

**UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF GEORGIA
GAINESVILLE DIVISION**

FAIR FIGHT, INC., JOHN DOE, and
JANE DOE,

Plaintiffs,

v.

TRUE THE VOTE, CATHERINE
ENGELBRECHT, DEREK
SOMERVILLE, MARK DAVIS, MARK
WILLIAMS, RON JOHNSON, JAMES
COOPER, and JOHN DOES 1-10,

Defendants.

Case No. 2:20-cv-00302-SCJ

**PLAINTIFFS' MOTION
FOR A TEMPORARY
RESTRAINING ORDER
AND/OR
PRELIMINARY
INJUNCTION**

Pursuant to Rule 65 of the Federal Rules of Civil Procedure, Plaintiffs Fair Fight Inc., John Doe, and Jane Doe, by and through the undersigned attorneys, file this Motion to for a Temporary Restraining Order and/or Preliminary Injunction to prohibit Defendants from continuing to file baseless challenges against lawful Georgia voters in advance of the January 5, 2021 runoff election. In particular, Plaintiffs seek an order restraining Defendants, their respective agents, officers, employees, and successors, and all persons acting in concert with each or any of them from:

- Submitting, or causing the submission of, further challenges to any voter's eligibility in the State of Georgia;
- Participating in any poll-watching, poll-monitoring, or election-observing activities; recruiting and training individuals for these activities; or advertising these activities; and
- Photographing or video recording voters or election workers during the course of voting or working at the polls.

Pursuant to Rule 65(d), Plaintiffs have filed with this Motion a proposed order directed at the persons to be bound thereby, stating the reasons why the order should issue, stating the order's terms specifically, and describing the acts restrained and required.

Pursuant to Rule 7.1A of the Local Rules of the Northern District of Georgia, Plaintiffs have also filed with their motion a brief citing the legal authorities supporting the motion and the facts relied upon.

Dated this 29th day of December, 2020.

Respectfully Submitted,

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I hereby certify that, on December 29, 2020, I served the foregoing
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This, the 29th day of December, 2020.

/s/ Allegra J. Lawrence

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**PLAINTIFFS' MEMORANDUM IN SUPPORT OF TEMPORARY
RESTRAINING ORDER AND/OR PRELIMINARY INJUNCTION**

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INTRODUCTION

Plaintiffs have moved for a temporary restraining order and/or preliminary injunction to put an end to the campaign of harassment, intimidation, and frivolous challenges initiated by Defendants True the Vote and others working in concert with them (collectively, “Defendants” or “True the Vote”). For the last two weeks, as Georgia voters returned to the polls for the January 5, 2021, runoff elections, True the Vote and its supporters have taken drastic measures to deter and intimidate voters and undermine confidence in the electoral system. Most recently, Defendants coordinated a highly publicized, statewide attack on the eligibility of over 364,000 Georgia voters. The attack has left thousands of lifelong Georgia residents falsely accused of illegal voting, in fear that casting a ballot will incur criminal penalties. Defendants’ conduct plainly violates § 11(b) of the Voting Rights Act, which protects voters from intimidation and harassment.

There is no do-over once the election has passed and voters have been deterred from the polls for fear of reprisal or harassment. Immediate injunctive relief is both appropriate and necessary to prevent any further irreparable harm to Plaintiffs and countless Georgians whose voting rights have been knowingly and intentionally placed in jeopardy with little time to spare before the runoff elections.

STATEMENT OF FACTS

I. Following the November election, false claims of voter fraud have been willfully propagated, directly resulting in intimidation and harassment of voters and election workers.

In the wake of the November election, a small but fervent number of organizations and individuals have willfully bred false claims that the election was plagued with fraudulent and illegal voting. Not only are these claims unfounded, they have been repeatedly proven false. Nevertheless, there remains a zealous contingency that refuses to be dissuaded by fact or evidence that their proselytizing is doing real, unmitigated damage, not just to our democratic systems writ large, but to individual voters and election workers, many of whom have found themselves the targets of menacing harassment as a direct result of these false claims. Among those most dedicated to spreading these false claims are True the Vote, a Texas-based group that touts itself as a “nonpartisan, voter’s rights and election integrity organization.” Ex. 23. In reality, True the Vote has spent over a decade making baseless claims about widespread voter fraud and launched unfounded attacks on the eligibility of thousands of lawful voters. *See* Exs. 6-7.

In the weeks that followed the November general election, True the Vote turned its sights on Georgia. On November 11, it filed litigation in federal district court, in which it claimed that tens of thousands of ineligible voters cast illegal

ballots in Georgia’s general election for President-elect Joe Biden. *See Brooks v. Mahoney*, No. 4:20-cv-00281, Compl., ECF No. 1 (S.D. Ga. Nov. 11, 2020). But rather than make its case in court, where it would have to prove its claims and its “evidence” would be tested, True the Vote voluntarily dismissed its case just four days later. *See Brooks v. Mahoney*, No. 4:20-cv-00281, Notice of Voluntary Dismissal, ECF No. 20 (S.D. Ga. Nov. 16, 2020).¹

True the Vote was not alone in its attempts to sow doubt about Georgia’s election results. Its efforts mirrored those of Sidney Powell, who famously announced she intended to “release the Kraken,” and prove illegal voting had tainted the election, as well as L. Lin Wood, Jr., who, when his litigious efforts to overturn the clear decision of Georgia voters failed, publicly called for the imposition of martial law. Exs. 15, 16. *None* of the suits that claimed that Georgia’s election results were anything but legitimate were able to withstand even the slightest bit of scrutiny. *See, e.g., Wood v. Raffensperger*, No. 2020-CV-342959 (Ga. Super. Ct., Fulton Cnty. Dec. 8, 2020) (dismissing case alleging tens of thousands of out-of-state residents illegally voted in Georgia’s General Election); Order, *Bolland v.*

¹ True the Vote brought similar cases in Pennsylvania, Michigan, and Wisconsin. None were successful. *See Pirkle v. Wolf*, No. 4:20-cv-02088, ECF No. 20 (M.D. Pa. Nov. 16) (True the Vote dismissing case); *Bally v. Whitmer*, No. 4:20-cv-02088, ECF No. 16 (W.D. Mich. Nov. 16, 2020) (same); *Langenhorst v. Pecore*, No. 1:20-cv-1701, ECF No. 26 (E.D. Wisc. Nov. 16, 2020) (same).

Raffensperger, No. 2020-CV-343018 (Ga. Super. Ct., Fulton Cnty. Dec. 8, 2020) (dismissing case and finding plaintiffs' claim that tens of thousands of people illegally voted in Georgia based on the National Change of Address registry was based on "speculation rather than duly pled facts"); *Pearson v. Kemp*, No. 1:20-cv-04809-TCB, ECF No. 74 (N.D. Ga. Dec. 7, 2020) (dismissing case alleging the National Change of Address registry showed over 20,000 ineligible votes cast ballots in Georgia's election).

While such claims of widespread fraud have not succeeded in court, they have had real consequences. A Fulton County election worker was forced to go into hiding after he was falsely accused of discarding a ballot and his personal information, including his license plate, was posted online. *See* Ex. 10. One Gwinnett County election worker was accused of being a traitor and threatened with a noose. *See* Ex. 11. Incidents like these led one Republican Georgia election official to plead with the public in a press conference in early December that "[s]omeone is going to get hurt, someone is going to get shot, someone is going to get killed" if these feverish claims do not stop. Ex. 9. And yet Defendants have continued to feed this frenzy.

II. Defendants have now launched a coordinated campaign to harass and intimidate voters across Georgia.

A. The “Landmark” Voter Challenge Program

In the wake of the wave of losses that groups and individuals alleging voter fraud suffered in their litigation following the general election—which, as of today, amount to more than *fifty* losses in court²—True the Vote has chosen to forego the courts all together, pivoting to a strategy of mass challenges of voter eligibility submitted directly to Georgia’s boards of elections themselves. While True the Vote has previously launched similar attacks on the right to vote on a smaller scale in other states, *see* Exs. 6, 17-19, its present efforts in Georgia are notable for their breathtaking scale and clearly calculated timing.³ On December 18—after voting was already well underway in Georgia’s Senate runoff election—True the Vote announced it was mounting a “landmark coordinated” effort “to preemptively challenge 364,541 potentially ineligible voters” across the State’s 159 counties. Ex.

² Jim Rutenberg, *Trump’s Fraud Claims Died in Court, but the Myth of Stolen Elections Lives On*, N.Y. TIMES (Dec. 26, 2020), available at: <https://www.nytimes.com/2020/12/26/us/politics/republicans-voter-fraud.html?action=click&module=Top%20Stories&pgtype=Homepage>

³ To give just a few examples, True the Vote famously attempted, through its spinoff organization the Ohio Voter Integrity Project, to have elections officials remove more than 2,100 voters from voter rolls in Ohio in 2012. Ex. 18. Local election officials found these efforts to be unfounded and rejected the challenges. *Id.* It also challenged the rights of eight members of an African American family, which it claimed had registered to vote using an address of a vacant lot in Cincinnati. However, the address was actually that of the family’s home, for over three decades. *Id.* Voter eligibility challenges driven by True the Vote in North Carolina, Maryland, and Wisconsin were also rejected for faulty evidence. Ex. 19.

1. With assistance from individual electors, including Defendants Derek Somerville, Mark Davis, Mark Williams, Ron Johnson, and James Cooper among others, True the Vote has asserted these indiscriminate mass challenges in at least 85 counties to date, using lists of voters in each county—sometimes numbering in the tens of thousands—that they purport to have created by comparing Georgia’s voter registration database to the U.S. Postal Service’s National Change of Address (NCOA) registry. *See* Ex. 1, Ex. 8.

These challenges have already been rejected in multiple counties and most recently by a federal court, for good (and obvious) reasons. Just yesterday, in a lawsuit filed against the Ben Hill and Muscogee County election boards, the Middle District of Georgia held that the challenges could not be lawfully sustained under the National Voter Registration Act, and that requiring the challenged voters to reprove their eligibility would likely violate their constitutional rights. *See* Order, *Majority Forward v. Ben Hill Cty Bd. of Elections*, No. 1:20-cv00266-LAG, ECF No. 12 at 7 (N.D. Ga. Dec. 28, 2020). The Court also found that sustaining the challenges risked disenfranchising thousands of voters, as the process for resolving such disputes can deter eligible Georgians from voting. *See id.*

Georgia law further confirms that the recent spate of residency-based challenges is meritless, as the law does not require a voter to reside at their

permanent in-state residence in order to cast a ballot. *See* O.C.G.A. § 21-2-217 (describing, for example, that one does not lose residency for voting purposes if one moves away temporarily, is away attending college or university, has moved for government service, among other reasons). Thus, any Georgia voter who temporarily relocated during the pandemic to be closer to family or care for someone ill, or who moved for a few months to take college classes, or to work a summer job, or for any other number of perfectly valid reasons, may request to receive mail at any other address—even outside the state—without forfeiting their right to vote in the county where they are registered. There is nothing irregular or unusual about voting while outside of one’s voting jurisdiction; indeed, the availability of absentee voting accommodates exactly that. *See* O.C.G.A. § 21-2-380(b). For precisely this reason, among others, the NCOA registry is a notoriously unreliable means of determining voter eligibility; the database offers no explanation of why any individual requested a change of address, which is critical to determine whether that individual has lost their right to vote in Georgia elections. *See* Ex. 21 at 2 (describing the NCOA registry as an “error-ridden list”), Ex. 22 (claims of voter fraud based on cross-referencing names and addresses of voters with the National Change of Address database were unsubstantiated).

Because the NCOA registry is such an unreliable means of determining voter eligibility, federal law further prohibits states from removing voters from registration rolls on the ground that the individual is suspected to have moved unless strict procedures are followed. Specifically, “[a] State shall not remove the name of a registrant from the official list of eligible voters in elections for Federal office on the ground that the registrant changed residence unless” (1) the State receives written confirmation from the voter of change of address, or (2) the voter fails to respond to a postcard notice, and also fails to vote in at least two subsequent federal general election cycles. 52 U.S.C. § 20507(d).

To endorse Defendants’ challenges would mean that simply being away from home (or receiving mail outside one’s permanent home) establishes probable cause that a voter is ineligible—which is nonsensical in light of the election procedures (i.e., absentee voting) that have been designed specifically to facilitate voting by absent residents. *See* O.C.G.A. §§ 21-2-380(b), 21-2-384. The purpose of these challenges is not to present evidence that the over 364,000 voters who are the victims of these challenges (the “Targeted Voters”) are ineligible, but rather to raise the specter that certain Georgia voters are “illegal” and should not be permitted to vote notwithstanding the absence of any legal support for such claims.

While Defendants’ “landmark” voter challenge efforts have already been rejected by many counties, with more likely to follow, calling more than 364,000 voters’ eligibility into doubt has real (and dangerous) consequences. When Defendants submit these lists of challenged voters, they become part of the public record, and predictably make their way online. *See, e.g.*, Ex. 12 (Cobb County publishing challenge list online). In fact, an individual claiming to work with True the Vote online has already threatened that “[i]f the Georgia counties refuse to handle the challenges of 366,000 ineligible voters in accordance with the law, I plan to release the entire list so America can do the QC.” Ex. 2. In this current political environment, in which cries of voter fraud have reached a fever pitch and have resulted in in doxing, harassment, and death threats, *see supra* at 5, these are serious accusations. Indeed, this is precisely the reason Plaintiffs John and Jane Doe are proceeding in this suit anonymously.

B. The Voter Monitoring Program and Million Dollar Bounty

To complement Defendants’ mass voter challenges, and to ensure that they will be able to “monitor” voters in the Senate Runoff, Defendants are recruiting volunteers to personally watch voters return ballots to drop box locations as part of their effort to implement the “most comprehensive ballot security initiative in

Georgia history.” Ex. 3. Promises such as these are alarming, particularly given True the Vote’s history of harassing voters at the polls. *See* Exs. 6-7.

Along with this live monitoring effort, True the Vote also created a “election integrity hotline” which will be available to “citizen watchdogs” “24 hours a day, seven days a week” to respond and “take action” as necessary. Ex. 3. True the Vote described this effort as “the most aggressive election integrity operation *in American history*.” Ex. 13. As a final touch, True the Vote also announced a program called “Validate the Vote”—an innocuous sounding initiative which allegedly established a \$1 million reward fund to “incentivize” individuals to report instances of “election malfeasance.” Ex. 4.

In sum, Defendants have now published lists of hundreds of thousands of Georgians who they claim are ineligible to vote, recruited volunteers to monitor voters as they return their ballots, urged “citizen watchdogs” to take photos and videos of voters who are exercising their fundamental right to vote under the pretenses of documenting “illegal” activity, and have now offered their supporters a one million dollar bounty as incentive to accuse individuals of voting illegally. The collective impact of these efforts is to expose thousands of lawful Georgia voters to the threat of harassment from Defendants’ supporters who may take it upon

themselves to “catch and expose” what they erroneously perceive to be illegal voting, or to suppress votes outright.

ARGUMENT

To obtain preliminary injunctive relief, Plaintiffs must establish that (1) they are likely to succeed on the merits; (2) they are likely to suffer irreparable injury in the absence of preliminary relief; (3) the balance of equities tips in their favor; and (4) the requested injunction is in the public interest. *See Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). The same standard applies to a temporary restraining order. *See, e.g., Wellons v. Comm'r, Ga. Dep't of Corr.*, 754 F.3d 1260, 1263 (11th Cir. 2014). Each factor weighs strongly in favor of relief in this case.

I. Plaintiffs are likely to succeed on the merits of their claims.

A. Defendants' conduct violates § 11(b) of the Voting Rights Act.

Plaintiffs are likely to prevail on their claim that Defendants have violated § 11(b) of the Voting Rights Act (VRA), codified at 52 U.S.C. § 10307(b). Section 11(b) provides in relevant part: “No person, whether acting under color of law or otherwise, shall intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce any person for voting or attempting to vote.” 52 U.S.C. § 10307(b).

To prove a § 11(b) violation, Plaintiffs must show that Defendants' conduct is objectively intimidating or threatening to voters. The operative words of § 11(b)—

to “intimidate,” “threaten,” and “coerce,” or to attempt to do so—should be given their commonly understood meaning. *See Taniguchi v. Kan Pac. Saipan, Ltd.*, 566 U.S. 560, 566 (2012) (unless otherwise defined in the statute, statutory terms are to be given their “ordinary meaning”). To “intimidate” is to “make timid or fearful” or to “compel or deter or as if by threats,” to “threaten” is to “utter threats against” or “cause to feel insecure or anxious,” and to “coerce” is to “compel to an act or choice” or “achieve by force or threat.”⁴ Thus, by the plain language of the statute, § 11(b)’s protections are not limited to overt acts of violence and pure physical force; it also prohibits acts of intimidation which involve no physical threat of bodily harm. *See, e.g., Cameron v. Johnson*, 262 F. Supp. 873, 897 (S.D. Miss. 1966), *aff’d*, 390 U.S. 611 (1968) (finding threat of criminal prosecution for voting sufficient for voter intimidation); *see also United States v. Nguyen*, 673 F.3d 1259, 1261 (9th Cir. 2012) (finding violation of California criminal voter intimidation statute where defendant mailed letters to voters with Hispanic surnames, warning that their personal information would be made available to organizations that were “against immigration”). More recently, a federal court held plaintiffs had stated a valid claim under § 11(b) where the defendants published names of allegedly ineligible voters,

⁴ Definitions available at <https://www.merriam-webster.com/> (last accessed Dec. 29, 2020).

subjecting those voters to “fear of harassment” from those who might believe or act on defendants’ publication. *League of United Latin Am. Citizens - Richmond Region Council 4614 v. Pub. Interest Legal Found.* (“LULAC”), No. 1:18-CV-00423, 2018 WL 3848404, at *4 (E.D. Va. Aug. 13, 2018).

Defendants’ conduct easily violates the plain language of § 11(b). As in *LULAC*, Defendants have created circumstances that are objectively likely to result in voter intimidation. Not only have some of their challenged lists been published online—indeed, they may be considered part of the public record—threats of doxing and harassment have already begun to emerge. *See* Ex. 2 (individual claiming to work with True the Vote stating that “[i]f the Georgia counties refuse to handle the challenges of 366,000 ineligible voters in accordance with the law, I plan to release the entire list so America can do the QC”); *see also* Ex. 20 (same individual stating: “Ok America. I’m done. We are going to start publishing the list of ineligible GA for all to review.”). In addition to the serious risk of harassment that they now face as a result of Defendants’ conduct, voters on these lists may also now be confused as to whether they are entitled to vote, even if they are a fully eligible and lawful Georgia voter. As one court explained in considering a similar mass challenge effort by the Montana Republican Party to voters based on change of address data, “[o]ne can imagine the mischief an immature political operative could inject into an election

cycle were he to use the [challenge] statutes, not for their intended purpose of protecting the integrity of the people's democracy, but rather to execute a tawdry partisan ploy." *Mont. Democratic Party v. Eaton*, 581 F. Supp. 2d 1077, 1079 (D. Mont. 2008). "Voters might be intimidated, confused, or even discouraged from voting upon receiving notice that their right to vote—the most precious right in a government of, by, and for the people—has been challenged." *Id.* Similarly, just this past week, the Southern District of Georgia refused to grant the Georgia Republican Party's request to segregate certain ballots until those voters' eligibility could be confirmed. *See Order Dismissing Case, Georgia Republican Party v. Raffensperger*, No. 2:20-CV-00135, ECF No. 31. (S.D. Ga. Dec. 18, 2020). As the court indicated at the hearing in that case, segregating ballots could lead to "voter suppression"—that is, "amid the confusion, there might be voters who are confused about what it means to have your vote set aside for possible later questioning." Ex. 25 at 75:15-18. Indeed, that is precisely what has happened and is happening here. This intimidation has been and (absent an injunction from this Court, will continue to be) the wholly predictable consequence of Defendants' actions.

To be sure, Plaintiffs need not show that Defendants intended to intimidate voters to obtain relief. While the VRA's predecessor voter intimidation statute, the Civil Rights Act of 1957, prohibited any person from intimidating voters, or

attempting to intimidate voters, “*for the purpose of* interfering with [the right to vote],” 52 U.S.C. § 10101(b) (emphasis added), Congress *removed* this purpose requirement when it passed § 11(b). This was not an accident or oversight. In testimony before the Senate Judiciary Committee, then-Attorney General Katzenbach explained that § 11(b) “represents a substantial improvement over [the Civil Rights Act],” which now prohibits voting intimidation. Voting Rights, Part 1: *Hearings on S. 1564 Before the S. Comm. on the Judiciary*, 89th Cong. 16 (1965). Attorney General Katzenbach expressly noted that, “under [the VRA] no subjective ‘purpose’ need be shown, in either civil or criminal proceedings, in order to prove intimidation . . . Rather, defendants *would be deemed to intend the natural consequences of their acts.*” *Id.* (emphasis added). The House Report adopted this reasoning, explaining, “unlike [the Civil Rights Act] (which requires proof of a ‘purpose’ to interfere with the right to vote) no subjective purpose or intent need be shown.” H. Rep. No. 89-439 at 30, 89th Congress, 1st Sess. 32 (1965); *see also Cameron*, 262 F. Supp at 884 n.9 (comparing both statutes and concluding the VRA does not require proof of a “purpose” to interfere with the right to vote, as the Civil Rights Act does); *Whatley v. City of Vidalia*, 399 F.2d 521, 526 (5th Cir. 1968) (concluding Congress “broadened the law in 1965 by adopting [§ 11(b)]”). And, in fact, in this case, it cannot be seriously disputed that voter intimidation is the natural

consequence of Defendants’ actions. As another federal court observed when it prohibited the national Republican Party from engaging in similar “ballot security” measures:

[I]t is all but certain that anti-fraud initiatives . . . will result in the disenfranchisement of many individuals whose eligibility is not in question. Some voters—especially in minority districts where the legacy of racism and history of clashes between the population and authorities has given rise to a suspicion of police and other officials—may choose to refrain from voting rather than wait for the qualifications of those ahead of them to be verified, especially if the verification process becomes confrontational.

Democratic Nat’l. Comm. v. Republican Nat’l. Comm., 671 F. Supp. 2d 575, 612 (D.N.J. 2009), *aff’d*, 673 F.3d 192 (3d Cir. 2012).

It should also be noted that Defendants’ activity does not need to actually deter voters from the polls *en masse* to constitute unlawful intimidation. *See United States v. Clark*, 249 F. Supp. 720, 728 (S.D. Ala. 1965) (explaining activity which discouraged voters from voting is actionable under Civil Rights Act, but also noting “[t]he success or failure of intimidation, threats or coercion, is immaterial, since ‘attempts’ are equally proscribed”). Nor do Plaintiffs need to show that Defendants were motivated by discriminatory animus. While many parts of the VRA were intended “to banish the plight of racial discrimination in voting,” *South Carolina v. Katzenbach*, 383 U.S. 301, 308 (1966), Congress explicitly invoked the Elections Clause of the Constitution, not the Fifteenth Amendment, when it passed § 11(b) of

the VRA. *See* H. Rep. No. 89-439 (1965) at 30-31; *see also id.* at 30 (“The prohibited acts of intimidation [under the VRA] need not be racially motivated.”). In light of both the plain text of § 11(b) and this legislative history, multiple courts have held that § 11(b) does not require proof of racial discrimination. *See Willingham v. Cty. of Albany*, 593 F. Supp. 2d 446, 462 (N.D.N.Y. 2006); *Cameron*, 262 F. Supp. 873 at 884 n.9. Nevertheless, as noted above, Defendants must be presumed to know the likely consequences of their acts. And the unavoidable reality is that the false flags of voter fraud upon which Defendants’ mass “challenges” rest are deeply planted in a disgraceful history of racial discrimination in voting, a problem that is especially prevalent in the American South. *See, e.g. Ne. Ohio Coal. for the Homeless v. Husted*, No. 2:06-CV-896, 2016 WL 3166251, at *28 (S.D. Ohio June 7, 2016), *aff’d in part, rev’d in part*, 837 F.3d 612 (6th Cir. 2016) (practices purportedly aimed at combatting voter fraud have “a pernicious history of intimidation of minority voters”).

Ultimately, because Plaintiffs have shown Defendants have engaged in conduct which has had (and will continue to have) an intimidating effect on voters, Plaintiffs are likely to succeed on the merits of their claim. This factor weighs in favor of their request for relief.

B. This Court can issue the requested injunction even if voter challenges are ostensibly permitted by state law.

While the Elections Clause of the Constitution gives states the primary responsibility for setting the “Times, Places, and Manner” of federal elections, it also gives Congress the ultimate power to “at any time by Law make or alter such Regulations . . .” U.S. Const. art. I. § 4. As the Supreme Court explained in *Smiley v. Holm*:

It cannot be doubted that these comprehensive words embrace authority to provide a complete code for congressional elections, not only as to times and places, but in relating to notices, registration, supervision of voting, *protection of voters*, prevention of fraud and corrupt practices, counting of votes, duties of inspectors and canvassers, and making and publication of election returns, in short, to enact the numerous requirements as to procedure and safeguards which experience shows are necessary in order to enforce the fundamental right involved.

285 U.S. 355, 366 (1932) (emphasis added). More recently, the Supreme Court confirmed that “[t]he Clause empowers Congress to pre-empt,” “alter,” or “supplant” state statutes regulating federal elections. Indeed, “[t]he power of Congress over the ‘Times, Places and Manner’ of congressional elections ‘is paramount, and may be exercised at any time, and to any extent which it deems expedient . . .’” in *Arizona v. Inter Tribal Council of Arizona, Inc.*, 570 U.S. 1, 8-9 (2013) (quoting *Ex parte Siebold*, 100 U.S. 371, 392 (1880)).

When Congress passed § 11(b), it explicitly invoked the Elections Clause as the basis for its authority. *See* H. Rep. No. 89-439 (1965) at 30-31 (“The power of Congress to reach intimidation by private individuals . . . derives from article I, section 4”); *see also United States v. Simms*, 508 F. Supp. 1179, 1186–87 (W.D. La. 1979) (holding “11(b), part of which now constitutes § 1973i(c), was enacted as part of Congress’ authority to make ‘necessary and proper’ legislation to their Constitutional power to regulate federal elections under Article I, Section 4 of the Constitution”); *United States v. Sayre*, 522 F. Supp. 973, 976 (W.D. Mo. 1981) (same). As a result, Defendants cannot use Georgia’s voter challenge laws as a shield: if those laws allow for voter intimidation that violates § 11(b), they are preempted. *Teper v. Miller*, 82 F.3d 989, 999 (11th Cir. 1996) (Georgia statute that had the effect of limiting the time for making contributions to candidates for federal office preempted by the Federal Election Campaign Act), *see also Craig v. Simon*, 980 F.3d 614, 617 (8th Cir. 2020) (Minnesota Nominee Vacancy Statute preempted by federal law setting date for federal elections).

To be clear, Georgia law does not endorse the broad, indiscriminate, mass challenges advanced by Defendants, but even if it did, such actions must also comply with federal laws proscribing voter intimidation—and they clearly do not. *See* 42 U.S.C. § 1985(3); 52 U.S.C. § 10307(b); *Inter Tribal Council of Ariz.*, 570 U.S. 1;

cf. United States by Katzenbach v. Original Knights of the Ku Klux Klan, 250 F. Supp. 330, 348 (E.D. La. 1965) (noting that “acts otherwise lawful may become unlawful and be enjoined under [the Civil Rights Act’s voter intimidation provision] if the purpose and effect of the acts is to interfere with the right to vote”).⁵ That state law may provide the mechanism to file voter challenges does not give Defendants the right to file frivolous challenges—much less against over 364,000 Georgians, just two weeks before the state’s Senate Runoff—when the obvious consequence is the intimidation of voters across the state. *See* 52 U.S.C. § 10307(b).

Finally, to find that Defendants’ activity is proscribed and pre-empted by federal law under Congress’s Elections Clause Power, this Court need not find that Congress explicitly outlawed these kinds of challenges. To the contrary, the Supreme Court recently clarified that the normal presumption against pre-emption *does not* apply to the Elections Clause because the sole purpose of the Elections Clause was explicitly to preempt states’ electoral regulations. *See Inter Tribal Council of Ariz.*, 570 U.S. at 13-14. As the Supreme Court explained:

There is good reason for treating Elections Clause legislation differently: The assumption that Congress is reluctant to pre-empt does not hold when Congress acts under that constitutional provision, which

⁵ Because the Civil Rights Act requires a showing of purpose, *see supra* at 15, *Katzenbach*’s invocation of “purpose” is inapplicable to § 11(b), which prohibits activity which has an objectively intimidating effect on voters, regardless of its intended purpose.

empowers Congress to ‘make or alter’ state election regulations. Art. I, § 4, cl. 1. When Congress legislates with respect to the ‘Times, Places and Manner’ of holding congressional elections, it *necessarily* displaces some element of a pre-existing legal regime erected by the States.

Id. at 14. For all of these reasons, the Court should find that Defendants have engaged (or will engage) in unlawful voter intimidation under the VRA and should immediately enjoin the Defendants from intimidating voters. Filing such challenges is a privilege, not a right. Defendants have manifestly abused that privilege.

II. Plaintiffs will suffer irreparable harm in the absence of relief.

In the absence of injunctive relief, Defendants’ voter challenges are likely to irreparably injure Plaintiffs. Infringements or abridgements on the right to vote necessarily constitute irreparable harm because they cannot be remedied after the election. *See, e.g., League of Women Voters of North Carolina v. North Carolina*, 769 F.3d 224, 244 (4th Cir. 2014) (finding irreparable injury based on threatened injury to North Carolina’s minority voters and explaining, “once the election occurs, there can be no do-over and no redress”); *Council of Alternative Political Parties v. Hooks*, 121 F.3d 876, 883 (3d Cir. 1997) (finding irreparable harm based on alleged denial of “voting and associational rights” because those rights “cannot be alleviated after the election”). For that reason, courts have easily found irreparable harm satisfied where Plaintiffs have alleged voter intimidation. As one court explained:

[I]f potential members of the electorate suffer intimidation, threatening conduct, or coercion such that their right to vote freely is abridged, or altogether extinguished, Plaintiff would be irreparably harmed. Further, if some potential voters are improperly dissuaded from exercising their franchise, it is unlikely those voters can be identified, their votes cannot be recast, and no amount of traditional remedies such as money damages would suffice after the fact.

Ariz. Democratic Party, No. 2:16-cv-03752, ECF No. 31 at 21 (D. Ariz. Nov. 4, 2016). The same is true here. Defendants' conduct cannot be adequately remedied after voters have already been made fearful to exercise their right to vote and the January election has come and gone.

Additionally, if the challenges continue, Fair Fight must divert resources to help Georgians as they navigate these challenges and ensure Georgians are not disenfranchised or dissuaded by them. *See* Declaration of Lauren Groh-Wargo, Ex. 24, ¶¶ 13-14. This, too, constitutes irreparable harm. *See, e.g., Ga. Coal. for People's Agenda, Inc. v. Kemp*, 347 F. Supp. 3d 1251 1268 (N.D. Ga. 2018) (finding irreparable harm where "[p]laintiffs' organizational missions . . . will continue to be frustrated and organization resources will be diverted to [address the challenged law]" . . . "[s]uch mobilization opportunities cannot be remedied once lost").

III. The balance of the equities favors Plaintiffs and preliminary relief is in the public interest.

A. Defendants’ conduct undermines electoral integrity.

While Defendants claim to engage in these efforts in the name of “ballot security,” courts across the country have examined these claims of widespread voter fraud in the 2020 General Election and have universally found they are without merit. For this reason, among many others, Defendants’ efforts to catch and expose “illegal voting” in the Senate Runoff in no way ensures “electoral integrity” in Georgia’s elections. Indeed, the state of Georgia has been more aggressive than most other states in purging its voter lists to ensure that ineligible voters do not remain on the voter registration rolls. *See* Ex. 14 (describing Georgia’s purge of 500,000 voters in 2018 as one of the largest purges in American history).

History shows that voter intimidation efforts themselves compromise the integrity of our nation’s elections. Certain “ballot security” efforts, much like Defendants’ mass challenges, “present[] an ongoing threat to the participation of minority individuals in the political process, and continue[] to pose a far greater threat to the integrity of that process than the type of voter fraud the [Defendant] is prevented from addressing by [engaging in ballot security efforts].” *Democratic Nat’l Comm.*, 671 F. Supp. 2d at 578-79. Here, too, Defendants’ vigilante efforts squarely do not ensure electoral integrity—they undermine it.

B. The public interest is advanced by ensuring voters can participate in elections free from intimidation, as federal law guarantees.

The temporary relief that Plaintiffs seek would enforce federal law securing the right to vote, which clearly advances the public interest. “[V]oter intimidation and coercion [are] . . . obvious harm[s] that federal law strongly and properly prohibits.” *United States v. Madden*, 403 F.3d 347, 352 (6th Cir. 2005) (Boggs, C.J., concurring in part and dissenting in part); *see also Russell v. Lundergan-Grimes*, 784 F.3d 1037, 1051 (6th Cir. 2015) (voters have a “right against voter intimidation”—“the right to cast a ballot free from threats or coercion”). The constitutional interest at stake in this litigation is the voters’ “most precious” “right . . . , regardless of their political persuasion, to cast their votes effectively” and free of intimidation. *Williams v. Rhodes*, 393 U.S. 23, 30-31 (1968). The interest in “protecting voters from confusion and undue influence” is “compelling,” *Burson v. Freeman*, 504 U.S. 191, 199 (1992) (plurality opinion of Blackmun, J.), and laws that protect voters from intimidation safeguard the “fundamental political right . . . preservative of all rights,” *Yick Wo v. Hopkins*, 118 U.S. 356, 370 (1886).

To ensure that elections in the United States would be free from harassment and intimidation, Congress created specific tools—the laws that Plaintiffs invoke here. These laws were not written to create illusory rights; they were written to ensure that the intimidation and violence that plagued our nation’s elections

throughout the nineteenth and twentieth century did not persist into our future. Defendants cannot be permitted to engage in conduct that threatens the most basic right in American democracy. “[O]ther rights, even the most basic, are illusory if the right to vote is undermined.” *Wesberry v. Sanders*, 376 U.S. 1, 17 (1964).

CONCLUSION

For the foregoing reasons, Plaintiffs’ motion for a temporary restraining order should be granted.

Dated this 29th day of December, 2020.

Respectfully Submitted,

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**Pro hac vice motion pending*

***Pro hac vice motion forthcoming*

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Exhibit 1

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TRUE THE VOTE PARTNERS WITH GEORGIANS IN EVERY COUNTY TO PREEMPTIVELY CHALLENGE 364,541 POTENTIALLY INELIGIBLE VOTERS

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True the Vote Partners with Georgians in Every County to Preemptively Challenge 364,541 Potentially Ineligible Voters

*Citizen-led Effort Seeks to Confirm All Votes Cast in U.S. Senate Runoff Elections are Legal, While Ensuring
Any Voter Challenged Has Full Opportunity to Prove Their Voting Eligibility*

ATLANTA, Georgia – True the Vote announced today it is submitting 364,541 Elector Challenges on behalf of Georgia voters representing all 159 counties. An Elector Challenge is a unique feature in Georgia law (GA. CODE ANN. § 21-2-230). It allows a voter to challenge the eligibility of any other voters in his or her county if probable cause exists to show that the challenged voter does not meet the qualifications legally required to cast a ballot. It represents one of the few vehicles that states have to update voter rolls ahead of an election without compromising any legitimate voters' right to have their vote counted.

“Ongoing debates about the November election throughout the country have Americans focused intently on improving the integrity of our elections and restoring the faith of voters. Today we assisted concerned Georgia voters in taking a stand for the sanctity of every legal vote,” **said Catherine Engelbrecht, the founder and president of True the Vote.** “It is our hope that this historic challenge marks the beginning of the great awakening of American voters to serve our democracy by getting involved in the process.

“We are proud to be working alongside patriots from across the Peach State; Derek Somerville of Forsyth county and Mark Davis of Gwinnett county who have been leading citizen efforts to highlight issues in Georgia’s voter rolls, Mark Williams of Gwinnett County who coordinated among eight print shops to get written challenges printed and delivered within 48 hours, and Ron Johnson of Jackson County and James Cooper of Walton County, who led the charge in recruiting hundreds of volunteer challengers across the state,” **Engelbrecht continued.** “Everyone pitched in. This is the power of citizen engagement and the core of what True the Vote exists to do in our pursuit of free, fair and secure elections.”

Today’s landmark coordinated challenge is the result of True the Vote’s voter registry research, which identified 124,114 registered voters who no longer reside in the county of record and 240,427 voters who no longer reside in the state of Georgia, according to filings with the United States Postal Service National Change of Address (NCOA) and other supporting commercial databases. True the Vote’s research was performed uniformly across all counties, without regard to any demographic or voting history.

“Filing the challenges preemptively, before absentee ballots are opened, will help ensure only legal, eligible votes are counted in Georgia’s January 5 runoff elections,” **Engelbrecht concluded.**

According to Georgia law, an Elector Challenge must be filed before a vote is cast. Once a vote has been cast, or in the case of absentee ballots, once the ballot has been removed from its signed envelope, there is no way to identify which ballot belongs to the ineligible party.

In fact, the best way to ensure only eligible voters are voting in the upcoming runoff elections is through Elector Challenges. States must comply with National Voter Registration Act standards in cleaning their voter rolls. Under Section 8 of the National Voter Registration Act, states are required to conduct a general voter registration list maintenance program that makes a reasonable effort to remove ineligible voters. The NVRA’s standards limit removal of names only to very narrow conditions, with ineligible names remaining on the list over an extended period of time.

An Elector Challenge does not remove voter names from the registry. Voters who have been challenged will have the opportunity, via GA. CODE ANN. § 21-2-230 to prove eligibility and still have their vote counted in the upcoming runoff election.

“I’ve said since Election Day that I must follow the law in the execution of our elections, and I’ve also encouraged Georgians to report any suspected problems for my office to investigate,” **said Georgia Secretary of State Brad Raffensperger**. “Though federal law restricts our ability to update our voter registration lists, the Elector Challenge is a vehicle under our law to ensure voter integrity. I support any effort that builds faith in our election system that follows the proper legal procedure.”

#

True the Vote (TTV) is an IRS-designated 501(c)3 voters’ rights organization, founded to inspire and equip volunteers for involvement at every stage of our electoral process. TTV empowers organizations and individuals across the nation to actively protect the rights of legitimate voters, regardless of their political party affiliation. For more information, please visit www.true-the-vote.org.

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Exhibit 2

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Crusade for Freedom

@Crusade4Freedom



We just prospectively challenged the eligibility of 360,000 voters in GA.

Largest single election challenge in Georgia and American history.

[#eyesonGA](#)

[#validatethevoteGA](#)



Crusade for Freedom

@Crusade4Freedom



If the Georgia counties refuse to handle the challenges of 366,000 ineligible voters in accordance with the law, I plan to release the entire list so America can do the QC.

[#validatethevoteGA](#) [#eyesonGA](#)

12:46 PM · Dec 20, 2020 · Twitter for iPhone

Exhibit 3

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TRUE THE VOTE LAUNCHES GEORGIA ELECTION INTEGRITY HOTLINE AS PART OF THE MOST COMPREHENSIVE BALLOT SECURITY EFFORT IN GEORGIA HISTORY

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True the Vote Launches Georgia Election Integrity Hotline as Part of the Most Comprehensive Ballot Security Effort in Georgia History

Election Integrity Hotline to Serve as Important Resource for Georgia Voters and Volunteers in Senate Runoff Elections

ATLANTA, Georgia – True the Vote today launched a Georgia Election Integrity Hotline to assist Georgia voters and volunteers during the Senate runoff elections. The hotline offers live, bilingual support 24 hours a day for Georgians who have questions or concerns, or who have witnessed election fraud, manipulation or illegal action taking place. Voters can fill out an online report available at **GAValidateTheVote.org** or call the hotline at 855-702-0702.

“True the Vote is working around the clock to provide critical tools and resources for Georgia voters as we head

into the final days before the runoff elections,” said **True the Vote Founder and President Catherine Engelbrecht**. “Our Georgia Election Integrity Hotline will serve as an important resource to voters, volunteers, and election workers who believe in ensuring the law is upheld throughout our election process. Anyone with questions or concerns during the election can call our live, bilingual voter hotline or submit a report online and we’ll be available 24 hours a day, seven days a week to respond, assist, and take action as necessary. We are all citizen watchdogs and we are asking voters to join us as we focus our ‘Eyes On Georgia’ in the most comprehensive ballot security initiative in Georgia history.”

This week, True the Vote also announced its **partnership with the Georgia Republican Party**. In addition to the Georgia Election Integrity Hotline, True the vote will assist with the Senate runoff election process, including publicly available signature verification training, monitoring absentee ballot drop boxes, and other nonpartisan election integrity initiatives.

#

True the Vote (TTV) is an IRS-designated 501(c)3 voters’ rights organization, founded to inspire and equip volunteers for involvement at every stage of our electoral process. TTV empowers organizations and individuals across the nation to actively protect the rights of legitimate voters, regardless of their political party affiliation. For more information, please visit **www.truehevote.org**.

Exhibit 4

RETRIEVED FROM DEMOCRACYDOCKET.COM

TRUE THE VOTE LAUNCHES “VALIDATE THE VOTE” INITIATIVE AND WHISTLEBLOWER COMPENSATION FUND TO ENSURE ELECTION VALIDITY, PROCESS INTEGRITY

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True the Vote Launches “Validate the Vote” Initiative and Whistleblower Compensation Fund to Ensure Election Validity, Process Integrity

Establishes Fund in Excess of \$1 Million to Incentivize Election Malfeasance Reporting; Takes Steps to Resolve Illegal Actions Through Litigation and Ensure Final Vote Tally is Valid to Maintain Public Confidence in U.S. Election System

HOUSTON, Texas – True the Vote, the country’s largest voters’ rights organization formed to prevent election fraud, today launched “Validate the Vote,” an initiative to provide that the 2020 election returns reflect the principle of “one vote for one voter.” The initiative, led by Catherine Engelbrecht, aims to protect the integrity of our nation’s electoral system and ensure public confidence and acceptance of election outcomes critical to American democracy.

“Unfortunately, there is significant tangible evidence that numerous illegal ballots have been cast and counted in the 2020 general election, potentially enough to sway the legitimate results of the election in some of the currently contested states,” said Englebrecht. “ True the Vote is stepping up to provide the resources needed that will ensure voters, election workers, and volunteers who are observing the extended ballot counting process – and seeing firsthand the illegal actions taking place – have the resources they need to document and report the malfeasance with the confidence that these issues will be pursued by every available legal channel.

As of today, True the Vote’s **Election Integrity Hotline** (855-702-0702) has received thousands of calls reporting alleged incidents of fraud. Additionally, multiple True the Vote election workers working alongside independent election workers across contested states have seen firsthand examples of election officials refusing to obey state election laws and counting votes illegally. These incidents include ballots being counted after deadlines, election workers refusing to recognize challengers who seek to contest a ballot, or similar. The establishment of the Whistleblower Compensation Fund will enable individuals with critical information to come forward and be supported.

“True the Vote aims to facilitate a discussion that reflects credible facts, evidence, and demonstrably actionable incidents of voter fraud. The current media reporting environment is rife with sensationalism that threatens the ability to quickly and accurately determine and bring focus to where actual issues have occurred and could undermine confidence in this election and, fundamentally, the free election system that underpins the Democracy. We need a result that tells us whether the election is legitimate and that every vote is validated,” added Englebrecht. “The vote integrity issues seen this election cycle, in particular, have largely been fueled by efforts to radically expand mail-in voting, which created numerous opportunities for voter fraud that does not exist with in-person voting. In addition, there are numerous statistical anomalies that must be reconciled to restore confidence in the vote.”

