

IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

AMERICAN CIVIL LIBERTIES
UNION FOUNDATION OF
GEORGIA; AMERICAN CIVIL
LIBERTIES UNION FOUNDATION,

Plaintiffs,

v.

STATE OF GEORGIA,

Defendant.

Civil Action No. 26CV007672

STATE OF GEORGIA'S MOTION TO DISMISS
AND BRIEF IN SUPPORT

Defendant State of Georgia submits the following Motion to Dismiss the Verified Complaint Seeking Declaratory and Injunctive Relief and Brief in Support. Plaintiffs American Civil Liberties Union Foundation of Georgia (“ACLU-GA”) and American Civil Liberties Union Foundation (“ACLU”) seek a declaration that the application of O.C.G.A. § 21-2-18 to their provision of *pro bono* legal services would violate Article I, Section I, Paragraph 5 of the Georgia Constitution, and injunctive relief enjoining the application of O.C.G.A. § 21-2-18 as to those legal services.

The General Assembly passed O.C.G.A. § 21-2-18 in order to clarify that the costs of election administration must be borne by state and local governments and to further ensure Georgia’s ban on the outside funding of

election administration. Although the language of O.C.G.A. § 21-2-18 is broad, it is also clear: the statute only prohibits government and election employees from accepting contributions, services, or other things of value “for the purpose of conducting primaries or elections or in support of performing his or her duties[.]” *Id.* § 21-2-18(c).

Plaintiffs allege, but for O.C.G.A. § 21-2-18, that they would provide *pro bono* legal representation for election workers to challenge election laws and workers who are sued due to their work in elections and that their inability to do so violates their First Amendment rights. But although both types of lawsuits may relate to or even arise out of the worker’s employment, the cost of legal representation in these cases is not a cost incurred “*for the purpose of conducting primaries or elections or in support of performing [an election worker’s] duties[.]*” *Id.* § 21-2-18(c) (emphasis added). Put differently, the cost or value of such legal services is not an election administration cost, and O.C.G.A. § 21-2-18 by its terms does not apply. Plaintiffs are simply seeking an advisory opinion from the Court. Because O.C.G.A. § 21-2-18 does not apply to the types of services that Plaintiffs describe in the complaint, Plaintiffs have not pleaded any reasonable or non-speculative uncertainty as to their future conduct. Without such uncertainty, there can be no actual controversy, and without actual controversy, declaratory relief cannot lie.

Furthermore, Plaintiffs do not have a First Amendment interest in whether election officials, especially those involved in litigation in their official capacities, can accept their offers of representations. Although Plaintiffs have a limited First Amendment right to offer their services to prospective clients, O.C.G.A. § 21-2-18 does not implicate those rights. Plaintiffs have no First Amendment rights with respect to election officials litigating in their official capacities. Such officials do not have the unilateral right to select their own counsel, and so Plaintiffs cannot have a First Amendment interest in soliciting them as clients or representing them.

BACKGROUND

In 2023, in order to clarify the “ban [on] the outside funding of election administration in Georgia,” the General Assembly passed O.C.G.A. § 21-2-18 to “prohibit certain local governments and persons from soliciting or accepting donations or other things of value to support the performance of election administration[.]” S.B. 222, 147th Gen. Assemb., Reg. Sess. (Ga. 2023). Section 21-2-18 requires that “[a]ll costs and expenses related to conducting primaries, elections, runoffs, or other undertakings authorized or required by [the Georgia Election Code] shall be paid from lawfully appropriated public funds.” O.C.G.A. § 21-2-18(b). Further, “no county or municipal government, government employee, or election official shall solicit, take, or otherwise accept from any

person a contribution, donation, service, or anything else of value for the purpose of conducting primaries or elections or in support of performing his or her duties[.]” *Id.* § 21-2-18(c). However, O.C.G.A. § 21-2-18 does not apply to “the donation or use of locations for voting purposes, services provided by individuals without remuneration, or goods that have nominal value of less than \$500.00.” *Id.* § 21-2-18(d).

