



Connie Taylor, Clerk of Superior Court
Cobb County, Georgia

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

KELI GAMBRILL, DAVID FLOAM,
and CATHERINE FLOAM,

Plaintiffs,

v.

COBB COUNTY, GEORGIA,

Defendant.

CIVIL ACTION FILE NO.
23-1-02428-56

ORDER ON DEFENDANT'S MOTION TO DISMISS

PLAINTIFF'S COMPLAINT FOR DECLARATORY RELIEF

Plaintiff Keli Gambrill ("Gambrill" or "Plaintiff") initiated this action for Declaratory Relief on March 28, 2023, and seeks an order declaring that the Resolution passed by the Cobb County Board of Commissioners ("BOC") on October 25, 2022 ("Resolution") to create new Commission District boundaries ("Resolution Map") is unconstitutional. The Resolution amended, or purported to amend, the General Assembly's HB 1154 and its district map, enacted by the Governor on March 2, 2022 as Act 562 ("HB 1154" or "HB 1154 Map"). Plaintiff also seeks a declaration that HB 1154 and its Map are valid and binding.

Procedural History

In her initial Complaint, Plaintiff Gambrill specifically seeks an Order declaring the Resolution is unconstitutional and that the HB 1154 Map is legal and binding. Defendant ("Cobb County") timely filed its Answer and a Motion to Dismiss. The Court entered a Scheduling Order for motions and hearings.

Thereafter, the Court granted Plaintiff's Motion for Extension of Time to respond to Defendant's Motion to Dismiss. On May 12, 2023, Plaintiff filed her response and also filed a Motion to Add David Floam and Catherine Floam as plaintiffs (collectively, "the Floams"). The Court granted that Motion, entered

an Amended Scheduling Order, and the Floams were added as Plaintiffs via an Amended Complaint filed June 14, 2023.

As a result of Plaintiffs' Amended Complaint, on June 20, 2023, Cobb County filed its second Motion to Dismiss (collectively, "Motions"), alleging the Plaintiffs lack standing and therefore, the Court lacks subject matter jurisdiction. Plaintiffs' Response and Cobb County's Reply were filed. The Court heard argument on the Motions to Dismiss on July 7, 2023, and took the matter under advisement.

On July 12, 2023, Plaintiffs submitted an unrequested supplemental letter brief via email and filed a Second Amended Complaint.¹ In their Second Amended Complaint, Plaintiffs seek additional relief, *to wit*: an order declaring that, until the validity of the Resolution is determined, a) the BOC should not hold elections; and, b) the BOC should compel the Board of Elections ("BOE") to withhold any new voter combination codes from the Secretary of State's office.² The Complaint, Amended Complaint, Second Amended Complaint and the parties' pleadings related to the Motions have been considered for purposes of determining Cobb County's Motions to Dismiss.³

Legal Analysis

Cobb County alleges the Plaintiffs do not have standing to pursue this action and seeks dismissal of their Complaint for lack of subject matter jurisdiction pursuant to O.C.G.A. § 9-11-12 (b)(1). Standing is a threshold issue in every lawsuit -- "a jurisdictional prerequisite to a plaintiff's right to

¹ The Court declines to consider the supplemental letter brief as the parties have briefed and argued the issues extensively.

² Notwithstanding that Plaintiffs seek a declaration regarding these additional claims, the specific relief requested -- a declaration that the BOC should compel or prohibit certain acts are not appropriate for declaratory relief.

³ The Attorney General filed an Amicus Curiae Brief on May 12, 2023 in support of Plaintiffs' position. The Amicus argues the merits of the Plaintiffs' lawsuit, but it does not address the question of subject matter jurisdiction. Therefore, it was not considered by the Court in reaching its determination on jurisdiction. If and when this or related matters proceed to Summary Judgment, the Court may consider the Amicus Brief.

sue.” *Sons of Confederate Veterans v. Henry County Board of Commissioners*, 315 Ga. 39, 44 (2022) (“*Sons of Confederate Veterans*”). Without standing, plaintiffs cannot access the court’s judicial powers to resolve their disputes. *Sons of Confederate Veterans*, 315 Ga. at 45. Here, Plaintiffs contend they have proper standing to proceed; Cobb County asserts that Plaintiffs do not. Both sides point to the *Sons of Confederate Veterans* ruling in support of their position.

