

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

**TOWN OF CLERMONT, GEORGIA, §
a Georgia Municipality, and its §
Town Council, both Individually and §
as Members of the Council, and being §
Mayor James Nix, and Council Members §
Seth Weaver, James (Sonny) Helton, §
John Brady, Mary Ellen Rogers, §
and Albert Reeves, §**

PLAINTIFFS,

vs.

**HALL COUNTY, GEORGIA, §
A Political Subdivision, and §
Tom Oliver, Billy Powell, Ashley Bell, §
Bobby Banks, and Steve Gailey, §
Individually and as Members of the §
Board of Commissioners of Hall County, §
Georgia, §**

DEFENDANTS. §

CIVIL ACTION FILE

NO. _____

**PETITION FOR WRIT OF MANDAMUS AND
TEMPORARY RESTRAINING ORDER AND
TEMPORARY AND PERMANENT INJUNCTION**

COUNT I: PETITION FOR WRIT OF MANDAMUS

1.

Plaintiff, the Town of Clermont, Georgia, is a Georgia municipal corporation, duly chartered and operating under the laws of the State of Georgia, and having the ability to sue and be sued. Plaintiffs, James Nix, Seth Weaver, James (Sonny) Helton, John Brady, Mary Ellen Rogers, and Albert Reeves, are members of the town council of Plaintiff, Town of Clermont, Georgia, and bring this action individually and as residents, taxpayers and voters of Hall County, and as a member of the town council of the Town of Clermont, Georgia.

2.

Plaintiffs name as Defendants the following: Hall County, Georgia; Tom Oliver Individually and as a member of the Board of Commissioners of Hall County, Georgia; Billy Powell, Individually and as a member of the Board of Commissioners of Hall County, Georgia; Bobby Banks, individually and as a member of the Board of Commissioners of Hall County, Georgia; Ashley Bell, Individually and as a member of the Board of Commissioners of Hall County, Georgia; and Steve Gailey, Individually and as a member of the Board of Commissioners of Hall County, Georgia and collectively sometimes referred to herein as Defendant Board of Commissioners of Hall County.

3.

Each of said Defendants is a resident of Hall County, Georgia and is subject to the jurisdiction of this Court.

4.

Defendant Hall County, Georgia is a political subdivision of the State of Georgia.

5.

The Defendants, comprising the Board of Commissioners of Hall County, Georgia, Individually and as a Board, constitute the duly elected and qualified governing body of Defendant Hall County, Georgia. The Defendant Board of Commissioners of Hall County, as public officers, are held to a fiduciary standard regarding their actions and statements. Article I, Section II, Paragraph I of Georgia Constitution (1983).

6.

Plaintiff, the Town of Clermont; Georgia, for many years has supported a library branch for the North Hall area located within the Town of Clermont, Georgia, by providing both a city structure and city funds to help offset the expenses of operation of the public library branch by

Defendant, Hall County, Georgia. The Plaintiff, the Town of Clermont, Georgia, made these expenditures of public funds based upon the representations of Defendant, Hall County, by and through its Board of Commissioners, that Defendant Hall County would construct a new library branch for the North Hall area within the Town of Clermont. On numerous occasions, including but not limited to, October 26, 2006, the Board of Commissioners of Hall County Georgia recognized that the Clermont library branch was inadequate, and that a new library branch needed to be constructed. At a public meeting of the Hall County Board of Commissioners, held on October 26, 2006, vice-chair Deborah Lynn, made a motion to conduct a study to determine any recommendations concerning the feasibility of renovating the existing Clermont library branch or if construction of a new facility was needed. This motion was passed unanimously by the Board of Commissioners. A true and correct copy of the minutes of said public meeting are attached hereto as Exhibit "1" and incorporated by reference hereof into this Petition.

7.

The Defendant, Hall County, on March 16, 2004, held a special purpose local option sales tax referendum, pursuant to O.C.G.A. § 48-8-110 et. seq., with some of the special purposes being for parks and recreation, and for a public library in the South Hall area. The March 16, 2004 referendum on said special purpose local option sales tax (hereinafter referred to as SPLOST V), was passed by a majority of the voters of Hall County, Georgia in the referendum held on March 16, 2004.