The integrity of elections is the core of our Democratic Republic. Regardless of the outcome, the legitimacy of our leaders, the ability to govern, and the preservation of our election system are at stake. Validate the Vote aims to support the constitutional rights of every voter and expose, fight and remedy fraud where it has occurred.

Please call the **Election Integrity Hotline** at 855-702-0702 to report voter fraud or visit **ValidatetheVote.us** for more information, report voter fraud or contribute.

***True the Vote** (TTV) is an IRS-designated 501(c)3 voters' rights organization, founded to inspire and equip volunteers for involvement at every stage of our electoral process. TTV empowers organizations and individuals across the nation to actively protect the rights of legitimate voters, regardless of their political party affiliation. For more information, please visit www.truethevote.org.*

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Exhibit 5

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Eveler, Janine

From: Absentee
Sent: Friday, December 18, 2020 2:29 PM
To: Eveler, Janine
Subject: FW: Section 21-2-230 Elector Challenge
Attachments: COBB_county.csv; COBB_county.xlsx

Sincerely,

The Absentee Team
770/528-2684

www.cobbelections.org

From: GA Elector Challenge [gaelectorchallenge@truethevote.org]
Sent: Friday, December 18, 2020 2:14 PM
To: info@cobbelections.org
Subject: Section 21-2-230 Elector Challenge

December 18, 2020

Cobb County
736 Whitlock Ave., Ste.400
Marietta, GA 30064

VIA EMAIL

RE: Elector Challenge

Please accept this letter as a challenge to the attached electors' eligibility to vote in the January 5, 2021 Election, pursuant to Georgia Code § 21-2-230.

Available data from the United States Postal Service National Change of Address (NCOA) and other commercially available sources demonstrates probable cause to believe these individuals no longer reside where they are registered to vote. In fact, these electors appear to have permanently established other residence, as reflected in their change of address, to residential addresses outside of the Georgia county in which they are currently registered to vote.

Georgia Code § 21-2-217 requires that if a person removes to another state, or to another county or municipality within the state of Georgia, with the intention of remaining there an indefinite time and making another state, county, or municipality such person's place of residence, such person shall be considered to have lost their residence in Georgia, or in the former county or municipality, notwithstanding that such person may intend to return at some indefinite future period.

Elector voter registration numbers, registered addresses, and address changes have been provided by attachment as CSV and XML spreadsheets. If you would prefer to receive these files in another format, please let me know.

Additionally, hard copies of individual challenges are being delivered to your office under separate cover.

Respectfully,

Pamela F Reardon

Voter ID: 03615023

Cobb County

4050 Coyte Dr

Marietta, GA 30062

CAUTION: This email originated outside Cobb County Government. Please exercise caution when opening links/attachments in this email .

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Exhibit 6

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Is True the Vote Intimidating Minority Voters From Going to the Polls?

Poll-watching organization volunteers have been accused of being aggressive.

By **DAN HARRIS and MELIA PATRIA**

November 1, 2012, 12:27 PM • 13 min read

H O N E S T Y I N E L E C T I O N S



'True the Vote' Volunteers Intimidating Voters?

Grassroots organization believes voter fraud is a sweeping national epidemic, but is it?

Nov. 2, 2012 — -- Teresa Sharp, a homemaker and grandmother, has lived in Hamilton County, Ohio, for nearly 30 years. A former poll worker and a Democrat, she says she has voted in every election since she was 18.

"Voting to me is, like, sacred, like my children," she said. "It lets me at least have an opinion about how I want to live in America."

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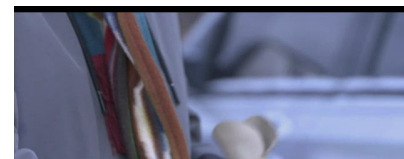
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ABC News Live

Sharp is keenly aware that her vote counts. Hamilton County, which includes Cincinnati, is hotly contested in a swing state that could decide this extraordinarily close presidential race. So naturally, Sharp was surprised when she received a letter in the mail that said, "You are hereby notified that your right to vote has been challenged by a qualified elector under RC 3503.243505.19."



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"Nobody's ever challenged me, especially my right to vote," Sharp said. "I'm confused. I'm concerned and pretty darn mad."

Her husband, Herbert, her sons, Christopher and Herbert Jr., her daughters, Aseneth and Eleanor, and her elderly aunt, all residents at the same family home in Hamilton County, also received a similar letter.

"I thought to myself that there's somebody out here trying to scare people into not voting," she said.

The letter came from the county board of elections, and was prompted by an official challenge submitted by a member of The Ohio Voter Integrity Project, a local affiliate of a grassroots organization called True the Vote. The organization believes that voter fraud is a sweeping national epidemic and has enlisted and trained an army of citizen volunteers to challenge voters in the name of what they call "voter integrity."

Their promotional and recruitment videos talk about "willful, fraudulent behavior," and, "people voting who are not who they said they were." They said they address the important need to keep elections free and fair for all citizens.

The goals sound admirable, and even patriotic, but Sharp and other Democrats say True the Vote is less about voter integrity than voter suppression, and is specifically meant to intimidate minorities, low-income people and students who might vote for President Obama.

"I was like, 'Whoa, why are they targeting my family? What did we do?'" said Sharp.

While it is legal in 46 states for any citizen to challenge another citizen's right to vote, election officials said, it very rarely happens.

But this election cycle, the challenge against Sharp was among 1,077 citizen challenges received by the Hamilton County Board of Elections alone. The challenge against Sharp incorrectly cited her property as a vacant lot, but after a hearing Hamilton County election officials threw it out.

Attempts to reach Marlene Kocher, the member of the local Integrity Project who challenged Sharp, were not successful. Other True the Vote volunteers declined to speak with us on camera.

However, True the Vote founder Catherine Engelbrecht, who travels the country speaking about voter fraud, agreed to speak with "Nightline" in her first national television interview. Engelbrecht denied the allegations that her organization was attempting to intimidate voters from the polls.

"Our goal really is to encourage citizens to get involved in the process," she said. "It has been a continued shock and disappointment, frankly, to hear these allegations that continue to be leveled at us. It's unfortunate that there are those that have tried to take this and twist it into something that it's not."

Engelbrecht started True the Vote three years ago after serving as a poll watcher in Houston, where she said she witnessed things that disturbed her.

"All the way through to what can only be called voter fraud," she said. "We saw people who would come in with multiple registrations. We saw people who would come in and want to vote but their name had already been signed in the poll book. We recognized there's something not quite right."

Engelbrecht said that voter fraud can have a major impact on the outcome of an election.

"There have been many elections in the not-too-distant past that have been within such a tight margin that it really makes it very clear: Every vote counts," she said. "So you really begin to ask yourself, 'How much fraud's OK?'"

"If there's a way to improve the process, and if there's a way for citizens to serve in the process and be a part of that contribution, then that's what we need to do," she added.

To stamp out voter fraud, True the Vote launched "integrity projects" all over the country by recruiting volunteers to start their own independent local chapters. True the Vote provides the groups with proprietary software to vet voter registrations, looking for inaccuracies that might be challengeable. Engelbrecht said the software compares the voter roll against the Social Security death index, property tax records and other public records.

"True the Vote is not turning in challenges," she said. "Citizen groups and private citizens across the country are using our software. ... The role, then, of a citizen volunteer is to look through. If you find anything, flag it and turn it over to the county officials."

Engelbrecht insisted that the organization is all about cleaning up voter rolls and denied that there is any political agenda behind the challenges.

"We do not attach party to anything that we do inside of the research," she said.

Teresa Sharp disagreed that challenging voters like her helped to keep elections fair.

"Right," she said. "Just the poor black neighborhoods. right? Everybody else is clean... So we're the dirty ones, we're the fraudulent folks."

While she agreed the challenge did not intimidate her, she expressed concern for others who might be challenged and not understand what it

meant.

Election officials in Hamilton County agreed that the challenge against Sharp was ill-placed and that the challenger was clearly wrong in her research asserting Sharp's home was a vacant lot.

Alex Triafilou, the Republican chair of the Hamilton County Board of Elections, said the local Integrity Project is doing a public service.

"They're reviewing the county and making sure our voter registration roles are accurate, and we think that's an important public service," he said.

Timothy Burke, the chairman of the Hamilton County Board of Elections and a Democrat, acknowledged that some of the challenges brought to the office correctly identified places where, say, a trailer park no longer existed. But others, he said, targeted college students who didn't list their dorm room or people who were mobile or lived in low-income areas -- and the majority of challenges were thrown out.

"Voter fraud has just not historically been a problem here in Hamilton County," Burke said. "I just think it's a smoke screen for their real effort, and that is to intimidate and prevent Democrats, and especially African-American Democrats, from voting."

Burke sees the challenges in context of what he said is a greater effort in Ohio to make voting more difficult, citing legislative moves to limit early voting days and pointing out billboards that went up in minority neighborhoods in several Ohio cities that said, "Voter Fraud is a Felony," with warnings of stiff fines and jail time.

"They're there for one purpose and that's to scare voters," he said. "There is a real concern that some voters have been confused, some voters have been intimidated, and the possibility that they might not show up because of it is a real shame."

Sharp also pointed out the billboards, and brought "Nightline" to one near her home.

"It makes me think back in the '20s and '30s and '40s when everything was segregated," she said, "you know, white people over there, and then black folks and everybody over there."

The billboard company in Cincinnati said the billboards were paid for by an anonymous family fund that wished to remain anonymous, and the billboards have since come down. "Nightline" found no evidence True the Vote was associated with the billboards.

Engelbrecht adamantly denied that True the Vote targets people based on race.

"Teresa Sharp has nothing to worry about because our citizens go into this race-blind, party-blind," she said. "This is literally nothing more than citizens doing what is legally allowed, what anyone can do in an effort to better our overall process and there is nothing more to it than that."

Engelbrecht conceded that the group's software program flags addresses with a high number of registered voters. When asked if the system was biased against people who live in multi-generational homes, she said, "That's the way we segment data just because it is an all-volunteer group that has only limited time."

In a video of an online training session for True the Vote volunteers, obtained by "Nightline" from an activist, an instructor said, "We have to exercise some discretion as we go through this too. You get the wrong person at the keyboard with this tool, if they were doing it for the wrong reasons they could get everyone in trouble. ... All they have to do is find a single judge that is sympathetic to their cause and it shuts us down in every state. So we have to be really careful about who we talk to and what we explain to people about how this thing works."

The instructor said the tool allows volunteers to vet across state lines, processing up to 3,000 voter registrations in 20 hours.

"If you have a friend that you know well, and you want to get him involved, I would just speak in generalities, don't go into real specifics," he said. "Because, like you, we would vet that person. They would sign a non-disclosure."

In response, Engelbrecht said that the remarks were taken out of context and were presented during the course of a longer conversation about the use of the group's publicly available research.

In a statement, she said, "True the Vote's research template was designed to identify potential inaccuracies in the voter rolls and support challenges or concerns by citizens so they may directly participate in the citizen challenge process. This important legal process was designed to protect voters from fraud and abuse, and relies on citizens to ensure the integrity of our voter rolls. Given the enormous value of this work, we, as an organization, take reasonable steps to help prevent the misuse of our data that supports the noble efforts of well-intended citizens who stand in the gap so every American vote is counted."

[Read the full statement HERE](#)

Engelbrecht insisted True the Vote is nonpartisan, and the volunteer training videos on its website do say that.

But there is evidence to suggest otherwise. Engelbrecht runs a Tea Party group in Houston and True the Vote recently donated \$5,000 to a Republican organization.

Engelbrecht told "Nightline" the donation was a mistake, and said that her Tea Party group and True the Vote are two separate organizations. But True the Vote organizes national summits where members have made clear they want to see President Obama out of office.

"I'm not being over the top here: I fear the Obama gang is setting themselves up to steal the elections, if possible," one volunteer leader said.

But again, Engelbrecht denied that the group had a political agenda.

"Our agenda is to make sure that the election process is as free and as fair as it can be for all American voters," she said. "To the extent that the administration is standing in the way of that, I take exception."

True the Vote has said it is mobilizing one million poll watchers to go to voting places across the country. The problem, critics said, is that those watchers are mostly white and many of the polling places they target serve mostly black or minority voters.

In 2010, people in Texas complained that poll watchers who were affiliated with True the Vote were being overly aggressive and intimidating. According to Douglas Ray, the senior assistant county attorney for Harris County, Texas, the county where Engelbrecht lives, there were several complaints of True the Vote volunteers being disruptive to voters.

Ray said he went to the True the Vote offices and saw push pins on a map that he interpreted as the group's intention to target specific minority areas. This year, he said, his office has already received complaint calls about True the Vote volunteers at early voting locations.

The county attorney's office directed "Nightline" to an early voting location in Houston where there were Caucasian poll watchers in a predominantly African-American neighborhood, where citizens have already begun to complain.

Despite all the controversy the group has kicked up, study after study -- by the U.S. Department of Justice, investigative journalists and a bipartisan commission -- has found voter fraud to be virtually non-existent.

But Engelbrecht said her group's observations suggested there was "room for improvement." At last count, she said, her organization turned in 33 names to counties, and True the Vote was looking into close to 2,000 registrations that have almost identical matches. Although those might appear to be low numbers in context of the greater population, she said the 2000 presidential election was decided by 537 votes in Florida.

But Ray said voter fraud is not a current threat to democracy.

"I think that she is looking at things and perceiving a problem where a problem really doesn't exist," Ray said.

Whether Engelbrecht is dreaming it up or not, thousands of people agree with her and True the Vote volunteers will be showing up at polling places across the country this Election Day.


But Teresa Sharp is not deterred. In fact, she recently voted early in Hamilton County without incident.

"Too many people sacrificed their life for me to have that opportunity," she said.

True the Vote Founder Catherine Engelbrecht's full statement to ABC**News:**

"The remarks you refer to were taken out of context and are presented during the course of a longer conversation about the use of our publicly-available research. True the Vote's research template was designed to identify potential inaccuracies in the voter rolls and support challenges or concerns by citizens so they may directly participate in the citizen challenge process. This important legal process was designed to protect voters from fraud and abuse, and relies on citizens to ensure the integrity of our voter rolls. Given the enormous value of this work, we, as an organization, take reasonable steps to help prevent the misuse of our data that supports the noble efforts of well-intended citizens who stand in the gap so every American vote is counted.

We recognize that maintaining voter rolls can be a highly charged issue, full of fodder for false claims of impropriety -- and we want no part of it. The data, and our volunteers' work with it, should be treated with utmost integrity; at no time being used for partisan or personal purposes."

 Comments (76)



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Exhibit 7

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The Washington Post

Democracy Dies in Darkness

Tea party-linked poll watchers rejected in Ohio county

By **Ed O'Keefe**

November 6, 2012 at 12:11 p.m. EST

COLUMBUS – Local volunteers with the tea party-linked organization True the Vote were rejected as poll watchers by county officials Tuesday amid questions about how the volunteers applied to monitor the polls.

Ohio law permits groups of at least five candidates to assign poll observers, but candidates backing the group withdrew their support when charges surfaced Monday that candidate names had been falsified or copied on forms requesting observer status, according to the Columbus Dispatch.

Catherine Engelbrecht, president of True the Vote, told the Dispatch that the rejection was “a final, desperate attempt to deny citizens their right to observe elections.”

“The Ohio Democratic Party has projected paranoia on an international scale by promoting the idea that concerned citizens would dare observe elections to ensure a fair process,” Engelbrecht said in a statement. “If the Ohio Democratic Party thinks True the Vote-trained poll watchers are legion, wait until it meets our lawyers.”

True the Vote volunteers in Columbus contacted by The Washington Post on Tuesday morning did not return requests for comment.

In a recent interview with The Post, Engelbrecht rejected suggestions that her Houston-based group – which has reportedly recruited millions of volunteers – would attempt to intimidate or attempt to raise questions about the validity of African-American and Latino voters.

“Contrary to various interest groups’ statements, True the Vote has never been investigated or charged with intimidating voters,” Engelbrecht told The Post. “A poll watcher’s sole purpose is to monitor the process of our elections. They are trained to never speak with voters, only authorities within the poll.”

But people who complained to the Franklin County Board of Elections about the group said True the Vote volunteers were told at recent training sessions to use cameras to intimidate voters when they enter the polling place, record their names on tablet computers and attempt to stop questionably qualified voters before they could get to a voting machine, the Dispatch reported.

A Franklin County Board of Elections spokesman did not immediately return requests for comment.



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Exhibit 8

RETRIEVED FROM DEMOCRACYDOCKET.COM

GOP activist's voter challenges raise questions in Georgia

By BILL BARROW today



ATLANTA (AP) — When a conservative organization announced plans this month to launch an election integrity operation in Georgia, the group's news release included a high-profile name: the chairman of the state's Republican Party. Less than a week later, the same group announced plans to challenge the eligibility of hundreds of thousands of Georgia voters.

To Democrats in the state and voting rights advocates, it was verification of what they have long argued — that the Georgia GOP is supporting efforts to suppress voting in one of the nation's newest political battlegrounds. It also raised questions about the legality of any coordination between the state party and the group True the Vote, charges the organization's founder disputes.

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A relatively obscure conservative group, True the Vote is among the numerous political organizations descending on Georgia ahead of a pair of high-stakes Senate run-offs on Jan. 5. The outcome of the contests will determine which party controls the Senate as President-elect Joe Biden launches his administration.

On Dec. 14, True the Vote announced it was launching an “election integrity” campaign in Georgia as “partners with (the) Georgia GOP to ensure transparent, secure ballot effort” for the Senate runoffs. The release featured a quote attributed to Georgia Republican Chairman David Shafer: “The resources of True the Vote will help us organize and implement the most comprehensive ballot security initiative in Georgia history.”

READ MORE:

- [Loeffler's wealth, Trump loyalty face scrutiny in Georgia](#)
- [In Georgia, Warnock brings faith and activism to the arena](#)
- [Georgia governor blasts attacks on family over election](#)

The Dec. 14 release described True the Vote’s effort as “publicly available signature verification training, a statewide voter hotline, monitoring absentee ballot drop boxes and other election integrity initiatives.” Days later, the group said it was challenging the eligibility of more than 360,000 voters spread across all 159 Georgia counties. The state GOP was not featured in that disclosure.

Campaign finance law forbids political parties from accepting contributions — including non-cash, “in-kind” contributions of goods and services — from any corporation. Not-for-profits with the tax status granted to True the Vote also have strict limits on the kind of activities they conduct, essentially allowing for generic voter registration and turnout drives.

Adav Noti, an elections law and campaign finance law expert at the nonpartisan Campaign Legal Center in Washington, said the law means True the Vote “absolutely cannot collaborate with a political party on voter registration or get-out-the-vote efforts or anything related to those areas in a campaign.”

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True the Vote founder Christine Engelbrecht, a former Texas tea party leader, disputes that, saying there is no “coordination” with Shafer or any of his staff. She said training materials her group is providing for poll workers, for example, are publicly available and the state GOP is not involved in any training sessions with True the Vote. She acknowledged, though, that some poll workers who get True the Vote materials could end up volunteering for the GOP as poll workers.

Georgia Republican Party officials, including Shafer, did not respond to multiple inquiries from The Associated Press about the party’s relationship with Engelbrecht.

True the Vote was founded in 2009 and has a reputation for training conservative poll watchers to be aggressive in highlighting potential voter fraud. Voter fraud in the United States is rare, and there is no evidence of any significant problems in this year’s presidential election. That has been confirmed in Georgia by Gov. Brian Kemp and Secretary of State Brad Raffensperger, both Republicans, and nationwide by officials including Attorney General William Barr.

But much of Engelbrecht's work in the weeks before the Georgia runoffs is focused on identifying registered voters her group argues are not eligible. She said her group's citizen-led challenges to tens of thousands of Georgia voters are based on residency records.

Lauren Groh-Wargo of Fair Fight Action, a political organization started by Georgia Democrat Stacey Abrams after she lost the 2018 governor's race, called it "a Hail Mary attempt by Republicans to suppress the vote two weeks out from an election, with people already voting."

Full Coverage: [Election 2020](#)

Early voting in Georgia began Dec. 14, the same day True the Vote said it had formed an alliance with the state Republican Party. Both parties expect close races between Republican Sens. David Perdue and Kelly Loeffler and their respective Democratic challengers, Jon Ossoff and Raphael Warnock, reflecting Georgia's new status as a battleground state. Biden became the first Democrat to carry Georgia in a presidential race since 1992, edging President Donald Trump by just 12,000 votes out of about 5 million cast.

Elections officials nationwide routinely conduct maintenance of voter rolls — removing voters who have moved or died or have been inactive for certain periods of time — between election seasons. But federal law prevents those practices so close to an election. True the Vote, however, is taking advantage of a state law that allows individual voters to challenge another voter's eligibility. A state court in Fulton County, which includes most of the city of Atlanta, ruled earlier this year that federal restrictions on changing voter rolls within 90 days of an election overrides state law. That ruling, however, doesn't necessarily apply statewide.

In at least one populous Georgia county — suburban Atlanta's Cobb — the local elections board already has rejected True the Vote's challenges. But in Muscogee County, home to Georgia's second-largest city, Columbus, the board found "probable cause" for the complaints. That means the affected Muscogee voters — Groh-Wargo said they number several thousand — could have to cast provisional ballots and then prove their eligibility to have those ballots counted.

Engelbrecht said her group has filed challenges in as many as 85 counties.

She insisted the voter challenges are separate from True the Vote operations that might overlap with the GOP's election-security program. She said neither Shafer nor any of his subordinates played any role in corraling the Georgia voters who filed the challenges with local elections officials.

She added that no money has changed hands between the party and True the Vote.

Noti, the elections law expert, said federal law is clear that "a contract or an agreement or an exchange of money is not required for coordination to be established."

It's not the first time that Engelbrecht's activities have drawn scrutiny. She spent years fighting with the IRS to win her group's tax-exempt classification. And most recently, True the Vote declared itself aligned with Trump's reelection campaign and its multistate legal effort to overturn the general election results. That drew considerable financial support, including top Trump donor Fred Eshelman, according to Bloomberg News.

But after True the Vote ended several of its lawsuits in battleground states, including Georgia, Eshelman filed suit against Engelbrecht's organization to recover a \$2.5 million contribution, alleging it had failed to investigate and expose any election fraud.

Exhibit 9

RETRIEVED FROM DEMOCRACYDOCKET.COM

'It Has to Stop': Georgia Election Official Lashes Trump

Gabriel Sterling, a voting system official in Georgia, harshly criticized the president for failing to condemn threats of violence against people overseeing the election in his state.

By Richard Fausset

Published Dec. 1, 2020 Updated Dec. 7, 2020

ATLANTA — In one of the most striking rebukes to President Trump since he launched his baseless attacks on the American electoral process, a top-ranking Georgia election official lashed out at the president on Tuesday for failing to condemn threats of violence against people overseeing the voting system in his state.

"It has to stop," Gabriel Sterling, a Republican and Georgia's voting system implementation manager, said at an afternoon news conference at the state Capitol, his voice shaking with emotion. "Mr. President, you have not condemned these actions or this language."

He added: "This is elections. This is the backbone of democracy, and all of you who have not said a damn word are complicit in this. It's too much."

Mr. Sterling's outburst of anger and frustration came amid a sustained assault on Georgia's election process by Mr. Trump as he seeks to reverse his loss to his Democratic rival, former Vice President Joseph R. Biden Jr. Mr. Sterling, who previously said he had received threats himself, said that threats had also been made against the wife of his superior, Brad Raffensperger, the Republican secretary of state.

"Mr. President, it looks like you likely lost the state of Georgia," Mr. Sterling said. He added that the president needed to "step up" and say, "Stop inspiring people to commit potential acts of violence. Someone is going to get hurt, someone is going to get shot, someone is going to get killed. And it's not right."

Mr. Sterling also called on the state's two Republican senators, David Perdue and Kelly Loeffler, to condemn the rhetoric that he said was getting dangerously out of hand. The two senators, both Trump loyalists, have called for Mr. Raffensperger to resign.

As Mr. Trump hurls false claims of fraud in Georgia, a number of lawsuits filed by conservatives in state and federal courts are seeking to decertify the results. The second of two recounts requested by the Trump campaign is in progress and is expected to wind up

Wednesday. And the Georgia Republican Party has descended into a state of virtual civil war as some of its most powerful players maneuver and malign their rivals, seeking advantage, or at least survival.

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In the meantime, Mr. Trump continues to lash out at Gov. Brian Kemp and Mr. Raffensperger, both staunch Republicans and Trump supporters, over the fact that he lost Georgia, saying they have not sufficiently rooted out fraud.

As late as Tuesday morning, Mr. Trump made the latest in a series of unsubstantiated claims about the Georgia election, writing on Twitter that the state had been “scammed” and urging Mr. Kemp to “call off” the election.

Some of Mr. Trump’s supporters have taken to the streets and the Capitol building in downtown Atlanta, where the conspiracy theorist Alex Jones of Infowars recently joined them. In other cases, Trump supporters have harassed or threatened Mr. Sterling, Mr. Raffensperger and others.

In a statement Tuesday evening, Tim Murtaugh, a spokesman for the Trump campaign, said: “The campaign is focused on ensuring that all legal votes are counted and all illegal votes are not. No one should engage in threats or violence, and if that has happened, we condemn that fully.”

Amid all of this, Mr. Sterling, a detail-oriented former city councilman from the Atlanta suburb of Sandy Springs, has taken on a prominent role in the state as it conducted its recounts. Along with Mr. Raffensperger, he has often been the main speaker in numerous news conferences in which he has explained the complexities of Georgia’s election and recount systems and has argued that the results, which currently show Mr. Biden winning by about 12,700 votes, are trustworthy.

Ari Schaffer, press secretary for the secretary of state’s office, did not answer directly when asked Tuesday whether Mr. Raffensperger had given Mr. Sterling his blessing to speak out so forcefully against the president. But he noted that the deputy secretary of state, Jordan Fuchs, had been standing near Mr. Sterling when he made his statements.

“Gabriel has my support,” Ms. Fuchs said independently in a text message.

Late Tuesday, representatives for Ms. Loeffler and Mr. Perdue said they condemned violence of any kind but also said they would not apologize for seeking accountability and accuracy in the state's elections.

In the second of two news conferences called by the secretary of state's office on Tuesday, Mr. Sterling, speaking loudly, emotionally and deliberately, said that people had intruded on Mr. Raffensperger's personal property. He said that Mr. Raffensperger's wife "is getting sexualized threats through her cellphone." He mentioned that he had police protection outside his own house, a topic he had also broached in a Nov. 21 tweet.

"So this is fun ... multiple attempted hacks of my emails, police protection around my home, the threats," Mr. Sterling wrote then. "But all is well ... following the law, following the process ... doing our jobs."

On Tuesday, Mr. Sterling also made references to reports that Joe diGenova, a lawyer for the Trump campaign, had said that Chris Krebs — a former federal cybersecurity official who vouched that the election was clean — should be shot. (Mr. diGenova later said his remarks had been "made in jest.")

But Mr. Sterling said that "the straw that broke the camel's back" had involved a threat against a 20-year-old contractor for a voting system company in Gwinnett County. He said the young worker had been targeted by someone who hung a noose and declared that the worker should be "hung for treason," simply for doing a routine element of his job. Mr. Sterling did not provide any other details.

"I can't begin to explain the level of anger I have right now over this," he said. "And every American, every Georgian, Republican and Democrat alike, should have that same level of anger."

Details of the noose incident Mr. Sterling cited could not be corroborated Tuesday. Cpl. Ryan Winderweedle, a spokesman for the Gwinnett County Police Department, said that he did not have any information about such an incident but noted that it could have occurred beyond that department's jurisdiction.

Joe Sorenson, a spokesman for the county government, said in an email that "citizen monitors" had "harassed" some county technology workers who were doing work that was unrelated to the elections but that involved going in and out of a storage area in the same building as the county elections office.

Maggie Haberman contributed reporting from New York.

Exhibit 10

RETRIEVED FROM DEMOCRACYDOCKET.COM

An Atlanta election worker is in hiding after a claim that he tossed a ballot. His boss says the claim is false.

By Sean Keenan

Nov. 6, 2020

ATLANTA, Ga. — A man working at a vote-counting site in Atlanta earlier this week has gone into hiding after being wrongly accused of discarding a ballot, according to Richard Barron, elections director for Georgia’s largest county, Fulton.

Mr. Barron made the announcement at a Friday evening press conference during which Fulton officials announced they had finished counting all the county’s more than 500,000 votes, including those cast in person — early or on Election Day — and mail-in ballots. Just a few-thousand provisional, military and overseas ballots are yet to be counted.

A short video posted on social media showed a man processing ballots, and crumpling and throwing away a piece of paper. A person narrating the video claims that he threw out a ballot. In fact, he was simply tossing out a list of instructions that had been placed in a ballot envelope, Mr. Barron said. After the video went viral, and the election worker’s personal information was posted online, threats were made on his life and he was forced into hiding, Mr. Barron added.

“He’s afraid to drive his car because the information about his car and his license plate is out there,” Mr. Barron said.

What is going on here? #Election2020 #ATL pic.twitter.com/NJi3xmInPT
— Essential Fleccas us (@fleccas) November 5, 2020

Mr. Barron said an investigation by the State Election Board into the incident showed no ballots had been discarded. He praised the election worker for being “very good at his job,” which was to slice open ballot envelopes with a cutting machine. “He was one of the workers who trained others with the cutting machines.”

Fulton County expects to finish processing the remaining ballots at some point tonight, he said.

Exhibit 11

RETRIEVED FROM DEMOCRACYDOCKET.COM

The Washington Post

Democracy Dies in Darkness

‘Someone’s going to get killed’: GOP election official in Georgia blames President Trump for fostering violent threats

By **Amy Gardner** and **Keith Newell**

Dec. 1, 2020 at 7:31 p.m. CST



A top Republican election official in Georgia lashed out at President Trump during a news conference Tuesday in Atlanta, blaming him for a flood of threats that have besieged his office and calling on the president and other Republicans to condemn the behavior.

Gabriel Sterling, a voting systems manager for Secretary of State Brad Raffensperger, was visibly angry and shaken as he approached a lectern in the Georgia Capitol.

“Mr. President, you have not condemned these actions or this language,” he said. “Senators, you have not condemned this language or these actions. . . . Stop inspiring people to commit potential acts of violence.”

He added: “That shouldn’t be too much to ask for people who ask us to give them responsibility.”

Sterling’s public chastisement represents one of the strongest rebukes yet of Trump’s baseless attacks on the election’s integrity by a member of his own party.

The episode revealed a fissure that has been widening within the Republican Party for weeks as Trump has claimed falsely, again and again, that President-elect Joe Biden won through election fraud.

Although more and more local and state Republicans have acknowledged Biden’s victory — and said they have seen no evidence of widespread fraud — most national GOP officials, including Georgia’s two U.S. senators seeking reelection in twin runoffs on Jan. 5, have refused to do so.

In addition to calling out Trump by name, Sterling also demanded that the two senators, David Perdue and Kelly Loeffler, denounce the threats that flowed into his office after Trump began attacking Raffensperger for failing to repeat his false accusations of fraud.

“When the president called Brad Raffensperger, who is a fine, upstanding, lifelong Republican, an ‘enemy of the people,’ that helped open the floodgates to this kind of crap,” Sterling said. “It takes people who are already spun up. . . . There are some nut balls out there.”

A Perdue spokeswoman, Casey Black, said in a statement that her boss “condemns violence of any kind, against

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Case 2:20-cv-00302-SCJ Document 11-12 Filed 12/29/20 Page 3 of 4

A Loeffler spokesman tweeted that it is “ridiculous” to suggest that the senator wouldn’t condemn physical threats but said the senator “won’t apologize” for calling out “inaction and lack of accountability.”

Trump campaign spokesman Tim Murtaugh said the campaign condemns threats or violence “if that has happened” — but remains “focused on ensuring that all legal votes are counted and all illegal votes are not.”

Neither senator has offered any evidence of fraud or mismanagement by Raffensperger, nor a rationale for their call for his resignation, which came after Trump began attacking him and Gov. Brian Kemp, also a Republican, for their failure to support the president’s claims of fraud. Trump is scheduled to travel to Georgia on Saturday to campaign on behalf of Loeffler and Perdue.

Late Tuesday night, Trump tweeted in response to Sterling’s call for him to condemn threats: “Rigged Election. Show signatures and envelopes. Expose the massive voter fraud in Georgia. What is Secretary of State and @BrianKempGA afraid of. They know what we’ll find!!!”

For his part, Senate Majority Leader Mitch McConnell (R-Ky.) refused Tuesday to take any questions about the presidential election or Trump’s claims, talking only about legislation that Congress is trying to pass this month. “The future will take care of itself,” McConnell told reporters, when pressed about Trump’s statements.

When asked for comment on Sterling’s news conference, McConnell’s office declined to comment, referring to his earlier remarks.

Sterling, 50, is a Georgia native, a graduate of the University of Georgia and a Republican who has worked as a political consultant and served on the Sandy Springs City Council, north of Atlanta.

Raffensperger, his boss, was among the first Republicans to speak out against Trump’s false claims of voter fraud, defending the integrity of Georgia’s elections and calling out Sen. Lindsey O. Graham (R-S.C.) for suggesting that he find a way to invalidate tens of thousands of legally cast absentee ballots.

That stance has drawn a fusillade of online attacks and personal threats against the secretary of state and others in his office.

But Sterling said Tuesday that for him, the last straw came when a 20-year-old technician for the state’s voting machine contractor, Dominion Voting Systems, was targeted by far-right social media users who falsely claimed they’d caught him on camera manipulating election data. Some people called for the worker’s imprisonment, torture or execution. One tweet accused him of treason and included an animated image of a hanging noose.

When Sterling stepped to the lectern inside the Georgia Capitol on Tuesday afternoon, he was noticeably upset.

“It has all. Gone. Too. Far,” Sterling said, adding: “It has to stop.”

“This kid took a job,” he added, his voice growing louder. “He just took a job. And it’s just wrong. I can’t begin to explain the level of anger I have right now over this. Every American, every Georgian, Republican or Democrat alike,

DiGenova later said he was joking.

“Someone’s going to get hurt,” Sterling said. “Someone’s going to get shot. Someone’s going to get killed.”

Sterling said he was off script and at one point quipped, “I’ve probably stepped out of line, but I’m kind of pissed.”

But Raffensperger gave Sterling the green light to speak his mind, Jordan Fuchs, a deputy secretary of state, said in an interview. “We pointed him in a direction and said, ‘Just do your thing.’”

Fuchs said Raffensperger’s wife, Tricia, has received “sexualized death threats.” Members of far-right groups have been found trespassing at the Raffenspergers’ home. Someone broke into the home of one of their adult children and turned all the lights on, “sending a clear signal that they can get access to their house,” Fuchs said. And members of Fuchs’s staff have had to filter through “thousands” of emails saying, “You should be shot” and “You should be hanged,” she said.

All of it has left her and her colleagues bewildered by and infuriated with their own party.

“They need to defend what they’re doing,” Fuchs said. “They need to defend the coalition that they have aligned with.”

Sterling also had another message for Trump that Republicans in Washington have been unwilling to deliver: The election is over.

“Mr. President, as the secretary said yesterday, people aren’t giving you the best advice on what’s actually going on on the ground,” he said. “It’s time to look forward. If you want to run for reelection in four years, fine, do it. But everything we’re seeing right now — there’s not a path.”

Sterling declined to name the Dominion contractor who had been threatened. The individual’s name was surfaced by Ron Watkins, whose father, Jim, owns the far-right Internet message board 8kun, which has been linked to white supremacy, neo-Nazism and QAnon.

Shortly after midnight Tuesday, Watkins posted what he called “a smoking-gun video” that he claimed showed the Dominion worker manipulating Georgia voting data.

In fact, the undated video — which was recorded at a distance and includes a man and woman offering ongoing commentary on the “nerd boy” as he works inside an election office — shows a man simply using a computer and thumb drive.

Drew Harwell, Michelle Ye Hee Lee, Paul Kane and Donna Cassata contributed to this report.

Updated December 18, 2020

Election 2020: Biden defeats Trump

Top Republicans offer conflicting messages about Trump’s loss while campaigning in Georgia

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Exhibit 12

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December 18, 2020

UPDATE: all challenges brought before the Board of Elections, as of 4pm December 18, 2020 have been denied.

Cobb County's Board of Elections will meet virtually, Friday December 18, 2020 at 3pm, to determine if *probable cause* exists for received challenges, regarding Cobb County voter lists.

Shepherd Challenge A: "pursuant to O.C.G.A. § 21-2-230(a) challenges qualifications of certain individuals on Cobb County's voter list to vote in the run-off election on January 5, 2021"

- Challenge Grounds [https://s3.us-west-2.amazonaws.com/cobbcounty.org.if-us-west-2/prod/2020-12/Shepherd%20Challenge_grounds.pdf]
- NCOA spreadsheet [https://s3.us-west-2.amazonaws.com/cobbcounty.org.if-us-west-2/prod/2020-12/Shepherd%20Challenge_NCOA.xlsx]

Reardon Challenge B: "pursuant to Georgia Code, Title 21-Elections, Chapter 2-Elections and Primaries generally, Article 6-Registrations of Voters, § 21-2-230 - challenge of person on list of electors by other electors."

- Challenge Grounds [https://s3.us-west-2.amazonaws.com/cobbcounty.org.if-us-west-2/prod/2020-12/Reardon%20Challenge_Grounds.pdf]
- Challenge COA [https://s3.us-west-2.amazonaws.com/cobbcounty.org.if-us-west-2/prod/2020-12/Reardon%20Challenge_COA.pdf]

Reardon Challenge C: "a challenge to the attached electors' eligibility to vote in the January 5, 2021 Election, pursuant to Georgia Code § 21-2-230."

- 2nd Challenge Grounds [https://s3.us-west-2.amazonaws.com/cobbcounty.org.if-us-west-2/prod/2020-12/Reardon%20Challenge2_Grounds.pdf]
- 2nd Challenge COA [https://s3.us-west-2.amazonaws.com/cobbcounty.org.if-us-west-2/prod/2020-12/COBB_county.xlsx]

Press Contact Info

Director of Cobb County Elections and Registration- Janine Eveler
(770) 528-2581

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Exhibit 13

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True the Vote

December 14 at 2:49 PM · 🌐

The fraud has been institutionalized. This is a travesty - both for voters and for those trying to ensure election integrity.

How could it be that tens of thousands of votes have already been cast and yet we don't know who's registered?





Maybe Stacy Abrams has access none of the rest of us do?


We are executing the most aggressive election integrity operation in American history.

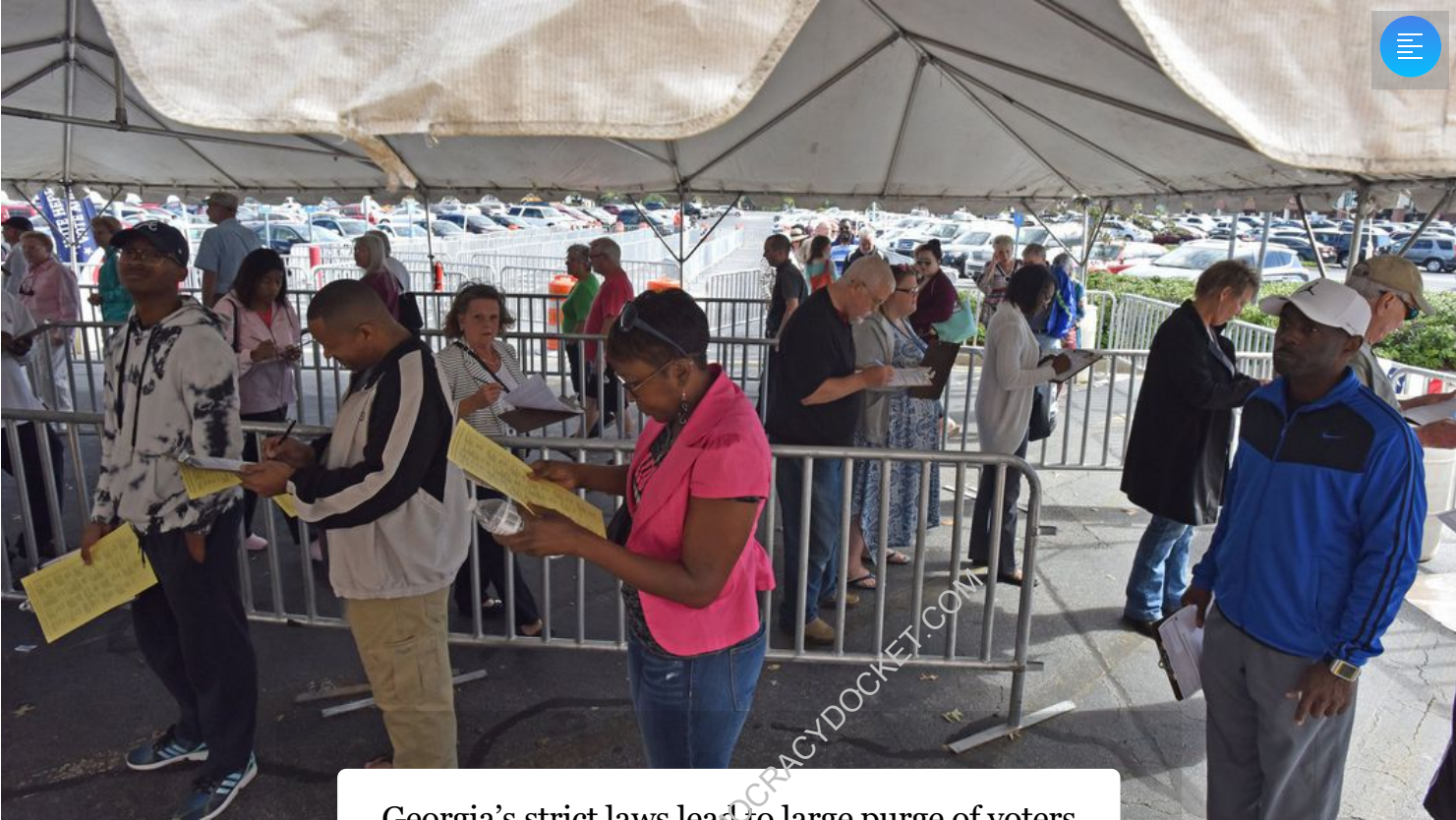
In GA, the past will not be prologue. [#GAValidatetheVote](#) [#EyesonGA](#)

Exhibit 14

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 Log In



Georgia's strict laws lead to large purge of voters

DIGGING DEEP | Oct 30, 2018

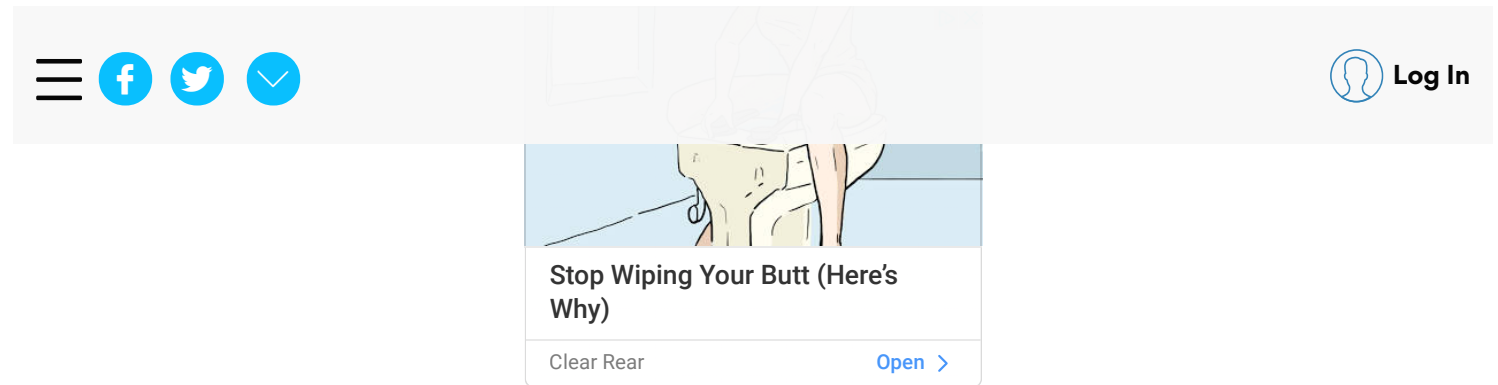
By [Alan Judd](#), The Atlanta Journal-Constitution

Efforts put voters at risk of disenfranchisement, critics say

Advertisement

One evening in July 2017, computers at the Georgia Secretary of State's office were set to a monumental task. Through the night, they would sift through a list of 6.6 million registered voters, seeking out those who didn't belong.

