

State Constitutional Law: Developments in Georgia Election Law

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I. INTRODUCTION

Since the 2018 election, the election process in Georgia has been subjected to intense scrutiny both on the campaign trail and in the courtroom through a variety of lawsuits. Cases in superior courts and the Supreme Court of Georgia have challenged everything from candidate eligibility to election outcomes to the voting machines used in elections. While much of the highest-profile litigation has been in federal court, state law regarding election administration and post-election contests has developed in significant ways during that time period. This Article reviews some of the most significant cases involving Georgia election law that have made their way through the state's courts over the past seven years.¹ For purposes of this Article, the definition of “election law” roughly tracks the definition the Supreme Court of Georgia uses when defining what are “cases of election contest” under article VI, section VI, paragraph 2 of the Georgia Constitution²: “challenges to the *candidates for* and *results of* elections,” including pre-election challenges to the

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1. While there are a number of federal cases during this period, in keeping with the focus of this publication, this Article focuses only on Georgia cases.

2. GA. CONST. art. VI, § 6, para. 2.

eligibility of candidates and also includes challenges to election administration generally.³

This Survey first provides a general overview of Georgia's statutory structure for elections in Section II. This includes the role and responsibilities of the various officials involved in administering elections. It then considers the development of standing law in Georgia and how that impacts election-related litigation in Section III, especially the relevance to challenges to election procedures. The Survey then reviews the standards that apply to pre-election and post-election challenges in Sections IV and V. It then considers some specific elements of cases, including challenges to voting machines in Section VI, and the supreme court's recent requirement of expedition in voting cases in Section VII.

As long as Georgia remains a battleground state with close elections, litigation over the administration of elections will continue. While Georgia law has developed significantly over the past seven years, there is no indication that the trend to run to court to deal with close elections will change at any point soon.

II. OVERVIEW OF GEORGIA ELECTION LAW

The Georgia Election Code is contained in Title 21 of the Official Code of Georgia⁴ and comprehensively covers the election process. At root, elections are like enormously complicated checklists—the statutory and regulatory structure⁵ attempts to anticipate every possible process and issue election officials and voters⁶ might encounter. The roles of various election officials and courts influence how elections are conducted and how they are challenged, so this Survey first examines the primary government officials responsible for conducting elections.

3. *Cook v. Bd. of Registrars of Randolph Cnty.*, 291 Ga. 67, 70, 727 S.E.2d 478, 481 (2012) (emphasis in original).

4. O.C.G.A. tit. 21 (2025).

5. Again, because our focus is on Georgia, this Survey does not consider the impact of federal laws like the National Voter Registration Act and the Help America Vote Act.

6. The terms “elector” and “voter” are used interchangeably in the Election Code to mean anyone who possesses the qualifications to vote and is registered. *See* O.C.G.A. § 21-2-2(7), (39) (2024).

*A. Roles of Various State Officials***1. Secretary of State**

The Secretary of State is a constitutional officer, elected statewide by the people of Georgia every four years.⁷ The Secretary's duties are broad, but in elections specifically, the Secretary is designated as the State's chief election official.⁸ But that role does not mean the Secretary actually "conducts" elections. Instead, the Secretary is charged with specific duties, including designing forms, receiving political party registrations, furnishing county officials with various types of paperwork, receiving election results back from county officials, and training county election superintendents (but not poll workers).⁹ The Secretary also is charged with providing voting equipment to county election officials.¹⁰

The Secretary also has specific responsibilities related to the voter-registration database.¹¹ The Secretary maintains the official list of registered voters, both active and inactive, in a state database.¹² Only certain types of voter-list maintenance procedures are the responsibility of the Secretary, specifically individuals who have died,¹³ individuals who filed change of address information with the Post Office,¹⁴ and voters who have no contact with the election system over multiple election cycles.¹⁵ This includes placing voters in "inactive" status, which occurs in situations involving no contact or when a mailing to a voter is returned as undeliverable.¹⁶ Once a voter is placed in inactive status and has no further contact with election officials for two general elections, the voter is moved from inactive to cancelled status and is then unable to vote until they complete the registration process again.¹⁷

The Secretary hears candidate-qualification challenges to state and federal candidates and can challenge candidates on his or her own

7. GA. CONST. art. V, § 3, para. 1.

8. O.C.G.A. § 21-2-50.2(a) (2003).

9. O.C.G.A. § 21-2-50(a) (2023).

10. O.C.G.A. § 21-2-300(a)(3) (2025).

11. See O.C.G.A. § 21-2-50(a)(14); *see also* Fair Fight Action, Inc. v. Raffensperger, 634 F. Supp. 3d 1128, 1163 (N.D. Ga. 2022).

12. O.C.G.A. § 21-2-50(a)(14).

13. O.C.G.A. § 21-2-231(e) (2019).

14. O.C.G.A. § 21-2-233(a) (2017).

15. O.C.G.A. § 21-2-234 (2019).

16. O.C.G.A. § 21-2-234(b).

17. O.C.G.A. § 21-2-235(b) (2019).

motion.¹⁸ Challenges to qualifications include those made against any of the “prerequisites (whether things like residency and bar membership or procedural steps and processes) to seek and hold office.”¹⁹ To determine challenges to candidate qualifications, the Secretary facilitates a hearing before the Office of State Administrative Hearings, then issues his or her final decision, which can be appealed.²⁰

Despite all of this responsibility, the Secretary is not an election *superintendent* for purposes of Georgia law.²¹ That role is reserved to county officials because in Georgia, county officials conduct elections.²²

2. State Election Board

The State Election Board (“SEB”) is a five-member Board with general regulatory power over elections in Georgia and includes representatives of both major political parties in Georgia.²³ It was first created in 1964 with the first Election Code.²⁴ Over time, the legislature increased the SEB’s authority, but primarily focused on uniformity and “legality and purity” of elections.²⁵

The SEB is also charged with investigations related to violations of the Election Code, making recommendations about enforcement and to define what constitutes a “vote” for purposes of the statewide voting system.²⁶ All of this is part of the SEB’s responsibility to take action “conducive to the fair, legal, and orderly conduct of primaries and elections.”²⁷

In 2021, the Georgia General Assembly also granted the SEB broad powers to temporarily suspend election superintendents, but only after they commit multiple violations of the law over multiple election cycles.²⁸ To temporarily suspend county officials, the SEB must respond to a petition or conduct an investigation, provide notice and a hearing, and then determine whether the county official in question has (1)

18. O.C.G.A. § 21-2-5 (1999).

19. *Camp v. Williams*, 314 Ga. 699, 705, 879 S.E.2d 88, 92 (2022).

20. O.C.G.A. § 21-2-5(b), (c).

21. O.C.G.A. § 21-2-2(35).

22. O.C.G.A. § 21-2-40 (2012).

23. O.C.G.A. § 21-2-30(c) (2024).

24. 1964 Ga. Laws, Ex. Sess., p. 26 (codified as amended at O.C.G.A. §§ 21-1-1 to 21-5-76).

25. O.C.G.A. § 21-2-31(1) (2010); *Republican Nat’l Comm. v. Eternal Vigilance Action, Inc. (EVA)*, 321 Ga. 771, 772, 917 S.E.2d 125, 137 (2025).

26. *EVA*, 321 Ga. at 772, 917 S.E.2d at 137 (quoting O.C.G.A. § 21-2-31(7)).

27. O.C.G.A. § 21-2-31(10).

28. O.C.G.A. § 21-2-33.2(c) (2024).

“committed at least three violations of this title or of State Election Board rules and regulations, in the last two general election cycles; and the county or municipal superintendent has not sufficiently remedied the violations” or (2) “for at least two elections within a two-year period, demonstrated nonfeasance, malfeasance, or gross negligence in the administration of the elections.”²⁹ Even under these provisions, the suspension can last no longer than nine months.³⁰

3. County Superintendents and Registrars

County election officials have the primary responsibility for conducting elections in Georgia.³¹ Historically, probate judges conducted elections.³² But over time, local acts established county boards of election in many counties across the state.³³ In 2024, the General Assembly completely replaced the role of the remaining probate judges who conducted elections with boards of election.³⁴

But there are still two distinct responsibilities related to elections at the county level assigned separately to election superintendents and registrars.³⁵ The primary difference is that registrars deal with voter registration while superintendents actually administer the elections.³⁶ While these two roles were separate for a long period of time, most counties today have a single board of elections and registration that carries out the responsibilities of both the election superintendent and the registrars.³⁷

a. Election Superintendents

The election superintendent is charged with most of the administrative details of an election, including reviewing nomination

29. *Id.*

30. O.C.G.A. § 21-2-33.2(e).

31. O.C.G.A. § 21-2-40.

32. *See* O.C.G.A. §§ 15-9-30(b)(2) (2024); 21-2-2(35)(a); 21-2-105 (2) (2024); 21-2-40.1(b)(1) (2024).

33. *See, e.g.*, Ga. H.R. Bill 623, Reg. Sess. (1985).

34. *See* Ga. S. Bill 212, Reg. Sess. (2024).

35. O.C.G.A. § 21-2-40.

36. *Id.*

37. O.C.G.A. §§ 21-2-40(b); 21-2-40.1. While this is the primary method today, at least one Georgia county still maintains a board of registrars that is separate from its board of elections. *See, e.g., Chatham County Board of Registrars*, <https://voter.chathamcountyga.gov/> [<https://perma.cc/7ZVC-BG73>] (last visited Aug. 21, 2025); *Chatham County Board of Elections*, <https://elections.chathamcountyga.gov/> [<https://perma.cc/T3S9-YR3M>] (last visited Aug. 21, 2025).

petitions, choosing polling places, allocating voting equipment among polling places, storing and programming voting equipment, canvassing election returns, and certifying election results.³⁸ Election superintendents are also charged with training poll workers and must be certified by the Secretary of State.³⁹ County election superintendents must also participate in continuing annual training provided by the Secretary.⁴⁰

Almost all of the day-to-day responsibilities about the administration of elections are handled by county superintendents and their staff.⁴¹ That includes choosing the boundaries for precincts,⁴² ensuring ballots are correct for all elections,⁴³ and ensuring access for voters with disabilities.⁴⁴ For voting machines, election superintendents must program, conduct public logic and accuracy testing, and safely store voting equipment.⁴⁵ County superintendents also process absentee-by-mail ballots accepted by the registrars.⁴⁶

County superintendents are responsible for delivering equipment to polling locations, ensuring the polls open on time, and evaluating provisional ballots.⁴⁷ When the election is concluded, superintendents count all ballots, meet to canvass votes, and eventually certify the returns of the election.⁴⁸ Election superintendents also conduct audits of the election system.⁴⁹

Similar to the Secretary, county superintendents hear candidate qualification challenges to county candidates and can challenge county candidates on their own motion.⁵⁰ The process for appellate review is the same for challenges to the Secretary's decisions, through the superior court and then by application to the Supreme Court of Georgia.⁵¹

38. O.C.G.A. § 21-2-70 (2024).

39. *Id.*

40. O.C.G.A. § 21-2-100 (2005).

41. *See, e.g.*, O.C.G.A. §§ 21-2-260 to 21-2-263; O.C.G.A. §§ 21-2-280 to 21-2-283.1; O.C.G.A. § 21-2-379.21 (2019).

