No. 23-10059

In the

United States Court of Appeals

for the Eleventh Circuit

ANDREW W. BELL,

Plaintiff-Appellant,

v.

BRAD RAFFENSPERGER, SECRETARY OF STATE OF GEORGIA, ET AL.

Defendant-Appellees.

On Appeal from the United States District Court for the Northern District of Georgia, Atlanta Division.
No. 1:21-cv-02486-SEG — Sarah E. Geraghty, *Judge*

CORRECTED BRIEF OF APPELLEES

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CERTIFICATE OF INTERESTED PERSONS AND CORPORATE DISCLOSURE STATEMENT

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

Adams, Hon. Kimberly M., Fulton County Superior Court Judge, issued an order in a collateral case

Bell, Andrew W., Plaintiff-Appellant

Bly, Hon. Christopher C., United States Magistrate Judge

Carr, Christopher M., Attorney General, Counsel for Defendant-Appellees

Evans, Blake, Current Director of Elections for the State of Georgia[1]

Geraghty, Hon. Sarah E., United States District Court Judge

[1] Bell's complaint names as a defendant "Chris Harvey, Director of Elections for the State of Georgia." App'x at 46. The complaint does not state whether Harvey is being sued in his official or personal capacity. To the extent that is lawsuit is against Harvey as the former Director of Elections in his official capacity, Harvey is no longer serving as the Director of Elections. Under Federal Rule of Appellate Procedure 43(c)(2), Blake Evans, the current Director of Elections, would be automatically substituted as a party in this action if this case is against the Director of Elections in his official capacity. To the extent that the Plaintiff-Appellant intended to name Harvey in his individual capacity, Harvey remains a Defendant-Appellee.

Harvey, Chris, Former Director of Elections for the State of Georgia, Defendant-Appellee[1]

Jones, Hon. Steve C., United States District Court Judge

McGowan, Charlene S., Former Assistant Attorney General, Trial Court Counsel for Defendant-Appellees

Office of the Georgia Attorney General, Counsel for Defendant-Appellees

O'Roark, Elizabeth M., Assistant Attorney General, Counsel for Defendant-Appellees

Raffensperger, Brad, Secretary of State for the State of Georgia, Defendant-Appellee

Skedsvold, Miles, Former Assistant Attorney General, Trial Court Counsel for Defendant-Appellees in a collateral case

Stoy, Lee M., Assistant Attorney General, Trial Court Counsel for Defendant-Appellees

Supreme Court of Georgia, issued a dismissal in a collateral case

Vaughan, Elizabeth Wilson, Assistant Attorney General, Counsel for Defendant-Appellees

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The undersigned counsel certifies that no publicly traded company or corporation has an interest in the outcome of this case or appeal.

/s/ *Elizabeth Vaughan*
Elizabeth Vaughan

STATEMENT REGARDING ORAL ARGUMENT

Appellees do not request oral argument in this case. The facts and legal arguments are adequately presented in the briefs and the decisional process would not be significantly aided by oral argument.

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STATEMENT OF ISSUES

1. Plaintiff Andrew Bell specifically asked the district court to set aside state court judgments denying his mandamus petition. The question is whether the district court properly applied the *Rooker-Feldman* doctrine to reject Bell's claims.

2. Whether the district court properly held that Bell's mandamus claim was moot because the election in which he wants to be placed on the ballot occurred two and a half years ago.

3. Whether the district court properly dismissed Bell's various constitutional challenges to Georgia's ballot access and judicial review procedures.

INTRODUCTION

Plaintiff-Appellant, Andrew Bell, failed to collect enough valid signatures to be placed on the ballot as an independent candidate for House District 85 in the Georgia House of Representatives for the 2020 General Election. He filed a number of legal challenges in state court, arguing that the court should require that the Secretary place him on the ballot because, contrary to election official's calculations, he claimed that he had collected the requisite signatures under the law, but state courts rejected all of

his arguments. Bell then filed this federal lawsuit against Appellees Brad Raffensperger (Georgia Secretary of State) and Chris Harvey (former Georgia Elections Director) more than six months after the conclusion of the election cycle in which he aspired to be a candidate. His complaint is barely colorable, and the district court properly rejected each of his outlandish theories.

First, Bell asked the district court to set aside state court orders rejecting his mandamus petition to be placed on the ballot and to order a new election for House District 85. The district court held that the *Rooker-Feldman* doctrine prohibited it from sitting over the state court as an appellate court and setting aside the state court's decision denying his mandamus petition. Bell now argues that the *Rooker-Feldman* doctrine does not apply because the Supreme Court of Georgia denied his appeal as moot rather than affirming on the merits, but that is nonsense: this is the paradigmatic *Rooker-Feldman* case, where he seeks to directly overturn a state court decision. The doctrine applies when state court proceedings have *ended*, on the merits or otherwise, and Bell admits that he has no further avenue for relief in state court. Bell also waives at a supposed "fraud-on-the-court" exception to *Rooker-Feldman*, but this Court has recognized no such exception,

and regardless, he pleaded no facts even *suggesting* any fraud by anyone.

Second, all of this is a bit beside the point, because, as the district court correctly held, Bell's case is entirely moot. The district court could not put him on the ballot for an election that already occurred two and a half years ago—indeed, we have had *another* legislative election in the meantime.

Bell's remaining arguments fare no better. As the district court held, this Court's decision in *Cowen v. Secretary of State of Georgia*, 22 F.4th 1227 (11th Cir. 2022) upheld Georgia's nomination-petition signature requirements, thus foreclosing Bell's challenge to the petition signature requirements. Bell's additional arguments under *Anderson-Burdick* are barely there. He argues that the five-day deadline for a candidate to file a mandamus petition challenging the Secretary's decision to not place him on the ballot severely burdens candidates' First and Fourteenth Amendment rights and does not serve an important government regulatory interest. This argument fails because the swift deadlines in the judicial review process protect rather than violate candidate's rights and serve the government's important regulatory interest in conducting orderly elections and avoiding voter confusion. He further argues that the delay to his

mandamus hearing violated his due process rights, but any delay constituted an election irregularity that does not amount to a constitutional violation.

STATEMENT OF THE CASE

Bell filed a federal complaint asking the district court to place him on the ballot for the Georgia House of Representatives for House District 85, well after the election ended and well after the state court system denied him relief on these very claims. Bell also challenged various election requirements. The district court dismissed his complaint, and he now appeals.

