ORIGINAL

No. 25-5612

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 Andrew Bell, an independent candidate for the Georgia House in the November 2020 election, submitted 2,200 verified signatures to qualify for the ballot but was wrongfully excluded after state officials altered his verification records and applied a late-notice petition deadline. He sued under 42 U.S.C. § 1983 in the Northern District of Georgia, challenging Georgia's ballot-access scheme, and the district court dismissed his First and Fourteenth Amendment claims.

On March 27, 2024, a three-judge Eleventh Circuit panel affirmed that dismissal. Bell timely petitioned for rehearing en banc, and on May 28, 2024, the court granted rehearing—vacating the panel opinion under Eleventh Circuit Rule 35-10. Despite rehearing being pending, the court issued its mandate on May 31, 2024, in violation of Federal Rule of Appellate Procedure 41(b). Bell then moved on May 20, 2025, to set aside the mandate and reinstate en banc review; the Eleventh Circuit denied that motion on August 7, 2025, effectively reviving a judgment the court had already vacated.

The following questions are presented:

1. Did the Eleventh Circuit violate Federal Rule of Appellate Procedure 41(b) by issuing a mandate while rehearing en banc was pending, and whether reinstating a vacated panel opinion without briefing decision violates due process Fifth and Fourteenth Amendments, especially when those procedures impact access to appellate correction of substantial federal and constitutional errors?

2. Should a fraud-on-the-court exception to the Rooker-Feldman doctrine, recognized in other circuits, apply when state election officials alter material verification documents in an election-access dispute?

3. Does the Eleventh Circuit's practice relating to reinstatement of previously vacated opinions, or denial of meaningful rehearing, contravenes longstanding Supreme Court precedent on vacatur of moot judgments, notably the Munsingwear doctrine, and raises questions of constitutional mootness and procedural fairness?

4. Do Georgia's ballot access provisions (O.C.G.A. §§ 21-2-170, 2-2-171), as applied to independent candidates, violate the First and Fourteenth Amendments by imposing impracticable deadlines, limiting write-in access, unverifiable procedures, foreclosing relief through deliberate delay, and denying meaningful appellate relief?

5. Do these appellate practices, when deployed in the context of constitutional ballot access litigation, create or perpetuate unconstitutional barriers to meaningful legal and political participation in violation of substantive and procedural due process, as articulated in Supreme Court ballot access decisions?

6. Should the Court reconsider the precedents in *Jenness v. Fortson*, *Anderson v. Celebrezze*, *Burdick v. Takushi*, and similar cases in light of recent procedural anomalies—such as issuing a mandate during pending rehearing and reinstating a vacated opinion—that undermine the judgments those cases relied upon?

7. Does the mootness doctrine's "capable of repetition yet evading review" exception apply where independent candidates will confront the same ballot-access barriers and truncated appellate timelines in future cycles?

LIST OF PARTIES TO THE PROCEEDING

Petitioner is Andrew W. Bell who was a Petitioner in U.S. District Court of Northern Georgia, and he was Appellant in the Eleventh Circuit Court of Appeals.

Respondents are Brad Raffensberger in his individual capacity and his official capacity as Georgia Secretary of State, and Chris Harvey the former Elections Director of Georgia in his individual capacity and official 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 W. Bell v. Secretary of State of Georgia et al*, Case No. 23-10059 (Eleventh Cir.), judgement entered on August 7, 2025 ("Appellant's Motion to

Set Aside the March 27, 2024 Decision and Reinstate the Rehearing En Banc that was Granted May 28, 2024," which the 11th circuit construed as a motion to recall the mandate was DENIED)

- *Andrew W. Bell v. Secretary of State of Georgia et al*, Case No. 23-7684 (United States Supreme Court), judgement entered on October 7, 2024 (Petition DENIED)

- *Andrew W. Bell v. Secretary of State of Georgia et al*, Case No. 23-10059 (Eleventh Cir.), judgement entered on May 31, 2024 (Mandate issued)

- *Andrew W. Bell v. Secretary of State of Georgia et al*, Case No. 23-10059 (Eleventh Cir.), judgement entered on May 28, 2024 (motion for leave to correct petition for rehearing en banc GRANTED)

- *Andrew W. Bell v. Secretary of State of Georgia et al*, Case No. 23-10059 (Eleventh Cir.), judgement entered on May 21, 2024 (motion for rehearing DENIED)
- *Andrew W. Bell v. Secretary of State of Georgia et al*, Case No. 23-10059 (Eleventh Cir.), judgement entered on March 27, 2024 (U.S. District Court decision affirmed)

- *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, 2022 (Petition for Writ of Mandamus Denied. Respondents Motion to Dismiss Granted)

- *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 (Denial of appeal after 7 months. Merits not ruled on, deemed moot)

- *Andrew W. 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 (Denial of petition for writ of mandamus)

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PETITION FOR A WRIT OF CERTIORARI

On August 13, 2020 Petitioner submitted a nomination petition, as an independent, for GA House District 85 to Elections Director Chris Harvey. On Aug. 19 DeKalb County's Voter Registration Office signed a Verification Statement certifying 2,200 valid signatures, exceeding the 1,255 (5%) required[1].

