

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

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**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.*

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

**Hon. Steve C. Jones**

**Defendants' Response in Opposition to Plaintiffs' Motion for Summary  
Judgment**

**Defs.' Resp. to Pls.'  
Mot. for Summ. J.**

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## Introduction

After nearly sixteen months of litigation, Plaintiffs are no closer today to proving that Defendants True the Vote, Inc. (“**TTV**”), Catherine Engelbrecht, Derek Somerville, Mark Davis, Mark Williams, Ron Johnson, and James Cooper (collectively, “**Named Defendants**”) violated Section 11(b) of the Voting Rights Act of 1965 (“**§ 11(b)**”) than they were when this Court denied their Motions for a Temporary Restraining Order and/or Preliminary Injunction. Order, ECF No. 29 (finding the “evidence provided to date does not show Defendants have harassed or intimidated voters”). *Id.* at 26. The same is true today—Plaintiffs have not provided sufficient (or any) evidence to “connect intimidation or harassment (real or attempted) to Defendants.” *Id.*

The undisputed facts show Named Defendants never contacted Challenged Voters directly; they carefully analyzed the data underlying their Voter Challenges, and they submitted Voter Challenges in accordance with Georgia law. They never sought to remove any voter from the voter registration lists. They never threatened legal, economic, or physical harm to any Challenged Voter. Plaintiffs failed to meet their burden of proof. Named Defendants’ Motion for

Summary Judgment should be granted.

### **Argument**

#### **I. The Plaintiffs produced no evidence that Named Defendants intimidated them in violation of § 11(b).**

Plaintiffs state that threats or intimidation “can appear in several forms, and subtler, nonviolent voter-related harm can give rise to a Section 11(b) violation.” Pls.’ Br. in Supp. of Pls.’ Mot. for Summ. J., ECF No. 156-1 at 9. (“**Pls.’ MSJ**”). Named Defendants acknowledged such in their Motion for Summary Judgment. *See* Defs.’ Br. in Supp. of Defs.’ Mot. for Summ. J. (“**Defs.’ MSJ**”), ECF No. 155-1 at 4 (citing *Nat’l Coal. on Black Civic Participation v. Wohl* (“**Wohl I**”), 498 F. Supp. 3d 457, 477 (S.D.N.Y. 2020)). Named Defendants provided many examples where courts found § 11(b) violations, but they all had two things in common: (1) the defendants made direct contact with voters or those attempting to help voters; and/or (2) the defendants acted in an unlawful manner. *See* Defs.’ MSJ at 4-7 (detailing cases where defendants’ § 11(b) violations found).

Plaintiffs’ additional case citations don’t support their assertions either. In the first, the defendants published a written report to national media, after being warned by election officials not to do so, that included voter information, titled

“Alien Invasion I,” which accused voters of committing felonies. *League of United Latin Am. Citizens - Richmond Region Council 4614 v. Pub. Int. Legal Found.* (“**LULAC**”), No. 1:18-CV-00423, 2018 WL 3848404 at \*1 (E.D. Va. Aug. 13, 2018). LULAC bears no relation to the undisputed facts here—it is undisputed that Named Defendants did not publicly publish any of the Challenge lists submitted to county election boards. TTV Tr. 257:11-14, ECF No. 155-7; Second Somerville Tr. 71:16-72:19; 72:21-73:14, ECF No. 155-14; Second Davis Tr. 46:3-14; 80:7-10, ECF No. 155-17 (collectively, “**No Publication Citations**”).

The second case involved a political party allegedly intimidating voters on Election Day by posting off-duty sheriffs and policemen—some of whom were wearing equipment normally associated with law enforcement personnel such as two-way radios and firearms—at polling places in minority precincts. *Democratic Nat. Comm. v. Republican Nat. Comm.*, 671 F. Supp. 2d 575, 579 (D.N.J. 2009), *aff’d*, 673 F.3d 192 (3d Cir. 2012). Plaintiffs have provided no evidence that Named Defendants advocated for placing armed off duty law enforcement personnel at any polling place, let alone polling places in minority precincts (Plaintiffs’ allegations that TTV wanted to have Navy SEALs “patrol” polling

places is unsupported by evidence, *infra*, at [Part II.B.2.](#)).

In short, Plaintiffs cannot cite to even one controlling precedent which sustains their allegation that submitting challenges allowed under state law, without any communication between Named Defendants and voters, without any Named Defendants' publication of the Challenges, and without any Named Defendant threatening any voter with physical, legal, or economic harm if they voted, can support a claim of an § 11(b) violation. The undisputed facts are clear—Named Defendants did not participate in any action which is analogous to any actions where § 11(b) violations have been found. Named Defendants' Motion for Summary Judgment should be granted.

**A. Scott Berson lacks Article III standing because Named Defendants did not submit voter challenges against him in Muscogee County.**

A plaintiff bears the burden of proof on the threshold jurisdictional question of standing and must prove each of the following standing elements: “(1) an injury in fact that (2) is fairly traceable to the challenged action of the defendant and (3) is likely to be redressed by a favorable decision.” *Jacobson v. Fla. Sec’y of State*, 974 F.3d 1236, 1245 (11th Cir. 2020).

Scott Berson was a challenged voter in Muscogee County. Plaintiff Scott

Berson's Responses to Defendants' First Set of Interrogatories (Jun. 23, 2021) ("**Berson Resp. to Interrogs.**"), ECF No. 155-23, Resp. No. 3. Mr. Berson was never contacted directly by any Challenger, including any Named Defendant. *Id.* at Resp. No. 14. Mr. Berson read in the paper that challenges had been filed and he "figured [he] was probably on the list." *Id.* at Resp. No. 6. 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. *Id.* 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. *Id.* at Resp. Nos. 12, 13. Mr. Berson describes having to find suitable identification and proof of residency after changing mailing addresses as "extremely frustrating and burdensome." *Id.* at Resp. No. 8. Mr. Berson never provided admissible evidence or testimony that he was intimidated or threatened by the Challenge.

TTV did not submit any Challenge in Muscogee County. TTV's Amended Responses to Plaintiffs' First Requests for Production (Mar. 24, 2021) ("**TTV Am. Resp. First RFP**"), ECF No. 155-6, Resp. No. 2. No one used the



Davis/Somerville Challenge List to submit a § 230 Challenge in Muscogee County. Second Davis Tr. 144:7-15.<sup>1</sup>

Plaintiffs have shown no evidence that Mr. Berson suffered an injury in fact that is traceable to any Named Defendant. First, Mr. Berson has not provided any testimony that he was intimidated, threatened, or even contacted by any Challenger. Mr. Berson's vote was accepted after he provided the Muscogee County officials with proof of residency, so he suffered no harm. Even if Mr. Berson was harmed by being required to prove his residency, he has not shown evidence causally linking this (alleged) harm was due to any action of a Named Defendant. Therefore, Mr. Berson lacks Article III standing because he has no injury in fact that is traceable to a Named Defendant in this case. Because he lacks standing, this Court should grant Named Defendants' motion for summary judgment, as related to his claims.

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<sup>1</sup> Plaintiffs offered declarations by Stephanie Pfeiffer Stinetorf, ECF No. 156-20, and Gamaliel Warren Turner, Sr., ECF No. 156-21 in support of their Motion for Summary Judgment. Both Ms. Stinetorf and Mr. Turner are registered to vote in Muscogee County. Since the undisputed evidence shows no Named Defendant submitted a challenge in Muscogee County, these declarations are immaterial to Plaintiffs' claims and should not be considered by this Court as any of their alleged injuries are not traceable to Named Defendants.

**B. Jocelyn Heredia’s claims of intimidation are unsupported by evidence sufficient to substantiate an § 11(b) violation.**

Ms. Heredia was a Challenged Voter in Banks County. Transcript Excerpts of Deposition of Jocelyn Heredia (Oct. 15, 2021) (“**Heredia Tr.**”), ECF No. 155-24, 20:13-21:7. TTV submitted a Challenge in Banks County, but Banks County did not process it because it found it did not have probable cause to do so. Banks County Board Minutes, ECF No. 155-26. A volunteer used the Davis/Somerville Challenge List to submit a Challenge in Banks County. ECF No. 156-35.

However, Mr. Davis and Mr. Somerville did not “act in concert” with TTV, which forms the basis of the complaint against them. *See* Defs.’ MSJ 13-17 (detailing citations to the record showing Mr. Davis and Mr. Somerville had no knowledge of TTV methodology, process, or analysis). Therefore, any Challenge based upon the Davis/Somerville Challenge List was independent from TTV, *id.*, and is irrelevant to the claims asserted in this case. *See* Defs.’ MSJ, Part I.B.

However, if this Court finds relevant Mr. Davis’ and Mr. Somerville’s Banks County Challenge, or finds that TTV’s mere submission of a Challenge (although unconsidered) is relevant, Ms. Heredia’s claims of intimidation are still unsupported by evidence. Ms. Heredia testified she was never contacted by the

person who submitted the Challenge. Heredia Tr. 49:4-50:2. Ms. Heredia testified that Banks County, not any Challenger, published her name on its website. *Id.* at 31:22-32:3. Ms. Heredia did submit a change of address form. *Id.* at 13:1-13.

Ms. Heredia testified that no one said anything to her while she was standing in line to vote that intimidated her or targeted her. *Id.* at 48:16-49:3. 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. *Id.* at 48:1-9. Ms. Heredia testified that she did not know she was Challenged until later, when she got into the polling location. *Id.* at 49:4-50:2. Ms. Heredia testified her feeling of intimidation increased when she learned she had been Challenged based upon her change of address. *Id.* at 48:10-15.

Ms. Heredia testified that because she was Challenged, election officials asked her to fill out a paper ballot and explained to her that if she provided the requisite proof of residency at her voter registration address, her paper ballot would be counted. *Id.* at 23:22-24:13. She provided them with proof of residency and submitted the paper ballot. *Id.* at 24:8-13.

None of the Named Defendants contacted Ms. Heredia directly. 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 (collectively, “**No Contact Citations**”). Ms. Heredia herself testified that no one said anything intimidating to her or targeted her while she was standing in line to vote. Heredia Tr. 48:16-49:3. She testified to a subjective feeling of intimidation even before knowing she was a Challenged Voter, but she provided no evidence of any acts of intimidation or threats directed to her by anyone, let alone directed to her by any Named Defendants, that would have turned that subjective feeling into an objective reason to feel intimidated. *Id.* at 48:1-9; 49:4-50:2; 48:10-15. She was able to cast a provisional ballot, and she verified her address to the Banks County election officials. *Id.* at 24:8-13. No one prevented her from voting. No one tried to prevent her from voting—a § 230 Challenge does not prevent someone from voting—it simply requires a Challenged Voter, in some contexts, to provide proof of eligibility to vote at a specific polling location. The undisputed facts on the record do not support Ms. Heredia’s claim of an § 11(b)

violation by any Named Defendant, and their Motion for Summary Judgment should be granted, as related to her claims.

**C. The anonymous Plaintiffs’ claims are unsubstantiated in the record and do not support an § 11(b) violation claim.**

Plaintiffs John Doe and Jane Doe submitted declarations, which this Court reviewed *in camera*, to support their claims. ECF No. 26. Jane Doe’s declaration states she is a registered voter in Clarke County, Georgia. ECF No. 156-19, ¶ 2. TTV submitted a challenge in Clarke County. TTV Am. Resp. First RFP, Resp. No. 2. The Davis/Somerville Challenge List was not submitted in Clarke County. ECF No. 156-35. John Doe’s county of registration was redacted. See ECF No. 26, so Named Defendants don’t know if John Doe was Challenged by a TTV submission or by a volunteer using the Davis/Somerville Challenge List. Mr. Davis and Mr. Somerville did not “act in concert” with TTV, which forms the basis of the complaint against them. *See* Defs.’ MSJ 13-17. Therefore, any Challenge based upon the Davis/Somerville Challenge List was independent from TTV, and is irrelevant to the claims asserted in this case. *See* Defs.’ MSJ 13-17.

Assuming, *arguendo*, that the Doe Plaintiffs are registered in a county where TTV submitted Challenges, or this Court considers Challenges rooted in the

Davis/Somerville Challenge List to be relevant, the Doe Plaintiffs still have not met their burden of proving an § 11(b) violation. Doe Plaintiffs both declared that they learned of their Challenge when they “read a story in the local paper.” ECF No. 26, ¶ 5. Doe Plaintiffs assert “Defendants published a list with my address on it,” *id.* at ¶ 8, but no evidence in the record supports this assertion. The Named Defendants did not publicly publish any Challenge Lists. No Publication Citations. The Doe Plaintiffs do not assert that they were contacted by any Named Defendant. *See* ECF No. 26. The Named Defendants did not contact any Challenged Voter. No Contact Citations. The Doe Plaintiffs assert they were “extremely upset” when they learned their eligibility to vote had been challenged. ECF No. 26, ¶ 5. 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.” ECF No. 26, ¶ 8.

Both Doe Plaintiffs declared they would vote in the run-off election. Again—a § 230 Challenge does not prevent someone from voting—it simply requires a Challenged Voter, in some contexts, to provide proof of eligibility to

vote at a specific polling location. The Doe Plaintiffs provide no evidence that they were asked to provide such proof of eligibility by any county election official.

Doe Plaintiffs declared a subjective fear of harassment that “could”—not “did,” not even would be “likely to”—just that they feared, subjectively, such harassment could happen at some theoretical point in the future. But the record does not provide any evidence of any acts of intimidation or threats directed to Doe Plaintiffs by anyone, let alone directed to them by any Named Defendants, that would have turned that subjective feeling about a theoretical, future possibility into an objective reason to feel intimidated. As this Court noted, it is critical that Plaintiffs “connect intimidation or harassment (real or attempted) to Defendants.” Order, ECF No. 29 at 26. Doe Plaintiffs have failed to provide any such evidence connecting intimidation or harassment to any Named Defendant.

The undisputed facts on the record do not support Doe Plaintiffs’ claims of an § 11(b) violation by any Named Defendant, and their Motion for Summary Judgment should be granted, as related to their claims.

**D. Fair Fight has not provided any evidence that Named Defendants had any contact with any Fair Fight agent in violation of § 11(b).**

This Court held Fair Fight has standing based upon a diversion of resources

and that if Plaintiffs showed Named Defendants violated § 11(b) (thereby unlawfully causing Fair Fight's diversion of resources), an injunction would redress Fair Fight's injury. *See* Order at 19.

However, Fair Fight is not a Challenged Voter, and its diversion of resources does not support its underlying § 11(b) violation claim—§ 11(b) has a private right of action, but the statutory language requires plaintiffs to show threats or intimidation against voters or those who are helping people vote. 52 U.S.C. § 10307(b). Fair Fight does not allege any Named Defendant attempted to stop it from proceeding with its efforts to assist voters, so it does not allege Named Defendants violated § 11(b) through any intimidation or harassment of Fair Fight or its agents.

Because the Plaintiffs have not produced any evidence that Named Defendants intimidated them in violation of § 11(b), their motion for summary judgment should be granted.



**II. Plaintiffs’ allegations that Named Defendants’ Challenges were frivolous are without merit.**

**A. TTV’s work related to the presidential election is immaterial and did not violate § 11(b).**

The sole issue before this Court is whether Named Defendants violated § 11(b). Am. Compl., ECF No. 73, ¶¶ 77-80 (single cause of action). Plaintiffs attempt to make much of the fact that TTV assisted in efforts to pursue litigation regarding the 2020 presidential election results. To support their criticism of this effort, Plaintiffs focus on two things: (1) a promotional piece drafted regarding this litigation, ECF No. 156-4; and (2) claims in federal lawsuits that allegedly lack evidentiary support. Pls.’ MSJ at 13.

Fair Fight contends it’s an undisputed fact that TTV “launched a nationwide effort to gin up evidence of voter fraud” in its Validate the Vote 2020 program. TTV’s promotional piece was clear—the three options described regarding the presidential election were based upon the condition that “*if sufficient election fraud is proven*, making the results of the election doubtful, the lawsuits will seek to have the state’s election results overturned.” *Id.* (emphasis added). Not only does the promotional piece acknowledge that sufficient proof would be necessary

for litigation (such measured language cannot be considered a call to “gin up evidence”), TTV’s work surrounding the presidential election is immaterial to the question of whether Named Defendants violated § 11(b) by submitting lawful voter challenges related to the Georgia runoff election.

Fair Fight asserts that TTV never “mustered *any* proof of ineligible voting in *any* of the lawsuits it filed . . . [and] voluntarily dismissed all four cases just days after filing.” Complaints do not have to provide evidence of allegations, they have to meet the *Twombly-Iqbal* plausibility standard. *Am. Dental Ass’n v. Cigna Corp.*, 605 F.3d 1283, 1290 (11th Cir. 2010). Fair Fight’s counsel must surely be aware of this as this Court did not dismiss Fair Fight’s *complaint* when it dismissed their motion for a TRO based upon lack of evidence. Order at 26-28. The lawsuits were voluntarily dismissed in accordance with federal rules before any discovery occurred, which obviously means they were dismissed before any evidence was collected regarding the claims.

**B. Named Defendants; work related to Georgia’s runoff election did not violate § 11(b).**

**1. TTV never offered bounties for reports of fraud.**

In conjunction with its work on the Challenge List, TTV established a

support 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. Ms. Engelbrecht testified that when she stated “Validate the Vote is about is putting a bounty on the fraud” during a podcast, she was “riffing” on what Validate the Vote was trying to do, but she then specified that the support fund was used to provide legal support, if and when needed. TTV Tr. 69:9-75:18.

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. Plaintiffs have provided no evidence—because none exists—that anyone was ever paid money from TTV’s support fund based solely upon their report of a potential election issue to the voter integrity hotline. Offering to pay for legal support after someone reports a potential issue to TTV and then gets sued for doing so is not offering a “bounty” for reports of fraud. Dr. Burton’s examples of intimidating rewards were all examples of blanket offers to pay for information about crimes or offering rewards for such information. See Burton Rpt. ECF No. 156-17 at 26. Plaintiffs have offered no evidence that Named Defendants offered

any such reward or incentive for simply reporting election fraud—the only financial support TTV offered was in the form of paying for legal assistance if a “whistleblower” was harassed or sued.

**2. TTV never advocated for, or recruited, former Navy SEALs to “patrol” polling places.**

In 2020, TTV had an initiative called “Continue to Serve” that was directed towards veterans and first responders working in the polls or volunteering to work in the polls. TTV Tr. 59:9-12. This initiative was started in recognition that states often struggle to get enough volunteers working at polls<sup>2</sup> and that veterans and first responders are very good at understanding a chain of command and understanding process, so those skill sets translate well to volunteering at polls. *Id.* at 59:19-60:17. Ms. Engelbrecht testified that the interactions between these volunteers and voters or other poll workers would depend on what capacity they volunteered in and what the state process was for various poll volunteer functions. *Id.* at 62:13-64:7.

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<sup>2</sup>See Secretary of State for the State of Georgia, *Brad Raffensperger Calls on Local Groups to Commit to Poll Working: Launches Poll Worker Recruitment Tools*, <https://sos.ga.gov/news/brad-raffensperger-calls-local-groups-commit-poll-working-launches-poll-worker-recruitment> (August 4, 2020).

Plaintiffs try to draw a comparison between recruiting former military members to serve as lawful volunteers at polling places, to the practice of placing off-duty armed police at polling places in minority districts. Pls.’ MSJ 25-26. Plaintiffs’ comparison is as factually inaccurate as it is insulting. The off-duty armed police in New Jersey were not volunteering as poll workers, as is allowed and required under state law—they were standing at polling places wearing armbands that read “National Ballot Security Task Force.” *Democratic Nat. Comm.*, 671 F. Supp. 2d 575, 579. Plaintiffs have provided no evidence—because none exists, that TTV wanted to recruit former Navy SEALs to “patrol” polling places. The undisputed evidence shows that TTV wanted to assist in recruiting former military members and first responders to be poll workers, under the supervision and training of state officials.

**3. Named Defendants did not encourage and amplify threats of election-related vigilantism on social media.**

Plaintiffs claim that Named Defendants “used or expressed support for threatening rhetoric on social media.” Pls.’ MSJ at 28. They compare this “threatening and intimidating rhetoric” to the placing armed guards or law enforcement officials at polling locations. *Id.* at 29. But Plaintiffs fail to provide

evidence that Named Defendants used or expressed support for threatening or intimidating rhetoric.

Plaintiffs assert a Facebook thread posted by Mr. Davis and Mr. Somerville is an example of threatening rhetoric. This thread detailed one problem they found after compiling the Davis/Somerville Challenge List: namely, the list contained quite a number of voters who were registered to vote at commercial mail receiving agencies (such as UPS stores), rather than at their residence. Second Davis Tr. 67:5-68:8; 70:22-71:16. They hoped election officials would notice this issue and work towards resolving it. *Id.*

Plaintiffs claim “an organization affiliated with Ms. Engelbrecht and True the Vote publicly threatened to publish the names of all challenged voters.” Pls.’ MSJ at 29. This claim refers to a tweet by “Crusade for Freedom” and a Facebook post by “Time for a Hero.” TTV is not associated with either Crusade for Freedom or Time for a Hero. TTV Tr. 259:1-18; 338:2-339:18. Although these tweets used hashtags for Validate the Vote Georgia, TTV does not control who uses hashtags on Twitter. 339:10-18.

**C. The Named Defendants’ Challenges were not frivolous.**

**1. NCOA data is properly considered.**

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.*

The process TTV used (through OpSec) to compile the Challenge List process was not limited to matching NCOA data to a voter file but used additional databases, including other state registrations, proprietary lists, county tax records, and voter registration rolls in other states allowing for broader comparisons and more accurate matching than is generally attained by using NCOA and a voter list alone. OpSec Tr. 94:17-21; 95:3-9, 17-18; 95:14-18; 96:3-17. 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. First Davis Tr. 21; Davis Interrog. Resp. Ct. Order Resp. No. 2.

If NCOA data is “undisputably lawful” as a trigger point for list maintenance in accordance with the NVRA, it can hardly be considered “frivolous” to begin with the NCOA to analyze data for possible inclusion on challenge lists, and the challenges here were based on more rigorous analysis than is required for list maintenance. Despite Plaintiffs’ assertions, the challenges at issue would not have required election officials to remove any voter from the registration list. Pls.’ MSJ at 4. Georgia law requires two things before the election officials can remove someone from the list of electors based upon a § 230 Challenge: (1) the challenge has to be based upon the grounds that the elector is not qualified to remain on the list of electors; and (2) the election officials have to determine, after a hearing, that the challenged elector is in fact, not legally eligible to remain on the list of electors for that county. O.C.G.A. § 21-2-30(h).

