Curling v. Raffensperger

Plaintiffs' Closing Argument

The Right to Vote Is Fundamental and Sacred

"Voting is the beating heart of democracy. It is a fundamental political right, because it is preservative of all rights."

Democratic Exec. Comm. of Fla. v. Lee, 915 F.3d 1312, 1318 (11th Cir. 2019)

"Confidence in the integrity of our electoral processes is essential to the functioning of our participatory democracy."

Purcell v. Gonazlez, 549 U.S. 1, 4 (2006)

"The right to vote freely for the candidate of one's choice is of the essence of a democratic society, and any restrictions on that right strike at the heart of representative government."

Reynolds v. Sims, 377 U.S. 533, 555 (1964)

Federal Courts Must Protect the Right to Vote

"There is more to the right to vote than the right to mark a piece of paper and drop it in a box or the right to pull a lever in a voting booth. The right to vote includes the right to have the ballot counted."

Reynolds v. Sims, 377 U.S. 533, 562 (1964)

"Since the right to exercise the franchise in a free and unimpaired manner is preservative of other basic civil and political rights, any alleged infringement of the right of citizens to vote must be carefully and meticulously scrutinized."

Reynolds v. Sims, 377 U.S. 533, 562 (1964)

"State and local laws that unconstitutionally burden [the right to vote] are impermissible"

Curling v. Raffensperger, 397 F. Supp.3d 1334, 1402 (N.D. Ga. 2019)
(citing *Wash. State Grange v. Wash. State Republican Party*, 552 U.S. 442, 451 (2008))

Defendants Would Render the Right to Vote Meaningless

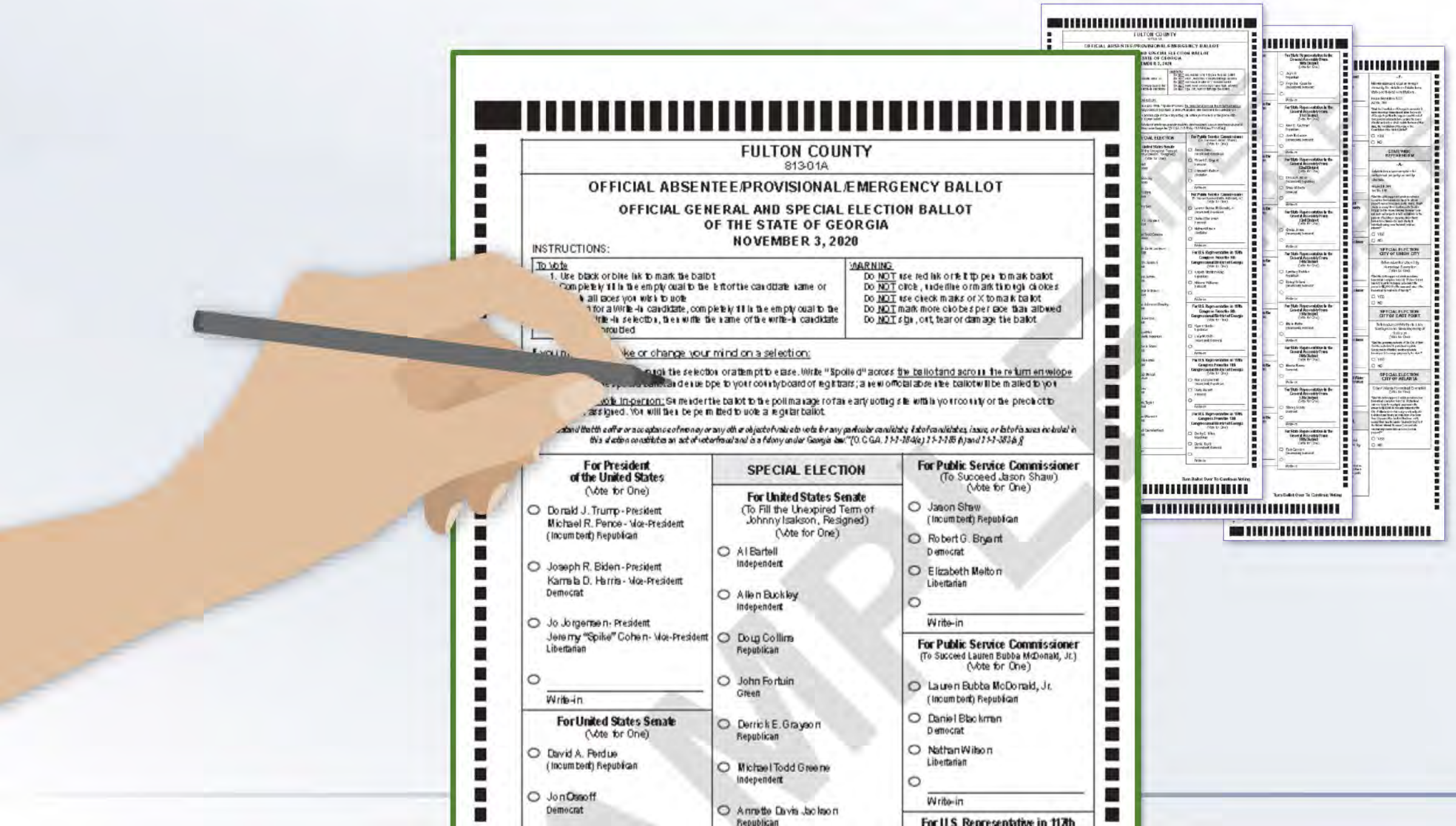
There is no legally protected interest in "verifying" one's vote or in voting on a "reasonably secure" system.

Dkt. 1649, State Defendants' Reply Brief at 6.

This Court Has Already Recognized the Unconstitutional Burden on Plaintiffs

"The Plaintiffs' voting claims go to the heart of a functioning democracy. As the Court commented in its Order last year, '[a] wound or reasonably threatened wound to the integrity of a state's election system carries grave consequences beyond the results in any specific election, as it pierces citizens' confidence in the electoral system and the value of voting.' The reality and public significance of the wounds here should be evident – and were last year as well."

Curling v. Raffensperger, 397 F. Supp. 3d 1334,1411 (N.D. Ga. 2019)
(quoting *Curling v. Raffensperger,* 334 F. Supp. 3d 1303, 1328 (N.D. Ga. 2018))



FULTON COUNTY
813-01A

OFFICIAL ABSENTEE/PROVISIONAL/EMERGENCY BALLOT

OFFICIAL GENERAL AND SPECIAL ELECTION BALLOT
OF THE STATE OF GEORGIA
NOVEMBER 3, 2020

INSTRUCTIONS:

To Vote
1. Use black or blue ink to mark the ballot
Completely fill in the empty oval to the left of the candidate name or
all races you wish to vote
for a Write-in candidate, completely fill in the empty oval to the
Write-in selection, then write the name of the write-in candidate
provided

WARNING
Do NOT use red ink or felt tip pen to mark ballot
Do NOT circle, underline or mark through choices
Do NOT use check marks or X to mark ballot
Do NOT mark more choices per race than allowed
Do NOT stain, cut, tear or damage the ballot

If you make a mistake or change your mind on a selection:
Do not attempt to erase the selection or attempt to erase. Write "Spoiled" across the ballot and across the return envelope
Return the spoiled ballot and the envelope to your county board of registrars; a new official absentee ballot will be mailed to you
Vote in-person: Surrender the ballot to the poll manager or an early voting site within your county or the precinct to
which assigned. You will then be permitted to vote a regular ballot.

I understand that the offer or acceptance of money or any other object of value to vote for any particular candidate, list of candidates, issue, or list of issues included in this election constitutes an act of voter fraud and is a felony under Georgia law." [O.C.G.A. 21-2-284(c) 21-2-285(b) and 21-2-383(b)]

For President of the United States
(Vote for One)
- Donald J. Trump - President
  Michael R. Pence - Vice-President
  (Incumbent) Republican
- Joseph R. Biden - President
  Kamala D. Harris - Vice-President
  Democrat
- Jo Jorgensen - President
  Jeremy "Spike" Cohen - Vice-President
  Libertarian
- Write-in

For United States Senate
(Vote for One)
- David A. Perdue
  (Incumbent) Republican
- Jon Ossoff
  Democrat

SPECIAL ELECTION

For United States Senate
(To Fill the Unexpired Term of Johnny Isakson, Resigned)
(Vote for One)
- Al Bartell
  Independent
- Allen Buckley
  Independent
- Doug Collins
  Republican
- John Fortuin
  Green
- Derrick E. Grayson
  Republican
- Michael Todd Greene
  Independent
- Annette Davis Jackson
  Republican

For Public Service Commissioner
(To Succeed Jason Shaw)
(Vote for One)
- Jason Shaw
  (Incumbent) Republican
- Robert G. Bryant
  Democrat
- Elizabeth Melton
  Libertarian
- Write-in

For Public Service Commissioner
(To Succeed Lauren Bubba McDonald, Jr.)
(Vote for One)
- Lauren Bubba McDonald, Jr.
  (Incumbent) Republican
- Daniel Blackman
  Democrat
- Nathan Wilson
  Libertarian
- Write-in

For U.S. Representative in 11th

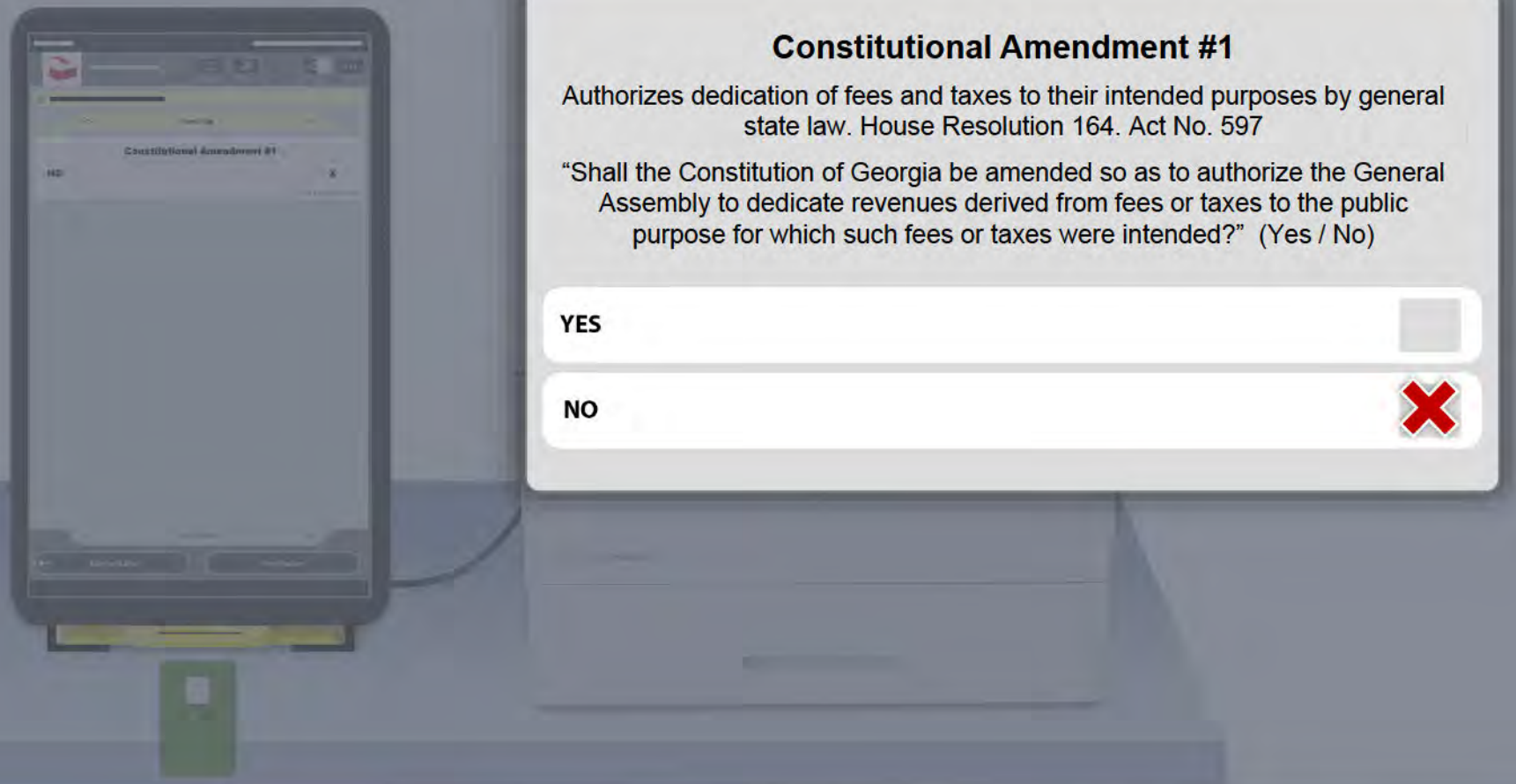
Three Burdens

1. Burden of voting with a BMD
2. Burden of duplicate review
3. Burden of voting with this particular ballot format

Three Burdens

1

Burden of voting with a BMD



Three Burdens

1

2

Burden of duplicate review



FAYETTE COUNTY

OFFICIAL BALLOT

GENERAL AND SPECIAL ELECTION
OF THE STATE OF GEORGIA
NOVEMBER 3, 2020

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376-Shakerag East

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Vote for Randy Hough (Rep)

For County Board of Education District 5 (Vote for One) (NP)
Vote for Brian Anderson (I) (Rep)

Constitutional Amendment #1 (NP)
Vote for YES

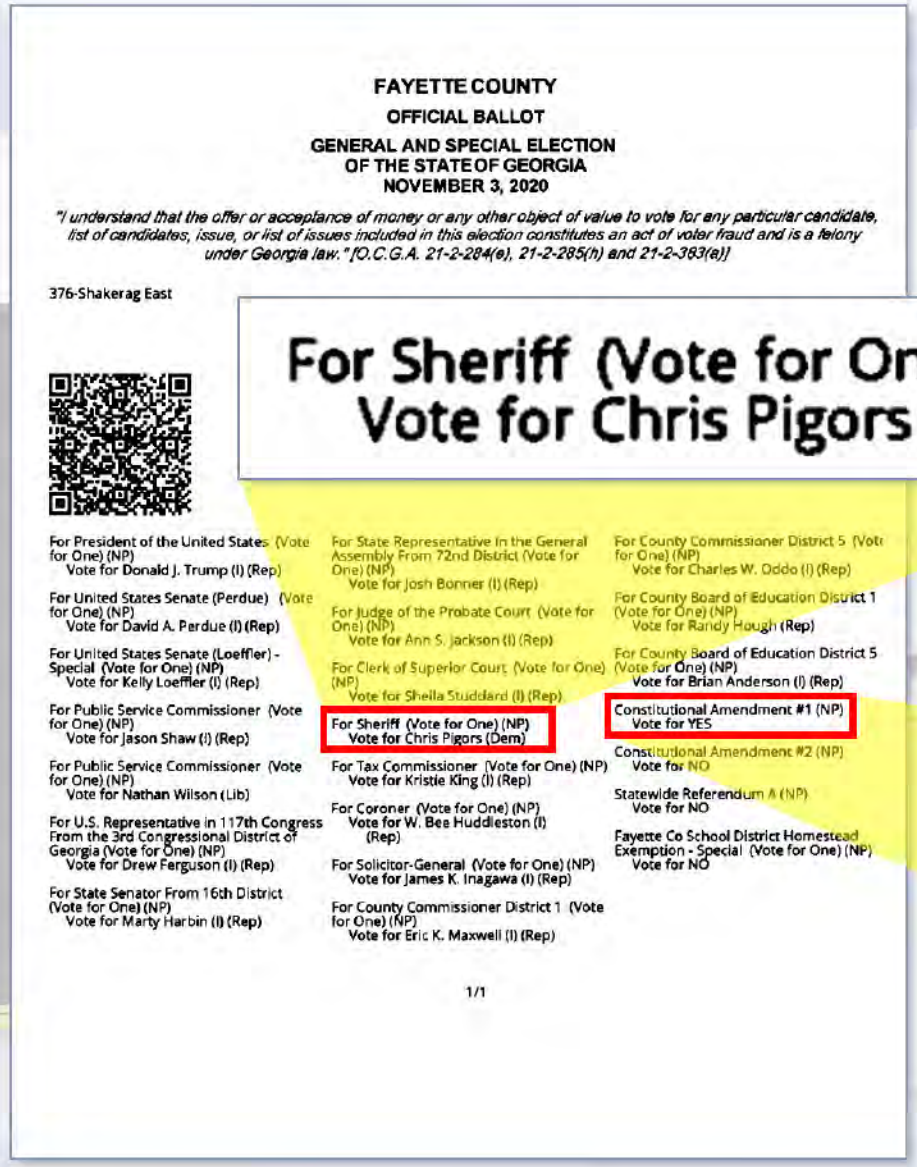
Constitutional Amendment #2 (NP)
Vote for NO

Statewide Referendum A (NP)
Vote for NO

Fayette Co School District Homestead Exemption - Special (Vote for One) (NP)
Vote for NO

1/1

Three Burdens



FAYETTE COUNTY

OFFICIAL BALLOT

GENERAL AND SPECIAL ELECTION
OF THE STATE OF GEORGIA
NOVEMBER 3, 2020

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Vote for NO

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1/1

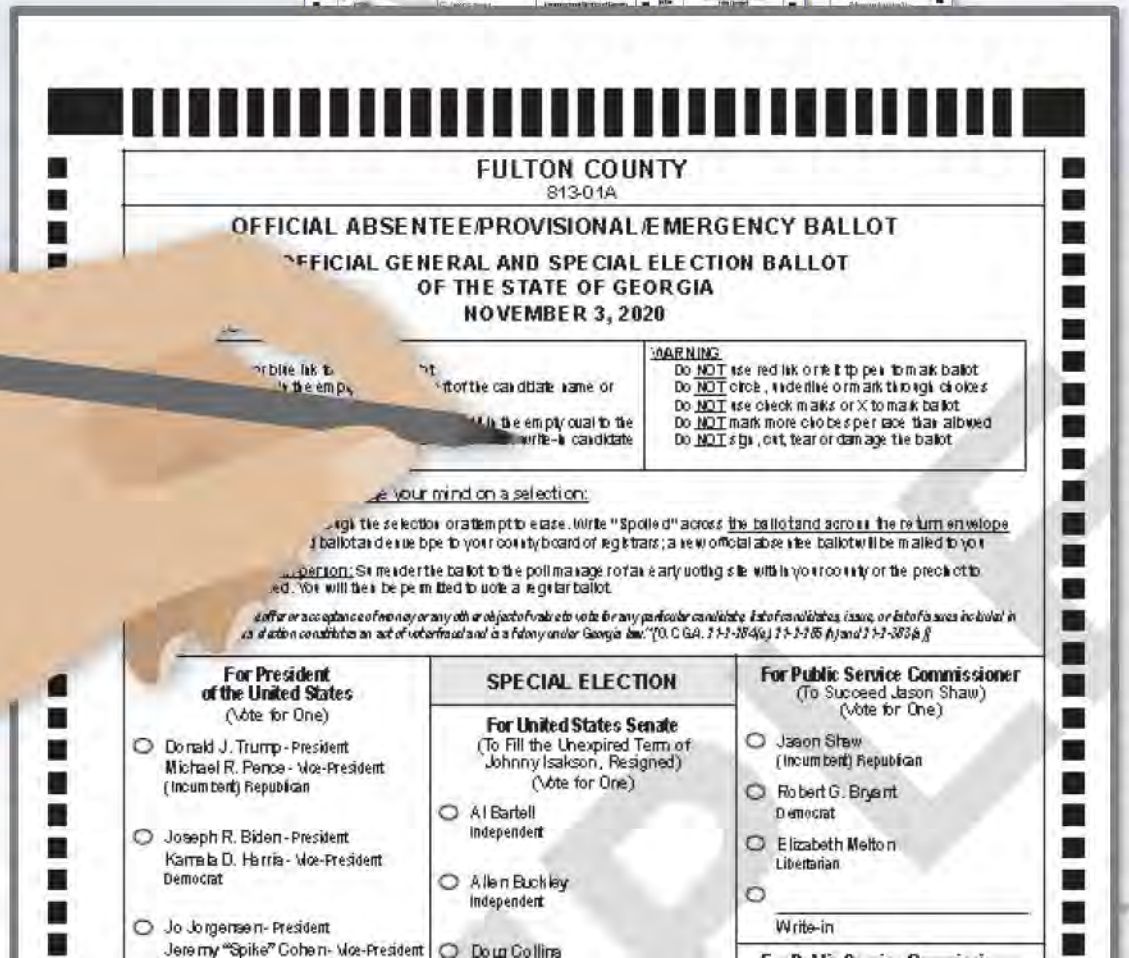
For Sheriff (Vote for One) (NP)
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Constitutional Amendment #1 (NP)
Vote for YES

3

Burden of voting with this particular ballot format





FULTON COUNTY
813-01A

OFFICIAL ABSENTEE/PROVISIONAL/EMERGENCY BALLOT

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NOVEMBER 3, 2020

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  Independent
- Doug Collins

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(To Succeed Jason Shaw)
(Vote for One)

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  Democrat
- Elizabeth Melton
  Libertarian
- Write-in

FAYETTE COUNTY
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GENERAL AND SPECIAL ELECTION
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Vote for Brian Anderson (I) (Rep)

Constitutional Amendment #1 (NP)
Vote for YES

Constitutional Amendment #2 (NP)
Vote for NO

Statewide Referendum A (NP)
Vote for NO

Fayette Co School District Homestead Exemption - Special (Vote for One) (NP)
Vote for NO

1/1



FULTON COUNTY
813-01A

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  Democrat
- Elizabeth Melton
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FAYETTE COUNTY

OFFICIAL BALLOT

GENERAL AND SPECIAL ELECTION
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NOVEMBER 3, 2020

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Vote for Randy Hough (Rep)

For County Board of Education District 5 (Vote for One) (NP)
Vote for Brian Anderson (I)

Constitutional Amendment #1 (NP)
Vote for YES

Constitutional Amendment #2 (NP)
Vote for NO

Statewide Referendum A (NP)
Vote for NO

Fayette Co School District Homestead Exemption - Special (Vote for One) (NP)
Vote for NO

1/1

The State Has Moved to Cellular-Based Poll Pads



Gabriel Sterling

COO

"[W]e've gone to our cellular-based Poll Pads that can guarantee that each voter is getting the correct ballot style."