42. O.C.G.A. §§ 21-2-260 to 21-2-263.

43. O.C.G.A. §§ 21-2-280 to 21-2-283.1.

44. O.C.G.A. § 21-2-379.21 (2019).

45. O.C.G.A. §§ 21-2-379.25 to 21-2-379.26.

46. O.C.G.A. § 21-2-386 (2025).

47. O.C.G.A. §§ 21-2-401 to 21-2-419.

48. O.C.G.A. §§ 21-2-490 to 21-2-497.

49. O.C.G.A. §§ 21-2-498 to 21-2-498.1.

50. O.C.G.A. § 21-2-6 (2001).

51. *Camp*, 314 Ga. at 700–01, 879 S.E.2d at 89–90.

b. County Registrars

County registrars have a separate, but closely related, set of responsibilities related to voter registration.⁵² If there is no combined board of elections and registration, a superior court judge appoints registrars that are three to five “judicious, intelligent, and upright electors of such county as county registrars” from a list provided by the grand jury.⁵³ These individuals carry out voter-registration obligations that are distinct from the duties of the election superintendent in overseeing elections.⁵⁴

Each county board of registrars is responsible for determining the eligibility of new individuals registering to vote.⁵⁵ And they have the continuing duty of “examining from time to time the qualifications of each elector” over whom they have responsibility.⁵⁶ County registrars use an extensive list of statutory factors to determine where a person resides for voting purposes.⁵⁷ The primary focus of the statutory factors is to determine the intent of the individual voter.⁵⁸ When determining a voter’s residence, registrars must consider all of the statutory factors and cannot elevate a single factor above the others.⁵⁹

Once an individual registrant is on the voter list, registrars have a continuing obligation to update the voter-registration list based on new data and remove ineligible individuals.⁶⁰ That includes reviewing data for new felons, individuals declared mentally incompetent, and people who reported they were not citizens when called for jury duty to remove those individuals from the rolls.⁶¹ Further, county officials are charged with removing individuals from the list of voters when they learn information showing someone has died.⁶² An individual voter can also request that the registrar remove his or her name from the voter list.⁶³

52. See O.C.G.A. § 21-2-212 (2023).

53. O.C.G.A. § 21-2-212(a).

54. See O.C.G.A. § 21-2-40.1.

55. O.C.G.A. § 21-2-226(a) (2017).

56. O.C.G.A. § 21-2-228(a) (1998).

57. O.C.G.A. § 21-2-217 (2025).

58. O.C.G.A. § 21-2-217(b); *Cook v. Bd. of Registrars of Randolph Cnty.*, 320 Ga. App. 447, 452, 740 S.E.2d 223, 227 (2013) (“The statutory factors that must be weighed are replete with references to the person’s intent[.]”).

59. *Handel v. Powell*, 284 Ga. 550, 554–55, 670 S.E.2d 62, 66 (2008).

60. O.C.G.A. § 21-2-231.

61. O.C.G.A. § 21-2-231(e).

62. O.C.G.A. § 21-2-231(e.1); see also *Fair Fight Action, Inc.*, 634 F. Supp. 3d at 1170.

63. O.C.G.A. § 21-2-232 (2023).

In addition to these processes, Georgia law also provides two methods for other voters to challenge the eligibility of individuals on the voter list, both of which are evaluated by the registrars.⁶⁴ Any voter can challenge the qualifications of new registrants and those on the voter list for their county to be listed as a voter, with the challenger bearing the burden of proof.⁶⁵ After a hearing, the decision of the registrars can be appealed.⁶⁶ A separate process exists to challenge the right of a voter to have his or her vote counted in a specific election.⁶⁷ This type of challenge requires the registrars to consider whether probable cause exists to sustain the challenge.⁶⁸ If probable cause exists, the voter can still vote, but must resolve the challenge before voting or vote a provisional ballot until the challenge can be resolved.⁶⁹ These challenge provisions are part of the duties of county registrars to continue their examination of the list of eligible voters.⁷⁰

B. Role of Georgia Courts in Elections

In addition to election officials, Georgia courts also have a role in ensuring that elections are carried out in a lawful manner.⁷¹ Those responsibilities begin before elections and run through certification.⁷²

1. Before an Election—Qualification Challenges

As referenced previously, voters⁷³ can challenge the qualifications of candidates to hold office.⁷⁴ Candidate qualifications “include[] all of the prerequisites for seeking and holding office.”⁷⁵ That means a qualification challenge can include any challenge to whether the candidate has the correct attributes for the offices (is the candidate a registered voter, is

64. O.C.G.A. § 21-2-229 (2021).

65. O.C.G.A. § 21-2-229(a), (c).

66. O.C.G.A. § 21-2-229(e).

67. O.C.G.A. § 21-2-230 (2024).

68. *Id.*

69. O.C.G.A. § 21-2-230(d), (e), (h).

70. O.C.G.A. § 21-2-228(a).

71. *See, e.g., Camp*, 314 Ga. 699, 879 S.E.2d 88 (qualification challenges); O.C.G.A. § 21-2-412 (1998) (voting time and procedures); O.C.G.A. §§ 21-2-520 to 21-2-529 (election contests).

72. *Id.*

73. While voters must challenge qualifications within two weeks of qualifying, the Secretary of State and county election superintendents can also challenge candidate qualifications at any time. *See* O.C.G.A. § 21-2-6(b).

74. O.C.G.A. §§ 21-2-5 to 21-2-6.

75. *Camp*, 314 Ga. at 700, 879 S.E.2d at 89.

the candidate a legal resident of the district for a sufficient time) and whether the candidate has followed the correct procedures to access the ballot.⁷⁶

Once either the Secretary (for federal and state offices) or the county superintendent (for county offices) renders a decision on the candidate's eligibility,⁷⁷ then the losing party has the option to appeal the decision to the superior court.⁷⁸ That is the only appeal of right and the court reviews only the record that was before the Secretary or county superintendent.⁷⁹ The appeal must follow the procedures outlined in the Superior and State Court Appellate Practice Act.⁸⁰ The superior court may reverse "if substantial rights of the appellant have been prejudiced because the findings, inferences, conclusions, or decisions of the superintendent are" in violation of the law, made on unlawful procedures, or infected with other errors or abuses of discretion.⁸¹

Following the superior court's ruling, the losing party may then seek further appellate review.⁸² If the case involves particular candidates and particular elections, then the losing party may seek review by application to the Supreme Court of Georgia.⁸³

2. During an Election—Voting Timing and Procedures

On election day, "at least one" superior court judge in "each judicial circuit" must be available from 7:00 A.M. to 10:00 P.M., and also for as long as is necessary to ensure "a free, fair, and correct computation and canvass of votes cast."⁸⁴

The primary need for superior courts on election day involves extensions of polling hours.⁸⁵ When a polling place opens late or voting is otherwise impeded during the day, courts will issue orders to hold

76. *Id.* at 706–07, 879 S.E.2d at 93.

77. Somewhat counterintuitively, in a pre-election qualification challenge, the burden of proof is entirely on the challenged candidate to prove his or her eligibility. *Haynes v. Wells*, 273 Ga. 106, 108–09, 538 S.E.2d 430, 433 (2000). Thus, a candidate who does not appear at a hearing to present a defense of his or her eligibility is properly disqualified as long as the challenger is eligible to bring the challenge.

78. O.C.G.A. §§ 21-2-5(e), 21-2-6(e).

79. *Id.*

80. O.C.G.A. §§ 5-3-1 to 5-3-21.

81. O.C.G.A. § 21-2-6(e).

82. *Id.*

83. GA. CONST. art. VI, § 6, para. 2; *Cook*, 291 Ga. at 70, 727 S.E.2d at 481; *see Camp*, 314 Ga. at 700, 879 S.E.2d at 89.

84. O.C.G.A. § 21-2-412.

85. *See* O.C.G.A. § 21-2-403(b) (2021).

precincts open to ensure voters in all precincts have an equal amount of time to cast their ballots.⁸⁶ But such an extension can only happen “upon good cause shown by clear and convincing evidence” that voting did not take place for a specific period of time, and the extension cannot be longer than the time voters were unable to vote.⁸⁷ In addition, if a superior court orders a polling location to stay open beyond 9:00 P.M., the judge must issue a “written order with specific findings of fact.”⁸⁸

On rare occasions, superior courts must address petitions for mandamus related to specific election responsibilities.⁸⁹ For example, in the 2024 election in Camilla, Georgia, the municipal election officials unilaterally cancelled the election.⁹⁰ After an emergency application to the superior court, the court directed the election to proceed.⁹¹

3. After an Election—Election Contests

After the voting process is over, the election superintendent carries out its statutory duty to certify the election results.⁹² Following certification, any voter who was eligible to vote in the election or a candidate may contest the results of the election.⁹³ The Election Code outlines a specific process for challenging elections under the election contest procedures, which are heard by superior courts.⁹⁴ Contests are discussed in more detail below.

