

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

DONNA CURLING, *et al.*

*Plaintiffs,*

v.

BRAD RAFFENSPERGER, *et al.*,

*Defendants.*

CIVIL ACTION

FILE NO. 1:17-cv-2989-AT

**STATE DEFENDANTS' RESPONSE TO COALITION PLAINTIFFS'  
HEARING BRIEF ON EVIDENTIARY PRESUMPTION ARISING FROM  
SPOILIATION OF EVIDENCE**

Coalition Plaintiffs filed their “Hearing Brief on Evidentiary Presumption Arising from Spoliation of Evidence” [Doc. 548] (“Brief”) in a desperate attempt to distract the Court and the public from the complete lack of evidence of an actual compromise of Georgia’s election system. Faced with this lack of evidence, Coalition Plaintiffs apparently decided that the only way forward was to try and tar State Defendants with a frivolous argument that they destroyed evidence.

Let’s be absolutely clear: State Defendants have not destroyed or spoliated any evidence that is relevant to this case. Every item identified in Coalition Plaintiffs’ Brief remains available for their review in the normal course of discovery.

That Coalition Plaintiffs accuse State Defendants of destroying evidence is disingenuous on its face. Coalition Plaintiffs have been on notice from *before this litigation was filed* of repurposing plans for the webserver (and its backup)<sup>1</sup> at the Center for Election Services (“CES”)—they even attached documents related to the repurposing to their original complaints. They did not raise any claims related to any election in which the CES webserver was in use until well after the webserver and its backup were repurposed by non-party Kennesaw State University (“KSU”). KSU IT never informed the Secretary of State or the Attorney General’s office that they were going to repurpose the webserver or its backup.

Further, Coalition Plaintiffs have known for years that DREs and memory cards retain information about elections. State Defendants have done nothing to remove election information from DREs or memory cards and Coalition Plaintiffs again ignored this Court’s order to confer on preservation obligations before raising issues to the Court. [Doc. 122].

---

<sup>1</sup> There were three different servers in use when CES was at Kennesaw State University: (1) a ballot-building GEMS Server that was separate and used only for building ballots; (2) an EPIC server that generated information used in ExpressPolls check-in machines; and (3) a webserver (with its backup) that was used for occasionally transmitting information to counties. Deposition of Michael Barnes [Doc. 472-10] (“Barnes Dep.”) at 9:25-11:1. The only category of servers Coalition Plaintiffs discuss in their Brief is the webserver and its accompanying backup—not the other servers.

As discussed below, there is absolutely no basis for this Court to sanction State Defendants nor is there any basis for the claims made by Coalition Plaintiffs.<sup>2</sup> This Court should not condone the gamesmanship engaged in by Coalition Plaintiffs.

## **I. BACKGROUND.**

Fed. R. Civ. P. 7(b)(1) requires requests for court orders to be made by motion. After the evidentiary hearing was underway in this case, Coalition Plaintiffs filed what they styled as a “Hearing Brief” but which sought action by the Court, because it ultimately requests a presumption regarding the use of evidence in the preliminary-injunction motions before the Court. [Doc. 548, p. 20]. Coalition Plaintiffs did not file a motion to compel or seek to enforce this presumption by a motion or otherwise request an expedited briefing schedule, nor had they ever raised any issue in their Brief as a discovery dispute prior to its filing.

Coalition Plaintiffs’ purposes are clear: they had apparently shared their Brief with reporters ahead of time, because a reporter contacted the Secretary of State’s office almost immediately after filing seeking comment and outlining the

---

<sup>2</sup> The complete lack of any basis in law or fact and the obvious use of the Brief for media and fundraising purposes raise significant questions about whether the Brief complies with Fed. R. Civ. P. 11.

contents of the Brief. *See* Email on July 25, 2019, attached as Ex. A. Once a reporter posted an article about the contents of the Brief (while counsel for State Defendants were in the preliminary-injunction hearing), Coalition Plaintiffs began using the article as a means of further fundraising for their organization. *See* Tweets from Marilyn Marks, attached as Ex. B.

Coalition Plaintiffs never raised or further discussed their Brief for the remainder of the evidentiary hearing (which also tends to indicate that it was designed for the media and for fundraising, not serious consideration). This Court directed State Defendants to respond by July 30, 2019.

## **II. ARGUMENT AND CITATION OF AUTHORITY.**

Coalition Plaintiffs bear the burden of proof on spoliation. *Eli Lilly & Co. v. Air Express Int'l USA, Inc.*, 615 F.3d 1305, 1318 (11th Cir. 2010). Plaintiffs must prove three elements to establish spoliation: (1) that the missing evidence existed at one time; (2) State Defendants had a duty to preserve the evidence; and (3) the evidence was crucial to Plaintiffs being able to prove their prima facie case. *In re Delta/Airtran Baggage Fee Antitrust Litig.*, 770 F. Supp. 2d 1299, 1305 (N.D. Ga. 2011). But “[e]ven if all three elements are met, ‘a party’s failure to preserve evidence rises to the level of sanctionable spoliation ‘only when the absence of that evidence is predicated on bad faith,’ such as where a party purposely loses or



destroys relevant evidence.” *Id.* Only if spoliation occurred does a Court then use the four factors outlined in *Flury v. Daimler Chrysler Corp.*, 427 F.3d 939, 945 (11th Cir. 2005), to determine the propriety of spoliation sanctions. *Delta*, 770 F. Supp. 2d at 1305.

In this case, there is no question that the evidence existed—in fact, it continues to exist and this question alone should be dispositive on allegations of spoliation. The only possible basis for Coalition Plaintiffs to argue that spoliation occurred would be that State Defendants violated a duty to preserve evidence. And a duty to preserve only arises when litigation is reasonably anticipated. *Walker v. United States*, No. 4:07-CV-0102-HLM, 2009 U.S. Dist. LEXIS 40097, at \*2 (N.D. Ga. Feb. 26, 2009).

As discussed below, Plaintiffs’ original claims had nothing to do with any election that occurred while the CES webserver was in use and State Defendants could not have reasonably anticipated that the webserver and its backup would need to be preserved. Despite knowing the existence of the webserver, Plaintiffs also apparently did not believe they were relevant to the original claims in this case because they did not name the webserver in their July 2017 litigation hold letter. All other election information remains available for review. There is no basis on which this Court could find spoliation occurred or that sanctions are appropriate.

A. *There is no prejudice to Coalition Plaintiffs because all information referenced in their Brief remains available to them.*

Coalition Plaintiffs identify four pieces of evidence they claim State Defendants have destroyed. [Doc. 548]. Items 1 and 2 are the webserver and its backup that hosted information when CES was located at KSU. Item 3 is every memory card used in a DRE in the entire state of Georgia and Item 4 is the internal memory of every DRE in the state of Georgia. *Id.*

Not only have State Defendants preserved the information on each of these items, each of these items remains available for Coalition Plaintiffs' review in the normal course of discovery. State Defendants notified Coalition Plaintiffs on July 8, 2019 that the FBI maintained possession of the webserver image, that State Defendants had requested a copy of that image, and that State Defendants would provide a copy to Plaintiffs in response to Plaintiffs' discovery requests. *See* Emails from J. Belinfante to C. Ichter and D. Cross on July 8, 2019, attached as Ex. C.

Memory cards and the internal memory of the DREs are not rewritten by subsequent use in an election—all election information remains stored on both devices. Declaration of Michael Barnes, attached as Ex. D (“Barnes Dec.”) at ¶¶ 6-7. This should not shock Coalition Plaintiffs, because the same issues were raised and discussed in the superior-court proceeding where the Secretary took the same

position when facing a similar argument from the same counsel. *See, e.g.*, Transcript of December 5, 2018 Status Conference [Doc. 449-10] at 8-9.

The fact that the evidence sought by Coalition Plaintiffs still exists means it is not “missing” and Coalition Plaintiffs cannot establish the first element of spoliation. *Delta*, 770 F. Supp. 2d at 1305. Coalition Plaintiffs further have put forward no evidence that the webserver or any other information was “crucial” to their ability to prove their case. *Id.* But even if these elements were somehow met, there is absolutely no basis to find that Coalition Plaintiffs have suffered any prejudice related to the evidence. *Flury*, 427 F.3d at 945, and this answer precludes sanctions.

The Coalition Plaintiffs’ reliance on Fed. R. Civ. P. 37(e) as a vehicle to obtain sanctions is similarly misplaced. The Notes of the Advisory Committee on the 2015 Amendment clearly state this rule is only applicable where the sought after electronically stored information is *actually* lost: “The new rule applies only to electronically stored information . . . It applies *only* when such information is lost.” Fed. R. Civ. P. 37(e) advisory committee’s note (emphasis added). Moreover, even if it were lost—which it is not—the “initial focus should be on whether the lost information can be restored or replaced,” which Coalition Plaintiffs have not even addressed. Wright & Miller, *Federal Practice and*

*Procedure* § 2284.22015, quoting Fed. R. Civ. P. 37(e). In any event, this Court may only order sanctions under the Rules if there was prejudice to Coalition Plaintiffs or if State Defendants acted intentionally to deprive Coalition Plaintiffs of the requested information. Fed. R. Civ. P. 37. The fact that the evidence about which Plaintiffs complain is still available, combined with the complete lack of any evidence of intentional conduct, precludes any sanctions against State Defendants. *Id.* Coalition Plaintiffs cannot show any causal link between their ability to prevail and the allegedly lost evidence—because the evidence still exists. *Delta*, 770 F. Supp. 2d at 1305; *see also Sharpnack v. Hoffinger Ind., Inc.*, 231 Ga. App. 829, 831 (1998).

But in spite of knowing the facts that undermined any claim that State Defendants destroyed documents, Coalition Plaintiffs go further in their Brief—they rewrite the history of this case in ways that have no basis in reality to accuse State Defendants of bad faith. While this effort takes significant imagination, it is not grounded in the facts of this case. This brief will evaluate each item of evidence Coalition Plaintiffs claim was destroyed.

*B. State Defendants were under no duty to preserve the KSU webservers.*

There was one webserver<sup>3</sup> in use at the Center for Election Services: a Dell PowerEdge R610. *See* Declaration of C. Correia, attached as Exhibit E (“Correia Dec.”), Ex. 10, p. 7 (April 26, 2017 email); Barnes Dep. at 9:25-11:1. The webserver backed up to a Unicoi server, which was a Dell PowerEdge 1950. *Id.* The webserver was removed from CES on March 3, 2017 and turned over to the FBI. Correia Dec. at ¶¶ 18-19. It was never returned to CES, although it was returned to KSU IT on March 17, 2017 after the FBI took an image of the server. *Id.* The backup Unicoi server was removed from CES in March 2017 and stored with KSU IT. *Id.* Contrary to Plaintiffs’ reimagining of the facts, the webserver hosted the website and included a partition that allowed counties to access some information after entering a username and password. Barnes Dec. at ¶ 3; Barnes Dep. at 155:16-157:6. It did not serve any other functions in the administration of elections.

The webserver and its backup were completely irrelevant to any claims in the initial Complaint, filed on July 3, 2017 [Doc. 1], or the First Amended Complaint, filed on August 18, 2017 [Doc. 15]. Both of these complaints focus *exclusively* on the April 2017 and June 2017 special election and runoff for the

---

<sup>3</sup> As explained above, the webserver at CES was separate from the ballot-building server and separate from the EPIC server. Barnes Dep. at 9:25-11:1.

Sixth Congressional District. *Id.*; Correia Dec. at ¶ 6. None of the claims related to these 2017 elections could have had anything to do with the CES webserver or its backup because those servers were taken out of service in *March 2017*, as Coalition Plaintiffs admit [Doc. 548, p. 8]. Correia Dec. at ¶ 10.

But even if there was some claim that could be related to the first two complaints, Coalition Plaintiffs had full knowledge of the plans for the servers. They even *attached as an exhibit* to both of their initial Complaints an April 18, 2017 memorandum from KSU IT that recommends repurposing the CES webserver and designating the Unicoi backup webserver as surplus. *See* [Doc. 1-2, pp. 98-102]; [Doc. 15-1, pp. 18-22]; Correia Dec. at ¶¶ 7-11. Coalition Plaintiffs also received, in response to an Open Records Act request,<sup>4</sup> (1) an April 26, 2017 email indicating the plan to “Format and reinstall” the webserver and surplus the backup server, Correia Dec., Ex. 10, p. 7; and (2) a June 27, 2017 email summarizing a KSU IT staff meeting to implement the plan for CES that instructed one of its staff members to “Wipe R610”—the webserver, Correia Dec., Ex. 10, pp. 9-10. The allegation that State Defendants knowingly destroyed evidence that was not even in their possession prior to this lawsuit being filed is disproved by the emails *already possessed* by Coalition Plaintiffs. State Defendants have not

---

<sup>4</sup> Jeff Milsteen, the former KSU Chief Legal Affairs Officer, provided the documents to Marilyn Marks by email on October 20, 2017. Correia Dec. at ¶ 28.

destroyed any evidence in this case nor supervised the destruction of any evidence, Correia Dec. at ¶ 5, and Coalition Plaintiffs have offered no evidence to the contrary.

Coalition Plaintiffs also must have agreed the servers were not relevant to their initial complaints because, despite knowing of the plans to repurpose the servers, they *never identified the webserver or its backup as relevant* in their July 10, 2017 litigation hold email [Doc. 548, pp. 33-34]. Correia Dec. at ¶ 9, Ex. 1. That message focused exclusively on items used in the April 18, 2017 and June 20, 2017 elections.<sup>5</sup> *Id.* By that point, the webserver had already been repurposed by the KSU IT Department. [Doc. 309, p. 9]. The backup server was repurposed on August 9, 2017. *Id.*; Correia Dec. at ¶ 20.

In a September 1, 2017 call with the Court, Plaintiffs indicated a plan to again amend their complaint and the Court directed a meet-and-confer regarding the litigation hold (particularly focused on the CES ballot-building server<sup>6</sup>), while

---

<sup>5</sup> While State Defendants have an obligation to preserve anything relevant to the claims beyond what is specifically listed, Plaintiffs' failure to list the server while knowing about the plans for it confirms State Defendants' reasonable view in 2017 that the original complaints had nothing to do with any election for which the webserver and backup server had been in use.

<sup>6</sup> The scope of the case up to this point was still exclusively about 2017 elections during which the CES webserver had not been in use. Discovery related to the

also trying to balance concerns about operating upcoming elections. Transcript of September 1, 2017 Conference [Doc. 60 at 19-20]. Plaintiffs then sent a litigation hold letter dated September 12, 2017 [Doc. 548, pp. 36-39], that, *for the first time*, raised items in use during the November 2016 elections as possibly relevant to the anticipated *new* claims. But this letter was not received by then-counsel for State Defendants until September 29, 2017. Correia Dec. at ¶¶ 13-17.

When Coalition Plaintiffs filed their Second Amended Complaint on September 15, 2017 [Doc. 70] they—for the first time—raised a claim about the November 2016 elections in this case. Correia Dec. at ¶ 12. That was also the first time that anything related to the CES webserver could have been even arguably relevant to this case due to its use during the November 2016 elections. While Mr. Lamb’s ability to access data on the webserver is mentioned in all three versions of the complaint, Plaintiffs’ claims were not premised on Mr. Lamb’s access to the webserver or anything related to the November 2016 elections until the filing of the Second Amended Complaint—after the servers had already been repurposed by the KSU IT Department.

But this story grows even stranger. State Defendants’ then-counsel advised Coalition Plaintiffs on October 6, 2017 that the servers had been wiped and

---

GEMS ballot-building server was relevant to those claims. Discovery of a webserver that had not been in use during those elections was not.



repurposed but that the FBI was maintaining a copy of the image it took at the State's request. Correia Dec. at ¶ 18. State Defendants' counsel further kept Plaintiffs' counsel updated about the status of the servers. Correia Dec. at ¶¶ 20-22. On November 17, 2017, an email from conflict counsel<sup>7</sup> put Plaintiffs' counsel on notice that no subpoena had been issued to the FBI and provided Plaintiffs' counsel with the contact information for the FBI agent with knowledge. Correia Dec. at ¶ 27. Despite knowing these facts, Plaintiffs' counsel now contend—without any evidence—that State Defendants' counsel's filing of the Notice of Intent to serve a subpoena was a “head feint,” and suggest State Defendants and counsel “hop[ed] the FBI would destroy it.” [Doc. 548 at 13].

Finally, after receiving an inquiry from Coalition Plaintiffs earlier this month about the status of the webserver image, State Defendants notified Coalition Plaintiffs on July 8, 2019 that the FBI image still existed and that they had requested a copy from the FBI. *See* Ex. C. At no time did the State Defendants or their counsel receive a copy of the image of the server from the FBI. The server itself was returned to KSU. Correia Dec. at ¶¶ 18-19. Again, despite knowing these facts, Plaintiffs' counsel accuse State Defendants, and State Defendants' counsel,

---

<sup>7</sup> On or about October 27, 2017, the Office of the Attorney General determined it could not continue to represent the State Defendants in this action and sought appointment of conflict counsel. Correia Dec. at ¶ 24.

of “retriev[ing] the server[ ] from the FBI and promptly and brazenly destroy[ing] it, . . . under the supervision of, if not by, government lawyers.” [Doc. 548 at 19].

Coalition Plaintiffs cannot be prejudiced when their claims did not even implicate the webserver until after it had already been repurposed in the normal course of business by a non-party to this case—and State Defendants had no duty to preserve the webserver until some claim raised by Plaintiffs implicated it. Coalition Plaintiffs further will still have the opportunity to review the webserver when it is produced in the normal course of discovery. To claim that State Defendants’ conduct screams “bad faith,” [Doc. 548, p. 6], ignores the history of this case and Plaintiffs’ own conduct. *Delta*, 770 F. Supp. 2d at 1313-14 (finding of bad faith is a prerequisite to spoliation sanctions).

*C. Memory cards and internal memory of DREs are preserved and Coalition Plaintiffs have never sought to confer with State Defendants on their preservation.*

The parties conferred a number of times at the outset of this litigation about how to balance the preservation requests of Plaintiffs with the needs of various defendants to conduct elections. *See, e.g.*, Transcript of September 20, 2017 Teleconference [Doc. 80, pp. 13-18]. That process ultimately culminated in an order that recognized the need to operate elections in the State of Georgia. [Doc. 122]. The order required any dispute about compliance with preservation

obligations to first be addressed through a conference with the parties before notifying the Court (if needed) to seek a resolution. *Id.* at 2; [Doc. 548, p. 12] (Coalition Plaintiffs' Brief recognizing this process).

State Defendants have taken the consistent position that past election data on memory cards and the internal memory of DREs is not erased by subsequent usage because each election is stored in separate folders on the various systems. Barnes Dec. at ¶¶ 5-7. As a result, there was no need to stop using existing memory cards or DREs because all past information remained available for continued examination.<sup>8</sup> *Id.* Taking the approach Coalition Plaintiffs say is required to preserve evidence would have prevented State Defendants from using a single DRE during the pendency of this lawsuit—essentially granting them the relief they seek from this Court. [Doc. 548, p. 17].

Coalition Plaintiffs have known of this position for years. At the very least at the December 2018 hearing in the Lieutenant Governor election-contest case, Coalition Plaintiffs knew the position taken by State Defendants about the continued use of memory cards and DREs. *See, e.g.*, Transcript of December 5, 2018 Status Conference [Doc. 449-10 at 8-9].

---

<sup>8</sup> This is also why Coalition Plaintiffs' position that State Defendants are violating their own regulations governing elections makes no sense—information about each election is maintained on each DRE for years after each election. Barnes Dec. at ¶¶ 4-6.

Despite Coalition Plaintiffs' knowledge and this Court's order requiring a conference about any disputes over preservation obligations, Coalition Plaintiffs instead raised these issues *for the first time* while the preliminary-injunction hearing was already underway. And, in any event, the evidence sought by Coalition Plaintiffs remains available to them and has not been destroyed. Coalition Plaintiffs have also put forward no evidence that the memory cards or information in the internal memory is necessary to prove their case.

### **III. CONCLUSION.**

State Defendants have complied with their obligations to preserve evidence and have not destroyed or spoliated any relevant information. This Court should deny Coalition Plaintiffs' last-ditch attempt to cover for their lack of evidence in support of their preliminary-injunction motion.

Respectfully submitted this 30th day of July, 2019.

Vincent R. Russo  
Georgia Bar No. 242628  
vrusso@robbinsfirm.com  
Josh Belinfante  
Georgia Bar No. 047399  
jbelinfante@robbinsfirm.com  
Carey A. Miller  
Georgia Bar No. 976240  
cmiller@robbinsfirm.com  
Kimberly Anderson

Georgia Bar No. 602807  
kanderson@robbinsfirm.com  
Alexander Denton  
Georgia Bar No. 660632  
adenton@robbinsfirm.com  
Brian E. Lake  
Georgia Bar No. 575966  
blake@robbinsfirm.com  
Robbins Ross Alloy Belinfante Littlefield LLC  
500 14th Street, N.W.  
Atlanta, Georgia 30318  
Telephone: (678) 701-9381  
Facsimile: (404) 856-3250

/s/ Bryan P. Tyson

Bryan P. Tyson  
Georgia Bar No. 515411  
btyson@taylorenghish.com  
Bryan F. Jacoutot  
Georgia Bar No. 668272  
bjacoutot@taylorenghish.com  
TAYLOR ENGLISH DUMA LLP  
1600 Parkwood Circle, Suite 200  
Atlanta, GA 30339  
Telephone: (678)336-7249

*Counsel for State Defendants*

**CERTIFICATE OF COMPLIANCE**

Pursuant to L.R. 7.1(D), the undersigned hereby certifies that the foregoing **STATE DEFENDANTS' RESPONSE TO COALITION PLAINTIFFS' HEARING BRIEF ON EVIDENTIARY PRESUMPTION ARISING FROM SPOILIATION OF EVIDENCE** has been prepared in Times New Roman, 14 pt., a font and type selection approved by the Court in L.R. 5.1(B).