A. Factual Background

In March 2020, Bell submitted his notice of candidacy as an independent candidate for House District 85 in the Georgia State House of Representatives for the November 3, 2020 General Election. App'x at 152; *see also Bell v. Raffensperger*, 311 Ga. 616, 616 (2021). Because Bell ran as an independent and not as a political party candidate, in order to have his name placed on the general election ballot for a non-statewide office, Bell was required to submit a nominating petition containing signatures equal to 5% of the number of registered voters eligible to vote for that office in

the last election. App'x at 152; *Bell*, 311 Ga. at 616. (citing O.C.G.A. § 21-2-170(b)).

However, in July 2020, the U.S. District Court for the Northern District of Georgia entered an injunction that lowered the signature petition requirement by 30%. *Cooper v. Raffensperger*, 472 F. Supp. 1282, 1295 (N.D. Ga. 2020). The district court in *Cooper* held that, even under the circumstances of the COVID-19 pandemic, Georgia's signature petition requirements imposed only a moderate burden on voters' and candidates' rights. *Id*. at 1293. That 30% reduction was applied to Bell's petition. App'x at 152; *Bell*, 311 Ga. at 616. Additionally, for the November 3, 2020 General Election, in recognition of the increased difficulty COVID-19 would pose on the signature gathering process, the Secretary extended the deadline for submitting nominating petitions to August 14. *Bell*, 311 Ga. at 616; O.C.G.A. § 21-2-170(e).

Bell submitted his nomination petition, which contained 2,200 raw signatures, to the Secretary of State's office on August 13, 2020. *See* App'x at 152, 156; 156 *Bell*, 311 Ga. at 616. After the 30% reduction was applied, he was required to collect only 1,255 valid signatures to be placed on the ballot. App'x at 68, 152. Of the 2,200 raw signatures in the petition, only 827 were determined to

be valid because the invalid signatures were either out of district, duplicates, printed names rather than signatures, by persons not registered to vote, or illegible. App'x at 68–70, 152; *Bell*, 311 Ga. at 616. Bell was notified by a letter attached to an email on September 4, 2020 that his nomination contained an inadequate number of valid signatures and, therefore, was denied. App'x at 153; *Bell*, 311 Ga. at 616.[2]

Four days later, on September 8, 2020, Bell filed an emergency application for writ of mandamus and injunctive relief in the Fulton County Superior Court, against the Secretary, under O.C.G.A. § 21-2-171(c). App'x at 153; *Bell*, 311 Ga. at 617. In his application, Bell complained about communications issues with election office staff regarding the status of his nomination petition; the timeliness of the notification that his nomination petition had been denied; and that the denial letter he received had the wrong date and the previous Secretary listed on the letterhead. Supplemental App'x at 26–30, ECF 3-1 at 23–27; *Bell*, 311 Ga. at

[2] The letter that the Secretary of State's office sent to Bell via email, due to a scrivener's error, was sent on the prior Secretary of State's letterhead, and contained the incorrect date of August 28, 2018. App'x at 84; *see also id.* at 112 (counsel for the Secretary of State explaining to the state trial court that the letter sent to Bell was on the incorrect letterhead and had the incorrect date).

617. Bell sought extensive relief: (1) a temporary restraining order prohibiting the Secretary from printing any ballots without his name in advance of a hearing; (2) an injunction either prohibiting the Secretary from printing the ballot without his name or requiring the Secretary to place him on the ballot; and (3) a writ of mandamus ordering the Secretary to validate his signature petition and place him on the ballot. Supplemental App'x at 34–36, ECF 3-1 at 31–33; *Bell*, 311 Ga. at 617.

On September 9, 2020, Bell sought an ex parte hearing. *Bell*, 311 Ga. at 617. The superior court held a hearing on Bell's application on September 15, 2021, which was the earliest possible date a hearing could be set in accordance with Georgia law. App'x at 153; *Bell*, 311 Ga. at 617 (citing O.C.G.A. § 9-10-2(1) (requiring that the Attorney General's office receive five days' notice advance written notice by the adverse party or his attorney of the time set for the particular trial, hearing, or other proceeding)). Bell did not present any evidence at the hearing, and the superior court denied Bell's petition because Bell failed to assert a clear legal right to relief, as required for the issuance of a writ of mandamus, due to his failure to demonstrate that he submitted the required number of verified signatures or that the

rejected signatures were rejected in error. App'x at 123–24, 154; Supplemental App'x at 77, Doc 3-1 at 75; *Bell*, 311 Ga. at 617.

Bell then appealed the superior court's decision to the Georgia Supreme Court, which has exclusive appellate jurisdiction over candidate challenges. *See* Ga. Const. Art. 6 § 6, ¶II(2); *Cook v. Bd. of Registrars of Randolph Cnty.*, 291 Ga. 67, 70 (2012). Bell did not ask the Georgia Supreme Court for expedited treatment of his appeal so that it could be resolved in sufficient time for the 2020 General Election. App'x at 154; *Bell*, 311 Ga. at 618. In May 2021, the Georgia Supreme Court dismissed Bell's appeal as moot because the relief Bell sought was no longer feasible: the November 3, 2020 General Election had already taken place. *Bell*, 311 Ga. at 619.

B. Proceedings Below

After the Georgia Supreme Court's dismissal of his appeal, Bell filed a complaint against Appellees[3] in federal district court.

[3] Bell's federal complaint district court lists the named defendants as "Brad Raffensperger, Secretary of State of the State of Georgia, and Chris Harvey, Director of Elections for the State of Georgia." App'x at 147. However, the complaint fails to state whether this suit is against Appellees in their official or personal capacities. To the extent that this lawsuit could be construed as one against Appellees in their official capacities, Blake Evans has succeeded Mr. Harvey as the Elections Director. Under Rule 43(c)(2), the substitution of Evans for Harvey as an appellee in

In his *pro se* complaint (which he styled as a "Petition for Writ of Mandamus"), Bell asked the district court to (1) "set aside" the superior court order affirming the denial of his nomination petition and the Georgia Supreme Court order dismissing his appeal of the superior court decision as moot, App'x at 149; (2) declare O.C.G.A. § 21-2-170(b)–(e) "unconstitutional based on its violations of the First and Fourteenth Amendments[,]" App'x at 150; and (3) declare O.C.G.A. § 21-2-171(c) as unconstitutional because it "takes away a candidate's right to due process." App'x at 159. The district court also inferred from the complaint a claim that the circumstances regarding the delay in holding his mandamus hearing violated his due process rights as well. App'x at 41.