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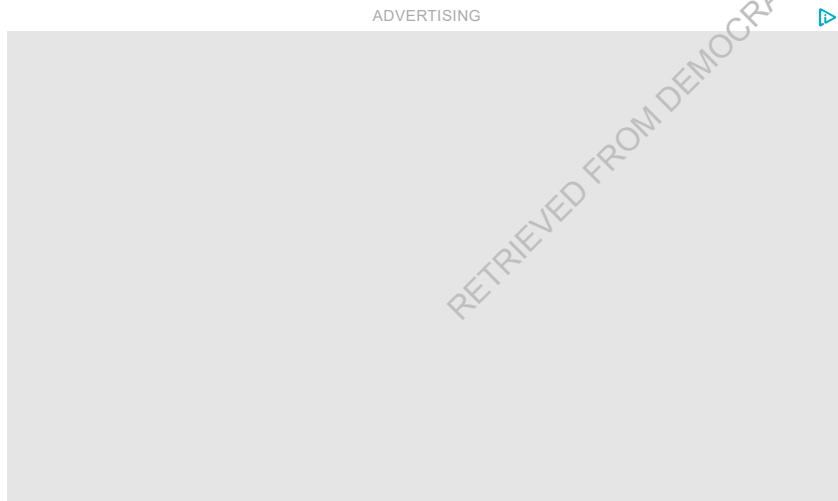


By dawn, more than 500,000 people were registered no more.

This purge, according to election-law experts, may represent the [largest mass disenfranchisement](#) in U.S. history.

It also underscores how Georgia – where people once died for the right to vote – has systematically enacted some of the strictest voting laws in the nation over the past two decades. While officials say the laws are aimed at preventing election fraud, the U.S. Commission on Civil Rights says no state has done more than Georgia in recent years to make voting difficult, especially for minorities.

Related: [How voting issues became a big issue in Georgia's governor race](#)

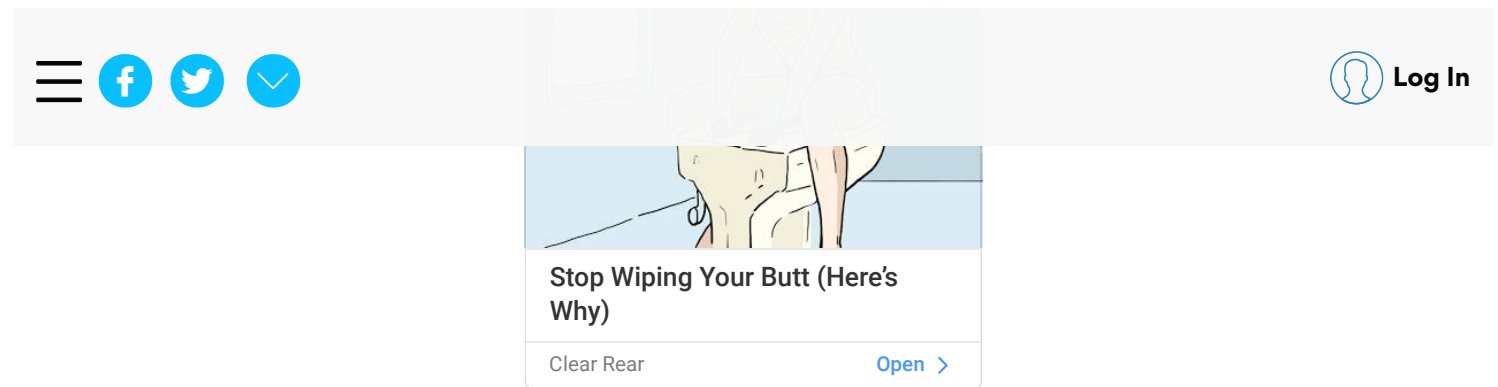


Related: [Georgia stalls voter registrations, from Jesus to new U.S. citizens](#)

These efforts went relatively unnoticed before this year's campaign for governor. That has changed amid what appears to be a historically tight race and, perhaps more important, claims that Republicans are engaging in voter suppression.

The focus on who gets to vote may have been inevitable in this election. Republican candidate [Brian Kemp](#), the secretary of state since 2010, has avidly enforced and advocated for strict voting laws. Democrat [Stacey Abrams](#), a former state legislator, is a long-time [voting-rights activist](#). She also could become the first African-American woman elected governor of any state.

Advertisement



The points of [conflict](#) are many: An "exact match" law that put 50,000 would-be voters into [electoral purgatory](#) over even slight inconsistencies in their registration applications. The [closing of voting precincts](#) in areas with substantial African-American populations. The diversion of a [busload of black senior citizens](#) headed to the polls for early voting.

Nothing, however, generated more controversy than Georgia's massive purge, authorized by a 20-year-old law whose advocates distilled the right to vote to a pithy phrase: Use it or lose it.

Since 2012, according to federal and state data, Georgia has [removed](#) about 1.4 million people from the voting rolls. Some died. Some moved away. Some lost their voting rights after being convicted of felonies.

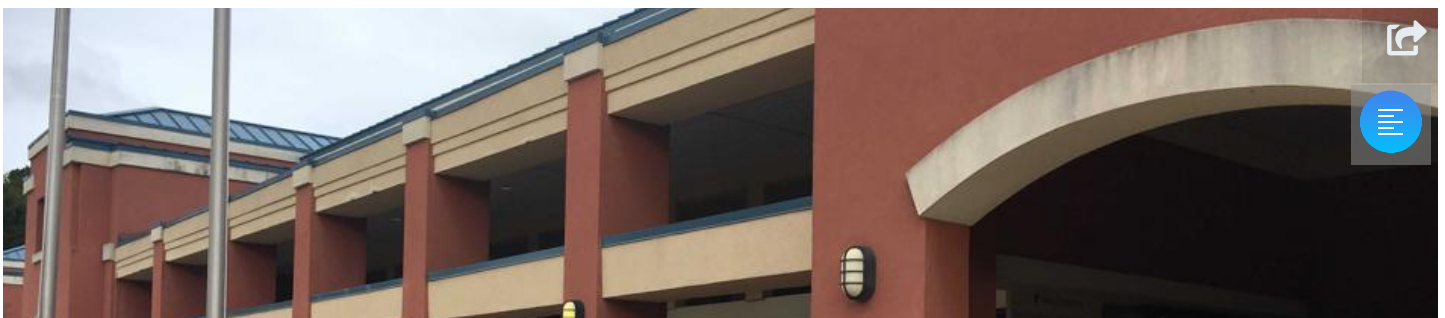
But most simply stopped participating in elections, an analysis of canceled registrations shows. They didn't use their right to vote, so they lost it.

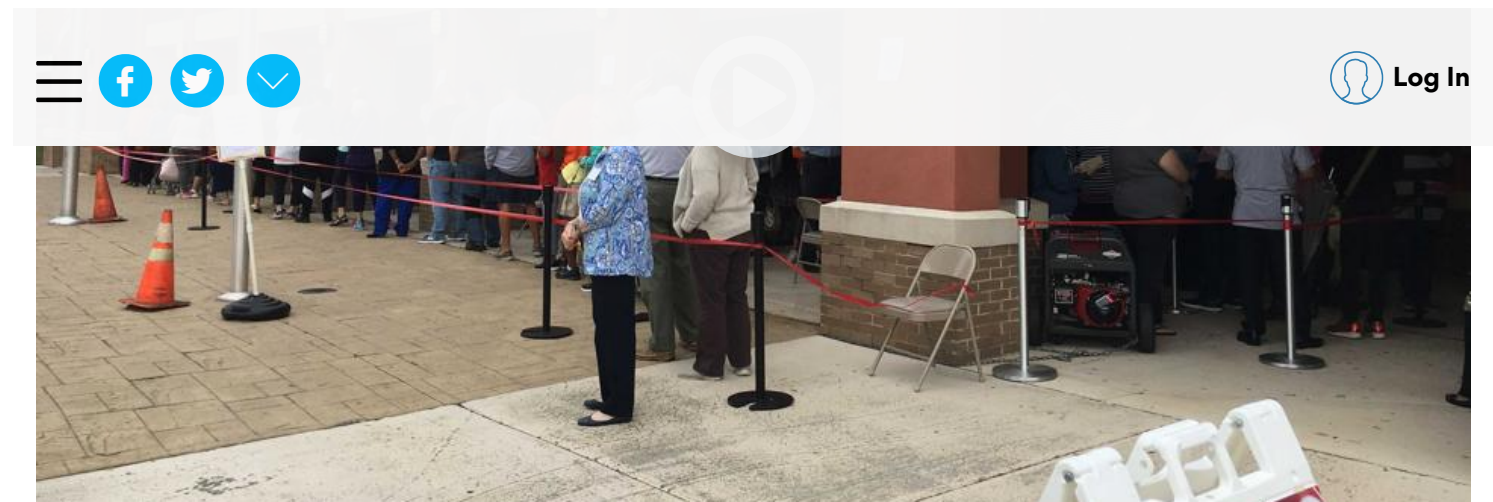
Kemp, whose job puts him in charge of the election in which he is running, and other officials say they are following the law. Both federal and state laws require voters lists to be accurate and up to date to help maintain election integrity. Officials say saboteurs could more easily assume the identities of inactive voters than of those who cast ballots in virtually every election.

But this year, the convergence of Georgia's numerous efforts to carefully regulate voting is straining the state's election system, said Jonathan Brater, a lawyer with the Brennan Center for Justice at New York University.

"The combined effect is to put voters – especially racial minorities – at risk of disenfranchisement," Brater wrote in a blog post last week.

The post's title: "What's the Matter with Georgia?"





‘Gateway to voting’

In 1965, before the Voting Rights Act took effect, 27.4 percent of eligible African-Americans and other minorities were registered to vote in Georgia. Three years later, that rate had almost doubled, to 52.6 percent.

But in a recent report, the [Commission on Civil Rights](#), a bipartisan federal panel, harshly criticized Georgia's more recent treatment of minority voters.

The commission listed five restrictions it considers particularly onerous: requiring government-issued photo identification to cast a ballot; requiring documentary proof of citizenship, such as a birth certificate or a passport, to register; aggressive purges of inactive voters; reductions in early voting; and moving or closing polling places.

Georgia is the only state that imposed all five restrictions, the commission found. The proof of citizenship law was never implemented, however.

The commission's criticism came as many states were busy revising laws that regulate voter registration – "the gateway to voting," as Dylan Lynch of the [National Conference of State Legislatures](#) put it. Twenty-three states passed voter registration laws this year, compared to six in 2014.

Many of those laws seek to make registration easier or to keep more voters eligible to cast ballots.

In California, for example, lawmakers instructed election officials to communicate with newly registered voters by text or email to let them know their applications are being processed. Delaware legislators ordered that the state find a “non-discriminatory” method for identifying registered voters who may have become ineligible by moving out of state. They said the current system, the same one that Georgia and 35 other states use, relies on a change-of-address database that contains too much erroneous information.

In many respects, the way Georgia maintains its voter list sits firmly in the mainstream. It is among 44 states that routinely flag inactive voters, according to the National Association of Secretaries of State. It is one of 38 states that

restrict voting by people judged mentally incompetent.



Log In

But in canceling the registration of people who stop participating in elections, Georgia is a definite outlier.

Since 1997, it has been one of nine states that purge voters for a lack of contact with the election system. Voting-rights advocates say it is unfair to take away a citizen's right to vote. But the U.S. Supreme Court, ruling in an Ohio case, recently [upheld the practice](#).

Regardless, said Candice Broce, a spokeswoman for Kemp's office, "it's not just the lack of voting" that leads to cancellation, "it's the lack of contact."

The purge

The night of July 28 last year, the secretary of state's computers hunted for voters who were registered but far from engaged.

Those voters had gone into inactive status after three years in which they had no contact with the election system. They had not updated their registrations with new addresses during that time. They had ignored mailings from their county election offices. They hadn't signed petitions seeking to get a candidate or an issue on the ballot.

And they hadn't voted.

At the end of that three years, state officials mailed these voters notices that gave them 30 days to confirm that they still wanted to be on the voting rolls. Regardless of whether they wanted to stay registered, they then failed to vote in either of the next two general elections.

The 1997 law – passed when Democrats controlled the Legislature and the governor's office, as Kemp's office points out – instructed election officials to clean up voter lists every odd-numbered year, between statewide elections. The Secretary of State's office did not carry out the required maintenance in 2015 because of a legal challenge, Broce, the spokeswoman, said. As a result, she said, the number of cancellations spiked in 2017.

The process can take as long as seven years. But for many of the people purged in 2017, the three years without contact ended in September 2014, when that year's early voting period concluded. Then they didn't vote in that year's general election two months later, or in 2016. They went from disengaged to disenfranchised in six years.

Kemp's office has described the process as "automated." But Broce said three officials from the office oversee the cancellations to guard against widescale errors. Kemp is not one of them.

"They all have to review and sign off on the identified list of people," Broce said.



Throughout 2017, the state purged 665,791 people, or about 10 percent of all registered voters. The law does not require the state to notify them of the cancellations.

More than 130,000 of those purged last year had registered to vote in 2008, the year of Barack Obama's historic presidential candidacy. Nearly half were minorities.

Officials suspect many voted for Obama that year – and never returned to the polls or made other contact with the election system.

What no one knows is whether some might have been similarly motivated to vote for the first black nominee for governor in Georgia. If they go the polls this year, they'll be turned away.

The right not to vote

In 2016, Common Cause and the NAACP challenged Georgia's method of purging voters, arguing in a lawsuit that it violated a First Amendment guarantee – the right not to vote. Just like voting, the suit claimed, withholding a vote “also constitutes political speech.”

“The First Amendment protects not only the right of a qualified citizen to vote,” the suit said. “It also protects the right of a citizen not to vote.”

In a hearing in federal court, a lawyer for the state argued that “there is no established constitutional right to vote. But, she said, “any registered voter is free not to vote in any election they so desire.”

A federal judge dismissed the suit, but an appeals court reinstated it while the Supreme Court considered the Ohio case. After the high court upheld Ohio's voter-list procedures, the suit was dropped.

So the purges stand, subject to rulings in recently filed lawsuits.

How many of the hundreds of thousands of purged voters actually want to be registered is not clear.

The Atlanta Journal-Constitution tried last week to get in touch with 50 people randomly chosen from the list of 2017's purged voters. Twenty clearly would be ineligible to vote in Georgia: 17 moved out of state, two were convicted of felonies and one had died. Most of the rest left a trail of address changes and disconnected telephone numbers.

For some, voting clearly is not a priority.

Exhibit 15

RETRIEVED FROM DEMOCRACYDOCKET.COM

ELECTION 2020 | Dec 8, 2020, 07:10am EST | 25,328 views

How Sidney Powell's 'Kraken' — Pushed By QAnon — Went From Cable News To Trump Mainstream

**Jack Brewster** Forbes Staff

Business

I'm a news reporter for Forbes.

TOPLINE Ever since Trump-aligned attorney Sidney Powell went on Fox Business and promised to “release the kraken”—a reference to her plot to expose baseless accusations of voter fraud and overturn the election results in favor of President Trump—the phrase has exploded in popularity as a rallying cry among QAnon supporters and members of Trump’s orbit, and become a [butt of jokes](#) among others as her nationwide legal effort fails at almost [every turn](#).



Powell's legal efforts to overturn the results of the US election are quickly falling apart CQ-ROLL CALL, INC VIA GETTY IMAGES

KEY FACTS

- Powell, a former **federal prosecutor** who **rose to prominence** as former Trump National Security Adviser Michael Flynn's attorney, first uttered the phrase—which is a catchphrase from the 1981 movie "Clash of the Titans"—on Fox Business in mid-November during an interview with Lou Dobbs, claiming Trump's legal team had a **mountain of evidence** to overturn the election results in several key states.
- Since then, the Trump campaign has **cut ties** with Powell as she floated increasingly unhinged conspiracy theories and the "Kraken" conspiracy theories have been almost entirely **debunked**, but the phrase has lived on as the attorney continues her longshot bid to change the results of the election.
- After Powell first used the phrase on November 13, the word "kraken" racked up hundreds of thousands of interactions on Facebook, according to the social media analytics tool CrowdTangle.
- QAnon conspiracy theorists—who have a **known ally in Powell**—have embraced the catch phrase as a "masterstroke of the plan to overturn the election results," according to Mike Rothschild, who recently published a book about conspiracy theories and tracks QAnon online.
- Right wing personalities, including **David J Harris Jr.** and **Austen Fletcher**, and other members of **Trump's legal team** have adopted the phrase as well, giving it a huge boost online.
- At the same time, the "kraken" has become a target of mockery among **Democrats** and **even some conservatives**: "It appears the only Kraken

being released will be the [@SeattleKraken](#) next year,” Gov. Jay Inslee (D-Wash.) tweeted Monday after Powell lost another court case.

CRUCIAL QUOTE

Reached for comment Monday, Powell dismissed those who criticize the “kraken” as a collection of conspiracy theories. “That's what they always say,” Powell said. “I'm obviously over the target. The fraud is blatant.”

KEY BACKGROUND

Powell has filed lawsuits in battleground states across the country, including Michigan, Georgia, Arizona and Wisconsin, with little success. On Monday, a federal judge [threw out](#) her lawsuit in Georgia. Powell [filed](#) an emergency appeal Monday night.

CHIEF CRITIC

“The claims in the Kraken lawsuit prove to be as mythological as the creature for which they're named,” Georgia Secretary of State Brad Raffensperger said Monday. “Georgians can now move forward knowing that their votes, and only their legal votes, were counted accurately, fairly, and reliably.”

WHAT TO WATCH FOR

QAnon followers believe that Powell's “kraken” legal case will [eventually end](#) in the Supreme Court, where the justices will overturn the results of the election, a hope that is not [steeped in reality](#). “They think everything is leading up to Trump's hand-picked justices seeing the wisdom in all these dismissed suits and using some non-existent mechanism to award the election to Trump,” Rothschild said.

FURTHER READING

[The Kraken: What is it and why has Trump's ex-lawyer released it?](#) (BBC)

[Sidney Powell's Georgia Lawsuit Gets Thrown Out In Court](#) (Forbes)

For Trump advocate Sidney Powell, a playbook steeped in conspiracy theories (Washington Post)

‘The People Have Spoken’: Sidney Powell’s Michigan Lawsuit Gets Shut Down In Court (Forbes)

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Jack Brewster

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I cover national politics for Forbes. Previously, I've written for TIME, Newsweek, the New York Daily News and VICE News. I also launched my own startup, Newsreel, a...

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Exhibit 16

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**Lin Wood**
@LLinWood

...

Good morning.

Our country is headed to civil war. A war created by 3rd party bad actors for their benefit - not for We The People.

Communist China is leading the nefarious efforts to take away our freedom.

@realDonaldTrump should declare martial law.



8:00 AM · Dec 1, 2020 · Twitter for iPhone

19.1K Retweets 4.1K Quote Tweets 43.5K Likes



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Replying to @LLinWood and @realDonaldTrump
We are with you @LLinWood and @realDonaldTrump



29



58



565



...



The Vocal Resistance @TrumpIsALiar16 · Dec 1
No we are absolutely not!



2



253



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Nothing can stop what is coming. Nothing.



74



11



298



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to increase stimulus relief c
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**COVID-19: News and updat
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Politics · LIVE

**The UK and the EU agree o
post-Brexit trade deal**

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Eric M Doerr @EricMDoerr · Dec 1

Replying to @LLinWood and @realDonaldTrump

@realDonaldTrump please draft and invoke: THE PROCLAMATION FOR THE

5



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**Chad Mueller** @Monarch_Pop · Dec 1

...

Replying to @LLinWood and @realDonaldTrump

Sounds like a great idea to me



2



4



33

**SpEkforTruth** @spEkfortruth · Dec 1

...

Replying to @LLinWood and @realDonaldTrump

As much as I agree with this, wouldn't something like that take quite a bit of time to prepare for? And what would we use to make sure the results are more accurate this time? I feel like the entire country needs a process that is vetted and how do we do that quickly



41



1



37

**Just Dee** @AnndeeB · Dec 1

...

The way it used to be done, in person and without the internet.



9



33

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**TJR** @TamRitter · Dec 1

...

Exactly what I have been saying for years. Our enemies are having fun with this.



3



2



67



This Tweet is from an account that no longer exists. [Learn more](#)

**Tony B Good** @tonygood2 · Dec 1

...

Replying to @LLinWood @Panther092203 and @realDonaldTrump

Civil War was never wanted during Lincoln Presidency but was necessary to preserve the Union. Now it's not wanted but may be necessary! God help us if it gets to that point! I hope they do not assassinate our President.



170



18



278

[Show replies](#)**Nikki Rosier** @NikkiRosier3 · Dec 1

...

Replying to @LLinWood and @realDonaldTrump

We are The Sleeping Giant and once we have woken up to the corruption in this country.. we will fight to get the power back to US... THE PEOPLE.



77



43



338

**a b e** @ThinSolidFilms · Dec 1

...

The people voted. Biden won.



14



155

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Exhibit 17

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Ski

[Subscribe](#)[Sign In](#)**LOCAL // ERICA GRIEDER**

Grieder: True the Vote lawsuit illustrates silliness of GOP efforts to redo election in court

Erica Grieder

Dec. 9, 2020 | Updated: Dec. 10, 2020 6:28 p.m.



A “Stop the Steal” rally was held outside of the Supreme Court on Wednesday.

Photo: ANNA MONEYMAKER, STR / NYT

It would be hard to find a Texan willing to donate a cool \$2.5 million to the Houston-based nonprofit True the Vote, in support of its efforts to relitigate the results of this year’s presidential elections.

One of us should have warned North Carolina businessman Fred Eshelman before he did just that.

Democrats will probably have little sympathy for the disgruntled donor, who last month filed suit against True the Vote in the hope of getting his money back. Some may even feel a bit of schadenfreude, hearing that a supporter of President Donald Trump is taking an organization so aligned with the president's worldview to court.

Eshelman's story is, however, an instructive one, in that it illuminates how disappointed Trump supporters are vulnerable to being taken advantage of as they process the news that Joe Biden won this year's presidential election.

More from Erica Grieder



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Doesn't things Harris

Eshelman could not be reached for comment. But the lawsuit gives his side of the story clearly enough.

"Immediately after the November 3rd general election, (Eshelman) decided to support efforts to investigate allegations of illegal and fraudulent conduct in connection with the 2020 general election," the suit states.

He quickly learned of True the Vote, which “holds itself out on its website as ‘the country’s largest voters’ rights organization,’” and had a conversation with the group’s founder, Catherine Engelbrecht.

Engelbrecht told him about True the Vote’s planned “Validate the Vote 2020” effort — which was necessitated, according to the lawsuit, by what she described as “significant evidence that there were numerous instances of illegal ballots being cast and counted in the 2020 general election.”

The plan, Eshelman says, was to elicit whistleblower testimony, drum up support from Republican lawmakers, and file suit in federal court in the closest battleground states in a bid to subpoena election data that could be analyzed “to identify patterns of election subversion.”

Eshelman approved, and on Nov. 5 wired \$2 million to True the Vote to support the effort. He sent another \$500,000, on Nov. 13. But things soured quickly.

In the lawsuit, Eshelman says that his efforts to find out what progress True the Vote was making were met with “vague responses, platitudes, and empty promises of follow-up that never occurred.” On Nov. 17, he sent an email to Engelbrecht asking for the bulk of his money back. He intended, he explained in a follow-up email, to use it “for other activities toward the common goal.”

True the Vote didn’t respond, Eshelman contends. Hence the lawsuit.

Engelbrecht, in a statement, said that Eshelman’s claims are “not accurate.” In her telling, Eshelman’s donation was used for its intended purpose — to establish a whistleblower program and to file lawsuits in four states, among other things. Although the lawsuits were ultimately dismissed, she continued, the rest of the work continues.

“When the consultants called us on November 5, it seemed like an answer to prayer,” Engelbrecht added. “Now, it seems like a nightmare.”

According to Terri Lynn Helge, a professor of law and associate dean at Texas A&M School of Law, disgruntled donors often face an uphill battle in court.

"It really depends on the gift agreement itself," Helge told me, explaining that a charity can't simply return money on request after it's gifted, even if its leaders are willing to do that.

It's possible, too, that Eshelman got his hopes up too high, after his conversations with Engelbrecht about the "Validate the Vote" effort.

True the Vote, founded in 2009, is somewhat notorious for making overly sweeping claims about voter fraud, which is rare, in reality, though not nonexistent. In 2016 one of the group's board members, Gregg Phillips, asserted that his team had identified some 3 million votes cast by non-citizens—a figure that completely defies belief, but one which was nonetheless repeatedly cited by Trump, who was elected in 2016 after losing the popular vote.

While Eshelman might not be a sympathetic figure, it's easy to understand how he ended up in the current predicament.

Millions of Americans, polls suggest, are not convinced that Joe Biden is president-elect. Many of them have, in recent weeks, donated to the various organizations pledging to investigate supposed irregularities in the November election and do something about them. Trump himself, via his Trump Make America Great Again Committee, has raised more than \$170 million since Election Day, according to a report by the Washington Post.

This is all in large part because Trump has cast himself as the victim of an implausible conspiracy in which Democrats convinced a slew of Republican officials in states such as Georgia and Arizona to help rig the presidential election on Biden's behalf.

Republican elected officials, who know better, are generally reluctant to go so far as to say that the election was stolen, as Trump maintains. But they've given credence to the president's claims to victory by insisting that his ongoing court fights are serious and potentially consequential, which could obviously reinforce that impression.

As the week began, Trump and his allies had already lost several dozen challenges filed in half a dozen states. U.S. Sen. Ted Cruz on Monday said he agreed to argue another case challenging results of the November election before the U.S. Supreme Court, if the court agreed to take it up, after he was approached by the petitioners. (The Supreme Court on Tuesday declined to do so.)

Texas Attorney Gen. Ken Paxton, apparently not to be outdone, on Tuesday filed suit in the Supreme Court seeking to overturn the results of the election in Pennsylvania, Wisconsin, Michigan and Georgia.

As long as these antics continue, Eshelman isn't the only American who's going to end up feeling burned after supporting what he believed to be a worthy cause.

Correction: This column has been corrected to reflect that U.S. Sen. Ted Cruz was asked to argue a case challenging the results of the November election, rather than volunteering himself to do so.

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Exhibit 18

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Tea party groups work to remove names from Ohio voter rolls



President Obama greets supporters at Bowling Green State University in Ohio. Some Democrats say tea party groups are trying to suppress the votes of groups including college students, who tend to favor Obama. (Jewel Samad, AFP/Getty)

Images)

By MICHAEL FINNEGAN, LOS ANGELES TIMES

SEP. 26, 2012 | 12 AM



CINCINNATI — Lori Monroe, a 40-year-old Democrat who lives in central Ohio, was startled a few weeks ago to open a letter that said a stranger was challenging her right to vote in the presidential election.

Monroe, who was recovering from cancer surgery, called the local election board to protest. A local tea party leader was trying to strike Monroe from the voter rolls for a reason that made no sense: Her apartment building in Lancaster was listed as a commercial property.

“I’m like, really? Seriously?” Monroe said. “I’ve lived here seven years, and now I’m getting challenged?”

Monroe’s is one of at least 2,100 names that tea party groups have sought to remove from Ohio’s voter rosters.

The groups and their allies describe it as a citizen movement to prevent ballot fraud, although the Republican secretary of state said in an interview that he knew of no

evidence that any more than a handful of illegal votes had been cast in Ohio in the last few presidential elections.

“We’re all about election integrity — making sure everyone who votes is registered and qualified voters,” said Mary Siegel, one of the leaders of the Ohio effort.

Some Democrats see it as a targeted vote-suppression drive. The names selected for purging include hundreds of college students, trailer park residents, homeless people and African Americans in counties President Obama won in 2008.

The battle over who belongs on the voter rolls in Ohio comes as supporters of Obama and his Republican challenger, Mitt Romney, are making elaborate plans to monitor the polls and mount legal challenges after the Nov. 6 election if necessary.

Obama’s reelection campaign and Romney allies are already fighting in court over Republican efforts to block Ohio voters from casting ballots the weekend before the election. In 2008, Ohio’s final weekend of early voting drew tens of thousands of African Americans to cast ballots, mainly for Obama.

The racial dimension of the 2012 clash over weekend voting burst into the open last month when one of Ohio’s most powerful Republicans, Franklin County GOP Chairman Doug Priesse, told the Columbus Dispatch, “We shouldn’t contort the voting process to accommodate the urban — read African American — voter-turnout machine.”

Some Democrats see the developments in Ohio as part of a national drive by Obama’s opponents to minimize turnout of his supporters, one that includes efforts elsewhere to impose new voter ID rules.

“Too much of this is going on for this not to be a coordinated effort,” said Tim Burke, chairman of the Hamilton County Democratic Party in the tea party stronghold of southwestern Ohio.

The Rev. Rousseau A. O'Neal, one of a group of black ministers from Cincinnati who provided buses to take African Americans to the polls in 2008 and plan to do so again in November, described the tea party project and the curtailment of weekend voting as "bigotry of the highest order."

"Who ever thought we'd be fighting for the right to vote in 2012?" he asked.

The tea party groups, scattered around the state, have joined forces under the banner of the Ohio Voter Integrity Project. It is an offshoot of True the Vote, a Texas organization that has recruited volunteers nationwide to challenge voter rosters and work as poll watchers.

True the Vote was founded by Catherine and Bryan Engelbrecht, a couple who run an oil field equipment manufacturing firm in Rosenberg, Texas.

In Ohio, election records show, one of the project's top priorities has been to remove college students from the voter rolls for failure to specify dorm room numbers. (As a group, college students are strongly in Obama's camp.)

Voters challenged include 284 students at the Ohio State University campus in Columbus, 110 at Oberlin College, 88 at College of Wooster, 38 at Kent State — and dozens more from the University of Cincinnati, Miami University, Lake Erie College, Walsh University, Hiram College, John Carroll University and Telshe Yeshiva, a rabbinical college near Cleveland.

So far, every county election board that has reviewed the dorm challenges found them invalid.

In some cases, the Ohio tea party researchers have correctly identified voters who have died or moved, speeding up the official updating of registration files. They also found voters registered at a Cincinnati trailer park that no longer exists.

“We wouldn’t know to take those folks off the rolls if it weren’t for this project,” said Alex Triantafilou, a Republican member of the Hamilton County Board of Elections.

Siegel, the Ohio project leader who is active in the Indian Hill Tea Party outside Cincinnati, called the project a nonpartisan attempt to ensure honest elections by cleaning up voter registration files. The project does not single out voters by race, party affiliation or neighborhood, she said.

All told, the Ohio group has questioned registrations in 13 counties, according to Siegel. In 2008, Obama won nine of them.

“We really aren’t trying to challenge people’s right to vote,” Siegel said.

But Siegel signed 422 “Challenge of Right of Person to Vote” forms and submitted them to Hamilton County’s elections board in July. She sought to remove the names from the voter rolls based on a Postal Service change-of-address registry. Siegel withdrew the challenges when the state declared the postal registry to be insufficient grounds to challenge voting rights.

Marlene Hess Kocher, another leader of the Ohio project, filed 420 challenges in Hamilton County over the last month. Kocher alleged that eight members of an African American family, the Sharps, were registered to vote at a vacant lot in Lockland, just outside Cincinnati.

“You are hereby notified that your right to vote has been challenged,” letters from county elections officials told each of the Sharps.

“Does this look like a vacant lot?” Teresa Sharp, 53, asked one recent afternoon as she and a friend sat on canvas chairs outside the four-bedroom house where the family has lived since the 1980s.

“People went through a lot just to have women allowed to vote, and then to have black people allowed to vote. So when they sent me that letter, I’m like, OK, they must know I’m black. And on top of that, my whole family — which really made me angry.”

Sharp confronted Kocher at an elections board hearing. Kocher, who displays signs on her front lawn for the Cincinnati Tea Party and Republican congressional candidates, told the board she mistakenly relied on “vacant lot misinformation” that she found on the county auditor’s website. She apologized to Sharp.

“I have no intention of preventing somebody from voting,” Kocher said. “I’m just raising it as a questionable issue.”

Jon Husted, the Republican secretary of state, said in an interview that the Sharp case undercut the tea party effort.

“When you cry wolf, and there’s no wolf,” he said, “you undermine your credibility, and you have unjustly inconvenienced a legally registered voter, and that can border on voter intimidation.”

Last week, Kocher and Denise Mayer, another leader of the Ohio project, attended a Cincinnati Tea Party dinner of several hundred people. “There’s a lot of ways to get involved with keeping our elections fair and honest, and I’m asking for you to get involved,” Mayer told the crowd in a pitch to recruit poll workers.

Moments later, Husted addressed the gathering. Husted, who is fighting the Obama campaign’s lawsuit to restore early voting on the weekend before the election, noted that Ohio for the first time has sent vote-by-mail applications to every voter in the state and allowed a total of 230 hours of early voting in the five weeks before the election.

“I get a little frustrated when I hear some folks use terms like ‘Jim Crow’ and ‘voter suppression’ and ‘disenfranchisement’ when it comes to Ohio elections,” Husted told

the tea party members. “No responsible person can hear about how easy it is to vote in Ohio and think that it’s hard to vote in Ohio, wouldn’t you say?” The crowd applauded.

michael.finnegan@latimes.com

Melanie Mason in the Washington bureau contributed to this report.



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Michael Finnegan is a Los Angeles Times politics writer covering the 2020 presidential campaign. A former New York Daily News reporter, he has covered national, state and local elections for The Times since 2000.

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Exhibit 19

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HOUSE COMMITTEE ON
OVERSIGHT AND REFORM
 CHAIRWOMAN **CAROLYN B. MALONEY**

(/)



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Cummings Launches Investigation of “True the Vote”; Raises Questions about Conservative Group’s Campaign to Challenge Legitimate Voters

Oct 5, 2012 | Press Release

Washington, DC—Rep. Elijah E. Cummings, Ranking Member of the House Committee on Oversight and Government Reform, sent a letter (/sites/democrats.oversight.house.gov/files/migrated/2012-10-04_EEC_to_Engelbrecht_TrueTheVote.pdf) to Catherine Engelbrecht, President and Founder of True the Vote, requesting documents relating to the group’s “horrendous record” of filing inaccurate voter registration challenges across the country.

“At some point, an effort to challenge voter registrations by the thousands without any legitimate basis may be evidence of illegal voter suppression,” wrote Cummings. “If these efforts are intentional, politically-motivated, and widespread across multiple states, they could amount to a criminal conspiracy to deny legitimate voters their constitutional rights.”

Cummings' letter details how numerous groups affiliated with True the Vote are engaging in a coordinated campaign to challenge legitimate voters across the country, including in Ohio, Wisconsin, North Carolina, and Maryland, although local and state election officials have repeatedly determined that these challenges are baseless.

As a result, legitimate voters—through no fault of their own—often receive letters from local election officials notifying them that their registrations have been challenged and requiring them to take steps to remedy false accusations against them.

"Multiple reviews by state and local government officials have documented voter registration challenges submitted by your volunteers based on insufficient evidence, outdated or inaccurate data, and faulty software and database capabilities," wrote Cummings. "Across multiple states, government officials of both political parties have criticized your methods and work product for their lack of accuracy and reliability."

In his letter, Cummings requests that Engelbrecht provide information about the data True the Vote uses to challenge voter registrations, the training provided to volunteers, and how True the Vote determines where to deploy resources in select jurisdictions.

Today's letter is the latest in Cummings' broader effort to promote the integrity of our nation's elections. On Monday, he sent a letter to Nathan Sproul, the head of Strategic Allied Consulting, the firm recently fired by the Republican National Committee for allegedly conducting voter registration fraud in four states.

The full letter follows:

October 4, 2012

Ms. Catherine Engelbrecht
Founder and President
True the Vote

P.O. Box 27378
Houston, TX 77227

Dear Ms. Engelbrecht:

I am writing to request information about the manner in which True the Vote and its affiliated organizations have been challenging the registration of thousands of legitimate voters based on insufficient, inaccurate, and faulty evidence.

According to your website, the mission of True the Vote is “to restore integrity to the American system of electing its leaders.”[1] One of your key initiatives is to train volunteers to challenge the registration of voters before elections, and to provide them with information and data about voters you want to purge from the rolls.

Unfortunately, True the Vote, its volunteers, and its affiliated groups have a horrendous record of filing inaccurate voter registration challenges, causing legitimate voters—through no fault of their own—to receive letters from local election officials notifying them that their registrations have been challenged and requiring them to take steps to remedy false accusations against them.

Multiple reviews by state and local government officials have documented voter registration challenges submitted by your volunteers based on insufficient evidence, outdated or inaccurate data, and faulty software and database capabilities. Across multiple states, government officials of both political parties have criticized your methods and work product for their lack of accuracy and reliability.

Your tactics have been so problematic that even Ohio Republican Secretary of State Jon Husted has condemned them as potentially illegal, stating:

When you cry wolf, and there's no wolf, you undermine your credibility, and you have unjustly inconvenienced a legally registered voter, and that can border on voter intimidation.[2]

Some have suggested that your true goal is not voter integrity, but voter suppression against thousands of legitimate voters who traditionally vote for Democratic candidates. In June, for example, you appeared at a Conservative Political Action Conference in Chicago that was organized to take “the fight for

the future of America directly to President Obama's backyard" and "energize and mobilize Midwestern conservatives, giving activists the tools needed to defeat the liberal agenda in 2012." [3] During your appearance at this conference, you claimed that the Obama Administration is "determined to force a radical agenda on us"; you accused the Administration of a stunning "assault on our elections"; and when asked if you are working to get a new "administration in there," you responded "Absolutely." [4]

At some point, an effort to challenge voter registrations by the thousands without any legitimate basis may be evidence of illegal voter suppression. If these efforts are intentional, politically-motivated, and widespread across multiple states, they could amount to a criminal conspiracy to deny legitimate voters their constitutional rights.

In order to investigate these serious allegations, I request that you provide information about the data you have been using to challenge voter registrations, the training you have been providing volunteers to conduct these activities, and the manner in which you have been determining where to deploy your resources in select jurisdictions. Given your multiple statements lauding transparency in our nation's voting process, I trust you will provide the requested information as soon as possible.

Inaccurate Voter Challenges in Ohio

There have been numerous reports of inaccurate voter registration challenges by volunteers at the Ohio Voter Integrity Project, a project "empowered" by True the Vote. For example, as the Los Angeles Times reported:

In Ohio, election records show, one of the project's top priorities has been to remove college students from the voter rolls for failure to specify dorm room numbers. (As a group, college students are strongly in Obama's camp.)

Voters challenged include 284 students at the Ohio State University campus in Columbus, 110 at Oberlin College, 88 at College of Wooster, 38 at Kent State—and dozens more from the University of Cincinnati, Miami University, Lake Erie

College, Walsh University, Hiram College, John Carroll University and Telshe Yeshiva, a rabbinical college near Cleveland.[5]

According to the Times report, "So far, every county election board that has reviewed the dorm challenges found them invalid." [6]

Many of these faulty registration challenges have been attributed to poor research methods and inaccurate information. For example, Mary Siegel, a leader of the Ohio Voter Integrity Project, reportedly signed 422 "Challenge of Right of Person to Vote" forms based on a Postal Service change-of-address registry and submitted them to the Hamilton County elections board. She withdrew the challenges after the state declared the postal registry to be insufficient grounds to challenge voting rights.[7] According to Ms. Siegel, the Ohio Voter Integrity Project challenged voter registrations in 13 counties in Ohio, nine of which President Obama won in 2008.[8]

Another leader of the Ohio project, Marlene Hess Kocher, reportedly filed 420 challenges in Hamilton County over the last month. These included false allegations that eight members of an African American family were registered to vote at a vacant lot outside Cincinnati. When confronted at an elections board hearing about these illegitimate challenges, Ms. Kocher publicly apologized and claimed that she had "no intention of preventing somebody from voting." [9]

In spite of this deplorable record, you personally commended the work of the Ohio Voter Integrity Project, stating, "This is an excellent example of True the Vote-empowered grassroots groups pushing for transparency and accountability from their local officials." [10]

Inaccurate Voter Challenges in Wisconsin

Problems with the tactics and methodologies employed by your organization were also identified in Wisconsin when a True the Vote affiliate known as Verify the Recall reviewed almost one million signatures on petitions demanding the recall of Governor Scott Walker. The New York Times reported that "thousands of volunteers helped enter petition signatures into a database, which was then analyzed by the group's software." [11]

According to the Times, however, a non-partisan state regulatory agency consisting of six former state judge appointees known as the Government Accountability Board reviewed True the Vote's work and "criticized its methods" for basic errors:

For example: Mary Lee Smith signed her name Mary L. Smith and was deemed ineligible by the group.

Signatures deemed "out of state" included 13 from Milwaukee and three from Madison.

