

THE OFFICE OF SECRETARY OF STATE
STATE OF GEORGIA

IN THE MATTER OF:

STATE ELECTION BOARD EMERGENCY MEETING

Thursday, March 28, 2024,

2:30 p.m.

Virtual Meeting via Microsoft Teams

Parties and board members appearing via Microsoft
Teams audio, chairperson appearing via audio and
video.

APPEARANCE OF THE PANEL

John Fervier, Chair

Sara Tindall Ghazal

Rick Jeffries

Janice Johnston

Ed Lindsey

MARY K MCMAHAN, CCR
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1 **P R O C E E D I N G S**

2 **MR. FERVIER:** I'm going to call to order the
3 March 28, 20'4 special meeting of the State
4 Election Board. I believe we have a quorum. All
5 members are present.

6 We'll start off with the prayer.

7 Dr. Janice Johnston, would you lead us in
8 our prayer, please.

9 (Invocation)

10 **MR. FERVIER:** Board member Jeffries, if you
11 would lead us in the Pledge of Allegiance,
12 please.

13 (Pledge of Allegiance)

14 **MR. FERVIER:** Thank you.

15 Board member Lindsey, do you have a comment
16 you'd like to make before we start?

17 **MR. LINDSEY:** Yes. And I'm glad the parties
18 are here because I want y'all to understand my
19 situation. My firm does represent certain
20 entities around the state (indiscernible). In
21 fact, I can't (indiscernible) one now
22 (indiscernible).

23 We have included among those is the Cobb
24 County Commission. We do not represent the Cobb
25 County Election Board. Those are two separate

1 entities. Under the law, for instance, Cobb
2 County Election Board is actually a -- a
3 instrument of the state. It's created by the
4 state.

5 So when it comes to matters strictly
6 involving the election board where the
7 commission's not involved, I could participate.
8 But if it does involve the commission
9 participating or commission actions are involved,
10 I don't. And because of that, on this particular
11 matter, regarding this particular complaint, I'm
12 going to have to recuse myself as of fairness to
13 (indiscernible) since my firm -- you know, I
14 don't do (indiscernible) anything with the
15 elections (indiscernible) are involved and I'll
16 have to recuse myself in this particular case.

17 And I'm not going to participate in the
18 examinations either. However, there are certain
19 statewide implications as to this issue. I
20 understand there's even some possibilities down
21 the road of some rules coming out of it as a
22 result of this problem. So I'm going to sit here
23 and I'm going to listen; I'm not going to be
24 participating (indiscernible). Thank you.

25 **MR. FERVIER:** Board member Lindsey, your

1 recusal is accepted by the chair. I want to
2 thank everyone for attending today's special
3 meeting of the State Election Board. This
4 meeting is called to consider complaints received
5 by the State Election Board alleging election
6 code violations by the Cobb County Board of
7 Elections and Administration.

8 I want to read part of our code under
9 subsection 5 of Code Section 21-2-31, Duties. It
10 shall be the duty of the State Election Board to
11 investigate or authorize the Secretary of State
12 to investigate when necessary or advisable the
13 administration of primary and election laws and
14 frauds and irregularities in primaries and
15 elections and to report violations of the primary
16 and election laws either to the Attorney General
17 or the appropriate district attorney who shall be
18 responsible for further investigation and
19 prosecution.

20 Now, I just -- I felt it necessary to read
21 that so they'll understand why we are here today.
22 Given the severity of the complaints and timing
23 of the upcoming election, I felt it was necessary
24 for the State Election Board to fully understand
25 the issues occurring in Cobb County.

1 Almost always there are two sides to every
2 story, and hopefully we'll be fully able to
3 understand both sides of that story today. With
4 that in mind, I invited some of the complainants
5 to attend today's meeting to address the board
6 and explain the basis for their complaints. I
7 also invited representatives of the Cobb County
8 Board of Elections and Registration to attend
9 today's meeting to address the board.

10 The board greatly appreciates both parties
11 attending this meeting on such short notice. In
12 order for this to be a fairly smooth process, I'm
13 asking that each side limit their comments to 20
14 minutes. And you can break that up how you see
15 fit.

16 After comments are made, board members may
17 have some follow-up questions to ask. Once both
18 sides have been heard, board members will have an
19 opportunity to make statements if they wish to
20 make statements. Unless other members of the
21 board have a comment they would like to make now,
22 we'd like to begin with the complainants.

23 If you'd introduce yourself.

24 **MS. GRUBBS:** Do you want me to go?

25 **MR. BARTH:** Yes, ma'am. Whatever you want

1 to say.

2 **MS. GRUBBS:** My name is Salleigh Grubbs.
3 I'm the chairwoman of the Cobb County Republican
4 Party, and I did file this complaint due to the
5 uncertainty of what was coming up with the map
6 situation.

7 So I'll just skip down to some e-mails that
8 I sent starting Friday, January 26th. I sent an
9 e-mail to Ms. Fall of Cobb County who's new. And
10 we appreciate her very much. I know she's in a
11 tough situation. But I asked -- inquired about
12 which commission map would be used that can
13 qualify in the primary election. Can you please
14 forward to me the map?

15 And so then their -- after February 5th,
16 letting her know that we would be doing our own
17 qualifying and then had a response from Ms. Fall
18 and a response from Mr. White. And essentially
19 there was confusion going into it from the
20 perspective that the Cobb County Commission was
21 choosing to recognize under Home Rule the -- what
22 we'll call the Home Rule maps. And you'll find
23 those in my complaint.

24 The maps that the county commission was
25 using, the green map is the home -- Home Rule map

1 and then the blue map is the legislative map that
2 was passed by the legislature. It was signed
3 into law by Governor Brian Kemp. And then it
4 subsequently was part of the action in the --
5 what is now the Floam case that was originally
6 brought by the parties.

7 But the legislative map has been the
8 presumptive map the entire time. And so I
9 assumed it was the map, but I wanted to be sure
10 because as the party chair you don't want to
11 screw up the qualifying. You don't want to have
12 disqualified candidates because of something that
13 you did.

14 So as far as I knew, based on information
15 that I had, we were using the legislative maps,
16 as we should because, again, they were passed by
17 the legislature, signed into law by the governor,
18 and upheld in a ruling by Judge Ann Harris.
19 After that the subject maps were put into play in
20 some role at some point by the commission.

21 So you had the Cobb County Commission
22 website saying find your map, put in your address
23 here. And then you have the Cobb County Board of
24 Elections saying, Here's our map. So at all
25 times the Cobb County Board of Elections was

1 using the legislative maps. There didn't seem to
2 be any confusion, but I wanted to clarify due to
3 some scuttlebutt that I've heard. I knew that
4 there was an appeal in a case. And then there
5 was some question as to the supersedeas or the
6 proposed stay.

7 Now, these maps, these legislative maps are
8 the maps that we voted on in the 2022 election
9 and were already put into place at that time. So
10 just the Cobb County commission's decision to use
11 the Home Rule map by resolution, not even by a
12 vote or anything like that, all of a sudden we're
13 rocking along and then that Friday afternoon,
14 around noon, I get an e-mail saying that -- from
15 Mr. White, saying that we were going to be using
16 the Home Rule map.

17 And on that afternoon there was a statement
18 that came out that they were going to use the
19 Home Rule map. But again this is Friday
20 afternoon before qualifying begins the following
21 Monday and came out with the statement about the
22 appeal. And all of a sudden there was a big
23 flip-flop.

24 And so I inquired to find out when the Cobb
25 County Board of Elections took a vote. I wanted

1 to see a copy of the minutes where they took a
2 vote to use the Home Rule maps instead of the
3 legislatively approved, you know, maps that, you
4 know, were found -- where Judge Harris said that
5 the maps were found to be unconstitutional under
6 Home Rule and so all of a sudden we flip-flop.

7 So I have a candidate that is in the
8 Legislative District 2 and then I had, you know,
9 not wanting to be caught with my, you know, tail
10 in a crack to provide for the better explanation
11 if we had a candidate to run under Home Rule
12 because -- anyway the candidates came to qualify
13 and I qualified both candidates.

14 **MR. FERVIER:** Can I ask a question?

15 **MS. GRUBBS:** Sure.

16 **MR. FERVIER:** You had one candidate under
17 the legislative map and one candidate under the
18 Home Rule map?

19 **MS. GRUBBS:** Correct.

20 **MR. FERVIER:** Okay.

21 **MS. GRUBBS:** Because I know this matter is
22 under appeal and we don't know which -- what's
23 going to prevail. I know that there are legal
24 actions going on. We actually filed a -- an
25 intervenor motion to try and get some

1 clarification because, you know, I'm not a judge.
2 While I respect Mr. White, he's not a judge.
3 There was no vote from the Cobb County Board of
4 Elections to use a Home Rule map. I'm operating
5 under the assumption that we're under the
6 legislative maps, but you can see there's a whole
7 lot of confusion and in -- inaction to declare
8 what is what.

9 Now, I'm aware that there was some
10 conversation over comments made about the status
11 quo. The status quo should be what was in place
12 due to the legislature that the governor and now
13 a superior court of Cobb County ruling that Home
14 Rule maps were unconstitutional.

15 And this has far-reaching implications, far
16 beyond just Cobb County because if Cobb County
17 can implement Home Rule, it's more that every
18 single board of commissioners in the state of
19 Georgia. So we're not talking about a matter
20 that is just about Cobb County. This is -- this
21 is a big deal.