As alleged, Plaintiffs are two civil rights organizations that engage in voting rights advocacy. Compl. ¶ 5. Plaintiffs allege that as part of this advocacy they provide *pro bono* legal services to elections officials, poll workers, and other election workers. *Id.* ¶ 6.

On May 27, 2026, Plaintiffs filed the complaint. The complaint alleges that O.C.G.A. § 21-2-18 could be read to apply to *pro bono* legal services that Plaintiffs intend to offer election workers who want to challenge certain election laws and election workers who are sued in connection with their employment or who are serving as fact witnesses. *See* Compl. ¶¶ 6, 26–27. The complaint does not allege that any official has taken this position as to the Plaintiffs. The complaint seeks a declaration that “application of Section 21-2-18 to [Plaintiffs’] provision of *pro bono* legal services, as organizations that engage in litigation as an integral part of political speech, violates Article I, Section I, Paragraph 5 of the Georgia Constitution.” *Id.* ¶ 32. Plaintiffs further

seek injunctive relief prohibiting the enforcement of O.C.G.A. § 21-2-18 as to the provision of their *pro bono* legal services. *See id.* ¶ 33.

LEGAL STANDARD

A motion to dismiss for failure to state a claim should be granted “if the allegations of the complaint, construed most favorably to the plaintiff, disclose with certainty that the plaintiff would not be entitled to relief under any state of provable facts.” *Ewing v. City of Atlanta*, 281 Ga. 652, 653 (2007). Further, a “motion to dismiss for failure to state a claim upon which relief may be granted should not be sustained unless . . . 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[.]” *Scouten v. Amerisave Mortgage Corp.*, 283 Ga. 72, 73 (2008) (citation omitted).

ARGUMENT AND CITATION OF AUTHORITY

Georgia’s Declaratory Judgment Act gives the Court, in “cases of actual controversy,” the “power[] . . . to declare rights and other legal relations of any interested party petitioning for such declaration” “in any civil case in which it appears to the court that the ends of justice [so] require. O.C.G.A. § 9-4-2(a)–(b). An “actual controversy” is a “justiciable controversy where there are interested parties asserting adverse claims on an accrued set of facts.” *Hughes v. Gwinnett Cnty.*, 375 Ga. App. 774, 778 (2025), *cert. denied* (Feb. 17, 2026)

(quotations omitted). “For a controversy to justify the making of a declaration, it must include a right claimed by one party and denied by the other.” *Id.* (quotations omitted). A court should award declaratory relief only where the “party seeking such relief faces some uncertainty or insecurity as to rights, status, or legal relations, upon which its future conduct depends.” *Id.* (quotations omitted).

Plaintiffs are not entitled to declaratory relief, or any incidental injunctive relief, because they have not pleaded that they face any non-speculative uncertainty as to their legal rights to represent certain clients. The plain language of O.C.G.A. § 21-2-18 makes clear that it does not apply to the *pro bono* legal services Plaintiffs describe in the complaint. Even if it did apply, Plaintiffs only have a narrow First Amendment interest in their ability to solicit election workers as clients, not in whether those clients accept their representations. Moreover, to the extent that Plaintiffs are seeking to represent election officials in their official capacities, those employees do not have the ability to unilaterally select counsel, as county commissions appoint county attorneys to represent counties and their employees in such matters. Plaintiffs cannot have a First Amendment interest in offering their services to or representing clients who cannot engage their services.

Because no plain reading of O.C.G.A. § 21-2-18 would actually prohibit an election worker from accepting the type of legal services alleged, there is no actual controversy here that would justify declaratory relief. And even if there were, Plaintiffs have not alleged that O.C.G.A. § 21-2-18 implicates their First Amendment rights. Accordingly, the complaint should be dismissed for failure to state a claim.

I. Plaintiffs are not entitled to a declaratory judgment because they do not face uncertainty concerning their future conduct.

