

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

AMERICAN OVERSIGHT and )  
JOHN DOE, )  
Plaintiffs, )

v. )

CIVIL ACTION  
FILE NO. 24cv009124

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. )

**DEFENDANTS' MOTION TO DISMISS**  
**PLAINTIFFS' COMPLAINT**  
**AND BRIEF IN SUPPORT**

COME NOW Defendants, by and through counsel, and moves this  
Court to dismiss Plaintiffs' Complaint. The Complaint should be dismissed

pursuant to O.C.G.A. § 9-11-12(b)(6) because the Complaint fails to state a claim upon which relief can be granted.

## INTRODUCTION

Though Plaintiffs purport to raise claims against Defendants for violations of the Georgia Open Meetings Act (O.C.G.A. § 50-14-1 *et seq.*) related to an effort by three members of the Georgia State Elections Board (“SEB”) to conduct a meeting on July 12, 2024, Plaintiffs’ own averment that the July 12 gathering was in fact “no meeting of the Georgia State Election Board” is fatal to these claims. (Complaint, Exhibit B, p. 2).

In order to pursue a claim for a violation of the Open Meetings Act, Plaintiffs must allege that a “meeting” subject to the requirements of the Open Meetings Act has taken place. They have alleged the opposite. A “meeting” subject to the Open Meetings act is one that, among other things, involves a “gathering of a quorum of the members of the governing body of an agency... .” O.C.G.A. § 50-14-1(a)(3)(A)(i). Plaintiffs have expressly alleged that the SEB members’ efforts to conduct such a meeting failed due to lack of an in-person quorum. These judicial admissions that the July 12 gathering was not a gathering of a quorum of the members of the SEB mean that the

Open Meetings Act has no applicability to the July 12 gathering, and their claims for violation of that Act must therefore be dismissed.

### STATEMENT OF FACTS

On July 9, 2024, the SEB held a regularly scheduled meeting.

Complaint, ¶ 31. At the end of the day, several items that had been on the meeting agenda still had not been addressed. *Id.*, ¶ 35. The SEB Chairman, John Fervier, recessed the meeting and announced that the Board would reconvene the next morning (July 10) at 9:00 a.m. *Id.*

On the morning of July 10, only two SEB members (Chairman Fervier and member Sara Tindall Ghazal) appeared in person. The three remaining SEB members (Janice Johnston, Rick Jeffares and Janelle King) did not attend in person but each planned to participate via phone. *Id.* at 35, 37. However, Chairman Fervier determined that the lack of a quorum of members present in person prevented the Board from convening, and he therefore informed meeting attendees that the meeting would have to be rescheduled. *Id.* at ¶ 38.

On July 11, 2024, members Jeffares, Johnston and King prepared a meeting notice calling “a meeting of the State Election Board to finish the unfinished agenda items from the Tuesday, July 9 State Election Board

meeting.” *Id.* at ¶ 49. The notice stated that the meeting would occur on Friday, July 12, 2024 at 4:00 p.m. in Room 341 of the Georgia State Capitol Building. *Id.*

On July 12, 2024 at 4:00 p.m., Defendants Jeffares and King appeared in Room 341 of the Georgia State Capitol Building. *Id.* at ¶ 61. Defendant Johnston did not appear in person, but appeared by video. *Id.* at ¶ 62. Plaintiffs allege that a quorum must be present in person to conduct a meeting under the Open Meetings Act, and that member Johnston’s video participation was not sufficient to satisfy the quorum requirements. *Id.* at ¶¶ 79, 84.

Plaintiffs allege that at the July 12 gathering, Defendants Jeffares, Johnston and King purported to vote on two administrative rules. Complaint, Exhibit B, p. 2. S, the SEB members unanimously agreed that these purported votes would have no effect, and on July 30, 2024, the SEB convened to ratify the actions taken during the July 9, 2024 meeting, and continue all remaining business to a meeting scheduled for August 6, 2024<sup>1</sup>.

---

<sup>1</sup> See [https://sos.ga.gov/sites/default/files/2024-07/Summary\\_7-9-30-2024.pdf](https://sos.ga.gov/sites/default/files/2024-07/Summary_7-9-30-2024.pdf).

## ARGUMENT AND CITATION OF AUTHORITIES

### **I. Plaintiffs Fail to State a Claim Upon Which Relief May Be Granted.**

In Georgia, a motion to dismiss for failure to state a claim pursuant to O.C.G.A. § 9-11-12(b)(6) should be granted if “(1) the allegations of the complaint disclose with certainty that the claimant would not be entitled to relief under any state of provable facts asserted in support thereof; and (2) the movant establishes that the claimant could not possibly introduce evidence within the framework of the complaint sufficient to warrant a grant of the relief sought.” *Anderson v. Flake*, 267 Ga. 498, 501 (1997) (internal footnote omitted).

Here, even under the most liberal construction of the Complaint, Plaintiffs fail to state a claim. See *Charles H. Wesley Educ. Found. Inc. v. State Election Bd.*, 282 Ga. 707, 708 (2007); *Luke v. Dept. of Natural Res.*, 270 Ga. 647 (1999).