22 So today I go on the Cobb County Board of
23 Elections, there was a challenge filed by someone
24 in the Home Rule District 2 map area who actually
25 would live in the Legislative 3 area who

1 challenged the one that was under our Legislative
2 District 2 map. And a challenge was filed and
3 the board ruled that she be disqualified. So
4 they disqualified our Legislative 2 candidate.

5 So when I go on to the board of elections
6 website to look at the legislative -- the
7 qualified candidates, the board of elections has
8 now removed our Legislative 2 candidate from the
9 qualified candidates. So it's as if Ms. Adams
10 has never qualified.

11 **MR. FERVIER:** When was that done?

12 **MS. GRUBBS:** I have no idea. I would love
13 to know from the board of elections when that was
14 done. If anything, it would seem to me that they
15 would say this candidate was ruled unqualified,
16 was disqualified on such-and-such date, but
17 that's not the case.

18 And actually today I go on the website and I
19 find that the maps that are on the website for
20 the board of elections are the legislative maps.
21 And I was rather dumbfounded. So I remembered
22 the legislative maps are in blue and the Home
23 Rule maps were in green. But now on the Cobb
24 Board of Elections website are the legislative
25 maps not the Home Rule maps which they have

1 qualified candidates for.

2 And so Cobb County is in a hot mess. This
3 decision to use the Home Rule maps was made at
4 the eleventh hour when we could not properly --
5 you know, if -- people have no idea what district
6 they're in. I even -- even with the
7 redistricting, I had a lady call me yesterday who
8 was very upset that she's now in District 14 when
9 she was in District 11 congressionally. I'm
10 like, that -- that's been done and over with.

11 So you can imagine the confusion. People in
12 commission districts have no idea what district
13 they're in. They don't have an updated precinct
14 card. When I qualified Alicia Adams, she was in
15 a -- her precinct card -- and I can tell you
16 this, at the time I qualified her, her precinct
17 card, according to the My Voter Page, was in
18 District 2. So she was in the Legislative
19 District 2 map.

20 **MR. FERVIER:** What day was that?

21 **MS. GRUBBS:** And that was part of
22 qualifying. As of March 13th, it still showed
23 that she was in County Commission District 2.
24 However, yesterday I go on the website to look on
25 My Voter Page, and now it's showing she's in

1 District 3.

2 So at some point, Cobb County has updated
3 and changed them to the Home Rule and their My
4 Voter Page for people in -- but yet if they go on
5 the Cobb County Board of Elections website, it's
6 going to show legislatively the map.

7 So, to me, at this point, it really is
8 tantamount to election interference. I -- the
9 eleventh-hour decision to make this change when
10 we have been dealing with this for months and
11 months and months. And even Mr. White in his
12 amicus brief, which I have here -- Mr. White
13 makes an excellent statement because he says,
14 Meanwhile I fully take the position the
15 supersedeas statute cannot hold an
16 unconstitutional law in place, and the Georgia
17 Attorney General's office takes the position that
18 any potential supersedeas should be lifted such
19 that the legislative map should be implemented
20 for the 2024 election cycle.

21 Now I don't know what happened between when
22 Mr. White did his amicus brief and March 1st, but
23 something had to have happened to induce the Cobb
24 County Board of Election to make a radical change
25 at the eleventh hour which is disenfranchising

1 voters. It's not fair to candidates.

2 And Mr. Barth here goes to qualify with the
3 Democratic Party to run -- we get along very well
4 considering the fact he went to get qualified
5 with the Democrat Party -- and they rejected him.
6 And there's another candidate, Reginald Copeland,
7 who they rejected him as well.

8 You can see the confusion. I, as a county
9 party chair, am not going to be responsible for
10 disenfranchising voters, and I'm not going to be
11 held responsible for disenfranchising candidates
12 who otherwise would be duly qualified to run.

13 So this is a mess. I'm aware of the -- the
14 Supreme Court is to hear oral argument and I'm
15 aware of Alicia Adams' complaint where a hearing
16 is to be held April the 11th. But if I'm not
17 mistaken, UOCAVA ballots have to be mailed by
18 April the 8th.

19 And Cobb County is in desperate need of
20 assistance and help, and this body has the
21 ability and you have the authority to induce the
22 Attorney General's Office to step in and do
23 something in a quicker fashion. Because this --
24 this -- you know, one of our basic -- I hear
25 about voter suppression all the time. I can't

1 think of any bigger case of voter suppression in
2 the state of Georgia or really, frankly, in the
3 country than this is right now. And we're in
4 desperate need of help in Cobb County.

5 **MR. FERVIER:** Yes?

6 **MR. BARTH:** Ladies and gentlemen, I am not a
7 lawyer. Donald Barth. I'm just the
8 (indiscernible) and no college, no nothing. I
9 voted last in 2018 for a district chair. We
10 would've cycled in in 2022. That was later. The
11 state changed the rules. So we're going to sit
12 back and wait two years because the state has
13 redistricted us. I'm good with that. That's the
14 law.

15 The board of elections started interfering
16 with elections all the way back to October of
17 2021. They decided at that point they were going
18 to allow the legal elections set by the state and
19 then when the candidates were elected, they were
20 going to move (indiscernible) wherever they want
21 and change our districts again after a legal
22 election.

23 So some people are disenfranchised because
24 they voted for, say, Joe (indiscernible) and
25 that's who they wanted over in the new group.

1 And I'll call it two maps. There's a lawful map,
2 awful map. And there's a reason. Lawful is just
3 what it says. Awful is when somebody interferes
4 and steps in. Now, let's get the awful map. The
5 people who set that map up may be -- I've heard
6 Erick Allen, Stoner, people like that.
7 (indiscernible) now, they did the map. And the
8 map that they did pass. Passed and signed by the
9 governor.

10 I went out looking for a candidate to run in
11 2022. We were ready. At that point the county
12 jumped in and changed everything. How could they
13 stand there and do that? That's -- you should've
14 interfered by then, but we're going to go on down
15 the road.

16 I've got an election board that has been
17 told that map, the awful map, was set up to keep
18 District 2 commissioner in her seat. Well,
19 that's bunk. So who authorized that board right
20 there to jump up and use the awful map. There
21 was no reason to use the awful map. We were
22 hurt. It's all been said out loud. It's been
23 said at all of the commissioner meetings. We set
24 that up to protect one Jerica Richardson.

25 So we know why the map was established. It

1 has nothing to do with a fair and equitable
2 election. By allowing them to do that, they have
3 too many (indiscernible), too many redheads,
4 anything you want and the county can all of a
5 sudden change boundaries on you without the state
6 becoming involved. So now we see what the
7 implications are down the road from what we've
8 got.

9 Now, here I am, sitting there, and I said,
10 Well, I'm just going to go up there and qualify.
11 Just took (indiscernible), walked up there,
12 waiting, they took my picture and all that. And
13 they told me at the democratic office -- they
14 were polite, the lady was polite, and she said,
15 No. And I said, I'm going to need better than
16 the lady sitting at the desk to tell me no. So
17 they called the election board and said, Hand him
18 a piece of paper saying we're going to go by this
19 piece of paper. And that's all they would give
20 me.

21 Well, proof that I was here just in case we
22 override this. So we did not override it. We're
23 all sitting there. Now, I've got Erick Allen
24 coming up there and qualifying to run. Do y'all
25 see a problem with that? I mean, you know,

1 you're on a board. If it looks fishy, smells
2 fishy, there's probably a rotten fish under this
3 whole thing. Erick Allen came in and qualified,
4 using a map that now they said, Well, we tweaked
5 it so it's not really his map. Well, whose map
6 is it? Who made that map, the awful map? This
7 is what I've asked this board to find out.

8 And then let's invite people to interfere
9 with an election. If this is true interference,
10 please use your power to go out and let's make
11 people answer for what they did. And this kind
12 of stuff could go on forever, changing elections
13 in South Georgia, anywhere they want in the
14 state.

15 So now we're back to the awful map versus
16 the lawful map. There's no way we can sit here
17 and let the rest of them collect campaign funds,
18 put their signs up, and we're told we're not
19 going to be allowed to even get in the race. So
20 it's a race. You have just let some people get
21 way ahead in the race. They're way out here and
22 the rest of us are being held on the starting
23 line.

24 Ladies and gentlemen, no race can be fair,
25 no race can be equitable. It's just wrong. And

1 I'm going to turn some time over, what we have
2 left.

3 **MS. GRUBBS:** Let me add one more thing. I
4 submitted our fees for qualifying and the fees
5 for Alicia Adams are included in this. If
6 they're not going to accept our candidate, there
7 has been no mention of Cobb Board of Elections
8 returning money.

9 And this is Commissioner Keli Gambrill.
10 She's eminently aware of this situation and so
11 she can --

12 **MR. BARTH:** We've got some minutes left.
13 And in fact would you -- would you like to
14 address the board?

15 **MS. GAMBRILL:** Again my apologies for being
16 late. (indiscernible) I've been to the
17 department of labor.

18 Not knowing what the conversation was, again
19 the map that the board of elections chose to look
20 at, if you carefully look at their amicus brief
21 that was submitted to the Supreme Court, on page
22 2, it clearly states that the legislative map is
23 the controlling map. So the question becomes why
24 did they deviate that the day before qualifying
25 began?

