

No. 20-14480

In the United States Court of Appeals for the Eleventh Circuit

CORECO JA'QAN PEARSON, ET AL.,
Plaintiffs-Appellants,

v.

BRIAN KEMP, ET AL.,
Defendants-Appellees

On Certified Order from the United States District Court
for the Northern District of Georgia, Atlanta Division,
No. 1:20-cv-04809-TCB

**EMERGENCY MOTION FOR
EXPEDITED BRIEFING SCHEDULE AND REVIEW**

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Gloria Kay Goodwin, Plaintiff-Petitioner

James Kenneth Carroll, Plaintiff-Petitioner

Carolyn Hall Fisher, Plaintiff-Petitioner

Cathleen Alston Latham, Plaintiff-Petitioner

Jason M. Shepherd, Plaintiff-Petitioner

Brian Jay Van Gundy, Plaintiff-Petitioner

Brian Kemp, Defendant-Respondent

Brad Raffensperger, Defendant-Respondent

Rebecca N. Sullivan, Defendant-Respondent

David J. Worley, Defendant-Respondent

Matthew Mashburn, Defendant-Respondent

Anh Le, Defendant-Respondent

**EMERGENCY MOTION FOR
EXPEDITED REVIEW AND BRIEFING SCHEDULE**

Plaintiffs-Appellants Coreco Ja’Qan Pearson, et al., (collectively “Republican Electors”)¹ respectfully move for expedited consideration of this interlocutory appeal they have taken against Defendants-Appellees Brian Kemp, et al. (collectively “Georgia Officials”)² and ask that this Court issue a briefing schedule making Republican Electors’ brief due on December 2, 2020, and Georgia Officials’ brief due on December 4, 2020.

I. Background

¹ The Plaintiffs-Appellants in this lawsuit are Georgia Trump Electors Coreco Ja’Qan Pearson, Vikki Townsend Consiglio, Gloria Kay Godwin, James Kenneth Carroll, Carolyn Hall Fisher, and Cathleen Alston Latham; Georgia Republican Party Assistant Secretary Brian Jay Van Gundy; and Cobb County Republican Party Chairman Jason Shepherd. While Brian Jay Van Gundy and Jason Shepherd are not officially “electors,” to simplify matters this motion refers to all Plaintiffs-Appellants collectively as “Republican Electors.”

² The Defendants-Appellees in this lawsuit are Brian Kemp, Governor of Georgia; Brad Raffensperger, Secretary of State of Georgia; and David J. Worley, Rebecca N. Sullivan, Matthew Mashburn, and Anh Le, members the Georgia State Board of Elections. To simplify matters, this motion refers to them collectively as “Georgia Officials.”

The stakes in this lawsuit could not be higher. As Republican Electors note in their Complaint (D1)³ and accompanying evidentiary attachments (D1-1 through D1-29), massive election fraud has occurred throughout the Georgia in this past November in the context of voting machines using Dominion software. This has affected, among other things, the outcome of who will be the next President of the United States. Republican Electors have brought five counts against Georgia Officials: four federal claims under 42 U.S.C. §1983 (D1:66-86) and one Georgia state law claim under Ga. Code §21-2-522 (D1:86-98).

On November 27, 2020, Republican Electors filed an emergency motion for temporary injunctive relief, seeking an order to direct Georgia Officials to allow Republican Electors' experts to inspect the Dominion voting machines in ten counties. (Doc.6 at 26-30). The district court initially granted Republican Electors leave to conduct forensic examinations of all voting machines in Georgia, but shortly thereafter rescinded the order.⁴ The district court subsequently held a hearing on

³ All references to the record are to D[PACER-generated docket number]:[PACER-generated page number within said docket number].

