

UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

Ryan Graham, et al.,

Appellants,

vs.

**Georgia Attorney General,
et al.,**

Appellees.

Appeal No. 22-13396

**Appellants' Motion for
Summary Reversal**

**EXPEDITED
CONSIDERATION
REQUESTED**

**Graham v. Georgia Attorney General
22-13396**

**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:

Burge, David

Carr, Christopher M.

Cohen, Mark H.

Graham, Ryan

Hicks, Darryl

Kreyenbuhl, James D.

Georgia Government Transparency and Campaign Finance

Commission

Libertarian Party of Georgia, Inc.

**Graham v. Georgia Attorney General
22-13396**

Thompson, Rick

Vaughan, Elizabeth

Watts, Robert A.

Young, Elizabeth

No corporation owns more than 10 percent of the stock in the
Libertarian Party of Georgia, Inc.

/s/ Bryan L. Sells

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Appellants' Motion for Summary Reversal

This is a constitutional challenge to Georgia's campaign-finance laws. The plaintiffs are the Libertarian Party of Georgia and Ryan Graham, the Libertarian candidate for Lieutenant Governor. The defendants are the Georgia Attorney General, the Georgia Government Transparency and Campaign Finance Commission, and the Commission's chair. The Attorney General and the Commission are jointly responsible for enforcing Georgia's campaign-finance laws.

The district court denied the plaintiffs' motion for a preliminary injunction on the ground that they lack standing to sue the named defendants and must instead sue Graham's opponent—a private individual—and his campaign committee for violating the plaintiffs' First Amendment rights. Because that decision conflicts with binding precedent, and because the district court did not even address the plaintiffs' Equal Protection claim, this Court should summarily reverse.

The plaintiffs request expedited consideration of this motion because it relates to an on-going election cycle. While the end of the election cycle itself will not moot this case (because candidates can raise funds even after an election), relief would be more useful before the cycle ends.

Background

The Georgia Government Transparency and Campaign Finance Act, O.C.G.A. § 21-5-1 et seq., prohibits any statewide candidate or campaign committee from receiving aggregate contributions from any person—natural or corporate—exceeding \$7,600 for the primary, \$7,600 for the general, and \$4,500 for a runoff election. *See* O.C.G.A. § 21-5-41(a), (k).¹ Violations of the Act

¹ Although the statutory contribution limits are \$5,000 for a primary or general election and \$3,000 for a runoff, *see* O.C.G.A. § 21-5-41(a), the statute contains an escalator provision based on the Consumer Price Index, *see* O.C.G.A. § 21-5-41(k). The current contribution limits are \$7,600 for a primary or general election and \$4,500 for a primary or general runoff election. *See* Georgia Government Transparency and Campaign Finance Commission,

are subject to civil penalties and injunctive relief enforceable by the Georgia Attorney General and the Georgia Government Transparency and Campaign Finance Commission. O.C.G.A. 21-5-6(b)(14).

In 2021, the Georgia General Assembly amended the Act to allow for the creation of a “leadership committee” which “may accept contributions or make expenditures for the purpose of affecting the outcome of any election or advocating for the election or defeat of any candidate” O.C.G.A. § 21-5-34.2(d). A

“leadership committee” is defined as:

a committee, corporation, or organization chaired by the Governor, the Lieutenant Governor, the nominee of a political party for Governor selected in a primary election in the year in which he or she is nominated, or the nominee of a political party for Lieutenant Governor selected in a primary election in the year in which he or she is nominated. Such term shall also mean up to two political action committees designated by the majority caucus of the House of Representatives, the minority caucus of the House of Representatives,

Contribution Limits, <<http://ethics.ga.gov/contribution-limits/>> (last visited Aug. 30, 2022).

the majority caucus of the Senate, and the minority caucus of the Senate. No person may chair more than one leadership committee.

O.C.G.A. § 21-5-34.2(a). A leadership committee must register with the Georgia Government Transparency and Campaign Finance Commission within ten days of beginning to accept contributions and must disclose contributions or expenditures over \$500.00.

O.C.G.A. § 21-5-34.2(e).

Importantly, “[t]he contribution limits in Code Section 21-5-41 shall not apply to contributions to a leadership committee or expenditures made by a leadership committee in support of a candidate or a group of named candidates.” O.C.G.A. § 21-5-34.2(e). This means that a leadership committee may accept contributions in any amount and is not limited by the current monetary limitations on candidates and their campaign committees.

The only individual candidates for statewide office who can form leadership committees and can raise unlimited amounts of

contributions under the leadership committee statute are the Governor, the Lieutenant Governor, and the nominees of a “political party” for those two offices who are chosen in a primary election. O.C.G.A. § 21-5-34.2(a). Georgia law defines “political party” as any political organization which, at the preceding gubernatorial election, nominated a candidate for Governor who polled at least 20 percent of the total vote cast in the state for Governor; or which at the preceding presidential election nominated a candidate for President who polled at least 20 percent of the total vote cast in the nation for that office. O.C.G.A. § 21-2-2(25). And the only political parties in Georgia are the Democratic and Republican parties. (ECF 1 at 6.) The Libertarian Party, on the other hand, is a “political body,” which is defined as “any political organization other than a political party.” O.C.G.A. § 21-2-2(23). Political bodies nominate their candidates by convention. *See* O.C.G.A. § 21-2-172. As a result, the only candidates for statewide public office who are eligible to form a leadership committee are the

candidates for Governor and Lieutenant Governor nominated by the Democratic and Republican parties.