Secretary of State of Georgia's instructions required cumulative totals and rejection breakdowns on the same Verification Statement page. Petitioner's Verification Statement page omitted the cumulative total. Instead, an **unsigned second page** on *county* letterhead — not state — was later presented, claiming only 827 valid signatures. Other candidates' forms followed the uniform, proper format.

Petitioner was notified of the "failure" by email at 4:56 p.m. Friday Sept. 4 — minutes before Labor Day weekend — making it impossible to meet the Sept. 8 write-in candidate deadline, which required newspaper publication by the morning of Tuesday September 8th. It was impossible to meet the deadline because the division of the Atlanta Journal-Constitution (AJC), which Petitioner needed to contact, was closed for the weekend and the Monday holiday. The timing also left only one business day to contact an attorney, before the writ of mandamus deadline required by O.C.G.A. § 21-2-171(c). Petitioner only had five calendar days to file a writ of mandamus with the Fulton County, Georgia superior court. The filing had to

[1] The requirement was 1793 signatures. The signature requirement was reduced to 1255 after an Eleventh Circuit Court order. See *Cooper v. Raffensperger*, 472 F. Supp.3d 1282 (N.D. Ga. 2020)

be submitted by Wednesday September 9, 2022. Essentially because of the notice timing, Petitioner was left with no weekend access to legal advice or the Atlanta Journal-Constitution's publication window.

This petition arises from a procedural breakdown in the Eleventh Circuit that undermines the integrity of appellate review, and the ongoing controversies have the capability of denying Petitioner meaningful access to the ballot in the future. After granting rehearing en banc and vacating the panel opinion, the Eleventh Circuit issued a mandate in violation of FRAP 41(b)[2], reinstated the vacated judgment without briefing, and later denied Petitioner's motion to set aside the May 31, 2024 mandate.[3] These actions raise urgent questions about mandate finality, rehearing procedure, and constitutional access to the electoral process.

This petition seeks Supreme Court intervention to address substantive and procedural questions arising from the Eleventh Circuit's mandate issuance and rehearing protocols under the Federal Rules of Appellate Procedure (FRAP) and related local rules. Specifically, the petition challenges the constitutional adequacy of the Circuit's interpretation and timing of the mandate under FRAP 41(b), its local rehearing procedures under FRAP 40 and corresponding internal operating procedures, and the due process implications of reinstatement of vacated opinions, especially in ballot access contexts and in light of the Munsingwear doctrine for vacatur and mootness. All cited precedents, federal rules, and constitutional

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[2] See App. at 77a
[3] See App. at 1a

standards are carefully embedded in the text, using proper legal citation format per Supreme Court and Bluebook standards.

OPINIONS BELOW

The Eleventh Circuit's August 07, 2025 Order, is unreported and attached as Appendix ("App") at App: 1a. The Eleventh Circuit's May 31, 2024 Order (issuance of mandate), is unreported and attached as App: 77a. The Eleventh Circuit's May 28, 2024 Order (Motion for Leave to Correct Petition for Rehearing en banc GRANTED), is unreported and attached at App: 75a. The Eleventh Circuit's May 21, 2024 Order (Motion for Rehearing DENIED), is unreported and attached at App: 72a. The Eleventh Circuit's *per curiam* opinion is unreported and attached at App: 31a. 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: 33a. The state court of Georgia's order is reported at 311 Ga. 616 (Ga. 2021) and attached at App: 81a.

JURISDICTION

This Court has jurisdiction under 28 U.S.C. § 1254(1), which authorizes review of decisions of the United States Courts of Appeals by writ of certiorari.

The Eleventh Circuit issued its order denying Petitioner's motion to set aside the mandate on August 7, 2025. This petition is filed within 90 days of that entry, in compliance with Supreme Court Rule 13.1.

