

Georgia Dodges Voter Requests For Election

Law360 (October 13, 2020, 10:22 PM EDT) — Atlanta federal judges have saved Georgia from a last-minute overhaul of its voting system, tossing an elector suit seeking relief from lengthy polling station lines and rejecting a separate bid to enforce the use of hand-marked paper ballots.

U.S. District Judge Michael L. Brown on Tuesday dismissed a complaint against Georgia's top election officials brought by Atlanta-area voters and the state's Democratic Party, saying they couldn't prove that unfairly long polling lines would be an issue in the Nov. 3 presidential election.

The plaintiffs, led by voter Lucille Anderson, wanted voting machines to be better allocated to polling stations based on elector populations after some voters waited more than eight hours to vote in Georgia's June 9 primary. But Judge Brown said the state had learned from its mistakes in June and changed its voting plans accordingly, so there was no impending harm.

"Defendants have taken extensive measures to address the issues that caused long lines in the past," Judge Brown said in his opinion. "It is possible, of course, these measures will ultimately prove insufficient and long lines will still arise. But that is not the point; no one, including this court, can guarantee short lines."

Judge Brown's opinion followed a ruling in a similar case on Sunday by U.S. District Judge Amy Totenberg that Georgia can't be forced before the general election to replace its electronic ballotmarking and scanning system with pen and paper.

Judge Totenberg denied the injunctive relief request from Georgia voters and election advocates, led by elector Donna Curling, alleging that the state's electronic system is severely flawed. But she allowed them to suggest a solution to a specific vote-counting issue for future implementation.

Judge Totenberg had ordered the state at the end of September to provide paper backups of updated poll books and emergency paper ballots at each voting location. But she said on Sunday that it was too risky to force the state to significantly change its voting system three weeks out from Election Day, especially because absentee and early voting had begun.

"Despite the profound issues raised by the plaintiffs, the court cannot jump off the legal edge and potentially trigger major disruption in the legally established state primary process governing the conduct of elections based on a preliminary evidentiary record," Judge Totenberg said in her opinion. "The court has already seen in the record of this case enough election chaos, operational deficiencies and challenges on all levels, plus stress in the system spiked further by COVID-19

complications, that the court cannot embrace a rosy view of the simplicity of moving to a total, comprehensive paper ballot system with so little time to prepare for such a major transition."

The state and its attorneys declined to comment on the cases Tuesday.

Judge Brown said the Anderson plaintiffs, including the national Democratic senatorial committee, were too vague in their request for relief, asking for "sufficient" and "adequate" voting equipment, resources, trained poll workers, and technical support. He said the state had since June reallocated its voting machines, recruited and given more poll workers better training, bought more equipment, reassigned voting locations to thousands of electors, and increased the number of polling places.

Counsel for the Anderson plaintiffs did not immediately respond to a request for comment Tuesday.

The Curling plaintiffs' case, filed in August 2017, remains active. The state is appealing Judge Totenberg's Sept. 28 order for paper poll book backups and emergency ballots.

David D. Cross of Morrison & Foerster LLP, lead attorney for the Curling plaintiffs, told Law360 they're disappointed with Judge Totenberg's decision but pleased she had found significant flaws in Georgia's voting system.

"The court found that it's simply too late for relief for this year, but due to no fault of the plaintiffs who brought this case and have been pursuing this relief since last fall," Cross said Tuesday.

"The court's thorough decision establishes that the state continues to take a 'head in the sand' approach to election security. The decision is a significant win for us on the facts."

Judge Totenberg asked the state to investigate how it could better ensure that all correctly marked ballots were counted by electronic scanners and allowed the plaintiffs to file their suggestion so that these measures could be implemented in January 2021.

The Anderson plaintiffs are represented by Adam M. Sparks, Halsey G. Knapp Jr. and Joyce G. Lewis of Krevolin & Horst LLC and Amanda J. Beane, Amanda R. Callais, Heath L. Hyatt, Jacki L. Anderson, Kevin J. Hamilton, Marc E. Elias, Marcus A. Haggard, Molly E. Mitchell and Tre A. Holloway of Perkins Coie LLP.

The Anderson defendants are represented by **Carey A. Miller, Joshua B. Belinfante and Vincent R. Russo Jr. of Robbins Alloy Belinfante Littlefield LLC**; Charlene S. McGowan of the Georgia Attorney General's Office; David R. Lowman, Detriess Thomas, Cheryl Ringer and Kaye W. Burwell of the Fulton County Attorney's Office; Irene B. Vander Els and Shelley D. Momo of the DeKalb County Law Department; Bryan F. Jacoutot, Bryan P. Tyson and Loree A. Paradise of Taylor English Duma LLP; Jennifer R. Davenport of the Chatham County Attorney's Office; Arash A. Sabzevari, Jack R. Hancock, David A. Cole and Timothy M. Boughey of Freeman Mathis & Gary LLP; Kenneth P. Robin and Patrick D. Jaugstetter of Jarrard & Davis LLP; and William H. Noland of Noland Law Firm LLC.

The Curling plaintiffs are represented by David D. Cross, John P. Carlin, Lyle F. Hedgecock, Mary G. Kaiser, Robert W. Manoso, Veronica Ascarrunz and Eileen M. Brogan of Morrison & Foerster LLP; Halsey G. Knapp Jr. and Adam M. Sparks of Krevolin & Horst LLC; Bruce P. Brown of Bruce P. Brown Law LLC; Robert A. McGuire III of Robert McGuire Law Firm; Cary Ichter of Ichter Davis LLC; and John Powers and David Brody of the Lawyers' Committee for Civil Rights Under Law.

Georgia is represented in Curling by ***Vincent R. Russo, Josh Belinfante, Carey A. Miller, Alexander Denton and Brian E. Lake of Robbins Alloy Belinfante Littlefield LLC***, and Bryan P. Tyson, Bryan F. Jacoutot, Diane F. LaRoss and Loree A. Paradise of Taylor English Duma LLP.

The cases are Anderson et al. v. Raffensperger et al., case number 1:20-cv-03263, and 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.