*/s/ Bryan P. Tyson*

Bryan P. Tyson

Georgia Bar No. 515411

**CERTIFICATE OF SERVICE**

I hereby certify that I filed the foregoing **STATE DEFENDANTS' RESPONSE TO COALITION PLAINTIFFS' HEARING BRIEF ON EVIDENTIARY PRESUMPTION ARISING FROM SPOLIATION OF EVIDENCE** with the Clerk of Court using the CM/ECF system, which will automatically send counsel of record e-mail notification of such filing:

This 30th day of July, 2019

/s/ Bryan P. Tyson  
Bryan P. Tyson  
Georgia Bar No. 515411

# EXHIBIT A



**From:** [Robin McDonald](#)  
**To:** [Hammock, Tess; ibelinfante@robbinsfirm.com; Vincent Russo; Bryan Tyson; Germany, Ryan; Broce, Candice; Katelyn McCreary](#)  
**Subject:** media inquiry from the Daily Report  
**Date:** Thursday, July 25, 2019 3:11:35 PM

---

Dear Tess, Candice, Katie, et al,

I am seeking your response to a court document filed today in the Curling v. Raffensperger alleging spoliation of evidence by both the offices of current Secretary of State Brad Raffensperger and former Secretary of State (now GA Governor) Brian Kemp.

The document alleges failure to preserve electronically stored information, despite numerous requests, notifications, and discussions, including

- 1) the destruction of two KSU servers used at the KSU Center for Election Services after the FBI returned the servers to the Secretary of State's office;
- 2) preserve DRE memory cards used in the relevant elections or make forensic images of same before reusing them;
- 3) preserve electronic data in the internal memories of DRE machines before deploying them to polling places and reusing them.

"Defendants have willfully destroyed critical evidence in this case. The Secretary of State's office, while the Secretary of State was seeking the governor's office, retrieved the servers from the FBI and promptly and brazenly destroyed it, placing it beyond the reach of plaintiffs, the court, and the people.... What's worse is that it appears that all of this was done under the supervision of, if not by, government lawyers, who are held to a higher standard than private lawyers." (pp 18-19)

I would like your comments and responses to the allegations in this document. I am writing a story now to post online this afternoon. The document was filed today. It is Document 548. The case number is 1:17-cv-02989. Coalition Plaintiffs' Hearing Brief on Evidentiary Presumption Arising From Spoliation of Evidence.

Thanks for your quick attention to this matter.

R. Robin McDonald/Staff Writer/The Daily Report/Atlanta

--

R. Robin McDonald  
Staff Writer  
The Daily Report/ALM Media  
260 Peachtree Street, N.W.  
Suite 1900  
Atlanta, GA 30033  
404-419-2835

# EXHIBIT B

7/29/2019

Marilyn Marks on Twitter: "Georgia voters should be disgusted by this story. We submitted the brief but haven't spoken in court about it y..."



← Tweet

🔍 Search Twitter



**Marilyn Marks**  
@MarilynRMarks1



Georgia voters should be disgusted by this story. We submitted the brief but haven't spoken in court about it yet.



**R. Robin McDonald** @rrobinmcdonald · Jul 25

Lawyers in GA federal paper ballot case accuse Secretary of State, governor of destroying evidence at.law.com/dg6mmY?cmp=sha... via @DailyReport @GARepublicans @GeorgiaDemocrat @MarilynRMarks1 @FairFightAction #gapol #galegal @BrianKempGA @LawyersComm @StateBarofGA @lawtwitter



6:47 AM · Jul 26, 2019 · Twitter for iPhone

254 Retweets 456 Likes



**Karen Myatt** @karenamyatt · Jul 26

Replying to @MarilynRMarks1 and @pakitaleone  
It's a GOP thing, it seems. Mueller documented the destruction of evidence by WH witnesses. It's why he couldn't further his conclusions about conspiracy. Records were disappeared.

This is illegal and should be prosecuted in GA and DC. If not, it will continue.



4

11



**cb** @seawiz2 · Jul 26

Replying to @MarilynRMarks1 and @jennycohn1  
Not surprised. You think this is not happening in several other GOP controlled states?



4



**A Voice For All GA** @AVoiceForAllGA · Jul 26

Replying to @MarilynRMarks1  
Absolutely Disgusting but not surprising about disgraceful corrupt illegitimate @GovKemp & @GaSecofState Please donate here coalitionforgoodgovernance.org/donate/ to support lawsuit filed by @CoalitionGoodGv for #HandMarkedPaperBallots for Georgia. Thank You @CoalitionGoodGv @MarilynRMarks1



Donate to the Coalition for Good Governance  
We appreciate your generous donations.  
coalitionforgoodgovernance.org



10

14



**Mark J Rudd** @rudd1mark · Jul 26

Replying to @MarilynRMarks1 and @MalcolmNance  
Republicans are the worst people on earth in Georgia or where ever there doing unlawfully, to win in there need to win and don't really care about consequences.



**Ellen Behm** @ellenbehm · Jul 26

Replying to @MarilynRMarks1 and @MalcolmNance

**Relevant people**

**Marilyn Marks**

@MarilynRMarks1

Follow

Election integrity activist. Political opinions solely my own.

**R. Robin McDonald**

@rrobinmcdonald

Follow

Dogged reporter/@ALMMedia. True crime author. GA courts/judicial system and bad judges are my beat. Inkstained wretch in a cyber world. Fedora optional.

**Daily Report**

@DailyReport

Follow

Atlanta's leading source of legal news. Choose subscription options here: law.com/dailyreportonl...

**Trends for you**

Trending in Georgia  
**#giroyshooting**  
22.6K Tweets

**#HobbsAndShaw**  
In theaters this Friday. Get tickets now.  
Promoted by Hobbs & Shaw

Trending in Georgia  
**AI Sharpton**  
79.3K Tweets

Trending in Georgia  
**#terribleMCUcasting**  
8,627 Tweets

Trending in Georgia  
**#GunControlNow**  
41.2K Tweets

Show more

Terms Privacy policy Cookies Ads info More

© 2019 Twitter, Inc.

7/29/2019

Marilyn Marks on Twitter: "Georgia voters should be disgusted by this story. We submitted the brief but haven't spoken in court about it y..."



As a Georgia voter, I am disgusted by this story.



Search Twitter



**K.T.** @Progressivemrs · Jul 26

Replying to @MarilynRMarks1 and @MalcolmNance  
Great work!



**Sundevil Doug** @moen4955 · Jul 26

Replying to @MarilynRMarks1 and @MalcolmNance  
Nothing coming out of Georgia politics would surprise me, nothing. There's a reason Trumpers love the South, their leader fits right in.



**AbbieX** @AbbieX · Jul 26

Replying to @MarilynRMarks1 and @MalcolmNance  
Where are the millions in Atlanta...ya know...like PR??



**RedUrs** @redurs73 · Jul 27

Replying to @MarilynRMarks1 and @regina74  
Trust me, we are not only disgusted, but we are outraged. That election was stolen and voters right were suppressed. We aren't sitting idly by crossing our fingers that it won't happen again. The FIGHT continues!



Show more replies

7/29/2019

Marilyn Marks on Twitter: "After @rrobinmcdonald broke this story, national media picked it up and published it widely. AP, CNN, Bloomb...



← Tweet

🔍 Search Twitter



**Marilyn Marks**  
@MarilynRMarks1



**Relevant people**



After @rrobinmcdonald broke this story, national media picked it up and published it widely. AP, CNN, Bloomberg, etc. Good reporting, Robin!



**Marilyn Marks**  
@MarilynRMarks1 Follow  
Election integrity activist. Political opinions solely my own.



**R. Robin McDonald** @rrobinmcdonald · Jul 26

**R. Robin McDonald**  
@rrobinmcdonald Follow  
Dogged reporter/@ALMMedia. True crime author. GA courts/judicial system and bad judges are my beat. Inkstained wretch in a cyber world. Fedora optional.



THIS: Lawyers in GA paper ballot case accuse Gov, Sec of State of destroying evidence that could reveal hacking, other fails at.law.com/NUe45o?cmp=sha... via @DailyReport @TheVotingNews @LawyersComm @FairFightAction @GARepublicans @TindallSara @marilynmarks1 @CommonCauseGA @ACLU



6:14 PM · Jul 27, 2019 · Twitter Web App

**Daily Report**  
@DailyReport Follow  
Atlanta's leading source of legal news. Choose subscription options here: law.com/dailyreportonl...

76 Retweets 171 Likes



**Trends for you**



Trending in Georgia  
**#gilroyshooting**  
22.6K Tweets

**#HobbsAndShaw**  
In theaters this Friday. Get tickets now.  
Promoted by Hobbs & Shaw

Trending in Georgia  
**Al Sharpton**  
79.3K Tweets

Trending in Georgia  
**#terribleMCUcasting**  
8,627 Tweets

Trending in Georgia  
**#GunControlNow**  
41.2K Tweets

Show more

7/29/2019

Marilyn Marks on Twitter: "The GA SOS (Raffensperger and Kemp before him) destroyed key evidence in our @CoalitionGoodGv electio..."



← Thread

🔍 Search Twitter



**Marilyn Marks**  
@MarilynRMarks1



The GA SOS (Raffensperger and Kemp before him) destroyed key evidence in our @CoalitionGoodGv election security lawsuit. They started destroying evidence 4 days after we sued them in 2017 and haven't stopped. We filed this brief on Thursday. ...  
alitionforgoodgovernance.sharefile.com/d-sfe3f30c6a72...



2:16 PM · Jul 27, 2019 · Twitter Web App

118 Retweets 142 Likes



**Marilyn Marks** @MarilynRMarks1 · Jul 27  
Replying to @MarilynRMarks1  
The Judge has ordered the State to respond by Tuesday to the facts we present on the State's destruction of evidence.

🗨️ 1

🔄 26

❤️ 46



**Marilyn Marks** @MarilynRMarks1 · Jul 27  
Once Georgia voters start connecting the MANY dots, they will be very concerned about the legitimacy of any GA election conducted with electronic ballots. Voters don't know 90% of the story yet. Will they ever? It depends whether there is support for investigative reporting.

🗨️ 2

🔄 42

❤️ 71



**Marilyn Marks** @MarilynRMarks1 · Jul 27  
Traditional media orgs in GA are not engaged in investigative reporting on what is being learned about GA's elections in this lawsuit. What will be required for that to change?

🗨️ 7

🔄 38

❤️ 83



**A Voice For All GA** @AVoiceForAllGA · Jul 27  
Replying to @MarilynRMarks1 and @CoalitionGoodGv  
Donate here to support @CoalitionGoodGv 's strong lawsuit for #HandMarkedPaperBallots for Georgia here coalitionforgoodgovernance.org/donate/ This lawsuit should lead to criminal charges for ILLEGITIMATE @GovKemp @GaSecofState & other officials. #GAPol #ProtectOurElections #SecureOurElections



Donate to the Coalition for Good Governance  
We appreciate your generous donations.  
🔗 coalitionforgoodgovernance.org



🔄 10

❤️ 9



**Mariann wildi** @wildi\_mariann · Jul 27  
Replying to @MarilynRMarks1 @jennycohn1 and @CoalitionGoodGv  
Shouldn't be a surprise to anyone.



❤️ 2



### Relevant people

**Marilyn Marks**  
@MarilynRMarks1

Follow

Election integrity activist. Political opinions solely my own.

**Coalition for Good Gover...**  
@CoalitionGoodGv

Follow

Citizen engagement for self-governance through fair and transparent elections. Suing Georgia to force paper ballot elections.

### Trends for you

Trending in Georgia  
**#gilroyshooting**  
22.6K Tweets

**#HobbsAndShaw**  
In theaters this Friday. Get tickets now.  
📺 Promoted by Hobbs & Shaw

Trending in Georgia  
**AI Sharpton**  
79.3K Tweets

Trending in Georgia  
**#terribleMCUcasting**  
8,627 Tweets

Trending in Georgia  
**#GunControlNow**  
41.2K Tweets

Show more

Terms Privacy policy Cookies Ads info More

7/29/2019

Marilyn Marks on Twitter: "The GA SOS (Raffensperger and Kemp before him) destroyed key evidence in our @CoalitionGoodGv electio..."



**A Voice For All GA** @AVoiceForAllGA · Jul 28

Replying to @MarilynRMarks1 and @CoalitionGoodGv

#MiniTrump ILLEGITIMATE @GovKemp committed #ObstructionOfJustice and other crimes. Donate here [coalitionforgoodgovernance.org/donate/](https://coalitionforgoodgovernance.org/donate/) to support @CoalitionGoodGv 's strong Federal lawsuit for #HandMarkedPaperBallots for Georgia that should lead to indictments for Kemp & @GaSecofState #GAPol

Search Twitter



Donate to the Coalition for Good Governance

We appreciate your generous donations.

[coalitionforgoodgovernance.org](https://coalitionforgoodgovernance.org)



5

6



**A Voice For All GA** @AVoiceForAllGA · Jul 28

Replying to @MarilynRMarks1 and @CoalitionGoodGv

ILLEGITIMATE @GovKemp committed #ObstructionOfJustice and may wind up in prison along with @GaSecofState and other election officials. Donate to support strong Federal lawsuit for #HandMarkedPaperBallots for Georgia filed by @CoalitionGoodGv here [coalitionforgoodgovernance.org/donate/](https://coalitionforgoodgovernance.org/donate/) #GAPol



Donate to the Coalition for Good Governance

We appreciate your generous donations.

[coalitionforgoodgovernance.org](https://coalitionforgoodgovernance.org)



3

5



# EXHIBIT C



[REDACTED]

---

**From:** Josh Belinfante <Josh.Belinfante@robbinsfirm.com>  
**Sent:** Monday, July 8, 2019 2:23 PM  
**To:** Cary Ichter  
**Cc:** bbrown@brucepbrownlaw.com; Carey Miller; DCross@mofocom;  
jpowers@lawyerscommittee.org; dbrody@lawyerscommittee.org; Bryan Tyson; Vincent Russo; Kimberly Anderson; Brian Lake; Alexander Denton; Bryan Jacoutot  
**Subject:** FBI Request

Cary:

We have confirmed that the FBI has maintained possession of the drive. We'll be responding to your discovery requests seeking more information in a timely manner.

Thanks,  
JB

## ROBBINS

Josh Belinfante  
**ROBBINS ROSS ALLOY BELINFANTE LITTLEFIELD LLC**  
500 Fourteenth Street NW  
Atlanta, GA 30318  
404.856.3262 (Direct)  
678.701.9381(Main)  
404.856.3250 (Fax)  
[www.robbinsfirm.com](http://www.robbinsfirm.com)

**Please visit our affiliated government relations practice: Robbins Government Relations**  
[www.robbinsgr.com](http://www.robbinsgr.com)

**NOTE:** This email is intended for the use and benefit of the addressed recipient(s) only. If you are not an addressee, your unauthorized review, use, disclosure, dissemination, distribution, or copying of this communication, or any of its contents, is prohibited. If you have received this communication in error, please contact me by reply email and destroy all copies of the original message. IRS Circular 230 requires me to state that any opinions expressed with respect to a significant tax issue are not intended or written by me to be used, and cannot be used by you, for the purpose of avoiding penalties that may be imposed on you or any other person who may examine this correspondence in connection with a Federal tax matter.

[REDACTED]

---

**From:** Josh Belinfante <Josh.Belinfante@robbinsfirm.com>  
**Sent:** Monday, July 8, 2019 3:12 PM  
**To:** Cross, David D.; Cary Ichter  
**Cc:** bbrown@brucepbrownlaw.com; Carey Miller; jpowers@lawyerscommittee.org; dbrody@lawyerscommittee.org; Bryan Tyson; Vincent Russo; Kimberly Anderson; Brian Lake; Alexander Denton; Bryan Jacoutot; Chapple, Catherine L.  
**Subject:** RE: FBI Request

David:

Hope you're not caught in the flooding I just read about.

To answer your question, we have requested a copy.

Thanks,  
JB

## ROBBINS

Josh Belinfante  
**ROBBINS ROSS ALLOY BELINFANTE LITTLEFIELD LLC**  
500 Fourteenth Street NW  
Atlanta, GA 30318  
404.856.3262 (Direct)  
678.701.9381(Main)  
404.856.3250 (Fax)  
[www.robbinsfirm.com](http://www.robbinsfirm.com)

**Please visit our affiliated government relations practice: Robbins Government Relations**  
[www.robbinsgr.com](http://www.robbinsgr.com)

**NOTE:** This email is intended for the use and benefit of the addressed recipient(s) only. If you are not an addressee, your unauthorized review, use, disclosure, dissemination, distribution, or copying of this communication, or any of its contents, is prohibited. If you have received this communication in error, please contact me by reply email and destroy all copies of the original message. IRS Circular 230 requires me to state that any opinions expressed with respect to a significant tax issue are not intended or written by me to be used, and cannot be used by you, for the purpose of avoiding penalties that may be imposed on you or any other person who may examine this correspondence in connection with a Federal tax matter.

**From:** Cross, David D. <DCross@mofocom>  
**Sent:** Monday, July 8, 2019 3:03 PM  
**To:** Josh Belinfante <Josh.Belinfante@robbinsfirm.com>; Cary Ichter <Clichter@ichterdavis.com>  
**Cc:** bbrown@brucepbrownlaw.com; Carey Miller <carey.miller@robbinsfirm.com>; jpowers@lawyerscommittee.org; dbrody@lawyerscommittee.org; btyson@taylorenghish.com; Vincent Russo <vrusso@robbinsfirm.com>; Kimberly Anderson <Kimberly.Anderson@robbinsfirm.com>; Brian Lake <Brian.Lake@robbinsfirm.com>; Alexander Denton <Alexander.Denton@robbinsfirm.com>; bjacoutot@taylorenghish.com; Chapple, Catherine L. <CChapple@mofocom>  
**Subject:** RE: FBI Request

Josh -

Has the state requested a copy of it from the FBI? If not, does it plan to?

Thanks.  
DC

**From:** Josh Belinfante <Josh.Belinfante@robbinsfirm.com>

**Date:** Monday, Jul 08, 2019, 11:23 AM

**To:** Cary Ichter <Clichter@ichterdavis.com>

**Cc:** bbrown@brucepbrownlaw.com <bbrown@brucepbrownlaw.com>, Carey Miller <carey.miller@robbinsfirm.com>, Cross, David D. <DCross@mofo.com>, jpowers@lawyerscommittee.org <jpowers@lawyerscommittee.org>, dbrody@lawyerscommittee.org <dbrody@lawyerscommittee.org>, btyson@taylorenghish.com <btyson@taylorenghish.com>, Vincent Russo <vrusso@robbinsfirm.com>, Kimberly Anderson <Kimberly.Anderson@robbinsfirm.com>, Brian Lake <Brian.Lake@robbinsfirm.com>, Alexander Denton <Alexander.Denton@robbinsfirm.com>, bjacoutot@taylorenghish.com <bjacoutot@taylorenghish.com>

**Subject:** FBI Request

- External Email -

Cary:

We have confirmed that the FBI has maintained possession of the drive. We'll be responding to your discovery requests seeking more information in a timely manner.

Thanks,  
JB

## ROBBINS

Josh Belinfante  
**ROBBINS ROSS ALLOY BELINFANTE LITTLEFIELD LLC**  
500 Fourteenth Street NW  
Atlanta, GA 30318  
404.856.3262 (Direct)  
678.701.9381(Main)  
404.856.3250 (Fax)  
[www.robbinsfirm.com](http://www.robbinsfirm.com)

**Please visit our affiliated government relations practice: Robbins Government Relations**  
[www.robbinsgr.com](http://www.robbinsgr.com)

**NOTE:** This email is intended for the use and benefit of the addressed recipient(s) only. If you are not an addressee, your unauthorized review, use, disclosure, dissemination, distribution, or copying of this communication, or any of its contents, is prohibited. If you have received this communication in error, please contact me by reply email and destroy all copies of the original message. IRS Circular 230 requires me to state that any opinions expressed with respect to a significant tax issue are not intended or written by me to be used, and cannot be used by you, for the purpose of avoiding penalties that may be imposed on you or any other person who may examine this correspondence in connection with a Federal tax matter.

=====

This message may be confidential and privileged. Use or disclosure by anyone other than an intended addressee is

prohibited. If you received this message in error, please delete it and advise the sender by reply email. Learn about Morrison & Foerster LLP's [Privacy Policy](#).

# EXHIBIT D

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

DONNA CURLING, *et al.*

*Plaintiffs,*

v.

BRAD RAFFENSPERGER, *et al.*,

*Defendants.*

CIVIL ACTION

FILE NO. 1:17-cv-2989-AT

**DECLARATION OF MICHAEL BARNES**

Pursuant to 28 U.S.C. § 1746, I, Michael Barnes, make the following declaration:

1.

My name is Michael Barnes. I am over the age of 21 years, and I am under no legal disability which would prevent me from giving this declaration. If called to testify, I would testify under oath to these facts.

2.

I currently am the Director of the Center for Election Systems, Office of Secretary of State–Brad Raffensperger (“CES”). I was formerly Director of the Center for Election Systems at Kennesaw State University (“KSU”), which was an

outside contractor with the Office of the Secretary of State, from 2002 until December 31, 2017. Beginning on January 1, 2018, all elections functions that were previously performed at KSU were moved to an internal department in the Office of the Secretary of State. I first began working at CES KSU in 2005. Prior to that time, I was the Assistant Director of Elections for the Georgia Secretary of State, and in that position I directed the State of Georgia's transfer to a uniform system of voting, *i.e.*, direct-recording electronic voting machines ("DREs").

3.

I am familiar with the server at CES that was accessed by Logan Lamb in 2016. That server was not a "central server" at CES because it did not contain any files used in the regular course of building ballots. It was a separate webserver where files were sometimes located to allow election officials to download files for use in elections. In my deposition, I discussed the types of files that were supposed to remain on the server.

4.

Georgia's DREs use both internal memory hardware and removal external memory cards. During an election, data files are saved to both the internal memory and the removable external memory cards. These files contain the data collected and operations performed during the DRE's use in an election. For example, when



a voter hits the “Cast Ballot” button on a DRE, the audit log records an entry with a timestamp and the words “Ballot Cast.” The information about who the voter was or what selections he or she made are not recorded in the audit log. The elector’s voter selections are recorded in both the internal memory and the removable external memory card.

5.

Once the external memory card is inserted into the DRE and the DRE is powered on, the DRE begins to store identical copies of data on both the external memory card and the DRE’s internal memory. As voters and election officials interact with the DRE, both the external memory card and internal memory are updated in tandem. When the election is ended on the DRE by a poll manager on election night, the external memory card that is removed contains a copy of the data collected and operations performed. The DRE’s internal memory keeps its identical copy of the same data in a folder specific to that election.

6.

