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1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF GEORGIA
3 ATLANTA DIVISION

4 DONNA CURLING, ET AL., :
5 :
6 PLAINTIFFS, :
7 vs. : DOCKET NUMBER
8 : 1:17-CV-2989-AT
9 BRAD RAFFENSPERGER, ET AL., :
10 :
11 DEFENDANTS. :

12 **TRANSCRIPT OF BENCH TRIAL - VOLUME 1 PROCEEDINGS**
13 **BEFORE THE HONORABLE AMY TOTENBERG**
14 **UNITED STATES DISTRICT SENIOR JUDGE**
15 **JANUARY 9, 2024**

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21 ***MECHANICAL STENOGRAPHY OF PROCEEDINGS AND COMPUTER-AIDED***

22 ***TRANSCRIPT PRODUCED BY:***

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CERTIFICATE

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P R O C E E D I N G S

(Atlanta, Fulton County, Georgia; January 9, 2024.)

THE COURT: Morning, Counsel.

We're here for trial in Curling, et al. v. Secretary Raffensperger, et al. This is 17-CV-2989.

Counsel, would you introduce yourselves and those with you. Thank you.

MR. CROSS: Good morning, Your Honor. David Cross with Morrison Foerster on behalf of the Curling plaintiffs.

MS. KAISER: Good afternoon, Your Honor. Mary Kaiser of Morrison Foerster on behalf of the Curling plaintiffs.

MR. FISHER: Good morning, Your Honor. Ramsey Fisher, Morrison Foerster, on behalf of the Curling plaintiffs.

MR. KNAPP: Good morning. Halsey Knapp, Krevolin & Horst, on behalf of Curling plaintiffs.

MR. SPARKS: Good morning, Your Honor. Adam Sparks, Krevolin & Horst, on behalf of Curling plaintiffs.

MR. MCGUIRE: Your Honor, Robert McGuire, Robert McGuire Law Firm for the Coalition plaintiffs.

MR. BROWN: Bruce Brown for the Coalition plaintiffs.

MR. ICHTER: Cary Ichter for the Coalition plaintiffs.

MR. OLES: David Oles for Ricardo Davis.

THE COURT: Thank you.

MR. TYSON: Good morning, Bryan Tyson for the

1 defendants.

2 MR. RUSSO: Good morning, Your Honor. Vincent Russo
3 for the defendants.

4 MR. BELINFANTE: Good morning, Judge. Josh
5 Belinfante, Robbins Firm, for the defendants.

6 MR. BEDARD: Good morning, Your Honor. Ed Bedard for
7 the defendants.

8 MR. PICO-PRATS: Good morning, Your Honor, Javier
9 Pico-Prats for the defendants.

10 MR. WEIGEL: Good morning, Your Honor. Dan Weigel on
11 behalf of the defendants.

12 MR. JACOUTOT: Good morning, Your Honor. Bryan
13 Jacoutot for the State defendants.

14 MS. HERNANDEZ: Good morning, Your Honor, Danielle
15 Hernandez for the State defendants.

16 MS. LaROSS: Good morning, Your Honor. Diane LaRoss
17 for the State defendants.

18 MR. BOYLE: Good morning, Your Honor. Donald Boyle
19 for the State defendants.

20 MR. MARTINO-WEINHARDT: Good morning, Your Honor.
21 Matthaeus Martino-Weinhardt on behalf of Curling plaintiffs.

22 MR. ANDREU-VON EUW: Good morning, Your Honor.
23 Christian Andreu-von Euw on behalf of the Curling plaintiffs.

24 MR. CAMPBELL: Good morning, Your Honor. Ben
25 Campbell on behalf of the Curling plaintiffs.

1 MR. SCHEINMAN: Good morning, Your Honor. Aaron
2 Scheinman, Morrison Foerster, for the Curling plaintiffs.

3 THE COURT: Thank you.

4 Counsel, to the extent that we've got folks who are
5 at the tables, because I doubt that anyone who is out there is
6 going to be participating actually in examination right now,
7 just have one of your team just draw me a little map of each of
8 where you are all sitting.

9 I mean, I obviously know everyone here. But names
10 can fly out of the brain once focused on other things. So if
11 one of you -- each of you could just do that, that would be
12 great.

13 My understanding, from our conversation yesterday,
14 was that counsel want to do an opening statement. And the
15 plaintiffs are doing a consolidated one, the Curling and
16 Coalition plaintiffs, of approximately an hour.

17 And additionally, recent counsel for Mr. Davis, who
18 has recently appeared in this case in the last month, asked to
19 also give an opening statement not to exceed ten minutes.

20 And the State said that you didn't think you were
21 going to go beyond an hour and thought it was going to be less.

22 MR. TYSON: Correct.

23 THE COURT: So we'll proceed on that basis.

24 And, Mr. Cross, are you giving the statement or is
25 somebody else?

1 MR. CROSS: I'm going to start. Ms. Kaiser is going
2 to go. I'm going to get up briefly on some different topics
3 and then Mr. McGuire will go.

4 THE COURT: All right. Well, you're the master of
5 your time then.

6 OPENING STATEMENT

7 MR. CROSS: The cornerstone of any democracy is a
8 citizen's exercise of their right to vote. Voting is a
9 citizen's voice in their government.

10 Importantly, Your Honor, these are not my words.
11 These are the words of the Georgia State Election Board
12 recognizing and emphasizing how important voting is to the
13 functioning of our democracy and importantly emphasizing the
14 individual, singular citizen's right to vote where each
15 individual citizen casts their own unique voice when they cast
16 their ballot. And that is how they participate in the
17 Government and ultimately in democracy.

18 And here in Georgia, in particular, it is not just
19 voting by any means. What is really important is voting in
20 person.

21 **(Playing of the videotape.)**

22 MR. CROSS: So what we will prove today, Your Honor,
23 and throughout this trial, is that there is standing for our
24 clients, first and foremost, to protect their individual right
25 to vote and particularly their individual right to vote in

1 person because of how important it is to them and to other
2 voters in Georgia as the Secretary's office has emphasized.

3 And Secretary Raffensperger himself has emphasized
4 how important it is to have an election process that is
5 transparent, that's accurate, that is objectively fair, and,
6 particularly important, that Georgians subjectively trust.

7 So Secretary Raffensperger himself recognizes and
8 promised in a stump speech, as he writes in his book, Your
9 Honor, a voting system the Georgians not only can have
10 objective trust but subjectively can trust the election
11 outcomes and that their right to vote is protected.

12 Unfortunately, despite the promise made here, that
13 doesn't exist in the state of Georgia. And we will show,
14 through the expert testimony of Dr. Alex Halderman and others,
15 that numerous, very serious vulnerabilities exist with this
16 system that have been validated by the U.S. Department of
17 Homeland Security, in particular by CISA, which has
18 responsibility for election security.

19 And how has the State responded to that? The same
20 way they are going to respond in this trial.

21 **(Playing of the videotape.)**

22 MR. CROSS: Anyone who has the access that
23 Dr. Halderman got can do anything they want with the voting
24 system. That is Secretary Raffensperger's own admission. Goes
25 so far as to say, Duh. Duh. Of course, you could do that if

1 you got into the system. But he says that is not real world.
2 In the real world, no one could get access to the voting
3 system.

4 **(Playing of the videotape.)**

5 MR. CROSS: What we will show in this trial is the
6 only person who doesn't live in the real world when it comes to
7 voting security is the Secretary of State because that was the
8 real world.

9 Day after day after day numerous individuals walking
10 in to a county election office with unmitigated access to the
11 voting system, not simply in the way Dr. Halderman had in a
12 conference room detached from the voting system, but in its
13 operational environment.

14 And as Secretary Raffensperger says, anyone who has
15 that access, duh, they can do whatever they want.

16 And how has the State responded and how will they
17 continue to respond, no doubt in this case, to what is
18 happening in the real world, to our experts, to CISA?

19 They say we're election deniers. They go so far as
20 to say that our Ph.D. experts, Dr. Alex Halderman, Dr. Andrew
21 Appel, Dr. Philip Stark, the leading election security experts,
22 experts on audits, are no different than a pillow salesman that
23 has been peddling fraud for years. And if you don't like the
24 comparison, well, tough noogies.

25 And what we will show is how dangerous this reaction

1 is because it misleads the public. And what it says to the
2 public and to those would be actors who will come back as we
3 saw in Coffee County, come on in, because we won't take it
4 seriously when you do it. We won't hold you accountable. And
5 we won't protect the system.

6 And their own expert disagrees with these smears
7 Dr. Juan Gilbert will testify in this case. Their election
8 expert that they retained for this case, will say that if he
9 wanted to assess the security vulnerabilities of a voting
10 system, the top of his list, Dr. Alex Halderman, Dr. Andrew
11 Appel, two experts for us. These are not election deniers.
12 They are among the most credible, respected experts in the
13 country. We will show you the State has absolutely no response
14 to their findings.

15 Before I hand it off, Your Honor, just briefly,
16 Secretary Raffensperger acknowledges that the ultimate fact
17 check in his book, this is what he says, is the United States
18 is in the court. He says, if you want to know the truth, watch
19 what happens in court.

20 Well, Secretary Raffensperger won't be here to tell
21 you anything, to answer a single question, and that is a
22 choice. He is choosing not to be here.

23 With that, I'll hand it off to Ms. Kaiser.

24 OPENING STATEMENT

25 MS. KAISER: Good morning, Your Honor. I'll spend a

1 few minutes introducing you to the key players you will hear
2 from and about during the trial, starting with the Curling
3 plaintiffs.

4 First we have Jeffrey Schoenberg. Mr. Schoenberg's
5 family moved to Georgia when he was four years old. After
6 attending college at Princeton and law school at UNC, he had a
7 variety of legal jobs before effectively retiring to care for
8 his parents back in Dunwoody, Georgia.

9 And, Your Honor, Mr. Schoenberg may, unfortunately,
10 not be able to attend the full trial in person as he wishes
11 because of these primary caregiving responsibilities for his
12 elderly parents.

13 Mr. Schoenberg will demonstrate to the Court as a
14 voter how the BMD system works at the polls and the reasons why
15 he is concerned about its reliability.

16 Next we have Donna Price. Ms. Price's family has
17 lived in Georgia since the 1700s, and one of her ancestors was
18 involved in drafting Georgia's Constitution.

19 Ms. Price will tell you that this family legacy and
20 her love of history has informed her belief that voting is
21 critical to protecting our country's democracy, and she
22 registered to vote as soon as she could when she was a high
23 school senior about to turn 18.

24 Ms. Price worked at Emory University for 30 years,
25 including in the IT department where she helped build websites

1 for several departments at the school.

2 Ms. Price will testify about her experience voting on
3 a BMD and how doing so prevented her from casting a verified
4 ballot. She will also explain that to her voting absentee is
5 no substitute for in-person voting because it is far more
6 complicated, arduous, and confusing than voting in person.

7 And on two occasions, the State's failure to mail her
8 an absentee ballot left her disenfranchised.

9 Next we have Donna Curling. Donna Curling was born
10 here in Georgia. She spent some time in North Carolina and
11 lived in California after she got married but moved back here
12 in 1987 and has lived in Roswell ever since.

13 Ms. Curling has spent several decades volunteering
14 for election protection and integrity organizations, including
15 Georgians for Verified Voting, which she cofounded with
16 Ms. Price.

17 She will testify that she prefers to vote in person
18 because the experience of going to the polling place is a very
19 important act of civic engagement for her.

20 However, since she became more educated about the
21 electronic voting equipment used in Georgia, she has mostly
22 voted absentee, even though it requires jumping through a lot
23 of hoops. And on two occasions the system left her
24 disenfranchised.

25 Ms. Curling will testify that it is critically

1 important to her that she have confidence that her vote will be
2 counted as she cast it and that her voice be heard in every
3 election but that -- but that under Georgia's current system
4 she is deprived of that right.

5 Your Honor, next I will briefly introduce you to
6 individuals at the State Election Board and the Secretary of
7 State's office who you will hear about during the course of the
8 trial.

9 First we have the State Election Board. Sitting
10 within the elections division of the Secretary of State's
11 office, the SEB is entrusted with safeguarding Georgia's
12 elections. The SEB members will confirm their responsibility
13 to protect the system. And several will agree that they would
14 not support a voting system that could be easily hacked.

15 And yet, at the time of their depositions, they each
16 admitted that they had not read Dr. Halderman's report and were
17 not aware of his findings, even though it was the State that
18 designated the report attorneys' eyes only and the
19 State's witnesses were always permitted to review it.

20 Next we have the Secretary of State's office. First
21 Gabriel Sterling. He is the chief operating officer for the
22 Secretary of State's office. Mr. Sterling admitted that while
23 the selection of the Dominion BMD system was Secretary
24 Raffensperger's decision, he was involved in the selection
25 process and aware of alternatives with no QR codes.

1 Mr. Sterling's testimony will also show that the
2 State has failed to properly assess the serious security
3 vulnerabilities associated with the BMD system, instead
4 electing to trivialize them. He has publicly dismissed
5 Dr. Halderman's report as a, quote, load of crap, even though
6 he had not read the report.

7 David Hamilton was the Secretary of State's part-time
8 contracted chief information security officer until June 2021.
9 The Secretary of State's office did not have a full-time CISO.

10 Mr. Hamilton left just before Dr. Halderman's report
11 came out. But as the Court will recall, in September 2022
12 Dr. Halderman demonstrated to the Court that he was able to
13 hack the Dominion BMD equipment.

14 Mr. Hamilton stated that as CISO he would have liked
15 to know about Dr. Halderman's 2020 demonstration but he was not
16 made aware of it.

17 He also confirmed the State's failure to implement
18 critical security measures, including remediating
19 vulnerabilities identified by cybersecurity vendor Fortalice.

20 Michael Barnes is the director of the Center for
21 Election Services, a position he held when the CES was housed
22 at Kennesaw State University and that he continued to hold when
23 it moved within the Secretary of State's office.

24 Mr. Barnes has no formal training in computer science
25 or cybersecurity, and yet he continues to play a major role in

1 managing the electronic voting system in Georgia.

2 Like several of his colleagues, he can't recall
3 anyone in his office ever even discussing Dr. Halderman or his
4 findings. He was aware of the Halderman report only from a
5 news article in 2022.

6 Merritt Beaver was the Secretary of State's chief
7 information officer until the end of 2023 and had
8 responsibility for election cybersecurity and technology. He
9 admitted that the reason the election software is not given to
10 the public is because you are giving them a roadmap to how to
11 basically get in and access the system.

12 Mr. Beaver also had not read the Halderman report.
13 He said I had never heard of that document, never seen it.

14 And Mr. Beaver's testimony will also show that the
15 Secretary's office receives regular technical assessments
16 regarding security risks in the election system from Fortalice,
17 but after this Court enjoined the DRE system relying in part on
18 the Fortalice reports and the findings of detailing security
19 failings in that report, he personally directed Fortalice to
20 stop providing written reports and to only deliver their
21 assessments orally.

22 Chris Harvey is the former elections director for the
23 State. As the first line of coordination between the Secretary
24 of State's office and Georgia's 159 counties, he admitted that
25 counties have varying levels of experience and interests in

1 election security and that any one of those counties could be
2 a, quote, weak point.

3 Of course, we now know that to be true because of
4 Coffee County.

5 Mr. Cross will now talk you through what happened in
6 Coffee County, the breaches that occurred there and how
7 additional witnesses were involved. I'll hand it back to him.

8 Thank you, Your Honor.

9 THE COURT: Thank you.

10 OPENING STATEMENT

11 MR. CROSS: As Mr. Harvey acknowledges, any one of
12 the 159 counties could be a weak point. We saw that in the
13 real world in Coffee County, and we'll talk through that in a
14 little bit of detail.

15 Just briefly, Your Honor, as I mentioned, we will put
16 on Dr. Alex Halderman to testify to his findings, over a half
17 dozen different very serious vulnerabilities validated by CISA,
18 and you will not hear a single cybersecurity expert retained by
19 the State who will refute or even disagree with these findings.

20 In fact, Dr. Gilbert will testify that he does not
21 disagree with any of the technical findings.

22 Briefly on QR codes, Your Honor, we will show, and I
23 don't think there is any dispute about this, voters cannot read
24 QR codes. That's how the ballots get tabulated. So a voter in
25 this system, unnecessarily, with an unconstitutional burden,

1 have no ability to determine whether their vote and what will
2 be tabulated reflects the selections they made. And there is
3 absolutely no reason for this. As you will hear, there is no
4 justification, certainly at a constitutional level, the State
5 will be able to put forward on that.

6 And again, their own expert, Dr. Michael Shamos, his
7 own testimony, as we will show, was don't use barcodes. He
8 told them this in 2019 and they did it anyways. And they will
9 not have a single expert who will justify that.

10 Now, their response, as you will hear during the
11 course of this trial, is to say it is okay that the QR code
12 isn't human readable because there is a human readable portion
13 of a ballot.

14 We will show you that they can't justify that burden
15 either.

16 And if you look at the ballot in front of you, Your
17 Honor, you have here an actual ballot from May of 2020 from
18 Fayette County. And what they are saying is a voter needlessly
19 cast a vote on a touch screen. Then they print this out. And
20 then they have to review this before they cast it.

21 First, they are asking voters to take on a burden
22 that is entirely unnecessary because this is not a required
23 system.

24 Second, they are taking on a burden that they can't
25 actually exercise, as our study -- as our experts will explain

1 and as the voters will explain.

2 And if you look at this ballot, they have to remember
3 every selection they made, they have to read through it in
4 detail in the stress of being in a polling site where people
5 are waiting for them to cast their vote, and they even have to
6 remember what the questions were.

7 In this ballot, this is an easy one for this voter
8 because they voted yes to every question. But a voter who
9 votes yes to some and no to others, when they print this out,
10 they now have to think back to themselves, what was each of the
11 six questions that was asked of me? Which ones did I answer
12 yes or no to? They have to remember all of that and trust that
13 it is right and trust their memory. It is an entirely
14 unnecessary burden that they cannot justify.

15 Dr. Gilbert, a man who specializes in the human
16 accessibility of BMDs, he has built his career on it, struggled
17 just to figure out the selections on this ballot from Fayette
18 County that were not Republican candidates. The question we
19 simply asked him, just find for us quickly the selections on
20 this real ballot that do not correspond to Republican
21 candidates.

22 **(Playing of the videotape.)**

23 MR. CROSS: An expert working with these machines
24 took 20 seconds just to identify selections that didn't have a
25 bar next to them. 20 seconds just to do that. Think about how

1 long it takes the burden of a voter to read through this and
2 actually look at it closely enough and remember to themselves
3 what was I asked, what were my options, is this what I
4 selected.

5 They cannot justify that burden.

6 And, in fact, their own expert, Dr. Ben Adida, who
7 has worked with the State for years, who still works with the
8 State on audits, agrees with our experts. He will admit that
9 the default system, the presumption at his company,
10 VotingWorks, is hand-marked paper ballots plus one BMD in a
11 polling site for those who need it. It is always what he
12 recommends to a county when they ask what they should do.

13 Their own experts cannot and will not justify the
14 extraordinary burden that they impose on voters. And we will
15 establish that there are other means that will not impose those
16 burdens.

17 Now let me talk a bit about Coffee County. Your
18 Honor is obviously familiar with a lot of this. These are the
19 key players we will talk through in this case. As you can see
20 on the left, the former election superintendent, Ms. Hampton,
21 Mr. Chaney, former member of the election board, both working
22 in the elections at the time of the breach, which you can see
23 in the pictures here. Some of the snapshots of what we saw
24 earlier.

25 And again, what we saw earlier was people on the

1 right coming in day after day over the period of a month. Even
2 at the level of you saw Ms. Hampton cutting the seals on
3 election equipment.

4 And you can see that four of those people have been
5 indicted. Two of them have already pled guilty on charges
6 related to this conduct.

7 What we have here is just a snapshot of a very long
8 document from Sullivan Strickler, and we will show that what
9 this is are the downloads and the access times that people
10 access the data, the proprietary software, what Merritt Beaver
11 says is the roadmap to hack the system, accessed this time and
12 time again on the internet with IP addresses that appear all
13 over the world.

14 This is old. This is years old. This is from the
15 summer of 2021. This data has been available in the wild now
16 for three years. We have no idea who all has access to it.

17 So we have the three breaches. Just a sample of what
18 was taken. There are many, many photos we will walk the Court
19 through. Mr. Maggio will talk through in particular what
20 happened that day. As you can see, they accessed, copied, and
21 stole data and proprietary software from virtually everything
22 in the office.

23 You can see on the right, pictures of the Poll Pads
24 that are so hopelessly insecure that you can run Netflix and
25 play video games on them.

1 And here we have two members of the Sullivan
2 Strickler team sitting at the EMS server terminal in the
3 operational office in Coffee County.

4 Secretary Raffensperger says this is not the real
5 world. He says this cannot happen in the real world. And
6 interestingly when he said it is not -- can't happen in the
7 real world, he said that long after it had already happened.

8 And to that point, let's talk just briefly about what
9 the Secretary's office knew about this and what they did.
10 Because that is going to bear critically on the security of the
11 system. Because as our experts will explain, the only way to
12 keep the system secure is that people have to understand that
13 if they engage in a breach like this or worse they will be held
14 accountable.

15 And we have not seen that accountability. Instead
16 what we will show is the State, at every opportunity, obscured
17 this. Made representations that were not accurate and failed
18 to do their job.

19 And here, let's start with January 26. Agent
20 Blanchard from the Secretary's office is dispatched to the
21 Coffee County office that we looked at in the video for an
22 investigation into election security issues in Coffee County.
23 He is literally in the office with Mr. Lenberg, who is in Misty
24 Hampton's office, which is connected to the EMS server room.
25 You can see them.

1 This is Agent Blanchard walking in with Misty Hampton
2 to her office, connects directly to the EMS server room. And
3 who walks out? Jeffrey Lenberg. You will not see a single
4 document, not a notation, not a report, nothing from Agent
5 Blanchard or anyone at the Secretary's office raising any flag
6 that when they sent an agent to investigate the security of
7 this office and found someone who is not supposed to be there
8 in the most sensitive aspect of that room, they did nothing.
9 Nothing.

10 Finally, on May 7, there is a new superintendent,
11 Mr. Barnes. He does the right thing when he comes in. He
12 finds a card from Cyber Ninjas, Doug Logan, sitting at the base
13 of the terminal where Misty Hampton left it. He alerts Chris
14 Harvey on May 7 of 2021, that he is concerned about this.

15 Chris Harvey, to his credit, does exactly the right
16 thing. He writes back to Mr. Barnes on May 11 and says, We're
17 going to open an investigation.

18 What is he investigating? Whether anyone has had
19 access to any of your equipment. The election equipment.

20 Frances Watson forwards that on to Pamela Jones, an
21 investigator, and says exactly that. You need to verify what,
22 if any, contact Cyber Ninjas had with any election equipment.
23 This was an investigation into an unauthorized breach of the
24 system. That is what they explicitly suspected and went to
25 look into.

1 They even hired a forensic consultant, Jim Persinger,
2 at the time. They say he was hired for this litigation. And
3 he was given, sometime around June 8th, we're told, the EMS
4 server and the ICC, which were finally taken because of the
5 concern about a possible breach. They were so concerned about
6 it they opened an investigation, they hired a forensic
7 consultant to take that.

8 And then they did nothing. It just dies. It just
9 dies. There is no evidence of any further investigation. We
10 asked them, in the ordinary course of discovery, are you aware
11 of any potential unauthorized access to the system? They
12 refused to answer those requests for months. Fighting over
13 them. Saying they weren't relevant. They were too broad.
14 Technical objections.

15 And finally, on October 21 of 2021, they swore under
16 oath that they were not aware of any hack to the system. They
17 didn't answer our question to which we said, Well, by hacked do
18 you mean something different from unauthorized access? Because
19 if you do, you need to let us know that. They never told us
20 they meant something different, even though their office had
21 investigated exactly that just months earlier.

22 Then they go on and they tell the public it never
23 happened.

24 **(Playing of the videotape.).**

25 MR. CROSS: But it did happen.

1 Finally, in June of 2022 they finally tell this
2 Court, after we have been trying to pursue discovery, and they
3 have been telling us and Your Honor that it hadn't happened,
4 telling the public it didn't happen, they finally say, Okay,
5 we're looking into it. We're investigating it.

6 On July 5th, Mr. Persinger finally looks at the EMS
7 server that he has, he images it, and he does it in a way that
8 wipes out thousands of important files. Destroys them. Gone.

9 Then a few weeks later, while we are trying to pursue
10 discovery to figure out what happened, we will show you that
11 Mr. Ryan Germany, the former general counsel, put in a
12 declaration to this Court where he swore under oath that prior
13 to March of 2022 the Secretary's office was not on notice of
14 allegations about a potential breach in Coffee County.

15 That is, at best, highly misleading. They
16 investigated it in the summer of 2021 with an investigation
17 that went nowhere.

18 And finally, in August, the same day, they call for a
19 GBI investigation.

20 September 26 we will show, long after, a year and a
21 half after this breach, after they have been telling the public
22 it didn't happen, they finally replace some additional
23 equipment but still not all of it in Coffee County.

24 And that same day, directly contrary to what
25 Mr. Germany had said, Secretary Raffensperger admits that he

1 and his office knew about it very early in 2021.

2 **(Playing of the videotape.)**

3 MR. CROSS: So he finally says to the public, very
4 early in 2021, we knew about this. We saw Ryan Blanchard there
5 in the office with Jeffrey Lenberg. We then see they
6 investigated months later.

7 Now, after he says that, we learn from the press that
8 an aide for Secretary Raffensperger off camera said, No, no,
9 no, he was mistaken, he meant that we learned about it May of
10 2021.

11 We don't know when they learned about it because
12 Secretary Raffensperger is choosing not to come and tell
13 anybody about when he learned about it. The choice he is
14 making.

15 But this is, perhaps, at least more consistent with
16 the documents we saw in the summer of 2021. But what it tells
17 us is that Mr. Germany certainly did not provide accurate
18 information nor has Mr. Sterling.

19 And again, we will show that when this is the
20 approach by the highest officials who are responsible for
21 securing the system, it makes it dangerous. Because it says to
22 the public, it says to those who would do bad things, come on
23 in. Because we will not tell the public about what happened.

24 And Secretary Raffensperger himself will not be here
25 to tell anyone anything.

1 The response it is not real world. It is a load of
2 crap. That is the gist of their defense. They have nothing
3 more to offer.

4 And where does that leave us, Your Honor? It leaves
5 us with CISA's advisory in the summer of 2022. A year and a
6 half ago CISA said, Dr. Halderman's findings are correct.

7 THE COURT: Just for purposes of the record, will you
8 say what the full -- what CISA is.

9 MR. CROSS: Yes. Yes. Thank you, Your Honor.

10 So the Cybersecurity and Infrastructure Security
11 Agency. I have it on the screen because I always get that
12 wrong.

13 The agency within the Department of Homeland
14 Security, which has responsibility for election security, in
15 the summer of 2021, in June, they confirmed Dr. Halderman's
16 findings and, importantly, you can see here, I'm not going to
17 talk through these now, they recommended a dozen mitigation
18 measures they said needed to be adopted as soon as possible.

19 And we will show evidence they have not adopted
20 virtually any and maybe none at all, a year and a half later.

21 What they will say to you is, We can't, we won't,
22 we're not going to do it. It is the Secretary's decision and
23 he will not be here. He is choosing not to be here to tell you
24 why he will not protect the system in a way that he has been
25 told to do it.

1 I'll finish with this. When the Coffee County story
2 began to unfold, due to our efforts, we were the ones that
3 brought that to light. We are no election deniers. We are not
4 the ones who tried to hide it. That was the State.

5 When it began to unfold, the Secretary, the then
6 chairman of the SEB, said the best way to deal with that is to
7 file a lawsuit and get relief from a judge. Because he says
8 the SEB can't do it. The Secretary won't. Well, that is why
9 we are here, Your Honor, doing what the chairman of the SEB is
10 said how you deal with this issue.

11 Your Honor is the last resort because no one else is
12 going to do anything. Certainly not them.

13 Thank you.

14 MR. McGUIRE: Good morning, Your Honor.

15 THE COURT: Morning.

16 OPENING STATEMENT

17 MR. McGUIRE: My name is Robert McGuire and along
18 with my co-counsel, Mr. Bruce Brown, who is right there, I
19 represent the Coalition for Good Governance or CGG, which is an
20 organizational party, as the plaintiff.

21 CGG is a nonprofit membership organization that works
22 to preserve and educate people about constitutional rights that
23 are exercised through voting.

24 I would like to ask Ms. Marilyn Marks to stand up.
25 She is CGG's executive director and board member.

1 Thank you, Marilyn.

2 She is here in the courtroom today as the corporate
3 representative of CGG.

4 In addition to CGG, Mr. Brown and Mr. Ichter, who is
5 next to him, represent three of the CGG's individual members
6 who are also co-plaintiffs. I would like to ask each of them
7 to stand. One of them is not here. Megan Missett is not here.
8 She is a little under the weather but hopefully will be here
9 when she feels better.

10 The others are Ms. Laura Digges, if I could ask you
11 to stand.

12 Mr. William Digges III.

13 CGG and the Digges and Ms. Missett are the group that
14 is now called the Coalition plaintiffs.

15 So over the next eight days, approximately, both
16 plaintiffs' groups are going to show you evidence of four
17 things that you need to see in order to rule for us.

