

**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

**CURLING PLAINTIFFS' RESPONSES TO STATE DEFENDANTS'
SECOND REQUESTS FOR PRODUCTION OF DOCUMENTS**

In accordance with Rules 26 and 34 of the Federal Rules of Civil Procedure, Plaintiffs Donna Curling, Donna Price, and Jeffrey Schoenberg (collectively, the “Curling Plaintiffs”), by and through counsel, hereby respond and object to the Second Requests for Production of Documents to Curling Plaintiffs (“Requests”), served on August 21, 2020, by Defendants Secretary of State Brad Raffensperger, the State Election Board, and the State Election Board Members (collectively, the “State Defendants”).

PRELIMINARY STATEMENT

Curling Plaintiffs decline to do more than is required by the Federal Rules of Civil Procedure, Federal Rules of Evidence, or the applicable rules and orders of this

Court.

Nothing in these responses is an admission by Curling Plaintiffs of the existence, relevance, or admissibility of any information, for any purpose. Curling Plaintiffs reserve all objections stated herein as well as objections as to competency, relevance, materiality, privilege, or admissibility related to the use of its responses and any document or thing identified in its responses as evidence for any purpose whatsoever in any subsequent proceeding in this action or any other action.

Some of the information sought in these Requests is publicly available and therefore is as accessible to Defendants as to Curling Plaintiffs.

Curling Plaintiffs do not waive, intentionally or otherwise, any attorney-client privilege, work-product immunity, joint defense or common-interest privilege or any other privilege, immunity, or other protection that may be asserted to protect information from disclosure.

Curling Plaintiffs have made a good faith effort, consistent with their duties under the applicable rules and orders, to reasonably construe each Request and to respond as they understand it.

REQUEST FOR PRODUCTION NO. 1:

All documents that evidence, refer, reflect, or relate to alleged existence of malware on the imaged KSU server produced by State Defendants in this civil action.

RESPONSE:

Per the Parties' August 26 discovery conference, this request has been narrowed as follows: "All documents that evidence or reflect the alleged existence of malware on the imaged KSU server produced by State Defendants in this civil action." Curling Plaintiffs have previously produced documents responsive to this Request. As noted in Curling Plaintiffs' response to Defendants' First Requests for Production, responsive evidence and associated documents include those that are either publicly available or already part of the record in this case. Curling Plaintiffs object to reproducing, and decline to reproduce, such documents and information because they are equally available to Defendants. Curling Plaintiffs also object to producing, and decline to produce, any documents relating to their experts' analyses and reports that are not discoverable under Rule 26 or any other applicable protection. To the extent responsive, non-privileged documents exist within Plaintiffs' possession, custody, or control and are reasonably accessible and not equally available to Defendants, Plaintiffs will conduct a reasonable search and

produce them.

REQUEST FOR PRODUCTION NO. 2:

All documents that evidence, refer, reflect, or relate to alleged existence of malware on the memory cards for Cobb, DeKalb, and Fulton Counties produced by State Defendants in this civil action.

RESPONSE:

Per the Parties' August 26 discovery conference, this request has been narrowed as follows: "All documents that evidence or reflect the alleged existence of malware on the memory cards for Cobb, DeKalb, and Fulton Counties produced by State Defendants in this civil action." Curling Plaintiffs object to producing, and decline to produce, any documents relating to their experts' analyses and reports that are not discoverable under Rule 26 or any other applicable protection. To the extent responsive, non-privileged documents exist within Plaintiffs' possession, custody, or control and are reasonably accessible and not equally available to Defendants, Plaintiffs will conduct a reasonable search and produce them.

REQUEST FOR PRODUCTION NO. 3:

All documents that evidence, refer, reflect, or relate to alleged existence of malware on any of the GEMS databases produced by State Defendants in this civil action.

