No. 23-7684

ORIGINAL

In the Supreme Court of the United States

ANDREW W. BELL,
Petitioner,

v.

BRAD RAFFENSBERGER, SECRETARY OF STATE OF GEORGIA;
CHRIS HARVEY, ELECTIONS DIRECTOR FOR THE STATE OF GEORGIA,
RESPONDENTS.

ON PETITION FOR WRIT OF CERTIORARI
TO THE U.S. COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

ANDREW W. BELL
P.O. Box 82348
Atlanta, GA 30354
(404) 380-0037
Andrew.Bell@live.com
pro se

QUESTIONS PRESENTED

Petitioner submitted his nomination to Respondents on August 13, 2020. The nomination petition was verified with 2200 **valid** signatures on August 19, 2020. However, Petitioner was notified on Sept 4, 2020 at 4:56 p.m., which was the Friday leading into Labor Day weekend that his name would not appear on the ballot because he only collected 827 signatures. The late notice prevent Petitioner from also becoming a write-in candidate as well. Georgia law stated that Tuesday September 8, 2020 was the last day a candidate could qualify as a write-in candidate. The law also requires the candidate to have placed an add in the newspaper by the morning of September 8, 2020, which was impossible because of the Labor Day holiday. Petitioner submitted his application for a writ of mandamus as required by O.C.G.A. § 21-2-171(c). Petitioner had to wait until September 15, 2020 even though the law states, "Upon the application being made, a judge of such court **shall** fix a time and place for hearing the matter in dispute as soon as practicable..." The superior court of Fulton County, Georgia stated Respondent Raffensberger was entitled to an extra five days before a hearing could be held because of O.C.G.A. § 9-10-2. There is no mention of O.C.G.A. § 9-10-2 in the O.C.G.A. § 21-2-171(c) statue. Respondents lied to the trial court concerning evidence. Petitioner's application for writ of mandamus was denied by the Superior Court of Fulton County on September 17, 2020. Petitioner in accordance with O.C.G.A. § 21-2-171(c) appealed to the Supreme Court of Georgia on September 22, 2020, which was within the five days allotted to him. The Supreme Court of Georgia did not abide by O.C.G.A. § 21-2-171(c), which states "It shall be the duty of the appellate court to fix the hearing and to announce its decision within such period of time as will permit the name of the candidate affected by the court's decision to appear on the ballot if the court should so determine." Petitioner's case was decided by the Georgia Supreme Court seven months later on May 3, 2021. Petitioner filed a motion for reconsideration that was denied on June 01, 2021. Respondents have never provided proof through the required verification statement that Petitioner only had valid 827 signatures. The signed verification statement of 2,200 valid still remains the only verification of how many valid signatures were counted for Petitioner in relation to his 2020 nomination petition.

The following questions are presented.

1. Should the Eleventh Circuit Court of Appeals have the same fraud-on-the-court exception to the *Rooker-Feldman* doctrine as the Sixth Circuit Court of Appeals?

2. Was the Petitioner's rights further violated by the courts, upon their omission or unacknowledged treatment of a clear set of facts, that clearly shows the verification statement was on one page and the cumulative total was on another was on another page, when the instructions say and other verification statements from other independent candidates show, the verification statement and cumulative total should be on the same page?

3. Does the *Rooker-Feldman* doctrine only relate to affirmed decisions of a state's highest court, or does it also pertain to decisions where none of the merits of the case were ruled

upon because they were deemed to be moot (the mootness doctrine and Article III of the constitution)?

4. Is O.C.G.A. § 21-2-170(a)-(h) unconstitutional and does it violate the First and Fourteenth amendment rights of independent candidates and/or the First and Fourteenth amendment rights of the registered electorate those candidates seek to represent?

5. Are the appellate procedures under O.C.G.A. § 21-2-171(c) unconstitutional and do they allow enough time for an independent candidate to effectively appeal to a Georgia superior court or Georgia appellate court in enough time that an error or crime can be discovered, that will enable that same candidate to have their name placed on the ballot?

6. With the invention of other technologies since *Jenness v. Fortson*, 403 U.S. 431 (1971), and the societal norms of social distancing, the societal norms of not sharing personal information, the susceptibility of fraud by documents being altered, tampered with, or destroyed by corrupt officials create a severe burden for the independent candidates; Is O.C.G.A. § 21-2-170(a)-(h) and O.C.G.A. § 21-2-171(a)(b)(c) the best way to calculate if a candidate has a modicum of support?

7. Does O.C.G.A. § 9-10-2 preference a state official over O.C.G.A § 21-2-171(c), and the First Amendment and Fourteenth amendments of the independent candidates and the registered voters of the electorate the candidate is apart of?

8. Being that most documents are transferred via email, Does the Supreme Court of Georgia's policy of paying a $5 fee for the first page and $1 for each additional page for court documents create a severe burden for a candidate seeking to petition this Court via a Writ of Certiorari?

LIST OF PARTIES TO THE PROCEEDING

Petitioner is Andrew Bell who was a plaintiff in district court and appellant in the Court of Appeals.

Respondents are Brad Raffensberger in his official capacity as Georgia Secretary of State, and Chris Harvey the former Elections Director of Georgia in his individual capacity.

RULE 29.6 STATEMENT

Petitioner is a natural person with no parent companies and no outstanding stock.

STATEMENT OF RELATED CASES

The following proceedings are directly related to this case within the meaning of Rule 14.1 (b)(iii):

- *Andrew Bell vs Secretary of State of Georgia c/o Brad Raffensberger*, Civil Action No. 2020CV340154 (Fulton County, Georgia superior court), judgement entered on September 17, 2020

- *Andrew W. Bell v Brad Raffensberger, Secretary of State of Georgia*, Case No. S21A0306 (Supreme Court of the State of Georgia), judgement entered on May 03, 2021

- *Bell v Raffensberger et al*, Case No. 1:21-cv-02486-SEG (U.S. District of Court of N.D. GA.), judgement entered on December 06, 2023

- *Andrew Bell v. Secretary of State of Georgia et al*, Case No. 23-10059 (Eleventh Cir.), judgement entered on March 27, 2024

TABLE OF CONTENTS

APPENDIX

TABLE OF AUTHORITIES

Federal Cases

Federal Statutes

State Cases

State Statues

Rules

Other

PETITION FOR WRIT OF CERTIORARI

Andrew Bell respectfully petitions this Court for a writ of certiorari to the U.S. Court of Appeals for the Eleventh Circuit to review the dismissal of his case on March 27, 2024. He also petitions this Court to add his motion to exceed the word limit in his reply brief that was denied in an Order by the Eleventh Circuit on July 25, 2023. Respondents are Georgia's Secretary of State Brad Raffensberger in his official capacity and Georgia's former Elections Director Chris Harvey in his individual capacity.

OPINIONS BELOW

The Eleventh Circuit's *per curiam* opinion is unreported and attached as Appendix ("App") at App: 1a. The district court granted Respondents 'motion to dismiss, denied Petitioner's "Petition for Writ of Mandamus", denied Petitioner's motion to amend, denied Respondents Motion to Strike Plaintiff's Amended Petition to Amend Pleading as moot, and the district court denied Petitioner Motion to bring phone into the courthouse as moot. The order of the district court is unreported and attached at App: 27a. The state court of Georgia's order is reported at 311 Ga. 616 (Ga.2021) and attached at App: 65a.

JURISDICTION

On March 27, 2024, the Eleventh Circuit affirmed the dismissal of the case. The district court had jurisdiction under Article III of the U.S. Constitution, 28 U.S.C. §§ 1331, 1343(a), 1344, 1391(b), 2202, and; 42 U.S.C. § 1983. The Eleventh Circuit had jurisdiction under 28 U.S.C. § 1291. This Court has jurisdiction under 28 U.S.C. §1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Appendix ("App.") contains the relevant statutory and regulatory provisions.

STATEMENT OF THE CASE

Petitioner submitted his nomination to the Respondents on August 13, 2020. Petitioner's verification statement was signed and validated with 2,200 signatures on August 19, 2020. *See* Appendix at 390a. However, Petitioner was notified via email on Friday September 4, 2020, at 4:56 p.m., four minutes before the close of business that he did not receive enough signatures to access the ballot. *See* Appendix at 448a. The appellate procedure listed in O.C.G.A. § 21-2-171(c) only grants the candidate five days to submit an application for a writ of mandamus. The five days are not business days, they are calendar days. In turn, three of the Petitioner's five days were Labor Day weekend. Petitioner was unable to get legal advice during those three days.

In the email, there was a letter dated August 28, 2018. *See* Appendix at 449a. The letterhead listed Brian P. Kemp as the Secretary of State of Georgia. When Petitioner submitted his nomination petition Respondent Brad Raffensberger was the Secretary of State of Georgia. There was an unsigned memo that stated the Petitioner only had 827 valid signatures, that was included with the letter. *See* Appendix at 476a. Petitioner's verification statement stated he had 2,200 valid signatures, which was signed on August 19, 2020, was not included in the email[1]. Petitioner filed his application for writ of mandamus on September 8, 2020. Petitioner had to wait seven days before receiving a hearing because the trial court gave O.C.G.A. § 9-10-2 preference instead of O.C.G.A. § 21-2-171(c). O.C.G.A. §21-2-171(c) is the only means available to an independent candidate, who is circulating a nomination, to correct an erroneous decision made by an election officer. O.C.G.A. § 21-2-171(c) mentions nothing in regard to O.C.G.A. § 9-10-2.