8.

The inadequacy of the Clermont library branch for the North Hall area, continued to be a concern for the Defendants, Board of Commissioners of Hall County, Georgia, and the commissioners began looking for property to construct a more appropriate library branch in Clermont for the North Hall area, and by way of use of SPLOST funds. On August 6, 2007, in

accordance with Executive Session minutes regarding the acquisition of real estate by the Defendants, Hall County Board of Commissioners, said minutes indicate that Defendant commissioner Steve Gailey stated that: “Looking at library property... thought Clermont was going to handle, but five (5) acres at Twenty-Seven Thousand and no/100 Dollars (\$27,000.00) per acre, and which tied into existing county property, was put under contract the previous Monday.” Chairman Tom Oliver suggested giving commissioner Steve Gailey and commissioner Bobby Banks discretion to negotiate a deal to acquire library property in Clermont. Commissioner Steve Gailey indicated that if the property could be acquired and they could “square off” the county’s existing property and it would be twelve (12) acres or they could get as little as seven (7) acres. Commissioner Deborah Mack motioned that commissioner Banks take the lead, and that he and commissioner Steve Gailey negotiate a price, and bring it back to the full Board for a future vote, and which passed by a 5-0 vote. A true and correct copy of the August 6, 2007 Executive Session minutes are attached hereto as Exhibit “2”, and incorporated into this Petition by reference hereof.

9.

In violation of the Open Meetings Act (O.C.G.A. § 50-14-1), and in violation of the Board of Commissioner’s vote held August 6, 2007, the Board of Commissioners did not meet again and vote for purchase of property for the Clermont library branch for the North Hall area, but on October 31, 2007, had Defendant Hall County, Georgia purchase 41.43 acres located in Clermont, Georgia as the site for construction of a new Clermont library branch and for public park purposes, and using SPLOST V funds dedicated to the special purpose of parks and recreation. Defendant, Hall County, Georgia used One Million, One Hundred Eighteen Thousand Six Hundred and Ten no/100 Dollars (\$1,118,610.00) of SPLOST V funds, and which were dedicated to the special purpose of parks and recreation, to purchase said site for the

Clermont library branch. A true and correct copy of the Warranty Deed regarding said property is attached hereto as Exhibit “3” and incorporated by reference hereof into this Petition.

10.

From October 31, 2007, until approximately February 11, 2010, Defendant Hall County, and Defendant Board of Commissioners, indicated in a multitude of public statements, that the future Clermont library branch for the North Hall area, was going to be constructed on a part of the 41.43 acre tract purchased by Defendant Hall County in the Town of Clermont, on October 31, 2007. See Exhibits “4” and “5” attached hereto and incorporated by reference hereof into this Petition. Included within the public presentations, was a February 25, 2009 presentation by commissioner Steve Gailey to the Hall County Library Board, and by which, commissioner Steve Gailey, on behalf of the Defendant Board of Commissioners presented the 44 acre tract to the Hall County Library Board, as the future site of the Clermont library branch, and which was a public meeting, and reported in the media to the Plaintiffs and other Hall County citizens. See Exhibit “6” attached hereto and incorporated by reference hereof into this Petition.

11.

In response to the presentation on behalf Defendants Hall County Board of Commissioners, the executive director of the Hall County library system, Adrian Mixson, revised a study regarding “A Building Program for the Hall County Library System”, with the revision completed on or about February 15, 2009, and which indicates that the North Hall library branch would be constructed in the town of Clermont, Georgia. A true and correct copy of pages 1 to 14 of said study is attached hereto as Exhibit “7” and incorporated by reference hereof into this Petition.

12.

