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Three Governors: Herman Talmadge, the Georgia Supreme Court and the Gubernatorial Election of 1946

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Non-discriminatory Jury Selection in Georgia

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Publisher's Statement

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Three Governors:

Herman Talmadge, the Georgia Supreme Court and the Gubernatorial Election of 1946

By Lucian Emery Dervan

Herman Talmadge, who died March 21, 2002, was a governor, senator, and Georgia icon who controlled state politics for much of the last half of the 20th century. While many events in Talmadge's life deserve attention, one event in particular stands out amongst the trials and tribulations, victories and scandals in this long American political life. In 1946, the Georgia gubernatorial election brought a state government to its knees, a state Supreme Court to the height of its power and Talmadge into the national spotlight as a revolver totting aspiring governor.



Herman Talmadge served as governor of Georgia from 1949 to 1955.

The Election of 1946

In 1946, as Ellis Arnall completed his final year as Georgia's governor, the only primary that mattered in Georgia during this period, the Democratic primary, was beginning to heat up. Prevented from running for re-election under Georgia's constitutional term limits, Arnall's chosen successor was James Carmichael, a state legislator and supporter. The main opposition for the primary endorsement

was Eugene Talmadge. Eugene Talmadge, often referred to as the "wild man from Sugar Creek," was a Democratic demagogue who had served as Georgia's governor from 1933-1937 and 1941-1943 when he was defeated by Arnall.¹

As the campaign evolved, Talmadge dominated the issues and made the entire election about white supremacy. This focus on race occurred because of two federal court decisions involving the right of blacks to vote in primaries. First, in 1944, a Texas court ruled that blacks must be allowed to vote in electoral primaries. This decision was followed quickly by the filing of a similar suit in Georgia by Primus King against the Muscogee County Democratic Committee. King won the suit in federal court in 1945 and, after being affirmed by the Fifth Circuit, Georgia's appeal to the United States Supreme Court was denied. Talmadge, however, was intent on preventing blacks from voting in the primaries and promised a "Democratic white primary." While Talmadge failed to create a whites-only primary, the issue



Herman Talmadge campaigns in Royston, Ga., during the 1948 gubernatorial race. Talmadge defeated Gov. M. E. Thompson in a special election.

helped mobilize voters in rural counties for his candidacy. This strategy was successful, and Talmadge won the Democratic primary on July 17, 1946.²

While most general elections in the South during this period involved little more than confirming the Democratic nominee, the Georgia general election of 1946 was approached slightly differently by some. As the Democratic convention approached in October, Eugene Talmadge was already ill and confined to a Jacksonville, Fla., hospital. In response to these concerns, Herman Talmadge, Eugene's son, initiated a write-in campaign for himself. The reason for this was

his belief that should his father die before assuming office, the Georgia Constitution delegated the authority to the legislature to elect a governor from the two remaining candidates with the most votes.³ Those who were concerned had their worries validated as November arrived — the general election was on November 5 and Eugene Talmadge won the election while still in the hospital.

In all great events, there is one decisive moment when the debacle begins. For Georgia, that moment arrived on Dec. 21, 1946, when Gov.-Elect Eugene Talmadge died. Knowing a storm was brewing in the capital, the story in the newspaper next to the pronouncement of Talmadge's death was a piece titled, "3 Leaders Loom for Governorship."⁴ Immediately, Herman Talmadge (hereafter "Talmadge") began campaigning for support in the legislature. At the same time, Gov. Arnall declared that he would remain in office until such time as a special election was held and a successor chosen. While Talmadge and Arnall began a war of words, the

third possible governor, M.E. Thompson, who had been elected Georgia's first lieutenant governor, waited on the side-lines.

In early January, Arnall shifted strategies and aligned with Thompson. The attorney-general, Eugene Cook, issued a ruling stating that the legislature did not have the authority to elect a governor and that Gov. Arnall would remain in the office until Thompson was inaugurated lieutenant governor. On January 14, despite Arnall's insistence he still held title to the office, the legislature took up the issue of electing a governor. It has been reported that as the session began, Thompson aides began serving laced drinks to Talmadge supporters in an effort to pass a resolution instilling Thompson as governor.⁵ Any such attempt failed, however, and the overwhelmingly pro-Talmadge legislature began preparing to elect him governor. A problem arose, however, when Talmadge forces discovered he had only 617 write in votes, placing him third among the remaining candidates. As noted above, the constitution only permitted the legislature to select a governor from the next two highest vote recipients. The legislature adjourned briefly and reconvened with a miraculous 58 new votes for Talmadge from his home county. It should be noted that these uncounted votes were all in the same handwriting, in alphabetical order and some of the voters were dead at the time of the election. These new write-in votes gave Talmadge the lead with 675 votes.

