350[16]) -- both of which authorize judges to enter an order permitting the e-filed document to be filed *nunc pro tunc* to the date it was first attempted to be transmitted.[17] From this set of uncontested facts, the Court finds it appropriate to GRANT the County's motion to have the 30 November 2021 pleadings filed *nunc pro tunc* to 29 November 2021.

Having found that the County's motion was timely filed, the Court now turns to the merits of its claim for fees. As the County made clear at the hearing on its motion, it is seeking fees only for the time spent defending against Petitioners' due process and equal protection claims -- and not the Open Records Act claims (for which Petitioners were partially successful). The billing information submitted matches that timeline, as the record entries and affidavit figures all post-date the entry of the order that resolved the Open Records claims. Following that order, litigation focused on the motions to dismiss and the merits of Petitioners' declaratory and injunctive relief claims. Given that the County enters litigation sheathed in sovereign immunity -- and the only possible waiver of that immunity Petitioners identified was a constitutional provision which on its face plainly did not apply, given the start date written into the Constitution (and,

[16] That order allowed judges to enter *nunc pro tunc* orders when an e-filing was delayed by "an error in the transmission of the E-Document to eFileGA which was unknown to the sending party."

[17] *See also S. T. C., Inc. v. Ralph + Rita Venture, LLC*, 376 Ga. App. 130 (2025).

awkwardly for Petitioners, quoted in their own motion to substitute the County and the Clerk as Respondents) -- the Court concludes that Petitioners' addition of the County to litigation from which the County was plainly constitutionally exempt introduced into this case claims which suffered from a "complete absence of any justiciable issue of law or fact." That is, Petitioners' claims presented zero factual or legal questions concerning the County's liability for due process or equal protection violations because the County was immune to such claims. There was nothing to litigate. At all. Because Petitioners knew -- or should have known -- that, they are liable for the County's attorney's fees, both under O.C.G.A. § 9-15-14(a) and under O.C.G.A. § 9-15-14(b). And because the County's legal fees associated with defending against these claims for which it enjoyed immunity were reasonable, the Court awards them all and finds Petitioners jointly and severally liable[18] for $29,285.

Clerk. The analysis of the Clerk's § 9-15-14 motion is similar but simpler. The Clerk was added to this litigation at the same time and in the same manner as the County (order of court in response to motion from Petitioners). The Clerk was dismissed for the same reason (sovereign immunity) and at the same time as the County. Unlike the County, however, the Clerk filed her § 9-15-14 motion on 22 November 2021, so it was timely *ab initio,* having been filed with 45 days of the final judgment in this case.

As with their claims against the County, the claims Petitioners pursued against the Clerk suffered from a "complete absence of any justiciable issue of law or fact."

[18] At the time of the motion to substitute the County and the Clerk, Petitioners remained a united front with a single petition. They even jointly filed their motion to substitute.

Only it was a three-fold "complete absence" for the Clerk. First, the Clerk, like the County, enjoys sovereign immunity and the only waiver to that immunity that Petitioners ever proffered -- Ga. Const. art. I, § 2, ¶ V(b)(1) -- was time-barred. Second, had the Constitutional waiver of immunity upon which Petitioners sought to rely in fact applied to the conduct at issue, the *only* proper party to the suit would have been the County; neither the Clerk nor any other County official, elected or otherwise, can be sued pursuant to Ga. Const. art. I, § 2, ¶ V(b)(1). *Lovell v. Raffensperger*, 318 Ga. 48, 52 (2024). Third and final, the Clerk played no role in the oversight and management of the 2020 general election and so could not have been part of any effort to dilute votes, deny due process, or prevent equal protection of the laws.[19]

Thus, just as with their claims against the County, Petitioners' claims against the Clerk presented zero factual or legal questions concerning the Clerk's liability for due process or equal protection violations. The Clerk was immune to such claims and also played no role in the alleged misconduct that supposedly supports such claims. Because Petitioners knew -- or should have known -- all of this, they are liable for the Clerk's attorney's fees, both under O.C.G.A. § 9-15-14(a) and under O.C.G.A. § 9-15-14(b). And because the Clerk's legal fees associated with defending against these baseless (as to her) claims were reasonable, the Court awards them all and finds Petitioners jointly and severally liable for $9,575.

[19] Indeed, per Petitioners' own admission, the sole reason the Clerk was added to this litigation was that she is the custodian of the election materials to which Petitioners seek access as part of their discovery efforts. That is what third party requests for production and subpoenas are designed to accomplish. Adding the Clerk-as-Custodian to this case needlessly (and frivolously) generated litigation expenses for the Clerk, the County, and the taxpayer.

RECAP

Petitioners Favorito, Jeffords, Peck, and Terris, registered Fulton County voters each, have standing -- specifically, community stakeholder standing -- to press their remaining post-appeal claims. Unfortunately for the Favorito Petitioners (Favorito, Peck, and Terris), those remaining claims are now all dismissed. Petitioner Jeffords's equal protection claim persists (although not as to Respondent Wan); all other claims are dismissed. All four petitioners have until 9 February 2026 to collectively remit $29,285 to counsel for the County and $9,575 to counsel for the Clerk. The County and the Clerk should notify the Court immediately if these payments are not timely made. Counsel for Jeffords is invited to attend the hearing in *Allen v. State of Georgia*, 24CV014632, on 9 March 2026 at 9:00am, at which time those parties will be discussing access to and duplication of many of the same electoral discovery materials sought in this case. After that hearing, the Court will convene the remaining parties in this case to discuss deadlines for discovery and trial.[20]

SO ORDERED this 4th day of February 2026.

Judge Robert C.I. McBurney
Superior Court of Fulton County

[20] Petitioner Favorito had pending two motions to substitute parties -- one filed 14 May 2024 (Doc 16) and one filed 12 December 2025 (Doc 45). Both are denied as moot, given the dismissal of Favorito's petition. Petitioner Jeffords adopted Favorito's first motion on 24 June 2024 (Doc 22); that motion is also denied because the only surviving claim in Jeffords' amended petition is one dealing with the conduct of the 2020 election -- making the addition of members of the Board of Registration and Elections who were not serving at the time of that election illogical (hence Respondent Wan's dismissal). Plus, the current Respondents were sued in their individual capacity, making substitution under either O.C.G.A. § 9-11-25(c) or (d) legally improper.

EXHIBIT "B"

FIRST DIVISION
BARNES, P. J.,
MARKLE and HODGES, JJ.

NOTICE: Motions for reconsideration must be received no later than 4:30 pm on the 10th day after the decision was issued to be deemed timely filed.
https://www.gaappeals.gov/rules

October 26, 2026

In the Court of Appeals of Georgia

A26A1596. FAVORITO et al v. WAN et al.

A26A1739. JEFFORDS v. FULTON COUNTY et al.

HODGES, Judge.

This is the second appearance of this case before this Court, where appellants Garland Favorito, Caroline Jeffords, Christopher Peck, and Trevor Terris have challenged the actions of various local officials regarding the November 2020 general election.[1] They appeal from a trial court order that dismissed many of their claims and

[1] The appellants first appealed a prior order dismissing their claims to the Georgia Supreme Court, which transferred the appeal to this Court, where we affirmed the trial court's determination that the appellants, and other prior petitioners, lacked standing to maintain the action. *Favorito v. Wan*, 364 Ga. App. 745 (875 SE2d 892) (2022). After the Supreme Court vacated this Court's opinion, we determined that the appellants had standing to pursue the action as community stakeholders. *Favorito v. Wan*, 367 Ga. App. 642, 642–44 (887 SE2d 810) (2023).

awarded attorney fees under OCGA § 9-15-14(a) and (b) to Fulton County and the Fulton County clerk of the superior court. In Case No. A26A1596, Favorito, Peck, and Terris (collectively "the Favorito petitioners") challenge the dismissal of their declaratory judgment, due process and equal protection claims, as well as the imposition of attorney fees. In Case No. A26A1739, Jeffords challenges the imposition of attorney fees. We consider these appeals together since they arise from the same trial court order and both challenge the imposition of attorney fees, for which they are jointly and severally liable.

