IN THE SUPERIOR COURT OF OCONEE COUNTY
STATE OF GEORGIA

SUZANNAH HEIMEL, Plaintiff, v. SHARON GREGG - DIRECTOR OF BOARD OF ELECTIONS and JAY HANLEY - CHAIRMAN OF BOARD OF ELECTIONS, Defendant.	CASE NO. SUSR024000058-LL

MOTION TO INTERVENE BY SUSAN NOAKES AND COMMON CAUSE GEORGIA AND MEMORANDUM OF LAW IN SUPPORT

Susan Noakes and Common Cause Georgia ("Common Cause") (hereinafter, "Proposed Intervenors") hereby respectfully file this Motion to Intervene and Memorandum of Law in Support in the above-styled action pursuant to O.C.G.A. § 9-11-24, showing the Court the following:

I. INTRODUCTION AND BACKGROUND

Plaintiff Suzannah Heimel ("Plaintiff") filed an Application for a Writ of Mandamus on September 4, 2024 (the "Application") and a Motion for Emergency Injunction on September 12, 2024 (the "Motion") attempting to compel the Oconee County Board of Elections and Registration ("Oconee BOER") to process challenges to the eligibility of approximately 230 Oconee County registered voters based on purported changed residence. Plaintiff fails to meet the demanding requirements for the extraordinary writ of mandamus under Georgia law because, *inter alia*, the relief she seeks would violate O.C.G.A. § 21-2-230(b)(1), which bars challenges of an elector within 45 days of an election and its resulting process for removing voters based on a change in

residency or inactivity. Proposed Intervenors seek to intervene as a matter of right pursuant to O.C.G.A. § 9-11-24(a), or in the alternative, seek to permissively intervene under O.C.G.A. § 9-11-24(b).

As the Proposed Intervenors, Susan Noakes and Common Cause seek to intervene on behalf of themselves or on behalf of their members. Ms. Noakes is a dedicated member of her community and regularly attends Oconee BOER meetings due to her concerns about voter challenges and their impact on the upcoming election. She has a strong interest in protecting not only her right to vote, but also the rights of her fellow Oconee County voters. Her concerns about voter challenges and protecting the right to vote have caused her to take time away from her other obligations, including caring for her 92-year-old ailing mother. If the BOER refrained from taking actions related to mass voter challenges during the 45 days prior to the election, Ms. Noakes would not need to attend BOER meetings to obtain additional information to protect her right to vote as well as the right to vote of her fellow Oconee County voters.

Common Cause is dedicated to eliminating barriers to voting and increasing civic engagement among their members and voters in traditionally disenfranchised communities, including among members and voters in Oconee County. Plaintiff's requested relief would not only threaten these members' fundamental right to vote but would also cause Common Cause to divert resources from their voter registration, mobilization, education, and election protection efforts toward identifying, contacting, and assisting voters affected by the Application and Motion in time to participate in the upcoming General Election on November 5, 2024. Accordingly, Proposed Intervenors, on their own behalf (Ms. Noakes) and on behalf of their members (Common Cause), have a direct interest in (1) the proper administration of Georgia's elections, (2) ensuring that the eligible members, constituents, and voters in the community they serve remain registered

to vote and are able to successfully participate in the upcoming General Election, and (3) continuing to engage in critical election-year activities and other organizational priorities without being forced to divert resources to address harms to their members, constituents, and voters in the community that would flow from Plaintiff's requested relief. These interests are not otherwise adequately represented in this action. The Court should grant intervention as of right, or, in the alternative, the Court should grant permissive intervention.

II. ARGUMENT AND CITATION TO AUTHORITY

A. Legal Standard for Intervention.

Georgia courts have defined intervention as "the procedure by which a third person, not originally a party to a suit, but claiming an interest in the subject matter, comes into the case, in order to protect his right or interpose his claim." *AC Corp. v. Myree,* 221 Ga. App. 513, 515 (1996). The standard for allowing intervention in a civil case is set forth in O.C.G.A. § 9-11-24, which permits intervention both as of right (O.C.G.A. § 9-11-24(a)) and on a permissive basis (O.C.G.A. § 9-11-24(b)). If a motion for intervention is timely and the party seeking to intervene meets the requirements set forth in O.C.G.A. § 9-11-24(a), courts must allow intervention. O.C.G.A. § 9-11-24(a) ("Upon timely application anyone *shall* be permitted to intervene . . . ." (emphasis added)); *see also AC Corp.*, 221 Ga. App. at 515; *Baker v. Lankford*, 306 Ga. App. 327, 330 (2010) ("Where intervention appears before final judgment, where the rights of the intervening party have not been protected, and where the denial of intervention would dispose of the intervening party's cause of action, intervention should be allowed and the failure to do so amounts to an abuse of discretion"); *Buckler v. DeKalb Cnty.*, 290 Ga. App. 190, 193 (2008) (the statute "requires a three-fold showing of (1) interest, (2) potential impairment, and (3) inadequate representation.") (quoting *DeKalb Cnty. v. Post Props.*, 245 Ga. 214, 219 (1980)).

