APPENDIX

TABLE OF APPENDIX

In the

United States Court of Appeals

For the Eleventh Circuit

No. 23-10059

ANDREW W. BELL,

Plaintiff-Appellant,

versus

SECRETARY OF STATE FOR THE STATE OF GEORGIA,
DIRECTOR OF ELECTIONS FOR THE STATE OF GEORGIA,

Defendants-Appellees.

Appeal from the United States District Court
for the Northern District of Georgia
D.C. Docket No. 1:21-cv-02486-SEG

ORDER:

Appellant's motion for leave to correct petition for rehearing en banc is GRANTED.

DAVID J. SMITH
Clerk of the United States Court of
Appeals for the Eleventh Circuit

ENTERED FOR THE COURT - BY DIRECTION

In the United States Court of Appeals for the Eleventh Circuit

ANDREW W. BELL,
Plaintiffs- Appellant,

versus

BRAD RAFFENSBERGER, SECRETARY OF STATE OF THE STATE OF GEORGIA;
CHRIS HARVEY, ELECTIONS DIRECTOR FOR THE STATE OF GEORGIA,
Defendants-Appellees.

On Appeal from the United States District Court
for the Northern District of Georgia
D.C Docket No. 1:21-cv-02486-SEG

MOTION FOR LEAVE TO CORRECT PETITION FOR REHEARING EN BANC

ANDREW W. BELL
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Atlanta, Georgia 30354
(404) 380-0037
pro se

CERTIFICATE OF INTERESTED PERSONS

I certify that the following person and entities may have an interest in the outcome of this case:

Adams, Kimberly M. Esmond., {(1st Trial Judge) Fulton County, GA Superior Court}

Andrew W. Bell (**Plaintiff/Appellant**)

Bly, Christopher C., United States Magistrate Judge

Carr, Christopher M., (Attorney of Appellee) (Attorney General of the State of Georgia) (Counsel for Defendants/Appellees)

Geraghty, Sarah E., {(2nd (Trial Judge) United States District Court Judge}

Harvey, Chris., (**Defendant/Appellee**)

Jones, Steve C., United States District Court Judge

McGowan, Charlene Swartz., (Attorney of Appellee)

Office of the Georgia Attorney General, Counsel for Defendants/Appellees

O'Roark, Elizabeth Marie., (Attorney of Appellee)

Raffensberger, Brad., (**Defendant/Appellee**) (Secretary of State of the State of Georgia)

Stoy Jr., Lee M., (Attorney of Appellee)

Supreme Court of Georgia

Vaughn, Elizabeth Wilson., (Attorney of Appellee)

Webb, Bryan Keith., (Attorney of Appellee)

Willard, Russell David., (Attorney of Appellee)

This certificate is made so that the judges of this Court may evaluate possible disqualification or recusal.

/s/ *Andrew W. Bell*
Andrew W. Bell
pro se

APPELLANT'S MOTION FOR LEAVE TO FILE CORRECTED PETITION

Pursuant to 11 Cir. R. 27-1 and Fed.R.Civ.P. 60(a), Appellant respectfully requests to file the attached corrected petition, which identical except for the case number that was added to the cover page, and the Rule 35(b)(1) statement which I added "O.C.G.A. §" five times in the statement, due to the fact "O.C.G.A. §" was not included in the original pleading. The original pleading included nomenclature of the statue but not the code from which it derived. I attempted to contact the counsel for the Defendant/Appellees, Elizabeth Vaughn, via email at EVaughan@law.ga.gov but I received emails from her in the past from the exact same email address. However, when sent an email about correcting the petition for the rehearing en banc, I was sent a return email stating that the message had been blocked. I tried to reach out by phone, I received here voicemail and I left a message.

CONCLUSION

Appellant made an inadvertent error and respectfully request to file the attached corrected Appellant's petition for rehearing en banc.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

This document complies with the type-volume limitation of Rule 27(d)(2) of the Federal Rules of Appellate Procedure because it contains 177 words as counted by the word-processing system used to prepare the document.

/s/ Andrew W. Bell
Andrew W. Bell

CERTIFICATE OF SERVICE

I hereby certify that on April 15, 2024, I served the foregoing by electronically filing it with this Court's ECF system, which constitutes service on all parties who have appeared in this case and are registered to use the ECF system.

/s/ Andrew W. Bell
Andrew W. Bell

In the United States Court of Appeals for the Eleventh Circuit

ANDREW W. BELL,
Plaintiffs- Appellant,

versus

BRAD RAFFENSBERGER, SECRETARY OF STATE OF THE STATE OF GEORGIA;
CHRIS HARVEY, ELECTIONS DIRECTOR FOR THE STATE OF GEORGIA,
Defendants-Appellees.

On Appeal from the United States District Court
for the Northern District of Georgia
D.C Docket No. 1:21-cv-02486-SEG

CORRECTED PETITION FOR REHEARING EN BANC

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Geraghty, Sarah E., {(2nd (Trial Judge) United States District Court Judge}

Harvey, Chris., (**Defendant/Appellee**)

Jones, Steve C., United States District Court Judge

McGowan, Charlene Swartz., (Attorney of Appellee)

Office of the Georgia Attorney General, Counsel for Defendants/Appellees

O'Roark, Elizabeth Marie., (Attorney of Appellee)

Raffensberger, Brad., (**Defendant/Appellee**) (Secretary of State of the State of Georgia)

Stoy Jr., Lee M., (Attorney of Appellee)

Supreme Court of Georgia

Vaughn, Elizabeth Wilson., (Attorney of Appellee)

Webb, Bryan Keith., (Attorney of Appellee)

Willard, Russell David., (Attorney of Appellee)

This certificate is made so that the judges of this Court may evaluate possible disqualification or recusal.

/s/ Andrew W. Bell
Andrew W. Bell
pro se

RULE 35(b)(1)

I express a belief, based on a reasoned and studied professional judgment, that the panel decision is contrary to the following decision(s) of the Supreme Court of the United States or the precedents of this circuit and that consideration by the full court is necessary to secure and maintain uniformity of decisions in this court: *Jenness v. Fortson*, 403 U.S. 431 (1971) and *Cowen, et al v. Sec'y of State of Ga.*, 22 F.4th 1227, 1235-36(11th Cir 2022)(Cowen II)

I express a belief, based on a reasoned and studied professional judgment, that this appeal involves one or more questions of exceptional importance: Does O.C.G.A. § 21-2-170(a)-(h) violate the First and Fourteenth amendment rights of voters and the registered electorate? Does O.C.G.A. § 21-2-171(a)(b) allow a potential candidate to have their petition examined in a timely manner that would allow their name to be placed on the ballot? Do the appellate procedures under O.C.G.A. § 21-2-171(c) allow enough time potential candidate to effectively appeal to a superior court or appellate court that an error or crime can be discovered, that will enable that same candidate to have their name placed on the ballot? Is the examination process of O.C.G.A. § 21-2-171(a)(b) and the appeal process of O.C.G.A. § 21-2-171(c) unconstitutional being that it does not allow for enough time for the nomination petition to be examined and appealed before the ballot is finalized, which in turn violates the First and Fourteenth amendment rights of the candidates and the voters they seek to represent? Does the societal norm of social distancing, the societal norm of not sharing personal information, the susceptibility of fraud by documents being altered, tampered with, or destroyed corrupt officials create a severe burden for the independent candidates? And with the invention of other technologies since 1971, is this the best way to calculate if a candidate has a modicum of support?

/s/ Andrew W. Bell
Andrew W. Bell
pro se

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STATEMENT OF THE ISSUES

Appellant Andrew Bell petitions this Court to rehear this case *en banc*, pursuant to FRAP 35 (b)(1)(A)(B). There are issues in this case 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). Also in *Cowen, et al. v. Sec'y of State of Ga.*, 22 F.4th 1227, 1235-36(11th Cir 2022)(Cowen II), *Cowen* only provides one example of an independent candidate who was able to access the ballot through a nationally recognized case[1], where he was able to gather support from individuals who typically voted Democrat while at the same time garnering Republican support because the Republican district attorney became unpopular after the Arbery murder. Cowen did not collect any signatures for a nomination petition, therefore he did not experience the unconstitutionally or the severe burden placed on candidates through O.C.G.A. §21-2-170(a)-(e) or the appellate process of O.C.G.A. § 21-2-171(a)(b)(c) the does not give an opportunity for a candidate to access the ballot. I respectfully submit

[1] Kieth Higgins ran and won as the Brunswick Judicial Circuit (Glynn County) after the murder of Ahmaud Arbery which made national news and brought national attention to the Brunswick, GA area. Mr. Higgins, myself, and other candidates devised strategies to collect more signatures in 2020. The most important being my strategy which was going to collect signatures at polling stations during primary and runoff elections (June 9 and August 11, 2020) due to fact those are places where the candidate knows people there are eligible to sign the nomination petition. However, Georgia has another law that makes that collect signatures at the polling place. O.C.G.A. § 21-2-414(a), which causes another severe burden on candidates having to access the ballot by way of a nomination petition, because the candidate can't collect signatures (1.) Within 150 feet of the outer edge of any building within which a polling place is established; (2.) Within any polling place; or (3.) Within 25 feet of any voter standing in line to vote at any polling place

that the proceeding involves one or more questions of exceptional importance. Does a crime raise to the level of fraud-on-the-court? The crime being the alteration of one document[2] and the addition of another document[3] that was not authorized to be used according to the rules and instructions given to all County Election Superintendents and Registrars in Georgia. Is the examination process of O.C.G.A. § 21-2-171(a)(b) and the appeal process of O.C.G.A. § 21-2-171(c) unconstitutional being that it does not allow enough time for the nomination petition to be examined and appealed before the ballot is finalized, which in turn violates the First and Fourteenth amendment rights of the candidates and the voters they seek to represent? Does the societal norm of social distancing, the societal norm of not sharing personal information, the susceptibility of fraud by documents being altered, tampered with, or destroyed corrupt officials create a severe burden for the independent candidates? And with the invention of other technologies since 1971, is this the best way to calculate if a candidate has a modicum of support?