On September 14, 2020, a hearing was scheduled for September 15, 2020, at 10:30 a.m. *See* Appendix at 371a. Respondents sent Petitioner an email at 8:26 p.m. on September 14,

[1] [1] Petitioner was emailed the verification in an attachment the night before the hearing at 8:25 p.m. *See* App at 373

2020. Petitioner did not know that the email had been sent until minutes before the September 15, 2020 hearing. In turn, like the judge who presided over the case, Mr. Bell assumed the evidence presented by the Respondents' counsel was true. However, the evidence, was in fact, not true. One of the Respondents' attorneys, Miles Skedsvold[2], lied to the Fulton County Superior Court when he stated, "First, there's no basis in evidence for finding Mr. Bell's petition was denied in error." According to the Respondents' own instructions, as it relates to the nomination petition, *"The cumulative total of valid signatures* ***must be*** *documented on the 2020 Petition Verification Statement." See* Appendix at 482a. In Petitioner's case his verification statement is different from all other candidates who submitted nomination petitions. The cumulative total was not documented on the 2020 Petition Verification statement. Petitioner has a verification statement that states he collected 2,200 **valid** signatures. However, the cumulative total is missing from the page. *See* Appendix at 475a. All the other independent candidates have their cumulative totals listed above the verification statement. In turn, either a different form was used for Petitioner in a discriminatory method or Petitioner's original 2020 Verification Statement form was scanned and then altered by computer software application, and then the altered version was presented to the Fulton County superior court as the original. The added second page is not signed, and it uses a DeKalb County, Georgia letterhead instead of the State of Georgia letterhead that is on his 2020 Verification Statement. Also, Respondents stated, *"It's no[t] longer possible to grant Mr. Bell effective relief...the deadline to finalize the ballot came and went on September 11, 2020." See* App at 401. In turn, according to the Respondents, O.C.G.A. § 21-2-171(c) was and is ineffective in giving an independent

[2] Ironically according to Miles Skedsvold LinkedIn page he's a law clerk at the Eleventh Circuit Court of Appeals the very court who failed to acknowledge the fraud and the crime that was committed by the Respondents.

candidate an opportunity to correct an error by an election officer, and still have the name of the wrongfully aggrieved candidate placed on the election ballot.

Petitioner's application for writ of mandamus was denied by the Superior Court of Fulton County on September 17, 2020. *See* App at 76. Petitioner in accordance with O.C.G.A. § 21-2-171(c) appealed to the Supreme Court of Georgia on September 22, 2020, which was within the five days allotted to him. *See* App at 422. The Supreme Court of Georgia did not abide by O.C.G.A. § 21-2-171(c), which states *"It shall be the duty of the appellate court to fix the hearing and to announce its decision within such period of time as will permit the name of the candidate affected by the court's decision to appear on the ballot if the court should so determine."* Petitioner's case was decided by the Georgia Supreme Court seven months later on May 3, 2021, that court refused to rule on the merits of any of the issues or claims brought by Petitioner, the Georgia court dismissed Petitioner's claim as moot. *See* App at 65. Petitioner filed a motion for reconsideration that was denied on June 01, 2021. *See* App at 75. Upon the dismissal of the motion for reconsideration Petitioner filed a petition for writ of mandamus with U.S. District Court of Northern Georgia on June 17, 2021. The U.S. District Court made its ruling a year and half later on December 6, 2022. *See* App at 27. The district court based its decision on a corrected petition, *See* App at 295, instead of Petitioner's amended petition. *See* App at 314. The district court granted Respondents motion to dismiss and denied Petitioner's petition for writ of mandamus. The district court denied Petitioner's amended petition[3]. The district court denied Respondents petition as moot. The district court denied petition for Petitioner to bring his phone into the federal courthouse as moot. Petitioner appealed the U.S. District Court's decision to the

[3] Petitioner was unfamiliar with the difference in the terms "amended" and "corrected". The first two corrections labeled as "amendments" were not amendments at all as Petitioner stated in his April 25. 2022 pleading with the district court. Case No. 1:21-cv-02486-SEG (Doc 28) (U.S. N.D. GA)

Eleventh Circuit Court of Appeals on March 16, 2023. *See* App at 122. On July 25, 2023, the Eleventh Circuit denied Petitioner's motion for leave to exceed the word count on his reply brief. *See* App at 183. The Eleventh Circuit affirmed the U.S. District Court's decision on March 27, 2024. *See* App at 1a. Petitioner filed a petition for rehearing en banc on April 11, 2024. On April 27, 2024, Petitioner filed a motion for leave for to correct petition for rehearing en banc. On 05/21/2024 the petition for rehearing en banc was denied. On 05/28/2024 Petitioner's motion for leave to correct petition for rehearing en banc was granted.

I. LEGAL BACKGROUND

Five justiciability issues underlie this petition: (1) Jurisdiction of U.S. District Court and the Court of Appeals as it relates to *Rooker-Feldman*. (2) Whether constitutional rights of the Petitioner and the electorate were violated (3) Whether O.C.G.A. § 21-2-170(a)-(h) and O.C.G.A. § 21-2-171(a)(b)(c) are constitutional. (4) Whether Petitioner's reply should have been accepted by the Eleventh Circuit. (5) Whether the U.S. District Court should have accepted Petitioner amended petition. (6) The procedures of the Georgia clerks' offices and their expedience as it relates to O.C.G.A. § 21-2-171(b)(c).

A. *Rooker-Feldman* Doctrine and State Courts

Does the *Rooker-Feldman* doctrine only relate to affirmed decisions of a state's highest court, or does it also pertain to decisions where none of the merits of the case were ruled upon because they were deemed to be moot (the mootness doctrine and Article III of the constitution)

1. Fraud-On-The-Court

Fraud-on-the-court exception that have been adopted by some U.S. Court of Appeals circuits but not adopted by the Eleventh Circuit.

B. Constitutional Rights of Petitioner and The Electorate Violated

Whether the Respondents violated the constitutional rights of the Petitioner

C. Constitutionality of Georgia Election Laws

Whether O.C.G.A. § 21-2-170(a)-(h) and O.C.G.A. § 21-2-171(a)(b)(c) are constitutional. Whether O.C.G.A. § 9-10-2 gives preference to the election instead of the rights granted to the candidate under O.C.G.A. § 21-2-171(c) statue.

D. Petitioner's Reply Brief Included Evidence Responding to New Issues and Arguments that were Raised by Respondents

Whether Petitioner's reply should have been accepted by the Eleventh Circuit.

E. Petitioner's Amended Petition Not Being Accepted By The U.S. District Court Prevents Petitioner From Receiving Justice

Whether the U.S. District Court should have accepted Petitioner amended petition.

II. FACTUAL BACKGROUND

A. Petitioner's Candidacy and Nomination Petition

On August 13, 2020, Petitioner submitted his nomination directly to Respondent Harvey. On August 19, 2020, Petitioner was verified with 2,200 valid signatures. There were instructions given to the Georgia County Election Superintendents and Registrars, stating, "The cumulative number of valid signatures and a breakdown of rejection numbers **must be** documented on the 2020 Verification Statement.[4]" *See* App at 482. Petitioner's cumulative number of valid signatures and breakdown of rejection numbers was not documented on his verification statement. It is not a fact that September 15, 2020, was after the deadline the ballots had to be finalized. There was no proof or evidence given by the Respondents that September 11, 2020, was the last day to finalize the 2020 General

[4] The form says 2018 due to the fact the Respondents never honored any open records or discovery request. See App at 346a and 432a

election ballot. The Respondents lied to the trial court when they stated there was no evidence that Petitioner had collected the correct number of signatures required to get on the ballot. The panel stated, *"the district court did not err in denying Bell's motion to amend his complaint to add a request for damages." See* App at 26. Petitioner requested damages in the Georgia Court (*See* App at 446a) and in Petitioner's original complaint with the U.S. District Court (*See* App at 311). There have been many changes in technology and society since 1971, when Linda Jeness filed her lawsuit in 1971, for the same severe 5% requirement. That requirement is no longer in place for statewide candidates.