18 First, we need to show you that the plaintiffs have
19 standing.

20 Second, we need to show you that the required use of
21 BMDs burdens the plaintiffs' constitutional rights.

22 Third, we need to show you that the State lacks any
23 interest in forcing voters to use BMDs that justifies the
24 burdens that the BMDs cause.

25 And fourth, relief.

1 The conduct plaintiffs are challenging here is the
2 State's enforcement of the requirement for all in-person voters
3 to use BMDs when they vote. We need to show you how relief can
4 be granted and why what we are asking for will work.

5 All the evidence that you hear from us over the next
6 eight days is going to fit into one of those four buckets.
7 I'll just tell you a little bit about what you are going to
8 hear from us on those.

9 On standing, you're going to hear about
10 organizational standing for Coalition for Good Governance and
11 individual standing for the individual plaintiffs.

12 The Coalition for Good Governance's officers are
13 going to tell you about how the organization has diverted
14 resources away from projects that CGG would have been working
15 on and into things that respond to and oppose the State's BMD
16 requirements.

17 The individuals for our side and Megan Missett, Mr.
18 and Mrs. Digges, as well as CGG members Jeanne Dufort and
19 Aileen Nakamura are going to tell you about concrete and
20 particularized harms they have personally experienced and will
21 personally experience all because of the requirement that
22 in-person voters must use BMDs.

23 You're going to hear that the injuries that these
24 individual plaintiffs and that CGG is suffering are caused by
25 the defendants. Evidence is going to show that the State

1 Election Board causes these injuries in two ways, by its action
2 and by its inaction.

3 You'll hear about the inaction in the form of the
4 SEB's refusal to use its authority to do anything to protect
5 voters from the burdens of BMD voting.

6 And you'll hear about the SEB's action in the form of
7 its use of its legal powers always and only to force the use of
8 BMDs like it did in Athens-Clarke County.

9 Evidence is going to show that the Secretary of State
10 for his part contributes to causing these injuries also by his
11 own failures to investigate or mitigate security breaches that
12 the BMDs have suffered, like the massive and enduring breach
13 that Mr. Cross spoke about just a moment ago.

14 You're going to hear evidence on the third prong of
15 standing which is redressability, and we're going to show that
16 these injuries are redressable by an order of the Court.

17 The evidence that you're going to hear on standing is
18 going to establish that these plaintiffs had a stake in the
19 outcome of the case. They have properly invoked the Court's
20 subject matter jurisdiction under Article III.

21 And then we'll turn to the merits. And on the
22 merits, you are going to hear first about our side of the
23 Anderson-Burdick balancing test, which is the burdens on
24 voting. You're going to hear from the fact witnesses I just
25 mentioned as well as from experts like Professor Halderman,

1 Professor Philip Stark, and Mr. Kevin Skoglund, all of whose
2 testimony is going to show that Georgia's unreliable,
3 vulnerable, insecure, unauditable, and inherently untrustworthy
4 BMDs burden the constitutional rights of voters, including the
5 plaintiffs.

6 And this testimony is going to weigh in our favor on
7 the Anderson-Burdick balancing test.

8 On the other side of the Anderson-Burdick test,
9 you're going to hear evidence that shows that the State lacks
10 any real interest in forcing voters to use BMDs. You're going
11 to hear from the mouths of the Secretary's own witnesses,
12 Secretary's own employees. You're going to hear testimony that
13 undermines any assertion that the State's asserted policy
14 preferences require the use of BMDs. They don't.

15 On the contrary, when it comes to BMDs, what you are
16 going to hear is that the defendants are very selective in
17 terms of what state laws they choose to follow and what state
18 laws they choose to believe they should enforce.

19 Finally, on relief, you're going to hear evidence
20 that the flaws in Georgia's BMDs cannot be fixed. Professor
21 Stark, who is the expert on auditing, is going to explain that
22 audits don't provide a mitigation as long as we're using BMDs,
23 because BMD ballot printouts are themselves not trustworthy
24 records and so they can't be the foundation of an audit. BMD
25 ballots are just not auditable.

1 On the other hand, you're going to hear that
2 Georgia's voting system can function perfectly well without
3 BMDs even under existing law using the existing scanners.

4 Jeanne Dufort and Aileen Nakamura have observed lots
5 of elections in Georgia and they are going to talk to you about
6 elections they have observed that are conducted by
7 municipalities without BMDs.

8 There are municipalities all over Georgia that
9 conduct large elections entirely without BMDs. You are going
10 to hear about these elections, some of these observations, and
11 you are going to hear that municipalities do use the Dominion
12 precinct scanners to count ballots that are cast by voters in
13 those elections.

14 You're going to hear that those elections work
15 smoothly. They are fast. Nobody is confused either on the
16 worker side or on the voter side.

17 So in conclusion, Your Honor, we're asking the Court
18 to make what is a difficult decision. We're asking you to
19 decide to enjoin the State from continuing to require in-person
20 voters to use the current BMDs as the standard method for
21 in-person voting. The decision we're asking you to make is not
22 a difficult one because it is hard to know what is right to do.
23 It is difficult because it is hard to do what is right in this
24 political environment, as the Court is well aware.

25 In this moment, too many people want to use this case

1 as a vehicle to dispute or to defend what happened four years
2 ago, in terms of the election. And this case is not about
3 that.

4 There is a famous saying that generals are always
5 preparing to fight the last war when what they should be
6 thinking about is the next war. 2020 is the last war.

7 As the Court receives the evidence that the
8 plaintiffs are going to present, we respectfully urge Your
9 Honor to look ahead to 2024 rather than backward at 2020.

10 A voting system like this one that few people do
11 trust, and that the evidence is going to show nobody should
12 trust, is a disaster waiting to happen in 2024.

13 Four years ago Secretary Raffensperger fought tooth
14 and nail to defend DREs only to call it a Godsend, famously
15 call it a Godsend, when DREs were gone before the 2020
16 election.

17 Now, he is fighting tooth and nail to defend BMDs
18 even as the 2024 elections are bearing down on us. We can all
19 hope that we won't need another Godsend, but we might.

20 Your Honor has a historic opportunity to truly
21 protect democracy in this country. All of the evidence is
22 going to show that BMDs are a profoundly insecure, unreliable,
23 and untrustworthy voting system component.

24 At the end of our case, we will ask the Court to bar
25 the State from requiring BMDs to be used as a standard method

1 for in-person voting. And we respectfully ask you to grant
2 that relief.

3 For the Coalition plaintiffs, Mr. Brown, Mr. Ichter,
4 and I look forward to presenting our case.

5 And thank you very much.

6 THE COURT: Thank you.

7 Mr. Oles, did you want to make a few more remarks?

8 OPENING STATEMENT

9 MR. OLES: Good morning, Judge. I represent Ricardo
10 Davis.

11 Ricardo, will you stand up, please.

12 Ricardo is here today to rectify a dilemma that began
13 in 2002 when the Georgia Secretary of State, then Secretary of
14 State Cox, purchased a statewide paperless direct recording
15 electronic voting system over the objections from the voters,
16 legislators, election officials, and even the Fulton County
17 elections director.

18 The paperless system produced secretly counted
19 results that were unverifiable to the voter, not auditable by
20 election officials, and not re-count capable for candidates.

21 Before that system was purchased, the Georgia
22 legislature removed the legal requirement that any voting
23 system have an independent audit trail of each vote cast
24 illustrating that Georgia voters cannot be confident that its
25 legislature will protect their constitutional rights.

1 Ricardo Davis was aware of the voting system problems
2 back then because he helped install the system for his county.
3 He later cofounded an organization called Voter GA that filed a
4 lawsuit in state court, much like this one, on behalf of
5 Georgia voters. The Georgia Supreme Court ruled against the
6 voters, again illustrating that Georgia voters cannot count on
7 the Georgia judicial system to protect their constitutional
8 rights either.

9 In August of 2019, this Honorable Court upheld many
10 of the claims back then finding the old DRE system
11 constitutionally deficient. At the same time, the Court
12 responded to excuses from the Secretary's office about a 2017
13 breach occurring in the Center for Elections Systems then at
14 Kennesaw State.

15 The Center's server that prepared the files for all
16 elections for all Georgia counties was found to be exposed to
17 anyone in the world to hack.

18 The election server was wiped days after this lawsuit
19 was filed without mitigating the risk of that potential breach.

20 This Court rejected the Secretary's excuses finding
21 that given the entire course of events described here the
22 defendants' contention that the servers were simply repurposed
23 and not intentionally destroyed or wiped is flatly not
24 credible.

25 Again, this illustrates the Georgia voters cannot

1 rely on the Secretary of State's office to protect their rights
2 either.

3 We remain in this dilemma because the Secretary
4 purchased another electronic voting system that plaintiffs
5 contend is similarly deficient. The Court already found that
6 this new Dominion system violates Georgia law in its
7 October 11, 2020, order that -- reciting that a Georgia law
8 requires a voting system must print an elector verifiable paper
9 ballot and produce paper ballots which are marked with the
10 elector's choice in a format readable by the elector and going
11 on to conclude that plaintiffs and other voters who wish to
12 vote in person are required to vote on a system that does none
13 of these things.

14 Despite this clear, plain text and acknowledgment of
15 the Court's findings, the Secretary, Georgia legislators,
16 county election boards ignored both this Court's findings and
17 Georgia law.

18 So this Honorable Court remains the last resort for
19 Georgia voters seeking to protect their constitutional rights.
20 That it has ample authority to do so is clear. Page 4 of the
21 Court's November 10, '23, order sets the issues for trial by
22 explaining that this Court has the legal authority to identify
23 constitutional deficiencies with the existing voting system.

24 The record before this Court is awash with various
25 types of security vulnerabilities, deficiencies that severely

1 impede the constitutional right to vote.

2 These are not simply speculative as the defendants
3 have claimed and not limited to the BMDs, the ballot-marking
4 devices. Dr. Halderman opines that the Dominion scanners
5 accept duplicate ballots, and he and Dr. Stark and others have
6 confirmed that over 2800 duplicates were counted in the 2020
7 election.

8 Dr. Halderman's security analysis explains that
9 malware which can change vote results can be delivered from the
10 State's centrally programmed election server through the county
11 election management servers to programmed county system
12 components like the BMD.

13 The record shows that a State election preparation
14 server has already been exposed to the internet and has always
15 been vulnerable to a single point of attack. The State server
16 can infect any county election system in any election without
17 detection.

18 Depositions in this case establish that Dominion
19 personnel wirelessly accessed the Coffee County system on the
20 night of January 5th, 2021, U.S. Senate runoff, adjusting
21 mail-in ballot scanner settings to address a partisan ballot
22 rejection problem without ever touching the equipment.

23 Such wireless access conflicts with the claims by
24 defendants and the vendor that the system has no remote
25 capability.

1 Dr. Halderman explains that Dominion failed to pay
2 sufficient attention to security during design software
3 engineering and testing, and it would be extremely difficult to
4 retrofit security into a system that was not intentionally
5 produced with such a process.

6 The best interest of Georgia voters demand that this
7 Court find the entire Dominion BMD system constitutionally
8 deficient, enjoin the State from using the system and prohibit
9 the State from enforcing any laws requiring use of the system.

10 But what would prevent the State from buying another
11 constitutionally deficient system that produces secretly
12 counted results? Would plaintiffs then have to go back to
13 court for the third time?

14 We ask the Court to consider that elections without
15 transparency are also, by nature, constitutionally deficient.

16 On Page 114 of its November 10, '23, order, this
17 Court said, setting precedent allows for suits based on the
18 argument that State officials' inaction allegedly harms
19 constitutional rights.

20 The record in this case shows that Georgia's
21 electronic election landscape is littered with inactions and
22 inappropriate actions by the defendants.

23 For example, in 2017 the defendants allowed the
24 central election preparation server to be wiped days after this
25 lawsuit was filed.

1 In 2019, the defendants' lack of candor with the
2 Court caused the Court to find the defendants flatly not
3 credible.

4 When 2020 Coffee County machinery counts added 39
5 votes with no change in ballots cast and then failed to count
6 votes on 185 more ballots, the Secretary did not help.

7 In 2021, the Secretary filed an amicus brief
8 attempting to prevent other plaintiffs from looking at ballots
9 that senior poll managers swore were counterfeit.

10 In 2022, when the Dominion system declared the wrong
11 winners in DeKalb District 2 commission primary, the Secretary
12 refused to allow full race hand counts for any other races to
13 ensure that statewide elections were correct.

14 Now, in 2023, '24 the Secretary of State refuses to
15 come before this Court.

16 The record shows that defendants employ wholly
17 inadequate audit procedures relying on secret electronic vote
18 counts and deny access to legally sealed ballots well beyond
19 the two-year legal seal requirement.

20 This inaction and others have left Georgians with no
21 reasonable means to verify election results or to detect
22 counterfeit ballots that the system cannot accept.

23 Ricardo Davis believes that these types of inactions
24 are also constitutional deficiencies in the overall election
25 system. Mr. Davis urges the Court to declare these practices

1 constitutionally deficient along with the complete Dominion
2 ballot-marking device system.

3 Mr. Davis relies on this Court as the last line of
4 defense to secure our future elections.

5 Thank you.

6 THE COURT: Thank you. Ready?

7 Mr. Tyson, are you doing this exclusively, or do you
8 also have a team?

9 MR. TYSON: You've got just me.

10 THE COURT: You've got a team. But are any of them
11 other than you speaking today?

12 MR. TYSON: I'll be the only one speaking, Your
13 Honor.

14 OPENING STATEMENT

15 MR. TYSON: Well, good morning again. Bryan Tyson
16 for the defendants.

17 I want to begin in a similar place as Mr. Cross.
18 This is a case about voting. It is a very important -- nothing
19 is more important than the right to vote. And cases involving
20 the right to vote, as we have talked about, look at the burden
21 on the right to vote and then the State interests that are
22 involved.

23 And one thing that is unique about this case is it is
24 unlike other cases in the election context. It is not
25 challenging a statute like a deadline for absentee ballots. It

1 is not challenging a particular election procedure like a
2 citizenship check for voters. It is not an election practice
3 like list maintenance.

4 Plaintiffs aren't claiming that any policy keeps them
5 from voting. They are not claiming the State failed to train
6 county election officials. What they are claiming is that
7 there is a burden on the right to vote by the inability for
8 them to determine that the vote they cast was accurately
9 counted.

10 As we'll see, even if the software is ultimately
11 correct, convincing somebody of that fact is almost -- can be
12 impossible. And so in order to have a claim there has to be a
13 burden on the plaintiffs' right to vote that is placed there by
14 the defendants that results in a significant increase over the
15 usual burdens of voting and is not justified by any state
16 interests. That is how the Eleventh Circuit formulates this
17 kind of claim.

18 And obviously the proper functioning of the election
19 system is critically important. But choosing between the
20 relative cost and benefit of various types of election systems
21 is a decision for the legislature, not for the Court.

22 And we have heard a lot of arguments already this
23 morning, good policy arguments about debates on the right
24 voting system. But this Court has to look at the
25 constitutionality of the system, not what it would think is the

1 ideal system.

2 Now, as has been mentioned, Georgia's faced
3 litigation about its method of voting before. Georgia faced
4 litigation in 2001 from voters who said that a hand-marked and
5 chad-based punch card system had a disproportionate effect on
6 voters of color and didn't count their votes. That was the
7 *Andrews* case.

8 Mr. Oles mentioned the *Favorito v. Handel* case that
9 challenged the DREs, the original touch screens.

10 But we're now at trial in this case. And this is the
11 first time in the nearly seven years this case has been pending
12 the Court is able to fully weigh the admissible evidence under
13 the Federal Rules without some kind of inference where you
14 defer to the plaintiffs.

15 And you're going to get to hear also, I think for the
16 first time since at least the Dominion equipment was put in
17 place, from the plaintiffs themselves about their claims.

18 And people having confidence in election outcomes
19 matters immensely in a democracy. But as this Court said in
20 both Georgia Shift and in this case, you can't sit as the
21 guarantor of a perfect election. That is both a practical
22 reality and a reality of the separation of powers in our
23 system.

24 You have the power, the Court has the power, to
25 enjoin State officials when there is an unconstitutional burden

1 on the right to vote.

2 And that is what the plaintiffs are asking for here.
3 You have heard they want an injunction enjoining the Secretary
4 and the SEB from enforcing Georgia law about the use of
5 ballot-marking devices.

6 And this is a very broad claim. There are
7 jurisdictions all over the country that use BMDs for in-person
8 voters. Los Angeles and San Diego, California. States like
9 South Carolina and Arkansas. Huge portions of Texas.

10 This is a far-reaching claim the plaintiffs make
11 here. And I think it is important to remember why they are
12 asking you to make this declaration.

13 We have heard a lot today about vulnerabilities.
14 What we have not heard and what you will not hear during the
15 course of this trial is evidence that a piece of election
16 equipment has been hacked and actually altered votes in an
17 election.

18 In fact, what we're going to hear is the opposite of
19 that. We're going to hear that not a single vote in Georgia
20 there is evidence that it has been altered by nefarious actors.

21 So, Your Honor, we're going to hear from
22 Dr. Halderman. He has no evidence of malware on the DREs
23 despite having access to those.

24 No evidence of malware in the GEMS databases despite
25 having access to those.

1 No evidence of malware in Dominion BMDs used in an
2 election.

3 No evidence of malware from when he's looked at the
4 Coffee County equipment.

5 You are going to hear other experts that relied on
6 Dr. Halderman for his analysis on that point.

7 But you're not going to hear evidence of malware
8 affecting elections. You are also not going to hear evidence
9 the plaintiffs' votes have been compromised.

10 Each of the plaintiffs, I'm sure, has policy concerns
11 about why they would prefer to vote using a different method.
12 But ultimately they don't have evidence they were prohibited
13 from voting or had their vote cast incorrectly on a
14 ballot-marking device.

15 And to the extent there is a claim that they didn't
16 receive an absentee ballot, the law in Georgia, both in the
17 Eleventh Circuit and in statute, is counties process absentee
18 ballots. So a burden on the right to vote from not receiving
19 an absentee ballot could not be traceable to the State.

20 And we have heard a lot about Coffee County. We're
21 going to hear a lot about that. But even Coffee County doesn't
22 provide the kind of evidence that plaintiffs claim that it
23 does.

24 First, none of the plaintiffs live in Coffee County.
25 So anything that happened there we would submit is not

1 burdening their right to vote.

2 Dr. Halderman said that the Dominion software was in
3 the wild in his 2021 report before anyone knew about Coffee
4 County, besides a handful of individuals and Ms. Marks.

5 That was the claim that there was software in the
6 wild from other states and that was part of the basis for
7 Dr. Halderman's opinions in this case about vulnerability.

8 So while Coffee County shows that every election
9 system is vulnerable to insider attacks, that is not something
10 unique to a ballot-marking device system. It doesn't change
11 the ultimate equation because, at least according to
12 Dr. Halderman, the software was already out there from other
13 states.

14 So Coffee County is very serious, and I don't want to
15 downplay that. But it is not serious for the reasons the
16 plaintiffs say it is. It is serious to show the importance of
17 election officials. It is serious to show what wrong beliefs
18 about threats to elections will lead people to do. But
19 ultimately it doesn't change the threats to Georgia elections
20 even under the plaintiffs' approach.

21 So then what is the plaintiffs' claims? What are
22 they basing their request for a ban on ballot-marking devices
23 on? We're going to hear over and over in this trial, it is
24 vulnerabilities, it is risks, it is possibilities.

25 What the plaintiffs are asking you to allow them to

1 do is substitute risks or substitute evidence for risks. To be
2 clear, you're going to hear from -- testimony from the
3 plaintiffs about every component of the election system. You
4 are going to hear that the precinct scanners have
5 vulnerabilities. You are going to hear central count scanners
6 have vulnerabilities. You are going to hear that election
7 management servers have vulnerabilities and that ballot-marking
8 devices have vulnerabilities.

9 But the only piece of equipment that plaintiffs are
10 asking you to enjoin is the ballot-marking devices for voters
11 who do not have disabilities. So I think it is also important
12 to remember the plaintiffs are not asking for an absolute bar
13 that no Georgia voter can vote on a ballot-marking device.

14 They still want to keep ballot-marking devices
15 available for voters with disabilities, even if they are barred
16 for everybody else.

17 So when we look at the entirety of the evidence
18 you're going to hear, what you are going to see is plaintiffs
19 are fine with a system that has vulnerabilities, including
20 continuing to use much of the existing Dominion equipment,
21 because they have to be.

22 Every voting system, a hand-marked system, a
23 ballot-marking device system, a DRE system, they all have
24 vulnerabilities, even including a hand-marked ballot system
25 where votes are counted by hand.

1 And on this point, I think it is important to
2 remember on vulnerabilities we agree with the plaintiffs'
3 experts on this point. Because in November of 2020 plaintiffs'
4 experts, I think almost all of them, signed a letter, and they
5 said in that letter, The presence of security weaknesses in
6 election infrastructure does not by itself tell us that any
7 election has actually been compromised. Altering an election
8 outcome involves more than simply the existence of a technical
9 vulnerability.

10 And that is exactly right. The existence of a
11 technical vulnerability does not tell you if an election
12 outcome has been altered.

13 And this is a statement signed by Dr. Halderman,
14 signed by Dr. Appel, signed by Mr. Hursti, signed by
15 Mr. Skoglund, signed by Dr. Stark.

16 Plaintiffs have only evidence of vulnerabilities in
17 this case. And again, they are asking you to substitute risks
18 for evidence when it comes to categorizing the burden on the
19 right to vote.

20 So let's look next at how this case works as a matter
21 of law. I know the Court is well familiar with our
22 Anderson-Burdick standard. You have to determine what is the
23 burden on the right to vote. After we get past standing, that
24 is the legal question we have to answer.

25 Is the burden voting on an electronic voting system?

1 Well, it can't be that because electronic voting systems, as
2 the Court has said, are not inherently unconstitutional any
3 more than lever or chad-based voting. Plaintiffs have the
4 freedom to vote a hand-marked paper by absentee ballot and they
5 can return that to their elections office on election day if
6 they so choose.

7 Is the burden voting on a system that has
8 vulnerabilities? Well, that can't be the burden because every
9 system has vulnerabilities.

10 Is it voting on a system that has malware installed
11 and hacked and election results are being altered? Well,
12 maybe. But that is not the evidence that the Court is going to
13 have in this case.

14 It also can't be a right to have their individual
15 voted counted in a particular way. As the Court has made very
16 clear, the Supreme Court and others, there is no right to vote
17 in a preferred manner.

18 To put plaintiffs' claims into focus, all analogies
19 are imperfect, but it is almost as if what plaintiffs are
20 saying is they can present evidence saying someone could drive
21 a car into a polling place on election day because there were
22 not sufficient vehicle barriers around that facility.

23 That is a risk that could disrupt voting, could cause
24 significant problems for voters, could have a massive impact on
25 an election depending on where it took place.

1 But it is a speculative risk without more. It is a
2 potential burden on the right to vote. It is not an actual
3 burden on the right to vote, just like there is a potential
4 burden on the right to vote from a blizzard on election day or
5 the storm we had this morning, people trying to get to polling
6 places.

7 Those are not the kinds of burdens though that rise
8 to the level of a constitutional violation. They are just part
9 of the usual burden of voting and living in the world that we
10 live in.

11 And I know the Court talked about the language from
12 *Jacobson* regarding the risks of voting related to particular
13 election procedures. But the application of the procedures the
14 Eleventh Circuit was talking about there would have resulted in
15 votes not being counted. The risk was a specific not counting
16 of votes.

17 What you are going to have evidentiary-wise here is
18 not that votes are not counted, just that there is only a risk.
19 And a risk that cannot be quantified.

20 Ultimately, Your Honor, there is nothing to show
21 anything here beyond the usual and normal burdens associated
22 with voting. And there is nothing here to show that if the
23 burden ultimately is Coffee County that the defendants
24 proximately caused anything related to that.

25 But let's say we don't convince you on that point and

1 you say you think there is a burden on the right to vote.

2 We have to then consider the State interests and
3 weigh that. As you know, the categorization of the burden
4 matters. A severe burden requires a compelling interest. A
5 lesser burden requires a lesser interest involved. And you
6 never get to the point of weighing State interests until you
7 have categorized the burden.

8 The evidentiary burden is on the plaintiffs to show
9 that severe burden on the right to vote. And if they do, then
10 we've got a number of State interests to talk about, and you'll
11 hear evidence on these points.

12 Starting with policy, ballot-marking devices are the
13 system of elections chosen by the legislature, signed by the
14 governor. The political branches chose this system and that
15 matters to this equation.

16 Ballot-marking devices provide clear voter intent
17 unlike hand-marked paper ballots. They provide a paper trail.
18 They provide disability accessibility and ensure that voters
19 with disabilities are not held in a separate category of voting
20 equipment.

21 Ballot-marking devices are touch screens. As
22 Mr. Oles referenced, Georgia voters have been voting on touch
23 screens for over two decades now. There is a familiarity with
24 that process.

25 Ballot-marking devices help election administrators,

1 particularly in early voting, to make sure they get the right
2 ballot for that voter when they can show up at any place in a
3 county during early voting.

4 And we'll talk about a lot more than that during the
5 course of the trial. But ultimately, even if the plaintiffs
6 can show a burden, we would submit they can't overcome the
7 State interests that are involved.

8 Ultimately, the plaintiffs are very narrowly focused
9 on the single issue of cybersecurity when administering
10 elections requires so many more facets for how those elections
11 have to be administered. Everything from training poll
12 workers, poll workers being able to operate equipment, all the
13 way through the ability to count and audit.

14 So this also, obviously, assumes we get past
15 jurisdictional issues on standing. I'm not going to rehash
16 those. I know you're well familiar with those.

17 We will submit that plaintiffs will not be able to
18 show an injury, especially the individual plaintiffs. And we
19 don't believe that the one plaintiff rule is going to work for
20 purposes of post trial given the two separate complaints.

21 My team and I finished the trial with Judge Jones
22 recently with multiple cases, multiple complaints and
23 ultimately had to make findings of standing as to each of those
24 cases. And we submit that should happen here as well.

25 But let's assume, take one more step farther, we have

1 not convinced you on jurisdiction, we haven't convinced you on
2 the burden on the right to vote or State interests. How the
3 Court would write an order or order a remedy I think shows how
4 difficult this kind of claim is.

5 This Court said correctly several times that it can't
6 order Georgia to use a hand-marked paper ballot system. So the
7 remedy the plaintiffs ultimately want is not part of, kind of,
8 of what you can order.

9 But then, if the order is ultimately about the
10 mitigation of a risk, how is the Court and what standard is the
11 Court going to apply to determine when a risk is sufficiently
12 mitigated to make a system constitutional again?

13 So, for example, on some of the specific things that
14 we have talked about, if the order says Georgia can't use the
15 Dominion equipment until such time as it upgrades the software
16 to a newer version, for example, that is ultimately not going
17 to be supported by the evidence at trial.

18 Dr. Halderman is going to testify he believes there
19 are more vulnerabilities on the Dominion equipment than what he
20 found. And it leaves the Court and the State in a position of
21 not being sure that, well, this one software upgrade solved the
22 constitutional problem. And then what happens if another
23 version of the software comes out or an additional
24 vulnerability is found?

25 Is every new software version going to lead to a new

1 lawsuit? And this is where finding that the Constitution
2 speaks to a specific version of software gets into the minutia
3 of elections in a way that doesn't fit well with the role of a
4 federal court.

5 If the order instead says Georgia has to do more
6 audits, we're going to have more evidentiary problems there.
7 As we have just heard from Mr. McGuire, the plaintiffs believe
8 that it is impossible to audit BMD-marked ballots and that
9 there is no auditing regime that would give confidence in the
10 election results here.

11 We, obviously, strongly disagree with that. We stand
12 by Georgia's robust auditing system. But is a certain kind of
13 audit constitutionally required? And again, what standard will
14 we use to determine when a sufficient amount of audits is
15 taking place? And how do we determine that an insufficient
16 amount of audits makes a system unconstitutional?

17 The biggest problem I think, Your Honor, is that if
18 you take the plaintiffs' case to its logical conclusion, the
19 only logical order that this Court could enter is one banning
20 ballot-marking devices completely and requiring hand-marked
21 paper ballots, which is exactly what this Court cannot do.

22 Let me get last to the public interest. Obviously to
23 find for the plaintiffs on a permanent injunction, since we're
24 only seeking prospective injunctive relief in this case, you
25 have to get to the question of, What is the public interest

1 that is involved?

2 As a consequence of giving risk and vulnerabilities
3 the weight of a constitutional violation is that we'll see some
4 people who rightly or wrongly are going to use the idea that
5 elections are not perfect to so distrust based solely on risk.

6 As we said at the beginning, the Court can't
7 guarantee a perfect election. We know that. No election is
8 without risks that something is going to go wrong. That is the
9 nature of it. That is why we have election contests in
10 Title 21. It is why we have ways of addressing these types of
11 issues.

12 But it is not in the public interest to find that
13 risks are sufficient to make an election system
14 unconstitutional because we have seen what happens with that
15 after 2018 and after 2020.

16 After 2020, Sidney Powell argued to another judge in
17 this district that her claims were, quote, About ensuring the
18 integrity of the vote and the confidence of the people that the
19 will they expressed in their vote is what actually determines
20 the election.