STATEMENT OF THE COURSE PROCEEDINGS AND DISPOSITION OF THE CASE

[2] App'x at 69
[3] App'x at 70

On August 13, 2020, I personally gave my nomination petition to Defendant/Appellee Harvey. On August 19, 2020, I was certified with 2,200 hundred valid signatures. However, on Sept 4, 2020, I was sent an email stating that I only had received 827 valid signatures. Neither the verification statement (App'x at 69) nor the unsigned fraudulent document with the DeKalb County letterhead (App'x 70), instead of the letterhead from the Secretary of State[4], were included with the email. The verification statement and the fraudulent document were emailed to me on the night of September 14, 2020, a day before the September 15, 2020, hearing that had been scheduled for 10:30 a.m. Although I noticed the email before the hearing started, I did not have time to thoroughly review the documents. I think through the service of my country I was blinded by patriotism and the belief in the rule of law, I was naïve to the fact of how bad the system was broken, and how far some person or persons would go to keep my name off the ballot. However, when I appealed to the Supreme Court of Georgia on September 22, 2020, I made it clear that I had been certified with 2,200 valid signatures on August 19, 2020, and that the added document was a fraudulent document. However, it took the Georgia Court over seven months to render its

[4] When I say instead of the letterhead from the Secretary of State, I am not referring to the letter that was sent sent via email on September 4, 2020 that displayed the Secretary of State as Brian Kemp instead of Brad Raffensberger that is dated August 28, 2018 (App'x at 68). I'm referring to the document with the DeKalb County letterhead (App'x 70) that held the false cumulative total that was ultimately used to keep my name from rightfully being placed on the ballot.

decision. I petitioned the U.S. District Court on June 17, 2021, the same as John Anderson had done on September 26, 1980. My petition was denied. I appealed to this Court on January 06, 2023. On July 25, 2023, this Court denied my motion to exceed the word limit. The original reply brief included hundreds of names that should have been counted that were not counted. On March 27, 2024, the decision of the U.S. District was affirmed.

STATEMENT OF FACTS

On August 13, 2020, I submitted my nomination directly to Defendant/Appellee Harvey. On August 19, 2020, I was certified 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." My cumulative number of valid signatures and breakdown of rejection numbers was not documented on my 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 Defendants/Appellees that September 11, 2020, was the last day to finalize the 2020 General election ballot. The Defendants lied to the trial court when they stated there was no evidence that I had collected the correct number of signatures required to get on the ballot. Panel stated, "the district court did not err in denying Bell's motion to amend his

complaint to add a request for damages." Op.26. I requested damages in the Georgia Court (Doc 3-1 at 165) and in my original complaint with the U.S. District Court (Doc 3 at 17). 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.

ARGUMENTS AND AUTHORITES

A panel of this Court states that I submitted a nomination petition with 2,200 signatures, Op.3[5]. I submitted more than 2,200 signatures. However, due to the fraud and corruption there is no way to prove it now. What can be stated as a fact, is that on August 19, 2020, I was certified 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 hereby returned with this verification statement. This 19th day of August 2020."*

[5] "Op." refers to the panel's March 27, 2024, decision. "FF" refers to the district court's finding of fact, and "CL." Refers to its conclusion of law.

The panel recognized that the "Georgia law requires the Secretary of State to expeditiously…examine the petition…", Op.3. However, in my case although the verification statement is signed on August 19, 2020, I was not notified until September 4, 2020. As I stated to the Supreme Court of Georgia, the U.S. District Court, and this Court the documentation submitted to the trial court by the Defendants/Appellees 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." My cumulative number of valid signatures and breakdown of rejection numbers was not documented on my verification statement. As a matter of fact, my verification statement differs from every other independent or third-party candidate who submitted a nomination petition in 2020, due to the fact that the format[6] of my verification differs from everyone else's. The format for all the other candidates is the same but mine 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 my name from being placed on the 2020 General election ballot.

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

Although the abovementioned facts were presented to the Georgia Court (App'x at 138), to the U.S. District Court (Doc 7 at 10-11)[7], and several times to this Court (Appellant's brief at 13-14, 18-20, 33-34); The Georgia Court, the U.S. District Court nor the panel for this Court 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 my nomination petition, the examination and review of my nomination petition, the verification statement itself, as well as the appellate process and procedure.

The panel does however, mention another fact, that letter I received in the email was dated August 28, 2018, and the letterhead identified Brian Kemp as the Secretary of State[8], Op.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 Defendant/Appellee Chris Harvey, which at this point from and integrity and proof standpoint does mean anything, being it was his office, and possibly Harvey himself who devised the scheme to remove the cumulative total from the official

[7] "Doc" refers to documents transferred by the U.S. District
[8] Brian Kemp at not been the Secretary of State for almost 20 months at that time.

document through scanning the document and then use computer software to remove the cumulative total from the form[9], and then print out a new verification statement and claim it was the original document, while at the same time adding a second 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 Defendants/Appellees presented both documents to the Fulton County superior court when there only should have been one document according to the Defendants/Appellees own instructions. The Defendants/Appellees never produced any official documentation stating the date that the ballots had to be finalized. Along with that the counsel for the Defendants/Appellees lied several times to the superior court judge. The panel includes two statues stating. "Under federal law and Georgia law, elections officials must transmit absentee ballots to eligible voters[10] at least 45 days before the general election." Op.4. However, one of the statues contradicts the statements made by the panel and the Defendants/Appellees. 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

[9] Although other independent candidates throughout Georgia had their verification statement and cumulative total on the same form so it can reasonably assumed that my form was altered due to the fact it does not exactly resemble the verification statement form of the candidates. The format for the form of the other independent candidates is exactly the same. Nor does it follow the instructions given by Defendant/Appellee Harvey to the Georgia County Superintendents and Registrars.

[10] The eligible voters in this circumstance or those voters who have already requested an absentee ballot.

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[11] 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." Op.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 Defendants/Appellees, the Fulton County Superior Court, the Georgia Court, the U.S. District Court, and the opinion of the panel, Op.5, are stating that O.C.G.A. § 9-10-2, superseded or trumped my rights and the rights of the GA House District 85 electorate that were granted under O.C.G.A. § 21-2-171(c)[12]. It appears also that the Defendants/Appellees, the District Court, and the panel believe that the Georgia Secretary of State's alleged right to a hearing override the First and

[11] 52 U.S.C. § 20302(g)(1)(2)(B)(ii)

[12] The application for such writ of mandamus shall be made within five days of the time when the petitioner is notified of such decision. 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; and notice thereof shall be served with a copy of such application upon the officer with whom the nomination petition was filed and upon the petitioner.

Fourteenth amendment rights of independent candidates and the First and Fourteenth amendment rights of the registered electorate of who offered their support by signing my petition. In my case, I was denied my 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. This Court previously stated "{"the right of individuals to associate for the advancement of political beliefs" and "the right of qualified voters, regardless of their political persuasion, to cast their votes effectively." Anderson v. Celebrezze, 460 U.S. 780, 787 (1983) (quotation omitted)}" *Cowen, et al v. Sec'y of State of Ga.*, 22 F.4th 1227, 1235-36(11th Cir 2022)(Cowen II). This Court previously stated, "{To be sure, "[n]o right is more precious in a free country than that of having a voice in the election of those who make the laws under which, as good citizens, we must live." *Burdick v. Takushi*, 504 U.S. 428, 441 (1992) (internal quotation marks omitted). But we also know that "the right to vote is the right to participate in an electoral process that is necessarily structured to maintain the integrity of the democratic system." Id.}" *See New Georgia Project, et al., v. Raffensberger*, No. 20-13360 (11th Cir. 2020). In 2020, I was denied my rightful place on the ballot and the electorate of Georgia House District 85 were denied there right of having their voice heard. Furthermore, the integrity in the democratic process was not maintained. A crime was committed I have not filed any criminal

complaint as it relates to the crimes committed, nevertheless the alteration of election documents violates several Georgia and federal laws.[13] What part of fraud or alteration of documents maintains the integrity of the democratic system?

From a historical context it seems as though Georgia has regressed further than it previously had. For example, 40 years to the day before I filed 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 my 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, my hearing was scheduled 7 days later and took place on September 15, 2020. Anderson lost his appeal as did I and appealed to the Georgia Supreme Court as did I. Anderson's case was affirmed by the Georgia Supreme Court on September 25, 1980, two weeks after the superior court ruling. My case was decided by the Georgia Supreme Court 7 months later on May 3, 2021. 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,

[13] O.C.G.A § 21-2-250, O.C.G.A § 21-2-252, O.C.G.A § 21-2-253, O.C.G.A § 21-2-254, 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

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 worldwide web, it would appear that the argument of the Appellees and the panel is that it was more difficult in 2020 or now, 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, I filed a motion for reconsideration that was denied. Upon the dismissal of the motion for reconsideration I 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.