B. History Of Georgia Ballot Access Laws

Respondent Brad Raffensberger previously admitted on August 07, 2019, in his "Response to Statement of Material Facts" re MOTION for Summary Judgement *Cowen et al v. Raffensberger* Case No. 1:17-cv-04660 (Doc 97), the following: **(1.)** Georgia enacted its first ballot-access law in 1922[5]. Act of Aug. 21, 1922, ch. 530, § 3, 1922 Ga. Laws 97, 100 (codified at 1933 Ga. Code § 34-1904). That law provided that an independent candidate, or the nominee of any party, could appear on the general-election ballot as a candidate for any office with no petition and no fee. Before 1922, Georgia did not use government-printed ballots. Voters had to use their own ballots, and these were generally provided to voters by a political party. **(2.)** In 1943, Georgia added a five-percent petition requirement for access to the general-election ballot. Act of March 20, 1943, ch. 415, § 1, 1943 Ga. Laws 292. That law allowed candidates of any political party that received at least five percent of the votes in the last general election for the office to appear on the general-election ballot without a petition or fee. The law required all other candidates to file a petition signed by at least five percent of the registered voters in the territory covered by the office. When Georgia first

[5] 1922 and 1943 were both in the heart and center of the Jim Crow Era

enacted its five-percent petition requirement in 1943, the petition deadline was 30 days before the general election. *See* Act of March 20, 1943, ch. 415, § 1, 1943 Ga. Laws 292 (amending 1933 Ga. Code § 34- 1904, which provided that "All candidates for National and State offices, or the proper authorities of the political party nominating them, shall file notice of their candidacy, giving their names and the offices for which they are candidates, with the Secretary of State, at least thirty days prior to the regular election, except in cases where a second primary election is necessary."). **(3.)** In 1964, the State added a time limit for gathering signatures on a nomination petition, providing that candidates could not begin circulating a nomination petition more than 180 days before the filing deadline. Georgia Election Code, ch. 26, § 1, 1964 Ga. Laws Ex. Sess. 26, 93 (codified at 1933 Ga. Code § 34-1010). That law also changed the petition filing deadline to 50 days before the general election. *Id.* at 87 (codified at 1933 Ga. Code § 34-1001). **(4.)** In 1965, the General Assembly moved the petition deadline to 60 days before the general election. Act of March 22, 1965, Ch. 118, § 1, 1965 Ga. Laws 224, 225 (codified at 1933 Ga. Code § 34-1001). **(5.)** In 1969, the petition deadline was moved to the second Wednesday in June. Act of April 9, 1969, ch. 89, § 8B, 1969 Ga Laws. 329, 336 (codified at 1933 Ga. Code § 34-1001). **(6.)** In 1977, the petition deadline was moved to the second Wednesday in July. Act of March 30, 1977, ch. 294, § 3(c), 1977 Ga. Laws 1053, 1056 (codified at 1933 Ga. Code § 34-1002). In 1969, the petition deadline was moved to the second Wednesday in June. Act of April 9, 1969, ch. 89, § 8B, 1969 Ga Laws. 329, 336 (codified at 1933 Ga. Code § 34-1001). In 1977, the petition deadline was moved to the second Wednesday in July. Act of March 30, 1977, ch. 294, § 3(c), 1977 Ga. Laws 1053,1056 (codified at 1933 Ga. Code § 34-1002). **(7.)** In 1974, the General Assembly lowered the qualifying fee to three percent of the annual salary of the office, where it remains today. Act of January 29, 1974, ch. 757, § 2, 1974 Ga. Laws 4, 6. **(8.)** In 1979, the General Assembly created a separate petition requirement for statewide

offices. Act of April 12, 1979, ch. 436, 1979 Ga Laws 617 (codified at 1933 Ga. Code § 34-1010). Under that provision, an independent or political-body candidate seeking a statewide office needed to file a petition signed by at least two and a half percent of the registered voters eligible to vote in the last election for the office. Candidates for all other offices still had to meet the five- percent threshold. **(9.)** In 1986, the General Assembly lowered the petition threshold for statewide candidates to one percent. Act of April 3, 1986, ch. 1517, § 3, 1986 Ga. Laws 890, 892-93 (codified at Ga. Code § 21-2-170). The threshold for all other independent and political-body candidates remained at five percent. **(10.)** In 1986, the General Assembly also moved the petition deadline to the first Tuesday in August. *Id.* at 891-92 (codified at Ga. Code § 21-2-132). **(11.)** In 1989, the General Assembly moved the petition deadline to the second Tuesday in July, where it remains today. Act of April 4, 1989, ch. 492, § 2, 1989 Ga. Laws 643, 647 (codified at Ga. Code § 21-2-132). **(12.)** In 1999, the General Assembly added a further requirement that each sheet of a nomination petition be notarized. Act of April 1, 1999, ch. 23, § 2, 1999 Ga. Laws 23, 24-25 (codified at Ga. Code § 21-2-170).

III. PROCEDURAL BACKGROUND

Petitioner submitted his nomination petition on August 13, 2020. The nomination petition was verified with 2,200 valid signatures on August 19, 2020. Petitioner was notified that his name would not be placed on the ballot on September 04, 2020, at 4:56 p.m. Petitioner submitted the application for writ of mandamus as required by O.C.G.A § 21-2-171(c) on September 08, 2024. A hearing was not scheduled until September 15, 2024, in violation of O.C.G.A § 21-2-171(c)[6]. Petitioner's application for writ of mandamus was

[6] The trial judge (Kimberly Adams) afforded Respondent Raffensberger extra time even though O.C.G.A § 21-2-171(c) states, "Upon the application being made, a judge of such court **shall** fix a time and place for hearing the matter in dispute as soon as practicable..."

denied by the Superior Court of Fulton County on September 17, 2020. Petitioner in accordance with O.C.G.A. § 21-2-171(c) appealed to the Supreme Court of Georgia on September 22, 2020, which was within the five days allotted to him. The Supreme Court of Georgia did not abide by O.C.G.A. § 21-2-171(c), which states *"It shall be the duty of the appellate court to fix the hearing and to announce its decision within such period of time as will permit the name of the candidate affected by the court's decision to appear on the ballot if the court should so determine."* Petitioner's case was decided by the Georgia Supreme Court seven months later on May 3, 2021. Petitioner filed a motion for reconsideration. The motion was denied on June1, 2021. The Petitioner filed an instant lawsuit on June 17, 2021. The district court granted Respondents 'motion to dismiss, denied Petitioner's "Petition for Writ of Mandamus", denied Petitioner's motion to amend, denied Respondents Motion to Strike Plaintiff's amended petition as moot, and the district court denied petitioner's motion to bring phone into the courthouse as moot. The Eleventh Circuit's *per curiam* opinion was decided on March 27, 2024. Petitioner filed for a rehearing en banc on April 11, 2024. On April 27, 2024, Petitioner filed a motion for leave for to correct petition for rehearing en banc. On 05/21/2024 the petition for rehearing en banc was denied. On 05/28/2024 Petitioner's motion for leave to correct petition for rehearing en banc was granted.

REASONS TO GRANT THE WRIT

This petition raises severe issues on Article III standing regarding mootness in an election contest, as well issues concerning the *Rooker-Feldman* doctrine and the fraud-on-the-court exception. This case also raises issues on the candidates First and Fourteenth amendment rights to associate for the advancement of political beliefs, and the First and Fourteenth amendment rights of qualified voters to cast their votes effectively, regardless

of their political persuasion. The petition also raises critical issues involving due process, voting rights, access to the ballot, and fraud on behalf of an election official(s).

I. JURISDICTION OF THE U.S. DISTRICT COURT AND THE *ROOKER-FELDMAN* DOCTRINE

The panel for the Eleventh Circuit stated that, *"{Under the Rooker-Feldman doctrine, "federal district courts cannot review or reject state court judgements rendered before the district court litigation began." Behr, 8 F.4th at 1212}"* However, Petitioner went with a precedent that had been made 40 years earlier by John Anderson. From a historical context it seems as though Georgia has regressed further than it previously had. For example, 40 years to the day of Petitioner filing a petition for mandamus in the Fulton Superior Court on September 08, 2020, to appeal a decision made by the Georgia Secretary of State about his nomination petition, John B. Anderson filed a similar petition for mandamus on September 08, 1980. *Anderson vs. Poythress* No. C80-167A; USDC (N.D. Ga Sept 26, 1980). Anderson was given a hearing in Fulton County Superior Court within 3 days on September 11, 1980. However, Petitioner's hearing was scheduled 7 days later and took place on September 15, 2020. Anderson lost his appeal as did Mr. Bell, Anderson appealed to the Georgia Supreme Court as did Petitioner. Anderson's case was affirmed by the Georgia Supreme Court on September 25, 1980[7], two weeks after the superior court ruling. Petitioner's case was decided by the Georgia Supreme Court 7 months later on May 3, 2021. The Georgia court did not rule on the merits of any of Petitioner's claims, stating *"We need not to address the merits of Mr. Bell's claims because this appeal must be dismissed as moot." See* App at 71

[7] The Supreme Court of Georgia affirmed the lower court's decision in a 4-3 decision

One day after the superior court's decision was affirmed Anderson's name was added to the 1980 general election ballot after a September 26, 1980, U.S. District Court decision. The general election in 1980 was held on November 04, 1980. In 2020, the general election was held on November 03, 2020. More than 40 years later after the invention and improvement of several technologies, most importantly software and the Internet, it would appear that the argument of the Appellees and the panel is that it was more difficult in 2020 or even today, to administer a fair process for candidates having to access the ballot by nomination petition, than it was in 1980.

After the May 3, 2021 Georgia Court decision, Petitioner filed a motion for reconsideration that was denied. Upon the dismissal of the motion for reconsideration Petitioner filed a petition for mandamus on with U.S. District Court of Northern Georgia on June 17, 2021. The U.S. District Court made its ruling a year and half later on December 6, 2022.

