

No. 26-10312

**United States Court of Appeals
for the Eleventh Circuit**

SAFE AFFORDABLE GEORGIA, INC,

Plaintiff-Appellant,

v.

CHAIRMAN OF THE STATE ETHICS COMMISSION, et al.,

Defendants-Appellees.

Appeal from the United States District Court
for the Northern District of Georgia,
Hon. Elenor L. Ross
(Dist. Ct. No. 1:25-cv-06985)

APPELLANT'S BRIEF ON LACK OF MOOTNESS

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INTRODUCTION

This appeal remains ripe for merits determination for two independent reasons. First, the recent election did not preclude the Court from awarding Safe Affordable Georgia the same meaningful relief it has always sought—the ability to coordinate with any Georgia candidate on equal terms with a Leadership Committee. Safe Affordable Georgia’s requested relief is not limited to coordinating with Brad Raffensperger, or even with a gubernatorial candidate, or to any particular election cycle. Safe Affordable Georgia remains entitled to an order that it can coordinate with any candidate, not just in this cycle, but in any election—several of which would likely occur before a final judgment in this case.

Second, this appeal is not moot because the case is capable of repetition while evading review.

The constitutionality of the scheme that allows only the sitting governor and lieutenant governor to have Leadership Committees prior to the end of the primary election has been litigated in multiple cases in both gubernatorial elections which have occurred since Georgia created Leadership Committees. *See, e.g., Perdue v. Kemp*, 584 F. Supp. 3d

1310, 1323 (N.D. Ga. 2022); *Jackson v. Jones*, No. 1:26-cv-00782, Doc 46 (N.D. Ga. Feb. 25, 2026). The issue will doubtlessly reoccur in future elections, as governors and lieutenant governors tend to continue running for office. The Georgia legislature has not corrected the free speech violations repeatedly identified by district courts, and there is no reason to assume it will ever do so. Yet fully litigating this issue to its conclusion inherently takes more time than any specific election campaign.

Safe Affordable Georgia is entitled to know when it fundraises whether it will be able to use those funds to coordinate with Raffensperger and other candidates in the future.¹

Mr. Raffensperger formed Safe Affordable Georgia in November 2025 and registered it as a hybrid PAC. Plaintiff filed this suit in early December seeking injunctive relief. In response, Defendants argued the case was premature and speculative because WBJ Leadership Committee, Inc., had yet to file a report evidencing spending to support

¹ Moreover, potential future primary candidates for governor and lieutenant governor, including Mr. Raffensperger, deserve to know what remedy, if any, this Court will afford to candidates shackled with fundraising limits who face opponents who control Leadership Committees.

Burt Jones's campaign. This evidences the ripeness issue that may arise in any case filed early in an election cycle.

The timelines of this case, the companion case, and prior similar cases show it is unlikely that future cases will proceed quickly enough for appellate review to be completed prior to the conclusion of a primary election. Because the loss of First Amendment freedoms for even minimal periods is irreparable, it is imperative this Court issue a merits decision in this matter.

ARGUMENT

I. This Appeal Is Not Moot Because a Preliminary Injunction Would Still Provide Safe Affordable Georgia the Meaningful Relief It Has Always Sought.

The emergency motion for preliminary injunction subject to this appeal requested that Defendants be prohibited from applying “O.C.G.A. § 21-5-30(a) to bar Safe Affordable Georgia from accepting contributions made to bring about the nomination or election of *a candidate for any office*; O.C.G.A. § 21-5-41 to bar Safe Affordable Georgia from coordinating its expenditures with *candidate committees*; and, Ga. Comp. R. & Regs, R. 189-6-04, implementing O.C.G.A. § 21-5-41’s contribution and coordination limits.” Emergency Motion, Doc 2 at 2 (emphasis added). *See also*, Complaint, Doc 1 at 14. The request was

not limited to fundraising and coordinating with Raffensperger, nor was it limited to any specific election cycle. Safe Affordable Georgia specifically requested to be able to fundraise to support a candidate “for any office,” and to coordinate with “candidate committees” in the plural.

While Raffensperger’s candidacy for governor was a basis for Plaintiff seeking parity with leadership committees, coordinating with his campaign was never the sole remedy sought. Raffensperger’s continued status as a candidate is not a necessary condition for Safe Affordable Georgia to coordinate with other candidates, in the current election, and in future elections pending final judgment in the case.

If that injunction is granted, Safe Affordable Georgia would be able to coordinate with candidates for any office, for as long as it takes to obtain a final judgment. This appeal is not moot.

II. This Appeal is Capable of Repetition While Evading Review

Even if this appeal would be otherwise moot, the dispute is capable of repetition while evading review, saving it from mootness.

“Article III’s ‘case-or-controversy requirement subsists through all stages of federal judicial proceedings [I]t is not enough that a dispute was very much alive when suit was filed.’” *FEC v. Wis. Right to*

Life, Inc., 551 U.S. 449, 461 (2007). However, there is an “exception to mootness for disputes capable of repetition, yet evading review.” *Id.* at 462. “The exception applies where (1) the challenged action is in its duration too short to be fully litigated prior to cessation or expiration, and (2) there is a reasonable expectation that the same complaining party will be subject to the same action again.” *Id.*

Primary elections are of short duration. This issues in this case have proven to be unreviewable by this court for two election cycles in a row, which is the entire duration the asymmetric fundraising standards have been in place. Thus, the first prong is met.

