

Election 2024: Recent Court Rulings on Voting and Counting Ballots

October 30, 2024

Recent court rulings in various states have determined key issues relating to the voting process and the counting of ballots for the 2024 congressional and presidential elections. This Sidebar provides a brief overview of the legal landscape for federal and state election laws, examines select recent court rulings relating to voting and ballot counting in the 2024 elections, and briefly discusses related legislation that is pending in the 118th Congress.

Overview of Legal Landscape

Although federal elections have national impact, they are primarily administered according to state laws. [Article I, Section 4, clause 1](#), of the U.S. Constitution, known as the Elections Clause, confers upon the states the initial and principal authority to administer elections within their jurisdictions. The Elections Clause provides that “[t]he Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of chusing Senators.” As a result of this decentralized authority, states vary in how they administer the voting process and the counting of ballots. For example, according to the [National Conference of State Legislatures](#), all state election laws provide for some type of voting by mail, but the specific requirements differ among the states. At the same time, the Elections Clause provides Congress with the authority to “[override](#)” state laws regulating federal elections. Under that authority, Congress has enacted federal laws, such as the [Help America Vote Act](#) and the [National Voter Registration Act](#), which regulate aspects of federal elections. Further, [Article II, Section 1, clause 4](#), provides that Congress “may determine the Time of chusing the [presidential] Electors, and the Day on which they shall give their Votes; which Day shall be the same throughout the United States.” Accordingly, Congress established the same date, every four years, for the states to elect presidential and vice-presidential electors in [3 U.S.C. § 1](#), known as Election Day.

Congressional Research Service

<https://crsreports.congress.gov>

LSB11244

Select Recent Court Rulings

As illustrated by the selected examples discussed below, courts have recently ruled on various state requirements concerning the voting process and the counting of ballots for the November 5, 2024, election. In so doing, courts have relied on the Elections Clause of the U.S. Constitution, state constitutional provisions, and state laws. In addition, courts have sometimes cited the Supreme Court’s 2006 per curiam ruling in *Purcell v. Gonzalez*—known as the “*Purcell* principle”—for the proposition that, in determining whether to enjoin or modify an election law close to Election Day, courts must consider the risk of “voter confusion and consequent incentive to remain away from the polls.” According to the Court in *Purcell*, that risk increases as the election draws closer, and a court must balance “the harms attendant upon issuance or nonissuance of an injunction” along with “considerations specific to election cases and its own institutional procedures.”

Although not a comprehensive discussion of all recent, relevant litigation, the following discusses examples of recent cases on voting and counting ballots. The results of these cases have varied and, in some instances, may be subject to appeal. As the 2024 election cycle unfolds, additional [litigation](#) is [expected](#).

Permitting Overseas Citizens Both to Register to Vote and to Vote: Michigan and North Carolina

State courts in Michigan and North Carolina recently denied emergency motions seeking to prevent certain family members of U.S. citizens living abroad, who never resided either in the state or anywhere in the United States, from registering to vote or from voting in the upcoming elections. As a result of the court rulings, election officials in Michigan and North Carolina will count the ballots of such voters in the November 5, 2024, election.

Michigan

On October 21, 2024, a Michigan state court [denied](#) a motion for summary disposition seeking to invalidate the [instructions](#) state election officials issued that permitted the spouses and dependents of overseas citizens, who have not resided in either Michigan or the United States, to register to vote and to vote. Addressing the timeline of the lawsuit, which was filed 28 days before Election Day, the court determined that the doctrine of “[l]aches bars this 11th hour attempt to disenfranchise these electors in the November 5, 2024 general election.” As the court explained, a lawsuit challenging the instructions “[could](#) have been raised at any time after 2017,” the year in which the Michigan Secretary of State issued the instructions. The court further observed that the challenged instructions adhere to federal law—the Uniformed and Overseas Citizens Absentee Voting Act ([UOCAVA](#))—as well as the state constitution and state law.

