

Judge Says Black Voters' Suit Against Ga. Utility Panel Is A Go

By **Clark Mindock**

Law360 (January 24, 2022, 10:05 PM EST) -- Black Georgia residents have been given the go-ahead to proceed with claims that the state Public Service Commission's election process is discriminatory after a federal judge determined Monday the system may allow white voters to drown out the will of the petitioners.

U.S. District Judge Steven D. Grimberg determined that the group of residents had adequately alleged the Public Service Commission's electoral system — in which candidates are voted on in at-large elections — may well violate the Voting Rights Act because the residents are unable to wield their collective influence to elect their preferred candidates.

Judge Grimberg said the residents out of Fulton County had satisfied the various prerequisites laid out in *Thornburg v. Gingles* to allege the system overseen by Secretary of State Brad Raffensperger, the defendant, potentially violates Section 2 of the VRA and warrants intervention. Raffensperger is being sued in his official capacity.

"They have put forward enough facts — that the secretary does not dispute — to establish that their proposed single-member, majority-minority district would give African Americans the potential to elect their representative of choice to the commission," Judge Grimberg said.

Nico Martinez, an attorney with Bartlit Beck LLP representing the plaintiffs, said that they believe that the Commission must be selected through an equitable process that doesn't dilute the strength of Black voters, and that they are looking forward to bringing claims to trial on behalf of the residents.

"We are very pleased that after reviewing the law and the facts we presented, the Court confirmed that a trial is necessary to give our clients the opportunity to present even more evidence showing that the method of electing members of Georgia's Public Service commission discriminates against Black voters," Martinez said.

A representative for the state and Raffensperger said the state is unable to comment on pending litigation.

The Georgia residents first filed the suit in July 2020, alleging the statewide electoral system for the commission works against their interests and consistently denies them their chosen representation.

The residents, who live in Fulton County — an area of the state that is predominantly Black and includes

Atlanta — say that while the commissioners must live within a district in order to qualify for the seat in question, that does not guarantee representation since the entire state votes on each commissioner. As a result, white voters in the rest of the state overwhelm the Black vote out of Fulton County.

According to Judge Grimberg's ruling, that discrepancy has meant that Black-preferred candidates have failed to win office dating back to at least 2012. Because white residents had voted as a bloc — and since Black voters likewise appeared to do so — Judge Grimberg said it was clear that the protections of the VRA might apply.

In fact, since the state moved to its current system, just one Black member has been elected to serve on the five-member commission overseeing the state's telecommunications, electric and natural gas services, according to the lawsuit. All five of the current commissioners are Republican as well, despite Fulton County's increasingly Democratic lean that culminated in 72.6% of the vote going to Democrat Joe Biden in the 2020 election.

The judge's decision comes after the Biden administration threw its weight behind the residents' lawsuit, filing an amicus brief in July expressing support for their efforts to have the election rules surrounding the commission rewritten.

The plaintiffs are represented by Bryan L. Sells of the Law Office of Bryan L. Sells LLC and Nicolas L. Martinez and Wesley A. Morrissette of Bartlit Beck.

Raffensperger is represented by Bryan F. Jacoutot, Bryan P. Tyson and Loree A. Paradise of Taylor English Duma LLP and Charlene S. McGowan of the Georgia Attorney General's Office.

The case is *Rose et al. v. Raffensperger*, case number 1:20-cv-02921, in the U.S. District Court for the Northern District of Georgia.

--Editing by Janice Carter Brown.