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." The 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**"[14], 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

[14] Doc 16 at 130

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.

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 voting machines or devices to collect votes or signatures. 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 their information. Many registered 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 Appellant stated in his brief (Appellant brief at 47), so even in 1971 she was not the best person to articulate the tremendous burden placed on the independent or third-party candidates. Appellate realized the best place to find registered voters is at the polling place. Appellate circulated his petition at several polling places during the primary election. Appellant, 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 Appellant's 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)[15]. When you combine 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

[15] No person shall solicit votes in any manner or by any means or method, nor shall any person distribute or display any campaign material, nor shall any person solicit signatures for any petition, nor shall any person, other than election officials discharging their duties, establish or set up any tables or booths on any day in which ballots are being cast: 1. Within 150 feet of the outer edge of any building within which a polling place is established; 2. Within any polling place; or 3. Within 25 feet of any voter standing in line to vote at any polling place. These restrictions shall not apply to conduct occurring in private offices or areas which cannot be seen or heard by such electors.

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.

CONCLUSION

For the foregoing reasons, the Court should grant rehearing en banc.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE WITH RULE 32(a)

Certificate of Compliance with Type-Volume Limitations,

Typeface Requirements, and Type Style Recommendations

1. This petition complies with the type-volume limitation of Fed. R. App. P. 35(b)(2)(A) because this petition contains 3,897 words, excluding the parts of the petition exempted by Fed. R. App. P. 32(f).

2. This petition complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because this petition has been prepared in Times New Roman font, a proportionally spaced typeface using Microsoft Word, in fourteen point font size and in plain, roman style.

/s/ Andrew W. Bell
Andrew W. Bell

CERTIFICATE OF SERVICE

I certify that on April 11, 2024, I electronically filed this brief with the Clerk of Court for the United States Court of Appeals for the Eleventh Circuit using the appellate CM/ECF system, thereby serving all persons required to be served.

/s/ Andrew W. Bell
Andrew W. Bell

ADDENDUM

1. Panel Decision

PANEL DECISION

[DO NOT PUBLISH]

In the

United States Court of Appeals

For the Eleventh Circuit

No. 23-10059

Non-Argument Calendar

ANDREW W. BELL,

Plaintiff-Appellant,

versus

SECRETARY OF STATE FOR THE STATE OF GEORGIA,
DIRECTOR OF ELECTIONS FOR THE STATE OF GEORGIA,

Defendants-Appellees.

Appeal from the United States District Court
for the Northern District of Georgia
D.C. Docket No. 1:21-cv-02486-SEG

Before JILL PRYOR, NEWSOM, and ANDERSON, Circuit Judges.

PER CURIAM:

In 2020, Andrew W. Bell submitted a nomination petition to the Georgia Secretary of State, seeking to add his name to the ballot as an independent candidate in an upcoming election for the Georgia House of Representatives. The Secretary of State determined that Bell failed to submit the required number of signatures to appear on the ballot. Bell then sought review of that decision by filing a mandamus petition in superior court. After the superior court denied Bell relief and the Georgia Supreme Court dismissed his appeal, he filed a lawsuit in federal court against Brad Raffensperger, Georgia's Secretary of State, and Chris Harvey, Georgia's Director of Elections at the time Bell submitted his nomination petition. In a thorough and well-reasoned order, the district court dismissed Bell's complaint. We affirm.

I.

In 2020, Bell sought to run as an independent candidate for the Georgia House of Representatives in District 85, which is located in DeKalb County. To have his name appear on the ballot as an independent candidate, Bell had to submit a nomination petition to the Secretary of State.

The nomination petition required signatures from 1,255 individuals registered to vote in District 85. Georgia law generally requires an independent candidate seeking to have his name

included on the ballot for a non-statewide election to obtain signatures from a number of registered voters in the district equal to 5% of the total number of registered voters eligible to vote in the last election for that office. *See* O.C.G.A. § 21-2-170(b). To meet this requirement, Bell would have had to submit 1,793 signatures. However, for the 2020 general election, because of the COVID-19 pandemic, a court decreased the number of signatures an independent candidate had to submit by 30%, reducing the signature requirement for candidates for non-statewide office from 5% to 3.5%. *See Cooper v. Raffensperger*, 472 F. Supp. 3d 1282, 1296 (N.D. Ga. 2020). Under Georgia law, Bell's nomination petition was due to the Secretary of State by July 14, 2020. *See* O.C.G.A. § 21-2-132(e). But due to the COVID-19 pandemic, the Secretary of State extended the deadline to August 14.

On August 13, Bell submitted a nomination petition to the Secretary of State's office with 2,200 signatures. Georgia law required the Secretary of State to "expeditiously . . . examine" the petition to determine whether it contained the required number of signatures. *Id.* § 21-2-171(a), (b). Despite the mandate to act quickly, the Secretary of State's office took approximately three weeks to review the signatures.[1] Upon review, it determined that Bell had submitted only 827 valid signatures and thus would not appear on the ballot for the District 85 general election.

[1] The only explanation in the record for the delay is that the attorney in the Secretary of State's office who reviewed the petition had taken a vacation.

Shortly before the close of business on Friday, September 4, Bell received an email notifying him of the decision from the Secretary of State's office with a letter from Harvey, the elections director. Although Bell received the email on September 4, 2020, the letter from Harvey was dated August 28, 2018. In addition, the letterhead identified Brian Kemp as the Secretary of State, even though he was no longer the Secretary of State; Raffensperger held the office. By the time Bell received the email, there was only one week until the deadline for elections officials to finalize the ballots for the general election.[2]

On the next business day, September 8, Bell, proceeding *pro se*, filed an emergency application for a writ of mandamus in Fulton County Superior Court, seeking review of the Secretary's decision. *See id.* § 21-2-171(c) (providing that the denial of a nomination petition may be reviewed by filing an application for a writ of mandamus in superior court "within five days of the time when the petitioner is notified of such decision"). He asked the court to order Raffensperger to certify that Bell was an independent candidate for District 85 and issue an injunction either prohibiting Raffensperger from printing ballots for the general election in District 85 without

[2] Under federal law and Georgia law, election officials must transmit absentee ballots to eligible voters at least 45 days before the general election. *See* 52 U.S.C. § 20302(a)(8)(A); O.C.G.A. § 21-2-384(a)(2). To have ballots printed and ready to be mailed by this deadline, the Secretary of State required ballots to be finalized by September 11.

Bell's name or requiring Raffensperger to place Bell's name on the ballot.

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.[3] Two days after the hearing, the superior court issued an order denying the application for a writ of mandamus. It concluded that Bell failed to demonstrate that he had submitted 1,225 valid signatures from voters in District 85 and thus had not shown that his nomination petition was denied in error.

About a week later, Bell appealed to the Georgia Supreme Court. Several months afterward, in May 2021, the Court dismissed the appeal as moot. *See Bell v. Raffensperger*, 858 S.E.2d 48, 51 (Ga. 2021). It explained that Bell had asked it "to reverse the trial court's order and direct the trial court to . . . either compel the Secretary to put his name on the November 3, 2020 general election ballot or prohibit the Secretary from printing ballots without his name on them." *Id.* In effect, Bell sought "to stop the printing of ballots that have already been printed, cast, and counted" and to require the

[3] Under Georgia law, the court could not schedule the hearing any earlier. When a state official is sued in his official capacity, the State generally must receive at least five days' written notice of a hearing. *See* O.C.G.A. § 9-10-2 (providing that judicial action in a case where a state official in his official capacity is a party generally is "void unless it affirmatively appears as a matter of record" that the Attorney General received "five days' advance written notice" of the hearing that resulted in the judicial action); *see also Ga. Dep't of Agric. v. Griffin Indus.*, 644 S.E. 2d 286, 289 (Ga. Ct. App. 2007) (discussing notice requirement).

Secretary of State "to place his name on a ballot that no longer exists for an election that has already occurred." *Id.* Because it was "no longer capable of granting the type of relief Bell request[ed]," the Georgia Supreme Court concluded that the appeal was moot. *Id.*

The Court noted that Georgia law generally requires it to "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 id.* at 50 n.3 (quoting O.C.G.A. § 21-2-171(c)). The Georgia Supreme Court acknowledged that it had not issued its decision within this time period. *Id.* But it explained that by the time Bell's appeal was docketed and he submitted a brief enumerating as error the superior court's decision on a nomination petition, "his appeal was already moot." *Id.* The Georgia Supreme Court also "emphasize[d]" that a party seeking to rely on the expedited-review provision for decisions regarding nomination petitions must "alert the Court" to his request for expedited review by filing a motion for expedited appeal citing § 21-2-172(c). Bell had filed no such motion and had not requested expedited review under § 21-2-172(c) in his initial appellate brief. *Id.*

Approximately one month after the Georgia Supreme Court dismissed his appeal, Bell, again proceeding *pro se*, filed a lawsuit in federal district court. He filed a pleading labeled "Petition for Writ of Mandamus" and named Raffensperger and Harvey (together, the "elections officials") as defendants. In the petition, Bell claimed

that he had submitted "more than the required number of signatures" to the Secretary of State and should have been included on the ballot for the general election in District 85 as an independent candidate. Doc. 3 at 17.[4] He asked the district court to issue a writ of mandamus and "set aside" the superior court's order denying him relief as well as the Georgia Supreme Court's decision dismissing his appeal. *Id.* at 3. He also asked the district court to order a new election for District 85 in which his name would appear on the ballot.

