

No. **23-808**

IN THE
Supreme Court of the United States

Brian D. Swanson

Petitioner,

v.

Secretary of State, State of Georgia

Respondent.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

The Seventeenth Amendment deprives the States of their equal suffrage in the Senate, requiring their consent under Article V of the Constitution, because if the people elect the Senators, then the State is deprived of all of its suffrage in the Senate. Since the State of Georgia did not ratify the Seventeenth Amendment, and did not consent to be deprived of its equal suffrage in the Senate, popular elections for Senator are unconstitutional in the State of Georgia. When Brad Raffensperger, the Secretary of State, conducts a popular election for United States Senator, in violation of Art 1 Sec 3 of the Constitution, and issues to petitioner an illegal ballot, he invites petitioner to cast an illegal vote in violation of 52 U.S.C §10307(c) subjecting petitioner to a \$10,000 fine and five years' imprisonment. Petitioner's suit to prevent the Secretary from issuing illegal ballots subjecting petitioner to a fine and imprisonment was dismissed for lack of standing.

The question presented is:

Does petitioner suffer a concrete and particularized injury, for the purpose of establishing standing, when the Secretary of State issues an illegal ballot authorizing him to cast an illegal vote, subjecting petitioner to a fine and imprisonment for voting in an election in which he is not eligible to participate under 52 U.S.C. §10307(c)?

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PETITION FOR A WRIT OF CERTIORARI

Petitioner, Brian D. Swanson, respectfully petitions for writ of certiorari to review the judgment of the United States Court of Appeals for the Eleventh Circuit (“Eleventh Circuit”).

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

The unpublished decision of the United States Court of Appeals for the Eleventh Circuit and the decision of the District Court are attached as Appendix 1-10.

STATEMENT OF JURISDICTION

Judgment for review was entered by a panel for the Eleventh Circuit Court of Appeals on January 8, 2024 and this Court has jurisdiction under 28 U.S.C §1254(1).

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 V

“... 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 legislature.”

INTRODUCTION

Brad Raffensperger, the Secretary of State for the State of Georgia, has placed Mr. Swanson in danger of a \$10,000 fine and five years' imprisonment because he has issued to Mr. Swanson an illegal ballot and has enticed Mr. Swanson to cast an illegal vote in violation of 52 U.S.C. §10307(c). Mr. Swanson has suffered a concrete and particularized injury traceable to the Secretary, but Mr. Swanson's suit was dismissed for lack of standing.

Mr. Swanson is a registered voter in the State of Georgia, but since the State of Georgia has refused to ratify the Seventeenth Amendment, Mr. Swanson is

not eligible to vote for a United States Senator. United States Senators from the State of Georgia must be appointed by the State Legislature under Article 1 Sec. 3 of the Constitution until the State chooses to ratify the Seventeenth Amendment.

Mr. Swanson has filed suit to stop the Secretary from issuing to Mr. Swanson ballots with the option to vote for United States Senator. When Mr. Swanson follows the Secretary's instructions and submits his illegal ballot, he becomes guilty of violating 52 U.S.C. §10307(c) and becomes subject to a \$10,000 fine and five years' imprisonment for violating federal law. This concrete and particularized injury is traceable to the Secretary and gives Mr. Swanson standing to file suit.

The decision of the Eleventh Circuit Court of Appeals denying Mr. Swanson standing in this case should be reversed.

STATEMENT OF THE CASE

Petitioner, Brian D. Swanson, is a registered voter in the State of Georgia who participated in the December 6, 2022 runoff election for United States Senator. Mr. Swanson cast his vote using the ballot provided by the Secretary of State and followed the Secretary's rules and regulations for casting a vote.

If the Seventeenth Amendment does not apply to Georgia, then Mr. Swanson believes that the Secretary's ballot is illegal and that using the ballot provided by the Secretary makes Mr. Swanson guilty of violating federal law.

On December 7, 2022, Mr. Swanson filed suit to prevent the Secretary from issuing any future ballots to Mr. Swanson with the option to vote for a United States Senator. The Secretary filed a motion to

dismiss on January 9, 2023 and Mr. Swanson objected to the motion on January 17, 2023. The District Court issued its order to dismiss and final judgment on May 16, 2023. Mr. Swanson filed a timely appeal on May 24, 2023 to the Eleventh Circuit Court of Appeals. The Appeals Court issued its final judgment denying Mr. Swanson standing on January 8, 2024.

REASONS FOR GRANTING THE PETITION

I. The Seventeenth Amendment Deprives the States of Their Equal Suffrage in The Senate.

An amendment to the Constitution is valid upon all states after three-fourths of the states have ratified it,¹ but Article V of the Constitution contains an exception to the amendment process. Article V States that, “no State, without its consent shall be deprived of its equal suffrage in the Senate.” The Seventeenth Amendment triggers this exception to the amendment process because the popular election of Senators authorized by the Amendment deprives the State of its equal suffrage in the Senate.