The underlying judgment of the Eleventh Circuit is appended to this petition, along with the court's order denying rehearing en banc. Review is sought under 28 U.S.C. § 1254(1). The petition is timely filed within ninety days of the entry of the order denying rehearing, consistent with Rule 13.3 and associated Supreme Court timing provisions. For clarity, the issuance of the appellate mandate or remittitur after judgment does not alter the computation of time for certiorari filing; computation is tied to the judgment or the denial of rehearing, not any subsequent mandate issuance or recall.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Article III (Section 2) of the United States Constitution

First Amendment of the United States Constitution

Fifth Amendment of the United States Constitution

Fourteenth Amendment of the United States Constitution

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

STATEMENT OF THE CASE

Petitioner Andrew W. Bell submitted over 2,200 verified signatures to qualify for the November 2020 general-election ballot as an independent candidate for the

Georgia House. On August 19, 2020, DeKalb County certified his petition. However, Petitioner was notified on September 4—just minutes before the Labor Day weekend—that his petition had been rejected, allegedly due to insufficient signatures. The late notice foreclosed his ability to qualify as a write-in candidate, whose deadline was September 8.

Petitioner filed a timely emergency petition for writ of mandamus in Fulton County Superior Court under O.C.G.A. § 21-2-171(c). The hearing was delayed until September 15 due to the court's application of O.C.G.A. § 9-10-2, which Petitioner argues improperly prioritized the state's procedural interests over his constitutional rights. The trial court denied relief, and Petitioner appealed to the Georgia Supreme Court. That court waited seven months to dismiss the appeal as moot—long after the election had passed—without addressing the merits.

Petitioner then filed suit in federal district court under 42 U.S.C. § 1983, alleging violations of the First and Fourteenth Amendments and fraud on the court. The district court dismissed his claims. On March 27, 2024, a panel of the Eleventh Circuit affirmed. Petitioner timely petitioned for rehearing en banc. On May 21, 2024, the original en banc petition was denied, but on May 28, 2024, the court granted Petitioner's motion to correct his petition and formally granted rehearing en banc[4]—vacating the March 27 panel opinion under Eleventh Circuit Rule 35-10[5].

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[4] See App: 75a

[5] Eleventh Circuit of Appeals Rule at the time of the granted rehearing. It is now 11th Cir. R. 40-11.

That same day, Petitioner filed a petition for a writ of certiorari in this Court, docketed as **No. 23-7684**, raising constitutional challenges to Georgia's ballot-access laws and pointing to systemic procedural defects. On October 7, 2024, this Court denied certiorari—without any indication it was aware that rehearing en banc had been granted and the panel opinion vacated.

On May 31, 2024—three days after granting rehearing—the Eleventh Circuit issued its mandate[6] in direct violation of FRAP 41(b). No en banc briefing or argument occurred. On May 20, 2025, Petitioner moved to set aside the March 27 decision and reinstate the en banc rehearing. The court denied that motion[7] on August 7, 2025, construing it as a request to recall the mandate, thereby reviving a judgment it had formally vacated.

CONSTITUTIONAL AND PROCEDURAL FRAMEWORK

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).

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[6] See App.: 77a
[7] See App.: 1a

I. Federal Rule of Appellate Procedure 41(b): Timing and Issuance of the Mandate

FRAP 41(b) provides the baseline for mandate issuance following a court of appeals' judgment. It states unambiguously:

"The court's mandate must issue 7 days after the time to file a petition for rehearing expires, or 7 days after entry of an order denying a timely petition for panel rehearing, petition for rehearing en banc, or motion for stay of mandate, whichever is later. The court may shorten or extend the time by order." **The Eleventh Circuit Court of Appeals never issued an order to shorten the time to issue the mandate.**

Several Advisory Committee notes clarify the Rule's operation. The 1998 amendment established that, **absent a timely rehearing petition**, the mandate issues seven days after the expiration of the rehearing window. If a party files for panel or en banc rehearing, or for a stay of mandate, the mandate issues seven days after denial of the last such request. The 2002 amendment further clarified that intermediate Saturdays, Sundays, and legal holidays are counted in computing the seven-day period, and that a mandate in the ordinary case issues exactly one week after the triggering event. The Eleventh Circuit issued its mandate three days after the motion for leave to correct petition for rehearing en banc was **granted** by that court, in violation of the rules of that court.

The procedural clarity provided by FRAP 41(b) is designed to assure regularity, predictability, and notice to all parties. Notably, the 2018 amendment emphasized that any stay of mandate requires court order and is not effective by mere inaction—this requirement stems directly from Supreme Court instruction in *Bell v. Thompson*, 545 U.S. 794, 804 (2005). *Bell* recognized that a stay without notice constitutes an abuse of discretion and may violate due process guarantees.