Adding a new election to a Georgia DREs does not automatically overwrite any prior election information maintained on the internal memory of the DRE unless the internal memory is already full. Each election is maintained in a separate folder on the internal memory of the unit and does not take up a large amount of



space. When the machines reach capacity, a manual process can be used to remove past election information. That manual process has not been used in Georgia since at least 2011, when BallotStation version 4.5.2! was installed on all Georgia DREs.

7.

Similarly, adding a new election to a memory card does not automatically overwrite prior election information maintained on the memory card. Each prior election is maintained in a separate folder on the memory card.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 30th day of July, 2019.

  
MICHAEL BARNES

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

DONNA CURLING, *et al.*

*Plaintiffs,*

v.

BRAD RAFFENSPERGER, *et al.*,

*Defendants.*

CIVIL ACTION

FILE NO. 1:17-cv-2989-AT

**DECLARATION OF CRISTINA CORREIA**

I, Cristina Correia, do hereby declare and state that the following facts are true and correct to the best of my knowledge, information and belief.

1.

I am over the age of 21 years and am in all ways competent to give testimony, suffering no physical or mental disabilities.

2.

I am a Senior Assistant Attorney General for the Office of Attorney General Chris Carr.

3.

I was lead counsel for the Defendants in this action until my office's withdrawal from representation on November 3, 2017.

4.

I have read the "Coalition Plaintiffs' Hearing Brief on Evidentiary Presumption Arising From Spoliation of Evidence." Doc. 548.

5.

At no time during this litigation have I, or anyone else to my knowledge, destroyed evidence, directed others to destroy evidence, or supervised the destruction of evidence. *See* Doc. 548 at 18-19.

6.

When this lawsuit was filed on July 3, 2017, it challenged the results of the June 20, 2017, Sixth Congressional District run-off election. Doc. 1-2.

7.

Exhibit C to the initial complaint included a memorandum, dated April 18, 2017, outlining an action plan for a number of IT assets within the Center for Elections Systems (CES). Doc. 1-2 at 98-102, particularly p. 101 ¶ 7.

8.

Included in that action plan was a list of IT assets that were recommended for replacement, including the CES public facing webserver, Dell PowerEdge R610, and a CES Dell PowerEdge 1950. Doc. 1-2 at 101 ¶ 7, items 8 and 9.

9.

On July 10, 2017, after business hours, I and several other attorneys received an email from Plaintiffs' counsel with a preservation hold request. The request sought preservation of "all election materials for the June 20 election." While the email specifically identifies several items Plaintiffs sought to preserve, there was no mention of the servers identified in paragraph 8 above. A true and correct copy of the email is attached as Exhibit 1.

10.

It was, and still is, my understanding that the two servers described in ¶ 8 above had been removed from CES in March, 2017 and therefore could not have had any data relevant to the April and June, 2017 elections.

11.

On August 18, 2017, with leave of Court, Plaintiffs filed an Amended Complaint. Doc. 15. Exhibit D to the Amended Complaint is the same four page

memo from Kennesaw State University that was included with the initial complaint and referenced in ¶¶ 7-8 above. Doc. 15-1 at 18-22.

12.

On September 15, 2017, with leave of Court, Plaintiffs filed their Second Amended Complaint. Doc. 70. The Second Amended Complaint, extends, for the first time, Plaintiffs' claims to the November, 2016 elections. Doc. 70 at ¶ 10.

13.

On September 26, 2017, counsel for Fulton County Defendants forwarded to me an email from Plaintiffs' Counsel, Joe Caldwell, that was dated September 22, 2017 and that had been sent to various county defense counsel and the Court, but failed to include any lawyer from the Attorney General's Office. I subsequently sent an email to all counsel and the court, asking that Plaintiffs' counsel copy me on all future communications. A true and accurate copy of the email exchange is attached hereto as Exhibit 2.

14.

On September 29, 2017, Plaintiffs' counsel sent an email which referred to a litigation hold letter of September 12, 2017. I responded to this email advising Plaintiffs' counsel that I had not received a letter or litigation hold dated September 12, 2017. A true and accurate copy of this email exchange is attached as Exhibit 3.

15.

Subsequent to the email exchange described in ¶ 14 above, I inquired of the other two attorneys from my office listed as an addressee on the September 12, 2017, letter and both advised that they had not received a copy of the letter.

16.

Subsequent to the email exchange described in ¶ 14 above, Plaintiffs' counsel, Joe Caldwell, forwarded a copy of a September 12, 2017, litigation hold letter. A copy of the email and letter are attached as Exhibit 4.

17.

The September 12, 2017 litigation hold letter from Plaintiffs' counsel requests, for the first time, the preservation of data and equipment used in the November 2016 elections.

18.

On October 6, 2017, I sent an email to Plaintiffs' counsel regarding the Plaintiffs' litigation hold request and explained that:

the CES server that was the subject of the alleged security lapse in March, 2017, was taken offline by Kennesaw State University Information Technology Services (UITs) on March 1, 2017, ninety minutes after UITs learned that certain information on the server may have been vulnerable to non-authorized access. The backup server was also taken offline on March 1, 2017. The FBI was contacted and took possession of the server from March 3, 2017 to March 17, 2017, and on that date, UITs erased all data on the server and backup server.



The physical servers were subsequently preserved, but without any of the data.

Exhibit 5 attached hereto.

19.

On or about October 16 or 17, 2017, I learned that the server that had been returned by the FBI to Kennesaw UITS on March 17, 2017, was, pursuant to the UITS action plan, erased on July 7, 2017 and not March 17, 2017, as I had previously believed. *See* Exhibit 10 at 19.

20.

On or about October 16 or 17, 2017, I learned that the backup Unicoi server had been erased and the hard drive removed for surplus on August 9, 2017, and not March 17, 2017, as I had previously believed.

21.

On the morning of October 18, 2017, I sent Plaintiffs' counsel, Joe Caldwell an email advising him of what I had learned. I received a response to my email on October 19, 2019. A true and accurate copy of my email exchange is attached hereto as Exhibit 6.

22.

On October 26, 2017, I emailed Plaintiffs' counsel and advised that we had confirmed with the FBI that they still had a copy of the forensic image of the CES

server taken in March 2017. I indicated to Plaintiffs' counsel that we were working with the FBI to get a copy of the forensic image and sent counsel a Notice of Intent to Serve Subpoena. A true and correct copy of my email is attached as Exhibit 7.

23.

In response to my email of October 26, 2017, Plaintiffs' counsel sent me an email with a link to a press report and inquired whether I continued to represent Kennesaw State University and CES. A true and correct copy of the email is attached hereto as Exhibit 8.

24.

On or about October 27, 2019, the Office of the Attorney General determined that it could not continue to represent the State Defendants in this action and immediately sought appointment of conflict counsel.

25.

I did not respond to the email from Plaintiffs' counsel referenced in ¶ 23 above or to any further emails.

26.

The only actions I took in defense of the litigation after the decision to obtain conflict counsel was to obtain each Defendant's consent to file a reply brief



in support of a pending motion to dismiss, to obtain each Defendant's consent to withdraw, and to provide conflict counsel with all relevant information and documents.

27.

On November 10, 2017, I was copied on an email exchange between conflict counsel for the State Defendants and Plaintiffs' counsel regarding the non-issuance of a subpoena to the FBI. Counsel for KSU put Plaintiffs' counsel on notice that the subpoena had not been issued and provided Plaintiffs' counsel with the contact information for the FBI agent with knowledge about the status of the server image in the FBI's possession. A true and accurate copy of the email exchange is attached hereto as Exhibit 9.

28.

On October 20, 2017, I was copied on an email and Open Records Act production between Jeff Milsteen, then KSU Chief Legal Affairs Officer, and Plaintiff Marilyn Marks. A true and accurate copy of that email and some of the documents provided with the email, are attached hereto as Exhibit 10.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 30th day of July, 2019.

  
Cristina Correia  
Cristina M. Correia

# Correia Declaration

## Exhibit 1

**Cristina Correia**

---

**From:** Bryan Ward <bryan.ward@holcombward.com>  
**Sent:** Monday, July 10, 2017 5:32 PM  
**To:** Annette Cowart; Russ Willard; Jennifer Colangelo; Cristina Correia; Josiah Heidt; ovbrantley@dekalbcountyga.gov; LKJohnson@dekalbcountyga.gov; TGPhilli@dekalbcountyga.gov; BDBryan@dekalbcountyga.gov; Patrise.Hooker@fultoncountyga.gov; Kaye.Burwell@fultoncountyga.gov; Cheryl.Ringer@fultoncountyga.gov; David.Lowman@fultoncountyga.gov; DWhite@hlclaw.com; SHegener@hlclaw.com  
**Cc:** Marvin Lim  
**Subject:** Curling et al. v. Kemp et al.; No. 2017CV292233  
**Attachments:** CURLING v KEMP (2) - COMPLAINT WITH VERIFICATION AND EXHIBITS.PDF

Counsel,

I am counsel for the plaintiffs in the above-referenced matter, *Curling et al. v. Kemp et al.*; No. 2017CV292233 (the "Action") (Complaint attached). I am writing you as either the attorney listed online for one of the defendant entities in the above-referenced matter or as an attorney for a defendant entity in the now-dismissed *Curling et al. v. Kemp et al.*, No. 2017CV290630. The purpose of this email is to notify your clients of their obligation to take reasonable steps to preserve and retain all hard copies and electronically stored information, as defined by Rule 34 of the Federal Rules of Civil Procedure, and all other documents and physical evidence relevant to this Action. To fulfill your preservation obligation, you must take reasonable steps to preserve all hard copy documents, physical evidence, and electronically stored information relevant to this Action, including, but not limited to

- suspending the Defendant entities' data destruction and backup tape recycling policies;
  - preserving relevant software, including legacy software (unless an exact copy or mirror image is made and stored) and hardware that is no longer in service but was in service during the relevant time period;
  - retaining and preserving necessary information to access, review and reconstruct (if necessary) relevant electronic data, including identification codes and passwords, decryption applications, decompression software, reconstruction software, network access codes, manuals and user instructions;
- retaining and preserving all backup tapes or other storage media; and
  - any other reasonable steps necessary to prevent the destruction, loss, override or modification of relevant data either intentionally or inadvertently, such as through implementation of a pre-existing document retention policy.

This preservation obligation includes all election materials for the June 20 election, including, in particular, **memory cards** (PCMCIA cards) used in that election. In addition, we are available to confer about the retention and security of the voting machines and GEMS server used in the June 20 and April 18 elections. Until such time, those machines should not be disturbed, tested, or changed in any way.

The foregoing list is not exhaustive, and you and your clients must preserve all documents, physical evidence, and information relevant to this Action.

Your clients' failure to preserve relevant data may constitute spoliation of evidence, which may subject your and/or your clients to sanctions. We trust that you and your clients will preserve for the duration of this Action all relevant hard copy documents, physical items, and electronically stored information. In the event of a dispute arising out of your failure to preserve documents, we will rely on this email in court as evidence of our request and additional notice of your and your clients' preservation obligations.

We look forward to working with you in this matter. Please contact me if you have any questions.

**Bryan M. Ward**



3399 Peachtree Road NE, Suite 400

Atlanta, Georgia 30326

404-892-5695 (Direct)

404-601-2803 (Main)

404-393-1554 (Fax)

[bryan.ward@holcombward.com](mailto:bryan.ward@holcombward.com)

[www.holcombward.com](http://www.holcombward.com)

# Correia Declaration

## Exhibit 2

**Cristina Correia**

---

**From:** Cristina Correia  
**Sent:** Tuesday, September 26, 2017 1:44 PM  
**To:** jcaldwell@steptoe.com; eschwartz@steptoe.com; Bryan Ward  
**Cc:** 'Amy\_McConochie@gand.uscourts.gov'; 'Ringer, Cheryl'; Burwell, Kaye; Lowman, David; Bryan, Bennett D; 'Daniel White'; Josiah Heidt; Elizabeth A. Monyak  
**Subject:** Curling v. Kemp: litigation hold/release

Mr. Caldwell,

I would appreciate being copied on all of your future communications with the Court and co-Defendants, including communications regarding the litigation holds. Please note that the GEMS servers are state property housed in the counties.

CES and the Secretary of State's office will arrange to have backup GEMS servers delivered to Cobb and DeKalb Counties so that they may keep their current GEMS servers quarantined. I believe that resolves the issue of the GEMS servers and the litigation hold for Cobb and DeKalb.

We are working with Fulton County to try and resolve some hardware issues to allow them to utilize a backup server as well. I will keep you and the Court posted on that progress. At a minimum, CES can create a backup image of the Fulton County GEMS server and maintain that backup per the litigation hold.

Sincerely,  
Cris Correia



**Cristina Correia**  
Assistant Attorney General  
Office of Attorney General Chris Carr  
Government Services & Employment

Tel: 404-656-7063  
ccorreia@law.ga.gov

Georgia Department of Law  
40 Capitol Square SW  
Atlanta, Georgia 30334

---

**From:** Ringer, Cheryl [mailto:Cheryl.Ringer@fultoncountyga.gov]  
**Sent:** Tuesday, September 26, 2017 11:37 AM  
**To:** Cristina Correia  
**Subject:** Curling v. Kemp: litigation hold/release

**From:** Caldwell, Joe [mailto:jcaldwell@Steptoe.com]  
**Sent:** Friday, September 22, 2017 5:40 PM  
**To:** Ringer, Cheryl; Bryan, Bennett D; [Amy\\_McConochie@gand.uscourts.gov](mailto:Amy_McConochie@gand.uscourts.gov)  
**Cc:** Matt Bernhard; Schwartz, Edward; Burwell, Kaye; Bryan Ward  
**Subject:** Curling v. Kemp: litigation hold/release

Counsel:

By Minute Entry of September 20, 2017, the Court ordered, among other things, that "Plaintiffs will inform Defendants by Friday, September 22, 2017, re what equipment, if any, it believes needs to remain subject to the litigation hold."



Plaintiffs specified the equipment initially which needs to remain subject to the litigation hold via its Litigation Hold confirmation letter of September 12, 2017 (attached). Since Fulton County indicated that it seeks to have 408 DRE's released for use in the November 2017 election, and DeKalb initially sought an unspecified amount, Plaintiffs further indicated in its e-mail of September 19, 2017 (attached) which specific DRE machines Plaintiffs are releasing. While Fulton County requested that Plaintiffs release 408 DRE machines, Plaintiffs have exceeded that amount by releasing 568 DRE's. Further, DeKalb County has since indicated that it no longer seeks release of DREs (attached). In short, it appears that the issue regarding release of DRE's between the parties has been resolved.

Beyond the DRE's, Fulton and DeKalb Counties both seek the release of their single GEMS servers in both of their Counties to conduct the November 2017 election. In response, Plaintiffs are willing to release the two GEMS servers, provided that Defendants will permit Plaintiffs to copy the contents of the servers during the next week. Specifically Plaintiffs propose to have one of its experts come to the appropriate facility in Fulton and DeKalb Counties on a specified date next week to copy the content of the GEMS servers in less than one day's time each. The expert could do a backup of the servers using a laptop and a few external hard drives, and he can do so in the presence of a responsible person Defendants designate.

Please advise promptly if this proposal is acceptable.

As instructed by Chambers, the Court is copied on this e-mail.

Best,  
Joe Caldwell

**Joe Robert Caldwell, Jr**  
Partner  
[jcaldwell@Step toe.com](mailto:jcaldwell@Step toe.com)  
+1 202 429 6455 direct | +1 202 429 3902 fax  
Step toe  
Step toe & Johnson LLP  
1330 Connecticut Avenue, NW | Washington, DC 20036  
[www.step toe.com](http://www.step toe.com)

This message and any attached documents contain information from the law firm Step toe & Johnson LLP that may be confidential and/or privileged. If you are not the intended recipient, please do not read, copy, distribute, or use this information. If you have received this transmission in error, please notify the sender immediately by reply e-mail and then delete this message.

Cheryl M. Ringer  
Senior Assistant County Attorney  
Office of the County Attorney  
141 Pryor St, S.W.  
Suite 4038  
Atlanta, GA 30303  
(404) 612-0246 ( Main)  
(404) 612-0263 (Direct)  
(404) 703-6540 (Fax)



Notice of Confidentiality: This communication constitutes an electronic communication within the meaning of the Electronic Communications Privacy Act, 18 U.S.C. Section 2510, and its disclosure is strictly limited to the recipient intended by the sender of this message. This communication, and any attachments thereto, contain confidential attorney-client privileged communications and attorney work product. If you are not the intended recipient, any disclosure, viewing, copying, distribution or use of any of the information contained in or attached to this communication is strictly prohibited. If you have received this communication in error, please notify us immediately by replying to the message and deleting it from your computer. Thank You.

# Correia Declaration

## Exhibit 3

## Cristina Correia

---

**From:** Cristina Correia  
**Sent:** Friday, September 29, 2017 6:18 PM  
**To:** 'Caldwell, Joe'; Ringer, Cheryl  
**Cc:** Bryan, Bennett D (benbryan@dekalbcountyga.gov); Burwell, Kaye; Daniel White (dwhite@hlclaw.com); Bryan Ward; Matt Bernhard; Schwartz, Edward  
**Subject:** RE: Curling v. Kemp: Litigation hold follow-up

Joe,

I have not received a September 12<sup>th</sup> litigation hold letter. Would you please forward that letter to me.

Thanks,  
Cris



**Cristina Correia**  
Assistant Attorney General  
Office of Attorney General Chris Carr  
Government Services & Employment

Tel: 404-656-7063  
ccorreia@law.ga.gov

Georgia Department of Law  
40 Capitol Square SW  
Atlanta, Georgia 30334

---

**From:** Caldwell, Joe [<mailto:jcaldwell@Steptoe.com>]  
**Sent:** Friday, September 29, 2017 5:48 PM  
**To:** Ringer, Cheryl  
**Cc:** Cristina Correia; Bryan, Bennett D ([benbryan@dekalbcountyga.gov](mailto:benbryan@dekalbcountyga.gov)); Burwell, Kaye; Daniel White ([dwhite@hlclaw.com](mailto:dwhite@hlclaw.com)); Bryan Ward; Matt Bernhard; Schwartz, Edward  
**Subject:** Curling v. Kemp: Litigation hold follow-up

Counsel,

Plaintiffs' litigation hold letter of September 12, 2017 asks, among other things, that defendants preserve DRE's and records from the April 2017, June 2017 and the November 2016 elections. Federal and State law similarly require that electronic voting records be maintained for a period of twenty-two and twenty-four months, respectively, following an election. *See* 52 U.S.C. 20701. *See also* Ga. Code 21-2-500. While each of you has acknowledged preservation with respect to the April and June 2017 elections, this e-mail seeks clarification that preservation is similarly being maintained for the November 2016 election.

Fulton County indicated on the September conference call with Judge Totenberg that Plaintiffs' request to hold electronic equipment and records related to the November 2016 election comes too late. Fulton County states that it has already begun its logic and accuracy testing of DRE's used in the November 2016 election in preparation for the November 2017 election. Beyond Plaintiffs' litigation hold letter, that action by Fulton County appears to violate both federal and state law.

Accordingly, Plaintiffs ask that Fulton County confirm if any of its electronic voting machines and equipment have been altered or over-written; and if so, how many? How many DRE's used in the November 2016 election remain unaltered? Plaintiffs ask the same questions of DeKalb and Cobb Counties with respect to any evidence related to the April and June 2017 elections, as identified in the September 12 litigation hold letter, and especially the November 2016 elections, as well. If any such equipment related to the hold request has been altered or destroyed, Plaintiffs ask that defendants cease that action immediately, advise what equipment was altered, and what equipment remains which has not been altered or destroyed.

Regards,

**Joe Caldwell**  
Partner  
Step toe & Johnson LLP  
202 429 6455

# Correia Declaration

## Exhibit 4

## Cristina Correia

---

**From:** Caldwell, Joe <jcaldwell@Step toe.com>  
**Sent:** Friday, September 29, 2017 6:26 PM  
**To:** Cristina Correia; Ringer, Cheryl  
**Cc:** Bryan, Bennett D (benbryan@dekalbcountyga.gov); Burwell, Kaye; Daniel White (dwhite@hlclaw.com); Bryan Ward; Matt Bernhard; Schwartz, Edward  
**Subject:** RE: Curling v. Kemp: Litigation hold follow-up  
**Attachments:** 17.09.12 - Litigation Hold Letter.docx

Cris, attached hereto.

**Joe Caldwell**  
Partner  
Step toe & Johnson LLP  
202 429 6455

---

**From:** Cristina Correia [<mailto:ccorreia@law.ga.gov>]  
**Sent:** Friday, September 29, 2017 6:18 PM  
**To:** Caldwell, Joe; Ringer, Cheryl  
**Cc:** Bryan, Bennett D ([benbryan@dekalbcountyga.gov](mailto:benbryan@dekalbcountyga.gov)); Burwell, Kaye; Daniel White ([dwhite@hlclaw.com](mailto:dwhite@hlclaw.com)); Bryan Ward; Matt Bernhard; Schwartz, Edward  
**Subject:** RE: Curling v. Kemp: Litigation hold follow-up

Joe,

I have not received a September 12<sup>th</sup> litigation hold letter. Would you please forward that letter to me.

Thanks,  
Cris



**Cristina Correia**  
Assistant Attorney General  
Office of Attorney General Chris Carr  
Government Services & Employment

Tel: 404-656-7063  
[ccorreia@law.ga.gov](mailto:ccorreia@law.ga.gov)

Georgia Department of Law  
40 Capitol Square SW  
Atlanta, Georgia 30334

---

**From:** Caldwell, Joe [<mailto:jcaldwell@Step toe.com>]  
**Sent:** Friday, September 29, 2017 5:48 PM  
**To:** Ringer, Cheryl  
**Cc:** Cristina Correia; Bryan, Bennett D ([benbryan@dekalbcountyga.gov](mailto:benbryan@dekalbcountyga.gov)); Burwell, Kaye; Daniel White ([dwhite@hlclaw.com](mailto:dwhite@hlclaw.com)); Bryan Ward; Matt Bernhard; Schwartz, Edward  
**Subject:** Curling v. Kemp: Litigation hold follow-up



Counsel,

Plaintiffs' litigation hold letter of September 12, 2017 asks, among other things, that defendants preserve DRE's and records from the April 2017, June 2017 and the November 2016 elections. Federal and State law similarly require that electronic voting records be maintained for a period of twenty-two and twenty-four months, respectively, following an election. *See* 52 U.S.C. 20701. *See also* Ga. Code 21-2-500. While each of you has acknowledged preservation with respect to the April and June 2017 elections, this e-mail seeks clarification that preservation is similarly being maintained for the November 2016 election.