21 Ms. Powell also said, quote, Allowing voters to cast
22 ballots that are solely counted based on their voting
23 designations and not on an unencrypted humanly unverifiable QR
24 code that can be subject to external manipulation and does not
25 allow proper voter verification and ballot vote auditing cannot

1 withstand the scrutiny of a federal court and cannot pass
2 muster as a legitimate voting system in the United States of
3 America.

4 Those are quotes from Ms. Powell on Pages 33 and 38
5 of the transcript in the *Pearson v. Kemp* case that was on
6 December 7, 2020, here in the Northern District.

7 And that is the danger we all face when risks become
8 a substitute for evidence of actual problems with elections.

9 In contrast to that, after the 2018 governor and
10 lieutenant governor race, there were multiple claims against
11 voting machines by candidates and those on the left who lost
12 those elections. Secretary, county election officials were
13 here in this courtroom and other courtrooms across the state
14 defending those election results.

15 After the 2020 presidential election in Georgia,
16 again multiple claims about machines from those on the right
17 who lost the election. Meanwhile, the Secretary, county
18 officials were in this courtroom, and other courtrooms across
19 the state defending the 2020 election results often at great
20 personal risk.

21 And the Secretary is still moving forward with
22 efforts to ensure safe and secure elections in Georgia. Over
23 the past year, the Secretary's office conducted health checks
24 of voting equipment across the State. Other states looked to
25 us as an example for auditing and how risk-limiting audits

1 should be conducted.

2 Georgia conducts excellent elections. And the
3 Secretary is committed to protecting Georgia elections and
4 election integrity in this state.

5 And so, Your Honor, we would submit that on the
6 public interest piece of this, Georgia elections work. Georgia
7 election officials do their work well, regardless of attacks
8 from the right or the left.

9 Georgia's 2020 and 2022 election results stood the
10 test because we used paper ballots in Georgia and we have an
11 auditable paper trail. When there is a question, we can go
12 back and look at every piece of paper, as we did after 2020.

13 What plaintiffs are asking of you in these cases is
14 to take that system that performed exactly as it was supposed
15 to in 2020 and in 2022 and dozens of elections and determine it
16 is unconstitutional based solely on the fears of the plaintiffs
17 and their experts that somehow, someday, someone might do
18 something that alters the outcome of an election.

19 That is not enough to have standing. That is not
20 enough to call into question the integrity of Georgia's voting
21 system. And there is no basis under the Constitution to enjoin
22 Georgia from using its Dominion ballot-marking devices.

23 So we would submit that at the conclusion of all the
24 evidence the Court should grant a defense verdict in both cases
25 and allow Georgia to continue to use its chosen election

1 system.

2 Thank you, Your Honor.

3 THE COURT: Thank you.

4 All right. Are plaintiffs ready to proceed?

5 MR. CROSS: Yes. We are, Your Honor.

6 THE COURT: I need a three-minute restroom break. So
7 knowing the fact that people are coming in and out of this,
8 we'll say five minutes. It is 10:58. So let's just --

9 MR. CROSS: One quick thing, Your Honor.

10 THE COURT: Yes.

11 MR. CROSS: There were aspects of Mr. Tyson's opening
12 that I didn't object to because I didn't want to interrupt the
13 opening. I just want to make sure that objections are not
14 waived.

15 THE COURT: It is opening statement. It's not --

16 MR. CROSS: I just wanted to be clear.

17 THE COURT: I don't have a jury here. So, you know,
18 all of this will be weighed with the real evidence. You are
19 all terrific lawyers and make compelling cases in both of your
20 arguments and your co-counsel's arguments. So --

21 MR. TYSON: And to be clear, Your Honor --

22 THE COURT: It is an abundance of intellectual riches
23 from all of you designed to try to confuse me at the same time
24 as illuminate all the issues.

25 MR. CROSS: I'm sure Mr. Tyson is about to say he

1 would have objected to me too.

2 MR. TYSON: Exactly.

3 MR. CROSS: Everything is preserved.

4 THE COURT: All right. Everything is preserved.

5 There is nothing in this that would -- you haven't sacrificed,
6 your point, as to any issue. And you-all wanted to make an
7 opening statement to sort of assist me in looking at it from a
8 global perspective. Though I think I have in the past. But I
9 understand that there is great public interest in this and why
10 it is useful to illuminate the issues also for the public at
11 large since the trial is being covered.

12 MR. CROSS: One quick thing my team reminded me.

13 An issue Mr. Tyson and I talked about before also
14 concerns sequestration of witnesses. So Your Honor has ordered
15 sequestration of witnesses. I think both sides have requested
16 it, except for experts and either a plaintiff who's named or a
17 representative for like the Coalition or Secretary's office.

18 One thing we talked about was, since there will be
19 some amount of press on this case, we would like either an
20 order or at least an agreement that witnesses who are
21 sequestered will avoid the press to the extent they can in good
22 faith. They are not going to look for things, they are not
23 going to go try to read things. Because otherwise it defeats
24 the sequestration if folks can just --

25 THE COURT: Probably Twitter as much as anything

1 else.

2 MR. TYSON: And, Your Honor, for the defendants, we
3 don't have an objection to that in theory. Our concern is that
4 obviously our clients and some of the witnesses, like
5 Mr. Sterling -- there are elections happening now. He may have
6 to hold a press conference. There may be a need to engage with
7 the media or read media about different things.

8 I think what we settled on is maybe if we could have
9 the witnesses agree they would not click on a story, not go
10 seeking out news about the case. That may be the best way to
11 approach it.

12 MR. CROSS: I think that generally works. We would
13 ask again -- the Secretary's office is a big office. Like
14 Mr. Sterling doesn't have to be the one to do a press
15 conference. Right? Witnesses should be in a role of a witness
16 is essentially what we're asking you.

17 THE COURT: I think that is true, except -- and if we
18 were in a one-week trial, that would be simple. The problem is
19 it is a three-week trial. And elections are in the -- in our
20 future.

21 So I don't know that I'm prepared to say that the
22 Secretary's key deputy isn't able to make -- give a press
23 conference.

24 But in any event, I think at this juncture almost all
25 the witnesses are very educated about the case. So -- but if

1 there is something that is really seminal that you think that
2 somebody might share that would affect testimony, you can --
3 you should talk about it first among each other and we'll
4 address that then.

5 MR. CROSS: Thank you, Your Honor.

6 THE COURT: Anything else?

7 MR. RUSSO: Your Honor, one more thing, and we talked
8 to Mr. Cross about this earlier, is back to the identification
9 of witnesses.

10 THE COURT: Just speak up a little.

11 MR. RUSSO: Back to the identification of witnesses,
12 and the 6:00 P.M. deadline the night before. We got a list of
13 11 witnesses at 6:00 P.M. last night not indicating who is
14 actually being called today. We asked for that to be
15 identified. Around 7:45 we did get some list. It included
16 even Dr. Halderman possibly being called today.

17 One of the individuals who was not on the list, David
18 Hamilton, then emails us this morning to say he was contacted
19 about possibly being called today.

20 And, look, we're all, of course, running around and
21 trying to get things done. We get it. And we're going to try
22 to get something figured out, maybe a better strategy going
23 forward. But we did want to put this on your radar.

24 THE COURT: Well, I understand. I don't know all
25 what happened. I'm not sure that it makes sense at the moment

1 for me to try to unravel that. I would not expect, frankly, if
2 you -- Dr. Halderman to speak with -- to be testifying with
3 that little amount of notice.

4 So I don't know who else might be -- might be a
5 problem. But have you indicated your first people that you are
6 going to be calling?

7 MR. CROSS: We did, yes.

8 They asked us to provide two days of witnesses. So
9 we were trying to do what they asked to accommodate them. We
10 provided two days of witnesses.

11 As I have acknowledged to them, in fairness, we did
12 not break it out in the email between the two days. Once we
13 got their email, we responded quickly. So I don't think this
14 is an issue, and I think we'll work it out.

15 THE COURT: I'm sure you will. Yes, they probably
16 need to know, first of all, who though -- as a whole, each of
17 you need to know who -- immediate folks who are likely to be
18 called in the next day and who are the next ones, understanding
19 that if something happens you may move up somebody. But a
20 really big witness I think each of you need to know.

21 MR. CROSS: Yes. Thank you, Your Honor.

22 THE COURT: Okay. All right. Well, let's take a
23 five-minute break.

24 If you're planning -- if you are a member of the
25 public and you are planning to continue to stay, I'm not -- you

1 can come back. Just you are not wedded to your seat. Everyone
2 needs a restroom break at points.

3 But -- and it still looks like we have maybe a seat
4 or two, or maybe I'm not looking at it properly. Do we have --

5 All right. So we are fine.

6 All right. We'll see you in five minutes.

7 COURTROOM SECURITY OFFICER: All rise. Court is in
8 recess for five minutes.

9 **(A brief break was taken at 11:04 AM.)**

10 THE COURT: Have a seat.

11 Who's plaintiffs' first witness? Would you call that
12 person?

13 MR. BROWN: Your Honor, before the first witness,
14 just a housekeeping note.

15 THE COURT: Okay.

16 MR. BROWN: I have spoken with the defense counsel.
17 And it is about who can attend the hearing. We had Dr. DeMillo
18 on our witness list, and we have taken him off. So he is -- it
19 is okay for him, as our consulting expert, to remain in the
20 courtroom? So Mr. Russo just wanted me to state on the record
21 that he is not on our witness record.

22 Thank you, Your Honor.

23 MR. RUSSO: We are going to release him on our
24 subpoena. We just wanted it to be on the record.

25 THE COURT: That's fine.

1 MR. BROWN: Thank you, Your Honor.

2 THE COURT: Good.

3 Well, that is not very nice of your colleagues to put
4 the newest person around here to -- as the first lawyer up for
5 examining a witness.

6 Well, I'm not saying you're the newest lawyer in
7 town. I'm just saying that it is -- they are the veterans and
8 then there is -- and then they throw you into the pit. All
9 right.

10 MR. CROSS: Everybody told me you were tired of
11 seeing me up, Judge.

12 THE COURT: That's right. Of course.

13 MR. MARTINO-WEINHARDT: At least I'm a fresh face,
14 Your Honor.

15 THE COURT: Remind me of your name.

16 MR. MARTINO-WEINHARDT: Matthaeus Martino-Weinhardt
17 on behalf of the Curling plaintiffs, Your Honor.

18 THE COURT: Thank you very much. I appreciate it.

19 **THE PLAINTIFFS' CASE.**

20 MR. MARTINO-WEINHARDT: The first witness we would
21 like to call is Mr. Jeffrey Schoenberg.

22 COURTROOM DEPUTY CLERK: Please raise your right
23 hand.

24 **(Witness sworn)**

25 COURTROOM DEPUTY CLERK: Please have a seat.

1 If you would loudly and clearly into that mic state
2 your name and spell your last name for the record.

3 THE WITNESS: My name is Jeff Schoenberg,
4 S-C-H-O-E-N-B-E-R-G.

5 Whereupon,

6 JEFFREY SCHOENBERG,
7 after having been first duly sworn, testified as follows:

8 DIRECT EXAMINATION

9 BY MR. MARTINO-WEINHARDT:

10 **Q.** Good morning, Mr. Schoenberg.

11 **A.** Morning.

12 **Q.** I would like to start with just a few questions about your
13 background.

14 Where do you live?

15 **A.** I live in Dunwoody, Georgia.

16 **Q.** Where were you born?

17 **A.** I was born outside of Washington, D.C., Andrews Air Force
18 Base, Maryland.

19 **Q.** Why there?

20 **A.** My father was an Air Force officer stationed at the
21 Pentagon and that is -- that was the convenient place at the
22 time.

23 **Q.** Can you briefly summarize for the Court where you have
24 lived since then?

25 **A.** We moved around a couple of times when I was young. My

1 family -- my last -- my father's last station was Warner Robins
2 Air Force Base, Robins Air Force Base in middle Georgia. We
3 moved there in 1970.

4 He retired. We moved to Atlanta in 1973. And other than
5 leaving the state for college and law school, I have lived in
6 Georgia ever since.

7 **Q.** Where did you go for college?

8 **A.** I went to Princeton University.

9 **Q.** What degree did you get?

10 **A.** I got an AB in politics with a concentration in political
11 theory.

12 **Q.** And what did you do after college?

13 **A.** I went to law school.

14 **Q.** Where did you go to law school?

15 **A.** The University of North Carolina, Chapel Hill.

16 **Q.** Could you briefly summarize your professional background
17 after college --

18 **A.** Sure.

19 **Q.** -- and law school.

20 **A.** Sure.

21 I practiced law for a few years at a large firm in town
22 here. I resigned from that position to start a business in
23 real estate development. When -- after a few additional years,
24 I got myself a position as an adjunct professor at Oglethorpe
25 University here in town.

1 I went to work for elected officials both on the campaign
2 side and on staff side. That included federal, legislative,
3 members of the Georgia delegation.

4 I have been an attorney recruiter for a number of years.
5 And most recently I've effectively retired in order to take
6 care of my aging parents.

7 **Q.** Next I would like to ask you some questions about your
8 experience as a voter in Georgia.

9 Are you registered to vote?

10 **A.** I am.

11 **Q.** Where?

12 **A.** In DeKalb County.

13 **Q.** Have you voted in previous elections in Georgia?

14 **A.** I have. Many. Yes.

15 **Q.** Since you've been eligible to vote, about how many
16 elections?

17 **A.** Dozens. As many as -- as many as I could, and I try to
18 vote in absolutely every election.

19 **Q.** Do you intend to keep voting in future elections?

20 **A.** Yes, I do.

21 Again, as often as there is an election, I will very
22 likely vote.

23 **Q.** Why do you vote?

24 **A.** Because I feel it is my civic responsibility. It is
25 the -- it is the core act of participating in government and

1 civic life. It strikes me as a very important thing to do and
2 something I really value.

3 **Q.** How is voting, to you, an act of participating in civic
4 life and democracy?

5 **A.** As a citizen, you bring your experiences and your point of
6 view to the question of how the -- how the government should be
7 run, who should represent your interests in government. You
8 know, specifically questions, ballot initiatives and whatever,
9 that you are being asked what is your opinion, what do you
10 think?

11 And the clearest, most obvious way to participate in civic
12 life is to answer those questions by voting. I think it is --
13 I have engaged in many different kinds of civic participation.
14 That is the one that seems most direct.

15 **Q.** Is it important to you that your vote is counted?

16 **A.** Yes. My vote should be counted as cast. My particular
17 point of view should be heard.

18 **Q.** Is it important to you that your vote is counted as cast
19 even if in a particular election it wouldn't have changed the
20 outcome?

21 **A.** Absolutely.

22 **Q.** Why is that?

23 **A.** Because it seems to me that regardless of whether I win or
24 lose an election, my voice has to be registered. You know, and
25 I will say, unlike what I have already heard in court today,

1 I'm not motivated to be here because I don't like the results
2 of a particular election.

3 I am -- my motivation for being a plaintiff in this case
4 is to protect my right to vote in a meaningful way and to know
5 that when I vote it is counted as cast.

6 **Q.** And more to the process of voting, do you prefer the
7 process of voting in person or mailing in an absentee ballot?

8 **A.** Strongly prefer to vote in person.

9 **Q.** What is it about the in-person voting process that you
10 prefer?

11 **A.** Well, Mr. Sterling used the word "pageantry." I'm not
12 sure it is exactly pageantry. But it is an activity that you
13 do with other members of the community. And I like that. I
14 like participating in that way.

15 I always thank the poll workers whenever I go to the poll.
16 I think it is important to participate in that way to show that
17 somebody cares that people are putting in the effort to make
18 the election work.

19 When my children were small, I thought it was an important
20 teaching opportunity, and I always took my children to the poll
21 with me when I could so that they would be there to see that
22 voting was an important part of my life and that I wanted them
23 to honor it and respect it and want to do it when they grew up.

24 Most recently, I've been taking my 97, 98-year-old father
25 to the polls when it is time to vote and helping him vote. And

1 I think it is an inspiration to other people to see somebody
2 his age still participating.

3 **Q.** Now I want to move on to the particular voting system that
4 is at issue in this case.

5 Are you familiar with Georgia's current voting system?

6 **A.** Yes, I am.

7 **Q.** What's your understanding of what that system is?

8 **A.** It is an electronic voting system, relies on
9 ballot-marking devices for the voters to use and a system of
10 scanners and supporting software to make that system work.

11 **Q.** Do you see a ballot-marking device in this courtroom?

12 **A.** Right in front of me, yes.

13 **Q.** Could you just summarize at a high level how voting on a
14 BMD works.

15 **A.** Sure.

16 The voter is given a voter card by the person that checks
17 you in at the poll. With that voter card you activate this
18 machine. And by touching your selections on the ballot style
19 that pops up, you indicate your choices for the elections --
20 you make your selections for the election at hand.

21 You print the ballot out from a printer that is attached
22 to the machine. And you take that ballot to the scanner where
23 it reads the QR code that is printed on the ballot.

24 **Q.** And since Georgia has implemented the BMD system, have you
25 had experience voting on a BMD?

1 **A.** Yes.

2 **Q.** And what was the first time you voted on a BMD?

3 **A.** I think the first time I voted on a BMD was the runoff
4 election in early 2021.

5 **Q.** Did you plan to vote on a BMD in that election?

6 **A.** No. That was a circumstance where I had asked for a
7 absentee ballot initially for the public service commission
8 race, as I remember. And there were -- because there were two
9 runoff elections and they were going to be run very close to
10 one another, I had asked for an absentee ballot.

11 They then combined those races, is my understanding. I
12 never got an absentee ballot for any race. And I realized it
13 was too late to go through the process again. So I gave up
14 waiting for an absentee ballot to arrive and just voted in
15 person that election cycle.

16 **Q.** And in that election, when you voted on a BMD, were you
17 confident that your vote was accurately counted?

18 **A.** No.

19 **Q.** Why not?

20 **A.** Because there was no way I could verify that the
21 information on the ballot that printed out of the machine was
22 going to reflect my intentions.

23 I know enough to know that the QR code rather than the
24 printed words on the page are the active part of the ballot.
25 And the QR -- I can't read the QR code.

1 Q. What is an example of a voting system that would give you
2 confidence that your vote is counted as you cast it?

3 A. Well, the simplest answer to that question is hand-marked
4 paper ballots where you can physically mark what you're
5 interested in voting in and know for certain that the marking
6 is for the -- reflects your intent.

7 I imagine there are plenty of other ways one could do it.
8 But that is the simplest.

9 Q. Based on your experiences voting, do you consider the
10 option of mailing in absentee ballot an adequate alternative to
11 voting on a BMD?

12 A. No. For a couple of reasons.

13 Q. What are those?

14 A. I tried it once and it failed. The system failed. I
15 didn't fail.

16 I also find that just generally it takes a lot of
17 planning. You have to -- you need a bunch of equipment. You
18 need a printer at home now. You need a bunch of -- you have to
19 go through a bunch of hoops to make that system work. That is
20 not something that I particularly want to have to do in order
21 to vote.

22 Additionally, I know that using a -- the absentee system,
23 if there is something wrong with the absentee ballot that you
24 submit, my understanding is somebody at the county will convert
25 it to a BMD cast ballot and you are back where we started.

1 Q. And in terms of the voting experience between voting in
2 person or mailing an absentee ballot, do you have feelings
3 about how those compare?

4 A. The feelings --

5 Q. About the process of voting in person.

6 A. Yeah. There's -- for what pageantry there is in the
7 system, that pageantry certainly does not follow the absentee
8 ballot process. There is no joy in civic or very little joy in
9 civic participation by filling out a ballot at home and putting
10 it in the mail.

11 Q. What about the timing of voting as between absentee or in
12 person?

13 A. That is another thing. If you are voting in person, even
14 if you are voting early in person, it is going to happen close
15 to election day and -- which gives you the opportunity to know
16 whatever facts are going to come down toward the end of that
17 election cycle that might have an impact on how you want to
18 vote.

19 In order to make sure that an absentee ballot gets in on
20 time, you generally have to vote awfully early, uncomfortably
21 early as far as I'm concerned.

22 Q. You already touched on this. But just to be absolutely
23 clear, do you dispute the outcome of any elections that have
24 taken place in Georgia?

25 A. No.

1 Q. Why then are you participating in this lawsuit?

2 A. Because I think I deserve -- I know I deserve a
3 constitutionally adequate election system. I need to know that
4 when I vote my vote will be counted as cast, and I know that I
5 don't have that now.

6 Q. Mr. Schoenberg, you have had experience voting on a BMD as
7 you have explained.

8 MR. MARTINO-WEINHARDT: Your Honor, if I may, I would
9 like to ask Mr. Schoenberg to come down to the BMD and briefly
10 demonstrate to the Court how the voting process on a BMD works?

11 THE COURT: Sure. Go ahead.

12 MR. MARTINO-WEINHARDT: And if I may, Your Honor, if
13 I could --

14 THE COURT: There seems to be some commotion over on
15 defense table. So I want to make sure there is no objection.

16 MR. MARTINO-WEINHARDT: Your Honor --

17 THE COURT: Wait. Just wait one moment.

18 MR. BELINFANTE: Your Honor, if I may, I'm just going
19 to come around so I can see what the witness is doing.

20 THE COURT: Sure, of course.

21 MR. MARTINO-WEINHARDT: I was going to ask the same
22 thing, if I could.

23 THE COURT: Of course.

24 MR. MCGUIRE: Your Honor, I would like to do the
25 same.

1 THE COURT: All right. Well, we probably should have
2 had this a little further out. But that is fine.

3 MR. BELINFANTE: I'm sorry. I can't see what is on
4 the screen.

5 THE COURT: Do you want to come over here?

6 MR. BELINFANTE: If you don't mind, Your Honor. I
7 certainly don't want to block your view.

8 THE COURT: That's all right. I'll just walk on out.

9 **(There was a brief pause in the proceedings.)**

10 BY MR. MARTINO-WEINHARDT:

11 **Q.** Mr. Schoenberg, before you start on the BMD, could you
12 briefly describe what happens when you arrive at a polling
13 location.

14 **A.** Sure.

15 So when you -- when you get to the front of the line,
16 you'll identify yourself with ID to the poll worker.

17 THE COURT: All right. Let me just get this -- it is
18 a little further -- closer to you. I just am not sure.

19 All right. Thank you.

20 MR. BELINFANTE: Actually, Your Honor, forgive me if
21 it's a bit delayed. I would object to the question only on the
22 grounds that I think it is -- if he is speaking about his own
23 experience voting, that is one thing.

24 I think the question was more generalized about what
25 happens. And there is 159 counties in Georgia with different

1 precincts and so on.

2 It is an easy cure. I would just object on the
3 grounds that the question itself is too broad for
4 Mr. Schoenberg's personal knowledge.

5 MR. MARTINO-WEINHARDT: I can rephrase it.

6 THE COURT: All right. Maybe he has also been --
7 worked in the polls, so you can explain what the basis of your
8 knowledge is.

9 BY MR. MARTINO-WEINHARDT:

10 Q. In your experience voting on a BMD, what have you observed
11 happens when you arrive at the polling location?

12 A. So you -- you are asked for an identity card of some sort
13 to prove who you are. The poll worker checks you in with the
14 electronic pollbook. Assuming that you have the right to vote
15 where you are, they prepare a voter card for your use to use
16 the BMD.

17 Q. Could you please take the demonstrative voter card and
18 insert it into the BMD.

19 A. (The witness complies.)

20 Q. Would you please describe what you see on the touch
21 screen.

22 A. I see a ballot style that says, Fulton County Official
23 Ballot, General and Special Election, the State of Georgia,
24 November 5th, 2024.

25 MR. BELINFANTE: Objection, Your Honor. What is

1 the -- where did this information come from?

2 MR. MARTINO-WEINHARDT: It is a demonstrative that we
3 have prepared.

4 MR. BELINFANTE: I mean --

5 THE COURT: It is obviously not the actual election
6 but --

7 MR. BELINFANTE: Understood, Your Honor. But I mean,
8 for example, then where did the card come from? Who prepared
9 the card? All of these kind of questions for something we're
10 just now seeing.

11 MR. MARTINO-WEINHARDT: Dr. Halderman prepared the
12 cards for this demonstration.

13 MR. BELINFANTE: Then I would object to this witness
14 testifying about a preparation he has not prepared, not seen,
15 and cannot determine if this is similar to a BMD that will be
16 used in a Fulton County special election or any other.

17 MR. CROSS: Your Honor, this all goes to
18 cross-examination and weight. It is a demonstration. We
19 didn't want to use a real ballot because we didn't want to get
20 into issues about us making suggestions about past elections.

21 So it is a demonstration just to show Your Honor how
22 it works. Mr. Belinfante can cross-examine him on how this
23 might differ from his real world experience. He will lay the
24 foundation that it is exactly the same.

25 MR. BELINFANTE: Your Honor, the witness has no

1 knowledge and certainly no foundation has been laid that the
2 witness has any knowledge about how a card is created, how it
3 is being read in a machine, how it is being appeared on the
4 machine, much less where I anticipate the testimony is going.

5 THE COURT: Well, I don't know where the testimony is
6 going.

7 MR. MARTINO-WEINHARDT: Your Honor --

8 THE COURT: He can testify as to what his experience
9 has been. Not that this is an identical replica. He can --
10 obviously, there are other ways that can be addressed. But we
11 can walk through the steps of how -- what usually -- what
12 happens when he puts in a card, what is the process in his
13 experience. That is all we're doing.

14 MR. BELINFANTE: And if that is --

15 THE COURT: And it is -- I mean, frankly, there is
16 probably everyone in this courtroom who lives in Georgia has
17 had this experience. So this is not unique. But nevertheless,
18 it is not -- we're not treating this as if this is an actual
19 voter -- that it is -- there is no indication, and you can
20 certainly raise it. It is a bench trial. I'm -- there is no
21 one who is being prejudiced. You can raise any of this, but
22 we're going to spend more time than it is worth.

23 MR. BELINFANTE: Your Honor, I don't disagree,
24 certainly -- and it wouldn't matter if I did anyway -- with
25 what Your Honor just said.

1 But just for clarity's sake, I want to make sure. My
2 objection is not that Mr. Schoenberg can't testify about his
3 experiences with machines. The objection is that he can't
4 testify using this machine and then as -- and then saying that
5 this is how something operates when we have no idea how it is
6 being created. The foundation hasn't been laid.

7 THE COURT: I don't know the entire scope of what his
8 testimony is, frankly. So, you know, I'm going to give you
9 some latitude to move forward.

10 Obviously, Dr. Halderman, who has done this many
11 times, can also do this. And he is certainly familiar with
12 this. So -- and there are other people too you can call for
13 cross-examination purposes -- somebody from the State, if there
14 is a problem.

15 But for now, just so we move forward -- and it is a
16 bench trial, and we are not affecting any jury members -- you
17 may proceed. But don't go too far.

18 MR. MARTINO-WEINHARDT: That is right, Your Honor.
19 The point is to show how an ordinary person interacts with this
20 machine and the concerns that Mr. Schoenberg has.

21 THE COURT: All right. Go ahead.

22 BY MR. MARTINO-WEINHARDT:

23 **Q.** Mr. Schoenberg, could you please describe again what you
24 are seeing on this screen.

25 **A.** So it looks the way you often -- in my experience, it

1 looks the way it typically looks. You get the front page of
2 the ballot style of the thing you're going to be voting that
3 day. That is what I'm looking at.

4 **Q.** Could you please advance to the next screen.

5 **A.** The first race that appears on the ballot is for President
6 of the United States.

7 **Q.** And in this demonstrative, what are the options?

8 **A.** George Washington of the Framers' Party, Benedict Arnold
9 of the Redcoats' party, and write-in.

10 THE COURT: Write-in?

11 THE WITNESS: Write-in.

12 BY MR. MARTINO-WEINHARDT:

13 **Q.** So obviously not an actual election you voted in?

14 **A.** No, sir.

15 **Q.** Now, could you please, as if you were at a BMD polling
16 place, as you have experienced it, go ahead and make a
17 selection. Then advance to the next and continue making
18 selections.

19 **A.** Sure.

20 **Q.** If you could please describe, as you are doing so, just
21 the name of each of the contests and when you are moving along.

22 **A.** Understood.

23 MR. BELINFANTE: Your Honor, I would just again
24 object. We have not seen -- now that we continue to see what
25 Mr. Schoenberg is doing, we have not seen this -- it has not

1 been provided to us.

2 And it would be prejudicial for us to have to even
3 cross-examine him when we have no information about what this
4 is or how it got here.

5 THE COURT: Well, tell me -- how much more have you
6 got here?

7 MR. MARTINO-WEINHARDT: It should be on the total
8 under ten minutes of going through this and Mr. Schoenberg
9 walking through.

10 THE COURT: Is there a way of cutting to the quick?
11 Because I know you're going to be able to do this at minimum
12 with Dr. Halderman and likely with others as well that you're
13 calling on cross-examination.

14 MR. CROSS: Your Honor, what he is doing right now
15 is -- I mean, it takes a couple minutes. He's just going to
16 vote it the same way he would in a voting booth so Your Honor
17 can see the process of that, the steps on that. Because that
18 goes to our burden. So we need that in the record beyond him
19 just saying it. We think the demonstrative shows Your Honor
20 step by step the burdens that the voter incurs when they vote.

21 THE COURT: Do you want to take a ten-minute break or
22 five-minute break so that opposing counsel can see your
23 demonstrative?

