

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

IN RE Gregory Howard and Paul L. Nally,)	
)	
Petitioners,)	
)	
v.)	CASE NO. <u>19-A-05733-9</u>
)	
GWINNETT COUNTY, GEORGIA)	
GRAND JURY Panel B, March)	
2019 Term, JENNIFER POWEL,)	
FOREMAN, MARLON)	
STODGHILL, VICE-FOREMAN,)	
AND GLENN EWING, CLERK,)	
)	
Respondents)	

VERIFIED

PETITION FOR DECLARATORY AND INJUNCTIVE RELIEF

AND WRIT OF MANDAMUS

COMES NOW PETITIONERS, pursuant to, inter alia, *U.S. Const*, Amendment(s) I, IV, and XIV, 18 U.S.C. § 4, 28 U.S.C. §§ 1331 and 1343, *The All Writs Act* codified at 28 U.S.C. § 1651, and 42 U.S.C. § 1983 and § 1988 and 18 U.S.C. § § 241 and 242. Additionally, thereto, relief is sought pursuant to the Ga. Const., Art. I, § I par(s). I, II, V, VII, IX, XII, XXII, and XXIX, and O.C.G.A. §§ 9-4-2 et seq., 9-5-1 et seq., and 9-6-20 et seq. and plea is made to this Honorable Assisting Article VI Court for relief in the

nature of a *Procedendo ad Judicium*, Declaration as to Petitioners' public rights, and Injunction to prohibit a refusal to perform a public duty, to the Grand Jury Respondent, an Art. I Court of Inquiry (the Grand Jury), for the purpose of Petitioners being heard in their grievances which is a legal, non-discretionary, self-enforcing duty required of that Art. I Court by O.C.G.A. § 15-12-67(b).

RELIEF SOUGHT

Petitioners seek the Declaration of their unalienable rights to petition, assemble with, speak to, and be heard by those vested with the power of government for the redress of their grievances to whom the Petitioners, in the exercise of their right of choice, choose to petition and speak, including a Grand Jury.

Additionally, that this Georgia Constitution's, Article I, Independent Court of Inquiry (hereafter, Grand Jury)¹, and all subsequent Grand Juries of this County, be Enjoined from summarily ignoring any citizen's petitions in the future, and that they be informed of their sworn duty to communicate, instantler, an acknowledgement of receipt of such a petition

¹ *Ga. Const.*, Art. I, § I, par. XI (a), In criminal cases... the jury shall be the judges of the law and the facts.

and provide a written notice of a date and time certain for a scheduled hearing upon said petition.

Petitioners also seek the Mandate of this Honorable Court to this Honorable, but misguided, Grand Jury of Gwinnett County, Georgia and its Chief Judge (hereafter, Foreman of said Grand Jury) for scheduling of, and notice to, the Petitioners of a date and time certain for the presentation of their grievance in the nature of criminal complaints; or, in the alternative, a notice of declining to hear and the legal reason therefor consistent with, and in light of, their sworn duty and Petitioners' right to petition, speak to, and be heard by any constitutional office of this State.²

ISSUES PRESENTED

1. Whether a Georgia Grand Jury has a statutorily mandated, legal, self-enforcing, and non-discretionary duty to provide a hearing, at a meaningful time and in a meaningful manner, upon a citizen's petition to be heard as to claims raised in a criminal complaint?

²*Borough of Duryea, Pa. v. Guarnieri*, ___ U.S. ___, 131 S. Ct. 2488, 2494 (2011) "[T]he right of access to courts for redress of wrongs is an aspect of the First Amendment right to petition the government."

See esp., *Ga. Const.*, Art. I, § I, par. XII, No person shall be deprived of the right to prosecute or defend, either in person or by an attorney, that person's own cause in any of the courts of this state.

2. Whether a Georgia Grand Jury has sole and exclusive jurisdiction to hear a sufficiency of a said complaint to determine whether such complaint is within its jurisdiction as to the subject matter thereof touching upon its present service?

