

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

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

Plaintiffs,

v.

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

Defendants.

**Civil Action No.
2:20-cv-00302-SCJ**

**PLAINTIFFS' OPPOSITION TO DEFENDANTS'
MOTION FOR SUMMARY JUDGMENT**

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INTRODUCTION

The undisputed evidence shows that Defendants launched a massive, multifaceted campaign of voter intimidation in advance of Georgia's 2021 United States Senate runoff elections.¹ Section 11(b) of the Voting Rights Act makes it a violation of federal law to "intimidate, threaten, or coerce," any person for the purpose of interfering with the right to vote, or attempting to do the same. 52 U.S.C. § 10307(b). And that is precisely what Defendants did in their quest to influence the outcome of two critical elections. They accused hundreds of thousands of Georgians of voting illegally, citing flawed and inconclusive evidence, and asked election officials to take actions barred by federal law; they repeatedly boasted of deploying former Navy SEALs to polling places and offered a \$1 million bounty on fraud; they repeatedly publicized their efforts to the widest possible audience, at a time when false accusations of election subversion reached a fever pitch and election officials were receiving death threats; and, importantly, voters were intimidated.

Defendants offer no credible evidence to refute these facts, but instead insist they did not personally contact voters, or subjectively intend to intimidate, or violate any other state or federal laws. Even if true, none of that is exculpatory. Section 11(b)

¹ For a full accounting of the ways in which Defendants violated Section 11(b), see Plaintiffs' Summary Judgment Motion and accompanying exhibits. ECF No. 156.

requires neither proof of subjective intent nor personal confrontation to establish liability. And while the absence of a separate state law or NVRA violation is no defense to a Section 11(b) claim, Defendants in this case lobbied election officials to take actions that would have violated both.

Finally, Defendants do not explain the spectacular failure of the challenge lists to reliably identify ineligible voters, nor do they dispute that their actions actually intimidated voters—the crux of a voter intimidation claim. Their motion instead doubles down on a hodgepodge of affirmative defenses, none of which constrains the Court’s authority to enforce Section 11(b). The VRA protects voters, not those who seek to deny the franchise to fellow citizens, and there is no constitutional right to intimidate. Defendants’ motion for summary judgment should be denied.

ARGUMENT

Section 11(b) of the Voting Rights Act prohibits any person from intimidating, threatening, or coercing anyone for voting or attempting to vote, and courts have interpreted the statute’s operative terms in accordance with their familiar definitions. TRO Order at 22 (Jan. 1, 2021), ECF No. 29 (citing *Nat’l Coal. on Black Civic Participation v. Wohl*, 498 F. Supp. 3d 457, 477 (S.D.N.Y. 2020)). To intimidate “means to ‘make timid or fearful,’ or to ‘inspire or affect with fear’”; to “‘threaten’ means to ‘utter threats against’ or ‘promise punishment, reprisal, or other

distress.’” *Wohl*, 498 F. Supp. 3d at 477. In other words, Section 11(b) outlaws both violent voter-related harms and subtler forms of non-violent intimidation. TRO Order at 22.

Defendants’ Motion bypasses the VRA’s plain language and invents new elements that are unsupported by case law and incompatible with the statutory text. Their arguments, however, offer no defense under the governing standards for Section 11(b) claims. The undisputed evidence, including testimony from Defendants themselves, demonstrates that their multifaceted attack on the electoral process intimidated voters and thus falls squarely within the categories of conduct prohibited by Section 11(b)—none of which is constitutionally protected.

I. Defendants’ conduct violates Section 11(b).

A. Direct contact between Defendants and challenged voters is not required to establish voter intimidation.

Despite clear evidence that their actions intimidated voters, Defendants suggest that liability under Section 11(b) attaches only when the intimidator communicates directly to the voter. *See* Br. In Supp. of Defs.’ Mot. for Summ. J. (“Defs.’ Br.”) at 6 (May 16, 2022), ECF No. 155-1. But the cases they cite say nothing of the sort, and some even imposed liability against defendants who acted through third parties. In *National Coalition on Black Civic Participation v. Wohl*, for example, the court found that the plaintiffs were likely to succeed on their Section

11(b) claim even where the defendants did not directly contact voters but instead hired a “nonparty California company to electronically place” intimidating robocalls. 498 F. Supp. 3d at 466. Likewise in *United States v. Tan Duc Nguyen*, 673 F.3d 1259, 1261-62 (9th Cir. 2012), the defendant used a third party to send intimidating letters but did not otherwise communicate directly with voters. In each instance, it was the substance of the message and the impact on voters—not the means of transmission—that triggered liability.

The same is true here. Defendants co-opted county election boards to complete their scheme by filing mass challenges to voters’ registration, knowing that those challenges would be conveyed by the local officials to voters. *See* O.C.G.A. § 21-2-230. Rather than standing for the proposition that a defendant violates Section 11(b) only when “directly communicat[ing] . . . to the voters themselves,” Defs.’ Br. at 6, these cases illustrate that defendants are liable if they cause other actors to intimidate voters.

Defendants’ argument, moreover, ignores the communications Defendants publicly directed squarely at Georgia voters through media and True the Vote’s own press releases, all of which contributed to a climate that even Defendants acknowledged was intimidating. Pls.’ Statement of Undisputed Material Facts (“SUMF”) ¶ 145 (May 16, 2022), ECF No. 156-2. When True the Vote and

Catherine Engelbrecht announced the Validate the Vote program, including the whistleblower and bounty fund, they did so in public forums that were intended to be distributed broadly for promotional purposes. *Id.* ¶¶ 49, 148. And when Defendants announced their landmark elector challenge program, they did so through a press release directed at all Georgians and beyond. *See, e.g., id.* ¶¶ 58-59, 145-151. That voters learned through election officials, rather than from Defendants themselves, that they were among the subjects of Defendants’ baseless challenges is a distinction without a difference.

B. Defendants’ challenges urged election officials to violate state and federal law.

Defendants repeatedly suggest (without supporting authority) that their compliance with state law shields them from liability under Section 11(b). Not only is that theory flawed, it rests on a false premise—in fact, Defendants’ challenges violated state *and* federal law.

O.C.G.A. § 21-2-230—the challenge procedure invoked by Defendants—allows a registered voter to challenge another elector’s eligibility to vote and, where the challenge successfully questions whether the elector is qualified to be registered, requires election officials to remove them from the registration rolls. *See id.* §§ 21-2-230(f), (g). Defendants’ allegations that voters had moved out of the county, by definition, rested on grounds that the voters were no longer qualified to be on the

voter rolls—being out of the county is no barrier to voting unless the voter is also improperly registered. The NVRA, however, requires election officials to comply with detailed notice procedures before purging voters based on an alleged address change, none of which could possibly occur within the two- to three-week window between the submission of Defendants’ challenges and the runoff election. *See* 52 U.S.C. § 20507(d)(1); *see also infra* Section I.E. By pursuing challenges that would require county officials to remove voters from the rolls with insufficient time to complete the federally mandated notice procedures, Defendants invited county officials to violate the federal law.

Perhaps recognizing that the NVRA barred the removal of challenged voters just weeks before the runoff election, Defendants argue that they sought only to contest the challenged electors’ ability to vote, not to remove them from the rolls. This too is impermissible under Georgia law. Section 224(h) states that “[a]ll persons whose names appear on the list of electors placed in the possession of the managers in each precinct . . . *shall* be allowed to deposit their ballots according to [the] law at the precinct in which they are registered.” O.C.G.A. § 21-2-224(h) (emphasis added). In other words, a voter whose name appears on the list of electors *must* be allowed to vote. *Id.* And a challenge based on an elector’s residence that does not also seek their removal from the rolls has no legal effect—because the elector is

entitled to vote as long as they remain on the rolls. By imploring county officials to disenfranchise electors who would remain registered, Defendants' stated goal would have violated state law. All of this demonstrates that Defendants' challenges could have achieved no lawful outcome and were legally flawed from the get-go.²

But even if the challenges complied with state law, that would not absolve Defendants from liability under Section 11(b). “[A]cts otherwise entirely within the law may violate the statute if they have the proscribed effect and purpose,” *United States v. McLeod*, 385 F.2d 734, 740 (5th Cir. 1967), and courts regularly find Section 11(b) violations for acts that may be lawful in other contexts. In *Wohl*, for example, the court did not find that robocalls violated state law, but rather that defendants issued robocalls in a manner that might “cause reasonable Black voters to resist voting out of fear.” 498 F. Supp. 3d at 483. Similarly, evicting tenants, sending letters, or restricting access to private property are lawful acts that nonetheless violate Section 11(b) when employed for voter intimidation. *See* Defs.’ Br. at 5-6 (citing cases). Voter challenges are no different.

² Furthermore, Section 230 requires that a challenger “specify distinctly the grounds of such challenge,” a clause which should be construed to require that those grounds be non-frivolous. *See United States v. Jin Fuey Moy*, 241 U.S. 394, 401 (1916).

C. Section 11(b) does not require proof of intent.

As this Court previously explained, “Section 11(b) has no intent requirement. In other words, a plaintiff need not show animus or an intent to harass or intimidate in order to succeed on a Section 11(b) claim.” TRO Order at 23 (citing the statute’s plain text, history, and precedent). While the VRA’s predecessor voter intimidation statute, the Civil Rights Act of 1957 (“CRA”), prohibited any person from intimidating or attempting to intimidate voters “*for the purpose* of interfering with [the right to vote],” 52 U.S.C. § 10101(b) (emphasis added), Congress removed this purpose requirement when it passed Section 11(b). During testimony before the Senate Judiciary Committee, then-Attorney General Katzenbach explained that Section 11(b) “represents a substantial improvement over [the Civil Rights Act]” because “under [the VRA] no subjective ‘purpose’ need be shown, in either civil or criminal proceedings, in order to prove intimidation . . . Rather, defendants *would be deemed to intend the natural consequences of their acts.*” Voting Rights, Part 1: *Hearings on S. 1564 Before the S. Comm. on the Judiciary*, 89th Cong. 16 (1965).

It is thus immaterial—even if it were true—that “Defendants did not seek to prevent [any voter] from casting his or her ballot,” Defs.’ Br. at 12, or consider “racial or other demographic data,” *id.* at 23. Plaintiffs do not need to show that Defendants were motivated by “animus” or discriminatory intent. TRO Order at 23.

Congress enacted Section 11(b) pursuant to its authority under the Elections Clause, not the Fifteenth Amendment, which provides further confirmation that “[t]he prohibited acts of intimidation [under the VRA] need not be racially motivated.” H. Rep. No. 89-439 at 30-31 (1965). What *is* material is that Defendants’ frivolous mass challenge effort objectively and predictably intimidated voters. *See, e.g.*, Pls.’ SUMF ¶¶ 155-174 (recounting experiences of Plaintiff Heredia, Plaintiff Jane Doe, and other challenged Georgia voters).

D. Defendants’ voter challenges were frivolous.

1. True the Vote’s challenges were riddled with obvious errors.

Defendants fail to offer any coherent justification for the staggering number of errors in True the Vote’s challenge file. *See* Decl. of Dr. Kenneth Mayer (“Mayer Rep.”) at 6 (May 16, 2022), ECF No. 156-16. First, True the Vote suggests that its analysis could not have been frivolous because it relied on NCOA data, which the NVRA authorizes *states* to use as part of their voter list maintenance. Defs.’ Br. at 19. But the NVRA imposes strict limitations on states’ use of NCOA data, precisely because that data is prone to generating false matches and is incapable of determining whether an individual’s change of address is intended to be permanent. *See infra* at I.E. States may use NCOA data only to “flag voters who may have moved and begin the process to confirm their address,” and not to “affirmatively

establish[] that a voter has [changed their residence].” TRO Order at 13 n.7. The NVRA’s strict procedures for official list maintenance do not authorize private attempts to engineer much broader disenfranchisement any more than official eminent domain powers would authorize a private person to bulldoze their neighbor’s house.

Second, True the Vote argues that its approach could not have been frivolous because OPSEC used a “proprietary process” that was supposed to reduce errors to “within one standard deviation of the potential error that might be expected.” Defs.’ Br. at 21-22. This is obfuscation, not explanation. Despite multiple requests, Defendants refused to describe OPSEC’s process in any meaningful detail. *See* Mayer Rep. at 3; Statement of Additional Material Facts (“SAMF”) ¶¶ 13-14. And their motion is equally vague, and rife with technical jargon and improper inferences that fail to comply with the applicable rules of evidence. *See* Fed. R. Evid. 701-02. Notably, True the Vote failed to designate an expert witness under Rule 26(a)(2).

The results of OPSEC’s “analysis” speak for themselves. Despite warnings from True the Vote’s allies, OPSEC produced a massive challenge list based on sloppy techniques that resulted in “tens of thousands of obvious errors.” Pls.’ SUMF ¶¶ 77-78, 116; Mayer Rep. 6. Tellingly, Defendants do not dispute that these errors

occurred or offer any direct response to Dr. Mayer’s specific findings. *See* Mayer Rep. 14-32; Pls.’ Br. in Supp. of Mot. Summ. J. (Pls.’ Br.), ECF 156-1, at 16-21.

2. Defendants Davis and Sommerville’s challenges were frivolous.

True the Vote’s own in-house analyst, Gregg Phillips, characterized Defendants Davis and Somerville’s data analysis succinctly: “This is bad process.” Pls.’ SUMF ¶ 125. Davis and Somerville’s only defense is self-serving and uncorroborated “research” that has never been produced, would tend to confirm the frivolity of their approach even if true, is inadmissible under the Federal Rules of Evidence, and likely reflects a significant exaggeration.

Defendants represent (again, without citing any credible evidence) that barely “37% of the voters who indicated a change of address within Georgia have updated their voter registration addresses to the same addresses shows in the NCOA data.” Defs.’ Br. at 23. Because Defendants have not disclosed Davis or Somerville as experts in this case, they may not offer opinion testimony based on technical and specialized knowledge of data analysis. *See* Fed. R. Civ. P. 26(a)(2)(A), 37(c); Fed. R. Evid. 701, 702. Even crediting that figure—which would be inappropriate for the additional reasons explained below—this concession confirms that Davis and Somerville’s challenges were deeply flawed. Plaintiffs do not claim that *every* registrant on the challenge lists remained a permanent Georgia resident, but that

Defendants' methods were clearly unreliable. Challenging 40,000 registrants with a 37% accuracy rate is frivolous.

Even that figure is likely an embellishment. Defendants divine the 37% statistic from research they refer to as "SOS Analysis," as if it were somehow verified by state officials. *Id.* at 22. But this semantic sleight of hand obscures that Defendants are merely citing to Davis's characterization of his own internal analysis. *See* Davis Ct. Order Interrog. Resp. No. 3. And Davis's additional unproduced data analysis is no defense against the claim that he employed sloppy methods to produce his challenge file.

Additionally, while Defendants tout their submission of Davis's data analysis to the Secretary of State, they are conspicuously silent about whether any of Davis's figures or methods were verified by the state's chief elections official. In fact, the opposite occurred. After Davis provided his spreadsheet of alleged non-resident voters to the Secretary of State's office, Ryan Germany, the Secretary's General Counsel, provided a factual and legal "analysis of the issue Mark Davis is pushing regarding in-state moves." SAMF ¶ 8. First, Germany explained that "determining whether someone who moved from one county to another should have been eligible to vote" requires applying federal and state law "to each individual's factual scenario. *A spreadsheet listing voters' names doesn't come close to meeting that*

standard.” Id. ¶ 9. (emphasis added). Germany further explained, “The NVRA requires individualized inquiry into each voter’s situation. Calling these voters ‘illegal voters’ without doing that individualized inquiry is a disservice.” Id. ¶ 10 (emphasis added).

Turning to the spreadsheet of voters that Davis claimed to be ineligible, Germany did not find that 37% were improperly registered—he found that 0% were improperly registered: “86% of the voters Mark Davis identified . . . showed up in person at the location where they were registered, showed their photo ID, executed a voter certificate saying they resided where they are registered, and then they were allowed to vote. The other 14% voted absentee by mail, submitting an absentee ballot application saying that they still resided where they were registered.” *Id. ¶ 11. This accounts for the entirety of names on Davis’s list.*

Additional analysis by the Secretary’s office further undermines Davis’s challenge list. After the November 2020 election, Frances Watson, the Secretary’s Chief Investigator, mailed surveys to “voters that had filed a National Change of Address form (NCOA) and also requested an Absentee Ballot emailed to the out of state address[.]” SAMF ¶ 15. She received 1,066 responses to the questionnaire and determined that 99% of the individuals she identified on the NCOA list remained eligible to vote in Georgia. *Id. ¶ 16. Only 13 voters—1.2195%—reported relocating*

in the months before the November 2020 elections. *Id.* ¶¶ 17-18³ Most of the surveyed voters never changed residency at all—they forwarded their mail because they were active military, visiting family, temporarily traveling for a job assignment, or for other innocuous reasons. *Id.* ¶ 19.

E. Defendants’ voter challenges attempted to induce county officials to violate the NVRA.

Defendants’ argument that their challenges “did not violate the National Voter Registration Act,” Defs.’ Br. at 31, is no defense at all; Plaintiffs do not allege violations of the NVRA, and the fact that Defendants did not directly violate one federal statute is not a safe harbor against proof that they violated the VRA. The relevance of the NVRA, as this Court has already explained at length, is not that Defendants violated it themselves, but that Defendants attempted to induce county boards to disenfranchise voters in contravention of the “purpose and plain language of the statutory safeguards Congress included in the NVRA.” TRO Order at 12. Section 8 of the NVRA restricts election officials from removing a registrant from the voter rolls for non-residency unless the registrant confirms the change of residence in writing or fails to vote in two federal elections after receiving formal

³ And among those few individuals, “[m]any reported that due to COVID they were having difficulty getting appointments to obtain their driver’s license in the new state and believed they needed the new driver’s license in order to complete their registration in the new state.” SAMF ¶ 18 n.3.

notice with a postage prepaid and pre-addressed return card. 52 U.S.C. § 20507(d)(1). Defendants did not restrict their challenges to the eligibility of registrants who satisfied either requirement.

Even if Defendants had limited their challenges to registrants who were properly removable for change of residency—which they did not even attempt—the NVRA still would have prevented counties from taking the immediate action that Defendants demanded. State officials must complete “any program the purpose of which is to systematically remove the names of ineligible voters from the official lists” within 90 days of the election. *Id.* § 20507(c)(2)(A). This protection reflects Congress’s judgment that removals “based on individual correspondence or rigorous individualized inquiry [have] a smaller chance for mistakes” relative to systematic removals, such as those that use “a mass computerized data-matching process to compare the voter rolls” with other databases.” *Arcia v. Fla. Sec’y of State*, 772 F.3d 1335, 1344, 1346 (11th Cir. 2014). As this Court recognized, Defendants’ “broad-strokes” challenges to hundreds of thousands of voters’ eligibility “based only on the NCOA can be categorized as a systematic attempt to identify ineligible voters.” TRO Order at 14-15. Because these challenges were filed mere weeks before the Senate runoff elections, county officials could not have acted on them.

Nor is it an excuse that Defendants intended counties to conduct further investigation before removing targeted individuals from the rolls. The NVRA does not supply a loophole that voters may be systematically disenfranchised within 90 days of an election for change of residency if state officials extemporize an investigation short of mailing “a postage prepaid and pre-addressed return card, sent by forwardable mail, on which the registrant may state his or her current address, together with a notice” that includes “information concerning how the registrant can continue to be eligible to vote.” 52 U.S.C. § 20507(d)(2). Even if counties had issued these notices, they would have had to wait *four years* before taking action against any registrant who failed to respond. *Id.* § 20507(d)(1)(B). Defendants’ stated goal, however, was to influence the imminently approaching January 5, 2021, senate runoff elections. *See, e.g.,* Pls.’ SUMF ¶ 75.⁴

If permitted, Defendants’ attempt to circumvent the NVRA’s requirements through mass challenges would invite all sorts of foul play. In *Montana Democratic Party v. Eaton*, 581 F. Supp. 2d 1077 (D. Mont. 2008), the court adjudicated NVRA

⁴ Defendants’ attempt to offload responsibility for verifying the accuracy of their challenge lists onto county officials further discredits their approach. Between the 360,000 challenges prepared by True the Vote and the 40,000 challenges planned by Davis and Somerville, it was simply inconceivable that local boards of registrars would be able to adjudicate every challenge with the time and attention necessary to prevent erroneous removals. Defendants knew that to be the case. *See* SAMF ¶ 5.

claims resulting from Republican Party operatives’ residency-based challenges to 6,000 voters shortly before an election. The court recognized that while the private party defendants were not themselves liable for NVRA violations, “[a]nything other than an unqualified rejection of the challenge would violate” the NVRA. *Id.* at 1083.

The court’s warning foreshadowed exactly what happened here:

One can imagine the mischief an immature political operative could inject into an election cycle were he to use the [challenge] statutes, not for their intended purpose of protecting the integrity of the people’s democracy, but rather to execute a tawdry partisan ploy. **Voters might be intimidated, confused, or even discouraged from voting** upon receiving notice that their right to vote—the most precious right in a government of, by, and for the people—has been challenged.

Id. at 1079 (emphasis added).

In moments of candor, Defendants acknowledge that they would prefer the NVRA not say what it says. *See* SAMF ¶ 3 (recognizing an “obvious conflict” between his preferred administration of Georgia’s residency requirements and the NVRA, and noting “existing Georgia case law” cuts against his preferred approach); *id.* ¶ 4 (referring to the NVRA as “antiquated”). Defendants concocted a scheme they believed could evade the NVRA’s requirements, which “lends support to Plaintiffs’ argument that Defendants’ § 21-2-230 challenges are frivolous.” TRO Order at 15. And “[t]he frivolity of such voter challenges,” the evidence shows,

“support[s] Plaintiffs’ contentions that these challenges result only in voter harassment and intimidation.” *Id.* at 28.

F. Defendants Somerville and Davis’s violated Section 11(b).

Defendants’ primary defense of Somerville and Davis rests on the idea that they cannot be liable under Section 11(b) because they did not play a leading role in True the Vote’s challenge effort or broader Validate the Vote scheme. But it is no defense that Somerville and Davis, already aware that True the Vote planned to challenge hundreds of thousands of Georgians, decided to file tens of thousands of additional challenges.

First, Defendants Somerville and Davis did assist in True the Vote’s own challenge effort. *See, e.g.,* Pls.’ SUMF ¶ 64. Somerville and Davis, for example, participated in strategy discussions with Defendants Engelbrecht and Phillips before True the Vote filed its challenges, SAMF ¶ 12, and attended meetings with True the Vote and its analyst, Gregg Phillips, *id.* Somerville was noted as a “fellow . . . challenger” by Engelbrecht in True the Vote emails, *id.*; spoke at those True the Vote’s challenger meetings to offer “encouragement” to elector challenge volunteers, *id.*; and edited True the Vote’s public communications about the challenges before they were released, voluntarily including himself and Davis on True the Vote’s press release announcing the challenges, *id.* When True the Vote

announced its mass challenge program, Somerville publicly praised the effort, explained that he “collaborated on methodology,” and touted that he was “honor[ed] to be a part of the fight.” *Id.*

Additionally, Somerville and Davis’s own additional challenge effort against nearly 40,000 Georgians is sufficient to establish liability. Pls.’ SUMF ¶ 61. They prepared their challenge lists with full knowledge that the NVRA precluded the state from removing voters in advance of the election. SAME ¶ 2. Instead of launching a general awareness campaign or speaking with their elected officials to achieve their stated goal of publicizing election integrity, *see id.* ¶ 7, Somerville and Davis instead recruited their friends to file mass challenges without even knowing whether it was “possible or feasible” to verify these voters’ eligibility before the runoff election. *Id.* ¶ 5. In doing so, they needlessly spotlighted tens of thousands of voters, including Plaintiff Jocelyn Heredia, who was pulled out of line at her voting location and forced to prove her eligibility to vote, a process she understandably found intimidating. Pls.’ SUMF ¶¶ 20-27, 151.

Finally, for the reasons described above, it is immaterial to the Section 11(b) analysis whether or not these Defendants had direct contact with individual voters, *see supra* at Section I.A., nor does the evidence demonstrate their challenges were “careful” and meritorious ones, *see supra* Section I.D.2.

II. Section 11(b) of the Voting Rights Act is not unconstitutional.

A. Judicial enforcement of Section 11(b) does not violate the First Amendment.

Defendants' argument that penalizing intimidating speech would violate the First Amendment forgets that several categories of speech, including true threats of nonviolent or nonbodily harm and defamation, have been carved out from constitutional protection. *See* TRO Order at 17; *Wohl*, 498 F. Supp. 3d at 478, 480; *Otto v. City of Boca Raton*, 981 F.3d 854, 865 (11th Cir. 2020). Additionally, as this Court has previously stated, the interest in "preventing voter intimidation" is sufficiently compelling to survive even strict scrutiny. TRO Order at 17 (citing *Burson v. Freeman*, 504 U.S. 191, 205 (1992)).

As discussed above, Section 11(b) does not require that a voter must be directly contacted by Defendants to be intimidated. *See supra* Section I.A. Additionally, as Plaintiffs have established in detail, voters did in fact experience fear and apprehension that they would no longer be able to exercise their right to vote, just as is required to find that speech constitutes a threat. Pls.' SUMF ¶¶ 152-174. This sense of apprehension manifested from Defendants' voter challenges as well as from the broader Validate the Vote scheme and all of the other actions taken to drum up publicity and fear through vigilantism and the patrolling of polling locations by former military combat veterans. Pls.' Br. at 24, 28.

Defendants' actions also fall outside of First Amendment protections where they involved deliberate efforts to publicize false accusations against voters through social media posts and press releases highlighting the voter challenges across various platforms. *Id.* at 26-27, 29-31; *see LULAC-Richmond Region Council 4614 v. Pub. Int. Legal Found.*, No. 1:18-CV-00423, 2018 WL 3848404, at *4 (E.D. Va. Aug. 13, 2018) (finding condemnations of unlawful voter registration, which led to “adverse publicity, intimidation, embarrassment, [or] fear of harassment associated with their participation in the electoral process” constituted voter intimidation under Section 11(b)). The Constitution does not give Defendants license to intimidate voters.

B. Judicial enforcement of Section 11(b) does not violate the right to petition under the First Amendment.

While the First Amendment protects advocacy against governmental intrusion, such advocacy must be through “lawful ends.” *NAACP v. Button*, 371 U.S. 415, 429 (1963). Defendants admit that a petition to the government is only protected absent “some sort of ‘wrongfulness.’” Defs.’ Br. at 28 (citing *Bill Johnson’s Rests., Inc. v. NLRB*, 461 U.S. 731, 743 (1983)). But actions that violate Section 11(b), by definition, cannot constitute “lawful ends” for advocacy.

As Plaintiffs have described, Defendants’ voter challenges, in combination with all their other activities targeted at Georgia voters, were unlawful. First, the challenges themselves were plainly frivolous. *See* Pls.’ Br. at 15-23. Second,

Defendants engaged in various other election-related acts that constitute intimidation. *See McLeod*, 385 F.2d at 741-44; *Wohl*, 498 F. Supp. 3d at 485. Third, these actions were put in motion just two weeks before the January runoff election, and there was no reasonable expectation that elections officials could resolve hundreds of thousands of voter challenges in this short period of time. Pls.’ Br. at 6. These facts, when taken together, demonstrate that there could be no lawful objective to Defendants’ actions and the resulting intimidation was a natural and foreseeable consequence of such conduct. *Id.* at 31-33. Because Defendants’ actions were unlawful, judicial enforcement of Section 11(b) cannot, in turn, violate Defendants’ First Amendment right to petition.

C. Judicial Enforcement of Section 11(b) does not unconstitutionally dilute Defendants’ right to vote.

Defendants propose that they are immune from the VRA’s requirements because a limitation on their ability to intimidate voters would “unconstitutionally violate[]” Defendants’ “right to vote via vote dilution.” Defs.’ Br. at 29. This up-is-down approach to voting rights, where Defendants claim that those who would prevent others from voting are the real victims, has no basis in law. *See* Order Dismissing Defs. Countercls. at 16-17 (Aug. 17, 2021), ECF No. 111 (dismissing Defendants’ counterclaim that *Plaintiffs* had somehow violated Section 11(b)).

As this Court has already explained, “while vote dilution can be the basis for

a voting rights lawsuit and is a legal principle that is found in the case law, there appears to be an absence of authority that provides a direct example of a case proceeding to the merits” where the claim concerns prophylactic measures to prevent or deter fraudulent voting. *Id.* at 16 n.9. In addition, the Court continued, “as correctly noted by [Plaintiffs], [Defendants’] theory of vote dilution is based upon a premise that the Eleventh Circuit and other courts have declined to uphold in other contexts on generalized grievance standing grounds.” *Id.* at 16-17 n.9. The United States Constitution does not license Defendants to take whatever measures they see fit to mitigate hypothetical unlawful voting. Enforcing the VRA to prevent voter intimidation *enhances* the right to vote.⁵

D. Section 11(b) is not unconstitutionally vague.

Finally, while Defendants invoke the Due Process Clause to argue that judicial enforcement of Section 11(b) is “unconstitutionally vague under . . . the Fifth or Fourteenth Amendments,” Defs.’ Br. at 30, they do not identify any particular aspect of Section 11(b) that violates this doctrine. Courts have routinely concluded that the terms “intimidate,” “threaten,” or “coerce” in Section 11(b) are not ambiguous. *See, e.g., United States v. Shrader*, 675 F.3d 300, 310 (4th Cir. 2012) (“‘Harass’ and

⁵ Besides, Defendant Catherine Engelbrecht is a resident of Texas—it is inconceivable that actions she took to deter non-resident voting in Georgia could have saved her own vote from dilution in Texas.

‘intimidate’ are not obscure words.”), *cert. denied*, 568 U.S. 1049 (2012); *United States v. Bowker*, 372 F.3d 365, 383 (6th Cir. 2004), *vacated on other grounds*, 543 U.S. 1182 (2005) (concluding in criminal context that the words “threaten” and “harass” have generally accepted and easily ascertained meanings). This is not a case in which a person “of common intelligence must necessarily guess” as to whether a specific act is proscribed by statute. *Ga. Pac. Corp. v. Occupational Safety & Health Rev. Comm’n*, 25 F.3d 999, 1005 (11th Cir. 1994).

Defendants also argue that judicial enforcement of Section 11(b) in this context would make it difficult for Georgians to understand how many challenges one can file without running afoul of Section 11(b), *see* Defs.’ Br. at 30, but the number of challenges at issue is not, and has never been, the sole basis for Section 11(b) liability.⁶ As Plaintiffs have described in detail, the problems with Defendants’ challenges go well beyond quantity, and include their extremely shoddy matching methodology, the false premise that a mail forwarding request jeopardizes voting eligibility, and the attempt to disenfranchise voters in violation of multiple NVRA requirements. These many errors contributed to the challenge file bloat, but it is the

⁶ Here, Plaintiffs understand Defendants to be making an overbreadth argument, rather than a vagueness argument. But regardless of the label for Defendants’ defense, judicial enforcement of Section 11(b) is neither unconstitutionally vague nor overbroad.

frivolousness of the challenges—rather than the size of the challenge files alone—that resulted in unlawful intimidation. Defendants’ challenges also constituted only one component of a much broader “Validate the Vote” scheme. Pls.’ Br. at 10-15. These actions occurred during a contentious post-2020 election period, in a state that repeatedly saw its election results attacked and election officials threatened over false claims of widespread voter fraud. Pls.’ SUMF ¶ 156. This is precisely the manner of intimidating conduct that Section 11(b) was enacted to prohibit.

CONCLUSION

Defendants’ motion for summary judgment should be denied.

Respectfully submitted, this 6th day of June, 2022.

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CERTIFICATE OF COMPLIANCE

Pursuant to LR 7.1(D), N.D. Ga., I hereby certify that the foregoing ***Plaintiffs’ Opposition to Defendants’ Motion for Summary Judgment*** has been prepared in accordance with the font type and margin requirements of LR 5.1, N.D. Ga., using a font type of Times New Roman and a point size of 14.

This 6th day of June, 2022

/s/ Uzoma N. Nkwonta
Uzoma N. Nkwonta
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CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the within and foregoing ***Plaintiffs’ Opposition to Defendants’ Motion for Summary Judgment*** with the Clerk of Court using the CM/ECF system, which will automatically send-e-mail notification to all counsel of record.

This 6th day of June, 2022.

/s/ Uzoma Nkwonta
Uzoma Nkwonta
Counsel for Plaintiffs

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

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

Plaintiffs,

v.

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

Defendants.

Civil Action No.
2:20-cv-00302-SCJ

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

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

1. True the Vote, Inc. (“TTV”) compiled a challenge list encompassing all 159 counties in Georgia (“Challenge List”) and intended to submit challenges on behalf of challengers in all of them. In order to do so, TTV needed eligible voters to volunteer to serve as challengers in each of these counties. TTV’s Responses to Plaintiffs’ Second Interrogatories (June 7, 2021) (“TTV Resp. to 2d Interrog.”), Resp. No. 14, Ex. A.

RESPONSE: Plaintiffs do not dispute that the Court may consider that “True the Vote, Inc. (‘TTV’) compiled a challenge list encompassing all 159 counties in Georgia” or that “TTV needed eligible voters to volunteer to serve as challengers in each of these counties” for purposes of the summary judgment motion. Plaintiffs dispute the statement that TTV “intended to submit challenges on behalf of challengers in all of them.” Catherine Engelbrecht testified that TTV did not identify challengers in all 159 counties, offered no clear explanation for why TTV submitted challenges in only a portion of the counties in Georgia, and TTV has offered no evidence of attempts to recruit challengers in the remaining 94 counties in which TTV did not submit a challenge. Ex. 50, Second Excerpt of True the Vote/Catherine Engelbrecht Deposition Transcript (“TTV Tr.”) 254:5-255:11.

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

RESPONSE: Plaintiffs object that correspondence between Marc Elias and boards of elections is immaterial to any claims or defenses in this case.

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

RESPONSE: Plaintiffs object that Paragraph 3 is inadmissible hearsay. Fed. R. Evid. 801(c), 802. *Macuba v. Deboer*, 193 F.3d 1316, 1322-25 (11th Cir. 1999). Plaintiffs further object that the assertions regarding challengers are immaterial to any claims or defenses in this case.

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

RESPONSE: Plaintiffs object that the assertion that "the intimidation and harassment of challengers increased" is inadmissible hearsay. Fed. R. Evid. 801(c), 802; *Macuba* at 1322-25. The cited evidence does not support a causal relationship

between alleged harassment and TTV's failure to submit challenges in all counties and stops short of confirming that TTV actually *requested* authorization from (or even solicited) challengers in every Georgia county. This assertion is also contradicted by Defendants' own admission that the purpose of the Validate the Vote scheme was to address perceived "illegal votes" in "Democrat counties" and to use "micro-targeting in key counties" as part of a broad effort "to have the state's election results overturned." Pls.' Mot. Summ. J. Ex. 1 ("Validate the Vote 2020") 1, ECF No. 156-4. The selection of counties in which TTV submitted challenges was also skewed towards counties with higher percentages of Black registrants. The 65 selected counties include: (1) the three counties with the highest percentage of Black registrants across the state; (2) ten of the 20 counties with the highest percentage of Black registrants; and (3) only four of the 20 counties with the smallest percentage of Black registrants. Expert Report of Dr. Kenneth Mayer ("Mayer Rep.") 34-35.

5. Therefore, TTV did not submit challenges in all of Georgia's 159 counties as originally planned, but only submitted challenges in the counties noted in TTV's Amended Responses to Plaintiffs' First Requests for Production (Mar. 24, 2021) ("TTV Am. Resp. First RFP"), Resp. No. 2, Ex. C. The counties in which TTV submitted Challenges is as follows: Appling Bacon Baldwin Banks Barrow Ben Hill Bibb Bleckley Brooks Butts Calhoun Charlton Cherokee Clarke Clayton

Cobb Coffee Columbia Coweta Crawford Crisp Dawson DeKalb Dodge Dooly
 Dougherty Douglas Fayette Franklin Fulton Gwinnett Habersham Hall Hancock
 Hart Henry Houston Jackson Jasper Jefferson Johnson Jones Lamar Lee Madison
 McDuffie McIntosh Oconee Oglethorpe Rockdale Sumter Taliaferro Tattnall Terrell
 Thomas Tift Toombs Towns Union Walton Webster Wheeler White Wilcox Wilkes.
Id. (reordered alphabetically).

RESPONSE: Plaintiffs do not dispute that the Court may consider this list of counties in which challenges were submitted for purposes of the summary judgment motion. The cited evidence makes no mention of the reason challenges were filed only in select counties and so does not support the assertion of a causal relationship between the alleged experiences of challengers and the targeting of voters in specific counties.

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

RESPONSE: Plaintiffs do not dispute that the court may consider that “TTV prepared analysis for all 159 counties but challenges were ultimately submitted in

65 counties” for purposes of the summary judgment motion. Defendants’ assertion that counties were targeted “because those were the counties in for which individual electors committed to filing the challenges” is unsupported by evidence and contradicted by Defendants’ own admission the Validate the Vote scheme would use “micro-targeting in key counties” in its efforts “to have the state’s election results overturned.” Validate the Vote 2020 at 1. The selection of counties in which TTV submitted challenges was also skewed towards counties with higher percentages of Black registrants. The 65 selected counties include: (1) the three counties with the highest percentage of Black registrants across the state; (2) ten of the 20 counties with the highest percentage of Black registrants; and (3) only four of the 20 counties with the smallest percentage of Black registrants. Mayer Rep. 34-35.

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

RESPONSE: Plaintiffs do not dispute that the court may consider that “Defendants had a meeting with the Georgia Secretary of State” for purposes of the summary judgment motion.

Plaintiffs dispute the description of Ryan Germany's statements made in TTV Tr. 170:7-12 because it is inadmissible hearsay. Fed. R. Evid. 801(c), 802. *Macuba* at 1322-25. Furthermore, the cited evidence makes no reference to the burden placed on voters but instead discusses burdens placed on counties. TTV Tr. 170:1-3 ("I wanted to understand if this was a burden on counties").

Finally, the assertion of Defendants' "understanding" of the burden does not comply with LR 56.1(B)(1) because it is an argument rather than a matter of fact.

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

RESPONSE: Plaintiffs object to the statements in Paragraph 8 as inadmissible hearsay. Fed. R. Evid. 801(c), 802. *Macuba* at 1322-25. Furthermore, the statements in Paragraph 8 are immaterial to the claims and defenses of this case.

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

RESPONSE: Plaintiffs do not dispute that TTV "had a meeting with the Secretary of State in mid-December," but Plaintiffs object to the remainder of Paragraph 9 as inadmissible hearsay. Fed. R. Evid. 801(c), 802. *Macuba* at 1322-25.

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

RESPONSE: Plaintiffs object that Paragraph 10 is inadmissible hearsay. Fed. R. Evid. 801(c), 802; *Macuba* at 1322-25.

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

RESPONSE: Defendants’ assertion that contact was initiated by electors rather than by Defendants is contradicted by the fact that Defendants partnered with political party officials to recruit challengers. *See, e.g.,* Ex. 49, Second Excerpt of Joseph Martin Deposition Transcript (“Martin Tr.”) 16:20-17:1, 20:20-22.

Defendants’ explanation of “[t]he impetus behind the Challenges” is contradicted by TTV’s own admission that the purpose of the Validate the Vote scheme was to address perceived “illegal votes” in “Democrat counties” and to use “micro-targeting in key counties” as part of a broad effort “to have the state’s election results overturned.” Validate the Vote 2020 at 1.

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

RESPONSE: Defendants' statement in Paragraph 12 is contradicted by TTV's own admission that the purpose of the Validate the Vote scheme was to address perceived "illegal votes" in "Democrat counties" and to use "micro-targeting in key counties" as part of a broad effort "to have the state's election results overturned." Validate the Vote 2020 at 1.

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

RESPONSE: Plaintiffs dispute the assertions in Paragraph 13 because the statute governing Defendants' challenges mandates the removal of voters where a registrant's qualifications are successfully challenged, O.C.G.A. 21-2-230(g), (h), (i), and, for purposes of Section 11(b), defendants are "deemed to intend the natural consequences of their acts." *See Hearings on S. 1564 Before the S. Comm. on the Judiciary*, 89th Cong. 16 (1965). Furthermore, TTV's communications with its

prospective challengers indicated that the parties sought to purge voters. *See, e.g.*, Pls.’ SUMF ¶ 135, TTV Tr. 231:20-235:5, 237:22-238:21.

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

RESPONSE: Plaintiffs object that the statements in Paragraph 14 are not material to any claims or defenses in this matter. Furthermore, the cited evidence does not support the assertion that no “volunteers had any contact with the Challenged Voters.” The cited evidence speaks only to the training volunteers received and makes no reference to whether any TTV volunteers actually contacted voters..

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

RESPONSE: The assertion is contradicted by evidence in the record. A Facebook account with links to Defendants declared, “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.” Pls.’ Mot. Summ. J. Ex. 23. Defendants Davis and Somerville exchanged texts about TTV stating that “if they publish they will be flooded with defamation complaints.” Pls.’ SUMF ¶ 143, Ex. 6; Tr. Second Dep. Mark Davis (“Davis II Tr. ”) 129:3-10; 129:11-19.

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

RESPONSE: Plaintiffs do not dispute that the Court may consider this evidence for purposes of the summary judgment motion.

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

RESPONSE: Plaintiffs dispute Paragraph 17 insofar as it suggests Validate the Vote was used solely in connection with the 2020 general election. Validate the Vote was also used in connection with the Georgia runoff election. TTV Tr. 69:4-7; Pls.’ SUMF ¶ 55, Ex. 19.

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

RESPONSE: Paragraph 18 is contradicted by the fact that the challenge of voters in Georgia was the subject of nationwide publicity. *See, e.g.*, Ex. 62, Mark

Niesse, *Eligibility of 364,000 Georgia voters challenged before Senate runoff*, The Atlanta Journal-Constitution, Dec. 22, 2020; Ex. 63, Kyle Cheney & Josh Gerstein, *Judge blocks voter purge in 2 Georgia counties*, Politico, December 28, 2020. None of the cited evidence excludes Georgia as a “subject of publicity regarding Validate the Vote.” Defendants stated a goal of “build[ing] momentum through broad publicity” in key states, which included Georgia. Validate the Vote 2020 at 1. Defendants publicized their Georgia challenges in press releases on December 14, 2020. Pls.’ Mot. For Summ. J. Ex. 21 (“True the Vote Partners With Georgia GOP to Ensure Transparent, Secure Ballot Effort for Senate Runoff Elections”). Defendants again publicized their Georgia efforts on December 18, 2020. Pls.’ Mot. For Summ. J. Ex. 22 (True the Vote Partners with Georgians in Every County to Preemptively Challenge 364,541 Potentially Ineligible Voters).

Finally, Defendants provide no evidence for the assertion that there was “counting of illegal ballots in Democratic counties in several states.”

19. TTV hired OpSec Group LLC (“OpSec”) to analyze publicly available data to create a list of registered Georgia voters to be challenged under O.G.C.A. § 21-2-230 as having changed their residency. Transcript Excerpts of Deposition of Gregg Phillips (Jan. 25, 2022) (“OpSec Tr.”), Ex. F 54:21; 57:11-21.

RESPONSE: Plaintiffs do not dispute that the Court may consider Paragraph 19 for purposes of the summary judgment motion.

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

RESPONSE: Plaintiffs do not dispute that the Court may consider that “TTV contracted with OpSec to prepare analysis for all Georgia counties” as a fact for purposes of the summary judgment motion. Plaintiffs object that the cited evidence offers no support for the statement that “challenges were limited by the residency of the electors willing to mount a challenge in their county.”

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

RESPONSE: Plaintiffs do not dispute that the Court may consider the non-exclusive statement that racial data was reviewed after accusations of bias as evidence for purposes of the summary judgment motion. Plaintiffs object that the assertion that “the data was not used in creating the Challenge Lists” is not supported by the cited evidence. Defendants state in TTV Tr. 248:13-22 that analysis

containing demographic data was created after the challenges; however, the report to which Paragraph 21 refers was created on December 16, 2020, two days before TTV announced its challenge of voters. TTV Tr. 245:22-246:4.

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

RESPONSE: Plaintiffs do not dispute that the Court may consider this evidence for purposes of the summary judgment motion.

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

RESPONSE: Plaintiffs dispute this statement in part. TTV has admitted that none of “the hotline contacts relevant to Georgia during the time frame of the runoff” resulted in the need for True the Vote to follow up or report the contact information to appropriate authorities.” TTV Tr. 92:19-95:3.

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

RESPONSE: Plaintiffs do not dispute Paragraph 24, but it is immaterial to the claims and defenses in this case.

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

RESPONSE: Plaintiffs do not dispute that the Court may consider Paragraph 25 for purposes of the summary judgment motion.

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

RESPONSE: Plaintiffs do not dispute Paragraph 26, but it is immaterial to the claims and defenses of this case.

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

RESPONSE: Plaintiffs do not dispute that the Court may consider the statement that "no reports received relevant to Georgia at the time of the runoff resulted in the need to follow up or report contact information to appropriate authorities" as fact for purposes of the summary judgment motion. Plaintiffs object

that the cited evidence provides no support for the assertion that “TTV did report some incidents to authorities.”

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

RESPONSE: Plaintiffs do not dispute that the Court may consider Paragraph 28 for purposes of the summary judgment motion.

29. In conjunction with its work on the Challenge List, TTV established a fund to provide legal support for people who reported information primarily to head off the chilling effect of the threat of legal action against challengers or those with information. TTV Tr. 71:11-19, 71:22-72:1, 74:8-17, 75:5-18, 76:15-19.

RESPONSE: The statement that the fund was established “primarily to head off the chilling effect of the threat of legal action against challengers” does not comply with LR 56.1(B)(1) because it presents legal argument rather than a statement of fact.

