IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

ANDREW W. BELL, Plaintiff, v. BRAD RAFFENSPERGER, *Secretary of State of the State of Georgia*, and CHRIS HARVEY, Defendants.	Case No.: 1:21-cv-02486-SCJ

DEFENDANTS' MOTION TO DISMISS

Defendants, Brad Raffensperger, Secretary of State for the State of Georgia, and Chris Harvey, former Director of Elections for the State of Georgia, move to dismiss Plaintiff's Complaint, (Doc. 7), for lack of personal jurisdiction, insufficient service of process, lack of subject matter jurisdiction, and for failure to state a claim upon which relief can be granted, pursuant to Federal Rule of Civil Procedure 12(b)(1), (2), (5), and (6). In support of their motion, Defendants rely on

their Memorandum of Law in Support of Defendants' Motion to Dismiss, which is filed contemporaneously with this motion.

Respectfully submitted, this 25th day of January 2022.

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CERTIFICATE OF SERVICE

I hereby certify that, on January 25, 2022, I have electronically filed the foregoing memorandum of law with the Clerk of Court using the CM/ECF system, which will send notification of such filing to the parties of record via electronic notification, as well as sent the document by United State Postal Service the following non-CM/ECF participants addressed as follows:

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MEMORANDUM OF LAW IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS

Defendants, Georgia Secretary of State Brad Raffensperger (the "Secretary") and Chris Harvey, the former Director of Elections ("Defendant Harvey"), submit this memorandum of law in support of their Motion to Dismiss Plaintiff's Complaint (Doc. 7), for lack of personal jurisdiction, insufficient service of process, lack of subject matter jurisdiction, and for failure to state a claim upon which relief can be granted, pursuant to Federal Rule of Civil Procedure 12(b)(1), (2), (5) and (6).

INTRODUCTION

In his complaint, Plaintiff Andrew Bell ("Bell") asks this Court to review a Georgia superior court decision denying his application for writ of mandamus, in which he sought to compel the Secretary to include his name on the 2020 General Election ballot as an independent candidate for a Georgia house district. Bell appealed that decision to the Georgia Supreme Court, which dismissed the appeal as moot. *Bell v. Raffensperger*, 311 Ga. 616 (2021). This lawsuit immediately followed.

Bell's complaint here suffers from several fatal defects that require its dismissal. As an initial matter, Defendant Harvey should be dismissed because Bell has failed to properly serve him. Bell has not *personally* served Defendant Harvey; rather, Bell attests that he attempted service by leaving a copy of the complaint and summons at the Secretary of State's Office on January 4, 2022. However, Defendant Harvey has not worked at the Secretary of State's Office since July 2021, and the Secretary of State's Office is not authorized to accept service on his behalf. Because Defendant Harvey has not been properly served, this Court lacks personal jurisdiction over him.

More importantly, this Court lacks jurisdiction over Bell's claims because he improperly seeks federal court review of a state court decision denying Bell's request to be placed on the 2020 General Election ballot. Under the *Rooker-Feldman*

doctrine, federal district courts possess no power to sit in direct review of state court decisions. Additionally, Bell's constitutional challenge to Georgia's nomination petition requirements, *see* O.C.G.A § 21-2-170(b) through (e) and O.C.G.A. § 21-2-171(c), are inextricably intertwined with his request to have this Court overturn the Georgia state courts' judgement and decisions. Therefore, this Court lacks subject matter jurisdiction to entertain Bell's complaint.

Finally, Bell's constitutional challenge fails to state a claim on the merits, because his arguments that Georgia's petition requirements violate the First and Fourteenth Amendment have been recently rejected by the Eleventh Circuit in *Georgia Sec'y of State v. Cowen*, 2022 U.S. App. LEXIS 390, __ F.4th __ (11th Cir. Jan. 5, 2022). Accordingly, this Court should dismiss Bell's complaint.

