

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

AMERICAN OVERSIGHT and JOHN DOE,

Plaintiffs,

v.

THE GEORGIA STATE ELECTION BOARD; JANICE JOHNSTON, in her individual capacity and official capacity as a Member of the Georgia State Election Board; RICK JEFFARES, in his individual capacity and official capacity as a Member of the Georgia State Election Board; JANELLE KING, in her individual capacity and official capacity as a Member of the Georgia State Election Board; JOHN FERVIER, in his official capacity as the Chairman of the Georgia State Election Board; SARA TINDALL GHAZAL, in her official capacity as a Member of the Georgia State Election Board;

Defendants.

CIVIL ACTION FILE NO. _____

**VERIFIED COMPLAINT FOR
INJUNCTIVE RELIEF, DECLARATORY RELIEF, AND DAMAGES**

COME NOW, American Oversight and John Doe (collectively, “Plaintiffs”), and file this complaint against the Georgia State Election Board, Janice Johnston in her individual capacity and official capacity as a Member of the Georgia State Election Board; Rick Jeffares in his individual capacity and official capacity as a Member of the Georgia State Election Board; Janelle King in her individual capacity and official capacity as a Member of the Georgia State Election Board; John Fervier solely in his official capacity as Chairman of the Georgia State Election Board; and Sara Tindall Ghazal solely in her official capacity as a Member of the Georgia State Election Board (collectively, all “Defendants,” and Johnston, Jeffares, and King,

collectively, the “Individual Defendants”). Plaintiffs seek enforcement of the Georgia Open Meetings Act as to all Defendants, to render void actions taken at an unlawful July 12 meeting (the “July 12 Unlawful Meeting”) of the State Election Board (the “Board”), and the imposition of civil penalties against the Individual Defendants for their knowing and willful conduct of the July 12 Unlawful Meeting in violation of the Open Meetings Act. Plaintiffs show the Court the following:

INTRODUCTION

1.

This case arises from an unlawful convening of the Georgia State Election Board, called by the Individual Defendants—Johnston, Jeffares, and King—to push through controversial election administration proposals without full transparency as required by the Open Meetings Act. In scheduling and holding this purported meeting on July 12, 2024, the Individual Defendants knowingly and willfully violated multiple procedural safeguards of the statute—enacted to ensure that government actions are conducted in public view—in an effort to avoid participation by the full Board and the public in considering and acting on these proposals.¹

2.

To that end, the Individual Defendants scheduled a meeting for 4:00 pm on a Friday afternoon, knowing that Chair Fervier and Member Tindall Ghazal were unavailable (and indeed that Defendant Johnston could not attend in person), with virtually no notice to the public. After hearing not only that their colleagues were unavailable, but also *knowing* that the Attorney

¹ While Plaintiffs are concerned by the substance of these proposals, this Action does not challenge their substantive merits nor require the Court to opine on those merits. Rather, this Action presents the straightforward claim that the Individual Defendants violated the Open Meetings Act and therefore, any votes on these proposals at the July 12 Unlawful Meeting had no legal effect.

General's office had instructed them that their plans were likely unlawful under the Open Meetings Act, the Individual Defendants nonetheless charged forward. Disregarding established Board practice (the very practice that the Board had properly used to schedule validly convened meetings earlier that same week), they issued no email notice of the meeting, nor did they post a notice to the Board's website, nor did they provide the notice to Fulton County's legal organ or a newspaper of general circulation as the Act requires. Instead, they pulled together a hastily drawn up document purporting to be a notice, signed directly only by Defendant Jeffares, just a day before the supposed meeting. The notice was apparently posted in only one place: outside the room at the State Capitol Building where the meeting would take place, where only the few who happened to pass by late on a Thursday afternoon would come across it.²

3.

These circumstances are telling. They suggest the Individual Defendants knew exactly what they were doing in calling this last-minute meeting: trying to push through controversial proposals without the due notice required by—and consequent robust discussion and debate contemplated under—the Open Meetings Act.

4.

The Georgia Open Meetings Act “was enacted in the public interest to protect the public—both individuals and the public generally—from ‘closed door’ politics and the potential abuse of individuals and the misuse of power such policies entail.” *EarthResources, LLC v. Morgan County*, 281 Ga. 396, 399 (2006) (citing *Atlanta Journal v. Hill*, 257 Ga. 398, 399 (1987)). In other words, the Act exists to ensure that actions like those undertaken at the July 12

² Although Plaintiffs cannot aver with certainty that *no other means whatsoever* were used to disseminate the notice, diligent research conducted in the days since July 11 has not produced evidence of any other form of public notice besides this single physical posting.

Unlawful Meeting happen in full sunlight, so members of the public can observe and participate in actions that directly affect them and their community.

5.

The proposals ostensibly approved by the Individual Defendants for the next step in the rulemaking process at the July 12 Unlawful Meeting have real consequences. One of the proposals—if it were to be adopted—has the potential to create an environment of intimidation and chaos during the 2024 general election (and beyond), as it would drastically increase the number of partisan poll watchers permitted at tabulation centers. The other would impose unnecessary burdens on election workers who are already stretched to capacity, by requiring them to compile and post election results that are already reported by the Secretary of State’s Office. That these proposals were pushed through in as much darkness as the Individual Defendants could muster belies their value to Georgia citizens.