The plain language of O.C.G.A. § 21-2-18 does not apply to Plaintiffs' conduct as described in the complaint, and therefore any uncertainty that Plaintiffs face is entirely speculative and of Plaintiffs' own creation. Purely "speculative 'uncertainty . . . is simply insufficient to warrant declaratory relief." *Hughes*, 375 Ga. App. at 778 (quoting *Cobb Cnty. v. Floam*, 319 Ga. 89, 100 (2024)). Moreover, "the relief sought by a plaintiff must have some immediate legal effect on the parties' conduct, rather than simply burning off an abstract fog of uncertainty." *City of Atlanta v. Atlanta Indep. Sch. Sys.*, 307 Ga. 877, 880 (2020). But any uncertainty Plaintiffs face arises solely from their misreading of the statute as enacted, and therefore there is no actual controversy.

First, Plaintiffs interpret O.C.G.A. § 21-2-18 to mean that legal services for any lawsuit *arising out of* the performance of an election worker's duties

would constitute something of value given “for the purpose of conducting primaries or elections or in support of performing [an election worker’s] duties.” O.C.G.A. § 21-2-18(c); *see also* Compl. ¶ 2. Plaintiffs overread the scope of the terms of O.C.G.A. § 21-2-18 as enacted. Section 21-2-18 requires that “[a]ll costs and expenses related to conducting primaries, elections, runoffs, or other undertakings authorized or required by this chapter shall be paid from lawfully appropriated public funds.” O.C.G.A. § 21-2-18(b). Similarly, O.C.G.A. § 21-2-18(c) prohibits any government employee or election official from “solicit[ing], tak[ing], or otherwise accept[ing] from any person a contribution, donation, service, or anything else of value for the purpose of conducting primaries or elections or in support of performing his or her duties under this chapter.” Section 21-2-18 does not forbid government employees or election workers in their individual capacities from accepting legal services for cases *arising out of* or related to their employment—only services accepted *for the purpose* of conducting elections or performing election workers’ duties. This construction of O.C.G.A. § 21-2-18 is further supported by the text of S.B. 222 itself, which explained that the purpose of O.C.G.A. § 21-2-18 was to clarify the existing ban on the “outside funding of election *administration*” and to “prohibit certain local governments and persons from soliciting or accepting donations or other things of value to support the performance of election

administration[.]” S.B. 222, 147th Gen. Assemb., Reg. Sess. (Ga. 2023) (emphasis added). That a lawsuit may arise out of the performance of an election worker’s employment does not make the legal expense of that litigation an election administration expense.

The legal services as described in Plaintiffs’ complaint would not constitute a service for the purpose of conducting elections or performing election workers’ duties. Plaintiffs allege that, but for O.C.G.A. § 21-2-18, they would represent election workers in “direct challenges to elections procedures and results and other election-related lawsuits.” Compl. ¶ 4. Plaintiffs also allege that they intend to represent “Georgia poll workers [who] have been targets of harassment and bogus challenges, often tied to attempts to overturn election results” and election officials who want to challenge “different provisions of law.” *Id.* ¶¶ 6, 26. But neither prosecution nor defense of this kind of litigation would be undertaken “for the purpose of conducting primaries or elections or in support of performing [an election worker’s] duties” under the Georgia Election Code. O.C.G.A. § 21-2-18(c). An election worker’s individual decision to challenge a provision of election law is not conduct taken for the purpose of conducting an election, nor is it authorized or required by the Georgia Election Code. *See* O.C.G.A. § 21-2-18(b)–(c). So too for lawsuits against election workers in their individual capacities designed to harass

election employees.¹ Because a plain reading of the text of O.C.G.A. § 21-2-18 does not prohibit the conduct that Plaintiffs describe, any concern about enforcement of O.C.G.A. § 21-2-18 against that conduct is purely speculative and cannot support declaratory relief. *See Georgiacarry.org v. Atlanta Botanical Garden, Inc.*, 299 Ga. 26, 30 (2016) (“[M]ere speculation regarding the application of a criminal provision is insufficient to maintain a declaratory judgment action because the requisite justiciable controversy is absent.”).²

