

IN THE SUPERIOR COURT OF FULTON COUNTY  
STATE OF GEORGIA

GWINNETT COUNTY, GEORGIA,  
Plaintiff,

v.

STATE OF GEORGIA,  
Defendant.

CIVIL ACTION FILE NO.  
24CV012456

**DISMISSAL ORDER**

Senate Bill 333 (“SB 333”), signed into law on February 13, 2024, provides for the creation and proposed charter of the City of Mulberry (“City”) within an unincorporated area of Gwinnett County (“County”). On October 1, 2024, the County filed this action for declaratory judgment and injunctive relief. The County requests a judgment declaring SB 333 unconstitutional and void and an injunction restraining the State from requiring the County to comply with SB 333.

R. Michael Coker is a citizen, resident, registered voter, and taxpayer of the County as well as a recently elected member of the City’s council. Citizens for Mulberry, Inc. is a Georgia nonprofit corporation created for the purpose of advocating for the creation of the City. Coker and Citizens for Mulberry, Inc. (collectively, the “Proposed Intervenors”) moved to intervene in this case.

The State appeared specially and moved to dismiss the case. The Proposed Intervenors support the dismissal of this case and contend that SB 333 is

constitutional. To facilitate the resolution of the claims and potential claims in this case, the Court (with the cooperation of the parties) required briefing on both preliminary and dispositive issues. A consolidated hearing was held on December 4, 2024.

For the reasons that follow, the Court **GRANTS** the State's Motion to Dismiss. Because of this conclusion, the Court does not reach the issue of intervention. The thoughtful analysis of the Proposed Intervenors was considered as amicus curiae briefing.

### **Factual Background**

The parties filed Stipulated Facts and Documents, and the material facts are largely undisputed. SB 333 is a local law that proposed the City upon approval by a local referendum. In May 2024, the qualified voters of the proposed City approved its creation. In November and December 2024, the County conducted and paid for the election for the City's first councilmembers. The County expended significant money and resources providing for the election for the first councilmembers. Under the terms of the Charter, the City shall reimburse the County for the costs of the initial election within two years.

Pursuant to SB 333, starting on January 1, 2025, and continuing through 12:00 Midnight on December 31, 2026 (the "transition period"), the County will be

required to participate in a transition period where services and government functions are transferred from the County to the City. The County will continue expending money and resources providing existing services for the City residents and otherwise participating in the transition period until December 31, 2026. During the two-year transition period, the County is prohibited from making any modifications to the zoning of any property located within the jurisdictional boundary of the City. No amendments to the zoning of any property within the boundaries of the City can be made until the City assumes responsibility for zoning matters.

### **Legal Analysis**

The State argues, in part, that this suit should be dismissed for lack of subject matter jurisdiction because the case does not present a properly pled claim for which sovereign immunity has been waived.

#### *Sovereign Immunity*

The Georgia Constitution provides a limited waiver of sovereign immunity for actions in the superior court seeking declaratory relief from acts of the state. Ga. Const. 1983, Art. I, Sec. II, Para. V (“Paragraph V”). Paragraph V further waives sovereign immunity for actions seeking injunctive relief so that a court awarding

declaratory relief may, only after awarding declaratory relief, enjoin acts to enforce its judgment.

An action against the State for declaratory relief can be an appropriate method for seeking review of the constitutionality of Georgia statutes. *Kuhlman v. State*, 317 Ga. 232 (2023). However, the movant and the action must meet other longstanding requirements even if sovereign immunity does not bar a party from bringing a declaratory judgment action against the State. *Id.* at n. 9. Thus, the Court must consider whether the County's allegations are sufficient to support declaratory relief.

### *Declaratory Judgment*

In cases of actual controversy, superior courts have power to declare rights and other legal relations of any interested party petitioning for such declaration. O.C.G.A. § 9-4-2. The purpose is to afford relief from insecurity and uncertainty with respect to rights, status, and other legal relations. O.C.G.A. § 9-4-1.

Justiciability of a declaratory judgment action presents a threshold question because a declaratory judgment may not be granted in the absence of a justiciable controversy. When a party seeking declaratory judgment does not show it is in a position of uncertainty, dismissal of the action is proper. *Collins v. Athens Orthopedic Clinic*, 356 Ga. App. 776 (2020).

