

**United States District Court
Northern District of Georgia
Gainesville Division**

**Fair Fight, Inc., Scott Berson, Jocelyn
Heredia, and Jane Doe,**

Plaintiffs,

v.

**True the Vote, Inc., Catherine
Engelbrecht, Derek Somerville, Mark
Davis, Mark Williams, Ron Johnson,
James Cooper, and John Does 1-10,**

Defendants.

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

Hon. Steve C. Jones

Defendants' Motion for Summary Judgment

Pursuant to Federal Rule of Civil Procedure 56, Defendants True the Vote, Inc. (“TTV”), Catherine Engelbrecht, Derek Somerville, Mark Davis, Mark Williams, Ron Johnson, and James Cooper (collectively, “**Named Defendants**”), file this Motion for Summary Judgment.

Federal Rule of Civil Procedure 56(a) provides “[t]he court shall grant summary judgment if the movant shows that there is no genuine dispute as to any

material fact and the movant is entitled to judgment as a matter of law.” The undisputed facts show that Named Defendants never contacted Challenged Voters directly; that they carefully analyzed the data underlying their Voter Challenges, and that they submitted Voter Challenges in accordance with Georgia law. They never threatened legal, economic, or physical harm to any Challenged Voter. Their purpose was clear and lawful: alert the proper government officials charged with ensuring free and fair elections in Georgia that the Challenged Voters *may* not have been legally eligible to cast ballots in the 2021 Senate Run-off Election in an effort to prevent vote dilution of those voters who were *legally* eligible to cast ballots in that election. Therefore, Named Defendants did not violate § 11(b) of the Voting Rights Act of 1965.

Pursuant to Local Rule 7.1(A)(1), Named Defendants have also filed with their motion a brief citing the legal authorities supporting the motion and the facts relied upon. Pursuant to Local Rule 56.1(B)(1), Named Defendants have included with this Motion a separate numbered statement of the material facts to which the Named Defendants contend there is no genuine issue to be tried. Further, pursuant to the Instructions for Cases Assigned to The Honorable Steve C. Jones, all

citations in the brief in support of this Motion reference the paragraph, page, and/or transcript line numbers where the referenced evidence can be found. III. Case Management, I. Motions for summary judgment.

Pursuant to Local Rule 7.1(E), Named Defendants request oral argument on this Motion. See also III. Case Management, J. Requests for oral argument on motions. This case involves complex federal statutory and constitutional questions of law, some of which have not been addressed directly by the Eleventh Circuit. In addition, the record in this case is substantial. Therefore, oral argument will assist this Court in reaching its judgment on the motion.

WHEREFORE, Named Defendants, pray this Court grant their Motion for Summary Judgment, thereby denying all Plaintiffs' requested relief.

Dated: May 16, 2022

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Brief in Support of Defendants' Motion for Summary Judgment

**Defs.' Br. ISO
Summ. J.**

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Introduction

Defendants True the Vote, Inc. (“**TTV**”), Catherine Engelbrecht, Derek Somerville, Mark Davis, Mark Williams, Ron Johnson, and James Cooper (collectively, “**Named Defendants**”) did not violate Section 11(b) of the Voting Rights Act of 1965. When this Court denied Plaintiffs’ preliminary motion for injunctive relief, it stated, “[a]fter careful review and consideration of the evidence and arguments, the Court finds that Plaintiffs have not provided enough evidence at this point to show that they are likely to succeed on the merits of their claims. Most critically, the evidence provided to date does not show that Defendants have harassed or intimidated voters.” Order, ECF No. 29 at 26. After sixteen months, during which parties have produced voluminous amounts discovery, including 11 depositions and two expert reports, nothing has changed—the Plaintiffs still have no evidence that any Named Defendant harassed or intimidated voters.

The undisputed facts show that Named Defendants never contacted Challenged Voters directly; that they carefully analyzed the data underlying their Voter Challenges, and that they submitted Voter Challenges in accordance with Georgia law. They never threatened legal, economic, or physical harm to any

Challenged Voter. Their purpose was clear and lawful: alert the proper government officials charged with ensuring free and fair elections in Georgia that the Challenged Voters *may* not have been legally eligible to cast ballots in the 2021 Senate Run-off Election in an effort to prevent vote dilution of those voters who were *legally* eligible to cast ballots in that election.

The Named Defendants would have no problem if 100% of the people legally eligible to vote in Georgia elections did so, even if their preferred candidates were defeated. In the words of Mr. Davis, “that actually is a fair fight.”

Argument

Motion for Summary Judgment Legal Standard

Federal Rule of Civil Procedure 56(a) provides “[t]he court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.”

A factual dispute is genuine if the evidence would allow a reasonable jury to find for the nonmoving party. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). A fact is “material” if it is “a legal element of the claim under the applicable substantive law which might affect the outcome of the case.” *Allen v.*

Tyson Foods, Inc., 121 F.3d 642, 646 (11th Cir. 1997).

The moving party bears the initial burden of showing the court—by reference to materials in the record—that there is no genuine dispute as to any material fact that should be decided at trial. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986)). The moving party satisfies this burden merely by “‘showing’—that is, pointing out to the district court—that there is an absence of evidence to support [an essential element of] the nonmoving party's case.” *Id.* at 325. The district court must determine whether the moving party has met its burden by viewing the evidence and all factual inferences in the light most favorable to the party opposing the motion. *Johnson v. Clifton*, 74 F.3d 1087, 1090 (11th Cir. 1996). Once the moving party has adequately supported its motion, the burden shifts to the non-movant to show that summary judgment is improper by coming forward with specific facts showing a genuine dispute. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986). The court should resolve all reasonable doubts in the non-movant’s favor. *Fitzpatrick v. City of Atlanta*, 2 F.3d 1112, 1115 (11th Cir. 1993).

The court must “avoid weighing conflicting evidence or making credibility

determinations.” *Stewart v. Booker T. Washington Ins.*, 232 F.3d 844, 848 (11th Cir. 2000). A genuine dispute for trial does not exist when the record as a whole could not lead a rational trier of fact to find for the nonmoving party. *Fitzpatrick*, 2 F.3d at 1115 (citations omitted).

Cross motions for summary judgment must be considered separately, as each movant bears the burden of establishing that no genuine issue of material fact exists and that it is entitled to judgment as a matter of law.” *3D Med. Imaging Sys., LLC v. Visage Imaging, Inc.*, 228 F. Supp. 3d 1331, 1336 (N.D. Ga. 2017).

I. Defendants’ conduct does not violate § 11(b).

The Voting Rights Act of 1965 prohibits intimidating or threatening a person for voting or attempting to vote. 52 U.S.C. § 10307(b) (“§ 11(b)”). Courts have held within the context of voting, intimidation and threats are not necessarily limited to the threat of violence or bodily harm, but can include threats of economic harm, legal action, dissemination of personal information, and surveillance, depending on the context. *Nat’l Coal. on Black Civic Participation v. Wohl*, 498 F. Supp. 3d 457, 477 (S.D.N.Y. 2020) (granting TRO against robocalls that “warned” people voting by mail would be used by police departments, credit

card companies, and the CDC to bring legal, economic, and physical harm to voters). The *Wohl* Court relied on various legal authorities to hold “that threats and intimidation include messages that a *reasonable recipient familiar with the context of the message* would interpret as a threat of injury tending to deter individuals from exercising their voting rights.” *Id.* at 477 (emphasis added).

The contexts under which courts have found violations of § 11(b) are varied, but they all involved more than simply asking appropriate government authorities to ensure that people who have reported a move out of a voting district are, in fact, still eligible to vote in that district. Since the context of an § 11(b) claim is critical, examples of actions that rose to the level of “intimidation” under § 11(b) will show what type of behavior meets this definition. *See Daschle v. Thune*, Decision and Order at 2, No. 4:04 Civ. 04177 (D.S.D. Nov. 1, 2004) (finding violation when defendants followed Native Americans into polling places, “ostentatiously making noises” behind them, discussing Native Americans who were prosecuted for illegally voting, following them out of the polling places, and recording their license plate numbers); *see also United States v. Nguyen*, 673 F.3d 1259, 1265 (9th Cir. 2012) (holding widely distributing letter among Latino

immigrants warning them that voting could lead to their personal information being turned over to people “against immigration” could provide basis of unlawful intimidation); *United States v. McLeod*, 385 F.2d 734, 737-38 (5th Cir. 1967) (finding § 11(b) violation when law enforcement officials stationed themselves around voter registration meetings, recorded the information of attendees, and then used that information to later arrest and prosecute attendees for “traffic violations”). Economic pressure may also be considered a form of intimidation. *See, e.g., United States v. Beaty*, 288 F.2d 653, 654-57 (6th Cir. 1961) (holding eviction of sharecroppers as punishment for registering to vote constitutes unlawful intimidation); *United States v. Bruce*, 353 F.2d 474, 476-77 (5th Cir. 1965) (finding unlawful intimidation when landowner restricted access to his property for voter registration efforts).

In virtually all of these cases where violations of § 11(b), or laws similar to § 11(b), were found, the defendants directly communicated the intimidating message, or acted in an intimidating manner, to the voters themselves or to people attempting to register voters (*making robocalls to voters . . . following voters . . . sending letters to Latino immigrants . . . using law enforcement officials to*

record who attends voter registration meetings . . . evicting people . . . and preventing person attempting to register voters access to property). Therefore, the courts found it “reasonable” for the direct recipients of these messages or actions to feel intimidated by the defendants within these contexts.

Here, the undisputed facts show Named Defendants’ actions did not come close to the types of actions courts have found to be intimidating or threatening. Plaintiffs have provided no evidence they stood outside polling places to intimidate potential voters or sent threatening letters to voters. In fact, Named Defendants had no direct contact with Challenged Voters at all. TTV Resp. to First Rogs. No. 5; Somerville Am. Resp. and Obj. 2d Interrogs., Resp. No. 7; First Davis Tr. 171:4-21; Williams Tr. 63:2-64:1; Johnson Resp. to First Interrogs. Resp. No. 5; Cooper Resp. to First Interrogs. Resp. No. 5; Cooper Tr. 45:1-9; 50:13-22. Named Defendants did not publicly publish any list of Challenged Voters. TTV Tr. 257:11-14; Second Somerville Tr. 71:16-72:19; 72:21-73:14; Second Davis Tr. 46:3-14; 80:7-10. TTV did not create a “bounty” in order to incentivize Challenges or accusations of voter fraud. TTV Tr. 71:11-19, 71:22-72:1, 74:8-17, 75:5-18, 76:15-19; TTV Tr. 316:3-12; TTV Tr. 316:19-317:5; First

Somerville Tr. 150:15-152:4. TTV did not create a hotline in order to intimidate voters—it turned over any credible accusation of voter irregularities to the proper government authorities. TTV Tr. 81:16-21; TTV Tr. 85:21-86:9; TTV Tr. 82:18-21; TTV Tr. 68:16-69:7; *id.* 81:22-82:4; TTV Tr. 85:13-20; TTV Tr. 93:17-95:3; TTV Am. Resp. 2d RFP Resp. No. 18; First Somerville Tr. 150:15-152:4. Named Defendants analyzed data and/or submitted Challenges to government election officials based upon that data as permitted under Georgia law. O.C.G.A. § 21-2-230. Most of those Challenges were rejected and not pursued in any way by county boards of elections. *See* Def TTV 1838; First Somerville Tr. 93:11-15. Within this context, Challenged Voters were not the direct “recipients” of any of the Named Defendants’ actions, and it would be wholly unreasonable to find Named Defendants’ lawful actions amounted to an § 11(b) violation.

Context is key—there has never been a Court that has held a defendant violated § 11(b) by exercising his rights as permitted under law. This Court should not be the first to do so. Named Defendants’ motion for summary judgment should be granted.

A. Georgia law permits voter challenges.

Georgia law permits challenges to an elector's right to vote in a particular election. Under Georgia law, a person may not vote in an Georgia election unless they are "[a] resident of this state and of the county or municipality in which he or she seeks to vote[.]" O.C.G.A. § 21-2-216(a). Accordingly, Georgia law sets out a process for challenging an elector's right to vote in an election, providing that: "[a]ny elector of the county or municipality may challenge the right of any other elector of the county or municipality, whose name appears on the list of electors, to vote in an election. . . ." O.C.G.A. § 21-2-230(a). ("**§ 230 Challenge**").

A § 230 Challenge does not result in automatic disqualification of the challenged voter—it simply triggers a process at the county board of registrars. First, the Board considers the § 230 Challenge to determine if probable cause exists to sustain it. *Id.* at (b). If the Board does not find probable cause exists, the § 230 Challenge is denied. *Id.* If the Board finds probable cause, the Board notifies the poll officers of the Challenged Voter's precinct, and if practical, notifies the Challenged Voter in order to afford the Challenged Voter an opportunity to answer the § 230 Challenge. *Id.* If the Challenged Voter appears at the polling

place to vote, the Challenged Voter is given an opportunity to appear before the Board and answer the grounds of the § 230 Challenge. *Id.* at (c). If the Board then denies the § 230 Challenge based upon the Challenged Voter's answer, the Challenged Voter shall be permitted to vote in the election even if the polls have already closed. *Id.* at (h). If the Challenged Voter appears at the polls to vote and "it is not practicable to conduct a hearing prior to the close of the polls," the Challenged Voter may cast a provisional ballot. *Id.* at (i). If the § 230 Challenge is subsequently denied, the provisional ballot will be certified along with all the other consolidated returns for that election. *Id.*

It is important to recognize that Georgia law permits two distinctly different challenges to the ability of an ineligible elector to vote. First, the presence of the elector on the list of electors (called under federal law "voter registration lists") can be challenged under O.C.G.A. § 21-2-229. The Challenges at issue in this case were not brought under this section since the Challenges did not question the Challenged Voters' presence on the list of electors. Second, the eligibility of a registered elector to vote in a particular election can be challenged under O.C.G.A. § 21-2-230. The current challenges were brought under this section and only

question the challenged elector's eligibility to vote in the run-off election and did not seek to have the elector removed from the registration list, which, as noted, is a separate and different challenge under Georgia law.

After this case was initiated, the Georgia Legislature made changes to the Georgia Election Code. Two significant changes directly impact § 230 Challenges. First, the legislature made it clear that “[t]here shall not be a limit on the number of persons whose qualifications such elector may challenge.” *Id.* at (a). (Effective March 25, 2021). The second change to § 230, relevant here, is that “[f]ailure to comply with the provisions of this Code section by the board of registrars shall subject such board to sanctions by the State Election Board.” *Id.* at (j).

The changes to § 230 make it clear—submitting “mass” Challenges is not prohibited and the Boards have greater accountability to be functionally responsive to voters who submit § 230 Challenges. Named Defendants¹ submitted

¹TTV did not submit any § 230 Challenges as only registered voters in any particular Georgia County may submit such Challenges. O.C.G.A. § 21-2-230. However, TTV did compile the list of Challenged Voters at issue in this case, and received permission to submit § 230 Challenges on behalf of individuals who volunteered to serve as Challengers in various counties. TTV Resp. to 2d Interrog. Resp. No. 14; TTV Tr. 255:4-256:13. Throughout this brief, the process TTV undertook of submitting § 230 Challenges on behalf of volunteers who gave it permission to do so will be referred to as TTV submissions, as grammatically

§ 230 Challenges as permitted under Georgia law operative at the time, and as bolstered by the 2021 version of the same law.

Submitting § 230 Challenges in accordance with the letter and spirit of Georgia law cannot provide the “context” for a violation of § 11(b). Named Defendants did not have the authority to determine a Challenged Voter’s eligibility to vote in the run-off election—that authority rests solely with the appropriate government officials. O.C.G.A. § 21-2-230. They simply provided credible, non-frivolous information to the applicable Board so that the Board could decide, under Georgia law, whether to require Challenged Voters to provide proof of residency based upon the § 230 Challenge submitted. TTV Tr. 342:15-343:1:18; TTV Resp. to First Interrogs. Resp. No. 5; First Somerville Tr. First Somerville Tr. 48:15-21; 78:6-9; Second Somerville Tr. 189:4-191:1; 56:18-57:11; 78:6-9; 189:4-191:1. Named Defendants did not seek to prevent even one eligible voter from casting his or her ballot. *See* TTV Tr. 152:15-154:19; *id.* 169:22-170:18; Second Davis Tr. 199:9-18. Named Defendants sought to petition their government—asking it to ensure that voters who were *ineligible* under the

appropriate.

law to cast a ballot be prevented from doing so—in order to protect the rights, and prevent vote dilution, of all the eligible voters who legally cast ballots. TTV Tr. 342:15-343:1; TTV’s Resp. First Interrogs. Resp. No. 5; First Somerville Tr. 124:1-12; 127:9-15; Second Davis Tr. 59:7-81 86:22-87:3; 90:14-21. They had every right to do so under Georgia law then, and continue to have that right now. Exercising their lawful rights to government authorities, without any direct contact with Challenged Voters, cannot support an § 11(b) violation claim.

B. Mark Davis and Derek Somerville did not act in concert with True the Vote’s voter challenges.

The First Amended Complaint alleges that Mr. Davis and Mr. Somerville “assisted and *acted in concert with True the Vote* in its effort to challenge the eligibility of hundreds of thousands of Georgians to vote.” First Am. Compl. ¶¶ 20, 21. (emphasis added). Plaintiffs have alleged TTV “challenge[d] over 364,000 Georgians’ eligibility to vote and recruit[ed] Georgians to engage in its ‘ballot security’ operation in Georgia in advance of the state’s January Senate Runoff.” *Id.* at ¶ 18. Much of the rest of the First Amended Complaint’s factual allegations describes TTV’s alleged history of meritless challenges and various “tactics” Plaintiffs allege intimidate and suppress votes. *Id.* at ¶¶ 30-35; 39-41; 58-61.

Defendants Davis’ and Somerville’s alleged actions are not mentioned in the First Amended Complaint outside of the allegation they “acted in concert with” TTV. Plaintiffs alleged, in their single claim, that “Defendants, by engaging in an unprecedented effort to challenge the eligibility of hundreds of thousands of Georgians to vote, by recruiting “citizen watchdogs” to watch voters return their ballots, and by offering a \$1 million reward to incentivize its supporters to find evidence of “illegal voting,” have engaged in activities which are objectively likely to intimidate voters in violation of § 11(b) of the Voting Rights Act. *Id.* at ¶ 79.

The undisputed facts in the record show that Mr. Davis and Mr. Somerville did not act in concert with TTV—not on Challenges, not on the alleged “citizen watchdogs” to watch voters return their ballots, and not on the alleged “\$1 million reward to incentivize its supporters to find evidence of ‘illegal voting.’” First Somerville Tr. 150:15-152:4. Neither Mr. Davis nor Mr. Somerville had any knowledge of the methodology, process, or analysis of TTV’s Challenge Lists. First Somerville Tr. 29:5-31:17; 32:20-33:4; 45:3-11; 103:6-13; 157:7-15 Somerville Interrog. Resp. Ct. Order Resp. No. 1, 4; First Davis Tr. 38:22-39:14;

41:10-42:16; 46:12-47:10; Second Davis Tr. 95:4-9; Davis Interrog. Resp. Ct. Order Resp. No. 1. Plaintiffs have shown no evidence that Mr. Davis and Mr. Somerville were involved in the alleged “citizen watchdogs” or the \$1 million fund, and Mr. Davis and Mr. Somerville testified to the contrary. First Somerville Tr. 150:15-152:4. Mr. Davis and Mr. Somerville were mentioned in TTV’s December 2020 press release because TTV was trying to generally acknowledge the work of Georgians who were attempting to contribute to the effort of voter integrity. Second Somerville Tr. 132:8-14.

Besides the undisputed facts which show that Mr. Davis and Mr. Somerville did not “act in concert” with TTV, the undisputed facts show their independent work cannot support an § 11(b) violation claim either. Neither Mr. Davis nor Mr. Somerville had any direct contact with Challenged Voters. Somerville Am. Resp. and Obj. 2d Interrogs., Resp. No. 7; First Davis Tr. 171:4-21. They did not publish the Davis/Somerville Challenge List publicly. Second Somerville Tr. 71:16-72:19; 72:21-73:14; Second Davis Tr. 46:3-14; 80:7-10. Volunteers submitted Challenges to the appropriate government officials, based on the Davis/Somerville Challenge List, independently from TTV. First Somerville Tr. 89:22-15; 97:22-99:19;

Somerville Interrog. Resp. Ct. Order Resp. No. 1.

It is an undisputed fact that neither Mr. Davis nor Mr. Somerville threatened legal, economic, or physical harm to any of the Challenged Voters. It is an undisputed fact that Mr. Davis and Mr. Somerville compiled the Davis/Somerville Challenge List with care and with painstaking detail. Somerville Interrog. Resp. Ct. Order Resp. No. 2; drive for Mr. Somerville to distribute to challengers.

Davis Interrog. Resp. Ct. Order Resp. No. 2; *see also* [Part I.D.2](#).

The allegations that Mr. Davis and Mr. Somerville “acted in concert with” TTV are wholly unsupported by the record. Even if this Court finds their independent work is relevant to Plaintiffs’ claims, nothing in the record supports their allegations that Mr. Davis and Mr. Somerville violated § 11(b). Mr. Davis and Mr. Somerville did not contact any Challenged Voter—they certainly did not threaten legal, economic, or physical harm to any of the Challenged Voters. They didn’t publicly post the Davis/Somerville Challenge List.

Mr. Davis’ and Mr. Somerville’s conduct does not come anywhere close to the reprehensible actions of others who have violated § 11(b). They carefully and lawfully availed themselves of a process authorized by Georgia statute. Doing so

is not an § 11(b) violation. and this Motion for Summary Judgment should be granted, as to Mr. Davis and Mr. Somerville.

C. Named Defendants did not have any contact with any Challenged Voter or with Fair Fight, and the § 11(b) violation claims are unsupported by any evidence.

Mark Williams used his printing business to print TTV's Challenges.

Williams Tr. 19:4-18; 21:11-22:15; Williams Resp. to First Interrogs. Resp. No. 1. Ron Johnson helped to find other volunteers willing to submit TTV's Challenges in other counties. Johnson Resp. to First Interrogs. Resp. No. 5. James Cooper also helped to find volunteers willing to submit TTV's Challenges. Cooper Resp. to First Interrogs. Resp. No. 5; Cooper Tr. 45:1-9; 50:13-22. TTV and Catherine Engelbrecht, in her capacity as TTV's President, worked with a team of data analysts to compile the TTV Challenge List. *See* TTV Resp. to 2d Interrog. Resp. No. 14. TTV also organized and submitted the Challenges in 65 Georgia counties, on behalf of the volunteers who had authorized them to do so. TTV Am. Resp. First RFP Resp. No. 2. TTV ran a voter integrity hotline, and turned any credible incidents over to the proper authorities—but did not have reason to turn any hotline calls over to Georgia authorities. TTV Tr. 68:16-69:7; 81:16-21;81:22-

82:4; 82:18-21; 85:13-86:9; 93:17-95:3; TTV Am. Resp. 2d RFP Resp. No. 18.

TTV established a fund to provide a legal support for people who reported information—the purpose of which was primarily to head off the chilling effect of the threat of legal action against challengers or those with information. TTV Tr.

71:11-19, 71:22-72:1, 74:8-17, 75:5-18, 76:15-19; 316:3-12; 316:19-317:5. As described above, Mark Davis and Derek Somerville worked on the

Davis/Somerville Challenge List independently and not in conjunction with TTV.

First Somerville Tr. 29:5-31:17; 32:20-33:4; 45:3-11; 103:6-13; 157:7-15

Somerville Interrog. Resp. Ct. Order Resp. No. 1, 4; First Davis Tr. 38:22-39:14;

41:10-42:16; 46:12-47:10; Second Davis Tr. 95:4-9; Davis Interrog. Resp. Ct.

Order Resp. No. 1. At times, various Named Defendants made public statements in general about issues surrounding voter integrity in Georgia—but none of those statements called for physical violence or threatened harm to any Plaintiff. *See,*

e.g., Second Somerville Tr. 75:1-84:10. At the most, these public statements called into question what the authorities should do when people cast illegal ballots. *See id.*

The things all these Named Defendants have in common? None of them

contacted Challenged Voters directly. None of them contacted Fair Fight. None of them published Challenge Lists publicly. None of them threatened Challenged Voters with any legal, economic, or physical harm. All of those commonalities are undisputed in the record. Plaintiffs provided no evidence otherwise. This motion for summary judgment should be granted because no Named Defendant had any contact with a Challenged Voter or with Fair Fight, and the § 11(b) violation claim is unsupported by any evidence showing otherwise.

D. The voter challenges were not frivolous.

1. True the Vote's data analysis was not frivolous.

The starting point TTV utilized for its Challenge List was the U.S. Postal Service National Change of Address (“NCOA”) data. OpSec Tr. 93:16-94:2. The NCOA is used by thirty-six states in required list maintenance to trigger sending a National Voting Rights Act (“NVRA”) “return card,” which is designed to ascertain the putative voter’s current address and explains the procedures for affirming residence. *Husted v. A. Philip Randolph Inst.*, 138 S.Ct. 1833, 1839-40 (2018). The practice of using the NCOA data for this purpose was pronounced as “undisputably lawful” by the United States Supreme Court. *Id.*

In addition to the usual CASS and DPV data hygiene for NCOA records, OpSec, the contractor used by TTV for data analysis, refined the data for all the counties² in Georgia using proprietary algorithms to compare the addresses in the registration file to other commercially available information to identify people who had moved out of the registered county or lived outside Georgia, *id.* at 113:6-17.³

OpSec's proprietary process sought to verify the identity of an individual before considering residency by comparing to data gathered from a combination of lists, *id.* at 96:3-11, including other state registrations and "five or six other data sources." *Id.* at 95:14-15; 17-18; 96:12-1. It is designed to identify persons who have deployed for military service, *id.* at 128:3-7; persons that, intending to move, file an NCOA request and then change their mind, *id.* at 127:12-128:2; persons that forward their mail because they were on vacation, *id.* at 126:22-127:5, 128:1-

²*See, e.g.*, TTV analyzed data for all 159 Georgia counties, with the intention of submitting Challenges in every county in which they had a volunteer Challenger. Because they did not get volunteers in all counties, TTV submitted Challenges in only 65 counties. TTV Am. Resp. First RFP, Reps. No. 2.

³In matching information from Georgia's voter rolls and other data, OpSec used fields that conformed with respect to data format and data type. *Id.* at 106:22-107:3.

2; persons that moved for non-military government service and submit an NCOA, *id.* at 126:9-16, 128:1-2; persons submitting an address change for purposes of attending school, *id.* at 125:17-19, 128:1-2; and persons that have moved inside the county or jurisdiction in which they were registered, *id.* at 125:2.

OpSec's proprietary process utilized uses a 4000-row algorithm which involved a complex series of other algorithms, such as dissimilarity and similarity indexes and fuzzy logic. *Id.* at 107:13-108:4; 113:22-114:3. The process used regression modeling throughout and included a process to identify the regression technique most likely to produce an accurate result. *Id.* at 118:19-119:22.

The process decided whether similar identifying information is sufficient to assume an accurate identity, and if it is not, assigned a risk factor to it. *Id.* at 108:8-11. An algorithm evaluated flagged data, pulling information from outside sources to resolve the risk, and if the question could not be resolved, a match based on the information would not have been included. *Id.* at 116:12-16; 119:16-22; 119:16-22.

OpSec reviewed the results of matching names in the voter files and the NCOA registry to ensure that it was reasonable with respect to false positives and

false negative to within one standard deviation of the potential error that might be expected. *Id.* at 140:8-141:7.

2. Davis and Somerville data analysis was not frivolous.

The Davis/Somerville Challenge List was not frivolous—Mr. Davis used his extensive experience in working with data and mailing lists to compile the data for the Davis/Somerville Challenge List. First Davis Tr. 21; Davis Interrog. Resp. Ct. Order Resp. No. 2. Mr. Davis’ and Mr. Somerville’s data analysis included running CASS & NCOA processing of voter-provided move status, geocoding to verify move locations, and extensive work to remove military and student voters, who they knew were likely to be eligible to vote. *Id.* Mr. Davis and Mr. Somerville did not consider racial or any other demographic data when compiling the Davis/Somerville Challenge List. First Davis Tr. 166:5-168:22; Second Somerville Tr. 30:6-32:14; 188:4-22. Second Davis Tr. 40:19-41:5; 185:15-188:4.

Research since the run-off election, which has been provided to the Georgia Secretary of State, has confirmed that the Davis/Somerville Challenge List was far from frivolous. Davis Interrog. Resp. Ct. Order Resp. No. 3. (“**SOS Analysis**”). The SOS Analysis shows over 3,500 voters who had submitted changes of address

outside the statutory grace period, cast ballots in their old county, and then updated their voter registration to their new county after the run-off. *Id.* The SOS Analysis showed that over 37% of the voters who indicated a change of address within Georgia have updated their voter registration addresses to the same addresses shown in the NCOA data provided to the USPS prior to the run-off election. *Id.* These voters have provided post-election, self-confirmation to the Secretary of State or their county's board of elections that the information on the Davis/Somerville Challenge List was accurate at the time they compiled it. *Id.*

3. Named Defendants did not based challenges upon racial or other demographic data.

OpSec used no demographic information in processing the data or compiling the Challenge List. OpSec Tr. 163:13-164:8; 149:14-17. After the List was compiled, OpSec consulted a "TrueAppend" document as a quality check on its results by looking at the overall number of moved provided in that report.⁴ The TrueAppend report includes age and demographic information but no changes were ever made to the Challenge List as a result of demographic information.

⁴As recorded in the timestamp footer in the report, the earliest that OpSec could have viewed it was on December 19, 2020. *See* TTV Tr. Exhibit 8 (also marked OPSEC 0009-0029).

OpSec Tr. 150:16-18, 151:13-16, 152:6-9; OpSec Tr. Exhibit 10. If demographic or other characteristics of individuals on the Challenge List were ever considered by OpSec or TTV, it was after and in response to Plaintiff's suit. OpSec Tr. 163:13-164:8; 149:14-17.

II. Judicial Enforcement of § 11(b) as sought to be applied by Plaintiffs, would be unconstitutional.

Judicial enforcement of private agreements amounts to state action, and as such, is subject to constitutional limitations. *Shelley v. Kraemer*, 334 U.S. 1, 19 (1948). The same would be true for judicial enforcement of a private cause of action permitted under federal law as here.

Defendants' § 230 Challenges involve their First Amendments rights to free speech and petition, as well as their right to vote. Georgia law specifically provides for the types of Challenges brought by Named Defendants, and the Georgia legislature has since confirmed, via additional statutory language, that "mass" Challenges are permitted under this law. O.C.G.A. § 21-2-230(a).

If this Court were to adopt Plaintiffs' interpretation of § 11(b) and find that Named Defendants' speech and conduct was encompassed by § 11(b), § 11(b) would be rendered unconstitutional as applied on several grounds. First, § 11(b)

would be unconstitutional as applied under the First Amendment since Named Defendants' speech does not contain true threats outside of First Amendment protection and since Named Defendants' § 230 Challenges are lawful actions to petition the government. Second, § 11(b) would be unconstitutional as applied under the First Amendment as violating Named Defendants' right to vote. And third, § 11(b) would be unconstitutional as applied under the Due Process Clause of the Fourteenth Amendment since it would be rendered unconstitutionally vague.

Furthermore, the doctrine of constitutional avoidance provides that, "if an otherwise acceptable construction of a statute would raise serious constitutional problems, and where an alternative interpretation of the statute is fairly possible, [courts] are obligated to construe the statute to avoid such problems." *I.N.S. v. St. Cyr*, 533 U.S. 289, 299–300 (2001). Pursuant to this cardinal principle of constitutional avoidance, § 11(b) must be construed narrowly, to avoid infringement upon those fundamental constitutional rights. This Court must hold that without evidence of wrongdoing or illegality underlying the § 230 Challenges, § 11(b) must allow for Defendants' right to challenge voters' right to vote in a

particular election, as allowed under Georgia law.

A. Judicial enforcement of § 11(b), as sought to be applied by Plaintiffs, would violate their right to free speech under the First Amendment.

Content-based restrictions on speech are subject to strict scrutiny, and a court must “consider whether a regulation of speech on its face draws distinctions based on the message a speaker conveys.” *Reed v. Town of Gilbert*, 576 U.S. 155, 163 (2015) (citation omitted). “Some facial distinctions based on a message are obvious, defining regulated speech by particular subject matter, and others are more subtle, defining regulated speech by its function or purpose. Both are distinctions drawn based on the message a speaker conveys, and, therefore, are subject to strict scrutiny.” *Id.* at 163-64. Whether the content of the speaker’s message is threatening or intimidating to voters is specifically at issue in a claim brought under § 11(b) and so this Court must use strict scrutiny to analyze these claims. *Id.* at 163.

The Supreme Court has defined narrow categories of speech which can be prohibited based on content. Only the category of “true threats” is relevant here. *Watts v. United States*, 394 U.S. 705, 708 (1969) (per curiam) (holding content-based restrictions “must be interpreted with the commands of the First

Amendment clearly in mind. What is a threat must be distinguished from what is constitutionally protected speech.”). The *Watts* Court held that “political hyperbole” is not a true threat, even when “crude,” “abusive, and inexact.” *Watts*, 394 U.S. at 708.

The Eleventh Circuit adopted the same objective standard for true threats that most other circuits employ— a true threat is a communication that, when taken in context, “would have a reasonable tendency to create apprehension that its originator will act according to its tenor.” *United States v. Martinez*, 736 F.3d 981, 986 (11th Cir. 2013), cert. granted, judgment vacated, 576 U.S. 1001 (2015) (vacating on grounds unrelated to applying objective standard).

As analyzed in [Part I](#), in virtually all of the cases where violations of § 11(b), or laws similar to § 11(b), were found, the defendants communicated the intimidating message, or acted in an intimidating manner, directly and specifically to the voters themselves or to people attempting to register voters. The undisputed facts cited in [Part I](#) show that it is undisputed that Challenged Voters were not the direct “recipients” of any of the Named Defendants’ action, and those actions could not meet the definition of true threat anyway.

Named Defendants’ actions do not meet the Eleventh Circuit’s objective test for true threats. Therefore, the speech surrounding the § 230 Challenges submitted by Named Defendants do not lose the First Amendment protection and penalizing such speech under § 11(b) would render § 11(b) unconstitutional as applied.

B. Judicial enforcement of § 11(b), as sought to be applied by Plaintiffs, would violate their right to petition under the First Amendment.

Furthermore, Named Defendants’ § 230 Challenges are quintessential petitions to the government to address grievances and are also protected under the First Amendment. Because First Amendment freedoms need breathing space to survive, government may regulate in the area only with narrow specificity. *Cantwell v. Connecticut*, 310 U.S. 296, 311 (1940). Without evidence that a petition was made with some sort of “wrongfulness,” a petition to the government is constitutionally protected. *Bill Johnson's Restaurants, Inc. v. NLRB*, 461 U.S. 731, 743 (1983) (finding no protection against consequences for bringing “baseless litigation.”). But the Constitution does specifically “protect[] vigorous advocacy, *certainly of lawful ends*, against government intrusion.” *Nat’l Ass’n for Advancement of Colored People v. Button*, 371 U.S. 415, 429 (1963) (emphasis added).

Like the NAACP in *Button*, Defendants here are advocating lawful means of vindicating their legal rights. Enjoining Defendants' lawful § 230 Challenges—which were brought in almost every Georgian county without regard to the county's racial or political demographics—would prohibit constitutionally protected activity without any of the narrowing required for such infringement and render § 11(b) unconstitutional as applied.

C. Judicial enforcement of § 11(b), as sought to be applied by Plaintiffs, unconstitutionally violates defendants' right to vote via vote dilution.

The right to vote is certainly fundamental, but included within the right to vote is the principle that valid and eligible votes should not be diluted by unlawful votes. *Bush v. Gore*, 531 U.S. 98, 105 (2000); *see also Reynolds v. Sims*, 377 U.S. 533, 555 (1964). Defendants' § 230 Challenges sought to prevent vote dilution by ensuring that all the people listed as eligible voters were legally eligible to cast votes. Because of these strong First Amendment protections, enforcing § 11(b), as sought to be applied by Plaintiffs unconstitutionally violates Named Defendants's right to vote via vote dilution.

D. Judicial Enforcement of § 11(b), as sought to be applied by Plaintiffs, is unconstitutionally vague.

A statute or regulation is considered unconstitutionally vague under the due process clause of the Fifth or Fourteenth Amendments if it “forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application.” *Georgia Pac. Corp. v. Occupational Safety & Health Review Comm’n*, 25 F.3d 999, 1005 (11th Cir. 1994).

The undisputed facts show Named Defendants did not have any contact with a Challenged Voter, nor did they threaten legal, economic, or physical harm to any Challenged Voter (through either the § 230 Challenges, the support fund, or the voter integrity hotline). It stands to reason, if the Named Defendants are found liable here, it would have to be on the basis of bringing “mass” § 230 Challenges. But that would sweep constitutionally protected activity into the definitions of harassment and intimidation without any attempt to specifically narrow or define what kinds of § 230 Challenges would fall outside of that protection. How many § 230 Challenges would a voter in Georgia be able to bring without running the risk of liability under § 11(b)? One? Ten? Twenty? If Named Defendants are

found liable under § 11(b) because they brought “mass” challenges—even though the Georgia legislature has made it clear the number of § 230 Challenges a voter may bring is not limited—no “man of common intelligence” in Georgia would know which, or how many, voter challenges allowed under Georgia law, would be considered a violation of § 11(b). Such a finding by this Court would chill Georgians’ First Amendment activity out of the fear of liability and confusion over exactly what petitions to government would be permitted under such a holding. As a result, § 11(b) would be rendered unconstitutionally vague.

III. Named Defendants’ § 230 Challenges did not violate the National Voter Registration Act.

The NVRA generally applies to state election officials in regards to voter registration list maintenance. *See* 52 U.S.C. § 20501, *et seq.* Plaintiffs here have not brought an NVRA claim against Named Defendants—nor could they, since they provided no written notice to the chief election official of Georgia.

Id. at § 20510(b)(1). However, they use an alleged violation of the NVRA as a proxy argument for an § 11(b) violation. That argument is without merit.

The Eleventh Circuit has not handed down controlling authority on whether the types of § 230 Challenges Named Defendants submitted are pre-empted by the

NVRA. A district court did enjoin Muscogee County *election officials* from “upholding a challenge to any voter’s eligibility solely on the basis of information in the NCOA registry.” *Majority Forward v. Ben Hill Cnty. Bd. of Elections*, 512 F. Supp. 3d 1354, 1375 (M.D. Ga. 2021). Even if that were controlling law, which it isn’t, it doesn’t apply here and does not implicate an § 11(b) violation.

First, it is an undisputed fact that neither TTV’s Challenges nor the Challenges based upon the Davis/Somerville Challenge List were based solely on information in the NCOA registry. TTV, Mr. Davis, and Mr. Somerville did start with data from the NCOA when compiling their Challenge Lists, but they certainly didn’t end there. See [Part I.D.1](#), [2](#). They performed other data analysis on these lists, using a variety of commercial and proprietary processes. *Id.* Even if this Court agrees that the NVRA pre-empts the types of § 230 Challenges the Named Defendants submitted before the run-off election, there was no controlling legal authority so holding at the time they submitted them.

Second, even if this Court agrees that the Named Defendants’ § 230 Challenges were pre-empted by the NVRA, that does not equate to an § 11(b) violation. It is undisputed that Named Defendants submitted the § 230 Challenges

to county officials as is their right under the First Amendment and Georgia law. TTV Tr. 257:11-14; Second Somerville Tr. 71:16-72:19; 72:21-73:14; Second Davis Tr. 46:3-14; 80:7-10. It is undisputed that Named Defendants had no direct contact with Challenged Voters regarding the Challenges. TTV Resp. to First Rogs. No. 5; Somerville Am. Resp. and Obj. 2d Interrogs., Resp. No. 7; First Davis Tr. 171:4-21; Williams Tr. 63:2-64:1; Johnson Resp. to First Interrogs. Resp. No. 5; Cooper Resp. to First Interrogs. Resp. No. 5; Cooper Tr. 45:1-9; 50:13-22. It is undisputed that Named Defendants never threatened legal, economic, or physical harm to any of the Challenged Voters. *See id.*

Because no controlling legal authority prohibited the types of § 230 Challenges Named Defendants submitted prior to their submission, and because the plain statutory language permits these types of § 230 Challenges, Named Defendants did not act unlawfully when submitting the § 230 Challenges prior to the run-off election. Further, because Named Defendants did not engage in any behavior that comports with the type of behaviors that have been § 11(b) violations, submitting these lawful § 230 Challenges cannot support Plaintiffs' claims.

Conclusion

Because the undisputed material facts show that Named Defendants engaged in constitutionally-protected conduct that did not violate § 11(b), this motion for summary judgment should be granted.

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Dated: May 16, 2022

/s/ David F. Guldenschuh

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Summ. J.

Certificate of Compliance

The undersigned counsel certifies that the foregoing has been prepared in Times New Roman (14 point) font, as required by the Court in Local Rule 5.1(B).

Respectfully submitted on May 16, 2022

/s/ James Bopp, Jr.

James Bopp, Jr.

Lead Counsel for Defendants

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**United States District Court
Northern District of Georgia
Gainesville Division**

**Fair Fight, Inc., Scott Berson, Jocelyn
Heredia, and Jane Doe,**

Plaintiffs,

v.

**True the Vote, Inc., Catherine
Engelbrecht, Derek Somerville, Mark
Davis, Mark Williams, Ron Johnson,
James Cooper, and John Does 1-10,**

Defendants.

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

Hon. Steve C. Jones

Defendants' Statement of Undisputed Material Facts

True the Vote, Inc. /Catherine Engelbrecht Statement of Facts

Georgia Voter Challenge

1. True the Vote, Inc. (“TTV”) compiled a challenge list encompassing all 159 counties in Georgia (“**Challenge List**”) and intended to submit challenges on behalf of challengers in all of them. In order to do so, TTV needed eligible voters to volunteer to serve as challengers in each of these counties. TTV’s Responses to

Defs.’ Stmt.

Undisputed Facts

Plaintiffs' Second Interrogatories (June 7, 2021) ("**TTV Resp. to 2d Interrog.**"), Resp. No. 14, Ex. A.

2. On the day that TTV's press release announcing this was issued, Attorney Mark Elias sent letters to the Boards of Elections in several Georgia counties. TTV 1455-57 (Letter from Marc Elias to Kristi L. Royston (Dec. 18, 2020)), Ex. B.

3. Several people serving as challengers started receiving intimidating and harassing messages via email and social media. TTV Resp. to 2d Interrog. Resp. No. 14.

4. As the Run-off election neared and the intimidation and harassment of challengers increased, TTV did not receive authorization to submit the challenge list from a registered voter in every Georgia county. *Id.*

5. Therefore, TTV did not submit challenges in all of Georgia's 159 counties as originally planned, but only submitted challenges in the counties noted in TTV's Amended Responses to Plaintiffs' First Requests for Production (Mar. 24, 2021) ("**TTV Am. Resp. First RFP**"), Resp. No. 2, Ex. C. The counties in which TTV submitted Challenges is as follows:

Appling	Habersham	White
Bacon	Hall	Wilcox
Baldwin	Hancock	Wilkes
Banks	Hart	
Barrow	Henry	
Ben Hill	Houston	
Bibb	Jackson	
Bleckley	Jasper	
Brooks	Jefferson	
Butts	Johnson	
Calhoun	Jones	
Charlton	Lamar	
Cherokee	Lee	
Clarke	Madison	
Clayton	McDuffie	
Cobb	McIntosh	
Coffee	Oconee	
Columbia	Oglethorpe	
Coweta	Rockdale	
Crawford	Sumter	
Crisp	Taliaferro	
Dawson	Tattnall	
DeKalb	Terrell	
Dodge	Thomas	
Dooly	Tift	
Dougherty	Toombs	
Douglas	Towns	
Fayette	Union	
Franklin	Walton	
Fulton	Webster	
Gwinnett	Wheeler	

Id. (reordered alphabetically).

6. TTV prepared analysis for all 159 counties but challenges were ultimately submitted in 65 counties because those were the counties for which individual electors committed to filing the challenges. Transcript Excerpts of Deposition of Catherine Engelbrecht, TTV 30(b)(6) (Jan. 26, 2022) (“**TTV Tr.**”), Ex. D, 255:4-256:13.

7. Based on its understanding of the governing statute and the process it outlined, and a meeting with the Georgia Secretary of State, TTV expected the challenge process to be orderly and organized and not burdensome to a challenged individual. TTV Tr. 152:15-154:19;169:22-170:18.

8. TTV had communications with individual challengers to discuss the process to have been followed and the threats that were being experienced, and TTV directed them where to submit information on the threats. TTV Tr. 159:21-161:2.

9. TTV had a meeting with the Secretary of State in mid-December to describe the Challenge and help understand the process in the counties to avoid friction or inappropriate process. TTV Tr. 168:5-22.

10. In that meeting, the Secretary of State commented that because the voter registration list had not been cleaned and considering the normal rate of moves that the number of names on the Challenge List was “about right.” TTV Tr. 169:1-12; 171:1-5.

11. The impetus behind the Challenges was in part that electors had contacted TTV about challenges in Georgia, and the challenge statute afforded an opportunity for citizens to engage in that way. TTV Tr. 223:17-224:6.

12. The purpose of the Challenges was to help electors bring to the attention of the counties those records that showed voters that appeared not to comply with eligibility standards for the runoff election. TTV Tr. 206:1-4.

13. The intent of TTV and the purpose of the Challenges was not to have people removed from voter registration rolls in Georgia, but for the county boards to confirm with the Challenged Voters whether they had moved. TTV Tr. 342:15-343:1; TTV Resp. to First Interrogs, Ex. E, Resp. No. 5.

14. Neither TTV nor any of the individual volunteers had any contact with the Challenged Voters. TTV Resp. to First Interrogs. Resp. No. 5.

Other Activities

Defs.’ Stmt.

Undisputed Facts

15. TTV never considered releasing the Challenge List to the public. TTV Tr. 257:11-14.

16. TTV was also involved in litigation in several states regarding possibly illegal ballots cast in the 2020 general election (“**Validate the Vote**”). The Validate the Vote name was created by a consultant of a donor in early November 2020. TTV Tr. 66:12-21, 67:16-20.

17. The name Validate the Vote was used with respect to these national litigation efforts in connection with the 2020 general election and sometimes included the name of the state in which the litigation efforts were directed. TTV Tr. 69:4-7.

18. The counting of illegal ballots in Democratic counties in several states was the subject of publicity regarding Validate the Vote, not the challenges in Georgia. TTV Tr. 267:6-268:2, 268:17-22, 276:3-5, 276:19-277:2, 277:3-5.

Work with OpSec

19. TTV hired OpSec Group LLC (“**OpSec**”) to analyze publicly available data to create a list of registered Georgia voters to be challenged under O.G.C.A. § 21-2-230 as having changed their residency. Transcript Excerpts of Deposition

of Gregg Phillips (Jan. 25, 2022) (“**OpSec Tr.**”), Ex. F 54:21; 57:11-21.

20. TTV contracted with OpSec to prepare analysis for all Georgia counties, and the challenges were limited by the residency of electors willing to mount a challenge in their county. TTV Tr. 231:11-19.

21. TTV received or viewed data from the TrueAppend on December 19, 2020; the data was not used in creating the Challenge Lists, TTV Tr. 244:17-245:10, 248:13-22, and the demographic information, which is automatically included, was reviewed as a result of claims that the List exhibited bias. TTV Tr. 185:1-5.

Fraud Hotline

22. Consistently over a number of election cycles, TTV hosts a hotline that is available online and uses a toll free number. TTV Tr. 81:16-21.

23. Reports of impropriety or malfeasance or reports of missing ballots or extra ballots were reviewed and either forwarded to the appropriate authorities or further vetted. TTV Tr. 85:21-86:9.

24. The election integrity hotline had live operators taking calls starting in late September of 2020. TTV Tr. 82:18-21.

Defs.’ Stmt.

Undisputed Facts

25. During the 2020 election cycle TTV's national election integrity hotline came to be associated with Validate the Vote. TTV Tr. 68:16-69:7; 81:22-82:4.

26. TTV referred easily answered questions or concerns to the official websites of the relevant government entities. TTV Tr. 85:13-20.

27. The purpose of the election integrity hotline was to gather information regarding potential violations that had already occurred and though TTV did report some incidents to authorities no reports received relevant to Georgia at the time of the runoff resulted in the need to follow up or report contact information to appropriate authorities. TTV Tr. 93:17-95:3; TTV's Amended Responses to Plaintiffs' Second Requests for Production (Jun. 18, 2021) ("**TTV Am. Resp. 2d RFP**"), Ex. G, Resp. No. 18.

28. During the runoff period, TTV made available training for signature verification and absentee ballot training. TTV Tr. 96:5-102:6.

Support Fund

29. In conjunction with its work on the Challenge List, TTV established a fund to provide legal support for people who reported information primarily to head off the chilling effect of the threat of legal action against challengers or those

with information. TTV Tr. 71:11-19, 71:22-72:1, 74:8-17, 75:5-18, 76:15-19.

30. The fund was also used to support litigation in several states in regard to the November 2020 presidential election. TTV Tr. 316:3-12.

31. As a result of the initiative associated with the fund, TTV received credible reports of criminal malfeasance that it submitted to authorities. TTV Tr. 316:19-317:5.

Withdrawn Challengers

32. Claire Joseph Martin was the only Georgia volunteer serving as a challenger who withdrew or attempted to withdraw a Georgia Elector Challenge in his or her name. TTV Resp. to 2d Interrog. Resp. No. 11.

33. Mr. Martin gave permission to submit Challenges on his behalf in Taliaferro County. Before the Taliaferro County Challenge List was submitted on his behalf, he submitted challenges to three of the voters on the List and who had requested absentee ballots. TTV Resp. to 2d Interrog. Resp. No. 11.

34. On December 20, 2020, he asked to “hold” the Challenge on his behalf and noted that two of the three challenges were residents in long-term care and were eligible to vote in Taliaferro County. TTV Resp. to 2d Interrog. Resp. No.

Defs.’ Stmt.

Undisputed Facts

11; TTV Tr. 327:10-15.

35. TTV submitted the withdrawal of the Challenge in Taliaferro County on Dec. 21. TTV Resp. to 2d Interrog. Resp. No. 11.

36. Mr. Martin later reported that Taliaferro County Chief Registrar confirmed with him that one of the three people on his challenge list did not live in Taliaferro County and the absentee ballot for that voter was rejected. TTV Resp. to 2d Interrog. Resp. No. 11.

37. TTV knows of no other instance in which TTV or a challenger learned that a voter whose name appeared on a Challenge List was in fact a resident of the County in which they were registered to vote. TTV Resp. to 2d Interrog. Resp. No. 12.

OpSec/Gregg Phillips Statement of Facts

38. OpSec was founded in 2020. OpSec Tr. 36:19.

39. True the Vote contracted with OpSec to analyze publicly available data to create TTV's Challenge List. OpSec Tr. 54:21, 57:11-21.

The Challenge List

40. OpSec prepared lists for all the counties in Georgia. OpSec Tr. 149:2-4.

Defs.' Stmt.

Undisputed Facts

TTV Tr. 231:11-13 (Analysis was prepared for all Georgia Counties); TTV Tr. 255:6 (“we had done the analysis to support [challenges in all 159 counties].”)

41. The counties for which challenges were submitted were those counties for which a Georgia voter lived in the jurisdiction and wished to file a challenge. OpSec Tr. 149:9-13; TTV Tr. 253:20-254:4; 255:7-11; 256:7-13.

OpSec’s Process and the Challenge List

42. In creating the Challenge List OpSec used the Georgia official voter registration file, the NCOA, the Coding Accuracy Support System (“**CASS**”), Delivery Point Validation (“**DPV**”) and proprietary algorithms (“**proprietary process**”) to help verify identity. OpSec Tr. 93:16-94:2.

43. In matching information from Georgia’s voter rolls and other data, OpSec used fields that conformed with respect to data format and data type. OpSec Tr. 106:22-107:3.

44. OpSec’s proprietary process compared the addresses in the registration file to government and commercially available information in order to identify people who had either moved out of the county in which they were registered or live outside the State of Georgia. OpSec Tr. 113:6-17.

45. OpSec's proprietary process was developed by Gregg Phillips in 2006 and through use has demonstrated its accuracy. OpSec Tr. 108:16-22.

46. OpSec used its proprietary process in addition to regular address matching to produce the Challenge List. OpSec Tr. 118:11-15.

47. OpSec's proprietary process is designed to infer, from consulting other sources of data, the purpose for which the person has submitted an NCOA request. OpSec Tr. 129:8-12.

48. Among the persons that OpSec's proprietary process is designed to identify are persons who have deployed for military service, OpSec Tr. 128:3-7; persons that, intending to move, file an NCOA request and then change their mind, *id.* 127:12-128:2; persons that forward their mail because they were on vacation, *id.* 126:22-127:5, 128:1-2; persons that moved for non-military government service and submit an NCOA, *id.* 126:9-16, 128:1-2; persons submitting an address change for purposes of attending school, *id.* 125:17-19, 128:1-2; persons that have moved inside the county or jurisdiction in which they were registered, *id.* 125:2.

49. OpSec's proprietary process does not consider as dispositive whether or

not a person filed a permanent or temporary address change. OpSec Tr. 138:16-22.

50. OpSec’s proprietary process seeks to verify the identity of an individual before considering residency by comparing to data gathered from a combination of lists. OpSec Tr. 96:3-11.

51. OpSec used databases other than NCOA and the voter file list to identify persons who had moved, OpSec Tr. 94:17, 95:3-9, including other state registrations, *id.* 95:14-15; 96:12-17, and “five or six other data sources.” OpSec Tr. 95:17-18.

52. To the extent that it is needed for the proprietary process, OpSec’s proprietary algorithm also uses the address information from TrueNCOA and SmartyStreets. OpSec Tr. 112:1-9; 119:16-22.

53. In producing the Challenge List, OpSec used, among other things, county tax records. OpSec Tr. 97:2-4.

54. OpSec’s proprietary process mitigates a lack of unique identifiers between voter registration rolls and NCOA lists by resolving for identity first, which, among other things, works to eliminate a false match between persons with the same first and last name but a different middle initial. OpSec Tr. 120:12-20.

Defs.’ Stmt.

Undisputed Facts

55. OpSec’s proprietary process of verifying identity is a means of and is used to correct potential matches of individuals in the voter file sharing a first and last name and address. OpSec Tr. 141:11-20.

56. OpSec’s approach of verifying identity and residency is a proprietary process that uses a 4000-row algorithm, involving a complex series of mostly common algorithms, such as dissimilarity and similarity indexes and fuzzy logic. OpSec Tr. 107:13-108:4; 113:22-114:3.

57. The fuzzy logic used in OpSec’s proprietary process is designed to ascertain whether similar information is similar enough to assume that an identity is accurate. If it is not, then it assigns a risk factor to it. OpSec Tr. 108:8-11.

58. In seeking to remove false positives or false negatives, OpSec’s proprietary processing includes a quality control algorithm that evaluates every piece of data flagged as having a risk of being potentially inaccurate. OpSec Tr. 118:3-11.

59. The formulas and algorithms “execute,” meaning that they pull in information from outside sources, using that information to process and resolve the risk assigned by the quality control algorithm. OpSec Tr. 119:16-22.

Defs.’ Stmt.

Undisputed Facts

60. OpSec's proprietary process further processes flagged questions of whether it's likely to be the same person, organization or street to attempt to resolve the question. OpSec Tr. 119:16-22. If the question cannot be resolved, a match based on the information would have been kicked out and not included, *id.* 116:12-16.

61. OpSec's proprietary process utilizes regression modeling including a model management process to identify the regression technique most likely to produce an accurate result. OpSec Tr. 118:19-119:22.

62. Regressions are run throughout the proprietary process. OpSec Tr. 119:5-9.

63. The names of individuals using military addresses were removed by identifying zip codes including military bases, FPO and other military designations, OpSec Tr. 129:16-130:1.

64. UOCAVA ballots and postcard ballots in general are handled by counties and counties don't make public that information. OpSec Tr. 135:20-136:8.

65. OpSec reviewed the results of matching names in the voter files and the

NCOA registry to ensure that it was reasonable with respect to false positives and false negative to within one standard deviation of the potential error that might be expected. OpSec Tr. 140:8-141:7.

66. The process reviewed for instances where the name does not match the name in the voter file or the name associated with that registration number and that name would likely have been “kicked out” as an exception, but it’s possible that the name could be included in the Challenge List. OpSec Tr. 145:5-18.

67. The process reviewed for instances where the registered address and the addressed to which the registrant moved are the same and it is possible that those names would appear on the Challenge List, especially if a different name was associated with the two addresses. OpSec Tr. 145:19-146:7.

68. The process cannot confirm whether an individual re-registered at the address to which the NCOA suggested the individual moved. OpSec Tr. 146:8-14.

69. OpSec used a TrueAppend document as a quality check on numbers by looking at the overall number of moved provided in that report as a check to see if there were noticeable accuracy issues with the result of its analysis; the report includes age and other demographic information that was not relevant, and OpSec

does not believe that any changes were made to the Challenge List after reviewing the report. OpSec Tr. 150:16-18, 151:13-16, 152:6-9; TrueAppend Doc., Ex. G

70. Hard copies of the Challenge List were not sent to counties in addition to electronic copies because it would have been unnecessary and the counties did not want them to be sent. OpSec Tr. 160:9-161:10.

71. If OpSec considered demographic and other characteristics of individuals on the Challenge List at all, it was only after and in response to Plaintiffs' suit, OpSec Tr. 163:13-164:8; 149:14-17, in which it is claimed, directly or indirectly, that the Challenges were aimed particularly at certain demographics, Amended Complaint ¶¶ 4, 16, 30.

72. OpSec uses DataWalk to do a type of regression analysis and data linkage but DataWalk was not used to generate the Challenge List. OpSec Tr. 164:18 -165:5.

73. OpSec might also use DataWalk to look at linkages between files denoting deceased persons in order to exclude them, but does not typically cross-check with such files. OpSec Tr. 166:1-18.

74. Neither OpSec nor Gregg Phillips know who tweets under the account

Crusade for Freedom. OpSec Tr. 167:22-168:10.

75. OpSec's analysis found that there were ineligible voters on the Georgia voter roll. OpSec Tr. 71:13.

Derek Somerville Statement of Facts

76. Mr. Somerville did not help or volunteer to help with TTV's Challenges in any way, including methodology of analysis, compiling a list of Challenges, or timing of any Challenges. Transcript Excerpts of First Deposition of Derek Somerville (Oct. 6, 2021) ("**First Somerville Tr.**"), Ex. I, 29:5-31:17; Defendant Derek Somerville's Responses and Objections to Plaintiffs' Interrogatories Pursuant to Court Order (Dec. 17, 2021) ("**Somerville Interrog. Resp. Ct. Order**"), Ex. J, Resp. No. 1,

77. Mr. Somerville and Mr. Davis worked together, independently from TTV, to run a separate data analysis for the Runoff election, which eventually was used by volunteers working with Mr. Somerville and Mr. Davis to submit voter challenges in various Georgia counties. ("**Davis/Somerville Challenge List**") First Somerville Tr. 32:20-33:4;45:3-11; Somerville Interrog. Resp. Ct. Order Resp. No. 1.

78. Mr. Davis took the lead in researching and identifying voters to include on the Davis/Somerville Challenge List. Based upon his review of this research and his discussions with Mr. Davis, Mr. Somerville understood the research and identification process to be as follows:

- a. Split the input voter data into 3 parts for processing so the databases would not exceed the dbase file size limitation of 2.14 gigabytes.
- b. Imported the data into 3 dbase structures with processing fields appended (added) to the structure.
- c. Copied the residence addresses into the “COA” (Change of address) fields created for CASS (Coding Accuracy Support System) and NCOA (National Change of Address) processing.
- d. Ran CASS & NCOA processing & saved the processing certifications.
- e. Created an empty table called “Moved” and imported the records that received an updated address during NCOA processing.
- f. Set a relation on the voter registration number into the vote history trailer data and flagged the voters in the “Moved” table who voted in the

general election.

g. Geocoded (assigned latitude & longitude) & digitally mapped the “Moved” table to assign the county of the new address.

h. Copied out a file of voters who cast ballots in the General Election with changes of address to a new state or to a new county in Georgia more than 30 days before the general and/or the runoff elections. This yielded a file of voters with a change of address to another state, as well as in state voters who, based on the month of their “Move Effective Dates”, appeared to have had residency issues when they voted in the General Election, along with voters who voted in the General who appeared to have similar residency issues heading into the Runoff Election.

i. Removed changes of address to PO Boxes.

j. Eliminated UOCAVA (Military) voters by matching against the absentee voter data.

k. Mr. Davis sent Mr. Somerville a copy of the file so that I could remove as many voters at military bases as possible.

l. Mr. Somerville sent the semi-final challenge list to Mr. Davis.

- m. Output a “Final” challenge list removing voters with changes of address prior to June of 2019 as we believed they would have already been through the Secretary of State’s NCOA processing, subsequent verification inquiries, and associated list maintenance activities.
- n. Created a report format for printed lists of challenged voters.
- o. Output a PDF list for each county.
- p. Output an Excel file for each county.
- q. Did an SQL query to get a count by county. The final count was 39,141 voters and the average number of challenged voters per county was 246.
- r. Mr. Davis uploaded the Davis/Somerville Challenge List to Google drive for Mr. Somerville to distribute to challengers.

Somerville Interrog. Resp. Ct. Order Resp. No. 2.

79. Mr. Somerville received no assistance from TTV in helping to prepare the Davis/Somerville Challenge List. Somerville Interrog. Resp. Ct. Order Resp. No. 4.

80. Mr. Somerville had no knowledge of how the TTV Challenge List was

developed, who participated in it, the methodology TTV used, or any other degree of knowledge pertaining to the TTV Challenge List. First Somerville Tr. 40:11-18; 42:15-43:9; Somerville Interrog. Resp. Ct. Order Resp. No. 1.

81. The Davis/Somerville Challenge List was completely unrelated to the TTV Challenge List. First Somerville Tr. 59:1-7.

82. Mr. Somerville's hope was that the Davis/Somerville Challenge List would be used by counties to determine whether "there was a flaw in the process that was exacerbated by circumstances surrounding the election[.] And did that, in turn, result in a number of votes that may have been ineligible? - regardless of who cast them, regardless of where they were cast, or regardless by whom." In other words, whether the Georgia voter rolls had a "data integrity issue." First Somerville Tr. 46:15-47:15.

83. Mr. Somerville's intent in working with Mr. Davis on the Davis/Somerville Challenge List was to encourage people to hold their government accountable by participating in a meaningful way—his intent was never to scare people away from participating in an election. Transcript Excerpts of Second Deposition of Derek Somerville (Feb. 2, 2022) ("**Second Somerville**

Tr.”), Ex. K 187:5-13.

84. At times, Mr. Somerville made public statements in general about issues surrounding voter integrity in Georgia—but none of those statements called for physical violence or threatened harm to any Plaintiff. *See* Second Somerville Tr. 75:1-84:10.

85. Mr. Somerville testified that it “wasn’t evident” to him that voters on the Davis/Somerville Challenge List “would ever be aware they were on the list.” But if these voters were asked to verify their residency by a county board, they simply had to show, through a benign process, they had not permanently moved from that county and were still eligible to vote there. First Somerville Tr. 56:18-57:11.

86. Mr. Somerville hoped that “if there was probable cause to believe that a vote may have been cast in an ineligible fashion – which may very well happen unbeknownst to the person who cast that vote – that that would be looked into by the local boards and remedied accordingly.” “‘Remedied’ does not necessarily mean they don’t vote, or that the voter is “purged” from the voter rolls. It simply means ensuring they vote in the proper county.” First Somerville Tr. 48:15-21; 78:6-9; Second Somerville Tr. 189:4-191:1.

87. Mr. Somerville did not believe that the Davis/Somerville Challenge List would have any short term impact; the effort was “really to highlight a very real issue with the integrity of the voter file, not necessarily to effect an outcome in any short order.” First Somerville Tr. 54:16-55:9.

88. The Davis/Somerville Challenge List was developed and used to highlight the fact that “the larger the amount of mail-in ballots, the more exaggerated the affect of a bad voter file.” First Somerville Tr. 153:1-12.

89. In recognition that military service in another county or state did not make a voter ineligible to cast a ballot in their home county, Mr. Somerville and Mr. Davis “went out of [their] way to make sure that . . . [they] removed individuals that appeared to be either serving in the military, or even remotely located near a military base in case the dependent – or dependents were caught up in that.” First Somerville Tr. 76:8-14; Second Somerville Tr. 20:18-21:4;26:10-21.

90. In recognition that students away from their home address were also likely eligible voters in their home counties, Mr. Somerville and Mr. Davis also made efforts to exclude them from the Davis/Somerville Challenge List, including identifying and removing students connected to addresses being on or near

campuses. Second Somerville Tr. 22:16-24:8.

91. The Davis/Somerville Challenge List consisted of “roughly 40,000 [registered voters] across all 159 counties [they] believed need[ed] to be verified by county election boards before the January 5, 2020, runoff.” First Somerville Tr. 86:14-18.

92. Mr. Somerville had “tremendous confidence” that the voters on the Davis/Somerville Challenge List “filed a change of address for one reason or another, and that there was and continues to be cause for each county election board to confirm that those individuals are still eligible voters within their county.” First Somerville Tr. 87:21-88:4.

93. Mr. Somerville, primarily through social media, asked if voters would be willing to submit voter challenges in their county, using the appropriate Davis/Somerville Challenge List. If a voter expressed interest, Mr. Somerville made that county’s list available to that Challenger, via email or Dropbox. The Challenger then was responsible for submitting the Challenge based upon the Davis/Somerville Challenge List to the appropriate county. First Somerville Tr. 89:22-15; 97:22-99:19; Somerville Interrog. Resp. Ct. Order Resp. No. 1.

94. The Davis/Somerville Challenge List was never released to the public. Second Somerville Tr. 71:16-72:19; 72:21-73:14.

95. Mr. Somerville had no contact with any Challenged Voter regarding the Challenges. Defendant Derek Somerville's Amended Responses and Objections to Plaintiffs' Second Interrogatories (Oct. 28, 2021) ("**Somerville Am. Resp. 2d Interrog.**"), Ex. L, Resp. No. 7.

96. To Mr. Somerville's knowledge, no county board of election accepted any Challenge submitted on the basis of the Davis/Somerville Challenge List. First Somerville Tr. 93:11-15.

97. Mr. Somerville's understanding of TTV's press release in December of 2020, was that TTV was trying to generally acknowledge the "work of Georgians" who were attempting to contribute to the effort of voter integrity, which is why his and Mr. Davis' names were included. Second Somerville Tr. 132:8-14.

98. Mr. Somerville had fairly minimal contact with TTV, and none of his contact resulted in substantive cooperation or coordination between the Davis/Somerville Challenge List and the TTV Challenge List efforts. First Somerville Tr. 103:6-13; 157:7-15; Somerville Interrog. Resp. Ct. Order Resp.

Nos. 1,4.

99. Mr. Somerville understood that the Davis/Somerville Challenge List would not prevent any eligible voter from voting, it would simply start a process undertaken by proper county authorities, which was designed to protect voters by identifying “those votes that are not eligible and would otherwise disenfranchise the very voters that [they were] trying to protect.” First Somerville Tr. 124:1-12; 127:9-15.

100. Mr. Somerville did not discuss with TTV, nor did he have any knowledge of, TTV’s 24/7 hotline or the “whistleblower fund” described in TTV’s November 6, 2020, press release. First Somerville Tr. 150:15-152:4.

101. After the Davis/Somerville Challenge List was compiled, Mr. Somerville ran several analyses on the data, including a breakdown of the file based on voter behavior. Mr. Somerville’s intent on this post facto review was to ensure that the data did not contain any particular bias regarding any other factor other than the data reflecting an address change the voter had submitted to the USPS. Second Somerville Tr. 30:6-32:14.

102. Mr. Somerville never considered race, sex, voting preference, or any

other demographic characteristic of the voters when working to compile the Davis/Somerville Challenge List. Second Somerville Tr. 30:6-32:14; 188:4-22.

Mark Davis Statement of Facts

103. Mark Davis is the president of Data Productions, which does marketing for commercial, nonprofit, and political organizations. Transcript Excerpts of First Deposition of Mark Davis (Oct. 4, 2021) (“**First Davis Tr.**”), Ex. M 17:6-9.

104. Mr. Davis has been admitted to testify as an expert witness in data analytics five times over the last 20 years in disputed elections, including in matters involving residency issues and redistricting errors. First Davis Tr. 19:6-13.

105. As part of his work with Data Productions, Mr. Davis processed between 50-60 million records in 2021, using a variety of data tools, including the USPS NCOA (National Change of Address) and CASS certification (Coding Accuracy Support System). First Davis Tr. 21:14-21.

106. Mr. Davis has matched the NCOA data with voter registration files for over 20 years, including during the 2020 election cycle. First Davis Tr. 27:4-28:21.

107. Mr. Davis noticed “residency issues with the Georgia Voter Database

for many, many years.” First Davis Tr. 32:11-33:17.

108. Because of Mr. Davis’ observations of residency issues with the Georgia Voter Database, he ran NCOA processing in November of 2020 to “ascertain the extent of the issues statewide.” First Davis Tr. 33:18-20.

109. Mr. Davis did not act in concert with, or cooperate with TTV, TTV’s data analysis, or its voter challenge efforts for the January 2021 Runoff. First Davis Tr. 38:22-39:14; 41:10-42:16; 46:12-47:10; Transcript Excerpts of Deposition of Mark Davis (Jan. 19, 2022) (“**Second Davis Tr.**”), Ex. N 95:4-9; Defendant Mark Davis’ Responses and Objections to Plaintiffs’ Interrogatories Pursuant to Court Order (Dec. 14, 2021) (“**Davis Interrog. Resp. Ct. Order**”), Ex. O, Resp. No. 1.

110. Mr. Davis supports efforts “to clean up voter rolls and ensure people don’t vote with residency issues because they’re casting ballots for people who don’t represent them” and diluting the votes of eligible voters. First Davis Tr. 58:22-59:9; Second Davis Tr. 175:4-14.

111. When the residency of a voter is called into question via a voter challenge, the Board of Elections would be responsible for investigating any

challenges it accepts. First Davis Tr. 120:7-22.

112. Mr. Davis ran data analysis on the Georgia voter rolls after the November 2020 election. (“**Davis November Analysis**”) First Davis Tr. 28:7-14; Second Davis Tr. 28:3-18.

113. Mr. Davis ran a separate data analysis for the Runoff Election; voters then volunteered to submit voter challenges in counties using this list.

(“**Davis/Somerville Challenge List**”) Second Davis Tr. 28:19-32:17.

114. Mr. Davis took the lead in researching and identifying voters to include on the Davis/Somerville Challenge List. Mr. Davis’ research included the following steps:

- a. Split the input voter data into 3 parts for processing so the databases would not exceed the dbase file size limitation of 2.14 gigabytes.
- b. Imported the data into 3 dbase structures with processing fields appended (added) to the structure.
- c. Copied the residence addresses into the “COA” (Change of address) fields created for CASS (Coding Accuracy Support System) and NCOA (National Change of Address) processing.

- d. Ran CASS & NCOA processing & saved the processing certifications.
- e. Created an empty table called “Moved” and imported the records that received an updated address during NCOA processing.
- f. Set a relation on the voter registration number into the vote history trailer data and flagged the voters in the “Moved” table who voted in the general election.
- g. Geocoded (assigned latitude & longitude) & digitally mapped the “Moved” table to assign the county of the new address.
- h. Copied out a file of voters who cast ballots in the General Election with changes of address to a new state or to a new county in Georgia more than 30 days before the general and/or the runoff elections. This yielded a file of voters with a change of address to another state, as well as in state voters who, based on the month of their “Move Effective Dates”, appeared to have had residency issues when they voted in the General Election, along with voters who voted in the General who appeared to have similar residency issues heading into the Runoff Election.

- i. Removed changes of address to PO Boxes.
- j. Eliminated UOCAVA (Military) voters by matching against the absentee voter data.
- k. Mr. Davis sent Mr. Somerville a copy of the file so that he could remove as many voters at military bases as possible.
- l. Mr. Somerville then sent the semi-final challenge list to Mr. Davis.
- m. Output a “Final” challenge list removing voters with changes of address prior to June of 2019 as we believed they would have already been through the Secretary of State’s NCOA processing, subsequent verification inquiries, and associated list maintenance activities.
- n. Created a report format for printed lists of challenged voters.
- o. Output a PDF list for each county.
- p. Output an Excel file for each county.
- q. Did an SQL query to get a count by county. The final count was 39,141 voters and the average number of challenged voters per county was 246.
- r. Mr. Davis uploaded the Davis/Somerville Challenge List to Google

drive for Mr. Somerville to distribute to challengers.

Davis Interrog. Resp. Ct. Order Resp. No. 2.

115. After the Run-off Election, Mr. Davis continued to analyze data related to Georgia voters. This data indicates that some voters who appeared to have residency issues (i.e., moved to another county more than 30 days before the election) voted in the General Election. Mr. Davis provided this data analysis to the Georgia Secretary of State in May of 2021 (“**SOS Analysis**”). Davis Interrog. Resp. Ct. Order Resp. No. 3.

116. The SOS Analysis showed that out of the 39,141 voters on the Davis/Somerville Challenge List, 26,854 had changes of address within the state of Georgia, and since the runoff, 9,950 voters (37.05%) have updated their voter registration addresses to the same addresses shown in the NCOA data provided to the USPS when they moved originally. These voters have provided post-election, self-confirmation to the Secretary of State or their county’s board of elections that the information on the Davis/Somerville Challenge List was accurate at the time Mr. Davis compiled it. Davis Interrog. Resp. Ct. Order Resp. No. 3; *see also* First Davis Tr. 132:8-22; Second Davis Tr. 60:16-61:3; 164:19-165:9; 166:21-168:14.

117. In addition, the SOS Analysis shows 18,202 voters of the 26,854 voters (67.8%) who submitted a change of address within the State of Georgia voted in the Run-off election. Of those 67.8% of voters, the data indicates 3,556 voters (19.5%) cast ballots for the Run-off Election in their old county, but have since updated their registration addresses to the same address they gave the USPS when they moved, which is in a different county than the one in which they voted. Since the Run-off Election, the Georgia Secretary of State has removed 1,486 of the voters on the Independent Run-off List. Of those, 403 (27%) voted in the Run-off Election. Davis Interrog. Resp. Ct. Order Resp. No. 3.

118. Of the voters described in the SOS Analysis, “94% of them would have been offered a ballot with a state house race on it that they don’t live in, about 86.5% would have been offered a chance to vote in a state senate district that they no longer lived in, and approximately 64% would have been offered the chance to cast a ballot in a congressional district they no longer lived in.” Second Davis Tr. 169:10-17.

119. Neither the Davis November Analysis nor the Davis/Somerville Challenge List took into account race, sex, or party affiliation. First Davis Tr.

166:5-168:22; Second Davis Tr. 40:19-41:5; 185:15-188:4.

120. Mr. Davis had no contact with any individual voters with potential residency issues according to his data analysis, nor did he encourage anyone else to contact individual voters with potential residency issues. First Davis Tr. 171:4-21. Mr. Davis and Mr. Somerville removed members of the military, to the best of their ability, from their list of voters with potential residency issues. Second Davis Tr. 29:1-17; 36: 14-37:6.

121. Mr. Davis and Mr. Somerville did not publish the Davis/Somerville Challenge List to the general public. Second Davis Tr. 46:3-14; 80:7-10.

122. Mr. Davis' "primary motivation" in compiling the list of voters with potential residency issues was "to prevent illegal votes from being cast." Second Davis Tr. 59:7-81 86:22-87:3; 90:14-21.

123. Mr. Davis believes it is the job of election officials and law enforcement to determine who may or may not have committed a crime as it relates to casting unlawful votes. Second Davis Tr. 59:8-11.

124. The Davis/Somerville Challenge List contained quite a number of voters who were registered to vote at commercial mail receiving agencies (such as

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UPS stores), rather than at their residence; he hoped election officials would notice this issue and work towards resolving it. Second Davis Tr. 67:5-68:8; 70:22-71:16.

125. Mr. Davis denies challenging a voter with a potential residency issue is voter intimidation. Second Davis Tr. 140:4-22.

126. The challenge in Muscogee County, Georgia did not come from the Davis/Somerville List. Second Davis Tr. 144:7-15.

127. Mr. Davis did not seek to intimidate any lawful voter. Second Davis Tr. 199:9-18.

Mark Williams Statement of Facts

128. Mark Williams owns a printing company, and his company printed the § 230 Challenges for TTV. Transcript Excerpts of Deposition of Mark Williams (Sept. 23, 2021) (“**Williams Tr.**”), Ex. P, 19:4-18; 21:11-22:15; Defendant Mark Williams’s Responses to Plaintiffs’ First Interrogatories (March 15, 2021) (“**Williams Resp. to First Interrogs.**”), Ex. Q, Resp. No. 1.

129. Mr. Williams introduced Ron Johnson and James Cooper to Gregg Phillips. Williams Tr. 23:3-24:7.

130. Mr. Williams did not help compile the TTV Challenge Lists. Williams

Tr. 35:4-15.

131. Mr. Williams volunteered to be the TTV Challenger in Gwinnett County. He submitted the Challenges to the Gwinnett Board with the hopes that the Board would vet the list, but he was told the Board would not vet them at all. Williams Tr. 63:2-64:1.

Ron Johnson Statement of Facts

132. Ron Johnson contacted eligible Georgia voters he knew to ask if they would be interested in bringing a § 230 Challenges in the county in which they live. He gave TTV the contact information for any Georgia voter who expressed an interest in participating in these Challenges. Defendant Ron Johnson's Responses to Plaintiffs' First Interrogatories (March 15, 2021) (" **Johnson Resp. to First Interrogs.**"), Ex. R, Resp. No. 5.

133. Mr. Johnson communicated with the volunteers to get their signed permission for TTV to submit the Challenges in there name. *Id.*

134. Mr. Johnson did not help compile the TTV Challenge Lists. Johnson Resp. to First Interrogs. Resp. Nos. 1-4.

James Cooper Statement of Facts

135. James Cooper contacted eligible Georgia voters he knew to ask if they would be interested in bringing a § 230 Challenges in the county in which they live. He prepared a “form” email to send to potential Challengers, which described the potential Challenges. He gave TTV the contact information for any Georgia voter who expressed an interest in participating in these Challenges. Defendant James Cooper’s Responses to Plaintiffs’ First Interrogatories (March 15, 2021) (“**Cooper Resp. to First Interrogs.**”), Ex. S, Resp. No. 5.