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

RESPONSE: Plaintiffs do not dispute that the Court may consider Paragraph 30 for purposes of the summary judgment motion.

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

RESPONSE: Paragraph 31 does not comply with LR 56.1(B)(1) because statements regarding the credibility of any reports present legal arguments rather than statements facts. Furthermore, TTV admitted that none of “the hotline contacts relevant to Georgia during the time frame of the runoff” resulted in the need for True the Vote to follow up or report the contact information to appropriate authorities.” TTV Tr. 92:19-95:3. Additionally, the contents of these reports are inadmissible hearsay. Fed. R. Evid. 801(c), 802; *Macuba* at 1322-25.

Plaintiffs further object that the cited evidence does not support the assertion that “TTV received credible reports.” The cited evidence only expresses TTV’s opinion that it considered the reports credible.

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

RESPONSE: Plaintiffs do not dispute that the Court may consider Paragraph 32 for purposes of the summary judgment motion.

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

RESPONSE: Plaintiffs dispute this statement in part. Mr. Martin consented to participate TTV's challenges in some fashion but was "shocked" to learn that TTV had submitted challenges on his behalf. Martin Tr. 57:13-15.

34. On December 20, 2020, he asked to "hold" the Challenge on his behalf and noted that two of the three challenges were residents in long-term care and were eligible to vote in Taliaferro County. TTV Resp. to 2d Interrog. Resp. No. 11; TTV Tr. 327:10-15.

RESPONSE: Plaintiffs do not dispute that the Court may Paragraph 34 for purposes of the summary judgment motion.

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

RESPONSE: Plaintiffs do not dispute that the Court may consider this evidence for purposes of the summary judgment motion.

36. Mr. Martin later reported that Taliaferro County Chief Registrar confirmed with him that one of the three people on his challenge list did not live in

Taliaferro County and the absentee ballot for that voter was rejected. TTV Resp. to 2d Interrog. Resp. No. 5.

RESPONSE: Plaintiffs object that cited evidence is inadmissible hearsay. Fed. R. Evid. 801(c), 802; *Macuba* at 1322-25.

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

RESPONSE: Plaintiffs do not dispute Paragraph 37, but it is immaterial to the claims and defenses of this case.

OpSec/Gregg Phillips Statement of Facts

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

RESPONSE: Plaintiffs do not dispute that the Court may consider Paragraph 38 for purposes of the summary judgment motion.

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

RESPONSE: Plaintiffs dispute, and the citations do not establish, that the data OpSec analyzed was publicly available.

40. OpSec prepared lists for all the counties in Georgia. OpSec Tr. 149:2-4. TTV Tr. 231:11-13 (Analysis was prepared for all Georgia Counties); TTV Tr. 255:6 (“we had done the analysis to support [challenges in all 159 counties].”)

RESPONSE: Plaintiffs do not dispute that the Court may consider Paragraph 40 purposes of the summary judgment motion.

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

RESPONSE: Plaintiffs dispute this fact. The selection of counties in which TTV submitted challenges was also skewed towards counties with higher percentages of Black registrants. The 65 selected counties include: (1) the three counties with the highest percentage of Black registrants across the state; (2) ten of the 20 counties with the highest percentage of Black registrants; and (3) only four of the 20 counties with the smallest percentage of Black registrants. Mayer Report at 34-35. For purposes of Section 11(b), defendants are “deemed to intend the natural consequences of their acts.” *See Hearings on S. 1564 Before the S. Comm. on the Judiciary*, 89th Cong. 16 (1965).

42. In creating the Challenge List OpSec used the Georgia official voter registration file, the NCOA, the Coding Accuracy Support System (“CASS”),

Delivery Point Validation (“DPV”) and proprietary algorithms (“proprietary process”) to help verify identity. OpSec Tr. 93:16-94:2.

RESPONSE: Plaintiffs dispute Paragraph 42. While Mr. Phillips claimed to have used each of these sources to create the Challenge List, the only component that Mr. Phillips testified was used to “help verify identify” was the “proprietary algorithm.” Defendants’ citation does not support the fact that OpSec used the Georgia official voter registration file, the NCOA, the Coding Accuracy Support System, or Delivery Point Validation to help verify identity.

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

RESPONSE: Paragraph 43 is inadmissible under Fed. R. Evid. 701(c) (lay witness testimony is limited to that which is “not based on scientific, technical, or other specialized knowledge with the scope of rule 702”), and Fed. R. Evid. 702 (allowing a witness to testify to their “scientific, technical, or other specialized knowledge” only if they have been qualified as an expert witness).¹

¹ Defendants have not designated any testifying experts in this matter or made any disclosures pursuant to Fed. R. Civ. P. 26(a)(2).

Furthermore, Paragraph 43 is vague and ambiguous in its use of the phrases “other data” and “fields that conformed with respect to data format and data type,” which have not been adequately explained and thus lack foundation.

Finally, Paragraph 43 is not supported by Defendants’ citation. Mr. Phillips testified that he agreed that it is “*important* that the fields conform with respect to data format and data type.” OpSec Tr. 106:22-107:3 (emphasis added). He did not testify that he, in fact, used field that conform. Additionally, this asserted fact is disputed by Plaintiffs’ expert. *See* Mayer Rep. 4-5, 32.

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

RESPONSE: Paragraph 44 is inadmissible under Fed. R. Evid. 701(c) and 702. The manner in which “OpSec’s proprietary process” identified people who had moved out of their county or out of state, and any inferences drawn from its resulting analysis, requires technical or specialized knowledge that can be offered only by a qualified expert witness. *Id.*

Plaintiffs further dispute that OpSec’s process reliably identified people who had moved out of the county in which they were registered or live outside the State

of Georgia. *See* Mayer Rep. 6, 24-34. Additionally, Defendants' characterization of OpSec's "proprietary process" should not be credited given Defendants' and OpSec's failure to produce information about these processes in response to Plaintiffs' requests for: "documents and communications relating to the methodology you relied upon in producing the Challenge List or any other list of Targeted Voters prepared in connection with the Elector Challenges, and the basis for identifying any of the Targeted Voters," Ex. 59, OpSec RFP Response No. 3; and "documents and communications that you reviewed to assess or ensure the reliability or accuracy of the Challenge List or any other list of Targeted Voters that were submitted with the Elector Challenges," Ex. 59, OpSec RFP Response No. 4. OpSec also failed to produce documents reflecting the design of its proprietary process. *See* Mayer Rep. 3-4, 19-24 (describing why True the Vote's descriptions of its matching methodology are "entirely inadequate from an academic or scientific perspective and provably incorrect"); *see also* OpSec Tr. 114:4-7 (refusing to produce the algorithm used to create the Challenge List).

Additionally, Plaintiffs object to Paragraph 44 as vague and ambiguous in its use of the phrases "proprietary process" and "government and commercially available information," which have not been adequately explained and thus lack foundation.

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

RESPONSE: Plaintiffs do not dispute the year that OpSec's process was developed, but they do dispute that "through use [the process] has demonstrated its accuracy." *See* OpSec Tr. 109:1-3 ("Q. Has [the process] been independently verified by anybody else? A. Nope."). Plaintiffs also object to Paragraph 46 as vague and ambiguous in its use of the phrase "proprietary process," which has not been adequately explained and thus lacks foundation.

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

RESPONSE: Plaintiffs do not dispute that OpSec used its "proprietary process" to produce the Challenge List. Defendants' citation does not reference "regular address matching." Plaintiffs object to Paragraph 46 as vague and ambiguous in its use of the phrases "proprietary process" and "regular address matching," which have not been adequately explained and thus lack foundation.

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

RESPONSE: Paragraph 47 is inadmissible under Fed. R. Evid. 701(c) and 702. The manner in which “OpSec’s proprietary process” operates, and any inferences it produces, requires technical and specialized knowledge that can be offered only by a qualified expert witness. *Id.*

Additionally, Plaintiffs dispute this fact because the results of OpSec’s matching process are entirely inconsistent with Defendants’ characterization of the process’s design. *See* Mayer Rep. 24-34. Further, Defendants’ characterization of OpSec’s “proprietary process” should not be credited given Defendants’ and OpSec’s failure to produce information about these processes in response to Plaintiffs’ requests for: “documents and communications relating to the methodology you relied upon in producing the Challenge List or any other list of Targeted Voters prepared in connection with the Elector Challenges, and the basis for identifying any of the Targeted Voters,” Ex. 59, OpSec RFP Response No. 3; and “documents and communications that you reviewed to assess or ensure the reliability or accuracy of the Challenge List or any other list of Targeted Voters that were submitted with the Elector Challenges,” Ex. 59, OpSec RFP Response No. 4. OpSec also failed to produce documents reflecting the design of its proprietary process. *See* Mayer Rep. 3-4, 19-24 (describing why True the Vote’s descriptions of its matching methodology are “entirely inadequate from an academic or scientific

perspective and provably incorrect”); *see also* OpSec Tr. 114:4-7 (refusing to produce the algorithm used to create the Challenge List).

Plaintiffs also object to Paragraph 47 as vague and ambiguous in its use of the phrases “proprietary process” and “other sources of data,” which have not been adequately explained and thus lack foundation.

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

RESPONSE: Paragraph 48 is inadmissible under Fed. R. Evid. 701(c) and 702. The manner in which “OpSec’s proprietary process” operates, and any inferences drawn from its resulting analysis, including which individuals it is “designed to identify” and how it does so, requires technical and specialized knowledge that can be offered only by a qualified expert witness. *Id.*

Plaintiffs further dispute this fact because the results of OpSec's matching process are entirely inconsistent with Defendants' characterization of the process's design. *See* Mayer Rep. 24-34. Additionally, Defendants' characterization of OpSec's "proprietary process" should not be credited given Defendants' and OpSec's failure to produce information about these processes in response to Plaintiffs' requests for: "documents and communications relating to the methodology you relied upon in producing the Challenge List or any other list of Targeted Voters prepared in connection with the Elector Challenges, and the basis for identifying any of the Targeted Voters," Ex. 59, OpSec RFP Response No. 3; and "documents and communications that you reviewed to assess or ensure the reliability or accuracy of the Challenge List or any other list of Targeted Voters that were submitted with the Elector Challenges," Ex. 59, OpSec RFP Response No. 4. OpSec also failed to produce documents reflecting the design of its proprietary process. *See* Mayer Rep. 3-4, 19-24 (describing why True the Vote's descriptions of its matching methodology are "entirely inadequate from an academic or scientific perspective and provably incorrect"); *see also* OpSec Tr. 114:4-7 (refusing to produce the algorithm used to create the Challenge List).

Plaintiffs also object to Paragraph 48 as vague and ambiguous in its use of the phrase “proprietary process,” which has not been adequately explained and thus lacks foundation.

49. OpSec’s proprietary process does not consider as dispositive whether or not a person filed a permanent or temporary address change. OpSec Tr. 138:16-22.

RESPONSE: Paragraph 49 is inadmissible under Fed. R. Evid. 701(c) and 702. The manner in which “OpSec’s proprietary process” operates, and any inferences draw from its resulting analysis, including what factors is will “consider as dispositive,” requires technical and specialized knowledge that can be offered only by a qualified expert witness. *Id.*

Further, Defendants’ citation does not support this fact. Additionally, Defendants’ characterization of OpSec’s “proprietary process” should not be credited given Defendants’ and OpSec’s failure to produce information about these processes in response to Plaintiffs’ requests for: “documents and communications relating to the methodology you relied upon in producing the Challenge List or any other list of Targeted Voters prepared in connection with the Elector Challenges, and the basis for identifying any of the Targeted Voters,” Ex. 59, OpSec RFP Response No. 3; and “documents and communications that you reviewed to assess or ensure

the reliability or accuracy of the Challenge List or any other list of Targeted Voters that were submitted with the Elector Challenges,” Ex. 59, OpSec RFP Response No. 4. OpSec also failed to produce documents reflecting the design of its proprietary process. *See* Mayer Rep. 3-4, 19-24 (describing why True the Vote’s descriptions of its matching methodology are “entirely inadequate from an academic or scientific perspective and provably incorrect”); *see also* OpSec Tr. 114:4-7 (refusing to produce the algorithm used to create the Challenge List).

Plaintiffs also object to Paragraph 49 as vague and ambiguous in its use of the phrase “proprietary process,” which has not been adequately explained and thus lacks foundation.

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

RESPONSE: Paragraph 50 is inadmissible under Fed. R. Evid. 701(c) and 702. The manner in which “OpSec’s proprietary process” operates, including if and how it might “verify the identity of an individual,” and any inferences drawn from its resulting analysis, requires technical or specialized knowledge that can be offered only by a qualified expert witness. *Id.*

Defendants' characterization of OpSec's "proprietary process" should not be credited given Defendants' and OpSec's failure to produce information about these processes in response to Plaintiffs' requests for: "documents and communications relating to the methodology you relied upon in producing the Challenge List or any other list of Targeted Voters prepared in connection with the Elector Challenges, and the basis for identifying any of the Targeted Voters," Ex. 59, OpSec RFP Response No. 3; and "documents and communications that you reviewed to assess or ensure the reliability or accuracy of the Challenge List or any other list of Targeted Voters that were submitted with the Elector Challenges," Ex. 59, OpSec RFP Response No. 4. OpSec also failed to produce documents reflecting the design of its proprietary process. *See* Mayer Rep. 3-4, 19-24 (describing why True the Vote's descriptions of its matching methodology are "entirely inadequate from an academic or scientific perspective and provably incorrect"); *see also* OpSec Tr. 114:4-7 (refusing to produce the algorithm used to create the Challenge List).

Plaintiffs also object to Paragraph 50 as vague and ambiguous in its use of the phrases "proprietary process" and "comparing to data gathered from a combination of lists," which have not been adequately explained and thus lack foundation.

51. OpSec used databases other than NCOA and the voter file list to identify persons who had moved, OpSec Tr. 94:17, 95:3-9, including other state

registrations, *Id.* 95:14-15; 96:12-17, and “five or six other data sources.” OpSec Tr. 95:17-18.

RESPONSE: Paragraph 51 is inadmissible under Fed. R. Evid. 701(c) and 702. The manner in which “OpSec’s proprietary process” operates, including its methodology for identifying “persons who had moved,” and any inferences drawn from its resulting analysis, requires technical or specialized knowledge that can be offered only by a qualified expert witness. *Id.*

Plaintiffs further dispute that OpSec reliably identified persons who had moved. *See* Mayer Rep. 24-34. Additionally, Defendants’ characterization of OpSec’s “proprietary process” should not be credited given Defendants’ and OpSec’s failure to produce information about these processes in response to Plaintiffs’ requests for: “documents and communications relating to the methodology you relied upon in producing the Challenge List or any other list of Targeted Voters prepared in connection with the Elector Challenges, and the basis for identifying any of the Targeted Voters,” Ex. 59, OpSec RFP Response No. 3; and “documents and communications that you reviewed to assess or ensure the reliability or accuracy of the Challenge List or any other list of Targeted Voters that were submitted with the Elector Challenges,” Ex. 59, OpSec RFP Response No. 4. OpSec also failed to produce documents reflecting the design of its proprietary

process. *See* Mayer Rep. 3-4, 19-24 (describing why True the Vote’s descriptions of its matching methodology are “entirely inadequate from an academic or scientific perspective and provably incorrect”); *see also* OpSec Tr. 114:4-7 (refusing to produce the algorithm used to create the Challenge List).

Plaintiffs also object to Paragraph 51 as vague and ambiguous in its use of the phrases “databases other than NCOA” and “five or six other data sources,” which have not been adequately explained and thus lack foundation.

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

RESPONSE: Paragraph 52 is inadmissible under Fed. R. Evid. 701(c) and 702. The manner in which “OpSec’s proprietary process” operates, including the use of “TrueNCOA and SmartyStreets,” and any inferences drawn from its resulting analysis, requires technical or specialized knowledge that can be offered only by a qualified expert witness. *Id.*

Further, Defendants’ characterization of OpSec’s “proprietary process” should not be credited given Defendants’ and OpSec’s failure to produce information about these processes in response to Plaintiffs’ requests for: “documents and communications relating to the methodology you relied upon in producing the

Challenge List or any other list of Targeted Voters prepared in connection with the Elector Challenges, and the basis for identifying any of the Targeted Voters,” Ex. 59, OpSec RFP Response No. 3; and “documents and communications that you reviewed to assess or ensure the reliability or accuracy of the Challenge List or any other list of Targeted Voters that were submitted with the Elector Challenges,” Ex. 59, OpSec RFP Response No. 4. OpSec also failed to produce documents reflecting the design of its proprietary process. *See* Mayer Rep. 3-4, 19-24 (describing why True the Vote’s descriptions of its matching methodology are “entirely inadequate from an academic or scientific perspective and provably incorrect”); *see also* OpSec Tr. 114:4-7 (refusing to produce the algorithm used to create the Challenge List).

Plaintiffs also object to Paragraph 52 as vague and ambiguous in its use of the phrases “proprietary algorithm” and “TrueNCOA and SmartyStreets,” which have not been adequately explained and thus lack foundation.

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

RESPONSE: Paragraph 53 is inadmissible under Fed. R. Evid. 701(c) and 702. The manner in which “OpSec’s proprietary process” operates, including how it might use county tax records, and any inferences drawn from its resulting analysis,

requires technical or specialized knowledge that can be offered only by a qualified expert witness. *Id.*

Further, Defendants' characterization of OpSec's "proprietary process" should not be credited where Plaintiffs subpoenaed OpSec to produce "All documents and communications relating to the methodology you relied upon in producing the Challenge List or any other list of Targeted Voters prepared in connection with the Elector Challenges, and the basis for identifying any of the Targeted Voters," Ex. 59, OpSec RFP Response No. 3, and "All documents and communications that you reviewed to assess or ensure the reliability or accuracy of the Challenge List or any other list of Targeted Voters that were submitted with the Elector Challenges," Ex. 59, OpSec RFP Response No. 4, and OpSec failed to produce documents reflecting the design of the proprietary process. *See* Mayer Rep. 3-4, 19-24 (describing why True the Vote's descriptions of its matching methodology are "entirely inadequate from an academic or scientific perspective and provably incorrect"); *see also* OpSec Tr. 114:4-7 (refusing to produce the algorithm used to create the Challenge List).

Plaintiffs also object to Paragraph 53 as vague and ambiguous in stating that OpSec used county tax records. Defendants have not explained how OpSec used

county tax records or for what purpose; thus this statement lacks foundation, and Defendants have not demonstrated its relevance.

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

RESPONSE: Paragraph 54 is inadmissible under Fed. R. Evid. 701(c) and 702. The manner in which “OpSec’s proprietary process” mitigates the absence of unique identifiers or eliminates false matches, and any inferences drawn from its resulting analysis, requires technical or specialized knowledge that can be offered only by a qualified expert witness. *Id.*

Further, Plaintiffs dispute that OpSec reliably “resolv[ed] for identity” or “eliminate[d] a false match between persons with the same first and last name but a different middle initial.” *See* Mayer Rep. 24-32. Additionally, Defendants’ characterization of OpSec’s “proprietary process” should not be credited given Defendants’ and OpSec’s failure to produce information about these processes in response to Plaintiffs’ requests for: “documents and communications relating to the methodology you relied upon in producing the Challenge List or any other list of Targeted Voters prepared in connection with the Elector Challenges, and the basis

for identifying any of the Targeted Voters,” Ex. 59, OpSec RFP Response No. 3; and “documents and communications that you reviewed to assess or ensure the reliability or accuracy of the Challenge List or any other list of Targeted Voters that were submitted with the Elector Challenges,” Ex. 59, OpSec RFP Response No. 4. OpSec also failed to produce documents reflecting the design of its proprietary process. *See* Mayer Rep. 3-4, 19-24 (describing why True the Vote’s descriptions of its matching methodology are “entirely inadequate from an academic or scientific perspective and provably incorrect”); *see also* OpSec Tr. 114:4-7 (refusing to produce the algorithm used to create the Challenge List).

Plaintiffs also object to Paragraph 54 as vague and ambiguous in its discussion of OpSec’s “proprietary process” and its purported ability to eliminate false matches. These “processes” have not been adequately explained (or even disclosed) and thus lack foundation.

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

RESPONSE: Paragraph 55 is inadmissible under Fed. R. Evid. 701(c) and 702. The manner in which “OpSec’s proprietary process” “corrects potential matches of individuals in the voter file sharing a first and last name and address,”

and any inferences drawn from its resulting analysis, requires technical or specialized knowledge that can be offered only by a qualified expert witness. *Id.* Furthermore, Defendants' citation does not support this fact.

Plaintiffs also dispute that OpSec's process reliably corrected potential matches of individuals in the voter file sharing a first and last name and address. *See* Mayer Rep. 25-26 (finding 1,375 records in the challenge file duplicated on the first name, last name, and address triplet). Additionally, Defendants' characterization of OpSec's "proprietary process" should not be credited given Defendants' and OpSec's failure to produce information about these processes in response to Plaintiffs' requests for: "documents and communications relating to the methodology you relied upon in producing the Challenge List or any other list of Targeted Voters prepared in connection with the Elector Challenges, and the basis for identifying any of the Targeted Voters," Ex. 59, OpSec RFP Response No. 3; and "documents and communications that you reviewed to assess or ensure the reliability or accuracy of the Challenge List or any other list of Targeted Voters that were submitted with the Elector Challenges," Ex. 59, OpSec RFP Response No. 4. OpSec also failed to produce documents reflecting the design of its proprietary process. *See* Mayer Rep. 3-4, 19-24 (describing why True the Vote's descriptions of its matching methodology are "entirely inadequate from an academic or scientific

perspective and provably incorrect”); *see also* OpSec Tr. 114:4-7 (refusing to produce the algorithm used to create the Challenge List).

Plaintiffs also object to Paragraph 55 as vague and ambiguous in its discussion of OpSec’s “proprietary process” and its purported ability to “correct potential matches of individuals in the voter file sharing a first and last name and address.” These “processes” have not been adequately explained (or even disclosed) and thus lack foundation.

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

RESPONSE: Paragraph 56 is inadmissible under Fed. R. Evid. 701(c) and 702. The manner in which “OpSec’s proprietary process” verifies identity and residency using a complex series of algorithms, and any inferences drawn from its resulting analysis, requires technical or specialized knowledge that can be offered only by a qualified expert witness. *Id.*

Further, Defendants’ characterization of OpSec’s “proprietary process” should not be credited given Defendants’ and OpSec’s failure to produce information about these processes in response to Plaintiffs’ requests for: “documents

and communications relating to the methodology you relied upon in producing the Challenge List or any other list of Targeted Voters prepared in connection with the Elector Challenges, and the basis for identifying any of the Targeted Voters,” Ex. 59, OpSec RFP Response No. 3; and “documents and communications that you reviewed to assess or ensure the reliability or accuracy of the Challenge List or any other list of Targeted Voters that were submitted with the Elector Challenges,” Ex. 59, OpSec RFP Response No. 4. OpSec also failed to produce documents reflecting the design of its proprietary process. *See* Mayer Rep. 3-4, 19-24 (describing why True the Vote’s descriptions of its matching methodology are “entirely inadequate from an academic or scientific perspective and provably incorrect”); *see also* OpSec Tr. 114:4-7 (refusing to produce the algorithm used to create the Challenge List).

Plaintiffs also object to Paragraph 56 as vague and ambiguous in its discussion of OpSec’s “proprietary process” and its use of a “4000-row algorithm, involving a complex series of mostly common algorithms, such as dissimilarity and similarity indexes and fuzzy logic” to verify identity and residency. These “processes” have not been adequately explained (or even disclosed) and thus lack foundation.

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

RESPONSE: Paragraph 57 is inadmissible under Fed. R. Evid. 701(c) and 702. The manner in which “OpSec’s proprietary process” uses “fuzzy logic” to verify identity, and any inferences drawn from its resulting analysis, requires technical or specialized knowledge that can be offered only by a qualified expert witness. *Id.*

Further, Defendants’ characterization of OpSec’s “proprietary process” should not be credited given Defendants’ and OpSec’s failure to produce information about these processes in response to Plaintiffs’ requests for: “documents and communications relating to the methodology you relied upon in producing the Challenge List or any other list of Targeted Voters prepared in connection with the Elector Challenges, and the basis for identifying any of the Targeted Voters,” Ex. 59, OpSec RFP Response No. 3; and “documents and communications that you reviewed to assess or ensure the reliability or accuracy of the Challenge List or any other list of Targeted Voters that were submitted with the Elector Challenges,” Ex. 59, OpSec RFP Response No. 4. OpSec also failed to produce documents reflecting the design of its proprietary process. *See* Mayer Rep. 3-4, 19-24 (describing why True the Vote’s descriptions of its matching methodology are “entirely inadequate from an academic or scientific perspective and provably incorrect”); *see also* OpSec Tr. 114:4-7 (refusing to produce the algorithm used to create the Challenge List).

Plaintiffs also object to Paragraph 57 as vague and ambiguous in its discussion of OpSec's "proprietary process" and its use of "fuzzy logic" to verify identity. These "processes" have not been adequately explained (or even disclosed) and thus lack foundation.

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

RESPONSE: Paragraph 58 is inadmissible under Fed. R. Evid. 701(c) and 702. The manner in which "OpSec's proprietary process" removes false positives or false negatives or uses quality control algorithms, and any inferences drawn from its resulting analysis, requires technical or specialized knowledge that can be offered only by a qualified expert witness. *Id.*

Further, Defendants' characterization of OpSec's "proprietary process" should not be credited given Defendants' and OpSec's failure to produce information about these processes in response to Plaintiffs' requests for: "documents and communications relating to the methodology you relied upon in producing the Challenge List or any other list of Targeted Voters prepared in connection with the Elector Challenges, and the basis for identifying any of the Targeted Voters," Ex. 59, OpSec RFP Repsonse No. 3; and "documents and communications that you

reviewed to assess or ensure the reliability or accuracy of the Challenge List or any other list of Targeted Voters that were submitted with the Elector Challenges,” Ex. 59, OpSec RFP Response No. 4. OpSec also failed to produce documents reflecting the design of its proprietary process. *See* Mayer Rep. 3-4, 19-24 (describing why True the Vote’s descriptions of its matching methodology are “entirely inadequate from an academic or scientific perspective and provably incorrect”); *see also* OpSec Tr. 114:4-7 (refusing to produce the algorithm used to create the Challenge List).

Plaintiffs also object to Paragraph 58 as vague and ambiguous in its discussion of OpSec’s “proprietary process,” and its removal of false negatives or false positives using a “quality control algorithm.” These “processes” have not been adequately explained (or even disclosed) and thus lack foundation.

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

RESPONSE: Paragraph 59 is inadmissible under Fed. R. Evid. 701(c) and 702. The manner in which the unspecified “formulas and algorithms ‘execute,’” and any inferences drawn from the resulting analysis, requires technical or specialized knowledge that can be offered only by a qualified expert witness. *Id.*

Additionally, Defendants' characterization of OpSec's "formulas and algorithms" should not be credited given Defendants' and OpSec's failure to produce information about these processes in response to Plaintiffs' requests for: "documents and communications relating to the methodology you relied upon in producing the Challenge List or any other list of Targeted Voters prepared in connection with the Elector Challenges, and the basis for identifying any of the Targeted Voters," Ex. 59, OpSec RFP Response No. 3; and "documents and communications that you reviewed to assess or ensure the reliability or accuracy of the Challenge List or any other list of Targeted Voters that were submitted with the Elector Challenges," Ex. 59, OpSec RFP Response No. 4. OpSec also failed to produce documents reflecting the design of its formulas and algorithms. *See* Mayer Rep. 3-4, 19-24 (describing why True the Vote's descriptions of its matching methodology are "entirely inadequate from an academic or scientific perspective and provably incorrect"); *see also* OpSec Tr. 114:4-7 (refusing to produce the algorithm used to create the Challenge List).

Plaintiffs also object to Paragraph 59 as vague and ambiguous in discussing the operation of unspecified formulas and algorithms. These "processes" have not been adequately explained (or even disclosed) and thus lack foundation.

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

RESPONSE: Paragraph 60 is inadmissible under Fed. R. Evid. 701(c) and 702. The manner in which “OpSec’s proprietary process” flags and resolves identity-related questions, and any inferences drawn from the resulting analysis, requires technical or specialized knowledge that can be offered only by a qualified expert witness. *Id.*

Plaintiffs further dispute that OpSec’s process “kicked out” unreliable matches. *See* Mayer Rep. 24-32. Additionally, Defendants’ characterization of OpSec’s “proprietary process” should not be credited given Defendants’ and OpSec’s failure to produce information about these processes in response to Plaintiffs’ requests for: “documents and communications relating to the methodology you relied upon in producing the Challenge List or any other list of Targeted Voters prepared in connection with the Elector Challenges, and the basis for identifying any of the Targeted Voters,” Ex. 59, OpSec RFP Response No. 3; and “documents and communications that you reviewed to assess or ensure the

reliability or accuracy of the Challenge List or any other list of Targeted Voters that were submitted with the Elector Challenges,” Ex. 59, OpSec RFP Response No. 4. OpSec also failed to produce documents reflecting the design of its proprietary process. *See* Mayer Rep. 3-4, 19-24 (describing why True the Vote’s descriptions of its matching methodology are “entirely inadequate from an academic or scientific perspective and provably incorrect”); *see also* OpSec Tr. 114:4-7 (refusing to produce the algorithm used to create the Challenge List).

Plaintiffs also object to Paragraph 60 as vague and ambiguous in its use of the phrase “proprietary process” and its discussion of how that process flags and resolves identity-related questions. These “processes” have not been adequately explained (or even disclosed) and thus lack foundation.

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

RESPONSE: Paragraph 61 is inadmissible under Fed. R. Evid. 701(c) and 702. The manner in which “OpSec’s proprietary process” utilizes regression modeling, and any inferences drawn from its resulting analysis, requires technical or specialized knowledge that can be offered only by a qualified expert witness. *Id.*

Further, Defendants' characterization of OpSec's "proprietary process" should not be credited given Defendants' and OpSec's failure to produce information about these processes in response to Plaintiffs' requests for: "documents and communications relating to the methodology you relied upon in producing the Challenge List or any other list of Targeted Voters prepared in connection with the Elector Challenges, and the basis for identifying any of the Targeted Voters," Ex. 59, OpSec RFP Response No. 3; and "documents and communications that you reviewed to assess or ensure the reliability or accuracy of the Challenge List or any other list of Targeted Voters that were submitted with the Elector Challenges," Ex. 59, OpSec RFP Response No. 4. OpSec also failed to produce documents reflecting the design of its proprietary process. *See* Mayer Rep. 3-4, 19-24 (describing why True the Vote's descriptions of its matching methodology are "entirely inadequate from an academic or scientific perspective and provably incorrect"); *see also* OpSec Tr. 114:4-7 (refusing to produce the algorithm used to create the Challenge List).

Plaintiffs also object to Paragraph 61 as vague and ambiguous in its discussion of OpSec's "proprietary process" and its use of "regression modeling." These "processes" have not been adequately explained (or even disclosed) and thus lack foundation.

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

RESPONSE: Paragraph 62 is inadmissible as testimony by a lay witness. Fed. R. Evid. 701(c); 702. The manner in which “OpSec’s proprietary process” operates, including the use of “regressions,” and any inferences drawn from its resulting analysis, requires technical or specialized knowledge that can be offered only by a qualified expert witness. *Id.*

Defendants’ characterization of OpSec’s “proprietary process” should not be credited given Defendants’ and OpSec’s failure to produce information about these processes in response to Plaintiffs’ requests for: “documents and communications relating to the methodology you relied upon in producing the Challenge List or any other list of Targeted Voters prepared in connection with the Elector Challenges, and the basis for identifying any of the Targeted Voters,” Ex. 59, OpSec RFP Response No. 3; and “documents and communications that you reviewed to assess or ensure the reliability or accuracy of the Challenge List or any other list of Targeted Voters that were submitted with the Elector Challenges,” Ex. 59, OpSec RFP Response No. 4. OpSec also failed to produce documents reflecting the design of its proprietary process. *See* Mayer Rep. 3-4, 19-24 (describing why True the Vote’s descriptions of its matching methodology are “entirely inadequate from an academic or scientific

perspective and provably incorrect”); *see also* OpSec Tr. 114:4-7 (refusing to produce the algorithm used to create the Challenge List).

Plaintiffs also object to Paragraph 62 as vague and ambiguous in its discussion of OpSec’s “proprietary process” and its use of “regressions.” These “processes” have not been adequately explained (or even disclosed) and thus lack foundation.

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

RESPONSE: Plaintiffs dispute this fact. *See* Mayer Rep. 30 (identifying 397 registrants in the challenge file who are listed as living on a military installation, and 22,956 registrants who, according to the challenge file, submitted an NCOA with an address on or near one of 189 military installations).

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

RESPONSE: Plaintiffs dispute this fact. Defendant Davis’s testimony establishes that military and UOCAVA voters can be identified and “dropped” from a challenge list. *See* Ex. 9, Davis II Tr. 29:3-10, ECF No. 156-12.

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

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

RESPONSE: This fact is immaterial—in addition to being vague and ambiguous—without any reference to what degree of error OpSec expected, which OpSec refused to explain in any meaningful detail. *See* OpSec Tr. 140:19-141:7. For the same reasons, Paragraph 65 lacks foundation.

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

RESPONSE: Plaintiffs do not dispute that errors were included in the Challenge List.

Paragraph 66 is inadmissible under Fed. R. Evid. 701(c) and 702. The manner in which OpSec’s proprietary “process” operates, including instances in which it “reviewed and “kicked out” specific records, and any inferences drawn from its resulting analysis, requires technical or specialized knowledge that can be offered only by a qualified expert witness. *Id.*

Further, Plaintiffs dispute that Defendants' process "kicked out" instances where an individual's name did not match the name in the voter file or the name associated with the registration number. Mayer Rep. 28-29.

Additionally, Defendants' characterization of OpSec's "process" should not be credited given Defendants' and OpSec's failure to produce information about these processes in response to Plaintiffs' requests for: "documents and communications relating to the methodology you relied upon in producing the Challenge List or any other list of Targeted Voters prepared in connection with the Elector Challenges, and the basis for identifying any of the Targeted Voters," Ex. 59, OpSec RFP Response No. 3; and "documents and communications that you reviewed to assess or ensure the reliability or accuracy of the Challenge List or any other list of Targeted Voters that were submitted with the Elector Challenges," Ex. 59, OpSec RFP Response No. 4. OpSec also failed to produce documents reflecting the design of its proprietary process. *See* Mayer Rep. 3-4, 19-24 (describing why True the Vote's descriptions of its matching methodology are "entirely inadequate from an academic or scientific perspective and provably incorrect"); *see also* OpSec Tr. 114:4-7 (refusing to produce the algorithm used to create the Challenge List).

Plaintiffs also object to Paragraph 66 as vague and ambiguous in its discussion of OpSec's "process" and its review of non-matching records. These "processes" have not been adequately explained (or even disclosed) and thus lack foundation.

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

RESPONSE: Paragraph 67 is inadmissible under Fed. R. Evid. 701(c) and 702. The manner in which OpSec's proprietary "process" operates, including instances in which it "reviewed" registration addresses, and any inferences drawn from its resulting analysis, requires technical or specialized knowledge that can be offered only by a qualified expert witness. *Id.*

Further, Defendants' citation does not support the fact that OpSec's process reviewed for the described instances. Plaintiffs do not dispute that the challenge file reflects instances where a challenged individual's registration address and the address to which the registrant allegedly moved are the same. Plaintiffs do dispute that Defendants reliably attempted to correct for this mistake. *See* Mayer Rep. 28-29.

Additionally, Defendants' characterization of OpSec's "process" should not be credited given Defendants' and OpSec's failure to produce information about these processes in response to Plaintiffs' requests for: "documents and communications relating to the methodology you relied upon in producing the Challenge List or any other list of Targeted Voters prepared in connection with the Elector Challenges, and the basis for identifying any of the Targeted Voters," Ex. 59, OpSec RFP Response No. 3; and "documents and communications that you reviewed to assess or ensure the reliability or accuracy of the Challenge List or any other list of Targeted Voters that were submitted with the Elector Challenges," Ex. 59, OpSec RFP Response No. 4. OpSec also failed to produce documents reflecting the design of its proprietary process. *See* Mayer Rep. 3-4, 19-24 (describing why True the Vote's descriptions of its matching methodology are "entirely inadequate from an academic or scientific perspective and provably incorrect"); *see also* OpSec Tr. 114:4-7 (refusing to produce the algorithm used to create the Challenge List).

Plaintiffs also object to Paragraph 67 as vague and ambiguous in its discussion of OpSec's "process" and its review of registration addresses. These "processes" have not been adequately explained (or even disclosed) and thus lack foundation.

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

RESPONSE: Plaintiffs do not dispute that Defendants did not confirm whether a challenged individual re-registered at the address to which the NCOA allegedly suggested the individual moved. Plaintiffs do dispute that Defendants could not review for this error. *See* Mayer Rep. 29 (reviewing for this error). Additionally, Defendants’ characterization of OpSec’s “process” should not be credited given Defendants’ and OpSec’s failure to produce information about these processes in response to Plaintiffs’ requests for: “documents and communications relating to the methodology you relied upon in producing the Challenge List or any other list of Targeted Voters prepared in connection with the Elector Challenges, and the basis for identifying any of the Targeted Voters,” Ex. 59, OpSec RFP Response No. 3; and “documents and communications that you reviewed to assess or ensure the reliability or accuracy of the Challenge List or any other list of Targeted Voters that were submitted with the Elector Challenges,” Ex. 59, OpSec RFP Response No. 4. OpSec also failed to produce documents reflecting the design of its proprietary process. *See* Mayer Rep. 3-4, 19-24 (describing why True the Vote’s descriptions of its matching methodology are “entirely inadequate from an academic or scientific perspective and provably incorrect”); *see also* OpSec Tr. 114:4-7 (refusing to produce the algorithm used to create the Challenge List).

69. OpSec used a TrueAppend document as a quality check on numbers by looking at the overall number of moved provided in that report as a check to see if there were noticeable accuracy issues with the result of its analysis; the report includes age and other demographic information that was not relevant, and OpSec does not believe that any changes were made to the Challenge List after reviewing the report. OpSec Tr. 150:16-18, 151:13-16, 152:6-9; TrueAppend Doc., Ex. G

RESPONSE: Defendants' citations do not support the fact that OpSec "used a TrueAppend document as a quality check on numbers by looking at the overall number of moved provided in the report." Plaintiffs do not dispute that the report includes demographic information that was not relevant to an individual's eligibility to vote.

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

RESPONSE: This fact is not material to any claim or defense in this case.

71. If OpSec considered demographic and other characteristics of individuals on the Challenge List at all, it was only after and in response to Plaintiffs' suit, OpSec Tr. 163:13-164:8; 149:14-17, in which it is claimed, directly or

indirectly, that the Challenges were aimed particularly at certain demographics, Amended Complaint ¶¶ 4, 16, 30.

RESPONSE: Plaintiffs dispute this fact. The selection of counties in which TTV submitted challenges was skewed towards counties with higher percentages of Black registrants. The 65 selected counties include: (1) the three counties with the highest percentage of Black registrants across the state; (2) ten of the 20 counties with the highest percentage of Black registrants; and (3) only four of the 20 counties with the smallest percentage of Black registrants. Mayer Report 34-35. The TrueAppend document prepared by OpSec analyzed racial demographic and other characteristics of individuals included on the challenge list, and this report was prepared *before* Plaintiffs filed this lawsuit. Ex. 58, Dec. 16, 2020 TrueAppend Report.

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

RESPONSE: This fact is not material to any claim or defense in this case.

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

RESPONSE: This fact is not material to any claim or defense in this case.

74. Neither OpSec nor Gregg Phillips know who tweets under the account Crusade for Freedom. OpSec Tr. 167:22-168:10.

RESPONSE: Plaintiffs do not dispute that the Court may consider Paragraph 74 for purposes of the summary judgment motion.

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

RESPONSE: Plaintiffs dispute that OpSec reliably identified ineligible voters on the Georgia voter roll. *See* Mayer Rep. 24-34.

Derek Somerville Statement of Facts

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

RESPONSE: Plaintiffs dispute that Mr. Somerville "did not help or volunteer to help with TTV's challenges in any way." *See, e.g.,* Pls.' SUMF ¶ 64. Mr.

Somerville, for example, met with Defendant Engelbrecht and Mr. Phillips just days before True the Vote filed its challenges, where Mr. Somerville learned of True the Vote's plan to challenge hundreds of thousands of voters and Mr. Somerville described to True the Vote how Georgia's challenge process worked. Ex. 45, Additional Transcript Excerpts of First Deposition of Derek Somerville (Oct. 6, 2021) ("Somerville Tr. I")19:4-23:21. Mr. Somerville later attended a meeting with Mr. Davis and Mr. Phillips to discuss the challenges, Somerville Tr. I 29:10-34:17; spoke at True the Vote's challenger meeting to "encourage" True the Vote's elector challenge volunteers, Somerville Tr. I 115:2-117:9; Ex. 54, Dec. 19, 2020 C. Engelbrecht Email; and edited True the Vote's public communications about the challenges before they were released, voluntarily including himself and Mr. Davis on True the Vote's press release announcing the challenges, Somerville Tr. I at 37:7-40:7; Ex. 52, Dec. 17, 2020 D. Somerville Text. When True the Vote's challenges were released, Mr. Somerville publicly praised the effort, admitted that he "collaborated on methodology," and touted that he was "honor[ed] to be a part of the fight." Ex. 53, Dec. 18, 2020 Somerville Facebook Post at 1.

77. Mr. Somerville and Mr. Davis worked together, independently from TTV, to run a separate data analysis for the Runoff election, which eventually was used by volunteers working with Mr. Somerville and Mr. Davis to submit voter

challenges in various Georgia counties. (“Davis/Somerville Challenge List”) Somerville Tr. I at 32:20-33:4; 45:3-11; Somerville Interrog. Resp. Ct. Order Resp. No. 1.

RESPONSE: Plaintiffs do not dispute that Mr. Somerville and Mr. Davis generated a separate challenge list and that the Court may consider Paragraph 77 for purposes of the summary judgment motion.

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

a. Split the input voter data into 3 parts for processing so the databases would not exceed the dbase file size limitation of 2.14 gigabytes.

b. Imported the data into 3 dbase structures with processing fields appended (added) to the structure.

c. Copied the residence addresses into the “COA” (Change of address) fields created for CASS (Coding Accuracy Support System) and NCOA (National Change of Address) processing.

d. Ran CASS & NCOA processing & saved the processing certifications.

e. Created an empty table called “Moved” and imported the records that received an updated address during NCOA processing.

f. Set a relation on the voter registration number into the vote history trailer data and flagged the voters in the “Moved” table who voted in the general election.

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

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

i. Removed changes of address to PO Boxes.

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

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

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

m. Output a “Final” challenge list removing voters with changes of address prior to June of 2019 as we believed they would have already been through the Secretary of State’s NCOA processing, subsequent verification inquiries, and associated list maintenance activities.

n. Created a report format for printed lists of challenged voters.

o. Output a PDF list for each county.

p. Output an Excel file for each county.

q. Did an SQL query to get a count by county. The final count was 39,141 voters and the average number of challenged voters per county was 246.

r. Mr. Davis uploaded the Davis/Somerville Challenge List to Google drive for Mr. Somerville to distribute to challengers. Somerville Interrog. Resp. Ct. Order Resp. No. 2.

RESPONSE: Paragraph 78 contains testimony that is inadmissible under Fed. R. Evid. 701(c) and 702. Any inferences about the accuracy of the challenge lists drawn from Davis’s process, including sub-parts b-h and j-r, requires technical or specialized knowledge that can be offered only by a qualified expert witness. *Id.* Additionally, this Paragraph’s representations of what Mr. Somerville was told in “discussions with Mr. Davis” is inadmissible hearsay.

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

RESPONSE: Plaintiffs do not dispute that the Court may consider Paragraph 79 for purposes of the summary judgment motion.

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

RESPONSE: Plaintiffs dispute Mr. Somerville “had no knowledge of how the TTV Challenge List was developed, who participated in it, the methodology TTV used, or any other degree of knowledge pertaining to the TTV Challenge List.” *See, e.g.,* Pls.’ SUMF ¶ 64 and Pls.’ Response to Defendants’ Paragraph 76, contained herein.

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

RESPONSE: Plaintiffs do not dispute that the Davis/Somerville challenge list was developed separately from True the Vote challenge list and that the Court may consider this assertion for purposes of the summary judgment motion. Plaintiffs

dispute that the Davis/Somerville challenge list was “completely unrelated” to the TTV challenge list, as seen by the shared conversations between them, same use of NCOA data, and even shared use of volunteers to submit both challenge lists. *See* Pls.’ SUMF ¶¶ 27, 39-40, 64; Ex. 46, Additional Transcript Excerpts Derek Somerville Reopened Deposition (Jan. 20, 2022) (“Somerville Tr. II”) at 100:15-101:7.

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

RESPONSE: Paragraph 82 does not comply with LR 56.1(B)(1) because what Mr. Somerville intended to do is an argument rather than a statement of fact.

83. Mr. Somerville’s intent in working with Mr. Davis on the Davis/Somerville Challenge List was to encourage people to hold their government accountable by participating in a meaningful way—his intent was never to scare people away from participating in an election. Transcript Excerpts of Second

Deposition of Derek Somerville (Feb. 2, 2022) (“Second Somerville Tr.”), Ex. K 187:5-13.

RESPONSE: The assertion of Mr. Somerville’s “intent” does not comply with LR 56.1(B)(1) because it is an argument rather than a statement of fact. Additionally, Plaintiffs dispute that Mr. Somerville’s only intention was to “encourage people to hold their government accountable.” Rather, at least one of his goals was to “force the verification” of NCOA voters that the state had failed to do, in his view. See Ex. 55, D. Somerville Facebook Post (“Since [the NCOA] process hasn’t been run by the state since early 2019 and given the unprecedented reliance this cycle on mail-in ballots, our challenges sought to force that verification.”).

