

IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

GARLAND FAVORITO, MICHAEL
SCUPIN, TREVOR TERRIS, SEAN
DRAIME, CAROLINE JEFFORDS,
STACEY DORAN, CHRISTOPHER PECK,
ROBIN SOTIR, and BRANDI TAYLOR,

Petitioner(s),

v.

ALEX WAN, VERNETTA KEITH
NURIDDIN, KATHLEEN RUTH, AARON
JOHNSON, AND MARK WINGATE, in
their individual capacities,

Respondent(s).

CIVIL ACTION FILE NO.:
2020CV343938

**THIRD PARTY CATHELENE “TINA” ROBINSON’S OPPOSITION TO
PETITIONERS’ MOTION TO CHANGE VENUE FOR AUDIT**

COMES NOW, Fulton County Clerk of Superior and Magistrate Courts, Cathelene “Tina” Robinson (the “Clerk”), and respectfully files this Opposition to Petitioners Caroline Jeffords and Robbin Sotir’s Motion to Change Venue for Audit (“Motion”) as follows:

On June 21, 2021, Caroline Jeffords and Robin Sotir (collectively, “Petitioners”) filed a Motion to Change Venue for the Audit with respect to the Order to Unseal. [*See* Order, entered May 21, 2021]. In support of their Motion, Petitioners cite recent security concerns related to the warehouse where ballots are stored (“Warehouse”), as well as spatial and other requirements that would supposedly necessitate Petitioners’ need to transport the ballots to another location, namely, the Georgia World Congress Center (“GWCC”)¹. As stated to this Court previously, the Clerk

¹ The Clerk is unaware of any provision within the Georgia Elections Code, the Open Records Act, or any other Georgia statute that allows the Petitioners to electronically scan ballots using equipment not authorized by the Secretary of State in order to independently audit or tabulate ballots. Any order issued by the Court should include sufficient safeguards to insulate the Clerk and her staff from prosecution for any alleged violation of State law.

objects to any transport of the ballots to which she is entrusted under Georgia law, and requests that this Court deny Petitioners' request to move the ballots to another location that is outside of her custody and control.

ARGUMENT AND CITATION OF AUTHORITY

Despite the fact that the Court has dismissed the Clerk from this action pursuant to its January 24, 2021 Order, the Clerk retains a right to notice and an opportunity to be heard with respect to the manner of production requested. *See Barham v. City of Atlanta*, 292 Ga. 375, 379, 738 S.E.2d 52, 56 (2013)("A trial court abuses its discretion by enjoining nonparties that did not have a full and fair opportunity to litigate."); *see also S-D RIRA, LLC v. Outback Prop. Owners' Ass'n, Inc.*, 330 Ga. App. 442, 450, 765 S.E.2d 498, 505 (2014)("under Georgia law, once the trial court enjoins a nonparty, 'that nonparty becomes a party with standing to appeal.'")(quoting *Barham v. City of Atlanta*, 292 Ga. 375, 376(1), 738 S.E.2d 52 (2013)).

Petitioners filed a Motion to Change Venue for the Audit, but venue typically refers to the county in which a case is heard. O.C.G.A. § 9-10-93. It is clear from their Motion, however, that Petitioners filed this motion not to change the venue for this lawsuit, but rather, to move the ballots outside the custody and control of the Clerk. In support of the same, Petitioners cite to no authority whatsoever that would permit them to take such actions. Accordingly, and for the reasons set forth in this Opposition, the Clerk requests that this Court deny Petitioners' Motion because: 1) there are no concerns with respect to the security of the ballots at this time; and 2) Georgia law has entrusted the Clerk with preserving these ballots, and the Clerk objects to the removal of these ballots outside of her possession, custody, or control, such that the Clerk's objections surely outweigh any spatial or other concerns relating to Petitioners' request.

I. THE BALLOTS HAVE BEEN AND CONTINUE TO REMAIN SECURE WITH THE CLERK.

In paragraphs 4-16 of Petitioners' Motion, counsel for Petitioners describes a series of security concerns but fails to include *any* evidence to the Motion to substantiate any such claims. Statements made by counsel without a single shred of evidence is not evidence before this Court, and thus, should be disregarded by this Court all together. In other words, unsubstantiated allegations of counsel unsupported by any evidence are not a basis to grant this motion, or any, for that matter. *See Dunn v. Reliable Tractor, Inc.*, 248 Ga.App. 258, 260 (2001) ("It is axiomatic that statements in briefs are not evidence."); *McEntyre v. McRae*, 240 Ga.App. 148 (1999) ("We cannot rely on the factual assertions in McEntyre's brief regarding what transpired during McRae's opening statement. Such factual assertions, unsupported by the appellate record, are not evidence and may not support a ruling by this court."); *Wall v. James*, 358 Ga.App. 121, 124 ("...statements by [a party's] attorney are not evidence."). Thus, there is no evidence before this Court for the Court to consider in making a determination regarding alleged security concerns at the Warehouse. And, as the Court noted at the June 21, 2021 hearing on this matter, the Court has already spoken to the Sheriff and has been reassured that the Warehouse is and continues to be secure².