24 I thought you would have shared it, frankly,
25 beforehand.

1 MR. CROSS: We had talked about exchanging
2 demonstratives. We are where we are.

3 THE COURT: Okay. Well, then let's just stop for
4 five minutes and let them look at the demonstrative.

5 MR. CROSS: Can I just ask a question? I guess what
6 I don't understand is, is the State's counsel saying they don't
7 understand -- the BMD is just voting the way you would at a
8 poll site, which is the foundation that is laid?

9 THE COURT: I understand that. I understand that.

10 MR. CROSS: They don't understand how that works?

11 THE COURT: Let them look at it. That is all.

12 MR. BELINFANTE: That is not our objection. I think
13 the Court recognizes that.

14 THE COURT: All right. So let's take a five-minute
15 recess for anyone who wants a recess and let the -- and let
16 them look at it.

17 And you don't need to be the guide either -- well,
18 you will be if I let you proceed. But let them just -- let
19 counsel come up and be familiar with the document.

20 **(A brief break was taken at 11:42 AM.)**

21 THE COURT: How are we proceeding?

22 MR. TYSON: Your Honor, having reviewed the
23 demonstrative, I have an objection that I need to discuss in
24 chambers regarding the -- regarding what we have looked at on
25 the demonstrative, if we could.

1 THE COURT: All right.

2 MR. BELINFANTE: For the record, Your Honor, this is
3 not a situation under the Court's warning about one counsel
4 having responsibility for objections and so on. I think the
5 Court will soon learn why it is Mr. Tyson making the objection.

6 THE COURT: Just being particularly argumentative?

7 MR. BELINFANTE: It is me, Your Honor.

8 THE COURT: All right. Ladies and gentlemen --

9 How long do you think that is going to take us to
10 chat?

11 MR. TYSON: Five minutes. I don't think it is long.

12 THE COURT: Well, just hang out because I want to
13 keep on running and get -- be able to at least to finish this
14 witness or get somewhere, like, by 12:30.

15 COURTROOM SECURITY OFFICER: Court will stand in
16 recess for about five minutes.

17 **(A brief break was taken at 11:50 AM.)**

18 THE COURT: Thank you for your patience. I had a
19 conference with counsel in chambers, and I determined that it
20 would probably be more efficient, in terms of resolving any
21 concerns and addressing the fact that the defense counsel
22 hadn't looked at the assembled software that Dr. Halderman did
23 before, that it would just make more sense to wait until
24 Dr. Halderman testifies for them to clarify any of their
25 questions.

1 And then we will end up having Mr. Schoenberg back to
2 describe his experience as a voter using the software assuming
3 everything has been looked at and defense counsel feel they
4 have had an adequate opportunity to review the demonstrative
5 here.

6 So we're going to halt where we were at. I
7 understood also that plaintiffs' counsel -- that this was the
8 remainder of the questioning for the testimony of
9 Mr. Schoenberg by plaintiffs' counsel; is that right?

10 MR. MARTINO-WEINHARDT: Correct, Your Honor.

11 THE COURT: Then I will allow you to resume this
12 after we have had done the two steps of having the opportunity
13 for the defense counsel to look at some of the software issues
14 and also examine Dr. Halderman regarding this. And then we
15 will have Mr. Schoenberg back.

16 But, Mr. Schoenberg, they still can cross-examine you
17 about the rest of your testimony and thank you for your --
18 waiting until whenever it is that we are through with
19 Dr. Halderman's testimony.

20 All right.

21 MR. BELINFANTE: So, Your Honor, so I understand
22 Mr. Schoenberg is going to return to the stand to continue
23 direct examination?

24 THE COURT: Yes.

25 MR. BELINFANTE: Okay.

1 THE COURT: Just as to this -- the issues relating to
2 what his experience as a voter would be --

3 MR. BELINFANTE: Okay. All right.

4 THE COURT: -- in using the touch screen and what
5 happens after that and -- and what happened -- what might
6 happen if there were -- if it was not normal software.

7 MR. BELINFANTE: Okay. If that is the case, Your
8 Honor, and I defer to the Court, would you rather me
9 cross-examine him within what the questions were so far or just
10 reserve until he comes back?

11 THE COURT: No. Go ahead and ask him the questions
12 about -- up to the point that he came down for the
13 demonstrative.

14 MR. BELINFANTE: All right. Thank you, Your Honor.

15 THE COURT: But we'll just not revisit those again
16 later. All right.

17 MR. BELINFANTE: Will do my best.

18 CROSS-EXAMINATION

19 BY MR. BELINFANTE:

20 **Q.** Good afternoon, Mr. Schoenberg.

21 **A.** Good afternoon.

22 **Q.** My name is Josh Belinfante. I'm one of the outside
23 counsel for the State defendants. I know we haven't met. At
24 least I don't believe we have. Although we may have crossed
25 paths politically somewhere along the way.

1 Speaking of that, you testified a moment ago that you had
2 worked in various campaigns in Georgia. One of those was now
3 State Representative Scott Holcomb's campaign for Secretary of
4 State; isn't that right?

5 **A.** That's correct.

6 **Q.** Okay. And in that race, Candidate Holcomb made an issue
7 of the old voting machines, the DRE machines as they are
8 called? The Diebold machines; isn't that right?

9 **A.** That's correct.

10 **Q.** And he focused that campaign, at least in part, on talking
11 about the need to change the voting system when he was out
12 campaigning across the state; right?

13 **A.** Very specifically talking about needing a paper trail, an
14 auditable paper trail.

15 **Q.** An auditable paper trail?

16 **A.** I believe that was the phrase that he usually used.

17 **Q.** Right. And, in fact, a verifiable paper auditing trail;
18 isn't that right?

19 **A.** Yes. Could be.

20 **Q.** Okay. And that is because the Diebold machines did not
21 have a piece of paper that was -- a voter then took to the poll
22 worker after they concluded voting; isn't that right?

23 **A.** Yes.

24 **Q.** It was all done on the computer system?

25 **A.** There was nothing machine independent about that system.

1 That's correct.

2 **Q.** And you testified a moment ago that you had voted on what
3 I'll refer to as the BMD machines or the Dominion voter
4 equipment before and it does spit out a piece of paper;
5 correct?

6 **A.** It does spit out a piece of paper.

7 **Q.** And on that piece of paper it is listed what a voter's
8 choices are under the QR code; correct?

9 **A.** It lists the selections that the voter has made. That's
10 correct.

11 **Q.** And as someone who has voted on a BMD machine, when you
12 voted on the BMD machine, did you receive the piece of paper
13 and then turn it in to the poll workers?

14 **A.** Yes.

15 **Q.** Okay. And as a concerned voter and understandably and
16 correctly wanting to make sure that your vote counted, did you
17 review the votes that were demonstrated on your ballot?

18 **A.** As it turns out, not every time.

19 **Q.** You did not?

20 **A.** I did -- I know that I did sometimes. And I also realize
21 that when I voted this last election in November that I didn't.

22 **Q.** Why did you not, sir?

23 **A.** Probably some combination of forgetting and there is -- I
24 will tell you the -- an -- a psychological sense that you are
25 done when the machine prints your ballot and you're finished

1 expressing your votes.

2 And I honestly think that part of the reason I didn't is
3 because you feel like, well, I've done what I have done, now I
4 just move on.

5 **Q.** But that is your personal feeling? You just felt like you
6 were done?

7 **A.** Yeah. I --

8 **Q.** Go ahead. I'm sorry. I thought you were done.

9 **A.** I expect that feeling is quite common given that I'm
10 having the same experience everybody else is.

11 **Q.** Have you conducted any surveys on that or is that just
12 your --

13 **A.** Of course not, no.

14 **Q.** Okay. Then -- so, Mr. Schoenberg, you testified a moment
15 ago that it is so important for you to understand -- for you to
16 know that your vote counted and now you're testifying that when
17 you have the opportunity to review your ballot you simply
18 forgot?

19 **A.** I will tell you another fact that goes through my head
20 every time I use the BMD is that it is a ridiculous nullity to
21 look at the paper because I can't read the important part of
22 the paper.

23 **Q.** Okay. You say --

24 **A.** So I -- that is a thought that has occurred to me as I'm
25 holding my ballot.

1 Q. Sure. That is your opinion; correct?

2 Because you have no firsthand knowledge that any vote you
3 have ever cast using a BMD machine was not correctly counted,
4 do you?

5 A. Nor do I have any firsthand knowledge that it was.

6 Q. And you have -- and there is no way that anyone could
7 convince you that it was or it was not, could they?

8 A. No. Because there is no auditable paper trail.

9 Q. So given that, Mr. Schoenberg, here is what I don't
10 understand. Would you agree with me that voting by absentee is
11 a hand-marked paper ballot?

12 A. Yes.

13 Q. And your reason for wanting to vote, understandably, and
14 many Georgians agree with you, your reason for wanting to vote
15 in person on election day is, as I believe you described it,
16 the pageantry you said might not be a perfect example, but you
17 wanted to thank poll workers and you wanted to do something
18 with the members of your community; right?

19 A. That is in part what I said, yes.

20 Q. But if your concern is that your vote isn't going to count
21 and you have just testified that you have no way of knowing one
22 way or the other, and the only thing you have to do to make
23 sure it counts is to give up on the pageantry and thanking poll
24 workers, which you could presumably do just by going by a poll
25 site and being with other members of the community, why not

1 vote by hand-marked paper ballot in an absentee?

2 **A.** Well, a couple of things. You're discounting all of the
3 drawbacks that I just expressed about absentee voting. And
4 also I have enough knowledge to know that if I submit a
5 hand-marked paper ballot, it can be converted into a BMD vote
6 by the -- by poll workers and I didn't avoid the system at all.

7 **Q.** And how would it be converted -- and what is the basis of
8 your understanding? You say your knowledge that it could be
9 converted. What is the basis of that knowledge?

10 **A.** If they determined, for some reason, that the vote can't
11 be read. They can't determine what its intention was.

12 **Q.** So even a hand-marked paper ballot, there could be a
13 determination that a voter's intent is not clear on the face of
14 the ballot; isn't that right?

15 **A.** Yes. That is possible.

16 **Q.** Okay. And you also talked about your concerns with the
17 hand-marked paper ballots -- or excuse me, voting absentee.
18 Let me go back.

19 Do you have an understanding of whether county governments
20 or the State government administers the delivery of an absentee
21 ballot? In other words, when you request it, do you have an
22 understanding that the request goes to the county or to the
23 State?

24 **A.** I do have an understanding.

25 **Q.** And what is that understanding?

1 **A.** It goes to the county.

2 **Q.** Okay. And do you have an understanding of whether the
3 county or the State then sends out that absentee ballot that
4 you have requested?

5 **A.** The State does -- I mean, excuse me, the county does.

6 **Q.** Okay. And you also talked about some of the burdens you
7 had with it. One was that you had to have a printer. Do you
8 personally have a printer at home, Mr. Schoenberg?

9 **A.** I have a printer that's kind of spotty, but yes, I have
10 got a printer available to me.

11 **Q.** So you could request and print out a request for a
12 hand-marked paper ballot or an absentee ballot, couldn't you?

13 **A.** I could.

14 **Q.** And your concern that -- it being converted to a BMD vote
15 is that a county official, right, would misread your intent?
16 Is that right?

17 **A.** No. My concern, if a person were to convert my vote to a
18 BMD, I'm not suggesting that they would be doing it in a way
19 that was inaccurate or, you know, malfeasant or anything of
20 that sort.

21 **Q.** Sure.

22 **A.** My problem would be that my ballot would then be cast by
23 the BMD, again where if somebody has played around with the
24 guts of the BMD that it wouldn't work.

25 **Q.** You have no firsthand knowledge of anyone actually playing

1 around with the guts of a BMD, do you --

2 **A.** I have --

3 **Q.** -- in an actual election as opposed to Dr. Halderman at
4 the University of Michigan?

5 **A.** Okay.

6 MR. BELINFANTE: Congratulations, by the way, Georgia
7 still should have been there.

8 THE COURT: They waited a long time.

9 MR. BELINFANTE: They did.

10 THE WITNESS: I'm not sure how much of that I should
11 respond to.

12 BY MR. BELINFANTE:

13 **Q.** That is fair.

14 **A.** I really don't know what the question was anymore. I'm
15 sorry.

16 **Q.** Totally fair. Sorry. Football was on the brain.

17 The issue -- the county election official -- and I'm not
18 impugning any bad intent, bad faith, none of that. But if a
19 county election official, even operating in good faith, the
20 only time it is your understanding that they would convert your
21 absentee ballot into one that has gone through a QR code system
22 is if they could not determine your intent based only the
23 absentee ballot itself; isn't that right?

24 **A.** Or if the scanner didn't read it or -- yeah, there are
25 other reasons.

1 Q. Okay. If the scanner didn't read it.

2 And you don't have a problem with hand-marked paper
3 ballots that would be read by a scanner as opposed to by
4 individuals, do you?

5 A. No. Not really.

6 Q. Now, your concern, though, with the BMDs is that your vote
7 could not be reliably counted as cast? Is that a fair way to
8 describe it?

9 A. My concern with the BMDs is that I have no evidence that
10 the time that I am in the -- in the ballot box voting that my
11 ballot -- that my intention is being understood properly. So I
12 don't know that it is being recorded properly. I don't know
13 that it is being scanned and read properly. And I have no -- I
14 don't want a guarantee. I want confidence. I want --

15 Q. Go ahead. Sorry.

16 A. And I don't get that confidence from the operation of this
17 system.

18 Q. We'll come back to the guarantee.

19 So now -- because I think before it may have been that you
20 wanted certainty. Now you just want a level of confidence.

21 How much confidence do you need to be satisfied?

22 A. A reasonable level of confidence I think is the answer to
23 your question.

24 Q. Mr. Schoenberg, you said a minute ago you went to law
25 school and you practiced law for a little while; correct?

1 **A.** Yes.

2 **Q.** And as a lawyer you would agree with me that reasonable is
3 one of those words that means a lot of different things to a
4 lot of different people; right?

5 **A.** It does.

6 **Q.** Okay.

7 **A.** I didn't have any better answer for you as to how to
8 measure levels of confidence.

9 **Q.** Okay. So if that were the case, then isn't it -- but you
10 do have an objection to the General Assembly's decision that a
11 BMD can provide a reasonable level of confidence, don't you?

12 **A.** I do. I think there's no question that it doesn't.

13 **Q.** And you have an objection to the vast majority of
14 Georgians who choose to vote in person on a BMD that presumably
15 had a reasonable level of confidence that it works? You just
16 disagree with them; isn't that right?

17 **A.** I have not thought about this in terms of disagreeing with
18 my fellow citizens in their -- in their exercise of their right
19 to vote. They are exercising their right to vote as that right
20 is offered to them by the State of Georgia. And I can't fault
21 them for that.

22 I don't expect everybody has an equal amount of knowledge
23 on the subject of election equipment to have equal amounts of
24 information available come to a decision as to what is
25 reasonable here.

1 Q. Mr. Schoenberg, we're in Georgia. Certainly since 2020
2 Georgians reasonably have a good amount of information, whether
3 it is good information or bad, but certainly that there are
4 debates about the accuracy of election equipment in Georgia,
5 don't they? Given the Sidney Powell lawsuits, the Trump
6 lawsuits, the Favorito lawsuits. These are in the news daily;
7 right?

8 A. As long as we're stipulating that they are getting
9 information that's both good and bad.

10 Q. Sure. Absolutely.

11 A. They certainly have heard plenty about whether the system
12 is reliable or not.

13 Q. And Georgians have also heard about --

14 THE COURT: I'm not sure where we're going here,
15 Counsel. I mean, this is all very interesting. But, you know,
16 we might -- we are projecting a three-week trial. If we go at
17 this rate, we will be at a five-week trial.

18 MR. BELINFANTE: I think, Your Honor, where it goes
19 is several things. One, what Mr. Schoenberg is testifying is
20 that he wants to -- I mean, the goal of this is to deprive
21 Georgians the opportunity to use a BMD, even when they can use
22 the other.

23 Where I was about to go is concerns people may have
24 with hand-marked paper ballots and I was just asking, once he
25 said Georgians don't know as much as he may about election

1 equipment, that at least they know there is significant --
2 there has been a lot of attention based on Dominion machines in
3 particular.

4 MR. MARTINO-WEINHARDT: We would object on relevance,
5 Your Honor.

6 THE COURT: What?

7 MR. MARTINO-WEINHARDT: We would object on relevance.

8 THE COURT: What is your contention about why it is
9 not relevant?

10 MR. MARTINO-WEINHARDT: Mr. Schoenberg's knowledge of
11 what other Georgians may know through the media or not has very
12 little to do with what he testified about his own experiences.

13 MR. BELINFANTE: I can probably curl it back.

14 THE COURT: This is exceeding the scope of what --
15 the examination. And I have let you do that to some extent.
16 But I think at this point you're really taking it to a whole
17 other level. This is not what he -- these were not the scope
18 of his direct testimony.

19 MR. BELINFANTE: I'll try to curl it back.

20 THE COURT: Thank you.

21 MR. BELINFANTE: And I'm sure the Court will tell me
22 if I get back out of line. And I will try not to.

23 BY MR. BELINFANTE:

24 Q. Mr. Schoenberg, you would also agree with me, though, that
25 as -- like you, there may be others who do not want to vote by

1 absentee; correct?

2 **A.** Yes.

3 **Q.** And you would agree with me, having lived in Georgia and
4 followed elections, that there are those who make allegations
5 that absentee ballots lead to voter fraud, stuffing of ballot
6 boxes, 21 mules, the movie, et cetera?

7 THE COURT: But I don't understand why you are
8 converting this plaintiffs' testimony, which is not about all
9 of those things, into that he should express his opinion about
10 them. That is what I'm saying seems outside the scope of the
11 direct testimony. I mean, if you --

12 MR. BELINFANTE: If I may, Your Honor, it is that
13 Mr. Schoenberg has testified that he wants these machines for
14 folks not to be able to vote on these machines, unless they are
15 handicapped or disabled. That would limit people to
16 hand-marked paper ballots.

17 And one of the issues that the Court is going to have
18 to weigh is whether it is in the public interest to enjoin the
19 use of the machines except for disabled voters. And if there
20 are allegations of fraud that he is aware of involving
21 hand-marked paper ballots, ballot boxes, et cetera, that is a
22 relevant factor that goes to that element that the plaintiffs
23 have to demonstrate.

24 THE COURT: I think you're going to have to elicit it
25 in a different way from somebody else. You can ask him does he

1 have any -- I just don't think they covered this.

2 I'm going to allow you two minutes to ask what
3 question you want that you think is going to illuminate the
4 issue.

5 But I think that this is not going to be helpful and
6 it is beyond the scope of the cross, no matter what you say
7 here. It is clearly beyond the scope.

8 If you want to have somebody -- call some other
9 citizens about those same issues and put on the testimony
10 yourself, that is fine.

11 MR. BELINFANTE: I think he answered the question.
12 So if the answer stands, I can just move on.

13 THE COURT: All right.

14 MR. BELINFANTE: Thank you, Mr. Schoenberg.

15 BY MR. BELINFANTE:

16 **Q.** Now, you said a moment ago that you were looking for
17 reasonable confidence that your vote was cast or counted as
18 cast; correct?

19 **A.** Yes.

20 **Q.** And you said that you don't get that with looking at the
21 ballot that is provided to you by the BMD machine printed out;
22 is that right?

23 **A.** That's correct.

24 **Q.** Okay. Even though it lists the choices that a voter makes
25 underneath the QR code; is that right?

1 **A.** Yes.

2 **Q.** Okay. And even though poll workers could run an audit
3 after an election comparing the identity of the names as
4 opposed to just running it through a QR code; is that right?

5 **A.** My understanding is that is not done.

6 **Q.** But it could be done; is that right?

7 **A.** I guess it could be done.

8 **Q.** Okay.

9 **A.** I understand from our experts that it is wildly
10 impractical, but it could be done.

11 MR. BELINFANTE: Move to strike. If you understood
12 from your experts, that would be hearsay.

13 THE COURT: All right. Motion to strike granted.

14 MR. MARTINO-WEINHARDT: He opened the door.

15 MR. CROSS: He opened the door to this, Your Honor.

16 MR. BELINFANTE: I asked the question if it could be
17 done.

18 MR. CROSS: Which he is answering how it could be.

19 MR. BELINFANTE: He's saying it can be done.

20 MR. CROSS: Based on his knowledge of his --

21 MR. BELINFANTE: Now he is saying -- I think we're
22 good.

23 THE WITNESS: My knowledge is it is next to
24 impossible to do.

25 MR. CROSS: It's okay. Sorry, Your Honor.

1 THE COURT: You may proceed. And if you want to
2 respond -- if plaintiff wants to bring that out in a different
3 way and address this, you can.

4 Go ahead.

5 BY MR. BELINFANTE:

6 **Q.** So, Mr. Schoenberg, sitting here today, you're not looking
7 for certainty that the system is doing what it was intended to
8 do?

9 **A.** I think "certainty" is probably too strong a word. I
10 understand that any voting system is going to be imperfect.
11 But I need constitutionally adequate reliability. I need voter
12 verifiability. I need an independent machine -- machine
13 independent audit trail.

14 I need to know that the system is adequately designed to
15 provide confidence to the voter that everything that can be
16 done is being done to assure them that their vote is being
17 counted as cast. And that is not absolute certainty. That is
18 not a guarantee. But it is also not in the least what the BMD
19 does.

20 **Q.** Mr. Schoenberg, you have no formal training in computers
21 or IT security; is that right?

22 **A.** That's correct.

23 **Q.** Okay. So when you testified just a second ago that you
24 need confidence that something is adequately designed, that is
25 not -- you're not basing -- you're not concluding that the BMD

1 is not adequately designed based on any personal knowledge, are
2 you?

3 **A.** It spits out a QR code, so it is not adequately designed
4 to provide security, is my sense of adequacy here.

5 I'm not talking about its internal software or anything of
6 that sort.

7 **Q.** Okay. Mr. Schoenberg, do you -- have you changed your
8 view that you're now looking for reasonable assurance as
9 opposed to certainty?

10 **A.** I think the view that I'm expressing here today may -- is
11 the view I've always had. I may be better at expressing it
12 today than I have been in the past, if that is what you're
13 asking.

14 **Q.** Mr. Schoenberg, do you recall being deposed in this
15 lawsuit on October 19, 2021?

16 **A.** Yes.

17 **Q.** Do you recall being under oath when you were deposed in
18 this lawsuit then?

19 **A.** Yes.

20 MR. BELINFANTE: I'm sorry. It looks like we're
21 missing a page in here.

22 May I approach the witness, Your Honor?

23 THE COURT: Yes.

24 BY MR. BELINFANTE:

25 **Q.** Mr. Schoenberg, I would just like to refresh your

1 recollection, please. If you could look at Lines 15 to 23
2 on -- I'm sorry -- Page, for the record, 37.

3 **A.** I've reviewed it.

4 **Q.** Okay. Is it your testimony today that you have always
5 maintained that you're looking for reasonable assurance or
6 you're looking for certainty?

7 **A.** My testimony is that I -- I need reasonable assurance. I
8 recognize that I have used the word "certain" in my answer
9 here. I don't think it fundamentally changes what I have
10 expressed.

11 THE COURT: Your answer in your deposition?

12 THE WITNESS: The answer in my deposition.

13 I'm relying on all the same, you know, reliability,
14 verifiability, transparency kind of things.

15 BY MR. BELINFANTE:

16 **Q.** Sure.

17 And today you're looking for reasonable assurance and
18 previously you were looking for certainty; right?

19 **A.** I used different words to try to express my opinion, yes.

20 **Q.** But you would agree with me that reasonable assurance and
21 certainty are two different things?

22 **A.** Sure. If you would like to say it that way, they are that
23 different.

24 **Q.** Well, I mean --

25 THE COURT: All right. I think you've asked enough.

1 It is asked and answered. There is no value to further
2 examination on this issue. I'm sorry.

3 MR. BELINFANTE: I was moving along, actually.

4 BY MR. BELINFANTE:

5 Q. Would you agree with me, given that, that no election is
6 flawless?

7 A. I previously testified, no, I don't believe any election
8 is flawless.

9 Q. Okay. Is it your -- is one of your criticisms of the BMD
10 machines, despite voting on them, that they maintain no record
11 of your vote?

12 A. I'm not sure I know what you're saying. The BMD itself
13 does not maintain any record of my vote.

14 Q. I'm sorry. Okay.

15 But does the paper ballot that is printed out, do you deem
16 that a record of your vote?

17 A. It is -- yeah. That is the ballot that is being cast as
18 my vote. So it is a record of my vote. It is not necessarily
19 a record of my intended vote.

20 Q. Okay. Mr. Schoenberg, I was -- given the limits, I'm just
21 trying to stay within those that were there before. So we may
22 ask these later.

23 A. Understood.

24 Q. You don't dispute, do you, that the DRE -- the Diebold DRE
25 machines are no longer in use in Georgia?

1 **A.** No. They have been trashed, as I understand it.

2 **Q.** Okay. Given your concerns about the Dominion BMD systems,
3 do you believe that there is a way to verify the validity of
4 elections in Georgia?

5 **A.** I'm sorry. Ask me that again.

6 **Q.** Sure.

7 Given your concerns about the Dominion BMD system and the
8 fact that Georgians do vote on them, do you believe that there
9 is a way to verify the validity of elections in Georgia?

10 MR. MARTINO-WEINHARDT: Vague. Is that asking about
11 outcomes?

12 THE COURT: Can you rephrase? I mean, that is a very
13 broad question.

14 BY MR. BELINFANTE:

15 **Q.** Do you believe that there is a way to verify the validity
16 of vote counts in Georgia in elections?

17 THE COURT: Generally speaking in elections or as to
18 in this particular system where there is -- with the QR code
19 or --

20 MR. BELINFANTE: Sure. Yes, Your Honor. All right.
21 Okay.

22 BY MR. BELINFANTE:

23 **Q.** In elections in Georgia using the Dominion BMD equipment,
24 as long as it is made available --

25 THE COURT: As currently configured?

1 MR. BELINFANTE: Well, I don't know the witness --

2 THE COURT: Well, he doesn't know anything about if
3 it -- what might be planned for later on and that is beyond the
4 scope.

5 MR. BELINFANTE: Let's take a past election.

6 BY MR. BELINFANTE:

7 Q. The 2022 election, general election, you would agree with
8 me that the BMD Dominion voting system was used; correct?

9 A. Yes.

10 Q. Okay. You would agree with me that at least -- and I
11 don't know, but I'm -- a significant or material number of
12 votes were cast using the BMD system in 2022's general
13 election; is that right?

14 A. I'm sure that is true.

15 Q. Okay. Do you believe that the vote count can be verified
16 in the general election of 2022 given the use of the BMDs?

17 A. You use the word "vote count" or the phrase "vote count."
18 And I think you can count the votes that were cast. What you
19 can't do is verify that you've captured the intention of the
20 votes that were cast, that we have demonstrated that we --
21 there has been evidence in this suit that this is a garbage
22 in/garbage out problem. That you might be recording something
23 that is the audit trail that is an inaccurate reflection of
24 voters' intentions, including potentially mine.

25 So you can count the number of votes over and over again

1 that were produced by the BMD system and know that you're
2 getting an accurate count. So I don't doubt that you can count
3 the votes. What I don't know is that you can be certain that
4 you're counting the votes accurately.

5 **Q.** And when you say counting the votes accurately, you mean
6 we can't be -- we can't be certain that you're counting the
7 votes per candidate accurately; is that right?

8 In other words, we know, for example, that 20,000 votes
9 were cast. But we'll never know of those 20,000 votes how many
10 went for one candidate to another.

11 **A.** No. You're getting that count too. The problem is at the
12 beginning, not the end. The problem is that you're not
13 capturing voter intent.

14 **Q.** Correct. So if we'll never know how many Georgians
15 intended to vote for a particular candidate -- we'll never know
16 if in the 2022 general election the number of voters that the
17 vote count shows voted for, for example, Governor Kemp,
18 accurately reflects the number of voters that intended to vote
19 for Governor Kemp? Is that your testimony?

20 **A.** I am more interested in what happens to my vote than I am
21 in that question. That is what brings me here.

22 But to try to answer your question, I have little
23 confidence that you can know for certain that with a degree of
24 reasonable reliability that what you have counted reflects what
25 the voters intended to be the count at the end for any

1 particular candidate.

2 THE COURT: So when you say that, when you say what
3 the voter intended, do you mean just what was in their brain or
4 what they actually -- what they thought --

5 THE WITNESS: What they actually touch on the touch
6 screen.

7 THE COURT: Okay.

8 THE WITNESS: I -- I know enough to know that it is
9 entirely possible that a touch on the touch screen does not
10 equate to a vote that is counted at the back end that says, I
11 voted for George Washington if I, in fact, vote for George
12 Washington. That is -- that is not something that is
13 reasonably reliable.

14 BY MR. BELINFANTE:

15 **Q.** Mr. Schoenberg, how much -- you would also agree with me,
16 though, that it is -- there is a possibility or risk that the
17 person who votes for George Washington with a hand-marked paper
18 ballot may not have that intent reflected when the vote is
19 actually counted?

20 **A.** Yes. There is a possibility that counting a hand-marked
21 paper ballot there are errors in the count.

22 MR. BELINFANTE: All right. Then, at this time, Your
23 Honor, I would have no further questions and would reserve
24 obviously when he is called back at the end and ask at that
25 time.