FRAP 41(d) specifically governs the procedures for staying the mandate pending the filing of a petition for writ of certiorari in the Supreme Court. The motion must be served on all parties and "must show that the petition would present a substantial question and that there is good cause for a stay." The stay may not exceed ninety days unless extended for good cause or pending Supreme Court disposition. The court of appeals must issue the mandate "immediately on receiving a copy of a Supreme Court order denying the petition, unless extraordinary circumstances exist." See *Ryan v. Schad*, 570 U.S. 521, 525 (2013) (per curiam).

The Eleventh Circuit has adopted additional local rules in strict adherence to FRAP 41. These include 11th Cir. R. 41-1 (stay or recall of the mandate requires exceptional circumstances), and R. 41-2 (expedited issuance of the mandate upon the motion of a party for good cause). Both reinforce the obligation of transparency, advanced notice, and judicial oversight in mandate issuance, particularly when Supreme Court review is sought.

Legal and Due Process Implications

The timing and notice requirements built into FRAP 41(b) and (d) enshrine due process values of regularity, predictability, and the preservation of appellate remedies. As the Supreme Court has recognized, "Notice and a hearing before an impartial tribunal... must be granted at a meaningful time and in a meaningful manner" (*Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 313 (1950); *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976)). When the appellate court issues a mandate without adherence to FRAP 41's requirements or without adequate notice, the deprivation of judicial remedies may violate the Fifth or Fourteenth Amendments' guarantee of procedural due process.

In *Catron v. City of St. Petersburg*, 658 F.3d 1260, 1267–70 (11th Cir. 2011), the Circuit panel observed that the Due Process Clause entitles litigants to notice and an opportunity for a hearing "at a meaningful time and in a meaningful manner," referencing *Mathews* and *Mullane*. These procedural minimums must be honored, especially where the interests at stake involve liberty rights or constitutional claims. This reasoning applies with particular force to appellate procedures that circumscribe or eliminate the possibility of Supreme Court review through irregular or accelerated mandate issuance.

II. Federal Rule of Appellate Procedure 40: Rehearing and En Banc Procedures

FRAP 40 governs petitions for panel rehearing and/or rehearing en banc. Under Rule 40(a), a party may seek review of an adverse decision by petition for panel rehearing, rehearing en banc, or both (to be filed as a single document unless a local rule provides otherwise). A petition for panel rehearing must "state with particularity each point of law or fact" believed to have been overlooked or misapprehended, and must develop argument in support.

Rule 40(b) establishes the required content for rehearing en banc petitions, which must include a statement of conflict or exceptional importance. Critically, Rule 40(d) provides that such petitions, in civil cases, are generally due within 14 days after entry of judgment, or 45 days where the United States or federal officers are parties. The Eleventh Circuit imposes a slightly longer 21-day window for most appeals by local rule (11th Cir. R. 40-2), again reinforcing the Court's commitment to providing parties a meaningful opportunity to seek appellate correction before loss of jurisdiction.

If a petition for rehearing is granted, the court may dispose of the case without further argument, order additional briefing, or issue any other appropriate order (FRAP 40(e)), and the original panel retains authority over the case unless rehearing en banc is expressly granted (FRAP 40(f)). These rules together affirm the judiciary's commitment to considered, orderly review, and, by extension, to the due process rights of litigants. The original

panel should no longer have authority over Petitioner's case (11th Cir Docket No. 23-10059).

The Eleventh Circuit further emphasizes in IOPs that the panel retains jurisdiction—even after the filing of a rehearing en banc petition—**unless the full court assumes control by granting review**. This is critical to avoid any procedural ambiguity or unfairness in the rehearing process.

III. Procedural Due Process Requirements in Mandate Issuance and Rehearing Context

Adequate due process in the appellate mandate context is assured only if settled procedural regularity is maintained. The Supreme Court in *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 542 (1985) reaffirmed that procedural due process guarantees not substantive rights but a "notice and opportunity for hearing appropriate to the nature of the case," and that deprivation without adherence to procedural regularity may be unlawful. See also *Mathews v. Eldridge*, 424 U.S. at 333.

In applying these standards to the mandate and rehearing context, the Eleventh Circuit has held that it is "**the minimal requirement of due process that an individual be given an opportunity for a hearing before he is deprived of any significant property interest**" (*Grayden v. Rhodes*, 345 F.3d 1225, 1232 (11th Cir. 2003)). The process must be timely, meaningful, and anchored in explicit procedural rules—both to prevent

arbitrary deprivations and to secure the right to seek further appellate or Supreme Court review.

