**IN THE SUPERIOR COURT OF FULTON COUNTY**
**STATE OF GEORGIA**

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| AMERICAN OVERSIGHT and JOHN DOE,<br><br>Plaintiffs,<br><br>v.<br><br>THE GEORGIA STATE ELECTION BOARD; JANICE JOHNSTON, in her individual capacity and official capacity as a Member of the Georgia State Election Board; RICK JEFFARES, in his individual capacity and official capacity as a Member of the Georgia State Election Board; JANELLE KING, in her individual capacity and official capacity as a Member of the Georgia State Election Board; JOHN FERVIER, in his official capacity as the Chairman of the Georgia State Election Board; SARA TINDALL GHAZAL, in her official capacity as a Member of the Georgia State Election Board;<br><br>Defendants. | CIVIL ACTION FILE NO. 24CV009124 |

**PLAINTIFFS AMERICAN OVERSIGHT AND JOHN DOE'S EMERGENCY MOTION FOR INTERLOCUTORY INJUNCTION AND TEMPORARY RESTRAINING ORDER**

Pursuant to O.C.G.A. § 9-11-65 and O.C.G.A. § 50-14-5(a), Plaintiffs American Oversight and John Doe hereby move this Court for a temporary restraining order and an interlocutory injunction enjoining Defendants Georgia State Election Board (the "Board"), Janice Johnston, Rick Jeffares, Janelle King, John Fervier, and Sara Tindall Ghazal (collectively, "Defendants"; and defendants Johnston, Jeffares, and King, the "Individual Defendants"), from implementing or taking further action with respect to the rules proposed to be adopted at a July 12, 2024 purported "meeting" of the State Election Board (the "July 12 Unlawful

Meeting"), which violated numerous provisions of the Georgia Open Meetings Act, O.C.G.A. §§ 50-14-1 *et seq*. Plaintiffs further move the Court to (i) advance the trial on the merits of Plaintiffs' claim for a declaration that Defendants' actions described in this Motion violated the Open Meetings Act, and (ii) consolidate that trial with the interlocutory injunction hearing. O.C.G.A. § 9-11-65(a)(2).

Plaintiffs request that the Court consider this Motion on an expedited basis, as the controversial proposals ostensibly approved at the July 12 Unlawful Meeting have direct relevance to, and the potential to disrupt, the upcoming general election in November. Defendants' failure to comply with the Open Meetings Act prevented the public, including Plaintiff Doe, from full access to their right of transparency in the consideration and adoption of these proposals, including the ability to hear the proposals and discussion around them, or to make or hear public comment from interested parties with relevant information that should have been considered in connection with these proposals. Accordingly, the Board should not be permitted to implement and enforce those proposals unless and until they are considered and approved at a public meeting that fully complies with all provisions of the Open Meetings Act.

## INTRODUCTION

This case arises from Defendants' numerous violations of the Georgia Open Meetings Act. As described in the Verified Complaint, the Individual Defendants—Johnston, Jeffares, and King—convened an unlawful meeting in violation of the Act to push through controversial election administration proposals. They held this meeting at 4 p.m. on a Friday afternoon, without requisite notice, without providing an agenda (moreover, without publicly sharing the text of one of the proposals they considered before or during the meeting), without meeting quorum requirements, and without satisfying technological requirements for teleconference

participation. All of these statutory requirements are in place to safeguard the public's right to open proceedings and oversight of the state officials who act on their behalf. The actions the Individual Defendants took in direct contravention of the law cannot stand.

Nearly two weeks after the unlawfully convened meeting, and after receiving widespread news attention and pushback from the community, Defendants have yet to take any remedial action. As a result, Plaintiffs have been forced to file this lawsuit. Plaintiffs now seek expedited interlocutory injunctive relief as to these violations because the public will be directly and acutely affected if the controversial, unlawfully-voted, and harmful proposals pushed through at the July 12 Unlawful Meeting are permitted to proceed, unchecked by judicial review.

The Open Meetings Act "was enacted in the public interest to protect the public—both individuals and the public generally—from 'closed door' politics and the potential abuse of individuals and the misuse of power such policies entail." *EarthResources, LLC v. Morgan County*, 281 Ga. 396, 399 (2006) (citing *Atlanta Journal v. Hill*, 257 Ga. 398, 399 (1987)). Actions taken at "meetings" held in violation of the Act are invalid for that very reason: to ensure they did not come about in the shadows through any abuse or misuse of power. An interlocutory injunction is necessary here to prevent irreparable harm to Plaintiffs and the public arising from the invalid, non-public adoption of proposed election rules, as well as the chaos, confusion, and potential burden and expense that would arise if the proposals approved at the July 12 Unlawful Meeting move forward. In order to protect the public interest and enforce the Open Meetings Act, this Court should enjoin Defendants from, during the pendency of this Action, noticing, implementing, enforcing, or otherwise taking further action based upon any actions taken at the July 12 Unlawful Meeting. In addition, accelerating consideration of

Plaintiffs' claim for a declaratory judgment is the proper course here to allow prompt and timely judicial review of the Defendants' actions, before the November election.

