IN THE SUPERIOR COURT OF MUSCOGEE COUNTY
STATE OF GEORGIA

LINDA PIERCE, Clerk of Superior, State, and Juvenile Courts of Muscogee County, and the Columbus Board of Equalization,	)	
Plaintiff,	)	
v.	)	Civil Action Number: SU14CV3472
COLUMBUS, GEORGIA, et. al.,	)	
Defendants.	)	

DEFENDANTS' CONSOLIDATED REPLY BRIEF IN SUPPORT OF THEIR MOTION FOR SUMMARY JUDGMENT

Defendants submit this Consolidated Reply Brief in Support of their Motion for Summary Judgment, respectfully showing the Court the following:

INTRODUCTION

Linda Pierce, Clerk of the Superior Court of Muscogee County (the "Clerk") filed the present action on November 13, 2014. She filed a Second Amended Complaint on July 1, 2015. A stipulated Scheduling and Discovery Order (the "Scheduling Order") was entered into by the parties and ordered by the Honorable Hilton M. Fuller on November 5, 2015. Under the Scheduling Order, the parties agreed that all discovery would be completed by January 31, 2016 (roughly 90

days), and that any dispositive motions would be filed by January 25, 2016 (after a subsequent stipulation of counsel).

The Clerk conducted no discovery during the agreed-upon discovery period. Defendants conducted written and deposition discovery, and timely moved for summary judgment on January 25, 2016. Defendants' Motion for Summary Judgment and supporting brief clearly demonstrate the following: (1) the Clerk's claims are facially invalid and unsupported by the law; and (2) the Clerk has offered no evidence in support of her alleged claims.

The Clerk has now responded with a fifty-six page brief that can best be described as a "shotgun pleading," completely devoid of admissible evidence. The problem for the Clerk is that this case is not at the pleading stage. Defendants have moved for summary judgment. The Clerk voluntarily chose not to conduct any discovery, not that it would have mattered given the volume of case law directly contrary to her claims. The salient point, though, is the Clerk cannot continue to rely on conclusory *allegations* at this stage of the case. She must *prove them*, and she cannot. Defendants' Motion for Summary Judgment should be **GRANTED**.[1]

[1]The Clerk's reliance on the conclusory allegations in her verified complaint is not enough to withstand a motion for summary judgment. *Smith v. Dill's Builders, Inc.*, 332 Ga. App. 491, 493, 773 S.E.2d 444, 447 (2015) ("A self-serving, conclusory affidavit not supported by fact or circumstances is insufficient to raise a genuine issue of material fact.").

ARGUMENT AND CITATION OF AUTHORITY

The allegations and argument in the Clerk's brief are nothing more than an attempt to confuse this case. The challenge here is not sorting through complex legal issues. The legal issues are extraordinarily clear. The challenge for the Court is unraveling the Clerk's attempt to confuse these straightforward legal issues. The Clerk's brief fails to answer three central questions: (1) What claims does the Clerk assert?; (2) Against whom?; and (3) For what?[2]

Though the Clerk has not answered these questions, Defendants will. The answers affirmatively show that summary judgment should be granted on all of the Clerk's claims.[3]

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[2]This presumes the Court even has jurisdiction over the relief sought by the Clerk, and the Court does not. The power to tax and a county's allocation of tax revenues are plainly subjects of exclusive legislative jurisdiction. *Turner County v. City of Ashburn*, 293 Ga. 739, 744, 749 S.E.2d 649, 690 (2013) ("[I]t follows that issues relating to how tax revenues should be allocated are also left solely to legislative discretion and are not matters for determination by the courts so long as there is no manifest abuse of power or failure to abide by constitutional or legislative directives regarding the purposes for which revenues may be spent"); *see also* O.C.G.A. § 36-5-22.1 (vesting the "governing authority" of each county with "original and exclusive jurisdiction" over the property and funds of the county); *Bentley v. Chastain*, 242 Ga. 348, 249 S.E.2d 38, 41 (1978) (a Superior Court has no jurisdiction "to readjudicate questions which have already been committed to the discretion" of county authorities).