A. Fraud-On-The-Court Exception to *Rooker-Feldman*

The Eleventh Circuit panel correctly states that Petitioner asked that the fraud-on-the-court exception be recognized concerning his case against the Respondents. The panel only acknowledged a letter that was sent to him by the Respondents, the letter had a date of August 28, 2018 and the letter listed Brian Kemp as the Secretary of State. Petitioner however, went much further than the letter from the Respondents in proving the fraud that was used in preventing his name from rightfully being placed on the ballot. Petitioner stated in his appeal to the Court of Appeals, *"Appellant stated in his petition several examples of fraud, mainly pertaining to his Verification Statement (Doc 3-1 at 6) and the unsigned memo with the DeKalb County letterhead (Doc 3-1 at 7). Appellant also presented evidence of the instructions that were sent to County Election Superintendents and*

Registrars (Doc 3-1 at 15). The instructions given clearly state that the cumulative total of valid signatures and a breakdown of rejection numbers must be documented on the Petition Verification Statement. Appellant has stated more than legal conclusions. Appellant has stated facts supported by evidence. The District Court insinuates that Appellant's only fraud accusation was based on the Appellees' letter dated August 28, 2018 that was submitted with Appellees September 4, 2020 email. The truth however is Appellant brought the facts regarding Appellees fraud and deception to the District Court, and therefore the District Court errored in denying the Appellant's motion to amend his petition. Appellant amended his petition in an effort to seek and gain justice." *See* App at 249a. The format of Petitioner's verification statement form differs from all other independent candidates in 2020. All of the other candidates cumulative were on the same page as their verification statement, as the Respondents instructions dictated. *See* App at 482a-486a; 475a.

II. CAPABLE-OF-REPETITION-YET-EVADING-REVIEW EXCEPTION TO THE MOOTNESS DOCTRINE

The panel for the Eleventh Circuit incorrectly stated that Petitioner did not argue the capable-of repetition-yet-evading-review exception in his original appellate brief. This is false, Petitioner did argue the capable-of repetition-yet-evading-review exception. The Petitioner stated in his original brief to the Court of Appeals the following, *"{District Court states that "Plaintiff does not state a claim for which relief can be granted". Appellant's petition and Appellant's amended pleading[8] state, Appellant rights were violated under 28 U.S.C. § 1343(a)(1)(2)(3)(4). Appellant was a victim of fraud at the hands of Appellees. Appellant's Validation Statement was signed and dated on August 19, 2020 with 2,200 signatures (Doc 3-1 at 6). An unsigned and unauthorized document was used to prevent*

[8] Amendment only changed one paragraph in the original petition (Doc 8).

Appellant from gaining access to the ballot (Doc 3-1 at 7). Appellant ended his petition with the following sentence, "The actions of the Office of the Secretary of State of Georgia are beyond negligent, and the fact that they continue to assert that Mr. Bell did not have the required 1,255 signatures even though the Respondents' own records show Mr. Bell had more than the required number of signatures (2,200) on August 19, 2020 shows that Appellee actions are with malice. In accordance with Rule 9(b)[9], Appellant stated in his petitions, "Along with the fact ***Mr. Bell has plans on continuing in politics as an Independent,*** *there has been conduct demonstrated by the Office of the Secretary of State of Georgia that routinely rejects signatures from nomination petitions and in Mr. Bell's case the Respondents provided unverified documentation, that could very well be fraudulent.}" See* App at 140a -141a. The actions of the corrupt election officials can definitely be repeated again because those officials haven't been held accountable for their actions, and the provisions listed in O.C.G.A. § 21-2-170(a)-(h) and O.C.G.A. § 21-2-171(a)(b)(c) have not been changed. The Eleventh Circuit talks about COVID-19 and the Secretary of State extending the deadline for the candidates to submit their nomination petition, however the deadline was previously the second Tuesday in August until that date was changed by the Georgia Assembly in 1989. In 2018, County Election Superintendents and Registrars had to have the nomination petition returned by August 17th. In 2020, Petitioner's verification statement was signed August 19th, however Petitioner was not notified until September 4, 2020 at 4:56 p.m. It would seem with the advent of new technologies that the Respondents have use and access to, that the process should be easier than it was in the 1980s regardless of COVID-19.

A. 2020 GENERAL ELECTION HAVING ALREADY OCCURRED

[9] FRAUD OR MISTAKE; CONDITIONS OF MIND. In alleging fraud or mistake, a party must state with particularity the circumstances constituting fraud or mistake. Malice, intent, knowledge, and other conditions of a person's mind may be alleged generally.

The panel for the Eleventh Circuit states, *"the 2020 general election had already occurred, the district court could not give Bell injunctive relief in the form of an order requiring the election officials to add him to the ballot for that election."* The panel leaves out that Mr. Bell also gave an option for a "new" election. *See* App at 16. Being that the State of Georgia had previously done that before and could do that again. Primarily because the incumbent in that election, Karla Drenner, had no opposition in the Democratic primary or in the General election, meaning a new election would not have any adverse effect on another candidate. Petitioner and the electorate of GA House District 85 were the only ones effected by the actions of the Respondents.

III. CONSTITUTIONALITY OF GEORGIA'S SIGNATURE REQUIREMENT

The panel of the Eleventh Circuit stated there was no severe burden placed on Petitioner. When a law or ruling is subjective, the law or ruling itself creates problems. What exactly is a significant modicum of support? A significant modicum of support may mean one thing to one person and something different to someone else. Is not 1% a significant modicum of support? The state of Georgia acknowledges that 1% is significant modicum of support going from the original 5% to 2 ½% and now 1% in statewide elections. However, with the advent of the Internet and most recently social media, a person could say their following on social media, or the amount of times someone has viewed their website, social media page, post, or video is a significant modicum of support. What is not true is that a nomination is petition as it presented in O.C.G.A § 21-2-170 and its appellate procedure in O.C.G.A § 21-2-171 are methods in which the candidates First and Fourteenth amendment rights to associate for the advancement of political beliefs, and the First and Fourteenth amendment rights of qualified voters to cast their votes effectively, regardless of their political persuasion, can be guaranteed or secured.

The District Court stated, *"Plaintiff's First and Fourteenth Amendment challenges to O.C.G.A, § 21-2-170 do not state a claim for relief because they are foreclosed by the Eleventh Circuit's decision in Cowen."* The opinion of the Eleventh Circuit in Georgia *Cowen v Sec'y of State,* U.S. App. 22 F.4th 1227 (11th Cir. Jan. 5, 2022) does not take into account for example that for some Independent candidates running for the State House of Representatives or State House Senate have to go into several different counties to get their nomination petition signed, but are not afforded an opportunity to get their petition signed at a statewide event, like a statewide candidate[10]. Neither does the Eleventh Circuit panel take into account candidates like Petitioner whose district is drawn inside of four other districts[11], and every address of his district is 2 miles or less from another district, therefore leaving a great possibility of registered voters who attend the same stores, schools, parks, religious institutions, and civic associations signing the circulators petition but not being validated for the candidate's nomination petition.

To go along with the heavy burden of circulating the petition, the State of Georgia has another law that makes it even harder to circulate the petition, O.C.G.A. § 21-2-414. When you combine the restriction of being 150 feet from any building from within a polling place is established or 25 feet from any voter standing in line, it makes it nearly impossible to approach anyone for the purpose of signing a nomination petition. The very place where there are known registered voters for the district, the individual circulating the nomination petition is hindered from speaking with those individuals. It may be reasonable to understand

---

[10] A statewide candidate has multiple counties but they can go to a Braves game and collect signatures of anyone attending the game as long as they are a registered voter of Georgia. The State Representative or Senate candidate would have to ask each person do they live in that particular district, and from Mr. Bell's experience most people do not know what State House or State Senate district they reside. A lot of people don't even know what their U.S. Congress district is.

[11] In 2020 it was 5 districts

the law if there is a candidate on the ballot, but it disenfranchises those that are not on the ballot and only seek a signature so that they can access the ballot.

Petitioner has encountered several people who have come up to him and state things such as, "we didn't see your name on the ballot but we wrote you in." Most of the people did not know that they could not write Andrew Bell in as a candidate because although September 8, 2020 was the first day that Mr. Bell could file his writ of mandamus, it was the last day that he could have filed his intention of candidacy to be a write-in candidate. It was impossible for Mr. Bell to be a write-in candidate due to the fact O.C.G.A § 21-2-133 states that the candidate had to submit a notarized authorization for such filing and publication. Mr. Bell could not publish his publication in the Atlanta Journal-Constitution (AJC) because it would have had to run the morning of September 8, 2020. However, due to the holiday Mr. Bell's last opportunity to notify, pay, and have the AJC publish his notice of intent of candidacy was September 4, 2020, and he was notified 4 minutes before the close of business on September 4, 2020, that he would not be appearing on the November 3, 2020, general election ballot.