6.

Most alarmingly, the Individual Defendants had clear and explicit notice that their actions likely violated the Open Meetings Act. On information and belief, the Attorney General’s office provided guidance to the Board on two separate occasions—on July 10 and July 11—saying just that. Nevertheless, the Individual Defendants proceeded with their unlawful plans anyway.

7.

Subsequently, on information and belief, the Individual Defendants received additional notice from Chairman Fervier that officials in the Secretary of State’s Office and Attorney General’s Office had determined that their actions violated the Open Meetings Act. In addition,

members of the public contacted the Board, further detailing their violations of Georgia Law. Nevertheless, the Individual Defendants took no steps to rectify their actions.

8.

The Individual Defendants' failure to comply with the notice and procedural requirements of the statute, as well as the Board's standard meeting practices, violates both the letter and the spirit of the Open Meetings Act.

9.

Plaintiffs thus asks this Court to (1) issue an interlocutory injunction prohibiting, during the pendency of this case, the Defendants or anyone acting in concert with them, from implementing or taking any action in furtherance of any and all actions ostensibly taken or proposals ostensibly approved at the July 12 Unlawful Meeting; (2) issue a declaration that all actions taken at the July 12 Unlawful Meeting are invalid and without any legal effect; (3) award Plaintiffs civil penalties against the Individual Defendants for their knowing and willful violations of the Act; and (4) award Plaintiffs their reasonable attorneys' fees and expenses of litigation.

PARTIES, JURISDICTION, AND VENUE

10.

Plaintiff American Oversight is a nonprofit corporation organized under the laws of Washington, D.C, and registered in the State of Georgia. American Oversight is a nonpartisan, nonprofit organization dedicated to ensuring government transparency at all levels. Through research and requests for public records under the federal Freedom of Information Act and state public records laws and enforcement of open meeting requirements, American Oversight uses the information it gathers, and its analysis of it, to educate the public about activities and

operations of state and federal governments through reports, published analyses, press releases, and other media. Among other critical governmental functions, election administration and voting rights are key focus areas for the organization. American Oversight can fully accomplish its mission of ensuring government transparency only if government meetings are open in accordance with applicable law.

11.

Plaintiff John Doe is a resident of Fulton County, Georgia. He registered to vote in Georgia in 2018, has been a regular voter since that time, and intends to vote in the upcoming 2024 elections. He is proceeding pseudonymously in this litigation based on his reasonable fear, based on recent and prevalent harassment of election officials, election workers, and participants in election-related lawsuits, of doxxing, harassment, and intimidation, if his identity were publicly revealed.

12.

Defendant Georgia State Election Board (the “Board”) is a Georgia state board and division of the Secretary of State’s Office. The Board is an agency within the meaning of the Georgia Open Meetings Act. *See* O.C.G.A. § 50-14-1(a)(1)(A). The Board is comprised of five voting members, including one chairperson. It is entrusted with a range of responsibilities and authority regarding the protection of the right to cast a ballot, including promulgating rules and regulations to promote uniformity in election practices and to take actions the Board deems appropriate to conduct fair, legal, and orderly elections, as provided by O.C.G.A. §§ 21-2-30 *et seq.* The Board and its Members regularly conduct business in Fulton County at their principal office, 2 Martin Luther King, Jr. Drive, Suite 802, Floyd West Tower, Atlanta, Georgia 30334.

13.

Defendant Janice Johnston is a Member of the Georgia State Election Board. She is named as a defendant in her individual and official capacity. As a Member, she participates in the operations of the Board and is tasked with a wide variety of responsibilities and authority regarding the protection of the right to cast a ballot, as described above. Defendant Johnston regularly conducts business in Fulton County.

14.

Defendant Rick Jeffares is a Member of the Georgia State Election Board. He is named as a defendant in his individual and official capacity. As a Member, he participates in the operations of the Board, tasked with a wide variety of responsibilities and authority regarding the protection of the right to cast a ballot, as described above. Defendant Jeffares regularly conducts business in Fulton County.

15.

Defendant Janelle King is a Member of the Georgia State Election Board. She is named as a defendant in her individual and official capacity. As a Member, she participates in the operations of the Board, tasked with a wide variety of responsibilities and authority regarding the protection of the right to cast a ballot, as described above. Defendant King regularly conducts business in Fulton County.

16.

This Court has jurisdiction to enforce compliance with the Open Meetings Act through legal and equitable means, O.C.G.A. § 50-14-5(a), *see also* O.C.G.A. § 50-14-1(b)(2); to levy civil fines against individuals or agencies who violate the Open Meetings Act, O.C.G.A. § 50-

14-6; and to award attorneys' fees and expenses in cases involving violations of the Georgia Open Records Act, O.C.G.A. § 50-14-5(b).

17.

Venue is proper in this Court under O.C.G.A. § 9-10-30 and O.C.G.A. § 21-2-30(j), because Fulton County is the county of residence of at least one of the defendants in this lawsuit and the primary office of the Board (where the Board members regularly conduct business) is located in Fulton County. Venue is also proper in Fulton County because a substantial part of the events or omissions giving rise to the claims asserted in this Action occurred in Fulton County. Defendants' principal office address is 2 Martin Luther King, Jr. Drive, Suite 802 Floyd West Tower, Atlanta, Georgia 30334 in Fulton County.

