IN THE SUPERIOR COURT OF OCONEE COUNTY
STATE OF GEORGIA

SUSAN NOAKES, Intervenor-Cross Claimant, v. SHARON GREGG, and JAY HANLEY, Respondents.	)	CASE NO. SUSR2024000058-LL

ORDER GRANTING TEMPORARY RESTRAINING ORDER

Intervenor-Cross Claimant Susan Noakes ("Ms. Noakes" or "Intervenor-Cross Claimant") seeks a temporary restraining order to require that Respondents follow O.C.G.A. § 21-2-230(b)(1) and postpone any action regarding challenged electors in the 45 days preceding an election until after the certification of the November 5, 2024 general election, as well as any other declaratory or injunctive relief as this Court deems proper. After granting Ms. Noakes's emergency motion for expedited treatment on October 10, 2024, this matter came before the Court for a hearing on Monday, October 21, 2024. The Court, having considered the filed pleadings and oral argument, and for good cause shown, finds as follows:

(1) Plaintiff has standing to assert the claims in her Answer & Cross-Claim;

efiled: 10-24-2024

(2) O.C.G.A. § 21-2-230(b)(1) requires Respondents to postpone any action regarding challenged electors pursuant to O.C.G.A. § 21-2-230(b) in the 45 days preceding an election,[1]—including considering probable cause determinations or taking any actions flowing therefrom, such as sustaining challenges, placing voters on a challenge list, removing voters from the registration rolls, or otherwise holding hearings or meetings related thereto—until after the election results are certified, irrespective of when the § 21-2-230 challenge ("S. 230 Challenge") was submitted to the BOER;

(3) the probable cause determinations made at the October 1, 2024 meeting are declared null and void;

(4) Respondents are ordered to restore the status of any voter placed on the challenge list or removed from the registration rolls as a result of the Oconee County Board of Elections and Registration's ("BOER") probable cause determination on October 1, 2024 to the voter's previous registration status, as though the October 1, 2024 challenges had not been sustained;

(5) Respondents are enjoined from taking any other actions pursuant to O.C.G.A. § 21-2-230(b) in the 45 days preceding the November 5, 2024 election and all future elections.

FACTUAL BACKGROUND AND PROCEDURAL HISTORY

This case originated on September 12, 2024, when non-party Suzannah Heimel filed a petition for a writ of mandamus seeking an order requiring Respondents to designate approximately 230 electors as "challenged" electors who must vote provisional ballots and prove their eligibility to vote prior to certification. On October 4, 2024, Ms. Noakes and Common Cause Georgia filed a motion to intervene and a proposed motion to dismiss Ms. Heimel's writ petition.

[1] The postponement does not include the BOER's duties to provide voters already placed on the challenge list prior to the 45 days preceding an election their legally protected opportunity to answer the grounds of a challenge if they choose to vote in the November 5, 2024 general election. *See* O.C.G.A. § 21-2-230(c)-(i).

Ms. Noakes also filed the instant cross-claim regarding other challenges that the BOER had adjudicated within 45 days of an election. At a hearing on October 7, 2024, the Court granted the motion to intervene and dismissed Ms. Heimel's writ petition.

The instant cross-claim concerns voter eligibility challenges that were submitted to the Oconee County Board of Elections and Registration ("BOER") pursuant to O.C.G.A. § 21-2-230 on September 8, 10, 11, 16, 18, and 19, 2024, and adjudicated by the BOER on October 1, 2024. On October 1, the BOER held a public hearing to determine whether "probable cause" existed to sustain the challenges pursuant to O.C.G.A. § 21-2-230(b). The BOER found probable cause to sustain the challenges as to 65 voters and subsequently notified those voters that they had been placed in "challenged" status for purposes of the upcoming presidential election. At that same meeting, the BOER set another challenge hearing for October 24, 2024, for the purpose of hearing evidence from the challenged voters on their eligibility to vote. The cross-claim seeks an emergency order reversing the October 1 probable-cause determinations and restoring the previous registration status of the challenged voters, and an injunction barring the BOER from conducting any further challenge proceedings under O.C.G.A. § 21-2-230 until after the certification of the November 5, 2024 election, as well as declaratory and permanent injunctive relief.

This Court set a hearing on Ms. Noakes' cross-claim and motion for a temporary restraining order for October 21, 2024. Late in the evening on Sunday, October 20, Respondents filed a motion to dismiss. As the motion was filed less than 24 hours before the hearing and had not been served on all counsel of record, the Court ruled, pursuant to its inherent authority to manage its docket, that the motion would not be taken up at the hearing and that Ms. Noakes could respond to the motion in the usual time permitted under the Court's rules. A decision on the motion to dismiss will be made in the ordinary course once it is fully briefed and is not a subject of this Order.

