

SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

Stop Cop City Vote and
Mariah Parker

Petitioners,

v.

A. VANESSA WALDON, individually, and
in her official capacity as the CITY OF
ATLANTA MUNICIPAL CLERK,

Respondent.

Civil Action No.

PETITION FOR A WRIT OF MANDAMUS

Petitioner seeks to submit a referendum to Atlanta voters giving those voters the option of stopping the lease of 265 acres of City property to the Atlanta Police Foundation for the purpose of building a \$90 million training facility. Once the Clerk approves the petition as to form, Petitioner is entitled to 60 days in which to collect signatures. However, on Wednesday, June 14, 2023, the Clerk denied the petition for a frivolous reason, claiming it did not contain information that the Clerk herself is required by statute to furnish.

Petitioner immediately corrected the supposed error. The interim Clerk did not respond until Friday, when she indicated she would review the revised petition, apparently intent on treating the corrected application as a new application, thereby attempting to trigger a new statutory review period. Each additional day the Clerk delays in approving the petition deprives Petitioners of one of the days in which it is entitled to collect signatures to include the referendum on the ballot in the next municipal election. Accordingly, Petitioner now asks this Court for a Writ of Mandamus to compel the Respondent to approve Petitioner's referendum petition.

PARTIES

1. Petitioner Stop Cop City Vote is an unincorporated association under O.C.G.A. § 9-2-24 consisting of individuals and incorporated associations that have united under the common goal of passing a referendum to repeal the ordinance authorizing the lease and construction of a new public safety training center. It is a sponsor of the referendum petition.
2. Petitioner Mariah Parker is an individual member of Stop Cop City Vote and a sponsor of the referendum petition.
3. Respondent A. Vanessa Waldon is the interim City of Atlanta Municipal Clerk. She is sued individually and in her official capacity.

JURISDICTION AND VENUE

4. The Superior Court of Fulton County has jurisdiction over this matter pursuant to Ga. Const. art. VI, § 4, ¶ I.
5. Venue is proper in Fulton County pursuant to Ga. Const. art. VI, § 2, ¶ VI.

STATEMENT OF FACTS

The referendum petition

6. The referendum petition filed on June 7, 2023, seeks to repeal Ordinance 21-O-0367. Petitioners attach a copy of the petition and cover letter delivered to Respondent as Exhibit A.
7. Ordinance 21-O-03067 authorized the lease of 265 acres of City property in unincorporated DeKalb County to the Atlanta Police Foundation for the purpose of building a \$90 million public safety training center (hereinafter “Training Center”).
8. Since its inception, strong public opposition has called on the City Council to reject the construction and proposed location of the Training Center.
9. In October 2021, City Council received 1,126 comments, approximately seventeen hours’

worth of recordings, that they listened to over the course of two days. The public comments overwhelmingly opposed the lease.

10. Despite the massive opposition to the project, City Council passed the ordinance by a vote of ten to four.

11. The initial lease did not include the necessary public funding to complete construction.

12. Instead, in May 2023, council members sought to introduce a funding bill that would authorize \$33.5 million in city funds for the Training Center's construction.

13. At that initial meeting on May 15, 2023, nearly three hundred people signed up for public comments. Every commenter testified against the Training Center.

14. When the final vote on funding the Training Center took place on June 5, 2023, City Council received nearly fifteen hours of public comment against the construction and funding of the proposed Atlanta Public Safety Training Center. Only four public commenters of the more than 350 people who signed up gave comments in support of the Training Center.

15. Despite repeated, record public opposition to the Training Center, Atlanta City Council approved funding of \$33.5 million, and up to \$67 million, for the Training Center.

16. Having exhausted all reasonable means of influencing the legislative process through public comment, Petitioners filed the referendum petition to empower Atlanta voters to decide on the Training Center's fate.

Clerk Waldon's Failure to Certify the Petition

17. After receiving the referendum petition, Respondent had seven days to approve "the petition as to form." O.C.G.A. § 36-35-3(b)(2)(C).

18. Clerk Waldon received the petition on June 7, 2023, and had until June 14, 2023, to approve the petition's form and return to the sponsor the official petition.

19. Clerk Waldon waited until the last day of the statutory period to reply and then denied the petition as to form, stating that the Petition did not contain a place for the person collecting the signatures to sign and attest.

20. That basis for denial is frivolous because the same statutory provision that Clerk Waldon relied on in denying the Petition expressly states that it **is the Clerk's** responsibility to provide a place for the person collecting the signatures to sign and attest. *See* O.C.G.A. § 36-35-3(b)(2)(C) (“**The clerk of the governing authority shall provide a place on each form for the person collecting signatures to provide his or her name**, street address, city, county, state, ZIP Code, and telephone number and to swear that he or she is a resident of the municipality affected by the petition and that the signatures were collected inside the boundaries of the affected municipality.”) (emphasis added).

21. By way of background, the Atlanta municipal code states that Petitioners “shall obtain copies of all official petitions from the municipal clerk.” *See* Atl. Mun. Code. Sec. 66-37. Petitioner not only need but arguably **cannot** furnish the form containing the attestation on their own. Only the Clerk may generate that form. The effect is that the Clerk denied the Petition because the Clerk itself had not yet formatted it correctly.