As set forth more fully below, we affirm the dismissal of the Favorito petitioners' claims, as they have failed to make any meaningful argument that these claims should survive. Regarding attorney fees, we conclude that the trial court erred in awarding fees to the county, affirm the award of fees to the clerk, and remand the case for the trial court to determine if the county is entitled to fees on other grounds.

Briefly, this case began in December 2020, when the appellants and others brought a petition for declaratory and injunctive relief against various officials in their individual capacities concerning purported illegal conduct regarding the handling or counting of ballots in Fulton County during the November 2020 general election. In

January 2021, the appellants sought to substitute the original defendants with Fulton County and the Fulton County clerk of the superior court as the new defendants. The superior court held a hearing on the motion to substitute in March 2021, and substituted the parties in April 2021. Both the clerk and the county moved to dismiss the petition in May 2021.

In February 2026, the superior court issued an order dismissing all of the Favorito petitioners' remaining claims, and all of Jeffords' claims save for an equal protection claim that is not at issue in these appeals.[2] The superior court also concluded that the appellants were liable to the county and the clerk for attorney fees pursuant to OCGA § 9-15-14(a) and (b) related to the dismissed claims. In Case No. A26A1596, the Favorito petitioners challenge the dismissal of their claims and the imposition of attorney fees. In Case No. A26A1739, we granted Jeffords' application for interlocutory review to consider the propriety of the attorney fee award.

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[2] The appellees have filed a motion to dismiss Case No. A26A1596, asserting that the appeal is interlocutory because Jeffords' equal protection claim is still pending. The Favorito petitioners, however, have been severed from Jeffords since April 2021, and the trial court's order is clear that all of the Favorito petitioners' "remaining claims are now all dismissed." As such, this appeal is not interlocutory, and the appellees' motion is DENIED.

1. In Case No. A26A1596, the Favorito petitioners challenge the dismissal of their declaratory judgment, due process, and equal protection claims. The Favorito petitioners, however, have failed to advance any meaningful argument to challenge the trial court's conclusion and these claims of error are abandoned as a result. See *In the Interest of K. R.*, 367 Ga. App. 668, 677(2)(b) (888 SE2d 204) (2023) ("[W]e have held that an argument is abandoned if it provides general citations to the 'most basic legal authority' without providing any legal authority or argument related to the specific facts of [the] case."); *Brittain v. State*, 329 Ga. App. 689, 704(4)(a) (766 SE2d 106) (2014) ("[A]n appellant must support enumerations of error with argument and citation of authority, and mere conclusory statements are not the type of meaningful argument contemplated by our rules.") (citation and punctuation omitted); *Dixon v. MARTA*, 242 Ga. App. 262, 266(4) (529 SE2d 398) (2000) ("Rhetoric is not a substitute for cogent legal analysis, which is, at a minimum, a discussion of the appropriate law as applied to the relevant facts."); Court of App. R. 25(d)(1) ("Any enumeration of error that is not supported in the brief by citation of authority or argument may be deemed abandoned.").

Here, the Favorito petitioners have only cited the most basic legal authority in a general fashion with absolutely no attempt to apply any of the myriad (including very recent) case law regarding where declaratory judgments will lie to the facts of this case. At most, they have cited three cases that state the purpose of the declaratory judgment act and note that this Court considers the substance over the nomenclature of pleadings. Worse, regarding their due process and equal protection claims, the Favorito petitioners have cited absolutely no authority to support their position. Because the Favorito petitioners have failed to cite any meaningful authority, this Court can only speculate as to what argument they intended to advance, and we will not engage in such an enterprise. "As an appellate court, we should not speculate or make arguments on [the] appellant[s'] behalf; to do so would improperly change this Court's role from disinterested decision-maker to appellate advocate." *Muniz v. State*, 375 Ga. App. 140, 141–42(1)(b) (914 SE2d 358) (2025) (punctuation omitted). Because we refuse to invent arguments for counsel, these enumerations are abandoned. *In the Interest of K. R.*, 367 Ga. App. at 677(2)(b).

2. The Favorito petitioners in Case No. A26A1596 and Jeffords in Case No. A26A1739 each challenge the trial court's award of attorney fees pursuant to OCGA

§ 9-15-14(a) and (b) to both Fulton County and the Fulton County clerk of the superior court on various grounds. As these appeals are taken from the same order, awarding fees on the same grounds, and the appellants' arguments are substantially similar, we will resolve these many enumerations collectively.

(a) As an initial matter, in both cases the appellants contend that the county and the clerk have waived or are estopped from any argument that they are entitled to fees for abusive litigation because the county and the clerk "affirmatively stated [the motion to substitute the county as a party] was unopposed." The appellants heavily rely on the fact that counsel representing the individual members of the Fulton County Board of Elections, who now represents the county, indicated the motion to substitute the parties was "unopposed." Additionally, the appellants point out that neither the county nor the clerk took any action to oppose substitution until four months after the motion to substitute was filed and until two and a half months after substitution was ordered.

Pretermitting whether the county and the clerk waived their opposition to being procedurally substituted as parties,[3] Georgia law is clear that the county and the clerk

[3] See *Kent v. A.O. White, Jr., Consulting Eng'r, Inc.*, 279 Ga. App. 563, 566(5) 631 SE2d 782) (2006) (finding wavier where opposition to substitution was filed

could still substantively assert sovereign immunity, as they each did with their first act after joining the case. Issues of substitution and sovereign immunity are separate inquiries, and "[t]he fact that a governmental entity may have sovereign immunity ... does not prevent such entity from being ... an entity that may sue and be sued." *Foskey v. Vidalia City School*, 258 Ga. App. 298, 301(b) (574 SE2d 367) (2002). We have also concluded in other contexts that the substitution of parties "is a procedural rule and does not alter the substantive rights of the parties[.]" *EMM Credit, LLC v. Remington*, 343 Ga. App. 710, 718(3) (808 SE2d 96) (2017). Because the county and the clerk could (and did) raise sovereign immunity as a substantive challenge after being substituted as parties, we conclude that their purported lack of opposition to being substituted is not a bar to attorney fees.

(b) Turning to the merits of the attorney fee award regarding Fulton County, "[g]enerally, an award of attorney fees is not available in Georgia unless authorized by statute or contract." *O'Keefe v. O'Keefe*, 285 Ga. 805, 805-06 (684 SE2d 266) (2009). OCGA § 9-15-14(a) *mandates* that the trial court must award attorney fees when a party

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"nearly ninety days after the motion to substitute was filed and two months after the superior court allowed the substitution").

> has asserted a claim, defense, or other position with respect 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, defense, or other position.

And OCGA § 9-15-14(b) *permits* a trial court to award attorney fees if an attorney or a party brings an action

> 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[.] ... As used in this Code section, "lacked substantial justification" means substantially frivolous, substantially groundless, or substantially vexatious.

"[A]n order awarding attorney fees pursuant to [OCGA § 9-15-14] must specifically state whether the award is made under OCGA § 9-15-14(a) or (b)[,]" *Woods v. Hall*, 315 Ga. App. 93, 97(2) (726 SE2d 596) (2012), and it must include "findings of fact that specify the conduct upon which the award is made." *Hicks v. Gabor*, 354 Ga. App. 714, 726(2)(b) (841 SE2d 42) (2020). See *Cohen v. Rogers*, 341 Ga. App. 146, 152(2)(b) (798 SE2d 701) (2017) ("To permit meaningful appellate review of an award of fees and expenses [under OCGA § 9-15-14], the trial court's order cannot be too vague and

conclusory, such as where it fails to cite examples of conduct that authorize the award.") (punctuation omitted).

When considering an appeal from an OCGA § 9-15-14(a) fee award, "we must determine whether the claim asserted below either had some factual merit or presented a justiciable issue of law." *Omni Builders Risk, Inc. v. Bennett*, 325 Ga. App. 293, 297(3) (750 SE2d 499) (2013). We will affirm an award under OCGA § 9-15-14(a) "if there is any evidence to support it." *Reynolds v. Clark*, 322 Ga. App. 788, 789(1) (746 SE2d 266) (2013). "We review a subsection (b) fee award for abuse of discretion." *Shoenthal v. DeKalb County Emps. Retirement System Pension Bd.*, 343 Ga. App. 27, 30 (805 SE2d 650) (2017).

