

UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

Richard Rose, et al.,

Plaintiff-Appellees,

vs.

Georgia Secretary of State,

Defendant-Appellant.

Appeal No. 22-12593

**Appellees' Unopposed
Motion to Expedite**

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**Rose v. Georgia Secretary of State
22-12593**

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

I hereby certify under Eleventh Circuit Rules 26.1, 26.1-2,
and 26.1-3 that these persons and entities have or may have an
interest in the outcome:

Bartlit Beck LLP

Beranek, Lori

Carr, Christopher

Clarke, Kristen

Erskine, Kurt R.

Georgia Department of Law

Grimberg, Steven D.

Herren, Jr., T. Christian

Hughes, Aileen Bell

Jacoutot, Bryan F.

C-1 of 4

**Rose v. Georgia Secretary of State
22-12593**

**Certificate of Interested Persons
and
Corporate Disclosure Statement
(continued)**

Karlan, Pamela S.

LaRoss, Diane

Martinez, Nicolas

McCorkle, Brionté

McGowan, Charlene

Mellett, Timothy F.

Morrisette, Wesley

Wanda Mosley

Petrany, Stephen J.

Raffensperger, Brad

Rose, Richard

Sells, Bryan L.

C-2 of 4

**Rose v. Georgia Secretary of State
22-12593**

**Certificate of Interested Persons
and
Corporate Disclosure Statement
(continued)**

Sitton, Janie Allison (Jaye)

Taylor English Duma LLP

The Law Office of Bryan L. Sells, LLC

Tyson, Bryan P.

U.S. Department of Justice

Webb, Bryan K.

Willard, Russell D.

Woodall, James “Major”

No publicly traded company has an interest in the outcome.

/s/ Bryan L. Sells

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Appellees' Unopposed Motion to Expedite

Appellees Richard Rose, Brionté McCorkle, Wanda Mosley, and James Woodall respectfully move the Court for an order expediting this election-related appeal. Specifically, they request that the Court expedite this appeal, directing the Clerk to place it on an argument calendar sufficiently in advance of the beginning of the next legislative session in January 2023 to allow the Court to resolve it by then. And the Court should issue a modified briefing schedule if necessary to accommodate the argument calendar selected by the Court.

Appellant Georgia Secretary of State does not oppose this motion. As explained more fully below, expedited consideration is warranted and appropriate to ensure that the appeal is resolved before the next regular session of the Georgia General Assembly in January 2023.

Background

Georgia's Public Service Commission consists of five members elected at-large by all Georgia voters in partisan elections to serve staggered six-year terms. Ga. Const. art. IV, § 1, ¶ I; O.C.G.A. § 46-2-1. Among many other duties, the Commission regulates the rates that electric, natural gas, and telephone companies can charge Georgia's consumers. O.C.G.A. § 46-2-1 *et seq.*

Appellees are four Black voters (the "Voters") who reside in Fulton or DeKalb counties, and they brought this suit against the Secretary in July 2020, alleging that the at-large method of election for the Public Service Commission violates Section 2. Appellant is the Georgia Secretary of State, who administers elections for members of the Commission and is responsible for certifying the results. *See* O.C.G.A. §§ 21-2-50(a)(4), 21-2-154(a), 21-2-132(d)(2), 21-2-499(a), 21-2-502(c).

On August 5, 2022, the district court issued a sixty-four-page opinion holding that Georgia's at-large method of electing Public Service Commissioners dilutes Black voting strength in violation of

Section 2 of the Voting Rights Act of 1965, 52 U.S.C. § 10301. (ECF 151.) The court permanently enjoined the Secretary from administering future Commission elections using that unlawful method, and it gave the Georgia General Assembly an opportunity to devise a remedy at its next session, which begins in January 2023. *See* Ga. Const. art. III, § 4, ¶ I(a) (“The General Assembly shall meet in regular session on the second Monday in January of each year . . .”).

On August 8, the Secretary sought an emergency stay of the district court’s permanent injunction. Last Friday, a deeply divided Eleventh Circuit motions panel stayed the district court’s injunction based solely on the principle established in *Purcell v. Gonzalez*, 549 U.S. 1 (2006), that federal courts ordinarily should not enjoin state election laws close to elections. Yesterday, the Voters filed an emergency application to vacate the stay in the Supreme Court. That application remains pending.

Argument

Under this Court’s internal operating procedures, an appeal may be expedited “for good cause shown.” 11th Cir. R. 27, I.O.P. 3. In addition, the federal courts “shall expedite” civil actions for good cause, which “is shown if a right under the Constitution . . . would be maintained in a factual context that indicates a request for expedited consideration has merit.” 28 U.S.C. § 1657(a).

This Court has frequently granted motions to expedite in election-related cases. *See, e.g., Cowen v. Sec’y of State*, No. 21-13199 (11th Cir. Nov. 17, 2021); *Brown v. Florida*, No. 11-14554 (11th Cir. Oct. 25, 2011); *Common Cause/Georgia v. Billups*, No. 05-17584 (11th Cir. Oct. 27, 2005); *United States v. Dallas Cnty. Comm’n*, 904 F.2d 26, 28 (11th Cir. 1990) (per curiam); *Delgado v. Smith*, 861 F.2d 1489, 1490 (11th Cir. 1988); *Bergland v. Harris*, 767 F.2d 1551, 1555 (11th Cir. 1985).

Expedited consideration here—regardless of the Supreme Court’s disposition of the pending application to vacate this Court’s stay—would serve the interests of all Georgia voters as well as the

State and would preserve the opportunity of the General Assembly to devise a remedy at a regular session should one become necessary. Expedited consideration is also necessary to ensure that appellate review of the merits of the district court's August 5 opinion and order is complete before the 2024 election cycle.

In addition, there is no dispute as to this Court's jurisdiction. The record is electronic and complete, with no additional transcripts to order. This appeal is thus well-suited to expedited consideration.

Conclusion

For these reasons, the Court should expedite this appeal in the manner requested above.

Respectfully submitted this 15th day of August, 2022.

/s/ Bryan L. Sells

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Certificate of Compliance

This response complies with the type-volume limitation of Rule 27(d)(2)(A) of the Federal Rules of Appellate Procedure because it contains 717 words. This motion also complies with the typeface and type-style requirements of Rule 32(a)(5) and (6) because it has been prepared in the 14-point Century Schoolbook typeface in roman style.

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