

Challenges to a Secretary of State's Election Management

Common Cause of Georgia v. Kemp
(*Amy Totenberg, 1:18-cv-5102*) and *Brown v. Kemp*
(*William M. Ray II, 1:18-cv-5121*) (N.D. Ga.)

Two federal lawsuits filed on the day before and the day of a general election challenged a secretary of state's election oversight. The first case alleged susceptibility to tampering of voters' records. The second case challenged the propriety of a secretary of state presiding over an election in which he is running for governor. A related case from the previous year challenged the security of touchscreen voting machines. A federal judge ordered the use of provisional ballots as an interim remedy for voter-record discrepancies, pursuant to the Help America Vote Act. Apparently the winner of the gubernatorial election, the secretary notified the judge in the other case of his resignation as secretary of state.

Subject: Voting procedures. *Topics:* Voting technology; provisional ballots; case assignment; Help America Vote Act (HAVA); laches; removal; enjoining certification; attorney fees.

Two federal lawsuits, filed in the Northern District of Georgia on the day before and on the day of the 2018 general election, challenged election oversight by Georgia's secretary of state. They were related to litigation initiated in 2017 over ballot technology.

Susceptibility to Security Breaches

According to the *Washington Post*,

[A cybersecurity sleuth] was taken aback when [a Google] query turned up a file with a list of voters and then alarmed when a subsequent simple data pull retrieved the birth dates, drivers' license numbers and partial Social Security numbers of more than 6 million voters, as well as county election supervisors' passwords for use on Election Day. He also discovered the server had a software flaw that an attacker could exploit to take control of the machine.¹

Common Cause of Georgia filed a federal complaint in the Northern District against Georgia's secretary of state on November 5, 2018, one day before the general election, alleging that the state's voter-registration website was improperly susceptible to security breaches and urging the use of provisional ballots in cases of registration questions.² On the following day, Judge Eleanor L.

1. Ellen Nakashima, *Georgia Faces Legal Challenge Over Its Voting Technology*, Wash. Post, Sept. 17, 2018, at A13.

2. Complaint, *Common Cause of Ga. v. Kemp*, No. 1:18-cv-5102 (N.D. Ga. Nov. 5, 2018), D.E. 1; *Common Cause Ga. v. Secretary*, 17 F.4th 102, 105 (11th Cir. 2021).

Ross reassigned the case from herself to Judge Amy Totenberg as related to a 2017 case over which Judge Totenberg was presiding.³

Direct Recording Electronic Voting Machines

On August 8, 2017, state and county election officials removed to the Northern District's federal court a July 3 complaint filed in state court challenging the use of direct recording electronic (DRE) voting machines in a June 20 special congressional runoff election.⁴ "DREs do not create a paper trail or any other means by which to independently verify or audit the recording of each elector's vote."⁵ On August 12, the plaintiffs filed a motion for limited early and expedited discovery, disclosing an intention to seek a preliminary injunction barring DREs—also known as touchscreen voting machines—in the November 7 municipal elections.⁶ On August 14, Judge Totenberg observed that the record did not show service for seven of the defendants, although three consented to removal.⁷ Judge Totenberg ordered service on the remaining four defendants by 5:00 p.m. on the following day.⁸

On August 18, Judge Totenberg noted the filing in state court of a notice of a related case there, and she ordered the parties to provide her with the status and records of that case.⁹ She also noted the plaintiffs' right to file with her an amended state-court complaint.¹⁰ At an August 22 telephonic status conference,¹¹ the plaintiffs' attorney noted that his clients' recent hiring of new counsel could delay their filing of the preliminary-injunction motion.¹² Judge Totenberg sought guidance on the case's time pressure:

We're not facing a major election cycle. I'm not trying to minimize the officeholders who are up for election or what is happening in the city. But it is not clear to me that having a preliminary injunction hearing on a thin record under these circumstances or ruling, even if I have a hearing, is really in anyone's interest. Not that I won't do it if I think it is warranted. But I'm not clear what the emergency is at this juncture, other than obviously there is

3. Order, *Common Cause of Ga.*, No. 1:18-cv-5102 (N.D. Ga. Nov. 6, 2018), D.E. 4; Transcript at 18, *id.* (Nov. 8, 2018, Nov. 10, 2018), D.E. 54 [hereinafter *Common Cause of Ga.* Transcript].

