

Georgia Officials Ask Judge To Scrap Voting System Suit

By Tom Lotshaw

Law360 (January 10, 2023, 6:18 PM EST) -- Georgia's Secretary of State wants a Georgia federal judge to scrap a long-running suit challenging the state's voting systems, arguing an advocacy group and voters behind the challenge don't have standing, haven't been injured and only raise speculative fears that haven't materialized.

The Coalition for Good Governance and a half-dozen Georgia voters filed the lawsuit in 2017, arguing the state's election systems are unreliable and prone to hacking and pushing for the state to supplement electronic voting machines with pen and paper ballots.

In a motion to dismiss filed on Monday, Secretary of State Brad Raffensperger and other election officials said voters already have a pen and paper option through absentee ballots. Meanwhile, the paperless, direct-recording electronic voting machines the suit originally targeted have already been replaced with more than 30,000 ballot-marking devices, or BMDs, that meet legal requirements and have been found to be reliable through multiple audits, Raffensperger said, including the largest hand recount in U.S. history after the 2020 presidential election.

"This case has essentially become a means for the [plaintiffs'] experts to vent their disagreement with Georgia and other states' policymakers based on their idiosyncratic views of the risk of using BMD-like systems," Raffensperger said. "But weighing risk is a political and not judicial decision."

According to Raffensperger, the plaintiffs have failed to substantiate any of the supposed risks they fear, even as the suit has continued through significant discovery and more than 1,500 docket entries.

"There is no evidence that their ballots or any ballots cast using a BMD were not accurately counted or that any vote has been changed or will be altered as a result of the use of the BMD system. And there is no evidence of the BMD system being hacked — indeed, [plaintiffs'] expert confirmed that he has not identified any malware on any component of Georgia's current election system," Raffensperger said.

"Nor are (plaintiffs') fears about the elections being 'unverifiable' justified," Raffensperger continued. "Each audit and recount since Georgia implemented the BMDs — including the much-lauded hand recount of the 2020 presidential election — confirmed the reliability of the BMDs in accurately counting votes."

Raffensperger's motion acknowledges various supporters of former President Trump, including since-terminated county election officials, granted unauthorized access to Coffee County's election equipment

in January 2021. But, Raffensperger said, the plaintiffs have not discovered any evidence of any malware being installed on the equipment or any evidence of anything being done to machines that could affect any votes in the future, despite extensive discovery and forensic examinations of the equipment.

"Put simply, the plaintiffs' fears are just that: concerns that have never materialized," Raffensperger said. "Under these circumstances, they cannot show that the requirement that counties offer BMDs imposes a burden on anyone's right to vote. If Georgia requires voters to use a BMD, the case may be different. But it is not, and this fact alone warrants granting summary judgment."

The Georgia Secretary of State's Office did not immediately respond to a request for comment on Tuesday.

Marilyn Marks, executive director of the Coalition for Good Governance, told Law360 on Tuesday that the state arguments that Georgia's voting systems are secure and should not be subjected to the scrutiny of a trial are absurd.

"Anyone who read 2022's front page stories about election security knows that Georgia's statewide system was breached by actors paid by Sidney Powell to make unauthorized copies of the Georgia's voting software. As plaintiffs have proven, system copies were distributed online to Powell's technical experts capable of designing malware that can be easily deployed in future elections (in multiple states) without detection," Marks said in an email statement.

"Try as they might, there is no way for Georgia officials to dismiss the extreme dangers of the largest voting system breach in the nation's history by claiming that no one has yet detected manipulation of past election results," Marks said.

David A. Cross, an attorney representing several voters in the case, said the lawsuit is about obtaining a secure election system in Georgia that allows voters to have confidence that their votes are counted as intended.

"We have a very developed record that shows many serious vulnerabilities of the system, including that the system was breached by officials associated with the Trump campaign in January 2021, which just shows how easy it is to exploit the system, and the defendants just completely ignore that record," Cross told Law360.

"The state's defense is that there is no evidence that votes have been altered in the past, and that means the system is secure. But that's a ridiculous argument," Cross said. "If the state found out that a bridge had a defect and could fall, it would be no defense to say the bridge is still standing, so it must be reliable."

The Fulton County Board of Registration and Elections also filed a motion to dismiss on Monday. It said the suit, which argues that Georgia's voting system is unconstitutional and should be replaced, is directed at the state and not it. "The voting systems in question are the product of a statewide mandate for all 159 counties in the state," the county board said in its motion.

The Coalition for Good Governance is represented by Bruce P. Brown of Bruce P. Brown LLC, Robert A. McGuire III of Robert McGuire Law Firm LLC and Russell T. Abney of Watts Guerra LLP.

Voters are represented by David D. Cross, Mary G. Kaiser, Veronica Ascarrunz and Hannah R. Elson

of Morrison & Foerster LLP, Halsey G. Knapp Jr. and Adam M. Sparks of Krevolin & Horst LLC, and Cary Ichter of Ichter Davis LLC.

Members of the Fulton County Board of Registration and Elections are represented by Kaye W. Burwell and David R. Lowman of the Office of the Fulton County Attorney.

Georgia is represented by Vincent R. Russo, Josh Belinfante, Carey A. Miller, Alexander Denton, Edward A. Bedard, Javier Pico Prats and Anna Edmondson of Robbins Ross Alloy Belinfante Littlefield LLC and Bryan P. Tyson, Bryan F. Jacoutat and Diane F. LaRoss of Taylor English Duma LLP.

The case is Donna Curling et al. v. Brad Raffensperger et al., case number 1:17-cv-02989, in the U.S. District Court for the Northern District of Georgia.

--Editing by Vaqas Asghar.

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