However, this Court must "keep in mind that OCGA § 9-15-14(a) is intended to discourage the bringing of frivolous claims, not the presentation of questions of first impression about which reasonable minds might disagree or the assertion of novel legal theories that find arguable, albeit limited, support in the existing case law and statutes." *Shoenthal*, 343 Ga. App. at 32. See OCGA § 9-15-14(c) ("No attorney or party shall be assessed attorney[] 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.")

(i) In its order awarding fees under OCGA § 9-15-14(a), the trial court concluded that (1) the county "enters litigation sheathed in sovereign immunity[,]" (2) the only possible waiver of sovereign immunity "plainly did not apply," and (3) the appellants' dismissed claims "presented zero factual or legal questions ... because the [c]ounty was immune to such claims." Said another way, the trial court found the claims "suffered from a 'complete absence of any justiciable issue of law or fact.'" See OCGA § 9-15-14(a).

In their petition, the appellants pled that those responsible for the November 2020 general election had failed to follow state law regarding ballot processing, diluted their vote, and allowed the disenfranchisement of voters by permitting the counting of fraudulent or fabricated ballots. The appellants sought to substitute the county as a party after Georgia voters approved an amendment to the Georgia Constitution allowing a new waiver of sovereign immunity. See Ga. Const. of 1983, Art. I, Sec. II, Par. V(b)(1) (the "Immunity Amendment"). This waiver permits actions in superior court for declaratory judgment and related injunctive relief against the state and its

counties for acts that are "outside the scope of lawful authority or in violation of the laws or the constitution of this state or the Constitution of the United States." Id. The Immunity Amendment provides, without any further direction, that this waiver "shall apply to past, current, and prospective acts which occur on or after January 1, 2021." Id.

The appellants assert that fees under OCGA § 9-15-14(a) should not be available as they asserted waiver of sovereign immunity under the Immunity Amendment, without the benefit of any interpretive guidance from our Supreme Court. At the time the appellants sought to substitute the county as a party, there was no guidance from our Supreme Court as to what types of "past, current, and prospective acts" could be captured by the waiver of sovereign immunity. Regardless of whether the appellants' claims regarding the November 2020 election could have supported a waiver of sovereign immunity, we conclude that the appellants' position was not so unreasonable that they could not have believed a trial court would accept it at the time it was filed.

In so concluding, we note that there have been at least five post-2021 Georgia appellate cases interpreting what types of acts can waive sovereign immunity under

the Immunity Amendment. See *Republican Nat'l Comm. v. Eternal Vigilance Action, Inc.*, 321 Ga. 771, 791(4) (917 SE2d 125) (2025); *Starship Enters. of Atlanta, Inc. v. Gwinnett County.*, 319 Ga. 293, 302(2)(b) (903 SE2d 55) (2024); *Maat Concepts, Inc. v. Fulton County,* ___ Ga. App. ___ (932 SE2d 825, 829(1)) (2026); *Fraser v. Glynn County*, 377 Ga. App. 662, 666–67(1)(a) (922 SE2d 825) (2025); *City of Atlanta v. MLK Props.*, 372 Ga. App. 210, 215-16(2)(a) (904 SE2d 79) (2024).We find *Eternal Vigilance Action* especially informative, where the Supreme Court reviewed petitioners' challenge to the rules of the State Election Board based on their concern that the application of such rules would infringe on the petitioners' right to vote. 321 Ga. at 791(4). The Supreme Court recognized the Immunity Amendment was an appropriate waiver of sovereign immunity because the voters "faced a risk of taking future undirected action that would nullify their votes." Id. at 791–92(4).

While the appellants in the instant cases were unsuccessful in demonstrating that they had pled prospective acts as contemplated by the Immunity Amendment, we cannot say their efforts were so frivolous that no court could have accepted them at that time. In *Fraser*, for example, this Court considered whether there was a waiver of sovereign immunity where, before 2021, a county had issued a (purportedly void)

quitclaim deed over certain property and petitioners were aggrieved by the county potentially enforcing trespass laws related to that property, where petitioners believed they had access. 377 Ga. App. at 666–67(1)(a). Because the county had not taken any action to threaten petitioners with a trespass prosecution, this Court found there was no justiciable controversy, and thus no waiver under the Immunity Amendment. Id. The appellants here were in a similar posture, seeking declaratory relief over past violations of law which could impact their rights going forward. We find it notable that nothing in the *Fraser* case suggested the petitioners were acting in a frivolous or vexatious manner, and that *Fraser* was ultimately a split decision, with a judge indicating he would have found a valid waiver of sovereign immunity. *Fraser*, 377 Ga. App. at 678(1) (922 SE2d 825) (2025) (McFadden, P. J., dissenting) (noting that the Immunity Amendment waives sovereign immunity for prospective acts of enforcing unlawful or unauthorized acts).

We conclude that appellants' claim of a waiver of sovereign immunity under the Immunity Amendment is similar to cases in which other petitioners have sought waiver without having attorney fees imposed. See *Eternal Vigilance Action, Inc.*, 321 Ga. at 791(4); *Fraser*, 377 Ga. App at 667(1)(a). Accordingly, we conclude that their

position was at least arguable at the time the petition was made. As stated above, attorney fees under OCGA § 9-15-14(a) are unavailable where parties take an arguable position on novel areas of law. *Shoenthal*, 343 Ga. App. at 32. Consequently, the trial court erred by awarding fees under OCGA § 9-15-14(a), which we now reverse.

(ii) This conclusion, however, does not end our inquiry regarding the attorney fee award to the county. While we have determined that the petition did not sufficiently lack substantial justification as to support an award under OCGA § 9-15-14(a), there are other grounds which can support a fee award under OCGA § 9-15-14(b), including "unnecessarily expand[ing] the proceeding by other improper conduct." *Kim v. Han*, 339 Ga. App. 886, 888(2) (795 SE2d 191) (2016) (punctuation omitted). The county asserts this is exactly what happened here, with the appellants' "many attempts to modify parties" and following "a ping-pong litigation strategy" to delay the proceedings. (Punctuation omitted.) While the trial court concluded that "[t]here was nothing to litigate" regarding the substitution of parties, it is unclear if this factual finding related to the lack of substantial justification or an unnecessary expansion of the proceeding.

> If the court awards attorney fees under OCGA § 9–15–14, it must make express findings specifying the abusive conduct for which the award is

> made, and whether the award is made under subsection (a) or (b) or both. If the court fails to make these findings, the fees award must be vacated and the case remanded for reconsideration.

Kim, 339 Ga. App. at 889(2). Because it is unclear from the trial court's order which factual finding undergirded which legal conclusion, we remand for the trial court to consider whether the appellants "unnecessarily expanded the proceeding[s] by other improper conduct," OCGA § 9-15-14(b), and (if so) provide appropriate findings of fact.[4]

(c) As to the clerk, the analysis regarding OCGA § 9-15-14(a) fees is much simpler. As with the county, the trial court noted the only proffered waiver of sovereign immunity was the Immunity Amendment. As noted above, the Immunity Amendment only applies to actions which are "outside the scope of lawful authority or in violation of the laws or the constitution of this state or the Constitution of the United States." Ga. Const. of 1983, Art. I, Sec. II, Par. V(b)(1). We conclude fees are

[4] We note that the Favorito petitioners have also asked this Court to reverse the attorney fee award in favor of the county based on a purportedly tardy motion for fees, and remand the award for further findings of fact. We decline to address this enumeration further, as this fee award has been reversed and the issue can be raised on remand.

appropriate because the appellants did not, and still have not, alleged any action by the clerk which was outside the scope of her authority or a violation of any law.

Instead of alleging wrongful acts, the appellants added the clerk solely because it "claims that it currently has possession of the ballots that [the appellants] seek to view." During the hearing on the motion to substitute, the appellants did not claim the clerk had done anything unlawful, but merely stated that they wanted injunctive relief to bind her to a preservation order. No appellant has pointed to any place in the record where anyone has asserted there was any unlawful conduct by the clerk, nor has our review of the record shown any claim that the clerk has acted unlawfully or beyond the scope of her authority.