4. Notice of Removal, *Curling v. Kemp*, No. 1:17-cv-2989 (N.D. Ga. Aug. 8, 2017), D.E. 1; see Mark Niese, *Lawsuit Tries to Force Georgia to Use Paper Ballots*, Atlanta J.-Const., June 4, 2018, at 1A.

5. *Curling v. Kemp*, 334 F. Supp. 3d 1303, 1308 (N.D. Ga. 2018).

6. Motion, *Curling*, No. 1:17-cv-2989 (N.D. Ga. Aug. 12, 2017), D.E. 4.

In 2002, Georgia was the first state to adopt DRE technology for elections. See Nakashima, *supra* note 1; Mark Niese, *Paper Ballots Ruled Out, for Now*, Atlanta J.-Const., Sept. 19, 2018, at 1A.

7. Order at 2–3, *Curling*, No. 1:17-cv-2989 (N.D. Ga. Aug. 14, 2017), D.E. 5.

8. *Id.* at 3.

9. Order at 2, *id.* (Aug. 18, 2017), D.E. 14.

10. *Id.* at 1; see Amended Complaint, *id.* (Aug. 18, 2017), D.E. 15.

11. Minutes, *id.* (Aug. 22, 2017), D.E. 41.

12. Transcript at 6–7, *id.* (Aug. 22, 2017, filed Aug. 24, 2017), D.E. 42; see *id.* at 5 (Judge Totenberg's observing, "It seemed to me that I needed to chat with you about the status of this case as soon as possible at this juncture before we just splurged in ten different directions.").

great value in voting and having integrity in the voting system. But why that won't be protected by having a more considered development of the record and a proper hearing at a later point in time I'm not clear.¹³

On the day after the conference, Judge Totenberg directed the plaintiffs to decide whether they wanted to move quickly to seek relief for the 2017 election or instead direct their efforts to the 2018 election:

The Court . . . encourages Plaintiffs' counsel to seriously review the information filed by Defendants . . . regarding the time schedule for election preparation . . . by August 29, 2017. . . . If Plaintiffs determine they wish to proceed with the current established schedule and plan, they are advised to focus their motion for preliminary injunctive relief realistically on the limited set of issues and claims they deem essential to be resolved in this current 2017 election cycle.¹⁴

On August 30, 2017, the plaintiffs filed a motion to grant them an extension until September 5 to file their preliminary-injunction motion.¹⁵ At an August 31 conference,¹⁶ the plaintiffs stated that they could file the injunction motion by 6:00 p.m. on September 1,¹⁷ and Judge Totenberg allowed them to do that.¹⁸ The plaintiffs decided, however, not to immediately pursue a preliminary injunction.¹⁹

The plaintiffs filed a second amended complaint two weeks later²⁰ and a third amended complaint nine months after that.²¹ On August 3²² and 7,²³ 2018, each of two groups of plaintiffs filed a motion for a preliminary injunction requiring the use of paper ballots.²⁴

On September 12, "[a] crowd of more than 125 people spilled into an overflow courtroom during a long day of testimony from voting technology experts who warned of the dangers of hacking and election officials who said a quick switch to paper ballots would create more problems."²⁵ Judge Totenberg would have held the hearing in the larger overflow courtroom, but it was not

13. *Id.* at 16–17.

14. Order, *id.* (Aug. 23, 2017), D.E. 40.

15. Motion, *id.* (Aug. 30, 2017), D.E. 51; see Transcript at 4, *id.* (Aug. 31, 2017, filed Sept. 8, 2017), D.E. 59 [hereinafter Aug. 31, 2017, *Curling* Transcript] ("THE COURT: Frankly, I just was surprised by the late motion for an extension.").