To warrant a declaratory judgment, the relief sought by a plaintiff must have some immediate legal effect on the parties' conduct, rather than simply burning off an abstract fog of uncertainty. *City of Atlanta v. Atlanta Independent School System*, 307 Ga. 877 (2020). A plaintiff must show facts or circumstances whereby it is in a position of uncertainty or insecurity because of a dispute and of having to take some future action which is properly incident to its alleged right, and which future action without direction from the court might reasonably jeopardize its interest. *Perdue v. Barron*, 367 Ga. App. 157 (2023).

A court has no province to give advisory opinions. If a declaratory judgment action raises issues that are moot, those issues are non-justiciable. *Barksdale v. DeKalb Cnty.*, 254 Ga. App. 7 (2002). Similarly, a declaratory judgment cannot be rendered based on a possible or probable future contingency. *Atlanta Cas. Co. v. Fountain*, 262 Ga. 16 (1992). If a declaratory judgment action presents only a question of academic interest and not a justiciable controversy, the entry of declaratory judgment is not appropriate. *Effingham County Bd. of Commrs.*, 286 Ga. App. 748 (2007). A court has no province to determine whether or not a statute, in the abstract, is valid. *Fourth St. Baptist Church of Columbus v. Bd. of Registrars*, 253 Ga. 368 (1984).

Mindful of these principles, the Court considers the threshold issue of whether there is a justiciable controversy which would authorize entry of a declaratory

judgment.<sup>1</sup> The County alleges three areas of uncertainty: (1) the requirement to hold and fund the November 2024 election for city council members, (2) the requirement to participate in a two-year transition period, and (3) the prohibition from exercising its authority to zone in the jurisdictional limits of the City. The County avers that there is an actual controversy between the County and the State because the State is requiring the County to adhere to SB 333.

Any uncertainty regarding the November 2024 election is moot. That election and related runoffs have already occurred. Therefore, the County is no longer in a position of uncertainty about holding and paying for the elections. Because the Court cannot issue a declaration about things that have already happened, the Court will consider the next alleged uncertainty.

The County alleges it is uncertain about providing services during the transition period defined in SB 333. The parties agree that the County will continue expending money and resources providing *existing* services.<sup>2</sup> Under SB 333, the County will continue to provide services that it is already providing. Put another way, the County will be providing these services regardless of the validity of SB

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<sup>1</sup> In some of the briefing, the issue of justiciability is conflated with standing. But standing and justiciability are distinct. See *Cobb Cnty. v. Floam*, 319 Ga. 89 (2024) (holding that plaintiffs have standing but that plaintiffs did not raise the requisite level of uncertainty to state a declaratory judgment claim). While the Court does not analyze the issue of standing in light of its conclusions as to justiciability, it appears that the County would have standing and the capacity to sue. See *Cherokee Cnty. v. City of Holly Springs*, 284 Ga. 298 (2008) (county's interest in its boundaries and the duties and obligations that flow therefrom is sufficient to establish standing in injunction action against city within county lines); *City of Atlanta v. Spence*, 242 Ga. 194 (1978) (counties and cities cannot challenge a state statute on state or federal equal protection or due process grounds, but they can assert challenges on other grounds).

<sup>2</sup> Stipulated Facts and Documents, ¶ 21 (emphasis added).

333. As pled and as described in the County's briefing, the County does not risk taking future undirected action. There is nothing in the record that suggests that a declaration of rights would have any impact on County-provided services. Therefore, any requirement for the County to continue to provide services during the transition period does not place the County in an uncertain position about its future conduct.

Finally, the Court considers the County's argument that it is in a position of uncertainty because SB 333 prohibits the County from zoning within the jurisdictional limits of the City. But there is no evidence or allegation that the County actually intends to enact any zoning ordinance or modify or amend the zoning of any property in the City. As such, the County has failed to establish the existence of an actual controversy where a ruling in its favor would have any immediate legal consequence rather than simply burning off the proverbial fog of uncertainty. Entry of a declaratory judgment, under the circumstances presented, would be based on a possible or probable future contingency and, thus, would be an erroneous advisory opinion.

### **Conclusion**

Because the County has not shown that it qualifies for declaratory relief, the claims for such relief must be dismissed. Absent declaratory relief, the County's

claims for injunctive relief must fail because the injunctive relief is only available under Paragraph V after prevailing on declaratory judgment. Consequently, the State's Motion to Dismiss is **GRANTED**, and this action shall stand **DISMISSED**.

**SO ORDERED** this 7 day of January, 2025.



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**RACHELLE L. CARNESALE, JUDGE**  
Fulton County Superior Court  
Atlanta Judicial Circuit

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