

**No. 25-10114-H**

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In the  
**United States Court of Appeals  
For the Eleventh Circuit**

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BRIONTÉ McCORKLE et al.,

*Plaintiffs – Appellants*

v.

SECRETARY OF STATE FOR THE STATE OF GEORGIA,

*Defendant – Appellee*

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Appeal from the United States District Court  
For the Northern District of Georgia

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**TIME-SENSITIVE MOTION FOR AN  
INJUNCTION PENDING APPEAL**

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**McCorkle v. Secretary of State for the State of Georgia  
25-10114-H**

**Certificate of Interested Persons  
and  
Corporate Disclosure Statement**

Pursuant to Eleventh Circuit Rule 26.1, 26.1-2, and 26.1-3, counsel for the plaintiffs-appellants certifies that the following persons and entities have or may have an interest in the outcome of this case:

Carr, Christopher

Clark Hill PLC

Georgia Conservation Voters Education Fund, Inc.

Georgia WAND Education Fund, Inc.

Jacoutot, Bryan Francis

LaRoss, Diane Festin

McCorkle, Brionté

Raffensperger, Brad

Sells, Bryan L.

**McCorkle v. Secretary of State for the State of Georgia  
25-10114-H**

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Pursuant to Federal Rule of Appellate Procedure 26.1, the counsel below certifies that neither Georgia Conservation Voters Education Fund, Inc. nor Georgia WAND Education Fund, Inc. has a parent company and that no publicly held corporation owns 10 percent or more of their stock.

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## Introduction

This is the rare case that meets the high standard for an injunction pending an appeal. That's because the outcome is squarely controlled by a unanimous recent decision of this Court: *Gonzalez v. Governor of Georgia*, 978 F.3d 1266 (11th Cir. 2020) (Branch, J.). The district court, Judge William Ray III, apparently disagreed with that decision and chose not to follow it.

At issue here is House Bill 1312, a 2024 Georgia law that purports to change the constitutional terms of members of Georgia's Public Service Commission. The plaintiffs filed a motion for a preliminary injunction to enjoin that law in the district court on July 17, 2024, and they requested expedited consideration. The district court didn't expedite the motion, rebuffed the plaintiffs' repeated requests for a ruling, and waited until January 13 to deny the motion and dismiss the case.

The first election under House Bill 1312 is set for June 17, 2025. Qualifying for that election will be open from April 1 until noon on April 4. And the Secretary of State has indicated that he plans to issue the call for the election in February or March. A

ruling is thus needed before the qualifying period begins and, ideally, before the Secretary issues the call.

## Background

### I. House Bill 1312

Article IV, Section I, Paragraph 1(a) of the Georgia Constitution provides as follows:

There shall be a Public Service Commission for the regulation of utilities which shall consist of five members who shall be elected by the people. The Commissioners in office on June 30, 1983, shall serve until December 31 after the general election at which the successor of each member is elected. Thereafter, all succeeding terms of members shall be for six years. Members shall serve until their successors are elected and qualified. A chairman shall be selected by the members of the commission from its membership.

Ga. Const. art. IV, §I, ¶1(a). The jurisdiction, powers, and duties of the PSC are prescribed by state law, and they include broad governmental authority to supervise and regulate common carriers, railroads, and public utilities. O.C.G.A. § 46-2-1 et seq. Among many other duties, the PSC regulates the rates that Georgians may be charged by electric, natural gas, and telephone companies.

Before the enactment of House Bill 1312 in 2024, members of the PSC were elected at large by all Georgia voters in partisan elections to serve staggered six-year terms. O.C.G.A. § 46-2-1. Although elected at large, members of the PSC are required to reside in one of five districts prescribed by statute. *Id.*

The term of office for each current Commissioner before House Bill 1312 is set forth in Table 1.