[3]Defendants set forth in great detail the myriad of reasons why the Clerk has not proven a cognizable case in their original summary judgment brief. In the interest of brevity, Defendants will not repeat all of those arguments here, and instead incorporate in full all of their previous arguments.

1. Has the Clerk Proven A Proper Case For an Injunction?

The Clerk contends that she has asserted injunctive claims against the CCG and the Individual Defendants. (Clerk Br., pp. 19-20). Those claims are all barred by sovereign immunity. *Georgia Dept. of Nat. Resources v. Ctr. for a Sustainable Coast*, 294 Ga. 593, 755 S.E.2d 184, 192 (2014).[4]

2. Has the Clerk Proven a Proper Case for Declaratory Relief?

The Clerk contends that she has asserted declaratory judgment claims against the CCG and the Individual Defendants. (Clerk Br., pp. 19-20). Those claims are also barred by sovereign immunity. *Olvera v. Univ. Sys. of Georgia's Bd. of Regents*, __ Ga. __, 782 S.E.2d 436, 438 (Ga. Feb. 1, 2016).[5]

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[4]Presumably, the Clerk purports to bring claims for injunctive relief against the Individual Defendants in their official capacities. To the extent the Clerk seeks to bring claims for injunctive relief against the Individual Defendants in their individual capacities, those claims are nonsensical and are barred by official and legislative immunity. The Clerk contends that the adopted budgets for her office were inadequate, and she requests the Court to order some or all of the Individual Defendants to adopt a new budget for her office. The Mayor, the City Manager, the Finance Director, and the City Attorney did not consider or vote on the Clerk's 2014, 2015, or 2016 budgets, and the Clerk does not allege otherwise. With respect to the Council Members who considered and adopted the budgets at issue, the Charter provides no authority for Council Members, outside of their official capacity, to propose or adopt local ordinances, including ordinances pertaining to the proposal and adoption of the operating budget. The Court cannot order the Council Members in their individual capacities to perform an official act such as, for example, passing a budget for the CCG. They have no authority to perform such an act in their individual capacities.

[5]Again, presumably the Clerk makes her declaratory judgment claims against the Individual Defendants in their official capacities. The Court cannot "declare" that

3. Has the Clerk Pled or Proven a Constitutional Claim?

The Clerk does not contend that she has asserted any constitutional claim in this case. (Clerk Br., pp. 19-20). At the hearing on Defendants' Motion to Dismiss, counsel for the Clerk specifically disavowed making any constitutional claim to the budget ordinances at issue in this case. *See* 1/15/15 Hearing Transcript, pp. 84-85 (Counsel for Clerk admitting that "I don't think we asked for it to be declared unconstitutional. We asked for it to be declared void and illegal.").

4. Has the Clerk Proven a Proper Mandamus Claim?

The Clerk contends that she has asserted a claim for mandamus absolute. (Clerk Br., pp. 19-20). Though the Clerk does not specify, that claim can only be against the Individual Defendants as mandamus only exists as a remedy to compel the performance of official acts. *Bland Farms, LLC v. Georgia Dep't of Agr.*, 281 Ga. 192, 193, 637 S.E.2d 37, 39 (2006) ("Mandamus is an extraordinary remedy to compel a public officer to perform a required duty when there is no other adequate legal remedy.").

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the Individual Defendants did or did not do anything related to a budget in their individual capacities. To the extent the Individual Defendants had any right to do anything related to a budget (*see* note 1 *supra*), their actions would be dictated by the Charter which only applies to them in their official capacities. In any event, any claim against the Individual Defendants in their individual capacities would be barred by official and/or legislative immunity. Defendants discussed these issues at length in their opening brief at pages 14-24.

What remedy does the Clerk seek in her mandamus claim? In the Clerk's deposition, her counsel stated it succinctly:

> Okay. If you're talking about mandamus and injunction claims, no, those claims speak for themselves.
>
> What we want is the budget process to be followed and for the budgets to be submitted appropriately and for the council to adopt budgets that will reasonably and adequately fund the clerk's office for these years.
>
> . . .
>
> And I will say, Alan, if they refuse to do it, they have to have a reasonable justification for the refusal, otherwise it's an abuse of discretion, just like we had the first time.

