

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

SUZANNAH HEIMEL,

Plaintiff,

v.

SHARON GREGG and JAY HANLEY,

Respondents,

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.

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*

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.”

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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STATE OF GEORGIA**

SUZANNAH HEIMEL,)	
)	
Plaintiff,)	
)	
v.)	
)	
SHARON GREGG - DIRECTOR OF)	
BOARD OF ELECTIONS and JAY)	
HANLEY - CHAIR OF BOARD OF)	
ELECTIONS,)	
)	Case no.
Defendant,)	SUSR024000058-LL
)	
SUSAN NOAKES and COMMON CAUSE)	
GEORGIA,)	
)	
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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