3. Whether, absent an initial determination of a want of subject matter jurisdiction, does a refusal to address or ignoring of a citizen's petition for redress by a Grand Jury create an actual injury to a petitioner's intangible property interest in the free exercise of his protectable prerogatives?

STANDING DOCTRINE

The U.S. Supreme Court has established that the "irreducible constitutional minimum" of standing includes three elements: (1) an injury-in-fact,(2) a causal connection between the injury and the conduct complained of, and (3) a likelihood that the injury will be redressed by a favorable decision. See: *Lujan v. Defenders of Wildlife*, 504 US 555, 560-61 (1992), cited in *Atlanta Taxicab Co. Owners Ass'n v. City of Atlanta*, 638 SE 2d 307, 318 (Ga. S.C. 2006)

Injury

(a) "Injury in Fact"

Spokeo, Inc. v. Robins, 136 S. Ct. 1540 (2018) ... "Injury in fact" is the first of three "irreducible" requirements for Article III standing. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560, 112 S.Ct. 2130, 119 L.Ed.2d 351 (1992). See also, GRANITE STATE v. City of Roswell, 658 SE 2d 587, 588 (Ga: S. C. 2008)

As an injury in fact is also defined by the Supreme Court as an invasion of a legally protected intangible interest, it is, therefore, without argument that the deprivation of protectable guarantees without legal authority to do so is, in fact, an injury in fact upon proof thereof.³

(b) "Actual or Imminent, not Conjectural or Hypothetical ”

As to this second leg of standing, there must be a causal connection between the injury and the conduct of which complaint is made; the injury has to be fairly traceable to the challenged action of the Respondent, and not the result of the independent action of some third party not before the

³ *American Civil Liberties Union v. Rowan County*, 513 F. Supp. 2d 889, 900 (Dist. Ct. E.D. Ky 2007), An "injury in fact" is defined as an "invasion of a legally protected interest which is (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical." *Id.* at 560, 112 S.Ct. 2130.

court." See, *Simon v. Eastern Ky. Welfare Rights Organization*, 426 U. S. 26, 41-42 (1976).

There is no room for argument, conjecture, or hypothetical speculation that when there is a deprivation of a “legally protected interest” in petitioning and being heard by a Grand Jury which is, simultaneously, a “thing of value” (O.C.G.A. § 16-1-3 (13) “Property”), there exist a real and actual injury cognizable at law; and that injury continues until, as in this case, the end of the term of the Grand Jury, at which point, there can be no actual remedy by mandamus or any other judicial proceeding other than a civil and/or criminal action for vindication.⁴

(c) Likelihood That Injury Will be Redressed

It must be likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision herein. *Simon*, Id., at 38, 43.

It is highly unlikely that an Order of this Court with carefully explained instructions from this Honorable Assisting Court to its colleagues will be disregarded; and in the instant matter, the Grand Jury will, most

⁴ See: O.C.G.A. § 1-3-6, “ ... Ignorance of the law excuses no one.”, and O.C.G.A. § 15-12-67(b), “... shall diligently inquire and true presentment make of all such matters and things as shall be given you in the court's charge or shall come to your knowledge touching the present service; ...”
See also, *Ga. Const.*, Art. I, § 1, par. II, “Protection to person and property is the **paramount** duty of government and shall be impartial and complete. No person **shall be denied** the equal protection of the laws.

certainly, mend the error of its ways. Alternatively, it is highly probable that a request, comely transmitted to them, for that Tribunal (the Grand Jury) to assemble in open court, there to receive instruction of this Honorable Court consistent with the observation of the Honorable Justice Powell in the case of *United States v. Calandra*, 414 U.S. 338 at 346, wherein we find him writing of the Grand Jury;

“ ... but it may not itself violate a valid privilege, whether established by the Constitution, statutes, or the common law. *Branzburg v. Hayes*, supra; *United States v. Bryan*, supra; *Blackmer v. United States*, supra; 8 J. Wigmore, Evidence §§ 2290-2391 (McNaughton rev. ed. 1961).”

would probably be less susceptible to embarrassment and more conducive to reception and understanding to cure this public procedural shortcoming.

