

**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 FILE
NO. 26CV007672

FINAL ORDER GRANTING DEFENDANT’S MOTION TO DISMISS

Fearing criminal and civil liability, the Plaintiffs ask this Court to declare a provision of the election code unconstitutional as applied to certain conduct. Specifically, they contend O.C.G.A. § 21-2-18 prevents the pro bono representation of government election workers in violation of the Georgia Constitution’s free speech clause. (Dkt. 1, 5/27/26). The parties filed and responded to dueling dispositive motions, the State seeking dismissal (Dkt. 11, 7/1/26; Dkt. 16, 7/31/26) and the Plaintiffs moving for judgment on the pleadings (Dkt. 15, 7/31/26; Dkt. 19, 8/31/26). Having reviewed these motions, the record, and applicable law, the Court concludes the Plaintiffs lack standing and therefore failed to state a valid claim.

Effective since May 3, 2023, O.C.G.A. § 21-2-18(c) forbids any county or municipal government, government employee, or election official from soliciting, taking, or otherwise accepting “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.” Violations are punishable as a felony of indeterminate length and a minimum \$10,000 fine. O.C.G.A. § 21-2-18(e). A violation could also be prosecuted administratively by the State Elections Board, resulting

in various civil penalties. O.C.G.A. § 21-2-33.1. Plaintiffs allege the legal representation of election officials is “integral to their mission to protect Georgians’ voting rights and the democratic process.” (Compl. ¶ 6). Believing O.C.G.A. § 21-2-18 could forbid such representation, the Plaintiffs have declined to move forward with representing certain unidentified clients, both affirmatively and defensively, due to the potential liability. (*Id.* at ¶¶ 8, 23, 25, 27). Plaintiffs argue the statute therefore violates and chills the protections of core political speech found in Article I, Section I, Paragraph 5 of the Georgia Constitution (“No law shall be passed to curtail or restrain the freedom of speech or of the press. Every person may speak, write, and publish sentiments on all subjects but shall be responsible for the abuse of that liberty.”). As a result, they seek a declaratory judgment deeming the law unconstitutional as applied to pro bono legal services and an injunction preventing enforcement. (*Id.* at ¶¶ 9, 32-33).

The Declaratory Judgment Act, O.C.G.A. § 9-4-1 *et seq.*, allows this Court to “simply declare the rights of the parties or express its opinion on a question of law, without ordering anything to be done.” *Burton v. Glynn Cty.*, 297 Ga. 544, 549 (2015) (cleaned up). But this power can only be deployed in “cases of actual controversy” and when “the ends of justice require.” O.C.G.A. § 9-4-2(a) & (b). In the absence of an actual controversy, a plaintiff lacks statutory standing and the claim must be dismissed. *GeorgiaCarry.Org, Inc. v. Atlanta Botanical Garden*, 299 Ga. 26, 28-31 (2016); *see also Cobb Cty. v. Floam*, 319 Ga. 89, 93 n.3 (2024) (characterizing *GeorgiaCarry.Org, Inc.*); *Patterson v. State*, 242 Ga. App. 131, 133 (2000). Ignoring this requirement would result in an improper advisory opinion on a purely theoretical question. *See, e.g., Floam*, 319 Ga. at 89.

When a plaintiff alleges the specter of criminal exposure, subjective fears are insufficient to establish an actual controversy. More is required than “mere speculation regarding the application

of a criminal provision.” *Georgiacarry.Org, Inc.*, 299 Ga. at 30; *Magby v. City of Riverdale*, 288 Ga. 128, 130 (2010) (“sheer speculation” insufficient to warrant declaratory relief). Instead, a plaintiff must show an actual, external threat of enforcement.

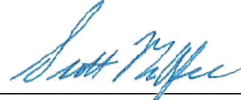
Plaintiffs argue they need not wait until a felony prosecution has commenced before obtaining relief, citing *Total Vending Serv., Inc. v. Gwinnett Cnty.*, 153 Ga. App. 109 (1980). This case is quickly distinguished. There, a company contracted to supply coin-operated amusement devices had been explicitly informed by county authorities that the county would immediately prosecute a violation of an anti-pinball law if the machines were installed. *Id.* at 109–10. Similarly, in *GeorgiaCarry.Org, Inc.*, the plaintiff’s fear of a weapons ban was not speculative because he had been asked to leave and escorted from publicly licensed property by law enforcement. 299 Ga. at 27. Unlike these concrete prior threats, the Plaintiffs’ allegations resemble those in *Patterson*, where the Court of Appeals affirmed dismissal because the challenger “had not been charged with violation of the statute nor had there been any showing of intent by authorities to take any action pursuant to the statute.” 242 Ga. App. at 133. The Plaintiffs do not allege that O.C.G.A. § 21-2-18 has ever been criminally or civilly enforced against them or any other pro bono representation in any way. Nor do they point to any indication such enforcement is brewing, such as through a subpoena for records, investigative interview, or demand letter.

In sum, the Plaintiffs do not allege any actual threat of criminal or civil prosecution, perhaps because — as pointed out by the State — a proper statutory construction does not validate their concerns. Regardless, the Court cannot issue a declaratory judgment based on these circumstances as alleged. The complaint fails to state a declaratory claim upon which relief can be granted.

Conclusion

The Defendant's motion to dismiss is granted because the Plaintiffs lack standing. Injunctive relief is dependent on a successful claim for declaratory judgment, and so the Plaintiffs' injunction claim is also dismissed. Finally, the Plaintiffs' motion for judgment on the pleadings is denied.

SO ORDERED, September 8, 2026.



Judge Scott McAfee
Superior Court of Fulton County
Atlanta Judicial Circuit

Filed and served electronically via eFile-GA.