In the petition, Bell also raised constitutional challenges to aspects of Georgia's statutory scheme related to nomination petitions. He claimed that the requirement that candidates for non-statewide office submit signatures from 5% of registered voters in the district was unconstitutional. Bell argued that this requirement imposed a "severe burden" on independent candidates because of the difficulty involved in collecting signatures. *Id.* at 14. He also pointed out that independent candidates for statewide office were required to submit signatures from just 1% of registered voters in Georgia to appear on the ballot. Bell asserted that it violated equal protection principles to apply different signature requirements to independent candidates running for non-statewide and statewide offices.

In addition, he challenged the statutory requirement that candidates whose nomination petitions were denied must seek

[4] "Doc." numbers refer to the district court's docket entries.

judicial review in superior court within five days of the Secretary of State's decision. Bell claimed that the five-day time period imposed a substantial burden because it did not give a candidate "enough time to consult with or hire an attorney" before applying for a writ of mandamus in superior court. *Id.* at 13.

Besides these challenges, Bell claimed that he was denied due process because of irregularities that occurred when the Secretary of State reviewed his nomination petition and in the state court litigation that followed. Bell asserted that the Secretary of State's office had delayed reviewing his nomination petition and that by the time he was notified of its decision that he would not appear on the ballot, there was not enough time for him to seek judicial review before ballots had to be finalized. Bell also argued that the superior court and Georgia Supreme Court "should have moved in a more expeditious manner" once he sought judicial review. *Id.* at 11.

The election officials moved to dismiss. After the parties had fully briefed the motion to dismiss, Bell sought leave to amend his complaint to add a demand for compensatory and punitive damages.

The district court granted the election officials' motion to dismiss and denied Bell's motion seeking leave to amend. Given Bell's *pro se* status, the district court liberally construed his "Petition for Writ of Mandamus" as a complaint raising four claims: (1) a request for mandamus relief in which Bell asked the district court to set aside the superior court's order denying his application for a

writ of mandamus as well as the Georgia Supreme Court's decision dismissing his appeal and to order a new election with Bell's name on the ballot; (2) a facial constitutional challenge to Georgia's signature requirement for nomination petitions; (3) a facial constitutional challenge to the five-day period within which an independent candidate must seek review of a nomination petition denial; and (4) a claim alleging that he was denied due process because he did not receive a timely hearing after his nomination petition was denied.[5] The court concluded that each claim was due to be dismissed.

The court began with Bell's claim requesting that it set aside the state court decisions. It construed this claim as alleging that Bell submitted enough valid signatures to qualify as an independent candidate and seeking to have the district court "review and invalidate the orders entered by the Georgia state courts." Doc. 33 at 15–16. The district court concluded that the *Rooker-Feldman* doctrine barred it from reviewing this claim.[6]

[5] Bell attached several documents to his petition, including Harvey's letter notifying Bell that his nomination petition had been denied, Bell's application for a writ of mandamus filed in superior court, the transcript of the superior court hearing, and the superior court's order. The district court treated these documents as part of the complaint. *See MSP Recovery Claims, Series LLC v. Metro. Gen. Ins. Co.*, 40 F.4th 1295, 1303 (11th Cir. 2022) (explaining that an attachment to a complaint generally is treated as part of the complaint).

[6] *Rooker-Feldman* is a jurisdictional doctrine derived from two Supreme Court cases: *Rooker v. Fidelity Trust Co.*, 263 U.S. 413 (1923), and *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462 (1983).

Bell argued that the *Rooker-Feldman* doctrine did not bar review because the state court decisions had been procured by fraud. To support his claim of fraud, Bell pointed to Harvey's letter, which was dated 2018 (not 2020) and identified Kemp (not Raffensperger) as the Secretary of State. The district court rejected this argument, explaining that even if there were a fraud-on-the-court exception to the *Rooker-Feldman* doctrine, Bell's allegations were insufficient to support an inference that these errors resulted from a "fraud-on-the-court, rather than mere clerical oversight." *Id.* at 16.

The court also concluded that Bell's request for an injunction requiring the election officials to place his name on the ballot for an election in District 85 was moot. The court explained that Bell's request for this relief had "been mooted by the passage of time" because the court could not grant injunctive relief "with respect to an election that has already happened." *Id.* at 17, 19.

The court considered whether the case was not moot under the capable-of-repetition-yet-evading-review exception. It acknowledged that Bell had alleged that he intended to run again as an independent candidate and would face similar ballot-access restrictions in a future election. But even considering these allegations, the court concluded that the exception did not apply because the allegations in the amended complaint did not support an inference that Bell would "be subject to the same unique circumstances" that he faced in 2020. *Id.* at 19. These circumstances included the Secretary of State extending the deadline for submitting nominations petitions, which resulted in a "shortened period

between the petition deadline and the ballot printing deadline," and the delay in the review of Bell's nomination petition arising from a Secretary of State staff member being out of town. *Id.*

The district court next considered Bell's constitutional challenge to Georgia's 5% signature requirement for non-statewide elections. It liberally construed his complaint as raising two arguments why the signature requirement was unconstitutional: (1) it "place[d] severe burdens on persons seeking to run as independent candidates," and (2) its "different treatment of statewide and non-statewide independent candidates violate[d] the Equal Protection Clause." *Id.* at 20. After considering this Court's recent decision in *Cowen v. Secretary of State*, 22 F.4th 1227 (11th Cir. 2022), the district court concluded that Bell failed to state a claim for relief.

The district court then turned to Bell's challenge to Georgia's statutory requirement that a candidate must seek review in superior court within five days of the Secretary of State denying his nomination petition. It concluded that Bell failed to state a claim because his allegations did not establish that the five-day window for judicial review imposed a severe burden on independent candidates' rights. The district court further concluded that the five-day window was reasonable given the State's interest in the prompt resolution of a candidate's challenge to the denial of his nomination petition in order to "(1) meet[] state and federal deadlines to finalize ballots for printing and sending to absentee voters, (2) conduct[] orderly elections, and (3) avoid[] voter confusion by not altering ballots after the election has begun." Doc. 33 at 33.

The district court also reviewed Bell's claim that he was denied due process because of the election officials' delay in reviewing his nomination petition, which deprived him of the opportunity to receive a hearing in superior court before the ballot printing deadline. It agreed with Bell that he "should have had a mandamus hearing before the ballot printing deadline." *Id.* at 35. But the court nevertheless concluded that his allegations did not "rise to the level of a constitutional violation." *Id.* at 36. Although the delay alleged by Bell "should be avoided in the future," the court concluded that this "episodic election irregularity . . . did not deprive [Bell] of his constitutional rights." *Id.* at 37 (internal quotation marks omitted).

In the same order, the district court also denied Bell's motion to amend his complaint to add a demand for compensatory and punitive damages. It concluded that the amendment was futile because "the complaint as amended would still be properly dismissed." *Id.* at 11.

This is Bell's appeal.

II.

Several standards of review apply to this appeal.

We review *de novo* a district court's determination that it lacked subject matter jurisdiction to review a claim under the *Rooker-Feldman* doctrine. *Behr v. Campbell*, 8 F.4th 1206, 1209 (11th Cir. 2021). We also review *de novo* a district court's determination regarding mootness. *Hall v. Sec'y, Ala.*, 902 F.3d 1294, 1297 (11th Cir. 2018).

We review *de novo* a district court's ruling on a motion to dismiss for failure to state a claim. *Chua v. Ekonomou*, 1 F.4th 948, 952 (11th Cir. 2021). "We accept the allegations in the complaint as true and construe them in the light most favorable to the plaintiff." *Id.* But "the tenet that a court must accept as true all of the allegations contained in a complaint is inapplicable to legal conclusions." *Turner v. Williams*, 65 F.4th 564, 577 (11th Cir. 2023) (internal quotation marks omitted). To state a claim for relief, "[t]he alleged facts, having been stripped of all legal conclusions, must make a claim for relief not merely *possible*, but *plausible*." *Id.* (emphasis in original).

We "review the denial of a motion to amend for an abuse of discretion, but whether the motion is futile is a question of law that we review *de novo*." *Brooks v. Warden*, 800 F.3d 1295, 1300 (11th Cir. 2015).

We liberally construe a *pro se* litigant's pleadings, holding them "to less stringent standards than formal pleadings drafted by lawyers." *Campbell v. Air Jam. Ltd.*, 760 F.3d 1165, 1168 (11th Cir. 2014).

III.

Bell raises several issues on appeal. First, he argues that the district court erred in concluding that it lacked jurisdiction to set aside the decisions of the superior court denying his application for a writ of mandamus and of the Georgia Supreme Court dismissing his appeal as moot. Second, he attacks the district court's determination that his request for injunctive relief directing the election

officials to put his name on the ballot was moot. Third, he argues that the district court erred in dismissing his constitutional claims for failure to state a claim for relief. Fourth, he says that the district court erred when it denied him leave to amend his complaint. We address each issue in turn.[7]

A.

We begin by considering whether the district court erred when it concluded that it lacked jurisdiction to consider Bell's request to set aside the superior court order and the Georgia Supreme Court decision.