III. IMPORTANCE OF STANDING IN ELECTION RELATED LITIGATION

A. Georgia Standing Law Generally

Another feature of election litigation that has developed in recent years has been the focus on standing to bring cases involving elections.⁹⁵

86. *Id.*

87. *Id.*

88. *Id.*

89. O.C.G.A. § 21-4-18 (1989).

90. See Order Granting Emergency Motion for Injunctive Relief, Superior Court of Mitchell County (Nov. 5, 2024), available at <https://www.scribd.com/document/788616648/Mitchell-County-Superior-Court-order> [<https://perma.cc/P6WV-TC3J>].

91. *Id.*

92. O.C.G.A. § 21-2-493 (2024).

93. O.C.G.A. § 21-2-521 (1998).

94. See O.C.G.A. §§ 21-2-520 to 21-2-529.

95. See, e.g., *Blackmon v. Tenet Healthsystem Spalding, Inc.*, 284 Ga. 369, 371, 667 S.E.2d 348, 350 (2008).

In Georgia, as elsewhere, “a plaintiff with standing is a prerequisite for the existence of subject matter jurisdiction.”⁹⁶ In the past, Georgia courts, including the Supreme Court of Georgia, uncritically adopted certain aspects of federal standing doctrine, weaving them into Georgia law.⁹⁷ But in 2022, the supreme court “questioned and then put a stop to that practice, at least with respect to questions of constitutional standing in Georgia courts.”⁹⁸ Since then, a steady stream of cases on standing have made their way to the supreme court, which the court has used to articulate, refine, and expound on the unique aspects of Georgia’s constitutional standing doctrine.⁹⁹ And plenty of similarities between Georgia’s standing jurisprudence and its federal counterpart remain, Georgia has developed or rediscovered some critical departures in recent years.¹⁰⁰

Perhaps the most notable difference between federal law and Georgia law on standing is that Georgia’s constitutional standing doctrine is premised on a plaintiff’s assertion of a violation of a legal right—whether her own private right personally held by the plaintiff or a public right shared by the relevant community.¹⁰¹ While proving a private right can be quite similar to certain aspects of federal standing doctrine—principally that it requires an injury be individualized to the plaintiff—what Georgia law views as a permissible claim under a “public rights” theory would often be precluded as generalized grievances under federal law.¹⁰² The focus on private and public rights stems from the state’s adoption of the English Common Law in effect at the time of the initial ratification of Georgia’s Constitution, and its subsequent importation of

96. *Id.*

97. *Wasserman v. Franklin County*, 320 Ga. 624, 627, 911 S.E.2d 583, 590 (2025).

98. *Id.* (citing *Sons of Confederate Veterans v. Henry Cnty. Bd. of Comm’rs (SCV)*, 315 Ga. 39, 880 S.E.2d 168 (2022)).

99. *See, e.g., SCV*, 315 Ga. 39, 880 S.E.2d 168; *Cobb Cnty. v. Floam*, 319 Ga. 89, 901 S.E.2d 512 (2024); *Wasserman*, 320 Ga. 624, 911 S.E.2d 583; *EVA*, 321 Ga. 771, 917 S.E.2d 125.

100. Georgia still shares many aspects of federal constitutional standing doctrine, but they are nonetheless grounded in principles of Georgia law. For example, like federal law, plaintiffs carry the burden of establishing standing. *EVA*, 321 Ga. at 775, 917 S.E.2d at 139. And, in Georgia, as in federal court, “a trial court’s lack of subject matter jurisdiction ‘cannot be waived and may be raised at any time either in the trial court, in a collateral attack on a judgment, or in an appeal.’” *Black Voters Matter Fund, Inc. v. Kemp (BVMF)*, 313 Ga. 375, 380–81, 870 S.E.2d 430, 436 (2022).

101. *Wasserman*, 320 Ga. at 629, 911 S.E.2d at 591.

102. *SCV*, 315 Ga. at 39, 880 S.E.2d at 171. Under Georgia law, an “injury need not always be individualized; sometimes it can be a generalized grievance shared by community members, especially other residents, taxpayers, voters or citizens.” *Id.*

the Judicial Power Paragraph¹⁰³ into Georgia law.¹⁰⁴ The Judicial Power Paragraph was first laid down in Georgia's Constitution in 1798 and has been carried forward without material change since then.¹⁰⁵ The result being that constitutional standing in Georgia is maintained only when a plaintiff asserts and later proves a violation of legal rights, whereas federal law focuses on whether a plaintiff has asserted an "injury in fact" that is traceable to and redressable by a defendant.¹⁰⁶

B. Standing in State Voting Litigation

Voting rights in Georgia have the somewhat-unique distinction of being characterized as both private rights and public rights in recent cases.¹⁰⁷ This hybrid status is possible in part because of the broad range of challenges that can be asserted under the banner of "voting rights." For example, the Supreme Court of Georgia has long held that voters, by virtue of being voters, can challenge certain election laws under a private right theory because "the denial of the right to elect public officials is such an injury to the *personal* right of any voter as would authorize him to attack the constitutionality of an act."¹⁰⁸ Thus, a voting related injury constitutes the violation of a private right "both when a voter is prevented from casting a ballot and when a properly cast vote is not counted."¹⁰⁹ But when the challenge is to election administration more broadly, perhaps in a way that does *not* personally affect the casting or counting of votes, voters may still have a public right they can vindicate against a local government as a member of the relevant community.¹¹⁰ And while the public right/private right dichotomy in voting claims may appear to

103. GA. CONST. art. VI, § 1, para. 1.

104. *SCV*, 315 Ga. at 47, 880 S.E.2d at 176 ("To understand the meaning of [Georgia's constitutional] text, we must consider the legal background against which the original Judicial Power Paragraph was adopted in the 1798 Constitution, with the common law providing the most critical context.").

105. *Id.* at 46, 880 S.E.2d at 175.

106. *Wasserman*, 320 Ga. at 629, 911 S.E.2d at 591.

107. *Compare SCV*, 315 Ga. at 61, 880 S.E.2d at 185 (characterizing voters as holding public rights), *with Wasserman*, 320 Ga. at 631–32, 911 S.E.2d at 592–93 (characterizing voters as holding private rights).

108. *BVMF*, 313 Ga. at 396, 870 S.E.2d at 446 (Peterson, J., concurring) (quoting *Manning v. Upshaw*, 204 Ga. 324, 327, 49 S.E.2d 874, 876 (1948)) (cleaned up) (emphasis in original).

109. *See EVA*, 321 Ga. at 784, 917 S.E.2d at 145 ("An infringement of the right to vote occurs both when a voter is prevented from casting a ballot and when a properly cast vote is not counted.").

110. *SCV*, 315 Ga. at 61–62, 880 S.E.2d at 185.

be a distinction without a difference at first blush, it is significant because public rights have been confined to challenges to local government action and have not been extended to challenges to state action.¹¹¹ Thus, where a court may find a plaintiff has standing when a voter alleges that their vote has been denied or diluted by some action of the state government, that same voter may fall short of the needed elements to establish standing if they plead only that the state government has encumbered election administration more broadly.¹¹²

Several recent cases from the Supreme Court of Georgia and the Georgia Court of Appeals have established and articulated this standing framework.¹¹³ Not all of them involve voting rights or elections themselves, but each touch on critical aspects applicable to election-related claims in Georgia courts.

1. *Black Voters Matter Fund*

*Black Voters Matter Fund, Inc. v. Kemp (BVMF)*¹¹⁴ involved a challenge to a newly created judicial district filed by a voter and a voting advocacy organization.¹¹⁵ The supreme court reviewed the standing claims using an analysis that largely mirrored the federal “diversion of resources” standard, even though it stopped short of importing such a standard into Georgia law.¹¹⁶ Rather, the court stated that “[e]ven assuming that a ‘diversion of resources’ theory like that in federal law exists under Georgia law,” the plaintiffs did not satisfy it.¹¹⁷ Thus, the remainder of the majority opinion of the court involved a largely federal analysis of standing.¹¹⁸ Though much of that portion of the opinion has been supplanted by later decisions from the Supreme Court of Georgia,¹¹⁹ it nonetheless remains good law for the broad proposition that Georgia’s organizational standing test permits an “organization to sue in its own

111. *Id.* at 61 n.19, 880 S.E.2d at 185 n.19; *see also EVA*, 321 Ga. at 781, 917 S.E.2d at 143 (finding that plaintiffs “have not established that [public rights] standing is available in the context of a suit against the State, as opposed to suits against local governments.”).

112. *EVA*, 321 Ga. at 785–86, 917 S.E.2d at 146.

113. *See, e.g., BVMF*, 313 Ga. 375, 870 S.E.2d 430; *SCV*, 315 Ga. 39, 880 S.E.2d 168; *Perdue v. Barron*, 367 Ga. App. 157, 885 S.E.2d 210 (2023); *Floam*, 319 Ga. 89, 901 S.E.2d 512; *Wasserman*, 320 Ga. 624, 911 S.E.2d 583; *EVA*, 321 Ga. 771, 917 S.E.2d 125.

114. 313 Ga. 375, 870 S.E.2d 430.

115. *Id.* at 375–76, 870 S.E.2d at 433.

116. *Id.* at 382–87, 870 S.E.2d at 437–41.

117. *Id.* at 383, 870 S.E.2d at 438.

118. *Id.* at 382–91, 870 S.E.2d at 437–43.

119. *See, e.g., SCV*, 315 Ga. 39, 880 S.E.2d 168; *Wasserman*, 320 Ga. 624, 911 S.E.2d 588.

right if it meets the same standing test applicable to individuals.”¹²⁰ It also is notable for Justice Peterson’s concurrence signaling that Georgia’s standing jurisprudence had veered off course from the text and history of Georgia’s Constitution and at times erroneously adopted federal precedent “wholesale” despite “the textual difference between the United States and Georgia Constitutions.”¹²¹ At the appropriate time, Justice Peterson suggested, the practice of incorporating these federal doctrines into Georgia law “may warrant reconsideration.”¹²²

2. *Sons of Confederate Veterans*

In *Sons of Confederate Veterans v. Henry County Board of Commissioners (SCV)*,¹²³ the supreme court took the opportunity to revisit Georgia’s standing doctrine.¹²⁴ There, it considered whether several organizations and an individual community member had standing to seek an injunction against a local government for its vote to remove historic monuments from public places in violation of a Georgia statute.¹²⁵ Analyzing the standing of the organizational and individual plaintiffs, the supreme court acknowledged that “[f]ederal law does not control standing requirements in state courts,” and embarked on a Georgia-focused “review [of] what standing is and how we have treated it historically.”¹²⁶ Alongside a lengthy exploration of Georgia’s history and precedent, reaching back to its adoption of the English common law, the court determined that “the power of courts—the judicial power—[is] limited to cases involving actual controversies, which requires a showing of some injury.”¹²⁷

The court identified two classes of rights that, if violated, were sufficient to provide standing to bring an action in Georgia courts.¹²⁸ First, at common law, “courts possessed broad power to adjudicate suits involving private rights—those belonging to an individual as an individual.”¹²⁹ And “a violation of a private right was understood to carry with it some injury sufficient for standing, even if the amount of injury

120. *BVMF*, 313 Ga. at 382, 870 S.E.2d at 437.