## LEGAL AND FACTUAL BACKGROUND

### *The Open Meetings Act*

The Open Meetings Act "seeks to eliminate . . . closed meetings which engender in the people a distrust of its officials who are clothed with the power to act in their name." *McLarty v. Board of Regents,* 231 Ga. 22, 23, 200 S.E.2d 117 (1973). Accordingly, the Act requires that "all meetings shall be open to the public," O.C.G.A. § 50-14-1(b)(1), and, to that end, prescribes several procedural requirements agencies subject to the Act must meet.

For purposes of the Open Meetings Act, agencies include, among others, "[e]very state department, agency, board, bureau, office, commission, public corporation, and authority." O.C.G.A. § 50-14-1(a)(1)(A). To comply with the Act, agencies must abide by a series of notice and other procedural requirements for meetings at which they will conduct official business. Meetings are defined, in relevant part, to include "[t]he gathering of a quorum of the members of the governing body of an agency at which any official business, policy, or public matter of the agency is formulated, presented, discussed, or voted upon[.]" O.C.G.A. § 50-14-1(a)(3)(A)(i). The statute governing the State Election Board provides that "[t]hree voting members of the [State Election Board] shall constitute a quorum[.]" O.C.G.A. § 21-2-30(d).

Whenever the Board intends to hold a meeting, it must provide public notice of "the time, place, and date[]." O.C.G.A. § 50-14-1(d)(1). Timing for notice depends on the nature of the meeting. Regularly-scheduled meetings must be noticed "at least one week in advance . . . in a conspicuous place available to the public at the regular place of an agency or committee meeting subject to this chapter, as well as on the agency's website, if any." *Id.*

For other meetings, "written or oral notice shall be given at least 24 hours in advance," via the county's legal organ or a newspaper of similar circulation, which must in turn share the information upon request from local media outlets. O.C.G.A. § 50-14-1(d)(2). In counties where the legal organ is published less than four times a week, "sufficient notice shall be the posting of a written notice for at least 24 hours at the place of regular meetings," and making the information available upon written request by local media outlets. *Id.* Only "[w]hen special circumstances occur and are so declared by an agency," may that agency "hold a meeting with less than 24 hours' notice[.]" O.C.G.A. § 50-14-1(d)(3).

Beyond notice requirements, the agency must meet additional procedural requirements before and during the meeting to ensure openness in compliance with the Act. Specifically, "[p]rior to any meeting, the agency or committee shall make available an agenda of all matters expected to come before the agency or committee at such meeting," to be "available upon request and . . . posted at the meeting site as far in advance of the meeting as reasonably possible." O.C.G.A. § 50-14-1(e)(1). In addition, while the Act permits certain meetings to be held entirely by teleconference, if the agency is otherwise meeting in person, then, absent emergency conditions, a participating member may only join by teleconference "so long as a quorum is present in person . . . [and] other requirements of this chapter are met," O.C.G.A. § 50-14-1(g)(2)–(3). In other words, members participating virtually in an in-person meeting do not count towards the quorum unless emergency conditions exist. Moreover, absent emergency conditions, the member's participation by teleconference must be necessitated by "reasons of health or absence from the jurisdiction," and the agency must ensure "the public [has] simultaneous access to the teleconference meeting." O.C.G.A. § 50-14-1(g)(3).

If a meeting "is not open to the public as required by" the Act—in other words, if an agency convenes a meeting without complying with the Act's procedural requirements—"[a]ny resolution, rule, regulation, ordinance, or other official action of an agency adopted, taken, or made at [that] meeting . . . shall not be binding." O.C.G.A. § 50-14-1(b)(2).

***The State Election Board***

The State Election Board is entrusted with a range of responsibilities and authority regarding the protection of the right to cast a ballot, including promulgating rules and regulations to promote uniformity in election practices and to take actions the Board deems appropriate to conduct fair, legal, and orderly elections, as provided by O.C.G.A. §§ 21-2-30 *et seq.* The Board is an agency within the meaning of, and subject, to the Georgia Open Meetings Act, O.C.G.A. § 50-14-1(a)(1)(A), and comprises five voting members: Members Janice Johnston, Rick Jeffares, Janelle King, Sara Tindall Ghazal, and Chairman John Fervier. Verified Compl. for Injunctive Relief, Declaratory Relief, and Damages ("Compl.") ¶ 12, July 18, 2024.

The Board's responsibilities are critically important, particularly in the current climate. The 2024 presidential election is already fraught and involves candidates from the 2020 election that came down to razor-thin margins in several states, including Georgia.[1] And many of these same states, including Georgia, remain critical battleground states in the 2024 election.[2] Indeed, the 2020 election led to former President Trump calling on the Georgia Secretary of State's office to "find" more votes in the state[3]—a decision that has led to the former president's

[1] Dartunorro Clark, *Georgia Hand Count of Votes Affirmed Biden's Narrow Victory over Trump,* NBC NEWS (Nov. 19, 2020, 9:12 AM), https://www.nbcnews.com/politics/2020-election/georgia-expected-release-results-trump-biden-hand-recount-n1248234.

[2] *See* Zachary B. Wolf & Renée Rigdon, *Why an Election for 330 Million-Plus People May Still Come Down to So Few Votes* (July 20, 2024, 1:23 PM), https://www.cnn.com/2024/07/20/politics/electoral-votes-swing-state-margins-dg/index.html.