A. Recently Clarified Analysis of Standing for Georgia Plaintiffs

In the *Sons of Confederate Veterans* case, decided October 25, 2022, the Supreme Court advised that its decision has “broad implications” for the analysis Georgia courts will use to determine whether a plaintiff has standing to pursue a legal claim. *Sons of Confederate Veterans*, 315 Ga. at 39. In *Sons of Confederate Veterans*, the Supreme Court resolved the question of plaintiffs’ standing in two separate lawsuits in which plaintiffs sought injunctive relief against their respective boards of commissioners, alleging their boards violated a Georgia statute that requires preservation and protection of certain monuments. That statute, O.C.G.A. § 50-3-1, expressly provides authorization to any person to file a lawsuit against anyone who violates the statute.⁴ The question before the Supreme Court was whether the statutory authorization to sue was sufficient, by itself, to confer standing upon the plaintiffs, or whether the Georgia Constitution requires an additional or separate showing of standing by plaintiffs. *Sons of Confederate Veterans*, 315 Ga. at 39.

Ultimately, the Supreme Court determined that even when a statute specifically permits a person to bring a lawsuit, the Georgia Constitution requires a separate analysis of a plaintiff’s standing to do so. *Id.* This constitutional standing analysis requires a plaintiff to demonstrate that she has suffered some cognizable injury -- harm or violation of her rights -- that can

⁴ “[A]ny person ... shall have a legal right to bring a cause of action for any conduct prohibited by this Code section.” O.C.G.A. § 50-3-1 (b)(5).

be redressed by the courts in order to have standing to sue. *Id.* If a plaintiff has not suffered any injury, then she cannot bring a lawsuit in Georgia. *Id.*

Having answered that question, the Supreme Court then analyzed the type of injury a plaintiff must show, and the Court's decision made it clear that the type of injury required may differ depending on whether the plaintiffs are challenging the constitutionality of a law or not. *Sons of Confederate Veterans*, 315 Ga. at 39-40.

1. Standing for Non-Constitutional Challenges

The *Sons of Confederate Veterans* plaintiffs were not challenging the constitutionality of the statute. Therefore, the Court decided that, for non-constitutional challenges, a showing of a "lesser requirement – that the plaintiff has suffered some kind of injury" including an injury that "that may be shared by all other members of the community ... when their local government fails to follow the law" could confer standing. *Sons of Confederate Veterans*, 315 Ga. at 39. After analyzing the claims of the *Sons of Confederate Veterans* plaintiffs in both cases, the Supreme Court found that only one plaintiff had standing as a "community stakeholder" to proceed with the lawsuit seeking injunctive relief. *Sons of Confederate Veterans*, 315 Ga. at 40.

2. Standing for Constitutional Challenges

Although the analysis of standing for plaintiffs who challenge the constitutionality of a law was not before the Supreme Court in *Sons of Confederate Veterans*, the Court took the opportunity to make clear that those cases "might impose a higher requirement" to achieve standing. *Sons of Confederate Veterans*, 315 Ga. at 39. In doing so, the Court recognized that it has "long held that in such cases, the plaintiff must show an actual, individualized injury." *Id.* The Supreme Court provided further direction when it expressly stated that "nothing in this opinion should be understood to undermine in any way our longstanding case law articulating" an

“individualized-injury requirement for constitutional challenges.” *Sons of Confederate Veterans*, 315 Ga. at 54, FN 13.⁵