Fulton County indicated on the September conference call with Judge Totenberg that Plaintiffs' request to hold electronic equipment and records related to the November 2016 election comes too late. Fulton County states that it has already begun its logic and accuracy testing of DRE's used in the November 2016 election in preparation for the November 2017 election. Beyond Plaintiffs' litigation hold letter, that action by Fulton County appears to violate both federal and state law.

Accordingly, Plaintiffs ask that Fulton County confirm if any of its electronic voting machines and equipment have been altered or over-written; and if so, how many? How many DRE's used in the November 2016 election remain unaltered? Plaintiffs ask the same questions of DeKalb and Cobb Counties with respect to any evidence related to the April and June 2017 elections, as identified in the September 12 litigation hold letter, and especially the November 2016 elections, as well. If any such equipment related to the hold request has been altered or destroyed, Plaintiffs ask that defendants cease that action immediately, advise what equipment was altered, and what equipment remains which has not been altered or destroyed.

Regards,

**Joe Caldwell**  
Partner  
Step toe & Johnson LLP  
202 429 6455

---

This message is intended exclusively for the individual or entity to which it is addressed. This communication may contain information that is proprietary, privileged, confidential or otherwise legally exempt from disclosure. If you are not the named addressee, you are not authorized to read, print, retain, copy or disseminate this message or any part of it. If you have received this message in error, please notify the sender immediately by e-mail and delete all copies of the message.

Joe Robert Caldwell, Jr.  
202 429 6455  
jcaldwell@steptoe.com  
1330 Connecticut Avenue, NW  
Washington, DC 20036-1795  
202 429 3000 main  
www.steptoe.com



September 12, 2017

**BY ELECTRONIC AND REGULAR MAIL**

Cristina Correia  
Josiah Benjamin Heidt  
Elizabeth Ahern Monyak  
Attorney General's Office-Atl  
Department of Law  
40 Capitol Square, SW  
Atlanta, GA 30334  
404-656-7063

Cheryl Ringer  
David R. Lowman  
Kaye Woodard Burwell  
Office of Fulton County Attorney  
Fulton County Government Center  
141 Pryor Street, S.W.  
Suite 4038  
Atlanta, GA 30303  
404-612-0263  
Email: [cheryl.ringer@fultoncountyga.gov](mailto:cheryl.ringer@fultoncountyga.gov)

Bennett Davis Bryan  
DeKalb County District Attorney's Office  
Stone Mountain Judicial Circuit  
556 North McDonough Street  
Suite 700  
Decatur, GA 30030  
404-687-3815  
Email: [bdbryan@dekalbcountyga.gov](mailto:bdbryan@dekalbcountyga.gov)

**Daniel Walter White**  
Haynie Litchfield Crane & White  
222 Washington Avenue  
Marietta, GA 30060  
770-422-8900  
Fax: 770-424-8900  
Email: [dwhite@hlclaw.com](mailto:dwhite@hlclaw.com)



Re: *Donna Curling, et al. v. Brian P. Kemp, et al.*, Civil No. 17-cv-02989-AT, United States District Court for the Northern District of Georgia

Dear Counsel:

As counsel for Plaintiffs in this action, and following up on our “meet and confer” conference calls on September 5 and 6, 2017, this letter is written to request that Defendants take reasonable steps to preserve all documents and records, including but not limited to all electronically stored information (“ESI”), that are relevant to the allegations in the pleadings in this action, or that are reasonably likely to lead to the discovery of admissible evidence.

Please ensure that Defendants preserve not merely the DRE voting machines, but all equipment, hard copy documents, and electronic data/information related to the November 2016, April and June 2017 elections including but not limited to:

1. DREs (Accuvote TS machines);<sup>1</sup>
2. 2 Optical Scanners;
3. TSx machines (whether used in voting or electronic transmission of voting data);
4. voter registration records;
5. poll books and all related electronic and paper data;
6. 10 voter access cards to be selected by the Plaintiffs from a list of inventory supplied by the Defendants;
7. communications related to the allegations in the Complaint (including, but not limited to, requests to recanvas, concerns about the voting system, certification of the voting system, and internal, non-privileged communications regarding the same), including the planning for the November 2016 general election;
8. internal or external investigations related to the November 2016, April 2017 and June 2017 elections (including, but not limited to, any software issues creating problems with voter registration, voter records, or voters ability to vote, or location for voting, and any forensic review or investigation);
9. card creators;

---

<sup>1</sup> As Defendants are aware, Plaintiffs remain amenable to releasing voting machines needed for the November 2017 election after being supplied with an inventory of machines and other equipment needed for their consideration.

10. GEMS databases;
11. election night reporting records and data (including the Election Night Reporting server activity logs);
12. memory cards for all equipment;
13. Election Media Processors;
14. modem transmission network logs;
15. any external storage device, servers, component, or other technology used to create, program, read, store, or transfer any of the above.

With respect to electronic records, we expect that Defendants have already imposed a litigation hold to preserve and retain all potentially pertinent ESI within their possession, custody or control, consistent with their obligations under the Federal Rules of Civil Procedure. For purposes of this notice, ESI shall include, without limitation, all electronic mail (“email”) files and attachments, backup email files (including backup media, such as Microsoft Exchange server backup tapes), text files (including word processing documents), data files, program files, spreadsheets, graphical image files (including .JPG, .GIF, .BMP, .TIFF and .PDF files), databases, voicemail messages and files, calendar and scheduling information, computer system activity logs (including network, web, and server logs), external storage devices, servers, or other technology used to create, program, read, store, or transfer data, and backup tapes. It shall also include all file fragments, residual and hidden data, deleted files and other electronically recorded information to the extent that the preservation of such data is reasonably calculated to lead to the retrieval of any relevant deleted information.

The duty of good faith which arises from the Federal Rules of Civil Procedure relating to the discovery of electronically stored information requires Defendants to take all steps necessary to prevent the loss of any relevant information, even if it is believed not to be reasonably accessible. Please also note that electronically stored information typically contains relevant, discoverable information beyond what is apparent to the viewers, *e.g.*, embedded data or metadata. As a result, Defendants must preserve all electronically stored information in its original electronic form, even where paper copies might exist. Because electronically stored information can be easily modified, deleted or otherwise corrupted, Defendants must take all necessary steps to make sure that all electronically discoverable data is preserved. This obligation includes the requirement that Defendants confirm that data is not altered or otherwise destroyed from automatic functions occurring during the routine operation of any electronic information systems, upgrades or the recycling of computer-related hardware or software. This preservation requirement includes, but is not limited to, the obligation to suspend any such operations, upgrades, or recycling features or protocols (including any document or data destruction policies) pending resolution of potential claims against Defendants.

We reserve the right to supplement this demand as investigation and discovery proceed. Of course, if you have any questions regarding any of the foregoing, please contact me directly.

Sincerely,

Joe Robert Caldwell, Jr.

# Correia Declaration

## Exhibit 5



**Cristina Correia**

---

**From:** Cristina Correia  
**Sent:** Friday, October 06, 2017 5:51 PM  
**To:** 'Caldwell, Joe'  
**Cc:** Ringer, Cheryl; Bryan, Bennett D (benbryan@dekalbcountyga.gov); Burwell, Kaye; Elizabeth A. Monyak; Daniel White (dwhite@hlclaw.com); Bryan Ward; Matt Bernhard; Schwartz, Edward; Josiah Heidt  
**Subject:** RE: Curling v. KemP: Clarification of Litigation Hold regarding CES and Kennesaw State

Joe,

Thank you for your email. I apologize for the delay in my response.

I received your letter, dated Sept. 12, 2017, via email on Sept. 29th. As I mentioned in my email that same day, neither Josiah Heidt or Elizabeth Monyak in my office had received a copy of the letter either. Your letter raises for the first time, a suggestion that equipment utilized in the Nov. 2016 election is relevant to Plaintiffs' claims. That election was not part of Plaintiffs' first two complaints, although I realize that you did include references to the Nov. 2016 election in Plaintiffs' Second Amended Complaint, filed the evening of Friday, September 15<sup>th</sup>.

All data and equipment housed at CES related to these three prior elections is being preserved. While your request for preservation of Nov., 2016 election data was only recently received, we are not aware of any data related to that election that has not been preserved.

While much, although not all, of the election equipment within the custody and control of each Georgia county is property of the State, the counties remain responsible for that equipment. All three counties involved in this litigation have acknowledged the litigation hold. I do **not** read your letter as requesting a hold of DRE equipment used outside of the three counties involved in this lawsuit. Obviously, elections for April and June, 2017 were limited to Cobb, DeKalb and Fulton. I do not interpret the addition of the Nov. 2016 elections in your most recent litigation hold letter to also broaden the scope of the geographical area included within that hold. In other words, we have not sought to quarantine every DRE machine and GEMS server used, in Nov. 2016, throughout the remaining 156 counties in the State.

Finally, while all data and equipment in the custody of CES has been preserved since the initiation of the litigation, the CES server that was the subject of the alleged security lapse in March, 2017, was taken offline by Kennesaw State University Information Technology Services (UITS) on March 1, 2017, ninety minutes after UITS learned that certain information on the server may have been vulnerable to non-authorized access. The backup server was also taken offline on March 1, 2017. The FBI was contacted and took possession of the server from March 3, 2017 to March 17, 2017. UITS retook custody of the server on March 17, 2017, and on that date, UITS erased all data on the server and backup server. The physical servers were subsequently preserved, but without any of the data.

Please feel free to give me a call if there's anything you would like to discuss.

Best,  
Cris



**Cristina Correia**  
Assistant Attorney General  
Office of Attorney General Chris Carr  
Government Services & Employment

Tel: 404-656-7063  
ccorreia@law.ga.gov

Georgia Department of Law  
40 Capitol Square SW  
Atlanta, Georgia 30334

---

**From:** Caldwell, Joe [mailto:jcaldwell@Steptoe.com]

**Sent:** Wednesday, October 04, 2017 9:17 AM

**To:** Cristina Correia

**Cc:** Ringer, Cheryl; Bryan, Bennett D (benbryan@dekalbcountyga.gov); Burwell, Kaye; Daniel White (dwhite@hlclaw.com); Bryan Ward; Matt Bernhard; Schwartz, Edward

**Subject:** Curling v. Kemp: Clarification of Litigation Hold regarding CES and Kennesaw State

Cris,

Your e-mail of September 26, 2017 said, among other things, that the GEMS servers in the possession of Fulton, DeKalb and Cobb Counties are the property of the State of Georgia, though housed in the respective Counties. Your email further noted that the GEMS servers in DeKalb and Cobb Counties would be preserved, and that a backup image would be made for the Fulton County GEMS server. Plaintiffs wish to ensure that any servers utilized by the Secretary of State ("SoS") and/or the Center for Election Systems ("CES") at Kennesaw University in connection with the April and June 2017, and November 2016 elections, and attendant records, are similarly preserved.

Accordingly, Plaintiffs ask:

- Whether the electronic voting equipment and records used in those elections belong to SoS or to CES?
- Whether the electronic equipment and records have been preserved intact, or whether any have been overwritten or altered in any way?
- If any of the equipment and/or records have been overwritten or altered, what specifically has been altered and how; and what remains unaltered?
- Whether CES and Kennesaw University are complying with Plaintiffs' litigation hold letter of September 12, 2017, along with federal and state statutory provisions cited in my e-mail of September 29, 2017, or whether they take a different position?

Thank you for your clarification.

Best,

Joe

**Joe Robert Caldwell, Jr**

Partner

[jcaldwell@Steptoe.com](mailto:jcaldwell@Steptoe.com)

+1 202 429 6455 direct | +1 202 429 3902 fax

**Steptoe**

Steptoe & Johnson LLP

1330 Connecticut Avenue, NW | Washington, DC 20036

[www.steptoelaw.com](http://www.steptoelaw.com)

This message and any attached documents contain information from the law firm Steptoe & Johnson LLP that may be confidential and/or privileged. If you are not the intended recipient, please do not read, copy, distribute, or use this information. If you have received this transmission in error, please notify the sender immediately by reply e-mail and then delete this message.

# Correia Declaration

## Exhibit 6



**Cristina Correia**

---

**From:** Caldwell, Joe <jcaldwell@Steptoe.com>  
**Sent:** Thursday, October 19, 2017 8:24 AM  
**To:** Cristina Correia  
**Subject:** RE: Curling v. Kemp: Clarification of Litigation Hold regarding CES and Kennesaw State

Thank you, Cris.

**Joe Caldwell**  
Partner  
Steptoe & Johnson LLP  
202 429 6455

---

**From:** Cristina Correia [mailto:ccorreia@law.ga.gov]  
**Sent:** Wednesday, October 18, 2017 10:38 AM  
**To:** Caldwell, Joe  
**Cc:** 'Ringer, Cheryl'; 'Bryan, Bennett D (benbryan@dekalbcountyga.gov)'; 'Burwell, Kaye'; Elizabeth A. Monyak; 'Daniel White (dwhite@hlclaw.com)'; 'Bryan Ward'; 'Matt Bernhard'; Schwartz, Edward; Josiah Heidt  
**Subject:** RE: Curling v. Kemp: Clarification of Litigation Hold regarding CES and Kennesaw State

Joe,

We have learned this week that we were mistaken about the dates of when the CES server that was accessed by Logan Lamb, and the subject of the FBI investigation, was erased. I had mentioned in my earlier email that it was erased upon return from the FBI in March, 2017, but I have now learned it was erased on July 7, 2017. I have also learned that the server was imaged by the FBI in March, 2017, and we are reaching out to the FBI to determine whether they still have the image. The back-up server, which I understand was only a back-up of some of the data on the above referenced server, was also erased and the hard drive removed for surplus on August 9, 2017.

To be clear, I am not suggesting that either the server or back up had any role at all in the April, 2017 and June, 2017 elections. Both had been removed from CES in March, 2017. But I want to be clear about the dates since you are now seeking a litigation hold regarding data for the November, 2016 election. The November, 2016 election data that was on the CES server accessed by Logan Lamb was there for the county election officials to download, but it is my understanding that the data exists elsewhere at CES. Therefore, I do not believe any data was actually lost. Nonetheless, I want to be clear about the status of both the server accessed by Logan Lamb and the back-up server.

Please feel free to contact me if you have any questions.

Best Regards,  
Cris



**Cristina Correia**  
Assistant Attorney General  
Office of Attorney General Chris Carr  
Government Services & Employment

Tel: 404-656-7063  
ccorreia@law.ga.gov

Georgia Department of Law  
40 Capitol Square SW  
Atlanta, Georgia 30334

---

**From:** Cristina Correia

**Sent:** Friday, October 06, 2017 5:51 PM

**To:** 'Caldwell, Joe'

**Cc:** Ringer, Cheryl; Bryan, Bennett D ([benbryan@dekalbcountyga.gov](mailto:benbryan@dekalbcountyga.gov)); Burwell, Kaye; Elizabeth A. Monyak; Daniel White ([dwhite@hlclaw.com](mailto:dwhite@hlclaw.com)); Bryan Ward; Matt Bernhard; Schwartz, Edward; Josiah Heidt

**Subject:** RE: Curling v. Kemp: Clarification of Litigation Hold regarding CES and Kennesaw State

Joe,

Thank you for your email. I apologize for the delay in my response.

I received your letter, dated Sept. 12, 2017, via email on Sept. 29th. As I mentioned in my email that same day, neither Josiah Heidt or Elizabeth Monyak in my office had received a copy of the letter either. Your letter raises for the first time, a suggestion that equipment utilized in the Nov. 2016 election is relevant to Plaintiffs' claims. That election was not part of Plaintiffs' first two complaints, although I realize that you did include references to the Nov. 2016 election in Plaintiffs' Second Amended Complaint, filed the evening of Friday, September 15<sup>th</sup>.

All data and equipment housed at CES related to these three prior elections is being preserved. While your request for preservation of Nov., 2016 election data was only recently received, we are not aware of any data related to that election that has not been preserved.

While much, although not all, of the election equipment within the custody and control of each Georgia county is property of the State, the counties remain responsible for that equipment. All three counties involved in this litigation have acknowledged the litigation hold. I do **not** read your letter as requesting a hold of DRE equipment used outside of the three counties involved in this lawsuit. Obviously, elections for April and June, 2017 were limited to Cobb, DeKalb and Fulton. I do not interpret the addition of the Nov. 2016 elections in your most recent litigation hold letter to also broaden the scope of the geographical area included within that hold. In other words, we have not sought to quarantine every DRE machine and GEMS server used, in Nov. 2016, throughout the remaining 156 counties in the State.

Finally, while all data and equipment in the custody of CES has been preserved since the initiation of the litigation, the CES server that was the subject of the alleged security lapse in March, 2017, was taken offline by Kennesaw State University Information Technology Services (UITS) on March 1, 2017, ninety minutes after UITS learned that certain information on the server may have been vulnerable to non-authorized access. The backup server was also taken offline on March 1, 2017. The FBI was contacted and took possession of the server from March 3, 2017 to March 17, 2017. UITS retook custody of the server on March 17, 2017, and on that date, UITS erased all data on the server and backup server. The physical servers were subsequently preserved, but without any of the data.

Please feel free to give me a call if there's anything you would like to discuss.

Best,  
Cris





**Cristina Correia**  
Assistant Attorney General  
Office of Attorney General Chris Carr  
Government Services & Employment

Tel: 404-656-7063  
ccorreia@law.ga.gov

Georgia Department of Law  
40 Capitol Square SW  
Atlanta, Georgia 30334

---

**From:** Caldwell, Joe [<mailto:jcaldwell@Steptoe.com>]

**Sent:** Wednesday, October 04, 2017 9:17 AM

**To:** Cristina Correia

**Cc:** Ringer, Cheryl; Bryan, Bennett D ([benbryan@dekalbcountyga.gov](mailto:benbryan@dekalbcountyga.gov)); Burwell, Kaye; Daniel White ([dwhite@hlclaw.com](mailto:dwhite@hlclaw.com)); Bryan Ward; Matt Bernhard; Schwartz, Edward

**Subject:** Curling v. Kemp: Clarification of Litigation Hold regarding CES and Kennesaw State

Cris,

Your e-mail of September 26, 2017 said, among other things, that the GEMS servers in the possession of Fulton, DeKalb and Cobb Counties are the property of the State of Georgia, though housed in the respective Counties. Your email further noted that the GEMS servers in DeKalb and Cobb Counties would be preserved, and that a backup image would be made for the Fulton County GEMS server. Plaintiffs wish to ensure that any servers utilized by the Secretary of State ("SoS") and/or the Center for Election Systems ("CES") at Kennesaw University in connection with the April and June 2017, and November 2016 elections, and attendant records, are similarly preserved.

Accordingly, Plaintiffs ask:

- Whether the electronic voting equipment and records used in those elections belong to SoS or to CES?
- Whether the electronic equipment and records have been preserved intact, or whether any have been overwritten or altered in any way?
- If any of the equipment and/or records have been overwritten or altered, what specifically has been altered and how; and what remains unaltered?
- Whether CES and Kennesaw University are complying with Plaintiffs' litigation hold letter of September 12, 2017, along with federal and state statutory provisions cited in my e-mail of September 29, 2017, or whether they take a different position?

Thank you for your clarification.

Best,

Joe

**Joe Robert Caldwell, Jr**

Partner

[jcaldwell@Steptoe.com](mailto:jcaldwell@Steptoe.com)

+1 202 429 6455 direct | +1 202 429 3902 fax

**Steptoe**

Steptoe & Johnson LLP

1330 Connecticut Avenue, NW | Washington, DC 20036

[www.steptoe.com](http://www.steptoe.com)

This message and any attached documents contain information from the law firm Steptoe & Johnson LLP that may be confidential and/or privileged. If you are not the intended recipient, please do not read, copy, distribute, or use this information. If you have received this transmission in error, please notify the sender immediately by reply e-mail and then delete this message.

---

This message is intended exclusively for the individual or entity to which it is addressed. This communication may contain information that is proprietary, privileged, confidential or otherwise legally exempt from disclosure. If you are not the named addressee, you are not authorized to read, print, retain, copy or disseminate this message or any part of it. If you have received this message in error, please notify the sender immediately by e-mail and delete all copies of the message.

# Correia Declaration

## Exhibit 7

## Cristina Correia

---

**From:** Cristina Correia  
**Sent:** Thursday, October 26, 2017 2:00 PM  
**To:** 'Caldwell, Joe'  
**Cc:** 'Ringer, Cheryl'; 'Bryan, Bennett D (benbryan@dekalbcountyga.gov)'; 'Burwell, Kaye'; Elizabeth A. Monyak; 'Daniel White (dwhite@hlclaw.com)'; 'Bryan Ward'; 'Schwartz, Edward'; Josiah Heidt; 'Jeff Milsteen'  
**Subject:** RE: Curling v. Kemp: Clarification of Litigation Hold regarding CES and Kennesaw State  
**Attachments:** curling subpoena notice\_20171026132809.pdf

Joe,

We have learned from the FBI that they do have a copy of the forensic image that they took of the CES server which they seized last March. Please see the attached Notice of Intent to Serve a Subpoena, which explains that we are seeking a copy of the forensic image from the FBI and that we intend to store that copy in a secure location at the Office of the Secretary of State during the pendency of this litigation.

As always, please feel free to contact me should you have any questions.

Best,  
Cris



**Cristina Correia**  
Assistant Attorney General  
Office of Attorney General Chris Carr  
Government Services & Employment

Tel: 404-656-7063  
ccorreia@law.ga.gov

Georgia Department of Law  
40 Capitol Square SW  
Atlanta, Georgia 30334

---

**From:** Cristina Correia  
**Sent:** Wednesday, October 18, 2017 10:38 AM  
**To:** 'Caldwell, Joe'  
**Cc:** 'Ringer, Cheryl'; 'Bryan, Bennett D (benbryan@dekalbcountyga.gov)'; 'Burwell, Kaye'; Elizabeth A. Monyak; 'Daniel White (dwhite@hlclaw.com)'; 'Bryan Ward'; 'Matt Bernhard'; 'Schwartz, Edward'; Josiah Heidt  
**Subject:** RE: Curling v. Kemp: Clarification of Litigation Hold regarding CES and Kennesaw State

Joe,

We have learned this week that we were mistaken about the dates of when the CES server that was accessed by Logan Lamb, and the subject of the FBI investigation, was erased. I had mentioned in my earlier email that it was erased upon return from the FBI in March, 2017, but I have now learned it was erased on July 7, 2017. I have also learned that the server was imaged by the FBI in March, 2017, and we are reaching out to the FBI to determine whether they still have the image. The back-up server, which I understand was only a back-up of some of the data on the above referenced server, was also erased and the hard drive removed for surplus on August 9, 2017.