[3] *See* Jeff Amy, *Georgia Official: Trump Call to 'Find' Votes Was a Threat*, AP (Nov. 2, 2021,

indictment in Fulton County[4]—while his allies spread false rumors of election irregularities and voter fraud in Georgia and elsewhere.[5] The landscape is no better in 2024, with various parties pushing harmful narratives and agendas about election administration and claims of voter fraud in advance of this year's momentous presidential election.[6]

***Events Surrounding the Board's Regularly Scheduled July 9 Meeting***

Against this backdrop, on July 9, 2024, at 8:30am, the Board held a regularly-scheduled meeting, duly noticed in advance on June 5, 2024. Ex. A; Compl. ¶ 31. Pursuant to the Board's standard practices and consistent with the requirements of the Open Meetings Act, notice was provided by email through the Secretary of State's notifications@sos.ga.gov email listserv (the "Email List"), Ex. A, and also posted to the Board's website[7]; an agenda was circulated to the Email List the day before the meeting (noting that nine petitions for amendment of an Election

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12:26 AM), https://apnews.com/article/donald-trump-joe-biden-arts-and-entertainment-elections-georgia-2b27f4c92919556bf6548117648693b7.

[4] *See* Richard Fausset & Danny Hakim, *Georgia Judge Rejects Effort to Dismiss Trump Case on Free Speech Grounds*, N.Y. TIMES (Apr. 4, 2024), https://www.nytimes.com/2024/04/04/us/georgia-judge-trump-free-speech.html.

[5] *See, e.g.*, Andrew Donohue, *Trump Lawyer Cleta Mitchell Escaped Georgia Indictment—And Still Leads Election Denial Movement*, INTERCEPT (Sept. 13, 2023, 5:01 PM), https://theintercept.com/2023/09/13/trump-indictment-cleta-mitchell-election/; Praveena Somasundaram et al., *Giuliani Says He Will Stop Accusing Georgia Workers of Election Tampering*, WASH. POST (May 22, 2024, 10:05 AM), https://www.washingtonpost.com/politics/2024/05/21/giuliani-georgia-defamation-agreement/.

[6] *See, e.g.*, Karissa Waddick, *Georgia's Election Integrity Laws Could Create "Hovering Threat" for Poll Workers in 2024*, USA TODAY (Apr. 29, 2024, 9:47 AM), https://www.usatoday.com/story/news/politics/elections/2024/04/29/georgia-election-workers-new-laws-2024/73466273007/; Bill Torpy, *Opinion: The Drive to Hijack Georgia Elections Part of Ongoing Plan*, ATLANTA J.-CONST. (July 15, 2024), https://www.ajc.com/opinion/columnists/opinion-the-drive-to-hijack-georgia-elections-part-of-ongoing-gop-plan/2HMXM5KCT5GRTN36DRXOXUVLQA/.

[7] Maya T. Prabhu & Caleb Groves, *Impromptu State Election Board Meeting Met with Ire, Jeers*, ATLANTA J.-CONST., July 12, 2024, https://www.ajc.com/politics/impromptu-state-election-board-meeting-met-with-ire-jeers/HUJAOT2GQNAONERTSMESDEQSX4/#.

Board rule were set to be considered), Ex. B; and a livestream link was provided so members of the public who were unable to attend in person could observe the meeting, *id.* Consistent with past Board practice, a court reporter transcribed the proceedings. Compl. ¶ 32.

After a lengthy period of public comment, and before all agenda items could be addressed, Board Chair Fervier recessed the meeting and announced that the Board would reconvene the next morning. *Id*. ¶ 35. However, before Chairman Fervier gaveled in the continued meeting on July 10, he reportedly informed the meeting attendees that the meeting would have to be rescheduled due to lack of quorum. *Id.* ¶¶ 35–38.

Soon thereafter, a Postponed Meeting notice was circulated to the Email List, confirming that the July 10 meeting would be postponed, and that "[a] future date will be set and announced as soon as possible." Ex. C. Chairman Fervier was subsequently told by the Georgia Attorney General's Office that properly rescheduling the meeting in compliance with the Open Meetings Act would require seven days' notice.[8]

***The Lead-up to the July 12 Unlawful Meeting***

On July 11, 2024, Defendant Jeffares contacted Chairman Fervier and Member Tindall Ghazal to ask if they were available to convene a Board meeting on July 12, 2024, and both indicated they were unavailable.[9] After apparently learning of Individual Defendants' plan to proceed with a meeting, an attorney from the Georgia Attorney General's office sent an email to all five members of the Board warning that the proposed July 12 meeting could violate the state's Open Meetings Act, indicating that the Act generally requires a minimum of one week's

[8] David Wickert, *The Backlash Against the Georgia Election Board's Actions Is Growing*, ATLANTA J.-CONST., July 16, 2024, https://www.ajc.com/politics/election/backlash-against-georgia-election-board-action-grows/U3S22F2VTVARJM7MU6MBUDQYTI/#.
[9] *Supra* note 7.

notice for non-emergency meetings or for meetings not arising under "special circumstances."[10] Notably, the Attorney General's office expressed skepticism that emergency or exceptional circumstances existed in this case, and called upon the Board members to let the Attorney General's office know if there was, in fact, "an actual emergency."[11] The Attorney General's office also instructed Defendants as to other procedural requirements, including that a quorum must be present in person, and instructing as to teleconference requirements. Compl. ¶¶ 46–47.