Nevertheless, the Clerk is aware of her duty to keep the ballots secure. (*See* Exhibit A, Affidavit of Tina Robinson, ¶ 3.) The Clerk shares space with both the Fulton County Sheriff ("Sheriff") and the Fulton County Board of Registration and Elections ("BRE") in the Warehouse. (*See* Exhibit A, Affidavit of Tina Robinson, ¶ 4.) The Warehouse is monitored twenty-four (24) hours a day, seven (7) days a week, including video surveillance. (*See* Exhibit A, Affidavit of Tina Robinson, ¶¶ 5-6.) The events described in Petitioners' Motion are captured on camera, and the video footage directly contradicts statements of counsel for Petitioners. (*See* Exhibit A,

² The Fulton County Sheriff's Office is investigating the allegations raised by counsel for Petitioners.

Affidavit of Tina Robinson, ¶ 7.) Under appropriate circumstances, and after the Sheriff's investigation is complete, the Clerk can provide the video evidence to this Court, if necessary.

As stated, however, despite there being actual evidence contradicting counsel for Petitioners' statements in the Motion, the statements in Petitioners' Motion should not be considered by this Court because they are unsubstantiated and unsupported by any evidence.

II. THE SPATIAL AND OTHER CONCERNS CITED BY PETITIONERS DO NOT OUTWEIGH THE INTEGRITY OF THE BALLOTS THAT THE STATE OF GEORGIA HAS ENTRUSTED TO THE CLERK.

The second set of concerns raised in Petitioners' Motion are the spatial concerns related to Petitioners' "audit". In addition to the spatial concerns, Petitioners state that they would require six to seven weeks to conduct said audit, in addition to a video surveillance system, security officers, air conditioning, a secure parking lot, and more.

As an initial matter, Petitioners fail to cite to any authority whatsoever that would entitle them to remove ballots outside of the custody and control of the Clerk. As stated in O.C.G.A. § 21-2-500, "the clerk shall hold such ballots and other documents under seal, unless otherwise directed by the superior court, for at least 24 months...Such ballots and other documents shall be preserved in the office of the clerk..." As pointed out by Petitioners Jeffords and Sotir in their Opposition to Fulton County's Motion to Dismiss (p. 3), unsealing of ballots is a tool to "help the State ferret out 'fraudulent and corrupt' electoral practices." These Petitioners are not the State, and the State has already certified the November 3, 2020 election results and de-bunked the very same misinformation and allegations that form the basis of Petitioners' allegations.³

³ The Petition relies, in part, on affidavits submitted in *Wood v. Raffensperger*, Case No. 1:20-cv-04651-SDG (N.D. Ga.) (Motion for Injunction Denied) which alleged that the November 3, 2020 election was conducted in an unconstitutional manner; affirmed in *Wood v. Raffensperger*, 981 F.3d 1307 (11th Cir. 2020).

Furthermore, Georgia law is clear that only authorized elections officials are legally permitted to verify and tabulate ballots. *See, e.g.*, O.C.G.A. §§ 21-2-498. There are serious privacy and security risks with allowing Petitioners to dictate access to, and storage of, ballots. The Warehouse has 24/7 security, a secure parking lot, security officers, air conditioning, and a 24-hour video surveillance system already in place. (*See Exhibit A, Affidavit of Tina Robinson.*) Thus, not only are Petitioners complaints regarding spatial and other concerns unreasonable, but Petitioners fail to provide *any reasons whatsoever* why the request to transport the ballots to GWCC outweighs the integrity of the ballots entrusted to the Clerk under Georgia law.

CONCLUSION

In light of the foregoing, Petitioners' Motion to Change Venue for the Audit should be denied.

Respectfully submitted, this 21st day of July, 2021.

OFFICE OF THE COUNTY ATTORNEY

s/ Gagan Vaideeswaran

Kaye Woodard Burwell

Georgia Bar No. 775060

Kaye.Burwell@fultoncountyga.gov

Dominique A. Martinez

Georgia Bar No. 430323

Dominique.Martinez@fultoncountyga.gov

Gagan Vaideeswaran

Georgia Bar No. 292708

Gagan.Vaideeswaran@fultoncountyga.gov

Attorneys for Respondent, Fulton County

Clerk of Superior and Magistrate Courts,

Cathelene "Tina" Robinson

141 Pryor Street, S.W.

Suite 4038

Atlanta, Georgia 30303

Telephone: (404) 612-0246

Facsimile: (404) 730-6324

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Petitioner(s),

v.