1 Again not knowing what the conversation
2 (indiscernible), that the biggest --

3 **MR. BARTH:** The biggest issue.

4 **MS. GAMBRILL:** But the biggest question that
5 I have -- and as far as the map, process-wise, it
6 did not go through the correct process to even
7 become a local law. So it has never been adopted
8 by the state as a local law because it did not go
9 through the correct channels to become a local
10 law unless the county board of commissioners is
11 allowed to make local law. But there's very
12 specific steps and procedures they have to take.
13 It was never submitted to our local legislators
14 to submit to the General Assembly to be even
15 voted on by the General Assembly to become a bill
16 to be (indiscernible).

17 So essentially this is an internal document
18 that the board of commissioners that has
19 essentially agreed to allow a commissioner the
20 benefit (indiscernible). It has no legislative
21 authority because it has not been voted on
22 (indiscernible).

23 I'm not quite sure what else you would like
24 to hear.

25 **DR. JOHNSTON:** Can you --

1 (Cross-talking)

2 **MS. GAMBRILL:** I'm not sure what was said.

3 **DR. JOHNSTON:** Can you verify, Keli, that in
4 some of the instances that there will be voters
5 who will skip an election cycle?

6 **MS. GAMBRILL:** So -- so there are --
7 essentially it's going to affect about -- roughly
8 it was -- forty -- 48,000 voters between
9 switching districts that were able to vote. They
10 voted in '18. They voted -- most who voted in
11 '18 were changed districts legislatively. That
12 essentially put them into the '24 voting. But
13 because of the change that the board of
14 commissioners made, they will not be able to vote
15 until 2026. So they essentially have skipped an
16 opportunity to vote for their local election
17 (indiscernible) for a period of six years where
18 you're supposed to do it every four.

19 **MR. FERVIER:** You said it's 48,000 or is it
20 a subset of that 48,000?

21 **MS. GAMBRILL:** So there -- I believe there
22 was a draft that was submitted and all of the
23 information to you, and essentially they have
24 gone through and highlighted which districts that
25 shifted between the two maps and which voters

1 would not be able to vote based on that map. But
2 if you don't have that, I can submit it to you to
3 see.

4 **MS. GRUBBS:** It was part of your complaint;
5 wasn't it?

6 **MS. GAMBRILL:** I believe it was, yes. So
7 while it's affecting a few candidates, it's
8 impacting multiple voters throughout Cobb County.

9 **MS. GRUBBS:** So it's just the one, District
10 2. It's also the -- the bordering areas with
11 District 4. So two and four have an election
12 this year, but there are other voters who are
13 being disenfranchised on a major scale in
14 District 1 and District 3.

15 **MS. GAMBRILL:** Correct.

16 **MR. BARTH:** And as this attorney read in the
17 beginning, the state is who puts the board of
18 elections in place, not the chairwoman of the
19 county, which she thinks she (indiscernible).

20 **MS. GAMBRILL:** Well, and if you
21 (indiscernible) look at the (indiscernible)
22 legislation for the board of elections for Cobb
23 County, the board of commissioners has no
24 authority over the board of elections.

25 **MS. GRUBBS:** Yes, we do give funding to

1 them, but that was the extent of our involvement
2 legislatively.

3 **MR. FERVIER:** You've got about one minute
4 left.

5 **MR. BARTH:** Now don't (indiscernible).
6 (Cross-talking)

7 **DR. JOHNSTON:** So let me be clear. The Cobb
8 Board of Commissioners did not submit or request
9 an amendment to their legislative council, OLC,
10 (indiscernible) General Assembly.

11 **MS. GAMBRILL:** Correct. They submitted it
12 to the Secretary of State, but that's not --
13 while for Home Rule, if we were amending
14 something that has already been accepted by the
15 state, it goes to the Secretary of State. This
16 was never sent to the legislation because again
17 while we made a Home Rule amendment, it impacted
18 a local act. They never followed the process to
19 make it become a local law.

20 So this document you will not find anywhere
21 in the state legislature. You won't find it in
22 an act. You won't find it in Article II. You
23 won't even find it in the (indiscernible)
24 legislation. It has not been recorded.

25 **DR. JOHNSTON:** May I ask the Secretary of

1 State's Office, does submitting a -- an amended
2 map to your office imply that it is certified or
3 approved or passed?

4 **MS. MCGOWAN:** No. So the Secretary of State
5 receives the full legislation in order for it to
6 be published to the public. So it's typically an
7 administerial act that we receive -- the office
8 receives any local legislation from county
9 (indiscernible) that have provided to legislative
10 counsel for publication.

11 (Cross-talking)

12 **MS. GRUBBS:** Legislative counsel did submit
13 to Cobb County a letter stating that the Home
14 Rule amendment was not constitutional.

15 **DR. JOHNSTON:** So -- so this map was not
16 certified.

17 **UNIDENTIFIED SPEAKER:** No.

18 **DR. JOHNSTON:** It was not approved.

19 **UNIDENTIFIED SPEAKER:** No.

20 **DR. JOHNSTON:** It is not passed by the
21 General Assembly?

22 **UNIDENTIFIED SPEAKER:** No.

23 **DR. JOHNSTON:** It is not signed by the
24 governor?

25 **UNIDENTIFIED SPEAKER:** No, ma'am.

1 **MS. GRUBBS:** I have a question. And I would
2 like to know from the Secretary of State's Office
3 can anyone just go and change My Voter Page? Or
4 what authority do they act under when they go in
5 and they start changing the --

6 **MR. FERVIER:** I think that any questions to
7 the Secretary of State will be -- they need to
8 come from the board.

9 **MS. GRUBBS:** Gotcha.

10 **MR. FERVIER:** Okay.

11 Did the Cobb GOP ask the courts for an
12 injunction to stop the -- this map --

13 **MS. GRUBBS:** We did --

14 **MR. FERVIER:** -- the Home Rule map?

15 **MS. GRUBBS:** We did do a motion to intervene
16 on the superior court level. So I have an
17 attorney working on that. But as far as, you
18 know -- it becomes what you do, which legal
19 avenue do you take? So there was a motion to
20 intervene which was denied because the case had
21 already gone to the Supreme Court.

22 **DR. JOHNSTON:** Has the -- has the Cobb
23 County Commission home -- Commissioner Home Rule
24 map been used in an election?

25 **MS. GAMBRILL:** No, ma'am.

1 **MS. GRUBBS:** No.

2 **MS. GAMBRILL:** I was elec -- I was -- I
3 filed, I think, 2022, and I was elected under map
4 562 which was signed by the governor in March of
5 that year. Technically the Secretary of State's
6 Office notified the board of commissioners that
7 they wanted a delay date of January 1st for the
8 implementation of Home Rule.

9 But according to the Secretary of State, we
10 would do a home rule that becomes effective that
11 day. If that was the case, then the board of
12 elections would've had to have changed to go
13 under the Home Rule map. They would've had to
14 change the districts in general and that did not
15 happen.

16 **MR. FERVIER:** Since the Cobb Commission left
17 the Home Rule map as the only map being
18 contested, can you tell me how many potential
19 candidates for office were unable to run for
20 election?

21 **MS. GAMBRILL:** We know three as of right now
22 that were not qualified that wanted to qualify
23 and were qualified under the legislative map. We
24 also know that there are two that have qualified,
25 that did not meet qualifications based on the

1 legislative map.

2 **MS. GRUBBS:** So that's the other side of the
3 coin as well is what to do about those candidates
4 who have qualified outside the legislative maps?

5 **MR. FERVIER:** The candidates that did not
6 qualify, have they filed a complaint with the
7 State Election Board?

8 **MS. GRUBBS:** Yes.

9 **MR. FERVIER:** All three of them?

10 **MR. BARTH:** We filed through the Secretary
11 of State, and they sent me back an e-mail saying
12 they had (indiscernible) -- yeah. So that's
13 that.

14 And I also called in -- early on, before all
15 this, I called the ACLU, tried to get them
16 involved. They came. They saw what it was and
17 they went back (indiscernible). So it's been
18 hard to get anybody to stand up.

19 The state's kind of stood by and said until
20 there was an election that was interfered with,
21 the state was going to hold off on any action.
22 This isn't a very good sign. Didn't go to
23 college, but I'm pretty sure it would be that
24 way. So ...

25 **MS. GRUBBS:** Well, and there are other --

1 there -- we don't know all of the candidates who
2 would have potentially qualified but, (a), due to
3 the confusion and, (b), just the -- you know,
4 because it costs money to run a campaign, who
5 wants to, you know -- who wants to do all of this
6 and then buy signs and gear up to run and then
7 have someone say, Oh, well, you're not -- you're
8 not qualified.

9 The uncertainty of what's going on is
10 unreal.

11 **MR. FERVIER:** But you know there were three
12 there that were not qualified and two that
13 qualified using the Home Rule maps.

14 **MR. BARTH:** Three -- three qualified using
15 Home Rule maps.

16 **MR. FERVIER:** Three qualified using --

17 **MR. BARTH:** Yes.

18 **MR. FERVIER:** (indiscernible)

19 **MS. GRUBBS:** Well, and it's hard to tell
20 because you wouldn't know, again, because they
21 just say they're qualified --

22 **MR. BARTH:** (indiscernible)

23 **MS. GRUBBS:** So you don't -- really
24 officially know. So ...

25 **MR. FERVIER:** Are there any other questions

1 from the board?

