

IN THE SUPERIOR COURT OF HOUSTON COUNTY

STATE OF GEORGIA

*Carolyn V. Sullivan*  
Carolyn V. Sullivan, Clerk of Superior Court  
Houston County, Georgia

THE NEW GEORGIA PROJECT,

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Civil Action No: 2020 V 123366

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Plaintiff,

:

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v.

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KATHERINE SHELTON, in her official  
capacity as Chair of the Houston County  
Board of Elections; BARBARA WADDLE,  
in her official capacity as Vice Chair of the  
Houston County Board of Elections; JOHN  
APPLEGATE, in his official capacity as a  
member of the Houston County Board of  
Elections; HENRY CHILDS in his official  
capacity as a member of the Houston County  
Board of Elections; SHERMAN FALANA, in  
his official capacity as a Member of the Houston  
County Board of Elections,

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Defendants.

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ORDER RE: PETITION FOR WRIT OF MANDAMUS

Plaintiff filed a Petition for Mandamus and Injunctive and Declaratory Relief on December 16, 2020. Defendants filed a response on December 17, 2020. Plaintiff was seeking a Writ of Mandamus compelling the Houston County Board of Elections to provide two additional advance voting dates. This Court, recognizing the immediate need of both sides for a decision, held a hearing on December 17, 2020 at 4:00 pm by Zoom video conference.

Petitioner argues the law requires the board to make advance voting available on Saturday, December 19, 2020 and Monday, January, 4, 2020. Neither day is currently on the Board's schedule for early voting and the County maintains neither is required by law. The schedule for advance voting is primarily controlled by OCGA § 21-2-385(d)(1) Its language is relevant to both issues raised by the Plaintiff.

This section clearly delineates primary, election and runoff with specific language for each. The election at issue is governed by OCGA § 21-2-385(d)(1)(C) which provides advance voting shall begin "on the fourth Monday immediately prior to a runoff from a

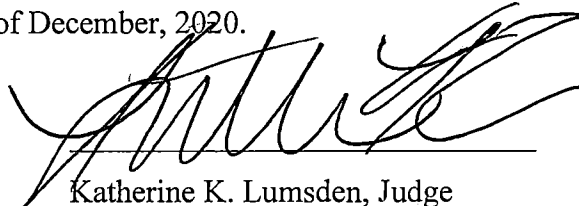
general election in which there are candidates for a federal office on the ballot in the runoff” and “shall end on the Friday immediately prior to each primary, election or runoff.” It goes on in relevant portion “Voting shall be conducted during normal business hours on weekdays during such period and shall be conducted on the second Saturday prior to a primary or election during the hours of 9:00 A.M. through 4:00 P.M.” This portion specifically leaves out “runoff” when establishing Saturday advance voting. Thus Saturday advance voting is not required for runoff elections.

As to the second issue raised, OCGA § 21-2-385(d)(1) requires advance voting “shall end on the Friday immediately prior” in this case January 1, 2020. It also requires voting to be conducted during “normal business hours on weekdays during such period”. January 1, 2020 is a legal holiday pursuant OCGA § 1-4-1. With regard to the election code, OCGA § 21-2-14 governs the computation of time “unless otherwise stated in specific code section” for exercising any such privilege, i.e. voting. Petitioner argues this requires an additional day of advance voting on Monday, January 4, 2020. However, there are additional code sections to consider in deciding if it “is otherwise stated” and thus OCGA § 21-2-14 is trumped by the specificity found there.

Advance voting is included in the definition of absentee electors as defined in OCGA § 21-2-380. Further, OCGA § 21-2-384(a)(2) specifies in relevant portion “ no absentee ballot shall be issued on the day prior to a primary or election”. OCGA § 21-2-385( c) goes on in relevant portion “ In the case of persons voting in accordance with subsection (d) of this Code section, the board of registrars or absentee ballot clerk shall furnish accommodations to the elector to ensure the privacy of the elector while voting his or her **absentee ballot**”(emphasis added). Therefore when read together, it appears that advance voting is the casting of an absentee ballot under the law. There is a specific provision that prohibits utilizing same on the day before a primary, election or runoff. Therefore, a Monday advanced voting day is not required despite the Friday, January 1<sup>st</sup> holiday. The Court notes that this analysis and conclusion differs from her opinion announced at the end of the hearing yesterday. However, after having the opportunity to carefully review the statutes and briefs of counsel, the Court is convinced this the decision required by law.

The petition for Writ of Mandamus and all other relief is DENIED.

SO ORDERED this 18 day of December, 2020.



Katherine K. Lumsden, Judge  
Houston Superior Court