

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

DONNA CURLING, et al;)	
)	
Plaintiffs,)	
)	
v.)	CIVIL ACTION
)	FILE NO: 1:17cv02989-AT
BRAD RAFFENSBERGER, et al.;)	
)	
)	
Defendants.)	
)	
)	

**FULTON COUNTY DEFENDANTS’ STATEMENT OF MATERIAL
FACTS TO WHICH THERE ARE NO GENUINE ISSUES TO BE TRIED**

COME NOW, the Members of the Fulton County Board of Registration and Elections, Mary Carole Cooney, Vernetta Nurrudin, Kathleen D. Ruth, Mark Wingate, and Aaron Johnson (“Fulton County Defendants”) in the above-styled case,, by and through the undersigned counsel, pursuant to Rule 56 of the Federal Rules of Civil Procedure and L.R. 56.1 of the United States District Court for the Northern District of Georgia in the above-styled action, and file this Statement of Material Facts to Which There Are No Genuine Issues to be Tried as follows:

1.

The Secretary of State of Georgia is the chief election official in the State of Georgia and has the responsibility to manage Georgia's electoral system. (O.C.G.A. §21-2-50).

2.

The Secretary of State of Georgia has the power to: to determine the forms of nomination petition, ballots, and other forms; to determine and approve the form of ballots for use in special elections; to develop, program, build, and review ballots for use by counties and municipalities on voting system in use in the state. (O.C.G.A. §21-2-50 (a)(1), (9) and (15)).

3.

The equipment used for casting and counting votes in county, state, and federal elections shall be the same in each county in this state and shall be provided to each county by the state, as determined by the Secretary of State. (O.C.G.A. § 21-2-300(a)(1)).

4.

The State of Georgia's process for moving to a Ballot Marking Device ("BMD") based voting system began in the fall of 2017, and Elections Director Chris Harvey, advised the Georgia General Assembly House of Representatives

Science and Technology Committee that Georgia should aim to have a new voting system in place by the 2020 election cycle.

([https://sos.ga.gov/admin/uploads/SAFE_Commission_Report_FINAL_\(1-10-18\).pdf](https://sos.ga.gov/admin/uploads/SAFE_Commission_Report_FINAL_(1-10-18).pdf))

5.

Beginning in June of 2020, with the 2020 Presidential Preference Primary/Special Election/General Primary Election, the State of Georgia has utilized a BMD-based voting system. (Declaration of Nadine Williams ¶ 4; O.C.G.A. § 21-2-300).

6.

The Fulton County Defendants are, or were at all times, relevant to this action Members of the Fulton County Board of Registration and Elections, which is the superintendent of elections for Fulton County, Georgia. (Declaration of Nadine Williams ¶ 3; O.C.G.A. § 21-2-2 (35)).

7.

The Fulton County Defendants are required by the Georgia Election Code to utilize the statewide BMD-based voting system for conducting elections in Fulton County, Georgia. (O.C.G.A. § 21-2-300).

8.

Plaintiffs' requests for relief include prohibiting the State of Georgia from utilizing the current BMD-based voting system and the implementation of a hand-marked paper ballot voting system in Georgia. (Doc. 1565, Deposition of Coalition for Good Governance, pp. 158-160, 170); (Doc. 1557, Deposition of Donna Price, pp. 28-30, 105-107) (excepts attached as Exhibits 1 and 2).

9.

There are no mentions of any Fulton County Board of Registration and Elections member in any of the Declarations or Depositions filed in this case.

10.

There are no mentions of or citations to any policy or custom of the Fulton County Board of Registration and Elections as the basis for any of the alleged constitutional violations in this case.

11.

The Fulton County Defendants cannot, under Georgia law, provide such relief and implement a hand-marked paper ballot system. (Declaration of Nadine Williams ¶ 5; O.C.G.A. § 21-2-300).

Respectfully submitted this 9th day of January 2023.

Kaye W. Burwell
Georgia Bar Number: 775060
kaye.burwell@fultoncountyga.gov

/s/ David R. Lowman
David R. Lowman
Georgia Bar Number: 460298
david.lowman@fultoncountyga.gov

OFFICE OF THE COUNTY ATTORNEY

141 Pryor Street, Suite 4038
Atlanta, Georgia 30303
(404) 612-0234 (office)
(404) 730-6324 (fax)

RETRIEVED FROM DEMOCRACYDOCKET.COM

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

DONNA CURLING, et al;)	
)	
Plaintiffs,)	
)	
v.)	CIVIL ACTION
)	FILE NO: 1:17cv02989-AT
BRAD RAFFENSBERGER, et al.;)	
)	
)	
Defendants.)	
)	
)	
_____)	

CERTIFICATE OF SERVICE

I hereby certify that on this date I have electronically filed the foregoing **FULTON COUNTY DEFENDANTS’ STATEMENT OF MATERIAL FACTS IN SUPPORT OF THEIR MOTION FOR SUMMARY JUDGMENT** with the Clerk of Court using the CM/ECF system, which will send email notification of such filing to all attorneys of record.

This 9th day of January 2023.

/s/ David R. Lowman
David R. Lowman
Georgia Bar Number: 460298

david.lowman@fultoncountyga.gov

OFFICE OF THE COUNTY ATTORNEY

141 Pryor Street, S.W.

Suite 4038

Atlanta, Georgia 30303

(404) 612-0234 (Office)

(404) 730-6324 (Facsimile)

RETRIEVED FROM DEMOCRACYDOCKET.COM