

Touch-Screen Voting Is Cheaper, Safer, Ga. Official Testifies

By Kelcey Caulder

Law360 (January 31, 2024, 8:30 PM EST) -- A top Georgia official testified Wednesday that the ballot-marking devices being challenged in the closely watched trial over the future of Georgia's election system are secure, and that discontinuing their use would be costly to taxpayers.

Georgia Secretary of State Chief Operating Officer Gabriel Sterling, the state's final witness in the multiweek bench trial, told a federal judge that continuing to use ballot-marking devices — touch-screen machines used by voters to record votes on physical ballots — would cost Georgia taxpayers less at the "county level" over a 10-year period than swapping to hand-marked paper ballots.

The state would save money even after factoring in the approximately \$25 million it will cost to upgrade software on the machines following the 2024 presidential election, Sterling said, adding that the cost of paper alone would drive up the price if the system were changed.

The ballot a voter gets varies, Sterling explained, depending on who's running for office where they live. There can be multiple "ballot styles" within a single precinct, he said, if, for example, voters are split between two or more voting districts.

According to Sterling, cost was just one factor the state used to determine that ballot-marking devices, or BMDs, were the right medium for Georgia voters to mark their intended choices at the polls.

The state also weighed the accessibility and reliability of the machines against alternative methods, Sterling said, arguing BMDs require "fewer human touchpoints" and present fewer opportunities for "human error" than hand-marked paper ballots.

Voters and the nonprofit Coalition for Good Governance, which sued state election officials over Georgia's election system in 2017, have argued throughout trial that BMDs are unreliable, vulnerable to hacking, fail to protect voters' privacy and introduce technological difficulties not present in hand-marked paper ballots. The officials, meanwhile, have argued that all election systems have risks, and no evidence has shown BMDs are more unreliable or vulnerable than any other system.

Both sides are expected to reiterate those positions Thursday when the court reconvenes for closing arguments.

Sterling fired back at the BMDs' challengers during his testimony Wednesday when he was shown a sample hand-marked paper ballot on which two selections were marked for one question. In cases like

that, he said, it was not possible to determine how a voter intended to vote.

On the other hand, Sterling said, ballots printed from BMDs include a human-readable section that clearly notes a voter's intended selections. Voters are encouraged by poll workers to review that portion of their ballot before handing it over to ensure the ballot's accuracy, he said.

David Cross, an attorney representing the voters, showed Sterling data from a study that showed only 23.8% of observed voters were instructed to check their ballot by poll workers, and only 14.2% of observed voters actually did so before turning their ballots over for tabulation.

Sterling acknowledged the results of that study, but said it was conducted "almost three and a half years ago."

Cross asked if Sterling was saying that all poll workers encourage voters to double-check their ballots. Sterling responded that all poll workers are trained to do so, and he believes a "majority" of them follow through.

Under questioning by Josh Belinfante, who represents the officials, Sterling explained that both state election officials and local election workers would face difficulties if the state were forced to transition away from using BMDs. County-level election workers would need to undergo training on whatever new system was implemented, Sterling said, and changes would have to be made in regard to, among other things, how voters check in at the polls and the way ballots are provided to voters.

"It would require a lot of work in the middle of an election season," Sterling said.

Bruce Brown, an attorney for the nonprofit, asked Sterling what the state would do if, on election day, malware installed by bad actors caused the BMDs to stop working. This question comes after an expert witness demonstrated how a \$10 smart card, a USB drive or a pen could be used to install malware, change ballots and grant individuals "super-user" access to the machines.

Sterling did not respond to the idea of malware causing such a problem, instead saying all BMDs in the state would only stop working in the event of a "devastating catastrophe," such as a terrorist attack, "electromagnetic pulse" or power grid failure.

Should one of those "unlikely" events happen, Sterling said every Georgia polling place is required to keep a number of emergency paper ballots on hand equal to at least 10% of the number of registered voters for that polling location. Those ballots would be used, he said, and then more ballots would have to be obtained somehow.

Cross, questioning Sterling after Brown, pushed Sterling on the hypothetical, asking if the state was prepared to handle a situation in which the BMDs stopped working unexpectedly.

"I'm going to say no, because anything I say you'll have an answer to," Sterling said before again noting the hypothetical was "wildly unlikely."

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, Matthaeus 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.