The legislature moved immediately to elect and inaugurate Talmadge, who then made his way to the governor's office upstairs where Arnall had barricaded him-

self in with several supporters. Talmadge and his aides broke down the door and a fight erupted resulting in numerous injuries, including a broken jaw for Thad Buchanan, an Arnall supporter. The evening ended peacefully, however, with Arnall being escorted safely home as Talmadge and 8,000 to 10,000 of his supporters filled the capital.

The next day the locks were changed, but Arnall still arrived for work as if he were governor. Unable to enter his office, Arnall conducted business at a desk in the capital rotunda. This temporary facility was abandoned by Arnall when pro-Talmadge supporters lobbed firecrackers into the desk area, after which point Arnall retired to a nearby law office, though Talmadge supporters claimed he had commandeered the men's bathroom. The day was not any less dramatic for Talmadge, who arrived for his first day as governor with a .38 caliber Smith & Wesson in his pocket.

Almost immediately after Talmadge's inauguration, Arnall filed suit attempting to enjoin Talmadge from acting as governor. While the court set a hearing for February 7, more dangerous moves were being made by the Arnall and Talmadge camps as each fought for control of the military. During World War II, the Georgia National Guard was mobilized and, as a result, another institution called the State Guard was created as its temporary replacement within the state. In 1946, however, the National Guard had returned, yet the State Guard had not been disbanded. To make matters worse, the National Guard supported Talmadge and the State Guard Supported Arnall. The troops were

mobilized and positioned around the capital, but conflict was averted. At one point, however, Talmadge troops seized furniture from Arnall's secretary and stenographer and took control of the switch board. As citizens feared a war may break out on the streets of Atlanta, Arnall and Talmadge each acted as governor and denied the other's authority to control the executive branch of government.

Thompson, who had been on the side lines during much of the clash between Arnall and Talmadge, reemerged on January 18 when he was sworn in as lieutenant governor. Shortly after the ceremony, Arnall resigned and Thompson claimed to have succeeded to the office of governor. Thompson was then substituted as plaintiff in the suit initiated by Arnall, which became the focal point of the dispute. The battle was no longer spilling into the streets or taking place in the corridors of the state capital. After Thompson's assumption of power, two governors sat in separate offices and claimed to be the rightful holders of executive power. The dispute would last for two more months until the Georgia Supreme Court finally resolved the matter.

The Courts

Three major suits became the focus of the judiciary's involvement in the controversy. In each, the underlying question was who held rightful title to the office of governor. To resolve this issue, the courts had to examine the state constitutional mandate that the legislature may only intervene in the election if "no person shall *have*" a majority of the vote. What made the analysis particularly difficult was the fact that Eugene Talmadge had received a majority of the vote in the election, but, because of his subsequent death, no one possessed a majority at the time the legislature published the results. The question remained, therefore, had the constitutional requirements for legislative intervention been met?

The first suit, as discussed above, was initiated by Arnall and later carried on by Thompson, who was substituted as plaintiff after assuming the office of governor. The case was heard by Judge Walter C. Hendrix, who ruled in favor of Talmadge. The lengthy decision came to the conclusion that the constitution did not intend the legislature only be able to act if no one, including the deceased, Eugene Talmadge, had received a majority.

A dispute over the highest office in the state had involved barricaded doors, fights in the capital, armed militias surrounding government buildings and candidates carrying weapons to protect themselves as they attempted to exercise the executive powers.

Construing the Constitution as we do, it is clear that the General Assembly had the right to decide when there was no election by the people. It did decide that on account of the death of the Governor-Elect there had been no election by the people. In our opinion the Constitution then put the duty and responsibility on it to elect and install a Governor. This duty and responsibility it decided as it saw fit. When it acts within its authority courts cannot interfere.⁶

Under this interpretation of the constitution, Arnall had not continued in office until Thompson was sworn in as lieutenant governor, and, therefore, Thompson had not succeeded to the office of governor.

The second case was *Bryars et al. v. Thompson*, in which Thompson sued the Board of Pardons and Parole to force them to deliver certain information to him as governor. Heard by Judge Claude Porter

in Floyd County, the court this time supported Thompson.

[T]he General Assembly was, under this provision of the Constitution, without jurisdiction to declare any person to have been elected governor of Georgia, there sole right being confined to the right to declare that Eugene Talmadge had received a majority of the votes cast for governor of Georgia in said election; that therefore, Ellis Arnall continued in office as governor until his resignation; and that M.E. Thompson having been elected and so declared by the General Assembly, and having qualified as lieutenant governor of the State of Georgia, upon said resignation becoming effective, became acting governor of Georgia...⁷

Thus, the lower courts were now split over who was the rightful governor.

The final case was *Fulton National Bank of Atlanta v. Talmadge et al.*, in which the bank filed suit to determine whether Talmadge or Thompson rightfully controlled state funds held by the bank. The case was decided by Judge Bond Almand in Henry County and, concurring with Judge Hendrix's opinion, upheld Talmadge's claim to the office.