**Table 1: PSC Terms of Office before House Bill 1312**

District	Commissioner	Term Start	Term End
1	Jason Shaw	Jan. 1, 2021	Dec. 31, 2026
2	Tim Echols	Jan. 1, 2017	Dec. 31, 2022
3	Fitz Johnson	Jan. 1, 2019	Dec. 31, 2024
4	Bubba McDonald	Jan. 1, 2021	Dec. 31, 2026
5	Tricia Pridemore	Jan. 1, 2019	Dec. 31, 2024

In 2020, four Black voters sued the Secretary of State in federal court alleging that the at-large method of electing members of Georgia's Public Service Commission violated the Voting Rights Act. *See* Complaint, *Rose v. Raffensperger*, 1:20-cv-2921-SDG (July 14, 2020) (ECF 1). After a week-long bench trial in June 2022, the district court ruled in the plaintiffs' favor and enjoined the Secretary of State from conducting any further elections for the Public Service Commission using the at-large method of election.

See Opinion and Order, *Rose v. Raffensperger*, 1:20-cv-2921-SDG (Aug. 5, 2022) (ECF 151).

As a result of the *Rose* injunction, the Secretary canceled the 2022 general election for the Public Service Commissioner from District 2 and the special general election for the Public Service Commissioner from District 3 to serve the remainder of Commissioner Eaton's original term. The injunction remained in place while the Secretary appealed the district court's judgment. (App. 1 at 6.)<sup>1</sup>

In November 2023, the Eleventh Circuit reversed the judgment of the district court, but the district court's injunction remained in place because a judge of the Eleventh Circuit withheld the issuance of the mandate. See Order, *Rose v. Raffensperger*, 1:20-cv-2921-SDG (Dec. 18, 2023) (ECF 179). With the injunction still in place at the beginning of the candidate-qualifying period in March

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<sup>1</sup> The plaintiffs have attached a documentary appendix to this motion. Throughout this brief, citations to the Appendix will be in the form "App. Tab at Page" unless otherwise noted.

2024, the Secretary called off the 2024 elections for members of the PSC. (App. 1 at 6.)

On April 16, 2024, this Court *sua sponte* issued a stay of the district court's injunction in *Rose*. See Order, *Rose v. Raffensperger*, 1:20-cv-2921-SDG (April 16, 2024) (ECF 182). The *Rose* plaintiffs filed a petition for a writ of certiorari in the United States Supreme Court, and that petition was denied on June 24, 2024. (App. 1 at 7.)

On March 16, 2024, the Georgia General Assembly adopted House Bill 1312, which, among other things, revises the terms of office for members of Georgia's PSC. The Governor signed House Bill 1312 on April 18, 2024, and it became effective immediately. When the Governor signed it, House Bill 1312 became Act 380. (*Id.*)

Section 2 of House Bill 1312 adds a new section to the Georgia Code that revises the terms of the current members of Georgia's PSC. It extends the terms of each current Commissioner by at least one year and shortens the terms of the next Commissioners elected from Districts 2 and 3. (App. 1312 at 3.) Table 2 sets forth the PSC terms as revised by House Bill 1312.

**Table 2: PSC Terms as Revised by House Bill 1312**

District	Old Term End	New Term End	Next Term
1	Dec. 31, 2026	Dec. 31, 2028	6 years
2	Dec. 31, 2022	Dec. 31, 2025	5 years
3	Dec. 31, 2024	Dec. 31, 2025	1 year
4	Dec. 31, 2026	Dec. 31, 2028	6 years
5	Dec. 31, 2024	Dec. 31, 2026	6 years

Under House Bill 1312, then, there will be an election for Districts 2 and 3 in 2025 for a five-year term and a one-year term, respectively. Qualifying for those seats will be open from April 1 to 4. The primary will be held on June 17. And the general election will be held on November 4. (*Id.*)

In the absence of House Bill 1312, there would be a special election for *three* seats—Districts 2, 3, and 5—in early 2025 because the general election at which those Commissioners should have been elected didn't occur. See O.C.G.A. § 21-2-504(a). It is the duty of the Secretary of State to call those elections. *Id.* A special primary would be required. See O.C.G.A. §§ 21-2-540(a)(2) and 46-2-4. And the Commissioners elected then would serve out the remainder of the original term of office for their district “as measured by the Constitution.” *Kemp v. Gonzalez*, 310 Ga. 104, 108-09 (2020). Elections for Districts 1 and 4 would proceed as

usual in 2026. Commissioners elected then would serve a full six-year term. *See* O.C.G.A. § 46-2-1(d).

