

## **Unsuccessful Challenges to Procedures for Accepting Absentee Ballots in Georgia’s 2021 Senatorial Runoff Election**

*Twelfth Congressional District Republican Committee  
v. Raffensperger (J. Randal Hall, S.D. Ga. 1:20-cv-180)  
and Georgia Republican Party v. Raffensperger  
(Eleanor L. Ross, N.D. Ga. 1:20-cv-5018)*

Federal judges in both the Southern District of Georgia and the Northern District of Georgia declined immediate relief from Georgia’s procedures for accepting absentee ballots in a 2021 runoff senatorial election.

*Subject:* Absentee and early voting. *Topics:* Absentee ballots; signature matching; laches; intervention; Covid-19.

Federal court challenges to Georgia’s procedures for accepting absentee ballots in a January 5, 2021, runoff election for the U.S. Senate were unsuccessful in both the Southern District of Georgia and the Northern District of Georgia.

### *Southern District Case*

A federal complaint filed in the Southern District on Wednesday, December 9, 2020—about four weeks before a runoff senatorial election—challenged Georgia’s procedures for accepting absentee ballots.<sup>1</sup> With their complaint, the plaintiffs filed a motion for a temporary restraining order and a preliminary injunction.<sup>2</sup>

The plaintiffs were affiliated with the Republican Party, and the state’s Democratic Party sought intervention as a defendant on Friday, December 12.<sup>3</sup> Judge J. Randal Hall granted intervention on Monday.<sup>4</sup>

Also on Monday, Judge Hall set the case for a videoconference hearing on Thursday, December 17.<sup>5</sup> Information on public telephone access to the hearing was posted in the docket sheet.<sup>6</sup> On December 16, Judge Hall granted intervention as defendants to two organizations and a voter.<sup>7</sup>

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1. Complaint, 12th Cong. Dist. Republican Comm. v. Raffensperger, No. 1:20-cv-180 (S.D. Ga. Dec. 9, 2020), D.E. 1.

“At issue are the rules for receipt and processing of absentee ballots including the use of drop boxes and Plaintiffs seek to halt the use of those rules in the now ongoing United States Senate run-off elections.” Transcript at 4, *id.* (Dec. 17, 2020, filed Jan. 1, 2021), D.E. 49 [hereinafter *12th Cong. Dist. Republican Comm.* Transcript].

2. Motion, *id.* (Dec. 9, 2020), D.E. 2.

3. Intervention Motion, *id.* (Dec. 11, 2020), D.E. 10.

4. Intervention Order, *id.* (Dec. 14, 2020), D.E. 14.

5. Order, *id.* (Dec. 14, 2020), D.E. 17; *see* Minutes, *id.* (Dec. 17, 2020), D.E. 46; *see also* Sandy Hodson & Susan McCord, *Suit Challenges Ballot Procedures*, Augusta Chron., Dec. 17, 2020, at A1.

6. Docket Sheet, *12th Cong. Dist. Republican Comm.*, No. 1:20-cv-180 (S.D. Ga. Dec. 9,

He began the hearing with an acknowledgment of the Covid-19 pandemic and an admonition against recording the proceeding: “Due to the continuing surge of the Corona Virus we are conducting this hearing today by video with nationwide audio streaming. . . . [F]ederal court rules strictly prohibit recording by anyone whether you’re participating by video conference or audio stream . . . any part of this hearing today.”<sup>8</sup>

Judge Hall ended the hearing by denying the plaintiffs immediate relief.<sup>9</sup> First, the plaintiffs did not have standing to pursue the case:

[T]he individual voters’ claims represent nothing more than a general grievance, not particularized in any fashion. As to the claims by the committee and the two voters asserting First Amendment claims, the Court finds that those claims are simply based upon speculation, highly speculative—highly speculative issues in some cases—many cases—involving potential actions of conduct of independent actors. The Court has noted that spending money or directed resources based on some fear of a speculative harm simply does not establish the concrete injury required for standing.<sup>10</sup>

Second, a delay in bringing the challenge to absentee voting, which had already begun, weighed against injunctive relief.<sup>11</sup>

A notice of appeal was filed ten days after the election,<sup>12</sup> and a voluntary dismissal was filed about two months later.<sup>13</sup>

#### *Northern District Case*

The Republican Party and its candidates for U.S. Senate in the runoff election filed a federal complaint on December 10, 2020, in the Northern District against state election officials, also challenging the adequacy of procedures in Georgia for validating absentee ballots.<sup>14</sup> According to the plaintiffs, “many counties in Georgia in the November 3, 2020 general election accepted virtually all absentee ballot signatures, rejecting impossibly low numbers of mismatched signatures, and even failing to find any missing signatures.”<sup>15</sup> With

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2020) (D.E. 18).

