No. 23-10059

In the United States Court of Appeals for the Eleventh Circuit

ANDREW W. BELL,

Appellant,
pro se

v.

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

On Appeal from the United States District Court
for the Northern District of Georgia, Atlanta
Division

PRINCIPAL BRIEF OF APPELLANT

ANDREW W. BELL
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(404) 380-0037
pro se

CERTIFICATE OF INTERESTED PERSONS

Appellant certifies that the following listed persons and entities as described in the fourth sentence of Rule 26.1-2 have an interest in the outcome of this case. These representations are made in order that the judges of this Court may evaluate possible disqualification or recusal:

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

Andrew W. Bell (**Appellant**)

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

Chris Harvey (**Appellee**)

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

Charlene Swartz McGowan (Attorney of Appellee)

Elizabeth Marie O'Roark (Attorney of Appellee)

Brad Raffensberger (**Appellee**) (Secretary of State of the State of Georgia)

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

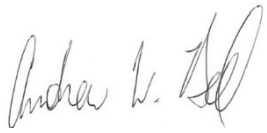
Elizabeth Wilson Vaughan (Attorney of Appellee)

Bryan Keith Webb (Attorney of Appellee)

Russell David Willard (Attorney of Appellee)

Supreme Court of Georgia

Signed,



Appellant

STATEMENT REGARDING ORAL ARGUMENT

Appellant Andrew W. Bell requests oral argument as he believes it could significantly aid the decisional process in this case, because he has first knowledge and experience in circulating nomination petitions and they are affected by O.C.G.A. § 21-2-170 and O.C.G.A. § 21-2-171.

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JURISDICTION and VENUE

1. This Court has jurisdiction over this appeal pursuant to 28 U.S.C. § 1291[1] because it is an appeal of a final decision by the U.S. District Court of Northern Georgia[2]. Mr. Andrew W. Bell timely appealed by filing his notice of appeal within 30 days of the district court's order of December 6, 2022.

2. The District Court had original jurisdiction over this case under 28 U.S.C. §1343(a)(1)(2)(3)(4), 42 U.S.C. § 1983, 42 U.S.C. § 1985

3. The suit was authorized by 42 U.S.C. § 1983

4. Declaratory relief was authorized by 28 U.S.C. §§ 2201 and 2202

5. Venue was proper in the Northern District of Georgia 28 U.S.C. §1391(b) and in the Atlanta Division under Local Rule 3.1.

[1] Reshard v. Britt, 819 F.2d 1573 (1987)
[2] Mr. Andrew W. Bell timely appealed by filing his notice of appeal within 30 days of the district court's order of December 6, 2022.

I. Statement of the Issues

1. Whether the District Court errored in not the letting the pro se Appellant amend his petition (Doc 24).
2. Whether the District Court errored granting the Appellees Motion to Dismiss.
3. Whether the District Court errored in applying the *Rocker-Feldman* doctrine.
4. Whether there was fraud-on-the court.
5. Whether O.C.G.A. § 21-2-170 and/or O.C.G.A. § 21-2-171 violated the constitutional rights of Appellant and the registered voters of Georgia House District 85.
6. Whether O.C.G.A § 9-10-2 and the Secretary of State of Georgia's alleged rights take precedent over O.C.G.A 21-2-171(c) and the First and Fourteenth Amendment rights of the Appellant and the registered voters of Georgia House District 85.

II. STATEMENT OF THE CASE

Appellant, first placed his notice of candidacy as Independent candidate for the 2020 Georgia House of Representatives District 85 general on March 2, 2020 (Doc 3-1 at 36-37). Appellant was then required to fill out a nomination petition as required by O.C.G.A. § 21-2-170(a). O.C.G.A § 21-2-170(b) required Appellant to have his 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 and the signers of such petition shall be registered and eligible to vote in the election at which such candidate seeks to be elected. Originally the total amount of signatures that Appellant was required to have would have been 1793. The signature requirement was reduced to 1255 on July 9, 2020, after the U.S. District Court of Northern Georgia issued an injunction that reduced the signature requirement *Cooper v. Raffensberger*, 472 F. Supp.3d 1282 (N.D. Ga. 2020). On August 13, 2020 Appellant's nomination petition was submitted to the Secretary of Georgia's election office and accepted by Appellee Chris Harvey. Appellant was sent an email on September 4, 2020 at 4:56 (Doc 3-1 at 47) that included an attachment with a letter denying Appellant access to the ballot (Doc 3-1 at 5). Appellant followed O.C.GA § 21-2-171(c) and went before the Fulton County Superior Court and the Georgia Supreme Court but was denied access to the ballot although he had a signed verification statement with 2,220

valid signatures.

III. SUMMARY OF THE ARGUMENT

The Verification Statement on the Appellant's nomination petition displays that it was signed August 19, 2020 (Doc 3-1 at 71). The Verification also states that Appellant had 2200 valid signatures (Doc 3-1 at 71). Although Appellant's Verification Statement is dated August 19, 2020, Appellant was told that his nomination was given to DeKalb County, Georgia for signature verification on August 21, 2020 (Doc 3-1 at 45). Appellant emailed Appellee on August 26, 2020 because O.C.G.A § 21-2-171(b) states, *"Upon the filing of a nomination petition, the officer with whom it is filed shall begin expeditiously to examine the petition to determine if it complies with the law."*[1] Appellant received an email from Appellees on September 4, 2020 at 4:56 (Doc 3-1 at 47). Attached to the email was a single letter dated August 28, 2018 (Doc 3-1 at 35). Appellant was told through the September 4, 2020 email by the Senior Elections Staff attorney that she could not give Appellant legal counsel and that she recommended that Appellant should consult with an attorney (Doc 3-1 at 47). In order to appeal the Appellees' decision, Appellant was required by O.C.G.A § 21-2-171(c) to file an application for writ of mandamus. O.C.G.A § 21-2-171(c) limited Appellant to a maximum of

[1] When Appellant emailed the Appellees on August 26, 2020, he had previously been told by the Appellees' election office, that the Secretary of State of Georgia had 10 days to examine his petition.

5 days to file the application for writ of mandamus. Appellant filed his writ of mandamus September 8, 2020 (Doc 3-1 at 20). Appellant did not receive a hearing until September 15, 2020 (Doc 3-1 at 73). The night before the hearing, on September 14, 2020, Appellees' counsel sent Appellant and the trial court three documents. Appellant had only seen part of one of the documents previously before the September 14, 2020 hearing. The other two documents were documents that were attached to the email Appellant had never been sent to Appellant or seen by Appellant. One of the two never seen or sent before documents was an affidavit signed by Appellee Chris Harvey (Doc 3-1 at 67-70). There was second never seen or sent before document was labeled as pre-hearing brief (Doc 3-1 at 55-66). The third document included a letter that was attached to the September 4, 2020 email that Appellant referred to earlier (Doc 3-1 at 35). The other page in the document was an unsigned memo with a DeKalb County letterhead that displayed a total of 2208 signatures and 827 valid signatures (Doc 3-1 at 72). The separate unsigned letterhead contradicts Appellants verification statement. Past nomination petitions have been accompanied with instructions (Doc 3-1 at 15)[2]. The instructions clearly state, *"The cumulative number of valid signatures and breakdown of rejection numbers must be documented on the 2018 Petition Verification Form."* There was

[2](Doc 3-1 at 15) Appellant provided a copy of the 2018 instructions. Appellant has asked for open record request on at least two occasions but has never received the 2020 instructions.

no notice given to the candidates stating there had been any changes made to the 2020 verification process. Appellant's Verification Statement Form is missing the cumulative totals and rejection numbers. Appellant's Verification Statement is different than the nomination petitions of other candidates. The copy of the petition that Appellant received, appears to have been altered by computer software.

During the September 15, 2020 hearing the trial court that stated there was no evidence presented that Mr. Bell had collected enough signatures to be on the ballot (Doc 3-1 at 94-95). The trial court asked the Appellees' counsel to submit a proposed order. On September 17, 2020, two days later, the trial court issued its order denying Appellant access to the ballot (Doc 3-1 at 73). On September 22, 2020, Appellant timely filed an "Emergency Application for Appellate Review" with the Supreme Court of Georgia (Doc 3-1 at 171). On May 3, 2021 almost eight months after Appellant petitioned the Supreme Court of Georgia with his writ of mandamus, the Supreme Court of Georgia made its decision. The Supreme Court of Georgia stated Appellant's claim for mandamus and injunctive relief was moot and dismissed Appellant's appeal (Doc 3-1 at 167-176). Appellant filed a reconsideration of the Supreme Court of Georgia on May 13, 2020 (Doc 3-1 at 178-184). The Supreme Court of Georgia unanimously denied the Appellant's reconsideration request on June 1, 2020 (Doc 3-1 at 186). Appellant originally filed an instant lawsuit in the U.S. District Court of Northern Georgia forma