RELEVANT BACKGROUND

In March 2020, Bell submitted his notice of candidacy as an independent candidate for Georgia State House of Representative in House District 85 for the November 3, 2020 General Election. (Doc. 7 at 6); *see also Bell*, 311 Ga. at 616. Because Bell was running as an independent and not as a political party candidate, in order to have his name placed on the general election ballot, Bell was required to submit a nominating petition containing signatures equal to 5% of the number of

registered voters eligible to vote for that office in the last election. (Doc. 7 at 6); *Bell*, 311 Ga. at 616 (citing O.C.G.A. § 21-2-170(b)).[1]

For the 2020 General Election, the petition requirement was reduced by 30% by court order due to the Covid-19 pandemic, *Cooper v. Raffensperger*, 1:20-cv-01312, 2020 WL 3892454 at *10 (N.D. Ga. July 9, 2020), and that reduction was applied to Bell's petition. (Doc. 7 at 6); *Bell*, 311 Ga. at 616. Additionally, the Secretary extended the deadline for submitting nominating petitions to August 14. *Id.*[2]

Bell submitted his nomination petition, which contained 2,200 raw signatures, to the Secretary of State's office on August 13, 2020.[3] (*See* Doc. 7 at 6); *Bell*, 311

[1] Under Georgia law, independent and third-party candidates obtain access to the general election ballot by petition, rather than winning a primary election like political party candidates. *See* O.C.G.A. § 21-2-170(b). The number of petition signatures required depends on the relevant district in which the candidate seeks to run. For statewide offices, an independent candidate must submit a nominating petition signed by 1% of the number of registered voters eligible to vote for that office in the last election. *Id.* For non-statewide offices, including Georgia's state house districts, 5% is required. *Id.*

[2] This extension increased the signature-gathering period from 180 to 211 days. *Id.* As a result, however, the time period in which petition signatures could be verified by elections officials was compressed.

[3] Once a nomination petition is presented for filing, it must be examined to determine if it complies with Georgia law, including whether it contains "a sufficient number of signatures of registered voters as required by law." O.C.G.A. § 21-2-

Ga. at 616. Of the 2,200 raw signatures in the petition, only 827 were determined by county officials to be valid because the invalid signatures were either out of district, duplicates, printed names rather than signatures, by persons not registered to vote, or illegible. (Doc. 7 at 6-7); *Bell*, 311 Ga. at 616. Bell was notified by a letter attached to an email on September 4, 2020 that his nomination petition contained an inadequate number of valid signatures, and therefore, was denied. (Doc. 7 at 7); *Bell*, 311 Ga. at 616.[4]

Four days after receiving notice that his nomination petition was denied, Bell filed an emergency application for writ of mandamus and injunctive relief in the Fulton County Superior Court against the Secretary pursuant to O.C.G.A. § 21-2-171(c). (Doc. 7 at 7); *Bell*, 311 Ga. at 617. In his Petition, Bell complained about communication issues with election office staff regarding the status of his nomination petition; the timeliness of the notification that his nomination petition had been denied; and that the denial letter he received had the wrong date and the

171(a)(3). The examination of the nomination petition must "begin expeditiously," and the nomination petition should be denied if it is determined to not comply with the law. *Id*. § 21-2-171(b).

[4] The letter that the Secretary of State's Office sent to Bell via email, due to a scrivener's error, was sent on the prior Secretary of State's letterhead, and contained the incorrect date of August, 28. 2018. (*See* Doc. 3-1 at 35; *see also id*. at 83 (counsel for the Secretary explaining to the state trial court that the letter sent to Bell was on the incorrect letterhead and had the incorrect date)).

previous Secretary listed on the letterhead. (*See* Doc. 3-1 at 20-32); *Bell*, 311 Ga. at 617. Bell sought the following relief: (1) a temporary restraining order prohibiting the Secretary from printing any ballots without his name in advance of a hearing; (2) an injunction either prohibiting the Secretary from printing the ballot without his name or requiring the Secretary to place him on the ballot; and (3) a writ of mandamus ordering the Secretary to validate his signature petition and place him on the ballot. (Doc. 3-1 at 32-33); *Bell*, 311 Ga. at 617.

The superior court held a hearing on Bell's petition on September 15, 2021, which was the earliest possible date a hearing could be set in accordance with Georgia law. (Doc. 7 at 7); *Bell*, 311 Ga. at 617 (citing O.C.G.A. § 9-10-2). Bell did not present any evidence at the hearing, and the superior court denied Bell's petition because it had concluded that he failed to assert a clear legal right to relief, as required for mandamus, due to his failure to demonstrate that he submitted the required number of verified signatures or that the rejected signatures were rejected in error. (*See* Doc. 7 at 8; Doc. 3-1 at 75, 94-98); *Bell*, 311 Ga. at 617.