Under the *Rooker-Feldman* doctrine, "federal district courts cannot review or reject state court judgments rendered before the district court litigation began." *Behr*, 8 F.4th at 1212. The doctrine requires dismissal of a claim "when a losing state court litigant calls on a district court to modify or overturn an injurious state-court judgment." *Id.* at 1210 (internal quotation marks omitted).

Here, the district court did not err in concluding that it lacked jurisdiction to review a portion of Bell's complaint based on

[7] Bell also argues on appeal that the district court should have addressed whether he properly served Harvey. Although the election officials argued that Harvey had not been properly served, the district court declined to address the issue, saying that it "need not address the sufficiency of service on Harvey" because, regardless of whether Harvey had been served, Bell had failed to state a claim for relief. Doc. 33 at 8 n.8. Similarly, we need not address the service issue because even assuming that Bell properly served Harvey, his complaint was properly dismissed for the reasons that follow.

Rooker-Feldman. After the superior court denied Bell the relief he requested and the Georgia Supreme Court dismissed his appeal, he asked the district court to conclude that he submitted sufficient signatures to appear on the ballot and to "set aside" the state courts' decisions. Doc. 3 at 3. Because the *Rooker-Feldman* doctrine bars judicial review of a claim that calls on a district court to set aside a state court judgment, the district court properly concluded that it lacked jurisdiction.

Bell nevertheless argues that the *Rooker-Feldman* doctrine should not apply because we should recognize a fraud-on-the-court exception. As evidence of fraud, he points to irregularities in the letter from Harvey notifying him that he would not appear on the ballot: the letter incorrectly stated that it was sent in 2018 and its letterhead identified Kemp as the Secretary of State. Even assuming a fraud-on-the-court exception exists, we agree with the district court that Bell's allegations were insufficient to permit an inference that there was fraud, as opposed to a clerical oversight. *See Turner*, 65 F.4th at 577 (explaining that allegations must make a claim plausible). It's true that Bell alleged in his complaint that Harvey's document was "fraudulent." Doc. 3 at 10. But without more, this allegation is conclusory and therefore insufficient. *See Einhorn v. Axogen, Inc.*, 42 F.4th 1218, 1222 (11th Cir. 2022) ("[C]onclusory allegations . . . will not prevent dismissal." (internal quotation marks omitted)). Accordingly, we affirm as to this issue.

B.

We now consider whether the district court erred when it concluded that Bell's request for injunctive relief was moot. "An issue is moot when it no longer presents a live controversy with respect to which the court can give meaningful relief." *Wood v. Raffensperger*, 981 F.3d 1307, 1316 (11th Cir. 2020) (internal quotation marks omitted). "[A]n issue can become moot at any stage of litigation, even if there was a live case or controversy when the lawsuit began." *Id.* We thus have recognized that certain types of relief in election-related cases may become moot after an election is complete and results are certified. *See id.* at 1316–17 (holding that voter's request that court enjoin Georgia's certification of election results and order a new recount for 2020 presidential election became moot after Georgia certified its election results).

Here, the district court did not err in dismissing as moot Bell's request for an injunction requiring the election officials to put his name on the ballot for the District 85 general election.[8] Because

[8] In addition to concluding that the request for injunctive relief was moot, the district court concluded that the capable-of-repetition-yet-evading-review exception to the mootness doctrine did not apply. Bell did not argue in his initial appellate brief that the district court erred in concluding that exception did not apply. He does suggest in his reply brief that the exception should apply because he plans to run as an independent candidate in the future. But an issue raised for the first time in a reply brief comes too late. *See Timson v. Sampson*, 518 F.3d 870, 874 (11th Cir. 2008).

Even assuming Bell had adequately raised this issue on appeal, we agree with the district court that the exception does not apply here. Although Bell intends

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. *See id.* Accordingly, we also affirm as to this issue.[9]

C.

We next review whether the district court erred when it concluded that Bell failed to state a claim that the election officials committed a constitutional violation. Bell argues that he adequately alleged three distinct constitutional violations: (1) Georgia's signature requirement for independent candidates running for non-statewide office is unconstitutional; (2) Georgia's requirement that candidates seek review within five days of a Secretary of State decision denying a nomination petition is unconstitutional; and

to run again, his allegations do not show that there is a reasonable expectation that he would be subject to the same unique circumstances that occurred in 2020. The unique circumstances that Bell faced in 2020 included that the Secretary of State extended the deadline for independent candidates to submit their nomination petitions due to the COVID-19 pandemic, which shortened the period between the petition deadline and the ballot-printing deadline, and the Secretary of State's office delayed reviewing Bell's petition due to an attorney's vacation. *See Wood*, 981 F.3d at 1317–18.

[9] Our conclusion that Bell's request for this injunctive relief is moot does not mean that we do not reach the merits of his constitutional claims. We liberally construe Bell's complaint as requesting other forms of relief that are not moot. As we explain in the next section, the district court properly dismissed those claims because Bell failed to state a claim for relief.

(3) the election officials denied him due process given the delay in the review of his nomination petition.

As to the signature requirement, Georgia law requires that an independent candidate seeking to appear on the ballot for a non-statewide office submit a nomination petition signed by "a number of voters equal to 5 percent of the total number of registered voters eligible to vote in the last election for the filling of the office the candidate is seeking." O.C.G.A. § 21-2-170(b). But for the 2020 election, because of the COVID-19 pandemic, a court ordered the Secretary to use a lower threshold. *See Cooper*, 472 F. Supp. 3d at 1296. As a result, Bell needed to submit signatures from a number of voters equal to 3.5% of the total number of voters eligible to vote in the last election for District 85. *Id.*

Bell claimed that the signature requirement imposed a "severe burden" on independent candidates running for non-statewide office. Doc. 3 at 14. He also pointed out that Georgia imposed a different signature requirement on independent candidates running for statewide offices. To appear on the ballot, an independent candidate for statewide office needed to submit a nomination petition with signatures from "a number of voters equal to 1 percent of the total number of registered voters eligible to vote in the last election" for the relevant office. O.C.G.A. § 21-2-170(b). But for the 2020 election, an independent candidate for a statewide office had to submit signatures from a number of voters equal to 0.7% of the total number of registered voters eligible to vote in the last election for that office. Bell claimed that the use of "two different

standards for statewide candidates versus non-statewide candidates violate[d] the Equal Protection Clause." Doc. 3 at 14.

To evaluate the constitutionality of the signature requirement, we apply what is known as the *Anderson-Burdick* test. *See Curling v. Raffensperger*, 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 "weigh[] all these factors" to "decide whether the challenged provision is unconstitutional." *Id.* If the State's 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 First and Fourteenth Amendment rights, it need only be a "rational way" to meet the State's "important regulatory interests." *Cowen*, 22 F.4th at 1233–34 (internal quotation marks omitted).

We recently considered similar challenges to Georgia's signature requirement in *Cowen*. In *Cowen*, the Libertarian Party challenged Georgia's signature requirement for third-party and independent candidates running for non-statewide office, alleging that it imposed an unconstitutional burden under the First and

Fourteenth Amendments and also drew "an unjustified classification between prospective Libertarian candidates for statewide office and those for non-statewide office." *Id.* at 1230–31. We concluded that there was no constitutional violation. *Id.* at 1229.

Using the *Anderson-Burdick* test, we first considered whether the signature requirement "unconstitutionally burden[ed] . . . the right of individuals to associate for the advancement of political beliefs and the right of qualified voters, regardless of their political persuasion, to cast their votes effectively." *Id.* at 1231 (internal quotation marks omitted). In considering the scope of the burden, we observed at least one local candidate for a district attorney race had recently gathered enough signatures to exceed the 5% threshold and appear on the ballot as an independent candidate. *Id.* at 1232. We concluded that this candidate's success "show[ed] that the 5% requirement . . . does not bar candidates from the ballot." *Id.* We acknowledged that the signature requirement imposed some burden because collecting signatures could be "costly and difficult" and that Georgia's 5% requirement was "somewhat higher than that in other states." *Id.* at 1232–33. But there were several ways in which Georgia reduced the burden associated with collecting signatures: voters could sign petitions for multiple candidates, voters could sign a petition even if they voted in a party primary, voters did not have to state that they intended to vote for the candidate in order to sign a petition, the pool of voters eligible to sign included those not registered in the preceding election, and signatures did not need to be notarized. *Id.* We ultimately concluded that the

signature requirement did not severely burden First and Fourteenth Amendment rights. *Id.* at 1233.

We then considered the State's interest as justification for the signature requirement. *See id.* at 1233–34. We explained that the State's interests included "requiring some preliminary showing of a significant modicum of support before printing the name of a political organization's candidate on the ballot, in maintaining the orderly administration of elections, and in avoiding confusion, deception, and even frustration of the democratic process at the general election." *Id.* at 1234 (internal quotation marks omitted). We concluded that these interests were compelling. *Id.* Because Georgia's signature requirement was a "rational way to meet" these important regulatory interests, we held that it "survive[d] challenge under the First and Fourteenth Amendments. *Id.* (internal quotation marks omitted).