A. *ANDERSON-BURDICK* TEST

In the Eleventh Circuit's panel opinion it stated the following, *"{To evaluate the constitutionality of the signature requirement, we apply what is known as the Anderson-Burdick test. See Curling v. Raffensberger, 50 F.4th 1114, 1121 (11th Cir. 2022), Democratic Exec. Comm. Of Fla. V. Lee, 915 F.3d 1312, 1318 (11th Cir. 2019). We begin by consider[ing] the character and magnitude of the asserted injury to the rights protected by the First and Fourteenth Amendments that the plaintiff seeks to vindicate." Anderson v. Celebrezze, 460 U.S. 780, 789, (1983). We then "identify and*

evaluate the precise interests put forward by the State as justifications for the burden imposed by its rule." Id. We then "We then "weigh□ all these factors" to "decide whether the challenged provision is constitutional." Id. If the restriction "imposes a severe burden on the right to vote," then we apply "strict scrutiny," meaning the restriction "survives only if it is narrowly tailored to serve a compelling state interest." Curling, 50 F.4th at 1122. But if the challenged restriction does not impose a severe burden on the First and Fourteenth Amendment rights, it need only be a "rational way" to meet the State's "important regulatory interests." Cowen, 22 F.4that 1233-34}." See App at 19.

The District Court stated, *"...O.C.G.A. § 21-2-171(c)'s five-day mandamus deadline is not facially unconstitutional under the Anderson-Burdick framework" (See* App at 60*).* The District Court gave three reasons for its decision. The first, was meeting state and federal deadlines to finalize ballots for printing and sending to absentee voters. However, the only document that Respondents provided, to state that they were meeting state and federal guidelines, was an affidavit from Respondent Harvey. There was never any proof or evidence given to verify his statement. Respondents have proven that they are not beyond chicanery, lying, or altering documents. Respondents provided no evidence from any authority showing any date or deadline regarding the finalization of ballots[12]. The second reason the district court gave for passing the Anderson-Burdick test was the idea the state needed the ballot restriction laws to conduct orderly elections. However, the advent of technology has made the election process easier for the Secretary of State of Georgia, but it

[12] if the statement is true, Georgia ballot restrictions have become even more stringent since the 1980 general election. John Anderson name was added to the 1980 general election ballot when he went before the District Court of Northern Georgia on September 26, 1980. Appellant's hearing was held on September 15, 2020. Appellees stated that deadline had already passed. Appellant filed his appeal with the Georgia Supreme Court on September 22, 2020.

has not made it easier for independent candidates to access the ballots. In all recent elections except for 2020 over 90 percent of people voted by electronic/programable voting machines. The Secretary of State's printing obligation has been significantly lowered. If an Independent candidate's name is not placed on an absentee ballot, it effects no one else but the independent candidate. Rightfully placing Petitioner's name on the ballot would not have made the November 3, 2020 election disorderly. The third reason the District Court gave for passing the Anderson-Burdick test, was so the State could avoid voter confusion by not altering ballots after voting had begun. Again, early voting did not start until October 12, 2020. Petitioner's hearing was held on September 15, 2020. Petitioner appealed to the Supreme Court on September 22, 2020, except for absentee ballots, ballots are no longer printed they are digital and programmable and can be changed very rapidly.

The District Court also stated, *"{The delay alleged by the Plaintiff is the kind of "episodic election irregularity" that should be avoided in the future, but that did not deprive Plaintiff of his constitutional rights. Gamza, 619 F.2d at 454.}" See* App at 63. The district court missed that fact that Appellant's verification statement was signed and dated August 19, 2020 with 2,200 valid signatures. Appellant was not notified until Sept 4, 2020 at 4:56 p.m., that his name would not be placed on the November 3, 2020 general election ballot.

The District Court states that the Georgia law is not discriminatory, *"{Unlike systematic discriminatory laws, isolated events that adversely affect individuals are not presumed a violation of the equal protection clause."}". See* App at 62. The District Court seems to have the belief, that when Georgia passed a law in 1922, and in its current form since 1943, to restrict ballot access to independent candidates, that the State was in support of voters having more choices. However, it is the opinion of Petitioner that most reasonable people would believe that in Georgia, that would have not been the case during those times in the Jim Crow Era. Being that *Brown vs Board of Education of Topeka,* 347 U.S. 483 was

decided in 1954, but Petitioner's mother was the first person to integrate Troup County, Georgia's school system in 1966, which was twelve years after the *Brown vs. Board of Education* ruling. It took legislation from Congress in 1964, 1965, and 1968 just to enforce rights that had been granted in 1865, 1868, and 1870. The years of 1964, 1965, and 1968 is well after 1943, and well after 1865, 1868, and 1870. The one fact that cannot be disputed is that Mr. Bell was validated with 2,200 signatures on August 19, 2020, and was defrauded from his rightful place on the ballot.

It is obvious and apparent that the Respondents have implemented methods and procedures, including the alteration of election documents to prevent independent candidates from having their name placed on the ballot. If the afore-mentioned examples, including fraud, do not demonstrate a violation of the First and Fourteenth Amendments it is highly doubtful anything else will.

B. ELEVENTH CIRCUIT DECISION IN *Cowen v. Secretary of State*, 22. F.4th 1227 (11th Cir. 2022)

The Eleventh circuit panel cites *Cowen* who never attempted to collect any signatures. In the Cowen decision in 2022, the Eleventh Circuit cites *Jenness* many times. Linda Jenness never attempted to collect any signatures either. The burden of the Secretary of State of Georgia has been significantly lowered since the *Jenness* decision in 1971, because with the exception of 2020 over 90 percent of the ballots in recent elections are cast by automated/programable voting machines. However, the burden of accessing the ballot has remained the same, or in Petitioner's case, the burden of accessing the ballot has gotten worse.

Petitioner's efforts were different than that of *Cowen's or* even *Jenness*. Cowen never put forth the effort to collect any signatures, nor did Linda Jenness. The District Court went on to say, that to evaluate Libertarian party's first ("severe burden") claim, the

Eleventh circuit performed an *Anderson-Burdick* test.[13] The District Court stated that, *"The Court explained that the Supreme Court previously upheld Georgia's 5% signature requirement in Jenness v Forston, 403 U.S. 431 (1971), and Jenness was still good law." (See App at 48).* The District Court acknowledged that Appellant disagreed with the *Cowen* decision. (*See* App at 50). First, although admirable, Linda Jenness never collected one signature for a nomination petition, and neither has any current elected official, judge, or other elected person in Georgia with the exception of one.[14] Appellant has unique perspective due to his experience. *Jenness* is not good law. Someone judging or reviewing the Georgia ballot-access laws from outside perspective might be of the impression that the Georgia ballot-access laws are quite open and numerous in many respects *(Cowen* at 1233), but in reality, they are not. Originally, in Appellant's mind, collecting 1793 signatures would not be a problem. However, he realized almost immediately that the task would be extremely difficult, and that realization was before the Governor of Georgia locked the state down because of the COVID-19 virus.

First, most people are unaware of the process required under 21-2-170(a)-(e),(h). Second, GA House District 85 elections have been comprised of entirely Democratic party votes, as reflected in the elections in the past 20 years. As the dissenting opinion pointed out in *Burbick v Takushi, "The dominance of the Democratic Party magnifies the disincentive because the primary election is dispositive in so many races. In effect, a Hawaii voter who wishes to vote for any independent candidate must choose between doing so and participating in what will be the dispositive election for many offices. This dilemma imposes*

---

[13] The *Anderson-Burdick* test named for the framework outlined by the 5-4 majority decision in the U.S. Supreme Court's *Anderson v Celebreze*, 460 U.S. 780 (1983) and refined in *Burdick v Takushi*, 504 U.S. 428 (1992).

[14] Keith Higgins who is a District Attorney who also ran as an Independent candidate in 2020. Appellant was involved in zoom meetings in 2020 with Keith Higgins and other independent candidates

a substantial burden on voter choice. It explains also why so few independent candidates secure enough primary votes to advance to the general election." When Petitioner would encounter potential registered voters hailing from his district, there would be an automatic resistance. A lot of registered voters would decline to sign the petition, due to them wanting protection of their personnel information, a lot of registered voters did not want to sign stating "they voted already" (not knowing that they still could sign the petition), a lot of registered voters wanted to sign the petition online[15], A lot of registered voters thought they were being solicited to buy something stating "I don't want but anything", other registered voters saying "why aren't you on the ballot already?" Other registered voters did not want the circulator to come on their property, other registered voters asking "are you a Democrat?"; Many registered voters did not know what district they were in,[16] and along with all of the afore mentioned occurrences many registered voters did not want to come in close proximity to the circulator.[17]

First, in *Cowen* the Eleventh Circuit panel states *"..the pool of voters eligible to sign included those not registered in the previous election." (See* App at 20*).* What the Eleventh Circuit does not consider is that for candidates like Mr. Bell, who should have been an independent candidate for GA House District 85 in the 2020 general election, the statement from the Eleventh Circuit, although true, is misleading. GA House District 85 is located in a densely populated area in the Center-South part of DeKalb County, Georgia. In 2020, District 85 is composed mostly of Americans of African descent. The district is mostly composed of middle to low-income families. The most important point, however, is that it is

---

[15] The Internet was not available in 1971
[16] District 85 is close proximity to 5 other districts
[17] Appellant believes social distance is the new normal after COVID-19 if it ever changes it won't be anytime soon.

surrounded by four other Georgia House Districts.[18] Every address in GA House District 85 is two miles or less from another district. Registered voters in District 85 essentially live in the same area(s) as registered voters from GA House Districts 84 and 86. They share the same schools, churches, grocery stores, gas stations, etc. O.C.G.A. § 21-2-170(a)-(e) does not allow for voters that are essentially in the same community to be counted. Georgia has long done their districting and redistricting polices to disenfranchise voters. It would not be unreasonable for someone to move from one apartment to another apartment or from one house to another house in a four-mile radius. In turn they could be a registered voter of GA House District 84 or 86 but shopping, going to school, or engaged in social activity in GA House District 85. O.C.G.A. 21-2-171(c) is antiquated. The Appellant encountered large amounts of registered voters who stated that they did not want to give their date of birth to someone that they did not know. Without the date of birth for verification the independent candidate can be left vulnerable to the unethical behavior of an unethical election official[19]. Second, O.C.G.A. § 21-2-171 (a)(b) does nothing to aid in verifying a registered voter who has no address or may be homeless. The verification process becomes even more arduous, difficult, or maybe impossible if the individual wanting to sign the petition does not have an address. There is an increase of homelessness in the United States and in Appellant's GA House District 85 district[20].