FULTON COUNTY; FULTON COUNTY
BOARD OF REGISTRATION AND
ELECTIONS; and FULTON COUNTY
CLERK OF SUPERIOR AND
MAGISTRATE COURTS,

Respondent(s).

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CERTIFICATE OF SERVICE

I hereby certify that I have this day electronically filed and served THIRD PARTY CATHELENE “TINA” ROBINSON’S OPPOSITION TO PETITIONERS’ MOTION TO CHANGE VENUE FOR AUDIT using the Odyssey e-File GA system, which automatically sends email notification of such filing to all attorneys of record and which constitutes effective service upon all attorneys of record, and by statutory email in accordance with O.C.G.A. § 9-11-5 (f)(1)(B) as follows:

Todd Harding
Maddox & Harding, LLC
113 E. Solomon Street
Griffin, GA 30223
maddoxharding@yahoo.com

Robert David Cheeley
Cheeley Law Group, LLC
2500 Old Milton Parkway
Suite 200

Alpharetta, Georgia 30009
bob@cheeleylawgroup.com

Paul C. Kunst
Paul C. Kunst, PC
941 Thomaston Street
Barnesville, Georgia 30204
341quicklube@bellsouth.net

William Charles Bundren
Texas State Bar No. 03343200
Bundren Law Group, PLLC
2591 Dallas Parkway, Suite 300
Frisco, Texas 75034
charles@bundrenlaw.net

Donald F. Samuel
Garland, Samuel & Loeb, P.C.
3151 Maple Drive, N.E.
Atlanta, GA 30305
dfs@gsllaw.com

Amanda Clark Palmer
Garland, Samuel & Loeb, P.C.
3151 Maple Drive, N.E.
Atlanta, GA 30305
aclark@gsllaw.com

Charles David Joyner
C. David Joyner PC
1305 Mall of Georgia Blvd Suite 130
Buford, GA 30519-8146
djoyner@cdavidjoynerpc.com

Steven Rosenberg
Office of the Fulton County Attorney
141 Pryor Street, S.W.
Suite 4038
Atlanta, Georgia 30303
steven.rosenberg@fultoncountyga.gov

Cheryl Ringer
Office of the Fulton County Attorney
141 Pryor Street, S.W.
Suite 4038
Atlanta, Georgia 30303

cheryl.ringer@fultoncountyga.gov

David R. Lowman
Office of the Fulton County Attorney
141 Pryor Street, S.W.
Suite 4038
Atlanta, Georgia 30303
david.lowman@fultoncountyga.gov

This 21st day of July, 2021.

/s/ Gagan Vaideeswaran _____
Gagan Vaideeswaran
Georgia Bar No. 292708
Gagan.Vaideeswaran@fultoncountyga.gov

Office of the Fulton County Attorney
141 Pryor Street, S.W.
Suite 4038
Atlanta, Georgia 30303
Telephone: (404) 612-0246

EXHIBIT A

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AFFIDAVIT OF CATHELENE "TINA" ROBINSON

COMES NOW, Cathelene "Tina" Robinson having been duly sworn by an officer authorized to administer oaths, and states as follows:

1.

I am more than twenty-one (21) years old and suffer from no legal disabilities. I have personal knowledge of the facts stated in this Affidavit. I give this Affidavit in support of Third Party Fulton County Clerk of Superior and Magistrate Courts' Opposition to Petitioners Caroline Jeffords and Robbin Sotir's Motion to Change Venue for Audit ("Motion").

2.

I am currently the Fulton County Clerk of Superior and Magistrate Courts (the "Clerk").

3.

Pursuant to O.C.G.A. § 21-2-500, the Fulton County Board of Registration and Elections (“BRE”) transferred to me in sealed containers, identified as containing the used and void ballots, and the stubs of the ballots used pertaining to the November 2020 General Election, which I hold and preserve under seal for at least twenty-four (24) months. I understand my duty to preserve these ballots and other documents under seal.

4.

Presently, the ballots and other documents from the November 2020 General Election are stored in a warehouse (“Warehouse”) where I share space with the BRE and the Fulton County Sheriff’s Office (“Sheriff’s Office”).

5.

The ballots and other documents I received are protected by various security measures that are in place. For instance, there are video cameras installed around the Warehouse to provide video surveillance 24 hours a day, 7 days a week.

6.

It is my understanding that the Sheriff’s Office is providing 24-hour security at the Warehouse.

7.

The events described in Petitioners’ Motion are captured on camera, and the video footage directly contradicts statements of counsel for Petitioners.

I declare under penalty of perjury that the foregoing is true and correct.

Executed in Fulton County, Georgia this 21st day of July, 2021.

Cathelene Robinson
Cathelene "Tina" Robinson

SWORN to and subscribed
before me this 21st day
of July, 2021.

Marvin Wooley
Notary Public
My commission expires: 1/21/2023