⁴ Neither the initial order nor the order rescinding it are part of the record on PACER.

the motion via Zoom on the evening of November 29, 2020 and orally ordered a Temporary Restraining Order from altering or destroying voting machines in three counties. (Tr.1).⁵

The following day—on November 30, 2020—the district court issued a written order granting in part Republican Electors’ motion for a temporary injunctive relief. (D14). While not agreeing to de-certify the election results or issue a stay on delivering the certified results to the Electoral College, the district court’s order did enjoin Georgia Officials from erasing any data on the Dominion voting machines for three counties—Cobb, Gwinnett, and Cherokee. (D14:3). But the order did not grant Republican Electors leave to inspect the machines themselves, instead giving Georgia Officials until December 2, 2020, to file a brief setting forth in detail the factual basis they had for opposing Republican Electors’ desire to conduct a forensic inspection of the Dominion voting machines. That Order was stayed on December 1, 2020, subject to further order of the Court. (Doc. 37).

The day after issuing its order partially granting emergency injunctive relief to Republican Electors, the district court issued a

⁵ The transcript of that hearing is attached to this motion.

subsequent order (D22) certifying, under 28 USC §1292(b), that its earlier order “involves a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the litigation.” (D22:1-2).

Republican Electors filed a notice of interlocutory appeal as a matter of right in the district court on December 1, 2020. (D32). *See Schiavo ex rel. Schindler v. Schiavo*, 403 F.3d 1223, 1225 (11th Cir. 2005) (“Although we ordinarily do not have jurisdiction over appeals from orders granting or denying temporary restraining orders, in circumstances such as these, ‘when a grant or denial of a TRO might have a serious, perhaps irreparable, consequence, and can be effectively challenged only by immediate appeal, we may exercise appellate jurisdiction.” (Quoting *Ingram v. Ault*, 50 F.3d 898, 900 (11th Cir. 1995)). As an alternative ground for appellate jurisdiction, Republican Electors intend to file with the Court, no later than midnight on December 2, 2020, a petition for permission to appeal under 42 USC §1292(b). This petition will be filed simultaneously with their brief in this case. *Cf. US v. Fokker Services*, 818 F.3d 733 (D.C. Cir. 2016)

(dismissing interlocutory appeal for lack of appellate jurisdiction but granting relief due to Government also filing a petition for a writ of mandamus). Should the motion panel grant Republican Electors permission to appeal, Republican Electors will immediately file their brief on the merits in that case.

II. An expedited briefing schedule is appropriate here.

The electoral college is set to vote on December 14, 2020, and the safe harbor provision for contested election is December 8, 2020. U.S. Code at 3 U.S.C. §5-7. Given this timeframe, an expedited briefing schedule is critical. The district court has yet to allow Republican Electors to even conduct forensic inspections of any Dominion voting machines, despite expressing skepticism about why Georgia Officials seem determined to prevent them from seeing what they contain. Even if the district court subsequently allows Republican Electors to conduct forensic inspections, this will be limited to the three counties it specified in its order and will exclude the additional seven counties Republican Electors desire to inspect. Republican Electors have presented more than sufficient evidence demonstrating the unreliability of Dominion software to justify conducting such forensic inspections of machines

using such software. Without this Court's expedited consideration and resolution of this appeal, there is no feasible way to grant Republican Electors the relief they seek.

III. Conclusion

Accordingly, Republican Electors respectfully move for an expedited briefing schedule in this case, asking for an order directing that their brief on the merits be due no later than midnight on December 2, 2020, and that Georgia Officials' brief be due no later than midnight on December 4, 2020.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on **December 2, 2020**, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Eleventh Circuit by using the CM/ECF system.

A true and correct copy of the foregoing will be emailed to the following counsel:

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/s/ Sidney Powell _____

CERTIFICATE OF COMPLIANCE

I certify under Fed. R. App. P. 5(c)(1) that this petition contains ********* words, excluding those parts exempted under Fed. R. App. P. 32(f).

I further that certify this brief complies with type-volume limitations under Fed. R. App. P. 32(g) as it is written in proportionally-spaced, 14-point Century font using Microsoft Office Word.

/s/ Sidney Powell _____