No. 22-11299

In the

# United States Court of Appeals

## for the Eleventh Circuit

MARJORIE TAYLOR GREENE,

*Plaintiff-Appellant*,

v.

SECRETARY OF STATE FOR THE STATE OF GEORGIA, ET AL.,

*Defendants-Appellees*.

On Appeal from the United States District Court for the Northern District of Georgia, Atlanta Division
No. 1:22-cv-01294-AT — Amy Totenberg, *Judge*

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## CERTIFICATE OF INTERESTED PERSONS AND CORPORATE DISCLOSURE STATEMENT

I hereby certify that the following persons and entities may have an interest in the outcome of this case:

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The undersigned counsel certifies that no publicly traded company or corporation has an interest in the outcome of this case or appeal.

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## STATEMENT REGARDING ORAL ARGUMENT

This Court granted in part Appellant's motion to expedite this appeal and has scheduled oral argument for August 11, 2022.

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## STATEMENT OF ISSUES

1. Whether this appeal of the district court's denial of Appellant's motion to enjoin a state administrative proceeding brought by a group of voters challenging Appellant's qualification as a candidate for U.S. Representative is moot when the Secretary of State has already issued a final decision that Appellant is a qualified candidate.

2. Whether the Court should abstain from considering the merits of Appellant's constitutional claims in deference to the parallel state proceeding.

3. Whether the district court abused its discretion in denying Appellant's motion for a preliminary injunction when Appellant faces no irreparable harm, is not likely to succeed on the merits of her constitutional claims, and fails to satisfy the remaining factors for injunctive relief.

## INTRODUCTION

Georgia has a well-established interest in regulating access to the ballot by candidates for federal and state office. *Cowen v. Sec'y of Ga.*, 22 F.4th 1227, 1234 (11th Cir. 2022). The state "has an interest, *if not a duty* to protect the integrity of its political processes" by ensuring that only candidates who meet the legal requirements for office are placed on the ballot. *Bullock v. Carter*, 405 U.S. 134, 145 (1972) (emphasis added). Accordingly, Georgia law requires that candidates be qualified in advance of an election and provides a process by which eligible voters or the Secretary of State may challenge the legal qualification of any candidate before any voter casts a ballot. O.C.G.A. § 21-2-5 (the "Challenge Statute"). After notice and the opportunity for a hearing, the Secretary of State is authorized to determine whether the candidate is qualified for office, and this decision is subject to judicial review in state court. *Id.*

Appellant Marjorie Taylor Greene filed this action against the Secretary and Administrative Law Judge Beaudrot (collectively, "State Appellees") seeking to bar a state administrative proceeding challenging her qualification as a candidate for U.S. Representative under the Challenge Statute. That challenge to her candidacy was initiated by a group of

interested voters who argued that Greene was disqualified from holding federal office because she had engaged in insurrection against the United States as prohibited by Section 3 of the Fourteenth Amendment. The State Appellees were not parties to that proceeding, but served as the adjudicators of the challengers' action. After the district court denied Greene's motion to enjoin the challenge proceeding, the hearing before Judge Beaudrot moved forward, Judge Beaudrot determined that the challengers had not proven by a preponderance of the evidence that Greene engaged in insurrection in violation of her oath of office, and the Secretary issued a final decision that Greene was a qualified candidate. Thus, Greene was not struck from the primary ballot and handily won her primary election with nearly 70% of the vote.

Greene's appeal asks this Court to reverse the decision of the district court denying her motion to enjoin the challenge proceeding. However, because that proceeding has already taken place and Greene has not been disqualified, this appeal is moot. Even if Greene could show some sort of injury caused by the challenge proceeding—and she cannot—there is simply no injunction a court could enter at this point that would redress her alleged injury. Because this appeal is moot, the Court is without jurisdiction to consider the merits of Greene's constitutional

challenge to the Challenge Statute, and any decision on the merits would be an improper advisory opinion.

But even if the Court did have jurisdiction over this appeal, it should abstain from considering the merits of Greene's constitutional claims due to the parallel state proceeding. Federal courts may properly abstain where, as here, there is a duplicative state proceeding involving the same issues and parties, and in which Greene has raised the same constitutional claims. Principles of federalism and preservation of judicial resources caution the Court to abstain in deference to the state proceeding.

While the jurisdictional issues are fatal to Greene's appeal, the district court properly denied Greene's motion for a preliminary injunction, and that decision should be affirmed. Greene faces no irreparable harm now that she has not been disqualified by the Secretary and won her primary. Additionally, she is not likely to succeed on the merits of her constitutional claims. The Challenge Statute does not violate the First and Fourteenth Amendment because, under the *Anderson-Burdick* framework, it is a reasonable, nondiscriminatory restriction that is justified by the state's important interest in limiting ballot access to candidates who meet the legal requirements for office. The Challenge Statute also does not usurp Congress's authority

under Article I, Section 5 of the Constitution to judge the qualification of its *members* because this authority co-exists with the constitutional authority of states to regulate *candidate* access to the ballot under Article I, Section 4. Finally, the Amnesty Act of 1872 did not provide prospective amnesty to all future insurrectionists such that it would prevent the Secretary from disqualifying Greene as a candidate for Congress, even if the challengers had proven that Greene had engaged in insurrection under Section 3 of the Fourteenth Amendment.

Accordingly, the Court should dismiss this appeal as moot or abstain from considering the merits. But even if the Court determines that it has jurisdiction over this appeal, it should affirm the district court's order denying Greene's motion for a preliminary injunction.

## STATEMENT OF THE CASE

### A. Statutory Framework

Georgia law requires that "every candidate for federal and state office…shall meet the constitutional and statutory requirements for holding the office being sought." O.C.G.A. § 21-2-5(a). When filing a notice of candidacy, candidates must sign a sworn affidavit attesting that they are eligible for office. O.C.G.A.

§ 21-2-153(e). Georgia law also permits any eligible voter to file a pre-election challenge to the qualification of a candidate for state or federal office by filing a complaint with the Secretary, giving the reasons why the voter believes the candidate is not qualified to seek and hold office. O.C.G.A. § 21-2-5(b).[1] The Secretary is then required to notify the candidate in writing that his or her qualification has been challenged, provide the reasons for the challenge, and advise the candidate that the challenge is being referred for a hearing by an administrative law judge of the Office of State Administrative Hearings ("OSAH"). *Id.* The ALJ is required to hold a hearing and report his or her findings of fact and conclusions of law to the Secretary. O.C.G.A. § 21-2-5(b). The Secretary then "shall determine if the candidate is qualified" to hold the public office sought in a final decision. O.C.G.A. § 21-2-5(c).