Trial Tr. Vol. 16B at 8:8-13

The Court Used Its Equitable Powers to Enjoin DREs

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

DONNA CURLING, *et al.*,

Plaintiffs,

v.

BRAD RAFFENSPERGER, *et al.*,

Defendants.

CIVIL ACTION NO.
1:17-CV-2989-AT

ORDER

I. Introduction 3

II. Joinder of Municipalities Conducting November 2019 Elections 12

III. Continuing Vulnerability and Unreliability of Georgia's GEMS/DRE System and Voter Registration System and Database 21

A. Georgia's DREs operate on outdated and vulnerable software 21

B. The DREs work in tandem with the Global Election Management System ("GEMS") interface, which poses additional problems for election integrity and security 25

C. The DRE/GEMS system is particularly susceptible to manipulation and malfunction 33

D. The State's expert Dr. Shamos essentially agrees that Georgia's DRE/GEMS system is not reliably secure 42

E. "What's Past is Prologue." 62

F. The experience of voters in the 2018 election demonstrates serious problems and failures in the State's DRE/GEMS and ExpressPoll systems 90

[T]he State Defendants are **DIRECTED:**

(1) To refrain from the use of the GEMS/DRE system in conducting elections after 2019.

Dkt. 579 at 147-148

The Burden on the Right to Vote Has Only Become More Severe

"No voters could verify whether their intended votes for particular candidates were actually cast."

Failure to implement critical software patches to address cybersecurity vulnerabilities



Dr. J. Alex Halderman

Slow and ineffective response to KSU data breach



Gabriel Sterling
"It didn't happen."

Insufficient remedial action

Dkt. 579 at 92; 22, 25; 65-69; 70-82

Roadmap

Standing

- Injury in fact
  - Cognizable
  - Particularized
  - Non-speculative
- Traceable
- Redressable

Merits

- Causation
- *Anderson-Burdick*
  - Character and magnitude of burden
  - Justifying State interests
- Irreparable Harm
- Balance of the burdens

Legal Standard: Traceability

"[A] plaintiff need only demonstrate, as a matter of fact, a fairly traceable connection between the plaintiff's injury and the complained of conduct of the defendant."

Ga. Ass'n of Latino Elected Offs., Inc. v. Gwinnett Cnty. Bd. of Registration & Elections, 36 F.4th 1100, 1116 (11th Cir. 2022) (citation omitted)

The State Controls the Manner of Voting

> [A]ll federal, state, and county general primaries and general elections as well as special primaries and special elections in the State of Georgia shall be conducted with the use of scanning ballots marked by electronic ballot markers....
>
> O.C.G.A. § 21-2-300(a)(2)

The State Controls the Manner of Voting

Georgia

MASTER SOLUTION PURCHASE AND SERVICES AGREEMENT

BY AND BETWEEN

DOMINION VOTING SYSTEMS, INC.
as Contractor,

and

SECRETARY OF STATE OF THE STATE OF GEORGIA
as State

Dated as of July 29, 2019

Contract No. [•]

Curling Pl. Ex. 47

The State Controls the Manner of Voting



Gabriel Sterling

COO

Q. How did that decision [to choose the Dominion BMD voting system] get made?

A. …Ryan Germany and I went to negotiate with the teams from both Dominion and ES&S....And at the end...Dominion was declared the winner of the bid...

Trial Tr. Vol. 5A at 233:23, 235:5-235:19

The State Dictates When Equipment Can Be Changed

From: Evans, Blake <bevans@sos.ga.gov>
Sent: Wednesday, August 18, 2021 9:08 AM
To: Kimberly Slaughter <Kslaughter@spaldingcounty.com>
Cc: Germany, Ryan <rgermany@sos.ga.gov>; Beck, Sarah <sbeck@sos.ga.gov>; Barnes, Michael <mbarnes@sos.ga.gov>; Thomas, Breanna <bthomas@sos.ga.gov>
Subject: RE: Spalding County Equipment

Kimberly,

I want to follow up our phone conversation with additional details.

First, I am attac
that election eq
authorization fr

Second, please
you have store
equipment to d
explanation to
that point, Mic
determine next
able to certify t
elections. The

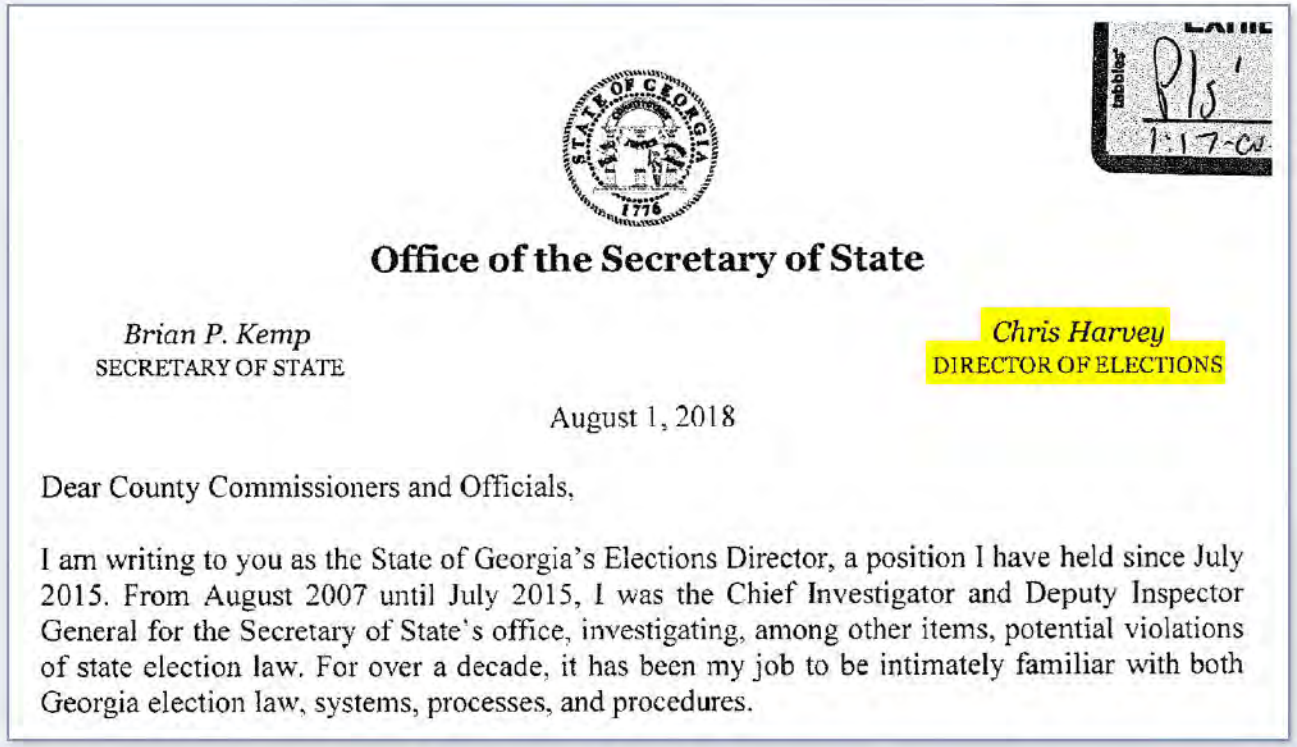
Again, please send your concerns to Michael and me. Once we receive your concerns, we will take the necessary steps on our end to address them.

Blake Evans
Elections Director
Georgia Secretary of State
Direct: 470-312-2777
Cell: 470-701-6901
<image003.jpg>

First, I am attaching to this email State Election Board Rule 183-1-12-.05, which states that election equipment cannot be modified, changed, or upgraded without authorization from the Secretary of State.

Curling Pl. Ex. 194

The State Decides When Counties May Switch to HMPBs



Office of the Secretary of State

Brian P. Kemp
SECRETARY OF STATE

Chris Harvey
DIRECTOR OF ELECTIONS

August 1, 2018

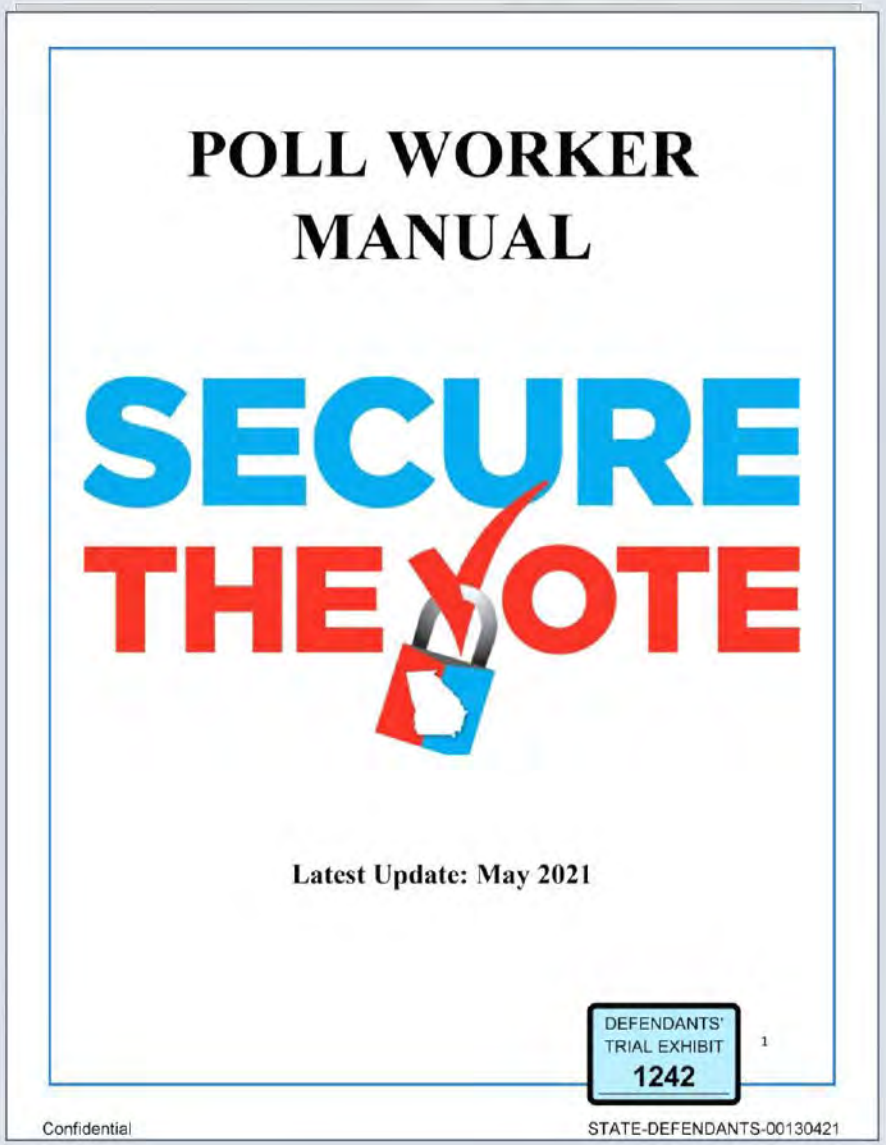
Dear County Commissioners and Officials,

I am writing to you as the State of Georgia's Elections Director, a position I have held since July 2015. From August 2007 until July 2015, I was the Chief Investigator and Deputy Inspector General for the Secretary of State's office, investigating, among other items, potential violations of state election law. For over a decade, it has been my job to be intimately familiar with both Georgia election law, systems, processes, and procedures.

There is a provision of Georgia law that allows the state to move to paper ballots in the event that the machines are "inoperable or unsafe." If we ever reach a point where our office feels that these machines cannot be trusted to accurately deliver election results, we will invoke this statutory provision. To this day, there is no credible evidence that our election process is anything except secure and accurate.

Curling Pl. Ex. 406

The State Dictates How Counties Run Elections



POLL WORKER
MANUAL

SECURE THE VOTE

Latest Update: May 2021

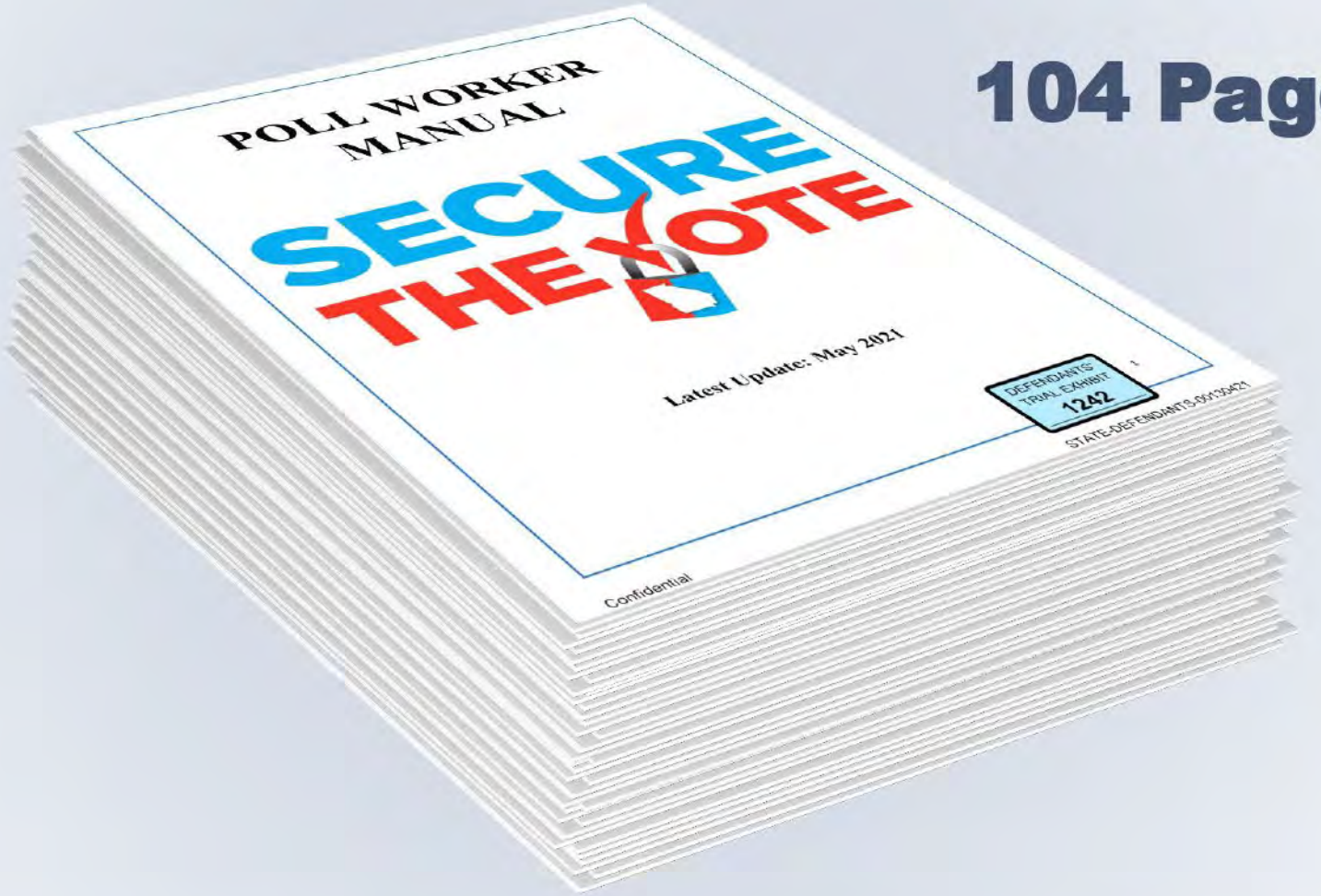
DEFENDANTS' TRIAL EXHIBIT 1242

Confidential

STATE-DEFENDANTS-00130421

Def. Ex. 1242

The State Dictates How Counties Run Elections



104 Pages

Def. Ex. 1242

The State Dictates How Counties Run Elections



Blake Evans

Director of Elections

Q. And we have walked through the poll worker manual that we'll come back to. One of the things this does is explain the steps that the counties are supposed to take to set up an election using the BMDs; right?

A. Correct. It has suggested layouts and that kind of thing.

Trial Tr. Vol. 11 at 186:15-20

The State Controls the Manner of Voting

Message

From: Evans, Blake [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=A09E743410F9426790AE196AA7F44DB8-EVANS, BLAK]
Sent: 3/24/2021 2:22:16 PM
To: Harvey, Chris [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=3f1f603ca29f4e62874ad7949bcd384b-Harvey, Chr]; Thomas, Breanna [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=8e47f66259114436abb067250d58d949-Thomas, Bre]
Subject: Notes for Review
Attachments: Challenges to Not Having a Uniformed Voting System.docx

Challenges to Not Having a Uniformed Voting System

1. The SOS could not have as much control over the process of counties unless the SOS Elections Division was expanded dramatically.
    a. Different systems each require their own unique skillsets and knowledge bases for people to use them. The SOS staff is currently equipped to assist counties with conducting elections using the Dominion system. If the state was using multiple vendors, then the SOS would need to drastically expand its staff to continue providing the same services to counties. Allowing counties to have different systems requires that counties have more autonomy, which makes it more difficult for the SOS to step in if a county is underperforming.

Counties Follow the State's Instructions



Gabriel Sterling

COO

"And, generally speaking, [if] the Secretary of State's Office says to do something, [the counties] generally do it because they don't want to go before the State Election Board for having done something wrong."