None of the § 230 Challenges were “based upon the grounds that the elector is not qualified to remain on the list of electors.” Rather, all the § 230 Challenges were based upon whether the elector was eligible to vote in the runoff election—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.

**2. Dr. Mayer's conclusions are unsupported in the record.**

The proprietary process resulting in the Challenge List used a sophisticated algorithm to draw in information from other databases in making a match, used regression modeling to substantially cut the risk of a mismatch, and reviewed the results of matching names 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. 108:8-11 113:6-17, 118:11-119:22, 140:8-141:7 141:11-20.

In several instances, Plaintiffs cite supposed weaknesses in data in the Challenge List. *See, e.g.*, Mayer Rep. 24-25. But the challenge file was the *result* of analysis, not a source of data, OpSec. Tr. 93:14-94:2, and is not evidence of what was considered in compiling the challenge list. Plaintiffs argue that Named Defendants challenge lists did not reliably match NCOA data to a voter file because the NCOA registry does not include any unique identifier, like a social

security number or other identification number that is unique to each voter. Mayer Rep. at 6; 15-16. But the combination of data—full name, address, and year of birth is itself a unique identifier, and the proprietary process used to create the Challenge List mitigates a lack of unique identifiers between voter registration rolls and NCOA lists by resolving for identity first, OpSec Tr. 120:12-20, using data from other lists to help verify identity of voters that have moved. OpSec Tr. 96:3-8; *id.* 96:12. The additional databases include other state registrations, proprietary lists, county tax records, and voter registration rolls in other states allowing for broader comparisons and more accurate matching than is generally attained by using NCOA and a voter list alone. OpSec Tr. 94:17-21; 95:3-9, 17-18; 95:14-18; 96:3-17 (duplicate entries in voter file is not material because the presence of duplicate records in the voter file was accounted for by OpSec’s process); *see also* OpSec Tr. 94:9-14; (process was not limited to NCOA and voter file list); *id.* 113:6-17 (process compared voter file information to commercially available information).

Dr. Mayer asserts that 22,956 registrants on the challenge file moved to an address on a military installation, but cites only 397 registrants who are listed as

actually living on a military installation. Mayer Rep. at 30. OpSec used NCOA filters to exclude recognized military addresses. TTV Tr. 202:18-203:11, 204:4-6; TTV 1453 (TTV Dep. Ex, 26). 300,000 voters were excluded from the initial query as identified as, among other things, deployed for military service. OpSec Tr. 128:3-7. The proprietary process checked databases other than NCOA and the voter file list to identify persons who had permanently 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.

**3. Mr. Martin’s withdrawal of challenges does not support the claim TTV’s challenges were frivolous.**

Joseph Martin volunteered to serve as TTV’s challenger in Taliaferro County. TTV Resp. to 2d Interrog. Resp. No. 11. Mr. Martin learned that three out of the 37 names on that challenge list had submitted absentee ballots, so he used those as his “test” cases. Martin Tr. 39:3-10. One of the three test cases lived in Wilkes County, but cast an absentee ballot in Taliaferro County and that voter later asked for her name to be removed from Taliaferro County’s registration. Martin Tr. 65:19-7; 66:8-17. The second test case did not reside in Taliaferro County, but was able to vote there due to a homestead exemption. *Id.* at 64:4-65:7.

So the information on TTV's list about that person's change of address was accurate. The local judge verified the third test case lived in Taliaferro County. *Id.* at 62:3-13. Mr. Martin testified that as far as the accuracy of the list he was provided, "it depends on how you look at the list" because one or two votes can make a difference in Taliaferro County. *Id.* at 99:11-19. He asked his challenge to be withdrawn because he didn't want to put the registrar through the "painful process of validating those 37 individuals." Martin Tr. 78:4-9. TTV withdrew his challenges on December 21, 2021. TTV Resp. to 2d Interrog. Resp. No. 11.

Plaintiffs presented no evidence about the other 34 people on this challenge list, but in two out of three test cases, TTV's data was accurate—and the system worked. One voter realized she was registered in the wrong county and withdrew her ballot; another proved he was still legally allowed to vote there due to a homestead exemption; in another TTV's data apparently inaccurate. Plaintiffs have no evidence showing there were any other inaccuracies.

### **Conclusion**

For the foregoing reasons, Defendants' Motion for Summary Judgment should be granted.

Dated: June 6, 2022

/s/ David F. Guldenschuh

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## **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 June 6, 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**

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**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.*

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

**Hon. Steve C. Jones**

**DEFENDANTS' RESPONSE TO PLAINTIFFS' CORRECTED  
STATEMENT OF UNDISPUTED MATERIAL FACTS**

Pursuant to Rule 56 of the Federal Rules of Civil Procedure and Local Rule 56.1, Defendants True the Vote, Inc. (“TTV”), Catherine Engelbrecht, Derek Somerville, Mark Davis, Mark Williams, Ron Johnson, and James Cooper (collectively, “**Named Defendants**”), by and through counsel, offer the following responses to Plaintiffs’ Corrected Statement of Undisputed Material Facts:

**Defs.’ Resp. To  
Pls.’ Corrected SUMF**

**I. The Plaintiffs**

**A. Fair Fight**

1. Plaintiff Fair Fight, Inc. is a political action committee with a non-contribution account, commonly known as a Hybrid PAC, registered with the Federal Election Commission, the Georgia Government Transparency and Campaign Finance Commission, and various state campaign finance regulators. Ex. 15, Fair Fight Declaration (“Decl.”) ¶ 3.

**Response:** Undisputed, but this fact is immaterial to the sole issue before this Court—that is whether Named Defendants engaged in activities that were objectively likely to intimidate voters in violation of §11(b) of the Voting Rights Act. *See* Order, ECF No. 29 at 2-3.

2. Part of Fair Fight’s mission is to secure the voting rights of Georgians, which includes advocating for voter engagement and voter turn-out, particularly among young people and people of color. *Id.* ¶ 4.

**Response:** Undisputed, but this fact is immaterial to the sole issue before this Court—that is whether Named Defendants engaged in activities that were objectively likely to intimidate voters in violation of §11(b) of the Voting Rights



Act. *See* Order, ECF No. 29 at 2-3.

3. Fair Fight’s voter engagement activities include efforts to support and elect pro-voting rights progressive leaders. To encourage voter participation, Fair Fight also conducts programmatic activities including the preparation and sponsorship of digital advertising, mailings, phone banks and calls, and text messaging. *Id.* ¶ 5.

**Response:** Undisputed, but this fact is immaterial to the sole issue before this Court—that is whether Named Defendants engaged in activities that were objectively likely to intimidate voters in violation of §11(b) of the Voting Rights Act. *See* Order, ECF No. 29 at 2-3.

4. Fair Fight also raises money and provides funding for voter engagement activities. *Id.* ¶ 5.

**Response:** Undisputed, but this fact is immaterial to the sole issue before this Court—that is whether Named Defendants engaged in activities that were objectively likely to intimidate voters in violation of §11(b) of the Voting Rights Act. *See* Order, ECF No. 29 at 2-3.

5. For the 2020 general election and the runoff election conducted on

January 5, 2021, Fair Fight engaged in voter participation work including educating voters about the voting process, engaging in get-out-the-vote activities, monitoring long lines at polling locations, and helping voters navigate the absentee ballot process. *Id.* ¶ 6.

**Response:** Undisputed, but this fact is immaterial to the sole issue before this Court—that is whether Named Defendants engaged in activities that were objectively likely to intimidate voters in violation of § 11(b) of the Voting Rights Act. *See* Order, ECF No. 29 at 2-3.

6. On December 14, 2020, the first day of early voting, Fair Fight learned from a True the Vote press release that True the Vote and the Georgia Republican Party were partnering to engage in what they termed as “the most comprehensive ballot security initiative in Georgia history.” *Id.* ¶ 7.

**Response:** Undisputed.

7. On December 18, Fair Fight learned from a True the Vote press release that True the Vote, and groups of individuals working in concert with True the Vote, including the other Defendants in this case, intended to mount challenges to the eligibility of hundreds of thousands of Georgians to cast their votes in the

runoff election. *Id.* ¶ 8.

**Response:** TTV admits that the December 18, 2020 press release announced TTV’s intention to submit Challenges on behalf of voters in all 159 counties. ECF No. 156-25. TTV’s press release stated, “We are proud to work alongside patriots from across the Peach State; Derek Somerville of Forsyth county and Mark Davis of Gwinett county who have been leading citizen efforts to highlight issues in Georgia’s voter rolls, Mark Williams of Gwinett county who coordinated among eight print shops to get written challenges printed and delivered within 48 hours, and Ron Johnson of Jackson County and James Cooper of Walton County, who led the charge in recruiting hundreds of volunteer challengers across the state.” *Id.*

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; 40:11-18; 42:15-43:9; 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. 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.

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.

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. Mr. Williams did not help compile the TTV Challenge Lists. Williams Tr. 35:4-15. This supports the statement regarding Mr. Williams in TTV's press release.

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. Mr. Johnson did not help compile the TTV Challenge Lists. Johnson Resp. to First Interrogs. Resp. Nos. 1-4. This supports the statement regarding Mr. Johnson in TTV's press release.

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. Mr. Cooper did not help compile the TTV Challenge Lists. Cooper Resp. to First Interrogs. Resp. Nos. 1-4. this supports the statement regarding Mr. Cooper in TTV's press release.

8. Upon learning about Defendants’ challenges, Fair Fight was forced to redirect efforts of its staff and volunteers to combat Defendants’ actions targeted at limiting ballot access. *Id.* ¶ 10.

**Response:** Fair Fight may have chosen to redirect its efforts “to combat Defendants’ actions,” but it has provided no evidence in the record showing it was forced to do so by anyone. Nor has it produced any evidence in the record showing any communication between any Named Defendant and Fair Fight. This redirection of efforts is immaterial to the question of whether Named Defendants violated § 11(b) as Fair Fight does not even allege that any of the Named Defendants did anything that intimidated Fair Fight or any of its agents. Nor has Fair Fight produced any evidence of any § 11(b) violation directed toward Fair Fight or any of its agents.

9. Specifically, Fair Fight reallocated staff from its voter mobilization activities described above to instead monitoring Georgia’s 159 counties to determine which counties received challenges that Defendants were supporting. That monitoring included in some instances physically attending the Board of Elections hearings on Defendants’ challenges, attempting to learn which voters

were being challenged, advocating against those challenges, reporting back to Fair Fight the results of those challenges, and, through a phonebank, and then attempting to inform challenged voters of their rights. *Id.* ¶ 11.

**Response:** Undisputed that Fair Fight reallocated staff as described in ¶ 9, but such reallocation is immaterial to the question of whether Named Defendants violated § 11(b) as Fair Fight does not even allege that any of the Named Defendants did anything that intimidated Fair Fight or any of its agents. Nor has Fair Fight produced any evidence of any § 11(b) violation directed toward Fair Fight or any of its agents.

10. During this time, Fair Fight expended additional financial resources in promoting the Voter Protection Hotline so that voters could obtain assistance if they were challenged, and but for Defendants' actions, Fair Fight would not have expended as many financial resources to this effort and otherwise could have allocated these funds to its get out the vote program. *Id.* ¶ 12.

**Response:** Undisputed that Fair Fight expended resources as described in ¶ 10, but such expenditures are immaterial to the question of whether Named Defendants violated § 11(b) as Fair Fight does not even allege that any of the

Named Defendants did anything that intimidated Fair Fight or any of its agents. Nor has Fair Fight produced any evidence of any § 11(b) violation directed toward Fair Fight or any of its agents.

11. Fair Fight also expended significant financial and staff resources to collect and analyze the challenge lists, some of which they obtained only from attending these Board of Elections challenge hearings. *Id.* ¶ 13.

**Response:** Undisputed that Fair Fight expended resources as described in ¶ 11, but such expenditures are immaterial to the question of whether Named Defendants violated § 11(b) as Fair Fight does not even allege that any of the Named Defendants did anything that intimidated Fair Fight or any of its agents. Nor has Fair Fight produced any evidence of any § 11(b) violation directed toward Fair Fight or any of its agents.

11. In addition to committing Fair Fight's paid staff to track and respond to Defendants efforts, Fair Fight also redirected its volunteers' time. Fair Fight had organized a large group of volunteers to gather information about general voting logistics, including confirming with counties their early voting locations, dates, and hours for runoff elections. During this time, Fair Fight volunteers were also



advocating for extending early voting opportunities, but because of Defendants' challenges, Fair Fight was forced to redirect the above-described efforts of its volunteers to, instead, reaching out to voters on Defendants' challenge lists and attending Boards of Elections meetings, some in-person, across the state. That redirection of effort required extensive Fair Fight staff involvement coordinate volunteers and took staff away from their voter engagement activities. *Id.* ¶ 14.

**Response:** Fair Fight may have chosen to redirect its volunteers' time, but it has provided no evidence in the record showing it was forced to do so by anyone. Nor has it produced any evidence in the record showing any communication between any Named Defendant and Fair Fight's volunteers. This redirection of efforts is immaterial to the question of whether Named Defendants violated § 11(b) as Fair Fight does not even allege that any of the Named Defendants did anything that intimidated Fair Fight or any of its agents or volunteers. Nor has Fair Fight produced any evidence of any § 11(b) violation directed toward Fair Fight or any of its agents or volunteers.

12. Because True the Vote and other Defendants in this action have indicated they will continue to file similar challenges in the future, after the

Runoff Election, Fair Fight turned its challenge tracking effort into an operational program called Democracy Watch, in order to respond to unlawful voter challenges if and when they are filed, advocate on the voters' behalf, and educate voters about their rights if they are challenged. *Id.* ¶ 15.

**Response:** Fair Fight has chosen to begin an operational program called Democracy Watch as described in ¶ 13, but it has provided no evidence in the record showing it was forced to do so by anyone. This is a strategic choice made by Fair Fight—every organization makes strategic decisions and plans based upon its current objectives. Fair Fight's strategic choice is immaterial to the question of whether Named Defendants violated § 11(b) as Fair Fight does not even allege that any of the Named Defendants did anything that intimidated Fair Fight or any of its agents or volunteers. Nor has Fair Fight produced any evidence of any § 11(b) violation directed toward Fair Fight or any of its agents or volunteers.

13. Democracy Watch is now operational in 31 Georgia counties. By August 2022, it will be operational in 50 counties. *Id.* ¶ 16.

**Response:** Undisputed, but the number of counties Democracy Watch is operating in now or in the future is immaterial to the question before this Court of whether

Named Defendants violated § 11(b).

14. Democracy Watch is monitored and overseen by Fair Fight’s Research and Voter Protection Staff, and it requires a substantial number of Fair Fight volunteers to operate. To run Democracy Watch, Fair Fight has had to hire two additional staff members and has fully allocated five staff members to oversee the program. These staff hires command a significant portion of Fair Fight’s resources. *Id.* ¶ 17. If Fair Fight’s Research Staff did not have to oversee the Democracy Watch program, Fair Fight would allocate their time to educating voters about election administration changes, researching better methods to turn out voters, and counteracting election disinformation efforts. *Id.* ¶ 18.

**Response:** Named Defendants do not dispute the monitoring and oversight as described in ¶ 15, but such monitoring and staffing decisions were not forced upon Fair Fight—it strategically chose to begin Democracy Watch operations. Fair Fight has provided no evidence in the record showing it was forced to do so by anyone. This is a strategic choice made by Fair Fight—every organization makes strategic decisions and plans based upon its current objectives. Fair Fight’s strategic choice is immaterial to the question of whether Named Defendants

violated § 11(b) as Fair Fight does not even allege that any of the Named Defendants did anything that intimidated Fair Fight or any of its agents or volunteers. Nor has Fair Fight produced any evidence of any § 11(b) violation directed toward Fair Fight or any of its agents or volunteers.

15. Similarly, if Fair Fight’s volunteers were not asked to participate in Democracy Watch, Fair Fight would be able to redirect their time to more traditional voter engagement activities, such voter mobilization and voter education. To date, Fair Fight has limited its voter education efforts to the State of Georgia due to limited volunteer capacity. Absent the drain on its resources caused by Defendants’ challenges, Fair Fight would expand its voter education efforts to other states. *Id.* ¶ 19.

**Response:** Named Defendants do not dispute they asked volunteers to participate in Democracy Watch as described in ¶ 16, but that decision was not forced upon Fair Fight—it strategically chose to begin Democracy Watch operations. Fair Fight has provided no evidence in the record showing it was forced to do so by anyone. This is a strategic choice made by Fair Fight—every organization makes strategic decisions and plans based upon its current objectives. Fair Fight’s

strategic choice is immaterial to the question of whether Named Defendants violated § 11(b) as Fair Fight does not even allege that any of the Named Defendants did anything that intimidated Fair Fight or any of its agents or volunteers. Nor has Fair Fight produced any evidence of any § 11(b) violation directed toward Fair Fight or any of its agents or volunteers.

16. Fair Fight has also been forced to direct additional funds to promote and educate the public about the Voter Protection Hotline, which voters can call if they find themselves the subject of a voter challenge. This promotion has cost Fair Fight hundreds of thousands of dollars. If Fair Fight did not have to expend these funds on directing voters to resources, should they be challenged, they would have allocated them towards their get out the vote program. *Id.* ¶ 20.

**Response:** Named Defendants do not dispute it directed funds to a Voter Protection Hotline as described in ¶ 16, but that decision was not forced upon Fair Fight—it strategically chose to do so. Fair Fight has provided no evidence in the record showing it was forced to do so by anyone. This is a strategic choice made by Fair Fight—every organization makes strategic decisions and plans based upon its current objectives. Fair Fight’s strategic choice is immaterial to the question of

whether Named Defendants violated § 11(b) as Fair Fight does not even allege that any of the Named Defendants did anything that intimidated Fair Fight or any of its agents or volunteers. Nor has Fair Fight produced any evidence of any § 11(b) violation directed toward Fair Fight or any of its agents or volunteers.

17. Unless and until this litigation is successful, Fair Fight will continue to divert significant staff resources, volunteer time, and money combating True the Vote and its cooperators' efforts to intimidate voters and restrict access to the polls. *Id.* ¶ 21.

**Response:** The undisputed material facts show that none of the Named Defendants sought to intimidate voters or restrict access to the polls. Named Defendants had no direct contact with Challenged Voters at all. TTV Resp. to First Interrogs. 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.

19. The actions that Fair Fight has to take to counteract Defendants' challenges and intimidation are not actions Fair Fight has taken in the past, and as described above, such actions are necessitated by, Defendants' wrongdoing at the center of this case. *See supra* ¶¶ 1-18.

**Response:** As noted above, Fair Fight has chosen to take certain actions - no one has forced it to do so. As demonstrated in Named Defendants' Responses to ¶¶ 1-

18, Fair Fight’s actions, reallocations, and strategic decisions are immaterial to the question of whether Named Defendants violated § 11(b) as Fair Fight does not even allege that any of the Named Defendants did anything that intimidated Fair Fight or any of its agents or volunteers. Nor has Fair Fight produced any evidence of any § 11(b) violation directed toward Fair Fight or any of its agents or volunteers.

**B. Jocelyn Heredia**

18. Plaintiff Jocelyn Heredia is a resident and registered voter in Banks County Georgia. Ex. 8, Jocelyn Heredia Dep. Tr. (“Heredia Tr.”) at 11:19-25.

**Response:** Undisputed.

19. In January of 2020, Ms. Heredia submitted a change of address form to USPS when she moved temporarily from her residence in Banks County to be closer to Atlanta for a job. *Id.* 12:17-25.

**Response:** In January of 2020, Ms. Heredia submitted a permanent change of address form (one without an end date) to the USPS. Heredia Tr., Ex. L. Around March of 2021, Ms. Heredia submitted another change of address form with the USPS to reflect that “she got another apartment in West Midtown.” Heredia Tr.



43:1-8. Around September of 2021, Ms. Heredia submitted another change of address form to Banks County. *Id.* 43:5-11.

20. She returned to her Banks County residence in March 2020, where she has resided ever since. *Id.*

**Response:** Ms. Heredia “got another apartment in West Midtown” around March of 2021. *Id.* 43:1-8.

21. Ms. Heredia learned that her vote was being challenged when she went to cast her in-person ballot for the runoff election in January 2021. She felt intimidated that she was being targeted in this way, particularly as a person of color in a predominantly white county. *Id.* 44:12-45:8.

**Response:** 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. 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. 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.

22. When Ms. Heredia was pulled aside at her polling location because of Defendants' challenge, she was one of only two persons of color in polling place line, and the second person of color was pulled aside as well. *Id.* 44:21-45:8.

**Response:** TTV disputes that Banks County election officials asked Ms. Heredia to provide proof of her eligibility to vote in Banks County on the basis of the challenge it submitted on behalf of its Banks County volunteer, Jerry Boling. 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.

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. Plaintiffs have offered no evidence that the woman of Asian descent was challenged on the basis of any Named Defendants' Challenge, or even if she was challenged at all.

23. Ms. Heredia was also listed as a “challenged voter” on Banks County’s website for at least six months. *Id.* 31:24-32:3; 61:17-62:20.

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

24. Ms. Heredia felt intimidated throughout her voting experience both because the legal implications of being challenged were unclear to her, and she also felt she was being targeted as a person of color. *Id.* 44:12-45:8.

**Response:** Named Defendants dispute that Ms. Heredia felt intimidated “throughout her voting experience because the legal implications of being challenged were unclear to her, and she also felt she was being targeted as a person of color.”

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. 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. She testified that she was at the polling location for three to four hours, but only found out she was

challenged after entering inside the polling location. *Id.* 47:3-25. She testified she was only inside the polling location for about twenty minutes out of those three to four hours. *Id.* Ms. Heredia testified that she only felt intimidated *based on the Challenge* until she was inside the polling location and learned of the Challenge. *Id.* at 49:4-9 (emphasis added).

Rather than the legal implications being unclear, Ms. Heredia testified that after she learned her eligibility to vote in Banks County had been challenged, an election worker told her that she could cast her ballot on paper [provisional ballot], then she needed to provide two forms of identification with her Banks County mailing address. *Id.* 23:22-24:7. The election worker told Ms. Heredia her provisional ballot would be counted when she produced the two forms of identification. *Id.* 24:18-23. Ms. Heredia provided those two forms of identification to the election worker. *Id.* 24:8-10.

25. According to the challenge list obtained from the Banks County website, Ms. Heredia was challenged by both Jerry Boling and Dan Gassaway. Ex. 30, Banks County Challenge List. Jerry Boling was True the Vote's challenge volunteer for Banks County, *see* Ex. 31, True the Vote County Challenger List,

and Dan Gassaway was a volunteer challenger who submitted Mr. Davis and Mr. Somerville's challenge lists. Ex. 32, Davis and Somerville County Challenger List.