* * *

The plaintiffs brought this action alleging that the leadership-committee statute violates their rights under the First Amendment and the Fourteenth Amendment's Equal Protection Clause. (ECF 1 at 7.) They sued the Georgia Attorney General and the Georgia Government Transparency and Campaign Finance Commission. (*Id.* at 3.) They later added the Commission Chair as a defendant in his official capacity. (ECF 14.)

The plaintiffs sought a preliminary injunction prohibiting the defendants from enforcing the leadership-committee statute in a manner that violates their constitutional rights. (ECF 4.) After full briefing and a hearing, the district court denied the motion. (ECF 16.) The court held that the plaintiffs lack standing to bring their First Amendment claim against the named defendants because their constitutional injury is neither traceable to, nor redressable

by, those defendants. (*Id.* at 15-20.) Instead, the court held that the only proper defendant is Graham’s Republican opponent and his leadership committee. (*Id.* at 27.)

The plaintiffs appealed and now seek summary reversal.

Legal Standards

Summary disposition is appropriate, in part, where “the position of one of the parties is clearly right as a matter of law so that there can be no substantial question as to the outcome of the case, or where, as is more frequently the case, the appeal is frivolous.” *Groendyke Transp., Inc. v. Davis*, 406 F.2d 1158, 1162 (5th Cir. 1969).²

This Court reviews the denial of a preliminary injunction for an abuse of discretion. *Indep. Party of Fla. v. Fla. Sec’y of State*, 967

² 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).

F.3d 1277, 1280 (11th Cir. 2020). It reviews any underlying legal conclusions *de novo* and any factual findings for clear error. *Id.*

Discussion

Summary reversal is warranted here for two reasons. First, the district court's holding on the plaintiffs' First Amendment claim conflicts with binding precedent. Second, the district court ignored the plaintiffs' Equal Protection claim. Full briefing and argument are unnecessary for this Court to address those two issues.

I. The plaintiffs have standing to bring their First Amendment claim.

Under Georgia law, the named defendants are responsible for enforcing Georgia's campaign finance laws. *See O.C.G.A. 21-5-6(b)(14)*. Graham would thus be at risk of prosecution by the named defendants under Georgia's campaign finance laws if he were to accept a contribution that exceeds the limits that apply to him—but that do not exceed the limits that apply to his opponent. (*Id.*)

In the First Amendment context, a threat of prosecution for engaging in arguably protected activity is a sufficient injury to

confer standing. See *Wollschlaeger v. Governor of Fla.*, 848 F.3d 1293, 1304 (11th Cir. 2017). “[P]laintiffs do not have to expose themselves to enforcement in order to challenge a law.... Rather, an actual injury can exist when the plaintiff is chilled from exercising her right to free expression or forgoes expression in order to avoid enforcement consequences.” *Wilson v. State Bar of Ga.*, 132 F.3d 1422, 1428 (11th Cir. 1998) (citations omitted). That injury, moreover, is directly traceable to the officials who are responsible for enforcing the statute. See *Jacobson v. Fla. Sec’y of State*, 974 F.3d 1236, 1253 (2020). And an injunction ordering the named defendants “not to follow the [] statute’s instructions” prohibiting Graham from creating a leadership committee would redress that injury. *Id.* at 1254.

The district court’s holding that the plaintiffs’ injuries are traceable only to Graham’s opponent and redressable only by an injunction against Graham’s opponent has no basis in law or fact. Graham’s opponent does not enforce Georgia’s campaign-finance

laws, and an injunction prohibiting Graham's opponent from engaging in First Amendment activity (accepting unlimited political contributions) would not un-chill Graham from accepting contributions that exceed the limits that apply to him. The court cited no cases holding that a candidate is the only proper defendant in a constitutional challenge to campaign-finance laws, and it seems unlikely, at best, that this Court would uphold a First Amendment claim brought against a private individual and his campaign committee. *See, e.g., United Egg Producers v. Standard Brands, Inc.*, 44 F3d 940, 942 (11th Cir. 1995) ("Without governmental action there can be no First Amendment violation."). *But see One Georgia, Inc. v. Carr*, ___ F. Supp. 3d ___, 2022 WL 1284238, at *10 (N.D. Ga. Apr. 28, 2022) (holding that the sitting governor's campaign committee is a state actor), *appeal dismissed as moot*, No. 22-11495 (11th Cir. Aug. 2, 2022).

The plaintiffs here did not sue the wrong defendants, and the district court's holding that they did is patently wrong. Because

that was the sole basis for the district court's denial of the plaintiffs' motion for a preliminary injunction on the plaintiffs' First Amendment claim, this Court should summarily reverse.

II. The district court failed to address the plaintiffs' Equal Protection claim.

The district court limited its review to the plaintiffs' First Amendment claim. It did not mention the plaintiffs' Equal Protection claim or the primary case on which they relied, *Riddle v. Hickenlooper*, 742 F.3d 922, 927 (10th Cir. 2014) (holding that differential contribution limits for third-party candidates violate the Equal Protection Clause). That, too, was reversible error. *See Cowen v. Ga. Sec'y of State*, 960 F.3d 1339, 1346-47 (11th Cir. 2020) (reversing a district court because it "did not separately address the [plaintiffs'] Equal Protection challenge").

Conclusion

The Court should summarily reverse the order of the district court and remand the case for further proceedings.

Respectfully submitted,

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Dated: October 15, 2022

Certificate of Compliance

This motion complies with the type-volume limitation of Rule 27(d)(2)(A) of the Federal Rules of Appellate Procedure because it contains 1,732 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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