North Carolina

On October 21, 2024, a North Carolina state court [denied](#) a motion for a temporary restraining order (or an expedited preliminary injunction) to enjoin a state [statute](#) permitting North Carolina residents’ adult children, who were born outside the United States and have not resided in North Carolina, to register to vote. The plaintiffs argued that the state board of elections “misinterpreted” the statute, thereby permitting non-residents to register or vote fraudulently in violation of the U.S. and North Carolina constitutions. Concluding that “there is absolutely no evidence” that any voter has invoked the statute to vote fraudulently in North Carolina, and criticizing the lawsuit as based on “[unsupported and speculative allegations](#) for which there is not even a scintilla of substantive evidence,” the court declined to issue an

injunction. On October 29, 2024, a three-judge panel of the North Carolina Court of Appeals [declined](#) to issue an injunction in this case.

Requiring Voters to Sign and Date Mail-In Ballots: Pennsylvania

On October 5, 2024, the Supreme Court of Pennsylvania [denied](#) an application for “[extraordinary jurisdiction](#)” in a case where nonpartisan voting organizations brought suit arguing that mail-in ballots that are received by Election Day, but are missing or have incorrect handwritten dates on the outer return envelope, should be counted. Under the Pennsylvania [election code](#), a mail-in voter is required to seal a marked ballot in the provided envelope, place the envelope into a pre-addressed return envelope, and complete, date, and sign the declaration printed on the return envelope. The organizations [maintained](#) that the failure to count such mail-in ballots with missing or incorrect dates violates “the fundamental right to vote” as guaranteed under “[the Free and Equal Elections Clause](#)” of the Pennsylvania Constitution.

In denying the voting organizations’ application, the Supreme Court of Pennsylvania [ruled](#) that during an ongoing election, it would “neither impose nor countenance substantial alterations to existing laws and procedures during the pendency of an ongoing election.” The court cited a U.S. Court of Appeals for the Sixth Circuit [case](#) that observed, “[c]all it what you will—laches, the *Purcell* principle, or common sense,” a court should not disrupt elections that are about to occur without “a powerful reason for doing so.” Because of the court ruling, [Pennsylvania election officials](#) will not count mail-in ballots lacking the required signature and date for the November 5, 2024, election.

On August 1, 2024, the Commonwealth Court of Pennsylvania preliminarily [enjoined](#) Pennsylvania election officials from enforcing the Pennsylvania laws requiring voter signatures and dates on mail-in ballots. Observing that the challenged laws implicate the “fundamental right to vote,” which is guaranteed under the Pennsylvania Constitution, the court applied a [strict scrutiny](#) standard of review. In so doing, the court held that, as the statutorily required date on the outer mail-in ballot envelope was not used to determine timeliness, voter qualifications, or fraud, the statute [did not serve](#) a compelling governmental interest. On September 13, 2024, the Supreme Court of Pennsylvania [vacated](#) the ruling, holding that the lower court lacked subject matter jurisdiction because, in part, the plaintiffs failed to name all Pennsylvania counties as defendants in the lawsuit.

Removing Names of Voters From the Voter Rolls: Virginia

On October 30, 2024, the U.S. Supreme Court temporarily [stayed](#) an October 25, 2024, [order](#) by a federal district court that preliminarily enjoined Virginia election officials, except in limited circumstances, from removing the names of voters from the voter rolls within 90 days of the November 5, 2024, election. The Supreme Court stayed the lower court’s order pending the disposition of an appeal in the U.S. Court of Appeals for the Fourth Circuit (Fourth Circuit).

On October 27, 2024, the Fourth Circuit [denied](#) the Virginia election officials’ motion for a stay of the lower court’s preliminary injunction. The Virginia election officials argued that the removal of approximately 1,600 names of potential noncitizens from the voter rolls within 90 days of Election Day does not violate the “Quiet Period [Provision](#)” of the National Voter Registration Act (NVRA) because the law does not cover noncitizens. Holding that the Virginia election officials’ interpretation of the NVRA “violates basic principles of statutory construction,” the Fourth Circuit disagreed.

As a result of the Supreme Court’s ruling, Virginia election officials will be permitted to [remove](#) the names of approximately 1,600 voters from the voter rolls. In addition, [Virginia](#) allows for same-day voter registration whereby, on Election Day, a voter may cast a provisional ballot that will be counted if the voter’s eligibility is confirmed by election officials.

