

1 UNITED STATES DISTRICT COURT  
2 FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

3	FAIR FIGHT, INC., JOHN DOE,	)	
	AND JANE DOE	)	VOLUME 8
4	PLAINTIFFS,	)	
		)	DOCKET NO. 2:20-CV-0302-SCJ
5	-VS-	)	
		)	
6	TRUE THE VOTE, INC., CATHERINE	)	
	ENGELBRECHT, DEREK SOMERVILLE,	)	
7	MARK DAVIS, MARK WILLIAMS, RON	)	
	JOHNSON, JAMES COOPER, AND	)	
8	JOHN DOES 1-10,	)	
	DEFENDANTS.	)	

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10 TRANSCRIPT OF SUMMARY JUDGMENT PROCEEDINGS  
11 BEFORE THE HONORABLE STEVE C. JONES  
12 UNITED STATES DISTRICT JUDGE  
13 TUESDAY, NOVEMBER 7, 2023

14 APPEARANCES:

15 ON BEHALF OF THE PLAINTIFFS:

16 ALLEGRA J. LAWRENCE-HARDY, ESQ.  
 17 CHRISTINA ASHLEY FORD, ESQ.  
 18 LESLIE J. BRYAN, ESQ.  
 19 MARCOS MOCINE-MC QUEEN, ESQ.  
 UZOMA NKWONTA, ESQ.  
 TINA MENG MORRISON, ESQ.  
 JACOB SHELLY, ESQ.  
 MICHELLE L. MC CLAFFERTY, ESQ.

20 ON BEHALF OF THE DEFENDANTS:

21 CAMERON POWELL, ESQ.  
 22 MICHAEL JOHN WYNNE, ESQ.  
 23 JAMES CULLEN EVANS, ESQ.

24  
25

1 APPEARANCES (CONTINUED):

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ON BEHALF OF INTERVENOR (USA):

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DANA PAIKOWSKY, ESQ.  
4 JENNIFER J. YUN, ESQ.  
TIM MELLETT, ESQ.  
5 AILEEN BELL HUGHES, ESQ.  
6 JUDY BAO, ESQ.

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I N D E X

<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
CATHERINE ENGELBRECHT	1889	1896	1913	
CLOSINGS:				
BY MR. NKWONTA	1939			
BY MR. WYNNE	1969			
BY MR. EVANS	1979			
REBUTTAL BY MR. KNWONTA	2007			

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1 (HELD IN OPEN COURT AT 9 A.M.)

2 THE COURT: Good morning. You-all can be seated.

3 Okay. I think, Ms. Engelbrecht, you were on the  
4 stand and you were doing direct, Mr. Evans.

5 MR. EVANS: Thank you, Judge Jones.

6 \*\*\*\*\*

7 CATHERINE ENGELBRECHT,

8 having been previously duly sworn,

9 Resumes the stand and testified as follows:

10 \*\*\*\*\*

11 DIRECT EXAMINATION (Continued)

12 BY MR. EVANS:

13 Q. Ms. Engelbrecht, I hope you had a nice evening. I just  
14 have a couple of questions to finish your direct.

15 In making its eligibility inquiry list, did True the Vote  
16 seek to create as limited a list as possible?

17 A. Yes. The mindset was to be exclusive rather than  
18 inclusive. Some of the actions that we took to ensure that  
19 that was the case -- it's important to note that with -- with  
20 NCOA as a sort of primary foundation, unless you have an exact  
21 match, it's not going to return anything. So by using middle  
22 name, suffix -- of course, full name, full address, but middle  
23 name and suffix, those were two additional steps. And if you  
24 don't get an exact match, that's not going to return anything.  
25 So that's step one, or one way of making sure you're not

1 getting any false positives.

2 Then going through and reviewing for military addresses,  
3 as we've discussed, reviewing for students as best as you can,  
4 and deceased, the goal was to create as tight a list as  
5 possible.

6 Q. And why did True the Vote try to create as limited a list  
7 as possible?

8 A. It's, you know, the basis of solid data, that what  
9 volunteers would then be presenting to their counties was  
10 trustworthy.

11 Q. In making its eligibility inquiry list, did True the Vote  
12 target any demographic group?

13 A. No.

14 Q. Why?

15 A. It just wasn't -- not what we do. It was just -- we were  
16 just trying to determine the accuracy of the list and  
17 providing ineligibility potentials as they, you know, were  
18 returned. There was no other motivation there.

19 Q. In making its eligibility inquiry list, did True the Vote  
20 select counties in which to file inquiries?

21 A. We didn't select counties. We made our dataset for the  
22 entire state and then it was dependent upon where volunteers  
23 came forward.

24 Q. In making its eligibility inquiry list, did True the Vote  
25 target any minority-majority counties?

1 A. No.

2 Q. I think that's majority-minority counties. Let me ask  
3 that again just for a clean record.

4 In making its eligibility inquiry list, did True the Vote  
5 target any majority-minority counties?

6 A. No.

7 Q. Does True the Vote have a hotline?

8 A. Yes.

9 Q. Did True the Vote have a hotline in December of 2020?

10 A. Yes.

11 Q. What was this hotline used for?

12 A. It was a resource for individuals to call in and ask  
13 questions or report concerns. And we -- we have that ongoing  
14 all the time.

15 Q. Were you expressing your voice in facilitating  
16 eligibility inquiries in December of 2020?

17 A. Absolutely, yes.

18 Q. What rights were you exercising and working with Georgia  
19 citizens in facilitating eligibility inquiries in December  
20 2020?

21 A. First Amendment rights, rights of free speech and  
22 assembly and petition.

23 Q. Approximately, how many middle names were there in True  
24 the Vote's eligibility inquiry list?

25 A. Over 61,000 --

1 MR. NKWONTA: Objection, Your Honor. This goes to  
2 data analysis that we've already determined she's not  
3 qualified to --

4 THE COURT: How many middle names?

5 MR. NKWONTA: From the entire challenge list.

6 THE COURT: You response?

7 MR. EVANS: She's got personal knowledge. I'm asking  
8 her, based upon her personal knowledge of generating the list,  
9 how many middle names were in the eligibility inquiry list.

10 THE COURT: Well, she's free to tell you later, but I  
11 don't think she, off the top of her head, can remember all the  
12 middle names in that list without reading the list. So I  
13 sustain the objection.

14 BY MR. EVANS:

15 Q. To your knowledge sitting here today, how many middle  
16 names are in True the Vote's eligibility inquiry list?

17 MR. NKWONTA: Same objection, Your Honor. It's  
18 250,000-plus, or maybe 364,000 list.

19 THE COURT: I don't know how she can know this  
20 without reading this, Mr. Evans. So I'm sustaining the  
21 objection.

22 Hold on, hold on.

23 BY MR. EVANS:

24 Q. Did True the Vote's list of eligibility inquiries have  
25 suffixes?

1 A. Yes.

2 Q. Did True the Vote's list --

3 THE COURT: Hold on. I have an objection.

4 MR. NKWONTA: Same objection with respect to the  
5 analysis of the list of 364,000 voters.

6 MR. EVANS: Judge, if I may respond. I'm asking if  
7 the list had suffixes. This is not data analysis.

8 THE COURT: She can answer that question, yeah. It's  
9 overruled.

10 Q. Did True the Vote's eligibility inquiry list have middle  
11 names?

12 A. Yes.

13 Q. Did True the Vote's master csv file contain any formulas?

14 A. No.

15 Q. In your experience, if you were to try to combine 65  
16 files into one file, would that combination causes problems?

17 A. Yes.

18 MR. NKWONTA: Objection, Your Honor. She's not  
19 qualified to give that type of analysis about combining files  
20 and conducting data analysis.

21 THE COURT: In her opinion would it cause trouble.  
22 You can ask in her opinion.

23 MR. EVANS: I'm asking her experience.

24 MR. NKWONTA: Our position would be that opinion  
25 testimony is improper under Rule 702 and 703 as a lay or an



1 expert witness.

2 THE COURT: I disagree with you on that. I'll allow  
3 that question in her opinion.

4 MR. EVANS: Thank you, Judge.

5 BY MR. EVANS:

6 Q. Go ahead.

7 A. Yes, it would cause massive problems. And we see these  
8 types of problems in my line of work with CoverMe, in working  
9 with healthcare data, when you're trying to integrate  
10 disparate datasets, unless you have exact data from -- exact  
11 same -- the exact same structure dataset to dataset. And  
12 there's many other underpinnings that would determine  
13 potential problems, but just the notion that you would take 65  
14 disparate files and merge, you're going to get all manner of  
15 error.