136. Mr. Cooper communicated with the volunteers to get their signed permission for TTV to submit the Challenges in there name. Cooper Resp. to First Interrogs. Resp. No. 5.

137. Mr. Cooper did not help compile the TTV Challenge Lists. Cooper Resp. to First Interrogs. Resp. Nos. 1-4.

Scott Berson Statement of Facts

138. Alton Russell submitted a § 230 Challenge in Muscogee County, which included Plaintiff Scott Berson. Plaintiff Scott Berson’s Responses to Defendants’ First Set of Interrogatories (Jun. 23, 2021) (“**Berson Resp. to**

Interrogs.”), Ex. T, Resp. No. 3.

139. Mr. Berson was never contacted directly by any Challenger, including any Named Defendant. Berson Resp. to Interrogs., Resp. No. 14.

140. Mr. Berson “read in the Columbus Ledger-Enquirer that challenges had been filed against people with out-of-state mailing addresses and I figured I was probably on the list.” Berson Resp. to Interrogs., Resp. No. 6.

141. He subsequently “received a phone call from a community organizer” informing him he had been challenged, but he doesn’t know the identity of the person who called him. Berson Resp. to Interrogs., Resp. No. 6.

142. Mr. Berson cast a provisional ballot in the run-off election, which was subsequently counted after he verified his eligibility with Muscogee County election officials. Berson Resp. to Interrogs., Resp. No. 12, 13.

143. Mr. Berson describes having to find suitable identification and proof of residency after changing mailing addresses as “extremely frustrating and burdensome.” Berson Resp. to Interrogs., Resp. No. 8.

Jocelyn Heredia Statement of Facts

144. Ms. Heredia was a Challenged Voter in Banks County. Transcript

Excerpts of Deposition of Jocelyn Heredia (Oct. 15, 2021) (“**Heredia Tr.**”), Ex. U, 20:13-21:7.

145. TTV filed an open records request with Banks County regarding its Challenge there, Banks County ORR, Ex. V, Def TTV 1836-37; the County responded with minutes from a meeting that showed it dismissed the Challenge List because no one requested a probable cause hearing. Banks County Board Minutes, Ex. W, Def TTV 1838.

146. Ms. Heredia testified that Banks County, not any Challenger, published her name on its website. Heredia Tr. 31:22-32:3.

147. Ms. Heredia did submit a change of address form. Heredia Tr. 13:1-13.

148. Ms. Heredia testified that no one said anything to her while she was standing in line to vote that intimidated her or targeted her. Heredia Tr. 48:16-49:3.

149. However, Ms. Heredia testified she felt “intimidated from the get-go,” as soon as she got to the polling location because she was the only Hispanic person in line to vote in a predominantly Republican county. Heredia Tr. 48:1-9.

150. Ms. Heredia testified that she did not know she was Challenged until

later, when she got into the polling location. Heredia Tr. 49:4-50:2.

151. Ms. Heredia testified her feeling of intimidation increased when she learned she had been Challenged based upon her change of address. Heredia Tr. 48:10-15.

152. Ms. Heredia testified that because she was Challenged, election officials asked her to fill out a paper ballot. Heredia Tr. 23:22-24:7.

153. The election officials explained to Ms. Heredia that if she provided the requisite proof of residency at her voter registration address, her provisional ballot would be counted. Heredia Tr. 23:22-24:13.

154. Ms. Heredia testified that she submitted the provisional ballot and provided the election officials with proof of her residency in Banks County. Heredia Tr. 24:8-13.

155. Ms. Heredia testified that a woman “of Asian descent” was also in the separate line to file a provisional ballot, but she does not know if that woman was a Challenged Voter or was filing a provisional ballot for some other reason. Heredia Tr. 45:9-14.

Doe Plaintiffs Statement of Facts

Defs.’ Stmt.
Undisputed Facts

156. Doe Plaintiffs both declared that they learned of their Challenge when they “read a story in the local paper about True the Vote’s challenges and saw my name and address had been published online.” ECF No. 26, ¶ 5.

157. Doe Plaintiffs assert “Defendants published a list with my address on it.” *id.* at ¶ 8.

158. The Doe Plaintiffs assert they were “extremely upset” when they learned their eligibility to vote had been challenged. *Id.* at ¶ 5.

159. The Doe Plaintiffs declared that the Challenge would not prevent either one of them from voting in the run-off election, but they feared they “could” become the target of harassment “from Defendants and their supporters.” *Id.* at ¶ 8.

Dated: May 16, 2022

/s/ David F. Guldenschuh

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**United States District Court
Northern District of Georgia
Gainesville Division**

<p>Fair Fight, Inc., Scott Berson, Jocelyn Heredia, and Jane Doe,</p> <p style="text-align: right;"><i>Plaintiffs,</i></p> <p style="text-align: center;">v.</p> <p>True the Vote, Inc., Catherine Engelbrecht, Derek Somerville, Mark Davis, Mark Williams, Ron Johnson, James Cooper, and John Does 1-10,</p> <p style="text-align: right;"><i>Defendants.</i></p>	<p>Civ. No. 2:20-cv-00302-SCJ</p> <p>Hon. Steve C. Jones</p>
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Dated: May 16, 2022

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Lead Counsel for Defendants

**Admitted Pro hac vice*

**United States District Court
Northern District of Georgia
Gainesville Division**

Fair Fight, Inc., John Doe, and Jane Doe,

*Plaintiffs and
Counter-Defendants,*

v.

**True the Vote, Inc., Catherine
Engelbrecht, Derek Somerville, Mark
Davis, Mark Williams, Ron Johnson,
James Cooper, and John Does 1-10,**

*Defendants
and Counter-Plaintiffs,*

Fair Fight Action, Inc.,
Counter-Defendants.

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

Hon. Steve C. Jones

**Defendant True the Vote, Inc.'s Responses to Plaintiffs' Second
Interrogatories**

Pursuant to Federal Rule of Civil Procedure 33, Defendant True the Vote, Inc. ("TTV") responds to Plaintiffs' Second Interrogatories.

General Objections

1. Defendant TTV objects to these requests to the extent that they purport to

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Ex. A to Defs.' Statement of Facts

call for the production of documents/information that: (a) contain privileged attorney-client communications; (b) constitute attorney work product; (c) disclose the mental impressions, conclusions, opinions, or legal theories of any attorneys or other representatives of the Plaintiffs; (d) were prepared in anticipation of litigation; or (e) are otherwise protected from disclosure under applicable privileges, immunities, laws, or rules.

2. Defendant TTV objects to these requests to the extent that they are vague, not limited in scope, unreasonably broad and burdensome, or beyond the scope of either category of permissible discovery under Fed. R. Civ. P. 26(b)(1).

3. Defendant TTV objects to the instructions accompanying the requests to the extent that they purport to impose obligations beyond those imposed by the Federal Rules of Civil Procedure, or any order promulgated by this Court.

4. Defendant TTV objects to discovery requests that are not proportional to the needs of the case and that are not “relevant to any party’s claim or defense.” Fed. R. Civ. P. 26(b)(1).

5. Defendant TTV objects to requests for information the benefit of which is outweighed by its lack of importance in resolving the issues at stake in this case,

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the amount in controversy, the parties' relative access to relevant information, the parties' resources, and whether the burden or expense of the proposed discovery outweighs its likely benefit. *See* Fed. R. Civ. P. 26(b)(1). Consistent with this rule, Defendant TTV does not produce multiple copies of a communication, e.g., where one email chain has multiple communications, earlier included ones are not produced as separate documents.

6. Subject to and without waiving any of the foregoing General Objections, which are hereby incorporated into each specific response, Defendant TTV (a) makes further objections in response to individual requests and (b) makes the required good-faith attempt to fulfill the duty to provide all responsive information readily available without undue labor and expense.

7. Defendant TTV objects to producing individuals' personal information, including emails and phone numbers, based upon privacy and relevancy.

Definitions

Except as specifically defined below, the terms used in these requests shall be construed and defined in accordance with the Federal Rules of Civil Procedure, wherever applicable. Any terms not defined shall be given their ordinary meaning.

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1. “Communication” means any transfer of information, whether written, oral, electronic, or otherwise, and includes transfers of information via email, report, letter, text message, voicemail message, written memorandum, note, summary, and other means. It includes communications entirely internal to True the Vote, as well as communications that include or are with entities and individuals outside of that organization.
2. “Comprehensive Ballot Security Initiative” means your program announced in your December 15, 2020 Press Release, including, but not limited to, the Election Integrity Hotline, plans to monitor absentee ballot drop boxes, and “other nonpartisan election integrity initiatives.”
3. “County” means any county in Georgia, as well as all employees, staff, agents, and representatives of the county, including the county boards of registrar’s offices, county registrars, or any other person with a responsibility for conducting or supervising elections in the county.
4. “Date” means the exact day, month, and year, if ascertainable, or, if not, the best available approximation (including relationship to other events).
5. “December 18, 2020 Press Release” means the press release posted on your

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Resp. to 2d Interrog.

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Website on that date, attached hereto as Exhibit A.

6. “December 14, 2020 Press Release” means the press release posted on your Website on that date, attached hereto as Exhibit B.

7. “December 15, 2020 Press Release” means the press release posted on your Website on that date, attached hereto as Exhibit E.

8. “Describe” means explain with particularity.

9. “Document” is synonymous in meaning and scope to the term “document” as used under Federal Rule of Civil Procedure 34 and the definitions for “writings and recordings” as set forth in Federal Rule of Evidence 1001, and it includes records, reports, lists, data, statistics, summaries, analyses, communications (as defined above), any computer discs, tapes, printouts, emails, databases, and any handwritten, typewritten, printed, electronically recorded, taped, graphic, machine-readable, or other material, of whatever nature and in whatever form, including all non-identical copies and drafts thereof, and all copies bearing any notation or mark not found on the original.

10. “Election” means any special or regularly-scheduled general election or run-off election held in the State of Georgia for any publicly elected office.

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Resp. to 2d Interrog.

11. “Georgia Elector Challenges” means the challenges to voter eligibility of registered Georgia voters in advance of the Run-off Election in which you have been and are involved and which are described, among other places, in your December 18, 2020 Press Release.

12. “Georgia Republican Party” means the state and/or county committees of the Republican Party, which works to elect Republican candidates to elected office, and their former, current, and/or future employees, staff, agents, consultants, and representatives. This term specifically encompasses the Georgia Republican Party that you announced a “partnership” with in your December 14, 2020 Press Release.

13. “Identify,” when used in reference to a communication, means to state when and where the communication was made; each of the makers and recipients thereof, in addition to all others present; the medium of communication; and its substance.

14. “Identify,” when used in reference to a government agency, firm, partnership, corporation, proprietorship, association, other entity, or person, means

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to state its, his, or her full name and present or last-known address.

15. “Identify,” when used in reference to processes or steps taken by you or others with whom you have worked on the matters at issue in this litigation, means to chronologically detail each and every action taken by any and all entities or persons, to identify the actor, and to detail how and when that action was or will be taken and for how long.

16. “Including” means “including but not limited to.”

17. “November 10, 2020 Press Release” means the press release posted on your Website on that date, attached hereto as Exhibit C.

18. “November Election” means the most recent election that was held in Georgia that culminated on Election Day on November 3, 2020, to include the general election and the special election held on that date.

19. “Person” means not only natural persons, but also firms, partnerships, associations, corporations, subsidiaries, divisions, departments, joint ventures, proprietorships, syndicates, trust groups, and organizations; federal, state, or local governments or government agencies, offices, bureaus, departments, or entities; other legal, business, or government entities; and all subsidiaries, affiliates,

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divisions, departments, branches, and other units thereof or any combination thereof.

20. “Relating to,” “regarding,” and their cognates are to be understood in their broadest sense and shall be construed to include pertaining to, commenting on, memorializing, reflecting, recording, setting forth, describing, evidencing, or constituting.

21. “Run-off Election” means the January 5, 2021 Senate Run-off election held in Georgia.

22. “Targeted Voter” or “Targeted Voters” means the registered Georgia voters who are the subject of the Georgia Elector Challenges.

23. “True the Vote Website” or “Website” means your website maintained at <https://truethevote.org>, a hard copy of the current home page is attached hereto as Exhibit D.

24. “Validate the Vote” Program refers to the initiative announced in your November 10, 2020 Press Release which you claim “[e]stablishes a whistleblower fund in excess of \$1 million to support those who come forward with credible evidence of criminal malfeasance; takes the steps to resolve illegal actions through

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litigation and ensure the final vote tally is valid to maintain public confidence in U.S. election system.”

25. “Voter” means any registered voter in Georgia and all persons who may properly register to vote in the state by the close of discovery in this case.

26. “You” and “your” means the organization that goes by the name of True the Vote, Inc., its officers, directors, partners, members, managers, employees, representatives, agents, consultants, or anyone acting on its behalf.

Interrogatories

Interrogatory No. 10: Describe in detail your involvement in any other elector challenges that were filed in Georgia in the six months leading up to the November Election.

Response: True the Vote had no involvement in any other elector challenges that were filed in Georgia in the six months leading up to the November election.

Interrogatory No. 11: Identify all “Georgia volunteers serving as challengers” (as described in your response to Interrogatory No. 1) who withdrew or attempted to withdraw Georgia Elector Challenges submitted in their names, and describe in detail the reasons why those individuals sought to withdraw the

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challenges.

Response: Clair Joseph Martin was the only Georgia volunteer serving as a challenger who withdrew or attempted to withdraw a Georgia Elector Challenge in his or her name.

James Cooper initially contacted Clair Joseph Martin to see if he would give True the Vote permission to submit Georgia Elector Challenges on his behalf in Taliaferro County and included the Taliaferro County challenge list in my email to Mr. Martin. Mr. Martin gave such permission via email. Before True the Vote could submit the challenges for Taliaferro County Challenge List on his behalf, Mr. Martin submitted challenges to three of the voters who were on the challenge list for Taliaferro County and who had also requested absentee ballots for the Run-off election.

After Mr. Martin submitted these three challenges, he emailed James Cooper on December 20, 2020, stating that two of the three challenges were for people who were eligible to vote in Taliaferro County. Later that same day, Mr. Martin asked, via an email to True the Vote and James Cooper, to “hold” the Taliaferro County challenges on his behalf. Mr. Cooper then emailed Mr. Martin’s request to

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hold his challenges to True the Vote. On December 21, 2020, True the Vote submitted Mr. Martin's withdrawal of his challenges to Taliaferro County.

Following TTV's withdrawal of Mr. Martin's challenges, he emailed Mr. Cooper to report that the Taliaferro County Chief Registrar did confirm with him that one of the three people on his challenge list did not live in Taliaferro County and the absentee ballot for that voter was rejected.

Interrogatory No. 12: Identify and describe in detail each instance in which you or the "Georgia volunteers serving as challengers" (as described in your response to Interrogatory No. 1) learned that a Targeted Voter was in fact a resident of the County in which they were registered to vote, and what, if any, steps you took in response to learning such information.

Response: Other than the communications involving Mr. Martin described in TTV's Response No. 11, TTV knows of no other instance in which TTV or the "Georgia volunteers serving as challengers" learned that a Targeted Voter was in fact a resident of the County in which they were registered to vote.

Under a Section 230 challenge allowed by Georgia law, the challenger submits challenges to his or her county election board. After the challenger

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submits these challenges, the county board of elections has the responsibility to determine if the challenge provides enough probable cause for further action under the law. If so, the challenged voters may be “flagged” by the county election board. When flagged, the challenged voter is not removed from the voting rolls and is not prevented from casting a ballot. If a flagged voter subsequently submits an absentee ballot or attempts to cast an in-person ballot, that voter will be asked by county election officials to provide identification showing eligibility to vote in that particular county. If the voter cannot provide that identification, that challenged voter is still able to cast a provisional ballot or follow other procedures for “curing” their registration. The county does not have the responsibility to inform the challenger of the outcome of any particular challenge. Therefore, neither the individual challengers nor TTV would have been expected to, and did not, learn of the results of the challenges, including the final determination of the residency or voter eligibility of any particular challenged voter.

In most of the counties in which TTV submitted challenges on individual challenger’s behalf, the board of elections declined to find probable cause or declined to pursue the challenges in any way.

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Interrogatory No. 13: List all counties in Georgia in which you submitted, or partnered with “Georgia volunteers” to submit, Georgia Elector Challenges.

Response: Previously answered. *See* Defendant True the Vote, Inc.’s Amended Responses to Plaintiffs’ First Requests for Production, Response to Request for Production No. 2.

Interrogatory No. 14: Describe in detail why you did not submit Elector Challenges to all 159 Georgia Counties as you claimed in your December 18, 2020 Press Release.

Response: At the time of the press release on December 18, 2020, True the Vote compiled challenge lists for all 159 counties and intended to submit challenges on behalf of challengers in all of them. In order to do so, True the Vote needed eligible voters to volunteer to serve as challengers in each of these counties.

The press release was designed as a tool to recruit challengers as well as inform people of True the Vote’s plans. On the same day as True the Vote’s press release was issued, Mark Elias sent letters to the Boards of Elections in several Georgia counties. *See, e.g.,* Def. TTV 1455. Several people who served as

Def. TTV

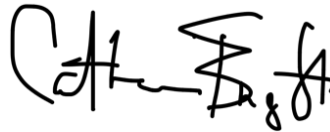
Resp. to 2d Interrog.

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challengers started to receive intimidating and harassing messages via email and social media. As the Run-off election neared and the intimidation and harassment of challengers increased, True the Vote did not receive authorization to submit the challenge list from a registered voter in every Georgia county. Therefore, True the Vote did not submit challenges in all of Georgia's 159 counties as originally planned, but only submitted challenges in the counties noted in Defendant True the Vote, Inc.'s Amended Responses to Plaintiffs' First Requests for Production, Response to Request for Production No. 2.

I, the undersigned, affirm under the penalties for perjury that the foregoing answers to Plaintiff's Interrogatories are true and correct.

Date: 06/07/21



Catherine Engelbrecht, President
True the Vote, Inc.

Dated: June 7, 2021

/s/ Courtney Kramer

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Def. TTV
Resp. to 2d Interrog.

Certificate of Service

I hereby certify that the foregoing document was served electronically on
June 7, 2021, upon all counsel of record via email.

/s/ Melena S. Siebert

Melena S. Siebert

Indiana Bar No. 35061-15

Counsel for Defendants

**Admitted Pro hac vice*

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Ex. A to Defs.' Statement of Facts



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December 18, 2020

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Kristi L. Royston
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Dear Gwinnett County Elections Officials:

In recent days voter challenges under O.C.G.A. § 21-2-230 have been filed in counties across Georgia demanding that officials in your position take action against the voting rights of thousands of registered individuals (the “Targeted Voters”). These purported challenges are not well founded. Should a similar challenge be filed in this County, any action your office might take to impede the casting of regular ballots by any Targeted Voter would be in violation of both Georgia and federal law. Should the County deny Targeted Voters their right to cast regular ballots, we will not hesitate to initiate legal action against you to protect lawful Georgia voters against these partisan attacks.

Probable cause does not exist to support these challenges under O.C.G.A. § 21-2-230 because the challenges are based on purported analysis of the United States Postal Service’s National Change of Address (“NCOA”) database. NCOA “matching” is notoriously unreliable, and on its own cannot provide the basis for a lawful challenge to a voter’s eligibility under Georgia law. Moreover, under federal law, the County is prohibited from invalidating voter registration on the basis of this type of broad challenge to residency at this point in the election cycle. This was the conclusion of a Georgia court that addressed a similar challenge to the eligibility of voters in Fulton County in October, a mere month before the November general election. *See Schmitz v. Fulton Cnty. Bd. of Registration & Elections*, 2020CV339337 (Super. Ct. Ga. Oct. 1, 2020). The present challenges come after voters have already begun to cast ballots in the runoff election. Any entertainment of them would be incredibly inappropriate and, indeed, unlawful.

NCOA data is not an accurate measure of an individual’s eligibility to vote. In fact, a federal judge recently recognized that Georgia’s prior reliance on this data to remove individuals from the voter rolls likely resulted in mistaken cancellations of lawful, eligible voters. *See Order, Black Voters Matter Fund v. Raffensperger*, No. 1:20-CV-04869-SCJ (N.D. Ga. Dec. 16, 2020), ECF 63 at 30. But even if the NCOA database accurately tracked which individuals have moved—and it does not—the information still would fail to reliably determine whether individuals are eligible to vote at the address where they are registered.

December 18, 2020
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While the place that a person receives significant mail, such as personal bills, may be evidence of the person's residency for voter registration purposes, O.C.G.A. § 21-2-217(15), both the Election Code and federal law enumerate legitimate reasons that individuals may change their mail address, even out of state, without forfeiting their eligibility to vote. These reasons include: moving for temporary purposes, § 21-2-217(a)(2); moving to engage in government service, § 21-2-217(a)(11); and intending to move without actually moving, § 21-2-217(a)(9). *See also* 52 U.S.C. § 20302(a)(1) (providing for voting by absent uniformed voters and overseas voters); O.C.G.A. § 21-2-216(e) (permitting a citizen who begins residence in another state within 30 days of an election to vote in Georgia if the person is not admitted to vote in the new state).

Thus, any voters 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 an address other than where they registered to vote without forfeiting their right to vote the county where they are registered. NCOA data makes no mention of why any individual requested a change of address, which would be critical for any threshold determination of the voter's eligibility. There is simply 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).

Precisely because NCOA data is so often unreliable and inaccurate, federal law *prohibits* the removal of individuals from voter registration lists unless strict precautions are followed. And what is forbidden in the registration context—restricting the right to vote based on alleged change-of-address information alone—certainly cannot supply probable cause for a challenge under O.C.G.A. § 21-2-230. Section 8(d) of the National Voter Registration Act (“NVRA”) expressly provides that “[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*” it follows the procedures set out therein, which require that: (1) the State receive 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.A. § 20507(d) (emphasis added). Because these challenges have not identified a single voter who has confirmed a change of address in writing to the State or received official notice from the State and failed to vote in two subsequent general elections, there is no basis for impeding their right to vote.

Section 8(c) of the NVRA provides an additional, independent prohibition on restricting the voting rights of Targeted Voters this close to the January 5 run-off elections for U.S. Senate. Section 8(c) requires that “[a] State shall complete, not later than 90 days prior to the date of a primary or general election for Federal office, any program the purpose of which is to systematically remove the names of ineligible voters from the official lists of eligible voters.” 52 U.S.C.A. § 20507(c)(2)(A). This section of the NVRA has been interpreted to apply not just to regular voter list maintenance programs, but also to voter challenges like those sought here. For example, a North Carolina federal court recently reviewed voter challenges across four counties and found that, where a county's removal of voters “lack[s] individualized inquiry,” rests on “generic

December 18, 2020
Page 3

evidence” such as mass mailings, and occurs within 90 days of a federal election, it violates Section 8(c) of the NVRA. *N.C. State Conf. of NAACP v. Bipartisan Bd. of Elections & Ethics Enf’t*, 1:16CV1274, 2018 WL 3748172, at *6-*7 (M.D.N.C. Aug. 7, 2018).

A Georgia court has already reached an identical conclusion. *See Schmitz* (denying as not required by Georgia law and prohibited by the NVRA a request for immediate hearings on mass registration and voter challenges brought on the basis of alleged change-of-residency data). So have other federal courts. *See Mont. Democratic Party v. Eaton*, 581 F. Supp. 2d 1077, 1082 (D. Mont. 2008) (“Because the federal [NVRA] makes it illegal to deny an elector his or her vote based on a change of address, subject to limited exceptions not implicated here, if Montana county election officials are required, or even allowed, to compel an elector challenged on the basis of change-of-address information to prove anything, there is a violation of federal law.”). For this very reason, rather than litigate a challenge case, Hancock County recently entered into a consent decree acknowledging that the NVRA governed its removal of several voters from the voter rolls pursuant to a challenge. *Ga. State Conf. of NAACP v. Hancock Cnty. Bd. of Elections & Registration*, 5:15-CV-00414 (CAR), 2018 WL 1583160, at *1 (M.D. Ga. Mar. 30, 2018) (granting joint consent decree requiring Hancock County to follow NVRA procedures for residency-based voter removal and establishing five-year monitoring).

Because elections officials are prohibited by the NVRA from preventing Targeted Voters from voting, the recent challenge efforts amount to a flagrant attempt at voter intimidation that is itself precluded by federal law. *See* 18 U.S.C. § 594 (criminalizing acts intended to intimidate voters and dissuade them from voting in a federal election); 52 U.S.C. § 20511(1) (criminalizing acts intended to intimidate any person for attempting to register to vote in a federal election); 52 U.S.C. § 10307(b) (prohibiting any person from intimidating voters in participating in election, whether or not such intimidation was intended). County elections officials must not be complicit in this effort.

To avoid costly and unnecessary litigation, I respectfully request that you immediately reject any challenge to registered voters on the basis of alleged change-of-residency and, should such a challenge be filed in your County, permit Targeted Voters to cast a regular ballot in the upcoming run-off elections.

Very truly yours,



Marc Erik Elias

MEE

**United States District Court
Northern District of Georgia
Gainesville Division**

Fair Fight, Inc., John Doe, and Jane Doe,

*Plaintiffs and
Counter-Defendants,*

v.

**True the Vote, Inc., Catherine
Engelbrecht, Derek Somerville, Mark
Davis, Mark Williams, Ron Johnson,
True the Vote, Inc., and John Does 1-10,**

*Defendants
and Counter-Plaintiffs,*

Fair Fight Action, Inc.,
Counter-Defendants.

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

Hon. Steve C. Jones

**Defendant True the Vote, Inc.'s Amended Responses to Plaintiffs' First
Requests for Production**

Pursuant to Federal Rule of Civil Procedure 34, Defendant True the Vote, Inc. ("TTV") responds to Plaintiffs' First Requests for Production.

General Objections

1. Defendant TTV objects to these requests to the extent that they purport to

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call for the production of documents/information that: (a) contain privileged attorney-client communications; (b) constitute attorney work product; (c) disclose the mental impressions, conclusions, opinions, or legal theories of any attorneys or other representatives of the Plaintiffs; (d) were prepared in anticipation of litigation; or (e) are otherwise protected from disclosure under applicable privileges, immunities, laws, or rules.

2. Defendant TTV objects to these requests to the extent that they are vague, not limited in scope, unreasonably broad and burdensome, or beyond the scope of either category of permissible discovery under Fed. R. Civ. P. 26(b)(1).

3. Defendant TTV objects to the instructions accompanying the requests to the extent that they purport to impose obligations beyond those imposed by the Federal Rules of Civil Procedure, or any order promulgated by this Court.

4. Defendant TTV objects to discovery requests that are not proportional to the needs of the case and that are not “relevant to any party’s claim or defense.” Fed. R. Civ. P. 26(b)(1).

5. Defendant TTV objects to requests for information the benefit of which is outweighed by its lack of importance in resolving the issues at stake in this case,

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the amount in controversy, the parties' relative access to relevant information, the parties' resources, and whether the burden or expense of the proposed discovery outweighs its likely benefit. *See* Fed. R. Civ. P. 26(b)(1). Consistent with this rule, Defendant TTV does not produce multiple copies of a communication, e.g., where one email chain has multiple communications, earlier included ones are not produced as separate documents.

6. By responding to these requests, Defendant TTV does not concede that any of the documents requested are relevant to a claim or defense or the subject matter of this action, or are admissible at the trial thereof, or that any person identified in the responses has documents relevant to this action. Defendant TTV reserves any and all objections as to competency, relevance, materiality, privilege, admissibility, or any other grounds on which an objection may be made.

Defendant TTV expressly reserves the right to object to further discovery into the subject of these requests. Any response to a request that inadvertently discloses privileged documents/information is not intended to and shall not be deemed or construed to constitute a waiver of any privilege or right of Defendant TTV.

Insofar as a response to a request may be deemed to be a waiver of any privilege

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or right, such waiver shall be deemed to be a waiver limited to that particular response only.

7. Defendant TTV objects to Plaintiffs' discovery requests to the extent that they seek to require him to produce documents or information not in its care, custody, or control or to answer on behalf of other parties.

8. Defendant TTV states that trial preparation and factual investigation are ongoing. Defendant TTV's responses to Plaintiffs' discovery requests are based on information known to Defendant TTV at this time, and Defendant TTV will supplement its responses appropriately if more documents are deemed responsive. Defendant TTV reserves the right to make reference at trial or any proceeding in this or any other action to facts or documents not identified in these responses, the existence or relevance of which is later discovered by Defendant TTV or its counsel.

6. Subject to and without waiving any of the foregoing General Objections, which are hereby incorporated into each specific response, Defendant TTV (a) makes further objections in response to individual requests and (b) makes the required good-faith attempt to fulfill the duty to provide all responsive information

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readily available without undue labor and expense.

7. Defendant TTV objects to producing individuals' personal information, including emails and phone numbers, based upon privacy and relevancy.

Requests for Production

Request for Production No. 1: All documents you consulted or referred to, or that otherwise relate to, your Answers to Plaintiffs' First Set of Interrogatories to Defendant True the Vote, Inc..

Response: Produced to the extent not subject to the following objections.

TTV objects to further production to the extent it seeks documents and materials protected by the First Amendment to the United States Constitution, namely the right of association and the right to petition the government, which are both protected from undue disclosure or investigation.

TTV's counsel contacted Plaintiffs' counsel to seek agreement that the parties would seek a protective order, which would preclude publication of confidential information and would require the parties to seek a motion for leave to file under seal if any documents containing personal information were to be filed with the Court. In addition, TTV's counsel asked Plaintiffs' counsel if they

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would agree not to sue any person identified as an individual challenger. While Plaintiffs' counsel was willing to discuss a protective order and filing under seal, as allowed, they were not willing to agree not to sue individual challengers.

Therefore, TTV objects to Request Number 1 to the extent it seeks documents and materials protected by the First Amendment to the United States Constitution, namely the right of association and the right to petition the government for a redress of grievances, both of which are protected from undue disclosure and investigation.

Further, TTV objects to Request Number 1 to the extent it seeks documents and materials that would likely lead to intimidation or harassment of individual challengers in violation of Section 11(b) of the Voting Rights Act. *See* Defendants' Answer to Plaintiffs' Complaint for Declaratory and Injunctive Relief, Affirmative Defenses, and Counterclaims Against Plaintiffs and Defendant Fair Fight Action, Inc., ECF No. 40.

Request for Production No. 2: All documents or communications discussing, analyzing, referring to, or otherwise relating to or regarding the Georgia Elector Challenges, including but not limited to all communications with

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or involving the email address gaelectorchallenge@truethevote.org, copies of the challenge, including the list of Targeted Voters submitted to each County, and the basis for any conclusion that any of the Targeted Voters are not eligible to vote under Georgia law.

Response: Produced to the extent not subject to the following objections.

The lists of challenged voters for the following counties have been produced:

1. Fulton	17. Columbia	33. Thomas	49. Wilcox
2. Butts	18. DeKalb	34. Tift	50. Franklin
3. Barrow	19. Fayette	35. Wheeler	51. Coffee
4. Clayton	20. Hall	36. Wilkes	52. Lee
5. Dodge	21. Hancock	37. Jones	53. Ben Hill
6. Douglas	22. Hart	38. Clarke	54. Bibb
7. Oconee	23. Henry	39. Bleckley	55. McDuffie
8. Oglethorpe	24. Houston	40. Dougherty	56. McIntosh
9. Cobb	25. Jasper	41. Crawford	57. Gwinnett
10. Banks	26. Jefferson	42. Lamar	58. Toombs
11. Appling	27. Johnson	43. Dawson	59. Habersham
12. Bacon	28. Madison	44. Jackson	60. Dooly
13. Brooks	29. Rockdale	45. Union	61. Coweta
14. Charlton	30. Sumter	46. Webster	62. Calhoun
15. Cherokee	31. Taliaferro	47. Walton	63. Crisp
16. Baldwin	32. Tattnall	48. Terrell	64. Towns
			65. White

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The challenge lists for the Georgia counties noted above were the only challenges TTV submitted via gaelectorchallenge@truethevote.org in accordance with the process described in TTV's Response to Interrogatory No. 4. Otherwise, TTV submitted no other challenges.

Defendant TTV incorporates its objections set forth in Response No. 1. TTV described its basis for its conclusion that the challenged voters might not be eligible to vote under Georgia law in its Responses to Plaintiffs' Interrogatories. Otherwise, Defendant TTV has no responsive documents in its care, custody, or control.

Request for Production No. 3: All communications with each of the "Georgia voters" whom you worked with in connection with the Georgia Elector Challenges as referred to in your December 18, 2020 Press Release. This includes but is not limited to the "Georgia voters" referred to in the Press Release as "representing all 159 counties," as well as Derek Somerville, Mark Davis, Mark Williams, Ron Johnson, and James Cooper.

Response: Produced to the extent not subject to the following objections.

Defendant TTV incorporates its objections set forth in Response No. 1. Otherwise, Defendant TTV has no responsive documents in its care, custody, or control.

Request for Production No. 4: All communications regarding the Voter Challenge Lawsuit, including but not limited to the temporary restraining order issued in that lawsuit and the Secretary of State's December 28, 2020 press release regarding the case and/or the order.

Response: Defendant TTV objects to this Request to the extent it seeks information beyond the scope of relevant material under Federal Rule of Civil Procedure 26. Otherwise, Defendant TTV has no responsive documents in its care, custody, or control.

Request for Production No. 5: All communications regarding your offer to provide "legal support" to Counties in your December 22, 2020 Press Release.

Response: Produced.

Request for Production No. 6: All documents and communications related to your "partnership" with the Georgia Republican Party "to assist with the Senate runoff election process," as announced in your December 14, 2020 Press Release.

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Response: TTV has no responsive documents in its care, custody, or control.

Request for Production No. 7: All communications related to your “offer” to the Georgia Democratic Party referenced in your December 14, 2020 Press Release.

Response: Produced.

Request for Production No. 8: All documents supporting your claim that voter fraud occurred in the November Election, that Georgia law was not upheld in that election, or that—to use the terminology on your Website—“law-abiding voters [did not] have their voices heard” in the November Election or in any prior election in Georgia over the last ten years.

Response: Defendant TTV objects to this Request to the extent it seeks information beyond the scope of relevant material under Federal Rule of Civil Procedure 26. Otherwise, TTV has no documents or communications in its care, custody, or control.

Request for Production No. 9: All documents supporting the statement on your Website that “Election law experts have long held that the margin of election fraud is 3 – 5%.”

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Response: Defendant TTV objects to this Request to the extent it seeks information beyond the scope of relevant material under Federal Rule of Civil Procedure 26. Otherwise, many election experts have expressed concern about voter fraud, widespread mail-in voting, ballot harvesting, maintenance of voter lists, and many other election integrity concerns. In 2005, the bipartisan Commission on Federal Election Reform, led by President Jimmy Carter and Secretary of State James Baker, addressed and warned about many of these concerns. The report can be found at:

<https://www.fec.gov/resources/cms-content/documents/ar05.pdf>

Request for Production No. 10: All documents supporting the statement on your Website that Georgia elections have been or that the Run-off Election will be, “targeted for subversion,” that “ineligible voters will be more likely to vote,” or that “invalid votes will more likely be counted.”

Response: TTV asserts that the Georgia Elector Challenges themselves support these statements. TTV also maintains that the Compromise Settlement Agreement and Release entered into between the Democratic Party of Georgia, Inc., the DSCC, and the DCCC on one side and Brad Raffensperger, Rebecca N.

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Sullivan, David J. Worley, Seth Harp, and Anh Le on the other side, made it more likely that ineligible voters would vote and that invalid votes would more likely be counted. In addition, investigations of The New Georgia Project also support TTV's assertions. *See*

<https://townhall.com/tipsheet/reaganmccarthy/2020/12/01/abramswarnock-voter-group-fraud-n2580878>

Request for Production No. 11: All documents or communications discussing, analyzing, referring to, or otherwise relating to your “Validate the Vote” Program, including but not limited to any and all information about where you have publicized the program, any documents or communications using the word “bounty,” any communications with anyone in purported response to the program, and any “credible evidence of criminal malfeasance” that you have identified in connection with elections in response to your Validate the Vote Program, including but not limited to any documents or communications related thereto.

Response: TTV promoted Validate the Vote generally on our website, social media, YouTube, radio, online news publications, and Fox News. A spreadsheet of

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the articles and references to Validate the Vote has been produced. TTV has searched its records and cannot find any reference to the word “bounty” relative to Validate the Vote. Ms. Engelbrecht may have used the word “bounty” on a podcast but cannot find specific reference to it for production.

As part of Validate the Vote program, an election integrity hotline was created. When people would call in with reports of concerns, the concerns were vetted (as the hotline was used by people to make many vile threats against TTV). Any vetted reports were turned over to the proper authorities for investigation.

Otherwise, TTV has no documents under its care, custody, or control.

Request for Production No. 12: All documents or communications involving or relating to the Twitter account of “@Crusade4Freedom,” including but not limited to any information regarding the identity or identities of the person or people who maintain, operate, or use that account and their association with or communications with True the Vote.

Response: TTV has no association with or knowledge relating to the Twitter account of “@Crusade4Freedom.” Therefore, TTV has no documents or communications in its care, custody, or control.

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Request for Production No. 13: All communications regarding your “voter registry research” as referenced in your December 18, 2020 press release, including but not limited to communications with persons involved in preparing lists of Targeted Voters or identifying registered voters whom you allege do not reside in their county of record or in the state of Georgia based on “filings with the United States Postal Service National Change of Address and other supporting commercial databases.”

Response: Produced to the extent not subject to objection. Otherwise, TTV has no documents in its care, custody, or control.

Request for Production No. 14: All documents and communications regarding the methodology used to conduct “voter registry research” as referenced in your December 18, 2020 press release, including but not limited to attempts to identify voters registered in Georgia whom you claim, based on “filings with the United States Postal Service National Change of Address and other supporting commercial databases,” no longer reside in the county of record or the state of Georgia.

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Response: Produced to the extent not subject to objection. Defendant TTV incorporates its objections set forth in Response No. 1. Otherwise, Defendant TTV has no responsive documents in its care, custody, or control.

Request for Production No. 15: All communications with individuals or entities involved in identifying voters registered in Georgia whose names, as you claim, appear in “filings with the United States Postal Service National Change of Address and other supporting commercial databases.”

Response: Produced to the extent not subject to objection. Defendant TTV incorporates its objections set forth in Response No. 1. Otherwise, Defendant TTV has no responsive documents in its care, custody, or control.

Dated: May 16, 2022

/s/ Ray Smith, III
Ray Smith, III, GA # 662555
rsmith@smithliss.com

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Certificate of Service

I hereby certify that the foregoing document was served electronically on
May 16, 2022, upon all counsel of record via email.

/s/ Ray S. Smith, III

Ray S. Smith, III

Georgia Bar No. 662555

Local Counsel for Defendants

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

-----X

FAIR FIGHT, INC., SCOTT BERSON,)
JOCELYN HEREDIA, and JANE DOE,)
Plaintiffs,)

vs.

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

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

FAIR FIGHT ACTION, INC.,)
Counter-Defendant.)

-----X

CONFIDENTIAL - PURSUANT TO PROTECTIVE ORDER
30(b)(6) VIDEOTAPED DEPOSITION OF
CATHERINE ENGELBRECHT
APPEARING REMOTELY
Wednesday, January 26, 2022
8:05 a.m. Central Time

Reported by: Lori J. Goodin, RPR, CLR, CRR
RSA, California CSR #13959

DIGITAL EVIDENCE GROUP
1730 M Street, NW, Suite 812
Washington, D.C. 20036
(202) 232-0646

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1 REMOTE APPEARANCES

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1 REMOTE APPEARANCES CONTINUED

2

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14 Joe Cerda, video/document technician

15

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12 RSA, California CSR #13959

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6 RSA, California CSR #13959

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17 (All exhibits were provided

18 electronically to the reporter.)

19

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21

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1 WEDNESDAY, JANUARY 26, 2022, 8:05 A.M.

2

3 PROCEEDINGS

4 THE VIDEOGRAPHER: We are now
5 beginning this video deposition. Today's
6 date is January 26, 2022. The time on the
7 video record is 8:05 a.m.

8 This is the deposition of Catherine
9 Engelbrecht, taken in the matter of Fair
10 Fight, Inc. versus True the Vote.

11 Will counsel please identify
12 themselves for the record and whom they
13 represent.

14 MR. NKWONTA: Good morning. My name
15 is Uzoma Nkwonta, and I represent the
16 plaintiffs in this case. I am joined with
17 co-counsel. I will let them represent
18 themselves -- or introduce themselves, I
19 should say, I'm sorry.

20 MS. BRYAN: Good morning. This is
21 Leslie Bryan from Lawrence and Bundy. I
22 represent the plaintiffs.

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1 MS. LINDENBAUM: Good morning. This
2 is Dara Lindenbaum from Sandler Reiff Lamb
3 Rosenstein & Birkenstock, also representing
4 the plaintiffs.

5 MR. SHELLY: Jacob Shelly with Elias
6 Law Group with plaintiffs.

7 MR. RAMIREZ: Joel Ramirez with
8 Elias Law Group with plaintiffs.

9 MR. MOCINE-MCQUEEN: Marcos
10 Mocine-McQueen, Elias Law Group with the
11 plaintiffs.

12 THE VIDEOGRAPHER: Okay. Counsel,
13 and before we swear in the witness, do all
14 parties agree or stipulate to the witness
15 being sworn in remotely through Zoom?

16 MR. NKWONTA: Yes, plaintiffs agree.

17 MR. BOPP: And I don't think I
18 entered my appearance. I am James Bopp,
19 representing the defendants and both -- and
20 representing both deponents in this action --
21 in this matter here today.

22 And, Melena Siebert will probably be

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1 joining us later, who is also counsel for the
2 defendants. And we consent to remote
3 deposition.

4 THE VIDEOGRAPHER: Okay, counsel.

5 With that being said, we will swear in the
6 witness, thanks.

7 * * *

8 Whereupon,

9 CATHERINE ENGELBRECHT,

10 a witness called for examination, having been
11 first duly sworn, was examined and testified as
12 follows:

13 * * *

14 EXAMINATION

15 BY MR. NKWONTA:

16 Q. Morning, Ms. Engelbrecht.

17 A. Good morning.

18 Q. My name is Uzoma Nkwonta. As I
19 mentioned before, I represent the plaintiffs in
20 this case.

21 And, my understanding is that you
22 are appearing today in your personal capacity and

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1 as the representative of True the Vote. Is that
2 correct?

3 A. Yes.

4 Q. Great. Ma'am, I just want to ask
5 you a few preliminary questions before we get
6 into the mechanics of the deposition.

7 Have you been deposed before?

8 A. No.

9 Q. So, this is your first time?

10 A. It is. Yes.

11 Q. In that case, I would like to go
12 over a few ground rules for the deposition just
13 so that we all proceed with the same
14 understanding.

15 So, the testimony today, all of your
16 testimony today, as you have heard is under oath
17 just as if you were testifying in court. Is that
18 fair?

19 A. Yes.

20 Q. And if at any point you don't
21 understand a question that I'm asking, just let
22 me know. I will do my best to rephrase the

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1 question or be a little bit clearer.

2 And if you do answer the question,
3 then I will assume that you understood the
4 question. Is that fair?

5 A. Yes.

6 Q. Okay. And for the benefit of
7 everyone and the court reporter, I would ask that
8 you continue to do as you are doing now and
9 answer audibly with yeses or nos, rather than
10 head nods or head shakes or gestures so that the
11 court reporter can keep an accurate record. Does
12 that sound good?

13 A. Yes.

14 Q. During the deposition, I would ask
15 that you allow me to finish my question before
16 giving your answer and I will do the same. And
17 that will help us have a clean transcript at the
18 end. Is that fair?

19 A. Yes.

20 Q. From time to time your attorney may
21 make an objection to my question. And that is
22 fine.

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1 You are okay to answer the question
2 unless your attorney instructs you not to answer
3 the question after he makes his objection.

4 Is that fair?

5 A. Yes.

6 Q. If there is any time with which you
7 would like to take a break, just let me know.
8 And I will find a good place to stop the
9 questioning so you can take a break.

10 I would only ask that if I am in the
11 middle of a question or if there is a question
12 pending that you would answer the question before
13 taking a break.

14 Is that fair?

15 A. Yes.

16 Q. And I know you mentioned this
17 earlier, I'm not sure if it was on the record or
18 off the record.

19 But would you mind repeating where
20 you were located for this deposition?

21 A. Cat Spring, Texas.

22 Q. And could you give me the address of

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1 where you are located for this deposition?

2 A. Sure. The full address?

3 Q. Yes, please.

4 A. Yes, okay. Sure. 13909 Track Road
5 in Cat Spring, Texas.

6 Q. And how are you viewing this
7 deposition? Are you on a laptop or are you on a
8 phone or some other device?

9 A. I am on laptop.

10 Q. And is there anyone in the room with
11 you currently?

12 A. No.

13 Q. And do you have any documents with
14 you currently?

15 A. No.

16 Q. Do you have any devices with
17 electronic copies of documents with you?

18 A. No. I have my -- I mean this is
19 probably too extreme, but I have my phone and I
20 have my headphone cases and that is it and a cup
21 of coffee.

22 Q. All right. So, because we are

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1 taking this deposition remotely, I may not be
2 able to see what you have in front of you or who
3 may enter the room.

4 And I just want to clarify that it
5 would not be appropriate for your attorney or
6 anyone else to tell you how to answer a specific
7 question that I ask.

8 And ask you to agree not to exchange
9 any communication with anyone whether by text or
10 e-mail related to the questions that I ask during
11 the deposition. Is that fair?

12 A. Yes.

13 Q. Great. So, we will get into some of
14 my additional preliminary questions now that we
15 have set those ground rules.

16 How did you prepare to testify
17 today?

18 A. Spoke with my attorney. Reviewed
19 all of the documents that we had submitted
20 heretofore. Reviewed the questions that were
21 outlined as being the primary subject matters for
22 today's review. And I guess that is really about

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1 it.

2 Q. Okay. And when did you speak with
3 your attorney, without disclosing what you
4 discussed?

5 A. Yesterday -- or, no. Monday,
6 Monday.

7 Q. And approximately how much time
8 would you say you spent preparing for this
9 deposition, again without disclosing the
10 specifics of what you have discussed?

11 A. Five or six hours. Six hours.

12 Q. All right. And are you on any
13 medication today that would affect your ability
14 to testify truthfully or to respond truthfully to
15 any of my questions?

16 A. No.

17 Q. Excellent.

18 MR. NKWONTA: Could we pull up
19 Exhibit 76, please. Or Document 76.

20 MR. BOPP: This might be a good
21 time, as I did yesterday. I would like to,
22 with your agreement, enter a, enter a

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1 continuing objection. And the continuing
2 objection means I won't have to object
3 repeatedly over the same things that have
4 already been decided by the court which we
5 understand, but we want to preserve our
6 objections.

7 We object to any questions
8 concerning activities before the 2016
9 election, meaning in previous elections prior
10 to 2016.

11 Any questions regarding any
12 activities other than in the State of
13 Georgia, any activities other than voter
14 eligibility challenges, preelection to the
15 Georgia runoff, and any questions regarding
16 the activities of King Street Patriots.

17 MR. NKWONTA: Understood. And so my
18 understanding is that will be your standing
19 objection.

20 To clarify on our end, will you be
21 instructing your witness not to answer
22 questions in light of those objections or

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1 subject to those objections?

2 MR. BOPP: No, if -- no. And as I
3 did -- I just didn't. I -- as long as they
4 are within the subject matter and within the
5 court orders, the parameters of this court
6 order, she will be permitted to answer for
7 sure.

8 MR. NKWONTA: All right. So, I
9 think that means we can proceed.

10 MR. BOPP: And if it ever occurs, I
11 mean I would do it if the question -- at the
12 time of the question. I'm not giving a
13 blanket, you know, advice to my client on how
14 to handle questions. Those would have to
15 arise, if they arose.

16 MR. NKWONTA: Understood. I
17 appreciate that. So, I think we are all set
18 to proceed.

19 (Exhibit 76 marked for
20 identification.)

21 BY MR. NKWONTA:

22 Q. Ms. Engelbrecht, the document that

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1 has just been shared with you, and I guess with
2 everyone on the Zoom call, is Exhibit 76, or
3 Document 76, which is the 30(b)(6) Notice issued
4 to True the Vote.

5 Have you seen this document before?

6 A. Yes.

7 Q. And do you understand that you have
8 been designated as a representative to answer
9 questions on behalf of True the Vote, Inc. or
10 True the Vote?

11 A. Yes. Yes.

12 MR. NKWONTA: Can we scroll down a
13 few pages to Exhibit A, please.

14 Sorry, next page. The page right
15 after.

16 BY MR. NKWONTA:

17 Q. And have you reviewed these topics
18 in Exhibit A of the 30(b)(6) Notice?

19 A. Yes.

20 Q. Are you prepared to testify about
21 all of these topics in Exhibit A of the 30(b)(6)
22 Notice?

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1 A. Yes.

2 Q. Great.

3 MR. NKWONTA: You can take that
4 down. And can we pull up Document 75,
5 please.

6 (Exhibit 75 marked for
7 identification.)

8 BY MR. NKWONTA:

9 Q. Ms. Engelbrecht, do you recognize
10 Document 75? Have you seen this document before?

11 A. Yes.

12 Q. And this is a deposition notice
13 issued to you individually; is that correct?

14 A. Yes.

15 Q. And do you understand that you are
16 also being deposed today in your individual
17 capacity?

18 A. Yes.

19 Q. Okay. And as we have done with the
20 prior deposition in this case, we will ask that
21 you agree that your answers today will be
22 attributed to you and/or True the Vote, unless we

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1 specify otherwise, or you specify otherwise in
2 the deposition in response to that question. Is
3 that fair?

4 A. Yes.

5 MR. NKWONTA: And do you agree to
6 that, counsel.

7 MR. BOPP: Do I agree to what?

8 MR. NKWONTA: That Ms. Engelbrecht's
9 answers will be attributed to Ms. Engelbrecht
10 and True the Vote, unless she specifies
11 otherwise in response, just as we did
12 yesterday?

13 MR. BOPP: I assume your questions
14 are directed at her in both capacities.

15 THE VIDEOGRAPHER: And counsel,
16 sorry. I apologize. This is Joe. I just
17 want to make sure for clarity that
18 Document 75 and 76, will those be entered
19 into as exhibits?

20 MR. NKWONTA: Yes, those will be
21 entered in as exhibits.

22 I think what might be best is I will

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1 continue to refer to them throughout the
2 deposition as 75 and 76. And then we can
3 decide after the fact whether we want to
4 number them sequentially. Is that fair?

5 THE VIDEOGRAPHER: Understood.

6 BY MR. NKWONTA:

7 Q. Ms. Engelbrecht, I want to start
8 with some background questions for you.

9 Where do you currently reside?

10 A. In Cat Spring, Texas.

11 Q. Are you a Texas native?

12 A. Yes.

13 Q. And what do you do for a living?

14 A. In addition to my work with True the
15 Vote, I am the co-founder of a healthcare fintech
16 software company.

17 Q. What is your role with True the
18 Vote?

19 A. I am both the founder of the
20 organization and its current president.

21 Q. Sorry, I didn't hear the last bit of
22 your answer. Do you mind repeating that?

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1 concerns with him?

2 A. Yes, I recall that we talked about
3 it and I understand. I mean it is a lot.

4 Q. And when you talked about it with
5 him did he relay the concerns about the program
6 being partisan?

7 A. Not the program. No, our program
8 was not partisan. He was shocked at, you know,
9 how could it be that the comments were taken and
10 twisted in a way that made things seem negative.
11 That was a shock to him.

12 Q. I want to ask you about a different
13 program. Have you heard or used the phrase,
14 Validate the Vote?

15 A. Yes.

16 Q. And where did that phrase come from?

17 A. It was a recommended name given to,
18 or suggested to me, by a consultant of a donor
19 that had come to us and had suggested, the
20 consultant suggested the name, Validate the Vote,
21 and I have used it.

22 Q. Is that phrase -- is that name, is

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1 that specific to True the Vote?

2 A. I don't know.

3 Q. Have you heard of any other
4 organizations that have used that phrase for any
5 of their programs?

6 A. I have. I have.

7 Q. Which ones?

8 A. The consultant who suggested that we
9 use that name went on to start his own
10 organization or had some other affiliation with
11 an organization that was using that name.
12 Whether or not they are still doing anything I
13 don't know.

14 But I recall seeing the -- I was
15 shocked to see that that had occurred.

16 Q. When did the consultant recommend
17 this name to you?

18 A. On November the 5th.

19 Q. What year?

20 A. Oh, sorry, 2020.

21 Q. And when did you see the consultant
22 start a different organization and use that same

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1 phrase?

2 A. I do not recall. Shortly
3 thereafter, but I do not recall.

4 Q. Other than that, do you recall any
5 other instances of organizations announcing sort
6 of Validate the Vote issues?

7 A. I do -- I cannot give you a specific
8 organization to direct your intentions to, but
9 that term I have seen many times, often with the,
10 you know, with the state attached to it, Validate
11 the Vote in a certain state or something like
12 that.

13 So, my recollection is I have read
14 it and seen it other places, but I can't give you
15 any other specifics about where to look.

16 Q. And during the 2020 election cycle
17 and the lead up to the 2021, the January 2021
18 runoff in Georgia, was Validate the Vote or the
19 phrase or the name of one of the programs that
20 True the Vote was initiating in Georgia and
21 elsewhere?

22 A. Validate the Vote was used broadly.

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1 We had an election integrity hotline, and it
2 didn't have a name so to speak. So we named it
3 Validate the Vote.

4 And then when the attentions turned
5 towards Georgia, as I recall, we would say
6 Validate the Vote Georgia, but it was still a
7 national effort.

8 Does that answer your question?

9 Q. Yes, it does. You have used the
10 word, bounty on fraud, before, correct? In
11 discussing the Validate the Vote program?

12 A. I don't -- I have read through this
13 in the preparation for this. I don't recall
14 saying that but -- I don't recall saying that,
15 but -- well, I will leave it at that. I don't
16 recall saying it.

17 MR. NKWONTA: Joe, can you pull up
18 Exhibit 64, please. And if we can go to
19 Page 3 of Exhibit 64.

20 (Exhibit 64 marked for
21 identification.)

22 BY MR. NKWONTA:

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2 didn't have a name so to speak. So we named it
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5 towards Georgia, as I recall, we would say
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10 word, bounty on fraud, before, correct? In
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16 recall saying it.

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18 Exhibit 64, please. And if we can go to
19 Page 3 of Exhibit 64.

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21 identification.)

22 BY MR. NKWONTA:

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1 A. Sure. These were extemporaneous
2 unscripted, just me talking.

3 And, I used that word for -- clearly
4 it is there. I don't recall saying it, but
5 clearly it was there. It was very much just sort
6 of a riff of trying to explain, you know, what
7 Validate the Vote was going to try to do.

8 And that is the nature of all of the
9 comments, which is just sort of a riff of trying
10 to explain it.

11 Q. In addition to the protection that
12 you mentioned that you wanted to offer to
13 whistleblowers, did that also include legal
14 support? Did you also discuss offering legal
15 support to whistleblowers?

16 A. I do recall in other instances
17 saying that it would be -- you know, legal
18 support would be one of the things that we would
19 hope to be able to offer.

20 Q. And why did you want to offer legal
21 support to whistleblowers?

22 A. There were people coming to us and

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1 just over the years, you know, people that have
2 information that they would like to share and are
3 concerned.

4 And want to not be left hanging if
5 they say something that, you know, would lead to
6 a place of needing counsel, you know, needing
7 some kind of representation. And, you know, I
8 can appreciate that.

9 So we just wanted to create an
10 environment where if they wanted to say something
11 we would, we would be with them.

12 Q. Did you offer that in order to, in
13 order to encourage whistleblowers to come
14 forward?

15 A. Is the question did we offer to pay
16 for legal counsel in order to encourage the
17 whistleblowers to come forward? Is that -- I'm
18 sorry --

19 MR. BOPP: Catherine, Catherine --

20 THE WITNESS: Could you repeat it?

21 Could you repeat the question?

22 MR. BOPP: Excuse me, I am speaking.

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1 witness during the testimony. And I ask that
2 you refrain from doing that further in this
3 deposition.

4 You have not asserted any objections
5 to my questions. You don't get to object to
6 your witness's own testimony.

7 BY MR. NKWONTA:

8 Q. Ms. Engelbrecht, I will repeat my
9 question. Did you offer legal support because
10 you thought it would encourage whistleblowers to
11 come forward?

12 A. Thank you. I thought that by making
13 it known that there would be legal support for
14 people who came forward, that it may encourage
15 people who were otherwise concerned about not
16 being able to withstand the whirlwind that these
17 things came to elicit.

18 Q. So, was it your view that concerns
19 about legal ramifications would keep some
20 whistleblowers from coming forward?

21 A. I'm sorry, can you repeat the
22 question?

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1 Q. Sure. Was it your view that
2 concerns about potential legal ramifications
3 would keep some whistleblowers from coming
4 forward?

5 A. It was my concern that, or my belief
6 that, in the environment in which we find
7 ourselves, it seems that it doesn't take too much
8 to end up being caught into a lawsuit.

9 And that we have all watched as
10 people who never thought they would find
11 themselves involved in anything like this do.
12 And that keeps a lot of people -- that has a very
13 chilling effect.

14 And so the thought was to try to
15 create an environment, as I say here on this
16 exhibit that is on the screen, to create a space
17 for people to come to and know that they wouldn't
18 be alone.

19 Q. So, and just to make sure I am fully
20 understanding, I think I am following what you
21 are saying.

22 A. Sure. Sure.

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1 Q. To make sure I'm fully
2 understanding.

3 Was it your concern that without
4 providing that legal support people may not come
5 forward because they were concerned about
6 potential legal ramifications?

7 MR. BOPP: I object. Asked and
8 answered now multiple times. You are
9 harassing the witness.

10 But you may answer if you, you know,
11 and if you -- you may answer.

12 THE WITNESS: Yeah, I feel like I
13 have answered it. I feel like I have
14 answered the question.

15 We thought that creating or making
16 it known that if people came forward and
17 needed some kind of legal support that we
18 would help support that. That was the reason
19 that I said what I said.

20 BY MR. NKWONTA:

21 Q. I understand that you feel like you
22 have answered the question. I do, I do want to

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1 forward would be taken care of and not just left.

2 Q. So, is one way to read this then is
3 that the dollars or the support, the financial
4 support or donations or dollars of True the
5 Vote -- and True the Vote's efforts will increase
6 as awareness of the Validate the Vote program and
7 these other efforts grows.

8 Is that, is that a fair reading?

9 A. Yes, I think that is fair.

10 Q. You also had a Validate the Vote
11 program hotline; is that right?

12 A. Yes.

13 Q. Was it called a Validate the Vote
14 Program Hotline or was there a specific name for
15 it?

16 A. Well, not initially. Every election
17 cycle we host a hotline that is both available
18 online, and then we have a toll free number that
19 people can call and share any manner of things.

20 And that has been consistent over a
21 number of cycles.

22 In the most recent cycle, we had

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1 started the hotline in late September. And we
2 didn't begin to use the name Validate the Vote
3 until, as I mentioned, November 5th or 6th,
4 something like that.

5 Q. But the hotline itself doesn't have
6 a specific name separate from Validate the Vote;
7 is that right?

8 A. Just the Election Integrity Hotline.

9 Q. And someone didn't have any ideas
10 for that?

11 A. No.

12 Q. Well, it is the Validate the Vote
13 hotline that you initiated, when did that hotline
14 take off for the 2020 election? Or when was that
15 hotline officially opened?

16 A. In, in, the hotline itself, just the
17 election integrity hotline, that is actually up
18 on our website right now. But we added the -- we
19 expanded the use of it for, to host live, live
20 operators taking calls and so forth. That
21 started in late September of 2020.

22 Q. So, that hotline started in late

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1 through the Voter Integrity Hotline?

2 A. This is consistent with the layout
3 of the rollup report that came to us, yes.

4 Q. And this is a document that True the
5 Vote produced, correct?

6 A. Yes.

7 Q. And this should reflect the reports
8 from the Voter Integrity Hotline or whatever the
9 hotline is called; is that right?

10 A. Yes.

11 Q. What did True the Vote do to vet
12 these reports?

13 A. As they came in, the reports came in
14 either via phone or via e-mail. If they came in
15 via phone and the report was something that was
16 easily answered, that could be directed back to
17 either the individual's location and therefore
18 their own municipality's website for certain
19 questions or concerns, then that instruction was
20 given.

21 If there were reports of some type
22 of impropriety or malfeasance, or something that

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1 seemed beyond just a standard, you know, I didn't
2 get my ballot, I got two ballots, where can I
3 vote, those kinds of things, the things that rose
4 beyond that, then those would be reviewed and
5 either forwarded to the appropriate authorities
6 or further vetted. And, you know, determined
7 whether or not it would be appropriate to have
8 additional support in verifying the information
9 that had been provided.

10 Q. Does this document reflect all of
11 the reports that you recorded from the Voter
12 Integrity Hotline?

13 A. If this is the first page of the
14 document then, from the Election Integrity
15 Hotline, it would not have been because that
16 started in the end of September.

17 Q. Let me rephrase my question then and
18 limit it to the runoff election.

19 A. Sure.

20 Q. For the runoff election in Georgia,
21 does this, does this spreadsheet capture all of
22 the reports from the Voter Integrity Hotline?

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1 your responses to Interrogatories 2 and 3,
2 including, but not limited to, all documents and
3 communications surrounding the launch of the
4 hotline, follow-up with users of the hotline,
5 vetted reports, and follow-up with the
6 authorities charged with investigating such
7 claims as described in your response to
8 Interrogatory Number 3."

9 Is that a correct reading of Request
10 Number 18?

11 A. That is a correct reading, yes.

12 Q. And in your response you state that,
13 "The defendant True the Vote has produced the
14 record of all hotline contacts relevant to
15 Georgia during the time frame of the runoff
16 election." Is that correct?

17 A. Yes. And that would be relevant to
18 Georgia at the time of the runoff collection --
19 runoff election, yes.

20 Q. You also state that, in the second
21 paragraph, "None of these contacts resulted in
22 the need for True the Vote to follow up or report

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1 the contact information to appropriate
2 authorities."

3 Is that correct?

4 THE WITNESS: Can we -- I apologize.
5 Could we just scroll down so I can see that
6 in the response?

7 MR. NKWONTA: Keep scrolling.

8 THE WITNESS: I can go -- yes.

9 MR. NKWONTA: The next page.

10 THE WITNESS: The next page.

11 MR. NKWONTA: And then the paragraph
12 starting with None of these concepts.

13 Can you scroll down a little bit
14 more, Joe?

15 THE WITNESS: Yes. Yes.

16 BY MR. NKWONTA:

17 Q. Is it accurate that none of the
18 reports to your election integrity hotline or
19 Validate the Vote hotline resulted in the need
20 for True the Vote to report anything to
21 authorities?

22 A. Specific to this request for

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1 production around the Georgia runoff and the
2 exhibit that we have looked at, that would be the
3 case, yes.

4 MR. NKWONTA: You can pull that
5 down, Joe. I would like to ask about some of
6 your other election related efforts.

7 If we could pull up Exhibit 61. And
8 can we scroll to the next page.

9 (Exhibit 61 marked for
10 identification.)

11 BY MR. NKWONTA:

12 Q. Do you recognize this document,
13 Ms. Engelbrecht?

14 A. Yes.

15 Q. What is it?

16 A. This was, based on its formatting,
17 this would have been taken from our website. And
18 it just describes that we launched the Election
19 Integrity Hotline specific to the runoff period.

20 Q. And this is a press release issued
21 by True the Vote, correct?

22 A. Yes. Or a blog post, but yes.

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1 Q. Or a blog post?

2 A. Or a blog post. I'm not certain
3 that this was a press release, but it most
4 certainly was posted on our website.

5 Q. Now, this press release makes
6 reference to efforts to provide signature
7 verification along with -- sorry, signature
8 verification training, absentee ballot drop box
9 monitoring, and other nonpartisan election
10 integrity initiatives.

11 Is that correct?

12 A. Yes.

13 Q. I want to explore each of those.
14 What signature training did you provide or what
15 signature verification training did you provide?

16 A. We posted online a signature
17 verification training course.

18 For that program particularly we had
19 worked with a signature verification specialist,
20 someone who is accredited in that field and has
21 worked in law enforcement and even in elections.

22 And so, she led the course, again

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1 online, but led the course in describing for
2 volunteers who would be potentially working in
3 that capacity what to look for.

4 And, you know, when you are looking
5 at signature verifications, how do you, if you
6 are going to compare two signatures, what are
7 some key traits that to an untrained eye you
8 might want to look at first. These are people
9 that -- most of them had never worked in that
10 capacity before.

11 So, just some basic understandings
12 of signature verification. And then the process
13 behind that.

14 So, taking the actual process of
15 looking at the signature and then in the greater
16 context of what that means inside of an election.
17 And the standards particularly in Georgia were
18 changing and how to do as best as you could to,
19 as a volunteer to be useful in that -- for the
20 state in that capacity.

21 Q. Who provided the training?

22 A. I do not remember her name. We

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1 worked only -- with her only on that one effort
2 or one training program. I believe it is all in
3 the training which is still I believe all online.

4 Q. Were you able to --

5 Are you still able to obtain that
6 information if it is still online, the identity
7 of the trainer?

8 A. Yes.

9 Q. Is that something you would be
10 willing to provide if we requested it?

11 A. Yes.

12 MR. BOFF: Excuse me. Any requests
13 for anything after this deposition including
14 production of documents, you can make in
15 writing to us.

16 And after the deposition, we will
17 then consider whether or not that request is
18 proper and determine whether or not, under
19 the rules and under the court's scheduling
20 orders, we will respond.

21 The witness, you know, is not -- I
22 mean, she is represented by counsel. There

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1 is a legal aspect to this. Okay. And that
2 is what we would like for you to do so that
3 we know what requests you are making by
4 putting it in writing, and then we can
5 respond appropriately.

6 MR. NKWONTA: Understood. And we
7 wouldn't direct the request to her. It was
8 more so just trying to understand access to
9 the information. But, yes, understood. We
10 will -- we would send any request to you and
11 counsel, of course.

12 MR. BOPP: Thank you.

13 BY MR. NKWONTA:

14 Q. Ms. Engelbrecht, am I right that the
15 training -- from what I understood, the training
16 was actually a link online provided on your
17 website that others could access, or was this a
18 set in-person training?

19 A. No, this is all online.

20 We used a training platform called
21 Teachable which is -- it allows for both the
22 support of a slide deck and audio or video and

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1 then supporting curriculum.

2 So that depending upon the training,
3 the volunteer or the participant would
4 potentially have a workbook to work from. And in
5 this instance there were some exhibits that were
6 a part of that platform.

7 Q. And how would one access this
8 training?

9 A. We have a, on our website, there is
10 a training page. And during this period of time
11 that training along with the absentee ballot
12 review training and the basic election worker
13 overview training would have been posted as
14 links.

15 And so, what would have happened is,
16 if someone was interested, they would go and sign
17 up, and automatically they get a log-in to
18 Teachable and then they can take the courses. It
19 doesn't cost anything. Yes.

20 Q. And you mentioned there is election
21 worker training.

22 Aside from signature verification,

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1 was there any other type of training relating to
2 the election that you posted online?

3 A. There was absentee ballot training.
4 That I recall. There -- those are the only two
5 that are specific to Georgia that I recall.

6 Q. What was the absentee ballot
7 training for, what did it entail specifically?

8 A. Sure. The process for -- well, most
9 people don't even know that you can volunteer to
10 help review absentee ballots. And given the
11 great influx of mail ballots in the 2020
12 election, our thought was more people that can
13 help volunteer to support this, the better the
14 throughput, the better overall accuracy of the
15 process.

16 And so, in light of that, the
17 absentee ballot -- and every state runs their
18 process a little different, everything from how
19 you engage, who you talk with to even find out if
20 there is a, you know, a need, or how you would go
21 about connecting yourself with the appropriate
22 individuals to even find your way toward being a

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1 volunteer.

2 That would have been a part of what
3 was included in the training. And then typically
4 a very dry recitation of state law and process to
5 give people some indication of what to expect so
6 that they feel more comfortable in volunteering.

7 Q. Is that training still available
8 publicly?

9 A. I do not think it is still posted
10 live on our website but it is still available.

11 Q. Can you clarify. So, if it was not
12 posted live on your website, how is it available?

13 A. Sure. That is a great. It is an
14 important distinction I believe.

15 Well, historically what we have done
16 is kept some links up that are more universal in
17 nature and just keep those up year round, but
18 then those are more that are more specific and
19 are more rule dependent that we only feature
20 during the appropriate election cycle.

21 So, we certainly do not want to have
22 information up that is no longer correct. And

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1 right?

2 MS. SIEBERT: Sounds good.

3 MR. BOPP: I am logging off. Bye
4 Cathy.

5 THE WITNESS: All right.

6 BY MR. NKWONTA:

7 Q. Ms. Engelbrecht, could you explain
8 what you meant by what should have been a simple
9 process that, I forget your exact words, but went
10 off the rails or something along those lines?

11 A. Sure, sure. Would you like me to
12 describe the process as I understood it should
13 have been conducted?

14 Q. Yes, please.

15 A. Okay. So, the way that the standard
16 reads and what we were expecting was -- and this
17 was informed by a meeting we had with the
18 Secretary of State, which I'm sure we will get
19 to.

20 But the elector challenges should
21 have been taken in by the -- or accepted by the
22 counties. They should have been reviewed for the

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1 determination by the boards, whether or not they
2 wanted to move those challenges forward.

3 If they wanted to move the
4 challenges forward or to review them, then what
5 would have -- let me say that differently.

6 Not to review them but to accept
7 them, what would have happened would have been
8 they would have taken or should have taken the
9 spreadsheets that were provided electronically,
10 submitted those to the state. The state then
11 therefore the rolls would have flagged the
12 record.

13 And if the voter that had a flagged
14 record did choose to vote, then if they voted in
15 person and their record was challenged, they,
16 they would at the point of -- in the polling
17 place they would show their ID which of course is
18 a Georgia standard anyway.

19 If the challenge was incorrect then
20 the challenge would have been resolved
21 immediately.

22 And if they voted in-person and

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1 didn't have ID that showed their correct address
2 or the address as it was listed on the
3 registration, then they would have voted a
4 provisional ballot and then been given the
5 opportunity in the extended hearing window to
6 resolve that so they could still vote and cast a
7 regular ballot.

8 And then the last example would have
9 been if someone had voted via absentee, the -- as
10 that came in and before they were separated, the
11 security envelope, the carrier envelope from the
12 ballot, there would have been a designation of
13 challenge.

14 And then similarly they would have
15 been given the opportunity to cure if they, the,
16 the indication inside the ballot was that the
17 address was in fact different.

18 And, that it should have been -- it
19 should have been a very organized process.

20 Q. An organized process that would have
21 resulted in all 364,000 challenged voters having
22 to present evidence of residency if they

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1 their residence.

2 So, this was not without, you know,
3 causation. But yes, then in the case of absentee
4 ballots, that would have been given the curing
5 process -- or resolved during the curing process.

6 Q. And what would -- we'll return to
7 the specific operation of the curing process and
8 of the challenge process. I do want to get back
9 to the meeting between you and Mr. Davis and
10 Mr. Somerville.

11 MR. NKWONTA: Joe, could we pull up
12 Exhibit 19. And can we enlarge that a little
13 bit as well. Great.

14 (Exhibit 19 marked for
15 identification.)

16 BY MR. NKWONTA:

17 Q. Do you recognize Exhibit 19,
18 Ms. Engelbrecht?

19 A. Yes.

20 Q. What is it?

21 A. That was a notice that was sent from
22 True the Vote to all the elector challengers who

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1 we were working with.

2 And this, as I mentioned earlier,
3 was part of the discussions that we had with
4 Derek, because of the confusion and concern that
5 was being experienced by the elector challengers
6 who were a part of our project.

7 And so this was an invitation to
8 participate in a Zoom call where we could talk
9 about what people were experiencing.

10 Q. And what did you all discuss during
11 those Zoom calls?

12 A. The process that was to have been
13 followed. And the people shared their concerns
14 of threats that they were receiving. And we gave
15 direction as to where to submit those to so that
16 we would have them on record.

17 Q. And where did you ask them to submit
18 the threats to?

19 A. I don't recall. Somewhere, within
20 True the Vote. I don't recall the specific
21 e-mail address or whatever.

22 Q. And do you still have a record of

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1 those threats?

2 A. Yes.

3 MR. NKWONTA: Could we pull that
4 down and pull up Exhibit 30.

5 (Exhibit 30 marked for
6 identification.)

7 MR. NKWONTA: And then before I get
8 into this, I will note that I have referred
9 to these documents as either document number
10 or exhibit number interchangeably.

11 We will just say either Document
12 Number 30 or Exhibit Number 30. I'm
13 referring to the exhibits.

14 BY MR. NKWONTA:

15 Q. So, Exhibit Number 30 is an e-mail
16 from you Ms. Engelbrecht to Brian Robinson. And
17 beneath it an e-mail to Senator Williams; is that
18 correct?

19 A. Yes.

20 Q. Do you recognize that e-mail?

21 A. Yes.

22 Q. And what was the date of that

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1 consultant?

2 A. Brian Robinson.

3 Q. And when you attended that meeting,
4 who was present at the meeting?

5 A. Jordan Fuchs, Ryan Germany, Brian
6 Robinson, for a brief period of time Secretary
7 Raffensperger, and myself. And that is all I
8 recall.

9 Q. When did this meeting occur?

10 A. I don't recall specifically. It was
11 in, you know, mid-December, somewhere in there.

12 Q. How long did it last?

13 A. I don't recall that, either.

14 Q. What did you all discuss at this
15 meeting?

16 A. I went with the express purpose of
17 describing the elector challenge and the wanting
18 to make sure that we understood, as best as we
19 could, what that process would look like at the
20 county level for the electors who wanted to
21 participate in their -- with their counties to
22 avoid any friction or inappropriate process.

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1 And, I expressed that I was
2 concerned about the size of the number, how large
3 it was. And I expressed that, you know, even
4 though we had done what we could to refine the
5 list so to be, you know, as exact as possible,
6 but the number was still large.

7 Secretary Raffensperger quickly
8 commented that he thought the number was about
9 right because they hadn't been able to clean the
10 list and so people move. And he did some fast
11 math in his head, yeah, XYZ, it should be about
12 that number.

13 And I remember the feeling of
14 saying, you know, this is a -- the only way we
15 can see to do this is to run the whole list, and
16 he agreed.

17 And again it is a process that
18 electors can participate in, and it is afforded
19 in state law. And that was kind of it. And then
20 we went through the specific steps of what would
21 happen.

22 Another thing I recall crisply is my

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1 conversation exchange with Ryan Germany, where I
2 wanted to understand if this was a burden on
3 counties and what that would look like and the
4 timing, because they were beginning to prepare
5 to -- for the early opening of absentee ballot
6 applications.

7 And Mr. Germany saying that it would
8 be a very simple process, that counties could
9 forward on the spreadsheet to the state. The
10 state would forward it to their vendor. And it
11 would be flagged as I have described in previous
12 comments.

13 So, the, the -- our understanding,
14 my understanding leaving that meeting was
15 following the process would be a, a smooth way to
16 support these electors who had, you know, come to
17 us with concern, out of concern for the fact that
18 the rolls weren't being maintained.

19 Q. You mentioned you were concerned
20 about the size of the challenges and how large it
21 was. Why were you concerned about the size of
22 the challenges?

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1 A. It is just because it is a big
2 number. It is a big number. But when you don't
3 clean the rolls for two years and, you know,
4 13 percent of the population moved, it is just
5 going to be a big number, but it's a lot.

6 Q. So, what concerns did that create
7 for you, the fact that the number was big.

8 Why was that concerning to you?

9 A. Because of the recognition that it
10 was going to draw attention, as it should,
11 because it is a -- it is worthy of attention that
12 our rolls would ever be that bad.

13 But I also knew that it would draw
14 negative attention in which I didn't want.

15 But, you know, were we to do less,
16 my feeling was we would have been potentially
17 accused of targeting or trying to be selective,
18 and that is not what we wanted either.

19 So, we just applied the same
20 standard statewide.

21 Q. In that meeting what information did
22 you provide the Secretary of State's office?

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1 A. They looked at other data elements
2 that are tracked in the Georgia file. When it
3 was mentioned that there was bias, we wanted to
4 see what the records of the state would show, so
5 they did that analysis.

6 Q. What other analysis did they
7 conduct?

8 A. Relative to all of this, I don't
9 recall.

10 Q. Is there anyone from True the Vote
11 who would recall? Are there any -- sorry, let
12 me -- you were -- I think you were shaking your
13 head but I will let you answer.

14 A. Sorry, no. I'm sorry, no. I'm --
15 that is my thinking nod. No, I don't think so.
16 No.

17 Q. Are there any documents that you
18 could review that would help refresh your
19 recollection of any other analyses that you
20 conducted?

21 A. No. I don't recall. I don't think
22 so.

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1 challenges was to bring to the -- to help
2 electors bring to the attention of their local
3 counties, records that appeared not to comply
4 with eligibility standards.

5 And it is within state law for them
6 to -- for citizens to participate in that way to
7 ask that question. And that is the extent of the
8 elector challenge.

9 Q. And if the challenges, as True the
10 Vote claims, does not result in a person be
11 removed, then why go through the effort of
12 scrubbing military addresses?

13 A. As I have said, it was just a choice
14 that we made to not -- I mean, there are, you
15 know, deployments. There are different ways in
16 which addresses are identified.

17 And because there is a filter that
18 exists within the expanded NCOA, we just chose to
19 remove them.

20 Q. You chose to remove them because
21 there are a lot of valid reasons why someone in
22 the military might file a notice of change of

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1 involved because we have been given indication
2 from the Secretary of State that they didn't need
3 printed copies.

4 So, there is a lot of there is a lot
5 that is inherent within this trying to understand
6 what the process was going to be going forward.

7 Q. Are you able to testify today that
8 your challenge list did not include voters who
9 lived on military installations?

10 A. No. I can testify that we did -- we
11 put the data through all of the filters and
12 followed the process that I have described.

13 But, data is data. It is possible.

14 MR. NKWONTA: We can pull down

15 Exhibit 9 -- or Exhibit 13.

16 BY MR. NKWONTA:

17 Q. Ms. Engelbrecht, how did you go
18 about recruiting challengers to submit these
19 challenges in various counties in Georgia?

20 A. Some had already -- some Georgians
21 had already come to us which was really the
22 impetus behind the idea that there might be

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1 something that we could help them with.

2 And Georgia's elector challenge laws
3 are unique in that it did afford an opportunity
4 for citizens to engage in that way.