The group's software would not recognize abbreviations, so Wisconsin addresses like Stevens Point were flagged if "Pt." was used on the petition.[12]

In a memorandum evaluating True the Vote's poor record in Wisconsin, the Government Accountability Board concluded that your organization's results "were significantly less accurate, complete and reliable than the review and analysis completed by the G.A.B." and "would not have survived legal challenge." [13]

The Government Accountability Board also found that software developed by True the Vote was flawed, writing:

It is staff's conclusion that True the Vote's results are at best flawed because of what must be described as a "strict compliance" standard coupled with a model that allows errors to be multiplied via the volunteer data entry. These errors led to many computer determined strikes as the software can only evaluate the information entered, so if it was flawed or incomplete there was no opportunity for determining validity under a substantial compliance standard.[14]

Similar Problems in Other States

The problems documented in Ohio and Wisconsin are similar to those identified in other states. For example, in North Carolina, Jay DeLancy, who runs the Voter Integrity Project of North Carolina, a group he started after attending a True to Vote meeting, told the New York Times that the group recently submitted the names of 30,000 people he claimed were dead, yet remained on state voter rolls. The Times also reported that he challenged

more than 500 registered voters he claimed were not American citizens. After reviewing these challenges, North Carolina election officials refuted nearly all of them.[15]

Moreover, North Carolina's Director of Voter Registration and Absentee Voting publicly criticized True the Vote's challenges, stating:

People are concerned about voter fraud, but ... we are not finding evidence of (such fraud). The Voter Integrity Project has not brought forth any information to show that someone is voting in the name of another, and I think citizens in North Carolina need to be aware of that.[16]

Similarly, Election Integrity Maryland, another statewide initiative "empowered" by True the Vote, reportedly filed 11,000 challenges this year with local Maryland election boards.[17] Among these challenges, the group filed a request to review registration records with the Maryland Board of Elections on August 30, 2012, alleging that "it found several potential dead voters, voters who registered after they had died and a living Maryland resident who has been voting twice in elections for years." [18]

Maryland's Director of Voter Registration has reported to Committee staff that, after investigating claims in the article, information provided by the organization "was determined to be inaccurate." Another state election official also reported that one of the leaders of Election Integrity Maryland recently called the Board of Elections to apologize for inaccurate press reports that the group believes mischaracterized its voter registration challenges.[19]

Local and state election officials in Maryland have also "questioned some of the research methods used by Election Integrity such as newspaper obituary notices, which is an unacceptable form of death verification under state law, and Facebook." [20] In addition, Maryland election officials report that "they've reviewed the challenges and that most of the inconsistencies can be explained, or that they don't have enough information to take someone off the rolls." [21] With respect to the volume of voter registration challenges submitted by the group, Maryland election officials "say those numbers are way overblown." [22]

Request for Documents and Information

In order to examine why your organization appears to be responsible for so many illegitimate voter registration challenges, I request that you provide the following information and documents:

1. a list of all individual voter registration challenges by state, county, and precinct submitted to governmental election entities, including correspondence and determinations by election officials relating to each challenge;
2. copies of all letters sent to states, counties, or other entities alleging non-compliance with the National Voter Registration Act for failing to conduct voter registration list maintenance prior to the November elections;
3. a list of voter registration rolls by state, county, and precinct that True the Vote is currently reviewing for potential challenges;
4. copies of all training materials used for volunteers, affiliates, or other entities;
5. copies of computer programs, research software, and databases used by True the Vote to review voter registration;
6. all contracts, agreements, and memoranda of understanding between True the Vote and affiliates or other entities relating to the terms of use of True the Vote research software and databases;
7. a list all organizations and volunteer groups that currently have access to True the Vote computer programs, research software, and databases; and
8. a list of vendors of voter information, voter registration lists, and other databases used by True the Vote, its volunteers, and its affiliates.

Please provide these documents by October 14, 2012. Thank you for your attention to this matter.

Sincerely,

Elijah E. Cummings
Ranking Member

cc: The Honorable Darrell E. Issa, Chairman

112th Congress



(//twitter.com/share?url=https://oversight.house.gov/news/press-releases/cummings-launches-investigation-of-true-the-vote-raises-questions-about&text=Cummings Launches Investigation of "True the Vote"; Raises Questions about Conservative Group's Campaign to Challenge Legitimate Voters
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BRENNAN
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VOTER PURGES

Myrna Pérez

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ABOUT THE BRENNAN CENTER FOR JUSTICE

The Brennan Center for Justice at New York University School of Law is a non-partisan public policy and law institute that focuses on fundamental issues of democracy and justice. Our work ranges from voting rights to redistricting reform, from access to the courts to presidential power in the fight against terrorism. A singular institution – part think tank, part public interest law firm, part advocacy group – the Brennan Center combines scholarship, legislative and legal advocacy, and communications to win meaningful, measurable change in the public sector.

ABOUT THE BRENNAN CENTER'S VOTING RIGHTS AND ELECTIONS PROJECT

The Voting Rights and Elections Project works to expand the franchise, to ensure that every eligible American can vote, and to ensure that every vote cast is accurately recorded and counted. The Center's staff provides top-flight legal and policy assistance on a broad range of election administration issues, including voter registration systems, voting technology, voter identification, statewide voter registration list maintenance, and provisional ballots.

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Myrna Pérez is counsel for the Democracy Program at the Brennan Center for Justice, focusing on a variety of voting rights and election administration issues including the Brennan Center's efforts to restore the vote to people with felony convictions. Prior to joining the Center, Ms. Pérez was the Civil Rights Fellow at Relman & Dane, a civil rights law firm in Washington, D.C. A graduate of Columbia Law School and the Harvard Kennedy School of Government, Ms. Pérez clerked for the Honorable Anita B. Brody of the United States District Court for the Eastern District of Pennsylvania and for the Honorable Julio M. Fuentes of the United States Court of Appeals for the Third Circuit.

ACKNOWLEDGMENTS

The author would like to thank the Brennan Center's Wendy Weiser, Michael Waldman, Fritz Schwarz, Erika Wood, Adam Skaggs, Jennifer Rosenberg, Liz Budnitz, Justin Levitt, Susan Lehman, Maggie Barron, Thaddeus Kromelis, Margaret Chen, Jonathan Blitzer, Jafreen Uddin, Monique Chase, and Laura Seago, as well as Carla Small, Arielle Saposh, Andrew Allison, David Wake, Amalea Smirneopolis, and Kathleen Wells for their helpful assistance. The Brennan Center for Justice sincerely appreciates the assistance and cooperation of the election officials and advocates who allowed themselves to be interviewed for this report, and gratefully extends our thanks.

The Center thanks the Bullitt Foundation, the Carnegie Corporation, the Charles H. Revson Foundation, the Educational Foundation of America, the Ford Foundation, the Irving Harris Foundation, the JEHT Foundation, the Joyce Foundation, the Mitchell Kapor Foundation, the Open Society Institute, the Rockefeller Family Fund, the Tides Foundation, and the Wallace Global Fund for the generous support that made this paper possible. The statements made and the views expressed in this paper are solely the responsibility of the Brennan Center.

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EXECUTIVE SUMMARY

Voter registration lists, also called voter rolls, are the gateway to voting. A citizen typically cannot cast a vote that will count unless her name appears on the voter registration rolls. Yet state and local officials regularly remove — or “purge” — citizens from voter rolls. In fact, thirty-nine states and the District of Columbia reported purging more than 13 million voters from registration rolls between 2004 and 2006.¹ Purges, if done properly, are an important way to ensure that voter rolls are dependable, accurate, and up-to-date. Precise and carefully conducted purges can remove duplicate names, and people who have moved, died, or are otherwise ineligible.

Far too frequently, however, eligible, registered citizens show up to vote and discover their names have been removed from the voter lists. States maintain voter rolls in an inconsistent and unaccountable manner. Officials strike voters from the rolls through a process that is shrouded in secrecy, prone to error, and vulnerable to manipulation.

While the lack of transparency in purge practices precludes a precise figure of the number of those erroneously purged, we do know that purges have been conducted improperly before. Over the past several years, every single purge list the Brennan Center has reviewed has been flawed. In 2004, for example, Florida planned to remove 48,000 “suspected felons” from its voter rolls. Many of those identified were in fact eligible to vote.² The flawed process generated a list of 22,000 African Americans to be purged, but only 61 voters with Hispanic surnames, notwithstanding Florida’s sizable Hispanic population. To compound the problem, the purge list over-represented African Americans and mistakenly included thousands who had had their voting rights restored under Florida law.³ Under pressure from voting rights groups, Florida ordered officials to stop using the purge list.⁴ To compound the problem, the purge list over-represented African Americans and mistakenly included thousands who had had their voting rights restored under Florida law.

In New Jersey in 2005, the Brennan Center worked with a political science professor to analyze a purge list prepared by a political party using “matching” techniques. We found that the list was compiled using a number of faulty assumptions and that it would have harmed eligible voters if used as the basis for a purge. In 2006, the Secretary of State of Kentucky attempted to purge the state’s rolls based on a flawed attempt to identify voters who had moved from Kentucky to neighboring South Carolina and Tennessee. A resulting lawsuit uncovered the fact that eligible voters who had not, in fact, moved out of the state of Kentucky were caught up in the purge; a state court ordered the state to reverse the purge.

The purges reviewed for this report give no greater grounds for comfort. While the reasons vary from state to state, no state reviewed in this report uses purge practices or procedures that are free from risk of error or manipulation, that have sufficient voter protections, or that have adequate procedures to catch and correct errors.

¹ | Brennan Center for Justice

The secret and inconsistent manner in which purges are conducted make it difficult, if not impossible, to know exactly how many voters are stricken from voting lists erroneously. And when purges are made public, they often reveal serious problems. Here are a few examples recent examples:

- In Mississippi earlier this year, a local election official discovered that another official had wrongly purged 10,000 voters from her home computer just a week before the presidential primary.
- In Muscogee, Georgia this year, a county official purged 700 people from the voter lists, supposedly because they were ineligible to vote due to criminal convictions. The list included people who had never even received a parking ticket.
- In Louisiana, including areas hit hard by hurricanes, officials purged approximately 21,000 voters, ostensibly for registering to vote in another state. A voter could avoid removal if she provided proof that the registration was cancelled in the other state, documentation not available to voters who never actually registered anywhere else.

FINDINGS

This report provides one of the first systematic examinations of the chaotic and largely unseen world of voter purges. In a detailed study focusing on twelve states, we identified four problematic practices with voter purges across the country:

Purges rely on error-ridden lists. States regularly attempt to purge voter lists of ineligible voters or duplicate registration records, but the lists that states use as the basis for purging are often riddled with errors. For example, some states purge their voter lists based on the Social Security Administration's Death Master File, a database that even the Social Security Administration admits includes people who are still alive.⁵ Even though Hilde Stafford, a Wappingers Falls, NY resident, was still alive and voted, the master death index lists her date of death as June 15, 1997.⁶ As another example, when a member of a household files a change of address for herself in the United States Postal Service's National Change of Address database, it sometimes has the effect of changing the addresses of all members of that household. Voters who are eligible to vote are wrongly stricken from the rolls because of problems with underlying source lists.

Voters are purged secretly and without notice. None of the states investigated in this report statutorily require election officials to provide public notice of a systematic purge or even individual notice to those voters whose names are removed from the rolls as part of the purge. Additionally, with the exception of registrants believed to have changed addresses, many states do not notify individual voters before purging them. In large part, states that do provide individualized notice do not provide such notice for all classes of purge candidates. For example, our research revealed that it is rare for states to provide notice when a registrant is believed to be deceased. Without proper notice to affected individuals, an erroneously purged voter will likely not be able to correct the error

before Election Day. Without public notice of an impending purge, the public will not be able to detect improper purges or to hold their election officials accountable for more accurate voter list maintenance.

Bad “matching” criteria leaves voters vulnerable to manipulated purges. Many voter purges are conducted with problematic techniques that leave ample room for abuse and manipulation. State statutes rely on the discretion of election officials to identify registrants for removal. Far too often, election officials believe they have “matched” two voters, when they are actually looking at the records of two distinct individuals with similar identifying information. These cases of mistaken identity cause eligible voters to be wrongly removed from the rolls. The infamous Florida purge of 2000 — conservative estimates place the number of wrongfully purged voters close to 12,000 — was generated in part by bad matching criteria.⁷ Florida registrants were purged from the rolls

in part if 80 percent of the letters of their last names were the same as those of persons with criminal convictions.⁸ Those wrongly purged included Reverend Willie D. Whiting Jr., who, under the matching criteria, was considered the same person as Willie J. Whiting.⁹ Without specific guidelines for or limitations on the authority of election officials conducting purges, eligible voters are regularly made unnecessarily vulnerable.

NO EFFECTIVE NATIONAL STANDARD
GOVERNS VOTER PURGES. THIS MAKES THE
RISK OF BEING PURGED UNPREDICTABLE
AND DIFFICULT TO GUARD AGAINST.

Insufficient oversight leaves voters vulnerable to manipulated purges. Insufficient oversight permeates the purge process beyond just the issue of matching. For example, state statutes often rely on the discretion of election officials to identify registrants for removal and to initiate removal procedures. In Washington, the failure to deliver a number of delineated mailings, including precinct reassignment notices, ballot applications, and registration acknowledgment notices, triggers the mailing of address confirmation notices,¹⁰ which then sets in motion the process for removal on account of change of address. Two Washington counties and the Secretary of State, however, reported that address confirmation notices were sent when any mail was returned as undeliverable, not just those delineated in state statute. Since these statutes rarely tend to specify limitations on the authority of election officials to purge registrants, insufficient oversight leaves room for election officials to deviate from what the state law provides and may make voters vulnerable to poor, lax, or irresponsible decision-making.

POLICY RECOMMENDATIONS

No effective national standard governs voter purges; in fact, methods vary from state to state and even from county to county. A voter's risk of being purged depends in part on where in the state he or she lives. The lack of consistent rules and procedures means that this risk is unpredictable and difficult to guard against. While some variation is inevitable, every American should benefit from basic protections against erroneous purges.

Based on our review of purge practices and statutes in a number of jurisdictions, we make the following policy recommendations to reduce the occurrence of erroneous purges and protect eligible voters from erroneous purges.

A. Transparency and Accountability for Purges

States should:

- **Develop and publish uniform, non-discriminatory rules for purges.**
- **Provide public notice of an impending purge.** Two weeks before any county-wide or state-wide purge, states should announce the purge and explain how it is to be conducted. Individual voters must be notified and given the opportunity to correct any errors or omissions, or demonstrate eligibility before they are stricken from the rolls.
- **Develop and publish rules for an individual to prevent or remedy her erroneous inclusion in an impending purge.** Eligible citizens should have a clear way to restore their names to voter rolls.
- **Stop using failure to vote as a trigger for a purge.** States should send address confirmation notices only when they believe a voter has moved.
- **Develop directives and criteria with respect to the authority to purge voters.** The removal of any record should require authorization by at least two officials.
- **Preserve purged voter registration records.**
- **Make purge lists publicly available.**
- **Make purge lists available at polling places.** Purge lists should be brought to the polls on Election Day so that errors can be identified and pollworkers can find the names of erroneously purged voters and allow them to vote regular ballots.

B. Strict Criteria for the Development of Purge Lists

States should:

- **Ensure a high degree of certainty that names on a purge list belong there.** Purge lists should be reviewed multiple times to ensure that only ineligible voters are included.
- **Establish strict criteria for matching voter lists with other sources.**
- **Audit purge source lists.** If purge lists are developed by matching names on the voter registration list to names from other sources like criminal conviction lists, the quality and accuracy of the information in these lists should be routinely “audited” or checked.
- **Monitor duplicate removal procedures.** States should implement uniform rules and procedures for eliminating duplicate registrations.

C. “Fail-Safe” Provisions to Protect Voters

States should ensure that:

- **No voter is turned away from the polls because her name is not found on the voter rolls.** Instead, would-be voters should be given provisional ballots, to which they are entitled under the law.
- **Election workers are given clear instructions and adequate training as to HAVA’s provisional balloting requirements.**

D. Universal Voter Registration

States should:

- **Take the affirmative responsibility to build clean voter rolls consisting of all eligible citizens.** Building on other government lists or using other innovative methods, states can make sure that all eligible citizens, and only eligible citizens, are on the voter rolls.
- **Ensure that voters stay on the voter rolls when they move within the state.**
- **Provide a fail-safe mechanism of Election Day registration for those individuals who are missed or whose names are erroneously purged from the voter rolls.**

I. INTRODUCTION

In 1959, the local Citizens Council, a white supremacist group with an organizational mission of maintaining racial segregation, together with a local election official removed 85% of the African American voters from the registration rolls of Washington Parish, Louisiana, under the guise of removing from the rolls all persons illegally registered.¹¹

In 2007, almost 50 years after a court found that the Washington Parish purge was unconstitutional both in purpose and effect, election officials in Louisiana removed more than 21,000 people from the voter registration rolls, the majority from areas most devastated by Hurricane Katrina a year earlier.¹² Almost a third of those removed were from Orleans Parish,¹³ which has a majority African American population.¹⁴ A voter could avoid removal if she provided proof that the registration was cancelled in the other state, documentation not available to voters who never actually registered anywhere else.¹⁵

While we may be past the days in which election officials are complicit with those who intentionally seek to target persons of color for removal from the voter rolls, the way in which voter registration lists are maintained in this country may sometimes have a similar effect.¹⁶

Voter registration lists are the gateway to voting. In most instances,¹⁷ a citizen can only vote and have her vote count if her name appears on the registration rolls. Yet officials regularly remove, or “purge,” citizens each day from voter registration lists. In fact, at least 13 million people were purged from voter rolls between the close of registration for the 2004 federal general election and the close of registration for the 2006 federal general election. A voter has been “purged” if her registration status has changed such that she is no longer listed on the registration list as a person who is able to cast a regular ballot or a ballot that will be counted.

WHEN PURGES GO WRONG, ELIGIBLE
VOTERS OFTEN DISCOVER THEY HAVE
BEEN KNOCKED OFF VOTER ROLLS
ONLY WHEN THEY SHOW UP AT THE
POLLS TO VOTE—AND CAN'T.

Dependable, accurate, and up-to-date voter registration lists increase the integrity of our elections in many ways. They let candidates and get-out-the-vote groups work more efficiently. Dependable lists also reduce confusion at the polls, make turnout numbers more precise and election misconduct easier to detect and deter. To the extent that they help insure that registration lists correctly reflect eligible registrants, precise, carefully conducted purges are important.

Unfortunately, many of the voter purges in this country are performed in a slipshod manner and leave ample room for abuse and manipulation. When purges go wrong, eligible voters are removed from the rolls, frequently with no notice or knowledge until they show up at the polls to vote.

This report examines what goes wrong with those purges, how voter purges are conducted, and how to minimize the risk that eligible voters will be incorrectly purged across the county. Our analysis is based on a review and examination of state statutes, regulatory materials, and news reports in the following twelve states, representing a cross-section of regions, election systems, and purge practices: Florida, Kentucky, Indiana, Michigan, Missouri, Nevada, New York, Ohio, Oregon, Pennsylvania, Washington, and Wisconsin. In five states — Kentucky, Missouri, Nevada, Ohio, and Washington — we also conducted extensive interviews with state and local election officials charged with the maintenance of voter registration lists.

Due to the secret nature of purges, it is difficult to know the full extent of the problem, or the exact number of people who have been wrongfully kept from voting. What we do know is that in the states studied, purge practices are unnecessarily secretive and in need of improvement. When purges are made public, they reveal serious problems. Given the margins by which elections are won, these purges matter greatly, and there is reason to believe that the number of people wrongfully purged makes a difference. There is no reason for purges to be kept secret — they undermine confidence in elections, and cast doubt on our concept of fairness.

The Brennan Center is dedicated to investigating the precise nature of these purges conducted behind closed doors. We encourage election officials, legislators, advocates and concerned members of the public to use this report to improve voter purge practices and ensure that the rights of eligible voters are not jeopardized.

II. TYPES OF VOTER PURGES

Purges occur as part of a process of “list maintenance” that states and localities use to update and clean their voter registration lists. Depending on the state, purges are conducted by local officials, state officials, or both. Voters are generally purged on one of the following grounds: (1) changes of address, (2) death, (3) disenfranchising criminal conviction, (4) duplication of other records, (5) inactivity or failure to vote, and (6) mental incapacitation.

Three statutes provide the bulk of the few existing federal requirements and voter protections for conducting purges — the National Voter Registration Act of 1993 (“NVRA”), the Help America Vote Act of 2002 (“HAVA”), and the Voting Rights Act of 1965. Under the NVRA, any state purge practice must be “uniform, non-discriminatory, and in compliance with the Voting Rights Act of 1965.”¹⁸ The NVRA also imposes certain limitations on election officials as to when and how registrants can be removed from the voter rolls on account of change of address,¹⁹ which afford some protections against one type of purge. HAVA emphasizes that voter purges must be done in accordance with the NVRA,²⁰ and requires that the process for maintaining statewide computerized voter registration databases, which HAVA requires, include minimum standards of accuracy to ensure that registration records are accurate and regularly updated.²¹

Purges can be “systematic,” meaning that they are large-scale and done in an organized and pre-planned fashion, or they can be “routine,” meaning that they affect an individual voter and are based on individualized information. A systematic purge is one in which all people believed to be deceased are removed from the registration rolls; a routine purge is one in which a son brings his mother’s death certificate to the local registrar and asks that she be removed from the rolls. Routine purges can have serious consequences for individual voters, but given the sheer number of persons affected, it is especially important to ensure that systematic purges are done well, with adequate protections for affected voters.

This section examines the statutes, policies, and procedures employed by states and localities for purging voters, and explains the policy choices that may affect the ability of voters to cast ballots which count. The particulars of how purges are conducted reveal how purge practices vary dramatically from jurisdiction to jurisdiction, how there is also a lack of consistent protections for voters, and how there are opportunities for mischief in the purge process.

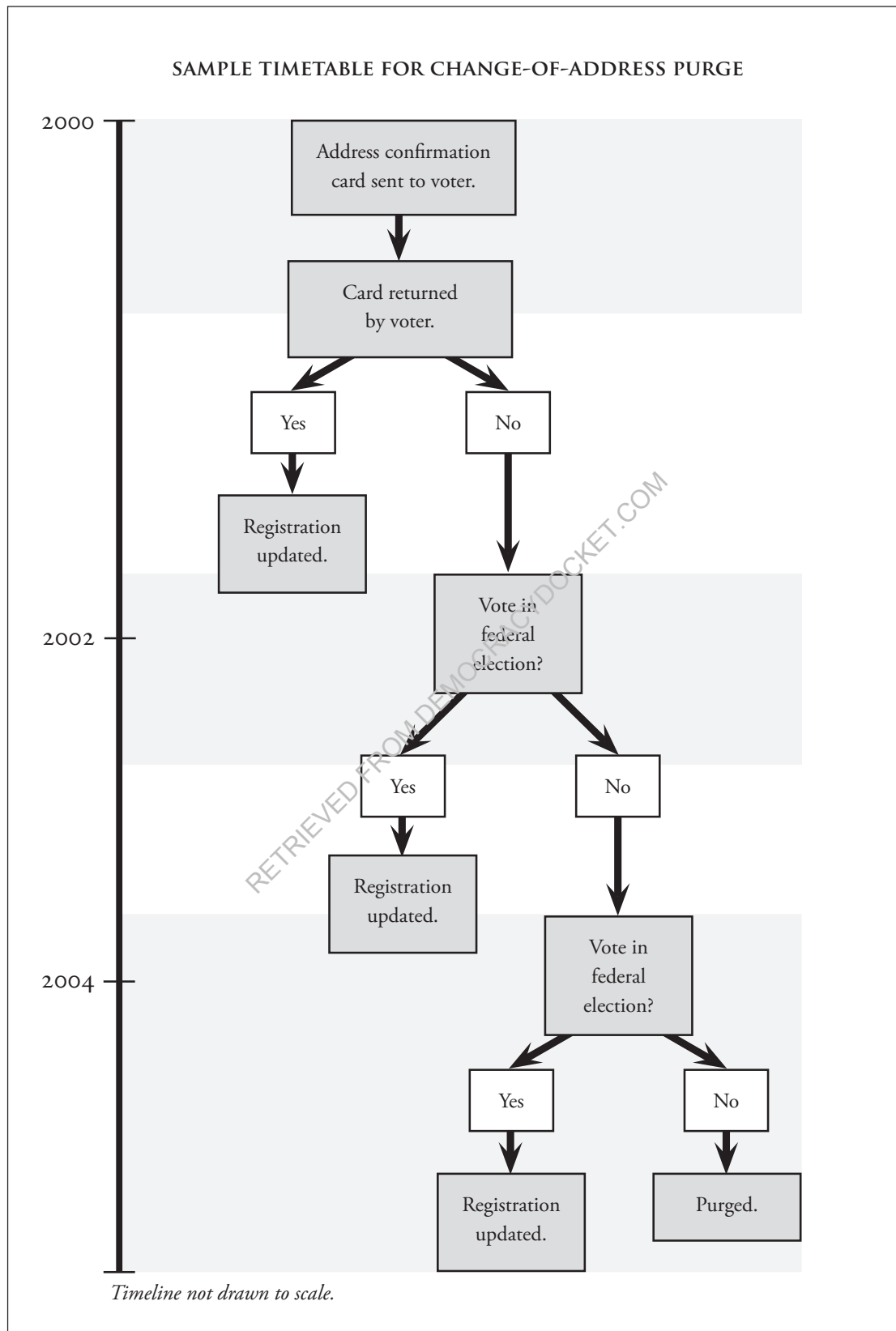
A. CHANGE OF ADDRESS

Twenty-nine million voting-age Americans move each year.²² Accordingly, it is no surprise that changes of name and address accounted for 43% of all voter registration transactions for the time period between the close of the 1996 elections to right after the close of the 1998 elections.²³ From the close of the 2004 elections to the close of the 2006 elections, changes of name, address, and political party accounted for more than 30% of all voter registration transactions.²⁴

Election officials we interviewed reported that changes of address are the most difficult aspect of list maintenance.²⁵ A number of election officials believe that changes of address account for the bulk of duplicate registrations on the voter rolls²⁶ because people who have moved often re-register at their new places of residency without notifying election officials in their former places of residence of the address change.²⁷

IF A JURISDICTION USES
UNDELIVERABLE MAIL
FROM A MASS MAILING
AS THE SOLE BASIS FOR
PURGING A VOTER, IT
BREAKS FEDERAL LAW.

Under federal law, election officials may purge a registrant believed to no longer be a resident of the election jurisdiction if two conditions are satisfied. First, the registrant must fail to respond to an address confirmation notice from the relevant election office in the time period designated under state law. The notice must be sent by forwardable mail and include a postage prepaid, pre-addressed response card. Second, the registrant must fail to vote in two federal general elections following the mailing of the address confirmation notice.²⁸ The sending of these notices starts the running of the clock for the time period in which a person must vote in two subsequent federal general elections or be removed from the rolls in those states that conduct purges.²⁹



In spite of this federal mandate, there are great discrepancies in the methods states and localities use to implement purges based on changes of address, including: differences in which events trigger the mailing of a notice seeking address confirmation; which information sources are used to identify registrants who have moved; how registrants' addresses are verified; and how officials proceed when a person does not respond to an address confirmation notices.

1. Post Card Purges and other Triggers for Address Confirmation Notices

The most common triggers causing a local election official to send an address confirmation notice include: the return of a mailing sent to the person from the election office; an acceptable source provides information suggesting that the person has moved; or the election office undertakes a program to verify addresses and finds an address that appears questionable.

In several states, officials are given the authority to send an address confirmation notice to a registrant if other undeliverable mail is returned to the election office in certain circumstances.³⁰ States, and even counties within states, vary in the type of mail that can trigger the mailing of a confirmation notice. Some states or counties will send an address confirmation notice based on the return of a mailing sent to all registered voters designed to ferret out bad addresses. This is sometimes referred to as a “canvass.” In other jurisdictions, a wider array of undeliverable election mail may trigger the mailing of an address confirmation notice, such as absentee ballots, registration acknowledgement notices, and precinct reassignment notices.³¹

If a purge arises from a mass mailing, typically a non-forwardable postcard, it is referred to as a “postcard purge.”³² In some cases, a postcard mailing is part of a jurisdiction's canvassing efforts. When postcards are returned as undeliverable, the jurisdiction usually sends an address confirmation notice to the voter. If the voter does not respond to the notice and fails to vote in two subsequent federal elections, the voter can be lawfully purged from the voter registration list, provided that the removal does not take place within 90 days of a federal election. If a jurisdiction uses undeliverable mail from a mass mailing as the sole basis for purging a voter, it breaks federal law. A Michigan law is legally vulnerable on this ground because if the original “voter identification” card — the card sent to new registrants — is returned as undeliverable to the local clerk, the clerk cancels the registration.³³

Although returned postcards from mass mailings probably form the most common basis for supposed changes of address, this kind of returned mail is not a reliable indicator that a person has moved for the reasons set forth below. Several of the factors that make this method unreliable affect voters in poor and minority communities more than those in other communities. Before presuming that returned mail means a person has moved, states and localities should consider the following sources of error:

a. Voter registration lists suffer from typos and other clerical errors

Mail sent to a listed registration address may be returned as undeliverable because of a typo or other data entry errors on the voter rolls. Large government databases are notoriously vulnerable to

such flaws.³⁴ One study found that as many as 26% of records in a Florida social service database included city names that were spelled differently from the same names on a master list, including more than 40 spelling variations of Fort Lauderdale, one of the largest cities in the state.³⁵ Address numbers and names may be mistyped or transposed. Portions of addresses apartment numbers or house numbers or directional indicators (e.g., S. Main St. or N. Main St.) may be dropped. Addresses may be entered incorrectly (e.g., 211-2 Main St. becomes 21 Main St.).

b. A voter may not be listed on the mailbox of her residential voting address

Mail sent to a listed registration address may be returned as undeliverable because the United States Postal Service does not know that the voter actually lives at the address listed. Couples, roommates, or family members may list only one or two members of the residential unit on the mailbox. Particularly when the unlisted members of the unit do not share the same surname as the listed member, the postal delivery person may simply presume that the individual in question does not live at the listed address.

c. A voter may live at a non-traditional residence

Mail sent to a listed registration address may be returned as undeliverable because the voter does not live at a traditional address. Homeless individuals, who have the right to register and vote in every state, are a prime example of this problem.³⁶ Depending on the law of the state, these citizens may list a homeless shelter or government building as their legal voting residence, even if the institution listed will not accept their mail.

d. A voter may be temporarily away from her permanent residence

Mail sent to a listed registration address may be returned as undeliverable because the voter is temporarily away from her permanent residence, and does not receive mail there. For example, an active duty member of the military may have difficulty receiving mail. In one notorious Louisiana case, a member of Congress who received her mail in Washington D.C. rather than at her home address in her district was challenged after a letter to her home was returned as undeliverable.³⁷

e. A voter's permanent mailing address may differ from her residential voting address

Mail sent to a listed registration address may be returned as undeliverable because the voter receives mail elsewhere — at a post office box, for example. When individuals register to vote, they list their physical residences, but not all Americans receive mail at their residential addresses.

f. Mail may not be properly delivered

Sometimes, of course, mail sent to a listed registration address is returned as undeliverable because it was not delivered properly, through no fault of the voter.³⁸ Mail can be lost or misrouted, causing

it to be returned to the sender. Erratic mail problems can be quite significant. In the 1990 census, for example, the *New York Times* reported that “[a]lthough at least 4.8 million [census] forms were found to be undeliverable by the Postal Service, 1.8 million of those were later delivered by hand.”³⁹ Moreover, ineffective mail delivery is more common in poor and minority communities.⁴⁰

g. A voter’s street name may have changed

Mail sent to a listed registration address may be undeliverable because the street name may have changed since the voter registered, even though the voter remains in the same residence. In Milwaukee in 2006, for example, when street addresses were checked against a postal service address program, city officials reviewing the list of discrepancies found that some addresses were flagged because of changes to the street names themselves.⁴¹

h. A voter may refuse to accept certain mail

Mail sent to a listed registration address may be undeliverable because the voter refuses to accept the piece of mail in question. There is no requirement that an individual accept a piece of mail offered for delivery, rather than sending it back with the delivery person. Catherine Herold of Ohio, for example, reported that she refused to accept delivery of a partisan mailing — which was returned undelivered and then used as purported evidence of her allegedly invalid registration.⁴²

i. A voter may have moved permanently, but nevertheless remains eligible to vote

State rules differ as to when a voter who has moved must inform election officials of her new address. At a minimum, however, federal law provides that if a voter has moved within the same area covered by a given polling place — if, for example, a voter moves from one apartment to another within the same apartment complex — she may legitimately vote at that polling place even if she has not yet notified a registrar of her move.⁴³

Federal law prohibits systematic purges within 90 days of an election.⁴⁴ Voter advocacy groups have criticized jurisdictions which have sent or have contemplated sending a mass mailing as the first step to confirm addresses when the initial mailing has taken place within 90 days of an election.⁴⁵ Mass mailings of this kind are inadvisable not only because undelivered mail is an unreliable indicator that a person has moved (as explained above), but also because of timing. Election officials are busiest in the 90 days preceding an election: they must process new registrations, update registration records, identify polling locations, prepare voting materials, and more. Without the time to exercise due care, data entry and other mistakes are more likely, subjecting eligible voters to the risk of a purge.

2. Information Sources Used to Identify Registrants Who Have Moved

Often voters do not tell election officials they have moved out of a jurisdiction, and so it is hard for officials to identify invalid records on voter registration lists. States, therefore, turn elsewhere to

identify voters who have moved. Given the NVRA's explicit authorization to do so, it is no surprise that states often rely heavily on information provided by the United States Postal Service, its licensees, and the USPS's National Change of Address database.⁴⁶ This method, though, has its own problems, including inaccuracies in postal service data and cost to election officials.⁴⁷ Some states use information gained in connection with jury notices and information from other departments, such as the bureau of motor vehicles to identify address changes.⁴⁸ For example, in Kentucky, one election official used information on changes of address for updating driver's licenses to update addresses in the voter registration list.⁴⁹

In some states, individuals can provide information about someone else's change of address that is then acted upon by election officials. In Nevada, county clerks can send an address confirmation notice based on information gained from another voter or other "reliable person" who submits an affidavit stating that a particular voter has moved outside the county with the intent to abandon her residence.⁵⁰

3. Address Verification Procedures

Some state statutes permit broad canvasses to confirm voters' addresses. For example, some states allow local election officials to conduct door-to-door canvasses to find voters.⁵¹ In actuality, however, a local election official we interviewed reported that this was not a widespread practice.⁵²

Some state statutes permit localities to initiate their own efforts to identify registrants who have moved. In some cases, the acceptable methods are unspecified or unlimited. Missouri law grants election officials broad authority and wide latitude to verify a person's address. The statute reads, in relevant part: "[t]he election authority may investigate the residence or other qualifications of any voter at any time it deems necessary. The election authority shall investigate material affecting any voter's qualifications brought to its attention from any source, and such investigations shall be conducted in the manner it directs."⁵³

4. Voter Classification After an Address Confirmation Notice is Sent

While the details of the process differ, after sending address confirmation notices states tend to follow one of two schemes: states designate any voter who is sent an address confirmation notice as "inactive,"⁵⁴ while others do not designate a voter as "inactive" until after the voter fails to respond to the address confirmation notice in a timely matter.⁵⁵ This distinction is relevant because in some states, the voting experience of someone designated "inactive" may be different from, and more difficult than, that of an "active" voter. In Massachusetts, for example, inactive voters shoulder additional identification burdens when they show up to vote.⁵⁶ In Oregon, where all elections in the state are allowed to be conducted by mail, inactive voters are not statutorily required to be given ballots by mail.⁵⁷ Additionally, some polling stations are reported to have a list of inactive voters that is separate and apart from the active voter list. There is at least some anecdotal evidence that sometimes the lists of inactive voters are not available at the polling stations, putting inactive voters at a disadvantage when attempting to vote.

B. DEATH

Both HAVA and the NVRA address the removal of deceased voters from the voter rolls. Under the NVRA, states must make a “reasonable effort” to remove those who have died from the registration rolls.⁵⁸ HAVA directs each state to coordinate its voter registration database with state death records for the purposes of removing names of deceased persons from the voter rolls.⁵⁹

Different agencies in different states maintain records of deaths, and so election officials get information about deceased registrants from varying sources. In some states, the department of health sends a list to election officials.⁶⁰ Elsewhere, local and state registrars or departments of vital statistics send a list of deceased persons to voting officials.⁶¹ Still other states do not designate which agency is charged with providing information on decedents.⁶²

Some states permit election officials to consider sources other than data from state agencies in gathering information on decedents. In some states, for example, election officials are permitted to use newspaper obituaries to identify deceased registrants.⁶³ In Washington State, a registrant may be removed from the registration rolls if another registered voter signs a statement of personal knowledge or belief that the registrant is deceased.⁶⁴ Elsewhere, state law authorizes the use of other sources, without specifying what sources may be considered.⁶⁵

C. DISENFRANCHISING CRIMINAL CONVICTIONS⁶⁶

States have a blizzard of varying laws regarding the voting rights of people with criminal convictions. Kentucky and Virginia permanently disenfranchise all people with felony convictions unless their rights are specifically restored by the government, while in Maine and Vermont, people with criminal convictions do not lose their voting rights at all — even prisoners are permitted to vote. Most state laws, however, fall somewhere in between those two positions.

Thirteen states and the District of Columbia automatically restore voting rights to formerly incarcerated persons upon their release from prison.⁶⁷ In contrast, eight states permanently disenfranchise citizens convicted of certain crimes unless the government approves individual rights restoration.⁶⁸ Five states allow probationers to vote and automatically restore the voting rights of persons with criminal convictions after release from prison and discharge from parole.⁶⁹ It is most common for a state to restore an individual’s voting rights upon completion of his sentence, including prison, parole, and probation.⁷⁰

Federal law provides little guidance or voter protections in this area. The NVRA permits states to purge people with felony convictions from the voter rolls consistent with state law.⁷¹ HAVA requires states to “coordinate the computerized list with State agency records on felony status” to remove registrants made ineligible by criminal convictions.⁷² As with other types of purges addressed in this report, state purge practices for people ineligible because of felony convictions are varied in numerous ways.

1. Authority and Responsibility

The responsibility for purging people with disenfranchising convictions differs from state to state. In some states, like Kentucky, the statutory responsibility rests with state election officials.⁷³ In other states, like Nevada, local officials are responsible.⁷⁴ There are also hybrid systems for removing people with disenfranchising convictions: in Washington, for example, local officials remove some people convicted of felonies while state officials remove others.⁷⁵ In Florida, local officials are required to conduct removals, but do so in accordance with information provided by state officials.⁷⁶ In other cases, state election law does not clearly delineate which officials are responsible for removing ineligible persons with felony convictions.⁷⁷

2. Sources of Information

Under federal law, United States Attorneys are required to notify states' chief election officials of felony convictions in federal court.⁷⁸ State election officials, then, in turn notify relevant local election officials. In addition to the provision of information by U.S. Attorneys, some state statutes provide that election officials are to obtain information on people with disenfranchising convictions from a number of other sources.⁷⁹ State statutes, however, do not always provide clear guidance as to what sources election officials can rely on in gathering information about registrants rendered ineligible by criminal convictions.⁸⁰ Consequently, sources vary on a county-by-county basis.⁸¹

D. DUPLICATE RECORDS

Often when voters move within a state, they register to vote in a new neighborhood without canceling their registration in the old one. Or, accidentally, a voter can register from the same address multiple times. Federal law says that state systematic purge programs should screen for and eliminate duplicate names from the centralized state voter registration list. But the federal law gives no specific guidance on how states should identify such duplicate records, or what processes should be followed.⁸² As a result, from state to state and county to county, officials remove duplicates in an inconsistent and confusing manner. There is not even any uniformity as to how duplicate registration records should be resolved once they are detected. For example, while a number of officials, when encountering what they presume to be duplicate registrations for the same person, presume that the more recent registration is the accurate one,⁸³ one election official in Michigan reported a practice of removing the newer registration when confronted with a duplicate.⁸⁴

Given the errors and inconsistencies in the records on state voter rolls, it may be impossible to tell with certainty whether two records indeed refer to the same person and therefore are duplicates — unless the affected individuals are contacted and can confirm the duplication. States and localities therefore typically rely to some extent on approximation and assumptions, which may not be accurate in some circumstances.

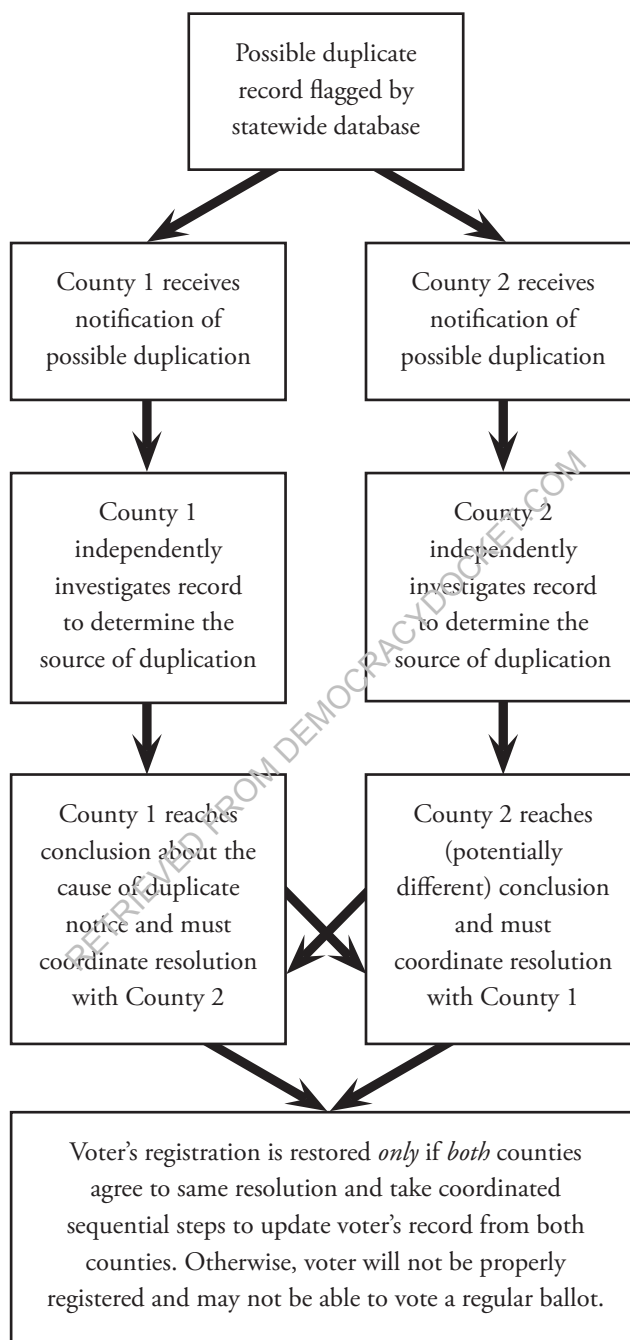
Some statewide list maintenance programs identify potential duplicate records automatically, but rely on local election officials to sort through the flagged records. These registrars are supposed to

purge only actual duplicates, while leaving untouched any records falsely flagged as duplicates.⁸⁵ The process is often confusing and time-consuming. For example, Missouri law gives local election officials explicit authority to identify and remove duplicate records, but it does not specify how duplicates should be identified or what evidence is enough to remove a voter.⁸⁶ As a result, different county election officials in Missouri follow very different procedures for identifying duplicate records. In one county, election officials request confirmation from voters for possible duplicate records, and the duplicate record is purged if the voter does not respond or appear to vote in the following election.⁸⁷ In a different county, election officials simply flag possible duplicates and monitor for voting fraud but take no further action.

Most state statutes, in fact, offer very little guidance to local election officials and do not specify what identifying characteristics should be verified, or what degree of approximation is permitted.⁸⁸ One election official in Ohio stated that their ability to identify duplicates is further complicated by, among other things, name changes after marriage and poorly programmed registration software that slows down the process.⁸⁹ When local election offices become busy with processing large numbers of new registrations prior to elections, they tend to relax the level of scrutiny they pay to checking the accuracy of duplicate matches.⁹⁰

Despite vague laws and scarce resources, local election officials reported increased pressure from state officials to “clean” the voter registration list of duplicate records.⁹¹ Such pressure, in the absence of counterbalancing restrictions or guidelines, is likely in the future to result in larger numbers of improperly purged registrants.

AN EXAMPLE OF DUPLICATE RESOLUTION



Source: JENNIFER BRUNNER, OHIO SECRETARY OF STATE, Statewide Voter Registration Database (SWVRD) System Manual (2008), 31-32, *available at* <http://www.sos.state.oh.us/SOS/Upload/elections/directives/2008/Dir2008-52.pdf>.