16 Q. In your experience, would you ever try to combined 65  
17 files into one file?

18 A. No. And certainly not in an xml format. That's a recipe  
19 for disaster.

20 Q. Why not?

21 A. Because in the -- in the merger, there are necessary  
22 assumptions that have to be made that, if you don't have -- if  
23 you have -- if you don't have a working knowledge of --

24 MR. NKWONTA: Objection, Your Honor.

25 THE COURT: Hold on.

1 MR. NKWONTA: This is now going to analysis of  
2 creating a merged file.

3 THE COURT: I agree with that, Mr. Evans. I allowed  
4 the opinion, but that's going beyond what she has expertise to  
5 testify about -- analysis. Sustained.

6 BY MR. EVANS:

7 Q. Would you facilitate the submission of eligibility  
8 inquiries again?

9 A. It's been a very trying experience, but I think what's  
10 more important -- what's most important is that citizens have  
11 the right to question and have the right to work towards  
12 improvements. So, yes, we would.

13 Q. Has the filing of this lawsuit affected your willingness  
14 to facilitate eligibility challenges again?

15 A. It's been intimidating, I'll use that word. It's  
16 affected our ability in that there's been -- it's been a long  
17 three years, as I say, with a lot of things that have been  
18 said that make it difficult to find partnerships, to -- it's  
19 affected our ability in -- in -- it's affected our ability in  
20 that the process has been sullied.

21 Q. Has the filing of this lawsuit affected your willingness  
22 to voice your belief in election integrity?

23 A. It's -- it's not affected my willingness, but, you know,  
24 I bear a few more scars. It's been a difficult process, but  
25 certainly I believe that my right to free speech in all of

1 this has been abridged.

2 MR. EVANS: Judge, no further questions.

3 THE COURT: Thank you, Mr. Evans.

4 Mr. Nkwonta, your witness.

5 CROSS-EXAMINATION

6 BY MR. NKWONTA:

7 Q. Ms. Engelbrecht, you've given a lot of testimony about  
8 the analysis of the challenge list and what went into creating  
9 the challenge list; correct?

10 A. I'm not -- I've talked about the methodology and the  
11 process, yes.

12 Q. But you didn't conduct any of that analysis yourself;  
13 correct?

14 A. No, I don't know if we can use the word "analysis." Is  
15 that -- I don't want to overstep.

16 THE COURT: She's paying attention.

17 BY MR. NKWONTA:

18 Q. You have not conducted any analysis of the challenge list  
19 yourself; correct?

20 A. No, that's not correct.

21 Q. So you have conducted analysis of the challenge list?

22 A. Yes.

23 Q. That's your testimony today?

24 A. Yes.

25 Q. You remember that you gave a deposition in this case in

1 January 2022; correct?

2 A. Yes.

3 Q. And your counsel was there?

4 A. Yes.

5 Q. And a court reporter was there?

6 A. Yes.

7 Q. And you were under oath?

8 A. Yes.

9 Q. In that deposition on -- starting on page 137, line 9,  
10 you were asked, "Did you conduct any of the analyses that went  
11 into identifying the voters who appeared on the challenges?

12 "Answer: I did not, no."

13 A. I'm sorry, I need to catch-up. I apologize. What's --

14 THE COURT: Give her time to read it.

15 MR. EVANS: Judge, just for completeness, I would  
16 appreciate --

17 MR. NKWONTA: Page 137.

18 MR. EVANS: -- if she could get a copy of the  
19 deposition that she's looking at, so it's not zoomed in on any  
20 certain phrases and she can review it.

21 MR. NKWONTA: She's -- if I'm impeaching the witness,  
22 the witness is not entitled to review what I'm holding.

23 THE COURT: She can look at what she's says.

24 MR. EVANS: She does. Actually --

25 THE COURT: Hold on, hold on, hold on.

1 MR. EVANS: -- by what rule?

2 THE COURT: Hold on, hold on.

3 Let her look at it. In other words, she can't just  
4 do -- say what she wants to say off of it.

5 MR. NKWONTA: We are pulling it up. In fact, I have  
6 copies here.

7 THE COURT: At least let her look at it, you know.

8 MR. NKWONTA: May I approach the witness, Your Honor?

9 THE COURT: Yes.

10 BY MR. NKWONTA:

11 Q. I'll direct your attention, Ms. Engelbrecht, to page 137,  
12 starting on line 9. You were asked, "Did you conduct any of  
13 the analyses that went into identifying the voters who  
14 appeared on the challenges?"

15 You responded, "I did not, no."

16 Next question: "And you mentioned that other databases  
17 were incorporated in creating matching lists and filtering the  
18 matching lists. Were some of those databases or some of those  
19 filtering methods outsourced to outside companies?"

20 Response: "Yes.

21 "Question: And were they outsourced to companies other  
22 than OpSec Group?

23 "Answer: We outsourced to OpSec and then OpSec followed  
24 their process."

25 Was that your testimony, Ms. Engelbrecht?

1 A. Yes.

2 Q. But your testimony today is that you did, in fact,  
3 conduct this analysis; is that right?

4 A. Well, I think there's a distinction in the way this  
5 question was asked. And if you continue to read in my --  
6 through my testimony, I talk very specifically about the  
7 databases that were used. I talked about TrueNCOA and  
8 SmartyStreets. I described the web-based apps. If you -- in  
9 taking these out of context, which has been, you know, the  
10 theme admittedly here, taking out of context, it's what it  
11 says. But if you read the rest of it, clearly I talk about  
12 the process and the methodology which I was responsible for.

13 Q. Okay. Well, let's add some context.

14 A. Sure.

15 Q. You just mentioned SmartyStreets. And is it your  
16 testimony today that you used SmartyStreets in your analysis  
17 of the challenge list?

18 A. In the analysis? We used SmartyStreets in the analysis  
19 of the TrueNCOA findings to just compare.

20 Q. And you did that personally, is that your testimony  
21 today?

22 A. No, that's not my testimony.

23 Q. In fact, you did not do that personally, you did not  
24 conduct any analysis using SmartyStreets. Mr. Phillips  
25 conducted that; correct?

1 A. Well, if we could, I think it's important to define what  
2 you mean by "conduct."

3 Q. Have you used "conduct" in a sentence before?

4 A. Yes.

5 Q. And whatever you determine conduct meant when you used it  
6 in a sentence, that would apply to this scenario.

7 A. Okay.

8 Q. So --

9 A. So I conducted the authorization of this entire project.  
10 I conducted that to happen.

11 Q. So you authorized the project?

12 A. Authorized is another word you can use.

13 Q. But you did not use SmartyStreets like you said you did  
14 in the direct examination, correct?

15 A. SmartyStreets was part of a process that I authorized.  
16 I'm not -- I -- really, I don't mean to be difficult, I just  
17 don't understand the distinction.

18 Q. Well, let me return. Because the question I just asked  
19 you is the same question I asked in your deposition, so let me  
20 return to your January 22nd -- January 2022 deposition. And  
21 now I'm looking at lines -- or page 139, lines 3 to 13.

22 You were asked: "Have you used SmartyStreets before?"

23 Your response: "Yes."

24 Next question: "And did you use SmartyStreets to refine  
25 NCOA lists?"

1 Your response: "Yes."

2 "Question: And in what context? For the Georgia  
3 election law challenges?"

4 Your response: "Yes. I should say, I did not personally  
5 do that. But that was my understanding as part of what was  
6 being used broadly to refine the NCOA list itself."

7 Was that your testimony, that you did not conduct the  
8 SmartyStreets analysis or use SmartyStreets to refine the NCOA  
9 list yourself?

10 A. Well, that is my testimony here. But, again, with  
11 context, when you -- when you manage a project and when you  
12 outline the requirements for that project and then give that  
13 authorization to a vendor, they're following that -- they're  
14 putting their fingers on the keyboard, but it was at my  
15 authorization. So I feel like there's -- we're getting this a  
16 little muddled.

17 Q. So just to clarify, the extent of your personal knowledge  
18 is based on you authorizing these activities to occur, not  
19 actually conducting the analyses yourself?

