Court battles over ballot counts in Georgia, Florida

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14 November 2018

A federal judge ruled Tuesday that local officials in Gwinnett County, Georgia, a heavily populated county outside Atlanta, had violated the 1964 Civil Rights Act in rejecting absentee ballots because of minor technical flaws. In her 17-page ruling, District Judge Leigh Martin May ordered the county to count ballots that had been rejected solely because the voter had omitted or incorrectly marked his or her birth year.

The decision was the second major rebuff to efforts by state and local Republican officials to guarantee victory to Republican gubernatorial candidate Brian Kemp over his Democratic opponent Stacey Abrams. Another federal judge ordered election officials to preserve and count provisional ballots cast by voters who in many cases were challenged over minor discrepancies between their names as recorded in voter registration lists and on the identification they presented at the polls, such as driver's licenses.

District Judge Amy Totenberg barred the Georgia secretary of state from certifying results on Tuesday, the normal deadline, delaying this action until Friday. In the interim, she ordered the state government to "immediately establish and publicize on its website a secure and free-access hotline or website for provisional ballot voters to access to determine whether their provisional ballots were counted and, if not, the reason why."

Brian Kemp held the office of secretary of state, supervising administration of the vote in which he was the Republican candidate for governor, until he resigned after the election, claiming victory, and was replaced by his deputy.

Kemp holds a lead of nearly 60,000 votes over Abrams, but he is only slightly above the 50 percent threshold to avoid a runoff under state law, with 50.3 percent of the vote. Tens of thousands of provisional and mail-in votes still remain to be counted, and if Abrams and a third-party candidate cut his margin by 19,000 votes, there would be a runoff election between Kemp and Abrams on December 4.

The ruling by Totenberg not only delays certification of the governor's race, it may affect the outcome of the state's closest congressional race, for the 7th Congressional District, in the Atlanta suburbs, where incumbent Republican Rob Woodall leads his Democratic challenger Carolyn Bourdeaux by only 901 votes out of nearly 300,000 cast.

In neighboring Florida, at least nine lawsuits have been filed by both Republicans and Democrats while a recount is conducted on three statewide races—for governor, US senator and agricultural commissioner, an important executive position in state government. The recount was ordered Saturday by the Florida secretary of state since in all three races the top two candidates were separated by less than 0.5 percent of the vote: 0.06 for agricultural commissioner, 0.15 percent for senator, 0.41 percent for governor.

Under state law, a machine recount—essentially rerunning the machine tabulations in each precinct—is to be completed by Thursday, November 15. In the event the results are within 0.25 percent of the vote, there would be a manual recount of all ballots deemed to be "undervotes" or "overvotes"—where no vote is recorded for the office in question, or two votes that cancel each other out—to determine whether machine error is involved.

While these procedures are well established under state law, and have been used for lesser offices, they have never before been invoked for statewide contests, let alone both governor and US senator at the same time. The Senate contest is almost certainly headed for a manual recount, which would have a deadline of Sunday, November 18. The final results are to be certified by Tuesday, November 20.

Governor Rick Scott, the Republican candidate for US Senate, has sought to cast doubt over the entire recount

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procedure, claiming without presenting any evidence that the Democratic Party is seeking to steal the election for incumbent Senator Bill Nelson. Scott leads Nelson by 12,562 votes out of more than eight million cast, a tiny margin that could easily be wiped out by provisional and mail-in ballots not yet counted in the three most populous and most heavily Democratic counties, Palm Beach, Broward and Miami-Dade.

In the gubernatorial contest, Republican Congressman Ron DeSantis leads Democrat Andrew Gillum by a slightly larger margin, 33,684 votes out of eight million. Unless there is a sizeable shift in the machine recount, the governor's race will be decided in favor of DeSantis without a manual recount.

Lawyers acting for Scott sought court orders Monday to impound ballots and voting machines in Palm Beach and Broward counties, claiming this was necessary to prevent fraud, but they failed to convince judges because they offered no supporting evidence.

Rival lawsuits were filed on behalf of the Democratic National Committee, the Democratic Senatorial Campaign Committee and the VoteVets political action committee, seeking a court order that all ballots postmarked by November 6 should be counted, rather than just those received by Election Day.

A separate lawsuit by the League of Women Voters and the watchdog group Common Cause Florida sought to bar Scott from using "the power of his office in any manner related to Florida's 2018 Senate race as long as he remains a candidate."

As in the Florida election crisis of 2000, when the US Supreme Court halted vote-counting in the state and awarded its electoral votes, and the White House, to George W. Bush, the Florida recount of 2018 has seen the Republican Party on the offensive against the counting of every vote, while the Democratic Party whimpers and retreats.

Democrat Gillum initially conceded the gubernatorial contest to DeSantis in the early hours of the morning after the polls closed, well before any definitive count, based purely on network projections that he had lost by about one percent of the vote. He rescinded his concession only after more up-to-date figures showed the margin was less than half of one percent, triggering the automatic recount.

Scott has been making strident statements about supposed Democratic theft of the elections, although the election supervisor for Broward County, the main target of right-wing venom, was originally appointed by Republican Governor Jeb Bush before winning re-election several times as a Democrat.

The loudest shouts about "vote fraud" have come from President Trump, who took time out from bullying presidents and prime ministers during his visit to Europe over the weekend to vilify local officials in Palm Beach and Broward counties. He demanded, via Twitter, that the initial vote totals announced last Tuesday night should be accepted as final.

This would mean disenfranchising hundreds of thousands of voters who cast provisional ballots, voted by mail, or whose votes were not tabulated November 6 for other reasons.

In a court hearing on Monday, Broward Circuit Chief Judge Jack Tuter said that no evidence had been presented of any vote fraud, and he urged Scott and other officials to "ramp down the rhetoric," expressing concern that the entire electoral system was being discredited.

"If someone in this lawsuit or someone in this county has evidence of voter fraud or irregularities at the supervisor's office, they should report it to their local law enforcement officer," the judge said. "If the lawyers are aware of it, they should swear out an affidavit, but everything the lawyers are saying out there in front of the elections office is being beamed all over the country. We need to be careful of what we say. Words mean things these days."

The overriding evidence is not of "vote fraud" but of systematic voter suppression, directed particularly against minority and poor working class voters. Florida notoriously bars 1.4 million people from voting because of past felony convictions, a lifetime ban that was only repealed November 6 through the passage of a referendum amending the state constitution.

One lawsuit filed with a federal court in Tallahassee notes that mail-in ballots rejected in previous elections, allegedly because the signatures did not match those on file with the state—about one percent of the total, far more than enough to swing the results of a close election—were disproportionately from young and minority voters.

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