

IN THE SUPERIOR COURT OF DEKALB COUNTY
STATE OF GEORGIA

WILLIAM HENDERSON, DEKALB
COUNTY REPUBLICAN PARTY, INC.

Plaintiffs,

v.

Civil Action File No. 24CV8564

VASU ABHIRAMAN, in his official capacity;
NANCY JESTER, in her official capacity;
ANTHONY LEWIS, in his official capacity;
SUSAN MOTTER, in her official capacity;
KARLI SWIFT, in her official capacity

Defendants.

**DEFENDANTS' VERIFIED ANSWER TO PLAINTIFFS' APPLICATION FOR
WRIT OF MANDAMUS AND DEFENDANTS' COUNTERCLAIM FOR
DECLARATORY RELIEF**

NOW COMES VASU ABHIRAMAN, in his official capacity, NANCY JESTER, in her official capacity, ANTHONY LEWIS, in his official capacity, SUSAN MOTTER, in her official capacity, and KARLI SWIFT, in her official capacity (together, the "**Defendants**"), by and through counsel, and subject to their affirmative defenses and counterclaims asserted herein, respond to allegations of Mr. William Henderson and the Dekalb County Republican Party, Inc.'s (together, the "**Plaintiffs**") *Application for Writ of Mandamus* (the "**Application**") as follows:

FIRST AFFIRMATIVE DEFENSE

Plaintiffs fail to state a claim against Defendants for which relief may be granted.

SECOND AFFIRMATIVE DEFENSE

Plaintiffs' claim is barred, in whole or in part, by the doctrine of preemption to the extent it seeks an order the effect of which would conflict with federal statutes, regulations, and/or common law pursuant to the Supremacy Clause of the United States Constitution.

THIRD AFFIRMATIVE DEFENSE

Plaintiff DeKalb County Republican Party, Inc. does not have standing to bring the claims in the Application.

FOURTH AFFIRMATIVE DEFENSE

Plaintiffs have failed to name and join an indispensable party.

FIFTH AFFIRMATIVE DEFENSE

None of Defendants individually acting in their official capacities have any duties under O.C.G.A. § 21-2-230 but only the board of voter registration and elections as a whole has such duties.

SIXTH AFFIRMATIVE DEFENSE

As the sixth affirmative defense and in specific answer to the allegations set forth in the Application, Defendants show as follows:

JURISDICTION AND VENUE

1.

Defendants admit that this Court has jurisdiction over the Application. Defendants deny that they refused to perform their duties. To the extent any other allegations in Paragraph 1 have neither been admitted nor denied, Defendants deny the same.

2.

Defendants admit the allegations contained in Paragraph 2 of the Application.

PARTIES AND JURISDICTION

3.

Defendants admit the allegations contained in Paragraph 3 of the Application.

4.

Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 4 of the Application, and accordingly the allegations in such Paragraph shall be deemed denied pursuant to O.C.G.A. § 9-11-8(b).

5.

Defendants admit that they are members of the DeKalb County Board of Registration and Elections (“BRE”) and the BRE has certain statutory duties. Defendants deny any remaining allegations contained in Paragraph 5 of the Application.

FACTUAL BACKGROUND

6.

Defendants admit Georgia law provides for a process by which a voter can challenge the right of another voter to vote or remain on the voter rolls. Defendants deny any remaining allegations contained in Paragraph 6 of the Application.

7.

Paragraph 7 of the Application is a statement of law for which no response is required. To the extent that an answer is required, Defendants deny the allegations contained in this Paragraph of the Application.

8.

Defendants admit the allegations contained in Paragraph 8 of the Application.

9.

Defendants admit the allegations contained in Paragraph 9 of the Application.

10.

Defendants admit that on August 26, 2024, Mr. Henderson filed his second set of challenges. Defendants deny the remaining allegations contained in Paragraph 10 of the Application.

11.

Defendants admit that on August 28, 2024, Mr. Henderson filed his third set of challenges. Defendants deny the remaining allegations contained in Paragraph 11 of the Application.

12.

