

No. 22-11299-JJ

IN THE
United States Court of Appeals
FOR THE ELEVENTH CIRCUIT

MARJORIE TAYLOR GREENE, an individual,

Plaintiff-Appellant

v.

MR. BRAD RAFFENSPERGER, in his official capacity as Georgia Secretary of
State, MR. CHARLES R. BEAUDROT, in his official capacity as an
Administrative Law Judge for the Office of State Administrative Hearings for the
State of Georgia,

Defendants-Appellees, and

DAVID ROWAN, *et al.*,

Intervenor-Defendants-Appellees.

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

Appellant's Motion to take Judicial Notice

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Docket No.: 22-11299 Greene v. Secretary of State for the State of Georgia, et al.

UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

CERTIFICATE OF INTERESTED PERSONS

AND CORPORATE DISCLOSURE STATEMENT (CIP)

Pursuant to FRAP 26.1 and Local Rule 26.1-1,

Greene, Marjorie Taylor

who is Appellant, makes the following disclosure:

1. Is party a publicly held corporation or other publicly held entity? No
2. Does party have any parent corporation? No
3. Is 10% or more of the stock of a party owned by a publicly held corporation or other publicly held entity? No
4. Is there any other publicly held corporation or other publicly held entity that has a direct financial interest in the outcome of the litigation? No
5. Is party a trade association? No
6. Does this case arise out of a bankruptcy proceeding? No
7. Is this a criminal case in which there was an organizational victim? No

Signature: /s/ James Bopp, Jr.

Date: 4/26/2022

Counsel for: Marjorie Taylor Greene, Plaintiff-Appellant

Introduction

The Georgia Secretary of State and Administrative Law Judge Beaudrot (“**State Appellees**”) moved this Court to take judicial notice of the final order of the Georgia Fulton County Superior Court order affirming the Secretary’s final determination that Appellant Marjorie Taylor Greene (“**Rep. Greene**”) is qualified to run as a candidate for U.S. Representative for Georgia’s 14th Congressional District. This Court granted State Appellees’ Motion. Subsequent to State Appellees’ motion, David Rowan, *et al.*, the Intervenors-Defendants-Appellees here (“**Challengers**”), filed a notice of appeal with the Georgia Supreme Court. Exhibit 1.

The notice of appeal was unavailable at the time State Appellees filed their motion. Pursuant to Federal Rule of Evidence 201, Appellant moves this court to take judicial notice of Challengers’ Notice of Appeal. It is appropriate for this Court to take judicial notice of both the Fulton County Superior Court final order and the Challengers’ Notice of Appeal.

This notice of appeal supports Rep. Greene’s position that: (1) this appeal is not moot; (2) this Court should not abstain; and (3) Rep. Greene can show irreparable harm to support a preliminary injunction.

Argument

The State Appellees argue this case is moot and Rep. Greene cannot show irreparable harm because “none of the hypothetical harms Greene contended she faced should the Georgia challenge process continue occurred.” State Mot. at 3. But the State errs because that appeal continues and the case will return to one or both of these two officials. Then the injunction will play a vital role.

Under Georgia law, the decision of the Fulton Superior County Court can be appealed, O.C.G.A. § 21-2-5(e) (“**Challenge Statute**”), and that is exactly what has happened here. Though the statute doesn’t specify to whom any remand “for further proceedings” goes, it should first go to the Secretary, just as U.S. Supreme Court remands are to circuit courts not district courts, after which it could be remanded by the Secretary to the administrative judge if required. Even after an affirmance, the case should return to the Secretary. And as noted, court options are (i) affirmance, (ii) remand for further proceedings, (iii) reversal, and (iv) modification. And even if the Georgia Supreme Court affirms or modifies that “final decision,” a holding by this Court that the Challenge Statute provides an unconstitutional process would affect any further proceedings because this case is not moot under an applicable exception.

As Rep. Greene argued in Appellant’s Reply Brief and incorporated by

reference herein, cases are not moot if they are capable of repetition yet evade review because there is inadequate time for full consideration and appellate review. *See* Appellant’s Reply Br., 1-6; *see, e.g., FEC v. Wisconsin Right to Life*, 551 U.S. 449, 462-64 (2007). Under this exception to the mootness doctrine, Rep. Greene has standing. The evading-review prong is readily evidenced by Challenger’s mootness argument, which (though erroneous) highlights that eventually (but not yet) the candidate challenge will be fully resolved, possibly before this Court rules. That is why election cases fit this exception. *See, e.g., Florida Right to Life v. Lamar*, 273 F.3d 1318, 1324 n.6 (11th Cir. 2001).

Since the preliminary-injunction motion sought relief against both the Secretary and the administrative judge “to enjoin them from enforcing the Challenge Statute, and since reversal and remand would make the Secretary’s prior “final decision” not controlling and put the case before those two officials again regarding enforcement of the same provision, a reversal of the denial of the preliminary-injunction motion would redress Rep. Greene’s injuries of being subject to an unconstitutional process and disqualification as a candidate as set out in the preliminary-injunction motion and memorandum. So the case is not moot on that basis, and it also fits the mootness exception.