E. INACTIVITY/FAILURE TO VOTE

Federal law explicitly states that a person cannot be purged merely for a failure to vote — a basic protection for registered voters who may only vote sporadically.⁹² This protection ensures that a voter does not lose her right to vote simply because she chooses not to exercise that right in a particular election. Accordingly, federal law prevents election officials from relying on the fact that a voter has not voted for some time to conclude that she moved, died, or otherwise becomes ineligible and then to cancel her registration based on that conclusion.

Election officials are, however, permitted to remove voters pursuant to the NVRA's change of address process. Under the NVRA, states must send forwardable address confirmation notices to voters believed to have moved with a postage prepaid and pre-addressed response card to either confirm a continuing address or update the state with a new address. If the card is not returned, the state cannot remove the voter unless the voter not only does not return the card confirming her address, but also does not vote in at least one of the two general federal elections following the notice's mailing.⁹³

1. Inadequate Guidance

Voters who have not voted for a designated period of time, or have not responded to an address confirmation notice, nor presented themselves to vote in the subsequent elections are often referred to as “inactive voters.”⁹⁴ Most of the state statutes surveyed for this report fail to provide clear guidance on how to meet the NVRA's requirements relating to “inactive voters.”

The Kentucky statute, for example, reiterates the NVRA requirement outlined above, but does not provide any guidance on how an inactive voter should be allowed to vote (for example, by signing a written affidavit confirming her address). As a result, local election officials impose inconsistent requirements for inactive voters who turn up at the polls on Election Day. One Kentucky county requires inactive voters to sign an affidavit before being allowed to vote, whereas another county requires an election officer at the polling place to call a central election office to confirm the registration before allowing inactive voters to receive a ballot.

The inconsistent requirements at different polling places can lead to the de facto disenfranchisement of inactive voters who should, instead, be protected by the NVRA. For example, in locations where telephone confirmations are required before inactive voters are allowed to vote, the polling places are sometimes not equipped with sufficient telephone lines to keep up with the high volume of voters in heavy turnout precincts, effectively forcing precincts to turn away inactive voters rather than allowing them to vote.⁹⁵ Thus, voters who would otherwise have been classified as active again could instead find themselves purged for failure to vote, despite attempting to do so. This problem reportedly occurred to inactive voters in St. Louis County in 2006.⁹⁶

2. Programs Targeting Voters who Failed to Vote

Some jurisdictions' policies stretch compliance with the NVRA's prohibition against purging a

voter merely for failure to vote. For example, in Ohio, though not required to do so by law,⁹⁷ many jurisdictions send address confirmation cards exclusively to registered voters who did not vote in the most recent election, rather than to all registered voters, as many other states do.⁹⁸ Ninety days following each general election in Wisconsin, state election officials are required to identify persons who have not voted within the previous four years and mail them a notice that informs the addressees that their registration will be “suspended” unless they apply to continue their registration.⁹⁹ Thus, the simple failure to vote in these jurisdictions is sufficient to trigger a process that could ultimately result in being purged from the voter registration list.

F. INCAPACITATION¹⁰⁰

Federal law offers even fewer guidelines for removing voters from the registration rolls because of mental incapacitation. In contrast to its references to purges based on felony convictions or death, HAVA does not mention the removal of persons adjudged incapacitated. The NVRA simply provides that states must comply with state law in removing names from the registration list of voters because of mental incapacity.¹⁰¹

1. *Varying Rights*

State laws vary with respect to the voting rights of persons who are mentally incapacitated. Pennsylvania, Michigan and Indiana, for example, do not by statute disenfranchise persons who are adjudged mentally incapacitated. In fact, Pennsylvania’s statute goes as far as specifying the means for determining the residency of individuals who live at institutions for mentally ill patients expressly for the purpose of voter registration.¹⁰² Indiana’s law specifies that the “[d]etention or commitment of an individual...does not deprive the individual of . . . [t]he right to . . . [v]ote.”¹⁰³ Like Pennsylvania, Indiana law specifies the residency of persons who are committed so that they may be able to vote.¹⁰⁴ In contrast, the Oregon Constitution contains a disenfranchising provision that renders ineligible those specifically adjudicated incompetent to vote.¹⁰⁵

The statutory practices for purging voters for mental incapacitation similarly vary. States like Missouri and New York provide only the most general standards for disenfranchising persons on account of mental incapacitation, providing that persons who are declared incapacitated may be removed from the rolls.¹⁰⁶ Similarly, Nevada requires cancellation of a registration when “the insanity or mental incompetence of the person registered is legally established.”¹⁰⁷ By contrast, states like Florida indicate that the declaration of mental incapacitation must be specifically with respect to voting before a person can be removed from the voter rolls.¹⁰⁸

The experience of election officials suggests that the public is not always informed as to the state voting protections for persons perceived to be mentally incapacitated. For example, local officials in Nevada and Ohio reported that they have had removal requests made by individuals relating to another voter on the grounds of mental incapacitation even when there was no court adjudication.¹⁰⁹

2. Sources for Identifying Individuals

In a number of states, like Kentucky,¹¹⁰ election officials are supposed to receive, pursuant to statute, lists indicating the names of persons who may no longer be eligible to vote on account of mental incapacity from state circuit or probate courts, district courts, or in the case of some states, for example, Washington¹¹¹ and New York,¹¹² the office of the court administrator. These practices are consistent with the policy of not depriving a person of the franchise absent court adjudication.

In practice, however, the lists of those ineligible to vote on account of mental incapacitation do not always come from the court system. At least one locality in Missouri claims to receive incapacitation lists from the state Department of Health and Human Services. One county election official in Ohio reported that local board of elections staff, sent to nursing facilities to help the elderly vote, sometimes determine that a particular person is incapable of voting.

III. PROBLEMS WITH PURGES

Our review of state purge practices reveals a number of shortcomings. Across the country, problems occur because the lists used to identify people to be purged are unreliable, purges are done in secret, election officials use bad matching criteria, and purges are conducted with insufficient oversight.

A. SOURCE LISTS ARE RIDDLED WITH ERRORS

States regularly purge their voter registration lists of ineligible voters or duplicate registration records, but the lists states use as the basis for purging voters are often riddled with errors, which result in the removal of many eligible voters. For example, some states purge voter registration rolls of individuals based on the Social Security Administration's Death Master File,¹¹³ a database of 77 million deaths, dating back to 1937.¹¹⁴

Unfortunately, even the Social Security Administration admits there are people in its master death index who are not actually dead.¹¹⁵ The master death index lists the date of death of Hilde Stafford, a Wappingers Falls, NY resident, as June 15, 1997. The 85-year-old's response: "I'm still alive," Stafford said, "I still vote."¹¹⁶

Indeed, from January 2004 to September

2005, the Social Security Administration had to "resurrect" the records of 23,366 people wrongly added to its Death Master File, meaning that the Administration was presented with irrefutable evidence that it had incorrectly listed 1,100 people a month, or more than 35 a day, as deceased.¹¹⁷

Lists can be inaccurate because they are overbroad, lack specificity, or simply contain errors. For example, when a member of a household files a change of address for herself in the United States Postal

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Service's National Change of Address database, the filing sometimes has the incorrect effect of changing the address of all members of that household.¹¹⁸ Lists may also fail to contain sufficiently specific identifying information, for example, only names and ages.¹¹⁹

Indeed, Florida's infamous purge of people presumed to have felony convictions in 2000 is a prime example of a bad purge based on unreliable underlying lists. The purge list wrongly included some, such as Reverend Willie Dixon, because the list contained inaccurate information — Reverend Dixon had been pardoned of a crime he committed in his youth and had his voting rights restored.¹²⁰ In other cases, the list reflected a misunderstanding of what types of crimes resulted in permanent disenfranchisement. Floridian Wallace McDonald was purged from the voter rolls for committing a misdemeanor, even though misdemeanors do not affect one's voting rights.¹²¹ Additionally, the purge wrongly included more than 300 individuals who had conviction dates in the future.¹²² Other problems with this purge are addressed below.

B. PURGES ARE CONDUCTED IN SECRET, WITHOUT NOTICE TO VOTERS

Approximately one week before the Mississippi's March 2008 presidential primary election, the circuit clerk of Madison County, Mississippi discovered that a local election commissioner had purged more than 10,000 residents from the voter registration rolls. County Election Commissioner Sue Sautermeister reportedly accessed the voter registration list from her home computer and purged the voters, including a Republican congressional candidate, his wife and daughter, and some people who had voted as recently as the November 2007 elections.¹²³ Fortunately, the Secretary of State's office and others recognized that Sautermeister's actions violated the NVRA, and worked to restore the purged voters in time for the March election.¹²⁴

The public — voters, advocates, and others — rarely, if ever, receive meaningful notice of systematic purges. In fact, none of the states we studied have statutes requiring election officials to notify the public in advance of systematic purges. The statutes themselves generally do not provide notice by specifying when systematic purges will or should occur — a typical indication would be that such a purge must take place at least 90 days before an election,¹²⁵ but offering no further specificity. Adequate advance notice is essential to prevent erroneous purges. When registrants are properly informed of pending purges, they can act to correct or clarify a situation. Conversely, registrants may be denied due process of law if they are disenfranchised without notice and without a meaningful opportunity to challenge the purge. An Election Day discovery that a purge has taken place is generally too late for the affected voter to cast a ballot that is counted.

Except for registrants believed to have changed addresses, many states do not notify individual registrants believed to be candidates for purges either. When states do give individual notice, they rarely do so for all types of purges. For example, states rarely require notice when a voter is believed to have died. Florida and New York, for instance, statutorily require the provision of notice prior to removal in other circumstances, but appear to omit the notice requirement when the person is believed to be dead.¹²⁶ Without such notice, it is far harder to correct errors when the voter has been confused with an unfortunate decedent, or is, in any case, very much alive.

In certain circumstances in some states, officials are statutorily required to notify registrants after they are removed.¹²⁷ While that is better than no notice at all, notice after the fact could preclude an erroneously purged voter from being reinstated in time for an upcoming election.

Some state laws require officials to tell registrants with disqualifying convictions before they are purged; indeed, in some states these voters may have more protections than those affected by other types of purges. In Florida and Washington, election officials must give advance warning to voters with disqualifying convictions, and give them an opportunity to respond prior to removal.¹²⁸ Indiana law requires election officials to send a notice to the last known address of all people who are disenfranchised because they are imprisoned no later than the day after the registration has been canceled from the rolls.¹²⁹

With notice provided neither to the public nor to the affected voter, election officials can conduct purges with little outside scrutiny or oversight. The lack of transparency makes voters vulnerable to manipulated or haphazard purges.

C. BAD “MATCHING” CRITERIA LEAVES VOTERS VULNERABLE TO PURGES

In 2008, the Elections Director for Muscogee County, Georgia, sent out 700 letters to local residents informing them that they were ineligible to vote because they were convicted felons. More than one-third of the voters called to report that there had been a mistake. The purged voters included an octogenarian who insisted she had never even received a parking ticket. According to media reports, the list that went to Muscogee County was generated by a new computer program, and included voters whose names, but not necessarily other information, corresponded or “matched” the names of those with felony convictions.¹³⁰

Largely because of HAVA, states now have computerized statewide voter registration databases. These digital lists have improved the registration process substantially. But they can also boost the danger of wrongful purging since large numbers of people can now be purged at one time. The inadequacies of existing purge protections are apparent in the use of bad “matching” criteria.

Computerized database “interoperability” allows for election officials to purge registrants because of an apparent “match” of identifying information in a voter registration record to records found in lists of people ineligible to vote for various reasons. However, far too often what appears to be a “match” will actually be the records of two distinct registrants with similar identifying information. States have failed to implement protections to ensure that eligible voters are not erroneously purged.

There are many reasons states have trouble with matching requirements. Often, state statutes do not often specify what information — what fields and how many — must match to warrant removal of a registrant from the voter registration list.¹³¹ This means that local purging officials use their own, often varied and insufficient, matching standards. For example, two Nevada county election officials reported different match standards for the removal of deceased registrants. One reported that if a person’s name and address or age on the report provided by the Department of Vital Statistics matches

the record of a registrant, the official would remove that registrant from the rolls. Another reported that she removed registrants when the date of birth, social security number, and first and last names of deceased people provided by the state's Department of Vital Statistics matched a registrant's record.

States that do set forth requirements for the kind of identifying information elections officials should use frequently require too little information — for example name and date of birth — to be confident that a particular registered voter is the same person listed on a list subject to purging.¹³²

Elementary statistics preclude reaching such a conclusion on such little information. In a group of 23 people, it is more likely than not that two will share the same day and month of birth; in a group of 180, it is more likely than not that two will share the same birth date, including year of birth.

Also, in any group of significant size, statistics teaches us that there will be many with the same first and last names — and it is likely that at least two such individuals will be born on the same day.¹³³ Certain names are more popular in certain years. For example, it would be unsurprising to find two Jessica Smiths born on the same day in 1985, or Lisa Smiths in 1965, or Mildred Smiths in 1925. Likewise, the prevalence of surnames will fluctuate with the immigration patterns of particular ethnicities, which vary from decade to decade.

Purging officials who ignore prefixes or suffixes can increase the likelihood of erroneous matches. A 2005 attempt to identify double voters and duplicate registrations on the New Jersey voter rolls was flawed in this respect: in seeking duplicates, it ignored middle names and suffixes, alleging that the voter records of distinct registrants J.T. Kearns Jr. and J.T. Kearns Sr. belonged to the same individual.¹³⁴

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Another problem arises when states do not specify how exacting purging officials must be when comparing fields. For example, in Missouri, where exact matches are not required, one election official reportedly deemed an approximate date of birth (e.g., a difference by one month or one day) as sufficient to establish a match.

In Florida, lists of ineligible people provided to election officials must contain certain identifying information, but the Florida statutes does not establish how or to what extent the information must exactly match that of a registrant before the registrant can be removed.¹³⁵ The Florida purge of 2000 discussed above — conservative estimates place the number of wrongfully purged voters close to 12,000 — was generated in part by bad matching criteria. Florida registrants were purged from the rolls if, in part, 80 percent of the letters of their last names were the same as those of known felons.¹³⁶

HOW BAD MATCHING CRITERIA CAN RESULT IN DISENFRANCHISEMENT				
Field	>> FN	>> MN	>> LN	>> D.O.B
>> Name 1:	>> John	>> Fitzgerald	>> George	>> 11/20/1976
>> Name 2:	>> Johnny	>> Fred	>> Georges	>> 11/22/1976
>> Number First Name matching letters = 04 >> >> Percentage of Last Name = 85.7% >> >> Result = MATCH >>				
Source: Gregory Palast, <i>The Wrong Way to Fix the Vote</i> , WASH. POST, June 10, 2001, at B01.				

Those wrongly purged included Reverend Willie D. Whiting Jr., who under the matching criteria, was considered to be the same person as Willie J. Whiting.¹³⁷ These purges were wildly inaccurate. In Miami-Dade County, for example, over half of the African American registrants who appealed their placement on the felon exclusion list were found to be eligible voters.¹³⁸

The matching criteria some states use, however, may not differ greatly from the criteria responsible for the erroneous purge in Florida. To identify possible duplicates, New York requires only that the first three letters of the first name, the first five letters of the last name, and date of birth match, although it will consider other information if it is available.¹³⁹

D. PURGES ARE CONDUCTED WITH INSUFFICIENT OVERSIGHT

Insufficient oversight permeates the purge process beyond just the issue of matching. For example, state statutes often rely on the discretion of election officials to identify registrants for removal and to initiate removal procedures. Since these statutes rarely tend to specify limitations on the authority of election officials to purge registrants, eligible registrants may be unnecessarily made vulnerable to poor, lax, or irresponsible decision-making.¹⁴⁰

Insufficient oversight also leaves room for election officials to deviate from what the state law provides. In Washington, the failure to deliver a number of delineated mailings, including precinct reassignment notices, ballot applications, and registration acknowledgment notices, triggers the mailing of address confirmation notices,¹⁴¹ which then sets in motion the process for removal on account of change of address. Two Washington counties and the Secretary of State, however, reported that address confirmation notices were sent when any mail was returned as undeliverable, not just those delineated in state statute. Although Ohio's election law expressly provides that information regarding the deaths of persons over age 18 must come directly from government health agencies, one local official reported using obituaries as a source to identify deceased registrants, and another official reported a practice of sending inquiries to local funeral homes, a practice also not condoned by statute.¹⁴² An election official in Missouri reported relying on both personal knowledge and obituaries, even though the state election code does not provide for the use of those sources.

The state statutes examined are generally more specific with respect to the amount of discretion election officials have to remove registrants for mental incapacitation than they are with respect to other grounds for removal. In a number of states we examined, a determination to purge someone because of mental incapacitation occurs only if individuals meet certain legal criteria, for example, if they are declared mentally incapacitated with respect to voting.¹⁴³ However, elections officials interviewed for this report indicated that in spite of these statutory strictures, they sometimes make their own determinations that particular residents are incapable of voting and deny ballots according to that determination.¹⁴⁴

IV. POLICY RECOMMENDATIONS

While much of election administration is governed by state law, the NVRA and HAVA provide guidance, and in some cases, explicit requirements, for how voters' rights to register and participate in the political process should be protected. Through the NVRA,¹⁴⁵ Congress minimized the states' historical ability to function as a gatekeeper

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for registration in many ways by requiring states to use and accept the Federal Mail Voter Registration Application.¹⁴⁶ It also made it easier to get on the voter rolls by requiring states to: distribute the Federal Mail Voter Registration Application to public and private entities and voter registration organizations;¹⁴⁷ permit a person to register to vote at the same time as applying for or renewing a driver's license;¹⁴⁸ and provide voter registration services at designated public agencies.¹⁴⁹

HAVA facilitates voter registration by requiring states to create and maintain a single statewide computerized database of its registered voters, and to coordinate that database with other state databases, including state agency records on felony status¹⁵⁰ and state agency records on death.¹⁵¹

The text of these two laws clearly prioritizes the inclusion of all eligible registrants over the removal of each and every ineligible registrant when there is a question. The relevant section in the NVRA begins with "each State shall ensure that any eligible applicant is registered to vote in an election."¹⁵² While the NVRA also requires states to

undertake a program to conduct list maintenance, they must only conduct a “reasonable” effort to purge the names of registrants who are ineligible because they have died or, in certain circumstances, have changed their addresses.”¹⁵³ The NVRA permits, but does not require, a state to remove a registrant from the official list of eligible voters when a registrant has requested removal or when the law of the state disenfranchises persons on account of criminal conviction or mental incapacity.¹⁵⁴

HAVA requires that states perform regular “list maintenance” and make “reasonable effort[s]” to ensure that ineligible voters and duplicate records are removed from the voter rolls.¹⁵⁵ Before addressing purges, HAVA expressly requires states to “ensure that each registered voter appears in the computerized list” and that “only voters who are not registered or who are not eligible to vote are removed from the computerized list.”¹⁵⁶

The existing federal requirements and voter protections do not go far enough, however, to protect voters. Indeed, the NVRA and HAVA do not specifically address most aspects of purge practices. Given the problems identified in our review of state purge practices and statutes, we recommend that states take action to reduce the occurrence of erroneous purges. Below are some recommendations of best practices based on our research.

A. TRANSPARENCY AND ACCOUNTABILITY FOR PURGES

Purges of voter registration lists should be conducted in a transparent and uniform manner. Any rules or procedures developed with respect to purges should establish accountability at all stages of a purge.

1. Develop and publish uniform, non-discriminatory rules for purges.

State election officials should publicly post consistent and fair rules that describe when, why, how, and by whom a voter registration record can be purged from the voter rolls. States should clearly identify appropriate sources of information on ineligible people and ensure that all localities are conforming to the same standards when relevant. State election officials should work with local election officials to ensure that state protocols are understood and being followed.

While the state of Ohio is not without its troubles in election administration, it can be commended for publicly posting all directives, advisories, and memoranda related to elections on the Secretary of State’s website. Not only does this practice allow local election officials easy access to the documents, it also gives members of the public the opportunity to be informed and educated as to election-related policies. Armed with this knowledge, watchdogs and individuals can help encourage compliance and hold localities accountable for any lapses. Irrespective of the nature of the rules, their transparency is necessary to ensure that they are fair and effective protocols.

2. Provide public notice of an impending purge.

States should provide public notification of any organized county-wide or state-wide purge at least two weeks prior to the purge, and provide a detailed explanation of how that purge is to be conducted.

Before a voter is removed from the voter registration list for any reason, she should be individually notified and given the opportunity to correct any errors or omissions, or demonstrate eligibility.

For most types of purge candidates, New York notifies registrants at risk of being purged 14 days in advance of the purge.¹⁵⁷ Best practices would extend this protection to all individuals who are candidates for purges and give each 30 days to respond before purging them from the voter rolls.

3. Develop and publish rules to remedy erroneous inclusion in an impending purge.

The rules and procedures for curing erroneous inclusion in an impending purge should be publicly posted and widely available. Additionally, for registrants who have been purged from the voter registration list, states should explicitly set out means by which they may be restored easily to the voter registration list, without regard to the voter registration deadline.

Pennsylvania, by statute, provides certain registrants both notice of an impending purge and a process for responding to any erroneous purge. Pennsylvania is required to send written notice to each individual whose registration is canceled.¹⁵⁸ Pennsylvania law also offer an additional protection: its statutes specifically contemplate the possibility that a registrant can be incorrectly reported as dead or incorrectly removed on the grounds of death and sets forth a process for addressing these instances.¹⁵⁹ States could and should apply this protection to all classes of purges.

4. Do not use failure to vote as a trigger for a purge

States should ensure that registrants are sent address confirmation notices only in response to an indication that the registrant has moved — not when a registrant has not voted for some time. All voters who have been inactive should be allowed to vote by regular ballot up until they are purged. If an inactive registrant votes during any of the two federal election cycles, they should remain on the voter registration list.

5. Develop directives and criteria with respect to who has the authority to purge voters.

No one person, acting alone, should be able to remove names from the list. The removal of any record should require authorization by at least two officials. Good directives for purge authorization minimize opportunities for mischief in the process.

Although majority support from the local election commission is required in Mississippi prior to the removal of any voter from the voter registration list, Madison County election commissioner Sue Sautermeister managed to purge more than 10,000 names from the list, alone, reportedly from her home computer.¹⁶⁰ This example highlights the importance of purge protocols which preclude non-compliance, for example, by designing the database so two people must enter an authorization code before voters can be removed.

6. Preserve purged voter registration records.

Statewide voter registration databases should have the design capacity to keep the records of names removed from the voter registration list, including who authorized the removal and on what grounds. Maintenance of this information ensures that the removal of any registrants is properly documented, allows for easier restoration to the list, and assigns accountability for the purge.

All media reports suggest that the Mississippi Secretary of State was successfully able to reinstate the voters purged by the Madison County commissioner.¹⁶¹ Officials from the Secretary of State's office indicated that the database is designed such that voting records are retained, even when the voter status changes.¹⁶² This design feature of the database makes for easier restoration than when the record is erased.

7. Make purge lists publicly available.

The records of voters purged from the list and the reason for removal should be made available for public inspection and copy. If any code is used to identify the reason for removal, a key defining each code symbol shall be made accessible to the public. These lists should also be brought to the polls on Election Day. This allows the public to verify that purged records were removed for fair reasons.

For example, Washington requires the Secretary of State and each county auditor to compile lists of everyone who is removed from the voting rolls and the reason for their removal; these lists must be preserved and kept available for public inspection for at least two years.¹⁶³ Additionally, some states allow voters to check their registration status electronically via voter portal functions on their websites that allow voters to check the status of their registration by entering their name and/or other personal information.¹⁶⁴

While these portals are a useful resource, there are some limits to their helpfulness. For example, not all interfaces inform the voter when the system was last updated. This is problematic because a voter unable to find her registration record might, instead of waiting for the system to be updated, send in an additional form out of desire to ensure that her name make it onto the rolls. Additional registration forms for the same individual increase administrative burdens for the registrar and the likelihood that there are errors in the registration. This problem can be ameliorated simply by noting when the interface was last updated. Another problem with portals is that not everyone will search for their record using the information as exactly listed on their registration application, or an inputting error will prevent a voter from being able to find her registration record. This problem can be corrected by designing the interface such that when a registration record is not found, more information is solicited and then the interface displays to the seeker similar names affiliated with the information provided. Individuals who suspect that they have found their record, but that the record contains misspellings or other errors, can then call the registrar's office and correct the problem.

Notwithstanding the usefulness of portals, they are an inferior substitute to purge lists because portals confine the information provided to a unique voter and do not allow voters and their advocates to observe trends.

8. Make purge lists available at polling places.

The records of voters purged from the list over the past two federal election cycles should be made available at the polls so that individuals erroneously purged can be identified and allowed to vote by regular ballot.

B. STRICT CRITERIA FOR THE DEVELOPMENT OF PURGE LISTS

To ensure a high degree of accuracy, states should use strict criteria for the development of purge lists. States should establish measures to protect eligible people from erroneous removal from the voter registration list.

1. Ensure a high degree of certainty that names on a purge list belong there.

Before purging any name from the voter registration list, authorized officials should have a high degree of certainty that a name belongs to an ineligible person or a duplicate record. Purge lists should be reviewed multiple times to ensure that only ineligible people are included.

2. Establish strict criteria for matching.

If purge lists are developed by matching names on the voter registration list to names from other sources, states should specify the information sufficient for attaining a high degree of certainty, including, at a minimum, last name, first name, middle name, prefix, suffix, date of birth, and address or driver's license number. Exact matches of a large number of fields substantially reduce the risk that such purges will erroneously remove eligible people.

As discussed throughout the report, the Florida purge in 2000 underscores the need for strict matching criteria. When records were deemed a match because 80% of the last name was the same, approximately 12,000 people were misidentified as disenfranchised felons.

3. Audit purge source lists.

If purge lists are developed by matching names on the voter registration list to names from other sources (for example, criminal conviction lists) the quality and accuracy of the information in these lists should be routinely "audited" or checked. Errors in source lists may lead to the erroneous removal of eligible people. Accordingly, election officials should calibrate reliance based on the known accuracy of the source list.

4. Monitor duplicate removal procedures.

States should implement uniform rules and procedures for eliminating duplicate registrations in accordance with HAVA. States should provide clear guidance to election officials with respect to when to flag a possible duplicate registration, how to verify that the registration is in fact duplicative, and when to remove that registration from the voter registration list.

C. “FAIL-SAFE” PROVISIONS TO PROTECT VOTERS

While inaccurate purges will be mitigated with the implementation of the previously mentioned recommendations, there must still be mechanisms in place to protect voters in the event that a person is incorrectly removed from the voter registration list.

1. No voter should be turned away from the polls because her name is not found on the voter registration list.

Instead, she should be provided a provisional ballot which will be counted upon determination by election officials that she is eligible to vote. In many states, however, voters have not been given the provisional ballots to which they are entitled.¹⁶⁵

2. Election workers should be given clear instructions and adequate training as to HAVA’s provisional balloting requirements.

HAVA sets forth a number of requirements with respect to the use of provisional ballots as a fail-safe in the event that a voter’s name does not appear on the registration list. Election workers should clearly understand that: no voter should be denied a provisional ballot; all voters must be given the opportunity to substantiate their eligibility to vote; all voters must be informed as to how they can substantiate their eligibility and how they can determine whether a ballot was counted; and the ballots must be counted when a voter confirms that she is eligible and registered to vote.

D. UNIVERSAL VOTER REGISTRATION

The purge systems currently in place are rife with error and vulnerable to manipulation. Even the best processes for culling the voter rolls will inevitably be imperfect and will erroneously lead to purges of at least some eligible voters. No eligible citizen should be deprived of the right to vote or put through an obstacle course because of these system malfunctions. Currently, eight states have a backup system in place that will protect the votes of those American caught up in a faulty purge — a system of Election Day registration which enables eligible citizens to register and vote on Election Day (or other days on which voting takes place). Some fear that Election Day registration may overwhelm election officials with a swarm of new and unexpected voters. Although those fears are baseless, they can be completely eliminated if Election Day registration is embedded within a system of universal voter registration in which the government takes the

affirmative responsibility of adding all eligible citizens in its records to the voter lists. Under such a system, there would be far fewer unregistered voters who show up at the polls on Election Day since virtually all eligible citizens would be registered. In addition to providing a fail-safe for those voters wrongly purged, universal voter registration would increase confidence in the accuracy of voter registration lists since they would have been assembled by election officials rather than by voters.

Universal voter registration has other benefits as well: it would add up to 50 million unregistered Americans to the voter rolls; eliminate the opportunity for partisan or other gamesmanship with voter registration rules and procedures; reduce fears of potential voter fraud, as those derive largely from the potential for fraudulent registrations; and reduce burdens on election officials, who currently devote substantial resources to processing voter registration forms in the months and days leading up to an election. The elements of a system of universal registration are as follows:

- The government takes affirmative responsibility to build clean voter lists consisting of all eligible citizens.
- Each eligible citizen only has to register once within a state; the government ensures that voters stay on the lists when they move within state.
- Election Day registration is available as a fail-safe for those eligible citizens whose names are erroneously not added to or erroneously purged from the voter rolls.

V. EMERGING ISSUES WITH RESPECT TO PURGES

There are numerous blemishes in our country's voting history. Since the end of Reconstruction in the late nineteenth century, the voting rights of poor and minority citizens have been restricted through a complex system of laws enacted by state legislatures and intended to limit or ignore the commands of the 14th and 15th Amendments. In the immediate aftermath of the Civil War and the Reconstruction Amendments, voting among African American men briefly soared in the former slave states.¹⁶⁶ In Louisiana in 1867, for example, approximately 90% of the eligible black male population had registered to vote.¹⁶⁷ However, by the end of the Reconstruction era in 1877, most Southern states had erected significant new barriers to minority voting that re-established control by the white Democratic Party, eliminating these hard-won rights from the vast majority of non-white voters.¹⁶⁸ At first glance, these new voting laws appeared race-neutral, so as not to violate the 14th and 15th Amendments, but in effect they purposely excluded many African Americans from the polls. Poll taxes, literacy tests, and grandfather clauses, for example, proved to be effective barriers to African American voting. Though these new restrictions did not, on face, target one group of voters over another, they were discriminatorily applied to African American voters.¹⁶⁹

Some commentators argue that voter purges are simply a variation of older, more overt methods of disenfranchisement intended to reduce minority participation.¹⁷⁰ Courts have agreed: one court overturned the aforementioned Louisiana purge, finding it “massively discriminatory in

purpose and effect,”¹⁷¹ and another referred to a Texas statute requiring yearly re-registration as a “direct descendant of the poll tax” that unconstitutionally disenfranchised voters.¹⁷² Although other courts differ on the motivations of purges, they do not deny that their effect can be discriminatory.¹⁷³

Irrespective of whether purging officials act with racial animus, if done without adequate protections, voter purges can have the same disenfranchising effect as the overt voter restrictions used in earlier decades. While new nuances to problematic purges are always emerging, there are at least two relatively new issues for which problems are predictable.

A. VOTER CAGING

In the later half of the twentieth century, a category of voter purges known as “voter caging” arose as a new tactic to generate lists of voters to be purged from voter registration lists or challenged at the polls. Adapted from a direct mail marketing practice of sorting mailing addresses,¹⁷⁴ voter caging is a controversial method of targeting voters in which non-forwardable mail is sent to registered voters at their voter registration address. Some percentage of that mail is returned to the sender as undeliverable for a variety of reasons, many unrelated to the recipient’s status as a voter.¹⁷⁵ On this basis alone, the sender (typically a political operative) uses the list of returned mail to either request election officials to purge the names from the registration list or later challenge the validity of the voter’s registration at the polls on Election Day, or both.

COMPUTERIZED VOTER
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Voter caging has been demonstrated to produce grossly inaccurate results and has threatened to disenfranchise thousands of legitimately registered voters.¹⁷⁶ The history of voter caging is littered with examples of political operatives targeting poor and minority neighborhoods where mail delivery might be less reliable or where voters are believed to be threatening to certain political interests. First uncovered in 1958, the practice has frequently been used to generate purges of thousands of voters. In 1986, for example, the Republican National Committee (“RNC”) hired a vendor to conduct a voter caging effort in at least three states, intending to purge voters residing in primarily African American neighborhoods.¹⁷⁷ Unearthed in subsequent litigation, an RNC internal memorandum discussing the targeting of Louisiana voters stated the goal of the voter caging program:

I would guess that this program will eliminate at least 60-80,000 folks from the rolls . . . If it’s a close race, which I’m assuming it is, this could really keep the black vote down considerably.¹⁷⁸

In more modern times, reports of intended voter caging efforts have surfaced in Ohio, Michigan, and Virginia.¹⁷⁹ Because voters who are victims of caging cannot cast a regular ballot, purges of this kind pose a significant threat to the completeness of voter registration lists, and ultimately, to the legitimacy of our nation's elections.

B. COMPARING DATABASES WITHIN AND ACROSS STATE LINES

HAVA's requirement of centralized computer voter registration databases has allowed election officials to maintain their voter lists with greater ease as states move away from many separate voter lists, but it also significantly amplifies the potential for large-scale disenfranchisement.¹⁸⁰ Indeed, computerized voter registration lists now make it possible for thousands of voters to be disenfranchised with a single keystroke.

Officials have increasingly focused attention on ways of making state databases “interoperable” with other databases that may contain relevant information on registered voters. “Interoperability” is generally defined as a method of connecting or integrating multiple databases so that changes in one database can be recognized and mirrored in a second database automatically. Seizing on language in HAVA which requires or recommends states to “coordinate” voter registration databases with felony conviction databases, death records, and records of voter moves through state DMV databases,¹⁸¹ several groups of states have started to compare voter registration lists among each other and initiate voter purges based on matches between records on different states' lists, presuming that individuals who have moved from one state to another have neglected to notify the original state before registering to vote in the new state.¹⁸²

The problem is that there are not always sufficient protections to ensure that the same individuals are identified as opposed to two different individuals with similar identifying information. In 2006, for example, the Kentucky State Board of Elections attempted to match names on its registration database against lists of voters in Tennessee and South Carolina, and purged 8,000 voters as a result of the match — without notifying the voters, and in violation of specific provisions of federal law.

Interoperability technology grants many opportunities to improve election administration and the maintenance of voter registration databases. Yet because of the speed and scale at which information can be shared, interoperability in many ways poses a greater threat to the right to vote than traditional methods of record coordination. State and local officials should strive to use existing computer and electronic technology in a way that enhances the experiences of voters and minimizes disenfranchising errors during the voter registration processes.

VI. CONCLUSION

Purges should be a carefully calibrated process designed to account for the complications that invariably arise. Without adequate safeguards, voters experience an unreasonable risk of disenfranchisement, and purges are vulnerable to manipulation. The above recommendations will go far in minimizing unnecessary risks to voters and should be implemented without delay.

ENDNOTES

- 1 U.S. Election Assistance Comm'n, *The Impact of the National Voter Registration Act of 1993 on the Administration of Elections for Federal Office 2005-2006: A Report to the 110th Congress*, 50 (2007), available at http://www.eac.gov/clearinghouse/docs/the-impact-of-the-national-voter-registration-act-on-federal-elections-2005-2006/attachment_download/file).
- 2 Ford Fessenden, *Florida List for Purges of Voters Proves Flawed*, N.Y. TIMES, July 10, 2004, at A02.
- 3 *Id.*
- 4 *Florida Scraps Flawed Felon Voting List*, ASSOC. PRESS, USA TODAY, July 10, 2004.
- 5 John Ferro, *Deceased Residents on Statewide Voter List*, POUGHKEEPSIE JOURNAL, Oct. 29, 2006.
- 6 *Id.*
- 7 Adam C. Smith, *No Telling if Voter Rolls are Ready for 2004*, ST. PETERSBURG TIMES, Dec. 21, 2003.
- 8 Gregory Palast, *The Wrong Way To Fix the Vote*, WASH. POST, June 10, 2001, at B1.
- 9 *Id.*
- 10 WASH. REV. CODE ANN. § 29A.08.620 (2008).
- 11 See *United States v. McElveen*, 180 F. Supp. 10, 11-14 (E.D. La. 1960) (ruling that the removals were in violation of the Fifteenth Amendment and that the voters taken off the registration rolls were illegally removed) *Id.* at 14.
- 12 Marsha Shuler, *Registrar Drops More than 21,000 from Voters Rolls*, THE ADVOCATE, Aug. 17, 2007, at A10.
- 13 *Id.*
- 14 Joe Gyan Jr., *Study: N.O. Population Older, Less Poor, City Remains Majority Minority*, THE ADVOCATE, Sept. 13, 2007, at A1 (reporting that New Orleans' black population dropped from 67% before Hurricane Katrina to 58% a year later).
- 15 Press Release, Secretary of State Jay Dardenne, Voters Registered in Multiple States Should Notify Registrar of Voters to Avoid Being Cancelled (June 15, 2007); Letter from Robert Poche to Voter entitled "Notice: Letter of Intent to Challenge" (June 15, 2007). Both documents were attached as exhibits to the Complaint filed in *Segue v. Louisiana*, No. 07-5221, 2007 U.S. Dist. LEXIS 74428 (E.D. La. Oct. 3, 2007) and are available at http://moritzlaw.osu.edu/electionlaw/litigation/documents/exhibit_000.pdf.
- 16 Although, it was not too long ago in which a political operative involved in a voter caging effort noted, "I would guess that this program will eliminate at least 60-80,000 folks from the rolls. . . . If it's a close race, which I'm assuming it is, this could really keep the black vote down considerably." See Martin Tolchin, G.O.P. Memo Tells of Black Vote Cut, N.Y. TIMES, Oct. 25, 1986, at 7.
- 17 North Dakota is the only state that does not require voter registration. Eight other states — Idaho, Maine, Minnesota, Montana, New Hampshire, Wisconsin and Wyoming — have Election Day registration, which allows voters to register and vote on Election Day. See IOWA CODE ANN. § 48A.7A (2008); IDAHO CODE ANN. § 34-408A (2008); ME. REV. STAT. ANN. tit. 21-A, § 122.4 (2008); MINN. R. 8200.5100 (2007); MONT. ADMIN. R. 44.3.2015(1)(a) (2008); N.H. REV. STAT. ANN. § 654:7-a (2008); WIS. STAT. ANN. § 6.55 (2007); WYO. STAT. ANN. § 22-3-104(f) (2008).
- 18 42 U.S.C. § 1973gg-6(b)(1) (2008).

- 19 See 42 U.S.C. § 1973gg-6(d)(1)-(2) (2008).
- 20 42 U.S.C. § 15483(a)(2)(A)(i) (2008).
- 21 42 U.S.C. § 15483(a)(4) (2008).
- 22 LAWRENCE NORDEN *ET. AL*, BETTER BALLOTS 10 (Brennan Center for Justice ed., 2008), *available at* <http://www.brennancenter.org/page/-/Democracy/Better%20Ballots.pdf> (calculated average of number of voting-age persons who moved between 2000 and 2006, as reported by the U.S. Census Bureau).
- 23 U.S. Federal Election Commission, *The Impact of the National Voter Registration Act of 1993 on the Administration of Elections for Federal Office 1997-1998: A Report to the 106th Congress* 11 (July 1999), *available at* http://www.eac.gov/files/clearinghouse/reports_surveys/The%20Impact%20of%20the%20NVRA%20of%201993%20on%20Admin%20of%20Elections%20for%2097-98.pdf.
- 24 U.S. Election Assistance Commission, *The Impact of the National Voter Registration Act of 1993 on the Administration of Elections for Federal Office 2005-2006: A Report to the 110th Congress* 10 (June 2007), *available at* http://www.eac.gov/program-areas/research-resources-and-reports/copy_of_docs/the-impact-of-the-national-voter-registration-act-on-federal-elections-2005-2006/attachment_download/file.
- 25 Confirmed by interviews with local boards of election officials in Missouri and Washington conducted in 2007. All interviews are on file at the Brennan Center.
- 26 Confirmed by interviews with local boards of election officials in Kentucky, Missouri, and Washington conducted in 2007. All interviews are on file at the Brennan Center.
- 27 While the NVRA does not specifically raise the issue of duplicates, and instead clarifies that the limitations imposed by the NVRA are not interpretable as precluding “correction of registration records,” 42 U.S.C. § 1973gg-6(c)(2)(B)(ii), (2008) HAVA instructs states to conduct list maintenance “in a manner that ensures that . . . duplicate names are eliminated from the computerized list,” 42 U.S.C. § 15483(a)(2)(B)(iii). Some states, like Washington, WASH. REV. CODE ANN. § 29A.08.610 (2008) and Florida, FLA. STAT. ANN. §§ 98.075, 98.073 (2008), have codified some guidance for addressing the problem of duplicate registrations, albeit with varying degrees of helpfulness. Election statutes in other states, for example, Ohio, and Wisconsin, however, remain silent on the topic of duplicate registration. A number of local officials indicated that duplicates are generally the result of change of addresses, and as such, their processes for responding to duplicates are essentially the purge practices with respect to change of addresses.
- 28 The NVRA makes clear that no person is to be removed from the statewide registration list solely on account of failure to vote. 42 U.S.C. § 1973gg-6(b)(2). The NVRA does permit, however, the removal of a name from the registration list if a person does not respond to an address confirmation notice AND does not vote in the subsequent two federal elections. *Id.*
- 29 A problem occurred in Travis County, Texas whereby individuals believed to have moved because of returned mail were purged despite having voted in at least one of the two subsequent federal elections after the mail was returned. Any update or information needed by election officials should have occurred while the person was at the polls voting. But for reasons not entirely clear, these voters were purged despite their having voted. See Marty Toohey, *Glen Maxey TV Ads Allege Voter Disenfranchisement*, AUSTIN AMERICAN-STATESMAN, Feb. 3, 2008.
- 30 Arkansas, Florida, Maine and Oklahoma all permit the mailing of address confirmation notices in such circumstances. See ARK. CONST. amend. 51, § 7 (2008); FLA. STAT. § 98.065(4) (2008); ME. REV. STAT. ANN. tit. 21-A, § 162-A (2008); OKLA. STAT. ANN. tit. 26, § 4-120.2 (2008).

