

No. 23-13916

In the
United States Court of Appeals
for the Eleventh Circuit

COAKLEY PENDERGRASS, *et al.*,
Plaintiffs-Appellees,

v.

BRAD RAFFENSPERGER,
in his official capacity as Secretary of State of Georgia,
Defendant-Appellant.

On Appeal from the United States District Court for the
Northern District of Georgia, Atlanta Division.
No. 1:21-cv-05339-SCJ — Steve C. Jones, *Judge*

**DEFENDANT-APPELLANT’S MOTION TO FILE
DOCUMENTS OUT OF TIME**

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Counsel for Defendant-Appellant Brad Raffensperger

CERTIFICATE OF INTERESTED PERSONS

Pursuant to Eleventh Circuit Rules 26.1-1 through 26.1-3, counsel for Defendant-Appellant hereby certifies that the below is a complete list of all trial judges, attorneys, persons, associations of persons, firms, partnerships, or corporations that have an interest in the outcome of this appeal.

1. Robert M. Allensworth: Attempted Amicus
2. Noah B. Bokat-Lindell: Counsel for Intervenor
3. Donald P. Boyle, Jr.: Counsel for Defendant
4. Christopher Carr: Counsel for Defendant
5. Georgia Department of Law: Counsel for Defendant
6. The Hon. William S. Duffey, Jr.: Former Defendant
7. Elias Law Group LLP: Counsel for Plaintiffs
8. Erin H. Flynn: Counsel for Intervenor
9. Christina Ashley Ford: Counsel for Plaintiffs
10. Daniel J. Freeman: Counsel for Intervenor
11. Sara Tindall Ghazal: Former Defendant
12. Ojuan Glaze: Plaintiff
13. Kevin J. Hamilton: Former Counsel for Plaintiffs

14. Jonathan Patrick Hawley: Counsel for Plaintiffs
15. Elliott Hennington: Plaintiff
16. Bryan F. Jacoutot: Counsel for Defendant
17. Triana Arnold James: Plaintiff
18. Janice W. Johnston: Former Defendant
19. Michael Brandon Jones: Counsel for Plaintiffs
20. The Hon. Steve Jones: District Court Judge
21. Abha Khanna: Counsel for Plaintiffs
22. Krevolin & Horst LLC: Counsel for Plaintiffs
23. Diane LaRoss: Counsel for Defendant
24. Anh Le: Former Defendant
25. Joyce Gist Lewis: Counsel for Plaintiffs
26. Edward Lindsey: Former Defendant
27. Matthew Mashburn: Former Defendant
28. Charlene McGowan: Former Counsel for Defendant
29. Daniel C. Osher: Former Counsel for Plaintiffs
30. Loree Anne Paradise: Former Counsel for Defendant
31. Coakley Pendergrass: Plaintiff
32. Perkins Coie LLP: Former Counsel for Plaintiffs

33. Stephen J. Petrany: Counsel for Defendant
34. Brad Raffensperger, in his official capacity as Secretary of
State of Georgia: Defendant
35. Robert Richards: Plaintiff
36. Jens Rueckert: Plaintiff
37. Makeba Rutahindurwa: Counsel for Plaintiffs
38. Adam Martin Sparks: Counsel for Plaintiffs
39. Michael Elliot Stewart: Counsel for Intervenor
40. Frank B. Strickland: Counsel for Defendant
41. Rebecca N. Sullivan: Former Defendant
42. Taylor English Duma LLP: Counsel for Defendant
43. Bryan P. Tyson: Counsel for Defendant
44. United States Department of Justice: Intervenor
45. Elizabeth Marie Wilson Vaughan: Former Counsel for
Defendant
46. Bryan K. Webb: Counsel for Defendant
47. Daniel H. Weigel: Counsel for Defendant
48. Graham W. White: Former Counsel for Plaintiffs
49. Russell D. Willard: Counsel for Defendant

Respectfully submitted this 16th day of December, 2023.

/s/Bryan P. Tyson

Bryan P. Tyson

*Counsel for Defendant-Appellant Brad
Raffensperger*

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**DEFENDANT-APPELLANT’S MOTION TO FILE
DOCUMENTS OUT OF TIME**

On November 28, 2023, Appellant filed his notice of appeal in three cases involving Georgia’s 2021 statewide redistricting plans, which are this appeal, *Grant v. Raffensperger*, and *Alpha Phi Alpha v. Raffensperger*. This Court docketed those three appeals on different days, setting various deadlines for initial-document filings.

Appellant timely filed the Certificate of Interested Persons and Corporate Disclosure Statement, Web-Based CIP, and Appearance of

Counsel forms in all three cases. The Civil Appeal Statement was likewise filed in the *Grant v. Raffensperger* appeal and the *Alpha Phi Alpha v. Raffensperger* appeal.

Appellant's counsel inadvertently failed to file the Civil Appeal Statement in this appeal by the deadline set by this Court and received notice from the Clerk on December 15, 2023. Today, Appellant filed the Civil Appeal Statement per this Court's instructions.

There is no prejudice to any party for the delay in filing. The legal issues in all three cases overlap and there will be no delay in filing Appellant's Brief.

Appellant respectfully requests this Court grant the Motion to File Documents Out of Time and accept the Civil Appeal Statement filed with this Motion.

Respectfully submitted this 16th day of December, 2023.