Our federal system of government has a dual nature. In “The Federalist #39,” James Madison describes our system as being partly national and partly federal, explaining the difference this way:

The difference between federal and national government, as it relates to the operation of the government, is supposed to consist in this, that in the former the powers operate on the political bodies composing the confederacy, in their

¹ U.S. Constitution, Art 1, Sec. 5

political capacities; in the latter, on the individual citizens composing the nation, in their individual capacities.

Our political system combines the federal and national principles of government in Congress so that both the people, in their individual capacities, and the States, in their political capacities, are represented. Both the people and the States are subject to federal law, and so in a just system, they must both be represented in Congress. This dual representation is accomplished by the different methods for electing the House and Senate. In "Federalist #39," Madison observes:

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 House of Representatives is elected by the people, in their individual capacities, which represents the national principle of government. This means that the people have suffrage in the House of Representatives. In contrast, the Senate is elected by the States, in their political capacities, which represents the federal principal of government. This means that States have suffrage in the Senate. Electing the Senate by the State Legislature is what gives to the State suffrage in the Senate. In "Federalist #62," Madison explains:

It is equally unnecessary to dilate on the appointment of senators by the State legislatures...It is recommended by the

double advantage of favoring a select appointment, and of giving to the State governments such an agency in the formation of the federal government as must secure the authority of the former, and may form a convenient link between the two systems.

It is clear that the State Governments are meant to be a constituent part of the federal system by granting them suffrage in the Senate. Our political system was originally designed so that the State Governments have suffrage in the Senate, while the people of the State have suffrage in the House of Representatives.

The Seventeenth Amendment alters this relationship. After the Seventeenth Amendment, the people elect the Senators, not the State. This means that the people have suffrage in the Senate, not the State. If the State of Georgia ratifies the Seventeenth Amendment, then the people of Georgia will have two Senators, but the State of Georgia will have no Senators. The popular election of Senators authorized by the Seventeenth Amendment triggers the exception to the ratification process found in Article V of the Constitution because the Amendment deprives the State of all of its suffrage in the Senate, and as a consequence, it deprives the State of its equal suffrage as well. The State cannot be deprived of its equal suffrage without its consent and the State of Georgia did not consent.

The Secretary admits in his briefings that Georgia did not ratify the Amendment. He states, "it is inconsequential that Georgia did not ratify the Seventeenth Amendment because (1) the Seventeenth Amendment was passed in accordance with Article V absent Georgia's vote" (11th Cir Doc 7 at 12) and

therefore, this is a factual matter that is not in dispute. This dispute is whether the Seventeenth Amendment deprives the state of its equal suffrage in the Senate requiring its consent and whether Mr. Swanson has standing to file suit if the Secretary's actions cause Mr. Swanson to violate federal law and subject him to a \$10,000 fine and five years' imprisonment.

The State of Georgia did not ratify the Seventeenth Amendment and did not consent to be deprived of its equal suffrage in the Senate. A popular election for United States Senator is unconstitutional in the State of Georgia. Brad Raffensperger, the Secretary of State for the State of Georgia, may not conduct a popular election for United States Senator in violation of Article 1, Sec. 3 of the Constitution.

There are nine State that have refused to ratify the Seventeenth Amendment and that must appoint their Senators from their State Legislature until the State ratifies the Amendment: Alaska, Florida, Georgia, Hawaii, Kentucky, Mississippi, South Carolina, Utah and Virginia.

II. Petitioner Suffered A Concrete and Particularized Injury Traceable to The Secretary of State.

The penalty for violating 52 U.S.C. §10307(c), by encouraging illegal voting or casting illegal votes, is a \$10,000 fine and five years' imprisonment. This is a concrete and particularized penalty that affects each and every violator of the law in a personal and individual way. *Gill v. Whitford*, 138 S. Ct. 1916, 1923 (2018)

Mr. Swanson is a registered voter in the State of Georgia, but since Georgia did not ratify the Seventeenth Amendment he is not eligible to vote for

a United States Senator under 52 U.S.C. §10307(c). Thus, when the Secretary conducts a popular election on his own authority in violation of Article 1 Sec. 3 of the Constitution and issues illegal ballots to Mr. Swanson and instructs him to cast an illegal vote, the Secretary puts Mr. Swanson in legal danger of fine and imprisonment for violating federal law. This injury is both concrete and particularized. *Trichell v. Midland Credit Mgmt., Inc.*, 964 F.3d 990, 996 (11thCir. 2020).

Under Georgia Law O.C.G.A. § 21-2-50, the Secretary of State is responsible for issuing correct ballots to be used state and federal elections. When the Secretary of State issues to Mr. Swanson a defective and illegal ballot that instructs him to cast an illegal vote, the injury that puts Mr. Swanson in legal jeopardy of fine and imprisonment for violating federal law is traceable to the Secretary of State. *Lujan v. Defenders of Wildlife*, 504 U.S. 555 (1992)

Mr. Swanson's suit is attempting to prevent the Secretary from issuing illegal ballots for United States Senator.