None of the Individual Defendants responded to the email from the Attorney General's office. Compl. ¶ 48. Instead, Defendant Jeffares created a purported meeting "notice" stating: "As provided in O.C.G.A. § 21-2-30(e), along with Board Members Jan Johnston and Janelle King, I hereby call a meeting of the State Election Board to finish the unfinished agenda items from the Tuesday, July 9th State Election Board Meeting. The meeting will be conducted on Friday, July 12, 2024 at 4:00 p.m. in Room 341 at the Georgia State Capitol Building in Atlanta, Georgia." Compl. Ex. A. A handwritten notation indicates that Jeffares signed the document on July 11, 2024, at 3:20pm. *Id.* The document does not indicate when it was posted.

The Individual Defendants did not disseminate this notice through the Email List nor post it to the Board's website. While the "notice" was apparently at some point posted outside the meeting room in the Georgia State Capitol Building, it was not posted on the Board's website,[12] published with the county's legal organ (the South Fulton Neighbor) nor to any newspaper of general circulation. Compl. ¶ 53. Neither an agenda nor a livestream link was provided.[13] Compl. ¶¶ 52–55.

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[10] *Supra* note 8.
[11] *Supra* note 7.
[12] *Id*.; *supra* note 8.
[13] *Supra* notes 7, 8.

### *The July 12 Unlawful Meeting and Aftermath*

On July 12, 2024, at 4:00pm, Defendants Jeffares and King, joined by Board Executive Director Michael Coan, appeared at the Capitol Building and purported to convene a meeting of the Board.[14] Defendant Johnston appeared by videoconference.[15] The July 12 Unlawful Meeting was not livestreamed,[16] nor was a court reporter present to transcribe it, contrary to the Board's standard practice. Compl. ¶¶ 54–58.

At the July 12 Unlawful Meeting, two proposed rules were considered and approved by Individual Defendants Jeffares, Johnston, and King. Several days before the meeting, both proposed rules had been sent by the Georgia Republican Party to Defendant Jeffares, who then shared them with the rest of the Board.[17] One of the proposals, which concerned permitting an increased number of poll observers at election tabulating centers, had been listed on the agenda for the regularly-scheduled July 9 meeting. Ex. B; Compl. ¶ 67. However, the other proposal—imposing new election result reporting requirements on county registrars—was not on the July 9 meeting agenda, nor was it publicly announced, disseminated, or previewed prior to the July 12 Unlawful Meeting. *Id*.; Compl. ¶ 68. Nor was the proposal's full text shared with meeting attendees during the July 12 Unlawful Meeting, before the Individual Defendants voted to approve it for the next step in the rulemaking process. Compl. ¶ 68.

The Open Meetings Act violations arise from the July 12 Unlawful Meeting itself; this Court need not opine on the specific proposals that the Individual Defendants voted on in

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[14] *Id*.
[15] *Id.*
[16] *Id*.
[17] David Wickert, *Emails Show Republican Leader's Involvement in Georgia Election Rules*, ATLANTA J.-CONST., July 17, 2024, https://www.ajc.com/politics/election/emails-show-republican-leaders-involvement-in-georgia-election-rules/BHUKJ6LZI5ENDLU5BPALXJ24ZY/.

violation of the Act. That said, those proposals are, at minimum, highly controversial, and have the potential to cause real harm to Georgia voters and election workers. The first would drastically increase the number of partisan poll watchers permitted at tabulation centers, which could create an environment of intimidation and chaos during the 2024 general election.[18] The second seeks to impose unnecessary burdens on election workers who are already stretched to capacity, by requiring them to compile and post-election results that are already reported by the Secretary of State's Office.[19] Even if policy arguments could be made for the proposals, the Open Meetings Act commands the Board to discuss them in the open, with proper public notice and a real quorum.

In the wake of the July 12 Unlawful Meeting, the Individual Defendants received additional notifications of their violations of the Open Meetings Act. The day after the meeting, Chairman Fervier sent a letter via email to all Board members, including the Individual Defendants, stating that the July 12 proceeding was unlawful according to the Georgia Secretary of State's office and the Georgia Attorney General's office. Compl. ¶ 71.

The Board also failed to write or make available to the public for inspection "[a] summary of the subjects acted on and those members present at a meeting . . . within two business days of the adjournment of a meeting" as required by O.C.G.A. § 50-14-1(e)(2)(A). *See* Ex. D (American Oversight open records request dated July 17, 2024, requesting "[a] summary of the subjects acted on and members present at the Georgia State Election Board meeting held

[18] Bill Torpy, *OPINION: The Drive to Hijack Georgia Elections Part of the Ongoing Plan*, ATLANTA J.CONST., July 15, 2024, https://www.ajc.com/opinion/columnists/opinion-the-drive-to-hijack-georgia-elections-part-of-ongoing-gop-plan/2HMXM5KCT5GRTN36DRXOXUVLQA/.
[19] *Supra* note 8.

on July 12, 2024"), Ex. E (response by the Board stating "We do not have any records responsive to this request.").

On July 15, 2024, Plaintiff American Oversight sent a letter via email to all five members of the State Election Board, noting the violations of the Open Meetings Act and possibly other provisions of Georgia law, and stating that "American Oversight and our partners in Georgia reserve the right to pursue legal action if the Board does not publicly, and **no later than Wednesday, July 17**, clarify that the sham meeting violated Georgia law and that the rules it purported to adopt are legally null and void." Compl. Ex. B (emphasis in original).

