

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

GEORGIA COALITION FOR THE  
PEOPLES' AGENDA, INC., *et. al.*

Plaintiffs,

v.

BRAD RAFFENSPERGER, in his  
official capacity as Secretary of State  
for the State of Georgia,

*Defendant.*

Civil Action No.  
1:18-cv-04727-ELR

**PLAINTIFFS' REPLY BRIEF IN SUPPORT OF MOTION IN LIMINE  
TO EXCLUDE UNDISCLOSED EVIDENCE**

Defendant's opposition to Plaintiffs' Motion in Limine is untimely. This Court instructs that responses to motions in limine must be filed nine (9) days after the motion is filed. *See* Instructions for Cases Assigned to the Honorable Eleanor L. Ross, 10.<sup>1</sup> Regardless, Plaintiffs offer a brief reply to correct the record on several key issues.

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<sup>1</sup> Plaintiffs' motion was filed on March 5, 2024. ECF No. 215. Defendant's opposition was due to be filed on March 14, 2024 pursuant to the Court's Instructions. Defendant filed his opposition five days late on March 19, 2024 without explanation. ECF No. 219.

First, it is indisputable that Plaintiffs will be prejudiced at trial by the Defendant's use of undisclosed information, including information pertaining to the second SAVE "audit" that has *still* not been disclosed to Plaintiffs.<sup>2</sup> Therefore, Plaintiffs move for the exclusion of evidence not disclosed during the discovery period to avoid ambush at trial. Contrary to Defendant's repeated assertions, *see* ECF No. 219 at 6-7, Plaintiffs have not received "significant information" related to the implementation of SAVE and GARVIS since the limited 30(b)(6) deposition of Ryan Germany in January 2023. Assertions made by Defendant in court filings, during phone conferences between the parties, and even during status conferences with the Court, are simply not evidence. Among other concerns, Plaintiffs will not have evidence in the Defendant's possession, custody and control to fairly examine the Defendant's witnesses at trial regarding the use or implementation of SAVE and GARVIS.

Second, the Court should address these issues now, rather than wait until trial. While courts conducting a bench trial often defer ruling on many evidentiary issues, motions to exclude evidence may be granted even in non-jury cases, "especially where resolution of the motion would streamline the trial process." *Castang v. Kim*, No. 1:22-CV-05136-SCJ, 2023 WL 2373660, at \*2 (N.D. Ga. Feb. 2, 2023) (quoting

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<sup>2</sup> Plaintiffs' counsel are continuing to meet and confer with Defendant's counsel regarding eight GARVIS voter files that Defendant included on his exhibit list filed with the consolidated proposed pretrial order, ECF No. 195-7, as Exhibits 122-129.

*Salomon Constr. & Roofing Corp. v. James McHugh Constr. Co.*, No. 1:18-CV-21733-UU, 2019 WL 5256980, at \*4 (S.D. Fla. Mar. 22, 2019)). Such is the case here, where the scope of testimony offered at trial, as well as the preparations of counsel for such testimony, may be greatly impacted by the Court's granting of Plaintiffs' Motion in Limine.

### **CONCLUSION**

Plaintiffs' Motion in Limine should be granted to exclude evidence concerning Defendant's post-discovery use of SAVE and GARVIS which Defendant has not disclosed to Plaintiffs.

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Respectfully submitted, this 22nd day of March, 2024.

/s/ Bryan L. Sells

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*forthcoming*

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**CERTIFICATE OF COMPLIANCE**

Pursuant to Local Rule 7.1, the undersigned counsel hereby certifies that this document has been prepared with one of the font and point selections approved by the Court in Local Rule 5.1.

Dated this 22nd day of March 2024.

*/s/ Julie M. Houk*

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**CERTIFICATE OF SERVICE**

I hereby certify that on March 22nd, 2024, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will then send a notification of such filing to the counsel of record in this case.

Dated this 22nd day of March 2024.

*/s/ Julie M. Houk*

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