To be clear, I am not suggesting that either the server or back up had any role at all in the April, 2017 and June, 2017 elections. Both had been removed from CES in March, 2017. But I want to be clear about the dates since you are now



seeking a litigation hold regarding data for the November, 2016 election. The November, 2016 election data that was on the CES server accessed by Logan Lamb was there for the county election officials to download, but it is my understanding that the data exists elsewhere at CES. Therefore, I do not believe any data was actually lost. Nonetheless, I want to be clear about the status of both the server accessed by Logan Lamb and the back-up server.

Please feel free to contact me if you have any questions.

Best Regards,  
Cris



**Cristina Correia**  
Assistant Attorney General  
Office of Attorney General Chris Carr  
Government Services & Employment

Tel: 404-656-7063  
ccorreia@law.ga.gov

Georgia Department of Law  
40 Capitol Square SW  
Atlanta, Georgia 30334

---

**From:** Cristina Correia  
**Sent:** Friday, October 06, 2017 5:51 PM  
**To:** 'Caldwell, Joe'  
**Cc:** Ringer, Cheryl; Bryan, Bennett D ([benbryan@dekalbcountyga.gov](mailto:benbryan@dekalbcountyga.gov)); Burwell, Kaye; Elizabeth A. Monyak; Daniel White ([dwhite@hlclaw.com](mailto:dwhite@hlclaw.com)); Bryan Ward; Matt Bernhard; Schwartz, Edward; Josiah Heidt  
**Subject:** RE: Curling v. Kemp: Clarification of Litigation Hold regarding CES and Kennesaw State

Joe,

Thank you for your email. I apologize for the delay in my response.

I received your letter, dated Sept. 12, 2017, via email on Sept. 29th. As I mentioned in my email that same day, neither Josiah Heidt or Elizabeth Monyak in my office had received a copy of the letter either. Your letter raises for the first time, a suggestion that equipment utilized in the Nov. 2016 election is relevant to Plaintiffs' claims. That election was not part of Plaintiffs' first two complaints, although I realize that you did include references to the Nov. 2016 election in Plaintiffs' Second Amended Complaint, filed the evening of Friday, September 15<sup>th</sup>.

All data and equipment housed at CES related to these three prior elections is being preserved. While your request for preservation of Nov., 2016 election data was only recently received, we are not aware of any data related to that election that has not been preserved.

While much, although not all, of the election equipment within the custody and control of each Georgia county is property of the State, the counties remain responsible for that equipment. All three counties involved in this litigation have acknowledged the litigation hold. I do **not** read your letter as requesting a hold of DRE equipment used outside of the three counties involved in this lawsuit. Obviously, elections for April and June, 2017 were limited to Cobb, DeKalb and Fulton. I do not interpret the addition of the Nov. 2016 elections in your most recent litigation hold letter to also broaden the scope of the geographical area included within that hold. In other words, we have not sought to quarantine every DRE machine and GEMS server used, in Nov. 2016, throughout the remaining 156 counties in the State.

Finally, while all data and equipment in the custody of CES has been preserved since the initiation of the litigation, the CES server that was the subject of the alleged security lapse in March, 2017, was taken offline by Kennesaw State University Information Technology Services (UITS) on March 1, 2017, ninety minutes after UITS learned that certain

information on the server may have been vulnerable to non-authorized access. The backup server was also taken offline on March 1, 2017. The FBI was contacted and took possession of the server from March 3, 2017 to March 17, 2017. UITS retook custody of the server on March 17, 2017, and on that date, UITS erased all data on the server and backup server. The physical servers were subsequently preserved, but without any of the data.

Please feel free to give me a call if there's anything you would like to discuss.

Best,  
Cris



**Cristina Correia**  
Assistant Attorney General  
Office of Attorney General Chris Carr  
Government Services & Employment

Tel: 404-656-7063  
ccorreia@law.ga.gov

Georgia Department of Law  
40 Capitol Square SW  
Atlanta, Georgia 30334

---

**From:** Caldwell, Joe [<mailto:jcaldwell@Steptoe.com>]

**Sent:** Wednesday, October 04, 2017 9:17 AM

**To:** Cristina Correia

**Cc:** Ringer, Cheryl; Bryan, Bennett D ([benbryan@dekalbcountyga.gov](mailto:benbryan@dekalbcountyga.gov)); Burwell, Kaye; Daniel White ([dwhite@hlclaw.com](mailto:dwhite@hlclaw.com)); Bryan Ward; Matt Bernhard; Schwartz, Edward

**Subject:** Curling v. Kemp: Clarification of Litigation Hold regarding CES and Kennesaw State

Cris,

Your e-mail of September 26, 2017 said, among other things, that the GEMS servers in the possession of Fulton, DeKalb and Cobb Counties are the property of the State of Georgia, though housed in the respective Counties. Your email further noted that the GEMS servers in DeKalb and Cobb Counties would be preserved, and that a backup image would be made for the Fulton County GEMS server. Plaintiffs wish to ensure that any servers utilized by the Secretary of State ("SoS") and/or the Center for Election Systems ("CES") at Kennesaw University in connection with the April and June 2017, and November 2016 elections, and attendant records, are similarly preserved.

Accordingly, Plaintiffs ask:

- Whether the electronic voting equipment and records used in those elections belong to SoS or to CES?
- Whether the electronic equipment and records have been preserved intact, or whether any have been overwritten or altered in any way?
- If any of the equipment and/or records have been overwritten or altered, what specifically has been altered and how; and what remains unaltered?
- Whether CES and Kennesaw University are complying with Plaintiffs' litigation hold letter of September 12, 2017, along with federal and state statutory provisions cited in my e-mail of September 29, 2017, or whether they take a different position?

Thank you for your clarification.

Best,

Joe



**Joe Robert Caldwell, Jr**

Partner

[jcaldwell@Step toe.com](mailto:jcaldwell@Step toe.com)

+1 202 429 6455 direct | +1 202 429 3902 fax

**Step toe**

Step toe & Johnson LLP

1330 Connecticut Avenue, NW | Washington, DC 20036

[www.step toe.com](http://www.step toe.com)

This message and any attached documents contain information from the law firm Step toe & Johnson LLP that may be confidential and/or privileged. If you are not the intended recipient, please do not read, copy, distribute, or use this information. If you have received this transmission in error, please notify the sender immediately by reply e-mail and then delete this message.

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

DONNA CURLING, et al.,	)	
	)	
Plaintiffs,	)	CA No. 1:17cv02989-AT
	)	
v.	)	
	)	
BRIAN KEMP, et al.,	)	
	)	
<u>Defendants.</u>	)	

**STATE DEFENDANTS' NOTICE OF INTENT TO SERVE SUBPOENA**

Pursuant to Rule 45(a)(4) of the Federal Rules of Civil Procedure, the State Defendants hereby notify all parties that they intend to serve a subpoena on the Atlanta Division of the Federal Bureau of Investigation ("FBI") to obtain a copy of the forensic image that was made by the FBI of the Kennesaw State University Center for Election Systems ("CES") server in March of 2017. *See* Exhibit 1 attached hereto.

Discovery in this case is stayed pursuant to the Court's September 5, 2017 (Doc. 56), and the State Defendants are not engaging in any discovery with respect to this drive and will not access it unless and until the stay of discovery is lifted (in the event that the State Defendants' Motion to Dismiss is not granted or only partially granted). This subpoena is being issued at this time in an attempt to retain and secure the image in the event it is later needed in this case for purposes of

discovery. The Court's Order staying discovery encourages the parties to take steps during the stay to facilitate an orderly and prompt resolution of the case. (Doc. 56).

The original CES server was wiped on July 7, 2017, prior to service of this lawsuit on any Defendant in this case; however, given that the FBI took a forensic image of the server during the 2-week period in March of 2017 when the server was in the FBI's possession, it is possible to obtain a copy of the image of that server as it appeared in March of 2017 when it was in FBI custody. Given that the FBI has closed its investigation of this matter, the FBI's forensic image was scheduled for destruction under standard FBI record retention policies and has been or soon will be wiped. Prior to the scheduled wiping of the original forensic image, the FBI made a copy of that image, which will be installed on a blank drive to be provided by the Georgia Secretary of State's Office to the FBI. This subpoena will seek production of that copy of the forensic image of the server taken by the FBI in March of 2017.

Upon taking possession of the drive with the forensic image copied on to it, the drive will be secured and taken by representatives at the Secretary of State's office to a secured storage facility at their Office. It will not be accessed by the State Defendants (or their counsel) unless and until discovery begins in this case.

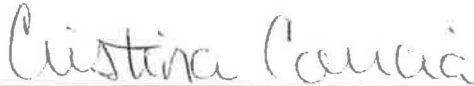
The State Defendants emphasize that by taking these actions, they are not acknowledging that the server taken by the FBI has any relevance to the Plaintiffs' claims in this lawsuit regarding the reliability of DREs or the electronic voting system in Georgia. The image is being obtained and preserved in an abundance of caution in the event that discovery of the forensic image is later determined to be relevant and discoverable.

Respectfully submitted,

CHRISTOPHER M. CARR  
Attorney General 112505

ANNETTE M. COWART 191199  
Deputy Attorney General

RUSSELL D. WILLARD 760280  
Senior Assistant Attorney General

  
CRISTINA M. CORREIA 188620  
Assistant Attorney General

ELIZABETH A. MONYAK 005745  
Assistant Attorney General

JOSIAH B. HEIDT 104183  
Assistant Attorney General

Georgia Department of Law  
40 Capitol Square SW  
Atlanta, GA 30334  
404-656-7063

Attorneys for State Defendants

Please address all  
Communication to:  
**CRISTINA CORREIA**  
Assistant Attorney General  
40 Capitol Square SW  
Atlanta, GA 30334  
ccorreia@law.ga.gov  
404-656-7063  
404-651-9325

CERTIFICATE OF SERVICE

I hereby certify that on this date I have e-mailed and mailed by U.S. mail,

U.S. postage prepaid, a copy of the foregoing Notice, addressed to the following:

Bryan Ward  
Marvin Lim  
Holcomb + Ward LLP  
3399 Peachtree Rd NE, Suite 400  
Atlanta, GA 30326  
Bryan.Ward@holcombward.com  
Marvin@holcombward.com

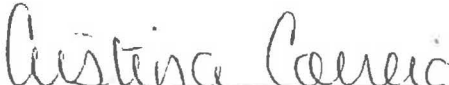
Joe Caldwell, Jr.  
Edward Schwartz  
Steptoe & Johnson-DC  
1330 Connecticut Avenue, N.W.  
Washington, DC 20036-1795

Overtis Hicks Brantley  
Bennett D. Bryan  
DeKalb County Law Department  
1300 Commerce Drive 5th Floor  
Decatur, GA 30030

Patrise M. Perkins-Hooker  
Kaye Burwell  
Cheryl Ringer  
Fulton County Attorney's Office  
141 Pryor Street SW Suite 4038  
Atlanta, GA 30303  
Facsimile: (404) 730-6324

Daniel W. White  
Haynie, Litchfield, Crane & White, PC  
222 Washington Avenue  
Marietta, Georgia 30060

This 26th day of October, 2017.

  
Assistant Attorney General

# EXHIBIT 1



AO 88B (Rev. 02/14) Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises in a Civil Action

**UNITED STATES DISTRICT COURT**

for the  
Northern District of Georgia

Donna Curling, et al.	)	
<i>Plaintiff</i>	)	
v.	)	Civil Action No. 1:17-cv-2989-AT
Brian Kemp, et al.	)	
<i>Defendant</i>	)	

**SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS  
OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION**

To: Kristy Green  
Chief Division Counsel, FBI, Atlanta Office  
*(Name of person to whom this subpoena is directed)*

**Production:** YOU ARE COMMANDED to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and to permit inspection, copying, testing, or sampling of the material: copy of forensic image that was made by the FBI of the Center for Elections Systems' election server in March of 2017 following FBI taking possession of that server (a Dell Power Edge R610 with DNS name elections.kennesaw.edu)

Place: FBI, Atlanta Division 3000 Flowers Road South Atlanta, Georgia 30341	Date and Time: <i>Mutually agreeable time and place</i>
---	--

**Inspection of Premises:** YOU ARE COMMANDED to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place:	Date and Time:
--------	----------------

The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 10/23/2017

CLERK OF COURT

OR

*Elizabeth A. Monyak*  
Elizabeth A. Monyak  
*Attorney's signature*

*Signature of Clerk or Deputy Clerk*

The name, address, e-mail address, and telephone number of the attorney representing *(name of party)* Brian Kemp, Center for Elections Systems, Merle King, CES, SEB, and SEB members, who issues or requests this subpoena, are: Elizabeth A. Monyak, 40 Capitol Square, SW, Atlanta, Georgia 30334; emonyak@law.ga.gov; 404-463-3630

**Notice to the person who issues or requests this subpoena**

If this subpoena commands the production of documents, electronically stored information, or tangible things or the inspection of premises before trial, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).



AO 88B (Rev. 02/14) Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises in a Civil Action (Page 2)

Civil Action No. 1:17-cv-2989-AT

**PROOF OF SERVICE**

*(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)*

I received this subpoena for *(name of individual and title, if any)* \_\_\_\_\_  
on *(date)* \_\_\_\_\_

I served the subpoena by delivering a copy to the named person as follows: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

I returned the subpoena unexecuted because: \_\_\_\_\_  
\_\_\_\_\_

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also  
tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of  
\$ \_\_\_\_\_.

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ \_\_\_\_\_ 0.00

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_  
\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc.:

**Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)****(c) Place of Compliance.**

**(1) For a Trial, Hearing, or Deposition.** A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
  - (i) is a party or a party's officer; or
  - (ii) is commanded to attend a trial and would not incur substantial expense.

**(2) For Other Discovery.** A subpoena may command:

- (A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
- (B) inspection of premises at the premises to be inspected.

**(d) Protecting a Person Subject to a Subpoena; Enforcement.**

**(1) Avoiding Undue Burden or Expense; Sanctions.** A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

**(2) Command to Produce Materials or Permit Inspection.**

**(A) Appearance Not Required.** A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

**(B) Objections.** A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

**(3) Quashing or Modifying a Subpoena.**

**(A) When Required.** On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

**(B) When Permitted.** To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

- (i) disclosing a trade secret or other confidential research, development, or commercial information; or

- (ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

**(C) Specifying Conditions as an Alternative.** In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

**(e) Duties in Responding to a Subpoena.**

**(1) Producing Documents or Electronically Stored Information.** These procedures apply to producing documents or electronically stored information:

**(A) Documents.** A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

**(B) Form for Producing Electronically Stored Information Not Specified.** If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

**(C) Electronically Stored Information Produced in Only One Form.** The person responding need not produce the same electronically stored information in more than one form.

**(D) Inaccessible Electronically Stored Information.** The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

**(2) Claiming Privilege or Protection.**

**(A) Information Withheld.** A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

**(B) Information Produced.** If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

**(g) Contempt.**

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

# Correia Declaration

## Exhibit 8



**Cristina Correia**

---

**From:** Caldwell, Joe <jcaldwell@Steptoe.com>  
**Sent:** Thursday, October 26, 2017 5:06 PM  
**To:** Cristina Correia  
**Cc:** 'Ringer, Cheryl'; 'Bryan, Bennett D (benbryan@dekalbcountyga.gov)'; 'Burwell, Kaye'; Elizabeth A. Monyak; 'Daniel White (dwhite@hlclaw.com)'; 'Bryan Ward'; Schwartz, Edward; Josiah Heidt  
**Subject:** RE: Curling v. Kemp: Clarification of Litigation Hold regarding CES and Kennesaw State

Cris,

In light of press reports like the following, <http://www.myajc.com/news/state--regional-govt--politics/kemp-starts-probe-after-data-georgia-election-computer-destroyed/YbX6G77yFqgEdqCCvB987O/>

Plaintiffs ask:

- Does the State Attorney General's Office continue to represent Kennesaw State University and CES?
- Is the equipment at issue in this litigation in the possession, custody and control of the State of Georgia?
- If not, please advise so that Plaintiffs can ensure that the litigation hold includes all entities of the University System of Georgia and its constituent schools, including KSU (and CES) and Georgia Tech, to the extent that they hold any election system machines, equipment, servers, data, images or other evidence.
- If the November 2016 election data on the CES server accessed by Logan Lamb "exists elsewhere in CES" or elsewhere, has the State taken custody to ensure that such data and/or related images are preserved?
- Please explain how the server and backup at issue had, as you say below, no role at all in the April 2017 and June 2017 elections.

Thank you for your attention to this request.

**Joe Caldwell**  
Partner  
Steptoe & Johnson LLP  
202 429 6455

---

**From:** Cristina Correia [mailto:ccorreia@law.ga.gov]  
**Sent:** Wednesday, October 18, 2017 10:38 AM  
**To:** Caldwell, Joe  
**Cc:** 'Ringer, Cheryl'; 'Bryan, Bennett D (benbryan@dekalbcountyga.gov)'; 'Burwell, Kaye'; Elizabeth A. Monyak; 'Daniel White (dwhite@hlclaw.com)'; 'Bryan Ward'; 'Matt Bernhard'; Schwartz, Edward; Josiah Heidt  
**Subject:** RE: Curling v. Kemp: Clarification of Litigation Hold regarding CES and Kennesaw State

Joe,

We have learned this week that we were mistaken about the dates of when the CES server that was accessed by Logan Lamb, and the subject of the FBI investigation, was erased. I had mentioned in my earlier email that it was erased upon return from the FBI in March, 2017, but I have now learned it was erased on July 7, 2017. I have also learned that the server was imaged by the FBI in March, 2017, and we are reaching out to the FBI to determine whether they still have

the image. The back-up server, which I understand was only a back-up of some of the data on the above referenced server, was also erased and the hard drive removed for surplus on August 9, 2017.

To be clear, I am not suggesting that either the server or back up had any role at all in the April, 2017 and June, 2017 elections. Both had been removed from CES in March, 2017. But I want to be clear about the dates since you are now seeking a litigation hold regarding data for the November, 2016 election. The November, 2016 election data that was on the CES server accessed by Logan Lamb was there for the county election officials to download, but it is my understanding that the data exists elsewhere at CES. Therefore, I do not believe any data was actually lost. Nonetheless, I want to be clear about the status of both the server accessed by Logan Lamb and the back-up server.

Please feel free to contact me if you have any questions.

Best Regards,  
Cris



**Cristina Correia**  
Assistant Attorney General  
Office of Attorney General Chris Carr  
Government Services & Employment

Tel: 404-656-7063  
ccorreia@law.ga.gov

Georgia Department of Law  
40 Capitol Square SW  
Atlanta, Georgia 30334

---

**From:** Cristina Correia

**Sent:** Friday, October 06, 2017 5:51 PM

**To:** 'Caldwell, Joe'

**Cc:** Ringer, Cheryl; Bryan, Bennett D ([benbryan@dekalbcountyga.gov](mailto:benbryan@dekalbcountyga.gov)); Burwell, Kaye; Elizabeth A. Monyak; Daniel White ([dwhite@hlclaw.com](mailto:dwhite@hlclaw.com)); Bryan Ward; Matt Bernhard; Schwartz, Edward; Josiah Heidt

**Subject:** RE: Curling v. Kemp: Clarification of Litigation Hold regarding CES and Kennesaw State

Joe,

Thank you for your email. I apologize for the delay in my response.

I received your letter, dated Sept. 12, 2017, via email on Sept. 29th. As I mentioned in my email that same day, neither Josiah Heidt or Elizabeth Monyak in my office had received a copy of the letter either. Your letter raises for the first time, a suggestion that equipment utilized in the Nov. 2016 election is relevant to Plaintiffs' claims. That election was not part of Plaintiffs' first two complaints, although I realize that you did include references to the Nov. 2016 election in Plaintiffs' Second Amended Complaint, filed the evening of Friday, September 15<sup>th</sup>.

All data and equipment housed at CES related to these three prior elections is being preserved. While your request for preservation of Nov., 2016 election data was only recently received, we are not aware of any data related to that election that has not been preserved.

While much, although not all, of the election equipment within the custody and control of each Georgia county is property of the State, the counties remain responsible for that equipment. All three counties involved in this litigation have acknowledged the litigation hold. I do **not** read your letter as requesting a hold of DRE equipment used outside of the three counties involved in this lawsuit. Obviously, elections for April and June, 2017 were limited to Cobb, DeKalb and Fulton. I do not interpret the addition of the Nov. 2016 elections in your most recent litigation hold letter to also



broaden the scope of the geographical area included within that hold. In other words, we have not sought to quarantine every DRE machine and GEMS server used, in Nov. 2016, throughout the remaining 156 counties in the State.

Finally, while all data and equipment in the custody of CES has been preserved since the initiation of the litigation, the CES server that was the subject of the alleged security lapse in March, 2017, was taken offline by Kennesaw State University Information Technology Services (UITS) on March 1, 2017, ninety minutes after UITS learned that certain information on the server may have been vulnerable to non-authorized access. The backup server was also taken offline on March 1, 2017. The FBI was contacted and took possession of the server from March 3, 2017 to March 17, 2017. UITS retook custody of the server on March 17, 2017, and on that date, UITS erased all data on the server and backup server. The physical servers were subsequently preserved, but without any of the data.

Please feel free to give me a call if there's anything you would like to discuss.