As of the date of this filing, Plaintiff American Oversight has received no specific response to this correspondence, nor have the Individual Defendants or the Board taken any steps to cure their unlawful conduct.

## ARGUMENT AND CITATION TO AUTHORITIES

### I. Legal Standard

Georgia trial courts are "vested with broad discretion" to grant an interlocutory injunction. *See SRB Inv. Servs., LLLP v. Branch Banking & Trust Co.*, 289 Ga. 1, 5 (2011). Injunctions serve to provide relief to litigants who do not have an adequate remedy at law. *Wood v. Wade*, 363 Ga. App. 139, 149 (Ga. Ct. App. 2022), *reconsideration denied* (Mar. 10, 2022). This remedy is "a stop-gap measure to prevent irreparable injury or harm to those involved in the litigation." *India-Am. Cultural Ass'n, Inc. v. iLink Pros., Inc.*, 296 Ga. 668, 670 (2015).

In deciding whether to issue an interlocutory injunction, the Court should consider whether: (1) there is a substantial likelihood that Plaintiffs will prevail on the merits of its claims at trial; (2) there is a substantial threat that Plaintiffs will suffer irreparable injury if the injunction is not granted; (3) the threatened injury to Plaintiffs outweighs the threatened harm that an injunction may pose to the Defendants; and (4) granting the requested interlocutory

injunction will not disserve the public interest. *SRB Inv. Servs., LLLP*, 289 Ga. at 5. These factors are a balancing test, and the movant need not prove each factor for the Court to grant an interlocutory injunction. *City of Waycross v. Pierce Cnty. Bd. of Comm'rs*, 300 Ga. 109, 111–12 (2016). Here, although "it is not incumbent upon the movant to prove each factor," *id.* at 112, Plaintiffs are able to prove all four factors here as shown below.

## II. Plaintiffs are entitled to an interlocutory injunction enjoining Defendants from implementing or enforcing actions taken at the July 12 Unlawful Meeting

In this case, all four factors weigh in favor of issuing Plaintiffs' requested injunction and enjoining Defendants from implementing or enforcing actions taken at the July 12 Unlawful Meeting during the pendency of this Action.

### A. Plaintiffs are substantially likely to prevail on the merits because Defendants' actions violated the Open Meetings Act.

First, Plaintiffs are likely to prevail on the merits of their declaratory judgment claim because Defendants have engaged in clear violations of the Open Meetings Act in connection with the July 12 Unlawful Meeting.[20] *See SRB Inv. Servs., LLP*, 289 Ga. at 5. In particular, Defendants (through the actions of Individual Defendants Jeffares, Johnston, and King) violated the Act's notice, agenda, quorum, and teleconference requirements. These requirements are in place to safeguard the public's right to transparency in government proceedings, and their violation undermines the very purpose of the statute. Accordingly, Plaintiffs are likely entitled to a declaration from this Court that any official actions ostensibly taken by the Board at the July 12 Unlawful Meeting were invalid and any votes taken at that gathering had no legal effect.

[20] Plaintiffs are also likely to prevail on their other claims, as well. For the sake of simplicity, and because Plaintiffs are seeking to move up consideration of their request for a declaration concurrent with a hearing on their request for an interlocutory injunction, this motion focuses on the merits of the declaratory judgment claim.

*Inadequate Notice*: First, the Individual Defendants failed to comply with the Act's notice requirements. Regularly-scheduled meetings of an agency subject to the Open Meetings Act must be noticed "at least one week in advance . . . in a conspicuous place available to the public at the regular place of an agency or committee meeting subject to this chapter as well as on the agency's website, if any." O.C.G.A. § 50-14-1(d)(1). The July 12 Unlawful Meeting was ostensibly called "to finish the unfinished agenda items from the [regularly-scheduled] Tuesday, July 9th State Election Board Meeting." Compl. ¶ 49 & Ex. A. After the July 9 meeting, when the Attorney General's Office learned the Board intended to continue that proceeding, the Office informed Chairman Fervier, and subsequently all members of the Board via email, that proper rescheduling would require seven days' notice.[21] Compl. ¶ 40. This directive suggested that a continuation of the meeting needed to be treated as a separate, regularly-scheduled meeting, subject to a new, week-long notice period. Despite the clear instruction from the Attorney General's Office, the Individual Defendants proceeded to convene a purported meeting on July 12 with, *at most*, barely 24 hours' notice, in violation of the Act. O.C.G.A. § 50-14-1(d)(1).

Furthermore, the Individual Defendants not only ignored the black-letter requirements of the statute, they also disregarded standard Board practice for disseminating meeting notices. Specifically, in contravention of the Board's standard practices, they failed to send notice through the Email List or to post it on the Board's website.[22] These simple steps are a virtually no-cost method of ensuring members of the public have notice of the Board's proceedings, furthering the purpose of the Open Meetings Act. *See EarthResources*, 281 Ga. at 399. And the Board's longstanding use of these practices establishes justifiable reliance expectations in the

[21] *Supra* note 8.
[22] *Supra* note 7.

public, which highlights and deepens the impact of the abnormality of the Board's deviations here. The Individual Defendants' disregard of time-honored Board practices speaks to their motivations in insisting to push forward with the July 12 Unlawful Meeting, knowingly excluding two of their colleagues, and with insufficient notice to the public.