2 **DR. JOHNSTON:** I have more, but you might --

3 **MR. FERVIER:** No, that we're -- I -- I'm
4 going to finish with them, then we will move to
5 the other -- the other parties.

6 **DR. JOHNSTON:** For Ms. Grubbs: When were
7 you informed that the Home Rule map would be
8 used?

9 **MS. GRUBBS:** The Friday before qualifying
10 started on the following Monday, which would've
11 been the first of March is when I was notified.

12 **DR. JOHNSTON:** Is that officially -- to your
13 knowledge, is that officially the way the Home
14 Rule map is to be used?

15 **MS. GRUBBS:** That was the first decisive
16 information. That statement that he has right
17 there is what we received, that statement that
18 was put out. So, yeah.

19 **MR. BARTH:** On the first of March.

20 **DR. JOHNSTON:** So -- so a resolution was
21 passed in twenty twenty --

22 **MR. BARTH:** -- one.

23 **DR. JOHNSTON:** -- one.

24 **MS. GAMBRILL:** No, twenty -- no --

25 **DR. JOHNSTON:** -- two.

1 **MS. GAMBRILL:** The whole resolution --

2 **DR. JOHNSTON:** The whole resolution --

3 **MS. GAMBRILL:** -- was October

4 (indiscernible), 2022.

5 **MS. GRUBBS:** Right.

6 **MS. GAMBRILL:** And submitted to

7 (indiscernible) --

8 (Cross-talking)

9 **DR. JOHNSTON:** (indiscernible) certified.

10 But it was -- was it implemented in any other
11 way?

12 **MS. GAMBRILL:** So the -- if I may --

13 **MS. GRUBBS:** Go ahead. Go ahead.

14 **MS. GAMBRILL:** So the -- the county has been
15 using the Home Rule for (indiscernible) zoning
16 cases. But even if I -- a zoning case law, it is
17 in one commissioner's district, all five
18 commissioners vote on it. You just get to take
19 the lead.

20 So that is really the only internal way that
21 an individual would know that the Home Rule map
22 was being used for business, is through zoning.

23 **DR. JOHNSTON:** Okay.

24 **MS. GAMBRILL:** And that would only be in --

25 (Cross-talking)

1 **DR. JOHNSTON:** How long have you been on the
2 board?

3 **MS. GAMBRILL:** I am in my sixth year.

4 **DR. JOHNSTON:** You're sixth year.
5 Commissioner, who initiated the Home Rule amended
6 map proposal?

7 **MS. GAMBRILL:** The chair of -- of
8 (indiscernible).

9 **DR. JOHNSTON:** The chair. And perhaps can
10 you explain to the board the -- the -- the
11 thought or the reason or the rationale for this
12 proposal?

13 **MS. GAMBRILL:** So the rationale that we were
14 given in executive session was that because Act
15 562 essentially drew a sitting commissioner out
16 of her district. However, I believe it's on line
17 24 of Act 562 that explicitly states that they
18 can finish the term of their election because the
19 legislators had learned over the years that with
20 all the map drawing they could protect the
21 (indiscernible). We had it happened in other
22 laws of government where they were drawn out but
23 they were allowed to finish their term and then
24 one ran into (indiscernible) different district.

25 So, however, while the state law allows that

1 in our own enabling legislation, the county has
2 not updated that legislation since 2003. In 2003
3 the state requires you to live -- it says: Shall
4 live in the district for the term of the election
5 in order to represent your constituents. The
6 county had not updated the (indiscernible)
7 legislation to reflect what state law says.

8 So because we have to revert back to our own
9 enabling legislation, technically that
10 commissioner would've had to step down to meet
11 our local laws. But no time during our meetings
12 was it ever discussed, going in and updating our
13 enabling legislation.

14 **MR. FERVIER:** That was my question.

15 **MS. GAMBRILL:** That was -- that would've
16 been the easiest thing to do. There was no
17 discussion of updating our enabling legislation.
18 Matter of fact, the commissioner that was going
19 to be removed when I brought it up said, Well,
20 our -- our delegation won't do that.

21 And my question is why not? That's their
22 job. You know Home Rule allows the county to be
23 more restrictive than our laws, right? We can be
24 more restrictive than state. We cannot be less
25 restrictive than state.

1 So essentially the state is looking at ours
2 as more restricting than theirs. As a board, we
3 could have updated to the enabling legislation
4 that the state currently recognizes and the
5 commissioner would've been able to finish out the
6 term.

7 **MR. FERVIER:** Would that local legislation
8 have been approved by the state legislation --
9 legislature?

10 **MS. GAMBRILL:** I don't see why it wouldn't
11 have because again it would've been framing our
12 own enabling legislation up to the current state
13 law.

14 **MR. FERVIER:** It would have been approved by
15 the legislature.

16 **MS. GAMBRILL:** We would've just had,
17 again -- actually we had another instance where
18 our internal services section of our code was out
19 of date compared to what the state was, by about
20 12 years.

21 So all we did is we had a board meeting and
22 we approved the language that the state had. We
23 adopted it into our own enabling legislation,
24 passed the vote in updating our enabling
25 legislation. So now we're current with state

1 law.

2 So I don't understand why we couldn't have
3 easily done that here. Or we could've easily,
4 again, went to our local delegation and said,
5 Hey, we want to update our enabling legislation,
6 submit the request. It would go to the General
7 Assembly, and a bill would've been created. It
8 would've been passed through an act signed by the
9 governor, and we should've updated it.

10 **MR. FERVIER:** Okay.

11 **MS. GHAZAL:** I do have a follow-up question.
12 Wasn't the local delegation's map rejected on the
13 (indiscernible) and then (indiscernible)
14 commission map that was passed by the legislature
15 was in fact general legislation and not local
16 legislation because the -- the delegation was
17 overruled already in that commission map? Isn't
18 that what started this whole process?

19 **MS. GAMBRILL:** Well, so that -- that is very
20 interesting. So the board of commissioners --
21 I'm just going to refer to my -- on here for
22 dates. On January --

23 **MS. HARDIN:** Keli, they're asking if you can
24 speak up a little bit online because it's hard to
25 hear.

1 **MS. GAMBRILL:** Oh, sure. Okay. So on
2 January -- on January 25th, the board had an
3 agenda item to approve a map that had not been
4 assigned a legislative number. It was just to
5 approve a map. That vote passed, three-two.
6 However, that map is now where this act -- or I'm
7 sorry, House Bill 1256. Well, what was
8 interesting is we approved that on January 25th.
9 That local delegation member did not submit it
10 until February 7th.

11 The delegation, the map that was submitted
12 was submitted February 3rd, around that. So my
13 question is is if the board of commissioners had
14 approved that map that didn't have a house bill
15 number yet, why did that legislator wait more
16 than two weeks to submit it to the house floor
17 for consideration?

18 So by the time they had submitted that bill,
19 which is 1256 or the Home Road Map, another map
20 had already been submitted and had started
21 through the process. There's a law in the
22 assembly that says you cannot have two competing
23 bills. And that is why 1256, which is the Home
24 Rule Map, was submitted on 7th and withdrawn on
25 the 8th because there was already another

1 competing bill under consideration.

2 **DR. JOHNSTON:** Commissioner, did -- did Miss
3 Richardson participate in the discussions, the
4 proposal, the drawings of the map, and question
5 the votes of the board of commissioners?

6 **MS. GAMBRILL:** No, she didn't
7 (indiscernible).

8 **DR. JOHNSTON:** She did not recuse herself --

9 **MS. GAMBRILL:** No, ma'am.

10 **DR. JOHNSTON:** -- in any of this? And she
11 voted on any issues that were to be addressed?

12 **MS. GAMBRILL:** Yes, ma'am.

13 **DR. JOHNSTON:** Question, commissioner. Is
14 there an inherent conflict of interest in a board
15 of commissioner's drafting of election maps?

16 **MS. GAMBRILL:** Potentially yes. It -- it
17 could be. In the area to which Commissioner
18 Richardson had relocated to -- again, and we --
19 and I have areas in my district as well that we
20 know those poor voters continually get socked
21 between the districts because that is kind of
22 the -- the boundary line. And in order to
23 balance the maps with one -- one vote -- one
24 person, one vote, they tend to always get
25 shifted.

1 So we do know that there's areas that tend
2 to shift based on population growth and to
3 balance (indiscernible). The area that
4 commissioner cho -- Commissioner Richardson chose
5 just to look at is the very farthest point of her
6 district. And that was done with the most legal
7 maps that were previously approved.

8 So again, knowing that that area tends to
9 shift, it -- it was a risk to move there, knowing
10 that that was an area that tends to shift,
11 completing districts.

12 **MS. GRUBBS:** It's all very coincidental.

13 **MS. GHAZAL:** I find no better argument to
14 support. Nonpartisan redistricting commissions
15 think exactly that. So thank you for doing that
16 work.

17 **MS. GRUBBS:** Well, again, it's a very
18 critical point because exactly what she stated,
19 you know, it will set a precedent if this goes
20 through that is not a good one.

21 **MR. FERVIER:** Well, unfortunately, this
22 board really has no authority over mapmaking or
23 approval of maps or anything else.

24 **MS. GRUBBS:** Understood.

25 **MR. FERVIER:** We're -- we're strictly

1 related to this book right here.

2 **MS. GRUBBS:** That's right. I know.

3 **MR. FERVIER:** The code. So ...