### **II. Plaintiffs’ Complaint Fails to Allege That the July 12, 2024 Gathering Was a “Meeting” Within the Meaning of the Open Records Act.**

In order to state a claim for violations of the Open Meetings Act, Plaintiffs must allege that a “meeting” requiring compliance with the Act’s provisions took place. Here, Plaintiffs’ Complaint does not simply fail to

allege that the July 12 gathering was a “meeting” subject to the Act’s requirements; instead, Plaintiffs expressly aver that the July 12 gathering was **not** a meeting under the Act. Complaint, Exhibit B, p. 2 (“[W]hatever happened at 4:00 pm on July 12 **was no meeting of the Georgia State Election Board...**)(emphasis added). The failure to allege that the July 12 gathering was a “meeting” as defined by the Act (and the express assertion to the contrary) are fatal to Plaintiff’s claim that Defendants somehow violated the Open Meetings Act, and Plaintiffs’ Complaint must therefore be dismissed.

The Act defines a “meeting” as:

- (i) The 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; or
- (ii) The gathering of a quorum of any committee of the members of the governing body of an agency or a quorum of any committee created by the governing body at which any official business, policy, or public matter of the committee is formulated, presented, discussed, or voted upon.

O.C.G.A. § 50-14-1(a)(3)(A).

The requirements of the Open Meetings Act with regard to public access, due notice, posting and agendas all apply only to meetings as defined by O.C.G.A. § 50-14-1(a)(3)(A). *See* O.C.G.A. § 50-14-1(b)(1); *Claxton Enter. v. Evans County Bd. of Comm'rs*, 249 Ga. App. 870, 873 (2001) (“The Act applies

to all "meetings" of such entities and defines meeting to include: "the gathering of a quorum of the members of the governing body of an agency or of any committee . . . at a designated time and place . . . at which official action is to be taken.")

Plaintiffs have alleged that because only two members of the SEB were physically present at the July 12, 2024 gathering, that there was no quorum present *See* Complaint, ¶¶ 79, 84. *See also* Complaint, Exhibit B, p. 2 (“What happened at 4:00pm on July 12 was no meeting of the Georgia State Election Board...”). These statements are admissions in judicio and are conclusive against any claim by Plaintiffs that the July 12 gathering was a “meeting” to which the Open Meetings Act Applies. *See generally Ga.-Pacific v. Fields*, 293 Ga. 499, 501 (2013) (admissions or allegations appearing in pleadings are treated as admissions in judicio and conclusive of the facts contained therein); *Kensington Partners v. Beal Bank Nev.*, 311 Ga. App. 196, 196 (1) (2011) (“It is well established that a party may make admissions in judicio in their pleadings, motions and briefs. [Cit.]”) (punctuation omitted).

Both the plain text of the Open Meetings Act and interpretive case law make it clear that the Open Meetings Act applies only to gatherings at which a quorum of voting members of government boards and agencies are present.

The Open Meetings Act is not intended to encompass every gathering at which state officials may be present; it applies only to meetings of agencies and boards that “are empowered to act officially for the State and at which such official action is taken. *McLarty v. Board of Regents*, 231 Ga. 22, 23 (1973). It applies only to meetings at which the members present have “authority to make governmental decisions and act for the State,” and 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.” *Id.*

Because there is “no compelling reason to require public meetings” of groups that can “take no official action” (*Id.* at 23), the Open Meetings Act does not apply to meetings of voting Boards and agencies at which a quorum of its members is not present. *See Lue v. Eady*, 297 Ga. 321, 321 (2015). In *Lue*, the court found that because a city’s charter defined a quorum as a meeting of four councilmembers and gave the mayor only limited voting power, a meeting of three councilmembers plus the mayor “does not constitute a quorum of the city council and is not a meeting that is subject to the Open Meetings Act.” *See also Philips v. Hawthorne*, 269 Ga. 9, 11 (1998)(petitions to recall public officials for alleged violations of Open



Meetings Act were legally insufficient where they failed to specify that a quorum was present).

Because Plaintiffs fail to allege that a quorum was present at the September 12 meeting, instead alleging that a quorum was *not* present, they have failed to state a claim for violations of the Open Meetings Act. As all claims raised in the Complaint stem from alleged violations of the Open Meetings Act, the entire Complaint must be dismissed as to all Defendants.

### CONCLUSION

For the foregoing reasons, Plaintiffs Complaint must be dismissed in its entirety.

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

Respectfully submitted,

CHRISTOPHER M. CARR                      112505  
Attorney General

BRYAN K. WEBB                                743580  
Deputy Attorney General

/s/ Elizabeth T. Young  
ELIZABETH T. YOUNG                      707725  
Senior Assistant Attorney General

Please address all  
communications to:

Elizabeth T. Young  
Georgia Department of Law  
40 Capitol Square, SW  
Atlanta, Georgia 30334  
Telephone: (404) 458-3425  
Email: [eyoung@law.ga.gov](mailto:eyoung@law.ga.gov)

*Counsel for Defendants*

RETRIEVED FROM DEMOCRACYDOCKET.COM

## CERTIFICATE OF SERVICE

I hereby certify that I have this day electronically filed the foregoing **MOTION TO DISMISS** with the Clerk of Court using the Odyssey e-filing system, which will send notification of such filing to the parties of record via electronic notification.

Dated: September 18, 2024.

/s/ Elizabeth Young

Elizabeth Young

Senior Assistant Attorney General

RETRIEVED FROM DEMOCRACYDOCKET.COM