RESPONSE:

Per the Parties' August 26 discovery conference, this request has been narrowed as follows: "All documents that evidence or reflect the alleged existence of malware on any of the GEMS databases produced by State Defendants in this civil action." Curling Plaintiffs have previously produced documents responsive to this Request. As noted in Curling Plaintiffs' response to Defendants' First Requests for Production, responsive evidence and associated documents include those that are either publicly available or already part of the record in this case. Curling Plaintiffs object to reproducing, and decline to reproduce, such documents and information because they are equally available to Defendants. Curling Plaintiffs also object to the assumption underlying this request that malware would be expected to exist "on any of the GEMS databases produced by State Defendants in this civil action." As Curling Plaintiffs and the expert previously explained, they sought those databases to assess the confidentiality (or lack thereof) of the Georgia election system and to rebut State Defendants' repeated, false claims that Georgia's GEMS databases were

unique and confidential. Curling Plaintiffs previously explained that they needed access to the GEMS servers, DREs, and other components of the election system—not simply GEMS databases, which were neither confidential nor unique to Georgia—to assess the overall security and reliability of the system. Curling Plaintiffs also object to producing, and decline to produce, any documents relating to their experts’ analyses and reports that are not discoverable under Rule 26 or any other applicable protection. To the extent responsive, non-privileged documents exist within Plaintiffs’ possession, custody, or control and are reasonably accessible and not equally available to Defendants, Plaintiffs will conduct a reasonable search and produce them.

REQUEST FOR PRODUCTION NO. 4:

All documents that evidence, refer, reflect, or relate to alleged existence of malware on the imaged DRE units produced by State Defendants in this civil action.

RESPONSE:

Per the Parties’ August 26 discovery conference, this request has been narrowed as follows: “All documents that evidence or reflect the alleged existence of malware on the imaged DRE units produced by State Defendants in this civil action.” Curling Plaintiffs object to producing, and decline to produce, any documents relating to their experts’ analyses and reports that are not discoverable

under Rule 26 or any other applicable protection. To the extent responsive, non-privileged documents exist within Plaintiffs' possession, custody, or control and are reasonably accessible and not equally available to Defendants, Plaintiffs will conduct a reasonable search and produce them.

REQUEST FOR PRODUCTION NO. 5:

All documents relied upon by Plaintiff Jeffrey Schoenberg to support his statement in his declaration [Doc. 785-5] that he is "concerned about the reliability of the BMD-based voting system." [Doc. 785-5, ¶10].

RESPONSE:

To the extent responsive, non-privileged documents exist within Plaintiff Schoenberg's possession, custody, or control and are reasonably accessible and not equally available to Defendants, Plaintiff Schoenberg will produce them.

REQUEST FOR PRODUCTION NO. 6:

All documents relied upon by Plaintiff Donna Curling to support her statement in her declaration [Doc. 785-3] that she "will be forced to vote on a system that [she does] not believe will count [her] vote equally and fully," if Georgia used BMDs for voting in future elections. [Doc. 785-5, ¶6].

RESPONSE:

To the extent responsive, non-privileged documents exist within Plaintiff

Curling's possession, custody, or control and are reasonably accessible and not equally available to Defendants, Plaintiff Curling will produce them.

REQUEST FOR PRODUCTION NO. 7:

All documents relied upon to support Plaintiff Donna Curling's assertion in her declaration [Doc. 785-3] that the BMDs are "unverifiable voting machines."

RESPONSE:

Plaintiffs construe this request as applying to documents Plaintiffs Curling relied on for this assertion in her declaration. To the extent responsive, non-privileged documents exist within Plaintiff Curling's possession, custody, or control and are reasonably accessible and not equally available to Defendants, Plaintiff Curling will produce them.

REQUEST FOR PRODUCTION NO. 8:

All evidence that refers, reflects, or relates to the alleged "threats to the security, transparency, and verifiability of Georgia elections posed by implementation of the BMD-based election system by Dominion Voting Systems, Inc. and selected by the Georgia Secretary of State's Office" learned by Plaintiff Donna Curling according to her declaration. [Doc. 785-4, ¶ 8].

RESPONSE:

Per the Parties' August 26 discovery conference, this request has been

narrowed as follows: “All documents relied upon by Plaintiff Donna Curling for her assertion regarding alleged ‘threats to the security, transparency, and verifiability of Georgia elections posed by implementation of the BMD-based election system by Dominion Voting Systems, Inc. and selected by the Georgia Secretary of State’s Office’ in her declaration. [Doc. 785-4, ¶ 8].” This statement actually comes from Plaintiff Donna Price’s declaration. To the extent responsive, non-privileged documents exist within Plaintiff Price’s possession, custody, or control and are reasonably accessible and not equally available to Defendants, Plaintiff Price will produce them.

REQUEST FOR PRODUCTION NO. 9:

All documents relied upon by Plaintiff Donna Curling to support her statement in her declaration [Doc. 785-4] that the BMD-based voting system in Georgia “suffers from systemic vulnerability to advanced persistent threats.” [Doc. 785-4, ¶ 10].