The Immunity Amendment's waiver, by its very terms, "turns on whether the petitioners have sought declaratory relief from acts of the relevant governmental entity that are either outside the scope of lawful authority or in violation of the laws or the Constitution of this state or the United States." *State v. Dovetel Communication, LLC*, 322 Ga. 635, 638(2) (921 SE2d 374) (2025) (punctuation omitted). Without any such allegation of an unlawful act, it is patent that there was never a justiciable issue of law regarding the clerk's waiver of sovereign immunity, and any claim of such a waiver

lacked substantial justification. To avoid the imposition of OCGA § 9-15-14(a) fees, the appellants must find some arguable support in the text of the Immunity Amendment or other persuasive precedent to support their position. See *Shoenthal*, 343 Ga. App. at 32. The appellants, however, make no attempt to do so, instead simply asserting (with no meaningful support by citation of authority) that somehow seeking the preservation or production of records the clerk possesses can be covered by the amendment.

Because the text of the Immunity Amendment, by its own terms, clearly requires there to be some unlawful act or action without lawful authority, there was no need for any interpretive guidance from our Supreme Court to know there was no justiciable issue regarding the clerk. Accordingly, the trial court was correct that the clerk is entitled to fees under OCGA § 9-15-14(a). See *Trabue v. Hanson*, 377 Ga. App. 450, 457–58(2)(a) (922 SE2d 684) (2025) (affirming such fees where there was evidence to support the lack of any justiciable issue). Because this attorney fee award is affirmed under OCGA § 9-15-14(a), we need not address the appellants' claims specific to OCGA § 9-15-14(b). *Cheng v. Gloria Walker Revocable Living Trust*, 379 Ga. App. 197, 200–01(3) (925 SE2d 229) (2026).

In sum, because reasonable minds could have differed regarding the interpretation of prospective acts as to the county, the trial court erred in awarding attorney fees to the county under OCGA § 9-15-14(a). There is, however, absolutely nothing in the record to support the appellants' position that the Immunity Amendment arguably waived the clerk's sovereign immunity, so the trial court correctly awarded attorney fees as to her. We remand this case to the trial court to determine whether the county's attorney fees are appropriate under OCGA § 9-15-14(b), and if so, to make appropriate findings of fact.

Judgment affirmed in part, reversed in part, and case remanded. Barnes P. J., and Markle, J., concur.

Fulton County Superior Court
EFILEDAC
Date: 7/2/2021 11:42 AM
Cathelene Robinson, Clerk

EXHIBIT "C"

IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

GARLAND FAVORITO, MICHAEL SCUPIN, TREVOR TERRIS, SEAN DRAIME, CAROLINE JEFFORDS, STACEY DORAN, CHRISTOPHER PECK, ROBIN SOTIR and BRANDI TAYLOR,
PETITIONERS,

v. **CIVIL ACTION NO.: 2020CV-343938**

ALEX WAN, VERNETTA KEITH NURIDDIN, KATHLEEN RUTH, AARON JOHNSON, AND MARK WINGATE,
in their individual capacities,
RESPONDENTS.

3rd AMENDMENT TO PETITION FOR DECLARATORY AND INJUNCTIVE RELIEF

COME NOW, PETITIONERS GARLAND FAVORITO, MICHAEL SCUPIN, TREVOR TERRIS, SEAN DRAIME, STACEY DORAN, CHRISTOPHER PECK, and BRANDI TAYLOR (hereafter The Favorito Petitioners), by and through their attorneys of record, and file their 3rd amendment to petition for declaratory and injunctive relief pursuant to Ga. Code Ann. § 9-4-1 et seq. and Ga. Code Ann. § 9-11-65, as follows:

THE PARTIES

1.

Garland Favorito is a resident of Fulton County, Georgia and was an elector who was entitled to vote, and who voted in the November 3, 2020 General Election and whose vote was not counted in the Official Statement of Votes Cast or the published hand count audit results or the recount results.

2.

Michael Scupin is a resident of Hall County, Georgia and was an elector who was entitled to vote, and did vote, in the November 3, 2020, General Election.

3.

Trevor Terris is a resident of Fulton County, Georgia and was an elector who was entitled to vote, and did vote, in the November 3, 2020, General Election.

4.

Sean Draime is a resident of Upson County, Georgia and was an elector who was entitled to vote, and did vote, in the November 3, 2020, General Election.

5.

Stacey Doran is a resident of Whitfield County, Georgia and was an elector who was entitled to vote, and did vote, in the November 3, 2020, General Election.

6.

Christopher Peck is a resident of Fulton County, Georgia and was an elector who was entitled to vote, and did vote, in the November 3, 2020, General Election.

7.

Brandi Taylor is a resident of Fannin County, Georgia and was an elector who was entitled to vote, and did vote, in the November 3, 2020, General Election.

8.

Respondent Alex Wan is named in his individual capacity and he may be served at: 130 Peachtree Street, Suite 2186, Atlanta, GA 30303.

9.

Respondent Vernetta Keith Nuriddin is named in her individual capacity and may be served at: 130 Peachtree Street, Suite 2186, Atlanta, GA 30303.

10.

Respondent Kathleen Ruth is named in her individual capacity and she may be served at: 130 Peachtree Street, Suite 2186, Atlanta, GA 30303.

11.

Respondent Aaron Johnson is named in his individual capacity and may be served at: 130 Peachtree Street, Suite 2186, Atlanta, GA 30303.

12.

Respondent Mark Wingate is named in his individual capacity and he may be served at: 130 Peachtree Street, Suite 2186, Atlanta, GA 30303.

13.

The Respondents are the current members of the Fulton County Board of Elections and the Fulton County Elections Director.

JURISDICTION AND VENUE

14.

Jurisdiction is proper in this Court pursuant to Ga. Code Ann. § 9-4-2 as the Respondents and the absentee ballots are located within Fulton County, Georgia.

15.

Venue is proper before this Court because the Respondents reside in Fulton County, Georgia and the absentee ballots are located within Fulton County, Georgia.

FACTUAL BACKGROUND

16.

The Favorito Petitioners aver that Garland Favorito was a Fulton County tabulation observer for the 11/03/2020 General Election.

17.

The Favorito Petitioners aver that while Garland Favorito was performing the function of a Fulton County tabulation observer he detected an abnormal 20,000 vote increase for Joe Biden's vote tabulation and an apparent abnormal reduction in Donald J. Trump's vote tabulation (Exhibit "A").

18.

The Favorito Petitioners aver that the same day Garland Favorito detected the vote tabulation abnormalities he notified the Fulton County Director of the Elections, the Fulton County Elections Board, and the Fulton County attorney and made an Open Records Request for the interim upload results (Exhibit "B").

19.

The Favorito Petitioners aver that Garland Favorito's Open Records Request never received a response from any of these individuals.

20.

The Favorito Petitioners aver that Robin Hall observed three (3) boxes of 100% Biden ballots while performing as a hand count audit monitor on November 14th (Exhibit "C").

21.

The Favorito Petitioners aver that Judy Aube observed three (3) boxes of 98% + Biden ballots while performing as a hand count audit monitor on November 14th (Exhibit "D").

22.

The Favorito Petitioners aver that Susan Voyles personally observed as a hand count auditor what she believes are fraudulent or fabricated absentee ballots because the suspect absentee ballots were not creased (Exhibit "E").

23.

The Favorito Petitioners aver that Susan Voyles personally observed as a hand count auditor what she believes are fraudulent or fabricated absentee ballots because the suspect ballots were not marked with a writing instrument but appeared to be marked with toner (Exhibit "E").

24.

The Favorito Petitioners aver that Susan Voyles personally observed as a hand count auditor what she believes may be fraudulent or fabricated absentee ballots because the suspect ballots were different in the stock or paper used (Exhibit "E").

25.

The Favorito Petitioners aver that Barbara Hartman personally observed as a hand count auditor what she believes are fraudulent or fabricated absentee ballots because the suspect absentee ballots were not creased (Exhibit "F").

26.

The Favorito Petitioners aver that Barbara Hartman personally observed as a hand count auditor what she believes are fraudulent or fabricated absentee ballots because the suspect ballots were not marked with a writing instrument but appeared to be marked with toner (Exhibit "F").

27.

The Favorito Petitioners aver that Barbara Hartman personally observed as a hand count auditor what she believes may be fraudulent or fabricated absentee ballots because the suspect ballots were different in the stock or paper used (Exhibit "F").