Where the court issues or recalls a mandate outside these procedural limits, or denies a timely rehearing petition without adequate process, there is an immediate risk of mistaken or unjustified deprivation of legal rights.

IV. Reinstatement of Vacated Appellate Opinions and the Munsingwear Doctrine

A central issue concerns whether the Eleventh Circuit's procedures for vacatur and reinstatement are consistent with the Supreme Court's established practice. In *United States v. Munsingwear, Inc.*, 340 U.S. 36 (1950), the Court articulated the principle that where a case becomes moot while pending appellate review, the standard practice is for the appellate court to vacate the lower court's judgment and remand with directions to dismiss the case as moot:

"The established practice of the Court in dealing with a civil case from a court in the federal system which has become moot while on its way here or pending our decision on the merits is to reverse or vacate the judgment below and remand with a direction to dismiss." (*Munsingwear*, 340 U.S. at 39)

This doctrine prevents parties from being bound by adverse judgments that have become unreviewable due to intervening mootness or happenstance circumstances beyond the appellant's control. The Supreme Court reaffirmed

its commitment to equitable vacatur in *U.S. Bancorp Mortgage Co. v. Bonner Mall Partnership*, 513 U.S. 18 (1994), narrowing the availability of vacatur to cases where the party seeking relief is not responsible for the mootness. Nevertheless, the application of *Munsingwear* vacatur remains the "established practice" for cases mooted beyond the petitioner's control.

Unjustified reinstatement of previously vacated appellate opinions, or refusal to vacate adverse judgments rendered unreviewable due to mootness, may violate due process, as it prevents effective judicial correction of errors and may apply res judicata and stare decisis effect to unreviewable decisions.

V. Due Process and Mootness Doctrine in the Appellate Setting

Under Article III, federal courts may only decide "live" cases or controversies. Mootness deprives courts of jurisdiction and mandates dismissal. *Kingdomware Techs., Inc. v. United States*, 136 S. Ct. 1969, 1975 (2016); *Campbell-Ewald Co. v. Gomez*, 577 U.S. 153, 161 (2016). Where mootness arises while an appeal is pending, the typical remedy is vacatur of the judgment below—ensuring that no party is prejudiced by an adverse ruling rendered unreviewable because of circumstances beyond their control (*Lewis v. Cont'l Bank Corp.*, 494 U.S. 472, 477–78 (1990); *DeFunis v. Odegaard*, 416 U.S. 312, 317–20 (1974)).

The Supreme Court in *Munsingwear* emphasized that parties must be vigilant in seeking vacatur upon mootness, as failure to do so may result in

the adverse judgment persisting with full legal effect (340 U.S. at 41). However, when mootness is not the fault of the appellant, *Munsingwear* requires that district or circuit court judgments be vacated so that no party is prejudiced by results of happenstance.

Recent applications and refinements of the *Munsingwear* doctrine, including dissenting opinions by current Supreme Court Justices (see, e.g., Justice Jackson in *Chapman v. Doe*, 598 U.S. ___ (2023)), have stressed that vacatur for mootness remains a strongly equitable remedy, not to be invoked in cases of voluntary cessation by the party seeking relief, but fundamental when circumstances, not party conduct, preclude review.

VI. Eleventh Circuit's Local Rules, Internal Operating Procedures, and Current Practice

Local Rules and Internal Operating Procedures

The Eleventh Circuit has incorporated the above procedural attributes into its local rules and internal operating procedures. For example:

- 11th Cir. R. 41-1: Motions to recall the mandate must demonstrate exceptional circumstances and be promptly filed.
- 11th Cir. R. 41-2: The court may expedite or delay the issuance of mandate only for good cause, and should provide notice.

- I.O.P. 2: The precedential value of published opinions is not dependent on the issuance or non-issuance of the mandate; published opinions are binding once issued, regardless of procedural status.
- While these rules align in substance with FRAP 41 and 40, the question of meaningful opportunity for notice and reasonable timeframes is a recurring theme in controlling Supreme Court authority on due process in appellate procedure and cannot be circumvented by local rule under the Supremacy Clause.