*No Agenda*: Next, Defendants violated the agenda requirements of the Act. O.C.G.A. § 50-14-1(e)(1). They did not disseminate an agenda before the July 12 Unlawful Meeting—or at all, apparently—in direct violation of the Act. They did not circulate an agenda via the Email List or on the Board's website, pursuant to the Board's standard practice. *Id.* Nor, to Plaintiffs' knowledge, was an agenda circulated by any other means. Indeed, at the July 12 Unlawful Meeting, the Individual Defendants announced an entirely new rule that had ***not*** been listed on the Board's July 9 meeting agenda, nor posted to the Board's website. Compl. ¶ 56. And while the Board voted to approve that rule to move forward in their rulemaking process, *id.*, they did not even read or otherwise distribute the full text of the proposed rule to meeting attendees—meaning that those who had managed to learn of the meeting had no way of knowing what the Board had voted on. *Id*. at ¶ 69. Indeed, *two full business days* after the meeting, the Board still lacked a legally required record of "the subjects acted on and those members present at a meeting" as required by O.C.G.A. § 50-14-1(e)(2)(A). *See* Exs. D, E (no records responsive to American Oversight's request for a summary of the meeting). This is precisely the kind of opaque government action the Open Meetings Act is designed to prevent.

*No Quorum*: In addition, Defendants violated the Act's quorum requirements because a quorum was not physically present at the July 12 Unlawful Meeting, as required under the circumstances. *See* O.C.G.A. § 50-14-1(g). The statute governing the Board states that "[t]hree voting members of the [State Election Board] shall constitute a quorum[.]" O.C.G.A.

§ 21-2-30(d). Further, under the Open Meetings Act, though certain meetings can be held fully remotely, O.C.G.A. § 50-14-1(f), if the agency is otherwise meeting in person, a participating member may only participate by teleconference "*so long as a quorum is present in person . . .* and other requirements of this chapter are met." O.C.G.A. § 50-14-1(g)(3) (emphasis added). Here, out of the three Board members who participated in the July 12 Unlawful Meeting, only two attended in person—Individual Defendants Jeffares and King—while Individual Defendant Johnston attended by video.[23] The Board therefore did not have the quorum required to take official action.

Had the Board wanted to, it could have convened an entirely remote meeting, but it would then have had to provide notice of the teleconference information to permit members of the public to attend, as has been the Board's practice in the past. *See* O.C.G.A. § 50-14-1(d); Compl. ¶ 32. But the Board did not do so. Instead, it held an in-person hearing, which required that there be "a quorum . . . present in person." O.C.G.A. § 50-14-1(g)(3). The Board cannot dispute that there was no quorum present in person.

*No Public Teleconference Access*: Finally, Defendants violated the Act's teleconference requirements. Whenever a member is permitted to attend a meeting by teleconference, the Open Meetings Act requires the agency to ensure that "the public [has] simultaneous access to the teleconference meeting." O.C.G.A. § 50-14-1(g)(2). Defendants failed to do so for the July 12 Unlawful Meeting. To Plaintiffs' knowledge, no remote access was arranged for members of the public, and no livestream link was set up or provided, even though the Board typically does so. *See, e.g.*, Ex. B. The Board's standard practice recognizes the value in increasing public access

[23] *Supra* notes 7, 8.

through modern technology, and the fact that it was not followed for the July 12 Unlawful Meeting is telling. Moreover, it was an independent violation of the Open Meetings Act.

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The Board is charged with "formulat[ing], adopt[ing], and promulgat[ing] such rules and regulations, consistent with law, as will be conducive to the fair, legal, and orderly conduct of primaries and elections" under O.C.G.A. § 21-2-31(2). The procedural requirements of the Open Meetings Act act as a safeguard and ensure that these vital functions are conducted in the open, in service of the people of Georgia. *See EarthResources*, 281 Ga. at 399 (Act enacted "in the public interest"). The violations described herein defeated that goal, and Plaintiffs have a substantial likelihood of prevailing on the merits of its declaratory judgment claim that Defendants violated the Open Meetings Act.

**B. Plaintiffs will suffer irreparable injury absent injunctive relief.**

The irreparable injury that will occur without an injunction is serious. The rules considered at the Unlawful Meeting would make significant changes to Georgia's elections procedures during an already-fraught elections cycle, without the public oversight and input that Georgia law requires. The Supreme Court of Georgia has made clear that the injury factor "is the most important one, given that the main purpose of an interlocutory injunction is to preserve the status quo temporarily to allow the parties and the court time to try the case in an orderly manner." *W. Sky Fin., LLC v. State ex rel. Olens*, 300 Ga. 340, 354 (2016) (internal quotation marks omitted). When considering whether injury is irreparable, courts consider whether monetary damages are adequate to protect the harmed interests. *Westpark Walk Owners, L.L.C. v. Stewart Holdings, L.L.C.*, 288 Ga. App. 633, 635 (2007). Thus, in cases involving intangible harm, courts will often find irreparable harm that cannot be compensated with monetary

damages. *See Wood*, 363 Ga. App. at 149 (finding plaintiffs suffered irreparable harm to their reputation that could not be compensated by damages); *Variable Annuity Life Ins. Co. v. Joiner*, 454 F. Supp. 2d 1297, 1304 (S.D. Ga. 2006) (finding harm from lost customer goodwill irreparable because "it is neither easily calculable, nor easily compensable, and is, therefore, an appropriate basis for injunctive relief").

