

## **Complaints Against Widespread Voter-Registration Challenges Based on Possibly Inaccurate Change-of-Address Records**

*Majority Forward v. Ben Hill County Board of Elections (Leslie A. Gardner, M.D. Ga. 1:20-cv-266) and Fair Fight v. True the Vote (Steve C. Jones, N.D. Ga. 2:20-cv-302)*

Two federal complaints filed less than two weeks before a senatorial runoff election in Georgia alleged that an organization was improperly challenging voter registrations based on unreliable change-of-address records. One week after the complaints were filed, a district judge in the Middle District of Georgia curtailed one county’s canceling voter registrations based on the change-of-address records alone. On the following day, a district judge in the Northern District of Georgia declined to impose immediate relief on the organization, but the case remains pending.

*Subject:* Nullifying registrations. *Topics:* Registration challenges; National Voter Registration Act; recusal; provisional ballots; Covid-19; case assignment.

Two federal complaints filed in Georgia on December 23, 2020—thirteen days before a senatorial runoff election—alleged that widespread efforts by a Texas-based organization to challenge voter registrations were based on unreliable change-of-address records.

### *The Middle District of Georgia*

A complaint filed in the Middle District of Georgia alleged that election officials for Ben Hill County and Muscogee County were cooperating with the organization by accepting voter-registration challenges based on “notoriously unreliable” records.<sup>1</sup> The plaintiffs were an “organization created to support voter registration and voter turnout efforts” and a voter who had moved temporarily to California for contract work.<sup>2</sup> On the following day, Judge Leslie A. Gardner set the case for hearing on December 30.<sup>3</sup> On December 27, the plaintiffs filed a motion for a temporary restraining order requiring election officials to accept regular ballots from challenged voters.<sup>4</sup> On De-

---

1. Complaint, *Majority Forward v. Ben Hill Cty. Bd. of Elections*, No. 1:20-cv-266 (M.D. Ga. Dec. 23, 2020), D.E. 1 [hereinafter *Majority Forward* Complaint]; *Majority Forward v. Ben Hill Cty. Bd. of Elections*, 509 F. Supp. 3d 1348, 1352, 1354 (M.D. Ga. 2020).

“In-person early voting in the Runoff Elections began on December 14, 2020.” *Majority Forward*, 509 F. Supp. 3d at 1353.

2. *Majority Forward* Complaint, *supra* note 1; *Majority Forward*, 509 F. Supp. 3d at 1352.

3. Order, *Majority Forward*, No. 1:20-cv-266 (M.D. Ga. Dec. 24, 2020), D.E. 2; *Majority Forward*, 509 F. Supp. 3d at 1354.

4. Temporary-Restraining-Order Motion, *Majority Forward*, No. 1:20-cv-266 (M.D. Ga. Dec. 27, 2020), D.E. 5; *Majority Forward*, 509 F. Supp. 3d at 1352–53.

ember 28, Judge Gardner granted the plaintiffs the requested temporary restraining order, to remain in effect for eight days (through election day).<sup>5</sup>

Also on December 28, Muscogee County election officials moved to sever claims against them from the rest of the case.<sup>6</sup> On December 29, the plaintiffs filed an amended complaint,<sup>7</sup> and the Muscogee County defendants filed a motion to stay the temporary restraining order.<sup>8</sup>

On the day of the all-day December 30 evidentiary hearing,<sup>9</sup> Judge Gardner issued a preliminary injunction against Muscogee County election officials—finding insufficient evidence justifying relief against Ben Hill County election officials—on finding a violation of section 8 of the National Voter Registration Act.<sup>10</sup> A published opinion followed on January 4, 2021.<sup>11</sup>

Section 8(d) specifies information requirements for the cancellation of a voter’s registration for change of residence.<sup>12</sup> In addition, section 8(c) prohibits the systematic cancellation of voter registrations fewer than ninety days before an election.<sup>13</sup>

The plaintiffs had moved on December 28, 2020, for the recusal of Judge Gardner, “the sister of Stacey Abrams, a Georgia politician and voting rights activist who was the Democratic candidate in the 2018 Georgia gubernatorial election.”<sup>14</sup> On December 31, Judge Gardner ruled that her oath of office required her to accept assignment of the case and decide it impartially.<sup>15</sup>

Twenty days after the election, the parties stipulated dismissal of the action.<sup>16</sup>

---

5. *Majority Forward*, 509 F. Supp. 3d at 1348.