28.

The Favorito Petitioners aver that Dr. Sonia Francis-Rolle personally observed as a hand count auditor what she believes are fraudulent or fabricated absentee ballots because the suspect absentee ballots were not creased (Exhibit "G").

29.

The Favorito Petitioners aver that Dr. Sonia Francis-Rolle personally observed as a hand count auditor what she believes are fraudulent or fabricated absentee ballots because the suspect

ballots were not marked with a writing instrument but appeared to be marked with toner (Exhibit "G").

30.

The Favorito Petitioners aver that Dr. Sonia Francis-Sonia Rolle personally observed as a hand count auditor what she believes may be fraudulent or fabricated absentee ballots because the suspect ballots were different in the stock or paper used (Exhibit "G").

31.

The Favorito Petitioners aver that Gordon Rolle personally observed as a hand count auditor what he believes are fraudulent or fabricated absentee ballots because the suspect absentee ballots were not creased (Exhibit "H").

32.

The Favorito Petitioners aver that Gordon Rolle personally observed as a hand count auditor what he believes are fraudulent or fabricated absentee ballots because the suspect ballots were not marked with a writing instrument but appeared to be marked with toner (Exhibit "H").

33.

The Favorito Petitioners aver that Gordon Rolle personally observed as a hand count auditor what he believes may be fraudulent or fabricated absentee ballots because the suspect ballots were different in the stock or paper used (Exhibit "H").

34.

The Favorito Petitioners aver that Garland Favorito filed an Open Records Request to inspect the absentee ballots while in the custody of the Fulton County Elections Board (Exhibit "I").

35.

The Favorito Petitioners aver that Garland Favorito's Open Records Request was not responded to in accordance and contrary to state law.

36.

The Favorito Petitioners aver that Bridget Thorne participated in ballot testing on live ballot stock for the November 3rd election and she determined that many test ballots were not secured (Exhibit "J").

37.

The Favorito Petitioners aver that David Cross witnessed up to nine unsecured ballot bags as a monitor for the recount of the November 3rd election (Exhibit "K").

38.

The Favorito Petitioners aver that the Respondents failed to ensure that the ballot processing center room center at the State Farm Arena 604 Suite Level Event Space 360 had full visibility so as to be in open view of the public, as required by state law. Ga. Code Ann. § 21-2-408; Ga. Code Ann. § 21-2-483 (b).

39.

The Favorito Petitioners aver that a ballot processing center at the State Farm Arena 604 Suite Level Event Space 360 was curved and would not allow an observer to complete view all aspects of ballot processing, as required by Ga. Code Ann. § 21-2-408; Ga. Code Ann. § 21-2-483 (b)

40.

The Favorito Petitioners aver that at or about 6:07 a.m. on 11/03/2020 a "water main break" was reported and the Supervisor delayed starting the mail-in ballot processing for approximately two (2) hours (Exhibits "L" and "M").

41.

The Favorito Petitioners aver that at or about 8:21 a.m. on 11/03/2020 a skirted table is brought into the tabulating center room which obstructed observers view as to what was under the skirted table contrary to Ga. Code Ann. 21-2-483 (b). (Exhibits "L" and "M").

42.

The Favorito Petitioners aver that at or about 9:30 a.m. on 11/03/2020 ballot processing begins and continues throughout the day (Exhibits "L" and "M").

43.

The Favorito Petitioners aver that at or about 9:57 p.m. on 11/03/2020 a Supervisor announces to the media and observers that ballot processing will cease for the night (Exhibits "L" and "M").

44.

The Favorito Petitioners aver that when ballot processing ceased after 9:57 p.m. on 11/03/2020 the observers and a Fox5 reporter remained on site until about 10:56 p.m. (Exhibits "L" and "M").

45.

The Favorito Petitioners aver that four (4) ballot processors remained after the observers and Fox5 reporter depart at or about 10:56 p.m. (Exhibits "L" and "M").

46.

The Favorito Petitioners aver that at or about 11:02 p.m. on 11/03/2020 one (1) ballot processor pulls a case of ballots from under the skirted table (Exhibits "L" and "M").

47.

The Favorito Petitioners aver that at or about 11:03 p.m. on 11/03/2020 another ballot processor pulls a second case of ballots from under the skirted table (Exhibits "L" and "M").

48.

The Favorito Petitioners aver that at or about 11:04 p.m. on 11/03/2020 another ballot processor pulls a third case of ballots from under the skirted table (Exhibits "L" and "M").

49.

The Favorito Petitioners aver that by 11:11 p.m. on 11/03/2020 the ballot processors are illegally scanning ballots onto memory cards contrary to Ga. Code Ann. 21-2-483 (b), 21-2-492 and 21-2-493 (Exhibits "L" and "M").

50.

The Favorito Petitioners aver that this illegal ballot processing continued until or about 12:51 a.m. on 11/04/2020 (Exhibits "L" and "M").

51.

The Favorito Petitioners aver that five (5) scanners were used for the illegal ballot processing and that each DR-G2140 or comparable scanner has the capacity to scan 3,000 ballots per hour.

52.

The Favorito Petitioners aver that at or about 1:34 a.m. on 11/04/2020 Biden received approximately a 136,155 vote increase that erodes Trump's lead (Exhibit "N").

53.

The Favorito Petitioners aver that there was a similar occurrence in Michigan at or about 5:31 a.m. on 11/04/2020 (Exhibit "O").

54.

The Favorito Petitioners aver that there was a similar occurrence in Wisconsin at or about 3:42 a.m. on 11/04/2020 (Exhibit "P").

55.

The Favorito Petitioners aver that there was a similar occurrence in Pennsylvania at or about 4:55 a.m. on 11/04/2020 (Exhibit "Q").

56.

The Favorito Petitioners aver that the observers returned to the State Farm Arena at or about 1:41 a.m. on 11/04/2020 after learning that ballot processing had continued in their absence (Exhibits "L" and "M").

57.

The Favorito Petitioners aver that Susan Voyles testified about her election fraud concerns before a Georgia Senate Committee on December 3rd, 2020 (Exhibit "L").

58.

The Favorito Petitioners aver that Susan Voyles testified about her election fraud concerns before a Georgia House Committee on December 10th, 2020 (Exhibit "M").

59.

The Favorito Petitioners aver that Bridget Thorne testified about her election fraud concerns before the Georgia House Committee on Governmental Affairs on December 10th, 2020 (Exhibit "L")

60.

The Favorito Petitioners aver that Bridget Thorne received a written request from Fulton County to train poll workers on or about August 21st, 2020 (Exhibit "T").

61.

The Favorito Petitioners aver that Bridget Thorne received a termination notice for her poll manager services from Fulton County Elections on December 17th, 2020 (Exhibit "S").

62.

The Favorito Petitioners aver that Susan Voyles received a termination notice for her poll manager services from Fulton County Elections on December 17th, 2020 (Exhibit "R").

63.

The Favorito Petitioners aver that on December 18th the Secretary of State condemned the "political firing" of Voyles and Thorne stating that it was a "retribution against whistleblowers" that "poses a threat to the continued strength and vibrancy of our democracy" (Exhibit "U").

64.

The Favorito Petitioners aver that the Respondents had a duty to investigate the election fraud concerns raised by Susan Voyles in accordance with their oath to "prevent any fraud, deceit or abuse" in carrying out an election under Ga. Code Ann. § 21-2-70.

65.

The Favorito Petitioners aver that the Respondents had a duty to investigate the election fraud concerns raised by Bridget Thorne in accordance with their oath to "prevent any fraud, deceit or abuse" in carrying out an election under Ga. Code Ann. § 21-2-70.

66.

The Favorito Petitioners aver that the Respondents had a duty under Ga. Code Ann. § 21-2-408 to not tell poll watchers that ballot processing was stopping for the night and then proceed to process ballots.

67.

The Favorito Petitioners aver that the Respondents had a duty to give notice to the observers before resuming the ballot processing pursuant to Ga. Code Ann. § 21-2-492 and Ga. Code Ann. § 21-2-493.

68.

The Favorito Petitioners aver that the Respondents had several agents that were under the authority of the Respondents to assist in implementing the Georgia Election Code and the rules and regulations of the State Election Board for the 2020 General Election.