Defendants admit the allegations contained in Paragraph 12 of the Application.

13.

Defendants admit the allegations contained in Paragraph 13 of the Application.

14.

Defendants admit that on September 12, 2024, the BRE passed a resolution relating to the scheduling of voter challenges that complied with both State and Federal law. Defendants deny the remaining allegations contained in Paragraph 14 of the Complaint.

15.

Defendants admit the allegations contained in Paragraph 15 of the Application.

16.

Defendants admit the allegations contained in Paragraph 16 of the Application.

17.

Defendants deny the allegations contained in Paragraph 17 of the Application.

18.

Defendants deny the allegations contained in Paragraph 18 of the Application.

19.

Defendants admit the allegations contained in Paragraph 19 of the Application.

20.

Defendants deny the allegations contained in Paragraph 20 of the Application.

21.

Defendants admit that *Arcia v. Florida Secretary of State*, 772 F.3d 1335, 1348 (11th Cir. 2014) is a case involving the 90-day “quiet period” provision of the National Voter Registration Act of 1993. Defendants deny the remaining allegations contained in Paragraph 21 of the Application.

22.

Defendants deny the allegations contained in Paragraph 22 of the Application as stated.

23.

Defendants deny the allegations contained in Paragraph 23 of the Application as stated.

24.

Defendants deny the allegations contained in Paragraph 24 of the Application as stated.

25.

Defendants deny the allegations contained in Paragraph 25 of the Application as stated.

26.

Defendants admit the allegations contained in Paragraph 26 of the Application.

27.

Defendants deny the allegations contained in Paragraph 27 of the Application as stated.

28.

Defendants deny the allegations contained in Paragraph 28 of the Application.

COUNT I

29.

Defendants incorporate all preceding paragraphs of this Answer as if each paragraph were fully set forth verbatim herein.

30.

Paragraph 30 of the Application is a statement of law for which no response is required. To the extent that an answer is required, Defendants deny the allegations contained in this Paragraph of the Application.

31.

Paragraph 31 of the Application is a statement of law for which no response is required. To the extent that an answer is required, Defendants deny the allegations contained in this Paragraph of the Application.

32.

Defendants deny the allegations contained in Paragraph 32 of the Application as stated.

33.

Defendants deny the allegations contained in Paragraph 33 of the Application as stated.

34.

Paragraph 34 of the Application is a statement of law for which no response is required. To the extent that an answer is required, Defendants deny the allegations contained in this Paragraph of the Application.

35.

Defendants deny the allegations contained in Paragraph 35 of the Application.

36.

Defendants deny the allegations contained in Paragraph 36 of the Application.

37.

Defendants deny each and every allegation in the Application which is not expressly admitted herein and deny that Plaintiffs are entitled to the relief requested in the Application.

COUNTERCLAIM FOR DECLARATORY RELIEF

Having responded to the Application, Defendants state their Counterclaim against Plaintiffs as follows:

JURISDICTION AND VENUE

1.

Plaintiffs have submitted to the jurisdiction and venue of this Court by filing the Application against the Defendants.

2.

Mr. Henderson filed three separate challenges with the BRE on August 19, 2024; August 26, 2024; and August 28, 2024, respectively, pursuant to O.C.G.A. § 21-2-230, in an effort to begin a process to remove certain registered voters from the DeKalb County voter rolls (the “Challenges”).

3.

O.C.G.A. § 21-2-230 is a program enacted by the State of Georgia the purpose of which is to allow its electors to challenge and remove voters from the State’s voter rolls. O.C.G.A. § 21-2-

230(b)(1) provides that voter challenges within 45 days of an election shall be postponed until after certification of the election.

4.

The earliest of the Challenges was filed within 78 days of the 2024 Presidential Election, which occurred on Tuesday, November 5, 2024 (the “**2024 Election**”).

5.

The National Voter Registration Act of 1993 (the “**NVRA**”) provides that “A State shall complete, not later than 90 days prior to the date of a primary or general election for federal office, any program the purpose of which is to systematically remove the names of ineligible voters from the official list of eligible voters.” 52 U.S.C. § 20507(c)(2)(A).