5 So, there were some that had come to
6 us initially.

7 And our thought was that others that
8 would be interested would either come to us or be
9 referred if that was something that was of
10 interest.

11 Q. Were some of these voters referred
12 by Republican Party officials?

13 A. They were referred by, that group of
14 James Cooper and Mark Williams as people that
15 they knew for different counties, but we never
16 did any deeper dives into their affiliations.

17 Q. Were any of the voters who
18 approached you, were any of them referred by the
19 Republican Party officials?

20 A. I don't recall. I don't think so,
21 but I don't recall specifically.

22 Q. When the voters approached you or

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1 BY MR. NKWONTA:

2 Q. Do you want to take a minute just to
3 read that e-mail?

4 A. Okay.

5 Q. How many challengers did the True
6 the Vote reach out to?

7 How many potential challengers did
8 True the Vote reach out to in order to seek
9 assistance in submitting these challenges?

10 A. I don't know.

11 Q. Did True the Vote try to recruit
12 challengers in all Georgia counties?

13 A. We were open to that for sure and
14 prepared the analysis to support that.

15 But as far as the individuals and
16 the voters who wanted to participate that was --
17 you know, as much as people coming to us as it
18 was people being referred that were also coming
19 to us, so --

20 Q. So this e-mail that went to
21 potential challengers stated that True the Vote
22 has identified over 500,000 people on the Georgia

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1 want to return to Exhibit 8.

2 (Exhibit 8 marked for
3 identification.)

4 BY MR. NKWONTA:

5 Q. I guess this is the first time you
6 are seeing Exhibit 8 in this deposition.

7 Ms. Engelbrecht, do you recognize
8 Exhibit 8?

9 A. This is the first time I have seen
10 it.

11 Q. And you have never seen any analysis
12 of any political party breakdown or racial or
13 demographic breakdown of the challenge lists?

14 A. No, I have seen that. I have seen
15 that.

16 Q. Where did you see that?

17 A. It was provided when there were
18 comments being made of, you know, as I mentioned
19 earlier of bias being entered in. And because
20 Georgia uniquely tracks those elements, you can
21 run, you know, the data or an analysis around
22 whether or not that was true or whether or not

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1 the, what the data shows.

2 So, I knew that that had occurred.

3 Q. Do you know when this analysis was
4 first conducted?

5 A. The analysis on this exhibit? Or --

6 Q. The analysis of the demographic
7 breakdown of the challenge list.

8 A. I don't know exactly. It came later
9 as a form of reputation of the assertion that
10 there was -- that that was part of this.

11 But, I don't know the date, no.

12 Q. True the Vote announced its
13 challenge program on December 18th, 2020; is that
14 correct?

15 A. I don't recall exactly. It would
16 have been around then, yes.

17 Q. And if I told you the date was --
18 the date that had been provided by defendants was
19 December 18th, would you have any reason to
20 dispute that?

21 A. No real reason to dispute it, no.

22 Q. And if you look at this file here,

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1 Exhibit 8 and pull up Exhibit 16.

2 (Exhibit 16 marked for
3 identification.)

4 BY MR. NKWONTA:

5 Q. Ms. Engelbrecht, Exhibit 16 is based
6 as OPSEC 61. Is this the text file that you are
7 referring to?

8 A. No, this looks more -- this is sort
9 of a classic dot TXT presentation of the
10 information looks like it would have been that,
11 but it is not that, as I recall. That looks like
12 more of an Excel or standard spreadsheet format.

13 Q. Have you seen this breakdown before?

14 A. I can't attest to the absolute
15 numbers but broadly, something broken down by the
16 race that is tracked inside of the state rolls,
17 yes.

18 Q. And when was this analysis
19 conducted?

20 A. I could not tell you except to say
21 that it was post the elector challenge effort or
22 initiative.

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1 Q. And at the time you issued this
2 press release is it fair to say that you had not
3 identified challengers in all 159 counties?

4 A. Yeah, I think that is fair to say,
5 yes.

6 Q. How many challengers had you
7 identified at the time True the Vote issued this
8 press release?

9 A. That I do not recall.

10 Q. Do you know how many counties or how
11 many challenges True the Vote had submitted at
12 the time that it issued this press release or
13 website post?

14 A. At this point I don't believe that
15 there had been any submitted. But I do not --
16 let me rephrase that.

17 I do not specifically recall that.
18 I have a general recollection, but I do not
19 specifically recall.

20 Q. How many challenges did True the
21 Vote end up filing for the, for the runoff
22 election?

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1 A. We ended up with electors that
2 wanted to challenge, totaling 65 total counties.
3 And, so submissions were made in those counties
4 on behalf of those electors.

5 Q. And why didn't True the Vote file
6 challenges in all 159 counties as it stated in
7 the press release?

8 THE WITNESS: Guys, I just got a
9 password required notice. Can you all see
10 that on the screen or is it just me?

11 THE VIDEOGRAPHER: Sorry, Catherine.
12 This is Joe. That might be on your end. I'm
13 not sure what it is relating to.

14 THE WITNESS: It is, it is. I
15 apologize. I just Xed out of it and it is
16 gone. I apologize.

17 THE VIDEOGRAPHER: Okay.

18 THE WITNESS: I'm sorry, could you
19 repeat the question?

20 BY MR. NKWONTA:

21 Q. Sure.

22 MR. NKWONTA: Can the court reporter

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1 read back the question, please.

2 (Whereupon, the record was read by
3 the reporter as requested.)

4 THE WITNESS: Again, I think the
5 press release was meant to acknowledge that
6 we had done the analysis to support that.
7 The reason that we didn't ultimately is
8 because it wasn't for us to do.

9 It was for electors in the, in their
10 respective counties. And that is just the
11 way the process works.

12 BY MR. NKWONTA:

13 Q. But True the Vote said it was going
14 to do this in the press release, in the very
15 first line, right?

16 A. Yeah. Again, I think that the
17 intent of the line was to suggest that we -- that
18 True the Vote was prepared to do that and do that
19 in every county.

20 But, you know, we go quickly into
21 the description of an elector challenge. And it
22 is, you know, the qualifications therein, so that

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1 is, that is what was -- that is how it was meant
2 to be taken.

3 Q. So, True the Vote did not actually
4 intend to file challenges in all 159 counties?

5 A. Oh, no. We were definitely prepared
6 to do that, but it was up to electors.

7 I mean the reason the True the Vote
8 exists is to help support citizens who want to
9 engage in their process. And this is a process
10 in Georgia that is afforded to electors and, you
11 know, that is -- we were ready to do that.

12 But, the process is that you only
13 work with electors from their specific counties.

14 MR. NKWONTA: Can we take a brief
15 five-minute break?

16 THE VIDEOGRAPHER: We are now going
17 off the record --

18 MR. NKWONTA: Is that okay with you
19 all?

20 MS. SIEBERT: Sure.

21 THE VIDEOGRAPHER: The time is
22 3:00 p.m.

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1 (Recess taken -- 3:00 p.m.)

2 (After recess -- 3:07 p.m.)

3 THE VIDEOGRAPHER: We are now going
4 back on the video record. The time is
5 3:07 p.m.

6 BY MR. NKWONTA:

7 Q. Ms. Engelbrecht, we just took a
8 short break. Do you understand that you are
9 still under oath?

10 A. Yes.

11 Q. Has True the Vote ever discussed or
12 considered publishing the list of challenged
13 voters in Georgia?

14 A. No.

15 Q. Has True the Vote issued the list of
16 challenged voters to the challengers, for
17 instance, who requested them?

18 A. Yes. If an elector asked for the
19 list, given that they had already signed off on
20 our, you know, agreement and terms that this is,
21 you know, to be, to be used for review purposes
22 and so forth. And, but, yes.

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1 together for this donor's use.

2 Q. And is this, this one pager, is this
3 essentially the framework for the Georgia elector
4 challenge or the activities that occurred in
5 Georgia afterward?

6 A. I -- no. This doesn't have any -- I
7 mean, we could look at it. I would like to look
8 at the whole thing. But, I don't believe so, no.

9 Q. So, this document -- let's look at
10 the first sentence underneath which says, "Goal:
11 To ensure the 2020 election returns reflect one
12 vote cast by one eligible voter and therefore
13 protect the right to vote and the integrity of
14 the election."

15 Is that correct? Does that reflect
16 your understanding?

17 A. Yes.

18 Q. And, underneath that, the Problem,
19 it says, "There is significant evidence that
20 there are numerous instances of illegal ballots
21 being cast and counted in the 2020 general
22 election. Most of these illegal votes are being

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1 counted in Democratic counties and are
2 suppressing legitimate results."

3 Do you see that first paragraph
4 underneath Problem?

5 A. I do.

6 Q. And who wrote that?

7 A. Pardon me, sorry. I don't, I don't
8 specifically recall.

9 Q. But the document came from True the
10 Vote, right?

11 A. That is correct, yes.

12 Q. How did True the Vote determine that
13 most of the illegal votes were being counted in
14 Democratic counties?

15 A. I would not know why that would have
16 been written that way.

17 Q. This was prepared shortly after the
18 November presidential election, correct?

19 A. Yes.

20 Q. Before new results had been
21 published --

22 A. That's correct.

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1 THE WITNESS: Can you scroll up, can
2 you scroll a little bit, Joe?

3 That would have been going back to
4 the litigation support for the cases that
5 were being filed shortly after the election.

6 BY MR. NKWONTA:

7 Q. So, the items that we discussed on
8 that OPSEC invoice including litigation support,
9 that was part of the aggregating and analyzing
10 data to identify patterns of election subversion
11 that we see in this document?

12 A. I mean I would, aggregate and
13 analyze data to identify patterns full stop.
14 But, that would have been part of that, yes.

15 Q. "File lawsuits in federal court with
16 capacity to be heard by SCOTUS," the Supreme
17 Court of the United States; is that correct?

18 A. That is what it says, yes.

19 Q. And is that referring to the
20 lawsuits that were filed in Georgia,
21 Pennsylvania, Michigan, Wisconsin, Arizona?

22 And also it lists the key states

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1 here below as well, Arizona, Nevada --

2 A. Uh-huh.

3 Q. Are those the lawsuits or legal
4 actions that that plan is referring to?

5 A. Yes. Those would have been in that
6 timeline of lawsuits.

7 Q. And then next it goes on to the
8 legal strategy for the Validate the Vote program.

9 And it states that, "Jim Bopp will
10 file federal suits in the seven closest
11 battleground states to investigate voter fraud,
12 expose it and nullify the results of the state's
13 election so that the presidential electors can be
14 selected in a special election or by the state
15 legislature."

16 Why was the goal to nullify the
17 results of the state's election even before the
18 election had been certified?

19 A. I do not know why this was -- I
20 don't -- that was not the goal. Let me answer it
21 that way. That was not the goal.

22 As we discussed earlier the goal was

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1 in excess of \$1 million. Is that correct?

2 A. Yes.

3 Q. And was the purpose of that million
4 dollars to reward people that came forward with
5 evidence of voter fraud?

6 A. The fund was to -- or the idea of
7 the fund was to support people that would come
8 forward, as we discussed previously, to have
9 funds available should they be necessary for
10 their legal support.

11 Also through this we were funding
12 the state election or county election lawsuits.

13 Q. Did you present any of the evidence
14 that you obtained through this initiative to any
15 of the courts or to -- or to Mr. Eshelman?

16 A. I don't recall. I talked to his
17 consultants daily. I don't recall anything in
18 specific.

19 Q. Did True the Vote obtain any
20 evidence of -- any credible evidence of criminal
21 malfeasance as referenced in this press release
22 after announcing this initiative?

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1 A. We did have some reports that we
2 considered credible.

3 Q. And did you submit those reports to
4 anyone?

5 A. Yes. They have been submitted.

6 Q. Where did you submit those reports?

7 A. There are active investigations in
8 Georgia and in Arizona, and I guess, those are
9 the two active states.

10 Q. What was the criminal malfeasance or
11 misconduct identified in those reports or alleged
12 in those reports?

13 A. I don't -- I mean those are active
14 investigations and our approach to this point has
15 been that we don't comment on active
16 investigations.

17 Q. So, you are not willing to disclose
18 or identify the nature of any of the reports of
19 fraud or evidence of fraud that you received?

20 THE WITNESS: May I consult with
21 counsel and just make sure I am answering the
22 question properly? I just want to make sure

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1 Sorry, sorry.

2 Q. And who is that challenger that
3 asked to withdraw their challenge?

4 A. I don't recall his name.

5 Q. Was it Joe Martin?

6 A. That does sound familiar, yes. That
7 sounds correct.

8 Q. And do you recall why Joe Martin
9 chose to withdraw his challenge?

10 A. My general recollection is that in
11 looking at names on a challenger list he
12 identified that a couple of them were at long --
13 were residents at long-term care facilities.
14 And he didn't -- for that purpose he
15 didn't want to move forward. And he notified
16 Amy. And we notified -- as I understand it, we
17 notified the county. And that was -- that is the
18 end of it as far as I know or as far as I recall.

19 Q. And did you determine or make any
20 efforts to determine whether those voters were
21 properly included in the challenge list?

22 A. We didn't submit the challenge list

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1 Q. Let me rephrase. Based upon your
2 experience and knowledge of election data
3 analysis, would the type of data that would
4 have -- that partially would have been sought by
5 those lawsuits, i.e. the voter rolls, the voter
6 records that you testified to earlier.

7 Based upon your experience in this
8 election data space, would that type of data have
9 been critical and used to assess whether there
10 was further evidence of election fraud?

11 A. Yes.

12 MR. NKWONTA: Objection, calls for
13 speculation.

14 BY MS. SIEBERT:

15 Q. Was it ever True the Vote's intent
16 for -- I'm speaking now for the Georgia
17 challengers for the runoff election.

18 Was it ever True the Vote's intent
19 to -- through those helping with those challenges
20 or working with people to submit those
21 challenges, to have people removed from the voter
22 registration rolls in Georgia?

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1 A. No.

2 Q. Was the purpose of those challenges
3 ever to prevent somebody who was legally allowed
4 to vote in Georgia from doing so?

5 A. No. No.

6 MS. SIEBERT: I think that is all I
7 have.

8 THE VIDEOGRAPHER: Any redirect.

9 MR. NKWONTA: Nothing further.

10 THE VIDEOGRAPHER: Okay. With that
11 we are now ending the deposition. The time
12 on record is 5:25 p.m.

13 (Whereupon, signature not having been waived,
14 the deposition suspended at 5:25 p.m.)

15 * * *

16

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**United States District Court
Northern District of Georgia
Gainesville Division**

Fair Fight, Inc., John Doe, and Jane Doe,

*Plaintiffs and
Counter-Defendants,*

v.

**True the Vote, Inc., Catherine
Engelbrecht, Derek Somerville, Mark
Davis, Mark Williams, Ron Johnson,
James Cooper, and John Does 1-10,**

*Defendants
and Counter-Plaintiffs,*

Fair Fight Action, Inc.,
Counter-Defendants.

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

Hon. Steve C. Jones

Defendant True the Vote, Inc.'s Responses to Plaintiffs' First Interrogatories

Pursuant to Federal Rule of Civil Procedure 33, Defendant True the Vote, Inc. ("TTV") responds to Plaintiffs' First Interrogatories.

General Objections

1. Defendant TTV objects to these requests to the extent that they purport to call for the production of documents/information that: (a) contain privileged

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attorney-client communications; (b) constitute attorney work product; (c) disclose the mental impressions, conclusions, opinions, or legal theories of any attorneys or other representatives of the Plaintiffs; (d) were prepared in anticipation of litigation; or (e) are otherwise protected from disclosure under applicable privileges, immunities, laws, or rules.

2. Defendant TTV objects to these requests to the extent that they are vague, not limited in scope, unreasonably broad and burdensome, or beyond the scope of either category of permissible discovery under Fed. R. Civ. P. 26(b)(1).

3. Defendant TTV objects to the instructions accompanying the requests to the extent that they purport to impose obligations beyond those imposed by the Federal Rules of Civil Procedure, or any order promulgated by this Court.

4. Defendant TTV objects to discovery requests that are not proportional to the needs of the case and that are not “relevant to any party’s claim or defense.” Fed. R. Civ. P. 26(b)(1).

5. Defendant TTV objects to requests for information the benefit of which is outweighed by its lack of importance in resolving the issues at stake in this case, the amount in controversy, the parties’ relative access to relevant information, the

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parties' resources, and whether the burden or expense of the proposed discovery outweighs its likely benefit. *See* Fed. R. Civ. P. 26(b)(1). Consistent with this rule, Defendant TTV does not produce multiple copies of a communication, e.g., where one email chain has multiple communications, earlier included ones are not produced as separate documents.

6. Subject to and without waiving any of the foregoing General Objections, which are hereby incorporated into each specific response, Defendant TTV (a) makes further objections in response to individual requests and (b) makes the required good-faith attempt to fulfill the duty to provide all responsive information readily available without undue labor and expense.

7. Defendant TTV objects to producing individuals' personal information, including emails and phone numbers, based upon privacy and relevancy.

Definitions

Except as specifically defined below, the terms used in these requests shall be construed and defined in accordance with the Federal Rules of Civil Procedure, wherever applicable. Any terms not defined shall be given their ordinary meaning.

1. "Communication" means any transfer of information, whether written, oral,

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electronic, or otherwise, and includes transfers of information via email, report, letter, text message, voicemail message, written memorandum, note, summary, and other means. It includes communications entirely internal to True the Vote, as well as communications that include or are with entities and individuals outside of that organization.

2. “Comprehensive Ballot Security Initiative” means your program announced in your December 15, 2020 Press Release, including, but not limited to, the Election Integrity Hotline, plans to monitor absentee ballot drop boxes, and “other nonpartisan election integrity initiatives.”

3. “County” means any county in Georgia, as well as all employees, staff, agents, and representatives of the county, including the county boards of registrar’s offices, county registrars, or any other person with a responsibility for conducting or supervising elections in the county.

4. “Date” means the exact day, month, and year, if ascertainable, or, if not, the best available approximation (including relationship to other events).

5. “December 18, 2020 Press Release” means the press release posted on your Website on that date, attached hereto as Exhibit A.

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6. “December 14, 2020 Press Release” means the press release posted on your Website on that date, attached hereto as Exhibit B.
7. “December 15, 2020 Press Release” means the press release posted on your Website on that date, attached hereto as Exhibit E.
8. “Describe” means explain with particularity.
9. “Document” is synonymous in meaning and scope to the term “document” as used under Federal Rule of Civil Procedure 34 and the definitions for “writings and recordings” as set forth in Federal Rule of Evidence 1001, and it includes records, reports, lists, data, statistics, summaries, analyses, communications (as defined above), any computer discs, tapes, printouts, emails, databases, and any handwritten, typewritten, printed, electronically recorded, taped, graphic, machine-readable, or other material, of whatever nature and in whatever form, including all non-identical copies and drafts thereof, and all copies bearing any notation or mark not found on the original.
10. “Election” means any special or regularly-scheduled general election or run-off election held in the State of Georgia for any publicly elected office.

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11. “Georgia Elector Challenges” means the challenges to voter eligibility of registered Georgia voters in advance of the Run-off Election in which you have been and are involved and which are described, among other places, in your December 18, 2020 Press Release.

12. “Georgia Republican Party” means the state and/or county committees of the Republican Party, which works to elect Republican candidates to elected office, and their former, current, and/or future employees, staff, agents, consultants, and representatives. This term specifically encompasses the Georgia Republican Party that you announced a “partnership” with in your December 14, 2020 Press Release.

13. “Identify,” when used in reference to a communication, means to state when and where the communication was made; each of the makers and recipients thereof, in addition to all others present; the medium of communication; and its substance.

14. “Identify,” when used in reference to a government agency, firm, partnership, corporation, proprietorship, association, other entity, or person, means to state its, his, or her full name and present or last-known address.

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15. “Identify,” when used in reference to processes or steps taken by you or others with whom you have worked on the matters at issue in this litigation, means to chronologically detail each and every action taken by any and all entities or persons, to identify the actor, and to detail how and when that action was or will be taken and for how long.

16. “Including” means “including but not limited to.”

17. “November 10, 2020 Press Release” means the press release posted on your Website on that date, attached hereto as Exhibit C.

18. “November Election” means the most recent election that was held in Georgia that culminated on Election Day on November 3, 2020, to include the general election and the special election held on that date.

19. “Person” means not only natural persons, but also firms, partnerships, associations, corporations, subsidiaries, divisions, departments, joint ventures, proprietorships, syndicates, trust groups, and organizations; federal, state, or local governments or government agencies, offices, bureaus, departments, or entities; other legal, business, or government entities; and all subsidiaries, affiliates, divisions, departments, branches, and other units thereof or any combination

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thereof.

20. “Relating to,” “regarding,” and their cognates are to be understood in their broadest sense and shall be construed to include pertaining to, commenting on, memorializing, reflecting, recording, setting forth, describing, evidencing, or constituting.

21. “Run-off Election” means the January 5, 2021 Senate Run-off election held in Georgia.

22. “Targeted Voter” or “Targeted Voters” means the registered Georgia voters who are the subject of the Georgia Elector Challenges.

23. “True the Vote Website” or “Website” means your website maintained at <https://truethevote.org>, a hard copy of the current home page is attached hereto as Exhibit D.

24. “Validate the Vote” Program refers to the initiative announced in your November 10, 2020 Press Release which you claim “[e]stablishes a whistleblower fund in excess of \$1 million to support those who come forward with credible evidence of criminal malfeasance; takes the steps to resolve illegal actions through litigation and ensure the final vote tally is valid to maintain public confidence in

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U.S. election system.”

25. “Voter” means any registered voter in Georgia and all persons who may properly register to vote in the state by the close of discovery in this case.

26. “You” and “your” means the organization that goes by the name of True the Vote, Inc., its officers, directors, partners, members, managers, employees, representatives, agents, consultants, or anyone acting on its behalf.

Interrogatories

Interrogatory No. 1: Describe with particularity your “Landmark” Voter Challenge Program, including the individuals or entities involved in the program, their role, and their expertise, if any, relevant to their role; the date when the program was initiated; the purposes and/or goals of the program; and the methodology employed in determining which voters to challenge.

Response:

Overview of Landmark Voter Challenge Program

The Georgia Elector Challenge project was an effort that TTV started in order to support Georgians who were concerned about the accuracy of their elections and wanted to do whatever they could improve the transparency and

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accuracy of the upcoming Special Election. To that end, TTV undertook an effort to identify electors who appeared not to meet the qualifications legally required to cast a ballot. This effort began towards the end of November. The goal was to file Section 230 challenges preemptively, before absentee ballots were opened to help ensure only legal, eligible votes were going to be counted in the Run-off Election.

To the best of TTV's knowledge, there has been no organization that has supported a statewide elector challenge at the scale required in Georgia. The size of the challenge was notable only because the voting rolls have not been cleaned in two years. TTV reviewed the rolls for the whole state because we were not targeting based on county, voting profile, or any other demographic.

Individuals and Entities Involved in Landmark Voter Challenge Program

Entities that were involved in the Georgia Elector Challenges include True the Vote, Inc., OpSec Group LLC ("OpSec"), and various print shops throughout Georgia. The individuals who were directly involved include Catherine Engelbrecht, Amy Holsworth, James Cooper, Ron Johnson, Mark Williams, and Gregg Phillips.

Catherine Engelbrecht is the Founder and President of TTV, and her

expertise includes over a decade of election integrity work, including supporting citizen-led voter challenges in a number of states. Amy Holsworth coordinated communications with challengers and communications support for both challengers and county representatives. Mark Williams, James Cooper, and Ron Johnson assisted with recruiting hundreds of voter challengers across the state of Georgia. Mark Williams owns a printing company and coordinated among eight print shops to expedite printing of individual challenges, when necessary. For the purposes of these interrogatories, any reference to Ms. Engelbrecht is a reference to her actions in her official capacity as President of TTV.

Gregg Phillips, managing partner of OpSec, has more than three decades of experience project management, elections and big data. OpSec developed formulas to assess the fit, risk and reliability of data analytics across multiple industries. OpSec uses complex analytical approaches to investigate complex issues, evaluate the risk in decisions, and build measured solutions. OpSec observes, researches and interprets results using applications and data known to law enforcement, program integrity and election professionals. OpSec's approach to analytics is measured and balanced.

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Goal of Voter Challenge Program

The goal of the Georgia Elector Challenge was simple: to preserve and promote election integrity in the State of Georgia.

TTV believes and is founded on the principle that every person legally authorized to vote in any particular election should do so if he or she chooses, and no one who is legally authorized to vote should be prevented from doing so. Likewise, people who are not authorized under law to cast a ballot should not be allowed to do so, as illegal ballots not only dilute the effect of legally cast ballots, but also cause people to question the results of the democratic process fundamental to our system of governance.

To that end, TTV supports efforts at the local and state levels across the country to ensure all those casting ballots are legally authorized to do so. TTV does this through a variety of programs, including data analysis, at issue here.

Methodology

TTV's methodology began with acquiring the Georgia voter rolls, obtained from the Secretary of State, current as of December 5, 2020. TTV contracted with OpSec to produce the county-by-county list of voters to be challenged on the basis

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of residency only. TTV gave OpSec explicit instructions to exclude records of voters whose identities could not be resolved, whose names appeared as being deceased according to the Social Security Death Index database, and whose addresses appeared to correlate with military installations or college campuses. TTV limited OpSec's review to only those records in which the voter appeared to have provided USPS with a permanent change of address notice ninety days prior to January 5th. OpSec also removed any records that appeared to be duplicated with the dataset properly defined. OpSec then used the NCOA, as well as other commercially available data and tools, as well as identity resolution algorithms to identify and review records of those voters who appeared to have filed permanent change of address notices with USPS. After this process of identification, review, and reconciliation, OpSec provided TTV with digital spreadsheets of the challenged voters to send via email to the respective County Board of Elections on behalf of the Georgia volunteers serving as challengers for various Georgia counties. When necessary, Mark Williams coordinated getting the lists of challenged voters printed in order to submit as hard copies to various Georgia counties.

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Interrogatory No. 2: Describe with particularity your “Comprehensive Ballot Security Initiative,” including the individuals or entities involved in the initiative, their role, and their expertise, if any; the date when the program was initiated; the purposes and/or goals of the program; and the methodology of the program.

Response: TTV has worked to support comprehensive ballot security efforts since our founding in 2010. For the state of Georgia specifically, the elector challenge effort started in November 2020 to assist and serve as a resource to Georgia Voters and Volunteers in the Run-off Election. In addition to the Georgia Elector Challenges, TTV launched an Election Integrity Hotline that offered live bilingual support 24 hours a day for Georgians who had questions or concerns, or who have witnessed potential election fraud, potential vote manipulation, or potential illegal actions taking place at polling locations. The Initiative also included various features such as publicly available signature verification training and volunteer recruitment.

The goal was to help to recruit, train, mobilize, and support concerned citizens to be active in election integrity efforts, to be alert to potential problems

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that can manifest at polling locations that can impact election integrity, and to respectfully engage with the appropriate authorities when questions or concerns related to election integrity arise. TTV never counsels or trains volunteers to confront or approach individuals who are attempting to vote with any concerns that may arise. TTV always trains and counsels its volunteers to work through the proper authorities with any questions or concerns.

Virtually every absentee ballot drop box had security cameras recording for the entire period of time relevant to the Run-off Election. TTV did not install these security cameras—county or state election authorities installed and maintained them. TTV has reviewed, and is in the process of reviewing, publicly available video footage from these government-installed security cameras. If there is security footage that in TTV's view, gives rise to a concern surrounding election integrity, TTV will alert whatever government body is charged with investigatory authority to the concern. This process was what TTV was referring to when it mentioned “monitoring absentee ballot drop boxes” in its press releases. TTV did not train, encourage, or direct volunteers or any other individual to monitor absentee ballot drop boxes.

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15

Ms. Engelbrecht has longstanding involvement with citizen engagement and ballot security initiatives and was directly involved in the Initiative. Amy Holsworth coordinated the volunteer support and general outreach that was involved. Communications were done by Genevieve Carter and her team.

Interrogatory No. 3: Describe with particularity your Validate the Vote Program, including the individuals or entities involved in the program, their role, and their expertise, if any; the date when the program was initiated; the purposes and/or goals of the program; and the methodology of the program.

Response: Initiated on November 6, 2020, the Validate the Vote program was an initiative to provide that the 2020 election returns reflected the principle of “one vote for one voter.” The initiative aimed to protect the integrity of our nation’s electoral system and ensure public confidence and acceptance of election outcomes critical to American democracy. Ms. Engelbrecht decided that it was time for TTV to step in and provide resources to help ensure voters, election workers, and volunteers who are observing the extended ballot counting process – and seeing firsthand the illegal actions taking place – had the resources they needed to document and report the malfeasance with the confidence that these

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issues will be pursued by every available legal channel and that they would be supported legally, if necessary.

TTV created the “Validate the Vote” program for the national presidential election and from that TTV created “Validate the Vote Georgia.” When TTV came to Georgia, we simply took the logo and put the word “Georgia” in the center of the logo. TTV then made all the resources we had available for the national election available in Georgia for the Run-off Election. TTV started an election integrity hotline where anyone who witnessed an alleged incident of fraud could call and report it or submit a report online. From there, TTV volunteers would follow up with the appropriate authorities charged with investigating such claims.

In addition, TTV coordinated the Georgia Elector Challenges and Comprehensive Ballot Security Initiative, described in Response Nos. 1-3.

Interrogatory No. 4: Identify each of the entities and individuals, including the “Georgia voters” referred to in your December 18, 2020 Press Release, with whom you worked on the Elector Challenges. Include their name, their contact information, their role in the challenge efforts (including the county or counties in which they were involved in the challenge efforts), and how you became

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connected to them.

Response: The individuals who were referenced in the Press Release include Derek Somerville, Mark Davis, Mark Williams, Ron Johnson, and James Cooper.

On December 15, 2020, Ms. Engelbrecht had dinner with Derek Somerville and Gregg Phillips. During this dinner, everyone introduced themselves to each other and provided one another with information on their background and interest in election integrity efforts.

On December 17, 2020, Ms. Engelbrecht sent a text message to Derek Somerville, informing him that TTV had a meeting with the Georgia Secretary of State's office. Ms. Engelbrecht never had any further conversation with Mr. Somerville about that meeting, nor did that text lead to any coordination between Mr. Somerville or TTV.

On December 19, 2020, Mr. Somerville sent an email to Catherine Engelbrecht which contained talking points for elector challengers that he had constructed on his own accord. Mr. Somerville did not ask Ms. Engelbrecht to share these talking points with TTV's volunteers, but after reviewing the

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information, Ms. Engelbrecht did send the information contained in his talking points to TTV's volunteer challengers. Ms. Engelbrecht added some additional detail to the message as well.

On December 20, 2020, Mr. Somerville and Mark Davis participated in a "Citizen Challenge Q&A" Zoom call hosted by Catherine Engelbrecht. In that meeting, Ms. Engelbrecht explained TTV's election integrity activities. Mr. Somerville offered some encouragement to challengers during this Zoom call, but did not contribute to or assist in any actual component of TTV's elector challenges.

The list of Georgia Elector Challengers includes approximately 70 people. Challengers were either already connected with TTV, having gone through our training or participated in one of our past projects, or they were referred to us via word of mouth from other challengers.

TTV contacted each challenger, explained the project and challenge methodology, and secured written authorization to name them as challengers in their county of residence. TTV then submitted the challenges on behalf of the challengers to each of their respective counties, either electronically or in printed

hard copy, or where required, both electronically and in printed hard copy. TTV submitted all of the electronic challenges via the email address: gaelectorchallenge@truethevote.org. TTV used this email address to submit the Georgia Elector Challenges in order to protect the individual challengers' personal emails from the spam and inevitable harassment TTV anticipated would come from the challenges.

TTV objects to Interrogatory No. 4 to the extent it calls for any individual's personal and private information that may be protected by such individual's right to privacy under the U.S. Constitution or the Georgia State Constitution.

TTV's counsel contacted Plaintiffs' counsel to seek agreement that the parties would seek a protective order, which would preclude publication of confidential information and would require the parties to seek a motion for leave to file under seal if any documents containing personal information were to be filed with the Court. In addition, TTV's counsel asked Plaintiffs' counsel if they would agree not to sue any person identified as an individual challenger. While Plaintiffs' counsel was willing to discuss a protective order and filing under seal, as allowed, they were not willing to agree not to sue individual challengers.

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Therefore, TTV objects to Interrogatory Number 4 to the extent it seeks information protected by the First Amendment to the United States Constitution, namely the right of association and the right to petition the government for a redress of grievances, both of which are protected from undue disclosure and investigation.

Further, TTV objects to Interrogatory Number 4 to the extent it seeks information that would likely lead to intimidation or harassment of individual challengers in violation of Section 11(b) of the Voting Rights Act. *See* Defendants' Answer to Plaintiffs' Complaint for Declaratory and Injunctive Relief, Affirmative Defenses, and Counterclaims Against Plaintiffs and Defendant Fair Fight Action, Inc., ECF No. 40.

Interrogatory No. 5: Describe in detail the steps you have taken, if any, to guard against the risk that challenged voters whose names are included in the Elector Challenges will suffer from harassment or will be otherwise deterred from voting in Georgia's Elections, including the Run-off Election. If you have taken no such steps, state that you have taken none.

Response: As noted in Response No. 2, TTV never counsels or trains

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volunteers to confront or approach individuals who are attempting to vote with any concerns that may arise. TTV always trains and counsels its volunteers to work through the proper authorities with any questions or concerns.

In bringing the Georgia Elector Challenges on behalf of individual voters, TTV followed the steps under Section 230 of the Georgia Election Code. By following the law as written in Section 230, no challenged voters would be subject to any intimidation or harassment by TTV or its volunteers, as neither TTV nor its individual volunteers had any contact with the challenged voters.

Ms. Engelbrecht sent an email to Georgia Elector Challengers stating that the challenger was “*not alleging any voter has acted improperly*, only that probable cause, as established under both Federal and State law, supports my challenge to believe the voter (elector) has changed their residence. Further, I am not asking the Board of Elections to remove the people on my list from the voter rolls, only to confirm with each voter whether or not they have moved. So, by following the law and flagging these voters, it can be further investigated.” (emphasis added). TTV did not accuse, either directly or indirectly, any voter of acting improperly, and it certainly did not seek to prevent those legally authorized

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to vote from doing so.

Interrogatory No. 6: Describe in detail the “voter registry research” that, per your December 18, 2020 Press Release, you claim to have done to identify the challenged voters, including but not limited to (1) the identities of any person involved in such research and their experience and/or qualifications for conducting such research and accurately identifying voters; (2) any and all data and/or databases used in this process or for this purpose, including each of the “other supporting commercial databases” referred to in your December 18, 2020 Press Release; (3) the methodology used to identify the challenged voters, including but not limited to what information was used to “match” voters (e.g., first and last names, dates of birth, etc.) and the basis upon which you concluded that the voters’ inclusion in the database made them ineligible to vote under Georgia law; and (4) any evaluation or analysis of the individual characteristics of any challenged voters, including racial, partisan, or geographic makeup or characteristics.

Response: *See* Response No. 1.

Interrogatory No. 7: State whether it is True the Vote’s position that a

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Georgia voter who files a change-of-address with the U.S. Postal Service to an address in another state has invalidated their Georgia voter registration, and/or has become ineligible to vote in Georgia.

Response: TTV's position is that if a person of his or her own free will submits documented notice to the USPS of their permanent relocation to an address outside of the state or county, and if precautionary exclusions are considered with respect to voters who have moved due to military service or college attendance, then it is reasonable to consider whether, in fact, the voter truly no longer resides in the state or county and thus is no longer legally authorized to vote in that county. Further, TTV also considers it true that the change of address information provides probable cause for the county board of elections for a valid Section 230 Challenge.

Interrogatory No. 8: Describe your self-proclaimed "partnership" with the Georgia Republican Party "to assist with the Senate runoff election process," as announced in your December 14, 2020 Press Release, including but not limited to the names and contact information of each the entities and individuals with whom True the Vote has been and intends to work with in this partnership, the

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approximate date when the partnership began, and the purpose and/or goals of the partnership.

Response: The partnership with the Georgia Republican Party (“GA GOP”) was announced on December 14, 2020, shortly after a meeting with Chairman David Shafer, Executive Director Stewart Bragg, and Florida Elections Day Operations Director Alyssa Gonzalez Specht. The term “partnership” was used only to emphasize the party’s seeming interest in nonpartisan election integrity efforts.

In this meeting, Ms. Engelbrecht presented the tools that TTV could provide in the interest of election integrity. Ms Engelbrecht discussed how TTV would be offering a variety of nonpartisan programs in Georgia, including recruiting volunteers for general service, sponsoring publicly available election worker and signature verification training, a statewide voter hotline, and other election integrity initiatives. These initiatives were all publicly available and provided at no cost. TTV’s communications director, Genevieve Carter, drafted a press release and received verbal approval from the GA GOP for a press release. After this, TTV and the GA GOP had no further communications.

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TTV extended this same partnership offer to the Democratic Party, but to no avail as there was no response from Senator Nikema Williams.

Contact Information:

David Shafer: Email: david@gagop.org

Stewart Bragg: Email: stewart@gagop.org

Alyssa Gonzalez Specht: Email: aspecht@donaldtrump.com

Interrogatory No. 9: Identify all individuals or entities that you have reason to believe may have communications or documents relevant to this litigation, that are not within True the Vote's custody or control. If you have reason to believe that a particular entity or individual has documents specifically responsive to any of the requests for production set forth in Plaintiffs First Requests for Production to True the Vote, identify the relevant number or numbers of each request for production when you identify that person or entity.

Response: I believe that Brad Raffensperger, Ryan Germany, Gabe Sterling, Jordan Fuchs, and the Georgia Secretary of State's office as a whole relevant to Interrogatory 6.

I believe that OpSec has information relevant to the creation of the lists of

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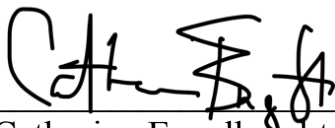
challenged voters.

I believe Stacey Abrams and Mark Elias have communications or documents relevant to Interrogatory 5.

Further, I believe that Senator Nikema Williams has communications or documents relevant to Interrogatory 8.

I, the undersigned, affirm under the penalties for perjury that the foregoing answers to Plaintiff's Interrogatories are true and correct.

Date: 03/15/21


Catherine Engelbrecht, President
True the Vote, Inc.

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Resp. to Interrog.

Dated: March 15, 2021

/s/ Ray Smith, III
Ray Smith, III, GA # 662555
rsmith@smithliss.com

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Five Concourse Parkway
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Atlanta, GA 30328
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Respectfully Submitted,

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Telephone: (812) 232-2434
Facsimile: (812) 235-3685
Lead Counsel for Defendants
**Admitted Pro hac vice*

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Certificate of Service

I hereby certify that the foregoing document was served electronically on
March 15, 2021, upon all counsel of record via email.

/s/ Melena S. Siebert

Melena S. Siebert

Indiana Bar No. 35061-15

Counsel for Defendants

**Admitted Pro hac vice*

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

-----X

FAIR FIGHT, INC., SCOTT BERSON, :
JOCELYN HEREDIA, AND JANE DOE, :
Plaintiffs, :

v. : Case No.:
: 2:20-CV-00302-SCJ

TRUE THE VOTE, INC., CATHERINE :
ENGELBRECHT, DEREK SOMERVILLE, :
MARK DAVIS, MARK WILLIAMS, :
RON JOHNSON, JAMES COOPER, AND :
JOHN DOES 1-10, :
Defendants. :

-----X

Deposition of GREGG PHILLIPS, as the corporate
representative of OpSec Group LLC and individually
Conducted Virtually
Tuesday, January 25, 2022
10:02 a.m. ET

Reported by: Matthew Goldstein, RMR, CRR

DIGITAL EVIDENCE GROUP
1730 M Street, NW, Suite 812
Washington, D.C. 20036
(202) 232-0646

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1 Deposition of GREGG PHILLIPS, conducted

2 virtually:

3 Pursuant to Notice, before Matthew Goldstein,

4 RMR, CRR, Notary Public in and for the State of

5 Maryland.

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1 A P P E A R A N C E S

2 ON BEHALF OF THE PLAINTIFFS:

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3 ELIAS LAW GROUP

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4 Suite 600

Washington, D.C. 20005

5 202.434.1609

6

7 ON BEHALF OF THE PLAINTIFFS:

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9 Suite 1650

Atlanta, Georgia 30309

10 404.400.3350

11

12 ON BEHALF OF THE DEFENDANTS:

JAMES BOPP, ESQUIRE

13 THE BOPP LAW FIRM

1 S 6th Street

14 Terre Haute, Indiana 47807

812.232.2434

15

16 ALSO PRESENT:

17 DESHAWN WHITE - VIDEOGRAPHER/EXHIBIT

18 TECHNICIAN

19 TINA MENG, ELIAS LAW GROUP

20

21

22

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1 THE VIDEOGRAPHER: This is Tape Number 1
2 for the videotaped deposition of Gregg Phillips in
3 the matter of Fair Fight, Incorporated, et al.,
4 versus True the Vote in the United States District
5 Court for the Northern District of Georgia, the
6 Gainesville Division. Case
7 Number 2:20-CV-00302-SCJ.

8 This deposition is being held by Zoom
9 video remote conferencing, the physical recording
10 in Fredericksburg, Virginia, on January 25th,
11 2022.

12 The time on the video screen is
13 10:02 a.m. Eastern Time.

14 My name is DeShawn White. I am the
15 legal videographer from Digital Evidence Group.

16 The court reporter is Matthew Goldstein
17 in association with Digital Evidence Group.

18 Will counsel please introduce themselves
19 for the record.

20 MR. SHELLY: I'm Jacob Shelly with Elias
21 Law Group on behalf of the plaintiffs.

22 MS. BRYAN: Good morning. Leslie Bryan,

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1 Lawrence & Bundy, on behalf of the plaintiffs.

2 MS. MENG: Hi. This is Tina Meng with
3 Elias Law Group on behalf of plaintiffs as well.

4 MR. BOPP: I'm done with your counsel
5 being introduced. Thank you.

6 James Bopp, attorney for defendants, and
7 here Gregg Phillips and his company.

8 THE VIDEOGRAPHER: Will the court
9 reporter please swear in the witness.

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1 P R O C E E D I N G S

2 Whereupon,

3 GREGG PHILLIPS,

4 being first duly sworn or affirmed to testify to
5 the truth, the whole truth, and nothing but the
6 truth, was examined and testified as follows:

7 EXAMINATION BY COUNSEL FOR THE PLAINTIFFS

8 BY MR. SHELLY:

9 Q. Thank you.

10 Good morning, Mr. Phillips. I'm Jacob
11 Shelly and I represent the plaintiffs in this
12 case.

13 Can you repeat your full name for the
14 record.

15 A. Gregg Alan Phillips.

16 Q. And your address for the record?

17 A. 1752 Coates Pass, Birmingham, Alabama
18 35242.

19 Q. Is that where you are right now?

20 A. Yes.

21 Q. Have you ever been deposed before?

22 A. Yes.

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1 Q. How many times?

2 A. Many.

3 Q. In what kinds of cases?

4 A. Mostly related to my various work as a
5 government employee.

6 Q. When was the most recent?

7 A. I don't know.

8 Q. Have you ever been deposed over a web
9 platform before?

10 A. No.

11 Q. Okay. So I'd like to start by going
12 over a few ground rules for the deposition so that
13 we all have the same understanding.

14 All testimony today is under oath just
15 as if you were testifying in court.

16 Does that make sense?

17 A. Yes.

18 Q. For the benefit of everyone and the
19 court reporter, and especially since we are all
20 remote, please make your answers audible. Head
21 shakes and nods are hard to put on the record.

22 Okay?

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1 A. Yes.

2 Q. Please allow me to finish my question
3 before giving your answer. That will help us have
4 a clean transcript for the record.

5 Sound good?

6 A. Yes.

7 Q. From time to time, your attorney may
8 make an objection to my question. And that's
9 fine, but you are to answer regardless unless he
10 specifically instructs you not to answer.

11 Does that make sense?

12 A. Yes.

13 Q. If at any point you do not understand a
14 question that I'm asking, please let me know and I
15 will do my best to rephrase or clarify. And if
16 you do answer, I will assume you understood the
17 question.

18 Is that fair?

19 A. Yes.

20 Q. If at any time you would like to take a
21 break, please let me know and I'll try to find a
22 good place to stop and we can go off the record

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1 for a few minutes. The only exception is that if
2 I asked you a question, I ask that you answer the
3 question before we take a break. Okay?

4 A. Okay.

5 Q. How are you viewing this deposition?
6 Are you on a laptop or phone?

7 A. Laptop.

8 Q. Do you have any documents with you,
9 either hard copies or electronic?

10 A. No.

11 Q. Is anyone else in the room with you?

12 A. No.

13 Q. Because we are taking your deposition
14 remotely, I may not always be able to see what you
15 have in front of you, who enters the room while
16 you are testifying. You understand that it would
17 not be appropriate for your attorney or anyone
18 else to tell you how to answer a particular
19 question that I ask?

20 A. Yes.

21 Q. And you agree that while you are
22 testifying today, you will not exchange

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1 communications, whether by text, e-mail or other
2 messaging, about how to answer the questions that
3 I ask?

4 A. Yes.

5 Q. All right. What did you do to prepare
6 for today's deposition?

7 A. Read through documents. Read the --
8 looked at the law, looked at files, looked at some
9 of your filings -- or the filings.

10 Q. And besides your counsel, did you talk
11 to anybody about today's deposition?

12 A. No.

13 MR. SHELLY: Can we pull up Exhibit A
14 and mark it as Exhibit 1.

15 (Phillips Deposition Exhibit 1 was
16 marked for identification and attached to the
17 transcript.)

18 BY MR. SHELLY:

19 Q. Do you recognize this document,
20 Mr. Phillips? There's a few pages. We can scroll
21 through.

22 A. Yes.

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1 Q. Do you understand that you have been
2 designated as a representative to answer questions
3 on behalf of OpSec Group LLC?

4 A. Yes.

5 Q. And are you prepared to testify about
6 all the topics in Exhibit A, which we can scroll
7 to if that would be helpful? It's a few pages
8 down.

9 MR. BOPP: I think this is a time for me
10 to interject an objection. We of course want to
11 preserve the objections we have made to the scope
12 of the subject matters that you are intending to
13 ask. And in order to expedite this, we would like
14 to make a continuing objection, with your
15 agreement; otherwise we'll just object to every
16 one or whatever.

17 And the continuing objections would be
18 any questions regarding any activities of the
19 deponent prior to the 2016 election, any
20 activities of the deponent in any other place
21 other than Georgia, any activities of the deponent
22 except for voter eligibility challenges

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1 preelection in the Georgia runoff election, and
2 any questions regarding the activities of King
3 Street Patriots. So we'd like to have a
4 continuing objection to that, with your agreement,
5 to expedite this.

6 MR. SHELLY: Yes, I agree to that.

7 MR. BOPP: Thank you.

8 BY MR. SHELLY:

9 Q. So, Mr. Phillips, my question is, those
10 objections having been heard, are you otherwise
11 prepared to testify to each of the topics in
12 Exhibit A?

13 A. Yes.

14 MR. SHELLY: Can we pull up Exhibit B.

15 (Phillips Deposition Exhibit 2 was
16 marked for identification and attached to the
17 transcript.)

18 BY MR. SHELLY:

19 Q. And do you recognize this document?

20 A. Yes.

21 Q. Do you understand that you are also
22 being deposed in your individual capacity?

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1 A. Yes.

2 Q. And, similarly, to make this as
3 efficient as possible, to save us the trouble of
4 asking and answering all my questions twice, do
5 you agree that your answers this morning may be
6 attributed to you and OpSec unless specified
7 otherwise?

8 A. Yes.

9 Q. Great.

10 MR. SHELLY: You can take that down.

11 BY MR. SHELLY:

12 Q. And I'd like to start with just some
13 brief background.

14 Where did you grow up, Mr. Phillips?

15 A. I was a military brat and grew up all
16 over the world.

17 Q. Okay. Where did you go to college?

18 A. University of Alabama.

19 Q. And what was your major?

20 A. Commerce and business administration.

21 Q. Did you complete any course work in
22 econometrics or statistics?

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1 database and made a match.

2 Q. And where do you get citizenship data
3 from?

4 A. We have -- we have --

5 MR. BOPP: Excuse me.

6 I object to the question. It goes
7 beyond the scope of the subject matter which, with
8 respect to the two states, are limited to data
9 analysis and record linkage, in number 2, and
10 voter registry and research in number 3.

11 So you are beyond the scope of your
12 subject matter specification, so I instruct him
13 not to answer.

14 BY MR. SHELLY:

15 Q. Mr. Phillips, what year was OpSec
16 founded?

17 A. The company --

18 Q. Yes.

19 A. -- was founded in 2020.

20 Q. Okay. So for these questions that are
21 before OpSec was created, these will be questions
22 in your individual capacity without regard to the

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1 Q. When did you first discuss generating
2 lists of registered Georgia voters to be
3 challenged for change of residency? And I'll
4 refer to these lists as "challenge lists" for
5 simplicity.

6 A. Can you repeat your question.

7 MR. BOPP: I object unless it's limited
8 to one of the six states and a particular
9 election.

10 MR. SHELLY: So my question referenced
11 Georgia specifically, but I will further clarify
12 that I am referring to the challenge program that
13 occurred in December -- in between the general and
14 runoff elections in Georgia spanning from end of
15 2020 to beginning of 2021.

16 MR. BOPP: Okay.

17 BY MR. SHELLY:

18 Q. My question is, when did you first
19 discuss generating lists of registered Georgia
20 voters to be challenged for change of residency?

21 A. Approximately the beginning of December.

22 Q. And whose idea was that?

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1 MR. SHELLY: Mr. White, can you pull up
2 Exhibit N, as in Nancy.

3 (Phillips Deposition Exhibit 5 was
4 marked for identification and attached to the
5 transcript.)

6 BY MR. SHELLY:

7 Q. Do you recognize this document,
8 Mr. Phillips?

9 A. It looks like an invoice, yeah.

10 Q. Yes.

11 I believe this is an invoice from OpSec
12 to True the Vote for \$400,000. And it reflects
13 that you had been paid the entire amount by
14 December 7th, 2020.

15 Does that look right to you?

16 A. I don't recall the specifics of the
17 payments, but that's what it says.

18 Q. Does this invoice cover your work
19 generating challenge lists?

20 A. This goes way beyond that. There's a
21 lot more to this than that.

22 Q. Okay. But it includes that and goes

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1 that analysis?

2 A. Because that's what we were hired by
3 True the Vote to do.

4 Q. And what did that analysis show?

5 A. It depends on the topic.

6 Q. What topics were you asked to analyze?

7 A. I don't have a specific list.

8 Q. Can you give me some examples?

9 A. Ineligible voters.

10 Q. And what did you find?

11 A. What did I find about what?

12 Q. When you analyzed the data.

13 A. We found that there were ineligible
14 voters on the voter roll. Isn't that why --

15 Q. In addition to the challenge lists --

16 A. I didn't say --

17 Q. You didn't say what?

18 MR. BOPP: I'm sorry, Jacob.

19 Gregg, you need to wait until the end of
20 the question before you answer, please.

21 BY MR. SHELLY:

22 Q. Did you use that analysis for your --

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1 MR. SHELLY: Okay. Return at
2 12:30 Eastern.

3 MR. BOPP: Okay. Great. Thank you.

4 THE VIDEOGRAPHER: The time is
5 11:57 a.m. We're now off the record.

6 (Recess from the record.)

7 THE VIDEOGRAPHER: Okay. The time is
8 12:31 p.m. We are now on the record.

9 BY MR. SHELLY:

10 Q. Okay. Mr. Phillips, I would like to ask
11 you some questions now about the challenge lists
12 that you generated in Georgia for the 2021 runoff
13 election.

14 What data files did you use to generate
15 the challenge lists?

16 A. The underlying data file, the state
17 voter registration file.

18 Q. And presumably the NCOA list as well?

19 A. We used NCOA. We used several other
20 USPS products. We use the CASS system, the Coding
21 Accuracy Support System. We use Delivery Point
22 Verification. We use several different

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1 components. We also have a proprietary algorithm
2 that we used to help verify identity.

3 Q. Okay. To make sure I understood that,
4 my understanding is that NCOA has a list of people
5 who submit to the USPS that they want their mail
6 to be forwarded. There's a list of names in the
7 voter rolls and there was the list of names who
8 submitted NCOA requests.

9 I understand you used various databases,
10 algorithms to perform the match, but am I correct
11 that the NCOA list of individuals and the voter
12 file list of individuals -- that those were the
13 two lists you used?

14 A. No, that's an oversimplification.

15 Q. Okay. Can you explain what other
16 information you used?

17 A. Yes. I just did. We used Advanced Data
18 Hygiene, as you guys and others have argued is the
19 correct way to go. We agree. We also used other
20 types of databases to help us -- help us verify
21 identity as best we can.

22 Q. Okay. What other lists of individuals

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1 besides the NCOA list did you use to identify
2 individuals who had moved?

3 A. There's lots of different possibilities
4 out there, what we used specifically in the query.
5 I mean, the algorithms that we used access Oracle
6 queries so that we can basically consolidate all
7 the data we need and eliminate all the data we
8 don't need to, you know, eliminate false positives
9 and false negatives as best we can.

10 Q. And what else could a person do to
11 indicate that they had changed residency that you
12 looked at besides sending a mail-forwarding
13 request to the post office?

14 A. We look at other state data
15 registrations. We look at a lot of things. It
16 depends on the situation. This one was pretty
17 simple, but it depends on the situation. We could
18 access five or six different data sources.

19 Q. Understood.

20 And I'm just asking specifically for the
21 Georgia challenge lists that you created.

22 Did I understand you to --

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1 (Unintelligible cross-talk.)

2 Q. Sorry?

3 A. We used proprietary lists. I mean, we
4 used some of the lists on the invoice you saw. We
5 gather all sorts of data to help verify identity.
6 Because if you don't verify identity, then
7 residency is really -- you know, it has some risk
8 in determining the residency.

9 So we seek to identify -- verify
10 identity first. And we -- I don't know who else
11 does that, but we do it.

12 Q. And did I hear you correctly to say that
13 you matched Georgia's voter registration list to
14 voter registration rolls in other states to create
15 the challenge lists at issue in this case?

16 A. Not only, but you asked me were there
17 other data sources. And that was one, yes.

18 Q. That was one you used. Okay.

19 So besides requesting their mail to be
20 forwarded to the post office, besides registering
21 to vote in another state, is there anything else
22 that a registered Georgia voter could do to have

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1 ended up on your list?

2 A. Sure. You can look at all kinds of
3 things. You can look at tax records to see if
4 people sold their house and moved. You can look
5 at all kinds of things.

6 Q. I'm asking specifically, what did you
7 look at to create --

8 A. Those are some of the things that we
9 did.

10 Q. You looked at tax records as well?

11 A. In some cases, yes.

12 Q. Which cases did you decide to look at
13 tax records for?

14 A. I don't recall specifically.

15 Q. Which tax records did you look at?

16 A. We would look at county tax records.

17 Q. And what are you looking at
18 specifically, whether an individual paid taxes in
19 the county where they're registered or something
20 different?

21 A. No, to see if they moved.

22 Q. Okay. Anything else that you looked at

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1 Q. So would you agree that it's
2 important --

3 A. So assuming that you're performing an
4 actual linkage, yes.

5 Q. Did you perform an actual linkage?

6 A. Can you define what you mean by
7 "linkage."

8 Q. Well, I'm repeating the term that you
9 just used.

10 What do you understand that to mean?

11 A. No, that's not true. You just said
12 "linkage."

13 What do you mean by "linkage"?

14 Q. Is that not the term that you just used?

15 A. You asked me a question about linkage.
16 Read the question.

17 Q. Did you attempt to link information
18 between Georgia's voter rolls and other data sets?

19 A. What do you mean by "link"?

20 Q. Match.

21 A. Match? Sure.

22 Q. When you performed that matching, do you

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1 agree that it's important that the fields conform
2 with respect to data format and data type?

3 A. Yes.

4 Q. Do you agree that it would be important
5 that both databases used for the match use
6 standardized abbreviations?

7 A. We have a separate approach that we use
8 for that because we verify identity first.

9 Q. Okay. Can you tell me about how you
10 verify the identity?

11 A. No.

12 Q. Why not?

13 A. Because it's a proprietary service that
14 my company used.

15 Q. Okay. This case has a protective order
16 in place specifically so we can understand these
17 questions.

18 A. It's a 4,000-row algorithm.

19 What do you want to know?

20 Q. I want to know what you do to verify the
21 identities before you perform the matching.

22 A. Assessing -- assessing identity involves

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1 a complex series of mostly common algorithms,
2 things like dissimilarity indexes, similarity
3 indexes. We use some fuzzy logic. We use a
4 number of different things. That's my answer.

5 Q. Okay. What is fuzzy logic?

6 A. Fuzzy logic is a set of -- in identity
7 is a set of algorithms that's designed to
8 ascertain whether something similar is near
9 similar enough to assume that identity is
10 accurate. And if it's not, then it assigns a risk
11 factor to it.

12 Q. And is this something that you developed
13 yourself or you used an outside vendor for it?

14 A. Yes. I developed --

15 Q. Which one? Is that something --

16 A. I developed it myself in 2006.

17 Q. Okay. Has its accuracy ever been
18 analyzed by anybody else?

19 A. Its accuracy. We use it every day in
20 our business. So it's used in practice, and we've
21 done 43 million cases, so its accuracy is pretty
22 well known.

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1 mean, we would use them as oracles. And when the
2 algorithm needs information, it would seek the
3 information from one, the other or both.

4 Q. What kind of information would it need?

5 A. The address information that TrueNCOA
6 and SmartyStreets provide.

7 Q. Were there any others that you used
8 besides TrueNCOA and SmartyStreets?

9 A. Not for addresses.

10 Q. For any other forms of data that were
11 relevant to the challenge lists?

12 A. What's the question?

13 Q. I asked if there were any other programs
14 similar to what TrueNCOA and SmartyLinks [sic]
15 provides. And you said not related to addresses.

16 A. No.

17 Q. Can you clarify what I got wrong?

18 A. You didn't get it wrong. You asked me
19 if there were any more. I said no.

20 Q. Understood.

21 What queries did you use in producing
22 the challenge list?

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1 A. What queries did we use? What do you
2 mean?

3 MR. SHELLY: Can we pull up Exhibit C.
4 And go to the top of page 13.

5 BY MR. SHELLY:

6 Q. I have some questions about number 4
7 here at the top. It says, "OpSec compared, using
8 algorithms, queries, and various regression
9 techniques" --

10 A. Yeah.

11 Q. -- "the addresses in the registration
12 file to government and commercially available
13 information in order to identify people who have
14 either moved out of the county in which they are
15 registered or who live outside the State of
16 Georgia."

17 A. Right.

18 Q. So I'll just start at the beginning, I
19 guess.

20 Can you tell me all of the algorithms
21 you used?

22 A. As I said, we have a proprietary

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1 algorithm that my company owns that we use
2 primarily for the identity and residency
3 resolution.

4 Q. Okay. Are you willing to produce that
5 algorithm or provide it in a format that we can
6 review?

7 A. No.

8 Q. Okay. And in the same context, can you
9 tell me what queries you used?

10 A. Well, the query would be a query against
11 the True- -- in this case, TrueNCOA and possibly
12 SmartyStreets. So they would -- they would pass
13 it through their CASS system to clean it up,
14 perform some hygiene on it. They'd look at
15 delivery point verifications and those kind of
16 things. If we found some anomalies, we might
17 access another system like a SmartyStreets, but
18 that's it. That's the query.

19 Q. So when you say you performed "hygiene,"
20 can you give me a concrete example of what it
21 would mean to provide hygiene to a piece of data
22 that you analyzed here?

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1 address, say, 123 Main, in a city that had a Main
2 Street and a Main Avenue, how would know the CASS
3 system know or SmartyStreets -- would either of
4 those systems know how to complete it? Or what
5 would it do in that situation?

6 A. You would have to ask them how they
7 would do it. To us, I mean, again, it's a
8 function of whether or not it's likely to be the
9 same person, organization or street. And then it
10 assigns sort of a risk score to it. And then it's
11 processed differently.

12 That might be a case where we would go
13 and look at, say, a SmartyStreets to see if we can
14 ascertain what the situation is. In the cases
15 where we cannot, we would kick it out and not
16 include it.

17 Q. Okay. And when you say it would assign
18 a "risk score," is that like a scale of 1 to 10?
19 Or what kind of risk score can be given?

20 A. We have risk scoring built into our
21 scoring mechanisms inside of our algorithms.

22 Q. So I'm trying to figure out what's

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1 Q. Were you able to eliminate the risk?

2 A. You can never eliminate all of the risk.

3 Q. Did you analyze every piece of data that
4 was flagged as a risk of potential inaccuracies?

5 A. The quality control algorithms would,
6 yes, in seeking to remove any false positives or
7 false negatives that might be in the system.

8 Q. And that's something that you did
9 in-house or that's something that TrueNCOA would
10 have done or something different?

11 A. No, that's something our algorithm does.

12 Q. And you run the data through your
13 algorithm on the back end after you -- after
14 TrueNCOA performs the match; is that correct?

15 A. Yes.

16 Q. And do you know how TrueNCOA or these
17 others assign risk?

18 A. How they assign risk? I have no idea.

19 Q. Moving on to the next clause in this
20 answer, what regression techniques did you use?

21 A. Our modeling is pretty significant. We
22 use some k-means modeling. We use a variety of

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1 different techniques in our scoring. And then we
2 use a model management process to identify the
3 regression technique most likely to produce an
4 accurate result.

5 Q. And in what stage in the process were
6 you running these regressions?

7 A. They're run through the process. It's
8 all baked into the system. Again, this whole
9 thing took a few minutes.

10 Q. Am I understanding that you did these
11 regressions after you received the preliminary
12 match back from TrueNCOA, and then you're
13 providing your own further analysis on it?

14 A. I didn't say that.

15 Q. Can you clarify what I misunderstood?

16 A. The formulas and algorithms that we use
17 execute. As they need information, they pull
18 information in from an outside entity, say,
19 TrueNCOA or whatever. It feeds it into the system
20 and then it continues to process it and keeps
21 working to solve -- solve for the risk. And
22 ultimately we come up with a list.

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1 MR. SHELLY: Okay. You can take this
2 exhibit down, Mr. White.

3 BY MR. SHELLY:

4 Q. When you were matching the voter
5 registration rolls to the NCOA list, what fields
6 were matched between those files?

7 A. We just uploaded the file. CASS does
8 the matching -- I'm sorry. The source does the
9 matching, TrueNCOA or SmartyStreets.

10 Q. Okay.

11 A. In this case TrueNCOA first.

12 Q. Are you familiar with the term "unique
13 identifier" in the context of data matching?

14 A. Sure.

15 Q. Are there any common unique identifiers
16 between the voter registration rolls and NCOA
17 lists?

18 A. Well, that -- not as many as there
19 should be, and that's why we seek to resolve
20 identity first.

21 Q. Are there any unique identifiers common
22 between those two lists?

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1 Q. What are some reasons you are aware of
2 that someone could submit an address change to the
3 postal service while remaining eligible to vote
4 where they are registered?

5 A. I have no speculation on that point.

6 Q. Okay. Just to clarify, you understand
7 that someone can submit an NCOA list and still be
8 properly registered, but you're not sure in what
9 scenarios that may be the case?

10 A. I didn't understand that's what you
11 asked. Is that what you're asking?

12 Q. So my second question was, what are some
13 reasons you're aware of that someone can submit an
14 address change to the postal office while
15 remaining eligible to vote where they are
16 registered?

17 A. Maybe they're being deployed in the
18 military. Maybe -- might have something to do
19 with school. Those kind of things.

20 Q. Any other examples you're aware of?

21 A. Moved inside the county or inside the
22 jurisdiction in which they were registered.

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1 There's a few.

2 Q. Is it your understanding that someone
3 who moved for other non-military government
4 service could still be eligible to vote in
5 Georgia?

6 A. I don't have a perfect list to offer
7 you. You asked me for some ideas. Those were
8 three.

9 Q. And now I'm offering you some more and
10 asking if they're consistent with what you would
11 have understood the requirements to be.

12 So, one, would you have understood
13 someone who moved for non-military government
14 service to remain eligible to vote in Georgia even
15 if they submitted an NCOA?

16 A. Sure.

17 Q. And would you understand someone to
18 remain eligible to vote in Georgia if they had a
19 temporary move or a part-time job or to visit
20 family?

21 A. It depends on the circumstance, but yes.

22 Q. And would you recognize that someone

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1 would remain eligible to vote if they forwarded
2 their mail for some mail-specific purpose, for
3 example, if they were on vacation and needed their
4 mail to be forwarded?

5 A. Yep.

6 Q. And if someone intended to move and so
7 filed an NCOA request, but did not actually move,
8 you would agree that they would remain eligible to
9 vote in Georgia?

10 A. It depends on their circumstance. I
11 can't answer that.

12 Q. And the question is, if someone is
13 living in Georgia, they intend to move so they
14 file an NCOA request to forward their mail, and
15 then they change their mind and do not actually
16 move, you would agree that they're still eligible
17 to vote in Georgia?

18 A. Sure. If they still submitted the
19 permanent move change, yeah.

20 Q. Okay. Who was responsible for removing
21 the names of eligible voters such as these from
22 the challenge lists?

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1 A. We did our best to -- first of all, the
2 code. Let's put it that way.

3 Q. Okay. To go through those examples
4 again, would the code be able to identify someone
5 who is deployed for military service?

6 A. As best we can, yes. We pulled out
7 300,000 voters off the initial query.

8 Q. Okay. I'll ask you another question
9 about that in a second, but would the code be able
10 to recognize someone who moved because they were a
11 college student?

12 A. It might.

13 Q. How would it do that?

14 A. If they submitted a permanent change or
15 a temporary change.

16 Q. Okay. Would the code --

17 A. We also --

18 Q. -- also identify --

19 A. I'm sorry. Go ahead.

20 Q. Go ahead.

21 A. Go ahead.

22 Q. Would the code be able to identify

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1 someone who moved for non-military government
2 service?

3 A. Possibly. And it depends, again, how
4 they submitted their NCOA and if they sold their
5 house or -- you're making suppositions that can't
6 be made. It's not a one piece or another; it's
7 the aggregate of it.

8 Q. Okay. So I understand that the code
9 cannot identify the purpose that someone submitted
10 an NCOA request, but your answer is you think you
11 can infer it from other sources of data?

12 A. As best we can. And then when the
13 challenge is made, the probable cause has to be
14 identified by the county. And they are the ones
15 with the capability of doing that.

16 Q. What steps did you take specifically to
17 remove the names of individuals who live on or
18 near a military base?

19 A. We have a list of ZIP codes that include
20 all the military bases. We also use some of the
21 military designators, FPO, that kind of thing.
22 And we pull those directly from -- in the initial

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1 query, rather than waiting till the end.

2 Q. When you say "we" --

3 (Unintelligible cross-talk.)

4 Q. -- was anyone else responsible for that
5 besides you?

6 (Unintelligible cross-talk.)

7 Q. But there was no other person
8 responsible for removing these names besides you?

9 A. No.

10 Q. If a person moved to an address, for
11 example, Camp Lejeune, North Carolina, would that
12 suggest to you that the person lives on a military
13 base?

14 A. Potentially.

15 Q. What about an address on Andrews Air
16 Force Base?

17 A. Potential.

18 Q. Barksdale Air Force Base?

19 A. Moved to or from? What's the question?

20 Q. To. To.

21 A. It depends. It depends on what their
22 submission said to the post office. So is it

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1 Base example, do you know what town Moody Air

2 Force Base is closest to in Georgia?

3 A. Macon? I don't know.

4 Q. I'll represent to you that I believe
5 it's Valdosta.

6 A. Yeah, that's right.

7 Q. Did you examine whether any addresses
8 with a Valdosta address could be in the military
9 or family of someone in the military?

10 A. We probably did, yeah.

11 Q. Would you have removed those voters?

12 A. Assuming that it met the matching
13 requirement, sure.

14 MR. SHELLY: You can take this exhibit
15 down, Mr. White.

16 BY MR. SHELLY:

17 Q. Mr. Phillips, are you familiar with
18 UOCAVA?

19 A. Of course.

20 Q. Did you examine whether any voters on
21 your list had requested a UOCAVA ballot?

22 A. As best we can. As you know, UOCAVA

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1 ballots and postcard ballots in general are not
2 handled by the state; they're handled by the
3 counties individually.

4 Q. How would you have researched or sought
5 to identify whether an individual had requested a
6 UOCAVA ballot?

7 A. Almost impossible because the counties
8 don't publicize that.

9 Q. Okay. When you say "almost impossible,"
10 so was there anything you did to identify whether
11 a voter had requested a UOCAVA ballot?

12 A. No, I am not aware of any way to do that
13 effectively.

14 Q. Did you -- I think you said you did --
15 well, let me just ask the question.

16 Did you take any steps to remove all the
17 names of college or university students who were
18 temporarily away from home?

19 A. Anyone temporary that had registered the
20 temporary address change, yes. Permanent address
21 changes, what we tried to do was eliminate the ZIP
22 codes in and around the schools.

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1 A. I don't have any opinion about moving to
2 college campuses.

3 Q. I didn't hear you. Could you repeat
4 that last part.

5 A. I don't have any opinion on your
6 question.

7 Q. Is it your understanding that most
8 students who attend college reside in a dormitory?

9 A. I would believe that to be false.

10 Q. Did you take any steps to remove the
11 names of individuals who were temporarily
12 attending college, but did not live in a
13 dormitory?

14 A. Did they register as permanent moves
15 from the NCOA?

16 Q. Am I gathering correctly that your
17 analysis of whether voters were eligible turned on
18 whether they filed a permanent or temporary change
19 of address?

20 A. It might. As I said, it's a complex
21 algorithm. It's 4,000 rows long. It doesn't --
22 it doesn't work like your brain does.

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1 Q. Do you know what proportion of the
2 original list that TrueNCOA flagged that you would
3 have sent along for further verification?

4 A. I recall that we probably got -- the
5 initial cut was probably 700,000 or so. And then
6 it ultimately got down to, what, 360-, so whatever
7 that delta is.

8 Q. Approximately how much time did you
9 spend reviewing the names that were matched
10 between the voter file and the NCOA registry? Or
11 am I understanding correctly that the code did all
12 the analysis and you personally did not do any
13 further?

14 A. There's a little bit of sort of
15 reviewing the quality of reports to ensure that
16 we're within something we consider reasonable on
17 the false positives and false negatives, but an
18 hour maybe.

19 Q. Okay. And what would you have
20 considered reasonable?

21 A. Maybe a standard deviation.

22 Q. Can you just explain that a little bit

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1 more? A standard deviation of what?

2 A. Relative to the potential error rate
3 that we might expect. That's the best way to
4 frame it.

5 Q. Okay. And what error rate did you
6 expect?

7 A. Less than one standard deviation.

8 Q. If you had had more time, would you have
9 done anything more?

10 A. No.

11 Q. Did you do anything to correct for
12 potential matches of individuals in the voter file
13 who share a first name, last name and reside at
14 the same address? Or am I understanding that you
15 relied on TrueNCOA to determine whether that would
16 be a match?

17 A. I never said that, but the import of
18 verifying identity can't be overstated in this
19 case. And that would come as a result of helping
20 verify identity.

21 Q. Okay. So when you pulled the voter
22 file, there was -- if there were two individuals

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Gregg Phillips

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1 It was system-generated.

2 MR. SHELLY: You can take this down,
3 Mr. White.

4 BY MR. SHELLY:

5 Q. Mr. Phillips, did you review the
6 challenge lists for instances where the name of
7 the registrant in the challenge file does not
8 match the name in the voter file or the registrant
9 with that registration number?

10 A. We would have, yes.

11 Q. And if you had noticed that, would you
12 still -- should that person have been included in
13 the challenge list if their name in the challenge
14 list did not match the name assigned to that
15 registration number in the registration rules?

16 A. That likely would have been an exception
17 and would have been kicked out, but it's possible
18 it could be included.

19 Q. Did you review the challenge list for
20 instances where the address an individual is
21 registered at and the address where a registrant
22 moved to are identical?

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1 A. There are some anomalies like that, yes.

2 Q. Should those anomalies have been removed
3 from the challenge list?

4 A. I would like to think they would, but
5 it's possible they wouldn't. There are some other
6 reasons why, especially if it was a different
7 name.

8 Q. Would you review the challenge list to
9 confirm whether an individual reregistered at the
10 address where the NCOA match suggested the
11 individual moved to?

12 A. That was beyond our capacity. So in
13 that case, what we would say is submit the
14 challenge and let the county figure it out.

15 Q. Do you know what it would mean when a
16 record shows a "moved to" street address of
17 general delivery?

18 A. It could mean a lot of things. They
19 didn't give an address. They didn't have an
20 address when they moved. It's possibly a homeless
21 person. There are dozens of reasons.

22 Q. Would you still understand that to

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1 were -- we were called to work.

2 Q. How many counties did you prepare
3 challenge lists for?

4 A. I think we did them all.

5 Q. And in how many counties were challenge
6 lists actually submitted?

7 A. I don't know the answer to that.
8 Catherine can answer that.

9 Q. Do you know how counties were chosen for
10 lists to be submitted?

11 A. I believe it's where we found a Georgia
12 voter that lived in the jurisdiction to make the
13 challenge.

14 Q. After you conducted the initial match,
15 did you analyze demographic information or other
16 characteristics of the individuals you identified?

17 A. Not until after you sued us.

18 MR. SHELLY: Can we pull up Exhibit H.

19 (Phillips Deposition Exhibit 10 was
20 marked for identification and attached to the
21 transcript.)

22

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1 BY MR. SHELLY:

2 Q. This is a TrueAppend document. We can
3 scroll through it several pages. Once you have a
4 sense, can you tell me if you're familiar with
5 this document. Feel free to ask Mr. White to
6 scroll directly.

7 A. Yes, I am familiar with it.

8 Q. Can you describe what it is for me?

9 A. It is a quality check on numbers.

10 Q. Do you know when this document was
11 created? It looks like it says December 16th.

12 A. Probably before we sent the challenges
13 out.

14 Q. Okay. And do you know why it was
15 created?

16 A. Yes, quality control. Trying to pull --
17 remove voters that would be a false positive or
18 false negative.

19 Q. Okay.

20 MR. SHELLY: Can you scroll to the next
21 page, Mr. White. Next page.

22

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1 BY MR. SHELLY:

2 Q. How would you have used age information
3 for your quality control?

4 A. We wouldn't. This was -- this is part
5 of the report that comes back from TrueAppend.

6 MR. SHELLY: Next page.

7 BY MR. SHELLY:

8 Q. How would you have used business owner
9 information?

10 A. We don't. It's part of the report that
11 comes back from TrueAppend.

12 Q. Which parts of this report did you use?

13 A. Probably just looked at the overall
14 numbers and then tried to assess whether or not
15 there was some accuracy -- noticeable accuracy
16 issues. And we don't use this product anymore,
17 but that would be it.

18 Q. Why don't you use this project anymore?

19 A. Product.

20 It's not effective. We have automated
21 testing tools now that we did not have.

22 Q. Do you know how much OpSec paid for this

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1 report?

2 A. Probably nothing. Twenty bucks --

3 Q. TrueAppend provided it for free?

4 A. -- forty bucks? I don't know. I don't
5 know how much...

6 Q. Would you make any changes to the
7 challenge lists after reviewing -- after reviewing
8 information in this report?

9 A. Not that I recall.

10 MR. SHELLY: You can take this one down,
11 Mr. White.

12 BY MR. SHELLY:

13 Q. Mr. Phillips, once a voter has been
14 challenged, what is your understanding of what
15 that voter must do to be able to cast a ballot and
16 have that ballot counted?

17 A. Prove who they were -- or prove where
18 they lived. Excuse me. Sorry.

19 Q. Did you consider the burden this process
20 could impose over the Christmas holidays on voters
21 who were temporarily outside of Georgia for a
22 legitimate reason?

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1 MR. SHELLY: It's just -- I'm squinting
2 on the screen, but what I want is actually at the
3 top of page 2, which is why I wasn't seeing it.
4 And the date line is actually right above this
5 page. It might be helpful context. It's the
6 first line of the previous page. It shows this
7 was a December 20th e-mail.

8 BY MR. SHELLY:

9 Q. Mr. Phillips, you write, "Because these
10 are supplemental to the electronic filing, we
11 don't really have a huge need to get these shipped
12 out immediately. If we drop ship across the next
13 week or so, can you get us a cost estimate? There
14 is some strategy at play here and we are adjusting
15 tactics to compensate."

16 And as you can see, this is an e-mail
17 string with Mark Williams.

18 Do you see what I'm referring to?

19 A. Yes.

20 Q. Okay. My question is, what is the
21 "strategy at play" that you are referencing?

22 A. Whether or not we were going to ship

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1 both the hard copy in addition to the electronic
2 copy which was being shipped.

3 Q. Okay. And how did you adjust tactics?

4 A. We ended up not shipping them to the
5 counties.

6 Q. Okay. And why was that decision made?

7 A. Cost, among other things, but the
8 counties were okay with just getting them
9 electronically, and they didn't want the boxes
10 dumped on their doorstep.

11 Q. Got it.

12 MR. SHELLY: Can we pull up Exhibit L.

13 (Phillips Deposition Exhibit 14 was
14 marked for identification and attached to the
15 transcript.)

16 BY MR. SHELLY:

17 Q. At the top here, this is December 28th,
18 you e-mail Roberta, "Can you please purchase the
19 newest GA voter filer? I think it is \$250. We
20 need to have it expedited if possible."

21 Who is Roberta?

22 A. She's a volunteer that used to work for

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1 to get -- I was probably trying to get the file.

2 There are two files in Georgia. One file has

3 history on it and one file has the actual voter

4 registrations. And they're linked by the UVID.

5 And I was probably trying to get one file before

6 the other one was done, is what I was probably

7 trying to do.

8 MR. SHELLY: Can we pull up Exhibit M.

9 (Phillips Deposition Exhibit 15 was

10 marked for identification and attached to the

11 transcript.)

12 BY MR. SHELLY:

13 Q. Are you familiar with this spreadsheet?

14 A. I'm not. And I know you guys are saying

15 that I submitted these, but I don't use Excel.

16 And I'm a little unclear on -- you're saying I

17 submitted this in Excel, and that's -- that just

18 doesn't ring true to me. I'm not sure. But I'm

19 familiar with the numbers, so...

20 Q. Okay. So this looks to me like a

21 spreadsheet of racial data.

22 Do you know when this --

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Fair Fight, Inc. et al. v. True the Vote, et al.