1 THE COURT: All right. Do you have any redirect?

2 REDIRECT EXAMINATION

3 BY MR. MARTINO-WEINHARDT:

4 Q. Mr. Schoenberg, just a few follow-up questions.

5 Opposing counsel asked you about voting on a hand-marked
6 paper ballot.

7 When you cast a vote with a hand-marked paper ballot, can
8 you be reasonably confident that what is tabulated reflects
9 what was marked on the ballot?

10 A. It is in my --

11 MR. BELINFANTE: Objection.

12 THE WITNESS: -- it is in my control, yes.

13 MR. BELINFANTE: Speculation. He is asking if it can
14 be reasonably calculated that the acts of a third party are
15 going to be completed as he's preferring. He has already
16 testified he doesn't know.

17 THE COURT: Overruled.

18 Go ahead.

19 THE WITNESS: Yes. I can be.

20 BY MR. MARTINO-WEINHARDT:

21 Q. Why is that?

22 A. Because when you fill out a hand-marked paper ballot,
23 you're doing it on your own. You can see if you filled in the
24 dots where you intended to fill in the dots and fully. So you
25 have some control over whether the scanner is going to read the

1 document the way you intend. And I think that that provides a
2 level of confidence.

3 MR. MARTINO-WEINHARDT: No further questions.

4 THE COURT: Thank you.

5 All right. May this witness be excused subject to
6 being re-called pursuant to the understandings I have already
7 articulated in the record?

8 MR. MARTINO-WEINHARDT: Yes, Your Honor.

9 THE COURT: All right.

10 THE WITNESS: Thank you.

11 THE COURT: We have lost a fair amount of time here.
12 Let's start back at 1:30, 45 minutes.

13 Thank you.

14 COURTROOM SECURITY OFFICER: Court will stand in
15 recess until 1:30.

16 **(A lunch break was taken.)**

17 **(A bench conference ensued, as follows:)**

18 THE COURT: That went a long time. I think it was
19 excessive, and I don't like having to interrupt constantly. So
20 I just wanted to say -- I mean, we will be here for six weeks
21 if we're going at that rate.

22 If I thought it was anything that was really
23 important or valuable for the Court's decision-making or your
24 record on appeal, I would have -- I would say, well, there is
25 another way of doing this. You call the persons required in

1 your case.

2 But I didn't think it was really contributing
3 anything. It was more like a deposition. So, you know, you
4 get to explore all sorts of things. So -- just I'm not sure
5 what triggered it.

6 But I mean -- and I took action on the very
7 legitimate issue that you-all raised, but I just really hope
8 that we can move more quickly through the next witnesses.

9 MR. TYSON: We can communicate that to our team.

10 THE COURT: All right. Thank you.

11 MR. CROSS: Thank you, Your Honor.

12 **(The bench conference was thereby concluded.)**

13 THE COURT: All right. Who is the plaintiffs' next
14 witness?

15 MR. CROSS: Your Honor, one administrative thing. We
16 do have the slides to hand up so Your Honor has those in the
17 record.

18 THE COURT: Thank you.

19 MR. CROSS: Can I approach on that?

20 MR. TYSON: Your Honor, I have slides to hand up as
21 well. I'll just give you my set.

22 THE COURT: Thank you.

23 I just want to just compliment both -- all counsel
24 who participated and the parties' respective opening
25 statements. They were really excellent. And I gave you grief

1 about doing them yesterday, but I thought they were really
2 excellent, and just congratulations to all involved.

3 Do plaintiffs have a next witness?

4 MR. MCGUIRE: Yes, Your Honor. The Coalition
5 plaintiffs are going to call Rhonda Martin.

6 COURTROOM DEPUTY CLERK: Raise your right hand,
7 please.

8 **(Witness sworn)**

9 COURTROOM DEPUTY CLERK: Please have a seat. If you
10 would, state your name and spell your last name for the record.

11 THE WITNESS: My name is Rhonda Martin. The last
12 name is spelled M-A-R-T-I-N.

13 Whereupon,

14 RHONDA MARTIN,

15 after having been first duly sworn, testified as follows:

16 DIRECT EXAMINATION

17 BY MR. MCGUIRE:

18 **Q.** Thank you.

19 And, Ms. Martin, what is your full name?

20 **A.** My full name is Rhonda Jo Martin.

21 **Q.** And, Ms. Martin, where do you live?

22 **A.** I live in Fulton County, Georgia.

23 **Q.** How long have you lived there?

24 **A.** I first moved to Atlanta in 1975 to go to school at
25 Georgia Tech, and over the years I've moved around some. Most

1 recently, I moved back to Atlanta in Fulton County in August of
2 2002.

3 **Q.** Now, what is your educational background?

4 **A.** I have a Bachelor of Science degree in applied math and a
5 Master of Science degree in operations research from Georgia
6 Tech. I also have a teaching certification in math --
7 mathematics major, science minor education from Purdue
8 University.

9 **Q.** Can you please give us a brief summary of your
10 professional career thus far?

11 **A.** Sure. So my first job after getting my bachelor's degree
12 from Georgia Tech was as a software engineer working for IBM
13 Corporation developing avionics software for the space shuttle.

14 Following that, I worked at Georgia Tech where I led a
15 team of people that developed new -- new DOD guidance and
16 policy for software -- computer software for mission-critical
17 applications.

18 After that, I was research coordinator for the National
19 Science Foundation Software Engineering Research Center which
20 was a consortium of universities and industrial members.

21 Since 2010, I have been the executive secretary of the
22 Qatar Computing Research Institute Scientific Advisory
23 Committee.

24 And let's see. And along the way, I also worked as an
25 upper school math teacher at Kent Place School in Summit, New

1 Jersey.

2 Q. Thank you.

3 And what is your connection to the plaintiff, Coalition
4 for Good Governance, in this case?

5 A. I'm a member of the Coalition for Good Governance. I
6 volunteer for the organization, and I'm also a board member.

7 Q. And just to save time, I want to call it CGG.

8 Does that work?

9 A. That would be really good. Thank you.

10 Q. When did you become a member of CGG?

11 A. I became active with CGG in the fall of 2018.

12 Q. And when did you join CGG's governing board?

13 A. In February -- I joined the board in February of 2020.

14 Q. So I would like to talk to you about CGG a little bit.

15 A. Okay.

16 Q. What kind of legal entity is Coalition for Good
17 Governance?

18 A. It is a 501(c)(3) nonprofit corporation, and it was formed
19 under the laws of the State of Colorado.

20 Q. Has it always been called CGG, Coalition for Good
21 Governance?

22 A. No. It was originally called The Rocky Mountain
23 Foundation.

24 Q. And do you know when it was formed in Colorado?

25 A. I believe that was in 2008.

1 Q. When did CGG change its name from Rocky Mountain
2 Foundation to its current name?

3 A. I think that occurred in 2017.

4 Q. And do you know why that name change happened?

5 A. It changed because the mission and the area where CGG
6 operated changed. You know, they expand their mission. They
7 started doing things in states other than Colorado, so changing
8 the name from Rocky Mountain Foundation was totally
9 appropriate.

10 Q. And is one of those states where it operates now Georgia?

11 A. Yes. Yes.

12 Q. Is CGG actually in any way legally registered to operate
13 in Georgia?

14 A. It is registered as a foreign charity for fundraising
15 purposes in the state of Georgia.

16 Q. Now, this lawsuit has been going on since 2017.

17 What has CGG's mission been during the life of the
18 lawsuit?

19 A. So the mission of CGG is focused on constitutional
20 liberties and individual rights specifically in terms of the
21 First Amendment, due process, and equal protection under the
22 law, really focused on elections as well as Government
23 transparency.

24 So those are the areas that we really look at, and we work
25 to -- you know, sometimes we are involved in litigation.

1 Sometimes we are working to inform legislative policy.

2 Communication, education, those are things that we're really
3 interested in in forming the debate space in these areas.

4 **Q.** And when you say "education," who is sort of in the target
5 audience for CGG's educational efforts?

6 **A.** So we have a large audience, you know, a number of
7 constituencies, I would say. We want to educate legislators.
8 We want to educate voters. We want to educate just the public
9 in general. We want to educate candidates. I mean, you know,
10 poll observers, poll workers. I mean, it really goes across
11 the board.

12 Obviously, the messages, you know, are tailored to the
13 different groups, but we really go across the board in terms of
14 wanting to educate people on issues.

15 **Q.** How does the organization govern itself?

16 **A.** We have a board of directors.

17 **Q.** And I think you mentioned you were a director; right?

18 **A.** Yes, I am.

19 **Q.** How big is the board of directors?

20 **A.** We used to have five people. Unfortunately, one of our
21 directors passed away, so we currently have four.

22 **Q.** And who besides yourself makes up the board currently?

23 **A.** So there is Lisa Cyriacks, who is the chairman of the
24 board and also the president. Marilyn Marks is vice president
25 and executive director. Virginia Forney is a director, and I'm

1 a director.

2 **Q.** What is the source of CGG's funding, if any?

3 **A.** It is totally donor-funded.

4 **Q.** Do you have any idea approximately how many donors the
5 organization has?

6 **A.** Yes. We have 800 donors that have provided donations via
7 PayPal, and then we have other donors that have written checks,
8 so more than 800.

9 **Q.** And what kinds of things does CGG spend its money on?

10 **A.** So we spend our money on litigation activities. We spend
11 our money reimbursing people for expenses that have been
12 incurred within our mission and to support our activities. And
13 then, of course, just the normal operating costs of an
14 organization.

15 So we'll spend money for, you know, accountants, filing
16 taxes, renting a P.O. Box, getting a subscription to a file
17 share service, Constant Contact, things along those lines.
18 Just the normal operating expenses that you would expect.

19 **Q.** As far as the human time spent on the organization, who
20 does the work of the organization to advance its priorities?

21 **A.** The work is done by the volunteer board, the volunteer
22 executive director, and some really involved volunteer members.

23 **Q.** Does the entity have any paid staff?

24 **A.** From time to time, we will pay college-age analysts or
25 assistants. But the board and the executive director get no

1 compensation for any of the activities that they do.

2 **Q.** If they spend money, are they reimbursed?

3 **A.** What's that?

4 **Q.** If they spend money, are they reimbursed?

5 **A.** Yes. Yes, they are reimbursed for expenses, but they
6 aren't compensated for their time.

7 **Q.** I would like to ask you what kind of activities CGG
8 strives to do to further its mission.

9 **A.** Okay. So first of all, it monitors election policies and
10 procedures and developments across the country and elsewhere.
11 You know, we want to know what is going on and we want to know
12 what is coming down the road, so that is the first thing.

13 We are involved in working groups and various forums with
14 experts around the country. We perform a lot of education
15 activities. I have already described various groups involved
16 there. And we also -- getting a little bit away from
17 elections, but talking about government transparency and
18 accountability, we monitor what is going on in terms of local
19 governments actually adhering to open meetings laws, open
20 records laws, and things along those lines.

21 **Q.** Does CGG ever partner or cooperate with other
22 organizations on other things?

23 **A.** Oh, yeah, yeah. Definitely, we do. We look for other
24 organizations that have similar missions, and we will join --
25 join them in various activities or ask them to work with us.

1 Q. Now, earlier, you mentioned litigation.

2 Is this case the only case in which CGG has ever been
3 involved in litigation?

4 A. No, I don't believe so. I know we have other cases
5 ongoing, actually, so --

6 Q. And have you yourself been a named plaintiff in other
7 litigation?

8 A. Yes. Yes. In the fall of 2018, *Martin v. Kemp* -- I'm
9 Martin -- we were happily successful in Gwinnett County in that
10 Gwinnett County was stopped from rejecting absentee ballots
11 where people accidentally wrote the wrong birth year on the
12 envelopes. So we were very pleased to participate there.

13 Q. And when you were named a plaintiff in, *Martin v. Kemp*,
14 were you a board member of CGG?

15 A. No, I was not a board member.

16 Q. Were you a "member" member?

17 A. That was kind of the start of my involvement, yeah.

18 Q. So was CGG involved in that case?

19 A. I think CGG was involved in kind of advising and just
20 working, but they were not a plaintiff.

21 Q. So for all of these activities, does the organization have
22 sufficient volunteer time to do all of those things at once?

23 A. We have to make decisions on that. I mean, since this
24 litigation has really kind of come to a head, we have had to
25 stop a lot of our other activities, but we do the best we can.

1 The board makes decisions.

2 **Q.** And similar question about money, how does -- does CGG
3 have enough funding to do all the activities that it --

4 **A.** No, we can't do everything at once. No.

5 **Q.** So when resources like time and money are not in
6 sufficient supply to do everything CGG wants to do, who decides
7 which activities the organization will focus on?

8 **A.** The board decides.

9 **Q.** And has the State of Georgia's -- turning to this case,
10 has the State of Georgia's enforcement of legal requirements
11 for all in-person voters to vote on BMDs impacted how CGG has
12 allocated its resources?

13 **A.** Absolutely.

14 **Q.** How so?

15 **A.** So we have had to really stop most of our other activities
16 at this point. In September of 2021, the board explicitly
17 discussed this and reaffirmed that this case was, in fact,
18 consistent with our mission, and we reaffirmed our commitment
19 to working on this case understanding that it meant that there
20 were a number of other things that we were no longer going to
21 be able to do.

22 So examples of things that we normally would be doing now
23 that we just can't because we don't have the resources, first
24 of all, the Georgia legislature just started a new session, and
25 typically, at this point in time, we would be very busy working

1 to educate the legislators on the various issues that pertain
2 to elections. Again, we have got a lot of experience from
3 gathering data around the country, working with experts around
4 the country, and we would be trying to share that with the
5 legislators, but obviously, we can't do that right now.

6 **Q.** So you would say that is something that you are spending
7 less money and time on?

8 **A.** Exactly. We're not doing it at all right now, where,
9 normally, that is where we would be right now.

10 **Q.** Can you think of any other things that CGG has done that
11 it is spending less money and time on because of this case?

12 **A.** Oh, yeah. Absolutely.

13 So beyond that, we would typically be performing a lot of
14 the education activities that I mentioned about with the
15 various groups about election security, BMD issues, other
16 election-related issues.

17 Education is one of our primary activities, and, in fact,
18 we had planned to work on some educational videos, and we have
19 had to totally stop that effort because of our focus here.

20 Other things, we've had, you know, Georgia members who
21 wanted us to work to educate the public about ranked choice
22 voting and some of the issues associated with that, and we
23 haven't been able to follow up on that.

24 You mentioned before -- we mentioned that we like to
25 cooperate with other organizations and work with experts around

1 the country. We have had to cut way back on our involvement in
2 terms of speaking engagements on election security. We've had
3 to really not participate in discussions about internet voting.
4 We've had to cut back on our involvement with the election
5 verification network, which is made up of experts from around
6 the country. We've had to cut back on our involvement with the
7 state audit working group, which is looking at coming up with
8 new kind of audit procedures specifically for post election
9 audits, and we have had to step back from that.

10 So there are a number of things there we had to stop with.
11 We've had to cut back on the open meetings and open records
12 kind of monitoring. We've had -- I know it is a long list. We
13 are a very active organization.

14 Sadly -- again, we started in Colorado. Sadly, when the
15 Colorado members came forward and wanted us to work to educate
16 the Boulder City Council on issues associated with instant
17 runoff voting, we had to say no. We didn't have the resources
18 to do that.

19 We have been extremely active in the neighboring state of
20 North Carolina. And there, we've had to really cut back. We
21 had started a project there on drive-thru voting which we had
22 to stop. We had to stop our cooperation with the election
23 transparency groups in North Carolina. We had to cut back on
24 our work with the NAACP.

25 We had to -- we weren't able to provide consulting support

1 with regard to North Carolina's state case -- court case on
2 ballot-marking devices. We had to put on hold our plans to
3 actually have litigation in North Carolina about ballot-marking
4 devices, and we've had to delay plans for litigation on ballot
5 secrecy issues in North Carolina.

6 Other places in the country, we've been unable to really
7 participate in discussions in the State of New York about
8 ballot-marking device issues there.

9 And let's see. Oh, and kind of underpinning everything,
10 we haven't been able to really maintain or upgrade our website,
11 our fundraising activities, and our membership tracking
12 capabilities which we have wanted to do for a very long time,
13 but we just don't have the bandwidth right now.

14 **Q.** Now, of all these things, is the organization actually
15 getting invitations that it is turning down, or are these just
16 the organization deciding what it is going to pursue?

17 **A.** No, we have been getting invitations and requests for
18 speaking engagements, requests to write out bids. We had
19 requests from Coffee County to come down and do some more town
20 halls to help educate the voters there about the breach that
21 occurred, and we have just had to say, No, we can't do that
22 anymore.

23 So we are turning down requests.

24 **Q.** Now, instead of doing all those things, what has CGG
25 instead been spending its time and resources doing?

1 **A.** Focusing primarily on this litigation, but we also have
2 spent a fair amount of time monitoring the activities of the
3 State Election Board here in Georgia specifically relevant to
4 ballot-marking device issues, and we proposed specific rules to
5 the State Election Board having to do with the use of
6 ballot-marking devices.

7 So those are other things that we have been doing.

8 **Q.** And are those proposals about ballot-marking devices
9 directed at the same concerns or different concerns than this
10 litigation?

11 **A.** The proposals had to do with if we're living in a world
12 where BMDs are being used, how can we try to have them be used
13 more effectively, how can we try to protect ballot secrecy, for
14 instance, things along those lines.

15 **Q.** So if the State of Georgia ended its requirements for
16 in-person voters to use BMDs starting tomorrow, how would that
17 affect CGG's use of its resources going forward?

18 **A.** Well, we could become involved in that long list of things
19 that I just went over. We could turn all that back on, become
20 more active in the various organizations, support other
21 organizations with similar interests, allow our members that
22 desperately want to make educational videos to jump in there.
23 I mean, we could just go back to all those other things.

24 **Q.** So let me transition you a little bit over to members.

25 So how do people become members of CGG?

1 **A.** Membership is totally voluntary. All anybody has to do is
2 just show an interest, and, you know, they are a member.

3 **Q.** Do they pay dues?

4 **A.** No. There are no dues.

5 **Q.** Do your members typically donate?

6 **A.** Yes. A lot of members do donate, but it is not a
7 requirement, so --

8 **Q.** And you mentioned that you have volunteers.
9 Are the volunteers typically members or --

10 **A.** Yes. Yes, the volunteers are members.

11 **Q.** Okay.

12 **A.** So we have a lot of members, but a core group of
13 volunteers that are just amazingly active, very impressive
14 group.

15 **Q.** So why would someone become a member? Like, what would
16 motivate them to become a member of CGG?

17 **A.** Well, someone would become a member of CGG if they
18 believed in our mission and were interested in our activities
19 and supporting our activities. They would become a member if
20 they wanted to be educated on the issues that we're pursuing.

21 And interestingly, a lot of the time, we have information
22 that we can share with our membership that you're not going to
23 find in the press. It is just -- it is a different level of
24 detail. We might be ahead of the game on some things.

25 So people want to be involved with us because we've got

1 the information before other folks do.

2 **Q.** So specifically with respect to this case, what relief is
3 Coalition for Good Governance asking for from the Court?

4 **A.** We would like an injunction prohibiting the State of
5 Georgia from requiring the use of BMDs for in-person voting.

6 **Q.** And let's say CGG wins.

7 How does CGG expect the State to conduct elections if BMDs
8 are not the standard method used for in-person voting?

9 **A.** Well, we trust that the Secretary of State and the State
10 Election Board could work with the Georgia legislature or
11 actually look at existing law to ascertain what the available
12 methods are for voting when the use of a BMD is either
13 impracticable or impossible. And there is existing law that
14 addresses that.

15 **Q.** So is it -- what is the organization's position on whether
16 the Court has to order hand-marked paper ballots if it gets rid
17 of the BMDs?

18 **A.** There is no need for any further order. Again, existing
19 law already gives the answer for what you can do if you don't
20 have BMDs. There is no need for an additional order from the
21 Court.

22 **Q.** What about the existing scanners that are used with the
23 BMDs?

24 **A.** We would like the existing scanners to continue to be
25 used. The scanners should be used for tabulation, but it

1 should be backed up with meaningful audits of the tabulation
2 outcomes.

3 **Q.** Do you have an understanding of the difference between
4 audits of the BMDs and audits of the scanner tabulations?

5 **A.** Yes. Yes.

6 **Q.** What is your understanding of the difference?

7 **A.** So my understanding is, if you're auditing the BMDs,
8 you're trying to make sure that that piece of equipment is
9 actually doing what it is intended to do.

10 So I touch the screen and do different things. What it
11 prints out, does it actually print out a vote that would match
12 what I intended, which is, of course, problematic because of
13 the QR codes and everything.

14 But anyway, so that is auditing the BMDs. Auditing the
15 tabulation outcomes is concerned with the scanners. And
16 scanning these documents, is the outcome exactly what the
17 tabulation says it is?

18 **Q.** And between those two, is there one kind of audit or both
19 that CGG is advocating for?

20 **A.** We're advocating that, the audit of the tabulation
21 outcome.

22 MR. MCGUIRE: No further questions on direct.

23 CROSS-EXAMINATION

24 BY MR. WEIGEL:

25 **Q.** Good afternoon, Ms. Martin.

1 I don't know if you recall. But while I've not had the
2 pleasure of speaking with you in connection with this
3 litigation, we met when I took your deposition back in May of
4 last year on behalf of the State of Georgia in connection with
5 the SB 202 lawsuit.

6 So that one was over Zoom, so it is --

7 **A.** I was going to say, that was a Zoom thing, so yeah.

8 **Q.** It is great to meet you in person.

9 **A.** Hi.

10 **Q.** Just starting off -- and you touched on this a little bit
11 with Mr. McGuire in connection with the *Martin v. Kemp* lawsuit,
12 but how did you become a member of CGG?

13 **A.** I was concerned about the things I had been reading in the
14 news about elections, and, you know, at that time, specifically
15 the number of absentee ballots that were being rejected. CGG
16 was involved on the issues in that area, and so I jumped in and
17 decided I wanted to help and was then asked if I wanted to be a
18 plaintiff on that suit, and I said yes.

19 **Q.** And if I understood your testimony correctly, you became a
20 member in 2018; correct?

21 **A.** Yes, that was 2018.

22 **Q.** So that would have been after the commencement of this
23 litigation; correct?

24 **A.** It was about the same time. It was all in the fall of
25 2018. The litigation was actually in November of 2018.

1 Q. And part of CGG's strategy to accomplish its mission that
2 you testified to is litigation; correct?

3 A. That's one thing that we do. We're also, as I said, very
4 interested in education and things along those lines and
5 working with people. But when we need to, litigation is
6 something we do.

7 Q. And over the last three years, CGG's primary monetary
8 expense has been litigation; correct?

9 A. Over the last how long?

10 Q. Three years.

11 A. Yeah, I would say that is true.

12 Q. And CGG lobbies for hand-marked ballots at the state
13 capitol; correct?

14 A. We're not a lobbying organization. We do education. You
15 know, our role is not -- is not as lobbyists.

16 Q. And does CGG reimburse any costs for that education, those
17 education efforts that occur at the capitol?

18 A. In terms of to individuals for their time, no. If you
19 spent a lot of money on making copies or something, maybe you
20 might ask to be reimbursed. I don't really know at that level
21 of detail, but I have never been reimbursed for anything.

22 Q. Are there any CGG member plaintiffs in this case?

23 A. Yes.

24 Q. And who are those?

25 A. Let's see. I'm trying to remember exactly who the list of

1 plaintiffs is.

2 Can you tell me the list of plaintiffs? I can tell you if
3 they are members.

4 **Q.** Just to the best of your recollection.

5 **A.** So I mean, I know some -- I can't -- I don't want to start
6 giving a whole list of our members and have them not actually
7 be plaintiffs.

8 **Q.** Okay.

9 **A.** But I know there are additional members.

10 **Q.** And CGG supports hand-marked ballots as an election
11 system; correct?

12 **A.** I'm not sure I understand what you are asking me.

13 **Q.** The use of hand-marked ballots to cast your vote in
14 election, CGG supports that use; correct?

15 **A.** We do support that as a method of voting.

16 **Q.** And you talked about CGG not being able to do its
17 education and involvement with other organizations; correct?

18 **A.** Because of our focus on this litigation, right now we've
19 had to cut back on those things.

20 **Q.** And you went right to my next question.

21 So that -- the inability to do that is because of the
22 focus on this litigation?

23 **A.** Exactly. Exactly.

24 **Q.** And CGG uses its participation in this lawsuit to help it
25 raise funds from donors; correct?

1 **A.** I wouldn't say it that way. I would say that donors
2 choose to support our activities on this lawsuit.

3 **Q.** So, for example, in emails or any sort of marketing
4 materials, would this lawsuit be referenced by CGG?

5 **A.** Yes, it would be referenced.

6 **Q.** And CGG doesn't maintain a roster of its members; correct?

7 **A.** As I said earlier, we would love -- we have wanted for a
8 very long time to improve our membership management, but we
9 just have not had the time or resources to do that, so --

10 **Q.** So just based off that understanding, you wouldn't be able
11 to say how many members CGG has at this moment; correct?

12 **A.** So what I can say is if we look at members coming from a
13 number of different groups, you know, we have an email list
14 that is about 10,000 people. We have the 800 people who have
15 donated via PayPal, which may or may not be that same 10,000
16 group. We have got other people who have been just asked to be
17 members.

18 And so we have got all these different groups. So we have
19 got at least 10,000 because that is the email list. But then
20 there is likely more because of the other methods that people
21 use to want to be involved with us, so --

22 **Q.** But just to confirm, as we sit here today, you wouldn't be
23 able to provide an exact number of members that CGG has?

24 **A.** Not an exact number, no.

25 **Q.** And just to understand the relief that CGG is seeking in

1 this lawsuit, CGG wants an injunction in connection with the
2 use of BMDs for in-person voting; correct?

3 **A.** With respect to the required use of BMDs for in-person
4 voting.

5 **Q.** But that injunction would not extend to voters with
6 disabilities; correct?

7 **A.** No, it would not.

8 **Q.** And CGG would be fine if voters voluntarily chose to use
9 BMDs; correct?

10 **A.** What we want is an injunction prohibiting the required use
11 of BMDs for in-person voting.

12 **Q.** So as --

13 **A.** If people choose to use BMDs because they have a
14 disability or for whatever reason, you know, that is fine. We
15 object to the required use of BMDs for in-person voting.

16 **Q.** And just to confirm, my understanding with that -- and you
17 probably touched on this.

18 So if a nondisabled voter voluntarily chose to use BMDs,
19 that would still be consistent with the relief that you're
20 seeking?

21 **A.** Well, I mean, it is not up to me. I don't think it is up
22 to anybody to say to somebody, what is your disability, before
23 they decide whether to open the gate to the BMDs.

24 So I don't understand how that question even works.

25 **Q.** And CGG wants Georgia to continue to use all Dominion

1 components except the BMDs; correct?

2 **A.** I don't -- I don't know. We want to continue the use of
3 the scanners. The other things, I'm not really sure what all
4 you're referring to. But it is the BMDs that we're objecting
5 to.

6 **Q.** And just to confirm, in connection with the relief,
7 there's no objection to the other Dominion components of the
8 voting machines other than the --

9 **A.** Right.

10 **Q.** -- BMDs?

11 Thank you.

12 Thank you so much, Ms. Martin. I believe that completes
13 my questioning. I just want to confer with my co-counsel.

14 **(There was a brief pause in the proceedings.)**

15 MR. WEIGEL: Ms. Martin, that completes my
16 questioning. Thank you so much for your time this afternoon.

17 THE WITNESS: Thank you.

18 MR. McGUIRE: And we have no redirect.

19 THE COURT: All right. You may step down. Thank you
20 very much.

21 MR. McGUIRE: Just as a point of housekeeping,
22 obviously now that Ms. Martin has testified, I'm not sure if
23 she's on the list -- will call list from the other side, but if
24 she's not, I'm sure she --

25 THE COURT: Well, she's a party?

1 MR. MCGUIRE: Yeah. Oh, yeah. No, she is not a
2 party. She's a witness.

3 MR. TYSON: Your Honor, I believe we have all the
4 individuals on the plaintiffs' list as may calls for our case.
5 I don't anticipate we're going to call Ms. Martin, but I don't
6 think I can say right here for sure we're not. So I'm not
7 quite sure to release her from sequestration yet. We'll
8 discuss this at the next break as well.

9 THE COURT: Ms. Martin, they are going to discuss at
10 the next break whether you can leave today and come back
11 another day. They are going to discuss it and -- or you can
12 wait outside until we have a break, but that is probably
13 another hour.

14 THE WITNESS: Okay. Thank you.

15 THE COURT: I'll leave it up to you.

16 THE WITNESS: Okay.

17 THE COURT: You need to chat with your --

18 MR. MCGUIRE: Yes.

19 Our next witness I don't think knows we are ready for
20 her.

21 We're going to be calling Jeanne Dufort, and she is
22 on her way.

23 THE COURT: She's on the floor?

24 MR. MCGUIRE: Yes. She's in the witness room, and
25 she has just been told.

1 THE COURT: All right.

2 COURTROOM DEPUTY CLERK: If you would, please raise
3 your right hand.

4 **(Witness sworn)**

5 COURTROOM DEPUTY CLERK: Please have a seat. If you
6 would state your name and spell your complete name for the
7 record.