(Pierce Dep., pp. 247-248).

As her counsel made clear, the Clerk is asking this Court to invalidate prior duly enacted budgets by the Council Members, and to order the Council Members to deliberate again over the Clerk's budget.[6] If the Clerk is dissatisfied with the Council Members' new deliberations or their so-called "reasonable justification," then the Clerk will presumably ask the Court to make them deliberate again and again until she gets the result she wants. The problem for the Clerk is that the

[6]Interestingly, those claims arise from the Clerk's now closed and moot FY 2014 and FY 2015 budgets, and soon to be closed and moot FY 2016 budget. The vast majority of the Clerk's claims in this case are moot.

Individual Defendants have absolute legislative immunity from the mandamus claims asserted by the Clerk.[7]

In Defendants' opening brief at pages 14-18, Defendants set forth in great detail the history of legislative immunity and how it operates as a bar to all of the Clerk's claims. *See, e.g., Saleem v. Snow*, 217 Ga. App. 883, 886, 460 S.E.2d 104, 107 (1995) ("Individuals acting in a legislative capacity are absolutely immune from suit."). Simply put, absolute legislative immunity applies to all actions taken and decisions made with regard to budget matters. *Woods v. Gamel*, 132 F.3d 1417, 1419-20 (11th Cir. 1998) ("In this case, the commissioners' act of passing the budget was legislative: policymaking of general application."). The blanket of legislative immunity extends to legislators and those in the executive branch or otherwise that perform budget functions. *Bogan v. Scott-Harris*, 523 U.S. 44, 55 (1998) ("Petitioner Bogan's [a city mayor] introduction of a budget and signing

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[7]This is the appropriate place to ask the "for what" question. Even assuming the Individual Defendants were not immune from the Clerk's claims, and they are, the Clerk's mandamus claim is flawed. The Clerk seeks to compel the Individual Defendants to deliberate over a budget and then re-deliberate again and again if she is unsatisfied with the outcome. That type of relief is not available in mandamus actions. *Schrenko v. DeKalb County School Dist.*, 276 Ga. 786, 794(3), 582 S.E.2d 109 (2003) (citations omitted) ("In general, mandamus relief is not available to compel officials to follow a general course of conduct, perform a discretionary act, or undo a past act." What the Clerk asks this Court to do is to dictate the *outcome* of budget decisions of the legislature, and mandamus is not proper for this purpose. *Georgia Dep't. of Transp. v. Peach Hill Properties, Inc.*, 278 Ga. 198, 201, 599 S.E.2d 167, 169-70 (2004) ("Mandamus can compel an official clothed with discretion to act, but it cannot mandate the outcome.").

into law an ordinance also were formally legislative, even though he was an executive official. We have recognized that officials outside the legislative branch are entitled to legislative immunity when they perform legislative functions."); *Bryant v. CEO Dekalb County Jones*, 575 F.3d 1281 (11th Cir. 2009) (Executive assistant was entitled to "absolute legislative immunity against any claims, including Lowe's retaliation claim, arising from actions directly related to his preparing and drafting the 2004 budget proposal.").

The blanket of legislative immunity applies regardless of the relief sought in the lawsuit and regardless of whether the Individual Defendants are sued in their individual or official capacities. *Scott v. Taylor*, 405 F.3d 1251 (11th Cir. 2005) ("The purpose of legislative immunity being to free legislators from such worries and distractions, it makes sense to apply the doctrine regardless of the capacity in which a state legislator is sued."). And the immunity applies regardless of the action or inaction of the parties exercising legislative discretion, even if bad motives are shown. *Whipple v. City of Cordele*, 231 Ga. App. 274, 276, 499 S.E.2d 113, 155 (1988) ("[E]ven if the record were to include evidence showing that the motives of the county commission were suspect when they enacted this ordinance, the U.S. Supreme Court has recently held that local legislators are

entitled to absolute immunity in performing their legislative functions, regardless of their motives.").[8]