If the Secretary determines that the candidate is not qualified, he will withhold the name of the candidate from the ballot or strike such candidate's name from the ballot if the ballots

[1] The Challenge Statute also authorizes the Secretary upon his own motion to challenge the qualification of a candidate at any time before the election. O.C.G.A. § 21-2-5(b).

have been printed, and all votes cast for the candidate will not be counted. O.C.G.A. § 21-2-5(c).

The Secretary's final decision is subject to judicial review, and either the voter filing the challenge or the candidate have the right to appeal by filing a petition for judicial review in the Superior Court of Fulton County. O.C.G.A. § 21-2-5(e). The reviewing court may reverse or modify the decision if substantial rights of the appellant have been prejudiced because, *inter alia*, the decision of the Secretary of State is based upon an error of law or in excess of the Secretary's statutory authority. *Id*. Review of the Superior Court's final judgment in a candidacy challenge lies with the Supreme Court of Georgia. *Burke v. Liberty Cnt'y Bd. of Elections*, 291 Ga. 802, 803 (2012). And of course, the Supreme Court of the United States retains certiorari review over any federal questions that arise in the course of the proceedings. 28 U.S.C. § 1257(a); *see also Sears v. Upton*, 561 U.S. 945, 946 n.1 (2010).

### B. Relevant Background and Proceedings Below

Greene qualified as a candidate for U.S. Representative for Georgia's 14th Congressional District in the primary election held

on May 24, 2022. (App'x Vol. I at 31.)[2] Prior to the primary, a group of interested voters (the "Challengers") initiated a challenge under the Challenge Statute to Greene's qualification as a candidate for U.S. Representative, alleging that Greene was disqualified from holding federal office because she "engaged in insurrection" against the United States as prohibited by Section 3 of the Fourteenth Amendment.[3] (App'x Vol. I, at 57.) The Secretary was not a party to this challenge, but his office referred the challenge to OSAH for a hearing in compliance with the Challenge Statute. A hearing before OSAH was held on April 22, 2022, before Judge Beaudrot. (App'x Vol. II, at 78.)

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[2] Citations to the Appendix and the State Appellees' Supplemental Appendix are to this Court's electronically generated page numbers at the top of the page.

[3] Section 3 of the Fourteenth Amendment provides that:

> No person shall be a Senator or Representative in Congress, or elector of President and Vice-President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

Before the OSAH hearing, however, Greene filed this lawsuit, alleging that the Challenge Statute was unconstitutional both facially and as applied to her. Her complaint included four counts: *First*, that the Challenge Statute's provision "triggering a government investigation based solely upon a Challenger's 'belief' that [Greene] is unqualified violates [her] First Amendment right to run for political office" (Count I). (Appellant's Brief at 4; *see also* App'x Vol. I, at 44-51.) *Second*, that the Challenge Statute violates the Due Process Clause of the Fourteenth Amendment because it shifts the burden of proof to the candidate (Count II). (*Id.*) *Third*, that the Challenge Statute "usurps" Congress's authority under Article I, Section 5 to determine the qualifications of its members (Count III). (*Id.*) *Fourth*, that the Challenge Statute, as applied to Greene, violates the 1872 Amnesty Act because that act retrospectively and prospectively removed all disabilities of individuals who had previously or would in the future engage in insurrection (Count IV). (*Id.*) Based on these claims, Greene moved for an emergency injunction seeking to enjoin the Secretary and Judge Beaudrot from "proceeding to adjudicate the…challenge to her candidacy for Congress under the Challenge Statute." (Appellant's Brief at 4.)

The State Appellees opposed Greene's motions, contending that the district court should abstain from exercising jurisdiction under the *Younger* abstention doctrine or, alternatively, that Greene could not satisfy the requirements for a preliminary injunction because her claims were not likely to succeed on the merits, she would not suffer irreparable harm, and the balance of equities and public interest weighed against enjoining the challenge proceeding. (App'x Vol. II, at 47-76.)

Following a hearing, the district court denied Greene's motion for an emergency injunction because Greene had failed to establish a likelihood of success on the merits. (App'x Vol. III, at 176-209.) Specifically, the district court concluded that the Challenge Statue did not violate the First and Fourteenth Amendments under the *Anderson-Burdick* framework (Counts I and II). (App'x Vol. III, at 179-202.) The district court also concluded that Greene failed to establish a likelihood of success on the merits of her claim that the Challenge Statute usurped Congress's authority to judge the qualifications of its members under Article I, Section 5 (Count III). (*Id.* at 202-09.) With respect to Greene's as-applied challenge (Count IV), the district court questioned whether the 1872 Amnesty Act created a private right of action upon which Greene could sue (*id.* at 161-62), but

concluded that Greene nevertheless had not carried her burden to show she was likely to succeed on the merits of that claim as well (*id.* at 202).

Following the district court's denial of Greene's motion for a preliminary injunction and her appeal of that order, the challenge proceeding went forward. (Supp. App'x at 83.) Judge Beaudrot held an evidentiary hearing, during which the parties presented evidence and Greene testified under direct and cross examination. (*Id.*) Greene had the opportunity to raise and brief the same constitutional arguments raised in this action in order to preserve those for appeal. (*Id.* at 99-100.) And while the burden of proof in a challenge proceeding is typically on the candidate to prove their qualifications, OSAH rules permit the burden to be shifted to the challenger. (*Id.* at 93.) Prior to the hearing, Judge Beaudrot issued an order shifting the burden of proof from Greene to the Challengers, requiring them to bear the burden of proving that Greene engaged in insurrection in violation of Section 3 of the Fourteenth Amendment. (*Id.*)

Following the hearing, Judge Beaudrot issued an initial decision determining Greene to be qualified because the Challengers failed to show by a preponderance of the evidence that Greene violated Section 3 of the Fourteenth Amendment by

engaging in insurrection after having previously taken an oath as a member of Congress. (*Id.* at 93-100.) Judge Beaudrot declined to determine whether the Challenge Statute was unconstitutional or to opine on the applicability of the Amnesty Act of 1872 because he concluded that Greene did not engage in insurrection. (*Id.* at 99-100.) Nonetheless, Judge Beaudrot acknowledged that Greene had preserved her constitutional arguments for judicial review. (*Id.*) The Secretary adopted Judge Beaudrot's findings of fact and conclusions of law as his final decision. (Supp. App'x at 102-103.) The Challengers filed a Petition for Judicial Review with the Superior Court of Fulton County appealing the Secretary of State's Final Decision. (Supp. App'x at 105-123.) Greene moved to intervene in that appeal in order to raise the same constitutional arguments she raises here. (Supp. App'x at 128-139.)