Gabriel Sterling 10/12/22 Dep. Tr. at 205:23-206:1

The State Controls the Election System

Topic	Supporting Evidence
State owns and certifies voting equipment	Sterling 10/12/22 Dep. Tr. at 199:9-18
State instructs counties on operation of voting equipment	Michael Barnes • Trial Tr. Vol. 12 at 38:15-39:5 Coalition Pl. Ex. 55
State provides seals for BMDs	James Barnes 7/20/22 Dep. Tr. at 73:2-75:9
State penalized Athens-Clarke County for switching to HMPBs	Matthew Mashburn • Trial Tr. Vol. 6A at 63:7-63:16, 65:16-66:5
Counties rely on State for cybersecurity of equipment	James Barnes 7/20/22 Dep. Tr. at 69:11-18
Counties rely on State to investigate election security issues	James Barnes 7/20/22 Dep. Tr. at 121:15-122:2 Wendell Stone 9/1/22 Dep. Tr. at 133:21-134:2 Blake Evans • Trial Tr. Vol. 11 at 257:9-25 Curling Pl. Ex. 194

Multiple Actors Do Not Defeat Traceability

"The presence of multiple actors in a chain of events that lead to the plaintiff's injury does not mean that traceability is lacking with respect to the conduct of a particular defendant. If the facts alleged are taken as true, and if the validity of Dr. Garcia-Bengochea's claim is assumed, the claimed trafficking injury is fairly traceable to Carnival and Royal Caribbean, even if they had some help from the Cuban government along the way."

Garcia-Bengochea v. Carnival Corp., 57 F.4th 916, 927 (11th Cir. 2023)

Roadmap

Standing

- Injury in fact
  - Cognizable
  - Particularized
  - Non-speculative
- Traceable
- Redressable

Merits

- Causation
- *Anderson-Burdick*
  - Character and magnitude of burden
  - Justifying State interests
- Irreparable Harm
- Balance of the burdens

Legal Standard: *Anderson-Burdick* test

"When deciding whether a state election law violates the due process rights guaranteed by the Fourteenth Amendment, the Court must weigh the character and magnitude of the burden the States rule imposes on those rights against the interests the State contends justify that burden."

Curling v. Raffensperger, 493 F. Supp. 3d 1264, 1272 (N.D. Ga. 2020)

"A law that severely burdens the right to vote must be narrowly drawn to serve a compelling state interest.... 'And even when a law imposes only a slight burden on the right to vote, relevant and legitimate interests of sufficient weight still must justify that burden'"

Curling v. Raffensperger, 493 F. Supp. 3d 1264, 1273 (N.D. Ga. 2020) (quoting *Democratic Exec. Comm. of Fla. v. Lee*, 915 F.3d 1312 (11th Cir. 2019))

Georgia's BMDs Burden Plaintiffs' Right to Vote

There is no "litmus test" for measuring the severity of the burden.

"[B]urdens 'are severe if they go beyond the merely inconvenient'"

Fair Fight Action, Inc. v. Raffensperger, 634 F.Supp.3d 1128, 1209 (N.D. Ga. 2022) (quoting *Crawford v. Marion Cnty. Election Bd.*, 553 U.S. 181, 205 (2008) (Scalia, J., concurring)

Plaintiffs do "not have to await the consummation of the threatened injury to obtain preventative relief"

Fla. State Conf. of NAACP v. Browning, 522 F.3d 1153, 1161 (11th Cir. 2008) (citation omitted)

Plaintiffs have standing upon a finding that there is a "substantial risk" that the harm will occur.

See Clapper v. Amnesty Int'l USA, 568 US 398, 414 (2013)

SOS Falls Far Short of Its Own "Election Security" Standard



Gabriel Sterling

COO

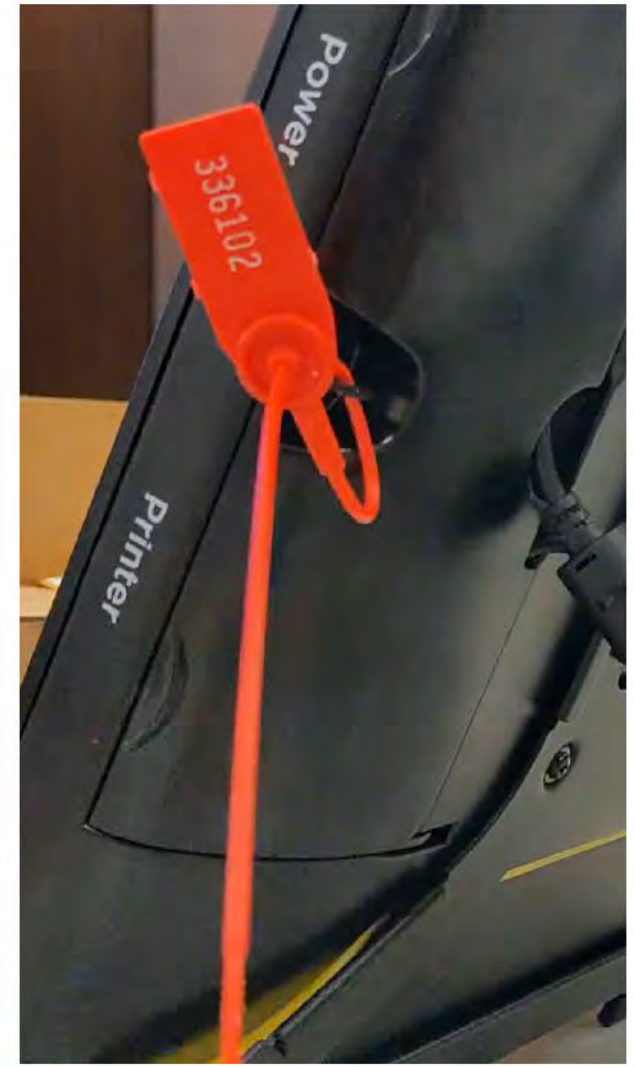
Q. Mr. Sterling, what are some of the factors or aspects that go into what you consider to be election security?

A. Physical security. Chain of custody of the equipment and ballots and ballot paper. The transport of paper from the manufacturer to the counties. Inspections of facilities that hold them. Cybersecurity. Training around cybersecurity. Cyber hygiene…

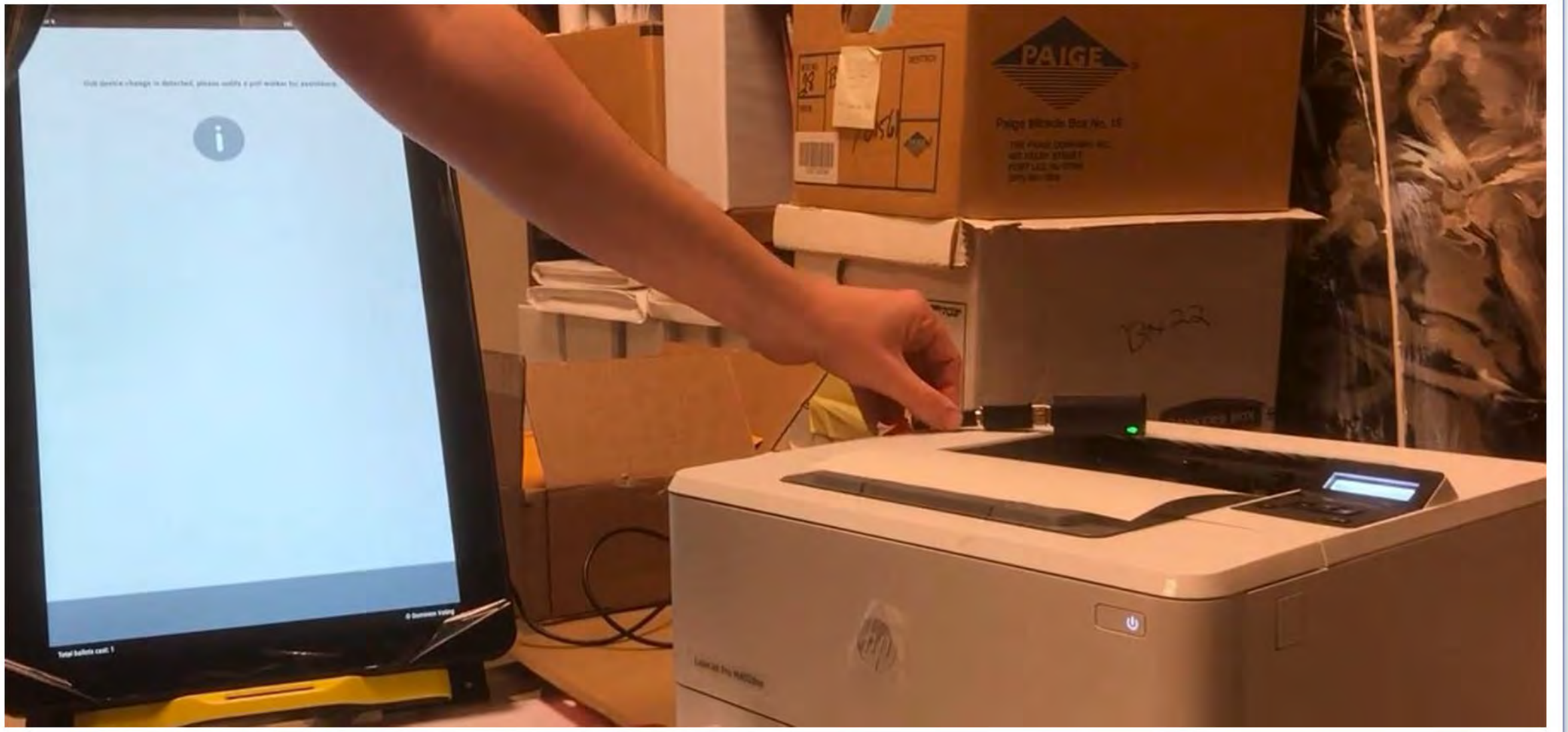
Trial Tr. Vol 15 at 228:2-228:8

Georgia's ICX Can Be Hacked With a Pen

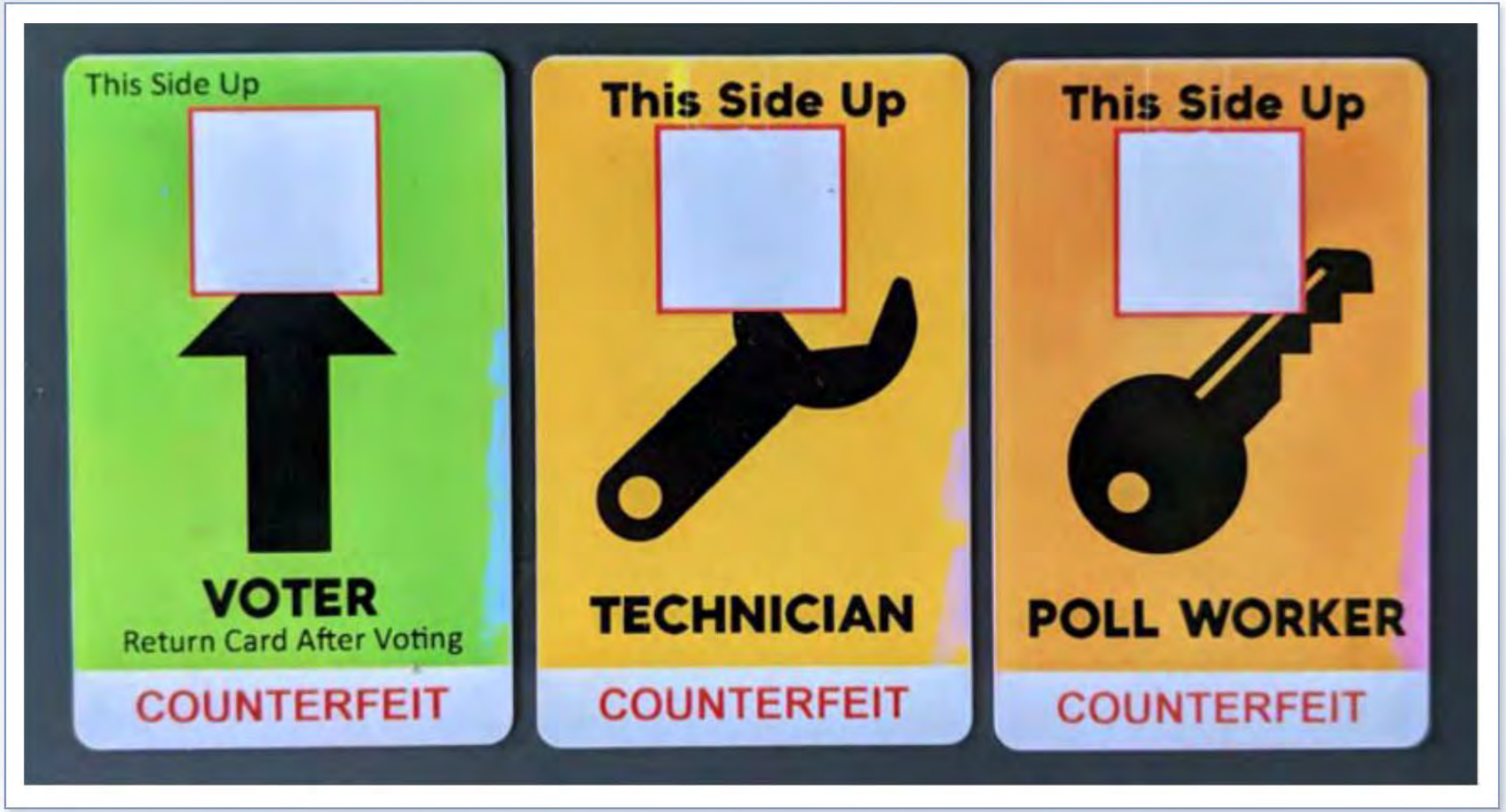




Georgia's ICX Can Be Hacked Via Unsecured Printer Cable



Georgia's ICX Access Cards Can Be Easily Counterfeited



Voter or "Insider" With No Computer Science Background Can Hack Georgia's ICX in Mere Minutes: *Super User Access*



Dr. J. Alex Halderman



Jeff Schoenberg

Q. How long did it take you to teach him?

A. Just a very – handful of tries at most, and he had completely mastered it.

Q. How does the time it took him to implement your hack compare to the time it took him to vote an ordinary ballot?

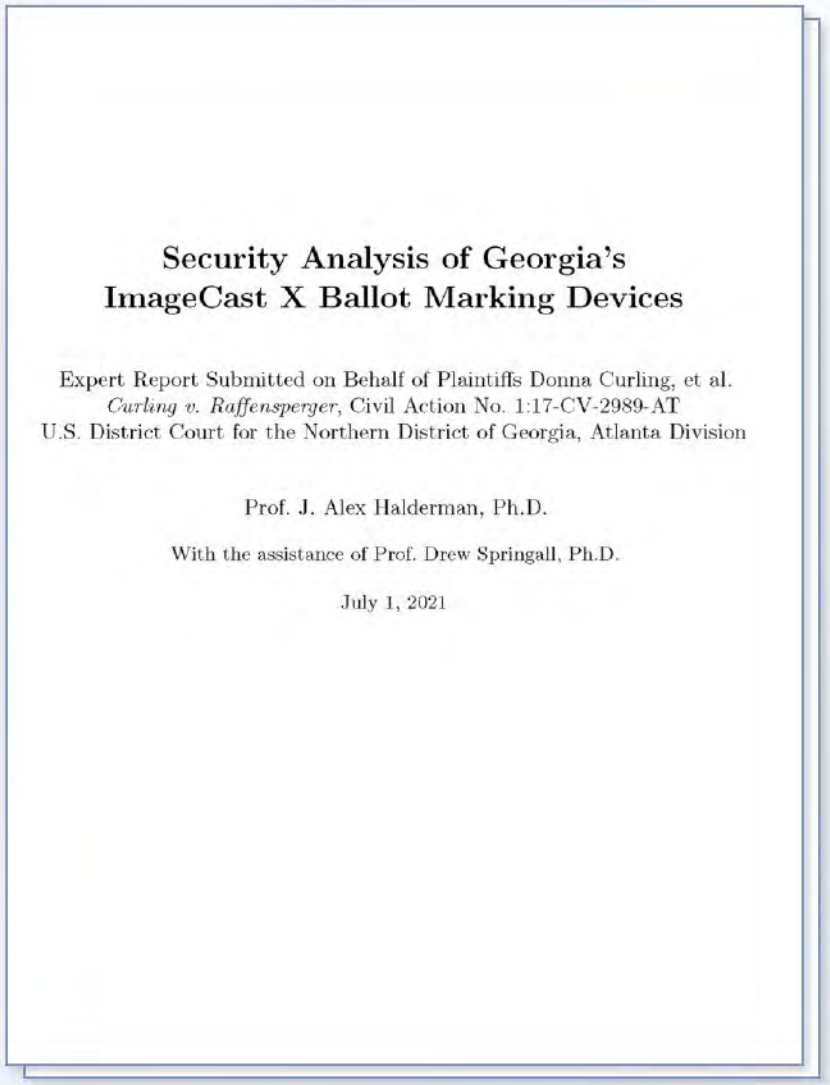
A. He is faster at hacking than voting the ballot, normally.

Trial Tr. Vol. 8A at 121:17-122:3

CISA and Dr. Gilbert Confirmed Dr. Halderman's Findings



Dr. J. Alex Halderman



Security Analysis of Georgia's
ImageCast X Ballot Marking Devices

Expert Report Submitted on Behalf of Plaintiffs Donna Curling, et al.
Curling v. Raffensperger, Civil Action No. 1:17-CV-2989-AT
U.S. District Court for the Northern District of Georgia, Atlanta Division

Prof. J. Alex Halderman, Ph.D.

With the assistance of Prof. Drew Springall, Ph.D.

July 1, 2021



Juan Gilbert

CYBERSECURITY & INFRASTRUCTURE SECURITY AGENCY
CISA

Curling Pl. Ex. 425; Curling Pl. Ex. 89; Juan Gilbert 10/29/21 Dep. Tr. at 218:16-245:22

CISA Confirmed Malware Can Spread via EMS and Media

ICS Advisory (ICSA-22-154-01)

More ICS-CERT Advisories

Vulnerabilities Affecting Dominion Voting Systems ImageCast X

Original release date: June 03, 2022

2.2.1 IMPROPER VERIFICATION OF CRYPTOGRAPHIC SIGNATURE CWE-347

The tested version of ImageCast X does not validate application signatures to a trusted root certificate. Use of a trusted root certificate ensures software installed on a device is traceable to, or verifiable against, a cryptographic key provided by the manufacturer to detect tampering. An attacker could leverage this vulnerability to install malicious code, which could also be spread to other vulnerable ImageCast X devices via removable media.

2.2.5 PATH TRAVERSAL: '../FILEDIR' CWE-24

The tested version of ImageCast X can be manipulated to cause arbitrary code execution by specially crafted election definition files. An attacker could leverage this vulnerability to spread malicious code to ImageCast X devices from the EMS.

Curling Pl. Ex. 89

Georgia's ICX Fails Any Meaningful Security Standard



Dr. J. Alex Halderman

Q. And you didn't quantify what sufficient security is in your report; right?

A. I don't quantify it. But again, Mr. Tyson, I basically hacked into it with a pen yesterday in front of you. I mean, we could talk about – we can talk about sufficient. But I think wherever you are going to reasonably draw the line, this is not on the sufficient side of it.

Trial Tr. Vol. 8A at 41:1-7

Dr. Wenke Lee – SAFE Commission Cybersecurity Expert— Advised State the System Must Be *Software Independent*



Wenke Lee

SAFE Commission
Cybersecurity Expert

Basic Security Requirements for Voting Systems

Wenke Lee, Ph.D.
Secure, Accessible & Fair Elections Commission

October 8, 2018

The most critical cybersecurity risk in a voting system is that votes are not counted accurately as a result of cyberattacks. Therefore, a voting system must be "strong software independent," that is:

- an undetected change or error (including cyberattack) in software cannot cause an **undetectable** change or error in an election outcome; and
- a detected change or error (due to poor software performance or cyberattack) can be corrected without re-running the election.

