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Security or Suppression: Georgia's Newest Election Law and Its Public Backlash

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Security or Suppression: Georgia's Newest Election Law and Its Public Backlash

By: Whit Wiman, Staff Editor, Vol. 110



One could call the Election Integrity Act of 2021^[1] many things. First known as Senate Bill 202, the Georgia voting law was swift; it was passed and signed only months after the 2020 presidential election and early 2021 Senate runoff elections.^[2]

It was restrictive; the law reduced the time voters had to request absentee ballots,^[3] imposed new photo ID requirements for absentee ballots,^[4] made it illegal for election officials to mail out absentee ballot applications to all registered voters,^[5] and more.^[6] But, most importantly, it was retaliatory—the Republican-controlled legislature's response to the first Democratic presidential and Senate victories since 1992 and 1996.^[7]

Attorney General Merrick B. Garland, however, was quick on the draw.^[8] On June 25, 2021, the Justice Department filed a lawsuit against Georgia in an attempt to stop what it claimed was racially discriminatory provisions of the state's new voting law.^[9] It contends that several of the law's provisions were adopted "with the purpose of denying or abridging the right to vote on account of race,"^[10] and these discriminatory effects were known to lawmakers.^[11]

If proven at trial, these provisions would be squarely at odds with Section 2 of the Voting Rights Act—which outlaws voting processes or requirements that result in the abridgement of the right to vote on account of race, color, or language minority status.^[12] Whether a discriminatory result has occurred requires that a totality of the circumstances test be applied.^[13]

The Justice Department questioned the legality of multiple provisions.^[14] Their complaint included challenges to the reduced time to request absentee ballots,^[15] the "costly and onerous" fines for organizations and groups that distribute follow-up absentee ballot applications,^[16] the ban on election officials from distributing unsolicited absentee ballot applications,^[17] and the ban on efforts to provide food or water to people waiting in long voter lines^[18]—a provision that has earned significant public backlash.^[19]

This particular restriction brought about criticism from activists who support groups such as World Central Kitchen, Pizza to the Polls, and other nonprofits who—the activists claim—help mitigate some of the issues that "cause voters to flee a line on a hot Georgia day" by providing "water to the elderly," handing out "[food to] kids who might . . . get cranky," and helping "create a sense of community."^[20] Georgia's conservative legislature, however, maintains that these election rules are "reasonable, non-discriminatory, and well within the mainstream of election laws across the country."^[21]

The Justice Department was not the only organization to file suit against this new law.[22] The Coalition for Good Governance filed a similar lawsuit to the Justice Department's roughly two weeks later.[23] They asked for an injunction to stop enforcement of the newly-passed law, but Judge J.P. Boulee denied the motion—his explanation being that Georgia was not prepared to change election rules in the middle of an election.[24] Following this ruling, the Secretary of State's office declared that this was just another frivolous lawsuit "based on misinformation and lies." [25] Even the Justice Department's request that these provisions not be enforced was ultimately unsuccessful,[26] and thus the Georgia elections that took place on November 2, 2021 more-or-less functioned as a test run for these new election rules.[27]

Despite the challenges and criticism to the Election Integrity Act of 2021, a simple question remains: Will its restrictions make any real difference in Georgia elections? Judging by the reporting on recent elections,[28] the answer seems to be that it's simply too early to tell. This latest election was, after all, the "first big test" of the state's new election rules.[29]

Even though there were instances of some Georgians discovering that they were required to travel to another precinct due to the new law,[30] reporters said that Atlanta counties ran into few issues[31] and Fulton County Elections Director Richard Barron claimed that they had avoided significant voting lines.[32] This was, however, only the result of a low turnout municipal election.[33]

To see the overarching impact this new election law will have, Americans should keep a close eye on Georgia when the midterm elections begin later this year. If proven effective, this voting law could be the harbinger of vote suppression for years to come.[34]

[1] Election Integrity Act of 2021, 2021 Gen. Assemb., Reg. Sess. (Ga. 1999).

[2] Nick Corasaniti & Reid J. Epstein, *What Georgia's Voting Law Really Does*, NYTimes.com (Aug. 18, 2021), <https://www.nytimes.com/2021/04/02/us/politics/georgia-voting-law-annotated.html> (<https://www.nytimes.com/2021/04/02/us/politics/georgia-voting-law-annotated.html>).

[3] *Id.*

[4] *Id.*

[5] *Id.*

[6] *Id.*

[7] *Georgia, 270toWin*, <https://www.270towin.com/states/georgia> (<https://www.270towin.com/states/georgia>) (last accessed Nov. 28, 2021); *List of United States Senators from Georgia*, Ballotpedia, https://ballotpedia.org/List_of_United_States_Senators_from_Georgia (https://ballotpedia.org/List_of_United_States_Senators_from_Georgia) (last accessed Nov. 28, 2021).