Bell then appealed the superior court's decision to the Georgia Supreme Court, which has exclusive appellate jurisdiction over candidate challenges. *See* Ga. Const. Art. 6 §6, ¶ II(2); *Cook v. Bd. of Registrars of Randolph Cty.*, 291 Ga. at 67, 70 (2012). Importantly, Bell did not ask the Georgia Supreme Court for expedited

treatment of his appeal so that it could be resolved in sufficient time for the 2020 General Election. (Doc. 7 at 8); *Bell*, 311 Ga. at 618. In May 2021, the Georgia Supreme Court dismissed Bell's appeal as moot because the relief Bell sought was no longer feasible because the November 3, 2020 general election had already taken place. *Bell*, 311 Ga. at 619.

Following the Georgia Supreme Court's dismissal of his appeal, Bell filed the present complaint against the Secretary and Defendant Harvey, which he titles a "Petition for Writ of Mandamus."[5] In his complaint, Bell asks this Court to (1) "set aside" the superior court order affirming the denial of his nomination petition and the Georgia Supreme Court order dismissing his appeal of the superior court decision as moot, and (2) declare O.C.G.A. § 21-2-170(b)-(e) "unconstitutional based on its violations of the First and Fourteenth Amendments." (Doc. 7 at 3-4). In the body of his complaint, Bell also argues that O.C.G.A. § 21-2-171(c) is unconstitutional because it "takes away a candidate's right to due process." (Doc. 7 at 13).

ARGUMENT

[5] Although Bell labels his complaint as a "petition for writ of mandamus," it does not appear to be one at all. Bell does not specifically ask this Court to compel anyone to do anything, (*see generally* doc. 7), which is a touchstone of mandamus. *See Marbury v. Madison*, 5 U.S. 137, 168-69 (1803); *See also U.S. v. Shalhoub*, 885 F.3d 1255, 1263 (11th Cir. 2017) ("The All Writs Act permits us to issue a writ of mandamus *to compel* a district court to perform a particular duty within its jurisdiction.") (emphasis added).

I. This Court Lacks Personal Jurisdiction Over Defendant Harvey Because Bell Failed to Personally Serve Him.

Defendant Harvey has not been properly served pursuant to Federal Rule of Civil Procedure 4, which requires service to either be in accordance with the "state law for serving a summons in an action brought in courts of general jurisdiction in the state where the district court is located or where service is made; or" by personally serving the defendant, leaving a copy of the complaint and summons at the Defendant's "dwelling or usual place of abode with someone of suitable age and discretion who resides there; or delivering a copy of each to an agent authorized by appointment or by law to receive service of process." Fed. R. Civ. P. 4(e)(1)-(2). Georgia's requirements for service are the same as the alternative requirements provided in Rule 4(e)(2). O.C.G.A. § 9-11-14(e)(7).

In Bell's Proof of Service pertaining to Defendant Harvey, his process server attests that she served the summons and complaint upon Defendant Harvey by leaving a copy of the complaint and summons with "Rachell Simmons, who is designated by law to accept service of process on behalf of Secretary of State of the State of Georgia Election Office." (Doc. 12 at 1). The proof of service does not indicate the date service was made, but it is signed and dated by the process server on January 4, 2022. However, Defendant Harvey has not worked for the Secretary of State's Office since July 2021, and Bell's attempt to serve him at the Secretary of

State's Office by leaving a copy with an individual in the Secretary's office was deficient. Rather, Defendant Harvey must be *personally* served in a manner consistent with Rule 4. *Cambridge Mut. Fire Ins. Co. v. City of Claxton*, 720 F.2d 1230, 1232 (11th Cir. 1983) (holding both Rule 4 and the Georgia law require personal service).

"Service of process is a jurisdictional requirement: a court lacks jurisdiction over the person of a defendant when that defendant has not been served." *Pardazi v. Cullman Med. Ctr.*, 896 F.2d 1313, 1317 (11th Cir. 1990). Because Bell failed to personally serve Defendant Harvey, this Court lacks personal jurisdiction over him, and the claims against him should be dismissed.