18.

Defendant John Fervier is the Chairman of the Georgia State Election Board. He is named as a nominal defendant in his official capacity, solely for the purpose of ensuring that complete relief may be granted. He participates in Board business alongside four other members. As Chairman, Defendant Fervier is, among other things, responsible for calling meetings and giving to each Board member prior notice of the time and place of each meeting, under O.C.G.A. § 21-2-30(e).

19.

Defendant Sara Tindall Ghazal is a Member of the Georgia State Election Board. She is named as a nominal defendant in her official capacity, solely for the purpose of ensuring that complete relief may be granted. As a Member, she participates in the operations of the Board, tasked with a wide variety of responsibilities and authority regarding the protection of the right to cast a ballot, as described above.

GENERAL ALLEGATIONS

The Open Meetings Act, O.C.G.A. § 50-14-1, and other Relevant Legal Provisions

20.

The Open Meetings Act “seeks to eliminate . . . closed meetings which engender in the people a distrust of its officials who are clothed with the power to act in their name.” *McLarty v. Bd. of Regents of Univ. Sys. Of Ga.*, 231 Ga. 22, 22 (1973).

21.

To effectuate its vital purpose, the Open Meetings Act requires that “all meetings shall be open to the public,” subject to limited exceptions, O.C.G.A. § 50-14-1(b)(1), to safeguard the public’s right to open proceedings and oversight over the state officials who act on their behalf.

22.

The Act applies to all agencies, defined to include, among others, “[e]very state department, agency, board, bureau, office, commission, public corporation, and authority.” O.C.G.A. § 50-14-1(a)(1)(A).

23.

To safeguard the public’s right to open proceedings and oversight over the state officials who act on their behalf, the Act provides for a series of notice and other procedural requirements for meetings held by state agencies.

24.

Meetings are defined, in relevant part, to include “[t]he gathering of a quorum of the members of the governing body of an agency at which any official business, policy, or public matter of the agency is formulated, presented, discussed, or voted upon[.]” O.C.G.A. § 50-14-1(a)(3)(A)(i).

25.

The statute governing the Board states that “[t]hree voting members of the [State Election Board] shall constitute a quorum[.]” O.C.G.A. § 21-2-30(d). The statute directs that “[m]eetings [of the Board] shall be held whenever necessary for the performance of the duties of the board on call of the chairperson or whenever any two of its members so request[.]” and “[t]he chairperson shall give to each member of the board prior notice of the time and place of each meeting of the board.” O.C.G.A. § 21-2-30(e).

26.

Regularly-scheduled meetings of an agency subject to the Open Meetings Act must be noticed “at least one week in advance . . . in a conspicuous place available to the public at the regular place of an agency or committee meeting subject to this chapter, as well as on the agency’s website, if any.” O.C.G.A. § 50-14-1(d)(1). Notice must “prescribe the time, place, and dates” of such meetings. *Id.*

27.

For other meetings, “written or oral notice shall be given at least 24 hours in advance[.]” O.C.G.A. § 50-14-1(d)(2). Such notice must be given to the county’s legal organ or a newspaper of general circulation with equal or greater circulation than the legal organ, which must immediately or as soon as practicable make the information available upon inquiry to the public or at written request by local media outlets. *Id.* In counties where the legal organ is published less than four times a week, “sufficient notice shall be the posting of a written notice for at least 24 hours at the place of regular meetings,” and making the information available at least 24 hours in advance upon written request by a local media outlets. *Id.*

28.

Only “[w]hen special circumstances occur and are so declared by an agency,” may that agency “hold a meeting with less than 24 hours’ notice[.]” O.C.G.A. § 50-14-1(d)(3). In such situation, the agency must “giv[e] such notice of the meeting and subjects expected to be considered at the meeting as is reasonable under the circumstances,” and “the reason for holding the meeting within 24 hours and the nature of the notice shall be recorded in the minutes.” *Id.*

29.

In addition, “[p]rior to any meeting, the agency or committee . . . shall make available an agenda of all matters expected to come before the agency or committee at such meeting.” O.C.G.A. § 50-14-1(e)(1). “The agenda shall be available upon request and shall be posted at the meeting site as far in advance of the meeting as reasonably possible . . . at some time during the two-week period immediately prior to the meeting.” *Id.*

30.

While the Act permits certain meetings to be held by teleconference, if the agency is otherwise meeting in person, a participating member may only participate by teleconference “so long as a quorum is present in person . . . [and] the other requirements of this chapter are met.” O.C.G.A. § 50-14-1(g)(3). The member’s participation by teleconference must be necessitated by “reasons of health or absence from the jurisdiction,” *id.*, and the agency must further ensure “the public [has] simultaneous access to the teleconference meeting,” *id.* at § 50-14-1(g)(2).

The Regularly Scheduled July 9 Meeting, Continuation, and Postponement

31.

On July 9, 2024, at 8:30 am, the Board held a regularly scheduled meeting, duly noticed in advance on June 5, 2024. Notice was provided by email to the notifications@sos.ga.gov email

listserv (the “Email List”), which routinely provides updates regarding Board meeting schedules. The notice for the July 9 meeting was also posted to the Board’s website, at sos.ga.gov/page/state-election-board-meetings-events, pursuant to the Board’s standard practice.