4 **DR. JOHNSTON:** I have another question.

5 Commissioner, who provided legal counsel for this
6 decision to embark on the Home Rule map?

7 **MS. GAMBRILL:** So our -- our internal
8 attorney, Mr. Rowling, was the lead on that and
9 then he had Elizabeth Monyak, Lauren Bruce a
10 couple times, and then Kelly Long. They -- they
11 were both in and out there. He told us that they
12 had sat outside counsel, but when another
13 commissioner and I asked who that outside counsel
14 was, we were not provided that information.

15 **DR. JOHNSTON:** Was outside counsel used but
16 not (indiscernible)?

17 **MS. GAMBRILL:** We were told that they had
18 consulted with outside counsel, but we were
19 not -- Commissioner Birrell and I were not told
20 who that counsel is.

21 **DR. JOHNSTON:** Were the votes unanimous on
22 using -- on the decision to use --

23 **MR. JEFFRIES:** You said three-two, didn't
24 you?

25 **MS. GAMBRILL:** Yes.

1 **DR. JOHNSTON:** Three-two. And who -- who
2 opposed using the Home Rule maps?

3 **MS. GAMBRILL:** Commission Birrell and I.

4 **MR. WHITE:** Mr. Chair?

5 (Cross-talking)

6 **MR. WHITE:** Mr. Chair, can I -- I've sort of
7 been patient and waiting for our chance to
8 respond but with this (indiscernible) and I made
9 this comment on the record, I -- I just -- I'm
10 not sure that this is appropriate in front of
11 this body. In court I would've objected multiple
12 times by now, but we're now wandering far afield
13 of the -- this book right here and what you said
14 that this board has authority to consider.

15 And I've been pretty patient up until now,
16 but you've said yourself, Mr. Chair, that this
17 board doesn't have any authority over the
18 map-making process and any -- there's just no
19 jurisdiction for this board to even investigate
20 or -- you know.

21 And so if this meeting here is purportedly
22 about your regulation powers under this section,
23 I just -- I would ask that you, if you're going
24 to make that statement, that could we confine the
25 inquiry here to things related to Title 21?

1 And again I apologize if -- if I'm out of
2 place here and I should've just waited. I've got
3 a much longer objection (indiscernible) when we
4 start doing our side, but things have wandered
5 far afield for at least the last 20 to 30 minutes
6 here. And I -- and I sort of waited patiently.

7 But at some point I felt I have to object on
8 the record that we're now going into matters that
9 have nothing to do with this board's authority
10 under Title 21.

11 **MR. FERVIER:** Thank you.

12 **DR. JOHNSTON:** Thank you for your comment.
13 I think these maps have everything to do with
14 elections and everything to do with elections has
15 to do with what's in this book. So but no
16 further questions at this moment.

17 **MR. FERVIER:** Thank you.

18 Are there any questions from the board?

19 We will now hear from Cobb County and, Mike,
20 if you would let me let them know when they're
21 down to the last two minutes.

22 **UNIDENTIFIED SPEAKER:** Sure.

23 **MR. FERVIER:** I'd appreciate that. Thank
24 you.

25 **UNIDENTIFIED SPEAKER:** If I may -- and I

1 apologize for interrupting. I do believe that at
2 the outset, sir, you indicated that 20 minutes
3 would be accorded to each side. And is that 20
4 minutes per, times three?

5 **MR. FERVIER:** No, no.

6 (Cross-talking)

7 **MR. FERVIER:** It's twenty minutes for you to
8 make your case. And then the board will ask
9 questions afterwards.

10 **UNIDENTIFIED SPEAKER:** Okay.

11 **MR. FERVIER:** So that was the question
12 period for the board afterwards.

13 **UNIDENTIFIED SPEAKER:** Understood.

14 **MS. HARDIN:** Could you introduce yourselves?

15 **MR. WHITE:** Yes. That is what I was going
16 to do first. And again I maybe should've done
17 that in making my -- my name is Daniel White and
18 I'm in -- a partner in the firm of Haynie,
19 Litchfield and White and my firm is engaged to
20 represent the Cobb County Board of Elections and
21 Registration.

22 We also have with us today Chairwoman Tori
23 Silas who's the chair of the Cobb County Board of
24 Elections and Registration and Tate Fall who is
25 the director of elections for Cobb County and is

1 appointed by our board.

2 And we have come here today at the
3 invitation of the chairman. But I want to
4 start -- let me start with two things. One, just
5 a quick disclosure. I did not know Mr. Barth was
6 going to be here because I wasn't given any
7 notice of who was going to be here or who
8 complained. And I'll get into that in a moment,
9 but I need to make a disclosure that Mr. Barth
10 sits on the board of zoning appeals in the City
11 of Marietta. My law firm represents the City of
12 Marietta. But because I had no notice that
13 Mr. Barth was going to be here today, I didn't
14 know I was going to need to prepare a disclosure
15 agreement. But I -- I have -- on rare occasions
16 I sat in on the BZA meetings and advised
17 Mr. Barth as a member of the Marietta Board of
18 Zoning Appeals.

19 So I don't believe -- I believe he's here in
20 a different capacity. I don't believe there's
21 any need for me to come today. I wouldn't have
22 known anyways because we weren't provided with
23 notice. So there would be no way for me to know
24 I would've had a conflict. But I want to put
25 that on the record in the first place.

1 **MR. FERVIER:** Let me say that I had no
2 knowledge of who would be attending fully either
3 today. I invited both sides to participate and
4 asked that they limit themselves to about three
5 people each. And they could bring the three
6 people they thought was most relevant. So ...

7 **MR. WHITE:** And again, Chairman, that's a --
8 that's part of our issues. When you say both
9 sides, I don't -- we don't even know who the
10 other side is. We -- we weren't -- we were not
11 provided with copies of any of the complaints.
12 And -- and I -- I -- let me just start this with
13 this. I'm going to read to you from Georgia case
14 law since we're -- we're going to talk about
15 rights and constitutional processes and rights.

16 In *Cobb County School District v Barker*, and
17 that's 271 Ga 35, and it says: The
18 constitutionally guaranteed right to due process
19 of law is, at its core, the right of notice and
20 the opportunity to be heard. The principles of
21 due process extend to every proceeding: judicial,
22 administrative, or executive in its nature.

23 Neither the federal nor the state
24 constitution due process right guarantee the
25 former method of process, but the party has to --

1 is satisfied -- satisfied if a party has
2 reasonable notice and an opportunity to be heard.

3 And I just -- I want to start my
4 presentation by saying -- and give this board a
5 chance if they would like to to adjourn this
6 hearing and come back because there -- I'm going
7 to -- I'm going to just read a few things into
8 the record here.

9 I'm going to start with your own notice of
10 this meeting. This says you called it to -- for
11 discussion and certification -- discussion of
12 certification and qualification of candidates.
13 That's also -- the public notice says the purpose
14 of this meeting is to consider complaints
15 received regarding certification and
16 qualification of political party candidates.

17 Nowhere is Cobb County mentioned. Nowhere
18 are the complainants mentioned. Nowhere are the
19 allegations referenced. No written notice was
20 provided at all that we even needed to be at this
21 meeting. The only reason we're here is because
22 we heard through the grapevine that we might be
23 questioned. And so I took the step, reaching out
24 to this board through its counsel on Tuesday and
25 said, you know, I'm not sure I should do this to

1 you but we're hearing that there might be
2 questions. And my e-mail says: If the actions
3 of Cobb County Board of Election and Registration
4 are going to be discussed, we would request more
5 detailed notice about what specifically is going
6 to be covered because the attached notice gives
7 no clue about the specifics of any complaints or
8 any allegations involved.

9 Likewise, if there's going to be a
10 discussion of complaints regarding Cobb Board of
11 Election actions, we would like a chance to
12 respond.

13 I see that the notice invites interested
14 parties to attend, but I don't see that that
15 notice offers an opportunity to address the
16 board. So the notice just invites opportu --
17 interested parties to attend. It doesn't even
18 say what's being discussed or who the interested
19 parties are.

20 So then we just -- as a counsel, I'm
21 advising my board or any other board -- and they
22 asked me, We want to hold a hearing and what do
23 we need to -- what -- what do we need to put in
24 our notice if we're going to be investigating?
25 And that's -- I was waiting to see what the board

1 said they were doing and you cited to your -- the
2 one duty you cited is to investigate, under
3 subsection 5 of 21-2-31.

4 For you to have an investigation today in
5 which you provided no notice of what was being
6 investigated and which you provided no
7 identification of the parties or the complaints
8 is completely improper.

9 I followed up again this morning and asked
10 for copies of the complaints and received the
11 following response: To follow up, we cannot
12 release the complaints submitted at this time.
13 It would be inappropriate and contrary to board
14 precedent as an investigation has not been
15 conducted in the complaints received. The
16 purpose of meeting today is for a discussion
17 amongst the parties and board and for
18 fact-finding purposes only.

19 And that's not consistent with what was
20 stated at the beginning. At the beginning this
21 was cited as an investigation. And if the board
22 wants to keep this investigation private, then it
23 should do its fact-finding in private.

24 If you want have a public fact-finding
25 hearing, then a lawyer -- allow people to air

1 unverified allegations on one side without giving
2 the other party notice of those allegations ahead
3 of time, then you need to adjourn today and give
4 this -- give our folks written questions, written
5 inquiries that we can respond to instead of
6 calling us in -- or my client in to answer
7 questions about complaints that were not shared
8 by the complainants with us, they were not shared
9 by this board with us and were not shared after
10 multiple requests.