II. Bell's Complaint Is an Improper Appeal of a State Court Decision, Which This Court Lacks Subject Matter Jurisdiction to Entertain Under the *Rooker-Feldman* Doctrine.

Bell's complaint improperly attempts to appeal the denial of his nomination by a Georgia superior court and the Georgia Supreme Court's dismissal of his appeal of that decision. But the Supreme Court has expressly held that lower federal courts do not have jurisdiction over claims, such as Bell's, that seek to have a federal district court act as an appellate court to review judgments and decisions of state courts. *Rooker v. Fid. Trust Co.*, 263 U.S. 413 (1923); *D.C. Court of Appeals v. Feldman*, 460 U.S. 462 (1983). Therefore, his claims requesting that this Court set aside the

Georgia trial court's decision affirming the denial of his nomination petition and the Georgia Supreme Court's order dismissing his appeal as moot must be dismissed pursuant to the *Rooker-Feldman* doctrine.

The *Rooker-Feldman* doctrine is a jurisdictional rule that precludes federal district courts from reviewing state court judgments. *Alvarez v. Att'y Gen. for Fla.*, 679 F.3d 1257, 1262 (11th Cir. 2012). "This is because 28 U.S.C. § 1257, as long interpreted, vests authority to review a state court judgment solely in the Supreme Court." *Id*. (alterations adopted) (quotation marks omitted). The *Rooker-Feldman* Doctrine is a narrow doctrine as it "is confined to cases . . . brought by state-court losers complaining of injuries caused by state-court judgments rendered before the district court proceedings commenced *and inviting district court review and rejection of those judgments*." *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 284 (2005). Nonetheless, "a state-court loser cannot avoid [its] bar by cleverly cloaking her pleadings in the cloth of a different claim." *May v. Morgan Cty. Ga.*, 878 F. 3d 1001, 1005 (11th Cir. 2017). Thus, *Rooker-Feldman* applies "both to federal claims raised in the state court and to those inextricably intertwined with the state court's judgment." *Casale v. Tillman*, 558 F. 3d 1258, 1260 (11th Cir. 2009).

Here, Bell specifically asks this Court to overturn the decisions of the superior court affirming the denial of his nomination petition and the Georgia Supreme Court's order dismissing his appeal of that decision as moot. (Doc. 7 at 3-4). In support of his request, Bell proffers several arguments as to why he should have been placed on the ballot as an independent candidate for Georgia State Representative. (*See* Doc. 7 at 9-13). But even if Bell's arguments were correct on the merits (and they are not), this Court lacks jurisdiction to overturn the judgments and decisions of a Georgia state court pursuant to the *Rooker-Feldman* Doctrine. *Alvarez*, 679 F.3d at 1262. Only the U.S. Supreme Court can sit in direct review of state courts. *Id*.

Moreover, *Rooker-Feldman* bars Bell's constitutional claims, (Doc. 7 at 4, 13-17), because they are inextricably intertwined with his claim challenging the denial of his nominating petition by the Georgia Supreme Court. With respect to both claims, Bell asks this Court to conclude that the Georgia Supreme Court erred in affirming the denial of his nomination petition and to nullify the state court judgment. *See Target Media Partners v. Specialty Mktg. Corp.*, 881 F. 3d 1279, 1286 (11th Cir. 2018) (a claim is "inextricably intertwined with a state court judgment when it asks the federal district court to "to effectively nullify the state court

judgment, or it succeeds only to the extent that the state court wrongly decided the issues.").