32.

The meeting was held at the Georgia State Capitol, Room 341. As is standard practice, the Board provided a livestream link for the July 9 meeting so that members of the public who were unable to attend in person could observe the meeting. As is also standard practice, a court reporter transcribed the proceedings.

33.

On July 8, 2024, at 12:04 pm, an Agenda for the July 9 meeting was circulated to the Email List. Agenda items included Public Comment, as well as nine “Procedure Matters,” each a separate petition for amendment of a State Election Board Rule. The Board stated in the Agenda that the meeting may “extend to more than one day.”

34.

Later on July 8, 2024, Georgia GOP Chairman Josh McKoon emailed the text of two proposed rules and accompanying talking points to Jeffares, who caused them to be forwarded to the Board. At least one of these rules was not already included on the July 9 meeting agenda, nor was it publicly disseminated. *See infra* ¶¶ 68-70.

35.

At the July 9 meeting, after a lengthy period of public comment, and before all agenda items could be addressed, Chair Fervier recessed the meeting and announced that the Board would reconvene on July 10, 2024, at 9:00 am. At that time, no other Board Members expressed concerns about the continued meeting. On information and belief, Fervier and Members Tindall

Ghazal and King were set to attend the continued meeting on July 10 in person, while Members Jeffares and Johnston had conflicts and would be unable to attend.

36.

On July 9 at 5:18 pm, a Continued Meeting notice was circulated to the Email List, confirming the July 9 meeting would be continued on July 10 at 9:00 am. According to the notice, the Continued Meeting would be livestreamed.

37.

However, before Fervier gaveled in the continued meeting on July 10 at 9:00 am, he informed the meeting attendees that the meeting would have to be rescheduled. On information and belief, shortly before Fervier was to commence the meeting, King sent him a text message stating that she would be unable to attend after all due to a conflict.

38.

King's anticipated absence meant that the Board would lack a quorum for the Continued Meeting and, as a result, could not convene. Accordingly, Fervier informed meeting attendees that the meeting would be rescheduled.

39.

Thereafter, on July 10 at 9:37am, a Postponed Meeting notice was circulated to the Email List, confirming that the July 10 meeting would be postponed and that "[a] future date will be set and announced as soon as possible."

40.

On information and belief, Fervier subsequently sought and received oral guidance from the Attorney General's office about how to properly reschedule the meeting—and was told he

would need to provide seven days' notice and that the meeting would need to be available to the public (i.e., via livestream).

Scheduling of the July 12 Unlawful Meeting

41.

On information and belief, on July 11, 2024, Jeffares contacted Fervier and Tindall Ghazal to ask if they were available to convene a Board meeting on July 12, 2024, and both indicated they were unavailable.

42.

Regardless of any Members' availability for a meeting on July 12, convening a meeting that day would be inconsistent with the oral guidance Fervier received from the Attorney General's office.

43.

Moreover, on July 11, an attorney from the Attorney General's office sent an email to all five members of the Board warning that the proposed July 12 meeting could violate the state's Open Meetings Act.

44.

The Attorney General's office advised that the Act generally requires a minimum of one week's notice for non-emergency meetings or for meetings not arising under "special circumstances"; advised that even emergency/special circumstance meetings generally required 24 hours' notice, including an ad placed in the county legal organ; and further explained the procedural requirements for truly exceptional circumstances requiring a meeting on less than 24 hours' notice.

45.

Notably, the Attorney General's office expressed skepticism that emergency or exceptional circumstances existed in this case, and called upon the Board members to let the Attorney General's office know if there was in fact an emergency.

46.

The Attorney General's office also instructed that while the Open Meetings Act provides for members to attend a meeting by teleconference, such meeting must otherwise comply with various statutory requirements—including, for example, notice requirements and ensuring that members of the public can fully participate (including through appropriate technological accommodations secured by advance notice provided to those planning to participate by teleconference to ensure all participants can hear all meeting content).

47.

Moreover, the Attorney General's office advised that even assuming it is permissible for some members to participate by teleconference, a quorum must nevertheless be present in person in order to comply with the Act.

48.

On information and belief, none of the Individual Defendants responded to the July 11 email from the Attorney General's office.

49.

Instead, Jeffares created a purported meeting "notice," dated July 11, 2024, stating: "As provided in O.C.G.A. § 21-2-30(e), along with Board Members Dr. Jan Johnston and Janelle King, I hereby call a meeting of the State Election Board to finish the unfinished agenda items from the Tuesday, July 9th State Election Board Meeting. The meeting will be conducted on

Friday, July 12, 2024 at 4:00 p.m. in Room 341 at the Georgia State Capitol Building in Atlanta, Georgia.” Ex. A.

50.

Jeffares apparently signed this document on his own behalf, and on behalf of Johnston and King, “with Express Permission.” *Id.* A handwritten notation indicates that Jeffares signed the document on July 11, 2024, apparently at 3:20 pm. *Id.*

51.

This purported “notice” for the July 12 Unlawful Meeting was not disseminated through the Email List.

52.

Nor was the “notice” for the July 12 Unlawful Meeting posted to the Board’s website.