**Response:** TTV disputes that Banks County election officials asked Ms. Heredia to provide proof of her eligibility to vote in Banks County on the basis of the challenge it submitted on behalf of Jerry Boling. 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.

Plaintiffs provided no evidence that either Mr. Boling or Mr. Gassaway spoke to, or contacted, Ms. Heredia.

**C. Jane Doe**

26. Plaintiff Jane Doe is a resident and registered voter in Clarke County, Georgia. Ex. 16, Jane Doe Decl. ¶ 2.

**Response:** Undisputed.

27. While Jane Doe's permanent residence is in Georgia, and Jane Doe is presently located in Georgia, in 2020, Jane Doe split her time between Georgia

and another state where her spouse had accepted a short-term career opportunity.

*Id.* ¶ 3.

**Response:** Undisputed.

30. To ensure she would not miss any mail while she was away, Jane Doe completed a USPS change of address form to forward her mail to her spouse's out of-state address. *Id.* ¶ 4.

**Response:** Undisputed, but material to the Challenge Lists, the change of address form Ms. Doe submitted was “permanent,” not temporary.

31. Jane Doe never intended to give up her residency in Georgia—she still owns a home there, pays taxes in Georgia, and worked in Georgia. *Id.*

**Response:** Undisputed.

32. Jane Doe's name and address appeared on a challenge list prepared by True the Vote and submitted by one of its volunteers named Gordon Rhoden. *Id.* ¶ 5.

**Response:** Since Jane Doe is anonymous, TTV has no way to know if her name appears on the challenge list submitted by Gordon Rhoden.

33. When Jane Doe learned of the challenge, she was extremely upset

because it felt like someone was trying to deprive her of her right to vote—in a very public way. *Id.*

**Response:** Named Defendants dispute that the Challenges sought to deprive Ms. Doe of her right to vote. *See* TTV Tr. 152:15-154:19; *id.* 169:22-170:18; Second Davis Tr. 199:9-18. Named Defendants never published the Challenge list publicly. 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.

34. Because Defendants claimed that Jane Doe is not eligible to vote, and because Defendants' list containing Jane Doe's name and address had been published online, Jane Doe feared that Defendants and their supporters would subject her to harassment for voting. This fear was based on her own observations of events that occurred in Georgia following the November 2020 election, including reports of the state's election workers getting harassed, threatened, and doxed. *Id.* ¶¶ 7-8.

**Response:** Disputed. Named Defendants did not publish Clarke County's challenge list online. 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 never contacted or communicated with Ms. Doe. 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 none of the Named Defendants harassed, threatened, or doxed Ms. Doe. *Id.*

35. Even though Jane Doe was able to vote in the Runoff Election, the experience of being challenged was stressful. She feared that she could—or her family could—become the next target of harassment from True the Vote and their supporters for having voted, especially because her name and address had been published online and she had been publicly identified as a challenged voter. *Id.* ¶ 9.

**Response:** Disputed. Plaintiffs have not provided any evidence that Ms. Doe, or Ms. Doe's family was harassed, or contacted in any way by Named Defendants. 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 publish Ms. Doe's name online. 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.

36. Although Jane Doe has been fully settled back in Georgia since July 2021, even today her name can be found online as a challenged voter in Clarke County, and she thus fears that she will be challenged again in future elections and that her eligibility to vote will be questioned. *Id.* ¶¶ 10-11.

**Response:** Disputed. Ms. Doe testified that Clarke County accepted and counted Ms. Doe's vote. Jane Doe Decl. ¶ 9. Plaintiffs have provided no evidence connecting any harassment or intimidation, or threat of such, to any Named Defendant. TTV Resp. to First Rgs. 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.

37. Jane Doe believes that she should not have to worry about being targeted or facing retribution for exercising her right to vote. *Id.* ¶ 12.

**Response:** Disputed. Ms. Doe has provided no evidence that she will face any

retribution for exercising her right to vote.

**II. Defendants collaborated with True the Vote to implement its Validate the Vote scheme in Georgia, and coordinated the largest mass challenge effort in Georgia history.**

38. True the Vote is a Texas-based organization founded by Catherine Engelbrecht, who is also its current president. Ex. 12, True the Vote / Catherine Engelbrecht Dep. Tr. (“TTV/Engelbrecht Tr.”) 22:17-20. True the Vote describes itself as a 501(c)(3) organization, but has frequently collaborated with Republican party officials to monitor polling places and challenge voters, among other activities. *See, e.g.*, TTV/Engelbrecht Tr. 112:2-13. True the Vote has been accused of voter intimidation dating back to 2012, including members of Congress Ex. 33, Elijah Cummings 2012 Letter.

**Response:** Undisputed, but immaterial to the sole issue before this Court—that is whether Named Defendants engaged in activities that were objectively likely to intimidate voters in violation of § 11(b) of the Voting Rights Act. *See* Order, ECF No. 29 at 2-3.

39. Derek Somerville is a resident of Georgia who, in the weeks leading up to Georgia’s January 2021 runoff, was also involved in analyzing voter address

information and coordinating efforts to challenge the eligibility of tens of thousands of voters across the state of Georgia. Ex. 10, Derek Somerville Reopened Dep. Tr. (“Somerville II Tr.”) 68:3-16. Over several weeks, Mr. Somerville participated in around a dozen calls with True the Vote, and participated in two or three calls with Ms. Engelbrecht. *Id.* 91:5-12. Mr. Somerville also personally met with Ms. Engelbrecht on at least one occasion, and had half a dozen conversations with Ms. Engelbrecht on the phone on a one-on-one basis. *Id.* 91:9-15. Mr. Somerville also admits that he had, on at least one occasion, told Ms. Engelbrecht that he thought True the Vote’s challenge strategy was broad, *id.* 94:11-16, and had copied Ms. Engelbrecht on emails he sent out about voter challenges in an attempt to influence True the Vote’s tone on this topic, *id.* 122:8-10.

**Response:** Disputed. Mr. Somerville met with Ms. Engelbrecht exactly one time. Somerville II Tr. 91:9-10. Mr. Somerville testified he directly communicated with Ms. Engelbrecht “an impressively low number of times.” Somerville II Tr. at 91:7-8. He met with her exactly once in person. *Id.* at 91:9-10. He participated in conference calls, which included calls related to these proceedings, two or three

times. *Id.* at 91:10-13. He had “maybe” half a dozen one-on-one conversations with Ms. Engelbrecht on the phone. *Id.* at 91:13-15.

Mr. Somerville does not dispute that he testified he thought TTV’s challenge strategy was broad, but that is immaterial to the issue at hand—whether Named Defendants violated § 11(b).

Mr. Somerville disputes that he copied Ms. Engelbrecht in an email to try to influence her tone on the topic of whether TTV’s challenge strategy was broad. Mr. Somerville testified that he copied Ms. Engelbrecht on an email to influence TTV’s tone on a the process overall, including that the challenges were permitted by law, that the Secretary of State’s office had challenged voters during this time based upon the NCOA, that they had gone to great lengths to mitigate the impact on the military, and that “victory really is in challenging the government to perform at a higher standard.” *Id.* at 122:1-123:10. Mr. Somerville testified that he did not have specific concerns about TTV’s “tone in relation to the challenges.” *Id.* at 123:16-124:14.

40. Mark Davis worked collaboratively with Mr. Somerville in analyzing voter data and coordinating efforts to challenge the eligibility of tens of thousands

of voters. *Id.* 68:3-16; Ex. 6, Mark Davis First Dep. Tr. (“Davis I Tr.”) 45:1-8. At some point, Mr. Davis had a phone call with Mr. Gregg Phillips where Mr. Davis provided Mr. Phillips with a primer on voter data in Georgia and gave Mr. Phillips information to “get started” with analysis into challenges. Davis I Tr. 49:12-50:21.

**Response:** Undisputed.

41. Mark Williams is also a Georgia resident who assisted with the printing of challenge letters that True the Vote would then send to individual counties in support of True the Vote’s voter challenges. Ex. 3, Mark Williams Dep. Tr. (“Williams Tr.”) 19:4-12. In particular, True the Vote would send Mr. Williams compiled lists of challenged voters, and Mr. Williams would print individual letters for the challenges. *Id.* 22:4-13. Mr. Williams also introduced True the Vote to other individuals who collaborated on the challenges, including Ron Johnson and James Cooper. *Id.* 22:19-23:2.

**Response:** Mr. Williams printed TTV’s challenge letters as part of a customer/vendor relationship. Williams Tr. 22:18-19. Otherwise, undisputed.

42. Ron Johnson was previously the Georgia GOP chairman for all counties with less than a population of 80,000 people, and also assisted True the

Vote with its efforts in Georgia, specifically in forwarding the names of individuals to True the Vote that could serve as potential challengers in various counties across the state. Ex. 5, Ron Johnson Dep. Tr. (“Johnson Tr.”) 35:13-17; 42:18-43:2. Many of these challengers were chairmen of their respective county Republican Party. *Id.* 41:6-8; 42:16-21; 43:6-9.

**Response:** Undisputed.

43. James Cooper, who previously served as the 3rd Vice Chair for the 10th District of the Georgia Republican Party, Ex. 2, James Cooper Dep. Tr. (“Cooper Tr.”) 11:9-17, was similarly involved in recruiting challengers for True the Vote across the state. *Id.* 28:2-15; 31:12-17.

**Response:** Undisputed.

**A. True the Vote’s “Validate the Vote” initiative started as a coordinated scheme to overturn presidential election results in Georgia and other battleground states.**

44. Shortly after the November 2020 election, conservative donor Fred Eshelman contacted Catherine Engelbrecht seeking True the Vote’s assistance in overturning the results of the presidential election. TTV/Engelbrecht Tr. 266:11–15, 285:21–286:4, 292:20–293:3.

**Response:** Disputed and immaterial to the issue of whether TTV’s voter challenges during the Georgia runoff election violated § 11(b). Ms. Engelbrecht testified that Mr. Eshelman did not express to TTV his interest in overturning the results of the presidential election. TTV/Engelbrecht Tr. 293:17 - 295:7.

45. True the Vote hatched a plan to identify “illegal voters and illegal votes,” “build public momentum” and “[g]alvanize Republican legislative support in key states,” including in Georgia, “to have the state’s election results overturned.” Ex. 1, *Eshelman v. TTV- Validate the Vote 2020* (“Validate the Vote 2020”) at 582. A consultant for True the Vote funder, Fred Eshleman, recommended the name “Validate the Vote,” which True the Vote adopted. TTV/Engelbrecht Tr. 66:12-67:20.

**Response:** Undisputed that the quoted words appear on the Validate the Vote promotional piece. Disputed as to context and purpose. Under the heading, “Plan,” this piece designated TTV as being responsible to “build public momentum through broad publicity” and to “galvanize Republican legislative support in key states.” ECF No. 156-4. Under the heading, “Legal Strategy,” Step 2 was defined as “Along with publicly available data, the produced election data will be analyzed

to identify both illegal voters and illegal votes.” *Id.* Step 3 under Legal Strategy stated, “If sufficient election fraud is proven, making the results of the election doubtful, the lawsuit will seek to have the state’s election results overturned, leading to a special election, to selection of Presidential Elector by the state legislature, or to the selection the President by the U.S. House of Representatives.” *Id.*

Disputed as to materiality on the issue before the Court of whether Named Defendants violated § 11(b).

46. On November 5, 2020, two days after the general election, True the Vote shared a proposal summarizing its strategy for implementing the “Validate the Vote” scheme and overturning the presidential election results. The proposal sought to highlight the purported “[p]roblem” of “Democrat officials” and “deliberate election fraud” resulting from the “counting [of] illegal votes,” and included a five-part plan:

- Solicit whistleblower testimonies from those impacted by or involved in elections fraud;
- Build public momentum through broad publicity;



- Galvanize Republican legislative support in key states;
- Aggregate and analyze data to identify patterns of election subversion; and
- File lawsuits in Federal Court with capacity to be heard by the Supreme Court of the United States.

Validate the Vote 2020 at 1.

**Response:** Disputed as to context and materiality on the issue of whether Named Defendants violated § 11(b) by submitting lawful voter challenges related to the Georgia runoff election.

On this proposal, under the heading “Problem,” the proposal stated, “There is significant evidence that there are numerous instances of illegal ballots being cast and counted in the 2020 general election. Most of these illegal votes are being counted in Democrat counties and are suppressing legitimate results. This is a result of Democrat officials refusal to obey state election laws and counting illegal votes. It is also the result of deliberate election fraud. This situation has been aided by the Democrat’s deliberate effort to radically expand mail-in balloting, creating myriad opportunities for voter fraud that does not exist with in-person voting.”

Furthermore, this flood of illegal votes violates the U.S. Constitution's right to vote by diluting the votes of legitimate voters." *Id.*

47. The proposal also identified OPSEC Group, LLC, and its founder and President, Gregg Phillips, as the Data and Research team. *Id.*

**Response:** Undisputed but immaterial to the question of whether Named Defendants violated § 11(b) by submitting lawful voter challenges related to the Georgia runoff election.

48. True the Vote even assured its donor that the Trump campaign would "cover" True the Vote's legal fees. TTV/Engelbrecht Tr. 305:3–305:8.

**Response:** Disputed. Factually, TTV did not "assure" its donor that the Trump campaign would cover TTV's legal fees. TTV stated it "had written in my 11/14 e-mail to you that it appeared our legal fees would have been covered by the Trump campaign which I described in a statement of our cash position, described as best as possible given the tight timeline with so many moving parts." TTV/Engelbrecht Tr. 305:3-8. This is immaterial to the question of whether Named Defendants violated § 11(b) by submitting lawful voter challenges related to the Georgia runoff election.

49. True the Vote did not have any evidence that the “problem” described in its proposal existed; rather, Ms. Engelbrecht repeatedly described the language used in the Validate the Vote proposal as “promotional.” *See* TTV/Engelbrecht Tr. 269:17–271:13. Nor could Ms. Engelbrecht explain why True the Vote wanted to challenge the results of only the presidential election, despite promoting that voter fraud was widespread. *Id.* at 285:13–20. However, Engelbrecht had been engaged in conversations with the Trump campaign, Ex. 41, Email from F. Eshelman, and as noted above, she believed at one point that the campaign would pay True the Vote’s fees. *See, e.g.*, Ex. 40, Email from C. Engelbrecht.

**Response:** Disputed. Ms. Engelbrecht testified that the effort to radically expand mail-in balloting or mail-in voting was well documented and that over time, mail-in balloting, mail-in voting does increase the opportunity for vote fraud and election fraud. TTV/Engelbrecht Tr. 270:12-19. This is immaterial to the question of whether Named Defendants violated § 11(b) by submitting lawful voter challenges related to the Georgia runoff election.

50. Consistent with its Validate the Vote scheme, True the Vote launched a nationwide effort to gin up evidence of voter fraud with the ultimate goal of

forcing one of three scenarios: (1) a “special election” in which voters would choose new electors, (2) state legislatures, rather than voters, would select presidential electors, or (3) the next president would be selected by the U.S. House of Representatives. Validate the Vote 2020 at 1. The organization also enlisted OPSEC to “aggregate and analyze data to identify patterns of election subversion.” *Id.*

**Response:** Disputed. TTV never launched any effort to “gin up evidence of voter fraud.” The three options described regarding the presidential election were based upon the condition that “*if sufficient election fraud is proven*, making the results of the election doubtful, the lawsuits will seek to have the state’s election results overturned.” *Id.* (emphasis added). This is immaterial to the question of whether Named Defendants violated § 11(b) by submitting lawful voter challenges related to the Georgia runoff election.

51. One of the first steps in the plan was to pursue litigation in battleground states. Days after the 2020 election True the Vote filed lawsuits in Michigan, Wisconsin, Georgia, and Pennsylvania in which they promised to deliver to the court evidence of, among other offenses, “votes by ineligible

voters.” *See, e.g.*, Compl. ¶ 45, *Brooks v. Mahoney*, No. 4:20-cv-00281-RSB-CLR (S.D. Ga. Nov. 11, 2020); Compl. ¶ 73, *Bally v. Whitmer*, No. 1:20-cv-01088-JTN-PJG (W.D. Mich. Nov. 11, 2020); Compl. ¶¶ 34, 44, *Langenhorst v. Pecore*, No. 1:20-cv-01701-WCG, (E.D. Wisc. Nov. 12, 2020); Compl. ¶ 26, *Pirkle v. Wolf*, No. 4:20-cv-02088-MWB, (M.D. Pa. Nov. 10, 2020).

**Response:** Undisputed but immaterial to the question of whether Named Defendants violated § 11(b) by submitting lawful voter challenges related to the Georgia runoff election.

52. True the Vote promised a “sophisticated and groundbreaking analysis” using, among other tools “United States Postal Service records”; the same type of records True the Vote would use when challenging the eligibility of hundreds of thousands of Georgia voters. *See Brooks*, Compl. ¶ 45; *Bally*, Compl. ¶ 73; *Langenhorst*, Compl. ¶¶ 34, 44; *Pirkle*, Compl. ¶ 26. But True the Vote never provided the courts with any such evidence. Days later, on November 16, 2020, True the Vote filed motions to voluntarily dismiss all four the cases.<sup>1</sup>

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<sup>1</sup>True the Vote was not alone in bringing such suits and some even depended on Postal Service records. None of the suits challenging Georgia’s election results were deemed meritorious. *Wood v. Raffensperger*, No.

**Response:** Undisputed but immaterial to the question of whether Named Defendants violated § 11(b) by submitting lawful voter challenges related to the Georgia runoff election.

53. None of the promised research or evidence—including the analysis of Postal Service records—materialized, even after its funder repeatedly implored the organization to provide “real evidence.” Ex. 39, Email from N. Howard; TTV/Engelbrecht Tr. 288:11-290:9.<sup>2</sup> Just days after filing these four lawsuits, the Vote abandoned them, voluntarily dismissing the cases.

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2020-CV-342959 (Ga. Super. Ct., Fulton Cnty. Dec. 8, 2020) (dismissing case alleging tens of thousands of out-of-state residents illegally voted in Georgia’s General Election); *Boland v. Raffensperger*, No. 2020-CV-343018 (Ga. Super. Ct., Fulton Cnty. Dec. 8, 2020) (dismissing case and finding plaintiffs’ claim that tens of thousands of people illegally voted in Georgia based on the National Change of Address registry was based on “speculation rather than duly pled facts”); *Pearson v. Kemp*, No. 1:20-cv04809-TCB, ECF No. 74 (N.D. Ga. Dec. 7, 2020) (dismissing case alleging the National Change of Address registry showed over 20,000 ineligible voters cast ballots in Georgia’s general election).

<sup>2</sup> True the Vote’s funder, Fred Eshelman, would eventually sue the organization, defense counsel James Bopp, the Bopp Law Firm, OpSec, and Gregg Phillips for breach of contract, fraudulent misrepresentation, and conversion. Eshelman alleged that True the Vote misspent his donation on efforts he never agreed to fund, like the “*largely baseless challenges to the eligibility of hundreds of thousands of voters in the 2021 Georgia Senate runoffs.*” Ex. 42, Mar. 19, 2021 Verified App. for Temp.

**Response:** Disputed that Mr. Eshelman was the “funder” as he made an unconditional donation to TTV, a 501(c)(3) organization, but this is also immaterial to the question of whether Named Defendants violated § 11(b) by submitting lawful voter challenges related to the Georgia runoff election. Undisputed that the four lawsuits were dismissed, but that is immaterial to the question of whether Named Defendants violated § 11(b) by submitting lawful voter challenges related to the Georgia runoff election.

54. In connection with the Validate the Vote scheme, True the Vote also planned to “[g]alvanize Republican legislative support in key states,” including Georgia. Validate the Vote 2020 at 1. Indeed, Ms. Engelbrecht had previously called for “more collaboration among conservative groups, suggesting that participants at the meeting work with groups like the Republican National Lawyers Association to formulate plans to challenge registrations and disqualify voters.” Ex. 14, Dr. Vernon Burton Expert Report (“Burton Rep.”) at 23 (citation omitted).

**Response:** The use of the word scheme is an editorial comment. Validate the Vote 2020 was related to the presidential election and is therefore immaterial to

the question of whether Named Defendants violated § 11(b) by submitting lawful voter challenges related to the Georgia runoff election.

Dr. Burton's quote attributed to Ms. Engelbrecht allegedly made is from an article from The Intercept, which is not authenticated or verified.

**B. As the Georgia runoff elections approached, “Validate the Vote” became “Validate the Vote Georgia.”**

55. When “attentions turned towards Georgia” for the Senate runoff election, “Validate the Vote” became “Validate the Vote Georgia.”

TTV/Engelbrecht Tr. 69:4–7. True the Vote “simply took the logo and put the word ‘Georgia’ in the center of the logo. TTV then made all the resources [it] had available for the national election available in Georgia for the Run-off Election.”

Ex. 19, TTV Resp. to Interrogatory No. 3 at 17. But Validate the Vote Georgia remained part of True the Vote's national effort. TTV/Engelbrecht Tr. 69:4–7.

**Response:** Undisputed, but the efforts TTV took regarding the presidential election are immaterial to the issue of whether Named Defendants violated § 11(b).

56. The donor's consultant, who originally proposed the name “Validate the Vote,” also coined the phrase “Validate the Vote Georgia” for True the Vote's



activities directed toward the runoff election. *Id.* at 264:12–16.

**Response:** Undisputed.

57. True the Vote enlisted OPSEC for its efforts in Georgia as well. The invoice that OPSEC issued to True the Vote listed only a single item—“Eyes on Georgia”— an umbrella project which included both OPSEC’s analysis for True the Vote’s Georgia Elector Challenges and its work to gather and analyze data to overturn the presidential election, *id.* at 182:6–183:20; *see also* Def TTV 288; Ex. 21, Dec. 14, 2020 True the Vote Press Release.

**Response:** Undisputed that OPSEC included in one invoice work it did for TTV in relation to the presidential election and work it did related to the Georgia runoff election.

### **C. Defendants launched mass voter challenges.**

58. On December 18, 2020, True the Vote issued a press release announcing that it had “partner[ed] with Georgians in every county to preemptively challenge 364,541 potentially ineligible voters.” Ex. 22, Dec. 18, 2020 True the Vote Press Release. The press release also touted that True the Vote was “working alongside patriots across the Peach State,” including Defendants

Somerville, Davis, Williams, Johnson, and Cooper. TTV/Engelbrecht Tr. at 251:18–252:14.

**Response:** Undisputed.

59. The press release also stated that True the Vote had “probable cause” to suspect that the 364,151 individuals being challenged did “not meet the qualifications legally required to cast a ballot.” Ex. 22, Dec. 18 Press Release.

**Response:** Disputed. The December 18 Press Release stated that “It [O.C.G.A. § 21-2-230] allows a voter to challenge the eligibility of any other voters in his or her county if probable cause exists to show that the challenged voter does not meet the qualifications legally required to cast a ballot.”