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1 A. No idea.

2 Q. -- spreadsheet would have been created?

3 A. No idea.

4 Q. Okay. But you did not create this and
5 you have not seen this; is that correct?

6 A. I may have seen it after the -- I mean,
7 as I said, we probably looked after we were sued,
8 but not before. I have no idea.

9 Q. Okay.

10 A. It's not relevant.

11 MR. SHELLY: Will you put up Exhibit O.

12 (Phillips Deposition Exhibit 16 was
13 marked for identification and attached to the
14 transcript.)

15 BY MR. SHELLY:

16 Q. Are you familiar with this document?

17 A. I am.

18 Q. Can you explain what it is?

19 A. It's a screenshot from a product called
20 DataWalk. It's an intelligence community and law
21 enforcement product that they use to link data.

22 Q. And how did you use this?

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1 A. We used it, and use it regularly, to do
2 a type of regression analysis and data linkage.

3 Q. Was it used to generate the challenge
4 lists?

5 A. No.

6 Q. Okay.

7 MR. SHELLY: Can we pull up Exhibit P.

8 (Phillips Deposition Exhibit 17 was
9 marked for identification and attached to the
10 transcript.)

11 BY MR. SHELLY:

12 Q. Are you familiar with this document?

13 A. It doesn't ring a bell, but it looks a
14 little bit like a DataWalk document. I can barely
15 see it. It's too small to see, but I assume it's
16 a DataWalk document.

17 Q. Mr. --

18 A. Let me rephrase that.

19 I don't know. We don't usually look at
20 this.

21 MR. SHELLY: Mr. White, can you zoom in
22 on, say, the top circle?

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1 THE WITNESS: Yeah, that's a DataWalk
2 document.

3 BY MR. SHELLY:

4 Q. Did you use this in relation to the
5 challenge lists?

6 A. No.

7 Q. What would you have used this for?

8 A. Just looking at different linkages
9 between different files and checking to see what
10 we can find. In this particular -- if we used it,
11 we used it to exclude. Because we typically don't
12 get into the whole deceased voter thing that
13 people talk about.

14 Q. You say you typically do not research
15 whether there are deceased voters?

16 A. We will occasionally look when we are
17 asked, but it's not a topic -- it was not a topic
18 for the challenges and not a topic in Georgia.

19 Q. Okay.

20 MR. SHELLY: You can take that one down,
21 Mr. White.

22

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1 BY MR. SHELLY:

2 Q. Mr. Phillips are you familiar with the
3 Crusade for Freedom?

4 A. No.

5 Q. Are you familiar with the Twitter
6 account @Crusade4Freedom?

7 MR. BOPP: I object. I mean, if you
8 think this is relevant, you can tell me why, but,
9 otherwise, I'm going to object. There's no
10 foundation laid. This isn't relevant at all to
11 anything.

12 MR. SHELLY: Can we --

13 MR. BOPP: And it's way beyond the scope
14 of the subject matter. But, I mean, if you want
15 to tell me, fine; if you don't, I'll just stand on
16 my objection.

17 MR. SHELLY: Can we pull up Exhibit T.

18 (Phillips Deposition Exhibit 18 was
19 marked for identification and attached to the
20 transcript.)

21 BY MR. SHELLY:

22 Q. So these are tweets. The first one

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1 says, "We just prospectively challenged the
2 eligibility of 360,000 voters in Georgia. Largest
3 single election challenge in Georgia and American
4 history."

5 Does this refresh your recollection
6 about what the Crusade for Freedom is?

7 A. No. I'm not on Twitter so...

8 Q. Okay. Fair to say that you do not know
9 who tweets under this account?

10 A. No, I don't know.

11 Q. Okay.

12 MR. SHELLY: Can you pull up Exhibit U.

13 (Phillips Deposition Exhibit 19 was
14 marked for identification and attached to the
15 transcript.)

16 BY MR. SHELLY:

17 Q. Are you familiar with this document?

18 A. Yes.

19 Q. Can you explain what it is?

20 A. It's sort of a brain dump when I was
21 first kind of working through some of the ideas
22 and how we might be able to put it together. It



Files (/Files) > moved_out_of_state_or_county.csv

Details

Your file has been processed, view the report below or click on "Export" to create an export file ...

Created By

avinash@cover.me

Status

Completed

Name

moved_out_of_state_or_county.csv


Record Count

406,213

Create Date

12/16/2020 7:19:58 PM

RETRIEVED FROM DEMOCRACYDOCKET.COM

TrueAppend Report (/Files/Report/0538f7a4-4990-438b-8697-f93df975f341) 

Maximum Potential Credits Required	314,468
------------------------------------	---------

Hygiene Details

Records Processed	396,897 (97.71%)
Vacant Flag	11,461 (2.89%)

OPSEC 0009

DPV Updated/Address Corrected Records	351,943 (88.67%)
DPV Deliverable Records	378,194 (95.29%)
DPV Non-Deliverable Records	18,700 (4.71%)
LACS Updated (Rural Address converted to Street Address)	4,110 (1.04%)
Residential Delivery Indicator	396,865 (99.99%)
Addresses matched to the USPS Database	396,895 (100.00%)
Invalid Addresses	729 (0.18%)

Address Types

General Delivery Address	27 (0.01%)
High Rise Address	74,400 (18.75%)
PO Box Address	20,219 (5.09%)
Rural Route Address	46 (0.01%)
Single Family Address	300,594 (75.74%)
Unknown	211 (0.05%)

Match Details

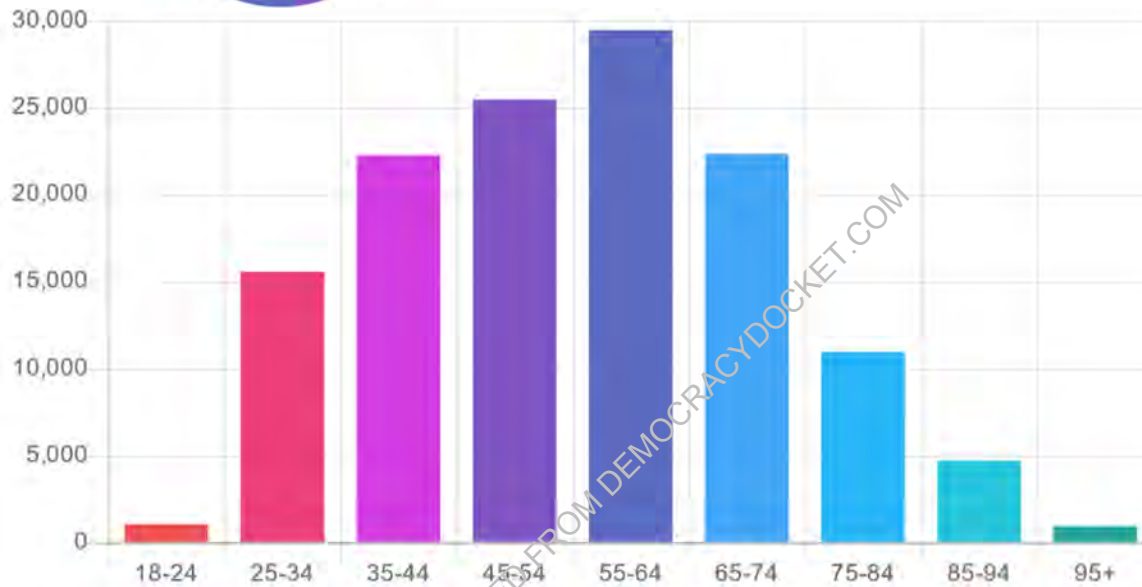
Duplicate Input Names and Addresses	35,043 (8.83%)
Valid Input Names and Addresses	361,852 (91.17%)

OPSEC 0010

Attributes

Age (13,257 Credits)

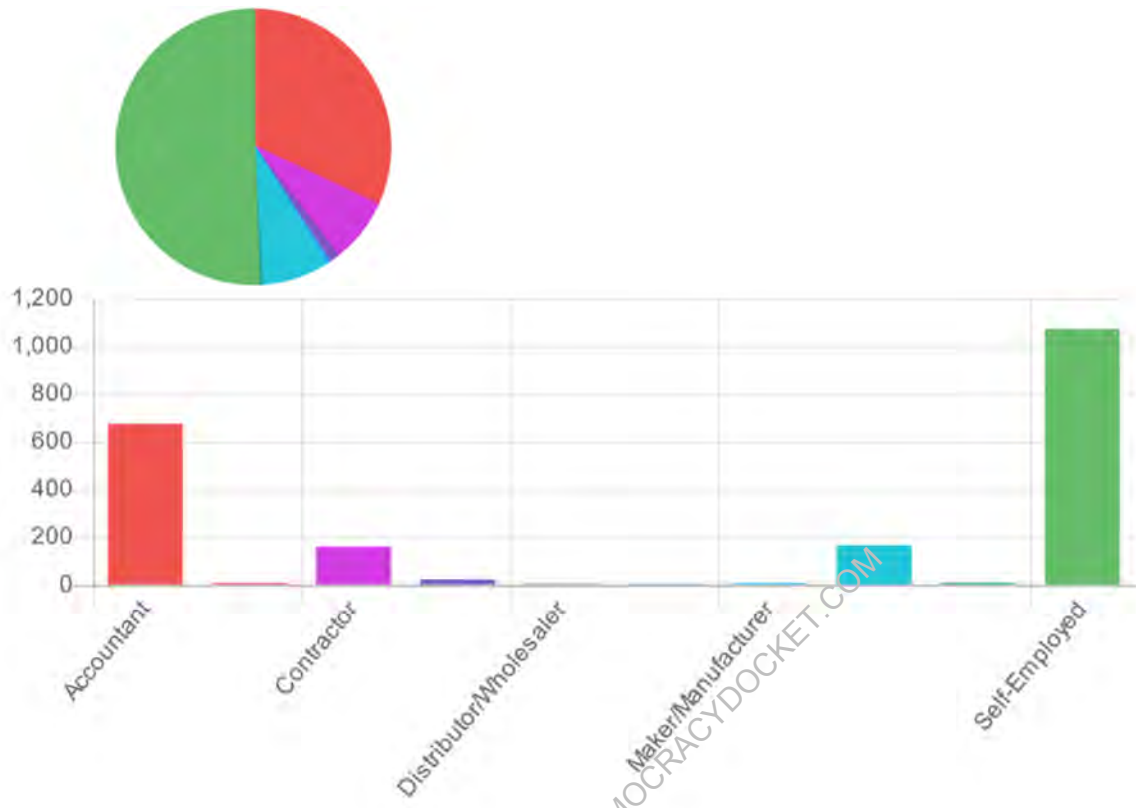
Indicates the age of an individual. (Note: Birth Year and Birth Month are also available via export and are directly related to Age. You should only purchase either Birth Year and Birth Month (2 attributes) or Age (1 attribute).)



1.64% Missing Values

Business Owner (213 Credits)

Indicates that an individual self-identified as a business owner.

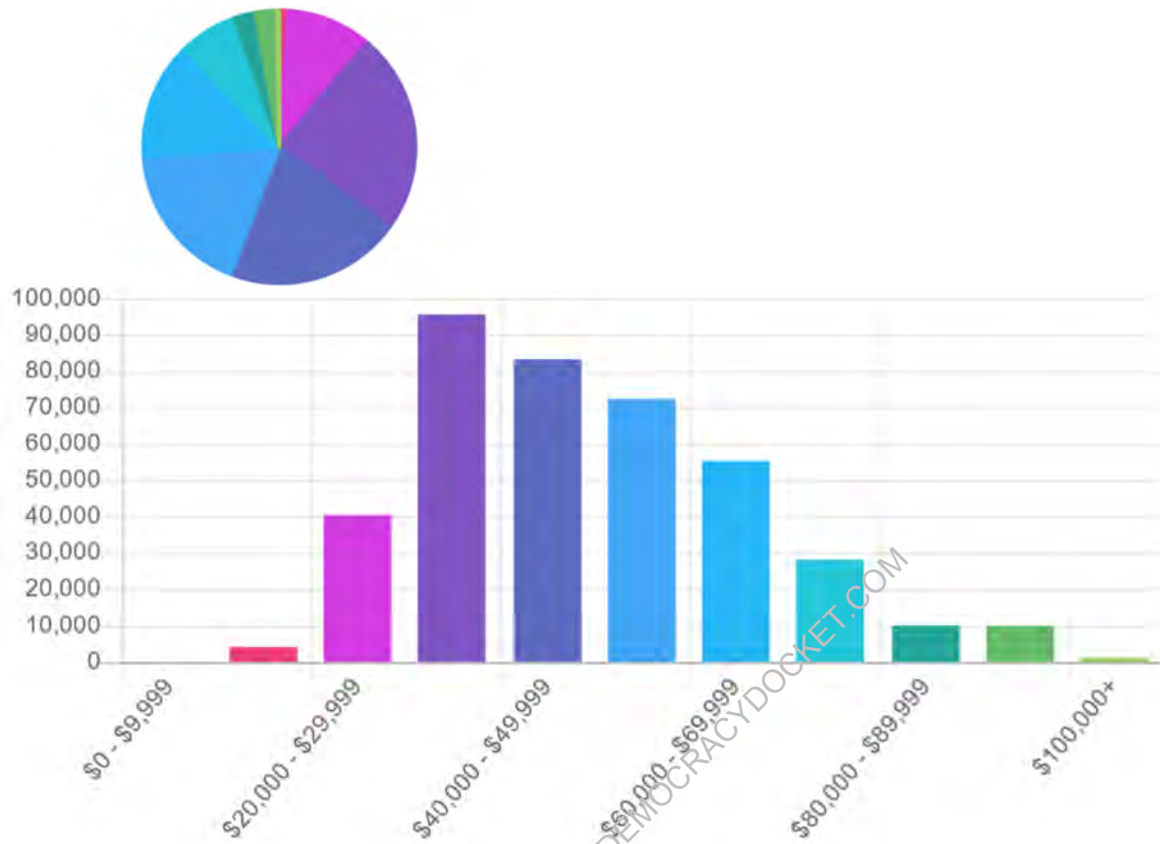


33.75% Missing Values

RETRIEVED FROM DEMOCRACYDOCKET.COM

Census Zip Median Household Income (Free)

Indicates the median household income for zip.

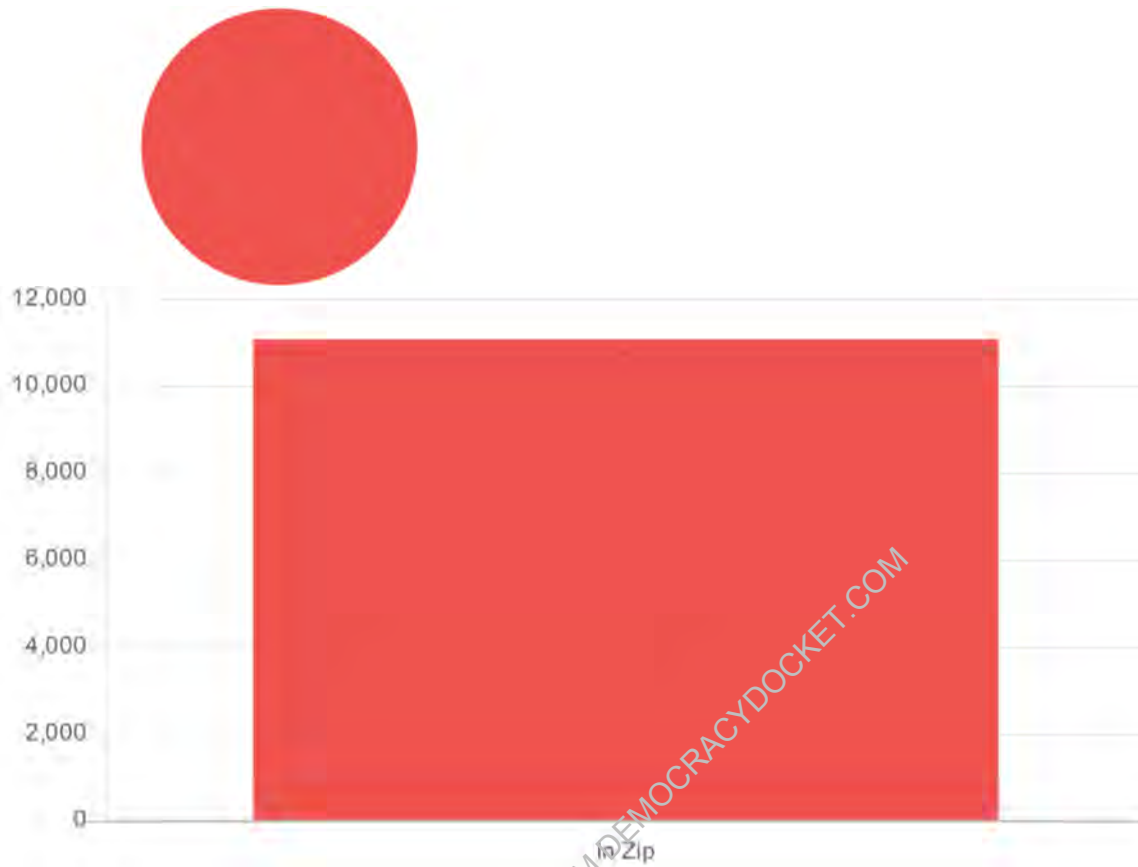


0.00% Missing Values

RETRIEVED FROM DEMOCRACYDOCKET.COM

Forbes Zip (Free)

Zip code used to identify match to Forbes data.

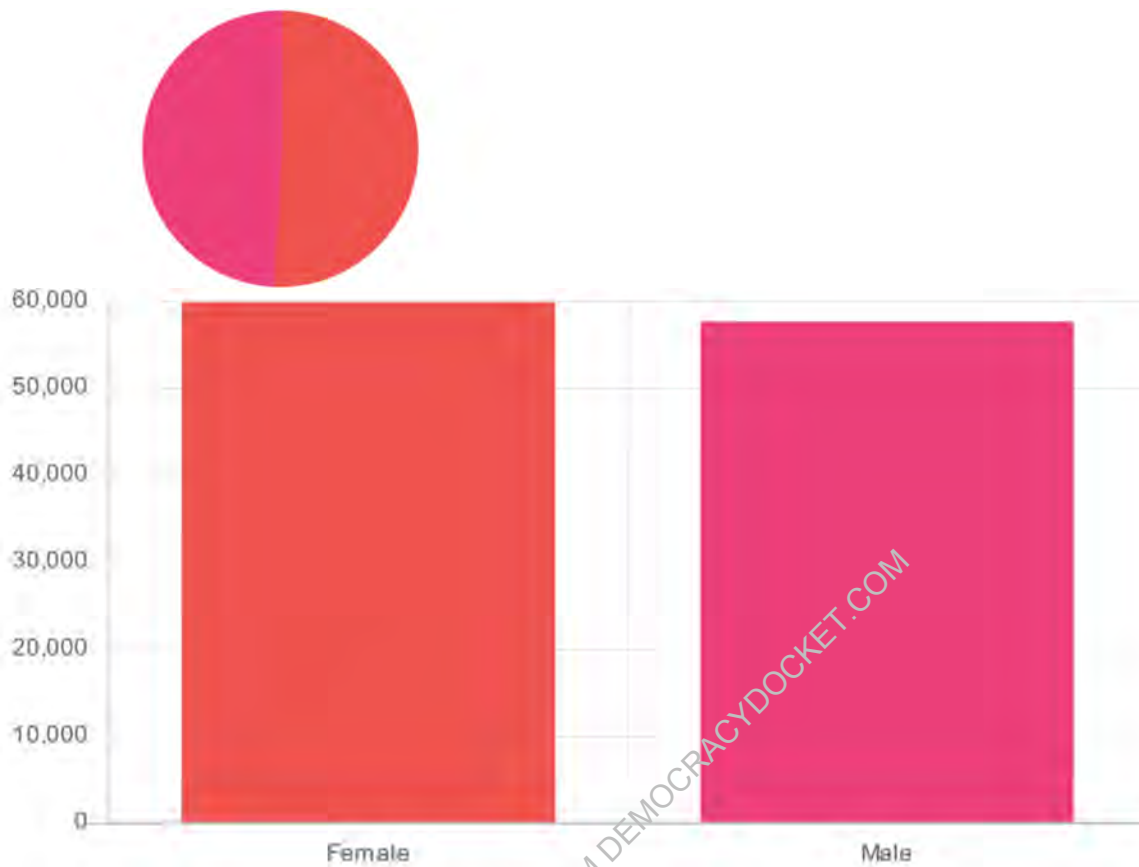


0.00% Missing Values

OPSEC 0014

Gender (Free)

Indicates gender of an individual.

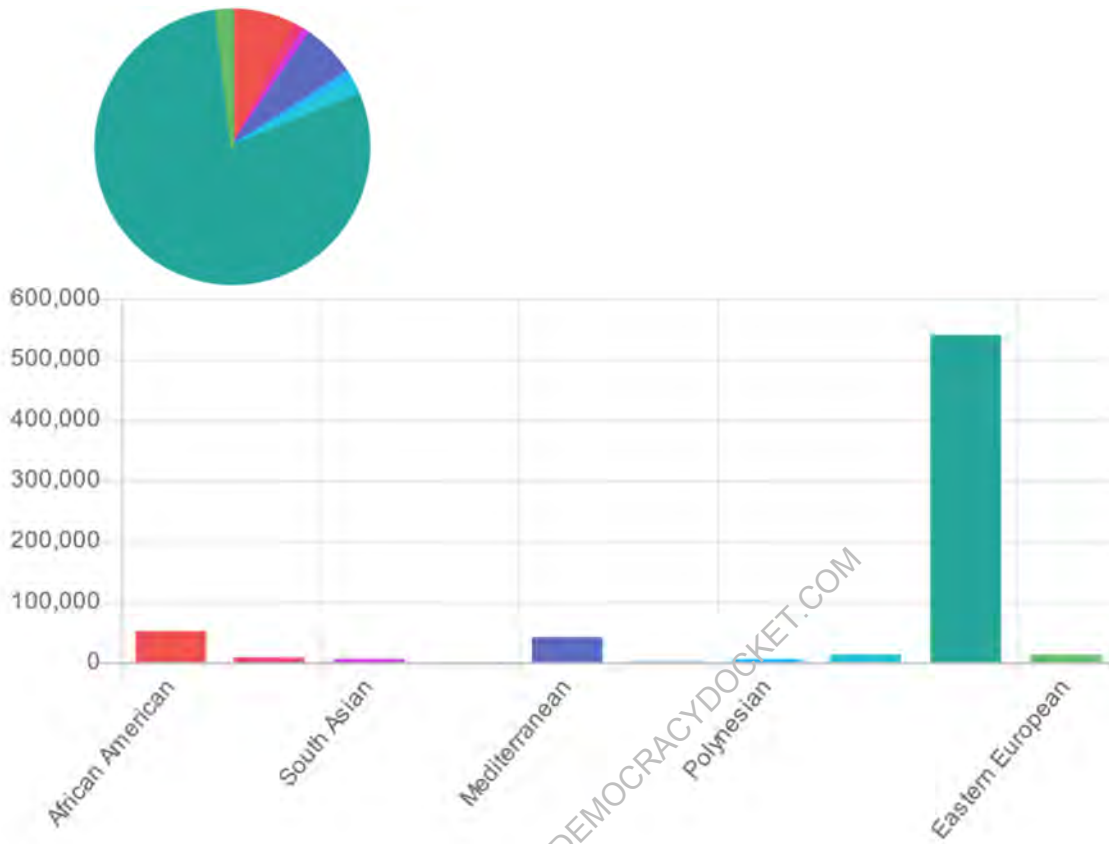


5.39% Missing Values

RETRIEVED FROM DEMOCRACYDOCKET.COM

Heritage (68,071 Credits)

Indicates an individual's background.

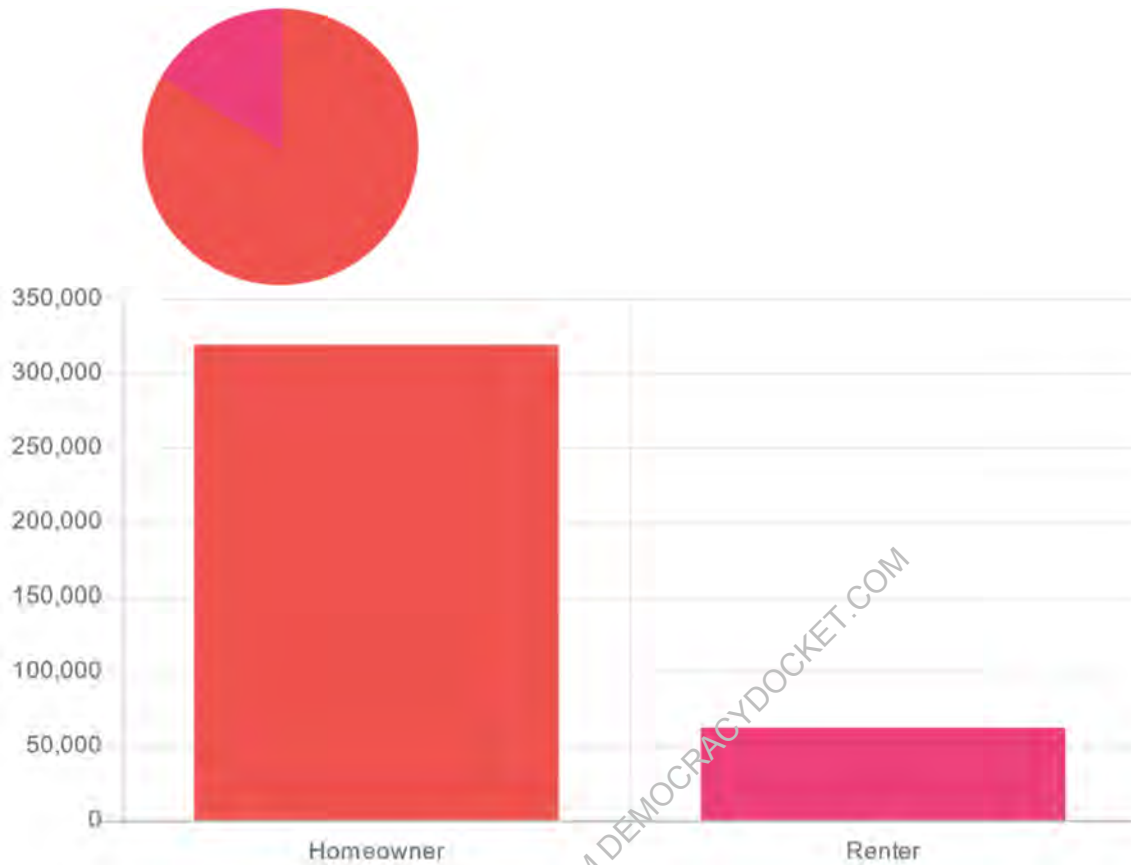


0.03% Missing Values

RETRIEVED FROM DEMOCRACYDOCKET.COM

Home Owner (38,099 Credits)

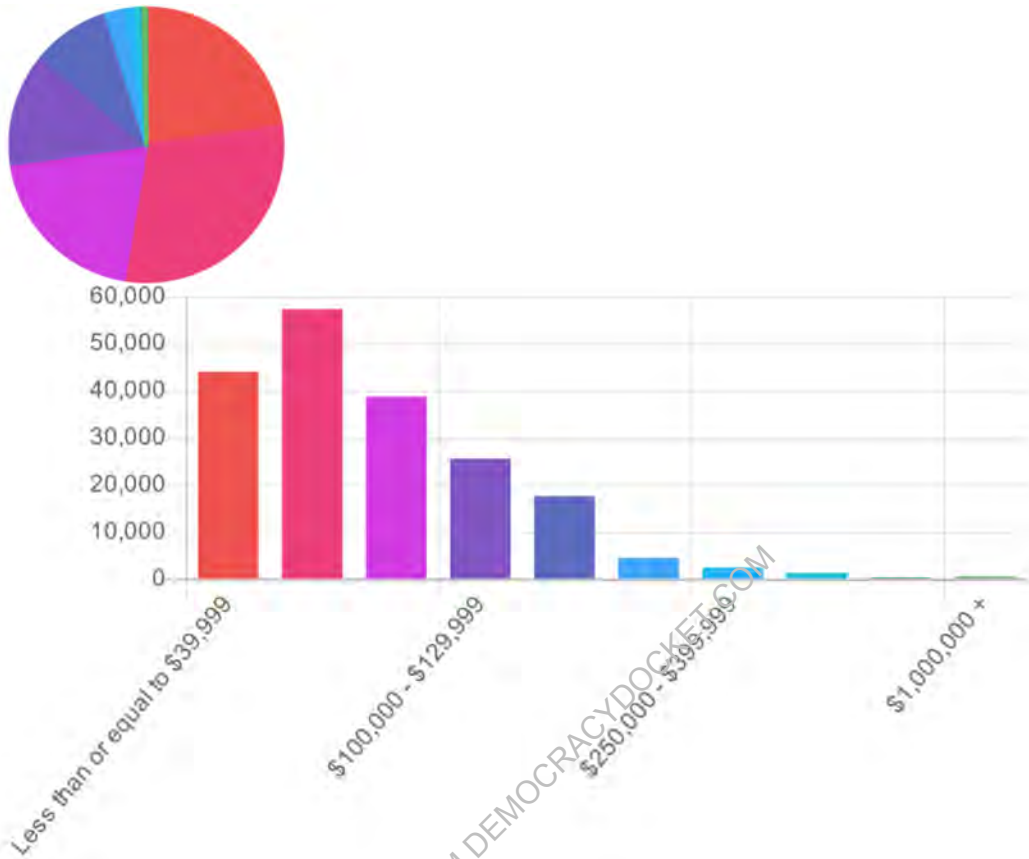
Indicates if the home is owner occupied or if the resident is a renter.



0.00% Missing Values

Income Decile (19,236 Credits)

Indicates the household income within a range.

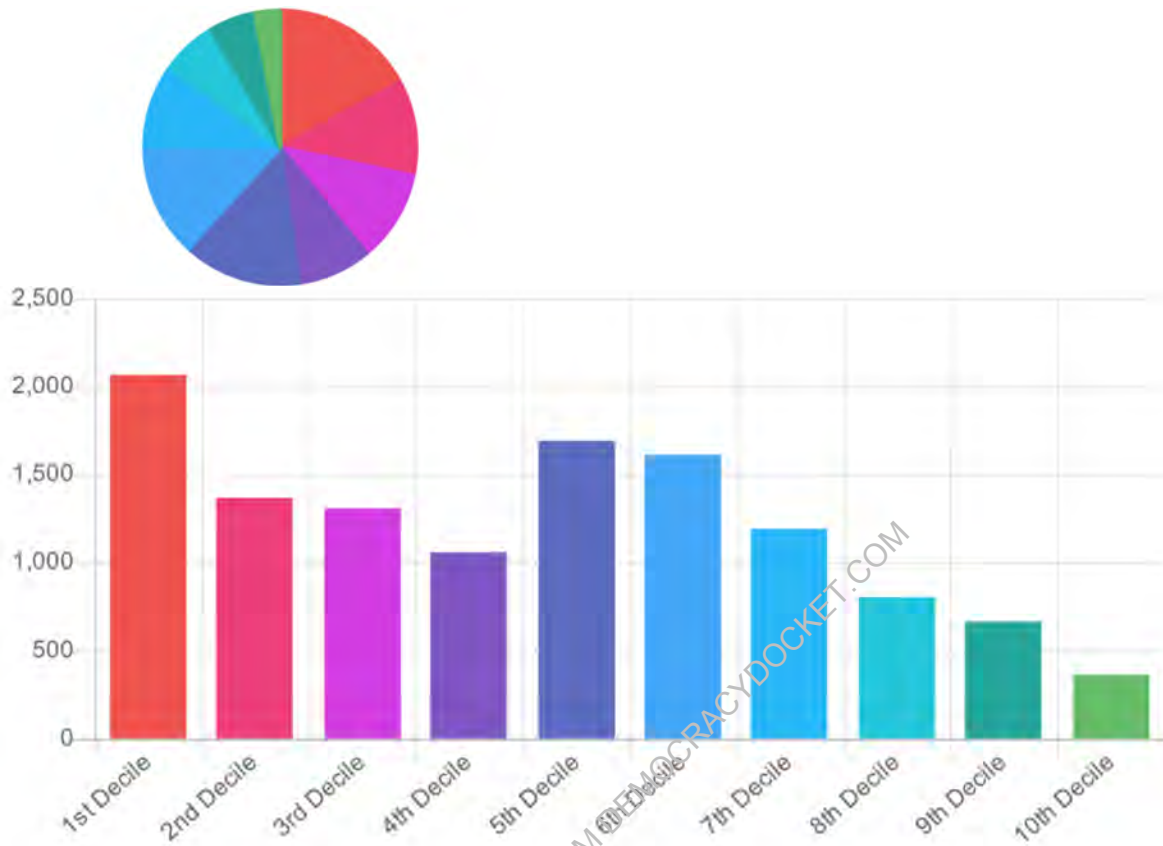


1.33% Missing Values

RETRIEVED FROM DEMOCRACYDOCKET.COM

Major Giving Decile (1,212 Credits)

A model that predicts the likelihood of donors giving a Major gift. The higher the decile, the more likely an individual is a qualified Major Giving prospect.

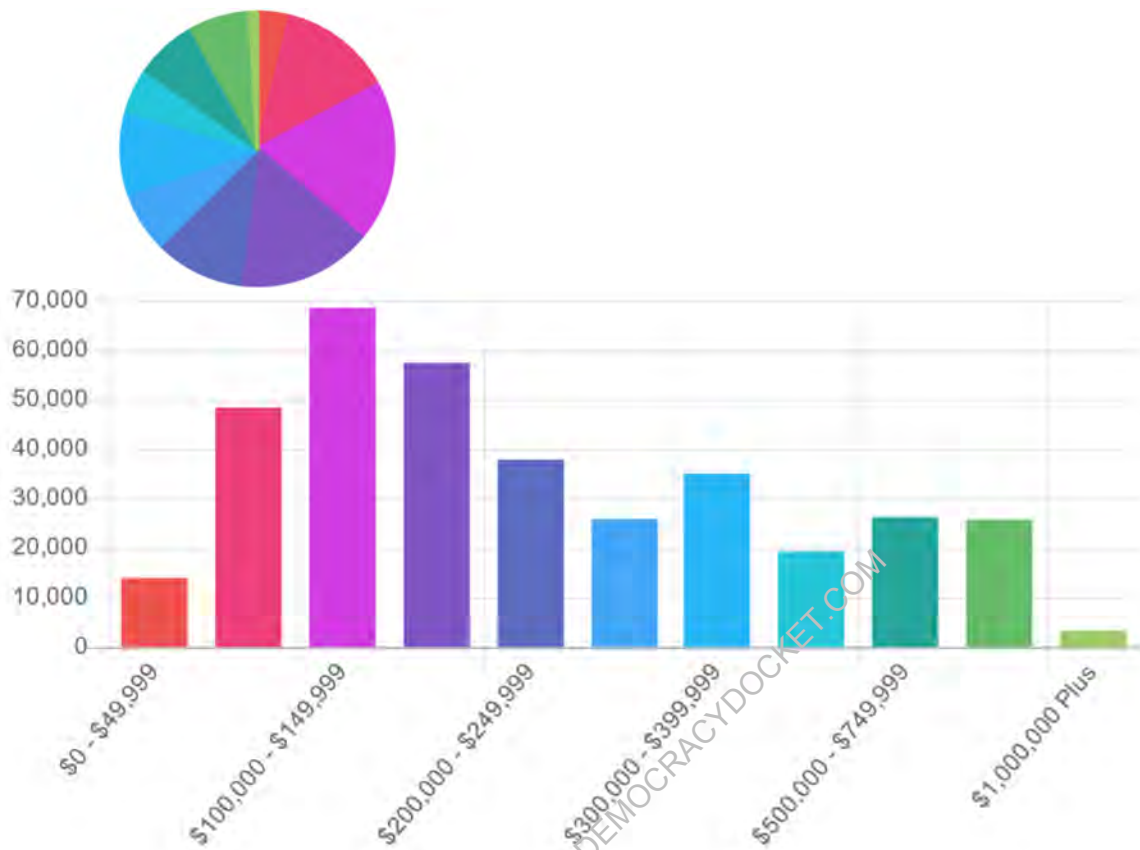


3.47% Missing Values

RETRIEVED FROM EDCRACYDOCKET.COM

Market Value Range (36,111 Credits)

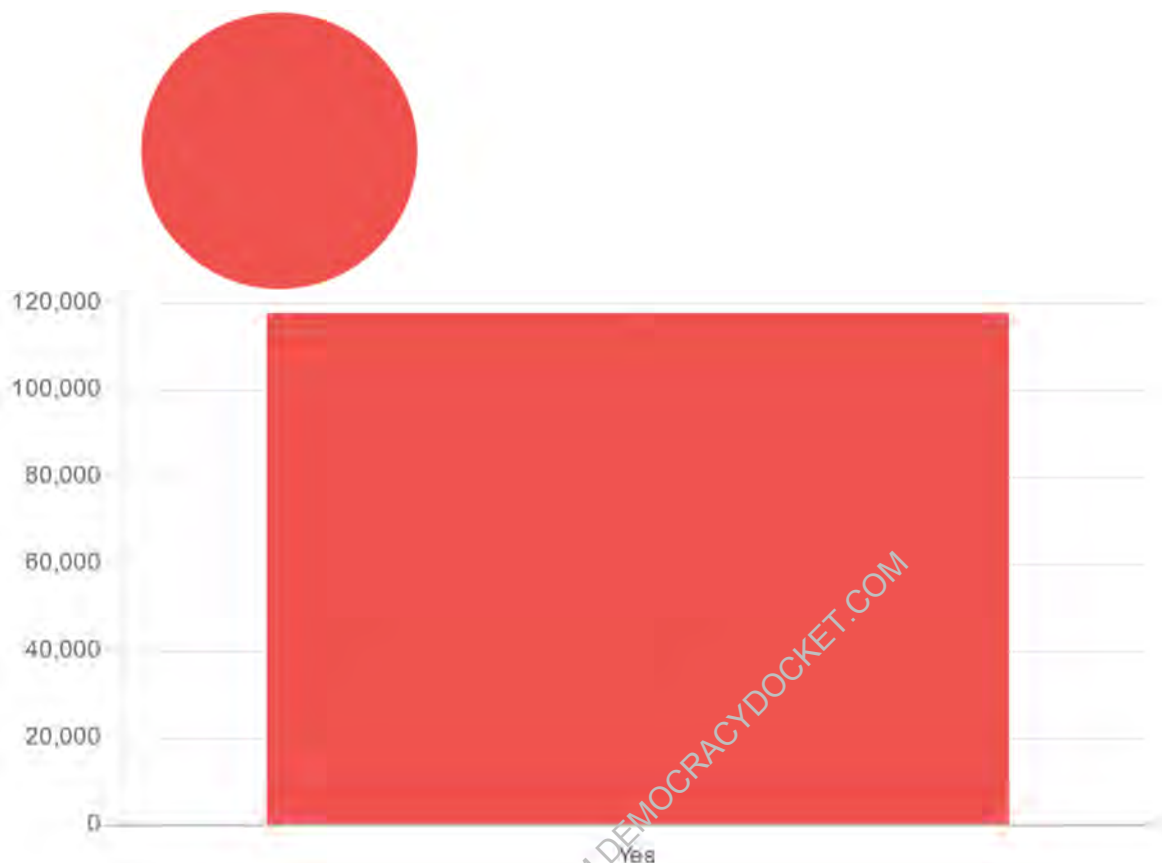
Indicates the market value of the home within a range.



4.89% Missing Values

Married (Free)

Indicates if anyone in the household is married.

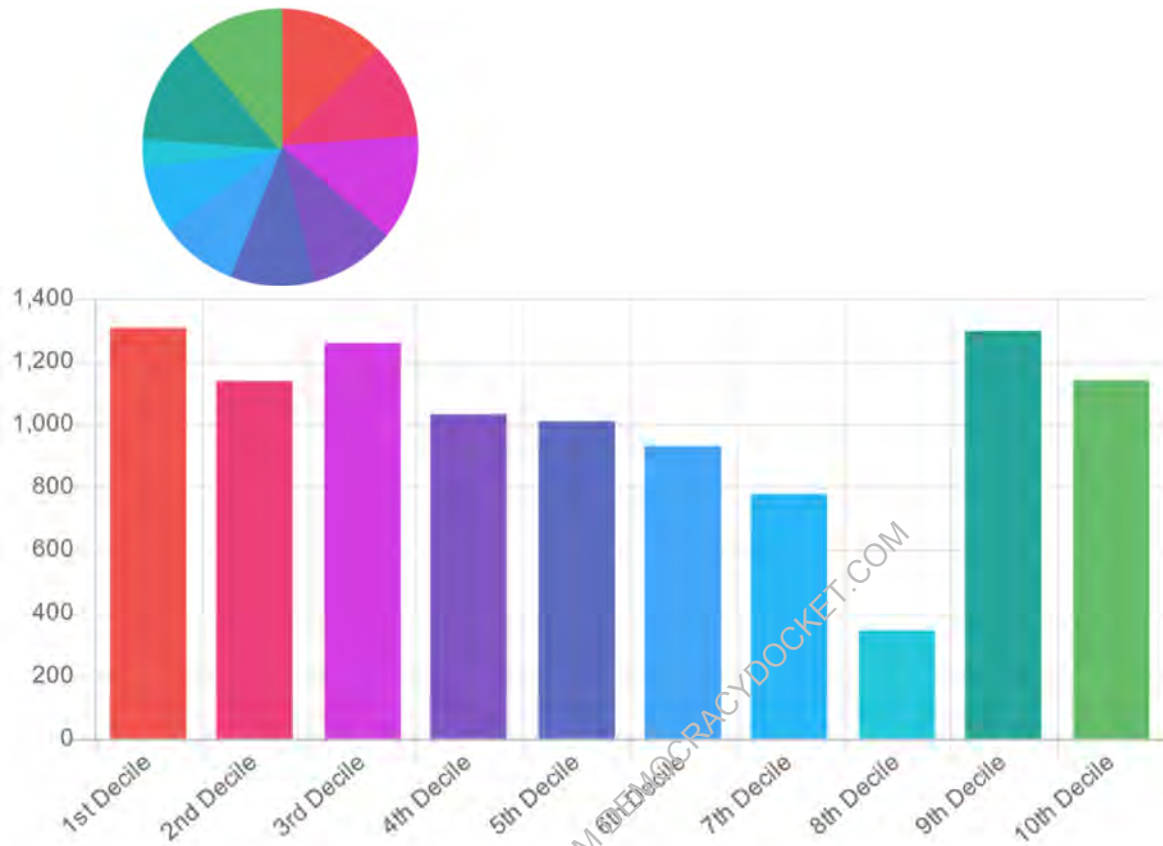


19.74% Missing Values

OPSEC 0021

Midlevel Giving Decile (1,024 Credits)

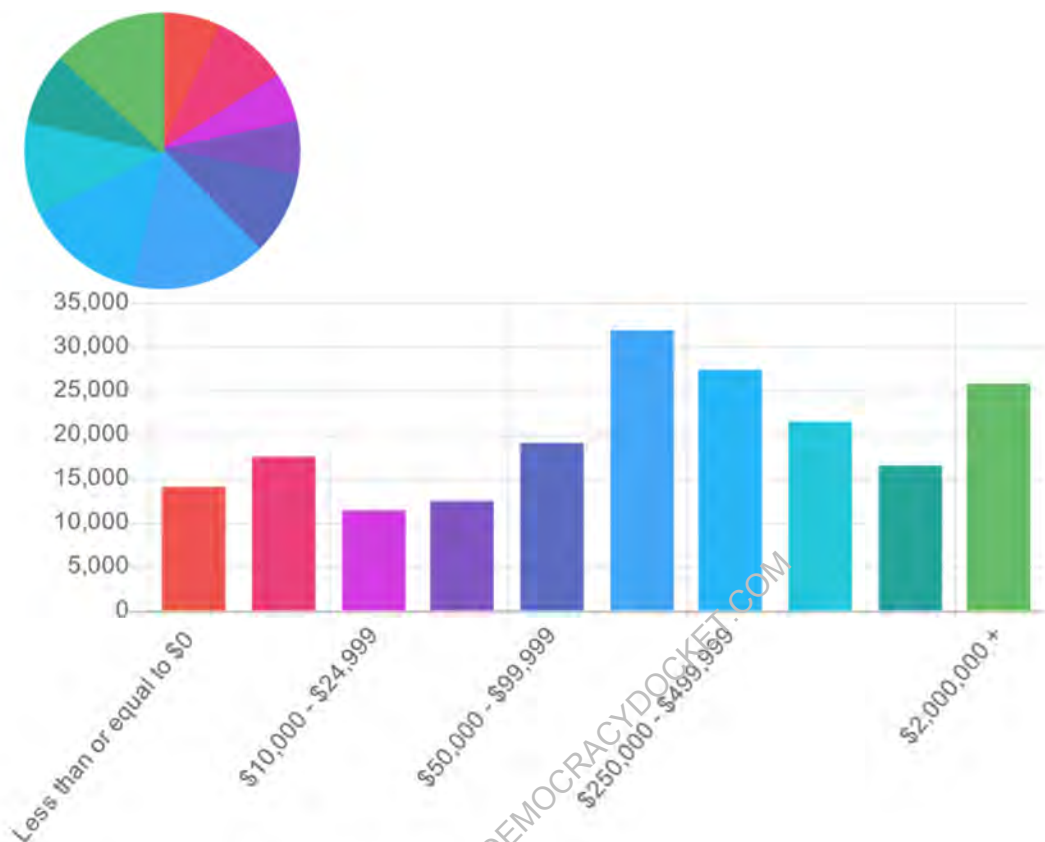
A model that predicts the likelihood of donors giving a Midlevel gift. The higher the decile, the more likely an individual is a qualified Midlevel Giving prospect.



3.93% Missing Values

Net Worth Decile (19,713 Credits)

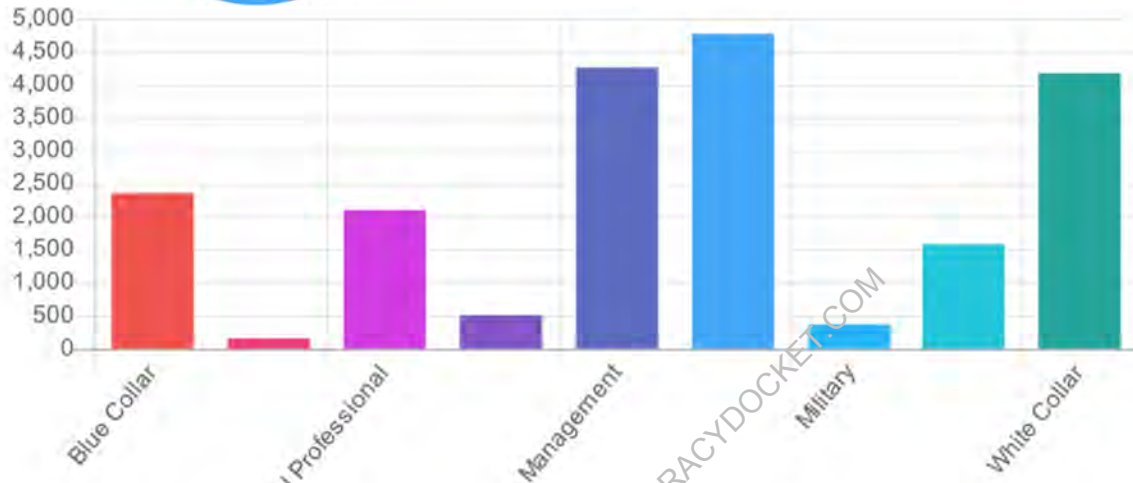
Indicates the household net worth within a range.



0.15% Missing Values

Occupation (2,026 Credits)

Indicates an individual's occupation.

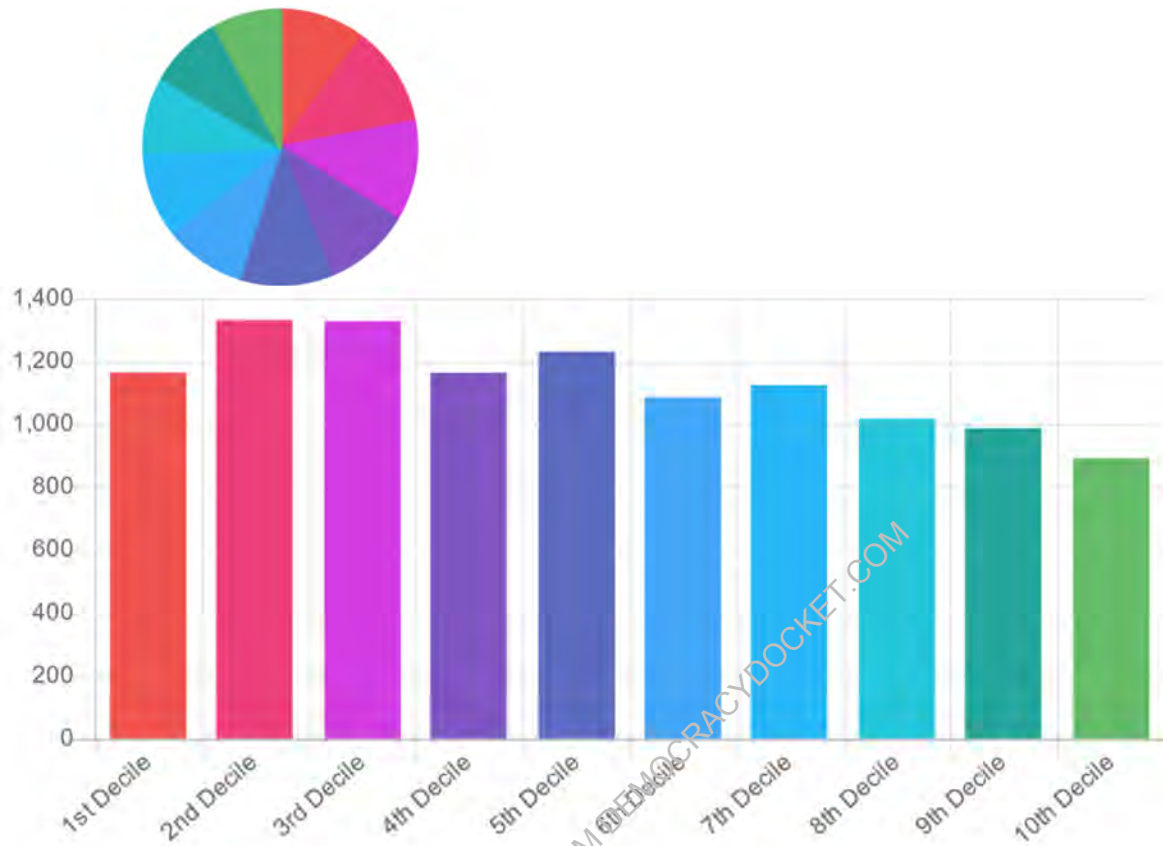


29.29% Missing Values

RETRIEVED FROM DEMOCRACYDOCKET.COM

Planned Giving Decile (1,133 Credits)

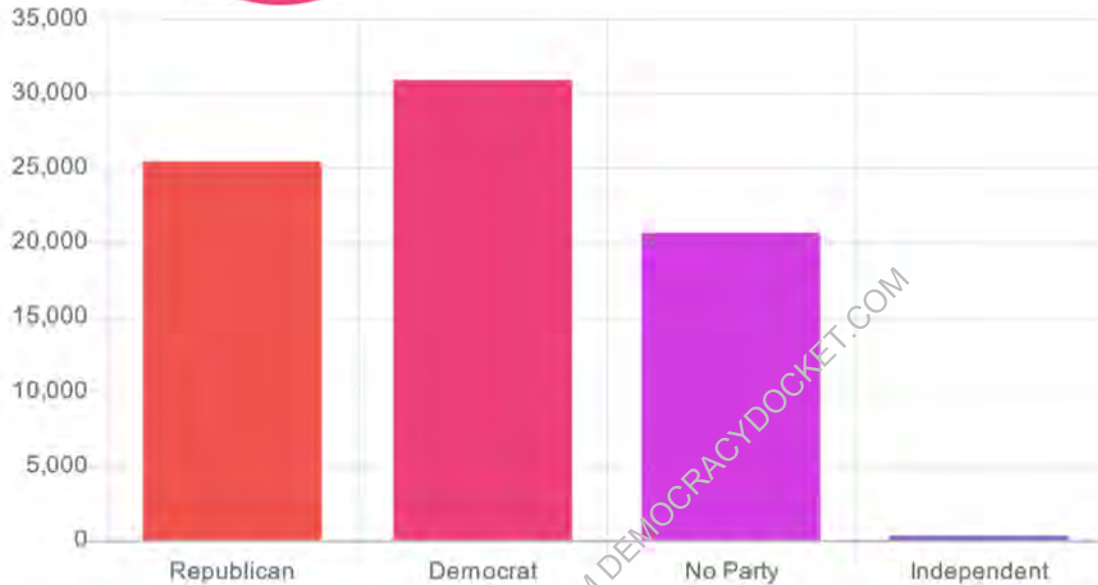
A model that predicts the likelihood of donors giving a Planned gift. The higher the score, the more likely an individual is a qualified Planned Giving prospect.



3.66% Missing Values

Political Party (7,717 Credits)

Indicates an individual's political party.

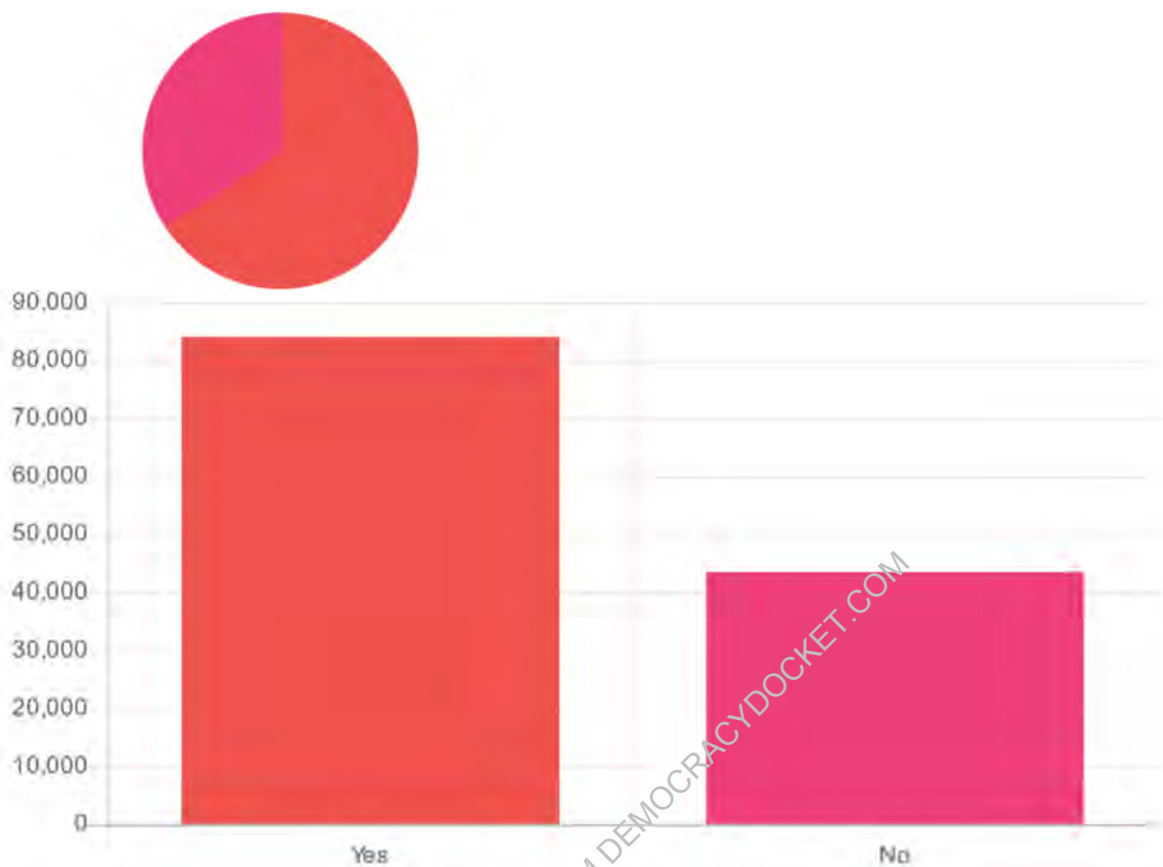


15.28% Missing Values

RETRIEVED FROM DEMOCRACYDOCKET.COM

Presence Of Children (12,749 Credits)

Indicates a household's known presence of children (0-17).

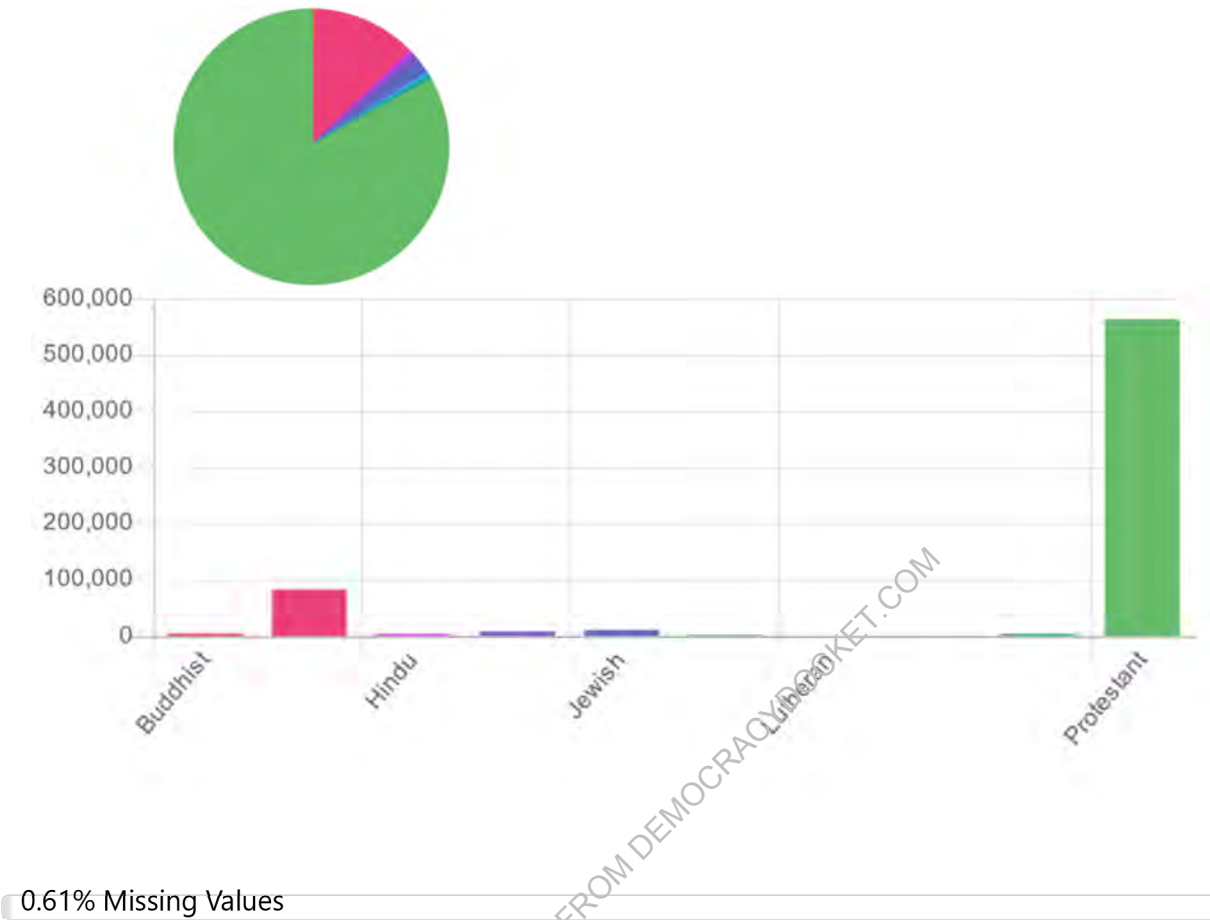


17.30% Missing Values

RETRIEVED FROM DEMOCRACYDOCKET.COM

Religion (67,834 Credits)

Indicates an individual's religion.



Map (/Files/Map/0538f7a4-4990-438b-8697-f93df975f341)



Input Fields



Preview



History



RETRIEVED FROM DEMOCRACYDOCKET.COM

**United States District Court
Northern District of Georgia
Gainesville Division**

Fair Fight, Inc., John Doe, and Jane Doe,

*Plaintiffs and
Counter-Defendants,*

v.

**True the Vote, Inc., Catherine
Engelbrecht, Derek Somerville, Mark
Davis, Mark Williams, Ron Johnson,
True the Vote, Inc., and John Does 1-10,**

*Defendants
and Counter-Plaintiffs,*

Fair Fight Action, Inc.,
Counter-Defendants.

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

Hon. Steve C. Jones

**Defendant True the Vote, Inc.'s Amended Responses to Plaintiffs' Second
Requests for Production**

Pursuant to Federal Rule of Civil Procedure 34, Defendant True the Vote, Inc. ("TTV") responds to Plaintiffs' Second Requests for Production.

General Objections

1. Defendant TTV objects to these requests to the extent that they purport to

**Def. TTV Am.
Resp. to 2d RFP.**

call for the production of documents/information that: (a) contain privileged attorney-client communications; (b) constitute attorney work product; (c) disclose the mental impressions, conclusions, opinions, or legal theories of any attorneys or other representatives of the Plaintiffs; (d) were prepared in anticipation of litigation; or (e) are otherwise protected from disclosure under applicable privileges, immunities, laws, or rules.

2. Defendant TTV objects to these requests to the extent that they are vague, not limited in scope, unreasonably broad and burdensome, or beyond the scope of either category of permissible discovery under Fed. R. Civ. P. 26(b)(1).

3. Defendant TTV objects to the instructions accompanying the requests to the extent that they purport to impose obligations beyond those imposed by the Federal Rules of Civil Procedure, or any order promulgated by this Court.

4. Defendant TTV objects to discovery requests that are not proportional to the needs of the case and that are not “relevant to any party’s claim or defense.” Fed. R. Civ. P. 26(b)(1).

5. Defendant TTV objects to requests for information the benefit of which is outweighed by its lack of importance in resolving the issues at stake in this case,

**Def. TTV Am.
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the amount in controversy, the parties' relative access to relevant information, the parties' resources, and whether the burden or expense of the proposed discovery outweighs its likely benefit. *See* Fed. R. Civ. P. 26(b)(1). Consistent with this rule, Defendant TTV does not produce multiple copies of a communication, e.g., where one email chain has multiple communications, earlier included ones are not produced as separate documents.

6. By responding to these requests, Defendant TTV does not concede that any of the documents requested are relevant to a claim or defense or the subject matter of this action, or are admissible at the trial thereof, or that any person identified in the responses has documents relevant to this action. Defendant TTV reserves any and all objections as to competency, relevance, materiality, privilege, admissibility, or any other grounds on which an objection may be made.

Defendant TTV expressly reserves the right to object to further discovery into the subject of these requests. Any response to a request that inadvertently discloses privileged documents/information is not intended to and shall not be deemed or construed to constitute a waiver of any privilege or right of Defendant TTV.

Insofar as a response to a request may be deemed to be a waiver of any privilege

**Def. TTV Am.
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or right, such waiver shall be deemed to be a waiver limited to that particular response only.

7. Defendant TTV objects to Plaintiffs' discovery requests to the extent that they seek to require him to produce documents or information not in its care, custody, or control or to answer on behalf of other parties.

8. Defendant TTV states that trial preparation and factual investigation are ongoing. Defendant TTV's responses to Plaintiffs' discovery requests are based on information known to Defendant TTV at this time, and Defendant TTV will supplement its responses appropriately if more documents are deemed responsive. Defendant TTV reserves the right to make reference at trial or any proceeding in this or any other action to facts or documents not identified in these responses, the existence or relevance of which is later discovered by Defendant TTV or its counsel.

6. Subject to and without waiving any of the foregoing General Objections, which are hereby incorporated into each specific response, Defendant TTV (a) makes further objections in response to individual requests and (b) makes the required good-faith attempt to fulfill the duty to provide all responsive information

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readily available without undue labor and expense.

7. Defendant TTV objects to producing individuals' personal information, including emails and phone numbers, based upon privacy and relevancy.

Requests for Production

Request for Production No. 11: All documents you consulted or referred to, or that otherwise relate to, your Answers to Plaintiffs' Second Set of Interrogatories to Defendant True the Vote, Inc.

Response: Produced.

Request for Production No. 12: All communications with any Targeted Voters.

Response: True the Vote had no communications with any Targeted Voters and therefore has no responsive communications in its care, custody, or control.

Request for Production No. 13: All communications with the Taliaferro County challenger, Joe Martin, including but not limited to all communications with or involving the email address joe@dancingpines.org.

Response: Emails previously produced. On December 21, 2020 sent a letter to Taliaferro County officials withdrawing Mr. Martin's challenge. This letter is

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produced here as Def. TTV 1833 in case it cannot easily be retrieved in TTV's previous production. *See also* Defendant True the Vote's Response to Second Set of Interrogatories, Response No. 11. Otherwise, True the Vote has no responsive communications in its care, custody, or control.

Request for Production No. 14: All communications regarding the accuracy of the challenge lists.

Response: Previously produced. Defendant True the Vote notes that the communications with Mr. Martin were the only communications with any challenger regarding the accuracy of the challenge lists. Otherwise, True the Vote has no responsive communications in its care, custody, or control.

Request for Production No. 15: All communications regarding Targeted Voters who had not changed their residence, had moved temporarily, or were otherwise still eligible to vote in Georgia.

Response: Produced, to the extent True the Vote communicated with or about Mr. Martin's challenges he separately submitted to Taliaferro County. See Defendant True the Vote's Response to Second Set of Interrogatories, Response No. 11. Otherwise, True the Vote had no communications regarding challenged

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voters who had not changed their residence, had moved temporarily, or were otherwise still eligible to vote in Georgia and therefore has no further responsive communications in its care, custody, or control.

Request for Production No. 16: All documents relating to instances of voter fraud or attempted voter fraud identified as a result of the Georgia Elector Challenges.

Response: Defendant True the Vote does not make any determination of voter fraud. As noted in Response No. 11 to Plaintiff's Second Set of Interrogatories, Mr. Martin communicated with James Cooper and True the Vote after he separately submitted his three challenges. As a result of his submission, Taliaferro County officials determined that Ms. Melba Ann Carmichael did not live in Taliaferro County but had submitted an absentee ballot there.

As noted in Response No. 12 to Plaintiff's Second Set of Interrogatories, True the Vote would not expect to, and did not, receive results of challenges from any county who chose to pursue the challenges submitted. Therefore, True the Vote does not have any responsive documents in its care, custody, or control.

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Request for Production No. 17: All documents relating to any other elector challenges that you were involved in that were filed in Georgia in the six months leading up to the November Election, including lists of challenged voters, correspondence with individual challengers, and correspondence to and from County officials regarding the challenges.

Response: True the Vote was not involved in any other elector challenges in Georgia in the six months leading up to the November election and therefore has no responsive documents in its care, custody, or control.

Request for Production No. 18: All documents and communications relating to True the Vote's "Election Integrity Hotline" as described in your responses to Interrogatory Nos. 2 and 3, including but not limited to all documents and communications surrounding the launch of the hotline, follow-up with users of the hotline, "vetted reports," and follow-up with "the appropriate authorities charged with investigating such claims" as described in your response to Interrogatory No. 3.

Response: Produced. Def. TTV 1835 (Redacted portions were tests of the system and not responsive). Defendant True the Vote has produced the record of

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all hotline contacts relevant to Georgia during the timeframe of the Run-off Election. The Election Integrity Hotline was launched nationwide before the November general election and simply continued during the Run-off Election in Georgia. Defendant True the Vote's Responses to Interrogatory Nos. 2 and 3 did not make that timeline clear. Defendant True the Vote objects to the production of documents relative to the Election Integrity Hotline's launch on the grounds such production is beyond the scope of this litigation.

None of these contacts resulted in the need for True the Vote to follow up or report the contact information to the appropriate authorities. Some of the contacts were general or vague complaints regarding receiving non-solicited absentee ballots. *See, e.g.*, Contact from Walter Bryant. Other contacts had more specific information, but made no allegation that the person in question had attempted to vote improperly in Georgia. *See, e.g.*, Contact from Cameron Day. Other contacts were obviously false contacts. *See, e.g.*, Contact from "Donald Trump" (to be clear, Defendant True the Vote never thought President Trump called the Election Integrity Hotline).

The purpose of the Challenges at issue in this case was to ensure that the

people who were casting ballots in the Run-off election were legally entitled to do so. To that extent the Challenges were trying to prevent “voter fraud” before it happened by working through the process allowed under Georgia law (i.e., presenting challenges to appropriate boards of elections for review, so that board could then follow its own process under Georgia law regarding the challenged voters). The Election Integrity Hotline had a different purpose—gathering information regarding potential voter fraud that had already occurred (e.g., a specific report that an individual personally knew of a person not authorized to vote in Georgia who had submitted an illegal absentee ballot) and reporting verifiable incidents to the appropriate authorities. While True the Vote did report some incidents of alleged voter fraud to authorities, none of those reports involved Georgia voters during the Run-off Election and therefore are beyond the scope of discovery in this matter.

Request for Production No. 19: All documents promoting Validate the Vote from your “website, social media, YouTube, radio, online news publications, and Fox News” as described in your response to Request for Production No. 11.

Response: True the Vote’s website and social media accounts on various

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platforms can be found at the following addresses:

<https://truethevote.org/>

<https://www.youtube.com/user/TrueTheVote>

<https://www.facebook.com/TrueTheVote>

<https://www.instagram.com/realtruethevote/>

The accounts referenced above contain videos and podcasts. Otherwise, True the Vote has produced a spreadsheet with active links to the various online news publications, per counsel's agreement. *See* Def. TTV 1834.

Dated: June 18, 2021

/s/ Courtney Kramer
Courtney Kramer, GA No. 483608
ckramer@bopplaw.com

Courtney Kramer, Of Counsel
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**Admitted Pro hac vice*

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Certificate of Service

I hereby certify that the foregoing document was served electronically on June 18, 2021, upon all counsel of record via email.

/s/ Melena S. Siebert

Melena S. Siebert*

Indiana Bar No. 35061-15

Counsel for Defendants

**Admitted Pro hac vice*

RETRIEVED FROM DEMOCRACYDOCKET.COM

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

-----x

FAIR FIGHT, INC.,
SCOTT BERSON,
JOCELYN HEREDIA,
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,
FAIR FIGHT ACTION, INC.,
Counter-Defendant.

-----x

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

-----x

*** CONFIDENTIAL - PURSUANT TO PROTECTIVE ORDER ***
REMOTE DEPOSITION OF
DEREK SOMERVILLE
Wednesday, October 6, 2021

DIGITAL EVIDENCE GROUP
1730 M Street, NW, Suite 812
Washington, D.C. 20036
(202) 232-0646

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1

October 6, 2021

2

9:17 a.m. Eastern Daylight Time

3

4

Remote video deposition of DEREK

5

SOMERVILLE, taken by Plaintiffs, pursuant to

6

Notice, dated September 23, 2021, before Brandon

7

Rainoff, a Federal Certified Realtime Reporter

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and Notary Public of the State of New York.

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Page 3

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19 ckramer@bopplaw.com

20

21 ALSO PRESENT:

ALICIA HOLMSTOCK, Legal Videographer

22 ALEX RENNICK, Digital Document Technician

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1 I N D E X O F E X A M I N A T I O N

2 Witness:

3 Derek Somerville

4

5 Examination:

6 By Ms. Ford.....Page 9

7

8 I N D E X O F E X H I B I T S

9 Exhibit APage 13

10 Four-page document entitled: Plaintiffs Notice to
Take the Deposition of Defendant Derek Somerville,
dated September 23, 2021 (no Bates Nos.)

11

12 Exhibit BPage 35

13 Document Bates stamped Def. Somerville 0004,
single-page SMS message From: Catherine Englebrecht,
To: Derek Somerville, Date: December 17, 2020

14

15 Exhibit DPage 41

16 Multipage document bearing heading on first page:
Derek Somerville (no Bates Nos.)

17

18 Exhibit CPage 62

19 Three-page email chain, top email From: Derek
Somerville, To: Catherine Engelbrecht, Subject: RE:
FW: Elector Challenge Follow-Up Items, Sent: December
20 19, 2020 (no Bates Nos.)

21

22

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1	I N D E X O F E X H I B I T S, CON'T
2	Exhibit EPage 94
3	Three-page document entitled: True The Vote Partners
4	With Georgians in Every County to Preemptively
5	Challenge 364,541 Potentially Ineligible Voters (no
6	Bates Nos.)
7	Exhibit FPage 115
8	Single-page email From: Catherine Engelbrecht, To:
9	Amy Holsworth, Subject: Citizen Challenge Q&A Zoom
10	call Sunday night at 6p et, Sent: December 19, 2020
11	(no Bates No.)
12	Exhibit IPage 125
13	Single-page document bearing heading: Jim Flenniken
14	(no Bates No.)
15	Exhibit GPage 138
16	Multipage document entitled: Defendant Derek
17	Somerville's Responses to Plaintiffs' First
18	Interrogatories, dated March 15, 2021 (no Bates Nos.)
19	Exhibit JPage 145
20	Multipage document entitled: Defendant Derek
21	Somerville's Responses to Plaintiffs' First Requests
22	for Production, dated March 15, 2021 (no Bates Nos.)
	Exhibit LPage 149
	Two-page document entitled: True The Vote Launches
	Georgia Election Integrity Hotline as Part of the
	Most Comprehensive Ballot Security Effort in Georgia
	History, dated December 15, 2020 (no Bates Nos.)

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1 I N D E X O F E X H I B I T S, CON'T

2 Exhibit MPage 151

3 Three-page document entitled: True The Vote Launches
4 "Validate the Vote" Initiative and Whistleblower Fund
5 to Ensure Election Validity, Process Integrity, dated
6 November 6, 2020 (no Bates Nos.)

5

6 Exhibit KPage 152

7 Single-page document bearing heading: Derek
8 Somerville, dated November 15, 2020 (no Bates No.)

8

9

10 (All exhibits were provided
11 electronically to the reporter.)

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1

* * *

2

P R O C E E D I N G

3

Wednesday, October 6, 2021

4

Remote Deposition

5

9:17 a.m. Eastern Daylight Time

6

* * *

7

THE VIDEOGRAPHER: We are now on the

8

record. This is tape No. 1 of the videotape

9

deposition of Derek Somerville, in the matter of

10

Fair Fight, Inc., et al., plaintiffs v. True The

11

Vote, et al., defendants, and Fair Fight Action,

12

Inc., counter-defendant, in the United States

13

District Court for the Northern District of

14

Georgia, Gainesville Division, Case No.

15

2:20-CV-00302-SCJ.

16

This deposition is being held remotely

17

by Zoom conferencing. Video recording is in

18

Olympia, Washington, on October 6, 2021.

19

The time on the video screen is 9:17

20

Eastern Time.

21

My name is Alicia Holmstock. I am the

22

legal videographer from Digital Evidence Group.

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1 The court reporter is Brad Rainoff, in
2 association with Digital Evidence Group.

3 All parties to this deposition are
4 appearing remotely and have agreed to the
5 witness being sworn in remotely unless an
6 objection is stated to this agreement.

7 Due to the nature of remote reporting,
8 please pause briefly before speaking to ensure
9 all parties are heard completely.

10 Will counsel please introduce
11 themselves and who they represent for the
12 record?

13 MS. FORD: My name is Christina Ford.
14 I represent the plaintiffs, and I'm here from
15 Elias Law Group.

16 MS. KRAMER: Courtney Kramer with Bopp
17 Law firm representing the defendants.

18 MS. McCLAFERTY: This is Michelle
19 McClafferty with Lawrence Bundy, also on behalf
20 of plaintiffs.

21 MR. RAMIREZ: This is Joel Ramirez
22 with the Elias Law Group on behalf of

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1 plaintiffs.

2 THE VIDEOGRAPHER: Will the court
3 reporter please swear in the witness?

4 DEREK SOMERVILLE,

5 having been duly sworn, was examined and
6 testified as follows:

7 EXAMINATION

8 BY MS. FORD:

9 Q. Good morning, Mr. Somerville. Thank
10 you for being here today. My name is Christina,
11 Christina Ford, and I represent the plaintiffs
12 in this case.

13 Will you please state your home
14 address for the record?

15 A. 5130 Saddlebred Lane, Cumming,
16 Georgia, 30028.

17 Q. Right.

18 And where are you located today?

19 A. I'm located in Roswell, Georgia.

20 Q. Okay.

21 Just generally, what location are you
22 in today?

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1 Is it a law firm?

2 A. I'm in the offices of my counsel at
3 821 Atlanta, Roswell, Georgia.

4 Q. Thank you.

5 Mr. Somerville, I just want to go over
6 a couple ground rules for this deposition,
7 particularly because we are appearing remotely,
8 so that we all have the same understanding.

9 If at any point you do not understand
10 a question I'm asking, will you please let me
11 know? And then I will do my best to rephrase or
12 clarify the question.

13 Does that sound good?

14 A. It does.

15 Q. At any time you would like to take a
16 break, please let me know. I'll try to find a
17 good stopping point.

18 The only thing I would ask is if we
19 are in the middle of a line of questioning, that
20 we resolve that line before taking a break.

21 Will you let me know if you need or
22 want a break?

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1 A. Understood.

2 Q. Today as you know, the court reporter
3 is recording the questions and answers. But the
4 reporter can only take down verbal answers, so
5 please answer with an audible "yes" or "no."

6 Does that sound good?

7 A. Yes.

8 Q. Great.

9 Finally, as the court reporter
10 mentioned, please wait until I finish asking my
11 question before you begin answering; and I will
12 do my very best to let you finish so that we are
13 not talking over each other.

14 Does that sound good?

15 A. Yes.

16 MS. KRAMER: Counsel, I hate to
17 interrupt, but do we mind taking the exhibit
18 screen off until we need them? -- until we use
19 them?

20 MS. FORD: That's fine with me.

21 MS. KRAMER: Okay. Perfect.

22 MS. FORD: Okay. Great.

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1 BY MS. FORD:

2 Q. Mr. Somerville, you said you are
3 viewing this deposition by laptop today?

4 A. Yes.

5 Q. Do you have any documents with you in
6 the room? -- either hard copies or electronic?

7 A. I do not.

8 Q. Is anyone else in the room with you
9 other than Ms. Kramer?

10 A. There is not.

11 Q. Just because I am obviously not
12 present with you today, I cannot tell what you
13 have in front of you or if anyone else enters
14 the room.