Abstention is also improper here. As this Court said in *Wexler v. Lepore*,

385 F.3d 1336, 1340 (11th Cir. 2004) (per curiam), “generally, as between state and federal courts, the rule is that the pendency of an action in the state court is no bar to proceedings concerning the same matter in the Federal court having jurisdiction.” *Id.* (quoting *Ambrosia Coal & Constr. Co. v. Morales*, 368 F.3d 1320, 1328 (11th Cir.2004)). As Rep. Greene highlighted in her Appellant’s Reply Brief and incorporated by reference herein, because this appeal concerns matter of federal and constitutional law, rather than state law, and because the administrative judge could not even consider Rep. Greene’s constitutional arguments, both *Younger* and *Colorado River* abstention is unwarranted. *See* Appellant’s Reply Br., 6-10.

Conclusion

For all the foregoing reasons this Court should take notice of both the Fulton County Superior Court’s final order and the Challengers’ Notice of Appeal.

August 2, 2022

Respectfully submitted,

/s/ James Bopp, Jr.

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Certificate of Compliance

I hereby certify that the foregoing document complies with the typeface requirements and the type-volume limitations of Federal Rules of Appellate Procedure 32(a)(7)(B) because it contains 774 words (calculated using the word count function of the word processing program used to draft the foregoing), excluding the parts of the motion exempted by Federal Rules of Appellate Procedure 32(f) and used Times New Roman, 14 point font.

/s/ James Bopp, Jr.
James Bopp, Jr.

Certificate of Service

I certify that on August 2, 2022, I caused the foregoing document and all attachments thereto to be electronically filed with the Clerk of Court for the U.S. Court of Appeals for the Fourth Circuit using the appellate CM/ECF system. Counsel for all parties and proposed-intervenors received notice of this filing through the CM/ECF system.

/s/ James Bopp, Jr.
James Bopp, Jr

IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

**David Rowan, Donald Guyatt,
Robert Rasbury, Ruth
Demeter, and Daniel Cooper,**

Petitioners,

vs.

Brad Raffensperger, Secretary
of State of the State of Georgia

Respondent,

and

Marjorie Taylor Greene,

Intervenor Respondent

Case No. 2022CV364778

**Petitioners’
Notice of Appeal**

Notice is hereby given that petitioners David Rowan, Donald Guyatt, Robert Rasbury, Ruth Demeter, and Daniel Cooper appeal to the Georgia Supreme Court from the final order entered in this case on July 25, 2022. The Supreme Court has exclusive jurisdiction in all “cases of election contest.” Ga. Const. Art. VI, § VI, ¶ II(2). And a challenge to

candidate qualifications, such as this one, is an “election contest.” See *Cook v. Bd. of Registrars of Randolph Cnty.*, 291 Ga. 67, 71 (2012).

The documents identified with an X on the attachment to this notice may be omitted from the record on appeal. A transcript of the hearing held in this matter on July 18 should be included with the record on appeal.

Respectfully submitted this 28th day of July, 2022.

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* Admitted pro hac vice

** Application for admission pro hac vice forthcoming

Certificate of Service

I hereby certify that on July 28, 2022, I served the foregoing document on the parties by United States mail, first-class postage prepaid, on the following attorneys of record for the parties:

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https://researchga.tylerhost.net/CourtRecordsSearch/ViewCasePrint/2533163506df517f896a375de0be123d

Case Information

David Rowan,Donald Guyatt,Robert Rasbury,Ruth Demeter,Daniel Cooper VS. Brad Raffensperger

2022CV364778

Location	Case Category	Case Type	Case Filed Date
Fulton - Superior Court	Civil	ADMINISTRATIVE APPEAL	5/16/2022
Judge	Case Status		
BRASHER, CHRISTOPHER	Closed (Closed)		

Parties 9

Type	Name	Attorneys
DEFENDANT	Brad Raffensperger	CHARLENE R SWARTZ, ELIZABETH VAUGHAN
INTERVENOR	MARJORIE TAYLOR GREENE	David F. Guldenschuh
INTERVENOR	MARGARET TAYLOR GREENE	David F. Guldenschuh
INTERVENOR	MARJORIE TAYLOR GREENE	David F. Guldenschuh
PLAINTIFF	Daniel Cooper	BRYAN SELLS
PLAINTIFF	Ruth Demeter	BRYAN SELLS
PLAINTIFF	Donald Guyatt	BRYAN SELLS
PLAINTIFF	Robert Rasbury	BRYAN SELLS
PLAINTIFF	David Rowan	BRYAN SELLS