Best,  
Cris



**Cristina Correia**  
Assistant Attorney General  
Office of Attorney General Chris Carr  
Government Services & Employment

Tel: 404-656-7063  
ccorreia@law.ga.gov

Georgia Department of Law  
40 Capitol Square SW  
Atlanta, Georgia 30334

---

**From:** Caldwell, Joe [<mailto:jcaldwell@Steptoe.com>]

**Sent:** Wednesday, October 04, 2017 9:17 AM

**To:** Cristina Correia

**Cc:** Ringer, Cheryl; Bryan, Bennett D ([benbryan@dekalbcountyga.gov](mailto:benbryan@dekalbcountyga.gov)); Burwell, Kaye; Daniel White ([dwhite@hlclaw.com](mailto:dwhite@hlclaw.com)); Bryan Ward; Matt Bernhard; Schwartz, Edward

**Subject:** Curling v. Kemp: Clarification of Litigation Hold regarding CES and Kennesaw State

Cris,

Your e-mail of September 26, 2017 said, among other things, that the GEMS servers in the possession of Fulton, DeKalb and Cobb Counties are the property of the State of Georgia, though housed in the respective Counties. Your email further noted that the GEMS servers in DeKalb and Cobb Counties would be preserved, and that a backup image would be made for the Fulton County GEMS server. Plaintiffs wish to ensure that any servers utilized by the Secretary of State ("SoS") and/or the Center for Election Systems ("CES") at Kennesaw University in connection with the April and June 2017, and November 2016 elections, and attendant records, are similarly preserved.

Accordingly, Plaintiffs ask:

- Whether the electronic voting equipment and records used in those elections belong to SoS or to CES?
- Whether the electronic equipment and records have been preserved intact, or whether any have been overwritten or altered in any way?
- If any of the equipment and/or records have been overwritten or altered, what specifically has been altered and how; and what remains unaltered?
- Whether CES and Kennesaw University are complying with Plaintiffs' litigation hold letter of September 12, 2017, along with federal and state statutory provisions cited in my e-mail of September 29, 2017, or whether they take a different position?

Thank you for your clarification.

Best,

Joe

**Joe Robert Caldwell, Jr**

Partner

[jcaldwell@Step toe.com](mailto:jcaldwell@Step toe.com)

+1 202 429 6455 direct | +1 202 429 3902 fax

**Step toe**

Step toe & Johnson LLP

1330 Connecticut Avenue, NW | Washington, DC 20036

[www.step toe.com](http://www.step toe.com)

This message and any attached documents contain information from the law firm Step toe & Johnson LLP that may be confidential and/or privileged. If you are not the intended recipient, please do not read, copy, distribute, or use this information. If you have received this transmission in error, please notify the sender immediately by reply e-mail and then delete this message.

---

This message is intended exclusively for the individual or entity to which it is addressed. This communication may contain information that is proprietary, privileged, confidential or otherwise legally exempt from disclosure. If you are not the named addressee, you are not authorized to read, print, retain, copy or disseminate this message or any part of it. If you have received this message in error, please notify the sender immediately by e-mail and delete all copies of the message.

# Correia Declaration

## Exhibit 9



**Cristina Correia**

---

**From:** Grant.Schnell@hklaw.com  
**Sent:** Friday, November 10, 2017 12:03 PM  
**To:** jcaldwell@Steptoe.com; john@barneslawgroup.com  
**Cc:** gwashington@Steptoe.com; dwhite@hlclaw.com; Kaye.Burwell@fultoncountyga.gov; benbryan@dekalbcountyga.gov; bryan.ward@holcombward.com; Cristina Correia; Cheryl.Ringer@fultoncountyga.gov; eschwartz@steptoe.com; scott@holcombward.com; roy@barneslawgroup.com; aaron@holcombward.com; david.lowman@fultoncountyga.gov; Josiah Heidt; marvin@holcombward.com; robert.highsmith@hklaw.com; tgphilli@dekalbcountyga.gov; lkjohnson@dekalbcountyga.gov; vernstes@dekalbcountyga.gov  
**Subject:** RE: 17-0167 Curling, et al v. Kemp, et al: Curling v. Kemp: Draft Preservation Order.docx

Thanks for looping me in, John.

Joe -- in response to a few of your inquiries below:

**c. Plaintiffs ask that you please advise whether the State Defendants currently have in their possession the forensic image from the FBI sought by their subpoena.**

As I understand it, the State only issued an intent to serve subpoena and not an actual subpoena (as discovery in the case was stayed). Therefore, the State Defendants would not have received anything from the FBI in response.

**d. I am happy to provide the FBI a copy of the draft Preservation Order if you would kindly provide the name and contact information of the FBI Agent with whom the State AG has been communicating.**

Kristy Green  
Chief Division Counsel  
FBI Atlanta  
Office: 770-216-3154

In response to the other points raised, I echo most of John's thoughts. It seems to me (and I think we all agree on this point per your e-mail below) that the purpose of the Court scheduling the Tuesday phone conference call was to ensure that evidence as it exists today is preserved in accordance with the preservation obligations imposed on all counsel and parties. Therefore, there is simply no need to recite any kind of history of who told who what and when (particularly in the light it is cast in the current draft order). To be clear, we 100% intend to comply the preservation obligations imposed by the law, and have no intention of acting inconsistent with those obligations. Thus, anything "backward looking" is more appropriately resolved through a motion for spoliation and we would suggest removal of all such language.

Regarding the FBI, we have no objection that any Consent Order ultimately agreed to is sent to them. But the FBI's preservation obligations, if they have any, are not one and the same with our client. If the FBI has possession of information that we are not in control of we cannot be responsible for it. It seems the proper course for plaintiffs is to issue a litigation hold letter to the FBI if they believe they may be in possession of potentially relevant information or evidence. But we certainly will not agree to anything in a consent order that even implies we have any control over what is in the possession of the FBI.

I look forward to reviewing the draft report.

Grant Schnell | Holland & Knight  
Associate  
Holland & Knight LLP  
1180 West Peachtree Street | Atlanta, GA 30309  
Phone 404.817.8560 | Fax 404.881.0470  
grant.schnell@hklaw.com | www.hklaw.com

---

[Add to address book](#) | [View professional biography](#)

-----Original Message-----

From: Caldwell, Joe [mailto:jcaldwell@Step toe.com]  
Sent: Friday, November 10, 2017 9:57 AM  
To: John Salter <john@barneslawgroup.com>  
Cc: Washington, Grace <gwashington@Step toe.com>; dwhite@hlclaw.com; Kaye.Burwell@fultoncountyga.gov; benbryan@dekalbcountyga.gov; bryan.ward@holcombward.com; ccorreia@law.ga.gov; Cheryl.Ringer@fultoncountyga.gov; Schwartz, Edward <eschwartz@step toe.com>; scott@holcombward.com; Roy Barnes <roy@barneslawgroup.com>; aaron@holcombward.com; david.lowman@fultoncountyga.gov; jheidt@law.ga.gov; marvin@holcombward.com; Highsmith, Robert (ATL - X48012) <robert.highsmith@hklaw.com>; tgphilli@dekalbcountyga.gov; lkjohnson@dekalbcountyga.gov; vernstes@dekalbcountyga.gov; Schnell, Grant E (ATL - X48560) <Grant.Schnell@hklaw.com>  
Subject: RE: 17-0167 Curling, et al v. Kemp, et al: Curling v. Kemp: Draft Preservation Order.docx

John,

While I think the FBI is a necessary recipient of the draft Order, I would not object to clarifying the difference. I think the Judge may think that is obvious, but I would not object to language saying: "This Order does not presume that Defendants have vicarious liability for any action taken or not taken by the FBI."

Best,  
Joe

Joe Caldwell  
Partner  
Step toe & Johnson LLP  
202 429 6455

-----Original Message-----

From: Caldwell, Joe  
Sent: Friday, November 10, 2017 9:11 AM  
To: 'John Salter'  
Cc: Washington, Grace; 'dwhite@hlclaw.com'; 'Kaye.Burwell@fultoncountyga.gov'; 'benbryan@dekalbcountyga.gov'; 'bryan.ward@holcombward.com'; 'ccorreia@law.ga.gov'; 'Cheryl.Ringer@fultoncountyga.gov'; Schwartz, Edward; 'scott@holcombward.com'; 'Roy Barnes'; 'aaron@holcombward.com'; 'david.lowman@fultoncountyga.gov';

'jheidt@law.ga.gov'; 'marvin@holcombward.com'; 'robert.highsmith@hklaw.com'; 'tgphilli@dekalbcountyga.gov'; 'lkjohnson@dekalbcountyga.gov'; 'vernstes@dekalbcountyga.gov'; 'Grant E Schnell'

Subject: RE: 17-0167 Curling, et al v. Kemp, et al: Curling v. Kemp: Draft Preservation Order.docx

John,

As I understand it, the Judge's intent is to preserve existing evidence. Her concerns are forward-looking at this point, and are not focused on deciding whether spoliation has occurred in the past. The intent of the draft order was to mirror that concern. It does not make any determination about whether spoliation has or has not occurred.

If you believe that point needs further clarification, I suggest adding language on the last page of the draft Order, above the last paragraph, which says: "By this Order, the Court seeks to preserve existing relevant evidence from this date forward, and does not at this time make any decisions about whether spoliation of evidence may or may not have occurred in the past."

Let me know if that addresses your concerns.

Thanks,  
Joe

Joe Caldwell  
Partner  
Steptoe & Johnson LLP  
202 429 6455

-----Original Message-----

From: Caldwell, Joe

Sent: Thursday, November 09, 2017 7:08 PM

To: 'John Salter'

Cc: Washington, Grace; dwhite@hlclaw.com; Kaye.Burwell@fultoncountyga.gov; benbryan@dekalbcountyga.gov; bryan.ward@holcombward.com; ccorreia@law.ga.gov; Cheryl.Ringer@fultoncountyga.gov; Schwartz, Edward; scott@holcombward.com; Roy Barnes; aaron@holcombward.com; david.lowman@fultoncountyga.gov; jheidt@law.ga.gov; marvin@holcombward.com; robert.highsmith@hklaw.com; tgphilli@dekalbcountyga.gov; lkjohnson@dekalbcountyga.gov; vernstes@dekalbcountyga.gov; Grant E Schnell

Subject: RE: 17-0167 Curling, et al v. Kemp, et al: Curling v. Kemp: Draft Preservation Order.docx

John,

I don't have that reaction at all. While I think that many of the issues listed below apply more to a spoliation motion, I'm open to considering any language you might suggest.

My hope is that we can avoid leaving all the work for the Judge, so please send me any language you think suitable.

Thanks, John.

Joe

Joe Caldwell  
Partner



Steptoe & Johnson LLP  
202 429 6455

-----Original Message-----

From: John Salter [mailto:john@barneslawgroup.com]

Sent: Thursday, November 09, 2017 6:57 PM

To: Caldwell, Joe

Cc: Washington, Grace; dwhite@hlclaw.com; Kaye.Burwell@fultoncountyga.gov; benbryan@dekalbcountyga.gov; bryan.ward@holcombward.com; ccorreia@law.ga.gov; Cheryl.Ringer@fultoncountyga.gov; Schwartz, Edward; scott@holcombward.com; Roy Barnes; aaron@holcombward.com; david.lowman@fultoncountyga.gov; jheidt@law.ga.gov; marvin@holcombward.com; robert.highsmith@hklaw.com; tgphilli@dekalbcountyga.gov; lkjohnson@dekalbcountyga.gov; vernstes@dekalbcountyga.gov; Grant E Schnell

Subject: RE: 17-0167 Curling, et al v. Kemp, et al: Curling v. Kemp: Draft Preservation Order.docx

Joe,

After looking over your response, I am reminded of a chicken standing in front of a carving block with the farmer holding a hatchet and asking the chicken to kindly put his neck on the block. Looks like the only areas we agree are that (a) the Judge's name on the order should be corrected to spell Totenberg (I presume) and (b) oral argument for Nov. 17 does not work if your team is unavailable. After discussing with your team, please let me know if Plaintiffs object to us approaching the Court with a request for other potential dates.

If you think it would be a better use of our time to just follow motion practice so Plaintiffs can argue for whatever you are after, let me know. Alternatively, we can await written input from others on your draft as originally directed. If so, when you circulate a draft joint report to the Court, please give us sufficient time (and space) to weigh in. Have a good weekend.

Cheers,

John

-----Original Message-----

From: Caldwell, Joe [mailto:jcaldwell@Steptoe.com]

Sent: Thursday, November 09, 2017 5:53 PM

To: John Salter <john@barneslawgroup.com>

Cc: Washington, Grace <gwashington@Steptoe.com>; dwhite@hlclaw.com; Kaye.Burwell@fultoncountyga.gov; benbryan@dekalbcountyga.gov; bryan.ward@holcombward.com; ccorreia@law.ga.gov; Cheryl.Ringer@fultoncountyga.gov; Schwartz, Edward <eschwartz@steptoe.com>; scott@holcombward.com; Roy Barnes <roy@barneslawgroup.com>; aaron@holcombward.com; david.lowman@fultoncountyga.gov; jheidt@law.ga.gov; marvin@holcombward.com; robert.highsmith@hklaw.com; tgphilli@dekalbcountyga.gov; lkjohnson@dekalbcountyga.gov; vernstes@dekalbcountyga.gov; Grant E Schnell <Grant.Schnell@hklaw.com>

Subject: RE: 17-0167 Curling, et al v. Kemp, et al: Curling v. Kemp: Draft Preservation Order.docx

Okay, will add him to the chain.

Also, you asked about Ed Schwartz. He is not available for argument on November 17, 2017.

Best,

Joe

Joe Caldwell

Partner

Steptoe & Johnson LLP

202 429 6455

-----Original Message-----

From: John Salter [mailto:john@barneslawgroup.com]

Sent: Thursday, November 09, 2017 5:40 PM

To: Caldwell, Joe

Cc: Washington, Grace; dwhite@hlclaw.com; Kaye.Burwell@fultoncountyga.gov; benbryan@dekalbcountyga.gov; bryan.ward@holcombward.com; ccorreia@law.ga.gov; Cheryl.Ringer@fultoncountyga.gov; Schwartz, Edward; scott@holcombward.com; Roy Barnes; aaron@holcombward.com; david.lowman@fultoncountyga.gov; jheidt@law.ga.gov; marvin@holcombward.com; robert.highsmith@hklaw.com; tgphilli@dekalbcountyga.gov; lkjohnson@dekalbcountyga.gov; vernstes@dekalbcountyga.gov; Grant E Schnell

Subject: Re: 17-0167 Curling, et al v. Kemp, et al: Curling v. Kemp: Draft Preservation Order.docx

Thanks for your comments, Joe. I am copying Grant Schnell because I think he wanted on this chain.

Cheers,

John

Sent from my iPhone

On Nov 9, 2017, at 5:30 PM, Caldwell, Joe <jcaldwell@Steptoe.com<mailto:jcaldwell@Steptoe.com>> wrote:

John,

Thank you for your comments. My responses below correspond to your paragraph numbers.

1. Unfortunately, Plaintiffs cannot agree that the trigger for the duty to preserve evidence is the date of litigation hold letters. As you know, counsel's duty to ensure that evidence is preserved arises not when a litigation hold letter is received, but when litigation is filed, threatened or reasonably foreseeable.
2. The Draft Preservation Order does not state that the State Defendants assume responsibility for evidence in the possession of the FBI. Here, after data on the CES main and backup servers was erased, the State AG's Office notified counsel that the FBI had a forensic image of the CES server, and that office intended to serve the attached subpoena on the FBI for that forensic image. In the State Defendants' Notice of Intent to Serve Subpoena (Oct. 26, 2017), counsel for the State Defendants said: "Upon taking possession of the drive with the forensic image copied on to it, the drive will be secured and taken by representatives at the Secretary of State's Office to a secured storage facility at their Office." If the State Defendants have possession of that, they would certainly be viewed as assuming responsibility for it.
  - a. Deleting the FBI from the order might effectively eliminate the possibility of recovering material data related to the CES server.
  - b. Further, as the proposed Preservation Order seeks only preservation rather than sanctions, no need currently exists to declare that the State Defendants are separate from the FBI.
  - c. Plaintiffs ask that you please advise whether the State Defendants currently have in their possession the forensic image from the FBI sought by their subpoena.
  - d. I am happy to provide the FBI a copy of the draft Preservation Order if you would kindly provide the name and contact information of the FBI Agent with whom the State AG has been communicating.
3. When you say that preservation obligations must not interfere with the legal duties of State officials, which duties do you contemplate? If none are known at this point, it seems appropriate that the State Defendants notify Plaintiffs in

advance of any anticipated need to alter or eliminate evidence. The parties can attempt to agree. Absent agreement among counsel, the State can apply to the Court for relief.

4. You have expressed concerns about possible retroactive application of litigation hold letters. Again, I note that obligations for evidence preservation arise when litigation is filed, threatened or reasonably foreseeable, but certainly before litigation hold letters are sent. If litigation hold letters in this case were sent in July and September, that appears to be of little consequence if the CES server was erased on July 7, 2017, four days after the litigation was filed. Indeed, in Georgia election matters, there are both federal and state statutory preservation obligations. See 52 U.S.C. 20701; see also GA Code 21-2-500. Once the duty to preserve is triggered, it extends to information that is relevant to claims and defenses of any party or the subject matter of the litigation.

a. Many of the arguments set forth in this paragraph appear to focus on spoliation rather than preservation.

b. If there is language that you propose for editing the preservation draft, please provide that language so that Plaintiffs can respond. However, regarding the proposed waiver, I repeat the substance of para. 1 above.

5. The litigation hold letters identify categories of evidence Plaintiffs expect exist, without knowledge of what actually does exist. Absent discovery in the case to date, Plaintiffs could not know more. As such, a preservation order should broadly include actual evidence that Plaintiffs may not currently know exists. For that reason, the attached litigation hold letters supplement the order rather than to limit it.

6. Regarding the language you propose, the Plaintiffs have no way of knowing or conforming what responsibilities are being transferred from CES to SoS. Perhaps you might say instead: "The State Defendants represent that . . ." And after the words "change in custody from CES to SoS" should be inserted, ", without any change or alteration of that evidence in any manner whatsoever," and then conclude.

I am happy to discuss, John.

Best,  
Joe

Joe Caldwell  
Partner  
Steptoe & Johnson LLP  
202 429 6455

From: John Salter [mailto:john@barneslawgroup.com]  
Sent: Wednesday, November 08, 2017 2:10 PM  
To: Caldwell, Joe  
Cc: Washington, Grace; 'dwhite@hlclaw.com<mailto:dwhite@hlclaw.com>';  
'Kaye.Burwell@fultoncountyga.gov<mailto:Kaye.Burwell@fultoncountyga.gov>';  
'benbryan@dekalbcountyga.gov<mailto:benbryan@dekalbcountyga.gov>';  
'bryan.ward@holcombward.com<mailto:bryan.ward@holcombward.com>';  
'ccorreia@law.ga.gov<mailto:ccorreia@law.ga.gov>';  
'Cheryl.Ringer@fultoncountyga.gov<mailto:Cheryl.Ringer@fultoncountyga.gov>'; Schwartz, Edward;  
'scott@holcombward.com<mailto:scott@holcombward.com>'; Roy Barnes;  
'aaron@holcombward.com<mailto:aaron@holcombward.com>';  
'david.lowman@fultoncountyga.gov<mailto:david.lowman@fultoncountyga.gov>';  
'jheidt@law.ga.gov<mailto:jheidt@law.ga.gov>'; 'marvin@holcombward.com<mailto:marvin@holcombward.com>';  
'robert.highsmith@hklaw.com<mailto:robert.highsmith@hklaw.com>';



'tgphilli@dekalbcountyga.gov<mailto:tgphilli@dekalbcountyga.gov>';  
'lkjohnson@dekalbcountyga.gov<mailto:lkjohnson@dekalbcountyga.gov>';  
'vernstes@dekalbcountyga.gov<mailto:vernstes@dekalbcountyga.gov>';  
benbryan@dekalbcountyga.gov<mailto:benbryan@dekalbcountyga.gov>  
Subject: RE: 17-0167 Curling, et al v. Kemp, et al: Curling v. Kemp: Draft Preservation Order.docx

Joe,  
I've tried to jump on this as soon as I received your draft. Please know these are not my final list of concerns as I have not had time for my clients' technical folks to make any concerns apparent to me. Further, I have not had time to consult my co-defendants and any issues that they may be able to call to my attention, especially since Roy and I are so new to the case. But, in the interests of time, here are my initial reactions to the Draft Order you circulated based on what I know now.

1) The State Defendants Agree we are Already Bound by a Duty to Preserve

a) The State Defendants wish to work cooperatively with the Plaintiffs to preserve evidence. The State Defendants are open to a Draft Order for Preservation of Evidence that reflects the timing of their receipt of Litigation Holds letters at the time they were received by the respective Defendants and with an appreciation of the material allegations at that time and as framed by then-operative allegations contained in iterations of the plaintiffs complaints. The State Defendants acknowledge and accept those duties and have performed them in good faith throughout the Curling litigation.

2) The Inclusion of the FBI In Absentia is Problematic

a) The State Defendants neither speak for the FBI, nor control them, nor are we able to bind them to certain responsibilities or duties under this Draft Preservation Order. I'm not sure it was your intent, but the Draft Order seems to imply vicarious liability of the State Defendants for any actions of the FBI. In the event any data in possession of the FBI were not preserved, the State Defendants neither assume responsibility for that, nor believe it would be appropriate for the Court to expose the State Defendants to sanctions, contempt, or other adverse ruling.

b) Potential Solution: One way to cure this concern would be to simply delete the references to the FBI. Another alternative would be for the Draft Order to clarify that the State Defendants are separate from the FBI and that the Order does not subject the State Defendants to any sanctions, contempt or other adverse ruling on account of the undirected actions of other parties outside the control of the State Defendants.

3) Safe Harbor for Actions Taken In Furtherance and in Compliance with State Law

a) The State Defendants wish to work cooperatively with the Plaintiffs to preserve evidence. But they also have legal duties and responsibilities to execute the business of the State, including upcoming and future elections. This necessarily includes transmitting data to our co-defendants who may need it. You cannot "quarantine the mailman." Obligations of preservation must not interfere-directly or indirectly-with the legal duties and responsibilities of officials charged with doing the State's business.

b) Should there be any conflict between duties of preservation arguably imposed by an order and statutory or constitutional duties the State Defendants are charged with executing, the Draft Order should include some preservation of their right to assert such compliance as a defense to technical non-compliance with this Order. The State cannot foresee every eventuality. I am trying to figure a way to draw this out without defeating the Plaintiffs' legitimate ends of preservation of relevant evidence. I wonder whether you can propose a solution that you may have already used with the County Defendants. If so, we could discuss or trade drafts of language to try and reach a reasonable compromise.