15 Do you agree do let me know if anyone
16 else enters today?

17 A. Yes.

18 Q. Okay. Great.

19 Do you agree to let me know if you put
20 any other -- any documents in front of you? --
21 either hard copy or electronic?

22 A. Yes.

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1 Q. All right. Two last points here.

2 Do you understand it would not be
3 appropriate for your attorney or anyone else to
4 tell you how to answer a particular question
5 that I ask today?

6 A. Yes.

7 Q. Do you agree that while you are
8 testifying today, you will not exchange
9 communications -- whether in-person or
10 electronic -- about how to answer questions
11 asked?

12 A. Yes.

13 Q. Great.

14 MS. FORD: Could we please put up
15 Exhibit A and mark it as Exhibit A?

16 (Exhibit A, Four-page document
17 entitled: Plaintiffs Notice to Take the
18 Deposition of Defendant Derek Somerville, dated
19 September 23, 2021 (no Bates Nos.), marked for
20 identification)

21 (Pause)

22

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1 BY MS. FORD:

2 Q. Mr. Somerville, this is just the
3 notice of deposition for today's deposition.

4 Do you recognize this document?

5 A. Yes.

6 Q. Great.

7 Are you prepared to testify today?

8 A. Yes.

9 MS. FORD: We can take this down.

10 BY MS. FORD:

11 Q. Mr. Somerville, just some brief
12 background about yourself.

13 Where do you live in Georgia?

14 A. At the address I provided earlier,
15 5130 Saddlebred Lane.

16 Q. What county is that in?

17 A. Fulton County.

18 Q. Okay.

19 How long have you lived there?

20 A. Roughly nine years.

21 Q. Before that, did you also live in
22 Georgia?

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1 A. -- and to -- to -- I'm sorry. I
2 didn't meaning to speak over you.

3 And I think it can be pursued with a
4 relative degree of accuracy.

5 Q. Were you asked to help with True The
6 Vote's challenges in any way?

7 A. I was not.

8 Q. Did you volunteer to help in any way?

9 A. I did not.

10 Q. You mentioned that you participated in
11 a call on December 16 with Mark Davis and Gregg
12 Phillips.

13 Is that correct?

14 A. Yes.

15 Q. Who proposed having that call?

16 A. I don't recall.

17 Q. What was the general purpose of the
18 call?

19 A. An introduction between Mark and
20 Gregg.

21 Q. Is it your understanding that was the
22 first time Mark and Gregg had met?

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1 A. Yes.

2 Q. And you were facilitating that
3 introduction?

4 A. Yes.

5 Q. So the title of that meeting was:
6 Elector challenge alignment.

7 Can you help me understand what was
8 meant by "alignment"?

9 A. My understanding -- my recollection is
10 that, in my understanding -- because I have
11 not -- I have no way of validating this -- that
12 Mark Davis has been involved in voter data for
13 quite some time, potentially decades.

14 It was also my understanding that
15 Gregg -- and forgive me, I don't recall his last
16 name -- that Gregg also had a passion for data.

17 And so my understanding in that call
18 was to bring those two together -- excuse me --
19 so that they could discuss the nuances of the
20 data in our Georgia election files.

21 Q. Okay. I just want to drill down that,
22 and make sure I understand here.

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1 So did "alignment" then mean alignment
2 of methodology? --

3 A. No.

4 Q. -- in compiling a list?

5 A. No.

6 Q. No? Okay.

7 Did it mean alignment of the voters
8 who would appear on the list?

9 A. No.

10 Q. Did it mean alignment of the timing of
11 challenges?

12 A. No.

13 Q. Can you help me understand, then, more
14 of what you mean?

15 A. It meant the alignment of the data
16 definitions and general election data universe
17 in Georgia.

18 So to give a little more definition
19 there, large datasets are unique. And one data
20 field in one dataset in one state doesn't
21 necessarily mean the same thing as it means in
22 another state.

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1 So part of it was to bring the two
2 together so that they could have a technical
3 discussion between the two of them about data,
4 which is not my forte.

5 And the other was just me trying to
6 make introductions in two people that seemed to
7 be professionals in a similar space.

8 Q. Okay.

9 I mean, at the time of this call, it
10 seems that True The Vote was already
11 contemplating doing their challenge effort, as
12 you mentioned.

13 Were you and Mark separately
14 considering a challenge effort?

15 A. Mark and I were separately
16 investigating a similar -- similar matter --
17 right? -- similar scope in terms of the --
18 whether or not people had cast votes that were
19 ineligible.

20 But -- so you might want to restate
21 your question.

22 But, yes, Mark and I were absolutely

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1 investigating the data at that time independent
2 of True The Vote, independent of True The Vote's
3 data, independent of their people, their
4 resources -- completely independent of them.

5 Q. Sure.

6 You say you were investigating.

7 At the time of this call, though, were
8 you both already contemplating that you might
9 file challenges?

10 Or help file challenges?

11 A. We were considering our options, yes.

12 Q. Okay.

13 And did you share that with True The
14 Vote?

15 Was that apparent to either True The
16 Vote or Gregg Phillips by the time of that call?

17 A. I don't recall.

18 Q. At any point in time, did you share
19 with True The Vote that you and Mark were
20 contemplating doing your own challenges?

21 A. I don't recall the specifics of doing
22 so, but it's reasonable to assume that we would

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1 what I asked of her.

2 Q. Then you would have sent it back to
3 her?

4 A. Yes.

5 Q. Did she respond to that at all?

6 A. I don't recall.

7 Q. Okay.

8 MS. FORD: We can take this down.

9 Thank you.

10 BY MS. FORD:

11 Q. Mr. Somerville, so what is your best
12 understanding of what was involved in developing
13 the challenge list that True The Vote submitted?

14 A. I was never consulted on the
15 development of the list, so I have no
16 understanding of how it was developed, who
17 participated in it, or any other degree of that
18 list at all. I have no knowledge of it.

19 Q. Okay.

20 MS. FORD: Can we pull up Exhibit D,
21 please, and Mark it with Exhibit D?

22

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1 Thomas: I did not have visibility into the
2 details of True The Vote's challenge, only
3 collaborated on methodology.

4 Did you write this?

5 A. I believe I did.

6 Q. What do you mean by -- when you said
7 you "collaborated on methodology"?

8 A. I don't recall.

9 The only collaboration that took place
10 is, again, the discussions that we had on data
11 definitions, or the general political arena.

12 So I don't -- I don't believe there is
13 a lot behind the term "methodology" in that
14 response.

15 Q. Mr. Somerville, can you just help me
16 explain why you would say you collaborated on
17 methodology if today you are saying you didn't?

18 A. Well, I think the methodology is the
19 data definitions that I just shared, and then
20 the general political arena inside the state of
21 Georgia.

22 Beyond that, there was absolutely no

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1 collaboration on their list, on how it was
2 compiled, on whether it was quality assured,
3 their numbers, how they delivered it, where they
4 delivered it. There was no collaboration
5 whatsoever on any of that.

6 Q. Okay.

7 Then just to go back to when you said
8 you shared information on general political
9 environment, what do you mean by that?

10 A. As any general political discussion
11 would be, the state of our political
12 environment.

13 It was a very -- there is a lot of
14 activity going on at that time. There was a lot
15 of passion around the election on all sides and
16 on countless topics. It was a very complex
17 time.

18 So it was just a simple discussion of,
19 "Well, this is Georgia, and here is what I
20 believe is going on in Georgia" -- the kind of
21 conversation you would have with anybody that is
22 unfamiliar with your state and wants to talk

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1 separate set of elector challenges in advance of
2 the runoff election.

3 Did you decide to move forward on
4 that?

5 A. We did.

6 Q. When did you decide to do that?

7 A. I don't recall. Mark and I --

8 Q. Was it -- sorry. Please answer.

9 A. Mark and I were looking at the impact
10 of address change on the database well before
11 True The Vote showed up in the state.

12 Q. Did you decide to move forward around
13 this same time when you were meeting with True
14 The Vote in -- in mid-December?

15 A. I don't recall a firm decision to move
16 forward, as you state it.

17 Q. Okay.

18 A. At the time, Mark and I were looking
19 at the data and trying to see what the data was
20 telling us.

21 That -- that was the extent of the
22 effort.

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1 Q. Okay.

2 What was the data telling you?

3 A. That due to a confluence of issues --
4 largely related to the pandemic, and a very
5 large turnout in absentee voting, and a very --
6 and 6.9 million mailers sent by the Secretary of
7 State's office -- that it was highly probable
8 that individuals voted in counties where they no
9 longer resided -- is what the data suggested --

10 Q. Okay.

11 A. -- which I believe is not terribly
12 atypical in an election.

13 Q. What were you hoping the challenges
14 would accomplish?

15 And here I mean your own, not True The
16 Vote's.

17 A. Well, the effort in any such effort is
18 always about the integrity of the process.

19 So without any regard to political
20 affiliation, geography, any -- any metric on the
21 individual, the fundamental question is: Was
22 there a flaw in the process that was exacerbated

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1 The hope is that a process is
2 followed, by which we can help ensure the
3 integrity of the process. It's about the data,
4 not the outcome.

5 Q. Sure.

6 Well, I'm sure -- or I assume -- that
7 you hoped something would happen when the
8 challenges were filed.

9 And I'm trying to understand what --
10 regardless of outcome, what did you hope or
11 expect would happen when the challenges were
12 filed with each county?

13 A. Well, I'm not aware of what was
14 necessarily filed all throughout the state.

15 But, again, I guess my hope would be
16 that, if there was probable cause to believe
17 that a vote may have been cast in an ineligible
18 fashion -- which may very well happen
19 unbeknownst to the person who cast that vote --
20 that that would be looked into by the local
21 boards and remedied accordingly.

22 There is no consideration for how that

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1 that's difficult to get across during a time
2 when people were very emotional. I'm not wired
3 that way.

4 My interest was rising above all of
5 the vitriol, all the noise, all the -- all of
6 it, and to see if there was a practical issue
7 that needed to be addressed within our state to
8 the benefit of all citizens in our state.

9 Q. Okay.

10 At the time that you and Mark were
11 working on putting these lists together, did you
12 think that it was feasible that these -- all of
13 these residency issues could be resolved before
14 the runoff election?

15 (Pause)

16 A. I don't recall, because, again, it
17 really wasn't ours to determine how this was
18 going to be handled by the government.

19 I also don't believe that I had any
20 expectation that that -- that was going to have
21 a short-term impact.

22 I think the effort was really to

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1 highlight a very real issue with the integrity
2 of our voter file, not necessarily to effect an
3 outcome in any short order, if that makes sense.

4 Q. I think so.

5 You mean you thought potentially
6 long-term this would just highlight issues with
7 the voter rolls.

8 Is that fair?

9 A. Yes.

10 To expand, I'm well aware there were
11 people in our state and certainly throughout the
12 country that wanted to see a different outcome
13 in our election, and that wanted to participate
14 in reversing the course of the results of the
15 election.

16 That was not one of my motives at any
17 point in time, ever.

18 For me, it was then, and continues to
19 be, and will always be, around the integrity of
20 the overall process, as it benefits everybody in
21 our state.

22 I take a very practical approach to

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1 literally everything that I do, and this was no
2 exception.

3 There were procedural deficiencies
4 that were highlighted largely as a consequence
5 to the large number of absentee ballot requests
6 that were sent out. And we believed there were
7 a number of people that inadvertently cast a
8 ballot and may not have updated their address.

9 So this was much more about
10 highlighting a procedural vulnerability than it
11 was affecting an outcome that was consistent
12 with much of what was being pressed around the
13 media at that time -- if that gives you
14 additional clarity.

15 Q. It does. Thank you.

16 How did you think the voters on these
17 lists would react?

18 A. Well, it wasn't evident to me that
19 voters on these lists would ever be aware they
20 were on the list.

21 So I don't suspect that there was a
22 great -- I don't -- plus, I think that, as I

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1 understand the process, the -- an appropriate
2 reaction would be to simply demonstrate that you
3 did not move; that you still are a legal
4 resident of the county.

5 So I viewed this then, and I view the
6 challenge as it's provided for under our laws, a
7 very benign process that encourages citizens to
8 participate in the effort to ensure election
9 integrity.

10 I didn't see anything hostile or
11 aggressive about it whatsoever.

12 MS. FORD: Could we pull up Exhibit D
13 again, please, and go to page 2?

14 (Pause)

15 MS. FORD: We might want to make it
16 bigger -- the paragraph -- the first paragraph
17 starting: Yesterday afternoon.

18 BY MS. FORD:

19 Q. So here you say: Starting yesterday
20 afternoon, and with the support of countless
21 Georgians across the state who demand
22 transparency and integrity in our elections, we

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1 When you say you are submitting -- I'm
2 sorry -- "we are submitting formal challenges,"
3 this is an effort that is entirely separate from
4 True The Vote?

5 A. I can't make it clear enough. This is
6 completely unrelated to True The Vote,
7 absolutely unrelated to True The Vote.

8 MS. FORD: We can pull this down.
9 Thank you.

10 A. Now, you know, we are aware that True
11 The Vote was doing -- was launching challenges.

12 But I -- I don't know that -- I don't
13 know when they did those relative to the
14 December 18 time stamp on that post, so -- but
15 completely independent of what they were doing.

16 Q. Following up on that, if you are were
17 aware that True The Vote was filing challenges,
18 and your general hope -- sorry, I won't say
19 "hope" -- maybe motivation in working on this
20 was to highlight data issues, election integrity
21 issues, why move forward with your own at all?

22 A. I don't understand your question.

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1 long extremely quickly.

2 Our motivations for this effort here
3 were truly, truly benign, and I think it's
4 evident in these posts.

5 When we went through the data, we
6 identified a number of individuals that had
7 indicated that they had moved.

8 Then, exercising an abundance of
9 caution, we went out of our way to make sure
10 that, as it states here, we removed individuals
11 that appeared to be either serving in the
12 military, or even remotely located near a
13 military base in case the dependent -- or
14 dependents were caught up in that.

15 Anyone that was and inactive record,
16 as it says here, that we removed; anybody who
17 voted electronically, we removed; anybody who
18 submitted a change of address within the prior
19 18 months, which I believe is the statute in the
20 state, we removed.

21 We erred on the side of the voter over
22 and over again until we arrived at -- and I

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1 In this case, this is a very binary
2 effort. It simply says: If these conditions
3 are met, then there is probable cause to believe
4 that a vote might have been cast ineligible, and
5 that should be remedied.

6 And "remedied" does not necessarily
7 mean they don't vote.

8 It simply means ensuring they vote in
9 the proper county.

10 Q. Understood.

11 And what do you mean by "it could do
12 more damage than good" if too many voters were
13 on the list?

14 A. I didn't say it would be too -- it
15 would do more damage than good if too many
16 voters were on the list. I was explaining --

17 Q. Sorry.

18 Please put it in your own words, then.

19 A. I was explaining the general doctrine
20 that would suggest that: What's the likely
21 outcome of your effort? And if it's going
22 to end -- if it's going to harm people, then you

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1 effort which was around the integrity of the
2 data. So I believe the prevailing logic was
3 that the change of address process has a maximum
4 period under which mail will be forwarded. And
5 I believe the maximum period -- again, I could
6 be mistaken here -- was 18 months.

7 In other words, if it's beyond that,
8 then the record is probably no longer active and
9 mail is no longer being forwarded.

10 That's my recollection.

11 Q. And you don't know the time period
12 that True The Vote used, I assume?

13 A. I do not.

14 Q. Then finally here, you say: We
15 continued to fine tune our list until we arrived
16 at roughly 40,000 across all 159 counties we
17 believe need to be verified by county election
18 boards before the January 5th, 2020 runoff.

19 What do you mean by "fine tune the
20 list"?

21 A. As I previously indicated, accuracy
22 matters. And it was very important for the

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1 effort -- for Mark and I, two individuals --
2 that we be very disciplined in approach, and
3 that we don't take any steps that inadvertently
4 advances inaccurate information.

5 The entire objective is to promote
6 accuracy within the data file.

7 So if we weren't fine tuning and
8 constantly checking, rechecking our work, it
9 would have been at counter-purposes to advance a
10 number of records that appear inaccurate only to
11 find that our work was actually inaccurate.

12 So I believe the "fine tune" is just
13 the disciplined approach of making sure that
14 everything we are doing is as accurate as we
15 possibly can be.

16 Q. Okay.

17 By the end when you had arrived at
18 this, you know, roughly 40,000 list, did you
19 have confidence in that list?

20 And in that methodology?

21 A. I have tremendous confidence that
22 those individuals filed a change of address for

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1 one reason or the other, and that there was and
2 continues to be cause for each county election
3 board to confirm that those individuals are
4 still eligible voters within their county.

5 Q. If you could go back and do it again,
6 are there any improvements you would make?

7 A. Our motivation was consistent
8 throughout, which was around trying to encourage
9 the integrity of the file, which benefits every
10 voter, period. So I don't believe our
11 motivation would change.

12 I believe our methodology was solid.

13 I believe that we probably would not
14 have done a whole lot different with respect to
15 our efforts. No, I don't believe so.

16 Q. Okay.

17 Did you and Mark ultimately have
18 challenges filed in all 159 counties?

19 A. No. By no stretch of the imagination
20 did we have challenges in 159 counties.

21 Q. How many counties would you estimate,
22 then?

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1 A. And the number is not actually known
2 to us because we made these files generally
3 available to those that wanted to participate in
4 the process, so it would be conjecture on my
5 part.

6 But I know it was not a significant
7 number.

8 I think a takeaway from this certainly
9 was that there -- it was much more complicated a
10 process than we estimated.

11 But I don't believe it was very many.
12 And most of them were -- to my knowledge --
13 were -- smaller rural counties in the north side
14 of the state are the only ones I can vaguely
15 recall.

16 There was an awful lot going on at
17 that time. And we can't submit a challenge
18 outside of county that we live in. So our --
19 our activity is somewhat limited to -- to the
20 counties that we are in.

21 Q. Okay.

22 What do you mean when you say you:

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1 file is, and, frankly, how poorly-managed by the
2 state, to the detriment of all citizens, that it
3 is.

4 Q. Do you know how many counties accepted
5 challenges that -- of the lists that you and
6 Mark put together?

7 A. I don't.

8 But I think we would have heard it --
9 you know, heard a fair amount about it if there
10 were.

11 I don't believe that there -- to my
12 knowledge, I'm not sure that any county accepted
13 a challenge.

14 I have no recollection of any county
15 accepting a challenge.

16 Q. Did that surprise you that no county
17 accepted them?

18 A. I don't know if I was surprised.

19 Again, I think we opened with a
20 discussion around, you know, what the government
21 does and doesn't do remains a mystery to me.

22 You know, I think that there was a

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1 almost 400,000 voters -- ten times as many -- is
2 not disciplined?

3 A. If their methodology sought to include
4 that volume and they executed it with
5 discipline, then theirs was a disciplined
6 process.

7 So I can't speak to how they --
8 whether they executed with discipline.

9 I understand the spirit of the
10 question, but it's evident that we used a
11 different process because the numbers are so --
12 so different.

13 Q. Sure.

14 MS. FORD: We can pull this down.

15 Thank you.

16 Can we pull Exhibit D back up and go
17 to page 22, please?

18 (Pause)

19 MS. FORD: And just make this purple
20 box bigger, please?

21 BY MS. FORD:

22 Q. This is a post from December 17 in

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1 which you write: Volunteers needed from each
2 county for a voter-integrity project! 15-minute
3 effort, performed from home. PM me if
4 interested.

5 Do you recognize this?

6 A. I do.

7 Q. Was this the post essentially
8 recruiting individuals to submit elector
9 challenges to specific counties?

10 A. Yeah -- I recall, yes. This would
11 have been an effort to involve individuals in
12 their counties with these challenges,
13 independent of True The Vote.

14 This is not related to True The Vote
15 at all.

16 Q. Okay.

17 So no one here who reached out to
18 you -- sorry.

19 I was about to put multiple double
20 negatives there.

21 Did you forward any of these
22 individuals who were interested to True The

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1 Vote?

2 A. No.

3 Q. What exactly were you asking these
4 volunteers to do?

5 A. Well, it's been a bit, but I suspect
6 this was about -- as we mentioned before --
7 identifying individuals that wanted to
8 participate with their local board of election
9 with this eligibility effort that we were
10 underway.

11 We could -- we could only submit
12 challenges in our own counties. We can't submit
13 them in other counties. So this was a largely
14 unsuccessful effort to identify individuals that
15 wanted to participate in the action.

16 Again, there -- you know, the context
17 of the day was there was an awful lot of
18 activity going on, but this is wholly unrelated
19 to True The Vote, and was largely unsuccessful.

20 Q. Why do you categorize it as
21 unsuccessful?

22 A. As I indicated earlier, we did not

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1 MS. FORD: Trying to see where this
2 is. Looking for something that starts on
3 December 19. Or -- sorry. I'm sorry. I have
4 got something confused.

5 BY MS. FORD:

6 Q. You mentioned in your discovery
7 responses that: On December 19, 2020, I sent an
8 email to Catherine Engelbrecht which contained
9 talking points for elector challenges that I
10 constructed on my own accord.

11 Is in the email that containing
12 talking points that you are referring to?

13 A. I believe so.

14 Q. Okay.

15 In your discovery responses, you
16 mentioned that you assumed True The Vote had
17 legal resources who would review my assumptions
18 in the talking points.

19 What assumptions are you referring to?

20 A. It's pretty -- well, it's just as you
21 have stated. I shared those talking points
22 which I had drafted on my own accord with

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1 So my assumption is that that's a
2 process to ensure that we are not wholly relying
3 on any one piece of information.

4 You know, my understanding and my
5 belief that the NCOA is -- it is an indicator
6 that there may be an anomaly, but then that
7 needs to be substantiated through subsequent
8 diligence.

9 That's my understanding of how it
10 works in the state -- that at no point would any
11 of these challenges prevent an eligible voter
12 from voting. That's not the intent.

13 The intent is to identify if there is
14 a data anomaly, then put in motion a process
15 that ultimately, when fully adjudicated,
16 identifies whether or not an individual -- with
17 their participation, hopefully -- whether or not
18 they are eligible or not.

19 I firmly believe -- and I -- I don't
20 mean to go long here -- that there are
21 individuals that are unaware that they are still
22 registered at their own county. So this is a

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1 said, "Our challenges sought to force that
2 verification"?

3 A. Well, I think I was speaking more
4 broadly on the data integrity effort. I think
5 the word "challenge" just became common
6 vernacular.

7 As it turned out, not that many were
8 ultimately submitted.

9 But I think this captures well the
10 point, which was that there is a process to
11 protect voters, but that process needs to be
12 undertaken in order to identify those votes that
13 are not eligible and would otherwise
14 disenfranchise the very voters that we're trying
15 to protect.

16 Q. Here you seem to be recognizing that
17 the NVRA traditional NCOA process was not going
18 to occur in the few months or weeks before the
19 runoff election.

20 Is that correct?

21 A. I don't -- I don't know if that's what
22 I was acknowledging.

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1 Gregg.

2 And this press release discusses a
3 24/7 hotline to report voter fraud that True The
4 Vote had just launched.

5 Have you seen this before?

6 A. I have not.

7 Q. Have you ever discussed this hotline
8 with True The Vote?

9 A. I have not.

10 Q. Were you aware that True The Vote had
11 launched this hot line?

12 A. I don't have any recollection of it.
13 If it was shared with me, I don't have any
14 recollection of it at all.

15 Q. Okay.

16 We can go to it, or you can just take
17 my word for it -- that this release also
18 mentions plans to -- quote -- "monitor absentee
19 ballot drop boxes."

20 Is that something you ever discussed
21 with True The Vote?

22 A. No, it was not.

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1 Q. Okay.

2 And were you aware of these plans?

3 A. No, I was not.

4 MS. FORD: Can we pull up Exhibit M

5 and mark it as Exhibit M?

6 (Exhibit M, Three-page document

7 entitled: True The Vote Launches "Validate the

8 Vote" Initiative and Whistleblower Fund to

9 Ensure Election Validity, Process Integrity,

10 dated November 6, 2020 (no Bates Nos.), marked

11 for identification)

12 BY MS. FORD:

13 Q. This is a press release from True The

14 Vote that was released in November, 2020,

15 discussing True The Vote's whistleblower fund

16 for those who reported instances of voter fraud

17 or election fraud.

18 Have you seen this before?

19 A. I don't believe I have.

20 Q. Did you ever discuss this

21 whistleblower fund with True The Vote?

22 A. I did not.

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1 Q. Were you aware they had launched this
2 fund?

3 A. I don't have any recollection of it,
4 no.

5 MS. FORD: We can take this down,
6 thank you.

7 Can we please pull up Exhibit K and
8 mark it as Exhibit K?

9 (Exhibit K, Single-page document
10 bearing heading: Derek Somerville, dated
11 November 15, 2020 (no Bates No.), marked for
12 identification)

13 (Pause)

14 MS. FORD: Can we scroll up, please?

15 Or actually, I'm sorry. It's there.

16 BY MS. FORD:

17 Q. This is a snapshot from your Facebook,
18 in which you write on November 15, 2020: This
19 is what we are up against. 600,000 mail ballots
20 and counting.

21 Did you write this?

22 A. It appears I did, yes.

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1 Q. Who is the "we" in "this is what we
2 are up against"?

3 A. I believe the context would be that
4 "we" is the people of Georgia.

5 The issue is, as I indicated earlier,
6 that the larger the amount of mail-in ballots,
7 the more exaggerated the affect of a bad voter
8 file.

9 So to me, the intent here is to
10 highlight the fact that we have a reliance on
11 mail-in ballots that's greater than ever -- is
12 how I would understand it.

13 It was a year ago, but that -- that I
14 believe is the context; and that is what I
15 believe today is the primary issue.

16 Q. Okay.

17 So you -- you thought it was
18 concerning that so many mail ballots are being
19 either requested or cast?

20 A. Well, I think I've continued to
21 maintain that the primary issue that we have
22 with respect to the quality of the election in

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Confidential - Pursuant to Protective Order

Derek Somerville

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1 significant number of people that were unaware,
2 due to circumstances, that they may have cast a
3 vote in a county that they are no longer
4 eligible to vote in. And I believe the NCOA
5 process was the only way to meaningfully alert
6 the voters that that was a condition.

7 Q. Mr. Somerville, do you have any
8 regrets about working with True The Vote in
9 December of 2020?

10 A. Well, I don't think you can
11 characterize what I did was work with them.

12 I met them. I spoke with them. I
13 have been cordial to them, as I would be
14 anybody. So I didn't work with them, so I don't
15 have regrets working with them.

16 Admittedly, our motivation for effort
17 was benign. It was governed by the laws in this
18 state, and it was driven by a passion to bring a
19 sensible discussion around: How we can improve
20 the overall environment for everybody?

21 And our association with True The Vote
22 has, I think, skewed that a little bit.

**United States District Court
Northern District of Georgia
Gainesville Division**

Fair Fight, Inc., John Doe, and Jane Doe,

Plaintiffs,

v.

**True the Vote, Inc., Catherine
Engelbrecht, Derek Somerville, Mark
Davis, Mark Williams, Ron Johnson,
James Cooper, and John Does 1-10,**

Defendants.

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

Hon: Steve C. Jones

**Defendant Derek Somerville's Responses and Objections to Plaintiffs'
Interrogatories Pursuant to Court Order**

Pursuant to Federal Rule of Civil Procedure 33 and the Court's Order (ECF
No. 133), Defendant Derek Somerville responds herein to Plaintiffs'

Interrogatories Nos. 1-4; 6-8.

General Objections

1. Defendant Somerville objects to these requests to the extent that they

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purport to call for the production of documents/information that: (a) contain privileged attorney-client communications; (b) constitute attorney work product; (c) disclose the mental impressions, conclusions, opinions, or legal theories of any attorneys or other representatives of the Plaintiffs; (d) were prepared in anticipation of litigation; or (e) are otherwise protected from disclosure under applicable privileges, immunities, laws, or rules.

2. Defendant Somerville objects to these requests to the extent that they are vague, not limited in scope, unreasonably broad and burdensome, or beyond the scope of either category of permissible discovery under Fed. R. Civ. P. 26(b)(1).

3. Defendant Somerville objects to the instructions accompanying the requests to the extent that they purport to impose obligations beyond those imposed by the Federal Rules of Civil Procedure, or any order promulgated by this Court.

4. Defendant Somerville objects to discovery requests that are not proportional to the needs of the case and that are not “relevant to any party’s claim or defense.” Fed. R. Civ. P. 26(b)(1).

5. Defendant Somerville objects to requests for information the benefit of which is outweighed by its lack of importance in resolving the issues at stake in

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this case, the amount in controversy, the parties' relative access to relevant information, the parties' resources, and whether the burden or expense of the proposed discovery outweighs its likely benefit. *See* Fed. R. Civ. P. 26(b)(1). Consistent with this rule, Defendant Somerville does not produce multiple copies of a communication, e.g., where one email chain has multiple communications, earlier included ones are not produced as separate documents.

6. Subject to and without waiving any of the foregoing General Objections, which are hereby incorporated into each specific response, Defendant Somerville (a) makes further objections in response to individual requests and (b) makes the required good-faith attempt to fulfill the duty to provide all responsive information readily available without undue labor and expense.

7. Defendant Somerville objects to producing individuals' personal information, including emails and phone numbers, based upon privacy and relevancy.

DEFINITIONS

Except as specifically defined below, the terms used in these requests shall be construed and defined in accordance with the Federal Rules of Civil Procedure,

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wherever applicable. Any terms not defined shall be given their ordinary meaning.

1. “Communication” means any transfer of information, whether written, oral, electronic, or otherwise, and includes transfers of information via email, report, letter, text message, voicemail message, written memorandum, note, summary, and other means. It includes communications entirely internal to True the Vote, as well as communications that include or are with entities and individuals outside of that organization.

2. “County” means any county in Georgia, as well as all employees, staff, agents, and representatives of the county, including the county boards of registrar’s offices, county registrars, or any other person with a responsibility for conducting or supervising elections in the county.

3. “Date” means the exact day, month, and year, if ascertainable, or, if not, the best available approximation (including relationship to other events).

4. “Describe” means explain with particularity.

5. “Georgia Elector Challenges” means the challenges to voter eligibility of registered Georgia voters in advance of the Run-off Election in which you and True the Vote have been and are involved and which are described, among other

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places, in True the Vote's December 18, 2020 Press Release.

Response/Modification: Pursuant to this Court's Order, Defendant Somerville has included responses which consider challenges to voter eligibility in advance of the Run-off Election he was involved with independent from True the Vote, Inc.

6. "December 18, 2020 Press Release" means the press release posted on the True the Vote Website on that date, attached hereto as Exhibit A.

7. "Identify," when used in reference to a communication, means to state when and where the communication was made; each of the makers and recipients thereof, in addition to all others present, the medium of communication; and its substance.

8. "Identify," when used in reference to a government agency, firm, partnership, corporation, proprietorship, association, other entity, or person, means to state its, his, or her full name and present or last-known address.

9. "Identify," when used in reference to processes or steps taken by you or others with whom you have worked on the matters at issue in this litigation, means to chronologically detail each and every action taken by any and all entities or

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persons, to identify the actor, and to detail how and when that action was or will be taken and for how long.

10. “Including” means “including but not limited to.”

11. “Person” means not only natural persons, but also firms, partnerships, associations, corporations, subsidiaries, divisions, departments, joint ventures, proprietorships, syndicates, trust groups, and organizations; federal, state, or local governments or government agencies, offices, bureaus, departments, or entities; other legal, business, or government entities; and all subsidiaries, affiliates, divisions, departments, branches, and other units thereof or any combination thereof.

12. “Relating to,” “regarding,” and their cognates are to be understood in their broadest sense and shall be construed to include pertaining to, commenting on, memorializing, reflecting, recording, setting forth, describing, evidencing, or constituting.

13. “Run-off Election” means the January 5, 2021 Senate Run-off election held in Georgia.

14. “Targeted Voter” or “Targeted Voters” means the registered Georgia voters

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who are the subject of the Georgia Elector Challenges.

15. “True the Vote” means the organization that goes by the name of True the Vote, its officers, directors, partners, members, managers, employees, representatives, agents, consultants, or anyone acting on its behalf.

16. “Voter” means any registered voter in Georgia and all persons who may properly register to vote in the state by the close of discovery in this case.

17. “You” and “your” means Defendant Derek Somerville and any of his representatives, agents, or anyone acting on his behalf.

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Interrogatories

Interrogatory No. 1: Describe in detail your role or involvement in compiling any list of Targeted Voters for purposes of the Georgia Elector Challenges.

Response No. 1: I did not participate in any aspect of compiling True the Vote's list of "Targeted Voters" for their "Georgia Elector Challenges."

Mark Davis and I worked together to compile our own independent challenge lists for the Run-off Election ("**Independent Run-off List(s)**") of voters for volunteers to challenge in the counties in which that volunteer lived. Mark Davis took the primary lead in analyzing the data to include in the Independent Run-off List, but I did review and discuss Mr. Davis' analysis.

I took the lead in finding Georgia voters who were interested in volunteering to serve as challengers in the county in which they lived. I posted some information on Facebook about what Mr. Davis and I were doing with the Independent Run-off Lists and asked people who were interested in serving as challengers to contact me via a private message on Facebook. Once I received a message from a person who was interested in volunteering as a challenger, I would

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generally follow up via email with more information and/or with the Independent Run-off List relevant to that voter's county.

Interrogatory No. 2: Describe in detail what research, if any, you conducted for purposes of identifying voters to include in the Georgia Elector Challenges.

Response No. 2:

As discussed in Response No. 1, Mark Davis took the lead in researching and identifying voters to include on the Independent Run-off Lists. Based upon my review of this research and my discussions with Mr. Davis, I understood the research and identification process to be as follows:

1. Split the input voter data into 3 parts for processing so the databases would not exceed the dbase file size limitation of 2.14 gigabytes.
2. Imported the data into 3 dbase structures with processing fields appended (added) to the structure.
3. Copied the residence addresses into the "COA" (Change of address) fields created for CASS (Coding Accuracy Support System) and NCOA (National Change of Address) processing.
4. Ran CASS & NCOA processing & saved the processing certifications.
5. Created an empty table called "Moved" and imported the records that received an updated address during NCOA processing.

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6. Set a relation on the voter registration number into the vote history trailer data and flagged the voters in the “Moved” table who voted in the general election.
7. Geocoded (assigned latitude & longitude) & digitally mapped the “Moved” table to assign the county of the new address.
8. Copied out a file of voters who cast ballots in the General Election with changes of address to a new state or to a new county in Georgia more than 30 days before the general and/or the runoff elections. This yielded a file of voters with a change of address to another state, as well as in state voters who, based on the month of their “Move Effective Dates”, appeared to have had residency issues when they voted in the General Election, along with voters who voted in the General who appeared to have similar residency issues heading into the Runoff Election.
9. Removed changes of address to PO Boxes.
10. Eliminated UOCAVA (Military) voters by matching against the absentee voter data.
11. Mark Davis sent me a copy of the file so that I could remove as many voters at military bases as possible.
12. I sent the semi-final challenge list to Mark Davis.
13. Output a “Final” challenge list removing voters with changes of address prior to June of 2019 as we believed they would have already been through the Secretary of State’s NCOA processing, subsequent verification inquiries, and associated list maintenance activities.
14. Created a report format for printed lists of challenged voters.

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15. Output a PDF list for each county.
16. Output an Excel file for each county.
17. Did an SQL query to get a count by county. The final count was 39,141 voters and the average number of challenged voters per county was 246.
18. Mark Davis uploaded the Independent Challenge Lists to Google drive for me to distribute to challengers.

Interrogatory No. 3: For any list of Targeted Voters that you had any involvement in compiling, describe the efforts, if any, you made to assess the accuracy of the list.

Response No. 3: I, along with Mark Davis, limited the Independent Run-off List to people who had already cast ballots in the general election with residency issues, and/or had voted in the General Election and were in a position to cast ballots in the Run-off Election with residency issues. As my response to Interrogatory No. 2 details, we took steps to remove voters whose changes of address data would more than likely have already been evaluated by the SOS prior to June of 2019, UOCAVA voters, and as many records in the area of military bases as we could.

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As a quality control measure, I arranged for a company called “Surebill” to independently process the voter file through their NCOA software so that Mr. Davis and I could compare our NCOA processing with theirs. There are two different kinds of NCOA processing. One processes changes of address from the preceding 18 months, and one processes changes of address from the preceding 48 months. Mark Davis always uses the 48 month, but Surebill uses a different software and NCOA data provider, and only has the capability of doing the 18 month version of NCOA. That obviously means there were about 30 months of NCOA changes they could not have replicated. Mark Davis and I communicated back and forth, primarily via email, comparing numbers for changes that did occur within 18 months, and although those numbers did appear similar, we would have preferred to have had someone else with the 48 month capability attempt to replicate our processing.

Interrogatory No. 4: Describe in detail any and all assistance provided to you by True the Vote in preparing the Georgia Elector Challenges.

Response No. 4: I received no assistance from True the Vote in preparing any challenges.

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Interrogatory No. 6: Identify and describe in detail all communications you had regarding the accuracy of the Georgia Elector Challenges.

Response No. 6: Mark Davis and I had telephone, email, and text communications regarding the steps we took to increase the accuracy of our Independent Run-off List (as described in Response No. 2). As a matter of routine and before litigation was contemplated, I generally deleted emails that contained large excel attachments. I disclosed some of the steps we took to improve the accuracy of the Independent Run-off List on social media and on other communication platforms, like email. When people who were interested in volunteering as challengers responded to my social media posts with questions, I would communicate with them, via private Facebook messages or via email.

Prior to the initiation of this litigation, I deleted some of the communications that would be responsive to this Interrogatory and its related Request for Production. I have produced the responsive documents of communications I still have in my care, custody, or control.

Interrogatory No. 7: Identify and describe in detail all communications you had regarding Targeted Voters who were ultimately determined to be residents of

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the counties in which they were registered.

Response No. 7: I do not recall any communications with any voters on any challenge lists who were ultimately determined to be residents of the counties in which they were registered.

Interrogatory No. 8: Identify and describe in detail all communications you had with challengers who withdrew or attempted to withdraw Georgia Elector Challenges submitted in their names, and describe in detail the reasons why those individuals sought to withdraw the challenges.

Response No. 8: I do not recall any communications with any challengers who withdrew or attempted to withdraw Georgia Elector Challenges submitted in their names.

I, the undersigned, affirm under the penalties for perjury that the foregoing answers to Plaintiff's Interrogatories are true and correct.

Date:

12/17/21


Derek Somerville

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Dated: December 17, 2021

/s/ Courtney Kramer

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ckramer@bopplaw.com

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Certificate of Service

I hereby certify that the foregoing document was served electronically on
December 17, 2021, upon all counsel of record via email.

/s/ Courtney Kramer

Courtney Kramer

Georgia Bar No. 483608

Local Counsel for Defendants

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

FAIR FIGHT, INC.,)
SCOTT BERSON, JOCELYN HEREDIA,)
and JANE DOE,)
Plaintiffs,)

v.)

Case No.

2:20-cv-00302

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

Videotaped Deposition of DEREK SOMERVILLE
Conducted Remotely via Zoom
Thursday, January 20, 2022
8:02 a.m. CST

Reported by Lisa A. Knight, RDR, CRR, RSA

DIGITAL EVIDENCE GROUP
1730 M Street, NW, Suite 812
Washington, D.C. 20036
(202) 232-0646

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1 Pursuant to Notice, the videotaped
2 deposition of DEREK SOMERVILLE was conducted
3 remotely via Zoom on behalf of the
4 Plaintiffs, at 8:02 a.m. CST, on Thursday,
5 January 20, 2022, reported stenographically
6 by Lisa A. Knight, Realtime Diplomat
7 Reporter, Certified Realtime Reporter, and
8 Realtime Systems Administrator.

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1 A P P E A R A N C E S

2 (All appearing remotely)

3

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20

21 ALSO PRESENT:

22 MITCHELL MAHON, Videographer

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1	I N D E X		
2	DEREK SOMERVILLE		
3	JANUARY 20, 2022		
4	EXAMINATION OF DEREK SOMERVILLE:		
5	BY MS. FORD		8
6	BY MS. SIEBERT		183
7			
8	DEPOSITION EXHIBITS		
9	DEREK SOMERVILLE		
10	JANUARY 20, 2022		
11	NUMBER	DESCRIPTION	MARKED
12	Somerville 1	Plaintiffs' Notice to Take the Deposition of Derek Somerville	12
13			
14	Somerville 2	E-mail string	18
15	Somerville 3	E-mail string	24
16	Somerville 4	E-mail string	29
17	Somerville 5	Text string, Bates Def Somerville 000714 to -719	38
18			
19	Somerville 6	E-mail string	42
20	Somerville 7	E-mail string	43
21	Somerville 8	Text string, Bates Def Somerville 000182 to -442	45
22			

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1	DEPOSITION EXHIBITS, CON'T		
	NUMBER	DESCRIPTION	MARKED
2	Somerville 9	E-mail string	51
3	Somerville 10	Facebook post	75
4	Somerville 11	Facebook post	78
5	Somerville 12	E-mail string	96
6	Somerville 13	E-mail string	98
7	Somerville 14	E-mail	120
8	Somerville 15	E-mail string	125
9	Somerville 16	Facebook Messenger printout, Bates Def	141
10		Somerville 000162 to -163	
11	Somerville 17	Facebook Messenger printout, Bates Def	145
12		Somerville 000160 to -161	
13	Somerville 18	Text string, Bates Def Somerville 000720 to	148
14		-727	
15	Somerville 19	Text string, Bates Def Somerville 000731 to	166
16		-733	
17	Somerville 20	Text string, Bates Def Somerville 000172 to	176
18		-175	
19	Somerville 21	E-mail string	179
20	**REPORTER'S NOTE: All quotations from exhibits are reflected in the manner in which they were read into the record and do not necessarily indicate an exact quote from the document.		
21			
22			

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1 PROCEEDINGS

2 THE VIDEOGRAPHER: We are going
3 on the record. This is Tape No. 1 of
4 the videotaped deposition of Derek
5 Somerville taken by plaintiffs in the
6 matter of Fair Fight, Inc., et al.,
7 versus True the Vote, et al., in the
8 United States District Court for the
9 Northern District of Georgia,
10 Gainesville Division, Case No.

11 2:20-cv-00302-SCJ.
12 This deposition is being held
13 remotely over Zoom videoconference on
14 January 20, 2022. The time is 8:02
15 Central.

16 My name is Mitchell Mahon; I'm
17 the legal videographer from Digital
18 Evidence Group. The court reporter is
19 Lisa Knight, in association with
20 Digital Evidence Group.

21 Will counsel please introduce
22 themselves for the record.

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1 MS. FORD: This is Christina
2 Ford from Elias Law Group for the
3 plaintiffs. And with me today, I have
4 Tina Meng and Jacob Shelly, and then
5 also Maia Cogen from Lawrence & Bundy.

6 MS. SIEBERT: Melena Siebert
7 for defendants.

8 THE VIDEOGRAPHER: And will the
9 court reporter please ask for
10 stipulations.

11 THE STENOGRAPHER: The
12 attorneys participating in this
13 deposition acknowledge that I am not
14 physically present in the deposition
15 room, and that I will be reporting
16 this deposition remotely.

17 They further acknowledge that
18 in lieu of an oath administered in
19 person, I will administer the oath
20 remotely. The parties also agree that
21 the witness has verified that he is,
22 in fact, Derek Somerville.

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1 The parties and their counsel
2 further agree that the witness may be
3 in a state where I am not a notary and
4 stipulate to the witness being sworn
5 in by an out-of-state notary.

6 If any party has an objection
7 to this manner of proceeding, please
8 state so now.

9 MS. FORD: We have no
10 objection.

11 MS. SIEBERT: None. No
12 objection.

13 THE STENOGRAPHER: Thank you.

14 DEREK SOMERVILLE,
15 having been first duly sworn to state the
16 whole truth, testified as follows:

17 EXAMINATION

18 BY MS. FORD:

19 Q. Mr. Somerville, thank you again
20 for being here today. I know it took a great
21 deal of effort. We'll endeavor to do this as
22 quickly as possible.

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1 A. I appreciate that.

2 Q. Can you please just state your
3 full name for the record.

4 A. My name is Derek Somerville.

5 Q. And where is your home address?

6 A. My home address is
7 5130 Saddlebred Lane, Cumming, Georgia.

8 Q. And where are you giving this
9 deposition from today?

10 A. I'm presently in Murray,
11 M-u-r-r-a-y, Kentucky.

12 Q. Okay. Thank you.

13 And I know we covered this
14 before, but I just -- as a refresher, I
15 wanted to go through a couple of the ground
16 rules for this deposition so that we have the
17 same understanding.

18 All testimony today is under
19 oath, just as if you were testifying in
20 court. Does that make sense?

21 A. It does.

22 Q. Great.

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1 And for the benefit of
2 everyone, and especially for the court
3 reporter, please make sure your answers are
4 audible today.

5 Please also allow me to finish
6 my question before giving your answer, and I
7 will do my very best to let you completely
8 finish your answer before I ask another
9 question.

10 Does that sound good?

11 A. Yes.

12 Q. And from time to time, your
13 attorney may make an objection to my
14 question. And that's fine, but you are to
15 answer unless she specifically instructs you
16 not to answer on the basis that a topic is
17 privileged.

18 Does that make sense?

19 A. Yes.

20 Q. Great.

21 And if, at any point, you do
22 not understand a question that I'm asking,

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1 please let me know, and I will do my best to
2 rephrase or clarify a question. So if you
3 answer a question, I will assume that you
4 understood it.

5 Is that fair?

6 A. Yes.

7 Q. Okay. And if, at any time, you
8 would like a break, please let me know, and
9 we can find a good place to stop and go off
10 the record.

11 Does that also sound good?

12 A. Yes.

13 Q. Great.

14 Mr. Somerville, I just have to
15 ask a couple of questions because I'm
16 obviously not in the room with you.

17 Do you have any documents with
18 you, either hard copies or electronic?

19 A. I do not.

20 Q. Okay. And is anyone else in
21 the room with you?

22 A. There is no one else in here

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1 but me.

2 Q. Okay. And do you understand
3 that it would not be appropriate for your
4 attorney, or for anyone else, to tell you how
5 to answer a particular question that I ask
6 you?

7 A. I do.

8 Q. Okay. And do you agree that
9 while you're testifying today, you will not
10 exchange communications with anyone about how
11 to answer questions?

12 A. I agree to that.

13 Q. Okay. Excellent.

14 MS. FORD: Mitchell, can we
15 please pull up Exhibit [sic] A? And
16 we can mark that as Exhibit 1.

17 (Somerville Exhibit 1,
18 Plaintiffs' Notice to Take the
19 Deposition of Derek Somerville,
20 was marked for identification, as
21 of this date.)

22 ///

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1 BY MS. FORD:

2 Q. And this is just the deposition
3 notice for today.

4 Mr. Somerville, do you
5 recognize this?

6 A. I do.

7 Q. Okay. Great. So you're
8 prepared to testify pursuant to this notice?

9 A. I'm present.

10 Q. Okay. Without disclosing any
11 specific communications you may have had with
12 your attorneys, can you describe at a high
13 level what you did to prepare for today?

14 A. I did not prepare for today,
15 other than a procedural call with my counsel
16 yesterday.

17 Q. Okay.

18 MS. FORD: And, Mitch, we can
19 take this down. Thank you.

20 BY MS. FORD:

21 Q. And, Mr. Somerville, I would
22 just like to ask you a couple questions about

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1 the process that was undertaken to search and
2 produce documents for this case.

3 A. (Nodded head up and down.)

4 Q. I'm not going to bring these
5 up, because I think we talked about them last
6 time, but, Mr. Somerville, you remember
7 receiving, I assume, requests for production
8 in this case?

9 A. I do.

10 Q. Can you describe at a high
11 level how you searched for and identified
12 documents that were responsive to those
13 requests?

14 A. Yeah. At a high level or a low
15 level, the definition is probably the same,
16 I scoured through normal search criteria any
17 area that I might have had communication, be
18 that text, e-mail, and then social media
19 platforms.

20 Q. Okay. How long did that search
21 take?

22 A. I don't recall the specific

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1 amount of time, but I dedicated a significant
2 amount of time to it.

3 Q. And did anyone help you with
4 searching for documents that were responsive
5 to the requests?

6 A. I recall reaching out to a
7 couple of individuals, where I did not retain
8 the e-mail, and asked if they could forward
9 them back to me. And so I -- a few that
10 I did reach out for that.

11 But in terms of actually
12 searching my own materials, nobody helped me
13 with that.

14 Q. Okay. Just so I understand
15 that: It sounds like you had some
16 communications that you no longer -- you
17 didn't have in your own possession but you
18 knew were probably out there, so you --

19 A. That is correct. By a matter
20 of standard practice, any large files
21 associated with e-mails, I tend not to retain
22 those e-mails. That's in my professional and

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1 personal practice as well.

2 So where I had any belief that
3 I had sent any, I reached out to folks that
4 they may have them. And I had some success
5 with that.

6 Q. Okay. Were there documents
7 that you knew at one point you possessed that
8 were responsive that you could not find?

9 A. I don't have any recollection
10 of that. No.

11 Q. Okay. And when you say you --
12 of, like, the large files that you no longer
13 have or possessed, at what point did you
14 delete those files?

15 A. I don't recall.

16 Q. Was it after the start of this
17 litigation?

18 A. I don't recall.

19 Q. Do you have a memory of whether
20 you deleted those files in December 2020,
21 when you were undertaking this initial
22 investigation and sort of challenge effort?

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1 A. Again, I don't recall. It's a
2 regular maintenance practice of mine. And
3 these would have been extremely large files,
4 particularly the voter files. And that's
5 typically the normal practice.

6 Often, it would be shortly
7 after having that piece of communication.
8 But I don't recall a specific date.

9 Q. Okay. And have you withheld
10 any documents that you thought were
11 responsive but that you did not produce to
12 us?

13 A. No.

14 Q. Okay. Mr. Somerville, I would
15 like to ask you a couple of follow-up
16 questions about how you conducted your
17 analysis of the Georgia voter files last
18 year.

19 A. Okay.

20 MS. SIEBERT: Ms. Ford, I just
21 want to lodge a continuing objection.

22 Of course, Mr. Somerville can

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1 answer, but a continuing objection to
2 any line of questioning regarding the
3 scope of anything Mr. Somerville might
4 have done with voter files not in
5 conjunction with True the Vote, our
6 continuing objection for the record.

7 MS. FORD: Okay. Understood.

8 MS. SIEBERT: Thank you.

9 MS. FORD: Thanks, Melena.

10 Mitch, can we pull up
11 Exhibit [sic] D. We're just skipping
12 B and C.

13 THE STENOGRAPHER: And you want
14 to mark this as Exhibit 2?

15 MS. FORD: Yes. Thank you.

16 (Somerville Exhibit 2,
17 E-mail string, was marked for
18 identification, as of this
19 date.)

20 BY MS. FORD:

21 Q. All right. Let's see. Derek,
22 are you able to see this -- Mr. Somerville?

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1 Do you agree with that?

2 A. I do.

3 Q. Okay. At the bottom of this
4 first page --

5 MS. FORD: So, Mitch, if you
6 can scroll down.

7 BY MS. FORD:

8 Q. -- Mr. Davis writes, "Our
9 purpose here is to identify voters who moved
10 across county lines more than 30 days before
11 the election but voted unlawfully in their
12 county. The investigation has also revealed
13 many out-of-state voters, presumably mostly
14 students, military, et cetera, but some of
15 those are probably also illegitimate."

16 Did I read that correctly?

17 A. You did.

18 Q. Okay. And, Mr. Somerville, why
19 do you believe Mr. Davis singled out military
20 voters here?

21 A. Well, I don't interpret him as
22 singling out military voters. I think what

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1 Mark was providing was examples of legitimate
2 reasons why an individual may be registered
3 in a county that they do not reside in.
4 Military being one example of it.

5 Q. Okay. And students being
6 another example?

7 A. And "et cetera," as he
8 indicates there. There are several scenarios
9 under which that might be legitimate. Yes.

10 Q. Okay. And under that
11 "et cetera" category, who would fall in that
12 category, in your opinion?

13 A. Well, in my opinion, I guess
14 anybody that our state law and our federal
15 laws permit to live in an area other than
16 where they're registered to vote.

17 So I think the predominance of
18 those, of course, would be, as Mark has
19 indicated here -- which I think is also
20 Mark's -- Mark very clearly stating his
21 intent, which is to not ensnare individuals
22 that are legitimately voting into his

1 effort -- but students, military, individuals
2 that have temporarily moved, for temporary
3 purposes. For example, those that would
4 spend the winter down in Florida might be a
5 good example.

6 Q. Okay. And I know we talked
7 about military voters last time, so I won't
8 retread that territory.

9 But for student voters -- in
10 the list of voter challenges that you and
11 Mr. Davis pulled together, were student
12 voters excluded?

13 A. To the extent that we were able
14 to identify that they were likely student
15 voters, yes.

16 So obviously there's no record
17 in the voter file that indicates somebody's a
18 student, but where we saw a large number of
19 files from the NCOA that came back to common
20 addresses, you could identify those addresses
21 as being on or near campuses. And so those
22 were excluded, to my recollection.

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1 Q. Okay. So just to put that in
2 maybe, like, concrete terms: If you saw an
3 address that looked like a dorm, are you
4 saying that you would have removed that from
5 the challenge list?

6 A. That's my recollection. Yes.

7 Q. Okay. And who was removing
8 that? You or Mr. Davis?

9 A. Well, I'm not aware of all of
10 Mark's activities, but anytime I came across
11 records that appeared to fall within those
12 categories, I removed them as well.

13 Q. Okay. And what about
14 individuals, as you mentioned, who
15 temporarily moved? How did you remove those
16 individuals from the list?

17 A. Well, I'm not sure we would
18 have clarity into those. And, again, that's
19 the importance of this process, is our lists
20 were not aimed at removing anybody's ability
21 to vote. They were aimed at encouraging
22 local boards of elections to confirm that

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1 those individuals still resided in the county
2 in which they were registered.

3 So this process wasn't a
4 function of trying to remove people, it was a
5 function of trying to engage a process that's
6 already used by the State.

7 Q. Okay.

8 MS. FORD: We can take this
9 down, Mitch. Thank you.

10 And could we please put up
11 Exhibit 5 -- I'm sorry, Exhibit [sic]
12 E. And I guess that's going to be
13 marked as Exhibit 3.

14 (Somerville Exhibit 3,
15 E-mail string, was marked for
16 identification, as of this
17 date.)

18 BY MS. FORD:

19 Q. Mr. Somerville, can you read
20 this document?

21 A. It would help if it got
22 enlarged. Okay.

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1 for.

2 For military purposes, for
3 example, and I know that we covered this in
4 the last deposition, we did our best to
5 identify geographies that were associated
6 with military bases. But there's no way to
7 know if somebody lives -- there's a military
8 person that is assigned to a location that's
9 not associated with a military base.

10 So this is acknowledging that
11 we put forth our best effort. As we said
12 countless times in public forums, we erred on
13 the side of the voter. If it looked even
14 remotely close, in this case, to a military
15 record, we excluded them.

16 But certainly there's a
17 military individual that's living somewhere
18 not near a base, assigned to, you know, a
19 military function that we would not have been
20 able to associate with a base. It's
21 imperfect. It's data.

22 Q. And at the end -- by the time

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1 BY MS. FORD:

2 Q. Mr. Somerville, can you please
3 take a moment to look over this document?

4 A. (Document[s] reviewed.)
5 Okay.

6 Q. And have you seen this before?

7 A. Well, it appears to be my
8 e-mail. So, yes.

9 Q. Okay. And can you explain what
10 this is?

11 A. Yeah. It looks like a
12 breakdown of the challenge file based on
13 voter behavior. And it looks like we
14 identified the Atlanta counties as well.

15 Q. Okay. And when you say "a
16 breakdown," are you referring to the
17 challenge universe that you and Mr. Davis put
18 together?

19 A. Based on the numbers in this
20 e-mail, yes.

21 Q. Okay. And that's the -- just
22 to confirm -- 39,141?

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1 A. Yes.

2 Q. Okay. Whose idea was it to
3 conduct this analysis?

4 A. Well, it appears to be my
5 analysis.

6 Q. Okay. And what was the purpose
7 of conducting this analysis?

8 A. I carved that data up a
9 thousand different ways. And so there's a
10 couple of guiding principles -- or several
11 guiding principles when we engaged in this
12 effort.

13 Number one is it was
14 nonpartisan. So I wanted to make sure that
15 as we compiled our data, that our data was
16 distributed and driven by the conditions that
17 we set forth, which was the change of
18 address, and that there wasn't any particular
19 bias regarding any other factor other than
20 the data.

21 But I'm certainly interested,
22 throughout the process, on how that data fell

1 through: Was it more prevalent in our
2 more -- the NCOA process, was it more
3 prevalent in our more dense counties? Was it
4 more prevalent in counties that voted one
5 way, voted another way?

6 Again, PivotTables in Excel are
7 very simple, and I wanted to carve that data
8 up and understand it as many different ways
9 as I possibly could.

10 But I -- this is a post facto
11 review. This is not anything that happened
12 prior to the data, as obviously it's
13 reviewing the final product, which was those
14 39,000 records. It's informative.

15 Q. What other -- you mentioned you
16 ran it across a number of dimensions. What
17 other dimensions did you examine?

18 A. Well, effectively, with Excel
19 PivotTables, you can cross-reference anything
20 in the file.

21 So we would have run it to
22 check for multiple records. We would have

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1 it was just such a loud forum, and we just
2 didn't want to be part of that. And we
3 rejected any overtures from anybody who tried
4 to enlist us to be part of any of that.

5 So I think we were very
6 sensitive about how our work was conducted
7 and how it was going to be perceived and how
8 it would be used.

9 Q. Okay. And just one more
10 follow-up here, and then I think we might be
11 ready for a break.

12 But here when you say you want
13 to discuss sharing with the public, I just
14 want to better understand what was on your
15 mind here.

16 Was it ever an option to you
17 that you and Mark would just release the list
18 of 39,141 names to the public?

19 A. No, that's not what is intended
20 here at all. I don't believe that would have
21 been our intent at any point in time.

22 I think the most likely

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1 interpretation of this is that we were trying
2 to put pressure on the Secretary of State's
3 office. The media certainly is one way to do
4 that. And that might have been part of that
5 discussion.

6 But in terms of -- and I'm not
7 sure I understand what you mean by "release."
8 But I don't have any recollections of any --
9 and I can't imagine we would ever have wanted
10 to, per se, "release."

11 Now, file -- individual county
12 files were made available to individual
13 challengers. But I don't know that I
14 understand what you mean by "release."

15 But by "public," I think,
16 again, it just comes back to, you know, how
17 we frame our effort and how that effort is
18 used during a time when there's an awful lot
19 of noise in the air.

20 Q. Sure.

21 And by "release," I just meant,
22 you know, instead of doing a Facebook post

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1 that says we found 39,000 individuals who we
2 think there should be more investigation of,
3 I mean, you know, you go on Facebook and you
4 actually list the 39,000 individual names.

5 So that's not something you
6 ever contemplated?

7 A. There is no scenario under
8 which I would have either contemplated or
9 agreed to anything, nor would have Mark.
10 That would have been too inflammatory, and it
11 would have been counter to the intent of the
12 effort.

13 So, no, there's no scenario
14 under which we would have considered that.

15 Q. Okay. And can you just explain
16 what you mean by "that would have been
17 inflammatory"?

18 A. Well, I would draw your
19 attention back to, you know, prior testimony
20 and testimony in this deposition. We readily
21 acknowledged that there were individuals on
22 that list that did not intend to do anything

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1 THE DEPONENT: No. Thank you.

2 MS. FORD: Great.

3 So maybe we'll come back at

4 10:10?

5 THE VIDEOGRAPHER: It would be

6 9:10 your time.

7 MS. FORD: Sorry. Thanks.

8 THE VIDEOGRAPHER: All right.

9 We're going off the record. The time
10 is 9:04. Thanks.

11 (Recess taken.)

12 THE VIDEOGRAPHER: We are going

13 back on the record. The time is

14 9:12 a.m.

15 MS. FORD: Mitch, could we

16 please bring up Exhibit [sic] L.

17 THE STENOGRAPHER: This will be

18 marked as Exhibit 10.

19 (Somerville Exhibit 10,

20 Facebook post, was marked for

21 identification, as of this

22 date.)

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1 MS. FORD: If we could make
2 this as big as possible.

3 BY MS. FORD:

4 Q. So, Mr. Somerville, I assume
5 you'll need a second to review this, so
6 please just take a moment to read it.

7 A. (Document[s] reviewed.)
8 I recall this.

9 Q. Okay. So did you publish this
10 original post on -- it looks like, on
11 December 4, 2020?

12 A. I did.

13 Q. Okay.

14 MS. FORD: And, Mitch, if we
15 can scroll down to the bottom. Great.

16 BY MS. FORD:

17 Q. At the bottom of this post, you
18 say, "We need to identify the abusers, start
19 throwing people in jail, and close the
20 loopholes."

21 Did I read that correctly?

22 A. You did.

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1 Q. Can you elaborate on that
2 sentiment?

3 A. Yeah. That's probably a little
4 hyperbole for the platform that it was on.

5 But I think -- and I think the
6 statement is pretty clear. The reality is
7 that we know that there were tremendous
8 numbers of these registrations, and often, in
9 cases, they were drafted in a way to make it
10 appear as if they were apartments, for
11 example.

12 So they would call the mailbox
13 "apartment number," when it most certainly
14 wasn't. That's a willful act. That's done
15 deliberately.

16 But, again, that statement,
17 I think, is just more in-the-moment bluster
18 than anything. Obviously we can't start
19 throwing people into jail. But it's
20 Facebook.

21 Q. Did you think your comment
22 might make someone think twice about voting,

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1 who fell into this category?

2 A. No, not at all. Yeah, I don't
3 have that kind of reach.

4 Q. So this was just shared with
5 your personal friends and audience on
6 Facebook?

7 A. Well, I don't know how the
8 Facebook algorithms work, so I don't entirely
9 understand, you know, where this stuff goes.
10 But I can tell by the interaction, it doesn't
11 go very far. I'm not a particularly
12 important person in this discussion.

13 But, again, that's just
14 Facebook bluster.

15 Q. Okay.

16 MS. FORD: Can we please pull
17 up Exhibit [sic] M.

18 THE STENOGRAPHER: That will be
19 marked Exhibit 11.

20 (Somerville Exhibit 11,
21 Facebook post, was marked for
22 identification, as of this

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1 date.)

2 BY MS. FORD:

3 Q. And, Mr. Somerville, this
4 appears to be a Facebook post from
5 December 5, 2020.

6 Do you recognize this one?

7 A. I recognize that I posted it,
8 yeah. I have to reread a lot of it, but I do
9 recognize it.

10 Q. Okay. And here, you appear to
11 be referring to a voter that you've given the
12 name Dave.

13 Does that seem right to you?

14 A. That does seem right to me.

15 Q. Okay.

16 MS. FORD: Can we please scroll
17 to page 3. I believe we want to keep
18 going. Okay.

19 BY MS. FORD:

20 Q. So here, Mr. Somerville,
21 I believe you've written a comment on your
22 own post, and I'll just read it for the

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1 record, since it won't be on the record
2 otherwise.

3 "P.S. This is just one guy,
4 one abuser, but we find them everywhere we
5 look. And because of that, we're going to
6 keep looking. I believe there are some
7 extremely committed investigators with the
8 SoS's office who are as committed as they
9 come, but the sheer volume of these abuses,
10 coupled with weak laws and weaker
11 enforcement, often ties their hands.

12 "Citizens can help, though.
13 Perhaps we should start outing these abusers
14 by name?"

15 And what was your purpose in
16 writing this comment?

17 A. Well, I think I need to read --
18 I would have to read what I was responding
19 to, number one, to know what my purpose was.

20 It looks like I'm defending the
21 Secretary of State's office, because I know
22 they were getting a lot of heat.

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1 I clearly make a statement that
2 there's good people in the Secretary of
3 State's office investigating, when I don't
4 know any of them personally. So I'm giving
5 them an awful lot of benefit.

6 And I'm just engaging in banter
7 with somebody that I'm not even sure I know
8 who they are, which I don't actually know
9 that person.

10 So can you be more specific?
11 Because there's a number of sentences in
12 there that speak to different things.

13 Q. Yeah. Sure.

14 So I'm specifically interested
15 in the -- maybe these last two sentences:
16 "Citizens can help them," referring to the
17 Secretary of State's office. "Perhaps we
18 should start outing these abusers by name?"

19 What did you mean when you
20 said, "...we should start outing these
21 abusers by name?"

22 A. I don't think I said we should

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1 start outing these -- I said, "Perhaps we
2 should start outing these abusers by name?"

3 I think what's instructive is
4 we've never outed anybody by name. So this
5 is back-and-forth banter, the tone of which
6 it's hard to determine, at what time of day,
7 what was going on, what was happening.

8 Obviously we didn't believe in
9 outing people by name because we never outed
10 anybody by name. It's also posed as a
11 question. So I don't -- I don't believe it's
12 anything.

13 Q. So --

14 A. Banter on Facebook.

15 Q. At the end of the day, do you
16 think it would be inappropriate to out voters
17 by name?

18 A. Well, I think my actions have
19 answered that question already. We've never
20 done it; we never intended to do it.

21 Q. So why publish this, then?

22 A. Publish what, Christina?

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1 Q. Publish this comment, which, in
2 my interpretation, at least, is not to one
3 person, but it's just you elaborating on your
4 initial post.

5 A. Well, the abusers, number one,
6 that I think I'm referencing are the ones
7 that are specifically manipulating the
8 system. And that's with reference to those
9 commercial mail-receiving agencies. So
10 that's number one.

11 Number two is it's posed as a
12 question; it's not posed as a statement. I'm
13 not saying we should. I'm simply saying
14 perhaps we should.

15 Again, this is -- there's a lot
16 of context here. There are a lot of things
17 that you say in those contexts that don't
18 necessarily reveal a fundamental base
19 opinion.

20 We've got thousands upon
21 thousands upon thousands of lines of material
22 out there. You've drawn attention to one

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1 line in, literally, tens of thousands of
2 pages of context, I'm sure, that posed as a
3 rhetorical question of: Should we out these
4 abusers by name?

5 We've never done it, not once.

6 So clearly we didn't think that was the right
7 thing to do. It's just a rhetorical question
8 in a stream of comments in Facebook.

9 Obviously didn't guide our process because we
10 never did that, nor would we.

11 MS. FORD: Can we please scroll
12 to the next page, Mitch.

13 (Complied.)

14 MS. FORD: Sorry. Actually,
15 can we scroll up just a little bit
16 more?

17 BY MS. FORD:

18 Q. Mr. Somerville, I know you say
19 you were being hyperbolic here and it was a
20 rhetorical question, but, you know, a
21 response from someone named Kristel Kretchmer
22 is, "Yes! Out the abusers by name."

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1 wanted to have the names of Georgians in
2 there, but Mark was conspicuously absent.
3 And I had felt, given the amount of work and
4 his knowledge and his expertise, that that
5 was an oversight. And "pissed" is probably a
6 strong word at the time, so I'm not quite
7 sure why I chose that word.

8 But it was important to me that
9 Mark -- if they were trying to acknowledge
10 the work of Georgians that were attempting,
11 you know, to contribute to the integrity --
12 the effort of voter integrity, that Mark
13 Davis's most certainly should have been in
14 there.

15 And I don't recall how our work
16 was originally characterized, so I don't
17 understand -- you know, I don't recall --
18 I don't recall how they originally
19 characterized it, but clearly, I made that
20 comment as well.

21 But, yeah, to the extent that
22 I didn't agree with the content, that's what

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1 And then the tertiary effect of that, as
2 I discuss, is, you know, you want to coach
3 people around you, that are watching you, in
4 how to engage in these efforts.

5 Not through, you know, again,
6 hyperbolic rhetoric, which we're all prone to
7 at times, and not to baseless allegations,
8 not to baseless theories that might actually
9 scare people from participating in an
10 election or participating in holding their
11 government accountable, but actually
12 encouraging people to participate in a
13 meaningful way.

14 I've spoken countless times on
15 this topic, when invited. And I know that's
16 all there, so it's easy to watch. And
17 I maintain the same message to everybody:
18 Those processes and that data belongs to all
19 of us, the people.

20 So not only do we have a right
21 to ensure that those processes are followed,
22 but I think we have an obligation. And,

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1 again, that goes all the way back to my
2 taking the oath as a U.S. Marine and, again,
3 as an FBI agent.

4 So our motive certainly wasn't
5 to effect a specific outcome. We have real
6 concerns -- that's why we did an analysis --
7 to make sure that the data didn't -- couldn't
8 be used by anybody in a partisan way.

9 Our motives were good. Mark
10 Davis is a very, very good man, a very
11 knowledgeable guy. And I hope I'm considered
12 in the same light by others. And I feel very
13 good about the work that we did.
14 I will tell you I -- and I know
15 this is not counsel's intent, but this is
16 profoundly insulting to have been
17 characterized as someone who would
18 participate in a racist activity, when I've
19 literally put my life on the line to defend
20 people that do not share my ethnicity. And
21 I've carved out a life that's made that a
22 perfectly clear priority of mine.

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1 So I'm -- I don't want to use
2 this as a forum for that, but that was our
3 intent, Ms. Siebert.

4 Q. Mr. Somerville, if somebody
5 ended up on your challenge list who turned
6 out to be legally allowed to vote in Georgia,
7 for instance, one of those military voters
8 that you discussed that might have lived far
9 enough outside of a base that you didn't --
10 you know, that the data didn't catch it, and
11 so it turns out that that person on the list
12 was legally allowed to vote in Georgia, would
13 you have any problem with that person casting
14 a vote in Georgia?

15 A. The whole intent of the process
16 is to ensure that legitimate, legal voters
17 don't have their vote cancelled out by an
18 ineligible voter.

19 And so not only would we not
20 have a problem with that, that would be a
21 victory. The process, as I understand it, is
22 specifically designed so that you are

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1 presenting evidence to a board of probable
2 cause.

3 You're not suggesting that
4 somebody did vote ineligible. You're not
5 suggesting they broke the law. You're not
6 suggesting any of that. You're asking the
7 Board of Elections to engage in a lawful
8 process that's enumerated under both federal
9 and state law to ensure that the integrity of
10 that voter file is intact.

11 If you challenge an individual
12 and the Board of Elections invokes that very
13 rigid process and that individual
14 substantiates that they're a legitimate
15 voter, then the process worked just as good
16 as if you challenged a voter and it was
17 determined that they were ineligible.

18 So, you know, I think there's a
19 lot of -- there's a lot of misinformation
20 around that process, or what the intent is,
21 but it certainly is never to purge anybody.
22 That word gets used an awful lot. It's to

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1 invoke a process.

2 So I would hope that -- no.

3 Rephrase that. So we're thrilled with

4 anybody who casts a vote. Absolutely.

5 Q. Okay.

6 MS. SIEBERT: Mitchell, could

7 you pull up -- I think it was

8 Exhibit 12, if I recall correctly.

9 Yeah, this is it. If you could
10 scroll down just a bit.

11 BY MS. SIEBERT:

12 Q. Mr. Somerville, you just
13 testified -- and I'm paraphrasing here --
14 that it wasn't your intention ever to, you
15 know, unjustly accuse anybody of voting
16 illegally or anything like that.

17 And so just to refresh your
18 recollection of this, I believe this is an
19 e-mail that you sent with some lists of kind
20 of talking points about this process.

21 Does that align with your
22 recollection?

**United States District Court
Northern District of Georgia
Gainesville Division**

Fair Fight, Inc., John Doe, and Jane Doe,

Plaintiffs,

v.

**True the Vote, Inc., Catherine
Engelbrecht, Derek Somerville, Mark
Davis, Mark Williams, Ron Johnson,
James Cooper, and John Does 1-10,**

Defendants.

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

Hon. Steve C. Jones

**Defendant Derek Somerville's Amended Responses and Objections to
Plaintiffs' Second Interrogatories**

Pursuant to Federal Rule of Civil Procedure 33, Defendant Derek
Somerville responds to Plaintiffs' Second Interrogatories.

General Objections

1. Defendant Somerville objects to these requests to the extent that they purport to call for the production of documents/information that: (a) contain

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privileged attorney-client communications; (b) constitute attorney work product; (c) disclose the mental impressions, conclusions, opinions, or legal theories of any attorneys or other representatives of the Plaintiffs; (d) were prepared in anticipation of litigation; or (e) are otherwise protected from disclosure under applicable privileges, immunities, laws, or rules.

2. Defendant Somerville objects to these requests to the extent that they are vague, not limited in scope, unreasonably broad and burdensome, or beyond the scope of either category of permissible discovery under Fed. R. Civ. P. 26(b)(1).

3. Defendant Somerville objects to the instructions accompanying the requests to the extent that they purport to impose obligations beyond those imposed by the Federal Rules of Civil Procedure, or any order promulgated by this Court.

4. Defendant Somerville objects to discovery requests that are not proportional to the needs of the case and that are not “relevant to any party’s claim or defense.” Fed. R. Civ. P. 26(b)(1).

5. Defendant Somerville objects to requests for information the benefit of which is outweighed by its lack of importance in resolving the issues at stake in this case, the amount in controversy, the parties’ relative access to relevant

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information, the parties' resources, and whether the burden or expense of the proposed discovery outweighs its likely benefit. *See* Fed. R. Civ. P. 26(b)(1).

Consistent with this rule, Defendant Somerville does not produce multiple copies of a communication, e.g., where one email chain has multiple communications, earlier included ones are not produced as separate documents.

6. Subject to and without waiving any of the foregoing General Objections, which are hereby incorporated into each specific response, Defendant Somerville (a) makes further objections in response to individual requests and (b) makes the required good-faith attempt to fulfill the duty to provide all responsive information readily available without undue labor and expense.

7. Defendant Somerville objects to producing individuals' personal information, including emails and phone numbers, based upon privacy and relevancy.

DEFINITIONS

Except as specifically defined below, the terms used in these requests shall be construed and defined in accordance with the Federal Rules of Civil Procedure, wherever applicable. Any terms not defined shall be given their ordinary meaning.

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1. “Communication” means any transfer of information, whether written, oral, electronic, or otherwise, and includes transfers of information via email, report, letter, text message, voicemail message, written memorandum, note, summary, and other means. It includes communications entirely internal to True the Vote, as well as communications that include or are with entities and individuals outside of that organization.

2. “County” means any county in Georgia, as well as all employees, staff, agents, and representatives of the county, including the county boards of registrar’s offices, county registrars, or any other person with a responsibility for conducting or supervising elections in the county.

3. “Date” means the exact day, month, and year, if ascertainable, or, if not, the best available approximation (including relationship to other events).

4. “Describe” means explain with particularity.

5. “Georgia Elector Challenges” means the challenges to voter eligibility of registered Georgia voters in advance of the Run-off Election in which you and True the Vote have been and are involved and which are described, among other places, in True the Vote’s December 18, 2020 Press Release.

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6. “December 18, 2020 Press Release” means the press release posted on the True the Vote Website on that date, attached hereto as Exhibit A.
7. “Identify,” when used in reference to a communication, means to state when and where the communication was made; each of the makers and recipients thereof, in addition to all others present; the medium of communication; and its substance.
8. “Identify,” when used in reference to a government agency, firm, partnership, corporation, proprietorship, association, other entity, or person, means to state its, his, or her full name and present or last-known address.
9. “Identify,” when used in reference to processes or steps taken by you or others with whom you have worked on the matters at issue in this litigation, means to chronologically detail each and every action taken by any and all entities or persons, to identify the actor, and to detail how and when that action was or will be aken and for how long.
10. “Including” means “including but not limited to.”
11. “Person” means not only natural persons, but also firms, partnerships, associations, corporations, subsidiaries, divisions, departments, joint ventures,

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proprietorships, syndicates, trust groups, and organizations; federal, state, or local governments or government agencies, offices, bureaus, departments, or entities; other legal, business, or government entities; and all subsidiaries, affiliates, divisions, departments, branches, and other units thereof or any combination thereof.

12. “Relating to,” “regarding,” and their cognates are to be understood in their broadest sense and shall be construed to include pertaining to, commenting on, memorializing, reflecting, recording, setting forth, describing, evidencing, or constituting.

13. “Run-off Election” means the January 5, 2021 Senate Run-off election held in Georgia.

14. “Targeted Voter” or “Targeted Voters” means the registered Georgia voters who are the subject of the Georgia Elector Challenges.

15. “True the Vote” means the organization that goes by the name of True the Vote, its officers, directors, partners, members, managers, employees, representatives, agents, consultants, or anyone acting on its behalf.

16. “Voter” means any registered voter in Georgia and all persons who may

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properly register to vote in the state by the close of discovery in this case.

17. “You” and “your” means Defendant Derek Somerville and any of his representatives, agents, or anyone acting on his behalf.

INTERROGATORIES

Interrogatory No. 6: Identify and describe in detail all communications you had regarding the accuracy of the Georgia Elector Challenges.

Response: I have never seen the Georgia Elector Challenges prepared by True the Vote, nor have I participated in any review of their accuracy.

I object to the requested supplementation of this interrogatory on four bases:

(1) I already answered this Plaintiffs’ defined interrogatory fully and truthfully;

(2) the requested supplementation is beyond the scope of permissible discovery as it is not “relevant to any party’s claim or defense” and is not proportional to the needs of the case pursuant to Federal Rule of Civil Procedure 26(b)(1); (3) the requested supplementation seeks information protected by the First Amendment to the United States Constitution, namely the right to petition the government for the redress of grievances, which is protected from undue disclosure and investigation; and (4) the requested supplementation seeks information that would violate §

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11(b) of the Voting Rights Act, which protects the right to be free from intimidation.

First, this interrogatory requests information related to all communications I had regarding the accuracy of the “Georgia Elector Challenges.” Plaintiffs have defined “Georgia Elector Challenges” as “the challenges to voter eligibility of registered Georgia voters in advance of the Run-off Election in which you *and* True the Vote have been and are involved and which are described, among other places, in True the Vote’s December 18, 2020 Press Release.”¹ (emphasis added). Plaintiffs have incorporated the defined term of “Georgia Elector Challenges” into its other defined term of “Targeted Voter” or “Targeted Voters.” Using that Plaintiffs’-defined incorporation, this term means “the registered Georgia voters who are the subject of the [the challenges to voter eligibility of registered Georgia voters in advance of the Run-off Election in which you *and* True the Vote have

¹ Plaintiffs have also requested I supplement this interrogatory “to accurately account for [my] challenge efforts in advance of the 2020 General Election.” Nkwonta Email to Defendants’ Counsel, October 14, 2021. I object to any supplementation of information related to the 2020 General Election to any interrogatory as beyond the scope of permissible discovery as it is irrelevant to any parties’ claim or defense. Fed. R. Civ. P. 26(b)(1).