The Court explained that the individualized harm required to demonstrate standing for purposes of a constitutional challenge “appears similar to the injury-in-fact required federally.” *Id.* The Court did not negate Georgia’s well-established legal principal that generalized grievances are not sufficient to confer standing for constitutional challenges. To the contrary, the *Sons of Confederate Veterans* decision expressly affirmed a heightened standing requirement for such cases. Federal authority requiring individualized injury is persuasive provided that it is aligned not only with the *Sons of Confederate Veterans* decision, but with decades of Georgia jurisprudence. *Sons of Confederate Veterans*, 315 Ga. at FN 13; see also *Wood v Raffensberger*, 981 F.3d 1307 (2020), *Lance v Coffman*, 549 U.S. 437 (2007), *Dillard v. Chilton County Commission*, 495 F. 3d 1324 (11th Cir. 2007).

B. Analysis of Plaintiffs’ Standing

Here, Plaintiffs rely on *Sons of Confederate Veterans* to contend they must allege only a generalized grievance as community stakeholders to achieve standing. Cobb County also relies on *Sons of Confederate Veterans* to assert that Plaintiffs must allege an individualized injury to withstand scrutiny of their standing. This conflict is resolved upon careful review of the nature of Plaintiffs’ claims.

Plaintiffs initial Complaint seeks an order declaring that the Resolution passed by the BOC to create new Commission District boundaries is unconstitutional and that the (unamended) HB 1154 and its Map are valid and binding. As such, in accordance with *Sons of Confederate Veterans*, Plaintiffs

⁵ “We have long held that Georgia courts may not decide the constitutionality of statutes absent an individualized injury to the plaintiff. [Citations omitted.] This kind of individualized injury appears similar to the injury-in-fact required federally. See *Black Voters Matter Fund*, 313 Ga. at 399-400 (3), 870 S.E.2d 430 (Peterson, J., concurring). Because the Plaintiffs are not challenging the constitutionality of a statute, it is not necessary to decide whether this individualized-injury requirement for constitutional challenges to statutes is of a constitutional dimension. And nothing in this opinion should be understood to undermine in any way our longstanding case law articulating this requirement.” *Sons of Confederate Veterans*, 315 Ga. at 54, FN 13.

must show an individualized injury. However, in their briefs opposing Defendant's Motion to Dismiss, Plaintiffs appear to cast or re-cast their claims as challenging the BOC's violation of two laws, HB 1154 and O.C.G.A. § 28-1-14.1 (the "Redistricting Statute"), and urge that, similar to the *Sons of Confederate Veterans* plaintiffs, only a generalized grievance is required to achieve standing necessary to pursue a declaration that the Defendant must follow these laws.

There is no dispute that HB 1154 was properly enacted by the General Assembly to revise Cobb County's Board of Commissioners' districts. There is no dispute that HB 1154 became law on March 2, 2022. The Redistricting Statute sets forth the process for local delegations to introduce bills for the General Assembly to consider when revising election districts for local boards and authorities, including boards of commissioners. There is no dispute that the County did not follow the Redistricting Statute when it put forth its own Resolution and Map. Instead, subsequent to the enactment of HB 1154, the BOC on October 25, 2022, promulgated their Resolution to amend HB 1154 and redraw the County's District boundaries, invoking their Home Rule authority under the Georgia Constitution. No one argues that in doing so, the BOC failed to follow the procedure set forth in the Georgia Constitution to make its own laws ("Home Rule"). Ga. Const. Art. IX, Sec.II, Para. 1.

Plaintiffs argue that the BOC's use of the Home Rule procedure in this instance was not authorized by the Constitution and that the Redistricting Statute sets forth the procedure the County was bound to follow to enact a different map. Defendant claims the Resolution amending HB 1154 was duly enacted as an exercise of the County's Home Rule authority and that the Resolution Map defines the BOC districts unless and until it is determined to be unconstitutional. That forms the gravamen of the dispute here -- whether the constitutional grant of Home Rule authority is properly used by a county to draw its board of commissioner districts, as urged by Cobb County, or whether such an act is *ultra vires*, as posited by Plaintiffs, who argue that the Redistricting Statute pre-empted the County's power to do so. Plaintiffs further

argue that the establishment of district boundaries falls under an explicit exception to the County's Home Rule authority.