### C. Standard of Review

This Court reviews a district court's denial of a motion for preliminary injunction "only for abuse of discretion." *Long v. Sec'y, Dep't of Corr.*, 924 F.3d 1171, 1175 (11th Cir. 2013).

## SUMMARY OF ARGUMENT

Greene's appeal is moot because the proceeding that Greene asked the district court to enjoin has already taken place, and the

Secretary has issued a final decision determining that Greene is a qualified candidate. Because of these developments, Greene cannot show that she sustained any injury as a result of the challenge proceeding, and even if she could, there is simply no injunction a court could enter at this point that would redress her alleged injury. Because this appeal is moot, the Court is without jurisdiction to consider the merits of Greene's constitutional challenge to the Challenge Statute.

But even if this appeal were not moot, the Court should abstain from considering the merits of Greene's constitutional claims in deference to the parallel state proceeding. Abstention is proper under both the *Younger* and *Colorado River* doctrines because this action involves a duplicative state proceeding involving the same issues and parties. Greene has raised the same constitutional arguments in the state proceeding as she raises here, and the resolution of that action likely will moot the underlying federal action. As such, principles of federalism and comity, and the preservation of judicial resources, caution the Court to abstain from issuing an opinion on the merits.

Finally, if the Court reaches the merits, it should affirm the district court's order denying Greene's motion for a preliminary injunction because Greene faces no irreparable harm now that she

has not been disqualified by the Secretary and has won her primary. The lack of irreparable harm is reason alone to deny injunctive relief.

Additionally, Greene is not likely to succeed on the merits of her constitutional claims. *First*, the Challenge Statute does not violate the First and Fourteenth Amendment because, under the *Anderson-Burdick* framework, the Challenge Statute imposes a minimal burden on candidates. Greene's argument that the law imposes a severe burden on candidates because it triggers a government investigation without probable cause is simply wrong and is based on inapplicable case law involving defendants who faced *criminal* prosecution for exercising free speech rights in violation of the First Amendment. Here, the challenge proceeding that Greene faced was not a government investigation in which she faced criminal prosecution or a possible deprivation of liberty, but was a civil administrative proceeding no more burdensome than this lawsuit. The minimal burdens faced by Greene are more than outweighed by the state's well-established and important interest in limiting ballot access to only those candidates who meet the legal requirements for office.

*Second*, the Challenge Statute also does not usurp Congress's authority under Article I, Section 5 of the Constitution to judge

the qualification of its members. Congress's authority co-exists with and is complimentary to the constitutional authority of states to regulate candidate access to the ballot under Article I, Section 4.

*Third*, the district court correctly rejected Greene's claim that any challenge to her candidacy based on Section 3 of the Fourteenth Amendment is barred because, even assuming she could be disqualified for having engaged in insurrection, any disability she may have incurred was removed by the Amnesty Act of 1872. While it is unclear that Greene can even assert a private right of action under the act, it still does not provide prospective amnesty to all future insurrectionists such that it would prevent the Secretary from disqualifying Greene as a candidate for Congress.

For these reasons, and because the balance of the equities and the public interest weight against injunctive relief, the district court's order should be affirmed, even assuming the case should not be dismissed as moot and the Court declines to abstain.

## ARGUMENT

### I. The Court lacks jurisdiction over Greene's appeal because it is moot.

Article III of the Constitution limits the jurisdiction of federal courts to "cases" and "controversies." *Christian Coalition of Fla., Inc. v. U.S.*, 662 F.3d 1182, 1189 (11th Cir. 2011). There are "three strands of justiciability doctrine—standing, ripeness, and mootness—that go to the heart of the Article III case or controversy requirement." *Id.* Courts do not determine questions of justiciability simply by looking to the state of affairs at the time the suit was filed. *Id.* at 1189-90. Rather, the controversy "must be extant at all stages of review, not merely at the time the complaint is filed." *Id.* at 1190 (citing *Preiser v. Newkirk*, 422 U.S. 395, 401 (1975)).

In order for Greene to show that the Court has jurisdiction over her appeal, she must demonstrate that her alleged injuries "will be redressed by a favorable decision." *Fla. Wildlife Fed'n, Inc. v. S. Fla. Water Mgmt. Dist.*, 647 F.3d 1296, 1303 (11th Cir. 2011) (citation omitted). However, if, "due to events that have happened since the filing of the complaint, the court can no longer redress the injuries claimed," the case is moot and should be dismissed. *Id.*

Mootness concerns the "availability of relief, not the existence of a lawsuit or an injury." *Wood v. Raffensperger*, 981 F.3d 1307, 1317 (11th Cir. 2020). Accordingly, when an issue "no longer presents a live controversy with respect to which the court can give meaningful relief," it is moot. *Friends of the Everglades v. S. Fla. Water Mgmt. Dist.*, 570 F.3d 1210, 1216 (11th Cir. 2009) (citation omitted); *see also Brooks v. Ga. State Bd. of Elections*, 59 F.3d 1114, 1118 (11th Cir. 1995) (explaining that an issue is moot when it is "impossible for the court to grant any effectual relief").