Here, Plaintiffs will suffer irreparable injury if Defendants are not enjoined from implementing or otherwise moving forward with the actions taken and votes purportedly made at the July 12 Unlawful Meeting. *See SRB Inv. Servs., LLLP*, 289 Ga. at 5. Defendants' failure to comply with the Open Meetings Act prevented the public from full access to their right of transparency and healthy discourse in the consideration and adoption of controversial proposals concerning election administration in Georgia. The 2024 general election is fast-approaching, and the current electoral climate has already become a breeding ground for uncertainty, chaos, and disruption.[24] Pressing forward with new election rules and amendments that are procedurally invalid is likely to cause all manner of harm, from sowing confusion among voters, to burdening already busy election officials with the task of planning to implement requirements that were not lawfully passed and may never be. The Individual Defendants pushed these controversial proposals through without the benefit of a proper Board quorum and, moreover, without ensuring fulsome public notice and participation, which is particularly critical on a time-sensitive matter of intense public interest, scrutiny, and importance. Permitting these proposals to proceed through the rule-making process before this Court can address these fatal infirmities is likely to

[24] *Supra* note 18; Savannah Hawley-Bates, *Poll Workers Face Threats Ahead of the 2024 Election. This Kansas City Woman Fears for Her Safety*, NPR (July 5, 2024, 4:00 AM), https://www.kcur.org/politics-elections-and-government/2024-07-05/2024-election-security-poll-worker-threats.

cause irreparable harm. *Cf. Wash. Post v. Dep't of Homeland Security*, 459 F. Supp. 2d 61, 75 (D.D.C. 2006) (finding likelihood of irreparable harm if information related to "a matter of current national debate, due to the impending election" was not released on an expedited basis in response to a federal FOIA request).[25]

This irreparable harm arises from the Open Meetings Act violations alone; this Court need not opine on any substantive flaws of the proposed rules themselves or the harm that may arise from their eventual enactment into law. Rather, for purposes of irreparable harm analysis, it suffices that controversial proposals were pushed forward in the rulemaking process at an illegally convened and conducted meeting.

Finally, this harm will not be mitigated by a 30-day public comment period under the Georgia Administrative Procedure Act, O.C.G.A. § 50-13-4(a)(1). Georgia law does not provide that agencies may engage in "'closed door' politics," *EarthResources*, 281 Ga. at 399, so long as the decisions reached at illegally-convened meetings are then published for comment. Rather, the Open Meetings Act requires open meetings with notice, agenda, and a quorum, and then the Administrative Procedure Act *separately* requires publication for public comment.

**C. The relative weight of harms counsels in favor of injunctive relief.**

The injury to Plaintiffs and the public outweighs any theoretical injury an injunction may pose to Defendants. *See SRB Inv. Servs., LLLP*, 289 Ga. at 5. As explained above, if an injunction does not issue here, procedurally invalid election-related rules are likely to proceed

[25] *Cf. Elrod v. Burns*, 427 U.S. 347, 373 (1976) ("The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury."); *see also Nebraska Press Ass'n v. Stuart*, 423 U.S. 1327, 1329 (1975) (where media is prevented from disseminating information, "each passing day may constitute a separate and cognizable infringement of the First Amendment. The suppressed information grows older. Other events crowd upon it. To this extent, any First Amendment infringement that occurs with each passing day is irreparable.").

toward implementation in advance of a momentous election. This outcome may lead to significant confusion, not to mention potentially unnecessary expenditure of resources by elections officials.

Conversely, granting this Motion would result in no cognizable injury to Defendants. Defendants have no legitimate interest in noticing, implementing, enforcing, or otherwise pushing forward invalid, illegally approved rules, *see supra* Section III.A, and so no harm can flow from an injunction. Further, Plaintiffs' requested injunction would leave Defendants free to proceed as they should have in the first place: to properly notice and convene a new meeting—in full compliance with the Act's procedural requirements—to reconsider the exact same proposals illegally approved at the July 12 Unlawful Meeting. The lack of harm to Defendants, weighed against the extreme harm to Plaintiffs and the public, strongly favors issuing an injunction.

**D. The public interest will be served by an interlocutory injunction.**

Granting an injunction here also serves the public interest. *See SRB Inv. Servs., LLLP*, 289 Ga. at 5. In *Byelick v. Michel Herbelin USA, Inc*., the Georgia Supreme Court explained that an interlocutory injunction protects the status quo *before* one party violates the other's rights; it does not further victimize the injured party by preserving the status *after* that violation. 275 Ga. 505, 506 (2002).[26] Similarly, in *Grossi Consulting, LLC v. Sterling Currency Grp., LLC*, the Supreme Court affirmed an interlocutory injunction that required a service provider to transfer assets to the other party. 290 Ga. 386, 388 (2012). Overruling the service provider's objections,

