UC-Berkeley Elections Expert Says Georgia's Lt. Governor Contest Is 'In Substantial Doubt'

A hearing on a motion to dismiss the election lawsuit is scheduled for Wednesday morning.

An analysis of votes cast in the Georgia lieutenant governor's race this past November suggest the results certifying Republican Geoff Duncan as the winner "are in substantial doubt," according to a professor of statistics at the University of California-Berkeley.

Philip Stark, associate dean of UC-Berkeley's Division of Mathematical and Physical Sciences and an expert in election statistics and post-election auditing, said he discerned a noticeable disparity in Duncan's contest with Democrat Sarah Riggs Amico between undervote rates of paper ballots and those cast on the state's obsolete electronic voting machines. Stark said his analysis—included in an affidavit filed in a pending legal challenge to Duncan's election—"strongly suggests that malfunction, misconfiguration, bugs, hacking, or other error or malfeasance caused some [direct-recording electronic] voting machines not to record votes in the lieutenant governor's contest."

Stark's affidavit is one by several election experts submitted in advance of a Wednesday hearing on the merits of a civil suit contesting the results and calling for a new election for lieutenant governor.

The affidavits were submitted by Atlanta attorney Bruce Brown on behalf of the plaintiffs—the Coalition for Good Governance, a nonprofit organization is spearheading litigation on multiple fronts to force the state to return to paper ballots; Smythe Duval, who lost his bid as the Libertarian candidate for secretary of state; and voters from Fulton and Morgan counties.

Cobb County Senior Superior Court Judge Adele Grubbs, who was specially appointed to handle the case, will hear arguments on motions to dismiss it Wednesday morning. Amico is not a party to the election challenge, filed Nov. 23 in Fulton County Superior Court. But the pending suit mirrors complaints the candidate raised in a Nov. 12 letter to the secretary of state citing discrepancies and apparent errors in recorded election returns, and other "significant anomalies." Amico requested an official review, which Secretary of State Robyn Crittenden declined to conduct.

Amico's letter to Crittenden—on which the lawsuit was based in part—said that the anomalies "appear to impact Democratic-leaning counties more heavily than Republican-leaning counties."

The suit cited multiple examples of people who attempted to vote for Amico, only to find the lieutenant governor's race was missing from the ballot or would not record a vote cast for lieutenant governor or flipped from Amico to Duncan.

In a response to a motion to dismiss the suit filed by four special assistant state attorneys general—all from Atlanta's ***The Robbins Firm***—Brown contended the lieutenant governor's race also "received far fewer votes than all other statewide races, including races that were further 'down ballot.'"

"This unprecedented pattern of election results lacks any reasonably plausible innocent explanation, and alone would cast doubt on the elections results," Brown said. "Even more alarming, this aberrant pattern appears only in the reported results of votes cast on the [electronic voting] machines. Votes on paper ballots conformed to the expected pattern, with the election for lieutenant governor receiving slightly fewer paper ballot votes than governor, and slightly more paper-ballot votes than secretary of state."

"The only reasonable explanation for such an anomalous vote discrepancy in the [electronic] votes cast in the contested election is that a voting system malfunction—whether the result of maliciousness or programming errors—caused an outcome changing number of votes in the lieutenant governor's race to not be recorded," Brown concluded.

But special assistant state attorney general and Robbins partner ***Joshua Belinfante*** argued that claims against Crittenden as secretary of state are barred by sovereign immunity. "The General Assembly has not waived sovereign immunity to authorize election contest claims to be brought against state agencies or state officials," Belinfante said. The other defendants are Duncan and the election boards of the state's three largest counties—Fulton, DeKalb and Gwinnett.

Belinfante's co-counsel include law partner ***Vincent Russo***, who also is deputy counsel to the Georgia Republican Party; ***Brian Lake*** and ***Alexander Denton***.

In a brief filed on Duncan's behalf, Duncan counsel Edward Lindsey of the Atlanta offices of Dentons said the case should be dismissed because of "simple math."

Duncan's margin of victory over Amico was 123,172 votes (1,951,738 vs. 1,828,566). Lindsey said the voter shortfall alleged by the plaintiffs would—if restored—increase the total tally by 115,691 votes—less than Duncan's margin of victory.

Lindsey also highlighted Amico's acknowledgement in her letter to Crittenden that the number of invalid, unrecorded and uncast votes in the lieutenant governor's race "is unlikely to affect the outcome of my race."

Belinfante also argued the suit did not identify "a sufficient number of rejected legal votes or illegal votes" either to change the election results or place the election in doubt.

Instead, plaintiffs make a series of conclusory allegations through which they claim that alleged vulnerabilities in Georgia's electronic voting infrastructure created a "high risk of undetected manipulations that should cast doubt on the election," Belinfante said. He also contended the plaintiffs did not allege "that any manipulation of Georgia's electronic voting infrastructure actually occurred."

In order for the case to go forward, Belinfante argued the presiding judge would have "to assume that the election was changed or should be placed in doubt" when he claimed there was "no basis" for the court to do so.

Brown countered that it "makes no sense for the secretary of state to suggest that she is not a proper party to a statewide election contest."

“Indeed, in any multiple-county election, such as this statewide race, it is the secretary’s office that counts, tabulates and certifies the election,” Brown said. “If the secretary’s views of her own immunity from suit in a contest were correct, then candidates would have no avenue to remedy an administrative electoral mistake or tabulation error made by the secretary herself or by her own office.”