The second prong is also met. The same complaining party prong is “relaxed” in election cases. *Hall v. Sec’y of State of Ala.*, 902 F.3d 1294, 1300 (11th Cir. 2018). “[C]ases construing the boundaries of the relaxation of the same complaining party rule in election cases do not always require affirmative proof that the same complaining party intends to continue similar participation in political activities and challenge again the restriction at issue; rather, the cases require only that there be a reasonable expectation under all the circumstances that

the same complaining party will continue such activities and again be subject to the challenged restriction.” *Id.*

While stating that it was not probing the outer limit of the relaxation of the standard, *id.* at 1305, *Hall* noted that the First, Third, Fifth, Sixth, Seventh, Eighth, and Ninth Circuits have all held that either the same party need not be subject to the provision in the future or that the court can conclude based on the circumstances of the case that there is a “reasonable expectation” that the same party will be subject to the challenged restriction again. *Id.* at 1304.

The Supreme Court has found election disputes capable of repetition and evading review without conducting any analysis of the complaining party prong. *See e.g., Am. Party of Tex. v. White*, 415 U.S. 767, 770 n.1 (1974) (noting without analysis in a footnote that “[a]lthough the November 1972 election has been completed and this Court may not grant retrospective relief that would affect the outcome, this case is not moot”); *Moore v. Ogilvie*, 394 U.S. 814, 816 (1969) (“while the 1968 election is over, the burden ... on the nomination of candidates for statewide offices remains and controls future elections The problem is therefore capable of repetition, yet evading review”).

Moore moved to the merits without discussing whether the candidate might run again. This case, like *Moore*, involves burdens placed on candidates for statewide office that will control future elections. The mootness inquiry should proceed as in *Moore*.

Under this Court’s interpretation of *Moore*’s silence, “it is not unreasonable to expect that politically active persons, like [Raffensperger], would [run] in another [primary] election” for governor. *Hall*, 902 F.3d, at 1300. At such time, Safe Affordable Georgia would again want to coordinate with Raffensperger and his campaign. Thus, there is “a reasonable expectation under the circumstances” that Safe Affordable Georgia “will again be subjected to the challenged restriction.” *Id.* at 1304.

This Court would break from at least the seven circuits referenced above and the Supreme Court’s treatment of like cases if it were to require at this juncture an affirmative statement that Raffensperger intends to run again. *See e.g., Lawrence v. Blackwell*, 430 F.3d 368, 371 (6th Cir. 2005) (finding standing where the plaintiff was “certainly capable of [running again], and under the circumstances it is reasonable to expect that he will do so”). The First Circuit assumed the candidate

would run again where she had “not renounced possible future candidacies.” *Vote Choice, Inc. v. DiStefano*, 4 F.3d 26, 37 n.12 (1st Cir. 1993). This Court characterized the Third Circuit as holding “it was reasonable to expect the plaintiff to wish to run for office again regardless of whether he explicitly stated his intent to do so.” *Hall*, 902 F.3d, at 1304 (*citing Merle v. United States*, 351 F.3d 92, 95 (3d Cir. 2003)); *see also Kucinich v. Tex. Democratic Party*, 563 F.3d 161, 165 (5th Cir. 2009) (holding a case not to be moot even where counsel “could not state whether his client ha[d] an intention to run for President in the future”); *Majors v. Abell*, 317 F.3d 719, 723 (7th Cir. 2003) (holding that “in an election case the court will not keep interrogating the plaintiff to assess the likely trajectory of his political career”); *McLain v. Meier*, 637 F.2d 1159, 1162 n.5 (8th Cir. 1980) (holding a challenge to state ballot access requirement was not moot without requiring proof that the plaintiff intended to seek ballot access again); *Schaefer v. Townsend*, 215 F.3d 1031, 1033 (9th Cir. 2000) (holding that a challenge to a residency requirement was not moot even though the candidate refused to disclose whether he intended to run again).

In addition to the seven circuits discussed in *Hall*, the Second and Fourth Circuits also apply the “reasonable expectation” standard. *Lerman v. Bd. of Elections*, 232 F.3d 135, 141 (2d Cir. 2000) (finding a “reasonable expectation that the same complaining parties would be subject to that same action in the future” without analyzing whether the pro se plaintiff would run again); *Lux v. Judd*, 651 F.3d 396, 401 (4th Cir. 2011) (“Election-related disputes qualify as ‘capable of repetition’ when there is a reasonable expectation that the challenged provisions will be applied against the plaintiffs again during future election cycles”).

Thus, all circuits that have examined the issue have either presumed the offending law would apply to the plaintiff again absent evidence to the contrary, or found it sufficient that some other person or entity would be subject to the restriction in the future. No circuit has required a plaintiff to affirmatively establish that a specific plaintiff or candidate will again engage in the prohibited conduct or speech in order to find there to be a reasonable expectation of future enforcement sufficient to conclude the case is not moot.

Under *Hall*, and precedent from nine sister circuits, this matter is capable of repetition while evading review and is not moot.

CONCLUSION

This appeal is not moot. The Court should resolve the appeal on the merits.

Dated: May 28, 2026

Respectfully submitted,

/s/ Charles Miller

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PAGE COUNT AND TYPEFACE CERTIFICATE

I hereby certify this document complies with the Court Order directing the filing of this brief because it is 10 pages long and prepared in 14 pt. Century Schoolbook font.

/s/ Charles Miller

Charles M. Miller