pauperis on June 17, 2021, but later paid the required filing fees on June 28, 2021 (Doc 3). On June 29, 2021 Appellant filed what he called an amended filing, but it was only a filing to correct a typo (Doc 4 at 2). Appellant filed what he called was his second amended filing (Doc 7) but filing was only to correct another typo as well (Doc 8). Appellant had mislabeled the statue as O.C.G.A. § 21-2-562 (2)(3) instead of O.C.G.A. § 21-2-562 (a)(b) (Doc 8 at 2). Appellees filed a motion to dismiss the Appellant's petition on January 25, 2022 (Doc 16). When appellant filed his pleading on March 17, 2022 (Doc 24) it was in response to Appellees' February 27, 2022 reply (Doc 22). In turn, Appellant has only one amended pleading and it should be Doc 24 not Doc 7. Appellees field a motion to strike Appellant's pleading on April 1, 2022 (Doc 25). Appellee Harvey was served Doc 24 on April 8, 2022 (Doc 27). Appellant filed a motion to bring phone into phone into the courthouse on April 20, 2022 (Doc 28). After serving Appellee Harvey the District Court reassigned his case 1:21-cv-2486-SCJ from Judge Steve C. Jones to Judge Sarah E. Geraghty 1:21-cv-2486-SEG on 04/19/2022. Appellant made demand for a jury trial on June 9, 2022 (Doc 31). The District Court made its ruling on December 6, 2022 (Doc 33). The District Court granted Appellees Motion to Dismiss (Doc 33 at 37). District Court denied Appellant's Petition for Writ of Mandamus (Doc 33 at 37). District Court denied what the Court called "Plaintiff's motion to amend (Doc 33 at 37). The District Court denied Appellees'

motion to strike Appellant's amended pleading as moot (Doc 33 at 37). The District Court denied Appellant's petition to bring his phone in as moot (Doc 33 at 37-38). The Appellant has now come before this Court because he believes the District Court errored in its ruling. The District Court believes that the District Court errored in applying the *Rooker-Feldman doctrine* in granting the Appellee's motion to dismiss. Appellant believes that the District Court errored in its denial of Appellant's amendment petition, or what District Court called "motion for leave to amend" (Doc 24).

IV. ARGUMENT AND CITATION OF AUTHORITIES

A. DISTRICT COURT ERRORED IN ITS DECISION TO DENY PLAINTIFF AMENDED PETITON AND/OR MOTION FOR LEAVE TO AMEND (DOC 24).

On June 29, 2021 Appellant filed what he called an amended filing, but it was only a filing to correct a typo (Doc 4 at 2). Appellant filed what he called was his second amended filing but was only to correct another typo as well. Appellant had mislabeled the statue as O.C.G.A. § 21-2-562 (2)(3) instead of O.C.G.A. § 21-2-562 (a)(b) (Doc 8 at 2). When appellant filed his pleading on March 17, 2022 (Doc 24) it was in response to Appellees' February 27, 2022 reply (Doc 22). In turn, Appellant has only one amended pleading and it is Doc 24 not Doc 7. The District Court stated that, *"Plaintiff fails to state a claim upon which relief can be granted. The addition of damages as a form of relief would not alter the Court's analysis or*

change its conclusion because Plaintiff has not alleged sufficient factual matter, accepted as true, to show that Defendants violated his rights." (Doc 33 at 11). Appellant's rights were violated under 28 U.S.C. § 1343(a)(1)(2)(3)(4). Appellant was a victim of fraud at the hands of Appellees. Appellant Validation Statement was signed and dated on August 19, 2020 with 2,200 signatures. An unsigned and unauthorized document was used to prevent Appellant from gaining access to the ballot. Appellant did not have a chance to thoroughly review Appellees pre-hearing submissions[3]. Appellant had to rely on the testimony of Appellees' counsel Miles Skedsvold that the memo he submitted to the Court and to Appellant was a legitimate document. The District Court seems to also be relying on Miles Skedsvold testimony[4]. During the entire testimony Mr. Skedsvold testified as though the unsigned memo presented to the trial court and Mr. Bell was a legitimate document when either he knew it wasn't or was naïve and was also fooled by Appellees[5]. Mr. Bell was not running for a DeKalb County office and the cumulative should be on the Verification Statement Form as the instructions

[3] Appellant was sent the pre-hearing documents at 8:26 the night before the hearing (see Doc 3-1 at 84 -85). He did not open his computer until approximately 30 minutes before the hearing.
[4] Miles Skedsvold performed like a shyster in the September15, 2020 hearing. Skedsvold stated that because of the difficult times the Appellant was given a letter dated from 2018 with the letterhead of the former Secretary of State Brian Kemp. It does not appear that any other Independent candidates suffered the same result even though they submitted their petitions during the same time period.
[5] More than likely Skedsvold knew that he would be testifying with a bunch of lies, therefore he attempted to protect himself with Appellee Harvey's affidavit (Doc 3-1 at 67-70).

dictate.[6] Skedsvold misled led and was untruthful several times in his testimony to the trial Court. Appellees gained possession of nomination petition on August 13, 2020. Appellant was not able to see his Verification Statement which clearly states that on August 19, 2020 he had 2,200 valid signatures (Doc 3-1 at 6). Appellees did not notify Appellee until September 4, 2020 at 4:56 that supposedly the number of valid and verified signatures submitted was allegedly 827. The Appellees did not let Appellant know that his nomination petition had been certified on August 19, 2020. Instead, Appellees lied to Mr. Bell telling him that his petition was delivered to DeKalb County on August 21, 2020 (Doc 3-1 at 45). Appellees' pretrial brief never states or even indicates that Mr. Bell did not have the required number of signatures[7].

B. DISTRICT COURT ERROED IN STATING THAT PLAINTIFF DOES STATE A CLAIM FOR WHICH RELIEF CAN BE GRANTED

District Court states that "Plaintiff does not state a claim for which relief can be granted". Appellant's petition and Appellant's amended pleading[8] state, Appellant rights were violated under 28 U.S.C. § 1343(a)(1)(2)(3)(4). Appellant was a victim

[6] Doc 3-1 at 15
[7] Appellees can see like anyone else can that Mr. Bell had 2200 valid signatures validated on August 19, 2020.
[8] Amendment only changed one paragraph in the original petition (Doc 8).

of fraud at the hands of Appellees. Appellant's Validation Statement was signed and dated on August 19, 2020 with 2,200 signatures (Doc 3-1 at 6). An unsigned and unauthorized document was used to prevent Appellant from gaining access to the ballot (Doc 3-1 at 7).

Appellant ended his petition with the following sentence, *"The actions of the Office of the Secretary of State of Georgia are beyond negligent, and the fact that they continue to assert that Mr. Bell did not have the required 1,255 signatures even though the Respondents own records show Mr. Bell had more than the required number of signatures (2,220) on August 19, 2020, shows that Appellee actions are with malice."* In accordance with Rule 9(b)[9], Appellant stated in his petitions, *"Along with the fact the Mr. Bell has plans on continuing in politics as an Independent, there has been conduct demonstrated by the Office of the Secretary of State of Georgia that routinely rejects signatures from nomination petitions and in Mr. Bell's case the Respondents provided unverified documentation, that could very well be fraudulent. The only stated verification states that Mr. Bell's petition contains 2,200 valid signatures. There was an additional memo but it was not provided by the Secretary of State of State of Georgia's office. The statement[10] made on August 19, 2020, in regards to, Mr.*

[9] FRAUD OR MISTAKE; CONDITIONS OF MIND. In alleging fraud or mistake, a party must state with particularity the circumstances constituting fraud or mistake. Malice, intent, knowledge, and other conditions of a person's mind may be alleged generally.

[10] This is to certify that the County Voter Registration Office has reviewed the referenced

*Bell's signature verification reveal two facts. The first being the attached memo was provided by the Secretary of State of the State of Georgia's office. Therefore, the memo with the Dekalb County letterhead (*Doc 3-1 at 7*) is obviously a fraudulent document and secondly the memo from the Respondents is missing. The memo should exactly like the one provided to other Voter Registration offices in other counties (Doc 3-1 at 16-19). The false document was used to prevent Mr. Bell from being placed on the ballot."* Appellant did in fact state a claim that could be granted.

1. DISTRICT COURT ERRORED IN NOT RULING ON THE PROCESS SERVICE OF APPELLE HARVEY

Appellant had a lot of difficulty in serving Appellee. Appellant eventually served Appellee Harvey on April 8, 2022 in accordance with Rule 4(j)(2)(A). Appellant served Appellee Harvey at the Office of the Governor of Georgia; 206 Washington Street III; State Capitol; Atlanta, GA 30334. The summons and petition were accepted by Rhonda Wilson who is authorized to accept service for the Governor of Georgia (Georgia's Chief Executive Officer) (Doc 27).

nomination petition and has determined that the petition contains 2.200 valid signatures, as per the attached memo provided by the Secretary of State for verifying signatures on the nomination petition for the November 3, 2020 General Election.

