

Extending the Deadline to Receive Absentee Ballots for Multiple Reasons

Democratic Party of Georgia v. Burkes
(*W. Louis Sands, M.D. Ga. 1:18-cv-212*)

Following a morning proceeding three days after an election, a federal judge signed a consent agreement extending the deadline for election officials to receive cast absentee ballots. Ballots were mailed late to voters because of a state court injunction and a hurricane.

Subject: Absentee and early voting. *Topics:* Absentee ballots; enjoining certification.

A major political party filed a federal complaint in the Middle District of Georgia on November 8, 2018, two days after a general election, seeking a court order requiring election officials in one county to accept absentee ballots post-marked by election day and received within three days after that instead of requiring that they be received by election day.¹ The complaint alleged that an injunction benefiting a prospective candidate delayed transmission of absentee ballots until after the statutory deadline.² Further, Hurricane Michael, arriving just after the government holiday of Columbus Day, closed offices, which performed at diminished capacity even after they opened again because of lingering disruptions to electricity and telephone systems.³ To top it off, the complaint alleged particularly poor mail service in the county.⁴

With its complaint, the party filed a motion for a preliminary injunction.⁵ Judge W. Louis Sands heard the case on the following morning.⁶ Judge Sands temporarily enjoined certification of the election and instructed the parties to return at 2:00 p.m. with additional evidence.⁷ The parties returned with a proposed consent agreement.⁸ Judge Sands granted the party relief:

At the afternoon hearing, Defendants appeared before the undersigned and did not contest that some voters were, in fact, harmed by the late mailing of the absentee ballots, and accordingly, consent to the relief requested by the Democratic Party of Georgia, namely that the Board treat all absentee ballots received by Dougherty County that are postmarked by November 6, 2018,

1. Complaint, *Democratic Party of Ga. v. Burkes*, No. 1:18-cv-212 (M.D. Ga. Nov. 8, 2018), D.E. 1; see Richard Fausset, Patricia Mazzei & Alan Blinder, *With No Clear-Cut Winner, the Bickering Builds*, N.Y. times, Nov. 9, 2018, at A1.

2. Complaint, *supra* note 1.

3. *See id.*

4. *Id.*

5. Preliminary Injunction Motion, *Democratic Party of Ga.*, No. 1:18-cv-212 (M.D. Ga. Nov. 8, 2018), D.E. 2.

6. Minutes, *id.* (Nov. 9, 2018), D.E. 6.

7. Temporary Restraining Order, *id.* (Nov. 9, 2018), D.E. 4; Minutes, *supra* note 6.

8. Minutes, *supra* note 6.

and are received within the three-day period following the election, if otherwise proper, as valid ballots, and shall count and include those ballots in the certified election results.⁹

Concerns about absentee ballots in Dougherty County are among the allegations in a pending action in the Northern District more generally challenging Georgia's oversight of elections.¹⁰

9. Consent Order, *Democratic Party of Ga.*, No. 1:18-cv-212 (M.D. Ga. Nov. 9 2018), D.E. 5; see Mark Niese, *What Happens Next with Vote Count?*, Atlanta J.-Const., Nov. 10, 2018, at 1A; Elise Viebeck, Vanessa Williams & Sharon Duntun, *Trump Says Kemp "Won" in Georgia*, Wash. Post, Nov. 11, 2018, at A7.

10. Complaint at 38, 42–43, *Fair Fight Action v. Crittenden*, No. 1:18-cv-5391 (N.D. Ga. Nov. 27, 2018), D.E. 1; Docket Sheet, *id.* (Nov. 27, 2018); see Valerie Bauerlein, *Suit Alleges Georgia Curbed Black Voters*, Wall St. J., Nov. 28, 2018, at A4; Richard Fausset, *Supporters of Candidate Who Lost Georgia Race Take the State to Court*, N.Y. Times, Nov. 28, 2018, at A19.