Second, under Plaintiffs’ reading, O.C.G.A. § 21-2-18(b) and (c) would also prohibit election officials, poll workers, and other election workers from *hiring* counsel to protect their interests in any litigation bearing a relationship

¹ To be sure, counties and municipalities have the authority, at their discretion, to “undertake to defend all or specified civil, criminal, or quasi-criminal actions brought or maintained against members of the municipality, county, or other public body . . . arising out of the performance of their duties or in any way connected therewith,” O.C.G.A. § 45-9-21(a), in which case the employee would not be entitled to choose their own counsel, *see Stephenson v. Bd. of Comm’rs of Cobb Cnty.*, 261 Ga. 399, 400–01 (1991). To the extent that Plaintiffs intend to represent election workers as “defendants or fact witnesses” in their *official* capacities, Compl. ¶ 27, defense in such cases may be taken up by the county or municipality, as a suit against a county employee in his official capacity is a suit against the county itself, *see Bd. of Comm’rs of Glynn Cnty. v. Johnson*, 311 Ga. App. 867, 868–69 (2011); *see also* Sec. II. However, that issue is entirely separate from whether O.C.G.A. § 21-2-18 categorically prohibits individual election employees from obtaining paid or pro bono counsel, where it is not provided, in all matters related to their public employment.

² Because O.C.G.A. § 21-2-18(b) and (c) do not apply, Plaintiffs do not need qualify for the exceptions provided for in O.C.G.A. § 21-2-18(d).

to their election work. The complaint focuses on the *pro bono* nature of Plaintiffs' services and on Plaintiffs' concerns that those services could constitute something of value under O.C.G.A. § 21-2-18(c) that does not fit cleanly into the exceptions outlined in O.C.G.A. § 21-2-18(d). Compl. ¶¶ 1–3, 20, 32–33. However, if O.C.G.A. § 21-2-18(b) applied to *pro bono* legal services, it would apply equally to legal services for which the litigant paid from their personal funds; in both hypotheticals, the legal services would not be “paid from lawfully appropriated public funds.” O.C.G.A. § 21-2-18(b). And paid legal services would certainly not constitute “services provided by individuals without remuneration.” O.C.G.A. § 21-2-18(d). Moreover, O.C.G.A. § 21-2-18(c) is not limited to contributions, donations, and services that are provided to government employees for free. *See* O.C.G.A. § 21-2-18(c). By Plaintiffs' construction of the statute, O.C.G.A. § 21-2-18(c) would also prohibit a government employee from receiving paid legal services where the services were not paid from public funds. Accordingly, O.C.G.A. § 21-2-18(b) and (c), as interpreted by Plaintiffs, could prevent individual election workers from *hiring* counsel to protect their interests in any litigation that relates in some way to their employment. That is plainly absurd and underscores how Plaintiffs have fundamentally overread the scope of O.C.G.A. § 21-2-18.

Because the alleged controversy in this case rests on an interpretation of O.C.G.A. § 21-2-18 that is at odds with the plain language of the statute, any potential uncertainty in Plaintiffs' conduct is simply too speculative to merit declaratory relief.

II. Plaintiffs' First Amendment rights are not implicated even if O.C.G.A. § 21-2-18 applies to representation of election workers.

Even if O.C.G.A. § 21-2-18 could be read to prohibit Plaintiffs' representation of certain election workers, such a prohibition would not implicate Plaintiffs' political speech rights under the Georgia Constitution or the United States Constitution. Section 21-2-18 does not implicate Plaintiffs' ability to offer their services to any election worker, and Plaintiffs do not have any First Amendment interest in soliciting government officials litigating in their official capacities as clients, as county commissions appoint county attorneys to represent counties and their employees in their official capacities. Those officials do not have the individual rights to engage the counsel of their choice.