20 A. Well, authorizing and seeing the return results. And  
21 these are -- these -- both of these systems, SmartyStreets and  
22 TrueNCOA, the output is reports that have been included as  
23 exhibits. So it's clear that we used them.

24 Q. Would it be fair to say that OpSec Group and Gregg  
25 Phillips were the ones that actually conducted this analysis



1 that you authorized?

2 A. It -- it would be -- parts of it, yes.

3 Q. And you referenced Social Security databases and some  
4 analysis that involved reviewing or applying Social Security  
5 databases to the challenge list. Is it your testimony today  
6 that True the Vote or yourself applied Social Security  
7 databases to refine the challenge list?

8 A. We used the -- TrueNCOA has a -- within it has a filter  
9 for -- called TrueDeceased that ties to the Social Security  
10 Death Index.

11 Q. Let me see if I can rephrase your question -- rephrase my  
12 question to try to get a direct answer.

13 On direct you made specific reference to using the Social  
14 Security database. Is it your testimony today that you or  
15 True the Vote used the Social Security database to refine the  
16 challenge list?

17 MR. EVANS: Objection, asked and answered.

18 THE COURT: Overruled. You can answer that question.

19 THE WITNESS: I believe what I said even yesterday  
20 was that TrueNCOA has a connection with the Social Security  
21 Death Index. The name of it is TrueDeceased. And so we  
22 relied upon TrueNCOA's use of TrueDeceased, which is a  
23 connection, just as TrueNCOA is a connection to NCOALink.

24 THE COURT: That's a yes to his question?

25 THE WITNESS: I think so.

1 BY MR. NKWONTA:

2 Q. I want to return again to your January 2022 deposition,  
3 which we've established you were testifying under oath. And I  
4 direct your attention to page 139, lines 14 to 19.

5 "Question: And you mentioned other databases like the  
6 Social Security database and a few others. Do you know if  
7 OpSec conducted all of those -- all of that analyses  
8 internally or whether it outsourced some of that analysis?"

9 Your answer: "I do not know."

10 Is your testimony today that you do know whether there  
11 was some analysis involving a Social Security database?

12 A. Give me one second. I want to -- it's sort of a compound  
13 question. I want to make sure I'm clear.

14 Well, the way I read the question, you were asking if  
15 sort of a -- to my understanding, it was a broad question, all  
16 of that analyses internally or whether it outsourced some of  
17 the analysis. To my understanding, it's not specific to the  
18 Social Security database, which is a particular one, because  
19 it's part of the overall program of TrueNCOA.

20 And my response was like, you know, I don't know. But  
21 TrueNCOA has TrueDeceased in it, which is what was provided in  
22 exhibits with TrueAppend. All of that just comes out  
23 together.

24 Q. I understand. So let me ask a more direct question.

25 When you spoke of the Social Security Death Index and the

1 use of the Social Security Death Index during your direct  
2 examination, is that something that you did personally or is  
3 that something that you authorized OpSec or Gregg Phillips to  
4 do?

5 A. I did not put my fingers on the keyboards to do it, no.

6 Q. You authorized Gregg Phillips and OpSec to do that; is  
7 that right?

8 A. Correct.

9 Q. So I'd like to pull up the deposition testimony of Mr.  
10 Gregg Phillips, which has been admitted as Plaintiffs'  
11 Exhibit 102. And I'd like to direct you to page 148, lines 13  
12 to 18, which should appear on the screen.

13 Question Mr. Phillips was asked: "Did you use the Social  
14 Security Death Index as part of your process?"

15 "Answer: Not in this instance.

16 "Question: 'This instance' referring to the Georgia  
17 challenge list?"

18 "Answer: Yes."

19 Do you disagree with Mr. Phillips' testimony on the use  
20 of the Social Security Death Index?

21 A. No, no. Because we also have licensure to directly  
22 access the Social Security Death Index, and that's not -- he  
23 -- I can -- I absolutely see where he would have made a  
24 distinction of whether or not we used the licensure from SSDI  
25 or to NCOA TrueDeceased and he would have answered it in that

1 way.

2 Q. Now, I recall hearing you testifying about efforts to  
3 remove duplicate names in the challenge list.

4 Do you recall that?

5 A. Yes.

6 Q. And would you have done that, engaged in those efforts,  
7 or did you authorize Gregg Phillips to do that?

8 A. My fingers were not on the keyboard to do that, no.

9 Q. So you authorized Gregg Phillips to do that?

10 A. Right, yes.

11 Q. I want to direct your attention to the same exhibit,  
12 Exhibit 102, page 122, line 17 to 123, line 5.

13 "Question: How many duplicates did you identify where a  
14 record in the NCOA registry matched more than one record in  
15 the voter file?

16 "Answer: I have no idea.

17 "Question: Are you aware if any such duplicates were  
18 identified?

19 "Answer: I have no idea.

20 "Question: Did you investigate whether there were any  
21 such duplicates?

22 "Answer: I have no idea. I don't -- it wasn't a topic."

23 Do you disagree with Mr. Phillips' testimony on that?

24 A. No, that's his testimony.

25 Q. You also testified during your direct about efforts to

1 remove military voters?

2 A. Yes.

3 Q. Do you recall that?

4 And, again, I'll ask you, were those efforts that you  
5 personally engaged in or that you authorized Gregg Phillips  
6 and OpSec to complete?

7 A. Again, my fingers weren't on the keyboard to do it, but I  
8 was not only -- not only authorized, but was involved in the  
9 conversations about the -- the various levels of effort to  
10 remove military addresses.

11 Q. So I'll direct your attention to Plaintiffs' Exhibit 102,  
12 page 131, lines 3 to 16 from Mr. Phillips' deposition.

13 "Question: If someone submitted a permanent change of  
14 address to Dover Air Force Base, would you understand that  
15 that person was no longer eligible to vote in Georgia?

16 "Answer: I don't know. It depends. I mean, not really,  
17 because military situations are different, because even if  
18 their permanent duty station is somewhere, they can still  
19 be -- their permanent residence can still be in the state in  
20 which they register. So it's much more complicated.

21 "Question: What further analysis did you perform to  
22 identify if military voters who moved to a base can retain  
23 their eligibility in Georgia?

24 "Answer: We didn't."

25 THE COURT: What's your objection?

1 MR. EVANS: Judge, I'm not sure why Gregg Phillips'  
2 testimony is relevant. He can't use it for impeachment. The  
3 deposition says what it says that it says. She can't say  
4 whether or not his testimony is -- his knowledge is true or  
5 false. So I'm not sure how this is relevant.

6 MR. NKWONTA: Well, she testified that she conducted  
7 these analysis on direct. And now we're hearing that Gregg  
8 Phillips conducted these analysis. So I'm asking her if she  
9 agrees with Gregg Phillips' assessment.

10 THE COURT: I'll allow it in, Mr. Evans. Overruled.

11 BY MR. NKWONTA:

12 Q. And then I'll direct you to page 136, lines 4 to 13 where  
13 Mr. Phillips is talking about UOCAVA voters.

14 "Question: How would you have researched or sought to  
15 identify whether an individual had requested a UOCAVA ballot?

16 "Answer: Almost impossible, because the counties don't  
17 publicize that.

18 "Question: Okay. When you say 'almost impossible,' so  
19 was there anything you did to identify whether a voter had  
20 requested a UOCAVA ballot?

21 "Answer: No. I'm not aware of any way to do that  
22 effectively."

23 That conflicts with the testimony you gave on direct. Do  
24 you disagree with Mr. Phillips' analysis?

25 A. Can we -- I do disagree with your translation of this,

1 yes. I mean, he's being -- he's being -- in my opinion, being  
2 responsive to the specific question about a UOCAVA ballot.

3 The broad step that was taken was we just removed  
4 international addresses.

5 But UOCAVA, as you know, is a very specific type of  
6 ballot -- or not ballot, but status. And it's not denoted in  
7 the voter file. So I would say that this was a very literal  
8 interpretation of UOCAVA.

9 Q. So to cut this short, just to make sure we're in  
10 agreement, the analyses that you discuss in your direct  
11 examination, you were referring to analyses that you had  
12 authorized Gregg Phillips to conduct; is that correct?

13 A. No.

14 Q. Which analyses did you press the keyboard on yourself, to  
15 use your lingo?

16 A. Well, analyses is -- is -- can be defined as observing  
17 data as it's provided back to you or making assessments about  
18 the data that is provided. That part of the analysis, if I  
19 can use that word, is certainly something that I participated  
20 in.