60. The challenge lists were constructed by matching the Georgia voter registration database of all registered voters (“voter file”) to the USPS’s National Change of Address (“NCOA”) registry, which lists the names and addresses of individuals who have requested the United States Postal Service to forward their mail to a different address. *See* Ex. 20, TTV Am. Resp. Pls’ First Req. for Admission (“TTV RFA”) Nos. 12-13; Williams Tr. 114:10-115:5; Ex. 13, Dr. Ken Mayer Expert Report (“Mayer Rep.”) at 16.

**Response:** Disputed that only the NCOA data was used. The process employed by OPSEC was not limited to matching NCOA data to a voter file but used additional databases, including other state registrations, proprietary lists, county tax records, and voter registration rolls in other states allowing for broader comparisons and more accurate matching than is generally attained by using NCOA and a voter list alone. OpSec Tr. 94:17-21; 95:3-9, 17-18; 95:14-18; 96:3-17.

61. Defendants Mark Davis and Derek Somerville used a similar methodology to prepare 39,141 challenges against Georgia voters. Mark Davis Reopened Dep. Tr. (“Davis II Tr.”) 41:20-17; Davis I Tr. 22:9-23:3; Somerville II 94:18-20;

**Response:** 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. First Davis Tr. 21; Davis Interrog. Resp. Ct. Order Resp. No. 2.

62. Ron Johnson and James Cooper—Georgia Republican Party

officials—recruited Georgia Republican Party county chairs to lend their names to True the Vote’s mass challenges. See Cooper Tr. 31:13–17, 57:17–58:9; Johnson Tr. 34:4-8. Ron Johnson also volunteered to be a challenger himself. Johnson Tr. 91:13-21; TTV/Engelbrecht Tr. 144:9-15.

**Response:** Undisputed.

63. Defendant Mark Williams was referred to True the Vote by David Shafer, “the Chairman of the GOP,” Ex. 34, Dec. 12, 2020 M. Williams Email; *see also* TTV/Engelbrecht 141:13–142:2,<sup>3</sup> and printed True the Vote’s challenges and assisted with finalizing the challenge lists, *see* TTV/Engelbrecht Tr. 222:8–19, 252:9–14.

**Response:** Undisputed that Mr. Williams was referred by David Shafer and that he printed the TTV challenges. Disputed to the extent “finalizing the challenge lists” implies more than printing the lists. No evidence on the record supports Mr. Williams’ involvement in the methodology or analysis of the lists—just that he

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<sup>3</sup>David Shafer is also the GOP official with whom True the Vote spoke before announcing it was partnering with the GOP to bring its Georgia Elector Challenges. *See* TTV/Engelbrecht Tr. 141:19–142:2; *see also* Dec. 14 Press Release.

printed them.

64. True the Vote and Mr. Davis and Mr. Somerville also had significant contact and collaboration throughout this whole time period. *See* Somerville II Tr. 91:1-15 (Mr. Somerville admitting having several conversations with True the Vote, and around half a dozen one-on-one conversations with Ms. Engelbrecht); *id.* at 94:11-16 (Mr. Somerville admitting he shared with Ms. Engelbrecht concerns about the broadness of True the Vote’s challenge list strategy); *id.* at 104:3-15 (Mr. Somerville admitting he “definitely spoke on the [December 20] call” hosted by True the Vote to update volunteers about the challenge efforts); *id.* at 115:17–116:11 (Mr. Somerville admitting he copied Ms. Engelbrecht on emails about challenge lists to “try to influence their tone”).

**Response:** Disputed. Mr. Somerville met with Ms. Engelbrecht exactly one time. Somerville II Tr. 91:9-10. Mr. Somerville testified he directly communicated with Ms. Engelbrecht “an impressively low number of times.” Somerville II Tr. at 91:7-8. He met with her exactly once in person. *Id.* at 91:9-10. He participated in conference calls, which included calls related to these proceedings, two or three times. *Id.* at 91:10-13. He had “maybe” half a dozen one-on-one conversations

with Ms. Engelbrecht on the phone. *Id.* at 91:13-15. Mr. Davis spoke with Gregg Phillips once on the phone, and he spoke with Catherine Engelbrecht on the phone. First Davis Tr. 35: 12-18.

65. True the Vote ultimately submitted challenges against 250,783 registrants across 65 counties. Mayer Rep. at 1, 14.

**Response:** Undisputed.

**1. Defendants' challenges were frivolous.**

66. Defendants knew their challenge lists included eligible Georgia voters who were properly registered, and they knew that their challenges would burden registrants. *See, e.g.*, Ex. 11, OPSEC Group, LLC / Gregg Phillips Dep. Tr. ("OPSEC/Phillips Tr." 147:20–22, Ex. 9, Davis II Tr. 35:21–37:1; TTV/Engelbrecht Tr. 208:18–209:2 (explaining the importance of not challenging military voters)).

**Response:** This SOF includes two statements. The first is not supported by the evidence cited: OpSec did not know of any individual's registration status or eligibility to vote; OpSec merely "accept[ed] that some individuals on the challenge list may be eligible to vote," OpSec Tr. 148:20-21. The statement is not

material because, even if true, it is irrelevant and/or would not demonstrate that the challenge was frivolous and would not otherwise affect the outcome of the suit. The second statement is not supported by the evidence cited: there, TTV explained that because military personnel move often and inaccurately file “permanent” address changes, and the preliminary list was so large, that it chose to exclude military personnel. TTV Tr. 207:16-21; *id.* 208:22-209:8.

67. “NCOA data are not error-free, and the companies that conduct NCOA matching note that false positives occur “on a regular basis,” which will invariably produce errors in the challenge list. Mayer Rep. at 33.

**Response:** The statement of what companies “note” is hearsay. To the extent that this statement refers to admissible evidence, it is a statement about the reliability of the NCOA, which, as a legal matter, is sufficient for the purposes on which it is relied by Defendants. In addition, the process employed was not limited to matching NCOA data to a voter file but used additional databases, including other state registrations, proprietary lists, county tax records, and voter registration rolls in other states allowing for broader comparisons and more accurate matching than is generally attained by using NCOA and a voter list alone. OpSec Tr. 94:17-21;

95:3-9, 17-18; 95:14-18; 96:3-17.

68. Even where the NCOA entries are accurate, the NCOA registry does not provide sufficiently specific or unique information to reliably match NCOA data to a voter file because the NCOA registry does not include any unique identifier, like a social security number or other identification number that is unique to each voter. Mayer Rep. at 6.

**Response:** The statement that the NCOA does not provide sufficiently specific or unique information to produce a reliable match is editorial comment<sup>4</sup> or a legal conclusion. The process used to compile the Challenge List process was not limited to matching NCOA data to a voter file but used additional databases, including other state registrations, proprietary lists, county tax records, and voter registration rolls in other states allowing for broader comparisons and more accurate matching than is generally attained by using NCOA and a voter list alone. OpSec Tr. 94:17-21; 95:3-9, 17-18; 95:14-18; 96:3-17.

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<sup>4</sup>See *Hobirn, Inc. v. Aerotek, Inc.*, No. 10-61144-civ, 2012 WL 13005347, at \*1 n.2 (S.D. Fla. July 25, 2012) (recognizing and discounting editorial commenting in statements of fact).



69. Even where it is certain that a registered voter submitted a change of address request, that does not mean the individual changed or abandoned their prior residence. The registrant may be forwarding their mail to a friend's house, or they may need access to their mail while on vacation. Voting eligibility is not affected, of course, where no move occurred. *Id.* at 14.

**Response:** Admitted, with clarifications: the Challenge List used only NCOA data in which the person indicated a permanent address change, not a temporary change of address. In addition, the process used to compile the Challenge List process was not limited to matching NCOA data to a voter file but used additional databases, including other state registrations, proprietary lists, county tax records, and voter registration rolls in other states allowing for broader comparisons and more accurate matching than is generally attained by using NCOA and a voter list alone. OpSec Tr. 94:17-21; 95:3-9, 17-18; 95:14-18; 96:3-17. 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.

70. Individuals who submit a change of address request do not thereby forfeit their eligibility to vote. *See, e.g.*, TTV RFA at 1; Ex. 7, Derek Somerville First Dep. Tr. (“Somerville I Tr.”) at 125:16-126:3 (“There are literally thousands of individuals that legitimately used NCOA to forward their mail out of the county/state but remain legal residents.”).

**Response:** The statement is a legal conclusion based on assumed facts that it does not present. An individual that submits a change of address request because they have changed domiciles does forfeit eligibility to vote in the former jurisdiction.

71. Defendants had no way of knowing whether voters who had filed a permanent change of address had moved away permanently, or just temporarily for a period longer than 12 months. TTV/Engelbrecht Tr. 209:17–211:8; Davis II Tr. 26:2–27:5.

**Response:** Defendants used only NCOA records in which the voter themselves indicated a permanent move. TTV Tr. 208:1-12. The process used to compile the Challenge List process was not limited to matching NCOA data to a voter file but used additional databases, including other state registrations, proprietary lists, county tax records, and voter registration rolls in other states allowing for broader comparisons and more accurate matching than is generally attained by using NCOA and a voter list alone. OpSec Tr. 94:17-21; 95:3-9, 17-18; 95:14-18; 96:3-17.

72. True the Vote’s goal was to create a presumption that all voters identified in its challenge lists would not be permitted vote absent further evidence proving their eligibility. TTV/Engelbrecht Tr. 158:1-159:5; Ex. 28, Email from M. Williams to A. Holsworth.

**Response:** Plaintiffs’ statement of TTV’s goal is not a statement of fact and “creat[ing] a presumption” is editorial comment about a legal fact. All in-person votes would have to show identification that proved their eligibility, meaning that the Challenge changed nothing for them, TTV Tr. 158:7-12, and the Challenge would require, as the statute provides, that absentee voters newly excused from

identification would confirm their residency in the curing process. *Id.* 158:13-159:5.

73. Defendants also fundamentally oppose the NVRA’s safeguards; they view the NVRA as “antiquated.” Davis I Tr. 112:16-22.

**Response:** Plaintiffs’ statement of Defendants’ “fundamental oppos[ition] is editorial comment. In context, the cited evidence states that Mr. Davis thought that the NVRA “should be amended so that it’s more helpful in keeping our nation’s voter rolls cleaner.” Plaintiffs’ characterization of this as opposing safeguards is editorial comment.

74. True the Vote explained to its volunteers the challenge process that it hoped to see implemented: “[w]hen the challenge letter is received at your election office[, election officials] are required by G[eorgia] law to not let a ballot be cast or counted until the individual that has been challenged comes in and proves they are not dead, or they still live in the same location.” Ex. 28, Email from M. Williams to A. Holsworth.<sup>5</sup>

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<sup>5</sup>Mr. Cooper testified that this explanation was “basically . . . the script” used to educate volunteers about the basis for True the Vote’s challenges and the challenge process. Cooper Tr. 42:20–43:21. Yet Ms. Engelbrecht admitted that

**Response:** Admitted as to the substance of the email; the characterization of “hope” is editorial comment. The evidence cited in the footnote does not support the statement that “critical nuances” were omitted, but only that the number of voters subject to challenge was overestimated in the email. The “critical nuances” mentioned by TTV were that individuals permanently changing their residence were “appropriate in the scope of an elector challenge.” TTV. Tr. 233:1-3.

75. Ms. Engelbrecht confirmed this understanding, testifying that if the challenge process had gone the way she envisioned it, all 360,000-plus voters on its challenge lists would be required to show proof of their residency before being allowed to vote in the runoff election, *see* TTV/Engelbrecht Tr. 158:1–159:5.

**Response:** To say what Defendant envisioned is editorial comment. As noted above, TTV pointed out that all in-person votes would have to show identification that proved their eligibility, meaning that the Challenge changed nothing for them, TTV Tr. 158:7-12, and the Challenge would require, as the statute provides, that absentee voters newly excused from identification would confirm their residency

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this script contains “a number of things . . . that are not correct” and omits critical nuances about True the Vote’s challenges. TTV/Engelbrecht Tr. 231:20–232:5.

during the curing process. *Id.* 158:13-159:5.

76. True the Vote’s voter challenge list did “not come anywhere close to what would be required for valid practices in academic studies of election administration.” Mayer Rep. at 2.

**Response:** This statement is editorial comment. To the extent that a comparison to “academic studies” is a fact, is not material because, as a matter of law, whether the challenge list was created using “practices in academic studies of election administration” is irrelevant and will not affect the outcome of the suit. The challenge list was created using NCOA, CASS, and DPV, OpSec Tr. 93:14-22, which is generally accepted advanced data hygiene and, additionally, uses other types of databases in a proprietary process to help verify identity, OpSec Tr. 94:1-2, 17-21.

77. True the Vote’s own allies—Defendants Mark Davis and Derek Somerville—warned that the scope of the challenge program was entirely too broad. See Davis I Tr. 61:19-62:7; Somerville II Tr. 94:11-95:2.

**Response:** Description of Defendants as allies and the assertion of their position

as a warning and the “challenge program” as “*entirely* too broad” are editorial comment. Mr. Davis opined that he would have challenged only those that had voted in the general election, Davis I Tr. 61:22-62:3, because he did not expect as many people that had moved to vote, and noted that “[t]housands of them did,” and that those that “don’t live here any more . . . shouldn’t be voting here.” *Id.* 62:5-10

**2. The data used to construct the challenge file, and the methods used to identify registrants who have allegedly moved, were unreliable and generated tens of thousands of obvious errors.**

78. True the Vote retained and collaborated with OPSEC Group, LLC and its founder, Gregg Phillips, to review data files and prepare lists of voters to challenge in each county in Georgia. TTV/Engelbrecht Tr. at 125:22-126:11.

**Response:** “Collaborated” is editorial commentary. Defendants admit that TTV hired 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. OpSec Tr. Ex. F 54:21; 57:11-21.

79. Mr. Phillips gained notoriety after the 2016 presidential election when

he claimed, without any basis, that more than three million votes were cast by non-citizens. OPSEC/Phillips Tr. 41:6-10; Ex. 29, G. Phillips CNN Interview Tr. at 8. But this allegation was obviously fabricated, as it came before statewide voter records were even available for review, and Mr. Phillips steadfastly refused to provide his data or methodology for outside verification. *See* Phillips CNN Interview Tr. at 8.

**Response:** Each sentence of this statement is or contains editorial comment. To the extent that any fact is stated, they are not material because no event or comment surrounding a 2016 election is relevant to the question of how the

80. Dr. Mayer's review of the challenge file prepared by OPSEC and True the Vote uncovered missing data, missing values in key fields, anomalous values and obvious errors, lack of adequate data preparation, challenge file addresses near or on military installations, challenge file addresses in municipalities with universities, and other inadequate data practices for which Defendants are unable to provide any justification. *See infra* ¶¶ 81-111.

**Response:** This statement is not supported by citation to evidence but to other



statements. Responses to these statements are provided below.

**i. Mismatches between data files**

81. The databases Defendants used do not allow for foolproof matching, as the Georgia voter file contains only one unique identifier—the voter registration number—for each registered voter. Mayer Rep. 16. The remaining information included in the voter file—a person’s name, address, birth year, race, gender, registration date, and date last voted—is not necessarily exclusive to any one person. *Id.* at 16. And the voter file does not include any other potential unique identifiers, such as social security numbers or driver’s license numbers. *Id.* at 15-16.

**Response:** The first sentence includes editorial comment; “foolproof” is not the applicable standard here or for any legal test. The process used to create the Challenge List was not limited to depending on the voter registration number to identify voters that have moved. OpSec Tr. 94:9-14; (process was not limited to NCOA and voter file list); *id.* 113:6-17 (process compared voter file information to commercially available information). The proprietary process gathers data from other lists to help verify identity of voters that have moved. OpSec Tr. 96:3-8; *id.*

96:12. The combination of data—full name, address, and year of birth is itself a unique identifier and the proprietary process used to create the Challenge List 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.

82. The NCOA registry also does not include a person's voter registration number or any other unique identifier. *Id.* at 16-17. Nor does a person's voter registration number appear in any other database that could have been matched to the voter file to establish non-residency. *Id.* Thus, the only common fields between the voter file and NCOA registry are a person's name and address, which cannot—and certainly did not—dependably identify a unique individual. *Id.* at 16.

**Response:** The statement is a legal conclusion. The combination of data—full name, address, and year of birth is itself a unique identifier and the proprietary process used to create the Challenge List 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. The analysis resulting in the Challenge List was not limited to depending on the voter registration number to identify voters that have moved. OpSec Tr. 94:9-14; (process was not limited to NCOA and voter file list); *id.* 113:6-17 (process compared voter file information to commercially available information). The proprietary process gathers data from other lists to help verify identity of voters that have moved. OpSec Tr. 96:3-8; *id.* 96:12.

83. In preparing the challenge lists, OPSEC accepted partial matches, where individuals in the voter file and NCOA registry had the same first and last names but *different* middle initials or *different* name suffixes (e.g., Jr. or Sr.). OPSEC/Phillips Tr. at 117:5-9, 17-19.

**Response:** OpSec stated that partial matches with names with different middle initials or name suffixes were possible but that its proprietary process of verifying identity first ameliorates or mitigates these partial matches. OpSec Tr. 122:4-16.

84. True the Vote and OPSEC refused to provide concrete information about how these matching errors were reduced or identified. *See* Mayer Rep. 20-23; OPSEC/Phillips Tr. 109:9-12.

**Response:** This statement contains editorial comment. OpSec’s process is proprietary process—meaning that it is protected as intellectual property or trade secret—the heart of which is a 4000-row algorithm developed by Gregg Phillips that has, through use, demonstrated its accuracy. OpSec Tr. 107:13-108:4; 113:22-114:3. OpSec Tr. 108:16-22. OpSec has provided information sufficient to describe how any “matching errors were reduced or identified.”

85. As OPSEC admits, “the import of verifying identity can’t be overstated in this case.” OPSEC/Phillips Tr. 141:17-19; *see also* Davis I Tr. 21:2-5.

**Response:** In context, OpSec’s statement was that *because its proprietary process works to verify identity* apart from and in addition to simply matching data between the NCOA list and a voter list, it was superior to the matching data method that it is commonly used. OpSec Tr. 120:12-20. For example, 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. 96:3-11; 141:11-20. t method and was not subject to the criticisms

## ii. Missing data

86. True the Vote's challenge file does not include several sources of identification found in the voter file, including middle name or middle initial, maiden name, suffix, or birth year. Mayer Rep. at 24. Instead, the only fields that appear to have been matched between the voter file and the NCOA registry are first name, last name, and address. *Id.* at 24-25.

**Response:** The challenge file was the result of analysis, not a source of data, OpSec. Tr. 93:14-94:2, and is not evidence of what was considered in compiling the challenge list. The proprietary process does not depend exclusively on matches between the voter file and NCOA registry. OpSec Tr. 94:9-14; (process was not limited to NCOA and voter file list); *id.* 113:6-17.

87. Because name and address combinations are far from unique in the voter file, this resulted in obvious errors. *Id.* at 25. Dr. Mayer found that there were 85,219 records in the Georgia voter file that had at least one duplicate entry with the same first name, last name, street address, apartment number, city, and zip code. *Id.* Dr. Mayer also found 1,375 entries in True the Vote's challenge file, where one entry in the NCOA database was linked to multiple individuals who share the same name and address, meaning that at least some of those individuals

from the voter file were misidentified and had not submitted a change of address form at all. *Id.* at 26.

**Response:** Named Defendants dispute whether the 1375 entries that Dr. Mayer describes are misidentified individuals that had not submitted a change of address form. The observation that the Georgia voter file contains duplicate entries is not material because the presence of duplicate records in the voter file is irrelevant to the question of how the Challenge List was created or any other question affecting the outcome of the suit. The process used to compile the Challenge List process was not limited to matching a voter file to NCOA data but used additional databases, including other state registrations, proprietary lists, county tax records, and voter registration rolls in other states and provided broader comparisons and more accurate matching than is attained by using NCOA and a voter list alone.

OpSec Tr. 94:17-21; 95:3-9, 17-18; 95:14-18; 96:3-17.

88. This error, moreover, had a disparate racial effect: Black voters comprise 27.3% of all individuals in the challenge file, but among the individuals in duplicated records, 40.3% are Black. *Id.*

**Response:** Defendants dispute whether the 1375 entries that Dr. Mayer describes are misidentified individuals that had not submitted a change of address form. Defendants neither consulted nor used demographic information in creating the Challenge List. OpSec Tr. 150:16-18, 151:13-16, 152:6-9; TrueAppend Doc., Ex. G; OpSec Tr. 163:13-164:8; 149:14-17; TTV Tr. 244:17-245:10, 248:13-22 Second Somerville Tr. 30:6-32:14; 188:4-22.

### iii. Missing values in key fields

89. Dr. Mayer found 15,360 records in the challenge file that failed to show any street address in the “moved to” address fields. Mayer Rep. at 26-27. Another 27 records show the “moved to” street address as “general delivery,” *id.* at 27, which Mr. Phillips admitted could mean “dozens” of things, including that the voter “didn’t have an address when they moved” or was homeless. OPSEC/Phillips Tr. 141:10-16.

**Response:** The Challenge List displayed what the NCOA file shows, which includes what the resident provided to the U.S.P.S. Defendants dispute any implication that there are records in the Challenge List for which the City, State, and Zip code were all missing. Defendants also dispute the implication that a voter

not having a “moved to” street address when they moved means that the voter has not moved or could unequivocally validly vote based on the “moved from” address. Whether a record is missing a “moved to” street address is not a material fact because compiling an accurate list of moved voters does not depend on having a “moved to” street address. The proprietary process used to create the Challenge List, in addition to address information, used a sophisticated algorithm to draw in information from other databases in identifying the individual first, used regression modeling to substantially cut the risk of a mismatch, and reviewed the results of matching names 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. 108:8-11 113:6-17, 118:11-119:22, 140:8-141:7 141:11-20.

90. The lack of a “moved to address” is important because this means the challenge lists included thousands of Georgia votes who may not have permanently moved out of their county—indeed, who may not have moved at all. Mayer Rep. at 26-27.



**Response:** Defendants dispute the implication that the Challenge List includes records for which the City, State, and Zip code are all missing. Whether a record is missing one component of a “moved to” street address is not material because the proprietary process resulting in the Challenge List did not rely solely on complete address information but used a sophisticated algorithm to draw in information from other databases in making a match, used regression modeling to substantially cut the risk of a mismatch, and reviewed the results of matching names 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. 108:8-11 113:6-17, 118:11-119:22, 140:8-141:7 141:11-20.

#### **iv. Anomalous values and obvious errors**

91. Apart from fields that were entirely missing from the challenge files, there were also fields that were completed incorrectly and inconsistently, exemplified by all of the 9,270 records in the Henry County challenge list containing erroneous zip code data. Mayer Rep. at 27.