Hearings 1

Date/Time	Hearing Type	Judge	Location	Result
7/18/2022 09:30 AM	ORAL ARGUMENT			

Events 35

Date	Event	Type	Comments	Documents
5/16/2022	Filing	Plaintiff's Original Petition	Petition for Judicial Review	PETITION.pdf
5/16/2022	Filing	CASE INITIATION FORM	ADMINISTRATIVE APPEAL	CASE INITIATION FORM.pdf
X 5/17/2022	Filing	ENTRY/NOTICE OF APPEARANCE	Notice of Appearance of Counsel	ENTRY/NOTICE OF APPEARANCE.pdf
X 5/17/2022	Filing	WAIVER OF SERVICE	Waiver of Service of Summons	WAIVER OF SERVICE.pdf
X 5/20/2022	Filing	MOTION	MOTION TO INTERVENE AS RESPONDENT	MOTION.pdf
X 5/20/2022	Filing	ENTRY/NOTICE OF APPEARANCE	Notice of Appearance of Counsel for Respondent	ENTRY/NOTICE OF APPEARANCE.pdf
5/25/2022	Filing	NOTICE	Notice of Manual Filing of Multimedia Files that are Part of the Administrative Record	NOTICE.pdf
5/26/2022	Filing	RECORD OF BOARD OF REVIEW	Administrative Record Part 2	RECORD OF BOARD OF REVIEW.pdf
5/26/2022	Filing	RECORD OF BOARD OF REVIEW	Administrative Record Part 1	RECORD OF BOARD OF REVIEW.pdf
X 5/27/2022	Filing	RESPONSE	Petitioners' Response in Opposition to Marjorie Taylor Greene's Motion to Intervene as a Respondent	RESPONSE.pdf
X 6/2/2022	Filing	APPLICATION	Bonifaz application for admission pro hac vice	APPLICATION.pdf
X 6/2/2022	Filing	APPLICATION	Hostetler application for admission pro hac vice	APPLICATION.pdf
X 6/2/2022	Filing	APPLICATION	Horton application for admission pro hac vice	APPLICATION.pdf
X 6/2/2022	Filing	APPLICATION	Fein application for admission pro hac vice	APPLICATION.pdf

Date	Event	Type	Comments	Documents
6/7/2022	Filing	RESPONSE	Response to Motion to Intervene as Respondent	RESPONSE.pdf
6/10/2022	Filing	ORDER	Granting Motion to Intervene	ORDER.pdf
6/10/2022	Filing	MOTION	Motion for Expedited Briefing Schedule and Hearing on the Petition for Judicial Review	MOTION.pdf
6/13/2022	Filing	RESPONSE	Petitioners' Response to the Respondent's Motion to Expedite	Petitioners' Response to the Respondent's Motion to Expedite.pdf
6/13/2022	Filing	ORDER	Shortening Response Time	ORDER.pdf
6/13/2022	Filing	ENTRY/NOTICE OF APPEARANCE	NOTICE OF APPEARANCE AND CERTIFICATE OF SERVICE	ENTRY/NOTICE OF APPEARANCE.pdf
6/13/2022	Filing	Answer	Intervenor-Respondent's Answer to Petitioner's Answer to Petitioner's Petition for Judicial Review	ANSWER/RESPONSE.pdf
6/13/2022	Filing	RESPONSE	INTERVENOR-RESPONDENT'S RESPONSE TO STATE RESPONDENT'S MOTION FOR EXPEDITED BRIEFING SCHEDULE AND HEARING ON THE PETITION FOR JUDICIAL REVIEW	RESPONSE.pdf
6/14/2022	Filing	APPLICATION FOR PRO HAC VICE	VERIFIED APPLICATION FOR PRO HAC VICE ADMISSION	APPLICATION FOR PRO HAC VICE.pdf
6/15/2022	Filing	SCHEDULING ORDER	Briefing Schedule and Hearing Date	SCHEDULING ORDER.pdf
6/23/2022	Filing	APPLICATION	VERIFIED APPLICATION FOR PRO HAC VICE ADMISSION	APPLICATION.pdf
6/24/2022	Filing	RESPONSE	Response to Petition for Judicial Review	RESPONSE.pdf
6/24/2022	Filing	BRIEF	BRIEF IN RESPONSE TO PETITION FOR JUDICIAL REVIEW	BRIEF.pdf
7/11/2022	Filing	OBJECTIONS	Objection to Affirmative Defenses, Counterclaims, and Cross-claims by Intervenor-Respondent Marjorie Taylor Greene	OBJECTIONS.pdf
7/15/2022	Filing	MOTION	Petitioners' Motion to Correct the Caption	Petitioners' Motion to Correct the Caption.pdf
7/15/2022	Filing	REPLY	Petitioners' Reply in Support of their Petition for Judicial Review	REPLY.pdf
7/15/2022	Filing	RESPONSE	Intervenor-Respondent Marjorie Taylor Greenes Response to Secretary of State Raffenspergers Objection to Intervenor-Respondent Marjorie Taylor Greenes Affirmative Defenses, Counterclaims, and Cross-Claims	RESPONSE.pdf
7/15/2022	Filing	MOTION TO STRIKE	Petitioners' Motion to Strike the Intervenor's Answer	MOTION TO STRIKE.pdf
7/18/2022	Hearing	ORAL ARGUMENT	-	-
7/18/2022	Filing	ORDER	Granting the Petitioner's Motion to Correct the Caption	ORDER.pdf

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