

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

**Fer-Rell Malone, Sr., et al.,**

Plaintiffs,

vs.

**Brad Raffensperger**, in his  
official capacity as Secretary of  
State of the State of Georgia,

Defendant.

Case No. 1:20-CV-02513-LMM

**Joint Motion for Entry of a  
Consent Judgment**

This is an action challenging the constitutionality of Georgia's requirement that circulators of a recall petition be registered voters eligible to vote in the recall election. The plaintiffs are proponents of a petition to recall the District Attorney for the Waycross Judicial Circuit, George E. Barnhill, who was involved in the investigation of the fatal shooting of Ahmaud Arbery. The plaintiffs allege that the voter-registration requirement, which requires circulators of their recall petition to be registered voters in the Waycross Judicial Circuit,

unconstitutionally burdens their rights under the First and Fourteenth Amendments to the U.S. Constitution, and they seek declaratory and injunctive relief prohibiting the Secretary of State from enforcing that requirement.

The parties, through counsel, have conferred and have agreed that it is in the best interest of all parties that this lawsuit be resolved without further litigation. Moreover, the parties agree that the voter-registration requirement is likely unconstitutional under the Supreme Court's decision in *Buckley v. American Constitutional Law Foundation*, 525 U.S. 182 (1999), and subsequent cases. Accordingly, the parties respectfully move the Court to enter the attached Consent Judgment as an appropriate resolution of this civil action.

In support of their motion, the parties stipulate as follows:

1. This Court has original jurisdiction over this case under Article III of the U.S. Constitution and 28 U.S.C. §§ 1331 and 1343(a)(3). The parties agree to waive obligations under the Federal Rules of Civil Procedure and the Local Rules to serve an answer and initial disclosures unless the Court determines otherwise.

2. Defendant Brad Raffensperger is the Secretary of State of the State of Georgia (hereinafter, the “Secretary”). He is charged by statute with enforcing the voter-registration requirement for the petition to recall Barnhill. When enforcing the voter-registration requirement, the Secretary exercises his authority under color of state law within the meaning of 42 U.S.C. § 1983. He is sued in his official capacity only.

3. The Recall Act of 1989 provides that “no person other than an elector of the electoral district of the officer sought to be recalled shall circulate a recall application or petition.” O.C.G.A. § 21-4-10. All signatures obtained by any person who is not qualified to circulate a recall petition “shall be void and shall not be counted in determining the legal sufficiency of the petition.” *Id.*

4. The petition form includes an affidavit that must be signed by the circulator attesting that he or she is “an elector registered to vote in the recall election herein petitioned for.” O.C.G.A. § 21-4-8(e). The circulator must also provide his or her residential address.

5. The Recall Act defines “elector” as “any person who possesses all of the qualifications for voting ... and who has registered in accordance with Chapter 2 of this title.” O.C.G.A. § 21-4-3(4).

6. As a result of these provisions, no person who is not a registered voter in the Waycross Judicial Circuit may lawfully circulate the Barnhill petition. Any signatures obtained by such a person will not be counted by the Secretary of State in the absence of an injunction.

7. In 1999—ten years after the General Assembly adopted the voter-registration requirement at issue here—the Supreme Court addressed a nearly identical voter-registration requirement for initiative petition circulators in *Buckley*, and it concluded that the requirement imposed an unconstitutional burden on the plaintiffs' rights under the First Amendment. 525 U.S. at 192-97.

8. The parties agree that there is a strong likelihood that the plaintiffs would prevail were this action to proceed to trial because there is a basis in both fact and law for contending that, under *Buckley* and subsequent cases, the Recall Act's voter-registration requirement for petition circulators is unconstitutional. The usual and appropriate remedy under the circumstances present here would be to enjoin enforcement of that requirement. *See, e.g., id.* at 191.

Accordingly, the parties ask the Court to enter the attached consent judgment enjoining the enforcement of the voter-registration requirement.

Respectfully submitted this 19th day of June, 2020.

**/s/ Bryan L. Sells**

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**CERTIFICATE OF COMPLIANCE**

I hereby certify that the forgoing JOINT MOTION FOR ENTRY OF A CONSENT JUDGMENT was prepared in 13-point Century Schoolbook in compliance with Local Rules 5.1(C) and 7.1(D).

**/s/ Bryan L. Sells**

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**CERTIFICATE OF SERVICE**

I hereby certify that on June 19, 2020, I electronically filed the foregoing JOINT MOTION FOR ENTRY OF A CONSENT JUDGMENT with the Clerk of Court using the CM/ECF system which will automatically send email notification of such filing to the following attorneys of record:

[none]

**/s/ Bryan L. Sells**

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