VII. Due Process Violations: Practical and Constitutional Impact

Due Process in Mandate Issuance and Rehearing

Multiple Eleventh Circuit decisions, including *Catron*, *Grayden*, and commentary in recent unpublished opinions (e.g., 2025 CaseMine commentary on *Carlton Smith v. Attorney General, State of Georgia (July 3, 2025)*), reaffirm that both the deprivation of a protected right and the absence of meaningful corrective process are required to state a colorable due process claim. Where the Circuit deploys its local rules or internal procedures to foreclose meaningful access to further review—whether by unreasonably abbreviating rehearing timelines, failing to provide adequate notice, or reinstating vacated opinions after the case is moot—litigants are denied the "opportunity to contest the basis upon which a state proposes to deprive them of protected interests" that is the hallmark of procedural due process.

In the appellate context, due process does not always require a right of appeal, but where such review is afforded by statute or rule, it "may not be administered irrationally" or in a manner that discriminates or arbitrarily forecloses remedial access (*Griffin v. Illinois*, 351 U.S. 12, 18 (1956); *Douglas v. California*, 372 U.S. 353, 357–58 (1963)).

Vacatur and Munsingwear Doctrine

Constitutional concerns are at their zenith when the court's own procedures, or a combination of circuit precedent and administrative action (via mandate or rehearing), operates to give binding effect to an adverse lower court opinion that has become moot as a result of events outside the petitioner's control. As the Supreme Court held in *Arizonans for Official English v. Arizona*, 520 U.S. 43, 71–72 (1997), vacatur is the proper remedy to ensure neither "the law nor the parties are prejudiced by a moot, unreviewable lower court decision."

Failure to vacate under *Munsingwear* may result in unconstitutional practical barriers, thwarting re-litigation and barring Supreme Court review, especially when parties are deprived of the one opportunity for appellate correction by procedural happenstance or court mismanagement.

VIII. Constitutional Ballot Access Challenges in the Eleventh Circuit

Procedural failures gain further constitutional significance when the underlying litigation involves ballot access—a core concern under the First and Fourteenth Amendments.

A. Leading Supreme Court and Eleventh Circuit Precedent

- *Anderson v. Celebrezze*, 460 U.S. 780, 790-95 (1983): Early deadlines and restrictive ballot access requirements impede the associational rights of candidates and voters; such laws must be weighed against the state's regulatory interests using a balancing test that considers character and magnitude of the asserted injury, state justifications, and the necessity/proportionality of the burden. The majority of election ballots are no longer printed

- *Jenness v. Fortson*, 403 U.S. 431 (1971): Signature requirements are constitutional so long as they do not freeze the status quo and a reasonable alternative means of access exists. Today because of identity theft, the closeness of surrounding districts that use the same community amenities and services, social distancing, and the ability of election officials to arbitrarily keep a candidate off the ballot by altering documents, there is no alternative means of accessing the ballot, thereby keeping the status quo.

- *Cartwright v. Barnes*, 304 F.3d 1138 (11th Cir. 2002); *Coffield v. Kemp*, 599 F.3d 1276 (11th Cir. 2010): Repeated application of Anderson/Jenness framework to ballot access in Georgia and the Eleventh Circuit.

The Eleventh Circuit's own controlling precedent recognizes the *Anderson* test as the governing standard for all constitutional ballot access claims, requiring the court to weigh not only the burden on associational and voting rights, but also the adequacy of underlying procedural protections afforded to litigants who challenge such barriers.

B. Current Developments and Ballot-Access News

Recent cases have heightened the importance of these questions. For example, the Eleventh Circuit in *Catoosa County Republican Party v. Catoosa County Board of Elections*, 24-12936 (June 12, 2025), remanded for trial a claim seeking to enforce political party control over ballot access—an issue resonant nationwide in litigation over primary access, candidate exclusion, and the constitutional floor for ballot regulation.

In the modern era, state-level innovation (or restriction) may be challenged under controlling Supreme Court doctrine when such laws create barriers either through superficial neutrality or arbitrary procedural hurdles. Early petition deadlines, high signature thresholds, and short windows to seek rehearing and Supreme Court review all potentially run afoul of *Anderson v. Celebrezze* and subsequent Supreme Court reasoning.

Discussion

I. Eleventh Circuit Procedures: Legal Clarity and Due Process Defects

Despite the facial regularity of the Eleventh Circuit's FRAP 41 and 40 implementation, the local practices of expedited or immediate mandate issuance, delayed or denied rehearing, and the prospect of reinstating vacated judgments without meaningful party participation pose substantial constitutional questions. These procedures may "deprive persons not from the deprivation, but from the mistaken or unjustified deprivation of life, liberty, or property," in violation of the essential elements of due process.

The regularity of procedural opportunity—a party's right to be heard prior to issuance of the mandate, or to seek meaningful rehearing—cannot be treated as a mere administrative formality. Where timing or lack of notice operates to cut off Supreme Court review as a practical matter, the procedure becomes constitutionally suspect.

