Exhibit 3

IN THE SUPERIOR COURT OF DEKALB COUNTY
STATE OF GEORGIA

WILLIAM HENDERSON and DEKALB COUNTY REPUBLICAN PARTY, Plaintiffs, v. VASU ABHIRAMAN, NANCY JESTER, ANTHONY LEWIS, SUSAN MOTTER, and KARLI SWIFT, Defendants, GEORIGA STATE CONFERENCE OF THE NAACP, NEW GEORGIA PROJECT, GEORGIA COALITION FOR THE PEOPLE'S AGENDA, INC., A. PHILLIP RANDOLPH INSTITUTE, COMMON CAUSE GEORGIA, and LEAGUE OF WOMEN VOTERS OF GEORGIA, Proposed Intervenors.	)	CIVIL ACTION FILE NO. 24CV8564

[PROPOSED] MOTION TO DISMISS APPLICATION FOR WRIT OF MANDAMUS AND MEMORANDUM IN SUPPORT THEREOF BY INTERVENORS GEORGIA STATE CONFERENCE OF THE NAACP, NEW GEORGIA PROJECT, GEORGIA COALITION FOR THE PEOPLE'S AGENDA, INC., A. PHILLIP RANDOLPH INSTITUTE, COMMON CAUSE GEORGIA, AND LEAGUE OF WOMEN VOTERS OF GEORGIA[1]

Intervenors the Georgia State Conference of the NAACP, New Georgia Project, Georgia Coalition for the People's Agenda Inc., A. Phillip Randolph Institute, Common Cause Georgia, and League of Women Voters of Georgia respectfully move to dismiss the Application for Writ of

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

Mandamus (the "Application") filed by Plaintiffs William Henderson and DeKalb County Republican Party in the above-styled action pursuant to O.C.G.A. § 9-11-12(b)(6).

INTRODUCTION

Plaintiffs' threadbare Application for a Writ of Mandamus (the "Application") is nothing more than an improper attempt to end-run the requirements of the National Voter Registration Act of 1993 (the "NVRA") on the eve of a presidential election. Plaintiffs seek to force the DeKalb County Board of Registration and Elections (the "Board") to engage in list maintenance based on a flawed data-matching effort that risks disenfranchising and purging from the voter rolls over 5,000 voters shortly before the 2024 general election. Plaintiffs fail to state a claim upon which relief may be granted for two reasons.

First, Plaintiffs' requested relief is plainly barred and preempted by the NVRA. Engaging in systematic list maintenance based on computerized data-matching violates the NVRA's 90-day quiet period. And Plaintiffs' demand is also based upon alleged improper voter residency or inactivity, which is insufficient to support a challenge to registration even if Plaintiffs' demand was not barred by the 90-day quiet period, because the challenged voters would not receive the proper notice and waiting process mandated by the NVRA before removal. For these reasons, granting the relief sought by Plaintiffs violates the clear provisions of Section 8(b), (c), and (d) of the NVRA, and even if Plaintiffs were correct that Georgia law requires the actions they demand, it is preempted.

Second, because Plaintiffs' Application does not adequately allege that Plaintiffs are "clearly" entitled to relief under state law, as it must for the extraordinary remedy of a writ of mandamus to issue, the Court should dismiss the Application.

PROCEDURAL AND FACTUAL BACKGROUND

Plaintiffs allege that William Henderson sent three letters to DeKalb County election officials beginning on August 19, 2024, demanding that the Board convene voter challenge hearings and remove 5,412 voters from the voter rolls. *See* Application ¶¶ 8-11; Ex A, Ex. B, Ex. C.

- In his initial August 19, 2024 letter, Henderson claimed that 166 voters should be removed because they registered using a post office or mail center box as a residence, based on what he contends is a computer "match" of the Georgia voter roll against addresses of post offices and mail centers. *See* Application at Ex. A.
- In his second letter, dated August 22, 2024, Henderson alleged he performed a computerized database sort of the "Secretary of State's Voter roll" and generated a list of 4,861 voters who purportedly have not had "official" contact with the Board in the last ten years. *See* Application at Ex. B. The copy of the letter filed with the Application, however, does not include this list and the Application does not otherwise identify the 4,861 registered voters he seeks to challenge or offer any other reason to believe these voters have become ineligible. *Id*. at Ex. B.
- In his third letter, dated August 28, 2024, Henderson claimed that 184 voters were allegedly matched to a National Change of Address database (NCOA) and "Voter Information Lookup" data from another state, which Plaintiffs assert indicates the voter has moved out of state. *Id*. at Ex. C.