The Libertarian Party also claimed that Georgia's use of different qualification requirements for candidates seeking statewide offices and non-statewide offices violated the Equal Protection Clause.[10] *Id.* To evaluate this claim, we again applied the *Anderson-*

[10] Under Georgia law, Libertarian Party candidates for statewide office were automatically entitled to ballot access because in the preceding general election a Libertarian Party candidate for statewide office received a number of votes equal to or greater than 1% of the total number of registered and eligible voters. *See Cowen*, 22 F.4th at 1234 (citing O.C.G.A. §§ 21-2-170(b); 21-2-180). Although the party's candidates for statewide office were automatically included on the ballot, its candidates for non-statewide office still had to satisfy the 5% signature requirement. *Id.*

Burdick test. *Id.* at 1235. We determined that the "magnitude of th[e] inequality" between the treatment of non-statewide and statewide candidates was "(at most) only as substantial as the severity of the burden of meeting the 5% signature requirement—the hurdle non-statewide candidates must overcome," which we had already concluded was not severe. *Id.*

We explained that the disparity in treatment of candidates for statewide and non-statewide offices could "be justified if the State put[] forward an important regulatory interest." *Id.* We concluded that the State had a compelling interest in "ensuring that candidates have a significant modicum of support among the electorate before placing them on the ballot." *Id.* (internal quotation marks omitted). The application of a 5% signature requirement for non-statewide candidates served this interest because it required that prospective Libertarian candidates for non-statewide office had to have "a significant modicum of support within the [] district they seek to represent." *Id.* Although we could "imagine more narrowly tailored alternatives" to address the differences between Libertarian candidates for statewide and non-statewide offices, "perfect tailoring" was "not require[d] . . . when the disparity [was] not severe." *Id.* at 1235–36. We thus concluded that there was no equal protection violation. *Id.*

Consistent with *Cowen*, we conclude that Bell failed to state a claim for relief. *Cowen* tells us that Georgia's signature requirement for independent candidates for non-statewide office, either on its own or as compared to the different signature requirement

for independent candidates for statewide office, did not impose a severe burden. *Id.* at 1232–33. In addition, based on *Cowen*, we conclude that the signature requirement was a rational way to meet the State's regulatory interests. *Id.* at 1233–34.

Bell nevertheless 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.[11] Appellant's Br. 39. But under the 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. *Smith v. GTE Corp.*, 236 F.3d 1292, 1300 n.8 (11th Cir. 2001). There is no "exception" to this rule "based upon a perceived defect in the prior panel's reasoning or analysis." *Id.* at 1303.[12]

[11] Although Bell criticizes the severe-burden analysis in *Cowen*, he does not dispute that if the burden were not severe, then the signature requirement would survive the constitutional challenges.

[12] In arguing that the signature requirement imposed a severe burden, Bell points to the difficulties that he faced in collecting signatures in the summer of 2020 due to the COVID pandemic. It is true that there was no claim in *Cowen* that the signature requirement was unconstitutional because of the unique difficulties involved in collecting signatures in 2020, during the height of the COVID-pandemic when there was no vaccine yet available. But after considering Bell's argument, we are not convinced that the signature requirement imposed a severe burden, particularly given that a court had reduced the signature requirement for non-statewide candidates from 5% to 3.5% because of the pandemic. *See Cooper*, 472 F. Supp. 3d at 1296.

We next consider whether Bell stated a claim that Georgia's requirement that a person whose nomination petition has been denied must seek review in state court within five days is unconstitutional. *See* O.C.G.A. § 21-2-171(c). To evaluate his challenge to the five-day requirement, we again look to the *Anderson-Burdick* test. We agree with the district court that "[a]lthough the five-day window to seek mandamus relief may pose difficulty and/or inconvenience," the allegations in Bell's complaint did not establish that it imposed a severe burden. Doc. 33 at 31. Instead, it is apparent from the face of Bell's complaint that candidates whose nomination petitions were denied, in fact, have been able to seek judicial review during this short window because, as the district court explained, Bell "himself was able to timely file his application for mandamus relief within the five-day window, and he has not alleged that the five-day mandamus deadline has prevented other candidates from appearing on the ballot." *Id.* at 32.

The election defendants have put forth a sufficient justification for the five-day requirement. The State has a compelling regulatory interest in quickly resolving challenges regarding independent candidates' appearances on the ballot so that the State can (1) meet state and federal deadlines to finalize ballots for printing and sending to absentee voters, (2) conduct orderly elections, and (3) avoid voter confusion by not altering ballots once the election has begun. Like the district court, we conclude that the five-day window is a reasonable way to meet these interests. *See Cowen*, 22 F.4th at 1234.

Bell also claimed that he was denied due process because the election officials' delay in reviewing his nomination petition meant that he was unable to obtain review of the decision denying his nomination petition before the ballots had to be finalized. We again agree with the district court that Bell failed to state a claim for relief. Certainly, the allegations in his complaint reflect that election officials failed to review his nomination petition as quickly as Georgia law contemplates. *See* O.C.G.A. § 21-2-171(b) (directing Secretary of State to "expeditiously examine" a nomination petition). 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." Doc. 33 at 35–36; *see Gamza v. Aguirre*, 619 F.2d 449, 453 (5th Cir. 1980) (explaining that "every state election irregularity" is not "considered a federal constitutional deprivation").[13] Because Bell failed to state a claim, we affirm the district court's dismissal of his constitutional claims.[14]

[13] In *Bonner v. City of Prichard*, 661 F.2d 1206, 1209 (11th Cir. 1981) (en banc), we adopted as binding precedent all decisions of the former Fifth Circuit handed down prior to October 1, 1981.

[14] Bell also complains about the Georgia Supreme Court's delay in dismissing his appeal as moot, saying it should have resolved his appeal before the general election instead of waiting until after the election and then dismissing it as moot. *See* O.C.G.A. § 21-2-171(c) (directing an appellate court to announce its decision in an appeal related to 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").

D.

Bell also argues that the district court erred when it refused to allow him to amend his complaint to add a request for compensatory and punitive damages. But a district court "may properly deny leave to amend [a] complaint . . . when such amendment would be futile." *Hall v. United Ins. Co. of Am.*, 367 F.3d 1255, 1263 (11th Cir. 2004). "[D]enial of leave to amend is justified by futility when the complaint as amended is still subject to dismissal." *Id.* (internal quotation marks omitted). Here, the district court did not err in denying Bell's motion to amend his complaint to add a request for damages. The amendment was futile because even with the amendment the complaint failed to state a claim for relief.

IV.

For the reasons set forth above, we affirm the district court.

AFFIRMED.

In its opinion, the Georgia Supreme Court acknowledged § 21-2-171(c)'s timing requirement but explained that Bell failed to file a motion seeking expedited review, and by the time Bell's appeal was docketed and he submitted a brief enumerating as error a superior court's decision on a nomination petition, "his appeal was already moot." *Bell*, 858 S.E.2d at 50 n.3. That Bell failed to avail himself of the expedited review available under § 21-2-171(c) does not mean that he was denied due process. *See Mata Chorwadi, Inc. v. City of Boynton Beach*, 66 F.4th 1259, 1267 (11th Cir. 2023) (explaining that plaintiffs' failure to "take advantage of [available] state procedures does not mean that the state deprived them of . . . due process").

UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

ELBERT PARR TUTTLE COURT OF APPEALS BUILDING
56 Forsyth Street, N.W.
Atlanta, Georgia 30303

David J. Smith
Clerk of Court

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March 27, 2024

MEMORANDUM TO COUNSEL OR PARTIES

Appeal Number: 23-10059-CC
Case Style: Andrew Bell v. Secretary of State for the State of Georgia, et al
District Court Docket No: 1:21-cv-02486-SEG

Opinion Issued
Enclosed is a copy of the Court's decision issued today in this case. Judgment has been entered today pursuant to FRAP 36. The Court's mandate will issue at a later date pursuant to FRAP 41(b).

Petitions for Rehearing
The time for filing a petition for panel rehearing is governed by 11th Cir. R. 40-3, and the time for filing a petition for rehearing en banc is governed by 11th Cir. R. 35-2. Except as otherwise provided by FRAP 25(a) for inmate filings, a petition for rehearing is timely only if received in the clerk's office within the time specified in the rules. **A petition for rehearing must include a Certificate of Interested Persons and a copy of the opinion sought to be reheard.** See 11th Cir. R. 35-5(k) and 40-1.

Costs
Costs are taxed against Appellant(s) / Petitioner(s).

Bill of Costs
If costs are taxed, please use the most recent version of the Bill of Costs form available on the Court's website at www.ca11.uscourts.gov. For more information regarding costs, see FRAP 39 and 11th Cir. R. 39-1.

Attorney's Fees
The time to file and required documentation for an application for attorney's fees and any objection to the application are governed by 11th Cir. R. 39-2 and 39-3.

Appointed Counsel
Counsel appointed under the Criminal Justice Act (CJA) must submit a voucher claiming compensation via the eVoucher system no later than 45 days after issuance of the mandate or the filing of a petition for writ of certiorari. Please contact the CJA Team at (404) 335-6167 or

cja_evoucher@ca11.uscourts.gov for questions regarding CJA vouchers or the eVoucher system.

Clerk's Office Phone Numbers

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CM/ECF Help Desk:	404-335-6125	Cases Set for Oral Argument:	404-335-6141

OPIN-1 Ntc of Issuance of Opinion

CASE NO. 23-10059

In the United States Court of Appeals for the Eleventh Circuit

ANDREW W. BELL

Plaintiff-Appellant,

v.

BRAD RAFFENSBERGER, SECRETARY OF STATE OF GEORGIA, et al.