RESPONSE:

This statement actually comes from Plaintiff Donna Price’s declaration. To the extent responsive, non-privileged documents exist within Plaintiff Price’s possession, custody, or control and are reasonably accessible and not equally available to Defendants, Plaintiff Price will produce them.

REQUEST FOR PRODUCTION NO. 10:

All evidence that refers, reflects, or relates to the alleged existence of malware that Plaintiffs contend could alter election outcomes through attacks on the BMDs used in Georgia elections.

RESPONSE:

Per the Parties' August 26 discovery conference, this request has been narrowed as follows: "All evidence that reflects the alleged existence of malware that Plaintiffs contend could alter election outcomes through attacks on the BMDs used in Georgia elections." Curling Plaintiffs have previously produced documents responsive to this Request. As noted in Curling Plaintiffs' response to Defendants' First Requests for Production, responsive evidence and associated documents include those that are either publicly available or already part of the record in this case. Curling Plaintiffs object to reproducing, and decline to reproduce, such documents and information because they are equally available to Defendants. Curling Plaintiffs also object to producing, and decline to produce, any documents relating to their experts' analyses and reports that are not discoverable under Rule 26 or any other applicable protection. To the extent responsive, non-privileged documents exist within Plaintiffs' possession, custody, or control and are reasonably accessible and not equally available to Defendants, Plaintiffs will conduct a

reasonable search and produce them.

REQUEST FOR PRODUCTION NO. 11:

All documents that support the claim made by Dr. Halderman that “If attackers breached any of them to attack the DRE-based system, those attackers may continue to have such access under the BMD-based system.” [Doc. 785-2, ¶ 11].

RESPONSE:

Curling Plaintiffs have previously produced documents responsive to this Request. As noted in Curling Plaintiffs’ response to Defendants’ First Requests for Production, responsive evidence and associated documents include those that are either publicly available or already part of the record in this case. Curling Plaintiffs object to reproducing, and decline to reproduce, such documents and information because they are equally available to Defendants. Curling Plaintiffs also object to producing, and decline to produce, any documents relating to their experts’ analyses and reports that are not discoverable under Rule 26 or any other applicable protection. To the extent responsive, non-privileged documents exist within Plaintiffs’ possession, custody, or control and are reasonably accessible and not equally available to Defendants, Plaintiffs will conduct a reasonable search and produce them.

REQUEST FOR PRODUCTION NO. 12:

All documents sufficient to show that malware from the GEMS/DRE system can transfer to the Dominion BMD system.

RESPONSE:

Curling Plaintiffs have previously produced documents responsive to this Request. As noted in Curling Plaintiffs' response to Defendants' First Requests for Production, responsive evidence and associated documents include those that are either publicly available or already part of the record in this case. Curling Plaintiffs object to reproducing, and decline to reproduce, such documents and information because they are equally available to Defendants. Curling Plaintiffs also object to producing, and decline to produce, any documents relating to their experts' analyses and reports that are not discoverable under Rule 26 or any other applicable protection. To the extent responsive, non-privileged documents exist within Plaintiffs' possession, custody, or control and are reasonably accessible and not equally available to Defendants, Plaintiffs will conduct a reasonable search and produce them.

REQUEST FOR PRODUCTION NO. 13:

All documents you plan to use in the Preliminary Injunction hearing.

RESPONSE:

Curling Plaintiffs have previously produced documents responsive to this Request. As noted in Curling Plaintiffs' response to Defendants' First Requests for Production, responsive evidence and associated documents include those that are either publicly available or already part of the record in this case. Curling Plaintiffs object to reproducing, and decline to reproduce, such documents and information because they are equally available to Defendants. Plaintiffs will produce responsive, non-privileged documents that are not equally available to Defendants.

Dated: August 28, 2020

Respectfully,

/s/ David D. Cross

David D. Cross (*pro hac vice*)

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CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing document has been prepared in accordance with the font type and margin requirements of LR 5.1, using font type of Times New Roman and a point size of 14.

/s/ David D. Cross
David D. Cross

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CERTIFICATE OF SERVICE

I hereby certify that on August 28, 2020, a copy of the foregoing **CURLING PLAINTIFFS' RESPONSES TO STATE DEFENDANTS' SECOND REQUESTS FOR PRODUCTION OF DOCUMENTS** was served on all counsel of record by electronic delivery of a PDF version.

/s/ David D. Cross
David D. Cross