All of these allegations necessarily require an initial determination of the nature and extent of powers conferred to Cobb County under the Georgia Constitution's Home Rule provision with regard to BOC redistricting. Either the BOC acted within the scope of Home Rule authority, or it did not. As such, Plaintiffs are challenging the constitutionality of the BOC Resolution, and must make a heightened showing of individualized harm to sustain scrutiny of their standing. As in *Sons of Confederate Veterans*, the Court must consider each Plaintiff's claim to standing because, although the facts are not in dispute, their individual situations may differ in ways material to the standing analysis. In doing so, the Court "accept[s] as true all well-pled material allegations" in the Complaint, Amended Complaint and Second Amended Complaint. *Sons of Confederate Veterans*, 315 Ga. at 63.

C. Elements of Individualized Harm Necessary to Sustain Constitutional Challenge

To demonstrate standing, a party must show "(1) an injury in fact, (2) a causal connection between the injury and the alleged wrong, and (3) the likelihood that the injury will be redressed with a favorable decision." *Black Voters Matter Fund, Inc. v. Kemp*, 313 Ga. 375, 382 (2022) (citations omitted). Plaintiffs must satisfy all three elements to have standing. "The burden of proving the interest necessary to demonstrate a particular party's standing is ordinarily placed on that party." *Id.*, citing *Dept. of Human Resources v. Allison*, 276 Ga. 175, 178 (2003). Each element is addressed in turn.

1. Injury in Fact

An injury in fact must be "concrete and particularized" and "actual or imminent, not conjectural or hypothetical." *Black Voters Matter*, 313 Ga. at 382 (citations omitted). "As a general rule, a litigant has standing to challenge the constitutionality of a law only if the law has an adverse impact on *that litigant's own rights*." (Emphasis in original.) *Id.*, citing *Feminist Women's Health*

Center v. Burgess, 282 Ga. 433, 434 (2007); see also *Black Voters Matter*, 313 Ga. at 393 (*concurrency*) (“persons seeking to challenge a [law] as unconstitutional may do so only if that [law] has *injured them in some specific way.*”) (*emphasis added.*)

a.) Plaintiff Gambrill

In her Second Amended Complaint, Plaintiff Gambrill alleges that she resides in District 1, has voted, intends to continue voting in future elections, and is a current member of the BOC. She claims that in her individual and official capacities, she has an interest in having a BOC comprised of officials who were elected in a fair and constitutional manner, and who legally wield authority. She also alleges an interest in having the law executed properly. These allegations, she asserts, are sufficient to establish her standing. In doing so, Gambrill points to O.C.G.A. § 9-6-24, which is the statute governing petitions for a writ of mandamus, and which requires only a generalized harm to confer standing. As a threshold matter, Gambrill is proceeding in her individual capacity only. To the extent that her allegations focus on her role as a BOC member, they would not be relevant because they arise in her official, rather than individual, capacity. Moreover, in this action for declaratory relief, alleging a generalized harm pursuant to the mandamus statute is neither correct nor sufficient to mount a constitutional challenge, for reasons previously explained.

In her briefing, Gambrill argues that her eligibility to sue arises from uncertainty, as both a resident and Commissioner, regarding her “voting power” and the “reliability of her position as commissioner” until the constitutionality of the Resolution is determined, which she also asserts “is true of the entirety of the county’s voters.” Because she alleges that all voters in the county face the same uncertainty, this diffuse harm is not particular to Gambrill.

Gambrill also argues that she may not be re-elected because “a change to any district lines has the potential to change the outcome of that district’s election. And the change of any individual commissioner has the potential to

change the outcome of any board action requiring majority consent.”⁶ Stating that “redistricting has far greater reaching effects than simply those particular individuals whose district changes from one to another depending on which map is implemented,” Gambrill alleges that “[a]ny change in the makeup of the BOC could alter the trajectory, policies, and projects of the county for years.” Again, these allegations appear to focus on her role as a BOC member and thus are official-capacity claims that are not relevant here. In any case, these allegations refer to generalized uncertainties well into the future. As such, they are speculative and not concrete.

