

Ga. Judge Scolds Attys For 'Nasty' Sparring In Voting Trial

By **Kelcey Caulder**

Law360, Atlanta (January 30, 2024, 8:52 PM EST) — Sparks flew Tuesday in federal court as attorneys debated whether the executive director of a nonprofit suing the state should be allowed to testify about a hack allegedly carried out by co-defendants of former President Donald Trump in the Georgia election interference case.

Attorneys representing the state, the nonprofit Coalition for Good Governance and a group of voters suing over the vulnerability of Georgia's voting machines were scolded by U.S. District Court Judge Amy M. Totenberg when an argument broke out over whether the nonprofit's executive director, Marilyn Marks, should be allowed to testify about the circumstances surrounding a phone call she received from Trump co-defendant Scott Hall in March 2021.

In the call, recordings of which were played during depositions in the long- running litigation, Hall told Marks he had arranged for a plane to take people to Coffee County, Georgia — where the alleged voting breach occurred — and had accompanied them as they "went in [the Coffee County elections office] and imaged every hard drive of every piece of equipment" and scanned ballots.

"The same people that went up to Michigan and did all of that forensic stuff on the computers, they sent their team down to Coffee County, Georgia, and they scanned all the equipment, imaged all the hard drives, and scanned every single ballot, absentee in-person, in-person, and absentee by mail," Hall can be heard saying on the recording. "We basically had the entire elections committee there, and they said, 'We give you permission. Go for it.'"

In the suit, a group of Georgia voters and the nonprofit Coalition for Good Governance **allege** the Voting Systems Corp. touchscreen machines used by in-person voters across the state are unreliable, vulnerable to malware and harder to audit than hand-marked paper ballots used by voters in other parts of the country.

Counsel for the voters used the Coffee County breach as an example of the machines' vulnerability during **opening statements**, playing surveillance video of unauthorized people entering the county elections office and accessing voting equipment in January 2021.

Josh Belinfante, an attorney representing the state, wanted Marks to testify about that call at trial, arguing that state election officials would have taken action to investigate allegations about what occurred in Coffee County more quickly if Marks had immediately reported what Hall told her to state election officials.

She did not immediately do so, Belinfante said, and so the plaintiffs in the case can't now argue the state's response to the Coffee County allegations was "ineffective," as they have **done throughout the trial**.

Bruce Brown, counsel for the nonprofit, objected to Belinfante's argument, saying the state failed to take appropriate action to address the Coffee County allegations even after it learned about the call. How Marks responded to it can't now be used to "villainize her," he argued.

David Cross, an attorney for the voters, joined Brown in his objection, saying the state had knowledge of other election-related issues in Coffee County that should have led to an investigation, including the April 2021 **discovery of a business card** for the now-shuttered cybersecurity company Cyber Ninjas in the county's elections office. Cyber Ninjas had led a partisan review of 2020 ballots in Arizona.

Cross said that the issue of when Marks reported Hall's call was a "collateral issue," given that Georgia called no state election officials to testify at trial about how the secretary of state's office might have acted differently had the call been reported.

After returning to the courtroom from a five-minute break, Judge Totenberg informed the attorneys on all sides that their discussion had gotten "pretty nasty."

"That degree of aggression is not necessary," the judge said, adding that the timing of Marks' reporting was not at the center of the case. "I am concerned that you take care in proceeding in a way that is fair and reasonable."

Brown explained that the attorneys involved in the case have gotten to know each other so well throughout the course of the litigation that they sometimes "feel free to be expressive," which drew a laugh from the judge and a few of the other attorneys.

"That is likely true, so to the extent I've offended you by saying you're too aggressive when this may just be part of your routine, I apologize, and I understand that," Judge Totenberg said. Before taking another break, she reminded the attorneys that Marks, "by herself, is not culpable."

While on the stand Tuesday, Marks testified that she knew Trump co- defendants Cathy Latham, who previously served as the chairwoman of the Coffee County Republican Party, and Misty Hampton, who served as the county's elections supervisor. Marks also said she knew Ed Voyles, a former member of the Coffee County board of elections.

She began communicating with each of them after the November 2020 election, Marks said, because she heard about what she believed were "illogical" and "outrageously overblown" allegations about election equipment operation issues and voter disparities in Coffee County.

Belinfante asked Marks if she knew why Voyles had resigned from the county's board of elections, to which the Marks said she thought it happened after "some controversy." Belinfante supplied that the resignation came after Voyles refused to certify the election in which Brad Raffensperger became Georgia's secretary of state, to which Marks responded she "didn't know."

Belinfante also questioned Marks about the nonprofit's lobbying efforts in Georgia, asking whether the coalition had opposed House Bill 316, a Raffensperger-backed election integrity bill that Belinfante said instituted a "uniform system" for elections using ballot-marking devices.

Marks admitted that the coalition opposed the bill, and Belinfante asked if the nonprofit's decision to file its first supplemental complaint in the current case was its attempt to push back against the bill's passing. She said it was, in part, an attempt to "reverse an inappropriate decision."

"It was to prevent the requirement that all in-person voters use [ballot- marking devices]," Marks said.

Requiring all in-person Georgia voters to use the devices, Marks argued, was something the nonprofit wanted reversed, because a "voter's will" may not be "accurately translated" when using a ballot-marking device.

The trial, which is now in its fourth week, is expected to wrap up Thursday.

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

1. 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 Lakshna Mehta.