21 And because I've been doing this for 13 years, my  
22 understanding of what outliers might look like, what anomalies  
23 might look like is significant. I have -- yeah, I've  
24 participated in many of these programs. But I'm not sure if  
25 that's even what I'm being asked.

1 Q. So other than reviewing the data, did you conduct any  
2 analyses yourself by, as you refer to it, pressing the keys on  
3 the keyboard?

4 A. I don't -- I don't think that's how you define analyses.  
5 That's how you've, I think, tried to define analyses.

6 Q. Can you tell me what analyses you conducted yourself as  
7 opposed to Mr. Gregg Phillips?

8 A. First, if we're going to use the word "analysis," I guess  
9 I analyzed how to procure the Georgia state voter database.  
10 And then I analyzed how to draw up a project plan. And I  
11 analyzed who to enlist and help who would have licensure to  
12 make sure that all of the necessary elements would be  
13 accessible, the right software licensure, the quality of the  
14 process. And then I analyzed the output. And I analyzed,  
15 much later and over the last three years, the reviews. So  
16 that's -- that was my role.

17 Q. Thank you.

18 I want to switch over briefly to your discussion of  
19 Mr. Joe Martin. I believe I heard you say on direct that you  
20 did not know Joe Martin or did not know of Joe Martin outside  
21 this process; is that correct?

22 A. Not outside of this process, no.

23 Q. So can you clarify what you meant when you say you did  
24 not know Joe Martin?

25 A. Prior to him volunteering to work as a -- or to volunteer



1 for this effort or to -- indicated he wanted to participate,  
2 to the best of my knowledge, I did not know Joe Martin.

3 Q. So -- but after he volunteered, then you knew of Joe  
4 Martin; correct?

5 A. After he volunteered and there were e-mail exchanges that  
6 I read about in this trial, then I knew of Joe Martin.

7 Q. And you saw his e-mails; correct?

8 A. Correct, yes.

9 Q. You also mentioned during the direct examination that  
10 before the 2020 election, True the Vote was involved in  
11 lawsuits challenging some of the voting measures or voting  
12 procedures that you believe were unlawful in the lead-up to  
13 the 2020 election.

14 Do you recall that?

15 A. Correct.

16 Q. And was True the Vote a plaintiff in all those lawsuits?

17 A. No.

18 Q. So in some of those lawsuits, you had individual  
19 plaintiffs and True the Vote covered the fees for those  
20 individual plaintiffs; correct?

21 A. Correct. I'm sorry.

22 MR. EVANS: Judge, this is -- I don't believe this  
23 was brought up on direct. This was asked and answered in his  
24 cross in his case-in-chief.

25 THE COURT: I don't remember it being on direct. The

1 direct was long yesterday, but I don't think he --

2 MR. NKWONTA: It was brought up on direct. And if  
3 the Court wants to take a two-minute break, we can pull up the  
4 exact citation.

5 THE COURT: I don't have time to do that. I'm trying  
6 to move this case along. I'm going to just take him at his  
7 word, Mr. Evans, and proceed from there.

8 MR. NKWONTA: And what was brought up, just for  
9 the -- to make sure everyone's on the same page, was the fact  
10 that True the Vote filed lawsuits before 2020. We -- I don't  
11 believe he went into what those lawsuits were about  
12 specifically or any of the details about who paid for what and  
13 stuff.

14 MR. EVANS: Okay. So long as it's limited to that,  
15 Judge.

16 THE COURT: Okay.

17 BY MR. NKWONTA:

18 Q. And in filing those lawsuits on behalf of individual  
19 voters where True the Vote was not named as a plaintiff, who  
20 did True the Vote retain to file those lawsuits?

21 A. Jim Bopp. Well, and local counsel.

22 Q. And the same person who filed the Georgia lawsuit that we  
23 discussed during my cross-examination, which is Plaintiffs'  
24 Exhibit 27?

25 A. I'm not sure what Plaintiffs' Exhibit 27 is.

1 Q. This would be the *Brooks v. Mahoney* lawsuit in Georgia,  
2 seeking to overturn the results of the presidential election  
3 in eight Georgia counties.

4 Do you recall that?

5 A. Yes, Jim Bopp did file that.

6 Q. And True the Vote was not a plaintiff in that case  
7 either?

8 A. No.

9 Q. And just now you mentioned that you were talking about  
10 the impact of this lawsuit on True the Vote's and your future  
11 plans to file challenges and to facilitate challenges in the  
12 future.

13 The IV3 platform that we discussed previously during my  
14 cross, that platform is meant to facilitate voter challenges  
15 by citizens; correct?

16 A. It's meant to facilitate the ability for voters to look  
17 at their local voter rolls. And then if they are in a state  
18 where they have a challenge process, that's part -- that could  
19 be part of it, if that's what the citizen chose to do. But  
20 that's not what IV3 is --

21 (Reporter asked for a clarification.)

22 THE WITNESS: Is the name of it, IV3.

23 Q. And True the Vote is ready to launch that platform;  
24 correct?

25 A. It's -- yes, it's up.

1 MR. NKWONTA: Thank you, Your Honor. I pass the  
2 witness.

3 THE COURT: Thank you.

4 Any redirect?

5 REDIRECT EXAMINATION

6 BY MR. EVANS:

7 Q. Ms. Engelbrecht, just a couple of questions.

8 Were you actively involved in the generation of the  
9 eligibility inquiry list?

10 A. Yes.

11 Q. Do you have to have your fingers pushing keys on a  
12 keyboard to be actively involved in the generation of an  
13 eligibility challenge list?

14 A. No.

15 Q. Why not?

16 A. Because providing the -- the oversight and the direction  
17 and the management and the analysis is sufficient.

18 Q. Was it important to you to be actively involved in the  
19 generation of the eligibility challenge list?

20 A. Absolutely, yes.

21 Q. Why is that?

22 A. Because the data needed to be correct. And this was  
23 something that -- that volunteers were entrusting us to  
24 represent. And it's an important process and not to be taken  
25 lightly. And for all the reasons you do good work.

1 Q. And in your experience as the CEO of True the Vote and at  
2 CoverMe, did you generate experience in dealing with datasets  
3 like --

4 A. I'm sorry.

5 Q. -- like you did in generating the eligibility challenge  
6 lists?

7 A. Every day, yes.

8 MR. EVANS: No further questions, Judge.

9 THE COURT: Thank you.

10 Recross?

11 MR. NKWONTA: Nothing further, Your Honor.

12 THE COURT: Thank you, Ms. Engelbrecht. You can step  
13 down. Run while you can.

14 THE WITNESS: Thank you. Thank you.

15 THE COURT: All right. Call your next witness.

16 THE WITNESS: Leave this --

17 THE COURT: Yes, ma'am. Leave that up there.

18 MR. WYNNE: Your Honor, the defense does not intend  
19 to call any additional witnesses. But there are a number of  
20 housekeeping matters that need to be addressed, including the  
21 motion for judicial notice and the supplement.

22 THE COURT: Let me say this: The one -- Mr. Nkwonta,  
23 the one they filed this morning dealing with Ben Hill, I've  
24 read those cases, those orders. So I don't see a big issue,  
25 but I'll tell you, I've read them at least twice.

1 MR. NKWONTA: Your Honor, they're --

2 THE COURT: I know you haven't had a chance to  
3 respond.

4 MR. NKWONTA: Right. And, Your Honor, there  
5 generally isn't a big issue with it. I think there's just one  
6 quirk about the Ben Hill case which is that the Court entered  
7 a TR0 shortly after we filed our complaint. That TR0, if you  
8 look on the docket, it says the TR0 has been withdrawn, which  
9 is normal because, you know, after you enter a TR0, then you  
10 schedule a PI hearing.

11 And so I think the TR0 bridges a lot of the gap  
12 between what the parties are discussing. And if there's a way  
13 to include the TR0 and include the other filings, like the  
14 Muscogee County response to the motion for TR0, where they  
15 explain what it is that they were doing --

16 THE COURT: Judge Garner issued an order on  
17 December 28, 2020; Judge Anand ordered on January 4, 2021.  
18 What is missing out of those orders that you think I need to  
19 go further on?

