IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

DEKALB COUNTY REPUBLICAN PARTY, INC.,

Applicant,

v.

BRAD RAFFENSPERGER, IN HIS OFFICIAL CAPACITY AS GEORGIA SECRETARY OF STATE,

Respondent.

Civil Action No. 24CV011028

MOTION IN LIMINE TO EXCLUDE TESTIMONY OF CLAY PARIKH AND BENJAMIN COTTON

Respondent Secretary of State Brad Raffensperger, in his official capacity as Georgia Secretary of State (the "Secretary"), submits the following Motion in Limine to Exclude the Testimony of Clay Parikh and Benjamin Cotton. The testimony of both witnesses fails to satisfy the standard of O.C.G.A § 24-7-702 and therefore should not be admitted as expert testimony. Even if the testimony of Mr. Parikh and Mr. Cotton were admissible, this Court should exclude such testimony under O.C.G.A. § 24-4-403. This testimony is not probative of the Secretary's compliance with his statutory obligations, and the unfair prejudice to the Secretary, confusion of the issues, and waste of time substantially outweighs any potential probative value.

I. The proposed expert testimony of Mr. Parikh and Mr. Cotton does not meet the standard for admissibility under O.C.G.A. § 24-7-702.

O.C.G.A. § 24-7-702(b) provides:

> (b) If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education may testify thereto in the form of an opinion or otherwise, if:
>
> > (1) The testimony is based upon sufficient facts or data;
> >
> > (2) The testimony is the product of reliable principles and methods; and
> >
> > (3) The witness has applied the principles and methods reliably to the facts of the case which have been or will be admitted into evidence before the trier of fact.

O.C.G.A. § 24-7-702 codifies the standards for admissibility of expert witness testimony set forth in *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993).

Neither Mr. Cotton nor Mr. Parikh can satisfy this standard here, where the only issues to be determined are whether the Secretary has already complied with O.C.G.A. § 21-2-300(a)(2) and (3).

A. Benjamin Cotton

Mr. Cotton's affidavit reveals that his testimony would fall far short of this standard. First, nothing in Mr. Cotton's affidavit suggests that he has any

knowledge—let alone expert knowledge—of the Secretary's testing and auditing processes for Georgia's voting system. *See generally* App., Ex. 4 ("Cotton Aff."). Although Mr. Cotton claims that he has "testified as an expert witness in state courts, federal courts and before the United States Congress," *Id.* ¶ 7, he does not contend that any of that testimony concerned the Secretary's compliance with Georgia election law. Mr. Cotton therefore cannot be a qualified expert on the only issues that matter here: (1) whether the Secretary purchased EAC-certified equipment; and (2) whether the Secretary made a determination that Georgia's voting system was "safe and practicable for use" in Georgia.

Second, even if Mr. Cotton were qualified, nothing in the Cotton Affidavit suggests that Mr. Cotton's testimony would be "based upon sufficient facts or data" or the "product of reliable principles and methods." O.C.G.A. § 24-7-702(b)(1), (2). Although Mr. Cotton claims vaguely to have "forensically examined Dominion Voting Systems (DVS) components" in "Coffee County Georgia," he does not explain what "components" he has reviewed, when this review was conducted, how he had access to these "components," or even what steps he took in conducting his "forensic examin[ation]." Instead, Mr. Cotton lists only his purported findings. So too with the election databases that Mr. Cotton has reviewed. The Cotton Affidavit

merely asserts that Mr. Cotton has performed a "thorough analysis" of these databases. Cotton Aff. ¶ 14.

The Cotton Affidavit does not provide any basis to conclude that Mr. Cotton has based his examination on sufficient data or that his conclusions are the results of the application of reliable principles and methods. Mr. Cotton's testimony does not meet the standard for admissibility under O.C.G.A. § 24-7-702 and should be excluded.

B. Clay Parikh

Mr. Parikh's affidavit similarly reveals that his testimony should be excluded under O.C.G.A. § 24-7-702. First, Mr. Parikh is likewise not a qualified expert. Unlike Mr. Cotton, Mr. Parikh at least claims he "reviewed voting system certification test reports, test plans, EAC relevant documents, and Georgia election laws and regulations." App., Ex. 3 ("Parikh Aff.") ¶ 6. But reviewing generic "test reports," test plans," or "Georgia election laws and regulations" hardly qualifies Mr. Parikh as an expert in the Secretary's procedures for confirming the safety and practicability of Georgia's voting systems.[1]

[1] The Parikh Affidavit also includes a section regarding Dominion's compliance with its contract with the State of Georgia. *See* Parikh Aff. ¶ 24. Testimony on this topic is wholly irrelevant to this mandamus action, which does not involve a breach of contract claim. And in any event, Mr. Parikh has no specialized knowledge about legal issues related to that contract.

Second, the Parikh Affidavit also fails to demonstrate that Mr. Parikh's testimony would be "based upon sufficient facts or data" or the "product of reliable principles and methods." O.C.G.A. § 24-7-702(b)(1), (2). Mr. Parikh claims to have reviewed several "databases" containing information about Georgia elections, but the Parikh Affidavit does not allege that Mr. Parikh has actually examined any Dominion Democracy Suite 5.5A voting system in use in Georgia. He says his analysis is based entirely on data allegedly obtained through Open Records Act requests. The Parikh Affidavit therefore does not suggest that Mr. Parikh's analysis meets the standard for expert testimony under O.C.G.A. § 24-7-702.