Bell filed an amended complaint, and Appellees filed a motion to dismiss, arguing that the *Rooker-Feldman* doctrine barred Bell's complaint and that his constitutional claims failed to state a claim upon which relief could be granted. App'x at 144–165, 169–

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this matter is automatic. *See Am. Civ. Liberties Union, Inc. v. Finch*, 638 F.2d 1336, 1342 (5th Cir. 1981). To the extent that the suit was brought against the Appellees in their individual capacity, Mr. Harvey remains an Appellee.

70; Supplemental App'x at 195–96, ECF Doc. 16-1 at 2–3.[4] Bell then filed a second amended complaint without first seeking leave. App'x at 16, 172–92; 196–203. The district court denied Bell leave to amend because the amendment would be futile as "the complaint as amended would still be properly dismissed." App'x at 18.

The district court granted Appellants' motion to dismiss in its entirety. It held that the *Rooker-Feldman* doctrine barred it from setting aside the state court orders in this case and that Bell's mandamus petition was moot. App'x at 21–26. Regarding Bell's claim that the 5% signature requirement for independent candidates for non-statewide office was unconstitutional under the First and Fourteenth Amendments, the district court explained

[4] Appellees also argued that the district court lacked personal jurisdiction because Bell failed to properly serve Harvey. Harvey has not worked for the Secretary's office since July 2021, and Bell's process server attempted to serve the summons and complaint on a staff member at the Secretary's office rather than serving Harvey personally as required by Federal Rule of Civil Procedure 4(e). Supplemental App'x at 191, ECF Doc. 12 at 1; *id.* at 201–02, ECF Doc. 16-1 at 8–9. Appellees also argued that Bell's attempt to serve Harvey through someone at his current employer was improper service. App'x at 15 n.8. In granting the motion to dismiss, the district court did not address the sufficiency of the service on Harvey because Bell failed to state a claim upon which relief could be granted. *Id.*

that this Court's precedent in *Cowen v. Secretary of State of Georgia*, 22 F.4th 1227 (11th Cir. 2022) foreclosed such a result. App'x at 32–34. The district court held that O.C.G.A. § 21-2-171(c)'s five-day deadline for a prospective candidate to file a mandamus petition to compel the granting of a nomination petition was constitutional under an *Anderson-Burdick* analysis. App'x at 41. The district court determined that the deadline did not impose a severe burden on Bell's rights and that the prompt resolution of Bell's appeal furthered three compelling government interests: (1) meeting state and federal deadlines to finalize ballots for printing and sending to absentee voters, (2) conducting orderly elections, and (3) avoiding voter confusion by not altering ballots after the election has begun. App'x at 34–41. Finally, the Court found that the delay in the resolution of Bell's petition and mandamus hearing before the superior court did not rise to the level of a constitutional violation. App'x at 43–44.

Bell then appealed the district court's order granting the Appellees' motion to dismiss, as well as other aspects of the order, including the denial of leave for Bell to further amend his complaint. ECF 1-1, p. 3.

C. Standard of Review

An order granting a motion to dismiss for failure to state a claim and for a lack of subject matter jurisdiction are questions of law reviewed *de novo*. *Boyle v. City of Pell City*, 866 F.3d 1280, 1286 (11th Cir. 2017) ("We review de novo a district court's order granting a motion to dismiss for failure to state a claim."); *Lord Abbett Mun. Income Fund, Inc. v. Tyson*, 671 F.3d 1203, 1205 (11th Cir. 2012) ("A district court's decision to grant a motion to dismiss for lack of subject matter jurisdiction pursuant to Rule 12(b)(1) is a question of law we review de novo.").

Appellate courts review a district court's denial of leave to amend under the abuse of discretion standard. *Newton v. Duke Energy Fla., LLC*, 895 F.3d 1270, 1275 (11th Cir. 2018) (citing *Smith v. Duff & Phelps, Inc.*, 5 F.3d 488, 493 (11th Cir. 1993)).

SUMMARY OF ARGUMENT

The district court properly dismissed all of Bell's claims. First, Bell's request for mandamus relief fails because *Rooker-Feldman* prohibited the district court from reviewing the judgments in his state case. The *Rooker-Feldman* doctrine is a jurisdictional rule that precludes federal district courts from reviewing state court judgments. Here, Bell explicitly asked the district court to "set aside" the state court judgments denying him access to the ballot

and to require the state to hold the 2020 election for the representative seat in Georgia House District 85 again. App'x at 149. Bell's complaint directly asks the district court to reject the judgments of both the superior court and the Supreme Court of Georgia. *Id.* Under the *Rooker-Feldman* doctrine, the Court cannot do so.

In response, Bell argues that the fraud-on-the-court exception applies, but that exception does not exist, and even if it did, it would not apply here. This Court has declined to recognize the exception. *See, e.g.*, *Ferrier v. Cascade Falls Condo. Ass'n*, 820 F. App'x 911, 914 (11th Cir. 2020) (unpublished); *Velazquez v. S. Fla. Fed. Credit Union*, 546 F. App'x 854, 859 (11th Cir. 2013) (unpublished); *Rice v. Grubbs*, 158 F. App'x 163, 165 (11th Cir. 2005) (unpublished). Regardless, Bell provides no plausible factual assertions to support a finding of fraud.

Second, any controversy surrounding whether Bell's name should be placed on the 2020 ballot is as moot as it comes. Not only has that election passed, *another* election has passed in the intervening period. There is no relief that this Court could provide regarding the 2020 ballots.

Third, the district court properly held that Bell failed to state a claim for relief regarding his challenges to the state law

requirements for signatures for nomination petitions and the judicial review procedure. This Court recently upheld the ballot access laws that Bell challenges here. *Cowen v. Sec'y of State of Ga.*, 22 F.4th 1227, 1235–36 (11th Cir. 2022) (*Cowen II*). And Bell's challenge to the judicial review process fails under the same analysis because the five-day deadline to file a mandamus petition challenging the Secretary's denial of an application protects candidate's right to appear on the ballot by ensuring that their challenge is heard before the ballot-printing deadline. Finally, any delay to Bell's mandamus hearing was the result of an election irregularity that does not amount to a constitutional violation.