53.

While the “notice” was apparently physically posted outside the meeting room in the Georgia State Capitol Building, on information and belief, it was not provided to the county’s legal organ nor to a newspaper of general circulation.

54.

The notice was not disseminated via any customary or widely-circulated channel of distribution. As of the date of this Complaint, Plaintiffs are unaware of any means of dissemination other than the physical posting outside the Capitol Building meeting room.

55.

In addition, no agenda for the July 12 Unlawful Meeting was disseminated through the Email List.

56.

Nor was an agenda for the July 12 Unlawful Meeting posted to the Board's website.

57.

The Individual Defendants did not provide any agenda to meeting attendees nor to the general public by any method.

58.

There was also no livestream link provided for the July 12 Unlawful Meeting.

59.

Though there was no agenda available, the July 11 "notice"—prepared by Jeffares on behalf of himself, Johnston, and King—stated an intention, at a high level, "to finish the unfinished agenda items from the Tuesday, July 9th State Election Board Meeting." *Id.*

60.

Because the unfinished agenda items from the July 9 meeting included multiple distinct proposed petitions for amendment of Board Rules, the purported July 11 "notice" accordingly indicated an intention that the July 12 Meeting would involve "official business, policy, or public matter of the agency" being "formulated, presented, discussed, or voted upon" within the meaning of O.C.G.A. § 50-14-1(a)(3)(A)(i).

The July 12 Unlawful Meeting

61.

On July 12, 2024, at 4:00pm, Defendants Jeffares and King, joined by Board Executive Director Michael Coan, appeared in Room 341 of the Georgia State Capitol Building and purported to convene a meeting of the State Election Board.

62.

Defendant Johnston appeared by video.

63.

Defendant Johnston's video was lagging, and some of her comments were delayed or unclear.

64.

On information and belief, the July 12 Unlawful Meeting was not livestreamed.

65.

On information and belief, there was no court reporter transcribing the July 12 Unlawful Meeting.

66.

At the July 12 Unlawful Meeting, two rules were considered and approved as proposed rules by Individual Defendants Jeffares, Johnston, and King.

67.

One of these proposed rules (Amended Rule 183-1-13-.05, concerning permitting an increased number of poll observers at election tabulating centers) had been listed on the agenda for the regularly scheduled July 9 meeting.

68.

However, the other proposed rule (Proposed Rule 183-1-12-.21, imposing new election result reporting requirements on county registrars) was not on the July 9 agenda, nor was it publicly announced, disseminated, or otherwise previewed prior to the July 12 Unlawful Meeting.

69.

The full text of Proposed Rule 183-1-12-.21 was not shared orally or in writing with members of the public present at the July 12 Unlawful Meeting.

70.

On information and belief, the Individual Defendants knew prior to the July 12 Unlawful Meeting that they intended to address Proposed Rule 183-1-12-.21.

71.

On information and belief, on July 13, 2024, Chair Fervier sent a letter via email to all Board members, including the Individual Defendants, stating that the July 12 meeting was unlawful according to the Georgia Secretary of State's office and the Georgia Attorney General's office.

72.

On July 15, 2024, Plaintiff American Oversight sent a letter via email to all five members of the State Election Board, putting them on notice that the July 12 Unlawful Meeting violated the Georgia Open Meetings Act and possibly other provisions of Georgia law. Ex. B. It further stated that "American Oversight and our partners in Georgia reserve the right to pursue legal action if the Board does not publicly, and **no later than Wednesday, July 17**, clarify that the sham meeting violated Georgia law and that the rules it purported to adopt are legally null and void." *Id.* (emphasis in original).

73.

As of the date of this Complaint, no members of the Board have responded to American Oversight's July 15 correspondence.

COUNT I

**Interlocutory Injunctive and Declaratory Relief for
Violations of the Georgia Open Meetings Act
(against all Defendants)**

74.

Plaintiffs hereby incorporate the allegations in paragraphs 1-73 as if fully stated herein.

75.

The Georgia Open Meetings Act instructs that “[t]he public at all times shall be afforded access to meetings declared open to the public” as laid out by the statute. O.C.G.A. § 50-14-1(c). The Act sets forth various procedural requirements—including notice, agenda, and quorum requirements—to ensure this goal is accomplished.

76.

A meeting failing to comply with any such requirement is not open to the public as required by the Act, and “[a]ny resolution, rule, regulation, ordinance, or other official action of an agency adopted, taken, or made at a meeting which is not open to the public as required by this chapter shall not be binding.” O.C.G.A. § 50-14-1(b)(2).

77.

Regularly scheduled meetings must be noticed at least seven days in advance, and absent special circumstances, all other meetings require a minimum of 24 hours’ notice. O.C.G.A. § 50-14-1(d). Notice must be accomplished by specific, prescribed means, including distribution to the county’s legal organ or a newspaper of general circulation, as well as posting to the agency’s website for regularly scheduled meetings. *Id.*

78.

The Act also requires that an Agenda be made available prior to a meeting, covering “all matters expected to come before the agency or committee at such meeting . . . as far in advance of the meeting as reasonably possible.” O.C.G.A. § 50-14-1(e)(1).

79.

