

**IN THE SUPERIOR COURT FOR THE COUNTY OF DEKALB
STATE OF GEORGIA**

**PHILIP J. AUTREY, JOHN F.
MUERLIN, TIMOTHY F. PILGRIM,
and BARBARA W. SMITH,
PETITIONERS,**

vs.

CIVIL ACTION NO.: 25CV5115

**THE STATE OF GEORGIA,
RESPONDENT.**

NOTICE OF APPEAL

COME NOW, THE PETITIONERS, by and through their attorney of record, and pursuant to O.C.G.A. § 5-6-34(a)(1), and file this Notice of Appeal from the **ORDER GRANTING THE STATE'S MOTION TO DISMISS THE AMENDED PETITION** (Exhibit "A") entered in this case on February 16, 2026. The Petitioners hereby designate the entire record for transmission by the Clerk of the Dekalb County Superior Court to the Clerk of the Court of Appeals of Georgia. The Clerk is respectfully directed to omit nothing from the record in the above-referenced case. The Petitioners do not designate any transcripts for transmission. The Court of Appeals has jurisdiction over this appeal pursuant to Ga. Code Ann. §15-3-3.1 (a)(6).

Respectfully submitted this the 10th day of March, 2026.

HARDING LAW FIRM, LLC

/s/ Todd A. Harding
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CERTIFICATE OF SERVICE

COME NOW, THE PETITIONERS, by and through their attorney of record, and hereby certify that they have served upon all Parties a true and correct copy of the foregoing **NOTICE OF APPEAL** in the above-styled matter by court approved electronic service by way of the Odyssey e-filing system to the following:

Ronald J. Stay, SR. AAG
40 Capital Square, S.W.
Atlanta, Georgia 30334-3434

Respectfully submitted this the 10th day of March, 2026.

HARDING LAW FIRM, LLC

/s/ Todd A. Harding
Todd A. Harding, For the Firm
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EXHIBIT “A”

IN THE SUPERIOR COURT OF DEKALB COUNTY

STATE OF GEORGIA

PHILIP J. AUTREY, et. al.,	:	
	:	
Petitioners,	:	
	:	CIVIL ACTION NO.
v.	:	25CV5115
	:	
THE STATE OF GEORGIA,	:	
	:	
Respondent.	:	

**ORDER GRANTING THE STATE'S
MOTION TO DISMISS THE AMENDED PETITION**

Petitioners seek declaratory and injunctive relief concerning the purported violation of two Georgia laws that, they say, prohibit the movement of certain flags at Stone Mountain Park (hereinafter 'Park') and the renovation of museum exhibits at the Park. But the Petitioners do not have standing because they have only alleged generalized harm, which is insufficient to proceed against the State. Further, the retrospective relief they seek is unavailable to them and they lack standing and have not presented a justiciable issue. Last, even if Petitioners had standing and had presented a justiciable issue, the laws they purport were violated have not been plead as violated, as is explained below. Having reviewed the filings and considered the parties' arguments, the Court GRANTS Respondent's Motion to Dismiss, for the reasons outlined below:

BACKGROUND

This is the only remaining action in a series of closely related actions. See Georgia Division, Sons of Confederate Veterans, Inc., et al. v. The Stone Mountain Memorial Association (DeKalb County, Civil Action No. 24CV11421) (filed December 23, 2024)

(voluntarily dismissed April 23, 2025) (seeking mandamus or injunction regarding relocation of certain flags); *Georgia Division, Sons of Confederate Veterans, Inc., et al. v. Reverend Abraham Moseley, et al.* (DeKalb County, Civil Action No. 25CV5114) (filed May 22, 2025) (voluntarily dismissed October 29, 2025) (seeking mandamus regarding relocation of certain flags); *Georgia Division, Sons of Confederate Veterans, Inc., et al. v. The State of Georgia* (DeKalb County, Civil Action No. 25CV6288) (filed July 1, 2025) (voluntarily dismissed September 30, 2025) (seeking a writ of injunction regarding museum exhibits).