[26] *Accord* WRIGHT & MILLER, *Federal Practice and Procedure* § 2948 (3d ed.) ("Courts also have awarded preliminary injunctions when it is necessary to compel defendant to correct injury already inflicted by defining the status quo as 'the last peaceable uncontested status' existing between the parties before the dispute developed"); *Nutra Health, Inc. v. HD Holdings Atlanta, Inc.*, No. 1:19-cv-05199-RDC, 2021 WL 5029427, at *2 (N.D. Ga. June 29, 2021) ("[T]he Court's order sought to restore the parties to their pre-suit status quo, not the status quo when the case began." (collecting authority)).

the Court held that the injunction properly preserved the status quo and prevented any party "from hurting the other while their respective rights are under adjudication." *Id.* (internal citations omitted).[27]

Here, the Open Meetings Act "was enacted in the public interest to protect the public—both individuals and the public generally—from 'closed door' politics and the potential abuse of individuals and the misuse of power such policies entail." *EarthResources*, 281 Ga. at 399; *see also McLarty*, 231 Ga. at 23 ("[What the [Open Meetings Act] seeks to eliminate are closed meetings which engender in the people a distrust of its officials who are clothed with the power to act in their name."). The Act's procedural requirements which ensure that "all meetings shall be open to the public," O.C.G.A. § 50-14-1(b)(1), reflect the judgment of the legislature that the public interest is best served by requiring government agencies to ensure and defend the public's right to open proceedings and to oversight over the state officials who act on their behalf.

An injunction enjoining Defendants who failed to safeguard those rights—pushing forward controversial eleventh-hour changes to election procedures shortly before a hotly contested election—is in the best interest of the public, particularly where Defendants have given no indication they intend to remedy their violations of the Open Meetings Act. The public has a right to full transparency in government proceedings, especially before controversial election administration rules with the potential for harm are implemented. It is also in the public interest

[27] *See also Aliera Healthcare, Inc. v. Anabaptist Healthshare*, 355 Ga. App. 381, 389–90 (2020) (affirming an interlocutory injunction that required Aliera to undo its transition of customers to a competing health plan and keep servicing those customers in an expired plan); *cf. Inkaholiks Luxury Tattoos Ga., LLC v. Parton*, 324 Ga. App. 769, 774 (2013) (affirming an interlocutory injunction that required defendants to stop using a contested tradename because the status quo to be preserved "is not the situation of contested rights, but the last, peaceable, noncontested status of the parties . . . . [In other words,] the situation prior to the time the junior user began use of its contested mark.").

to prevent Defendants from flouting their obligations under the Open Meetings Act. This factor further weighs in favor of granting Plaintiffs' Motion and issuing an interlocutory injunction.

* * *

In sum, all four of the factors this Court must consider before entering an injunction—the likelihood that Plaintiffs will prevail on the merits of their claims at trial, the threat that Plaintiffs will suffer irreparable injury if the injunction is not granted, the balance of harm to Plaintiffs far outweighing any theoretical harm to Defendants, and that the injunction will not disserve the public interest—counsel in favor of granting this Motion. As such, and in accordance with O.C.G.A. § 50-14-5, Plaintiffs respectfully request that this Court exercise its considerable discretion and issue an interlocutory injunction enjoining Defendants from, during the pendency of this action, noticing, implementing, or enforcing the rules approved at the July 12 Unlawful Meeting, or implementing or enforcing any other votes or official actions undertaken at that proceeding. *See* O.C.G.A. § 50-14-5(a) ("The superior courts of this state shall have jurisdiction to enforce compliance with the provisions of this chapter, including the power to grant injunctions or other equitable relief."); O.C.G.A. § 9-11-65(d) ("Every order granting an injunction and every restraining order . . . is binding . . . upon the parties to the action, their officers, agents, servants, employees, and attorneys, and upon those persons in active concert or participation with them who receive notice of the order by personal service or otherwise.").

## III. Plaintiffs are entitled to a temporary restraining order to preserve the status quo.

Plaintiffs have asked the Court for expedited consideration of their motion for an interlocutory injunction. If necessary to protect the status quo ahead of a hearing on that motion, Plaintiffs also request a temporary restraining order ("TRO") to prevent any further action from being taken on the proposed rules approved at the July 12 Unlawful Meeting. The Court may issue a TRO if "it appears from affidavits or verified complaint that immediate and irreparable

injury, loss or damage will result before the adverse party can be heard in opposition." *United Food & Com. Workers Union v. Amberjack Ltd.*, 253 Ga. 438, 438 (1984); O.C.G.A. § 9-11-65(b). For the reasons described above, Plaintiffs will suffer immediate and irreparable injury if Defendants are not prohibited from implementing or enforcing the actions taken at the July 12 Unlawful Meeting.

## CONCLUSION

For the reasons outlined above, this Court should grant Plaintiffs' request for a temporary restraining order and interlocutory injunction. Plaintiffs further request that the Court accelerate consideration of Plaintiffs' claim for declaratory judgment by hearing that claim at the interlocutory injunction hearing.

Respectfully submitted this 24th day of July, 2024.

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## CERTIFICATE OF SERVICE

I hereby certify that I have this day caused a true and correct copy of the foregoing to be filed with the Clerk of Court using the eFile Georgia system.

Additionally, I have served a true and correct copy of the foregoing on the Georgia State Election Board, addressed to:

Attention: Mr. John Fervier, Chairman
Georgia State Election Board
2 MLK Jr. Drive
Suite 802, Floyd West Tower
Atlanta, Georgia 30334

This 24th day of July, 2024.

/s/ *Sarah Brewerton-Palmer*
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