

Suit Fuels Speculation Georgia Will Be Battleground State in 2020 Election

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By R. Robin McDonald



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A new lawsuit reflects the growing perception that Georgia will be a battleground state in 2020.

The suit by the Democratic National Committee challenges the constitutionality of a Georgia law that determines the order candidates appear on ballots, based on the governor's political party.

The suit, filed Friday against Secretary of State Brad Raffensperger and members of the State Election Board, contends that the ballot order statute "puts an arbitrary thumb on the scale" in all of the state's partisan general elections—in favor of candidates of the governor's political party. As a result, through at least 2022, every Republican candidate in a state partisan race will be listed first because Gov. Brian Kemp is a Republican.

The suit asks a federal judge to declare the statute as unconstitutional and bar the state from enforcing the ballot order statute to benefit the state Republican party. It also asks the court to require a ballot order system that gives other major party candidates “an equal opportunity to be listed first on the ballot.”

The Georgia suit is one of three federal ballot order cases brought by the Democratic National Committee, its congressional affiliates and state parties on Friday. The committee also filed similar suits in [Arizona](#) and [Texas](#). Both states have ballot order laws similar to Georgia’s, where the sitting governor’s party dictates which candidates will be placed first on the ballot for the respective state offices they seek.

The Democratic Party argues in the Georgia suit that ballot order “is no mere election detail.”

“It is a fact almost universally acknowledged that the candidates listed first in a race on the ballot receive an electoral benefit solely due to their ballot position” in a “phenomenon known as the primacy effect,” it contends. “It gives first-listed candidates a meaningful and arbitrary advantage over all of their opponents. Thus, the ballot order statute gives Republican candidates a meaningful electoral advantage over their similarly situated Democratic opponents.”

The suit brands that alleged electoral advantage as arbitrarily tied to the electoral success of a party’s gubernatorial candidate and argues that it “persists on every ballot, in every partisan race, in every general election thereafter, even if the last gubernatorial election was incredibly close—such as in 2018, where Governor Kemp and his Democratic opponent were separated by a mere 1.39 percentage points.”

Kemp has become a lightning rod for Democratic allegations of voter suppression after Democratic challenger Stacy Abrams ended her campaign but refused to concede the race, calling out “incompetence and mismanagement” by Kemp while he was secretary of state and saying that on his watch, “Democracy failed Georgia.”

Kemp, Georgia’s secretary of state and chief elections officer from 2010-2018, and didn’t resign the post before launching his successful campaign for governor. Kemp was a defendant in multiple lawsuits in the run-up to and following the November 2018 election over how his office managed the state’s voter registration rolls. Before Kemp stepped down following the election, five federal judges in the state handed down six temporary restraining orders to address flaws in the administration of the midterm election.

An ongoing lawsuit filed by Fair Fight Action, which Abrams founded, called Kemp the “chief architect” of a string of barriers to voting on both a local and statewide level. The suit demands sweeping changes in Georgia’s electoral system and calls for government oversight either by a federal judge or the U.S. Justice Department’s civil rights division.

The DNC is joined in the new litigation by the Democratic Senatorial Campaign Committee, the Democratic Congressional Campaign Committee, the Democratic Party of Georgia and Priorities USA, a progressive advocacy organization and two voters—a 17-year-old Dunwoody resident who will be 18 in 2020 and has already registered to vote and a Morgan County voter who has voted for both Republican and Democratic party candidates.

The party organizations are represented by attorneys Adam Sparks and Halsey Knapp of Atlanta's Krevolin & Horst and a team of attorneys from Perkins Coie in Washington, D.C., that include Marc Elias, Elisabeth Frost, Jacki Anderson and Zachary Newkirk and their Seattle partner Abha Khanna.

The suit notes a number of state races where the winners and losers in state races since 2016 were separated by small, in several cases minute percentages and predicted there are likely to be even more highly competitive races in Georgia next year.

"Our democracy only works if we have free and fair elections without any arbitrary partisan advantages for one party or another," said Nikema Williams, chairwoman of the Democratic Party of Georgia. "Every Georgian should have confidence that their vote will count and that their elections are administered under a fair and unbiased system. Especially given the history of Republican efforts at voter suppression in Georgia, the result from the last election should not determine who wins the next one."

"Democrats are taking every action possible to protect the integrity of our democratic process and ensure every voter can participate in a fair election," said DNC Chair Tom Perez. "An unbiased ballot is one of the cornerstones of our democratic system, and this joint effort will help make sure no one political party is given an unfair advantage at voters' expense."

"Ballot order laws in Arizona and Georgia are creating unfair advantages for one political party and are antithetical to fair elections," said Guy Cecil, chairman of Priorities USA. "Priorities USA is committed to working with our partners to ensure that we protect our election process from these unconstitutional advantages."

A spokesman for Secretary of State Brad Raffensperger had no immediate comment on the litigation.

R. Robin McDonald

Daily Report reporter R. Robin McDonald's journalism career includes stints as a staff writer at The Atlanta Journal-Constitution, The Fort Worth Star-Telegram, The Wichita Eagle, and The Anniston Star and as a trial tracker at CourtTV and CNN. She is the author of two true crime books -- *Black Widow: The True Story of the Hilley Poisonings* and *Secrets Never Lie: The Death of Sara Tokars*.

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