FACTS

At about 8:30 a.m. on March 27, 2019, a PETITION OF CRIMINAL COMPLAINT was personally served upon the Clerk of the Respondent Grand Jury, Mr. Glenn Ewing, by the previous Term Grand Jury Foreman. The same was receipted for and evinced by the signature of the Clerk. [P.

Exhibit 1].⁵ Since that date and time of filing, approximately 80 days, there was no communication of any kind from the Foreman, or other person on behalf of the Grand Jury. Whereupon a letter to the Foreman, Vice Foreman, and Clerk of that panel was sent and received about May 29, 2019 demanding some response [P Exhibit 2], whereupon Mr. Howard received a phone call from the Clerk, Mr. Glenn Ewing, stating that the Jury was preparing a written response to mail to us upon seeking legal advice.

ARGUMENT

A petition or remonstrance, submitted to any elected or appointed officer, sitting for, or authorized to act on behalf of the State of Georgia, or any of its agencies, brings forth a legal, non-discretionary, and self-enforcing duty upon being petitioned, to first determine if said petition is within the lawful subject matter jurisdiction of that office and to communicate that determination, in the case of this Grand Jury, in an appropriate manner, to the petitioners.⁶ In communication with a Grand Jury, it is possible that a sufficiency of the subject matter and merits will

⁵ O.C.G.A. § 15-12-67 (b), "You, ... the grand jury for the County of _____, shall diligently inquire and true presentment make of **all** such matters and things as shall ... come to your knowledge touching the present service; ..."

⁶ O.C.G.A. § 15-12-67 (b), "... you shall present all things truly and as they come to your knowledge. So help you God." See also, O.C.G.A. § 24-14-23, "In the ordinary course of business, when good faith requires an answer, it is the duty of the party receiving a letter from another to answer within a reasonable time. Otherwise, the party shall be presumed to admit the propriety of the acts mentioned in the letter of the party's correspondent and to adopt them."

not be revealed upon, or within, the initial communicating petition. This is a matter of a petitioner's public right to choose whether to do so or not in light of the secrecy of a Grand Jury's inquisition, as such communication is privileged and confidential⁷; and, under such a circumstance, it would be necessary for a Foreman to set a hearing for that determination.⁸

Subsequent to the submission of a Petition, it is the responsibility of the Foreman, with or without the advice and consent of the Tribunal, to cause to be set a date and time certain for such hearing and to cause notice thereof served upon Petitioners.

At all times, in such a communication, no judge, district attorney, or sheriff has a right to demand knowledge of the nature of a citizen's business with a Grand Jury, or to obstruct in any way a Petitioner's chosen task, as such communications are privileged⁹ and the Petitioners, in this case, are

⁷ *In re Gwinnett County Grand Jury*, 668 SE 2d 682, 684 (Ga. S.C. 2008), "The secrecy of the grand jury ..., encourages unhampered disclosures by persons who have information pertinent to the subject matter of the investigation, ..."

⁸ *Younger v. Gilmore*, 404 US 15, Per Curiam, On this appeal we postponed the question of jurisdiction pending the hearing of the case on the merits. 401 U. S. 906 (1971). ... Having heard the case on its merits, we find that this Court does have jurisdiction (*Alabama Teachers v. Alabama Public School and College Authority*, 393 U. S. 400 (1969)) and affirm the judgment of the District Court for the Northern District of California. *Johnson v. Avery*, 393 U. S. 483 (1969)

⁹ *In re Quarles and Butler*, 158 U.S. 532, 535 (1895), It is likewise his right and his duty to communicate to the executive officers any information which he has of the commission of an offence against those laws; and such information, given by a private citizen, **is a privileged and confidential communication**, for which no action of libel or slander will lie, and the disclosure of which cannot be compelled without the assent of the government.

confidential informants, sources, and/or witnesses, entitled to the protections of the state in, inter alia, US Const., Amend. I and XIV, 18 U.S.C. 1512, 18 U.S.C. 1515(a)(1), 19 CFR § 161.15, O.C.G.A. § 15-11-170(e)(1), O.C.G.A. § 15-12-71 (e)(4), and O.C.G.A. § 50-18-72(26).

