

## Ga. Elections Director Says Paper Ballots Have Problems Too

By Kelcey Caulder

*Law360 (January 24, 2024, 7:01 PM EST)* -- Georgia's elections director pushed back Wednesday on claims that hand-marked paper ballots would serve voters in the state more reliably than the ballot-marking devices currently used at the polls, explaining why the state will not upgrade its voting system until after the 2024 presidential election.

Though a group of voters and the nonprofit Coalition for Good Governance have argued throughout a trial over the future of the state's election system that Georgia voters should cast paper ballots filled out by hand instead of voting on touchscreen ballot-marking devices, Georgia Elections Director Blake Evans said Wednesday that paper ballots present their own unique set of difficulties.

Evans, who previously worked in elections offices in Escambia County, Florida, and Fulton County, Georgia, said hand-marked paper ballots often lead to the kinds of unreliable results that those challenging Georgia's ballot-marking devices fear are inevitable under the state's current system.

According to Evans, "mismarked" ballots were a common problem in Escambia County, where in-person voters used hand-marked paper ballots. He said voters in the county would sometimes do things like circle or place a check mark beside a candidate's name instead of filling in the appropriate circle.

Evans said such scenarios made it impossible for a scanner to read voters' intended selections, and audits of mismarked ballots would only be conducted if vote margins called for it once other ballots were tallied.

Evans also addressed arguments that the state failed to address potential security risks associated with the ballot-marking devices even after the Cybersecurity and Infrastructure Security Agency released an advisory urging jurisdictions where the devices were in use to implement controls mitigating potential risks, though there was some debate about whether Evans should be allowed to testify on the subject at all.

David Cross, an attorney representing the voters, said Evans should not be allowed to speak on the subject because the state failed to answer questions during discovery about what, if any, measures were taken to address the advisory. Cross also pointed out that, throughout the trial, witnesses who worked at the Georgia Secretary of State's Office at the time the advisory was published **said** they hadn't read it or the 96-page report that preceded it until after it was brought to their attention in litigation.

U.S. District Judge Amy Totenberg acknowledged those issues, saying it was "truly troubling" to have a

witness address something "central to the case" for the first time during the third week of trial.

"As of this point, there has been a seemingly profound lack of interest in addressing some of the issues by officials in the agency," Totenberg said. "I'm not saying that in a derogatory way, I'm just saying it has seemed thus far that they haven't taken it as seriously as I would want them to."

After taking a 15-minute break to consider the issue, Judge Totenberg allowed Evans to testify on the subject, but said his doing so was "conditional" and that she would address the admissibility of his testimony "later on."

Back on the stand, Evans explained that after the advisory was published, the Secretary of State's office reached out to Dominion Voting Systems Corp. about how to upgrade Georgia's elections equipment. The settled-on solution, he said, was to upgrade to the U.S. Election Assistance Commission-certified voting system Democracy Suite 5.17.

However, Evans said the new system can't be installed until after the 2024 presidential election because it would take too long to install it on all the election equipment used in every county across the state — and it would have to be installed on every piece of equipment, he said, not just ballot-marking devices.

Evans said it would likely take 20 minutes to download the new software onto a scanner and that, in Fulton County alone, there are "over 1,000" scanners.

Waiting until after the 2024 election cycle to make the statewide move to the new voting system will allow both the state and counties to focus on running safe and secure elections while preparing for a future rollout, Evans said.

The group challenging the election system sued state election officials in 2017, taking aim at the paperless touch-screen voting machines that Georgia had been using for 15 years. The suit was later amended to challenge the ballot-marking devices when the state purchased them in 2019, with claims they were unreliable and vulnerable to hacking.

Of particular concern to the system's challengers are the ballots printed by ballot-marking devices, which feature a human-readable summary and a barcode that is read by a scanner to count votes. The challengers say voters can't be certain the barcode accurately reflects their selections and that the human-readable part of the ballot is often unchecked by voters or hard to parse, making it more difficult for a person to know their vote is being counted as cast.

Such risks would not be present if voters voted on hand-marked paper ballots, the challengers **argued**, and voters would be able to verify their votes rather than trust the accuracy of barcodes they can't read.

State election officials have **argued there is no proof** that any vote has been altered, manipulated or changed under Georgia's current election system, and that all voting systems, including hand-marked paper ballots, have potential risks.

As such, the officials argue no evidence has been presented to outweigh the state's interest in continuing to use ballot-marking devices, which they said make it easier for people with disabilities to vote, simplify election workers' jobs and help obtain more accurately recorded ballots.

The trial, which was originally expected to last just three weeks, is now expected to end next week.

The state election officials are represented by Vincent R. Russo, Josh Belinfante, Carey A. Miller, Alexander Denton, Edward A. Bedard, Javier Pico-Prats, Anna Edmondson and Melanie Leigh Johnson of Robbins Alloy Belinfante Littlefield LLC and Bryan P. Tyson, Bryan F. Jacoutot and Diane F. LaRoss of Taylor English Duma LLP.

The Coalition for Good Governance is represented by Bruce P. Brown of Bruce P. Brown Law LLC, Robert A. McGuire III of Robert McGuire Law Firm, Russell T. Abney of Watts Guerra LLP, Cary Ichter of Ichter Davis LLC and Eric R. Havian of Constantine Cannon LLP.

The voters are represented by David D. Cross, Mary G. Kaiser, Matthaueus H. Martino-Weinhardt, Aaron Heath Scheinman, Reiley Jo Porter, Lyle F. Hedgecock, Ramsey W. Fisher, Tamara Raquel Wiesebron, Wail Jihadi, Robert W. Manoso, Benjamin E. Campbell and Hannah R. Elson of Morrison Foerster LLP, Halsey G. Knapp Jr., Jessica G. Cino and Adam M. Sparks of Krevolin & Horst LLC, Cary Ichter of Ichter Davis LLC, Christian Gabriel Andreu-von Euw of The Business Litigation Group PC, William Brent Ney of Ney Rhein LLC and Robert A. McGuire III of Robert McGuire Law Firm.

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

--Editing by Caitlin Wolper.