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

RESPONSE: Plaintiffs do not dispute that the Court may consider this evidence for purposes of the summary judgment motion.

85. Mr. Somerville testified that it “wasn’t evident” to him that voters on the Davis/Somerville Challenge List “would ever be aware they were on the list.” But if these voters were asked to verify their residency by a county board, they

simply had to show, through a benign process, they had not permanently moved from that county and were still eligible to vote there. First Somerville Tr. 56:18-57:11.

RESPONSE: Plaintiffs do not dispute that Mr. Somerville testified that it was not evident to him that voters would be aware that they were challenged and that he testified that he believed the challenge process to be benign. Plaintiffs dispute that the challenge process was benign or unharmful to voters, as demonstrated, for example, by the fact that Plaintiff Heredia had to spend 3-4 hours at her polling location in her attempt to resolve the challenge, provide identification, and cast a provisional ballot, Ex. 48, Second Excerpt of Jocelyn Heredia Deposition Transcript (“Heredia Tr.”) 45:15-47:25, and that many voters felt intimidated by the challenges, *see* Pls.’ SUMF ¶¶ 155-174, ECF No. 156-2 (recounting experiences of Plaintiff Heredia, Plaintiff Jane Doe, and other challenged Georgia voters). Finally, whether the process required to regain one’s right to vote was simple or “benign” does not comply with LR 56.1(B)(1) because it is an argument rather than a statement of fact.

86. Mr. Somerville hoped that “if there was probable cause to believe that a vote may have been cast in an ineligible fashion – which may very well happen unbeknownst to the person who cast that vote – that that would be looked into by the local boards and remedied accordingly.” “‘Remedied’ does not necessarily mean they don’t vote, or that the voter is “purged” from the voter rolls. It simply means

ensuring they vote in the proper county.” First Somerville Tr. 48:15-21; 78:6-9; Second Somerville Tr. 189:4-191:1.

RESPONSE: Plaintiffs do not dispute that Mr. Somerville testified that this is what he believed would happen to challenged voters. Plaintiffs dispute these facts to the extent they are purporting to state a legal conclusion of the effect of a challenge. Plaintiffs further object that what Mr. Somerville “hoped” does not comply with LR 56.1(B)(1) because it is an argument rather than a statement of fact.

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

RESPONSE: Plaintiffs dispute the fact that Mr. Somerville did not believe that the Davis/Somerville challenge list would have any short-term impact. *See* Ex. 53, Dec. 18, 2020 Somerville Facebook Post at 2 (“[we believed] roughly 40,000 [registered voters] across all 159 counties [] need[ed] to be verified by county Election Boards BEFORE the January 5, 2020 Senate run-off”) (emphasis in original). Furthermore, Mr. Davis and Mr. Somerville arranged to bring challenges under a statute that requires boards of election to consider the accusations

challengers have made. O.C.G.A. § 21-2-230 (“Upon the filing of such challenge, the board of registrars shall immediately consider such challenge”).

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

RESPONSE: Plaintiffs do not dispute that the Court may consider this evidence for purposes of the summary judgment motion.

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

RESPONSE: Plaintiffs dispute that Mr. Somerville and Davis were able to remove all military voters from their challenge list because they did not personally know the individuals that they were challenging. As Mr. Somerville explained, “there’s no way to know if [] there’s a military person that is assigned to a location that’s not associated with a military base . . . It’s imperfect. It’s data.” Somerville Tr. II at 26:2-21.

90. In recognition that students away from their home address were also likely eligible voters in their home counties, Mr. Somerville and Mr. Davis also made efforts to exclude them from the Davis/Somerville Challenge List, including identifying and removing students connected to addresses being on or near campuses. Somerville II Tr. 22:16-24:8.

RESPONSE: Plaintiffs do not dispute that Mr. Somerville and Mr. Davis acknowledged that student voters are one of the categories of voters who “may be registered in a county that they do not reside in” but still be a legitimate voter. Somerville Tr. II at 20:8-21:9. Plaintiffs dispute that Mr. Somerville and Mr. Davis were able to remove all of these voters; as Mr. Somerville acknowledged, “obviously there’s no record in the voter file that indicates somebody’s a student.” Somerville Tr. II at 22:16-18. They removed student voters “to the extent that we were able to identify that they were likely student voters.” Somerville Tr. II at 22:6-15.

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

RESPONSE: Plaintiffs do not dispute that the Court may consider Paragraph 91 for purposes of the summary judgment motion.

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

RESPONSE: The assertion of Mr. Somerville’s “tremendous confidence” does not comply with LR 56.1(B)(1) because it is an argument rather than a statement of fact. The statement that “there was and continues to be cause for each county election board to confirm that those individuals are still eligible voters within their county” does not comply with LR 56.1(B)(1) because it is an argument and legal conclusion rather than a statement of fact.

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

RESPONSE: Plaintiffs do not dispute that the Court may consider Paragraph 93 for purposes of the summary judgment motion.

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

RESPONSE: Plaintiffs dispute that the Davis/Somerville Challenge list was never released to the public. In Banks County, for example, the Davis/Somerville challenge list was posted online for six months. Pls.' SUMF ¶ 158. And, as noted in Paragraph 93, Davis and Somerville provided the challenge lists to voters that expressed interest.

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

RESPONSE: Paragraph 95, insofar as it refers to Mr. Somerville having direct contact with a voter, is immaterial to the claims and defenses of this case.

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

RESPONSE: Plaintiffs do not dispute that the Court may consider Paragraph 96 for purposes of the summary judgment motion.

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

RESPONSE: Plaintiffs do not dispute that Mr. Somerville testified that he believed Mark Davis’s name should be included in the press release if True the Vote was acknowledging the “work of Georgians.” Defendants’ citation provides no evidence for the assertion that his belief was correct.

98. Mr. Somerville had fairly minimal contact with TTV, and none of his contact resulted in substantive cooperation or coordination between the Davis/Somerville Challenge List and the TTV Challenge List efforts. First Somerville Tr. 103:6-13; 157:7-15; Somerville Interrog. Resp. Ct. Order Resp. Nos. 1,4.

RESPONSE: Plaintiffs dispute Mr. Somerville “had fairly minimal contact with TTV and none of his contract resulted in substantive cooperation or coordination [with TTV].” *See, e.g.,* Pls.’ SUMF ¶ 64 and Pls.’ Response to Defendants’ Paragraph 76, contained herein.

Furthermore, an assertion regarding the “substantive cooperation or coordination between” defendants does not comply with LR 56.1(B)(1) because it is an argument and a legal conclusion rather than a statement of fact.

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

RESPONSE: An assertion regarding what Mr. Somerville “understood” would happen does not comply with LR 56.1(B)(1) because it is an argument rather than a statement of fact.

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

RESPONSE: Plaintiffs do not dispute that the Court may consider Paragraph 100 for purposes of the summary judgment motion.

101. After the Davis/Somerville Challenge List was compiled, Mr. Somerville ran several analyses on the data, including a breakdown of the file based

on voter behavior. Mr. Somerville’s intent on this post facto review was to ensure that the data did not contain any particular bias regarding any other factor other than the data reflecting an address change the voter had submitted to the USPS. Second Somerville Tr. 30:6-32:14.

RESPONSE: Plaintiffs do not dispute that Mr. Somerville “ran several analyses on the data.” Mr. Somerville, for example, ran an analysis to determine how many of the challenged voters on his list were Democrats, *see* Ex. 56, Dec. 15, 2020 D. Somerville Email. The assertion of Mr. Somerville’s “intent” does not comply with LR 56.1(B)(1) because it is an argument rather than a statement of fact.

102. Mr. Somerville never considered race, sex, voting preference, or any other demographic characteristic of the voters when working to compile the Davis/Somerville Challenge List. Second Somerville Tr. 30:6-32:14; 188:4-22.

RESPONSE: The cited testimony does not support the statement in Paragraph 102 because it makes reference only to whether preparation of Mr. Somerville’s challenge list included consideration of *partisanship*; it does not address whether there was consideration of race, sex, or other demographic characteristics.

Mark Davis Statement of Facts

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

RESPONSE: Plaintiffs do not dispute that the Court may consider Paragraph 103 for purposes of the summary judgment motion.

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

RESPONSE: Mr. Davis has not been offered as an expert in this case and so this assertion is immaterial to the claims and defenses of this case.

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

RESPONSE: Plaintiffs do not dispute that Mr. Davis testified that as part of his business, he processed 50-60 million records in 2021. However, Defendants’ citation does not support the fact that Mr. Davis used “a variety of data tools,

including the USPS NCOA (National Change of Address) and CASS certification (Coding Accuracy Support System).”

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

RESPONSE: To the extent that Paragraph 106 describes the activity of comparing data sets but not the accuracy of those efforts, Plaintiffs do not dispute that the Court may consider Paragraph 106 for purposes of the summary judgment motion.

107. Mr. Davis noticed “residency issues with the Georgia Voter Database for many, many years.” First Davis Tr. 32:11-33:17.

RESPONSE: Plaintiffs do not dispute that Mr. Davis testified that he noticed that there were residency issues in the Georgia Voter Database for many years. Plaintiffs dispute that this citation is sufficient to demonstrate that there have in fact been residency issues with the Georgia Voter Database for many years.

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

RESPONSE: Plaintiffs do not dispute that the Court may consider the assertion that Mr. Davis “ran NCOA processing in November of 2020” for purposes

of the summary judgment motion. An assertion of Mr. Davis's motivations or goals does not comply with LR 56.1(B)(1) because it is an argument rather than a statement of fact.

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

RESPONSE: Plaintiffs dispute that Mr. Davis "did not act in concert with . . . TTV." *See, e.g.*, Pls.' SUMF ¶ 64. First, it is clear that Mr. Davis and Mr. Somerville worked closely with each other regarding challenge efforts in the January 2021 Runoff. *See, e.g.*, Defs.' Ex. O, Davis Interrog. Resp. Ct. Order, Resp. Nos. 1, 3. Mr. Davis had a phone call with Mr. 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. Pls.' SUMF ¶ 40. It is also clear that Defendant Somerville, with whom Defendant Davis worked closely, was involved extensively with True the Vote's challenges, *see* Pls.' Response to Defendants' Paragraph 76, contained herein.

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

RESPONSE: Plaintiffs do not dispute that Mr. Davis testified that he supports efforts to clean up the voter rolls. An assertion about his motivation for doing so does not comply with LR 56.1(B)(1) because it is an argument rather than a statement of fact.

111. When the residency of a voter is called into question via a voter challenge, the Board of Elections would be responsible for investigating any challenges it accepts. First Davis Tr. 120:7-22.

RESPONSE: Plaintiffs object to Paragraph 111 because it offers a legal conclusion about the Board of Elections’ responsibilities.

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

RESPONSE: Plaintiffs do not dispute that the Court may consider Paragraph 112 for purposes of the summary judgment motion.

113. Mr. Davis ran a separate data analysis for the Runoff Election; voters then volunteered to submit voter challenges in counties using this list. (“Davis/Somerville Challenge List”) Second Davis Tr. 28:19-32:17.

RESPONSE: Plaintiffs do not dispute that the Court may consider Paragraph 113 for purposes of the summary judgment motion.

114. Mr. Davis took the lead in researching and identifying voters to include on the Davis/Somerville Challenge List. Mr. Davis’ research included the following steps: a. Split the input voter data into 3 parts for processing so the databases would not exceed the dbase file size limitation of 2.14 gigabytes. b. Imported the data into 3 dbase structures with processing fields appended (added) to the structure. c. Copied the residence addresses into the “COA” (Change of address) fields created for CASS (Coding Accuracy Support System) and NCOA (National Change of Address) processing. d. Ran CASS & NCOA processing & saved the processing certifications. e. Created an empty table called “Moved” and imported the records that received an updated address during NCOA processing. f. Set a relation on the voter registration number into the vote history trailer data and flagged the voters in the “Moved” table who voted in the general election. g. Geocoded (assigned latitude & longitude) & digitally mapped the “Moved” table to assign the county of the new address. h. Copied out a file of voters who cast ballots in the General Election with changes of

address to a new state or to a new county in Georgia more than 30 days before the general and/or the runoff elections. This yielded a file of voters with a change of address to another state, as well as in state voters who, based on the month of their “Move Effective Dates”, appeared to have had residency issues when they voted in the General Election, along with voters who voted in the General who appeared to have similar residency issues heading into the Runoff Election. i. Removed changes of address to PO Boxes. j. Eliminated UOCAVA (Military) voters by matching against the absentee voter data. k. Mr. Davis sent Mr. Somerville a copy of the file so that he could remove as many voters at military bases as possible. l. Mr. Somerville then sent the semi-final challenge list to Mr. Davis. m. Output a “Final” challenge list removing voters with changes of address prior to June of 2019 as we believed they would have already been through the Secretary of State’s NCOA processing, subsequent verification inquiries, and associated list maintenance activities. n. Created a report format for printed lists of challenged voters. o. Output a PDF list for each county. p. Output an Excel file for each county. q. Did an SQL query to get a count by county. The final count was 39,141 voters and the average number of challenged voters per county was 246. r. Mr. Davis uploaded the Davis/Somerville Challenge List to Google drive for Mr. Somerville to distribute to challengers. Davis Interrog. Resp. Ct. Order Resp. No. 2.

RESPONSE: Paragraph 114 is inadmissible under Fed. R. Evid. 701(c) and 702. The manner in which Mr. Davis conducted his analysis, and any inferences about the accuracy of the challenge lists drawn from Davis’s process, requires technical and specialized knowledge that can be offered only by a qualified expert witness. *Id.*

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

RESPONSE: Plaintiffs do not dispute that Mr. Davis continued to analyze data related to Georgia voters after the runoff election, or that he provided data analysis to the Georgia Secretary of State in May of 2021, but the citation does not support the fact that the data actually identified voters with residency issues. Additionally, Paragraph 115 is inadmissible under Fed. R. Evid. 701(c) and 702. What data related to Georgia voters “indicates” requires technical or specialized knowledge that can be offered only by a qualified expert witness. *Id.* Finally, any assertion that some voters “appeared to have residency issues” does not comply with

LR 56.1(B)(1) because it is an argument and a legal conclusion rather than a statement of fact.

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

RESPONSE: Paragraph 116 is inadmissible under Fed. R. Evid. 701(c) and 702. What data related to Georgia voters “showed” requires technical or specialized knowledge that can be offered only by a qualified expert witness. *Id.*

Plaintiffs further object that Paragraph 116 is inadmissible hearsay. Fed. R. Evid. 801(c), 802. *Macuba v. Deboer*, 193 F.3d 1316, 1322-25 (11th Cir. 1999).

Additionally, Plaintiffs dispute Mr. Davis's assertion that his analysis demonstrates that “37.05% . . . [of] voters have provided post-election, self-confirmation” that the Davis/Somerville Challenge List was accurate at the time Mr.

Davis compiled it. After Mr. Davis provided his lists to the Secretary of State's office, Ryan Germany, the Secretary of State's General Counsel, provided a factual and legal analysis that is inconsistent with Mr. Davis's representations. Mr. Germany did not find that 37% were improperly registered—he found that 0% were improperly registered: “86% of the voters Mark Davis identified . . . showed up in person at the location where they were registered, showed their photo ID, executed a voter certificate saying they resided where they are registered, and then they were allowed to vote. The other 14% voted absentee by mail, submitting an absentee ballot application saying that they still resided where they were registered.” Ex. 61, July 13, 2021 R. Germany Email at 1. Mr. Germany's analysis accounted for the entirety of names on Mr. Davis's list.²

117. In addition, the SOS Analysis shows 18,202 voters of the 26,854 voters (67.8%) who submitted a change of address within the State of Georgia voted in the Run-off election. Of those 67.8% of voters, the data indicates 3,556 voters (19.5%) cast ballots for the Run-off Election in their old county, but have since updated their

² These statements are admissible under the government records exception to the hearsay rule because they represent “factual findings that are based upon the knowledge or observations of the preparer of the report” and are based on “a legally authorized investigation.” *Crawford v. ITW Food Equip. Grp., LLC*, 977 F.3d 1331, 1348 (11th Cir. 2020).

registration addresses to the same address they gave the USPS when they moved, which is in a different county than the one in which they voted. Since the Run-off Election, the Georgia Secretary of State has removed 1,486 of the voters on the Independent Run-off List. Of those, 403 (27%) voted in the Runoff Election. Davis Interrog. Resp. Ct. Order Resp. No. 3.

RESPONSE: Paragraph 117 is inadmissible under Fed. R. Evid. 701(c) and 702. What data related to Georgia voters “shows” and “indicates” requires technical or specialized knowledge that can be offered only by a qualified expert witness. *Id.*

Plaintiffs object that Paragraph 117 is inadmissible hearsay. Fed. R. Evid. 801(c), 802. *Macuba v. Deboer*, 193 F.3d 1316, 1322-25 (11th Cir. 1999).

Additionally, Plaintiffs dispute the accuracy of Mr. Davis’s representation that the “SOS analysis” demonstrates that 19.5% of voters who submitted a change of address within the State of Georgia and cast ballots for the runoff election did so in their old county, but then updated their registration addresses to the same address they gave the USPS when they moved, which is in a different county than the one in which they voted. Mr. Germany did not find any voters on Mr. Davis’s challenge list to be improperly registered. Ex. 61, July 13, 2021 R. Germany Email (“86% of the voters Mark Davis identified . . . showed up in person at the location where they were registered, showed their photo ID, executed a voter certificate saying they

resided where they are registered, and then they were allowed to vote. The other 14% voted absentee by mail, submitting an absentee ballot application saying that they still resided where they were registered.”). Mr. Germany’s analysis accounted for the entirety of names on Mr. Davis’s list.

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

RESPONSE: Paragraph 118 is inadmissible under Fed. R. Evid. 701(c) and 702. Analysis of data related to Georgia voters requires technical or specialized knowledge that can be offered only by a qualified expert witness. *Id.*

Additionally, Plaintiffs dispute the representation about the percentages of voters who live in a different district than the one they voted in. Mr. Germany’s analysis of Mr. Davis’s data found 0% of voters on Mr. Davis’s challenge list were improperly registered. Ex. 61, July 13, 2021 R. Germany Email at 1.

119. Neither the Davis November Analysis nor the Davis/Somerville Challenge List took into account race, sex, or party affiliation. First Davis Tr. 166:5-168:22; Second Davis Tr. 40:19-41:5; 185:15-188:4.

RESPONSE: Plaintiffs dispute Paragraph 119. Mr. Somerville, for example, ran an analysis to determine how many of the challenged voters on his list were Democrats, *see* Ex. 56, Dec. 15, 2020 D. Somerville Email.

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

RESPONSE: Plaintiffs dispute that Mr. Somerville and Mr. Davis were able to reliably remove members of the military. As Mr. Somerville explained, “there’s no way to know if [] there’s a military person that is assigned to a location that’s not associated with a military base . . . It’s imperfect. It’s data.” Somerville Tr. II at 26:2-21. Plaintiffs further object that the assertion that Mr. Davis and Mr. Somerville acted “to the best of their ability” does not comply with LR 56.1(B)(1) because it is an argument rather than a statement of fact. The assertion regarding Mr. Davis’s lack of contact with voters is not material to any claim or defense in this case.

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

RESPONSE: Plaintiffs dispute that Mr. Davis and Mr. Somerville did not publish their Challenge List. Davis and Somerville provided the challenge lists to voters that expressed interest. Somerville I Tr. at 89:22-91:22; 97:22-99:19. Plaintiffs also dispute that the Davis/Somerville Challenge list was never released to the public. In Banks County, for example, the Davis/Somerville challenge list was posted online for six months. Heredia Tr. at 31:22-32:3.

122. Mr. Davis’ “primary motivation” in compiling the list of voters with potential residency issues was “to prevent illegal votes from being cast.” Second Davis Tr. 59:7-8; 86:22-87:3; 90:14-21.

RESPONSE: Paragraph 122’s assertion regarding Mr. Davis’s “primary motivation” does not comply with LR 56.1(B)(1) because it is an argument rather than a statement of fact.

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

RESPONSE: Mr. Davis’s belief about who is responsible for determining who committed a crime does not comply with LR 56.1(B)(1) because it is an argument and legal conclusion rather than a statement of fact. Further, it is immaterial to the claims and defenses of this case.

124. The Davis/Somerville Challenge 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; he hoped election officials would notice this issue and work towards resolving it. Second Davis Tr. 67:5-68:8; 70:22-71:16.

RESPONSE: Defendants' assertion that the challenge lists contain "quite a number of voters" who were registered to vote at commercial mail receiving agencies lacks foundation. The assertion that such registrations are an "issue" does not comply with LR 56.1(B)(1) because it is a legal conclusion rather than a statement of fact. Finally, an assertion regarding what Mr. Davis "hoped" would occur does not comply with LR 56.1(B)(1) because it is an argument rather than a statement of fact.

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

RESPONSE: Paragraph 125 does not comply with LR 56.1(B)(1) because it is an argument and a legal conclusion rather than a statement of fact.

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

RESPONSE: Plaintiffs do not dispute that the Court may consider Paragraph 126 for purposes of the summary judgment motion.

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

RESPONSE: Paragraph 127 does not comply with LR 56.1(B)(1) because it is an argument and a legal conclusion rather than a statement of fact.

Mark Williams Statement of Facts

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

RESPONSE: Plaintiffs do not dispute that the Court may consider Paragraph 128 for purposes of the summary judgment motion.

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

RESPONSE: Plaintiffs do not dispute that the Court may consider Paragraph 129 for purposes of the summary judgment motion.

130. Mr. Williams did not help compile the TTV Challenge Lists. Williams Tr. 35:4-15.

RESPONSE: Plaintiffs dispute Paragraph 130. *See* Ex. 57, Dec. 17, 2020 M. Williams Email (Email from C. Engelbrecht to M. Williams, requesting “please remove addresses that would suggest they are military bases”).

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

RESPONSE: Plaintiffs do not dispute that the Court may consider that Mr. Williams “volunteered to be the TTV Challenger in Gwinnett County” for purposes of the summary judgment motion. An assertion regarding Mr. Williams’s “hopes” does not comply with LR 56.1(B)(1) because it is an argument rather than a statement of fact.

Ron Johnson Statement of Facts

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

RESPONSE: Plaintiffs do not dispute that the Court may consider this evidence for purposes of the summary judgment motion.

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

RESPONSE: Plaintiffs do not dispute that the Court may consider this evidence for purposes of the summary judgment motion.

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

RESPONSE: Plaintiffs do not dispute that the Court may consider this evidence for purposes of the summary judgment motion.

James Cooper Statement of Facts

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

RESPONSE: Plaintiffs do not dispute that the Court may consider this evidence for purposes of the summary judgment motion.

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

RESPONSE: Plaintiffs do not dispute that the Court may consider this evidence for purposes of the summary judgment motion.

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

RESPONSE: Plaintiffs do not dispute that the Court may consider this evidence for purposes of the summary judgment motion.

Scott Berson Statement of Facts

138. Alton Russell submitted a § 230 Challenge in Muscogee County, which included Plaintiff Scott Berson. Plaintiff Scott Berson's Responses to Defendants' First Set of Interrogatories (Jun. 23, 2021) ("Berson Resp. to Interrogs."), Ex. T, Resp. No. 3.

RESPONSE: Plaintiffs do not dispute that the Court may consider this evidence for purposes of the summary judgment motion.

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

RESPONSE: Plaintiffs object that whether Mr. Berson was contacted directly by a challenger is immaterial to the claims and defenses in this case.

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

RESPONSE: Plaintiffs do not dispute that the Court may consider this evidence for purposes of the summary judgment motion.

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

RESPONSE: Plaintiffs do not dispute that the Court may consider this evidence for purposes of the summary judgment motion.

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

RESPONSE: Defendants’ citations do not support the fact that Plaintiff Berson’s vote was counted after he verified his “eligibility” with Muscogee County.

Mr. Berson was, however, asked to “provide his residency,” which he did when he sent an election official a copy of his automobile insurance bill. Def.’s Ex. T, Berson Resp. to Interrogs., Resp. No. 12 (“Elections Director Nancy Boren told me I had been . . . and told me I would have to prove my *residency* at a later time . . . A few days later I called the Muscogee County Board of Elections and asked a staff member where I should send *proof of residency*.”) (emphasis added).

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

RESPONSE: Plaintiffs do not dispute that the Court may consider this evidence for purposes of the summary judgment motion.

Jocelyn Heredia Statement of Facts

144. Ms. Heredia was a Challenged Voter in Banks County. Transcript Excerpts of Deposition of Jocelyn Heredia (Oct. 15, 2021) (“Heredia Tr.”), Ex. U, 20:13-21:7.

RESPONSE: Plaintiffs do not dispute that the Court may consider this evidence for purposes of the summary judgment motion.

145. TTV filed an open records request with Banks County regarding its Challenge there, Banks County ORR, Ex. V, Def TTV 1836-37; the County

responded with minutes from a meeting that showed it dismissed the Challenge List because no one requested a probable cause hearing. Banks County Board Minutes, Ex. W, Def TTV 1838.

RESPONSE: Plaintiffs do not dispute that Defendant True the Vote filed an open records request with Banks County or that Banks County ultimately dismissed the challenge list. Plaintiffs dispute the implication that Plaintiff Heredia was not affected by the challenge because Banks County dismissed the challenge. Defendants' exhibit demonstrates that Banks County did not dismiss the challenge until February 4, 2021, nearly a month after the Runoff Election, see Defs.' Ex. W, and Plaintiff Heredia testified that she was pulled out of line at her polling location for being a challenged voter and required to show supplemental documentation of her residence, a process which took 3-4 hours in total. Heredia Tr. at 45:15-47:25.

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

RESPONSE: Plaintiffs do not dispute that the Court may consider this evidence for purposes of the summary judgment motion.

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

RESPONSE: Plaintiffs do not dispute that the Court may consider this evidence for purposes of the summary judgment motion.

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

RESPONSE: Plaintiffs object that whether Ms. Heredia was directly intimidated by another person while standing in line to vote is immaterial to the claims and defenses in this case.

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

RESPONSE: Defendants’ citations do not support the fact that Plaintiff Heredia was intimidated only because she was the only Hispanic person in line to vote in a predominantly Republican county. Plaintiff Heredia did testify that she was initially intimidated because she was the only “non-white” voter that she initially saw at her polling location. Heredia Tr. at 48:8-10. Plaintiff Heredia further testified that she felt intimidation “when they told me my vote was being challenged.” *Id.* at 48:10-15.

150. Ms. Heredia testified that she did not know she was Challenged until later, when she got into the polling location. Heredia Tr. 49:4-50:2.

RESPONSE: Plaintiffs do not dispute that the Court may consider this evidence for purposes of the summary judgment motion.

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

RESPONSE: Plaintiffs do not dispute that Plaintiff Heredia's intimidation increased when she learned her right to vote had been challenged, but Defendants' citation does not support the fact that Plaintiff Heredia was told that the challenge was based on a change of address.

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

RESPONSE: Plaintiffs do not dispute that the Court may consider Paragraph 152 for purposes of the summary judgment motion.

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

RESPONSE: Plaintiffs do not dispute that the Court may consider Paragraph 153 for purposes of the summary judgment motion.

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

RESPONSE: Plaintiffs do not dispute that the Court may consider Paragraph 154 for purposes of the summary judgment motion.

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

RESPONSE: Plaintiffs do not dispute that the Court may consider this evidence for purposes of the summary judgment motion.

Doe Plaintiffs Statement of Facts

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

RESPONSE: Plaintiffs do not dispute that the Court may consider this evidence for purposes of the summary judgment motion.

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

RESPONSE: Plaintiffs do not dispute that the Court may consider this evidence for purposes of the summary judgment motion.

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

RESPONSE: Plaintiffs do not dispute that the Court may consider this evidence for purposes of the summary judgment motion.

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

RESPONSE: Plaintiffs do not dispute that the Court may consider this evidence for purposes of the summary judgment motion.

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Respectfully submitted, this 6th day of June, 2022.

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Counsel for Plaintiffs
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CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the within and foregoing *Plaintiffs' Response to Defendants' Statement of Undisputed Material Facts* with the Clerk of Court using the CM/ECF system, which will automatically send-e-mail notification to all counsel of record.

This 6th day of June, 2022.

/s/ Uzoma Nkwonta
Uzoma Nkwonta
Counsel for Plaintiffs

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

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

Plaintiffs,

v.

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

Defendants.

Civil Action No.
2:20-cv-00302-SCJ

PLAINTIFFS' STATEMENT OF ADDITIONAL FACTS

Pursuant to L.R. 56.1(B)(2)(b), Plaintiffs submit the following statement of additional facts in support of Plaintiffs' Opposition to Defendants' Motion for Summary Judgment.

1. Plaintiffs incorporate by reference all facts in their Corrected Statement of Undisputed Material Facts filed with their Motion for Summary Judgment. *See* ECF No. 171.

Mark Davis and Derek Somerville

2. Defendants Somerville and Davis prepared challenge lists of roughly 40,000 voters, and organized the submission of those challenge lists in advance of the January 2021 runoff election with full knowledge that the processes under the National Voter Registration Act ("NVRA") precluded the state from removing voters in advance of the election. Ex. 45, Second Excerpt of Derek Somerville First Deposition Transcript ("Somerville I Tr.") 72:19-73:5; 119:12-122:2.

3. Mr. Davis previously recognized an "obvious conflict" between his preferred administration of Georgia's residency requirements and the NVRA, and noted that "existing Georgia case law" cuts against his preferred approach of cleaning the voter rolls by purging voters. Ex. 51, Mark Davis Affidavit ¶ 14.

4. Mr. Davis has also referred to the NVRA as “antiquated,” *id.* ¶ 36, and, from his perspective, at odds with ensuring clean voter rolls. Ex. 47, Second Excerpt of Mark Davis First Deposition Transcript (“Davis Tr. I”) 112:19-22, 114:10-18.

5. At the time they filed the challenges, Mr. Davis and Mr. Somerville did not know whether it was “possible or feasible” to verify voters’ eligibility before the runoff election. Somerville Tr. I at 132:22-133:4; *see also* Davis I Tr. 151:11-13 (admitting that the larger the number of voter challenges, the harder it is for counties to deal with them).

6. And as Mr. Somerville described, “[w]hether or not the challenges were submitted, whether or not they were heard, and whether they were consequential at the county level was tertiary to trying to demonstrate that there are laws in the state that empower citizens to be involved; that our voter file is managed by state officials, and potentially not very well.” Somerville Tr. I at 107:7-14.

7. Mr. Somerville stated that he and Mr. Davis believed that “election officials were paying attention to what we were doing, and that our effort might influence discussions,” and “the effort was to go straight to the source of the matter and try to draw attention to the voter file.” *Id.* at 109:9-12, 109:19-21.

8. After Mr. Davis provided his spreadsheet of alleged non-resident voters to the Secretary of State’s office, Ryan Germany, the Secretary of State’s General

Counsel, provided a factual and legal “analysis of the issue Mark Davis is pushing regarding in-state moves.” Ex. 61, July 13, 2021 R. Germany Email at 1.¹

9. SOS Counsel Germany explained in his email that “determining whether someone who moved from one county to another should have been eligible to vote” requires applying federal and state law “to each individual’s factual scenario. A spreadsheet listing voters’ names doesn’t come close to meeting that standard.” *Id.*

10. SOS Counsel Germany further explained: “The NVRA requires individualized inquiry into each voter’s situation. Calling these voters ‘illegal voters’ without doing that individualized inquiry is a disservice.” *Id.*

11. Additionally, 100% of the voters on Mr. Davis’s list verified their residency before voting, with specifically (1) 86% of the voters identified by Mr. Davis showed up in person at the location where they were registered, showed their photo ID, executed a voter certificate saying they resided where they are registered, and then were allowed to vote, and (2) the other 14% voted absentee by mail,

¹ This evidence is admissible under the government records exception to the hearsay rule because it represents “factual findings that are based upon the knowledge or observations of the preparer of the report” and are based on “a legally authorized investigation.” *Crawford v. ITW Food Equip. Grp., LLC*, 977 F.3d 1331, 1348 (11th Cir. 2020).

submitting an absentee ballot application saying that they still resided where they were registered. *Id.*

12. In addition to the approximately 40,000 voter challenges that they coordinated, Defendants Somerville and Davis also engaged in the following actions: (1) participated in strategy discussions with Defendants Engelbrecht and OPSEC's Gregg Phillips before True the Vote ("TTV") filed its challenges, Somerville Tr. I 19:5-23:2; Davis Tr. I at 35:3-38:19; 49:12-50:21; (2) attended meetings with TTV and its analyst, Phillips, Somerville Tr. I 29:10-34:17; (3) Mr. Somerville spoke at TTV's challenger meeting to offer "encouragement" to the elector challenge volunteers, Somerville Tr. I at 115:2-117:9; (4) Mr. Somerville edited TTV's public communications about the challenges before they were released, voluntarily including himself and Mr. Davis on TTV's press release announcing the challenges, Somerville Tr. I 37:7-40:7; Ex. 52, Dec. 17, 2020 D. Somerville Text; and (5) when TTV announced its mass challenge program, Mr. Somerville publicly praised the effort, explained that he "collaborated on methodology," and touted that he was "honor[ed] to be a part of the fight." Ex. 53, Dec. 18, 2020 Somerville Facebook Post. Mr. Somerville was also noted as a "fellow . . . challenger" by Ms. Engelbrecht in TTV emails. Ex. 54, Dec. 19, 2020 C. Engelbrecht Email.

OPSEC and True the Vote Challenge

13. Despite multiple requests to OPSEC to produce or explain the underlying data or analysis underpinning its challenge lists, OPSEC refused to do so, both during written discovery and depositions. Specifically, Plaintiffs subpoenaed OPSEC to produce “All documents and communications relating to the methodology you relied upon in producing the Challenge List or any other list of Targeted Voters prepared in connection with the Elector Challenges, and the basis for identifying any of the Targeted Voters,” Ex. 59, OPSEC RFP Response No. 3, and “All documents and communications that you reviewed to assess or ensure the reliability or accuracy of the Challenge List or any other list of Targeted Voters that were submitted with the Elector Challenges,” Ex. 59, OPSEC RFP Response No. 4. But OPSEC failed to produce documents reflecting the design of its proprietary process. *See* Ex. 11, OPSEC Tr. 114:4-7, ECF No. 156-14 (refusing to produce the algorithm used to create the Challenge List).

14. Mr. Phillips also refused to describe in any meaningful detail the kind of accuracy that could be expected based on his proprietary process. *See id.* 140:14-141:7.

Additional SOS Investigation

15. After the November 2020 election, Frances Watson, the Georgia Secretary of State's Chief Investigator, mailed surveys to "voters that had filed a National Change of Address form (NCOA) and also requested an Absentee Ballot emailed to [an] out of state address[.]" Ex. 60, Apr. 6, 2021 F. Watson Email at 1.²

16. Ms. Watson received 1,066 responses to the questionnaire. *Id.*

17. From those surveys, 99% of the individuals she identified on the NCOA list remained eligible to vote in Georgia. *Id.*

18. Only 13 voters (1.2195%) reported relocating in the months before the November 2020 elections. *Id.*³

19. Most of the surveyed voters forwarded their mail because they were active military, visiting family, temporarily traveling for a job assignment, or for other innocuous reasons, but had not moved. *Id.*

² This evidence is also admissible under the government records exception to the hearsay rule. *See supra* note 1.

³ And among those few individuals, "[m]any reported that due to COVID they were having difficulty getting appointments to obtain their driver's license in the new state and believed they needed the new driver's license in order to complete their registration in the new state." Ex. 60, Apr. 6, 2021 F. Watson Email at 1.

Respectfully submitted, this 6th day of June, 2022.

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*Admitted *pro hac vice*

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the within and foregoing *Plaintiffs' Statement of Additional Facts* with the Clerk of Court using the CM/ECF system, which will automatically send-e-mail notification to all counsel of record.

This 6th day of June, 2022.

/s/ Uzoma Nkwonta

Uzoma Nkwonta
Counsel for Plaintiffs

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

FAIR FIGHT, INC., et al.,

Plaintiffs,

v.

TRUE THE VOTE, INC., et al.,

Defendants,

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

Index of Additional Exhibits¹

Exhibit 45	Second Excerpt of Derek Somerville First Deposition Transcript
Exhibit 46	Second Excerpt of Derek Somerville Reopened Deposition Transcript
Exhibit 47	Second Excerpt of Mark Davis First Deposition Transcript
Exhibit 48	Second Excerpt of Jocelyn Heredia Deposition Transcript
Exhibit 49	Second Excerpt of Joseph Martin Deposition Transcript
Exhibit 50	Second Excerpt of True the Vote / Catherine Engelbrecht Deposition Transcript
Exhibit 51	Mark Davis Affidavit
Exhibit 52	Dec. 17, 2020 D. Somerville Text
Exhibit 53	Dec. 18, 2020 D. Somerville Facebook Post
Exhibit 54	Dec. 19, 2020 C. Engelbrecht Email
Exhibit 55	D. Somerville Facebook Post
Exhibit 56	Dec. 15, 2020 D. Somerville Email
Exhibit 57	Dec. 17, 2020 M. Williams Email
Exhibit 58	Dec. 16, 2020 TrueAppend Report
Exhibit 59	OPSEC Responses to Plaintiffs' Request for Production
Exhibit 60	Apr. 6, 2021 F. Watson Email
Exhibit 61	July 13, 2021 R. Germany Email
Exhibit 62	Dec. 22, 2020 Atlanta Journal Constitution Article
Exhibit 63	Dec. 28, 2020 Politico Article

¹ An index of Plaintiffs' Exhibits 1-44 can be found at ECF 156-3.

Exhibit 45

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Derek Somerville

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

-----x

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

v.

TRUE THE VOTE,
CATHERINE ENGELBRECHT,
DEREK SOMERVILLE,
MARK DAVIS,
MARK WILLIAMS,
RON JOHNSON,
JAMES COOPER,
and JOHN DOES 1-10,
Defendants,
FAIR FIGHT ACTION, INC.,
Counter-Defendant.

-----x

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

-----x

*** CONFIDENTIAL - PURSUANT TO PROTECTIVE ORDER ***
REMOTE DEPOSITION OF
DEREK SOMERVILLE
Wednesday, October 6, 2021

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

10/6/2021

Fair Fight, Inc. et al. v. True the Vote, et al.
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Derek Somerville

Page 2

1

October 6, 2021

2

9:17 a.m. Eastern Daylight Time

3

4

Remote video deposition of DEREK

5

SOMERVILLE, taken by Plaintiffs, pursuant to

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Notice, dated September 23, 2021, before Brandon

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Rainoff, a Federal Certified Realtime Reporter

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and Notary Public of the State of New York.

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Fair Fight, Inc. et al. v. True the Vote, et al.
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Derek Somerville

Page 3

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21 ALSO PRESENT:

ALICIA HOLMSTOCK, Legal Videographer

22 ALEX RENNICK, Digital Document Technician

10/6/2021

Fair Fight, Inc. et al. v. True the Vote, et al.
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Derek Somerville

Page 4

1 I N D E X O F E X A M I N A T I O N

2 Witness:

3 Derek Somerville

4

5 Examination:

6 By Ms. Ford.....Page 9

7

8 I N D E X O F E X H I B I T S

9 Exhibit APage 13

10 Four-page document entitled: Plaintiffs Notice to
Take the Deposition of Defendant Derek Somerville,
dated September 23, 2021 (no Bates Nos.)

11

12 Exhibit BPage 35

13 Document Bates stamped Def. Somerville 0004,
single-page SMS message From: Catherine Englebrecht,
To: Derek Somerville, Date: December 17, 2020

14

15 Exhibit DPage 41

16 Multipage document bearing heading on first page:
Derek Somerville (no Bates Nos.)

17

18 Exhibit CPage 62

19 Three-page email chain, top email From: Derek
Somerville, To: Catherine Engelbrecht, Subject: RE:
FW: Elector Challenge Follow-Up Items, Sent: December
20 19, 2020 (no Bates Nos.)

21

22

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Fair Fight, Inc. et al. v. True the Vote, et al.
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1	I N D E X O F E X H I B I T S, CON'T
2	Exhibit EPage 94
3	Three-page document entitled: True The Vote Partners
4	With Georgians in Every County to Preemptively
5	Challenge 364,541 Potentially Ineligible Voters (no
6	Bates Nos.)
7	Exhibit FPage 115
8	Single-page email From: Catherine Engelbrecht, To:
9	Amy Holsworth, Subject: Citizen Challenge Q&A Zoom
10	call Sunday night at 6p et, Sent: December 19, 2020
11	(no Bates No.)
12	Exhibit IPage 125
13	Single-page document bearing heading: Jim Flenniken
14	(no Bates No.)
15	Exhibit GPage 138
16	Multipage document entitled: Defendant Derek
17	Somerville's Responses to Plaintiffs' First
18	Interrogatories, dated March 15, 2021 (no Bates Nos.)
19	Exhibit JPage 145
20	Multipage document entitled: Defendant Derek
21	Somerville's Responses to Plaintiffs' First Requests
22	for Production, dated March 15, 2021 (no Bates Nos.)
	Exhibit LPage 149
	Two-page document entitled: True The Vote Launches
	Georgia Election Integrity Hotline as Part of the
	Most Comprehensive Ballot Security Effort in Georgia
	History, dated December 15, 2020 (no Bates Nos.)

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Fair Fight, Inc. et al. v. True the Vote, et al.
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Derek Somerville

Page 6

1 I N D E X O F E X H I B I T S, CON'T

2 Exhibit MPage 151

Three-page document entitled: True The Vote Launches
3 "Validate the Vote" Initiative and Whistleblower Fund
to Ensure Election Validity, Process Integrity, dated
4 November 6, 2020 (no Bates Nos.)

5

6 Exhibit KPage 152

Single-page document bearing heading: Derek
7 Somerville, dated November 15, 2020 (no Bates No.)

8

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10 (All exhibits were provided
11 electronically to the reporter.)

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10/6/2021

Fair Fight, Inc. et al. v. True the Vote, et al.
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Derek Somerville

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1

* * *

2

P R O C E E D I N G

3

Wednesday, October 6, 2021

4

Remote Deposition

5

9:17 a.m. Eastern Daylight Time

6

* * *

7

THE VIDEOGRAPHER: We are now on the

8

record. This is tape No. 1 of the videotape

9

deposition of Derek Somerville, in the matter of

10

Fair Fight, Inc., et al., plaintiffs v. True The

11

Vote, et al., defendants, and Fair Fight Action,

12

Inc., counter-defendant, in the United States

13

District Court for the Northern District of

14

Georgia, Gainesville Division, Case No.

15

2:20-CV-00302-SCJ.

16

This deposition is being held remotely

17

by Zoom conferencing. Video recording is in

18

Olympia, Washington, on October 6, 2021.

19

The time on the video screen is 9:17

20

Eastern Time.

21

My name is Alicia Holmstock. I am the

22

legal videographer from Digital Evidence Group.

10/6/2021

Fair Fight, Inc. et al. v. True the Vote, et al.
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Derek Somerville

Page 8

1 The court reporter is Brad Rainoff, in
2 association with Digital Evidence Group.

3 All parties to this deposition are
4 appearing remotely and have agreed to the
5 witness being sworn in remotely unless an
6 objection is stated to this agreement.

7 Due to the nature of remote reporting,
8 please pause briefly before speaking to ensure
9 all parties are heard completely.

10 Will counsel please introduce
11 themselves and who they represent for the
12 record?

13 MS. FORD: My name is Christina Ford.
14 I represent the plaintiffs, and I'm here from
15 Elias Law Group.

16 MS. KRAMER: Courtney Kramer with Bopp
17 Law firm representing the defendants.

18 MS. McCLAFERTY: This is Michelle
19 McClafferty with Lawrence Bundy, also on behalf
20 of plaintiffs.

21 MR. RAMIREZ: This is Joel Ramirez
22 with the Elias Law Group on behalf of

10/6/2021

Fair Fight, Inc. et al. v. True the Vote, et al.
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Page 9

1 plaintiffs.

2 THE VIDEOGRAPHER: Will the court
3 reporter please swear in the witness?

4 DEREK SOMERVILLE,

5 having been duly sworn, was examined and
6 testified as follows:

7 EXAMINATION

8 BY MS. FORD:

9 Q. Good morning, Mr. Somerville. Thank
10 you for being here today. My name is Christina,
11 Christina Ford, and I represent the plaintiffs
12 in this case.

13 Will you please state your home
14 address for the record?

15 A. 5130 Saddlebred Lane, Cumming,
16 Georgia, 30028.

17 Q. Right.

18 And where are you located today?

19 A. I'm located in Roswell, Georgia.

20 Q. Okay.

21 Just generally, what location are you
22 in today?

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Fair Fight, Inc. et al. v. True the Vote, et al.
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Derek Somerville

Page 19

1 A. Yeah, they would be accurate. I
2 apologize. I just -- again, these were very
3 brief encounters, you know, almost a year ago.

4 Q. Sure.

5 So you mentioned you attended a dinner
6 with Catherine Engelbrecht and Gregg Phillips on
7 December 15.

8 Was that the first time you had met
9 either of them?

10 A. Yes.

11 Q. Where was that dinner?

12 A. It was in -- again, forgive me.

13 It was at a restaurant closer in to
14 downtown. I live about 45 minutes north of
15 Atlanta, so I'm not terribly familiar with the
16 restaurants down there, so I don't recall the
17 name. And frankly, I don't remember the exact
18 location --

19 Q. Okay --

20 A. -- it was closer to the Atlanta area.

21 Q. Was anyone else in attendance at that
22 dinner?

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Fair Fight, Inc. et al. v. True the Vote, et al.
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Page 20

1 A. No, ma'am.

2 Q. So just you, Catherine, and Gregg?

3 A. Myself, Catherine, and Gregg.

4 Q. What was the purpose of that dinner?

5 A. That wasn't immediately evident to me.

6 They invited me and I thought that was

7 polite. I assumed the reason they invited me is

8 I have some level of involvement in local

9 politics in north Georgia. And based on the

10 evening, my assumption is that they were trying

11 to get a better understanding of the political

12 environment in Georgia, of which I have

13 opinions.

