

Ga. Wants Standing Review In Election Suit After Others Axed

Law360 (January 22, 2021, 6:08 PM EST) — Georgia's top election officials urged a federal judge Thursday to certify for appeal her July decision that voters have standing to pursue claims Georgia's voting system is flawed, in light of recent dismissals of suits targeting alleged flaws in the 2020 presidential election.

U.S. District Judge Amy Totenberg had asked the state defendants and plaintiff voters during a Tuesday teleconference whether she should send her ruling to the Eleventh Circuit, given that the federal appellate court and her peers have decided some Georgia voters can't show personal harm to justify their election-related complaints. The case before her has been pending for three years, with seven Georgia voters and a civil rights group challenging the security and effectiveness of the state's voting system.

Secretary of State Brad Raffensperger and the state's election board said Thursday that federal judges in Georgia have since July repeatedly dismissed "eerily similar" election cases for the same "jurisdictional defects that plague plaintiffs" in the case before Judge Totenberg.

One such suit was brought by an Atlanta trial attorney and promptly thrown out by one of Judge Totenberg's colleagues in the Northern District of Georgia, who said the plaintiff had no standing as a private citizen, individual voter or campaign donor. The Eleventh Circuit affirmed that ruling in December, agreeing that attorney L. Lin Wood Jr. lacked standing to sue because he failed to allege a particularized injury.

"In some instances those other plaintiffs even utilized the orders of this court and expert affidavits submitted to the court in the course of this case," election officials said in their brief. "Plaintiffs continue to lack standing (among other jurisdictional bars) because they cannot demonstrate a concrete and imminent injury-in-fact that is personal to the plaintiffs, rather than a generalized grievance."

But the plaintiffs in the case before Judge Totenberg urged her to leave untouched her July finding that they have sufficient standing to proceed. About half a dozen Georgia voters and the civil rights organization Coalition for Good Governance have since 2017 been challenging components of Georgia's voting system.

They say that to go backward in the lengthy case at a time when parties are finally preparing for trial, having significantly supplemented the record since July, would be unnecessarily time-consuming and expensive. They would rather address standing at a trial on the merits of their case, once discovery is complete.

"Not only would it present the Eleventh Circuit with an anachronistic appeal on a tiny portion of the current record, it almost certainly would gain nothing," voters and the coalition said in their brief. "Even the most conservative outcome of an interlocutory appeal now is another round of amended complaints."

The plaintiffs said their claims are unlike those that recently failed, which were attempts to invalidate or halt certification of the Nov. 3 general election results in President Joe Biden's favor. They said their suit, in its third amended form, is not about any particular election but is an effort to relieve burdens on each voter's right to have their vote counted in any Georgia election through a secure and reliable system.

"The claims here also are based on documented facts and science, not unsubstantiated claims of widespread election fraud and outlandish theories," plaintiffs said.

David D. Cross of Morrison & Foerster LLP, an attorney for the voters, told Law360 they're confident they'll win their argument on standing if Judge Totenberg certifies her order for appeal and it is reviewed by the Eleventh Circuit. He said the harm to all Georgia voters due to the state's current voting equipment and methods is real and imminent.

Cross said the case could go to trial as early as May, although that depends on whether defendants are allowed by the court to request summary judgment in their favor before then.

Judge Totenberg said during the Tuesday teleconference that she was feeling very cautious about the litigation approach in the case, given that two of her orders were already subject to interlocutory appeal and that standing had been a key decider in the "enormous amount" of recent election litigation.

"I think I have read every single decision, frankly, that has come out on the election cases across the nation," she said. "So I think this is a reasonable concern on my part."

Counsel for the election officials deferred comment to Raffensperger's office, which did not immediately respond to a request for comment Thursday.

The voters are represented by David D. Cross, Veronica Ascarrunz, Eileen Brogan, Lyle P. Hedgecock, Mary G. Kaiser and Robert W. Manoso of Morrison & Foerster LLP, Halsey G. Knapp Jr. and Adam M. Sparks of Krevolin & Horst LLC and Cary Ichter of Ichter Davis LLC.

Coalition for Good Governance is represented by Bruce P. Brown of Bruce P. Brown Law LLC and Robert A. McGuire III of Robert McGuire Law Firm.

The election officials are represented by **Vincent R. Russo, Josh Belinfante, Carey A. Miller and Alexander F. Denton** of **Robbins Alloy Belinfante Littlefield LLC** and Bryan P. Tyson, Jonathan D. Crumly, James A. Balli, R. Dal Burton, Diane F. LaRoss, Bryan F. Jacoutot and Loree A. Paradise of Taylor English Duma LLP.

The case is Curling et al. v. Raffensperger et al., case number 1:17-cv-02989, in the U.S. District Court for the Northern District of Georgia.

-Additional reporting by Adrian Cruz. Editing by Jay Jackson Jr.