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been and are involved and which are described...].

Plaintiffs did not define these terms using the disjunctive “or,” but rather the conjunctive “and.” By Plaintiffs’ own definition, the scope of this interrogatory is limited to communications regarding the accuracy of the Georgia Elector Challenges that occurred in conjunction with True the Vote. I had no role and involvement regarding the accuracy of the Georgia Elector Challenges in conjunction with True the Vote. I object to further supplementation of this interrogatory on the basis that I have already answered this Plaintiffs’-defined interrogatory fully and truthfully and have supported the answer to this interrogatory in my deposition testimony.

Second, the First Amended Complaint states, “[u]pon information and belief, Defendant Somerville has assisted and *acted in concert with True the Vote* in its effort to challenge the eligibility of hundreds of thousands of Georgians to vote.” ¶ 20. (emphasis added). Plaintiffs have alleged True the Vote “challenge[d] over 364,000 Georgians’ eligibility to vote and recruit[ed] Georgians to engage in its “ballot security” operation in Georgia in advance of the state’s January Senate Runoff.” ¶ 18.

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Plaintiffs allege, in their single claim, that “Defendants, by engaging in an unprecedented effort to challenge the eligibility of hundreds of thousands of Georgians to vote, by recruiting “citizen watchdogs” to watch voters return their ballots, and by offering a \$1 million reward to incentivize its supporters to find evidence of “illegal voting,” have engaged in activities which are objectively likely to intimidate voters in violation of § 11(b) of the Voting Rights Act. First Am. Compl., ECF No. 73, ¶ 79.

The scope of Plaintiffs’ First Amended Complaint defines me as a Defendant by my alleged “act[ing] in concert with True the Vote” and the Plaintiffs’ claim relates to the alleged “challenge to hundreds of thousands of voters.” Therefore, Plaintiffs’ claim, as it relates to my alleged involvement, concerns the allegations that I acted in concert with True the Vote to challenge hundreds of thousands of voters, recruited citizen watchdogs, and offered a reward to find evidence of illegal voting.

As I have fully and truthfully testified to in both my responses to interrogatories and in deposition testimony, I did not act in concert with True the Vote. I object to the supplementation of this interrogatory to include any work I

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may have done separately and independently from True the Vote as beyond the scope of permissible discovery because it is not relevant to Plaintiffs' claim that I acted in concert with True the Vote to challenge hundreds of thousands of voters, recruited citizen watchdogs, or offered a reward to find evidence of illegal voting. Further, I never recruited citizen watchdogs or offered a reward to anyone to find evidence of illegal voting, either independently or in concert with True the Vote.

The "Federal Rules of Civil Procedure strongly favor full discovery whenever possible." *Farnsworth v. Procter & Gamble Co.*, 758 F.2d 1545, 1547–48 (11th Cir. 1985). However, the proper scope of discovery is not without limits. The Eleventh Circuit has instructed that "[e]vidence is relevant if it has any tendency to make a fact more or less probable than it would be without the evidence, and the fact is of consequence in determining the action." *Aycock v. R.J. Reynolds Tobacco Co.*, 769 F.3d 1063, 1068 (11th Cir. 2014).

This action, by virtue of Plaintiffs' own pleadings, concerns actions of True the Vote and those who worked in concert with True the Vote. Plaintiffs have not included claims relevant to challenges submitted by anyone who did not act in concert with True the Vote. Any response to this interrogatory that would concern

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challenge efforts I may have been involved with that were separate and independent from True the Vote is simply of no consequence in determining the action before this Court.

Third, any work I may have done separately from True the Vote related to challenges is directly related to my First Amendment right to petition the government for the redress of grievances.

Fourth, any work I may have done separately from True the Vote related to challenges was done to protect my vote from voter dilution. The right to protect my vote from voter dilution is essential to my right to vote and is subject to § 11(b) of the Voting Rights Act, which includes the right to be free from intimidation from those who seek to prevent me from protecting my right to vote.

Therefore, I object to the requested supplementation to this interrogatory as beyond the scope of permissible discovery as it is not “relevant to any party’s claim or defense” and is not proportional to the needs of the case pursuant to Federal Rule of Civil Procedure 26(b)(1).

Interrogatory No. 7: Identify and describe in detail all communications you had regarding Targeted Voters who were ultimately determined to be residents of

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the counties in which they were registered.

Response: I have had no communications with any Targeted Voter determined to be a resident of the county in which they were registered.

I incorporate and adopt my objections to the Request for Supplementation to Interrogatory No. 6 hereto.

Interrogatory No. 8: Identify and describe in detail all communications you had with challengers who withdrew or attempted to withdraw Georgia Elector Challenges submitted in their names, and describe in detail the reasons why those individuals sought to withdraw the challenges.

Response: I had absolutely no involvement with the identification of challengers or submission of Georgia Elector Challenges and am completely unaware of any challengers who withdrew or attempted to withdraw Georgia Elector Challenges Submitted in their names.

I incorporate and adopt my objections to the Request for Supplementation to Interrogatory No. 6 hereto.

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I, the undersigned, affirm under the penalties for perjury that the foregoing answers to Plaintiff's Interrogatories are true and correct.

Date: 10/28/21


Derek Somerville

RETRIEVED FROM DEMOCRACYDOCKET.COM

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Dated: October 28, 2021

/s/ Courtney Kramer
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Certificate of Service

I hereby certify that the foregoing document was served electronically on
October 28, 2021, upon all counsel of record via email.

/s/ Courtney Kramer

Courtney Kramer

Georgia Bar No. 483608

Local Counsel for Defendants

RETRIEVED FROM DEMOCRACYDOCKET.COM

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

FAIR FIGHT, INC.,)
SCOTT BERSON, JOCELYN HEREDIA,)
and JANE DOE,)

Plaintiffs,)

v.)

Case No.

2:20-cv-00302

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

Defendants.)

Videotaped Deposition of MARK DAVIS

Conducted Remotely via Zoom

Monday, October 4, 2027

9:04 a.m. EDT

Reported by Lisa A. Knight, RDR, CRR, RSA

DIGITAL EVIDENCE GROUP
1730 M Street, NW, Suite 812
Washington, D.C. 20036
(202) 232-0646

10/4/2021

Fair Fight, Inc. et al. v. True the Vote, et al.

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1 DIGITAL EVIDENCE GROUP

2 Pursuant to Notice, the videotaped

3 deposition of MARK DAVIS was conducted

4 remotely via Zoom on behalf of the

5 Plaintiffs, at 9:04 a.m. EDT, on Monday,

6 October 4, 2021, reported stenographically by

7 Lisa A. Knight, Realtime Diplomat Reporter,

8 Certified Realtime Reporter, and Realtime

9 Systems Administrator.

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Page 3

1 A P P E A R A N C E S

2 (Appearing Remotely)

3 * * *

4

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Mark Davis

Page 4

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10 812.232.2434

11

12 ALSO PRESENT:

13 HENRY MARTE, VIDEOGRAPHER

14

15

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1	I N D E X		
2	MARK DAVIS		
3	OCTOBER 4, 2021		
4	EXAMINATION OF MARK DAVIS:		PAGE
5	BY MR. SHELLY		8
6	BY MS. SIEBERT		156
7			
8	DEPOSITION EXHIBITS		
9	MARK DAVIS		
10	OCTOBER 4, 2021		
11	NUMBER	DESCRIPTION	PAGE
12	Davis A	Plaintiffs' Notice to	13
13		take the Deposition of	
		Defendant Mark Davis,	
		No Bates	
14	Davis B	Affidavit of Mark Davis,	80
		No Bates	
15	Davis C	Mark Davis Facebook Post,	114
		May 7 at 2:07 p.m.,	
16		No Bates	
17	Davis D	E-mail string, top e-mail	70
		to Catherine Engelbrecht	
18		from Derek Somerville,	
		12/19/20, No Bates	
19	Davis E	Zoom meeting invitation	143
		(TTV Legal Update),	
20		12/27/20, No Bates	
21	Davis F	Mark Davis Facebook Post,	142
		December 17, 2020,	
22		No Bates	

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1 DEPOSITION EXHIBITS, CON'T

2 MARK DAVIS

3 OCTOBER 4, 2021

4	NUMBER	DESCRIPTION	PAGE
5	Davis J	Zoom meeting invitation,	144
6		12/30/20 (Georgia Elector Challenger Townhall), No Bates	
7	Davis K	Mark Davis Facebook post	116
8		dated May 7 showing partial tag list, No Bates	
9	Davis L	Printout of Data	19
10		Productions' website, No Bates	
11			
12			
13			
14			
15	**REPORTER'S NOTE: All quotations from		
16	exhibits are reflected in the manner in which		
17	they were read into the record and do not		
18	necessarily indicate an exact quote from the		
19	document.		
20			
21			
22			

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1 PROCEEDINGS

2 THE VIDEOGRAPHER: We are now
3 on the record. My name is Henry
4 Marte; I'm a videographer on behalf of
5 Digital Evidence Group. Today's date
6 is October 4, 2021; and the time is
7 9:04 a.m.

8 This deposition is being held
9 by remote Zoom in the matter of Fair
10 Fight, Inc., et al., versus True the
11 Vote. The deponent today is Mr. Mark
12 Davis. All parties to this deposition
13 are appearing remotely and have agreed
14 to the witness being sworn in
15 remotely.

16 Counsel, please identify
17 themselves for the record, after which
18 the court reporter will administer the
19 oath to the witness.

20 MR. SHELLY: I'm Jacob Shelly
21 from Elias Law Group representing
22 plaintiffs.

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1 MS. BRYAN: Good morning. I'm
2 Leslie Bryan with Lawrence & Bundy,
3 representing plaintiffs.

4 MS. TAYLOR: Torryn Taylor from
5 Perkins Coie, also with plaintiffs.

6 MS. FORD: Christina Ford from
7 Elias Law Group representing
8 plaintiffs.

9 MS. KRAMER: Courtney Kramer
10 with Bopp Law Firm representing
11 defendants.

12 MS. SIEBERT: Melena Siebert
13 with The Bopp Law Firm representing
14 defendants.

15 MARK DAVIS,
16 having been first duly sworn to state the
17 whole truth, testified as follows:

18 EXAMINATION

19 BY MR. SHELLY:

20 Q. Good morning, Mr. Davis.

21 Could you just state your

22 record -- your name -- your full name for the

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1 record once more.

2 A. Mark Alan Davis.

3 Q. And your address, for the

4 record.

5 A. 325 Wesfork, W-e-s-f-o-r-k,

6 Way, Suwanee, Georgia 30024.

7 Q. Thank you.

8 And I'd like to start by going

9 over some of the ground rules for this

10 deposition, which will overlap slightly about

11 what the stenographer just said, but just to

12 make sure we're all on the same page.

13 All testimony here is under

14 oath just as if you were testifying in court.

15 Does that make sense?

16 A. It does.

17 Q. How many times have you been

18 deposed before?

19 A. Let me think here.

20 (Pause.)

21 I don't recall exactly off the

22 top of my head. I'd have to think about that

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1 one for a few minutes.

2 Q. More than five?

3 A. No. Less than five.

4 Q. But more than one?

5 A. More than one, yes.

6 Q. Fair enough.

7 For the benefit of everyone and
8 the court reporter, and especially since we
9 are all remote, please make your answers
10 audible because head shakes and nods are hard
11 to put in the record.

12 Please allow me to finish my
13 question before giving your answer. That
14 will also help us have a clean transcript for
15 the record.

16 Does that sound good?

17 A. Yes.

18 Q. From time to time, your
19 attorney may make an objection -- and that's
20 fine -- but you are to answer it regardless,
21 unless she specifically instructs you not to
22 answer.

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1 Does that make sense?

2 A. Yes.

3 Q. If at any point you do not
4 understand a question that I am asking, will
5 you please let me know?

6 A. Yes.

7 Q. And I will do my best to
8 rephrase or otherwise clarify the question.
9 If you do answer a question, I will assume
10 you understood it.

11 Is that fair?

12 A. Yes.

13 Q. If, at any time, you would like
14 to take a break, please let me know, and I
15 will try to find a good place to stop, and we
16 can go off the record for a few minutes. The
17 only exception is that if I have asked you a
18 question, I do ask that you answer the
19 question before we take a break.

20 Is that all right?

21 A. Understood.

22 Q. And you gave me your home

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1 address. Is that the address you are located
2 for this deposition?

3 A. Yes.

4 Q. And how are you viewing this
5 deposition? Is this a laptop? It looks like
6 a computer of some sort. I imagine it's not
7 a phone.

8 A. This is a workstation.

9 Q. And do you have any documents
10 with you related to this deposition, either
11 hard copies or electronic?

12 A. In this room or at my disposal?

13 Q. At your disposal.

14 A. No.

15 Q. And is anyone in the room with
16 you?

17 A. No. I have a wife upstairs
18 who's doing her own Zoom meeting today.

19 Q. Okay. I have a kid home sick,
20 who may be making an appearance at some point
21 as well, but hopefully it's just you and me.

22 Because we are taking your

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1 deposition remotely, I may not always be able
2 to see what you have in front of you or if
3 you [sic] may enter the room while you're
4 testifying.

5 Do you understand it would not
6 be appropriate for your attorney or anyone
7 else to tell you how to answer a particular
8 question I ask?

9 A. Understood.

10 Q. And do you agree that while we
11 are testifying today, you will not exchange
12 communications, whether by text, e-mail, or
13 other messaging, about how to answer the
14 questions that I ask?

15 A. Yes.

16 Q. Okay. Great. Let's get
17 started.

18 MR. SHELLY: Henry, can you
19 please pull up Exhibit A.

20 (Davis Exhibit A,
21 Plaintiffs' Notice to take the
22 Deposition of Defendant Mark

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Mark Davis

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1 Davis, No Bates, was marked for
2 identification, as of this
3 date.)

4 BY MR. SHELLY:

5 Q. Mr. Davis, do you recognize
6 this document?

7 A. It appears to be the first
8 page of the lawsuit.

9 MR. SHELLY: If you can scroll
10 down, Henry.

11 BY MR. SHELLY:

12 Q. This is the notice about this
13 deposition we're taking right now.

14 A. Okay.

15 Q. Have you seen this before?

16 A. I don't know that I have.

17 Q. Are you prepared to testify
18 today?

19 A. I am.

20 Q. Without disclosing any specific
21 communications you may have had with your
22 lawyers, can you describe at a high level

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1 what you did to prepare for today?

2 A. Nothing comes to mind other
3 than discuss it with my attorneys. You know,
4 I was told generally what you said earlier,
5 about waiting for the full question before
6 answering and so on, so forth. It basically
7 said about what you said.

8 Q. Okay. Great.

9 I would like to start with --

10 MR. SHELLY: You can take that
11 down, Henry. Thank you.

12 BY MR. SHELLY:

13 Q. I would like to start with some
14 brief background about yourself.

15 Can you tell me where you grew
16 up?

17 A. I grew up in Atlanta, Georgia.

18 Q. Have you been in Georgia your
19 whole life?

20 A. All but about a year of it,
21 yes.

22 Q. And you're registered to vote

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1 Q. Have you received any formal
2 training in quantitative analysis or
3 statistics?

4 A. No.

5 Q. What do you do professionally?

6 A. I'm the president of Data
7 Productions, which does marketing for
8 commercial, nonprofit, and political
9 organizations. And I create an enhanced
10 version of the Georgia Voter Database that
11 candidates and organizations use when they
12 run for office.

13 Q. How long have you held that
14 role?

15 A. Data Productions was
16 incorporated in 1991. Over the years, we
17 merged with another company, and I bought it
18 back. And it's kind of a long story, but
19 I've been doing this kind of work for
20 approximately 30 years now.

21 Q. Are you the founder of Data
22 Productions?

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1 nuts.

2 Q. Would you consider data
3 processing to be your strong suit?

4 A. Yes.

5 Q. And why is that?

6 A. I've been admitted to testify
7 as an expert witness in data analytics 5
8 times over the last 20 years in various
9 disputed elections. I've been working with
10 voter data for longer than most people have.
11 I know it well. And I'm -- I've testified in
12 court over residency issues and redistricting
13 errors and things like that.

14 Q. And what happens if a client or
15 you try to perform a project without good
16 data processing?

17 A. I'm not sure I understand the
18 question.

19 Q. Sure.

20 MR. SHELLY: Henry, can you
21 pull up Exhibit L.

22 (Davis Exhibit L,

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1 that data processing is very important.

2 Q. Fair to say that the quality of
3 processing affects of validity of the
4 conclusions that can be drawn from the data?

5 A. Yes.

6 MR. SHELLY: Thank you. Henry,
7 you can take that one down.

8 BY MR. SHELLY:

9 Q. Mr. Davis, you mentioned that
10 you perform National Change of Address
11 processing as part of your data processing
12 services. Is that right?

13 A. Yes.

14 Q. And roughly how many times a
15 year would you say you perform NCOA
16 processing?

17 A. I don't know the answer to that
18 question off the top of my head, but it's
19 often. It's regular. I would say I probably
20 will process 50, 60 million records this
21 year.

22 Q. And when you say "process those

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1 leave and another permanent change of address
2 when they come back.

3 Q. Got it.

4 Have you ever matched the NCOA
5 list to a voter registration file?

6 A. Often.

7 Q. When have you done so?

8 A. The enhanced version of the
9 motor voter database that I build, I've been
10 running NCOA processing on that data for in
11 excess of 20 years, I believe.

12 It's -- again, it's required by
13 the Postal Service when we do mailings for
14 campaigns or organizations, that kind of
15 thing.

16 Q. Okay. And did you perform this
17 matching for the 2020 election?

18 A. Yes.

19 Q. Just once or how many times?

20 A. Off the top of my head, I don't
21 recall how many times I did it for 2020.

22 Q. More than once?

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1 A. At least once.

2 Q. Is part of the potential
3 confusion that you also ran it for the Senate
4 elections in January, which was around the
5 same time? Or just that you do it so often
6 that you're not sure how many times?

7 A. Well, I know I ran NCOA
8 processing when I built the file that
9 candidates were using. I also ran NCOA on
10 the voter database in November. I believe it
11 was -- I don't remember the exact date, but
12 it was in November.

13 Q. After the election?

14 A. After the election.

15 Q. Am I understanding correctly,
16 you don't recall running it before the
17 November election? Or is it possible --

18 A. I would need to look. It's
19 something that I do regularly, but I don't
20 want to give an unclear answer, so I'll just
21 say I did it at least once in 2020.

22 Q. Okay. Did you publish your

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1 outside of, you know, professional
2 background.

3 MR. SHELLY: Okay. I do have
4 some more questions on that, but
5 I appreciate the objection.

6 BY MR. SHELLY:

7 Q. Mr. Davis, were you ever paid
8 for any of this analysis that you performed
9 for the NCOA matching?

10 A. That's a broad question.

11 Q. Sorry. For the November,
12 specifically, matching that you recall.

13 A. No.

14 Q. And can you tell me a little
15 bit about why you performed that matching?

16 MS. SIEBERT: Objection. This
17 is irrelevant to the subject matter of
18 the case. It has nothing to do with
19 the November election.

20 Mark, I'm going to go ahead and
21 instruct you to answer this. But,
22 again, we're nearing the end.

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1 A. I have been seeing residency
2 issues with the Georgia Voter Database for
3 many, many years. I've seen them just show
4 up in the voter data that I've worked on for
5 various reasons. They are especially
6 apparent following redistricting and
7 reapportionment.

8 And when I have seen them in
9 the past, especially in some of the cases
10 I've testified in as an expert witness over
11 the years, it became obvious to me that we
12 have major issues here in Georgia with
13 residency. And in the past few cases where
14 I have seen them, I became curious about what
15 I would see if I performed the kind of
16 analysis I normally do as an expert witness
17 statewide.

18 And so out of curiosity, in
19 November, I ran NCOA processing to ascertain
20 the extent of the issues statewide.

21 BY MR. SHELLY:

22 Q. Okay. After you completed that

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1 first instance?

2 A. I told her that I thought that
3 if we had these kinds of residency issues in
4 the general, then it was entirely possible
5 we'd have the same issues in the runoff.

6 Q. And what was her response?

7 A. I don't recall her exact
8 response.

9 Q. But she reacted positively to
10 it, that this was something that she would
11 consider?

12 A. I don't recall her reaction,
13 other than she was glad to be aware of the
14 information.
15 We didn't know each other well
16 at the time, and -- I mean, she really didn't
17 know me from Adam, so I really couldn't
18 characterize her response to it. I guess
19 that would be a question for her.

20 Q. Did she ask for your
21 assistance?

22 A. During the phone call with

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1 Gregg Phillips, I was invited to consider
2 taking some sort of role here in Georgia with
3 True the Vote. And I declined that
4 invitation because I just don't have the
5 bandwidth for it.

6 Q. What was -- what were you being
7 asked to do that you didn't have time for?

8 A. There was nothing specific.
9 There -- he did mention the possibility -- he
10 mentioned they were seeking to build a team
11 in Georgia and asked if I would consider
12 becoming involved potentially in some sort of
13 a leadership role. And I declined. I don't
14 have the time.

15 Q. Okay. It does seem to me that
16 the analysis that you ran was relevant to the
17 challenges that are at the heart of this
18 suit, so I would like to ask you a few more
19 questions about those.

20 You mentioned that your NCOA
21 list covered a 48-month period. I'm looking
22 for what window that would cover.

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1 we're suing over.

2 So I think understanding the
3 basis of his analysis will help us
4 better understand the challenge
5 program, while I do appreciate the
6 distinction, that his analysis did not
7 actually -- we have not yet
8 established that they used his data in
9 the challenges.

10 MS. SIEBERT: If you would
11 permit me.

12 Mark, can you please clarify:
13 Did you share your actual data
14 analysis with Catherine and Gregg?

15 THE DEPONENT: I did not share
16 any of my data with Catherine or
17 Gregg. We talked in generalities
18 about issues that are very known to
19 them.

20 True the Vote has been aware
21 for many, many, many years that every
22 Secretary of State in the nation faces

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1 issues with the cleanliness of their
2 voter rolls largely due to provisions
3 of the 1993 National Voter
4 Registration Act.

5 I was not telling either of
6 them anything they didn't already know
7 about the problem, in general. I just
8 simply told them what I was seeing in
9 Georgia. Neither of them was
10 surprised to hear it.

11 MS. SIEBERT: Okay.

12 THE DEPONENT: But I did no
13 data processing for True the Vote at
14 all, and I did no data processing of
15 this nature for the runoff for True
16 the Vote.

17 MS. SIEBERT: So, Mr. Shelly,
18 I understand from Mr. Davis's
19 testimony just now that he did not
20 perform any data analysis and did not
21 share any specific data analysis with
22 True the Vote.

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1 call -- but we established a relationship
2 after that and began to work collaboratively.

3 Q. Did you discuss challenging
4 voters with him?

5 A. We did discuss the possibility
6 of doing it not affiliated with True the
7 Vote.

8 Q. And was that before or after
9 the call with Ms. Engelbrecht that you
10 mentioned?

11 A. I don't recall.

12 Q. Okay. Did he ask for your
13 assistance challenging any Georgia voters?

14 A. Well, we did discuss creating
15 our own challenges, but not True the Vote's
16 challenges.

17 Q. And did you pursue that?

18 MS. SIEBERT: I'm going to
19 object to this question. Again,
20 beyond the scope.

21 This lawsuit is about the
22 challenges that were, quote, in

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1 concert with True the Vote. So this
2 is beyond the scope of this lawsuit.

3 Mark, you can go ahead and
4 answer.

5 A. I did do data processing for
6 other people to file challenges, not in
7 coordination with True the Vote, not
8 affiliated with True the Vote. A totally
9 different perspective than True the Vote.

10 I'll stop there.

11 BY MR. SHELLY:

12 Q. Okay. And who were these other
13 groups?

14 A. Excuse me?

15 Q. What other group were you
16 providing -- were you assisting with voter
17 challenges?

18 A. No group in particular.

19 Q. Are there other individuals?

20 A. They were created to permit
21 other interested individuals to file them if
22 they wished to file them.

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1 way, I would hope that Mr. Davis would
2 answer.

3 MS. SIEBERT: All right. Mark,
4 go ahead.

5 A. I'm not aware of residency
6 challenges that were filed before the
7 general, but it wouldn't surprise me to learn
8 that there were. There weren't any that I
9 was involved with.

10 BY MR. SHELLY:

11 Q. Do I understand correctly that
12 filing these challenges were your idea in the
13 first instance? Or did someone else first
14 provide that idea?

15 A. It certainly was not my
16 original idea. That's been a topic that's
17 been discussed for quite some time.

18 There have been previous
19 challenges in previous elections filed on
20 residency issues, as far as I'm aware. It's
21 not a new idea by any stretch.

22 Q. Did you support these

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1 challenges -- I'll make this one specific to
2 the post-November challenges that True the
3 Vote filed. Did you support those
4 challenges?

5 A. In general, I support any
6 effort to clean up the voter rolls and ensure
7 people don't vote with residency issues
8 because they're casting ballots for people
9 that don't represent them.

10 So to that extent, I would
11 support efforts to prevent people from
12 casting illegal ballots.

13 Q. And what did you hope the
14 impact of these challenges would be on the
15 voters?

16 A. I hoped that the counties that
17 accepted challenges would simply give them
18 additional scrutiny to make sure that they
19 retained the eligibility to vote in a
20 particular election.

21 In other words, under Georgia
22 law, if they move from one county to another

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1 investigation is done and those people are
2 identified, and those persons who broke the
3 law were identified, you know, it's really up
4 to our elected -- our elections officials and
5 law enforcement to determine who did and
6 didn't break the law.

7 There is NCOA evidence that
8 indicates that that is a possibility, but
9 that's not a be all end all, without an
10 investigation. Even when the Secretary of
11 State has actionable NCOA evidence, he has to
12 verify it.

13 A Board of Elections that
14 accepts a challenge would also investigate.
15 So if the residency of these voters is going
16 to be called into question, it should be done
17 by our elections officials.

18 I see evidence that quite a few
19 voters may have cast ballots in counties they
20 no longer lived in. And, you know, that's up
21 to our elections officials and law
22 enforcement to investigate.

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1 Q. Is that correct?

2 A. Yes --

3 Q. Okay.

4 A. -- it's quite different.

5 Q. Okay. So thinking about within
6 that -- within that scope of the data
7 analysis that you have ever done in voter
8 integrity issues, so discounting campaign,
9 discounting any other kind of marketing or
10 mass mail data analysis that you've done, so
11 in the voter integrity data analysis that
12 you've done, have you ever done any data
13 analysis where you focused on any particular
14 demographic of the individuals?

15 A. Well, it depends on how you
16 define the word "demographic."

17 Q. Race, sex, things like that.

18 A. No.

19 Q. Okay.

20 A. The analysis that I did for
21 challenges, there were Republicans that were
22 challenged, there were Democrats that were

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1 challenged. There were people of all race,
2 male and female and I guess other or -- there
3 was no criteria by any of that stuff that
4 comes to mind that was used.

5 I mean, at the end of the day,
6 a vote is either a lawful ballot or an
7 unlawful ballot, whether you're talking about
8 a Democrat or a Republican.

9 Q. So in the voting integrity
10 analysis data that you've done, is it fair to
11 say that you are agnostic as far as race,
12 gender, sex, even political party?

13 A. I deliberately avoided making
14 decisions along those lines.

15 Now, subsequent to all of this,
16 my understanding is the Secretary of State's
17 office chose, on their own, to run some
18 background on voting histories of some of
19 these voters that were -- that they're
20 investigating. But I didn't even want to
21 look.

22 So what they came up with, what

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1 they showed, is that this was not a highly
2 partisan group of voters that were not --
3 there were -- there was some primary vote
4 history.

5 And in some of these voters'
6 background, but compared to your average
7 general election voter, most of these folks
8 appeared to be low-interest voters or
9 less-involved voters, in terms of voting
10 every time in every election or in every
11 primary or what have you.

12 Q. And, again, was that across the
13 spectrum of political party, race, gender,
14 all of that kind of thing, or --

15 A. Based on what the Secretary of
16 State's office saw, I recall seeing some
17 primary vote history. I don't recall seeing
18 them do any kind of racial breakdown on it.
19 That's something that I can do. It's
20 something that I haven't done, but, you know,
21 I do obviously have the data to be able to do
22 that.

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1 compliance with the NVRA. But other than
2 that, I have not worked with a lot of voter
3 data outside of our own state.

4 Q. That's fair. That's fair.

5 To your knowledge or your
6 understanding, when somebody does -- an
7 individual decides to make a Section 230
8 challenge in their county, is the process
9 that they would -- that that individual would
10 then go knock on somebody's door and say,
11 Hey, I don't think you're eligible to vote in
12 Gwinnett County?

13 A. No. I see no reason to do
14 that.

15 Q. Okay.

16 A. In fact, I would -- if I were
17 asked about it, I would encourage people to
18 avoid any kind of contact with these voters
19 unless it's done by an elected official or a
20 county official or someone conducting an
21 official investigation.

22 As an example, I would hope

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

-----x

FAIR FIGHT, INC., SCOTT BERSON, :

JOCELYN HEREDIA, and JANE DOE, :

:

Plaintiffs, :

:

vs. :

:

Case No.

TRUE THE VOTE, CATHERINE :

ENGELBRECHT, DEREK SOMERVILLE, : 2:20-cv-00302-SCJ

MARK DAVIS, MARK WILLIAMS, :

RON JOHNSON, JAMES COOPER, and :

JOHN DOES 1-10, :

:

Defendants. :

:

FAIR FIGHT ACTION, INC., :

:

Counter-Defendant. :

-----x

VIRTUAL VIDEOTAPED DEPOSITION OF
MARK A. DAVIS

Wednesday, January 19, 2022

9:05 a.m. Eastern Standard Time

REPORTER: Dawn A. Jaques, CSR, CLR

DIGITAL EVIDENCE GROUP

1730 M Street, NW, Suite 812

Washington, D.C. 20036

(202) 232-0646

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20

21 VIDEOGRAPHER AND EXHIBIT TECHNICIAN:

22 Mitchell Mahon, Digital Evidence Group

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1 I-N-D-E-X

2 WITNESS: PAGE:

3 MARK A. DAVIS

4 Examination by Ms. Meng 7, 189

5 Examination by Ms. Siebert 161

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7 E-X-H-I-B-I-T-S

8 DAVIS DEPOSITION EXHIBIT: PAGE:

9 Exhibit 1 Notice of Deposition 11

10 Exhibit 2 Plaintiffs' First Requests for
Production to Mark Davis 1211 Exhibit 3 Plaintiffs' Second Requests for
Production to Mark Davis 1312 Exhibit 4 November 26, 2020, email chain
SUBJECT: Independent Verification
13 (No Bates) (4 pages) 2314 Exhibit 5 December 14, 2020, email chain
SUBJECT: FYI - From the Georgia
15 Voter Guide
(No Bates) (2 pages) 3416 Exhibit 6 December 15, 2020, email chain
SUBJECT: County Count
17 (No Bates) (2 pages) 3818 Exhibit 7 Somerville text exchanges with
Mark Davis
19 (No Bates) (261 pages) 4920 Exhibit 8 December 22-23, 2020, email chain
SUBJECT: Citizen Challenges:
21 Update and Encouragement

22 (No Bates) (3 pages) 53

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6	Exhibit 10 December 4, 2020, Facebook post	
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7	Exhibit 11 December 5, 2020, Derek Somerville	
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9	Exhibit 12 December 16, 2020, email chain	
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1 P R O C E E D I N G S

2 THE VIDEOGRAPHER: We are going on the
3 record. This is Tape No. 1 of the videotaped
4 deposition of Mark Davis, taken by Plaintiffs in
5 the matter of Fair Fight, Inc., et al., vs. True
6 the Vote, in the United States District Court for
7 the Northern District of Georgia, Gainesville
8 Division, Case No. 2:20-cv-00302-SCJ.

9 This deposition is being held remotely
10 over Zoom videoconference on January 19th, 2022.
11 The time on the video screen is 9:05 a.m.

12 My name is Mitchell Mahon; I am the
13 legal videographer from DEG. The court reporter
14 is Dawn Jaques, in association with Digital
15 Evidence Group.

16 Will counsel please introduce
17 themselves for the record?

18 MS. MENG: Good morning, everyone. My
19 name is Tina Meng on behalf of Plaintiffs, Elias
20 Law Group.

21 MS. FORD: I'm Christina Ford, also
22 with Elias Law Group on behalf of Plaintiffs, but

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1 I will not be speaking today.

2 THE VIDEOGRAPHER: Will the court
3 reporter please swear in the witness?

4 MS. SIEBERT: Melena Siebert on behalf
5 of Defendants today. And I believe there is one
6 more attorney for Plaintiffs.

7 THE VIDEOGRAPHER: They might be
8 muted.

9 THE REPORTER: Ms. Cogen, did she
10 state hers?

11 MS. COGEN: Yes, Maia Cogen for
12 Plaintiffs today.

13 THE REPORTER: Would you raise your
14 right hand to be sworn, please?

15 (The witness was administered the oath.)

16 Whereupon,

17 MARK A. DAVIS,
18 was called as a witness, after having been
19 first duly sworn by the Notary Public,
20 was examined and testified as follows:

21

22

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Fair Fight, Inc. et al. v. True the Vote, et al.

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1 EXAMINATION BY COUNSEL FOR THE PLAINTIFFS

2 BY MS. MENG:

3 Q Good morning, Mr. Davis. How are you?

4 A Good morning. I'm all right. How
5 about yourself?

6 Q Good. So my name is Tina Meng, as I
7 said before, and I represent the Plaintiffs in
8 this case.

9 Just for the record, would you state
10 your full name and address?

11 A Mark Allen Davis, 325 Wesfork,
12 W-E-S-F-O-R-K -- there's no T in there -- Way,
13 Suwanee, Georgia, S-U-W-A-N-E-E, 30024.

14 Q Great. And I know, you know, this is
15 the second time that you've been deposed for this
16 case, but just as a refresher, I'd like to go over
17 some of the ground rules for the deposition so
18 we're all on the same page.

19 All the testimony today is under oath
20 just as you were testifying in court.

21 Does that make sense to you?

22 A Yes, it does.

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1 Q Great. So for the benefit of everyone
2 and the court reporter, especially since we're all
3 remote, please make sure to answer audibly. Head
4 shakes and nods are hard to put on the record, so
5 a yes or no or a spoken answer would be most
6 helpful.

7 Please allow me to finish my question
8 before giving your answer, and I'll do the same
9 when you're responding. Again, this is for a
10 clear transcript and for the record.

11 Does that sound good to you?

12 A Mm-hmm. Yes, it does.

13 Q Great. From time to time, your
14 attorney may make an objection to a question that
15 I ask, and that's fine, but you are to answer
16 unless she specifically instructs you not to
17 answer based on a topic of privilege.

18 Does that make sense as well?

19 A Yes, it does.

20 Q Great. So if at any point you do not
21 understand a question that I'm asking, will you
22 please let me know?

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1 A Yes, I will.

2 Q Okay. I will do my best to rephrase
3 or otherwise clarify, and I will assume that if
4 you answer a question, the question makes sense to
5 you. Is that fair?

6 A Yes.

7 Q Great. Now, if at any time you'd like
8 a break, please let me know. I'll try to find a
9 good place to stop and we can go off the record
10 for a few minutes.

11 The only exception to that is if I've
12 asked you a question, I please just ask that you
13 answer the question before taking a break.

14 Sound good?

15 A Yes.

16 Q Now, what address are you located at
17 for this deposition?

18 A 325 Wesfork Way, Suwanee, Georgia
19 30024.

20 Q Okay. And how are you viewing this
21 deposition? Is it by laptop, or monitor with a
22 video camera?

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1 A I have a desktop with two screens. So
2 if you see me looking left and right, that's why.

3 Q Sure. And do you have any documents
4 with you, either hard copies or electronic?

5 A I do not. The only thing on my desk
6 is some paperwork and some unopened mail.

7 Q Sounds good.

8 And is anyone in the room with you
9 right now?

10 A No. I do have a wife working
11 upstairs, and a stepdaughter who I believe is
12 asleep in her bedroom.

13 Q Great. We'll try not to bother her
14 then.

15 Because we're taking the deposition
16 remotely, I may not always be able to see who is
17 entering the room or in front of you, so do you
18 understand that it would not be appropriate for
19 you -- for your attorney or anyone else to tell
20 you how to answer a question I ask you today?

21 A Yes.

22 Q Great. And do you agree that while

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1 you're testifying, you will not exchange
2 communications -- whether by text, email, or other
3 messaging -- to anyone else about how to answer a
4 question today?

5 A Yes.

6 Q Great. If you don't have any other
7 questions for me, I think we can get started.

8 A Okay.

9 Q Great. Mitch, do you mind pulling up
10 Exhibit A and mark it as Exhibit 1 for me?

11 (Davis Exhibit 1 was marked
12 for identification.)

13 BY MS. MENG:

14 Q Mr. Davis, do you recognize this
15 document?

16 A I don't, but it appears to be notice
17 of this deposition.

18 Q Yes. I believe this is a notice to
19 take the deposition of you, noted for
20 January 19th, 2022, to begin at 9:00 a.m.

21 Are you prepared to testify today?

22 A I am.

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1 Q Great. Now, without disclosing any
2 specific communications you may have had with your
3 lawyers, can you describe at a high level what you
4 did to prepare for today?

5 A Reviewed discovery documents that I
6 provided to you. That's all I can think of
7 really.

8 Q Okay. Mitch, you can take that
9 exhibit down.

10 So Mr. Davis, I'd like to ask you a
11 few questions about the process to search and
12 produce documents for today.

13 So, Mitch, if you could pull up
14 Exhibit B, which we can mark as Exhibit 2.

15 (Davis Exhibit 2 was marked
16 for identification.)

17 BY MS. MENG:

18 Q Great, thank you.

19 Mr. Davis, do you recognize this
20 document?

21 A Yes.

22 Q Okay. And you've seen it before?

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1 A Yes.

2 Q So just to identify this, do you agree
3 that this is a Plaintiffs' First Requests for
4 Production to you?

5 A I'd have to go back and compare them,
6 but it appears to be.

7 Q Yeah. So just for the record, I think
8 in the title of the document it says "First
9 Requests." Do you see that at the top there?

10 A Excuse me?

11 Q At the top, I think it says
12 "Plaintiffs' First Requests for Production to
13 Defendant Mark Davis," the title of the document.

14 A Okay.

15 Q Great. Thank you, Mitch. Can you
16 pull up Exhibit C and mark it as Exhibit 3?

17 (Davis Exhibit 3 was marked
18 for identification.)

19 BY MS. MENG:

20 Q So Mr. Davis, do you recognize this
21 document?

22 A Yes.

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1 Q Okay. And you've seen it before?

2 A I believe so.

3 Q Okay. And this, according to the
4 title of the document, do you agree that it's the
5 Plaintiffs' Second Requests for Production to you,
6 Mark Davis?

7 A That's what it appears to be.

8 Q Okay. Great, thank you.

9 Mitch, you can take that exhibit down.
10 Thank you.

11 Now, Mr. Davis, how did you search for
12 and identify documents that were responsive to the
13 two requests for production that you just saw?

14 A I thought through the requests, went
15 over them with my attorney, and then with whatever
16 was appropriate, I went looking for responsive
17 documents to provide.

18 Q Okay. And when did you undertake the
19 search for documents?

20 A It's been some time. I don't recall
21 specifically.

22 Q Okay. And do you remember how long

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1 the search took in terms of hours, days, weeks?

2 A It depends on which search we're
3 talking about. The way that certain requests were
4 defined in the original request, there was a lot
5 that didn't appear relevant.

6 There was language used in the
7 definitions linking the requests to being in the
8 context of True the Vote, and there was later a
9 hearing with the judge to determine how that was
10 to be interpreted, I suppose.

11 And then this latest hearing that we
12 had, the judge, I believe, ruled that a lot of the
13 stuff that we did not think was within the scope
14 of the original requests should be viewed in that
15 context, and I was asked to go back and redo some
16 of that stuff.

17 I wasn't given a great deal of time to
18 do that, and I had a lot of work to do and we had
19 holidays going on, so I devoted as much time as I
20 could to it, but I really didn't have a lot of
21 time available to devote to it, so I did the best
22 that I could to try to deliver responsive

1 documents to you.

2 Q That makes sense.

3 And can you just briefly describe the
4 process you took in terms of, you know, where you
5 might have looked for documents?

6 A Depends on the question. Some of
7 those questions were very broad, and I did the
8 best that I could to review computer files,
9 databases, source files from various places,
10 emails, et cetera.

11 It really depends on the question, I
12 suppose.

13 Q Great, okay. But in general, you
14 looked at your computer, devices that you have,
15 things that you had access to and communicate on;
16 is that correct?

17 A I looked wherever was appropriate in
18 the context of the question.

19 Q Okay. And did anyone else help you in
20 any way with searching for documents?

21 A No.

22 Q Okay. Have you withheld any documents

1 for any reason from production?

2 A It depends, again, on the context of
3 the question.

4 Q And by question, you're referring to
5 the requests for production?

6 A Each of the requests, right.

7 Q Okay. And can you just elaborate a
8 little bit on, you know, what the general
9 parameters were that you might have withheld
10 documents based on the production requests?

11 A Some weren't relevant to the question
12 asked. And again, as I said earlier, a lot of the
13 definitions that were in the original requests
14 asked for, for example, communications relating to
15 the challenge that I and True the Vote worked on,
16 and we didn't -- we didn't get involved with
17 True the Vote's challenge. They did that all on
18 their own. That was their own effort.

19 So a lot of the questions, the way the
20 definitions were provided and the way the
21 questions were asked, there were some documents
22 that just didn't have anything to do with

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1 answering that question in the context in which it
2 was asked.

3 Q Okay. Were there any documents,
4 records, or communications that you believed were
5 covered by the requests for production that
6 perhaps you couldn't find?

7 A Yes. There were some -- there were
8 some text messages that I deleted prior to the
9 lawsuit, and then after the judge's most recent
10 interpretation of the scope of the requests, I did
11 go looking for some that I recalled in my mind
12 that I could not locate. So there were some.

13 Some of those have been produced from
14 other sources, so they are available now, but
15 there were a couple that come to mind.

16 One was a text message thread between
17 Derek Somerville and I, and another was a text
18 message exchange between Catherine at
19 True the Vote that I could not locate either.

20 I get a lot of junk texts and a lot of
21 junk email, and I do my best to try to keep that
22 cleaned out on a regular basis, otherwise it piles

1 up and just gets unmanageable, and it's possible
2 that I may have accidentally deleted those when I
3 was cleaning out text messages at some point last
4 year. I'm not sure. All I know is I could not
5 locate some of them.

6 Q Okay. And so you referred to two
7 specific communications that you don't recall --
8 or that you weren't able to find.

9 Could you just explain or elaborate,
10 based on your memory of those communications, what
11 were contained in those text messages?

12 A Well, there was a thread between Derek
13 Somerville and I that touched on a lot of topics,
14 and I'm aware that it's been disclosed, so I would
15 imagine that we'll be reviewing that today.

16 There was also a text message that I
17 had exchanged with Catherine in relation to the
18 launch of a website that was being discussed, and
19 I believe that that text exchange led to a phone
20 call, a brief phone call, where I expressed those
21 concerns.

22 Those are the only two that

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1 immediately come to mind.

2 Q Okay. And do you know when that phone
3 call took place?

4 A I don't recall, but I believe that
5 that may be in the text messages between Derek and
6 I, which I think you guys have a copy of.

7 Q Okay. So soon thereafter about that
8 text message did --

9 A Around that time that the text message
10 occurred.

11 Q Okay. And you had mentioned that you
12 routinely delete communications, emails, texts and
13 things like that.

14 On what regular basis are you deleting
15 things on devices?

16 A I don't have any set schedule. Well,
17 I get a lot of texts and emails that are -- for
18 example, there are certain accounts, when I log
19 in, I get a confirmation, text message or email.

20 When I process National Change of
21 Address processing for a customer, I'll get
22 notices that it's been received and been returned,

1 and when I log in to different places, I'll get
2 confirmations. And I try to almost immediately
3 clean those out when they come in because there's
4 just no reason for me to keep them.

5 Or as another example, if I get an
6 email from somebody or a text message from
7 somebody saying, hey, can you give me a call when
8 you get a minute? You know, as soon as I pick up
9 the phone and do that, I'll normally just delete
10 the text because it's no longer needed.

11 So I don't have any real set schedule
12 or anything, but I do try to keep junk cleaned out
13 as much as I can because it stacks up and gets
14 into the hundreds or thousands if I don't.

15 Q Okay. And can you describe how the
16 text message thread with Mr. Davis might have
17 fallen into that criteria for how you clear out
18 your messages?

19 A You mean Mr. Somerville?

20 Q Oh, yes, sorry.

21 A Well, the messages that we exchanged
22 early on, at some point I just didn't feel like

1 they were relevant and I just, you know, wiped
2 them out. I didn't think I would need them again
3 in the future.

4 The rest of the thread that happened
5 after that point, I can only assume that I may
6 have deleted it by accident at some point last
7 summer or last fall, because when I went to look
8 for it, it was not there.

9 Q And so just to clarify, do you use a
10 phone device for your text messages?

11 A I do.

12 Q And is there like a trash folder or a
13 deleted messages part of --

14 A Not that I'm aware of.

15 Q Sorry?

16 A Not that I'm aware of.

17 Q Okay. And do you recall, I know you
18 had said that perhaps some of these messages were
19 deleted by accident.

20 Do you recall a time frame by which
21 you would have gone into your phone and deleted
22 things, and messages might have gotten erased that

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1 you didn't mean to?

2 A As I said, I think sometime last
3 summer or last fall, I would imagine. I'm not at
4 all sure. I just don't know.

5 Q Okay. And what about messages on
6 other social media platforms, do you routinely go
7 through and clear those out or delete them?

8 A Typically not.

9 Q Okay. So Mr. Davis, I'd like to ask
10 you a couple follow-up questions about how you
11 conducted your analysis of the Georgia voter files
12 last year.

13 Mitch, could you pull up Exhibit D and
14 mark it as Exhibit 4, please?

15 (Davis Exhibit 4 was marked
16 for identification.)

17 MS. SIEBERT: If possible, I'd like to
18 lodge just a continuing objection, just for the
19 record, to questions related to Mr. Davis's work
20 that was not in conjunction with True the Vote,
21 either for the runoff election or for the November
22 election, just for the record.

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1 Of course, we'll instruct him to
2 answer, but if okay with you, I'd like to just
3 lodge a continuing objection for the record.

4 MS. MENG: Thank you, Melena, that's
5 noted. And I would say that these questions are
6 based off of documents that were produced, and
7 so --

8 MS. SIEBERT: No, of course. Of
9 course.

10 BY MS. MENG:

11 Q So Mr. Davis, could you just take a
12 moment a take a look at this document in front of
13 you. I believe it's an email chain, and it may be
14 multiple pages, but I'd like to just focus you on
15 the first page for now.

16 A Sorry, did you ask for a response?

17 Q Oh, no. I just wanted you to review
18 it, and let me know when you've had a chance to
19 look it over.

20 A I recall this email.

21 Q Okay. And do you agree that this is
22 an e-mail chain between you and Mr. Somerville

1 for some period of time intending to return,
2 there's no issue with them voting.

3 Q Okay. So in the eventual list of
4 about 40,000 voter challenges that you and
5 Mr. Somerville pulled together, were the names of
6 voters who forwarded their -- were the names of
7 voters who forwarded their mail to an address on a
8 military base therefore excluded?

9 A Well, the number you're quoting --
10 based on the number you're quoting, I think I need
11 to draw some distinctions here.

12 That initial list that I output of
13 40,100 something, I'd have to look at the count,
14 that list I don't think is really relevant to this
15 case. That list was produced basically for the
16 Trump attorneys and for me to continue as a
17 starting point to work with. That was not used to
18 challenge voters in the runoff election.

19 The selection criteria for that file,
20 and the processing that I did for that file, were
21 different. So I just want to draw that
22 distinction.

1 Q Sure. Thank you for that
2 clarification.

3 So in the list that you eventually did
4 pull together for voter challenges, did you
5 exclude names of military voters?

6 A Well, in the absentee voter database,
7 there are UOCAVA voters in there, and those are
8 military typically, or subject to the Act, so
9 basically military and their families, so those
10 were dropped.

11 And Derek Somerville, being
12 ex-military, is pretty familiar with where
13 military bases are, so to what extent we could, we
14 did attempt to suppress as much as possible what
15 could likely be members of the military. But at
16 the end of the day, ferreting out those kinds of
17 issues is what investigations are for.

18 So, you know, the number of records
19 was quite large, wasn't really possible for
20 private citizens like us to do those kinds of
21 investigations, so it's up to our county elections
22 officials or state elections officials, whatever

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1 the case may be, to take on that task.

2 Q Okay. And Mr. Davis, you mentioned
3 that there was different criteria for this list of
4 about 40,000 voter names that were pulled together
5 for the Trump attorneys, but you had referenced
6 before, that criteria was different than the list
7 of voters that you and Mr. Somerville worked
8 together to pull for voter challenges.

9 Can you just elaborate on how that
10 criteria was different?

11 A Well, for one thing, after I output
12 the initial list, it was basically just a down and
13 dirty first draft or first look at those issues.

14 And one of the things that I noticed
15 within a couple days, I believe, of generating
16 that file was that it contained some changes of
17 address that were to P.O. Boxes, so almost
18 immediately I wound up dropping about 5,000
19 records out of there.

20 And the other important distinction to
21 make is in the selection criteria, because if a
22 person moved more than 30 days -- moved to another

1 county more than 30 days before the general
2 election, that would indicate potential residency
3 issues for voting in the general, but for the
4 runoff, that date range is obviously quite
5 different.

6 So, for example, if someone had moved
7 with a Move Effective Date in October or November
8 of 2020, we would want to suppress all of those
9 because they're either within the grace period of
10 30 days or irrelevant; whereas the date for the
11 runoff was obviously a couple months later, and so
12 the selection criteria for that would have been
13 different.

14 And we also did some other
15 suppressions when we generated the challenge list.
16 For example, in our analysis of the voter data, it
17 appeared that the Secretary of State had done list
18 maintenance in 2019, and so we assumed that
19 changes of address that were from that time period
20 probably would have already been through their
21 NCOA process and subsequent list maintenance
22 activities, so we limited the scope to changes of

1 address that were beyond that time.

2 We did what we could to suppress
3 military, and I'm trying to think what other
4 suppressions we did.

5 Well, I assume we're probably going to
6 go through some additional communications here
7 that will help refresh my memory on this, but
8 there were a number of suppressions that we did
9 for the runoff file that shouldn't be conflated
10 with analysis that we did for the general
11 election, and I think this is an issue that keeps
12 coming up.

13 Analysis that I did for the general
14 election and for issues related to the general
15 election is different from analysis that I did for
16 potential issues related to the runoff. So that
17 distinction needs to be made.

18 And the list that you're referencing,
19 the 40,219, or whatever that final count was, that
20 particular file I don't think is particularly
21 relevant here to the issues at hand in this case,
22 but that's my opinion, so ...

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1 "Done. No way to catch them all, but I'm sure I
2 removed a few thousand records."

3 Do you see that?

4 A I think he's talking about the
5 military scrub I asked him to do.

6 Q Okay. And just to clarify the time
7 frame here, these e-mails were sent in the middle
8 of December, so based on what you were saying with
9 the previous list that you did for the general
10 election, would this list have been for -- this
11 analysis have been for the runoff election; is
12 that correct?

13 A Yes.

14 Q Okay. And what did you believe
15 Mr. Somerville meant by there's no way to catch
16 them all?

17 A Well, the scrub he did would have been
18 military bases, people living on base, but there's
19 also people who live off base, some closer than
20 others.

21 So I think what he was saying is he
22 did his best effort to suppress as much military

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1 as possible, but there's no way to catch them all.

2 At the end of the day, as I said, you
3 know, that's what investigations are for, and so
4 it's a best efforts kind of situation. We made a
5 good-faith effort to do what we could with regard
6 to the military.

7 Q Okay. And how confident were you in
8 how accurate your analyses were in capturing or
9 removing the data that you were seeking to remove?

10 A As far as the military or --

11 Q Military, or any other type of
12 category, like student voters, et cetera.

13 A Well, I have a lot of experience doing
14 this kind of work, and I gave my best efforts to
15 the cause as well.

16 Our goal was to produce legitimate
17 challenges as much as possible. We didn't want to
18 inconvenience people unnecessarily, but at the
19 same time, it appears to me, or at least the data
20 indicates, that there likely were a lot of
21 unlawful votes that were cast in the general
22 election, and because we were seeing that, we were

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1 Mr. Somerville is referring to here related to
2 voter names from the runoff as opposed to --

3 A No.

4 Q -- anything we discussed before? No?

5 A No. I think what he's talking about
6 here -- and again, I'm not real sure where he was
7 going with this.

8 I had produced a count by county, so
9 basically 159 separate counts, one for each
10 county, indicating how many voters were being
11 challenged in each county. I believe the average
12 was less than 250. If I recall off the top of my
13 head properly, I think it was like 146 or
14 something per county was the average.

15 And I'm not sure why he asked for that
16 count, but it was an aggregate level number. I
17 feel confident that none of this here refers to
18 partisanship with regard to any particular voter.

19 The production of the challenge list
20 was not done based on partisanship or race, or any
21 kind of criteria like that. The count that he
22 produced this from was an aggregate level count of

1 how many were being challenged per county, and for
2 whatever reason, it appears he did some sort of
3 workup based on which of those counties were red
4 and blue. And I'm not sure what the point of this
5 was, but I would encourage you to ask him.

6 Q Okay. And what's your understanding
7 of the reference to red and blue in this analysis?

8 A I can only assume that he's referring
9 to the counties that voted either Democrat or
10 Republican. Again, I'd encourage you to ask him.

11 Q Sure. Is it fair to say, then, that
12 you and Mr. Somerville didn't discuss this
13 analysis further?

14 A I don't recall if we did or didn't.
15 Quite frankly, when I saw it, I didn't really see
16 the point of it.

17 Q And do you know if this analysis was
18 shared with anyone else?

19 A I don't know.

20 Q And so just to clarify for my own
21 understanding, and apologies if you've already
22 said this, but you said that you had sent

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1 generally available basically to help support the
2 challenges that were issued.

3 Q Okay. And are you aware if anyone at
4 True the Vote might have had access, as you had
5 said, because the certifications were publicly
6 available?

7 A Well, they were available to the
8 challengers. I don't believe we published it to
9 the public, but certainly members of the public
10 could have obtained them from an Open Records
11 Request from any of the counties where they were
12 filed, but I don't recall us publishing it to the
13 general public. I wouldn't see any reason to do
14 that.

15 Can you repeat your question? I
16 forget the original context.

17 Q Yeah. I was just asking if you knew
18 if the NCOA certifications were ever disclosed to
19 anyone at True the Vote?

20 A Not that I'm aware of. I suppose it's
21 possible. I don't know why it would be relevant
22 to True the Vote. Their effort was their effort,

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1 by the prospect of prosecution. It should be
2 obvious. If you're aware that what you're doing
3 is unlawful, you shouldn't do it.

4 Q Okay. And was it ever your goal to
5 partake in efforts that would lead to the criminal
6 prosecution of voters?

7 A My primary motivation was to prevent
8 illegal votes from being cast. It's the job of
9 our election officials and law enforcement to
10 determine who may or may not have committed a
11 crime.

12 I've tried to make a point of not
13 accusing any particular voter of violating the
14 law, even though they may have. I'll leave it
15 there.

16 Q So, Mitch, could you pull up Exhibit 7
17 again?

18 MS. SIEBERT: Ms. Meng, I'm sorry,
19 what exhibit number was this email? I missed it.

20 MS. MENG: It was Exhibit 8.

21 MS. SIEBERT: Thank you.

22 MS. MENG: Mm-hmm.

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1 BY MS. MENG:

2 Q Mitch, do you mind scrolling to pages
3 221 and 222, please? Great, thank you.

4 So Mr. Davis, just to confirm, this is
5 the text message thread between you and
6 Mr. Somerville that we had reviewed previously,
7 correct?

8 A Yes.

9 Q Okay. And at the top of the
10 screenshot on page 222 here, it looks like you and
11 Mr. Somerville are discussing the SoS, which I
12 presume to be Secretary of State's office,
13 conducting some investigation.

14 Do you see that?

15 A Yes.

16 Q Can you elaborate on what type of
17 investigations the two of you were discussing?

18 A In May, I had received an update to
19 the voter file, and when I compared the NCOA
20 processing that I did in November to the May copy
21 of the voter file, there were over 10,000 voters
22 that had voted in the general election who had

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1 since updated their own registrations to the exact
2 same addresses that they gave to the United States
3 Postal Service when they moved originally.

4 And since that count had gotten up so
5 high, I decided it was probably about time for the
6 Secretary of State to go ahead and open an
7 official investigation into those issues, and I
8 did ask for that investigation, and they did
9 commit to doing it if I would provide the data for
10 them to do the investigation, which I did do at
11 some point in May. I don't remember the exact
12 date.

13 Q Okay. Mitch, do you mind pulling up
14 Exhibit K? And this is marked as Exhibit 9.

15 (Davis Exhibit 9 was marked
16 for identification.)

17 BY MS. MENG:

18 Q Mr. Davis, do you recognize this
19 document?

20 A Can you zoom in on it? It's really
21 small. Yes, I recognize it.

22 Q Okay. And can you explain what it is?

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1 at this? And Mitch will blow it up for you.

2 Thank you.

3 A I remember this one.

4 Q And can you explain what it is?

5 A Well, we found quite a number of
6 voters that were registered to vote at commercial
7 mail receiving agencies, and in many instances,
8 the fact that their residence that they're
9 claiming appears to be an 8 x 8 inch box in a
10 UPS store, or whatever they measure, many times
11 was disguised as an apartment number or a unit
12 number instead of a P.O. Box number.

13 Again, Georgia law requires us to be
14 registered where we actually reside. One of the
15 obvious problems with people registering at a
16 UPS store is that we're assigned our voting
17 districts for house, senate, congressional, county
18 commission, school board, any number of election
19 districts, and if you're registered at a
20 UPS store, you might live miles away in completely
21 different districts, and you may be casting
22 ballots in voting districts that you don't live

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1 in.

2 So there's obvious problems with that,
3 and quite frankly, I was astounded to find that in
4 the data. There are obvious ways to identify
5 those registrations in the CASS™ certification
6 process, and in my view, our Secretary of State
7 and/or the counties can and should be addressing
8 those concerns.

9 Q Okay. And here, this is a post where
10 it looks like you've reposted something that
11 Mr. Somerville had posted and labeled with you,
12 which I know is perhaps something that the social
13 media website allows you to do. Is that correct?

14 A Yeah, he posted it and tagged me in
15 the post.

16 Q Okay. Now, Mitch, if we could go to
17 the bottom of the page. So right there, the last
18 paragraph we see that this post said, "We need to
19 identify the abusers, start throwing people in
20 jail, and close the loopholes."

21 Do you see that, Mr. Davis?

22 A I do.

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1 determine violations of law. My main concern is
2 correcting the problem.

3 Q Did you agree with the sentiment that
4 Mr. Somerville wrote here with this sentence?

5 A I think I just expressed my sentiment
6 on the matter. That's his. I would ask him about
7 it.

8 Q Okay. But it is true that you were
9 tagged in this post, and you then reposted it; is
10 that correct?

11 A Correct.

12 Q Okay. And what did you -- why did you
13 decide to share the post?

14 A Excuse me?

15 Q Why did you decide to share the post?

16 A I think it's important for people to
17 understand that this kind of stuff and this kind
18 of trash is in our voter database, and no one
19 seems to be doing anything about the issue.

20 Q And what did you hope would be the
21 reaction of someone reading this post?

22 A Well, I would hope our elections

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1 officials would sit up and take notice of this and
2 work towards resolving the issue, but I would just
3 about bet money that if I were to go into the last
4 copy of the voter database that I received and do
5 yet another analysis of this issue, I'd still
6 find tons of people registered to vote at
7 commercial mail receiving agencies that they don't
8 live at. I mean, this is -- this should be an
9 obvious and completely nonpartisan issue here.

10 Q Did you think the comment that you
11 shared that we just reviewed here might make
12 someone think twice about voting?

13 A I would hope it would make people
14 aware that they can't register to vote anywhere
15 other than where they actually live, and no one
16 lives in a UPS store that I'm aware of.

17 Q Okay. And how do you think this post
18 might have affected someone who is an out-of-state
19 voter?

20 A I'm not sure I understand your
21 question.

22 Q Let me rephrase that.

1 movers can appear in the data processing because
2 many of them actually file permanent changes of
3 address for what technically is a long-term
4 temporary move, and for that reason, I don't like
5 to talk much about individual voters by name. I
6 don't think that's a smart thing to do.

7 And I certainly don't support
8 publishing any of this analysis or putting people
9 on the spot, and, you know, we avoided doing that
10 with these efforts.

11 Q And why is it that you didn't want to,
12 as you had said, put people on the spot or publish
13 information?

14 A I think I just explained that not all
15 of these are actual permanent changes of address.

16 There's going to be some in the mix
17 where a person may have gone out of the state or
18 to another county for some temporary purpose, even
19 though it may be a long-term temporary change of
20 address, classed as a permanent change of address
21 by the Postal Service.

22 Q Okay. And what was the concern that

1 Q And so did you agree with this comment
2 that -- agree with this comment and the sentiment
3 that voters should be punished if they are, as you
4 said, voting illegally?

5 A Well, as I said before, if a voter --
6 and we can pull up the law and read the plain
7 language of it, but I'm paraphrasing here, but my
8 understanding of O.C.G.A. § 21-2-562 is that if a
9 voter willfully misleads elections officials about
10 where they live so they can cast an unlawful
11 ballot, it appears to me to say that that is a
12 felony.

13 Now, as far as who should and
14 shouldn't be prosecuted and all of that, that's up
15 to our elections officials and law enforcement.

16 Quite frankly, I don't expect to see a
17 whole lot of that because I so seldom see them
18 take any kind of meaningful action when voter
19 fraud is uncovered and admitted to on the record
20 in a courtroom. I don't see much activity going
21 on there.

22 So again, my primary motivation is to

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1 effect change that would help prevent unlawful
2 votes from being cast and effect changes in policy
3 to help identify and thwart unlawful voting.

4 You know, one of the issues that I
5 have raised before in my prior deposition here is
6 that, in the general election, the data seems to
7 indicate there were over 100,000 voters who had
8 moved from the county they were registered in to a
9 new county more than 30 days before the election.

10 The vast majority of those voters did
11 not attempt to cast unlawful ballots in a county
12 they no longer live in, but it appears that the
13 same data indicates that tens of thousands may
14 have done precisely that. And if that's the case,
15 that means the voters that obeyed the law didn't
16 get to have their votes counted, and folks who
17 broke the law did, and any of us should have an
18 issue with that.

19 MS. SIEBERT: Ms. Meng, for just a
20 second, my dog needs to be let in my office. I'm
21 just going to go off camera for 5 seconds and let
22 her in so she doesn't drive me crazy.

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1 believe generally refers violations of election
2 law to the Attorney General's Office of Georgia,
3 but it's also my understanding that county
4 district attorneys can hold grand jury hearings.
5 You know, so I think that, in general, that can
6 take a number of different forms.

7 That's not really my issue. You know,
8 if a county identifies some sort of unlawful
9 voting and refers it for prosecution to their
10 county district attorney, I believe that would be
11 an appropriate venue for that. But again, I'm not
12 a lawyer, but based on what I am aware of, that's
13 my opinion.

14 But again, my primary motivation is to
15 thwart illegal voting in the first place. As far
16 as any consequences, I'm not super optimistic that
17 anyone is going to get prosecuted. Even if they
18 have committed a felony, I'd be surprised.
19 Because I so often see obvious vote fraud go
20 unpunished, I'm not optimistic that it's going to
21 happen simply because it's been identified.

22 I'll leave it there.

1 challenges, and some of the smallest counties
2 might have received very, very few. So I had a
3 disagreement in terms of the scope.

4 One of the issues that popped up early
5 on was my desire to make sure everyone was aware
6 that our challenge was not True the Vote's, and
7 vice versa, and I wanted people to be aware of the
8 difference in the philosophies surrounding the
9 challenges.

10 And then the other instance that I
11 recall was there was some talk about publishing
12 voter data on the website, and I think I may have
13 misunderstood what they were doing, and I had
14 expressed a concern about what I thought their
15 plans to be, but I think it turns out some of my
16 concerns were unfounded.

17 Q Okay. And you had referred to,
18 you know, wanting your challenges to be more
19 legitimate. Can you elaborate on what you mean by
20 "legitimate"?

21 A I don't mean to imply that theirs were
22 illegitimate. Theirs was broader than the one

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1 information, you're referring to what exactly?

2 The information that you believed at the time
3 would be revealed on this website?

4 A Well, your organization has alleged
5 that True the Vote and myself has intimidated
6 voters. I'm not aware of any contact that we've
7 engaged in that would constitute intimidation of
8 any particular voter.

9 Challenging a voter on its face I
10 don't think is voter intimidation. That is a
11 First Amendment petition to your government for
12 redress of grievances, and it is specifically
13 protected under Georgia law in 21-2-230. A
14 challenge is a lawful vehicle for petitioning your
15 government for redress of grievances. I don't
16 believe that constitutes voter intimidation. I
17 guess we're going to see what the court system
18 believes on that.

19 But as long as challenges are handled
20 appropriately, and we're not publishing them to
21 the public or trying to intimidate voters, I don't
22 see any issue with them. It seemed perfectly

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1 Directing your attention, Mr. Davis,
2 to page 193, it says here, "[T]hey're literally
3 sitting there defending a challenge that didn't
4 even come from True the Vote."

5 Do you see that?

6 A Yes.

7 Q Okay. And can you clarify who the
8 "they" you're referring to in this text is?

9 A I don't remember, but what I do
10 remember is that the -- that I was referring to
11 the challenge down in Muscogee, and that challenge
12 didn't come from either True the Vote or me and
13 Derek, so I think that was the point I was making,
14 and I really don't recall who the "they" was in
15 that part of the message.

16 Q Okay. So pivoting now to another
17 topic, Mr. Davis, what discussions, if any, have
18 you had with officials or individuals in the
19 Secretary of State's office regarding voter
20 challenges and list maintenance?

21 I know you've before referred to the
22 May 2011 conversations about investigations, but

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1 investigation was specifically related to votes
2 that were cast in the general election.

3 Q Okay. So would any of this post
4 challenge data analysis have had any impact on the
5 challenges themselves?

6 A Say that again.

7 Q Would any of the post challenge data
8 analysis that you performed have any impact on the
9 challenges themselves that had already been
10 submitted in some form?

11 A Some of the names on the list would
12 have been in common, but the selection criteria
13 for the challenge and the selection criteria for
14 the SoS investigation were different.

15 The investigation that I asked for
16 from the Secretary of State's office related to
17 the general election and to votes cast in the
18 general election with residency issues.

19 And one of the primary reasons that I
20 asked for it was because thousands and thousands
21 of voters were coming in after the election and
22 officially updating their own registration

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1 addresses to the exact same addresses that they
2 gave to the Postal Service when they originally
3 moved, and that seemed to me to be pretty solid
4 corroborating evidence that the NCOA information
5 was accurate, and if that proved accurate, why
6 would we doubt the Move Effective Dates that they
7 had given to the Post Office when they originally
8 moved.

9 Q Okay. So let me give you an example
10 just to make sure I'm understanding what you were
11 just testifying about, okay?

12 Jane Doe -- not the Jane Doe that's
13 named as a plaintiff here, but just a Jane Doe --
14 submits a permanent change of address record to
15 the Post Office in, let's say, June of 2020, okay?

16 That would have showed up on your --
17 you know, the data analysis that you did, correct?

18 A Yes.

19 Q Okay. And then Jane Doe then, let's
20 say, voted in the -- and she had moved -- she had
21 submitted and moved either outside of the county
22 where she was registered, either to another state

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1 or another county in Georgia. That's the
2 assumption that I'm making, okay?

3 So then let's say Jane Doe voted in
4 the county in which she was registered at. That
5 would have shown up in your data analysis,
6 correct?

7 A Well, to be clear --

8 MS. MENG: Sorry, just to interject, I
9 just want to object to this hypothetical. It
10 assumes facts that aren't in the evidence, and
11 it's a leading question as well.

12 BY MS. SIEBERT:

13 Q And I understand that, and I'm not --
14 let me clarify. Let me rephrase this, Mr. Davis,
15 because I'm just trying to understand. I am just
16 trying to understand why the testimony you just
17 gave about the dates of the NCOA addresses and
18 confirmation are important, okay, and trying to
19 put it in a real-world example, but maybe that's
20 not the best way to do it.

21 So somebody who -- what you're -- take
22 me through the specific timeline of that type of

1 person that would have -- the type of voter that
2 would have put you on alert in May when you did
3 that post election data analysis, and specifically
4 why the timeline is important.

5 A Okay. So when I ran NCOA on the voter
6 database, the records that had NCOA matches were
7 flagged in the data, and then I pulled those into
8 a file called "moved."

9 From that, I excluded any changes of
10 address from October and November of 2020, October
11 because those would have been occurring within the
12 grace period under O.C.G.A. § 21-2-217 -- or,
13 actually, I believe 218 -- that defines the 30-day
14 grace period. So I excluded any from October
15 because they were in the grace period, or at least
16 the vast majority were, and then I excluded
17 November because they were irrelevant.

18 So what remained in that file was
19 approximately 580,000, and all of those changes of
20 address, the Move Effective Dates would have been
21 before the grace period.

22 And I also want to clarify that none

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1 of the records that I gave the Secretary of
2 State's office to investigate involved voters who
3 moved outside the state. They were only people
4 who moved within the state, where the data
5 indicated that they had moved from one county to
6 another county more than 30 days before the
7 election.

8 So in May, I received an update to the
9 voter file, and when I compared the data from
10 November to the data from May, there were over
11 10,000 voters who had since updated their own
12 registration to the exact same address that they
13 had originally given to the Postal Service when
14 they filed their changes of address.

15 So the reason that I did that was
16 because, to me, that seems to be pretty strong
17 corroborating evidence that the person did, in
18 fact, move to the address they gave to the Postal
19 Service; and since the Move Effective Date they
20 gave to the Postal Service was more than 30 days
21 before the election, they should have updated
22 their registration to their new county, as

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1 required, and they should have cast their ballots
2 in their new county.

3 And one of the major reasons this is
4 important is because, when I compared the two and
5 the addresses matched, I was also able to pull
6 over the person's new county and the person's new
7 voting districts, and when I compared the voting
8 districts to their previous voting districts, what
9 it showed me is that people that returned to their
10 old county to cast a ballot, 94% of them would
11 have been offered a ballot with a state house race
12 on it that they don't live in, about 86.5% would
13 have been offered a chance to vote in a state
14 senate district that they no longer lived in, and
15 approximately 64% would have been offered the
16 chance to cast a ballot in a congressional
17 district that they no longer lived in.

18 They also could have cast ballots for
19 county sheriff, district attorney, school board,
20 county commission, could have even voted on tax
21 increases that they will never have to pay because
22 they no longer live there.

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1 registration is updated so that they can cast a
2 lawful ballot and actually vote for the people who
3 actually represent them.

4 Q Do you think that the laws in Georgia
5 that require people to vote in the municipality,
6 county, and even precinct in which they reside,
7 makes sense?

8 A I do. Clearly, the goal of those laws
9 is to ensure people are voting in the right
10 districts, and it is a bedrock foundation of our
11 republic that we vote on the representatives who
12 actually represent us. And if you're voting in
13 districts that you don't live in, you're diluting
14 the votes of the people who do live there.

15 And not only that, but as I stated
16 earlier, there were large numbers of people
17 similarly situated going into the general
18 election. The voters who obeyed the law, knowing
19 they weren't properly registered in their current
20 county, didn't get to vote, but apparently many
21 voters who were in that situation chose to go vote
22 in their old county.

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1 UPS store, I don't know why they would be
2 intimidated.

3 Now, somebody who is registered at a
4 UPS store I hope would learn that that's not
5 proper and take immediate steps to correct their
6 registration.

7 Q Okay. Was it ever in anything that
8 you did with this data analysis, either you, in
9 connection with -- you and Derek Somerville, was
10 it ever your intention to intimidate somebody that
11 was legally able to vote in Georgia --

12 A Not at all.

13 Q -- to prevent them from doing that?

14 A Not at all.

15 Q Okay. Did you ever in your data
16 analysis take into account someone's race?

17 A No, that was not part of it, and it's
18 pretty easy to demonstrate. And if you want, I'll
19 walk how to do that, in case Fair Fight would like
20 to follow along. I'd be happy to demonstrate
21 that.

22 Q Why don't you do that.

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1 A Okay. So you have the databases that
2 I gave you for discovery, you have files M voter
3 1, 2 and 3. In those files, there's a field
4 called DLV_Code. If you run a count of the ones
5 with an M in that field, your count will come up
6 to over 600,000.

7 But if you then exclude any changes of
8 address with a Move Effective Date in October of
9 2020 or November of 2020, then you're going to
10 drop down to the same count that you see in the
11 data file called "Moved."

12 And then in the data file called
13 "Moved," if you go through there and count the
14 records where the COA state equals Georgia, and
15 the county name field does not equal the new
16 county field, and the new county field is not
17 blank, and the voted field is not empty, then you
18 will come out with almost the same count as the --
19 oh, and it's not a P.O. box -- well, let me back
20 up. Strike that last part. Leave the P.O. Boxes
21 in for now, you'll come up with a count that's
22 virtually identical to the file called "Issues."

1 Now, I subsequently removed the
2 P.O. Boxes, and that dropped the count down to
3 around 35,000. So it's not difficult to
4 demonstrate that there were no partisan influences
5 or racial influences on the selection criteria.

6 And I went so far with the challenge
7 data, after it was cast in stone and the challenge
8 efforts had concluded and all of that, I took the
9 certified copy of the qualified list of electors
10 for the runoff election, and I actually did a
11 query by race, and then I compared it to a query
12 by race that I did on the challenge list, and the
13 percentages -- the racial percentages in the
14 challenge list differed very little from the
15 racial percentages in the qualified list of
16 electors that were able to vote in the runoff in
17 total.

18 So I don't think it's very difficult
19 to show that there were not any racial or partisan
20 motivations for the challenge. There were
21 Republicans challenged, there were Democrats
22 challenged, there were people of all the different

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1 racial codes that were challenged.

2 The criteria was objective, and none
3 of that was involved, despite the claims that have
4 been made to the contrary.

5 Q If 100% of the people -- speaking as a
6 citizen, if 100% of the people in Georgia who are
7 legally able to vote, whether they be serving in
8 the military somewhere else or students somewhere
9 else or voting properly in the district they're
10 registered in, let's just assume 100% of the
11 people who are registered to vote correctly do so,
12 so you have 100% turnout, would you have any
13 problem at all with 100% of the people who are
14 legally allowed to vote in Georgia voting?

15 A If they do it lawfully, I don't have
16 an issue with it. I'd love to see it.

17 Q What if -- if that happened, would you
18 have a problem with it if that resulted in
19 whatever your political preferences are never
20 winning another election?

21 A No, that actually is a fair fight.

22 Q I'm just making sure I don't have any

1 think twice about voting, the ones that you had
2 deemed to be ineligible?

3 A If a voter knows they're ineligible to
4 cast a lawful ballot, perhaps they should think
5 twice about violating the law.

6 But if a voter is properly registered,
7 there's no reason for any voter to be intimidated
8 by a post talking about people who aren't.

9 Q So Mr. Davis, I want to again move to
10 strike your answer as nonresponsive and ask you to
11 answer the simple question that was it your intent
12 in making the Facebook post to make voters think
13 twice about voting based on whether or not you
14 thought they were ineligible?

15 A I don't seek to intimidate any lawful
16 voter, period. If you consider that an invalid
17 response to that question, I don't know what else
18 to say.

19 Voters that knowingly cast ballots
20 unlawfully should be concerned. I don't know what
21 else to tell you there.

22 Q So did you want ineligible voters to

**United States District Court
Northern District of Georgia
Gainesville Division**

Fair Fight, Inc., John Doe, and Jane Doe,

Plaintiffs,

v.

**True the Vote, Inc., Catherine
Engelbrecht, Derek Somerville, Mark
Davis, Mark Williams, Ron Johnson,
James Cooper, and John Does 1-10,**

Defendants.

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

Hon: Steve C. Jones

**Defendant Mark Davis' Responses and Objections to Plaintiffs'
Interrogatories Pursuant to Court Order**

Pursuant to Federal Rule of Civil Procedure 33 and the Court's Order (ECF No. 133), Defendant Mark Davis responds herein to Plaintiffs' Interrogatories Nos. 1–4; 6–8.

General Objections

1. Defendant Davis objects to these requests to the extent that they purport to

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call for the production of documents/information that: (a) contain privileged attorney-client communications; (b) constitute attorney work product; (c) disclose the mental impressions, conclusions, opinions, or legal theories of any attorneys or other representatives of the Plaintiffs; (d) were prepared in anticipation of litigation; or (e) are otherwise protected from disclosure under applicable privileges, immunities, laws, or rules.

2. Defendant Davis objects to these requests to the extent that they are vague, not limited in scope, unreasonably broad and burdensome, or beyond the scope of either category of permissible discovery under Fed. R. Civ. P. 26(b)(1).

3. Defendant Davis objects to the instructions accompanying the requests to the extent that they purport to impose obligations beyond those imposed by the Federal Rules of Civil Procedure, or any order promulgated by this Court.

4. Defendant Davis objects to discovery requests that are not proportional to the needs of the case and that are not “relevant to any party’s claim or defense.” Fed. R. Civ. P. 26(b)(1).

5. Defendant Davis objects to requests for information the benefit of which is outweighed by its lack of importance in resolving the issues at stake in this case,

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the amount in controversy, the parties' relative access to relevant information, the parties' resources, and whether the burden or expense of the proposed discovery outweighs its likely benefit. *See* Fed. R. Civ. P. 26(b)(1). Consistent with this rule, Defendant Davis does not produce multiple copies of a communication, e.g., where one email chain has multiple communications, earlier included ones are not produced as separate documents.

6. Subject to and without waiving any of the foregoing General Objections, which are hereby incorporated into each specific response, Defendant Davis (a) makes further objections in response to individual requests and (b) makes the required good-faith attempt to fulfill the duty to provide all responsive information readily available without undue labor and expense.

7. Defendant Davis objects to producing individuals' personal information, including emails and phone numbers, based upon privacy and relevancy.