14 Q. Okay.

15 Did you discuss anything other than

16 the general political environment?

17 A. Not with any measure of specificity.

18 I was aware, of course, that they had

19 concerns about the election, but it was very

20 much a cordial first meeting.

21 Bear in mind I had never spoken with

22 these people, other than the conversations that

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Fair Fight, Inc. et al. v. True the Vote, et al.
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1 led to the invite for dinner. I had very
2 limited knowledge whatsoever of who they are,
3 what they do, where they did it. So it was very
4 much a introductory, almost like a business
5 meeting.

6 Q. Okay, you said they mentioned they had
7 concerns about the election.

8 Can you elaborate on that?

9 A. Not with a terrible degree of
10 specificity.

11 There was an awful lot of chatter at
12 that time about the election. And there was an
13 awful lot of people expressing concerns,
14 certainly inside of the ecosystem that I live
15 in.

16 So I don't recall anything unique
17 about what they were sharing with me. So
18 forgive me. It all blends together.

19 Q. Sure.

20 Well, let me ask a more specific
21 question, then.

22 Were the concerns generally either

10/6/2021

Fair Fight, Inc. et al. v. True the Vote, et al.
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Page 22

1 that the election results in Georgia maybe were
2 not accurate?

3 A. I believe that would be the general
4 tone.

5 Q. Or that some sort of fraud had
6 potentially occurred in the election?

7 A. I don't recall a discussion of fraud.
8 I do recall the discussion of
9 irregularity.

10 Q. Okay. Thank you.

11 At that dinner, did you or anyone, I
12 would say, at the dinner discuss any plans to
13 file elector challenges in Georgia?

14 A. I do recall discussion around
15 electoral challenges at that dinner.

16 Q. What specifically did you discuss?

17 A. I believe that was largely just it --
18 the subject line.

19 My recollection is that they had
20 intended to file some measure of challenges, but
21 the detail behind that, I don't have a
22 recollection of.

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1 I do recall at the time that it was
2 largely a significant effort.

3 But, again, I had not met them up
4 until that point, so I didn't have a terrible
5 amount of understanding, frankly, of who exactly
6 they were. I just knew they were out of state.

7 Q. You mentioned they were out of the
8 state.

9 So were they seeking clarity from you
10 on how to file challenges?

11 A. No.

12 Q. So they were seeking from you maybe
13 more information about the general political
14 environment that you mentioned?

15 A. I suspected as much.

16 And then in certain parts of the
17 state, I have some name recognition, so it's not
18 unusual for people to reach out to me and ask to
19 align with me in order to leverage some level of
20 that name recognition.

21 Q. Okay.

22 Well, whether at that dinner or after

10/6/2021

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1 A. -- and to -- to -- I'm sorry. I
2 didn't meaning to speak over you.

3 And I think it can be pursued with a
4 relative degree of accuracy.

5 Q. Were you asked to help with True The
6 Vote's challenges in any way?

7 A. I was not.

8 Q. Did you volunteer to help in any way?

9 A. I did not.

10 Q. You mentioned that you participated in
11 a call on December 16 with Mark Davis and Gregg
12 Phillips.

13 Is that correct?

14 A. Yes.

15 Q. Who proposed having that call?

16 A. I don't recall.

17 Q. What was the general purpose of the
18 call?

19 A. An introduction between Mark and
20 Gregg.

21 Q. Is it your understanding that was the
22 first time Mark and Gregg had met?

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1 A. Yes.

2 Q. And you were facilitating that
3 introduction?

4 A. Yes.

5 Q. So the title of that meeting was:
6 Elector challenge alignment.

7 Can you help me understand what was
8 meant by "alignment"?

9 A. My understanding -- my recollection is
10 that, in my understanding -- because I have
11 not -- I have no way of validating this -- that
12 Mark Davis has been involved in voter data for
13 quite some time, potentially decades.

14 It was also my understanding that
15 Gregg -- and forgive me, I don't recall his last
16 name -- that Gregg also had a passion for data.

17 And so my understanding in that call
18 was to bring those two together -- excuse me --
19 so that they could discuss the nuances of the
20 data in our Georgia election files.

21 Q. Okay. I just want to drill down that,
22 and make sure I understand here.

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1 So did "alignment" then mean alignment
2 of methodology? --

3 A. No.

4 Q. -- in compiling a list?

5 A. No.

6 Q. No? Okay.

7 Did it mean alignment of the voters
8 who would appear on the list?

9 A. No.

10 Q. Did it mean alignment of the timing of
11 challenges?

12 A. No.

13 Q. Can you help me understand, then, more
14 of what you mean?

15 A. It meant the alignment of the data
16 definitions and general election data universe
17 in Georgia.

18 So to give a little more definition
19 there, large datasets are unique. And one data
20 field in one dataset in one state doesn't
21 necessarily mean the same thing as it means in
22 another state.

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1 So part of it was to bring the two
2 together so that they could have a technical
3 discussion between the two of them about data,
4 which is not my forte.

5 And the other was just me trying to
6 make introductions in two people that seemed to
7 be professionals in a similar space.

8 Q. Okay.

9 I mean, at the time of this call, it
10 seems that True The Vote was already
11 contemplating doing their challenge effort, as
12 you mentioned.

13 Were you and Mark separately
14 considering a challenge effort?

15 A. Mark and I were separately
16 investigating a similar -- similar matter --
17 right? -- similar scope in terms of the --
18 whether or not people had cast votes that were
19 ineligible.

20 But -- so you might want to restate
21 your question.

22 But, yes, Mark and I were absolutely

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1 investigating the data at that time independent
2 of True The Vote, independent of True The Vote's
3 data, independent of their people, their
4 resources -- completely independent of them.

5 Q. Sure.

6 You say you were investigating.

7 At the time of this call, though, were
8 you both already contemplating that you might
9 file challenges?

10 Or help file challenges?

11 A. We were considering our options, yes.

12 Q. Okay.

13 And did you share that with True The
14 Vote?

15 Was that apparent to either True The
16 Vote or Gregg Phillips by the time of that call?

17 A. I don't recall.

18 Q. At any point in time, did you share
19 with True The Vote that you and Mark were
20 contemplating doing your own challenges?

21 A. I don't recall the specifics of doing
22 so, but it's reasonable to assume that we would

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1 have discussed that.

2 Q. Was anyone else on that call other
3 than you, Mark, and Gregg?

4 A. No, ma'am.

5 Q. Were any particular decisions made on
6 that call?

7 A. None at all. It was an introductory
8 discussion between two people that had never
9 met, and myself who had met Gregg the night
10 before.

11 Q. So how did that call end?

12 A. I don't recall any after action or
13 follow-up that resulted from that call.

14 My recollection is it was a nice
15 introduction; and two individuals with technical
16 backgrounds had a conversation that largely rose
17 beyond me.

18 MS. FORD: Switching to a different
19 topic, can we please pull up Exhibit B and Mark
20 it as Exhibit B?

21

22

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1 in the state, but I don't recall -- I don't know
2 the Secretary of State, and so I don't know -- I
3 really don't recall why I was kept in the loop
4 on that.

5 Q. So when Catherine writes here she "got
6 some guidance that is changing our process a
7 bit," what did you understand that to be a
8 reference to?

9 A. I don't -- I understood it to be a
10 reference to their efforts in the state, but I
11 don't know specifically what she was referring
12 to.

13 Q. Do you know what the guidance was that
14 she received from the Georgia Secretary of State
15 office?

16 A. I do not.

17 (Pause)

18 Q. And here Ms. Engelbrecht also
19 mentions: The plan now is to send the release
20 probably late today along with the digital
21 files.

22 This release -- is that a press

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1 release to the public that she is referencing
2 here?

3 A. I would assume that's what that means,
4 but I don't -- I don't know the general context
5 of that -- that statement.

6 But there was a press release drafted,
7 and that may be what she is referring to.

8 Q. Okay.

9 Do you know what the digital files are
10 that she is referring to?

11 Is that a challenge list?

12 Or something else?

13 A. I do not know.

14 Q. Then finally, Ms. Engelbrecht
15 mentions: As soon as I get to a stopping point,
16 I'll send you a release for your review.

17 Is that the a same press release you
18 just mentioned you thought it might be?

19 A. Yeah -- within that context, that
20 would be the press release.

21 Q. Why was she sending it to you?

22 A. Because she intended to include myself

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1 and Mark's names in it.

2 Q. Okay.

3 And did she send that to you?

4 A. I believe she did.

5 Q. Okay.

6 Did you --

7 A. -- she did. I'm sorry. Yes, I

8 recall. So she did, yes.

9 Q. Okay.

10 Did you review it?

11 A. I did.

12 Q. Did you propose any changes to the

13 release?

14 A. I did.

15 Q. What were those changes?

16 A. To my recollection -- is I encouraged

17 them to include Mark.

18 But beyond that -- and I don't recall

19 the other details other than how we were

20 characterized.

21 But I don't -- again, this was a long

22 time ago, so I don't recall the specifics of

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1 what I asked of her.

2 Q. Then you would have sent it back to
3 her?

4 A. Yes.

5 Q. Did she respond to that at all?

6 A. I don't recall.

7 Q. Okay.

8 MS. FORD: We can take this down.

9 Thank you.

10 BY MS. FORD:

11 Q. Mr. Somerville, so what is your best
12 understanding of what was involved in developing
13 the challenge list that True The Vote submitted?

14 A. I was never consulted on the
15 development of the list, so I have no
16 understanding of how it was developed, who
17 participated in it, or any other degree of that
18 list at all. I have no knowledge of it.

19 Q. Okay.

20 MS. FORD: Can we pull up Exhibit D,
21 please, and Mark it with Exhibit D?

22

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1 voted in-person in the 2020 general election?

2 A. Again, this is entirely independent of
3 any actions by True The Vote.

4 But I believe that if an individual
5 cast a vote and they appeared on the national
6 change of address database as having moved
7 outside of their county, then they were probably
8 included in that file, with some tolerances for
9 military bases, electronic - votes, etc.

10 Q. Okay.

11 We can get to that now so you can walk
12 me through it.

13 MS. FORD: Can we pull Exhibit D back
14 up and go to page 2 again?

15 (Pause)

16 MS. FORD: Yes. Can we make this
17 bigger? Thank you.

18 BY MS. FORD:

19 Q. Going to this third paragraph here,
20 you mention here there are roughly 40,000 voters
21 on your list across all 159 counties that you
22 believed were worth filing before the runoff

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1 election.

2 Is that correct?

3 THE WITNESS: I need to read.

4 MS. FORD: Sure.

5 A. That's what I wrote.

6 Q. Okay.

7 Can you walk me through how you
8 arrived at that roughly 40,000 number?

9 (Pause)

10 MS. KRAMER: I'm going to object again
11 to scope.

12 Honestly, this is -- he's made it very
13 clear, counsel, that this has nothing to do with
14 True The Vote.

15 And I just would ask that we please
16 keep the line of questioning related to the
17 witness as it relates to True The Vote, and just
18 True The Vote.

19 MS. FORD: Counsel, I think this
20 lawsuit is about more than just True The Vote.

21 And Mr. Somerville has testified that
22 he helped file challenges in the runoff

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1 A. And the number is not actually known
2 to us because we made these files generally
3 available to those that wanted to participate in
4 the process, so it would be conjecture on my
5 part.

6 But I know it was not a significant
7 number.

8 I think a takeaway from this certainly
9 was that there -- it was much more complicated a
10 process than we estimated.

11 But I don't believe it was very many.
12 And most of them were -- to my knowledge --
13 were -- smaller rural counties in the north side
14 of the state are the only ones I can vaguely
15 recall.

16 There was an awful lot going on at
17 that time. And we can't submit a challenge
18 outside of county that we live in. So our --
19 our activity is somewhat limited to -- to the
20 counties that we are in.

21 Q. Okay.

22 What do you mean when you say you:

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1 Made the files generally available?

2 A. Well, as is evident with my Facebook
3 post, people were aware that we were working on
4 this.

5 And individuals would reach out and
6 say: Hey, I would like to participate. How can
7 I help?

8 And if they are in a county that had
9 individuals identified, then -- if we are able
10 to get back to everybody, we would have
11 encouraged them to submit the challenge in their
12 own counties.

13 But it wasn't -- you know, I can't --
14 I need to be very clear here. There was not an
15 organization around this.

16 Things were moving very quickly.

17 We were more motivated around the data
18 integrity than anything.

19 So by the time we realized that there
20 was a substantial number of records within the
21 voter file that needed closer examination, you
22 know, the days were ticking by.

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1 And so it -- I would love to tell you
2 it was a more coordinated effort, but it wasn't.

3 So I don't -- I don't know how many.

4 Q. That's fair.

5 So if someone expressed interest in
6 helping out, did you email the list for that
7 specific county?

8 A. So some were emailed. Some -- but --
9 and I believe we had a Dropbox that people can
10 access.

11 Again, there was no meaningful way to
12 manage other people's activities through this.
13 It wasn't our core focus.

14 So I'm sure we exercised a number of
15 means to communicate lists to people.

16 Q. Okay.

17 So was the general thrust of this:
18 Someone indicated they were interested; you sort
19 of guided them to the list; and then it was
20 their challenge from that point on?

21 A. That's the general thrust, and it was
22 an unimpressive level of engagement.

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1 almost 400,000 voters -- ten times as many -- is
2 not disciplined?

3 A. If their methodology sought to include
4 that volume and they executed it with
5 discipline, then theirs was a disciplined
6 process.

7 So I can't speak to how they --
8 whether they executed with discipline.

9 I understand the spirit of the
10 question, but it's evident that we used a
11 different process because the numbers are so --
12 so different.

13 Q. Sure.

14 MS. FORD: We can pull this down.

15 Thank you.

16 Can we pull Exhibit D back up and go
17 to page 22, please?

18 (Pause)

19 MS. FORD: And just make this purple
20 box bigger, please?

21 BY MS. FORD:

22 Q. This is a post from December 17 in

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1 which you write: Volunteers needed from each
2 county for a voter-integrity project! 15-minute
3 effort, performed from home. PM me if
4 interested.

5 Do you recognize this?

6 A. I do.

7 Q. Was this the post essentially
8 recruiting individuals to submit elector
9 challenges to specific counties?

10 A. Yeah -- I recall, yes. This would
11 have been an effort to involve individuals in
12 their counties with these challenges,
13 independent of True The Vote.

14 This is not related to True The Vote
15 at all.

16 Q. Okay.

17 So no one here who reached out to
18 you -- sorry.

19 I was about to put multiple double
20 negatives there.

21 Did you forward any of these
22 individuals who were interested to True The

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1 Vote?

2 A. No.

3 Q. What exactly were you asking these
4 volunteers to do?

5 A. Well, it's been a bit, but I suspect
6 this was about -- as we mentioned before --
7 identifying individuals that wanted to
8 participate with their local board of election
9 with this eligibility effort that we were
10 underway.

11 We could -- we could only submit
12 challenges in our own counties. We can't submit
13 them in other counties. So this was a largely
14 unsuccessful effort to identify individuals that
15 wanted to participate in the action.

16 Again, there -- you know, the context
17 of the day was there was an awful lot of
18 activity going on, but this is wholly unrelated
19 to True The Vote, and was largely unsuccessful.

20 Q. Why do you categorize it as
21 unsuccessful?

22 A. As I indicated earlier, we did not

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1 attention away from a lot of vitriol, a lot of
2 the unproductive discourse, that was underway
3 around that election and draw people's attention
4 to very real opportunities to improve the
5 integrity of our elections across the entire
6 state for all voters.

7 Whether or not the challenges were
8 submitted, and whether or not they were heard,
9 and whether or not they were consequential at
10 the county level was tertiary to trying to
11 demonstrate that there are laws in the state
12 that empower citizens to be involved; that our
13 voter file is managed by state officials, and
14 potentially not very well.

15 And I wanted to demonstrate that there
16 were very real opportunities to improve the
17 overall integrity of our elections in the state
18 and encourage other people to participate in
19 that effort.

20 So I think the disconnect is that
21 everybody wants to connect this to a desired
22 outcome, likely connected to the election

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1 results.

2 The outcome I was looking for was to
3 demonstrate the importance of integrity -- data
4 integrity and data hygiene within that voter
5 file, which was arguably very, very poor at the
6 time of the election.

7 That -- my passion surrounded the
8 integrity of the data, not the outcome of the
9 election.

10 Q. Okay.

11 You say you wanted to draw attention
12 to the issue.

13 How did you plan to do that if you
14 were not going to file any challenges?

15 A. Well, I would argue by virtue of being
16 deposed right now, I drew attention to the
17 issue.

18 Q. That's fair.

19 I guess what I'm saying is: If it was
20 important to you to do the diligence, develop
21 this list, then be able to say, "Hey we've
22 identified these 40,000 that we think deserve

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1 attention," and that was sufficient for you, why
2 then did you encourage other volunteers to
3 submit challenges in their own counties?

4 A. Well, as I just stated, part of the
5 effort was to encourage people to participate in
6 a lawful process.

7 I also believed at the time -- and
8 maybe I have an inflated sense of where I fit in
9 this state -- but I was of the belief that
10 elected officials were paying attention to what
11 we were doing, and that our effort might
12 influence discussions, and push them in a more
13 productive place.

14 It's my fundamental belief that
15 individuals in the state, in all counties,
16 across all political affiliations, encompassing
17 all ethnicities, were damaged by the lack of
18 hygiene in our voter file.

19 And the effort was to go straight to
20 the source of the matter and try to draw
21 attention to the voter file.

22 The challenges are a part of that.

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1 noise and stayed focused on data hygiene.

2 MS. FORD: Could we please pull up
3 Exhibit F and Mark it as Exhibit F?

4 (Exhibit F, Single-page email From:
5 Catherine Engelbrecht, To: Amy Holsworth,
6 Subject: Citizen Challenge Q&A Zoom call Sunday
7 night at 6p et, Sent: December 19, 2020 (no
8 Bates No.), marked for identification)

9 (Pause)

10 BY MS. FORD:

11 Q. This is an email invitation from Ms.
12 Engelbrecht about a challenger town hall
13 meeting.

14 Do you recognize this?

15 A. I don't necessarily recognize the
16 email, but I do recognize the town hall meeting
17 that you reference, yes.

18 Q. Did you attend that meeting?

19 A. I did.

20 Q. Before we get to that, Ms. Engelbrecht
21 here calls you a: Fellow challenger.

22 What exactly did she mean by that?

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1 Or did you take it to mean?

2 A. Well, I don't -- I don't believe that
3 this email was particularly impactful to me, so
4 I don't even recall that language.

5 I see it there.

6 I don't know why she chose the
7 language she chose, but I never issued a
8 challenge, so --

9 Q. Have you ever issued an elector
10 challenge?

11 A. I have not.

12 Q. So you did attend this call?

13 A. I did attend this call.

14 Q. Did you speak on the call?

15 A. I'm sure I spoke, yes. But I did not
16 lead this call.

17 If I'm not mistaken, I was driving in
18 the rain and -- but I was not -- I was not a,
19 you know, a stated part of the agenda, if you
20 will.

21 Q. What did you say on the call?

22 A. I don't recall exactly.

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1 But because there were fellow
2 Georgians on the call, I'm sure I offered my
3 encouragement.

4 Q. What do you mean by "encouragement"?

5 A. Well, I think it's good any time that
6 our citizens involve themselves productively.

7 So, again, I don't recall my exact
8 language at all, but I think just encouragement
9 in the general sense.

10 Q. What was generally discussed on the
11 call?

12 A. As I indicated, I was driving in the
13 pouring rain, so it was very difficult for me to
14 track the nature of the call. So I had --
15 again, I had a very difficult time understanding
16 what was being said and by whom.

17 So I don't have a particularly
18 remarkable recollection of this call.

19 I believe I was spending more time
20 trying to keep my car on the road.

21 Q. Do you know approximately how many
22 people were on in call?

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1 A. I do not.

2 Q. More than a handful?

3 A. I have no recollection. I don't know
4 how many people were on the call. I don't know
5 if it was more than a handful or not.

6 Q. Okay.

7 But did the general topic include the
8 elector challenges that True The Vote was
9 filing?

10 A. Based on the email, that would be my
11 recollection.

12 But, again, it just -- it wasn't a
13 very big activity for me because I wasn't
14 directly involved with what they were doing. I
15 just don't have a very detailed recollection of
16 that call.

17 Q. Okay.

18 MS. FORD: We can pull this down.

19 BY MS. FORD:

20 Q. In December of 2020, were you already
21 familiar with -- sounds like you were already
22 familiar with the concept of list maintenance.

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1 Is that right?

2 A. Yeah -- well, with the national change
3 of address process, yes.

4 Q. Were you familiar with the National
5 Voter Registration Act, or NVRA for short?

6 A. Not in the summer of 2020, no. I
7 hadn't researched it as carefully as I had
8 later.

9 Q. By December of 2020, were you familiar
10 with the NVRA?

11 A. Yes.

12 Q. What is your understanding of how NCOA
13 data is used under the NVRA?

14 A. I believe, if I'm not mistaken, it's
15 section 8 that articulates the use of NCOA as a
16 reasonable means for identifying individuals
17 that may have moved.

18 I believe there is safe harbor
19 language with that respect as well.

20 But it's my understanding that NCOA is
21 explicitly cited as a reasonable means of
22 identifying individuals that may have moved.

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1 And if I'm not mistaken, it's within
2 the general confines of the guidance that's
3 provided for the removal of individuals from
4 lists as well.

5 Q. What do you mean by "safe harbor
6 language"?

7 A. Well, I'm surrounded by attorneys, but
8 I'm not one.

9 So my understanding is that language
10 is provided to give the states, you know, again,
11 the ability to use NCOA as a means to identify
12 people that -- as a reasonable means to identify
13 probable cause that somebody has moved their
14 primary residence.

15 Q. And you understand the NVRA, after
16 someone is identified on the NCOA list -- that
17 the state would send a notice to the voter?

18 A. Is that a statement?

19 Or a question?

20 Q. It's a question.

21 Is that your general understanding of
22 how it works?

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1 A. Yeah -- my general understanding is
2 the NVRA provides a very thorough process for
3 protecting the voter to ensure that -- that
4 there is multiple occasions of engaging that
5 voter to verify that -- their address.

6 So more specifically -- and I know
7 that there are those on this call that are very
8 familiar with NVRA -- but that it's a
9 multitiered process that expands over a
10 significant amount of time from notifications,
11 as well as lack of involvement in elections.

12 So -- and by my understanding, that's
13 a process that can transpire over a number of
14 years -- six or seven years, if I'm not
15 mistaken.

16 Q. Okay.

17 So it's your understanding that that's
18 not a process that could be accomplished in a
19 short amount of time.

20 Is that right?

21 A. No. It is absolutely my
22 understanding -- and appropriately so -- that

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1 it's a process that takes a considerable amount
2 of time, and I'm happy that it was.

3 Q. Did Georgia use that process in
4 advance of the 2020 runoff election?

5 A. I suspect they did not, because I
6 believe that NVRA also further stipulates
7 periods -- blackout periods -- where you can't
8 engage in any of that activity within a certain
9 proximity of an election.

10 But I'm also not aware of what the
11 Secretary of State's office was or wasn't doing.

12 Q. Okay.
13 What is your understanding of the
14 purpose of the blackout period?

15 A. Well, again, I think that's reasonably
16 self-evident.

17 We all have a vested interest in our
18 laws not being exploited to affect a desired
19 outcome in an election.

20 And so -- and I don't know the
21 motivation for those that drafted or passed the
22 NVRA.

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1 an active role in helping remedy the issue.

2 And the issue was the voter fraud.

3 Q. Were you hoping to remedy anything --
4 I mean, you say here you were hoping to do it on
5 an earlier exhibit. You thought this
6 verification needed to be done before the
7 January 5th, 2021 runoff.

8 So, I mean, that doesn't sound like a
9 long-term vision there. That sounds like
10 something you wanted to be done before the date
11 of the runoff election.

12 Is that fair?

13 A. Well, I think it's one line in
14 thousands of words that I wrote, or spoke to
15 lots of people about the effort, so I don't know
16 that that was an overarching motive.

17 But I do believe that the idea was we
18 need to correct the hygiene issues within this
19 file so that we only have eligible people
20 participating in our elections, be them whoever
21 they are, as soon as we possibly can.

22 Whether or not that fell within the

10/6/2021

Fair Fight, Inc. et al. v. True the Vote, et al.
Confidential - Pursuant to Protective Order

Derek Somerville

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1 blackout periods of the NVRA, I'm not an
2 elections attorney. You know, I'm not. So I
3 don't entirely know whether or not that was
4 possible or feasible.

5 But I think urgency around this matter
6 was important. I still think that.

7 Q. Okay.

8 (Pause)

9 MS. FORD: Give me one second here.

10 We can go ahead and take this down,
11 though.

12 BY MS. FORD:

13 Q. Before, you mentioned -- you agreed at
14 least that just appearing on the NCOA list did
15 not mean that someone was ineligible to vote.

16 Is that correct?

17 A. Not only is that correct, but I made a
18 very focused effort whenever and wherever
19 possible to indicate that we did not -- I say
20 we -- I did not believe that that was an
21 indication of anybody knowingly doing anything
22 wrong, or knowingly violating any law, or

Exhibit 46

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2/20/2022

Fair Fight, Inc. et al. v. True the Vote, et al.

Derek Somerville

Page 1

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

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

v.)

Case No.

2:20-cv-00302

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

Videotaped Deposition of DEREK SOMERVILLE
Conducted Remotely via Zoom
Thursday, January 20, 2022
8:02 a.m. CST

Reported by Lisa A. Knight, RDR, CRR, RSA

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

2/20/2022

Fair Fight, Inc. et al. v. True the Vote, et al.

Derek Somerville

Page 2

1 Pursuant to Notice, the videotaped
2 deposition of DEREK SOMERVILLE was conducted
3 remotely via Zoom on behalf of the
4 Plaintiffs, at 8:02 a.m. CST, on Thursday,
5 January 20, 2022, reported stenographically
6 by Lisa A. Knight, Realtime Diplomate
7 Reporter, Certified Realtime Reporter, and
8 Realtime Systems Administrator.

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2/20/2022

Fair Fight, Inc. et al. v. True the Vote, et al.

Derek Somerville

Page 3

1 A P P E A R A N C E S

2 (All appearing remotely)

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21 ALSO PRESENT:

22 MITCHELL MAHON, Videographer

2/20/2022

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Derek Somerville

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1	I N D E X		
2	DEREK SOMERVILLE		
3	JANUARY 20, 2022		
4	EXAMINATION OF DEREK SOMERVILLE:		
5	BY MS. FORD		8
6	BY MS. SIEBERT		183
7			
8	DEPOSITION EXHIBITS		
9	DEREK SOMERVILLE		
10	JANUARY 20, 2022		
11	NUMBER	DESCRIPTION	MARKED
12	Somerville 1	Plaintiffs' Notice to Take the Deposition of Derek Somerville	12
13			
14	Somerville 2	E-mail string	18
15	Somerville 3	E-mail string	24
16	Somerville 4	E-mail string	29
17	Somerville 5	Text string, Bates Def Somerville 000714 to -719	38
18			
19	Somerville 6	E-mail string	42
20	Somerville 7	E-mail string	43
21	Somerville 8	Text string, Bates Def Somerville 000182 to -442	45
22			

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Derek Somerville

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1	DEPOSITION EXHIBITS, CON'T		
	NUMBER	DESCRIPTION	MARKED
2	Somerville 9	E-mail string	51
3	Somerville 10	Facebook post	75
4	Somerville 11	Facebook post	78
5	Somerville 12	E-mail string	96
6	Somerville 13	E-mail string	98
7	Somerville 14	E-mail	120
8	Somerville 15	E-mail string	125
9	Somerville 16	Facebook Messenger printout, Bates Def	141
10		Somerville 000162 to -163	
11	Somerville 17	Facebook Messenger printout, Bates Def	145
12		Somerville 000160 to -161	
13	Somerville 18	Text string, Bates Def Somerville 000720 to	148
14		-727	
15	Somerville 19	Text string, Bates Def Somerville 000731 to	166
16		-733	
17	Somerville 20	Text string, Bates Def Somerville 000172 to	176
18		-175	
19	Somerville 21	E-mail string	179
20	**REPORTER'S NOTE: All quotations from exhibits are reflected in the manner in which they were read into the record and do not necessarily indicate an exact quote from the document.		
21			
22			

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Derek Somerville

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1 PROCEEDINGS

2 THE VIDEOGRAPHER: We are going
3 on the record. This is Tape No. 1 of
4 the videotaped deposition of Derek
5 Somerville taken by plaintiffs in the
6 matter of Fair Fight, Inc., et al.,
7 versus True the Vote, et al., in the
8 United States District Court for the
9 Northern District of Georgia,
10 Gainesville Division, Case No.

11 2:20-cv-00302-SCJ.
12 This deposition is being held
13 remotely over Zoom videoconference on
14 January 20, 2022. The time is 8:02
15 Central.

16 My name is Mitchell Mahon; I'm
17 the legal videographer from Digital
18 Evidence Group. The court reporter is
19 Lisa Knight, in association with
20 Digital Evidence Group.

21 Will counsel please introduce
22 themselves for the record.

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Derek Somerville

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1 MS. FORD: This is Christina
2 Ford from Elias Law Group for the
3 plaintiffs. And with me today, I have
4 Tina Meng and Jacob Shelly, and then
5 also Maia Cogen from Lawrence & Bundy.

6 MS. SIEBERT: Melena Siebert
7 for defendants.

8 THE VIDEOGRAPHER: And will the
9 court reporter please ask for
10 stipulations.

11 THE STENOGRAPHER: The
12 attorneys participating in this
13 deposition acknowledge that I am not
14 physically present in the deposition
15 room, and that I will be reporting
16 this deposition remotely.

17 They further acknowledge that
18 in lieu of an oath administered in
19 person, I will administer the oath
20 remotely. The parties also agree that
21 the witness has verified that he is,
22 in fact, Derek Somerville.

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1 The parties and their counsel
2 further agree that the witness may be
3 in a state where I am not a notary and
4 stipulate to the witness being sworn
5 in by an out-of-state notary.

6 If any party has an objection
7 to this manner of proceeding, please
8 state so now.

9 MS. FORD: We have no
10 objection.

11 MS. SIEBERT: None. No
12 objection.

13 THE STENOGRAPHER: Thank you.

14 DEREK SOMERVILLE,
15 having been first duly sworn to state the
16 whole truth, testified as follows:

17 EXAMINATION

18 BY MS. FORD:

19 Q. Mr. Somerville, thank you again
20 for being here today. I know it took a great
21 deal of effort. We'll endeavor to do this as
22 quickly as possible.

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Derek Somerville

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1 Do you agree with that?

2 A. I do.

3 Q. Okay. At the bottom of this
4 first page --

5 MS. FORD: So, Mitch, if you
6 can scroll down.

7 BY MS. FORD:

8 Q. -- Mr. Davis writes, "Our
9 purpose here is to identify voters who moved
10 across county lines more than 30 days before
11 the election but voted unlawfully in their
12 county. The investigation has also revealed
13 many out-of-state voters, presumably mostly
14 students, military, et cetera, but some of
15 those are probably also illegitimate."

16 Did I read that correctly?

17 A. You did.

18 Q. Okay. And, Mr. Somerville, why
19 do you believe Mr. Davis singled out military
20 voters here?

21 A. Well, I don't interpret him as
22 singling out military voters. I think what

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Fair Fight, Inc. et al. v. True the Vote, et al.

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1 Mark was providing was examples of legitimate
2 reasons why an individual may be registered
3 in a county that they do not reside in.
4 Military being one example of it.

5 Q. Okay. And students being
6 another example?

7 A. And "et cetera," as he
8 indicates there. There are several scenarios
9 under which that might be legitimate. Yes.

10 Q. Okay. And under that
11 "et cetera" category, who would fall in that
12 category, in your opinion?

13 A. Well, in my opinion, I guess
14 anybody that our state law and our federal
15 laws permit to live in an area other than
16 where they're registered to vote.

17 So I think the predominance of
18 those, of course, would be, as Mark has
19 indicated here -- which I think is also
20 Mark's -- Mark very clearly stating his
21 intent, which is to not ensnare individuals
22 that are legitimately voting into his

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1 effort -- but students, military, individuals
2 that have temporarily moved, for temporary
3 purposes. For example, those that would
4 spend the winter down in Florida might be a
5 good example.

6 Q. Okay. And I know we talked
7 about military voters last time, so I won't
8 retread that territory.

9 But for student voters -- in
10 the list of voter challenges that you and
11 Mr. Davis pulled together, were student
12 voters excluded?

13 A. To the extent that we were able
14 to identify that they were likely student
15 voters, yes.

16 So obviously there's no record
17 in the voter file that indicates somebody's a
18 student, but where we saw a large number of
19 files from the NCOA that came back to common
20 addresses, you could identify those addresses
21 as being on or near campuses. And so those
22 were excluded, to my recollection.

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1 Q. Okay. So just to put that in
2 maybe, like, concrete terms: If you saw an
3 address that looked like a dorm, are you
4 saying that you would have removed that from
5 the challenge list?

6 A. That's my recollection. Yes.

7 Q. Okay. And who was removing
8 that? You or Mr. Davis?

9 A. Well, I'm not aware of all of
10 Mark's activities, but anytime I came across
11 records that appeared to fall within those
12 categories, I removed them as well.

13 Q. Okay. And what about
14 individuals, as you mentioned, who
15 temporarily moved? How did you remove those
16 individuals from the list?

17 A. Well, I'm not sure we would
18 have clarity into those. And, again, that's
19 the importance of this process, is our lists
20 were not aimed at removing anybody's ability
21 to vote. They were aimed at encouraging
22 local boards of elections to confirm that

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1 those individuals still resided in the county
2 in which they were registered.

3 So this process wasn't a
4 function of trying to remove people, it was a
5 function of trying to engage a process that's
6 already used by the State.

7 Q. Okay.

8 MS. FORD: We can take this
9 down, Mitch. Thank you.

10 And could we please put up
11 Exhibit 5 -- I'm sorry, Exhibit [sic]
12 E. And I guess that's going to be
13 marked as Exhibit 3.

14 (Somerville Exhibit 3,
15 E-mail string, was marked for
16 identification, as of this
17 date.)

18 BY MS. FORD:

19 Q. Mr. Somerville, can you read
20 this document?

21 A. It would help if it got
22 enlarged. Okay.

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Derek Somerville

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1 Q. And this is the only part
2 that's relevant.

3 Are you familiar with this
4 e-mail communication?

5 A. Again, not committed to memory,
6 but it looks familiar.

7 Q. Sure.

8 This, to me, appears to be a
9 similar e-mail about analysis that you were
10 engaging in on the lists.

11 A. Um-hum.

12 Q. And here, Mr. Davis asked you
13 to do another military scrub. And in
14 response, you write, at the very top, "Done.
15 No way to catch them all..."

16 Do you see that?

17 A. I do.

18 Q. And what did you mean by that?

19 A. Well, I'm acknowledging the
20 imperfect nature of data files, meaning
21 that -- and by "catch them all" would mean
22 identifying the records that we were looking

2/20/2022

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Derek Somerville

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1 for.

2 For military purposes, for
3 example, and I know that we covered this in
4 the last deposition, we did our best to
5 identify geographies that were associated
6 with military bases. But there's no way to
7 know if somebody lives -- there's a military
8 person that is assigned to a location that's
9 not associated with a military base.

10 So this is acknowledging that
11 we put forth our best effort. As we said
12 countless times in public forums, we erred on
13 the side of the voter. If it looked even
14 remotely close, in this case, to a military
15 record, we excluded them.

16 But certainly there's a
17 military individual that's living somewhere
18 not near a base, assigned to, you know, a
19 military function that we would not have been
20 able to associate with a base. It's
21 imperfect. It's data.

22 Q. And at the end -- by the time

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Derek Somerville

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1 So I'm not entirely certain
2 that we knew what those next steps were.

3 Q. Okay. That makes sense.
4 That's a fair point.

5 A. And, I'm sorry, that sounds
6 like an -- evasive, but it's not. I don't
7 know. I think that's probably why we wanted
8 to be on that call.

9 And if my memory serves me
10 correct, I don't know that we were on the
11 original -- again, we may have learned about
12 the call late. I just don't recall. I do
13 recall the call, but I don't recall this
14 specifically.

15 Q. And here, you say, the call
16 will be attended -- "Will be largely attended
17 as they invited all of their volunteers (many
18 of which were also our volunteers)."

19 I understand that to mean, at
20 the point of going into the call, you already
21 had some visibility into the fact that the
22 two groups shared at least some volunteer

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1 challengers. Is that accurate?

2 A. That is accurate. We would not
3 have known what those numbers were, nor did
4 we know the extent of True the Vote's reach,
5 in terms of the number of volunteers. We
6 just knew that there was some degree of
7 overlap.

8 Q. Okay. And when Mark responded,
9 "I'll be ready" to this e-mail, what was
10 he -- I mean, I realize you can't read into
11 Mark's mind, but what did you understand him
12 to be saying he would be ready for?

13 A. Have you deposed Mark Davis?

14 Q. I personally have not, but
15 someone else has.

16 A. Okay. I'm sorry. You would
17 understand why I asked that question.

18 Mark Davis is the most ready
19 person I know. Mark is extremely into data.
20 He's extremely into facts and figures. And
21 so there's no way for me to scope or frame
22 what he meant by "I'll be ready," other than

Exhibit 47

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10/4/2021

Fair Fight, Inc. et al. v. True the Vote, et al.

Mark Davis

Page 1

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

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

Plaintiffs,)

v.)

Case No.

2:20-cv-00302

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

Defendants.)

Videotaped Deposition of MARK DAVIS

Conducted Remotely via Zoom

Monday, October 4, 2027

9:04 a.m. EDT

Reported by Lisa A. Knight, RDR, CRR, RSA

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

10/4/2021

Fair Fight, Inc. et al. v. True the Vote, et al.

Mark Davis

Page 2

1 DIGITAL EVIDENCE GROUP

2 Pursuant to Notice, the videotaped
3 deposition of MARK DAVIS was conducted
4 remotely via Zoom on behalf of the
5 Plaintiffs, at 9:04 a.m. EDT, on Monday,
6 October 4, 2021, reported stenographically by
7 Lisa A. Knight, Realtime Diplomat Reporter,
8 Certified Realtime Reporter, and Realtime
9 Systems Administrator.

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10/4/2021

Fair Fight, Inc. et al. v. True the Vote, et al.

Mark Davis

Page 3

1 A P P E A R A N C E S

2 (Appearing Remotely)

3 * * *

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10/4/2021

Fair Fight, Inc. et al. v. True the Vote, et al.

Mark Davis

Page 4

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8 1 South 6th Street

9 Terre Haute, Indiana 47807

10 812.232.2434

11

12 ALSO PRESENT:

13 HENRY MARTE, VIDEOGRAPHER

14

15

16

17

18

19

20

21

22

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Fair Fight, Inc. et al. v. True the Vote, et al.

Mark Davis

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1	I N D E X		
2	MARK DAVIS		
3	OCTOBER 4, 2021		
4	EXAMINATION OF MARK DAVIS:		PAGE
5	BY MR. SHELLY		8
6	BY MS. SIEBERT		156
7			
8	DEPOSITION EXHIBITS		
9	MARK DAVIS		
10	OCTOBER 4, 2021		
11	NUMBER	DESCRIPTION	PAGE
12	Davis A	Plaintiffs' Notice to	13
13		take the Deposition of	
		Defendant Mark Davis,	
		No Bates	
14	Davis B	Affidavit of Mark Davis,	80
		No Bates	
15	Davis C	Mark Davis Facebook Post,	114
		May 7 at 2:07 p.m.,	
16		No Bates	
17	Davis D	E-mail string, top e-mail	70
		to Catherine Engelbrecht	
18		from Derek Somerville,	
		12/19/20, No Bates	
19	Davis E	Zoom meeting invitation	143
		(TTV Legal Update),	
20		12/27/20, No Bates	
21	Davis F	Mark Davis Facebook Post,	142
		December 17, 2020,	
22		No Bates	

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Mark Davis

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1 DEPOSITION EXHIBITS, CON'T

2 MARK DAVIS

3 OCTOBER 4, 2021

4 NUMBER	DESCRIPTION	PAGE
5 Davis J	Zoom meeting invitation,	144
6	12/30/20 (Georgia Elector	
	Challenger Townhall),	
	No Bates	
7 Davis K	Mark Davis Facebook post	116
8	dated May 7 showing	
	partial tag list, No	
	Bates	
9 Davis L	Printout of Data	19
10	Productions' website,	
11	No Bates	
12		
13		
14		
15	**REPORTER'S NOTE: All quotations from	
16	exhibits are reflected in the manner in which	
17	they were read into the record and do not	
18	necessarily indicate an exact quote from the	
19	document.	
20		
21		
22		

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10/4/2021

Fair Fight, Inc. et al. v. True the Vote, et al.

Mark Davis

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1 PROCEEDINGS

2 THE VIDEOGRAPHER: We are now
3 on the record. My name is Henry
4 Marte; I'm a videographer on behalf of
5 Digital Evidence Group. Today's date
6 is October 4, 2021; and the time is
7 9:04 a.m.

8 This deposition is being held
9 by remote Zoom in the matter of Fair
10 Fight, Inc., et al., versus True the
11 Vote. The deponent today is Mr. Mark
12 Davis. All parties to this deposition
13 are appearing remotely and have agreed
14 to the witness being sworn in
15 remotely.

16 Counsel, please identify
17 themselves for the record, after which
18 the court reporter will administer the
19 oath to the witness.

20 MR. SHELLY: I'm Jacob Shelly
21 from Elias Law Group representing
22 plaintiffs.

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Mark Davis

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1 MS. BRYAN: Good morning. I'm
2 Leslie Bryan with Lawrence & Bundy,
3 representing plaintiffs.

4 MS. TAYLOR: Torryn Taylor from
5 Perkins Coie, also with plaintiffs.

6 MS. FORD: Christina Ford from
7 Elias Law Group representing
8 plaintiffs.

9 MS. KRAMER: Courtney Kramer
10 with Bopp Law Firm representing
11 defendants.

12 MS. SIEBERT: Melena Siebert
13 with The Bopp Law Firm representing
14 defendants.

15 MARK DAVIS,
16 having been first duly sworn to state the
17 whole truth, testified as follows:

18 EXAMINATION

19 BY MR. SHELLY:

20 Q. Good morning, Mr. Davis.

21 Could you just state your

22 record -- your name -- your full name for the

10/4/2021

Fair Fight, Inc. et al. v. True the Vote, et al.

Mark Davis

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1 A. I became aware of them years

2 ago, I believe, through media reports.

3 Q. Have you ever worked with

4 anyone affiliated with True the Vote?

5 A. I know them. I've not formally

6 worked with them, no.

7 Q. And did you communicate with

8 Catherine Engelbrecht last year about

9 perceived voting irregularities in Georgia?

10 A. I did.

11 Q. And when did you do that?

12 A. Gregg Phillips and I and Derek

13 Somerville had a phone call about what I was

14 seeing in Georgia. And I believe at some

15 point, Catherine and I had a phone call.

16 I just don't remember when it was. But I did

17 make them aware of the issues that I was

18 seeing.

19 Q. Did you describe the -- can you

20 tell a little bit more about what you

21 described for them?

22 A. Well, it's clear to me that

10/4/2021

Fair Fight, Inc. et al. v. True the Vote, et al.

Mark Davis

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1 Georgia voters are not updating their voter
2 registration information as they should be,
3 and they're not updating their driver's
4 licenses as they should be.

5 Georgia law requires you to
6 update your driver's license within 60 days
7 when you move. And according to the
8 Secretary of State's office, approximately
9 97 percent of Georgia voters hold driver's
10 licenses.

11 And since we're on the Motor
12 Voter system, if you comply with the state
13 law requiring you to update your driver's
14 license within 60 days, it would
15 automatically trigger an update to your voter
16 registration.

17 And you can do either online.
18 You can update your driver's license or you
19 can update your registration. And large
20 numbers of Georgia voters aren't doing that
21 in a timely manner.

22 Q. Did you describe the NCOA

10/4/2021

Fair Fight, Inc. et al. v. True the Vote, et al.

Mark Davis

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1 matching that you had performed?

2 A. Yes.

3 Q. And what was the response when
4 you shared what you had found?

5 A. It showed that there were
6 approximately 110,000 Georgia voters who had
7 moved from one county to another more than
8 the 30-day grace period before the election.
9 And it appeared that they had not updated
10 their registration to their new county.

11 And the data also indicated
12 that thousands of them appeared to have
13 returned to their old residence or old county
14 of residence to cast ballots, which state law
15 does not permit outside the grace period.

16 Q. Did you discuss the idea of
17 challenging some of these Georgia voters who
18 were suspected of having changed their
19 address?

20 A. I did tell her that I was
21 considering the idea.

22 Q. Did you raise that idea in the

10/4/2021

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1 first instance?

2 A. I told her that I thought that
3 if we had these kinds of residency issues in
4 the general, then it was entirely possible
5 we'd have the same issues in the runoff.

6 Q. And what was her response?

7 A. I don't recall her exact
8 response.

9 Q. But she reacted positively to
10 it, that this was something that she would
11 consider?

12 A. I don't recall her reaction,
13 other than she was glad to be aware of the
14 information.

15 We didn't know each other well
16 at the time, and -- I mean, she really didn't
17 know me from Adam, so I really couldn't
18 characterize her response to it. I guess
19 that would be a question for her.

20 Q. Did she ask for your
21 assistance?

22 A. During the phone call with

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1 Gregg Phillips, I was invited to consider
2 taking some sort of role here in Georgia with
3 True the Vote. And I declined that
4 invitation because I just don't have the
5 bandwidth for it.