Plaintiffs allege that on September 12, 2024, the Board passed a resolution that it would postpone consideration of non-individualized voter challenges—such as Henderson's mass challenges—received less than 90 days before a primary or general election, because doing so

would violate the NVRA's bar on systematic list maintenance within 90 days of an election. Application ¶ 15. The Application alleges the Board explained that such non-individualized voter challenges were a "program of systematic removal" if they "do not rely upon individualized information or investigation to determine the validity of the individual challenges," "use a mass computerized data-matching process to compare the voter rolls with other state and federal databases," "lack unique identifiers, indicia of reliability, or evidence of authenticity," or "lack reliable first-hand evidence specific to individual voters." Application ¶ 16.

Plaintiffs waited to file this Application until September 17, asserting that the Board is required under Georgia law to set a hearing on Plaintiff Henderson's challenges to the eligibility of 5,412 voters. Application ¶¶ 19, 23.

I. APPLICABLE 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).

II. ARGUMENT AND CITATION OF AUTHORITIES

A. The Court Should Dismiss the Application Because the Plaintiffs' Requested Relief Is Preempted by and Therefore Barred by the NVRA.

Plaintiffs seek to require the Board to conduct systematic list maintenance within 90 days of a federal election in violation of Section 8(c) of the NVRA, which could result in the removal of thousands of voters from the rolls. Even if this requested relief were required under state law

(and it is not) it is preempted by and barred by the NVRA, which Congress enacted pursuant to its Elections Clause powers to create a "complex superstructure of federal regulation atop state voter-registration systems" that would preempt any conflicting state law. *See Ariz. v. Inter Tribal Council of Ariz., Inc.*, 570 U.S. 1, 5 (2013) ("*ITCA*"). The Court should dismiss the Application.

The Georgia Supreme Court has explained the doctrine of federal preemption:

> The Supremacy Clause of the United States Constitution mandates that federal law will preempt a state law that is inconsistent with it. U. S. Const., Art. VI, cl. 2. Such preemption may be either express or implied, and "is 'compelled whether Congress'[s] command is explicitly stated in the statute's language or implicitly contained in its structure and purpose.'" . . . And, "[w]hen a federal statute unambiguously precludes certain types of state [law], we need go no further than the statutory language to determine whether the state [law] is preempted."

Reis v. OOIDA Risk Retention Grp., Inc., 303 Ga. 659, 660 (2018) (alterations in original) (citations and quotations omitted). "The preemption doctrine of the Supremacy Clause may apply: (1) where there is direct conflict between state and federal regulation; (2) where state law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress; or (3) where Congress has occupied the field in a given area so as to oust all state regulation." *Hernandez v. State*, 281 Ga. 559, 561 (2007) (quoting *Aman v. State*, 261 Ga. 669, 671 (1991)). Additionally, the Elections Clause of the United States Constitution states:

> The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the places of chusing Senators.

U. S. Const., Art. I, § 4, cl. 1. The Elections Clause "empowers Congress to pre-empt state regulations governing the 'Times, Places and Manner' of holding congressional elections." *ITCA*, 570 U.S. at 7–8. When Congress acts pursuant to the Elections Clause, its power over federal elections is plenary, and the presumption against preemption that applies to enactments under other constitutional provisions therefore does not apply. *See id.* at 5-9.

The Plaintiffs' requested relief facially violates two provisions of the NVRA: 1) the statute's prohibition on conducting a systematic voter removal program within 90 days of a federal election; and 2) its prohibition on removing voters due to a change of address or inactivity without satisfying the NVRA's notice procedures or the specified waiting period.

