

IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

VOTERGA AND
PHILIP SINGLETON,
PETITIONERS,

v.

CIVIL ACTION NO.: 2021CV353604

STATE OF GEORGIA,
RESPONDENT.

PETITION FOR DECLARATORY AND INJUNCTIVE RELIEF

COME NOW, PETITIONERS VOTERGA AND PHILIP SINGLETON, by and through their attorney of record, and file their petition for declaratory and injunctive relief pursuant to Ga. Code Ann. § 9-4-1 et seq. and Ga. Code Ann. § 9-11-65, as follows:

THE PARTIES

1.

Petitioner VoterGA is an unincorporated association, under Georgia law, that strives for election integrity and has not for profit status and several of its members are electors who were entitled to vote, and who voted in the November 3, 2020 General Election and January Runoff Election. Many VoterGA members are also entitled to and shall vote in future elections within the State of Georgia.

2.

Petitioner Philip Singleton is a resident of Coweta County, Georgia and was an elector who was entitled to vote, and did vote, in the November 3, 2020, General Election and January Runoff Election. He is also entitled to and shall vote in future elections within the State of Georgia. He is currently a Republican member of the Georgia House of Representatives and represents District 71.

3.

Respondent State of Georgia is named because sovereign immunity has been waived for claims of declaratory judgment and injunctive relief and it may be served at: 130 Peachtree Street, Suite 2186, Atlanta, GA 30303.

4.

The Petitioners aver that they have a right to have in person voting conducted on ballot marking devices that comply with state law.

JURISDICTION AND VENUE

5.

Jurisdiction is proper in this Court pursuant to Ga. Code Ann. § 9-4-2 and Ga. Code Ann. § 9-11-65 as the Respondent is the State of Georgia.

6.

Venue is proper before this Court because the Respondent is the State of Georgia and venue must be in Fulton County, Georgia.

FACTUAL BACKGROUND

7.

The Petitioners aver that the Georgia Secretary of State's office is required by state law to procure and distribute ballot marking devices to the counties within the State of Georgia pursuant to Ga. Code Ann. § 21-2-300 (a)(1).

8.

The Petitioners aver that the Georgia Secretary of State's office is authorized by state law to conduct pilot programs to test and evaluate ballot marking devices pursuant to Ga. Code Ann. § 21-2-300 (a)(4).

9.

The Petitioners aver that the Georgia Secretary of State's office procured the current ballot marking devices from Dominion Voting Systems, Inc. on or about 07/29/2019 pursuant to the contract titled the Master Solution Purchase and Services Agreement By and Between Dominion Voting Systems, Inc., as Contractor, and Secretary of State of the State of Georgia as State.

10.

The Petitioners aver that the Georgia Secretary of State's office certified that the ballot marking devices, scanner tabulators, and election management servers procured from Dominion Voting Systems, Inc. complied with state law on or about 08/09/2019.

11.

The Petitioners aver that the Georgia Secretary of State's office and Dominion Voting Systems, Inc. signed the 1 Amendment to the original contract on or about 04/28/2020.

12.

The Petitioners aver that the Georgia Secretary of State's office and Dominion Voting Systems, Inc. signed the 2 Amendment to the original contract on or about 05/10/2020.

13.

The Petitioners aver that the paper ballot generated from the current ballot marking devices do not comply with state law as required by Ga. Code Ann. § 21-2-2(7.1) and Ga. Code Ann. § 21-2-300(a)(2).

14.

The Petitioners have a justiciable and actual case or controversy concerning the Respondent's complete failure to procure ballot marking devices, scanner tabulators, and election management servers that comply with state law and threaten to undermine their fundamental right to vote with a system that burdens their fundamental right to vote.

15.

The Petitioners aver that this action is adverse. The Petitioners represent their interest in contending that they have a fundamental right to vote and to not have the primary and general elections conducted using ballot marking devices, scanner tabulators, and election management servers that comply with state law. The Respondent can adequately represent its interest in defending against the Petitioners' contentions.

16.

The Petitioners also contend that the Parties can adequately represent these interests.

17.

The Petitioners have a fundamental right to vote and to not have the primary and general elections conducted using ballot making devices, scanner tabulators, and election management servers that do not comply with state law in future elections in which they would participate.

18.

The Petitioners aver that the declaration will resolve the current case or controversy, because it will provide guidance for their fundamental right to vote with ballot marking devices,

scanner tabulators, and election management servers that comply with state law in future elections in which they would participate.

19.