## II. Procedural History

The plaintiffs here are one registered voter and two nonprofit organizations whose missions include environmental justice and civic engagement. (App 1 at 2-3.) They sued the Secretary of State on July 17, 2024, and sought a preliminary injunction on an expedited basis to enjoin the Secretary from enforcing House Bill 1312 and requiring him to call a special election to fill three seats on the Commission “as soon as practicable.” (App. 2 at 1-2.)

The district court held an in-person status conference on the motion on July 31. The court stated at that conference that it hadn’t read the plaintiffs’ brief and would be out of the country for much of August. (App. 17 at 44-45.) The court declined to expedite the briefing on the plaintiffs’ motion. Meanwhile, the Secretary moved to dismiss, arguing that the plaintiffs lacked standing and failed to state a claim for relief.

On Monday, November 25, the plaintiffs’ counsel contacted the district court to request a status conference on the plaintiffs’ motion for a preliminary injunction, noting that the motion “seeks relief that would affect the State’s 2025 election cycle.” (App. E at 1.) The court responded, despite the plain text of House Bill 1312 and the parties’ extensive briefing on the issue, that “there are no scheduled elections for the State of Georgia during 2025” and that, “[i]n any event . . . the Court expects to rule on the Motion either in December or January.” (*Id.* at 2.) On January 13, 2025, the plaintiffs’ counsel contacted chambers for an update, and the district court issued its ruling later that day. (*Id.* at 5.)

The district court granted the Secretary’s motion to dismiss in an 18-page ruling that cites *Gonzalez* only once—and then only as authority for the four ordinary preliminary-injunction factors. (App. 20 at 16.) The court first concluded that the plaintiffs failed to state a claim “because it believes that Georgia courts are best suited to be the ‘final arbitrators’ of this state constitutional challenge.” (*Id.* at 9.) The court next concluded that the plaintiffs lack standing because House Bill 1312 doesn’t “evade an election or otherwise



prevent a vote” but only affects “the precise *timing* of the election”—and therefore doesn’t injure the plaintiffs. (*Id.* at 11.)

Then the court turned to the merits. Even though the merits weren’t at issue in the Secretary’s motion to dismiss and no party had raised or briefed the question of strict scrutiny, the district court concluded that House Bill 1312 doesn’t violate the Due Process Clause because it is narrowly tailored to further a compelling state interest in “avoiding rapid, simultaneous turnover of all PSC members.” (*Id.* at 15.)

Finally, the court turned to the plaintiffs’ motion. The court ruled that even if it had jurisdiction, the court would still deny the plaintiffs’ motion because “it would not serve the public interest to force Defendant to hold an election” because “[t]he present situation was not of the Defendant or the State of Georgia’s making.” (*Id.* at 16-17.) Instead, according to the court, it was the fault of the *Rose* plaintiffs for seeking to vindicate their rights under the Voting Rights Act. (*Id.* at 17.)

This appeal followed.<sup>2</sup> (App. 22 at 1.)

### Legal Standard

A party seeking an injunction pending appeal must establish all of the following: “(1) a substantial likelihood that [it] will prevail on the merits of the appeal; (2) a substantial risk of irreparable injury to the [movant] unless the injunction is granted; (3) no substantial harm to other interested persons; and (4) no harm to the public interest.” *Touchston v. McDermott*, 234 F.3d 1130, 1132

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<sup>2</sup> The plaintiffs haven’t sought an injunction pending appeal in the district court because (1) the district court has already denied the precise injunction they seek despite the benefit of full and complete briefing; (2) the timing of the upcoming election makes it impracticable to do so—particularly in light of the district court’s six-month delay in deciding the plaintiffs’ motion for a preliminary injunction for which the plaintiffs repeatedly sought and were denied expedited consideration. *See Fed. R. App. P. 8(a)(2)(A)*. The Secretary could call the next election under House Bill 1312 at any time and has indicated that he may do so as soon as February. Under these circumstances, moving first in the district court would have been futile and impracticable. *See, e.g., Homans v. City of Albuquerque*, 264 F.3d 1240, 1243 (10th Cir. 2001); *Gonzalez by Gonzalez v. Reno*, No. 00-11424-D, 2000 WL 381901, at \*1 n.4 (11th Cir. Apr. 19, 2000).