Requiring Hand-Counting of Ballots: Georgia

On October 22, 2024, the Supreme Court of Georgia [denied](#) a motion for an expedited appeal of a Georgia county court decision that held that the recent rules promulgated by the state election board, including a requirement that election ballots be hand-counted, exceeded the board's authority. The challenged [rule](#) required poll managers and officers to hand-count ballots after the polls close on Election Day and before transmitting the ballots for certification. The election board maintained that the rule was necessary "to ensure the secure, transparent, and accurate counting of ballots."

On October 16, 2024, the Fulton County Superior Court [ruled](#), among other things, that the hand-counting requirement was not authorized by state election law and "[vastly expands the authority](#) and obligations of poll officials." The court also held that the requirement violated the Elections Clause of the U.S. Constitution. As the court explained, the Elections Clause directs "[that the times, places and manners of](#)" congressional elections be established by the legislature of each state and cannot be delegated to another state body. As a result, it is unlikely that the hand-counting rule will be in effect in Georgia for the November 5, 2024, election, although an appeal is pending before the Georgia Supreme Court and, according to the court, "will proceed in the ordinary course."

Requiring Counting of Absentee Ballots Received After Election Day: Mississippi

On October 25, 2024, a three-judge panel of the U.S. Court of Appeals for the Fifth Circuit (Fifth Circuit) [held](#) that a Mississippi voting law that requires election officials to count absentee ballots received by mail up to five days following Election Day is preempted by the federal laws establishing Election Day. The Fifth Circuit did not enjoin the state law, but remanded the matter to the federal district court to establish the appropriate relief. Citing the *Purcell* principle, the Fifth Circuit also instructed the district court to give "[due consideration](#)" to preserving existing voting rules close to Election Day.

In reaching its decision, the Fifth Circuit observed that under the authority granted by the Electors Clause and the Elections Clause of the U.S. Constitution, Congress has statutorily established a single Election Day for congressional and presidential elections. Relying on the statutory text, court precedent, and historical practice, the Fifth Circuit determined that, by Election Day, voters must cast their ballots and election officials must *receive* such ballots. Therefore, the Fifth Circuit held that the Mississippi voting law requiring the counting of absentee ballots received up to five days after Election Day is preempted by federal law.

According to [media reports](#), the Mississippi Secretary of State has acknowledged that the Fifth Circuit ruling will not have practical effect for the November 5, 2024, election because the panel stopped short of overturning the state law, choosing instead to remand to the lower court for reconsideration. Longer term, the Fifth Circuit's opinion could impact similar state laws within its jurisdiction and could wind up before the Supreme Court on appeal.

Considerations for Congress

While states have the initial and principal authority to administer elections within their jurisdictions, Congress may enact overriding laws, within the bounds of the [Constitution](#), that regulate aspects of federal elections. Relevant to the court rulings discussed, Congress may choose to enact legislation addressing voting and the counting of ballots in federal elections. In the 118th Congress, for example, the Clean Elections in America Act ([H.R. 8499](#)) would limit voting by mail in federal elections to qualified voters meeting one of a specified list of "excusable reasons" for not voting in person. By contrast, the Accessible Voting Act of 2024 ([H.R. 7389](#) and [S. 3748](#)) and the Freedom to Vote Act ([H.R. 11](#), [S. 1](#), and

[S. 2344](#)) would require mechanisms for all qualified voters, without condition, to cast absentee ballots, including by mail. In the alternative, Congress may decide to defer to state laws and rules promulgated by election officials, as interpreted by the courts, to regulate federal election voting and ballot counting procedures. CRS further discusses related policy options in this [In Focus](#).

Author Information

L. Paige Whitaker
Legislative Attorney

Disclaimer

This document was prepared by the Congressional Research Service (CRS). CRS serves as nonpartisan shared staff to congressional committees and Members of Congress. It operates solely at the behest of and under the direction of Congress. Information in a CRS Report should not be relied upon for purposes other than public understanding of information that has been provided by CRS to Members of Congress in connection with CRS's institutional role. CRS Reports, as a work of the United States Government, are not subject to copyright protection in the United States. Any CRS Report may be reproduced and distributed in its entirety without permission from CRS. However, as a CRS Report may include copyrighted images or material from a third party, you may need to obtain the permission of the copyright holder if you wish to copy or otherwise use copyrighted material.