A quorum must be present to conduct a meeting, O.C.G.A. § 50-14-1(a)(3)(A); O.C.G.A. § 21-2-30(e), and absent emergency circumstances, the quorum must be present in person, O.C.G.A. § 50-14-1(g).

80.

In addition to the statutory requirements set forth above, the State Election Board has adopted certain procedural norms to further safeguard the public’s right to transparency in meetings conducting official business, including distributing meeting notices, agendas, and other updates via the Email List, as well as publishing meeting notices, agendas, and summaries to its website.

81.

The Board, through the actions of the Individual Defendants, violated the Open Meetings Act by failing to comply with the statute’s notice requirements under O.C.G.A. § 50-14-1(d)(1). As a continuation of the regularly scheduled July 9 meeting, the July 12 Unlawful Meeting required at least seven days’ notice under the Act, O.C.G.A. § 50-14-1(d)(1), as indicated by the Attorney General’s Office in its July 10 email to the Board. Nonetheless, Defendant Jeffares’ purported “notice” of the meeting was signed, at the earliest, barely 24 hours prior to the July 12 Unlawful Meeting.

82.

But even if the meeting was subject to only the 24 hours' notice requirement, the Board, through the actions of the Individual Defendants, at the very least violated the spirit of the Open Meetings Act by failing to make notice of the July 12 Unlawful Meeting available in the manner and locations prescribed by O.C.G.A. § 50-14-1(d)(2) nor in accordance with the Board's typical practice. The July 12 Unlawful Meeting was not noticed in the county's legal organ nor in a newspaper of general circulation as required by the Act, nor was it disseminated through the Email List or posted to the Board's website, in accordance with the Board's usual practices. Indeed, the July 12 Unlawful Meeting deviated from the Board's usual practices in every respect.

83.

The Board, through the actions of the Individual Defendants, also violated the Open Meetings Act by failing to make an agenda available prior to the July 12 Unlawful Meeting (or at any other time), as required under O.C.G.A. § 50-14-1(e)(1). The failure to provide any notice of Proposed Rule 183-1-12-.21 prior to the July 12 Unlawful Meeting, or the full text of that proposal at any time before or during the July 12 Unlawful Meeting, demonstrates the egregiousness of this violation, particularly where the Individual Defendants knew ahead of time that this item would be addressed.

84.

The Board, through the actions of the Individual Defendants and in particular Defendants Johnston's participation by video, further violated the Open Meetings Act by its failure to have an in-person quorum, in violation of O.C.G.A. § 50-14-1(g).

85.

Furthermore, the Board, through the actions of the Individual Defendants, also violated the teleconference requirements of O.C.G.A. § 50-14-1(g), by permitting a member to join remotely but failing to make arrangements for the public to have access to the teleconference, via livestream or otherwise.

86.

Under O.C.G.A. § 50-14-5, this Court should enforce compliance with the Open Meetings Act by entering an interlocutory injunction to, during the pendency of this action, enjoin Defendants and all acting in concert with them from implementing or taking any action in furtherance of any and all actions ostensibly taken or proposals ostensibly approved at the July 12 Unlawful Meeting.

87.

Furthermore, under O.C.G.A. §§ 50-14-1(b)(2), 50-14-5, this Court should enforce compliance with the Open Meetings Act by declaring that any resolution, rule, regulation, ordinance, or other official action adopted, taken, or made at the July 12 Unlawful Meeting is invalid, and that any votes taken at the July 12 Unlawful Meeting have no legal effect and did not constitute any part of “formulat[ing], adopt[ing], and promulgat[ing] such rules and regulations, consistent with law, as will be conducive to the fair, legal, and orderly conduct of primaries and elections” under O.C.G.A. §21-2-31(2).

COUNT II

Willful and Knowing Violation of the Georgia Open Meetings Act (against Defendants Johnston, Jeffares, and King, in their individual capacities)

88.

Plaintiffs hereby incorporate the allegations in paragraphs 1-73 as if fully stated herein.

89.

Members of the State Election Board are responsible for ensuring their compliance with all relevant provisions of Georgia State law, including the Open Meetings Act.

90.

Defendants Johnston, Jeffares, and King were on notice that their plans for the July 12 Unlawful Meeting violated various provisions of the Open Meetings Act, as described *supra* at ¶¶ 41-70, including requirements as to notice, agendas, quorum, and teleconference protocols.

91.

The Individual Defendants were on notice of these violations through oral guidance received by Chairman Fervier from the Attorney General's Office on July 10, 2024, as well as written guidance subsequently emailed by the Attorney General's Office to all Board members, including the Individual Defendants, on July 11, 2024.

92.

Furthermore, after the July 12 Unlawful Meeting, multiple parties contacted the Individual Defendants to reiterate that their actions violated the Open Meetings Act, including Chair Fervier by email on July 13, 2024, and Plaintiff American Oversight by emailed letter on July 15, 2024.

93.

Despite ample notice of their violations, the Individual Defendants nonetheless proceeded with their unlawful meeting on July 12, and have taken no steps to remediate those violations after the fact.

94.

Even setting aside these express notifications, the Individual Defendants' conduct in scheduling and conducting the meeting strongly suggests they acted with full knowledge of their unlawful conduct. Their failure to provide notice or an agenda through the Email List or on the Board's website, or to provide for a livestream or court reporter at the July 12 Unlawful Meeting, despite each of these steps being routine practice by the Board, belies an intentional effort at preventing the public from fully participating in that proceeding.