CONCLUSIONS OF LAW

Ms. Noakes is entitled to a temporary restraining order because she is likely to succeed on the merits of her claims that Respondents violated O.C.G.A. § 21-2-230(b)(1), and because the equitable factors considered by the Court on an emergency motion favor her.

I. Intervenor-Cross Claimant Has Standing.

This Court first addresses whether Ms. Noakes has standing for her cross-claim. As a resident and taxpayer of Oconee County, Ms. Noakes has standing to challenge Respondents' alleged failure to administer the election according to law. As the Georgia Supreme Court recently held, "community stakeholders have standing to enforce a public duty." *Cobb Cnty. v. Floam*, 319 Ga. 89, 95 (2024). Ms. Noakes is a long-time resident, registered voter, and citizen of Oconee County, and therefore has standing under *Floam*. *See generally* Dkt. # 15 (Mot. To Intervene, Ex. 1); *see also Sons of Confederate Veterans v. Henry Cnty. Bd. of Comm'rs*, 315 Ga. 39, 60–63 (2022) (recognizing that one's membership in the community sometimes is sufficient to confer standing to sue a local government "even in cases where no tax dollars [are] directly implicated.").

Because Ms. Noakes alleges that Respondents have violated and continue to violate O.C.G.A. § 21-2-230(b)(1), Ms. Noakes's interests in ensuring Georgia's elections are conducted in compliance with the law are directly implicated in this case. *See also 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).

II. O.C.G.A. § 21-2-230(b)(1) requires the BOER to postpone any action pursuant to § 21-2-230(b) Until After Certification of the November 5, 2024 General Election.

The question for the Court is whether O.C.G.A. § 21-2-230(b)(1) bars county election superintendents from adjudicating challenges brought pursuant to § 21-2-230(b) in the 45 days preceding an election and requires that election superintendents postpone those challenges until after the certification of that election. This Court finds that it does.

The relevant portion of O.C.G.A. § 21-2-230(b)(1) 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." The Court will refer to this provision as the "45-Day Rule."

The General Assembly adopted the 45-Day Rule as part of Senate Bill 189 in the 2024 legislative session, and that bill was signed into law by Governor Kemp on May 6, 2024 as Act 697. It became effective July 1, 2024. As a new law, the Court is unaware of court rulings on the interpretation of the 45-Day Rule.

A. <u>The Text and Structure of Section 230(b) Support Petitioner's Reading</u>

The Court agrees with Petitioner that O.C.G.A. § 21-2-230(b)(1) bars county election officials from considering any challenge—including making the "probable cause" determination required by subsection (b)—during the 45 days preceding an election, regardless of when the challenges were submitted to the Board. Because the BOER adjudicated and sustained Section 230 challenges on October 1, 2024—within 45 days of the November 5, 2024 election—the BOER violated subsection (b)(1).

To understand why this is the proper interpretation of subsection (b)(1), the Georgia Supreme Court requires us to look first at the text, reading it first in a natural and reasonable way *Green v. State*, 311 Ga. 238 (2021) ("When presented with a question of statutory interpretation, we begin by examining the statute's plain language, reading the text in its most natural and reasonable way, as an ordinary speaker of the English language would.") (citation and quotation marks omitted). In looking at Section 21-2-230 of the Georgia Code, the Court first notes that subsection (b)(1) is nestled under subsection (b):

> (b) Upon the filing of such challenge, the board of registrars shall immediately consider such challenge and determine whether probable cause exists to sustain such challenge. If the registrars do not find probable cause, the challenge shall be denied. If the registrars find probable cause, the registrars shall notify the poll officers of the challenged elector's precinct or, if the challenged elector voted by absentee ballot, notify the poll officers at the absentee ballot precinct and, if practical, notify the challenged elector and afford such elector an opportunity to answer. Probable causes shall include, but not be limited to, an elector who is deceased; an elector voting or registering to vote in a different jurisdiction; an elector obtaining a homestead exemption in a different jurisdiction; or an elector being registered at a nonresidential address as confirmed or listed by or in a government office, data base, website, or publicly available sources derived solely from such governmental sources. If a challenged elector's name appears on the National Change of Address data base, as maintained by the United States Postal Service, as having changed such elector's residence to a different jurisdiction, the presence of such elector's name on such data base shall be insufficient cause to sustain the challenge against the elector unless additional evidence would indicate that the elector has lost his or her residency as determined pursuant to Code Section 21-2-217; provided, however, that:
>
> (1) Any 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. Subsection (b)(1) modifies subsection (b), as denoted by the clause preceding (b)(1) ("provided, however, that:…."). Subsection (b)(1) thus refers to the content within subsection (b), which explains how to conduct the probable cause determination. The 45-

Day Rule established by Subsection (b)(1) is therefore most naturally read to refer to both the filing of the challenge and the adjudication of that challenge, including the probable cause determination.

