

Ga. Voting System Suit Should Go To Trial, Group Says

By Tom Lotshaw

Law360 (February 13, 2023, 11:39 PM EST) -- The Coalition for Good Governance and a group of voters are pushing back against Georgia officials' attempt to end their suit challenging the constitutionality of the state's in-person electronic voting system, telling a Georgia federal judge their case should instead proceed to trial.

The nonprofit group and voters argued that there's plenty of evidence to back up their claims that Georgia's new electronic system is unreliable and prone to hacking and needs to be fixed and supplemented with pen and paper ballots, according to a filing lodged Friday in response to a January motion for summary judgment by state and Fulton County election officials.

State officials argued the group and its voters don't have standing, have not been injured and raise only speculative fears that have not materialized about a voting system that meets legal requirements and has been found to be reliable through multiple audits.

But the Coalition for Good Governance argued that granting the state's request for summary judgment now would be inappropriate. The group said it has developed a "massive record of evidence" showing the state's electronic voting system imposes burdens on voters in various ways that bear on their constitutionality claims, and that the only question for now is whether those claims are supported by evidence.

"There is no world in which the answer to that question at this stage in the proceedings, after nearly six years of litigation, is anything other than a resounding 'yes,'" the group said in its filing on Friday.

The voters say that the situation with allegedly unreliable electronic voting was made worse after various supporters of former president Donald Trump, including since-terminated county election officials, granted unauthorized access to Coffee County election equipment in January 2021, putting the system at risk statewide.

"There is simply no question that this case must go to trial promptly," Marilyn Marks, executive director of the Coalition for Good Governance, told Law360 on Monday.

"Plaintiffs clearly have standing and issues that must be tried are well articulated," Marks said. "State defendants should stop the foot-dragging with delay tactics in litigation while attempting to avoid undertaking the obvious changes needed to secure Georgia's elections."

The suit has been pending since August 2017. It got a ruling against the state's old voting system in 2019, and was then revamped to challenge the new system.

The suit continues to seek several injunctions against the use of the voting system, including one that would bar the state from requiring in-person voters to use touchscreen ballot-marking devices, or BMDs, and other injunctions that would require the state to upgrade the system's scanner software to address ballot traceability concerns and to ensure that voters' marks on mail ballots are not improperly disregarded.

In its filing opposing the state's motion for summary judgment, the group argued that state officials have failed to address several of the specific mechanisms by which the voters argue their constitutional rights are violated when they use the state's in-person voting system, including ballot secrecy claims, with the state wrongly contending the court dismissed them.

The group said the in-person voting system requires voters to make selections on large, bright screens, and that state guidance on equipment layout to local officials to improve their privacy has been "singularly ineffective," with the state either unwilling or unable to fix the problem.

"Coalition plaintiffs have submitted numerous recent eyewitness accounts from all over the state confirming BMDs are routinely positioned so virtually anyone in the polling location can see how voters vote," the group said.

David D. Cross, one of the attorneys representing a second group of voters in the case, said the facts the suit has uncovered regarding Secretary of State Brad Raffensperger's "cavalier attitude toward election security" confirm that Georgia's ballot-marking device system is "hopelessly insecure" and needs to be replaced soon.

"With the extensive breach in Coffee County two years ago plus other regular security lapses that have all gone unanswered by the secretary, Georgia's voting system is like a bridge that could fall at any moment and that the state proclaims safe simply because it's still standing," Cross said.

Georgia Deputy Secretary of State Jordan Fuchs, however, told Law360 on Monday that the claims being raised by the Coalition for Good Governance and the voters are the same claims raised by Sidney Powell and John Eastman after the 2020 election and are "completely without merit."

As much as they "try to pretend they are not making the same claims as the 'Stop the Steal' crowd, the words on paper and in court give them away," Fuchs said. "The fact is that Georgia's voting system accurately counts votes and reflects the will of Georgia voters, and that has been proven countless times."

Representatives for Fulton County did not immediately respond to a request for comment on Monday.

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

Voters are represented by David D. Cross, Mary G. Kaiser and Hannah R. Elson of Morrison & Foerster LLP, Halsey G. Knapp Jr., Jessica G. Cino 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. Jacoutot 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 Emily Kokoll.

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