

IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

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

Petitioners,

v.

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

Respondents.

CIVIL ACTION NO.
2020CV343938

**RESPONDENT FULTON COUNTY BOARD OF REGISTRATION
AND ELECTIONS' EMERGENCY MOTION FOR
PROTECTIVE ORDER AND EXPEDITED RULING**

COMES NOW, Respondent FULTON COUNTY BOARD OF
REGISTRATION AND ELECTIONS ("BRE"), which files this emergency motion
for protective order and expedited ruling pursuant to OCGA 9-11-26(c) and shows
the Court as follows:

FACTS

On December 23, 2020, Petitioners filed the original Complaint against several Respondents, not including the BRE, seeking a declaratory judgment and injunctive relief. Subsequently, Petitioners filed a motion to substitute the Respondent BRE (among others) as a Respondents. Neither of these two complaints was ever served on the BRE.

When respondent BRE learned that meetings and hearings were being scheduled, it made a special appearance through undersigned counsel and filed a motion to dismiss on the ground that the BRE was improperly included in the action based on sovereign immunity; and that no proceedings should occur until the BRE was properly served and the motion to dismiss was adjudicated.

That motion is still pending, scheduled to be heard on June 21. Petitioners have now served deposition notices, setting depositions prior to the expiration of 30 days from service of the complaint and while the motion to dismiss is pending. The first of several depositions had been noticed for June 10, but by agreement of counsel has been delayed until the week of June 14, 2021. This Court should grant a protective order, instructing that the depositions cannot go forward as scheduled, but must wait until Respondent BRE is served¹ and has its full 30 days from the date of

¹ The BRE counsel, Don Samuel, advised Petitioners' counsel that the BRE would accept service via email to counsel's office. Still, however, service of the Complaint and Summons has not occurred as of 2:00 pm today, June 9, 2021.

service. Moreover, in light of the Motion to Dismiss that has been filed (and will be renewed after proper service), Respondent BRE is entitled to a stay. Since the first depositions are scheduled for the week of June 14, 2021, Respondent BRE asks that the Court's determination be expedited so an Order can be issued in advance of the scheduled depositions. Respondent BRE attempted to resolve this matter without Court intervention, but it was not successful. (See attached Certificate of Counsel.)

ARGUMENT AND CITATIONS OF AUTHORITY

OCGA 9-11-26(c) provides that: Upon motion by a party ... and for good cause shown, the court in which the action is pending ... may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression or undue burden or expense, including one or more of the following:

- (1) That the discovery not be had;
- (2) That the discovery may be had only on specified terms and conditions, including a designation of the time or place....”

This Court should order that Petitioners not be permitted to take the depositions:

- (1) until 30 days expires from service of the Complaint pursuant to OCGA § 9-11-30(a), which requires a 30-day period following service of the Complaint prior to the initiation of discovery; and

(2) prior to Respondent BRE being heard on its Motion to Dismiss since this matter is and will be stayed pursuant to OCGA § 9-11-12(j) until the Motion to Dismiss is adjudicated.

WHEREFORE, the Court should grant a protective order pursuant to O.C.G.A. 9-11-26(c).

RESPECTFULLY SUBMITTED,

GARLAND, SAMUEL & LOEB, P.C.

/s/ Donald F. Samuel
DONALD F. SAMUEL, ESQ.
Georgia State Bar No.: 624475

/s/ Amanda Clark Palmer
AMANDA CLARK PALMER
Georgia State Bar No.: 130608

Counsel for the Fulton County Board of
Registration and Elections

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aclark@gslaw.com

CERTIFICATE OF SERVICE

I hereby certify that I have electronically filed this RESPONDENT FULTON COUNTY BOARD OF REGISTRATION AND ELECTIONS' EMERGENCY MOTION FOR PROTECTIVE ORDER AND EXPEDITED RULING using the ODYSSEY eFileGA system which will automatically send email notification of such filing to all attorneys and parties of record.

This the 9th day of June, 2021.

GARLAND, SAMUEL & LOEB, P.C.

/s/ Donald F. Samuel

DONALD F. SAMUEL, ESQ.

Georgia State Bar No.: 624475

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PROPOSED ORDER

For good cause shown, the Respondent Fulton County Board of Registration and Elections' Motion for a Protective Order pursuant to OCGA § 9-11-26(c) is granted.

The discovery in this case is stayed – including all depositions – until this matter can be considered at the June 21 hearing and until further order of this court on June 21, 2021.

HONORABLE BRIAN J. AMERO

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CERTIFICATE OF COUNSEL

Comes Now, Don Samuel, counsel for the Fulton County Board of Registration and Elections, and, pursuant to Uniform Superior Court Rule 6.4 shows as follows:

1. On Friday, June 4, 2021, shortly after receiving Petitioners' notices of depositions scheduled for several dates in June (beginning June 10, now delayed until the week of June 14), counsel called counsel for the Petitioners, Robert Cheeley.

2. During this call, undersigned counsel asked whether the Petitioners would consent to delaying the depositions until the Motion to Dismiss was adjudicated. Mr. Cheeley responded that he would respond to this request on Monday, June 7.
3. Undersigned counsel also told Mr. Cheeley that it is the Respondents' position that not only does the pending Motion to Dismiss necessitate the postponement of discovery, but the fact that the Complaint has never been served on the Respondent BRE also necessitates postponement of discovery.
4. Undersigned counsel told Mr. Cheeley that undersigned counsel would accept service of the Complaint via email.
5. On June 7, Mr. Cheeley and undersigned counsel further discussed this matter and Mr. Cheeley proposed a plan to resolve the dispute regarding discovery. That plan was not acceptable to the Respondents.
6. Therefore, the parties have attempted in good faith to resolve the discovery dispute but the court's intervention is now necessary. Respondents contend that a Protective Order should be granted on an expedited basis and this matter should be placed on the June 21 agenda.

RESPECTFULLY SUBMITTED,

GARLAND, SAMUEL & LOEB, P.C.

/s/ Donald F. Samuel

DONALD F. SAMUEL, ESQ.

Georgia State Bar No.: 624475

Counsel for the Fulton County Board of
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