2. THE DISTRICT COURT ERRORED IN ITS LEGAL STANDARD

The District Court states after citing several cases[11], "evaluation of a motion to dismiss entails a two-pronged approach: (1) a court must identify any allegations in the pleading that are merely legal conclusions to which the "assumption of truth" should not apply, and (2) where there are remaining well-pleaded factual allegations, a court should "assume their veracity and then determine whether they plausibly give rise to an entitlement to relief." The District Court failed to utilize the two-pronged approach. Appellant stated in his petition several examples of fraud, mainly pertaining to his Verification Statement (Doc 3-1 at 6) and the unsigned memo with the DeKalb County letterhead (Doc 3-1 at 7). Appellant also presented evidence of the instructions that were sent to County Election Superintendents and Registrars (Doc 3-1 at 15). The instructions given clearly state that the cumulative total of valid signatures and a breakdown of rejection numbers must be documented on the Petition Verification Statement. Appellant has stated more than legal conclusions. Appellant has stated facts supported by evidence. The District Court insinuates that Appellant's only fraud accusation was based on the Appellees' letter dated August 28, 2018 that was submitted with Appellees September 4, 2020 email. The truth however is Appellant brought the facts

[11] Ashcroft v Iqual, 556 U.S. 662, 678 (2009); Bell Atl. Corp v. Twombly, 550 U.S. 544, 570 (2007); Wooten v. Quicken Loans, Inc. 626 F.3d 1187, 1196 (11th Cir. 2010); Powell v. Thomas, 643 F.3d 1300. 1302 (11th Cir. 2011)

regarding Appellees fraud and deception to the District Court, and therefore the District Court errored in denying the Appellant's motion to amend his petition. Appellant amended is petition in an effort to seek and gain justice. Appellant's petition complied with Rule 8 and Rule 9 of the District Court.

3. DISTRICT ERRORED IN ITS RULING WHEN IT STATED THAT THE GEORGIA SUPREME COURT AFFIRMED THE FULTON COUNTY SUPERIOR COURT'S DECISION

First the Supreme Court of Georgia did not affirm the Fulton County Superior Court's decision. The Supreme Court of Georgia stated in its May 3, 2020 decision that, *"We need not address the merits of Bell's claims because this appeal must be dismissed as moot." (Doc 3-1 at 173)*

4. DISTRICT ERRORED IN ITS RULING OF THE *Rooker-Feldman* DOCTRINE.

The District Court cites several cases in relation to the *Rooker-Feldman* doctrine. The District Court cites several cases in its ruling. In *Rooker v. Trust Co*. the ruling was affirmed by the state Supreme Court, but in the Mr. Bell's case the Supreme Court of Georgia did not affirm the Fulton Superior Court's decision. The District Court cites *District of Columbia*

Court of Appeals v. Feldman, where the U.S. Supreme Court held that it had sole jurisdiction over state judicial proceedings even if those challenges allege that the state's court action was unconstitutional. However, a few years before the *District of Columbia Court of Appeals v. Feldman* decision a precedent had already been set in regard to state election procedures, and also the appeal of decisions made by election officials, who denied a nomination petition. The precedent was established first in *v Forston*, 403 U.S. 431 (1971) and then in the same U.S. District Court[12] *Anderson vs. Poythress* {No. C80-167A; USDC (N.D. Ga Sept 26, 1980)}. The District Court case *Bell vs Raffensberger* et al (1:21-cv-02486), was also in the same District Court as *Jenness v Forston* and *Anderson vs. Poythress*. *Anderson vs. Poythress*, 246 Ga. 435 {No. C80-167A, USDC (ND. Ga. Sept 26,1980)}is a clear example where the U.S. District Court ruled on the merits of a case that had been decided by the Fulton County Superior Court and the Supreme Court of Georgia. There are differences between *Anderson vs. Poythress* and this case *Bell vs Raffensberger*. In *Anderson vs. Poythress*, 246 Ga. 435 (271 SE2d 834) the Supreme Court of Georgia affirmed[13] the Fulton County Superior Court's judgement. In *Bell vs*

[12] United States District Court; Northern District of Georgia; Atlanta Division
[13] There were three dissenters.

Raffensberger, 313 Ga. 616 the Supreme Court of Georgia did not affirm the Fulton County Superior Court's ruling nor did the Supreme Court of Georgia address any of the merits of Mr. Bell's claims (Doc 3-1 at 173). The Supreme Court of Georgia essentially admitting that O.C.G.A. 21-2-171(c) does not provide the candidate with an opportunity to for the candidate to access the ballot (Doc 3-1 at 173-176) by hearing the Mr. Bell's case almost eight months after it was filed in the Georgia Supreme Court. In *Exxon Mobil Corp. v. Saudi Basic Indus. Corp*. the U.S. Supreme Court held that, *"28 U.S.C. § 1257 did not bar the District Court from addressing the validity of the Rule itself, so long as the plaintiffs did not seek review of the Rule's application in a particular case.."*. The Supreme Court went on to say, *"Rooker-Feldman does not otherwise override or supplant preclusion doctrine or augment the circumscribed doctrines allowing federal courts to stay or dismiss proceedings in deference to state-court actions…Rooker and Feldman exhibit the limited circumstances in which this Court's appellate jurisdiction over state-court judgements, §1257, precludes a federal district court from exercising subject-matter jurisdiction simply because a party attempts to litigate in federal court a matter previously litigated in state court."* In the *Exxon Mobil Corp* the U.S. Supreme Court ruled, *"Rooker-Feldman did not prevent the District*

Court from exercising jurisdiction when ExxonMobil prevailed in the Delaware courts. The Third Circuit misperceived the narrow ground occupied by Rooker-Feldman, and consequently erred in ordering the federal action dismissed." Nicholson v. Shafe another case the District Court cited, claiming that it was barred by *Rooker-Feldman* from ruling on the Appellant's case. In *Nicholson v Shafe* this Court seems to differ with U.S. Supreme Court's ruling in *Exxon Mobil Corp. v. Saudi Basic Indus. Corp*. While the Supreme Court stated in *Exxon Mobil Corp* that there are limited circumstances in which a federal district court would not have subject matter jurisdiction, this Court stated in *Nicholson v. Shafe*, *"Generally speaking, the Rooker-Feldman doctrine bars federal district courts from reviewing state court decisions."* This Court continues on in the *Nicholson* case, giving an analysis of both the *Rooker* and *Feldman* cases, eventually stating, *"the Eleventh Circuit set forth a four-factor test to guide the application of the Rooker-Feldman doctrine*[14] *of the Rooker-Feldman doctrine.."*. This Court goes on to clarify *Amos* factors, stating that even after *Exxon Mobil* this Court had applied *Amos* factors on four

[14] (1) the party in federal court is the same as the party in state court, *see Roe v. Alabama*, 43 F.3d 574, 580 (11th Cir. 1995); (2) the prior state court ruling was a final or conclusive judgment on the merits, *see David Vincent, Inc. v. Broward County*, 200 F.3d 1325, 1332 (11th Cir. 2000); (3) the party seeking relief in federal court had a reasonable opportunity to raise its federal claims in the state court proceeding, *see Dale v. Moore*, 121 F.3d 624, 626 (11th Cir. 1997) (per curiam); and (4) the issue before the federal court was either adjudicated by the state court or was inextricably intertwined with the state court's judgment, *see Goodman ex rel. Goodman v. Sipos*, 259 F.3d 1327, 1332 (11th Cir. 2001).

occasions[15]. This Court went on to that *Nicholson v. Shafe*, *"..provides us with an occasion to consider the continued viability of the Amos test, and to clarify our precedent." This Court thus noted that the "Supreme Court further noted that Rooker-Feldman does not prohibit a "district court from exercising subject-matter jurisdiction simply because a party attempts to litigate in federal court a matter previously litigated in state court"*.

In Appellant's case the State Supreme Court of Georgia declined to address the merits of Appellant's claims. At the time Appellant filed his petition with the District Court he still believed that it was possible for him to access the ballot based on the facts. On June 17, 2021 when Appellant filed with the District Court, the winner of the GA House District 85[16] had been unopposed in both her primary election and the general election. Her rights would not have been infringed upon. The only rights that were violated were the First and Fourteenth amendment rights of the registered voters of GA House District 85 and the Appellant. GA House District 85 consisted of approximately 40,000 registered voters. The issue of assessing the ballot did not become moot until the next GA House District 85 election was certified[17] due to the fact the incumbent had an opponent.

[15] Three of the which this Court says was in passing
[16] Karla Drenner
[17] Karla Drenner had an opponent in the 2022 Democratic primary (Jocelyn O'neal)

In *Velazquez v. S. Fla Fed. Credit Union*, this Court stated, *"{due to the Supreme Court's cautionary statement in Exxon Mobil that the Rooker-Feldman doctrine "has sometimes been construed to extend far beyond the contours of the Rooker and Feldman cases," 544 U.S. at 283, 125 S. Ct. at 1521, we have since declined to adhere to the Amos test… Instead, we determine whether Rooker-Feldman applies in two stages. First, we must determine whether state court proceedings have ended, which we do by applying the three tests articulated by the First Circuit and adopted by this court in Nicholson*[18]*… Second, we consider whether the Appellant is a "state-court loser□ complaining of injuries caused by state-court judgements…and inviting district court review and rejection of those judgements."}"* In Appellant's case, as in *Nicholson*, the first test has not been satisfied. The highest state court available did not affirm the Fulton County Superior Court's judgement. In turn, the third test has not been satisfied either because Mr. Bell continues to litigate both federal and state issues. The second test has not been satisfied either. After the May 3, 2021 ruling in which the court declined to address the merits of Mr. Bell's claims, dismissing his claims as moot (Doc 3-1 at 173), Mr. Bell filed for a motion of reconsideration on May 13, 2001

[18] (1) When the highest state court in which review is available has affirmed the judgement below and nothing is left to be resolved, (2) if the state action has reached a point where neither party seeks further action, and (3) if the state court proceedings have finally resolved all the federal questions in the litigation, but state law or purely factual questions (whether great or small) remain to litigated.