As set forth below, Proposed Intervenors' motion is timely and they have satisfied the requirements for both intervention as a matter of right and for permissive intervention under O.C.G.A. § 9-11-24 (a) and (b), respectively.

B. Proposed Intervenors' Motion Is Timely.

Proposed Intervenors' motion is timely. They move to intervene only one month after the filing of the Application, before any answers or motions to dismiss have been filed, before defense counsel has entered an appearance, and before any scheduled hearing has occurred. There is thus no prejudice to the parties based on an untimely motion to intervene here. "[W]hether a motion to intervene is timely is a decision entrusted to the sound discretion of the trial court," *AC Corp.*, 221 Ga. App. at 515 (citation omitted), and Georgia courts have routinely found intervention motions filed much later to be timely, *see, e.g., Liberty Mut. Fire Ins. v. Quiroga-Saenz*, 343 Ga. App. 494, 499 (2017) (finding intervention motion timely when intervenor "waited a month after hiring counsel to move to intervene"); *Stephens v. McGarrity*, 290 Ga. App. 755, 758 (2008) (finding that trial court abused its discretion in concluding that motion to intervene was untimely when filed 21 days after intervenor learned of proposed settlement and before the settlement hearing). The instant motion is indisputably timely.

C. The Moving Intervenors May Intervene as a Matter of Right.

Pursuant to O.C.G.A. § 9-11-24(a), there are three requirements for intervention as a matter of right: (1) interest in the subject matter, (2) impairment resulting from an unfavorable decision, and (3) inadequate representation. *See Baker*, 306 Ga. App. at 329; *Buckler*, 290 Ga. App. at 193. If a prospective party satisfies these requirements, a court may not deny intervention; the party "*shall* be permitted to intervene." O.C.G.A. § 9-11-24(a) (emphasis added). The Proposed Intervenors satisfy each of these requirements.

1. *Proposed Intervenors and their members have interests that support their intervention in this action as a matter of right.*

An intervening party has an interest in the case sufficient for intervention as of right when the litigation is "of such a direct and immediate character that he will either gain or lose by the direct effect of the judgment, and such interest must be created by the claim in suit, or a claim to a lien upon the property, or some part thereof, which is the subject matter of the litigation." *Rossville Fed. Sav. & Loan Ass'n v. Chase Manhattan Bank*, 223 Ga. 188, 189 (1967) (internal citations omitted). Proposed Intervenors have at least three significant, protectable interests at risk of impairment in this litigation: (1) ensuring that Oconee County elections are administered according to state law; (2) ensuring that voters in the community they serve remain registered to vote and are able to successfully participate in the upcoming General Election, and (3) for Common Cause, continuing to engage in critical election-year activities and other priorities without being forced to divert resources to address harms to their members, constituents, and voters in the community that would flow from Plaintiff's requested relief.

First, Georgia voters and organizations with members that have a stake in the community—like Proposed Intervenors—have a legally cognizable injury to vindicate public rights when elections are not administered according to the law. *See Sons of Confederate Veterans v. Henry Cnty. Bd. of Comm'rs*, 315 Ga. 39, 60–63 (2022); *Barrow v. Raffensperger*, 308 Ga. 660, 667 (2020) (finding that the plaintiff "has a right as a Georgia voter to pursue a mandamus claim to enforce the Secretary's duty to conduct an election that is legally required . . . [and] does not need to establish any special injury to bring that claim as a voter."); *Rothschild v. Columbus Consol. Gov't*, 285 Ga. 477, 479-480 (2009) (finding that plaintiffs' allegations that defendants failed to perform public duty promised to voters was sufficient to establish standing); *Manning v. Upshaw*, 204 Ga. 324, 326 (1948) (finding that plaintiff, as a "citizen and a voter" of Alpharetta,

may maintain a petition for mandamus to compel the mayor and city council members to call for an election to elect their successors). Because the actions Plaintiff demands would violate O.C.G.A. § 21-2-230(b)(1), the Proposed Intervenors' interests in ensuring Georgia's elections are conducted in compliance with state law are directly implicated.