DEFINITIONS

Except as specifically defined below, the terms used in these requests shall be construed and defined in accordance with the Federal Rules of Civil Procedure, wherever applicable. Any terms not defined shall be given their ordinary meaning.

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to Rog. Ct. Order

1. “Communication” means any transfer of information, whether written, oral, electronic, or otherwise, and includes transfers of information via email, report, letter, text message, voicemail message, written memorandum, note, summary, and other means. It includes communications entirely internal to True the Vote, as well as communications that include or are with entities and individuals outside of that organization.

2. “County” means any county in Georgia, as well as all employees, staff, agents, and representatives of the county, including the county boards of registrar’s offices, county registrars, or any other person with a responsibility for conducting or supervising elections in the county.

3. “Date” means the exact day, month, and year, if ascertainable, or, if not, the best available approximation (including relationship to other events).

4. “Describe” means explain with particularity.

5. “Georgia Elector Challenges” means the challenges to voter eligibility of registered Georgia voters in advance of the Run-off Election in which you and True the Vote have been and are involved and which are described, among other places, in True the Vote’s December 18, 2020 Press Release.

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Response/Modification: Pursuant to this Court’s Order, Defendant Davis has included responses which consider challenges to voter eligibility in advance of the Run-off Election he was involved with independent from True the Vote, Inc.

6. “December 18, 2020 Press Release” means the press release posted on the True the Vote Website on that date, attached hereto as Exhibit A.

7. “Identify,” when used in reference to a communication, means to state when and where the communication was made; each of the makers and recipients thereof, in addition to all others present; the medium of communication; and its substance.

8. “Identify,” when used in reference to a government agency, firm, partnership, corporation, proprietorship, association, other entity, or person, means to state its, his, or her full name and present or last-known address.

9. “Identify,” when used in reference to processes or steps taken by you or others with whom you have worked on the matters at issue in this litigation, means to chronologically detail each and every action taken by any and all entities or persons, to identify the actor, and to detail how and when that action was or will be taken and for how long.

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10. “Including” means “including but not limited to.”
11. “Person” means not only natural persons, but also firms, partnerships, associations, corporations, subsidiaries, divisions, departments, joint ventures, proprietorships, syndicates, trust groups, and organizations; federal, state, or local governments or government agencies, offices, bureaus, departments, or entities; other legal, business, or government entities; and all subsidiaries, affiliates, divisions, departments, branches, and other units thereof or any combination thereof.
12. “Relating to,” “regarding,” and their cognates are to be understood in their broadest sense and shall be construed to include pertaining to, commenting on, memorializing, reflecting, recording, setting forth, describing, evidencing, or constituting.
13. “Run-off Election” means the January 5, 2021 Senate Run-off election held in Georgia.
14. “Targeted Voter” or “Targeted Voters” means the registered Georgia voters who are the subject of the Georgia Elector Challenges.
15. “True the Vote” means the organization that goes by the name of True the

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Vote, its officers, directors, partners, members, managers, employees, representatives, agents, consultants, or anyone acting on its behalf.

16. “Voter” means any registered voter in Georgia and all persons who may properly register to vote in the state by the close of discovery in this case.

17. “You” and “your” means Defendant Mark Davis and any of his representatives, agents, or anyone acting on his behalf.

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Interrogatories

Interrogatory No. 1: Describe in detail your role or involvement in compiling any list of Targeted Voters for purposes of the Georgia Elector Challenges.

Response No. 1: I did not participate in any aspect of compiling True the Vote's list of "Targeted Voters" for their "Georgia Elector Challenges."

Derek Somerville and I compiled our own independent challenge lists for the Run-off Election ("**Independent Run-off List(s)**") of voters for volunteers to challenge in the counties in which that volunteer lived. The process and research used to compile the Independent List is described in Response No. 2. After I compiled the Independent Run-off List, it was subdivided by county and uploaded to a Google drive, and my understanding was that the Georgia voters, who volunteered to serve as challengers in the county in which they lived, were given access to the Independent List for their county.

Interrogatory No. 2: Describe in detail what research, if any, you conducted for purposes of identifying voters to include in the Georgia Elector Challenges.

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Response No. 2:

1. Split the input voter data into 3 parts for processing so the databases would not exceed the dbase file size limitation of 2.14 gigabytes.
2. Imported the data into 3 dbase structures with processing fields appended (added) to the structure.
3. Copied the residence addresses into the “COA” (Change of address) fields created for CASS (Coding Accuracy Support System) and NCOA (National Change of Address) processing.
4. Ran CASS & NCOA processing & saved the processing certifications.
5. Created an empty table called “Moved” and imported the records that received an updated address during NCOA processing.
6. Set a relation on the voter registration number into the vote history trailer data and flagged the voters in the “Moved” table who voted in the general election.
7. Geocoded (assigned latitude & longitude) & digitally mapped the “Moved” table to assign the county of the new address.
8. Copied out a file of voters who cast ballots in the General Election with changes of address to a new state or to a new county in Georgia more than 30 days before the general and/or the runoff elections. This yielded a file of voters with a change of address to another state, as well as in state voters who, based on the month of their “Move Effective Dates”, appeared to have had residency issues when they voted in the General Election, along with voters who voted in the General who appeared to have similar residency issues heading into the Runoff Election.

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9. Removed changes of address to PO Boxes.
10. Eliminated UOCAVA (Military) voters by matching against the absentee voter data.
11. Sent a copy of the file to Derek Somerville so he could remove as many voters at military bases as he could.
12. Received back the semi-final challenge list from Derek Somerville.
13. Output a “Final” challenge list removing voters with changes of address prior to June of 2019 as we believed they would have already been through the Secretary of State’s NCOA processing, subsequent verification inquiries, and associated list maintenance activities.
14. Created a report format for printed lists of challenged voters.
15. Output a PDF list for each county.
16. Output an Excel file for each county.
17. Did an SQL query to get a count by county. The final count was 39,141 voters and the average number of challenged voters per county was 246.
18. Uploaded the challenge data to Google drive for Derek Somerville to distribute to challengers.

Interrogatory No. 3: For any list of Targeted Voters that you had any involvement in compiling, describe the efforts, if any, you made to assess the accuracy of the list.

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Response No. 3: I, along with Derek Somerville, limited the Independent Run-off List to people who had already cast ballots in the general election with residency issues, and/or had voted in the General Election and were in a position to cast ballots in the Run-off Election with residency issues. As my response to Interrogatory No. 2 details, we took steps to remove voters whose changes of address data would more than likely have already been evaluated by the SOS prior to June of 2019, UOCAVA voters, and as many records in the area of military bases as we could.

As a quality control measure, Derek Somerville arranged for a company called “Surebill” to attempt to replicate the NCOA results I got on the voter file in November, but we ran into a fairly major obstacle. There are two different kinds of NCOA processing. One processes changes of address from the preceding 18 months, and one processes changes of address from the preceding 48 months. I always use the 48 month, but Surebill uses a different software and NCOA data provider, and only has the capability of doing the 18 month version of NCOA. That obviously means there were about 30 months of NCOA changes they could not have replicated. I recall we had some back and forth comparing numbers

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for changes that did occur within 18 months, and although those numbers did appear similar, I would have preferred to have had someone else with the 48 month capability attempt to replicate our processing.

Since the Run-off Election, I have continued to analyze data related to Georgia voters. This data indicates that some voters who appeared to have residency issues (i.e., moved to another county more than 30 days before the election) voted in the General Election. I provided this data analysis to the Georgia Secretary of State in May of 2021 (“**SOS Analysis**”).

Out of the 39,141 voters on our Independent Run-off List, 26,854 had changes of address within the state of Georgia, and so far since the runoff, 9,950 voters (37.05%) have updated their voter registration addresses to the same addresses shown in the NCOA data provided to the USPS when they moved originally. These voters have provided post-election, self-confirmation to the Secretary of State or their county’s board of elections that the information on the Independent List was accurate at the time I compiled it.

In addition, 18,202 voters of the 26,854 voters (67.8%) who submitted a change of address within the State of Georgia voted in the Run-off election. Of

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those 67.8% of voters, the data indicates 3,556 voters (19.5%) cast ballots for the Run-off Election in their old county, but have since updated their registration addresses to the same address they gave the USPS when they moved, which is in a different county than the one in which they voted.

Since the Run-off Election, the Georgia Secretary of State has removed 1,486 of the voters on the Independent Run-off List. Of those, 403 (27%) voted in the Run-off Election.

Justin Gray, an investigative reporter for Channel 2 (WSBTV) in Atlanta filed an open records request for the SOS Analysis I provided to the Georgia Secretary of State. On that SOS Analysis were two names of Georgia voters who filled out an NCOA card indicating they had moved to a Georgia county different than the one in which they were registered to vote in. The first, Mark Buerkle, admitted he moved from Gwinnett County to Fulton County but asserted he turned in a Fulton County ballot in Fulton County. However, the vote history and absentee voter data show the ballot he returned was actually a Gwinnett County ballot he had mailed to him at his home in Fulton County. The second, Jon Stout, admitted that he had moved and voted in his former county.

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<https://www.wsbtv.com/news/local/voter-analyst-claims-thousands-georgians-voted-wrong-county/N6LQWGPD0ZAJFN34H7BGTPONEU/>

Interrogatory No. 4: Describe in detail any and all assistance provided to you by True the Vote in preparing the Georgia Elector Challenges.

Response No. 4: I received no assistance from True the Vote in preparing any challenges.

Interrogatory No. 6: Identify and describe in detail all communications you had regarding the accuracy of the Georgia Elector Challenges.

Response No. 6: Derek Somerville and I had telephone, email, and text communications regarding the steps we took to increase the accuracy of our Independent List (as described in Response No. 2) and disclosed some of the steps we took to improve the accuracy of the Independent List on social media and on other communication platforms, like email.

Prior to the initiation of this litigation, I deleted some of the communications that would be responsive to this Interrogatory and its related Request for Production. I have produced the responsive documents of communications I still have.

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Interrogatory No. 7: Identify and describe in detail all communications you had regarding Targeted Voters who were ultimately determined to be residents of the counties in which they were registered.

Response No. 7: I do not recall any communications with any voters on any challenge lists who were ultimately determined to be residents of the counties in which they were registered.

Interrogatory No. 8: Identify and describe in detail all communications you had with challengers who withdrew or attempted to withdraw Georgia Elector Challenges submitted in their names, and describe in detail the reasons why those individuals sought to withdraw the challenges.

Response No. 8: I do not recall any communications with any challengers who withdrew or attempted to withdraw Georgia Elector Challenges submitted in their names.

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I, the undersigned, affirm under the penalties for perjury that the foregoing answers to Plaintiff's Interrogatories are true and correct.

Date: 12/14/2021

Mark Davis
Mark Davis

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Dated: December 14, 2021

/s/ Courtney Kramer
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Certificate of Service

I hereby certify that the foregoing document was served electronically on December 14, 2021, upon all counsel of record via email.

/s/ Courtney Kramer

Courtney Kramer

Georgia Bar No. 483608

Local Counsel for Defendants

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

-----)

FAIR FIGHT, INC., SCOTT BERSON,)

JOCELYN HEREDIA, and JANE DOE,)

)

Plaintiffs,)

v.) Case No.

) 2:20-CV-00302-SCJ

)

TRUE THE VOTE, INC.,)

CATHERINE ENGELBRECHT,)

DEREK SOMERVILLE, MARK DAVIS,)

MARK WILLIAMS, RON JOHNSON,)

JAMES COOPER, and JOHN DOES 1-10,)

Defendants.)

-----)

DEPOSITION OF MARK WILLIAMS

APPEARING REMOTELY

September 23rd, 2021

9:00 a.m.

Reported by: Eileen Mulvenna, CSR/RMR/CRR

DIGITAL EVIDENCE GROUP

1730 M Street, NW, Suite 812

Washington, D.C. 20036

(202) 232-0646

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1 REMOTE VIDEOTAPED DEPOSITION of
2 MARK WILLIAMS, a witness on behalf of Defendant in
3 the above-titled action, held on Thursday, September
4 23, 2021, commencing at approximately 9:00 a.m.
5 (Eastern Time), before Eileen Mulvenna, CSR/RMR/CRR,
6 Certified Shorthand Reporter, Registered Merit
7 Reporter, Certified Realtime Reporter, and Notary
8 Public of the State of New York.

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20

21 ALSO PRESENT:

22 Kenzie Guerrero, Videographer

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1 THE VIDEOGRAPHER: This is Tape No. 1
2 in the videotaped deposition of Mark Williams
3 in the matter of Fair Fight, Inc., et al.,
4 Plaintiffs, v. True the Vote, et al.,
5 Defendants, and Fair Fight Action, Inc.,
6 Counterdefendants, in the United States
7 District Court for the Northern District of
8 Georgia, Gainseville Division. Case
9 No. 2:20-cv-00302-SCJ.

10 This deposition is being held remotely
11 by Zoom videoconferencing, physical recording
12 in Culpeper, Virginia, on September 23, 2021.
13 The time is 9:08 a.m., Eastern Time.

14 My name is Kenzie Guerrero. I'm the
15 legal videographer from Digital Evidence
16 Group. The court reporter is Eileen Mulvenna
17 in association with Digital Evidence Group.

18 Will counsel please introduce
19 themselves for the record.

20 MS. TAYLOR: Torryn Taylor with
21 Perkins Coie on behalf of the plaintiffs.

22 MS. McCLAFFERTY: Michelle McClafferty

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1 with Lawrence & Bundy, also on behalf of
2 plaintiffs.

3 MR. SHELLY: Jacob Shelly with Elias
4 Law Group with plaintiffs.

5 MS. KRAMER: Courtney Kramer with Bopp
6 Law Firm on behalf of the defendants.

7 THE VIDEOGRAPHER: Will the court
8 reporter please swear in the witness.

9 MARK WILLIAMS,
10 having been duly sworn by Eileen Mulvenna,
11 a Notary Public of the State of New York,
12 was examined and testified as follows:

13 EXAMINATION

14 BY MS. TAYLOR:

15 Q. Good morning, Mr. Williams.

16 A. Good morning.

17 Q. My name is Torryn Taylor, as I
18 mentioned, and I'm an attorney with the plaintiff in
19 this case today.

20 Can you please state your address for
21 the record.

22 A. 3312 Canary Trail, Duluth, Georgia

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1 30096.

2 Q. Have you ever been deposed before?

3 A. Yes.

4 Q. When were you last deposed?

5 A. It's been many years. I don't even
6 recall when or what. It was probably a divorce case
7 or something.

8 Q. And just the one time?

9 A. A couple of times.

10 Q. A couple of times. Okay.

11 Before we get started today, I'm just
12 going to go over some ground rules, if that's okay
13 with you, just to make sure that we're on the same
14 page because each deposition runs a little
15 differently.

16 A. Absolutely.

17 Q. Great.

18 Just a reminder, as you probably know
19 from your previous deposition, all your testimony
20 you give today is under oath, just as if you were to
21 be testifying in court.

22 For the benefit of everyone and the

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1 court reporter, especially since we're all remote,
2 if you could make your answers audible so that the
3 court reporter can transcribe it. Head nods and
4 shakes and stuff won't show up on the transcript.

5 Does that make sense?

6 A. Yes.

7 Q. Okay. Great.

8 If you could allow me to finish my
9 question before answering just so there's no
10 interruptions, that will also be for the benefit of
11 the court reporter and allow us to have a clean
12 transcript, that would be great.

13 And then from time to time, your
14 attorney may make an objection, which is totally
15 allowed. And you are to answer the question
16 regardless, unless she specifically instructs you
17 not to answer.

18 Does that make sense?

19 A. Yes.

20 Q. Great.

21 And if at any point you don't
22 understand a question that I'm asking, please just

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1 let me know and I'll try and rephrase it so that it
2 makes sense, so that it's clear to you. And if you
3 do answer the question, I'll assume that you've
4 understood the question; is that fair?

5 A. Yes.

6 Q. And then, lastly, if at any time you
7 want to take a break -- we'll try and take semi
8 regular breaks throughout, but if there's any point
9 you need to take a break, just let me know and I can
10 find a place to stop and happy to take one. The
11 only request I have is if there's a question
12 currently pending, that you answer the question
13 first before we go on to break, but after that, any
14 time is fine.

15 Is that cool?

16 A. Yep, very good.

17 Q. Great. So let's get started.

18 Did you prepare at all to testify
19 today?

20 A. No.

21 Q. Okay. And are you on any medication
22 of any sort that might affect your ability to

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1 testify today?

2 A. Blood pressure and stuff like that,
3 but nothing that should affect me in any way.

4 Q. Nothing that affects your memory or
5 anything like that?

6 A. No.

7 Q. Great.

8 So you mentioned you live in Duluth,
9 Georgia; is that correct?

10 A. Yes.

11 Q. Is that in Gwinnett County, Georgia?

12 A. Yes.

13 Q. How long have you lived there?

14 A. Gwinnett County, almost all my life.

15 Q. And what do you do for a living?

16 A. Printing.

17 Q. And in what capacity? Can you
18 elaborate on that a little.

19 A. It's a family-owned business, Printing
20 Trade Company. We do printing.

21 Q. And Printing Trade Company is the name
22 of the business?

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1 little bit more a little later on, but can you just
2 describe for me at a very high level your
3 involvement with True the Vote after this e-mail.

4 A. I met with Gregg. And he explained
5 that they were trying to -- they needed to print the
6 letters and explained the job to me. And I told him
7 what we can do and things along those lines. So
8 they were bringing that to me.

9 Q. When you say "letters," are you
10 referring to the challenge letters that True the
11 Vote issued in the January runoff election?

12 A. Correct.

13 Q. And who did you generally
14 communicate -- during the scope of this printing
15 project that you were doing with True the Vote, who
16 did you communicate with?

17 A. I believe it was almost always Gregg.
18 I believe that's correct.

19 Q. Did you have any other interactions
20 with Catherine Engelbrecht?

21 A. I spoke with her on the phone a few
22 times, but I think that's about it.

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1 A. Met Mark [inaudible] Derek Somerville,
2 I think.

3 Q. Do you recall working with anyone else
4 at True the Vote during this time?

5 A. Not -- no, I don't.

6 Q. How about anyone else at OPSEC?

7 A. At where?

8 Q. OPSEC, which was Gregg Phillips'
9 company.

10 A. No. No, not at all.

11 Q. When you were generally communicating
12 with these people, you said mostly you were
13 interacting with Gregg Phillips for this project,
14 was that mostly over e-mail? Or how were you
15 communicating?

16 A. It was almost all phone calls just
17 about. And we didn't have a lot of interaction,
18 just -- it was basically just a customer/vendor
19 relationship.

20 Q. Okay. What -- can you broadly
21 describe what those -- what types of customer/vendor
22 interactions you're talking about?

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1 A. Well, they brought the project here
2 and we discussed it. And then once we did, then we
3 produced the job and got it to them.

4 Q. So what did True the Vote ask you to
5 do with regard to compiling these challenge lists?

6 A. They sent us lists and we printed
7 them. They sent us the list -- well, they sent us
8 the individual letters, is what they sent us, files
9 with the individual letters, and we printed them and
10 gave them the copies.

11 Q. So you printed the letters and then
12 gave them back to True the Vote?

13 A. Yes.

14 Q. Did you do anything else?

15 A. Not that I recall.

16 Q. Okay. Why did you agree to work with
17 True the Vote?

18 A. Well, as I said, it was a
19 customer/vendor relationship. And when they told me
20 that they were trying to -- that they had intentions
21 of working to challenge a lot of the votes and
22 things, I introduced them to a couple of people,

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1 which was Ron Johnson and James Cooper. And then it
2 went from there, so that was it.

3 Q. Okay. Did you reach out to anyone to
4 ask them to become a challenger on behalf of True
5 the Vote?

6 A. Not that I recall.

7 Q. Okay. But you did reach out to James
8 Cooper and to Ron Johnson?

9 A. Correct, to introduce them to Gregg
10 and his group.

11 Q. Okay. And do you know what Ron
12 Johnson and James Cooper did for True the Vote?

13 A. I wasn't involved in that part, so not
14 really.

15 Q. You have no idea?

16 A. No idea.

17 Q. When you introduced them, what were
18 you -- what did you think you were introducing them
19 for?

20 A. For their connections to people all
21 across the state, that they might be able to help
22 them make connections across the state.

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1 Q. Connections for what?

2 A. To -- I guess to do the challenges. I
3 just knew that both of these guys were real big in
4 the party and stuff and held positions and things
5 like that. So I just assumed that they would be
6 able to help them be introduced to people and
7 things. So I introduced them to them.

8 Q. Did True the Vote -- or did Gregg ask
9 you to reach out to anybody you might know who might
10 be able to do that?

11 A. No. He described what they were
12 doing. And I thought there was a couple people that
13 might be able to help him, so I just introduced
14 them.

15 Q. So how did you reach out to Mr. Cooper
16 and to Mr. Johnson in order to introduce them to
17 Mr. Phillips and True the Vote?

18 A. To the best of my recollection, it was
19 phone calls.

20 Q. What did you tell them?

21 A. That I had somebody that they probably
22 should meet and have a discussion with.

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1 Q. Did you conduct any research yourself
2 to help identify voters for the challenge list?

3 A. No, not that I recall.

4 Q. Okay. Did you participate at all in
5 preparing the challenge list?

6 A. Not that I recall.

7 Q. Other than printing them?

8 A. Yes. We were just the printer,
9 correct.

10 Q. But you didn't help with compiling the
11 lists themselves that you were printing?

12 A. Not that I recall. Outside the
13 capacity of what you might have seen -- you were
14 just discussing, that text message, that kind of
15 thing.

16 Q. Just so that I'm clear, we're talking
17 about lists and letters.

18 Were you printing like lists of names
19 in addition to actual challenge letters or one or
20 the other?

21 A. No. We were just printing the
22 letters. And the data was the names that were going

9/23/2021

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Mark Williams

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1 the Vote?

2 A. The Gwinnett County was challenged.

3 Q. You challenged in Gwinnett County?

4 A. Yes.

5 Q. Or, rather, you were the challenger
6 for Gwinnett County?

7 A. I was the challenger for Gwinnett
8 County.

9 Q. Okay. How many voters did you
10 challenge?

11 A. I believe the number was somewhere
12 around 32,000, if I'm not mistaken.

13 Q. How many of those challenges were
14 successful?

15 A. None.

16 Q. What would you consider to have been
17 success?

18 A. For them to be vetted.

19 Q. So it's your understanding that none
20 of them were vetted?

21 A. It was told to me by the elections
22 board that they had no intentions of vetting them at

9/23/2021

Fair Fight, Inc. et al. v. True the Vote, et al.

Mark Williams

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1 all.

2 Q. Do you -- strike that.

3 How did True the Vote assist you in
4 preparing your challenge?

5 A. They provided the data and then that
6 was basically it. They prepared the data and we had
7 a discussion about that. That was about it.

8 Q. What was that discussion?

9 A. Just that there would be the challenge
10 to the people that had moved and things along those
11 lines and running against NCOA lists, that that was
12 the challenges that we'd be making.

13 Q. Can you elaborate on that for me.
14 What was your understanding of how the
15 list of challenged voters for Gwinnett County was
16 compiled?

17 A. My understanding was that they matched
18 it with NCOA lists. And I'm very familiar with
19 those, and that made a lot of sense to do it that
20 way.

21 Q. Just so that we're clear for the
22 record, when you say "NCOA," you're referring to the

**United States District Court
Northern District of Georgia
Gainesville Division**

Fair Fight, Inc., John Doe, and Jane Doe,

*Plaintiffs and
Counter-Defendants,*

v.

**True the Vote, Inc., Catherine
Engelbrecht, Derek Somerville, Mark
Davis, Mark Williams, Ron Johnson,
James Cooper, and John Does 1-10,**

*Defendants
and Counter-Plaintiffs,*

Fair Fight Action, Inc.,
Counter-Defendants.

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

Hon. Steve C. Jones

Defendant Mark Williams's Responses to Plaintiffs' First Interrogatories

Pursuant to Federal Rule of Civil Procedure 33, Defendant Mark Williams responds to Plaintiffs' First Interrogatories.

General Objections

1. Defendant Williams objects to these requests to the extent that they purport to call for the production of documents/information that: (a) contain privileged

**Def. Williams
Resp. to Interrog.**

attorney-client communications; (b) constitute attorney work product; (c) disclose the mental impressions, conclusions, opinions, or legal theories of any attorneys or other representatives of the Plaintiffs; (d) were prepared in anticipation of litigation; or (e) are otherwise protected from disclosure under applicable privileges, immunities, laws, or rules.

2. Defendant Williams objects to these requests to the extent that they are vague, not limited in scope, unreasonably broad and burdensome, or beyond the scope of either category of permissible discovery under Fed. R. Civ. P. 26(b)(1).

3. Defendant Williams objects to the instructions accompanying the requests to the extent that they purport to impose obligations beyond those imposed by the Federal Rules of Civil Procedure, or any order promulgated by this Court.

4. Defendant Williams objects to discovery requests that are not proportional to the needs of the case and that are not “relevant to any party’s claim or defense.” Fed. R. Civ. P. 26(b)(1).

5. Defendant Williams objects to requests for information the benefit of which is outweighed by its lack of importance in resolving the issues at stake in this case, the amount in controversy, the parties’ relative access to relevant information, the

Def. Williams
Resp. to Interrog.

parties' resources, and whether the burden or expense of the proposed discovery outweighs its likely benefit. *See* Fed. R. Civ. P. 26(b)(1). Consistent with this rule, Defendant Williams does not produce multiple copies of a communication, e.g., where one email chain has multiple communications, earlier included ones are not produced as separate documents.

6. Subject to and without waiving any of the foregoing General Objections, which are hereby incorporated into each specific response, Defendant Williams (a) makes further objections in response to individual requests and (b) makes the required good-faith attempt to fulfill the duty to provide all responsive information readily available without undue labor and expense.

7. Defendant Williams objects to producing individuals' personal information, including emails and phone numbers, based upon privacy and relevancy.

DEFINITIONS

Except as specifically defined below, the terms used in these requests shall be construed and defined in accordance with the Federal Rules of Civil Procedure, wherever applicable. Any terms not defined shall be given their ordinary meaning.

1. "Communication" means any transfer of information, whether written, oral,

Def. Williams
Resp. to Interrog.

electronic, or otherwise, and includes transfers of information via email, report, letter, text message, voicemail message, written memorandum, note, summary, and other means. It includes communications entirely internal to True the Vote, as well as communications that include or are with entities and individuals outside of that organization.

2. “County” means any county in Georgia, as well as all employees, staff, agents, and representatives of the county, including the county boards of registrar’s offices, county registrars, or any other person with a responsibility for conducting or supervising elections in the county.
3. “Date” means the exact day, month, and year, if ascertainable, or, if not, the best available approximation (including relationship to other events).
4. “Describe” means explain with particularity.
5. “Georgia Elector Challenges” means the challenges to voter eligibility of registered Georgia voters in advance of the Run-off Election in which you and True the Vote have been and are involved and which are described, among other places, in True the Vote’s December 18, 2020 Press Release.
6. “December 18, 2020 Press Release” means the press release posted on the

Def. Williams
Resp. to Interrog.

True the Vote Website on that date, attached hereto as Exhibit A.

7. “Identify,” when used in reference to a communication, means to state when and where the communication was made; each of the makers and recipients thereof, in addition to all others present; the medium of communication; and its substance.

8. “Identify,” when used in reference to a government agency, firm, partnership, corporation, proprietorship, association, other entity, or person, means to state its, his, or her full name and present or last-known address.

9. “Identify,” when used in reference to processes or steps taken by you or others with whom you have worked on the matters at issue in this litigation, means to chronologically detail each and every action taken by any and all entities or persons, to identify the actor, and to detail how and when that action was or will be aken and for how long.

10. “Including” means “including but not limited to.”

11. “Person” means not only natural persons, but also firms, partnerships, associations, corporations, subsidiaries, divisions, departments, joint ventures, proprietorships, syndicates, trust groups, and organizations; federal, state, or local

Def. Williams
Resp. to Interrog.

governments or government agencies, offices, bureaus, departments, or entities; other legal, business, or government entities; and all subsidiaries, affiliates, divisions, departments, branches, and other units thereof or any combination thereof.

12. “Relating to,” “regarding,” and their cognates are to be understood in their broadest sense and shall be construed to include pertaining to, commenting on, memorializing, reflecting, recording, setting forth, describing, evidencing, or constituting.

13. “Run-off Election” means the January 5, 2021 Senate Run-off election held in Georgia.

14. “Targeted Voter” or “Targeted Voters” means the registered Georgia voters who are the subject of the Georgia Elector Challenges.

15. “True the Vote” means the organization that goes by the name of True the Vote, its officers, directors, partners, members, managers, employees, representatives, agents, consultants, or anyone acting on its behalf.

16. “Voter” means any registered voter in Georgia and all persons who may properly register to vote in the state by the close of discovery in this case.

Def. Williams
Resp. to Interrog.

17. “You” and “your” means Defendant Mark Williams and any of his representatives, agents, or anyone acting on his behalf.

INTERROGATORIES

Interrogatory No. 1: Describe in detail your role or involvement in compiling any list of Targeted Voters for purposes of the Georgia Elector Challenges.

Response: I had no role or involvement in compiling the contents of any list of Targeted Voters for purposes of the Georgia Elector Challenges. I, through my company, Printing Trade Co., printed some of the lists of Georgia Elector Challenges for True the Vote, Inc.

Interrogatory No. 2: Describe in detail what research, if any, you conducted for purposes of identifying voters to include in the Georgia Elector Challenges.

Response: I conducted no research for the purpose of identifying voters to include in the Georgia Elector Challenges.

Interrogatory No. 3: For any list of Targeted Voters that you had any involvement in compiling, describe the efforts, if any, you made to assess the accuracy of the list.

Def. Williams
Resp. to Interrog.

Response: Other than the printing described in Response No. 1, I was not involved in either compiling or assessing the accuracy of Targeted Voter lists.

Interrogatory No. 4: Describe in detail any and all assistance provided to you by True the Vote in preparing the Georgia Elector Challenges.

Response: True the Vote, Inc. sent me the electronic versions of the lists of Georgia Elector challenges to print, as described in Response No. 1. Otherwise, I did not prepare the contents Georgia Elector Challenges, so True the Vote provided no assistance to me in preparing such Challenges.

Interrogatory No. 5: Identify all individuals affiliated with True the Vote—including its officers, directors, partners, members, managers, employees, representatives, agents, consultants, or anyone acting on its behalf—with whom you have communicated regarding the Georgia Elector Challenges.

Response: I communicated with the following people who are affiliated with True the Vote regarding printing the lists referred to in Response No. 1: Amy Holsworth, Catherine Engelbrecht, Mark Williams, Gregg Phillips, John David Phillips, Mark Williams. I contacted various people I knew in Georgia who might be interested in acting as challengers.

Def. Williams
Resp. to Interrog.

I, the undersigned, affirm under the penalties for perjury that the foregoing answers to Plaintiff's Interrogatories are true and correct.

Date: 3-15-2021


Mark Williams

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Def. Williams
Resp. to Interrog.

Dated: March 15, 2021

/s/ Ray Smith, III
Ray Smith, III, GA # 662555
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Local Counsel for Defendants

Respectfully Submitted,

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Lead Counsel for Defendants
**Admitted Pro hac vice*

Def. Williams
Resp. to Interrog.

Certificate of Service

I hereby certify that the foregoing document was served electronically on
March 15, 2021, upon all counsel of record via email.

/s/ Melena S. Siebert

Melena S. Siebert

Indiana Bar No. 35061-15

Counsel for Defendants

**Admitted Pro hac vice*

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Def. Williams
Resp. to Interrog.

**United States District Court
Northern District of Georgia
Gainesville Division**

Fair Fight, Inc., John Doe, and Jane Doe,

*Plaintiffs and
Counter-Defendants,*

v.

**True the Vote, Inc., Catherine
Engelbrecht, Derek Somerville, Mark
Davis, Mark Williams, Ron Johnson,
James Cooper, and John Does 1-10,**

*Defendants
and Counter-Plaintiffs,*

Fair Fight Action, Inc.,
Counter-Defendants.

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

Hon. Steve C. Jones

Defendant Ron Johnson's Responses to Plaintiffs' First Interrogatories

Pursuant to Federal Rule of Civil Procedure 33, Defendant Ron Johnson responds to Plaintiffs' First Interrogatories.

General Objections

1. Defendant Johnson objects to these requests to the extent that they purport to call for the production of documents/information that: (a) contain privileged

**Def. Johnson
Resp. to Interrog.**

attorney-client communications; (b) constitute attorney work product; (c) disclose the mental impressions, conclusions, opinions, or legal theories of any attorneys or other representatives of the Plaintiffs; (d) were prepared in anticipation of litigation; or (e) are otherwise protected from disclosure under applicable privileges, immunities, laws, or rules.

2. Defendant Johnson objects to these requests to the extent that they are vague, not limited in scope, unreasonably broad and burdensome, or beyond the scope of either category of permissible discovery under Fed. R. Civ. P. 26(b)(1).

3. Defendant Johnson objects to the instructions accompanying the requests to the extent that they purport to impose obligations beyond those imposed by the Federal Rules of Civil Procedure, or any order promulgated by this Court.

4. Defendant Johnson objects to discovery requests that are not proportional to the needs of the case and that are not “relevant to any party’s claim or defense.” Fed. R. Civ. P. 26(b)(1).

5. Defendant Johnson objects to requests for information the benefit of which is outweighed by its lack of importance in resolving the issues at stake in this case, the amount in controversy, the parties’ relative access to relevant information, the

Def. Johnson
Resp. to Interrog.

parties' resources, and whether the burden or expense of the proposed discovery outweighs its likely benefit. *See* Fed. R. Civ. P. 26(b)(1). Consistent with this rule, Defendant Johnson does not produce multiple copies of a communication, e.g., where one email chain has multiple communications, earlier included ones are not produced as separate documents.

6. Subject to and without waiving any of the foregoing General Objections, which are hereby incorporated into each specific response, Defendant Johnson (a) makes further objections in response to individual requests and (b) makes the required good-faith attempt to fulfill the duty to provide all responsive information readily available without undue labor and expense.

7. Defendant Johnson objects to producing individuals' personal information, including emails and phone numbers, based upon privacy and relevancy.

DEFINITIONS

Except as specifically defined below, the terms used in these requests shall be construed and defined in accordance with the Federal Rules of Civil Procedure, wherever applicable. Any terms not defined shall be given their ordinary meaning.

1. "Communication" means any transfer of information, whether written, oral,

Def. Johnson
Resp. to Interrog.

electronic, or otherwise, and includes transfers of information via email, report, letter, text message, voicemail message, written memorandum, note, summary, and other means. It includes communications entirely internal to True the Vote, as well as communications that include or are with entities and individuals outside of that organization.

2. “County” means any county in Georgia, as well as all employees, staff, agents, and representatives of the county, including the county boards of registrar’s offices, county registrars, or any other person with a responsibility for conducting or supervising elections in the county.
3. “Date” means the exact day, month, and year, if ascertainable, or, if not, the best available approximation (including relationship to other events).
4. “Describe” means explain with particularity.
5. “Georgia Elector Challenges” means the challenges to voter eligibility of registered Georgia voters in advance of the Run-off Election in which you and True the Vote have been and are involved and which are described, among other places, in True the Vote’s December 18, 2020 Press Release.
6. “December 18, 2020 Press Release” means the press release posted on the

Def. Johnson
Resp. to Interrog.

True the Vote Website on that date, attached hereto as Exhibit A.

7. “Identify,” when used in reference to a communication, means to state when and where the communication was made; each of the makers and recipients thereof, in addition to all others present; the medium of communication; and its substance.

8. “Identify,” when used in reference to a government agency, firm, partnership, corporation, proprietorship, association, other entity, or person, means to state its, his, or her full name and present or last-known address.

9. “Identify,” when used in reference to processes or steps taken by you or others with whom you have worked on the matters at issue in this litigation, means to chronologically detail each and every action taken by any and all entities or persons, to identify the actor, and to detail how and when that action was or will be aken and for how long.

10. “Including” means “including but not limited to.”

11. “Person” means not only natural persons, but also firms, partnerships, associations, corporations, subsidiaries, divisions, departments, joint ventures, proprietorships, syndicates, trust groups, and organizations; federal, state, or local

Def. Johnson
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governments or government agencies, offices, bureaus, departments, or entities; other legal, business, or government entities; and all subsidiaries, affiliates, divisions, departments, branches, and other units thereof or any combination thereof.

12. “Relating to,” “regarding,” and their cognates are to be understood in their broadest sense and shall be construed to include pertaining to, commenting on, memorializing, reflecting, recording, setting forth, describing, evidencing, or constituting.

13. “Run-off Election” means the January 5, 2021 Senate Run-off election held in Georgia.

14. “Targeted Voter” or “Targeted Voters” means the registered Georgia voters who are the subject of the Georgia Elector Challenges.

15. “True the Vote” means the organization that goes by the name of True the Vote, its officers, directors, partners, members, managers, employees, representatives, agents, consultants, or anyone acting on its behalf.

16. “Voter” means any registered voter in Georgia and all persons who may properly register to vote in the state by the close of discovery in this case.

Def. Johnson
Resp. to Interrog.

17. “You” and “your” means Defendant Ron Johnson and any of his representatives, agents, or anyone acting on his behalf.

INTERROGATORIES

Interrogatory No. 1: Describe in detail your role or involvement in compiling any list of Targeted Voters for purposes of the Georgia Elector Challenges.

Response: I had no role or involvement in compiling any list of Targeted Voters for purposes of the Georgia Elector Challenges.

Interrogatory No. 2: Describe in detail what research, if any, you conducted for purposes of identifying voters to include in the Georgia Elector Challenges.

Response: I conducted no research for the purpose of identifying voters to include in the Georgia Elector Challenges.

Interrogatory No. 3: For any list of Targeted Voters that you had any involvement in compiling, describe the efforts, if any, you made to assess the accuracy of the list.

Response: I was not involved in either compiling or assessing the accuracy of Targeted Voter lists.

Def. Johnson
Resp. to Interrog.

Interrogatory No. 4: Describe in detail any and all assistance provided to you by True the Vote in preparing the Georgia Elector Challenges.

Response: I did not prepare the Georgia Elector Challenges, so True the Vote provided no assistance to me in preparing such Challenges.

Interrogatory No. 5: Identify all individuals affiliated with True the Vote—including its officers, directors, partners, members, managers, employees, representatives, agents, consultants, or anyone acting on its behalf—with whom you have communicated regarding the Georgia Elector Challenges.

Response: I contacted eligible Georgia voters I knew to ask if they would be interested in bringing a Georgia Elector Challenge in the county in which they live. I gave True the Vote, Inc. the contact information for any Georgia voter who expressed an interest in participating in such challenges. I also communicated with these potential challengers regarding getting their signed permission for TTV to submit the challenges in their name.


I forwarded the contact information of people who expressed interest in being a Challenger to the following people who are affiliated with True the Vote: Amy Holsworth, Catherine Engelbrecht, Ron Johnson, Gregg Phillips, John David

Def. Johnson
Resp. to Interrog.

Phillips, Mark Williams.

I, the undersigned, affirm under the penalties for perjury that the foregoing answers to Plaintiff's Interrogatories are true and correct.

Date: MARCH 15, 2021



Ron Johnson

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Def. Johnson
Resp. to Interrog.

Dated: March 15, 2021

/s/ Ray Smith, III
Ray Smith, III, GA # 662555
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Respectfully Submitted,

James Bopp, Jr.,* IN # 2838-84
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Melena Siebert,* IN # 35061-15
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Lead Counsel for Defendants
**Admitted Pro hac vice*

Def. Johnson
Resp. to Interrog.

Certificate of Service

I hereby certify that the foregoing document was served electronically on
March 15, 2021, upon all counsel of record via email.

/s/ Melena S. Siebert

Melena S. Siebert

Indiana Bar No. 35061-15

Counsel for Defendants

**Admitted Pro hac vice*

RETRIEVED FROM DEMOCRACYDOCKET.COM

Def. Johnson
Resp. to Interrog.

**United States District Court
Northern District of Georgia
Gainesville Division**

Fair Fight, Inc., John Doe, and Jane Doe,

*Plaintiffs and
Counter-Defendants,*

v.

**True the Vote, Inc., Catherine
Engelbrecht, Derek Somerville, Mark
Davis, Mark Williams, Ron Johnson,
James Cooper, and John Does 1-10,**

*Defendants
and Counter-Plaintiffs,*

Fair Fight Action, Inc.,
Counter-Defendants.

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

Hon. Steve C. Jones

Defendant James Cooper's Responses to Plaintiffs' First Interrogatories

Pursuant to Federal Rule of Civil Procedure 33, Defendant James Cooper responds to Plaintiffs' First Interrogatories.

General Objections

1. Defendant Cooper objects to these requests to the extent that they purport to call for the production of documents/information that: (a) contain privileged

**Def. Cooper
Resp. to Interrog.**

attorney-client communications; (b) constitute attorney work product; (c) disclose the mental impressions, conclusions, opinions, or legal theories of any attorneys or other representatives of the Plaintiffs; (d) were prepared in anticipation of litigation; or (e) are otherwise protected from disclosure under applicable privileges, immunities, laws, or rules.

2. Defendant Cooper objects to these requests to the extent that they are vague, not limited in scope, unreasonably broad and burdensome, or beyond the scope of either category of permissible discovery under Fed. R. Civ. P. 26(b)(1).

3. Defendant Cooper objects to the instructions accompanying the requests to the extent that they purport to impose obligations beyond those imposed by the Federal Rules of Civil Procedure, or any order promulgated by this Court.

4. Defendant Cooper objects to discovery requests that are not proportional to the needs of the case and that are not “relevant to any party’s claim or defense.” Fed. R. Civ. P. 26(b)(1).

5. Defendant Cooper objects to requests for information the benefit of which is outweighed by its lack of importance in resolving the issues at stake in this case, the amount in controversy, the parties’ relative access to relevant information, the

Def. Cooper
Resp. to Interrog.

parties' resources, and whether the burden or expense of the proposed discovery outweighs its likely benefit. *See* Fed. R. Civ. P. 26(b)(1). Consistent with this rule, Defendant Cooper does not produce multiple copies of a communication, e.g., where one email chain has multiple communications, earlier included ones are not produced as separate documents.

6. Subject to and without waiving any of the foregoing General Objections, which are hereby incorporated into each specific response, Defendant Cooper (a) makes further objections in response to individual requests and (b) makes the required good-faith attempt to fulfill the duty to provide all responsive information readily available without undue labor and expense.

7. Defendant Cooper objects to producing individuals' personal information, including emails and phone numbers, based upon privacy and relevancy.

DEFINITIONS

Except as specifically defined below, the terms used in these requests shall be construed and defined in accordance with the Federal Rules of Civil Procedure, wherever applicable. Any terms not defined shall be given their ordinary meaning.

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Def. Cooper
Resp. to Interrog.

electronic, or otherwise, and includes transfers of information via email, report, letter, text message, voicemail message, written memorandum, note, summary, and other means. It includes communications entirely internal to True the Vote, as well as communications that include or are with entities and individuals outside of that organization.

2. “County” means any county in Georgia, as well as all employees, staff, agents, and representatives of the county, including the county boards of registrar’s offices, county registrars, or any other person with a responsibility for conducting or supervising elections in the county.

3. “Date” means the exact day, month, and year, if ascertainable, or, if not, the best available approximation (including relationship to other events).

4. “Describe” means explain with particularity.

5. “Georgia Elector Challenges” means the challenges to voter eligibility of registered Georgia voters in advance of the Run-off Election in which you and True the Vote have been and are involved and which are described, among other places, in True the Vote’s December 18, 2020 Press Release.

6. “December 18, 2020 Press Release” means the press release posted on the

Def. Cooper
Resp. to Interrog.

True the Vote Website on that date, attached hereto as Exhibit A.

7. “Identify,” when used in reference to a communication, means to state when and where the communication was made; each of the makers and recipients thereof, in addition to all others present; the medium of communication; and its substance.

8. “Identify,” when used in reference to a government agency, firm, partnership, corporation, proprietorship, association, other entity, or person, means to state its, his, or her full name and present or last-known address.

9. “Identify,” when used in reference to processes or steps taken by you or others with whom you have worked on the matters at issue in this litigation, means to chronologically detail each and every action taken by any and all entities or persons, to identify the actor, and to detail how and when that action was or will be aken and for how long.

10. “Including” means “including but not limited to.”

11. “Person” means not only natural persons, but also firms, partnerships, associations, corporations, subsidiaries, divisions, departments, joint ventures, proprietorships, syndicates, trust groups, and organizations; federal, state, or local

Def. Cooper
Resp. to Interrog.

governments or government agencies, offices, bureaus, departments, or entities; other legal, business, or government entities; and all subsidiaries, affiliates, divisions, departments, branches, and other units thereof or any combination thereof.

12. “Relating to,” “regarding,” and their cognates are to be understood in their broadest sense and shall be construed to include pertaining to, commenting on, memorializing, reflecting, recording, setting forth, describing, evidencing, or constituting.

13. “Run-off Election” means the January 5, 2021 Senate Run-off election held in Georgia.

14. “Targeted Voter” or “Targeted Voters” means the registered Georgia voters who are the subject of the Georgia Elector Challenges.

15. “True the Vote” means the organization that goes by the name of True the Vote, its officers, directors, partners, members, managers, employees, representatives, agents, consultants, or anyone acting on its behalf.

16. “Voter” means any registered voter in Georgia and all persons who may properly register to vote in the state by the close of discovery in this case.

Def. Cooper
Resp. to Interrog.

17. “You” and “your” means Defendant James Cooper and any of his representatives, agents, or anyone acting on his behalf.

INTERROGATORIES

Interrogatory No. 1: Describe in detail your role or involvement in compiling any list of Targeted Voters for purposes of the Georgia Elector Challenges.

Response: I had no role or involvement in compiling any list of Targeted Voters for purposes of the Georgia Elector Challenges.

Interrogatory No. 2: Describe in detail what research, if any, you conducted for purposes of identifying voters to include in the Georgia Elector Challenges.

Response: I conducted no research for the purpose of identifying voters to include in the Georgia Elector Challenges.

Interrogatory No. 3: For any list of Targeted Voters that you had any involvement in compiling, describe the efforts, if any, you made to assess the accuracy of the list.

Response: I was not involved in either compiling or assessing the accuracy of Targeted Voter lists.

Def. Cooper
Resp. to Interrog.

Interrogatory No. 4: Describe in detail any and all assistance provided to you by True the Vote in preparing the Georgia Elector Challenges.

Response: I did not prepare the Georgia Elector Challenges, so True the Vote provided no assistance to me in preparing such Challenges.

Interrogatory No. 5: Identify all individuals affiliated with True the Vote—including its officers, directors, partners, members, managers, employees, representatives, agents, consultants, or anyone acting on its behalf—with whom you have communicated regarding the Georgia Elector Challenges.

Response: I contacted eligible Georgia voters I knew to ask if they would be interested in bringing a Georgia Elector Challenge in the county in which they live. I prepared a “form” email for me to send to potential challengers, which described the potential challenges. I gave True the Vote, Inc. the contact information for any Georgia voter who expressed an interest in participating in such challenges. I also communicated with these potential challengers regarding getting their signed permission for TTV to submit the challenges in their name.


I forwarded the contact information of people who expressed interest in being a Challenger to the following people who are affiliated with True the Vote:

Def. Cooper
Resp. to Interrog.

Amy Holsworth, Catherine Engelbrecht, Ron Johnson, Gregg Phillips, John David Phillips, Mark Williams.

I, the undersigned, affirm under the penalties for perjury that the foregoing answers to Plaintiff's Interrogatories are true and correct.

Date: 3-15-21


James Cooper

Def. Cooper
Resp. to Interrog.

Dated: March 15, 2021

/s/ Ray Smith, III
Ray Smith, III, GA # 662555
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Respectfully Submitted,

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**Admitted Pro hac vice*

Def. Cooper
Resp. to Interrog.

Certificate of Service

I hereby certify that the foregoing document was served electronically on
March 15, 2021, upon all counsel of record via email.

/s/ Melena S. Siebert

Melena S. Siebert

Indiana Bar No. 35061-15

Counsel for Defendants

**Admitted Pro hac vice*

RETRIEVED FROM DEMOCRACYDOCKET.COM

Def. Cooper
Resp. to Interrog.

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

FAIR FIGHT, INC., SCOTT BERSON,
JOCELYN HEREDIA, 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,

FAIR FIGHT ACTION, INC.,

Counter-Defendant.

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

**PLAINTIFF SCOTT BERSON'S RESPONSES TO DEFENDANTS' FIRST
SET OF INTERROGATORIES**

Pursuant to Rules 26 and 33 of the Federal Rules of Civil Procedure, Plaintiff Scott Berson, by and through his attorneys, submits the following written objections and responses ("Responses") to Defendants' First Set of Interrogatories, which were electronically served on May 25, 2021.

This Response reflects Mr. Berson's current knowledge and information. Mr. Berson reserves the right to alter, supplement, amend, or otherwise modify these objections and responses based on later recollections. Nothing in these Responses

can be taken as an admission that Mr. Berson agrees with Defendants' use or interpretation of terms. These Responses are based on Mr. Berson's understanding of each individual interrogatory. To the extent Defendants assert an interpretation of any interrogatory that is inconsistent with Mr. Berson's understanding, Mr. Berson reserves the right to supplement his Responses.

INTERROGATORIES

INTERROGATORY #1: The Complaint states, "In 2019, [You] temporarily relocated to Alabama for a two-year residential master's program at Auburn University," and that "in December 2020 . . . [You] returned to live in Georgia" Compl. ¶ 15. Did You register to vote in Alabama at any point during the time you lived there?

RESPONSE: No, I did not register to vote in Alabama during the time that I lived there.

INTERROGATORY #2: The Complaint states that "in December 2020 . . . [You] returned to live in Georgia" *Id.* To what county in Georgia does this refer?

RESPONSE: I returned to Muscogee County.

INTERROGATORY #3: Were You aware, before You had any Communication with anyone about the potential for the present lawsuit, of anyone aside from Yourself whose right to vote in the Run-off Election had been challenged by any Defendant? If so, please state how you became so aware, on what date you became so aware, and the names of the other individuals whose right to vote had been challenged.

SPECIFIC OBJECTION AND RESPONSE: Mr. Berson objects to the this interrogatory because it is not relevant to any claim or defense. But Mr. Berson does not withhold any information on the basis of this objection.

Mr. Berson responds: Yes, I was aware that other voters' right to vote had been challenged before I became aware of this lawsuit. I read a news article in the Columbus Ledger-Enquirer that was published on December 16, 2020, which reported Muscogee County Republican Chair Alton Russell had filed challenges to thousands of voters. The article describes individuals who had been challenged but does not list their names. A work colleague also told me he knew of other people who had been challenged, including someone in the military. I do not know the names of these other challenged individuals.

INTERROGATORY #4: On what date did You move from Alabama back to Georgia in 2020?

RESPONSE: I am unable to verify the exact date I moved back to Georgia, but I believe it to have been approximately December 10, 2020.

INTERROGATORY #5: When You moved back to Georgia in December 2020, did You change Your mailing address back to the residence you moved back to? If so, please state the date on which You submitted the change of address form.

SPECIFIC OBJECTION AND RESPONSE: Mr. Berson objects to the this interrogatory because it is not relevant to any claim or defense. But Mr. Berson does not withhold any information on the basis of this objection.

Mr. Berson responds: No, I did not change my mailing address back to the residence I returned to.

INTERROGATORY #6: How did You first learn that Your right to vote in the Run-off Election had been challenged?

RESPONSE: I read in the Columbus Ledger-Enquirer that challenges had been filed against people with out-of-state mailing addresses and I figured I was probably on the list. I subsequently received a phone call from a community organizer asking if I was aware of the challenges and informing me that I had been challenged. I do not recall the exact date of the phone call, which occurred at some

point during the week of December 16-22, or the identity of the person who called me.

INTERROGATORY #7: Please Describe any and all Documents or Communications that led You to believe that “it would be impossible for [You] to vote and to have [Your] vote counted because [You] would not have the time and availability to re-prove [Your] residency,” Compl. ¶ 15.

RESPONSE: I do not have any documents or communications responsive to this request. My biggest concern was that I would not have time to collect documents proving my Georgia residency. There were only a few weeks between when I was challenged and the election, and the whole process occurred over the holidays when I was graduating, moving, and trying to find a new job. Because I had been temporarily away from Georgia for school, I did not have easy access to the usual documents to show residency, such as a utility bill or rent statement. I was not sure if I would be able to figure out which documents I could use to prove my residency and whether I would be able to submit them in time for my ballot to count.

INTERROGATORY #8: Please Describe any and all Documents or Communications that led You to believe that You would face future “burdens associated with being forced to re-prove [Your] residency,” *id.*

RESPONSE: I do not have any documents or communications responsive to this request. I recognized that these challenges target and burden young people like me because we make so many short-term moves while maintaining a single permanent residence. Having to find suitable identification and proof of residency over and over again to vote every time I use a temporary mailing address to receive packages and correspondence would be extremely frustrating and burdensome.

INTERROGATORY #9: Do You have any current plans to temporarily relocate in the future, such that a change of address form would need to be filed?

RESPONSE: On approximately May 26, 2021, I decided to move to North Carolina later this summer. North Carolina will be my new permanent residence, and I will change my address accordingly.

INTERROGATORY #10: Did You vote, or attempt to vote, in the Run-off Election?

RESPONSE: Yes, I voted.

INTERROGATORY #11: If you voted, or attempted to vote, in the Run-off Election, were you asked to prove your residency?

RESPONSE: Yes.

INTERROGATORY #12: If you were asked to prove your residency before voting in the Run-off Election, who asked you to do so and what documentation did you provide in order to do so?

RESPONSE: When I attempted to vote in-person, I was stopped by a poll worker and taken aside. Elections Director Nancy Boren told me I had been challenged, required me to fill out a provisional ballot, and told me I would have to prove my residency at a later time. I was not told when I would have to prove my residency, what documents I could use to prove my residency, or where to submit my proof of residency. A few days later I called the Muscogee County Board of Elections and asked a staff member where I should send proof of residency. I was provided Nancy Boren's email address, and on January 7, 2021 I sent her a copy of my automobile insurance bill. That same day Ms. Boren responded this was sufficient.

INTERROGATORY #13: If you voted, or attempted to vote, in the Run-off Election, were you permitted to cast a regular or provisional ballot in that election?

RESPONSE: I was required to cast a provisional ballot.

INTERROGATORY #14: Were you contacted by any of the Defendants directly? If so, please state the name of the Person who contacted you, when this contact occurred, and what Communication occurred.

RESPONSE: I am not aware of any contact with Defendants.

I declare under penalty of perjury that the foregoing Responses are true and correct to the best of my knowledge and belief.

By:  E9F332793DCF448...

Name: Scott Berson

Date: June 23, 2021

CERTIFICATE OF SERVICE

I hereby certify that on June 24, 2021, a copy of the foregoing was served via email to the following attorneys of record:

Melena Sue Sibert
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Ray Smith, III
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Dated: June 24, 2021

/s/ Uzoma N. Nkwonta
Uzoma N. Nkwonta

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
GAINESVILLE DIVISION

FAIR FIGHT, INC., SCOTT BERSON,
JOCELYN HEREDIA, AND JANE DOE,
Plaintiffs,

v.

Civ. No.

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

2:20-cv-00302-
SCJ

Defendants.

VIDEOTAPED DEPOSITION OF
JOCELYN HEREDIA

DATE: Friday, October 15, 2021

TIME: 2:00 p.m.

LOCATION: Remote Proceeding

871 Third Street, Apartment 1545

Atlanta, GA 30318

REPORTED BY: Deidra Musick Nash, Notary Public

JOB No.: 4845630

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A P P E A R A N C E S

ON BEHALF OF PLAINTIFFS FAIR FIGHT, INC., ET AL:

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ON BEHALF OF DEFENDANT TRUE THE VOTE, INC., ET AL:

COURTNEY KRAMER, ESQUIRE (by videoconference)

Bopp Law Firm

104 Marietta Street Northwest, Suite 100

Atlanta, GA 30303

ckramer@bopplaw.com

ALSO PRESENT:

Todd Davis, Videographer (by videoconference)

Bailey Neher, Tech Concierge (by videoconference)

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I N D E X

EXAMINATION:

PAGE

By Ms. Kramer

6

E X H I B I T S

NO.

DESCRIPTION

PAGE

Exhibit A

Notice of Deposition

10

Exhibit B

Responses to Defendants' First

Set of Interrogatories

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Exhibit E

Banks County Election Website

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Exhibit F

Georgia Voter File Excerpt

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Exhibit H

Jocelyn Heredia LinkedIn Profile

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Exhibit J

Georgia Election Code Excerpt

(O.C.G.A. § 21-2-230)

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Exhibit L

U.S.P.S. Change of Address

Confirmation

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Exhibit N

Georgia Voter Registration Data

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(Exhibits attached.)

QUESTIONS INSTRUCTED NOT TO ANSWER

PAGE

LINE

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15

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15

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20

P R O C E E D I N G S

REPORTER: Good afternoon. My name is Deidra Nash; I am the reporter assigned by Veritext to take the Zoom record of this proceeding. We are now on the record at 2:00 p.m. This is the deposition of Jocelyn -- I can't say your last name; I'm sorry -- H-E-R-D-I-A [sic] taken in the matter of Fair Fight, Inc., Scott Berson, et al vs. True the Vote, Inc., et al. This deposition is being digitally recorded on October 15, 2021, at 871 Third Street, Apartment 1545, Atlanta, Georgia 30318.

I am a notary authorized to take acknowledgements and administer oaths in the state of Georgia. Parties agree that I will swear in the witness remotely, outside of her presence.

Additionally, absent of an objection on the record before the witness is sworn, all parties and the witness understand and agree that any certified transcript produced from the recording, virtually, of this proceeding:

- is intended for all uses permitted under applicable procedural and evidentiary rules and laws in the same manner as a deposition recorded by stenographer means; and

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1 - shall constitute written stipulation
2 of such.

3 And I also want to say that Todd Davis
4 is our videographer, and Ms. Bailey Neher is the
5 concierge.

6 And at this time will everyone in
7 attendance, beginning with the taking attorney, please
8 identify yourself for the record.

9 MS. KRAMER: Courtney Kramer with Bopp
10 Law Firm, representing the defendants.

11 MS. FORD: Christina Ford with Elias
12 Law Group, representing the plaintiffs and Ms. Heredia
13 today.

14 MR. NKWONTA: Uzoma Nkwonta from Elias
15 Law Group, representing the plaintiffs.

16 REPORTER: And Ms. Jocelyn, if you
17 could please identify yourself.

18 MS. HEREDIA: Jocelyn Heredia. I'm a
19 plaintiff.

20 REPORTER: Thank you. Hearing no
21 objections, I will now swear the witness. Ms.
22 Jocelyn, if you would please raise your right hand.

23 //

24 //

25 //

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1 WHEREUPON,

2 JOCELYN HEREDIA,

3 called as a witness, and having been first duly sworn
4 to tell the truth, the whole truth and nothing but the
5 truth, was examined and testified as follows:

6 REPORTER: Thank you so much. Ms.
7 Kramer, please begin when you're ready.

8 EXAMINATION

9 BY MS. KRAMER:

10 Q Thank you for being here today, Ms. Heredia.
11 Did I get your last name -- pronounce that right?

12 A Yes, you did, actually.

13 Q Great. Well, as you know, my name is
14 Courtney Kramer, and I represent the defendants in
15 this case. I first want to go over a few rules for
16 this deposition, particularly because it's a remote
17 deposition. Have you ever testified in a deposition
18 before?

19 A No.

20 Q Okay. So this is your first time?

21 A Yeah.

22 Q Okay. Perfect. So I'll just go over a
23 couple rules, just so you understand how things will
24 work today. Do you understand that you are under oath
25 today, as if you were in court?

1 A Yes.

2 Q And during my questions, the court reporter
3 is going to be taking down what we are saying. And to
4 make sure we don't confuse her, let me fully finish a
5 question, and then in turn, I'll let you fully finish
6 your answer, just so we don't talk over each other.
7 Is that fair?

8 A That's fair.

9 Q Okay.

10 A That's good.

11 Q And if at any point, you don't understand a
12 question I'm asking, just let me know, and I can do my
13 best to clarify. And if you answer a question, I will
14 assume that you understand what I'm asking. Is that
15 fair?

16 A That's fair.

17 Q Okay. And I received documents from your
18 attorneys prior to today, and I'll be referring to
19 some of them as exhibits. I will always show them to
20 you before I ask any questions about them.

21 And since the court reporter is here and
22 appearing remotely, please answer audibly to all
23 questions, as the court reporter cannot record head
24 nods or gestures. Does that sound good?

25 A Sounds good.

1 Q Okay. And are you viewing this deposition
2 by laptop?

3 A Yes.

4 Q And did you prepare for this deposition?

5 A I did prepare. I spoke to my lawyer
6 yesterday, and I looked over the documents for this
7 case.

8 Q Okay. And did you discuss this deposition
9 with anyone other than your attorneys?

10 A I discussed it with a friend.

11 Q Okay. And what did you discuss about this
12 with your friend?

13 A That I had a deposition today.

14 Q Was any substance of the nature of the
15 deposition discussed?

16 A No.

17 Q Okay. Thanks for clarifying that. And do
18 you have any documents with you today or in front of
19 you?

20 A No.

21 Q Okay. Perfect. And is anyone else in the
22 room with you?

23 A Yes.

24 Q Who else is in the room with you today?

25 A A friend.

1 MS. KRAMER: Counsel, I would ask that
2 we have the witness be in a room by herself, just for
3 the purposes of the deposition --

4 THE WITNESS: Okay.

5 MS. KRAMER: -- if possible.

6 MS. FORD: Jocelyn, is it easy enough
7 to ask your friend to go to a different room?

8 THE WITNESS: Yeah; they can go to a
9 different room.

10 MS. FORD: Okay.

11 THE WITNESS: They're working from
12 home, so give me one second.

13 REPORTER: Did we want to go off the
14 record, or just stand by for a second?

15 MS. KRAMER: I would just stand by for
16 a second, unless it takes longer than, you know, 30
17 seconds.

18 REPORTER: Okay.

19 THE WITNESS: Okay.

20 BY MS. KRAMER:

21 Q Thank you. And since I'm not in the actual
22 room with you, I'm not able to see what you have in
23 front of you or if someone else enters the room. Can
24 you let me know if someone does enter the room at any
25 point during this deposition?

Fair Fight, Inc., Et Al. Vs. True The Vote, Et Al

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1 A Yes. I can.

2 Q Thank you. And then, Ms. Heredia, do you
3 understand that you cannot ask your attorney's help to
4 respond to a particular question that's asked?

5 A I understand.

6 Q Okay. And your attorney may object to a
7 question that I ask, but you should still respond
8 unless your attorney instructs you not to respond.
9 Does that make sense?

10 A That makes sense.

11 Q Okay. And finally, if at any time you need
12 a break, just let me know, and we can go off the
13 record for five or ten minutes if that's needed.
14 Hopefully it won't take too long, so that won't be
15 necessary, but if you need a break, just let me know.

16 A Sounds good.

17 Q Okay.

18 MS. KRAMER: And at this time, can we
19 please put up what is marked as Exhibit A?

20 TECH CONCIERGE: Please stand by. This
21 is Exhibit A.

22 (Exhibit A was marked for
23 identification.)

24 BY MS. KRAMER:

25 Q Ms. Heredia, can you see this document?

Fair Fight, Inc., Et Al. Vs. True The Vote, Et Al

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1 A Yes.

2 Q Do you recognize this document?

3 A Yes, I do.

4 Q Okay. I just want to confirm that you
5 understand that you're appearing today pursuant to
6 this Notice.

7 A I understand.

8 Q Great. Okay. So I just have some
9 background questions I want to start with.

10 MS. KRAMER: Bailey, you can take the
11 exhibit off. Thank you.

12 Q Ms. Heredia, where is your current address
13 in Georgia?

14 A It is in Banks County. It is -- the actual
15 address is 304 Borders Road, Commerce, Georgia 30530.

16 Q And how long have you resided there for?

17 A That's a tough question. Approximately four
18 years.

19 Q And are you registered to vote from this
20 address?

21 A Yes.

22 Q How long have you voted from that address?

23 A So I can't recall, but I did vote from that
24 address for the presidential election and the -- the
25 special election.

Fair Fight, Inc., Et Al. Vs. True The Vote, Et Al

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1 Q Okay. And when you moved there for your
2 job, did you change your mailing address to reflect
3 where you lived in Atlanta for that job?

4 A I did.

5 Q And it was just a temporary job?

6 A Yes. At the time it was.

7 Q So you changed your address with the Postal
8 Service. And did you change it back once you moved
9 from Atlanta?

10 A I did not. Because I still had access to
11 the apartment, so, you know, if I needed the mail, I
12 could get it. And to be honest, I don't even get that
13 much mail.

14 Q Did you have intentions of moving back to
15 that address, if you kept your mailing address in
16 Atlanta?

17 A That's hard to say. So in March, the
18 COVID-19 pandemic hit, and we were told that we would
19 be remote. And we were told that we -- that they
20 weren't even sure when we would go back to the office.
21 So, you know, I would be remote until my job told me
22 that I had to be in person.

23 Q Have you been in person with that job yet?

24 A In February, yes.

25 Q Of this year?

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1 Q Why do you think your ballot wasn't counted?

2 A Oh; okay.

3 Q Sorry.

4 A So for the presidential election, I went to
5 vote in person, and I was able to log into the voter
6 registration website and check the status of my -- of
7 my vote, and it said that it was accepted. And then
8 for the special election, I did the same thing, and I
9 went to the voter registration website, and I checked
10 to see if my vote was accepted, but it was blank. So
11 I -- to this day, I don't know if it was accepted or
12 not.

13 Q Okay. So when you went to go vote, can you
14 tell me a little bit about what happened when you went
15 to go vote, since you're questioning whether your vote
16 was accepted or not? Just so I can have a little
17 background on that.

18 A Right. So for the special election, I went
19 to vote. I got in line. And when it was my turn to
20 present my identification to vote, she -- the worker
21 there wrote my name down on a piece of paper, and she
22 said that my vote was being challenged. And at that
23 point in time, I actually didn't even know what --
24 what my vote being challenged even meant. And she
25 said that I would have to -- so I asked her for

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1 clarification -- "What does that mean?" -- and she
2 said that I would have to cast my vote on paper and
3 provide two forms of identification stating that --
4 two forms of identification with my mailing address
5 that's on my driver's license in order for my vote to
6 count. So that is why I still don't know if my vote
7 was counted.

8 Q Okay. I understand that. All right.

9 MS. KRAMER: Bailey, can we please go
10 to the second tab, for the runoff?

11 TECH CONCIERGE: Yes. That's what I
12 have pulled up here.

13 MS. KRAMER: Oh; perfect.

14 TECH CONCIERGE: 2021?

15 MS. KRAMER: Yeah. Thank you.

16 TECH CONCIERGE: You're welcome.

17 BY MS. KRAMER:

18 Q Okay. So Ms. Heredia, this is from the
19 voter absentee files, like I said, from the Secretary
20 of State's website. Just different -- same file,
21 just -- well, different file, just the information for
22 2021 for that runoff. And if you look under column
23 N --

24 A Yes.

25 Q -- if we can expand that. So your mailing

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1 address under here looks as though it's in Decatur,
2 Georgia. This is just the information that the
3 Secretary of State has on their files. Did this
4 address match your driver's license at the time when
5 you went to go vote in January?

6 A No. That's not the address on my driver's
7 license.

8 Q Okay. Do you know why your mailing address
9 would be Decatur on the record for 2021 in January if
10 your registration address is in Banks County?

11 A I actually don't know.

12 Q Did you change your address between November
13 2020 and January 2021? Did you file any change of
14 address forms or have your mailing address be changed
15 to Decatur, Georgia?

16 A I submitted a change of address in February
17 of 2020. And then from there, I did not submit any
18 other change of -- changes of address with the
19 U.S.P.S.

20 Q Did you use this address with someone or an
21 organization different than the U.S.P.S., that would
22 explain why your address here is Decatur?

23 A I don't recall. I don't remember.

24 Q Have you ever lived at this address before?

25 A Have I lived in North Druid Hills Road?

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1 Q Yes.

2 A Yes.

3 Q When?

4 A In -- when I'm -- so I got the job with AT&T
5 and I moved to Atlanta; and then in March, I moved
6 back to Banks County.

7 Q Okay. And this is where you lived for those
8 two months at the beginning of 2020?

9 A Correct.

10 Q Okay. I understand that. So let's see. So
11 let me ask you a few questions about what happened
12 when you went to go vote in person.

13 MS. KRAMER: We can take this exhibit
14 down for the time being, Bailey. Thank you.

15 Q So when the election worker told you that
16 your vote was being challenged, can you tell me a
17 little bit about that exchange? What did he or she
18 give you? What did they say to you? And then exactly
19 what happened right after that?

20 A So -- sorry; can you break that down into,
21 like, one question at a time?

22 Q Sorry. Yeah. So what did the election
23 office say to you when they told you that you were
24 being challenged?

25 A Okay. She said to me that my vote was being

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1 challenged. And then I asked her what that meant.
2 And she said that -- I actually don't even know if --
3 I can't even remember if she explained it, but she
4 said that I would need to fill out a paper ballot and
5 provide two forms of identification that had the
6 address that's on my driver's license in order for my
7 vote to count.

8 Q Okay. And you provided those two forms of
9 documents?

10 A Yes. I did.

11 Q Okay. So based on what they told you, if
12 you provided those two forms, then your vote would
13 count. Correct?

14 MS. FORD: Objection. Calls for some
15 speculation.

16 MS. KRAMER: I'll rephrase.

17 BY MS. KRAMER:

18 Q Based on what the election worker told you,
19 that you had to give her two forms of identification
20 in order for your vote to count, and then you gave her
21 those forms of identification, do you then believe
22 that your vote would be counted?

23 A If I relied on what she was telling me, yes.
24 But I -- you know, I would like to see, like -- so for
25 the presidential election, I was able to see actual

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1 I -- I don't -- I don't know. I didn't overhear
2 anything.

3 Q Okay. So they talked to her individually.
4 So when the election worker told you that your vote
5 was being challenged, did they talk to you
6 individually about that as well?

7 A Yes, they did. And it wasn't, like,
8 individually, like, in a room or anything. It was --
9 you know, people are around; there's people close by
10 submitting their ballot in -- on a machine; there's
11 people in line. But she would keep her voice down
12 when she was speaking to -- to certain people.

13 Q Okay. So she didn't, like, raise her voice
14 when she was telling you that you were being
15 challenged. It wasn't some announcement to the
16 polling location.

17 A Right. It wasn't an announcement. But
18 whoever was voting by paper ballot, they would make --
19 you know, they made me and the other woman step aside
20 as other people were able to cast their ballot on the
21 machine.

22 Q Okay. But it was not public why people were
23 voting by paper ballot, based on your experience?

24 A While I was there, it was not public. But I
25 do know that my name, along with other challenged

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1 voters' names, were published on the Banks County
2 website. And it was public information for six
3 months.

4 Q Okay.

5 MS. KRAMER: Bailey, can we please pull
6 up Exhibit E?

7 TECH CONCIERGE: This is Exhibit E.

8 (Exhibit E was marked for
9 identification.)

10 BY MS. KRAMER:

11 Q Ms. Heredia, does this look familiar to
12 you -- this PDF of the website of Banks County?

13 A Yes. That's familiar. That's what I was
14 referencing --

15 Q Okay.

16 A -- in my previous question.

17 Q Okay, perfect. So can you tell me who -- or
18 I guess can you clarify: This is obviously the Banks
19 County website, and not another organization's website
20 that has, I guess, the challenge list that you're
21 referring to?

22 A Correct. This is the Banks County website.

23 Q Okay. And was this challenge list published
24 on any other website, to your knowledge?

25 A To my knowledge, no. But anything that's on

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1 believe was also challenged -- well, she casted a
2 paper ballot -- was Asian.

3 I put it -- you know, I connected the two,
4 and I thought that they were -- people of color were
5 being challenged. And that made me feel intimidated.
6 And like I said, I didn't know what that even was, and
7 I didn't even know if it was legal. So that made me
8 feel intimidated.

9 Q But to clarify what you testified earlier,
10 you don't know if the lady that was behind you -- the
11 Asian lady -- if she was being challenged or not. You
12 just know that she was voting by provisional ballot.
13 Right?

14 A That's correct.

15 Q Okay. And while you were at the polling
16 location, you said that you voted via provisional
17 ballot and this other lady. About how long would you
18 say that you were at that polling location for?

19 A Maybe three to four hours. So I -- when I
20 went to vote, I think I voted early -- actually, I
21 can't remember. But there was a line and, you know, I
22 got in line to vote; and then when I casted my vote
23 through the paper ballot, I was told that I would have
24 to provide two forms of identification saying that I
25 do live in Banks County.

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1 Q But you didn't feel intimidated or as if you
2 were being targeted until you were told that your vote
3 had been challenged?

4 A I guess -- so this is a predominantly red
5 county; it's Republican. I'm in line with non-colored
6 people. So I felt intimidated from the get-go, as
7 soon as I was there. Because -- I don't know,
8 like -- I'm the only Hispanic coming to vote at a
9 predominantly Republican county; I'm the only
10 non-white; so from there, I felt intimidated. And
11 then when they told me my vote was being challenged,
12 that's when I really felt, like, okay, like, my vote
13 is being challenged. That's when I felt it
14 stronger -- like, okay; you're trying to intimidate
15 me.

16 Q Did someone intimidate you in line leading
17 up to that point, though? Did someone say something
18 to you?

19 A No one said anything to me, but I mean,
20 people can talk with their eyes -- like, can stare.
21 So no one said anything to me, but --

22 Q So it was a feeling that you had.

23 A Yeah; was --

24 Q I'm just trying to understand the events
25 leading up to when you voted. So no one said anything

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1 to you in line that intimidated you or targeted you;
2 right?

3 A That's correct.

4 Q Okay. And it wasn't until you got to go
5 give the election worker your license -- when she told
6 you that your vote was being challenged -- that you
7 felt intimidated, based on the challenge. Correct?

8 A Based on the challenge, yes.

9 Q Okay. And do you understand that your vote
10 was challenged before you got in line that day? That
11 didn't occur when you got in line -- it didn't occur
12 when you came up to the election worker. Right?

13 MS. FORD: Objection. It's kind of a
14 vague question.

15 MS. KRAMER: I'll rephrase. Sorry,
16 Counsel.

17 BY MS. KRAMER:

18 Q Based on what you've learned thus far in
19 this citizen challenge process, as you know by the
20 complaint that you are a plaintiff on, are you aware
21 that your vote -- the challenge to the residency of
22 your vote had to have been done prior to you going to
23 vote that day?

24 A So you're asking me if I understand that the
25 challenge occurred before I was in line?

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1 Q Yes.

2 A Okay. That makes sense.

3 Q And do you know who challenged you?

4 A I can't recall their names, but I believe it
5 was two men.

6 Q Okay. And do you know anybody else who has
7 been challenged?

8 A So I don't know anyone by name who was
9 challenged, but after I was challenged, I did
10 research, and I found out that, you know, over 300,000
11 people were challenged. But I don't know anyone's
12 name who was challenged.

13 Q Okay. And I'll get to those questions in a
14 minute, about what happened after that. In Exhibit B
15 that we previously pulled up -- and we can pull it up
16 again, if you would like -- but you had stated that
17 you felt targeted by your race, and you testified that
18 here; right? That you felt as if you were targeted by
19 your race, because you were the only Hispanic person
20 in that room that you saw that was being challenged?

21 A Correct.

22 Q Okay.

23 MS. KRAMER: Can we please pull up
24 Exhibit F again?

25 TECH CONCIERGE: Please stand by. This



September 22, 2021

Andra Phagan
Elections Supervisor
Banks County Board of Elections
aphagan@co.banks.ga.us

Dear Ms. Phagan,

Under O.C.G.A. §50-18-70, I am requesting information regarding two pieces of information related to voter challenges submitted at the end of 2020 and information related to the process for provisional ballots in Banks County, GA.. Please provide this information in the form of electronic copies of each of the following documents, files, or images, as soon as they become available. You need not wait until the entire request is satisfied before providing documents that are ready for production. Respectfully, I request any and all documents related to the following:

- 1) Any and all copies of documents and correspondence that describe the process in Banks County of how a voter casts a provisional ballot and why a voter has to cast a provisional ballot as opposed to voting in person via electronic ballot on a machine. This includes any documents that detail why a voter who comes to vote in person, must then vote by provisional ballot.
- 2) Any and all copies of documents and correspondence related to citizen voter challenges from November 2020-January 2021;
- 3) Any and all copies of documents and correspondence between the Banks Board of Elections Members regarding citizen challenges that were submitted between November 2020-January 2021;
- 4) Any and all correspondence regarding the organization True the Vote, Catherine Engelbrecht, and/or Banks County Voter Jocelyn Heredia between the time from of June 2020-March 2021.

If your agency does not maintain these public records, please let me know who does and include the proper custodian's name and address. As provided in the open records law, O.C.G.A. § 50-18-71(b)(1)(A), I will expect your response within three (3) business days. Should a proper response take longer, please notify me immediately. Please provide all information electronically/digitally (PDF Preferred) via email. I agree to pay any reasonable copying and postage fees of not more than \$50 with a receipt provided indicating the charges for each document should they exceed such cost. If the cost would be greater than this amount, please notify me. If you choose to deny this request, please provide a written explanation for the denial including a reference to the specific statutory exemption(s) upon which you rely. Please provide

all segregable portions of otherwise exempt material. Materials requiring delivery via USPS or another carrier service should be directed to:

True the Vote Research Department,
P.O. Box 3109, Houston, Texas 77253-3109
Emails may be addressed to research@truethevote.org

Sincerely,
Catherine Engelbrecht
Founder & President
True the Vote

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BANKS COUNTY BOARD OF ELECTIONS AND REGISTRATION

BOARD MINUTES

FEBRUARY 4, 2021

The Banks County Board of Elections and Registration was called to order on Thursday, February 18, 2021. Board members present: Lynn Lewallen, Lynda Garrison, Gail Sheppard, Carol Ayers and Election Supervisor Andra Phagan.

Board minutes for October 1, 2020, December 3, 2020 and January 8, 2021 was presented to the Board. Motion to approve Carol Ayers and seconded by Lynda Garrison. Vote 4-0.

Vital Report –Four names presented to Board. Motion to approve Carol Ayers. Seconded Lynda Garrison. Vote 4-0.

Felon Report – Nobody requested a hearing.

Challenge List – Nobody requested a probable cause hearing. Dismissed the Challenged List. Motion to approve Gail Sheppard and seconded Lynda Garrison. Vote 4-0.