95.

Indeed, on information and belief, the Individual Defendants intentionally acted to frustrate the purpose of the Open Meetings Act and to prevent members of the public from observing or participating in the July 12 Unlawful Meeting. At the very least, the Individual Defendants were negligent in their failure to comply with the Open Meetings Act.

96.

The Open Meetings Act provides that "the court in any civil action brought pursuant to this chapter" may impose a civil penalty of up to \$1,000 for a violation "against any person who negligently violates the terms of this chapter." O.C.G.A. § 50-14-6.³ Penalties imposed under this provision are payable to the plaintiff who initiated the action.

97.

In their scheduling and conduct of the July 12 Unlawful Meeting, the Individual Defendants intentionally and/or negligently violated the Open Meetings Act, and their actions warrant the imposition of civil penalties. This Court should impose civil penalties against each of

³ The permissible fee increases to \$2,500 for each additional violation committed within a 12-month period from the date the first penalty or fine was imposed. *Id.*

the three Individual Defendants for the violations of the Open Meetings Act stemming from their failures to comply with the Act's notice, agenda, quorum, and teleconference requirements, in the amount of \$1,000 per violation. *Supra* ¶¶ 41-70.

COUNT III

Attorneys' Fees and Expenses (against Defendant State Election Board)

98.

Plaintiff hereby incorporates the allegations in paragraphs 1-74 as if fully stated herein.

99.

Where "the court determines that an agency acted without substantial justification in not complying with" the Open Meetings Act, "the court shall, unless it finds that special circumstances exist, assess in favor of the complaining party reasonable attorney's fees and other litigation costs reasonably incurred." O.C.G.A. § 50-14-5(b).

100.

As detailed above, the Board, through the actions of the Individual Defendant members of the Board, intentionally violated various provisions of the Open Meetings Act. They have not established an emergency nor special circumstances nor any other substantial justification warranting their conduct, and their actions have effected real harm by stymying the public's right to full participation in what should be open proceedings.

101.

The Board also ignored Plaintiff American Oversight's July 15, 2024 letter detailing their non-compliance with the Open Meetings Act and have, to date, taken no steps to cure their violations.

102.

By refusing to take any steps to address their violations, including responding to Plaintiff American Oversight's correspondence, Defendants have left Plaintiffs with no way to remedy the actions taken in an unlawful meeting that violated the Open Meetings Act other than filing this lawsuit.

103.

Under O.C.G.A. § 50-14-5(b), this Court should award Plaintiffs their reasonable attorneys' fees and litigation costs incurred in bringing this enforcement action.

104.

In addition, Plaintiffs are also entitled to an award of their reasonable attorneys' fees and litigation costs incurred in this action under O.C.G.A. § 13-6-11, because Defendants, by their actions described above, have acted in bad faith, been stubbornly litigious, or have caused Plaintiffs unnecessary trouble and expense.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray that this Court award the following relief:

- 1) Enter an interlocutory injunction enjoining Defendants and their officers, agents, servants, employees, and attorneys, and those persons in active concert or participation with them, during the pendency of this lawsuit, from implementing or taking any action in furtherance of any and all actions taken, proposals approved, or rules approved at the July 12 Unlawful Meeting;
- 2) Declare that any resolution, rule, regulation, ordinance, or other official action of the Board adopted, taken, or made at the July 12 Unlawful Meeting is invalid;

- 3) Impose civil penalties against the Individual Defendants Johnston, Jeffares, and King of \$1,000 each per violation of the Open Meetings Act, payable to Plaintiffs;
- 4) Award Plaintiffs their reasonable attorneys' fees, expenses, and other litigation costs incurred in bringing this action; and
- 5) Grant Plaintiffs any such further relief as the Court deems just and appropriate.

Respectfully submitted, this 18th day of July, 2024.

/s/ Sarah Brewerton-Palmer

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Counsel for Plaintiff American Oversight

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

AMERICAN OVERSIGHT and JOHN DOE,

Plaintiffs,

v.

THE GEORGIA STATE ELECTION BOARD; JANICE JOHNSTON, in her individual capacity and official capacity as a Member of the Georgia State Election Board; RICK JEFFARES, in his individual capacity and official capacity as a Member of the Georgia State Election Board; JANELLE KING, in her individual capacity and official capacity as a Member of the Georgia State Election Board; JOHN FERVIER, in his official capacity as the Chairman of the Georgia State Election Board; SARA TINDALL GHAZAL, in her official capacity as a Member of the Georgia State Election Board;

Defendants.

CIVIL ACTION FILE NO. _____

**VERIFICATION OF COMPLAINT FOR
INJUNCTIVE RELIEF, DECLARATORY RELIEF, AND DAMAGES**

I, Chioma Chukwu, state under oath that I have reviewed Plaintiff American Oversight's Complaint for Injunctive Relief, Declaratory Relief, and Damages in the above-captioned matter. The statements contained therein are true and correct based on my personal knowledge and based upon the information currently available to me.



Chioma Chukwu
Interim Executive Director
American Oversight

Sworn to and subscribed before me

This 18th day of July 2024.