(Doc 3-1 at 177-184). Appellant's motion of reconsideration was denied June 1, 2021 (Doc 3-1 at 186). The denial of the Appellant's motion for reconsideration effectively ended his ability to have his issues decided in state court due to the fact Mr. Bell was the losing party and had exhausted all state court options in a timely manner. Mr. Bell did not allow the time for his appeal to expire and he still seeks further action. In *Velazquez*, this Court quotes the First Circuit when it says, *"{The court noted, however, that litigation is not ended "even if the federal plaintiff expects to lose in state court and hopes to win in federal court…}"*. This Court went to the second stage in *Velazquez* base on its opinion that the state court proceedings, when it stated, *"we are not dealing with a federal plaintiff who expected to lose in state court; instead, we are dealing with a federal plaintiff who had lost and given up in state court…"*. Mr. Bell never expected to lose in state court, and he surely didn't give up.

Lastly, in regard to whether the Appellant is a state-court loser complaining of injuries caused by state-court judgements and inviting district court review and rejection of those judgements, he is not. The merits of Mr. Bell's claims were not addressed by the Supreme Court of Georgia. As far as Appellant's claims being inextricably intertwined with state court judgements, *Rocker-Feldman* is based on the decision of the highest appellate state court, Mr. Bell was not given the opportunity to have his federal claims heard or ruled upon by that court (Supreme

Court of Georgia).

The District Court uses the *Rice* and *Velazquez* cases in stating that this Court does not recognize the fraud-on-the-court exception to the *Rooker-Feldman* doctrine. This Court states in *Velazquez*, *"{Velazquez asks this court to recognize a fraud-on-the-court exception to Rooker-Feldman. See In re Sun Valley Foods Co., 801 F.2d 186, 189 (6th Cir. 1986)… As a preliminary note, this case comes from the Sixth Circuit, and "[u]nder the established federal legal system the decisions of one circuit are not binding on other circuits." Bonner v. City of Prichard, 661 F.2d 1206, 1209 (11th Cir. 1981) (en banc). More importantly, even if we were to adopt the exception Velazquez seeks, it would not apply here. Velazquez presented evidence of fraud to Florida's Third District Court of Appeal, and that court was unconvinced by the evidence. Fraud on the court does not occur simply because a court is unpersuaded by a party's allegation of fraud, and that is all Velazquez suggests happened here.}"* Unlike *Rice* in 2005, this Court seems like may be willing to change it stance on the fraud-on-the-court exception, judging by the language it used in *Velazquez*, when it states, *"..even if we were to adopt the exception…"*. In Mr. Bell's case not only is there clear evidence of fraud (Doc 3-1 at 5-7) and (Doc 3-1 at 15-19) as Appellant explained to the District Court (Doc 3-1 at 10 -11). There is also clear evidence of a conspiracy (Doc 3-1 at 1-14), (Doc 3-1 at 41), (Doc 3-1 at 43-47), and (Doc 3-1 at 83-93). In describing the fraud-on-

court exception the District Court cites *Sun Valley Foods Co*., 801 F.2d 186, 189, (6th Cir. 1986)[19]. The District Court states that the fraud-on-the court exception does not apply to Appellant. The District Court states, *"The facts, as alleged, are insufficient to permit an inference that the notice's incorrect date and letterhead constituted fraud-on-the-court, rather than mere clerical oversight."* The District Court seems to have overlooked what the Appellant's petition stated about the fraud that injured him and the registered voters of GA House District 85 (Doc 7 at 9-10). Appellant provides proof the fraud (Doc 3-1 at 5-7) and its conspiracy (Doc 3-1 at 9-13).

The District Court goes on to say, *"But even if that were not the case, the Eleventh Circuit has declined to recognize the fraud-on-the-court exception to the Rocker-Feldman doctrine."* The District Court cites this Court's rulings in *Velazquez v. S. Fla Fed. Credit Union*, 546 F. App'x 854, 859 (11th Cir. 2013) and *Rice v Grubbs*, 158 F. App'x 163, 165 (11th Cir. 2005) to

[19] There is, however, an exception to the general rule that precludes a lower federal court from reviewing a state's judicial proceedings. A federal court "may entertain a collateral attack on a state court judgment which is alleged to have been procured through fraud, deception, accident, or mistake. . . ." *Resolute Insurance Co. v. State of North Carolina,* 397 F.2d 586, 589 (4th Cir. 1968). The district court below stated: "there has been no evidence . . . [of] facts such as fraud, accident or mistake which . . . deceived the Court into a wrong decree. . . ." We are bound to accept the district court's factual findings unless those findings are "clearly erroneous." Fed.R.Civ.P. 52(a). *Arthur v. City of Toledo,* 782 F.2d 565, 570 (6th Cir. 1986). The district court's findings in this case are not clearly erroneous and we therefore affirm its decision to dismiss Sun Valley's § 1983 claims against the Michigan state officials.

support its conclusion. In *Rice v Grubbs* although this Court stated that it had not recognized a fraud exception to the *Rooker-Feldman* doctrine, they did say that there was an exception to the *Rooker-Feldman* doctrine when Appellant did not have a reasonable opportunity to raise their federal claim in the state appeals court. In Mr. Bell's case although he appealed the Fulton County, Georgia Superior Court's ruling to the Georgia Supreme Court. The Supreme Court of Georgia did not affirm the lower court's decision. In fact, the Georgia Supreme Court did not address any issues in Mr. Bell's petition to the Court (Doc 3-1 at 173). The Georgia Supreme Court held that, Appellant claims were moot and the Georgia Supreme Court declined to analyze any of the issues raised by Appellant (Doc 3-1 at 173-175). This Court also went on to say in *Rice v Grubbs* that *"{..the Rices argue the district court failed to consider 28 U.S.C. § 1343(a)(3) (giving federal courts certain civil actions), the district court failed to consider 28 U.S.C. § 1343(a)(3) "giving federal courts jurisdiction over certain civil actions), which they argue overcomes the doctrine. Although the language of § 1343(a)(3) is broad, it is not an independent, exception-free grant of jurisdiction. Rather, that section gives federal courts jurisdiction over certain civil actions but does not give jurisdiction to review a state court judgement...}."* Appellant placed 28 U.S.C. §1343(a)(1)(2)(3)(4) in his jurisdictional statement (Doc 7 at 4). Appellant was denied his opportunity to have his federal claim heard in state court due to fact the

Georgia of Supreme Court of Georgia declined to address any of the issues that Appellant brought to the court. 28 U.S.C. §1343(a)(1) is a statute that involves recovery of damages for injury to a person or property, or because of the deprivation of any right or privilege of a citizen of the United States; by any act done in the furtherance of any conspiracy mentioned in section 1985 of Title 42(1). The conspiracy begins on August 17, 2020 when Mr. Bell received an email from the Appellees office stating that they would notify him when his petition was sent to the county for review (Doc 3-1 at 43). Appellant's Verification Statement is dated August 19, 2020, Appellant was told that his nomination was given to DeKalb County, Georgia for signature verification on August 21, 2020 (Doc 3-1 at 45). Appellant emailed Appellee on August 26, 2020 because O.C.G.A § 21-2-171(b) states, *"Upon the filing of a nomination petition, the officer with whom it is filed shall begin expeditiously to examine the petition to determine if it complies with the law."* Appellant received an email from Appellees on September 4, 2020 at 4:56 (Doc 3-1 at 47). Attached to the email was a single letter dated August 28, 2018 (Doc 3-1 at 35). Appellant was told through the September 4, 2020 email by the Senior Elections Staff attorney that she could not give Appellant legal counsel and that she recommended that Appellant should consult with an attorney (Doc 3-1 at 47). In order to appeal the Appellees' decision, Appellant was required by O.C.G.A § 21-2-171(c) to file an application for writ of mandamus. O.C.G.A § 21-

2-171(c) limited Appellant to a maximum of 5 days to file the application for writ of mandamus. Appellant filed his writ of mandamus September 8, 2020 (Doc 3-1 at 20). Appellant did not receive a hearing until September 15, 2020 (Doc at 73). The night before the hearing, on September 14, 2020, Appellees' counsel sent Appellant and the trial court three documents. Appellant had only seen part of one documents previously before the September 14, 2020 hearing. The other two documents were documents that had never been sent to Appellant or seen by Appellant. One of the two never seen or sent before documents was an affidavit signed by Appellee Chris Harvey (Doc 3-1 at 67-70). There was second never seen or sent before document was labeled as pre-hearing brief (Doc 3-1 at 55-66). The third document included a letter that was attached to the September 4, 2020 email that Appellant referred to earlier (Doc 3-1 at 35). The other page in the document was an unsigned memo with a DeKalb County letterhead that displayed a total of 2208 signatures and 827 valid signatures (Doc 3-1 at 72). The separate unsigned letterhead contradicts Appellants verification statement. Past nomination petitions have been accompanied with instructions (Doc 3-1 at 15). The instructions clearly state, *"The cumulative number of valid signatures and breakdown of rejection numbers must be documented on the 2018 Petition Verification Form."* There was no notice to the candidates that any changes had been made to the 2020 verification process. Appellant Verification Statement Form is missing the

cumulative totals and rejection numbers. Appellant Verification Form is different than the nomination petitions of other candidates. The appearance of Appellant's Verification Statement form petition are different than the other Independent candidates.