Greene's appeal is moot because there is no remedy this Court can order that would redress her asserted injuries. In her brief, Greene points to a number of hypothetical injuries she could face *if* the Secretary were to disqualify her as a candidate, including the potential of having her name struck from the primary election ballot, having votes not count for her, or her supporters losing the right to vote for her in the primary election. (Appellant's Brief, at 36-38.) However, we know now that none of these things have happened. Greene was *not* disqualified. Rather, the Secretary issued a final decision determining her to be qualified candidate for U.S. Representative. (Supp. App'x at 102-103.) Greene's name was *not* struck from the primary ballot, and her supporters were *not* denied the opportunity to vote for her and have those votes

counted. In fact, Greene won her primary with nearly 70% of the vote.[4]

Because of this, Greene cannot show that she faces any injury that could be redressed by an injunction at this point. Greene's original motion for emergency injunctive relief asked the district court to enjoin the Secretary and Judge Beaudrot from enforcing the Challenge Statute. (App'x Vol. I, at 121, 191.) But the Secretary and Judge Beaudrot have already fulfilled their duties under the Challenge Statute: the Secretary referred the qualification challenge to OSAH, Judge Beaudrot held a hearing regarding Greene's qualifications and issued an initial decision that Greene is a qualified candidate for U.S. Representative, and the Secretary adopted that determination as his final decision. It is also simply too late to enjoin the Secretary from disqualifying Greene, because he has already deemed her qualified. That "bell cannot be un-rung," and any injury Greene argues she will sustain by having to participate in a proceeding that has already taken place can no longer be redressed by this Court. *Fla. Wildlife Fed'n, Inc.*, 647 F.3d at 1304; *Wood*, 981 F.3d at 1318.

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[4] *See* official primary election results certified by the Secretary at https://results.enr.clarityelections.com/GA/113667/web.285569/#/detail/31410 (last visited June 8, 2022).

Absent a justiciable case or controversy between the parties, this Court is without jurisdiction to reach the merits of Greene's claims. Because this Court's power is limited to enjoining executive officials from enforcing a statute, it cannot simply declare the Challenge Statute unconstitutional. *Jacobson v. Fla. Sec'y of State*, 974 F.3d 1236, 1255 (11th Cir. 2020). Indeed, a federal court "has no authority to give opinions upon moot questions or abstract propositions, or to declare principles or rules of law which cannot affect the matter in issue in the case before it." *Christian Coalition*, 662 F.3d at 1189 (citing *Church of Scientology of Cal. v. U.S.*, 506 U.S. 9, 12 (1992)); *see also Wood*, 981 F.3d at 1313 (holding that federal courts "lack the power to declare the law.").

Accordingly, for the Court to "declare the law" on the merits of Greene's various constitutional arguments at this point in time would be merely advisory and beyond this Court's Article III jurisdiction. *Wood*, 981 F.3d at 1313; *see also Friends of the Everglades*, 570 F.3d at 1216 ("To decide a moot issue is to issue an advisory opinion, one unnecessary to the judicial business at hand and outside the authority of Article III courts.").

Although it remains possible that the Secretary's final decision that Greene is a qualified candidate could be reversed on

appeal in state court, that possibility does not save this appeal from being moot. Greene's appeal is limited to the district court's denial of her motion for preliminary injunction, and there is no injunction that can be entered against the Secretary or Judge Beaudrot that would provide effectual relief now that they have ruled in her favor.

On top of all that, even assuming the state court were to examine the constitutional arguments regarding the Challenge Statute, Greene can assert her position in state court and ultimately upon certiorari review by the U.S. Supreme Court. Therefore, her constitutional arguments are preserved and can be heard, if necessary, by other courts having jurisdiction. But this appeal should be dismissed as moot.

## II. The Court should otherwise abstain from ruling on the merits of Greene's constitutional claims in deference to the pending parallel state proceeding.

Federal courts may properly abstain from hearing cases that are duplicative of a pending state proceeding. *Quackenbush v. Allstate Ins. Co.*, 517 U.S. 706, 716-17 (1996). Here, consideration of principles of federalism and comity counsel against addressing Greene's constitutional claims on the merits when they are also the subject of the pending state challenge proceeding.

As State Appellees argued below, abstention under *Younger v. Harris*, 401 U.S. 37 (1971) is appropriate here because the state proceeding is a "civil proceeding involving certain orders that are uniquely in furtherance of the state court's ability to perform their judicial functions." *Sprint Commc'ns, Inc. v. Jacobs*, 571 U.S. 69, 72 (2013). This is especially true now that the Secretary's final decision is the subject of judicial review in the state court. This case also meets the remaining factors in the *Younger* analysis because it (1) constitutes an ongoing state judicial proceeding that (2) implicates important state interests and (3) provides an adequate opportunity to raise federal challenges. *Middlesex Cnty. Ethics Comm. v. Garden State Bar Ass'n*, 457 U.S. 423, 432 (1982).

Despite State Appellee's showing, the district court declined to abstain under *Younger* when it denied Greene's motion for preliminary injunction, finding that the pending state proceeding did not fall within one of three "exceptional circumstances" warranting *Younger* abstention as set forth in *Sprint*. (App'x Vol. III at 162-76.)

But even if this Court agrees that *Younger* is not squarely on point, abstention is appropriate under *Colorado River Water*

*Conservation District v. United States,* 424 U.S. 800 (1976).[5] As this Court recently explained, the *Colorado River* abstention doctrine applies "when concurrent state and federal litigation exists, and the federal litigation does not qualify for abstention under any of the three traditional abstention doctrines." *Gold-Fogel v. Fogel*, 16 F.4th 790, 799 (11th Cir. 2021). Should none of the other abstention doctrines apply, then "wise judicial administration, giving regard to conservation of judicial resources and comprehensive disposition of litigation, may allow a federal court not to perform its otherwise virtually unflagging obligation to exercise the jurisdiction given it." *Id.* at 799-800 (quotation marks omitted).

This Court considers several factors when deciding whether to stay an action under *Colorado River* when parallel state and federal litigation exists:

> (1) whether one of the courts has assumed jurisdiction over property, (2) the inconvenience of the federal forum, (3) the potential for piecemeal litigation, (4) the order in which the fora obtained jurisdiction, (5) whether state or federal law will be applied, (6) the adequacy of the state court to protect the parties' rights, (7) the vexatious or reactive nature of either the federal or the state

[5] The district court issued an order staying the underlying proceedings until August 15, 2022, following a motion for stay filed by Greene and the State Appellees. (ECF Doc. 69.)

> litigation, and (8) whether the concurrent cases involve a federal statute that evinces a policy favoring abstention.

*Id.* at 800 (quotation marks omitted).

Abstention under *Colorado River* is appropriate here. This federal action is parallel to the challenge proceeding that is now in state court on judicial review. The state challenge proceeding was initiated before Greene's federal lawsuit and involves the exact same parties. Greene has defended herself in the state challenge proceeding by asserting the same constitutional arguments that she raises here, and seeks to further those arguments on judicial review. Thus, the federal action involves the same parties and substantially the same issues as the ongoing state proceeding as required by *Colorado River*. *See Ambrosia Coal & Constr. Co. v. Morales*, 368 F.3d 1320, 1330 (11th Cir. 2004).

