

22-129

No.

IN THE
Supreme Court of the United States

IN RE BRIAN D. SWANSON, PETITIONER

On Petition for a Writ of Mandamus to the United States
Court of Appeals for the Eleventh Circuit

PETITION FOR A WRIT OF MANDAMUS

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QUESTION PRESENTED

1. Does the Seventeenth Amendment deprive the State of Georgia of its equal suffrage in the Senate, requiring its consent under Article 5 of the Constitution, making popular elections for United States Senator unconstitutional in the State of Georgia because the State did not ratify the Amendment?

LIST OF PARTIES

All the parties appear in the caption of the case on the cover page.

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TABLE OF AUTHORITIES***Cases***

None.

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PETITION FOR A WRIT OF MANDAMUS

Petitioner, Brian D. Swanson (“Swanson,” “I,” “me”) having first-hand knowledge of the events in this case respectfully petitions for writ of mandamus to the United States Court of Appeals for the Eleventh Circuit (case: 22-12319) and to the United States District Court for the Southern District of Georgia to order Judge J. Randall Hall, Chief Judge for the Southern District of Georgia to immediately decide on the motion to dismiss, which was filed by the Georgia Secretary of State on March 22, 2022 in the case 1:22-cv-11.

The legal citations and arguments used are those of a layperson without any formal or informal legal training. Therein, Brian D. Swanson respectfully asks this Court’s indulgence.

OPINIONS BELOW

There are no opinions to attach at this time.

STATEMENT OF JURISDICTION

The jurisdiction of this Court is invoked under 28 U.S.C §1651.

CONSTITUTIONAL PROVISIONS

1. Article I Section 3
“The Senate of the United States shall be composed of two Senators from each State, chosen by the legislature thereof, for six years, and each Senator shall have one vote.”
2. Article 5
“... and that no State, without its Consent, shall be deprived of its equal Suffrage in the Senate.”
3. Seventeenth Amendment
“The Senate of the United States shall be composed of two Senators from each State, elected by the people thereof, for six years; and each Senator shall have one vote. The electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State Legislatures.”

INTRODUCTION

The State of Georgia has not ratified the Seventeenth Amendment to the Constitution. Petitioner believes that the Seventeenth Amendment deprives the State of Georgia of its equal suffrage in the United States Senate and therefore, requires the State's consent before the Amendment is valid in the State of Georgia. If Petitioner is correct, then popular elections for United States Senator are unconstitutional in the State of Georgia until the State decides to ratify the Amendment and decides to surrender its representation in Congress as a

sovereign member in our federal system of government.

Brad Raffensperger, Secretary of State for the State of Georgia, injures Petitioner when he holds an unconstitutional popular election for United States Senator. Petitioner is a retired naval officer who has sworn an oath to support and defend the Constitution under 5 U.S.C §3331 and who is still bound by his legal oath and subject to the Uniform Code of Military Justice under 10 U.S.C §802(a)(4). Compelling Petitioner to cast an unconstitutional vote in an unconstitutional election in a violation of his oath is an injury that cannot be compensated. Additionally, Petitioner is not eligible to vote for a United States Senator under 52 U.S.C. §10307 and when the Secretary gives Petitioner a ballot with instructions to vote for a United States Senator, the Secretary is conspiring to encourage illegal voting under 52 U.S.C § 10307(c). Petitioner is a registered voter in the State of Georgia, but he is not eligible to vote for a United States Senator unless the State of Georgia ratifies the Seventeenth Amendment.

STATEMENT OF THE CASE

This case originated back in 2021 just after the 2020 elections. Petitioner filed his first complaint in the Southern District of Georgia on February 5, 2021. (Case: 1:21-cv-20) The State of Georgia filed a motion to dismiss on March 19, 2021. The District Court waited until January 20, 2022 to dismiss the case due to technical errors in the service of the complaint.

Petitioner corrected the errors identified by the court and filed a new complaint on February 8, 2022. (Case: 1:22-cv-11) The State of Georgia again filed a

motion to dismiss on March 22, 2022. The District Court has taken no action on the motion to dismiss.

Petitioner has asked the District Court for the following relief: (1) an injunction to prevent popular elections for Senator until the court determines if the Seventeenth Amendment is applicable to the State of Georgia, and (2) declare the popular elections unconstitutional and order the Georgia State Legislature to appoint two United States Senators in accordance with Article 1, Section 3 of the Constitution.

Petitioner feared a replay of his first complaint, and if the District Court waits until after the upcoming election to render a decision, the corrective measures will be horribly disruptive if Petitioner's argument is proven to be true. Therefore, Petitioner filed a writ of mandamus in the Eleventh Circuit Court of Appeals on July 15, 2022 (Case: 22-12319), asking the Court to order Judge J. Randall Hall to immediately decide on the Secretary's motion to dismiss. The Eleventh Circuit has taken no action.

Therefore, Petitioner has no alternative but to petition this Court for a writ of mandamus directing the Eleventh Circuit to order Judge Hall to decide on the motion to dismiss so the case may either proceed or may be appealed before the election.