Defs. Ex. 1224

State's Expert, Dr. Gilbert, Agrees Software Independence Is Needed for Georgia's Voting System



Juan Gilbert

State's Expert

Q. Can you describe to the Court the meaning of the term software independence as it relates to voting systems?

A. Essentially what it says in laymen's terms is an undetectable change in the software, whether it is intentional or error or accidental, cannot cause an undetectable change in the outcome of the election. If that is the case, you are software independent.

Trial Tr. Vol. 14A at 57:5-13

Software Independence *Requires* Voter Verification



Juan Gilbert

State's Expert

Q. And why does voter verification matter?

A. It matters, because without voter verification, we essentially are in a world where ballots could be manipulated and you lose software independence, essentially.

Trial Tr. Vol. 14A at 58:9-58:12

RLAs Do Not Protect the Individual Right to Vote



Ben Adida

State Contractor

Q. If you come to the last paragraph, do you see that you explain the role of the RLA is to ensure that paper ballots that have been verified by the voter are properly counted as the voter saw them?

A. They are.

Trial Tr. Vol. 12 at 245:9-13

Voters Cannot Verify Georgia's ICX Ballots: QR Codes and Inscrutable "Human-Readable" Text



Aileen Nakamura

"So after you finish checking your ballot on the BMD and you have done the, you know, going back and forth and making sure that all the buttons were correct … when you push print, the BMD goes blank … So when the printout comes out … you have nothing to compare it against. And you have to have memorized the entire content and remember how many races there were, see if there is any races missing. I know that I could never catch that."

Trial Tr. Vol. 2 at 56:8-17

Voters Cannot Verify the "Human-Readable" Text



Dr. Philip Stark

Q. Does the scholarship say anything about how much of a burden … it is on voters to have to check BMD-printed ballots for accuracy?

A. The scholarship suggests that is a cognitively non-trivial task that relatively few voters would be able to recall all of their selections or even the name of every contest that they voted in without some kind of written prompt.

Trial Tr. Vol. 9 at 138:7-14

Voters Cannot Verify the "Human-Readable" Text

Political Science
School of Public & International Affairs
UNIVERSITY OF GEORGIA

- **More than 50%** of voters undertook an "**insufficient check**" of their ballots
- **More than 80%** check their ballots for **less than 5 seconds**

Table 1. Voter Behavior Observed at the Voting Booth

Category	Percentage
Did not check	20.0%
Brief glance	31.3%
Short time	29.9%
Long time	18.8%

Curling Pl. Ex. 51

Voters Cannot Verify the "Human-Readable" Text



Dr. Juan Gilbert

University of Florida

State's Retained Expert

18 seconds to verify part of a ballot

For President of the United States (Vote for One) (NP)
Vote for Donald J. Trump (I) (Rep)

For United States Senate (Perdue) (Vote for One) (NP)
Vote for David A. Perdue (I) (Rep)

For United States Senate (Loeffler) - Special (Vote for One) (NP)
Vote for Kelly Loeffler (I) (Rep)

For Public Service Commissioner (Vote for One) (NP)
Vote for Jason Shaw (I) (Rep)

For Public Service Commissioner (Vote for One) (NP)
Vote for Nathan Wilson (Lib)

For U.S. Representative in 117th Congress From the 3rd Congressional District of Georgia (Vote for One) (NP)
Vote for Drew Ferguson (I) (Rep)

For State Senator From 16th District (Vote for One) (NP)
Vote for Marty Harbin (I) (Rep)

For State Representative In the General Assembly From 72nd District (Vote for One) (NP)
Vote for Josh Bonner (I) (Rep)

For Judge of the Probate Court (Vote for One) (NP)
Vote for Ann S. Jackson (I) (Rep)

For Clerk of Superior Court (Vote for One) (NP)
Vote for Sheila Studdard (I) (Rep)

For Sheriff (Vote for One) (NP)
Vote for Chris Pigors (Dem)

For Tax Commissioner (Vote for One) (NP)
Vote for Kristie King (I) (Rep)

For Coroner (Vote for One) (NP)
Vote for W. Bee Huddleston (I) (Rep)

For Solicitor-General (Vote for One) (NP)
Vote for James K. Inagawa (I) (Rep)

For County Commissioner District 1 (Vote for One) (NP)
Vote for Eric K. Maxwell (I) (Rep)

For County Commissioner District 5 (Vote for One) (NP)
Vote for Charles W. Oddo (I) (Rep)

For County Board of Education District 1 (Vote for One) (NP)
Vote for Randy Hough (Rep)

For County Board of Education District 5 (Vote for One) (NP)
Vote for Brian Anderson (I) (Rep)

Constitutional Amendment #1 (NP)
Vote for YES

Constitutional Amendment #2 (NP)
Vote for NO

Statewide Referendum A (NP)
Vote for NO

Fayette Co School District Homestead Exemption - Special (Vote for One) (NP)
Vote for NO

Trial Tr. Vol. 14A at 99:10-23; Curling Pl. Ex. 425 at 15 (July 1, 2021 Halderman Report)

Who Is Responsible For Cybersecurity of Georgia Elections?



Gabriel Sterling

COO

Q. [I]f you have a bad human being who makes decisions that are obviously against the law, that is the same for every system. That threat remains the same regardless.

A. Which is why it is so critically important to have ballots that are verified by the voter; right, sir?

Q. That is one of the reasons, yes.

Trial Tr. Vol. 65:20-66:7

Who Is Responsible For Cybersecurity of Georgia Elections?



Michael Barnes

Director of CES
Deputy Director of Elections

Q. As director of CES, you have no responsibility for cybersecurity; right?

A. That is correct.

Trial Tr. Vol. 12 at 76:23-25

Who Is Responsible For Cybersecurity of Georgia Elections?



Michael Barnes

Director of CES
Deputy Director of Elections

Q. Well, are you, in fact, the person who is responsible for determining what security measures need to be taken to protect the election system, or is that somebody else?

A. That is somebody else.

Q. And, in fact, you're not involved in it at all, you're sort of kept out of it; is that right?

A. Yes, ma'am.

Trial Tr. Vol. 3 at 159:16-22

Who Is Responsible For Cybersecurity of Georgia Elections?



Michael Barnes

Director of CES
Deputy Director of Elections

Q. And so who are the folks who make those decisions?

A. The people that maintain for the Secretary of State's office their infrastructure security measures are the Secretary of State's IT division.

Q. And who there, historically, in the last ten years has been responsible for that?

A. Merritt Beaver has been our CIO. He just recently retired.

Trial Tr. Vol. 3 at 159:23-160:5

Who Is Responsible For Cybersecurity of Georgia Elections?



Merritt Beaver

Former CIO

Q. Are you saying that you had no responsibility for the cybersecurity for the Dominion voting system?

A. We have outsourced that to them. I do not have responsibility for county equipment. Dominion is county equipment.

Q. And who have you outsourced that to?

A. Dominion.

Trial Tr. Vol. 5A at 109:13-19

Who Is Responsible For Cybersecurity of Georgia Elections?



Merritt Beaver

Former CIO

Q. And would it be your practice then that anything that Dominion handled as to security, you would not have been involved in?

A Correct.

Trial Tr. Vol. 5A at 128:9-12

Who Is Responsible For Cybersecurity of Georgia Elections?



David Hamilton

Former CISO

Q. The security of Georgia's voting equipment fell outside the scope of your work?

A. Correct.

* * *

Q. All of that was handled by the vendor Dominion; is that right?

A. Correct.

Trial Tr. Vol. 11 at 125:2-13

Who Is Responsible For Cybersecurity of Georgia Elections?



Gabriel Sterling

COO

Q. …[I]s there somebody – who is that somebody in the State who – in your office or in some other one that is responsible for oversight of security in the election system to the extent that it is the State's responsibility?

A. Again, from my point of view, most of this lies in the county level. For the system itself, we have a contract with Dominion….

Trial Tr. Vol. 5A at 217:25-218:7

Who Is Responsible For Cybersecurity of Georgia Elections?



Blake Evans

Director of Elections

Q. But the manual that was provided to Georgia with the machines by Dominion recommends not to do it the way you're doing; right?

A. Correct.

Q. So you disagree with Dominion on how this – at least this security measure should be handled; right?

A. For our state, yes.

Trial Tr. Vol. 13 at 99:7-23

Who Is Responsible For Cybersecurity of Georgia Elections?



Blake Evans

Director of Elections

Q. And you don't – who made that decision?

A. I know that we have discussed it internally, and so, collectively, that is the decision that has – that we have come to.

Q. And you have not identified anyone with cybersecurity training as having been involved in that decision, have you, sir?

A. I do not remember the – anybody with that specific training being involved.

Trial Tr. Vol. 13 at 99:24-100:7

Who Is Responsible For Cybersecurity of Georgia Elections?



James Barnes

Former Coffee County
Election Supervisor

Q. Did you ever have any communications with any Dominion techs, folks who come out and help with the equipment and machines?

A. No, we didn't have a Dominion tech assigned to us.

Q. So any time you have an issue, performance and operation issue with any of the election equipment, you go to CES for that?

A. Yes, that's correct.

James Barnes 7/20/22 Dep. Tr. at 78:7-15

Who Is Responsible For Cybersecurity of Georgia Elections?



Michael Barnes

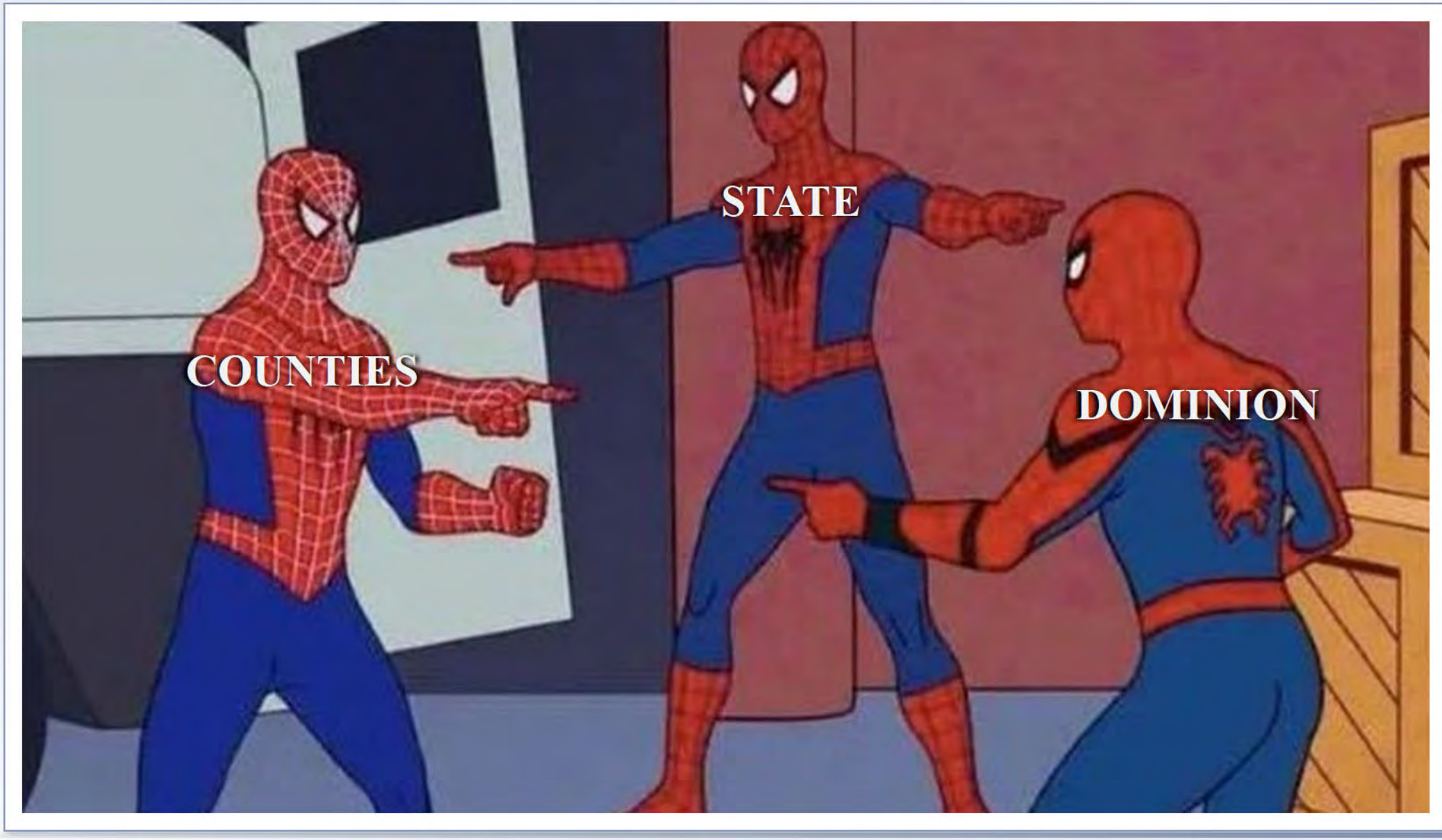
Director of CES
Deputy Director of Elections

Q. As director of CES, you have no responsibility for cybersecurity; right?

A. That is correct.

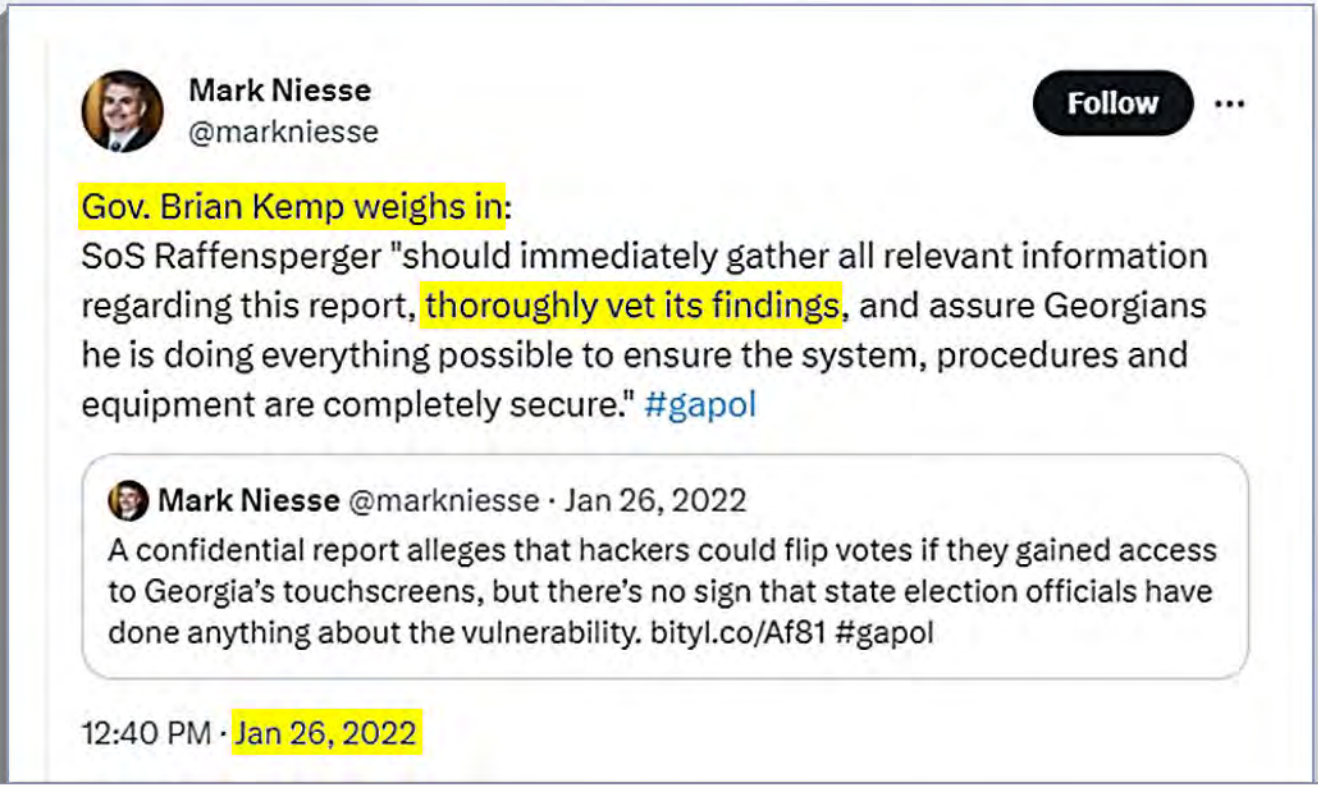
Trial Tr. Vol. 12 at 76:23-25

Who Is Responsible For Cybersecurity of Georgia Elections?



SOS Is Indifferent and Reckless Toward Election Security





January 27th, 2022

(Atlanta) – Today, Georgia Secretary of State Brad Raffensperger calls on J. Alex Halderman to ask the judge to publicly release his "secret report" and pre-election testimony that is generating misleading media articles about the Dominion voting equipment used in Georgia.

Curling Pl. Ex. 85

SOS Is Indifferent and Reckless Toward Election Security



Ryan Germany

Former General Counsel

Q. [A]s of January '22 when this – when Secretary Raffensperger made the decision to call for the release of this report, the only person who in his office could have advised him having read it would be you without any computer science training; is that right?

* * *

A. I would have been the only person who read the complete report. There are other people who, of course, had read media accounts of what was in the report.

Trial Tr. Vol. 4 at 127:5-22

SOS CIO Calls SOS Release of Halderman Report "Ignorant of Cybersecurity"



Merritt Beaver

Former CIO

Q. Do you have a view from a cybersecurity perspective on whether this [Halderman] report, which purports to identify numerous vulnerabilities with the voting system, whether it should be released publicly?

A. Anything that can adversely [a]ffect security, in my opinion, shouldn't be released. You are only reducing Georgia's ability to secure their equipment and systems whenever security information about an existing system is released. In my mind, it's bad practice and just, you know, being ignorant of cybersecurity.

Merritt Beaver 3/10/22 Dep. Tr. at 379:4-15

State Experts Keep Disappearing....



Dr. Wenke Lee



Dr. Michael Shamos



Teresa Payton



Jack Cobb

SOS Disregarded Advice of Computer Science Professionals


Dr. J. Alex Halderman


Kevin Skoglund


Dr. Phillip Stark


Dr. Andrew Appel


Dr. Richard DeMillo


Dr. Wenke Lee


Teresa Payton


Dr. Michael Shamos


Dr. Ben Adida


Dr. Juan Gilbert


David Hamilton


Merritt Beaver

DOMINION VOTING

So, Who's Making the Decisions?


Brad Raffensperger


Gabriel Sterling


Ryan Germany


Blake Evans


Chris Harvey


Michael Barnes

State Has Not Maintained Chain of Custody



Michael Barnes

Director of CES
Deputy Director

Q. [Y]ou did not have any chain of custody paperwork for the removal of the EMS and the ICC from Coffee County in 2021; correct?

A. At that time, we did not….

Trial Tr. Vol. 3 at 144:10-13

State Has Not Maintained Chain of Custody



James Barnes

Q. The County wouldn't keep a copy of their own chain of custody documents so that there's a record of replacing the ICC and the EMS?

A. I'm not aware of any documentation about it being taken, but then again, it was the state employees coming to get it, so...