Defendants-Appellees.

MOTION TO SET ASIDE THE MARCH 27, 2024 DECISION AND REINSTATE THE REHEARING EN BANC THAT WAS GRANTED MAY 28, 2024

Andrew W. Bell
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Andrew.Be11@live.com
pro se

CERTIFICATE OF INTERESTED PERSONS

Appellant certifies that no traded public company or corporation have an interest in the outcome of this case and the following listed persons and entities may have an interest in the outcome of this case:

Adams, Kimberly M. Esmond., {(1st Trial Judge) Fulton County, GA Superior Court}

Bell, Andrew W., (**Plaintiff / Appellant**)

Bly, Chistopher C., United States Magistrate Judge

Carr, Christopher M., (Attorney of Appellee) (Attorney General of the State of Georgia)

Geraghty, Sarah E., {(2nd (Trial Judge) U.S. District Court Northern District of Georgia}

Harvey, Chris., (**Defendant / Appellee**)

Jones, Steve E., United States District Court Judge

McGowan, Charlene Swartz., (Attorney of Appellees)

O'Roark, Elizabeth Marie., (Attorney of Appellees)

Petrany, Stephen J., (Attorney of Appellees)(Solicitor General of the State of Georgia)

Raffensperger, Brad (**Appellee**) (Secretary of State of the State of Georgia)

Skedsvold, Miles (Attorney of Appellee)
Stoy, Jr., Lee M., (Attorney of Appellee)

Supreme Court of Georgia

Elizabeth Wilson Vaughan (Attorney of Appellee)

Bryan Keith Webb (Attorney of Appellee)

Russell David Willard (Attorney of Appellee)

/s/Andrew W. Bell
Andrew W. Bell

MOTION TO SET ASIDE THE MARCH 27, 2024 DECISION AND REINSTATE THE REHEARING EN BANC THAT WAS GRANTED MAY 28, 2024

BACKGROUND

Appellant Andrew W. Bell petitioned this Court to rehear this case *en banc*, pursuant to FRAP 35 (b)(1)(A)(B)[1], on April 11, 2024. On April 27, 2024 Appellant filed a Motion for Leave to Correct his petition for rehearing en banc, the motion included the corrected petition. The opposition to the motion was unknown due to the fact that neither person listed as counsel for the Appellees could be contacted.[2] On May 21, 2024 his original petition for rehearing en banc was denied. On May 28, 2024 his motion to correct his petition for rehearing en banc was granted. The clerk never set an en banc briefing schedule, as was required by 11th Cir. R. 35-7 at that time[3]. Appellant had begun working on a petition for writ of certiorari to the Supreme Court of the United States after receiving this Court's March 27, 2024 opinion. In turn, on May 28, 2024 Appellant hand delivered his petition for writ of

[1] The current rules of this Court state this rule was transferred to FRAP 40
[2] Neither Elizabeth Wilson Vaughn or Elizabeth Marie O'Roark could be contacted through email or phone by Appellant. Appellant believes that neither individual works for the Georgia Department of Law, and if they do, it's probable that they felt an ethical obligation to remove themselves from the case. When Appellant petitioned the Supreme Court for certiorari (Docket No. 23-7684) the Solicitor General of Georgia, Stephan J. Petrany submitted a waiver on Appellees behalf.
[3] It is now 11th Cir. R. 40-8

certiorari to the Supreme Court of the United States[4], before Appellant became aware of this Court's decision to grant his petition for rehearing en banc. However, there is nothing in this Court's Rules or the Rules of the Supreme Court of the United States that state if someone petitions the Supreme Court before or after their petition for rehearing has been granted, their petition for rehearing will not be heard. As a matter of fact, the Rule 35-10 of this Court on May 28, 2024 stated, "Effect of Granting Rehearing En Banc. Unless otherwise expressly provided, the effect of granting a rehearing en banc is to vacate the panel opinion and the corresponding judgement." Also in this Court's Rules on May 28, 2024, the Rules stated, "Necessity for Filing. As indicated in 11th Cir. R. 35-3, it is not necessary to file a petition for rehearing or petition for rehearing en banc in the court of appeals as a prerequisite to the filing of a petition for writ of certiorari in the Supreme Court of the United States. Counsel are also reminded that the duty of counsel is fully discharged without filing a petition for rehearing en banc if the rigid standards of FRAP 35(a)[5] are not met." *See* I.O.P. for section FRAP 40.

[4] Although the petition was delivered on May 28, 2023, the petition for writ of certiorari was not docketed until June 11, 2024 as No. 23-7684.
[5] In the current rules FRAP 35(a) has been replaced by FRAP 40.

This Court issued a mandate in direct conflict with FRAP 41(a)(b). Appellant's "motion for leave to correct petition for rehearing en banc" was granted on May 28, 2024, and this Court issued its mandate on May 31, 2024. Appellant was unable to file a motion to stay in accordance with FRAP 41 due to the fact that by May 31, 2024, both counsels of record for Appellees had withdrawn from the case[6], and were unable to be served.

Appellant's petition for a writ of certiorari to the United States was denied on October 07, 2024. Appellant, still believing that his corrected petition for rehearing was before this Court, filed a motion to add DeKalb Board of Elections and Registrars as a party. On the same day there was a notice issued stating, "Notice that no action will be taken on Motion to Add a Party filed by Appellant Andrew W. Bell. Reason(s) no action being taken on filing(s). This case is closed.

ARGUMENTS AND AUTHORITIES

I. Petition for Rehearing En Banc was granted

[6] Attorney Elizabeth Wilson Vaughn withdrew from the case on August 31, 2023 and Attorney Elizabeth Marie O'Roark was removed by this Court on April 16, 2024. Both attorneys filed an "appearance of counsel form" on January 24, 2023. No other attorney filed an "Appearance of Counsel Form".

As previously mentioned I was granted a rehearing en banc on May 28, 2024. According to the rules of this Court, "if a petition for panel rehearing or rehearing en banc is granted, the court may: (1) dispose of the case without further briefing or argument; (2) order additional briefing or argument; or (3) issue any other appropriate order." *See* FRAP 40(e).[7] This Court's rules also state, "unless otherwise expressly provided, the effect of granting a rehearing en banc is to vacate the panel opinion and the corresponding judgement. If the effect of granting a rehearing "is to vacate the panel opinion and corresponding judgement", the March 27, 2024 panel decision in this case (Case No. 23-10059) should now be vacated.

II. Issues previously presented concerning why a rehearing en banc was necessary

Also as stated in my corrected petition for rehearing en banc. A panel of this Court states that I submitted a nomination petition with 2,200 signatures, Op.3[8]. I submitted more than 2,200 signatures. However, due to what Appellant believes to be fraud and corruption,

[7] This section or language did not exist in this Court rules at the time Appellant submitted his motion for leave to correct his petition for rehearing en banc, nor did the language.
[8] "Op." refers to the panel's March 27, 2024, decision. "FF" refers to the district court's finding of fact. and "CL." Refers to its conclusion of law.

there is no way to prove it now. I provided proof of several names that were incorrectly excluded from being counted towards my nomination petition. *See* Doc 29. The document was over the word count limit. I filed a motion to exceed the word count limit on June 24, 2023. On July 25, 2023, this Court denied the motion. I filed another reply brief on July 30, 2023 without the aforementioned evidence. *See* Doc 33. Nothing can dispute the fact that on August 19, 2020, I was certified 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 hereby returned with this verification statement. This 19th day of August 2020."*

The obvious problem with my cumulative total is that it differs from all the other candidates that were required to submit a nomination petition. The other candidates that were required to submit a nomination petition have their cumulative total of signatures and

verification statement on the same page. However, with me there is one page that appears to altered, due to the fact the page does not have the same appearance or format as those of other candidates.[9]

The panel recognized that the "Georgia law requires the Secretary of State to expeditiously...examine the petition...", Op.3. However, in my case although the verification statement is signed on August 19, 2020, I was not notified until September 4, 2020. As stated in the Supreme Court of Georgia, the U.S. District Court, and this Court the documentation submitted to the trial court by the Defendants/Appellees appears to be fraudulent. This can be noted by the instructions given to the Georgia County Election Superintendents and Registrars, where it states, "The cumulative number of valid signatures and a breakdown of

[9] The verification page for the other candidates contains information that my verification page does not have. The other candidates' verification page and as well as mine had the same letterhead with the seal of the State of Georgia, Brad Raffensperger as the Secretary of State and Chris Harvey as the Elections Director. The other candidates' verification page and as well as mine had a "TO:" section with the name, title, and address of the Elections Director. The other candidates' verification page and as well as mine had a "RE:" section with contains the name of the candidate, the office that they were seeking, and the county in which the signatures are being collected. The other candidates' verification page and my verification page contained a section that starts off with "This is to certify that the County Voter Registration Office...". However, the other candidates' verification page is above a section labeled "The following is a breakdown of the rejected signatures" or cumulative total. My verification page has no such section labeled "The following is a breakdown of the rejected signatures". There is a second page added with no signature, with the County letterhead that displays 827 valid signatures, although the verification statement states that I have 2,200 valid signatures. There is no second page added for the other candidates who were required to submit a nomination petition. There is also a statement above the name and signature of the election official that appears on other candidates' verification page but not my verification page.

rejection numbers **must be** documented on the 2020 Verification Statement." My cumulative number of valid signatures and breakdown of rejection numbers was not documented on my verification statement. As a matter of fact, my verification statement differs from every other independent or third-party candidate who submitted a nomination petition in 2020.[10] The format for all the other candidates is the same but mine 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 document, which has to be fraudulent, was added in successful attempt to keep my name from being placed on the 2020 General election ballot.

