



SUPREME COURT OF GEORGIA  
Case No. S20M1012, S20M1020

March 23, 2020

The Honorable Supreme Court met pursuant to adjournment.

The following order was passed:

**JOHN BARROW v. BRAD RAFFENSPERGER.  
ELIZABETH BESKIN v. BRAD RAFFENSPERGER.**

These two matters are before the Court on Barrow’s “Emergency Motion for Expedited Consideration of Petition for Writ of Mandamus” (Case No. S20M1012), which was filed in the Court of Appeals on March 18, 2020, and transferred to this Court on March 19, and Beskin’s “Emergency Application for Expedited Appeal and Consideration of Petition for Writ of Mandamus” (Case No. S20M1020), which was filed in this Court on March 19. Barrow has also filed a “Motion to Disqualify or Recuse All Justices.”

These matters are similar, and Barrow’s and Beskin’s underlying cases were heard together by the trial court. According to the emergency filings, Justice Keith R. Blackwell was elected in May 2014 to serve a six-year term of office on this Court beginning on January 1, 2015, and ending on December 31, 2020. His office was initially listed for election on May 19, 2020, for the six-year term beginning on January 1, 2021, with candidates scheduled to qualify for that election between March 2 and March 6, 2020. On February 26, however, Justice Blackwell submitted a letter to the Governor resigning his office effective November 18. On February 26, the Governor accepted Justice Blackwell’s resignation, effective November 18.

On March 1, Secretary of State Brad Raffensperger, the respondent in both of these cases, announced that he was cancelling qualifying for the May 19 election for Justice Blackwell's office. Barrow and Beskin each then sought to qualify for the election, but the Secretary's staff declined their qualifying forms and fees. They each then filed a petition for mandamus against the Secretary in the Superior Court of Fulton County, asking that the Secretary be ordered to reopen qualifying and hold the election for the office held by Justice Blackwell for the term beginning on January 1, 2021. After holding a joint hearing on the cases on March 13, on March 16 the trial court denied both mandamus petitions in separate but similar orders. These emergency filings followed, although appeals of the trial court's orders have yet to be docketed in this Court. Because the cases appear similar and the emergency filings seek the same relief, we have consolidated the emergency filings for decision, and we would expect to consolidate subsequent appeals of the cases for decision.

Having considered the emergency filings, the Court hereby grants them in part and orders expedited review of these cases in the following manner:

- Upon the filing of a notice of appeal by Barrow and by Beskin, the trial court clerk is directed to transmit the records in each case to this Court as promptly as possible and within no more than two business days. The trial court should ensure compliance with this directive. Upon receipt of the respective records, each appeal will be docketed here.
- Barrow and Beskin are directed to file their principal briefs by Thursday, March 26.
- Raffensperger is directed to file his response briefs in each case by Monday, March 30.
- Barrow and Beskin are directed to file any reply briefs by Tuesday, March 31.

The parties' briefs may address any issue regarding the trial court's respective orders, but should specifically address the following issues:

1. In Beskin's case only: Whether Beskin's qualifying for a different May 19, 2020 election for Justice of the Supreme Court renders her case moot.
2. Whether the Secretary of State properly treated Justice Blackwell's resignation as creating a vacancy in Justice Blackwell's office immediately upon its acceptance by the Governor, which the Governor could immediately fill by appointment.
3. Whether Justice Blackwell's resignation, made effective as of November 18, 2020, might lawfully be withdrawn, rescinded, or revoked after it was accepted by the Governor, so that Justice Blackwell might continue to serve until the term of office to which he was elected in 2014 ends on December 31, 2020.
4. If so, whether the Secretary of State has any discretion to cancel an election for a Justice's next full term, if a vacancy in the Justice's office is highly likely but not certain to arise before the Justice's existing term of office ends.
5. What remedies may be available that would alleviate the need to decide this case on an extremely expedited basis, in the event (as to which we express no opinion whatsoever at this time) that the trial court's order were reversed and the Secretary of State were ordered to allow qualifying for and then to hold an election for Justice Blackwell's office. For example, could the time for qualifying be shortened, the requirements for absentee ballots or early voting adjusted, or the election date moved to coincide with the July election

or the November election? If all of the parties agree that there are remedies that would allow the Court additional time to decide these cases, they may jointly request an extension of the briefing schedule set forth above, explaining when in their view a decision would be necessary.

Recognizing that this Court and Georgia's entire judicial system is operating under a Statewide Judicial Emergency Order declared by the Chief Justice due to the Coronavirus/COVID-19 crisis, if anyone subject to this order cannot meet a deadline specified due to health concerns or working conditions, then the Court and all parties should be immediately notified so that accommodations can be considered. Once appeals are docketed, the Court will consider requests for oral arguments but may defer setting any oral arguments until the briefing is complete and depending on the status of the judicial emergency.

Justices Blackwell, Boggs, Peterson, Bethel and Ellington have decided not to participate in either of these cases, so Barrow's motion to recuse all of the Justices is dismissed as moot as to those five Justices. Pursuant to this Court's Rule 57, nonparticipating Justices shall not participate in any motions, decisions, or opinions on the merits and shall not be present when discussions regarding these cases take place, and neither briefs nor motions nor copies of draft opinions or other internal documents will be circulated to the nonparticipating Justices. The office formerly held by Justice Benham remains vacant; if it is filled before these cases are decided, the new Justice will participate in subsequent decisions, unless the new Justice decides to recuse. Chief Justice Melton, Presiding Justice Nahmias, and Justice Warren, having each carefully considered the motion to recuse him or her, deny the motion.

Pursuant to this Court's rules and policies, by unanimous vote of the participating Justices, substitute judges have been selected by the Clerk of this Court at random from a pre-existing list and have

been designated to hear and decide these cases in the place of the nonparticipating Justices.

*Emergency motion in Case No. S20M1012 and emergency application in Case No. S20M1020 granted in part. Melton, C.J., Nahmias, P.J., Warren, J., and Judges Scott L. Ballard, Brenda Holbert Trammell, Richard M. Cowart, Sarah F. Wall, and Timothy R. Walmsley concur. Blackwell, Boggs, Peterson, Bethel, and Ellington, JJ., not participating.*

*Motion to recuse in Case No. S20M1012 dismissed in part as moot and denied by each of the participating Justices.*

**SUPREME COURT OF THE STATE OF GEORGIA**  
Clerk's Office, Atlanta

I certify that the above is a true extract from the minutes of the Supreme Court of Georgia.

Witness my signature and the seal of said court hereto affixed the day and year last above written.

 , Clerk