20 MR. NKWONTA: Well, I -- so -- and my apologies if  
21 this is included in their motion for judicial notice, I don't  
22 remember seeing it, but the TR0 opinion I don't believe was  
23 included.

24 THE COURT: All right. Well -- some of my staff can  
25 pull up the exact -- I've read her opinion, her orders. But

1 if there's something missing, we'll go on the docket. What  
2 you're asking is for the Court to see the exact TRO opinion?

3 MR. NKWONTA: Yes, the exact TRO opinion, which I  
4 don't believe --

5 THE COURT: That's no problem.

6 MR. NKWONTA: I don't believe -- I don't believe it's  
7 on the docket anymore because it was withdrawn.

8 MR. WYNNE: It is, Your Honor. It's docket --  
9 it's -- that was the one entered December 28th. There was a  
10 hearing December 30th. And it wasn't withdrawn. There was a  
11 new one. It's still on the docket. And under Rule 201(d),  
12 judicial notice is mandatory when supplied with the necessary  
13 information. We've supplied the necessary information.

14 THE COURT: I've already indicated I've read those  
15 orders at least twice. I know what's in them. I'm just  
16 trying to figure out what Mr. Nkwonta wants me to read  
17 additionally. I --

18 MR. NKWONTA: That was both -- just to ensure that  
19 both opinions were included and the Muscogee brief was  
20 included. It's more an issue of completeness. We don't  
21 object to taking judicial notice.

22 THE COURT: If there is something in addition to --  
23 other than the orders that were entered by Judge Gardner, send  
24 it to us again. Or if you can't find it, we can definitely  
25 get it, so --

1 MR. WYNNE: I can give it to you right now.

2 THE COURT: Well, if you've got it printed out --

3 MR. WYNNE: I've got the whole docket sheet right  
4 here. And, in fact, I believe that we have --

5 THE COURT: Well, I've looked at what you --

6 MR. WYNNE: -- entered the docket sheet.

7 THE COURT: I looked at what you gave me. I'm  
8 familiar with it. Let Mr. Nkwonta look at it and make sure  
9 that he's satisfied that the Court has everything.

10 Because, again, I think I thoroughly read it, but,  
11 you know, I admit, you know, we didn't go and pull everything  
12 off the docket. We pulled mainly just the orders off the  
13 docket.

14 MR. WYNNE: Will do. It's Exhibit A1 or Exhibit A  
15 and 1. Here is the docket sheet. And we don't object to the  
16 inclusion of anything, you know, for optional completeness and  
17 because it's mandatory under 201(d).

18 And I'd ask the other items there also be taken into  
19 judicial notice.

20 THE COURT: Again, I don't mind reading everything.  
21 I thought I pulled -- you know, I didn't just read the order,  
22 we read everything that went along with the order. But if I'm  
23 missing something, I have no problem with you-all giving it to  
24 me and I'll read it. Judicial notice, but I'm going to allow  
25 it.



1 MR. WYNNE: Yeah. And there were also some websites  
2 and I have the authority allowing those to be taken judicial  
3 notice of dynamic websites that the Court could go to, media  
4 articles and so forth, and these things are --

5 THE COURT: I don't think the media -- I think the  
6 media is one of the best things in America, in the world, but  
7 I don't base decisions on media articles.

8 MR. WYNNE: No, of course not.

9 THE COURT: Nothing personal.

10 MR. WYNNE: Of course not. But to counterbalance  
11 their references to articles during one of these crosses that  
12 I was handling, take a look at the others.

13 THE COURT: Listen, listen, listen. If it's not on  
14 that docket, I can't base a decision on something that's not  
15 on the docket. Again, with all due respect to the media, I  
16 read it every day, especially in this case I've been trying to  
17 keep up with what the media is saying, but I'm not going to  
18 base decisions based on that.

19 MR. WYNNE: No. I was talking about the other  
20 attachments, not just Attachment A relating to Ben Hill in  
21 Muscogee, but there are other items.

22 THE COURT: Let's keep it simple.

23 Mr. Nkwonta, is this anything else that's missing out  
24 of the -- what's been filed by defendants or what the Court  
25 has already read?

1 MR. WYNNE: And we have no objection to the items  
2 they've listed, obviously. I think there's three of them,  
3 including the prior subpoenas that were withdrawn.

4 THE COURT: Mr. Wynne, are you talking about what  
5 you-all filed on Sunday night or Monday?

6 MR. WYNNE: Yes.

7 THE COURT: Okay. I think the response -- we got a  
8 response back from the plaintiff. I think the plaintiffs only  
9 had some objections about some hearsay matters in there. They  
10 didn't object to all of it. We can pull it again and look at  
11 it.

12 I think we're fine, Mr. Nkwonta, on the Ben Hill part  
13 of this, unless you-all have something else you want to add  
14 that you think I need to read that wasn't available to me.

15 MR. NKWONTA: And we'll identify it, but we're fine  
16 with the Ben Hill.

17 THE COURT: We saw your response to the judicial  
18 notice regarding the e-mails on Stephanie -- what's her last  
19 name?

20 MR. NKWONTA: Stinetorf.

21 THE COURT: -- Stinetorf, and you-all had some  
22 objections. And I can't remember exactly from when we pulled  
23 it, but just tell me: What were your objections to that  
24 judicial notice?

25 MR. NKWONTA: Well, the objection is it's not

1 appropriate for judicial notice. It's not -- it's not a  
2 matter that's not -- that is not reasonably contested.

3 Stephanie Stinetorf testified that that e-mail was mistaken  
4 and there were subsequent e-mails that clarified the issue.

5 So we believe it's not appropriate to take judicial  
6 notice of a single e-mail, but I think this can be resolved.  
7 What we propose is the Court can take that e-mail into account  
8 but also take Ms. Stinetorf's other e-mails with individuals  
9 from Muscogee --

10 THE COURT: Rule of completeness.

11 MR. NKWONTA: -- under Rule 106.

12 THE COURT: I have no problem doing that. And  
13 Mr. Wynne has noted he has no problem with that, so we will do  
14 that.

15 So it's in, Mr. Wynne. And we're going to add -- you  
16 give me the other e-mails, just to make sure I have them all?

17 MR. NKWONTA: Yeah, we attached them to our response.

18 THE COURT: All right. Then I have them right here,  
19 then. Thank you.

20 MR. NKWONTA: Thank you.

21 MR. WYNNE: Thank you. It's perfectly fair. We're  
22 in favor of more information.

23 THE COURT: Well, since I have to read it all, I  
24 can't say I'm totally in agreement with you. But we'll do it  
25 that way. Rule of completeness says the law says I have to do

1 it now. So I'm going to follow the law.

2 What else? Those are the two judicial notices I  
3 received from the defendants. And they both are in, and,  
4 again, we'll do a rule of completeness. We'll read all the  
5 e-mails that you ask me to read.

6 MR. NKWONTA: Have you gotten to plaintiffs' requests  
7 for judicial --

8 THE COURT: Not yet. Since the defendant is  
9 standing, we'll deal with his first and then we'll get back to  
10 yours.

11 What else?

12 MR. WYNNE: Yeah. And as to C and D, those  
13 government --

14 THE COURT: C and D on what? C and D on what?

15 MR. WYNNE: C and D is the screen print from the  
16 Georgia's Secretary of State's website.

17 THE COURT: Which one are you talking about, Monday's  
18 judicial notice or today's judicial notice?

19 MR. WYNNE: Sunday's.

20 THE COURT: Okay.

21 MR. WYNNE: And Attachment C is a screenprint taken  
22 from the Georgia Secretary of State's website and the fact as  
23 illustrated by this attachment, counting absentee ballots  
24 files can be accessed by year and by individual and are  
25 publicly available. Defendants request the Court take

1 judicial notice of that fact and all records relating to  
2 absentee ballots that can be downloaded --

3 THE COURT: Mr. Wynne, Mr. Wynne, I'm taking judicial  
4 notice of everything you filed Sunday.

5 MR. WYNNE: Okay. Thank you. That was -- I was just  
6 clarifying that. And I got the case law about taking judicial  
7 notice of dynamic --

8 THE COURT: Mr. Wynne, you're winning. You're  
9 winning. When you're winning what happens? You quit talking.

10 MR. WYNNE: All right. Hey, I haven't had a chance  
11 to be up here in a couple days.

12 THE COURT: Well, I miss hearing you, but when you're  
13 winning, the way I was taught, sit down, leave it alone.

14 MR. WYNNE: I gotcha.

15 THE COURT: You might say something that changes the  
16 judge's mind.

17 MR. WYNNE: I don't want to do that.

18 THE COURT: Yeah. All right. Let's take up  
19 plaintiffs' judicial notices.

20 MR. NKWONTA: Just give us one minute, Your Honor.

21 THE COURT: Okay. Thank you, Mr. Wynne.

22 MR. NKWONTA: I'll start by -- just to avoid any  
23 delay while we pull up the motion --

24 THE COURT: Hold on. Before Mr. Wynne sits down,  
25 Mr. Wynne, do you have everything in evidence for the

1 defendant you want to put into evidence?