The Petitioners aver that the use of ballot marking devices, scanner tabulators, and election management servers that do not comply with state law is violative of their fundamental right to vote and to have the statutory provisions enforced to alleviate uncertainty in their participation in future elections.

20.

The Petitioners aver that future elections will be conducted on a regular basis within the State of Georgia and that the continued use of ballot marking devices, scanner tabulators, and election management server that do not comply with state law endangers and creates uncertainty as to their fundamental right to vote in those future elections.

**COUNT I: DECLARATORY JUDGMENT FOR
FAILURE TO COMPLY WITH STATE LAW (VERIFIABILITY)**

21.

The Petitioners incorporate by reference and re-allege paragraphs 1 through 20 of this Petition as set forth herein verbatim.

22.

The Petitioners aver that the paper ballot generated from the current ballot marking devices has the elector's intent written on the face of the paper ballot and has a QR code on the paper ballot.

23.

The Petitioners aver that an elector can verify the written portion of the paper ballot but cannot verify the QR code portion of the paper ballot.

24.

The Petitioners aver that the written portion of the paper ballot is not used for counting or re-counting the elector's intent.

25.

The Petitioners aver that the QR codes produced by the ballot marking devices are encoded so that an elector cannot determine or verify that it matches the written portion of the paper ballot.

26.

The Petitioners aver that even if the elector was in possession of an electronic QR code reading device he could not verify his intent on the paper ballot.

27.

The Petitioners aver that Georgia's statewide Dominion Democracy Suite 5.5 Ballot Marking Device voting system does not "*print an elector verifiable paper ballot*" as required by Ga. Code Ann. § 21-2-2(7.1).

28.

The Petitioners aver that Georgia's statewide Dominion Democracy Suite 5.5 Ballot Marking Device voting system does not "*produce paper ballots which are marked with the elector's choices in a format readable by the elector*" as required by Ga. Code Ann. § 21-2-300(a)(2).

29.

The Petitioners aver that the State of Colorado announced a ban on the Dominion Democracy Suite 5.5 Ballot Marking Devices prior to Georgia's purchase of the system because its accumulation of votes in QR codes is unverifiable to the voter.

30.

The Petitioners aver that the State of Texas rejected the Dominion Democracy Suite 5.5 voting system as unsuitable prior to Georgia's purchase of the system because it failed to comply with Texas state law or meet its standards for certification.

31.

The Petitioners aver that VoterGA warned about the need for any new voting system to tabulate human readable vote marks in their requirements to the Secure, Accessible and Fair Elections (SAFE) Commission originally produced on or about December 20th, 2018.

32.

The Petitioners aver that many of citizens testified before the SAFE Commission or the Georgia legislature in opposition to Ballot Marking Device voting systems and QR coded paper trails.

33.

The Petitioners aver that Mr. Garland Favorito and Mr. Michael Opitz warned then Candidate Brad Raffensperger about the dangers of unverifiable QR coded voting systems after he spoke to the Madison Forum in Marietta on or about June 30, 2018, during the Republican primary runoff.

COUNT II: TEMPORARY INJUNCTION

34.

The Petitioners incorporate by reference and re-allege paragraphs 1 through 33 of this Petition as set forth herein verbatim.

35.

In the absence of a temporary restraining order, the Petitioners will suffer irreparable harm for which there is no adequate remedy at law, while injunctive relief will cause no harm to the Respondent because there are alternative ways for the State conduct elections that would not undermine election integrity.

36.

Immediate and irreparable injury, loss, or damage will result to the Petitioners if the requested injunctive relief is not granted, because there is at least one (1) primary election and one (1) general election to be conducted in 2022.

37.

There will be immediate irreparable damage to the Petitioners and the Citizens of Georgia through their loss of confidence in the integrity of the election process by virtue of the use of ballot marking devices that fail to comply with state law, which clearly outweighs any potential harm to Respondents.

38.

Granting the requested relief will not disserve the public interest.

39.

It is further in the public interest to grant the Petitioners' request for temporary injunctive relief, so that the Petitioners and Georgia voters can have confidence that future elections are conducted in accordance with state law and on ballot marking device system that comply with state law.

40.

The Petitioners are entitled to the temporary injunctive relief sought herein, because there is a substantial likelihood of success on the merits as a case in the Northern District of Georgia has already found that the ballot marking device system do not comply with state law.

41.

The damage to the Petitioners is not readily compensable by money, and no other remedy at law exists.

42.

The balance of equities favors entry of a temporary restraining order and injunctive relief against the Respondent and would not be adverse to any legitimate public interest.

43.

