Fulton County Superior Court
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IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

JULIE ADAMS, Plaintiff	* *	CIVIL ACTION
	*	
v.	*	24CV006566
	*	
FULTON COUNTY BOARD OF REGISTRATION AND ELECTIONS *et al.*, Defendants	* * *	Judge McBurney

ORDER ON PLAINTIFF'S MOTION TO CORRECT MISNOMER *ET AL.*

On 22 August 2024, Plaintiff filed a motion seeking to correct a misnomer in the style of the case, to drop a party (without prejudice), and to amend the caption of this case. Given the time-sensitive nature of the legal questions presented in this litigation, the Court directed Defendants to file a response by 3 September 2024, which they did. In their response, Defendants opposed all requested relief and obliquely renewed their still-pending call for dismissal. For the reasons discussed below, the Court DENIES Plaintiff's motion and DISMISSES Plaintiff's amended complaint.

In both her original and amended complaint, Plaintiff seeks declaratory relief concerning the nature of her statutorily defined role as an "election superintendent" on the Fulton County Board of Registration and Elections. Several years ago, our Supreme Court determined that such claims were barred by the sovereign immunity our local and state governments enjoy. *Lathrop v. Deal*, 301 Ga. 408 (2017). In November 2020 -- a momentous election on many legal fronts -- the people of Georgia approved an amendment to the Georgia Constitution that created a limited waiver of sovereign immunity for claims such as Plaintiff's, in which an aggrieved party seeks a judicial declaration of the meaning (or constitutionality) of some statutory provision. Ga. Const. of

1983, Art. I, Sec. II, Para. V(b) ("Paragraph V"). With that waiver came several draconian (but very plainly stated) pleading requirements: any complaint seeking relief pursuant to Paragraph V must be brought against the State (or local government) *only* and no other claims for any other form of relief can be included in that complaint. Failure to comply with either requirement is fatal: the non-compliant complaint "shall be dismissed." Ga. Const. of 1983, Art. I, Sec. II, Para. V(b)(2); *Lovell v. Raffensperger*, 318 Ga. 48 (2024) (affirming dismissal of complaint brought pursuant to Paragraph V because it named agency head instead of State of Georgia); *State v. SASS Grp., LLC*, 315 Ga. 893, 894 (2023) (reversing trial court for failing to dismiss suit that brought Paragraph V claim against both the State of Georgia and a local District Attorney and which had non-Paragraph V claims).

Plaintiff's first complaint seeking Paragraph V relief was brought against the Fulton County Board of Registration and Elections (FCBRE) and its Director. Neither is a proper party for such a suit and the original complaint should have been dismissed -- as Defendants argued in their 22 July 2024 motion to dismiss.[1] In response to the motion to dismiss, Plaintiff amended her complaint and began the process of trying to recast her claims as ones being brought exclusively against Fulton County. That was too little, too late; the fatal pleading flaw cannot be undone.[2]

Lest this outcome be deemed harsh, two things should be considered. First, the pleading requirements for seeking relief pursuant to Paragraph V are both simple and

[1] The original complaint (as well as the amended complaint) also commingles non-Paragraph V claims with the declaratory relief claim against the government. This, too, is fatal to Plaintiff's efforts, as Paragraph V claims must stand alone. *SASS Grp.*, 315 Ga. at 904.

[2] It is an open question, presently before the Supreme Court, whether a party that recognizes that it has failed to comply with Paragraph V's simple pleading requirements can amend its complaint and avoid an early demise to its declaratory relief claim. *See Cobb County et al. v. Ray Murphy*, S24A1297. (In the *Murphy* case, there was not the additional pleading deficiency of a non-Paragraph V claim, distinguishing it from the current case, which would still suffer from a fatal pleading error even if Plaintiff were permitted to swap in Fulton County for the Board of Registration and Elections.) Until the Supreme Court provides additional guidance, this Court will take that Court at its word in *SASS Grp*.

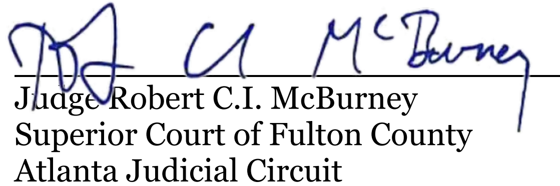
very public. The plain language of Paragraph V tells us what (and what not) to do. Moreover, in case that plain language was not clear (and it is), the Supreme Court over a year before Plaintiff filed her initial complaint confirmed that the constitutional language meant what it said: a claim for relief against the State or a local government that seeks to have a judge declare that a law (or rule or ordinance) is unconstitutional, that a law (or rule or ordinance) means this or that, that a statutorily defined role is ministerial or discretionary, or that products containing Delta-8-THC and Delta-10-THC are "hemp products" can be brought *only* against the government, be it the State, a county, or a municipality. *SASS Grp.*, 315 Ga. at 897. What this Court is enforcing today is not new law in Georgia.

Second, Plaintiff's claims are not forfeited; they are merely dismissed -- for now. This action is done, but there can be another. Plaintiff can refile, name the correct party, and we will pick up where we left off, likely with all the same lawyers and certainly with the same substantive arguments. If Plaintiff moves with alacrity, the merits of her claim that the role of an election superintendent -- in particular when certifying the results of an election -- is discretionary rather than ministerial can still be considered alongside the related claims set forth in *Abhiraman et al. v. State Board of Elections*, 24CV010786.[3] This may seem like an unnecessary drill, but it was also an entirely unavoidable one.

[3] In the *Abhiraman* case, Petitioners seek declaratory relief concerning various rules promulgated by a state agency, the State Election Board. However, in that case, in which Petitioners did *not* name the State of Georgia as Respondent, there is a jurisdictional hook other than Paragraph V: O.C.G.A. § 50-13-10. That statute is a waiver of sovereign immunity for actions "alleging necessity of a declaratory judgment on [the] validity of rules of state agencies." *Burton v. Composite State Bd. of Med. Examiners*, 245 Ga. App. 587, 589 (2000).

Plaintiff's case is DISMISSED without prejudice.[4]

SO ORDERED this 9th day of September 2024.



Judge Robert C.I. McBurney
Superior Court of Fulton County
Atlanta Judicial Circuit

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[4] Plaintiff failed to comply with the constitutionally prescribed requirements to establish a waiver of sovereign immunity to seek declaratory relief against a local government. If sovereign immunity was not waived, this Court lacks jurisdiction over this matter. *2200 Atlanta Inv'rs, LLC v. DeKalb Cnty.*, 369 Ga. App. 537, 539 (2023). Dismissal on the grounds of lack of jurisdiction is always without prejudice. *Murray v. Lexington Park of Fulton Cnty. Cmty. Ass'n, Inc.*, --- Ga. App. ---, 904 S.E.2d 119, 125 (2024); *Pinnacle Benning, LLC v. Clark Realty Capital, LLC*, 314 Ga. App. 609, 614-615 (2012). Defendants' request that Director Williams (or this case) be dismissed *with* prejudice is therefore DENIED.