121. *Id.* at 392, 870 S.E.2d at 444 (Peterson, J., concurring).

122. *Id.* at 394, 870 S.E.2d at 445.

123. 315 Ga. 39, 880 S.E.2d 168.

124. *Id.* at 39, 880 S.E.2d at 171.

125. *Id.* at 41–42, 880 S.E.2d at 172–73.

126. *Id.* at 43–44, 880 S.E.2d at 173–74.

127. *Id.* at 62, 880 S.E.2d at 185.

128. *Id.* at 47–48, 880 S.E.2d at 176–77.

129. *Id.* at 47, 880 S.E.2d at 176.

was minimal.”¹³⁰ But the court identified another class of rights, deemed “public rights.”¹³¹ For this “lesser requirement,” the court noted that “Georgia has long recognized that members of a community, whether as citizens, residents, taxpayers, or voters, may be injured when their local government fails to follow the law.”¹³² That is because “[g]overnment at all levels has a legal duty to follow the law . . . and the violation of that legal duty constitutes an injury that our case law has recognized as conferring standing to those community stakeholders, even if the plaintiff suffered no individualized injury.”¹³³

But when a litigant is not a community stakeholder possessing a public right, “a local government’s duty to follow the law is not owed to that plaintiff; the plaintiff suffers no cognizable injury as a result of a violation of that duty; and the uninjured plaintiff cannot bring suit for that violation.”¹³⁴ As a result, the court determined the plaintiff organizations did not have standing to challenge the local government action because they “have set forth no allegations showing that they are community stakeholders” and “they do not have independent, direct standing as organizations.”¹³⁵ But the court determined the individual plaintiff had sufficiently asserted a violation of a her public right, and that injury was “sufficient to support her claims.”¹³⁶

The supreme court was careful not to dispense this principle of community-based standing wholesale, even for individual plaintiffs.¹³⁷ Indeed, the court acknowledged it has “long held that Georgia courts may not decide the constitutionality of statutes absent an individualized injury to the plaintiff.”¹³⁸ And beyond the constitutional context, the courts have generally not allowed broad community standing when a plaintiff challenges *state* action.¹³⁹ To be sure, the general rule is that “[w]here a public duty is at stake, a plaintiff’s membership in the community provides the necessary standing to bring a cause of action to ensure a local government follows the law.”¹⁴⁰ But that “reasoning and [the court’s] holding regarding standing [is] limited to suits against *local*

130. *Id.* at 48, 880 S.E.2d at 176.

131. *Id.*

132. *Id.* at 39, 880 S.E.2d at 171.

133. *Id.* at 39–40, 880 S.E.2d at 171.

134. *Id.* at 53, 880 S.E.2d at 180.

135. *Id.* at 66, 880 S.E.2d at 188.

136. *Id.* at 65, 880 S.E.2d at 187.

137. *Id.* at 54 n.13, 880 S.E.2d at 180 n.13.

138. *Id.*

139. *Id.* at 61 n.19, 880 S.E.2d at 185 n.19.

140. *Id.* at 61, 880 S.E.2d at 185.

governments.”¹⁴¹ This limitation on the community standing doctrine stems in part from its tension with “the Georgia Constitution’s Separation of Powers Provision.”¹⁴²

In sum, *SCV* established that “from the earliest days of this [c]ourt, we understood the power of courts—the judicial power—to be limited to cases involving actual controversies, which requires a showing of some form of injury.”¹⁴³ For injuries affecting public rights (*i.e.*, community-based injuries) by a local government, it is sufficient that a plaintiff be a member of the community and allege that the local government failed to follow the law.¹⁴⁴ There need not be an “injury-in-fact” as required by federal law because the injury is supplied by the violation of a legal right, in this case a community right, that the local government follow the law.¹⁴⁵ These community-based rights extend to voting rights.¹⁴⁶ But when those voting rights are couched as public rights, courts have continued to cabin the standing afforded by virtue of being a voting member of the community to suits against *local governments*.¹⁴⁷ And this limitation is rooted both in the common law, which “permitted proceedings to control the actions of the Crown *subordinates* that harmed the sovereign[.]”¹⁴⁸ and in Georgia’s structural separation of powers.¹⁴⁹

3. *Perdue v. Barron*

Not long after *SCV*, the principles articulated by the supreme court were applied in the election context. *Perdue v. Barron*,¹⁵⁰ followed the bitterly contentious general election in 2020, where the race for one of Georgia’s two seats in the United States Senate went to a runoff when no candidate obtained the requisite majority of votes.¹⁵¹ Incumbent Republican Senator David Perdue had led the initial vote count with 2,462,617 votes, amounting to 49.73% of the total.¹⁵² Democratic

141. *Id.* at 61 n.19, 880 S.E.2d at 185 n.19 (emphasis added).

142. *Id.* (citing GA CONST. art. V, § 2, para. 2).

143. *Id.* at 62, 880 S.E.2d at 185.

144. *Id.* at 39–40, 880 S.E.2d at 171.

145. *Id.* at 45, 880 S.E.2d at 175.

146. *Id.* at 39–40, 880 S.E.2d at 171.

147. *Id.*

148. *Id.* at 53, 880 S.E.2d at 180 (emphasis added).

149. *Id.* at 61 n.19, 880 S.E.2d at 185 n.19.

150. 367 Ga. App. 157, 885 S.E.2d 210.

151. *Id.* at 158, 885 S.E.2d at 213.

152. *Id.*

challenger Jon Ossoff followed closely behind with 2,374,519 votes, securing 47.95% of the vote.¹⁵³ In the succeeding runoff election, Ossoff defeated Perdue.¹⁵⁴ Rather than filing an election contest following his runoff defeat, Perdue and a voter from Fulton County, Georgia, filed what they colloquially termed an “election justice” action alleging voting irregularities in Fulton County.¹⁵⁵ Specifically, the plaintiffs alleged that “several batches of absentee ballots were scanned multiple times and that thousands of unlawful counterfeit absentee ballots were counted and certified during the election process in violation of the Georgia Constitution.”¹⁵⁶ After the trial court ruled against the plaintiffs on the merits, appeals ensued.¹⁵⁷ The court of appeals applied the public/private rights standard articulated by the supreme court in *SCV*.¹⁵⁸

Turning first to the former candidate for U.S. Senate, David Perdue, the court quickly dispensed with his claims under a public-rights theory because Perdue never even alleged he was a member of any relevant community that might afford him such standing.¹⁵⁹ “The petition does not establish, much less allege, any residency for Perdue that could confer standing as contemplated by [*SCV*].”¹⁶⁰ Thus, Perdue’s claims that he was “concerned about the legitimacy of future elections and concerned with the policies, procedures, practices, and customs of Fulton County” elections officials were insufficient to garner public rights standing.¹⁶¹ The Fulton County voter, by contrast, sufficiently alleged facts that supported her standing under a public-rights theory.¹⁶²

The court of appeals held that “Lennon alleged that she is ‘a resident of Fulton County, Georgia, and was an eligible elector and was registered to vote in the General Election.’”¹⁶³ Additionally, the court held it was important that she alleged the local government officials “‘permitted a fraudulent person to request an absentee ballot . . . using . . . Lennon’s name’ in violation of state law and that, as a result, she had to complete a provisional ballot when she appeared to vote in person.”¹⁶⁴ Thus, under

153. *Id.*

154. *Id.*

155. *Id.* at 157, 885 S.E.2d at 212.

156. *Id.* (punctuations omitted).

157. *Id.* at 157, 885 S.E.2d at 212–13.

158. *Id.* at 157, 885 S.E.2d at 213.

159. *Id.*

160. *Id.* at 161, 885 S.E.2d at 215.

161. *Id.* at 161–62, 885 S.E.2d at 215 (cleaned up).

162. *Id.* at 162, 885 S.E.2d at 216.

163. *Id.*

164. *Id.*

“the principles stated in [SCV],” Lennon had standing as a voter under a public-rights theory.¹⁶⁵

4. *Cobb County v. Floam*

In the year that followed the court of appeals’s decision in *Perdue*, further action at the supreme court helped to sharpen the contours of public-rights standing in voting-related challenges.¹⁶⁶ In *Cobb County v. Floam*,¹⁶⁷ standing was once again considered to determine whether two Cobb County citizens, David and Catherine Floam, could challenge a commission redistricting map adopted by the Cobb County Board of Commissioners (“BOC”) that altered the district plan passed by the Georgia General Assembly.¹⁶⁸ When the General Assembly passed its county commission map, it went against the wishes of the majority of the County’s legislative delegation and “departed from the usual ‘local courtesy’ tradition in which a majority of a county’s legislative delegation determines which local redistricting maps are enacted through local legislation.”¹⁶⁹ In response, the BOC passed its own amendment restructuring the commission maps as the county preferred.¹⁷⁰ The Floams subsequently challenged the BOC amendment, seeking a declaratory judgment that it was unconstitutional and an order restraining the county from conducting elections under the BOC map.¹⁷¹ Critically, for standing purposes, the Floams alleged that (1) the County had a public duty to follow law and implement the map put forth by the General Assembly; (2) voters had the right to “free and fair elections;” and (3) voters had a public right to vote on lawfully created maps.¹⁷² The Supreme Court of Georgia ruled this was sufficient to establish standing under the public-rights doctrine, because the Floams challenged local government action as community stakeholders.¹⁷³

Reiterating its reasoning in *SCV*, the court acknowledged that “for nearly 100 years prior to the adoption of the 1983 Georgia Constitution, Georgia had allowed citizen, taxpayer, resident, or voter suits to challenge various county and city actions without demonstrating a

165. *Id.*

166. *See Floam*, 319 Ga. 89, 901 S.E.2d 512.