Bell's challenges to the constitutionality of O.C.G.A. §§ 21-2-170 and 21-2-171 could have been properly raised in the Georgia courts. While Bell did not explicitly raise constitutional challenges in the state court action, he argued that the deadline to seek judicial review of the denial of his nomination petition under O.C.G.A. § 21-2-171 was unduly burdensome. (Doc. 3-1 at 25-28). He also argued at the hearing in the state court action that complying with the petition-signature requirement during the pandemic was unduly burdensome under the First and Fourteenth Amendment. (*See id*. at 80-81). To the extent that Bell believed that Section 21-2-170 unequally treats third-party candidates in violation equal protection, as he now argues in this Court, he certainly could have raised that issue in the trial court as well. *See Powell v. Powell*, 80 F. 3d 464, 467 ("In our federal system, a state trial court's interpretation of federal law is no less authoritative than that of the federal court of appeals in whose circuit the trial court is located."); *Target Media Partners*, 881 F. 3d at 1286 (stating that "a federal claim is not inextricably intertwined with a state court judgment when there was no reasonable opportunity to raise that particular claim during the relevant state court proceeding.").

Bell's request that this Court overturn the Georgia Supreme Court's decision affirming the denial of his nomination petition and his inextricably intertwined constitutional challenges to the petition requirements are barred by the *Rooker-Feldman* Doctrine. Thus, this Court lacks jurisdiction to hear his claims, and his complaint should be dismissed.[6]

III. Bell Fails to State a Claim Upon Which Relief Can Be Granted.

Bell has failed to allege a claim against the Defendants upon which relief can be granted because not only does this Court lack the authority to overturn a state court judgement, as discussed *supra*, but his arguments regarding the constitutionality of Sections 21-2-170 and 21-2-171 lack merit and have been rejected by the Supreme Court and the Eleventh Circuit.

Rule 12(b)(6) authorizes a motion to dismiss all or some of the claims in a complaint on the ground that its allegations fail to state a claim upon which relief can be granted. Fed. R. Civ. P. 12(b)(6). When analyzing a motion under Rule

[6] For largely the same reasons, if this Court construes, Bell's complaint as a petition truly seeking mandamus, it should be dismissed because mandamus cannot be used in lieu of appeal, which Bell had the opportunity to do before the Georgia Supreme Court, and, if he had chosen, the United States Supreme Court. *Cheney v. United States Dist. Court*, 542 U.S. 367, 380-81 (2004) ("the party seeking issuance of the writ must have no other adequate means to attain the relief he desires—a condition designed to ensure that the writ will not be used as a substitute for the regular appeals process."). (Citation and quotation omitted).

12(b)(6), this Court assumes the factual allegations in the complaint are true and gives the plaintiff the benefit of all reasonable factual inferences. *Hazewood v. Found. Fin. Grp., LLC*, 551 F.3d 1223, 1224 (11th Cir. 2008). Despite this, however, "courts 'are not bound to accept as true a legal conclusion couched as a factual allegation.'" *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (quoting *Papasan v. Allain*, 478 U.S. 265, 286 (1986)).

Bell raises constitutional challenges to Georgia Code Sections 21-2-170(b)-(e) and 21-2-171(c). Bell claims that Section 21-2-170(b) through (e) is unconstitutional because it treats independent candidates seeking to run for a statewide office differently than independent candidates seeking to run for a non-statewide office. Specifically, Bell states that Section 21-2-170(b)-(e) violates the Equal Protection Clause guaranteed by the First and Fourteenth Amendments because statewide candidates only have to collect the amount of signatures equal to one percent of the electorate eligible to vote for that office, as opposed to the five percent requirement for independent candidates seeking a non-statewide office. (Doc. 7 at 13-14). Bell also asserts that Section 21-2-171(c) is unconstitutional because "it denies independent candidate['s] due process" by not giving them "enough time to consult with or hire an attorney to represent them." (*Id*. at 13).

A. Bell's challenge to Georgia's ballot requirements fails under the *Anderson-Burdick* framework

Bell's contentions that Georgia's petition requirements for independent candidates unconstitutionally treats those running for statewide office differently than those running for a non-statewide office fails under the *Anderson-Burdick* framework for evaluating the constitutionality of ballot-access requirements, as recently held by the Eleventh Circuit in *Sec'y of Georgia v. Cowen*, 11th Cir. Case No. 21-13199, slip op. at 15 (Jan. 5, 2022) (*Cowen II*).