8 THE WITNESS: Jeanne Dufort, J-E-A-N-N-E, D-U-F, as
9 in Frank, O-R-T, as in Thomas.

10 Whereupon,

11 JEANNE DUFORT,

12 after having been first duly sworn, testified as follows:

13 DIRECT EXAMINATION

14 BY MR. MCGUIRE:

15 Q. Good morning -- or good afternoon, Ms. Dufort. I'm still
16 on Pacific Time. Sorry.

17 Ms. Dufort, where do you live?

18 A. Morgan County.

19 Q. Here in Georgia?

20 A. Yes.

21 Q. And how long have you lived there?

22 A. Since 2002.

23 Q. How would you describe Morgan County?

24 A. It is a beautiful rural county with about 20,000 people.

25 Q. How many of those 20,000 people are registered voters, if

1 you know?

2 **A.** About 13,000 active voters.

3 **Q.** And what do you do for work in Morgan County?

4 **A.** I'm a realtor. I help people run away to the country.

5 **Q.** Apart from work, are you otherwise active in the community
6 there?

7 **A.** I am. I have served on our Comprehensive Plan Steering
8 Committee for two cycles. I'm currently serving on an
9 Affordable Housing Task Force, and I am the first vice chair of
10 our local -- the Morgan County Democratic Committee.

11 **Q.** What other activities do you spend time on?

12 **A.** Well, I'm a very active volunteer for CGG. That is like a
13 part-time job. I also was active in the efforts around the
14 Rivian massive plant that has come to our -- western edge of
15 our county.

16 **Q.** And is there a group you worked with on that, or was that
17 individual effort?

18 **A.** There is a group of citizens that have gotten engaged in
19 that.

20 **Q.** Great. So are you currently registered to vote in Morgan
21 County?

22 **A.** I am.

23 **Q.** How long have you been registered there?

24 **A.** Since 2002.

25 **Q.** How regularly do you vote?

1 **A.** Always.

2 **Q.** Every election?

3 **A.** Every election. When I was 18, I did two things. I
4 registered to vote, and I gave blood because you could, and I
5 have done that ever since.

6 **Q.** Do you plan to vote in any elections coming up in 2024?

7 **A.** All of them.

8 **Q.** When you vote in 2024, do you know how you will be voting,
9 meaning by what voting method?

10 **A.** Pending the outcome of this, I will be voting by
11 hand-marked paper ballot, absentee mail.

12 **Q.** So meaning -- when you say pending the outcome --

13 **A.** If I have to.

14 **Q.** If you have to, you'll vote by --

15 **A.** I will vote on a hand-marked paper ballot however I am
16 allowed to.

17 **Q.** So if nothing changes as a result of this litigation,
18 you're going to be voting --

19 **A.** I'll be voting by mail.

20 **Q.** -- by mail.

21 Why do you intend to vote by mail?

22 **A.** Well, I value voting a secret ballot, I value my privacy,
23 and I have -- my hours of observation and my listening to
24 experts causes me to be concerned that a BMD ballot is not a
25 reliable ballot.

1 Q. So your reason for voting by mail is that you don't want
2 to vote on a BMD?

3 A. Correct.

4 Q. You mentioned secrecy and reliability.

5 Are there any other reasons why you don't want to vote on
6 a BMD?

7 A. Well, yes. The secrecy thing, right, is a problem for me
8 because I live and work in a small county. We say that
9 everybody knows your name, but they shouldn't get to know how
10 you vote unless you tell them.

11 And my hours of observation lead me to understand that
12 that is a risk with in-person voting on a BMD.

13 Q. So when you're -- let's make sure we're talking about the
14 same thing.

15 A. Yeah.

16 Q. So when you vote on a BMD, which components do you have in
17 mind that you are concerned about?

18 A. So everything that involves marking your ballot. The
19 issue here is how you mark your ballot; not any of the rest of
20 the system; right? So it is the touch screen, which is big and
21 bright. It interprets your vote and sends it to a printer and
22 prints out -- it prints out a version of your vote in two ways,
23 both on a QR code and in a printed text.

24 Q. And let's talk about the touch screen and the printout.

25 Do you have any particular concerns with the touch screen?

1 **A.** Well, just that very language in the law of, it interprets
2 your vote to a printer; right? Just start right there. I
3 would rather know that my hand interpreted my vote with a
4 Sharpie.

5 Does that make sense?

6 **Q.** Uh-huh (affirmative). And you mentioned secrecy.

7 Is that an issue with the touch screen?

8 **A.** It is. It is big and bright and visible from quite a
9 distance, and --

10 **Q.** And why does that concern you? Why does it concern you
11 that people might see how you vote?

12 **A.** So three real reasons; right? One is, I have a federally
13 and Georgia constitutionally protected right to secret ballot,
14 end stop. I don't have to justify it. So that is number one
15 for me; right?

16 Number two is, because I work and live in a small town, my
17 choices, particularly on local non-partisan races like
18 judges -- as a realtor, I work with all kinds of attorneys.
19 They sometimes compete with one another on my ballot. It is
20 not good if I let them know which one I chose; right?

21 And third, as a local party official, when we have our
22 primaries, the leadership is expected not to take sides before
23 the primaries are decided. So keeping my ballot, my personal
24 choices private until after the primary is really a requirement
25 of the job.

1 Q. Now, just because the touch screen is big and bright and
2 visible from a distance, what makes you think anybody would be
3 looking at your screen while you are using the BMD?

4 A. So I have spent --

5 MR. PICO-PRATS: Your Honor --

6 THE WITNESS: -- hours and hours and hours --

7 MR. PICO-PRATS: I'm just going to object for -- it
8 is outside the scope of relevance for this case. The ballot
9 secrecy is out.

10 MR. MCGUIRE: Yeah, we're talking about ballot
11 secrecy as an injury-in-fact for purposes of standing. We're
12 not talking about it as a merits burden on voting; we're just
13 talking about an injury-in-fact.

14 And given that we understand -- we understand it is
15 out of the case as a claim. We're not trying to argue any
16 violation of laws, but an injury, for purposes of standing,
17 doesn't have to be illegal. It just has to be something that
18 invades a legally protected interest, burdens it in some way.

19 And so the invasion of secrecy is an injury for
20 standing even if it isn't something on the merits. So we are
21 cognizant of that line, and I don't intend to --

22 THE COURT: All right. Well, try to wrap it up
23 because I understand your argument. But at some point it
24 becomes -- -- you know the expression -- maybe the ears of the
25 dog wagging the tail.

1 BY MR. MCGUIRE:

2 Q. Okay. Let me just ask you a couple of questions about why
3 that isn't fixable.

4 We're not going to go into secrecy anymore.

5 But why couldn't that problem be remedied by a curtain
6 around your BMD?

7 A. So the machines, by law, need to be visible to election
8 officials to see to protect from tampering, so we don't have
9 curtains around the BMDs.

10 Q. And why couldn't it be remedied by one of those polarized
11 screens that they put over laptops on airplanes so your
12 neighbor can't see how you're --

13 A. Like they use in banks. It is the best idea that isn't
14 executable because there are none certified anywhere for use
15 with BMDs.

16 Q. And finally, why couldn't you just fix that problem by
17 arranging the BMDs in your polling place so that nobody has a
18 line of sight to each screen?

19 A. So I have spent lots of time observing elections in lots
20 of places, and so has the CGG team. Polling places come in all
21 kinds of shapes and sizes from little cinderblock buildings
22 down in south Georgia to the State Farm Arena and everything in
23 between.

24 Election officials have a three-part rule; right? They
25 have to deploy one voting station for every 250 voters. They

1 have to deploy them in a way that can still be visible for
2 monitoring to prevent tampering, and they have to protect
3 absolute ballot secrecy.

4 So when you think of the shapes and sizes of polling
5 places and apply those requirements, and then you account for
6 windows and doors and shapes, the record of the last four years
7 just shows that if it were possible to do it every time for
8 every voter, it would have been done, and it has not been done.

9 **Q.** So let's turn to the ballot card that the BMD prints out
10 after you are done on a touch screen.

11 What concerns do you have with that BMD-printed ballot?

12 **A.** So to begin with, it contains two versions of my vote, one
13 in the BMD -- or under the QR code that I can't read because
14 I'm human and we can't read QR codes, and the other in a
15 modified version of the text you would see on a normal ballot.

16 **Q.** Now, why is it -- why does it concern you that you can't
17 read the QR code if you have the human text right there?

18 **A.** So almost always, the QR code is the only thing we use to
19 tabulate results. So fundamentally, there's separate problems
20 with me being able to accurately review the text. But even if
21 I did and could and all my neighbors did and could, that is not
22 what is being counted.

23 **Q.** And you say you might not be able to accurately review the
24 text summary.

25 Can you explain that?

1 **A.** Once upon a time when I was young, I was very good at
2 cognitively reading long lists and keeping them in my head.
3 I'm presenting to you today as not such a young person. And
4 I've tested myself, and I'm just not capable of memorizing a
5 30- or 40-question ballot, which is typical in our general
6 elections or even some of our primaries.

7 **Q.** Why can't you just refer back to the screen when you are
8 verifying your printed ballot?

9 **A.** So the screen has gone blank by the time the printer
10 prints that ballot out. The additional option is that I could
11 get a sample ballot, mark it privately by hand in the comfort
12 of my own home, bring that into the polling place and check.
13 But isn't that kind of absurd to walk in with a hand-marked
14 paper ballot and be forced to convert that to a BMD ballot? At
15 least, it seems that way to me.

16 **Q.** Now, would it fix these two problems on the ballot
17 printout, meaning the QR code and the text summary, if the BMDs
18 were somehow changed to print out a full-face ballot instead of
19 one that has a QR code and a text summary?

20 **A.** Right. So --

21 MR. PICO-PRATS: Your Honor, objection on speculation
22 and calling for a legal conclusion.

23 THE COURT: Overruled. Everyone has been --
24 including counsel for the State, have been discussing possible
25 remedies.

1 So go ahead.

2 THE WITNESS: It doesn't solve for the problem of
3 having to verify. It solves for one problem. There are no
4 longer two versions of my vote on one piece of paper.

5 But it doesn't solve for the challenges of being able
6 to verify that long of a list, and it is a computer's
7 interpretation of my vote, not what I marked.

8 BY MR. MCGUIRE:

9 **Q.** And are you aware of whether that kind of fix is even
10 authorized here?

11 **A.** It is -- it first would require the upgrade, which has
12 been discussed. The Secretary of State has announced that
13 won't happen until after the 2024 election due to time and
14 effort constraints. Therefore, it is not authorized yet. It
15 is not certified yet in Georgia.

16 And if we were to both take on the burden and cost of
17 upgrading to the new software, our printers -- we have
18 30,000-plus printers that won't print those full-face ballots,
19 so we would have to further invest in all new printers.

20 **Q.** Now, let's say you are voting on a BMD and you spot an
21 error.

22 What would you do?

23 **A.** I would call it to the attention of my local election
24 official. I would be allowed to -- they would spoil that
25 ballot, and I would be allowed to, you know, make a new

1 selection.

2 **Q.** Why doesn't the fact that you can do that solve your
3 concerns about voting on BMDs?

4 **A.** So it is very hard for both a voter and an election
5 official to understand why a printout from a BMD ballot doesn't
6 match the voter's selection. Did the voter make a mistake?
7 Was the system mal-programmed? What happened?

8 North Hampton County, Pennsylvania, is a perfect example
9 of that. That just happened in the last election; right?
10 Voters went in, they made their choices, and very early in
11 morning, they said, Hey, wait, this is opposite of what I chose
12 in the printed text they could review.

13 As I understand it, election officials were told, Well,
14 the BMD is -- the QR code is correct; it is the text that
15 isn't. So now we have this horrifying problem that -- two
16 versions of your vote on one ballot. Some of those officials
17 directed voters to just, Well, then make the opposite selection
18 on the BMD, and it will print out right in a way that agrees
19 with what your choice was.

20 That turned out to be terrible advice because in reversing
21 that so that the printed text was accurate for them, the QR
22 code was not accurate. I don't think voters or election
23 officials should ever be faced with that conundrum of trying to
24 deal with a ballot that is irreconcilable, right, that has two
25 versions of a vote on one ballot.

1 Q. And if you walked into a polling place in Georgia and did
2 vote on a BMD and were faced with that problem, would you --
3 what would you do?

4 A. Golly gosh, I would be stuck, right, because by that point
5 I wouldn't be allowed to vote by hand. I would be voting on a
6 machine I had no confidence was actually recording my vote the
7 way I intended it to be.

8 Q. So you said you voted by mail?

9 A. I do.

10 Q. Why doesn't voting by mail solve this entire problem?

11 A. It introduces a new set of problems. In the aggregate,
12 that is my choice; right? But think about the experience.
13 When you vote in person in my rural county, right, you show up,
14 you show your ID, you get a card, you go to the machine, you
15 vote, you go to the scanner, you get your sticker, you leave.
16 15 minutes max for most people, most of the time; right? Super
17 easy. One little chunk of your day you can plan, in and out.

18 Voting by mail is a journey and a process. You request a
19 ballot. You watch to see that the ballot arrives; hope it
20 does. You mark your choices. Now you've got to return the
21 ballot.

22 I personally will not put it through the mail for two
23 reasons. One, the uncertainty of the mail. You know, all of
24 our senators and congressmen just wrote a letter to the
25 Postmaster General going, what is up in the bad mail delivery?

1 But also, the way it is designed, the ends are open and
2 you can literally see my personally identifying information in
3 there. I'm not willing to put that through the U.S. Mail, so I
4 have the extra burden of having to go to my election office and
5 hand my ballot in.

6 In 2022, I requested a ballot and it never arrived. The
7 records show that they had mailed it out on the 18th, like
8 well-before election day, and yet, it never arrived. So I went
9 to the office, reported it hadn't arrived. They spoiled that
10 one, issued me a new one. They couldn't hand it to me. I
11 literally had to watch them go to the post office with the
12 replacement ballot.

13 And luckily, it did arrive before. It got there Friday or
14 Saturday before election day. So I was able to vote it and not
15 have to work on the BMDs, but that is a hassle. So that is
16 sort of part of one.

17 But a really important piece is, when you vote in person,
18 you don't only mark your ballot, you cast your ballot. You
19 personally put it through the scanner. So anything that might
20 or might not be wrong with that ballot, right, you get a chance
21 to remedy because you're the one casting it.

22 With hand-marked paper ballots with vote by mail, let's
23 say, you can confirm that the election office has received your
24 ballot, but you lose control of when and how it is scanned.
25 And if there is any reason that there is a stray mark or

1 anything on any particular contest, you can lose your vote in
2 that contest. Because if it is deemed an overvote, unlike when
3 you scan it, it kicks it back and you get a chance to remedy
4 it.

5 When election workers are scanning your ballot -- I mean,
6 I'm a vote review panelist. I see this all the time. If there
7 is any reason that it is deemed an overvote, you lose that
8 vote.

9 So that is a lot to risk, but I do that. Because in the
10 aggregate, that is still a better choice for me.

11 **Q.** And that is under the current system, yes?

12 **A.** Yes.

13 **Q.** So if you were allowed to vote in person in 2024 without
14 using a BMD, would you rather vote by mail in that case?

15 **A.** 100 percent. If I'm allowed to mark a hand-marked paper
16 ballot in person, I will be there on election day with bells on
17 my toes happily marking that ballot and scanning that ballot.

18 **Q.** And why would you rather vote on election day instead of
19 earlier?

20 **A.** So I'm a -- two real reasons. One is kind of small
21 townish; right? It is a -- it is sort of an annual community
22 rite of passage to show up in your local precinct, greet the
23 workers that have been working for years, see your neighbors.
24 It is a thing, and it is fun; right? It's like a celebration
25 of democracy. So that is an important piece.

1 But also, things happen. It is super useful to be able to
2 cast a ballot with absolutely all the information available
3 about candidates, about issues whatever. So the last possible
4 day to vote is a good day to vote.

5 But under Georgia law, I'm not even allowed to mark my
6 hand-marked paper ballot on election day.

7 **Q.** I'm going to shift gears now and let's talk about
8 Coalition for Good Governance.

9 How are you connected to Coalition for Good Governance?

10 **A.** I am -- two ways. I'm both a member and an active
11 volunteer.

12 **Q.** When did you become a member of CGG?

13 **A.** In 2018.

14 **Q.** And how did you become a member?

15 **A.** I was recruited to be the moderator for a panel of experts
16 that was -- that had a program designed to educate local
17 election directors.

18 **Q.** And from being a moderator, how did that turn into
19 membership?

20 **A.** You know, I fell in love with the mission and the story
21 and asked how else I could help.

22 **Q.** You said you were also a volunteer?

23 **A.** (Witness nods head affirmatively.)

24 **Q.** As a volunteer, what do you do for CGG?

25 **A.** Well, I am a pretty good communicator, so I love our

1 activities that involve educating voters, educating assembly
2 members and local election officials. I like that part.
3 Sometimes I'm called on even to be on panels, you know, of
4 groups. So I like that part.

5 But I'm also a human that will do lots of grunt work if
6 required, so I do some pretty wonky things as well.

7 **Q.** How do you know what the organization needs you to do?

8 **A.** The organization has a board and an executive director.
9 They set the priorities, and I am in regular communication with
10 them as far as what the work is.

11 **Q.** How much time would you say you typically devote to your
12 volunteer work for CGG?

13 **A.** It ebbs and flows, but safe to say it is thousands and
14 thousands of hours since 2018.

15 **Q.** And that has been during this lawsuit.

16 Has your work mostly focused on BMDs in Georgia, or have
17 you worked on other things?

18 **A.** So I have taken part -- CGG coordinates with some other
19 national and other regional election groups, so I have worked
20 on that to some degree. I have been on some panels, you know,
21 with the groups from other areas. I have been, you know, on
22 radio shows a few times explaining things that are going on.
23 So I have done that work.

24 We have done -- do you want to --

25 **Q.** Oh, no. Go ahead.

1 Are you done?

2 **A.** Yeah. So we have done four projects that come to mind
3 that were particularly fun. This last fall, we organized a
4 pair of town halls in Coffee County.

5 **Q.** Let me ask you to interrupt because I think you may be
6 going on to a different topic.

7 Let me just ask you this: So of your work, how much of it
8 would you say is directed at BMDs, how much of it is directed
9 at something else?

10 **A.** The fight through this case and through education, right,
11 to end the requirement for in-person voters to use the BMD
12 certainly takes up a huge amount of our time.

13 **Q.** What are some examples of the work that you have done that
14 is directed at helping CGG stop the required use of BMDs?

15 **A.** So I have worked, for example, with Indivisible groups.
16 I'm in the leadership team of Indivisible 10, but I have worked
17 with other Indivisible groups around the country just to
18 educate them about the issue. There is a group organized in
19 Greene County, and I went and made an in-person presentation
20 for them.

21 THE COURT: I'm sorry.

22 What is Indivisible?

23 THE WITNESS: Indivisible is a grass roots national
24 organization that was founded after the 2016 election to help
25 citizens figure out how to communicate with Government

1 officials on policy in an informed and constructive way, and I
2 have been active with them separately from CGG since 2016, so
3 even before I knew CGG.

4 BY MR. MCGUIRE:

5 **Q.** So Indivisible. And have you done any election
6 observation?

7 **A.** I have done a lot of election observation from, you know,
8 as far down as the south end of Georgia to north and northeast
9 Georgia to, of course, in my own local area.

10 **Q.** Why does CGG have you observe elections?

11 **A.** It is really useful that we understand the nuts and bolts
12 of how election processes really work, how voters are impacted.

13 A good example of why that knowledge is helpful, I
14 recently went to observe the Fulton County re-count, and I had
15 an opportunity to, you know, be there with a couple of elected
16 officials, the new Chair of the Fulton County board, with a
17 State Election Board member, and it turned out that I knew a
18 little bit more about how that stuff works, so what they were
19 doing.

20 And they asked questions, and I was able to answer them in
21 a helpful way. In fact, Dr. Patrise commented in the
22 subsequent board meeting that our presence there was super
23 helpful to, you know, that. So I was really proud that my CGG
24 work was able to be useful.

25 **Q.** And have you observed any non-BMD elections?

1 **A.** I have.

2 **Q.** Can you tell us a couple of those that you have observed?

3 **A.** So I observed one when my local county had to go to
4 emergency paper ballots. So for a period of time, we became a
5 hand-marked paper ballot election.

6 But I also recently this fall observed Snellville, which,
7 for 20-odd years has been voting as a municipality with
8 hand-marked paper ballots.

9 **Q.** I'm going to ask you about those. But before I get off of
10 this subject, what else does CGG work on currently besides
11 BMDs?

12 **A.** So think of us as kind the policy wonk team; right? We
13 focus on all of the parts of the election process that make you
14 sure that your vote is counted the way you cast it.

15 So it is not just BMDs. It is scanning and tabulation.
16 It is processes that help make sure that the count of the votes
17 and the voters checked in matches. It is audits and re-counts,
18 and it is protecting the rights of citizens to observe those
19 elections.

20 So we -- it is kind of an inside baseball thing. We see
21 that as our mission.

22 **Q.** Let's say Georgia had not started using BMDs in 2019.

23 What else would you have been working on with your
24 volunteer time over the past several years?

25 **A.** So elections still matter; right? Even if we were

1 hand-marked paper ballot elections, all those things I said,
2 right, how is tabulation working, how are audits working? We
3 are woefully behind on audits, for example, in Georgia; right?
4 We have -- we weren't great on citizen observation before the
5 events of the 2020 election, but we're pushing citizens farther
6 and farther out in an understandable but misguided effort to
7 protect election workers.

8 And citizen observation of elections is a core part of us
9 knowing and having confidence in election outcomes. So we
10 would be working on all those things.

11 **Q.** So I want to talk about the general election you said you
12 observed in Morgan County.

13 What year -- what election was that?

14 **A.** Well, I mean, I have been observing elections for a long
15 time, but I think the one we want to talk about today is the
16 2020 general election.

17 **Q.** Is that the one where you saw a switchover?

18 **A.** It is. You know, before dawn had dawned on election day
19 of 2020, when we opened up the polling place and I was
20 assigned -- I was running a team of poll watchers, but I
21 assigned myself to start the day at my local polling place,
22 right, so I could greet people and all that stuff.

23 When the polls opened at 7:00 A.M., it was the first time
24 we were doing a general election with the new equipment; right?
25 And everybody was kind of like, new thing. Well, voters came

1 in. They checked in. They were handed out a ballot access
2 card. They walked over to the machines, and they weren't able
3 to pull up ballots.

4 **Q.** Let me stop you there.

5 So it was meant to be a BMD election?

6 **A.** Absolutely meant to be a BMD election.

7 **Q.** How quickly -- so what was the problem that happened?

8 **A.** The -- when a voter checks in, a ballot access card gets
9 encoded with their particular ballot style. In the precinct --
10 the polling place I was observing, we had two precincts, so two
11 ballot styles.

12 So you encode it. The voter goes to the BMD, puts it in,
13 and the correct ballot is supposed to show up and they can
14 start making their choices. It didn't work.

15 **Q.** So what was it doing?

16 **A.** They were getting nothing.

17 **Q.** Just a blank screen?

18 **A.** It just wasn't -- so I'll say this. I was in a position
19 to observe all of it, but I wasn't looking at the screens. I
20 was sitting back against the wall.

21 But they were reporting -- I could hear them reporting,
22 like, nothing is here. Like, what is up with this?

23 So the poll manager quickly went over. So now there's
24 one, there's two, there's three people there, right, because
25 check-in happens reasonably routinely early in the morning.

1 She took the card that hung around her neck. Poll
2 managers have a super card where they can put it in. And
3 instead of it automatically pulling a ballot up, they get to
4 punch a code in for a ballot style and it will come up. That
5 worked.

6 So the first few voters, that is what happened. But I saw
7 her kind of look at this and look at that, look at the third
8 voter arrive, then fourth voter arrive, same problem. And she
9 realized this wasn't a good plan for two reasons. One, it was
10 super slow for voters to have to wait for her to come over and
11 do that for them.

12 MR. PICO-PRATS: Your Honor, objection to hearsay.
13 Layperson opinion for expertise of what is going on over here.

14 MR. MCGUIRE: I'd respond to that that she's
15 describing what she witnessed and that she is a fact witness of
16 what happened. And so I'm not asking her to say what anybody
17 said for the truth of it. She's just describing what she saw.

18 THE COURT: No? All right. Overruled.

19 Just try to not put words into anyone's mouth. Okay?

20 THE WITNESS: Okay.

21 BY MR. MCGUIRE:

22 **Q.** Let me back up.

23 So the poll place manager realized there was a problem?

24 **A.** Yes.

25 **Q.** And you said she initially was trying to fix it?

1 **A.** She was initially trying to fix it by manually bringing up
2 ballots for people.

3 **Q.** What were the voters doing while the manager tried these
4 initial fixes?

5 **A.** Most were waiting.

6 **Q.** And you said she could punch in her own code?

7 **A.** She could punch in the ballot style and get one individual
8 voter working at a time.

9 **Q.** So is that what she did?

10 **A.** For a couple of voters.

11 **Q.** And then what happened?

12 **A.** She said, Everybody, wait.

13 I could hear this; right? I walked over because the
14 voting stations are like where these folks are, and the
15 check-in is like where you are, so not far away.

16 THE COURT: So are you referring from the witness
17 stand to where the jury would be sitting?

18 THE WITNESS: Yes. I was super close to it, so I
19 could see it, I could hear it, yes.

20 So she went over to her poll workers at the check-in
21 stations and said, Open up the box of emergency paper ballots.
22 We have to go to this. They are not working. The BMDs aren't
23 working.

24 BY MR. MCGUIRE:

25 **Q.** And how long into voting did that happen?

1 **A.** Minutes.

2 **Q.** And so when she said -- she told her workers go open the
3 emergency ballots, what happened next?

4 **A.** Instead of -- so from then on, instead of encoding ballot
5 access cards, as voters checked in, they handed them the
6 appropriate ballot style and a Sharpie and directed them to go
7 to the voting station like normal.

8 **Q.** How quickly did that --

9 MR. PICO-PRATS: Your Honor, objection to hearsay
10 again. Everything that someone else is saying, that can't be
11 used for the truth of the matter asserted.

12 THE COURT: Well, let me just say once again, I don't
13 think he is -- it is being introduced for the purposes of the
14 truth of what the individual poll worker was. The witness is
15 testifying as to what she observed. If people were using paper
16 ballots instead of the machines, she's capable of seeing that.
17 To the extent that there is hearsay that is used here to
18 facilitate the -- her testimony, I will disregard it.

19 MR. PICO-PRATS: Your Honor, another objection for
20 speculation. If it is not being used for hearsay, it is
21 speculation of what they are doing.

22 THE COURT: Well, it is speculation only if she
23 didn't see it herself or have other reliable information upon
24 which she is testifying, and I think she's telling us what she
25 observed.

1 And even if you don't -- aren't reporting on the
2 exact words somebody is saying, if they are basically
3 marshaling people in a different direction and you can see that
4 the machines aren't being used, I think that that is
5 sufficient.

6 So I note your objections. I'm going to proceed, and
7 I can disregard anything that is hearsay if it actually ends up
8 becoming an issue. Thank you.

9 BY MR. MCGUIRE:

10 **Q.** So just to back up, so after the switchover, how did
11 voters get their paper ballots when they checked in?

12 **A.** The check-in people handed them to them.

13 **Q.** And did --

14 THE COURT: Did you see that or not?

15 THE WITNESS: Yes.

16 BY MR. MCGUIRE:

17 **Q.** And, again, how many ballot styles were in use in that
18 polling place?

19 **A.** Two.

20 **Q.** Aside from handing the voters a paper ballot instead of
21 plastic card when they checked in, did you see anything else
22 change to the check-in process?

23 **A.** No.

24 **Q.** After the switchover when the voters were getting paper
25 ballots, where did they go to fill them out?

1 **A.** They went to the same voting stations that were set up.

2 **Q.** Did you see any voters ask for instructions on how to vote
3 on the paper ballot?

4 **A.** No.

5 **Q.** Once the voters filled out their paper ballots, what did
6 they do with them?

7 **A.** They walked over to the scanners and scanned their
8 ballots.

9 **Q.** Did you see any activity that involved the scanners from
10 the workers? Did the workers have to reprogram the scanners to
11 let this happen?

12 **A.** No.

13 **Q.** Did you see anyone try to cast an overvote into a scanner?

14 **A.** No.

15 **Q.** What would have happened if that had occurred?

16 **A.** It would have kicked it back out for the voter to review.

17 MR. PICO-PRATS: Your Honor, objection. That calls
18 for an expert conclusion.

19 THE COURT: Well, how do you know that?

20 THE WITNESS: I know that because I've observed that
21 in other elections happen.

22 THE COURT: Okay. Well, had used you -- had you seen
23 this with this scanner? That's what I'm trying to say.

24 THE WITNESS: On that day, no voter cast an overvote.

25 THE COURT: All right. Well, then it becomes not

1 relevant.

2 All right. Go ahead.

3 BY MR. MCGUIRE:

4 **Q.** In your experience with the scanners you've seen and then
5 people put overvoted hand-marked paper ballots into them, what
6 happens?

7 **A.** The machine kicks it out and gives the voter an
8 opportunity to review and remedy or not, if they choose to,
9 just say, cast this the way it is.

10 **Q.** Now, the switchover that you saw, how did that appear to
11 affect the privacy of the voting process?

12 **A.** It solved for the problem because you can't really see
13 what is on a piece of paper in somebody's hand without real big
14 effort.

15 **Q.** Did the need for the workers to find and give out the
16 right style of paper ballot to the voters affect the speed of
17 the check-in process?

18 **A.** Absolutely not.