Plaintiffs claim that the *pro bono* representation of "elections officials, poll workers, and other elections workers" is "core political speech protected by

the Georgia Constitution.”³ Compl. ¶ 31. To the extent that O.C.G.A. 21-2-18 creates any uncertainty as to whether Plaintiffs can represent elections officials and workers, the question is confined to whether such persons can *accept* Plaintiffs’ offers of representation. The statute’s operative provision states that “no county or municipal government, government employee, or election official shall *solicit, take, or otherwise accept*” a “contribution, donation, service, or anything else of value.” O.C.G.A. 21-2-18(c) (emphasis added). Nothing in O.C.G.A. 21-2-18 speaks to the direct conduct of Plaintiffs. At most, O.C.G.A. 21-2-18 would only restrict who can *actually engage* Plaintiffs for representation, and not Plaintiffs’ “narrow First Amendment right to associate for the purpose of engaging in litigation as a form of political expression.” *Cuban Am. Bar Ass’n, Inc. v. Christopher*, 43 F.3d 1412, 1429 (11th Cir. 1995) (recognizing the “right for a lawyer to *solicit* a client for the purpose of engaging in litigation as a form of political expression” (emphasis added)); *cf. NAACP v. Button*, 371 U.S. 415, 434–38 (1963) (same); *In re Primus*, 436 U.S. 412, 431–32 (1978) (holding ACLU’s *offer* of representation was protected activity under the First Amendment). Section 21-2-18 does not

³ Although the complaint makes repeated references to Plaintiffs’ alleged First Amendment rights, *see* Compl. ¶¶ 7, 33, Plaintiffs only seek relief under the Georgia Constitution, *see id.* ¶¶ 31–32 (citing Ga. Const. art. I, § I, ¶ V).

proscribe Plaintiffs' rights to offer their services to election workers or solicit them as clients.

Nor can Plaintiffs assert a First Amendment right to represent election officials in their official capacities. A government entity enjoys broad discretion to restrict the First Amendment activity of its employees or agents to avoid potential disruption. *Atwater v. Tucker*, 343 Ga. App. 301, 308 (2017) (citing *Garcetti v. Ceballos*, 547 U.S. 410, 418 (2006)). Moreover, the power to retain counsel for suits in official capacity is one that must be *expressly granted*; there is no individual right of a government agent to retain counsel for a lawsuit in his or her official capacity. *Stephenson*, 261 Ga. at 400; *see also* O.C.G.A. § 45-9-21(a) (counties and municipalities have the discretion to undertake defense of lawsuits arising out of the performance of employees' duties). The county attorney is the legal representative of the county and is a public officer that holds his office by virtue of his appointment by the governing authority itself. *Croy v. Whitfield County*, 301 Ga. 380, 384 (2017). Plaintiffs' narrow First Amendment rights to solicit clients are "predicated upon the existence of an underlying legal claim that may be *asserted by the potential litigant*." *Haitian Refugee Ctr., Inc. v. Baker*, 953 F.2d 1498, 1513 (11th Cir. 1992) (emphasis added) (citing *Button*, 371 U.S. at 440). If the employees in their official capacities whom Plaintiffs seek to represent do not have the right to engage

their own counsel, then Plaintiffs certainly do not have a First Amendment right to solicit them as clients, let alone a First Amendment interest in those employees accepting Plaintiffs' representation.

Accordingly, even to the extent that O.C.G.A. § 21-2-18 does restrict election officials and poll workers from retaining Plaintiffs for the type of *pro bono* representation described in the complaint, Plaintiffs nonetheless fail to state a valid claim for declaratory relief because any such restriction is not operative to Plaintiffs, nor is it an unlawful infringement on protected activity.

CONCLUSION

For the foregoing reasons, Defendant respectfully requests that the Court dismiss the complaint for failure to state a claim.

This 1st day of July, 2026.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I have this day electronically filed the foregoing **MOTION TO DISMISS AND BRIEF IN SUPPORT** 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: July 1, 2026.

/s/ Alexandra M. Noonan
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