16. Minutes, *id.* (Aug. 31, 2017), D.E. 54.

17. Aug. 31, 2017, *Curling* Transcript, *supra* note 15, at 6, 9.

18. Order, *Curling*, No. 1:17-cv-2989 (N.D. Ga. Aug. 31, 2017), D.E. 53.

19. See Transcript at 4, *id.* (Sept. 1, 2017, filed Sept. 8, 2017), D.E. 60.

20. Second Amended Complaint, *id.* (Sept. 15, 2017), D.E. 70.

21. Third Amended Complaint, *id.* (June 13, 2018), D.E. 226.

22. Preliminary-Injunction Motion, *id.* (Aug. 3, 2018), D.E. 258; see Mark Niese, *Judge Might Shift Georgia Voting to Paper Ballots by November*, Atlanta J.-Const., Aug. 9, 2018, at 1B.

23. Preliminary-Injunction Motion, *Curling*, No. 1:17-cv-2989 (N.D. Ga. Aug. 7, 2018), D.E. 260; see Amended Preliminary-Injunction Motion, *id.* (Aug. 20, 2018), D.E. 271.

24. *Curling v. Raffensperger*, ___ F. Supp. 3d ___, ___, 2023 WL 7463462 (N.D. Ga. 2023) (p.18 of opinion filed at N.D. Ga. No. 1:17-cv-2989, D.E. 1705).

25. Mark Niese, *Judge May Force Paper-Ballot Vote*, Atlanta J.-Const., Sept. 13, 2018, at 1B.

equipped for some of the technology that the parties wanted to use.²⁶ “We are making available, of course, the audio in the overflow courtroom as well as . . . screens in there that will show any exhibits. But unfortunately or fortunately you won’t get to see some of the witnesses. There is no video presentation.”²⁷

Acknowledging the merits of the plaintiffs’ claims, Judge Totenberg ruled on September 17 that the motions had been filed too late for effective relief in the 2018 general election.²⁸ On the one hand, “[t]he State of Georgia Defendants have delayed in grappling with the heightened critical cybersecurity issues of our era posed for the State’s dated, vulnerable voting system that provides no independent paper audit trail.”²⁹ On the other hand, “[l]ast-minute, wholesale changes in the voting process operating in over 2,600 precincts, along with scheduled early voting arrangements, could predictably run the voting process and voter participation amuck.”³⁰

Plaintiffs shine a spotlight on the serious security flaws and vulnerabilities in the State’s DRE system—including unverifiable election results, outdated software susceptible to malware and viruses, and a central server that was already hacked multiple times. . . .

...

While Plaintiffs have shown the threat of real harms to their constitutional interests, the eleventh-hour timing of their motions and an instant grant of the paper ballot relief requested could just as readily jeopardize the upcoming elections, voter turnout, and the orderly administration of the election.

...

The Court attempted to expedite this case at earlier times to no avail. . . .

Meanwhile, the State Defendants have also stood by for far too long, given the mounting tide of evidence of the inadequacy and security risks of Georgia’s DRE voting system and software.

...

. . . [T]he Court finds that the Plaintiffs have not carried their burden of persuasion to establish these prerequisites for such extraordinary injunctive relief in the immediate 2018 election time frame ahead.

V. Conclusion

While Plaintiffs’ motions for preliminary injunction are **DENIED**, the Court advises the Defendants that further delay is not tolerable in their confronting and tackling the challenges before the State’s election balloting system. . . .

...

26. Transcript at 9–10, *Curling*, No. 1:17-cv-2989 (N.D. Ga. Sept. 5, 2018, filed Sept. 17, 2018), D.E. 307.

27. *Id.* at 10.

