

No Right to Have Provisional Ballots Counted Without Evidence That Voter-Registration Applications Were Received

Jackson v. Madison County Board of Registrars
(*Madeline Hughes Haikala, N.D. Ala. 5:18-cv-1855*)

Four voters sought an injunction requiring the counting of their provisional ballots, alleging that they registered to vote on time. On evidence that their voter registration applications were never received, the judge determined that they were not entitled to immediate injunctive relief.

Subject: Provisional ballots. *Topics:* Provisional ballots; registration procedures; student registration; case assignment.

Four voters filed a federal complaint in the Northern District of Alabama on Friday, November 9, 2018, three days after a general election, seeking an injunction requiring election officials to count their provisional ballots, alleging that although they registered to vote on time, their registration applications were not processed before the election.¹ With their complaint, the plaintiffs filed a motion for a temporary restraining order.²

On the day that the case was filed, the court assigned the case to a magistrate judge³ and then reassigned the case to Judge Madeline Hughes Haikala.⁴ Judge Haikala issued a temporary restraining order against the final certification of provisional ballots until she could hear from the parties.⁵ Also on the day that the complaint was filed, she held a telephone conference with the parties⁶ and set the case for hearing on the following Tuesday.⁷

At the November 13 hearing, the plaintiffs' attorney informed the court, "Since election day, plaintiffs have checked the status of their provisional ballots and discovered that their ballots have been rejected, meaning they will not be counted."⁸ In closing, defense counsel argued that "while plaintiffs have put forth evidence that they completed the forms, they do not know that those forms got turned in."⁹ Judge Haikala concluded that the case essentially presented a chain-of-custody issue: "So based on all of the evidence that the Court

1. Complaint, *Jackson v. Madison Cty. Bd. of Registrars*, No. 5:18-cv-1855 (N.D. Ala. Nov. 9, 2018), D.E. 1.

2. Temporary-Restraining-Order Motion, *id.* (Nov. 9, 2018), D.E. 4.

3. Assignment Notice, *id.* (Nov. 9, 2018), D.E. 2.

4. Reassignment Notice, *id.* (Nov. 9, 2018), D.E. 8.

5. Docket Sheet, *id.* (Nov. 9, 2018) (D.E. 13).

6. *Id.* (minutes, Nov. 9, 2018).

7. *Id.* (D.E. 15).

8. Transcript at 5, *id.* (Nov. 13, 2018, filed Nov. 21, 2018), D.E. 24.

9. *Id.* at 103.

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has received, the Court cannot say at this point that there is a substantial likelihood of success on the merits.”¹⁰

Judge Haikala granted a voluntary dismissal on January 28, 2019.¹¹

10. *Id.* at 109–10; see Ivana Hryniw, *Four A&M Students’ Votes Won’t Count*, *Huntsville Times*, Nov. 14, 2018, at A3.

11. Order, *Jackson*, No. 5:18-cv-1855 (N.D. Ala. Jan. 28, 2019), D.E. 31.