6. Severance Motion, *Majority Forward*, No. 1:20-cv-266 (M.D. Ga. Dec. 28, 2020), D.E. 8, 11.

7. Amended Complaint, *id.* (Dec. 29, 2020), D.E. 20.

8. Stay Motion, *id.* (Dec. 29, 2020), D.E. 24.

9. Transcript, *id.* (Dec. 30, 2020, filed Jan. 27, 2021), D.E. 40; Minutes, *id.* (Dec. 30, 2020), D.E. 31.

“Defendant Muscogee County called one witness.” *Majority Forward v. Ben Hill Cty. Bd. of Elections*, 512 F. Supp. 3d 1354, 1357–58 (M.D. Ga. 2020).

10. Preliminary Injunction, *Majority Forward*, No. 1:20-cv-266 (M.D. Ga. Dec. 30, 2020), D.E. 27 [hereinafter *Majority Forward* Preliminary Injunction], 2020 WL 9074825; *see* 52 U.S.C. § 20507; *see also* Susan McCord, *Federal Judge Rejects Georgia Voter Challenges*, *Augusta Chron.*, Dec. 30, 2020, at A4; Mark Niese, *Judge Rejects Challenges to 4,000 Voters*, *Atlanta J.-Const.*, Dec. 30, 2020, at 5B; David Wickert, *Judge Is Skeptical of Challenges to Ga. Voters’ Eligibility*, *Atlanta J.-Const.*, Jan. 3, 2021, at 15A. *See generally* Robert Timothy Reagan, *Motor Voter: The National Voter Registration Act* (Federal Judicial Center 2014).

11. *Majority Forward*, 512 F. Supp. 3d 1354.

12. 52 U.S.C. § 20507(d); *see Majority Forward* Preliminary Injunction, *supra* note 10, at 1–2.

13. 52 U.S.C. § 20507(c)(2)(A); *see Majority Forward* Preliminary Injunction, *supra* note 10, at 2.

14. Recusal-Motion Brief at 4, *Majority Forward*, No. 1:20-cv-266 (M.D. Ga. Dec. 28, 2020), D.E. 7-1.

15. Opinion, *id.* (Dec. 31, 2020), D.E. 28.

16. Stipulation, *id.* (Jan. 25, 2021), D.E. 39.

*The Northern District of Georgia*

A political action committee and two anonymous voters filed a complaint in the Northern District of Georgia against the Texas-based organization at issue in the Middle District case, an “organization whose stated purpose is to combat voter fraud,” and four persons affiliated with the organization, claiming that the organization “has spearheaded a coordinated attack on Georgia’s electoral system threatening voters with entirely frivolous claims of fraudulent and illegal voting that have reached feverish heights in the weeks leading up to the January 5, 2021 [senatorial] runoff.”<sup>17</sup> The complaint further alleged that the organization “in partnership with electors in each Georgia county, intended to preemptively challenge the eligibility of more than 364,000 Georgians to vote on the grounds that these voters no longer reside in the State of Georgia.”<sup>18</sup> The individual plaintiffs sought permission to proceed anonymously, alleging that they feared “retaliation from Defendants and their supporters for having filed the lawsuit.”<sup>19</sup>

Senior Judge Richard W. Story exercised his prerogative as a senior judge on December 29 and declined assignment of the case.<sup>20</sup> That day, Judge Steve C. Jones set the case for a videoconference hearing on December 31.<sup>21</sup> Judge Jones noted that the complaint sought immediate injunctive relief and ordered the plaintiffs to file a motion to that effect.<sup>22</sup> On December 29, the plaintiffs filed a motion for a temporary restraining order or a preliminary injunction.<sup>23</sup>

At his hearing, Judge Jones and the parties acknowledged Judge Gardner’s injunction.<sup>24</sup>

Judge Jones informed the plaintiffs’ attorney that he would need to know additional information about the individual plaintiffs to establish standing for them to bring their claims, and Judge Jones said that if the individual plaintiffs were concerned about their safety, then the information should be physically brought to him that day, but it should not be emailed.<sup>25</sup> The hearing ended at 1:15 p.m.<sup>26</sup> After the hearing, the plaintiffs filed declarations that had been executed on December 24 by the two anonymous plaintiffs, and Judge Jones filed copies of the declarations in the public record, redacting

---

17. Complaint, *Fair Fight, Inc. v. True the Vote*, No. 2:20-cv-302 (N.D. Ga. Dec. 23, 2020), D.E. 1 [hereinafter *Fair Fight, Inc. Complaint*]; see Order, *id.* (Jan. 1, 2021), D.E. 28 (changing the name of a defendant in the case from True the Vote to True the Vote, Inc.).