69.

The Favorito Petitioners aver that the Respondents negligently supervised their agents.

70.

The Favorito Petitioners aver that the Respondents breached their duty owed to the Favorito Petitioners by failing to properly implement the provisions of the Georgia Election Code.

71.

The Favorito Petitioners aver that the Respondents breached their duty owed to the Favorito Petitioners by failing to properly supervise implementation of the provisions of the Georgia Election Code.

72.

The Favorito Petitioners aver that the duty owed to the Favorito Petitioners was ministerial in nature because it was created by state law and the State Election Board rules and regulations.

73.

The Favorito Petitioners aver that the Respondents failure to properly implement and supervise the application of the Georgia Election Code and Georgia State Election Board rules and regulations is not discretionary in nature.

74.

The Favorito Petitioners aver that the breach of this duty was the proximate cause of the Favorito Petitioners' injuries.

75.

The Favorito Petitioners aver that the breach of this duty was also the direct cause of the Favorito Petitioners' injuries.

76.

The Favorito Petitioners aver that if the Court finds the complained of acts are discretionary acts, that the Respondents intended to do wrong by violating state law when they failed to implement or properly supervise implementation of the Georgia Election Code and the State Elections Board's rules and regulations.

77.

The Favorito Petitioners aver that Garland Favorito cast his vote for qualified Constitution Party of Georgia statewide write-in candidate Don Blankenship.

78.

The Favorito Petitioners aver that Mr. Favorito's vote for write-in candidate Don Blankenship is not shown in the official statement of votes cast.

79.

The Favorito Petitioners aver that the official statement of votes cast contain write-in votes only for candidates Loren Collins and Gloria LaRiva.

80.

The Favorito Petitioners aver that totals for individual write-in candidates were not computed during the county's official hand count audit held on November 14th and 15th.

81.

The Favorito Petitioners aver that the computerized recount completed on or about December 4th did not declare any further votes for qualified write in candidates not shown in the official statement of votes cast.

82.

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.

83.

The Favorito Petitioners aver that this action is adverse. The Favorito Petitioners represent their interest in contending that they have a fundamental right to have their votes counted and given the same and equal weight as the votes of other electors in any future elections. The Respondents can adequately represent their interest in defending against the Favorito Petitioners' contentions.

84.

The Favorito Petitioners also contend that the Parties can adequately represent these interests.

85.

The Favorito Petitioners are currently uncertain as to their fundamental right to have their votes given the same and equal weight of other electors, and not be debased or diluted in future elections in which they would participate.

86.

The Favorito Petitioners aver that the declaration will resolve the current case or controversy, because it will provide guidance on the uncertainty of their fundamental right to have their votes counted and weighed and not debased or diluted by counterfeit ballots in future elections in which they would participate.

87.

The Favorito Petitioners aver that the insertion of counterfeit ballots into an election result is tantamount to and has the same effect on the weight and value of their votes as does ballot stuffing, which makes them uncertain in the participation in future elections.

88.

The Favorito Petitioners aver that future elections will be conducted on a regular basis within Fulton County, Georgia and the State of Georgia, and that the continued insertion of counterfeit ballots would debase and dilute the weight and value of these The Favorito Petitioners' votes in those future elections.

89.

The Favorito Petitioners hereby incorporate by reference Exhibits "A" through "U" of the notice of filing that was filed into the record on 12/23/2020 as if re-stated herein verbatim.

COUNT I: DECLARATORY JUDGMENT FOR VIOLATION OF STATE EQUAL PROTECTION CLAIM (SAME COUNTY)

90.

The Favorito Petitioners incorporate by reference and re-allege paragraphs 1 through 89 of this 3rd Amendment to Petition as set forth herein verbatim.

91.

The Constitution of the State of Georgia provides, "Protection and property is the paramount duty of government and shall be impartial and complete. "No person shall be denied the equal protection of the laws." Ga. Const. art. I, § I, para. II.

92.

Under Georgia's Equal Protection Clause, "the government is required to treat similarly situated individuals in a similar manner." State v. Jackson, 271 Ga. 5 (1999), Favorito v. Handel, 285 Ga. 795, 798 (2009) (citation and quotations omitted).

93.

This requires abiding by the process enacted by the Georgia General Assembly and State Elections Board, by applying a uniform procedure throughout the county to conduct ballot processing.

94.

Respondents, jointly and severally, failed to implement and ensure such uniform procedure for the visibility and transparency.

95.

Respondents, jointly and severally, failed to ensure their agents implemented the uniform treatment of absentee ballots within the county.

96.

The failure to perform ballot processing in accordance with state law created two (2) classes that had two (2) different standards applied to their absentee votes.

97.

Electors who had their ballots processed at times and at places in other parts of the county had state law applied to their ballot processing.

98.

Electors who had their ballots processed at State Farm Arena 604 Suite Level Event Space 360 between 11:02 p.m. on 11/03/2020 and 12:51 a.m. on 11/04/2020 did not have state law applied to their ballot processing.

99.

Georgia voters were treated differently depending on when and where their ballots were processed.

100.

An elector in one part of the county would not have his or her ballot treated in a similar manner as a ballot being processed in another part of the county.

101.

Electors in the same county would not have their ballots treated in a similar manner as ballots processed at State Farm Arena 604 Suite Level Event Space 360 between 11:02 p.m. on 11/03/2020 and 12:51 a.m. on 11/04/2020.

102.

Electors in the same precinct would not have their ballots treated in a similar manner as those votes processed at State Farm Arena 604 Suite Level Event Space 360 between 11:02 p.m. on 11/03/2020 and 12:51 a.m. on 11/04/2020.

103.

Respondents, jointly and severally, failed to apply uniform procedures for treating similarly situated electors similarly within the county.

104.

Respondents' systemic failure to provide for uniformity across the county is a direct and flagrant violation of the Constitution of the State of Georgia.

105.

As a result, there is a substantial likelihood that fraudulent or fabricated ballots were introduced into the ballot processing at State Farm Arena 604 Suite Level Event Space 360 between 11:02 p.m. on 11/03/2020 and 12:51 a.m. on 11/04/2020.

COUNT II: DECLARATORY JUDGMENT FOR VIOLATION OF STATE DUE PROCESS CLAIM (SAME COUNTY)

106.

The Favorito Petitioners incorporate by reference and re-allege paragraphs 1through 105 of this 3rd Amendment to Petition as set forth herein verbatim.

107.

Pursuant to the Constitution of the State of Georgia, "No person shall be deprived of life, liberty, or property except by due process of law." Ga. Const. art'. I, § I, para. I.

108.

Moreover, "all citizens of the United States, resident in this state, are hereby declared citizens of this state; and it shall be the duty of the General Assembly to enact such laws as will protect them in the full enjoyment of the rights, privileges, and immunities due to such citizenship." Ga. Const. art. I, § 1, para. VII.

109.

The right to vote is a fundamental right and the right to have his vote treated equally with all other voters in the state.

110.

The implementation or failure to implement the Georgia Election Code by the Respondents and their agents is state action.

111.

When a fundamental right is allegedly infringed by government action, substantive due process requires that the infringement be narrowly tailored to serve a compelling state interest. Old S. Duck Tours v. Mayor & Aldermen of City of Savannah, 272 Ga. 869, 872, 535 S.E.2d 751, 754 (2000).

112.

By failing to abide by state law when conducting ballot processing, the Respondents diluted the votes of qualified Georgia electors.

113.

By allowing illegal ballot processing, the Respondents, by and through their own misconduct or the negligent supervision of their agents, allowed the disenfranchisement of qualified Georgia electors.

114.

Respondents, jointly and severally, violated the Due Process protections of qualified Georgia Electors guaranteed by the Georgia State Constitution.

115.

As a result, there is a substantial likelihood that fraudulent or fabricated ballots were introduced into the ballot processing at State Farm Arena 604 Suite Level Event Space 360 between 11:02 p.m. on 11/03/2020 and 12:51 a.m. on 11/04/2020.

COUNT III: DECLARATORY JUDGMENT FOR VIOLATION OF STATE EQUAL PROTECTION CLAIM (WITHIN STATE)

116.

The Favorito Petitioners incorporate by reference and re-allege paragraphs 1 through 115 of this Petition as set forth herein verbatim.