**Response:** Defendants dispute the implication that the Challenge List includes records for which the City, State, and Zip code are all missing. In the case of the

Henry County, the city and zip code fields were transposed in the export of the voter record, causing “city” to display twice, but this is not material because NCOA data was “cleaned” using CASS and DPV in the analysis producing the Challenge List for Henry County and every other county. OpSec Tr. 114:10-14; 115:1-18. Moreover, the proprietary process does not depend exclusively on matches between the voter file and NCOA registry. OpSec Tr. 94:9-14; *id.* 113:6-17. Instead, it used a sophisticated algorithm to draw in information from other databases in making a match, used regression modeling to substantially cut the risk of a mismatch, and reviewed the results of matching names 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. 108:8-11 113:6-17, 118:11-119:22, 140:8-141:7 141:11-20.

92. Additionally, city spellings and abbreviations differ arbitrarily—for example, Dauphin Island, Alabama is only sometimes abbreviated to “Dauphin Isl,” and San Juan Capistrano, California is only sometimes abbreviated to “San Juan Capo.” *Id.* at 28.

**Response:** The Challenge List provided the spelling and abbreviations returned from the NCOA, which was run through CASS, OpSec Tr. 114:10-14, which provides standardized abbreviations, OpSec Tr. 115:1-10, that were used in the matching analysis via the proprietary process. OpSec Tr. 93:19-94:2. The raw NCOA data to which this statement refers is not the data used to create the Challenge List.

93. None of these errors or abbreviations exist in the voter file, further confirming True the Vote settled for approximate matches in putting together their challenge files. *Id.*

**Response:** The “errors” Plaintiffs have previously asserted were with respect to zip codes were not are not material because that data was not the data used to create the Challenge List. NCOA data was “cleaned” using CASS and DPV in the analysis producing the Challenge List for Henry County and every other county. OpSec Tr. 114:10-14; 115:1-18. Similarly, the spelling and abbreviations the Challenge List provided were from the raw NCOA, which was run through CASS, OpSec Tr. 114:10-14, which provides standardized abbreviations, OpSec Tr. 115:1-10, that were used in the matching analysis via the proprietary process.

OpSec Tr. 93:19-94:2. The raw NCOA data to which this statement refers is not the data used to create the Challenge List. Moreover, the proprietary process does not depend exclusively on matches between the voter file and NCOA registry.

OpSec Tr. 94:9-14; *id.* 113:6-17 and resulting “matches” provided in the Challenge List were reviewed 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.

94. Dr. Mayer also found 263 examples where the name of the registrant in the challenge file does not match the name in the voter file under the voter registration number provided. *Id.*

**Response:** The process used proprietary analyses and lists to help verify identity of individuals listed in the raw data, a process that may be unique, that is, above and beyond what is conventionally done for matching. OpSec Tr. 96:311.

Absolute verification of identity has to be done by the counties using their access to DMV and other files that are not available to citizens and voters. OpSec Tr. 142:9-15.

95. Dr. Mayer found five examples where the registration address and “moved to” address in the challenge file were identical, indicating that the voter had not, in fact, moved at all, “rais[ing] further questions about the validity of the NCOA matching process used, as well as the lack of quality control in reviewing the results (to the extent they were reviewed at all).” *Id.*

**Response:** This statement contains editorial comment and offers an assessment of the entire Challenge List based on five errors in raw data. This discrepancy appears to be due to two cities being associated in the NCOA with the wrong counties. The proprietary process used to generate the Challenge List is rigorous and is designed to identify 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.

96. Gregg Phillips (OPSEC) admitted that he knew these errors were in the challenge file and that they should have been removed. OPSEC/Phillips Tr. 146:2-5.

**Response:** The citation does not support the statement made. Gregg Phillips said that mismatched names were possible, that the Lists were reviewed for such errors, that matches with such errors would “likely . . . have been an exception and . . . kicked out, but it’s possible that it could be included.” OpSec Tr. 145:5-18. Mr. Phillips said that there were matches in which the registered address and the “moved to” address were the same, and that it is possible that this could be valid matches, “especially if it was a different name.” OpSec Tr. 146: 1-7.

97. Mr. Phillips knew that registrations remain valid where a voter moves within the same county, but nonetheless, voters who changed their address to another address within the same county were still included in the challenge lists. *Id.* at OPSEC/Phillips Tr. 125:12-22.

**Response:** The conclusion of this statement is not supported by the evidence cited. Mr. Phillips opined that a person might submit an address change to move within the same county and still be eligible in the registered jurisdiction. OpSec

Tr. 125:21-22.

98. Dr. Mayer found 145 instances where a targeted individual's registration address and "moved to" address was in the same county. Mayer Rep. at 28.

**Response:** A possible discrepancy of 145 records among over 350,000 is not material to the question of how the Challenge List was created or any other question affecting the outcome of the suit. Among the persons that OpSec's proprietary process is designed to identify are persons that have moved inside the county or jurisdiction in which they were registered, OpSec Tr. 125:2. Because the process consulted records other than address records, the process could infer that some one had, in fact moved. OpSec Tr. 129:8-15 (whether someone moved is inferred by the aggregate of data considered).

99. Dr. Mayer also found 6,377 examples where individuals had already re-registered at their "new" address, indicating that True the Vote inexplicably challenged the eligibility of voters who were registered at the address that True the Vote believe to be their home. Mayer Rep. at 29.

**Response:** Defendants dispute whether the individuals re-registering were identical with the individuals that submitted the change of address in the NCOA. OpSec Tr. 146:8-11 (asking about individuals re-registering at the address the NCOA match “suggested” the individual moved to where the NCOA).

100. Mr. Phillips admitted that “[reviewing for this error] was beyond our capacity so in that case what we would say is submit the challenge and let the county figure it out.” OPSEC/Phillips Tr. 146:8-14.

**Response:** Admitted with the clarification that this statement was made with respect only to cases where the individual appeared to have re-registered at the address “the NCOA match suggested the individual moved to.” OpSec Tr. 146:8-11

101. Finally, Dr. Mayer found 336 examples where challenged individuals were not registered to vote in Georgia at all, meaning they were wrongfully accused of being registered or voting unlawfully. Mayer Rep. at 29.

**Response:** Defendants dispute whether 336 individuals on the Challenge List were not and/or never had been registered to vote in Georgia. No accusation was made by Defendants of any person identified on the Challenge List TTV Resp. to



First Interrogs. No. 5. Defendants never publicized the List. TTV Tr. 257:11-14, ECF No. 155-7; Second Somerville Tr. 71:16-72:19; 72:21-73:14, ECF No. 155-14; Second Davis Tr. 46:3-14; 80:7-10, ECF No. 155-17.

**v. Lack of adequate data preparation**

102. Because True the Vote use any unique identifiers conduct its match, it was especially important to regularize the fields that were matched so that they have a common format. Mayer Rep. at 29.

**Response:** Defendants dispute the premise of this statement and the conclusion. The combination of data—full name, address, and year of birth is itself a unique identifier and the proprietary process used to create the Challenge List mitigates a lack of unique identifiers between voter registration rolls and NCOA lists by resolving for identity first, OpSec Tr. 107:4-8, 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.

103. But the address fields in the challenge file do not match the address fields in the voter file. *Id.* The challenge list provides two fields for a street address and apartment or unit number, while the voter file provides four separate

fields for house number, street name, street suffix, and apartment or unit number.

*Id.*

**Response:** Defendants dispute the conclusion that a difference in the display of address fields in the Challenge List means that there was a difference in data that would affect analysis.

104. Dr. Mayer found that of the 41,691 records in the challenge file that have a value in the apartment or unit number field, several are not valid: five are recorded as missing rather than blank, one is recorded as either a spreadsheet cell reference or a typographical error (“=g16”), one is recorded as an en dash (“-”), and another is recorded as “Null.” *Id.*

**Response:** The address information in the Challenge List was supplied by the NCOA data. NCOA data was “cleaned” using CASS and DPV in the analysis producing the Challenge List. OpSec Tr. 114:10-14; 115:1-18. The raw NCOA data to which this statement refers is not the data used to create the Challenge List. Moreover, the proprietary process does not depend exclusively on matches between the voter file and NCOA registry. OpSec Tr. 94:9-14; *id.* 113:6-17 and resulting “matches” provided in the Challenge List were reviewed 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.

**vi. Challenge file included addresses near or on military installations**

105. Defendants knew that Georgia residents who temporarily relocate due to military service remain eligible to vote in Georgia. *See, e.g.*, TTV Resp. to First Interrogatories No. 7 at 24; OPSEC/Phillips Tr. 125:12-18.

**Response:** Admitted with the clarification that an individual *temporarily* relocated for military service remains *eligible* to vote in the previous jurisdiction. A person that permanently moves, whether in the military or not, would not be eligible to vote in the “moved from” jurisdiction. TTV Tr. 232:18-22.

106. Dr. Mayer found 22,956 registrants who, according to the challenge file, moved to an address on a military installation, including 397 registrants who are listed as actually living *on a military installation*. Mayer Rep. at 30. For example, the challenge list includes 41 registrants with an address on Fort Knox, KY; 35 on Fort Bragg, NC; 29 on Fort Campbell, KY; 23 on Joint Base Lewis McChord, WA; 16 on Fort Stewart, GA; 15 on Fort Meade, MD; 14 on Eglin Air

Force Base, FL; 13 on Fort Irwin, CA; 12 on Camp Lejeune, NC; and nine at the United States Air Force Academy, CO. *Id.*

**Response:** Defendants dispute the implication that *all* individuals moving to an address on a military installation remain eligible to vote in the previous jurisdiction. Defendants note that this statement provides a basis for considering whether, at most, 397 individuals on the Challenge List were on a military installation, while it alleges that 22,956 were in fact living on a military installation. OpSec used NCOA filters to exclude recognized military addresses. TTV Tr. 202:18-203:11, 204:4-6; TTV 1453 (TTV Depo. Exh 26). 300,000 voters were excluded from the initial query as identified as, among other things, deployed for military service. OpSec Tr. 128:3-7. The proprietary process checked databases other than NCOA and the voter file list to identify persons who had permanently 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. 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 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

107. Gregg Phillips (OPSEC) was aware that voters who submit even a permanent change of address form to USPS listing their new duty station remain eligible to vote in the state where they registered. OPSEC/Phillips Tr. 131:7-12. However, when asked what further analysis was performed to identify whether military voters who moved to a base retained their eligibility to vote in Georgia, Mr. Phillips admitted “[w]e didn’t.” OPSEC/Phillips Tr. 131:13-16.

**Response:** Defendants dispute the first sentence of this statement. It implies that Defendant agrees that in all cases an individual retains eligibility to vote in a previous jurisdiction when filing a permanent change of address to a new duty station. OpSec used NCOA filters to exclude recognized military addresses. TTV Tr. 202:18-203:11, 204:4-6; TTV 1453 (TTV Depo. Exh 26). 300,000 voters were excluded from the initial query as identified as, among other things, deployed for military service. OpSec Tr. 128:3-7. The proprietary process checked databases other than NCOA and the voter file list to identify persons who had permanently 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. 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.

**vii. Challenge file included addresses in municipalities with universities.**

108. Defendants also knew that students remain eligible to vote at their original residence when attending school out of state (or out of county). *See, e.g.*, TTV Resp. to First Interrogatories No. 7 at 24; OPSEC/Phillips Tr. 125:12-19.

**Response:** Defendants dispute this statement. It implies that Defendant agrees that in all cases an individual retains eligibility to vote in a previous jurisdiction when filing a permanent change of address for reasons having to do with school. The proprietary process checked databases other than NCOA and the voter file list to identify persons who had permanently 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.

109. Dr. Mayer found 35,056 registrants in the challenge file with a “new” address in a city containing academic institutions that Georgia residents regularly

attend. Mayer Report at 31. As one example, the small town of Dahlonega is home to the University of North Georgia, as well as the Army base Camp Merrill. *Id.* at 50. From this town of 7,500 people, True the Vote challenged 273 individuals. *Id.*

**Response:** This statement contains an implicit legal conclusion that in all cases an individual retains eligibility to vote in a previous jurisdiction when filing a permanent change of address for reasons having to do with school. The individuals at issue have themselves filed an NCOA record of a permanent address change. TTV Tr. 135:3-8; OpSec Tr. 128:8-15. The proprietary process also considers databases other than NCOA and the voter file list to identify persons who have permanently 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. Among the persons that OpSec’s proprietary process is designed to identify are persons submitting an address change for purposes of attending school, *id.* 125:17-19, 128:1-2.

110. In all, 57,534 registrants in the challenge file—or 22.9% of the entire list—are alleged to have moved to or near a military installation, or to a municipality with a college or university. *Id.* at 32.

**Response:** This statement contains an implicit legal conclusion that in all cases an individual retains eligibility to vote in a previous jurisdiction when filing a permanent change of address for reasons having to do with a new military duty station or school. Defendants' data begins with an NCOA record of a permanent address change filed by the individual at issue. TTV Tr. 135:3-8; OpSec Tr. 128:8-15. The proprietary process also considers 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. Among the persons that OpSec's proprietary process is designed to identify are persons submitting an address change for purposes of attending school, *id.* 125:17-19, 128:1-2; and persons who have deployed for military service, OpSec Tr. 128:3-7.

111. Dr. Mayer concluded that the "matching process ostensibly used by True the Vote does not adhere to standard practice in political science." *Id.* at 32. Because Defendants did not "ensure that data fields were conforming, that missing and anomalous values were identified and corrected, and that implausible matches



(such as duplicates and name changes) were either removed or investigated further to identify possible errors,” their validation process was “wholly inadequate.” *Id.*

**Response:** This statement is editorial comment. To the extent that a comparison to “standard practice in political science” is a fact, it is not material because, as a matter of law, whether the challenge list was created using such practices is irrelevant and will not affect the outcome of the suit. Defendants dispute the statement’s implying that the practices were required for purposes of the relevant state or federal statute or other law and the conclusion that the process employed was therefore “wholly inadequate.” The process used to create the Challenge List was not limited to depending on the voter registration number to identify voters that have moved. OpSec Tr. 94:9-14; (process was not limited to NCOA and voter file list); *id.* 113:6-17 (process compared voter file information to commercially available information). The proprietary process gathers data from other lists to help verify identity of voters that have moved. OpSec Tr. 96:3-8; *id.* 96:12. The proprietary process 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. 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. 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. Regressions are run throughout the proprietary process. OpSec Tr. 119:5-9. The combination of data—full name, address, and year of birth is itself a unique identifier and the proprietary process used to create the Challenge List 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. The proprietary process checked databases other than NCOA and the voter file list to identify persons who had permanently 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.

**viii. Volunteer challengers and fellow defendants warned True the Vote of obvious errors.**

112. True the Vote's regular practice was to submit challenges from a True

the Vote email account under a volunteer's name without telling the volunteer who was being challenged. *See* Cooper Tr. 75:3-76:4. However, when Joe Martin, Chair of the Taliaferro County Republican Party, was identified as a registered voter willing to submit True the Vote's challenge list in his county, Ex. 4, Joseph Martin Dep. Tr. ("Martin Tr.") 20:17-22, he requested the challenge list for Taliaferro County to submit himself. *Id.* 43:19-44:2.

**Response:** Disputed as to the implication that TTV refused to show volunteers the list in advance—there is no evidence on the record that TTV refused to show volunteers the challenge lists if requested to do so. Mr. Martin asked to see the list before he agreed to volunteer. Cooper Tr. 75:21-22.

113. After receiving True the Vote's list of 37 names, Mr. Martin asked: "How did this list come about? Where did this list come from? Who generated the list?" Martin Tr. 38:19-20. Martin expressed that he believed standard practice required providing two sources for the allegation that a voter had changed residency, and nothing about the challenge lists reflected that multiple sources had been consulted. *Id.* 46:20-47:5.

**Response:** Disputed to the extent that Mr. Martin testified he believed standard

practice required providing two sources for the allegation that a voter had changed residency. Mr. Martin testified “in my line of work [he is retired from the defense industry, Martin Tr. 15:18] when you only have a single source of validation, you - you - you want two sources.” *Id.* at 46:20-47:2.

114. Martin was “not comfortable” that the list he received “was valid,” *id.* 38:17-19, and so rather than challenge all 37 individuals on True the Vote’s Taliaferro County list, Mr. Martin winnowed the list himself and chose to submit letters challenging only the three registrants on the list who had requested an absentee ballot for the runoff elections. *Id.* 55:7-12.

**Response:** Undisputed.

115. But Martin soon discovered that even this limited subset was faulty. According to county elections officials: (1) the first person he challenged did not live in New Jersey, as his challenge letter alleged, and instead was a 100-year-old woman living in Taliaferro County, (2) the second person he challenged lived in a nursing home and maintained a permanent residence in Taliaferro County, and (3) the third person he challenged also lived in a nursing home. Martin Tr. 61:12–66:7.

**Response:** The first sentence contains an editorial comment. Disputed as to results of the three test cases. One of the three test cases lived in Wilkes County, but cast an absentee ballot in Taliaferro County and that voter later asked for her name to be removed from Taliaferro County’s registration. Martin Tr. 65:19-7; 66:8-17. The second test case did not reside in Taliaferro County, but was able to vote there due to a homestead exemption. *Id.* at 64:4-65:7. So the information on TTV’s list about that person’s change of address was accurate. The local judge verified the third test case lived in Taliaferro County. *Id.* at 62:3-13.

116. As a result, Martin promptly withdrew all of his challenges and updated True the Vote about the issues he encountered: “My experience with the True the Vote data base has not been good,” he wrote in an email, because of “[c]oncerns with the quality of your information.” *Id.* 87:4–8, 87:16–18. After summarizing the relevant events, he repeated again, “Impact of 3 challenges. Not good! Indicates problem with data accuracy and relevance.” *Id.* 77:6–78:9; 83:20–84:9.<sup>6</sup>

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<sup>6</sup>Notably, Mr. Martin—the only challenger who requested to see the list of individuals to be challenged in his county, Cooper Tr. 75:3–76:4—was also the one challenger to request that his challenges be withdrawn. *See* TTV/Engelbrecht

**Response:** Undisputed that he sent that message to TTV. But disputed as to full context. He also testified that as far as the accuracy of the list he was provided, “it depends on how you look at the list” because one or two votes can make a difference in Taliaferro County. *Id.* at 99:11-19. He asked his challenge to be withdrawn because he didn’t want to put the registrar through the “painful process of validating those 37 individuals.” Martin Tr. 78:4-9.

117. Shortly after Martin shared that his desire to withdraw his challenges, Defendant Cooper emailed Ms. Engelbrecht that he would immediately look for a replacement challenger in Taliaferro County to resubmit the list. Cooper Tr. 105:14-20.

**Response:** Undisputed.

118. True the Vote also proceeded with challenges to all 37 individuals on the Taliaferro County challenge list under Martin’s name but without telling Martin it was doing so. Martin Tr. 56:4-57:9.6.<sup>7</sup>

Response: Disputed. TTV withdrew his challenges on December 21, 2021. TTV

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Tr. 328:4–13.

<sup>7</sup>Mr. Martin was “shocked” when he later learned from open records requests that True the Vote had done this. Martin Tr. 57:5–15, 62:21–63:3.

Resp. to 2d Interrog. Resp. No. 11.

119. Defendant Mark Davis also took “exception” to the logic of True the Vote’s challenge methodology. Davis I Tr. 60:15-18.

**Response:** Disputed. Mr. Davis testified he took exception to some of TTV’s logic. First Davis Tr. 60:17-18. He later testified, “it’s not that I really object to their criteria, but I probably personally wouldn’t have done it that way.” *Id.* at 62:10-12. Disagreements between TTV and Mr. Davis on the specific processes chosen by each are immaterial to the question of whether Named Defendants violated § 11(b).

120. Mr. Davis specifically objected that he “was not on board with the philosophy surrounding [TTV’s] challenge,” as he “felt it was too broad,” and that he wanted his challenges to “be more legitimate, more smaller.” *Id.* ; Davis II Tr. 94:14-17.

**Response:** Disputed. Mr. Davis testified, “it’s not that I really object to their criteria, but I probably personally wouldn’t have done it that way.” *Id.* at 62:10-12. Disagreements between TTV and Mr. Davis on the specific processes chosen by each are immaterial to the question of whether Named Defendants violated §

11(b).

121. Ms. Engelbrecht and True the Vote, however, were intent on “including as many records as possible within [True the Vote’s] challenge.” Engelbrecht/TTV Tr. 149:20-150:1.

**Response:** Undisputed on content, but disputed as to lack of context. Ms. Engelbrecht testified, “[w]e wanted to review as many records, recognizing that the state hadn’t cleaned their rolls in two years. And recognizing all of the new rules around the election process that would have impact. We wanted to do as much as we could to afford an even review.” TTV Tr. 149:14-19.

122. Mr. Davis also recognized that many registrants who file a “permanent” change of address form with the postal service only intend to relocate temporarily, and filing a “permanent” change of address form does not indicate that the individual has moved permanently. A “permanent” change of address form is required for mail forwarding that lasts longer than a year; thus, if the registrant is a student or member of the military whose temporary relocation is expected to last longer than one year, they must complete a permanent change of address form to ensure mail forwarding for the duration of their temporary relocation. Davis II



Tr. 26:14-27:5.

**Response:** Undisputed.

123. True the Vote did not conduct any such investigation to determine whether voters who filed a “permanent” change of address were students or otherwise away temporarily; instead, Mr. Phillips spent “an hour maybe” reviewing the challenge file to ensure the number of errors looked “reasonable” relative to his expectations, and he deemed that sufficient. OPSEC/Phillips Tr. 140:8-141:10.

**Response:** Disputed. OpSec used NCOA filters to exclude recognized military addresses. TTV Tr. 202:18-203:11, 204:4-6; TTV 1453 (TTV Dep. Ex, 26). 300,000 voters were excluded from the initial query as identified as, among other things, deployed for military service. OpSec Tr. 128:3-7. The proprietary process checked databases other than NCOA and the voter file list to identify persons who had permanently 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.

124. Unfortunately, Mr. Davis himself also failed to perform the necessary

analysis on his own challenge file of 40,000 registrants. He asked Mr. Somerville to manually remove names with addresses that might be affiliated with military bases, but not remove college students or other potentially eligible voters. Davis I Tr. 149:18-150:1.

**Response:** Disputed as to the word “manually.” Mr. Davis testified that Mr. Somerville “was aware of where the big military bases are and did his best to scrub them out of the data.” First Davis Tr. 149:11-14.