(11th Cir. 2000) (en banc); accord *Florida v. Dep't of Health and Human Svcs.*, 19 F.4th 1271, 1279 (2021).

## Argument

### I. The plaintiffs are likely to succeed on the merits.

It is now well-established that public officials violate the Due Process Clause if they disenfranchise voters in violation of state law. *Gonzalez*, 978 F.3d at 1271; *Duncan v. Poythress*, 657 F.2d 691, 704 (5th Cir. 1981).<sup>3</sup> In *Gonzalez*, this Court held that a Georgia statute violated the Georgia Constitution and the Due Process Clause by extending the constitutional term of a district attorney. 978 F.3d at 1271. In *Duncan*, the former Fifth Circuit held that the Georgia Secretary of State violated state law and the Fourteenth Amendment by failing to call a special election to fill a Supreme Court vacancy. 657 F.2d at 708. The only question here is whether House Bill 1312 violates state law.

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<sup>3</sup> The Eleventh Circuit has adopted as binding precedent all Fifth Circuit decisions prior to October 1, 1981. *Bonner v. City of Prichard*, 661 F.2d 1206, 1209 (11th Cir. 1981) (en banc).

It does. House Bill 1312 violates Article IV, Section I, Paragraph 1(a) of the Georgia Constitution, which provides that “all succeeding terms of [PSC] members shall be for six years.” Ga. Const. art. IV, § 1, ¶1(a). By extending the term of the current Commissioners by at least one year beyond the original six-year term and by shortening the subsequent term of the next Commissioners elected from District 2 and District 3, House Bill 1312 plainly violates the Georgia Constitution.

It is axiomatic, of course, that the Georgia General Assembly can’t amend the constitution by passing a statute. *E.g., Kemp, 310 Ga. at 113* (citing cases). And the Georgia Supreme Court has already addressed this very question: the General Assembly cannot by statute change the term of a public official that is set out in the constitution. *Id.* Doing so, as the General Assembly has done here, violates the constitution. *Id.*

Nobody here disputes, as a matter of fact, that House Bill 1312 extends the terms of Public Service Commissioners beyond the six years prescribed in the Georgia Constitution and shortens the terms of the Commissioners next elected from Districts 2 and 3.

But the district court didn't even try to distinguish *Gonzalez*. It also didn't discuss whether House Bill 1312 violates the Georgia Constitution—even though the Georgia Supreme Court has squarely addressed the issue on a question certified by this Court. *See Kemp*, 310 Ga. at 105. Instead, the district court held that House Bill 1312 survives strict scrutiny under the Due Process Clause because it is narrowly tailored to further the State's compelling interest in “avoiding rapid, simultaneous turnover of all PSC members”—something that wouldn't happen even without House Bill 1312 because two members wouldn't otherwise be up for election again until 2026. That holding is a legal error unlikely to be upheld on appeal—particularly in light of this Court's unanimous ruling in *Gonzalez*.

The district court's holding on standing fares no better. McCorkle alleges that she is a Georgia voter who wants to vote for Public Service Commissioners but can't because House Bill 1312 delays those elections. This is precisely the injury alleged by the plaintiffs in *Gonzalez*, who were denied the right to vote for the office of district attorney for the Western Judicial Circuit because of

a similar statute that delayed the election for that office. 978 F.3d at 1268 n.1; *see also Gonzalez v. Kemp*, 470 F. Supp. 3d 1343, 1346 (N.D. Ga. 2020) (noting that the plaintiffs “are all residents and registered voters within the Western Judicial Circuit and intended to vote” for the office of the district attorney). McCorkle thus has standing for the same reason that the *Gonzalez* plaintiffs had standing: she alleges the denial of her right to vote in a specific election delayed by an unconstitutional statute. *See Jacobson v. Fla. Sec’y of State*, 974 F.3d 1236, 1246 (11th Cir. 2020) (“[T]he Supreme Court has made clear that ‘a person’s right to vote is individual and personal in nature,’ so ‘voters who allege facts showing disadvantage to themselves as individuals have standing to sue.’” (quoting *Gill v. Whitford*, 585 U.S. 48, 65-66 (2018))).