6 Q. What was -- what were you being
7 asked to do that you didn't have time for?

8 A. There was nothing specific.
9 There -- he did mention the possibility -- he
10 mentioned they were seeking to build a team
11 in Georgia and asked if I would consider
12 becoming involved potentially in some sort of
13 a leadership role. And I declined. I don't
14 have the time.

15 Q. Okay. It does seem to me that
16 the analysis that you ran was relevant to the
17 challenges that are at the heart of this
18 suit, so I would like to ask you a few more
19 questions about those.

20 You mentioned that your NCOA
21 list covered a 48-month period. I'm looking
22 for what window that would cover.

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1 this line of questioning pretty soon.

2 Beyond the scope.

3 A. I don't know the answer to that
4 question. In fact, I don't know who
5 specifically filed what where or anything
6 like that.

7 I did do the data processing.
8 I did create the data to do challenges, but
9 I did not organize them or recruit people to
10 file them or anything of that nature.

11 BY MR. SHELLY:

12 Q. You mentioned Gregg Phillips
13 was on this initial call with
14 Ms. Engelbrecht.

15 How did you meet Mr. Phillips?

16 A. I actually did not say that.
17 I said that I had a conference call with him
18 and Derek.

19 I believe that Catherine and
20 Gregg had taken Derek out to dinner one day
21 previous to that and wanted to meet me. And
22 Catherine was not available for the call, but

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1 Gregg was, so if I recall correctly, it was
2 just me and Derek and Gregg Phillips on that
3 call.

4 Q. And what did you discuss on
5 this call?

6 A. We compared our backgrounds in
7 data processing and data analytics and
8 working with voter data.

9 He, I believe, comes from
10 Texas, and I'm from Georgia. We talked about
11 how different states store data differently.

12 And I just basically kind of
13 gave him a little bit of a primer on data
14 that's available from the state, where to get
15 it, what it looks like, what's in it, those
16 kinds of things.

17 They were looking to do their
18 own analysis of the Georgia Voter Database,
19 and I just basically gave them some
20 information about, you know, how to get
21 started.

22 Q. Did you recommend -- if I

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1 in time. So that, alone, could easily
2 account for the disparity.

3 I just recently ran NCOA again,
4 and, you know, the numbers had gone up
5 considerably as far as the number of hits
6 statewide. So it's really a moving target.

7 And that's part of the reason
8 for the certification, is one of the primary
9 reasons for the certifications, is in order
10 to be in compliance with United States Postal
11 Service move update requirements, the
12 processing has to be done within a certain
13 amount of time of when you do the mailing or
14 you can risk losing your postage discounts.

15 Q. And then can we look at
16 paragraph 36. You refer to the antiquated
17 Voter Registration Act.

18 A. Yes.

19 I believe the 1993 National
20 Voter Registration Act should be amended so
21 that it's more helpful in keeping our
22 nation's voter rolls cleaner.

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1 I would advocate for the use of
2 a national voter data clearinghouse, not
3 federalized elections or federalized voter
4 registration but something similar to or
5 perhaps even ERIC, E-R-I-C, the Electronic
6 Registration Information Clearinghouse.

7 Somewhere in the neighborhood
8 of half of our states are participating
9 states. My understanding is it's an NGO, and
10 that each state sends a designee to
11 participate in the governance of ERIC.

12 And the states will submit
13 voter data with a hatched version of the full
14 date of birth and Social Security number so
15 that that information remained confidential,
16 but at the same time can be matched against
17 other member states.

18 It's very useful in determining
19 if a voter is registered in more than one
20 state, which happens often. As an example,
21 the 267,000 that moved out of Georgia, some
22 large number of them probably are registered

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1 in other states.

2 I'm not privy to the results of
3 the analysis that ERIC does, but I would
4 imagine that they routinely find people who
5 have moved from one state to another. And
6 when they move to their new state, they got a
7 driver's license and registered to vote and
8 never cancelled their voter registration in
9 Georgia.

10 So, yes, I do believe that, you
11 know, in this day and age, that's nearly a
12 30-year-old law there. And technology has
13 advanced considerably since those days.

14 Yes, I do believe that we can
15 do better and that we can keep our voter
16 rolls cleaner and we can help ensure people
17 are able to vote and vote lawfully and vote
18 for people who actually represent them.

19 MR. SHELLY: Henry, can we look
20 at Exhibit C now.

21 (Davis Exhibit C,
22 Mark Davis Facebook Post, May 7 at

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1 you're aware, many of them did reject them.

2 You know, that was part of the
3 reason that I, you know, limited the scope of
4 the challenges, is because, A, since they had
5 already voted in the general and many of them
6 already with potential residency issues, I
7 felt like that was on stronger footing, as
8 far as the counties go, in their ability to
9 process a challenge as well as and the
10 strength of the challenge itself.

11 So, yeah, I would agree that
12 the larger the number is, the more difficult
13 it is on the counties. And, in part, I think
14 that may be part of the reason that some of
15 the counties rejected challenges, because
16 they just didn't want to deal with it.

17 And then part of the other
18 reason is the threat of a lawsuit backed by
19 an organization with millions of dollars
20 behind them. A lot of voters were
21 intimidated and a lot of counties were
22 intimidated.

Exhibit 48

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Deposition of:
Jocelyn Heredia

October 15, 2021

In the Matter of:
**Fair Fight, Inc., Et Al. Vs. True The
Vote, Et Al**

Veritext Legal Solutions

800.808.4958 | calendar-atl@veritext.com | 770.343.9696

Fair Fight, Inc., Et Al. Vs. True The Vote, Et Al

Page 1

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
GAINESVILLE DIVISION

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

v.

Civ. No.

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

2:20-cv-00302-
SCJ

VIDEOTAPED DEPOSITION OF
JOCELYN HEREDIA

DATE: Friday, October 15, 2021

TIME: 2:00 p.m.

LOCATION: Remote Proceeding

871 Third Street, Apartment 1545

Atlanta, GA 30318

REPORTED BY: Deidra Musick Nash, Notary Public

JOB No.: 4845630

A P P E A R A N C E S

ON BEHALF OF PLAINTIFFS FAIR FIGHT, INC., ET AL:

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Washington, DC 20002

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UZOMA NKWONTA, ESQUIRE (by videoconference)

Elias Law Group

10 G Street Northeast, Suite 600

Washington, DC 20002

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ON BEHALF OF DEFENDANT TRUE THE VOTE, INC., ET AL:

COURTNEY KRAMER, ESQUIRE (by videoconference)

Bopp Law Firm

104 Marietta Street Northwest, Suite 100

Atlanta, GA 30303

ckramer@bopplaw.com

ALSO PRESENT:

Todd Davis, Videographer (by videoconference)

Bailey Neher, Tech Concierge (by videoconference)

Fair Fight, Inc., Et Al. Vs. True The Vote, Et Al

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I N D E X

EXAMINATION:

PAGE

By Ms. Kramer

6

E X H I B I T S

NO.

DESCRIPTION

PAGE

Exhibit A

Notice of Deposition

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Exhibit B

Responses to Defendants' First
Set of Interrogatories

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Exhibit E

Banks County Election Website

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Exhibit F

Georgia Voter File Excerpt

15

Exhibit H

Jocelyn Heredia LinkedIn Profile

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Exhibit J

Georgia Election Code Excerpt
(O.C.G.A. § 21-2-230)

26

Exhibit L

U.S.P.S. Change of Address
Confirmation

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Exhibit N

Georgia Voter Registration Data

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(Exhibits attached.)

QUESTIONS INSTRUCTED NOT TO ANSWER

PAGE

LINE

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15

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15

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20

P R O C E E D I N G S

REPORTER: Good afternoon. My name is Deidra Nash; I am the reporter assigned by Veritext to take the Zoom record of this proceeding. We are now on the record at 2:00 p.m. This is the deposition of Jocelyn -- I can't say your last name; I'm sorry -- H-E-R-D-I-A [sic] taken in the matter of Fair Fight, Inc., Scott Berson, et al vs. True the Vote, Inc., et al. This deposition is being digitally recorded on October 15, 2021, at 871 Third Street, Apartment 1545, Atlanta, Georgia 30318.

I am a notary authorized to take acknowledgements and administer oaths in the state of Georgia. Parties agree that I will swear in the witness remotely, outside of her presence.

Additionally, absent of an objection on the record before the witness is sworn, all parties and the witness understand and agree that any certified transcript produced from the recording, virtually, of this proceeding:

- is intended for all uses permitted under applicable procedural and evidentiary rules and laws in the same manner as a deposition recorded by stenographer means; and

1 - shall constitute written stipulation
2 of such.

3 And I also want to say that Todd Davis
4 is our videographer, and Ms. Bailey Neher is the
5 concierge.

6 And at this time will everyone in
7 attendance, beginning with the taking attorney, please
8 identify yourself for the record.

9 MS. KRAMER: Courtney Kramer with Bopp
10 Law Firm, representing the defendants.

11 MS. FORD: Christina Ford with Elias
12 Law Group, representing the plaintiffs and Ms. Heredia
13 today.

14 MR. NKWONTA: Uzoma Nkwonta from Elias
15 Law Group, representing the plaintiffs.

16 REPORTER: And Ms. Jocelyn, if you
17 could please identify yourself.

18 MS. HEREDIA: Jocelyn Heredia. I'm a
19 plaintiff.

20 REPORTER: Thank you. Hearing no
21 objections, I will now swear the witness. Ms.
22 Jocelyn, if you would please raise your right hand.

23 //

24 //

25 //

1 WHEREUPON,

2 JOCELYN HEREDIA,

3 called as a witness, and having been first duly sworn
4 to tell the truth, the whole truth and nothing but the
5 truth, was examined and testified as follows:

6 REPORTER: Thank you so much. Ms.
7 Kramer, please begin when you're ready.

8 EXAMINATION

9 BY MS. KRAMER:

10 Q Thank you for being here today, Ms. Heredia.
11 Did I get your last name -- pronounce that right?

12 A Yes, you did, actually.

13 Q Great. Well, as you know, my name is
14 Courtney Kramer, and I represent the defendants in
15 this case. I first want to go over a few rules for
16 this deposition, particularly because it's a remote
17 deposition. Have you ever testified in a deposition
18 before?

19 A No.

20 Q Okay. So this is your first time?

21 A Yeah.

22 Q Okay. Perfect. So I'll just go over a
23 couple rules, just so you understand how things will
24 work today. Do you understand that you are under oath
25 today, as if you were in court?

1 I -- I don't -- I don't know. I didn't overhear
2 anything.

3 Q Okay. So they talked to her individually.
4 So when the election worker told you that your vote
5 was being challenged, did they talk to you
6 individually about that as well?

7 A Yes, they did. And it wasn't, like,
8 individually, like, in a room or anything. It was --
9 you know, people are around; there's people close by
10 submitting their ballot in -- on a machine; there's
11 people in line. But she would keep her voice down
12 when she was speaking to -- to certain people.

13 Q Okay. So she didn't, like, raise her voice
14 when she was telling you that you were being
15 challenged. It wasn't some announcement to the
16 polling location.

17 A Right. It wasn't an announcement. But
18 whoever was voting by paper ballot, they would make --
19 you know, they made me and the other woman step aside
20 as other people were able to cast their ballot on the
21 machine.

22 Q Okay. But it was not public why people were
23 voting by paper ballot, based on your experience?

24 A While I was there, it was not public. But I
25 do know that my name, along with other challenged

1 voters' names, were published on the Banks County
2 website. And it was public information for six
3 months.

4 Q Okay.

5 MS. KRAMER: Bailey, can we please pull
6 up Exhibit E?

7 TECH CONCIERGE: This is Exhibit E.

8 (Exhibit E was marked for
9 identification.)

10 BY MS. KRAMER:

11 Q Ms. Heredia, does this look familiar to
12 you -- this PDF of the website of Banks County?

13 A Yes. That's familiar. That's what I was
14 referencing --

15 Q Okay.

16 A -- in my previous question.

17 Q Okay, perfect. So can you tell me who -- or
18 I guess can you clarify: This is obviously the Banks
19 County website, and not another organization's website
20 that has, I guess, the challenge list that you're
21 referring to?

22 A Correct. This is the Banks County website.

23 Q Okay. And was this challenge list published
24 on any other website, to your knowledge?

25 A To my knowledge, no. But anything that's on

1 believe was also challenged -- well, she casted a
2 paper ballot -- was Asian.

3 I put it -- you know, I connected the two,
4 and I thought that they were -- people of color were
5 being challenged. And that made me feel intimidated.
6 And like I said, I didn't know what that even was, and
7 I didn't even know if it was legal. So that made me
8 feel intimidated.

9 Q But to clarify what you testified earlier,
10 you don't know if the lady that was behind you -- the
11 Asian lady -- if she was being challenged or not. You
12 just know that she was voting by provisional ballot.
13 Right?

14 A That's correct.

15 Q Okay. And while you were at the polling
16 location, you said that you voted via provisional
17 ballot and this other lady. About how long would you
18 say that you were at that polling location for?

19 A Maybe three to four hours. So I -- when I
20 went to vote, I think I voted early -- actually, I
21 can't remember. But there was a line and, you know, I
22 got in line to vote; and then when I casted my vote
23 through the paper ballot, I was told that I would have
24 to provide two forms of identification saying that I
25 do live in Banks County.

1 And so because of that, I either had to go
2 all the way home and find, you know, the forms of
3 identification; or, you know, at the time, I decided
4 to search my car. So I searched my car for those two
5 forms, and then I had to get back in line -- like, the
6 back of the line -- and wait in line again. So it
7 took longer than I expected.

8 Q I understand. Just a guess: How long were
9 you actually inside the physical polling location for?
10 Not the line, but where you go to actually vote and
11 give the election worker your ID and things like that.
12 How long would you say you were in that room for?

13 A Twenty minutes, roughly.

14 Q Okay. And you don't remember if you voted
15 early or if you voted on election day?

16 A I -- I don't remember.

17 Q Okay. So you were inside that room where
18 the voters are for about 20 minutes, and you were the
19 only Hispanic person that you saw, being challenged
20 during that time. Are you aware that there were
21 multiple days to go vote in person in Georgia?

22 A Yes. I'm aware.

23 Q Okay. So there could have been other people
24 being challenged on different days, but you didn't see
25 any of them.

1 MS. FORD: Objection. Calls for
2 speculation.

3 MS. KRAMER: I'll rephrase.

4 BY MS. KRAMER:

5 Q So you say that you felt intimidated because
6 you were the only Hispanic person there that was being
7 challenged, that you saw. I'm just clarifying that
8 that you were only in that room for a period of
9 approximately 20 minutes out of the entire time of
10 early voting and election day voting. And that's that
11 time period in which you felt intimidated.

12 A So the Banks County -- where you go vote in
13 Banks County, it's a very, very small room. I believe
14 there's only two machines, and they were only letting
15 two people vote, and then one person who was in line,
16 in the location.

17 So in that little tight space, I was only
18 there for 20 minutes; but actually at the location
19 where, you know, the line -- the line actually wrapped
20 around the building, because there was just not enough
21 space to be inside the voting -- like, inside the
22 actual building, which -- so I was actually there for
23 around three to four hours. And that's the period
24 that I felt very intimidated. Like, even when I went
25 home, I was still shocked.

1 Q But you didn't feel intimidated or as if you
2 were being targeted until you were told that your vote
3 had been challenged?

4 A I guess -- so this is a predominantly red
5 county; it's Republican. I'm in line with non-colored
6 people. So I felt intimidated from the get-go, as
7 soon as I was there. Because -- I don't know,
8 like -- I'm the only Hispanic coming to vote at a
9 predominantly Republican county; I'm the only
10 non-white; so from there, I felt intimidated. And
11 then when they told me my vote was being challenged,
12 that's when I really felt, like, okay, like, my vote
13 is being challenged. That's when I felt it
14 stronger -- like, okay; you're trying to intimidate
15 me.

16 Q Did someone intimidate you in line leading
17 up to that point, though? Did someone say something
18 to you?

19 A No one said anything to me, but I mean,
20 people can talk with their eyes -- like, can stare.
21 So no one said anything to me, but --

22 Q So it was a feeling that you had.

23 A Yeah; was --

24 Q I'm just trying to understand the events
25 leading up to when you voted. So no one said anything

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Joseph Martin

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

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

-against-) 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.)

VIDEO-RECORDED DEPOSITION OF
JOSEPH MARTIN

Zoom Recorded Videoconference

09/28/2021

9:03 a.m. (EDT)

REPORTED BY: AMANDA GORRONO, CLR

CLR NO. 052005-01

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

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Fair Fight, Inc. et al. v. True the Vote, et al.

Joseph Martin

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09/28/2021

9:03 a.m. (EDT)

VIDEO-RECORDED DEPOSITION OF JOSEPH MARTIN,
held virtually via Zoom Videoconferencing, before
Amanda Gorrone, Certified Live Note Reporter, and
Notary Public of the State of New York.

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9/28/2021

Fair Fight, Inc. et al. v. True the Vote, et al.

Joseph Martin

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1 A P P E A R A N C E S

(Via Zoom Videoconferencing):

2

3 ON BEHALF OF PLAINTIFFS:

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4

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505 Howard Street

5

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San Francisco, CA 94105-3204

6

PHONE: 415.344.7122

E-MAIL: TTaylor@perkinscoie.com

7

- AND -

8

Michelle McClafferty, Esquire

Lawrence & Bundy LLC

9

1180 West Peachtree Street NW

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10

Atlanta, GA 30309

PHONE: 404-400-1755

11

FAX: 404-609-2504

E-MAIL: Michelle.mcclafferty@lawrencebundy.com

12

- AND -

13

Joel Ramirez, Esquire

14

Elias Law Group

10 G Street NE

15

Suite 600

Washington, DC, 20002-4253

16

ON BEHALF OF DEFENDANTS:

Courtney Kramer, Esquire

17

The Bopp Law Firm

1 South Sixth Street

18

Terre Haute, Indiana 47807-3510

PHONE: (812) 232-2434

19

FAX: (812) 235-3685

20

21 ALSO PRESENT:

Henry Marte, Legal Videographer - Digital Evidence

22

Group

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Fair Fight, Inc. et al. v. True the Vote, et al.

Joseph Martin

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17	Exhibit 11	Letter Bates No. Def. TTV 1833..	94
18	Exhibit 12	Letter on The Bopp Law Firm letterhead beginning Bates No. Def TTV 1460.....	104
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22			

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Joseph Martin

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1 THE TECH: We are now on the record.

2 My name is Henry Marte. I am a videographer on
3 behalf of Digital Evidence Group.

4 Today's date is September 28, 2021,
5 and the time is 9:03 a.m.

6 This deposition is being held in the
7 matter of Fair Fight, Inc., et al. Versus True the
8 Vote.

9 The deponent today is Mr. Joe Martin.

10 All parties to this deposition are
11 appearing remotely and have agreed to the witness
12 being sworn in remotely.

13 All appearances -- you know what,
14 counsel, please identify themselves for the record.

15 MS. TAYLOR: Torryn Taylor with
16 Perkins Coie on behalf of the plaintiffs.

17 MS. KRAMER: Courtney Kramer with
18 Bopp Law Firm on behalf of the defendants.

19 MS. McCLAFFERTY: Michelle
20 McClafferty with Lawrence & Bundy, also on behalf of
21 plaintiffs.

22 MR. RAMIREZ: Joel Ramirez with Elias

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Joseph Martin

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1 Law Group also on behalf of plaintiffs.

2 JOSEPH MARTIN, called as a witness, having been first
3 duly sworn by a Notary Public of the State of New
4 York, was examined and testified as follows:

5 EXAMINATION

6 BY MS. TAYLOR:

7 Q. Good morning, Mr. Martin.

8 A. Good morning.

9 Q. Good morning. I'm Torryn Taylor. As
10 I mentioned, I am an attorney for plaintiffs in this
11 case.

12 Do you mind stating your full name
13 for the record, please?

14 A. Clare Joseph Martin.

15 Q. Okay. And your address, please?

16 A. 3198 Hillman Road North --

17 Q. And is that?

18 A. -- Northeast Crawfordville, Georgia
19 30631.

20 Q. Got it. And, is that where you are
21 videoing in today from, Mr. Martin?

22 A. Correct.

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1 Q. Okay. So, after you moved to
2 Taliaferro County?

3 A. 2008. Sometime in 2008 I believe.

4 Q. Okay. And, prior to these past
5 general and runoff elections in Georgia, had you had
6 any experience with the Georgia Election Code?

7 A. Experience with the code, I would say
8 no.

9 Q. Okay. And, do you have any legal
10 training or background?

11 A. No.

12 Q. And, are you a registered voter in
13 Georgia?

14 A. Absolutely.

15 Q. In Taliaferro County?

16 A. Absolutely.

17 Q. And for how long have you been a
18 registered voter there?

19 A. 2008.

20 Q. Okay. Mr. Martin, can you explain to
21 me how you first got involved with True the Vote?

22 A. That's -- I got a call from James

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1 Cooper.

2 Q. Okay. And, how do you know
3 Mr. Cooper? Or, did you know Mr. Cooper, before he
4 reached out to you?

5 A. Mr. Cooper was with the GOP, in
6 Georgia. And, I believe he was associated with the
7 10th District. And I had met him previously at my
8 residence when he delivered signs.

9 Q. Okay. And did you have a
10 relationship with Mr. Cooper beyond that, at that
11 point?

12 A. No.

13 Q. And so, you said you received a phone
14 call from him. Do you recall roughly when that was?

15 A. No, I don't. All that, I believe is
16 in my written deposition, which I do not have in
17 front of me. You know -- to be precise I don't know
18 exactly when -- that would be on the E-mails or the
19 deposition.

20 Q. Okay. I believe you're referring to
21 the written discovery responses that you submitted.
22 Is that correct?

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1 the runoff election, or both?

2 A. I believe it was the runoff election.

3 Q. Okay. So, the runoff election was in

4 January of 2021. Would you say you spoke with Mr.

5 Cooper that month? Or, the month before, perhaps?

6 Roughly speaking. It doesn't have to be precise.

7 A. Now, again, it's in the written -- I

8 believe there's a complete timeline in the written

9 documentation.

10 Q. Okay. And it's okay if you don't

11 remember, Mr. Martin.

12 A. I mean if you want to ask me -- if

13 you want to quote what I said in the written

14 documentation, I'll verify that.

15 Q. Understood, Mr. Martin. We can move

16 on.

17 Did -- can you explain to me what

18 you -- what that phone conversation with Mr. Cooper

19 entailed?

20 A. I believe our initial conversation

21 was he asked me to find a voter who would be willing

22 to challenge out-of-state/out-of-county voters.

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1 Q. And by "voters" you mean, voters who
2 are registered in the state and in the county?

3 A. No, someone who is registered in
4 Taliaferro County.

5 Q. Okay. But was actually out of state
6 or out of the county?

7 A. No. Someone who was a registered
8 voter, living in Taliaferro County, who would be
9 willing to challenge voters who presumably did not
10 live in the county or in the state.

11 Q. Okay. I think we were saying the
12 same thing there, just a little bit differently.

13 When Mr. Copper reached out to you
14 asking you to identify a voter, did he represent to
15 you that he was affiliated with True the Vote in any
16 way?

17 A. No.

18 Q. Okay. In what capacity did he reach
19 out to you, with this request?

20 A. I was under the impression he was
21 reaching out to me as a member of the 10th District
22 GOP.

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1 exactly as to the exact date when that may have
2 happened?

3 A. Right.

4 Q. That makes sense.

5 A. I did not become aware that they
6 actually sent that in until we began the written
7 deposition; when I went back and asked the county
8 registrar under an Open Records Request for all
9 information related to this subject matter.

10 Q. Okay.

11 A. And that was way later than anything
12 that occurred.

13 At that point in time, you know, I
14 was sort of shocked that they had actually sent that
15 in.

16 Q. And, did Mr. Copper, at any point,
17 tell you that voters who were registered in
18 Taliaferro County but did not live in Taliaferro
19 County weren't eligible to vote there? Or, how did
20 you come to that understanding?

21 A. I mean is it not logical? I mean, if
22 you don't live -- if your -- don't live here, you

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1 shouldn't be voting here, should you?

2 Q. Okay. So, you came to that
3 conclusion logically on your own, would you say?

4 A. Well, I would think so.

5 Q. Okay.

6 MS. TAYLOR: Henry, can we pull up
7 and mark as the next exhibits -- its actually three
8 documents, but we can look at them one at a time.
9 The ones that ends in Bates 0001, 0002 and 0003.

10 THE TECH: Okay. So, should I bring
11 up one first.

12 MS. TAYLOR: You can bring up one
13 first. Yeah. And then we can just click through
14 them for Mr. Martin.

15 (Whereupon, Exhibit 4, Letter
16 beginning Bates No. Martin 0001, was marked for
17 identification.)

18 (Whereupon, Exhibit 5, Letter
19 beginning Bates No. Martin 0002, was marked for
20 identification.)

21 (Whereupon, Exhibit 6, Letter
22 beginning Bates No. Martin 0003, was marked for

Exhibit 50

RETRIEVED FROM DEMOCRACYDOCKET.COM

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

-----X

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

vs.

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

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

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

-----X

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

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

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

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1 REMOTE APPEARANCES
2
3 FOR PLAINTIFFS:
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1 REMOTE APPEARANCES CONTINUED

2

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7 1 South 6th Street

8 Terre Haute, Indiana 47807

9 812-232-2434

10 jboppjr@aol.com

11 msiebert@bopplaw.com

12

13 Also present:

14 Joe Cerda, video/document technician

15

16

17

18

19

20

21

22

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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 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 A. I would have to -- I can't confirm
2 that. I would have to -- I can't confirm that.
3 It should have just been a, you know, dump out to
4 fulfill the requirement, but I can't confirm it.

5 MR. NKWONTA: Let's see if we can
6 blow up a document. That might help.

7 Can we pull up Exhibit 79?

8 (Exhibit 79 marked for
9 identification.)

10 MR. NKWONTA: And can you enlarge
11 that a little bit and scroll to Page 8.

12 BY MR. NKWONTA:

13 Q. Ms. Engelbrecht, Exhibit 79 is the
14 Second Amended Response -- True the Vote's Second
15 Amended Response to Plaintiff's Second Request
16 for Production.

17 Do you recognize this document?

18 A. Yes.

19 Q. Now, if you look at the Request
20 Number 18, Request Number 18 seeks, "All
21 documents and communications relating to True the
22 Vote's Election Integrity Hotline as described in

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

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

11 A. That is a correct reading, yes.

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

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

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

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1 the contact information to appropriate
2 authorities."

3 Is that correct?

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

7 MR. NKWONTA: Keep scrolling.

8 THE WITNESS: I can go -- yes.

9 MR. NKWONTA: The next page.

10 THE WITNESS: The next page.

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

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

15 THE WITNESS: Yes. Yes.

16 BY MR. NKWONTA:

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

22 A. Specific to this request for

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

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

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

9 (Exhibit 61 marked for
10 identification.)

11 BY MR. NKWONTA:

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

14 A. Yes.

15 Q. What is it?

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

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

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

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

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

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

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

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1 BY MR. NKWONTA:

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

4 A. Okay.

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

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

10 A. I don't know.

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

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

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

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

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1 voter list that shouldn't be there.

2 Is that correct that True the Vote
3 identified over 500,000 people in the Georgia
4 voter lists?

5 A. They are in -- yeah, there are a
6 number of things in this e-mail that are not
7 correct which is what is giving me pause, so --

8 Q. Okay. So, we will start first with
9 that 500,000 figure. Is that correct?

10 A. Sure. Um, that is not the number
11 that we had for our challenges, no.

12 Q. And states that the 500,000 people
13 should not be on the challenge list.

14 Is it True the Vote's position that
15 all individuals on those challenges should not be
16 registered in Georgia or should not be on the
17 voter list?

18 A. It was and is our position that
19 according to the analysis that we provided, or
20 that we supported, records corresponded with
21 individual decisions to permanently change their
22 residence.

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1 And therefore it would have made
2 their record ineligible and appropriate in the
3 scope of an elector challenge.

4 That sentence is -- doesn't indicate
5 those nuances that I think are critical.

6 Q. At that point had True the Vote
7 concluded that these voters should not be on the
8 voter rolls or that they were not legally
9 registered?

10 A. Well, again on the basis of our
11 analysis, the, all that is and should have been
12 done was the recognition of the information that
13 was available and the provision of that to the
14 counties.

15 This is, you know -- this e-mail is,
16 doesn't clearly make those distinctions known or
17 understood.

18 Q. The e-mail also, I think the fourth
19 paragraph down asked the voter to take a photo of
20 and scan your signature and e-mail it with their
21 voter registration information.

22 But it doesn't offer the voter an

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1 opportunity to review the list, does it?

2 A. This e-mail does not offer that, no.

3 Q. At the third paragraph from the
4 bottom, in the last sentence of that paragraph,
5 it says, "True the Vote has assured me that the
6 list that they are challenging is 99.9 percent
7 likely to be incorrectly registered."

8 Do you have any way of knowing
9 whether 99.9 percent of your challenge list is
10 incorrectly registered?

11 A. No. And my data background would
12 never make that kind of statement. And the
13 statement itself is odd in the way the sentence
14 is written, "True the Vote has assured me that
15 the list."

16 It seems odd that Amy would have
17 written that because Amy was part of the True the
18 Vote team. That is a distinction that you
19 probably didn't -- well, you didn't ask for, no.

20 But specific to your inquiry about
21 the 99.9, this data is -- data is data. You
22 shouldn't make assertions like that.

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1 Q. And regardless of who wrote it, you
2 don't dispute that Amy sent it, right?

3 A. I, according to what I'm looking at
4 on the screen, the markings are there to support
5 it.

6 It just does not --

7 Q. If Amy testified that she sent it,
8 would you have any reason to --

9 A. No, if Amy testified that she sent
10 it, if she said she sent it, then she sent it.

11 Q. And if this document was produced by
12 defendants, would you have any reason to doubt
13 that this was sent by defendants?

14 A. I mean if they said they did this,
15 then they did this.

16 MR. NKWONTA: Can we go to Page 16
17 of Exhibit 36. And can you scroll a little
18 bit so we get that full e-mail below from
19 James Cooper.

20 THE VIDEOGRAPHER: Sorry, guys. It
21 is just -- stand by.

22 MR. NKWONTA: Okay.

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Catherine Engelbrecht 30(b)(6)

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1 THE VIDEOGRAPHER: And then you said

2 Page 16 of 36?

3 MR. NKWONTA: Yes, Page 16.

4 THE VIDEOGRAPHER: Roger that.

5 BY MR. NKWONTA:

6 Q. And then you see that the e-mail
7 from James Cooper is also on -- in Exhibit 36,
8 and also includes similar language?

9 A. Yes.

10 Q. And if you look at the second
11 paragraph, second to the last sentence, there is
12 an additional sentence there that says, "If this
13 very type action" -- I think there is a typo. I
14 will start again.

15 "If this very type action had been
16 taken back in October, it is very likely Trump
17 would have won Georgia." Do you see that there?

18 A. I do.

19 Q. At the very top, do you see the
20 response from the voter to James Cooper that
21 says, "True the Vote has my permission to use my
22 signature to challenge the illegal votes in Cobb

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1 County."

2 Is that right?

3 A. That is what it says, yes.

4 Q. You mentioned that the challenges
5 were not technically meant to remove voters from
6 the voter rolls.

7 But isn't it true that some voters
8 got that impression from the communications that
9 were issued to these voters?

10 MS. SIEBERT: Objection. You are
11 asking her to testify about other people's
12 state of mind.

13 Catherine, go ahead.

14 THE WITNESS: I mean, this is what
15 James Cooper wrote. It is really all I can
16 say. It is what somebody else wrote.

17 MR. NKWONTA: Could we pull up
18 Exhibit 39, please.

19 (Exhibit 39 marked for
20 identification.)

21 BY MR. NKWONTA:

22 Q. Exhibit 39 is a little bit clearer.

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1 And you will see at the top of Exhibit 39, James
2 Cooper forwards the e-mail chain below to a
3 number of individuals, including yourself.

4 And you can see that the body of the
5 e-mail below that he forwarded is similar; is
6 that right?

7 A. Yes.

8 Q. And in response to James Cooper's
9 e-mail, the perspective challenger responds,
10 "James, Here is my," it is redacted. I'm
11 assuming it is a registration number.

12 "I give True the Vote permission to
13 use my name and signature in the pursuit of
14 purging the rolls of the deceased, nonexistent
15 and nonresidents of my county."

16 Is that a correct reading of the
17 proposed challenger's response?

18 THE WITNESS: Can you scroll up a
19 little bit, Joe? Or down. Sorry. Yes.

20 So, that is what you just read and
21 that is what the document says, yes.

22 BY MR. NKWONTA:

1/26/2022

Fair Fight, Inc. et al. v. True the Vote, et al.
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1 the, what the data shows.

2 So, I knew that that had occurred.

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

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

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

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

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

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

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

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

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

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

1/26/2022

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Catherine Engelbrecht 30(b)(6)

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1 it says create date, 12/16/2020.

2 Is that what you see there on OPSEC
3 Number 9?

4 A. Uh-huh, I do see that.

5 MR. NKWONTA: And if we scroll down
6 to the chart, I just want to make sure that
7 you have a chance to look at the charts in
8 here.

9 If you scroll to Page 18 of this
10 PDF, for instance.

11 BY MR. NKWONTA:

12 Q. Have you seen this chart before?

13 A. I don't think that I have, no.

14 Q. Do you know why OPSEC would have
15 created this chart?

16 A. I knew that there were, in the
17 TrueNCOA, they have an extension that is part of
18 their platform called TrueAppend that
19 automatically prints these out.

20 So, I read about this in the
21 exhibits.

22 MR. NKWONTA: Could we go to Page 8.

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

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

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

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

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

17 THE VIDEOGRAPHER: Okay.

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

20 BY MR. NKWONTA:

21 Q. Sure.

22 MR. NKWONTA: Can the court reporter

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1 read back the question, please.

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

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

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

12 BY MR. NKWONTA:

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

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

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

Exhibit 51

RETRIEVED FROM DEMOCRACYDOCKET.COM

AFFIDAVIT OF MARK DAVIS

Comes now, MARK DAVIS, and after being duly sworn makes the following statement under oath:

1. My name is MARK DAVIS.
2. I am over the age of 21 years, and I am under no legal disability which would prevent me from giving this declaration. If called to testify, I would testify under oath to these facts.
3. I am a resident of the State of Georgia
4. I am the President of Data Productions, Inc. I have been working with Georgia voter data for more than thirty (30) years.
5. I create an enhanced version of the Georgia Voter Database which has been used by numerous campaigns and other organizations over the years, primarily for demographic analysis and voter contact efforts.
6. Because of that experience, I have become aware of numerous issues regarding residency and redistricting issues, among other concerns relating to absentee balloting. That awareness has caused me to become an advocate for election integrity for the past twenty (20) years.
7. I have been brought in as an expert witness in a total of five (5) election disputes. New elections were ordered in four (4) of those cases, and thus far there has been no judgment issued in the fifth (5th) case, which was a recent dispute in a Long County case where I discovered double voting in the primary election. That double voting resulted in an investigation conducted by the Secretary of State's office that revealed approximately one thousand (1,000) double votes in approximately 120 counties.
8. When I processed an update to my copy of the Georgia Voter Database I received in August, I saw hundreds of thousands of voters who have name and address records which matched against USPS National Change of Address (NCOA) records. I have been seeing similar numbers for many years.
9. My understanding of the core issue is that every Secretary of State in the union is required to address those issues in accordance with provisions of the 1993 National Voter Registration Act.
10. For more information regarding the provisions of the act, specifically regarding NCOA and changes of address please visit the DOJ website for a summary which can be found at: <https://www.justice.gov/.../national-voter-registration...>
11. The act permits a Secretary of State to mail a voter with an NCOA match at both their old and new addresses to obtain confirmation of the change of address, but as a practical matter, when that happens that request is often ignored.
12. The only other remedy available to a Secretary of State is to allow the voter's registration to age out of the system for inactivity, also as proscribed by the act, which can often take years.
13. The relevant state laws governing residency requirements in Georgia can be found in OCGA 21-2-217 and 21-2-218.
14. Although our state laws on residency appear to be clear, there is obvious conflict between the effective implementation and administration of those laws and the 1993 National Voter Registration Act, as well as some existing Georgia case law which has only made the situation worse.
15. It is often argued in Georgia cases that evidence indicating a voter has in fact moved, even many years ago, is insufficient to prove that they intended to establish a new residence.
16. I have only seen judges act on those residency issues when we have succeeded in bringing people into court, have them put on the witness stand under oath, and they have admitted that they did in fact move with the intention of establishing a new residence.
17. The net effect of all that is our Georgia database always contains hundreds of thousands of people who have filed changes of address with the USPS, stating they have moved away from the addresses shown on their voter registration records, and that opens up a "Pandora's box" of potential issues.

18. I have just recently completed the NCOA processing on another copy of the voter database I obtained just this week.
19. It shows two hundred sixty-seven thousand two hundred and fifty- five (267,255) voters who have told the USPS they were moving to an address out of state.
20. Some of those no doubt will be students and people serving in the military who intend to return to Georgia, and they are of course lawfully permitted to vote.
21. I show fourteen thousand nine hundred and eighty (14,980) of those out of state movers voted in our November 3, 2020 General election.
22. The NCOA processing also revealed three hundred twelve thousand nine hundred and seventy-one voters (312,971) who moved within the state of Georgia.
23. Those who moved within a county can still vote in the county and update their registration as required.
24. However, of those who moved within the state, I am showing one hundred twenty-two thousand two hundred and thirty-one (122,231) voters who moved across county lines.
25. Of those I show forty thousand two hundred and seventy-nine who moved across county lines more than thirty (30) days before the election but then cast a ballot in their old county of residence.
26. Again, if those were all temporary relocations, they are eligible, but I think it highly likely the vast majority are not temporary.
27. Georgia law says if these voters moved within thirty (30) days of the election, they were still eligible to vote in their previous county, so I am not counting any records with "Move Effective Dates" provided to the USPS past September 2020.
28. The law also states that if a voter moves more than thirty (30) days before the election, he or she may not lawfully cast a ballot in the county they previously resided in, which makes a great deal of sense.
29. If we think objectively about the reason for the law, a person who moves from county A to county B, but returns to county A to vote will then receive a ballot with election contests on it they have no lawful reason to cast a vote in.
30. So, outside of that thirty day grace period, or a temporary change of address, a person who does not permanently live in a county they cast a vote in has no legal or moral right to cast a vote for sheriff, district attorney, county commission, school board, or in a legislative, congressional, or other district they no longer reside in.
31. In other words, it does not matter if the statewide races are the same, because the others are not, so a person who moves across county lines more than thirty (30) days from the election, and fails to update their registration as required by law, finds themselves in a very untenable position of their own making.
32. They are no longer legally allowed to cast a vote in their previous county, and at the same time are not properly registered to vote in their new county.
33. This unfortunately leaves them in a position where they cannot lawfully cast a ballot at all.
34. It appears to me we probably had tens of thousands of illegal votes cast in our last election. Worse, that has probably been happening for many, many years. I can only imagine how many close election contests have been affected by these issues.
35. It is my hope that, if nothing else comes from the uproar surrounding our recent general election, we might all agree there is an obvious need for reform.
36. First, the antiquated 1993 Voter Registration Act should be amended to create a National Voter Data Clearinghouse, which all states are required to participate in.
37. If a person is a New York snowbird, who spends their winters in Florida, they should still be permitted to vote in their home state.

38. However, the moment they declare Florida as their residence, and register to vote there, they should immediately be removed as a voter in New York.

39. Second, that Clearinghouse should be used to identify voters who are registered or voting in more than one state.

40. Third, I would also suggest we change the way the USPS gathers National Change of Address data and how that is used. If we simply allow them to ask people filing those notices to indicate if their address change is temporary or permanent, and then allow a Secretary of State to act on that information, it would go a long way towards keeping our voter rolls clean.

41. Finally, I suggest we take steps before each election to notify voters with potential residency issues of the need to address any they legitimately may have so all eligible voters are casting lawful ballots for the elected officials who seek to represent them as public servants.

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

Executed this ____ day of November, 2020.

Mark Davis



Both voting by mail and voting in person have a long history of trustworthiness in the US. Voter fraud is extremely rare across voting methods.

Source: Bipartisan Policy Center

Get Accurate Election Info



14

49 Comments 42 Shares



Like



Share

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Exhibit 52

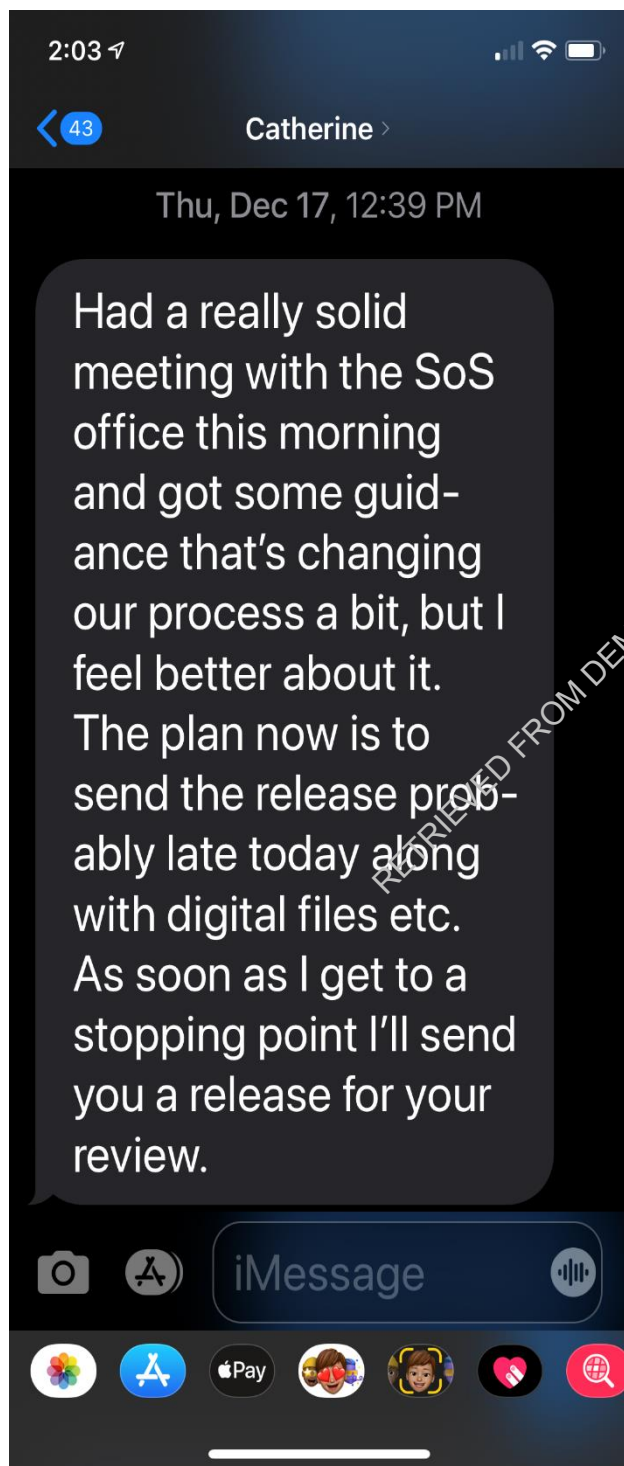
RETRIEVED FROM DEMOCRACYDOCKET.COM

SMS Message

To: Derek Somerville

From: Catherine Englebrecht

Date/Time: 17 DEC 2020, THU, 12:39PM



**Somerville
Exhibit B
(10-6-21)**

WWW.DIGITALEVIDENCEGROUP.COM

Def. Somerville 0004

Exhibit 53

RETRIEVED FROM DEMOCRACYDOCKET.COM



**Somerville
Exhibit D
(10-6-21)**
WWW.DIGITALEVIDENCEGROUP.COM

Derek Somerville

Posts About Friends Photos Videos Check-Ins More ▾

Message

Do you know Derek?

If you know Derek, send him a message.

Message

Intro

Joined November 2008



+ 5

Featured

Posts

Filters



Derek Somerville is with Mark Davis.

December 19, 2020 · 🌐

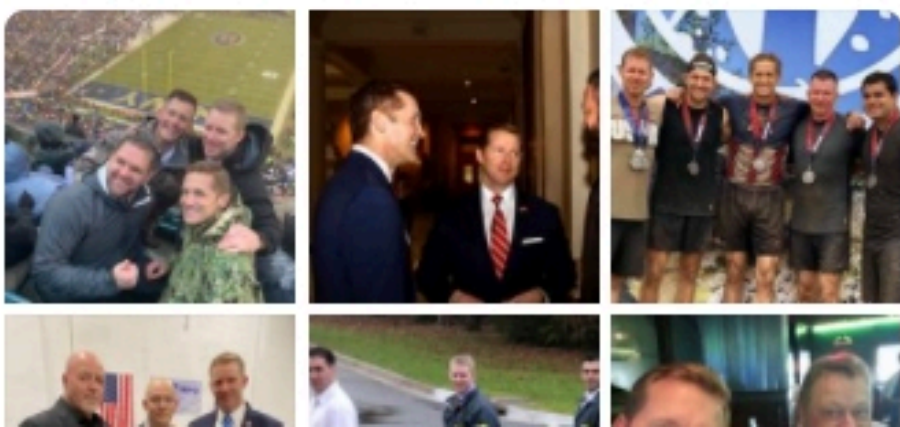
Yesterday, Georgians from across the state came together in a unified call for greater integrity in our elections. Those who wish to keep us divided will tell you otherwise, but this effort was not, is not, and will never be, about politics.