Second, Proposed Intervenors have an interest in protecting the rights of their members who reside in Oconee County or their own right to vote in the upcoming General Election, some of whom are likely to be directly impacted by Plaintiff's mass voter challenges. *See* Affidavit of Susan Noakes (Exhibit 1, "Noakes Aff.") ¶¶ 18, 24, 25; Declaration of John W. Young, II (Exhibit 2, "Young Decl.") ¶¶ 20, 21, 23. The disposition of this suit will directly impact Ms. Noakes and Common Cause's members and constituents—eligible voters who could be disenfranchised if the Oconee BOER is ordered to process challenges during the O.C.G.A. § 21-2-230(b)(1) quiet period. *See* Noakes Aff. ¶¶ 18, 25; Young Decl. ¶¶ 20, 29-30.

Third, Proposed Intervenor Common Cause has an interest in avoiding the need to divert resources to respond to a mass removal of voters, particularly during the run up to the General Election when, consistent with its mission, Common Cause is already extraordinarily busy mobilizing voters. Proposed Intervenor's diversion of resources injuries here are more than sufficient to show impairment. *See, e.g.*, *Common Cause/Ga. v. Billups*, 554 F.3d 1340, 1350-51 (11th Cir. 2009), *cert. denied*, 129 S. Ct. 2770 (2009) (concluding Georgia NAACP had standing to challenge photo ID statute because it needed to divert resources to educate and assist voters); *Fla. State Conf. of N.A.A.C.P. v. Browning*, 522 F.3d 1153, 1165 (11th Cir. 2008) ("[A]n organization suffers an injury in fact when a statute 'compel[s]' it to divert more resources to accomplishing its goals") (citation omitted); *Ga. Coalition for People's Agenda, Inc. v. Kemp*, 347 F. Supp. 3d 1251, 1258 (N.D. Ga. 2018) (concluding that Georgia NAACP and GCPA have

standing based upon diversion of resources); *Ga. State Conf. of the NAACP v. DeKalb Cnty.*, 484 F. Supp. 3d 1308, 1316 (N.D. Ga. 2020) (citations omitted) (holding that "an organization suffers an injury in fact when a statute compels it to divert more resources to accomplishing its goals" and "the fact that the added cost has not been estimated and may be slight does not affect standing, which requires only a minimal showing of injury"); *Fair Fight Action, Inc. v. Raffensperger*, 413 F. Supp. 3d 1251, 1267 (N.D. Ga. 2019); *Gwinnett Cnty. NAACP v. Gwinnett Cnty. Bd. of Registration & Elections*, 446 F. Supp. 3d 1111, 1119 (N.D. Ga. 2020). Further, Proposed Intervenor Common Cause's election-related and other programming to assist challenged voters in the 30 days before the General Election is at risk of being impaired if this Court orders the Oconee BOER to process voter challenges within O.C.G.A. § 21-2-230(b)(1)'s 45-day quiet period. *See* Young Decl. ¶¶ 9, 22. Notably, as of October 7, 2024, it will be too late to re-register voters who are inappropriately removed from voter rolls.

2. *An unfavorable disposition will impair the Proposed Intervenors' interests as well as the interests of Common Cause's members.*

The second requirement is whether an unfavorable disposition would impair an intervenor's own interests. *See Liberty Mut. Fire Ins. Co.*, 343 Ga. App. at 499-500; *see also Bibb Cnty. v. Monroe Cnty.*, 294 Ga. 730, 740 (2014) (finding that "disposition . . . could impair [intervenor's] ability to protect its interest . . ." in a mandamus proceeding). This litigation presents the very real danger that Common Cause's core mission to protect the voting rights of their members and other eligible Georgia voters would be thwarted if voter challenges and purges are allowed to occur within 45 days of an election. The litigation also directly targets and harms Common Cause's members and other voters in the community at large who are on the list of

approximately 230 challenged Oconee County voters.

