

Ga. Voters Say Dominion Gave Sealed Report To Nonprofit

By **Kelcey Caulder**

Law360 (October 7, 2022, 7:19 PM EDT) -- Georgia voters who have been challenging the state's election methods and voting equipment since 2017 have told a federal judge that U.S. Dominion Inc. should be punished for sending a nonprofit an unredacted copy of a sealed report that claims there are security vulnerabilities in the state's voting machines.

The Coalition for Good Governance and several voters said Thursday that Dominion's decision to give an unredacted copy of the sealed report to The MITRE Corp. violated a longstanding court order that prohibited its disclosure, a move motivated by the company's desire to have an outside analysis it could "misleadingly tout" as a refutation of the findings made by the report's author, J. Alex Halderman.

Halderman, a professor of computer science and engineering at the University of Michigan, said in sworn declarations filed publicly with the court that he examined Dominion's voting machines for 12 weeks and identified "multiple severe security flaws" that would allow bad actors to install malicious software.

In Thursday's filing, the voters contended that Dominion had only handed the unredacted version of Halderman's report over to MITRE so that it could refute those findings in a report of its own. MITRE's report is allegedly more "marketing" than reality and shouldn't be allowed to go public without, at the very least, a redacted version of Halderman's report being made publicly available at the same time, the voters say.

"The MITRE report alone provides a critically incomplete and misleading picture of Dr. Halderman's analyses and findings and their implications for election security, which [the U.S. Cybersecurity and Infrastructure Security Agency] validated months ago and agreed warranted prompt adoption of important remedial measures," the voters said. "State defendants themselves likewise have proposed that the MITRE report and Halderman report 'travel in tandem' if shared with others."

Having both reports "travel together" is important, the voters said, because the MITRE report suffers from "numerous significant deficiencies," misstates critical facts, and bases all its findings on the assumption that there is "strict and effective controlled access" to Dominion's election hardware and software. They called that assumption "far-fetched" and "wildly inaccurate" in light of the "stunning scale" of access shown in a January 2021 breach of Dominion's software and equipment in Coffee County, Georgia.

According to the filing, voters learned some time after the MITRE report was filed under seal in

September 2021 that Dominion had given the nonprofit an unredacted version of Halderman's report, allegedly to aid MITRE in research it was doing to help the company address potential issues with its software and equipment. That never should've happened, the voters contended, as the report has been sealed and treated as "attorneys' eyes only" since July 2021, and Dominion never obtained or sought permission from the court to share the unredacted report.

Dominion's counsel argued that it was "expressly permitted" to disclose the unredacted Halderman report to MITRE under a section of the protective order that allowed [attorneys' eyes only] materials to be shared with expert witnesses, according to the filing, but the voters said that wasn't true.

According to them, that section of the protective order only permits those materials to be shared with experts "to whom disclosure is reasonably necessary for this litigation and who have signed the 'acknowledgment and agreement to be bound' by the protective order." MITRE isn't a party or expert in the case, the voters said, and has "made it clear that it wants no involvement in this litigation," so it did not satisfy the order's requirements.

The voters further argued that Dominion couldn't have reasonably believed it could share the unredacted Halderman report with MITRE when the nonprofit wasn't properly vetted and no information was provided to the court about what confidentiality measures it had to protect a report that "provides step-by-step guidance for stealing votes and hacking elections."

"The reality, of course, is that Dominion deliberately disclosed the sealed report to MITRE for its own business purposes — to represent to customers that purportedly 'independent' experts evaluated and refuted Dr. Halderman's findings," the voters said. "This is obviously very far afield from what the protective order allows for sealed material, and the court should not permit Dominion to profit from its willful violation of the court's order."

The voters have been challenging the state's voting systems and equipment since August 2017, claiming Georgia's election methods and equipment are unreliable and prone to hacking, and pushing for the state to supplement its electronic voting machines with pen and paper.

David D. Cross of Morrison & Foerster LLP, who represents the voters, said his clients were "disappointed" that Dominion misused Halderman's sealed report. "We wanted Dominion to have that report to try to mitigate severe deficiencies with its voting products, which CISA confirmed," he said.

"Instead, Dominion secretly shared it with MITRE and is now trying to mislead its customers about those deficiencies rather than fix them. The MITRE report is marketing, not a real security assessment."

Counsel for Georgia and for Dominion did not immediately respond to requests for comment Friday.

The voters are represented by David D. Cross, Mary G. Kaiser, Veronica Ascarrunz, Hannah R. Elson and Zachary Fuchs of Morrison & Foerster LLP, Halsey G. Knapp Jr. and Adam M. Sparks of Krevolin & Horst LLC, Bruce P. Brown of Bruce P. Brown Law LLC, Robert A. McGuire III of Robert McGuire Law Firm LLC, Russell T. Abney of Watts Guerra LLP, and Cary Ichter of Ichter Davis LLC.

Georgia is represented by Vincent Russo, Josh Belinfante, Carey A. Miller and Alexander Denton of Robbins Alloy Belinfante Littlefield LLC, and Bryan P. Tyson, Jonathan D. Crumly, James A. Balli, Diane F. LaRoss, Bryan F. Jacoutot and Loree Anne Paradise of Taylor English Duma LLP.

Dominion is represented by J. Matthew Maguire Jr. and Robert J. Kozloski III of Parks Chesin & Walbert PC.

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

--Editing by Adam LoBelia.

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