

**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

FILE NO. 1:17-cv-2989-AT

**STATE DEFENDANTS' STATUS REPORT FOR
TELECONFERENCE ON JANUARY 17, 2020**

On December 30, 2019, State Defendants notified this Court that the entire GEMS/DRE system had been decertified by Secretary Raffensperger and requested a status conference to address the storage of the decertified GEMS/DRE equipment. [Doc. 689]. Both sets of Plaintiffs agreed that a status conference was needed. [Docs. 691, p. 1; 692 p. 6]. In granting State Defendants' request for a status conference, the Court identified two topics for State Defendants to address at the status conference [Doc. 694] and later requested specific information on the rollout schedule for the new ballot-marking devices ("BMDs") [Doc. 695].

BMD ROLLOUT

The Secretary of State's Office expects to have the new Election Management System (EMS) in all 159 counties no later than February 1, 2020, and the BMD rollout for the March 24, 2020 Presidential Preference Primary completed by mid-February. Declaration of Gabriel Sterling, attached as Ex. A ("Sterling Dec."), ¶ 5. As of January 15, 2020, acceptance testing of BMDs is nearly complete, with 29,197 BMDs having completed acceptance testing. Sterling Dec., ¶ 3. Despite the delays related to availability of storage space for the old GEMS/DRE equipment, as of today, BMDs have either been delivered or are scheduled for delivery to 94 counties, which includes the largest counties by voter registration and represents 85% of the total BMD deployment. Sterling Dec., ¶ 4. Every county has had at least two BMDs for demonstration and training purposes since October 2019.

Id.

The deployment to counties is ongoing and scheduling those deliveries remains connected to the pickup of the DRE units due to storage-space limitations in county facilities. Sterling Dec., ¶ 5. As the old equipment is picked up and counties confirm that they are prepared to accept and store the new equipment, deliveries to those counties are scheduled. Sterling Dec., ¶ 6.

As such, deliveries are continuously being scheduled, with 16 county deliveries scheduled for this week. Sterling Dec., ¶ 6.

Once it has an EMS and scanners, a county can conduct elections on the Dominion system even if a county has not received its full state allotment of BMDs. Sterling Dec., ¶ 7. Because the Secretary of State decertified the GEMS/DRE system, elections will be conducted on the Dominion election-management system using hand-marked paper ballots if BMDs are unavailable. *See* Proposed Rules, Ga. Comp. R. & Regs. r. Rule 183-1-12-.01, 183-1-12-.11(2)(c), 183-1-12-.20 [Doc. 684-1, pp. 3-4, 53, 69].

INFORMATION AVAILABLE TO PLAINTIFFS

By email to the Courtroom Deputy with copies to Plaintiffs' counsel, State Defendants contemporaneously file with this Report several Excel sheets, Bates numbered STATE-DEFENDANTS-00014403 through 14407, which have been available to Plaintiffs since they were first produced in July 2019. Those documents provide the serial number and county of each DRE, ExpressPoll, Optical Scanner, and GEMS server. The file is too large to be easily converted to Acrobat format and filed on the public record.

Curling Plaintiffs' expert now says he needs DRE Machine Recap Sheets in order to prepare a statistical sample, [Doc. 692-2, ¶ 12], which encompasses two kinds of forms. A DRE Recap sheet for a single precinct is

attached as Exhibit B to this filing to show what information is included for each precinct in the State of Georgia. For early voting locations, a “Daily Recap of Absentee Voting on TS Machines” is the equivalent form. An example of the Daily Recap for each DRE is attached as Exhibit C. With the election materials sent from each precinct (and early voting location) to Secretary of State, recap sheets for each precinct and early-voting location, indicating the serial numbers of the DREs used in that particular election, are included.¹

A statewide election will result in more than 3,000 DRE Recap Sheets, possibly (but not necessarily) maintained separately by the type of form—in other words, it is possible that DRE Recap sheets for particular counties will be mixed in with other information from precincts. In order for Plaintiffs’ experts to determine which DREs were used in each election, (1) the State will have to locate and pull all DRE Recap Sheets—which will involve an allocation of state-employee time away from the BMD rollout—and (2) then Plaintiffs’ expert will have to enter that information into a database format to

¹ The information in this section is based on information from the Secretary of State’s office and is provided in a brief in the interests of time for the Court. State Defendants will make the appropriate officials available to provide sworn testimony on these points if that would assist the Court in understanding any part of this component of Georgia elections.

have the information Plaintiffs say is necessary for Plaintiffs to prepare the analysis they told the Court they could prepare.

Time is of the essence to state officials working quickly to collect DREs and deploy BMDs. Sterling Dec., ¶¶ 5-6. And, as is clear with the decertification of the DREs, all claims about the DREs are moot. “If events that occur subsequent to the filing of a lawsuit or an appeal deprive the court of the ability to give the plaintiff or appellant meaningful relief then the case is moot and must be dismissed.” *United States v. Georgia*, 778 F.3d 1202, 1204 (11th Cir. 2015) quoting *Troiano v. Supervisor of Elections*, 382 F.3d 1276, 1282 (11th Cir. 2004). If any sample is to be maintained, the only machines that should be preserved are the units already sequestered subject to prior preservation orders, although Plaintiffs’ claims related to those units are also moot.

Respectfully submitted this 16th day of January, 2020.

Vincent R. Russo
Georgia Bar No. 242628
vrusso@robbinsfirm.com
Josh Belinfante
Georgia Bar No. 047399
jbelinfante@robbinsfirm.com
Carey A. Miller
Georgia Bar No. 976240
cmiller@robbinsfirm.com
Alexander Denton
Georgia Bar No. 660632

adenton@robbinsfirm.com
Brian E. Lake
Georgia Bar No. 575966
blake@robbinsfirm.com
Robbins Ross Alloy Belinfante Littlefield LLC
500 14th Street, N.W.
Atlanta, Georgia 30318
Telephone: (678) 701-9381
Facsimile: (404) 856-3250

/s/ Bryan P. Tyson
Bryan P. Tyson
Georgia Bar No. 515411
btyson@taylorenghish.com
Bryan F. Jacoutot
Georgia Bar No. 668272
bjacoutot@taylorenghish.com
TAYLOR ENGLISH DUMA LLP
1600 Parkwood Circle, Suite 200
Atlanta, GA 30339
Telephone: 678-336-7249

Counsel for State Defendants

CERTIFICATE OF COMPLIANCE

Pursuant to L.R. 7.1(D), the undersigned hereby certifies that the foregoing **STATE DEFENDANTS' STATUS REPORT FOR TELECONFERENCE ON JANUARY 17, 2020** has been prepared in Century Schoolbook 13, a font and type selection approved by the Court in L.R. 5.1(B).

/s/Bryan P. Tyson
Bryan P. Tyson