Q. And you don't recall them handing you paperwork to sign?

A. I don't recall, no.

James Barnes 7/20/22 Dep. Tr. at 132:8-16

State Has Not Maintained Chain of Custody



Ryan Germany

Former General Counsel

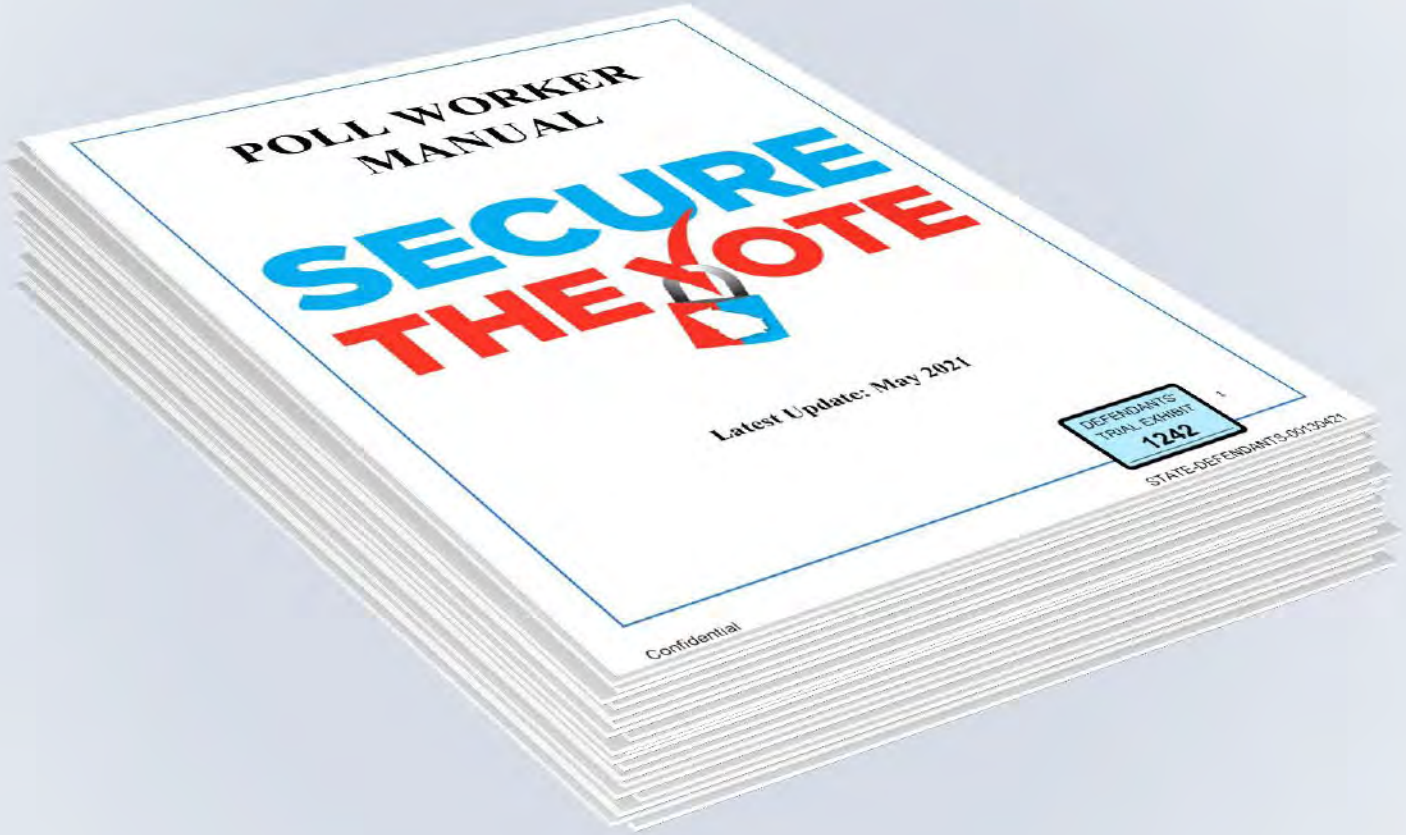
Q. You testified that Chris Bellew going down to potentially replace the EMS server was something that CES responds to regularly; right?

* * *

A. …[F]rom what I have learned from Michael [Barnes], they do, as a matter of course, bring a spare server with them on these types of calls just so they can make sure they leave the county with a working server.

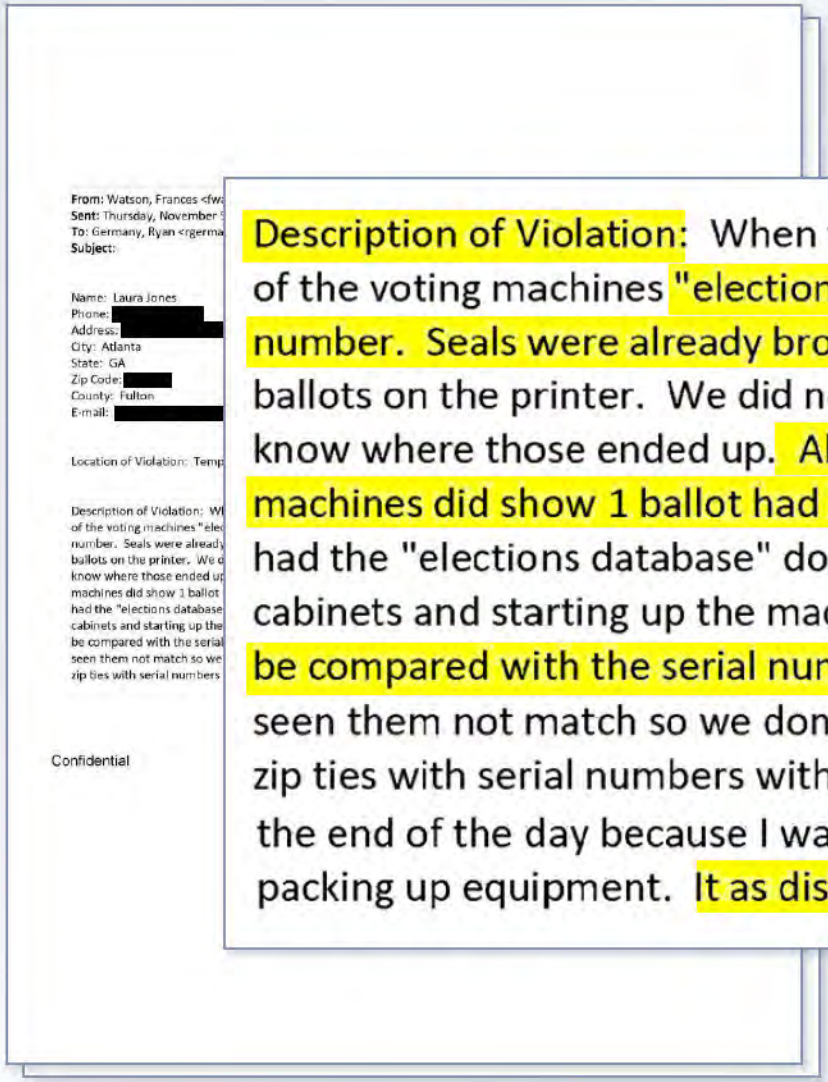
Trial Tr. Vol. 4 at 28:8-29:2

State Training Is Grossly Inadequate For Election Security



Defs. Ex. 1242

State Training Is Grossly Inadequate For Election Security


From: Watson, Frances <fw
Sent: Thursday, November
To: Germany, Ryan <rgerma
Subject:

Name: Laura Jones
Phone: [redacted]
Address: [redacted]
City: Atlanta
State: GA
Zip Code: [redacted]
County: Fulton
E-mail: [redacted]

Location of Violation: Temp

Description of Violation: W
of the voting machines "ele
number. Seals were already
ballots on the printer. We d
know where those ended up
machines did show 1 ballot
had the "elections database
cabinets and starting up the
be compared with the serial
seen them not match so we
zip ties with serial numbers

Confidential

Description of Violation: When we opened the large cabinets containing the voting machines, we discovered that most of the voting machines "election database" doors were wide open and not secured with a zip tie with serial number. Seals were already broken or a zip tie was put on but was not put through the door. Also, we found two paper ballots on the printer. We did not scan these ballots. Our Poll Manager, Kaira Bell, put these on her clipboard. I don't know where those ended up. Also, all of the machines are supposed to show "0" ballots cast upon opening. One of our machines did show 1 ballot had been cast on it. We did not use this machine, but we did use all the other machines that had the "elections database" door open. Last but not least, we did not follow the protocol for opening the large cabinets and starting up the machines. In training, I was instructed that all serial numbers on zip ties on doors were to be compared with the serial numbers written down on a form. We did not do this. My Poll Manager said, "I've never seen them not match so we don't need to do this. I can always check it at the end of the day." So, we clipped off all the zip ties with serial numbers without checking them for a match. I also know that the Poll Manager did not check them at the end of the day because I was given the job of putting zip ties on to close up the machines and the Manager was packing up equipment. It as disheartening not to see the security measures followed. Laura Jones [redacted]

Curling Pl. Ex. 100

State Training Is Grossly Inadequate For Election Security

On Jul 9, 2020, at 1:52 PM, "clinchelections@clinchcountyga.gov" <clinchelections@clinchcountyga.gov> wrote:

EXTERNAL EMAIL: Do not click any links or open any attachments unless you trust the sender and know the content is safe.

<image001.gif>

Michael,

My tech is doing L&A testing and discovered that 2 of our BMDs Election Data Seals were missing, (poll workers). Do we need to send these back to be resealed ? If so my regional tech has offered to take them back to Atlanta and drop them off on his way back home. Please let me know what we need to do.

Laina Ballance
Clinch County Elections Supervisor
25 Court Sq. Suite A
Homerville Ga. 31634
912-487-3656 Office
912-487-5162 Fax
clinchelections@clinchcountyga.gov

State Training Is Grossly Inadequate For Election Security

Message

From: Barnes, Michael [/O=SOS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=D4F658ED134C4A6D91A27F28A0572934-BARNES, MICHAEL]
Sent: 7/9/2020 5:54:46 PM
To: clinchelections@clinchcountyga.gov
Subject: Re: Data Seals

No, just please put your own seal on the equipment and document the seal number attached.

Sent from my iPhone
Michael Barnes
470-316-2884

On Jul 9, 20
<clinchelect

EXTER
the cont

<image
Michae
My tec
were missing, (poll workers). Do we need to send these back to be resealed ? If so my regional tech has offered to take them back to Atlanta and drop them off on his way back home. Please let me know what we need to do.

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clinchelections@clinchcountyga.gov



Michael Barnes

Curling Pl. Ex. 104

Cathy Latham Opened the Door to Georgia's Voting System



Curling Pl. Ex. 359

Unauthorized Access Is a "Huge Security Breach"

From: Germany, Ryan <rgermany@sos.ga.gov>
Sent: Tuesday, December 22, 2020 2:59:04 PM
To: Barnes, Michael <mbarnes@sos.ga.gov>; Harvey, Chris <wharvey@sos.ga.gov>; Gabe_ Sterling <sterlinginnovative@gmail.com>; Evans, Blake <bevans@sos.ga.gov>; Fuchs, Jordan <jfuchs@sos.ga.gov>
Subject: RE: Butts County

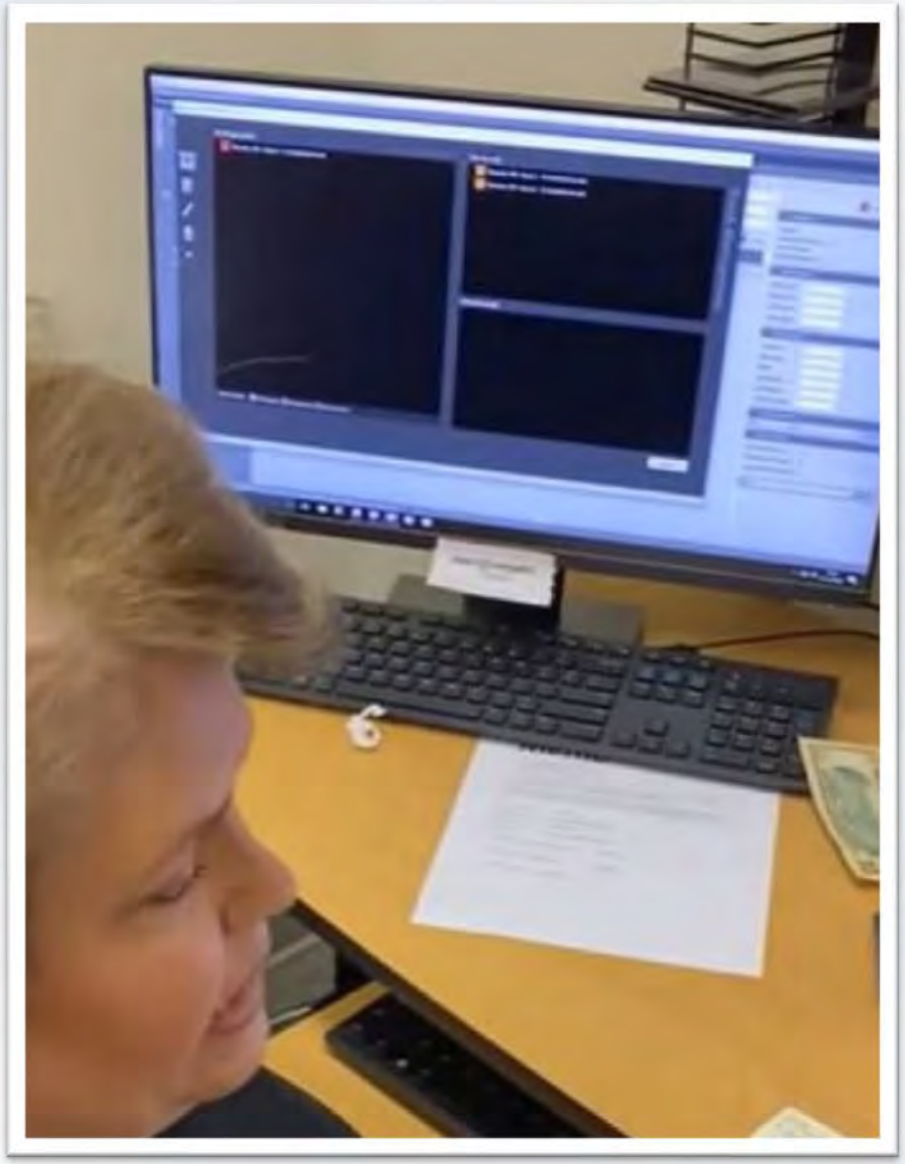
This would be against the law. They are not allowed to give an unauthorized person access to their EMS server. That would be a huge security breach.

Butts County just called me. Tina is saying that Senator Burt Jones has talked to her election board chairman and wants to bring a "forensic analyst" to inspect their election management computer. I told Tina to immediately contact Chris to make him aware of this effort.

Michael Barnes
Director – Center for Election Systems

Curling Pl. Ex. 632

Unauthorized Access Is a "Huge Security Breach"



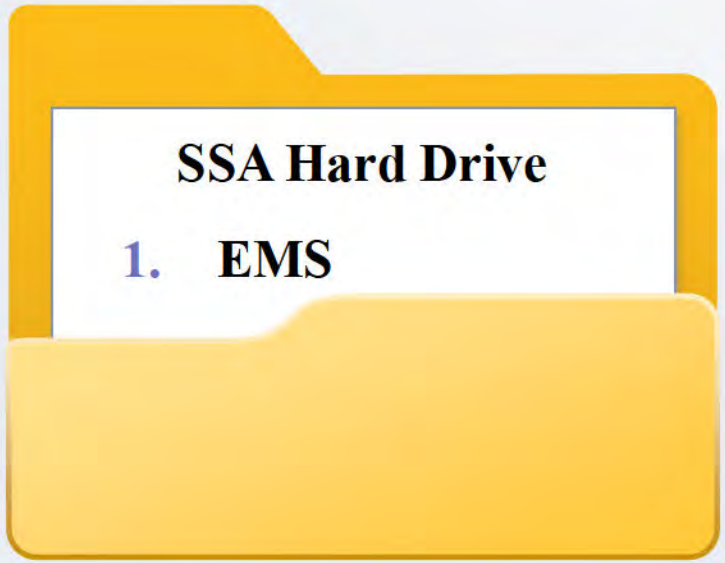


Curling Pl. Exs. 37, 493

Sullivan Strickler Forensic Hard Drive Contents

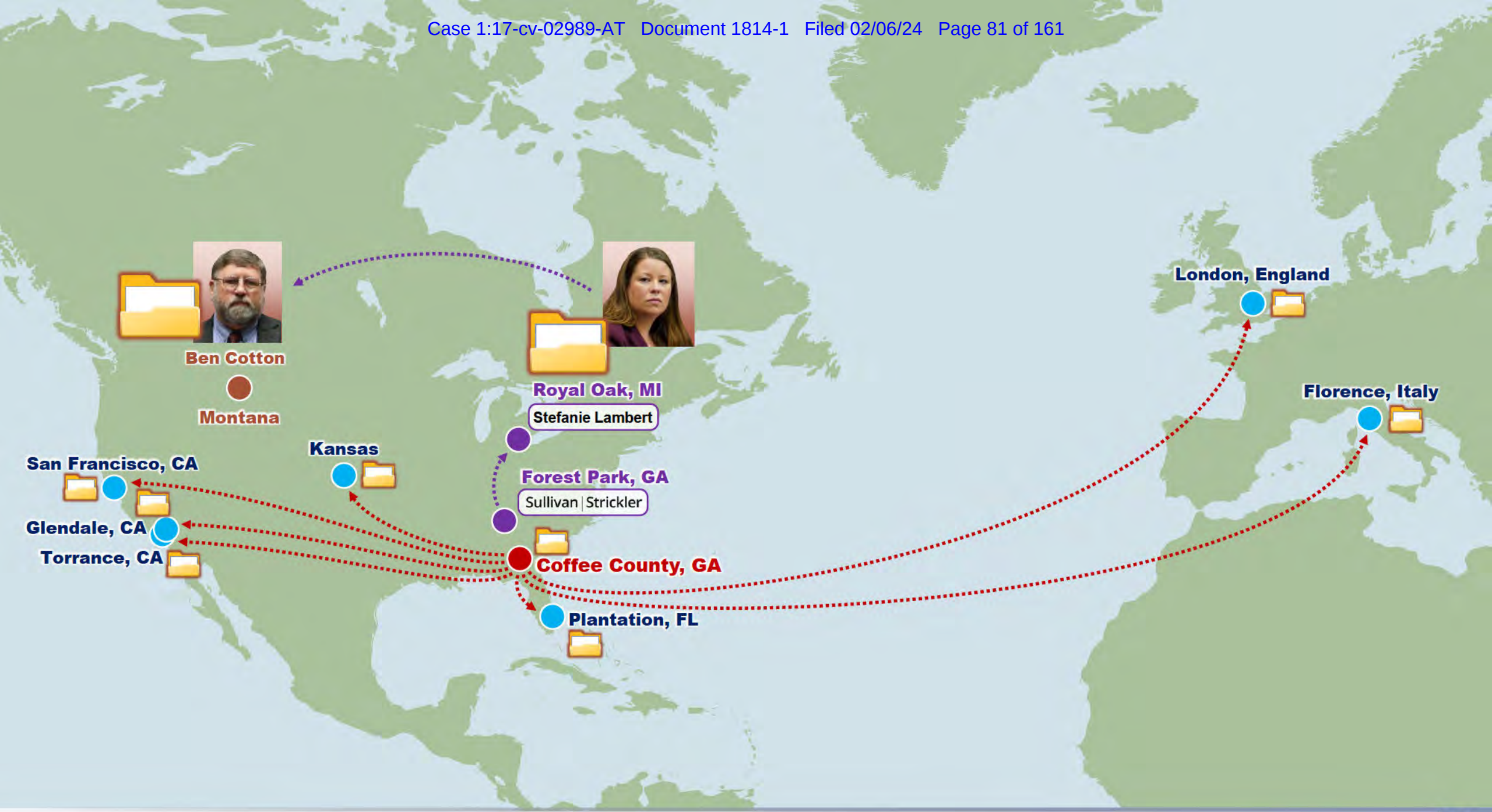
1. Coffee County EMS
2. Coffee County ICC
3. 18 CompactFlash cards
4. 7 USB drives, including ICX install file
5. Mobile Ballot Printing Laptop
6. Partial data from 20 Poll Pads

Curling Ex. 471 at 16-19


SSA Hard Drive
1. EMS


SullivanStrickler


ShareFile
SullivanStrickler
Cyber Ninjas


Ben Cotton
Montana
Royal Oak, MI
Stefanie Lambert
London, England
Florence, Italy
Kansas
San Francisco, CA
Forest Park, GA
Sullivan | Strickler
Glendale, CA
Torrance, CA
Coffee County, GA
Plantation, FL



Kevin Skoglund

Uncontrolled Distribution



Ben Cotton

Montana



Royal Oak, MI

Stefanie Lambert

Kansas

San Francisco, CA

Forest Park, GA

Sullivan | Strickler

Glendale, CA

Torrance, CA

Coffee County, GA

Plantation, FL

London, England

Florence, Italy

State Ignored—And Then Obscured—Coffee County Concerns

Topic	Supporting Evidence
State is responsible for elections investigations	Curling Pl. Ex. 597 Frances Watson • Trial Tr. Vol. 7B at 16:22-25
State investigated suspected remote access of one Fulton County laptop	Curling Pl. Exs. 254, 294
State investigated "I bet I can hack your electronic voting machines" email from "random guy"	Curling Pl. Ex. 587 Ryan Germany • Trial Tr. Vol. 4 at 79:2-80:12
State investigated Spalding County plan to hire SullivanStrickler to image equipment	Curling Pl. Ex. 194 Blake Evans • Trial Tr. Vol. 11 at 257:9-25 Michael Barnes • Trial Tr. Vol. 12 at 47:6-25
State investigated and replaced Treutlen County EMS after Treutlen hired Misty Hampton	Michael Barnes • Trial Tr. Vol. 12 at 134:3-7

November 2020:
Misty Hampton YouTube Video.
PX495

December 2020: Open Coffee County investigation re certification and YouTube video / Chaney identified as dishonest.
PX521, PX522, PX493

December 2020:
Notice of attempted forensic image of equipment in Butts County.
PX 632

Circa Early 2021:
Joseph Kirk alerts SOS to unauthorized access request in Bartow County.
Vol. 13 183:19-184:13

January 2, 2021:
Trump asks SOS to "find" votes.