2 MR. WYNNE: Could I have just a moment to confer?

3 THE COURT: You can do that while Mr. Nkwonta is  
4 talking.

5 MR. NKWONTA: Well, we pulled up the motion itself to  
6 make sure I don't say anything wrong. I believe what we seek  
7 to admit or ask the Court to take judicial notice of is the  
8 data from the Secretary of State's -- from Georgia Secretary  
9 of State that lists the voting age population by race in each  
10 county in Georgia. And we've provided sort of the relevant  
11 cite for that.

12 We also attached, I believe, three subpoenas that  
13 were issued to Ms. Heredia's apartment buildings and her -- I  
14 believe her auto dealership or her auto --

15 THE COURT: I plan on -- unless defense can tell me  
16 something they haven't told me, I plan on allowing everything  
17 you requested judicial notice.

18 MR. NKWONTA: And we specifically request that the  
19 Court take judicial notice of the eight counties in Georgia  
20 that have the highest Black voting age populations. The  
21 counties are listed in our --

22 THE COURT: I have it listed. Matter of fact, I read  
23 them this morning. They are Fulton, DeKalb, Gwinnett, Cobb,  
24 Clay, Chatman, and Richmond.

25 MR. NKWONTA: Yes, that's correct.

1 THE COURT: I will take judicial notice of everything  
2 you've asked me to take judicial notice of.

3 MR. NKWONTA: Thank you, Your Honor.

4 THE COURT: Okay. Mr. Wynne, do you know exactly  
5 whether your exhibit list is complete?

6 MR. WYNNE: Your Honor, I'm going to have to ask for  
7 about five-minutes, it's been a two-week trial, to confer with  
8 cocounsel here.

9 THE COURT: Take five minutes. I'll sit right here.  
10 Say that out loud, Ms. Wright.

11 Mr. Wynne, listen up very closely. It's Ms. Wright's  
12 responsibility to keep up with what's been admitted, and she's  
13 going to tell you what has been admitted.

14 THE DEPUTY CLERK: Defendants 38' and that's it.

15 THE COURT: And while they're looking at their  
16 exhibit list, you might want to recheck yours.

17 Mr. Nkwonta, I directed you-all to provide me an  
18 updated exhibit list because you-all added 91 through 105.  
19 And we need that updated exhibit list before we close this  
20 out.

21 Department of Justice, you're fine.

22 MS. BOA: Thank you, Your Honor.

23 MR. NKWONTA: Very quick cleanup, Your Honor, while  
24 they sort through their exhibits.

25 The docket numbers that we wanted to make sure were

1 added for the Muscogee County case were ECF 12, which is the  
2 original TRO order, and ECF 23, which is the Muscogee County  
3 brief in opposition to the motion for TRO.

4 THE COURT: 12 and 23?

5 MR. NKWONTA: Correct.

6 THE COURT: Maddie, did you get that?

7 MR. NKWONTA: And then for our updated exhibit list,  
8 i just want to make sure I heard the Court correctly. The  
9 version that you have doesn't go to 105? It stops at --

10 THE COURT: It stops at 90.

11 MR. NKWONTA: Okay. We'll provide you an updated  
12 version. Would you like us to file them on the docket as  
13 well?

14 THE COURT: Yes. The main -- first, get one to  
15 Ms. Wright as quick as possible. The docket one you can do  
16 tomorrow, but we need this one ASAP.

17 MR. NKWONTA: We'll do that. Thank you.

18 THE COURT: All right, Mr. Wynne.

19 MR. WYNNE: Yes, Your Honor. A few things.

20 According to our list, we'd like to offer 53 and 54. Those  
21 are the audio transcripts of the -- of the matters that -- I  
22 think they're audio of the alleged SEAL's statement. And then  
23 we've got the audio transcript. I may be mistaken if we have  
24 actual audio. Do we not have audio? Well, we have just the  
25 transcript. Then strike that. I'm trying to be complete



1 here. Strike that request.

2 THE COURT: Four transcripts.

3 MR. NKWONTA: I believe those are already in  
4 evidence. I believe 53 is Plaintiffs' Exhibit 51. And I  
5 believe Defendants' Exhibit 54 is Plaintiffs' Exhibit 52.

6 THE COURT: I don't know.

7 MR. WYNNE: Well, if they're in, then my point is  
8 moot.

9 THE COURT: As usual, let me talk to the paralegal.  
10 Are those the same and are they in?

11 MR. WYNNE: They are the same. Okay.

12 THE COURT: Then we don't need 53 and 54.

13 MR. WYNNE: All right. Just being careful.

14 Next we'd ask for No. 64, which Ms. Heredia -- or  
15 that Mr. -- Mr. Evans proved up with Ms. Heredia. That was  
16 the CARFAX.

17 MR. NKWONTA: Object on authenticity grounds and  
18 hearsay and foundation.

19 MR. WYNNE: I don't think they preserved those.

20 MR. NKWONTA: We did preserve those. This is part of  
21 the -- this is also disclosed untimely, so...

22 THE COURT: They did, Mr. Wynne, on the 26th of  
23 October.

24 What's next?

25 MR. WYNNE: I would just respond to their -- to their

1 hearsay objection and the Court's ruling under the residual  
2 hearsay rule.

3 THE COURT: Well, your first objection, though -- and  
4 I'll have plaintiffs' counsel repeat it again. The hearsay  
5 objection is not your -- it's a problem, but it's not your  
6 biggest problem.

7 MR. NKWONTA: So, Your Honor, actually, I want to  
8 retract one of my objections. I believe Exhibit 64, the  
9 CARFAX, I believe that was disclosed in May of 2023. So I  
10 apologize and I retract that objection.

11 THE COURT: I think Ms. Heredia testified about it,  
12 Mr. Nkwonta, and she -- I think she probably verified -- I  
13 haven't seen the exhibit, but she probably verified what was  
14 in the exhibit, because I didn't see the exhibit. But she --  
15 Mr. Evans on direct -- on cross questioned her about it.

16 MR. NKWONTA: She verified one entry that showed  
17 where her car got service. So, obviously, that is in evidence  
18 that the car got serviced on that date. But the CARFAX report  
19 itself is unverified.

20 THE COURT: Okay. Without seeing the exhibit, I  
21 can't -- if he's talking about the whole CARFAX report, you  
22 know, it's telling if the car if it's been in an accident and  
23 all that, she did not testify to that.

24 MR. WYNNE: We'd ask to offer it under 807, which is  
25 the residual hearsay exception and point out that throughout,

1 plaintiffs have been criticizing our various -- our various  
2 witnesses for not having looked at things like the CARFAX  
3 report, which is a concession of some element of reliability  
4 putting it in Rule 807.

5 THE COURT: I almost should ask either  
6 Ms. Lawrence-Hardy or Ms. Bryan to stand up here and rule on  
7 your objection, because this came up in another case and we  
8 spent about, what, an hour and a half on it. And at the end  
9 of the day, Ms. Bryan and Ms. Lawrence-Hardy was not happy  
10 with the Court. I didn't allow it then, and I'm not allowing  
11 it now.

12 MR. WYNNE: Okay. Well --

13 THE COURT: And let me say, anybody reading this  
14 record, so the Appellate Court can be really sure, what  
15 happened in the case, Ms. Bryan and Ms. Lawrence-Hardy, I just  
16 used it to relate it, because they both were looking at me  
17 like what the world are you doing.

18 Totally different matter. But there's a whole  
19 different set of procedures you have to follow to get  
20 something in on residual and you haven't offered not one of  
21 them yet.