The Clerk has offered no discernible response to Defendants' legislative immunity arguments in her brief, other than to say generally that the Individual Defendants "were not acting within their authority." (Clerk Br., p. 27). The Clerk cites no authority for this proposition other than a block quotation from the Georgia Supreme Court's opinion in *Village of North Atlanta v. Cook*, 219 Ga. 316, 133 S.E.2d 585 (1963). The ellipses in the block quote cited by the Clerk is telling as the Clerk omits over a page of the Supreme Court's opinion. In the page omitted by the Clerk, the Georgia Supreme Court actually said:

> While we have been unable to find any case in our court in which an action has been brought against State legislators in connection with their legislative acts, this court has uniformly held that the courts will not inquire into the motives of a municipal council in the enactment of an ordinance.
>
> . . .
>
> *The [Dekalb County legislative delegation] could not properly be made parties defendant in an action for declaratory judgment asserting the unconstitutionality of a provision in an act of the General Assembly passed at a session of the General Assembly of*

[8]Absolute legislative immunity applies regardless of whether the Clerk's claims sound in damages or equitable relief. *Supreme Court of Virginia v. Consumers Union of U. S., Inc.*, 446 U.S. 719, 732-33 (1980) ("In *Tenney* we concluded that Congress did not intend ... to abrogate the common-law immunity of state legislators. Although *Tenney* involved an action for damages ..., its holding is equally applicable to ... actions seeking declaratory or injunctive relief.").

which they were members, solely on the basis of acts done by them in their official capacity.

Cook, 219 Ga. at 319, 133 S.E.2d at 589 (emphasis added).[9]

The Clerk has cited no case in Georgia (or elsewhere) in which legislators or members of an executive branch have been denied legislative immunity for their policy-making decisions in deliberating upon and passing a budget. The United States Supreme Court says absolute legislative immunity exists. *Bogan*, 523 U.S. at 55. The Georgia Supreme Court says the same thing. *Village of North Atlanta*, 219 Ga. at 319, 133 S.E.2d at 526. This Court must also.

5. Has the Clerk Stated a Claim for Breach of Contract?

The Clerk continues to assert that she has a valid claim for breach of contract against the CCG. (Clerk Br., pp. 50-54). It is undisputed that prior to the institution of her lawsuit, the Clerk never gave notice of or made a claim against

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[9]The Supreme Court's holding makes clear that the legislators are entitled to absolute legislative immunity for any acts done in a legislative capacity. To the extent an aggrieved party wishes to challenge the constitutionality of an ordinance, that claim would be against the CCG, provided certain statutory requirements are complied with, none of which have been complied with here. O.C.G.A. § 9-4-7 ("If a statute of the state, any order or regulation of any administrative body of the state, or any franchise granted by the state is alleged to be unconstitutional, the Attorney General of the state shall be served with a copy of the proceeding and shall be entitled to be heard."). The Clerk has admitted that she is not making any constitutional challenges to the budget ordinances in this case. *See* 1/15/15 Hearing Transcript, pp. 84-85 (Counsel for Clerk admitting that "I don't think we asked for it to be declared unconstitutional. We asked for it to be declared void and illegal.").

the CCG for breach of contract related to the Tyler Contract, in violation of O.C.G.A. § 36-11-1. ("All claims against counties must be presented within 12 months after they accrue or become payable or the same are barred...."). In fact, the Clerk expressly declared that she did not have a money damages claim against the CCG:

> The Clerk's only cause, and thus her claim will be to require the City to do what the Georgia Constitution requires, adequately fund the office. *The Clerk has no money damage claims against the City,* what money damage claims against the Clerk, from the City, are you alleging?

Clerk Brief in Opposition to Defs.' Mot. For Partial Summary Judgment, Ex. "1", p. P-AL 00073 (emphasis added).

The Clerk's failure to give pre-suit notice of her claim could not be clearer. The Clerk notified the CCG that she had *no claim for damages at all.* The lack of a timely and valid *ante litem* notice is the subject of Defendants' Motion for Partial Summary Judgment, which has been pending for quite some time without a formal order. That motion is due to be summarily granted. *Burton v. Dekalb County*, 202 Ga. App. 676, 678, 415 S.E.2d 647, 648 (1992) ("The requirement of ante litem notice is a statutorily created benefit granted to both counties and municipalities by the legislature.").[10]

[10]In addition, the Clerk's claim for breach of contract is substantively flawed. Defendants adequately addressed this issue in their opening brief at pp. 33-35.