The present action was filed on May 22, 2025. The original petition was styled as a “Petition for Writ of Injunction” regarding the relocation of certain flags at Stone Mountain Park. On October 14, 2025, the Amended Petition was filed, which relates to both the relocation of certain flags and the renovation of certain museum exhibits. In short, the Amended Petition asserts that it was unlawful for the State to relocate certain flags at the Park from the base of the walk-up trail to another area of the Park, and, further, that renovations to museum exhibits at Memorial Hall are also unlawful. See, e.g., Amended Petition, ¶¶100, 49, 52. According to Petitioners, the relocation and renovations violate O.C.G.A. § 50-3-1 and O.C.G.A. §12-3-190 et seq., which prohibit removing, concealing, or relocating monuments and, further, indicate that one of the purposes of Stone Mountain Park is to be a Confederate memorial. *Id.*; see also Amended Petition, ¶104 (quoting O.C.G.A. §12-3-191(7)); *id.* at ¶39 (quoting O.C.G.A. §12-3-192.1).

The Amended Petition, like the original, is styled as a writ of injunction, but it seeks “declaratory judgment and injunctive relief involving unlawful future acts of the State pursuant to Article I, Section II, Paragraph V of the Constitution of the State of Georgia.”

Amended Petition, ¶21. While the Amended Petition confines itself to the limited waiver in Paragraph V for prospective declaratory and injunctive relief, the Amended Petition's enumerated Counts suggest that it seeks more expansive relief, ultimately seeking to have the flags moved back to their original location and, possibly, to have the museum renovation unwound. See Amended Petition, ¶¶132–38, 149–58.

On November 10, 2025, via consent order, Petitioner Georgia Division, Sons of Confederate Veterans, Inc., and Petitioner Confederate Memorial Camp # 1432 of the Sons of Confederate Veterans were dropped from the action. The remaining Petitioners are four individuals claiming standing to sue as community stakeholders. See Amended Petition, ¶¶5–13.

Respondent, the State of Georgia, timely filed a motion to dismiss the original petition and, subsequently, on November 7, 2025, filed the pending Renewed Motion to Dismiss the Amended Petition. On December 8, 2025, Petitioners filed an opposition to the Motion. On January 28, 2026, the Court heard argument regarding the Motion.

CONCLUSIONS OF LAW

The Court accepts the pleadings in the Amended Petition as true for purposes of the Motion to Dismiss, so the question is whether there is a right to legal relief. *Renasant Corp. v. Korst*, 361 Ga. App. 794, 798 (2021) (“The main consideration of such a motion to dismiss is whether, under the assumed set of facts, a right to some form of legal relief would exist.”). “A motion to dismiss may be granted only where a complaint shows with certainty that the plaintiff would not be entitled to relief under any state of facts that could be proven in support of his claim.” *GeorgiaCarry.Org, Inc. v. Bordeaux*, 360 Ga. App. 807, 809 (2021) (quotation omitted).

There is no right to legal relief here for three reasons. First, the Petitioners lack standing as taxpayers to sue the State. Second, the relief sought by the Petitioners is retrospective and therefore unavailable because the Court cannot provide redress under the limited waiver of sovereign immunity pled in the Petition and, further, the Amended Petition does not plead a justiciable controversy. Third, even if the other issues were surmounted, the facts as pled do not violate the Georgia laws that Petitioners assert were violated.

I. The Petitioners lack standing.

Standing is a jurisdictional prerequisite, and the Petitioners lack standing because they assert only generalized harm, which is insufficient against the State. In a recent series of decisions culminating with *Republican National Committee v. Eternal Vigilance Action*, 321 Ga. 771 (2025), our Supreme Court clarified the requirements for standing under the judicial power clause of the Constitution. In short, the mere existence of a statutory cause of action may confer authority to file suit, but it does not automatically confer standing because “a statute cannot confer standing in the absence of a cognizable injury.” *Sons of Confederate Veterans v. Henry Cty. Bd. of Comm’rs*, 315 Ga. 39, 64 (2022). For claims against the State or its entities, as opposed to local governments, that cognizable injury must generally be individual and particularized. See *Eternal Vigilance Action*, 321 Ga. at 781 (clarifying that prior decisions regarding community stakeholder standing were “limited to suits against local governments”). Pleading standing as a citizen, taxpayer, or community stakeholder is generally insufficient in an action against the State, as a matter of law. *Id.* at 779–83; see also *Cobb County v. Floam*, 319 Ga. 89, 93 (2024).