Applicable precedent on notice, opportunity to be heard, and meaningful time and manner includes *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306 (1950); *Mathews v. Eldridge*, 424 U.S. 319 (1976); and *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532 (1985). The irreducible minimum of due process is the meaningful opportunity to present arguments before rights are foreclosed.

II. Appellate Mandate, Vacatur, and Equitable Relief

The Supreme Court's clear guidance is not to allow procedurally defective or moot decisions to stand as precedent. The *Munsingwear* doctrine and its

progeny, as well as references in FRAP 41(d), require courts to vacate lower judgments that become moot on appeal and to remand for further proceedings or dismissal, unless the petitioning party caused the mootness. This rule, equitably designed, preserves future re-litigation rights and protects due process.

By refusing to vacate, or by reinstating vacated opinions through local appellate protocols, the Eleventh Circuit risks creating binding authority predicated on defective or unreviewable decisions, harming both litigants and the integrity of the judicial process. See *Arizonans for Official English*, 520 U.S. 43; *U.S. Bancorp Mortgage Co. v. Bonner Mall P'ship*, 513 U.S. 18; *Ryan v. Schad*, 570 U.S. 521; *Bell v. Thompson*, 545 U.S. 794.

III. Ballot Access and the Constitution: Heightened Procedural Protection

Where the underlying litigation concerns access to the ballot and voting rights, appellate procedures must be especially scrupulous, for the right to cast a ballot and to associate for political purposes is fundamental. As *Anderson v. Celebrezze* held:

"A burden that falls unequally on independent candidates or on new or small political parties impinges, by its very nature, on associational choices protected by the First Amendment" (460 U.S. at 793).

Any appellate procedure that erects arbitrary, shortened, or obscure hurdles to judicial correction of ballot access restrictions is, at a minimum,

constitutionally suspect. The Eleventh Circuit itself has repeatedly cited *Anderson*, *Jenness*, and *Burdick v. Takushi*, 504 U.S. 428 (1992), as binding in all ballot access litigation within the circuit.

IV. Fraud-on-the-Court Exception to Rooker-Feldman Merits Recognition

Other circuits recognize that Rooker-Feldman does not bar federal jurisdiction where the state-court judgment was procured by fraud on the court. Here, respondents introduced altered official documents—removing the cumulative signature total from the verification form and substituting an unsigned page—to defeat ballot access. **Denying review leaves such fraud beyond federal redress,** and it also leaves the continued controversies unresolved with the capability of being repeated in future elections.

V. Constitutional Infirmities in Georgia's Ballot-Access Scheme

Under *Anderson v. Celebrezze* and *Burdick v. Takushi*, burdens on ballot access must be weighed against state interests.

- **Severe Burden**: District 85[8] is geographically small, surrounded by multiple other districts, making eligible-voter identification difficult. COVID-19

[8] Petitioner address was recently changed to District 84. Before the change Petitioner had always been in GA house District 85 since its inception in DeKalb County. In the 2020 cycle, Georgia's legislature passed a congressional plan (SB 2EX) on Nov. 22, 2021, a state House plan (HB 1EX) on Nov. 12, 2021, and a state Senate plan (SB 1EX) on Nov. 15, 2021; all three were signed by the governor on Dec. 30, 2021. On Oct. 26, 2023, a federal court struck all three plans, finding violations of the Voting Rights Act. On Dec. 7, 2023, the legislature passed a remedial congressional plan (SB 3EX), and passed remedial state Senate (SB 1EX) and state House (HB 1EX) on Dec. 5, 2023; the governor signed all three on Dec. 8, 2023, and the trial court approved those plans on Dec. 28, 2023. The liability and remedial decisions are both currently on appeal. *See* Case No. 1:21-cv-05337 (N.D. Ga.), Nos. 23-13914, 24-10230 (11th Cir.)

compounded difficulties; restrictions like O.C.G.A. § 21-2-414 which limit petitioning near polling places (the only place where there are known registered voters).

- **Write-In Deadline Trap**: Notice of denial came after the final day to publish a write-in candidacy notice, ensuring no ballot participation.
- **Discriminatory Application**: The altered verification form used only in petitioner's case deviated from the uniform format, without explanation.
- **Lack of Effective Appellate Relief**: O.C.G.A. § 21-2-171(c)'s expedited review requirement was ignored; the Georgia Supreme Court's seven-month delay rendered relief impossible. O.C.G.A. § 21-2-171(c) is flawed, it is incapable of offering the appellate relief the would allow a candidate's name to be correctly placed on the ballot after an error has occurred.