Plaintiff's Application and Motion seek to initiate a process that can disenfranchise and purge from the rolls Common Cause's members and other voters in the community just weeks before the 2024 General Election. Plaintiff's Application and Motion also directly attack and seek to undo and neutralize the good work of the Proposed Intervenors. Proposed Intervenors have registered to vote or have been assisting their members and other prospective voters in registering to vote; educating them about voting in the upcoming General Election; and planning activities to mobilize these voters to the polls, including in Oconee County. *See* Noakes Aff. ¶ 3; Young Decl. ¶¶ 5, 8, 21. Common Cause also has commitments to furthering their work in other areas such as civic education and ethics reform. *See* Young Decl. ¶ 8. Common Cause's staff are already stretched thin, and an outcome in this case that requires Defendants to initiate an improper purge would further drain the Proposed Intervenors' limited resources. *See* Young Decl. ¶¶ 7, 22. If the Application and Motion are successful and challenge hearings are convened to consider purging approximately 230 voters from the voting rolls, the Proposed Intervenors would have to invest substantial resources—in addition to those already expended to encourage voter registration and voter engagement this year—to monitor those challenge hearings, to obtain records related to those challenges, to quickly identify and connect with the affected voters, and to assist them in protecting their eligibility to vote in the upcoming November 5, 2024 General Election, in which voting is set to begin in a matter of days, all of which would require inordinate staff and volunteer time and resources these Proposed Intervenors cannot afford to lose at this juncture in the election cycle. *See* Young Decl. ¶¶ 7, 26, 27, 30.

Plaintiff's attack on and potential unwinding of Common Cause's extensive voter registration and get out the vote efforts in Oconee County demonstrate that its interests may be

impaired if Common Cause is denied the ability to intervene in this case, there is a high risk of injury to its core organizational interests and programs, and its members and constituents will be at risk of disenfranchisement, *see supra* Section II(C)(1)-(2), particularly because, as explained below, Defendants are not situated to adequately protect those interests. *See infra,* Section II(C)(3). The Proposed Intervenors sufficiently satisfy the impairment prong.

3. *The named respondents will not adequately represent the Proposed Intervenor Noakes and Proposed Intervenor Common Cause's members.*

Finally, the interests of the intervening parties are not adequately represented by the current parties to the action. *See Sw. Ga. Prod. Credit Ass'n v. Wainwright*, 241 Ga. 355, 356 (1978) ("The issue of adequacy of representation is a question of fact which must be ruled on by the trial court in considering the application for intervention, assuming the other requirements are met."). While there ordinarily is a presumption under Georgia law where a party seeks to intervene on the side of a governmental entity and "the interest of the intervenor is identical to that of a governmental body . . ." that representation is adequate, *Post Props.*, 245 Ga. at 219, courts have recognized that this presumption is a "weak" one that can be rebutted without much "difficult[y]." *See, e.g., Clark v. Putnam Cnty.*, 168 F.3d 458, 461 (11th Cir. 1999). All that is required is for Proposed Intervenors to meet the "minimal" burden of showing that their interests *may* be inadequately represented. *Id.* This requirement is readily satisfied here, because, just as in *Putnam County*, the Proposed Intervenors' interests are divergent and conflict with those of the Defendants, and there are strong reasons to think the Proposed Intervenors' interests will not be adequately represented by the Oconee County officials named in the action. *Id.* at 462-63.

First, as county officials, the named Defendants are charged with representing the interests of all Oconee County citizens at large, including the Plaintiff. But the duty to represent *every other citizen* in Oconee County indicates that the respondents cannot robustly represent the interests of

the Proposed Intervenors. *Id.* at 461-62. As the court found in *Putnam County*, the defendant county commissioners' "intent to represent everyone in itself indicates that the commissioners represent interests adverse to the proposed intervenors; after all, both the plaintiffs and the proposed defendant-intervenors are Putnam County citizens. The commissioners cannot adequately represent the proposed defendants while simultaneously representing the plaintiffs' interests." *Id.* at 461-62. The Defendants cannot adequately represent the Proposed Intervenors when this inherent divergence exists between the citizens whose interests the respondents must concurrently represent. *Id.* Moreover, as county officials, Defendants' "interests and interpretation of [O.C.G.A. § 21-2-230(b)(1)] may not be aligned and its reasons for seeking dismissal" may very well be different from those of Proposed Intervenors. *Putnam Cnty.*, 168 F.3d at 461–62 (holding that county representatives, who represent all county citizens, including both plaintiffs and the proposed defendant-interveners, reflect an interest distinct from that of the proposed intervenors).

Second, the named Defendants are individuals appointed by elected officials who, like all such officials, have an interest in "remain[ing] politically popular and effective leaders[,]" and, as such, they also have an incentive to compromise. *Putnam Cnty.*, 168 F.3d at 462 (internal quotations omitted) (alterations in original); *see also Meek v. Metro. Dade County*, 985 F.2d 1471, 1478 (11th Cir. 1993), *abrogated on other grounds by Dillard v. Chilton County Comm'n*, 495 F.3d 1324, 1330-33 (11th Cir. 2007), *cert. denied*, 554 U.S. 918 (2008). As county officials appointed by elected individuals, the named Defendants may thus have a disincentive to zealously represent the interest of the Proposed Intervenor Noakes and Proposed Intervenor Common Cause's members. *Id.* While the named Defendants may assert that they will adequately represent

the interest of Proposed Intervenors, there is no reason to believe that Defendants can do so in the same zealous, unconflicted manner as the Proposed Intervenors themselves.

