FULTON COUNTY SUPERIOR COURT
STATE OF GEORGIA

STATE OF GEORGIA, V. SIDNEY KATHERINE POWELL ET AL., DEFENDANTS.	CASE NO. 23SC188947 JUDGE MCAFEE

POWELL'S MOTION IN LIMINE ON THE LEGAL ISSUE OF AUTHORITY

Powell files this Motion in Limine to request the Court decide the issue of authority before this case is presented to a jury because it is a pure question of law. Coffee County officials' authority is plain on the face of multiple Georgia statutes and regulations. Coffee County had possession and control over the machines. Their authority is a question of law that is crucial to counts 32-37.[1]

Georgia law gives counties authority over voting machines. Local governing authorities "shall provide voting machines in good working order." Ga. Code. Ann. § 21-2-323(d). "Each county shall be responsible for maintaining all components of the voting system" and "shall assume the responsibility for repair, maintenance, and upkeep of all system components." Ga. Comp. R. & Regs. 183-1-12-.14(a).[2] Counties

[1] Even if the Coffee County officials could not give authority, the State still must prove that the Defendants had actual knowledge of that fact as required by the statutes alleged in Counts 32 through 37. This determination would be a question of fact.

[2] *See also* Ga. Comp. R. & Regs. 183-1-12-.04 ("After the end of the initial warranty period for state owned voting system components, the county shall be responsible for maintaining an appropriate warranty or otherwise be responsible for maintenance and upkeep of such devices.")

are responsible for the "technical support for the installation, set up, and operation" of voting equipment. Ga. Code Ann. § 21-2-300. Consistent with that authority, counties are not allowed to use voting machines unless they "register or record correctly and accurately every vote cast." Ga. Code Ann. § 21-2-322.

County superintendents have the responsibility to make sure that voting devices are "properly recording votes." Ga. Code Ann. § 21-2-379.25(a). Election superintendents are authorized to adjust voting machines so that they are in good working order. Ga. Code Ann. § 21-2-327(a). Where voting systems are inoperable or not working correctly, the custodian or superintendent is required to repair the voting system or replace the voting system. Ga. Code Ann. § 21-2-371(b). If voting systems malfunction, the election supervisor must "immediately arrange for the repair of the voting system component or shall provide a replacement component as soon as practicable." Ga. Comp. R. & Regs. 183-1-12-.11(11)(a). In case of "any malfunction or problem with any voting system component, the county election superintendent shall document the problem and its resolution." Ga. Comp. R. & Regs. 183-1-12-.14(b). Moreover, superintendents may not "prevent free access to and examination of all voting machines which are to be used at the primary or election by any of the duly appointed representatives or candidates." Ga. Code Ann. § 21-2-327(e). Voting machines "may be opened and all the data and figures therein" may be examined under Ga. Code. Ann. 21-2-457. The State has cited nothing to contradict the authority vested in the counties.

Legal authorization is a question of law for the Court. For example: "The constitutionality of a statute presents a question of law." *Atlanta Oculoplastic Surgery, P.C. v. Nestlehutt*, 286 Ga. 731, 732–33, 691 S.E.2d 218, 221 (2010). "It is an elementary rule of statutory construction that, absent clear evidence that a contrary meaning was intended by the legislature, words in a statute should be assigned their ordinary, logical, and common meanings." *Glanton v. State*, 283 Ga. App. 232, 233–34, 641 S.E.2d 234, 235 (2007). "Whether a legal duty exists is a question of law for the court." *Rasnick v. Krishna Hosp., Inc.*, 302 Ga. App. 260, 263, 690 S.E.2d 670, 673 (2010), aff'd, 289 Ga. 565, 713 S.E.2d 835 (2011). "[T]he identification of those officials whose decisions represent the official policy of the local governmental unit is itself a legal question to be resolved by the trial judge *before* the case is submitted to the jury." *Jett v. Dallas Indep. Sch. Dist.*, 491 U.S. 701, 737 (1989).

> "Municipalities cannot be expected to predict how courts or juries will assess their 'actual power structures,' and this uncertainty could easily lead to results that would be hard in practice to distinguish from the results of a regime governed by the doctrine of respondent superior. It is one thing to charge a municipality with responsibility for the decisions of officials invested by law, or by a 'custom or usage' having the force of law, with policymaking authority. It would be something else, and something inevitably more capricious, to hold a municipality responsible for every decision that is perceived as 'final' through the lens of a particular factfinder's evaluation of the city's 'actual power structure.'"
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> *City of St. Louis v. Praprotnik*, 485 U.S. 112, 125 n. 1 (1988).

"The final policymaker theory of liability provides a method for establishing local governmental liability where an individual vested with ultimate, non-

reviewable decision-making authority for the challenged action or policy has approved or implemented the unconstitutional action at issue. To determine if someone is a final policy maker, [courts] look not only to state and local positive law, but also 'custom and usage having the force of law." *Williams v. Fulton Cnty. Sch. Dist.*, 181 F. Supp. 3d 1089, 1124 (N.D. Ga. 2016) (citation and quotation omitted).

The question as to whether an official has final policy-making authority is a "question of law to be resolved by the trial court judge." *Mandel v. Doe*, 888 F.2d 783, 793 (11th Cir.1989). "[T]he question of whether a state official has been given sufficient authority to be sued under § 1983 is 'a question of state law.'" *Schultz v. Alabama*, 42 F.4th 1298, 1315 (11th Cir. 2022), cert. denied sub nom. *Hester v. Gentry*, 143 S. Ct. 2610 (2023) citing *Pembaur v. City of Cincinnati*, 475 U.S. 469, 483, 106 S.Ct. 1292, 89 L.Ed.2d 452 (1986).

Accordingly, Ms. Powell requests the Court decide as a matter of law that Coffee County officials had authority to allow the forensic imaging of the machines on January 7, 2021, and to conduct the follow-up testing of them later in January.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify the above styled **POWELL'S MOTION IN LIMINE ON THE LEGAL ISSUE OF AUTHORITY** has been served, this day, by electronic mail, upon all counsel who have entered appearances as counsel of record in this matter via the Fulton County e-filing system.

This the 13th day of October 2023.

/s/ Brian T. Rafferty
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