

Voters Advocate For Paper Ballots In Ga. Voting Machine Trial

By **Kelcey Caulder** ·

Law360 (January 10, 2024, 5:05 PM EST) — On the second day of a trial over the future of Georgia's election system, voters who say the state's current electronic in-person voting machines are unreliable told a federal judge why they believe hand-marked ballots are a better option.

Aileen Nakamura, a Georgia voter who studied computer science at Wellesley College and now serves as an assistant secretary for the nonprofit Coalition for Good Governance, told U.S. District Judge Amy Totenberg that after spending "hundreds of hours" observing elections in the state, including some using hand-marked ballots and others using the state's current touchscreen voting machines, she "much more strongly prefer[s]" the former.

That, Nakamura said, is because the current voting machines — commonly called ballot-marking devices, or BMDs — do not protect voters' privacy, are vulnerable to hacking, introduce technological difficulties not present in hand-marked ballots and print a ballot featuring a barcode that is then scanned to record and tally voters' selections at the polls.

Echoing testimony given by other voters on the first day of trial, Nakamura said the barcode presents a problem because it's impossible to verify that the selections represented by it are those voters actually selected on the voting machine. And while the printed ballots include a summary of a voters' selections, Nakamura said that without being able to read the barcode, voters have no way of knowing for sure that it matches what is represented in the summary.

The privacy issue is also unique to the state's current voting machines, Nakamura said. Their size and height, particularly when placed in "carriers," makes it possible for others in a polling place to see voters' selections while they are casting their ballots, she said, adding that it makes her "extremely nervous."

Under questioning by attorney **Edward Bedard**, who represents state election officials sued over the election system in 2017, Nakamura said she knows it is possible for others to see her ballot when using the voting machines because her husband was able to see both her vote and their daughter's vote.

Attorney **Javier Pico-Prats** asked Nakamura whether she keeps her vote a "secret" from her husband, but Nakamura, who said she prefers to keep her selections private, said that was not the point.

Had someone other than her husband seen her vote, Nakamura said it could have led to disastrous consequences. In 2008, she said her mailbox was "bashed in" after she put out a political yard sign. Given how much more "politically polarized" Georgia is today, she said she is "even more scared."

"Using a hand-marked paper ballot gives me the privacy I want, and I know my choices are my choices," Nakamura said.

Bedard asked whether anyone told Nakamura in 2008 that they destroyed her mailbox for a political reason, and she said no, adding that she felt it was political due to the fact that it happened immediately after the yard sign was put out.

The state's current voting machines also present technological issues that aren't present in hand-marked ballots, given they could be hacked, shut down unexpectedly or lag in a way that delays the voting process for both voters and poll workers, Nakamura said.

Citing her observance of "pilot elections" in 2019, during which BMDs were used for the first time, Nakamura said the voting machines were "very difficult" for poll workers to use and dramatically slowed down the check-in process for voters. She observed that same year that hand-marked voting at polling locations where the voting machines were not being used was "degrees faster."

Nakamura also cited concerns about security practices surrounding the voting machines, saying they are often "ziptied" in carriers overnight and rechecked in the morning to ensure they haven't been tampered with. That is a problem, she said, given that the machines often stay overnight in polling places like churches that are "publicly open."

"I think it's a security issue," Nakamura said. "No one can hack my paper ballot."

Georgia voter Donna Price, who formed the election integrity advocacy group Georgians for Verified Voting, told the judge she lacks confidence in the state's current voting machines because of the "unreadable" barcode.

"When I vote using the machine, I feel like I'm handing my vote to someone behind a screen," Price said. "My vote is my voice in a collective of voices. It is part of the will of the people that authorizes the acts of government. I want my vote to count and be counted as cast."

During opening statements on the first day of trial, attorney Bryan Tyson told Judge Totenberg that no evidence has been presented to outweigh the state's interest in continuing to use its voting machines. The machines were selected, he said, because they allow individuals with disabilities to vote without difficulty, simplify the jobs of election workers and help obtain accurately recorded ballots.

Robert McGuire, who represents the nonprofit Coalition for Good Governance, and David Cross, who represents voters challenging the election system, pushed back on that argument, saying the machines have vulnerabilities that make it possible for hackers to change election results. Given that, they argued, it can't be said that the machines ensure more accurate vote counts.

The trial is expected to last three weeks and will leave Judge Totenberg to decide whether Georgia's current election system and voting machines are so flawed that they violate voters' constitutional rights.

Judge Totenberg has said that even if she finds problems with the state's election system, she can't force the adoption of a paper version. Instead, she said in a November order, she can order the state to take measures that lessen any uncovered "constitutional deficiencies," such as providing for the use of printed ballots that don't feature barcodes, increasing the number and scope of election audits, and instituting

cybersecurity measures recommended by experts.

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, 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.

Voters are represented by David D. Cross, Mary G. Kaiser, Oluwasegun Joseph, Matthaeus H. Martino-Weinhardt, Aaron Heath Scheinman, Reiley Jo Porter, Lyle F. Hedgecock, Ramsey W. Fisher, Tamara Raquel Wiesebron, Wail Jihadi, Robert W. 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.

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.