II. Even if Mr. Parikh and Mr. Cotton were qualified experts or could testify as lay witnesses, their testimony should be excluded under O.C.G.A. § 24-4-403.

Under O.C.G.A. § 24-4-403, the Court may exclude evidence if "its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence." Evidence that is both irrelevant and prejudicial is inadmissible. *See Wheeler v. Stewart*, 234 Ga. App. 714 (1998).

The testimony of Mr. Parikh and Mr. Cotton is not probative to any issue before the Court in this case. The affidavits submitted with the Application for

Writ of Mandamus make clear that Mr. Parikh and Mr. Cotton intend to testify to their views of the method the Dominion system uses to handle encryption of information that they purport to have discovered from election "databases" and unspecified voting system "components," not the extent to which the Secretary has complied with his statutory obligations under O.C.G.A. § 21-2-300. But even if the testimony were probative, the unfair prejudice, confusion of issues, and waste of time incurred by the Secretary and this Court substantially outweigh any probative value.

A. Mr. Parikh and Mr. Cotton's testimony is not probative of whether the Secretary has complied with his duties under O.C.G.A. § 21-2-300.

Dekalb County Republican Party, Inc. ("Applicant") has petitioned for a writ of mandamus seeking an order compelling the Secretary to comply with his obligations under O.C.G.A § 21-2-300. Accordingly, only evidence that speaks to the extent to which the Secretary has done so is probative or even relevant.

It is clear from the Application that Mr. Parikh and Mr. Cotton intend to testify about their views on encryption processes that they purport to have discovered from election "databases" and unspecified voting system "components." App., Ex. 3 ¶¶ 7–8; *id.*, Ex. 4 ¶ 9. Even if the witnesses' claims about encryption were accurate, neither Mr. Parikh nor Mr. Cotton purports

to have any knowledge regarding the Secretary's processes for ensuring the security of Georgia's voting system—and they do not consider how any other protections or testing protects Georgia's voting system, instead looking only at one issue in isolation. Their testimony therefore is neither relevant to nor probative of the extent to which the Secretary has complied with O.C.G.A. § 21-2-300(a)(2) or (3).

Nor can their testimony be probative of what type of relief this Court should order. Although the Application requests highly detailed relief regarding encryption and post-election reporting, *see* App. ¶¶ 35–36, as explained in the Secretary's Motion to Dismiss, "mandamus will not lie to dictate the manner in which the action is taken or the outcome of such action." *Bibb Cnty. v. Monroe Cnty.*, 294 Ga. 730, 736 (2014).

In fact, Applicant's intention to call Mr. Cotton and Mr. Parikh as witnesses reveals that this is not in fact a proper mandamus claim. Applicant seeks to introduce hours of technical testimony concerning Georgia's voting system,[2] when the only issues before this Court are (1) whether the Secretary purchased EAC-certified equipment; and (2) whether the Secretary made a

[2] As explained *supra* Sec. I, neither the Cotton Affidavit nor the Parikh Affidavit is clear on precisely what the affiants have examined, what analyses they have conducted, and whether they have provided the basis for any opinions to counsel for the Secretary.

determination that Georgia's voting system was "safe and practicable for use" in Georgia—a determination entirely within his discretion. O.C.G.A § 21-2-300(a)(2), (3). That is not a proper use of mandamus.

B. The danger of unfair prejudice, confusion of the issues, and wasted time substantially outweighs any potential probative value.

Neither witness's testimony has any bearing on the Secretary's compliance with his duties under O.C.G.A. § 21-2-300. But to the extent that it did, admission of such testimony would be so unfairly prejudicial, so confusing to the issues, and such a waste of time as to substantially outweigh any probative value. *See* O.C.G.A § 24-4-403.

First, to permit Mr. Parikh and Mr. Cotton to testify is unfairly prejudicial to the Secretary. Not only does this testimony push false and/or misleading claims about Georgia's voting system and cast doubt on the upcoming presidential election, but it is being offered only to convince this Court to substitute Applicant's judgment for the Secretary's. That is not permitted on mandamus.

Second, the testimony of Mr. Parikh and Mr. Cotton serves only to confuse the issues. It suggests that whether the methodology used by the United States Election Assistance Commission (EAC") is the issue here, when in fact that is not relevant to any permissible mandamus relief.

Third, the testimony of Mr. Parikh and Mr. Cotton would be a gross waste of time. A rule nisi hearing should concern only the extent to which a public official has fulfilled or failed to fulfill a non-discretionary, legally-required duty. To admit the testimony of Mr. Parikh and Mr. Cotton would be to permit Applicant to turn this hearing into a mini-trial concerning the adequacy of the EAC's certification methodology and the encryption processes and standards used in Georgia's voting system, the latter of which has already been litigated on a full trial record (as Applicant well knows). *See Curling v. Raffensperger*, Case No. 1:17-CV-2989-AT (N.D.G.A).

CONCLUSION

For the foregoing reasons, the Secretary respectfully requests that the Court grant the Secretary's Motion in Limine and exclude any expert testimony of Clay Parikh or Benjamin Cotton.

This 27th day of September, 2024.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I have this day electronically filed the foregoing **MOTION IN LIMINE TO EXCLUDE TESTIMONY OF CLAY PARIKH AND BENJAMIN COTTON** with the Clerk of Court using the Odyssey e-filing system, which will send notification of such filing to the parties of record via electronic notification.

Dated: September 27, 2024.

/s/ Elizabeth T. Young
Elizabeth T. Young
Senior Assistant Attorney General