- 31 WASH. REV. CODE § 29A.08.620 (2008).
- 32 The section that follows is taken in large part from: JUSTIN LEVITT & ANDREW ALLISON, BRENNAN CTR. FOR JUSTICE, A GUIDE TO VOTER CAGING 3-6 (2007), *available at* http://www.brennancenter.org/dynamic/subpages/download_file_49608.pdf.
- 33 MCLS § 168.499(3) (2008).
- 34 See ASSOCIATION FOR COMPUTING MACHINERY, STATEWIDE DATABASES OF REGISTERED VOTERS 21 (Feb. 2006), *available at* http://www.acm.org/usacm/PDF/VRD_report.pdf.
- 35 NANCY COLE & ELLIE LEE, ABT ASSOCS., INC., FEASIBILITY AND ACCURACY OF RECORD LINKAGE TO ESTIMATE MULTIPLE PROGRAM PARTICIPATION, VOL. III, RESULTS OF RECORD LINKAGE 20 (Econ. Research Serv., Elec. Publ'ns from the Food Assistance & Nutrition Research Program, 2004).
- 36 See NAT'L COALITION FOR THE HOMELESS, STATE-BY-STATE CHART OF HOMELESS PEOPLE'S VOTING RIGHTS (2008), *available at* <http://www.nationalhomeless.org/getinvolved/projects/vote/chart.pdf>; *cf.* SEC'Y OF STATE OF MO., MANDATE FOR REFORM: ELECTION TURMOIL IN ST. LOUIS, NOVEMBER 7, 2000 27 (2001), *available at* <http://bond.senate.gov/mandate.pdf>.
- 37 Jon Margolis, *GOP Sued Over Voters Tactic*, CHI. TRIBUNE, Oct. 8, 1986, at C9. There are many other examples of voters who are temporarily away from their permanent residences. A college student may legally reside at her parents' home address and register to vote there while she is away at school, even though she does not receive mail at her parents' house. A voter may be on an extended vacation and have canceled or transferred mail service, or may have done the same for a temporary job transfer. See Steve Suo, *Some Inactive Voters Aren't*, THE OREGONIAN, Aug. 27, 2000, at C1. A citizen living overseas, but registered to vote at her last domestic residence, might also receive no mail at her registered address; for example, mail sent to one such voter in New Hampshire was returned undelivered despite the fact that the voter was eligible to vote. Memorandum from Bud Fitch, Deputy Att'y Gen., N.H. Dep't of Justice, to Robert Boyce, Chairman, N.H. Sen. Internal Aff. Comm., et al. 3 (Apr. 6, 2006), *available at* http://doj.nh.gov/publications/nreleases/pdf/040606wrongful_voting.pdf. Similarly, a member of the armed forces, stationed away from his voting residence, could illegitimately get caught up in the purge process.
- 38 *More Mail Undelivered*, FT. LAUDERDALE SUN-SENTINEL, Apr. 16, 1994, at 3A.
- 39 Felicity Barringer, *Cities Seek Bush's Backing to Avert Census 'Crisis'*, N.Y. TIMES, Apr. 18, 1990, at A17. See also, e.g., James Barron, *Sign of Approval, But Will It Bring Mail?*, N.Y. TIMES, Aug. 2, 2004, at B1. Also, in larger group residential homes, the voting residence may quite properly list the street address, but mail will not be delivered without a unit number.
- 40 See Dayne L. Cunningham, *Who Are To Be the Electors? A Reflection on the History of Voter Registration in the United States*, 9 YALE L. & POL'Y REV. 370, 393-94 & nn.134-35 (1991) (considering studies of the distribution of census surveys and tax forms shows that ineffective mail delivery is more common in poor and minority communities). *Cf.* CHANDLER DAVIDSON ET AL., REPUBLICAN BALLOT SECURITY PROGRAMS: VOTE PROTECTION OR MINORITY VOTE SUPPRESSION—OR BOTH? 14 (2004), http://www.votelaw.com/blog/blogdocs/GOP_Ballot_Security_Programs.pdf.
- 41 Larry Sandler & Greg Borowski, *Parties Spar Over City Voter Lists*, MILWAUKEE J. SENTINEL, Oct. 27, 2006, at B1; see also Tom Kertscher, *Landlord Sees a Lot in a Name*, MILWAUKEE J. SENTINEL, June 8, 2004 at B5. The same apparently happened to some challenged voters in Louisiana in 1986. See Thomas M. Burton, *Democrats Sue Over GOP Bid to Mail Down the Vote*, CHI. TRIBUNE, Sept. 25, 1986, at C1.
- 42 John Riley, *Complications, Challenges Abound*, NEWSDAY, Oct. 31, 2004, at A37; see also, Sandy Theis, *Fraud-busters Busted*, CLEVELAND PLAIN DEALER, Oct. 31, 2004, at H1.

- 43 42 U.S.C. § 1973gg-6(e)(1)(2008). Similarly, a voter who has moved within the same registrar's jurisdiction and congressional district may return to vote at her former polling place without re-registering. 42 U.S.C. § 1973gg-6(e)(2)(A)(i)(2008). Especially in urban areas where there is high mobility within a particular neighborhood, undeliverable mail may simply reflect the recent move of a voter who remains fully eligible to vote.
- 44 42 U.S.C. § 1973gg-6(2)(A).
- 45 See also Kandiss Crone, *Hosemann: Voter Purge Violated Federal Law*, WLBT News 3, Mar. 5, 2008, <http://www.wlbt.com/Global/story.asp?s=7973229>; Joint Press Release, Advancement Project, MERA, Michigan NAACP and ACORN, Voting Groups Caution Michigan Election Officials on Eve of National Secretary of State Conference (July 24, 2008), *available at* http://www.democraticunderground.com/discuss/duboard.php?az=view_all&address=159x12543.
- 46 42 U.S.C. § 1973gg-6(c)(2008).
- 47 For example, one Kentucky election official reported that the information compiled by the Postal Service does not match the criteria his county uses to identify voters.
- 48 Indiana and Florida are examples of states that use jury notices and information from other government agencies to identify people who may have moved. IND. CODE ANN. § 3-7-38.2-2(c) (2), (4) (2008) (permitting the use of information from a court regarding jury notices and from the bureau of motor vehicles regarding the surrender of a person's Indiana license for the operation of a motor vehicle to another jurisdiction); FLA. STAT. ANN. § 98.065(4) (2008) (permitting the use of information regarding jury notices signed by a voter and returned to the courts and information from the Department of Highway Safety and Motor Vehicles indicating that the legal address of a registered voter might have changed).
- 49 Unless another authority is otherwise cited, information in this report about Kentucky was derived from interviews with county clerks conducted in April 2007 and an interview with an official from the State Board of Election conducted in September 2008. All interviews are on file at the Brennan Center.
- 50 NEV. REV. STAT. ANN. § 293.535 (2003).
- 51 MICH. COMP. LAWS SERV. § 168.509dd(3)(a) (2008) (permitting house-to-house canvasses as part of a program to remove the names of unqualified voters from the voter registration list); WIS. STAT. ANN. § 6.40(2)(b) (2007) (permitting municipal clerks to conduct door-to-door canvasses to identify voters who no longer reside at their registered addresses); 25 PA. CONS. STAT. ANN. § 1901(b)(2) (2008) (allowing election officials to visit registered addresses to supplement other list maintenance activities); NEV. REV. STAT. ANN. § 293.530(2) (2008) (permitting county clerks to conduct house-to-house canvasses to investigate registrations). New York's statute provides a variation whereby New York Board of Elections employees are required to conduct a canvass upon written request of any Board of Elections member. N.Y. ELEC. LAW § 5-710 (Consol. 2008).
- 52 This was reported to us by an interviewee from Nevada in March 2007. Unless another authority is cited, information in this report about Nevada was derived from interviews conducted with county clerks and registrars in March, 2007.
- 53 MO. REV. STAT. § 115.191 (2008).
- 54 WASH. REV. CODE ANN. § 29A.08.620(1) (2008) (designating voters as inactive if certain pieces of mail are returned to sender as undeliverable); N.Y. ELEC. LAW § 5-712(5) (Consol. 2008) (designating all voters who are sent an address confirmation notice as inactive); OR. REV. STAT. § 247.563(3) (2007) (designating the registration of voters sent address confirmation notices as inactive until further determination).
- 55 FLA. STAT. ANN. § 98.065 (4)(c) (2008) (designating as inactive all voters who have been sent an address confirmation notice and who have not returned the postage prepaid, preaddressed return form

within 30 days or for which an address confirmation notice has been returned as undeliverable.); MO. REV. STAT. § 115.193(5) (2008) (designating any voter as an inactive voter if . . . the voter fails to respond to the notice . . . within thirty days after the election authority sends such notice).

- 56 See 950 MASS. CODE REGS. 54.04(6) (2008).
- 57 Cf. OR. REV. STAT. § 254.470(2)(a) (2007) (directing that ballots be sent “to each *active* elector”) (emphasis added).
- 58 42 U.S.C. § 1973gg-6(a)(4)(A) (2008).
- 59 42 U.S.C. § 15483(a)(2)(A)(ii)(II) (2008).
- 60 See e.g. FLA. STAT. ANN. § 98.093(2)(a) (2008) (requiring the Department of Health to furnish monthly to the department a list containing the name, address, date of birth, date of death, social security number, race, and sex of each deceased person 17 years of age or older.); IND. CODE ANN. § 3-7-45-2.1(b)(1) (2008) (stating that the state department of health provides election officials with information on decedents); N.Y. ELEC. LAW § 5-708(1) (Consol. 2008) (stating that state health department must deliver to the state board of elections monthly records of the names of all persons of voting age for whom death certificates were issued); OHIO REV. CODE ANN. § 3503.18 (2008) (directing the chief health officer and director of health to file list of decedents with board of elections); 4 PA. CODE § 183.6(d)(1) (2008) (stating that death notices are received from the department of health for the purposes of removing records).
- 61 See e.g., MO. REV. STAT. § 115.195(1) (2008) (state or local registrar of vital statistics provides election officials with a list of decedents); WASH. REV. CODE ANN. § 29A.08.510(1) (2008) (state department of vital statistics provides the list to the Secretary of State).
- 62 Nevada statute does not specify what state agency provides the names of Nevada residents who have died. In fact, the statute permits local officials to cancel the registration of a voter only if the county clerk “has personal knowledge of the death of the person registered, or if an authenticated certificate of the death of any elector is filed in his office.” NEV. REV. STAT. § 293.540(1) (2008).
- 63 WASH. REV. CODE ANN. § 29A.08.510(2) (2008) (permitting county auditors to use newspaper obituary articles to cancel a voter’s registration). Election officials in three Washington counties confirmed the use of this practice.
- 64 WASH. REV. CODE ANN. § 29A.08.510(3) (2008).
- 65 Kentucky permits the removal of a deceased registrant based on the notification of “other reliable sources.” KY. REV. STAT. ANN. § 116.113(1) (2008). Similarly, Florida law suggests that the state permits removal of deceased registrants based on information from “other sources.” FLA. STAT. ANN. § 98.093(3) (2008).
- 66 For more information on the voting rights of persons with criminal convictions, please visit the Brennan Center’s website at: http://www.brennancenter.org/content/section/category/voting_after_criminal_conviction/. See also ERIKA WOOD, RESTORING THE RIGHT TO VOTE (Brennan Center for Justice ed., 2008) available at http://www.brennancenter.org/content/resource/restoring_the_right_to_vote/ for a discussion of why voting rights should be restored to persons with criminal convictions upon release from prison.
- 67 The thirteen states are Hawaii, Illinois, Indiana, Massachusetts, Michigan, Montana, New Hampshire, North Dakota, Ohio, Oregon, Pennsylvania, Rhode Island, and Utah.
- 68 Those eight states are Alabama, Arizona, Delaware, Florida, Mississippi, Nevada, Tennessee, and Wyoming.

- 69 The five states are California, Colorado, Connecticut, New York, and South Dakota.
- 70 These twenty states are Alaska, Arkansas, Georgia, Idaho, Indiana, Kansas, Louisiana, Maryland, Minnesota, Missouri, Nebraska, New Jersey, New Mexico, North Carolina, Oklahoma, South Carolina, Texas, Washington, West Virginia, Wisconsin. (Nebraska imposes a two-year waiting period after completion of sentence.)
- 71 42 U.S.C. § 1973gg-6(a)(3)(b) (2008).
- 72 42 U.S.C. § 15483(a)(2)(A)(ii)(I) (2008).
- 73 See KY. REV. STAT. ANN. § 116.113 (2008).
- 74 See NEV. REV. STAT. ANN. § 293.540(3) (2008) (vesting county clerks with the task of canceling the voter registrations of persons convicted of felonies).
- 75 Unless otherwise cited, information pertaining to Washington was derived from interviews with four county board of elections officials as well as with staff from the Secretary of State's office conducted during February-April, 2007. All interviews are on file with the Brennan Center.
- 76 FLA. STAT. ANN. § 98.075(5) (2008).
- 77 For example, the Missouri statute specifically requires the county's election authority, which is generally the county auditor, to *remove* registrants reported dead or adjudged incapacitated, but with respect to those with criminal convictions, the statute only directs that the election authority to determine the voting qualifications of those reported convicted or pardoned. MO. REV. STAT. § 115.199 (2008). Some local officials in Missouri indicated that it is not their practice to purge persons convicted of disenfranchising crimes from the rolls. Instead, the registrant is placed in a particular status indicating current ineligibility. When the registrant's sentence has been completed, the person's eligibility is reactivated upon a showing of the appropriate documentation. See interviews with officials from city boards of election in Missouri conducted in 2007. Also, Pennsylvania, which automatically restores voting rights upon release from prison, does not indicate in its election statutes that individuals are removed because of incarceration — instead, the statute specifies that incarcerated persons are not eligible for absentee ballots. See 25 PA. CONS. STAT. ANN. § 2602(w) (2008).
- 78 42 U.S.C. §§ 1973gg-6(g)(1), (g)(5) (2008).
- 79 FLA. STAT. ANN. § 98.093(2)(c)-(f) (2008) (stating that the department of law enforcement, board of executive clemency, and department of corrections, in addition to the U.S. Attorney, will provide information about people with criminal convictions to election officials); IND. CODE ANN. §§ 3-7-46-4.1, 3-7-46-6 (2008) (stating that department of correction and county sheriffs will provide information about people with criminal convictions).
- 80 For example, in Nevada, the state statute does not specify where the purging officials are to receive information on who has been convicted of disqualifying convictions. NEV. REV. STAT. ANN. § 293.540(3) (2008). Note, however that Nevada statutes do require the Director of the Department of Corrections to submit monthly to each county clerk in this state a list which provides the name of each persons released from prison by expiration of term of imprisonment during the previous month or who was discharged from parole during the previous month. See NEV. REV. STAT. ANN. § 209.134 (2008).
- 81 In Nevada, local election officials reported varying practices with respect to the removal of individuals with criminal convictions. One local official reported a practice of obtaining information on disqualifying convictions from jury questionnaires. Another stated that he receives such information from the state Department of Corrections. A third reported finding information on disqualifying convictions by reviewing courts' judgments.
- 82 42 U.S.C. § 15483(a)(2)(B)(iii) (2008).

- 83 Nevada officials offered examples of this assumption.
- 84 Interview with a county election official in Michigan conducted in September 2008 is on file at the Brennan Center. A county official in Washington similarly reported that the newer registration record is removed when faced with a known duplicate.
- 85 *E.g.*, Missouri's statewide voter registration database creates a duplicate list on a monthly basis, and local election officials are responsible for working through the list. (Confirmed by a Missouri county board of election official.) Washington's statewide voter registration list produces a potential duplicate report that local election officials check daily. (Confirmed by a Washington county board of elections official.) The Ohio Secretary of State's office creates a daily duplicate list that is accessed by county elections officials. (Confirmed by a Ohio county board of elections officials.)
- 86 MO. ANN. STAT. § 115.165(4) (2008).
- 87 Unless another authority is otherwise cited, information in this report about Missouri was derived from interviews with staff from the Secretary of State's office, officials from city boards of election, a county election official, and voter protection advocates conducted in 2007. All interviews are on file with the Brennan Center.
- 88 *See, e.g.*, NEV. REV. STAT. ANN. § 293.540(9) (2008) (authorizing removal of duplicate records, but providing no criteria for identifying matching records). *But see* WASH. REV. CODE ANN. § 29A.08.610 (2008) (providing required criteria of identical date of birth, similar names and compared signatures; the only statute of those surveyed to provide such detailed criteria).
- 89 Unless another otherwise cited, information in this report about Ohio was derived from interviews with county board of elections officials conducted during February-March, 2007. All interviews are on file with the Brennan Center.
- 90 A Missouri board of election official attested to the consequences of these periods of heightened activity.
- 91 This has been the case, for instance, in Missouri and Ohio according to local elections officials there.
- 92 *See* 42 U.S.C. § 1973gg-6(b)(2) (2008).
- 93 42 U.S.C. § 1973gg-6(d)(2) (2008).
- 94 *See, e.g.*, U.S. Election Assistance Commission, *The Impact of the National Voter Registration Act of 1993 on the Administration of Elections for Federal Office 2005-2006* 97 (2007), available at http://www.eac.gov/clearinghouse/docs/the-impact-of-the-national-voter-registration-act-on-federal-elections-2005-2006/attachment_download/file.
- 95 This scenario reportedly occurred in both 2000 and 2006 in precincts in St. Louis, Missouri according to voter protection advocates working in the state.
- 96 Interviews with voter protection advocates in Missouri conducted in 2007.
- 97 OHIO REV. CODE ANN. § 3503.21(B) (2008).
- 98 Ohio boards of election officials confirmed this practice.
- 99 WIS. STAT. ANN. § 6.50(1)-(3) (2007). Note that Wisconsin, a state with Election Day registration, is exempt from the NVRA.
- 100 While the NVRA and some state laws contemplate the removal of persons from voter registration rolls for the reason of mental incapacitation in accordance with state law, our interviews with local officials indicate that very few registrants are purged from voter rolls on this basis.

- 101 42 U.S.C. § 1973gg-6(a)(3)(b) (2008).
- 102 25 PA. CONS. STAT. § 1302(a)(4) (2008).
- 103 IND. CODE ANN. § 12-26-2-8(1)(F) (2008).
- 104 *See Id.* § 3-5-5-17 (2008) (specifying that individuals who are committed to institutions for the mentally ill do not gain residency in the precinct of the institution).
- 105 OR. CONST. art. 2, § 3 (2007).
- 106 MO. REV. STAT. §§ 115.199, 115.133 (2) (2008); N.Y. ELEC. LAW § 5-400(1)(c) (Consol. 2008) (cancelling a voter's registration, including the registration of a voter in inactive status, if he has been adjudicated incompetent).
- 107 NEV. REV. STAT. ANN. § 293.540(2) (2008).
- 108 FLA. STAT. ANN. § 98.075(4) (2008). Washington and Ohio similarly indicate that the declaration of mental incapacitation must be specifically with respect to voting to warrant removal from the rolls. WASH. REV. CODE ANN. § 29A.08.515 (2008) (cancelling the voter registration for one who has been appointed a guardian and adjudicated incompetent with respect to voting); OHIO REV. CODE ANN. § 3503.21(4) (2008) (cancelling a registration based upon adjudication of incompetency of the registered elector for the purpose of voting).
- 109 Confirmed by interviews with local boards of election officials in Kentucky, Nevada, and Ohio conducted in 2007. All interviews are on file at the Brennan Center.
- 110 KY. REV. STAT. § 116.113(2) (2008) (circuit court). In Florida, Missouri, Nevada, and Ohio, election officials also receive lists of individuals ineligible to vote due to adjudication of mental incapacity from state courts. FLA. STAT. ANN. § 98.093(2)(b) (2008) (circuit court); MO. REV. STAT. § 115.195(3) (2008) (probate division of the circuit court); NEV. REV. STAT. ANN. § 293.542 (2008) (district court); OHIO REV. STAT. § 3503.18 (2008) (probate judge).
- 111 Washington's statutes strongly suggest as much. The text of the statute indicates that the computerized statewide voter registration list must be coordinated with other agency databases within the state, including the office of the administrator for the courts. *See* WASH. REV. CODE ANN. § 29A.08.651(5) (2008). However, the statute is not more explicit than the county auditor will receive official notice that a court has imposed a guardianship for an incapacitated person and has determined that the person is incompetent for the purpose of rationally exercising the right to vote. *See Id.* § 29A.08.515.
- 112 *See* N.Y. ELEC. LAW §§ 5-614(5), 5-106(6) (Consol. 2008). Note that lists can be also be supplied by any court with jurisdiction over such matters. *Id.* § 5-708(3).
- 113 This was confirmed by county boards of election officials in Washington; Press Release, Wash. Sec'y of State, State's First Consolidated List of Registered Voters Combats Voter Fraud (Feb. 20, 2007), *available at* http://www.secstate.wa.gov/office/osos_news.aspx?i=FenKyLcm7pnRO0P0kcR9kA%3d%3d.
- 114 John Ferro, *Deceased Residents on Statewide Voter List*, *POUGHKEEPSIE JOURNAL*, Oct. 29, 2006.
- 115 *Id.*
- 116 *Id.*
- 117 Office of the Inspector General, Social Security Administration, *Audit Report 2* (Sept. 2006), *available at* <http://www.ssa.gov/oig/ADOBEPDF/A-06-06-26020.pdf>.
- 118 An Ohio election official reported that entire households were removed when an address appeared in the national change of address list on account of one individual associated with that address moving. A

Kentucky county official similarly reported that the National Change of Address database is unreliable and that the postal service is incapable of differentiating which person in a household has moved.

- 119 An Ohio county official reported that the list he received with the names of deceased residents sometimes contained records without dates of birth, making it hard to use to guide the removal of deceased registrants. A Nevada official opined that the lists from the Department of Vital Statistics were of an adequate quality, but sometimes hard to use because they provided a decedent's age instead of providing the decedent's date of birth.
- 120 *Id.*
- 121 *Id.*
- 122 Greg Palast, *Ex-Con Game: How Florida's "Felon" Voter-Purge Was Itself Felonious*, HARPER'S MAG., Mar. 1, 2002, available at <http://www.ejfi.org/voting/voting-95.htm>.
- 123 Kandiss Crone, *Hosemann: Voter Purge Violated Federal Law*, WLBT News 3, Mar. 5, 2008, <http://www.wlbt.com/Global/story.asp?s=7973229>; Lucy Weber, *Purged Voting Rolls to be Fixed*, CLARION LEDGER, Mar. 6, 2008, at 1A; Lucy Weber, *Thousands of Names Removed From Madison County Voter Rolls*, CLARION LEDGER, Mar. 5 2008, at 1; Lucy Weber, *Resignation, Investigation Urged in Madison Co. After Vote-Roll Purge*, CLARION LEDGER, Mar. 7, 2007, at 1A; Cheryl Lasseter, *Landrum Asking for Voter-Roll Investigation*, WLBT News 3, Mar. 6, 2008, <http://www.wlbt.com/Global/story.asp?s=7977823>.
- 124 Andrew Ujifusa, *Change to Voter Rolls Called Into Question*, MADISON COUNTY HERALD J., Mar. 13, 2008, at 1; Kandiss Crone, *Hosemann: Voter Purge Violated Federal Law*, WLBT News 3, Mar. 5, 2008, <http://www.wlbt.com/Global/story.asp?s=7973229>; Lucy Weber, *Purged Voting Rolls to be Fixed*, CLARION LEDGER, Mar. 6, 2008, at 1A; Lucy Weber, *Thousands of Names Removed From Madison County Voter Rolls*, CLARION LEDGER, Mar. 5 2008, at 1; Lucy Weber, *Resignation, Investigation Urged in Madison Co. After Vote-Roll Purge*, CLARION LEDGER, Mar. 7, 2007, at 1A; Cheryl Lasseter, *Landrum Asking for Voter-Roll Investigation*, WLBT News 3, Mar. 6, 2008, <http://www.wlbt.com/Global/story.asp?s=7977823>
- 125 See generally WASH. REV. CODE ANN. § 29A.08.605 (2008); KY. REV. STAT. ANN. § 116.112(6) (2008).
- 126 See FLA. STAT. ANN. § 98.075(3) (2008); N.Y. ELEC. LAW § 5-402(2) (Consol. 2008). Interestingly, Florida's decision to exempt persons presumed deceased from notice requirements is in contrast to its statute squarely requiring that a registrant be given notice and the opportunity to respond to the charge of ineligibility on account of mental incapacitation prior to removal from the registration rolls, FLA. STAT. ANN. § 98.075(4), (7) (2008), protections for which Florida is unique among the states studied in expressly providing.
- 127 IND. CODE ANN. § 3-7-46-9 (2008) (requiring notification after removal from the registration list, specifically sent to the last known address of all people disenfranchised on account of imprisonment not later than the day following the day that the registration has been canceled from the rolls).
- 128 FLA. STAT. ANN. § 98.075(7) (2008); WASH. REV. CODE ANN. § 29A.08.520(1) (2008) (requiring that if a registrant is found on a list of felons, the canceling authority must send a notice of the proposed cancellation and an explanation of the requirements for restoring the right to vote once all terms of sentencing have been completed; if the person fails to respond within thirty days, the registration is to be canceled).
- 129 IND. CODE ANN. § 3-7-46-9 (2008).
- 130 See, e.g., Alan Riquelmy, *Political Confusion: Removal Letter Confuses Law-Abiding Voters*, COLUMBUS LEDGER-ENQUIRER, April 3, 2008, at A01.

- 131 See e.g., American Civil Liberties Union, *Purged!: How Flawed and Inconsistent Voting Systems Could Deprive Millions of Americans of the Right to Vote* 8 (2004), available at <http://tinyurl.com/4vdl75>.
- 132 Election officials in Washington state reported only using a few fields to identify voters for removal.
- 133 Michael P. McDonald & Justin Levitt, *Seeing Double Voting* 11 (July 1, 2007) (unpublished manuscript, submitted to the 2007 Conference on Empirical Legal Studies), available at http://papers.ssrn.com/sol3/Delivery.cfm/SSRN_ID997888_code698321.pdf?abstractid=997888&mirid=1.
- 134 Brennan Center for Justice at NYU School of Law & Michael McDonald, Preliminary Analysis of the September 15, 2005 Report Submitted to the New Jersey Attorney General by the New Jersey Republican Party 6-7 (2005), available at http://www.brennancenter.org/page/-/d/download_file_35010.pdf.
- 135 FLA. STAT. ANN. § 98.093(2)(a) (2008).
- 136 Gregory Palast, *The Wrong Way To Fix the Vote*, WASH. POST, June 10, 2001, at B1.
- 137 *Id.*
- 138 U.S. Commission on Civil Rights, Voting Irregularities in Florida During the 2000 Presidential Election, Ch. 5 (June 2001) available at <http://www.usccr.gov/pubs/vote2000/report/ch5.htm>. African Americans constituted over 65% of the voters on the county's exclusion list. *Id.* Ch. 1, available at <http://www.usccr.gov/pubs/vote2000/report/ch1.htm>.
- 139 N.Y. COMP. CODES R. & REGS. tit. 9 § 6217.8 (2008).
- 140 Missouri's statutes are an example of a wide grant of authority given to election officials regarding the sources and methods permitted to verify a person's address, reading "[t]he election authority may investigate the residence or other qualifications of any voter at any time it deems necessary. The election authority shall investigate material affecting any voter's qualifications brought to its attention from any source, and such investigations shall be conducted in the manner it directs." MO. ANN. STAT. § 115.191 (2008).
- 141 WASH. REV. CODE ANN. § 29A.08.620 (2008).
- 142 OHIO REV. CODE ANN. § 3503.18 (2008).
- 143 FLA. STAT. ANN. § 98.075(4) (2008). WASH. REV. CODE ANN. § 29A.08.515 (2008) ("Upon receiving official notice that a court has imposed a guardianship for an incapacitated person and has determined that the person is incompetent for the purpose of rationally exercising the right to vote, under chapter 11.88 RCW, if the incapacitated person is a registered voter in the county, the county auditor shall cancel the incapacitated person's voter registration."); OHIO REV. CODE ANN. § 3503.21(4) (2007) ("The adjudication of incompetency of the registered elector for the purpose of voting as provided in section 5122.301 [5122.30.1] of the [Ohio] Revised Code.").
- 144 Confirmed by county boards of election officials in Ohio.
- 145 42 U.S.C. § 1973gg *et. seq.*
- 146 42 U.S.C. § 1973gg-4(a)(1) (2006); see *Charles H. Wesley Educ. Found. v. Cox*, 408 F.3d 1349, 1355 (11th Cir. 2005) (holding that NVRA prohibited state from rejecting voter registration applications postmarked by correct date under state law); see also *Assoc. of Cmty. Organizations for Reform Now v. Edgar*, 56 F.3d 791, 792-3, 795 (7th Cir. 1995) (overriding state law to the extent that it conflicts with the NVRA).
- 147 42 U.S.C. § 1973gg-4(b) (2006).

- 148 42 U.S.C. § 1973gg-3(a)(1) (2006).
- 149 42 U.S.C. § 1973gg-5(a)(2)(A) (2006).
- 150 42 U.S.C. § 15483(a)(2)(A)(ii)(I) (2006).
- 151 42 U.S.C. § 15483(a)(2)(A)(ii)(II) (2006).
- 152 42 U.S.C. § 1973gg-6(a)(1) (2006) (enumeration omitted) (emphasis added).
- 153 42 U.S.C. § 1973gg-6(a)(4)(A)-(B) (2006).
- 154 42 U.S.C. § 1973gg-6(a)(3)(A)-(B) (2006).
- 155 42 U.S.C. § 15483(a)(4)(A) & (B)(2)(iii) (2006).
- 156 *Id.* § 15483(a)(2)(B)(i) & (ii).
- 157 The New York Board of Elections must notify voters by mail and wait 14 days prior to cancellation for any reason except request to be removed (which includes registering in another state), death, or inactivity for two general elections. N.Y. ELECTION LAW § 5-402(2) (McKinney 2007).
- 158 25 PA. CONS. STAT. ANN. § 1203(h) (2006).
- 159 *Id.* § 1505(c) (2006).
- 160 Lucy Weber, *Purged Voter Rolls To Be Fixed*, CLARION-LEDGER, Mar. 6, 2008 at 1A.
- 161 Lucy Weber, *Resignation, Investigation Urged in Madison Co. After Voter-Roll Purge*, MADISON COUNTY JOURNAL, Mar. 7, 2008 at 1; Andrew Ujifusa, *Change to Voter Rolls Called Into Question*, MADISON COUNTY JOURNAL, Mar. 13, 2008 at 1.
- 162 See Letter from C. Delbert Hosemann, Mississippi Secretary of State (Mar. 31, 2008) (on file with the Brennan Center). A later conversation with staff from the Secretary of State's office clarified this feature.
- 163 WASH. REV. CODE § 29A.08.770 (2008). Other states grant the public varying degrees of access to records of voters purged. See, e.g., FLA. STAT. ANN. § 98.045(2)-(3) (2007); MICH. COMP. LAWS § 168.514 (2007); WIS. STAT. §§ 6.33, 6.36 (2007).
- 164 Of the twelve states covered in this report, for example, the following ten provide readily accessible voter portal functions on their websites: Indiana, Kentucky, Michigan, Missouri, Nevada, New York, Ohio, Pennsylvania, Washington, and Wisconsin.
- 165 See, e.g., People for the American Way et al., *Shattering the Myth: An Initial Snapshot of Voter Disenfranchisement in the 2004 Elections*, at 8 (December 2004); Demos, *Continuing Failures in "Fail-Safe" Voting*, at 4 (Dec. 2005), available at <http://www.demos-usa.org/pubs/December%20PB%20Report%20Draft%2015.pdf>.
- 166 See ROBERT M. GOLDMAN, RECONSTRUCTION AND BLACK SUFFRAGE: LOSING THE VOTE IN REESE AND CRUIKSHANK 13 (Univ. Press of Kansas 2001).
- 167 CHANDLER DAVIDSON AND BERNARD GROFMAN EDS., QUIET REVOLUTION IN THE SOUTH 104 (Princeton Univ. Press 1994).
- 168 *Id.* at 105.
- 169 *Id.*
- 170 Steve Barber et al., *The Purging of Empowerment: Voter Purge Laws and the Voting Rights Act*, 23 HARV. C.R.-C.L. L. REV. 483, 486-87 (1988).

- 171 *United States v. McElveen*, 180 F.Supp. 10, 11-13 (E.D. La. 1960) (finding that purges for errors in voter registration affected 85% of black voters and only 0.07% of white voters, despite similar errors among half of white registrations).
- 172 *Beare v. Smith*, 321 F. Supp. 1100, 1103 (S.D. Tex. 1971), *aff'd sub nom. Beare v. Briscoe*, 498 F.2d 244, 248 (5th Cir. 1974).
- 173 *See, e.g., Toney v. White*, 488 F.2d 310, 312 (5th Cir. 1973) (voiding the results of an election on the ground that a voter purge conducted 30 days prior to the election had a racially discriminatory effect, notwithstanding a lack of evidence suggesting the purge was racially motivated).
- 174 Paul Kiel, TPMuckraker.com, *Cage Match: Did Griffin Try to Disenfranchise African American Voters in 2004?*, <http://www.tpmuckraker.com/archives/003523.php> (June 26, 2007).
- 175 JUSTIN LEVITT & ANDREW ALLISON, *A GUIDE TO VOTER CAGING* 3-6 (Brennan Center for Justice ed., 2007) *available at* http://www.brennancenter.org/dynamic/subpages/download_file_49608.pdf.
- 176 *Id.*
- 177 CHANDLER DAVIDSON ET AL., CENTER FOR VOTING RIGHTS AND PROTECTION, *REPUBLICAN BALLOT SECURITY PROGRAMS: VOTE PROTECTION OR MINORITY VOTE SUPPRESSION OR BOTH?* 17 (2004) *available at* http://www.votelaw.com/blog/blogdocs/GOP_Ballot_Security_Programs.pdf.
- 178 Martin Tolchin, *G.O.P. Memo Tells of Black Vote Cut*, N.Y. TIMES, Oct. 25, 1986, at 7.
- 179 *See 2004 Presidential Election: Hearing Before the Committee on House Judiciary Subcommittee on Constitution, Civil Rights, and Civil Liberties*, (2008) (statement of J. Gerald Hebert, Executive Director & Director of Litigation, The Campaign Legal Center); Chandler Davidson *et al.*, *Election Law: Vote Caging as a Republican Ballot Security Technique*, 34 WM. MITCHELL L. REV. 533, 561 (2008); Teresa James, *Caging Democracy: A 50-Year History of Partisan Challenges to Minority Voters* 16-20, 22 (Project Vote ed., Sept. 2007), *available at* <http://projectvote.org/index.php?id=355>.
- 180 At the time of publication, most, but not all, states have implemented centralized statewide voter registration databases. For example, California's VoteCal system is not expected to be fully deployed until 2010. *See* http://www.sos.ca.gov/elections/bidders_library/q_a_rfp_regional_co.pdf.
- 181 42 U.S.C. § 15483(1)(A)(iv); *see also* §§ 15483(2)(A)(ii)(I)-(II), (5)(B)(i)-(ii).
- 182 *See* Memorandum of Understanding Between the States of Missouri, Iowa, Nebraska and Kansas for the Improvement of Election Administration, December 2005, *available at* http://www.sos.mo.gov/elections/2005-12-11_MO-KS-IA-NE-MemorandumOfUnderstanding.pdf; *see also* Sean Greene, *Midwest Voter Registration Data-Sharing Project Moves Forward: Kansas Leads Groups of States Crosschecking Information; Advocates Voice Concern*, electionline.org, Dec. 13, 2007, http://www.pewcenteronthestates.org/report_detail.aspx?id=33612; M. Mindy Moretti, *Western States Contemplate Voter Information Sharing: Interstate Cooperation Has Promise and Pitfalls, Officials Decide*, electionline.org, Feb. 2, 2006, http://www.pewcenteronthestates.org/report_detail.aspx?id=33814.

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Military voters fear they're part of unsupported fraud claim

By MICHELLE L. PRICE, MICHAEL BALSAMO and ANTHONY IZAGUIRRE November 13, 2020



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LAS VEGAS (AP) — Some military voters are concerned they have been thrust into the center of unsubstantiated fraud claims by President Donald Trump's campaign that several thousand people may have improperly voted in Nevada.

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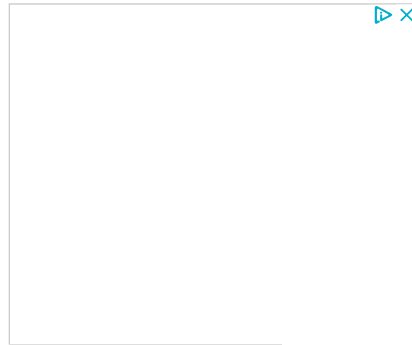
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publicly that the election went well and international observers confirmed there were no serious irregularities that elected Democrat Joe Biden the next president.

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Still, lawyers from Trump's campaign sent a letter to Attorney General William Barr alleging they had uncovered what they described as "criminal voter fraud" in Nevada. They said they had identified 3,062 people who "improperly" cast mail ballots in Clark County, a Democrat-heavy area that includes Las Vegas and about 75% of the state's population.

Those people were identified by "cross-referencing the names and addresses of voters with the National Change of Address database," according to the letter.

A copy of the letter provided to The Associated Press included a 62-page chart enumerating each voter but the listing did not include the name, address or party affiliation. Instead, it listed voters by the county, city, state and zip code they moved from, and the city,

state and nine-digit zip code they moved to. The full nine-digit zip code can narrow an address down to a particular segment of a few blocks or even one side of a street, according to the U.S. Postal Service.

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Voting rights activists say hundreds of people on the list appear to be linked to the U.S. military. The American Civil Liberties Union of Nevada, which is doing election protection work, found 157 voters who listed a military base post office, according to staff attorney Nikki Levy, meaning they likely voted legally under added protections in federal law allowing absentee voting for military members and their families.

It's hard to know offhand how many military families are on the Trump campaign list because not all service members use their base post office as their address, Levy said.

Rebekah Mattes, a civil servant who now lives in Stuttgart, Germany, said she believes she found herself and her husband, who is in the Air Force, on the list because it includes only two voters who made the same move they did from North Las Vegas to their new zip code in Germany.

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"It's a little disheartening that this process that's in place for people like my family, to be able to exercise their right to vote, is being questioned," Mattes said, adding, "That's a pretty broad brush to be painting with for something that's this important."

residences and their new nine-digit zip codes being linked and released.

The Justice Department had been looking into the allegations, but officials wouldn't comment further. With Biden leading Trump by wide margins in key battleground states, none of those issues would have any impact on the outcome of the election.

Nevada election law stipulates that in order to register to vote, an individual must have been a resident for 30 days preceding an election, but does not specify how long an already registered voter must be physically present in the state in order to participate in an election.

The Nevada Secretary of State's office said voters do not lose their eligibility to vote or void their registration when they leave the state temporarily, even for long periods of time, and they may travel for 30 days or more and still cast a ballot.

Full Coverage: [Election 2020](#)

Clark County Registrar of Voters Joe Gloria responded to the Trump campaign's allegations at a news conference last week, saying his office was reviewing a list of names that the campaign sent him, but said the allegation involves "something that happens regularly."

Federal and state law allows otherwise eligible voters to be exempt from any requirements that they reside in a state for any amount of time in order to cast a vote in a presidential election. A citizen who moves within 30 days before an election has the right to vote in their new state or their prior state of residence. Voters who take advantage of that only vote for president and vice president. They do not get to vote in any other contests.

Shortly after the Trump campaign sent its letter, Barr gave prosecutors the

issued, the department's top elections crime official announced he would step aside from that position because of the memo.

The issues Trump's campaign and its allies have pointed to are typical in every election: Problems with signatures, secrecy envelopes and postal marks on mail-in ballots, as well as the potential for a small number of ballots miscast or lost.

Trump's campaign has also launched legal challenges complaining that their poll watchers were unable to scrutinize the voting process. Many of those challenges have been tossed out by judges; none of the complaints show any evidence that the outcome of the election was impacted.

Another active probe in Pennsylvania, meanwhile, appears to have fallen apart after the employee recanted the allegations in an interview with the postal service's inspector general's office, people familiar with the matter said. It is a federal crime to make a materially false statement to a federal agent. The people were not authorized to speak about an ongoing investigation and spoke to the AP on condition of anonymity.

The employee, Richard Hopkins, admitted in an interview with the Postal Service's inspector general that allegations were based on parts of a conversation he overheard among co-workers at the mail facility where he works in Erie. He also said an affidavit cited by Sen. Lindsey Graham, R-S.C.,

the chairman of the Senate Judiciary Committee — and forwarded to the Justice Department by Graham — was written by Project Veritas, a conservative group that has been promoting voter fraud accusations on social media.

some of his main claims in the initial affidavit, according to a recording of the interview posted by Project Veritas.

Balsamo reported from Washington, and Izaguirre from Lindenhurst, N.Y.



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Exhibit 23

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As the nation's largest nonpartisan, voters' rights and election integrity organization, True the Vote exists to inspire and equip volunteers for involvement at every stage of America's electoral process. We provide training, technology, and support to fellow citizens so that they can ensure election integrity in their own communities.

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**UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF GEORGIA
GAINESVILLE DIVISION**

FAIR FIGHT, INC., JOHN DOE, and
JANE DOE,

Plaintiffs,

v.

TRUE THE VOTE, CATHERINE
ENGELBRECHT, DEREK
SOMERVILLE, MARK DAVIS, MARK
WILLIAMS, RON JOHNSON, JAMES
COOPER, and JOHN DOES 1-10,

Defendants.

Case No. 2:20-cv-00302-SCJ

DECLARATION OF LAUREN GROH-WARGO

Pursuant to 20 U.S.C. § 1746, I, Lauren Groh-Wargo, declare as follows:

1. My name is Lauren Groh-Wargo. I am over eighteen years of age, have personal knowledge of the facts stated in this Declaration, and can competently testify to the matters contained herein.

2. I am a Senior Advisor to Fair Fight, Inc. (“Fair Fight”), one of the Plaintiffs in the above-captioned litigation. I am authorized to provide this Declaration for Fair Fight.

3. Fair Fight is a political action committee with a non-contribution account, commonly known as a Hybrid PAC, registered with the Federal Election

Commission, the Georgia Government Transparency and Campaign Finance Commission, and various state campaign finance regulators.

4. In addition to its other work, one of Fair Fight's missions is to secure the voting rights of Georgians, a mission that includes voter engagement and voter turn-out, particularly among young people and people of color.

5. Fair Fight's voter engagement activities include efforts to support and elect pro-voting rights progressive leaders. To encourage voter participation, Fair Fight handles programmatic activities including the preparation and sponsorship of digital advertising, mailings, phone banks and calls, and text messaging. Fair Fight raises money and provides funding for voter engagement activities.

6. For the 2020 general election runoff, to be conducted January 5, 2021, Fair Fight was engaged in voter participation work including educating voters about the voting process, engaging in get out the vote activities, monitoring long lines at polling locations, and helping voters navigate the absentee ballot process.

7. On the first day of early voting, December 14, 2020, Fair Fight learned from a True the Vote press release that True the Vote and the Georgia Republican Party were partnering to engage in what they termed as "the most comprehensive ballot security initiative in Georgia history." *See* <https://truethevote.org/true-the-vote-partners-with-georgia-gop-to-ensure-transparent-secure-ballot-effort-for-senate-runoff-elections/>.

8. On December 16, Fair Fight learned, from Ralph A. Russell, Chair of the Muscogee County Republican Party, of the challenge that True the Vote mounted against 4033 Muscogee County voters. Then, on December 17, Fair Fight learned of challenges filed in other counties, including Cobb, Troup, Clarke, and Henry Counties. Fair Fight also obtained the challenge cover letters from Cobb and Athens-Clarke Counties and learned the county Republican chairs had filed the challenges in both counties.

9. On December 18, Fair Fight learned from a True the Vote press release that True the Vote, and groups and individuals working in concert with True the Vote, intended to mount challenges to the eligibility of hundreds of thousands of Georgians to cast their votes in the runoff election. *See* <https://truethevote.org/true-the-vote-partners-with-georgians-in-every-county-to-preemptively-challenge-364541-potentially-ineligible-voters/>.

10. Upon learning about True the Vote's challenges, Fair Fight was immediately concerned because True the Vote's' challenges were consistent with the tactics of voter intimidation that had for too long persisted in Georgia. As a result of True the Vote's plans, Fair Fight was forced to focus on combatting True the Vote's efforts to limit ballot access and oppose the organization's efforts at voter intimidation. This change in Fair Fight's activities impeded Fair Fight's voter engagement efforts.