28. *Curling v. Kemp*, 334 F. Supp. 3d 1303 (N.D. Ga. 2018); *Curling v. Raffensperger*, ___ F. Supp. 3d at ___, 2023 WL 7463462 (p.20 of opinion filed at N.D. Ga. No. 1:17-cv-2989, D.E. 1705); *Curling v. Raffensperger*, 397 F. Supp. 3d 1334, 1338 (N.D. Ga. 2019); see Richard L. Hasen, *Election Meltdown 70–71* (2020); Ellen Nakashima, *Motion to Force Georgia to Use Paper Ballots in Midterm Elections Is Denied*, Wash. Post, Sept. 19, 2018, at A3; Niese, *supra* note 6.

29. *Curling*, 334 F. Supp. 3d at 1307.

30. *Id.*

. . . The 2020 elections are around the corner. If a new balloting system is to be launched in Georgia in an effective manner, it should address democracy's critical need for transparent, fair, accurate, and verifiable election processes that guarantee each citizen's fundamental right to cast an accountable vote.³¹

Voting machines used in the 2018 election were sequestered pending further litigation, pursuant to Judge Totenberg's December 2017 preservation order.³² In an interlocutory appeal, the court of appeals determined on February 7, 2019, that "the State Defendants are neither entitled to Eleventh Amendment immunity nor legislative immunity and their standing arguments are not yet reviewable."³³

On April 2, 2019, a new governor signed a bill replacing Georgia's electronic voting machines with touchscreen-and-paper machines.³⁴ On May 21, Judge Totenberg ruled that her 2017 case could proceed to discovery.³⁵ She issued a 153-page opinion on August 15 allowing old technology through 2019 elections but prohibiting it beyond then.³⁶

Suit Seeking the Recusal of Georgia's Secretary of State

On the day of the November 6, 2018, general election, five voters filed a federal complaint in the Northern District seeking relief from Georgia's secretary of state's administering the election while also seeking the office of governor.³⁷ Among the allegations in the complaint was a claim that the secretary falsely and publicly accused the opposing party of cybercrimes.³⁸ With their complaint, the voters filed a motion for a temporary restraining order against the secretary's exercising any authority over the election.³⁹

On the next day, the plaintiffs provided notice that the case was related to the one filed by Common Cause a day earlier,⁴⁰ and Judge William M. Ray II set the case for hearing on the morning after that.⁴¹ At the hearing, Judge Ray

31. *Id.* at 1322, 1326–28 (record citation omitted); see Alan Judd & Bill Rankin, *Security Doubts Not Over After Race Ends*, Atlanta J.-Const., Nov. 18, 2018, at 1A.

32. See Preservation Order, *Curling*, No. 1:17-cv-2989 (N.D. Ga. Dec. 15, 2018), D.E. 122; see also Mark Niese, *Why Did Some Voting Machines Sit Unused?*, Atlanta J.-Const., Nov. 8, 2018, at 1A.

33. *Curling v. Kemp*, 761 F. App'x 927, 930 (11th Cir. 2019); see *Curling*, 397 F. Supp. 3d at 1338 n.1.

34. Ga. Act No. 24 (2019–2020), www.legis.ga.gov/legislation/en-US/Display/20192020/HB/316; see *Curling*, 397 F. Supp. 3d at 1340; see also Greg Bluestein & Mark Niese, *Governor Signs Bill for New Voting Machines*, Atlanta J.-Const., Apr. 5, 2019, at 1A; see also Cameron McWhirter, *Voting Machine Bill Passes in Georgia*, Wall St. J., Mar. 14, 2019, at A3.

35. *Curling v. Raffensperger*, 403 F. Supp. 3d 1311 (N.D. Ga. 2019).

36. *Curling*, 397 F. Supp. 3d 1334. See generally Danny Hakim, Reid J. Epstein & Stephanie Sul, *Anatomy of an Election "Meltdown" in Georgia*, N.Y. Times, July 26, 2020, at A1.

37. Complaint, *Brown v. Kemp*, No. 1:18-cv-5121 (N.D. Ga. Nov. 6, 2018), D.E. 1.

38. *Id.* at 8–10.