4) State Defendants Object to Retroactive Litigation Holds

a) It is customary and expected that Litigation Holds are only enforced in a prospective, not retrospective, fashion. Time's arrow flies only in one direction. It is important and only fair that the State Defendants be able to rely on a Hold Letter that gives fair notice of what is to be preserved in reasonably specific terms. And we cannot enter into a joint order that could be construed as waiving certain defenses against adverse enforcement based upon untimeliness or specificity (or lack thereof) in prior Hold Letters. With that concern generally expressed, what follow are some specific concerns we think the Draft Order does not address sufficiently.

b) Effective Date of the September 2017 Litigation Hold Letter:

i) The Litigation Hold Letter dated September 12, 2017, was not delivered to counsel for the State Defendants until September 29, 2017 (although the face of the document suggests otherwise). The State Defendants wish to preserve their objection to any sanctions or obligation for preservation arising as to the items listed in the September 12, 2017 Hold Letter until, at least, after they had received notice of same on September 29, 2017. On behalf of the State Defendants, enforcement of the Draft Order as to the items listed in the September 2017 Litigation Hold Letter should be limited to time periods after September 2

c) Retroactivity Concerns Specific to the CES Server and Backup Server Currently Featured in the Draft Order.

i) The Order's recital on page 2 implicitly approves a retroactive litigation hold by implying that the handling of the CES server at KSU was not acquiesced in by the Plaintiffs in the Curling litigation. Further, it sets the stage for potential adverse actions regarding this antecedent issue to be visited only upon, and solely to the prejudice of, the State Defendants. We therefore object to the inclusion of the second paragraph in the Draft Order in its entirety. Here are the reasons why:

ii) Months before Plaintiffs filed their original complaint, this was disclosed in a report published by KSU in an "Incident Report" dated April 18, 2017. This same report was attached by Plaintiffs to their original complaint (filed July 3, 2017). DE # 1-2 at ¶ 16, attaching April 18, 2017 "Incident Report" as Exhibit C to original complaint. Accordingly, Plaintiffs either knew or, in the exercise of reasonable care, should have known, that the CES server and back-up mentioned in the Draft Order were planned for repurposing and "surplus" and that, in the ordinary and customary course of business, that servers containing potentially sensitive data would be wiped clean as a precaution before repurposing or transitioning them to "surplus."

iii) Because the server and back-up were removed from use in April of 2017, they were not used for either the April, 2017 or June, 2017 special election and run-off, respectively. The aforementioned elections, not the November 2016 election, were the focus of the original and first amended complaints. Only in the Second Amended Complaint did the scope of plaintiffs' allegations expand to the November, 2016 election, thereby giving fair notice to the State Defendants that the server and back-up reasonably could be construed as "evidence" subject to any explicit or implicit duty of preservation. However, by the time the Second Amended Complaint was filed on September 15, 2017, the July and August actions respecting the server and backup had already transpired.

d) Prejudice from Retroactivity and Potential Solutions:

i) Regarding the above concerns, it does not appear the Draft Order takes them into account sufficiently to avoid prejudice to the State Defendants. For these reasons, the Draft Order in its present form causes more harm in the form of confusion than it does good by clarifying responsibilities regarding preservation and/or future potential enforcement by the Court.

ii) Left unaddressed, this confusion could cause unfair prejudice to the State Defendants. Indeed, if the Plaintiffs' signaled intention of filing a motion for spoliation is any indication, the effect of the Draft Order could be interpreted as purely opportunistic "clearing of the decks" of the State Defendants' reasonable objections and defenses to any such



motion that might come in the future from the Plaintiffs. Perhaps this concern might be alleviated by the addition of an explicit "no waiver" clause preserving Defendants' defenses to any motion for spoliation or enforcement of this Draft Order in the future. If the Plaintiffs would be amenable to that, please let me know so that we might discuss that further.

iii) In addition to the above-mentioned issues of unfair retroactivity, this raises an issue of Plaintiffs' timeliness and/or acquiescence in those actions respective to the server and back-up. Even if only preserving this argument for future consideration for the Court, any Draft Order should preserve this concern and issue for Defendants against any argument of waiver or acquiescence, especially given the Draft Order's second paragraph.

iv) At minimum, the Draft Order should explicitly state and preserve the State Defendants' position that the CES server and back-up that were repurposed in July/August were action-items that were planned and known-or knowable in the exercise of reasonable care to the public and the Curling Plaintiffs-well in advance of those actions being taken by KSU.

#### 5) The Expansion of the Scope of the Order from Prior Hold Requests

a) The Draft Order appears to create new and broad categories of "evidence" that the State Defendants would have a duty of preservation. See, e.g., Draft Order 2 ("data, records, and equipment related to the election infrastructure"). The language is exceptionally broad. It is also undefined by the Draft Order. This leaves these items open to contentious interpretation. As a result, predictable and mutually-agreeable construction of the Draft Order is impossible. To be enforceable, the Draft Order should not be subjective or make it difficult for a party to know with reasonable certainty the metes and bounds of its duty in order to comply.

b) Possible Solution. While all cases are different, this case is not one where "evidence" has such an obvious and mutually-agreeable understanding that we know what each other is saying. Indeed, we have moved to dismiss the 2nd Amended Complaint as a "shotgun" complaint that is, among other concerns, too non-specific to satisfy standing or plead a viable claim. For the State Defendants, I suggest there is at least one way to solve the scope concern. The Draft Order could rely on incorporation-by-reference of earlier Hold Letters, according to the times they were received by the respective party defendants. To cure the vagueness concerns, therefore, we suggest that the scope of the Draft Order be explicitly defined only to incorporate by reference the Litigation Hold letters and the scope described therein.

#### 6) Ability to Change Custody

a) In the future, and as publicly disclosed, one of the steps the SoS has planned in order to ensure preservation of evidence is to clarify and maintain channels of communication regarding some of the issues implicated in this Draft Order. To that end, and in order to ensure the flexibility to the State Defendants commensurate with performing and executing their legal duties, we suggest the following be incorporated into the Draft Order: "The parties understand that certain responsibilities are transferring from CES to SoS. As part of that transition, relevant information may change custody from CES to SoS and each party agrees that a change in custody of relevant evidence from CES to SoS does not violate this Order."

Thanks for taking the first cut at a draft. Please let me know your thoughts regarding the above. In the meantime, I will also try and confer with my co-defense counsel and my technical folks regarding their thoughts and try to bring any further follow-up within sufficient time to be incorporated into a joint report as required by the Court.

Cheers,  
John

[P.S.-you might want to correct a typo. Judge's name is spelled "Totenberg."]

John F. Salter | Attorney at Law  
BARNES LAW GROUP, LLC

31 ATLANTA STREET | MARIETTA, GEORGIA 30060  
770 BARNES LAW (227-6375) | 770 BARNES FAX (227-6373)  
john@barneslawgroup.com<mailto:jsalter@barneslawgroup.com>

BARNESLAWGROUP.COM<https://urldefense.proofpoint.com/v2/url?u=http-3A\_\_BARNESLAWGROUP.COM&d=DwIF-g&c=14jPbF-1hWnYXveJ5rixTS\_Fo3DRrpL7HUwJDac4Hlc&r=MRC3Pfv79G-OqKfSZ4m0i3vWdXNm1lqSdxuXFmkb0ZI&m=yUzrbukVfkg5wCjuCzK3o4bqp2CTdrN-zxUNI86ceU&s=choopCPBPRFwNkTjN4alEeL-gTJ1oQBzSt-1LIgcNkk&e=>

<image001.jpg>

From: Washington, Grace [mailto:gwashing@steptoe.com]  
Sent: Wednesday, November 08, 2017 10:33 AM  
To: 'dwhite@hlclaw.com<mailto:dwhite@hlclaw.com>' <dwhite@hlclaw.com<mailto:dwhite@hlclaw.com>>; 'Kaye.Burwell@fultoncountyga.gov<mailto:Kaye.Burwell@fultoncountyga.gov>' <Kaye.Burwell@fultoncountyga.gov<mailto:Kaye.Burwell@fultoncountyga.gov>>; 'benbryan@dekalbcountyga.gov<mailto:benbryan@dekalbcountyga.gov>' <benbryan@dekalbcountyga.gov<mailto:benbryan@dekalbcountyga.gov>>; 'bryan.ward@holcombward.com<mailto:bryan.ward@holcombward.com>' <bryan.ward@holcombward.com<mailto:bryan.ward@holcombward.com>>; 'ccorreia@law.ga.gov<mailto:ccorreia@law.ga.gov>' <ccorreia@law.ga.gov<mailto:ccorreia@law.ga.gov>>; 'Cheryl.Ringer@fultoncountyga.gov<mailto:Cheryl.Ringer@fultoncountyga.gov>' <Cheryl.Ringer@fultoncountyga.gov<mailto:Cheryl.Ringer@fultoncountyga.gov>>; Schwartz, Edward <eschwartz@steptoe.com<mailto:eschwartz@steptoe.com>>; 'scott@holcombward.com<mailto:scott@holcombward.com>' <scott@holcombward.com<mailto:scott@holcombward.com>>; Roy Barnes <roy@barneslawgroup.com<mailto:roy@barneslawgroup.com>>; 'aaron@holcombward.com<mailto:aaron@holcombward.com>' <aaron@holcombward.com<mailto:aaron@holcombward.com>>; 'david.lowman@fultoncountyga.gov<mailto:david.lowman@fultoncountyga.gov>' <david.lowman@fultoncountyga.gov<mailto:david.lowman@fultoncountyga.gov>>; 'jheidt@law.ga.gov<mailto:jheidt@law.ga.gov>' <jheidt@law.ga.gov<mailto:jheidt@law.ga.gov>>; John Salter <john@barneslawgroup.com<mailto:john@barneslawgroup.com>>; 'marvin@holcombward.com<mailto:marvin@holcombward.com>' <marvin@holcombward.com<mailto:marvin@holcombward.com>>; 'robert.highsmith@hklaw.com<mailto:robert.highsmith@hklaw.com>' <robert.highsmith@hklaw.com<mailto:robert.highsmith@hklaw.com>>; 'tgphilli@dekalbcountyga.gov<mailto:tgphilli@dekalbcountyga.gov>' <tgphilli@dekalbcountyga.gov<mailto:tgphilli@dekalbcountyga.gov>>; 'lkjohnson@dekalbcountyga.gov<mailto:lkjohnson@dekalbcountyga.gov>' <lkjohnson@dekalbcountyga.gov<mailto:lkjohnson@dekalbcountyga.gov>>; 'vernstes@dekalbcountyga.gov<mailto:vernstes@dekalbcountyga.gov>' <vernstes@dekalbcountyga.gov<mailto:vernstes@dekalbcountyga.gov>>; benbryan@dekalbcountyga.gov<mailto:benbryan@dekalbcountyga.gov>  
Cc: Caldwell, Joe <jcaldwell@steptoe.com<mailto:jcaldwell@steptoe.com>>  
Subject: 17-0167 Curling, et al v. Kemp, et al: Curling v. Kemp: Draft Preservation Order.docx

On behalf of Joe Caldwell:

Counsel,



Attached, in accordance with the Judge's instructions on the conference call yesterday, see Dkt. No. 105, is a proposed Preservation Order for counsel's consideration. If you have edits, I ask that you circulate them in writing via e-mail, which may be followed by telephone calls, as necessary. By the end of the week, I will circulate for comments a draft Joint Report of the Parties Concerning Preservation of Evidence toward the goal of filing that Report on Monday, November 13, 2017, as directed.

Thank you.

Joe Robert Caldwell, Jr

Partner

[jcaldwell@Step toe.com](mailto:jcaldwell@Step toe.com)<<mailto:jcaldwell@Step toe.com>>

+1 202 429 6455 direct | +1 202 429 3902 fax

Step toe

Step toe & Johnson LLP

1330 Connecticut Avenue, NW | Washington, DC 20036

[www.step toe.com](http://www.step toe.com)<[https://urldefense.proofpoint.com/v2/url?u=http-3A\\_\\_www.step toe.com&d=DwIF-g&c=14jPbF-1hWnYXveJ5rixtS\\_Fo3DRrpL7HUwJDAc4Hlc&r=MRC3Pfv79G-](https://urldefense.proofpoint.com/v2/url?u=http-3A__www.step toe.com&d=DwIF-g&c=14jPbF-1hWnYXveJ5rixtS_Fo3DRrpL7HUwJDAc4Hlc&r=MRC3Pfv79G-OqKfSZ4m0i3vWdXNm1lqSdxuXFmkb0ZI&m=yUzrbukVfkg5wCjuCzK3o4bqp2CTdrN-zxUNI86ceU&s=FrB97IDA5cOd5xja6x6lPz4m5ffS44ZaUYM4FdY_7tQ&e=>)

[www.step toe.com](http://www.step toe.com)<[https://urldefense.proofpoint.com/v2/url?u=http-3A\\_\\_www.step toe.com&d=DwIF-g&c=14jPbF-1hWnYXveJ5rixtS\\_Fo3DRrpL7HUwJDAc4Hlc&r=MRC3Pfv79G-OqKfSZ4m0i3vWdXNm1lqSdxuXFmkb0ZI&m=yUzrbukVfkg5wCjuCzK3o4bqp2CTdrN-zxUNI86ceU&s=FrB97IDA5cOd5xja6x6lPz4m5ffS44ZaUYM4FdY\\_7tQ&e=>](https://urldefense.proofpoint.com/v2/url?u=http-3A__www.step toe.com&d=DwIF-g&c=14jPbF-1hWnYXveJ5rixtS_Fo3DRrpL7HUwJDAc4Hlc&r=MRC3Pfv79G-OqKfSZ4m0i3vWdXNm1lqSdxuXFmkb0ZI&m=yUzrbukVfkg5wCjuCzK3o4bqp2CTdrN-zxUNI86ceU&s=FrB97IDA5cOd5xja6x6lPz4m5ffS44ZaUYM4FdY_7tQ&e=>)

ATTORNEY-CLIENT PRIVILEGED; DO NOT FORWARD OR DISCLOSE WITHOUT EXPRESS PERMISSION. Communications from attorneys and their employees are confidential and may not be forwarded or disclosed without the sender's express permission. There is no intent on the part of the sender to waive any privilege, including the attorney-client privilege, that may attach to this communication. Further, anything you believe to be tax advice in this communication, including attachments, cannot be used to avoid penalties under the Internal Revenue Code, nor does it promote, market, or recommend any transaction or tax-related matter. Barnes Law Group does not give tax advice.

ATTORNEY-CLIENT PRIVILEGED; DO NOT FORWARD OR DISCLOSE WITHOUT EXPRESS PERMISSION. Communications from attorneys and their employees are confidential and may not be forwarded or disclosed without the sender's express permission. There is no intent on the part of the sender to waive any privilege, including the attorney-client privilege, that may attach to this communication. Further, anything you believe to be tax advice in this communication, including attachments, cannot be used to avoid penalties under the Internal Revenue Code, nor does it promote, market, or recommend any transaction or tax-related matter. Barnes Law Group does not give tax advice.

ATTORNEY-CLIENT PRIVILEGED; DO NOT FORWARD OR DISCLOSE WITHOUT EXPRESS PERMISSION. Communications from attorneys and their employees are confidential and may not be forwarded or disclosed without the sender's express permission. There is no intent on the part of the sender to waive any privilege, including the attorney-client privilege, that may attach to this communication. Further, anything you believe to be tax advice in this communication, including attachments, cannot be used to avoid penalties under the Internal Revenue Code, nor does it promote, market, or recommend any transaction or tax-related matter. Barnes Law Group does not give tax advice.

---

NOTE: This e-mail is from a law firm, Holland & Knight LLP ("H&K"), and is intended solely for the use of the individual(s) to whom it is addressed. If you believe you received this e-mail in error, please notify the sender immediately, delete the e-mail from your computer and do not copy or disclose it to anyone else. If you are not an existing client of H&K, do not construe anything in this e-mail to make you a client unless it contains a specific statement to that effect and do not disclose anything to H&K in reply that you expect it to hold in confidence. If you properly received this e-mail as a client, co-counsel or retained expert of H&K, you should maintain its contents in confidence in order to preserve the attorney-client or work product privilege that may be available to protect confidentiality.

# Correia Declaration

## Exhibit 10

**Cristina Correia**

---

**From:** Jeff Milsteen <jmilstee@kennesaw.edu>  
**Sent:** Friday, October 20, 2017 10:16 AM  
**To:** marilyn  
**Cc:** asklegal; Cristina Correia  
**Subject:** Fw: ORR for data retrieval from elections.kennesaw.edu  
**Attachments:** ORR 1 of 3 10.18.17.pdf; ORR 2 of 3 10.18.17.pdf; ORR 3 of 3 10.18.17.pdf  
  
**Importance:** High

Ms. Marks,

Attached please find the records responsive to your open records request. All records have been produced except documents that would be exempt pursuant to OCGA 50-18-72(a)(41), which excepts privileged attorney-client communications from the disclosure requirements of the Open Records Act. To be clear, the record that has been withheld involves communications between the Office of the Attorney General and employees of Kennesaw State University, and not internally between the Legal Affairs Division and employees of the Center for Elections Systems or UITS.

Sincerely,

Jeff Milsteen  
Chief Legal Affairs Officer  
Kennesaw State University

**From:** Stephen Craig Gay  
**To:** Lectra Lawhorne  
**Subject:** CES Investigative update  
**Date:** Friday, March 17, 2017 5:11:58 PM

---

Lectra,

Good afternoon. I wanted to take a moment and provide you with an update on the Center for Election Systems Incident Response process:

- We met with CES Staff today to review the architecture of their internal network, review physical access controls, and understand the services running on the internal network. We validated that an air gap exists between the internal and external network and further validated via arp tables that no routes were available from the intranet servers to an external network. Several opportunities for improvement were identified and CES staff are working on documentation for the system. An executive summary with recommendations is forthcoming

- All external-facing servers associated with the Center are isolated to elections.kennesaw.edu which is hosted in the Enterprise instance of OmniUpdate and contains only public information.

- UITS WinServ, in partnership with the ISO and CES, is provisioning a dedicated Virtual Server which will be used for internal file storage for CES. The server will be locked down via AD group memberships and will use verbose logging and monitoring tied to our splunk instance. The logs will specifically audit for file access and alert on any modifications to the authorizing AD group. Furthermore a local firewall will be in place and all traffic outside the CES IP range blocked.

- I met with FBI Agent Ware at 4:30pm to receive the elections server - Dell PowerEdge R610 Tag Number 96J2F21. The ISO team will be performing a data recovery for data requested by the CES (Business Operations) on Monday. We have confirmed that the FBI is maintaining a forensic image and changes to the server can occur. Agent Ware shared that "the investigation is wrapping up" and mentioned being in attendance at the March 29th meeting with AUSA Grimberg.

Please let me know if you have any questions or if I can provide any additional information.

In service,

Stephen C Gay CISSP CISA  
KSU Chief Information Security Officer & UITS Executive Director  
Information Security Office  
University Information Technology Services (UITS)  
Kennesaw State University  
Technology Services Bldg, Room 031  
1075 Canton Pl, MB #3503  
Kennesaw, GA 30144  
Phone: (470) 578-6620  
Fax: (470) 578-9050  
sgay@kennesaw.edu

---

<b>Milestone</b>	<b>Due Date</b>	<b>Status</b>	<b>Lead</b>	<b>Notes</b>
Private Network Assessment Meeting	26-Jun	Complete	S. Gay	
Spec UPS	13-Jul	Complete	C. Dehner	
Order UPS	13-Jul	Complete	C. Dehner	
DBAN R610 Hard Drives	7-Jul	Complete	C. Dehner	
Deliver R610 to Networking	7-Jul	Complete	C. Dehner	
Image Dell PowerEdge R630s (101614 & 101613)	26-Jul	Complete	C. Darrow	
Rack Dell PowerEdge R630 and migrate DC and NAS	28-Jul	In progress	C. Darrow	
Install UPS	4-Aug	Complete	C. Darrow	Due data dependant on delivery of UPS from CDW-G.



192.168.3.135	Linux 2.6.8	*M600M65		IMI Card Duplicator
192.168.3.119	Linux 2.6.8	*M600M73		IMI Card Duplicator
192.168.3.81	Linux 2.6.8	*M600M60		IMI Card Duplicator
192.168.3.73	Linux 2.6.8	*M600M72		IMI Card Duplicator
192.168.3.116	Linux 2.6.8	*M600M82		IMI Card Duplicator
192.168.3.104	Linux 2.6.8	*M600M70		IMI Card Duplicator
192.168.3.115	Linux 2.6.8	*M600M71		IMI Card Duplicator
192.168.3.180	Linux 2.6.12	*M600M81		IMI Card Duplicator
192.168.3.76	Linux 2.6.8	*M600M69		IMI Card Duplicator
192.168.3.123	Linux 2.6.8	*M600M28		IMI Card Duplicator
192.168.3.128	Linux 2.6.8	*M600M79		IMI Card Duplicator
192.168.3.131	Linux 2.6.8	*M600M84		IMI Card Duplicator
192.168.3.71	Linux 2.6.8	*M600M83		IMI Card Duplicator
192.168.3.132	Linux 2.6.8	*M600M86		IMI Card Duplicator
192.168.3.66	Linux 2.6.8	*M600M417		IMI Card Duplicator
192.168.3.66	Linux 2.6.8	*M600M74		IMI Card Duplicator
192.168.3.2	Microsoft Windows Server 2003 R2 SP2	*SEMINOLE		
192.168.3.53	HP P2055 Series	*Fax-Printer *FAX-PRINTER		
192.168.3.65	Microsoft Windows XP	*SEAN-GEMS-2		
192.168.3.57	Microsoft Windows XP	*CALLCENTER		
192.168.3.50	Microsoft Windows Server 2008 R2, Standard Edition	*EPIC		
192.168.3.4	Microsoft Windows Server 2008 R2, Enterprise Edition	*CES-DC1		
192.168.3.3	Microsoft Windows Server 2008 R2, Standard Edition	*CES-NAS		
192.168.3.1	Microsoft Windows Server 2008	*CES-DC.CES.KENNESAW.EDU		
192.168.3.54	Microsoft Windows XP	*MPEARSON-980		
192.168.3.56	Microsoft Windows XP	*GEMS-DDESSERT		
192.168.3.60	Microsoft Windows 7 Home, Premium Edition SP1	*STEVEN7-GEMS		Audio recording
192.168.3.70	Windows XP	h57-marie.CES.KENNESAW.EDU		
192.168.3.66	Windows XP	GEMS-mking.CES.KENNESAW.EDU		
192.168.3.51	Microsoft Windows 7.5	*KSLUCES-2HALL		Audio recording
192.168.3.61	Unknown			
192.168.3.52	Windows XP	seminole-termin.CES.KENNESAW.EDU		

**From:** [Christopher Dehner](#)  
**To:** [Steven Dean](#); [Jason Figueroa](#)  
**Cc:** [Michael Barnes](#); [Stephen Gay](#)  
**Subject:** CES server surplus  
**Date:** Wednesday, August 9, 2017 11:24:58 AM

---

Fellas,

I will arrive at the center around 1:30 today to pick up the old DC. I will also get the old unicoi server from secure storage. Additionally, I sent in a service ticket for this request.