167. *Id.*

168. *Id.* at 89, 901 S.E.2d at 513.

169. *Id.* at 89–90, 901 S.E.2d at 514.

170. *Id.* at 90, 901 S.E.2d at 514.

171. *Id.*

172. *Id.*

173. *Id.* at 95, 901 S.E.2d at 517.

particularized injury because those community stakeholders had a cognizable interest in having their government follow the law.¹⁷⁴ In *Floam*, that is precisely what the plaintiffs challenged.¹⁷⁵ They accordingly had standing as community stakeholders—as voters—to challenge their local government’s allegedly unlawful action.¹⁷⁶ Ultimately, the claims made by the plaintiffs in *Floam* failed on other grounds,¹⁷⁷ but the supreme court nevertheless firmly established the right of voters to challenge actions of their local governments related to voting on the basis of public right (or community) standing.¹⁷⁸

5. *Wasserman v. Franklin County*

*Wasserman v. Franklin County*¹⁷⁹ was not a voting rights case.¹⁸⁰ But it is nevertheless instructive in the voting-rights sphere due to its expansive look into standing under Georgia’s Constitution, and it is perhaps the most exhaustive exposition produced by the supreme court since its earlier decision in *SCV*. As in *SCV*, the supreme court refocused the standing inquiry away from the alleged factual injury experienced by a plaintiff onto whether a plaintiff experienced a deprivation or violation of an existing legal right.¹⁸¹ In Georgia—as at common law—a plaintiff bringing a claim must assert and prove a violation or denial of one of his, her, or its “own rights.”¹⁸² The court noted that prior to the adoption of the first Georgia Constitution in 1798, “rights held by individuals, like . . . *the right to vote*, were classified as private rights.”¹⁸³

Wasserman primarily involved the court’s reexamination of its third-party standing doctrine.¹⁸⁴ And this would lay the groundwork for the court’s later reexamination into the adjacent theory of associational standing.¹⁸⁵ The court ultimately instructed, as it had before in *SCV*, that “questions about standing to invoke the judicial power of Georgia courts

174. *Id.* at 91, 901 S.E.2d at 515 (citing *SCV*, 315 Ga. at 53–61, 880 S.E.2d at 180–85).

175. *Id.* at 95, 901 S.E.2d at 517.

176. *Id.*

177. *Id.* at 101, 901 S.E.2d at 521.

178. *Id.* at 95, 901 S.E.2d at 517–18.

179. 320 Ga. 624, 911 S.E.2d 583.

180. *Id.* at 625, 911 S.E.2d at 588–89.

181. *Id.* at 629, 911 S.E.2d at 591.

182. *Id.* at 635, 911 S.E.2d at 595.

183. *Id.* at 630, 911 S.E.2d at 592 (emphasis added); *see also Manning*, 204 Ga. at 327, 49 S.E.2d at 876 (“the right of a voter to vote” is a “personal right, the denial of which would be an injury . . .”).

184. *Wasserman*, 320 Ga. at 629, 911 S.E.2d at 591.

185. *See EVA*, 321 Ga. 771, 917 S.E.2d 125.

must be answered by construing and applying the Georgia Constitution, not by borrowing federal standing doctrine.”¹⁸⁶ Though much of the decision extends the logic of *SCV* to the issue of third-party standing, the characterization of voting rights as “private” and “individual” in *Wasserman* suggested a disconnect from their public character as identified in *SCV*.¹⁸⁷

The court traced its classification of voting as a private right to Lord Holt’s dissenting opinion in *Ashby v. White*,¹⁸⁸ an early Eighteenth century English vote denial case.¹⁸⁹ And the court also noted that at least one Justice of the Supreme Court of the United States approvingly cited Lord Holt’s opinion as “permeated with the conception that a voter’s franchise is a personal right.”¹⁹⁰ But *Ashby* involved an actual and individualized vote denial,¹⁹¹ which helped harmonize the differing views taken by the Supreme Court of Georgia in *SCV* and *Wasserman* with respect to the public-private nature of voting rights cases.¹⁹²

“Public wrongs’ . . . are a ‘breach and violation of public rights and duties, which affect the whole community, considered as a community.’”¹⁹³ But *denying* someone the right to vote is different and is a private wrong because it affects the individual as an individual.¹⁹⁴ As such, *Wasserman* clarified that the actual *exercise* of the franchise is a private right that is “held by individuals.”¹⁹⁵

6. *Eternal Vigilance Action*

Not long after the supreme court decided *Wasserman*, the constitutional standing “course corrections” the court made there and in *SCV* came to a head in a case involving voting rights and election administration.¹⁹⁶ *Republican National Committee v. Eternal Vigilance Action (EVA)*¹⁹⁷ arrived at the Supreme Court of Georgia on appeal after

186. *Wasserman*, 320 Ga. at 627, 911 S.E.2d at 590.

187. Compare *SCV*, 315 Ga. at 61, 880 S.E.2d at 185, with *Wasserman*, 320 Ga. at 631–32, 911 S.E.2d 592–93.

188. (1703) 92 Eng. Rep. 126, 2 Ld. Raym. 938 (KB).

189. *Wasserman*, 320 Ga. at 630–31, 911 S.E.2d 592.

190. *Id.*

191. See generally *Ashby*, 92 Eng. Rep. 126, 2 Ld. Raym. 938.

192. See *Wasserman*, 320 Ga. at 630–31, 911 S.E.2d 592.

193. *Wasserman*, 320 Ga. at 630, 911 S.E.2d at 592 (citing 3 WILLIAM BLACKSTONE, COMMENTARIES ON THE LAWS OF ENGLAND *2 (1768)).

194. See *id.*

195. *Id.*

196. *EVA*, 321 Ga. at 776, 917 S.E.2d at 140.

197. 321 Ga. 771, 917 S.E.2d 125.

a group of plaintiffs—some organizational and some individual—succeeded at the trial court in challenging a series of regulations passed by the State Election Board (“SEB”) ahead of the 2024 general election.¹⁹⁸ On appeal, the supreme court began by addressing whether the plaintiffs had standing to challenge the regulations.¹⁹⁹

The organizational plaintiffs premised their standing arguments on two familiar theories available under federal law: a “diversion of resources” theory, where the organization claimed to have been injured through financial expenditures made in response to the challenged law,²⁰⁰ and an associational theory, where the organization claimed the right to sue on behalf of its injured members.²⁰¹ But as Justice Peterson’s concurring opinion in *BVMF* telegraphed three years earlier, the supreme court had historically only *assumed* the viability of a diversion-of-resources theory without *deciding* the question of whether it could truly fit within Georgia’s Judicial Power Paragraph.²⁰² Likewise, the supreme court had never analyzed the acceptability of associational standing under Georgia law and rather had only “uncritically adopted” the doctrine in a handful of cases.²⁰³ *EVA* presented the opportunity to squarely reconsider its organizational standing precedent under Georgia law.

As to diversion-of-resources standing, the court acknowledged that neither *SCV* nor *Wasserman* disturbed the broad point in *BVMF* that “an organization does have standing ‘in its own right if it meets the same standing test applicable to individuals.’”²⁰⁴ But *EVA* clarified that Georgia law, “now properly understood[,] is centered on the violation of a legal right, not a factual harm.”²⁰⁵ And the court also clarified that *BVMF* “was not a holding that the diversion of resources theory is properly part of Georgia’s standing doctrine.”²⁰⁶ To the contrary, “a theory based solely on factual harms without any grounding in a plaintiff’s own rights has no place in our standing doctrine, and thus a diversion of resources theory divorced from a showing of a violation of an organization’s legal

198. *Id.* at 772–74, 917 S.E.2d at 137–38.

199. *Id.* at 774–89, 917 S.E.2d at 138–48.

200. *Id.* at 775, 917 S.E.2d at 139.

201. *Id.* at 777–78, 917 S.E.2d at 140–41.

202. *Id.* at 777, 917 S.E.2d at 140; *see also BVMF*, 313 Ga. at 392–94, 870 S.E.2d at 444–45 (Peterson, J., concurring).

203. *EVA*, 321 Ga. at 778, 917 S.E.2d at 141.

204. *Id.* at 777, 917 S.E.2d at 140 (quoting *BVMF*, 313 Ga. at 382, 870 S.E.2d at 437).

205. *Id.*

206. *Id.*

rights cannot establish organizational standing.”²⁰⁷ Because the organizations in *EVA* never alleged any violation of their legal rights, they did not have organizational standing under Georgia law.²⁰⁸

The supreme court next considered whether a Georgia counterpart to federal associational standing could be properly applied under Georgia law.²⁰⁹ Associational standing is “essentially a less-demanding version of third-party standing, permitting a plaintiff to sue to vindicate the rights of someone else, even if the plaintiff has suffered no injury.”²¹⁰ And while it had previously been incorporated into Georgia’s jurisprudence in *Aldridge v. Georgia Hospitality & Travel Ass’n*,²¹¹ the court did so in cursory fashion, citing “only federal authority and law review articles and did no analysis whatsoever of whether the theory was consistent with the judicial power under the Georgia Constitution.”²¹² Moreover, having recently excised third-party standing from its standing jurisprudence just a few months earlier in *Wasserman*, the court’s deep dive into the Judicial Power Paragraph called into question the viability of associational standing.²¹³ With associational standing “squarely at issue” in *EVA*, the court determined it was improperly imported into Georgia’s body of standing law.²¹⁴ At bottom, associational standing is premised on asserting the rights of others not before the court, and proper application of Georgia’s constitution reveals a “consistent understanding that a plaintiff must assert her own legal rights to have a Georgia court resolve a dispute about the relative rights of parties to the action.”²¹⁵

None of the plaintiffs—whether organizational or individual—demonstrated standing under a public rights or “community standing” theory, either.²¹⁶ As it had in previous cases, the court declined to extend the concept of community stakeholder standing to claims against the State.²¹⁷ That left just the individual plaintiffs asserting their private right to vote to establish standing to challenge the SEB rules.²¹⁸

207. *Id.*

208. *Id.*

209. *Id.* at 777–80, 917 S.E.2d at 140–42.