22 MR. WYNNE: I'm ready.

23 A, the statement is offered as evidence of a material  
24 fact. It's a material fact that there was dispute about  
25 Ms. Heredia's residence for purpose of Section 230.

1           The statement is more -- B, the statement is more  
2 probative on the point for which it is offered, that any other  
3 evidence that the public can cure through reasonable efforts  
4 and because plaintiffs have put so much effort --

5           THE COURT: There's your problem right there. I  
6 don't find there's been enough reasonable efforts that you  
7 could not have gotten this in another way.

8           Residual is the last resort to get something in where  
9 all of the other mechanisms have not been met. But the key is  
10 that you have to show this Court that you used all those other  
11 mechanisms and did not work out. Not because of your failure  
12 to do it, but because you haven't shown the Court that it  
13 couldn't have been done another way. And that's my ruling  
14 here.

15           MR. WYNNE: For the record, I would just suggest that  
16 the large array of things that were done that they objected to  
17 as an intrusion upon Ms. Heredia's personal affairs, that is  
18 everything that Mr. Somerville, who is nothing but thorough,  
19 did.

20           THE COURT: I respectfully disagree with you,  
21 Mr. Wynne, but I note your objection for the record. I'm not  
22 allowing it in.

23           MR. WYNNE: Okay. Thank you.

24           Along the same lines and potentially risking the same  
25 ruling, I'd offer, again with Ms. Heredia, Exhibits 127

1 through 129. Those are the NCOA result, the CASS summary  
2 report, and the CASS certification, which I believe Mr. Evans,  
3 you know, set the foundation through cross.

4 THE COURT: 127 through what?

5 MR. WYNNE: 129.

6 MR. NKWONTA: Your Honor, I don't know who laid the  
7 foundation on this. If they are suggesting that Jocelyn laid  
8 a foundation a CASS summary report, I would object to that.  
9 I'm not sure what a CASS -- I'm still not sure what CASS means  
10 after this trial.

11 MR. WYNNE: Well, I think Ms. Engelbrecht explained  
12 that admirably. And if you take the testimony of Jocelyn  
13 Heredia and combine it with that explanation, there is a  
14 sufficient evidentiary foundation to let these uncontested  
15 materials, in terms of whether they're accurate and probative,  
16 in.

17 MR. NKWONTA: Your Honor, 127 is just a screenshot.  
18 128 and 129 are pages that -- it's unclear what it is they  
19 are. And I'm -- I don't think you can cobble together  
20 testimony from different witnesses to establish foundation.  
21 But even if you could, I still -- there still has been no  
22 foundation laid for these exhibits.

23 MR. WYNNE: Of course you can. We did it with the  
24 text message exchange. We had to wait until Derek Somerville  
25 was on the stand to -- to authenticate his part of that

1 communication. So of course you can use two witnesses to  
2 establish a foundation. That's fundamental.

3 THE COURT: Well, I agree you can use two witnesses  
4 to establish a foundation. I'm just trying to think, did you  
5 establish the foundation?

6 Tell me again your objection, other than the  
7 foundation aspect of it.

8 MR. NKWONTA: Foundation, authenticity. And it's  
9 unclear what these -- it's unclear what these pages are.

10 THE COURT: So what are they? Are they the ones  
11 where it's showing Mr. Bowling and them challenging?

12 MR. WYNNE: We can pull the exact exhibits and show  
13 them.

14 MR. NKWONTA: No witness actually explained what  
15 these documents are.

16 THE COURT: I need to see them, because I don't  
17 remember -- I probably saw them, but just -- I remember one  
18 dealing with Ms. Heredia, the other showing -- Representative  
19 Bowling and Mr. Gasaway -- Dan Gasaway was challenging her.  
20 Is that the one you-all are talking about?

21 MR. WYNNE: Ms. Martinez has them pulled up on her  
22 screen right here. If we want to find a way --

23 THE COURT: Well, plaintiffs' counsel said he doesn't  
24 know what it is. So you've got to show it to him as well. I  
25 don't remember seeing this.

1 MR. WYNNE: It's in voluminous binders, I'm not  
2 sure -- but we have them on the screen.

3 THE COURT: What -- your screen. Is that -- I don't  
4 remember seeing that, I've got to be honest with you,  
5 Mr. Wynne. I don't agree that the testimony regarding this is  
6 extensive enough to establish a foundation. I would think the  
7 person would have to establish a foundation, one of the two  
8 people would have to at least looked at it to identify it. It  
9 was never put up on the screen. So I don't know how you can  
10 establish a foundation when the person -- again, two people  
11 can do it, but neither of them was ever shown this.

12 MR. WYNNE: Fair enough.

13 THE COURT: Denied.

14 MR. WYNNE: All right. 128.

15 THE COURT: 128. I think you've got the same problem  
16 with 128. I don't remember either one of the two people  
17 you're trying to lay a foundation with ever identified this.

18 MR. WYNNE: Well, okay. Could I recall  
19 Ms. Engelbrecht?

20 THE COURT: I already told you your problem.

21 What's your next one?

22 MR. WYNNE: All right. 129.

23 THE COURT: One more time. If one of the two people  
24 had identified it, that's part of laying the foundation. But  
25 neither one of these people were shown 129 either. So they

1 never identified it.

2 MR. WYNNE: So is that --

3 THE COURT: That's a no as well. 127, 128, 129 are  
4 not allowed. I note Mr. Wynne's exceptions for the record.

5 MR. WYNNE: Okay. Then I go to -- and I think this  
6 is in order that they were presented. This is regarding  
7 Mr. Turner. We have 278, which was presented. And that's  
8 this one. And he did --

9 THE COURT: Yeah. On the first day, October the  
10 26th, that one was presented.

11 MR. NKWONTA: Your Honor, this exhibit was disclosed  
12 12 hours before trial.

13 THE COURT: Okay. Well, Mr. Wynne, your problem is  
14 that it was not timely disclosed, according to plaintiffs'  
15 counsel.

16 MR. WYNNE: Well, I still need a ruling for the  
17 record, if you will.

18 THE COURT: It was not timely disclosed and that's  
19 the reason why I'm not allowing it in. I think it probably  
20 would come in otherwise, but plaintiffs' counsel is saying it  
21 was not timely disclosed under the rules. So based on that --  
22 that is your objection?

23 MR. NKWONTA: Yes, Your Honor.

24 THE COURT: I would have to deny it. I remember this  
25 one. Because this one was presented, it was shown to



1 Mr. Turner on the 26th of October, but it was not put in, it  
2 was not offered, and it was not timely disclosed. So I'm  
3 denying it on that basis, it was not timely disclosed.

4 MR. WYNNE: And then 276. Again, I would -- I would  
5 say that it was fully -- a foundation was laid for this  
6 exhibit during Mr. Turner's testimony, and as -- I offer it  
7 into evidence.

8 THE COURT: I think we're going to have the same  
9 problem. I remember it also being shown to Mr. Turner. I  
10 think the proper foundation was set up. The question is, was  
11 it timely disclosed?

12 MR. NKWONTA: It was not timely disclosed, Your  
13 Honor. And just for the record, we would also assert a  
14 foundation objection because it was still -- no one has  
15 testified as to where that document came from or what it is.

16 THE COURT: Mr. Wynne, if it is not timely disclosed  
17 we don't even get to the other part. So, again, I note your  
18 exception. I think you'll probably -- if you had timely  
19 disclosed, you probably would have got it in, but...

20 MR. WYNNE: And for the record as well, I'd also note  
21 that new counsel did not get the entire files from former  
22 counsel until after the May date, which seriously handicapped  
23 our ability to understand the relevance and to supplement that  
24 exhibit list, the due date for which had already passed.

25 That being the same for the witnesses we had hoped to

1 call, but we were precluded because of prior counsel's neglect  
2 and negligence.

3 THE COURT: I don't quite know how to respond to  
4 that, because I don't want to get subpoenaed for an Indiana  
5 case.

6 MR. WYNNE: I just wanted to note it for the record  
7 and ask the Court to take judicial notice of my statement.

8 THE COURT: I take judicial notice of your statement.  
9 I'm not saying whether it's true or false, but I take judicial  
10 notice of your statement.

11 MR. WYNNE: And so with that, so I don't have to  
12 repeat everything again, we offer Exhibit 277.

13 THE COURT: I think we're in the same situation that  
14 it was not timely disclosed. So I'm denying it for that  
15 basis.