VI. Capable of Repetition Yet Evading Review

Petitioner intends to seek office again, and the statutory scheme that foreclosed timely relief[9] remains unchanged. As in *Southern Pacific Terminal Co. v. ICC,* 219 U.S. 498 (1911) these conditions meet both prongs of the exception to mootness.

REASONS TO GRANT THE WRIT

I. The Eleventh Circuit Violated FRAP 41(b) by Issuing a Mandate During Pending Rehearing

[9] See O.C.G.A. § 21-2-171(c)

FRAP 41(b) prohibits issuance of a mandate while rehearing is pending. The Eleventh Circuit granted rehearing en banc on May 28, 2024, vacating the panel opinion. Yet it issued its mandate three days later, on May 31, 2024. This violated the rule and deprived Petitioner of the appellate process to which he was entitled. See *Calderon v. Thompson*, 523 U.S. 538, 549–50 (1998); *United States v. Reyes*, 49 F.3d 63 (2nd Cir. 1995).

II. The Court Reinstated a Vacated Opinion Without Resolution, Violating Due Process

Granting rehearing en banc vacates the panel opinion. *See* 11th Cir. R. 40-11; *United States v. American-Foreign S.S. Corp.*, 363 U.S. 685, 689–90 (1960). **The Eleventh Circuit's August 7, 2025 denial reinstated a vacated judgment without briefing or resolution.** This denied Petitioner a hearing "at a meaningful time and in a meaningful manner." See *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976); *Logan v. Zimmerman Brush Co.*, 455 U.S. 422, 429–30 (1982).

III. The Prior Certiorari Denial (No. 23-7684) was Based on a Vacated Opinion

Petitioner's original certiorari petition (No. 23-7684) was filed on May 28, 2024—the same day rehearing was granted. The Court denied certiorari on October 7, 2024, unaware that the panel opinion had been vacated. The present petition supplies the missing procedural context and challenges the mandate issuance and reinstatement of a vacated judgment.

IV. Georgia's Ballot Access Scheme Violates Constitutional Rights

Petitioner was verified with 2,200 signatures on August 19, 2020, but was notified of rejection on September 4—too late to qualify as a write-in candidate. The verification form was altered, and the appellate process under O.C.G.A. § 21-2-171(c) failed to provide timely relief. The Georgia Supreme Court delayed review for seven months and dismissed the case as moot. These burdens violate the First and Fourteenth Amendments. *See Anderson v. Celebrezze*, 460 U.S. 780, 787 (1983); *Cowen v. Secretary of State of Georgia*, 22 F.4th 1227 (11th Cir. 2022).

CONCLUSION AND PRAYER FOR RELIEF

This petition presents urgent questions about mandate finality, rehearing procedure, and constitutional access to the ballot. The Eleventh Circuit's procedural breakdown and Georgia's burdensome laws demand this Court's review.

Petitioner respectfully requests that this Court:

1. Grant the petition for writ of certiorari.
2. Vacate the Eleventh Circuit's August 7, 2025 order.
3. Remand with instructions to treat the March 27, 2024 opinion as vacated and proceed with en banc rehearing.
4. Review the timing and procedural fairness of the Eleventh Circuit's mandate issuance process, especially as relates to the protection of Supreme Court

review and adherence to FRAP 41(b), including the necessity for adequate notice and opportunity for stay.

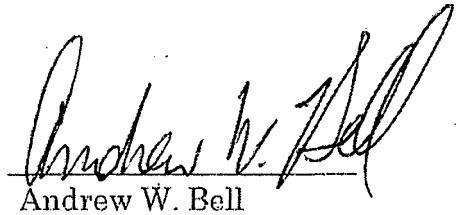
5. Review the proper scope, timing, and procedural regularity of rehearing under FRAP 40, including the requirement of meaningful procedural safeguards prior to the foreclosure of appellate correction.

6. Review the Circuit's authority, or lack thereof, to reinstate vacated opinions once a case becomes moot, in light of the *Munsingwear* doctrine and Supreme Court precedent requiring vacatur of judgments rendered unreviewable through no fault of the party seeking review.

7. Review the application of these rules in the special context of constitutional ballot access cases, ensuring that core associational and electoral rights under the First and Fourteenth Amendments are not diminished by procedural technicalities or irregularities.

8. Review the need to harmonize local rules and internal operating procedures with established Supreme Court due process doctrine and equitable vacatur standards.

Respectfully submitted on September 04, 2025,



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