The Petitioners seek to have the Court enjoin the use of the current ballot marking devices, scanner tabulators, and election management server used by the State of Georgia until these devices comply with state law.

COUNT III: PERMANENT INJUNCTION.

44.

The Petitioners incorporate by reference and re-allege paragraphs 1 through 43 of this Petition as set forth herein verbatim.

45.

In the absence of a permanent injunction, the Petitioners will suffer irreparable harm for which there is no adequate remedy at law, while injunctive relief will cause no harm to Respondent because there are alternative ways for the State conduct elections that would not undermine election integrity.

46.

Immediate and irreparable injury, loss, or damage will result to the Petitioners if the requested permanent injunctive relief is not granted, because there is at least one (1) primary election and one (1) general election to be conducted in 2022.

47.

There will be immediate irreparable damage to the Petitioners and the Citizens of Georgia through their loss of confidence in the integrity of the election process by virtue of the use of ballot marking devices that fail to comply with state law, which clearly outweighs any potential harm to Respondents.

48.

Granting the requested relief will not disserve the public interest.

49.

It is further in the public interest to grant the Petitioners' request for permanent injunctive relief, so that Georgia voters can have confidence that future elections are conducted in accordance with state law and on ballot marking devices, scanner tabulators, and election management server that comply with state law.

50.

The Petitioners are entitled to the permanent injunctive relief sought herein, because there is a substantial likelihood of continued use of ballot marking devices that do not comply with state law in future elections.

51.

The damage to the Petitioners is not readily compensable by money, and no other remedy at law exists.

52.

The balance of equities favors entry of a permanent injunction and injunctive relief against the Respondent and would not be adverse to any legitimate public interest.

53.

The Petitioners seek to have the Court permanently enjoin and prohibit the Respondent from continuing to use ballot marking devices, scanner tabulators, and election management server that do not comply with state law.

WHEREFORE, THE PETITIONERS pray:

- a). that process **ISSUES** and service by **EFFECTUATED**;
 - b). that the Court **CONDUCTS** an evidentiary hearing on the temporary and permanent injunctions;
 - c). that the Court **DECLARES** that the current ballot marking devices, scanner tabulators, and election management server used by the Respondent do not comply with state law;
 - d). that the Court **ISSUES** a temporary and permanent injunction preventing the use of the current ballot marking devices, scanner tabulators, and election management server in any election within the State of Georgia;
- AND**
- e). for any other relief the Court **DEEMS** just and proper.

Respectfully submitted this the 24th day of August, 2021.

MADDOX & HARDING, LLC



Todd A. Harding, For the Firm
Ga. Bar No.: 101562
Attorney for Petitioners

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STATE OF GEORGIA

VOTERGA AND
PHILIP SINGLETON,
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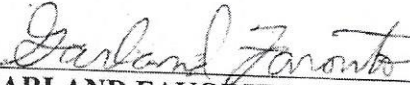
CIVIL ACTION NO.: 2021CV353604

STATE OF GEORGIA,
RESPONDENT.

VERIFICATION

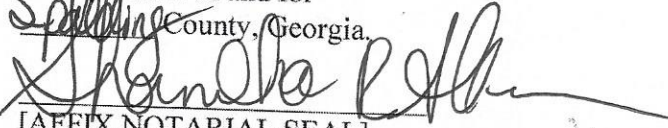
COMES NOW, VOTERGA, an unincorporated association, in the above style action, and personally had an official member before the undersigned officer duly authorized to administer oaths, and on oath deposes and says that he believes the facts alleged in the Petition therein are true and accurate to the best of his knowledge and belief.

Respectfully submitted this the 23 day of August, 2021.


GARLAND FAVORITO, PRESIDENT,
PETITIONER

SUBSCRIBED AND SWORN BEFORE ME
this the 23rd day of August, 2021.
to certify and witness my hand
and official seal.

Notary Public in and for
Spalding County, Georgia.

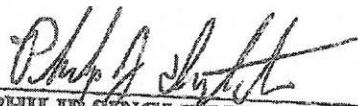

[AFFIX NOTARIAL SEAL]

Shamika Roshunda Allen
NOTARY PUBLIC
Spalding County, Georgia
My Commission Expires 7/13/2024

VERIFICATION

COMES NOW, PHILIP SINGLETON, in the above style action, and personally had an officer appear before the undersigned officer duly authorized to administer oaths, and on oath deposes and says that he believes the facts alleged in the Petition therein are true and accurate to the best of his knowledge and belief.

Respectfully submitted this the 23 day of August, 2021.



PHILIP SINGLETON,
PETITIONER