117.

The Constitution of the State of Georgia provides, "Protection and property is the paramount duty of government and shall be impartial and complete. "No person shall be denied

the equal protection of the laws." Ga. Const. art. I, § I, para. II.

118.

Under Georgia's Equal Protection Clause, "the government is required to treat similarly situated individuals in a similar manner." State v. Jackson, 271 Ga. 5 (1999), Favorito v. Handel, 285 Ga. 795, 798 (2009) (citation and quotations omitted).

119.

This requires abiding by the process enacted by the Georgia General Assembly and State Elections Board, by applying a uniform procedure throughout the state to conduct ballot processing.

120.

Respondents, jointly and severally, failed to implement and ensure such uniform procedure for the visibility and transparency.

121.

Respondents, jointly and severally, failed to ensure their agents implemented the uniform treatment of absentee ballots within the state.

122.

The failure to perform ballot processing in accordance with state law created two (2) classes that had two (2) different standards applied to their absentee votes.

123.

Electors who had their ballots processed at times and at places in other parts of the state had state law applied to their ballot processing.

124.

Electors who had their ballots processed at State Farm Arena 604 Suite Level Event Space 360 between 11:02 p.m. on 11/03/2020 and 12:51 a.m. on 11/04/2020 did not have state law applied to their ballot processing.

125.

Georgia voters were treated differently depending on when and where their ballots were processed.

126.

An elector in one part of the state would not have his or her ballot treated in a similar manner as a voter in other parts of the state.

127.

Electors in other parts of the state would not have their ballots treated in a similar manner as ballots processed at State Farm Arena 604 Suite Level Event Space 360 between 11:02 p.m. on 11/03/2020 and 12:51 a.m. on 11/04/2020.

128.

Electors in the same precinct or same county would not have their ballots treated in a similar manner as those votes processed at State Farm Arena 604 Suite Level Event Space 360 between 11:02 p.m. on 11/03/2020 and 12:51 a.m. on 11/04/2020.

129.

Respondents, jointly and severally, failed to apply uniform procedures for treating similarly situated electors similarly within the state.

130.

Respondents' systemic failure to provide for uniformity across the county is a direct and flagrant violation of the Constitution of the State of Georgia.

131.

As a result, there is a substantial likelihood that fraudulent or fabricated ballots were introduced into the ballot processing at State Farm Arena 604 Suite Level Event Space 360 between 11:02 p.m. on 11/03/2020 and 12:51 a.m. on 11/04/2020.

COUNT IV: DECLARATORY JUDGMENT FOR VIOLATION OF STATE DUE PROCESS CLAIM (WITHIN STATE)

132.

The Favorito Petitioners incorporate by reference and re-allege paragraphs 1through 131 of this 3rd Amendment to Petition as set forth herein verbatim.

133.

Pursuant to the Constitution of the State of Georgia, "No person shall be deprived of life, liberty, or property except by due process of law." Ga. Const. art'. I, § I, para. I.

134.

Moreover, "all citizens of the United States, resident in this state, are hereby declared citizens of this state; and it shall be the duty of the General Assembly to enact such laws as will

protect them in the full enjoyment of the rights, privileges, and immunities due to such citizenship." Ga. Const. art. I, § 1, para. VII.

135.

The right to vote is a fundamental right and the right to have his vote treated equally with all other voters in the state.

136.

The implementation or failure to implement the Georgia Election Code by the Respondents and their agents is state action.

137.

When a fundamental right is allegedly infringed by government action, substantive due process requires that the infringement be narrowly tailored to serve a compelling state interest. Old S. Duck Tours v. Mayor & Aldermen of City of Savannah, 272 Ga. 869, 872, 535 S.E.2d 751, 754 (2000).

138.

By failing to abide by state law when conducting ballot processing, the Respondents diluted the votes of qualified Georgia electors.

139.

By allowing illegal ballot processing, the Respondents, by and through their own misconduct or the negligent supervision of their agents, allowed the disenfranchisement of qualified Georgia electors.

140.

Respondents, jointly and severally, violated the Due Process protections of qualified Georgia Electors guaranteed by the Georgia State Constitution.

141.

As a result, there is a substantial likelihood that fraudulent or fabricated ballots were introduced into the ballot processing at State Farm Arena 604 Suite Level Event Space 360 between 11:02 p.m. on 11/03/2020 and 12:51 a.m. on 11/04/2020.

COUNT V: DECLARATORY JUDGMENT FOR VIOLATION OF STATE EQUAL PROTECTION CLAIM (THIRD PARTY)

142.

The Favorito Petitioners incorporate by reference and re-allege paragraphs 1 through 141 of this 3rd Amendment to Petition as set forth herein verbatim.

143.

The failure to perform ballot processing in accordance with state law created two (2) classes that had two (2) different standards applied to their votes.

144.

Electors who had cast their ballots for some third party candidates did not have their votes counted or recounted.

145.

Georgia voters were treated differently depending on which third party candidate they voted for in the November 3, 2020 General Election.

146.

An elector casting a ballot for certain third party candidates had their votes counted and recounted.

147.

Respondents, jointly and severally, failed to apply uniform procedures for treating similarly situated electors the same when it came to counting and recounting third party candidate ballots.

148.

Respondents' systemic failure to provide for uniformity across the county is a direct and flagrant violation of the Constitution of the State of Georgia.

COUNT VI: DECLARATORY JUDGMENT FOR VIOLATION OF STATE DUE PROCESS CLAIM (THIRD PARTY)

149.

The Favorito Petitioners incorporate by reference and re-allege paragraphs 1 through 148 of this 3rd Amendment to Petition as set forth herein verbatim.

150.

The right to vote is a fundamental right and the right to have his vote treated equally with all other voters in the state and county.

151.

The implementation or failure to implement the Georgia Election Code by the Respondents and their agents is state action.

152.

When a fundamental right is allegedly infringed by government action, substantive due process requires that the infringement be narrowly tailored to serve a compelling state interest. Old S. Duck Tours v. Mayor & Aldermen of City of Savannah, 272 Ga. 869, 872, 535 S.E.2d 751, 754 (2000).

153.

By failing to abide by state law when conducting ballot processing, the Respondents disenfranchised qualified Georgia electors.

154.

By not counting and recounting certain ballots, the Respondents, by and through their own misconduct or the negligent supervision of their agents, allowed the disenfranchisement of qualified Georgia electors.

155.

Respondents, jointly and severally, violated the Due Process protections of qualified Georgia Electors guaranteed by the Georgia State Constitution.

COUNT VII: TEMPORARY INJUNCTION

156.

The Favorito Petitioners incorporate by reference and re-alleges paragraphs 1 through 155 of this 3rd Amendment to Petition as set forth herein verbatim.

157.

In the absence of a temporary restraining order, the Favorito Petitioners will suffer irreparable harm for which there is no adequate remedy at law, while injunctive relief will cause no harm to Respondents because if the suspect ballots are lost or tampered with it would undermine election integrity.

158.

Immediate and irreparable injury, loss, or damage will result to the Favorito Petitioners if the requested injunctive relief is not granted, because immediate access to the suspect ballots will improve the confidence in the state's election process and resolve skepticism about the validity of published election results.

159.

There will be immediate irreparable damage to the Citizens of Georgia through their loss of confidence in the integrity of the election process by virtue of the illegal votes included in the tabulations of the 2020 General Election, which outweighs any potential harm to Respondents.

160.

Granting the requested relief will not disserve the public interest.

161.

It is further in the public interest to grant the Favorito Petitioners' request for temporary injunctive relief, so that Georgia voters can have confidence that future elections are conducted in accordance with the Election Code.

162.

The Favorito Petitioners are entitled to the temporary injunctive relief sought herein, because there is a substantial likelihood of success on the merits.

163.

The damage to the Favorito Petitioners is not readily compensable by money, and no other remedy at law exists.

164.

The balance of equities favors entry of a temporary restraining order and injunctive relief against Respondents, and would not be adverse to any legitimate public interest.

165.

The Favorito Petitioners seek to have the Court maintain custody and control over the suspect ballots pending an immediate visual inspection and forensic review of the suspect ballots.

COUNT XI: PERMANENT INJUNCTION.

203.