Moreover, named Defendants have already demonstrated an unwillingness to defend fully against Plaintiff's demands by convening a challenge hearing within 45 days of the approaching general election. Noakes Aff. ¶¶ 9-10, 15-17; Minutes from Oconee BOER's 10/1/2024 Meeting (Exhibit 3). Specifically, at their recent October 1, 2024, meeting, the BOER processed approximately 80 challenges, finding probable cause as to all of them. *Id.; see also, e.g.*, Consent Decree, *Ga. State Conf. of the NAACP v. Hancock Cnty. Bd. of Elections & Registration*, No. 5:15-CV-414, Doc. 67-1 at 2-3 (M.D. Ga. Mar. 1, 2017). These facts together show that the Defendants' representation of the Proposed Intervenors "may be" inadequate; and "that is enough to entitle the [Proposed Intervenors] to intervene." *Trbovich v. United Mine Workers*, 404 U.S. 528, 538 n.10 (1972); *Clark*, 168 F.3d at 461-62.

Only the Proposed Intervenors, an organization that has a non-partisan mission to zealously protect the interests of Georgia voters and a dedicated community advocate and an Oconee County voter, can adequately represent the interests of the organization, their members, and other voters in the community in this litigation. Accordingly, this Court should grant the Proposed Intervenors' Motion to Intervene as a matter of right under O.C.G.A. § 9-11-24(a) because they have demonstrated an interest in the matter, that those interests would be impaired by an unfavorable decision, and that the named Defendants do not adequately represent their interests in this action.

D. In the Alternative, the Court Should Grant the Proposed Intervenors Permissive Intervention Under O.C.G.A. § 9-11-24(b).

Even if the Court determines that Proposed Intervenors are not entitled to intervene as a matter of right, the Court should exercise its broad discretion to grant permissive intervention, *see Allgood v. Georgia Marble Co.*, 239 Ga. 858, 859 (1977), as Proposed Intervenors have satisfied

the requirements for permissive intervention under Georgia law. Under O.C.G.A. § 9-11-24(b), a court may allow intervention on a permissive basis where the Proposed Intervenors' interests share common questions of law or fact with the underlying action. *See DeLoach v. Floyd*, 160 Ga. App. 728, 730 (1981). Permissive intervention is appropriate when such common questions exist and the intervention will not unduly delay or prejudice the original parties. *See* O.C.G.A. § 9-11-24(b). Proposed Intervenors have satisfied the requirements for permissive intervention because there are undeniably common questions of law and fact shared between the action engendered by Plaintiff and the interests of the Proposed Intervenors in opposing the Plaintiff's claims and demands for relief.

The Proposed Intervenors' interests arise from and are threatened by the exact same facts as the Application and Motion, and the relief Proposed Intervenors seek is specifically opposed to the relief Plaintiff seeks—preventing the holding of the requested challenge hearings and resulting removal of voters during the 45-day quiet period because those hearings would violate O.C.G.A. § 21-2-230(b)(1) and negatively impact the Proposed Intervenor Common Cause's voter protection, voter registration, get-out-the-vote activities, voter education, and advocacy initiatives and risk the protected rights of Proposed Intervenor Ms. Noakes. Additionally, intervention will not cause delay or prejudice to the parties because the Application was filed just one month ago, and a hearing has yet to be held. *See, e.g.*, *Ga. Aquarium, Inc. v. Pritzker*, 309 F.R.D. 680, 691 (N.D. Ga. 2014) (finding intervention would not prejudice parties where "litigation is in a relatively nascent stage and none of the deadlines" had yet passed). Indeed, the Proposed Intervenors are fully prepared to meet any schedule set by the Court and appear at the hearing already scheduled for this matter. Intervention at this early stage will cause no delay or prejudice to the parties.

Accordingly, and in the alternative to intervention as a matter of right, the Proposed Intervenors have satisfied the requirements for this Court to allow their permissive intervention under O.C.G.A. § 9-11-24(b).

III. CONCLUSION

For the reasons set forth above, the Court should grant the Proposed Intervenors' Motion to Intervene as a matter of right under O.C.G.A. § 9-11-24(a) or, in the alternative, for permissive intervention under O.C.G.A. § 9-11-24(b).

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

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*motion for admission *pro hac vice* forthcoming