The answer seems to be that governments, like human beings, have frailties [sic] and

imperfections, but that when popular elections do not achieve a result, representative government steps in to prevent a complete breakdown. Government, like life, must go on.⁸

The cases now stood two for Talmadge and one for Thompson. The State Supreme Court would have to resolve the issue lest the uncertainty that inhabited the capital continue indefinitely.

The three cases from the lower courts were appealed directly to the Georgia Supreme Court and were argued and decided together. The reason for moving the issue directly before the Supreme Court was to speed up the case. The Chief Justice of the Georgia Supreme Court remarked, "[i]f counsel for both sides should agree to accelerate the hearings in the several cases involving the governorship before the Supreme Court, I am sure the Court would entertain such a motion."⁹ Agreeing to the accelerated appeals process, the three cases were docketed for March 6 before the Georgia Supreme Court.

On March 19, 1947, the Georgia Supreme Court, in a 5-2 decision, ruled that Thompson was rightfully governor, and the controversy was over as quickly as it began.¹⁰ The opinion, written by Justice Duckworth, begins with the issue of whether the court has jurisdiction to decide the controversy. While the opinion admits that issues, which are purely political,

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Gregory Conner
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are not within the jurisdiction of the court, the court holds that where the construction of a constitutional provision is in question the judiciary holds exclusive jurisdiction. Therefore, the court considers whether under the Georgia Constitution the General Assembly had the power to elect Herman Talmadge governor. In finding that the General Assembly acted outside its power, the court states “[i]n this State all power and sovereignty repose in the people.” The power to elect a governor, therefore, does not transfer to the legislature unless the voters fail to give a candidate a majority of the vote. In the current situation, the court notes, Eugene Talmadge received a majority of the votes cast and, therefore, regardless of his death, the conditions precedent for legislative intervention were not present. While Eugene Talmadge possessed a majority, his death prevented him from being sworn in as governor and, therefore, this inability of the majority vote recipient to assume office created a necessity for Gov. Arnall to remain in office. The court concludes its opinion by noting that upon the resignation of Gov. Arnall, Lt. Gov. Thompson had a duty and responsibility to assume the office of governor and execute its functions. Thus, Thompson is “entitled to perform all of the duties and exercise all the authority which by the constitution and laws are imposed upon the governor of this state.”¹¹

After the opinion was handed down, Talmadge stepped aside graciously. A dispute over the highest office in the state had involved barricaded doors, fights in the capital, armed militias surrounding government buildings and candidates carrying weapons

to protect themselves as they attempted to exercise the executive powers. In the end, however, the judiciary intervened to quell the emotion and danger of the situation and peacefully end the controversy. The matter was not over for Thompson and Talmadge, however. While Georgia settled down in the following months under the leadership of Gov. Thompson, Talmadge prepared to make another bid for the office he felt entitled to in 1947. Talmadge did not have to wait long. In 1948, Talmadge defeated Thompson in a special election. ^{GBJ}

Lucian Dervan is a 2002 graduate of Emory University School of Law and an associate with King & Spalding. Dervan received his B.A. from Davidson College. The opinions expressed herein are solely those of the author and do not necessarily represent the opinions of King & Spalding.

Endnotes

1. The other two candidates in the Democratic primary were Eurith Rivers, another former Governor, and Hoke O’Kelly, a disabled war veteran.
2. See James F. Cook, *THE GOVERNORS OF GEORGIA* 232-33 (Mercer Univ. Press 1995).

3. This belief was because of Article V, section I, Paragraph IV of the Georgia Constitution of 1945 which read in part, “but, if no person shall have such majority, then from the two persons having the highest number of votes... the General Assembly shall immediately, elect a Governor...”
4. M.L. St. John, *3 Leaders Loom for Governorship*, ATLANTA CONSTITUTION, Dec. 22, 1946, at 1.
5. See Gary Pomerantz, *When Georgia had Three Governors*, ATLANTA JOURNAL AND CONSTITUTION, Dec. 29, 1996, at 4D; *Georgia’s Three Governors Controversy*, at www.gdnpeachnet.edu/faculty/sbuchanan/governor.htm (last visited Dec. 5, 2000).
6. James B. Sanders, *THE GEORGIA GUBERNATORIAL CONTROVERSY OF 1947* 71 (1947) (unpublished thesis, M.E. Thompson Collection, Special Collections and Archives, Robert W. Woodruff Library, Emory Univ.) (quoting Arnall v. Talmadge, No. 1693 (Henry County Superior Court Feb. 12, 1947)).
7. *Id.* at 72 (quoting Bryars et al. v. Thompson, No. 15792 (Floyd County Superior Court Feb. 7, 1947)).
8. *Id.* at 74 (quoting Fulton National Bank of Atlanta v. Talmadge et al., Number 15798 (Henry County Superior Court Feb. 15, 1947)).
9. M.L. St. John, *High Court would Speed Action in Governor Case*, ATLANTA CONSTITUTION, Feb. 11, 1947, at 1.
10. Thompson v. Talmadge, 201 Ga. 867, 872 (Ga. 1947).
11. *Id.* at 898.