Despite multiple opportunities to address standing, the Amended Petition does not allege an injury to individual rights and, instead, asserts community stakeholder standing based on Petitioners' alleged status as citizens, residents, and taxpayers. See Amended Petition, ¶¶6–13; see also *id.* at ¶¶132–58 (seeking injunctions based on alleged misuse of “taxpayer revenue”). At oral argument, counsel for the Petitioners confirmed that Petitioners were relying on their alleged status as taxpayers to assert generalized harm. Further, Petitioners' Opposition to the Motion to Dismiss makes it clear that it is relying on community stakeholder standing as taxpayers. See Opposition, at pp. 4–6.

In particular, Petitioners rely heavily on footnote seven in *Eternal Vigilance*, which notes two cases where an allegation of a generalized injury was allowed to proceed against the State. See *Eternal Vigilance Action*, 315 Ga. at 783, fn.7. But, as Respondent correctly points out, the two cases Petitioners rely on, *Arneson v. Board of Trustees of the Employees' Retirement System of Georgia*, 257 Ga. 579 (1987) and *Head v. Browning*, 215 Ga. 263 (1959), are also criticized in the *Eternal Vigilance* decision as “outliers.” *Eternal Vigilance Action*, 315 Ga. at 783. Indeed, according to our Supreme Court, the cases “did not rebut the general requirement that a plaintiff must assert the violation of his own individual right, as opposed to a community stakeholder right, to challenge actions by the State.” *Id.*

For their part, Petitioners have also not rebutted this “general requirement.” Instead, Petitioners make bare assertions regarding the lack of “challenge to state legislative action” or lack of “challenge to the separation of powers.” Opposition, pp. 6–7. But Petitioners have not explained, for example, why sovereign immunity should be waived under Paragraph V for injunctive relief when injunctive relief was explicitly

removed by the legislature as a statutory cause of action from the law that they say was violated. See *Sons of Confederate Veterans v. Newton Cty. Bd. of Comm'rs*, 368 Ga. App. 511, 516 (2023) (concluding that there was no waiver of sovereign immunity for injunctive relief where such provisions were removed from O.C.G.A. § 50-3-1 by the legislature); see also Ga. Div., *Sons of Confederate Veterans, Inc. v. Downs*, 365 Ga. App. 280 (2022) (concluding that petitioners lacked standing to complain that removal of a monument violated O.C.G.A. § 50-3-1 because the alleged injuries were too abstract). Allowing an end-run pursuit of injunctive relief that the legislature expressly removed from O.C.G.A. § 50-3-1 would not seem to respect the separation of powers or, in this context, be a proper exercise of judicial power.

In sum, the Court is not inclined to forego the general requirement that a cause of action against the State assert an injury that is individual and particularized, and therefore the Court concludes that Petitioners lack standing and the Motion to Dismiss the Amended Petition shall be granted.

- II. The Amended Petition ultimately seeks retrospective relief, which is not available in a declaratory relief action, so the Petitioners lack standing because of a lack of redressability and they have also failed to assert a justiciable controversy, since declaratory relief must seek guidance as to the petitioner's future conduct.

The relief that Petitioners truly seek is retrospective—Petitioners seek to have the flags moved back to where they were and to have the museum exhibits restored to their former state. Only these actions would redress the Petitioners' alleged injuries resulting from the purported violation of O.C.G.A. § 50-3-1 and O.C.G.A. §12-3-190 et seq. But that retrospective relief is not available under the limited waiver of sovereign immunity that Petitioners have availed themselves of because declaratory and injunctive relief is

prospective only. Thus, they lack standing because the Court cannot redress their purported injury and they, further, have not pled a justiciable controversy.