Vacancy of Board Member Linda Lewallen - Three names were recommended by the Board – Ann Moon, Wanda Eubanks and Sharon Pruitt. The list will be submitted to the Banks County Board of Commissioners for approval. The names will now go before the Chief Superior Court Judge of Banks County.

November 2021 Elections–Town of Homer, E Splost and Splost for November 2, 2021. Early voting begins October 12, 2021 through October 29, 2021.

Time Force –Each employee will need to approve their work hours on the computer bi-weekly in order to be paid.

Motion to adjourn Gail Sheppard. Seconded by Carol Ayers. Vote 4-0.

Meeting adjourned at 10:45 a.m.

Lynda Garrison, Clerk

Banks County Board of Elections & Registration



Deposition of:
Jocelyn Heredia

October 15, 2021

In the Matter of:

**Fair Fight, Inc., Et Al. Vs. True The
Vote, Et Al**

Veritext Legal Solutions

800.808.4958 | calendar-atl@veritext.com | 770.343.9696

Fair Fight, Inc., Et Al. Vs. True The Vote, Et Al

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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF GEORGIA

GAINESVILLE DIVISION

FAIR FIGHT, INC., SCOTT BERSON,

JOCELYN HEREDIA, AND JANE DOE,

Plaintiffs,

v.

Civ. No.

TRUE THE VOTE, INC., CATHERINE

2:20-cv-00302-

ENGELBRECHT, DEREK SOMERVILLE,

SCJ

MARK DAVIS, MARK WILLIAMS, RON

JOHNSON, JAMES COOPER, AND

JOHN DOES 1-10,

Defendants.

VIDEOTAPED DEPOSITION OF

JOCELYN HEREDIA

DATE: Friday, October 15, 2021

TIME: 2:00 p.m.

LOCATION: Remote Proceeding

871 Third Street, Apartment 1545

Atlanta, GA 30318

REPORTED BY: Deidra Musick Nash, Notary Public

JOB No.: 4845630

Fair Fight, Inc., Et Al. Vs. True The Vote, Et Al

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A P P E A R A N C E S

ON BEHALF OF PLAINTIFFS FAIR FIGHT, INC., ET AL:

CHRISTINA FORD, ESQUIRE (by videoconference)

Elias Law Group

10 G Street Northeast, Suite 600

Washington, DC 20002

cford@elias.law

UZOMA NKWONTA, ESQUIRE (by videoconference)

Elias Law Group

10 G Street Northeast, Suite 600

Washington, DC 20002

unkwonta@elias.law

ON BEHALF OF DEFENDANT TRUE THE VOTE, INC., ET AL:

COURTNEY KRAMER, ESQUIRE (by videoconference)

Bopp Law Firm

104 Marietta Street Northwest, Suite 100

Atlanta, GA 30303

ckramer@bopplaw.com

ALSO PRESENT:

Todd Davis, Videographer (by videoconference)

Bailey Neher, Tech Concierge (by videoconference)

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I N D E X

EXAMINATION:

PAGE

By Ms. Kramer

6

E X H I B I T S

NO.

DESCRIPTION

PAGE

Exhibit A

Notice of Deposition

10

Exhibit B

Responses to Defendants' First

Set of Interrogatories

37

Exhibit E

Banks County Election Website

32

Exhibit F

Georgia Voter File Excerpt

15

Exhibit H

Jocelyn Heredia LinkedIn Profile

39

Exhibit J

Georgia Election Code Excerpt

(O.C.G.A. § 21-2-230)

26

Exhibit L

U.S.P.S. Change of Address

Confirmation

42

Exhibit N

Georgia Voter Registration Data

51

(Exhibits attached.)

QUESTIONS INSTRUCTED NOT TO ANSWER

PAGE

LINE

63

15

72

15

72

20

P R O C E E D I N G S

REPORTER: Good afternoon. My name is Deidra Nash; I am the reporter assigned by Veritext to take the Zoom record of this proceeding. We are now on the record at 2:00 p.m. This is the deposition of Jocelyn -- I can't say your last name; I'm sorry -- H-E-R-D-I-A [sic] taken in the matter of Fair Fight, Inc., Scott Berson, et al vs. True the Vote, Inc., et al. This deposition is being digitally recorded on October 15, 2021, at 871 Third Street, Apartment 1545, Atlanta, Georgia 30318.

I am a notary authorized to take acknowledgements and administer oaths in the state of Georgia. Parties agree that I will swear in the witness remotely, outside of her presence.

Additionally, absent of an objection on the record before the witness is sworn, all parties and the witness understand and agree that any certified transcript produced from the recording, virtually, of this proceeding:

- is intended for all uses permitted under applicable procedural and evidentiary rules and laws in the same manner as a deposition recorded by stenographer means; and

Fair Fight, Inc., Et Al. Vs. True The Vote, Et Al

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1 - shall constitute written stipulation
2 of such.

3 And I also want to say that Todd Davis
4 is our videographer, and Ms. Bailey Neher is the
5 concierge.

6 And at this time will everyone in
7 attendance, beginning with the taking attorney, please
8 identify yourself for the record.

9 MS. KRAMER: Courtney Kramer with Bopp
10 Law Firm, representing the defendants.

11 MS. FORD: Christina Ford with Elias
12 Law Group, representing the plaintiffs and Ms. Heredia
13 today.

14 MR. NKWONTA: Uzoma Nkwonta from Elias
15 Law Group, representing the plaintiffs.

16 REPORTER: And Ms. Jocelyn, if you
17 could please identify yourself.

18 MS. HEREDIA: Jocelyn Heredia. I'm a
19 plaintiff.

20 REPORTER: Thank you. Hearing no
21 objections, I will now swear the witness. Ms.
22 Jocelyn, if you would please raise your right hand.

23 //

24 //

25 //

Fair Fight, Inc., Et Al. Vs. True The Vote, Et Al

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1 WHEREUPON,

2 JOCELYN HEREDIA,

3 called as a witness, and having been first duly sworn
4 to tell the truth, the whole truth and nothing but the
5 truth, was examined and testified as follows:

6 REPORTER: Thank you so much. Ms.
7 Kramer, please begin when you're ready.

8 EXAMINATION

9 BY MS. KRAMER:

10 Q Thank you for being here today, Ms. Heredia.
11 Did I get your last name -- pronounce that right?

12 A Yes, you did, actually.

13 Q Great. Well, as you know, my name is
14 Courtney Kramer, and I represent the defendants in
15 this case. I first want to go over a few rules for
16 this deposition, particularly because it's a remote
17 deposition. Have you ever testified in a deposition
18 before?

19 A No.

20 Q Okay. So this is your first time?

21 A Yeah.

22 Q Okay. Perfect. So I'll just go over a
23 couple rules, just so you understand how things will
24 work today. Do you understand that you are under oath
25 today, as if you were in court?

Fair Fight, Inc., Et Al. Vs. True The Vote, Et Al

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1 A Yes.

2 Q And during my questions, the court reporter
3 is going to be taking down what we are saying. And to
4 make sure we don't confuse her, let me fully finish a
5 question, and then in turn, I'll let you fully finish
6 your answer, just so we don't talk over each other.
7 Is that fair?

8 A That's fair.

9 Q Okay.

10 A That's good.

11 Q And if at any point, you don't understand a
12 question I'm asking, just let me know, and I can do my
13 best to clarify. And if you answer a question, I will
14 assume that you understand what I'm asking. Is that
15 fair?

16 A That's fair.

17 Q Okay. And I received documents from your
18 attorneys prior to today, and I'll be referring to
19 some of them as exhibits. I will always show them to
20 you before I ask any questions about them.

21 And since the court reporter is here and
22 appearing remotely, please answer audibly to all
23 questions, as the court reporter cannot record head
24 nods or gestures. Does that sound good?

25 A Sounds good.

1 Q Okay. And are you viewing this deposition
2 by laptop?

3 A Yes.

4 Q And did you prepare for this deposition?

5 A I did prepare. I spoke to my lawyer
6 yesterday, and I looked over the documents for this
7 case.

8 Q Okay. And did you discuss this deposition
9 with anyone other than your attorneys?

10 A I discussed it with a friend.

11 Q Okay. And what did you discuss about this
12 with your friend?

13 A That I had a deposition today.

14 Q Was any substance of the nature of the
15 deposition discussed?

16 A No.

17 Q Okay. Thanks for clarifying that. And do
18 you have any documents with you today or in front of
19 you?

20 A No.

21 Q Okay. Perfect. And is anyone else in the
22 room with you?

23 A Yes.

24 Q Who else is in the room with you today?

25 A A friend.

1 MS. KRAMER: Counsel, I would ask that
2 we have the witness be in a room by herself, just for
3 the purposes of the deposition --

4 THE WITNESS: Okay.

5 MS. KRAMER: -- if possible.

6 MS. FORD: Jocelyn, is it easy enough
7 to ask your friend to go to a different room?

8 THE WITNESS: Yeah; they can go to a
9 different room.

10 MS. FORD: Okay.

11 THE WITNESS: They're working from
12 home, so give me one second.

13 REPORTER: Did we want to go off the
14 record, or just stand by for a second?

15 MS. KRAMER: I would just stand by for
16 a second, unless it takes longer than, you know, 30
17 seconds.

18 REPORTER: Okay.

19 THE WITNESS: Okay.

20 BY MS. KRAMER:

21 Q Thank you. And since I'm not in the actual
22 room with you, I'm not able to see what you have in
23 front of you or if someone else enters the room. Can
24 you let me know if someone does enter the room at any
25 point during this deposition?

Fair Fight, Inc., Et Al. Vs. True The Vote, Et Al

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1 A Yes. I can.

2 Q Thank you. And then, Ms. Heredia, do you
3 understand that you cannot ask your attorney's help to
4 respond to a particular question that's asked?

5 A I understand.

6 Q Okay. And your attorney may object to a
7 question that I ask, but you should still respond
8 unless your attorney instructs you not to respond.
9 Does that make sense?

10 A That makes sense.

11 Q Okay. And finally, if at any time you need
12 a break, just let me know, and we can go off the
13 record for five or ten minutes if that's needed.
14 Hopefully it won't take too long, so that won't be
15 necessary, but if you need a break, just let me know.

16 A Sounds good.

17 Q Okay.

18 MS. KRAMER: And at this time, can we
19 please put up what is marked as Exhibit A?

20 TECH CONCIERGE: Please stand by. This
21 is Exhibit A.

22 (Exhibit A was marked for
23 identification.)

24 BY MS. KRAMER:

25 Q Ms. Heredia, can you see this document?

Fair Fight, Inc., Et Al. Vs. True The Vote, Et Al

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1 A Yes.

2 Q Do you recognize this document?

3 A Yes, I do.

4 Q Okay. I just want to confirm that you
5 understand that you're appearing today pursuant to
6 this Notice.

7 A I understand.

8 Q Great. Okay. So I just have some
9 background questions I want to start with.

10 MS. KRAMER: Bailey, you can take the
11 exhibit off. Thank you.

12 Q Ms. Heredia, where is your current address
13 in Georgia?

14 A It is in Banks County. It is -- the actual
15 address is 304 Borders Road, Commerce, Georgia 30530.

16 Q And how long have you resided there for?

17 A That's a tough question. Approximately four
18 years.

19 Q And are you registered to vote from this
20 address?

21 A Yes.

22 Q How long have you voted from that address?

23 A So I can't recall, but I did vote from that
24 address for the presidential election and the -- the
25 special election.

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1 Q Okay. So the November election -- the 2020
2 election -- and the January runoff?

3 A That's correct.

4 Q Okay. Great. And what is your current
5 occupation?

6 A I am a remote worker, and I'm a researcher.

7 Q For what company?

8 A For AT&T.

9 Q What kind of research do you do for AT&T?

10 A User experience research.

11 Q And that's the only company that you
12 currently work for?

13 A That's correct.

14 Q Okay. And how long have you worked there
15 since?

16 A Approximately -- less than two years.

17 Q Okay. Great. When did you live in Atlanta,
18 Georgia?

19 A I lived in Atlanta in January and February
20 of 2020.

21 Q And why did you live in Atlanta during those
22 two months?

23 A Sure. For this job, the AT&T job, I -- so
24 I -- I got the job, and it was a temporary position at
25 the time, so I moved to Atlanta for the job.

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1 Q Okay. And when you moved there for your
2 job, did you change your mailing address to reflect
3 where you lived in Atlanta for that job?

4 A I did.

5 Q And it was just a temporary job?

6 A Yes. At the time it was.

7 Q So you changed your address with the Postal
8 Service. And did you change it back once you moved
9 from Atlanta?

10 A I did not. Because I still had access to
11 the apartment, so, you know, if I needed the mail, I
12 could get it. And to be honest, I don't even get that
13 much mail.

14 Q Did you have intentions of moving back to
15 that address, if you kept your mailing address in
16 Atlanta?

17 A That's hard to say. So in March, the
18 COVID-19 pandemic hit, and we were told that we would
19 be remote. And we were told that we -- that they
20 weren't even sure when we would go back to the office.
21 So, you know, I would be remote until my job told me
22 that I had to be in person.

23 Q Have you been in person with that job yet?

24 A In February, yes.

25 Q Of this year?

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1 A Of 2020.

2 Q So -- sorry; I guess I'll clarify. You're
3 working remotely right now; is that what you --

4 A Correct.

5 Q Okay. And so, since February of last year,
6 have you gone back to working in person in Atlanta?

7 A No.

8 Q Okay. And is your mailing address still in
9 Atlanta?

10 A It's not.

11 Q It's not. Okay. When did you change your
12 address?

13 A I changed it -- I can't recall the exact
14 date, but I -- so we were supposed to be back into the
15 office in October, and then our job told us that we
16 would have to -- oh. And then in September, our job
17 told us that we would not go back into the office for
18 the rest of this year, and we would be remote
19 indefinitely, until they let us know otherwise. So
20 recently I changed my address back to Banks County,
21 because I don't know where I'll be. But ...

22 Q Okay. Okay. Thanks for clarifying that.
23 Okay. Let's start with a few questions just about the
24 2020 election. Did you vote in the 2020 primary
25 election?

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1 A You mean the presidential election?

2 Q The primary in June of that year, so before
3 the general election. So November was the general;
4 there was a primary before that. I just wanted to
5 know if you voted in the primary at all.

6 A I believe I did not.

7 Q Okay. And you voted in 2020 in November,
8 you stated; right?

9 A For the presidential election, yes.

10 Q Okay. And for that, did you request any
11 absentee ballots for the presidential election?

12 A I believe I did, but I actually never
13 received it. And so I just -- sorry. For the
14 presidential election, I believe no; for the other
15 election, the special election, I believe yes. But I
16 can't recall. I can't remember.

17 Q Okay.

18 MS. KRAMER: At this time, Bailey, can
19 we pull up Exhibit F?

20 TECH CONCIERGE: Please stand by. This
21 is Exhibit F.

22 (Exhibit F was marked for
23 identification.)

24 MS. KRAMER: Counsel, just so you know,
25 I'm representing to you Ms. Heredia's portion of the

1 Georgia voter file that's available on the Secretary
2 of State's website. Due to the size of the original
3 file, the Excel file, I can't upload it as an exhibit
4 fully, but I can -- the link's right there -- the
5 source of it. I just simply pulled out Ms. Heredia's
6 name from the big file, and that's what you're seeing
7 here.

8 BY MS. KRAMER:

9 Q So in this file, on the very first tab, is
10 the tab for the general election. And this is just
11 from the voter history file that's available on the
12 Secretary of State's website. If we go up on line 2,
13 if we scroll to column S, it says that -- and we can
14 expand that -- that you requested an absentee ballot
15 for the 2020 election. Do you remember doing this?

16 A Okay.

17 Q Ms. Heredia?

18 A I probably did. I remember that I did
19 request a mail-in ballot or absentee ballot. But I
20 just couldn't remember if it was for the presidential
21 or the -- the special election.

22 Q Okay. That's fine. And then I also want to
23 bring your attention to where it says "Ballot Status,"
24 just right next to it, the "C" -- and this is on the
25 Secretary of State's website, too -- means "canceled,"

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1 and that's reflected in row 3, when you requested --
2 well, I guess, when there was another one that was
3 sent or requested again -- you had voted in person,
4 which is reflected under column W, where it says "in
5 person."

6 Do you remember canceling your first ballot
7 that you requested?

8 A Yes. So I requested the absentee ballot,
9 and I believe I -- I never received it. I don't know
10 if it got lost or -- or what happened to it, but I
11 never received it, and the time was running out to
12 vote. So then I went to vote in person, and then they
13 made me sign a document stating that my absentee
14 ballot would be canceled because I was voting in
15 person.

16 Q Okay. Yeah; that makes sense. That's the
17 process in which the counties have to follow. I'm
18 sure you've heard of that by now.

19 MS. FORD: Courtney, just for the
20 record, I just do want to object to the foundation of
21 this document, just because we can't verify it at this
22 moment. But --

23 MS. KRAMER: Yeah.

24 MS. FORD: Just for the record.

25 MS. KRAMER: Yeah; I understand. Like

1 I said, I'm more than happy to send you a big file of
2 this, but for the purposes of the deposition, I wasn't
3 able to upload it as a exhibit like that. But I
4 understand.

5 BY MS. KRAMER:

6 Q Okay. And so in the November 2020 election,
7 you didn't actually receive any absentee ballots to
8 your address; correct?

9 A I don't remember receiving it on time.

10 Q Okay.

11 A That's why I went to vote in person.

12 Q And where did you vote in that election? Or
13 what county did you vote in?

14 A Banks County.

15 Q Okay. And at that time, were you registered
16 to vote in Banks County? Well, I guess you were
17 registered to vote in Banks County. At that time, was
18 your mailing address still the Atlanta address?

19 A This would be November 20 -- so this is
20 November 2019; correct? Twenty --

21 Q Twenty.

22 A Twenty. Is this November 2020?

23 Q Yes. Yes. So during that time, you know,
24 you previously testified that you had changed your
25 mailing address, I believe in January of February of

1 2020, because you didn't know about remote work. But
2 I'm just trying to figure out if your mailing address
3 was still the Atlanta address during the November
4 election.

5 A I believe it was.

6 Q Okay. Great. And during the November
7 election, when you went to vote in person, you weren't
8 challenged to vote -- or did you have any issues
9 voting in person?

10 A I actually did not have any issues.

11 Q Okay. And you were able to cast your
12 ballot?

13 A I was; yes.

14 Q Okay. Great. All right. So let's move on
15 to the January Senate runoff in 2021.

16 MS. KRAMER: You can take -- actually,
17 let's keep this exhibit up, just for the time being.

18 Q If you don't mind, Ms. Heredia. I'm going
19 to refer back to it; I just don't want to have to have
20 Bailey keep pulling it up and putting it back.

21 Did you vote in the January Senate runoff?

22 A I went in to vote in person. However, to
23 this day, I don't know if my ballot was counted.

24 Q Okay. So when you -- why do you say that?

25 A Why do I say --

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1 Q Why do you think your ballot wasn't counted?

2 A Oh; okay.

3 Q Sorry.

4 A So for the presidential election, I went to
5 vote in person, and I was able to log into the voter
6 registration website and check the status of my -- of
7 my vote, and it said that it was accepted. And then
8 for the special election, I did the same thing, and I
9 went to the voter registration website, and I checked
10 to see if my vote was accepted, but it was blank. So
11 I -- to this day, I don't know if it was accepted or
12 not.

13 Q Okay. So when you went to go vote, can you
14 tell me a little bit about what happened when you went
15 to go vote, since you're questioning whether your vote
16 was accepted or not? Just so I can have a little
17 background on that.

18 A Right. So for the special election, I went
19 to vote. I got in line. And when it was my turn to
20 present my identification to vote, she -- the worker
21 there wrote my name down on a piece of paper, and she
22 said that my vote was being challenged. And at that
23 point in time, I actually didn't even know what --
24 what my vote being challenged even meant. And she
25 said that I would have to -- so I asked her for

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1 clarification -- "What does that mean?" -- and she
2 said that I would have to cast my vote on paper and
3 provide two forms of identification stating that --
4 two forms of identification with my mailing address
5 that's on my driver's license in order for my vote to
6 count. So that is why I still don't know if my vote
7 was counted.

8 Q Okay. I understand that. All right.

9 MS. KRAMER: Bailey, can we please go
10 to the second tab, for the runoff?

11 TECH CONCIERGE: Yes. That's what I
12 have pulled up here.

13 MS. KRAMER: Oh; perfect.

14 TECH CONCIERGE: 2021?

15 MS. KRAMER: Yeah. Thank you.

16 TECH CONCIERGE: You're welcome.

17 BY MS. KRAMER:

18 Q Okay. So Ms. Heredia, this is from the
19 voter absentee files, like I said, from the Secretary
20 of State's website. Just different -- same file,
21 just -- well, different file, just the information for
22 2021 for that runoff. And if you look under column
23 N --

24 A Yes.

25 Q -- if we can expand that. So your mailing

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1 address under here looks as though it's in Decatur,
2 Georgia. This is just the information that the
3 Secretary of State has on their files. Did this
4 address match your driver's license at the time when
5 you went to go vote in January?

6 A No. That's not the address on my driver's
7 license.

8 Q Okay. Do you know why your mailing address
9 would be Decatur on the record for 2021 in January if
10 your registration address is in Banks County?

11 A I actually don't know.

12 Q Did you change your address between November
13 2020 and January 2021? Did you file any change of
14 address forms or have your mailing address be changed
15 to Decatur, Georgia?

16 A I submitted a change of address in February
17 of 2020. And then from there, I did not submit any
18 other change of -- changes of address with the
19 U.S.P.S.

20 Q Did you use this address with someone or an
21 organization different than the U.S.P.S., that would
22 explain why your address here is Decatur?

23 A I don't recall. I don't remember.

24 Q Have you ever lived at this address before?

25 A Have I lived in North Druid Hills Road?

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1 Q Yes.

2 A Yes.

3 Q When?

4 A In -- when I'm -- so I got the job with AT&T
5 and I moved to Atlanta; and then in March, I moved
6 back to Banks County.

7 Q Okay. And this is where you lived for those
8 two months at the beginning of 2020?

9 A Correct.

10 Q Okay. I understand that. So let's see. So
11 let me ask you a few questions about what happened
12 when you went to go vote in person.

13 MS. KRAMER: We can take this exhibit
14 down for the time being, Bailey. Thank you.

15 Q So when the election worker told you that
16 your vote was being challenged, can you tell me a
17 little bit about that exchange? What did he or she
18 give you? What did they say to you? And then exactly
19 what happened right after that?

20 A So -- sorry; can you break that down into,
21 like, one question at a time?

22 Q Sorry. Yeah. So what did the election
23 office say to you when they told you that you were
24 being challenged?

25 A Okay. She said to me that my vote was being

1 challenged. And then I asked her what that meant.
2 And she said that -- I actually don't even know if --
3 I can't even remember if she explained it, but she
4 said that I would need to fill out a paper ballot and
5 provide two forms of identification that had the
6 address that's on my driver's license in order for my
7 vote to count.

8 Q Okay. And you provided those two forms of
9 documents?

10 A Yes. I did.

11 Q Okay. So based on what they told you, if
12 you provided those two forms, then your vote would
13 count. Correct?

14 MS. FORD: Objection. Calls for some
15 speculation.

16 MS. KRAMER: I'll rephrase.

17 BY MS. KRAMER:

18 Q Based on what the election worker told you,
19 that you had to give her two forms of identification
20 in order for your vote to count, and then you gave her
21 those forms of identification, do you then believe
22 that your vote would be counted?

23 A If I relied on what she was telling me, yes.
24 But I -- you know, I would like to see, like -- so for
25 the presidential election, I was able to see actual

1 confirmation on the voter registration website. It
2 said, when I logged in -- it said, you know, "Your
3 vote was accepted." And then I did the same thing for
4 the special election, and where it usually says
5 "accepted," it was just blank. So I don't really have
6 confirmation that my vote was -- that my vote counted.

7 Q Okay. So just to clarify, for the November,
8 you did vote in person on the electronic ballot
9 machine, and the runoff was a provisional, written
10 ballot. Right?

11 A That's correct.

12 Q Okay. Did you receive a document from the
13 election official when they told you your vote was
14 being challenged?

15 A Yes. She provided a document, and it looked
16 like a printout of an email, but I can't recall what
17 was on the document. So I know it was an email, but I
18 can't recall what specifically it was, and I don't
19 have that document anymore.

20 Q Okay. Just to clarify, the person that gave
21 you that document was an election worker with Banks
22 County?

23 A I believe so; yes.

24 Q Okay. And it wasn't anybody at True the
25 Vote?

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1 A I -- I don't think so.

2 Q And it wasn't any of the defendants in this
3 lawsuit?

4 A I don't think so.

5 Q Okay. I now want to turn just to a few
6 questions about -- I guess kind of going back to some
7 of these exhibits -- about how you got to the point of
8 being challenged. I know it can be kind of confusing,
9 and it's a new area for a lot of us, but I just kind
10 of want to go through the code section with you, just
11 so we can both be on the same page.

12 MS. KRAMER: Bailey, can you please
13 pull up Exhibit J?

14 TECH CONCIERGE: Please stand by. You
15 said J; correct?

16 MS. KRAMER: J. Yes.

17 TECH CONCIERGE: This is Exhibit J.

18 (Exhibit J was marked for
19 identification.)

20 MS. KRAMER: And can we scroll -- well,
21 okay.

22 BY MS. KRAMER:

23 Q Ms. Heredia, what I'm showing you is a
24 section of the Georgia election code. This is also as
25 provided on the Secretary of State's website. And the

1 provision code in which your vote was challenged is
2 under 21-2-230, as I'm sure you know based on the
3 complaint. Are you familiar with this statute?

4 A I -- I'm not. I haven't read through this
5 statute before.

6 Q Okay. And that's completely fine. So under
7 the election code, since you're not familiar with
8 it --

9 MS. KRAMER: Can we please go to page
10 2, section I?

11 Q And Ms. Heredia, I just kind of want to go
12 through this with you, just so you can be familiar
13 that the County kind of has a certain procedure it has
14 to follow when they notify voters that they're being
15 challenged on the basis of residency.

16 And so here -- well, I don't want to read
17 this straight to you, but I do want to know if, as
18 stated in here, that you were able to -- well, I want
19 to kind of point out that it does say that because
20 they were not able to conduct a hearing, that you do
21 have to vote by provisional ballot. And you were able
22 to do so. Right?

23 MS. FORD: Courtney, I'm going to just
24 object to this to the extent you're asking her to read
25 a statute and draw legal conclusions. I think factual

1 questions are fine, but --

2 MS. KRAMER: I can rephrase. I was
3 just trying to compare what happened in person
4 compared with what the statute says. I wasn't really
5 trying to ask her to draw a legal conclusion with it.

6 MS. FORD: Jocelyn, you can answer.

7 I'll just say, I'll object to anything
8 that is asking Ms. Heredia to conclude whether what
9 she experienced conforms with section 230. But I have
10 no objection to her answering what she experienced and
11 what happened to her that day.

12 MS. KRAMER: Okay. Okay.

13 BY MS. KRAMER:

14 Q So Ms. Heredia, toward the middle of the
15 statute -- do you recall where you placed your ballot
16 once you filled it out?

17 A I -- right. Yes. I do recall. I actually
18 filled out the paper ballot, and then I had to give it
19 to the -- who I believe is the -- the worker. And she
20 told me that I could not seal it myself, so she went
21 to the back to -- there was, like, a hallway. She
22 went through the hallway and into a room. And she
23 said that she had sealed it. And that's all I know.

24 Q Okay. So you didn't see her seal the ballot
25 at all?

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1 A That's correct. I did not see her seal the
2 ballot.

3 Q Did you see any other people at the polling
4 location that day, while you were there, have to fill
5 out a paper ballot?

6 A Yes. I did, actually. A lady behind me.
7 She was, I believe, of Asian descent; I can't confirm.
8 She looked Asian -- of Asian descent. She also had to
9 fill out a paper ballot.

10 Q And when she finished filling out that
11 ballot, did you see where her ballot was placed?

12 A I did not. So I was in line before her, so,
13 you know, I -- I gave my ballot with the envelope to
14 the worker, and she said that I would need to provide
15 two forms of identification with my mailing address in
16 order for my vote to count. And then that's when she
17 went to the hallway, into a room.

18 And then at the same time, I could see that
19 this lady that was behind me was filling out a paper
20 ballot. But then at that point I left to go to
21 find -- either go home to find two forms of
22 identification, or -- I was going to -- I was going to
23 check my car to see if I had two forms of
24 identification there. So I didn't actually see what
25 happened to her ballot.

1 Q Okay. And I just want to clarify that
2 before you gave your ballot to the election worker, or
3 who you believe was the election worker, you did place
4 it in the envelope. Right?

5 A No. I did not place it in the envelope.

6 Q Okay. So you gave her the open ballot and
7 then the envelope in the other hand? Or did she have
8 the envelope? I'm just trying to figure out how --

9 A Yeah. So I provided the envelope, and then
10 I provided my ballot. But I can't remember if I
11 folded it or I just gave it to her. But I do remember
12 that I did not put it inside the envelope. And I did
13 not seal it --

14 Q Okay.

15 A -- I provided both.

16 Q Okay. Thanks for clarifying that. And then
17 I just want to touch real fast on the lady behind you.
18 You said she was filling out a provisional ballot. Do
19 you know why she was?

20 A I don't know.

21 Q Okay. So you don't know if the lady behind
22 you was a voter being challenged or if she chose to
23 vote on a paper ballot?

24 A I -- I don't know. Yeah. I -- I wasn't --
25 like, they would talk to the people individually. So

1 I -- I don't -- I don't know. I didn't overhear
2 anything.

3 Q Okay. So they talked to her individually.
4 So when the election worker told you that your vote
5 was being challenged, did they talk to you
6 individually about that as well?

7 A Yes, they did. And it wasn't, like,
8 individually, like, in a room or anything. It was --
9 you know, people are around; there's people close by
10 submitting their ballot in -- on a machine; there's
11 people in line. But she would keep her voice down
12 when she was speaking to -- to certain people.

13 Q Okay. So she didn't, like, raise her voice
14 when she was telling you that you were being
15 challenged. It wasn't some announcement to the
16 polling location.

17 A Right. It wasn't an announcement. But
18 whoever was voting by paper ballot, they would make --
19 you know, they made me and the other woman step aside
20 as other people were able to cast their ballot on the
21 machine.

22 Q Okay. But it was not public why people were
23 voting by paper ballot, based on your experience?

24 A While I was there, it was not public. But I
25 do know that my name, along with other challenged

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1 voters' names, were published on the Banks County
2 website. And it was public information for six
3 months.

4 Q Okay.

5 MS. KRAMER: Bailey, can we please pull
6 up Exhibit E?

7 TECH CONCIERGE: This is Exhibit E.

8 (Exhibit E was marked for
9 identification.)

10 BY MS. KRAMER:

11 Q Ms. Heredia, does this look familiar to
12 you -- this PDF of the website of Banks County?

13 A Yes. That's familiar. That's what I was
14 referencing --

15 Q Okay.

16 A -- in my previous question.

17 Q Okay, perfect. So can you tell me who -- or
18 I guess can you clarify: This is obviously the Banks
19 County website, and not another organization's website
20 that has, I guess, the challenge list that you're
21 referring to?

22 A Correct. This is the Banks County website.

23 Q Okay. And was this challenge list published
24 on any other website, to your knowledge?

25 A To my knowledge, no. But anything that's on

1 the internet can be downloaded, replicated, put
2 elsewhere. So it could be anywhere else.

3 Q I understand that. But I'm just kind of
4 more asking that to your knowledge, that you know of,
5 you have not seen this challenge list any other place
6 but the Banks County website?

7 A Correct.

8 Q Okay. Give me one second, Ms. Heredia. On
9 this website, did you personally ever click or
10 download the challenge list?

11 A I clicked on it, but I did not download
12 it -- downloaded it for my reference.

13 Q Do you know of anybody that did download it?

14 A I'm not.

15 Q Okay. So to your knowledge, this hasn't
16 really been put elsewhere. Like I said, to your
17 knowledge, this list hasn't been put elsewhere but
18 just this website.

19 MS. FORD: I'm going to just object
20 that it calls for some speculation.

21 THE WITNESS: Right.

22 MS. KRAMER: I understand. I'm just
23 asking the witness just to her knowledge, just right
24 now, if she knows of it being published anywhere else.

25 THE WITNESS: I don't know.

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1 BY MS. KRAMER:

2 Q Okay. And I just want to clarify that what
3 you're viewing, and also to your knowledge, this
4 website's not operated by True the Vote; correct?

5 A That's correct.

6 Q And it doesn't appear to be operated by any
7 of the defendants, in your opinion?

8 A That's correct. To what I can see on
9 this -- until "Banks County, Georgia," until the
10 "Resources" line, I -- I don't remember --

11 Q We can scroll.

12 A -- recently.

13 MS. KRAMER: Thank you, Bailey.

14 Q So, Ms. Heredia, did you see any of the
15 defendants' names on this website?

16 A I did not.

17 Q Okay. Thank you.

18 MS. KRAMER: Bailey, can we please pull
19 up Exhibit F again?

20 TECH CONCIERGE: This is Exhibit F.

21 MS. KRAMER: Perfect. Perfect.

22 BY MS. KRAMER:

23 Q Okay. Ms. Heredia, I just want to go back
24 and just kind of discuss the basis of the challenge,
25 from what's in the complaint and from what you

1 experienced.

2 As you know, you were challenged on the
3 basis of residency. And with that, I just wanted to
4 show you some instances of where your address has been
5 shown to be in Atlanta, just so you can see kind of
6 where the discrepancy might have been. Like I say,
7 under this document, the voter absentee files, your
8 mailing address says North Druid Hills, and it didn't
9 say North Druid Hills in the 2020 general election on
10 the first tab. I just wanted to point that out to
11 you. So this is just what the Secretary of State's
12 office and County offices had access to.

13 MS. FORD: Ms. Kramer, I'm just going
14 to object again, to foundation and to facts not in
15 evidence, just to the extent this is an Excel
16 spreadsheet.

17 MS. KRAMER: Okay. Okay.

18 MS. FORD: Just for the record.

19 MS. KRAMER: Yeah. That's fine. And
20 like I said, we can submit certified copies of these
21 history files as well, just for clarification.

22 BY MS. KRAMER:

23 Q So you see here that your mailing address
24 here is in Commerce, and the one for the runoff is in
25 Decatur? You see that?

1 A I do see that. However, I did submit the
2 change of address in February of 2020. So, you know,
3 I submitted my change of address in February of 2020;
4 I was not challenged for the presidential election;
5 but I was challenged for the special election.

6 And at that time, I had -- in January of
7 2021, when the special election occurred, I did not
8 change my address. So from February 2020, my -- like,
9 I had not -- so, from February 2020, when I submitted
10 my change of address, I did not do -- I'm just, like,
11 confused why for November I was able to vote and I was
12 not challenged, but I had submitted a change of
13 address in February of 2020, and -- but now, in the
14 special election, I was challenged.

15 And I believe it's because for the special
16 election, the popular vote counts, and then for the
17 presidential election, it's based off of the electoral
18 college. So whether I voted or not, that county is
19 predominantly -- it -- it's a red county. So it would
20 run red for the presidential election no matter what.
21 But for the special election, my vote would actually
22 count, because it was a popular vote.

23 Q Okay. Okay. I'm just purely making note of
24 the fact that what's on record says that your mailing
25 address here is Decatur, and this would raise the red

1 flag to the County. I'm just showing you the
2 differences in your addresses on file in the general
3 versus the runoff.

4 A Okay.

5 MS. KRAMER: Can we please pull up
6 Exhibit B?

7 TECH CONCIERGE: This is Exhibit B.
8 (Exhibit B was marked for
9 identification.)

10 BY MS. KRAMER:

11 Q Ms. Heredia, does this document look
12 familiar to you?

13 A Yes.

14 Q Okay. And does it appear to be a true and
15 accurate copy of --

16 A It does.

17 Q -- the document that you're familiar with?

18 A Yes.

19 Q Okay.

20 MS. KRAMER: Can you please scroll down
21 to page 4, Interrogatory No. 4?

22 Q So Ms. Kramer, I just want to clarify based
23 on what you've testified today. Under your response
24 here, for Interrogatory No. 4, you state that you did
25 not change your mailing address back to Banks County

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1 after you moved back to Banks County in March 2020.

2 So the address -- so I'm asking -- but you previously
3 testified, I believe, that you did change your address
4 back to Banks County for the November election.

5 MS. FORD: Objection to the extent that
6 misstated testimony.

7 THE WITNESS: Correct. I did not say
8 that.

9 BY MS. KRAMER:

10 Q Okay. I'm just trying to verify. And maybe
11 I, like, misunderstood you. Okay. So your mailing
12 address was Banks County -- or sorry; your mailing
13 address was Atlanta from the date that you submitted
14 your change of address through the election.

15 A That's correct.

16 Q Okay. And when did you change your mailing
17 address back to Banks County?

18 A I changed my mailing address back to Banks
19 County actually pretty recently.

20 Q Okay.

21 A Because I learned that my job -- I don't
22 have to go back into the office until an indefinite
23 amount of time.

24 Q Okay. Okay. September, I believe you said.
25 Okay; I was just clarifying that. That makes sense.

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1 So you agree that your mailing address was Atlanta
2 during the runoff?

3 A Correct.

4 Q Okay.

5 A And I would like to add that it was -- it
6 is -- it was in Atlanta because I still had access to
7 the apartment. So I could get my mail at any time.

8 Q I understand. I understand. I was just
9 making the comparison that, you know, your address
10 where you're registered to vote versus your mailing
11 address was different during that time period.

12 A Correct.

13 Q Okay.

14 MS. KRAMER: Bailey, can we please pull
15 up Exhibit H?

16 TECH CONCIERGE: This is Exhibit H.

17 (Exhibit H was marked for
18 identification.)

19 BY MS. KRAMER:

20 Q Ms. Heredia, is this your LinkedIn profile?

21 A That's correct.

22 Q And did you create this?

23 A Yes.

24 Q And you're the only one that has access and
25 control to it?

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1 A Yes.

2 Q Okay. I just want to understand. I guess
3 here, point out -- and if this is wrong, please
4 correct me -- but your city of where you live, on
5 LinkedIn here, shows Atlanta, Georgia.

6 MS. FORD: Objection to the extent that
7 Ms. Kramer's characterizing what the exhibit says.

8 MS. KRAMER: Okay. I'll rephrase.

9 BY MS. KRAMER:

10 Q Ms. Heredia, why does the location here
11 state Atlanta, Georgia?

12 A It states Atlanta, Georgia because that is
13 where the office -- where the CNN office is, where my
14 employer is located

15 Q Okay. And when did you -- and this is not
16 your current employer?

17 A It is my current employer, yes.

18 Q Okay. Could you please clarify? I believe
19 you testified earlier your employer was AT&T.

20 A That's correct; yes. AT&T -- CNN -- AT&T
21 owns CNN. So we're -- AT&T is the parent company, and
22 CNN is -- I'm not sure what it's called, but under
23 AT&T. So it goes AT&T, Warner Media, CNN. So
24 technically, I work for AT&T; AT&T writes my checks.

25 Q Okay. But under AT&T, the specific, I

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1 guess, department or division is CNN?

2 A That's correct.

3 Q Okay. And you never -- is Atlanta, Georgia
4 still the location on your LinkedIn profile?

5 A I believe so. I'm -- I've -- it's -- I
6 believe it's based off of what company you work at,
7 like, where your -- your company is based out of. So
8 I'm not sure if, like, I manually typed it in, or if
9 it just populates when you put in where you work.

10 Q Okay. Okay. Thank you for clarifying that.
11 Okay. So Ms. Heredia, if you don't mind, can we take
12 about a five-minute break, since we're about an hour
13 into this?

14 MS. KRAMER: If that's okay with you,
15 Counsel.

16 THE WITNESS: It's okay with me.

17 MS. FORD: Yes. Sorry, I didn't
18 realize we were on mute. Would you mind if we take a
19 ten-minute break so I can just run to the restroom?

20 MS. KRAMER: Yeah. Ten minutes is
21 fine. Is that okay with you, Ms. Heredia?

22 THE WITNESS: It's fine with me. Yeah.

23 VIDEOGRAPHER: The time is 14:58; we're
24 off the record.

25 (Off the record.)

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1 VIDEOGRAPHER: The time is 15:09; we're
2 back on the record.

3 MS. KRAMER: Great. Bailey, can we
4 please pull up Exhibit L?

5 TECH CONCIERGE: Please stand by. This
6 is Exhibit L.

7 (Exhibit L was marked for
8 identification.)

9 BY MS. KRAMER:

10 Q Ms. Heredia, does this document look
11 familiar to you?

12 A Yes. I provided this document.

13 Q And was this what you received from U.S.P.S.
14 when you changed your mailing address?

15 A That's correct.

16 Q And just so I know, because I don't believe
17 it has it on this document, this was when you changed
18 your mailing address from Banks County to Atlanta
19 during 2020; right?

20 A That's correct.

21 Q Okay. And you have not submitted another
22 one of these forms until September of 2021?

23 A Actually, I submitted another one previously
24 to September of 2021.

25 Q When did you submit another one of these?

1 A I believe it was March of 2021, because
2 the -- this mailing -- this mailing -- this forwarding
3 mailing address was set to Decatur, Georgia, and the
4 contract for the apartment for this -- for
5 Decatur -- expired. So I wanted to have another, you
6 know -- I -- so because the contract expired for the
7 Decatur apartment, I then got another apartment in
8 West Midtown. So I submitted a change of address to
9 West Midtown in March of 2021. And then I submitted
10 another change of address for Banks County in --
11 around September 2021.

12 Q Okay. So just to clarify, you had not
13 submitted a change of address form -- let me rephrase
14 that. To clarify, during the 2020 election cycle,
15 this was the only change of address form that you had
16 filed with U.S.P.S.?

17 A Yes. That's correct.

18 Q And this is what they had on file -- the
19 Atlanta address -- as your mailing address. Right?

20 A Yes. That's correct.

21 Q Okay. And from March 2021 to September of
22 2021, your mailing address was then West Midtown?

23 A That's correct.

24 Q Okay. And it wasn't until recently -- I'm
25 just trying to get these dates right. And it wasn't

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1 until recently that you submitted another change of
2 address form to have your mailing address be in Banks
3 County?

4 A Correct. I don't know the exact date, but
5 it was around September.

6 Q So fairly recently.

7 A Fairly recent; correct.

8 Q Okay. Okay. Just wanted to clarify that.
9 Great.

10 MS. KRAMER: Bailey, we can take this
11 exhibit down.

12 Q So Ms. Heredia, I want to discuss with you
13 next kind of like the basis for this lawsuit under
14 which you felt as though you were being intimidated
15 and targeted. What made you feel intimidated?

16 A So when I went to go vote, I -- you know,
17 I'm relatively new to voting. And I thought it would
18 be a super-easy process; you know, just get in line
19 and you cast your vote. But it ended up being a
20 longer process for me.

21 I -- I learned that my vote was being
22 challenged as I was there, and I actually didn't know
23 what that even meant. And -- and when I was
24 challenged, I was the only Hispanic there voting. And
25 I noticed that the only other race besides white who I

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1 believe was also challenged -- well, she casted a
2 paper ballot -- was Asian.

3 I put it -- you know, I connected the two,
4 and I thought that they were -- people of color were
5 being challenged. And that made me feel intimidated.
6 And like I said, I didn't know what that even was, and
7 I didn't even know if it was legal. So that made me
8 feel intimidated.

9 Q But to clarify what you testified earlier,
10 you don't know if the lady that was behind you -- the
11 Asian lady -- if she was being challenged or not. You
12 just know that she was voting by provisional ballot.
13 Right?

14 A That's correct.

15 Q Okay. And while you were at the polling
16 location, you said that you voted via provisional
17 ballot and this other lady. About how long would you
18 say that you were at that polling location for?

19 A Maybe three to four hours. So I -- when I
20 went to vote, I think I voted early -- actually, I
21 can't remember. But there was a line and, you know, I
22 got in line to vote; and then when I casted my vote
23 through the paper ballot, I was told that I would have
24 to provide two forms of identification saying that I
25 do live in Banks County.

1 And so because of that, I either had to go
2 all the way home and find, you know, the forms of
3 identification; or, you know, at the time, I decided
4 to search my car. So I searched my car for those two
5 forms, and then I had to get back in line -- like, the
6 back of the line -- and wait in line again. So it
7 took longer than I expected.

8 Q I understand. Just a guess: How long were
9 you actually inside the physical polling location for?
10 Not the line, but where you go to actually vote and
11 give the election worker your ID and things like that.
12 How long would you say you were in that room for?

13 A Twenty minutes, roughly.

14 Q Okay. And you don't remember if you voted
15 early or if you voted on election day?

16 A I -- I don't remember.

17 Q Okay. So you were inside that room where
18 the voters are for about 20 minutes, and you were the
19 only Hispanic person that you saw, being challenged
20 during that time. Are you aware that there were
21 multiple days to go vote in person in Georgia?

22 A Yes. I'm aware.

23 Q Okay. So there could have been other people
24 being challenged on different days, but you didn't see
25 any of them.

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1 MS. FORD: Objection. Calls for
2 speculation.

3 MS. KRAMER: I'll rephrase.

4 BY MS. KRAMER:

5 Q So you say that you felt intimidated because
6 you were the only Hispanic person there that was being
7 challenged, that you saw. I'm just clarifying that
8 that you were only in that room for a period of
9 approximately 20 minutes out of the entire time of
10 early voting and election day voting. And that's that
11 time period in which you felt intimidated.

12 A So the Banks County -- where you go vote in
13 Banks County, it's a very, very small room. I believe
14 there's only two machines, and they were only letting
15 two people vote, and then one person who was in line,
16 in the location.

17 So in that little tight space, I was only
18 there for 20 minutes; but actually at the location
19 where, you know, the line -- the line actually wrapped
20 around the building, because there was just not enough
21 space to be inside the voting -- like, inside the
22 actual building, which -- so I was actually there for
23 around three to four hours. And that's the period
24 that I felt very intimidated. Like, even when I went
25 home, I was still shocked.

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1 Q But you didn't feel intimidated or as if you
2 were being targeted until you were told that your vote
3 had been challenged?

4 A I guess -- so this is a predominantly red
5 county; it's Republican. I'm in line with non-colored
6 people. So I felt intimidated from the get-go, as
7 soon as I was there. Because -- I don't know,
8 like -- I'm the only Hispanic coming to vote at a
9 predominantly Republican county; I'm the only
10 non-white; so from there, I felt intimidated. And
11 then when they told me my vote was being challenged,
12 that's when I really felt, like, okay, like, my vote
13 is being challenged. That's when I felt it
14 stronger -- like, okay; you're trying to intimidate
15 me.

16 Q Did someone intimidate you in line leading
17 up to that point, though? Did someone say something
18 to you?

19 A No one said anything to me, but I mean,
20 people can talk with their eyes -- like, can stare.
21 So no one said anything to me, but --

22 Q So it was a feeling that you had.

23 A Yeah; was --

24 Q I'm just trying to understand the events
25 leading up to when you voted. So no one said anything

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1 to you in line that intimidated you or targeted you;
2 right?

3 A That's correct.

4 Q Okay. And it wasn't until you got to go
5 give the election worker your license -- when she told
6 you that your vote was being challenged -- that you
7 felt intimidated, based on the challenge. Correct?

8 A Based on the challenge, yes.

9 Q Okay. And do you understand that your vote
10 was challenged before you got in line that day? That
11 didn't occur when you got in line -- it didn't occur
12 when you came up to the election worker. Right?

13 MS. FORD: Objection. It's kind of a
14 vague question.

15 MS. KRAMER: I'll rephrase. Sorry,
16 Counsel.

17 BY MS. KRAMER:

18 Q Based on what you've learned thus far in
19 this citizen challenge process, as you know by the
20 complaint that you are a plaintiff on, are you aware
21 that your vote -- the challenge to the residency of
22 your vote had to have been done prior to you going to
23 vote that day?

24 A So you're asking me if I understand that the
25 challenge occurred before I was in line?

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1 Q Yes.

2 A Okay. That makes sense.

3 Q And do you know who challenged you?

4 A I can't recall their names, but I believe it
5 was two men.

6 Q Okay. And do you know anybody else who has
7 been challenged?

8 A So I don't know anyone by name who was
9 challenged, but after I was challenged, I did
10 research, and I found out that, you know, over 300,000
11 people were challenged. But I don't know anyone's
12 name who was challenged.

13 Q Okay. And I'll get to those questions in a
14 minute, about what happened after that. In Exhibit B
15 that we previously pulled up -- and we can pull it up
16 again, if you would like -- but you had stated that
17 you felt targeted by your race, and you testified that
18 here; right? That you felt as if you were targeted by
19 your race, because you were the only Hispanic person
20 in that room that you saw that was being challenged?

21 A Correct.

22 Q Okay.

23 MS. KRAMER: Can we please pull up
24 Exhibit F again?

25 TECH CONCIERGE: Please stand by. This

1 is Exhibit F.

2 MS. KRAMER: And can we please go to
3 the third tab?

4 BY MS. KRAMER:

5 Q Ms. Heredia, what I'm showing you is the
6 voter registration file, which is where people get
7 their list of challenges from, or the voter
8 information from. I've noted your counsel has
9 objected to this based on it being an Excel sheet, but
10 I will just also note that we can submit this as a
11 certified copy as well. I just pulled out your
12 section of the registration file from the Secretary of
13 State.

14 If you notice, under column Q, race says
15 "U," which is "unknown."

16 A Okay.

17 Q I also, just to clarify that ...

18 MS. KRAMER: Can we pull up Exhibit N?

19 MS. FORD: Ms. Kramer, I'm just going
20 to object to the extent you're giving testimony about
21 what an exhibit shows.

22 MS. KRAMER: Okay.

23 TECH CONCIERGE: This is Exhibit N.

24 (Exhibit N was marked for
25 identification.)

1 MS. KRAMER: Can we zoom in to Banks
2 County please? Row 15.

3 TECH CONCIERGE: That help?

4 MS. KRAMER: Yes. That's perfect.
5 Actually, Bailey, can we easily go back to Exhibit F
6 real fast? Thank you.

7 BY MS. KRAMER:

8 Q Okay. Ms. Heredia, I just want to just go
9 back to this and just kind of get your understanding
10 of it. Do you recall, when you filled out your voter
11 registration file, whether or not you put down what
12 race you were?

13 A I don't recall.

14 Q Okay. So you don't recall if you put down
15 "Hispanic" or "unknown"?

16 A I don't recall. Like it says, I registered
17 in 2017. And I haven't changed it since then. So,
18 you know, at this point, that's four years ago.

19 Q Okay. So you haven't changed your file
20 since 2017?

21 A I don't believe so.

22 Q Okay. Okay. Based on this file, in your
23 opinion, would someone know your race?

24 MS. FORD: Objection. Object on the
25 basis of foundation, and calling for speculation here.

1 MS. KRAMER: Counsel, witness said that
2 she felt targeted on the basis of race. And per the
3 challenges, this is the only information on file that
4 can be submitted for that challenge. And I'm just
5 trying to understand if someone who was viewing this
6 file would be able to target Ms. Heredia based on her
7 race, based on the information in the Secretary of
8 State's files.

9 MS. FORD: I mean, you can ask the
10 question. I'll continue to object to the extent that
11 it's not in evidence. So if this is the only thing
12 that was examined and her name is right there as well.

13 MS. KRAMER: Okay. I understand.
14 Okay.

15 BY MS. KRAMER:

16 Q So Ms. Heredia, I'll ask again: Based on
17 this, would someone be able to determine that you are
18 of Hispanic race?

19 A So, based off of what I'm seeing in the
20 document, it says race "U," which I think is
21 "unknown." However, you can easily look me up on
22 Google and find my ethnicity, just by looking at me,
23 honestly. Just as easily as you were able to find my
24 LinkedIn. Anyone can Google someone's name and find
25 out more information on them.

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1 Q Okay. And do you know if somebody did that?

2 A I don't know.

3 Q And to your knowledge, your challenge was
4 just solely based on residency; correct?

5 A I'm sorry; can you repeat that?

6 Q Based on your knowledge of the lawsuit and
7 the complaint, and your challenge, your specific
8 challenge was only based on your residency. Is that
9 correct?

10 A So I'm not sure if my challenge was just
11 based on my residency. I guess that's one part of it.
12 But I do know that, just from my research after I was
13 challenged, a majority of the people who were
14 challenged were people of color.

15 Q You know that to -- how do you know that?

16 A Just off of research. Googling, you know,
17 who was challenged. And I -- through Googling it, I
18 found that approximately 300,000 people were
19 challenged, and a majority of them were either in
20 counties that have predominantly people of color
21 residing in them or people of color in other counties.

22 Q So -- okay. So I understand your last part,
23 but can you kind of help walk me through how you --
24 what you read, or how you know that these people were
25 predominantly of color, that were challenged? You

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1 told me the makeup of the counties that were
2 challenged, but not the people that were challenged in
3 those counties.

4 A I guess -- so I say that because my county,
5 Banks County, is not predominantly -- it does not have
6 diversity. So I guess I'm speculating. Based off my
7 experience, the county that I'm in, it's not a county
8 where there's a lot of people of color. But I do know
9 that I was challenged, and counties that have people
10 of color were also challenged.

11 Q But you don't know if those people --

12 A And --

13 Q -- challenged were people of color.

14 A Correct. I can't verify it. I just Googled
15 it. So --

16 Q So would it be correct to say, based on your
17 testimony, that you don't know the ethnicities of
18 other people who were challenged?

19 MS. FORD: Objection. Mischaracterizes
20 testimony.

21 MS. KRAMER: I'm trying to clarify if
22 the witness knows or is just speculating as to the
23 ethnicity of others who were challenged. Not the
24 makeup of the counties, but the people on the
25 challenge lists.

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1 THE WITNESS: So you're saying the
2 people of the challenge list? So I know I'm a person
3 of color who does not live in a predominantly -- in a
4 county that has other people of color. So I'm basing
5 it off of my experience.

6 BY MS. KRAMER:

7 Q Okay. Okay. I understand that. I'm just
8 trying to understand your previous statement. Do you
9 know others who were challenged who were also of a
10 different ethnicity than the predominant ethnicity in
11 that county?

12 A No. I do not know their names.

13 Q Okay. And you don't know any other people,
14 or their ethnicity, that were challenged in your
15 county. Right?

16 A I don't personally know other people who
17 were challenged.

18 Q Okay. Okay. And you didn't look their
19 ethnicity up online or anything like that; did you?

20 A I did not search for their names and then
21 try to find their ethnicity; no.

22 Q Okay. You just know that based on your
23 research, there was a large number of people that were
24 challenged; is that what you're trying to say?

25 A Correct. It was an article that had

1 information about the challenge, and all it said was
2 it was -- it said a lot of information. But to your
3 point -- I'm sorry; what was the point?

4 Q I'm saying that, based on your research, you
5 said that there were a lot of challenges, and I was
6 just confirming that you don't personally know of any
7 of the ethnicities of those other challenges besides
8 yourself.

9 A Correct. I can't verify.

10 Q Okay. And you just read this, like, in an
11 article?

12 A Several articles, with a Google search.

13 Q Okay. Like news outlets?

14 A Yeah. It might have been news outlets, and
15 different people who wrote about it.

16 Q Okay. So people's, like, personal blogs, or
17 something of that nature? I'm just trying to get an
18 understanding of what you read.

19 A No. It wasn't personal blogs. It was what
20 I believed as trustworthy. So news organizations.

21 Q Were any of them certified, like, public
22 records or documents?

23 A No.

24 Q They were just news cycles, or news outlets?

25 A Correct.

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1 Q That in your personal opinion are reputable?

2 A Correct.

3 Q Okay.

4 MS. KRAMER: Oh, Bailey, you can take
5 this down. Thank you. Sorry.

6 Q How did you get involved with Fair Fight?

7 A So when I learned that my vote was being
8 challenged, I went home and I was confused by the
9 whole experience. Like I said before, I actually
10 questioned whether this was legal. So I called a
11 voting rights hotline, and I asked them for
12 information on what being challenged meant, and I told
13 them my story. And months later, I was contacted by
14 Fair Fight.

15 Q Okay. Which hotline did you call?

16 A I don't remember the specific hotline, but
17 it was, like, a voter rights hotline.

18 Q Okay. And it wasn't the Secretary of
19 State's hotline?

20 A So I actually -- so I called the voter
21 rights hotline, and then they told me to -- because I
22 was asking them if there was a way to verify that my
23 vote would count, and they told me to call the
24 secretary -- I'm actually not sure of her title. But
25 I guess it's someone in Banks County who can verify

1 whether my vote was counted, and it was on the Banks
2 County website -- the phone number. And I called
3 several times, and nobody picked up.

4 Q When was the last time that you called Banks
5 County to figure out if your vote was counted?

6 A Maybe February of 2020. So like, within the
7 same time frame; not recently.

8 Q Do you mean to say February 2021?

9 A Oh, sorry. February of 2021.

10 Q That's okay. And so at what point -- about
11 when did Fair Fight reach out to you?

12 A I don't remember the exact date, but I
13 remember it was months later.

14 Q Months later. So like, months had passed
15 since the last time you had tried to call the
16 elections office to figure out if your vote was
17 counted?

18 A It was so long ago that I don't remember the
19 exact date. But it could have been a month later,
20 months later -- I can't -- I can't say when it was. I
21 just don't remember.

22 Q Okay. That's fine. When you tried to reach
23 the elections office in Banks County, did you ever
24 leave a message with the County?

25 A I don't remember if that was possible.

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1 Q Did you ever file a complaint with the
2 County?

3 A No.

4 Q Did you ever email the County?

5 A No. I don't -- I don't even know where --
6 like, who to email about it.

7 Q Okay. So who did you call at Banks County,
8 if you went to the website?

9 A At this point in time, I don't remember. So
10 on the website, there was just -- it said, like, you
11 know, polling hours; you know, information on how to
12 vote; and then it was, like, if you have any
13 questions, issues, whatever, the number was there.

14 Q Okay. Do you have a guess of about how many
15 times you called that number -- just a rough guess?

16 A Maybe, like, five times.

17 Q Okay. But you didn't try to reach out to
18 the County another -- or did you look through the
19 County website to find if there was an email address?

20 A I was looking for, like, any type of contact
21 information. So I feel like if there was an email, I
22 would have found it. All I remember was there being a
23 phone number.

24 Q Okay. Besides calling the elections office
25 and the voter rights hotline, did you call any

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1 other -- well, I guess you talked to the Secretary of
2 State, you said. Did you talk to any other hotlines
3 or people, officials, about your concerns about your
4 vote?

5 A I just talked to Christina when -- I just
6 talked to the hotline, and then Christina contacted me
7 from Fair Fight. So just them and the Banks County
8 contact.

9 Q Okay. Have you talked to anybody from Banks
10 County up to this point?

11 A No.

12 Q Were you ever notified that you had been
13 removed from the voter list?

14 A I have not been -- have I been contacted?

15 Q Correct.

16 A I have not been contacted.

17 Q So to your knowledge, you are still on that
18 voter list in Banks County?

19 A To my knowledge, I could still be on that
20 challenged voter list.

21 Q Okay. I'm just clarifying that no one's
22 contacted you, and that you haven't received anything
23 notifying you, that you're in jeopardy of being taken
24 off the list.

25 A You say in jeopardy of being taken off the

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1 list of challenged voters?

2 Q No; not of challenged voters. Of being
3 taken off the list of registered voters for Banks
4 County.

5 A Correct. I have not been contacted by
6 anyone from Banks County.

7 Q Okay. And just to clarify, since February
8 of this year, you haven't tried to reach back out to
9 Banks County to find out if your vote was counted?

10 A That's correct. I haven't contacted Banks
11 County. But I did -- I don't know, I guess
12 recently -- look at the voter registration page to see
13 if there was anything that would say if my vote was
14 counted or not.

15 Q Okay. And you're still able to log into the
16 Banks County -- are you still able to log into your
17 voter registration page for the State of Georgia?

18 A Yes.

19 Q And it still says that you're a registered
20 voter?

21 A Yes.

22 Q Okay. Just making sure. So after Fair
23 Fight reached out to you -- or I guess -- who from
24 Fair Fight reached out to you?

25 A The only person I remember is Christina.

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1 Q You haven't talked to anybody else involved
2 with Fair Fight about this?

3 A My lawyer, Uzoma; and that's all, I believe.

4 Q And did she approach you, I guess, about
5 being a plaintiff in this lawsuit?

6 MS. FORD: Objection to the extent this
7 is going to get into attorney-client, confidential
8 conversations.

9 MS. KRAMER: I'll rephrase.

10 BY MS. KRAMER:

11 Q Did you ask to be a plaintiff in this
12 lawsuit, or did someone ask you to be a plaintiff in
13 this lawsuit?

14 MS. FORD: Jocelyn, I'm just going to
15 object and instruct you not to answer, to the extent
16 that you're going to reveal any conversations that you
17 had with me or Uzoma.

18 Q Who all did you communicate with regarding
19 your concerns about being intimidated as a voter?

20 A The hotline and Christina.

21 Q When you called the hotline, did they have
22 you fill out any kind of complaint or form or
23 documentation describing your experience?

24 A They took my story and what happened, and
25 that was all.

1 Q And did they only communicate with you via
2 phone, or did they ever communicate with you in other
3 ways?

4 A Just phone. Oh -- yeah; just phone --

5 Q Do you know --

6 A -- the hotline.

7 Q Oh, sorry.

8 A So for the hotline, it was just phone. And
9 then I've communicated with Christina through email.

10 Q Okay. I understand that. I was just more
11 trying to verify for the hotline that you called. And
12 do you recall the name of that hotline or where you
13 found that phone number?

14 A I don't remember the phone number; don't
15 remember, like, the actual name of the hotline. I
16 just know it was a voter rights hotline.

17 Q Okay. I'm trying to figure out where you
18 found that number. Did you Google it? Did you ask a
19 friend? How did you come across -- how did you know
20 to call this hotline?

21 A I'm pretty sure I Googled it.

22 Q Do you recall what you Googled when you were
23 trying to find out who to call?

24 A I think I -- so before I even called the
25 hotline, I did research on what being a challenged

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1 voter meant. And then within that, there was, like, a
2 voter rights page. And then I clicked that, and it
3 had a hotline.

4 Q Do you recall what website you read the
5 research about? Sorry. Do you recall what website
6 you looked at when you were learning about what being
7 a challenged voter meant? Sorry; I'm trying to phrase
8 that the way you said it. But what website that was
9 on?

10 A So I looked at several pages.

11 Q Okay. Can you give me an example of a
12 couple of those?

13 A News outlets; maybe state official pages. I
14 just --

15 Q Do you recall which news outlets -- oh,
16 sorry. Finish; sorry.

17 A I just can't recall. Like, I just looked up
18 "challenged vote" or something around those lines.
19 And just whatever popped up there is what I clicked
20 through.

21 Q With these news outlets that you said that
22 you possibly looked at, would these be similar news
23 outlets to the ones you described when talking about
24 the large amount of challenged voters, previously?

25 A It could be. I just don't remember.

1 Q Okay. So I just want to go back through,
2 just so I understand, like, the timing of some of
3 this, Ms. Heredia. When did you find out -- or I
4 guess, have you consistently worked at your job since
5 January of 2020?

6 A Can you repeat your question? Have you
7 consistently worked at your job --

8 Q Have you been a fulltime employee of your
9 current employer since January of 2020?

10 A No.

11 Q At what point did you become a fulltime
12 employee?

13 A It was February 2021.

14 Q So around the same time that you became a
15 plaintiff in this lawsuit?

16 A I don't remember when I became a plaintiff
17 of this lawsuit.

18 Q But it was sometime after January of 2021;
19 correct?

20 A That I got a fulltime -- that I was a
21 fulltime employee?

22 Q Well, you stated that you became a fulltime
23 employee in February of 2021. I'm just trying to
24 figure out, at what point did you become a plaintiff
25 in this lawsuit? I'm just confirming that it was

1 sometime after January of 2021.

2 A That sounds accurate, because the special
3 election was in 2021. So sounds accurate.

4 Q And does your current job know about your
5 involvement in this lawsuit?

6 A So they do, because I went to them asking if
7 I was able to, given the nature of my job. I wanted
8 to confirm with their law department that I was able
9 to be a plaintiff in this case.

10 Q Can you explain to me what you mean by the
11 nature of your job?

12 A So the department that I work for is CNN.
13 So it's a media company. So I wanted to make sure
14 that my job didn't prohibit me or -- I wanted to make
15 sure that I could keep my job and be a plaintiff in
16 this case.

17 Q So you got your job before you were a
18 plaintiff in the lawsuit?

19 A Right. But I was not a fulltime. So at the
20 time, I was a temporary.

21 Q Okay. Did you become -- I'm trying to
22 understand the timeline here. At what point did you
23 become a fulltime employee?

24 A Around February. So I've always worked for
25 this organization --

1 Q Yeah.

2 A -- but initially, I was temporary, until I
3 got a fulltime offer.

4 Q So at the time that you were contemplating
5 being a plaintiff in this lawsuit, you were a
6 temporary employee. Is that what you're saying?

7 MS. FORD: Ms. Kramer, I'm just going
8 to object to the relevance of this line of
9 questioning.

10 MS. KRAMER: I'm just trying to figure
11 out the timeframe, and based on the witness's
12 testimony -- nature of your job -- I'm just trying to
13 understand what the concern was and when she became a
14 fulltime employee. And then that also goes to
15 residency questions, of if she knew she was going to
16 be staying in Atlanta or going back to Banks County.
17 I'm just trying to understand the timeframe of all
18 this.

19 MS. FORD: Okay. I'm not sure that it
20 matters what the exact nature of her job was at the
21 time she became the plaintiff.

22 VIDEOGRAPHER: Counsel, this is Todd,
23 the videographer. I need to start a new file,
24 whenever you get a second. It'll take me about five
25 seconds to do it.

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1 MS. KRAMER: Okay. You can go ahead
2 and do that.

3 VIDEOGRAPHER: This is the end of media
4 file number one. The time is 16:03. We're off the
5 record.

6 (Off the record.)

7 VIDEOGRAPHER: This is the beginning of
8 media file number two. The time is 16:04. We're back
9 on the record.

10 MS. FORD: And Ms. Kramer, just real
11 quick, if you have a significant number of questions
12 remaining, I would just suggest a break. Because
13 we're coming on another hour.

14 MS. KRAMER: I only have a few more
15 questions, if that's okay.

16 MS. FORD: Jocelyn, are you okay with
17 that, or would you like a break?

18 THE WITNESS: Sure. Let's keep going,
19 and I'll request a break if it's too many questions.

20 MS. KRAMER: I'll try to keep it brief,
21 Ms. Heredia. I know it's Friday. Okay. I won't ask
22 many more questions; I just want to clarify --

23 Counsel, if you'll permit, I just want to clarify what
24 we just discussed, just so I understand.

25 //

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1 BY MS. KRAMER:

2 Q Ms. Heredia, you say that you were a
3 temporary employee at CNN at the time you filed the
4 lawsuit, and at some time after that time, you became
5 a fulltime employee?

6 MS. FORD: I'm just going to object
7 that I believe that mischaracterizes testimony, though
8 I understand we're trying to clarify testimony at this
9 point. Ms. Kramer, can you just phrase it in a direct
10 question for Jocelyn to answer?

11 MS. KRAMER: Yeah, sure.

12 BY MS. KRAMER:

13 Q Is it true that you became a fulltime
14 employee at CNN after this lawsuit was filed?

15 A I don't remember when the lawsuit was filed
16 originally. Like, I don't know the dates to be able
17 to tell you whether I was a fulltime after or before.

18 Q Okay. But you just testified that you were
19 a temporary employee at the time, when you were asking
20 if it was okay that you would be involved in this,
21 with your work.

22 A Right. In January -- so the special
23 election was in January, and then I guess -- so in
24 January I was a temporary. And then in February I was
25 fulltime. Around those dates. It might have been

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1 March -- February, March. Around -- it's around the
2 time of the end-of-year review, where they review your
3 performance. And it's usually around February or
4 March.

5 Q Okay. I understand. I really was just
6 clarifying what you had stated before about --

7 A Okay.

8 Q -- about your status of your employment at
9 the time of the lawsuit. I thought you had said that
10 you were a temporary employee; that's why you were
11 asking about your job. I wasn't trying to confuse
12 you, or anything like that. I was just trying to get
13 clarification on that. Like I said, correct me if I'm
14 wrong, please.

15 A Okay.

16 Q Okay. I have, like, two more questions
17 about this, and then I'm moving on. So your job knew
18 about the lawsuit prior to offering you the fulltime
19 position?

20 MS. FORD: Ms. Kramer, I'm just going
21 to object on the basis of relevance to this question.

22 MS. KRAMER: Okay. I will ask that the
23 witness please answer.

24 THE WITNESS: Can you repeat the
25 question?

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1 BY MS. KRAMER:

2 Q Did your job know about the lawsuit prior to
3 offering you a fulltime position?

4 A I actually don't know. I -- like I said, I
5 don't remember what specific dates I got the fulltime
6 position. You know, I -- I would have to look on --
7 look through my pay stubs and find the specific date
8 that I became a fulltime position.

9 Q Okay. Were you offered anything of value to
10 be a plaintiff in this lawsuit?

11 A No.

12 Q Who is paying your legal fees for this
13 lawsuit?

14 MS. FORD: Objection to the extent this
15 goes into privileged legal matters. So I'll instruct
16 you not to answer, Jocelyn.

17 MS. KRAMER: Is -- okay.

18 BY MS. KRAMER:

19 Q Is Fair Fight paying your legal fees today?

20 MS. FORD: Jocelyn, I'll instruct you
21 not to answer.

22 BY MS. KRAMER:

23 Q Ms. Heredia, has anyone from True the Vote
24 reached out to you about your eligibility to vote?

25 A No.

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1 Q Have any of the defendants contacted you
2 about your eligibility to vote?

3 A No; they have not.

4 Q Has anybody besides the election worker at
5 Banks County come up to you and discussed your
6 challenge eligibility?

7 A Correct.

8 Q So the only time this has been discussed, or
9 that you've been notified of this, was on election
10 date or the day that you went to vote in Banks County?

11 A Right. The day of.

12 Q And to your knowledge, you are still
13 registered to vote, based on the State's website?

14 A Yes.

15 Q And have you received -- has anyone reached
16 out to you to try to intimidate you or harass you
17 based on your eligibility to vote since that election
18 day?

19 A No. No one has contacted me.

20 Q So the only time that you felt intimidated
21 or targeted was that day?

22 MS. FORD: Objection on --

23 MS. KRAMER: Based on --

24 MS. FORD: I'm just going to object on
25 the basis that it mischaracterizes prior testimony.

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1 MS. KRAMER: I'll rephrase.

2 BY MS. KRAMER:

3 Q Has there been any other documents sent to
4 you or communications relayed to you about your
5 challenged eligibility to vote since election day?

6 A That's correct. I haven't received any
7 documents about the matter. Or --

8 Q Or any communications?

9 A -- emails. That's correct. No
10 communications.

11 Q Okay. Did you know who or what True the
12 Vote was, prior to this lawsuit?

13 A No.

14 Q And just to clarify, you haven't talked to
15 anybody at True the Vote about anything related to
16 your vote?

17 A That's correct. I have not talked to anyone
18 from True the Vote.

19 Q Have you tried to reach out since February
20 to the election board to discuss your concerns about
21 your vote?

22 A No, I haven't.

23 Q And was the lawsuit -- based on your
24 recollection, was this filed after the last time you
25 tried to contact Banks County? I'll rephrase that.

1 Since this lawsuit's been filed, have you tried to
2 reach out to Banks County at all?

3 A No, I have not.

4 Q Okay. And as it stands today, Ms. Heredia,
5 where is your current mailing address?

6 A 304 Borders Road, Commerce, Georgia 30530.

7 Q Okay. And that wasn't changed until
8 September of this year?

9 A Back to Banks County; correct.

10 Q Okay. So during that time, it was on file
11 with U.S.P.S. as being in Atlanta?

12 A That's correct. Yeah, that's -- sorry.
13 That's correct. Because I have access to the
14 apartment.

15 Q Okay. And besides your attorney -- I'm
16 assuming, when you say Christina, you mean Ms. Ford;
17 right?

18 A That's correct.

19 Q Besides communicating with Ms. Ford, you
20 haven't talked with anybody else at Fair Fight or
21 involved with Fair Fight?

22 A I've talked to Uzoma, and that's all.

23 Q Are you a member of Fair Fight?

24 A No.

25 Q It's an organization, so I'm just asking if

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1 you're a member of the organization.

2 A Oh. No.

3 Q Okay. I don't believe I have any further
4 questions.

5 MS. FORD: Great. I also do not have
6 any questions.

7 REPORTER: I have a couple questions,
8 before we go off the record. Ms. Ford, would your
9 client like to read and sign or waive signature?

10 MS. FORD: She would like to --

11 VIDEOGRAPHER: Let me go -- video -- if
12 that's all right.

13 MS. FORD: Sorry; I didn't hear that.

14 VIDEOGRAHPER: Can we stay -- do we
15 need to go off the video record?

16 REPORTER: I just need this for the
17 transcript.

18 VIDEOGRAPHER: We can keep going. I
19 apologize.

20 REPORTER: Ms. Ford, would your client
21 like to read and sign or waive signature?

22 MS. FORD: She would like to read and
23 sign.

24 REPORTER: Okay. And then Ms. Kramer,
25 would you like a copy of the transcript?

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1 MS. KRAMER: Please.

2 REPORTER: All right. And then Ms.

3 Ford, would you like a copy?

4 MS. FORD: Yes, we would. Thank you.

5 REPORTER: All right. And then -- I'm
6 so sorry; I don't -- would your co-counsel like a copy
7 as well?

8 MS. FORD: No; we just need one copy.

9 MR. NKWONTA: Yeah; it's all going to
10 the same firm.

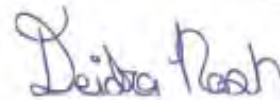
11 REPORTER: Okay. I got you. All
12 right. The time is 4:18, and we are off the record.

13 (Signature Reserved.)

14 (Whereupon, at 4:18 p.m., the
15 proceeding was concluded.)
16
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CERTIFICATE OF NOTARY PUBLIC

I, DEIDRA MUSICK NASH, the officer before whom the foregoing proceedings were taken, do hereby certify that any witness(es) in the foregoing proceedings, prior to testifying, were duly sworn; that the proceedings were recorded by me and thereafter reduced to typewriting by a qualified transcriptionist; that said digital audio recording of said proceedings are a true and accurate record to the best of my knowledge, skills, and ability; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this was taken; and, further, that I am not a relative or employee of any counsel or attorney employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.



DEIDRA MUSICK NASH

Notary Public in and for the
State of Georgia

[X] Review of the transcript was requested.

CERTIFICATE OF TRANSCRIBER

I, KATHLEEN LEISERSON, do hereby certify that this transcript was prepared from the digital audio recording of the foregoing proceeding, that said transcript is a true and accurate record of the proceedings to the best of my knowledge, skills, and ability; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this was taken; and, further, that I am not a relative or employee of any counsel or attorney employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.



KATHLEEN LEISERSON

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1 Christina Ford

2 cford@elias.law

3 October 29, 2021

4 RE: Fair Fight, Inc., Et Al. v. True The Vote, Et Al
5 10/15/2021, Jocelyn Heredia (#4845630)

6 The above-referenced transcript is available for
7 review.

8 Within the applicable timeframe, the witness should
9 read the testimony to verify its accuracy. If there are
10 any changes, the witness should note those with the
11 reason, on the attached Errata Sheet.

12 The witness should sign the Acknowledgment of
13 Deponent and Errata and return to the deposing attorney.
14 Copies should be sent to all counsel, and to Veritext at
15 litsup-ga@veritext.com

16
17 Return completed errata within 30 days from
18 receipt of testimony.

19 If the witness fails to do so within the time
20 allotted, the transcript may be used as if signed.

21
22 Yours,

23 Veritext Legal Solutions
24
25

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1 Fair Fight, Inc., Et Al. v. True The Vote, Et Al

2 Jocelyn Heredia (#4845630)

3 E R R A T A S H E E T

4 PAGE_____ LINE_____ CHANGE_____

5 _____

6 REASON_____

7 PAGE_____ LINE_____ CHANGE_____

8 _____

9 REASON_____

10 PAGE_____ LINE_____ CHANGE_____

11 _____

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14 _____

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16 PAGE_____ LINE_____ CHANGE_____

17 _____

18 REASON_____

19 PAGE_____ LINE_____ CHANGE_____

20 _____

21 REASON_____

22 _____

23 _____

24 Jocelyn Heredia

Date

25

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1 Fair Fight, Inc., Et Al. v. True The Vote, Et Al

2 Jocelyn Heredia (#4845630)

3 ACKNOWLEDGEMENT OF DEPONENT

4 I, Jocelyn Heredia, do hereby declare that I
5 have read the foregoing transcript, I have made any
6 corrections, additions, or changes I deemed necessary as
7 noted above to be appended hereto, and that the same is
8 a true, correct and complete transcript of the testimony
9 given by me.

10
11 _____
12 Jocelyn Heredia

_____ Date

13 *If notary is required

14 SUBSCRIBED AND SWORN TO BEFORE ME THIS

15 _____ DAY OF _____, 20____.

16
17
18 _____
19 NOTARY PUBLIC
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Georgia Code

Title 9, Chapter 11

Article 5, Section 9-11-30

(e) Review by witness; changes; signing.

If requested by the deponent or a party before completion of the deposition, the deponent shall have 30 days after being notified by the officer that the transcript or recording is available in which to review the transcript or recording and, if there are changes in form or substance, to sign a statement reciting such changes and the reasons given by the deponent for making them. The officer shall indicate in the certificate prescribed by paragraph (1) of subsection (f) of this Code section whether any review was requested and, if so, shall append any changes made by the deponent during the period allowed. If the deposition is not reviewed and signed by the witness within 30 days of its submission to him or her, the officer shall sign it and state on the record that the deposition was not reviewed and signed by the deponent within 30 days. The deposition may then be used as fully as though signed unless, on a motion to suppress under paragraph (4) of subsection (d) of Code

Section 9-11-32, the court holds that the reasons given for the refusal to sign require rejection of the deposition in whole or in part.

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VERITEXT LEGAL SOLUTIONS
COMPANY CERTIFICATE AND DISCLOSURE STATEMENT

Veritext Legal Solutions represents that the foregoing transcript is a true, correct and complete transcript of the colloquies, questions and answers as submitted by the court reporter. Veritext Legal Solutions further represents that the attached exhibits, if any, are true, correct and complete documents as submitted by the court reporter and/or attorneys in relation to this deposition and that the documents were processed in accordance with our litigation support and production standards.

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