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CERTIFICATE OF COMPLIANCE

This document complies with the type-volume limitation of Rule 27(d)(2)(A) of the Federal Rules of Appellate Procedure because it contains 186 words as counted by the word-processing system used to prepare the document.

Respectfully submitted this 16th day of December, 2023.

/s/Bryan P. Tyson
Bryan P. Tyson

CERTIFICATE OF SERVICE

I hereby certify that on December 16, 2023, I served this Motion 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.

Respectfully submitted this 16th day of December, 2023.

/s/Bryan P. Tyson
Bryan P. Tyson

Rev. 4/18

UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT
CIVIL APPEAL STATEMENT

Please TYPE. Attach additional pages if necessary.

11th Circuit Docket Number: 23-13916

Caption: COAKLEY PENDERGRASS, et al. V. BRAD RAFFENSPERGER, et al.	District and Division: <u>Northern District of Georgia - Atlanta</u> Name of Judge: <u>Hon. Steve C. Jones</u> Nature of Suit: <u>Voting Rights Act</u> <hr/> Date Complaint Filed: <u>12/30/21</u> District Court Docket Number: <u>1:23-cv-05339-SCJ</u> <hr/> Date Notice of Appeal Filed: <u>11/28/23</u> <input type="checkbox"/> Cross Appeal <input type="checkbox"/> Class Action <hr/> Has this matter previously been before this court? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If Yes, provide (a) Caption: _____ (b) Citation: _____ (c) Docket Number: _____
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	Attorney Name	Mailing Address	Telephone, Fax, Email
For Appellant: <input type="checkbox"/> Plaintiff <input checked="" type="checkbox"/> Defendant <input type="checkbox"/> Other (Specify)	Bryan Tyson	1600 Parkwood Circle Suite 200 Atlanta, GA 30339	(770) 434-6868 btyson@taylorench.com

For Appellee:
 Plaintiff
 Defendant
 Other (Specify)

Please CIRCLE/CHECK/COMPLETE the items below and on page 2 that apply.

Jurisdiction	Nature of Judgment	Type of Order	Relief
<input checked="" type="checkbox"/> Federal Question <input type="checkbox"/> Diversity <input type="checkbox"/> US Plaintiff <input type="checkbox"/> US Defendant	<input checked="" type="checkbox"/> Final Judgment, 28 USC 1291 <input type="checkbox"/> Interlocutory Order, 28 USC 1292(a)(1) <input type="checkbox"/> Interlocutory Order Certified, 28 USC 1292(b) <input type="checkbox"/> Interlocutory Order, Qualified Immunity <input type="checkbox"/> Final Agency Action (Review) <input type="checkbox"/> 54(b)	<input checked="" type="checkbox"/> Dismissal/Jurisdiction <input type="checkbox"/> Default Judgment <input checked="" type="checkbox"/> Summary Judgment <input checked="" type="checkbox"/> Judgment/Bench Trial <input type="checkbox"/> Judgment/Jury Verdict <input type="checkbox"/> Judgment/Directed Verdict/NOV <input type="checkbox"/> Injunction <input type="checkbox"/> Other _____	Amount Sought by Plaintiff: \$ _____ Amount Sought by Defendant: \$ _____ Awarded: \$ _____ to _____ Injunctions: <input type="checkbox"/> TRO <input type="checkbox"/> Preliminary <input checked="" type="checkbox"/> Granted <input checked="" type="checkbox"/> Permanent <input type="checkbox"/> Denied

Based on your present knowledge:

(1) Does this appeal involve a question of First Impression? Yes No
What is the issue you claim is one of First Impression? Private right of action in VRA cases

(2) Will the determination of this appeal turn on the interpretation or application of a particular case or statute? Yes No
If Yes, provide
(a) Case Name/Statute _____
(b) Citation _____
(c) Docket Number if unreported _____

(3) Is there any case now pending or about to be brought before this court or any other court or administrative agency that
(a) Arises from substantially the same case or controversy as this appeal? Yes No
(b) Involves an issue that is substantially the same, similar, or related to an issue in this appeal? Yes No
If Yes, provide
(a) Case Name Alpha Phi Alpha Fraternity, Inc., et al. v. Brad Raffensperger; Grant v. Raffensperger
(b) Citation _____
(c) Docket Number if unreported 23-13914, 23-13921
(d) Court or Agency _____

(4) Will this appeal involve a conflict of law
(a) Within the Eleventh Circuit? Yes No
(b) Among circuits? Yes No

If Yes, explain briefly:

Private right of action issue is the subject of a circuit split between the 5th and 8th circuits

(5) Issues proposed to be raised on appeal, including jurisdictional challenges:
1. The district court erred when it found a violation of Section 2 of the VRA.
2. As applied by the district court, Section 2 of the VRA is unconstitutional.
3. There is no private right of action under Section 2 of the VRA.

I CERTIFY THAT I SERVED THIS CIVIL APPEAL STATEMENT ON THE CLERK OF THE U.S. COURT OF APPEALS FOR THE ELEVENTH CIRCUIT AND SERVED A COPY ON EACH PARTY OR THEIR COUNSEL OF RECORD, THIS 15th DAY OF December, 2023.

Bryan Tyson

NAME OF COUNSEL (Print)

/s/Bryan P. Tyson

SIGNATURE OF COUNSEL