125. While Mr. Davis and Mr. Phillips (OPSEC) were each disinterested in the problems with their own challenge lists, they had no trouble recognizing each other’s flaws. See OPSEC/Phillips Tr. 103:13-16. Mr. Phillips specifically criticized Mr. Davis’s approach for failing to verify the identity of individuals on the voter rolls before matching to the NCOA, and assessed Mr. Davis’s methodology bluntly by stating: “This is bad process.” *Id.*

**Response:** The first sentence contains editorial comment. Disputed, Mr. Phillips testified that “my guess” is Mr. Davis did “clean the rolls as it relates to identity verification first or he wouldn’t have had this. This is bad process.” OPSEC Tr. 103:12-16. Mr. Phillips’ opinions or guesses as to Mr. Davis’ processes is

immaterial to the question of whether any Named Defendants violated § 11(b).

**3. True the Vote made good on its call to collaborate and galvanize support from Republicans by coordinating its Validate the Vote scheme with Georgia Republican Party officials.**

126. True the Vote also partnered with and “galvanize[d] support” from Republicans in Georgia. In a December 14, 2020 press release, True the Vote announced that it was “partner[ing]” with the Georgia Republican Party to help them “implement the most comprehensive ballot security initiative in Georgia history.” Dec. 14 Press Release.

**Response:** Undisputed.

127. For its mass elector challenges, True the Vote recruited challengers solely through two Georgia Republican Party officials, Defendants James Cooper and Ron Johnson, who in turn relied on Republican Party contacts to recruit challengers, several of whom were GOP party officials themselves. Cooper Tr. 33:3–13; 36:11–37:19; 115:15–22; Johnson Tr. 34:4–8; TTV/Engelbrecht Tr. 239:22–240:15; *see also* Cooper Tr. 139:8–14.

**Response:** Disputed as to implication TTV was unwilling to work with Democrats. TTV sent a letter to Georgia State Senator Nikema Williams, a

Democrat, offering “our assistance to the Democratic Party of Georgia for the Senate Runoff. Def TTV 1497.

128. Mr. Cooper testified that True the Vote ran its recruitment process from the Georgia GOP spreadsheet, recruiting Republican county chairs, and then recruiting a different challenger if a current or former Republican county chair did not want to be a challenger. *See* Cooper Tr. 58:3–9; 129:22–130:4.

**Response:** Disputed. Mr. Cooper testified that he used a spreadsheet the GOP had on the state [party’s] website. Cooper Tr. 36:17-37:3.

129. Joe Martin—the volunteer who ultimately requested that his challenge be withdrawn (and Chair of the Taliaferro County Republican Party)—even thought that Mr. Cooper had recruited him on behalf of the Georgia Republican Party, as Cooper signed his True the Vote recruitment email as coming from the “3rd Vice Chair 10th District Republican Party.” Williams 0377.7.<sup>8</sup>

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<sup>8</sup> Although True the Vote denied Plaintiffs’ Request for Admission No. 17 that it reached out to the Georgia Republican Party before reaching out to the Democratic Party of Georgia, that denial was false. As Ms. Engelbrecht testified in her deposition on behalf of True the Vote, she reached out to and partnered with the Georgia Republican Party before attempting to contact the Democratic Party of Georgia. *See* TTV/Engelbrecht Tr. 166:14–167:4.

**Response:** Undisputed.

130. True the Vote’s press release announcing its partnership with the Georgia Republican Party was just one of many designed to further the Validate the Vote scheme—specifically, the plan to “[b]uild public momentum through broad publicity.” Validate the Vote 2020 at 1; TTV/Engelbrecht Tr. 274:16–275:12.

**Response:** Disputed as to the editorial comment contained in the word “scheme.” Undisputed that TTV planned to “build public momentum through broad publicity,” which included press releases. Disputed as to the editorial comment implied by the use of “many.”

**4. Defendants’ public statements stoked fears, accused hundreds of thousands of Georgians of acting unlawfully, and exaggerated its efforts to build momentum for its Validate the Vote scheme.**

131. True the Vote’s December 18, 2020 press release announcing its mass challenges stated that it had “partner[ed] with Georgians in every county to preemptively challenge 364,541 potentially ineligible voters,” Ex. 22, Dec. 18 Press Release. In fact, it had not. *See* TTV/Engelbrecht Tr. 252:18–22. Instead, Ms. Engelbrecht testified that this language was intended to signal “willingness”

to partner with Georgians in every county. *Id.* 251:14–17.

**Response:** Undisputed.

132. Ms. Engelbrecht testified that the point of the press release was “more to show just support for the engagement of citizens,” *id.* 252:16–17, *i.e.*, to build the public momentum necessary to accomplish Validate the Vote’s goals.

**Response:** Undisputed as to the quote from Ms. Engelbrecht, disputed as to the editorial comment contained in the second clause.

133. The press releases had another goal: to elicit donations. Ms. Engelbrecht hoped that as awareness of the Validate the Vote program and its other efforts increased, so too would financial support or donations to True the Vote. *See* TTV/Engelbrecht Tr. 81:2–9. Indeed, True the Vote anticipated having its “legal fees . . . covered by the Trump campaign” because the campaign was going to use its research collected from the Validate the Vote scheme. *Id.* 305:3–8, 306:18–21.

**Response:** Undisputed as to the first sentence. Disputed as to the second. The question of legal fees surrounding the presidential election is immaterial as to the issue of whether Named Defendants violated § 11(b).

134. Ms. Engelbrecht has also publicly “offer[ed] tips to ordinary Americans to prevent the Democrat plan to steal the election in 2020,” see *id.* 323:15–324:3—a plan referenced in True the Vote’s Validate the Vote proposal that Ms. Engelbrecht admits was “promotional,” *id.* 269:17–271:13.

**Response:** Disputed, but immaterial as to the issue of whether Named Defendants violated § 11(b).

135. Despite True the Vote’s assertions that the Georgia Elector Challenges did not accuse any voter of “act[ing] improperly” or seek to “remove people . . . from the voter rolls,” TTV Resp. to Interrogatories No. 5 at 22, its recruitment email stated it was 99.9 percent certain that over 500,000 people on the Georgia voter rolls shouldn’t be there. Williams 0375. But in her deposition, Ms. Engelbrecht stated that the 500,000 number was incorrect and that it had no way of knowing whether the 99.9 percent figure was correct. *See* TTV/Engelbrecht Tr. 232:5–234:15.

**Response:** Disputed. Ms. Engelbrecht testified that “[i]t was and is our position that according to the analysis we provided, or that we supported, records correspond with individual decisions to permanently change their residence. And

therefore it would have made their record ineligible and appropriate in the scope of an elector challenge. TTV Tr. 232:18-233:3.

136. One of the recruiting emails for the True the Vote challenges claimed that if the challenges had occurred in October, “it is very likely Trump would have won Georgia.” Williams 0389.

**Response:** Undisputed.

137. True the Vote’s volunteers also believed they were removing people from the voter rolls and that the challenged voters were violating the law. Volunteers responded to recruiting emails stating that True the Vote could use their names and signatures to “challenge the illegal votes.” *See, e.g.*, Ex. 35, Dec. 15, 2020 Dodge County Challenger Email; Ex. 36, Dec. 18, 2020 Jones County Challenger Email; Ex. 37, Dec. 15, 2020 Barrow County Challenger Email; Ex. 38, Dec. 19, 2020 Calhoun County Challenger Email; *see also* TTV/Engelbrecht Tr. 236:6–243:19.

**Response:** Undisputed that some challengers wrote that in emails, but disputed as to whether a challenge to anyone’s registration was ever submitted.

138. True the Vote did not correct these Responses they furthered its



mission of building “public momentum” and were consistent with True the Vote’s assertions that “illegal” voting was rampant and those votes were being counted due to the malfeasance of Democratic officials. Validate the Vote 2020 at 1.

**Response:** This is not a statement of fact, but an editorial opinion.

139. On November 29, 2020, Defendants Mark Davis and Derek Somerville published a Facebook post about a scenario in which a voter dubbed “Dave” was alleged to have illegally voted in Georgia despite living in New York. In response, one individual wrote: “[c]an we start turning people in for election fraud? I have a list of a few people who should be made sorry they voted in two states,” Ex. 25, Nov. 30, 2020 Davis Facebook Post at 1, of which Mr. Davis expressed support by “liking” the message.

**Response:** Undisputed as to the Facebook post and comment. Disputed as to the editorial comment that Mr. Davis “expressed support” as that is a conclusory statement.

140. Several days later, on December 4, 2020, Mr. Somerville and Mr. Davis published another post about voters registered with UPS store P.O. boxes, and someone commented “I think a search warrant is in order here,” to which Mr.

Davis responded, “great idea!” Ex. 26, Dec. 4, 2020 Davis and Somerville Facebook Post at 3. Another individual commented on this post: “[l]et’s see if any one has the balls to prosecute to the max or if they will just get a hand slap!” *Id.* at 4. Yet another individual commented: “Hang that prick!!!” Ex. 27, Dec. 5, 2020 Davi and Somerville Facebook Post at 6.

**Response:** Undisputed.

141. On December 20, 2020—shortly after True the Vote submitted the bulk of its Georgia Elector Challenges—a group called “Crusade for Freedom” posted: “We just prospectively challenged the eligibility of 360,000 voters in GA. Largest single election challenge in Georgia and American history.” Ex. 23, Crusade for Freedom Tweets. Two days later, Crusade for Freedom tweeted: “If the Georgia counties refuse to handle the challenges of 366,000 ineligible voters in accordance with the law, I plan to release the entire list so America can do the QC.” *Id.*; TTV/Engelbrecht Tr. 264:17–265:3. Both tweets contained the hashtags #eyesonGA and #validatethevoteGA. *Id.*

**Response:** Undisputed.

142. Ms. Engelbrecht admitted that these hashtags mirrored the slogans

appearing on several True the Vote documents, an internal invoice between OPSEC and True the Vote. See TTV/Engelbrecht Tr. 264:7–16. Ms. Engelbrecht also admitted that she was not aware of any groups other than True the Vote that challenged the eligibility of approximately 366,000 voters in Georgia during the runoff elections. *Id.* 264:2–6. And she admitted that Crusade for Freedom’s logo in its tweets matched the logo in a Facebook post from an organization named Time for a Hero—which was founded by Ms. Engelbrecht and Mr. Phillips, *id.* 37:4–6—that stated, “Crusade for Freedom coming soon,” *id.* 261:10–11.

**Response:** Disputed. TTV is not associated with either Crusade for Freedom or Time for a Hero. TTV Tr. 259:1-18; 338:2-339:18. Although these tweets used hashtags for Validate the Vote Georgia, TTV does not control who uses hashtags on Twitter. 339:10-18.

143. About a week later, on December 30, 2020, Mr. Davis texted Mr. Somerville, “Derek, we need to stop this. If they publish they will be flooded with defamation complaints.” Davis II Tr. 129:3-10; 129:11-19 (Mr. Davis describing his concern that complaints were going to be made public).

**Response:** Disputed. This comment was completely unrelated to the § 230

Challenges, and is therefore immaterial. This comment was related to a mistaken impression that Mr. Davis had about another website TTV was considering. Second Davis Tr. 129:11-130:12.

144. Mr. Davis further explained that publishing the names would “literally mak[e] good on one of the ‘Threats’ alleged in [Plaintiffs’] complaint.” Somerville 371. Mr. Davis texted Ms. Englebrecht to implore her not to publish the names.

**Response:** Disputed. This comment was completely unrelated to the § 230 Challenges, and is therefore immaterial. This comment was related to a mistaken impression that Mr. Davis had about another website TTV was considering. Second Davis Tr. 129:11-130:12.

**D. True the Vote threatened to place a bounty on fraud and SEALS at polling places.**

145. True the Vote also created a “hotline,” which it used to gather information or data that OPSEC would aggregate for use in overturning electoral results. TTV/Engelbrecht Tr. 70:11–14. Yet Ms. Engelbrecht was “troubled” by the “intimidation” suffered by electors who received threats to themselves and their businesses, TTV/Engelbrecht Tr. 330:4–10, and recognized the “chilling

effect” such an environment could have. *Id.* 75:13.

**Response:** Disputed that TTV would aggregate the information from the hotline for “overturning election results” as that statement is not in the quote from Ms. Engelbrecht’s transcript. TTV established a support 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.

146. True the Vote then announced a whistleblower fund in excess of \$1 million, TTV/Engelbrecht Tr. 315:20–316:2.

**Response:** Disputed as to the implication the fund was a reward or bounty program. Ms. Engelbrecht testified the fund “was to support people that would come forward, as we discussed previously, to have funds available should they be necessary for their legal support.” TTV Tr. 316:6-10.

147. Historically, bounties in the voting context have been “used to direct suspicion around minority voters” by “incentivizing individuals to create or suspect fraud where there may have been none.” Burton Rep. at 26.

**Response:** Disputed as to editorial comment.

148. Nevertheless, Ms. Engelbrecht promoted the bounty in press releases and on her podcast, stating that “Validate the Vote is about [] putting a bounty on the fraud.” Ex. 43, Engelbrecht Podcast Transcript; TTV/Engelbrecht Tr. 70:6–7.

**Response:** Disputed. Ms. Engelbrecht testified that when she stated “Validate the Vote is about is putting a bounty on the fraud” during a podcast, she was “riffing” on what Validate the Vote was trying to do, but she then specified that the support fund was used to provide legal support, if and when needed. TTV Tr. 69:9-75:18.

149. True the Vote did not report any of the tips submitted to the Validate the Vote Georgia hotline to state authorities for action or investigation. See id. 94:17–95:3.

**Response:** Undisputed.

150. With respect to the Georgia Senate runoffs, True the Vote characterized its Validate the Vote scheme as part of “the most comprehensive ballot security effort in Georgia history.” Dec. 14 Press Release.

**Response:** Disputed as to editorial comment contained in “scheme.” Undisputed as to the quote from the press release.

151. That “ballot security” effort also involved soliciting Georgia voters to

act as “citizen watchdogs” by reporting “election fraud, manipulation or illegal action taking place.” *Id.* True the Vote targeted specific citizens to serve as “watchdogs”: it launched a “Continue to Serve” initiative that recruited veterans and first responders, including Navy SEALs, to monitor polling places. *See* Ex. 24, Seals at the Polls Podcast Tr. As Ms. Engelbrecht explained, polling places “need[ed] people who were unafraid to call it like they see it,” and if “[y]ou want to talk about people who understand and respect law and order and chain of command, you get some S[EALS] in those polls.” Ms. Engelbrecht explained how the SEALs could “interact with voters,” TTV/Engelbrecht Tr. 63:18–21, and election officials: “no, no, that is not—this is what it says and this is, this is how we’re going to play the show,” *id.* 62:9–12.

**Response:** Disputed. In 2020, TTV had an initiative called “Continue to Serve” that was directed towards veterans and first responders working in the polls or volunteering to work in the polls. TTV Tr. 59:9-12. This initiative was started in recognition that states often struggle to get enough volunteers working at polls<sup>9</sup>

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<sup>9</sup>*See* Secretary of State for the State of Georgia, *Brad Raffensperger Calls on Local Groups to Commit to Poll Working: Launches Poll Worker Recruitment Tools*,

and that veterans and first responders are very good at understanding a chain of command and understanding process, so those skill sets translate well to volunteering at polls. *Id.* at 59:19-60:17. Ms. Engelbrecht testified that the interactions between these volunteers and voters or other poll workers would depend on what capacity they volunteered in and what the state process was for various poll volunteer functions. *Id.* at 62:13-64:7.

**E. Defendants' actions were objectively intimidating, and, in fact, intimidated voters.**

152. “[V]oters whose eligibility is challenged may perceive a legal risk if they vote, which again dramatically increases the cost of voting and discourages turnout even if the individual is eligible.” Mayer Rep. at 41.

**Response:** Disputed as to editorial comment and opinion, not statement of fact.

153. This risk is particularly acute for low-information voters or voters of lower socioeconomic status who may lack the resources to navigate the law or understand whether they are still eligible to vote. Mayer Rep. at 39-41.

**Response:** Disputed as to editorial comment and opinion, not statement of fact.

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<https://sos.ga.gov/news/brad-raffensperger-calls-local-groups-commit-poll-working-launches-poll-worker-recruitment> (August 4, 2020).



154. “[V]oters may be reasonably hesitant to arrive at the polls to ‘prove’ their eligibility if it has been challenged,” particularly in a state, like Georgia, that has for the past decade “launched numerous investigations into voters accused of wrongdoing,” particularly minority voters. Burton Rep. at 17–20, 25.<sup>10</sup>

**Response:** Disputed as to editorial comment and opinion, not statement of fact.

155. When Plaintiff Jane Doe first learned that her eligibility to vote had been challenged by Defendants by reading a local paper that publicly disclosed her name, she feared that she or her family could become the target of harassment

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<sup>10</sup>Georgia’s “Elector Challenge” provision, O.C.G.A. § 21-2-230, was enacted over 100 years ago, the Elector Challenge provision was, like True the Vote’s Validate the Vote scheme, “[g]rounded on unsubstantiated claims of voter fraud” and “the pretext of purifying elections.” Burton Rep. at 8. Designed to disenfranchise Black voters, it was used with devastating effect for decades in mass challenges to suppress Black voting power and steal elections for white supremacists, most famously Eugene Talmadge and Marvin Griffin in 1946. *See id.* 8–14. The Talmadge and Griffin mass challenges were the largest in Georgia history—until True the Vote’s. *See id.* 24–25. The Talmadge and Griffin challenges were brought shortly before election day and curbed the ability of Black Georgians, who had just gained access to vote in primaries, the ability to exert influence over the primary process. *See* Burton Rep. at 24. Likewise, True the Vote brought its mass challenges not months before the election, but mere days before Georgia elected its first Black Senator to the United States Congress. *See id.* at 24–25.

from Defendants and their supporters if she voted. Jane Doe Decl. ¶¶ 5, 7, 9.

**Response:** Undisputed.

156. Jane Doe was especially concerned because she had seen reports of Georgia’s elections workers being harassed, threatened, and doxed after the general election. *Id.* ¶ 7.

**Response:** Undisputed.

157. Jane Doe’s information still remains publicly online to this day, and she fears she will be challenged again in future elections and that her eligibility to vote will be questioned again. *Id.* ¶ 11.

**Response:** Undisputed.

158. Similarly, Plaintiff Jocelyn Heredia testified that she felt intimidated when she was challenged by Defendants. Heredia Tr. 44:21-45:8. Heredia was also publicly listed as a “challenged voter” on Banks County’s website for six months. *Id.* 31:24-32:3, 61:17-62:21. For Ms. Heredia, the challenge was an intimidating experience, both because of the unclear legal implications and because she felt she was being targeted as a person of color in a predominantly white county. *Id.* 44:12-45:8.

**Response:** Disputed. 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. 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. Ms. Heredia testified that she did not know she was Challenged until later, when she got into the polling location. *Id.* at 49:4-50:2. Ms. Heredia testified her feeling of intimidation increased when she learned she had been Challenged based upon her change of address. *Id.* at 48:10-15.

Ms. Heredia testified that because she was Challenged, election officials asked her to fill out a paper ballot and explained to her that if she provided the requisite proof of residency at her voter registration address, her paper ballot would be counted. *Id.* at 23:22-24:13. She provided them with proof of residency and submitted the paper ballot. *Id.* at 24:8-13.

159. Stephanie Pfeiffer Stinetorf is another voter who experienced anxiety about her ability to participate in the Georgia runoff elections in January 2021 after she was challenged by Defendants. *See infra* ¶¶ 160-166.

**Response:** Disputed. Named Defendants did not submit challenges in Muscogee County. TTV did not submit any Challenge in Muscogee County. TTV's Amended Responses to Plaintiffs' First Requests for Production (Mar. 24, 2021) ("**TTV Am. Resp. First RFP**"), ECF No. 155-6, Resp. No. 2. No one used the Davis/Somerville Challenge List to submit a § 230 Challenge in Muscogee County. Second Davis Tr. 144:7-15.

160. Stinetorf moved to Georgia in 2018, and registered to vote at the time. Ex. 17, Stinetorf Decl. ¶ 2. She is a civilian employee of the United States Department of Defense, and as part of her job, received military orders to move to Germany in August 2020, at which time she submitted a change of address form to ensure she would continue to receive mail. *Id.* ¶¶ 3-4.

**Response:** Undisputed, but immaterial as Ms. Stinetorf is a registered voter in Muscogee County. TTV did not submit any Challenge in Muscogee County. TTV's Amended Responses to Plaintiffs' First Requests for Production (Mar. 24, 2021) ("**TTV Am. Resp. First RFP**"), ECF No. 155-6, Resp. No. 2. No one used the Davis/Somerville Challenge List to submit a § 230 Challenge in Muscogee County. Second Davis Tr. 144:7-15.

161. When Stinetorf learned that her absentee ballot for the January 2021 runoff election had been challenged, she became “very confused and concerned.” *Id.* ¶¶ 6-8.

**Response:** Undisputed, but immaterial as Ms. Stinetorf is a registered voter in Muscogee County. TTV did not submit any Challenge in Muscogee County. TTV’s Amended Responses to Plaintiffs’ First Requests for Production (Mar. 24, 2021) (“**TTV Am. Resp. First RFP**”), ECF No. 155-6, Resp. No. 2. No one used the Davis/Somerville Challenge List to submit a § 230 Challenge in Muscogee County. Second Davis Tr. 144:7-15.

162. Stinetorf immediately emailed and called the county registrar to get more information about the challenge, and her “anxiety grew” when she did not hear back for several days. *Id.* ¶ 10.

**Response:** Undisputed, but immaterial as Ms. Stinetorf is a registered voter in Muscogee County. TTV did not submit any Challenge in Muscogee County. TTV’s Amended Responses to Plaintiffs’ First Requests for Production (Mar. 24, 2021) (“**TTV Am. Resp. First RFP**”), ECF No. 155-6, Resp. No. 2. No one used the Davis/Somerville Challenge List to submit a § 230 Challenge in Muscogee

County. Second Davis Tr. 144:7-15.

163. Given the demands of Ms. Stinetorf's job and the time difference between the U.S. and Germany, she was not sure that she could remedy the problem or participate in any challenge hearings to protect her right to vote, which caused her significant amount of stress. *Id.* ¶ 9.

**Response:** Undisputed but immaterial as Ms. Stinetorf is a registered voter in Muscogee County. TTV did not submit any Challenge in Muscogee County. TTV's Amended Responses to Plaintiffs' First Requests for Production (Mar. 24, 2021) ("**TTV Am. Resp. First RFP**"), ECF No. 155-6, Resp. No. 2. No one used the Davis/Somerville Challenge List to submit a § 230 Challenge in Muscogee County. Second Davis Tr. 144:7-15.

164. Several days after Stinetorf initially found out her ballot had been challenged, she learned that a court order prevented her county from discarding her ballot unless the challenger was able to present further information about her ineligibility. *Id.* ¶ 11.