REASONS FOR GRANTING THE WRIT

I. A writ of mandamus is warranted given the urgent circumstances of this case.

The Court may "issue all writs necessary or appropriate in the aid of their respective

jurisdictions and agreeable to the usages and principles of law.” 28 U.S.C. § 1651(a).

A writ of mandamus is warranted where “(1) no other adequate means exist to attain the relief [the party] desires, (2) the party’s right to issuance of the writ is clear and indisputable, and (3) the writ is appropriate under the circumstances.” *Hollingsworth v. Perry*, 558 U.S. 183, 190 (2010) (quoting *Cheney v. United States Dist. Ct.*, 542 U.S. 367, 380–81 (2004)) (internal quotation marks and alterations omitted).

Time is running out to reach a conclusion in this complaint before the election. Candidates are spending money for an election that may never happen or that may be overturned once it is determined if the Seventeenth Amendment is applicable in the State of Georgia. Their money having been spent cannot be recovered. Voters may be dismayed at last minute upheavals in the electoral process if they are not given sufficient time to understand the reasons for any change. The District Court has been aware of Petitioner’s arguments since February 2021 and so, this lengthy delay for a decision on the motion to dismiss cannot be explained, unless the courts are terrified of the potential political disruptions to the status quo.

Petitioner’s argument is purely constitutional and rather simple. James Madison explained in *Federalist* #39 that our system of government is partly national and partly federal. The idea of federal government is that the power of the central authority operates on the political bodies that compose the confederacy; however, the idea of national government is that the power of the central authority operates on individual citizens composing the nation. As originally designed, The United States Senate represents the States, in their political

capacities, while the House of Representatives represents the people in their individual capacities. In Federalist #39, Madison explains:

The House of Representatives will derive its powers from the people of America ... So far the government is NATIONAL, not FEDERAL. The Senate, on the other hand, will derive its powers from the States, as political and coequal societies ... So far the government is FEDERAL, not NATIONAL.

The Seventeenth Amendment alters this relationship so that the people elect both the House and the Senate, leaving the States with no representation in Congress and no suffrage in the Senate. If the States are deprived of all of their suffrage in the Senate, then they are deprived of their equal suffrage as well. Thus, the popular election of Senators unexpectedly triggers the provision of Article 5 of the Constitution which states, “no State, without its consent, shall be deprived of its equal suffrage in the Senate.” The State of Georgia did not ratify the Amendment, and did not consent to be deprived of its equal suffrage in the Senate. Petitioner has no constitutional or legal authority to vote for a United States Senator.

One reason that the State must be represented in Congress is that in our unique federal system of taxation, the State is a taxpayer: *No Taxation Without Representation!* When Congress enacts a direct tax, the State pays the tax, “This requirement means that any ‘direct Tax’ must be apportioned so that each state pays in proportion to its population.” *National Federation of Independent Businesses v. Sebelius* (2012). The State pays, not the individual. Both the people and the States are taxpayers and both must be represented separately. Petitioner explained this unique element in our federal system

of taxation in two separate petitions to this Court (19-973) and (21-624) when attempting to expose an error in our Tax Code. Both petitions were denied.

Nine States remain that have not ratified the Seventeenth Amendment and, if Petitioner's argument is true, these nine States may immediately regain their authority in our federal system of government: Alaska, Hawaii, Utah, Mississippi, Florida, Georgia, South Carolina, Kentucky, and Virginia. It is Petitioner's hope that, when pressured, The State of Georgia and the other eight States, will choose to restore their authority in our federal system by appointing their Senators from the State Legislature rather than ratify the Amendment.

CONCLUSION

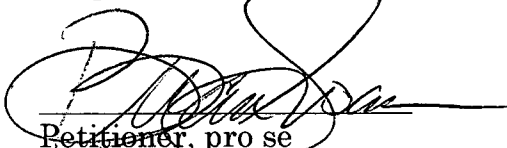
For the foregoing reasons, this petition for a writ of mandamus should be granted because, (1) No other means of relief exist. Petitioner has no power expedite the decision of the District Court and he has already petitioned the Eleventh Circuit for relief and the motion to dismiss remains unanswered. (2) Petitioner's right to request a speedy resolution of his complaint is clear and indisputable, and (3) the writ is appropriate under the circumstance because another unconstitutional popular election for United States Senator draws near and will cause Petitioner to again violate his oath and to cast another illegal vote for Senator. Petitioner respectfully prays for the following relief:

- (1) Direct that The Eleventh Circuit Court of Appeals to order J. Randall Hall, Chief Judge for the United States District Court for the Southern District of Georgia, to immediately

decide on the motion to dismiss filed by the Georgia Secretary of State on March 22, 2022, and,

- (2) Issue an injunction prohibiting Brad Raffensperger, Georgia Secretary of State, from holding a popular election for United States Senator on November 8, 2022, or alternately, to hold the certification of that election in abeyance, until the lower courts rule on whether the Seventeenth Amendment has legal force in the State of Georgia. Perhaps an injunction from this Court will spur the lower courts to action, because they have been dragging their feet for almost two years in an attempt to avoid answering Petitioner's question.

Respectfully Submitted,



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September 8, 2022