18. *Fair Fight, Inc. Complaint* at 2, *supra* note 17.

19. Motion to Proceed Anonymously, *Fair Fight, Inc.*, No. 2:20-cv-302 (N.D. Ga. Dec. 23, 2020), D.E. 2.

20. Order, *id.* (Dec. 29, 2020), D.E. 5.

21. Order, *id.* (Dec. 29, 2020), D.E. 6.

22. *Id.*

23. Motion, *id.* (Dec. 29, 2020), D.E. 11.

24. Transcript at 19–22, 38–41, 71–82, 103, *id.* (Dec. 31, 2020, filed Jan. 26, 2021), D.E. 46.

25. *Id.* at 12–14.

26. Minutes, *id.* (Dec. 31, 2020), D.E. 25.

identifying information.<sup>27</sup> Following the defendants' response,<sup>28</sup> Judge Jones decided late on January 1, 2021, that the individual plaintiffs could proceed anonymously.<sup>29</sup>

This Court finds, in light of the current climate surrounding this runoff election, their fears to be reasonable. Since the general election, Georgia election workers and officials have reported receiving threats predicated on unfounded claims of voter fraud. The atmosphere has been serious enough for state officials to make a public plea for the accusations to stop before people are seriously harmed or killed.<sup>30</sup>

But Judge Jones denied the plaintiffs immediate relief.<sup>31</sup> Although Judge Jones expressed “grave concerns regarding Defendants’ coordinated, broad-strokes challenge to more than 360,000 Georgia voters on the eve of an unprecedented two-seat Senate runoff,”<sup>32</sup> “the evidence provided to date does not show that Defendants have harassed or intimidated voters.”<sup>33</sup>

An amended complaint filed on March 22 included three individual plaintiffs, one of them anonymous.<sup>34</sup> The complaint offered an explanation for each individual plaintiff’s recently relocating to where the plaintiff intended to vote.<sup>35</sup> Judge Jones determined on March 9, 2023, that only some of the case’s issues could be resolved by summary judgment.<sup>36</sup>

On September 13, Judge Jones denied an August 14 defense motion for a jury trial: relief at issue was only equitable, the request was “extremely delayed,” and the requested change in procedure would be disruptive to the court and parties and prejudicial to the plaintiffs.<sup>37</sup> Trial began on October 26.<sup>38</sup>

---

27. Declarations, *id.* (Jan. 1, 2021), D.E. 26.

28. Letter, *id.* (Jan. 1, 2021), D.E. 27.

29. Opinion at 18–19, *id.* (Jan. 1, 2021), D.E. 29 [hereinafter Jan. 1, 2021, *Fair Fight, Inc.* Opinion]; *see* Wickert, *supra* note 10.

30. Jan. 1, 2021, *Fair Fight, Inc.* Opinion, *supra* note 29, at 18–19.

31. *Id.* at 21–28 (citations omitted).

32. *Id.* at 11; *see id.* at 15 (noting that many Georgia voters might have been “temporarily out of state for various COVID-19 related reasons”).

33. *Id.* at 26.

34. Amended Complaint, *Fair Fight, Inc.*, No. 2:20-cv-302 (N.D. Ga. Mar. 22, 2021), D.E. 73 [hereinafter *Fair Fight, Inc.* Amended Complaint]; *see also* Opinion, *id.* (Aug. 17, 2021), D.E. 111 (dismissing earlier counterclaims).

35. *Fair Fight, Inc.* Amended Complaint, *supra* note 34, at 7–8.

36. Opinion, *Fair Fight, Inc.*, No. 2:20-cv-302 (N.D. Ga. Mar. 9, 2023), D.E. 222, *modified* by Order, *id.* (May 3, 2023), D.E. 235.

37. Opinion, *id.* (Sept. 13, 2023), D.E. 244; *see* Motion, *id.* (Aug. 14, 2023), D.E. 237.

38. Docket Sheet, *id.* (Dec. 23, 2020).