210. *Id.* at 777, 917 S.E.2d at 140–41.

211. 251 Ga. 234, 304 S.E.2d 708 (1983).

212. *EVA*, 321 Ga. at 778, 917 S.E.2d at 141.

213. *Id.* at 777–80, 917 S.E.2d at 140–42.

214. *Id.* at 778, 917 S.E.2d at 141.

215. *Id.* at 779, 917 S.E.2d at 141 (quoting *Wasserman*, 320 Ga. at 644, 911 S.E.2d at 600).

216. *Id.* at 781, 917 S.E.2d at 143.

217. *Id.* at 781–84, 917 S.E.2d at 143–44.

218. *Id.* at 783–84, 917 S.E.2d at 144.

On that score, the court largely agreed with the plaintiffs, holding that the “right to vote is fundamental; it is necessary to preserve our republic and our liberty.”²¹⁹ And it provided that an “infringement of the right to vote occurs both when a voter is prevented from casting a ballot and when a properly cast vote is not counted.”²²⁰ But just because voting is a private right in some contexts does not grant a voter standing to challenge *any* aspect of voting.²²¹ Indeed, the court held that even the individual voter plaintiffs lacked standing to challenge two of the SEB rules because they “do not concern the casting or counting of votes.”²²² This was a critical distinction and one that synthesized the private/public right dichotomy when it comes to standing in voting-related claims. And it demonstrated that voting as a private right does not extend indefinitely. It is at times more akin to a public right when it goes beyond the realm of “casting or counting votes.”²²³ In *EVA*, though, the court had already ruled that the plaintiffs failed to establish public-right community standing to challenge the *State* action at issue.²²⁴ Had this been a challenge by voters to local government action related to voting, instead of to the actions of the State, they likely would have had the requisite standing to undertake the challenge.

All of this is critically important for future challenges to election administration and other issues involving voting. As in federal court, plaintiffs must ensure they have standing to challenge the election practice involved.²²⁵ But a challenge to state voting regulations generally requires the violation a private right, while challenges to local decisions or processes only requires that the plaintiff be a community member.²²⁶

IV. STANDARDS FOR OTHER PRE-ELECTION CHALLENGES

In addition to pre-election challenges like *EVA* to election processes, the other main challenge brought before an election involve the eligibility of candidates or mandamus actions.²²⁷ Although partially discussed above, two recent cases involving pre-election challenges merit further

219. *Id.* at 784, 917 S.E.2d at 145.

220. *Id.* (citing *Wasserman*, 320 Ga. at 631–32, 911 S.E.2d at 592–93).

221. *Id.* at 786, 917 S.E.2d at 146.

222. *Id.* at 786–88, 917 S.E.2d at 146–47.

223. *Id.*

224. *Id.* at 782, 917 S.E.2d at 143.

225. *Id.* at 775, 917 S.E.2d at 139.

226. *See id.* at 780–81, 917 S.E.2d at 143–44.

227. *See Camp*, 314 Ga. 699, 879 S.E.2d 88; *Barrow v. Raffensperger*, 308 Ga. 660, 842 S.E.2d 884 (2020).

discussion, because they illustrate important points about the development of Georgia election law in this area.²²⁸

A. *Camp v. Williams*

*Camp v. Williams*²²⁹ involved a dispute during the election of the Douglas County Chief Magistrate Judge about the proper method of replacing an ineligible candidate.²³⁰ The case began when the incumbent successfully challenged the qualifications of her opponent who was not a member of the State Bar of Georgia prior to the primary election.²³¹ The County Democratic Party provided a substitute candidate on the ballot who was not on the list of certified Democratic candidates for the chief magistrate position, which the Board of Elections accepted.²³² Camp then filed a candidate qualification challenge to the purported Democratic candidate's qualifications, claiming that Georgia law did not authorize the replacement of the candidate in the circumstances of the case.²³³ While the superior court agreed that the Douglas County Board of Elections should not have included the replacement candidate on the ballot, it "refused to reverse the Board's decision" because it did not believe it had the authority to do so.²³⁴ The Douglas County Superior Court interpreted the applicable Code section authorizing candidate-qualification challenges as limited only to personal attributes of the candidate and did not include the authority to review the process by which the candidate was placed on the ballot or the candidate's eligibility.²³⁵

Camp sought discretionary review at the Supreme Court of Georgia, which considered the sole question of whether O.C.G.A. § 21-2-6²³⁶ authorized the superior court "to reverse the decision of the Superintendent and the Douglas County Board of Elections."²³⁷ The supreme court, presuming "that the General Assembly meant what it said and said what it meant," held that O.C.G.A § 21-2-6 authorizes

228. *Id.*

229. 314 Ga. 699, 879 S.E.2d 88.

230. *Id.* at 699-700, 879 S.E.2d at 89.

231. *Id.* at 700, 879 S.E.2d at 89. This is an unusual judicial position in Georgia that is partisan.

232. *Id.*

233. *Id.*

234. *Id.* at 701, 879 S.E.2d at 90.

235. *Id.*

236. O.C.G.A. § 21-2-6.

237. *Camp*, 314 Ga. at 701, 879 S.E.2d at 90.

voters to challenge a candidate's constitutional and statutory qualifications for holding office which "indicates that prerequisites to appearing on the ballot are included in the challengeable qualifications."²³⁸

While candidate substitution under Georgia law can occur *after* a primary election when the candidate secures the nomination under O.C.G.A. § 21-2-134(b)(1)(A),²³⁹ the replacement candidate in this case had not qualified "through the Democratic primary in the time prescribed by law."²⁴⁰ Thus, that candidate did not qualify to seek and hold the public office of Chief Magistrate Judge of Douglas County under O.C.G.A. § 21-2-6, the "express vehicle to vindicate voters' interest in ensuring that is so."²⁴¹ The supreme court reversed the judgement of the superior court and the case was remanded "for further proceeding consistent with th[e] opinion" of the court.²⁴²

B. Barrow v. Raffensperger

*Barrow v. Raffensperger*²⁴³ addressed how judicial elections are handled when an incumbent judge resigns.²⁴⁴ After supreme court Justice Blackwell announced he was resigning, the Secretary canceled the election scheduled for May 19, 2020, for Justice Blackwell's next term.²⁴⁵ The plaintiffs "tried to qualify for that election and were turned away by the Secretary's office."²⁴⁶ So they filed a mandamus action in the Fulton County Superior Court, seeking to compel the Secretary to reopen qualifying and conduct the May 2020 election for supreme court.²⁴⁷ The superior court denied the mandamus petitions "agreeing with the Secretary that a current vacancy was created in Justice Blackwell's office when his resignation was accepted by the Governor, which gave rise to the Governor's power to appoint a successor."²⁴⁸

238. *Id.* at 701–02, 879 S.E.2d at 90 (citation omitted).

239. O.C.G.A. § 21-2-134(b)(1)(A) (2021).

240. *Camp*, 314 Ga. at 706, 879 S.E.2d at 93.

241. *Id.* at 708, 879 S.E.2d at 94.

242. *Id.* at 708, 879 S.E.2d at 95.

243. 308 Ga. 660, 842 S.E.2d 884.

244. *Id.* at 660–61, 842 S.E.2d at 887.

245. *Id.* at 661, 842 S.E.2d at 887.

246. *Id.*

247. *Id.* The plaintiff Beskin also filed a claim that her federal constitutional rights were violated along with the mandamus claim, but the superior court did not find that Beskin's rights were violated. *Id.*

248. *Id.*

The plaintiffs then appealed to the supreme court,²⁴⁹ which held that Justice Blackwell's resignation was irrevocable once accepted by the Governor and the Justice's position would not be vacant until November 18, 2020, at which time the Governor would be required to appoint a new Justice.²⁵⁰ As a result, the May 19, 2020 election would be "legally nugatory" because the election would be held to fill a "future term that will never exist."²⁵¹ The court concluded that "[m]andamus cannot be granted to compel the Secretary of State to conduct an election to fill the future term of office of a Justice whose office will definitely be vacated before his existing term of office ends, thereby eliminating the future term."²⁵²

V. STANDARDS FOR ELECTION CONTESTS

The post-election remedy available to voters and candidates is an election contest, which seeks to overturn an election.²⁵³ After certification, election results are presumed valid.²⁵⁴ As a result, "one challenging the results bears the burden of showing that the results are invalid due to an irregularity sufficient to place the entire election in doubt."²⁵⁵ It is not enough to show an erosion of confidence in the outcome because "[e]lections cannot be overturned on the basis of mere speculation."²⁵⁶

Election contests generally proceed under one of two paradigms.²⁵⁷ The most common is that the number of illegal votes accepted or legal votes rejected is sufficient to place the result in doubt.²⁵⁸ "The second paradigm involves cases where a party alleges systemic irregularities in the election process that may not be measurable in the same discrete manner that is used in cases falling within the first paradigm."²⁵⁹

249. *Id.*

250. *Id.* at 661–62, 842 S.E.2d at 887–88.

251. *Id.* at 662, 842 S.E.2d at 888.

252. *Id.* at 680, 842 S.E.2d at 900.

253. *See Martin v. Fulton Cnty. Bd. of Registration & Elections*, 307 Ga. 193, 222, 835 S.E.2d 245, 266–67 (2019).

254. *Id.*

255. *McCranie v. Mullis*, 267 Ga. 416, 416, 478 S.E.2d 377, 378 (1996).

256. *Martin*, 307 Ga. at 222, 835 S.E.2d at 267 (quoting *Meade v. Williamson*, 293 Ga. 142, 149, 745 S.E.2d 279, 285 (2013)).

257. *Id.*

258. *Id.* at 222–23, 835 S.E.2d at 267–68 (collecting cases).

259. *Id.* at 223, 835 S.E.2d at 268.