[Signature]
Notary Public

My Commission Expires: 10/13/27



RETRIEVED FROM DEMOCRACYDOCKET.COM

EXHIBIT A

RETRIEVED FROM DEMOCRACYDOCKET.COM



State Election Board

Thursday, July 11, 2024

As provided in O.C.G.A. § 21-2-30 (e), along with Board Members Dr. Jan Johnston and Janelle King, I hereby call a meeting of the State Election Board to finish the unfinished agenda items from the Tuesday, July 9th State Election Board meeting. The meeting will be conducted on Friday, July 12, 2024 at 4:00 p.m. in Room 341 at the Georgia State Capitol Building in Atlanta, Georgia.

rk 7/11/2024 3:20 PM

Mr. Rick Jeffares

Dr. Janice Johnston (Signed with Express Permission) *RJ*

Dr. Janice Johnston

Ms. Janelle King (Signed with Express Permission) *RJ*

Ms. Janelle King

EXHIBIT B

RETRIEVED FROM DEMOCRACYDOCKET.COM



July 15, 2024

VIA EMAIL

Chairman Fervier & Members Tindall Ghazal,
Johnston, Jeffares, & King
2 MLK Jr. Drive
Suite 802 Floyd West Tower
Atlanta, Georgia 30334

Dear Chairman Fervier, Mrs. Tindall Ghazal, Dr. Johnston, Mr. Jeffares, & Mrs. King:

We write with grave concern regarding the improperly-noticed, unlawfully-conducted meeting of the State Election Board on Friday, July 12, 2024. For the reasons set forth below, the meeting violated numerous provisions of Georgia law, and the two resolutions that the members present at that meeting purported to adopt have no binding legal effect. American Oversight and our partners in Georgia may pursue legal action if the Board does not promptly and publicly clarify that the sham meeting violated Georgia law and that the rules it purported to adopt are null and void.

Background

As you know, the Board's July 9 meeting did not complete all items on its agenda. After a lengthy period of public comment, Chairman Fervier recessed the meeting and announced, consistent with O.C.G.A. § 21-2-30, that it would reconvene on July 10. The Board issued a "Notice of Continued Meeting" stating that "Notice is hereby given that the Georgia State Election Board will be continuing today's meeting (Tuesday, July 9) to tomorrow, Wednesday, July 10, 2024, at 9:00 A.M. . . . The purpose of the meeting is to continue addressing the items from the agenda for the meeting held on July 9, 2024."

However, on July 10, no quorum was present. Chairman Fervier informed those present that the meeting would be rescheduled but would not be held that same week. The Board issued a public notice stating that "Notice is hereby given that today's meeting of the State Election Board will be postponed. A future date will be set and announced as soon as possible."

According to credible sources, Chairman Fervier subsequently sought and received oral guidance from the Attorney General's office on how to properly reschedule the meeting and was told he would need to provide seven days' legal public notice and that the meeting would need to be available to the public (e.g., livestreamed). This, however, did not happen. Instead, on Thursday, July 11, Members Jeffares, Johnston, and King circulated by means unknown what purported to be a "notice" under O.C.G.A. § 21-2-30(e) for a Board meeting at 4:00pm on Friday, July 12 "to finish the unfinished agenda items from the Tuesday, July 9th State Election Board meeting." This "notice" was not posted to the Secretary of State's website (where Board



notices are typically posted) nor through the notifications@sos.ga.gov email listserv, which routinely provides updates regarding Board meeting schedules.

According to reports, that afternoon, the attorney general's office sent an email to all Board members warning that the July 12 meeting could violate the Open Meetings Act. As indicated in the reports, the email suggested that the attorney general's office could not readily identify any special circumstances warranting an emergency meeting not subject to standard Open Meetings Act notice requirements and invited the Board members to "please let me know if there's an actual emergency I'm unaware of."

Nevertheless, on July 12, members King and Jeffares purported to convene a Board meeting in the State Capitol Building. Member Johnston joined by video. At this ostensible meeting, these three Board members purported to adopt two new rules, one of which (183-1-12-.21) had not been on the agenda on July 9 and, to our knowledge, had never been made public before—or even during—the July 12 event.

Violations of Georgia law

The July 12 purported meeting violated numerous provisions of Georgia law, including but not limited to the following:

- The purported meeting was not properly convened under O.C.G.A. § 21-2-30.
- The purported meeting was not properly noticed or conducted under the Open Meetings Act, O.C.G.A. §§ 50-14-1 *et seq.*
- The Board lacked a physical quorum at the purported meeting in violation of O.C.G.A. § 21-2-30(d).
- The purported adoption of two rules (one of which had not been published on any agenda) violated O.C.G.A. § 50-13-4.

Consequently, whatever happened at 4:00pm on July 12 was no meeting of the Georgia State Election Board, and the "rules" that the individual members purported to adopt have no legal force, validity, or effect.

American Oversight and our partners in Georgia reserve the right to pursue legal action if the Board does not publicly, and **no later than Wednesday, July 17**, clarify that the sham meeting violated Georgia law and that the rules it purported to adopt are legally null and void.

Sincerely,

/s/ Katherine M. Anthony

Katherine M. Anthony, Deputy Chief Counsel
American Oversight