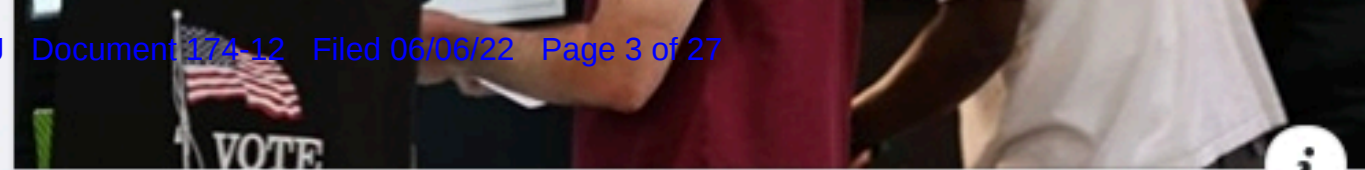
Using the EXACT same criteria, voter rolls were challenged equally in counties that traditionally vote Republican and counties that traditionally vote Democrat. It doesn't get less partisan than that.

Georgians are fed up with both incompetence and corruption, and are coming together like never before to expose both. It's an honor to be part of this fight, and our work is just beginning.

Photos

[See All Photos](#)





BREITBART.COM

True the Vote Partners with Georgians to Challenge Allegedly Ineligible Voters

25

3 Comments 7 Shares

Like

Comment

Share



Sam Thomas

How many of those voters voted in November? ...

Like · Reply · 20w



Derek Somerville

Sam Thomas All of those in our challenge - approximately 40k. I did not have visibility into the details of True The Vote's challenge, only collaborated on methodology. So, I cannot answer for their data. ...

Like · Reply · 20w



Joe Scott Phillips

Breitbart? Really? 🤔🤔 ...

Like · Reply · 19w



Derek Somerville is with Lucretia Hughes and 17 others. ...

December 18, 2020 · 🌐

Starting yesterday afternoon, and with support from countless Georgians across the state who demand transparency and integrity in our elections, we began submitting formal challenges to dozens of county Boards of Elections citing tens-of-thousands of voters on Georgia's voter rolls whose legal residency, and therefore their eligibility to vote in Georgia, is in question.

Using the US Postal Service's National Change-of-Address database, Mark processed the addresses of all 7.6 million active and inactive voters in the Georgia voter file. Over 580,000 individuals were identified as having submitted a change-of-address to a location other than their address on file with the Secretary of State. While it was tempting to challenge all these voters, we wanted to ensure we were precise in our approach and that we erred on the side of the voter.

We removed individuals who did not vote in our most recent general election. We removed records of those serving in the military and those who may be their dependents. We removed inactive records. We removed those who voted electronically. We included only those whose change-of-address requests were submitted within the prior 18 months. We continued to fine-tune our list of voters until we arrived at roughly 40,000 across all 159 counties we believe need to be verified by county Election Boards BEFORE the January 5, 2021 Senate run-off.

The current state of our voter rolls is simply unacceptable. Federal law requires the quality of our voter rolls to be maintained, and specifically allows for the use of the National Change of Address database to do so. When states fail this standard, they are often sued by the Federal government. Poorly maintained voter files invite both error and corruption and fuel public distrust of election results, a reality with which we are all too familiar.

In forthcoming posts, we will share what our analysis said about the quality of the data contained within the voter files. We will share how

that poor data quality was exploited by some to illegally vote in our elections. We will share how the Secretary of State's decision to mail 6.9 million absentee ballot requests through an uncleansed database resulted in hundreds of thousands of those requests either not reaching the intended recipient or being forwarded to new addresses (in and outside of the state) without the Secretary of State's knowledge. We will question what happened to many of the absentee ballots themselves. And finally, we will share how our voter files got to such a poor state of maintenance in the first place and, of course, what can be done to prevent this in the future.

Thank you to all those who continue to vigilantly watch over these elections and who have either assisted in our efforts or offered to do so. To be certain, it will take the citizens of this state, We The People, to ensure we have integrity in our elections.



255

156 Comments 225 Shares



Like



Comment



Share



Mark McDonald

Hi Derek, please add me to your tag list if not inconvenient for you.

...

Like · Reply · 20w



1



Mark McDonald

Chuck Reagin
Check this out.

...

Like · Reply · 20w



Angie Thomas

It is incredible and so noble that you and other American citizens have spent your time doing this for our country. I am sure I'm not the only one who appreciates these efforts! 🇺🇸

...

Like · Reply · 20w



5



Lucretia Hughes · [Follow](#)

Can you call me, it's in your inbox. Thanks

...

Like · Reply · 20w



Patty Quadagno Ryan

Can you make this shareable Derek? Thanks

...

Like · Reply · 20w



2



Jo Joanne

Derek Somerville I was surprised to know that when someone dies and a death certificate is issued that it doesn't delete that person from the voter rolls. No

...

software to notify all authorities that need to know???

Like · Reply · 20w · Edited

6



David DeLugas

Jo Joanne Derek Somerville Banks do so immediately. Somehow banks close accounts (or make withdrawals no longer possible). Whatever banks do, every SOS should do.

...

Like · Reply · 20w

3



Andrea Foster

Social security is also notified when a death certificate is filed. Why can this not be accessed also.

...

Like · Reply · 20w

2



Mark Davis

Hi Jo Joanne - I recently met a guy who developed a web crawler for obituaries, and an algorithm to match that data to the voter file. When he ran Georgia, he turned up very few. The SOS gets that data from vital statistics, and from what I've seen they're getting that job done.

...

Like · Reply · 20w · Edited

1



Carol S Streeter

Jo Joanne i received a jury duty notice for someone who has been gone from Georgia since 2003 and another friend got one for the grand Jury a for her husband who had been dead for close to ten years.

...

Like · Reply · 20w

1



Michelle Rogers Knight

My MIL was a registered voter and she passed in Nov 2019. I've verified her registration and have learned their is no registered voter who matches her info.

...

Like · Reply · 20w

1



Annie Kate Head

Wow. God bless you

...

Like · Reply · 20w



Joe McCutchen

Great job Derek.

1

...

Like · Reply · 20w



Larry Brown

Yes, make public. An awesome disclosure. More reason this SOS needs to be held accountable.

...

Like · Reply · 20w



Fred Ross

Great job Derek and to all those assisting you!! Looking forward to your forthcoming posts with additional infuriating information.

...

🇺🇸 Thank you, Derek!! 🇺🇸

Like · Reply · 20w

1



Dean Sheridan

That's a fantastic start.

...

Like · Reply · 20w

1



Andy Soha

- Great Job. Keep it going until ALL THESE ISSUES are Arbitrated and Corrected. 1
- Like · Reply · 20w
-  Jerry Shadinger
Great Job 1
- Like · Reply · 20w
-  Sally Gee
❤️🇺🇸❤️🇺🇸❤️🇺🇸👍
- Like · Reply · 20w
-  Jim Flenniken
Spin Owsley more documentation
- Like · Reply · 20w
-  Spin Owsley
Jim Flenniken Rand Paul said the other day that we need to look at these state elections and make sure they are sorted out. I agree. 1
- Like · Reply · 20w
-  Andy Soha
Great Job In Doing what Needs to be Done !!!!👍
- Like · Reply · 20w 2
-  Susan Bates Stead
How can i help? 1
- Like · Reply · 20w
-  Denise Rumbaugh
Great work!!! 1
- Like · Reply · 20w
-  Janet Sigman
Thank you!!!! Great work!!!
- Like · Reply · 20w 1
-  Cari Zuckman Spangler
-  1
- Like · Reply · 20w
-  Pamela Reardon
I just delivered in person our stack for Cobb County. Emailed digital lists yesterday. Thanks Derek and Mark for your hard work! True patriots! 11
- Like · Reply · 20w
-  Philip J Singleton
Pamela Reardon awesome
- Like · Reply · 20w
-  Sheri Gilligan
Pamela Reardon thank you
- Like · Reply · 20w

Derek Somerville
Pamela - you are a true warrior!! ...

Like · Reply · 20w



Ron Hooper
Great Job Pamela, I will try calling you today ...

Like · Reply · 19w



Joshua Morris
Thank you for all the time and effort you have put into this and into trying to fix problems in our governments. Hoping and praying you reap big successes. ...

Like · Reply · 20w



3



Sandy Price
Great Job 🙌 Keep up the great work! God Bless 🙏 ...

Like · Reply · 20w



Kathy Thompson Seigle
Mark Davis, Derek Somerville, et al: God bless you guys! I would have lost hope if it weren't for you. ...

Like · Reply · 20w · Edited



1



Carol S Streeter
Thank you to each of you that has jumped in and since I am technically illiterate I tagged some of my conservative friends in the rural counties around me (Marion). I will be sharing and praying for all of us. Thanks again. ...

Like · Reply · 20w



1



Sheri Gilligan
Thank you Derek and Mark for your time, talent, and energy in this effort. ...

Like · Reply · 20w



4



Jeff Jones
Thanks Derek and Mark! Fantastic work. Now, let's see it pay off. ...

Like · Reply · 20w



1



Kiera Byrd
Excellent. 🇺🇸🇺🇸 ...

Like · Reply · 20w



Bobby Mussara
Great job! Even the current recount going on isn't going to be accurate! They need to CERTIFY EVERY VOTE, especially the ones in The Atlanta area that primarily went to one candidate in the early hours of the morning after the election! ...

Like · Reply · 20w



Rebecca Etheridge
Why were people removed this late in the game? ...

Like · Reply · 20w



Will Stauff
Will any of this matter if Fulton and Gwinnett plus Abrams 1.2 million ballots go unchecked ...

Like · Reply · 20w



Lisa Jones
Thank you for your hard work. Keep fighting ...

Like · Reply · 20w



Henry Hicks

RETRIEVED FROM DEMOCRACYDOCK.COM

- Henry Hicks
Thank you for your diligence. ...
Like · Reply · 20w
- Bill Evans
I have no faith in our Governor Secretary of State or LT Governor. They know there was fraud. It was on video. The machines can change votes it was proven in Coffee County. ...
Like · Reply · 20w
- Bill Evans
https://www.realclearpolitics.com/.../election_workers_in... ...
REALCLEARPOLITICS.COM
Election Workers In Coffee County, Georgia Demonstrate Dominion...
Like · Reply · 20w
- Peter Korman
You and Mark are on a vital mission, Derek. Please check with David Shafer as to our findings in GA06. ...
Like · Reply · 20w
- Michelle Rogers Knight
Spalding County registered voter, I'll be happy to help. ...
Thank you for the work you're doing!!!
Like · Reply · 20w
- Ken Pullin
Michelle Rogers Knight - just sent you an email. ...
Like · Reply · 20w
- Marci Baer McCarthy
Thank you for Mark Davis and your diligent efforts in restoring election integrity in Georgia. ...
Like · Reply · 20w
- Marci Baer McCarthy
The ball is in the court of our elections officials to do the right thing and ensure election integrity. We have presented them with the information to do so. ...
Like · Reply · 20w
- Greg Pearson
Thanks to everyone involved in this effort 🇺🇸🇺🇸🙏🙏 ...
Like · Reply · 20w
- MW Omega
Thank you and Mark, not just for your diligence but especially for your desire for justice. ...
Like · Reply · 20w
- Blair Parker
God bless you and thank you!! ...
Like · Reply · 20w
- Patrick Owens
Thank you men for your efforts! Bless you all! ...
Like · Reply · 20w
- Mary Johnson
Are you matching against PO Boxes? ...
People using stores for their address?

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**Tory Braden**

Does anyone know when Perdue and Loeffler will visit here?

...

Like · Reply · 20w

**Brian Laurens**

The data company I use shows a similar number, after the guys cleaned it went down to 7m.

...

I recently asked why the numbers were so far off. That was their answer as well.

Like · Reply · 20w · Edited

**Phil Alexander**

Well done Derek Somerville. Press the fight.

...

Like · Reply · 20w

**Laurie Breslin Wilson**

You guys are awesome!

...

Like · Reply · 20w

**Larry Savage**

Unfortunately, this doesn't change the outcome because you don't know how they voted. It is great information for reforming the process.

...

Like · Reply · 20w

**Mark Davis**

These claims are in the Shafer/Trump suit. Under the law, because we don't know who people voted for, if the number of irregular or unlawful votes exceeds the difference between the vote counts, then it calls the election results into question. A judge can also find "Systemic Irregularities", which is a term that has never really been defined well.

...

Like · Reply · 20w



3

**Larry Savage**

Mark Davis But then what? A new election?

...

Like · Reply · 20w

**Mark Davis**

Opinions vary on that, but it seems obvious there is no time, so if the suit succeeds I would think we either send no electors or the legislature could opt to send it's own slate.

...

Like · Reply · 20w · Edited



4

**Brian Neu**

Mark Davis I know you're busy, but is there another Mark Davis+ Derek Somerville superhero team working this same angle in each of the other contested states? Is there a sharing of tools and methods that can help achieve success in enough states to matter?

...

Like · Reply · 20w

**Mark Davis**

Brian Neu thank you for the kind words. We have heard from quite a number of people involved in the other states and there is a lot of information sharing happening. As an example, here in GA the grace period for reregistering in your new county is 30 days. Michigan has similar laws, but their grace

...

RETRIEVED FROM DEMOCRACYDOCKET.COM

period is 60 days, so we shared information about how to do this same analysis.

Like · Reply · 20w



5



Brian Neu

Thanks, that's good to know. Iron sharpens iron . . .

...

Like · Reply · 20w · Edited



5



Brent Hilburn

I'm sure the voter database didn't get to be in this shape in just the last 24 months... Just a reminder that the sitting governor used to have this job... Maybe he should have spent less time suing people who just wanted to be included on the ballot and more time maintaining the records... Also, The GOP has held that office for 20 YEARS....

...

This reply is not intended to be partisan... This is to remind you some things shouldn't BE partisan... So stop voting for the letter beside the name and get THE BEST person for the job...

Like · Reply · 20w



2



Michelle Chapman

So I went to vote on election day, presented my new address and DL from October 2020. It stated I was registered in Dekalb co, had to sign a form the "head lady" told me to sign, she didn't sign it and guess what I received in the mail for me to go fill out all new forms ?!?!?! Discouraged me completely in the entire system !!! Pathetic.....thank you for trying to do SOMETHING ! I think the corruption has gone to far and deep. And for way too LONG bless our wonderful country ! Merry CHRISTmas

...

Like · Reply · 20w · Edited



3



Derek Somerville

Michelle Chapman Merry Christmas!

...

Like · Reply · 20w



Sonny Sonnett Bearden

...

Valerie Biden Owens (Joe's sister) is married to John Owens. His brother, R Kevin Owens, is a partial owner of Dominion software!

Like · Reply · 20w



Steve Kotaniemi

Oregon appreciates that. Keep up your good work to keep your election fair and honest.

...

Like · Reply · 20w



1



Ron Helton

Thanks to you for doing this.

...

Like · Reply · 20w



1



Sam Harben III

Why would you think Mark is correct or that he knows

what he is doing? Maybe he is in the tank and just trying to strip certain precincts of votes. After all, he is the campaign manager that ran the SOS campaign. Maybe he has a new client and is simply trying to cast shade ahead of the 2022 election. A much better solution is to eliminate the registration nonsense completely. You show your ga id and you vote.

Like · Reply · 20w



Bill Simon
Sam Harben III Wrong "Mark".

You are thinking of "Mark Rountree."

Derek Somerville is referring to Mark Davis.

But, maybe you don't understand too much of anything.



1

Like · Reply · 20w



Sam Harben III
Bill Simon Thank you for the correction. And, you are an asshole.

Like · Reply · 20w



Bill Simon
Sam Harben III yeah, but smarter than you, just the same... 😊

Like · Reply · 20w



Sam Harben III
Bill Simon Mark R is doing the exact same thing, asshole, and many of the questions still apply, asshole. Try answering the objections, asshole.

Like · Reply · 20w



Bill Simon
Sam Harben III I cannot see his comments... because he's a BIGGER asshole than me who blocked me.



1

Like · Reply · 20w



Sam Harben III
Bill Simon tru dat. Peace out, brother. Just playin'.



2

Like · Reply · 20w



Jerry Shadinger
Thanks guys keep us posted



1

Like · Reply · 20w



Randy Todd
I heard that it was the republicans who were doing this. Very nasty republicans.

Like · Reply · 20w

^ Hide 11 Replies



Derek Somerville
Randy - Mark and I prepared these challenges without any assistance from any political party. We issued challenges in traditionally Republican counties and traditionally Democrat counties. This is about cleaning up the voter roles, not about politics.



6

Like · Reply · 20w



Randy Todd

Derek Somerville Ok, so you talk about how bad our voter roles are. Georgia has been run by Republicans for over 10 years. So you are saying that the Republicans running Georgia, and complaining about illegal voting, are the ones who let it get screwed up. I stand by my original comment above.

...

Like · Reply · 20w



Robert Trim

Randy Todd it has been screwed up for a couple of decades, since Mac Cleland at least, and the Democrats have sued every time the lists have been cleaned in the last 10 years and Democrat judges have stopped it

...

Like · Reply · 20w

Randy Todd

Am I correct that the Republicans have been in power for 10+ years and as Stacey Abhrams has stated, they have worked to clean up the role in A partisan way, then it is clearly their fault that these problems exist? Are you trying to blame the Democratic judges are the problem, along with Max Cleland? This definitely shows your bias and the need for significant oversight on whatever you are doing.

...

Like · Reply · 20w

Derek Somerville

Randy Todd Seems simple to me: our voter roles are not presently in acceptable condition. I'm not concerned about who created the mess, I just want it corrected. We can point fingers later.

...

Like · Reply · 20w



Randy Todd

Derek Somerville I assume, based on your statements, that you are a tepublican. So I understand why you shun placing blame on Republicans, as I have documented. I can only hope that whomever you are and whatever you are doing does not cause Democrats to once again file a law suit based on bias. I have my doubts, but I'll watch and see what happens. Be honorable. Make bipartisan integrity your number one requirement. Thanks.

...

Like · Reply · 20w



Derek Somerville

Randy Todd I'm struggling here: I, and others, have openly and publicly called out the Secretary of State's office for poor voter file list maintenance. I fail to understand how that action aligns what appears to be your position that this is a partisan effort (perhaps I'm missing your point). This is about the voter file, not the party. We have challenged any and all voters who appear to have moved out of their counties prior to the election (removing military of course). That is the ONLY criteria we used, and we supported these challenges equally in EVERY, not some, every County in the state. Same criteria applied equally in Republican and Democrat counties alike. How does

...

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it get any more bipartisan than that? The problem with this line of questioning is it appears you don't want to accept my answer. If you believe in bipartisan voter integrity efforts, know that that is exactly what is happening here - and offer your support. We need more bipartisan efforts aimed and reducing incompetence and corruption in all areas of the government, but if every time citizen's attempt to hold the government accountable they're accused of partisanship (or worst), they'll stop stepping up and these issues will never get resolved. I do appreciate your concern, but please be assured, bipartisan integrity is absolutely our number one requirement. Happy holidays.

Like · Reply · 20w · Edited



Chris Fetterman

Randy Todd listen here Todd. This is about legal votes counting and not allowing people to vote who do not live in their other "legal" residence to vote. If they live in another county or state and vote twice one where they really live and another where they don't live, that's illegal. I don't give a damn if they are Republican or Democrat. It's ILLEGAL. So get off your stupid bus and get back into reality.

Like · Reply · 20w · Edited



Randy Todd

Chris Fetterman so you are the tough guy. You listen here, it's Funny your passion coincides with trump's false, anti-democratic accusations attacking our SS and Gov. For malfeasance. Why do you not join Stacey Abhram's effort to fix the voting roles in Georgia? Do you agree with her, or is this a partisan effort by you to try and sway the Jan. 5th run off?

Funny isn't it. I am in "reality" and you are the one challenging the electoral system in Georgia now that Georgia voted Blue. I guess if you can't get the need voted, you can join trump and try to subvert democracy. That's what I see going on here. Shame on you both.

Like · Reply · 20w · Edited



Randy Todd

Derek Somerville you are struggling because your story is biased. So maybe you identify as a tea party republican and feel that calling out our republican SOS means you are bi-partisan. It doesn't. It just means you drank Brant Frost's kool aid and believe it is your responsibility to fight against Democracy in America while weaponizing our Constitution. Funny you didn't join Stacey Abhram's well known effort to make voting available to every legal voter vs starting this witch hunt of your own. Better people than you have certified the Georgia voted, multiple times. Seems you are simply jumping on trump's payroll. Very sad.

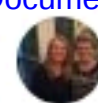
Like · Reply · 20w · Edited



John Fischer

Derek Somerville you will hurt his brain with this response.

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**Sandy Laplante**

This is awesome!!! Thank you so much for protecting the vote!!

...



1

Like · Reply · 20w

**Jim Wheeler
Angi Evert**

...

Like · Reply · 20w

**Kathy Lanning
Russell Matthews Follow**

...

Like · Reply · 20w

**Teri Lynn**

Gosh, remember when the "free press" used to do these kinds of investigations instead of obstructing information dissemination? You have put to shame the worthless AJC and every local network broadcasting outfit!

...



5

Like · Reply · 20w

**Jacqueline Sharp Edenfield**
Thank you for your efforts!

...

Like · Reply · 20w

**Dennis Saint Aubin**
Good work sir

...

Like · Reply · 20w

**Adam Reynolds**
Great work

...

Like · Reply · 20w

**Susann Haddad**

Thank you 🙏 this is a much needed action. It is a shame our SOS refuses to cooperate but we can remove him in the next election. For time being it looks like the citizens of our state are the ones that need to make a difference in the honesty and accuracy of our election. How can one help you with this effort? Another method of voter fraud is the issuing of voter registration when one applies for driver's licenses. I think the process is flawed and people might not e citizens are getting registered to vote.

...



1

Like · Reply · 20w · Edited

**Ron Goodbub**

If there ever was an election that needed to be redone it is the November 3rd. This is an out and out theft. Prosecution to the ABSOLUTE FULLEST EXTENT OF THE LAW!!!!

...



7

Like · Reply · 20w

**John Dikov**

We need all of our congressmen and senators to stand up and fight for this election. We cannot allow a corrupt dem party to work with China to overthrow our government. Plain and simple, this is an attempt at a coup.

...



1

Like · Reply · 20w

**Lee Larko**

Called the Election office in Brooks and they didn't check their mail until I called.I asked for a receipt confirmation, haven received it yet!

...

Like · Reply · 20w



Derek Somerville

Lee Larko Thank you, Sir! I'll have some additional correspondence headed your way soon.

...

Like · Reply · 20w



1



Angi Evert

Bryan DeHaven

...

Like · Reply · 20w



Kathy Whitehead Simmons

THANK YOU!!!! I feel so angry And helpless. I'm happy to know that someone knew an avenue and went that way.

...

Like · Reply · 20w



1



WC Allen

A lady in Ellijay received 2 mail-in ballots that she did NOT request. She threw both away and voted in person. How many times did this happen???

...

Like · Reply · 20w



1



Irene Penn

WC Allen I got numerous ballots in the mail. I voted in person

...

Like · Reply · 19w



Jodi Beauregard

Wonderful, thank you!

...

Like · Reply · 20w



1



Robert Trim

Any help I can provide in Cobb let me know

...

Like · Reply · 20w



1



Greg Giglio

It seems to me that those who don't want the voter rolls cleaned up, while at the same time pointing out how easy it is to register to vote, either have something to hide or are just up to no good. I know without a doubt that I would not want ANYONE voting in my place, and I would not want ANYONE who is not a resident of this state to have a say in what this State does or what we, as legal residents, are subject to.

...

Like · Reply · 19w



4



Dan Solla

...



Like · Reply · 19w



Rick McQueen

Hall county- our hearing is Wednesday at 2:30

...

Like · Reply · 19w



2



Donna Chastain Waters

Call them all out. They need to work for we the people.

...

We the People
ARE PISSED

Like · Reply · 19w



5



Gail Mac
Lots

...

Like · Reply · 19w



Bryan Watson

And we thought the internet and all the amazing technology was going to make it better. This reminds me of those stories I was told in the late 70's about how the dead voted as well as many people that had not lived in the community for several years.

...

Like · Reply · 19w



1



Lisa Marie Nava-Stephens

Thank you, we are so disgusted with the clear effort to cheat!

...

Like · Reply · 19w



1



Zane Schauer

Amongst all of us who want to have accurate voting tallies and election outcomes - there are some who realize that not every improperly or miscounted vote favored Biden - and some of us realize that not every improperly or miscounted vote was cast by a minority voter. Some of us realize that the outcome of a 3 million dollar recount in Wisconsin resulted in about 130 more votes for Biden. Some of us who claim we want accurate voting tallies and election outcomes actually want those things - as opposed to wanting to unseat the President-elect whose victory has been validated in about 60 court decisions.

...

Like · Reply · 19w · Edited



2

^ Hide 24 Replies



Jeff Jones

Zane Schauer Every voter should want as clean a vote as is possible of only legal votes, including making certain voters are legal residents in the county in which they vote. This effort has zero to do with changing the fraudulent vote that occurred on 11/3; no mention is made of party affiliation or voter demographic, nor are either part of this effort.

...

Like · Reply · 19w



Zane Schauer

Jeff Jones undeniably almost every initiative you have championed has had as its goal to overturn the election results. I just hope you are learning not to embrace every conspiracy theory that comes along - after they have consistently been debunked or disproven. There are lots of loyal and patriotic Republican elected officials who voted for Trump

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Republican elected officials who voted for Trump who seem to have decided it is best for the country to accept the election outcome - and get on with dealing with our country's well being.

Trump considers those in his party who don't support his claim to have won the election as traitors, weak, disloyal and beneath contempt - including his VP; his outgoing AG; Mark Meadows, his chief of staff; Pat Cipollone, the White House counsel; Secretary of State Mike Pompeo; numerous Governors and Secretaries of State, and Senate Majority Leader Mitch McConnell. Perhaps Chris Christie said it best when he said that he voted for Trump and that although he is a loyal Republican - he loves his country more than he loves his political party.

And then there is this op/ed article in today's Brunswick News.

https://thebrunswicknews.com/.../page_d3adb772-17fb-5baa...

THEBRUNSWICKNEWS.COM

Page A4

Like · Reply · 19w · Edited



Jeff Jones

Zane Schauer the fraud is blatantly obvious

Like · Reply · 19w



Zane Schauer

Jeff Jones what is blatantly obvious is that the justices, the judges, the elected officials, and the electoral college voters did not agree with the supposition that there is evidence of fraud sufficient to reverse the outcome of the presidential election.

In other words, it is blatantly obvious that "the" fraud you and others have proclaimed to be blatantly obvious hasn't convinced those empowered to reverse the election outcome to do so.

Pat Robertson - a well respected Christian commentator who is conservative, Republican, and a long-time Trump supporter - said today that the President is living in an "alternate" reality and should "move on" from his 2020 election loss.

Like · Reply · 19w



Jeff Jones

Zane Schauer Read:

<http://secure.campaigner.com/.../5is4-2c7mmx--suiig-p7rg4r7>



SECURE.CAMPAIGNER.COM

Download the Report on Georgia Election Fraud

Like · Reply · 19w



Zane Schauer

See my previous posts. Perhaps this report dated 21 December can be evaluated objectively and applied prospectively. It hasn't been evaluated or validated objectively - and it refers to hearsay about hearsay and it cites irregularities that have been shown to be of no consequence. Facebook is not a court of law.

Like · Reply · 19w



Jeff Jones

Zane Schauer No, the witness testimony was authoritative, factual and spot on. Many folks choose to ignore facts. Sad.

Like · Reply · 19w



Zane Schauer

Jeff Jones The folks who have chosen to reject the supposed facts are in fact the Justices and Judges and elected officials who have been duly empowered to consider them. What's sad is the preoccupation you and have with trying to prove Trump would have been reelected but for fraud. That is the "alternate reality" Pat Robertson referred to.

Like · Reply · 19w



Mark Davis

Zane Schauer you're confusing your issues here. One is lawsuits over the general election that are still working their way through the court system, and the other is the challenges being filed over the residency of individual voters who told the post office they were moving out of their county more than 30 days before the election, or out of the state entirely. Those challenges are not decided by Justices and Judges, but by county boards of elections.

If those folks did move, as they told the USPS they were doing, and the move was not temporary, then they are no longer lawfully permitted to vote in their old county, and they are not registered in their new county.

The counties who are rejecting those challenges are ignoring the NCOA processing the 1993 National Voter Registration Act permits a Secretary of State to act upon, and our own state laws in OCGA 21-2-233 and 234 not only allow our SOS to do NCOA, but REQUIRE him to do NCOA, so the "No probable cause" crap is absolute nonsense.

<https://law.justia.com/.../chapter-2/article-6/21-2-217/>

JUSTIA
U.S. Law

LAW.JUSTIA.COM

2010 Georgia Code :: TITLE 21 - ELECTIONS :: CHAPTER 2 -...

Like · Reply · 19w · Edited



Zane Schauer

I realize they are separate issues in terms of the adjudication officials - but they both spring from the same "blatantly obvious fraud" narrative which is still contesting the outcome of the Presidential

is still contesting the outcome of the Presidential election

Like · Reply · 19w



Mark Davis

These unresolved residency issues have actually been around for years. They're just getting more attention now. I see tens of thousands of voters who told the USPS they were moving to an address outside their county or their state more than 30 days before the election, but went back and voted in their old county anyway. If a judge agrees there were more unlawful votes than the spread between the vote totals, that judge can and should invalidate the election in Georgia. There were hundreds of thousands of similarly situated people who obeyed the law and didn't cast an unlawful vote, which is also an equal protection issue.

...

Like · Reply · 19w · Edited



Zane Schauer

As far as the spread goes, keep in mind the likelihood that not all unlawful votes were cast for Biden. The 3 million dollars spent on behalf of Trump to do a recount in the one Wisconsin county suspected of fraud resulted in a net gain for Biden of about 130 votes. It seems that there is an underlying assumption in all of the challenges that any and all transgressions and errors were made in favor of Biden. You can choose to believe that Republicans are saints and all Democrats are sinners - I choose to remember that both parties have been caught at dirty tricks and campaign fraud.

...

Like · Reply · 19w



Mark Davis

Zane Schauer under Georgia law we have secret ballots, and it does not matter who a person who casts an unlawful vote actually voted for. If the number of illegal or irregular votes exceeds the spread, which would call the outcome of the election into question, or the judge sees "Systemic irregularities", then the judge can and should invalidate the election.

...

Like · Reply · 19w · Edited



Zane Schauer

Mark Davis thanks for the clarification - so the election officials in each of Georgia's 159 counties make their own determinations - still subject to some judicial review it seems to me.

What I read seemed applicable to who gets to vote in the upcoming runoff election - rather than be applied retroactively to the Presidential election.

I'm bowing out of this thread because we aren't going to change each other's opinions.

...

Like a growing number of Americans - political party immaterial - I am looking forward to seeing more energy spent on addressing the serious issues our country is dealing with - rather than the maneuvering and machinations to undo, redo and do-do the Presidential election outcome.

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Merry Christmas!

Like · Reply · 19w



Mark Davis

Again I have to keep the issues separate. The challenge based on unlawful votes cast in the general happens in a courtroom, and the challenges to prevent people from casting illegal votes in the runoff happen before the various boards of election.

The issues overlap, but we're really talking about disparate issues. I agree with you though, I doubt minds are going to be changed. I've been working with voter data for over 30 years, and have been an activist for election integrity for about 20 years now, and have testified as an expert witness in 5 election disputes. So yea, I'm pretty opinionated on these topics.

Merry Christmas to you too.

Like · Reply · 19w · Edited



Zane Schauer

Mark Davis I readily admit that your experience exceeds mine over the last 30 years pf your life dealing with election integrity. My focus in graduate school back in the 70s was on the shameful voter suppression in the South which prompted passage of the Voting Rights Act of 1965.

I'm hopeful going forward that election integrity doesn't inadvertently resurrect voter suppression.

Like · Reply · 19w · Edited



Mark Davis

Please keep in mind nether the Voting Rights Act or the 1964 Civil Rights Act would have even been needed were it not for Democrats like Lester Maddox, Bull Conner, or George Wallace. When they blocked the doors to the schoolhouse in Arkansas, Republican President Dwight Eisenhower sent in federal troops to open them back up.

https://en.m.wikipedia.org/wiki/Civil_Rights_Act_of_1875

Like · Reply · 19w · Edited



2



Zane Schauer

And now - as Paul Harvey used to say - for the rest of the story... <https://billmoyers.com/.../when-the-republicans-really.../>



BILLMOYERS.COM

When the Republicans Really Were the Party of Lincoln |...

Like · Reply · 19w



Mark Davis

Bill Moyers is no Paul Harvey! 🤔

Like · Reply · 19w



Zane Schauer

Mark Davis we are supposed to evaluate the

message not the messenger...

Like · Reply · 19w



Mark Davis

Glad the Democrats finally came around and supported a bill based on the one we passed...

...in 1875.

Better late than never! ㄟ(ㄟ) ㄟ

https://en.wikipedia.org/wiki/Civil_Rights_Act_of_1875



EN.WIKIPEDIA.ORG

Civil Rights Act of 1875 - Wikipedia

Like · Reply · 19w



Zane Schauer

Mark Davis more current history seems more time relevant than past history - what was happening in 1965 is 90 years more contemporary than what was happening in 1875. Our country's history has shown that neither political party has been on the high ground all of the time.

Like · Reply · 19w · Edited



Rebecca King

Zane Schauer I thought you said you were bowing out of the discussion. But I wisely didn't believe it. To say you want more energy spent on important things happening to our country instead of election integrity is extremely short sighted and so misguided. I haven't seen any of that voter "suppression" in this day and time. Actually more of the opposite, mainly brainwashing and shaming poc to vote for a candidate who would definitely not be in their best interests long term. Leftists don't want them educated, aware of the truth, and thinking for themselves. Simply towing the leftist line is what they are expected to do!

Like · Reply · 19w



Zane Schauer

Rebecca King, I stayed in the thread out of respect for my exchange with Mark Davis. You can wisely believe this - your posting doesn't meet my standards for replying.

Like · Reply · 19w



Henry Hicks

Thankful for the hard work that you are making for voting integrity.

Like · Reply · 19w



Connie Pemberton Abel

Thank you!

Like · Reply · 19w



Chrsty Tyler Schpr

Thank you on behalf of the future of this county & the future for our children ! I was told by a former college mate that it was "quaint " that I was a Nationalist and against Globalist ... Marxist agendas ...

Bully Tactics don't work forever a #Patriot and a
#Constitutionalist !! ❤️

Like · Reply · 19w · Edited



Derek Somerville

Chrsty - I don't understand why, or how, anyone who seeks a fair and transparent election could oppose efforts to ensure only eligible voters participate...but we've had no shortage of people accusing us of voter suppress, disenfranchisement, and racism. Those accusations are of course absurd and have no effect on our efforts, but they do make you wonder about the motives of the people who make them. At any rate, stay in the fight!

...



1

Like · Reply · 19w · Edited



Robert Trim

Derek Somerville this has been the mantra for decades. They race card in particular has been used to the pint of throwing shackles across the table during voter ID hearings in the Senate in 2005. The democrats on the committee lead by Kasim Reed and Emmanuel Lewis refused to participate. I worked for the committee and the things we were called publicly and privately were vile. All because of a plan to secure elections

...

Like · Reply · 19w



Chrsty Tyler Schpr

Derek Somerville not leaving 😊 glad you aren't either !

...



1

Like · Reply · 19w



Pat Okeefe

Thank you For
Showing the country what REALLY
Happened to ALL
OF OUR VOTES!!

...



1

Like · Reply · 19w



Pat Okeefe

MAKE THE Whole
WORLD SEE THIS
FRAUD!!!
We VOTED for
PRESIDENT TRUMP!!!!

...

THANK
YOU



1

Like · Reply · 19w



Jim Flenniken

Marta Stewart you might find this interesting

Like · Reply · 19w



Cindy Bennett

Excellent..thank you!!

Like · Reply · 19w



Donna Cooper

Go vote! Perdue and loeffler need our backing. Vote Red!!!


Like · Reply · 19w



Melanie Szustak

Where do we sign up?


Like · Reply · 19w




Derek Somerville


December 17, 2020 · 🌐


Volunteers needed from each county for a voter-integrity project! 15-minute effort, performed from home. PM me if interested


 59

50 Comments 36 Shares

 Like

 Comment



 Share




Jennifer Lichty Ziolkowski

Sending pm

Like · Reply · 20w



 2



Robert Goddard

Do you have to live in Georgia?


Like · Reply · 20w



Derek Somerville

Robert Goddard Yes my brother, you do. But you can help in spirit! 😊


Like · Reply · 20w




Robert Goddard

I would help if I could. We need these 2 seats.




























Like · Reply · 20w

 1




Nancy Stewart Mayes



Derek Somerville Lord, I've done all I can do for the last 20 years and this is my final battle. We did

- manage to turn vv upside down over that time.
Like · Reply · 20w  1
-  Elizabeth Carden Good
Sent you a pm. ...
Like · Reply · 20w  2
-  Vickie Vandiver Merritt
Sending pm ...
Like · Reply · 20w  1
-  Nancy Stewart Mayes
Good luck. I will pray. ...
Like · Reply · 20w  1
-  Angie Spooner
Pm'd ...
Like · Reply · 20w  1
-  Mary Johnson
done ...
Like · Reply · 20w  1
-  Carol S Streeter
Derek, I am going to tag my friend Julia Cyrene and she would be a blessing to y'all. ...
Like · Reply · 20w  2
-  June Chocalla
Sending PM ...
Like · Reply · 20w  1
-  Jean Smith
What can I do ...
Like · Reply · 20w  1
-  Derek Somerville
Jean - Thanks for asking! If you're willing, please message me with your county and I can let you know if we have it covered or still need assistance. Thanks!! ...
Like · Reply · 20w
-  Bonnie McDaniel
I WILL P.M. YOU MY NUMBER ...
Like · Reply · 20w  2
-  Suzanne Tucker
I'm from Cobb if you need someone ...
Like · Reply · 20w  2
-  Debbie Harris Staver
Denice Sutton Semple Jan Popa will you do this with me for Cherokee? ...
Like · Reply · 20w  2
-  Denice Sutton Semple
Debbie Harris Staver yes!! ...
Like · Reply · 20w  1
-  Debbie Harris Staver
Denice Sutton Semple awesome! Thank you! ...
Like · Reply · 20w
-  Denice Sutton Semple
Debbie Harris Staver I heard from him ...
 1

- Like · Reply · 20w
-  Sylvia Anne Done ...
- Like · Reply · 20w
-  Christopher Lee Raley
How can I help? Buford GA ...
- Like · Reply · 20w  1
-  Byron Stewart
Sign me up!!!  2 ...
- Like · Reply · 20w
-  Annie Kate Head
Lee Ann Curtis Head! ...
- Like · Reply · 20w  1
-  Annie Kate Head
Rick Head ...
- Like · Reply · 20w
-  Annie Kate Head
Cynthia T. Scott ...
- Like · Reply · 20w
-  Cynthia T. Scott
Annie Kate Head Just saw this, I can help. ...
- Like · Reply · 20w
-  Cynthia T. Scott
Annie Kate Head Bibb County ...
- Like · Reply · 20w
-  Annie Kate Head
Cynthia T. Scott Message Derek Somerville ...
- Like · Reply · 20w
-  Derek Somerville
Thank you everyone for reaching out! I attempted to keep up with everyone last night and had to stop at 1:30am this morning! If you PM'd me and I haven't gotten back to you, I will soon! The response has been nothing short of inspiring! ...
- Like · Reply · 20w   4
-  Cheryl Odell
YAY!! ...
- Like · Reply · 20w
-  Stephen Collins
Still need a hand ? ...
- Like · Reply · 20w
-  Lynda K Kilko
Houston county. I will help. ...
- Like · Reply · 20w  1
-  Alta Shaerer
Henry county, I can help ...
- Like · Reply · 20w  1
-  Carol S Streeter
Derek Somerville, I tagged some of my die hard conservatives in the rural counties around me, so if any respond and you don't feel comfortable let me know but I think I covered most of the rural counties around me ...

RETRIEVED FROM DEMOCRACYDOCKET.COM

I think I covered most of the rural counties around me.  3
Like · Reply · 20w



 **Patrick Owens**
Can help in Glynn Co. and can find someone in Jeff Davis Co. ...
Like · Reply · 20w  1



 **Debbie Harris Staver**
Andrea Williams Ruff Dominique Hawkins ...
Like · Reply · 20w  1



 **Andrea Williams Ruff**
Me! ...
Like · Reply · 20w  1



 **Linda Menk**
Yes ...
Like · Reply · 20w  1



 **Laura Leonard Knapp**
I can help. Forsyth County ...
Like · Reply · 20w



 **Derek Somerville**
Thank you everyone! The response continues to be overwhelming! Trying to get back to everyone quickly, so please be patient with me. 😊 ...
Like · Reply · 20w  3

 **Betsy Ross**
Hey if video can help in anyway please let me know... ...
Like · Reply · 20w  2


 **Natalie Carnes Tilley**
Fulton County, would love to help! Sent a Pm ...
Like · Reply · 20w  1

 **Wendy Norman Rumford**
Hey I am in white county would love to help ...
Like · Reply · 20w  1


 **Melette Warner**
I can help in Jackson county!! ...
Like · Reply · 20w  1

 **Nicholas Poulos**
Sumter County here. ...
Like · Reply · 20w  1

 **Tracy Elaine**
Send pm. From Schley county. ...
Like · Reply · 20w  1

 **Kathy Hardy Mang**
I live in Muscogee County and will volunteer. ...
Like · Reply · 20w

 **Jim Flenniken**
I'm in. Tell me what you need. ...
Like · Reply · 19w  1

 **Michelle Rogers Knight**
Spalding County special called session tomorrow based on the challenge I filed. Will update outcome. ...
Like · Reply · 19w

EMO

Case 2:20-cv-00302-SCJ Document 174-12 Filed 06/06/22 Page 27 of 27

Exhibit 54

RETRIEVED FROM DEMOCRACYDOCKET.COM

From: Catherine Engelbrecht
Sent: Saturday, December 19, 2020 8:16 PM EST
To: Amy Holsworth
Subject: Citizen Challenge Q&A Zoom call Sunday night at 6p et

Good Evening Everyone!

Thank you for your willingness to stand in support of election integrity in your County! We'd like to get together tomorrow night on a Zoom call to talk about the deliveries of the challenges, how counties are reacting, what happens moving forward, and discuss any questions.

I'll be on the call, along with our legal team, our data/operations director, Gregg Phillips, and fellow Georgian and challenger Derek Somerville (whom most of you know).

We've scheduled a zoom call for Sunday at 6p et. If you can join in the call, please do!

[Here's the link to call in.](#)

Irish philosopher Edmund Burke once said "The only thing necessary for the triumph of evil is for good men to do nothing."

You, good people, are doing something. And together, all things are possible.

I look forward to visiting with you all tomorrow night. If you can't make the call, please know you can always reach me directly at this email address or by cell at 832.444.7701

Onward -

Catherine Engelbrecht

--



TRUETHEVOTE

Catherine Engelbrecht, President

+1 (713) 401 6017
truethevote.org

P.O. Box 3109 #19128
Houston, TX 77253-3109

**Somerville
Exhibit F
(10-6-21)**

WWW.DIGITALEVIDENCEGROUP.COM

Exhibit 55

RETRIEVED FROM DEMOCRACYDOCKET.COM



Derek Somerville My wife was one of the legitimate people they could've done an NCOA and still maintained Georgia residency. For over a year she was the primary caregiver to her father who was living in Charlotte North Carolina. During that time if she wanted to it would've been a very convenient thing for her to have had her mail directed to her at her fathers address. That said at no point in time did she ever relocate to North Carolina we paid taxes here in Georgia and we maintained a residency here in Georgia. She was/is a Georgia residence. If someone's going to take a convenience that the Postal Service offers and use it to corrupt our elections they need to be prosecuted to the full extent of the law. And that's the issue, no one ever gets prosecuted, there's no downside to it.

Like · Reply · 18w · Edited



1



Derek Somerville

Jim Flenniken Thanks for sharing. You are correct: there are literally thousands of individuals that legitimately use NCOA to forward their mail out of the county/state but who remain legal residents. As you are aware, in no way are these challenges intended to prevent people like your wife from voting. The issue is of course the thousands who used the NCOA, but in fact no longer reside in the state. At some point, if your wife filed an NCOA, the state will send her a note and ask her to verify that she is still a resident. She would of course indicate she still is, and the matter would end there. Very simple and straight-forward. But since that process hasn't been run by the state since early 2019, and given the unprecedented reliance this cycle on mail-in ballots, our challenges sought to force that verification. Sadly, the news mischaracterized the effort as one that 'purges' voters from the rolls, when it actually only asks the Board of Elections to verify the voter is still a resident. And of course, I couldn't agree more about the impact the lack of prosecution has on our laws. We have iron-clad examples of individuals who haven't lived in the state for years, who have no real property in Georgia, who pay taxes elsewhere and are registered to vote in another state, and who voted in our election. If not for NCOA, we would never have discovered them. And yet, I suspect nothing will happen to them. We need to elect true leaders who will fight for what is right, uphold the law, and never negotiate with those who seek to destroy the integrity of our elections for political gain. All that said, Happy New Year Sir!