Election contest procedures include multiple traps for the unwary. The petition must include specific items to be valid and must be verified.²⁶⁰ Service must be made on the chair of the State Election Board, even though the SEB is not a party.²⁶¹ The clerk is supposed to notify the administrative judge for the administrative district where the contest is filed and issue a special service of process.²⁶² And the proceeding must move quickly, with a number of deadlines for initial hearings, because the normal deadlines in the Civil Practice Act do not apply.²⁶³

In an election contest, the superior court has a large amount of discretion in managing discovery, and “there is no definite, one-size-fits-all amount of time” that constitutes a “reasonable time for discovery” because it is dependent on the facts and circumstances of each case.²⁶⁴ A similar amount of discretion applies to the types of discovery permitted, with superior courts able to balance the competing interests in discovery requests.²⁶⁵ An election contest can be tried to a jury when there is “(1) [a] demand, and (2) a determination that there are issues which under other laws of this State the litigant is entitled to have trial by a jury.”²⁶⁶

After hearing evidence, if the superior court determines that the results are placed in doubt, the remedy is ordering a repeat election among the same candidates in the contested election.²⁶⁷ Any appeal must be filed within ten days of the final determination by the superior court.²⁶⁸

Attorney’s fees in election contests are available for cases that fit under O.C.G.A. § 9-15-14²⁶⁹ as having “a complete absence of any justiciable issue of law or fact” to support the claims.²⁷⁰

260. O.C.G.A. § 21-2-524(a), (d) (2000).

261. O.C.G.A. § 21-2-524(b).

262. O.C.G.A. §§ 21-2-523 (1998), 21-2-524(f).

263. O.C.G.A. §§ 21-2-524(f), 21-2-525(a) (1998); *see also Martin*, 307 Ga. at 213, 835 S.E.2d at 260–61.

264. *Martin*, 307 Ga. at 213, 835 S.E.2d at 261.

265. *Id.* at 218, 835 S.E.2d at 264.

266. *Id.* at 232, 835 S.E.2d at 273 (quoting *Henderson v. Cnty Bd. of Registration & Elections*, 126 Ga. App. 280, 285, 190 S.E.2d 633, 636 (1972)).

267. O.C.G.A. § 21-2-527(d) (1998).

268. O.C.G.A. § 21-2-528 (2016).

269. O.C.G.A. § 9-15-14 (2001).

270. *Davis v. Dunn*, 286 Ga. 582, 586–87, 690 S.E.2d 389, 393 (2010).

VI. CHALLENGES TO VOTING MACHINES

The 2018 and 2020 elections both saw significant challenges to the use of electronic voting machines in Georgia elections, primarily in federal court. But that focus has continued and Georgia law has also developed in areas involving the use of voting machines. Courts have considered cases involving the use of QR codes on paper ballots generated by Georgia's voting system.²⁷¹ And courts have also addressed the statutory requirements concerning the certification and security of Georgia's voting system.²⁷²

A. *VoterGa and the Legality of QR Codes*

Georgia voting machines used for in-person voting produce a paper ballot that contains two elements: (1) a human-readable summary of the voter's selections, and (2) a QR code read by the scanner at the precinct.²⁷³ In *VoterGa v. Georgia*,²⁷⁴ the plaintiffs claimed that the use of the Dominion voting machines violated Georgia law and their right to vote.²⁷⁵ Despite acknowledging that voters are able to read their choices on the paper ballot generated by Georgia's voting machines, the plaintiffs complained that voters are unable to verify whether the corresponding QR code displayed on the ballot accurately recorded their vote in violation of O.C.G.A. §§ 21-2-2(7.1)²⁷⁶ and 21-2-300²⁷⁷ of the Georgia Election Code.²⁷⁸ The Fulton County Superior Court found that the State had satisfied the requirements of Georgia law and granted the State's motion to dismiss "concluding that the petitioners failed to state a claim upon which relief can be granted because there is no actual controversy between the parties."²⁷⁹

The Court of Appeals of Georgia agreed that "there is no language in the [Georgia Election Code] that requires that the corresponding QR code

271. *VoterGa v. Georgia*, 368 Ga. App. 119, 889 S.E.2d 322 (2023).

272. *DeKalb Cnty. Republican Party, Inc., v. Raffensperger*, No. 24CV011028 (Fulton Cnty. Super. Ct. Oct. 04, 2024), <https://www.fultonclerk.org/DocumentCenter/View/10139/32-DISMISSAL-ORDER-10-04-2024> [<https://perma.cc/34PZ-RXMN>], [*DeKalb GOP*] *aff'd*, No. A25A0831, 2025 Ga. App. LEXIS 400 (Sept. 19, 2025).

273. *See VoterGa*, 368 Ga. App. at 120, 889 S.E.2d at 323.

274. 368 Ga. App. 119, 889 S.E.2d 322.

275. *Id.* at 120, 889 S.E.2d at 323.

276. O.C.G.A. § 21-2-2(7.1).

277. O.C.G.A. § 21-2-300.

278. *VoterGa*, 368 Ga. App. at 120, 889 S.E.2d at 323.

279. *Id.* at 121, 889 S.E.2d at 323.

on the ballot be readable by [the] elector, or that electors must be able to verify their election choices through the specific mechanism or device that actually tabulates and counts their voting choices”²⁸⁰ and declined “to construe the statute in such a manner.”²⁸¹ Based on the presumption that the “General Assembly meant what it said and said what it meant,” the court concluded that the readable paper ballots generated by Georgia’s election system satisfied the statutory requirements of the Election Code and there was no case or controversy under Georgia law.²⁸² The court of appeals further determined that there was “no state of provable facts that would warrant [declaratory and injunctive] relief” and affirmed the superior court’s dismissal of the case.²⁸³

B. DeKalb GOP on Equipment Certification

A separate case challenged Georgia’s election system by focusing on security rather than the operation of the voting machines.²⁸⁴ That case was filed as a mandamus action, claiming that the Secretary had not complied with the voting system certification requirements of O.C.G.A. § 21-2-300(a).²⁸⁵ After a trial, the superior court dismissed the mandamus petition, ruling that the plaintiff failed to allege any clear legal duty under the Georgia Election Code violated by the State.²⁸⁶ The court held that O.C.G.A. § 21-2-300(a) did not contain any continuing duty by the State to re-certify the election system once it had been certified by the United States Election Assistance Commission (“EAC”) and the Secretary “as safe and practicable for use.”²⁸⁷ The Secretary had not neglected any duty and the plaintiff had “no clear legal right to the [] demanded relief.”²⁸⁸ The plaintiffs then appealed to the Supreme Court of Georgia, which transferred the case to the court of appeals.²⁸⁹

280. The Georgia Election Code defines electors as registered qualified voters or more specifically, “any person who shall possess all of the qualifications for voting now or hereafter prescribed by the laws of this state, including applicable charter provisions, and shall have registered in accordance with this chapter.” O.C.G.A. § 21-2-2 (7).

281. *VoterGa*, 368 Ga. App. at 123, 889 S.E.2d at 325.

282. *Id.* (quoting *DeKalb Cnty Bd. of Tax Assessors v. Barrett*, 361 Ga. App. 598, 600, 865 S.E.2d 192, 194 (2021)).

283. *Id.*

284. *DeKalb GOP*, slip. op. at 1.

285. *Id.*

286. *Id.* at 2, 8.

287. *Id.* at 6–7.

288. *Id.* at 8.

289. *DeKalb Cnty. Republican Party, Inc. v. Raffensperger*, No. S25M0234, Order to Transfer (Ga. Sup. Ct. October 15, 2024).

In its transfer order to the court of appeals, the supreme court stated that under O.C.G.A. § 15-3-3.1(a)(4),²⁹⁰ it “no longer has jurisdiction over appeals in cases involving extraordinary remedies” and that it did not have jurisdiction in cases seeking “to compel respondent to take certain actions regarding upcoming elections” because such cases do not invoke the supreme court’s exclusive “election contest” jurisdiction under article VI, section VI, paragraph II (2) of the Georgia Constitution.²⁹¹ The appeal of the superior court’s decision has been affirmed by the court of appeals based on lack of standing of the plaintiffs.²⁹²

VII. IMPORTANCE OF EXPEDITING ELECTION RELATED CASES

Perhaps the most significant development over the last seven years is the Supreme Court of Georgia’s expansion of a doctrine that requires plaintiffs challenging elections to exercise every means possible to expedite their cases. Historically, plaintiffs were always required to complete challenges to primary elections before the general election, rooted in the requirement that the challenge be heard with “greatest of expedition,” because the subsequent election moots the challenge to the primary.²⁹³ And the burden has always been on the plaintiff bringing the contest to ensure it moves expeditiously.²⁹⁴

But in recent years, the supreme court has imposed an additional requirement, making clear that even if a pre-election challenge or contest to a general election is not moot in the jurisdictional sense, it can still be dismissed if the plaintiff did not make efforts to move things along quickly.²⁹⁵ This expansion of the traditional mootness approach to election contests now requires plaintiffs to use every means available to obtain a final ruling prior to the election.²⁹⁶ A review of several recent cases demonstrates how this process works.²⁹⁷

290. O.C.G.A. § 15-3-3.1(a)(4) (2016).

291. DeKalb Cnty. Republican Party, Inc. v. Raffensperger, No. S25M0234, Order to Transfer (Ga. Sup. Ct. October 15, 2024).

292. DeKalb Cnty. Republican Party, Inc. v. Raffensperger, No. A25A0831, 2025 Ga. App. LEXIS 400 (Sept. 19, 2025).

293. Swain v. Thompson, 281 Ga. 30, 31, 635 S.E.2d 779, 781 (2006).

294. Schmitz v. Barron, 312 Ga. 523, 524–25, 863 S.E.2d 121, 123 (2021).

295. See Miller v. Hodge, 319 Ga. 543, 905 S.E.2d 562 (2024).

296. See Catoosa Cnty. Republican Party v. Henry, 319 Ga. 794, 906 S.E.2d 750 (2024).

297. See, e.g., Miller, 319 Ga. 543, 905 S.E.2d 562; Henry, 319 Ga. 794, 906 S.E.2d 750.

A. Failure to Expedite in Pre-Election Cases

Several cases from the supreme court demonstrate how plaintiffs were unsuccessful in expediting pre-election litigation such as candidate-qualification challenges.²⁹⁸

1. *Miller v. Hodge*

In *Miller v. Hodge*,²⁹⁹ the supreme court explained in detail how mootness works in election contests.³⁰⁰ The case involved a contest filed by Miller against several county officials contesting a county commissioner election, but the runoff election was held prior to the resolution of the contest.³⁰¹ The Chatham County Superior Court found the first election was valid and that Miller's claims about the first election were mooted by the runoff.³⁰² Miller appealed.³⁰³

The supreme court affirmed, explaining the difference in a traditional understanding of mootness and how mootness works in the election context.³⁰⁴ The court contrasted mootness when "intervening events have rendered the relief sought impossible or pointless," with the election-contest statutes, which permit the court "to direct a trial court to declare an election result invalid and to call for a new election," even after a subsequent election occurred.³⁰⁵ The court then explained that its past use of the term "moot" for election contests was "based on various prudential reasons for courts to limit their exercise of jurisdiction and to refrain from invalidating elections after the fact when the challenging party has not acted with dispatch to litigate their claims before a subsequent election."³⁰⁶

The key point is not that the subsequent election moots the contest, because the subsequent election can still be invalidated.³⁰⁷ Rather, the burden is on the challenger "to utilize every available means to protect his rights and to resolve this election contest prior to the succeeding runoff election, such as by seeking an expedited ruling on the election

298. *Id.*

299. 319 Ga. 543, 905 S.E.2d 562.