6. Does the Court need to Address Any Other Issues?

Because the Clerk has not stated a cognizable claim against a defendant that does not possess immunity from the claim, the answer is no. This case can and should be resolved on the immunity issues alone and those issues are ripe and fully briefed before the Court.

In the event the Court wishes to delve into the merits of this ill-conceived lawsuit, the case starts and ends with the Clerk's own admissions. The Clerk principally relies on *Bd. of Comm'rs of Dougherty County v. Saba*, 278 Ga. 176, 177, 598 S.E.2d 437, 437 (2004), which held that the issue before the trial court was a simple one: "Did the Board of Commissioners adopt a budget for the Sheriff's department that did not reasonably and adequately provide for the personnel and equipment necessary to enable the Sheriff to perform his duties of enforcing the law and preserving the peace, and thereby abuse its discretion?" *Id.*

If *Saba* is the standard, as the Clerk argues, consider the Clerk's admissions:

> Q: ....But back to my question, what evidence do you have that council failed to exercise its discretion in adopting your fiscal year 2014 budget?
>
> A: *I have no evidence.*

(Pierce Dep., p. 88) (emphasis added).

> Q: What evidence do you have that council failed to exercise its discretion in approving the budget for your office in 2015?

A: *There's no evidence of it*.....[numerous pages of complaints about her office omitted].

(Pierce Dep., p. 97) (emphasis added).

Q: (By Mr. Snipes) So it boils down to the fact that you didn't – that you didn't get the money that you thought you should have gotten; is that right?

A: Correct.

(Pierce Dep., p. 89).

Q: How do you know the council ignored the legal requirements of your office?

A: Because they didn't fund it.

Q: So, again, at the end of the day, comes down to the money; is that right?

A: It – it comes down to the fact they did not provide the funds.

(Pierce Dep., p. 103).

Q: Okay. So 2016, then, your answer is similar to '14 and '15, and boils down to the fact that council didn't provide you with as much money as you thought was necessary?

A: They had not provided me with enough to even make the year with even – to adequately do any of my job.

(Pierce Dep., p. 107).

The Council had a duty by state law and the Charter to adopt a budget. It did so. The Clerk admits she has no evidence that the Council manifestly abused its discretion. There is no such evidence as it is undisputed that the budget of the

Clerk's office was reduced by less than 1.5% in 2015, and was actually increased in 2016. The Clerk's admissions are fatal to her case, and Defendants are entitled to summary judgment on all of her claims. *See, e.g., Bd. of Comm'rs of Randolph Cnty. v. Wilson*, 260 Ga. 482, 483, 396 S.E.2d 903, 904-05 (1990) ("Nothing in Section 8 of the act requires the county to budget separately for each individual deputy sheriff. By approving or disapproving the sheriff's budget request for salaries, whether done separately or as a lump sum, the commissioners have performed their duty under the language of the act....That the amount budgeted by the commissioners may well require the sheriff to adjust the number of his deputies or the amount of his deputies' pay does not suggest an abuse of discretion."); *Chaffin v. Calhoun, supra*, 262 Ga. 202, 203, 415 S.E.2d 906, 908 (1992) (Upholding the denial of an injunction where the county cut a sheriff's budget by some 47%).

Finally, Defendants must address the last red herring that permeates throughout the Clerk's brief. The Clerk repeatedly alleges that the CCG and/or some of the Individual Defendants violated Charter § 8-105. *See, e.g.*, Clerk Br., pp. 25-29, 31-35. According to the Clerk, the Mayor is required to incorporate the Clerk's annual budget request *in toto* into the Mayor's recommended budget for each fiscal year. The Clerk argues that the Mayor has no right to propose a budget

for the Clerk's office or for the office of any other constitutional officer. The Clerk is hopelessly wrong.[11]