11 And I would -- I would -- I would advise
12 this board to discuss whether you want to
13 continue this meeting because anything that you
14 find from here on out, any facts that you might
15 find, they are not going to be admissible because
16 you did not provide the (indiscernible), maybe
17 your counsel or a judge might disagree.

18 But if some -- if an action takes forward
19 from here on forward and it attempts to use
20 information from this meeting, the gains of that
21 ill-gotten information (indiscernible) you
22 can't -- you can't (indiscernible) evidence
23 because it was obtained improperly and use it
24 further, then I would say just -- you might want
25 to decide whether you want to come back at

1 another time when you've provided actual notice
2 of the complaints (indiscernible). Otherwise
3 it's just --

4 And we are here out of transparency and
5 wanting to be fully open. But to ask a party to
6 come in and not even share the complaints with
7 them is totally inappropriate, totally against
8 the constitutional principles of due process of
9 law.

10 So with that said, I'm just going to pause
11 here for a minute. And after those two
12 disclosures that I represent Mr. Barth and that
13 this board, you know, is meeting without having
14 given proper notice on what apparently is an
15 investigatory purpose, you know, I don't know if
16 the chair has a response or if the board needs to
17 have a discussion, but I -- I don't think this
18 hearing should've started and I definitely don't
19 think it should go forward because there has been
20 no notice provided to my client of what was going
21 to be discussed today.

22 **MR. FERVIER:** I -- I would like to respond
23 to that. Thank you for your comments.

24 The board has the -- the right to meet
25 whenever they see fit to discuss things that are

1 happening related to election law. You were not
2 required to attend this. There was no demand
3 that you attend it. There was no demand made of
4 anybody from Cobb County to attend it. There's
5 no demand of anybody making a complaint to attend
6 it.

7 I called you and invited you to participate
8 if you wanted to, the same as I called Ms. Grubbs
9 and -- since she was the main complainant, and
10 invited her to attend if she wanted to. If you
11 do not want to attend, that is your choice. So
12 nobody was required to attend this and you are
13 free to leave at any point that you want to.

14 There have been numerous complaints filed.
15 Before an investigation is opened, the board
16 would like to understand what the issues are and
17 give everybody an opportunity to explain what the
18 issues are. And that's simply what is happening
19 today as we are trying to understand exactly what
20 happened. And a decision will be made at a later
21 date as to what -- what -- what occurs. So ...

22 **MR. WHITE:** That's fair enough. And so
23 given that, at most what I would say we'd feel
24 comfortable with today is just giving you what I
25 would consider a legal update.

1 I don't -- I don't think it's appropriate
2 for my -- my client to answer, you know,
3 fact-finding questions when they haven't -- I
4 compare it to a -- sort of a 30(b)(6) deposition.
5 If I'm going to tell an organization, "We need
6 you to have a representative here to answer
7 questions on behalf of your organization," you
8 don't -- you don't get to call them in blindly.
9 You give them a list of topics about what they're
10 going to need to testify about so they have a
11 chance to prepare.

12 We -- and I appreciate the invitation and I,
13 for sure, think it's better to have both sides on
14 the record. And I do have a problem with the
15 fact that one side knew what was going to be
16 discussed and we did not.

17 So I'm comfortable sort of giving a legal
18 update, but I don't think it's appropriate for
19 this board to ask questions of either the
20 chairwoman or director Fall at this point because
21 they haven't had the opportunity to prepare --
22 prepare for the questions they're going to be
23 asked.

24 But we are and have been from the beginning
25 transparent with the -- the process that led to

1 the implementation of this map. I don't mind
2 putting that on the record again. It's in --
3 it's in legal briefs, it's in meeting minutes,
4 it's an open discussion. There's no -- there's
5 no -- you know, let's not -- let's keep this in
6 secret with no outside influence.

7 These are all discussions that happened
8 among the board and in public and then are put
9 into -- in court, frankly. I know there's lots
10 of questions today about, well, what process was
11 used to adopt the Home Rule map and is it valid?

12 Frankly, that's not this board's
13 jurisdiction. It's -- you don't -- you -- even
14 if you don't disagree and think it's improper,
15 you don't have the authority to do anything about
16 it. And so who does is Cobb County Superior
17 Court and the Georgia Supreme Court. And those
18 are the two bodies that have, right now, two
19 lawsuits pending before them. They want to
20 answer all of these questions.

21 And I understand that each side has very
22 strong feelings and -- and preferences over the
23 outcome they desire. And I'll tell you up-front
24 the preference for the Cobb County Board of
25 Election was for this question to have been

1 answered twelve months ago.

2 The fact that it was not and still is
3 pending is the greatest consternation that I have
4 faced in my time as the board attorney and I've
5 been -- I know every board member has expressed
6 to me this complete frustration that -- that we
7 have gone into an election season, really up
8 until January, with three different sets of maps
9 still outstanding. It's been unprecedented.

10 Every -- every single map that's coming out
11 in -- in this current election cycle was still in
12 limbo as of January 1st this year. And it's just
13 been unprecedented. And the fact that this Cobb
14 County commission map is still in -- in -- sort
15 of up in the air with the Supreme Court and is
16 just a source of internal consternation for my
17 client. And so I'm happy to just walk you
18 through a history of the litigation and our
19 involvement.

20 We are not mapmakers. We are not map
21 drawers. We are not -- my client is not the
22 person who decides which map is used. For the
23 reference about (indiscernible) voted to use it.

24 This board is the state election board. You
25 know you don't vote to implement a map. You

1 implement maps that are in place by law. You
2 don't have authority to take a vote to implement
3 one map or the other. You just look at the maps
4 that were passed by the legislature and you
5 implement them.

6 And that's what our board does. We have
7 some maps that are -- that are clearly -- we
8 don't have any questions about, but most of our
9 maps at some point in the -- that we -- our board
10 has had to implement have been in litigation at
11 some time in the last two to three years. And
12 we've had to wait for court rulings and other
13 things to come out so that -- so that board
14 actions and the staff know which maps can be
15 implemented.

16 And so I just also wanted just to start off
17 by saying there have been lots of talks about,
18 you know, voter suppression and unconstitu --
19 people's constitutional rights are being
20 trampled.

21 Let's talk about the constitutional right
22 that's at issue here. It is -- excuse me, it is
23 the -- an exception to the Home Rule
24 constitutional provision, which itself is an
25 exception. So there's a list of powers the state

1 has and then there's a list of powers that
2 counties have under the Home Rule. And then
3 under that there's exceptions to say the counties
4 can't do these things.

5 So I don't know about you, but the average
6 citizen does not care about most of those rights.
7 They care about this one because it involves an
8 election. But only people like me who took Perry
9 Sentell's local government law class at UGA Law
10 hear anything about most of the other things that
11 are in the Home Rule provision. And it's
12 upsetting people because it's not resulting in a
13 map for whichever their preferred outcome is.

14 So I wanted to scale back some of the
15 rhetoric about people's constitutional rights
16 being trampled. The Cobb County Board of
17 Election and the voters of Cobb County, frankly,
18 are stuck in the middle of a political battle
19 between the state government and the local
20 government.

21 And that's -- that's what's happened here.
22 And it's unfortunate that it's played out in
23 litigation that has not been resolved and that
24 people are affected. We are the first to tell
25 you we hate voter confusion. And we wanted all

1 of this -- this board wanted all of this resolved
2 long ago.

3 So I just want to sort of back -- back away
4 from some of the really inflammatory language
5 about people's constitutional rights being
6 trampled and point out citizens in every
7 redistricting cycle will be upset about how maps
8 get drawn and they don't have the right to go to
9 court unless they are individually harmed by
10 that. And so that's what's happening in the
11 Floam case and in this Cobb County case.

12 If you -- if you take the time to go read
13 Judge Harris's ruling in Cobb County, it's a very
14 well-reasoned order. In that case it was -- the
15 original case -- let me back up one second. My
16 client asked me could we file a declaratory
17 judgment because we don't -- we did not like
18 being in the position of having a member of the
19 state senate coming to our meeting and saying,
20 You can't use this Home Rule map that's been
21 passed.

22 We also didn't like the idea of having to
23 face our commissioners who we work with -- with
24 an election, saying, We're not going to use your
25 map. So my client had asked me could we file a

1 declaratory judgment. And that was brought up in
2 public meetings. Can we do this?

3 I counseled patience. And they waited and
4 there was a lawsuit filed last year by Larry
5 Savage that that started. There were some
6 questions about standing (indiscernible). That
7 got dismissed. Then a new lawsuit was filed with
8 Commissioner Gambrill as a plaintiff. That
9 eventually became just one lawsuit because
10 there -- there was a recognition that there were
11 problems with standing. Who is really hurt by
12 this process?

13 And so those -- those issues were raised and
14 they went to find some voters to bring in as
15 candidates that they thought would have standing
16 and so the Floams were added to the lawsuit.

17 Judge Harris -- the argument in that case
18 really came down to those -- the -- there's not a
19 question about whether the Cobb County commission
20 has the power to change certain kinds of local
21 legislation through its Home Rule power. The
22 question is can they do this? Can they change
23 their maps?

24 We've never taken a position that -- the
25 Board of Elections has never taken a position on

1 whether they have the authority to do that.