11. Specifically, to counteract True the Vote's efforts to limit access to the ballot, Fair Fight took staff away from its voter mobilization activities described above and dedicated that staff instead to monitoring the Georgia's 159 counties to determine which counties received challenges True the Vote was supporting. That monitoring included attending the Board of Elections hearings on True the Vote's challenges. Fair Fight also expended significant financial and staff resources to collect and analyze the challenge lists.

12. In addition to committing Fair Fight's paid staff to track and respond to the efforts of True the Vote, Fair Fight redirected the time of Fair Fight volunteers. Fair Fight had organized a large group of volunteers to gather information about general voting logistics, including confirming with counties their early voting locations, dates, and hours. Fair Fight volunteers also advocated for extending early voting opportunities. Because of the efforts of True the Vote and those working with True the Vote to restrict the right of hundreds of thousands of Georgians to cast votes, Fair Fight was forced to redirect the above-described efforts of its volunteers to, instead, reaching out to voters on True the Vote's lists of challenged voters and attending Boards of Elections meetings, some in-person, across the state. That re-direction of effort required extensive Fair Fight staff involvement to reach out to and coordinate volunteers and took staff away from their voter engagement activities.

13. Fair Fight's efforts to respond to and combat True the Vote's challenges also required Fair Fight to expend money. That money was diverted from Fair Fight's voter engagement activities.

14. Unless and until this litigation is successful, Fair Fight will continue to expend staff resources, volunteer time, and money combatting the efforts of True the Vote and its cooperators to restrict access to the polls. These expenditures would not be required if this Court grants the relief requested by Fair Fight in its complaint.

In accordance with 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed the 29th day of December, 2020.


DocuSigned by:

BBED9263CF704CF...
Lauren Groh-Wargo

Exhibit 25

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IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
BRUNSWICK DIVISION

GEORGIA REPUBLICAN PARTY,
INC., et al.,

Plaintiffs,

v.

BRAD RAFFENSPERGER, et al.,

Defendants.

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:
:

CASE NUMBER 2:20-CV-00135

MOTION HEARING
(Via video conferencing)

BEFORE THE HONORABLE LISA GODBEY WOOD
United States Courthouse
801 Gloucester Street
Brunswick, Georgia
December 18, 2020

COURT REPORTER: Victoria L. Root, CCR
United States Court Reporter
Post Office Box 10552
Savannah, Georgia 31412
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P R O C E E D I N G S

(Call to order at 3:22 p.m.)

THE COURT: Good afternoon.

IN UNISON: Good afternoon, Judge.

THE COURT: All right, Ms. Sharp. Call the next case.

COURT CLERK: Georgia Republican Party, Incorporated; National Republican Senatorial Committee; Perdue for Senate; Georgians for Kelly Loeffler; Bethany Ballard; Ashley Gilles; Jean Seaver v. Brad Raffensperger; Rebecca Sullivan; David Worley; Matthew Mashburn; Ann Le; Patricia Gibson; Patricia Featherstone; Keith Rustin; Tommy Clark; Sandra Dean; Thomas Mahoney; Marianne Heimes; Malinda Hodge; Antwan Lang; Debbie Rauers.

On behalf of the plaintiffs is Leah Zammit, Benjamin Gibson, George Meros, Jeffrey York. On behalf of Defendant Brad Raffensperger and Rebecca Sullivan is Russell Willard. On behalf of Defendants Patricia Gibson, Patricia Featherstone, Keith Rustin, Tommy Clark, Sandra Dean is Rick Strickland, Brad Watkins, and Aaron Mumford. On behalf of Defendants Thomas Mahoney, Marianne Heimes, Malinda Hodge, Antwan Lang, and Debbie Rauers is Benjamin Perkins and Jennifer Davenport.

THE COURT: All right. Ready for the plaintiffs?

MR. MEROS: Yes, Your Honor.

1 THE COURT: And ready for the Defense?

2 UNIDENTIFIED SPEAKER: Yes, Your Honor.

3 UNIDENTIFIED SPEAKER: Yes.

4 THE COURT: All right.

5 UNIDENTIFIED SPEAKER: Yes, Your Honor.

6 THE COURT: Counsel, let me make some preliminary
7 remarks and observations. First, let me apprise everybody that
8 we do have a public line available. Of course, if there
9 weren't COVID, we would all be here together. But because of
10 the challenges of the current epidemic, it's hard for people
11 that are located outside of this area to get here in a hurry,
12 and it's also not safe for us to all be packed into one
13 courtroom at this time, so I did allow the hearing to proceed
14 by way of video conference so we could get to it in a timely
15 fashion.

16 Obviously, time is important. And the plaintiffs
17 filed their complaint and petitioned for emergency relief last
18 night, Thursday night. The defendants, I believe, have just
19 received word about the suit today.

20 And the reason that I'm jumping on it and hearing it
21 today is because contained in the request for emergency relief
22 is an allegation that, come Monday, the way that the election
23 will be handled moves into somewhat of a different phase in
24 that by 8:00 on Monday, the various boards of election will
25 have the permission to separate the outer envelope of mail-in

1 ballots from the inner envelope of mail-in ballots. And the
2 plaintiffs allege that that would then challenge any kind of
3 identification of ballots that they claim would be improper.
4 And that explains the timing of why I'm having the hearing on
5 such a quick basis.

6 By way of further preliminaries, we have some
7 attorneys who are local who are here in the courtroom. We have
8 some members of the public, citizens, who, of course, are
9 entitled to listen and observe. We also, because of COVID,
10 have a public line open so that anybody from anywhere can dial
11 in to that public line and listen to the proceedings.

12 For the benefit of those of you who are participating
13 remotely either by audio or by video, whether you're a member
14 of the bar or not, I need to remind everybody who is
15 participating that it is improper to make any kind of video or
16 audio recording of this event. And you need to be careful to
17 listen closely. We, of course, have a court reporter who is
18 also appearing remotely who will make an official record of the
19 proceeding that will be available at some point in the future.

20 I have had the opportunity to read and review the
21 complaint, the request for emergency relief, and the affidavits
22 that were submitted, including one that was just submitted, in
23 preparation for the hearing.

24 I am going to give each side, the plaintiffs and the
25 defendants, an hour for their presentation. If you discover

1 some compelling need to go beyond that, I'll hear you on that,
2 but just, in your mind, order things accordingly.

3 It is extraordinary relief that the plaintiffs seek,
4 and it is their burden to show that they're entitled to that
5 relief, so we'll, of course, begin with the plaintiffs.

6 who will begin that presentation on behalf of the
7 plaintiffs?

8 MR. MEROS: Your Honor, this is George Meros on
9 behalf of the plaintiffs. I will be arguing today.

10 THE COURT: All right. Mr. Meros, if you will begin
11 and get us started.

12 MR. MEROS: Thank you, Your Honor, and may it please
13 the Court. My name is George Meros of Shutts & Bowen law firm
14 in Tallahassee. And as I stated before, also Mr. York and
15 Ms. Zammit of Shutts & Bowen are present as well.

16 The very good news, Your Honor, is I feel certain I
17 will not take up an hour of your time, but this is -- excuse
18 me -- this is an important matter --

19 THE COURT: And --

20 MR. MEROS: -- but one that --

21 THE COURT: Let me interject because you're correct,
22 Mr. Meros. It is very important. And that's why we're jumping
23 on it. And, you know, ordinarily, people get 15, 20 minutes
24 for oral argument, but I'm having an extended amount of time
25 because it is very important for everybody in our state and in

1 the country. So with that, if you'll continue.

2 MR. MEROS: Yes, yes. Thank you very much.

3 And what Your Honor said before in the introduction
4 about what our papers say and why immediate and extraordinary
5 relief is necessary is right on point.

6 As of Monday, if there is not a temporary injunction
7 or if there is not some interim relief to preserve or segregate
8 ballots without depriving anyone of the right to vote, without
9 imposing additional burdens on the right to vote, but to have
10 a process by which this Court or others could determine whether
11 there will be violations of the federal Voting Rights Act --
12 and if, in fact, there is not a suspension of some proceedings
13 and the ability to get this put to rest -- and in large part,
14 this is an issue of law.

15 without that, there will be ballots that will be
16 separated from envelopes where the envelopes would identify
17 individuals where the ballots would not. And once that occurs,
18 with the commingling, it will be impossible to determine
19 whether a given individual voted in a senatorial election in
20 another state and is poised to or did thereafter vote in a
21 senator- -- in a federal election in Georgia involving two
22 senate races. And that's why this -- is one of the many
23 reasons why this is so important.

24 We have facts that we have shown in the declaration,
25 and we have Mr. Morgan, the declarant, who is available to

1 testify -- and I will not repeat that testimony but to the
2 extent that we can offer either additional information or
3 answer questions for the Court or the others. But we have
4 facts to show that there is a pool of individuals that have,
5 in fact, voted in elections in other states involving senate
6 elections.

7 we also have information that many of those same
8 individuals have either filed a change of address or have,
9 in fact, registered to vote in Georgia in an election involving
10 senate races -- two senate races. And if, in fact -- and so
11 what we have here is we have individuals that are poised to
12 vote in this election despite the fact that they have already
13 voted for a senator or senators in another state.

14 And I say this is an issue of law because the federal
15 Voting Rights Act -- and Section 11(a) and 11(e) of the Voting
16 Rights Act make it clear, in our view, that voting twice in
17 senate elections is unlawful. And there must be a remedy for
18 that because the whole purpose of the Voting Rights Act and
19 that prohibition is to make sure that individuals have an equal
20 right to the electoral process. And if some are voting twice,
21 that is not the same, and that is unlawful as compared to those
22 who have voted once. And Mr. Morgan can describe in some more
23 detail why that's so important.

24 I also want to make it very clear that this is not
25 something that should burden the state officials and the county

1 officials in a process by which there can be some opportunity
2 to understand what has happened and what might well happen in
3 this runoff election. We are only asking for the ability to
4 have segregated, preserved votes, both absentee and in-person
5 voting preserved so that there can be some identification and
6 some ability to determine the extent to which this unlawful
7 conduct has occurred or might well occur.

8 And it is not our intent to try to dictate to this
9 Court or to the state and local officials how, necessarily, to
10 do that. We want this to be a smooth process. We want it to
11 be a process that is one simply to understand the lawfulness of
12 certain conduct and to -- and if there are violations, to make
13 sure that those innocent who have voted for a single senator
14 that -- for a single senator have the same right to vote as
15 those who have voted unlawfully. And so what -- however that
16 is -- and however best to do that, we certainly respect the
17 expertise and the right of local and state officials to try to
18 determine how to do that.

19 And, again, it is so important to understand that
20 none of this would impact or implicate a burden on the right of
21 voters to elect their candidate of choice. To the contrary, it
22 will preserve the right of people to the franchise that have
23 followed the law.

24 And we don't know, now, how many people that might
25 be. We do know that there are individuals that -- or that

1 there are numbers of people that Mr. Morgan has identified that
2 will only increase in number and probably substantially so.
3 And if nothing were to occur before Monday, then that number of
4 people who potentially have a vote -- have voted in violation
5 of the Voting Rights Act, there would be no remedy for that.
6 It would be irreparable. The right to cast a vote as -- the
7 same as other people lawfully would be lost. And that, we
8 suggest, cannot fairly occur under federal law or the
9 Constitution.

10 Now, there might be individuals in the state
11 government that suggest that they don't have any authority or
12 power over this. We respectfully suggest that, in fact, the
13 Secretary of State has the power to issue bulletins to county
14 boards about how to handle ballots cast by new registrants and
15 the state board of elections has the ability to issue an
16 emergency rule requiring suggestion of these ballots.

17 And we also believe it clear that county boards would
18 be required to comply with regulations issued by the state
19 board of elections. And, again, we would not dictate how that
20 is done. We would be more than happy to try to facilitate and
21 to make it easier to have that done if that is the best way to
22 go about it.

23 The -- with regard to the -- then --

24 And you have this, Your Honor, and you've already
25 read it, so I'm not going to go through all of the elements of

1 a TRO or a preliminary injunction.

2 But in looking at this, it's hard to imagine how the
3 public interest could be more greatly impacted than one person
4 walking into a voting booth and electing for a senate -- a
5 senator and another person to have walked into that same voting
6 booth and voted for a senator and then gone on to another state
7 in another voting booth and voting for another senator. That
8 is fundamentally an issue of fairness. It's an issue of
9 federal law. And it's an issue of the right to the same vote
10 as other people have.

11 I think it equally clear that the facts will show
12 that we're entitled to relief. And the numbers strongly
13 suggest already that there is a high likelihood that the
14 thousands and thousands of individuals who have registered to
15 vote in Georgia and -- between 4- and 500 individuals that we
16 know have voted in other states and have registered in Georgia
17 in this runoff election suggests very strongly that it is no
18 accident that this will be one individual that has voted twice
19 in senate elections.

20 So we think the facts will clearly show that. We
21 think the law -- and this case cries out for a declaratory
22 judgment. Opponents will say that somehow the federal voting
23 Rights Act does not protect against this conduct. We think
24 that is clearly not the case. But we do not shy away. We
25 embrace the right to have that issue decided.

1 If the Court were to decide that there's no cause of
2 action for voting for two different senators with others voting
3 for one, so be it. If, in fact, there is an evaluation of
4 ballots in a process where there is some suspended period of
5 time where these things can be assessed and there are no
6 violations, so be it.

7 But if there are those that have violated the law,
8 then that means there are others that have had their right to
9 vote diminished and diluted.

10 Now, if Your Honor -- Mr. Mark Morgan, the declarant
11 in Exhibit H, I believe, of the memorandum, is here and
12 available if the Court would like. I don't want to be
13 repetitive. I would ask Mr. Morgan, if you would like it, to
14 briefly describe his declaration. But to -- to the extent that
15 he can expand on additional information that may be upcoming
16 and available in short order, we would be happy to provide that
17 and offer Mr. Morgan up for any questions the Court or others
18 might have.

19 THE COURT: well, let me ask some legal questions to
20 you, Mr. Meros. I do have the affiant's affidavits. And if
21 there are other reasons that you want to develop, you can have
22 him sworn and walk him through questions. But at this point,
23 I don't have any questions for him. I do have some questions
24 for you.

25 And so let me start in on the standing part. And I'm

1 looking at the redressability prong of standing. And so what
2 you've just shared with me -- and it is contained, of course,
3 in your filings -- is that what you'd like is to have -- the
4 people who registered and voted in other states and then seek
5 to vote in Georgia, have their ballots set aside.

6 How does that redress the rights that you seek to
7 vindicate?

8 MR. MEROS: The way we believe that works is exactly
9 what you said, and that is if there is a potential of people
10 violating federal law, then you set that aside until you can
11 assess and determine whether the violations are real, whether
12 they are substantial, or whether they are minimal.

13 THE COURT: Wait. But you make --

14 MR. MEROS: And the Court has --

15 THE COURT: Wait, wait. You're making a little bit
16 of a leap that I'm asking you to draw a line. I understand
17 you're asking to set those ballots aside -- not separate them
18 from the outer envelope, just set those aside, and then you're
19 leaping to say that they could then be referred to as possible
20 violations of what you allege would be a violation of federal
21 law.

22 But the fact that someone voted in California, for
23 example, in the November election and the fact that they then
24 voted in Georgia for the January election doesn't prove that
25 they voted for Senate twice.

1 MR. MEROS: Well, that would be an issue -- I'm
2 sorry. Go ahead.

3 THE COURT: That would be an issue. And you can vote
4 for a president and all the other offices that might have been
5 on the ballot in California and not have voted for a senate
6 [sic] in California. And likewise, come January, you could
7 show up and vote for the public service commission that is
8 on the ballot as well as the U.S. Senate. You could actually
9 have voted in California and Georgia and never voted for a
10 U.S. senator.

11 And so even if we pull those ballots aside and set
12 them in their own private stack, just having them there and you
13 some day doing actually more than setting them aside but
14 investigating these people, even if you investigated them and
15 even if you came to me and said, "I found Mr. Joe Smith voted
16 in California and voted in Georgia, so throw this ballot out,"
17 you haven't shown anything. You haven't shown he's voted for
18 Senate twice, once, or zero.

19 In fact, wouldn't we have to rip open that ballot and
20 look at his private vote to tell that?

21 MR. MEROS: You know, I would -- we certainly
22 wouldn't need to rip open the ballot. And it is an issue of
23 fact as to what occurred if we have proof of that, if we have
24 those materials preserved.

25 THE COURT: But right now, all that you have is --

1 you know, you -- remember, this is an extraordinary relief that
2 you seek, and so you can't just come in here and say, "You
3 know, we think this might have happened" or "We think this
4 might be about to happen" or "We think the chances are even
5 that this is going to happen."

6 You've got an extraordinary burden to bear. And
7 right now, at best, all you can say is somebody voted for
8 something in one state, and somebody wants to vote for
9 something else in another state, but I don't see any proof that
10 anybody voted for a senator twice.

11 MR. MEROS: Well, Your Honor, I respectfully suggest
12 that there is more than just an even chance that there have
13 been some that have voted or will vote twice.

14 THE COURT: What's --

15 MR. MEROS: We have --

16 THE COURT: Wait, wait. Show me in the record.
17 Where is that proof?

18 MR. MEROS: We have information that approximately
19 between 400 and 500 individuals, which will likely be a larger
20 number, that have voted in -- for -- in Senate elections in
21 states outside of Georgia. We also know --

22 THE COURT: Do you have the names of the people that
23 cast their ballots for senators or just the names of people
24 that cast a ballot for something in California or other states?

25 MR. MEROS: That cast a ballot in a federal election

1 that involved senatorial candidates.

2 THE COURT: well, then understand how we started the
3 question off. You understand that in really every ballot that
4 had a U.S. senator on it, it also had a -- like, a president on
5 it, too. And the fact that you turned in a ballot doesn't
6 prove that you voted for a senator.

7 MR. MEROS: By itself, it may not under certain
8 circumstances.

9 THE COURT: So --

10 MR. MEROS: It may --

11 THE COURT: -- other than -- understand that that
12 is what Aristotelian logic tells us, that by itself, it proves
13 nothing.

14 So other than that, what do you have? Because I
15 agree. By itself, it proves nothing. So what do you have
16 other than that?

17 MR. MEROS: We have the fact that these individuals
18 that have cast votes in federal elections have now registered
19 to vote for a runoff election that involves two senators and a
20 public service commission race.

21 I would suggest, Your Honor, that that by itself is
22 enough to raise a concern and more probable than not that there
23 are individuals that have voted in a race involving senatorial
24 elections that have raced to Georgia to register to vote in an
25 election that effectively only involves two senators and a PSC

1 race. Now --

2 THE COURT: And I do --

3 MR. MEROS: -- might that be --

4 THE COURT: I do understand that's your suggestion.

5 Let me take you sort of to the next level, and that
6 is: If I agreed with you that you suggesting that is enough
7 for this extraordinary relief and had every board of election
8 in the state do something different, handle in-person voters
9 that come next week different than all the in-person voters
10 that have already come under the system that has been applied
11 for days now, even if I did that, even if we set those people
12 aside in a special area, their ballots, how, then, would you
13 prove that they voted for the Senate in the states they
14 originated from?

15 MR. MEROS: I think Mr. Morgan can talk about what
16 he has been able to find in other states. We cannot say that
17 every individual voted for a senator in the state of Kansas --

18 THE COURT: How many --

19 MR. MEROS: -- because --

20 THE COURT: -- would you -- how many could you say,
21 "I know this person marked the bubble for Senate?" How could
22 you?

23 MR. MEROS: Well, we could undergo -- we could have
24 some sort of process by which there would be some -- once
25 we understand --

1 THE COURT: What I'm asking you -- what would that
2 process be?

3 MR. MEROS: That process could be an inquiry to
4 individuals that's saying, "We are aware, John Smith, that you
5 voted in Kansas. We are aware that" --

6 THE COURT: You would do --

7 MR. MEROS: -- "you voted" --

8 THE COURT: Would you conduct that?

9 MR. MEROS: No, no. Certainly not, no. That --

10 THE COURT: Who would? The --

11 MR. MEROS: -- in fact, could be --

12 THE COURT: -- secretary of state?

13 MR. MEROS: -- supervisor of elections. It could be
14 any number of ways.

15 THE COURT: So they'd call these voters in one at a
16 time and interrogate them?

17 MR. MEROS: Not -- no. It would not necessarily be
18 a confrontational process. It could be one that is respectful.
19 It could be one where there are misunderstandings. But it
20 all -- but that would be a way to make sure -- on the other
21 hand, Your Honor, what you have here is if you, in fact, have
22 individuals that have done that, by virtue of there being less
23 than perfect evidence, we have no evidence at all by virtue of
24 time -- by virtue of the way -- and no remedy under the federal
25 Voting Rights Act.

1 All we're asking for here is some means by which
2 there could be questioning, there could be a request for an
3 explanation or something.

4 THE COURT: But as part of that respectful
5 questioning that you would do of these voters that we pull
6 aside, would you have to ask them --

7 MR. MEROS: Ask them what?

8 THE COURT: -- about their vote?

9 MR. MEROS: Oh, no.

10 THE COURT: You would have to ask them --

11 MR. MEROS: You'd say --

12 THE COURT: -- "Did you vote for senate?"

13 MR. MEROS: -- "Did you vote for a senator in a
14 senate election in Kansas in -- on X date? Did you thereafter
15 register to vote in Georgia, and did you vote for a senator in
16 Georgia?" That simple.

17 But -- that simple but also that extraordinarily
18 important because we do know that there is a probability
19 that the majority of individuals that came into Georgia and
20 registered to vote in a runoff election in a high-profile,
21 highly publicized senatorial election is probable, I would
22 suggest, if not almost clear that many of those individuals
23 voted for senators and not just the PSC.

24 THE COURT: How would you --

25 MR. MEROS: And --

1 THE COURT: -- convince me that -- setting up here
2 sort of in midstream, that sort of system wouldn't serve to
3 suppress some voters when they understand that you can come and
4 vote, but, you know, even if you hadn't cast a ballot for a
5 senator before, we're going to set you aside, and we're going
6 to ask you some respectful questions later?

7 How is that not, A, confusing to some voters and, B,
8 perhaps a cause of suppression for others?

9 MR. MEROS: And I would suggest to you, Your Honor,
10 that we have tried very carefully not to do anything that would
11 suggest suppression of the vote. Everyone --

12 THE COURT: Right.

13 MR. MEROS: -- can and will be able to vote.

14 THE COURT: But --

15 MR. MEROS: And, in fact, in -- people have voted in
16 absentee balloting.

17 And, also, in early in-person voting, there has been
18 substantial voting in that area, many of which we probably do
19 not have the ability to determine that there was an invalid
20 vote because it's too late. With regard to absentee ballots
21 and absentee voting, that has already occurred.

22 The vote would not be suppressed. Everyone will be
23 able to vote. And it's not unlike provisional voting where
24 you can have a vote that, for whatever reason, is provisional,
25 whether it's because of, you know, a mark that, you know, is

1 unclear or whatever, but that is put aside for a while, that
2 will be counted if it's legally appropriate.

3 And that's -- those are the ways that (audio
4 disruption) Georgia and the officials in the state of Georgia
5 know how to do those things and know how to do them well. And
6 so those -- many, many of those votes have already gone out
7 there. There's no -- and time and time again, we have tried to
8 make it clear that there is no one at risk here other than --
9 if, in fact, there is proof that there was double voting, then
10 that vote would be invalidated just like sometimes provisional
11 votes are (audio disruption).

12 But, again, without that effort, then we won't know.
13 And those hundreds and on their way to thousands of individuals
14 that raced to Georgia in a -- in an election relating to
15 high-profile senators, we won't have any remedy to make sure
16 that every voter has one vote and not two votes.

17 And --

18 THE COURT: Let me --

19 MR. MEROS: -- if I may --

20 THE COURT: Let me continue with some standing
21 questions.

22 MR. MEROS: Sure.

23 THE COURT: I know you're familiar and well-versed
24 with the recent cases that have come out across the state of
25 Georgia. And with regard to standing, some of the causes of

1 action that have been put forth before, we've -- we have heard
2 from the Eleventh Circuit about those.

3 And, you know, when there are multiple cases filed,
4 the respective sides sort of learn as they go, and -- but when
5 I look at who the plaintiffs are in this suit, it's my
6 understanding that neither David Perdue or Kelly Loeffler
7 themselves -- neither of those candidates is a plaintiff.
8 They're -- they do have committees that are.

9 Is that correct?

10 MR. MEROS: Yes, Your Honor. They do have
11 committees. They are not individual plaintiffs.

12 THE COURT: All right. Tell me: With regard -- I
13 know you're traveling under -- and at least one of your causes
14 of action -- Section 11 of the Voting Rights Act. Tell me
15 how that -- the injury that you're putting forth squares with
16 Section 11. It seems almost the flip side of it.

17 Here, we would have more votes being counted rather
18 than what the language of Section 11 seems geared toward, and
19 that is a willful failure or refusal to tabulate votes.

20 MR. MEROS: Right. It's not just a willful refusal.
21 It is -- it also -- in 11(a) and 11(e) and other provisions, it
22 talks about making sure that the vote (audio interruption) --
23 heard something.

24 THE COURT: well, let -- yeah. 11(a) says "No person
25 acting under color of law shall fail or refuse to permit any

1 person to vote who is entitled to vote under any provision of
2 Chapter 103 to 107" (audio interruption) --

3 I'm sorry. Someone is -- all right.

4 -- "or who is otherwise qualified to vote, or
5 willfully fail or refuse to tabulate (audio disruption), count,
6 and report such person's vote."

7 So how does (a) apply to you?

8 MR. MEROS: Because, in fact, if a person can vote
9 lawfully in only one senate race (audio disruption) and others
10 can violate that provision -- I'm sorry.

11 THE COURT REPORTER: Excuse me, Judge. There's
12 somebody not muted, and they're having a conversation. I can
13 hear them.

14 THE COURT: Thank you.

15 Let me remind everybody who's participating on the
16 phone it -- it is an important hearing. And whatever
17 conversation you're having may be important, too, but you need
18 to have it separately from this one. To do otherwise, we're
19 going to have to start excluding lines so that we can hear the
20 people who are speaking. I'm sure you understand, and I'll
21 appreciate your compliance with that request.

22 All right. Mr. Meros, if you'll continue.

23 MR. MEROS: Yes, Your Honor.

24 Under Section 11(a), it says, like you said, "No
25 person acting under color of law shall fairly refuse to permit

1 any person to vote who is entitled to vote," and it goes on.
2 But then "vote" is defined -- is a defined term that means
3 "all action necessary to make a vote effective in any primary,
4 special, or general election, including, but not limited to
5 registration," and it goes on from there.

6 And under Gray v. Maine, a vote is not properly
7 counted or included in appropriate totals, in violation of
8 Section 11(a), where it is diluted by the counting of unlawful
9 ballots.

10 And so what we're saying is the right to cast a vote
11 is a vote that is not diluted; that a vote is the same as
12 others, not that I get one vote and someone else gets two
13 votes.

14 THE COURT: Well, how is that not a generalized harm
15 that every other voter suffers? How is that --

16 MR. MEROS: Generalized harm?

17 THE COURT: Yeah. How would that be a particularized
18 harm?

19 MR. MEROS: Well, I -- anytime you have senatorial
20 elections and one person can, in our view, violate the Voting
21 Rights Act and vote twice and another individual votes once,
22 that's a very particular harm.

23 And also, Your Honor, election -- Section 11(e) of
24 the Voting Rights Act specifically talks about voting in --
25 voting more than once. And here's -- and with regard to

1 standing and redressability, we suggest that, clearly, there's
2 standing here and redressability because we have the real
3 potential -- and we believe the preponderance of the evidence
4 will show that it's a violation --

5 THE COURT: Wait. Before you jump on, how do you get
6 around Wood v. Raffensperger as far as your dilution goes?

7 MR. MEROS: I'm sorry. Wood -- the Wood case --

8 THE COURT: Right.

9 MR. MEROS: -- is that -- well, Your Honor --

10 THE COURT: How do you get around the dilution
11 conclusions reached by the Eleventh Circuit?

12 MR. MEROS: Well, the -- that case talks about vote
13 dilution, and that case, you know, definitely has some bearing
14 on whether you call something vote dilution. But here, we have
15 a -- an express violation of the federal Voting Rights Act, and
16 that's redressable by invalidating that vote.

17 And that's not -- and, certainly, the Court -- and
18 that case does not suggest that there is no remedy for a
19 violation of federal law, and there are -- its specific private
20 causes of action under the Voting Rights Act and the Schwier
21 case, Schwier v. Cox, makes that very clear.

22 And, also, if I may, Your Honor, I mean, the Wood
23 case does talk about dilution, but it talks about it, in the
24 Eleventh Circuit, as a generalized harm. Here, there's nothing
25 generalized about an individual that has voted twice in

1 violation of federal law vis-à-vis other people. That's --

2 THE COURT: But it's --

3 MR. MEROS: That is --

4 THE COURT: -- harm to the plaintiffs.

5 How does that harm the individual plaintiffs in any
6 more particular way?

7 MR. MEROS: Well, the plaintiffs here have dedicated
8 millions of dollars toward electing senators. They have
9 diverted resources to doing that, to getting out the right to
10 vote, to doing all the things that you do in particularly
11 critical elections.

12 But what they do not do themselves, you know, what
13 they have not urged others to do, which some others have urged
14 others to do it, is to violate the Voting Rights Act in
15 preserving the right to vote. If there's only one senatorial
16 election versus two, then there's less power with that person
17 that votes once rather than a person that votes twice.

18 It's just like Northern Florida in the old days where
19 there was no redistricting and a given elector had 10 times the
20 power than an elector in South Florida had. And that's exactly
21 the sort of thing that is a critical element of vote dilution.
22 And 11(e) was designed to protect lawful voters like ours and
23 like the three individual plaintiffs.

24 THE COURT: Let me walk you through -- we've
25 concentrated time on standing, and I appreciate your responses.

1 Let me hear you weigh in with regard -- if you were to be found
2 to have had proper standing for some or all of your causes of
3 action, then that would lead us to look at the four prongs that
4 you need to show to succeed on your TRO. walk me through how
5 you would do so.

6 MR. MEROS: well, as I said before, if you're talking
7 about the prongs of the TRO, I would suggest it's absolutely
8 in the public interest to make sure that voting is not done in
9 violation of federal law and that Congress has made it clear
10 that that is unlawful. And so the public interest is
11 extraordinarily substantial.

12 And balance that against the individuals and the
13 redressability. Once again, we're talking about preserving
14 their rights to vote, not diminishing them, not -- you know,
15 not abusing the voters but making their right to vote vis-à-vis
16 those who might have violated the law.

17 Now, success on the merits, I think, Your Honor,
18 again that is something that we certainly think we will be able
19 to actually prove by a preponderance of the evidence. And we
20 have already shown what is -- what are extraordinary
21 circumstances.

22 And if, in fact, it ends up that there is no
23 violation or a small number of violations, then there will be
24 no harm to anyone, and there will be a benefit to the public
25 to know what has happened or not happened. But in an election

1 of this importance and the proof that we have to this extent
2 and -- you know, and the federal Voting Rights Act, it would
3 be --

4 THE COURT: As to the -- I'm sorry. As to the people
5 that voted in person last week, there is nothing that can be
6 done about their votes; is that correct?

7 MR. MEROS: That's correct, Your Honor, yeah. And
8 keep in mind, Your Honor, that the reason -- frankly, the
9 reason for that is because there was no way to find out and
10 to understand any earlier than December 8th the number of
11 registered voters -- new registered voters and then the ability
12 to ascertain: Are there -- in this extraordinary amount of
13 voters, is --

14 THE COURT: why does --

15 MR. MEROS: -- some of that --

16 THE COURT: why does knowing the actual number
17 matter?

18 MR. MEROS: well, it matters -- let's say that there
19 was 200,000 individuals that registered to vote or that had --

20 THE COURT: If there were 100 and the race was that
21 close, it would matter; right? If there were 10 and the race
22 was that close, it would matter. Or if there's 100,000 and the
23 race were that close, it would matter.

24 It's hard to know what number matters until the
25 election happens, and -- so why not, just knowing what the

1 system was from the get-go, make the motion?

2 MR. MEROS: You needed the names of the voters and
3 the registrants to understand and to determine whether there
4 was any potential problem.

5 THE COURT: Don't -- you need those names in order
6 for the board of elections to follow through on any TRO that I
7 issued, but you wouldn't need the names to make the motion that
8 you made.

9 MR. MEROS: I -- no. Respectfully, I don't believe
10 so, Your Honor. I think the names --

11 THE COURT: I still don't know the names. They're
12 not before me. You didn't need those to bring this motion.
13 You haven't ever submitted them.

14 MR. MEROS: Well, we have Mr. Morgan here. But the
15 names of the registrants are -- it's public information, and
16 that's the information from which one can discern whether
17 there's been voting in another state, and it would not be --

18 THE COURT: Before -- but before any voting ever
19 began, you were aware that people were allowed to register here
20 who had voted elsewhere, and so why not make that -- just like
21 right now, you've come forth. You still don't know the exact
22 number, and you still don't know all the names, but you've come
23 forth. Why not do it even earlier? I don't -- I'm still not
24 sure about the timing.

25 MR. MEROS: (Audio disturbance) not be right,

1 Your Honor. We would be faced with very strong opposition
2 about "How dare you look into things that show nothing."

3 And we, being in a position, through no fault of our
4 own, not having the information until 10 days ago and, in fact,
5 without knowing that there would ultimately be a runoff -- the
6 fact that there was a runoff happened. Who knows whether
7 anyone would have guessed or determined that there was going to
8 be a runoff.

9 But all of those things -- I would suggest to you,
10 Your Honor, that we would be accused of guessing and being
11 irresponsible to do the sorts of things you're concerned about.
12 And that's exactly what we chose not to do, not to be
13 irresponsible; to get the information as quickly as we possibly
14 could; and to provide a remedy that is not a burden on the
15 voter, that is an effort to implement the federal Voting Rights
16 Act.

17 THE COURT: All right. Well, if you'd like to
18 reserve the balance of your time for a reply, this would
19 probably be a natural break if -- but, Mr. Meros, is that --
20 would you like to do that?

21 MR. MEROS: Yes, Your Honor.

22 THE COURT: All right. Then let me turn to the
23 Defense to hear their response.

24 Who was going to take the lead in that regard?

25 MR. WILLARD: Your Honor, I believe that would be me.

1 This is Mr. Willard -- Russ Willard from the State Attorney
2 General's Office. I'm here on behalf of Secretary of State
3 Raffensperger and the vice chair of the state election board,
4 Rebecca Sullivan.

5 THE COURT: All right. Mr. Willard, if you'll
6 proceed.

7 MR. WILLARD: Your Honor, I apologize at the outset.
8 To borrow from Benjamin Franklin, my remarks -- or I apologize
9 for the length of my remarks. I didn't have time to make them
10 shorter due to the lack of notice.

11 Along those lines, I'd like to address a couple of
12 elephants in the room. And I'm not referring to the animal
13 symbol or the plaintiffs. Mr. Gibson and Ms. Zammit, who are
14 on the pleadings in this case, are also on the pleadings in a
15 state court action brought by the RNC and the state GOP against
16 my clients.

17 There were a total of seven e-mails exchanged between
18 us yesterday afternoon. We had a 9 a.m. conference call this
19 morning. At no time during any of that period of time did
20 they indicate that they had filed suit against my clients, were
21 seeking a TRO or an emergency hearing, so we didn't find out
22 about this until 10:00 this morning.

23 In addition, Plaintiffs, especially the state
24 Republican Party, appear to be engaging in a little bit of
25 forum shopping. Since the start of the November 2020 general

1 election cycle, the plaintiffs have filed suit in the Northern
2 District in Atlanta, Fulton Superior Court; and one of their
3 affiliate identities filed in the Augusta Division of the
4 Southern District yesterday.

5 We have four more divisions than the Southern
6 District to go, I guess, as they continue their quest to find a
7 judge who will rule in their favor, and we haven't even begun
8 exploring the Middle District yet.

9 But that dovetails into a discussion about what is
10 missing from the plaintiffs' complaint, and that is any
11 reference to the Northern District case of NAACP v. Kemp,
12 1:17-CV-1397, that was heard in 2017 in front of Judge Batten.
13 That is the consent decree that the State is operating under.
14 That is what requires us to accept voter registrations until
15 December 7th.

16 And yet Plaintiffs failed to bring this case in the
17 Northern District. They failed to identify this as a related
18 case. They have also failed to name or notice any of
19 the parties to that order or decree. There are at least
20 six separate entities that were party to that decree on the
21 plaintiffs' side, none of whom have been noticed of this
22 hearing or this case by the plaintiffs.

23 So what is this case? It is a belated attempt to
24 change the rules of the game as the clock strikes midnight or,
25 as Judge Batten found yesterday in dismissing a similar belated

1 attack on Georgia's election framework, is an attack on the
2 election that is already underway and at halftime.

3 why must their claims --

4 THE COURT: I think --

5 MR. WILLARD: -- be denied?

6 THE COURT: -- that was -- I think that was
7 Judge Hall that used that --

8 MR. WILLARD: I'm sorry.

9 THE COURT: -- analogy, but --

10 MR. WILLARD: Yes. Judge Batten was earlier this
11 year.

12 THE COURT: Right.

13 MR. WILLARD: I apologize. That was Judge --

14 THE COURT: I think Judge --

15 MR. WILLARD: -- Hall.

16 THE COURT: -- Judge Hall used the football analogy.
17 Judge Batten --

18 MR. WILLARD: He did.

19 THE COURT: -- used all those.

20 But nevertheless, continue.

21 MR. WILLARD: Well -- and I was there, Your Honor.
22 I have been standing in front of the fire hose now for a couple
23 of months. I was the one who argued it in front of Judge Hall,
24 and I extend my deepest apologies for not remembering that that
25 was Judge Hall yesterday morning.

1 But Plaintiffs' claim must fail because they lack
2 standing. They've waited too close to the election to bring
3 the claim. They've waited too long after their claim allegedly
4 accrued to seek relief. They've failed to state a viable claim
5 for relief, and they have failed to satisfy any of the prongs
6 for granting PI relief.

7 In terms of standing, the plaintiffs have asserted
8 the same arguments and submitted the same affidavits in the
9 Northern District case that was held in front of Judge Ross
10 yesterday afternoon, and she found that they lacked standing to
11 proceed.

12 THE COURT: And tell me about that case.

13 Was -- Section 11, Voting Rights Act, was that set
14 forth in that suit as well?

15 MR. WILLARD: They did not articulate a VRA claim in
16 that suit, Your Honor, but they have asserted, as the basis for
17 the standing, that the VRA criminal provision gives them some
18 cause of action and ability to bring the claim. And they --

19 THE COURT: And just --

20 MR. WILLARD: -- cite to --

21 THE COURT: -- to clarify -- wait. Just to clarify,
22 in the case with Judge Ross also, or you're referring back to
23 the case --

24 MR. WILLARD: No.

25 THE COURT: -- on --

1 MR. WILLARD: I'm back to this case, Your Honor.
2 They --

3 THE COURT: Okay.

4 MR. WILLARD: -- did not assert Voting Rights Act
5 claims in the case in front of Judge Ross, but they were
6 claiming the same sort of generalized injury, and they utilized
7 the same declarations to form the basis for that injury.

8 The plaintiffs argue that FEC v. Akins gives them
9 standing, but it does not. As the Third Circuit held recently
10 in the Bognet case, Akins involved a statutory right not at
11 issue in a vote dilution claim under equal protection.

12 Instead, the plaintiffs here have only a generalized grievance
13 about government and vote dilution and how the State organizes
14 its electoral framework.

15 As the Court noted, 2 weeks ago, we got a decision
16 in the Wood v. Raffensperger case out of the Eleventh Circuit.
17 Plaintiffs failed to address that case at all in their
18 briefing. Here, as in Wood, the plaintiffs' interests are no
19 different than any other person interested in ensuring the
20 proper administration of an election.

21 As the Eleventh Circuit found, while vote dilution is
22 a basis for standing in the limited context of gerrymandering
23 or malapportionment, cases where voters are harmed compared to
24 irrationally favored voters from other districts -- and that is
25 what Plaintiffs' counsel was referring to when he talked about

1 the fact that Northern District Florida voters used to have a
2 greater weight of their votes than voters in the rest of
3 Florida. It was the same thing as under the old county unit --

4 THE COURT: County unit --

5 MR. WILLARD: -- system in Georgia.

6 THE COURT: -- system. Right, right.

7 MR. WILLARD: What the Eleventh Circuit expressly
8 found is that it does not convey standing in a case where votes
9 may be improperly counted. Vote dilution is not an appropriate
10 basis for standing in that context. And that is just a
11 2-week-old decision at this point.

12 Plaintiffs also, as the Court correctly noted, lacked
13 Article III standing under Jacobson because there is no
14 traceability or redressability based on the named defendants.
15 I'm stealing a little bit of the thunder from the Chatham
16 County attorney, but I think you're going to hear from him
17 shortly that they have named the wrong board in Chatham County.
18 I think they've submitted an affidavit to that effect.

19 But in terms of the state defendants, who -- I am
20 here appearing on behalf of Secretary Raffensperger and
21 Ms. Sullivan -- there is no traceability of any decision on the
22 part of county election officials to register someone to vote
23 in the January 5th runoff or to count their ballot for the
24 January 5th runoff, so there is no traceability back to my
25 clients.

1 In addition, there is no redressability as to my
2 clients because, as the court found in Jacobson, federal courts
3 lack the ability to, in effect, take a named defendant and
4 direct them to go out and direct somebody else who isn't
5 named in the litigation to do something, in this case, the
6 158 unnamed county election entities that are not a party to
7 this case.

8 In addition to an absolute lack of standing to
9 proceed with their claims --

10 THE COURT: Let me --

11 MR. WILLARD: -- Plaintiffs --

12 THE COURT: Before --

13 MR. WILLARD: -- cannot --

14 THE COURT: Wait.

15 MR. WILLARD: -- get around --

16 THE COURT: Whoa, whoa, whoa. Before we get on to --

17 MR. WILLARD: That's fine.

18 THE COURT: -- nonstanding, let me back you up
19 because I think, although Wood v. Raffensperger may not be
20 highlighted in their pleadings, obviously, they're aware of it.
21 And this case, unlike Raffensperger, unlike the case that
22 Judge Ross dealt with, unlike the case that Judge Hall dealt
23 with, this one does contain a Voting Rights Act allegation that
24 hasn't been addressed head-on by Raffensperger or the Ross case
25 or the Hall case.

1 And so what the plaintiffs are saying in this case is
2 Congress has elevated their specific allegations to a concrete
3 individualized harm. They're saying that Section 11, in fact,
4 statutorily confers the kind of standing that they're urging in
5 this case.

6 How do you respond to that?

7 MR. WILLARD: Their only apparent authority for that
8 statement in regards to saying that they have a private right
9 of action under a federal criminal statute in terms of double
10 voting is a reference to the Schwier case. And the Schwier
11 case was not a federal criminal statute giving somebody a
12 private right of action. The Schwier case involved the federal
13 Privacy Act where you had a private right of action and an
14 interest at the individualized level to bring those claims.

15 There is nothing in the criminal provisions of the
16 Voting Rights Act that confers a private right of action on any
17 of these plaintiffs or establishes more than a generalized
18 grievance against the administration of the State's election
19 framework. Additionally, their Voting Rights Act analysis
20 is nonsensical at best. They argue that you cannot vote in a
21 runoff when you have already voted in an election.

22 Now, first, there is no reference in the Voting
23 Rights Act prohibitions to a runoff election. There is a
24 reference in the national -- in the NVRA legislation to a
25 runoff election, so, clearly, Congress understands how to

1 include a runoff election when it wants to.