Regards,

Chris

Get [Outlook for Android](#)

---

**Michael Barnes**

---

**From:** Steven Jay Dean  
**Sent:** Wednesday, April 26, 2017 3:18 PM  
**To:** Christopher Michael Dehner  
**Cc:** Merle Steven King; Michael L. Barnes; Jason Stephen Figueroa  
**Subject:** Private Network Hardware Assessment

Chris, we recently receive a draft of the Incident report and I would like to go through the hardware section to get a plan outlined for addressing the recommendations. The document states the following:

1. Rackmount UPS Battery backups (one displaying warning light)  
Recommendation: Replace batteries as needed and move under UITS ISS management
2. 3com Switches – Age 10+ years -- No Support -- L2 only  
Recommendation: Replace and move under UITS ISS management
3. Dell 1950 (Windows Domain Controller) – Age 10+ years  
Recommendation: Surplus
4. Dell PowerEdge R630 – Age 1 year  
Recommendation: Migrate services from Dell 1950 and move under UITS ISS management on CES Isolated Network
5. EPIC – Vision Computer – Age Unknown – Electors list creation box  
Recommendation: Continue as ISO/CES managed
6. EPIC Files – Dell 1900 – Age 6+ years – Electors list creation box backups  
Recommendation: Surplus
7. NAS – Dell 1900 – Age 6+ years – CES Isolated Network NAS  
Recommendation: Surplus
8. [elections.kennesaw.edu](http://elections.kennesaw.edu) - Age 5 years - Dell PowerEdge R610  
Recommendation: Format and reinstall on CES Isolated Network as NAS
9. [unicoi.kennesaw.edu](http://unicoi.kennesaw.edu) – Age 6+ years. Dell PowerEdge 1950  
Recommendation: Surplus
10. Web server backup  
Recommendation: Surplus

We had submitted for approval to UITS the purchase of two new UPS units prior to the incident. Should we continue and order these as previously planned?

Will new hardware (and other equipment) be ordered by ISO under ISO budget, ordered by ISO under CES budget, or ordered by CES? Who will decide what hardware is purchased?

How should we proceed with replacing the Switches and who will install and manage them?

When will the assessment of the private network software commence and what department will handle the migrations and updates? How will this project factor into their schedule?

We would like to get moving on this list as soon as possible. Please let me know what I can do as the next step. Thanks.

Steven Dean  
Technical Coordinator  
KSU Center for Election Systems  
3205 Campus Loop Road

Kennesaw, GA 30144  
P: 470-578-6900 F: 470-578-9012

**From:** Christopher Michael Dehner

**Sent:** Tuesday, June 27, 2017 5:22 PM

**To:** Stephen Craig Gay; Nickolaus E Hassis; Jason Stephen Figueroa; Steven Jay Dean; Michael L. Barnes; Davide F Gaetano

**Subject:** CES Network Assessment Meeting Notes 6/26

CES Network Assessment

6/27/17 4:00PM-5:15PM

Attendees:

Nick Hassis, Stephen Gay, Jason Figuero, Steven Dean, Michael Barnes, Davide Gaetano

Notes:

CES – is most secure network at KSU, making it more secure  
9/10 AAR items closed - Final item: Private Network Inventory

Goal: Reduce number of devices on private network

IMI Card Duplicators also act as data extractor to private network NAS

Reconciled Windows XP devices not captured by network scan

GEMS services dependent on .NET version found on WinXP

Davide – Can GEMS services be virtualized to work on Win7 or Win10?  
Steven – Not certain

Stephen: Can we use local authentication instead of domain controller?  
Davide: Put domain controllers on Epic and NA

Cellular dialer to send syslog, environment, arpwatch alerts & GPS updates for time keeping.  
New Epic and New NAS servicers will also be domain controllers  
Cycle hard drive backups to fireproof safe in Secure Storage

Davide suggestions:

- Physically label computers if on private network
- Add distance between private and public network devices
- Replace wifi access point, create new ssid for only CES
- Arpwatch box for public and private networks to prevent network crossovers
- Put CES behind a firewall – force denial and whitelist

Action Items:

CES IT

- Confirm printer has unnecessary services disabled
- Work with vendor on upgrading Epic to more current version of Windows Server

UITS

- Build new XP image
- Windows 10 build for audio box

- Migrate data from Poweredge 1900 to Server TBD and decommission box
- Spin up new servers
- Collaborate with CES on transferring services to new servers
- Chris: Connect with Jonathan on new APCs
- Chris: Wipe R610 server, deliver to Davide & Casey for install
- Chris Schedule update meetings for CES Network Updates (include Casey, Jonathan, and GJ)

---

Christopher Dehner, CISA  
IT Security Professional III  
Information Security Office  
University Information Technology Services (UITS)  
Kennesaw State University  
Technology Services Bldg, Room 027  
1075 Canton Pl, MB #3503  
Kennesaw, GA 30144  
Phone: 470-578-6620  
Fax: 470-578-9050  
[cmd9090@kennesaw.edu](mailto:cmd9090@kennesaw.edu)



**From:** [Christopher Dehner](#)  
**To:** [Stephen Gay](#)  
**Cc:** [Michael Barnes](#); [Steven Dean](#); [Jason Figueroa](#)  
**Subject:** Re: CES server surplus  
**Date:** Wednesday, August 9, 2017 3:54:39 PM

---

Stephen,

I'm happy to report that the remaining two servers on the AAR were delivered to ITIM and the hard drives were degaussed three times. Additionally, I followed up with Jonathan on replacing the old UPSs with the new ones.

Regards,

Chris

---

**From:** Stephen Gay  
**Sent:** Wednesday, August 9, 2017 11:32 AM  
**To:** Christopher Dehner; Steven Dean; Jason Figueroa  
**Cc:** Michael Barnes; Lectra Lawhorne  
**Subject:** Re: CES server surplus

Chris,

This is fantastic news. Great work to all parties on closing the final recommendation from the incident after action report.

In your service,  
Stephen.

Sent from Nine

**From:** Christopher Dehner  
**Sent:** Aug 9, 2017 11:24 AM  
**To:** Steven Dean; Jason Figueroa  
**Cc:** Michael Barnes; Stephen Gay  
**Subject:** CES server surplus

Fellas,

I will arrive at the center around 1:30 today to pick up the old DC. I will also get the old uncoi server from secure storage. Additionally, I sent in a service ticket for this request.

Regards,

---



Chris

Get Outlook for Android

**From:** Ware, William D. II (AT) (FBI)  
**To:** Stephen Craig Gay  
**Subject:** RE: Request for data retrieval  
**Date:** Thursday, March 16, 2017 7:44:15 PM

---

How about a little after 4 pm?

----- Original message -----

**From:** "Stephen C. Gay" <sgay@kennesaw.edu>  
**Date:** 03/16/2017 3:15 PM (GMT-05:00)  
**To:** "Ware, William D. II (AT) (FBI)" <William.Ware@ic.fbi.gov>  
**Subject:** Re: Request for data retrieval

Agent Ware,

Thank you for the response. I'm open 12:30pm - 1:30pm, 2:30pm - 3:00pm, and after 4pm if any of those work for you?

Stephen

----- Original Message -----

**From:** "Ware, William D. II (AT) (FBI)" <William.Ware@ic.fbi.gov>  
**To:** "Stephen C Gay" <sgay@kennesaw.edu>  
**Sent:** Thursday, March 16, 2017 12:00:13 PM  
**Subject:** RE: Request for data retrieval

Hi Stephen,

We have a forensic image of the server so we can just give you the server back so you guys can do what you want. Are you around tomorrow so I can bring it back?

Davey

--

----- Original message -----

**From:** "Stephen C. Gay" <sgay@kennesaw.edu>  
**Date:** 03/15/2017 1:51 PM (GMT-05:00)  
**To:** "Ware, William D. II (AT) (FBI)" <William.Ware@ic.fbi.gov>  
**Subject:** Fwd: Request for data retrieval

Agent Ware,

We received the request below from the Center for Election Systems regarding data contained on the seized server which they do not have a backup of. What is the possibility of having the data extracted and us picking it up?

Thank you for your consideration of this request.  
Stephen

----- Forwarded Message -----

From: "Michael Barnes" <mbarne28@kennesaw.edu>

To: "Stephen C Gay" <sgay@kennesaw.edu>

Cc: "Steven Dean" <sdean29@kennesaw.edu>, "Merle King" <mking@kennesaw.edu>

Sent: Wednesday, March 15, 2017 1:41:25 PM

Subject: Request for data retrieval

Stephen,

As discussed earlier today, we would like to retrieve certain records from elections.kennesaw.edu that support our daily office activities, items such as inventory records, workflow databases used during our ballot building efforts, and operation manuals. These data are located in the cesuser user directory at /home/cesuser. We would like to retrieve the entire cesuser directory, if possible.

Thanks,

Michael Barnes  
Director  
Center for Election Systems  
Kennesaw State University  
3205 Campus Loop Road  
Kennesaw, GA 30144  
ph: 470-KSU-6900  
fax: 470-KSU-9012

**From:** Ware, William D. II (AT) (FBI)  
**To:** Stephen Craig Gay  
**Subject:** RE: Request for data retrieval  
**Date:** Thursday, March 16, 2017 12:00:23 PM

---

Hi Stephen,

We have a forensic image of the server so we can just give you the server back so you guys can do what you want. Are you around tomorrow so I can bring it back?

Davey

--

----- Original message -----

**From:** "Stephen C. Gay" <sgay@kennesaw.edu>  
**Date:** 03/15/2017 1:51 PM (GMT-05:00)  
**To:** "Ware, William D. II (AT) (FBI)" <William.Ware@ic.fbi.gov>  
**Subject:** Fwd: Request for data retrieval

Agent Ware,

We received the request below from the Center for Election Systems regarding data contained on the seized server which they do not have a backup of. What is the possibility of having the data extracted and us picking it up?

Thank you for your consideration of this request.  
Stephen

----- Forwarded Message -----

**From:** "Michael Barnes" <mbarne28@kennesaw.edu>  
**To:** "Stephen C Gay" <sgay@kennesaw.edu>  
**Cc:** "Steven Dean" <sdean29@kennesaw.edu>, "Merle King" <mking@kennesaw.edu>  
**Sent:** Wednesday, March 15, 2017 1:41:25 PM  
**Subject:** Request for data retrieval

Stephen,

As discussed earlier today, we would like to retrieve certain records from elections.kennesaw.edu that support our daily office activities, items such as inventory records, workflow databases used during our ballot building efforts, and operation manuals. These data are located in the cesuser user directory at /home/cesuser. We would like to retrieve the entire cesuser directory, if possible.

Thanks;

---

Michael Barnes  
Director  
Center for Election Systems  
Kennesaw State University  
3205 Campus Loop Road  
Kennesaw, GA 30144  
ph: 470-KSU-6900  
fax: 470-KSU-9012



**From:** [Stephen Craig Gay](#)  
**To:** [mbeaver@sos.ga.gov](mailto:mbeaver@sos.ga.gov)  
**Cc:** [Lectra Lawhorne](#); [Michael L. Barnes](#)  
**Subject:** Plan of action for the passing of data  
**Date:** Wednesday, March 22, 2017 6:25:02 PM

---

Merritt,

Thank you for the conversation regarding the ExpressPoll file pickup and discussion on getting the processed data back to your office. Looking over my notes, I have the following plan of action from our discussion:

Objective: KSU will use the Secretary of State SFTP server to upload the data moving forward, after which members of your team will coordinate the distribution to the counties which require the data.

Tasks:

- Remove all users/rights with the current KSU folder on the Secretary of State SFTP Server and provision new accounts for specified users (Likely SDean, MFiguro, CDehner)
- Work with Chris Dehner, in the UITS Information Security Office, to share and validate SFTP certificate for server.
- Work with Chris Dehner and members of CES to develop process for file transfer, account password expiration, and archiving of file and associated password sharing
- Chris Dehner will work with Steven and Jason on selecting the archive software client, SFTP client and validating the functionality
- Test the clients and processes, and resolve any challenges.

If you could send me the contact information for James and Stephen on your team I will share with the team and ask that they connect 1st thing tomorrow. I don't want to be a roadblock to these tasks and progress, but will check-in on the progress and will be available to assist as needed.

Stephen C Gay CISSP CISA  
KSU Chief Information Security Officer & UITS Executive Director  
Information Security Office  
University Information Technology Services (UITS)  
Kennesaw State University  
Technology Services Bldg, Room 031  
1075 Canton Pl, MB #3503  
Kennesaw, GA 30144  
Phone: (470) 578-6620  
Fax: (470) 578-9050  
[sgay@kennesaw.edu](mailto:sgay@kennesaw.edu)

**From:** Beaver, Merritt  
**To:** [Stephen Craig Gay](#); [Koonce, Steven](#); [Oliver, James](#)  
**Cc:** [Lectra Lawhorne](#); [Michael L. Barnes](#)  
**Subject:** RE: Plan of action for the passing of data  
**Date:** Thursday, March 23, 2017 10:24:00 AM

---

Stephen

I would like to tie in both Steven Koonce, one of our Network administrators and James Oliver, our security manager. See their emails attached.

I talked with my team and our election's team and we would like to just create a new set of SFTP folders for this effort. The old folder was set up the exchange sample ballot forms and we would like to not repurpose that folder for this new use. There will be a need for KSU to upload files to SOS and also for SOS to send files to KSU. We are suggesting that we have two folders to serve each of these purposes. Both of these folders will only hold data for 30 days and after that time any files left will be automatically deleted as these will be transfer folders only.

I will let Steven and James work with your team to best set this environment up.

Thanks

Merritt

S. Merritt Beaver  
Chief Information Officer  
Office of Georgia Secretary of State Brian P. Kemp  
Office (404) 656-7744 Mobile: (770)330-0016  
[mbeaver@sos.ga.gov](mailto:mbeaver@sos.ga.gov)

-----Original Message-----

From: Stephen C. Gay [<mailto:sgay@kennesaw.edu>]  
Sent: Wednesday, March 22, 2017 6:25 PM  
To: Beaver, Merritt <[mbeaver@sos.ga.gov](mailto:mbeaver@sos.ga.gov)>  
Cc: Lectra Lawhorne <[llawhorn@kennesaw.edu](mailto:llawhorn@kennesaw.edu)>; Michael Barnes <[mbarne28@kennesaw.edu](mailto:mbarne28@kennesaw.edu)>  
Subject: Plan of action for the passing of data

Merritt,

Thank you for the conversation regarding the ExpressPoll file pickup and discussion on getting the processed data back to your office. Looking over my notes, I have the following plan of action from our discussion:

Objective: KSU will use the Secretary of State SFTP server to upload the data moving forward, after which members of your team will coordinate the distribution to the counties which require the data.

Tasks:

- Remove all users/rights with the current KSU folder on the Secretary of State SFTP Server and provision new accounts for specified users (Likely SDean, MFiguro, CDehner)
- Work with Chris Dehner, in the UITS Information Security Office, to share and validate SFTP certificate for server.
- Work with Chris Dehner and members of CES to develop process for file transfer, account password expiration, and archiving of file and associated password sharing
- Chris Dehner will work with Steven and Jason on selecting the archive software client, SFTP client and validating the functionality
- Test the clients and processes, and resolve any challenges.

If you could send me the contact information for James and Stephen on your team I will share with the team and ask that they connect 1st thing tomorrow. I don't want to be a roadblock to these tasks and progress, but will check-in on the progress and will be available to assist as needed.

Stephen C Gay CISSP CISA

KSU Chief Information Security Officer & UITS Executive Director Information Security Office University  
Information Technology Services (UITS) Kennesaw State University Technology Services Bldg, Room 031  
1075 Canton Pl, MB #3503

Kennesaw, GA 30144

Phone: (470) 578-6620

Fax: (470) 578-9050

sgay@kennesaw.edu

**From:** [Christopher Dehner](#)  
**To:** [Davide Gaetano](#)  
**Cc:** [Casey Darrow](#); [Stephen Gay](#); [Chris Gaddis](#)  
**Subject:** RE: CES Network Assessment Meeting Notes 6/26  
**Date:** Wednesday, July 19, 2017 1:29:00 PM  
**Attachments:** [CES Network surplus milestones.xlsx](#)

---

Davide,

I think we're ready to make the final push on closing the CES AAR recommendations. All we have left is the imaging and transference of services of the two Dell PowerEdge R630s (both in CES private network data center) and the replacement of the UPSs. Per our conversations, one server is for DC/NAS and the other for Epic. I checked with Steven Dean and both servers not running any services so we can begin as soon as possible without impacting their services. The UPSs were ordered last week and we are waiting on delivery. I've included the project milestones and suggested due dates. If these due dates are not feasible, please provide alternative dates. If you have any questions, please feel free to reach out.

Regards,

Chris

**From:** Christopher Michael Dehner  
**Sent:** Friday, July 7, 2017 11:16 AM  
**To:** Davide Gaetano <dgaetano@students.kennesaw.edu>  
**Cc:** Casey Darrow <cdarrow@kennesaw.edu>; Stephen Craig Gay <sgay@kennesaw.edu>; James Christopher Gaddis <jgaddis6@kennesaw.edu>  
**Subject:** Fw: CES Network Assessment Meeting Notes 6/26

Davide,

I am reseeded this email because for some reason, it was sent to a [dgaetano@students.kennesaw.edu](mailto:dgaetano@students.kennesaw.edu) account.

Per your instructions regarding the reimaging and installation of the CES server, we DBAN'd the hard drives and delivered the server to TS023. The server is a Dell PowerEdge R610 (Asset Tag: 103019). When it is ready for racking in the CES private network, please let me know and I'll coordinate with the Steven Dean.

Regards,

Chris

---

**From:** Stephen Craig Gay  
**To:** Lectra Lawhorne  
**Subject:** CES Investigative update  
**Date:** Friday, March 17, 2017 5:11:58 PM

---

Lectra,

Good afternoon. I wanted to take a moment and provide you with an update on the Center for Election Systems Incident Response process:

- We met with CES Staff today to review the architecture of their internal network, review physical access controls, and understand the services running on the internal network. We validated that an air gap exists between the internal and external network and further validated via arp tables that no routes were available from the intranet servers to an external network. Several opportunities for improvement were identified and CES staff are working on documentation for the system. An executive summary with recommendations is forthcoming

- All external-facing servers associated with the Center are isolated to elections.kennesaw.edu which is hosted in the Enterprise instance of OmniUpdate and contains only public information.

- UITS WinServ, in partnership with the ISO and CES, is provisioning a dedicated Virtual Server which will be used for internal file storage for CES. The server will be locked down via AD group memberships and will use verbose logging and monitoring tied to our splunk instance. The logs will specifically audit for file access and alert on any modifications to the authorizing AD group. Furthermore a local firewall will be in place and all traffic outside the CES IP range blocked.

- I met with FBI Agent Ware at 4:30pm to receive the elections server - Dell PowerEdge R610 Tag Number 96J2F21. The ISO team will be performing a data recovery for data requested by the CES (Business Operations) on Monday. We have confirmed that the FBI is maintaining a forensic image and changes to the server can occur. Agent Ware shared that "the investigation is wrapping up" and mentioned being in attendance at the March 29th meeting with AUSA Grimberg.

Please let me know if you have any questions or if I can provide any additional information.

In service,

Stephen C Gay CISSP CISA  
KSU Chief Information Security Officer & UITS Executive Director  
Information Security Office  
University Information Technology Services (UITs)  
Kennesaw State University  
Technology Services Bldg, Room 031  
1075 Canton Pl, MB #3503  
Kennesaw, GA 30144  
Phone: (470) 578-6620  
Fax: (470) 578-9050  
sgay@kennesaw.edu

<b>Milestone</b>	<b>Due Date</b>	<b>Status</b>	<b>Lead</b>	<b>Notes</b>
Private Network Assessment Meeting	26-Jun	Complete	S. Gay	
Spec UPS	13-Jul	Complete	C. Dehner	
Order UPS	13-Jul	Complete	C. Dehner	
DBAN R610 Hard Drives	7-Jul	Complete	C. Dehner	
Deliver R610 to Networking	7-Jul	Complete	C. Dehner	
Image Dell PowerEdge R630s (101614 & 101613)	26-Jul	Complete	C. Darrow	
Rack Dell PowerEdge R630 and migrate DC and NAS	28-Jul	In progress	C. Darrow	
Install UPS	4-Aug	Complete	C. Darrow	Due data dependant on delivery of UPS from CDW-G.



**From:** Christopher Dehner cmd9090@kennesaw.edu  
**Subject:** Re: CES server surplus  
**Date:** August 9, 2017 at 3:54 PM  
**To:** Stephen Gay sgay@kennesaw.edu  
**Cc:** Michael Barnes mbarne28@kennesaw.edu, Steven Dean sdean29@kennesaw.edu, Jason Figueroa jfigue12@kennesaw.edu

Stephen,

I'm happy to report that the remaining two servers on the AAR were delivered to ITIM and the hard drives were degaussed three times. Additionally, I followed up with Jonathan on replacing the old UPSs with the new ones.

Regards,

Chris

**From:** Stephen Gay  
**Sent:** Wednesday, August 9, 2017 11:32 AM  
**To:** Christopher Dehner; Steven Dean; Jason Figueroa  
**Cc:** Michael Barnes; Lectra Lawhorne  
**Subject:** Re: CES server surplus

Chris,

This is fantastic news. Great work to all parties on closing the final recommendation from the incident after action report.

In your service,  
Stephen.

Sent from Nine

**From:** Christopher Dehner  
**Sent:** Aug 9, 2017 11:24 AM  
**To:** Steven Dean; Jason Figueroa  
**Cc:** Michael Barnes; Stephen Gay  
**Subject:** CES server surplus

Fellas,

I will arrive at the center around 1:30 today to pick up the old DC. I will also get the old unicon server from secure storage. Additionally, I sent in a service ticket for this request.

Regards,

Chris

Onna

Get Outlook for Android