2 You'll never hear us support one map over the
3 other. That's -- they've instructed me at every
4 step of the way, do -- don't support one map over
5 the other. All we're authorized to do is let the
6 court know logistically what it takes for us to
7 implement the maps and that we need some guidance
8 so that this board can get the election set
9 there.

10 So that -- the Floams were added to that
11 lawsuit last summer. Then the court gave the
12 parties the chance to brief them on summary
13 judgment. The Attorney General did get involved
14 in that case and filed an amicus brief on behalf
15 of the Floams. So they have been involved.

16 So the board's saying, We need to do
17 something and get the Attorney General involved.
18 They're already involved. So that's not -- I
19 don't -- you know, if that helps you -- helps
20 you -- helps you a little bit about whether you
21 need to get them involved or not, they're in --
22 they're deeply involved.

23 Both parties briefed on issues on summary
24 judgment. Judge Harris, in her January 8th
25 order, ended up finding that -- and actually

1 earlier she found that Commissioner Gambrill did
2 not have standing to continue. So it was just
3 the Floams. And the judge, Harris, found they
4 did have standing to sue and that she considered
5 the six or seven reasons the Floams said the Home
6 Rule map was unconstitutional, the resolution.
7 And she adopted two -- she agreed with two of
8 them. But that's enough to say, Okay, this map
9 was not authorized under the Constitution.

10 And so that day my board was ready to
11 implement the legislative map. And there was --
12 there was never any question that that's how
13 Judge Harris ruled or the final court order came
14 out. They were ready to implement that. But
15 also the same day the county attorneys notified
16 us that, Hey, we're going to file an appeal.

17 And so when that happens, there's a --
18 there's a statute, an appellate statute, O.C.G.A.
19 5-6-46, of the appellate that I know off the top
20 of my head. That's the automatic supersedeas
21 statute. And that says that in any case where
22 there's an appeal of a civil action, there's an
23 automatic stay that goes into place of which I
24 just (indiscernible). They just can't enforce
25 that until the appeal gets heard and decided.

1 So, you know, I saw that and I was concerned
2 about that. Frankly, I didn't -- it doesn't --
3 my client wasn't -- frankly not comfortable going
4 against a superior court judge just over maps.
5 You know, it doesn't comport with the
6 constitution. And so they have us -- questions
7 for me. I'm not going to go into what my advice
8 for them, but we -- we filed an amicus brief.

9 And I think I want to just go back and
10 correct a couple things that were said. How much
11 time do we have?

12 **UNIDENTIFIED SPEAKER:** We're at 19 minutes.
13 If you want (indiscernible).

14 **MR. FERVIER:** Well, I took a couple minutes
15 away from you. So ...

16 **MR. WHITE:** So we filed an amicus brief. We
17 did not take a position on whether supersedeas
18 should or shouldn't apply or whether the stay
19 should be lifted or not. We just pointed out to
20 the court: These are the deadlines. We've got
21 qualifying coming up. We need to know.

22 And invited the Supreme Court said lift the
23 supersedeas, so lift the stay on Judge Harris's
24 ruling. We said, We're not even sure it applies,
25 let us know if it does. If not, lift it. A.G.'s

1 office said the same thing. Floam said the same
2 thing. The Supreme Court actually, instead of
3 lifting the supersedeas, said, We're going to
4 expedite briefing and have it finished by
5 February 21st in -- in -- presumably that gives
6 them ten days to issue an order before qualifying
7 and they didn't issue an order before qualifying.

8 They issued an order that said, We're going
9 to give you -- we're going to ex -- we're going
10 to move the hearing up and we're going to ask the
11 parties to be ready to come in and address --
12 it's a very complicated -- it's a very wordy new
13 legal question, but when I read it, I said, The
14 court's asking the Floams to come in and explain
15 how they have standing.

16 The court -- the Supreme Court's concerned
17 with the Floams having enough standing. That's
18 what that question is. And so not only did they
19 not address -- address the supersedeas and
20 lifting the stay, they said: Floams, we want you
21 to come in and answer whether you have standing
22 to bring us a legal question and ask counsel to
23 be there to address.

24 At that point we're left with no ruling from
25 the Supreme Court as to whether the hold on Judge

1 Harris's ruling is in place or not. But the
2 implication is because they held in abeyance an
3 earlier order, scheduling order, they said, We're
4 going to hold in abeyance the issue of
5 supersedeas. That, to me, tells me that the
6 implication is there's a supersedeas in place and
7 we're just going to hold off on ruling on it.

8 So that's why that order came out on
9 February 29th. That's why on March 1st you get a
10 statement that we released that everybody has
11 cited (indiscernible), Well, what -- what
12 happened? What changed your mind? My client
13 never -- my client never changed their mind.
14 They never had a mind on this issue. They don't
15 have a preference for a map.

16 The board of elections -- the board of
17 elections is a -- (indiscernible) more of a
18 sports analogy, they're the fields crew. They're
19 the groundskeeper. They're the scorekeeper.
20 They don't set the rules. They're not the
21 referee. They don't interpret the rules.
22 They're not the rule maker. They only adopt the
23 rules.

24 All they want to do is draw the lines and
25 count the votes. And that's all they wanted to

1 do. And to come in and say that our board chose
2 one map over the other is -- is incorrect. Our
3 board was tasked with saying, What's the law on
4 the date qualifying and on the date the primary
5 is? We have to follow that.

6 And that's what our board did and that's
7 what they did every step of the way. They don't
8 -- my board does not have the authority to decide
9 the constitutionality of the Home Rule map or the
10 priority of the legislative map. It's not their
11 job.

12 And courts have been asking -- I'll say
13 frankly, just -- and I know I'm over time now,
14 but the Cobb GOP unwittingly confirmed our
15 position by trying to intervene in the Floam case
16 after -- on March 7th and said, Court, hey, we
17 want you to tell us does this map -- or let us in
18 the case, we're about to qualify people and we
19 need to know. Please tell us who we should
20 qualify. We want to intervene and make sure that
21 the legislative map is (indiscernible).

22 You heard some vague reference from
23 Ms. Grubbs about this. But that order says, I'm
24 sorry, I can't rule on that because there's a
25 supersedeas in place. So Judge Harris who issued

1 her ruling declaring the map unconstitutional
2 says, I can't do anything to enforce my order
3 because there's a -- there's a stay in place.

4 So, I'm kind of thankful to Cobb GOP for
5 giving us some clarity, but there's now a court
6 order that says, Yeah, there's a supersedeas in
7 place and I can't do anything to enforce my
8 ruling that the Home Rule map is invalid and the
9 legislative map should be in place.

10 So that's our legal update. That's where we
11 stood on March 1st. That's where we stand today.

12 There's now been a lawsuit filed by
13 Ms. Adams who was qualified under the Home Rule
14 map -- excuse me, under the legislative map and a
15 challenge (indiscernible) who -- who an elector
16 said she doesn't have the right and she lived in
17 that district. And she's not qualified.

18 Our board held a hearing as required, under
19 21-2-6. That's been appealed as allowed under
20 21-2-6. There's also a mandamus action that's
21 been filed. We've filed a response. I got a
22 response to our certiorari that we filed
23 yesterday, an 18-page response, saying this is
24 the status.

25 So the idea that our board is taking, you

1 know, any kind of covert -- making these covert
2 decisions or actions, it's just -- it's not true.
3 It's a false political narrative that's out
4 there.

5 My board -- and the board of elections, I'll
6 state, is a neutral election administrator. It
7 has never adopted a position on -- if a court
8 rules tomorrow that the legislative map needs to
9 be implemented, they'll start implementing it.
10 Granted, they'll wait until after the election to
11 do it because trying to get these changed before
12 UOCAVA -- I don't even understand how it could
13 happen before April 6th, which is the deadline
14 for UOCAVA ballots.

15 But the board of elections has never ever
16 taken a position on which map should apply. It's
17 only ever said, We just need either the
18 legislature or the court to tell us which map
19 applies. And right now there is still a
20 pending -- there's -- yes, there's an order from
21 Judge Harris, but equally afforded weight under
22 the law is O.C.G.A. 5-6-46. And Judge Harris
23 recognizes that because she's now issued an order
24 saying, I can't do anything because there's a
25 supersedeas in place.

1 So with that, that's our legal update on
2 where things stand and how -- how this got to
3 this process. And I'm happy to answer legal
4 questions. I'm really uncomfortable with my
5 clients answering factual questions today. If
6 there are some, I may consult with them and see,
7 but I just wanted all of that -- we are happy to
8 get that on the record and get that out there so
9 people know our position for -- for anyone who
10 has questions about the legal status of these
11 maps and how we got there.

12 **MR. FERVIER:** Thank you. I want to be
13 honest, sir. This board has the right and the
14 obligation to consider complaints that are
15 brought before the State Election Board. Since
16 we have numerous complaints that were brought
17 before us, I felt it was necessary for us to
18 understand what the parties had to say before we
19 proceeded with any type of further action. And
20 I'm sure it's been very helpful to the board
21 members today to hear from both parties.

22 Given your reservations for asking
23 questions, I will have no questions for your --
24 your side.

25 Any further comments from the -- from the

1 board?

2 **DR. JOHNSTON:** Could you help me? Who
3 decided the supersedeas?