2 But to read the prohibition as Plaintiffs ask this
3 Court to read it is to say that if you have cast a ballot in
4 one of the VRA-contemplated elections on the front end under
5 the Voting Rights Act, you cannot then subsequently vote in a
6 runoff even though there is no reference in runoff within that
7 provision of the VRA.

8 And what that means -- if you actually take their
9 argument at its word, it means that the only eligible voters
10 who can vote in the January 5th runoff are individuals who were
11 registered to vote prior to November 4th and failed to cast
12 a ballot in any state, including Georgia, in the November 3rd
13 general election, and that is absurd --

14 THE COURT: What they --

15 MR. WILLARD: -- because --

16 THE COURT: -- may --

17 MR. WILLARD: -- individuals --

18 THE COURT: Wait, wait, wait. I understand why that
19 would be hard to swallow.

20 But what they may say is, "No. What we're trying
21 to prohibit is for you to be able to cast a vote for one given
22 seat in one state and then come in and cast a vote for a
23 different senate seat in this state."

24 MR. WILLARD: And, Your Honor, that is a very
25 compelling policy argument, but it's just that. It's a policy

1 argument that finds no textual support in the Voting Rights Act
2 or in the State's framework. You can argue that it is good
3 policy to prevent somebody who votes in North Carolina -- I
4 think North Carolina had a senate election. I'm not sure.

5 But let's say they cast an in-person or an early vote
6 on November 3rd and their boss walks in on November 4th and
7 says, "I'm moving you to Atlanta, and you've got to be in
8 Atlanta by November 10th" and they arrive in Atlanta and they
9 say, "I want to have a voice in who is going to represent me in
10 Congress. I'm going to go out and register to vote, and I'm
11 going to cast my ballot for the January 5th runoff election so
12 I can have a say in who my elected state senator is going to
13 be."

14 It's an interesting policy discussion as to whether
15 they should be permitted to cast a ballot or not, but
16 Plaintiffs cannot cite to any express statutory prohibition
17 against doing that. What they have attempted to say is that
18 the Voting Rights Act criminal provision which has that
19 prohibition against casting multiple votes at an election
20 prohibits that.

21 But the only way to read that is the contorted
22 reading that says the runoff election is the same as the
23 general election, which then gets you to the point of if I went
24 in person and cast a ballot on November 3rd in Georgia and
25 voted in Georgia's two senatorial elections, under Plaintiffs'

1 reading, I cannot then go out and vote in the January 5th
2 runoff because I will have already cast a ballot at the general
3 election, if you're going to read the general election and the
4 runoff as two different elections that I cannot have cast
5 ballots in.

6 Your Honor, I'm happy to entertain any additional
7 questions you have about standing at this point. Otherwise,
8 I'm going to move on to the fact that Plaintiffs have waited
9 too long and too close to the election to bring their claims.

10 THE COURT: All right. Proceed.

11 MR. WILLARD: Plaintiffs cannot get around Purcell
12 abstention and the Purcell principle as articulated by the
13 Eleventh Circuit. We are now not on the eve of the election,
14 as the Court in Purcell admonished Courts to refrain from
15 interfering in the election framework.

16 We are, as the Eleventh Circuit found in the
17 New Georgia Project v. Raffensperger case 2 months ago, in the
18 midst of an election. We have already had, as of 2 days ago,
19 400,000 absentee votes that were already mailed out, returned,
20 and have been accepted by county election officials. We have
21 had another quarter of a million voters who have already cast
22 in-person ballots in the state of Georgia. We are halfway over
23 the waterfall of the election. We are seeing the tidal pool at
24 the bottom.

25 Plaintiffs have waited too close to that election.

1 They filed suit -- I don't know whether they filed before the
2 courthouse closed yesterday or after hours, but they filed
3 their lawsuit on December 17th. Plaintiffs have been chirping
4 in the ear, both publicly and privately, of my clients
5 since November 4th about this issue, but they wait until
6 December 17th to bring this issue before the Court.

7 There is -- as the Court admonished in Purcell, as
8 the Eleventh Circuit has held as recently as the New Georgia
9 Project case, the attendant harm with judicial interference in
10 the election framework at this point goes to the fact that
11 election officials will have to be notified. The public will
12 have to be notified. Training will have to be conducted.
13 Procedural safeguards will have to be enacted on the fly. All
14 of that is why the Supreme Court and the Eleventh Circuit have
15 set down bright-line rules and told the judicial branch to stay
16 out of the election framework once the electoral process has
17 begun.

18 In addition, Your Honor, the plaintiffs have waited
19 too late from the time when their cause of action accrued to
20 bring these claims. As the Court correctly acknowledged, they
21 didn't have to wait until they had a list. They still haven't
22 proffered a list. They've got a declaration testimony that
23 says somebody who is consulting for them has a list, but they
24 haven't presented it to the Court as a basis for moving forward
25 on an evidentiary fact-finding basis.

1 And so you have inexcusable delay on the part of the
2 plaintiffs, any one of whom could have intervened in the case
3 in front of Judge Batten back in 2017. They could have
4 objected to the consent decree. They could have brought a TRO
5 at any point in the intervening 3 and a half years trying to
6 get some sort of certainty or setting aside or clarification on
7 what the TRO and the consent decree actually established for
8 Georgia elections.

9 Instead, they wait until after we are now in our
10 fifth election cycle of the year. We have completed a primary,
11 a primary runoff, a general election, a state-level general
12 election runoff, and are about to have the January 5th runoff.

13 And they wait until we are less than 3 weeks out from
14 that, after you've had three-quarters of a million people who
15 have already cast lawful ballots in this race, to come in at --
16 and say, "We want to poke it. We want to throw some judicial
17 sand into the gas tank and see -- and hope and pray that it
18 doesn't have any unintended effects." That's what they're
19 doing here, and it is improper and prohibited under both the
20 Purcell doctrine as well as laches.

21 It is just as nonsensical to Plaintiffs' argument --
22 and, Your Honor, I'm going to move on from Purcell and laches
23 unless you have any questions for me.

24 THE COURT: You can move on.

25 MR. WILLARD: It is just as nonsensical in terms of

1 the PI factors, their likelihood of success on the merits.
2 In effect, what they are coming to the Court and saying is that
3 a federal criminal statute, which I've already addressed how
4 nonsensical their reading of the federal criminal statute is --
5 but they're basically saying the federal criminal provisions
6 of the Voting Rights Act expressly prohibit what Judge Batten
7 found 3 and a half years ago the NVRA actually requires the
8 State to do, and that is process all voter registrations that
9 are submitted at least 30 days out from any federal election.

10 There is no irreparable injury to the plaintiffs.
11 They have a perfectly viable state process that they can go
12 forward to challenge any voter's registration or ballot that
13 has been cast. They don't want to do that because I think they
14 think it's going to be too hard reading between the lines or
15 too resource intensive. They plead that they don't have the
16 resources to go do this.

17 Your Honor, I believe anybody who has watched TV over
18 the last 4 weeks would laugh at the concept that they lack
19 resources. Political ads are aired in such a way now and are
20 so permeating the airwaves that we're interpreting your
21 regularly scheduled political ad to bring you your scheduled
22 Christmas programming.

23 Even if they didn't -- even if they had some sort of
24 resource argument, it doesn't excuse the burden that would be
25 placed on state and county election officials and the public,

1 who has some realistic expectation that the election framework
2 that was in place on November 20th when these elections were
3 certified from November 3rd and the candidates were finalized,
4 that the rules of the game in effect at that point, in effect
5 when UOCAVA ballots went out, in effect when votes started
6 being processed and cast, that those rules of the game would
7 stay in place for the entirety of the election cycle and not
8 have somebody coming in at the 11th hour attempting to put
9 their hand on the scale and adjust who can cast a lawful ballot
10 because they feel that those individuals may be more inclined
11 to vote for their opponent than for themselves.

12 The -- that dovetails in with the final two factors,
13 which, in election cases, are considered in tandem, and that is
14 the balancing of the equities and the public's interest. And
15 in this case, Your Honor, whether you want to cite to Purcell,
16 whether you want to talk about laches, whether you want to talk
17 about the public's faith in the process, whether you want to
18 talk about individual county election officials, county
19 election volunteers, state election officials, their ability to
20 conduct the election in the time frame that is set out in
21 statute under the framework that has been in place for months
22 or years, or whether you want us scrambling over the weekend
23 trying to come up with a regulatory paradigm that the Eleventh
24 Circuit has already said, "You can't order us to do" -- but
25 that -- we would be in a situation of trying to change the

1 wheels on the car as we're going down the interstate of this
2 electoral cycle.

3 I want to address some specific points that the
4 plaintiffs made in their argument. And it really -- their
5 choice of words, whether they intended to let it slip or not --
6 but the Eleventh Circuit has required, for standing purposes,
7 that you have a concrete injury. Instead, Plaintiffs used, in
8 response to questions from you, that there is a chance, there
9 may be a probability. That is insufficient to confer standing
10 in the Eleventh Circuit.

11 Your Honor, I'm happy to take any questions. I feel
12 like I've taken enough of the court's time today already.

13 My last closing is Plaintiffs have said that they
14 couldn't bring this until the election was certified.
15 Your Honor has already put the light of that in terms of "You
16 could have brought these claims before you knew who the voters
17 were or before you saw any list of who the voters were."

18 It's a -- they're making a framework argument. It's
19 not a fact-based argument. Their making a framework argument
20 here. If they were at the state level, if they were bringing
21 a challenge in one of the 159 counties, then it's a fact-based
22 inquiry as to who did what in terms of the individual voter
23 registrants. But they're making a procedural framework
24 argument. That cause of action could have been brought 3 and a
25 half years ago.

1 They also claim that they didn't know that there
2 would be a runoff. I forget how many candidates there were for
3 the Loeffler seat, but there was nobody in the world who would
4 have taken a bet on the fact that the Loeffler seat would not
5 have ended in a runoff. The only question was who was going to
6 be in that runoff election.

7 And the NRSC was going to have a candidate in that
8 election. The Georgia Republican Party was going to have a
9 candidate in this election. Maybe the Loeffler campaign
10 wouldn't have been a plaintiff. Maybe there was some
11 uncertainty as to whether it was going to be the Doug Collins
12 campaign in the runoff. But there has always been a certainty
13 that there was going to be a runoff election for at least one
14 Georgia senate seat.

15 And with that, I think I will turn the balance of our
16 time over to the Chatham and the Glynn County attorneys.

17 THE COURT: Before we do that, let me come back to a
18 line of inquiry that I began with the plaintiffs, and that is,
19 ultimately, even if all you said were wrong, I want to hear you
20 address my question about even -- how would setting aside these
21 ballots result in proving that someone voted for Senate twice
22 even if I interpreted the Voting Rights Act as the plaintiffs
23 urge?

24 MR. WILLARD: They would have to have an evidentiary
25 determination voter by voter, which is contemplated under

1 the Georgia code -- they just haven't elected to pursue that
2 route -- where you're asking the voter, "How did you vote?
3 what races did you vote for?"

4 That's the only way to ascertain whether somebody
5 submitted a ballot that was an undervote or not, to determine
6 whether they cast a ballot for a particular office appearing on
7 that ballot. We've got ballots in the state where -- we've had
8 an unprecedented number of undervotes in the presidential race
9 in the state of Georgia this year.

10 Apparently, there were a lot of voters who said, "A
11 pox on all your houses."

12 Or you had situations where you had voters who said,
13 "My cousin is running for county commission chair. I don't
14 normally vote. I'm going to go in and vote for county
15 commission chair."

16 But plaintiffs cannot make that factual tie-in at
17 this point, and there's really no mechanism in federal court to
18 make that tie-in. They've had ample opportunity to challenge
19 electors and the ballots cast by electors at the county level.
20 They have elected not to pursue that route.

21 THE COURT: Is there any argument to be made that
22 taking this as the initial step and getting a statewide order
23 to go ahead and set those ballots aside and then, at some point
24 in the future, as they request in their initial pleadings, if
25 the margin of victory is such that those set-aside ballots

1 might be decisive, then to undertake that state procedure?

2 MR. WILLARD: Your Honor, the secretary of state,
3 Vice Chair Rebecca Sullivan, the three members of the state
4 election board, who I wasn't able to communicate with before
5 this election, they don't have ballots sitting in their office.
6 The ballots are maintained by the 159 county officials who have
7 been charged under the state constitution and state statutes
8 with determining whether -- that a person has lawfully
9 submitted that ballot and then tabulating that ballot result.

10 So --

11 THE COURT: And that fact --

12 MR. WILLARD: -- under Jacobson --

13 THE COURT: Wait, wait. That fact is obvious.

14 MR. WILLARD: Right.

15 THE COURT: What I'm asking is: what they're trying
16 to do right now is just have these set aside. Obviously,
17 they're not in your office or your client's office. They're at
18 each of the 159 county board of --

19 MR. WILLARD: Right.

20 THE COURT: -- election offices. I'm not asking
21 about where they are. I know that.

22 MR. WILLARD: Well, no.

23 THE COURT: I'm asking you: Is the order -- can the
24 order be flipped?

25 MR. WILLARD: No. In terms of -- under Jacobson

1 and redressability, they -- you have no ability to order those
2 159 county officials who -- or, actually, I guess, in this
3 case, 158 unnamed county officials who are actually in
4 possession of those ballots from not doing anything with them
5 because Plaintiffs failed to name them. Plaintiffs have failed
6 to go out and get the individuals in front of you who could
7 grant the relief that they are seeking.

8 THE COURT: Having -- if they were to succeed in
9 having the ballots set aside, could they then file individual
10 lawsuits to then institute that process in the separate
11 counties?

12 MR. WILLARD: There is a county mechanism which they
13 have failed to avail themselves of at this point.

14 But as Your Honor already acknowledged, there are
15 individuals who would be caught up in at least Plaintiffs'
16 convoluted theory of illegal votes who have been casting
17 ballots for now 5 full days, whose ballots are already in the
18 system, who engaged in early in-person voting, who -- those
19 ballots, there's no way to bring those back out at this point.

20 THE COURT: I see.

21 MR. WILLARD: And so at that point, you have a
22 Bush v. Gore problem because you have individuals who fall
23 within this class whose votes are going to have been treated
24 differently than the --

25 THE COURT: Yes.

1 MR. WILLARD: -- absentee ballots that are sitting in
2 an election office this weekend.

3 THE COURT: All right. So who do you pass the gavel
4 to?

5 MR. WILLARD: I think I'm going to pass it to
6 Mr. Perkins because he's one who I know is on the call. And
7 I'm sorry. I'm not sure who is on the call from Glynn County.
8 Hopefully, Mr. Perkins does so he can pass it on to them after
9 he's finished.

10 THE COURT: All right. Mr. Perkins, are you on the
11 call?

12 MR. PERKINS: Yes, Your Honor. I'm actually on your
13 screen. I'm in the --

14 THE COURT: I see you.

15 MR. PERKINS: -- conference room. We -- thank you,
16 Your Honor.

17 THE COURT: At the head of the table?

18 MR. PERKINS: That's right, Your Honor. I apologize
19 for the camera angle, but we were on pretty short notice here.

20 THE COURT: That's fine. Go ahead.

21 MR. PERKINS: Your Honor, very quickly, as
22 Mr. Willard noted, there is an issue as far as the parties that
23 were named. My clients, the Chatham County defendants, are not
24 the proper parties in this case. And I base that on the relief
25 sought. The relief sought seeks to -- seeks a determination

1 of what voters were new registrants and then to separate those
2 ballots out.

3 The declaration of Russell Bridges that was filed
4 earlier today, Docket Number 28, is -- demonstrates this for
5 you. He is the election superintendent for Chatham County.
6 He -- in his declaration, he states that the board of
7 elections' only involvement in the absentee ballot process is
8 opening the envelope containing the ballots and tabulating the
9 ballots.

10 Chatham County is unique. If we're not the only
11 state, we're one of very few that have a separate board of
12 elections and a board of registrars. And the board of
13 registrars in Chatham County handles things like registration,
14 as the name would indicate to you, and so that -- it is the
15 entity that is capable of determining, although it would take
16 a lot of work, if a voter is a new registrant.

17 The board of elections doesn't do that. The board of
18 elections -- I think the most easy way I can describe it to you
19 is they count the votes. The board of registrars does the
20 rest. So right off, that is a significant issue as far as the
21 relief that is sought against my clients.

22 I do have with me Colin McRae, who is the chairman of
23 the board of registrars also. I have with me Sabrina German,
24 who is the director of voter registration in Chatham County, if
25 that need should arise, Your Honor.

1 THE COURT: All right. Thank you, Mr. Perkins.
2 who will be next for on the Defense?

3 UNIDENTIFIED SPEAKER: Your Honor, Mr. Watkins is
4 going to --

5 THE COURT: All right. Then if -- Mr. Watkins, if
6 you'll approach.

7 And I think our camera will go to Mr. Watkins so the
8 rest of you can see him as well.

9 MR. WATKINS: All right, Judge. I'll try to be
10 brief.

11 We adopt the arguments that were asserted by the
12 secretary of state. I wanted to add briefly to the standing
13 argument and specifically the prong that deals with whether the
14 injury is based on some hypothetical future harm as opposed
15 to something that is impending. I know the Court is well aware
16 of the standard and the standard that the possible future
17 injury -- a possible future injury is not sufficient and has to
18 be reasonably and certainly impending. And the Court touched
19 on these issues when questioning Plaintiffs' counsel.

20 As I see it, the Court would have to sort of come to
21 three conclusions in order to get there on this prong to
22 satisfy standing. One, the Court would have to satisfy itself
23 that this really is a violation of the Voting Rights Act for
24 somebody to vote for a senate candidate in one state in the
25 November election, move lawfully to another state for a -- for,

1 we would assume, a non-nefarious reason, and then attempt to
2 register and vote in another senate race.

3 so if that's the case, the Court would have to decide
4 that that is, in fact, in violation of the Voting Rights Act
5 and that violates the provision that prohibits -- or sets the
6 standard that you can't vote two times, quote, for an election
7 to the same candidacy or office.

8 And that's subject to interpretation, but that's a
9 legal issue that the Court would have to decide in order to
10 determine that, well, this really is harm that is certainly
11 impending.

12 The next thing the Court would have to decide is
13 that --

14 THE COURT: Let me -- before we go to the next one,
15 let's focus on that one. Walk me through what your argument is
16 about why they don't succeed on that prong.

17 MR. WATKINS: Well, I'll just tell you the various
18 interpretations. So one interpretation would be that -- and
19 the plaintiffs' interpretation is that that is a vote for the
20 same candidacy or office because they would interpret voting
21 for a senate seat very broadly.

22 So broadly speaking, if you vote for a senate seat
23 and then move and try to vote for another senate seat in
24 another state, then that's violative of the Voting Rights Act,
25 as opposed to a more narrow interpretation in that you're

1 voting for that senate -- particular senate seat, and you can't
2 vote twice for that particular senate seat.

3 And, of course, the secretary of state's counsel,
4 I think, made a good point that the Voting Rights Act doesn't
5 touch upon runoff elections. And certainly, a fair
6 interpretation is that, as contemplated, that somebody -- a
7 voter, like a voter in Georgia who doesn't move, can vote in
8 that particular race and also -- as distinguished from a
9 subsequent runoff race.

10 But that's a legal interpretation that the
11 plaintiffs, I think, correctly point out has not been decided.
12 That -- they argue that it suggests that it should be decided
13 this way or that it's implied that it should be decided that
14 way based on statutory construction. But that hasn't been
15 decided, and that is something this Court would have to decide,
16 to take that leap that this is, in fact, an injury that's going
17 to occur.

18 THE COURT: And so your argument would be not only is
19 that a standing issue but then, also, plugged back into
20 substantial likelihood of success on the merits that there's no
21 case law interpreting it one way or the other, so --

22 MR. WATKINS: So how do you come to the conclusion
23 that you're most likely to succeed on that legal principle,
24 especially, Your Honor, when you're -- this Court is confined
25 to view that from the highest standard?

1 This is a mandatory injunction that the plaintiffs
2 are seeking. They're seeking to cause the County or the State
3 to take certain action, so it's a mandatory injunction against
4 a government actor. And our circuit has held that that is even
5 a heightened standard beyond what is already a high standard
6 which requires not just proving by a preponderance of the
7 evidence on each of those four points but actually going beyond
8 that and proving by clear and convincing evidence.

9 And so it's a heightened standard on top of a
10 heightened standard when they're seeking this mandatory
11 injunction against a government actor. But yeah -- so that's
12 sort of the first hurdle.

13 And beyond that, as to Glynn County, the affidavit of
14 this Mr. Morgan, as Your Honor quickly picked up on, doesn't
15 say and can't say that these voters in other states voted for
16 a senate race in those other states. In terms of Glynn County,
17 in Paragraph 24, the best it can say is that eight folks that
18 have been newly registered in Glynn County came from another
19 state and voted in the general election. It doesn't say and
20 they have not established that they voted for a senator in
21 another election.

22 And then to your point, Your Honor, how, then, do
23 you -- if you set these ballots aside, how do you then go prove
24 that in order to satisfy that there is impending harm? Because
25 if you can't prove that, then you're not going to have

1 standing.

2 You know, these voters are certainly going to be
3 wary, you would think, if there were some nefarious purpose, to
4 admit that. What if they were to take the Fifth if asked? But
5 that's a problem.

6 And then the third issue -- the third hurdle that
7 they would have to get by is they would -- as we know, we have
8 had early voting for 5 full days. I would think they would
9 have the burden to show that these eight voters in Glynn County
10 haven't already voted, because there's no way to undo it and
11 segregate these votes if they've already voted. So you would
12 have to assume that these eight voters in Glynn County hadn't
13 already voted. And if they have voted, you'd have to assume
14 that they have voted, as I say, in another senate in another
15 state.

16 Outside of standing -- and I think standing's been,
17 obviously, hit on by the secretary of state's attorney. But
18 outside of standing, another issue is that, in terms of
19 Glynn County, well, who -- what decision does the local board
20 make versus the state?

21 So you're being asked to enjoin a mandatory
22 injunction against the local board. Well, the duties of the
23 local board versus the duties of the state election board are
24 set out by statute. And I would submit that the state election
25 board is the one that would make a call as to segregating

1 certain ballots of newly registered voters. And I would cite
2 the Court to O.C.G.A. Section 21-3-31, Subsections 1, 2, and 7,
3 which lay out that if the -- it's the state board that
4 promulgates the (audio disruption) rules, not the local board.

5 The only thing they cite to in terms of the local
6 board's ability to make rules is to make rules to guide poll
7 workers, but that is secondary to the very explicit duties of
8 the State (audio disruption) in terms of making rules governing
9 regulating elections, how they're conducted, whether they're
10 uniform, whether they're fair. And so, in any circumstance, we
11 would say, even if the Court got by the standing issues and got
12 by the other issues, that we would not be the party that would
13 make that call.

14 Finally, the last point I'll make is that Plaintiff
15 was notably vague about how this would actually be done. I
16 mean, how would this be done? They're asking for segregation
17 of all ballots, not just mail-in ballots. And so the way it
18 works is somebody comes in to vote in person. There's not
19 notice to a poll worker whether this person has registered to
20 vote a week ago, 3 weeks ago, 2 months ago. So how would it
21 work?

22 And they say, well, they'll just leave it to the
23 Counties to decide how it would work. But it's an
24 impossibility. And that's why they've shied away from
25 explaining to the Court, well, how do you do this in practice?

1 How do you segregate every ballot, not just a mail-in ballot,
2 but an in-person ballot? And how do you educate the poll
3 workers to do that? And where is this list of names that
4 allows you to do it? And so it's an impossibility to do.

5 Beyond that, again, we would just rely on the same
6 arguments that the secretary of state is going to assert in
7 this action, and we would ask that the requested relief be
8 denied. Thank you.

9 THE COURT: All right. Thank you, Mr. Watkins.

10 Anybody else want to be heard for the Defense?

11 (No response.)

12 THE COURT: Well, then let me turn back to Mr. Meros
13 for reply. I see he's been pacing anxiously.

14 And it is now time to return to your argument, so let
15 me hear anything further you would like to argue.

16 MR. MEROS: Yes, ma'am. And my apologies. I am
17 a pacer. I didn't realize I was being watched, but I'll
18 certainly learn from this.

19 THE COURT: It's -- I'm not criticizing you. I -- as
20 you say, it's an important case. And I can still remember --
21 it's not -- I haven't been on the bench that long. I remember
22 what it was like to be listening to the other side and -- so,
23 in any event, it's not a criticism. It's just an observation.

24 MR. MEROS: No. That's quite all right, Your Honor.
25 And thank you very much for your time. You've been very

1 generous with your time, and we very much appreciate that.

2 The gentleman from Glynn County, I believe, is
3 correct about something that he said, and that is it is the
4 state election board that has the ability to do and to
5 implement the sort of limited relief, setting aside ballots
6 until we can understand what violations of the Voting Rights
7 Act, if any, have occurred.

8 There has been a lot of talk about Jacobson and a lot
9 of talk about no one else can do it, but he is correct that the
10 state election board has the ability to issue recommendation,
11 issue rules. The secretary of state has the ability to issue
12 guidance on that and so, again, limited relief -- very limited
13 relief to deal with an extraordinarily important issue.

14 Now, the secretary of state said to Your Honor that
15 the Voting Rights Act is a policy judgment in this context.
16 Congress made that policy judgment in passing the Voting Rights
17 Act. And in 11(a) and 11(e), they were very clear about what
18 policy the United States had.

19 To some extent, the secretary of state is arguing
20 that it isn't so important to prevent voting twice as it is to
21 make the situation more difficult than we want it to be. I
22 cannot imagine, Your Honor, a more important policy choice
23 under these circumstances.

24 The secretary also suggested that we were too late.
25 And the Court and I talked about the fact that if, in fact, we

1 had guessed, if, in fact, that we had had some fear that this
2 might be occurring without the facts to suggest it, I imagine
3 the secretary of state would demonize us as he has so far
4 today. That is why we did it at the very earliest possibility,
5 in August -- I mean, in -- I'm sorry -- on December 8th, to try
6 to figure out what's going on. That's 10 days ago.

7 And in those 10 days, we have gone to extraordinary
8 lengths to have enough information to be confident that there
9 are violations here that would require invalidation of a vote
10 or many votes.

11 Your Honor also suggested that there might be a
12 difference -- or what if the number of votes that were
13 preserved or segregated, under no circumstances would there be
14 a sufficient number of votes to affect the election? That
15 would be a relevant consideration as to what to do. We don't
16 doubt that. And -- but if, in fact, there is the potential for
17 500 votes or 1,000 votes, as we know from prior elections, you
18 can have a very important vote with a disparity much less than
19 400 votes.

20 We have, in fact, conceded that there are any number
21 of votes that have been cast that are irreparably, for our
22 plaintiffs, gone and unavailable. We can't do anything about
23 that. We don't purport to do anything about that. What we
24 don't want to do -- what we want to do is to stop the bleeding
25 of the potential for federal violations in voting twice in

1 senatorial elections.

2 The secretary's -- the gentleman from the secretary's
3 office specifically told the Court that there is a process by
4 which electors can be questioned -- can be asked questions,
5 can be -- can discuss with electors certain issues of ballots
6 without problem. That's existing -- that's an existing
7 practice in the secretary of state's office. We think that
8 makes eminently good sense. And what makes good sense and what
9 makes good policy and what is consistent with federal law, that
10 remedy is what we would be perfectly happy to have.

11 The secretary's counsel also said that the Voting
12 Rights Act in this context does not apply to runoff elections.
13 We would respectfully suggest that that is clearly wrong. The
14 Georgia constitution provides that a runoff election is part of
15 a general primary and runoff election. It is not sui generis.
16 It's not an exception to the Voting Rights Act. It is a part
17 of the process of voting.

18 And I have yet to hear an explanation from the
19 defendant's as to how it can be that a violation of the Voting
20 Rights Act is less important than the challenges faced in
21 determining how many -- how many ballots should be invalidated
22 under these circumstances.

23 We welcome the opportunity, given the ability to have
24 some evidentiary relief, some evidentiary proceedings, to dig
25 further into this, to provide additional information. There

1 have been a lot of accusations about how bad we are and things
2 we've done and all of that, and we're more than happy to
3 provide evidence about what actually occurred with regard to
4 the attorney general's office or the other individual counties
5 with respect to this issue.

6 THE COURT: Secretary of state says if a runoff is
7 part of a general election, then, if you voted in the general
8 election, why should you be able to vote again in the runoff
9 if --

10 MR. MEROS: But we're --

11 THE COURT: -- it gives the --

12 MR. MEROS: -- dealing with --

13 THE COURT: -- if it gives the interpretation that
14 you're saying?

15 MR. MEROS: I'm not sure I understand. But what we
16 are talking about is -- so what is the difference in voting in
17 the general election and voting in the runoff for the same
18 election -- or for the same senatorial --

19 THE COURT: So --

20 MR. MEROS: -- election?

21 THE COURT: -- if somebody votes in one general
22 election, let's say, in California and then moves to Georgia
23 and votes in that runoff, how is that a crime and voting in the
24 general election in Georgia and then voting in the runoff in
25 Georgia -- seems like --

1 MR. MEROS: Well, Your Honor, under the Voting Rights
2 Act, a runoff is a continuation of the general --

3 THE COURT: Right.

4 MR. MEROS: -- and it's voting twice. One can't vote
5 twice.

6 THE COURT: In both cases?

7 MR. MEROS: Certainly.

8 THE COURT: So --

9 MR. MEROS: You know --

10 THE COURT: -- if I --

11 MR. MEROS: -- (indiscernible) -- I'm sorry. Go
12 ahead.

13 THE COURT: The only difference would be -- if one
14 person voted in California, moved here, and then voted in the
15 runoff and one person was in Georgia the whole time, voted
16 here, and then voted in the runoff, what -- why is one a crime
17 and one not?

18 MR. MEROS: Well -- and I don't know whether it's a
19 crime. I know that it's a federal violation. I know there are
20 criminal penalties, but I'm not suggesting that everyone has
21 committed crimes. So let me just be clear about that.

22 THE COURT: Why is the California situation
23 prohibited by the Voting Rights Act if the just plain straight
24 Georgia one is not?

25 MR. MEROS: The -- well, the general election itself

1 has ended.

2 THE COURT: I thought it was --

3 MR. MEROS: There's a --

4 THE COURT: -- a continuation.

5 MR. MEROS: It is -- it is one -- it is part of one
6 type of election, yes. And, Your Honor I'll be frank with you.
7 That might be a distinction. I can't tell you right now that
8 there is no distinction between the two. What I can tell
9 you -- and I'll be happy to try to supplement that because I
10 don't want to overstate. But if the -- and let me go back a
11 minute.

12 The general election is still happening now because
13 it is a continuation.

14 THE COURT: Right.

15 MR. MEROS: And so let's say you have a race for the
16 governor and I vote early by mail and I do a -- vote by mail --
17 well, an early voting at the voting booth and voting by mail as
18 well. There's an obligation for the supervisors of election to
19 look at that and say, "No, you can't do that. That's voting
20 twice."

21 THE COURT: Understood.

22 MR. MEROS: The same, arguably, could be exactly the
23 same here because this race is a continuation of the -- the
24 general is a continuation all the way through the runoff.

25 Now, might that be a distinction under the voting

1 Rights Act? I don't think so. But I also don't want to
2 overstate.

3 I do know that we certainly have evidence --
4 substantial evidence of individuals that have voted in other
5 states and are now poised to vote in the senatorial elections
6 here. Clearly, under those circumstances, in our view, there
7 is no question that there is more than probative evidence, but
8 there's a substantial amount of evidence that that will result
9 in violations of the Voting Rights Act.

10 The supervisor talked about the consent decree and
11 how we failed to advise the Court of the consent decree and
12 that that is somehow dispositive. I would suggest, Your Honor,
13 that it isn't even apropos to what the arguments are and what
14 the legal issues are.

15 That consent decree arose from a circumstance where
16 you had a general election, you had a potential -- a runoff.
17 And if it goes to runoff, you didn't have any opportunity to
18 register to vote for the runoff. And the consent decree
19 required what now exists, and that is that you have 30 days to
20 register for the runoff.

21 And it's nothing whatsoever to do -- it's not -- with
22 this matter. With this matter, we had a general election, and
23 we had 30 days for registration. That registration occurred.
24 So I'm at a complete loss as to what impact, if any, that has
25 on the case.

1 Purcell is all about having elections at a period of
2 time when there would be voter confusion with regard to what
3 they're doing. That's not this case. As I've said before, so
4 many of these individuals as of Monday will have already voted.
5 Others will have already voted. Others that will vote on that
6 date will have the ability -- the pure ability to vote subject
7 to a preservation time and a time by which to implement the
8 will of Congress in this matter.

9 And, Your Honor, with that, if you have any other
10 questions, I'll be happy to answer them. But otherwise, we
11 truly appreciate your time.

12 THE COURT: Certainly.

13 Counsel, I hate to hold you longer, but I am going to
14 take about a 20-minute break and let -- allow you to go have a
15 comfort break, and we'll reconvene at approximately 5:35.

16 All right. We'll be in recess.

17 COURT SECURITY OFFICER: All rise.

18 Court's in recess.

19 (A recess was taken from 5:13 p.m. to 5:45 p.m.)

20 COURT SECURITY OFFICER: This honorable court is back
21 in session. Come to order and be seated.

22 THE COURT: All right. Counsel, have a seat.

23 Had -- did we lose our lead defense counsel?

24 There -- is he down to the left? All right.

25 MR. WILLARD: I'm here, Your Honor.

1 THE COURT: Okay. I appreciate the swift appearance
2 by both sides and apologize in advance for the rough nature of
3 my findings of fact and conclusions of law. Ordinarily, even
4 for a TRO, I will take the time to carefully compose and draft,
5 redraft, and triple draft written findings of fact and
6 conclusions of law.

7 But because of the timing that this was brought to
8 me late yesterday afternoon and because Monday, the election
9 will continue, it is important that I go ahead and rule and
10 whichever side is dissatisfied with that ruling make any
11 attempts that they can make to seek the higher level of review.

12 And so these will be my very rough, on-the-cuff,
13 on-the-run findings of fact and conclusions of law. And
14 although they might not be polished, they are nevertheless --
15 I'm confident in the conclusions that I am going to make.

16 As the record will reflect, the plaintiffs brought
17 the lawsuit last night. They seek multiple causes of action,
18 including a cause grounded in the Voting Rights Act. They
19 seek -- they filed not only their complaint but also request
20 for temporary restraining order issued in an emergency
21 capacity.

22 I was able to read and review all of the documents
23 that were submitted by the plaintiff and study those in
24 anticipation of the hearing. We were able to, in less than
25 24 hours, schedule the hearing and assemble the attorneys for

1 both sides so that we could have robust oral argument in court
2 both by -- in person and by video conference here this
3 afternoon. I have had the opportunity to hear from both sides
4 for the last hours plus, and I believe each side was able to be
5 heard thoroughly.

6 After hearing from both sides, reviewing the
7 affidavits that were submitted and the arguments that were
8 made, it is my finding that the plaintiffs do not have standing
9 to obtain the relief that they seek.

10 As for the non-Voting Rights Act claims, I find,
11 for the reasons that are set forth in prior decisions,
12 including the Eleventh Circuit's recent decision in the Wood v.
13 Raffensperger case, that standing is lacking for the reasons
14 that are set forth therein.

15 I am aware that, in this case, the -- there were not
16 just individual voters that were plaintiffs but also the
17 campaign committees and supporters of Senator Loeffler and
18 Senator Perdue. But -- although Wood v. Raffensperger did
19 provide some indication that perhaps, if it were the actual
20 candidate that were a plaintiff, that the standing argument
21 might be analyzed differently, here, we're not presented with
22 that case. And I find that even as to those two plaintiffs,
23 the -- their harm is -- doesn't have the requisite
24 particularity and concrete nature that is necessary to proceed
25 at this stage.

1 I note that, of course, the plaintiffs do have the
2 burden of showing that standard. And at least so far, with
3 what has been presented to me at this point, they haven't been
4 able to meet that.

5 I mention that -- the Wood case and also the case
6 that -- in Augusta that Judge Hall addressed recently and the
7 case in Atlanta that Judge Ross has reached. For the reasons
8 that are set forth in the -- Wood v. Raffensperger that was
9 decided by the Eleventh Circuit earlier this month, I find that
10 standing is lacking for the non-Voting Rights Act claims even
11 with this constellation of plaintiffs.

12 As for the voting act claims, it has the same fate.
13 Plaintiffs have been unable to, so far, meet the standard for
14 showing that they, in fact, have standing to proceed on that
15 claim. Specifically, they haven't shown, with the requisite
16 degree, that they've suffered an injury in fact that is
17 particularized and concrete.

18 I find that they haven't met the standard in showing
19 that the Voting Rights Act elevates what would otherwise be
20 general harm into a particularized harm. I think both sides
21 agree that perhaps that might be possible to someday show but
22 that that has not been shown as of tonight.

23 And if that were not enough, the other prong that is
24 a problem for the plaintiffs is redressability. That is a
25 problem. I think both parties acknowledge that it's not

1 entirely clear whatsoever that what is -- has already happened
2 all this week when voters came to vote and what will continue
3 to happen as voters continue to vote next week and beyond -- it
4 is not clear that that's a voting right violation, and yet we
5 do have a risk of suppressing other voters from coming in, a
6 risk of confusion.

7 I'm not entirely clear why the plaintiffs waited
8 until last night to bring forth these issues, but I'm concerned
9 on a number of levels with what it would mean to, at this
10 point, switch course.

11 Having addressed standing, just for the good of the
12 order, let me make it clear, some of the fundamental concepts
13 about standing. Of course, Article III of the Constitution
14 limits the subject matter jurisdiction of all federal courts,
15 including this one, to cases and controversies.

16 Our courts are courts of limited jurisdiction, and
17 that's one of the most fundamental principles of law. We're
18 not constituted as freewheeling enforcers of the Constitution
19 and the laws, and it is incumbent on a plaintiff who comes to
20 federal court to bear the burden of proving that his or her
21 suit falls within our jurisdiction.

22 Standing, as I've already portended, has three prongs
23 that must be satisfied. One is that the plaintiff suffered
24 an injury in fact; second, that it's fairly traceable to the
25 challenged conduct of the defendant; and, third, that it's

1 likely to be redressed by a favorable judicial decision.

2 I do find that the plaintiff, as I said, has not been
3 able to prove to the requisite standard that he has suffered
4 and she has suffered an injury in fact or that it's likely to
5 be redressed by a favorable judicial decision.

6 On the redressability, it is speculative at this
7 point how that would even work out to be proven. We've heard
8 that even if certain ballots, the ones that haven't already
9 been cast and put into the general pool -- that even if those
10 were to be segregated and someday someone were to ask them
11 questions, they don't have to answer those questions. They
12 could take the Fifth and so forth. There's a lot of logistical
13 problems and hitches with the redressability issue.

14 As we've hinted at in discussing the voting act
15 standing, the kind of injury that's necessary to support
16 standing is an injury that's distinct from a generally
17 available grievance about the Government as discussed in
18 Wood v. Raffensperger. These -- the plaintiffs have not shown
19 the kind of particularized and concrete injury that satisfies
20 that prong.

21 If we were to get past standing, as I've said, I
22 would find that the plaintiffs still wouldn't be able to
23 satisfy the requirements for obtaining this extraordinary
24 relief of temporary restraining order or preliminary
25 injunction. They would trip on substantial likelihood of

1 prevailing on the merits for the reasons that I've identified
2 in talking about the standing issue.

3 And as far as the threatened injury to the movant
4 outweighing whatever damages the proposed injunction may cause,
5 again, I have some real problem with that weighing in that
6 the -- at this point, Plaintiff hasn't been able to carry their
7 burden of showing that a Voting Rights Act would even come into
8 play, and yet he would ask for us to, midstream, jump in and
9 alter the way that ballots are being handled and the way that
10 voters are being handled.

11 And there is a lot of room for confusion and really
12 illustrates why there's the fundamental rules peppering the
13 case law that federal judges shouldn't jump into an ongoing
14 election and change the rules mid-election.

15 And I would be concerned about voter suppression,
16 that, amid the confusion, there might be voters who are
17 confused about what it means to have your vote set aside for
18 possible later questioning.

19 And all this dawn at this late juncture in the middle
20 of an election is -- leads me to conclude that the balance of
21 the injuries comes out on the side of the defendant rather than
22 the plaintiff. For that reason, I would find that it's not
23 proper to order that the TRO be granted in the way that the
24 plaintiffs have requested that it be done.

25 So just to conclude, I find that there is no standing

1 for any of the claims. There -- and so that motion will be
2 denied. And I will issue a very short written order that just
3 refers to my oral findings.

4 Again, Counsel, it is, of course, an important
5 election, and I appreciate your time and attention this evening
6 in helping me to address the motion and -- at the earliest
7 possible juncture.

8 All right. Counsel, we'll be in recess.

9 COURT SECURITY OFFICER: All rise.

10 UNIDENTIFIED SPEAKER: Thank you, Your Honor.

11 UNIDENTIFIED SPEAKER: Thank you, Your Honor.

12 THE COURT: Yes.

13 (Proceedings concluded at 6:01 p.m.)
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C E R T I F I C A T E

I, Victoria L. Root, Certified Court Reporter, in and for the United States District Court for the Southern District of Georgia, do hereby certify that, pursuant to Section 753, Title 28, United States Code, the foregoing is a true, correct, and complete transcript of the stenographically reported proceedings held via video conference in the above-entitled matter and that the transcript page format is in conformance with the regulations of the Judicial Conference of the United States.

WITNESS MY HAND AND SEAL this 24th day of December, 2020.



VICTORIA L. ROOT, CCR B-1691
United States Court Reporter
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**UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF GEORGIA
GAINESVILLE DIVISION**

FAIR FIGHT, INC., JOHN DOE, and
JANE DOE,

Plaintiffs,

v.

TRUE THE VOTE, CATHERINE
ENGELBRECHT, DEREK
SOMERVILLE, MARK DAVIS, MARK
WILLIAMS, RON JOHNSON, JAMES
COOPER, and JOHN DOES 1-10,

Defendants.

Case No. 2:20-cv-00302-SCJ

**[PROPOSED] ORDER
GRANTING
PLAINTIFFS' MOTION
FOR A TEMPORARY
RESTRAINING ORDER
AND/OR
PRELIMINARY
INJUNCTION**

THIS MATTER comes before the Court on Plaintiffs' Motion for a Temporary Restraining Order or Preliminary Injunctive Relief (the "Motion"). Upon considering the amended motion and supporting authorities, the response from the Defendants, and the evidence and pleadings of record, the Court finds that Plaintiffs are likely to succeed on the merits of their claims, that they will be irreparably harmed if this motion is not granted, that the balance of equities tip in Plaintiffs' favor, and that the requested equitable relief is in the public interest. It is hereby:

ORDERED that the Motion is **GRANTED**, and Defendants, their respective agents, officers, employees, and successors, and all persons acting in concert with each or any of them, are hereby **ENJOINED** from the following activities:

- Submitting, or causing the submission of, further challenges to any voter's eligibility in the State of Georgia;
- Participating in any poll-watching, poll-monitoring, or election-observing activities; recruiting and training individuals for these activities; or advertising these activities; and
- Photographing or video recording voters or election workers during the course of voting or working at the polls.

IT IS SO ORDERED.

Dated this _____ day of December, 2020.

The Honorable Steve C. Jones
United States District Judge