

**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

REPLY IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS

Bell's response to Defendants' motion to dismiss confirms his complaint should be dismissed. Despite Bell's contentions and subsequent efforts to serve Harvey since the filing of Defendants' motion to dismiss, Harvey has still not been properly served by Bell, and therefore, this Court continues to lack personal jurisdiction over him. Bell also contends that his complaint is not barred by the *Rooker-Feldman* doctrine because it falls within the "fraud exception." The Eleventh Circuit, however, has not recognized the fraud exception to the *Rooker-Feldman* doctrine and, in fact, has declined invitations to do so several times. Further, Bell

contends that the Supreme Court and Eleventh Circuit's decisions upholding Georgia's ballot access laws are flawed in response to Defendants' arguments that Georgia's ballot access laws do not violate Bell's First and Fourteenth Amendment Rights under the *Anderson-Burdick* test. But regardless of whether Bell believes the Supreme Court and the Eleventh Circuit wrongly decided the constitutionality of Georgia's ballot access laws, those decisions are nonetheless binding on this Court, and affirm the constitutionality of Georgia's ballot access laws. Finally, Bell reiterates his contentions that Georgia's appeal process for the denial of a candidate's nomination petition deprives potential candidates due process. However, Bell continues to fail to identify what interest is being denied without due process, and in any event, Georgia law provides potential candidates all the due process demanded under the constitution and it readily passes the *Anderson-Burdick* test.

Accordingly, this Court should grant Defendants' motion and dismiss Bell's complaint.

ARGUMENT

I. This Court Continues to Lack Personal Jurisdiction Over Harvey.

Bell has continued to fail to properly serve Harvey, and his contentions that personal service is not required under the federal rules or Georgia law are wrong. As explained in Defendants' motion to dismiss, Bell attempted to serve a copy of

the complaint and summons on Harvey by leaving a copy with an individual at the Secretary of State's Office. Harvey explained this was improper because (1) he did not even work at the Secretary of State's Office at the time service was attempted and (2) *personal service* is generally required under the Federal Rules and Georgia law. Bell has now attempted to serve Harvey by leaving a copy of the complaint and summons with an individual at Harvey's current employer, (Doc. 18), which is still insufficient.

The Federal Rules and Georgia Law require service to be effectuated in one of three ways:

- (A) delivering a copy of the summons and of the complaint to the individual personally;
- (B) leaving a copy of each at the individual's dwelling or usual place of abode with someone of suitable age and discretion who resides there; or
- (C) 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); *see also* O.C.G.A. § 9-11-4(e)(7) (providing for the same three methods of personal service of an individual defendant). Bell has not accomplished serving Harvey in any of the three methods for doing so, because he has not delivered the complaint and summons directly to Harvey at his home, his work, or anywhere. (*See* Docs. 12, 18). Instead, he continues to leave the complaint and summons with

an individual at his place of employment who is not appointed or designated by law to accept service on behalf of Harvey. (*See id.*). Nor is Harvey's place of employment his "abode" as Bell contends, because such an argument completely obliterates the common and ordinary meaning of the word. *See Merriam Webster*, "Abode," <https://www.merriam-webster.com/dictionary/abode> (stating "the place where one lives"). Harvey must be *personally* served in a manner consistent with Rule 4, which Bell has failed to do on two separate occasions now. *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). Thus, this Court continues to lack jurisdiction over Harvey, and Bell's claims against him must be dismissed.

II. The Eleventh Circuit Has Declined to Recognize the Fraud Exception to the *Rooker-Feldman* Doctrine.

Bell fails to rebut Defendants' arguments that this Court lacks jurisdiction under the *Rooker-Feldman* doctrine. Indeed, Bell essentially concedes that he is in fact attempting to appeal the judgment and decisions of the Georgia courts to this Court by not arguing that his case is not one barred by *Rooker-Feldman* doctrine, but instead arguing that it falls within the "fraud exception" to the *Rooker-Feldman* doctrine. (*See* Doc. 21 at 4-5). There is a major flaw with Bell's argument, however, in that the fraud exception to the *Rooker-Feldman* doctrine has not been recognized by the Eleventh Circuit as a viable exception. *Ferrier v. Cascade Falls Condo. Ass'n*,

820 F. App'x 911, 914 (11th Cir. 2020) (unpublished) (“we have not recognized a fraud exception to the Rooker-Feldman doctrine, and we decline to do so now. Indeed, such an exception would effectively gut the doctrine by permitting litigants to challenge almost any state-court judgment in federal district court merely by alleging that ‘fraud’ occurred during the state-court proceedings”); *see also Scott v. Frankel*, 606 F. App'x 529, 532 (11th Cir. 2015) (unpublished); *Rice v. Grubbs*, 158 F. App'x 163, 165 (11th Cir. 2005) (unpublished).