6.

Although the NVRA provides an exception for removals based on individualized information at any time, the Challenges are not sufficiently individualized because they are not the product of “individual correspondence or rigorous inquiry” *Arcia v. Fla. Sec’y of State*, 772 F.3d 1335, 1346 (11th Cir. 2014).

7.

Insofar as the Application requests an order requiring the Defendants to conduct a hearing on the Challenges within 90 days of the 2024 Election, the completion of which could result in the systematic removal of registered voters from the DeKalb County voter rolls, it conflicts with the NVRA 90-day prohibition.

COUNT I –DECLARATORY JUDGMENT REGARDING THE NVRA QUIET PERIOD

8.

Defendants incorporate all preceding paragraphs of this Counterclaim as if each paragraph were fully set forth verbatim herein.

9.

Pursuant to O.C.G.A. § 9-4-2, “[i]n cases of actual controversy, the respective superior courts of this state ... shall have power, upon petition or other appropriate pleading, to declare the rights and other legal relations of any interested party petition for such declaration”

10.

An actual controversy exists between the Defendants and Plaintiffs concerning whether the Defendants may conduct a hearing on O.C.G.A. § 21-2-230 challenges within 90 days of an election where a federal candidate appears on the ballot or if the NRVA prohibits such hearings during the 90-day “quiet period.”

11.

Defendants ask this honorable court to declare their rights and duties with respect to the O.C.G.A. § 21-2-230 challenges in light of 52 U.S.C. § 20507(c)(2)(A).

12.

Defendants are entitled to a judgment declaring that O.C.G.A. § 21-2-230 is preempted by 52 U.S.C. § 20507(c)(2)(A) and that Defendants cannot hear any O.C.G.A. § 21-2-230 challenges within 90 days of a primary or general election where a candidate for federal office appears on the ballot.

COUNT II –DECLARATORY JUDGMENT
REGARDING THE SECTION 230 QUIET PERIOD

13.

Defendants incorporate paragraphs 1 through 7 of this Counterclaim as if each paragraph were fully set forth verbatim herein.

14.

Pursuant to O.C.G.A. § 9-4-2, “[i]n cases of actual controversy, the respective superior courts of this state ... shall have power, upon petition or other appropriate pleading, to declare the rights and other legal relations of any interested party petition for such declaration”

15.

An actual controversy exists between the Defendants and Plaintiffs concerning whether the Defendants may conduct a hearing on O.C.G.A. § 21-2-230 challenges within 45 days of an election under O.C.G.A. § 21-2-230(b)(1).

16.

Defendants ask this honorable court to declare their rights and duties with respect to the timing of probable cause hearing for O.C.G.A. § 21-2-230 challenges.

17.

Defendants are entitled to a judgment declaring that O.C.G.A. § 21-2-230(b)(1) prohibits Defendants from hearing any O.C.G.A. § 21-2-230 challenges within 45 days of a primary, run-off primary, election, or run-off election.

WHEREFORE, having fully answered and asserted defenses to the Application and stated a counterclaim, Defendants pray that:

(a) the Application be Denied;

- (b) the Court declares that O.C.G.A. § 21-2-230 is preempted by § 52 U.S.C. 20507(c)(2)(A) and that Defendants cannot hear O.C.G.A. § 21-2-230 challenges within 90 days of a primary or general election where a candidate for federal office appears on the ballot;
- (c) the Court declares that O.C.G.A. § 21-2-230 prohibits Defendants from hearing any O.C.G.A. § 21-2-230 challenges within 45 days of a primary, run-off primary, election, or run-off election
- (d) all costs of this action be taxed against Plaintiffs; and
- (e) Defendants have such other and further relief that the Court deems necessary and proper.

Respectfully submitted this 18th day of November, 2024.