1. *Plaintiffs' Requested Relief is Preempted by and Barred by Section (8(c) of the NVRA.*

Section 8(c) of the NVRA provides that "any program the purpose of which is to systematically remove the names of ineligible voters from the official lists of eligible voters" cannot be conducted within 90 days of a primary, general, or runoff election for federal office. 52 U.S.C. § 20507(c)(2). *See also Arcia v. Fla. Sec'y of State*, 772 F.3d 1335, 1345–46 (11th Cir. 2014). A program is systematic if it does "not rely upon individualized information or investigation . . . [but instead] use[s] a mass computerized data-matching process to compare the voter rolls with other state and federal databases . . . ." *Arcia*, 772 F.3d at 1344. "[T]he phrase 'any program' suggests that the 90 Day Provision has a broad meaning. . . [and] strongly suggests that Congress intended the 90 Day Provision to encompass programs of any kind. . ." *Arcia*, 772 F.3d at 1344; *see also United States v. Gonzalez*, 520 U.S. 1, 5 (1997) ("Read naturally, the word 'any' has an expansive meaning, that is 'one or some indiscriminately of whatever kind.'") (citation omitted).

Here, Plaintiffs seek to force the Board to initiate a systematic voter removal program within 90 days of a federal election based on generalized, computerized data-matching of voter information. Application, at Ex. A, B, C. Plaintiffs' Application alleges the legal conclusion that Henderson's challenges are not "systematic removals [because they are] a response to individual information being provided by electors." Application ¶¶ 21, 25-26. That is wrong. Plaintiffs allege no personal knowledge concerning the eligibility of the challenged voters other than the knowledge they purportedly obtained through the computerized matching effort they undertook. Application,

at Ex. A, B, C. A systematic program does not become individualized simply because it is conducted by a private elector rather than an elections administrator. Indeed, federal case law, including in the Eleventh Circuit, makes clear that computerized data matching of voter information is not sufficiently individualized to avoid Section 8(c)'s 90-day quiet period regardless of who conducts it. *See Arcia*, at 772 F.3d 1335, 1345–46. For example, in *Majority Forward v. Ben Hill Cnty. Bd. of Elections*, a Georgia federal district court found that it would likely violate the NVRA for a county board of elections to sustain a private voter's mass-challenges based, as here, on unverified mass data-matching of unknown reliability devoid of any individualized inquiry within 90 days of a federal election. 512 F. Supp. 3d 1354, 1369–70 (M.D. Ga. 2021). Similarly, in *North Carolina State Conference of the NAACP v. North Carolina State Board of Elections*, the court held that, as here, thousands of challenges mounted by a private elector within the 90 days before the general election "constitutes the type of 'systematic' removal prohibited by the NVRA." No. 16-1274, 2016 WL 6581284, at *5 (M.D.N.C. Nov. 4, 2016) (footnote omitted). The court reasoned "[]though the State Board is correct that individuals initiated the challenge process at issue, these individuals cannot administer hearings related to the challenges, make findings of probable cause, and actually remove a voter from the voter rolls, which is the injury alleged here." *Id.* The court went on, "thus, the challenges would have no effect on the voter if such challenges were not processed and sustained by the County Boards." *Id.* Applying the same reasoning here dooms Plaintiffs' Application.

A proper reading of Section 8(c) prevents voter confusion, chaos, and potential disenfranchisement of voters in the days leading up to an election. *See, e.g., Arcia*, 772 F.3d at 1346 ("voters removed days or weeks before election day will likely not be able to correct the State's errors in time to vote"). Election officials cannot evade Section 8(c) simply because private

individuals—and not election officials—generate thousands of challenges based on non-individualized, computerized data-matching. As the United States Department of Justice's recent guidance clarifies, Section 8(c)'s 90-day "deadline also applies to list maintenance programs based on third-party challenges derived from any large, computerized data-matching process." Dep't of Justice, *Voter Registration List Maintenance: Guidance Under Section 8 of the National Voter Registration Act, 52 U.S.C. § 20507*, at 4 (Sept. 2024), https://www.justice.gov/crt/media/1366561/dl (last visited Oct. 1, 2024). And, as the Eleventh Circuit explained, "the 90 Day Provision strikes a careful balance: It permits systemic removal programs at any time *except* for the 90 days before an election because that is when the risk of disenfranchising eligible voters is the greatest." *Arcia*, 772 F.3d at 1346 (prohibiting state from removing alleged non-citizens from voter rolls within 90-day quiet period) (emphasis in original). The Application should be denied because the requested relief is preempted and barred by Section 8(c) of the NVRA.