[8] *Justice Department Files Lawsuit Against the State of Georgia to Stop Racially Discriminatory Provisions of New Voting Law*, Off. of Pub. Affs. (June 25, 2021), <https://www.justice.gov/opa/pr/justice-department-files-lawsuit-against-state-georgia-stop-racially-discriminatory> (<https://www.justice.gov/opa/pr/justice-department-files-lawsuit-against-state-georgia-stop-racially-discriminatory>).

[9] *Id.*

[10] *Id.*

[11] *Id.*

[12] *Section 2 of the Voting Rights Act: Vote Dilution and Vote Deprivation*, SCOTUSblog.com, <https://www.scotusblog.com/election-law-explainers/section-2-of-the-voting-rights-act-vote-dilution-and-vote-deprivation/> (<https://www.scotusblog.com/election-law-explainers/section-2-of-the-voting-rights-act-vote-dilution-and-vote-deprivation/>) (last accessed Nov. 28, 2021).

[13] *Id.*

[14] *Justice Department Files Lawsuit Against the State of Georgia to Stop Racially Discriminatory Provisions of New Voting Law*, *supra* note 8.

[15] *Id.*

[16] *Id.*

[17] *Id.*

[18] *Id.*

[19] Tim Carman, *New Limits on Food and Water at Georgia's Polls Could Hinder Black and Low-Income Voters, Advocates Say*, WashingtonPost.com (Apr. 9, 2021), <https://www.washingtonpost.com/food/2021/04/09/georgia-voting-laws-food/> (<https://www.washingtonpost.com/food/2021/04/09/georgia-voting-laws-food/>).

[20] *Id.*

[21] Kate Brumback, *Georgia Asks Judge to Toss DOJ Lawsuit Targeting Voting Law*, APNews.com (July 28, 2021), <https://apnews.com/article/lawsuits-voting-georgia-8dae722e74914902d2e71c7a02ae8d09> (<https://apnews.com/article/lawsuits-voting-georgia-8dae722e74914902d2e71c7a02ae8d09>).

[22] Mark Niese, *Federal Judge Upholds Georgia's Latest Voting Laws*, Atlanta J.-Const. (July 8, 2021), <https://www.governing.com/nov/federal-judge-upholds-georgias-latest-voting-laws> (<https://www.governing.com/nov/federal-judge-upholds-georgias-latest-voting-laws>).

[23] *Id.*

[24] *Id.*

[25] Maggie Astor, *A Federal Judge Declines, For Now, to Block Parts of Georgia's Voting Law.*, NYTimes.com (July 7, 2021), <https://www.nytimes.com/2021/07/07/us/politics/georgia-voting-law-judge-ruling.html> (<https://www.nytimes.com/2021/07/07/us/politics/georgia-voting-law-judge-ruling.html>).

[26] Niese, *supra* note 22.

[27] *Id.*

[28] Joe Henke, *Election Day in Atlanta | Few Issues Reported in Fulton County*, 11 Alive (Nov. 2, 2021), <https://www.11alive.com/article/news/politics/elections/fulton-county-election-day/85-fbd8015d-30d0-4508-b09b-039d16e02aaf> (<https://www.11alive.com/article/news/politics/elections/fulton-county-election-day/85-fbd8015d-30d0-4508-b09b-039d16e02aaf>); Justin Gray, *Tuesday's Election Brought First Major Test to State's New Voting Laws*, WSBTV.com (Nov. 2, 2021), <https://www.wsbtv.com/news/local/atlanta/tuesdays-election-brings-first-major-test-states-new-voting-laws/34W2CXC4AVHTHCAEK5BY5OZS5M/> (<https://www.wsbtv.com/news/local/atlanta/tuesdays-election-brings-first-major-test-states-new-voting-laws/34W2CXC4AVHTHCAEK5BY5OZS5M/>).

[29] Henke, *supra* note 28; Gray, *supra* note 28.

[30] Fredreka Schouten, *Voters, Activists and Embattled Local Officials Road-Test Georgia's Election Restrictions in Tuesday's Elections*, CNN.com (Nov. 3, 2021), <https://www.cnn.com/2021/11/03/politics/georgia-election-law-test/index.html> (<https://www.cnn.com/2021/11/03/politics/georgia-election-law-test/index.html>).


[31] Gray, *supra* note 28.

[32] *Id.*

[33] Schouten, *supra* note 30.

[34] Adam Brewster & Caitlin Huey-Burns, *Georgia Has Changed Its Voting Laws. Which States Will Be Next?*, CBSNews.com (Apr. 2, 2021), <https://www.cbsnews.com/news/voting-laws-georgia-texas-arizona-florida/> (<https://www.cbsnews.com/news/voting-laws-georgia-texas-arizona-florida/>).

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