Standing requires a cognizable injury and, additionally, that the Court can provide redress. *Sons of Confederate Veterans v. Henry Cty. Bd. of Comm'rs*, 315 Ga. 39, 39 (2022) (“a plaintiff must have a cognizable injury that can be redressed by a judicial decision.”). In addition to standing (e.g., redressability), Plaintiffs “must also seek relief of the right kind” to allege a justiciable controversy. *Floam*, 319 Ga. at 89. Relief under the limited waiver of sovereign immunity in Paragraph V is available “only after awarding declaratory relief.” *State v. Sass Group, LLC*, 315 Ga. 893, 893 (2023). Declaratory relief is only available “to guide parties . . . as to their future conduct.” *Floam*, 319 Ga. at 96 (quoting *Shippen v. Folsom*, 200 Ga. 58, 67 (1945)). Thus, not only must a litigant allege uncertainty but a declaration of rights must “direct the plaintiff’s future conduct,” otherwise no justiciable controversy is present and declaratory judgment is unavailable. *Id.* at 97. Indeed, “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 Indep. Sch. Sys.*, 307 Ga. 877, 880 (2020).

The Amended Petition does not seek guidance on the Petitioners’ future conduct, nor does it allege that Petitioners face any present uncertainty as to their own rights that a declaration would resolve. Instead, it seeks only community-based relief—a declaration that the “future expenditure of state taxpayer revenue to maintain” the flags in their new location is unlawful, Amended Petition ¶¶116–23, and, similarly, a declaration that the future expenditure of taxpayer revenue for the proposed changes to museum exhibits is unlawful, Amended Petition ¶¶124–31. The Amended Petition seeks related injunctions,

including moving the flags back to their original location, Amended Petition ¶¶132–58, however, at the oral argument, counsel for Petitioners seemed to abandon the claim(s) for retrospective relief, indicating that Petitioner now are only seeking to stop the future expenditure of taxpayer revenue. But, as set forth above, any such relief derives from community-based standing, which the law precludes.

In any event, the alleged violation of laws could only be rectified by retrospective relief, which is unavailable, because, according to the Amended Petition itself, unless the flags are moved back and the museum exhibits removed, the Georgia statutes would continue to be violated—stopping future payments would not undue the alleged violations of law. What's more, the declarations sought do not relate to Petitioners' own rights and there is no nexus pled with Petitioners' own future conduct. Rather, Petitioners would ask whether future payments to maintain the status quo at Stone Mountain are unlawful. The Amended Petition is thus merely attempting to burn off an abstract fog of uncertainty as to someone else's conduct, which is not justiciable.

In sum, the court cannot redress the true purported injury, the alleged violation of O.C.G.A. § 50-3-1 and O.C.G.A. §12-3-191(7), because retrospective relief is unavailable, and, additionally, nothing in the requested relief is necessary to guide the Petitioners' own future conduct.¹ *Floam*, 319 Ga. at 96. The Court therefore concludes that Petitioners lack standing because the Court cannot redress their purported injury

¹ To the extent that Petitioners truly only seek prospective relief, the Amended Petition still fails because the guidance of future conduct sought from the court must be “incident to” the alleged right that is being violated. *Perdue v. Barron*, 367 Ga. App. 157 (2023). The alleged violation of rights and the prospective relief sought here are too tenuously connected to state a justiciable controversy. *See Downs*, 365 Ga. App. 280 (concluding the alleged injuries were too abstract).

and, further, that they have failed to plead a justiciable controversy. The Motion to Dismiss should be granted for this additional reason.

III. The amended petition must be dismissed because Petitioners fail to state a claim for relief.

Even if Petitioners had standing and could demonstrate justiciability, they still fail to state a claim upon which relief may be granted. The Amended Petition alleges a violation of two Georgia laws: O.C.G.A. § 50-3-1 and O.C.G.A. §§ 12-3-190 et seq. Assuming these provisions apply to the flags and the museum exhibits, the facts pled do not violate the statutes.