39. Temporary-Restraining-Order Motion, *id.* (Nov. 6, 2018), D.E. 2.

40. Notice, *id.* (Nov. 7, 2018), D.E. 8.

41. Order, *id.* (Nov. 7, 2018), D.E. 3; see Richard Fausset & Alan Blinder, *Republican in the Lead, Georgia Governor Race Quickly Goes to Court*, N.Y. Times, Nov. 8, 2018, at F15.

received a copy of the secretary's letter of resignation.⁴² Two days after the election, it appeared that the secretary probably had enough votes to win the governorship without a runoff election.⁴³ His challenger conceded defeat on November 16.⁴⁴

Judge Ray dismissed the case as moot on November 30.⁴⁵

Further Litigation on Provisional Ballots

Common Cause filed a motion for a temporary restraining order and expedited discovery on November 7, the day after election day.⁴⁶ That day, Judge Totenberg set the case for hearing on the following day.⁴⁷ On November 7 and 8, she issued three orders explaining to the parties what information she required them to present at the hearing.⁴⁸ On November 9, she ordered the plaintiffs to file by 3:00 p.m. that day an affidavit from a qualified statistician "regarding whether or not there is a statistically significant increase in the percentage of provisional ballots cast, relative to the total number of ballots cast," comparing the 2018 election with the elections in 2014 and 2016.⁴⁹

On November 12, Judge Totenberg ordered, pursuant to the Help America Vote Act,⁵⁰

the Secretary of State's Office to immediately establish and publicize on its website a secure and free-access hotline or website for provisional ballot voters to access to determine whether their provisional ballots were counted and if not, the reason why. The Court further **ORDERS** the Secretary of State to direct each of the 159 county election superintendents to similarly publicize the availability of the hotline or secure website on the county and county election websites.⁵¹

42. Minutes, *Brown*, No. 1:18-cv-5121 (N.D. Ga. Nov. 8, 2018), D.E. 15; see Bill Barrow & Kate Brumback, *Georgia's Democratic Candidate for Governor Vows to Fight On*, Miami Herald, Nov. 9, 2018, at 7A; Jim Galloway, *Amid Ballot Fight, a Race to Decide Who Should Count Them in Future*, Atlanta J.-Const., Nov. 14, 2018, at 1B; Judd & Rankin, *supra* note 31; see also *Common Cause of Ga.* Transcript, *supra* note 3, at 5 (statement by an attorney for the secretary of state that "Secretary Kemp has resigned effective noon today.").

43. See Fausset & Blinder, *supra* note 41.

44. See Alan Blinder & Richard Fausset, *Democrat Ends Bid in Georgia for Governor*, N.Y. Times, Nov. 17, 2018, at A1; Vanessa Williams & Felicia Sonmez, *Abrams Acknowledges Kemp's Gubernatorial Win, Remains Critical of Election*, Wash. Post, Nov. 17, 2018, at A4 ("Kemp's 50.22 percent of the tally put the Republican just above the 50 percent-plus-one-vote threshold required to avoid a runoff election in December.").

45. Order, *Brown*, No. 1:18-cv-5121 (N.D. Ga. Nov. 30, 2018), D.E. 16.

46. Motion, *Common Cause of Ga. v. Kemp*, No. 1:18-cv-5102 (N.D. Ga. Nov. 7, 2018), D.E. 15; *Common Cause Ga. v. Secretary*, 17 F.4th 102, 105 (11th Cir. 2021).

47. Order, *Common Cause of Ga.*, No. 1:18-cv-5102 (N.D. Ga. Nov. 7, 2018), D.E. 17; see *Common Cause Ga.*, 17 F.4th at 105.

48. Orders, *Common Cause of Ga.*, No. 1:18-cv-5102 (N.D. Ga. Nov. 7 and 8, 2018), D.E. 18, 20, 21.

49. Order, *id.* (Nov. 9, 2018), D.E. 41.

50. Pub. L. No. 107-252, 116 Stat. 1666 (2002), *as amended*, 52 U.S.C. §§ 20901–21145. See generally Marie Leary & Robert Timothy Reagan, *The Help America Vote Act* (Federal Judicial Center 2012); Symposium, *HAVA @ 10*, 12 Election L.J. 111 (2013).