Based on that straightforward reading of the text linking subsection (b)(1) to the conduct in subsection (b), subsection (b)(1)'s prohibition within 45 days of the election plainly refers to the conduct described in subsection (b)—which includes probable cause determinations and other resulting actions, such as notifying the poll officers and the challenged elector.

Legislative History

If the statute's text and how the statutory provision is constructed is not enough to clearly interpret the statute, the Georgia Supreme Court—and the legislature—requires us to look at the statute's legislative history. *Jud. Council of Ga. v. Brown & Gallo, LLC*, 288 Ga. 294, 297 (2010) ("Where the language of a statute is capable of more than one meaning, we construe the statute so as to carry out the legislative intent."); *see also* § 1-3-1(a) ("In all interpretations of statutes, the courts shall look diligently for the intention of the General Assembly, keeping in view at all times the old law, the evil, and the remedy.").

As detailed above, the text provides substantial support for the interpretation that § 21-2-230(b)(1) requires the BOER to postpone any action pursuant to § 21-2-230(b) in the 45 days preceding an election until after the next election is certified. But even if the text were still ambiguous, the legislative history further supports this interpretation. Legislative history supports that reference to the submission of a § 21-2-230 challenge was historically inclusive of a probable cause determination such that any postponement of a challenge contemplated in § 21-2-230(b)(1) includes the BOER's probable cause determination. This is because the legislature historically viewed a "challenge" as a process that includes the submission of a § 21-2-230 challenge *and* its probable cause determination, not just the filing of the challenge.

As Senator Rick Williams explained in a Senate Ethics Hearing on March 19, 2024, during this year's legislative session, § 21-2-230 challenges were traditionally conducted in-person, when an elector was going to vote. In discussing revisions to § 21-2-230 via HB 976, Senator Rick Williams, who was the Baldwin County Chief Registrar in 1998 and current vice-chair of Senate Ethics Committee, explained in that Senate Ethics hearing these challenges traditionally were done in-person, when an elector was going to vote. See Exhibit A. Therefore, the term "immediately" did in fact refer to an immediate probable cause determination by the county elections board.

This explanation for how challenges traditionally operated, and the historical relevance of an "immediate[]" probable cause determination, is significant because it supports the fact that the legislature—even in 2024—considered the submission of challenges under O.C.G.A. § 21-2-230 and the probable cause determination to effectively be a single event. Therefore the 45-day provision requiring the postponement of "any challenge" within 45 days of an election covers the whole process—from the submission to the probable cause determination to the consequences of a probable cause determination flowing therefrom.

III. Intervenor-Cross Claimant Is Entitled to a Temporary Restraining Order.

Georgia law provides: "An interlocutory injunction is a device to keep the parties in order to prevent one from hurting the other whilst their respective rights are under adjudication . . . . There must be some vital necessity for the injunction so that one of the parties will not be damaged and left without adequate remedy." *Lee v. Env'l Pest & Termite Control*, 271 Ga. 371, 373 (1999).

When determining whether to issue an interlocutory injunction, the trial court must consider whether (1) there is a substantial threat that the moving party will suffer irreparable injury if the injunction is not granted; (2) the threatened injury to the moving party outweighs the threatened harm that the injunction may do to the party being enjoined; (3) there is a substantial likelihood that the moving party will prevail on the merits of their claims at trial; and (4) granting

an interlocutory injunction will not disserve the public interest. Even though an interlocutory injunction is an extraordinary remedy, and the power to grant it must be prudently and cautiously exercised, the trial court is vested with broad discretion in making that decision. *Holland Ins. Group, LLC v. Senior Life Ins. Co.*, 329 Ga. App. 834, 841 (2014) (citations omitted).

This Court has "broad discretion" to enter an interlocutory injunction to "prevent irreparable damage to one of the parties and to maintain the status quo until a final determination is made." *Treadwell v. Inv. Franchises, Inc.*, 273 Ga. 517, 519 (2001).

Substantial Threat of Irreparable Injury

There is a substantial threat that Ms. Noakes will suffer irreparable injury if the Court does not enjoin the Board from considering challenges to Electors between now and the November 5, 2024 General Election, or future elections. Indeed, the BOER has recently considered and sustained challenges and placed dozens of voters in challenged status within the 45-day period before the General Election. Under the proper interpretation of the 45-Day Rule, this violates Georgia law. Ms. Noakes faces an ongoing injury to her public rights as an Oconee County voter based on this violation unless she can obtain relief from this Court.