ARGUMENT

I. The district court correctly held that the *Rooker-Feldman* bars Bell's request for mandamus relief.

The district court correctly held that the *Rooker-Feldman* doctrine barred Bell's request that it set aside state court orders denying him access to the ballot. App'x at 22–24. Doing so would require the federal court to sit in review of state court judgments, which it cannot do. The *Rooker-Feldman* doctrine is a jurisdictional rule that precludes federal district courts from reviewing state court judgments. *Alvarez v. Att'y Gen. for Fla.*, 679 F.3d 1257, 1262 (11th Cir. 2012). "This is because '28 U.S.C. §

1257, as long interpreted, vests authority to review a state court judgment solely in the Supreme Court.'" *Id.* (alterations adopted) (quoting *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 US. 280, 292 (2005)). The *Rooker-Feldman* Doctrine is a narrow doctrine, as it "is confined to cases . . . brought by state-court losers complaining of injuries caused by state-court judgments rendered before the district court proceedings commenced *and inviting district court review and rejection of those judgments*." *Exxon Mobil Corp.*, 544 U.S. at 284 (emphasis added). Nonetheless, "a state court loser cannot avoid [its] bar by cleverly cloaking her pleadings in the cloth of a different claim." *May v. Morgan Cnty. Ga.*, 878 F.3d 1001, 1005 (11th Cir. 2017). Thus, the *Rooker-Feldman* doctrine applies "both to federal claims raised in the state court and to those 'inextricably intertwined' with the state court's judgment." *Casale v. Tillman*, 558 F.3d 1258, 1260 (11th Cir. 2009) (quoting *D.C. Ct. of Appeals v. Feldman*, 460 U.S. 462, 482 (1983)).

When applying *Rooker-Feldman*, this Court should consider, first, whether the state court proceedings have ended and, second, whether a state court loser seeks relief for injuries caused by a state court judgment. *Nicholson v. Shafe*, 558 F.3d 1266, 1273–75 (11th Cir. 2009).

This is not a difficult *Rooker-Feldman* case. Bell did not even *try* to "cleverly cloak[]" his pleadings. *May*, 878 F.3d at 1005. Bell plainly asks the federal courts to review a state court judgment. *Behr v. Campbell*, 8 F.4th 1206, 1208, 1211 (11th Cir. 2021). Bell lost in state court. App'x at 149. The superior court affirmed the Secretary's denial of Bell's nomination petition, and the Georgia Supreme Court denied his appeal as moot. *Bell*, 311 Ga. at 619–620. Bell filed in federal court on June 17, 2021, over a month later, App'x at 46, and he specifically asked the district court to "set aside" the state court judgments and require the Secretary to accept his nomination petition and hold the 2020 General Election again for Representative for Georgia House District 85. App'x at 48–49, 149–50. Bell's request for relief falls squarely within the boundaries of the *Rooker-Feldman* doctrine, and, thus, the district court correctly dismissed his mandamus claims.

Bell makes two arguments against applying the *Rooker-Feldman* doctrine in this case, and neither hold water. *First*, he argues that his state court case has not ended and that he is not asking for review of a state court judgment because the Georgia Supreme Court never reached the merits of his claim and dismissed his case moot. Appellant's Br. at 18–19.

This argument makes no sense. The state court case *did* end—there is no suggestion that anyone could do anything to continue that litigation, which resolved years ago. And there is no "mootness" exception to the *Rooker-Feldman* doctrine. Whatever the reason for his loss, Bell asks for a review of a state court judgment. When reviewing a *Rooker-Feldman* decision, a court looks to whether the state court loser effectively attempts to appeal the decision of the state court—which Bell is doing here. *See Behr*, 8 F.4th at 1208, 1211.

Bell argues that because the Supreme Court of Georgia did not reach the merits of his claims and dismissed his appeal as moot, the appellate process has not ended for purposes of *Rooker-Feldman*. Appellant's Br. at 18–19. He contends that his case does not fit into any of the three categories outlined by the First Circuit and cited by this Circuit in *Nicholson* describing situations where the appellate process has ended. *Nicholson*, 558 F.3d at 1273–75. They are, "[g]enerally speaking[,]": (1) "when the highest state court in which review is available has affirmed the judgment 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 . . . remain to be litigated." *Nicholson*, 558 F.3d at 1275 (quoting *Federacion de Maestros de P.R. v. Junta de Relaciones del Trabajo de P.R.*, 410 F.3d 17, 24–25 (1st Cir. 2005)). He focuses in on the first prong,[5] and explains that because the Supreme Court of Georgia dismissed his claim as moot it did not actually affirm the judgment of the Superior Court, the state court process has not ended. Appellant's Br. at 18–19.

Here, Bell relies heavily on certain statements in *Nicholson*, 558 F.3d at 1274, arguing 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

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[5] Though Bell focuses on the first situation, he makes general and conclusory arguments that his case falls into the second and third categories described in *Nicholson*. As to the second situation, which states that a case has ended when neither party seeks further action, he explains that he never expected to lose in state court and has not given up. Appellant's Br. at 19. But Bell only seeks further action in federal court. He is not still pursuing his case in state court. Thus, the state proceedings have ended. As to the third situation, when the state court litigation has resolved all federal questions in the case, Bell argues the case has not ended because he "continues to litigate both federal and state issues." Appellant's Br. at 18. But it is irrelevant whether Bell continues to litigate state and federal issues. What matters here is that the state court came to a final resolution as to all of the issues Bell raised in state court when it dismissed his case. *Bell*, 311 Ga. at 619. Therefore, these arguments are without merit.

previously litigated in state court." Appellant's Br. at 17 (quoting *Nicholson*, 558 F.3d at 1274). However, this Court in *Nicholson* decided to "adhere to the language in *Exxon Mobil*, delineating the boundaries of the *Rooker–Feldman* doctrine: 'cases brought by state-court losers complaining of injuries caused by state-court judgments rendered before the district court proceedings commenced and inviting district court review and rejection of those judgments.'" *Nicholson*, 558 F.3d at 1274 (quoting *Exxon Mobil*, 544 U.S. at 284). This Court concluded that, because the appellants in the *Nicholson* case commenced the federal district court action *before* the end of state proceedings, the *Rooker–Feldman* doctrine did not apply in those circumstances. *Id.* at 1275.