**Response:** Undisputed but immaterial as Ms. Stinetorf is a registered voter in Muscogee County. TTV did not submit any Challenge in Muscogee County.

TTV's Amended Responses to Plaintiffs' First Requests for Production (Mar. 24, 2021) ("**TTV Am. Resp. First RFP**"), ECF No. 155-6, Resp. No. 2. No one used the Davis/Somerville Challenge List to submit a § 230 Challenge in Muscogee County. Second Davis Tr. 144:7-15.

165. Even though these issues were eventually resolved, Stinetorf found the process of trying to figure out why she had been challenged and how she could prove her eligibility to vote in Georgia was "difficult and confusing," and she is not sure she could have personally resolved the issue if not for the intervening order allowing her ballot to be counted. *Id.* ¶ 12.

**Response:** Undisputed but immaterial as Ms. Stinetorf is a registered voter in Muscogee County. TTV did not submit any Challenge in Muscogee County. TTV's Amended Responses to Plaintiffs' First Requests for Production (Mar. 24, 2021) ("**TTV Am. Resp. First RFP**"), ECF No. 155-6, Resp. No. 2. No one used the Davis/Somerville Challenge List to submit a § 230 Challenge in Muscogee County. Second Davis Tr. 144:7-15.

166. Stinetorf is also concerned about the impact on her and her husband, who is also a Georgia voter stationed in Germany, of any future challenges and the

time and energy it would take for them to defend their right to vote. *Id.* ¶ 13.

**Response:** Undisputed but immaterial as Ms. Stinetorf is a registered voter in Muscogee County. TTV did not submit any Challenge in Muscogee County.

TTV's Amended Responses to Plaintiffs' First Requests for Production (Mar. 24, 2021) ("**TTV Am. Resp. First RFP**"), ECF No. 155-6, Resp. No. 2. No one used the Davis/Somerville Challenge List to submit a § 230 Challenge in Muscogee County. Second Davis Tr. 144:7-15.

167. Another voter, Gamaliel Warren Turner, Sr., is a 68-year-old retired veteran and lifelong Georgia resident who is registered to vote in Muscogee County. Ex. 18, Turner Decl. ¶ 2.

**Response:** Undisputed but immaterial as Mr. Turner is a registered voter in Muscogee County. TTV did not submit any Challenge in Muscogee County. TTV's Amended Responses to Plaintiffs' First Requests for Production (Mar. 24, 2021) ("**TTV Am. Resp. First RFP**"), ECF No. 155-6, Resp. No. 2. No one used the Davis/Somerville Challenge List to submit a § 230 Challenge in Muscogee County. Second Davis Tr. 144:7-15.

168. Turner registered to vote when he was 18 and has voted in almost



every election over the past 50 years. *Id.* ¶ 2.

**Response:** Undisputed but immaterial as Mr. Turner is a registered voter in Muscogee County. TTV did not submit any Challenge in Muscogee County. TTV's Amended Responses to Plaintiffs' First Requests for Production (Mar. 24, 2021) ("**TTV Am. Resp. First RFP**"), ECF No. 155-6, Resp. No. 2. No one used the Davis/Somerville Challenge List to submit a § 230 Challenge in Muscogee County. Second Davis Tr. 144:7-15.

169. Turner is employed as a government contractor with the United States Navy, and in October 2019 had to temporarily relocate to Camarillo, California for his job. *Id.* ¶ 3. Turner thus submitted a postal service change of address form to avoid missing mail deliveries while away on temporary work assignment; however, he always intended to return to Georgia and thus never registered to vote in California or changed his citizenship or residence from Georgia to another state. *Id.* ¶¶ 3-4.

**Response:** Undisputed but immaterial as Mr. Turner is a registered voter in Muscogee County. TTV did not submit any Challenge in Muscogee County. TTV's Amended Responses to Plaintiffs' First Requests for Production (Mar. 24,

2021) (“**TTV Am. Resp. First RFP**”), ECF No. 155-6, Resp. No. 2. No one used the Davis/Somerville Challenge List to submit a § 230 Challenge in Muscogee County. Second Davis Tr. 144:7-15.

170. Turner voted by absentee ballot in the 2020 primary and general election, and requested that the registrar mail his ballot to his California address for the runoff election. *Id.* ¶ 6.

**Response:** Undisputed but immaterial as Mr. Turner is a registered voter in Muscogee County. TTV did not submit any Challenge in Muscogee County. TTV’s Amended Responses to Plaintiffs’ First Requests for Production (Mar. 24, 2021) (“**TTV Am. Resp. First RFP**”), ECF No. 155-6, Resp. No. 2. No one used the Davis/Somerville Challenge List to submit a § 230 Challenge in Muscogee County. Second Davis Tr. 144:7-15.

171. However, Turner was one of 4,000 voters who had been challenged by Defendants in Muscogee County. *Id.* ¶ 7.

**Response:** Disputed. Named Defendants did not submit challenges in Muscogee County. TTV did not submit any Challenge in Muscogee County. TTV’s Amended Responses to Plaintiffs’ First Requests for Production (Mar. 24, 2021) (“**TTV Am.**

**Resp. First RFP**”), ECF No. 155-6, Resp. No. 2. No one used the Davis/Somerville Challenge List to submit a § 230 Challenge in Muscogee County. Second Davis Tr. 144:7-15.

172. As a result of the challenges, Turner became worried about the legality of his participation in the January runoff elections. And while he successfully sued the Muscogee County Board of Elections to ensure his ballot would be counted, the “entire experience was scary, confusing, and intimidating,” as he did not know how he would resolve the situation in time to vote. *Id.* ¶¶ 8-9. Turner also had to pay an extra charge to send his ballot via FedEx for expedited delivery. *Id.* ¶ 10.

**Response:** Undisputed but immaterial as Mr. Turner is a registered voter in Muscogee County. TTV did not submit any Challenge in Muscogee County. TTV’s Amended Responses to Plaintiffs’ First Requests for Production (Mar. 24, 2021) (“**TTV Am. Resp. First RFP**”), ECF No. 155-6, Resp. No. 2. No one used the Davis/Somerville Challenge List to submit a § 230 Challenge in Muscogee County. Second Davis Tr. 144:7-15.

173. As a Black voter and veteran growing up in the segregation era, he

found the challenge process discouraging, and “[t]hinking back to the senseless difficulty of [his] voting experience in the January runoff elections gives [him] PTSD.” *Id.* ¶¶ 11-12.

**Response:** Undisputed but immaterial as Mr. Turner is a registered voter in Muscogee County. TTV did not submit any Challenge in Muscogee County. TTV’s Amended Responses to Plaintiffs’ First Requests for Production (Mar. 24, 2021) (“**TTV Am. Resp. First RFP**”), ECF No. 155-6, Resp. No. 2. No one used the Davis/Somerville Challenge List to submit a § 230 Challenge in Muscogee County. Second Davis Tr. 144:7-15.

174. Turner wonders “if it is even worth trying to vote again given the trouble that the voter challenge has caused [him].” *Id.* ¶ 11.

**Response:** Undisputed but immaterial as Mr. Turner is a registered voter in Muscogee County. TTV did not submit any Challenge in Muscogee County. TTV’s Amended Responses to Plaintiffs’ First Requests for Production (Mar. 24, 2021) (“**TTV Am. Resp. First RFP**”), ECF No. 155-6, Resp. No. 2. No one used the Davis/Somerville Challenge List to submit a § 230 Challenge in Muscogee County. Second Davis Tr. 144:7-15.

Dated: June 6, 2022

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**Defs.' Resp. To**

**Pls.' Corrected SUMF**

### **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 June 6, 2022

/s/ James Bopp, Jr.

James Bopp, Jr.

Lead Counsel for Named 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**

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Letter to Senator Nikema Williams (“Def TTV 1497”)..... Ex. AA

Dated: June 6, 2022

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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

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2  
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14 Joe Cerda, video/document technician

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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 attributed to us.

2 But I don't know anything more about  
3 those.

4 Q. And the articles that you reviewed,  
5 did you see any reference to address changes or  
6 change of address in the challenges?

7 A. I saw references to address, yes.

8 Q. So, did you learn at some point  
9 after, did you learn that the challenges involved  
10 addresses of voters or residency?

11 A. I did, yes.

12 Q. And did you learn that the  
13 challenges involved information from the Postal  
14 Service?

15 A. I don't know where they got the  
16 information upon which they based their  
17 challenges.

18 Q. You just know that they were based  
19 on changes of address?

20 A. Just, in preparation for today and  
21 in reading, knowing that Ohio was named, I went  
22 back to see what it might have been. And that is

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1 really the extent of my recollection around all  
2 of this.

3 It was just being asked about it by  
4 the press.

5 Q. And, but around the time  
6 contemporaneously or shortly after it happened,  
7 you were aware of it because you were asked about  
8 it by the press and you had read about it; is  
9 that right?

10 A. Yes, yes. Yes.

11 Q. And you were also aware that those  
12 challenges were rejected; is that right?

13 A. Actually, in my reading just last  
14 evening, actually, I read that of those  
15 challenges, some were rejected and some were not.

16 But, that is again based upon just  
17 my, my reading recently. I didn't know at the  
18 time what any particular outcome was.

19 Q. At the time, were you aware of any  
20 of the challenges that had succeeded or that were  
21 upheld?

22 A. I don't recall.

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1 Q. Are you familiar with the  
2 organization Verify the Vote?

3 A. No.

4 Q. Have you ever heard the name, Verify  
5 the Vote?

6 A. I have, yes. I have heard the name.  
7 I just, I don't know -- I have heard the name,  
8 yes.

9 Q. Where have you heard the name?

10 A. I have heard the use of that name in  
11 just over the years in -- there are so many  
12 groups named so many similar things.

13 I have read the name somewhere, but  
14 I don't have any other -- well, that is where I  
15 have heard it.

16 Q. Have you ever commented on Verify  
17 the Vote or any of the group's activities?

18 A. I do not recall.

19 Q. All right. I would like to move on  
20 to some of True the Vote's election monitoring  
21 activities that you alluded to earlier.

22 And I want to start with one of the



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1 activities that I would like you to explain and  
2 describe which is Seals to the Polls. Have you  
3 heard that term used before?

4 A. I have not heard that term. But --  
5 I mean, I have not heard that term, no.

6 Q. Have you discussed or considered  
7 initiatives to bring Navy Seals to serve as poll  
8 watchers or Navy Seals to the polls?

9 A. In 2020, we had an initiative called  
10 Continue to Serve that was directed towards  
11 veterans and first responders working in the  
12 polls or volunteering to work in the polls.

13 And for a brief period that effort  
14 was led by a Former Navy Seal. And so he was  
15 quick to, you know, refer to the Seals, but yes.

16 Q. Was that ever one of the goals or  
17 the targets to ensure that, or to get Navy Seals  
18 to serve as poll monitors?

19 A. Well, it was the goal to encourage  
20 veterans and first responders to participate,  
21 because we need everybody -- the entire process  
22 needs more volunteers. There are just not enough

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1 volunteers working inside of elections.

2 And the thought behind the outreach  
3 was that these were folks that are very good at  
4 chain of command, at understanding process.

5 And in our experience they make  
6 great volunteers for these kinds of things,  
7 because often when you have people who are very  
8 well intended, but they are not as familiar with  
9 that construct of, you know, ordered processing  
10 and very observant of standards and time periods  
11 in which things must be reported in an orderly  
12 fashion, that can throw people.

13 And for people that come out of  
14 backgrounds that are more oriented towards that  
15 chain of command, that works, they do really  
16 well. And so that was the thought behind  
17 Continue to Serve.

18 MR. NKWONTA: Joe, can you pull up  
19 Exhibit 65 or Document 65.

20 (Exhibit 65 marked for  
21 identification.)

22 BY MR. NKWONTA:

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1 Q. Ms. Engelbrecht, Document 65 is a  
2 transcript of a statement that you made which we  
3 had transcribed and which we -- which True the  
4 Vote acknowledged in response to one of our  
5 requests for admission that this was a correct --  
6 it is a true and correct transcript.

7 MR. NKWONTA: Joe, can you go to --

8 MR. BOPP: I'm sorry, I have a  
9 question. I didn't understand what you just  
10 said.

11 What is the date of this, did you  
12 say?

13 MR. NKWONTA: The date of this  
14 transcript?

15 MR. BOPP: Yes. You gave a date.

16 MR. NKWONTA: August 13, 2021.

17 MR. BOPP: Okay, all right, thank  
18 you. Sorry, I didn't understand what you  
19 said.

20 MR. NKWONTA: Joe, can you go to the  
21 second page of this transcript.

22 BY MR. NKWONTA:

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1 Q. Ms. Engelbrecht, can you read this  
2 second paragraph into the record.

3 A. "Of interest here, we have a new  
4 initiative called Continue to Serve which is  
5 about recruiting veterans and first responders to  
6 work inside the polls. You want to talk about  
7 people who understand and respect law and order  
8 and chain of command, you get Seals in the polls.

9 "And they're going to say no, no,  
10 that is not -- this is what it says and this is,  
11 this is how we're going to play the show. And  
12 that's what we need."

13 Q. When you were making this statement  
14 and when you were referring to Seals in the  
15 polls, who did you envision them referring to or  
16 interacting with?

17 A. Well -- I'm sorry. Can you repeat  
18 the question?

19 Q. Sure. Who did you envision -- when  
20 you were making the statement, who did you  
21 envision the Seals interacting with or talking  
22 to?

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1           A.       Depending upon the capacity in which  
2       they were working, things can get very confusing  
3       in polling places. And the thought was just the  
4       individuals that are, as I say here, familiar  
5       with that kind of law of order and chain of  
6       command and understanding process are very  
7       decisive in their, this is how we need to do  
8       this, this is what the rules say.

9                       So, I'm familiar with this entire  
10      situation and how this came about. And I would  
11      say that, you know, it was taken out of context.  
12      That is, what I have just explained to you was  
13      the, the rationale behind the comment.

14           Q.       And you anticipate that these Seals  
15      would be interacting with people in the polling  
16      place including voters or election officials; is  
17      that correct?

18           A.       I would say that veterans and first  
19      responders, working inside the polls, depending  
20      upon their capacity, may interact with voters,  
21      also depending upon the state.

22                       If they were serving in the capacity

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1 of poll watcher, they would not engage with  
2 anyone. If they were working as a judge or a  
3 clerk, then they may.

4 And certainly with one another as  
5 part of the team working at the polls which can  
6 get very confusing, they would interact together  
7 working with others there at the polling place.

8 Q. Who is Ed Hiner? H-I-N-E-R is the  
9 last name.

10 A. He temporarily was the spokesperson  
11 for Continue to Serve.

12 Q. You say temporarily. Did he stop  
13 being a spokesperson at some point?

14 A. He did, yes.

15 Q. Why is that?

16 A. He also had a program that was a  
17 leadership program for after school, like after  
18 school programs.

19 And that -- in California. And that  
20 really got busy. And he was also writing a book  
21 or had written a book and was promoting that  
22 book. And, you know, the oversight of an effort

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1 like this is, takes a lot of time. And he just  
2 didn't have that time to devote because there  
3 were so many other interests in play for him.

4 Q. Have you seen or are you familiar  
5 with news articles or news reports in which Ed  
6 Hiner claimed that he withdrew after realizing  
7 how partisan the program had become?

8 A. No, I'm not aware of that.

9 Q. Do you have any reason to dispute  
10 that those were his reasons for withdrawing?

11 A. Well, the reasons for his withdrawal  
12 were, as I have stated, he didn't have the time.

13 He was shocked by how mean spirited  
14 comments can be about these kinds of efforts.  
15 And he didn't have any political background and  
16 didn't want it to -- he didn't, he didn't want  
17 the, the animus that comes oftentimes,  
18 unfortunately, with detractors who are looking to  
19 try to find a partisan angle here when there is  
20 none. But that is not what the media will  
21 report.

22 Q. And did you discuss Mr. Hiner's

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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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1 know, in casual conversation thinking I knew what  
2 Amy was referring to, I responded in that way.

3 But, I'm not -- in this moment, it  
4 could have been -- there is so many things  
5 happening in so many states that we were not a  
6 part of but observant of, that it really could  
7 have been a number of things.

8 Q. Were you aware of any other  
9 challenges filed in Georgia before the November  
10 election?

11 A. No. But I'm also not sure that this  
12 is even about Georgia.

13 Q. Well, it was produced in this case.  
14 And if it is not about --

15 A. It is -- I'm sorry.

16 Q. What other jurisdictions could this  
17 e-mail have been referring to?

18 A. It could have been Wisconsin. To  
19 clarify, we did not file anything in Wisconsin,  
20 but there were -- and again this is, I believe,  
21 an incorrect use of the term, elector challenge.

22 But there were subsets that were

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1 being, in many states, were being challenged in  
2 court that could have been used for analysis.

3 I don't recall the specifics any  
4 longer about what this exchange specifically was.

5 MR. NKWONTA: Okay. Let's pull this  
6 down and pull up Exhibit 26. And could you  
7 enlarge Exhibit 26 a little bit?

8 (Exhibit 26 marked for  
9 identification.)

10 BY MR. NKWONTA:

11 Q. Ms. Engelbrecht, do you recognize  
12 Exhibit 26?

13 A. Yes.

14 Q. What is it?

15 A. This was an e-mail that began as  
16 comments and clarifications that I had sent to  
17 the elector challengers, who we were working  
18 with.

19 And then Amy forwarded this to James  
20 Cooper and then James Cooper responded back.

21 MR. NKWONTA: And can you scroll  
22 down to the second e-mail. Great.

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1 BY MR. NKWONTA:

2 Q. And, it includes talking points that  
3 were shared by you, according to Amy. That  
4 e-mail says, "Good afternoon. Here is an excerpt  
5 from an e-mail in which a few talking points were  
6 shared by Catherine Engelbrecht. Hope this  
7 helps."

8 Is that a correct reading of that  
9 second e-mail from Amy Holsworth?

10 A. Yes.

11 Q. And do you agree that the talking  
12 points that follow were shared by you or came  
13 from you?

14 A. Yes.

15 Q. And looking at those talking points,  
16 you describe sort of the process of the NCOA  
17 matching.

18 I wanted to ask you specifically  
19 about the enhanced NCOA search to identify  
20 military addresses. What does that mean?

21 A. When you are using NCOA link with  
22 the filters that I referred to earlier, the, the

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1 DPV, the delivery point, the verification, and --  
2 well specifically that.

3 And then the NCOA link version gives  
4 you the opportunity to filter out any recognized  
5 military address.

6 And then further, there were efforts  
7 made to recognize the standard zip codes,  
8 orientations of bases that have certain -- the  
9 way that the address looks, you can tell that it  
10 was a military base and so those were filtered  
11 out. And that is what it meant.

12 Q. And to be clear you are referencing  
13 the enhanced NCOA search to remove identifiable  
14 military addresses. That appears on Page 2 of  
15 the PDF or Bates Number TTV 1453; is that  
16 correct?

17 MR. NKWONTA: If you could scroll  
18 down, Joe, to the next page, so  
19 Ms. Engelbrecht can see that.

20 THE WITNESS: Yes.

21 MR. NKWONTA: You might scroll down  
22 a little bit more. There we go. It is Item

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1           Number 1 on TTV 1453. Right.

2                   THE WITNESS: Uh-huh.

3   BY MR. NKWONTA:

4           Q.     Who conducted the scrub of the list  
5   for military addresses specifically?

6           A.     That was through OPSEC.

7           Q.     And why did you think it was  
8   important to scrub the military addresses from  
9   the list?

10          A.     Just due to the sensitivity around  
11   military addresses broadly. It was just -- the  
12   numbers were already so large and it was just  
13   not -- we thought it would be, you know, better  
14   to just not even have include that to the best of  
15   our ability.

16          Q.     When you say sensitivity around  
17   military addresses, what do you mean by that?

18          A.     I mean that the military is --  
19   people move very often. There is a lot --  
20   oftentimes having worked with veterans groups and  
21   veterans for an extended period of time, mail is  
22   just always sensitive.



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1 It is typically lagging. It is just  
2 an area that we would want to, not -- that we  
3 recognize is not as exacting as more typical  
4 residential filter.

5 Q. Your challenges as True the Vote has  
6 acclaimed, your challenges did not lead to any,  
7 you know, challenged person being removed.

8 That is, I believe, True the Vote's  
9 claim; is that correct?

10 A. Right. Our elector challenges were  
11 in accordance with the code which had never led  
12 to anybody. You said it differently.

13 Our, the standard, the 230 standard  
14 was not about removing anybody from the rolls but  
15 rather asking the county to confirm the  
16 eligibility of the record.

17 And then they follow their process  
18 that we have nothing to do with, clearly.

19 Q. And True the Vote has also claimed  
20 that the purpose of the challenge is just to get  
21 the counties to confirm residency, right?

22 A. Well, just the purpose of the

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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 (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 Q. I want to go back to an organization  
2 that we discussed earlier in this deposition,  
3 Time For A Hero. That was the organization that  
4 you ran with Gregg Phillips; is that right?

5 A. Uh-huh.

6 MR. NKWONTA: Could we pull up  
7 Exhibit 72.

8 (Exhibit 72 marked for  
9 identification.)

10 BY MR. NKWONTA:

11 Q. Do you recognize Exhibit 72? Is  
12 that Time for a Hero's Facebook page?

13 A. I really don't -- I can't confirm  
14 that.

15 Q. Well, does it say Time For A Hero on  
16 that Facebook page?

17 A. It does, it does say Time For A  
18 Hero.

19 Q. And does Time For A Hero have a  
20 Facebook page?

21 A. I can't confirm that. I don't know.  
22 I never did any of this.

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1 Q. Who would be able to confirm whether  
2 Time For A Hero has a Facebook page?

3 A. The last person who ran the  
4 organization managed all of the social media, so  
5 he would be able to.

6 Q. And who was that person?

7 A. I couldn't recall his name earlier,  
8 but his name is Ty Bathurst.

9 Q. How do you spell that?

10 A. T-Y, B-A-T-H-U-R-S-T.

11 Q. And do you have any reason to doubt  
12 that this is Time for a Hero's Facebook page?

13 A. Well, Time for A Hero is no longer  
14 an organization that I am connected with. I  
15 filed their closing tax return a couple years  
16 ago. If this was still there I, I am -- I can't  
17 say that I have reason to doubt it, but I  
18 can't -- I don't know about it.

19 MR. NKWONTA: Can we go to Page 19.

20 But before we do, I noticed some sound issues  
21 when Ms. Engelbrecht was responding. I just  
22 want to make sure that we were able to

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1 capture the response. If there is anything to  
2 resolve.

3 THE REPORTER: I'm happy to read  
4 back the answer if you'd like or do you want  
5 her -- do you want me to read back what I  
6 have?