Second, Eleventh Circuit states in *Cowen v. Sec'y of State,* 22 .F4th 1227 (11th Cir. 2022), *"Candidates still have 180 days to collect signatures, and the filing deadline, which the Supreme Court stated was not "unreasonably early" in Jenness, is later now. (Cowen at 1233). See* App at 100. The problem with that rationale is, that in order for the candidate to

---

[18] In 2020 it was 5

[19] Petitioner was defrauded by Respondents in his 2020 election (*See* App at 303-304)

[20] https://endhomelessness.org/homelessness-in-america/homelessness-statistics/state-of-homelessness-dashboards/?State=Georgia

have the full 180 days, it is necessary for the candidate to start circulating the petition before the candidate has actually qualified to be a candidate. In Petitioner's case he was required to submit his nomination petition by the second Tuesday in July, which was July 14, 2020.[21] The earliest date Respondents allowed Petitioner to declare his candidacy was March 2, 2020. 180 days prior to July 14, 2020 would have been January 16, 2020. The actual time was really March 2, 2020 through July 14, 2020, which is only 134 days. Forcing a potential candidate to tell the public to sign their nomination petition because they are a candidate, when they really are not, is forcing the candidate to lie to the electorate. This may be the practice of the Respondents, but not the practice of Petitioner.

Third, the Eleventh Circuit says in *Cowen, "The Georgia legislature has since added a requirement that write-in candidates file a notice of candidacy, but that change has no effect on the burden of gaining ballot access by nomination petition." (Cowen at 1233). See* App at 100-101. This was not true for Petitioner. O.C.G.A. § 21-2-133 set the requirements for write-in candidates in Georgia. O.C.G.A. § 21-2-133(a)(b) has requirements that a write-in candidate must publish a notice of their intention to run as a write-in candidate. O.C.G.A. § 21-2-133(a) is difficult to decipher from the Petitioner's experience of running for Georgia House District 85. GA House District 85 is a state elected office, but it is not a statewide elected office. Some GA House districts cover more than one county. Mr. Bell's district only encompasses one county. The fact remains however he was notified by Appellees on Friday September 4, 2020 at 4:56 p.m. Labor Day weekend. Therefore, making it impossible for him to place a notice in the Atlanta Journal-Constitution or the DeKalb Champion newspaper. O.C.G.A. § 21-2-133(a)(1) states Petitioner would have had to have his notice run in the paper by September 8. The Atlanta Journal-Constitution office whom Petitioner

[21] The date was changed to August 13, 2020 due to the the signature petition requirement by 30%. *Cooper* v. *Raffensperger,* 1:20-cv-01312, 2020 WL 3892454 (N.D.Ga July 9, 2020)

believes he needed to contact was unavailable until the morning of September 8 and there was no longer an afternoon paper. In turn, the Respondents prolonged review and notice to Respondents kept Petitioner from being eligible to become a write-in candidate, but write-in candidate has a real chance of winning if there not already well-known and people know that they're running for office? Lastly, it was possible to derive those theories in *Jenness* to explain how "open in numerous respects" Georgia ballot-access laws are perceived to be because Linda Jenness never experienced circulating any nomination petitions. Unlike Linda Jenness, Andrew Bell can say that it is nearly an impossible task, because he has been fighting this case for almost four years in the same tenacity in which he set out to collect signatures for his nomination petition. Petitioner's viewpoint is not from assumption but from experience.

The District Court states, there was no severe burden placed on Petitioner. What more significant burden can there be if Petitioner collected more than the required amount of signatures, and he was still unable to have his name placed on the ballot?

The District Court states, *"Plaintiff's First and Fourteenth Amendment challenges to O.C.G.A, § 21-2-170 do not state a claim for relief because they are foreclosed by the Eleventh Circuit's decision in Cowen." See* App at 50. The opinion of the Eleventh Circuit panel in the *Georgia Cowen v Sec'y of State*, 22 F.4th 1227 (11th Cir. Jan. 5, 2022) does not take into account for example that for some independent candidates running for the GA State House of Representatives or GA State Senate have to go into several different counties to get their nomination petition signed, but are not afforded an opportunity to get their petition signed at a statewide event, like a statewide candidate[22]. Neither does the Eleventh Circuit panel

[22] A statewide candidate has multiple counties but they can go to a Braves game and collect signatures of anyone attending the game as long as they are a registered voter of Georgia. The State Representative or Senate candidate would have to ask each person do they live in that particular

take into account candidates like Appellant whose district is drawn inside of four other districts[23], and every address of his district is 2 miles or less from another district, therefore leaving a great possibility of registered voters who attend the same stores, schools, parks, religious institutions, and civic associations signing the circulators petition but not being validated for the candidate's nomination petition. Meanwhile, a statewide candidate does not have go to every county in Georgia to collect signatures. They can go to a University of Georgia game and collect signatures from people coming from the entire state all in one place, as long as the person is registered to vote in Georgia they can sign that person's petition. Meanwhile, a candidate from GA District 85 can't have a person that lives 2 miles away or less sign their petition. Which one is harder? Which one is more severe?

C. CONSTITUTIONALITY OF GEORGIA'S REVIEW AND APPELLATE PROCESS CONCERNING O.C.G.A § 21-2-171(a)(b)(c)

A panel of the Eleventh Circuit states that Petitioner submitted a nomination petition with 2,200 signatures. *See* App at 3. Petitioner submitted more than 2,200 signatures. What can be stated as a fact, is that on August 19, 2020, Petitioner was verified with 2,200 valid signatures. The following statement was provided by the DeKalb County Voter and Registration office: *"This is to certify that the County Voter Registration Office has reviewed the referenced nomination petition and has determined that the petition contains 2,200 valid signatures, as per attached memo provided by the Secretary of State for verifying signatures on the nomination petition for the November 3, 2020 General Election. This petition is*

---

district, and from Mr. Bell's experience most people do not know what State House or State Senate district they reside. A lot of people don't even know what their U.S. Congress district is.

[23] In 2020 it was 5 districts

hereby returned with this verification statement. This 19th day of August 2020." See App at 475.

The panel recognized that the *"Georgia law requires the Secretary of State to expeditiously...examine the petition..." See* App at 3. However, in Petitioner's case although the verification statement is signed on August 19, 2020, he was not notified until September 4, 2020. As Petitioner stated to the Supreme Court of Georgia, the U.S. District Court, the Eleventh Circuit and now this Court, the documentation submitted to the trial court by the Respondents was fraudulent. The instructions given to the Georgia County Election Superintendents and Registrars, state, *"The cumulative number of valid signatures and a breakdown of rejection numbers* ***must be*** *documented on the 2020 Verification Statement." See* App at 482. Petitioner's cumulative number of valid signatures and breakdown of rejection numbers was not documented on his verification statement. As a matter of fact, his verification statement differs from every other independent or third-party candidate who submitted a nomination petition in 2020 and previous years, due to the fact that the format[24] of his verification differs from everyone else's. The format for all the other candidates is the same but Petitioner's is different. A reasonable person would have to assume that either DeKalb County received different instructions and a different verification statement form than the other Georgia counties, or the original form was altered to remove the cumulative total and second fraudulent document was added in successful attempt to keep Petitioner's name from being placed on the 2020 General election ballot.

[24] How the document is formatted or laid out.

Although the abovementioned facts were presented to the Georgia Court (*See* App at 459a; 493a-494a), to the U.S. District Court (*See* App at 303a-305a)[25], and several times to Eleventh Circuit (*See* App at 134a-135a, 139a-141a, 154a-155a); The Georgia Court, the U.S. District Court nor the panel for the Eleventh Circuit has ever made mention, wrote, gave a statement or opinion about these set of facts. To leave out these facts, **presents a false narrative** of the events involving the presentation of Petitioner's nomination petition, the examination and review of Petitioner's nomination petition, the verification statement itself, as well as the appellate process and procedure.