4 **MR. WHITE:** Well, the supersedeas is -- is
5 in the statute. That's -- supersedeas is under
6 5-6-46 and it says that in every civil action an
7 automatic stay occurs when a party filed a notice
8 of appeal and pays their costs.

9 But there's also a separate thinking that
10 says counties and local governments don't have to
11 pay costs. So as soon as the county filed their
12 appeal, supersedeas went into effect.

13 Now, I also -- I'm going to -- I'll just go
14 ahead and put some Monday-morning quarterbacking
15 out on the table for you. The plaintiffs in this
16 case could've asked for an injunction when they
17 filed their original actions. And, you know, I
18 know that there's a -- we're going to kind of get
19 into the weeds here.

20 The constitutional provision they brought it
21 under says you have to have a declaratory
22 judgment first and then you can get an
23 injunction. There's no reason they couldn't have
24 asserted both in the complaint. And if Judge
25 Harris submitted a declaratory judgment and then

1 granted an injunction, at that point, the burden
2 shifts to Cobb County to get the injunction
3 lifted.

4 But that wasn't done. The plaintiffs in
5 this case did not ask -- they did not file a
6 motion for injunction. They just filed a
7 motion -- they just filed an action for
8 declaratory relief. So the minute they had the
9 declaratory relief ruling -- and there was a case
10 that talks about it. If you don't have an
11 injunction, then the stay goes into place and the
12 burden is not shifted to the -- to the appellant,
13 here, the county --

14 So this -- this could've been different if
15 there had been an injunction requested and
16 granted. And I think likely given the -- the
17 declaratory judgment was granted, finding it
18 unconstitutional, I think it's pretty likely
19 Harris would've enjoined in using the map. And
20 then Cobb County would've had to file a motion
21 and demonstrate why the stay should have been
22 lifted.

23 But the plaintiffs in this case, for
24 whatever reason, didn't ask for an injunction
25 when they filed their complaint. I don't know if

1 it was an oversight or they thought they
2 couldn't, but the supersedeas -- the amicus brief
3 that I drafted, it's out there. And just to show
4 you we're not taking sides, I got fussed at by
5 the county attorneys because they -- they didn't
6 like that we were sort of laying everybody's
7 argument on the table. And we're -- we weren't
8 going to take a position that -- that supported
9 the Floams or the -- the county commission. We
10 were going to take -- it could've -- supersedeas
11 may apply. We don't know. Supersedeas may not
12 apply. Let us know.

13 If -- if it does apply, let's, you know,
14 either lift it or say that it's not lifted so
15 that we know, Supreme Court, how do we move
16 forward with (discernible)? They declined --
17 they had the chance to review it. Because ours
18 was in on February 8th. So we (indiscernible) a
19 summary rule on February 29th. They had had an
20 opportunity to review our brief, the Attorney
21 General's brief, and the Floams' brief that all
22 said, Hey, there's a case back in 2016 where you
23 lifted the supersedeas and allowed this other --
24 you know, this election to take place in South
25 Fulton for the referendum. You should do that.

1 I didn't advocate what should be done, I
2 just pointed out that the court's done this
3 before. So there's a way to deal with this if
4 you think it should be done. And the court
5 didn't take the -- they had a clear opportunity
6 to either say it doesn't apply or lift it, and
7 the Supreme Court did not do that.

8 So their ruling that the -- they -- they're
9 going to hold off on the -- hold in abeyance.
10 The (indiscernible) of supersedeas is still the
11 law of the case today. So that's who -- the
12 Supreme Court's the one who said that the
13 supersedeas is in place in addition to the
14 statute, but I don't if it's (indiscernible).

15 **DR. JOHNSTON:** Okay. Could the Cobb Board
16 of Commissioners decide at that point to use the
17 legislative maps until their legal question was
18 answered at the Supreme Court?

19 **MR. WHITE:** You're (indiscernible) Cobb
20 Board of Commissioners?

21 **DR. JOHNSTON:** Yes.

22 **MR. WHITE:** I can't speculate on what their
23 counsel is telling them or what they -- what
24 their decision may have been. I mean, I guess I
25 could've -- they could've -- they could've said

1 withdraw your appeal. But they're -- they're --
2 they don't have authority to tell our board to --
3 to implement anything, you know, at least by
4 directive. They'd have to -- they'd have to
5 withdraw their appeal and which lies, then, Judge
6 Harris's order. There's no -- as long as the
7 appeal is still standing, I could see -- sure, I
8 guess they could've told the Supreme Court: Hey,
9 Supreme Court, why don't you go ahead and lift
10 the supersedeas and we'll deal with this like
11 that. But I'm not -- that's all speculation on
12 what the county could've ordered done and
13 (indiscernible) talked about with their legal
14 counsel who's separate from me.

15 **MR. FERVIER:** I noticed in the statement
16 that came out on March 1st that there's a comment
17 that in an abundance of caution they will use the
18 Home Rule map, what's been defined as the Home
19 Rule map. Can you explain to me what that
20 abundance of caution -- I don't understand what I
21 -- you would use a Home Rule in an abundance of
22 caution versus using the existing legislative
23 map.

24 **MR. WHITE:** An abundance of caution was
25 because there's no -- we would've loved the

1 Supreme Court or any court to have just come
2 right out and said, Use this map. Like, this is
3 the map that's in place while the supersedeas is
4 going. But in the absence of the direct ruling
5 from the Supreme Court saying the supersedeas is
6 lifted or it's not, the other reason they decided
7 on an abundance of caution is we don't know on
8 March 1st whether the Supreme Court -- we don't
9 how this is going to (indiscernible). It could
10 go either way.

11 The signal they're sending by asking the
12 Floams questions seems to be: We're not sure the
13 Floams have standing. So that's like -- if
14 you're telling us: I'm not even sure we can
15 decide this case, then we better move forward and
16 say the map -- Judge Harris's -- this lawsuit
17 never should've even been brought. Then Judge
18 Harris's ruling definitely would not be upheld.

19 And so the abundance of caution was just to
20 say we asked for a specific ruling and didn't get
21 it, but because the court is (indiscernible),
22 they just implied by not issuing a ruling, we
23 have to go with what their -- what their ruling
24 implies.

25 So that was the thing, is we just didn't

1 have what -- didn't have it in black and white
2 that said, like clear: You used this map during
3 the election (indiscernible). And you really
4 just say we have to take what they rule on and
5 implement it based on the -- the statute and
6 their -- their rules of evidence.

7 **MR. FERVIER:** Okay. Any further questions?

8 **DR. JOHNSTON:** One more question.

9 **MR. FERVIER:** Okay.

10 **DR. JOHNSTON:** Are any of the board of
11 commissioners designated as election officials?

12 **MR. WHITE:** I don't -- (indiscernible) says
13 no. The board of commissioners?

14 **DR. JOHNSTON:** Right.

15 **MR. WHITE:** No.

16 **DR. JOHNSTON:** So they're not charged with
17 providing direction to the conduct of elections?

18 **MR. WHITE:** No. And they haven't -- they
19 haven't told us how to conduct (indiscernible)
20 election.

21 **DR. JOHNSTON:** Okay.

22 **MR. LINDSEY:** I can answer that for you
23 underneath the law. That's something that the
24 state legislature mandates has to go to the board
25 of elections. Commissioners can't have a direct

1 role over elections, under -- underneath our
2 statutes. I think it's 21-2-40. I may be off on
3 that, but that's -- I think that's the code
4 section that creates the board of election and
5 gives them independent authority over elections.

6 **DR. JOHNSTON:** So I was just wondering how

7 --

8 (Cross-talking)

9 **MR. LINDSEY:** It's sort of --

10 **DR. JOHNSTON:** Yeah.

11 **MR. LINDSEY:** (indiscernible)

12 **DR. JOHNSTON:** Right. So I was -- I mean, I
13 was just wondering how deciding on maps that are
14 released for -- for elections, what authority was
15 given to the commissioners? I -- I couldn't find
16 it in the official code of Cobb County and --
17 that they had had any authority to be involved
18 with elections.

19 **MR. FERVIER:** Any further questions from the
20 board? Do you have any questions for the board?

21 **MR. WHITE:** No.

22 **MR. FERVIER:** Do I have a motion to adjourn?

23 **MR. JEFFRIES:** So moved.

24 **MR. FERVIER:** Do I have a second?

25 **MS. GHAZAL:** Second.

1 **MR. FERVIER:** All in favor of adjourning,
2 signify by saying aye. Aye?
3 **THE BOARD MEMBERS:** Aye.
4 **MR. FERVIER:** Any discussion? Hearing no
5 discussion, I'll -- (indiscernible). So moved,
6 this meeting's adjourned. Thinking of something
7 else. Thank you.
8 (Adjourned at 3:59 p.m.)
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CERTIFICATE

STATE OF GEORGIA

I hereby certify that the foregoing meeting was taken down via Microsoft Teams audio, and was reduced to typewriting under my direction; that the foregoing transcript is a true and correct record given to the best of my ability, that speaker identifications are the best possible without being present in the room for said hearing.

The above certification is expressly withdrawn upon the disassembly or photocopying of the foregoing transcript, unless said disassembly or photocopying is done under the auspices of the undersigned and electronic signature is attached thereon.

I further certify that I am not a relative, employee, attorney, or counsel of any of the parties; nor am I financially interested in the action.

This, the 23th day of April, 2024.

****Mary K McMahan****

Mary K McMahan, CCR
Certified Court Reporter
Certificate Number 2757