SMALL HERRIN, LLP

Counsel for Defendants

By: /s/ Brent W. Herrin

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Benjamin S. Klehr
GA Bar No. 487931
Q. Andy T. Nguyen
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SIGNATURES CONTINUED ON FOLLOWING PAGE

DEKALB COUNTY ATTORNEY'S OFFICE
Counsel for Defendants

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(by Brent W. Herrin with express permission)
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jmpetty@dekalbcountyga.gov

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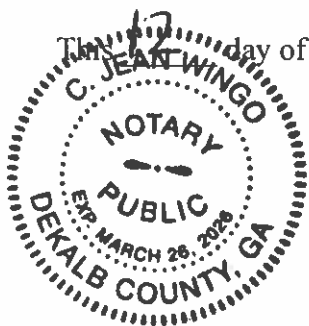
Civil Action File No. 24CV8564

VASU ABHIRAMAN, in his official capacity;
NANCY JESTER, in her official capacity;
ANTHONY LEWIS, in his official capacity;
SUSAN MOTTER, in her official capacity;
KARLI SWIFT, in her official capacity

Defendants.

VERIFICATION

Personally appeared before me, the undersigned officer duly authorized to administer oaths, Vasu Abhiraman, in his official capacity as a member of the DeKalb County Board of Registration and Elections, who after being duly sworn, deposes and says that the facts contained in the **DEFENDANTS' ANSWER TO PLAINTIFFS' APPLICATION FOR WRIT OF MANDAMUS AND DEFENDANTS' COUNTERCLAIM FOR DECLARATORY RELIEF** is true and correct to the best of his knowledge, information and belief.



Vasu Abhiraman, in his official capacity as a
member of the DeKalb County Board of
Registration and Elections

Sworn to and subscribed before me
this 12 day of November, 2024.

C. Jean Wingo

Notary Public

My Commission Expires: 3.26.2026

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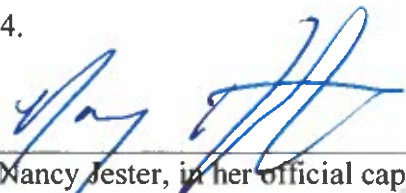
VASU ABHIRAMAN, in his official capacity;
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ANTHONY LEWIS, in his official capacity;
SUSAN MOTTER, in her official capacity;
KARLI SWIFT, in her official capacity

Defendants.

VERIFICATION

Personally appeared before me, the undersigned officer duly authorized to administer oaths, Nancy Jester, in her official capacity as a member of the DeKalb County Board of Registration and Elections, who after being duly sworn, deposes and says that the facts contained in the **DEFENDANTS' ANSWER TO PLAINTIFFS' APPLICATION FOR WRIT OF MANDAMUS AND DEFENDANTS' COUNTERCLAIM FOR DECLARATORY RELIEF** is true and correct to the best of her knowledge, information and belief.

This 12 day of November, 2024.



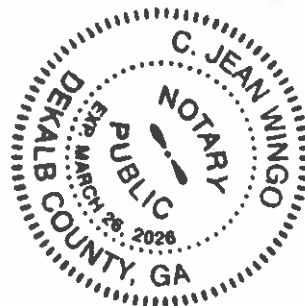
Nancy Jester, in her official capacity as a
member of the DeKalb County Board of
Registration and Elections

Sworn to and subscribed before me
this 12th day of November, 2024.

3-26-2026

Notary Public

My Commission Expires:



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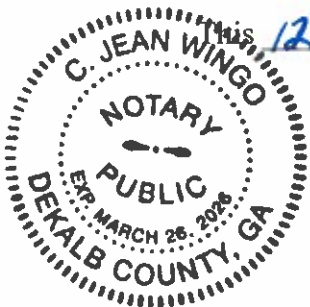
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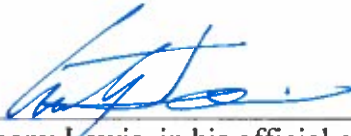
Defendants.

VERIFICATION

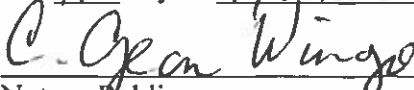
Personally appeared before me, the undersigned officer duly authorized to administer oaths, Anthony Lewis, in his official capacity as a member of the DeKalb County Board of Registration and Elections, who after being duly sworn, deposes and says that the facts contained in the **DEFENDANTS' ANSWER TO PLAINTIFFS' APPLICATION FOR WRIT OF MANDAMUS AND DEFENDANTS' COUNTERCLAIM FOR DECLARATORY RELIEF** is true and correct to the best of his knowledge, information and belief.