Here, the state court proceedings ended before Bell initiated his lawsuit before the district court, irrespective of whether the Supreme Court of Georgia's decision on Bell's appeal affirmed on the merits. Bell has no further recourse in state court after the Supreme Court of Georgia rendered its decision. Furthermore, Bell admits in his brief that his state court case has "effectively ended" and that he "exhausted all state court options[.]" Appellant's Br. at 19. Therefore, his state court case ended *prior* to

the initiation of his federal litigation, satisfying that prong of *Rooker-Feldman*.

Second, he argues that this Court should apply a fraud-on-the-court exception to *Rooker-Feldman* and apply it to allow jurisdiction over his mandamus claims in his case. Of course, this Court has declined to recognize the fraud-on-the court exception in regards to the *Rooker-Feldman* doctrine. *See, e.g., Velazquez v. S. Fla. Fed. Credit Union,* 546 F. App'x 854, 859 (11th Cir. 2013) (unpublished); *Ferrier v. Cascade Falls Condo. Ass'n*, 820 F. App'x 911, 914 (11th Cir. 2020) (unpublished); *Rice v. Grubbs*, 158 F. App'x 163, 165 (11th Cir. 2005) (unpublished). This Court has explained that "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." *Ferrier*, 820 F. App'x at 914.

But even if this Court were to adopt a fraud-on-the-court exception, the district court in this case properly held that Bell had not alleged that any fraud took place. App'x at 23. In jurisdictions that have adopted the fraud-on-the-court exception, a federal court can "entertain a collateral attack on a state court judgment which is alleged to have been procured through fraud,

deception, accident or mistake." *In re Sun Valley Foods Co.*, 801 F.2d 186, 189 (6th Cir. 1986). But Bell did not provide any factual allegations that could lead to such a conclusion. He simply makes conclusory (indeed, paranoid) statements that the Secretary's office engaged in fraud and conspiracy. Such accusations cannot support an inference of fraud. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009); *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007); *see also Fullman v. Graddick*, 739 F.2d 553, 557 (11th Cir. 1984) ("A complaint may justifiably be dismissed because of the conclusory, vague and general nature of the allegations of conspiracy.").

Simply put, Bell asked a federal district court to "set aside" a state court' judgment. The only way to grant his request for mandamus relief would be to sit as an appellate court over a state decision. This Court simply cannot do so. Therefore, the district court properly applied the *Rooker-Feldman* doctrine and held that it could not grant Bell the relief which he seeks.

II. The district court properly held that Bell's request for mandamus relief is moot

There is another threshold problem with Bell's attempt to re-litigate the 2020 election: it was the *2020 election*. Bell asks this Court to do the impossible—to put his name on the ballot for an election that took place two-and-half years ago. "A case is moot

when it no longer presents a live controversy with respect to which the court can give meaningful relief." *Al Najjar v. Ashcroft*, 273 F.3d 1330, 1336 (11th Cir. 2001) (quoting *Fla. Ass'n of Rehab. Facilities, Inc. v. Fla. Dep't of Health and Rehab. Servs.*, 225 F.3d 1208, 1216–17 (11th Cir. 2000). There is no live controversy here because the 2020 election is over. Even though Bell says he will run again, his request for relief pertains to the 2020 election—he wants the federal court to force the state to hold it again. App'x at 25–26. But as the Supreme Court of Georgia explained: "Bell seeks to stop the printing of ballots that have already been printed, cast, and counted, and he seeks to compel the Secretary to place his name on a ballot that no longer exists for an election that has already occurred." *Bell*, 311 Ga. at 619; s*ee also Wood v. Raffensperger*, 981 F.3d 1307, 1317 (11th Cir. 2020) (explaining that it could not "turn back the clock and create a world" in which the election was not certified).

On appeal, Bell argues that courts have set aside elections in the past and that it would not be difficult to hold an election limited to House District 85 again. Appellant's Br. at 28. Bell cites *Gasaway v. Ellington*, No. 18CV358 (Banks County Superior Court Feb. 8, 2019), as an example of a case where a court ordered an election to be held again after time had passed. But the

Gasaway case involved voting irregularities in a Republican Primary election rather than a nomination petition from an independent candidate to get on the ballot. In that case, the superior court required the election to be held again months after the election rather than years. Bell had the opportunity to bring his case before a Georgia superior court judge, and his mandamus petition to the superior court pursuant to O.C.G.A. § 21-2-171(c) was denied. Supplemental App'x at 76–78, Doc 3-1 at 73–75; *Bell*, 311 Ga. at 617.

Regardless, the issue here is not whether it would be difficult to hold a new election. It is that the federal court cannot turn back time to place his name on the ballot in an election that occurred two and half years ago. The futility of his complaint is even more apparent when one takes into account that the office sought by Bell had a term that ran from January 2021 until January 2023; thus there is no longer a temporally possible situation wherein an election could be held that would allow him to win the office that he sought for even a day or a minute. Thus, Bell's claims do not present a live controversy for this Court and must be dismissed.

III. Bell failed to properly plead and serve his complaint and no amendment can save it.

The district court properly dismissed Bell's complaint. First, under this Court's precedent and *Anderson-Burdick*, Bell's claims that Georgia's ballot access laws and judicial review procedure violate his constitutional rights fail. This Court already held Georgia's ballot access laws do not violate the First and Fourteenth Amendments to the Constitution under the *Anderson-Burdick* framework because they do not severely burden candidates' rights and are justified by important regulatory interests. *Cowen II*, 22 F.4th at 1235–36. Following the same analysis, the judicial review process also survives under *Anderson-Burdick*. Finally, any delay to Bell's mandamus hearing in Fulton County Superior Court constituted an election irregularity that does not amount to a due process violation. Thus, this Court should affirm the district court's dismissal of Bell's constitutional claims. Second, any amendment to Bell's complaint would have been futile. Third, and finally, Bell failed to personally serve Chris Harvey and any suit against him in his personal capacity cannot stand.

A. Georgia's 5% petition-signature requirement is consistent with the First and Fourteenth Amendments

Under O.C.G.A. § 21-2-170, independent candidates must obtain access to the general election ballot by petition, rather than winning a primary election like a political party. For state house districts, candidates must collect the signatures of 5% of the number of registered voters eligible to vote for that office in the last election. O.C.G.A. § 21-2-170(b).

