

**IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA**

DeKalb County Republican Party, Inc.
Applicant,

Civil Action File No.
24CV011028

v.

Brad Raffensperger, in his Official Capacity
as the Secretary of State of the State of
Georgia,
Respondent

APPLICANT'S RESPONSE TO MOTION IN LIMINE

COMES NOW, THE APPLICANT, and submits this response to the motion in limine,
as follows:

The Secretary seeks to prevent expert testimony on the grounds that the Applicant's expert witnesses are not qualified under Ga. Code Ann. §24-7-702 or that their testimony must be excluded under Ga. Code Ann. §24-4-403. Upon examination, these contentions are without merit and should be rejected. This mandamus action is being heard without a jury. The issues asserted by the Secretary pertaining to the Applicant's expert witnesses are better resolved during the voir dire and qualification of the expert witnesses, so the Court can get a clear understanding of their basis to testify as expert witnesses. The Court and the Parties can inquire into the experts' basis of knowledge-both technical and factual pursuant to Ga. Code Ann. §24-7-702. The Court can further inquire specifically into the reliability of their principles and methods during voir dire. The Court can further inquire into the experts' application of those principles and methods to the facts of this case. The Secretary's real remedy is to participate in voir dire and qualification of the expert witnesses and then argue the Ga. Code Ann. §24-7-702 standard is not met, after a through inquiry by the Court and the Parties into the three (3) factors enumerated in Ga. Code Ann. §24-7-702.

The Applicant contends that Ga. Code Ann. §21-2-300 incorporates the EAC and other standards into the text of the statute. (See Response to Motion to Dismiss). The Applicant contends that not incorporating those standards would lead to an absurd understanding of the Secretary's ministerial duties pertaining to election equipment. (See Applicant's Response to Motion to Dismiss). Further, those standards require and place a continuing duty upon the Secretary to maintain the EAC certification standards after the initial certification at purchase. (See Applicant's Response to Motion to Dismiss). In conclusion, the motion in limine addressing Ga. Code Ann. §24-7-702 should not be granted and the Court should undertake voir dire and qualification of the expert witnesses to ascertain their qualifications to testify as expert witnesses under Ga. Code Ann. §24-7-702.

The expert witnesses' testimony will have probative value and will assist the Court. The testimony of the expert witnesses will discuss the Secretary's continuing duty to abide by EAC and other standards and will also discuss the security failures that accompany the failure to abide by those standards. These topics are not prejudicial to the Secretary because these are the applicable standards he is required to maintain. The Secretary seeks to prevent testimony that discusses his continuing obligation and desires to limit the fact finding to only past acts. The Applicant's expert witnesses are conversant with the other protections that are used by the Secretary to purportedly protect Georgia's voting system. This issue can easily be ascertained during voir dire and qualification of the expert witnesses. The experts' testimony does not push false claims about Georgia's voting system. As explained in Applicant's opposition to the Secretary's Motion to Dismiss, the Secretary cannot establish that any court, anywhere, has ever considered, much less resolved, the merits of the encryption-key issue that Applicant's experts will establish in this Court. (Compare Mot. to Dismiss at 1-4 with Opp'n at 25-29; cf. Mot. in

Limine at 8 (describing the encryption-key issue as” false and/or misleading” without any evidence whosoever). To the contrary, the testimony is based upon information that was gathered through Open Records Requests and information given to the public. The encryption keys are left in plain text and not in a protective module as required by state law and the applicable security standards. This forms a continuing violation of the EAC and other standards. The Applicant does not seek to substitute its judgment for the Secretary’s but does seek to require the Secretary to continue to perform his ministerial duties under the applicable statutes and standards. The expert testimony would not be a gross waste of time. The testimony will go specifically to the applicable and continuing standards that must be maintained by the Secretary and the issues the failure to maintain those standards could produce. The Applicant prays the Motion in Limine is **DENIED**.

Respectfully submitted this the 29th day of September, 2024.

**CALDWELL, CARLSON, ELLIOTT &
DELOACH, LLP**

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** Pro Hac Vice Application forthcoming*

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CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing document on counsel of record by filing the same in the Court's electronic filing system which will cause electronic service to be made upon all such counsel of record.

Respectfully submitted this the 29th day of September, 2024.

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