51. *Common Cause of Ga. v. Kemp*, 347 F. Supp. 3d 1270, 1299–300 (N.D. Ga. 2018);

In light of intervening statutory actions, the parties stipulated dismissal of the case on June 14, 2019.⁵² Judge Totenberg awarded the plaintiff \$166,210.09 in attorney fees and costs on May 29, 2020.⁵³ The court of appeals affirmed the award on October 28, 2021.⁵⁴

Further Litigation on Election Technology

Pending before Judge Totenberg is an October 15, 2019, amended complaint challenging Georgia's election technology.⁵⁵

On August 7, 2020, Judge Totenberg again declined to grant the plaintiffs a preliminary injunction, noting that the record by then had become out of date.⁵⁶ On September 28, however, Judge Totenberg was able to conclude that a preliminary injunction should require election officials to provide at each polling place by the close of early voting during the November 3 general election a paper record of eligible voters in light of historical problems with electronic records.⁵⁷ On October 11, Judge Totenberg provided further injunctive relief protecting electronic voting procedures from malfunction and interference.⁵⁸

Common Cause Ga., 17 F.4th at 106; see Greg Bluestein & Mark Niese, *Vote Count Plays Out in Counties, Courts*, Atlanta J.-Const., Nov. 14, 2018, at 1A; Allison McCann & Karen Yourish, *In Some Races, Results May Still Be Weeks Away*, N.Y. Times, Nov. 14, 2018, at A18; Sean Sullivan, Beth Reinhard, Vanessa Williams & Lori Rozsa, *New Court Moves Could Prolong Fla., Ga. Races*, Wash. Post, Nov. 14, 2018, at A1; see also Judd & Rankin, *supra* note 31 ("last week, Totenberg detailed instances of mismanagement by county election officers").

52. Stipulation, *Common Cause of Ga.*, No. 1:18-cv-5102 (N.D. Ga. June 14, 2019), D.E. 116.

53. Opinion, *id.* (May 29, 2020), D.E. 123, 2020 WL 12948010; *Common Cause Ga.*, 17 F.4th at 106.

54. *Common Cause Ga.*, 17 F.4th 102.

55. Supplemental Complaint, *Curling v. Raffensperger*, No. 1:17-cv-2989 (N.D. Ga. Oct. 15, 2019), D.E. 628; Third Amended Complaint, *id.* (Oct. 15, 2019), D.E. 627; *Curling v. Raffensperger*, ___ F. Supp. 3d ___, ___, 2023 WL 7463462 (N.D. Ga. 2023) (pp.32–33 of opinion filed at N.D. Ga. No. 1:17-cv-2989, D.E. 1705); see Opinion, *Curling*, No. 1:17-cv-2989 (N.D. Ga. July 30, 2020), D.E. 751 (dismissing a procedural-due-process claim). See generally Nick Corasaniti & Stephanie Saul, *In Georgia Election Havoc, a Costly Bet on Tech*, N.Y. Times, June 12, 2020, at A1 ("good-government groups, a federal judge and election-security experts warned of [new high-tech voting-system] perils"); Richard Fausset, Reid J. Epstein & Rick Rojas, *Anger and Mistrust in Georgia as Vote Dissolves Into Debacle*, N.Y. Times, June 10, 2020, at A1 ("Georgia's statewide primary elections on Tuesday were overwhelmed by a full-scale meltdown of new voting systems put in place after widespread claims of voter suppression during the state's 2018 governor's election.")