19 **Q.** How did the speed of the overall voting process after the
20 switchover to hand-marked paper ballots compare to the speed of
21 the voting process when the BMDs were working?

22 **A.** So on that day, I never saw the BMDs working, so I don't
23 have facts that I can offer.

24 **Q.** How did the speed of what you saw compare to the typical
25 speed of BMD voting --

1 **A.** What I will say --

2 **Q.** -- that you have witnessed?

3 **A.** -- I have been at that polling place for the opening of
4 polls many times. On that day, the first voters were out the
5 door by 7:15 when the doors opened at 7:00. So 15 minutes of
6 come in, discover the problem, correct for the problem, and be
7 out the door.

8 That is consistent with my normal experience at that same
9 polling place when only BMDs are being used.

10 **Q.** How confusing did the use of hand-marked paper ballots
11 appear to be for the voters?

12 **A.** None.

13 **Q.** How confusing did the use of hand-marked paper ballots
14 appear to be voter poll workers?

15 **A.** Not at all. We have a terrific election director, and she
16 had them well-trained according to the Secretary of State's
17 procedures.

18 MR. PICO-PRATS: Your Honor, just objection on the
19 grounds of what their state of mind was for when they were
20 voting.

21 THE COURT: I don't think she testified about that.

22 MR. PICO-PRATS: What was the question?

23 Whether the voters were confused is the -- was the
24 question asked.

25 THE COURT: All right. Strike your -- I will strike

1 her testimony that they didn't appear to be confused, but ask
2 it another way.

3 BY MR. MCGUIRE:

4 **Q.** Did you perceive the use of hand-marked paper ballots to
5 cause any disruption to voting?

6 **A.** I will say this. No voters using hand-marked paper
7 ballots asked for help. At other times during my many hours of
8 watching, I have regularly seen voters ask for help with the
9 BMDs, often senior voters.

10 **Q.** Did you watch at this polling place all day?

11 **A.** No. I was there for maybe an hour because I was running a
12 crew, so I was moving all around the county all day.

13 **Q.** Did you ever see a time when that polling place switched
14 back to BMDs?

15 **A.** I didn't see the switch. This happened countywide, so all
16 five precincts were affected as confirmed to me by -- directly
17 by the election director and by my poll watchers that I was
18 coordinating. And the election director informed me that it
19 was late morning by the time all of our precincts were back
20 to -- whatever the technical problem was was solved with the
21 help of the Dominion tech, and we were back to BMD voting free
22 in person.

23 **Q.** So I would like to switch and ask you about a different
24 election you observed.

25 You mentioned Snellville.

1 **A.** Uh-huh (affirmative).

2 **Q.** When was the election in Snellville that you observed?

3 **A.** November of '23.

4 **Q.** And what kind of election was that?

5 **A.** Municipal.

6 **Q.** Meaning -- meaning what? What were the offices on the
7 ballot? I mean, roughly --

8 **A.** Now, you're asking me to remember what the ballots were.
9 There were three ballot styles. I think it was mayor and
10 council. There may have been another office. I don't recall.

11 **Q.** And what voting methods were used in the Snellville
12 election that you observed?

13 **A.** Snellville used hand-marked paper ballots, and the manager
14 told me she had been running them that way for about 20 years.

15 **Q.** How is that Snellville is authorized to run an election
16 without using BMDs?

17 **A.** Municipalities are allowed to choose their method of
18 voting.

19 **Q.** So can you very briefly describe the steps of the voting
20 process that you saw used in Snellville from voter check-in to
21 casting the ballot?

22 **A.** Sure. I was there a little over an hour. Voters checked
23 in in a fairly normal way, you know, showed your ID, checked
24 that you were valid to vote, moved you along. And then they
25 were sent to a table where, depending on which ballot style --

1 because there were three ballot styles there -- they were sent
2 to a table and told go to this person, this person, or this
3 person. They were handed a paper ballot in a folder. It was
4 super cool to see that, right, to protect the ballot secrecy.

5 Then they were directed to a bunch of stations that were
6 just set up, tables with screens. They were handed a Sharpie
7 too and told to mark their ballot. And then they walked over
8 to the optical scanner and scanned their ballot and left.

9 Because it was a small election, there were sometimes
10 lines to check in during the time I was there. But once they
11 left the check-in station, it was three to five minutes to
12 walking back out the door. It was super fast.

13 **Q.** So you mentioned optical scanners.

14 Were those -- how did those optical scanners in Snellville
15 differ from the kind of scanners you have seen used in BMD
16 elections?

17 **A.** They appeared to be the same.

18 **Q.** And do you have any knowledge of where Snellville got
19 those scanners?

20 **A.** I didn't ask the manager.

21 **Q.** How large was the Snellville municipal election that you
22 observed?

23 **A.** Snellville has a population of about 20,000, the same size
24 as my county.

25 **Q.** Do you know how that compares to other jurisdictions in

1 Georgia size-wise?

2 **A.** I do because I've looked up where my county stands; right?
3 With 159 counties, there's about 100 counties that are smaller
4 than us. So that also means there's about 100 counties out of
5 159 that are smaller than Snellville as a municipality.

6 **Q.** Was Snellville's election the only one you observed that
7 day?

8 **A.** No. I observed Conyers municipal elections and also
9 Athens-Clarke County municipal elections.

10 **Q.** And were any of those other elections conducted using BMD?

11 **A.** They were BMD elections.

12 **Q.** Did you see any other elections that day that were
13 conducted using hand-marked paper ballots?

14 **A.** No. Other members of our team did that day. We spread
15 out.

16 **Q.** Were they in different cities?

17 **A.** Yeah.

18 **Q.** So other cities besides Snellville are using hand-marked
19 paper ballots?

20 **A.** Lots of cities have used hand-marked paper ballots for
21 many years.

22 **Q.** So you saw BMD and Snellville hand-marked paper ballots
23 that day.

24 **A.** On the same day. I got to compare and contrast, yes.

25 **Q.** So that is what I want to ask you to do.

1 How did the BMD elections that you observed that day
2 compare with the Snellville's hand-marked paper ballot
3 election?

4 **A.** So, again, the only changes is how you mark a ballot;
5 right? The check-in and the scan, same.

6 So the question is, how do you mark a ballot? In the
7 Conyers two precincts polling places that I watched, ballot
8 secrecy was not well-protected at all. The workers were super
9 nervous about where poll watchers and election observers could
10 even stand. They were pushing us really far away because I
11 think they were aware of that.

12 So the -- you know, the ability to observe was really
13 impaired because of the nervousness about how you might see
14 this.

15 I saw voters in Conyers precincts both -- not in Athens --
16 very typical, some elderly folks that needed some help with
17 operating the BMDs. And, of course, if you have ever watched
18 an election worker try to help a voter who asks for help on a
19 BMD, it is a pretty funny thing. Like, they kind of put their
20 back to it and they are kind of pointing, like, because they
21 don't want to see what is on the screen.

22 So I saw some of that. That is typical of what I will see
23 when I'm observing elections.

24 **Q.** How did the timing or the speed of voting compare between
25 the two different kinds of elections?

1 **A.** All of them were very small elections with short ballots,
2 so the timing was very marginally different. You know, some
3 voters take a little longer than others. But with two or three
4 or four contests on the ballot, nobody takes a long time, so I
5 would -- it certainly wasn't any longer to do hand-marked paper
6 ballots. It might have been a second or two shorter.

7 **Q.** So switching gears yet again, in all the observations
8 you've conducted, have you made any observations about the
9 physical security of the BMD equipment in polling places when
10 you have seen that?

11 **A.** Yeah.

12 **Q.** And what have you seen?

13 **A.** So I'm remembering 2019, Judge Totenberg, when I was here
14 in this courtroom and Alex Halderman was on the stand, and he
15 described Georgia's voting system as an ecosystem with tens of
16 thousands of pieces of equipment moved from warehouses to 2,500
17 polling places and back again by an army of temporary workers.

18 My observation has brought that to life, right, in the
19 five subsequent years that I have been doing a lot of election
20 observation. It is just difficult to say with certainty this
21 stuff is secure.

22 **Q.** Have you actually seen any things that you would think of
23 as insecure?

24 **A.** Yeah. So depending on the size of the county, mostly,
25 meaning the number of locations that a county has to service,

1 voting equipment for election day gets moved on-site anywhere
2 from one to four days ahead of time. You see it as often as
3 Friday before election. My county moves it there on Monday
4 before the election day because we're small, five locations.

5 And large amounts of our polling places are public access
6 buildings like schools or gyms or libraries. They are multiuse
7 buildings. So the multiuse continues, no matter that the
8 election equipment has been delivered.

9 And I'm aware just recently at SEB meetings, they have
10 heard cases regarding this problem of sleepovers, right, of
11 election equipment being in place not under the supervision of
12 election workers.

13 **Q.** And have you yourself seen anyone access election
14 equipment in the sleepover situation?

15 **A.** I have not.

16 **Q.** Are you aware of it happening?

17 **A.** Yes. Some of our CGG volunteers have directly observed
18 that.

19 **Q.** What kinds of things have they observed?

20 **A.** Arriving at a church for a meeting of their organization,
21 they find themselves in a room filled with election equipment
22 on Saturday.

23 THE COURT: All right. I think she's testifying
24 about somebody else's observation.

25 THE WITNESS: Right. It is not my direct

1 observation.

2 THE COURT: Unless she was supervising it, I don't
3 see how she can do that.

4 Thank you.

5 BY MR. MCGUIRE:

6 Q. Were you supervising those people?

7 A. I was a team member in designing the project for people to
8 go look, but -- you know, so I was part of the coordination
9 team. I don't know where your definition is of supervising.

10 THE COURT: If everyone was -- if you were actually
11 collecting information from people, I mean, you wouldn't have a
12 direct knowledge, but it was part of your supervisory
13 responsibilities.

14 THE WITNESS: I collected the reports, and we
15 designed the thing, we assigned locations, we collected the
16 reports. So that was my role.

17 THE COURT: So you received reports on this?

18 THE WITNESS: Yes, absolutely.

19 THE COURT: Written reports?

20 THE WITNESS: Pardon me?

21 THE COURT: You receive written or oral reports?

22 THE WITNESS: Written reports.

23 THE COURT: So your testimony is based on your review
24 of those written reports?

25 THE WITNESS: Yes, ma'am, in my capacity as a

1 volunteer for CGG.

2 THE COURT: Okay. Well, I understand that limited
3 capacity that it is, then it is not -- I mean, it is still --
4 you're reporting about -- as I understand it, you're testifying
5 about a report that you were able to read that -- in your
6 capacity as a supervisor of this project, but we don't have any
7 of the reports here.

8 So, I mean, I accept it for the purpose that this is
9 what you were advised, but not that we have the actual
10 information.

11 THE WITNESS: Okay.

12 BY MR. MCGUIRE:

13 Q. Have you personally seen equipment unguarded in a
14 sleepover location?

15 A. Yes.

16 Q. Okay. Where? I mean, what kind of locations?

17 A. In my own county.

18 Q. Okay. You testified earlier that you intend to vote by
19 mail unless -- in order to avoid using a BMD.

20 A. (Witness nods head affirmatively.)

21 Q. Are mail ballots ever converted to BMD ballots, that you
22 know of?

23 A. Yes.

24 Q. When does that happen?

25 A. So in my county, which is small, our vote review panelists

1 are also our duplication panelists. That's a function.

2 **Q.** What does the vote review panel do?

3 **A.** The vote review panel is a group of three people. It
4 consists of a Democrat, a Republican, and an election official.
5 In my county, it is usually the director of elections. I have
6 done that for lots of years. Because we're small, we also do
7 the duplicate ballot thing. In some larger counties with a
8 bigger pool of ballots, they use different people.

9 So when you are -- when you are scanning ballots
10 centrally, there are always a certain number of ballots that
11 won't scan properly. Some of the reasons include that they are
12 damaged in opening the envelopes. Some of the reasons would
13 include they have jagged edges where there is a little tab on
14 the top of the ballot and you tear that off. Some reasons are
15 the fold marks are not able to be straightened out. Sometimes
16 coffee is spilled on a ballot.

17 There are a bunch of different reasons why ballots will
18 not be accepted through the scanner. Sometimes you can't
19 discern the actual reason, but the fact is they just are not
20 taking, so those ballots are set aside for duplication.

21 Up until 2022 in my county, we duplicated like for like.
22 If we had a hand-marked paper ballot that had come in that
23 couldn't be scanned, we pulled a blank hand-marked paper
24 ballot. One person would be the writer, one person would be
25 the caller, one person would review it. We would alternate

1 those responsibilities.

2 So we were very comfortable that what had come -- what the
3 voter had intended was what we were sending through the
4 scanner. You know, you cross-reference the duplicate ballots
5 and all that stuff.

6 In 2022, I arrived for a typical session, and my election
7 director said, We're going to do it differently this time. And
8 she personally went over the ballot-marking device, used her
9 super card to pull up the right style, marked the ballot, got
10 it printed, and walked it over to us and said, Here is the
11 hand-marked ballot, here is the BMD ballot that matches it,
12 please review it and approve it for duplication.

13 That was appalling to me. I asked her to actually show me
14 the procedure that authorized it, and she, in fact, had
15 direction from the Secretary of State that said you can do it
16 either way you want. And she just said, I choose to do it this
17 way.

18 But the idea that I have described, all the efforts I go
19 through to make sure I cast my ballot by hand-marked paper
20 ballot that, through no fault of my own and with no knowledge
21 or consent, my ballot gets converted to a BMD ballot is --
22 can't even wrap my brains around how awful that is to me.

23 **Q.** So last topic.

24 You testified earlier that you had gotten your county
25 party to join CGG in proposing rules to the SEB or else -- you

1 talked about proposing rules; correct?

2 **A.** Yes. One of the activities we do with CGG is propose
3 rules, and I have recruited my county party to join in certain
4 ones of those.

5 **Q.** What are some examples of the kinds of rules that you have
6 proposed to the State Election Board?

7 **A.** Some of them -- because we've been at this for a little
8 while, some of them include things as simple as specifically
9 counting the data cards that are used in elections as part of
10 the election material that must be preserved under the law
11 instead of being just reused.

12 We have proposed rules about cybersecurity practices. You
13 know, every corporation in America has -- that uses electronics
14 has cybersecurity practices. We proposed rules based on CISA,
15 the Cybersecurity and Infrastructure Agency's definition of
16 cybersecurity incidents. So we proposed a set of rules for
17 them that said mandatory reporting and swift investigation and
18 mandatory action if it is deemed to be serious. That was
19 another rule.

20 More recently, we proposed rules about ballot secrecy, and
21 we also proposed rules to make the logic and accuracy testing
22 in practice live up to what is spelled out in the statutes.

23 **Q.** And how has the State Election Board responded to your
24 rule proposals?

25 **A.** They voted no.

1 Q. I'm sorry.

2 They've all --

3 A. They refused all of them.

4 Q. Has the State Election Board explained why it has rejected
5 those proposals?

6 A. Yes. They have sent us letters. As required by law, they
7 have sent us letters explaining their decisions.

8 Q. Okay. You mentioned ballot secrecy as one of the rules
9 you proposed.

10 A. Yes, sir.

11 Q. And have you done anything with logic and accuracy?

12 A. Yes.

13 Q. Was that a separate proposal?

14 A. Yes. I mentioned four; right? The cybersecurity, the
15 media cards, the ballot secrecy, and the logic and accuracy
16 testing.

17 There have been some others. Like, we proposed one early
18 on that said, Let somebody return their mail ballot at a
19 polling place, at their local polling place on election day.

20 And that was early on, and their answer then was, that's a
21 good idea, we'll get to it because -- but we don't want to
22 burden officials in the first season we're rolling these out.

23 But they have never gotten to it, and we have been a
24 little busy and haven't repropose it to them.

25 MR. McGUIRE: I would like to show the witness an

1 exhibit. I'll hand it to counsel.

2 May I approach, Your Honor?

3 THE COURT: Yes.

4 BY MR. MCGUIRE:

5 **Q.** So, Ms. Dufort, I have handed you what has been marked as
6 Coalition Plaintiffs' Exhibit 59.

7 Do you see that?

8 **A.** I do.

9 **Q.** Do you recognize that document?

10 **A.** Yes.

11 **Q.** What is that document?

12 **A.** It is a letter dated January 2nd that was sent to explain
13 why they rejected our petitions at our December -- at their
14 December 20th meeting.

15 **Q.** Who is the sender of the letter?

16 **A.** Let's see who signed it. The State Election Board, it is
17 Matt Mashburn, the acting chair, on behalf of the State
18 Election Board.

19 **Q.** Ms. Dufort, on Exhibit 59, I want to direct your attention
20 to the first numbered point on the second page which refers to
21 the board's announcement at the Athens-Clarke County hearing.

22 Do you see that reference?

23 **A.** I do.

24 **Q.** What is that reference to Athens-Clarke County referring
25 to?

1 **A.** So this is what happened in March of 2020. I was there at
2 the meeting that is referred to, and I was also at many
3 election board meetings in Athens-Clarke County leading up to
4 it.

5 This was the first rollout of the new equipment, and the
6 election board chair was a young Army veteran who had a special
7 training in logistics, so he was really leaning into this.
8 Like, new equipment, new project, we know the rules, one
9 station per 250 voters, you know, reserving the ability to
10 monitor it and protecting ballot secrecy.

11 So he had that in mind. He worked back and forth with the
12 election director to try to figure out how to do this and do it
13 right, Army guy, logistics guy.

14 **Q.** When you say "do this and do it right," do what?

15 **A.** Meet the standards in deploying the new equipment for the
16 first time.

17 **Q.** The BMDs?

18 **A.** The BMD equipment; right. March of '20 was -- you know,
19 we were just leaning into COVID. But really, it was the first
20 time we ever used that equipment for the presidential primary
21 election.

22 So on the very first day of early voting, naturally, he
23 and some other board members went over to the early voting
24 location which was connected to their office and observed that
25 ballot secrecy was not being protected despite their best

1 efforts.

2 So they called an emergency meeting that afternoon. They
3 said, you know, we're not meeting the legal standard. We're
4 going to start voting with hand-marked paper ballots under the
5 authority given to us under the impracticable standards. So
6 they did that.

7 State Election Board and the Secretary of State reacted
8 very strongly to that action. Scheduled a State Election Board
9 hearing in Athens very soon after. It was an all-day hearing.
10 I was there. And the conclusion at the end of that meeting was
11 interesting.

12 They didn't say affirmatively you can protect ballot
13 secrecy and here is how. They simply said, you haven't tried
14 hard enough, go try harder, and threatened them with really
15 large fines if they didn't immediately return to BMD voting.

16 **Q.** Then what happened?

17 **A.** So they returned to BMD voting, and, you know, sacrificed
18 editorial -- sacrificed ballot secrecy to the rule of you have
19 to use the BMDs, no matter what.

20 **Q.** Finally, please look at the second bullet point, the
21 second numbered bullet point there.

22 Do you see where it says -- and I'm going to quote it with
23 the -- I'll leave out the part in the middle, but it says, the
24 board previously noted -- and I'm going to skip a bit -- quote,
25 that the board's rules and state statutes already provide for

1 ballot secrecy, so no additional rules were necessary.

2 Do you see that?

3 **A.** I do.

4 **Q.** Why are they wrong to write that SEB rules and state
5 statutes already provide for ballot secrecy? Why are they
6 wrong about that?

7 **A.** Yeah, so it's one of those things that's partly wrong and
8 partly right.

9 MR. PICO-PRATS: Just objection. It calls for a
10 legal conclusion.

11 MR. MCGUIRE: I'm just asking her to explain her
12 understanding of the letter that they sent her. It is a --

13 THE COURT: All right. Explain the letter that you
14 got without opining as to the law.

15 THE WITNESS: Okay.

16 THE COURT: Thank you.

17 BY MR. MCGUIRE:

18 **Q.** Why is that not a satisfactory answer to you?

19 **A.** So since that hearing in Athens in March of 2020, I have
20 observed and CGG volunteers have observed lots and lots of
21 elections in lots and lots of places. And there is a body of
22 evidence in this case and in other cases that demonstrates that
23 ballot secrecy is not uniformly afforded to in-person voters.

24 Election directors have tried their best. They have spent
25 lots of money in pursuit of trying to figure this out. And if

1 there were a solution, we would know it by now; right?

2 Lots and lots of voters' votes cast --

3 MR. PICO-PRATS: Your Honor --

4 THE WITNESS: -- and it simply isn't protected.

5 MR. PICO-PRATS: -- objection that this is lay
6 testimony.

7 THE COURT: Well, it is lay testimony, but it is her
8 experience, so it can come in. It is her opinion, but she's
9 told us the basis of it.

10 MR. MCGUIRE: Your Honor, I would move to admit
11 Coalition Plaintiffs' Exhibit 59 into evidence.

12 THE COURT: Are there objections?

13 MR. PICO-PRATS: To move it into evidence?

14 THE COURT: Uh-huh.

15 MR. PICO-PRATS: No objection, Your Honor.

16 THE COURT: It is admitted.

17 BY MR. MCGUIRE:

18 **Q.** So based on this letter and the SEB's reactions to your
19 other proposals, how optimistic are you about obtaining relief
20 from constitutional violations from the SEB?

21 **A.** You know, I'm a natural-born optimist, so I will never
22 quit hoping, but it doesn't look like they are ready and
23 willing to give us relief.

24 MR. MCGUIRE: Nothing further on direct, Your Honor.

25 THE COURT: Okay. Are you fine? Do you need any

1 water?

2 THE WITNESS: I'm good.

3 THE COURT: Okay. Great.

4 THE WITNESS: Thank you for asking.

5 CROSS-EXAMINATION

6 BY MR. PICO-PRATS:

7 Q. Good afternoon, Ms. Dufort. My name is Javier Pico-Prats.
8 How are you today?

9 A. I'm great.

10 Q. Did I hear that you're a member of the Coalition for Good
11 Governance? Is that right?

12 A. I am.

13 Q. And you are self-employed as a realtor; is that correct?

14 A. I am.

15 Q. Have you had any training or do you have an expertise in
16 election security?

17 A. I'm not here as an expert. I'm here as a citizen
18 observer.

19 Q. All right. And so the answer is no; right?

20 A. Correct.

21 Q. And you don't have any expertise in elections outside of
22 you being a poll watcher or on the review panel; is that
23 correct?

24 A. I'm sorry?

25 Q. You don't have any expertise outside of that; correct?

1 **A.** Outside of what? Can you --

2 **Q.** Just being a poll watcher or being on the review panel for
3 elections.

4 **A.** No. I just have my hundreds and thousands of hours of
5 observation to offer.

6 **Q.** So everything you have talked about today is just your
7 opinion; is that correct?

8 **A.** As a layperson, it is what I have observed. That is a
9 little different than an opinion.

10 **Q.** Okay. But it is your observations as a layperson --

11 **A.** Yes.

12 **Q.** -- and your beliefs?

13 **A.** It is my observations.

14 **Q.** Okay. Let's talk a little --

15 THE COURT: Can you just clarify one thing for me?

16 THE WITNESS: Yes, ma'am.

17 THE COURT: I know you have been on the review
18 committee for absentee ballots that are not clear.

19 And were you part of the -- and you were part of the
20 Democratic party or you had an office or not?

21 THE WITNESS: I'm a --

22 THE COURT: You --

23 THE WITNESS: -- I'm first vice chair of the Morgan
24 County Democrats.

25 THE COURT: In that capacity, do you work with the

1 elections office?

2 THE WITNESS: I do.

3 THE COURT: And what sorts of things do you do?

4 THE WITNESS: I wear a couple of hats.

5 THE COURT: You may --

6 THE WITNESS: I wear nonpartisan hats and partisan
7 hats.

8 THE COURT: But when you're working on elections,
9 what do you do in that capacity?

10 THE WITNESS: In my capacity as first vice chair of
11 Morgan County --

12 THE COURT: Yes.

13 THE WITNESS: When I work on elections with them. I
14 work on normal voter turnout activities, candidate recruitment
15 and training, and I coordinate our local poll watchers,
16 generally speaking.

17 THE COURT: And do you work also with the elections
18 office in that connection?

19 THE WITNESS: Yeah. I have -- before I became a
20 member of CGG, I was attending board meetings on -- board of
21 elections meetings on behalf of Morgan County Dems.

22 Once I became a member of CGG, I kind of had a dual
23 purpose of observing because I had -- realtors are really good
24 at wearing multiple nonpartisan hats, if that makes sense;
25 right? We say we are not red or blue. We're just

1 policy-driven.

2 THE COURT: All right. Go ahead, sir.

3 MR. PICO-PRATS: Thank you.

4 BY MR. PICO-PRATS:

5 Q. In talking a little bit about your experience on the voter
6 review panel, on working in that capacity, you reviewed
7 hand-marked paper ballots; is that correct?

8 A. Yes. Mostly.

9 Q. Okay. And that was really trying to gather the voter's
10 intent when a voter might have made a mistake or some kind of a
11 mark on a ballot that wasn't registered correctly?

12 A. The way I like to say it is we're responsible for looking
13 at ballots that the computer has a hard time interpreting.
14 There is a bunch of reasons for that.

15 Q. A reason could be that maybe a voter by accident filled
16 out two letters -- two boxes for the same candidate -- same
17 election; is that correct?

18 A. It is possible.

19 Q. Or that maybe they didn't vote -- fill in an oval
20 entirely.

21 Is that another possibility?

22 A. People are wide-ranging, and there is a wide range of
23 reasons why ballots wind up in front of the vote review panel.
24 But people are smarter than computers, so we're able to solve
25 with no ranker, right, Democrat/Republic, nearly all of those

1 things.

2 **Q.** And when reviewing ballots, again, this is solely
3 hand-marked paper ballots, is that right, when you are on the
4 review panel?

5 **A.** You know, it is not by law that. I'm just trying to think
6 of any examples where we might have looked at a BMD -- no, we
7 did have -- how could I forget?

8 Yes. We had cause to look at some BMD ballots because an
9 election manager had made the decision to continue a little
10 longer in one of our polling places on that day when the
11 encoding wasn't right. A manager kept encoding for longer and
12 wouldn't let the voters go and scan their ballots. She, for
13 whatever reason, left them to be scanned at the end of the day
14 not by voters.

15 And it turned out that she had made about 30 or 32
16 mistakes. She had two precincts in her place, and there were
17 voters that had voted the wrong ballot. So we actually had to
18 look at those and convert them to the correct ballot style.

19 So that is an example of where we did wind up having to
20 deal with BMD ballots.

21 **Q.** This was a human error?

22 **A.** Yeah. It was a human error.

23 **Q.** Okay. And when talking about the hand-marked paper
24 ballots that you get -- and you just mentioned that you saw it
25 once for BMD.

1 But outside of that human error, have you ever seen a BMD
2 ballot that was ambiguous?

3 **A.** No.

4 **Q.** And is this something because this is something that is
5 printed instead of something that is filled out by a human
6 hand?

7 **A.** Really, it is because voters scan them, and the ambiguous
8 ballots that come in front of us are because they are not
9 scanning correctly. So as long as the voter has been able to
10 stand in front of a scanner and scan it, no matter whether it
11 is a hand-marked ballot or a BMD ballot, it doesn't come before
12 the vote review panel.

13 **Q.** Do you have any professional training with relation to the
14 BMD machines?

15 **A.** No. I'm a citizen volunteer. Remember?

16 **Q.** Yes, ma'am.

17 And it is true that you stated you don't watch the voter
18 on a BMD machine because you don't know if your vote is being
19 counted because of the QR code?

20 **A.** The QR code is one of my objections to the BMD ballot.

21 **Q.** And do you have any evidence that a BMD has printed a
22 ballot and QR code has read differently from what a voter
23 intended?

24 **A.** North Hampton County, Pennsylvania. Absolutely.

25 **Q.** Do you have any evidence of that in Georgia?

1 **A.** No -- yes, actually.

2 **Q.** Could you please explain that.

3 **A.** Yeah. In June -- so I'm a little fuzzy on the details
4 because I didn't prep for this. But in June of 2020 when we
5 were first using them, there was a problem in -- a very vexing
6 problem in Tattnall County around the outcome of a
7 commissioner's race.

8 So you had your BMD ballots, and they said what they said,
9 and you had your cast vote record, and it said what it said.
10 And it wasn't coming out right, and they weren't really looking
11 at the cast vote record; right? I later saw those attached.
12 They were just looking at the face of the ballots, and they
13 were like, We can count these by hand and it comes out right,
14 but the count in the system isn't correct.

15 And it turns out that there was a coding error that was
16 causing some of those Republican commissioner primary ballots
17 to report as Democratic ballots. So the contests weren't
18 aligning.

19 And so until they discovered that, they weren't able to
20 get to a correct result. So that is one example.

21 The other example, I think, is DeKalb County where I
22 observed over Memorial Day weekend of 2022, I believe it was,
23 where they had a problem that was discovered because a
24 candidate who voted with her husband in her precinct found her
25 precinct was reporting zero votes for her, and she found that

1 not to be credible since she and her husband, at least, had
2 voted for her. And it took a while to sort out why BMD ballots
3 that looked correct on the surface weren't reporting correctly.

4 So those are two Georgia examples that I have personally
5 reviewed.

6 **Q.** And this is something that someone put a vote in on a BMD
7 and it printed out and it was -- and when it was scanned, it
8 was a different vote than the one they had put in?

9 **A.** It printed out in a way that agreed with what they wanted,
10 but it didn't tabulate correctly in both cases.

