

Onerous Absentee-Ballot Procedures in Mississippi

O’Neil v. Hosemann

(Daniel P. Jordan III, S.D. Miss. 3:18-cv-815)

On the day before a runoff election, plaintiffs sought a federal-court injunction requiring the counting of absentee ballots postmarked by election day instead of received by the day before election day. The federal judge decided that the request for relief was too late and the relief requested was too disruptive.

Subject: Absentee and early voting. *Topics:* Absentee ballots; laches.

Three voters and an organization promoting voting rights filed a federal complaint in the Southern District of Mississippi on Monday, November 21, 2018, six days before a runoff election, against state election officials and election officials of two counties, challenging Mississippi’s procedures for absentee voting as unusually onerous.¹ Five days later, on the day before election day, the plaintiffs filed an “Emergency Motion for Temporary Restraining Order and Preliminary Injunction”² to require the counting of absentee ballots that are postmarked by election day instead of received as of the day before.³

Judge Daniel P. Jordan III heard the case on election day, completing the hearing late in the morning.⁴ That day, he issued an opinion denying immediate relief.⁵ “There are two related problems with Plaintiffs’ requested relief—it is too late and disturbs the status quo.”⁶ Changing the deadline for absentee ballots after the deadline had passed and on the day for postmarked ballots if the deadline were to change “would mean that different voters would be operating under different laws.”⁷

Moreover, Judge Jordan questioned “whether Plaintiffs named the correct defendants. . . . [U]nder Mississippi’s election [statutes], the registrars, i.e., circuit clerks, for each county are given the relevant tasks.”⁸

He noted, however, that the Mississippi timeline for requesting and casting absentee ballots “is tight—if not impossible—for some voters.”⁹

Judge Jordan dismissed the case as settled in 2020.¹⁰

1. Complaint, *O’Neil v. Hosemann*, No. 3:18-cv-815 (S.D. Miss. Nov. 21, 2018), D.E. 1; *see* Amended Complaint, *id.* (Dec. 20, 2018), D.E. 26.

2. Motion, *id.* (Nov. 26, 2018), D.E. 3.

3. Brief at 6, *id.* (Nov. 26, 2018), D.E. 4.

4. Docket Sheet, *id.* (Nov. 21, 2018); Opinion at 6, *id.* (Nov. 27, 2018), D.E. 19, 2018 WL 6188292.

5. Opinion, *supra* note 4.

6. *Id.* at 4.

7. *Id.* at 6.

8. *Id.* at 3.

9. *Id.* at 2.

10. Order, *O’Neil v. Hosemann*, No. 3:18-cv-815 (S.D. Miss. Oct. 30, 2020), D.E. 60.