56. Opinion, *id.* (Aug. 7, 2020), D.E. 768.

57. *Curling v. Raffensperger*, 491 F. Supp. 3d 1289 (N.D. Ga. 2020); *id.* at 1293 (noting that the injunction was issued "in light of new evidence brought to light by Plaintiffs in the late evening hours on Friday, September 25, 2020"); see Order, *Curling*, No. 1:17-cv-2989 (N.D. Ga. Oct. 14, 2020), D.E. 969 (denying a stay); Orders, *id.* (Oct. 12, 2020), D.E. 965, 966 (clarifying the injunction).

58. *Curling v. Raffensperger*, 493 F. Supp. 3d 1264 (N.D. Ga. 2020); *Curling*, ___ F. Supp. 3d at ___, 2023 WL 7463462 (p.38 of opinion filed at N.D. Ga. No. 1:17-cv-2989, D.E. 1705).

On October 24, 2020, the court of appeals stayed the September 28 injunction.⁵⁹ On October 5, 2022, the court of appeals determined that the deadline for paper voter lists was an abuse of discretion: “As with other reasonable, nondiscriminatory voting rules, we consider not what the best policy would be, but whether the State’s administrative concerns justify the one in place.”⁶⁰

On November 10, 2023, Judge Totenberg agreed that some of the plaintiffs’ claims were suitable for trial, which is set to begin on January 9, 2024.⁶¹

Further Litigation on Election Management

Judge Steve C. Jones conducted a bench trial from April 11 to June 23, 2022,⁶² in a November 27, 2018, action generally challenging Georgia’s oversight of elections.⁶³ He did not find any flaws in the way that Georgia conducted elections requiring a judicial remedy.⁶⁴

59. *Curling v. Sec’y of State*, No. 20-13730 (11th Cir. Oct. 24, 2020), 2020 WL 6301847.

60. *Curling v. Raffensperger*, 50 F.4th 1114, 1117 (11th Cir. 2022).

61. *Curling*, ___ F. Supp. 3d ___, 2023 WL 7463462 (opinion filed at N.D. Ga. No. 1:17-cv-2989, D.E. 1705); Order, *Curling*, No. 1:17-cv-2989 (N.D. Ga. Oct. 13, 2023), D.E. 1700.

62. Minutes, *Fair Fight Action v. Crittenden*, No. 1:18-cv-5391 (N.D. Ga. June 23, 2022), D.E. 852; Minutes, *id.* (Apr. 11, 2022), D.E. 789; *Fair Fight Action, Inc. v. Raffensperger*, 634 F. Supp. 3d 1128, 1148 (N.D. Ga. 2022 (“[a]fter a delay in the start of trial due to the Omicron variant of COVID-19”); *id.* at 1143 (“what is believed to have been the longest voting rights bench trial in the history of the Northern District of Georgia”)).

63. Docket Sheet, *Fair Fight Action*, No. 1:18-cv-5391 (N.D. Ga. Nov. 27, 2018); Second Amended Complaint, *id.* (Dec. 3, 2020), D.E. 582; Amended Complaint, *id.* (Feb. 19, 2019), D.E. 41; Complaint at 39–41, *id.* (Nov. 27, 2018), D.E. 1; see *Fair Fight Action v. Raffensperger*, 413 F. Supp. 3d 1251 (N.D. Ga. 2019) (denying a motion to dismiss the amended complaint on standing, mootness, and other grounds, but dismissing the state election board from some claims for sovereign immunity); see also Valerie Bauerlein, *Suit Alleges Georgia Curbed Black Voters*, Wall St. J., Nov. 28, 2018, at A4; Richard Fausset, *Supporters of Candidate Who Lost Georgia Race Take the State to Court*, N.Y. Times, Nov. 28, 2018, at A19; Vanessa Williams, *Lawsuit by Abrams’s PAC Alleges Voter Suppression in Georgia*, Wash. Post, Nov. 30, 2018, at A4.

64. *Fair Fight Action, Inc.*, 634 F. Supp. 3d 1128; see Matthew Brown, *Judge Upholds Ga. Law in Challenge Brought by Abrams After 2018 Loss*, Wash. Post, Oct. 2, 2022, at A8.