To the extent that these allegations and arguments are intended to form the basis for Gambrill’s particularized injury necessary for standing, they are not sufficient. Gambrill was re-elected in 2022 when her candidacy for commissioner was unopposed. It is impossible to predict whether she will be re-elected in 2026 and that outcome will be dependent upon many factors independent of the district boundaries set by the Resolution. Gambrill’s right and ability to vote is not in question. She affirms that she has voted and intends to continue voting.⁷ Rather, Gambrill’s grievance is with regard to the changed District boundaries, which according to her allegations, did not change the District in which she resides and votes.

At best, the concerns raised by Gambrill are generalized and according to her, shared by all citizens. They are not particular to Gambrill, and therefore,

⁶ The Court notes that Gambrill was re-elected in November, 2022 and retains her position as Commissioner under either Map.

⁷ The Court acknowledges that “the denial of the right [to elect public officials] is such an injury to the *personal* right of any voter as would authorize him to attack the constitutionality of an act’ used by officials to justify refusing to hold required elections. (*Emphasis in original.*)” *Black Voters Matter*, 313 Ga. at 383, citing *Manning v. Upshaw*, 204 Ga. 324, 327 (1948) and referring to *Barrow v. Raffensperger*, 308 Ga. 660, 660, 678 (2020) (A Georgia voter has a right to pursue a mandamus claim to enforce the Georgia Secretary of State’s duty to conduct an election that is legally required.). However, there is no allegation that the Resolution being challenged here denied any Cobb voter the right to vote or prohibited required elections from being held. In fact, the allegations are to the contrary.

they are not sufficient to show an injury in fact to Gambrill.⁸ Several of her claims arise from her official capacity and are not relevant to this suit. As a result, Plaintiff Gambrill has no standing to proceed on these claims and her case ends here.

b.) The Floams

In their Second Amended Complaint, the Floams allege that before any of the redistricting relevant to this case, they resided in District 1. After HB 1154 was enacted, the Floams remained in District 1. The Floams also allege that in the November, 2022 election they voted amongst the slate of candidates in District 1.⁹ Significantly, a review of HB 1154 and the Resolution confirms that neither map with new district boundaries would be used for elections held prior to January 1, 2023. Thus, this allegation standing alone does not indicate harm to the Floams in a particular way.

More cogently, the Floams aver the Resolution Map caused their residence to be located within the redrawn District 3 boundary. As such, when the Resolution Map became effective on January 1, 2023, it effectively changed the Floams' district after they voted, placing them in a district in which they were not able to cast any ballot. While the Defendant argues that this impact is true for all such similarly-situated Cobb voters, and occurs to certain voters in each district every time boundaries are redrawn, it is not necessarily a generalized grievance shared "by a large class of citizens" as defined in the *Wood* case. *Wood*, 981 F.3d at 1314 (2020). Rather, it is shared only by that minority of Cobb citizens, including the Floams, whose districts have been changed by the implementation of the Resolution Map after they voted for a candidate in another

⁸ "We are aware of no line of authority supporting the idea that Georgia courts have the authority to resolve a dispute where no rights are violated or injury suffered. And indeed, obviating the cognizable-injury requirement would run afoul of the strict prohibition against issuing advisory opinions. Deciding questions in which a plaintiff has suffered no injury and where no rights can be vindicated by a judicial decision is tantamount to "making law," rather than interpreting and applying it to an accrued set of facts." *Sons of Confederate Veterans*, 315 Ga. at 62.