During the September 15, 2020 hearing trial court that stated there was no evidence presented that Mr. Bell had collected enough signatures to be on the ballot (Doc 3-1 at 94-95). The trial court asked the Appellees' counsel to submit a proposed order. On September 17, 2020 the trial court issued its order denying Appellant access to the ballot (Doc 3-1 at 73). On September 22, 2020, Appellant timely filed an "Emergency Application for Appellate Review" with the Supreme Court of Georgia (Doc 3-1 at 171). On May 3, 2021 almost eight months after Appellant petitioned the Supreme Court of Georgia with his writ of mandamus, the Supreme Court of Georgia made its decision. The Supreme Court of Georgia stated Appellant's claim for mandamus and injunctive relief was moot and dismissed Appellant's appeal (Doc 3-1 at 167-176). Appellant filed a reconsideration of the Supreme Court of Georgia on May 13, 2020 (Doc 3-1 at 177-184). The Supreme Court of Georgia unanimously denied the Appellant's reconsideration request on June 1, 2020 (Doc 3-1 at 186). Appellant originally filed an instant lawsuit in the U.S. District Court of Northern Georgia forma pauperis on June 17, 2021, but later paid the required filing fees on June 28, 2021 (Doc 3). Appellees violated 28

U.S.C. §1343(a)(2) in the same manner as they did 28 U.S.C. §1343(a)(1) due to the fact there were individuals including Appellees that failed to prevent or to aid in preventing wrongs. It is clear that Appellant would also be entitled to damages under 28 U.S.C. §1343(a)(3)(4) as well.

As previously stated Appellees lied about not receiving the discovery request (Doc 3-1 at 92). They also lied about there not being any evidence for Appellant receiving the requisite amount of signatures (Doc 3-1 at 84). During the hearing Appellees never mentioned that Appellant verification statement validated 2,200 signatures. The *Rooker-Feldman* doctrine does not apply to Appellant. None of the four-factor tests articulated in *Nicholson* have been satisfied in Appellant's case. Finally, the U.S. District Court of Northern Georgia previously stated, *"The court perceives plaintiffs' claim as one for the interference with the exercise of their constitutional rights to vote and to gain access to the ballot by reason of the Secretary's failure to accord Anderson due process of law in applying the Georgia nomination statute to him." Anderson, et al vs Poythress{No. C80-187A; USDC (N.D. Ga Sept 26,1980}*. Unlike Anderson, Mr. Bell was not even afforded the opportunity to review his nomination before the hearing. Although he properly submitted his discovery request to Appellees. (Doc 3-1 at 1-4) Like Anderson however, Mr. Bell experienced a very extraordinary and expedited judicial proceeding in seeking to mandamus the Secretary of State of Georgia O.C.G.A. §

21-2-171(c). Mr. Bell only had five days to file is application for a writ of mandamus. Appellant's hearing should have been an opportunity to demonstrate how the Secretary of State errored in denying Mr. Bell access to the ballot. It was impossible to properly prepare for the hearing because the Appellees never sent Appellant the discovery he requested. Appellees did email his verification on September 14, 2022 at 8:26 p.m. well beyond the close of business. Appellees had had the verification statement since August 19, 2020. Appellant noticed an email from the Appellee approximately 30 minutes before the 10 a.m. hearing on September 15, 2020. *"During this period, they needed to prepare to rebut the Secretary's findings with respect to a vast number of invalidated voter signatures. To expect them at the same time to explore more peripheral issues such as constitutional challenges to the judicial proceedings in which they were participating, and to deny them the right collaterally to raise such issues, may carry the application of the principles of res judicata too far" Id*. Appellant had virtually no time to look at all the documents that the Appellees provided at the last minute. Appellees used the fraudulent document to disguise the fact that Appellant had acquired enough signatures to be on the ballot. The trial court was also deceived and tricked by the chicanery and lies of Appellees.

5. DISTRICT COURT ERRORED ON MOOTNESS CLAIM

Appellant's appeal (writ of mandamus) only became moot after the GA House District 85 incumbent received a primary opponent in March of 2022. There have been other elections that have been set aside and a new election ordered {*Gasaway vs. Laurel Ellision, Chris Erwin,et al*. (Civil Action No.: 18-CV-249)}. House District 85 is located inside one county in Georgia (Dekalb County), which means that only the Appellees and one Voting and Registration office would have been involved in administering a new election. There would have been no need for Appellees to print ballots for the whole state. Appellant uses the term "printed" facetiously, because the majority of votes casts are via electronic voting machines[20]. Except for 2020, GA House District 85 has had over 91% of the ballots cast by automated/programmable voting machines. Ordering a new election was indeed possible. The new election would have protected the rights of the Independent candidate (Mr. Bell) as well as the registered voters of GA House District 85. GA House District 85 had approximately 35,000 registered electors that voted at 17 precincts in approximately 14 locations in 2020. The new election would not have affected a third party until March 10, 2022 because until that time the incumbent ran unopposed. Mr. Bell's name was not placed on the ballot for the November 3,

[20] Which in themselves have problems i.e. https://decaturish.com/2022/07/dekalb-elections-office-identified-ballot-shift-as-error-in-dekalb-commission-district-2-election/

2020 General election, even though he went through the entire appeal process of O.C.G.A § 21-2-171(c).

6. District Court Errored in its analyzes of Appellants' Constitutional Challenge of O.C.G.A. § 21-2-170 and O.C.G.A. § 21-2-171

The District Court states, *"Plaintiff alleges that he intends to run for Georgia House District 85 as an independent candidate in the future and thus will face the same restrictions to ballot access he faced in the lead-up to the election. Accepting as true the allegation that the Plaintiff intends to run again, however, the amended complaint does not sufficiently allege that Plaintiff will be subject to the same unique circumstances as he faced in 2020."* Then the District Court goes on to assume that Appellees allegation are facts, even though they have presented no evidence to support their allegations, and many of those allegations have since proven to be lies. The District Court continues with, *"Those circumstances included an extended deadline for submitting nomination petition occasioned by a Secretary of State staff member being out of town."* The staff member that said she was out of town can't be believed because she lied on a series of emails (Doc 3-1 at 43-46). Appellees submitted no evidence other than the affidavit of Appellee Harvey, we definitely can't believe that. The proven facts are Appellant turned his nomination petition in

on August 13, 2020. Appellant's verification statement was signed and dated August 19, 2020. Appellant received an email stating that his petition was sent to the county on August 21, 2020. Appellant received another email at the close of business September 4, 2020, with a letter attached to it. The letter was dated August 28, 2018 the Secretary of Georgia Brad Raffensberger's name or signature did not appear on the letterhead. Also included was a fraudulent election document that was used to change the Appellant's verification statement. Appellant does not know how unique the circumstances of election fraud is but it most definitely can happen again in another election because Mr. Bell has essentially proven that O.C.G.A. § 21-2-170(a)-(e) and O.C.G.A. § 21-2-171(a)-(c) are unconstitutional being that statutes prevent Independent candidates from accessing the ballot or even worse than that, the statutes prevent Independent candidates from having any errors made by a reviewing official corrected so that they may access the ballot.