2. *Plaintiffs' Requested Relief is Preempted by and Barred by Sections 8(b)(2)), 8(c)(1)(B)(ii), and 8(d) of the NVRA.*

Each of the 5,412 challenges at issue in this matter are based upon alleged improper residency or inactivity. Application, at Ex. A and C (alleged residency); Application, at Ex. B (alleged inactivity). If these challenges are sustained, state law provides that Defendants must remove those voters from the rolls. O.C.G.A. §§ 21-2-230(g)–(i). However, Georgia law on this issue must yield to the preemptive provisions of the NVRA. Specifically, the NVRA allows for the removal of voters from the rolls based on inactivity or on residency grounds *only* in two circumstances: upon 1) the person's written confirmation of a change in residence to a place outside the jurisdiction, or 2) completion of the notice-and waiting process described in Section 8(d)(2) of the NVRA. 52 U.S.C. §§ 20507(b)(2); 20507(c)(2); 20507(d)(2).

Courts have applied these restrictions to voter challenge-initiated purges like those sought by the Plaintiffs in this case. Before the 2016 general election, for example, four individuals in Beaufort County, North Carolina challenged 138 registered voters "on the grounds that the challenged voters were not residents of the precinct and/or municipality," and similar challenges to registered voters' eligibility were made in Cumberland and Moore Counties. *N.C. State Conf. of NAACP v. Bipartisan Bd. of Elections and Ethics Enf't,* No. 16-1274, 2018 WL 3748172, at *4, 8-9 (M.D.N.C. Aug. 7, 2018). The court ruled that those county election boards "violated § 20507(d) of the NVRA in sustaining challenges to voter registrations based on change of residence . . . without complying with the prior notice and waiting period requirement in § 20507(d) . . . ." *See, e.g., id.* at *4.

Here, Plaintiffs do not allege that any of the challenged voters have been sent a notice that complies with Section 8(d) of the NVRA nor that any challenged voter has submitted written evidence of a confirmation of a change of address.[2] Accordingly, removal of these voters would violate the NVRA's notice and waiting requirement. To the extent O.G.C.A. § 21-2-230 permits county officials to remove voters from the rolls based on challenges to their residency without complying with the NVRA's specified notice and waiting period, it is preempted by Section 8(d) of the NVRA. *See also Majority Forward,* 512 F. Supp. 3d at 1368 (finding that to the extent

[2] Plaintiffs may attempt to argue that the voters who allegedly appear on the voter rolls in another state have effectively provided notice of a change of address, but that argument was rejected by the Seventh Circuit where such voters were identified through a similar data-matching program. *Common Cause Indiana v. Lawson*, 937 F.3d 944, 961-63 (7th Cir. 2019). Likewise, submitting a change of address to the U.S. Postal Service's NCOA system does not constitute notice of a change of address for NVRA purposes: The NVRA requires notice and written confirmation from the voter *after* the voter's name appears in the NCOA database. 52 U.S.C. § 20507(c)-(d).

O.C.G.A. §§ 21-2-230 "conflicts with the NVRA, it is preempted."). Accordingly, the Application should be dismissed.

B. The Court Should Dismiss the Application For Mandamus Because the Plaintiffs Are Not Clearly Entitled to Relief Under State Law and Plaintiffs' Requested Relief Would Be Futile.

Count I (the only Count in the Application) seeks mandamus relief. Application ¶¶ 29-36. Georgia's mandamus statute provides in relevant part that:

> [a]ll official duties should be faithfully performed, and whenever, from any cause, a defect of legal justice would ensue from a failure to perform or from improper performance, the writ of mandamus may issue to compel a due performance if there is no other specific legal remedy for the legal rights.

O.C.G.A. § 9-6-20. "Mandamus is a remedy for improper government inaction—the failure of a public official to perform a clear duty." *Bibb Cnty. v. Monroe Cnty.*, 294 Ga. 730, 734 (2014) (quoting *Southern LNG, Inc. v. MacGinnitie*, 294 Ga. 657, 661 (2014). "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, "Mandamus 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*, 842 S.E.2d 884, 898 (Ga. May 14, 2020); *Sotter v. Stephens*, 291 Ga. 79, 81 (2012). The Application should be dismissed because (1) Plaintiffs have not adequately alleged that they have a clear right to relief under applicable state

law; (2) granting mandamus would be fruitless because the requested relief is barred and preempted by federal law.