The Charter expressly requires the Mayor to submit a recommended budget "for the ensuing fiscal year...on or before a date fixed by ordinance, but not less than sixty (60) days prior to the beginning of the fiscal year." Charter § 7-401(2). The Mayor is required to accompany the recommended budget with "explanations of general fiscal policies, explanation of major changes recommended for the next fiscal year, a general summary of the budgets and other information deemed appropriate." Charter § 7-401(2). The recommended budget, among other things, must contain an operating and a capital budget; an estimate of the unencumbered fund balance at the beginning of the ensuing fiscal year and the amount of reserves for designated purposes or activities includable in the operating budget; and a reasonable estimate of cash reserved to be received during the ensuing fiscal year, classified according to source. Charter § 7-401(2).

[11]The Clerk argues she has separate budgetary rights from that of the local governing authority. The law says otherwise. *Lawson v. Lincoln County*, 292 Ga. App. 527, 528 664 S.E.2d 900, 901 (2008) (Court recognized that to allow the sheriff to operate "independent from the county's budgeting process would, in the extreme undermine the county's broad discretion to exercise control over public property").

The Mayor's recommended budget must be balanced. Charter § 7-401(2)(5). And it must include expenditures for all departments and offices because the Mayor's recommended budget must contain:

> Proposed expenditures detailed by *each department, board, commission, office, agency, and activity* in accordance with an established classification of account, including those capital outlays which are to be financed from the revenues of the ensuing fiscal year, and including all debt service requirements in full for such fiscal year payable from such funds.

Charter § 7-401(2)(c) (emphasis added).

Despite the Charter's clear mandate that the Mayor propose a budget for each "department, board, commission, office, agency, and activity" with detailed expenditures for each, the Clerk contends that the Charter prohibits the Mayor from proposing a budget for the Clerk's office. The Clerk solely relies on Charter § 8-105 which provides:

> All elective officers such as the sheriff, tax commissioner, Judge of Probate Court, coroner and other elective officers, and all agencies not under the direct control and jurisdiction of the Council such as the board of health and board of family and children services, which receive appropriations from the Council, shall prior to the commencement of each fiscal year prepare and submit to the City Manager annual operating and capital budget requests for the ensuing fiscal year. Such budget requests shall be incorporated into the overall consolidated government budget for submission by the Mayor to the Council. The Council shall grant a hearing to any such officer or agency on such proposed budgets.

The Charter clearly requires that the Clerk, as well as all other elected officials and agencies not under the direct control of the CCG, "shall submit

budget requests," not budgets or even recommended budgets. The meaning of the word "request" demonstrates the plain meaning of the provision. The Clerk may *ask* for budget requests from the executive branch, and if her requests are not granted, then she may take them directly to Council. This provision is only part of a budgetary scheme that allows all requests to be made in the initial recommended budget process. Georgia law authorizes the executive's discretion into the budget processes as follows:

> Nothing in this Code section shall preclude the utilization of an executive budget, under which an elected or appointed official, authorized by charter or local law and acting as the chief executive of the governmental unit, exercises the initial budgetary policy-making function, while another individual, designated as provided in this Code section as budget officer, exercises the administrative functions of budgetary preparation and control.

O.C.G.A. § 36-81-4(c).

The Charter does not require the executive branch to accept each and every budget request submitted by the Clerk.[12] Under the Clerk's blanket assertion of power, which notably is not supported by any case law, each entity and official

[12]The "incorporation" of the budget requests required in Charter § 8-105 does not entitle the Clerk to a budget of her own choice, hence the qualifying word "request" and the entitlement to a hearing. A hearing would be unnecessary if the requests had to be automatically accepted, which is not implied by the word "incorporate," meaning "***a***: to unite or work into something already existent so as to form an indistinguishable whole ***b*** : to blend or combine thoroughly." *See* Webster's Dictionary, www.merriam-webster.com.

