

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

SUZANNAH HEIMEL,)	
)	
Plaintiff,)	
)	
v.)	
)	
SHARON GREGG and JAY HANLEY,)	
)	
Respondents,)	CASE NO.
)	SUSR024000058-LL
COMMON CAUSE GEORGIA and SUSAN)	
NOAKES,)	
)	
Intervenor Respondents.)	
)	
)	
)	
)	
)	

**MOTION TO DISMISS APPLICATION FOR WRIT OF MANDAMUS AND MOTION
 FOR EMERGENCY INJUNCTION AND MEMORANDUM IN SUPPORT THEREOF
 BY INTERVENORS SUSAN NOAKES AND COMMON CAUSE GEORGIA¹**

Pursuant to O.C.G.A. § 9-11-12(b)(6), Intervenor Susan Noakes and Common Cause Georgia (collectively, “Intervenors”) respectfully move to dismiss the Application for Writ of Mandamus (the “Application”) and Motion for Emergency Injunction filed by Plaintiff Suzannah Heimel (“Plaintiff”) in the above-styled action.

INTRODUCTION

Plaintiff’s threadbare and vague Application and Motion for Emergency Injunction are futile because the Application does not adequately allege that Plaintiff is “clearly” entitled to any

¹ The Proposed Intervenor respectfully request leave from the Court to file this Motion to Dismiss Application for Writ of Mandamus with Memorandum in Support Thereof as Intervenor’s initial pleading, which shall be deemed to have been filed as of this date.

relief under state law, as it must for the extraordinary remedy of a writ of mandamus to issue. A writ of mandamus can only compel officials to perform their existing legal duties, and neither Plaintiff's Application for Writ for Mandamus nor Motion for an Emergency Injunction seeks any action that Defendants are duty-bound to perform.

PROCEDURAL AND FACTUAL BACKGROUND

Plaintiff alleges that, on July 19, 2024, Oconee County election officials received “two lists containing 232 challenged voters” with a demand that the Oconee County Board of Elections and Registration (“Board”) convene challenge hearings. *See* Application pp. 1-2. Plaintiff alleges that, on August 15, 2024, the Board held a hearing for only two of the challenged voters but did not convene hearings on the remaining challenges. *Id.* Plaintiff claims to have spoken during this hearing with the Board and an Oconee County attorney about the alleged violation and, later, she sent an email to Daniel Haygood, another Oconee County attorney, asking for a remedy to the claimed procedural violation. *Id.* She claims she did not receive a response and that no additional hearings were scheduled for the remaining 230 challenged voters. *Id.* She also generally alleges that the Board has failed “to remove dead and ineligible voters per OCGA § 21-2-231.” *Id.* at p. 1 ¶ 2. Plaintiff sent a “Cease and Desist Order” and then re-filed her letter as a Writ of Mandamus. *See* Application. She then filed a Motion for Emergency Injunction (“Motion”) on September 12, 2024, arguing that the Board is required under Georgia law to designate the 230 voters as “challenged” voters who must vote a provisional ballot subject to adjudication by Respondents prior to certification.

LEGAL STANDARDS

A motion to dismiss under O.C.G.A. § 9-11-12(b)(6) should be granted when, as here, “the allegations of the complaint, when construed in the light most favorable to the plaintiff, and with

all doubts resolved in the plaintiff's favor, disclose with certainty that the plaintiff would not be entitled to relief under any state of provable facts." *Penny v. McBride*, 282 Ga. App. 590, 590 (2006). In considering the factual allegations in a complaint, courts are not required to accept as true "legal conclusion[s] [that are] couched as fact" *Mabra v. SF, Inc.*, 316 Ga. App. 62, 65, (2012).

ARGUMENT

The Court Should Dismiss the Application for Mandamus and Motion for Emergency Injunction Because Plaintiff Is Not Clearly Entitled to Relief Under State Law, So Plaintiff's Requested Relief Would Be Futile.