⁹ Plaintiff Gambrill ran unopposed for District 1 Commissioner in the November, 2022 election.

district. Assigned voting districts did not change for all Cobb County residents -- Plaintiff Gambrill's situation demonstrates that -- however, for certain Cobb voters, the Resolution changed their district after they voted in another district. Defendant argues that districts change with every redistricting; however, if the Resolution is determined to be unconstitutional, as urged by Plaintiffs, then the Floams have identified a harm that is concrete, actual and particular to them.

In addition, after identifying the specific changes to their voting district under the various maps, the Floams allege that their "proper district is unknown" due to differences between the Secretary of State and Cobb County Board of Elections and Registrations websites. Clearly, the Floams know their assigned district under the various Maps. And the County argues that the differences in websites will be remedied when voter data is updated. Nevertheless, as the matter stands, the Floams allege they are uncertain as to whether the Resolution that changed their residence from District 1 to District 3 was constitutionally proper. This allegation of an unconstitutional redrawing of their district cites an actual and concrete harm particular to the Floams. Consistent with the purpose of declaratory judgment, the Floams' suit seeks relief from the uncertainty and insecurity of their voting rights and voter status in light of the disputed districts. Even so, further analysis is required to determine the Floams' standing.

2. Causal Connection Between the Injury and the Alleged Wrong

The challenged Resolution was passed and became effective when it was transmitted to the Secretary of State on October 26, 2022. *See Ga. Const*, Art. IV, Sec. I, Para 1(g). There is no dispute that the voting district for the Floams' residence changed from District 1 to District 3 as a direct result of the Resolution. All parties agree that the Floams voted for the District 1 slate of candidates in the November, 2022 election and that as of January 1, 2023, the Floams became residents of District 3. The Floams would have remained in District 1 under HB 1134. The Floams allege that the Resolution itself is unconstitutional, and thus, their relocation into District 3 was illegal and had a direct impact, or nullification, of their November, 2022 votes. They also allege

uncertainty as to the constitutionality of the Resolution that created this change in their District. The harm claimed by the Floams is directly related to the Resolution.

3. Likelihood that the Injury will be Redressed with a Favorable Decision

Here, a decision favorable to the Floams would mean the Court ultimately determines that the Resolution is unconstitutional. In that case, HB 1134 and the HB 1134 Map would again take effect and the Floams' district would be restored from District 3 to District 1 and the efficacy of their November, 2022 votes would similarly be restored.

Georgia's Constitution was recently amended to provide citizens the right to seek "declaratory relief from the acts of ... any county ... 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). "This right shall apply to past, current, and prospective acts which occur on or after January 1, 2021." *Id.* "Legislative acts in violation of this Constitution or the Constitution of the United States are void, and the judiciary shall so declare them." Ga. Const. Art. I, § 2, ¶ V (a).

In this action, the Floams clearly allege the Resolution was *ultra vires*, an act beyond the BOC's Home Rule authority. As such, and because they have shown they have the standing to do so, the Constitution gives the Floams the right to challenge the constitutionality of the BOC's Resolution in their suit for declaratory relief.

Conclusion

The Floams' allegations are sufficient to establish their constitutional standing to proceed. Plaintiff Gambrill's allegations made in her individual capacity do not satisfy the legal requirement to allege an injury in fact and as a result, she does not have standing to proceed.

WHEREFORE, Defendant's Motions to Dismiss the Complaint for lack of subject matter jurisdiction are **GRANTED** with regard to Plaintiff Gambrill and

she is dismissed as a party to this lawsuit. Defendant's Motions to Dismiss the Complaint for lack of subject matter jurisdiction are **DENIED** with regard to the Floams.

SO ORDERED this 16 day of August, 2023.



HONORABLE ANN B. HARRIS
Judge, Superior Court of Cobb County
Cobb Judicial Circuit

CERTIFICATE OF SERVICE

This is to certify that I have this day served a copy of this document via PeachCourt e-file to the following email address(es):

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This 16 day of August, 2023.



Cynthia L. Patton, Staff Attorney
to the Honorable Judge Ann B. Harris
Cobb County Superior Court
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