Moreover, in arguing that the denial of his nomination petition was obtained through fraud, Bell refers this Court to page 10 of his complaint wherein he explains the denial of his nomination petition was obtained through “fraudulent” documents. (See Doc. 21 at 5; Doc. 7 at 10). Based on these allegations and further arguments by Bell, he, thus, seems to argue that there was a level of *intrinsic* fraud in obtaining the denial of his nomination petition. *See Valentine v. BAC Home Loans Servicing, L.P.*, 635 F. App'x 753, 757 (11th Cir. 2015) (unpublished) (explaining the difference between extrinsic and intrinsic fraud, and stating that intrinsic fraud entails lying about facts pertaining to issues relevant in a judicial proceeding). However, although a couple of circuits have recognized the fraud exception to the *Rooker-Feldman* doctrine, *see Scott*, 606 F. App'x at 532 n. 4 (citing *In re Sun Valley Foods Co.*, 801 F.2d 186, 189 (6th Cir. 1986); *Resolute Ins. Co. v. State of N.C.*, 397

F.2d 586, 589 (4th Cir. 1968), and whatever the merits of Bell’s arguments (which there are none) no circuit has recognized an *intrinsic fraud* exception to the *Rooker-Feldman* doctrine. *See Castro v. Lewis*, 777 F. App’x 401, 407 (11th Cir. 2019) (unpublished) (“we know of no court to have ever recognized an *intrinsic fraud* exception to the Rooker-Feldman doctrine.”) (emphasis added); *Valentine*, 635 F. App’x at 757 (“There is no recognized exception to the *Rooker-Feldman* doctrine for *intrinsic fraud*”) (emphasis added).

Because Bell has effectively conceded that he really is attempting to appeal the judgment and decisions of the Georgia state courts, and because the fraud exception to the *Rooker-Feldman* doctrine is not applicable in this Circuit, this Court lacks jurisdiction over Bell’s complaint and should dismiss it.

III. Georgia’s Ballot Access Laws Continue to Prevail Under the *Anderson-Burdick* Framework, and Georgia Provides Potential Candidates All of the Necessary Due Process When Their Nomination Petition is Denied.

In response to Defendants’ arguments that Bell’s complaint failed to state a claim upon which relief could be granted because his challenges to Georgia’s ballot access laws prevail under binding Supreme Court and Eleventh Circuit precedent and pass the relevant *Anderson-Burdick* framework, Bell argues that the recent Eleventh Circuit Opinion in *Sec’y of Georgia v. Cowen*, 11th Cir. Case No. 21-13199, slip op. at 15 (Jan. 5, 2022) (*Cowen II*) and the older Supreme Court Opinion

in *Jenness v. Fortson*, 403 U.S. 431, 432 (1971)—both of which affirmed the constitutionality of Georgia’s ballot access laws—failed to take into account “the political environment” and the “racial dynamics and social influences.” (Doc. 21 at 6). Essentially, Bell argues that *Cowen II* and *Jenness* were wrongly decided. (*See id* at 5-9). Of course, the decisions of the Supreme Court and the Eleventh Circuit are binding on this Court and may not be disregarded, even if Bell believes that they were wrongly decided. *Hutto v. Davis*, 454 U.S. 370, 375 (1982).

Finally, Bell continues to asserts in conclusory fashion that Section 21-2-171(c) violates a candidate’s due process. At the same time, he continues to fail to specify whether his claim is a procedural or substantive due process challenge, cite authority for either proposition, and identify what interest is being denied without due process. Regardless, and as explained in more detail in Defendants’ memorandum in support of their motion to dismiss, 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* and 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. The 5-day deadline in which to appeal serves the dual purpose of expeditiously resolving a candidate’s challenge to the denial of their nomination petition and 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.

* * *

Bell has continued to fail to properly serve Harvey, his arguments essentially concede the fact that he is improperly appealing the decisions and judgments of the Georgia State Courts, his arguments that the fraud exception to the *Rooker-Feldman* doctrine applies to his case are wrong, he improperly requests this Court to ignore binding Supreme Court and Eleventh Circuit precedent, and he continues to conclusory assert that Georgia's appeal process for the denial of nomination petitions denies potential candidates due process. All in all, Bell has done nothing to save his complaint from the inevitable: its dismissal for lack of personal jurisdiction, subject matter jurisdiction, and for failure to state a claim upon which relief can be granted.

CONCLUSION

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

Respectfully submitted, this 17th day of February, 2022.

Christopher M. Carr
Attorney General

112505

Bryan K. Webb 743580
Deputy Attorney General

Russell D. Willard 760280
Senior Assistant Attorney General

Charlene S. McGowan 697316
Assistant Attorney General

/s/ Lee M. Stoy, Jr.
Lee M. Stoy, Jr. 884654
Assistant Attorney General

Office of the Georgia Attorney General
40 Capitol Square SW
Atlanta, Georgia, 30334
lstoy@law.ga.gov
(404) 458-3661 (telephone)
(404) 657-9932 (facsimile)

Attorneys for the Defendants

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.

Lee M. Stoy, Jr.

Georgia Bar No. 884654

Attorney for Defendant

CERTIFICATE OF SERVICE

I hereby certify that, on February 17, 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:

Andrew W. Bell
P.O. Box 82348
Atlanta, GA 300354
USA

/s/ Lee M. Stoy, Jr.
Lee M. Stoy, Jr.
Georgia Bar No. 884654
Attorney for the Defendants

Georgia Department of Law
40 Capitol Square, S.W.
Atlanta, Georgia 30334-1300
Telephone: (404) 458-3661
FAX: (404) 657-9932
Email: lstoy@law.ga.gov