District Court states, "Plaintiff's complaint appears to assert a facial challenge to O.C.G.A. § 21-2-170(b)-(e), not as an applied challenge." (Doc 33 at 20) The District Court is aware that the Appellant is representing himself pro se and that he is nor has ever been an attorney. In turn, it is unfair for Appellant to determine whether O.C.G.A. § 21-2-170(b)-(e) is a facial challenge or an applied challenge. Appellant had originally gone to the U.S. District Court, because he was following

the course of the only known person to have been successful in challenging the Georgia nomination petition statute, John Anderson. On September 25, 1980, John Anderson lost a 4-3 decision in the Supreme Court of Georgia *Anderson v. Poythress*, 246 Ga. 435 (Sept 25, 1980). On September 22, 2020, Appellant timely filed an "Emergency Application for Appellate Review" with the Supreme Court of Georgia (Doc 3-1 at 171. Unlike the Georgia Supreme Court in 1980 who made their decision within days of Mr. Anderson filing is petition with the Georgia Supreme Court. Mr. Bell had to wait several months until the Georgia Supreme Court made their May 3, 2021 decision. The May 3, 2021 decision declined to make any judgements on the constitutionality of O.C.G.A. § 21-2-170 or O.C.G.A § 21-2-171. Even with the advent of technology the ability of Independent candidates to access the ballot has become more restrictive than was even the case in 1980. Being that Appellant is not an attorney he chose to follow *Anderson's* successful course of action. In turn after Appellant's reconsideration request was denied he filed with U.S. District Court. The District Court made its ruling based on Appellant's amended petition (Doc 7). The amended petition was filed on September 13, 2021, which was approximately a year and a half ago. In 1980, Anderson capitulated to the U.S. Supreme Court decision *Jenness v. Fortson*, 403 U.S. 431 (1971). Although Mr. Bell acknowledged Anderson's argument in regards to *Jenness v. Fortson* Mr. Bell did not agree in totality with Anderson's

position (Doc 7 at 13-14). In *Anderson, et al vs Poythress* {No. C80-187A; USDC (N.D. Ga Sept 26,1980} the District Court said, *"Plaintiff's stated at trial that they do not allege that the statue under which the Secretary denied Anderson access to the ballot is unconstitutional on its face. Such challenge would be fruitless anyway, inasmuch as the Supreme Court in Jenness v. Fortson, 403 U.S. 431 (1971) has upheld the ballot access requirements imposed therin."* Bell has experienced and endured a different experience than Anderson. With Anderson, after losing in the Supreme Court of Georgia his case was heard the next day by the U.S. District Court. The District Court ruled in Anderson's favor enabling him to access the ballot. 40 years later that was not the case for Mr. Bell. Although his case was docketed by the Supreme Court of Georgia on September 22, 2020, that Court did not make a ruling on the case until May 3, 2021. The ruling did not address the merits of any of Mr. Bell's claims and the Court dismissed his appeal as moot.

The District Court stated, *"Construed liberally, Plaintiff's amended complaint contains two arguments as to why the ballot-access law is unconstitutional: (1) the statute's nomination-petition requirements (particularly, the 5% signature requirement) place severe burdens on persons seeking to run as independent candidates, and (2) section 21-2-171(b)'s different treatment of statewide and non-statewide candidates violates the Equal Protection Clause. Eleventh Circuit was presented with these exact arguments in Cowen v Secretary of State of Georgia, 22*

Cooper v. Raffensberger, 472 F. Supp.3d 1282 (N.D. Ga. 2020) *F.4th 1227 (11th Cir. 2022)"*. (Doc 33 at 20-21) Appellant is different that of *Cowen's*. Cowen never put forth the effort to collect any signatures. The District Court went on to say that to evaluate Libertarian party's first ("severe burden") claim, the Eleventh circuit performed an *Anderson-Burdick* test.[21] The District Court stated that, *"The Court explained that the Supreme Court previously upheld Georgia's 5% signature requirement in Jenness v Forston, 403 U.S. 431 (1971), and Jenness was still good law." (Doc 33 at 22)*. The District Court acknowledged that Appellant disagreed with the *Cowen* decision. (Doc 33 at 24) First, although admirable, Linda Jenness never collected one signature for a nomination petition, and neither has any current elected official, judge, or other elected person in Georgia with the exception of one.[22] Appellant has unique perspective due to his experience. *Jenness* is not good law. Someone judging or reviewing the Georgia ballot-access laws from outside perspective might be of the impression that the Georgia ballot-access laws are quite open and numerous in many respects *(Cowen* at 1233) but in reality, they are not. Originally, in Appellant's mind 1793 signatures would not be a problem. However, he realized almost immediately that the task would be almost

[21] The *Anderson-Burdick* test named for the framework outlined by the 5-4 majority decision in the U.S. Supreme Court's *Anderson v Celebreze*, 460 U.S. 780 (1983) and refined in *Burdick v Takushi*, 504 U.S. 428 (1992).

[22] Keith Higgins who is a District Attorney who also ran as an Independent candidate in 2020. Appellant was involved in zoom meetings in 2020 with Keith Higgins and other independent candidates

impossible, and that was before the Governor of Georgia locked the state down. First, most people are unaware of the process required under 21-2-170(a)-(e),(h). Second, GA House District 85 is comprised of entirely Democratic party votes as is reflected in the elections of over 20 years. As the dissenting opinion pointed out in *Burbick v Takushi, "The dominance of the Democratic Party magnifies the disincentive because the primary election is dispositive in so many races. In effect, a Hawaii voter who wishes to vote for any independent candidate must choose between doing so and participating in what will be the dispositive election for many offices. This dilemma imposes a substantial burden on voter choice. It explains also why so few independent candidates secure enough primary votes to advance to the general election."* When Appellant would encounter potential register voters, there would be an automatic resistance. A lot of registered voters declining to sign out of protection of their personnel information, a lot of registered voters not wanting to sign because they said "they already voted", a lot of registered voters wanting to sign up online[23], A lot of registered voters thought they were being solicited to buy something stating "I'm not interested, other registered voters saying, "why aren't you on the ballot already?", some registered voters not wanting the circulator to come on their property, other registered voters asking "are you a Democrat?"; Many registered voters not knowing what district

[23] The Internet was not available in 1971

they were in,[24] and along with all of the afore mentioned occurrences may registered voters did not want to come in close proximity to the circulator.[25]

First, in *Cowen* this Court states *"..the pool of voters eligible to sign included those not registered in the previous election." (Cowen at 1233)* What this Court does not consider is that for candidates like Mr. Bell, who should have been an Independent candidate for GA House District 85 general election, the statement from this Court although true is misleading. GA House District 85 is located in a densely populated area in the Center-South part of the county. District 85 is composed mostly of Americans of African descent. The district is mostly composed of middle to low-income families. The most important point, however, is that it is surrounded by two[26] other Georgia House Districts. Every address in GA House District 85 is two miles or less from another district. Registered voters in District 85 essentially live in the same area(s) as registered voters from GA House Districts 84 and 86. They share the same schools, churches, grocery stores, gas stations, etc. O.C.G.A. § 21-2-170(a)-(e) does not allow for voters that are essentially in the same community to be counted. Georgia has long done their districting and redistricting polices to disenfranchise voters. It would not be unreasonable for someone to move from one apartment to another apartment or

[24] District 85 is close proximity to 5 other districts
[25] Appellant believes social distance is the new normal after COVID-19 if it ever changes it won't be anytime soon.
[26] In 2020 it was 5

from one house to another house in a four-mile radius. In turn they could be a registered voter of GA House District 84 or 86 but living in GA House District 85. O.C.G.A. 21-2-171(c) is antiquated. The Appellant encountered large amount of amount of registered voters who stated that they did not want to give their date of birth to someone that they did not know. Without the date of birth for verification the Independent candidate can be left vulnerable to the unethical behavior of an unethical election official[27]. Second, O.C.G.A. does nothing to aid in verifying a registered voter who has no address or may be homeless. The verification process becomes even more arduous, difficult, or maybe impossible if the individual wanting to sign the petition does not have an address. There is an increase of homelessness in the United States and in Appellant's GA House District 85 district[28].

Second, this Court states in *Cowen*, *"Candidates still have 180 days to collect signatures, and the filing deadline, which the Supreme Court stated was not "unreasonably early" in Jenness, is later now. (Cowen at 1233).* The problem with that rationale is in order for the candidate to have the full 180 days it is necessary for the candidate to start circulating the petition before the candidate has actually qualified to be a candidate. In Appellant's case he was required to submit his

[27] Appellant was defrauded by Appellees in his 2020 election (Doc 3-1 at 6-7)
[28] https://endhomelessness.org/homelessness-in-america/homelessness-statistics/state-of-homelessness-dashboards/?State=Georgia

nomination petition by the second Tuesday in July, which was July 14, 2020.[29] The earliest date Appellees allowed Appellant to declare his candidacy was March 2, 2020. 180 days prior to July 14, 2020 would have been January 16, 2020. The actual time was really March 2, 2020 through July 14, 2020, which is only 134 days. Forcing the someone to tell the public to sign their nomination petition because they are a candidate, when they really are not, is forcing the candidate to lie to the electorate. This may the practice of Appellees but not that of Appellant. Third, this Court goes on to say in *Cowen*, *"The Georgia legislature has since added a requirement that write-in candidates file a notice of candidacy, but that change has no effect on the burden of gaining ballot access by nomination petition." (Cowen at 1233).* This was not true for Appellant. O.C.G.A. § 21-2-133 set the requirements for write-in candidates in Georgia. O.C.G.A. § 21-2-133(a)(b) have requirements that a write-in candidate publish a notice of their intention to run as a write-in candidate. O.C.G.A. § 21-2-133(a) is difficult to is difficult to decipher for the Appellant's standpoint of running for Georgia House District 85. GA House District 85 is a state elected office but it is not a statewide elected office. Some GA House districts cover more than one county Mr. Bell's district only encompasses one county. The fact remains however he was notified by

[29] The date was changed to August 13, 2020 due to the the signature petition requirement by 30%. *Cooper* v. *Raffensperger,* 1:20-cv-01312, 2020 WL 3892454 (N.D.Ga July 9, 2020)

Appellees on Friday September 4, 2020 at 4:56 p.m. Labor Day weekend. Therefore, making it impossible for him to place a notice in the Atlanta Journal-Constitution or the DeKalb Champion newspaper. O.C.G.A. § 21-2-133(a)(1) states Appellant would have had to have his notice run in the paper by September 8. The Atlanta Journal-Constitution office whom Appellant believes he needed to contact was unavailable until the morning of September 8 and there was no longer an afternoon paper. In turn, the Appellees prolonged review and notice to Appellees kept Appellant from being eligible to become a write-in candidate. Lastly, it was possible to derive those theories in *Jenness* to explain how "open in numerous respects" Georgia ballot-access laws are perceived to be because Linda Jenness never experienced circulating any nomination petitions. Unlike Linda Jenness Appellant can say that it is nearly an impossible task, because he has been fighting this case for 2 ½ years in the same manner in which he set out to collect signatures for his nomination petition. Appellant's viewpoint is not from assumption but from experience.