January 26, 2021:
Agent Blanchard encounters Jeffrey Lenberg in Coffee County elections office connected to EMS server room.
PX493

February 2021:
SOS hires Robert Sinners after he coordinates Coffee County lawsuit and potential contact on 1/7/21.
Vol. 3, 50:8-10

February 25, 2021:
Misty Hampton and Jill Ridlehoover forced to resign for allegedly falsifying time sheets.
PX125

April 2021:
James Barnes contacts CES about issues accessing EMS.
July 20, 2022 Depo, 106: 13-22

May 6, 2021:
Dominion sends notice to counties warning about firms seeking to conduct "forensic audits."
PX143

May 6, 2021
James Barnes reports finding a Cyber Ninjas card on Misty Hampton's desk.
PX78

May 11, 2021:
Frances Watson and Michael Barnes look into Chris Harvey's "worst fear": potential unauthorized access to voting equipment, on "simultaneous tracks."
Vol. 7B 52:15-18

May 11, 2021:
Blanchard claims brief outreach to James Barnes who denies any SOS outreach. No follow-up by SOS.
PX145

June 8, 2021:
CES replaces EMS and ICC in Coffee County and puts them in a closet. ICC worked fine. Concerned about potential "compromise."
Vol. 12 117:10-15

July 2021:
Plaintiffs serve interrogatory regarding potential unauthorized access.
PX579

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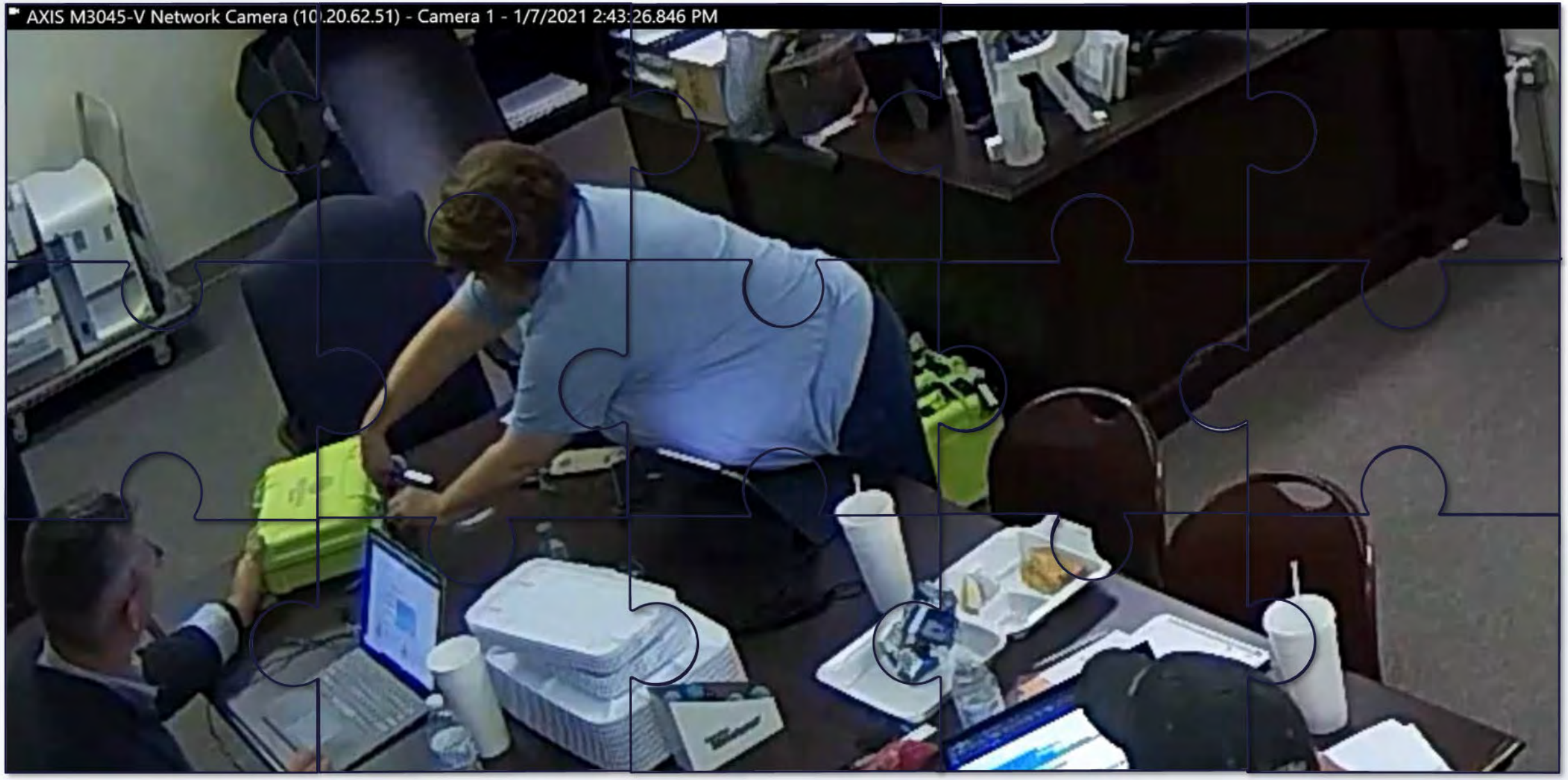
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AXIS M3045-V Network Camera (10.20.62.51) - Camera 1 - 1/7/2021 2:43:26.846 PM


AXIS M3045-V Network Camera (10.20.62.51) - Camera 1 - 1/7/2021 2:43:26.846 PM

SOS Declared Coffee County Breaches "Didn't Happen"

April 29, 2022



Gabriel Sterling



Curling Pl. Ex. 493

SOS Did Not Actually Investigate Coffee County Breaches

April 2022



Joshua Blanchard

Investigator

Q. You didn't have enough – you didn't have enough information to do much of an investigation in April of [] 2022.

A. I was told to hold off moving forward with an investigation.

Q. And who told you to hold off?

A. That came from our supervisors. It would have been Glenn Archie and above.

Trial Tr. Vol. 6A at 234:12-19

SOS Did Not Actually Investigate Coffee County Breaches



Joshua Blanchard

Investigator

Q. So is it fair to say that you were never actively investigating the Coffee County breaches?

A. Not the actual – no, sir.

Q. That is not a true statement?

A. No. No, sir. I never investigated the breaches -- actively investigated.

Q. Okay. Thanks. And to your knowledge, did anyone else in the Secretary of State's office actively investigate the Coffee County 2021 breaches?

A. Not that I'm aware of.

Trial Tr. Vol .6A at 261:2-15

Roadmap

Standing

- Injury in fact
  - Cognizable
  - Particularized
  - Non-speculative
- Traceable
- Redressable

Merits

- Causation
- *Anderson-Burdick*
  - Character and magnitude of burden
  - Justifying State interests
- Irreparable Harm
- Balance of the burdens

The Coffee County Breaches Greatly Increased Risk



Kevin Skoglund

"[I]f you have a virtual machine, it is like … being at the keyboard of that computer wherever it is. … You can, you know, experiment with the features, see what the menu options are, see what the settings are. And then you can also do investigations on how to overcome defenses that the machine has or ways that you might manipulate the machine. It becomes sort of like a little laboratory."

Trial Tr. Vol. 9 at 24:19-25:16

The Coffee County Breaches Greatly Increased Risk



Merritt Beaver

Former CIO

"I think anytime you reveal any security information about an organization, you give a road map to bad actors."

Merritt Beaver 2/2/22 Dep. Tr. at 192:16-193:6

The Coffee County Breaches Greatly Increased Risk



Merritt Beaver

Former CIO

Q. Can you explain what are the reasons that election software is not released to the public? I think you've already touched on this quite a bit in your earlier testimony?

A. It's pretty obvious. You don't expose your – basically your system to the public because they – basically you're giving them a road map to how to basically get in and access the system. So the best defense of any system is keeping everything secret about that system.

Merritt Beaver 3/10/22 Dep. Tr. at 417:6-15

Coffee County Actors Took the "Keys to the Software Kingdom" for Georgia Voting System *Three Years Ago*

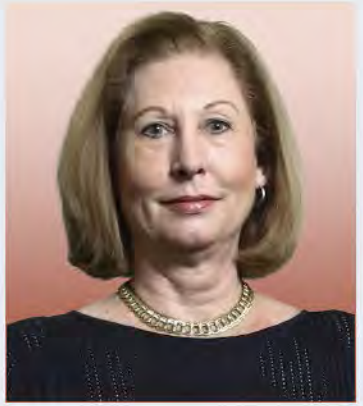


Russell David Willard

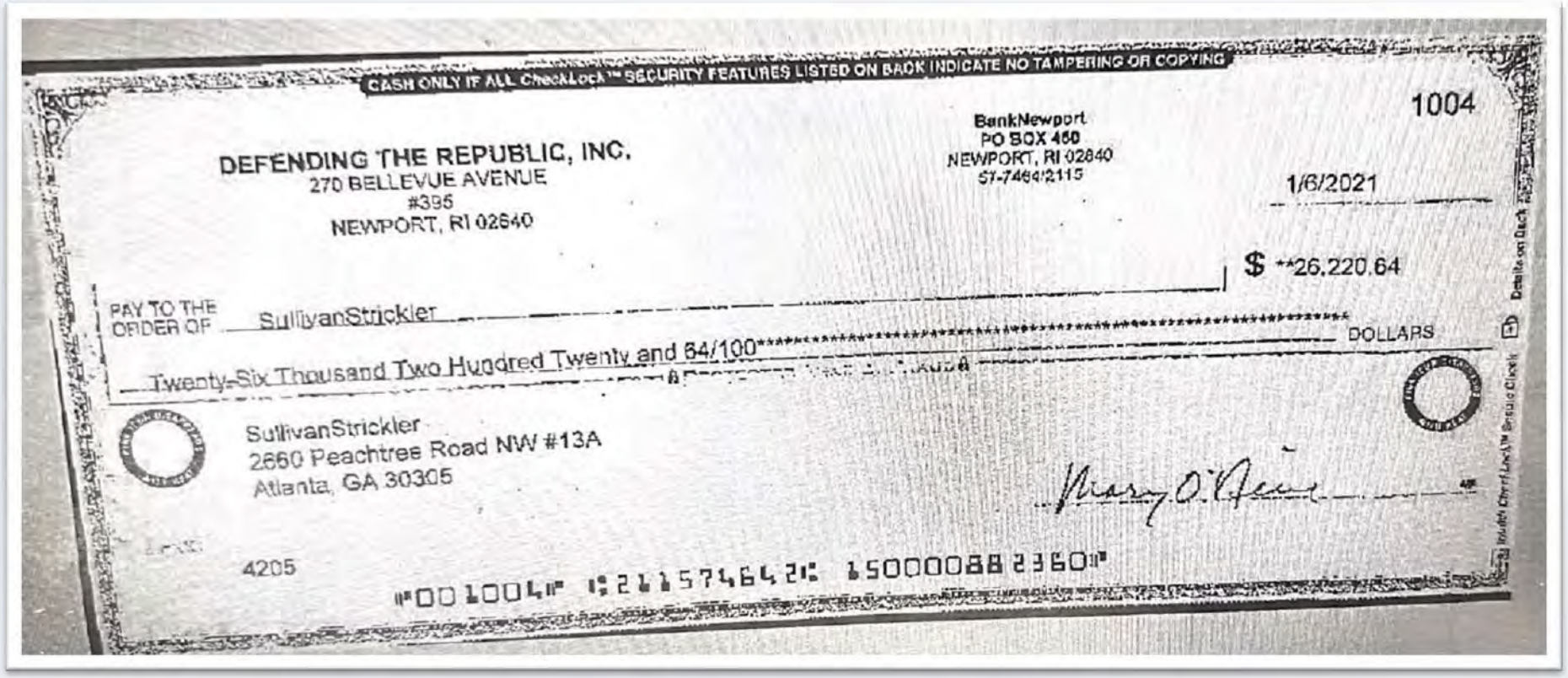
Attorney for the State

"It poses a security risk for Ms. Powell's minions to go in and image everything, download the software, and figure out for future elections a way to hack in so that their preferred candidates can win … [Y]ou cannot allow … a third party to come in and get the proverbial keys to the software kingdom."

"Ms. Powell's Minions" Effectuated Coffee County Breaches



Sidney Powell



CASH ONLY IF ALL CheckLock™ SECURITY FEATURES LISTED ON BACK INDICATE NO TAMPERING OR COPYING

1004

DEFENDING THE REPUBLIC, INC.
270 BELLEVUE AVENUE
#395
NEWPORT, RI 02840

BankNewport
PO BOX 450
NEWPORT, RI 02840
57-7464/2115

1/6/2021

PAY TO THE ORDER OF SullivanStrickler

$ **26,220.64

Twenty-Six Thousand Two Hundred Twenty and 64/100********** DOLLARS

SullivanStrickler
2660 Peachtree Road NW #13A
Atlanta, GA 30305

Mary O'Rourke

4205

"001004" 1:261574642: 1500008B2360"

Trial Tr. Vol. 6A at 119:5-6; Curling Pl. Ex. 349

Effective Detection by Voters Is Extremely Unlikely



Dr. Andrew Appel

Plaintiff's Expert

"And the first consequence is that if you multiply five percent times seven percent, you find that one out of every 300 voters approximately will notice and perhaps inform the poll worker that what is on the paper is not what they selected on the screen"

*** * ***

"[I]t is inappropriate for an election official to, you know, cancel the results of an election because a few voters indicate that what they read on the paper is not what was marked on the screen."

Trial Tr. Vol. 16B at 180:17-182:2

Effective Detection by Voters Is Extremely Unlikely



Dr. Andrew Appel

Plaintiff's Expert

"So even though it may be the case that some voters did detect the hack, they have no way of proving it to anyone and there is no consequence, there is no way to correct the outcome of the election."

* * *

"And a risk-limiting audit or any inspection of the paper ballots will not correct it either. Because the fraudulent votes are already marked onto the paper ballots, except for those small portion of voters who are careful enough to inspect their ballots."

Trial Tr. Vol. 16B at 182:3-10

Detection May Be The Goal — To Cause Chaos and Disenfranchise Voters



Dr. J. Alex Halderman

"What keeps me up at night is, what if some fanatics on the internet, you know, recruit a few dozen people to go around a state like Georgia on election day and program BMDs even in a simple way that will really visibly swap votes? … It would be chaos, and it would take tremendous work to figure out the full scope of that chaos."

Trial Tr. Vol. 7B at 217:17-218:1

Detection May Be The Goal – To Cause Chaos and Disenfranchise Voters



Gabriel Sterling
COO

Q. Do you agree that the main thing that a bad actor may want to do to affect elections in Georgia is simply to just cause chaos?

A. That would be a – if you're – it depends on the intentions of a bad actor. A chaos actor would be something that could be done, yes. That could be a goal.

Trial Tr. Vol. 5A at 187:12-17

Detection Is Not Enough—Voting System Must Recover



Dr. Ben Adida

State Contractor

"[T]he final safety net of a good voting system is one where even if the computers were infected with malware, we would have a way to detect and recover."

Trial Tr. Vol. 12 at 285:24-286:2

Georgia Is "Unprepared" to Protect the Right to Vote



Gabriel Sterling

COO

"[N]ormally, they would just take [the BMD] out of service…. [and if that happens on 20 BMDs] [p]ull those 20 BMDs, and then you would probably have to do a deeper investigation....

What would happen then, if we saw a lot of that happening and all over the place or in a particular county, at that point you may move to other emergency procedures which would be use, unfortunately, hand-marked paper ballots...."

Trial Tr. Vol. 5A at 201:19-207:14

Georgia Is "Unprepared" to Protect the Right to Vote



Gabriel Sterling

COO

Q. Is Georgia prepared or unprepared to use the legally mandated hand-marked paper ballot backup system if only the BMDs and printers cannot be used on election day 2024 for any reason?

A. I would refer to my earlier answer, but basically . . . Given the wild hypothetical, no. I don't believe any state could be.

Q. Okay. Thank you. Sorry. The no is prepared or unprepared?

A. . . . No. There is – given the hypothetical with everything breaking down, unless there was – with the number – it would depend on what time of day. I mean, there's too many hypotheticals there. I'm going to say no in general because anything I answer you'll have an answer to. So that is – I am going to sit with that for right now.

Q. Okay. So unprepared.

A. Correct.

Trial Tr. Vol. 16B at 117:17-118:13

Georgia Is "Unprepared" to Protect the Right to Vote



Matthew Mashburn

Former Chair
State Election Board

Q. That is the emergency procedure that the board has in place; correct?

A. That the Court has in place?

Q. That the board has in place.

A. The board – it is available in an emergency situation, but the state of Georgia is not prepared to handle 8 million paper ballots. We don't have the infrastructure. We haven't done the testing. We haven't put it in place. Georgia is nowhere near ready for that.

Trial Tr. Vol. 6A at 97:3-11

Legal Standard: Irreparable Harm

"Courts routinely deem restrictions on fundamental voting rights irreparable injury . . . [because] once the election occurs, there can be no do-over and no redress. The injury to these voters is real and completely irreparable if nothing is done to enjoin [the] law."

League of Women Voters of N.C. v. North Carolina, 769 F.3d 224, 247 (4th Cir. 2014)

The Inevitable Result Is Chaos



Dr. Kevin Skoglund

Plaintiff's Expert

"[Northampton county] said that two precincts of 156 notified them of the problem. . . And keep in mind, this was a countywide error that all precincts were experiencing on every single ballot, not an intermittent issue."

Trial Tr. Vol. 16B at 157:19-158:4

The Inevitable Result Is Chaos



Dr. Kevin Skoglund

Plaintiff's Expert

"So the way that some of the polling places had to deal with the problem, some shut down voting entirely. And we don't know if those voters returned or not. Some were told to vote against their preference so that the printed ballot would be correct. That turned out to be tragic because it was later determined that the issue was that the barcodes were correct and the human text was wrong. So those voters voted a vote against their preference."

Trial Tr. Vol. 16B at 158:14-21

This Impending Disenfranchisement Is Unconstitutional

"For the purposes of this case, we can assume that if excessive wait times result in many voters leaving their polling places before voting, and doing so with a likelihood that they will not return to vote, that may well rise to the level of a severe burden."