Like · Reply · 18w

Exhibit 56

RETRIEVED FROM DEMOCRACYDOCKET.COM

From: Derek Somerville
Sent: Tuesday, December 15, 2020 2:30 PM EST
To: Mark Davis
Subject: RE: County Count

Some quick analysis of the challenges based upon how they voted

- 59% are for counties that voted 60% or more for Biden.
- 64% are for counties that voted blue (>50%)
- 55% are for counites that comprise Atlanta

60%+ BLUE	Sum of CHALLENGE COUNT	Sum of CHALLENGE COUNT2
NO	16,102	41.14%
YES	23,039	58.86%
Grand Total	39,141	100.00%

VOTED	Sum of CHALLENGE COUNT	Sum of CHALLENGE COUNT2
BLUE	25,031	63.95%
RED	14,110	36.05%
Grand Total	39,141	100.00%

ATL COUNTY	Sum of CHALLENGE COUNT	Sum of CHALLENGE COUNT2
ATLANTA	21,423	54.73%
NOT	17,718	45.27%
Grand Total	39,141	100.00%

From: Mark Davis <mark.davis@dataproductions.com>
Sent: Tuesday, December 15, 2020 2:23 PM
To: Derek Somerville <derek@spc-llc.com>
Subject: County Count

Mark Davis
 President
 Direct: 470-242-0734
 Fax: 678-496-3889
 Cell: 404-435-0217
mark.davis@dataproductions.com

**Somerville
 Exhibit 4
 (1-20-22)**

WWW.DIGITALEVIDENCEGROUP.COM



325 Wesfork Way
Suwanee, GA 30024

CONFIDENTIALITY NOTICE: This e-mail may contain privileged or confidential information and is for the sole use of the intended recipient(s). If you are not the intended recipient, any disclosure, copying, distribution, or use of the contents of this information is prohibited and may be unlawful. If you have received this electronic transmission in error, please reply immediately to the sender that you have received the message in error, and delete it. Thank you

RETRIEVED FROM DEMOCRACYDOCKET.COM

Exhibit 57

RETRIEVED FROM DEMOCRACYDOCKET.COM

From: Mark Williams
Sent: Thursday, December 17, 2020 7:52 AM EST
To: Art Department
Subject: Fwd: Data and letter
Attachments: GA Challenge Residency.docx

----- Forwarded message -----

From: **Gregg Phillips** <gregg@opsec.group>
Date: Wed, Dec 16, 2020 at 5:53 PM
Subject: Fwd: Data and letter
To: Mark Williams <mark@printingtradeco.com>

Gregg Phillips
Managing Partner
OPSEC Group
www.opsec.group

512-241-9789 (mobile)

“In a time of deceit telling the truth is a revolutionary act.” George Orwell

Begin forwarded message:

From: Gregg Phillips <gregg@opsec.group>
Date: December 16, 2020 at 3:03:35 PM EST
To: John David Phillips <johndavid@opsec.group>, Alec Jones <alec@opsec.group>, Cole <cole@opsec.group>
Subject: Fwd: Data and letter

Gregg Phillips
Managing Partner
OPSEC Group
www.opsec.group

512-241-9789 (mobile)

“In a time of deceit telling the truth is a revolutionary act.” George Orwell

**Williams
Exhibit 8
(9-23-21)**

WWW.DIGITALEVIDENCEGROUP.COM

Begin forwarded message:

From: Catherine Engelbrecht <catherine@truethevote.org>
Date: December 16, 2020 at 2:59:07 PM EST
To: mark@printingtradeco.com
Cc: Gregg Phillips <gregg@opsec.group>
Subject: Data and letter

Hi Mark -

Attached please find our residency challenge data and letter.

We didn't have the county election offices data ready to go, but we will have it within the next hour, so I will send your way asap.

Also, please remove addresses that would suggest they are military bases (Ft. Benning, Moody Air Force Base, Addresses with APO, FPO, or DPO in them...)

If you need anything at all from us, please don't hesitate to give me a call at 832.444.7701

For God and Country -
Catherine Engelbrecht

 [moved out of state or county.csv](#)

--



TRUETHEVOTE

Catherine Engelbrecht, President

+1 (713) 401 6017
truethevote.org

PO Box 3109 #19128
Houston, TX 77253-3109

Exhibit 58

RETRIEVED FROM DEMOCRACYDOCKET.COM

Files (/Files) > moved_out_of_state_or_county.csv

Details

Your file has been processed, view the report below or click on "Export" to create an export file ...

Created By

avinash@cover.me

Status

Completed

Name

moved_out_of_state_or_county.csv

Record Count

406,213

Create Date

12/16/2020 7:19:58 PM



TrueAppend Report (/Files/Report/0538f7a4-4990-438b-8697-f93df975f341)



Maximum Potential Credits Required	314,468
------------------------------------	---------

Hygiene Details

Records Processed	396,897 (97.71%)
Vacant Flag	11,461 (2.89%)

OPSEC 0009

DPV Updated/Address Corrected Records	351,943 (88.67%)
DPV Deliverable Records	378,194 (95.29%)
DPV Non-Deliverable Records	18,700 (4.71%)
LACS Updated (Rural Address converted to Street Address)	4,110 (1.04%)
Residential Delivery Indicator	396,865 (99.99%)
Addresses matched to the USPS Database	396,895 (100.00%)
Invalid Addresses	729 (0.18%)

Address Types

General Delivery Address	27 (0.01%)
High Rise Address	74,400 (18.75%)
PO Box Address	20,219 (5.09%)
Rural Route Address	46 (0.01%)
Single Family Address	300,594 (75.74%)
Unknown	211 (0.05%)

Match Details

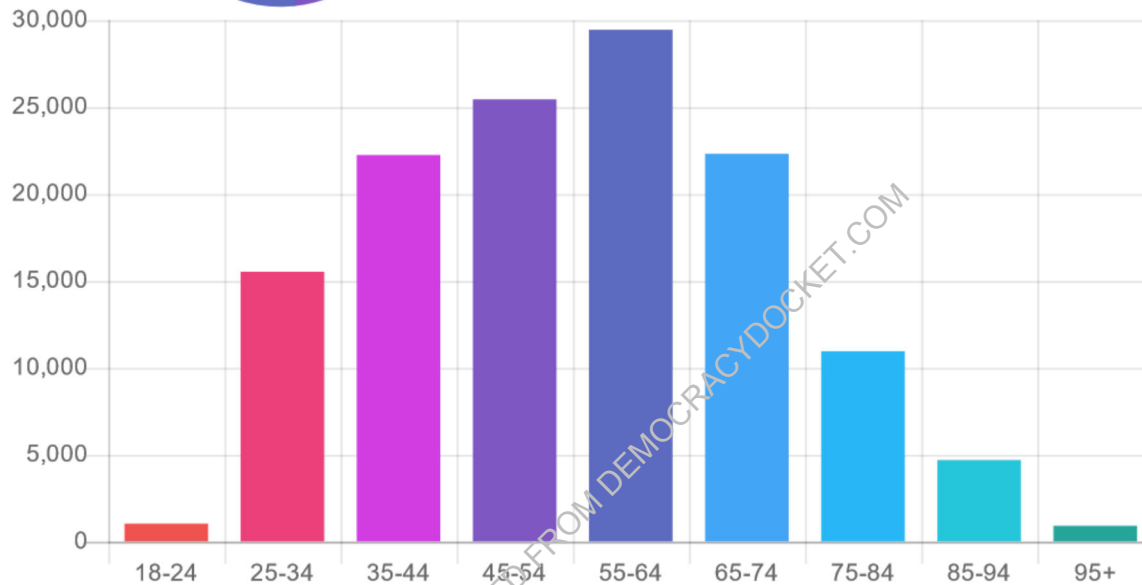
Duplicate Input Names and Addresses	35,043 (8.83%)
Valid Input Names and Addresses	361,852 (91.17%)

OPSEC 0010

Attributes

Age (13,257 Credits)

Indicates the age of an individual. (Note: Birth Year and Birth Month are also available via export and are directly related to Age. You should only purchase either Birth Year and Birth Month (2 attributes) or Age (1 attribute).)

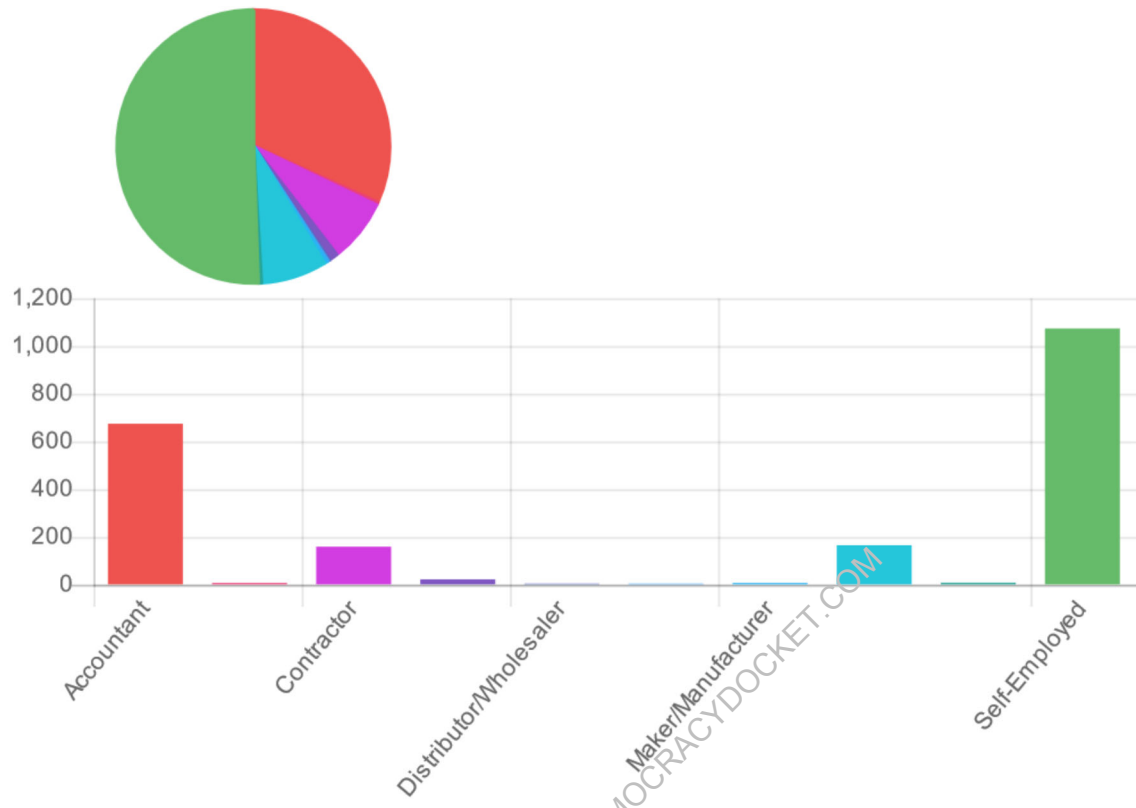


1.64% Missing Values

RETRIEVED FROM DEMOCRACYDOCKET.COM

Business Owner (213 Credits)

Indicates that an individual self-identified as a business owner.

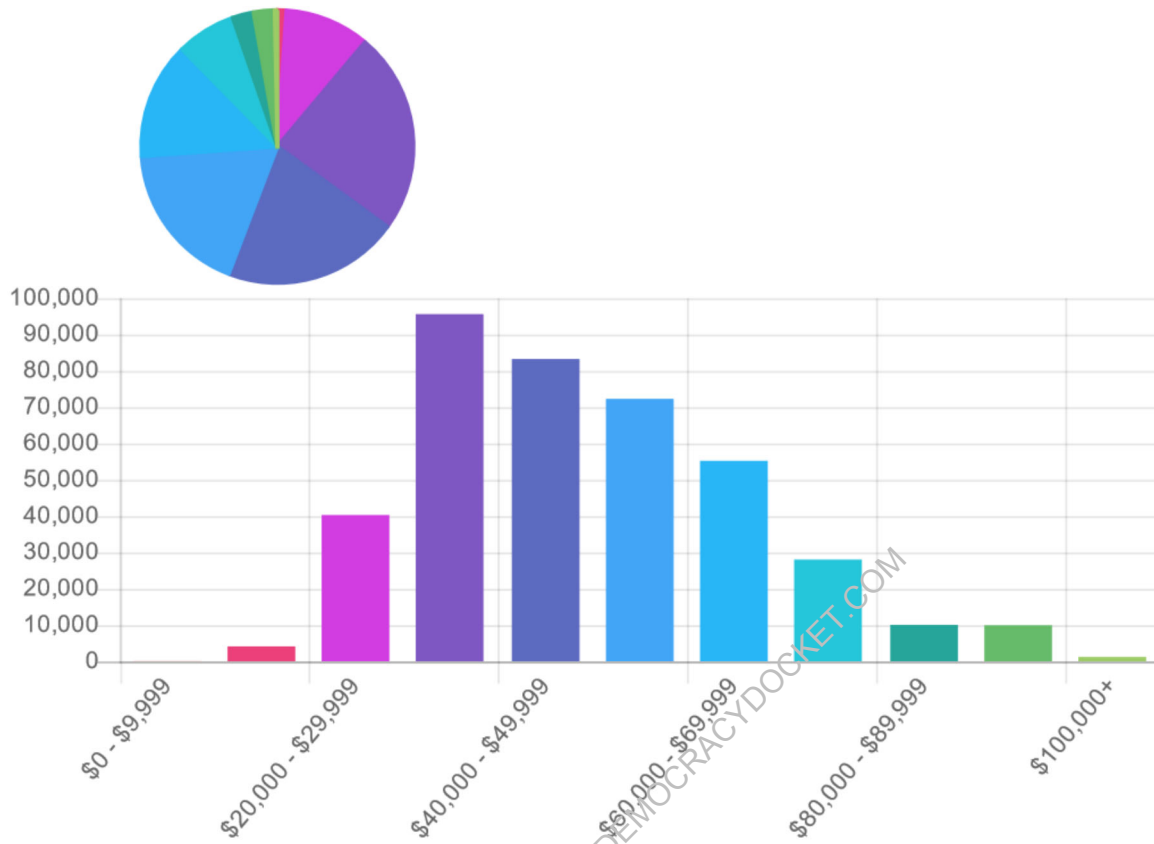


33.75% Missing Values

RETRIEVED FROM DEMOCRACYDOCKET.COM

Census Zip Median Household Income (Free)

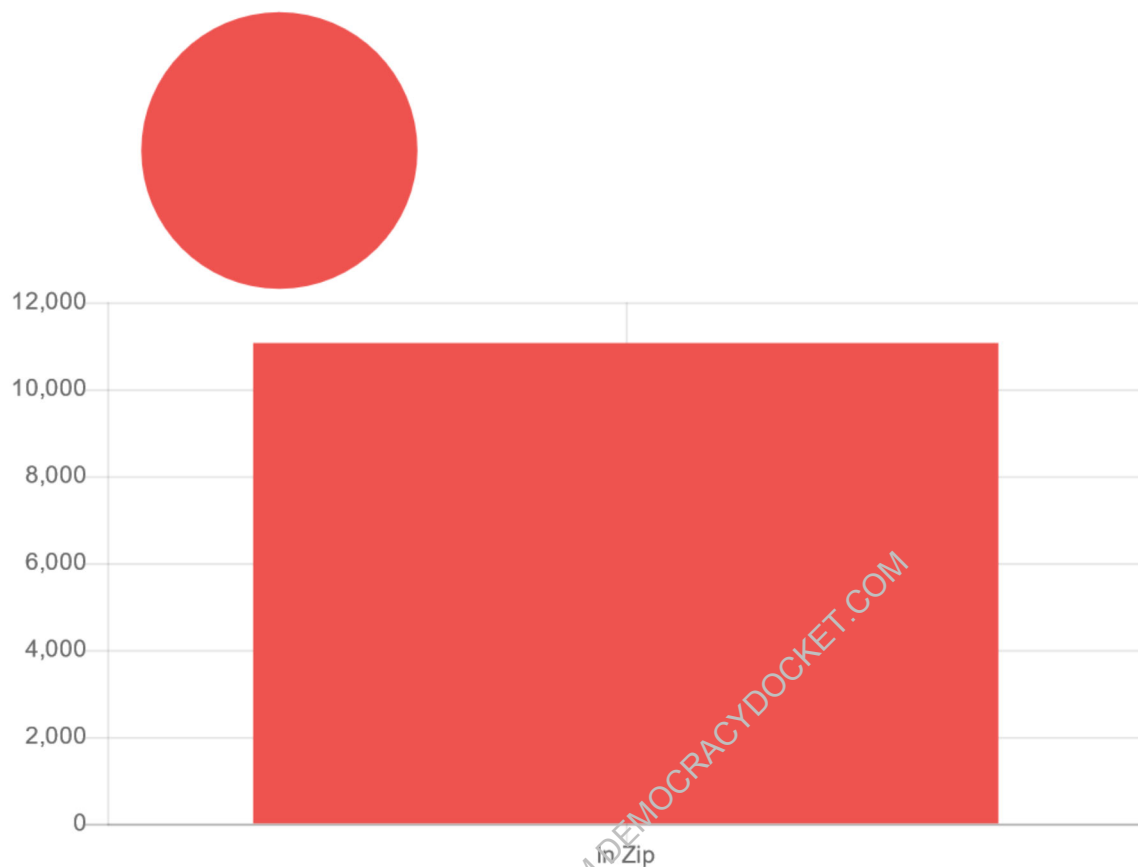
Indicates the median household income for zip.



0.00% Missing Values

Forbes Zip (Free)

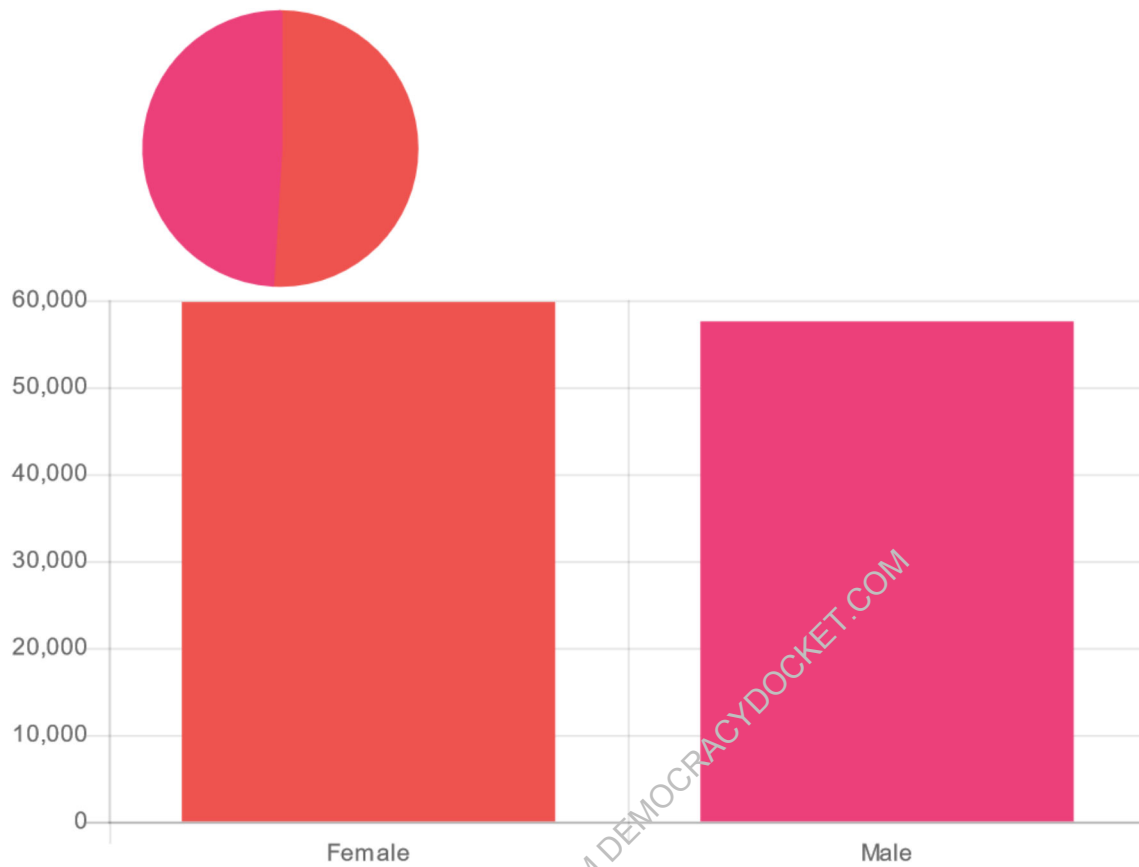
Zip code used to identify match to Forbes data.



0.00% Missing Values

Gender (Free)

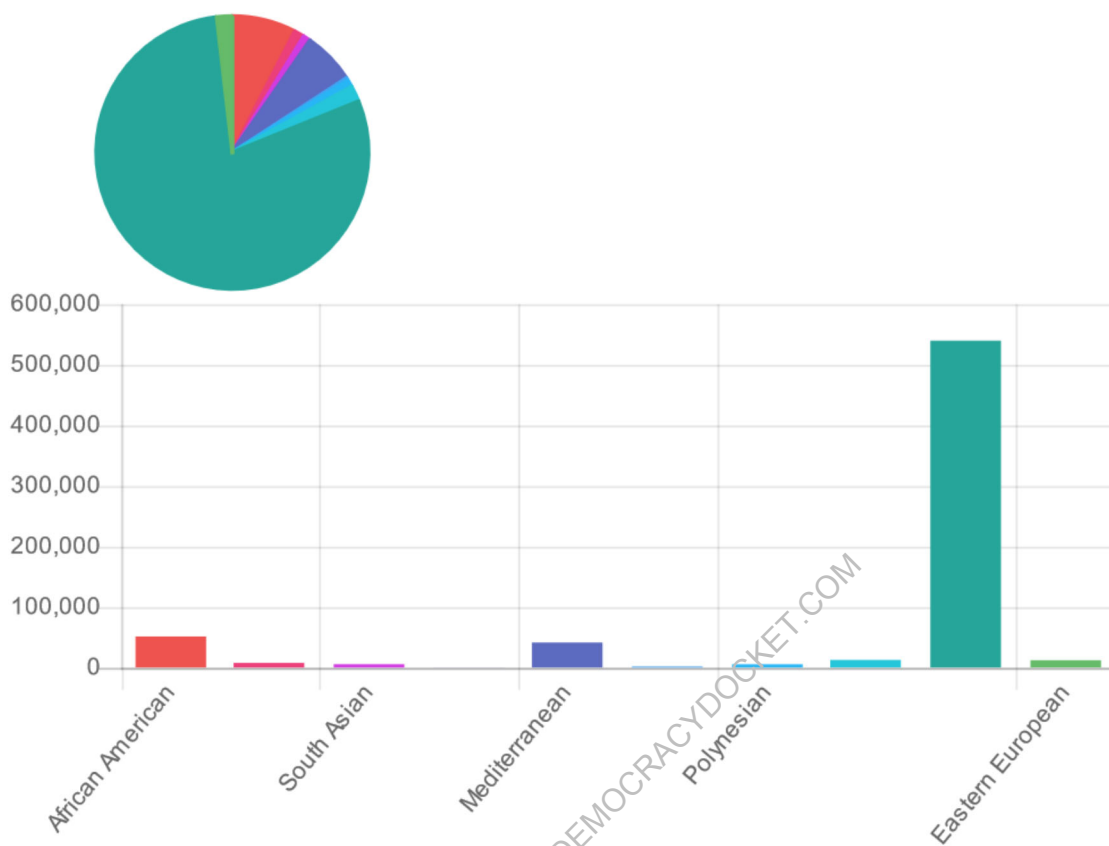
Indicates gender of an individual.



5.39% Missing Values

Heritage (68,071 Credits)

Indicates an individual's background.

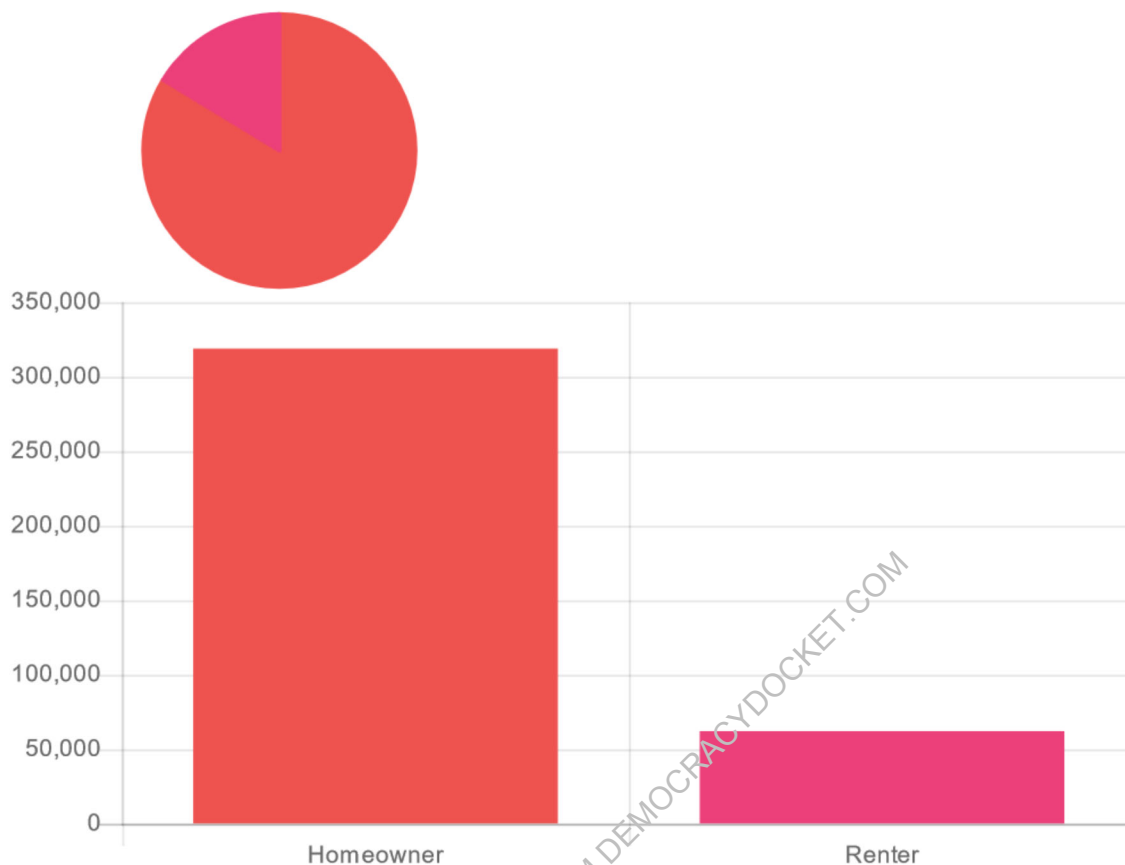


0.03% Missing Values

RETRIEVED FROM DEMOCRACYDOCKET.COM

Home Owner (38,099 Credits)

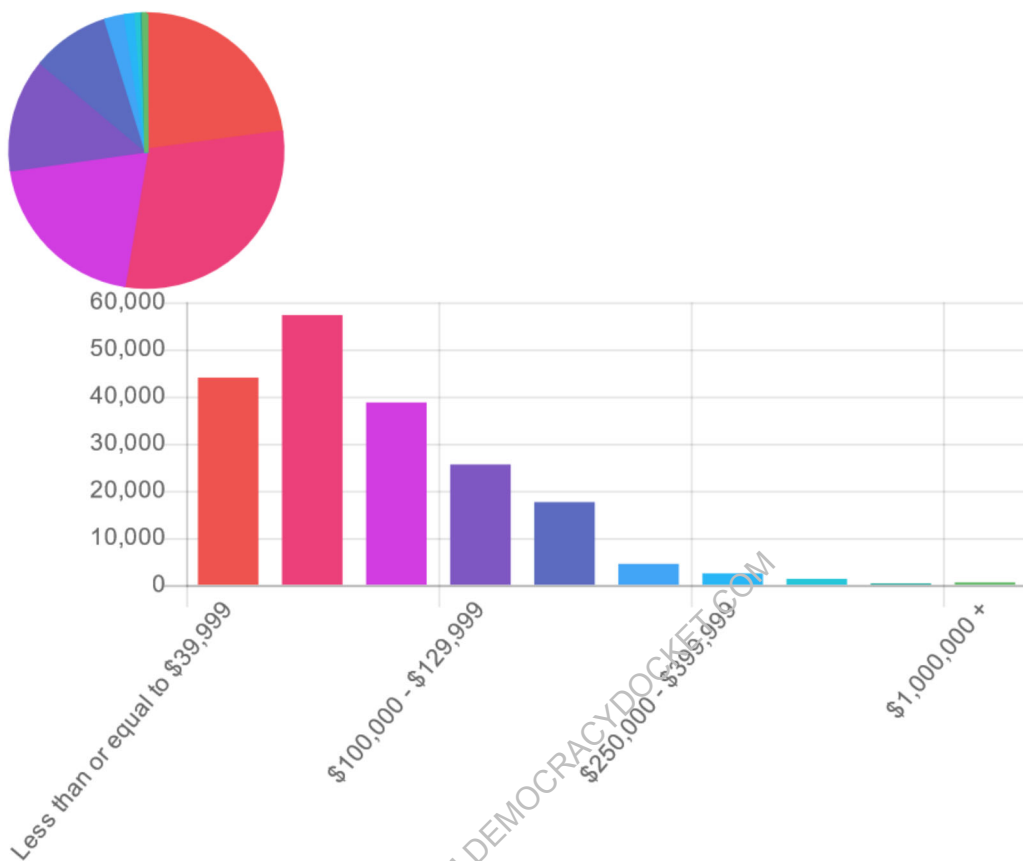
Indicates if the home is owner occupied or if the resident is a renter.



0.00% Missing Values

Income Decile (19,236 Credits)

Indicates the household income within a range.

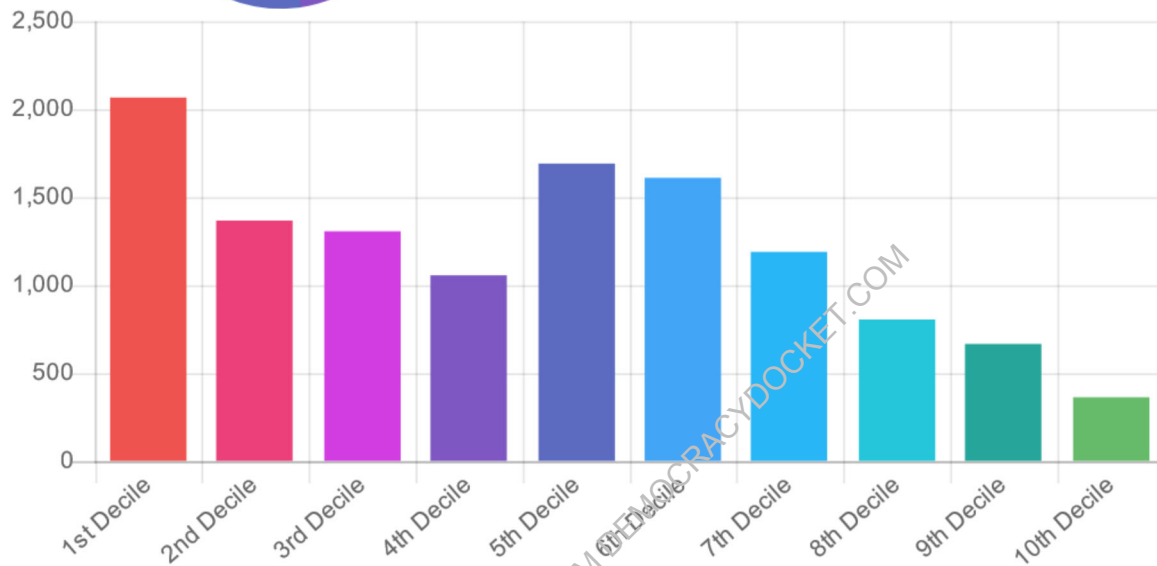


1.33% Missing Values

RETRIEVED FROM DEMOCRACYDOCKET.COM

Major Giving Decile (1,212 Credits)

A model that predicts the likelihood of donors giving a Major gift. The higher the decile, the more likely an individual is a qualified Major Giving prospect.

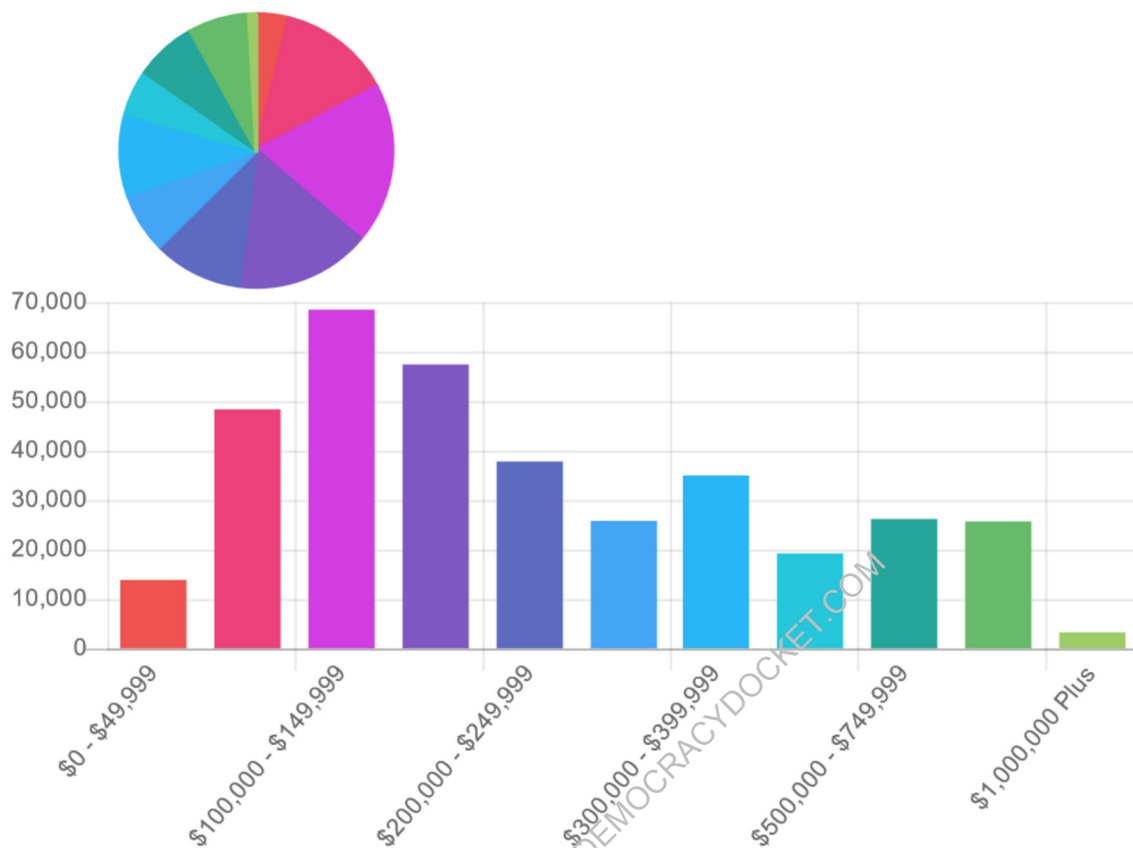


3.47% Missing Values

RETRIEVED FROM EMERALD CRACYDOCKET.COM

Market Value Range (36,111 Credits)

Indicates the market value of the home within a range.

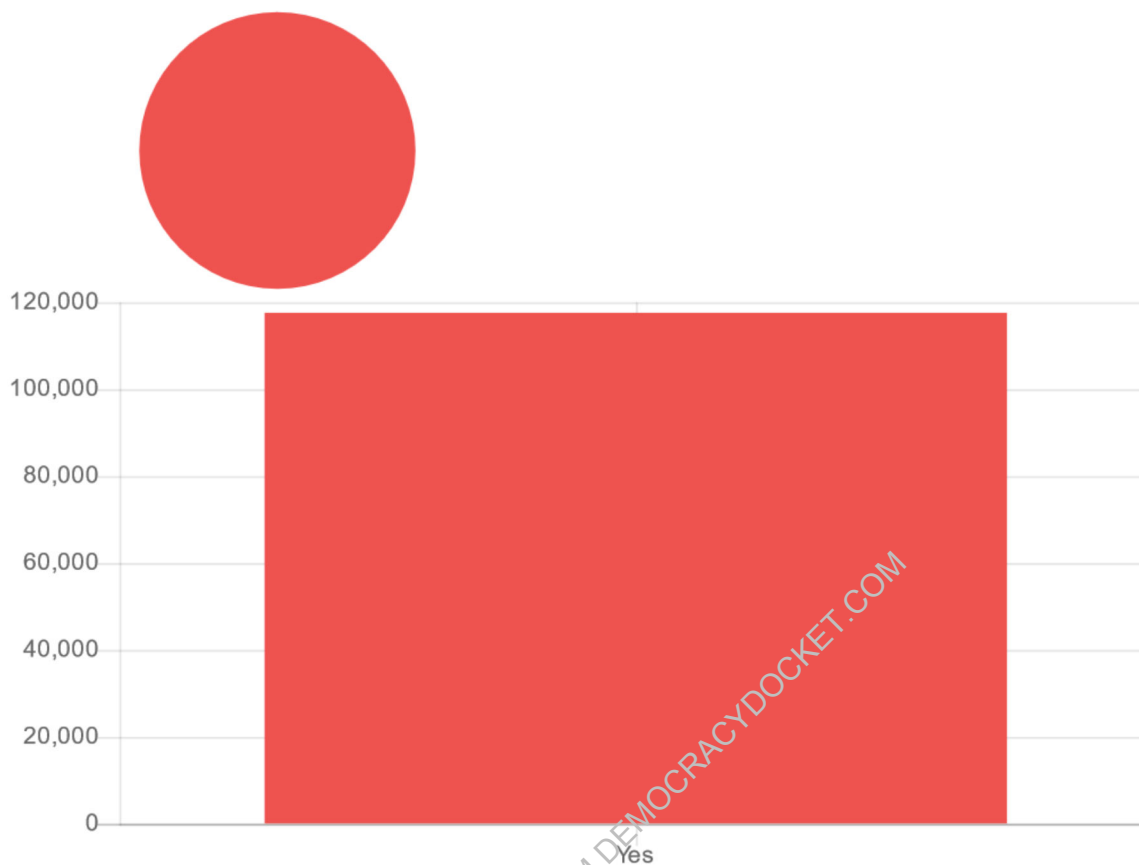


4.89% Missing Values

RETRIEVED FROM DEMOCRACYDOCKET.COM

Married (Free)

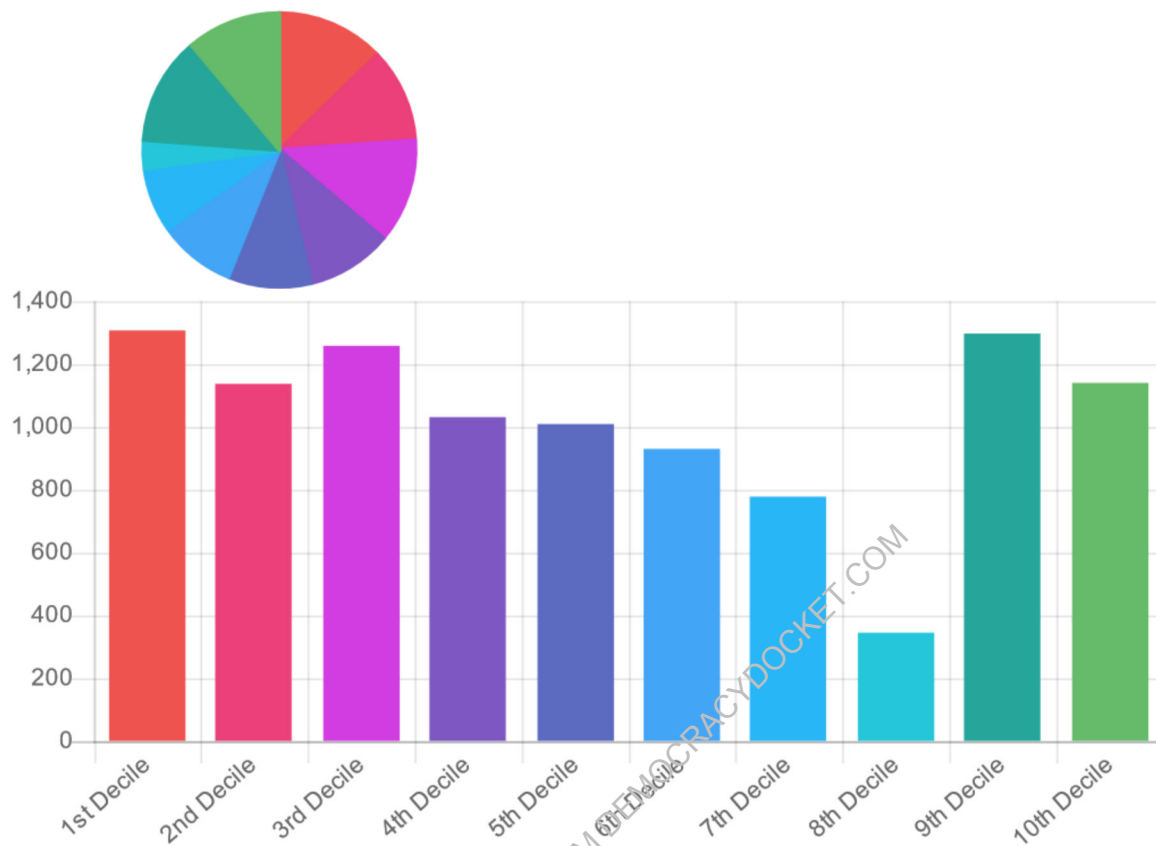
Indicates if anyone in the household is married.



19.74% Missing Values

Midlevel Giving Decile (1,024 Credits)

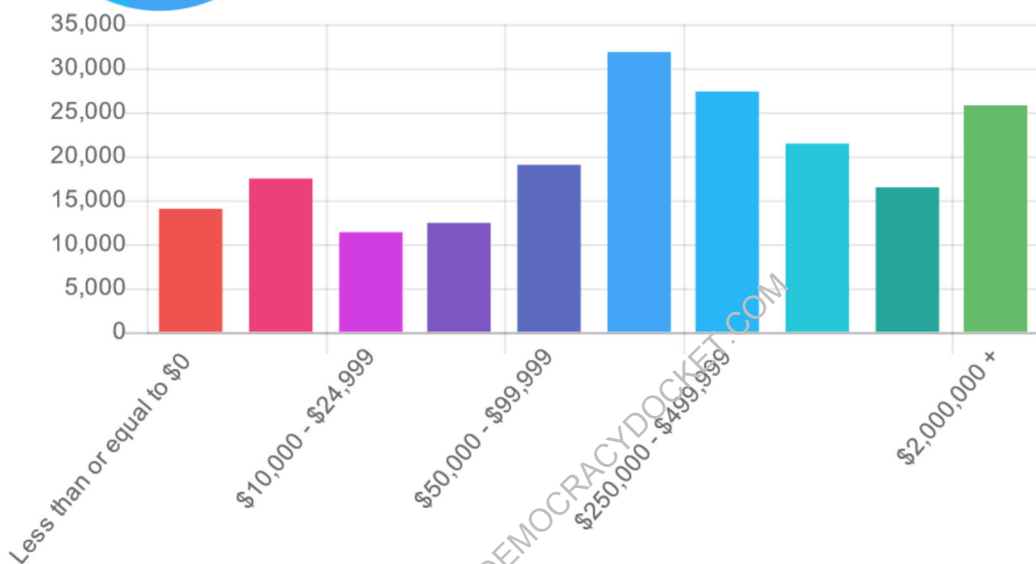
A model that predicts the likelihood of donors giving a Midlevel gift. The higher the decile, the more likely an individual is a qualified Midlevel Giving prospect.



3.93% Missing Values

Net Worth Decile (19,713 Credits)

Indicates the household net worth within a range.

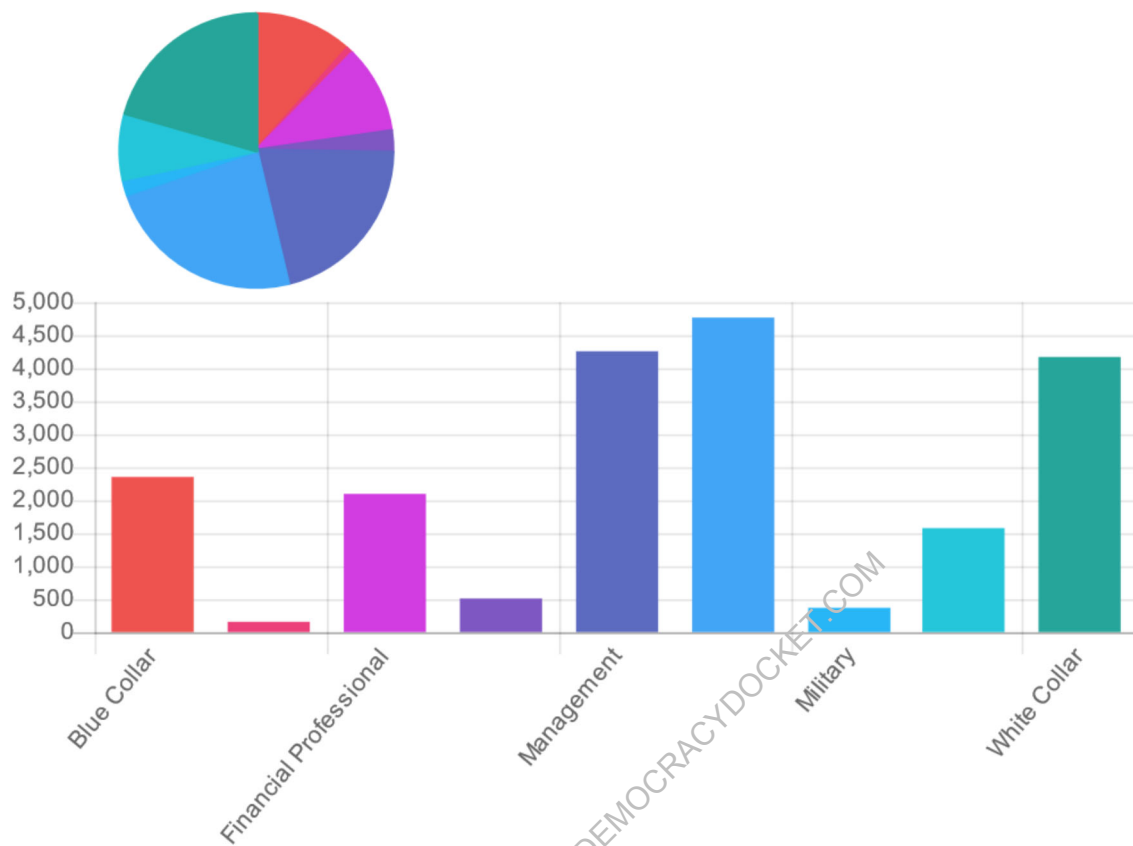


0.15% Missing Values

RETRIEVED FROM DEMOCRACYDOCKET.COM

Occupation (2,026 Credits)

Indicates an individual's occupation.