Bell claims that O.C.G.A. § 21-2-170(b)–(e) is unconstitutional because those subsections treat independent candidates seeking to run for a statewide office differently than independent candidates seeking to run for a non-statewide office. Appellant's Br. at 30. Specifically, Bell argues that O.C.G.A. § 21-2-170(b)-(e) violates his First and Fourteenth Amendments rights because statewide candidates only have to collect the amount of signatures equal to one percent of the electorate eligible to vote for that office, as opposed to the five percent requirement for independent candidates seeking a non-statewide office. App'x at 159–60. This Court has held that this argument fails under the *Anderson-Burdick* framework for evaluating the constitutionality of ballot-access requirements under the First and Fourteenth Amendments. *Cowen II*, 22 F.4th at 1235. Therefore, the district court correctly dismissed the claim.

Courts "consider[] equal protection challenges to ballot-access laws under the *Anderson* test." *Cowen II*, 22 F.4th at 1235. Under the *Anderson-Burdick* framework, courts are to "weigh the character and magnitude of the burden the State's rule imposes on those rights against the interests the State contends justify that burden, and consider the extent to which the State's concerns make that burden necessary." *Timmons v. Twin Cities Area New Party*, 520 U.S. 351, 358 (1997). The rigorousness of the Court's inquiry "depends upon the extent to which a challenged regulation burdens First and Fourteenth Amendment rights." *Burdick v. Takushi*, 504 U.S. 428, 434 (1992). When "those rights are subjected to 'severe' restrictions, the regulation must be 'narrowly drawn to advance a state interest of compelling importance.'" *Id.* (citations omitted). "Lesser burdens, however, trigger less exacting review, and a State's 'important regulatory interests' will usually be enough to justify 'reasonable, nondiscriminatory restrictions.'" *Timmons*, 520 U.S. at 358 (citations omitted).

Numerous challenges have been brought against Georgia's ballot access requirements for independent candidates, and "have been upheld each time." *Cowen v. Ga. Sec'y of State*, 960 F.3d 1339, 1343 (11th Cir. 2020) (*Cowen I*); *see also Coffield v. Handel*, 599 F.3d 1276, 1277 (11th Cir. 2010); *Cartwright v. Barnes*, 304

F.3d 1138, 1141–42 (11th Cir. 2002); *McCrary v. Poythress*, 638 F.2d 1308, 1312–13 (11th Cir. 1981). The U.S. Supreme Court found Georgia's 5% petition-signature requirement constitutional, *Jenness v. Fortson*, 403 U.S. 431, 439–40 (1971), and the Eleventh Circuit last year determined that the alternative method for statewide third party candidates to obtain ballot access—automatic access to the ballot if a statewide political body candidate receives one percent of the votes in the prior election—which is not offered to non-statewide candidates, did not violate non-statewide candidates' equal protection rights under the Fourteenth Amendment. *Cowen II*, 22 F.4th at 1236–37. The same applies to Bell as an independent candidate.

Bell's challenge to O.C.G.A. § 21-2-170(c) falls squarely within the precedent set by this Court in *Cowen II,* 22 F.4th at 1236–37. As this Court explained in *Cowen II*, Bell's challenge to O.C.G.A. § 21-2-170(c) fails simply because Georgia's regulatory interests justify its ballot access requirements for non-statewide independent candidates. The U.S. Supreme Court and the Eleventh Circuit have already held that the five percent signature requirement is not a severe burden. *See id. at* 1233–34. ("Georgia's ballot-access laws do not severely burden the Libertarian Party's First and Fourteenth Amendment rights."); *Jenness*, 403 U.S. at

438–39 (stating "Georgia imposes no suffocating restrictions whatever upon the free circulation of nominating petitions," and that Georgia freely allows third-party candidates to access the ballot); *Cartwright*, 304 F.3d at 1141 (recognizing that Georgia's 5% petition requirement is not severely burdensome).

Because the signature requirement does not severely burden independent candidates' First and Fourteenth Amendment rights, then it only needs to be justified by "the State's important regulatory interests," and the State does not need to offer any proof to support its interests. *Cowen II*, 22 F.4th 1233–34 (quoting *Anderson*, 460 U.S. at 788). Georgia has an interest in requiring some preliminary showing of a significant modicum of support before printing the name of a candidate on the ballot, in maintaining the orderly administration of elections, and in avoiding confusion, deception, and even frustration of the democratic process at the general election that justifies the five percent signature requirement. *See id.* at 1234. The Supreme Court and Eleventh Circuit have routinely held that these state interests are "compelling." *Id.* (citing *Jenness*, 43 U.S. at 442; *Swanson v. Worley*, 490 F.3d 894, 903 (11th Cir. 2007); *Munro v. Socialist Workers Party*, 479 U.S. 189, 193–94 (1986); *Libertarian Party of Fla. v. Fla.*, 710 F.2d 790, 792–93 (11th Cir. 1983)).

Bell argues that the burden on candidates is severe because of the difficulty of collecting the required signatures under the statute. Appellant's Br. at 34–36. But the Court considered the difficulty of collecting signatures in *Cowen II*, and still upheld the signature requirement. *Cowen II*, 22 F.4th at 1230–32.

As both the U.S. Supreme Court and the Eleventh Circuit have held, Georgia's five percent signature requirement does not impose a severe burden, and the State's compelling regulatory interests support the signature requirement. Bell failed to state a claim upon which relief could be granted, and the district court properly dismissed Bell's complaint.

B. Bell's constitutional challenge to the five-day deadline for a rejected nomination petition candidate to file a mandamus petition fails under the *Anderson-Burdick* framework.

Under Georgia's Elections Code, a claimant is required to file a challenge to the decision denying their nomination petition within five days of being notified of the decision. O.C.G.A. § 21-2-171(c). Bell challenges this section under the First and Fourteenth Amendments in two ways. First, he claims that the limited time frame for a candidate to file a mandamus petition makes it impossible to hire an attorney in time to represent the potential candidate in the challenge. Appellant's Br. at 41–43. Second, he

argues more generally that the petition review process does not provide enough time for a potential candidate to put together a mandamus petition to challenge the denial of the nomination petition—what is essentially a due process challenge. *Id.*; App'x at 50.