Subsequent to the purchase of the 44 acre tract in the Town of Clermont, Georgia to

construct the Clermont library branch, the Board of Commissioners of Hall County, Georgia determined that there existed within Hall County, several special projects, including the North Hall library branch in Clermont, and which necessitated a referendum for Special Purpose Local Option Sales Tax for the special projects (hereinafter referred to as “SPLOST VI”), and with the referendum to approve said SPLOST by the Hall County citizens, including Plaintiffs, to be held on March 17, 2009.

13.

In order to facilitate passage of the SPLOST VI in the March 17, 2009 referendum, Defendant Hall County, Defendant Board of Commissioners, and agents for Hall County, including but not limited to County Administrator Charley Nix, participated in presentations to the public, including but not limited to civic organizations located within Hall County, Georgia, and sponsored in part by the Greater Hall County Chamber of Commerce. In these public presentations to the voters of Hall County, Georgia, agents for Defendant Hall County, and Defendant Board of Commissioners of Hall County, including but not limited to some of the commissioners themselves, indicated that a special purpose of SPLOST VI would be to construct a new North Hall library near Highway 129 in central North Hall, and specifically upon the 44 acre tract of property located within the Town of Clermont, Georgia and previously purchased by Defendant Hall County. See Exhibits “4”, “5”, “6”, and “7”. The representation that the North Hall library was to be constructed in the future, near Highway 129 in central North Hall, was a specific reference to constructing the library upon the property located within the Town of Clermont, Georgia, in that Defendant Hall County already owned said property, and therefore this representation could be specifically met by Defendant Hall County. No representation was made by Defendant Hall County as to any other location of the special projects of SPLOST VI.

14.

On March 9, 2009, the Executive Director of the Hall County Library Board, Adrian Mixson, submitted a grant proposal to the State of Georgia for Two Million and no/100 Dollars (\$2,000,000.00), and to receive funding from the State for the Clermont library branch. The grant application submitted by director Adrian Mixson, was signed by Defendant Tom Oliver, as Chairman of the Hall County Board of Commissioners, and the grant application specifically noted that the North Hall library branch was to be located upon property in the Town of Clermont, Georgia and already owned by Hall County, and to be constructed using SPLOST funds to be authorized by the March 17, 2009 election. The grant application further noted a need for the grant funding, due to the inadequacy of the Clermont library branch, and the fact that the current structure of the Clermont library branch constituted a fire hazard. A true and correct copy of this public record, is attached hereto as Exhibit "8", and incorporated by reference hereof into this Petition.

15.

Based upon the specific representations of Defendant Hall County and the Defendant Board of Commissioners of Hall County, that the North Hall library branch would be located in Clermont, Georgia, the referendum of March 17, 2009 for SPLOST VI, passed by a majority vote of the citizens of Hall County, Georgia, including the votes of Plaintiffs James Nix, John Brady, and Albert Reeves.

16.

Plaintiffs James Nix, John Brady, and Albert Reeves, being citizens, taxpayers and voters of Hall County, voted in the March 17, 2009 referendum for SPLOST VI, and specifically voted in favor of the referendum based upon the representations of Defendant Hall County and Defendant Hall County Board of Commissioners and their agents, that the North Hall library

branch would be constructed upon the property already owned by Hall County in Clermont, Georgia, and as to which, Hall County had spent over One Million Dollars (\$1,000,000.00) to acquire.

17.

Subsequent to the March 17, 2009 SPLOST VI referendum vote, Hall County purchased approximately one hundred and twenty-five acres (125) off of Nopone Road in order to construct in accordance with SPLOST V and SPLOST VI, the North Hall Community Center, and a recreational park for North Hall. The Executive Session minutes of the Defendant Hall County Board of Commissioners for the purchase of said property, are attached hereto as Exhibits “9”, “10” and “11”, and incorporated by reference hereof into this Petition. At no time in the discussion by the Hall County Board of Commissioners regarding the purchase of any property for the community center, or regarding the passage of SPLOST VI, did the Hall County Board of Commissioners ever indicate to the citizens and voters of Hall County, Georgia, that the Clermont library branch would be joined into one structure with the North Hall Community Center, or that the North Hall library branch would be located anywhere other than within the Town of Clermont, Georgia.