The panel does however, mention another fact, that letter Petitioner received in the email was dated August 28, 2018, and the letterhead identified Brian Kemp as the Secretary of State[26]. *See* App at 4. However, the panel goes on to say, *"there was only one week until the deadline for elections officials to finalize the ballots for general election."* The panel stated an "unknown" as a fact. The Secretary of State's office has never presented any evidence that the ballots had to be finalized by September 11, 2020. The only submission presented to the trial court was an affidavit from Respondent Chris Harvey, which at this point from and integrity and proof standpoint does not mean anything, being it was his office, and possibly Harvey himself who devised the scheme to remove the cumulative total from the official document through scanning the document and then use computer software to remove the cumulative total from the form, and then print out a new verification statement and claim it was the original document, while at the same time adding a second unsigned document that doesn't even have the same letterhead as the verification statement. Once the second document was added with the derived cumulative total the

---

[25] "Doc" refers to documents transferred by the U.S. District

[26] Brian Kemp at not been the Secretary of State for almost 20 months at that time.

Respondents presented both documents to the Fulton County superior court when there only should have been one document according to the Respondents own instructions. The Respondents never produced any official documentation stating which date the 2020 ballots had to be finalized. Along with that, the counsel for Respondent Brad Raffensberger lied several times to the superior court judge. The panel includes two statues[27] stating, *"Under federal law and Georgia law, elections officials must transmit absentee ballots to eligible voters[28] at least 45 days before the general election."* *See* App at 4. However, one of the statues contradicts the statements made by the panel and the Respondents. 52 U.S.C. § 20302(a)(8)(A)(B) states **(A) except as provided in subsection (g)**, in the case in which the request is received at least 45 days before an election for Federal office, not later than 45 days before the election; and **(B)** in the case in which the request is received less than 45 days before an election for Federal office— **(i)** in accordance with State law; and **(ii)** if practicable and as determined appropriate by the State, in a manner that expedites the transmission of such absentee ballot. **Subsection (g) actually requires that the Secretary of State of Georgia request a hardship waiver[29] when the state has suffered a delay due to a legal contest.**

In its opinion the panel stated, *"The superior court held a hearing on Bell's application for a writ of mandamus on September 15, which was after the deadline for ballots to be finalized."* *See* App at 5. First, it is not a fact that September 15, 2020 was after the deadline the ballots had to be finalized, Secondly it appears that the Respondents, the Fulton County Superior Court, the Georgia Court, the U.S. District Court, and the opinion of the panel, are stating that O.C.G.A. § 9-10-2 took preference or trumped Petitioner's

---

[27] 52 U.S.C. § 20302(a)(8)(A) and O.C.G.A. § 21-2-384(a)(2)
[28] The eligible voters in this circumstance or those voters who have already requested an absentee ballot.
[29] 52 U.S.C. § 20302(g)(1)(2)(B)(ii)

rights and the rights of the GA House District 85 electorate, that were granted under O.C.G.A. § 21-2-171(c). It appears also that the Respondents, U.S. District Court, and the Eleventh Circuit panel believe that the Georgia Secretary of State's alleged right to a hearing override the First and Fourteenth amendment rights of independent candidates and the First and Fourteenth amendment rights of the registered electorate of who offered their support by signing Petitioner's nomination petition. In Petitioner's case, he was denied his rightful place on the 2020 general election ballot, and the registered electorate were denied their First amendment right to choose a candidate of their choice to redress their grievances to their government. In 2020, Petitioner was denied his rightful place on the ballot and the electorate of Georgia House District 85 were denied their right of having their voices heard. Furthermore, integrity in the democratic process was not maintained. A crime was committed. Petitioner has not filed any criminal complaint as it relates to the crimes committed, nevertheless the alteration of election documents violates several Georgia and federal laws.[30] What part of fraud or alteration of documents maintains the integrity of the democratic system? Finally, if September 15, 2020 was after the ballot had been finalized it further proves that O.C.G.A. § 21-2-171(c) does not give a candidate the opportunity to correct an error an have their name placed on the ballot in time for the election, in violation of the First and Fourteenth amendment.

The panel states that the Georgia Supreme Court *"{noted that Georgia law generally requires it "announce its decision" in an appeal reviewing the denial of a nomination petition "within such period of time as will permit the name of the candidate affected by the court's decision to be printed on the ballot if the court should so determine.}" See* App at 6. The

[30] O.C.G.A § 21-2-562, O.C.G.A § 21-2-603, O.C.G.A § 21-2-604, 28 U.S.C. § 1343(a)(1)(2)(3)(4), 42 U.S.C § 1983, 42 U.S.C. § 1985

Georgia court never used the word "generally". As a matter of fact the Georgia Court quoted a portion of the Georgia law O.C.G.A. § 21-2-171(c) verbatim. The Georgia Court did not use the word "generally" it used the word "**shall**"[31], writing "It **shall** be the duty of the appellate court to fix the hearing and to announce its decision within a such a period of time as will permit the candidate affected by the court's decision to be printed on the ballot if the court should so determine." O.C.G.A § 21-2-171(c) does not work and is incapable of providing due process to the candidate seeking a review of their nomination petition. Along with that, the process has been and is still susceptible to fraud.

D. CURRENT CONTROVERSIES NOT PRESENT DURING *JENNESS* (1971)

Other controversies involve issues that were not present or in front of the U.S. Supreme Court when the Court ruled on *Jenness v. Fortson*, 403 U.S. 431 (1971). In 1971, the Internet was not available as a means to circulate petitions. In 1971, the were no electronic devices to collect signatures, through a code or other verification such as a driver's license number. In 1971, identity theft, to the point that it even existed, was not a concern of most people. In 1971, social distancing was not the societal norm. In 2020, and now in 2024 there is the Internet, there is technology that exist where registered voters can sign petitions securely and safely, identity theft is a major problem and concern in the United States, and social distancing is common practice. If registered voters are fearful of giving out their personal information, or they are fearful of coming in contact with the individual circulating the petition, it causes a severe burden of the independent or the third-party candidate circulating the nomination petition. When Appellant circulated his petition in 2020, besides people not wanting to come into contact with another person, which is the biggest hurdle in collecting signatures, many registered voters did not want to give out

[31] *See* App at 70

their information. Many registered voters would ask could they sign the petition online. It's totally normal now for an individual to sign into a website or app and receive a code by email or phone to gain access. In turn, it seems suspicious, in this day and time, for people to come around with clip boards asking people for their name, address, date of birth, and signature. Even in 1971, Jenness never collected any signatures, as Petitioner stated in his brief to the Eleventh Circuit (*See* App at 168), so even in 1971 she was not the best person to articulate the tremendous burden placed on the independent or third-party candidates. Petitioner realized the best place to find registered voters is at the polling place. Petitioner circulated his petition at several polling places during the primary election. Petitioner, was able to get many registered voters to sign his petition. There was another run-off later in the election cycle that did not go the same way. Election officials told individuals that were circulating Petitioner's nomination petition that they had to be 150 feet away from the building. To go along with the heavy burden of circulating the petition, the State of Georgia has another law that makes it even harder to circulate the petition O.C.G.A. § 21-2-414(a). When the restriction of being 150 feet from any building from within a where a polling place is established or 25 feet from any voter standing in line, it makes it impossible to approach anyone for the purpose of signing a nomination petition, at the very location where the circulator knows that there are registered voters. The very place where there are known registered voters for the district, the individual circulating the nomination petition is hindered from speaking with those individuals, even though the person is not on the ballot.

IV. PETITIONER WAS DENIED DUE PROCESS

The panel for the Eleventh Circuit, stated *"Because Bell failed to state a claim, we affirm the district court's dismissal of his constitutional claims." See* App at 25. However,

Mr. Bell has consistently complained that his rights were violated. O.C.G.A. § 21-2-171(b) states, *"Upon filing of a nomination petition, the officer with whom it is filed shall begin expeditiously to examine the petition to determine it complies with the law."* Petitioner submitted his nomination petition to Respondents on August 13, 2020. The verification statement was signed on August 19, 2020 with 2,200 valid signatures. However, Petitioner was not contacted on August 19, 2020. Petitioner was not contacted until September 4, 2020, at 4:56 p.m., leaving him no opportunity to have his name placed on the ballot not even as a write-in candidate.[32] The panel of the Eleventh Circuit states, *"{Although the delay was "unfortunate" and should not have happened, we agree with the district court that Bell's allegations simply do not "rise to the level of a constitutional violation.}" See* App at 25. The only opportunity left for Petitioner was to appeal the decision of the Respondents. O.C.G.A. § 21-2-171(c) states, *"If the petition complies with the law, it shall be granted and the candidate named therein shall be notified in writing. If the petition fails to comply with the law, it shall be denied and the candidate named therein shall be notified of the cause of such denial by letter directed to his or her last known address."* According to the verification statement Petitioner had 2,200 valid signatures on August 19, 2020, and his name should have been placed on the 2020 General election ballot. Petitioner's First and Fourteenth Amendment rights were violated, and if changes are not made to the Georgia law, his rights and the rights of other independent candidates will continue to violated, as they seek office in Georgia as independent candidates. Upon appealing the Respondents decision in accordance with O.C.G.A. § 21-2-171(c), first in the superior court on September 15, 2020, the Respondents stated, *"It's no[t] longer possible to grant Mr. Bell Effective relief. As his*

[32] In order for Petitioner to have been able to run as write-in candidate he would have needed to run an article in the paper by the morning of September 08, 2020. The AJC newspaper add department was closed from Sept 5th through September 7th. That department did not reopen until the morning of September 08, 2020.

own petition notes, the deadline to finalize the ballot came and went on September 11, 2020. Mandamus fails on a showing that relief would be fruitless or nugatory." See App at 401. After Petitioner's writ of mandamus was denied in the Fulton County, Georgia superior court, Petitioner appealed to the Supreme Court of Georgia in accordance with O.C.G.A. § 21-2-171(c). Petitioner's case was decided by the Georgia Supreme Court seven months later on May 3, 2021. Petitioner's First and Fourteenth Amendment rights were violated, and if changes are not made to the Georgia law it is possible that his and the rights of other independent candidates will continue to be violated, as they seek office in Georgia as independent candidates.