In *Cowen II*, the Eleventh Circuit concluded that Georgia's petition requirements do not violate the Fourteenth Amendment's guarantee of due process or equal protection under the *Anderson-Burdick* framework. Slip op. at 15. Under the *Anderson-Burdick* framework, courts are to "weigh the character and magnitude of the burden the State's rule imposes on those rights against the interest the State contends justify that burden, and consider the extent to which the State's concerns make that burden necessary." *Timmons v. Twin Cities Area New Party*, 520 U.S. 351, 358 (1997). The rigorousness of the Court's inquiry "depends upon the extent to which a challenged regulation burdens First and Fourteenth Amendment rights." *Burdick v. Takushi*, 504 U.S. 428, 434 (1992). When "those rights are subjected to 'severe' restrictions, the regulation must be 'narrowly drawn to advance a state interest of compelling importance.'" *Id.* (citations omitted). "Lesser burdens,

however, trigger less exacting review, and a State's 'important regulatory interests' will usually be enough to justify 'reasonable, nondiscriminatory restrictions.'" *Timmons*, 520 U.S. at 358 (citations omitted).

Numerous challenges have been brought against Georgia's ballot access requirements for independent candidates, and "have been upheld each time." *Cowen v. Georgia Sec'y of State*, 960 F. 3d 1339, 1343 (11th Cir. 2020) (*Cowen I*). The Supreme Court itself has found Georgia's five percent petition-signature requirement constitutional, *Jenness v. Fortson*, 403 U.S. 431, 432 (1971), and the Eleventh Circuit earlier this year determined that the alternative method for statewide political body candidates to obtain ballot access—automatic access to the ballot if a statewide political body candidate receives one percent of the votes in the prior election—which is not offered to non-statewide candidates, did not violate non-statewide candidates' equal protection rights under the First and Fourteenth Amendments. *Cowen II*, 11th Cir. Case No. 21-13199, slip op. at 16-17.

Here, Bell's challenge to Section 21-2-170(b)-(e) fails simply because Georgia's regulatory interest justify its ballot access requirements for non-statewide independent candidates. The Supreme Court and the Eleventh Circuit have already held that the five percent signature requirement is not a severe burden. *See Cowen II*, 11th Cir. Case. No. 21-13199, slip op. at 12 ("Georgia's ballot-access laws do not

severely burden the Libertarian Party's First and Fourteenth Amendment rights."); *Jenness*, 403 U.S. at 438-39 (stating "Georgia imposes no suffocating restrictions whatever upon the free circulation of nominating petitions," and that Georgia freely allows third-party candidates to access the ballot); *see also Coffield v. Handel*, 599 F.3d 1276, 1277 (11th Cir. 2010); *Cartwright v. Barnes*, 304 F.3d 1138, 1141-42 (11th Cir. 2002); *McCrary v. Poythress*, 638 F.2d 1308, 1312-13 (11th Cir. 1981)..

Because the signature requirement does not severely burden independent candidates First and Fourteenth Amendment rights, then it only needs to be justified by "the State's important regulatory interests," and the State does not need to offer any proof to support its interests. *Cowen II*, 11th Cir. Case No. 21-13199, slip op. at 12-13. Georgia has routinely defended the five percent signature requirement for non-statewide independent candidates by claiming that it has an interest in requiring some preliminary showing of 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. *See Cowen II*, 11th Cir. Case No. 21-13199, slip op. at 12-13. The Supreme Court and Eleventh Circuit have held these asserted interests to be "compelling." *Id*.

The Supreme Court and the Eleventh Circuit have routinely upheld Georgia's ballot access laws and have concluded that the five percent signature requirement is not severe. Therefore, the State's "compelling" regulatory interests support the requirement and defeat Bell's equal protection claim. Bell has, thus, failed to state a claim upon which relief can be granted, and this Court should dismiss it.

B. Section 21-2-171(c) does not violate a potential candidate's due process.

Bell asserts, rather conclusory, that Section 21-2-171(c) violates a candidate's due process because it does not provide a candidate enough time in which to consult with an attorney. (Doc. 7 at 13). Bell does not specify whether his claim is a procedural or substantive due process challenge. He cites no authority for either proposition, nor does he identify what interest is being denied without due process. Bell also seems to misunderstand the touchstone of due process—notice and the opportunity to be heard in a meaningful manner—and therefore he has failed to state a claim upon which relief can be granted in this regard as well.