The remaining factors under *Gold-Fogel* also weigh heavily in favor of the Court's abstention. The state court proceeding began first and is progressing much faster than the federal proceeding. Specifically, in the state proceedings, there has already been an administrative hearing on Greene's qualification, the Secretary has already issued a final decision, and that decision is now before the state court on judicial review. Additionally, the state court is just as competent to hear Greene's constitutional arguments on judicial review. *See Tafflin v. Levitt*, 493 U.S. 455, 458 (1990)

("state courts have inherent authority, and are thus presumptively competent, to adjudicate claims arising under the laws of the United States."). Therefore, abstention here will not preclude Greene from having her constitutional defenses considered by a court of competent jurisdiction, if it is even necessary to reach them. And should Greene disagree with the state courts' determination of her constitutional questions, she can seek certiorari review by the U.S. Supreme Court. 28 U.S.C. § 1257(a).

## III. The district court did not abuse its discretion in denying Greene's motion for preliminary injunction.

Even if the Court determines that Greene's appeal is not moot and that it should not otherwise abstain from considering the merits, the Court should affirm the district court's order denying her motion for preliminary injunction because Greene failed to satisfy the requirements for injunctive relief.

"A preliminary injunction is an extraordinary remedy never awarded as of right." *Winter v. Natural Res. Def. Council*, 555 U.S. 7, 24 (2008). In order to prevail on her motion, Greene was required to show: (1) a substantial likelihood of prevailing on the merits; (2) that she will suffer irreparable injury unless the injunction issues; (3) that the threatened injury to the movant

outweighs whatever damages the proposed injunction may cause the opposing party; and (4) the injunction would not be adverse to the public interest. *Duke v. Cleland*, 954 F.2d 1526, 1529 (11th Cir. 1992).

An injunction is a "remedy potentially available only after a plaintiff can make a showing that some independent legal right is being infringed—if the plaintiff's rights have not been violated, [she] is not entitled to any relief, injunctive or otherwise." *Alabama v. U.S. Army Corps of Engineers*, 424 F.3d 1117, 1127 (11th Cir. 2005) (quoting *Klay v. United Healthgroup, Inc.* 376 F.3d 1092, 1098 (11th Cir. 2004)). Because an injunction is an extraordinary remedy, it is available not simply when the legal right asserted has been infringed, but only when that legal right has been infringed by an injury for which there is no adequate legal remedy and which will result in irreparable injury if the injunction does not issue. *U.S. Army Corps of Engineers*, 424 F.3 at 1127 (citations omitted). Here, the district court correctly denied Greene's motion for a preliminary injunction because she cannot show irreparable harm and is not likely to succeed on the merits of her claim.

### A. Greene cannot show irreparable harm.

A showing of irreparable injury is the "sine qua non of injunctive relief." *Siegel v. LePore*, 234 F.3d 1163, 1176 (11th Cir. 2000) (citations omitted). A lack of irreparable injury, standing alone, makes injunctive relief improper. *Id.*

Greene cannot show irreparable harm for the same reason her appeal is moot. The threatened injuries that Greene claimed she was likely to face absent injunctive relief never materialized—in fact, the opposite happened. She was not disqualified as a candidate by the Secretary, nor was she removed from the ballot, and she has been certified the winner of her primary election with nearly 70% of the vote. Thus, she faces "no serious harm, let alone irreparable harm" as a result of the challenge proceeding. *See Siegel*, 234 F.3d at 1177 (holding that the Republican candidates for President and Vice President in the 2000 presidential election faced no irreparable harm as the result of a manual recount of ballots because they already had been certified the winners of the election). Injunctive relief is improper for this reason alone. *Id.* at 1176.

### B. Greene is not likely to succeed on the merits of her constitutional claims.

Even if Greene could show irreparable harm, she is not likely to succeed on the merits of her constitutional challenge to the Challenge Statute. Greene argues that the Challenge Statute: (1) violates her right to be a candidate for federal office under the First Amendment (Count I); (2) violates Due Process under the Fourteenth Amendment (Count II); (3) violates Article I, Section 5 of the U.S. Constitution because it "usurps" the Congress's power to determine the qualification of its members (Count III); and (4) violates the Amnesty Act of 1872 as applied to her (Count IV). None of these claims are likely to succeed on the merits.

#### 1. The Challenge Statute does not violate the First or Fourteenth Amendment under the *Anderson-Burdick* framework.

It is well established that states have an important interest in regulating candidate access to the ballot. *See, e.g., Anderson v. Celebrezze*, 460 U.S. 780, 788 (1983); *Storer v. Brown*, 415 U.S. 724, 732 (1974); *Jenness v. Fortson*, 403 U.S. 431, 442 (1971). Contrary to Greene's assertion, candidacy is not a fundamental constitutional right, and there is certainly no protected right to run for federal office if the candidate does not meet the constitutional requirements. *See Bullock*, 405 U.S. at 142-43.

Courts have recognized, however, that state restrictions on candidates' eligibility for the ballot can implicate voting and due process rights under the First and Fourteenth Amendments. *Clements v. Fashing*, 457 U.S. 957, 963 (1982); *see also Anderson*, 460 U.S. at 786-87. But still, not all of these restrictions impose constitutionally suspect burdens on voters' rights requiring close scrutiny. *Anderson*, 460 U.S. at 788; *Clements*, 457 U.S. at 963.