under Charter § 8-105 would receive an entitlement to *all* requests made, which the provision does not state. The Mayor would have to first consider, and eliminate from her own budget plan, all funds requested by "all elective officers, and all agencies not under the direct control and jurisdiction of the Council, such as the board of health and the board of family and children services, which receive appropriations from Council ....[who must] all submit to the City Manager annual operating and capital budget requests for the ensuing fiscal year." *See* Charter § 8-105. The county officers and other officials listed in this provision could virtually bankrupt the CCG – before any funds could be budgeted for the other fifty (50) various departments. Lacking any specific language in Georgia law or the Charter to authorize her claims, this Court would be forced to rewrite the Charter to grant the Clerk any of the expanded powers she requests. There is no evidence or law to suggest the Charter budget process should or has ever operated in the manner urged by the Clerk.[13]

Finally, the Clerk's insistence on such a strained reading of Charter § 8-105 only highlights the desperation of her position. The facts are undisputed that the

[13]Given that the Mayor's proposed budget must be balanced (Charter § 7-401(2)(5)), how could the Mayor possibly be required to incorporate *in toto* all the budget requests of constitutional officers, elected officials, and agencies into the recommended budget? What if the Clerk's budget request was for $50 million or $100 million or $1 billion? Would the Mayor be required to "incorporate" that number into a "balanced budget" that the Charter requires the Mayor to submit to Council? According to the Clerk, yes. That reading of the Charter makes no sense.

Mayor submitted a recommended budget to Council in each of the years about which the Clerk complains. (Pierce Dep., pp. 50, 67-68, 108-09). The Clerk admits that she prepared a budget request for each of those fiscal years. (*Id.*). Council scheduled a hearing on the Clerk's budget requests in every year. (*Id.*). The Clerk had a right to be heard on her budget requests every year, but voluntarily chose not to exercise that right in FY 2015 and FY 2016, though she did lobby the Council Members extensively and provided them with voluminous written documentation to lobby for her budget requests. (Pierce Dep., pp. 68-69, 108).

The plain purpose of Charter § 8-105 is to ensure that Council can consider the budget requests of certain offices including the Clerk prior to the adoption of a budget for a fiscal year. That happened. The Clerk cannot be heard to complain about a budget process that followed the letter of the Charter, and that ensured that the purpose of the Charter was accomplished as well. *See, e.g.*, O.C.G.A. § 1-3-1(c) ("A substantial compliance with any statutory requirement, especially on the part of public officers, shall be deemed and held sufficient, and no proceeding shall be declared void for want of such compliance, unless expressly so provided by law."); *Hart v. Columbus*, 125 Ga. App. 625, 632, 188 S.E.2d 422, 427 (1972) ("We rule adversely to the contention by appellants that the adoption of the two challenged ordinances failed to comply with the requirements and mandate of the charter relative to the procedures to be followed prior to the creation of urban

services districts. A substantial compliance by public officers with requirements imposed by statute shall be deemed and held sufficient.").[14]

CONCLUSION

This case is not about some unsettled rule of law. What is this case about? It is about a Clerk who tried to use a frivolous lawsuit as heavy-handed budget negotiating tool. Her attempted "negotiation" failed. It is time for her lawsuit to fail too. Defendants' Motion for Summary Judgment should be **GRANTED**.

Respectfully submitted, this 11th day of April, 2016.

PAGE, SCRANTOM, SPROUSE,
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By: _____
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[14]Even if the Clerk's strained construction of § 8-105 is correct, and it is not, she has not alleged or shown that any harm occurred to her. It is undisputed that the Clerk's budget requests were before the Council in every fiscal year prior to the Council's adoption of a budget, and the Clerk was afforded an opportunity to be heard. *See, e.g.*, *Buckler v. DeKalb County Bd. of Com'rs.*, 299 Ga. App. 465, 467, 683 S.E.2d 22, 24 (2009) ("Thus, because the [Act] does not expressly provide that a county's failure to strictly comply with the Act's uniform procedures invalidates an ordinance adopted thereunder, and because the developers have failed to demonstrate that they were harmed by the county's alleged failure to strictly comply with the procedures, the ordinance is valid as long as the county substantially complied with the provisions of the [Act].").

CERTIFICATE OF SERVICE

I do hereby certify that I am counsel for Defendants and that a true and exact copy of the foregoing document has been served upon counsel of record in the within matter by email, as follows:

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This 11th day of April, 2016.

Counsel for Defendants