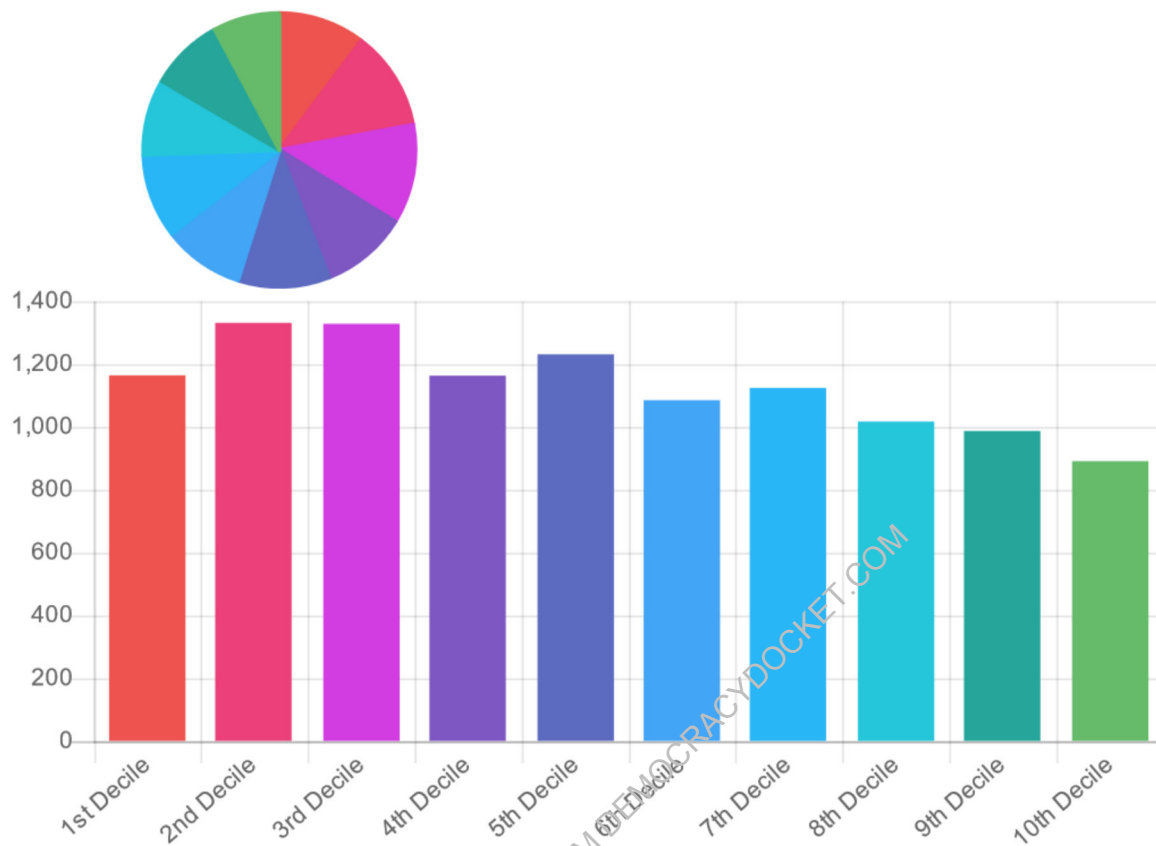


29.29% Missing Values

RETRIEVED FROM DEMOCRACYDOCKET.COM

Planned Giving Decile (1,133 Credits)

A model that predicts the likelihood of donors giving a Planned gift. The higher the score, the more likely an individual is a qualified Planned Giving prospect.

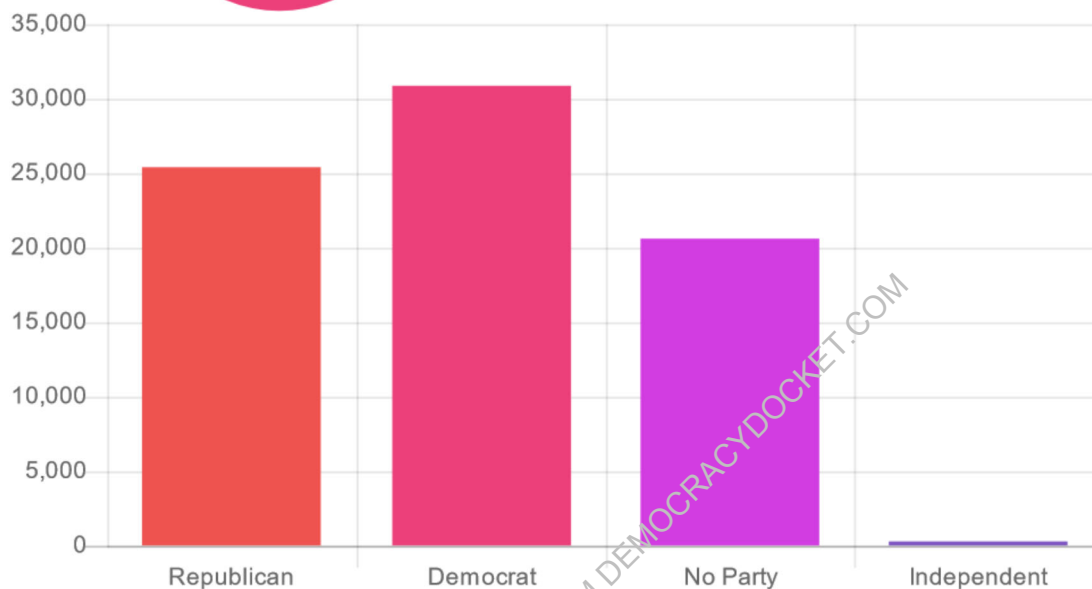


3.66% Missing Values

RETRIEVED FROM EMERALD CRACYDOCKET.COM

Political Party (7,717 Credits)

Indicates an individual's political party.

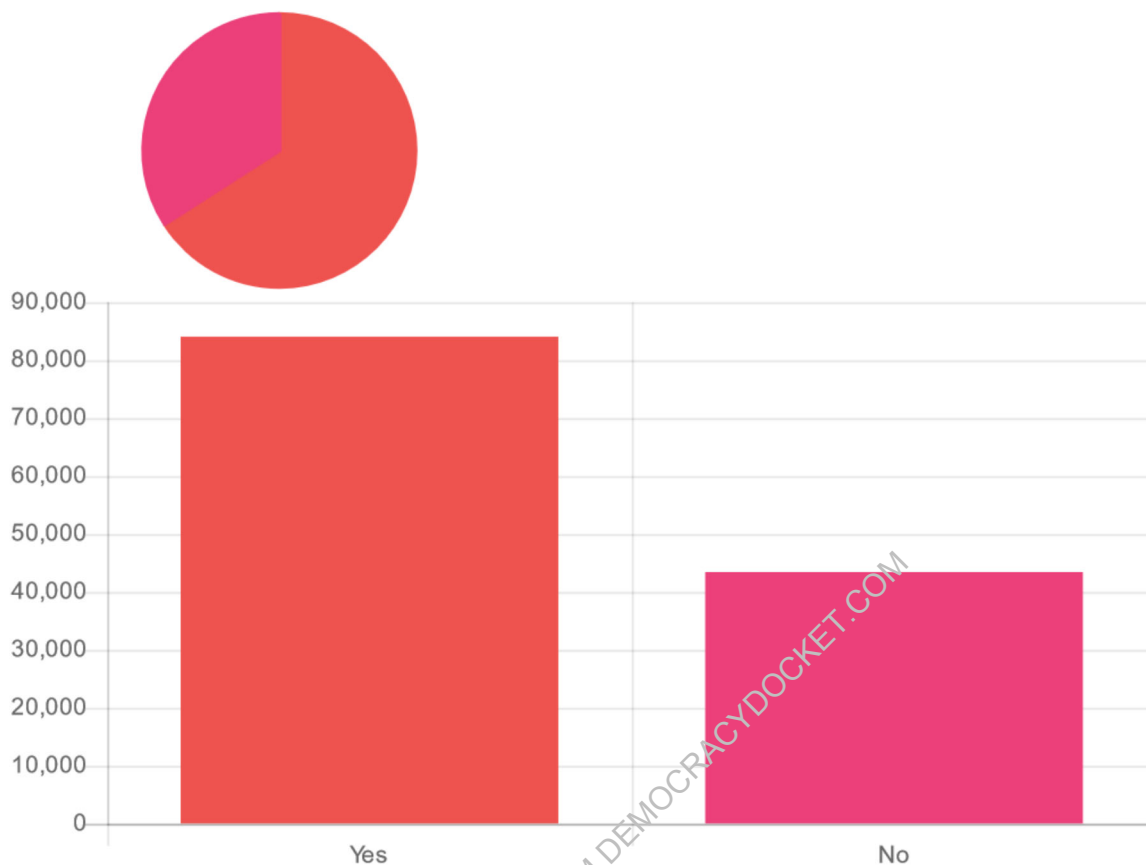


15.28% Missing Values

RETRIEVED FROM DEMOCRACYDOCKET.COM

Presence Of Children (12,749 Credits)

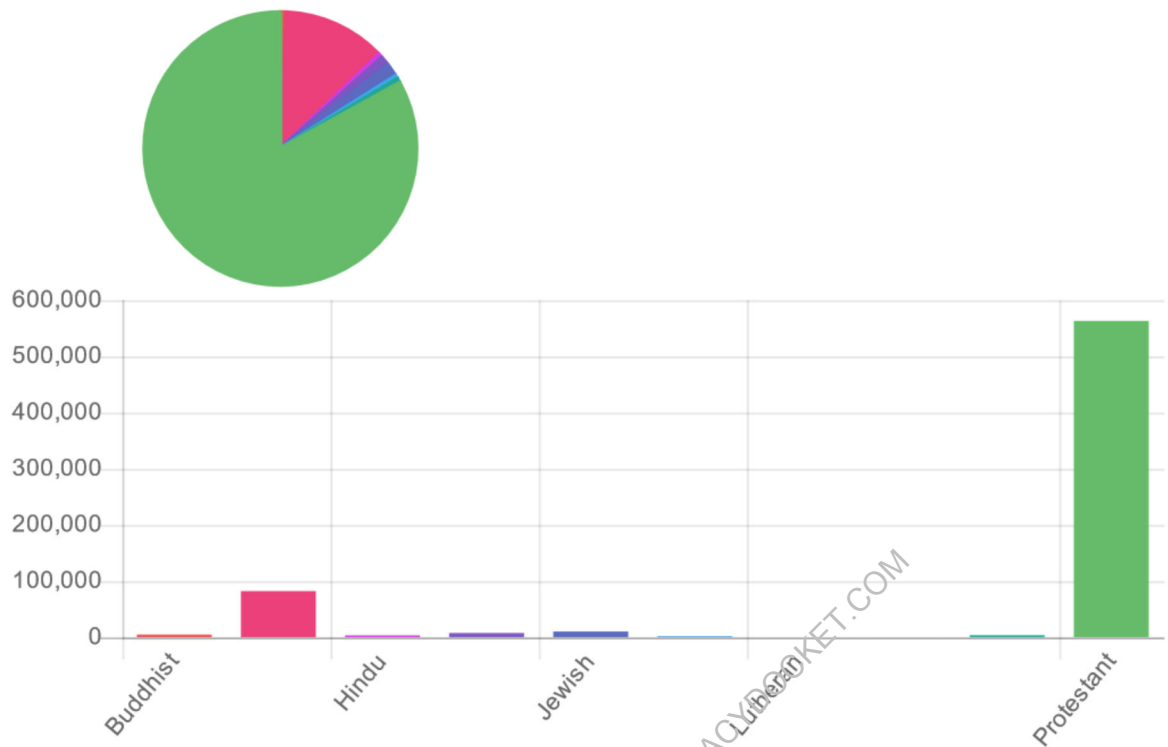
Indicates a household's known presence of children (0-17).



17.30% Missing Values

Religion (67,834 Credits)

Indicates an individual's religion.



0.61% Missing Values

Map (/Files/Map/0538f7a4-4990-438b-8697-f93df975f341)



Input Fields



Preview



History



RETRIEVED FROM DEMOCRACYDOCKET.COM

Exhibit 59

RETRIEVED FROM DEMOCRACYDOCKET.COM

For a statement of your obligations in producing documents under this subpoena see Rules 45(d), (e) and (f) of the Federal Rules of Civil Procedure, which appear on the final page of the subpoena. Documents should be produced within twenty-one (21) days of receiving this subpoena. To make arrangements for electronic production, contact Jacob Shelly at jshelly@perkinscoie.com. Anything that cannot be produced electronically should be produced to ARC, 3104 4th Ave, South, Birmingham, Alabama 35233. The production should be made pursuant to the Definitions and Instructions below.

DEFINITIONS

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

1. “Challenge List” means any list of Targeted Voters submitted in connection with an Elector Challenge.

2. “Communication” means any transfer of information, whether written, oral, electronic, or otherwise, and includes transfers of information via email, report, letter, text message, voicemail message, written memorandum, note, summary, and other means.

3. “County” means any county in Georgia, as well as all employees, staff, agents, and representatives of the county, including the county boards of elections

offices, county registrars, or any other person with a responsibility for conducting or supervising elections in the county.

4. “Date” means the exact day, month, and year, if ascertainable, or, if not, the best available approximation (including relationship to other events).

5. “December 18, 2020 Press Release” means the press release posted on True the Vote’s Website on that date, attached hereto as Exhibit B.

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

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

8. “Elector Challenges” means the challenges to the eligibility of registered Georgia voters in advance of the Run-off Election.

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

10. “Identify,” when used in reference to a government agency, firm, partnership, corporation, proprietorship, association, other entity, or person, means to state its, his, or her full name and present or last-known address.

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

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

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

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

other legal, business, or government entities; and all subsidiaries, affiliates, divisions, departments, branches, and other units thereof or any combination thereof.

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

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

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

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

19. “True the Vote Website” or “Website” means the website maintained by True the Vote at <https://truethevote.org>.

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

21. “You” and “your” means OpSec Group LLC and any of its officers, directors, partners, members, managers, employees, representatives, agents, consultants, or anyone acting on its behalf.

INSTRUCTIONS

You are to follow the instructions set forth below in responding to these requests.

1. Pursuant to Federal Rule of Civil Procedure 45(d)(2)(B), if you object to any part of a request, set forth the basis of your objection and respond to all parts of the request to which you do not object. Any ground not stated in a timely objection is waived.

2. If, in responding to these requests, you encounter any ambiguities when construing a request or definition, set forth in your response what you find ambiguous and the construction you used in responding. Where you, in good faith, doubt the meaning or intended scope of a request, and the sole objection would be to its vagueness, overbreadth, or ambiguity, please contact Plaintiffs' counsel for clarification in advance of asserting an objection.

3. With respect to any document withheld on a claim of privilege or work-product protection, provide a written privilege log identifying each document individually and containing all information required by Federal Rule of Civil Procedure 45(e)(2), including a description of the basis of the claimed privilege and all information necessary for Plaintiffs to assess the claim of privilege.

4. You should produce all documents available to you or subject to your access or control that are responsive to the requests. This includes documents in your

actual or constructive possession or control, as well as that of your investigators, experts, representatives, agents, and any other persons acting on your behalf.

5. Documents are to be produced as they are kept in the ordinary course of business. Accordingly, documents should be produced in their entirety, without abbreviation, redaction, or expurgation; file folders with tabs or labels identifying documents responsive to this request should be produced intact with the documents; and documents attached to each other should not be separated.

6. All documents are to be produced in electronic form and meet the following criteria:

Printed Materials. All printed materials should be scanned and produced in electronic form. The printed materials shall be converted to a single page TIFF images and produced as follows: (i) images of all file labels, file headings, and file folders associated with any hard copy document will be produced with the images of the hard copy documents; (ii) document breaks for paper documents shall be based on Logical Document Determination (or “LDD”), rather than on physical document breaks; and (iii) the database load file shall include the following fields: BEGBATES, ENDBATES, BEGATTACH, ENDATTACH, CUSTODIAN, CONFIDENTIALITY, REDACTED, and CDVOLUME.

Metadata Fields and Processing. The following metadata and coding fields should be produced along with each produced document: BEGBATES, ENDBATES, BEGATTACH, ENDATTACH; CUSTODIAN, CONFIDENTIALITY, REDACTED, OTHER_CUSTODIAN, and CDVOLUME. The OTHER_CUSTODIAN field should be populated to identify other custodians in possession of the document before deduplication was applied to the data set.

TIFFS. Single page Group IV TIFFs should be provided, at least 300 dots per inch (dpi). Single page TIFF images should be named according to the unique bates number, followed by the extension “.TIF”. Original document

orientation should be maintained (i.e., portrait to portrait and landscape to landscape).

Text Files. For each document originating in electronic format, a text file containing the full text of each document should be provided with the image files and metadata. Text of native files should be extracted directly from the native file. The text file should be named according to the unique bates number, followed by the extension “.TXT.” The full text and/or OCR of any document should not be contained within a database load file, but rather as a standalone file with each text file containing an entire document as they are defined.

Database Load Files. An ASCII delimited data file (.txt, .dat, or .csv) that can be loaded into commercially acceptable database software (e.g., Concordance) should be provided. The first line of each text file must contain a header identifying each data field name (i.e., header row). Each document within the database load file must contain the same number of fields as defined in the header row.

Cross-Reference Image File Registration. An image load file that can be loaded into commercially acceptable production software (e.g., Opticon, iPro) should be provided. Each TIFF in a production must be referenced in the corresponding image load file. An exemplar load file format is below.

Bates Numbering. All images must be assigned a unique and sequential Bates number.

Native File Productions. If a native file is produced, it should include a TIFF image as a placeholder for the file to represent the file in the production set. The TIFF image placeholder for a native file should be branded with a unique Bates number and state “See Native Document” on the TIFF image. The native file should then be renamed to match the Bates number assigned to the document with its original file extension. The filename field produced in the production load file that reflects the original metadata should maintain the original file name.

Microsoft Office files, WordPerfect, other standard documents (e.g. Google Docs and PDF documents). MS Office files, WordPerfect, other standard documents, such as PDF documents and Google Docs, should be converted to single-page TIFF images and produced consistent with the specifications

herein. If the document contains comments or tracked changes, the TIFF images must be generated to include the comments or track changes in the file.

Email and attachments. E-mail and attachments should be converted to single-page TIFF images and produced consistent with the specifications provided herein. Attachments shall be processed as separate documents, and the text database load file shall include a field identifying the production range of all attachments of each e-mail.

Embedded Files. Embedded files shall be treated as separate files. The load file shall include a field identifying, for each document containing an embedded file, the production range of any such embedded file. This production range may be identified in the same field as the production range of an e-mail attachment.

Color Documents. Except as otherwise specifically provided herein or agreed to by the Parties, documents originally in color need not be produced in color unless the production in black and white alters or obscures the substance of the document. Documents produced in color must be produced with agreed compression.

Redactions. If a document requires redaction, native files, full text and/or OCR, and specified metadata fields will be excluded. The TIFF image should show the caption [Redacted, Redacted-Privileged, Redacted-PII, etc.] where applicable and a production load file field should be populated to indicate the document contains a redaction.

Encryption. Industry-standard encryption tools and practices must be used when transferring data. Passwords must be at least 8 characters with a mix of character sets and sent in a separate communication from the encrypted data.

Notwithstanding the foregoing, the parties may negotiate a separate production format when necessary.

7. If any otherwise-responsive document was, but is no longer, in existence or in your possession, custody, or control, identify the type of information

contained in the document, its current or last known custodian, the location/address of such document, and the identity of all persons having knowledge or who had knowledge of the document, as well as describe in full the circumstances surrounding its destruction, loss, or other disposition from your possession or control.

8. Materials sought by these requests for production that become available after you serve your responses must be disclosed to counsel for Plaintiffs by supplementary response or responses.

9. If you contend that it would be unreasonably burdensome to obtain and provide any or all of the documents called for in response to any request, then in response to the appropriate request: (a) produce all such documents as are available to you without undertaking what you contend to be an unreasonably burdensome effort; (b) describe the efforts you made to obtain the documents you can produce, identifying who you consulted, describing the files, records and documents you reviewed, and identifying each person who participated in the gathering the documents, specifying the amount of time spent and the nature of work done by that person; and (c) state why the additional efforts to produce other responsive documents would be unreasonably burdensome.

10. A reference to an entity shall be construed to include its officers, directors, partners, members, managers, employees, representatives, agents, consultants, or anyone acting on its behalf.

11. To the extent that you do not have any documents reflecting the information requested, and/or any means of recording the information requested, please so indicate in your response to the specific request.

REQUESTS FOR PRODUCTION

Request for Production No. 1: All communications between you and True the Vote regarding any “voter registry research” as referenced in True the Vote’s December 18, 2020 press release, including but not limited to communications with other persons involved in preparing the Challenge List or any other lists of Targeted Voters.

Response: Produced, to the extent in OPSEC’s care, custody, and control, subject to the objections detailed below. Most of the communications between OPSEC and True the Vote were conducted via verbal communications. OPSEC (or Gregg Phillips) and True the Vote have worked together on many similar data and voter analysis projects over the past eight years, so they did not need to communicate regarding this specific project via written communications to a great extent.

OPSEC objects to the production of methodology materials to the extent the Request asks for documents and communications subject to trade secrets,

proprietary information, or to which OPSEC is subject to contractual confidentiality agreements.

Request for Production No. 2: All contracts, instructions, requests, and guidance between you and True the Vote regarding the production of the Challenge List or any other list of Targeted Voters prepared in connection with the Elector Challenges.

Response: Produced, to the extent in OPSEC's care, custody, and control, subject to the objections detailed below.

OPSEC objects to the production of methodology materials to the extent the Request asks for documents and communications subject to trade secrets, proprietary information, or to which OPSEC is subject to contractual confidentiality agreements.

Request for Production No. 3: All documents and communications relating to the methodology you relied upon in producing the Challenge List or any other list of Targeted Voters prepared in connection with the Elector Challenges, and the basis for identifying any of the Targeted Voters.

Response: Produced, subject to the objections detailed below.

OPSEC combines 30 years of experience and expertise with public, commercial and private data sources in a single repository for evaluation.

We deploy commercially available software tools such as JMP, DataWalk and Minitab to execute proprietary algorithms, queries and various regression techniques to ensure accurate resolution of voter eligibility criteria such as identity, residency, citizenship, age, and felon status.

Our analysts use scoring, similarity, dissimilarity and other accepted techniques to allow machine learning to take the place of human error and slow speeds to arrive at fast, accurate conclusions.

OPSEC objects to the production of methodology materials to the extent the Request asks for documents and communications subject to trade secrets, proprietary information, or to which OPSEC is subject to contractual confidentiality agreements.

Request for Production No. 4: All documents and communications that you reviewed to assess or ensure the reliability or accuracy of the Challenge List or any other list of Targeted Voters that were submitted with the Elector Challenges.

Response: Produced, to the extent in OPSEC's care, custody, and control, subject to the objections detailed below.

OPSEC objects to the production of methodology materials to the extent the Request asks for documents and communications subject to trade secrets, proprietary information, or to which OPSEC is subject to contractual confidentiality agreements.

Request for Production No. 5: All communications regarding the reliability or accuracy of any Challenge Lists or lists of Targeted Voters that were submitted with the Elector Challenges, or any databases you relied upon in creating such lists.

Response: Produced, to the extent in OPSEC's care, custody, and control, subject to the objections detailed below.

OPSEC objects to the production of methodology materials to the extent the Request asks for documents and communications subject to trade secrets, proprietary information, or to which OPSEC is subject to contractual confidentiality agreements.

Request for Production No. 6: All billings, invoices, and payment records relating to your preparation of the Challenge List or any other lists of Targeted Voters.

Response: Produced, to the extent in OPSEC's care, custody, and control.

Exhibit 60

RETRIEVED FROM DEMOCRACYDOCKET.COM

From: Watson, Frances
Sent: Tuesday, April 6, 2021 12:55 PM
To: Ryan Germany

The list of voters that had filed a National Change of Address form (NCOA) and also requested an Absentee Ballot be mailed to the out of state address were compiled for the November 2020 Election. There were approximately 8,094 that were identified. Those voters were mailed a letter and a questionnaire and requested to complete and return.

There were 1066 (13.17024%) that returned the questionnaire as of 04/06/2021.

Out of the returns it was found:

74 were active military or spouse
151 were visiting/assisting family temporarily
24 were out of state due to medical treatment
431 were in the process of moving to the new state but had not completed the move at the time of the election.
127 were temporarily out of state due to job assignment
10 reported they were temporarily out of state due to COVID
38 reported having a second home in another state with Georgia as the primary state of residence
17 Georgia residents reported having their mail forwarded to family members in another state as they needed assistance with day to day finances
39 responded that Georgia is their primary residence and did not provide a reason
7 responded they were temporarily traveling
2 are now deceased
26 reported they were in the process of relocating and had made the move just prior to the election
13 reported they relocated prior to July 2020-

Out of those responding to the survey there was 1.2195 % (13) that should have had time to register in the new state. Many reported that due to COVID they were having difficulty getting appointments to obtain their driver's license in the new state and believed they needed the new driver's license in order to complete their registration in the new state.

With a 13.17024 % response rate it would be reasonable to conclude that 1.2195 % would be the average rate of possible ineligible voters from the original 8094. Resulting in an estimate of approximately 98.70 ineligible voters

All those that reported that they have relocated were sent a voter cancelation form to cancel their Georgia Voter Registration.

Exhibit 61

RETRIEVED FROM DEMOCRACYDOCKET.COM

From: Fuchs, Jordan <jfuchs@sos.ga.gov>
 To: Germany, Ryan <rgermany@sos.ga.gov>
 Raffensperger, Brad <brad@sos.ga.gov>
 Sterling, Gabriel <gsterning@sos.ga.gov>
 Jones, Walter <wjones@sos.ga.gov>
 Schaffer, Ari <aschaffer@sos.ga.gov>

Date: 7/13/2021 7:13:59 PM

Subject: Re: Mark Davis

Walter please get this to the fact checker who is on deadline.

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From: Germany, Ryan <rgermany@sos.ga.gov>
 Sent: Tuesday, July 13, 2021 7:11:35 PM
 To: Raffensperger, Brad <brad@sos.ga.gov>; Fuchs, Jordan <jfuchs@sos.ga.gov>; Sterling, Gabriel <gsterning@sos.ga.gov>; Jones, Walter <wjones@sos.ga.gov>; Schaffer, Ari <aschaffer@sos.ga.gov>
 Cc: Beck, Sarah <sbeck@sos.ga.gov>; Evans, Blake <bevans@sos.ga.gov>; Watson, Frances <fwatson@sos.ga.gov>
 Subject: Mark Davis

Below is a quick legal analysis of the issue Mark Davis is pushing regarding in-state moves. Thanks to Sarah for helping me find the relevant state laws.

Bottom line is that determining whether someone who moved from one county to another should have been eligible to vote in the November election requires applying a complicated array of both federal and state law (some of which are contradictory) to each individual's specific factual scenario. A spreadsheet listing voters' names doesn't come close to meeting that standard.

As Mark Davis himself admitted in a sworn declaration he submitted in December 2020, the list maintenance restrictions that the National Voter Registration Act (NVRA) puts on states makes it difficult to keep voter rolls up to date when people move. The NVRA was passed in 1993 and applies to all states, so this is not a new issue, and I don't think it is unique to Georgia. The NVRA's 90 day blackout period from conducting systematic list maintenance prior to a federal election precludes states taking any systematic action with NCOA data basically for the entire election year. As Mark also alludes to in his December declaration, courts in Georgia have found that inclusion on an NCOA list alone is not a sufficient reason to challenge the voter's eligibility to vote. *See Majority Forward v. Ben Hill County Board of Registrations*. The NVRA requires individualized inquiry into each voter's situation. Calling these voter's illegal voters without doing that individualized inquiry is a disservice.

The NVRA says that states shall not remove the name of a registrant from the official list of eligible voters in elections for Federal office on the ground that the registrant has changed residence unless the registrant goes through the procedures set forth by the NVRA. *See 52 USC 20507(d)(1)*. Those procedures must take place outside of 90-days before a federal election.

Georgia law says that all persons whose names appear on the list of electors shall be allowed to deposit their ballots according to law at the precinct in which they are registered. *See 21-2-224(h)*. The rationale for this state law seems clear the law wants to ensure that poll workers cannot make arbitrary decisions about who gets to vote. So if a voter is on the list of eligible voters, shows up in the location where they are registered, and shows their photo ID, the county election official has to allow them to vote. I don't think anyone would argue something different.

86% of the voters Mark Davis identified did exactly that showed up in person at the location where they were registered, showed their photo ID, executed a voter certificate saying they resided where they are registered, and then they were allowed to vote. The other 14% voted absentee by mail, submitting an absentee ballot application saying that they still resided where they were registered.

Again, this is not a new issue. It's an issue caused by out of date federal law that Secretary Raffensperger has said needs to be fixed since he became Secretary of State. He even went to DC to tell our Congressmen it needed to be fixed before the 2020 election• they didn't take any action. We have consistently said that the issues we were seeing post 2020 election were similar to issues to that come up after any election. This is exactly one of those issues. It doesn't invalidate the 2020 election any more than it invalidates any previous election in Georgia. It does highlight that the federal law that restricts dates from keeping better voter rolls needs to be reformed, just like Mark Davis said in his sworn declaration and Secretary Raffensperger has been saying since he was elected.

--

C. Ryan Germany
General Counsel and Asst. Commissioner of Securities and Charities
Georgia Secretary of State
Direct: 470-312-2808
Cell: 678-672-9230
rgermany@sos.ga.gov



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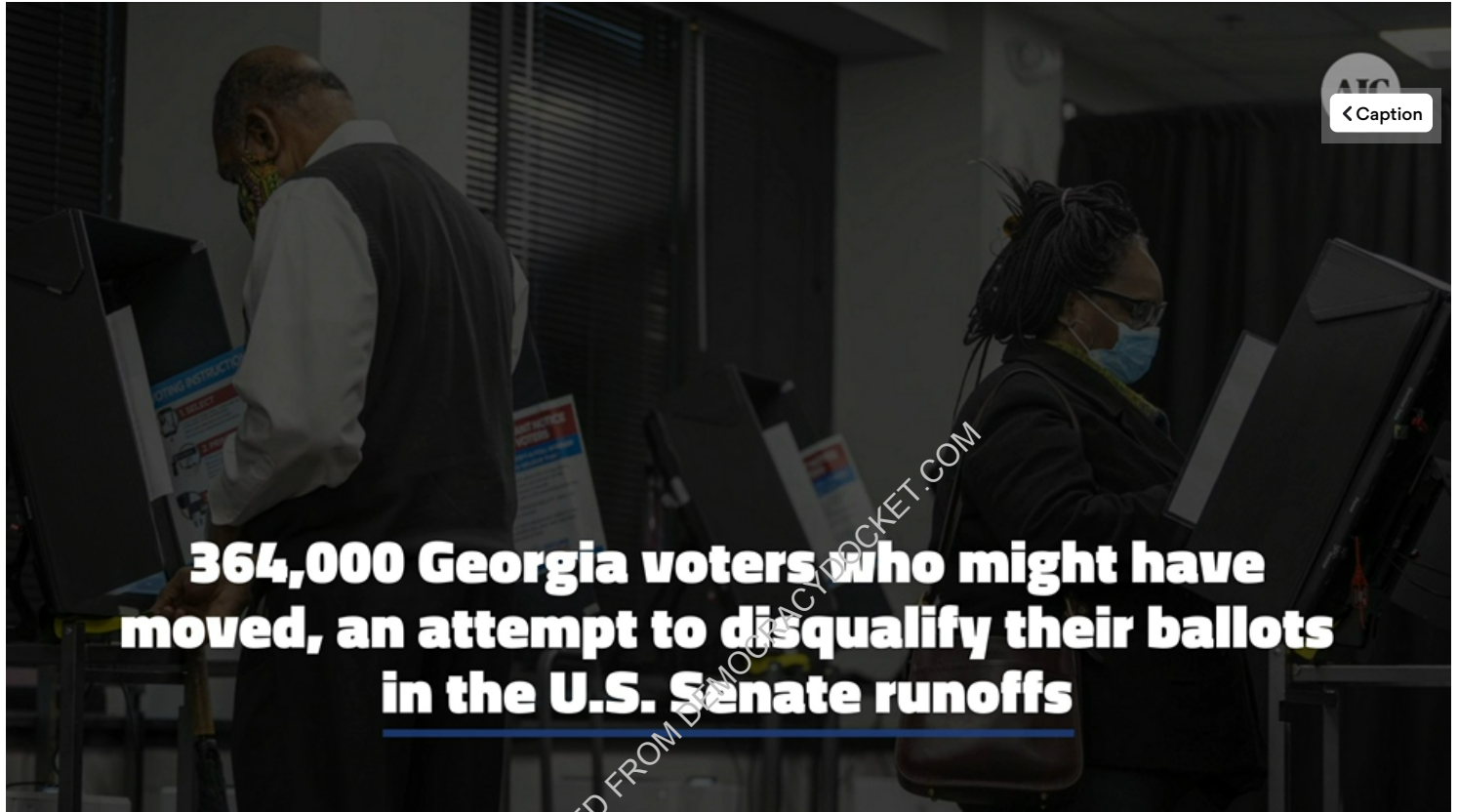
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Eligibility of 364,000 Georgia voters challenged before Senate runoff



POLITICS

By [Mark Niese](#), The Atlanta Journal-Constitution

Dec 22, 2020

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A Texas-based organization is working with Georgia Republican Party members to challenge the eligibility of over 364,000 Georgia voters who might have moved, an attempt to disqualify their ballots in the U.S. Senate runoffs.



The effort questions voters' residency and leaves decisions over whose ballots should count to county election boards.

The election watchdog group [True the Vote](#) targeted voters whose names showed up on U.S. Postal Service lists showing their addresses had changed. The organization enlisted Republicans in dozens of counties to file voter challenges with their local election boards.

The effort has gained traction in at least two counties, Forsyth and Muscogee, questioning the eligibility of over 9,000 voters who will be forced to use provisional ballots if they show up at the polls. Election boards in many other counties have rejected similar objections to voters, including in Athens-Clarke, Cobb, DeKalb, Fulton and Gwinnett counties.

Requiring voters to use provisional ballots would prevent their ballots from being counted until election officials verify residency. The burden of proof is on the challenger, but voters might be asked to provide information that shows their votes are valid.

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Voting rights groups say True the Vote is trying to disenfranchise voters, using inexact and unverified change-of-address lists to cancel ballots in a major election that will decide control of the U.S. Senate.

It's "one of the oldest tricks in the voter suppression playbook," said Sean Young, an attorney for the [American Civil Liberties Union of Georgia](#). He called it an example of "voter caging," the practice of using mail lists to seek large cancellations of registrations.

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"It's unsurprising that political operatives would pull this out in the middle of a contentious election," Young said. "There's no shortage of conspiracy theories in this election. Mass voter challenges attempt to make those conspiracies real and disenfranchise hundreds of thousands of voters in the process."

Fair Fight Action, a voting rights group founded by Democrat Stacey Abrams, plans to file a [federal lawsuit](#) Wednesday seeking to stop the statewide voter challenges.

Federal law prohibits systematic voter removals within 90 days of an election. But registrations of voters can be canceled on a case-by-case basis if county election boards decide a voter is ineligible.

Catherine Engelbrecht, president of True the Vote, said she's following a process outlined in Georgia law to ensure that only legitimate voters cast ballots.

A unique provision of state law allows voters to challenge the eligibility of voters in their counties. Only Georgians are allowed to vote in the runoffs between Republican U.S. Sens. Kelly Loeffler and David Perdue, and Democrats Raphael Warnock and Jon Ossoff.

"Everyone across the country is raising their eyebrows about election integrity," Engelbrecht said. "There was no effort to do anything other than get good accurate voter lists in place for the coming election."

But using change-of-address lists isn't a reliable way to [cull voter registration](#) lists without additional information, according to the Brennan Center for Justice, a policy institute at New York University.

Those lists often include the names of legitimate voters, such as members of the military and students who are temporarily living elsewhere. The lists also need to be checked to ensure that voters haven't moved back to Georgia, and that they don't include people in other states with the same names.

At least 2,203 of the voters on True the Vote's list voted in person in the general election, meaning they're active voters who showed photo ID at the polls, according to the Brennan Center.

The Gwinnett elections board voted 3-2 on Monday to deny a challenge of the eligibility of more than 15,000 voters.

"This is nightmarish from an adjudication standpoint, a practical standpoint," said Stephen Day, a Democratic Party board member. "I think that this is ill-conceived and ill-timed and violates the law in many places."

In Muscogee, local Republican Party Chairman Alton Russell said he wants to protect Georgia's runoff from ineligible voters.

"I'm not trying to suppress any voter," Russell said. "I'm just saying if you're a legal voter, you should be allowed to vote. If you're not, you shouldn't."

Fewer than 50 of the county's 4,000 challenged voters have cast ballots so far, Muscogee Elections Director Nancy Boren said.

In one case, a man said he still lived in Muscogee County but his registration was challenged because his son has the same name and had moved to New York. Other voters said they had moved out of state to take care of family members before returning home to Georgia, Boren said.

She and her staff plan to check driver's license and property tax records to verify residency, and voters will be mailed notifications before the county election board holds hearings on their registrations

"Most voters are very accommodating. All of them have cast provisional ballots, and we're holding the absentee ballots for the board to consider at a later time," Boren said. "They typically err on the side of allowing the voter to vote."

State election officials update voter rolls every other year, canceling the registrations of people who moved away or hadn't participated in elections for more than eight years. Last December 287,000 people were removed from the voter list.

Republican Secretary of State Brad Raffensperger said Monday that he is also trying to stop out-of-state voters. He sent letters to 8,000 people who requested absentee ballots for the runoffs and filed change-of-address notices with the Postal Service.

"Qualified Georgians and only Georgians are allowed to vote in our elections," Raffensperger said. "I will not tolerate out-of-state voters attempting to undermine the integrity of the vote in Georgia. Let this be a warning to anyone looking to come to Georgia temporarily to cast a ballot or anyone who has established residence in another state but thinks they can game the system."

The letters inform voters that it's a felony to vote in Georgia without being eligible.

The Democratic Party of Georgia said it will fight attempts to invalidate and intimidate legitimate voters.

"This is a baseless, despicable attempt to wrongfully disenfranchise hundreds of thousands of Georgia voters, including members of our military serving abroad," said Scott Hogan, the state Democratic Party's executive director.

Staff writer Amanda C. Coyne contributed to this article.

About the Author

The Atlanta
Journal-Constitution**Mark Niese**

Mark Niese covers voting rights and elections for The Atlanta Journal-Constitution. He also reports on the Georgia House of Representatives and government. He has been a reporter at the AJC since 2013 following a decade at The Associated Press in Atlanta, Honolulu and Montgomery, Ala.

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Exhibit 63

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ELECTIONS

Judge blocks voter purge in 2 Georgia counties

Judge Leslie Abrams Gardner, sister of Stacey Abrams, rejected a call for her to recuse.



A federal judge in Georgia ordered two counties to reverse a decision removing more than 4,000 voters from the rolls ahead of the Jan. 5 runoff elections. | Jessica McGowan/Getty Images

By **KYLE CHENEY** and **JOSH GERSTEIN**

12/28/2020 11:08 PM EST

Updated: 12/29/2020 10:00 AM EST



A federal judge in Georgia on Monday ordered two counties to reverse a decision removing more than 4,000 voters from the rolls ahead of the Jan. 5 runoff elections that will decide control of the U.S. Senate.

The judge, Leslie Abrams Gardner — the sister of former gubernatorial candidate Stacey Abrams, a prominent ally of President-elect Joe Biden who has led voter registration efforts across the state — concluded that the counties appeared to have improperly relied on unverified change-of-address data to invalidate registrations in the two counties.

The bulk of the registrations that the counties sought to rescind, more than 4,000, were in Muscogee County, which Biden won handily in November. An additional 150 were from Ben Hill County, which Trump won by a wide margin.

The suit, brought by Majority Forward, represented by National Democratic Party attorney Marc Elias, followed an effort to challenge the lengthy roster of voters simply because their registrations appeared to match U.S. Postal Service change-of address records. Voting officials in the two counties agreed to remove the voters, despite warnings from Democrats that such postal data is not a reliable or conclusive indicator that a voter has given up their local residence.

After Gardner's ruling, Elias [hailed the decision](#) as a “blow to GOP voter suppression.”

“We continue to monitor how other Georgia counties respond to the

suppression scheme,” he added. “Where necessary, we will sue and we will win.”

The evidence to challenge the 4,000 registrations in Muscogee County was particularly sparse. The challenge was lodged Dec. 14 by a local voter named Ralph Russell who alleged that he had compared evidence from publicly accessible voter registration databases to prove that these voters had moved out of Georgia.

“I believe that each of the individuals named ... as a result of registering their name and change of address to a location outside of Muscogee County, removed to another state with the intention of making the new state their residence,” Russell told the county board. “Thus, each individual has lost their residence in Muscogee County, and consequently, each individual is ineligible to vote in Muscogee County.”

The Muscogee board met Dec. 16 and backed Russell’s motion 3-1, even though he didn’t attend the meeting and provided no additional evidence to support his challenge. Voters on Russell’s list, per the board, would be required to vote by provisional ballot and present additional evidence of residency to vote.

In Ben Hill County, the board voted 2-1 to support a challenge lodged by Tommy Roberts, a member of the City Council in Fitzgerald, Ga. Roberts similarly relied on change-of-address data, and the board backed him despite evidence that the data could not be verified and would be inadmissible in court.

“Despite this advice from the County Attorney, the Ben Hill Board voted to find that there was probable cause to sustain the challenges,” Gardner noted.

[Gardner’s 11-page ruling released Monday night](#) noted that the removals of the voters appeared to violate federal law because they were not given proper notice and because they qualify as the type of systematic voter roll cleaning that is not permitted within 90 days of a federal election.

The Muscogee board filed a motion earlier Monday arguing that Gardner must remove herself from the case based on her relationship with her sister, Abrams.

Lawyers for the board, described Abrams as “a Georgia politician and voting rights activist who was the Democratic candidate in the 2018 Georgia gubernatorial election and has since engaged in various highly publicized efforts to increase voter registration and turnout for the 2020 general election in Georgia.”

The motion requesting Gardner’s recusal noted that a voter registration group affiliated with Abrams, Fair Fight, filed a suit in another federal court in Georgia last week complaining that a national organization dedicated to targeting voter fraud, True the Vote, is making unjustified challenges to Georgia voters in the lead-up to the Jan. 5 runoffs.

“Abrams’ involvement in the Fair Fight Litigation ... is sufficient to satisfy the standard for mandatory judicial recusal,” the board’s attorneys wrote. “Abrams has a clear interest in the outcome of this proceeding and other similarly situated litigation in Georgia due to her voting advocacy through projects such as Fair Fight and the New Georgia Project.”

Gardner, an appointee of President Barack Obama, noted the recusal request in her ruling granting the restraining order and said she is declining to step aside.

“The Court has reviewed the motion and finds no basis for recusal. An Order detailing the Court’s reasoning is forthcoming,” the judge wrote.

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NEW

CORRECTION: An earlier version of this article misstated the name of the group Majority Forward.

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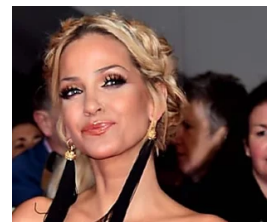
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**IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF GEORGIA
GAINESVILLE DIVISION**

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

Plaintiffs,

v.

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

Defendants.

**Civil Action No.
2:20-cv-00302-SCJ**

**DECLARATION OF UZOMA NKWONTA IN SUPPORT OF
PLAINTIFFS' OPPOSITION TO DEFENDANTS' MOTION FOR
SUMMARY JUDGMENT**

I, Uzoma Nkwonta, hereby declare as follow:

1. I am over the age of 18 and competent to make this declaration. I am an attorney with the law firm Elias Law Group LLP, and am counsel for Plaintiffs Fair Fight, Inc., Scott Berson, Jocelyn Heredia, and Jane Doe. I submit this declaration to provide the Court true and correct copies of certain documents submitted in support of Plaintiffs' Opposition to Defendants' Motion for Summary Judgment:

2. **Exhibit 60** is a true and correct copy of email correspondence from Frances Watson to Ryan Germany, dated April 6, 2021. This correspondence was obtained from the Georgia Secretary of State's office through an Open Records Request made to the Secretary of State's office on February 15, 2022.

3. **Exhibit 61** is a true and correct copy of an email exchange between Ryan Germany and individuals in the Georgia Secretary of State's office, including Secretary Brad Raffensperger, dated April 13, 2021. This email exchange was obtained from the Secretary of State's office through an Open Records Request made to the Secretary of State's office by American Oversight Committee on July 29, 2021. *See Georgia Secretary Of State Communications From Select External Groups Related To 'Big Lie' Disinformation*, American Oversight (Dec. 15, 2021), <https://www.americanoversight.org/document/georgia-secretary-of-state-communications-from-select-external-groups-related-to-big-lie-disinformation>.

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

Executed on this 6th day of June, 2022

/s/ Uzoma Nkwonta
Uzoma Nkwonta
Counsel for Plaintiffs