Curling v. Raffensperger, 50 F.4th 1114, 1123 (11th Cir. 2022)

Roadmap

Standing

- Injury in fact
  - Cognizable
  - Particularized
  - Non-speculative
- Traceable
- Redressable

Merits

- Causation
- *Anderson-Burdick*
  - Character and magnitude of burden
  - Justifying State interests
- Irreparable Harm
- Balance of the burdens

Plaintiffs' Injury Can Be Redressed By the State

The injury, or threat of injury, must be "likely...redressed by a favorable decision."

Lujan v. Defs. of Wildlife, 504 U.S. 555, 561 (1992)

"Significantly, for standing purposes the relief sought need not be complete."

Garcia-Bengochea v. Carnival Corp., 57 F.4th 916, 927 (11th Cir. 2023)

Courts Have Broad Power to Remedy Constitutional Violations

"Federal courts 'possess broad discretion to fashion an equitable remedy.'"

Black Warrior Riverkeeper, Inc. v. U.S. Army Corps of Engineers, 781 F.3d 1271, 1290 (11th Cir. 2015)

"The power of a court of equity to modify a decree of injunctive relief is long-established, broad, and flexible."

Brown v. Plata, 563 U.S. 493, 542 (2011)

"When federal law is at issue and the public interest is involved, a federal court's equitable powers assume an even broader and more flexible character than when only a private controversy is at stake."

Kansas v. Nebraska, 574 U.S. 445, 456 (2015)

"Once a right and a violation have been shown, the scope of a district court's equitable powers to remedy past wrongs is broad, for breadth and flexibility are inherent in equitable remedies."

Miller v. Carson, 401 F. Supp. 835, 891 (M.D. Fla. 1975)

The Court Used Its Equitable Powers to Enjoin DREs

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

DONNA CURLING, *et al.*,

Plaintiffs,

v.

BRAD RAFFENSPERGER, *et al.*,

Defendants.

CIVIL ACTION NO.
1:17-CV-2989-AT

ORDER

I. Introduction 3

II. Joinder of Municipalities Conducting November 2019 Elections 12

III. Continuing Vulnerability and Unreliability of Georgia's GEMS/DRE System and Voter Registration System and Database 21

A. Georgia's DREs operate on outdated and vulnerable software 21

B. The DREs work in tandem with the Global Election Management System ("GEMS") interface, which poses additional problems for election integrity and security 25

C. The DRE/GEMS system is particularly susceptible to manipulation and malfunction 33

D. The State's expert Dr. Shamos essentially agrees that Georgia's DRE/GEMS system is not reliably secure 42

E. "What's Past is Prologue." 62

F. The experience of voters in the 2018 election demonstrates serious problems and failures in the State's DRE/GEMS and ExpressPoll systems 90

[T]he State Defendants are **DIRECTED:**

(1) To refrain from the use of the GEMS/DRE system in conducting elections after 2019.

Dkt. 579, Order at 147-48

The 2019 Order Also Required the State to Plan For HMPBs

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
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DONNA CURLING, *et al.*,

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[T]he State Defendants are **DIRECTED:**

(2) To develop a default plan for use in the 2020 elections … and provide, as part of that contingency plan, for the use of hand-marked paper ballots for voting….

Dkt. 579, Order at 148

Georgia Law Requires HMPBs as Backup

In any primary or election in which the use of voting equipment is impossible or impracticable, for the reasons set out in Code Section 21-2-334, the primary or election may be conducted by paper ballot in the manner provided in Code Section 21-2-334.

O.C.G.A. § 21-2-281

The State Was Unprepared For HMPBs in 2019

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

DONNA CURLING, *et al.*,

Plaintiffs,

v.

BRAD RAFFENSPERGER, *et al.*,

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Despite this provision [providing for the use of paper ballots if machines are inoperable or unsafe], the Secretary of State's officials have testified (twice) before this Court that the State does not have adequate resources or the necessary procedures in place to make the switch [to paper ballots]....

Dkt. 579, Order at 148

The State's Shifting Defense

2019	Curling and Coalition Plaintiffs' respective Complaints are devoid of any allegations that hacking, security vulnerabilities, or other problems have been identified or exploited in Georgia's BMD voting system. Slate Defendants' Motion to Dismiss Reply Brief, at 5, Dkt.653
2020	Curling Plaintiffs do not point to any new identified, active security risk or hacking potential the use of BMDs poses... State Defendants' Opposition to Preliminary Injunction Motion, at 7, Dkt. 821
2021	Plaintiffs here do not allege an actual breach of the BMD system—but in *Tsao*, there had been an actual compromise of the point-of-sale system. State Defendants' Brief on Standing, at 12, Dkt. 1066
2023	There is no evidence that their ballots or any ballots cast using a BMD were not accurately counted or that any vote has been changed or will be altered as a result of the use of the BMD system. State Defendants' Motion for Summary Judgment, at 3, Dkt. 1567-1

Déjà Vu All Over Again . . . All Over Again

> [T]he State Defendants have also stood by for far too long, given the mounting tide of evidence of the inadequacy and security risks of Georgia's DRE voting system and software. **The Court is gravely concerned about the State's pace in responding to the serious vulnerabilities of its voting system.**
>
> *Curling v. Kemp*, 334 F. Supp. 3d 1303, 1327 (N.D. Ga. 2018)

> "The past may here be prologue anew – it may be "***like déjà vu all over again***." The Defendants have previously minimized, erased, or dodged the issues underlying this case."
>
> *Curling v. Raffensperger*, 397 F. Supp. 3d 1334, 1412 (N.D. Ga. 2019) (citation omitted)

State Engages in Campaign of False Character Assault



Mike Hassinger

Spokesperson
Secretary of State

"If the PhDs don't like being put in the same category as the Pillow salesman, tough noogies. They should stop saying similar things."

Trial Tr. Vol. 5A at 192:18-21

State Engages in Campaign of False Character Assault



Gabriel Sterling

COO

Q. What is an election denier?

A. In general, a person who denies the outcome of an election based not necessarily on fact but on theory and not evidence.

Trial Tr. Vol. 5A at 259:1-3

State Engages in Campaign of False Character Assault



Gabriel Sterling

COO

Q. Do you know who made the decision to respond to Dr. Halderman's findings by characterizing him and the plaintiffs as election deniers?

A. No sir, I can't say specifically who. It was an internal communications decision.

* * *

Q. Fair to say that the people speaking on behalf of the Secretary would not make those statements without his knowledge and authorization?

A. Fair to say that.

Trial Tr. Vol. 5A at 192:23-193:11

Court Is the Ultimate Fact-check



Brad Raffensperger

Secretary of State

"[The] ultimate fact-check in the United States occurs in courts of law, where witnesses swear to tell the truth or risk imprisonment and where lawyers must also tell the truth or risk disbarment.

If you want to know the truth, watch what happens in court."

Trial Tr. Vol. 4 at 132:1-132:10

Legal Standard: Plaintiffs' Cognizable Interest

As the Supreme Court has recognized, "**all qualified voters have a constitutionally protected right to vote**," and that right necessarily encompasses "the right of qualified voters within a state to cast their ballots **and have them counted**."

Reynolds v. Sims, 377 U.S. 533, 554-555 (1964) (emphasis added)

Legal Standard: Plaintiffs' Particularized Injury

"The Supreme Court has 'long recognized that a person's right to vote is individual and personal in nature' and **'voters who allege facts showing disadvantage to themselves as individuals have standing to sue'** " as they have alleged a concrete and particularized injury."

Georgia Ass'n of Latino Elected Offs., Inc. v. Gwinett Cnty. Bd. of Registration & Elections, 36 F.4th 1100, 1114 (11th Cir. 2022) (quoting *Gill v. Whitford*, 585 U.S. ---, 138 S. Ct. 1916, 1929 (2018)(other quotation marks omitted))

Requiring a voter either to endure a burden to vote in person or cast an absentee ballot is an injury sufficient for standing.

See Common Cause/Georgia v. Billups, 554 F.3d 1340, 1350 (11th Cir. 2009)

Legal Standard: Organizational Standing

"Organizations may have standing under a 'diversion-of-resources' theory **when they divert financial resources or personnel time to counteract unlawful acts of a defendant**, thereby impairing the organizations' ability to engage in typical projects."

Fair Fight Action, Inc. v. Raffensperger, 634 F.Supp.3d 1128, 1177 (N.D. Ga. 2022) (citing *Havens Realty Corp. v. Coleman*, 455 U.S. 363, 379 (1982)) (emphasis added)

Legal Standard: Organizational Standing

An organizational plaintiff has standing to challenge election laws if it has diverted time, personnel or other resources from its usual projects to assist voters whose ability to vote is affected by state action.

Fair Fight Action, Inc. v. Raffensperger, 634 F.Supp.3d 1128, 1178 (N.D. Ga. 2022)

This may include:

- Diverting from one activity aimed at achieving an organization mission to a different activity at aimed at the same mission.
  - *See, e.g., Common Cause/Georgia v. Billups,* 554 F.3d 1340, 1350 (11th Cir. 2009)
- Diverting resources to achieve the organizations' typical goal in a different or amplified manner.
  - *See Ga. Ass'n of Latino Elected Offs., Inc. v. Gwinnett Cty. Bd. of Registration,* 36 F.4th 1100, 1115 (11th Cir 2022)

Legal Standard: One Plaintiff Rule

"The law is abundantly clear that so long as at least one plaintiff has standing to raise each claim [] we need not address whether the remaining plaintiffs have standing."

Fla. ex rel. Att'y Gen. v. U.S. Dep't of Health & Human Servs., 648 F.3d 1235, 1243 (11th Cir. 2011) (collecting cases)

"**If this Court finds that one Plaintiff has standing** with respect to a challenged practice, **there is standing** sufficient for the Court to consider the challenge, regardless of whether any other Plaintiff has standing with respect to that challenged practice. *See Town of Chester, NY v. Laroe Ests., Inc.* 137 S. Ct. 1645, 1651 (2017)."

Fair Fight Action, Inc. v. Raffensperger, 634 F. Supp. 3d 1128, 1178 (N.D. Ga. 2022)

BMD Ballots Are Not Voter Verified



Donna Price

Curling Plaintiff

Q. And when you voted on a BMD, did you know whether your ballot accurately reflected the selections you made?

A. I didn't know if the ballot that went – was scanned, the choices that were scanned, I didn't know if those reflected my choices.

Trial Tr. Vol. 2 at 37:24-38:3

BMD Ballots Are Not Voter Verified



Megan Missett

Coalition Plaintiff

"And there was, you know, a certain amount of pressure and anxiety because people had been waiting a long time. So when I went out after I finished voting to get to the scanner to feed my ballot card, I was just – I was creating a log jam. And it takes me like three minutes to really go through. So I had to keep people from coming in or going out, and I just – I couldn't do it."

Trial Tr. Vol. 8 at 156:19-25

Voters Can Make Mistakes on the Touchscreen



Dr. Ben Adida

State Contractor

"Voters can make mistakes through the process on touch screens especially. We've certainly seen it in the development of our own machines at VotingWorks and all the testing we have done. It is really easy to make a mistake."

Trial Tr. Vol. 12 at 288:15-18

RLAs Require Voter Verification



Joseph Kirk

Election Supervisor
Bartow County

"We need them to review their ballots in order for my audits to have any meaning."

Trial Tr. Vol. 13 at 162:16-17

Roadmap

Standing

- Injury in fact
  - Cognizable
  - Particularized
  - Non-speculative
- Traceable
- Redressable

Merits

- Causation
- *Anderson-Burdick*
  - Character and magnitude of burden
  - Justifying State interests
- Irreparable Harm
- Balance of the burdens

Even One Disenfranchised Voter Is Too Many

"It is a basic truth that even one disenfranchised voter—let alone several thousand—is too many."

League of Women Voters of N. C. v. North Carolina, 769 F.3d 224, 244 (4th Cir. 2014)

"This test requires the Court to weigh the character and magnitude of the burden that the State's rule imposes on Plaintiffs' voting rights against the interests that the State contends justify that burden, and consider the extent to which the State's concerns make the burden necessary."

Dkt. 1705 at 111 (citing Timmons v. Twin Cities Area New Party, 520 U.S. 351, 358 (1997)

The State's Articulated Interest Is Uniformity



Gabriel Sterling

COO

Q. Does the State have an interest in using the current Dominion BMD equipment?

A. Yes.

Q. What is that interest?

A. Again, the uniformity brings a lot of advantages, for training and for usage, I mean – and, frankly, to protect voters....

Trial Tr. Vol. 15 at 246:11-246:17

The State Owns and Certifies Voting Equipment



Gabriel Sterling

COO

Q. So the EMS server that was taken and the ICC in the summer of last year from Coffee County, that is and has always been owned by the Secretary's Office or by the State?

A. Once it was purchased and accepted, yes.

Gabriel Sterling 10/12/22 Dep. Tr. at 199:9-13

The State Instructs Counties on Operation of Voting Equipment



Michael Barnes

Deputy Director
of Elections
Director of CES

"Any type of functional error. If it is during an election, we tell the county immediately to turn their devices off, seal the device … If it is a device during testing … then we're going to advise the county again, probably best not to use that device for the upcoming election. Any device in which they have a malfunction … then we would recommend that they submit … a repair to manufacturer submission with the vendor, and then make sure that that device is transferred to the vendor for repair."

Trial Tr. Vol. 12 at 38:15-39:5

State Instructs Counties on Operation of Voting Equipment

From: Rachel Roberts <Rachel.Roberts@coffeecounty-ga.gov>
Sent: Wednesday, June 1, 2022 12:53 PM
To: Barnes, Michael <mbarnes@sos.ga.gov>; Patel, Pratik <ppatel@sos.ga.gov>
Subject: ICC MEMORY CARDS

EXTERNAL EMAIL: Do not click any links or open any attachments unless you trust the sender and know the content is safe.

Where do I get more memory cards from for the ICC's?

I do not have enough to hold the runoff unless we can clear the c

Thanks

Rachel Roberts

Coffee County Georgia

Elections Supervisor

From: "Barnes, Michael" <mbarnes@sos.ga.gov>
To: Rachel Roberts <Rachel.Roberts@coffeecounty-ga.gov>,"Patel, Pratik" <ppatel@sos.ga.gov>
Addressed To: rachel.roberts@coffeecounty-ga.gov
Subject: Re: ICC MEMORY CARDS
Date: Wednesday, June 01, 2022 17:27 GMT
Attachments: Outlook-muc5cpkj.png (18.5 KB)

You may use the cards you used in May.

Michael Barnes

Director – Center for Election Systems

Georgia Secretary of State

Coalition Pl. Ex. 55

The State Provides Seals For BMDs



James Barnes

Former Coffee County Election Supervisor

Q. Did you ever have any briefings at those meetings from the Secretary of State or otherwise on security of the system?

A. No. Mostly it was – there's one tab on there that's a secure tab. We were always told that if you mess up and take that off, it immediately has to get sent back to CES.

* * *

Q. Are you talking about the seals that go on there?

A. It's a – it's a braided metal and then clamped in plastic seal.

James Barnes 07/20/22 Dep. Tr. at 73:2-16

The State Penalized Athens-Clarke County For Switching to HMPBs



Matthew Mashburn

Former Chair
State Election Board

Q. [W]hat were they doing different from everyone else?

A. They wanted to do away with the BMDs.

* * *

Q. And the SEB, do you recall, imposed a civil penalty of $5000 until they did switch back [to BMDs]?

A. That's correct… they did do it the next day.

Trial Tr. Vol. 6A at 63:7-16, 65:16-66:4

Counties Rely on State For Cybersecurity of Equipment



James Barnes

Former Coffee County Election Supervisor

Q. In the time that you were at Coffee County, are you aware of any cybersecurity testing that was done on any of the election equipment there?

A. No, sir. When it comes to us, it's certified by the State.

Q. So you rely on the State for that; is that fair?

A. Yes.

James Barnes 7/20/22 Dep. Tr. at 69:11-18

Counties Rely on State to Investigate Election Security Issues



James Barnes

Former Coffee County Election Supervisor

Q. Were you concerned that the fact that the password never – no longer worked, that maybe that was an indication that someone had done something they weren't supposed to do on that server and on the ICC?

A. Like I said, I don't get paid to speculate and investigate. That's why the State has investigators.

James Barnes 7/20/22 Dep. Tr. at 122:10-16

Counties Rely on State to Investigate Election Security Issues



Wendell Stone

Coffee County Elections Board

Q. Are you aware of any measures by the State or the County to deal with any risk associated with unnecessary software on the ICC and EMS computers?

A. Not aware.

Q. Fair to say that's something that the County would rely on the State to deal with?

A. Yes.

Wendell Stone 09/01/22 Dep. Tr. at 133:21-134:2

Broken or Missing Seals

From: Hall, Adrick
Sent: Tuesday, November 10, 2020 11:18 AM
To: Watson, Frances <fwatson@sos.ga.gov>
Subject: RE:

I spoke with Austin and he explained that when he went to vote by Absentee-In-Person, the security seals on the BMDs were broken. He brought it to a poll worker's attention and she went and got a man (possibly a tech) who said they leave them open while the polls are open so they can fix the machines if necessary. He informed Austin that they were sealed when the polling location closed.

Austin said, out of concern, he photographed the BMDs in the front and back to capture the broken seals in pictures. I asked that he send me copies of the photos and he said he would email them to me.

Curling Pl. Ex. 102 at 2

Broken or Missing Seals

From: Susan Gray <sgray@jeffersoncountyga.gov>
Sent: Wednesday, February 26, 2020 8:22 AM
To: Barnes, Michael <mbarnes@sos.ga.gov>
Subject: Jefferson County Board of Elections

EXTERNAL EMAIL: Do not click any links or open any attachments unless you trust the sender and know the content is safe.

Michael,
These are the BMD serial numbers that I took the State of Georgia Seal from by mistake.
I have the seals but I am unsure of the serial number which SOS seal came off.

BMD	New Seal
# 270870	- 0783766
# 300492	- 0582158
# 300494	- 0373662
# 171100	- 0783758
# 300493	- 0783743
# 171101	- 0119665
# 300495	- 0582162

Seal numbers that were removed:
307303; 307305; 307330; 307367; 307370; 307713; 356953

Curling Pl. Ex. 103

Wide Access to Locations Storing Election Equipment



Aileen Nakamura

"[T]he BMDs that are left in the room are sleeping over. They are staying over that night or that weekend. And because a lot of these locations that are being used as polling places are also public locations, you know, libraries, churches, universities, there are – there is a lot of foot traffic. …[W]ith the BMDs, what they found is it takes so many van loads to get all of the equipment into the polling places that they are left sometimes on a Friday, sometimes on a Saturday, sometimes on a Sunday for an election that is happening on Tuesday."

Trial Tr. Vol. 2 at 95:24-96:18

State Is Responsible For Elections Investigations



Frances Watson

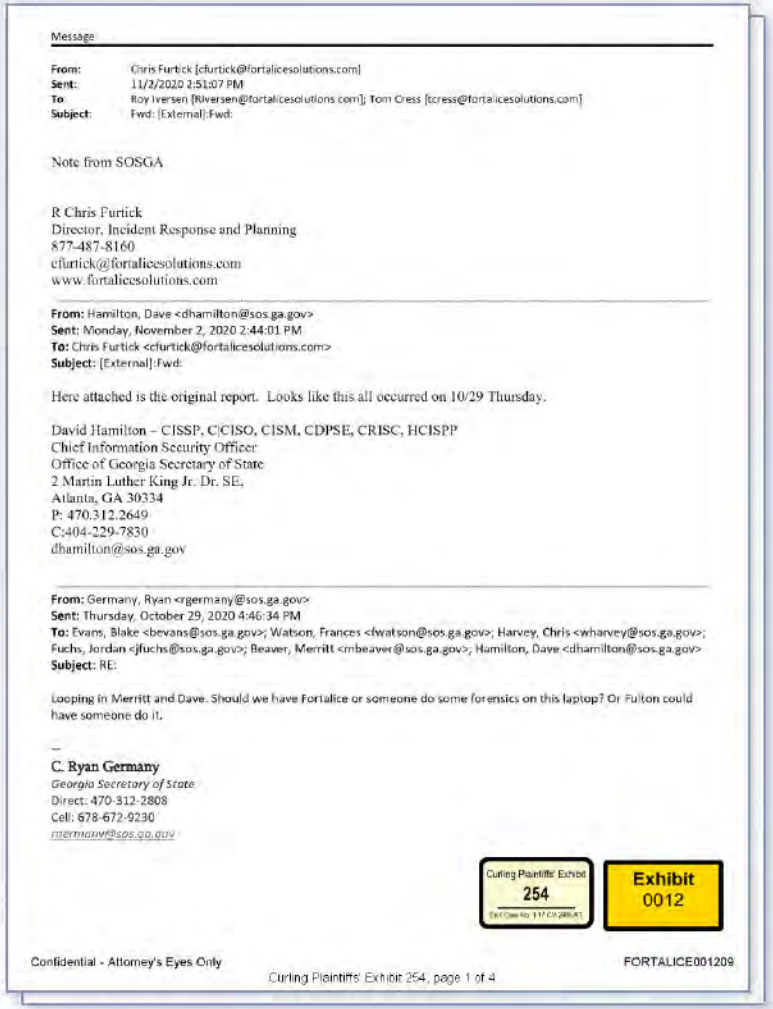
Former Chief Investigator
of Investigations Division

Q. And you said you had – your division had responsibility for investigation specifically into election issues; is that right?