18.

Even though Defendant Hall County Board of Commissioners, had spent One Million, One Hundred Eighteen Thousand Six Hundred and Ten no/100 Dollars (\$1,118,610.00) out of SPLOST V funds to purchase the land within the City of Clermont, Georgia for the Clermont library branch, and even though Defendant Hall County Board of Commissioners made numerous representations that the North Hall library branch would be located upon said land in Clermont, Georgia during the campaign for passage of SPLOST VI, Defendant Tom Oliver on February 8, 2010, proposed that Hall County abandon the Clermont site for the North Hall

library branch, and combine the library branch into one structure with the community center to be constructed within the North Hall park on Nopone Road.

19.

Subsequently, on Wednesday, February 10, 2010, the Hall County Library Board met in a public meeting to discuss moving the branch library from Clermont to be joined into one structure with a community center to be located at the Nopone Road Community Park. Upon motion made by Board Member Carlyle Cox, the Board voted 6-4 to locate the North Hall library branch at central location close to Highway 129 in the North Hall area. Board Member Carlyle Cox, in breach of his duty as a fiduciary, prior to the vote, did not disclose that he had been a paid consultant for Defendant Hall County, solely upon the authority of Defendant Tom Oliver for several years, and did not recuse himself in the vote. See January 2010 invoice of Cox's company, Omega Consulting, attached hereto as Exhibit "12" and incorporated by reference into this Petition.

20.

Subsequently, on February 11, 2010, Defendant Hall County Board of Commissioners held a public hearing and public meeting regarding moving the Clermont library branch from the 44 acre tract in Clermont owned by Hall County to the Nopone Road Recreational Park. Plaintiffs, some individually, and some through the town attorney, objected to the proposal, and presented evidence and case law that the proposed move of the library branch from Clermont was an abuse of discretion by the Defendant Hall County Board of Commissioners in light of the fact that Hall County had already spent over a million dollars to purchase the library site. Pursuant to Robert's Rules of Order, the Defendant Hall County Board of Commissioners, voted to table the issue for two weeks until the next meeting. See the public minutes of the February 11, 2010 meeting, which are attached hereto as Exhibit "13" and incorporated by reference

herein.

21.

On Thursday, February 25, 2010, the Defendant Hall County Board of Commissioners, met again in public meeting, and again held a public hearing on the move of the Clermont library branch to the Nopone Road location. At the meeting held on February 25, 2010, no motion was made by any commissioner in accordance with Robert's Rules of Order to untable the issue of moving the Clermont library branch to the Nopone Park site. Further, in the public hearing before the Board of Commissioners, Plaintiff Town of Clermont, and the Clermont Town Council, both individually and officially, presented evidence and case law authority that the move of the branch library to the Nopone Road site was an abandonment of the special purpose to construct a library branch in Clermont, and also an abuse of discretion by the Defendant Board of Commissioners in light of the representations made to the citizens and voters of Hall County, including but not limited to the Plaintiffs. The Defendant Hall County Board of Commissioners, by a 4-1 vote, voted to construct the North Hall library branch at the Nopone Road Park site, and thus wasted approximately one million dollars that was used to purchase the Clermont property, and also breached the special purpose of constructing the North Hall library branch upon the Clermont property in accordance with SPLOST VI.

22.

The Defendant Hall County Board of Commissioners, on March 25, 2010, further abused their discretion, by authorizing the expenditure of up to Two Hundred Forty-Five Thousand no/100 Dollars (\$245,000.00), to change the design of the recreational park located on the Nopone Road property to include the North Hall library branch. See public minutes of the March 25, 2010 meeting, which are attached hereto as Exhibit "14" and incorporated by reference hereof into this Petition.

23.