7. Intervention Order, *id.* (Dec. 16, 2020), D.E. 38; *see* Intervention Motion, *id.* (Dec. 15, 2020), D.E. 31.

8. *12th Cong. Dist. Republican Comm.* Transcript, *supra* note 1, at 3–4.

9. Order, *12th Cong. Dist. Republican Comm.*, No. 1:20-cv-180 (S.D. Ga. Dec. 17, 2020), D.E. 47; *12th Cong. Dist. Republican Comm.* Transcript, *supra* note 1, at 35–36; *see* Susan McCord, *Absentee Ballot Lawsuit Dismissed*, *Augusta Chron.*, Dec. 18, 2020, at A1; David Wickert, *Judges Dismiss Suits Related to Ga. Absentee Ballot Rules*, *Atlanta J.-Const.*, Dec. 18, 2020, at 5A.

10. *12th Cong. Dist. Republican Comm.* Transcript, *supra* note 1, at 35.

11. *Id.* at 35–36.

12. Notice of Appeal, *12th Cong. Dist. Republican Comm.*, No. 1:20-cv-180 (S.D. Ga. Jan. 15, 2021), D.E. 50.

13. Motion, *12th Cong. Dist. Republican Comm. v. Secretary*, No. 21-10183 (11th Cir. Mar. 17, 2021); *see* Order, *id.* (Mar. 31, 2021), 2021 WL 1567735 (dismissing the appeal).

14. Complaint, *Ga. Republican Party v. Raffensperger*, No. 1:20-cv-5018 (N.D. Ga. Dec. 10, 2020), D.E. 1.

15. *Id.* at 4.

their complaint, the plaintiffs filed a motion for a temporary restraining order and a preliminary injunction.<sup>16</sup>

On the next day, Judge Eleanor L. Ross set the case for hearing on December 21.<sup>17</sup> On December 14, Judge Ross granted a December 11 motion by the Democratic Party to intervene as a defendant in the case.<sup>18</sup> Also on Monday, December 14, Judge Ross rescheduled the hearing from the following Monday to the intervening Thursday, and she rescheduled the hearing from in person to via videoconference, at the parties' request.<sup>19</sup>

At the hearing, Judge Ross dismissed the case for lack of standing.<sup>20</sup>

On Sunday, December 20, the court of appeals declined to stay Judge Ross's dismissal.<sup>21</sup> Responsibility for validating absentee ballots lay with local election officials, not state election officials.<sup>22</sup> The court of appeals accepted a voluntary dismissal of the appeal on January 4, 2021.<sup>23</sup>

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16. Motion, *id.* (Dec. 10, 2020), D.E. 2.

17. Order, *id.* (Dec. 11, 2020), D.E. 11.

18. Intervention Order, *id.* (Dec. 14, 2020), D.E. 15; Intervention Motion, *id.* (Dec. 11, 2020), D.E. 12.

19. Order, *id.* (Dec. 14, 2020), D.E. 17; *see* Order, *id.* (Dec. 15, 2020), D.E. 23 (rescheduling the hearing from 9:30 a.m. to 3:00 p.m., at the parties' request).

20. Minutes, *id.* (Dec. 17, 2020), D.E. 46; Opinion at 3, *Ga. Republican Party v. Sec'y of State*, No. 20-14741 (11th Cir. Dec. 20, 2020) [hereinafter 11th Cir. *Ga. Republican Party* Opinion]; *see* Wickert, *supra* note 9.

21. 11th Cir. *Ga. Republican Party* Opinion, *supra* note 20; *see* Mark Niese, *Appeals Court Rejects Ballot Signature Lawsuit*, Atlanta J.-Const., Dec. 22, 2020, at 7A.

22. 11th Cir. *Ga. Republican Party* Opinion, *supra* note 20, at 5–6.

23. Order, *Ga. Republican Party*, No. 20-14741 (11th Cir. Jan. 4, 2021).