In reviewing challenges to restrictions on candidacy under the First and Fourteenth Amendments, courts are to apply the *Anderson-Burdick* framework, which weighs the "character and magnitude of the asserted injury" against the state's asserted interests. *Anderson*, 460 U.S. at 789 (1982); *Burdick v. Takushi*, 504 U.S. 428, 434 (1992).[6] The rigorousness of the Court's inquiry "depends upon the extent to which a challenged regulation burdens First and Fourteenth Amendment rights." *Burdick*, 504 U.S. at 434. When "those rights are subjected to 'severe'

[6] While Greene agrees that the *Anderson-Burdick* framework applies to Counts I and II, she argues that this Court should review the district court's application of the framework *de novo*, citing *Duke v. Smith*, 13 F.3d 388, 392 (11th Cir. 1994). (Appellant's Brief at 32). But *Duke* involved an appeal of the district court's final judgment after a trial on the merits, *id.* at 390, and is not applicable. Because this appeal is of the district court's denial of a motion for preliminary injunction, the abuse of discretion standard applies.

restrictions, the regulation must be 'narrowly drawn to advance a state interest of compelling importance.'" *Id.* (citations omitted). "Lesser burdens, however, trigger less exacting review, and a State's 'important regulatory interests' will usually be enough to justify 'reasonable, nondiscriminatory restrictions.'" *Timmons v. Twin Cities Area New Party*, 520 U.S. 351, 358 (1997) (quoting *Burdick*, 504 U.S. at 434). This Court has held that the *Anderson-Burdick* framework applies to both substantive and procedural due process claims. *New Ga. Project v. Raffensperger*, 976 F.3d 1278, 1282 (11th Cir. 2020).

To the extent the Challenge Statute imposes any sort of restriction on a candidate's ability to run for office, it is a reasonable, nondiscriminatory restriction that imposes a minimal burden. Georgia requires that all candidates who appear on the ballot meet the qualifications of the office they are seeking. O.C.G.A. § 21-2-5(a). When filing a notice of candidacy, candidates must sign an affidavit certifying that they are eligible for office. O.C.G.A. § 21-2-153(e). By requiring candidates to attest that they are eligible for office, state law places "the affirmative obligation on [the candidate] to establish [her] qualification for office." *Haynes v. Wells*, 273 Ga. 106, 108 (2000). The Challenge Statute is the only means by which the state or voters are able to verify the

veracity of the candidate's attestation of eligibility. The vast majority of candidates will never face a candidacy challenge. In the rare instance that a challenge is filed, candidates are required to prove they are eligible to stand for office by a mere preponderance of the evidence in a civil administrative proceeding. *Haynes*, 273 Ga. at 108; Ga. Comp. R. & Regs. 616-1-2-.21(4). The proceeding is judicial in nature, conducted before an administrative law judge in accordance with the procedures and safeguards of the Georgia Administrative Procedure Act, and subject to judicial review. *See generally* O.C.G.A. § 21-2-5.

Despite these reasonable safeguards, Greene points to two reasons why the Challenge Statute imposes a severe burden on her candidacy, neither of which have merit. *First*, Greene argues that because the Challengers here were able to initiate their challenge based upon a "belief" that Greene was not qualified, this infringed "upon a fundamental First Amendment right by the triggering [of] a government investigation," which can only be triggered by "probable cause." (Appellant's Brief at 34.) But the challenge proceeding before OSAH was not a "government investigation." It was a civil administrative proceeding brought by a group of voters seeking to disqualify Greene as a candidate. The Secretary did not initiate this proceeding but was merely the

referring agency and not a party. And, again, no person, including Greene, has a "fundamental First Amendment right" to be a candidate for federal office, especially if the person does not meet the constitutional qualifications for office.

Greene's contention that there must be "probable cause" before a civil challenge proceeding can be initiated against a candidate is also without legal merit. (Appellant's Brief at 34.) The only cases Greene cites in support of this proposition involved the government imposing *criminal* charges on defendants and possible deprivation of their liberty as a result of their free speech, in violation of the First Amendment. *See Watkins v. U.S.*, 354 U.S. 178 (1957) (criminal conviction of union official who refused to answer questions before congressional committee); *Tobey v. Jones*, 706 F.3d 379 (4th Cir. 2012) (protestor at airport seized and arrested by TSA agents for displaying the text of the Fourteenth Amendment on his chest). There is simply no rational comparison between the civil administrative challenge to Greene's candidacy and the union official criminally prosecuted for refusing to answer questions regarding his affiliation with the Communist Party before the House Committee on Un-American Activities. *Watkins*, 354 U.S. at 182. Greene faced no criminal charges or other possible deprivation of her liberty or property in the OSAH

hearing, which was governed by the same legal protections as any other civil case. Indeed, Greene faced no more burdens participating in the challenge proceeding before OSAH than she does in this lawsuit to which she willingly made herself a party.

*Second*, Greene argues that it is severely burdensome to require her to bear the burden of proving that she did not engage in insurrection during the OSAH proceeding. (Appellant's Brief at 34-35). Because most candidate qualification challenges involve straight-forward issues such as age or residency, the Georgia Supreme Court has held that it should not be voters' burden to disprove a candidate's eligibility to run for office, when the candidate has already sworn in an affidavit that he or she is eligible, based upon the candidate's knowledge of his or her own eligibility. *See Haynes*, 273 Ga. at 108-09 (holding that the challenger "is not required to disprove anything regarding [the candidate's] eligibility to run for office"). Greene fails to cite a single case supporting her argument that this allocation of the burden of proof imposes a severe burden on candidates. But in any event, OSAH rules allow an ALJ to shift the burden from the candidate to the challengers where justice requires. Ga. Comp. R. & Regs. 616-1-2-.07(2). And in Greene's case, Judge Beaudrot shifted the burden to the Challengers, recognizing that this

particular challenge proceeding did not involve a straight-forward issue of proving an objective qualification, such as age or residency, that could be proven by information within the candidate's possession. (Supp. App'x at 93.) Because she was not required to bear the burden of proof in the challenge proceeding, Greene cannot plausibly explain how she was severely burdened by the process.

As the district court correctly reasoned, Greene at most faced a mere inconvenience by having to participate in the challenge proceeding. (App'x Vol. III, at 191.) And this mere inconvenience is far outweighed by the compelling interest of the state that candidates are eligible for office before placing their names on the ballot. The state "has an interest, *if not a duty* to protect the integrity of its political processes" by ensuring that only candidates who meet the legal requirements for office are placed on the ballot. *Bullock*, 405 U.S. at 145 (emphasis added); *see also Anderson*, 460 U.S. at 788; *Jenness*, 403 U.S. at 442. This "legitimate interest in protecting the integrity and practical functioning of the political process permits it to exclude from the ballot candidates who are constitutionally prohibited from assuming office." *Hassan v. Colorado*, 495 F. App'x 947, 948 (10th Cir. 2012) (holding that state could disqualify presidential

candidate from the ballot because the candidate did not meet the constitutional requirements for the office); *see also Lindsay v. Bowen*, 750 F.3d 1061, 1064 (9th Cir. 2014) (same).

