

**IN THE SUPERIOR COURT OF FORSYTH COUNTY
STATE OF GEORGIA**

**DEMOCRATIC PARTY OF GEORGIA
and LIZ BARRETT,**

Petitioners,

v.

**FORSYTH COUNTY BOARD OF
ELECTIONS AND REGISTRATION and
MANDI B. SMITH, in her official capacity
as Elections Director of the Forsyth
County Board of Elections and
Registrations,**

Respondents.

**CIVIL ACTION
FILE NO.: 20CV-1760-1**

ORDER

Pursuant to Rule Nisi filed November 5, 2020, the above-styled action came before the Court on November 6, 2020, at 9:00 a.m., for an emergency hearing on Petitioners' request for interlocutory injunction. Petitioners were represented at the hearing by their counsel, Attorney Halsey Knapp. The Respondents were represented at the hearing by their counsel, Attorney Ken Jarrard. Following consideration of the parties' oral arguments,¹ the Court finds and ORDERS as follows:

The Petitioners' pleadings request relief in two forms; that is, declaratory relief and injunctive relief. Petitioners' request for injunctive relief requires the Court to simultaneously consider Petitioners' request for declaratory relief under the Declaratory Judgment Act.² At the outset the Court notes that these forms of relief (declaratory relief and injunctive relief), as

¹ Petitioners did not introduce any evidence at the emergency hearing and instead primarily relied upon the contents of their Emergency Verified Complaint for Declaratory and Injunctive Relief.

² See O.C.G.A. § 9-4-1 et seq.

expressly requested by the Petitioners in their pleadings, are barred by sovereign immunity. See Lathrop v. Deal, 301 Ga. 408 (2017).

Nevertheless, the Court must look beyond the nomenclature used by Petitioners in their pleadings to ascertain the actual relief that they are seeking. Having done this, the Court finds that the Petitioners ultimately seek the Court to *mandamus* Respondent Mandi B. Smith, the Elections Director of the Forsyth County Board of Elections and Registration (hereinafter “Director”), to turn over to Petitioners very specific voting record information under the guise of O.C.G.A. § 21-2-72 and O.C.G.A. § 50-18-70 et seq. A claim for mandamus relief is not barred by sovereign immunity. See, e.g., Carson v. Brown, 348 Ga. App. 689 (2019). The Court will therefore consider Petitioners’ mandamus claim with regard to both statutory pathways asserted.

With regard to O.C.G.A. § 21-2-72, that statute provides:

Except when otherwise provided by law or court order, the primary and election records of each superintendent, registrar, municipal governing authority, and committee of a political party or body, including registration statements, nomination petitions, affidavits, certificates, tally papers, returns, accounts, contracts, reports, and other documents in official custody, except the contents of voting machines, shall be open to public inspection and may be inspected and copied by any elector of the county or municipality during usual business hours at any time when they are not necessarily being used by the custodian or his or her employees having duties to perform in reference thereto; provided, however, that such public inspection shall only be in the presence of the custodian or his or her employee and shall be subject to proper regulation for the safekeeping of such documents and subject to the further provisions of this chapter. The custodian shall also, upon request, if photocopying equipment is available in the building in which the records are housed, make and furnish to any member of the public copies of any of such records upon payment of the actual cost of copying the records requested.

(Emphasis supplied). Petitioners specifically seek to have this Court mandamus the Director to allow Petitioners immediate public inspection of “any and all election related public records, including but not limited to, `registration statements, nomination petitions, affidavits, certificates, tally papers, returns, accounts, contracts, reports, and other documents in official custody’”

During oral argument, however, Petitioners substantially narrowed the scope of this request to specifically seek the names, telephone numbers, residential addresses, and dates of birth for Forsyth County electors casting an absentee and/or provisional ballot.³ Petitioners, especially the Democratic Party of Georgia, expressed a desire to use this particularized voter information to identify electors casting provisional ballots so that agents of the Democratic Party of Georgia could contact that individuals to “help them ensure their mail and provisional ballots are counted and they are fully enfranchised.”⁴ Even if such information was available to an elector or Petitioners under O.C.G.A. § 21-2-72 via the “other documents” language of § 21-2-72, that statute cannot be read in a vacuum. It must be read with other statutory provisions within Chapter 2 of Title 21 of the Code. Because the Petitioners have particularly focused their request during oral argument as to personal information and data related to provisional ballots, the Court must also look to O.C.G.A. § 21-2-418. There, the General Assembly expressly required the voter registrars to

establish a free access system, such as a toll-free telephone number or internet website, by which any elector who casts a provisional ballot in a primary or election, or runoff, in which federal candidates are on the ballot may ascertain whether such ballot was counted and, if such ballot was not counted, the reason why such ballot was not counted. The registrars shall establish and maintain reasonable procedures necessary to protect the security, confidentiality, and integrity of personal information collected, stored, or otherwise used by such free access system. Access to such information about an individual provisional ballot shall be restricted to the elector who cast such ballot.