Since the date of filing, there had been no written communication from the said Foreman; and once the term of office of that body expires, if no hearing, there shall be a grievous failure of justice, not to mention, an unlawful deprivation of property interests and violations of both State and Federal Criminal Statutes. See especially, O.C.G.A. § 16-8-2, 18 U.S.C. § 241, and § 242.

The fundamental and unalienable rights to petition, peaceably assemble with, responsibly speak to, and be heard by a Georgia Grand Jury are rights protected under the U.S. Const., Amendment(s) I, IV, and XIV and are rights secured under the Constitution of the State of Georgia's comparable provisions.¹⁰ These intangible rights are being denied, and this

¹⁰ Id., at 536, The right of a citizen informing of a violation of law, like the right of a prisoner in custody upon a charge of such violation, to be protected against lawless violence, does not depend upon any of the Amendments to the Constitution, but arises out of the creation and establishment by the Constitution itself of a national government, paramount and supreme within its sphere of action.

See also: Ga. Const., Art. I, § I, par(s). V, IX, and XII. See also, O.C.G.A. 1-2-6 (a)(6),(7), and (8).

body is in violation of its paramount duty espoused in the Ga. Const., Art I, § I, par II.

CONCLUSION

As the underlying facts of this case prove beyond argument, the March Term of the Gwinnett County Grand Jury, Panel B, has been negligently dilatory in complying with their mandated duty. This has led to a denial of protectable intangible public property interest of these Petitioners and, of greater consequence, is denying the citizens of Gwinnett County, and the whole State, of their public right to have the evidence of every man.¹¹ Additionally, this raises the specter of a Grand Jury intentionally concealing and obstructing criminal misconduct within this County and State, not to mention an unlawful deprivation of the statutory rights of citizens to bring forth their testimony.

For the edification of these Defendants, it is noteworthy that they be apprised of the Law which is also a fact in this case.

¹¹ *United States v. Nixon*, 418 US 683, 709, Only recently the Court restated the ancient proposition of law, albeit in the context of a grand jury inquiry rather than a trial,

"that `the public . . . has a right to every man's evidence,' except for those persons protected by a constitutional, common-law, or statutory privilege, *United States v. Bryan*, 339 U. S. [323, 331 (1950)]; *Blackmer v. United States*, 284 U. S. 421, 438 (1932) . . ." *Branzburg v. Hayes*, 408 U. S. 665, 688 (1972).

O.C.G.A. § 15-19-17 states,

“Clients shall not be relieved from their liability for damages and penalties imposed by law on the ground that they acted under the advice of their counsel”

In other words, this Jury shall be subject to liability for any actual damages arising from their unlawful deprivations of rights should that occur; and they should also know that the United States Congress has placed a value upon the unlawful deprivation or taking of one civil right by one entity of \$250,000.00 (see: 18 U.S.C. 3571) unless that entity is a “corporation”, in which case that value rises to \$500,000.00.

REASON FOR ISSUANCE OF WRIT

“The remedy of mandamus is available only in extraordinary situations to correct a clear abuse of discretion or usurpation of judicial power.” *In re Link A Media Devices Corp.*, 662 F.3d 1221, 1222 (Fed. Cir. 2011). This Honorable Court should grant this Petition for Writ of Mandamus to direct the Grand Jury and its Foreman to promptly comply with its oath of office, which requires of them a public duty, and do substantial justice, i.e., as to a hearing to determine the question of “touching upon their present service”, as such present denial constitutes the

refusal of performing a public duty and a deprivation of Petitioners' civil rights and an infliction of actual injuries to Petitioners' protectable rights of petition, speech, and hearing through mistake or ignorance of the law or the willful and malicious misconduct of their office.