This Circuit has expressly rejected procedural due process claims in the voting rights context, holding that federal courts "must evaluate laws that burden voting right using the approach of *Anderson* and *Burdick*." *New Ga. Project v. Raffensperger*, 976 F.3d 1278, 1282 (11th Cir. 2020) (citations omitted). So, both of Bell's challenges fall under the *Anderson-Burdick* framework. And Bell cannot possibly succeed since the character and magnitude of the burden on constitutional rights is minimal if it even exists. *Timmons*, 520 U.S. at 358. Regardless, Georgia's laws are reasonable, nondiscriminatory rules that serve the state's important regulatory interests. *Timmons*, 520 U.S. at 358.

Importantly, as the district court noted, Bell does not have the right to an attorney in this civil case. App'x at 35; *Bass v. Perrin*, 170 F.3d 1312, 1320 (11th Cir. 1999) ("A plaintiff in a civil case has no constitutional right to counsel."); *In the Interest of B.R.F.*, 788 S.E.2d 416, 419 (Ga. 2016) ("Civil litigants typically do not enjoy a constitutional right to counsel."). Thus, any burden

that the petition review process under O.C.G.A. § 21-2-171(c) imposes on Bell's ability to retain an attorney to challenge the denial of his nomination petition does not burden a constitutional right.

Next, Bell did not adequately allege that the five-day window to file a mandamus petition pursuant to O.C.G.A. § 21-2-171(c) generally violates his First and Fourteenth Amendment rights on their face under the *Anderson-Burdick* framework. First, the law does not impose a severe burden on Bell's constitutional rights. "No bright line separates permissible election-related regulation from unconstitutional infringements on First Amendment freedoms." *Timmons*, 520 U.S at 359. But the burden must be more than a "merely inconvenient[,]" *Crawford v. Marion County Election Board*, 553 U.S. 181, 205 (2008) (Scalia, J. concurring), and a burden is not severe just because "a particular individual may not appear on the ballot as a particular party's candidate[.]" *Timmons*, 520 U.S. at 359.

The candidate must file their petition within five days of being notified of the denial, the trial court judge must set a hearing for a time "as soon as practicable," and the appellate court has the duty to "fix the hearing and announce its decision within such a period of time as will permit the name of the candidate

affected by the court's decision to be printed on the ballot if the court should so determine." O.C.G.A. §21-2-171(c). Every part of the system must work quickly given the constrained timeframe. These requirements do not severely burden a candidate's constitutional rights: instead, they operate as a part of a system to *vindicate* the candidate's rights to appear on the ballot quickly.

Promptly resolving a candidate's appeal serves the state's interest of finalizing ballots to (1) conduct orderly elections; (2) avoid voter confusion by not altering the ballots after the election begins; and (3) meet the state's obligations under state and federal law to finalize, print, and mail ballots to overseas voters by the prescribed deadline. *See* 52 U.S.C. § 20302(a)(8)(A); O.C.G.A. §21-2-384(a)(2). All three serve important regulatory interests.

This Court has explained that interests such as "maintaining the orderly administration of election" and "avoiding confusion deception, and even frustration of the democratic process at the general election" are not only important but are compelling interests. *Cowen II*, 22 F.4th at 1234. *See also New Ga. Project*, 976 F.3d at 1278 (explaining that "conducting an efficient election, maintaining order, quickly certifying election results, and preventing voter fraud" are important interests) and *Green v. Mortham,* 155 F.3d 1332, 1335 (11th Cir. 1998) (concluding that

states have a compelling interest in "maintaining fairness, honesty, and order" and avoiding confusion in the election process). Providing a shorter timeline to file a petition serves this interest by moving these claims through the court system due to the temporal requirements of the election calendar, including ballot printing deadline. The Secretary's interests in maintaining order in the state's election and avoiding voter confusion both have been held to be compelling interests by this Circuit, and Georgia's five-day deadline is justified under the *Anderson-Burdick* framework.[6]

Finally, Bell argues on appeal that the district court should have construed his complaint to challenge all four aspects of O.C.G.A § 21-2-171(c). Appellant's Br. at 41.[7] The other three

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[6] Bell argues that the Secretary did not provide sufficient evidence to show that it has to meet federal deadlines and that putting his name on the ballot after the printing deadline would have caused voter confusion or disorder in the elections process. Appellant's Br. at 43–44. But the Secretary is not required to offer proof to support the State's important regulatory interests to succeed under *Anderson-Burdick*. *Cowen II*, 22 F.4th at 1233–34 (explaining that "[n]o proof of 'actual voter confusion, ballot overcrowding, or the presence of frivolous candidacies' is required" (quoting *Munro*, 479 U.S. at 195)). In any event, these are largely self-evident points.

[7] In ruling on the motion to dismiss, the district court noted that, in his response to the motion to dismiss, Bell seemingly

portions of this subsection provide that: (1) once the mandamus application is filed, the superior court shall set the application for a hearing as soon as practicable; (2) if the superior court denies the petition, the candidate has five days from entry of the superior court order to file an appeal; and (3) "it shall be the duty of the appellate court" to set a hearing and announce its decision with enough time that will permit the name of the candidate to appear on the ballot if the court rules in the candidate's favor. O.C.G.A. § 21-2-171(c).

Bell argues that the superior court improperly delayed his hearing on the petition and that the Supreme Court of Georgia should have heard his appeal, despite *his* failure to seek expedited treatment, with enough time for his name to have appeared on the ballot. Appellant's Br. at 5, 15, 31–32, 44–46. Bell cannot simultaneously demand both that there be an efficient and timely review process and argue that he alone should be given more time to prepare his court filings when all parties are on a constrained timeline due to the impending election.

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attempted to broaden his facial challenge to include all four parts of O.C.G.A. § 21-2-171(c)'s review process. However, the district court properly determined that Bell could not alter the scope of his complaint in a response brief. App'x at 33.

To the extent that his complaint could be construed as challenging the five-day deadline to file an appeal from the superior court's decision under O.C.G.A § 21-2-171(c), which he never expressly states, that deadline survives under the *Anderson-Burdick* test just as the five-day deadline to file the original petition does. Again, the burden is not severe because it aids the candidate by moving the appeals process along to ensure that their challenge can be heard by the Georgia Supreme Court in time to permit them to be placed on the ballot. And the deadline serves the same important regulatory interests of maintaining orderly elections and avoiding voter confusion as the mandamus petition filing deadline serves. Thus, the district court properly dismissed his facial challenges to O.C.G.A § 21-2-171(c).