The statute already provides a mechanism to ensure that voters casting a provisional ballot can ascertain whether that ballot was processed and counted. Similarly, the voter can also obtain information regarding the reason(s) why the ballot was not counted. Poll officers are required to provide voters casting provisional ballots “written information that informs the elector of the

³ Emergency Verified Complaint for Declaratory and Injunctive Relief at p.3.

⁴ Emergency Verified Complaint for Declaratory and Injunctive Relief at p.3.

existence of the free access system . . . by which the elector will be able to ascertain if his or her ballot was counted and, if such ballot was not counted, the reason why such ballot was not counted.” O.C.G.A. § 21-2-418(f). Petitioners presented no evidence to otherwise allow the Court to conclude that Respondents failed to comply with O.C.G.A. § 21-2-418’s requirements. Because voters already have a mechanism through which to make inquiry and remedy any reported ballot deficiency — a burden that the statute places squarely on the voter — the Petitioners’ request for the confidential voter information is not warranted under the circumstances presented in this case. Stated another way, Petitioners have failed, based upon the evidence and law, to demonstrate how O.C.G.A. § 21-2-418 requires Respondents to disclose the requested information to Petitioners.

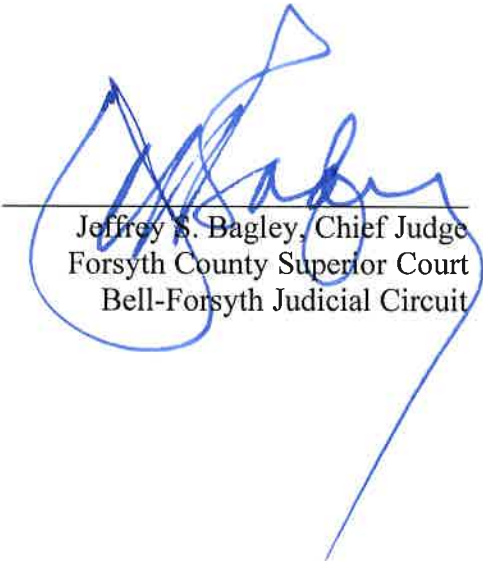
“Mandamus is an extraordinary remedy to compel a public officer to perform a required duty when there is no other adequate legal remedy. It is a discretionary remedy that courts may grant only when the petitioner has a clear legal right to the relief sought or the public official has committed a gross abuse of discretion. In general, mandamus relief is not available to compel officials to follow a general course of conduct, perform a discretionary act, or undo a past act.” Alford v. Hernandez, 343 Ga. App. 332, 338 (2017) (quoting Bland Farms v. Ga. Dept. of Agriculture, 281 Ga. 26, 28 (2016)). The “duty which a mandamus complainant seeks to have enforced must be a duty arising by law, either expressly or by necessary implication; and the law must not only authorize the act be done, but must require its performance.” Id. Petitioners bear the burden to prove that the Respondents have a clear legal duty to provide the requested voter information. Petitioners have not met that burden. O.C.G.A. § 21-2-418 provides that the information the Petitioners seek may only be provided to the elector who cast the ballot.

Recognizing that they might not succeed with their argument under O.C.G.A. § 21-2-72, the Petitioners alternatively seek to obtain relief through the Open Records Act. The Court finds that Respondents provided a timely written response to the Petitioners’ request under the Open

Records Act. The Court cannot authorize relief under the Open Records Act where a specific statute already addresses the very relief sought by Petitioner. Again, O.C.G.A. §§ 21-2-72 and 21-2-418 protect the voter information that is sought. The General Assembly sought to protect the confidential and sensitive voter information in Title 21. The Court cannot ignore those statutes in favor of the Open Records Act. Accordingly, the Open Records Act cannot be used in the manner suggested by Petitioners.

Based upon the evidence before the Court and the legal arguments made, the Court DENIES the Petitioners' request for declaratory relief, injunctive relief, and implied mandamus relief. The Court DISMISSES the Complaint in its entirety.

It is SO ORDERED, this 6th day of November, 2020.



Jeffrey S. Bagley, Chief Judge
Forsyth County Superior Court
Bell-Forsyth Judicial Circuit

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