The Constitution prohibits states from depriving persons of life, liberty, or property without due process of law. *See* U.S. Const. Amend XIV, § 1; *Buxton v. City of Plant City, Fla.*, 871 F.2d 1037, 1041 (11th Cir. 1989). Procedural due process claims are typically analyzed under the test set forth in *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976) ("The fundamental requirement of due process is the

opportunity to be heard at a meaningful time and in a meaningful manner."). In determining whether process is constitutionally adequate, this Court considers: 1) the private interest at stake; 2) the risk of erroneous deprivation through existing procedures and the probable value of additional procedural safeguards; and 3) the state's interest. *Id.*

However, the Eleventh Circuit has expressly rejected procedural due process claims in the voting rights context, holding that federal courts "must evaluate laws that burden voting rights using the approach of *Anderson* and *Burdick*." *New Ga. Project v. Raffensperger*, 976 F.3d 1278, 1282 (11th Cir. 2020). But nevertheless, the time in which Georgia law gives candidates to appeal the denial of their nomination petition in no way denies candidates due process or is unduly burdensome under *Anderson-Burdick*.

Indeed, Georgia law provides candidates all the due process that is required under federal law, *i.e.*, notice and an opportunity to be heard in a meaningful manner. *Mathews*, 424 U.S. at 333. Specifically, Section 21-2-171(b), requires a candidate to be given notice of the decision regarding his nomination petition, and, if it is denied, the reasons for the denial. O.C.G.A. § 21-2-171(b). If the candidate chooses to appeal, he then has five days to do so after being notified. *Id*. § 21-2-171(c). The superior court is then to set a hearing as soon as practicable where the candidate can

present evidence and argue his case. *Id*. If the candidate in unsuccessful there, he can appeal directly to the Supreme Court of Georgia. *Id*.; *See* Ga. Const. Art. 6 §6, ¶ II(2); *Cook v. Bd. of Registrars of Randolph Cty.*, 291 Ga. 67, 70 (2012).

Bell focuses on the fact Section 21-2-171(c) only provides candidates five days in which to appeal the denial of their nomination petition (Doc. 7 at 13), but ignores the compelling interests that justify this shortened timeframe. Challenges to the sufficiency of a petition are to be heard by state courts expeditiously so that they may be resolved in time for the candidate to be placed on the general election ballot if the challenge is successful. Counties are required under state and federal law to finalize, print, and mail ballots to oversees voters by a prescribed deadline. *See* 52 U.S.C. § 20302(a)(8)(A); O.C.G.A § 21-2-384(a)(2). Prompt resolution of the candidate's challenge both serves the State's important interest in the orderly administration of elections and avoiding voter confusion by not altering the ballots after the election has already begun. *See Jenness*, 403 U.S. at 442.

Section 21-2-171(c) seeks to benefit the candidates by fast-tracking their appeal so that they are placed on the ballot if they are so entitled. *See Cowen II*, 11th Cir. case no. 21-13199, slip op. at 11 (rejecting argument that petition validation requirement is "error prone" because Georgia law provides "prompt judicial review of the decision to deny a nomination petition."). The timing requirements of Section

21-2-171(c) only starts after the candidate is notified, and once a candidate files requests judicial review, a hearing is set "as soon as practicable" so the candidate is given the opportunity to present evidence and be heard. The 5-day deadline does not impose a severe burden on candidates, and the notice and opportunity for a hearing is sufficient to satisfy due process, and therefore, Bell's argument that Section 21-2-171(c) deprives a candidate of due process fails.

CONCLUSION

For the forgoing reasons, this Court should dismiss Bell's complaint against the Defendants.

Respectfully submitted, this 25th day of January, 2022.

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CERTIFICATE OF COMPLIANCE

I hereby certify, pursuant to Local Rule 7.1(D), that this memorandum of law was prepared using 14-point Times New Roman font in accordance with Local Rule 5.1(C).

/s/ Lee M. Stoy, Jr.
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CERTIFICATE OF SERVICE

I hereby certify that, on January 25, 2022, I have electronically filed the foregoing memorandum of law with the Clerk of Court using the CM/ECF system, which will send notification of such filing to the parties of record via electronic notification, as well as sent the document by United State Postal Service the following non-CM/ECF participants addressed as follows:

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