The District Court states, there was no severe burden placed on Appellant. When a law or ruling is subjective, the law or ruling itself creates problems. What is exactly is a significant modicum of support? A significant modicum of support may one thing to one person and something different to someone else. Is not 1% a significant modicum of support? The state of Georgia acknowledges that 1% is

significant modicum of support going from the original 5% to 2 ½% and now 1% in statewide elections. However, with the advent of the Internet and most recently social media, a person could say their following on social media, or the amount of times their page, post, or video has been viewed is a significant modicum of support. What is no longer true is the printing of ballots. The burden of the Secretary of State of Georgia has been significantly lowered since the *Jenness* decision in 1971, because with the exception of 2020 over 90 percent of the ballots in recent elections are cast by automated/programable voting machines. However, the burden of accessing the ballot has remained the same or in Appellant's case, the burden of accessing the ballot has gotten worse.

The District Court states, "Plaintiff's First and Fourteenth Amendment challenges to O.C.G.A, § 21-2-170 do not state a claim for relief because they are foreclosed by the Eleventh Circuit's decision in *Cowen*." The opinion of this Court in *Georgia Cowen v Sec'y of State*, 2022 U.S. App. LEXIS 390, F.4th (11th Cir. Jan. 5, 2022) does not take into account for example that for some Independents running for the State House of Representatives or State House Senate have to go into several different counties to get their nomination petition signed, but are not afforded an opportunity to get their petition signed at a statewide event, like a statewide candidate[30]. Neither does this Court take into account candidates like

[30] A statewide candidate has multiple counties but they can go to a Braves game and collect

Appellant whose district is drawn inside of two other districts[31], and every address of his district is 2 miles or less from another district, therefore leaving a great possibility of registered voters who attend the same stores, schools, parks, religious institutions, and civic associations signing the circulators petition but not being validated for the candidate's nomination petition. Meanwhile, a statewide candidate does not have go to every county in Georgia to collect signatures. They can go to a University of Georgia game and collect signatures from Brunswick to Ringgold, or from Augusta to Columbus all in one place, as long as the person is registered to vote in Georgia they can sign that person's petition. Meanwhile, a candidate from GA District 85 can't have a person that lives 2 miles away or less sign their petition. Which one is harder? Which one is more severe?

7. District Court Errored in its decision on the facial Constitutional Challenge to O.C.G.A. § 21-2-171 (c)

The District Court states, "Although there are four parts to the statutory review process, Plaintiff only challenges one." (Doc 33 at 26) This is not accurate. Appellant clearly compares his case to John Anderson's (Doc 7 at 12). In that

signatures of anyone attending the game as long as they are a registered voter of Georgia. The State Representative or Senate candidate would have to ask each person do they live in that particular district, and from Mr. Bell's experience most people do not know what State House or State Senate district they reside. A lot of people don't even know what their U.S. Congress district is.

[31] In 2020 it was 5 districts

comparison Appellant makes note of the length of time it took for the Supreme Court of Georgia took to hear his case. Appellant went further than Mr. Anderson did in *Anderson vs. Poythress*, 246 Ga. 435 (271 SE2d 834). Appellant filed a motion for reconsideration with the Supreme Court of Georgia after its May 3, 2021 decision. Appellant motion for reconsideration was denied on June 1, 2021 (Doc 3-1 at 186), exhausting all of options with the Georgia courts. The District Court claims that he tried to broaden his challenge to include all four parts in his response brief, but this is not true. As Appellant did challenge all four parts in his petition (Doc 7 at 11-12).

District Court goes on to say that Appellant has no right to counsel in civil proceedings. Although this may be true that Appellant did not have the right to counsel, it does not negate the fact that being notified at 4:56 p.m. the Friday beginning Labor Day weekend virtually eliminated his opportunity of hiring an attorney to counsel, write, or even review his application for writ of mandamus, being that three of the five days (Saturday, Sunday, and Monday) would be taken by the holiday. That being said the average person running for office has no experience or training in filing an application for a writ of mandamus. The District Court is essentially stating that there is no severe burden because everyone is knowledgeable and capable of writing and filing an application for a writ of mandamus within five days. We know that not to be true, because it if were there

would be no need for bar exams and law schools.

District Court goes on to say the five-day mandamus requirement did not prevent Mr. Bell from accessing the ballot. Appellant explained, "Mr. Bell was able to submit his writ of mandamus before the deadline, but Mr. Bell is most likely an anomaly not the norm. When most people need to deal with a legal problem, they hire a lawyer to aid and assist in their legal process." (Doc 7 at 13). The Appellant has also stated that the five-day mandamus deadline has prevented other from appearing on the ballot.[32] (Doc 23 at 7). The District Court goes on to say, *"{But when considering the exigent circumstances that compel them, it cannot be said that they create "unfair" or "unnecessary" burdens. Anderson, 460 U.S. at 793.}"* Before appealing his case to the courts, Appellant had never heard of Linda Jenness or John Anderson, but because of his ordeal he now has a great deal of respect for both, but more especially John Anderson because he actually put in the work like Mr. Bell to collect signatures for his nomination petition. In turn, it somewhat insulting and disrespectful for anyone that hasn't gone through the

[32] "There has never been an American of African descent a/k/a "black" that has ever gained access to the ballot through a nomination petition since the petition requirement was set forth in 1943. Even Mr. Bel1 was unable to gain access to the ballot even though he had 945 more signatures than he needed. The actions of the Defendants seem to be a clear violation of Section 2 of the 1965 Voting Rights Act. The citizens of GA House District 85 were clearly deprived of the choice of voting for the candidate of their choice. In Mr. Bell's case he ran as an independent because he believes the platforms of the two majority parties are not addressing or, in the least, properly addressing the issues concerning his community."

experience to downplay the experience that they haven't been in or gone through. It would be like someone saying climbing Mt. Everest is no big deal anyone can do it. O.C.G.A. 21-2-171(c) 5 day required prevented Appellant from obtaining legal assistance for at least three of the five days. O.C.G.A. 21-2-171(c) does not take into account weekends and holidays. Not only did O.C.G.A. 21-2-171(c) violate the First and Fourteenth amendment rights of Appellant and the registered voters of GA House District 85, it stripped Mr. Bell and those individuals that assisted him in circulating his petition of valuable time in which he can never get back. Unfortunately, it's still stripping him of his time because he has yet to find one attorney to represent him.

The District Court stated that it found that the interests articulated by Defendants are sufficiently important to justify the reasonable burden imposed by section 21-2-171(c)'s five-day mandamus deadline. The District Court then stated, "Accordingly, O.C.G.A. § 21-2-171(c)'s five-day mandamus deadline is not facially unconstitutional under the *Anderson-Burdick* framework" (Doc 33 at 34). The District Court gave three reasons for its decision. The first, was meeting state and federal deadlines to finalize ballots for printing and sending to absentee voters. The only thing that Appellees provided to state that they were meeting state and federal guidelines was an affidavit from Appellee Harvey. There was no proof given to verify is statement. Appellees have proven that they are not beyond

chicanery, lying, or altering documents. Appellees provided no evidence from any authority showing any date or deadline regarding the finalization of ballots[33]. The second reason the district Court gave was so the state could conduct orderly elections. The advent of technology has made the election process easier for the Secretary of State of Georgia but it has not made it easier for Independent candidates to access the ballots. In all recent elections except for 2020 over 90 percent of people voted by electronic/programable voting machines. The Secretary of State's printing obligation has been significantly lowered. If an Independent candidate's name is not placed on an absentee ballot it effects no one else but the Independent candidate. Rightfully placing Appellant's name on the ballot would not have made the November 3, 2020 election disorderly. The third reason the District Court gave was so that the State could avoid voter confusion by not altering ballots after voting has begun. Again, early voting started on October 12, 2020. Appellant's hearing was held on September 15, 2020. Appellant appealed to the Supreme Court on September 22, 2020.