This 12th day of NOVEMBER, 2024.




Anthony Lewis, in his official capacity as a member of the DeKalb County Board of Registration and Elections

Sworn to and subscribed before me
this 12th day of November, 2024.


Notary Public
My Commission Expires: 3.26.2026

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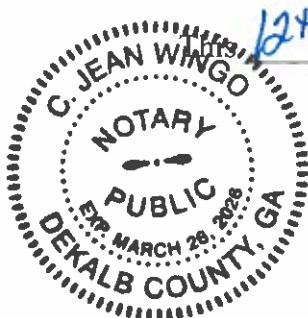
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VASU ABHIRAMAN, in his official capacity;
NANCY JESTER, in her official capacity;
ANTHONY LEWIS, in his official capacity;
SUSAN MOTTER, in her official capacity;
KARLI SWIFT, in her official capacity

Defendants.

VERIFICATION

Personally appeared before me, the undersigned officer duly authorized to administer oaths, Susan Motter, in her official capacity as a member of the DeKalb County Board of Registration and Elections, who after being duly sworn, deposes and says that the facts contained in the **DEFENDANTS' ANSWER TO PLAINTIFFS' APPLICATION FOR WRIT OF MANDAMUS AND DEFENDANTS' COUNTERCLAIM FOR DECLARATORY RELIEF** is true and correct to the best of her knowledge, information and belief.



12th day of November, 2024.

Susan Motter

Susan Motter, in her official capacity as a
member of the DeKalb County Board of
Registration and Elections

Sworn to and subscribed before me
this 12th day of November, 2024.

C. Jean Wingo
Notary Public

My Commission Expires: 3.26.2026

IN THE SUPERIOR COURT OF DEKALB COUNTY
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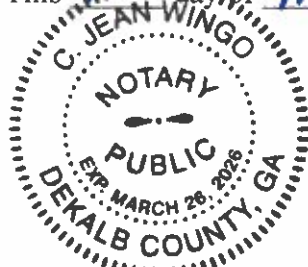
VASU ABHIRAMAN, in his official capacity;
NANCY JESTER, in her official capacity;
ANTHONY LEWIS, in his official capacity;
SUSAN MOTTER, in her official capacity;
KARLI SWIFT, in her official capacity

Defendants.

VERIFICATION

Personally appeared before me, the undersigned officer duly authorized to administer oaths, Karli Swift, in her official capacity as a member of the DeKalb County Board of Registration and Elections, who after being duly sworn, deposes and says that the facts contained in the **DEFENDANTS' ANSWER TO PLAINTIFFS' APPLICATION FOR WRIT OF MANDAMUS AND DEFENDANTS' COUNTERCLAIM FOR DECLARATORY RELIEF** is true and correct to the best of her knowledge, information and belief.

This 12th day of November, 2024.



Karli Swift

Karli Swift, in her official capacity as a
member of the DeKalb County Board of
Registration and Elections

Sworn to and subscribed before me
this 12th day of November, 2024.

C. Jean Wingo

Notary Public

My Commission Expires: 3.26.2026

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing DEFENDANTS' VERIFIED ANSWER TO PLAINTIFFS' APPLICATION FOR WRIT OF MANDAMUS AND DEFENDANTS' COUNTERCLAIM FOR DECLARATORY RELIEF was served upon the following counsel by using the Court's electronic filing system (Odyssey) which will automatically send email notification of and a link to such filing, to:

Alex B. Kaufman, Esq.
Kevin T. Kucharz, Esq.
Chalmers, Adams, Backer & Kaufman, LLC
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kkucharz@chalmersadams.com

This 18th day of November, 2024.

SMALL HERRIN, LLP
Counsel for Defendants

By: /s/ Brent W. Herrin
Brent W. Herrin
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