22. Rather than fight the Clerk on this point, Petitioners immediately sent a Petition that complied with the Clerk's request. Petitioners attach a copy of the corrected Petition as Ex. B.

23. On Friday, June 16, 2023, Petitioners received the Clerk's assurance that she would review the re-submitted Petition before the end of the day.

24. Instead, the Clerk closed her office at noon for the long weekend without ruling on the Petition, and, upon information and belief, is taking the position that the corrected petition is a new Petition for which the Clerk can wait an additional seven days to review.

The Prejudicial Effect of Webb's Failure to Certify

25. Petitioners have 60 days from receiving copies of the petition from the Clerk during which to obtain signatures in support of placing the referendum on the ballot.

26. After Petitioners obtain the requisite signatures, the City Council will have 50 days to determine the petition's validity, *see* O.C.G.A. § 36-35-3(b)(2)(A). If approved, the City then has one week to issue the call for the ballot, O.C.G.A. 36-35-(b)(2)(A), and the call to the ballot must be 29 days before the November 7 election.

27. As a result of this timetable and the Clerk's failure to approve the petition last week, each additional day of delay in approval must be subtracted from the 60 days to which Petitioner would ordinarily be entitled to obtain signatures.

28. Absent immediate relief from this Court, Petitioners will be deprived of an adequate time to collect signatures, solely as a result of the Clerk's failure to exercise its statutory duties.

Claim for Relief

29. The Georgia Constitution authorizes the Legislature to establish the laws by which a municipality may exercise home rule. Ga. Const. art. IX, § 2, ¶ II.

30. The Georgia Legislature created a process by which citizens could petition for a referendum to "amen[d] or repeal[] ordinances, resolutions, or regulations" adopted by cities under their home rule powers. O.C.G.A. § 36-35-3(b)(2)(A).

31. Section 2-501 of Atlanta's Charter authorizes City Council to "prescribe procedures to govern the initiation, adoption, and repeal of ordinances by the electorate."

32. This citizen-led referendum process begins with the municipal clerk.

33. As the City of Atlanta's Municipal Clerk, Respondent "shall approve all petitions as to form." O.C.G.A. § 36-35-3(b)(2)(C).

34. Municipal Code Sec. 66-37 mirrors the statute, stating that “[t]he municipal clerk shall approve all petitions as to form.”

35. The Home Rule statute also requires Respondent to “within seven days, provide the sponsor with official petitions.” O.C.G.A. § 36-35-3(b)(2)(C).

36. The statute requires “The petition shall specifically set forth the exact language of the proposed amendment or repeal.” O.C.G.A. § 36-35-3(b)(2)(A).

37. The only other requirement concerns the information for petition circulators that the **Clerk** must place on the form. O.C.G.A. § 36-35-3(b)(2)(C) requires:

The clerk of the governing authority shall provide a place on each form for the person collecting signatures to provide his or her name, street address, city, county, state, ZIP Code, and telephone number and to swear that he or she is a resident of the municipality affected by the petition and that the signatures were collected inside the boundaries of the affected municipality.

38. Petitioners’ referendum petition contained the language repealing the ordinance. *See Ex. A.*

39. Respondent failed to provide a place on the form where the person collecting signatures would sign. Petitioners’ revised form placed that information on the form for Respondent. *See Ex. B.*

40. The Home Rule statute creates a ministerial duty whereby Respondent must approve the form of referendum petitions within seven days.

41. Respondent has failed to perform her duty under the law.

42. To the extent that Respondent exercised discretion in finding that the petition did not comply with the law, that exercise was a *per se* abuse of discretion because it was not in accordance with the law, which places the burden on the Clerk itself to furnish a suitable form for signature collection. *See, e.g.* 5 U.S.C. 706(2)(A) (stating that an agency action is an abuse of discretion when it is “not in accordance with law.”); *see also Weyerhaeuser Co. v. United States Fish &*

Wildlife Serv., 139 S. Ct. 361, 370 (2018) (explaining that where there is a clear law for an administrative agency to apply, a court may set aside an executive action misapplying that law).

43. Respondent has likewise abused her discretion by failing to consider the corrected petition and instead treating it as a new application.

44. Petitioners have no other legal remedy.

45. Petitioners are therefore entitled to relief as described in the prayers for relief.

WHEREFORE, Plaintiff asks that the Court:

- a. Assume jurisdiction over this matter;
- b. Issue a Mandamus Nisi directing Respondent to appear before this Court within no fewer than ten and no more than thirty days, as required by O.C.G.A. § 9-6-27(a); to be heard, and show cause, if any he has, why a Writ of Mandamus Absolute should not be granted to Petitioners;
- c. Issue findings of facts and conclusions of law for any orders issued in this matter;
- d. Issue a Writ of Mandamus compelling Respondent to approve the form of the referendum petition and to provide Petitioners with copies of the official petition;
- e. Grant Plaintiff reasonable attorney's fees and costs incurred in filing this action under O.C.G.A. § 9-15-14;
- f. Provide such further relief as the Court deems just and proper.

Submitted on June 19, 2023

/s/ Kurt G. Kastorf

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