Plaintiff seeks the issuance of a writ of mandamus, *see generally* Application, and the relief specified in her Motion that followed the filing of her Application is the same relief. Simply restated. "The writ of mandamus is properly issued only if (1) no other adequate legal remedy is available to effectuate the relief sought and (2) the applicant has a *clear legal right* to such relief." *Id.* (quoting Richard C. Ruskell, Davis & Shulman's Ga. Practice & Procedure, § 29:2 (2013–2014 ed.)) (emphasis added). "A clear legal right to the relief sought may be found only where the claimant seeks to compel the performance of a public duty that an official or agency is required by law to perform." *Id.* at 735 (citing *Bland Farms, LLC v. Ga. Dep't of Agric.*, 281 Ga. 192, 193 (2006)). Further, "[m]andamus will not be granted when it is manifest that the writ would, for any cause, be nugatory or fruitless" O.C.G.A. § 9-6-26; *see Barrow v. Raffensperger*, 308 Ga. 660, 678 (2020); *Sotter v. Stephens*, 291 Ga. 79, 81 (2012).

The Court should dismiss the Application because Plaintiff has no clear legal right to the relief she seeks. Plaintiff appears to seek a writ from this Court (1) declaring the Board's dismissal of the challenged voters at the August 6, 2024, meeting invalid and (2) directing the Board to place these voters in challenged status and only permit them to cast provisional ballots. But Plaintiff

has no “clear” right to a declaration that the dismissal was invalid, particularly because she pleads no facts suggesting that the challenges were submitted in proper form and required the Board to take any mandatory action under the law. And Plaintiff has no “clear” right to an order directing the Board to place the voters into challenged status because the Board has no mandatory duty under Section 230 to do so, and instead retains discretion to decide whether there is “probable cause to sustain such challenge.” O.C.G.A. § 21-2-230(b). Because the Board has no “clear” and “manifest” mandatory duty under the law to reach Plaintiffs’ preferred outcome on the challenges, the Court has no power to grant the requested writ of mandamus.

Further, granting mandamus here would be “fruitless” because there are fewer than 45 days left before the November 5, 2024 General Election. Plaintiff appears to request relief under O.C.G.A. § 21-2-230, which governs challenges to voters’ qualifications to vote in a particular election and provides for the designation of voters as “challenged” voters who may only vote challenged ballots. But that statute does not allow the relief she seeks. Section 230 provides that “[a]ny challenge of an elector within 45 days of a primary, run-off primary, election, or run-off election shall be postponed until the certification of such primary, election, or runoff is completed.” O.C.G.A. § 21-2-230(b)(1). Consequently, the Board could not take action on Plaintiffs’ requested actions on the challenges even if this Court ordered it to treat them as Section 230 challenges.

Under these circumstances, mandamus would be fruitless. In *Halpern Props., Inc. v. Newton Cnty. Bd. of Equalization*, the Georgia Supreme Court affirmed the denial of a mandamus petition seeking to compel a member of a tax equalization board to indicate his vote on a tax assessment as required by law. 245 Ga. 728, 728 (1980). Because the other two members had voted to approve the assessment, it was “a futile exercise” to require the final member to vote; “even if the writ were granted,” it was “clear that its issuance would be ‘nugatory or fruitless.’” *Id.*; see

also Barrow, 308 Ga. at 679 (stating that “mandamus will not lie when the thing or things sought would be unnecessary, fruitless, unavailing or nugatory”) (quoting *Hall v. Staunton*, 55 W. Va. 684 (1904)). Likewise, granting Plaintiff's Application would be fruitless. The Court should therefore deny and dismiss the Application.

III. CONCLUSION

For the foregoing reasons, this Court should grant Intervenors' Motion to Dismiss the Application for Writ of Mandamus.

Respectfully submitted, this 4th day of October, 2024.

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*motion for admission *pro hac vice*
forthcoming

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SUSAN NOAKES and COMMON CAUSE)	
GEORGIA,)	
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Proposed Intervenors.)	

CERTIFICATE OF SERVICE

I hereby certify that, on October 4, 2024, the foregoing was served upon the following persons by electronic mail and through the Court's electronic service delivery to:

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