As was held in the case of *In re LESTER*, 77 Ga. 143, 147 - 148 (1886) (to this date not overturned by the Georgia Supreme Court);

It is true that each member of the grand jury is under a solemn obligation to make diligent inquiry and to present truly all infractions of the criminal law, which may be given the body in charge, or may come to the knowledge of any of them touching the service in which they are engaged.,

and *Id.*, at 148,

It is the right of any citizen or any individual of lawful age to come forward and prosecute for offenses against the state, or when he does not wish to become the prosecutor, he may give information of the fact to the grand jury, or any member of the body, and in either case, it will become their duty to investigate the matter thus communicated to them, or made known to one of them, whose obligation it would be to lay his information before that body.

Cited and affirmed as the law in Georgia in *Illinois, vs. Parker*, 374 Ill. 524, 528; 30 N.E.2d 11; (1940) and *Brack v Wells*, 184 Md. 86, 95-96 (1944). See The Full Faith and Credit Clause.

Additionally, as this matter is time-sensitive, such granting will remove a currently actual and an ultimate irreparable actual injury to

Petitioners which would make unnecessary the future bringing of federal criminal complaints pursuant to, inter alia, 18 U.S.C. §§ 241 and 242 or federal torts under Title 42. Judicial economy and the ends of justice, so that a failure of justice not occur, dictates a favorable issuance.

FINDING OF FACTS AND CONCLUSIONS OF LAW

In any event of a denial or dismissal pursuant to any state or federal statutes or rules of courts, or other reason, Petitioners respectfully request the Court issue findings of facts and conclusion of law supporting such denial.

Petitioners request hearing in not later than 11 days (9-6-27).

Respectfully submitted this _____ day of _____, 2019.

1480 Rivershyre Pkwy.
Lawrenceville, GA 30043
Email: Gregory@apbmail.com
Phone: 404-983-7115

/s/ _____
Gregory Howard,

3667 Hwy 140 NE
Rydal, Georgia 30171
Email: pnally1@att.net
Phone: 770-386-1171

/s/ _____
Paul L. Nally,

VERIFICATION

Before the undersigned officer duly authorized to administer oaths came J. Gregory Howard and Paul L. Nally, who swear under oath that they have read and examined the foregoing Verified Petition for Declaratory and Injunctive Relief and Writ of Mandamus.

/s/ _____
J. Gregory Howard

/s/ _____
Paul L. Nally

SWORN TO and subscribed before
me this _____ day of _____, 2019

NOTARY PUBLIC

My Commission Expires: _____

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

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Petitioners,)	
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v.)	CASE NO. _____
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GWINNETT COUNTY, GEORGIA)	
GRAND JURY Panel B, March)	
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FOREMAN, MARLON)	
STODGHILL, VICE-FOREMAN,)	
AND GLENN EWING, CLERK,)	
)	
Respondents)	

MANDAMUS NISI

The petition of J. Gregory Howard and Paul L. Nally in the above-entitled cause having been read and considered, the same is hereby sanctioned and ordered filed; and it is further ordered that the Defendant named, GWINNETT COUNTY, GEORGIA GRAND JURY Panel B, March 2019 Term, be and appear before me at the Courthouse in the City of Lawrenceville, Georgia, on the ____ day of _____, 2017, at _____ o'clock, a.m., or so soon thereafter as can be heard, then and there to show cause why a mandamus absolute should not be issued against them

as prayed for in the Petition, and further relief be granted as the facts of the case may warrant.

It is further ordered that in default of such appearance and showing, the mandamus prayed for will be made absolute and the Petitioner will be accorded such relief as they may show they are entitled to.

It is further ordered that a copy of said Petition and this order be served upon said Defendants.

Dated and signed, this _____ day of _____, 2017.

Judge
Superior Court
Gwinnett County, Georgia

P - EXHIBIT 1

(Original Petition filed in February w/ Grand Jury)

P – EXHIBIT 2

(Letter of May 17, 2019 to Grand Jury Clerk, Glenn Ewing,
Foreman, Jennifer Powell, and Marion Stoghill)

CERTIFICATE OF SERVICE

I certify that I served a copy of the Verified Petition for Declaratory and Injunctive Relief and Writ of Mandamus with Exhibits on June 10 , 2019 by filing with and placing in the hand of the Clerk of the Superior Court of Gwinnett County, Georgia.

/s/ _____
Gregory Howard,