300. *Id.* at 545–50, 905 S.E.2d at 564–67.

301. *Id.* at 543–44, 905 S.E.2d at 563–64.

302. *Id.* at 544, 905 S.E.2d at 564.

303. *Id.*

304. *Id.* at 548–50, 905 S.E.2d at 566–67.

305. *Id.* at 548, 905 S.E.2d at 566–67.

306. *Id.* at 548, 905 S.E.2d at 567.

307. *Id.* at 548, 905 S.E.2d at 566–67.

contest or a stay of the subsequent election.”³⁰⁸ The court made clear that the prudential concerns about election contests, coupled with Miller’s actions in failing to expedite the case, including seeking additional briefing which delayed the superior court’s decision, resulted in the court dismissing the appeal.³⁰⁹

2. *Catoosa County Republican Party v. Henry*

The court then dealt with several additional cases that applied this principle. In *Catoosa County Republican Party v. Henry*,³¹⁰ the court again explained that its election-contest precedents make “crystal clear that the first such hurdle is for the parties seeking to undo an election to have done everything within their power to have their claims decided before the election occurred.”³¹¹ The *Henry* case involved a county party that tried to stop candidates from qualifying for county offices, which resulted in a superior court order allowing the candidates to qualify.³¹² The supreme court explained the tight deadlines involved in pre-election qualification challenges and then noted that “[a]lthough the trial court worked quickly to resolve the parties’ dispute prior to the qualifying deadline, and the CCRP Defendants quickly filed a notice of appeal, any sense of urgency apparently ended at that point.”³¹³ The court ultimately dismissed the appeal, noting that the appellants asked for additional time for their brief, never sought expedition, and never sought any emergency stay of the election.³¹⁴ The appellants were required “to do all they could to ensure that their claims were resolved before the primary election occurred. But they chose delay instead.”³¹⁵ As a result, the court dismissed the appeal without reaching the merits.³¹⁶

308. *Id.* at 547, 905 S.E.2d at 566.

309. *Id.* at 549, 905 S.E.2d at 567.

310. 319 Ga. 794, 906 S.E.2d 750.

311. *Id.* at 794, 906 S.E.2d at 751.

312. *Id.* at 795–97, 906 S.E.2d at 751–52.

313. *Id.* at 799, 906 S.E.2d at 753.

314. *Id.* at 799–800, 906 S.E.2d at 754.

315. *Id.* at 800, 906 S.E.2d at 754.

316. *Id.*

*B. Failure to Expedite in Post-Election Cases***1. *Ponder v. Davis***

In the 2024 election cycle, the court also applied the same rule it applied in pre-election challenges to post-election contests as well.³¹⁷ The *Ponder v. Davis*³¹⁸ case involved an election for Georgia Court of Appeals, where a voter sought to remove Davis from the ballot before the election as not qualified.³¹⁹ After that challenge was denied and the voter did not attempt to stay the election, the general election occurred and Davis won.³²⁰

Ponder and the voter who filed the original challenge then filed an election contest, claiming that Davis was not qualified to hold the office of judge.³²¹ The Fulton County Superior Court dismissed the contest because the verifications were not consistent with Georgia law and also denied an attempt to amend the petition to correct the verifications.³²² When considering the appeal, the supreme court looked back to the original pre-election challenge and explained that the voter who filed it

never moved to stay the election, chose not to appeal the dismissal of his pre-election challenge, and has not otherwise shown how he has acted with dispatch to resolve his claims before the election took place.

Ponder, like Frails, never sought a stay of the election until the challenges to Davis's qualifications could be resolved. Indeed, it does not appear that Ponder participated in any pre-election challenge at all, instead waiting until three weeks after she lost the election to file this post-election contest.³²³

As a result, the supreme court dismissed the appeal without reaching the merits because the “[a]ppellants have failed to show that they did all they could to resolve their claims with dispatch before the election and that the prudential grounds discussed above counsel for dismissal of their appeal.”³²⁴

317. See *Ponder v. Davis*, 320 Ga. 532, 910 S.E.2d 195 (2024).

318. *Id.*

319. *Id.* at 532–33, 910 S.E.2d at 195.

320. *Id.* at 533, 910 S.E.2d at 196.

321. *Id.* at 533–34, 910 S.E.2d at 196.

322. *Id.* at 534, 910 S.E.2d at 196.

323. *Id.* at 535–36, 910 S.E.2d at 197 (emphasis added).

324. *Id.* at 536, 910 S.E.2d at 197.

2. *Peterson v. Vie*

Like the other cases, *Peterson v. Vie*³²⁵ also involved delay in trying to address concerns about an election.³²⁶ In an election for probate judge, Peterson challenged Vie's qualifications prior to primary, but did not resolve the issue before the primary itself.³²⁷ Peterson then filed an election contest after she lost the primary, claiming that Vie was not qualified to hold the office.³²⁸ After that contest was dismissed, Peterson used the entire time to file her responsive briefs and never sought expedited review until after she filed her appellate brief.³²⁹ The court then exercised its prudential approach to election cases and dismissed the appeal, yet again determining that the appellant's failure to expedite the issues in appeal prevented the consideration of the merits of Peterson's appeal.³³⁰

C. *Successful Expedition in Pre-Election Case*

In contrast to the slew of cases dismissed in 2024 for failure to prosecute, the supreme court considered at least one case that properly used every means available in a pre-election qualification challenge.³³¹ A group of voters filed challenges to the electors for several third-party candidates for President of the United States following qualifying.³³² The Secretary denied the challenges, but the superior court reversed, ordering that the candidates be removed from the ballot because it found their electors had not qualified properly.³³³ The electors sought emergency review by the supreme court by filing applications for discretionary appeal, combined with emergency motions to stay and expedite the appeals.³³⁴

The court granted the applications and ultimately resolved the appeal in two weeks from the filing of the applications for discretionary review through briefing, oral argument, and an opinion that concluded the

325. 320 Ga. 502, 910 S.E.2d 191 (2024).

326. *Id.* at 502, 910 S.E.2d at 192.

327. *Id.* at 502–03, 910 S.E.2d at 193.

328. *Id.*

329. *Id.* at 503–04, 910 S.E.2d at 193.

330. *Id.* at 504–05, 910 S.E.2d at 194.

331. *Al Bari v. Pigg*, 319 Ga. 825, 907 S.E.2d 86 (2024).

332. *Id.* at 825–26, 907 S.E.2d at 189.

333. *Id.*

334. *Id.* at 829, 907 S.E.2d 192.

third-party candidates had not properly qualified.³³⁵ The court contrasted this case to the others it dismissed in a footnote:

We emphasize that the parties in this election contest have moved with alacrity and dispatch—especially once the cases reached this Court. As detailed above, the initial complaints filed timely with the Secretary of State were lodged just over two months ago, on July 12, 2024, and three levels of review (ALJ, Secretary of State, and superior courts) spanned less than a month, from mid-August to mid-September. The superior courts below issued orders on September 11, 2024, and some of the affected parties began filing discretionary applications the very next day. When they did, they moved for emergency stays and asked for expedited consideration. We ordered an accelerated schedule and the parties briefed and argued the appeals within one week of the first discretionary appeal being granted.³³⁶

This case demonstrates that using all tools at a party’s disposal results in the supreme court resolving the merits of the appeal, unlike the cases dismissed for prudential reasons.

D. Questions About “Dispatch Doctrine”

More recently, Justice Pinson (joined by Justice Warren) has questioned the “expansion of our judge-made prudential doctrine that election contests must be brought and litigated ‘with dispatch.’”³³⁷ While the Justices were not ready to abandon the doctrine, citing some support for it in the context of election contests, they highlighted the concerns that allow a court to avoid the merits of a decision based on policy considerations even when that court has jurisdiction.³³⁸

VIII. CONCLUSION

Georgia remains a battleground state, with frequent close elections on a statewide basis. While having a familiarity with the structure of elections is important, litigants must also recognize the critical nature of standing. Pursuing cases involving the administration of elections is easier in state courts than federal courts in some areas and more difficult in others. But the public and private nature of voting rights matter when litigating in state courts.

335. *Id.* at 829–30, 907 S.E.2d at 192.

336. *Id.* at 830 n.6, 907 S.E.2d at 192 n.6.

337. *Dean v. State*, 321 Ga. 836, 840, 916 S.E.2d 428, 432 (2025) (Pinson, J., concurring).

338. *Id.* at 844, 916 S.E.2d at 435.

A variety of pre- and post-election options remain available for voters and candidates wishing to challenge aspects of election administration. But all of those cases take place against a backdrop of the importance of finality in the administration of elections and the presumed validity of election results. Thus, litigating with “alacrity and dispatch”³³⁹ is critical to ensuring claims are heard and adjudicated in a timely way.

Georgia law regarding elections has developed significantly in the last seven years. The current close nature of many elections ensures that future developments are inevitable. In the end, confidence in election administration and election results matters—and state officials, county officials, judges, lawyers, candidates, and voters all have roles to play in ensuring that confidence endures.

339. *Al Bari*, 319 Ga. at 830 n.6, 907 S.E.2d at 192 n.6.