At the argument, counsel for the Petitioners made it clear they were asserting the violation of O.C.G.A. § 50-3-1, subsections (b)(2) and (3).² Subsection (2) includes a provision that a monument shall not be “removed or concealed” for the “purpose of preventing the visible display of the same.” O.C.G.A. § 50-3-1(b)(2). Nothing alleged in the Amended Petition meets this definition. As for the museum, there are no allegations that anything specific in the museum was “removed or concealed” from view. Rather, the crux of Petitioners’ amended complaint is the interpretative changes that are occurring. The museum still exists and Petitioners do not allege that anything specific will be removed or concealed in the new exhibits. Regarding the flags, it is conceded that they were simply relocated to Valor Park, another public portion of the park. Amended Complaint, ¶100. While Petitioners may contend this relocation was to a “less travelled”

² Petitioners previously conceded that another provision, O.C.G.A. § 50-3-1(b)(7), “references relocation based on certain reasons not involved in this case.” Opposition to Original Motion to Dismiss, at p. 16 (filed July 29, 2025). Further, there is no allegation in the Amended Petition regarding the Stone Mountain engraving, so Petitioners have failed to state a claim regarding O.C.G.A. § 50-3-1(c).

site, that is not the same as “preventing the visible display” of the flags, as the statute’s plain language requires. There is nothing alleged in the Amended Petition that violates the plain text of Subsection (2).

Similarly, the Petition quotes, in part, subsection (b)(3), which prohibits a monument from being “relocated, removed, concealed, obscured, or altered,” but which allows an exception for “appropriate measures for the preservation, protection, and interpretation of such monument or memorial.” O.C.G.A. § 50-3-1(b)(3). Even if one assumes, for argument, that a museum is subject to O.C.G.A. § 50-3-1 and further assumes that the museum’s exhibits are being “altered,” the text of the statute is still not violated because any changes to the museum fall within the statutory exception for “measures for the preservation, protection, and interpretation” of the museum and its constituent exhibits. By any reasonable, natural definition, updating and enhancing the exhibits in a museum fall within measures for “interpretation.” Regarding the flags, again the exception for “appropriate measures for the preservation, protection, and interpretation” are implicated in the Amended Petition itself. While the Flag Terrace was arguably “relocated” within the park, it was done so to preserve and protect the display, according to the Amended Petition itself. Amended Petition, ¶100 (“the Flag Terrace and flags originally placed on the Stone Mountain Park Walk Up trail ... [will] be preserved and protected by locating said ... flags at the base of Stone Mountain at Valor Park”). While the Amended Petition also alleges that SMMA “did not relocate the Confederate Flag Terrace . . . for purposes of preservation, protection, and interpretation,” this allegation is conclusory. Amended Petition, ¶35. Nothing in the pleadings permits such an inference, and there is insufficient particularity to substantiate such a claim.

Finally, counsel for the Petitioners maintained at oral argument that O.C.G.A. §12-3-190 et seq. was violated. See also Opposition, at p. 13 (arguing that O.C.G.A. §12-3-192.1 must be read together with O.C.G.A. §50-3-1). The Amended Petition itself merely references a few portions of the statutes, including a definition of “Project,” noting that Stone Mountain will be maintained, managed, and operated as a “Confederate memorial and public recreational area,” as well as one of the purposes of the association, to “maintain an appropriate and suitable memorial for the Confederacy.” Amended Petition, ¶104 (quoting O.C.G.A. §12-3-191(7)); id. at ¶39 (quoting O.C.G.A. §12-3-192.1). The Amended Petition never explains how the statutes are purportedly violated. Further, it is not clear that the statutes create a duty or obligation for the State, but, even assuming one or more of them did, it is also not clear how the relocation of the flags or the renovation of the museum would violate the statute’s language. As noted, it is not explained in the Amended Petition, and it is not readily apparent to the Court. Indeed, even if a new museum exhibit’s subject matter did not cover the Confederacy, there is no allegation in the Amended Petition that the new museum exhibits will fail to remember the Confederacy in total, nor is there any allegation that all traces of the Confederacy will be removed from the Park. And, additional interpretative exhibits are expressly allowed.

The Court concludes that the Amended Petition fails to state a claim for relief, and the Court would grant the Motion to Dismiss for this additional reason.

CONCLUSION

For the reasons above, it is **ORDERED** that Respondent’s Motion to Dismiss is **GRANTED**. The Amended Petition is **DISMISSED** with prejudice.

SO ORDERED this 16th day of February, 2026.

Stacey K. Hydrick

Hon. Stacey Hydrick
Judge, Superior Court of DeKalb County