IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

STATE OF GEORGIA,	)	
	)	
vs.	)	**Case No. 23SC188947**
	)	
HARRISON FLOYD,	)	
	)	
DEFENDANT.	)	

DEFENDANT HARRISON FLOYD'S
MOTION FOR CERTIFICATE OF IMMEDIATE REVIEW

COMES NOW, DEFENDANT HARRISON FLOYD, by and through his attorneys of record, who files this Motion for certification of the Court's Order denying reconsideration entered on March 14, 2024, for immediate review pursuant to O.C.G.A § 5-6-34(b).

The Defendant filed his Plea in Bar on October 31, 2023, asserting that the Fulton County District Attorney did not have authority to investigation or presentment authority to bring election-related charges against the Defendant absent a referral from the State Election Board ("SEB"). It is undisputed that no referral was sought nor granted of the SEB. The State filed their response on November 17, 2023, asserting that they did not need such a referral, and that they had concurrent jurisdiction with the SEB. The Defendant filed his reply countering those claims on December 14, 2023. This Court denied the Defendant's Plea in Bar on January 9, 2024, finding that the concurrent jurisdiction existed, despite no authority to be found for such a decision. On January 12, 2024, the Defendant filed for a certificate of immediate review, or in the alternative, a motion to reconsider. This Court denied the Defendant's motion on March 14, 2024, and affirmed its January 9, 2024 order, denying the Defendant's Plea in Bar.

As grounds for this motion, the Defendant Harrison Floyd respectfully shows that a certificate of review is of such importance to the case that immediate review should be had in the Georgia appellate courts. Specifically, an immediate appeal would assist this Court and the Parties in determining the applications of O.C.G.A. § 21-2-35 and O.C.G.A. § 15-12-100. The issues presented in the Defendant's Plea in Bar are issues of first impression in the context of election-related cases, and little case law is on point for guidance. In support of this motion, the Defendant shows the Court the following:

1.

The general rule in Georgia is that "[a]ll parts of a statute should be harmonized and given sensible and intelligent effect, because it is not presumed that the legislature intended to enact meaningless language." Grimes v. Catoosa Cnty. Sheriff's Office, 307 Ga. App. 481, 483-84, 705 S.E.2d 670, 673 (2010). *See also* Berryhill v. Georgia Cmty. Support & Solutions, Inc., 281 Ga. 439, 441 (2006) (courts should give a sensible and intelligent effect to every part of a statute and not render any language superfluous).

2.

Georgia courts further hold that "[a] statute must be construed in relation to other statutes of which it is a part, and all statutes relating to the same subject-matter, briefly called statutes *in pari materia*, are construed together, and harmonized wherever possible, so as to ascertain the legislative intendment and give effect thereto." Tew v. State, 320 Ga. App. 127, 130 (2013).

3.

American jurisprudence holds that the words or text of statutes matter. "[T]he courts must . . . lean in favor of a construction which will render every word operative, rather than one which may make some idle and nugatory." citing Thomas M. Cooley, A Treatise on the Constitutional

Limitations Which Rest upon the Legislative Power of the States of the American Union 58 (1868). See Kungys v. United States, 485 U.S. 759, 778 (1988) (Scalia, J., plurality opinion) (calling it a "cardinal rule of statutory interpretation that no provision should be construed to be entirely redundant.").

4.

Defendant Harrison Floyd asserts that the Court erred in failing to recognize that O.C.G.A. § 21-2-35 is a specific statute that overrides the general provisions of O.C.G.A. § 15-12-100. To be sure, the Fulton County District Attorney ("District Attorney") does have "broad" powers, but in an election-related case, those powers are clearly statutorily limited without a referral from the SEB. Despite this Court's explanation of "harmony" amongst these statutes, to hold that the District Attorney holds concurrent jurisdiction with the SEB, and that a referral from the SEB to the District Attorney is not necessary in election-related cases, renders O.C.G.A. § 21-2-35 absolutely meaningless and superfluous.

5.

The Georgia Legislature has provided concurrent jurisdiction 194 times in particular areas throughout the Georgia Code, yet no mention of "concurrent jurisdiction" is found within O.C.G.A. § 21-2-35. By allowing for concurrent jurisdiction within the Georgia Code that many times, if the Georgia Legislature intended for a District Attorney to have concurrent jurisdiction with the SEB, they know how to state such. By its omission, it is clear that the Georgia Legislature did NOT intend for the District Attorney to act unilaterally, without the SEB's involvement. The text of the statute is clear that the Georgia Legislature intended a referral from the SEB before a District Attorney can take action on a case. Here, no referral was given to the District Attorney. Therefore, the District Attorney usurped the power given to the SEB by the

Georgia Legislature to pursue her own agenda, without any statutory authority to override the SEB.

6.

There is little case law on this particular issue, which renders the subject a case of first impression. There exists a conflict between the applications of O.C.G.A. § 21-2-35 and 15-12-100. The Court's explanation of "harmony" between the statutes fails to reconcile the applications of these statutes. As such, this Court should therefore allow the guidance of the Court of Appeals of Georgia to decide the issue.

Respectfully submitted this the 20th day of March 2024.

HARDING LAW FIRM, LLC

/s/ ***Todd A. Harding***
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CERTIFICATE OF SERVICE

This is to certify that I have this day served the District Attorney of Fulton County, Georgia a true and correct copy of the **DEFENDANT HARRISON FLOYD'S MOTION FOR CERTIFICATE OF IMMEDIATE REVIEW** via electronic transmission through the Odyssey automated system to all counsels of record:

Fani T. Willis, Fulton County DA
136 Pryor St SW
3rd Floor
Atlanta, Georgia 30303

Respectfully submitted this the 20th day of March 2024.

HARDING LAW FIRM, LLC

/s/ *Todd A. Harding*
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