An injury is "irreparable" either based on its nature, as when the party injured cannot be adequately compensated in damages, or when the damages that may result cannot be measured by any definite pecuniary standard. *Blackmon v. Scoven*, 231 Ga. 307 (1973) (overruled on other grounds by *City of Atlanta v. Barnes*, 276 Ga. 449 (2003)). Ms. Noakes and the voters in the community will be irreparably harmed if Respondents are permitted to hold electors in challenged status based on a probable cause determination made within the 45 days preceding the General Election.

Moreover, The Georgia Constitution expressly protects the right to vote:

> Every person who is a citizen of the United States and a resident of Georgia as defined by law, who is at least 18 years of age and not disenfranchised by this article, and who meets minimum residency requirements as provided by law shall be entitled to vote at any election by the people. The General Assembly shall provide by law for the registration of electors.

Ga. Const. Art. II, Sec. I, Par. II.

Ms. Noakes's and the public's trust in the electoral process will also be eroded if the Respondents are permitted to violate the law and consider challenges to electors' eligibility this close to the General Election. Accordingly, irreparable harm to voters and the public trust are highly likely if Respondents continue to hold voters in challenged status based on a probable cause determination made within 45 days of this or a future election, in violation of Georgia law.

The Threatened Injury to Ms. Noakes Outweighs Any Such Harm that the TRO Would Cause Respondents

The balance of the conveniences also favors Ms. Noakes. *Bijou Salon & Spa, LLC v. Kensington Enters., Inc.*, 283 Ga. App. 857, 860 (2007) ("[T]he trial court must balance the conveniences of the parties pending the final adjudication, with consideration being given to whether greater harm might come from granting the injunction or denying it.") (quoting *Univ. Health Svcs. v. Long*, 274 Ga. 829-30 (2002)).

As discussed above, the potential harm to Ms. Noakes and the Oconee voters is constitutional in nature. If this TRO is not granted, Oconee voters face the potential of being improperly placed in challenged status, burdening them with extra steps to prove their eligibility during the critical period before an election so that their ballot may be counted or else they risk losing their fundamental right to vote in this election. *Democratic Party of Ga., Inc. v. Perdue*, 288 Ga. 720, 727 (2011) (acknowledging a fundamental right to vote pursuant to Georgia Constitution); *Favorito v. Handel*, 285 Ga. 795 (2009) ("The right to vote is fundamental, forming the bedrock of our democracy.").

This significant, constitutional harm outweighs any such harm the TRO would cause the Respondents in fact, freeing the Respondents from any obligation to hear Section 230 elector challenges with fewer than 15 days to go before the General Election would allow free their time and resources to attend to their other pressing responsibilities with the upcoming election. Indeed, the General Assembly discussed the limited resources of county BOERs when the state legislators debated S.B. 189, the bill that added Section O.C.G.A. § 21-2-230(b)(1) to the Georgia Code. *See* Summary Transcript of House Floor Vote on S.B. 189 (Mar. 28, 2024), Constance Burton, Marcela Hawkins, Jack Lindsay, *Georgia State University Law Review* (Exhibit 2), pp. 5-6. For example, Representative Draper described the loss of county BOER resources spent on meritless voter challenges as "very harmful"" and stated, "All of this takes time and resources away from them doing their jobs, and a system that barely has any time, resources, or willing personnel left."" *Id.*

Any interest Respondents have is trumped by the voters' fundamental constitutional right to cast their ballots and have them counted, especially in this critical time days before an election, and any interlocutory relief would also be favorable to Respondents' time and resources.

Ms. Noakes is Substantially Likely to Prevail on the Merits

For the reasons discussed above, Ms. Noakes has demonstrated a substantial likelihood of success on the merits of her claims based on the proper interpretation of O.C.G.A. § 21-2-230(b)(1).

Granting the TRO Will Serve the Public Interest

Granting the requested TRO will serve the public interest. The public has a strong interest in the right of its qualified citizens to vote without unnecessary encumbrances. The public's perception of the electoral process is protected when the BOER that is empowered with overseeing

elections in Oconee County is made to follow Georgia law and not hear Section 230 Elector challenges within 45 days of the General Election. It would, in fact, offend public policy to permit the BOER to hear such challenges in violation of O.C.G.A. § 21-2-230(b)(1).

As the Cross Claimant is entitled to a TRO, it now follows that the Court hereby **ORDERS:**

(1) that the status of any voter placed on the challenge list or removed from the registration rolls as a result of the BOER's probable cause determination on October 1, 2024 be restored to their previous status on the voter registration rolls had the October 1, 2024 challenges not been sustained;

(2) that no other action pursuant to O.C.G.A. § 21-2-230(b) may be taken in the 45 days preceding an election.

SO ORDERED, this 24th day of October, 2024.

Hon. Lisa Lott, Chief Judge
Oconee County Superior Court

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