The District Court also stated, *"{The delay alleged by the Plaintiff is the kind of "episodic election irregularity" that should be avoided in the future, but that did*

[33] if the statement is true, Georgia ballot restrictions have become even more stringent since the 1980 general election. John Anderson name was added to the 1980 general election ballot when he went before the District Court of Northern Georgia on September 26, 1980. Appellant's hearing was held on September 15, 2020. Appellees stated that deadline had already passed. Appellant filed his appeal with the Georgia Supreme Court on September 22, 2020.

not deprive Plaintiff of his constitutional rights. Gamza, 619 F.2d at 454.}" The District Court missed that fact that Appellant's verification statement was signed and dated August 19, 2020 with 2,200 valid signatures. Appellant was not notified until Sept 4, 2020 that his name would not be placed on the November 3, 2020 general election ballot. The District Court continues in its ruling to take Appellees' testimony, of the hearing be held after the hearing deadline, as fact even though Appellees lied during the same hearing. Even if it were true, which Appellant does not believe is true, it only further strengthens Appellant's claims that the State's ballot restrictions have worsened since the same U.S. District Court allowed John Anderson to access the ballot on September 26, 1980 after the September 25, 1980 Supreme Court of Georgia ruling. Which allowed John Anderson access to the ballot for the general election that was held on November 4, 1980.

The District Court acknowledges that Appellant should have had a mandamus hearing before the ballot printing deadline (Doc 33 at 35). District Court blames the Appellees staff attorney and the superior court's decision to hold the hearing on September 15, 2020 for the delay in reviewing Appellant's petition. The District Court continues to believe everything the Appellees say. Appellees provided no documentation that would indicate or confirm that the staff attorney was out of town. If we would believe Appellees, the staff attorney was rushing back and just so happened to send Appellant her email and attachment four minutes before the

close of business on September 4, 2020, even though the verification is dated August 19, 2020. The Fulton County Superior court judge, and the District Court seem to agree that O.C.G.A § 9-10-2 held more importance than O.C.G.A. § 21-2-171(c) and the First and Fourteenth amendment of Appellant and the registered voters of Georgia House District 85.

The District Court states that the Georgia law is not discriminatory, *"{Unlike systematic discriminatory laws, isolated events that adversely affect individuals are not presumed a violation of the equal protection clause."}"* (Doc 33 at 36). The District Court seems to be of the belief that when Georgia passed their law in 1943 restricting Independent candidates, the State was in support of voters having more choices, but most reasonable people would believe that would not be the case in Georgia. That's because it took legislation from Congress in 1964 and 1965 just to grant rights that had been granted in 1865, 1868, and 1870. 1964 and 1965 is after 1943 and well after 1865, 1868, and 1870. The one fact that cannot be disputed is that Mr. Bell was validated with 2,200 signatures and was defrauded from his rightful place on the ballot.

The opinion of the Eleventh Circuit in *Cowen* focused heavily on *Jenness v. Fortson*, 403 U.S. 431 (1971). Stating that in *Jenness*, *"When assessing the record of past petitioning efforts, however, the Supreme Court looked not only to a gubernatorial candidate who successfully petitioned onto the ballot, but also to a*

presidential candidate. Id. at 439. Each of those candidates was subject to the 5% signature requirement under the law as it existed at that time. Id. at 432, 438–39. We thus broaden our own analysis to include other prospective candidates for non-statewide office. The parties agree that in 2020, an independent candidate for district attorney gathered enough signatures to exceed the 5% threshold." Cowen, 21-13199, U.S. at 9.

The Supreme Court does not take into account in *Jenness*, the two cases that they referenced and this Court did not take into account, is in the three cases that they referenced (two of which are the same cases referenced by the Supreme Court) is the political environment along with the racial dynamics and social influences in all of the cases. They also failed to take into account the fame, recognition, and/or notoriety of the candidates that accessed the ballot through nomination petitions.

Starting in the very early part of the 19th century after the period of Reconstruction, Georgia became a one-party (Democratic Party) politics state. A Democrat won every statewide and presidential election in Georgia until 1964 when Republican Barry Goldwater received all of the electoral votes for President of the United States for the State of Georgia[34]. Two years later the Republicans

[34] In protest to Lydon B. Johnson and the Democratic Party's support of the 1964 Civil Rights Act

mounted another formidable campaign and actually narrowly won the plurality in the General election. The reason they did not win was due to the candidacy of the write-in candidate Ellis Arnall as explained by the New Georgia Encyclopedia[35]. Arnall was the former Governor of Georgia and of course was well known throughout the state. According to the New Georgia Encyclopedia, people were dismayed by the choice of two conservative segregationists so they organized a campaign to write in Arnall's name. Arnall was able to obtain the signatures because of his notoriety, the political environment, and the support of activists groups who were against the election of either conservative segregationist. The second person was George Wallace who gained access to the ballot through nomination petition in 1968. George Wallace who was a national figure and from a neighboring state of Georgia. Wallace had huge amount of notoriety in Georgia.

[35]Arnall, the front-runner, received only 29.4 percent of the votes in the Democratic primary and was forced into a runoff with Maddox, who received 23.5 percent of the vote. Carter came in third with 20.9 percent. In the runoff Maddox won 54.3 percent of the vote and the right to face Callaway in the general election. Dismayed by the choice between two conservative segregationists, some Georgians organized a campaign to write in Arnall's name in the general `election. By preventing either of the party nominees from receiving a majority of the popular vote, they hoped to force the legislature to choose the next governor, with Arnall as one of the choices. The constitution provided that, if no candidate polled a majority in the general election, the lawmakers would pick from the three candidates who received the most popular votes. Although Callaway received a plurality with a margin of 3,039 votes in November, he failed to gain a majority because Arnall received 7.1 percent of the popular vote. The legislature, overwhelmingly Democratic, elected Maddox governor by a vote of 182 to 66, ending one of the strangest gubernatorial elections in Georgia politics. Henderson, Harold. "Gubernatorial Election of 1966." New Georgia Encyclopedia, last modified Aug 14, 2020. https://www.georgiaencyclopedia.org/articles/government-politics/gubernatorial-election-of-1966/

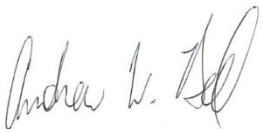
Wallace not only gained access to the ballot but he won all but seventeen of the 159 counties in Georgia. Wallace could have collected a lot more than the 5 percent that was required to access the ballot at that time for statewide candidates. The third case involves the District Attorney of Glynn County Keith Higgins. Although Mr. Higgins did not have much notoriety, notoriety was still the primary factor of Mr. Higgins accessing the ballot. The reason notoriety is involved Mr. Higgins case is due to the fact that an American of African descent, by the name of Ahmad Arbery was accosted and murdered as he ran for his life. The case garnered nationwide attention and news coverage.

V. CONCLUSION

For the aforementioned mentioned reasons, the Appellant request that this Court reverse the District Court's ruling on Appellees Motion to Dismiss. Appellant also request this Court to reverse the District Court's ruling of his Petition for Writ of Mandamus on the grounds that Appellant stated a claim that relief could be granted under via 28 U.S.C. §1343(a)(1)(2)(3)(4). Appellant also request that his amended pleading filed March 17, 2022 (Doc 24) be granted due to the fact that Appellant only made clerical errors as reflected by (Doc 4) and (Doc 8). O.C.G.A. § 21-2-171(a) gives the Secretary of State of Georgia unfettered power in examining a petition. He or his subordinates can deny a signature for any

reason. However, O.C.G.A. § 21-2-171(a) does not give the candidate or petition circulator an opportunity to present the person whose signature is in question. O.C.G.A. § 21-2-171(b) is ambiguous using terms like begin expeditiously, but it gives no beginning or ending time. O.C.G.A. § 21-2-171(b) provides several rights and authorities to the reviewing official but it provides no rights to the candidate. There is nothing in O.C.G.A. § 21-2-171(b) that states that the candidate should be notified when their petition is being examined, or anything that says the candidate should be allowed to attend the examination process at specific date, location, and start time. O.C.G.A. § 21-2-171(c) is the most egregious of them all. It only gives a lay person 5 days to file an application for a writ of mandamus. The five-day period does not exclude weekends and holidays. According to what Appellant has experienced the Secretary of State of Georgia is afforded an additional 5-day grace period due to O.C.G.A. § 9-10-2 which the Fulton County, GA Superior Court and the U.S. District Court of Northern Georgia supersede the First and Fourteenth amendment rights of the candidate and the rights of the registered voters of the district they represent, to correct an error(s) and have the candidate's name placed on the ballot. Last but not least 21-2 171(a)(b)(c) can be manipulated by fraud as was the case with the Appellant in 2020, in violation of 28 U.S.C. §1343(a)(1)(2)(3)(4).

Respectfully Submitted,



Andrew W. Bell

CERTIFICATE OF COMPLIANCE

1. This brief complies with the type-volume limitation of FED. R. APP. P. 32(g) and FED. R. APP. P. 28.1(e)(2) because: this brief exceeds 30 pages

- this brief contains 12,989 words, excluding the parts of the brief exempted by FED. R. APP. P. 32(f).

2. This brief also complies with the typeface requirements of FED. R. APP. P. 32(a)(5)(A) and the type requirements of FED. R. APP. P. 32(a)(6) because:

- this brief has been prepared in a proportionally spaced typeface using Word for Microsoft 365 with a 14 point font named Times New Roman.

CERTIFICATE OF SERVICE

This is to certify that the foregoing instrument has been served via the Court's ECF filing system in compliance with 11TH Cir. Rule 25-3(f) and (j) of the Federal Rules of Appellate Procedure, on March 15, 2023, on all registered counsel of record, and has been transmitted to the Clerk of the Court.