III. The Eleventh Circuit's Holding Denying Petitioner's Standing Plainly Conflicts with This Court's Precedents.

Both the opinions of the District Court and the Eleventh Circuit suggest that Mr. Swanson's injury must be unique to him in order to establish standing and that other members of the public may not share the same injury. This opinion conflicts with this Court's established precedents on standing.

Mr. Swanson is in danger of fine and imprisonment for casting an illegal vote because he followed the

instructions given by the Secretary of State. The Eleventh Circuit stated that even if Mr. Swanson could face prosecution that he, "has not described how the possible criminal prosecution is a grievance undifferentiated from everyone else who voted in the election." (App. at 3) The Eleventh Circuit wrongly applied this Court's precedence on standing. This Court said that "To deny standing to persons who are in fact injured simply because many others are also injured, would mean that the most injurious and widespread Government actions could be questioned by nobody. We cannot accept that conclusion." (*United States v. Students Challenging Regulatory Procedures (SCRAP)*, 412 U.S. 669, 688 (1973)). In addition, Mr. Swanson does not have to wait until he is actually prosecuted to claim an injury in fact. This Court's precedent states, "But, as we have noted, when fear of criminal prosecution under an allegedly unconstitutional statute is not imaginary or wholly speculative, a Plaintiff need not 'first expose himself to actual arrest or prosecution to be entitled challenge [the] statute.' *Steffel v. Thomson*, 415 U.S. at 415 U.S. 459" (*Babbitt v. United Farm Workers Nat'l Union*, 442 U.S. 289 (1979)). Thus, even though Mr. Swanson has not yet been charged or prosecuted for his violation of federal law, he has still suffered a concrete and particularized injury. The violation of federal law under direction of the Secretary is, by itself, an injury which establishes his standing to challenge the Secretary's issuance of illegal ballots.

The Eleventh Circuit also tried to write off Mr. Swanson's complaint as, "nothing more than a generalized grievance against the government," (App. at 3) when in reality, Mr. Swanson's grievance is against a liability for a \$10,000 fine and five years' imprisonment.

IV. Petitioner's Complaint Is Not Moot.

The Secretary argued in his motion to dismiss that the case is moot and that petitioner failed to state a claim because the election has already been certified. (App. at 6) The Secretary asserts that, "Swanson seeks to have Georgia's most recent senate election declared void after it has already been certified, he cites no authority whatsoever to support the notion that this Court could order such relief" (11th. Doc 7 at 10). This statement is inaccurate. The District Court has the authority to declare the senate election unconstitutional, "a law repugnant to the Constitution is void, and the courts, as well as other departments, are bound by that instrument." *Marbury v. Madison* 5 U.S. 137 (1803). If the popular election for United States Senator in the State of Georgia violates the Constitution, then the election is void. The authorities cited by the Secretary to support his mootness claim are inapplicable to this case because petitioner is not challenging the certification of the election. Petitioner is challenging the constitutionality of the election because the State of Georgia has refused to ratify the Seventeenth Amendment. The certification of an unconstitutional election cannot be a defense to overthrowing the Constitution itself. If the election is unconstitutional, then to this date, no Senators from the State of Georgia have been constitutionally elected and the controversy remains.

This Court has declined to deem a case moot that present issues or disputes that are "capable of repetition, yet evading review." *FEC v. Wis. Right to*

Life, Inc., 551 U.S. 449, 462 (2007). Mr. Swanson's complaint satisfies the exceptions to the mootness doctrine. First, the time between an election and the certification of an election is too short to litigate Mr. Swanson's complaint. If the certification of an unconstitutional election foreclosed the complaint, then Mr. Swanson's dispute could never be reviewed by the courts. Second, Mr. Swanson will suffer the same injury during the next Georgia election for U.S. Senator and he will be in jeopardy again of a \$10,000 fine and five years of imprisonment for casting an illegal vote. *Spencer v. Kemna*, 523 U.S. 1, 17-18 (1998).

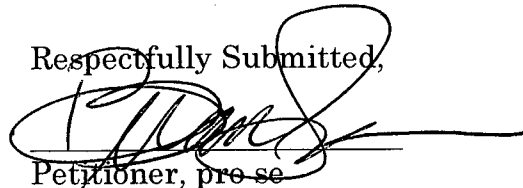
Mr. Swanson's complaint is not moot and he has stated a claim upon which relief may be granted.

CONCLUSION

Mr. Swanson has satisfied all the elements of Article III standing necessary to challenge the Secretary's issuance of illegal ballots in this case.

For the foregoing reasons, this Court should grant the petition, vacate the decision, and remand this case to the Eleventh Circuit in accordance with this Court's established precedence on standing.

Respectfully Submitted,



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January 30, 2024