The Challenge Statute plainly advances this important state interest. Undoubtedly, the public's interest in having only eligible candidates on the ballot more than outweighs any inconvenience that may be imposed on a candidate facing a challenge proceeding. Holding that the Secretary cannot exclude a candidate who does not meet the constitutional requirements for office "would mean that anyone, regardless of age, citizenship or any other constitutional ineligibility would be entitled to clutter and confuse [the] electoral ballot." *Lindsay*, 750 F.3d at 1064. Nothing in the Constitution "compels such an absurd result." *Id.*

In sum, the Challenge Statute is a "reasonable, nondiscriminatory restriction" on ballot access that is more than justified by the state's "important regulatory interests," *Timmons,* 520 U.S. at 358, and Greene is unlikely to succeed on the merits of her First and Fourteenth Amendment claims.

### 2. The Challenge Statute does not usurp Congress's authority under Article I, Section 5 to judge the qualifications of its members.

Contrary to Greene's argument, the Challenge Statute does not usurp the Congress's power to be "Judge of the Elections, Returns and Qualifications of its own Members" under Article I, Section 5. (Appellant's Brief at 52.) Rather, the state's powers to regulate the time, place, and manner of elections under Article I, Section 4 and Congress's powers under Article I, Section 5 are complimentary. *See Roudebush v. Hartke*, 405 U.S. 15, 24-26 (1972) (holding that Article 1, Section 4 gives the states the ability to conduct a recount for a U.S. Senate election without usurping the Senate's authority to judge the election results under its Article I, Section 5 powers).

The U.S. Constitution "anticipates that the electoral process is to be largely controlled by the states and reviewed by the legislature." *Hutchinson v. Miller*, 797 F.2d 1279, 1283 (4th Cir. 1986). States have the authority to regulate *candidates* and *elections* for federal office, while Congress retains the authority to regulate its *members* after they are elected. *See id.*; *see also Roudebush*, 405 U.S. at 24-26; *McIntyre v. Fallahay*, 766 F.2d 1078, 1083 (7th Cir. 1985). Thus, while Congress can decline to seat a candidate who has won election as a U.S. Representative,

the states have the constitutional authority—if not the duty—to regulate which candidates for U.S. Representative are placed on the ballot and the manner of their election.

The Challenge Statute is the state's only mechanism for verifying candidate qualifications before voters cast their ballots. If the Secretary were enjoined from disqualifying candidates for federal office prior to an election, as Greene argues, there would be no legal process by which the state could prevent candidates who fail to meet the constitutional requirements for Congress from accessing the ballot. The state already requires that candidates meet the requirements for U.S. Representative set forth in the Qualifications Clause, which provides that no person may serve as a U.S. Representative unless that person is at least twenty-five years old, has been a citizen of the United States for at least seven years, and be an inhabitant of the state when elected. U.S. CONST. art. I, § 2, cl. 2. Without the ability to verify candidate eligibility through the administrative process set forth in the Challenge Statute, there is no way for the state to avoid the possibility that fraudulent or unqualified candidates such as minors, out-of-state residents, or non-citizens could be elected to Congress. And if a candidate for U.S. Representative is elected by a majority of voters in the general election and then subsequently

is disqualified by Congress before assuming office, the state and counties would be required to incur the significant expense of a special election to fill the resulting vacancy. *See* O.C.G.A. § 21-2-543. To conduct a new election after a candidate is disqualified from taking office would be a tremendous waste of state and county resources and harmful to voter confidence in the electoral process.

Accordingly, the district court correctly held that Greene was not likely to succeed on the merits of Count III.

### 3. The Challenge Statute as applied to Greene does not run afoul of the Amnesty Act of 1872.

The district court rightly questioned whether the Amnesty Act of 1872 even provides a private right of action upon which Greene could bring a federal action, either standing alone or under Section 1983. Nevertheless, the district court considered this claim on the merits and concluded that the act did not remove all prospective disability from Greene even if she were found to have engaged in insurrection in violation of Section 3 of the Fourteenth Amendment.

**a. Greene failed to show that she has a private right of action under the Amnesty Act of 1872.**

Before the district court reached the merits of Greene's claim under the Amnesty Act, it recognized that Greene had failed to show that the act provides a private right of action in the first place, either standing alone or under Section 1983. (App'x Vol. III, at 158-62.) In determining whether a private right of action exists, the Courts "must first determine whether Congresses *intended to create a federal right*." *Gonzaga Univ. v. Doe*, 536 U.S. 273, 283 (2002) (emphasis in original). And "[f]or a statute to create such private rights, its text must be phrased in terms of the persons benefited." *Id.* at 284; *see also California v. Sierra Club*, 451 U.S. 287, 294 (1981) ("[t]he question is not simply who would benefit from the Act, but whether Congress intended to confer federal rights upon those beneficiaries").

Quite simply, here, even assuming arguendo that the Amnesty Act created a federal right—which it arguably did not since it merely removed a disability to hold public office imposed by Section 3 of the Fourteenth Amendment—it must first be determined whether Greene is in the class of persons being conferred a right by it. As explained further below, the Amnesty Act of 1872 did not prospectively remove disabilities imposed by Section 3 of the Fourteenth Amendment, and therefore, Greene

has no rights conferred to *her* by the Act that she can enforce in federal court. Thus, she does not have the ability to bring a claim under the Amnesty Act of 1872, or one under Section 1983 seeking to enforce that act, because she is not in the class of persons contemplated by it. Therefore, the district court did not err in concluding that Greene failed to show that the Amnesty Act of 1872 provides her a private right of action in federal court in the first instance.

**b. The Amnesty Act of 1872 did not provide prospective amnesty to future insurrectionists.**

Even assuming Greene could bring an action based on the Amnesty Act of 1872, the district court correctly held that it did not prospectively remove any disability incurred under Section 3 to all future members of Congress, as Greene asserts. Section 3 of the Fourteenth Amendment provides, in pertinent part:

> No person shall be a Senator or Representative in Congress, . . . who, having previously taken an oath, as a member of Congress, or as an officer of the United States, . . . to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

U.S. CONST. amend. XIV, § 3. After the passage of the Fourteenth Amendment, Congress relied on private bills to remove the

disabilities imposed by Section 3 on certain individuals, but Congress soon became overwhelmed by requests for amnesty, which "led to calls for general section three amnesty legislation." *See* Gerard N. Magliocca, *Amnesty and Section Three of the Fourteenth Amendment*, 36 Const. Comment. 87, 131–35 (2021). Accordingly, Congress passed a broad amnesty act in 1872, *id.*, which provided specifically:

> That all political disabilities imposed by the third section of the fourteenth article of amendments of the Constitution of the United States are hereby removed from all persons whomever, except Senators and Representatives of the thirty-sixth and thirty-seventh Congresses, offices in the judicial, military, and naval service of the United States, heads of departments, and foreign ministers of the United States.