The district court’s holding that the plaintiffs have failed to state a claim is also infirm. It is inconsistent with *Duncan* and *Gonzalez*, in which Georgia state officials delayed or denied elections to which voters were entitled under state law, and the courts of appeals held that doing so violated the Due Process Clause of the Fourteenth Amendment. The district court here

didn't mention either case before concluding that the plaintiffs failed to state a claim. While the court below may disagree with those cases, it is bound to follow them.

As a result, the plaintiffs are likely to succeed on the merits of their claim.

**II. The plaintiffs have suffered and will suffer irreparable harm in the absence of an injunction.**

Harm is irreparable for purposes of a preliminary injunction when “it cannot be undone through monetary means.” *Deerfield Med. Ctr. v. City of Deerfield Beach*, 661 F.2d 328 (5th Cir. 1981). Harms that touch upon the constitutional and statutory rights of political parties, candidates, and voters are generally not compensable by money damages and are therefore considered irreparable. *See, e.g., Elrod v. Burns*, 427 U.S. 347, 373 (1976) (plurality opinion); *League of Women Voters v. North Carolina*, 769 F.3d 224, 247 (4th Cir. 2014); *Obama for Am. v. Husted*, 697 F.3d 423, 436 (6th Cir. 2012); *Williams v. Salerno*, 792 F.2d 323, 326 (2d Cir. 1986); *Ga. State Conf. of the NAACP v. Fayette Cnty. Bd. of Comm'rs*, 118 F. Supp. 3d 1338, 1347 (N.D. Ga. 2015).

This Court has held that “missing the opportunity to vote in an election is an irreparable harm for the purposes of a preliminary injunction.” *Jones v. Governor of Fla.*, 950 F.3d 795, 828 (11th Cir. 2020); accord *Gonzalez*, 978 F.3d at 1272. And that’s precisely what has happened here. Because of House Bill 1312, McCorkle and millions of other Georgia voters missed the opportunity to vote in a special election for three seats in 2024. They will miss an opportunity to vote in a special election for one seat in 2025. Under this Court’s precedents, that’s more than enough to constitute irreparable harm.

### **III. The balance of harms favors the plaintiffs.**

The third factor requires the Court to consider the potential impact that the requested injunction might have upon the State, and to balance that potential with the considerable and irreparable harms that the plaintiffs would suffer should the injunction. See *Gonzalez*, 978 F.3d at 1272-73. There is no question that the balance of equities tips in the plaintiffs’ favor here.



McCorkle and millions of her fellow Georgians face the loss of their right to vote. *Id.* They will be unable to vote for Public Service Commissioners as provided by law. But the State will suffer no harm if the Secretary is enjoined from enforcing an unconstitutional statute. *Id.* at 1272.

#### **IV. An injunction would serve the public interest.**

The public interest in this case is clear. “[I]t is always in the public interest to prevent the violation of a party’s constitutional rights.” *Hobby Lobby Stores, Inc. v. Sebelius*, 723 F.3d 1114, 1145 (10th Cir. 2013) (en banc) (quoting *Awad v. Ziriax*, 670 F.3d 1111, 1131–32 (10th Cir. 2012)), *aff’d*, 134 S. Ct. 2751 (2014); *accord League of Women Voters of N.C.*, 769 F.3d at 247. The requested injunction will also ensure that Georgia voters will have an opportunity to vote for Public Service Commissioners in accordance with state law and sooner than they otherwise would have. The requested injunction, if granted, would therefore favor the public interest.

## Conclusion

The district court here flagrantly ignored this Court's controlling decisions in *Gonzalez* and *Duncan*. House Bill 1312 is patently unconstitutional, and millions of Georgians are being unlawfully denied the right to vote as a result. This Court should therefore issue an injunction prohibiting the Secretary from enforcing House Bill 1312 and requiring him to call a special primary and general election to fill the seats of Commissioners from Districts 2, 3, and 5 as soon as practicable.

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### **Certificate of Compliance**

This brief complies with the type-volume limitation of Rule 27 of the Federal Rules of Appellate Procedure because, excluding parts of the brief exempted by Rule 32(f), it contains 3,325 words. This brief also complies with the typeface and type-style requirements of Rule 32(a)(5) and (6) because it has been prepared in 14-point Century Schoolbook font using Microsoft Word for Mac.

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