First, Plaintiffs fail to adequately allege that Defendants failed to perform a clear legal duty, because Defendants are not required to act in response to generalized voter challenges. O.C.G.A. § 21-2-230 provides that:

> [a]ny elector of the county or municipality may challenge the right of any other elector of the county or municipality, whose name appears on the list of electors, to vote in an election. Such challenge shall be in writing and *specify distinctly the grounds of such challenge*.

O.C.G.A. § 21-2-230(a) (emphasis added). Only if these requirements are satisfied may county election officials convene a challenge hearing or consider a challenge. *See* § 21-2-230(b).

Plaintiffs' Application, which is based on computerized data-matching and a mere list of voters who purportedly have not had "official" contact with the Board, does not contain the specificity required by the statute. Although Plaintiffs characterize the additional criteria identified by Defendants to sustain challenges during the 90-day period as "extra statutory requirements," Application ¶ 18, those criteria in fact reflect Defendants' attempt to ensure that challenges from individual electors contain the requisite specificity required by law. Mandamus relief is thus plainly inappropriate here, where plaintiffs cannot establish that the Defendants were required to perform the relief they seek. *See e.g., Bedingfield v. Adams*, 221 Ga. 69, 72 (1965); *Harmon v. James*, 200 Ga. 742, 744-45 (1946). Plaintiffs' request for a writ of mandamus should be denied.

Second, even assuming Plaintiffs could show Defendants were required to act in response to their non individualized voter challenges here (which they cannot), Defendants already responded by failing to sustain Plaintiffs' challenges at Defendants' September 12 meeting. This response was well within the board's discretion. Indeed, Plaintiffs' own Application acknowledges this. *See* Application ¶¶ 15-16.

Instead, Plaintiffs' Application appears to challenge the manner in which Defendants exercised their discretion. To the extent the Plaintiffs contend the Defendants were required to "conduct[] a hearing" to review each of the mass challenges at issue in this matter, as suggested in the Application, Application ¶¶ 19, 23, they are wrong as a matter of law; there is no such obligation under the statute. O.C.G.A. § 21-2-230 directs boards of registrars to do nothing more than "consider" the challenge and assess whether "probable cause exists." § 21-2-230(b). Here, as Plaintiffs concede, the Board did exactly that: It considered the challenges at the September 12 meeting and determined that there was no probable cause to act on them at present because doing so would violate the NVRA. Application ¶¶ 13-14. The statute does not require the Board to convene a public hearing to "consider" challenges, nor does it require that any probable cause determination be made at a public hearing or in writing. *Id*. O.C.G.A § 21-2-230 only permits a board to convene a voter challenge hearing much later in the process—after probable cause has been determined and the voter has been provided notice and an opportunity to answer, and, even then, in only a few specified circumstances. O.C.G.A. §§ 21-2-230(f), (g), (h). And none of the events that could trigger the requirement for a hearing under § 21-2-230 are alleged.

Even if Georgia law required the Board to hold a hearing of some kind, Defendants would still have discretion regarding what actions they took at that hearing. Plaintiffs concede that Defendants convened to consider the challenges, which is all that was required. The rest was discretionary, and there is clearly no mandamus authority to compel the board to take a discretionary action. *See Bibb Cnty.*, 294 Ga. at 737 ("[e]ven where official action of some sort is required . . . where the action involves the exercise of discretion, mandamus will not lie to dictate the manner in which the action is taken or the outcome of such action."). Plaintiffs therefore lack

a clear legal right to convene a hearing to challenge the legitimacy of any voter's ballot in the general election pursuant to O.C.G.A. § 21-2-230.

Third, In light of the Defendants' obligations under the NVRA, granting mandamus would be "fruitless," because the requested relief is barred and preempted by the NVRA. *See* Supra, Section II(A). Thus, even if the Plaintiffs were entitled to relief under State law, no voter could be removed from the rolls before the election or before receiving adequate notice—proceeding to Henderson's proposed challenge hearings would simply be an empty gesture. *Id*. In *Halpern Properties, Inc. v. Newton County Board 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 v. Raffensperger*, 842 S.E.2d at 899 (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)). So too here would granting Plaintiffs' Application would be nugatory and fruitless. The Court should 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 2nd day of October, 2024:

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*motion for admission *pro hac vice* forthcoming