The Favorito Petitioners incorporate by reference and re-alleges paragraphs 1 through 168 of this 3rd Amendment to Petition as set forth herein verbatim.

204.

In the absence of a permanent injunction, the Favorito Petitioners will suffer irreparable harm for which there is no adequate remedy at law, while injunctive relief will cause no harm to Respondents because if the Respondents are allowed to continue to receive and count counterfeit ballots, it would undermine election integrity and debase and dilute the Favorito Petitioners' votes in future elections.

205.

Immediate and irreparable injury, loss, or damage will result to the Favorito Petitioners if the requested permanent injunctive relief is not granted, because if the Respondents are allowed to continue to receive and count counterfeit ballots, it would undermine election integrity and debase and dilute the Favorito Petitioners' votes in future elections.

206.

There will be immediate irreparable damage to the Favorito Petitioners through their loss of confidence in the integrity of the election process and the debasement and dilution of their votes by virtue of the counterfeit ballots included in the tabulations of the 2020 General Election and future elections, which outweighs any potential harm to Respondents.

207.

Granting the requested relief will not disserve the public interest.

208.

It is further in the public interest to grant the Favorito Petitioners' request for permanent injunctive relief, so that the Favorito Petitioners have confidence in future elections.

209.

The Favorito Petitioners are entitled to the permanent injunctive relief sought herein, because there is a substantial likelihood of success on the merits.

210.

The damage to the Favorito Petitioners is not readily compensable by money, and no other remedy at law exists.

211.

The balance of equities favors entry of a permanent injunction and injunctive relief against the Respondents and would not be adverse to any legitimate public interest.

212.

The Favorito Petitioners seek to have the Court enjoin and prohibit the Respondents from counting counterfeit ballots in future elections.

COUNT XII: DECLARATORY JUDGMENT FOR VIOLATION OF STATE EQUAL PROTECTION AND STATE DUE PROCESS CLAIMS: AUDIT ERRORS

213.

The Favorito Petitioners incorporate by reference and re-allege paragraphs 1 through 212 of this 3rd Amendment to Petition as set forth herein verbatim.

214.

The Favorito Petitioners aver that about 923 of the 1539 mail-in ballot batch files contained votes incorrectly reported in official Fulton County November 3rd , 2020 results due to discrepancies in votes for Donald Trump, Joe Biden, and total votes cast compared to reported audit totals for their respective batches.

COUNT XIII: DECLARATORY JUDGMENT FOR VIOLATION OF STATE EQUAL PROTECTION AND STATE DUE PROCESS CLAIMS: FALSE AUDIT REPORTING

215.

The Favorito Petitioners incorporate by reference and re-allege paragraphs 1 through 214 of this 3rd Amendment to Petition as set forth herein verbatim.

216.

The Favorito Petitioners aver that 7 batches of Fulton County mail-in ballots containing a total of about 554 votes for Joe Biden, 140 votes for Donald Trump, and 11 votes for Jo Jorgenson were falsely reported in the hand count audit as having a total of 850 votes for Joe Biden, 0 votes for Donald Trump, and 0 votes for Jo Jorgenson.

COUNT XIV: DECLARATORY JUDGMENT FOR VIOLATION OF STATE EQUAL PROTECTION AND DUE PROCESS CLAIMS: AUDIT RESULTS WITHOUT BALLOTS

217.

The Favorito Petitioners incorporate by reference and re-allege paragraphs 1 through 216 of this 3rd Amendment to Petition as set forth herein verbatim.

218.

The Favorito Petitioners aver that Fulton County failed to include over 50,000 tally sheets when the results were originally published for the full hand count audit conducted by the office of the Secretary of State for the November 3rd , 2020 election, and these tally sheets continued to be missing until on or about February 24th 2021.

COUNT XV: DECLARATORY JUDGMENT FOR VIOLATION OF STATE EQUAL PROTECTION AND STATE DUE PROCESS CLAIMS: BALLOTS UNREPORTED IN AUDIT RESULTS

219.

The Favorito Petitioners incorporate by reference and re-allege paragraphs 1through 148 of this 3rd Amendment to Petition as set forth herein verbatim.

220.

The Favorito Petitioners aver that over 200 Fulton County mail-in ballots containing votes were not included in the hand count audit results for the November 3rd election.

COUNT XVI: DECLARATORY JUDGMENT FOR VIOLATION OF STATE EQUAL PROTECTION AND STATE DUE PROCESS CLAIMS: DUPLICATE VOTES IN AUDIT RESULTS

221.

The Favorito Petitioners incorporate by reference and re-allege paragraphs 1 through 220 of this 3rd Amendment to Petition as set forth herein verbatim.

222.

The Favorito Petitioners aver that there are about 36 batches of mail-in ballots that contain about 4,255 total extra votes redundantly added into the Fulton County audit results for

the November 3rd election, including about 3,390 extra votes for Joe Biden, 865 extra votes for Donald Trump, and 43 extra votes for Jo Jorgenson.

COUNT XVII: DECLARATORY JUDGMENT FOR VIOLATION OF STATE EQUAL PROTECTION AND STATE DUE PROCESS CLAIMS: MISSING CHAIN OF CUSTODY FORMS

223.

The Favorito Petitioners incorporate by reference and re-allege paragraphs 1 through 222 of this 3rd Amendment to Petition as set forth herein verbatim.

224.

The Favorito Petitioners aver that Fulton County did not provide drop box transfer forms for at least three (3) pickup days, and the forms are needed to provide chain of custody proof for about 5,000 ballots.

WHEREFORE, THE FAVORITO PETITIONERS pray:

a). that process **ISSUES** and service by **EFFECTUATED**;

b). that the Court **CONDUCTS** an evidentiary hearing on the temporary injunction;

c). that the Court **DECLARES** that the Respondents have violated the state equal protection clause;

d). that the Court **DECLARES** that the Respondents have violated the state due process clause;

e). that the Court **DECLARES** that the Respondents' state equal protection rights will be violated in future elections by the counting of counterfeit ballots;

f). that the Court **DECLARES** that the Respondents' state due process rights will be violated in future elections by the counting of counterfeit ballots;

g). that the Court **DECLARES** that the Respondents' state equal protection and state due process rights will be violated in future elections by the unconstitutional practices enumerated in Counts XII through XVII;

h). that the Court **ISSUES** a temporary injunction preventing the removal or tampering with all paper ballots;

i). that the Court **ORDERS** the Respondents to allow the Favorito Petitioners and

their representatives immediate access to all mail-in paper ballots from the November 3, 2020 General Election for visual inspection;

j). that the Court **ORDERS** that the Respondents to allow the Favorito Petitioners and their representatives to immediately scan all mail-in paper ballots from the November 3, 2020 General Election for technical inspection and validation;

k). that the Court **ORDERS** the Respondents to produce the existing Dominion ballot images and election reports from the November 3, 2020 General Election for technical inspection and validation;

l). that the Court **GRANTS** the Favorito Petitioners attorney fees for having to prosecute this civil action; **AND**

m). for any other relief the Court **DEEMS** just and proper.

Respectfully submitted this the 2nd day of July, 2021.

MADDOX & HARDING, LLC



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IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

GARLAND FAVORITO, MICHAEL SCUPIN,
TREVOR TERRIS, SEAN DRAIME,
CAROLINE JEFFORDS, STACEY DORAN,
CHRISTOPHER PECK, ROBIN SOTIR,
and BRANDI TAYLOR,
PETITIONERS,

v. **CIVIL ACTION NO.: 2020CV343938**

ALEX WAN, VERNETTA KEITH
NURIDDIN, KATHLEEN RUTH,
AARON JOHNSON, AND
MARK WINGATE,
in their individual capacities,
RESPONDENTS.

CERTIFICATE OF SERVICE

COME NOW, THE FAVORITO PETITIONERS, notifies the Court that they have served a copy of **PETITIONERS FAVORITO, SCUPIN, TERRIS, DRAIME, DORAN, PECK, AND TAYLOR'S 3rd AMENDMENT TO PETITION FOR DECLARATORY AND INJUNCTIVE RELIEF** via email to the contacts listed in the Odyssey Automated service system.

Respectfully submitted this the 2nd day of July, 2021.

MADDOX & HARDING, LLC

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