V. ELEVENTH CIRCUIT PANEL DENIAL OF MOTIONS AND AMENDMENTS

A. PETITIONER'S MOTION FOR LEAVE FOR EXCESS WORDS IN HIS REPLY BRIEF WAS DENIED BY COURT OF APPEALS ON JULY 25, 2023

Petitioner replied to Respondents response brief on June 12, 2023. Petitioner was responding to Respondents 10,041-word response brief. Petitioner contacted the counsel of the Respondents to see if they had any objection to him filing an excess word reply. Respondents informed Petitioner that they had no objections to him filing an excess word reply brief. On June 24, 2023, Petitioner filed a motion for leave for excess words in his reply brief. Petitioner wanted to address new issues and arguments that were raised in the Respondents response brief. On July 25, 2023, the Eleventh Circuit denied Petitioner's motion. Petitioner had to reduce his word count for from 12,072 words to 6,500 words.

B. PETITIONER'S AMENDED PETITION WAS DENIED IMPROPERLY

Petitioner stated incorrectly that he amended his pleading three times. However, Petitioner should have used the word "corrected" instead of "amended". The first correction

was correcting a date from 2020 to the actual date of 2021. Petitioner wrote exactly what was changed to the pleading in his pleading on June 29, 2021. The seconding correction was made after petitioner discovered he had listed a Georgia statue incorrectly. Petitioner originally listed the statue as O.C.G.A. § 21-2-562 (2)(3) but the statue is actually O.C.G.A. § 21-2-562 (a)(b). Petitioner corrected the error and described the crime that was committed. The third amended filing, which is actually the first amended filing, was created to further specify the damages that Petitioner had suffered at the hands of the Respondents. Petitioner was already demanding damages from the Respondents previous to the filing of his corrected petition filed in the U.S. District Court on June 28, 2021 (*See page* 17 of the corrected petition), and also on page 18 of the corrected petition filed in the U.S. District Court on September 13, 2021. *See* App at 331. On March 17, 2022, Petitioner filed his amended his petition in the U.S. District Court in order to specify damages. Most importantly the Federal Rules of Civil Procedure (Fed. R. Civ. P.) Rule 15 (a)(2) states, ***"The court should freely give leave when justice so requires."***

VI. FULTON COUNTY, GA AND SUPREME COURT OF GA CLERKS' OFFICES ENGAGE IN PRACTICES THAT VIOLATE RIGHTS AND PREVENT JUSTICE FROM BEING SERVED

During the appellate process of O.C.G.A § 21-2-171(c) one of the major problems that Petitioner encountered was individuals in the clerks offices not being informed of O.C.G.A § 21-2-171(c) or the importance of being expedient in the process. *See* App at 495a-496a. Even recently when attempting to access documentation for this case. The Supreme Court of Georgia denied me any online access to view the documents online. I had to go to the Supreme Court of Georgia and use their computers. I am disabled and I have mobility problems. There is no public parking. At the same time because there is no way to view

documents online, I was forced to pay $5 for the first page and a $1 for each additional page to be printed.

CONCLUSION

The panel for the Eleventh Circuit, *"{stated Bell urges us to reject Cowen, arguing that its reasoning is flawed. He criticizes the opinion's analysis of severe burden, saying that we failed to "take into account" the difficulties that independent candidates for non-statewide office face when collecting signatures...But under prior-panel-precedent rule, we are bound by Cowen* ***unless and until that holding is overruled by this Court sitting en banc or by the Supreme Court.}"*** See App at 23. Petitioner has been fighting his case for almost four years. Having missed several special occasions amongst friends and family, most recently a wedding reception and Mother's Day. Petitioner has missed business opportunities and other ventures that would have provided him much needing income during this time. All due to the fact that nowadays most attorneys are personal injury attorneys. No money can replace the valuable time that Mr. Bell has lost. However, Petitioner comes before this Court in hopes of justice and that these antiquated and unfair laws in Georgia will be deemed unconstitutional.

Jenness has had a similar effect on the country as *Plessy v Ferguson*, 163 U.S. 537 (1896). Both caused bad policies to spread throughout the county, which caused large amounts of controversies and divisions. This country went over 133 years[33] before Georgia enacted its first ballot restriction law on August 21, 1922. The law has been in its current form[34] since March 20, 1943 (over 81 years). As we approach 102 years of ballot access restrictions in Georgia, the country is trapped in a two-party system that limits the impact

[33] Based on the U.S. Constitution ratified on March 09, 1789.
[34] Statewide candidates are no longer held to the 5% standard they are held to a 1% standard

of independent candidates who don't want to be aligned with either party. Their names being placed on the ballot doesn't guarantee their election to office. Quite opposite, in this country it takes money to run for political office, not being part of the Democratic or Republic party makes more it difficult for an independent candidate to raise money for their campaign.

Jenness, in this Court's attempt to protect a "state interest in requiring some preliminary showing of a significant modicum of support before printing the name of a political organization's candidate on the ballot" Id., has strengthened two political parties, diminished ideas and political thought, and caused a division in the country only seen before the Revolutionary War, Civil War and the Civil Rights Movement. In this country's first farewell address35, its first President George Washington warned the country against

---

[35] I have already intimated to you, the danger of parties in the state, with particular reference to the founding them on geographical discriminations. Let me now take a more comprehensive view, and warn you in the most solemn manner against the baneful effects of the spirit of party, Generally.— This spirit, unfortunately, is inseparable from our nature, having its root in the strongest passions of the human mind. It exists under different shapes in all governments more or less stifled, controlled, or repressed; but in those of the popular form, it is seen in its greatest rankness and is truly their worst enemy. The alternate domination of one faction over another, sharpened by the spirit of revenge, natural to party dissention, which in different ages and countries has perpetrated the most horrid enormities, is itself a frightful despotism. But this leads at length to a more formal and permanent despotism. The disorders and miseries, which result, gradually incline the minds of men to seek security and repose in the absolute power of an individual: and sooner or later the chief of some prevailing faction, more able or more fortunate than his competitors, turns this disposition to the purposes of his own elevation, on the ruins of Public Liberty. Without looking forward to an extremity of this kind (which nevertheless ought not to be entirely ought of sight) the common and continual mischiefs of the spirit of party are

political parties, and it would appear that his warnings were prophecies and are now revealing themselves. The state only prints absentee ballots, all the other ballots are digital. There are better ways to submit those items electronically, for example a one-time code. The fact that Petitioner's verification statement was signed on August 19, 2020, with 2.200 valid signatures, which was more than the 1,255 that he was required to have, is proof that the Georgia laws violate the First and Fourteenth Amendment rights of the candidate and the registered electorate that they seek to represent. We are at time in our country where the two-party system has become dysfunctional. On a local level we should be able to elect officials who are not tied to national narrative of a political party. We should be able to elect officials whose goal is to do what's in the best interest of their particular community. The Georgia laws prevent those individuals from having their name placed on the ballot. What we have now is the Atlanta Braves vs the New York Yankees, or the Mike Tyson vs Evander Holyfield. Whose side are you on? Republican or Democrat? If the ballot consisted of just names instead of names and party, the public would have to inform themselves more of the candidates who are on the ballot or just leave the spot blank. What we have now is people voting for a party and not voting for a candidate. The majority of the people don't know the candidates or what the candidates' stances are. The media outlets in

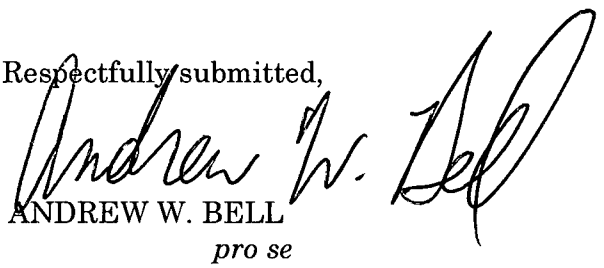
---

sufficient to make it the interest and duty of a wise People to discourage and restrain it. It serves always to distract the public councils and enfeeble the Public Administration. It agitates the Community with ill-founded jealousies and false alarms; kindles the animosity of one part against another, foments occasionally riot and insurrection. It opens the door to foreign influence and corruption, which finds a facilitated access to the government itself through the channels of party passions. Thus, the policy and the will of one country are subjected to the policy and will of another.

this country have shrunken tremendously, in turn giving people less information about candidates, especially on a neighborhood or community level. The people, for the most part, simply vote Republican or Democrat, because those are the only choices that they have.

The petition for writ of *certiorari* should be granted.

Respectfully submitted,



ANDREW W. BELL
pro se

P.O. Box 82348
Atlanta, GA 30354
(404) 380-0037
andrew.be11@live.com