7 MR. NKWONTA: Yes, please.

8 (Whereupon, the record was read by  
9 the reporter as requested.)

10 BY MR. NKWONTA:

11 Q. And you have no reason to doubt that  
12 Time For A Hero created a Facebook page? In fact  
13 you acknowledged that Time For A Hero created a  
14 Facebook page?

15 A. I, acknowledge that when the  
16 organization was active, we had somebody that was  
17 managing, or, you know, overseeing social media.

18 And so, it is not outside of the  
19 realm of possibility, but I can't confirm it.

20 I mean I can confirm that I'm  
21 looking at a document that says Time For A Hero,  
22 but I can't confirm anything past that.

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1 MR. NKWONTA: Could we go to Page 19  
2 of the Facebook page, of Exhibit 72.

3 BY MR. NKWONTA:

4 Q. Is that -- is that you in that  
5 Facebook post from August 8, 2020?

6 A. That is me, that is me.

7 MR. NKWONTA: And could we go to the  
8 next post on the following page, Page 20.

9 BY MR. NKWONTA:

10 Q. It says, "Crusade for Freedom coming  
11 soon."

12 What is the Crusade for Freedom?

13 A. I don't, I don't know. I don't have  
14 any affiliation with Crusade for Freedom.

15 I, I guess that Ty was posting some  
16 stuff from True the Vote here just to keep stuff  
17 on social media. I don't know about Crusade for  
18 Freedom.

19 Q. So, he was posting stuff from where?

20 A. From True the Vote. But, I don't  
21 know about this.

22 Q. Uh-huh. Have you heard that phrase

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1 Q. Your e-mail address is Catherine at  
2 True the Vote dot org, correct?

3 A. Yes.

4 Q. So you don't dispute that this came  
5 from your e-mail?

6 A. Or that an attachment called  
7 Validate the Vote or whatever it was, Validate  
8 the Vote 2020, I -- some of this language is not  
9 anything I, I recall, the best I can say.

10 This is not a typical.

11 Q. I guess my question is, you don't  
12 dispute that this was attached to an e-mail that  
13 you sent, correct?

14 A. I, I don't dispute that there was an  
15 attachment called Validate the Vote or Validate  
16 the Vote 2020.

17 Whether or not this document is in  
18 fact that attachment, I'm just not -- I'm not  
19 sure. I just can't confirm that.

20 Q. And you don't dispute sending a plan  
21 of some sort to Mr. Eshelman, correct?

22 A. I definitely did send a plan that



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1 they requested. So, I definitely recall that.

2 Q. And do you recall providing a budget  
3 for that effort?

4 A. I recall that there were budget  
5 numbers included along that right-hand column of  
6 the document that I provided.

7 Q. And is there any reason why this  
8 document was not produced in response to our  
9 discovery requests?

10 A. Not that I am -- no, not that I'm  
11 aware of.

12 MR. NKWONTA: That is all of the  
13 questions I have for you at the moment,  
14 Ms. Engelbrecht. Thank you for your time.

15 THE WITNESS: Thanks very much.

16 MS. SIEBERT: Okay. I just have a  
17 couple of follow-up questions.

18 EXAMINATION

19 BY MS. SIEBERT:

20 Q. Ms. Engelbrecht, do you recall  
21 testifying regarding the Time for a Hero  
22 Facebook, that line of questioning?

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1 A. Yes.

2 Q. And do you recall that on the --  
3 that you testified that on the Time for a Hero  
4 Facebook page, apparently they had shared or that  
5 Facebook page had posted a video from True the  
6 Vote. Do you recall that?

7 A. Yes.

8 Q. Okay. Did you control who from Time  
9 for a Hero could share that video on your  
10 Facebook page?

11 A. No.

12 Q. Okay. Do you recall that later on  
13 that Facebook page, counsel showed you a post  
14 that appeared to be from somebody -- or an  
15 account called Crusade for Freedom?

16 A. Yes.

17 Q. Okay. Does True the Vote or do you  
18 personally have any association with Crusade for  
19 Freedom?

20 A. No.

21 Q. Do you recall later in testimony,  
22 counsel asked you regarding some tweets that were

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1     apparently sent by an account called Crusade for  
2     Freedom?

3                     Can you answer verbally? I'm sorry.

4             A.     I'm sorry. Yes, yes, yes, yes.

5             Q.     And do you recall that that Crusade  
6     for Freedom Twitter account appeared to have the  
7     same logo as the Crusade for Freedom account that  
8     was on the Time for a Hero Facebook page?

9             A.     Yes.

10            Q.     Okay. And do you recall testifying  
11    or seeing that that, the tweets used hashtags  
12    Eyes on Georgia and Validate the Vote Georgia?

13            A.     Yes.

14            Q.     The Crusade for Freedom tweets?

15            A.     Yes.

16            Q.     Do you have any control over who can  
17    post something on Twitter using those hashtags?

18            A.     No.

19            Q.     Okay. Do you recall testimony  
20    regarding the, I believe it is the December 14th  
21    press release that True the Vote put out that  
22    discussed the effort in Georgia for, related to

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1 the runoff election challenges?

2 A. Yes.

3 Q. Do you recall that press release?

4 Okay.

5 Was part of the purpose of the press  
6 release to assist True the Vote in recruiting  
7 potential volunteer challengers?

8 A. I think that is, recruiting or just  
9 making aware that it was an opportunity for  
10 citizens to participate in.

11 Q. Okay. All right. There was a line  
12 of questioning that counsel asked you, a whole  
13 line of questioning regarding the target -- the  
14 states that are listed in the court's order  
15 regarding the November 2020 -- the litigation  
16 following the November 2020 election that True  
17 the Vote was involved in.

18 Do you recall that, those lines of  
19 questioning?

20 A. Uh-huh.

21 Q. Okay. And do you recall testifying  
22 that those suits were voluntarily dismissed?

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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 JAMES COOPER

Wednesday, September 22, 2021

9:02 a.m. Eastern Standard Time

REPORTER: Dawn A. Jaques, CSR, CLR

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1 I-N-D-E-X

2 WITNESS: PAGE:

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6 E-X-H-I-B-I-T-S

7 COOPER DEPOSITION EXHIBIT: PAGE:

8 Exhibit 1 December 16-18, 2020, email  
chain between Caesar Gonzales  
9 and James Cooper, SUBJECT:  
True the Vote

10 Def. Cooper 0138 - 0139 34

11 Exhibit 2 December 15, 2020 - March 29,  
2021, email chain, SUBJECT:  
12 Draft challenge numbers by  
county, Tranche One | 407,000

13 Def Williams 0745 - 0749 56

14 Exhibit 3 December 16, 2020, email chain  
SUBJECT: Questions I keep getting

15 OPSEC 0052 - 0053 73

16 Exhibit 4 December 17, 2020, email to  
James Cooper from Joe Martin

17 SUBJECT: CHALLENGE to Taliaferro  
County Registrar VOTERS WHO MOVED

18 Def. Cooper 0180 80

19 Exhibit 5 December 17-20, 2020, email chain  
SUBJECT: Taliaferro County Missing

20 voters

21 Def. Cooper 0183 - 0184 82

22



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5	J Martin challenge letters to	
	Taliaferro County	
6	Def. Cooper 0181 - 0182	90
7	Exhibit 7 December 18-20, 2020, email chain	
	SUBJECT: URGENT: For Elector	
8	Challenge Project	
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9	Exhibit 8 December 16, 2020 - March 29,	
	2021, email chain, SUBJECT:	
10	Gordon Rhoden (True the Vote)	
	Clarke County	
11	Def Williams 0854	124
12	Exhibit 9 December 18-20, 2020, email	
	chain, SUBJECT: List of counties	
13	needing signatures	
14	OPSEC 0045 - 0047	131
15		
16		
17		
18		
19		
20		
21		
22		

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1 P R O C E E D I N G S

2 THE VIDEOGRAPHER: This is Tape No. 1  
3 in the videotaped deposition of James Cooper, in  
4 the matter of Fair Fight, Inc., et al.,  
5 Plaintiffs, v. True the Vote, et al., Defendants,  
6 and Fair Fight Action, Inc., Counter-Defendants,  
7 in the United States District Court for the  
8 Northern District of Georgia, Gainesville  
9 Division, Case No. 2:20-cv-00302-SCJ.

10 This deposition is being held remotely  
11 by Zoom videoconferencing, physical recording in  
12 Culpeper, Virginia, on September 22nd, 2021. The  
13 time is 9:02 a.m. Eastern Time.

14 My name is Kenzie Guerrero; I'm a  
15 legal videographer from Digital Evidence Group.  
16 The court reporter is Dawn Jaques, in association  
17 with Digital Evidence Group.

18 Will counsel please introduce  
19 themselves for the record?

20 MR. RAMIREZ: Joel Ramirez for the  
21 Plaintiffs.

22 MS. BRYAN: Leslie Bryan for

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1 Plaintiffs.

2 MR. BOPP: Jim Bopp for Defendants.

3 MS. KRAMER: Courtney Kramer for  
4 Defendants.

5 MR. SHELLY: Jacob Shelly for  
6 Plaintiffs.

7 MS. RODGERS: Torryn Taylor for the  
8 Plaintiff.

9 THE REPORTER: Okay, Mr. Cooper, if  
10 you'll raise your right hand to be sworn, please.

11 (The witness was administered the oath.)

12 MR. BOPP: Joel, do you mind if I ask  
13 a procedural question? You've got 12  
14 depositions -- or 12 exhibits. Did you send those  
15 to us, or are we just going to see them?

16 MR. RAMIREZ: You'll see them here,  
17 and they've all been produced by Defendants.

18 MR. BOPP: Okay, fair enough.  
19 Thank you. You can go ahead, I'm sorry.

20

21

22

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1 Whereupon,

2 JAMES COOPER,

3 was called as a witness, after having been

4 first duly sworn by the Notary Public,

5 was examined and testified as follows:

6 EXAMINATION BY COUNSEL FOR THE PLAINTIFFS

7 BY MR. RAMIREZ:

8 Q Right, okay. Okay, let's get started.

9 Mr. Cooper, as we begin, I just want  
10 to go over a few things about this deposition

11 before we dive into the questions.

12 Does that sound fair?

13 A Yes.

14 Q And you can hear me okay?

15 A Yes.

16 Q Awesome. Okay, so first, if I ask a  
17 question at any point that you don't understand,  
18 if you could let me know, and then I'll do my best  
19 to clarify the question so that we have a full  
20 understanding. Does that sound good?

21 A Yes.

22 Q Okay. And correlatively, if you

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1 answer the question, I will assume that you  
2 understand it. Does that sound good?

3 A Yes.

4 Q Okay. If at any point you want to  
5 take a break, let me know. I'll try to find a  
6 good place to stop.

7 The one exception is that if I'm  
8 asking a question, then we have to finish  
9 answering that question before we can take the  
10 break. Does that sound good?

11 A Unless I need advice from the counsel.

12 Q Sounds good, okay. And as you know,  
13 today a court reporter will be recording this  
14 session. The court reporter can only record  
15 audible responses, so I will ask that you answer  
16 with an audible yes or no.

17 A head shake, for instance, won't come  
18 out on the transcript, so we need audible  
19 responses. Does that sound good?

20 A Yes, sir.

21 Q Okay. And finally, if you could  
22 please wait until I'm finished asking a question,

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1 that would be great, because otherwise we'll be  
2 talking over each other; that way we have a clear  
3 record for the Court. Does that sound good?

4 A Yes.

5 Q Okay, great. All right, so let's dive  
6 right in. So first, what did you do to prepare  
7 for today's deposition?

8 A Nothing.

9 Q Nothing. Did you meet with anyone  
10 regarding this deposition?

11 A Counsel yesterday.

12 Q Okay, yesterday. And have you  
13 discussed this deposition with anyone other than  
14 your attorneys?

15 A No.

16 Q Okay. All right, so first I want to  
17 get a little personal background.

18 How long have you been a resident of  
19 Walton County?

20 A 1998.

21 Q Since '98. And are you a registered  
22 voter in Walton County?

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1           A     Georgia is an open primary state. I  
2     don't know if they're registered Republican or  
3     not.

4           Q     Okay. Helpful, thank you.

5                     People not on the list that you knew  
6     through personal connections, I want to clarify  
7     that's the case.

8                     If you sent an email to someone -- if  
9     you sent this email to someone, and that person's  
10    name wasn't on this state county list, you knew  
11    about that person because you knew them  
12    personally; is that correct?

13          A     Yes, unless this was forwarded to  
14    someone from someone else.

15          Q     Right, right. So anyone to whom you  
16    sent this email that wasn't on the list, did you  
17    know whether those people were registered  
18    Republican voters in Georgia?

19          A     I couldn't confirm that, no.

20          Q     Okay. This email that you sent -- and  
21    I'm sure you can see it, it's the bottom of this  
22    chain of emails in this exhibit.

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1 A Mm-hmm.

2 Q Is that the first contact you had with  
3 each of the prospective challengers that you  
4 recruited or attempted to recruit?

5 A The initial email -- that would be the  
6 initial email that I would send, yes.

7 Q Any person to whom you sent the email,  
8 did you have any prior contact with them about the  
9 Georgia elector challenges?

10 A There were some that I only had a  
11 phone number for that I had to call to get an  
12 email address.

13 Q Okay. And in those conversations, did  
14 you discuss the elector challenges at all?

15 A Basically I would outline what we was  
16 doing, just like this initial email, and then get  
17 the email address and send them the email.

18 Q Okay. Did you have a script for any  
19 of these calls?

20 A Basically you're looking at the  
21 script.

22 Q Okay. Other than the people who



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1 forwarded this email, and other than yourself, did  
2 anyone else send this email to prospective  
3 challengers?

4 A I do not know the answer to that.

5 Q How many people replied to your email?

6 A I couldn't recall the answer to that.

7 Q I'm sorry, just making sure you were  
8 finished.

9 Is there a tracker or perhaps a  
10 document that would help refresh your memory on  
11 that topic?

12 A I'm sorry?

13 Q If you can't recall, is there a  
14 tracker or is there a document that would help  
15 refresh your memory on that topic, the number of  
16 people that responded to this email?

17 A I mean, I turned over all of the  
18 emails that I had.

19 Q Did anyone call or text you in  
20 response to receiving this email?

21 A I do not recall. I mean, I don't -- I  
22 simply just don't remember.

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1 Q Okay. Then maybe a more useful  
2 question would be, after you sent this email, sort  
3 of what happened next as part of your recruitment  
4 process?

5 A When I sent this email, if they  
6 replied -- if they replied back that they wanted  
7 to challenge, I would then forward the email to --  
8 oh, my goodness, I can't recall all of the emails,  
9 but it was a group of emails. One was to  
10 Mark Williams, one was -- I mean, I'd cc  
11 Mark Williams in sending it.

12 Because what I'd do is, once they sent  
13 in what True the Vote needed as far as their  
14 voter ID, their signature, and statement that they  
15 could -- you know, they would challenge the voters  
16 or the electors in their county, I would then  
17 forward that back to Mark Williams, Ron Johnson,  
18 Catherine, there was two other gentlemen, and Amy,  
19 a lady named Amy, and I believe that was it.

20 So if they replied back to it with  
21 permission, I would forward or send their reply,  
22 the whole chain, to that group of individuals.

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1 Q Is that Amy Holsworth at

2 True the Vote?

3 A Yes, sir. Yes, sir, that's correct.

4 Q How many -- and I know it's been a

5 while, so you may not remember the specific

6 numbers, but sort of generally.

7 When you got responses to this email,

8 how many people gave permission to be challengers

9 or refused? Do you have a sense of those two

10 groups?

11 A I honestly couldn't recall.

12 Q Did more people agree to be

13 challengers than refused?

14 A I really couldn't -- I really couldn't

15 recall that. I just -- I didn't have anyone

16 straight out say no. I had some that preferred

17 not to because of their position in the county.

18 Q So no one you emailed -- you sent this

19 email -- let me rephrase that.

20 Anyone you sent this email to who

21 refused, did they give reasons for why?

22 A No, not really, not that I recall.

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1 Q Just the ones who said they couldn't  
2 because they were -- because of their position in  
3 the county?

4 A Right. Some county chairs passed it  
5 on because they didn't want to do it themselves.

6 Q Okay. And why didn't they want to do  
7 it themselves?

8 A They felt like it -- some of them felt  
9 like -- well, I mean, I would be assuming things  
10 here. I can't really answer that.

11 Q Well, my question is did they tell  
12 you? Did they communicate with you in the emails  
13 where they refused, did they say why? Did they  
14 tell you why they didn't want to?

15 A I don't -- I don't recall the emails,  
16 to be honest with you. I mean, this was in  
17 November and Dec- -- this was in December. I  
18 mean, this has been almost 10 months ago now or  
19 so, so it would be -- I'm sorry, I don't recall.

20 MR. BOPP: Joel, can we take a short  
21 break? I need one. Say for five minutes?

22 MR. RAMIREZ: Yeah, that sounds fine

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1 to me.

2 MR. BOPP: Okay, thank you.

3 Appreciate you accommodating me.

4 MR. RAMIREZ: Of course.

5 THE VIDEOGRAPHER: Are we going off  
6 the record?

7 MR. BOPP: Yes, please.

8 THE VIDEOGRAPHER: Okay. The time is  
9 9:52 a.m. Off the record.

10 (A break was taken.)

11 THE VIDEOGRAPHER: The time is  
12 10:00 a.m. Back on the record.

13 BY MR. RAMIREZ:

14 Q Kenzie, can we pull the Exhibit 1 back  
15 up, please? Great, okay.

16 All right, Mr. Cooper, can you hear  
17 me? Can you see the exhibit?

18 A Yes.

19 Q Awesome. All right.

20 Okay, so before we broke, we were  
21 talking a little bit about this, and I want to  
22 continue with this question.

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1 Did you maintain a list of the people  
2 to whom you sent this email?

3 A I did not maintain a list here. There  
4 was a shared -- a shared file with the other  
5 individuals with True the Vote, Catherine and Amy  
6 and Mark. You know, everybody had a running total  
7 of who was challenging in what county.

8 Q Okay. So did you maintain a list of  
9 the people who responded to this email?

10 A No, sir, I did not.

11 Q And that information was not on this  
12 shared document you referenced?

13 A No, sir. No, sir.

14 Q Did you send either a list of the  
15 names or each name as you sent this email to  
16 Mark Williams?

17 A All I would do is I would -- when I  
18 got a response, I would forward the response back  
19 to the individuals that I had referenced earlier  
20 in the email chain.

21 Q Got it. And so you forwarded that to  
22 Mark Williams?

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1           A     It was sent to Mark, Ron, Amy,  
2     Catherine, and Ron Johnson. And there were two  
3     other names that I can't recall that I would cc  
4     when we would get a response.

5           Q     Got it. Do you have a sense of how  
6     many challengers you recruited in total for the  
7     elector challenges?

8           A     I don't recall how many I  
9     challenged -- or recruited, no, sir.

10          Q     Were any challengers recruited by  
11     someone other than you or Ron Johnson?

12          A     I do not know the answer to that.

13          Q     Okay. So you mentioned that, after  
14     you got a response, you would forward it.

15                 Anything else -- did you do anything  
16     else after you received a response to this email?

17          A     No, sir.

18          Q     So once you got their permission to be  
19     a challenger, you forwarded that, and that was the  
20     end of your involvement with the recruitment  
21     process?

22          A     Yes, sir.

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1 Q Okay. Did you have any other  
2 involvement with the people that you recruited?

3 A I'm not sure that I understand what  
4 you're asking. Could you rephrase that?

5 Q Sure. After forwarding -- so someone  
6 who gave permission to be a challenger, you would  
7 then forward that permission to the people that  
8 you mentioned. After that, did you have any  
9 subsequent communication with the challengers?

10 A Not that I can recall, unless they  
11 sent an email later.

12 Q Okay. None of them reached out to you  
13 regarding their challenges, like the status of  
14 their challenge?

15 A If they did, I would forward it to Amy  
16 and Catherine and them, so I really don't recall.

17 Q Over what dates did you or  
18 True the Vote submit the challenge letters  
19 themselves?

20 A I'm sorry, do what now?

21 Q Submit the challenge letters  
22 themselves.



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1 I asked you before the date range for  
2 the recruitment effort, when you were recruiting,  
3 so I'm asking now the date range over which the  
4 actual challenges were submitted.

5 A I'm not sure what you're asking me  
6 there.

7 Q Okay. How were the challenges  
8 submitted for each of the people you recruited?

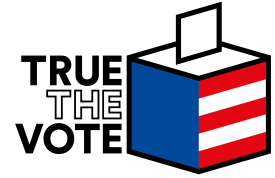
9 A I didn't submit the challenges, so I  
10 really -- I can't answer that. I don't know.

11 Q So what information did the  
12 prospective challengers send you?

13 A They would send me what was -- what I  
14 asked for in that email there. We would ask -- I  
15 would ask for their signature, a statement from  
16 them stating that True the Vote had their  
17 permission to challenge voters in their county  
18 using their name, their voter ID number, and their  
19 address.

20 Q Okay, give me one moment.

21 Did you attach anything to this email  
22 when you sent it to the people to whom you sent



December 20, 2020

Senator Nikema Williams  
Democrat Party of Georgia  
P.O. Box 89202  
Atlanta, GA 30312

VIA EMAIL

Dear Senator Williams -

I'm writing today on behalf of True the Vote, a nonpartisan national organization committed to helping stakeholders carry out free and fair elections. We would like to offer our assistance to the Democratic Party of Georgia for the Senate runoff, including publicly available signature verification training, a statewide voter hotline, monitoring absentee ballot drop boxes, and other election integrity initiatives.

With many Americans raising questions about the integrity of our elections, we feel it's essential to our democracy to restore faith in our processes. We believe that we can address concerns about fraud by following existing Georgia laws and carrying out a public, transparent effort to ensure that all ballots counted are cast by legal voters.

Georgia is Ground Zero in the fight to begin restoring integrity to America's election process. That's why True the Vote is working around the clock to engage volunteers from all across the state to participate in this important effort with the goal of preventing a repetition of the uncertainties that arose from the November general election. To accomplish this goal, we are ready, willing and able to work with anyone who is working to ensure the law is upheld and all legal voters have their voices heard.

I would welcome the opportunity to discuss ways in which we can partner over the coming weeks. Please feel free to contact me at your convenience, either by email at [catherine@truethevote.org](mailto:catherine@truethevote.org) or by phone at 713.401.6017.

For America -

A handwritten signature in black ink, appearing to read 'C. Engelbrecht', is written over a faint, diagonal watermark that says 'RECEIVED FROM DEMOCRACY DOCKET.COM'.

Catherine Engelbrecht  
True the Vote, Founder