Although the abovementioned facts were presented to the Georgia Court (App'x at 138), to the U.S. District Court (Doc 7 at 10-11)[11], and several times to this Court (Appellant's brief at 13-14, 18-20, 33-34); The Georgia Court, the U.S. District Court nor the panel for this Court has ever made mention, wrote, gave a statement or opinion about these

[10] How the document is formatted or laid out.
[11] "Doc" refers to documents transferred by the U.S. District

set of facts. To leave out these facts presents a false narrative of the events involving the presentation of my nomination petition, the examination and review of my nomination petition, the verification statement itself, as well as the appellate process and procedure.

The panel does mention another fact, that letter I received in the email was dated August 28, 2018, and the letterhead identified Brian Kemp as the Secretary of State[12], Op.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 Defendant/Appellee Chris Harvey, which at this point from and integrity and proof standpoint does 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, most likely scanning the document, and then use some sort computer software to

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

remove the cumulative total from the form[13], and then print out a new verification statement and claim it was the original document, while at the same time adding a second 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 Defendants/Appellees presented both documents to the Fulton County superior court when there only should have been one document according to the Defendants/Appellees own instructions. The Defendants/Appellees never produced any official documentation stating the date that the ballots had to be finalized. Along with that the counsel for the Defendants/Appellees lied several times to the superior court judge. The panel includes two statues stating. "Under federal law and Georgia law, elections officials must transmit absentee ballots to eligible voters[14] at least 45 days before the general election." Op.4. However, one of the statues contradicts the statements made by the panel and the Defendants/Appellees. 52 U.S.C. § 20302(a)(8)(A)(B)

[13] Although other independent candidates throughout Georgia had their verification statement and cumulative total on the same form so it can reasonably assumed that my form was altered due to the fact it does not exactly resemble the verification statement form of the candidates. The format for the form of the other independent candidates is exactly the same. Nor does it follow the instructions given by Defendant/Appellee Harvey to the Georgia County Superintendents and Registrars.
[14] The eligible voters in this circumstance or those voters who have already requested an absentee ballot.

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 an hardship waiver[15] 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." Op.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 Defendants/Appellees, 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

[15] 52 U.S.C. § 20302(g)(1)(2)(B)(ii)

superseded or trumped my rights and the rights of the GA House District 85 electorate that were granted under O.C.G.A. § 21-2-171(c).[16] Op.5. It appears also that the Defendants/Appellees, the District Court, and the panel believe that the Georgia Secretary of State's alleged right to be notified of 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 my petition in midst of a pandemic. In my case I was denied the right to have my name placed on the ballot after being verified with 2,200 valid signatures, and the registered electorate was denied their First amendment right to choose a candidate of their choice to redress their grievances to their government. This Court previously stated ""the right of individuals to associate for the advancement of political beliefs" and "the right of qualified voters, regardless of their political persuasion, to cast their votes effectively." Anderson v. Celebrezze, 460 U.S. 780, 787 (1983) (quotation omitted)"" *Cowen, et al v. Sec'y of State of Ga.*, 22 F.4th 1227,

[16] The application for such writ of mandamus shall be made within five days of the time when the petitioner is notified of such decision. 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; and notice thereof shall be served with a copy of such application upon the officer with whom the nomination petition was filed and upon the petitioner.

1235-36(11th Cir 2022)(Cowen II). This Court previously stated, ""To be sure, "[n]o right is more precious in a free country than that of having a voice in the election of those who make the laws under which, as good citizens, we must live." *Burdick v. Takushi*, 504 U.S. 428, 441 (1992) (internal quotation marks omitted). But we also know that "the right to vote is the right to participate in an electoral process that is necessarily structured to maintain the integrity of the democratic system." Id."" *See New Georgia Project, et al., v. Raffensberger*, No. 20-13360 (11th Cir. 2020). In 2020, I was denied the right to have my name placed on the ballot and the electorate of Georgia House District 85 were denied their right of having their voices heard. Furthermore, the integrity in the democratic process was not maintained.

From a historical context it seems as though Georgia has regressed further than it previously had. For example, 40 years to the day before I filed 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 my 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, my hearing was scheduled 7 days later and took place on September 15, 2020. Anderson lost his appeal, as did I, and appealed to the Georgia Supreme Court as did I. Anderson cased was confirmed by the Georgia Supreme Court on September 25, 1980, two weeks after the superior court ruling. My case was decided by the Georgia Supreme Court 7 months later on May 3, 2021. 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 worldwide web, it would appear that the argument of the Appellees and the panel is that it's more difficult, in 2020 or now, to administer a fair process for candidate having to access the ballot by nomination petition than it was in 1980. In today's time there is very little of printing of ballots, most votes are cast through digital votiong machines. After the May 3, 2021 Georgia Court decision, I filed a

motion for reconsideration that was denied. Upon the dismissal of the motion for reconsideration I 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.

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." The 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**"[17], 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

[17] Doc 16 at 130

process to the candidate seeking a review of their nomination petition. Along with that, the process has been and is still susceptible to fraud.

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 voting machines or devices to collect votes or signatures. 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 2025 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 give out 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 Appellant stated in his brief (Appellant brief at 47), so even in 1971 she was not the best person to articulate the tremendous burden placed on the independent or third-party candidate. Appellate realized the best place to find registered voters is at the polling place. Appellate circulated his petition at several polling places during the primary election. Appellant, 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 Appellant's 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[18]. When you

[18] No person shall solicit votes in any manner or by any means or method, nor shall any person distribute or display any campaign material, nor shall any person solicit signatures for any petition.

combine 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.

As I stated in my petition for writ of certiorari to the Supreme Court of the United States, It is my opinion that the Jenness v. Fortson, 403 U.S. 431 (1971) decision 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", has created a two party political system that has 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

nor shall any person, other than election officials discharging their duties, establish or set up any tables or booths on any day in which ballots are being cast: 1. Within 150 feet of the outer edge of any building within which a polling place is established; 2. Within any polling place; or 3. Within 25 feet of any voter standing in line to vote at any polling place. These restrictions shall not apply to conduct occurring in private offices or areas which cannot be seen or heard by such electors.

this country's first farewell address[19], its first President George Washington warned the country against 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

[19] 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 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.

are digital. Appellant believes that there are better ways to submit those items electronically, for example a one-time code like many companies do. 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 this country have shrunk 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 in the majority of elections, those are the only choices that they have.

Most importantly, although there was a hearing in the trial court. The counsel for the Appellees lied during the hearing causing irreparable harm to Appellant. Appellant should have been able to raise the issue before the Supreme Court of the State of Georgia pursuant to O.C.G.A. § 21-2-171(c), however that Court waited over 7 months to decide that Appellant case was moot. Appellant has been denied his

right to petition the government for a redress of grievances.[20] "The right to petition is guaranteed". *McDonald v. Smith*, 472 U.S. 479 (1985).

CONCLUSION

For the foregoing reasons, the Court should set aside the panel opinion made on March 27, 2024, and conduct the rehearing en banc that it granted to Appellant on May 28, 2024.

Respectfully submitted on May 20, 2025

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[20] Petitioner First and Fourteenth Amendment rights under the United States Constitution. Petitioner's rights under the Georgia Constitution (1983), Article I, Section I, Paragraphs II, VII, IX, XII, XXX. ""The First Amendment guarantees "the right of the people . . . to petition the Government for a redress of grievances." The right to petition is cut from the same cloth as the other guarantees of that Amendment, and is an assurance of a particular freedom of expression. In United States v. Cruikshank, 92 U.S. 542 (1876), the Court declared that this right is implicit in "[t]he very idea of government, republican in form." Id., at 552. And James Madison made clear in the congressional debate on the proposed amendment that people "may communicate their will" through direct petitions to the legislature and government officials. 1 Annals of Cong. 738 (1789).

The historical roots of the Petition Clause long antedate the Constitution. In 1689, the Bill of Rights exacted of William and Mary stated: "[I]t is the Right of the Subjects to petition the King." 1 Wm. & Mary, Sess. 2, ch. 2. This idea reappeared in the Colonies when the Stamp Act Congress of 1765 included a right to petition the King and Parliament in its Declaration of Rights and Grievances. See 1 B. Schwartz, The Bill of Rights - A Documentary History 198 (1971). And the Declarations of Rights enacted by many [472 U.S. 479, 483] state conventions contained a right to petition for redress of grievances. See, e. g., Pennsylvania Declaration of Rights (1776).'" *MCDONALD v. SMITH*, 472 U.S. 479 (1985).

CERTIFICATE OF COMPLIANCE

This document complies with the type-volume limitation of Rule 27(d)(2) of the Federal Rules of Appellate Procedure because it contains 4876 words as counted by the word-processing system used to prepare the document.

/s/ Andrew W. Bell
Andrew W. Bell

CERTIFICATE OF SERVICE

I hereby certify that on May 20, 2025, I served the foregoing by electronically filing it with this Court's ECF system, which constitutes service on all parties who have appeared in this case and are registered to use the ECF system.

/s/ Andrew W. Bell
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