The vote by the Defendant Hall County Board of Commissioners to move the Clermont library branch from the site in Clermont to the Nopone Road Recreational Park is an infringement upon the Plaintiffs' Constitutional right to vote, in that the authorization for SPLOST VI was specifically based upon the representations that the North Hall library branch would be located upon the property located within the Town of Clermont, Georgia, and therefore operates to deprive Plaintiffs of rights protected under the Constitution of the State of Georgia and the Constitution of the United States of America. Further, the vote by the Defendant Board of Commissioners to move the Clermont library branch to the Nopone Road Recreational Park constitutes an abandonment of the special purpose authorized by the SPLOST VI referendum, and constitutes a gross abuse of discretion by the Defendant Hall County Board of Commissioner.

24.

Plaintiffs show that they have no adequate remedy at law and that Defendants should be compelled to perform their official duties in accordance with their representations regarding SPLOST VI, and that the failure of Defendants to construct the library branch upon the property in Clermont, Georgia constitutes a gross abuse of discretion, and improper performance of their duties, and that a Writ of Mandamus Absolute should issue to compel the Defendant Hall County Board of Commissioners to construct the North Hall library branch upon the property owned by Hall County in Clermont, Georgia.

COUNT II: PETITION FOR TEMPORARY RESTRAINING ORDER
AND A TEMPORARY AND PERMANENT INJUNCTION

25.

Plaintiffs, do hereby incorporate by reference hereof, paragraphs 1-24 of this Petition, being Count I of the Petition, into Count II of Petition, as if they were fully set forth herein.

26.

Although Plaintiffs have provided an ante litem notice to Defendants that the move of the Clermont library branch to the Nopone Road Recreational Park constituted a gross abuse of discretion by Defendant Board of Commissioners, the Defendant Board of Commissioners on March 25, 2010, approved a change order for the redesign of the Nopone Road Recreational Park, in order to add the North Hall library branch to said park, and at a cost of Two Hundred Forty-Five Thousand and no/100 Dollars (\$245,000.00) of SPLOST funds.

27.

Plaintiffs are entitled to a Temporary Restraining Order, a Temporary Injunction, and a Permanent Injunction, to prohibit Defendants from expending any public funds, including SPLOST funds, in order to construct the North Hall library branch at the Nopone Road Recreational Park in violation of the special purposes of SPLOST VI, and the only way to ensure that said special public purpose of constructing the Clermont library branch in Clermont is achieved, is to enjoin Defendants from further expenditures and further design and construction work regarding the Nopone Recreational Park and/or the library branch, until such time as the merits of Plaintiff's Writ of Mandamus can be resolved. Plaintiffs are further entitled to a Temporary and Permanent Injunction preventing the further expenditure of any public funds, including SPLOST VI funds, to construct the Nopone Recreational Park until the resolution of Plaintiffs' claims, or to redesign said park to include the branch library.

WHEREFORE, Plaintiffs pray:

(a) That the Plaintiffs have a trial of jury, as to any fact issue raised by their Petition, or the response of the Defendants, to the Petition;

(b) That Plaintiffs receive a Writ of Mandamus Absolute compelling the Defendants to construct the North Hall library branch upon the property already owned by the Defendant Hall County in Clermont, and which was purchased for said library branch, and being located within the Town of Clermont, Georgia;

(c) That Defendants be served with a copy of this proceeding, unless service is acknowledged, and with any Order of the Court setting down a Hearing date for grant of the Temporary Restraining Order, and Temporary and/or Permanent Injunction, and also that they receive subsequent Notice as to the trial for the Writ of Mandamus Absolute;

(d) That the Plaintiffs receive a Temporary Restraining Order, a Temporary Injunction, and a Permanent Injunction that enjoins and restrains the Defendants from expending any public funds, including but not limited to SPLOST VI funds, on a change of design and/or construction to the Nopone Road Recreational Park to include a library, or to expend any public funds, including SPLOST VI funds, on placing or constructing a library branch within the recreational park located upon Nopone Road and a Temporary Restraining Order, Preliminary and Permanent Injunction preventing Defendants from proceeding forward with the design and construction of Nopone Road Park until the claims of the Plaintiffs are resolved;

(e) That the Plaintiffs, receive such other relief as is just and equitable.

HULSEY, OLIVER & MAHAR, LLP

By: _____

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