C. The delays to Bell's case in the state court system do not constitute a violation of his First and Fourteenth Amendment rights.

Finally, Bell argues that the state court violated his constitutional rights because his mandamus hearing before the Fulton Superior Court pursuant to O.C.G.A § 21-2-171(c) was delayed until after the ballot-printing deadline. Though the district court held that Bell should have had a mandamus hearing before the deadline, it held that *Anderson-Burdick* does not apply

to accidental mistakes on the part of election officials during the administration of elections. App'x at 43 (citing *Fair Fight Action, Inc. v. Raffensperger*, No. 1:18-CV-5391-SCJ, 2022 WL 4725887, at *52 (N.D. Ga. Sept. 30, 2022)). Furthermore, "[u]nlike systematic discriminatory laws, isolated events that adversely affect individuals are not presumed to be a violation of the equal protection clause." *Gamza v. Aguirre*, 619 F.2d 449, 453 (5th Cir. 1980). Furthermore, if every state election irregularity were considered a federal constitutional deprivation, federal courts would adjudicate every state election dispute, and Section 1983 does not authorize federal courts to be state election monitors. *Id.* at 453-54. Thus, the district court correctly held that this case was an election irregularity that does not violate the First and Fourteenth Amendments. App'x at 41-44.[8]

On appeal, Bell argues in his brief that the district court just did not look closely enough at the facts of his case. Appellant's Br.

[8] Furthermore, Bell has made no showing of "any real or immediate threat that [he] will be wronged again—a 'likelihood of substantial and immediate irreparable injury.'" *City of Los Angeles v. Lyons*, 461 U.S. 95, 111 (1983). He must do so to be eligible for equitable relief. *Id.* The specific circumstances surrounding the 2020 election, and therefore surrounding Bell's claimed injury, are unlikely to occur again due to the unprecedented nature of the pandemic.

at 45. He says that the district court missed the "fact that Appellant's verification statement was signed and dated August 19, 2020 with 2,200 valid[9] signatures" and implies that the Secretary lied at the 2020 hearing in Fulton County. *Id.* He alleges that the district court accepted Appellees' facts rather than his own. Appellant's Br. at 29. But the district court evaluated his claim under Federal Rule of Civil Procedure 12(b)(6) and accepted his contention that his state court case was delayed as true. App'x at 42. The district court held that the delay simply did not amount to a constitutional violation, and, therefore, that Bell did not state a claim upon which relief could be granted. App'x at 43. Thus, the district court properly dismissed this claim.

D. The district court properly denied Bell leave to amend his complaint because such amendment would be futile.

After the parties fully briefed the Secretary's motion to dismiss, Bell filed a second amended pleading without first

[9] As the Georgia state litigation determined, that is simply not accurate. Bell submitted a petition with 2,200 names, but only 827 were valid and verified, and the rest were either not actually signatures, were not registered voters, were not eligible voters residing within the district that Bell sought to run in, or were illegible as to name, address, or both. *See* App'x at 127; *Bell*, 311 Ga. at 616.

seeking leave to amend. App'x at 16, 172. The district court construed Bell's second amended pleading as a motion for leave to amend. *Id.* at 17. The district court reviewed the second amended complaint and found it to be "materially identical to the amended complaint with one exception," in that Bell added claims for compensatory and punitive damages. *Id.* at 16, 171–94. Bell did not change the substance of his legal claims. *Id.* at 16. The district court held that Bell's proposed amendment fell under the futility exception to the general rule allowing amendment. App'x at 17–18. A district court does not need to allow a proposed amendment where the "complaint as amended would still be properly dismissed." *Cockrell v. Sparks*, 510 F.3d 1307, 1310 (11th Cir. 2007). The district court then held that even if Bell added claims for compensatory and punitive damages, his complaint would still fail to state a claim upon which relief could be granted and, thus, any amendment would be futile. App'x at 18.

Bell, on appeal, does not argue that the claims for compensatory and punitive damages make his claims legally cognizable under Rule 12(b)(6), and he simply reiterates the same accusations of fraud that he espouses throughout his brief without any factual basis. Appellant's Br. at 7–8. But, whether he seeks injunctive or compensatory relief, the facts in his complaint (and

any permutation thereof) did not add up to a plausible legal conclusion that he was entitled to relief. Therefore, any change to the complaint would have been futile, and the district court properly denied him leave to amend his complaint.

E. This Court lacks personal jurisdiction over Harvey because Bell failed to personally serve him.

As noted above, Bell's complaint names as a defendant "Chris Harvey, Director of Elections for the State of Georgia." App'x at 46. However, the complaint does not state whether Harvey is being sued in his official or personal capacity. Appellees argued in their motion to dismiss before the district court that Harvey was never served, and the district court held that Bell failed to state a claim upon which relief could be granted and declined to rule on this issue regarding service. App'x at 15 n.8. Pursuant to the Federal Rules of Civil Procedure and Georgia law, Bell was required to effect service on Chris Harvey 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)(2); *see also* O.C.G.A. §9-11-4(e)(7)

(providing the same three methods of personal service of an individual defendant). Bell attempted to serve Harvey at the Secretary's office, where he had not worked since July of 2021 and, therefore, failed to follow these requirements. Furthermore, as Appellees argued in the district court, Bell's attempt to serve Harvey through someone at his current employer was also inadequate service. *See* App'x at 15 n.8. Service to Appellee Harvey was, therefore, deficient. Supplemental App'x at 191, ECF Doc. 12 at 1; *id.* at 201–02, ECF Doc. 16-1 at 8–9.

CONCLUSION

For the reasons set out above, this Court should affirm the judgment of the district court.

Respectfully submitted.

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CERTIFICATE OF COMPLIANCE

This document complies with the type-volume limitation of Rule 32(a)(7)(B) of the Federal Rules of Appellate Procedure because it contains 10,041 words as counted by the word-processing system used to prepare the document.

/s/ *Elizabeth Vaughan*
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CERTIFICATE OF SERVICE

I hereby certify that on May 23, 2023, I served this brief by electronically filing it with this Court's ECF system, which constitutes service on all parties who have appeared in this case and are registered to use the ECF system.

Plaintiff-Appellant is appearing in this matter pro se, and I hereby certify that additional copies of the foregoing have this day been sent by U.S. mail and by email to Plaintiff-Appellant at the following addresses:

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