Act of May 22, 1872, ch. 193, 17 Stat. 142 (1872).

The plain language of the Amnesty Act of 1872 simply does not support Greene's contentions that it removed any disability imposed by Section 3 both retrospectively and prospectively, such that it would shield any future member of Congress who engages in insurrection. The Fourth Circuit recently rejected the same argument in a nearly identical case brought by Rep. Madison Cawthorn, who was facing the same challenge to his candidacy as Greene. *Cawthorn v. Amalfi et al.*, No. 22-1251, 2022 WL 1635116

(4th Cir. May 24, 2022). Specifically, the Fourth Circuit rejected Representative Cawthorn's argument that the Amnesty Act of 1872 removed any possible disability imposed by Section 3 on future insurrectionists by concluding "[t]he most fundamental problem with Representative Cawthorn's proposed interpretation is that the Act's operative clause refers to those 'political disabilities *imposed*' in the past tense rather than new disabilities that might arise in the future. The past tense is 'backward-looking'; it refers to things that have already happened, not those yet to come." *Id.* at *8 (emphasis in original). Thus, according to the Fourth Circuit, the Amnesty Act of 1872 "did not prospectively immunize Representative Cawthorn—or anyone else—from Section 3's reach." *Id.* at *10.

There is no reason for this Court to depart from the correct analysis by the Fourth Circuit. The plain language of the 1872 Amnesty Act is quite clear in that it was not removing any disability under Section 3 of the Fourteenth Amendment that was incurred in the future, but rather, only disabilities that had already been incurred previously by Congress's use of past tense participles and verbs. *See* Act of May 22, 1872, ch. 193, 17 Stat. 142 (1872) ("That all political disabilities *imposed* . . . are hereby *removed*.") (emphasis added); *see also Cawthorn*, 2022 WL

1635116, at *8-9. And although Congress has the authority to "remove such disability" imposed by Section 3 of the Fourteenth Amendment, it cannot effectively repeal Section 3 and render it forever inoperative. Thus, the district court did not err in concluding that the Amnesty Act of 1872 did not grant Greene blanket amnesty for any violation of Section 3 of the Fourteenth Amendment.

**c. The State Appellees have not waived any arguments that can be made in support of the district court's ruling pertaining to Greene's Amnesty Act of 1872 claim.**

Greene suggests that the State Appellees have waived any arguments that can be made on appeal in support of the district court's ruling pertaining to her as-applied claim under the Amnesty Act of 1872. (Appellant's Brief at 18). The State Appellees did not take a position on the merits of this claim in responding to Greene's motion for a preliminary injunction because they were required to be the adjudicators of that claim in the challenge proceeding, and it would have been improper for them to have pre-determined these issues on the merits before the hearing had even taken place.

As a prevailing party below, the State Appellees are allowed to defend that judgment "*on any ground preserved* in the district

court." *Worthy v. Phenix City*, 930 F.3d 1206, 1216 (11th Cir. 2019) (emphasis added) (quotation marks omitted); *see also Mass. Mut. Life Ins. Co. v. Ludwig,* 426 U.S. 479, 481 (1976) ("the appellee may, without taking a cross-appeal, urge in support of a decree any matter appearing in the record") (quotation marks omitted).

And while it is generally true that arguments not raised in the district court will not be addressed by this Court on appeal, *see Access Now, Inc. v. Sw. Airlines Co.*, 385 F.3d 1324, 1331 (11th Cir. 2004), the State Appellees are not raising any arguments on appeal that were not raised below. These arguments were at least made to the district court by the Challengers and considered by the district court in its order. (App'x Vol. II, at 118-23.) And based on arguments presented to it by both the Intervenors and Greene, the district court rendered decisions as to whether the Amnesty Act of 1872 provided prospective relief to future insurrectionists and created a private right of action. (*See* App'x Vol. II, at 118-23; Vol. III, at 158-62, 193-202.) Thus, the State Appellees are certainly entitled to make arguments in support of the district court's rulings on appeal, even if those arguments were not originally proffered by them below, because they have been preserved and were considered by the district court.

### C. The remaining preliminary injunction factors support the district court's denial of Greene's motion.

Although the district court did not reach the remaining preliminary injunction factors because it concluded that Greene had not establish a likelihood of success on the merits, the balance of the equities and the public interest both support the district court's decision not to enjoin the Secretary and Judge Beaudrot from enforcing the Challenge Statute.

As discussed above, the state has an important and well-established interest in regulating ballot access and preventing ineligible candidates from being placed on the ballot. Allowing the Secretary to disqualify ineligible candidates before an election takes place saves voters from being disenfranchised, and saves counties the significant expense of holding a special election if an ineligible candidate is elected by the voters and later disqualified. The public's confidence in the integrity of the ballot is fundamental to representative government, and more than outweighs any burden that Greene may have faced in the challenge proceeding.

In sum, because Greene failed to demonstrate that she faces irreparable harm, that she is likely to succeed on the merits of her claims, or that that the balance of the equities and public interest

favor an injunction, the district court did not abuse its discretion in denying her motion for a preliminary injunction.

## CONCLUSION

For the reasons set out above, this appeal is moot and should be dismissed. Alternatively, the Court should affirm the district court's order denying Greene's motion for a preliminary injunction.

Respectfully submitted, this 14th day of June, 2022.

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## CERTIFICATE OF COMPLIANCE

This document complies with the type-volume limitation of Rule 32(a)(7)(B) of the Federal Rules of Appellate Procedure because it contains 9048 words as counted by the word-processing system used to prepare the document. This brief also complies with the typeface and type-style requirements of Rule 32(a)(5) and (6) because it has been prepared in 14-point Century Schoolbook font.

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## CERTIFICATE OF SERVICE

I hereby certify that on June 14, 2022, I served this brief by electronically filing it with this Court's ECF system, which constitutes service on all attorneys who have appeared in this case and are registered to use the ECF system.

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