A. Yes.

Trial Tr. Vol 7B at 16:22-25

State Investigated Suspected Remote Access of One Fulton County Laptop



Message

From: Chris Furtick [cfurtick@fortalicesolutions.com]
Sent: 11/2/2020 2:51:07 PM
To: Roy Iversen [Riversen@fortalicesolutions.com]; Tom Cress [tcress@fortalicesolutions.com]
Subject: Fwd: [External]:Fwd:

Note from SOSGA

R Chris Furtick
Director, Incident Response and Planning
877-487-8160
cfurtick@fortalicesolutions.com
www.fortalicesolutions.com

From: Hamilton, Dave <dhamilton@sos.ga.gov>
Sent: Monday, November 2, 2020 2:44:01 PM
To: Chris Furtick <cfurtick@fortalicesolutions.com>
Subject: [External]:Fwd:

Here attached is the original report. Looks like this all occurred on 10/29 Thursday.

David Hamilton – CISSP, C|CISO, CISM, CDPSE, CRISC, HCISPP
Chief Information Security Officer
Office of Georgia Secretary of State
2 Martin Luther King Jr. Dr. SE,
Atlanta, GA 30334
P: 470.312.2649
C:404-229-7830
dhamilton@sos.ga.gov

From: Germany, Ryan <rgermany@sos.ga.gov>
Sent: Thursday, October 29, 2020 4:46:34 PM
To: Evans, Blake <bevans@sos.ga.gov>; Watson, Frances <fwatson@sos.ga.gov>; Harvey, Chris <wharvey@sos.ga.gov>; Fuchs, Jordan <jfuchs@sos.ga.gov>; Beaver, Merritt <mbeaver@sos.ga.gov>; Hamilton, Dave <dhamilton@sos.ga.gov>
Subject: RE:

Looping in Merritt and Dave. Should we have Fortalice or someone do some forensics on this laptop? Or Fulton could have someone do it.

--
C. Ryan Germany
Georgia Secretary of State
Direct: 470-312-2808
Cell: 678-672-9230
rgermany@sos.ga.gov

Curling Plaintiffs' Exhibit 254

Exhibit 0012

Confidential - Attorney's Eyes Only FORTALICE001209

Curling Plaintiffs' Exhibit 254, page 1 of 4

From: Hall, Adrick <ahall@sos.ga.gov>
Sent: Thursday, October 29, 2020 4:16 PM
To: Callaway, James <jcallaway@sos.ga.gov>
Cc: Watson, Frances <fwatson@sos.ga.gov>
Subject: RE:

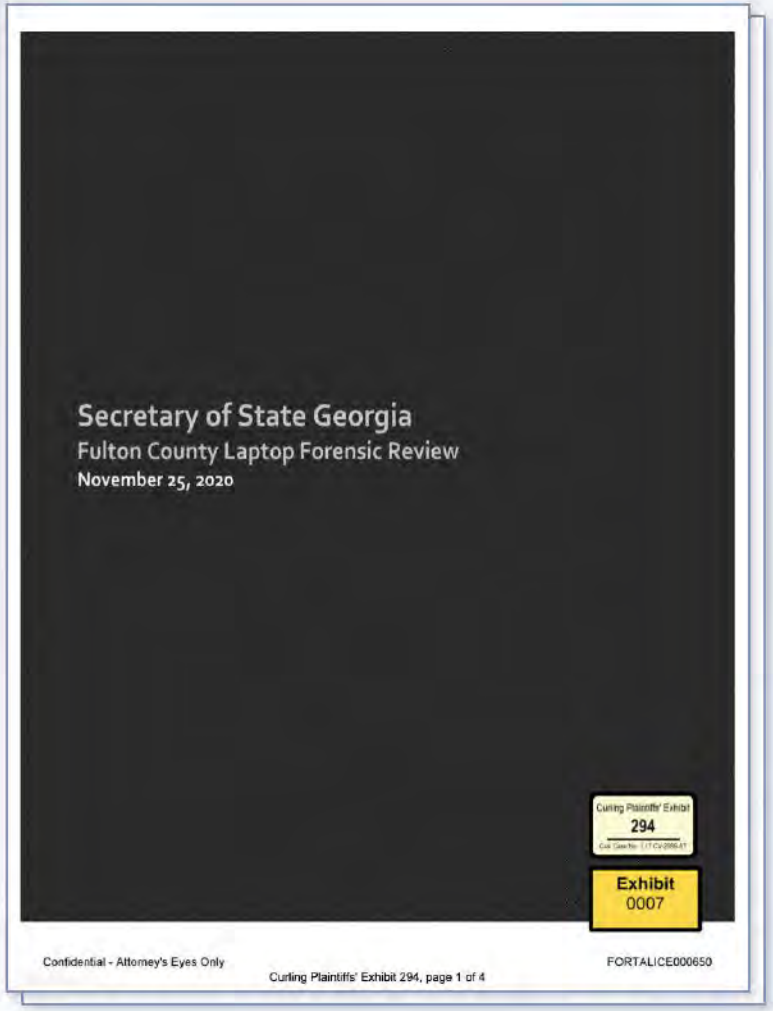
Braun is there. He is obtaining written statements from the poll manager, the poll worker and the IT personnel who looked at the laptop. The general statement is that the laptop was a Fulton County laptop. The used it to access ElectioNet and Easy Vote and process the AB applications for voters. The laptop was on wifi mode and the cursor began to move from icon to icon on its own. The laptop kept kicking the poll worker off of Easy Vote and he would have to continuously logon. The poll manager called the IT person who simply told Braun the cursor was methodically moving from icon to icon as if the laptop was remotely accessed. The IT person told Braun that no program and no information appeared to have been deleted.

From: Germany, Ryan <rgermany@sos.ga.gov>
Sent: Thursday, October 29, 2020 4:46:34 PM
To: Evans, Blake <bevans@sos.ga.gov>; Watson, Frances <fwatson@sos.ga.gov>; Harvey, Chris <wharvey@sos.ga.gov>; Fuchs, Jordan <jfuchs@sos.ga.gov>; Beaver, Merritt <mbeaver@sos.ga.gov>; Hamilton, Dave <dhamilton@sos.ga.gov>
Subject: RE:

Looping in Merritt and Dave. Should we have Fortalice or someone do some forensics on this laptop? Or Fulton could have someone do it.

Curling Pl. Ex. 254

State Investigated Suspected Remote Access of One Fulton County Laptop


Secretary of State Georgia
Fulton County Laptop Forensic Review
November 25, 2020

Curling Plaintiffs' Exhibit 294

Exhibit 0007

Confidential - Attorney's Eyes Only

FORTALICE000650

Curling Plaintiffs' Exhibit 294, page 1 of 4

Fortalice

Executive Summary

In October of 2020, Fulton County observed erratic mouse movement on a laptop, potentially consistent with the behavior that would occur if a remote user and a local user were both attempting to use the mouse simultaneously. After attempting to troubleshoot the issue as operational and due to concerns of malicious activity on a sensitive system, Fulton County engaged Secretary of State Georgia (SoSGA) for assistance.

Fortalice Solutions (Fortalice) was engaged by SoSGA as they are a trusted advisor and have extensive experience in incident response events and digital forensics. SoSGA requested

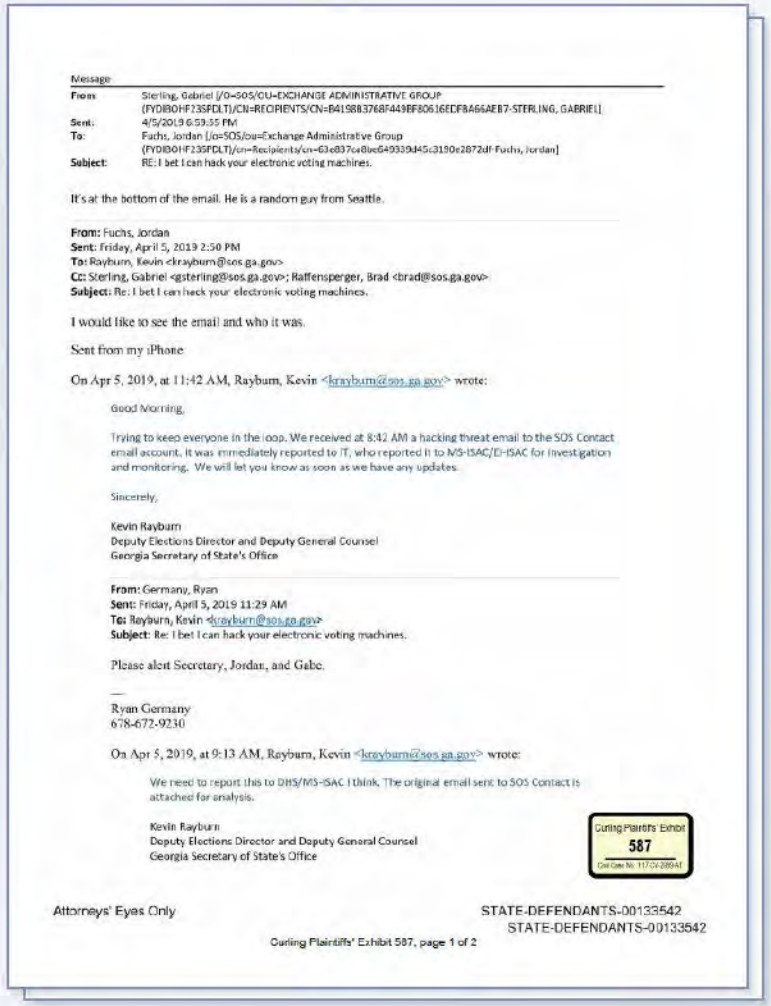
Curling Pl. Ex. 294

State Investigated "I Bet I Can Hack Your Electronic Voting Machines" Email From "Random Guy"



Ryan Germany

Former General Counsel



Message

From: Sterling, Gabriel [/O=SOS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=B41988376BF449BF80616EDF8A66AEB7-STERLING, GABRIEL]
Sent: 4/5/2019 6:59:55 PM
To: Fuchs, Jordan [/o=SOS/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=63e837c48bc649339d45c3190e2872df-Fuchs, Jordan]
Subject: RE: I bet I can hack your electronic voting machines.

It's at the bottom of the email. He is a random guy from Seattle.

From: Fuchs, Jordan
Sent: Friday, April 5, 2019 2:50 PM
To: Rayburn, Kevin <krayburn@sos.ga.gov>
Cc: Sterling, Gabriel <gsterling@sos.ga.gov>; Raffensperger, Brad <brad@sos.ga.gov>
Subject: Re: I bet I can hack your electronic voting machines.

I would like to see the email and who it was.

Sent from my iPhone

On Apr 5, 2019, at 11:42 AM, Rayburn, Kevin <krayburn@sos.ga.gov> wrote:

Good Morning,

Trying to keep everyone in the loop. We received at 8:42 AM a hacking threat email to the SOS Contact email account. It was immediately reported to IT, who reported it to MS-ISAC/EHSAC for investigation and monitoring. We will let you know as soon as we have any updates.

Sincerely,

Kevin Rayburn
Deputy Elections Director and Deputy General Counsel
Georgia Secretary of State's Office

From: Germany, Ryan
Sent: Friday, April 5, 2019 11:29 AM
To: Rayburn, Kevin <krayburn@sos.ga.gov>
Subject: Re: I bet I can hack your electronic voting machines.

Please alert Secretary, Jordan, and Gabe.

—
Ryan Germany
678-672-9230

On Apr 5, 2019, at 9:13 AM, Rayburn, Kevin <krayburn@sos.ga.gov> wrote:

We need to report this to DHS/MS-ISAC I think. The original email sent to SOS Contact is attached for analysis.

Kevin Rayburn
Deputy Elections Director and Deputy General Counsel
Georgia Secretary of State's Office

Curling Plaintiffs' Exhibit 587

Attorneys' Eyes Only

STATE-DEFENDANTS-00133542
STATE-DEFENDANTS-00133542

Curling Plaintiffs' Exhibit 587, page 1 of 2

Q. And you tell Mr. Rayburn, please alert Secretary, Jordan, and Gabe; right?

A. Yes.

Q. Secretary is Secretary Raffensperger?

A. Yes.

Q. Jordan is Jordan Fuchs?

A. Yes.

Curling Pl. Ex. 587; Trial Tr. Vol. 4 at 79:2-80:12

State Investigated Spalding County Plan to Hire Sullivan Strickler to Image Equipment

Kimberly,

I want to follow up our phone conversation with additional details.

First, I am attaching to this email State Election Board Rule 183-1-12-.05, which states that election equipment cannot be modified, changed, or upgraded without authorization from the Secretary of State.

Second, please send me a written explanation of your concerns. Since the equipment you have stored is state owned equipment, we must follow protocols to examine the equipment to detect possible issues. The proper procedure is to send a written explanation to Michael Barnes, Director of the Center for Election Systems, and me. At that point, Michael and his team will travel to Spalding to assess the equipment and determine next steps. Any deviation from the procedures could lead to us not being able to certify the equipment, which would mean it could not be used in future elections. The county would be required to purchase new equipment.

Again, please s
we will take th

Blake Evans
Elections Direc
Georgia Secret
Direct: 470-31
Cell: 470-701-
<image003.jpg



Blake Evans

Director of Elections

First, I am attaching to this email State Election Board Rule 183-1-12-.05, which states that election equipment cannot be modified, changed, or upgraded without authorization from the Secretary of State.

Curling Pl. Ex. 194

State Investigated Spalding County Plan to Hire Sullivan Strickler to Image Equipment



Michael Barnes

Director of CES
Deputy Director of Elections

Q. Are you aware of an incident involving Dominion equipment in Spalding County in 2021?

A. I'm – I'm aware that their elections board reached out to the Secretary of State's office. I believe it was after they had made a decision to sever ties with the previous election supervisor in Spalding County.

* * *

Q. Do you recall if the election management server was replaced?

A. I believe . . . that a decision was finally made to provide Spalding County with a new election management server.

Trial Tr. Vol. 12 at 47:6-15

State Investigated And Replaced Treutlen County EMS After Treutlen Hired Misty Hampton



Michael Barnes

Director of CES
Deputy Director of Elections

Q. Mr. Barnes, your office replaced the EMS server in Treutlen County after you learned that Misty Hayes had been employed by Treutlen County after the Coffee County incident; right?

A. Yes.

Trial Tr. Vol. 12 at 134:3-7

Halderman's Findings Are the Real World



Dr. J. Alex Halderman

Ph.D in Computer Science, Princeton University

Bredt Family Professor of Computer Science & Engineering, University of Michigan

Q. You mentioned a normal nontechnical person. Have you seen a Georgia voter without a computer science background implement any of the hacks you identified?

A. Yes.

Q. Who?

A. Jeff Schoenberg.

Trial Tr. Vol. 8A at 121:7-122:3

Halderman's Findings Are the Real World



Dr. J. Alex Halderman

Q. How long did it take you to teach him?

A. Just a very – handful of tries at most, and he had completely mastered it.

Q. How does the time it took him to implement your hack compare to the time it took him to vote an ordinary ballot?

A. He is faster at hacking than voting the ballot, normally.

Trial Tr. Vol. 8A at 137:12-138:20

"Yet the vital issues identified in this case will not disappear or be appropriately addressed without focused State attention, resources, ongoing serious evaluation by independent cybersecurity experts, and open-mindedness. And at very least, the Court cannot fathom why, post-election, the State and Dominion would not at least be moving toward consideration of the software upgrade option Dominion originally promised, allowing voters to cast ballots that are solely counted based on their voting designations and not on an unencrypted, humanly unverifiable QR code that can be subject to external manipulation and does not allow proper voter verification and ballot vote auditing. Time will tell whether Act V here can be still avoided or at least re-written."

Curling v. Raffensperger, 493 F. Supp. 3d 1264, 1342 (N.D. Ga. 2020)

Election Procedures Can Be So Flawed They Violate Due Process

"Federal courts have properly intervened *when the attack was, broadly, upon the fairness of the official terms and procedures under which the election was conducted.* The federal courts were not asked to count and validate ballots and enter into the details of the administration of the election. Rather they were *confronted with an officially-sponsored election procedure which, in its basic aspect, was flawed*. Due process, representing a profound attitude of fairness between man and man, and more particularly between individual and government, is implicated in such a situation." (emphasis added)

Curling v. Raffensperger, 397 F. Supp. 3d 1334, 1404 (N.D. Ga. 2020)

Voters Can't Verify QR Codes



Dr. Michael I. Shamos

Ph.D *Carnegie Mellon University*

Former State Expert

"I'll say, first, I'm not a fan of bar codes…"

Michael Shamos 07/19/19 Dep. Tr. at 56:22-23

Not If, But When



Teresa Payton
Fortalice

Q. And going into the midterm elections of last year, you had grave concerns about election interference; correct?

A. I did, yes. Still do.

Q. In fact, going into the midterms of last year, you believe that one thing that we can be sure of is that a U.S. election will be hacked, no doubt about it; right?

A. Yes.

Dkt. 570, 2019 PI Hearing Tr. at 206:6-12

Logic & Accuracy Testing Is Not a Fix



James Barnes

Coffee County Elections Supervisor

Q. [I]f you have a virtual machine … it is like being at the keyboard of that computer wherever it is. … [I]n the case of like an election management system from a county, it is like being in that county sitting in front.

A. **Logic and accuracy is not really about cybersecurity. They're supposed to be closed systems that are not networked out and supposed to be in a locked door with only minimal access to – of a few people to them. So unless there's user error, there shouldn't be cybersecurity issues.**

Trial Tr. Vol. 9 at 44:9-21

Logic & Accuracy Testing Is Not a Fix



Dr. Juan Gilbert

State Expert

Q. Just below the heading 7.5, the bolded language, "Defeating Logic and Accuracy Testing."

A. I see it … "It can be defeated by ICX malware."

Q. You don't dispute that finding in your declaration, right?

A. I did not dispute that in my declaration.

Juan Gilbert 10/29/21 Dep. Tr. at 223:19-224:22

RLAs Are Not a Fix



Dr. Juan Gilbert

State Expert

Q. Isn't it true that a risk-limiting audit can never audit what the BMD device showed to the voter?

A. That's correct.

Juan Gilbert 10/29/21 Dep. Tr. at 223:19-224:22

RLAs Are Not a Fix



Dr. J. Alex Halderman

Ph.D in Computer Science,
Princeton University

Bredt Family Professor
of Computer Science &
Engineering,
University of Michigan

Q. Is it your opinion that Georgia cannot conduct an actual risk-limiting audit as long as it is using BMDs with QR codes; correct?

A. Yes. A risk-limiting audit needs as an input to the audit an accurate representation of voters' selections.

Trial Tr. Vol. 8A at 14:25-15:2