11 **Q.** But when reviewing it, it did say the vote that they
12 wanted?

13 **A.** When they reviewed it, it did say that, yes.

14 **Q.** And do you have any evidence that a Georgia BMD has ever
15 been hacked?

16 **A.** You know, that is not my department.

17 **Q.** But you don't; is that correct?

18 **A.** It is not my department.

19 **Q.** Okay. But you don't?

20 **A.** I will repeat, it is not my department.

21 **Q.** Okay. You have previously stated that BMDs are not
22 auditable; is that correct?

23 **A.** I'm not sure that I stated that, but I would tell you that
24 I have listened to Philip Stark and read his papers, and I
25 would agree with that statement.

1 Again, I'm not an expert.

2 **Q.** But you're basing it on your expert's opinion; is that
3 correct?

4 **A.** I am basing it on the opinion of Philip and other experts,
5 yes.

6 **Q.** But you personally don't have any opinion whether --

7 **A.** I am not an expert.

8 **Q.** Okay. Before, you talked a little bit about issues you've
9 had voting by mail.

10 **A.** Uh-huh (affirmative).

11 **Q.** And you said that voting by mail it is -- not to misquote
12 you, but it has its own set of problems; is that correct?

13 **A.** It does.

14 **Q.** And you would say that those are problems that generally
15 any voter that wants to vote by mail would have?

16 **A.** Yes.

17 **Q.** And do you have -- would you agree that you don't have
18 confidence in the U.S. voting system, the U.S. Mail system?

19 **A.** Those are two different statements, so which one do you
20 want me to answer?

21 **Q.** The mail system.

22 **A.** I have read enough and seen enough, including my own
23 ballot that went astray, to not have confidence, full
24 confidence that something as important as a ballot is going to
25 get delivered always every time.

1 Q. And you were talking in 2022 that you had an issue with an
2 absentee ballot request; is that correct?

3 A. Yes.

4 Q. And did you end up voting in that election?

5 A. I was able to vote a mail ballot because the replacement
6 did get to me on time.

7 Q. And if it had not gotten in on time, could you have gone
8 in and voted in person?

9 A. I could have.

10 Q. And was it -- is it a preference of yours just to vote by
11 absentee ballot?

12 A. It is a preference of mine to vote in person on election
13 day, but only if I can use a method that I feel confident will
14 result in my vote being counted as cast without sacrificing
15 ballot secrecy.

16 So as long as Georgia requires me to vote on a BMD as a
17 condition of in-person voting, I will continue to vote by mail.

18 Q. Well, is it not true that you could go in with your
19 absentee ballot and turn it in to the registrar's office?

20 A. I can, and I do.

21 Q. So you do vote in person?

22 A. No. That is not voting in person. Turning a mail ballot
23 in at the registrar's office is not voting in person.

24 Q. What do you classify as voting in person?

25 A. So voting in person is -- the ultimate conclusion of

1 voting in person is being able to scan your ballot and see that
2 it has been accepted, and you can't do that when you vote by
3 mail.

4 **Q.** Do you -- however, you believe -- you have stated that you
5 believe that scanning a ballot, you don't know if the vote that
6 you are intending to put -- that you put in the machine is one
7 that is being tabulated; is that correct?

8 **A.** In which kind of ballot are you asking about?

9 **Q.** Do you have -- let me rephrase this.

10 Do you have an issue with the scanner itself that is part
11 of the BMDs systems, or no?

12 **A.** I think that as long as we have a reliable, fundamental
13 document, a reliable paper ballot, any problems that occur with
14 the scanners can be overcome. You can always reconstruct the
15 correct outcome that voters intended.

16 **Q.** Okay. So it is specifically the QR code that you have an
17 issue that might be reading something different; is that
18 correct?

19 **A.** It is the entirety of the BMD ballot for the reasons I
20 have already explained.

21 **Q.** Talking a little bit about verifying votes, you've said
22 that you've had issues remembering all the votes that you have
23 after putting them in a BMD, for instance, that you would have
24 issue remembering every one you had voted for; correct?

25 **A.** Yeah. I used to be able to look at a phone number over

1 here and put it in my phone, right, without looking again.

2 Today, my brain -- you know, it just works a little
3 differently today than it once did.

4 **Q.** You talked a little bit about someone being able to bring
5 in a sample ballot.

6 **A.** Yes.

7 **Q.** And you said that you hadn't seen people bring in sample
8 ballots before or rarely.

9 **A.** Rarely.

10 **Q.** Is that correct?

11 **A.** Rarely.

12 **Q.** Would you say that is a personal choice whether they bring
13 in a sample ballot?

14 **A.** I mean, many things in life are personal choices, so yes.

15 **Q.** And in terms of someone bringing in a sample ballot or
16 taking the time to review, would you say that is a personal
17 choice as well, whether they decided to review?

18 **A.** So I'll answer it that way; right? My ballot, my vote is
19 super important to me; right? You can clearly see the time I'm
20 spending on this. Mine is important. But I am very cognizant
21 that my own vote leads to an outcome when pooled only with
22 everybody else's.

23 So to the extent that people can't review their ballots
24 with meaningfulness or don't, or don't exercise personal
25 responsibilities, it doesn't really matter. It affects my vote

1 because I'm part of a pool of votes that leads to outcomes. So
2 I am harmed when the pool is spoiled.

3 **Q.** But you have the ability to review a ballot once it is
4 printed; is that correct?

5 **A.** I have the opportunity to, yes.

6 **Q.** Okay. And that someone else doesn't, that doesn't affect
7 your vote personally; is that correct?

8 **A.** It absolutely affects -- again, for the reasons I just
9 explained, if the pool is spoiled, my vote is impacted.

10 **Q.** It doesn't impact your ability to vote; is that correct?

11 **A.** If by ability to vote you mean marking a ballot and
12 casting a ballot, it does not affect that.

13 THE COURT: You are talking about the paper ballot
14 that you're -- the absentee ballot?

15 THE WITNESS: Yeah, or any ballot; right? Whatever I
16 choose to vote individually, I can take charge of that. But if
17 the pool around me has flaws, it impacts the impact of my vote.

18 Does that make sense the way I'm trying to describe
19 that to you?

20 BY MR. PICO-PRATS:

21 **Q.** I understand what you are saying.

22 **A.** Okay.

23 **Q.** But if it is up to the discretion of someone to bring in a
24 ballot and -- or sorry, a sample ballot, as you were saying,
25 and then it is up to their discretion -- sorry. Scratch that.

1 Do you understand that people are required to review a
2 ballot after it is printed?

3 **A.** Yeah. There is a law that says you must do that.

4 **Q.** Okay.

5 **A.** Have you ever timed people and watched how many actually
6 do?

7 **Q.** Let's talk a little bit about -- do you have expertise in
8 timing people before?

9 **A.** I do. I have done it.

10 **Q.** Okay. But -- you're certified in it, taken a class in it?

11 **A.** No. I have done it as a citizen observer.

12 **Q.** Okay. Let's talk a little bit about the proposed rules
13 that you brought in at the end.

14 These proposed rules were brought into the State Election
15 Board; is that correct?

16 **A.** Correct.

17 **Q.** Have you ever proposed rules to the county election board?

18 **A.** The county election board doesn't make rules. It is the
19 State Election Board that -- the process is legislative rules,
20 state -- legislation, State Election Board rules, and Secretary
21 of State procedures, and the counties are bound by those.

22 **Q.** Are you aware of anything preventing a county from passing
23 an ordinance relating to cybersecurity measures?

24 **A.** The counties --

25 THE COURT: Are you talking about the county or the

1 county elections board you're asking about?

2 MR. PICO-PRATS: The county elections board.

3 THE WITNESS: Based on the experience when
4 Athens-Clarke County tried to do as a board what it deemed the
5 responsible thing to do, I have -- and by the way, local
6 election officials across the state called that being
7 "Athened." There's a word for it, what happened that day.

8 I have zero confidence based on many attempts to
9 propose to individual election boards that they do some action
10 that helps protect local elections at least. They are
11 unwilling to sort of go off the range. They are very clear, we
12 have to live with the set of rules that is above us, the
13 Secretary of State procedures, the State Election Board rules,
14 and what the legislature has said.

15 So I can't see where that would be a useful exercise
16 or any chance that any election board would actually really try
17 to do something different.

18 BY MR. PICO-PRATS:

19 **Q.** But you're unaware that it is something that the county
20 can do; is that correct?

21 **A.** I mean, I could be 150 pounds, but --

22 THE COURT: I think she's already responded. Let's
23 move on. I think she's responded to you fully on that.

24 MR. PICO-PRATS: That's all the questions I have.

25 THE COURT: Thank you.

1 MR. PICO-PRATS: Thank you, ma'am.

2 THE WITNESS: Thank you.

3 REDIRECT EXAMINATION

4 BY MR. MCGUIRE:

5 Q. I have a very short redirect.

6 Counsel who questioned you asked about your observations
7 of voters reviewing ballots on BMDs.

8 A. Yes.

9 THE COURT: Can you speak up?

10 MR. MCGUIRE: Yes.

11 THE COURT: Thank you.

12 BY MR. MCGUIRE:

13 Q. Opposing counsel asked -- Ms. Dufort, he asked you about
14 voters reviewing their BMD ballots.

15 Have you had the opportunity to observe voters doing that?

16 A. Yes. I have spent countless hours watching the BMD ballot
17 process.

18 Q. Have you done it in multiple elections?

19 A. Yes.

20 Q. By countless hours, I mean, what do you really mean?

21 A. Hundreds, maybe thousands --

22 Q. Okay.

23 A. -- in lots of locations and lots of counties.

24 Q. And so based on what you have seen, what do voters
25 typically do with their paper-printed BMD ballot?

1 **A.** My observations are fairly consistent with the report I
2 reviewed that the Secretary of State had contracted with the
3 University of Georgia to do, right, where it said 18 percent
4 looked for at least five seconds and everybody else looked for
5 less than that.

6 You can watch a voter from the BMD station where they are
7 picking their ballot out of a printer on their path over to the
8 scanner. And you can easily observe, are they glancing at it?
9 Are they pausing there for a while? What are they doing?

10 And it makes sense to me in what I have observed and been
11 able to catalog that fewer than one in five voter looks for at
12 least five seconds.

13 To put that in context, I have tried to time myself. And
14 I am a pretty fast reader for comprehension. I can't
15 comprehend at a pace much faster than one second per contest,
16 no matter how hard I try.

17 So five seconds is a pretty low standard, in my opinion.

18 MR. MCGUIRE: Nothing further. Thank you.

19 THE COURT: Is that it?

20 Okay. May this witness be excused?

21 MR. BROWN: Yes, Your Honor.

22 Pursuant to the agreement with counsel, Ms. Dufort is
23 a one-and-done witness, so she can be excused. Thank you.

24 THE COURT: You're welcome to sit here; you're
25 welcome to leave.

1 COURTROOM DEPUTY CLERK: Please leave the exhibit on
2 the counter there -- just right there on the desk.

3 That will be fine. Yes, ma'am.

4 THE COURT: So you are welcome to sit. You are
5 welcome to leave. But don't discuss your testimony with anyone
6 who was not here.

7 THE WITNESS: You'll see a lot of me over the coming
8 days.

9 THE COURT: Okay.

10 All right. Let's take a restroom break for ten
11 minutes.

12 COURTROOM SECURITY OFFICER: All rise.

13 **(A brief break was taken at 3:39 PM.)**

14 THE COURT: Who is plaintiffs' next witness?

15 MR. BROWN: Your Honor, the Coalition plaintiffs will
16 call Laura Digges.

17 **(There was a brief pause in the proceedings.)**

18 COURTROOM DEPUTY CLERK: Could I get you to please
19 stand, ma'am, and raise your right hand.

20 **(Witness sworn)**

21 COURTROOM DEPUTY CLERK: Please have a seat. And if
22 you would, please state your name and spell your entire name
23 for the record.

24 THE WITNESS: Laura Digges, L-A-U-R-A D-I-G-G-E-S.

25 Whereupon,

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LAURA DIGGES,

after having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. BROWN:

Q. Ms. Digges, good afternoon.

My name is Bruce Brown, as you know, representing the Coalition plaintiffs.

Ms. Digges, are you a named plaintiff in this case?

A. I am.

Q. And are you also a member of plaintiff, Coalition for Good Governance?

A. Yes.

Q. And when did you become a member of CGG?

A. 2017.

Q. Backing up a little bit, you are from Cobb County; is that right?

A. I am living in Cobb County currently.

Q. When did you move to Georgia?

A. To Georgia, I moved in 1996, year of the Olympics.

Q. And just -- could you just outline briefly your employment history since you moved to Georgia.

A. Since I moved to Georgia, I have worked at IBM for 12 years. Then I worked for Bright Horizons. They are an employer-sponsor childcare center, largest in the country. Then I worked for Tokio Marine. They're an insurance company.

1 Q. And are you now retired?

2 A. I am retired.

3 Q. And you said you were a member of plaintiff CGG?

4 A. I am.

5 Q. And why did you become a member of CGG?

6 A. I have always been interested in elections, election
7 integrity and democracy. My whole life, my family was
8 interested in politics. I remember when JFK was elected, my
9 family was ecstatic, we celebrated.

10 And CGG has given me the opportunity to -- to enjoy that,
11 and they have taught me so much, more than I ever could have
12 learned in any civics class.

13 Q. And what does CGG do on your behalf?

14 A. On my behalf? Well, since I live in Cobb County, they
15 keep me updated on Cobb County Board of Elections. They keep
16 me updated on any legislation. I have participated in the
17 State Board of Elections meeting and Cobb County Board of
18 Elections meetings.

19 Q. And what other volunteer work have you done for CGG?

20 A. For CGG, they have motivated me to become a poll watcher.
21 And I now realize how important that is and how much the poll
22 watchers do for us. I have also participated in Cobb County
23 Board of Election meetings and participated in the State Board
24 of Election meetings.

25 Q. At the present time and in the recent past, do you vote

1 absentee by mail or do you vote by BMD?

2 **A.** I vote by absentee mail.

3 **Q.** And why do you vote absentee rather than in person?

4 **A.** I don't trust the BMDs.

5 **Q.** And why don't you trust the BMD?

6 **A.** Because I like to know that my vote is counted as cast. I
7 like to be able to -- to me, it is important to know how I
8 vote.

9 And with the BMDs and the QR code, I can't do that.

10 **Q.** Have you experienced some difficulties with absentee
11 voting that you are doing instead of voting in person on BMDs?

12 **A.** Like I said, I have always been interested in politics.
13 We have raised our children to be that way. We used to -- as a
14 family event on election day, we would all go vote together,
15 then go out to dinner and discuss it. And because I can't vote
16 on the BMDs now, I miss that.

17 It is also -- as far as the mail-in absentee ballot, it
18 is -- you know, you have to go to My Voter page, request the
19 application and the whole routine that you have to go through
20 to make sure that you've gotten it, and it always doesn't
21 happen, which, in my husband's case, they never mailed him the
22 application, so he had to go vote in person.

23 **Q.** And so -- but at least for present purposes, the -- going
24 through the difficulties of absentee voting for you is worth it
25 compared to voting in person on the BMD; is that correct?

1 **A.** That's correct.

2 **Q.** And, again, what for you personally are you giving up by
3 not voting in person on election day?

4 **A.** By not voting in person on election day, I am -- I'm
5 giving up the community participation. I miss that.

6 **Q.** And are you able to -- when you vote absentee, are you
7 able to get the most recent information on elections prior to
8 election day?

9 **A.** No. Usually, you have to request the application ahead of
10 time and complete the application, and because I don't trust
11 the mail -- we've had a lot of problems with our mail -- we
12 have to drive it in, which isn't exactly convenient.

13 **Q.** Okay. Now, you and the other plaintiffs are asking the
14 Court to enjoin the State from forcing in-person voters to use
15 the BMDs.

16 And how would that alleviate the burdens that you now face
17 in voting?

18 **A.** Well, it is my understanding that if the State decided to
19 not use the BMDs, I could go in and I could mark the ballot
20 personally by hand with a pen or marker and know that my vote
21 that I personally put on that ballot would be cast. I am
22 casting that vote as I marked it, which is not the case with
23 the BMDs.

24 **Q.** Ms. Digges, do you plan to vote in future elections?

25 **A.** Always.

1 Q. And will you be voting absentee by mail or in person on
2 election day?

3 A. If they do not have hand-marked paper ballots, I will be
4 voting absentee mail.

5 Q. Thank you.

6 MR. BROWN: No further questions.

7 THE WITNESS: You're welcome.

8 CROSS-EXAMINATION

9 BY MR. BEDARD:

10 Q. Good morning, Ms. Digges -- or good afternoon.

11 A. I know.

12 Q. We've been here a long time.

13 I know we haven't had a chance to meet. My name is Ed
14 Bedard. I'll be representing the State --

15 A. Nice to meet you.

16 Q. -- and I'll be asking you some questions.

17 I appreciate your testimony about working for Bright
18 Horizons. My kids go to a Bright Horizons daycare center.

19 A. Oh, which one?

20 Q. They're great.

21 Well, I won't say that in open court.

22 A. Oh, that's true. That's true. Never mind.

23 Q. But there is a lot of them, so I don't think I have given
24 too much away.

25 A. They're great.

1 Q. Yeah, exactly. When you see it, you'll know.

2 A. Good choice.

3 Q. A few clarifying questions just to start.

4 I think you testified you live in Cobb County; right?

5 A. Yes, I do.

6 Q. No plans to move anytime soon?

7 A. No. We are here for the duration.

8 Q. Great. Just a few other things.

9 You're not a cybersecurity expert; right?

10 A. No, not at all.

11 Q. No formal training in cybersecurity; right?

12 A. Not at all.

13 Q. Never had any training on a BMD; correct?

14 A. No.

15 Q. Not an expert in election administration either?

16 A. No.

17 Q. Okay. Never run an election yourself?

18 A. No.

19 Q. Never worked as a paid election worker?

20 A. No.

21 Q. Let me ask you, what is the remedy -- I just want some
22 clarification here.

23 What is the remedy that you're seeking through this
24 lawsuit? What do you want the Court to do for you?

25 A. I would like to vote by hand-marked paper ballots.

1 Q. Okay. So you want the Court to order -- to restrain the
2 required use of BMDs for in-person voting --

3 A. Correct.

4 Q. -- is that correct?

5 So that you have the option of voting hand-marked paper
6 ballots --

7 A. Exactly.

8 Q. Okay. Thank you.

9 You have never voted on a BMD machine; correct?

10 A. Never.

11 Q. And no plans to vote on a BMD at any point in the future?

12 A. No.

13 Q. So you wouldn't call yourself right now an in-person voter
14 as it is; right?

15 A. No.

16 Q. Okay. At the same time, you've never been prevented from
17 voting on a BMD; correct?

18 A. No.

19 Q. You've just chosen not to?

20 A. Correct.

21 Q. Yeah. Georgia adopted the BMD system between the 2018
22 gubernatorial and the 2020 presidential cycle; right? In
23 your --

24 A. Excuse me?

25 Q. Georgia adopted the BMD voting system between the 2018

1 gubernatorial and 2020 presidential elections; right?

2 **A.** Yes.

3 **Q.** Yea. And in every election that you've voted in since
4 Georgia adopted the BMD system, you voted absentee by mail;
5 correct?

6 **A.** Correct.

7 **Q.** Okay. Now, before you submitted those ballots, you
8 double- and triple-checked them to make sure they were correct;
9 right?

10 **A.** Yes.

11 **Q.** Looked them over, made sure that the marks were exactly as
12 you intended them?

13 **A.** Yes.

14 **Q.** You didn't just fill it out and then turn it in; right?

15 **A.** Correct.

16 **Q.** Okay. Have you ever changed anything after you went
17 through it the first time?

18 **A.** No.

19 **Q.** Okay. Ever found a mistake?

20 **A.** Have I ever found a mistake? No.

21 **Q.** Okay. So let's talk about your concerns with BMDs.

22 You don't want to vote on a BMD, I think you testified,
23 because you don't know if your vote is going to be counted as
24 cast; correct?

25 **A.** Correct.

1 **Q.** What does counted as cast mean to you? Can you define
2 that?

3 **A.** Counted as cast means I vote, and I always vote
4 hand-marked paper ballots, and I can see my vote on the ballot.

5 With the BMD, I push the button, and it goes through and
6 it reads the QR code, and I don't read QR code.

7 **Q.** But the BMD prints out a printed summary, correct, of your
8 votes?

9 **A.** I guess so.

10 **Q.** Okay. Well, it is true because you have never voted on a
11 BMD, have you?

12 **A.** Yeah, I never have.

13 **Q.** How is an absentee by mail ballot, a hand-marked paper
14 ballot -- in your mind, what you want the Court to be able to
15 give you the option to do, how is a hand-marked paper ballot
16 counted as cast?

17 Or let me rephrase that.

18 How do you know that a hand-marked paper ballot is counted
19 as cast?

20 **A.** Well, they -- I hand it to them. They take it, and I go
21 through My Voter page, it shows accepted, and then they scan
22 them, as far as I know.

23 **Q.** They scan them, but you don't know what the scanner
24 tabulates your vote as, do you?

25 **A.** I'm not a technical person. I don't know.

1 Q. So when it comes to a hand-marked paper ballot, you don't
2 know if your hand-marked paper ballot has been counted as you
3 cast it, do you?

4 A. Well, it scans it.

5 Q. It scans it, so it counts it?

6 A. It counts it.

7 Q. It counts it.

8 And that's no different than your BMD ballot; right? You
9 know that the BMD ballot is counted; right? I mean,
10 hypothetically, because you have never voted on a BMD, of
11 course, but between the two, you can know that both have been
12 counted; correct?

13 A. Yes, I guess.

14 Q. So how do you know that a hand-marked paper ballot is
15 counted as cast?

16 A. How do I know it is counted as cast? I mean, I don't know
17 the technicalities of all of it, so I really don't know.

18 Q. Okay. You can't be sure that your hand-marked paper
19 ballot has been counted as cast either, can you?

20 A. Well, I am marking it on my ballot that way. I'm assuming
21 that they are counting it correctly going by the circle that
22 they say I'm --

23 Q. You are assuming that; right?

24 A. I'm assuming that.

25 Q. You are assuming that they are counting it correctly

1 because you've put it out on a hand-marked paper ballot?

2 **A.** I guess I'm -- the question is, why would it not be
3 counted correctly?

4 **Q.** I don't know.

5 You don't know that it has been counted, though, either,
6 have you?

7 Sitting here today, you don't know if any of your
8 hand-marked paper ballots that you voted by absentee in the
9 last four or so years have been counted as cast, do you?

10 **A.** I am trusting that they are.

11 **Q.** What is the basis of that trust?

12 **A.** Because the scanner scans the marks on the ballot.

13 **Q.** Okay. But a scanner just reads your hand-marking the same
14 as it reads a QR code; right?

15 **A.** But it is not reading the BMD --

16 **Q.** Sure.

17 **A.** -- QR code.

18 **Q.** But if we are in a BMD situation -- again, I know you
19 haven't voted on a BMD.

20 If you were going to go back and check to make sure that
21 the BMD was correct, you have the printed summary that you can
22 confirm; correct?

23 **A.** Could you repeat that, please.

24 **Q.** Sure. If you use a BMD and you scan that, the scanner
25 uses the QR code; right?

1 **A.** Right.

2 **Q.** And if you use a hand-marked paper ballot and you scan
3 that, it is scanning, as a computer does, what you marked on
4 the paper; correct?

5 **A.** Correct.

6 **Q.** But in either case, you don't know what the scanner has
7 counted, do you?

8 **A.** Well, it is counting -- on my ballot, it is counting my
9 vote. On the QR code, it is counting the QR code which I don't
10 know what that is reading, whether it is how I am -- how I
11 marked --

12 **Q.** Sure. But you also don't know what the scanner has
13 counted for your hand-marked paper ballot?

14 **A.** I have more faith in that than I do the BMD.

15 **Q.** So you have more faith, but is there anything in
16 particular that is supporting that faith? What is supporting
17 your increased trust in the hand-marked paper ballot over the
18 BMD ballot?

19 **A.** The QR code is what bothers me.

20 **Q.** But in either case, whether it is the QR code or your
21 hand-marked paper ballot, you don't know what the scanner has
22 counted; right?

23 **A.** It is counting what I marked on the ballot.

24 THE COURT: I think you've gone far enough.

25 MR. BEDARD: Okay.

1 THE COURT: Thank you.

2 MR. BEDARD: I think you understand my point, Your
3 Honor.

4 BY MR. BEDARD:

5 Q. A few other questions.

6 MR. BEDARD: Well, let me -- hold on. Let me look at
7 my list here and see if I can cut some of this out, Your Honor.

8 BY MR. BEDARD:

9 Q. Ms. Digges, at the end of the day, your concern right now
10 is that you don't have the opportunity to vote in the method
11 you would prefer in person; correct?

12 A. Correct.

13 Q. Okay.

14 MR. BEDARD: I think that's it, Your Honor.

15 THE COURT: All right.

16 REDIRECT EXAMINATION

17 BY MR. BROWN:

18 Q. Ms. Digges, just a couple of follow-up questions.

19 When you vote on a hand-marked paper ballot, whose vote is
20 that that is on that ballot?

21 A. My vote.

22 Q. When the computer spits out a BMD ballot, whose vote is
23 that?

24 A. I don't know.

25 MR. BROWN: Thank you.

1 No further questions, Your Honor.

2 THE COURT: May this witness be excused? May this
3 witness be excused?

4 MR. BROWN: Yes, Your Honor.

5 THE COURT: Thank you very much, Ms. Digges.

6 THE WITNESS: You're welcome. Thank you.

7 MR. BEDARD: And just, Your Honor, she's still
8 subject to a subpoena at the moment. Again, we -- like the
9 other witnesses, we don't necessarily anticipate calling her,
10 but for sequestration purposes.

11 THE COURT: All right. That is fine. You are not
12 excused from these proceedings as a whole, but they will let
13 you know if they need you, and you're welcome to --

14 MR. BEDARD: You know what? I'm sorry, Your Honor.
15 She's a party.

16 THE COURT: That's right.

17 Do you have another witness?

18 MR. BROWN: Your Honor, we do not have any additional
19 witnesses. We anticipated that the morning would be -- go
20 longer with what you did yesterday and also that the
21 demonstration would take a good bit of time, and so my
22 apologies, but we do not have another witness available.

23 We will be ready to go fast right off the start
24 tomorrow morning with our next witness that we will disclose to
25 the defendants.

1 THE COURT: I mean, I'm just trying to keep time
2 here.

3 I mean, should we be starting earlier at 9:00 or
4 is --

5 MR. BROWN: I'm happy to, Your Honor. We're going
6 faster than anticipated, so we're in good shape. And we
7 have -- my next witness will be no longer than Ms. Digges. And
8 then depending on some illnesses, we will still pass through
9 very quickly and commit to be doing that.

10 THE COURT: Okay. Let me chat with my gang here.

11 MR. BROWN: Thank you, Your Honor.

12 And sorry for any inconvenience.

13 MR. CROSS: Your Honor, just could I ask, there's
14 something to be helpful to us if we could talk with you in
15 chambers again.

16 It is a personal issue, not a security issue.

17 Would that be okay?

18 THE COURT: All right. But then we need to conclude
19 so that we have enough time for --

20 MR. CROSS: Yeah. It pertains to the witness --

21 THE COURT: Is this something you want on the record?

22 MR. CROSS: Probably not.

23 THE COURT: All right. Well --

24 MR. RUSSO: We're happy to come.

25 THE COURT: Let me just chat with my group about the

1 schedule first.

2 **(There was a brief pause in the proceedings.)**

3 THE COURT: We'll start at 9:30. Let's be sure each
4 day, though, that we're not running into this because it is --
5 you know, I'm worried that we'll run out of time and then I'll
6 end up having to find extra days after I have to take a break
7 at some point.

8 MR. BROWN: Understood, Your Honor.

9 THE COURT: I have been counting the number of days
10 even now, given the volume of witnesses, but -- and -- all
11 right.

12 Well, be sure -- we'll see you at 9:30, same
13 protocol, and that's it.

14 So, Counsel, if you want to come and talk with me in
15 chambers, that is fine.

16 I'm going to deal with it like I did before in
17 private, but meanwhile --

18 MR. CROSS: We can also do it here because people are
19 probably going to leave.

20 THE COURT: We can do it here then.

21 MR. CROSS: I just -- we wanted to keep it private to
22 the extent --

23 THE COURT: That's fine.

24 Well, I'm going to excuse the public and media
25 from -- we'll just stay in here then.

1 (A brief discussion ensued off the record, and
2 the proceedings were thereby adjourned at 4:30
3 PM.)
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C E R T I F I C A T E

UNITED STATES OF AMERICA
NORTHERN DISTRICT OF GEORGIA

I, SHANNON R. WELCH, RMR, CRR, Official Court Reporter of the United States District Court, for the Northern District of Georgia, Atlanta Division, do hereby certify that the foregoing 215 pages constitute a true transcript of proceedings had before the said Court, held in the City of Atlanta, Georgia, in the matter therein stated.

In testimony whereof, I hereunto set my hand on this, the 9th day of January, 2024.

Shannon R. Welch

SHANNON R. WELCH, RMR, CRR
OFFICIAL COURT REPORTER
UNITED STATES DISTRICT COURT

UNITED STATES DISTRICT COURT
OFFICIAL CERTIFIED TRANSCRIPT

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