16 MR. WYNNE: Same offer into evidence, Exhibit 280.

17 MR. NKWONTA: Yes, Your Honor, same objection.

18 THE COURT: Denied because it was not timely  
19 disclosed.

20 MR. WYNNE: And 275.

21 MR. NKWONTA: Same objection, Your Honor.

22 THE COURT: It's denied because it was not timely  
23 disclosed.

24 MR. WYNNE: There are a couple more here.

25 And then Exhibits 297 through 302. Those relate to

1 Jocelyn Heredia and inquiry into, you know, her residence for  
2 purposes of the Section 230 eligibility inquiry.

3 THE COURT: Now, 297 was shown to her on October the  
4 27th, but it was not admitted.

5 MR. NKWONTA: Same objection. It was not timely  
6 disclosed.

7 THE COURT: Is that same way for 298 and 299 as well?

8 MR. NKWONTA: Yes, Your Honor.

9 MR. WYNNE: 299 through 302.

10 THE COURT: All right. Just for the record,  
11 Mr. Wynne, from 297 to 302, the Court is going to deny it  
12 because it was not timely disclosed.

13 MR. WYNNE: Okay. And I believe that's it. And so  
14 the defendants --

15 THE COURT: Just for the record, I did allow in 64  
16 over objection. Wait a minute. Yeah, I allowed that one --  
17 well, I didn't, excuse me, because the CARFAX included extra  
18 information. I think you're going to have to go through it  
19 and take out the part -- one part of it is admissible, but not  
20 all of it.

21 MR. WYNNE: Okay.

22 THE COURT: One part she testified to about going to  
23 CARFAX and things like that, but she didn't testify about the  
24 entire CARFAX report that talks about accidents in the past  
25 and things like that.

1 MR. WYNNE: Well, we can redact that and reoffer it.

2 THE COURT: You redact that and show it to  
3 plaintiffs' counsel.

4 MR. NKWONTA: Your Honor, if the Court is going to  
5 admit that exhibit, then we would prefer the entire exhibit be  
6 admitted under the rule of completeness. So no need to  
7 redact. Our view is just it shouldn't be admitted. If it  
8 comes in, we think the entire thing should come in.

9 THE COURT: All right. Here's what I'll do. To  
10 perfect your record, I'm going to allow it in over objection.  
11 So that we'll put it all in, but I'll just say you objected to  
12 it. So I allowed it in over objection.

13 MR. NKWONTA: Thank you, Your Honor.

14 THE COURT: So the whole thing comes in over  
15 objection.

16 So you don't have to redact, Mr. Wynne.

17 MR. WYNNE: Okay. Then defendants rest.

18 THE COURT: Okay. Plaintiffs, anything? Have you  
19 got all your exhibits in?

20 Ms. Wright, is the defendants' list up-to-date and is  
21 plaintiffs' list up-to-date?

22 THE DEPUTY CLERK: Yes, sir.

23 THE COURT: Okay. Closing arguments start at 10:30.  
24 I think both sides requested an hour for closing; is that  
25 correct, plaintiffs?

1 MR. NKWONTA: Yes, Your Honor. May I request to  
2 reserve 15 minutes for rebuttal?

3 THE COURT: You can reserve as much time as you want.

4 MR. WYNNE: Your Honor, we're going to split our  
5 part. I'm going to take the first 15 minutes, and then  
6 Mr. Evans will take the last 45 minutes.

7 THE COURT: Okay. All right. That's fine. We'll  
8 start at 10:30. Thank you-all.

9 (A break was taken. )

10 THE COURT: You-all can may be seated.

11 Before we start the closings, one announcement I need  
12 to make -- two announcements. Defendants' counsel filed a  
13 motion 52(c) last week. I told plaintiffs' counsel they had  
14 till noon today to respond.

15 I read defense counsels' brief Sunday night, a very  
16 good brief, but based on what I've heard in the argument last  
17 week, I'm going to deny the motion to 52(c). So I don't need  
18 today to brief. But both sides still are required by next  
19 Wednesday at 5 p.m. to file findings of facts and conclusions  
20 of law. So you probably -- your brief will not be in vein,  
21 whoever did the research, you can probably work it into that.  
22 Okay?

23 All right. Yes, sir.

24 MR. NKWONTA: Sorry, just one last housekeeping item  
25 I want to verify with Ms. Wright.

1 THE COURT: Yeah.

2 THE DEPUTY CLERK: Yes.

3 (A discussion is held off the record.)

4 THE COURT: Okay. Are you ready?

5 MR. NKWONTA: Yes, Your Honor.

6 THE COURT: Which clock is the plaintiffs' clock,  
7 Ms. Wright?

8 THE DEPUTY CLERK: That would be the left.

9 THE COURT: Mr. Nkwonta, the clock on the left is  
10 yours. The clock on the right is defendants. The one on the  
11 far left is the one -- is yours.

12 MR. NKWONTA: Thank you.

13 THE COURT: All right.

14 MR. NKWONTA: Good morning, may it please the Court.

15 THE COURT: Sir.

16 MR. NKWONTA: When we started this trial, Your Honor,  
17 I said that defendants' false accusations and threats would  
18 have consequences and that lies have consequences. And now  
19 that the evidence is in, I want to put a finer point on that  
20 statement.

21 Because with the evidence that we've seen, Your  
22 Honor, we submit that the standard to which we hold defendants  
23 and the standard by which we judge their conduct, as we've  
24 seen through this trial before the January 2021 runoff, will  
25 have serious consequences and serious implications for the

1 right to vote.

2 Now we know what the stakes are. And we know what  
3 the stakes are because Jocelyn Heredia has not voted since the  
4 January 2021 runoff. And you heard her, Your Honor, talk  
5 about how excited she was to be voting. How she emerged from  
6 the voting booth with an "I Voted" sticker. How she watched  
7 her parents become citizens and take part in one of the most  
8 cherished Constitutional rights. How she voted in 2016, 2018,  
9 2020, and the 2021 runoff. She was politically active.

10 But after her experience being challenged by both  
11 True the Vote's volunteer Jerry Bowling, and Mark Davis and  
12 Derek Somerville's volunteer, Dan Gasaway, she stayed away in  
13 2022.

14 Those are the stakes. And it's not just Jocelyn.  
15 The Court heard testimony from several voters, all of whom  
16 approached the voting process from different stages of life,  
17 from different backgrounds, and even from different parts of  
18 the world.

19 You had D'Malio Turner on temporary assignment in  
20 California. You had Scott Berson, recent Auburn graduate who  
21 came back home to Georgia and voted in the 2021 runoff while  
22 he was at home. And you have Stephanie Stinetorf who was in  
23 Germany working. And yet the one thing that all of these  
24 individuals shared in common, in addition with Jocelyn, the  
25 one thing they shared in common is that the challenges made

1 them fear that they had done something wrong. They were being  
2 accused of voting unlawfully. They felt that they were being  
3 accused of violating the law. They were fearful. They were  
4 intimidated.

5           So these are the consequences. And we saw the  
6 consequences when these individuals, these brave individuals  
7 testified.

8           And so the question is whether these plaintiffs and  
9 Georgia voters must bear these consequences alone. Whether  
10 they have to fend for themselves or whether the VRA provides  
11 some protection when they are falsely and recklessly accused  
12 of being unlawful voters.

13           Now, before I get too deep into the testimony and the  
14 exhibits, I want to recognize that this case presents some  
15 difficult legal questions that the Court has been working  
16 through, and to be frank, that I've been wrestling with. And,  
17 thankfully, the path that was laid out in the Court's summary  
18 judgment order, I believe is one that gives us a way out of  
19 this legal thicket. And it starts out by explaining how to  
20 prove a Section 11(b) violation. And it's grounded in the  
21 text of the statute and we can follow it.

22           It says, "Plaintiffs must show that plaintiffs'  
23 actions, directly or through the means of a third party in  
24 which they're directed" -- that's the first element -- "caused  
25 or could have caused" -- that's the second element -- "any



1 person to be reasonably intimidated, threatened, or coerced  
2 from voting or attempting to vote."

3 So I'll start with what I think is a threshold  
4 question. And it's a question that Your Honor raised during  
5 the Rule 52 motion arguments as well. What did these  
6 defendants do to end up here? What did each of them do? What  
7 are their actions that violated Section 11(b)?

8 I'm going to start with True the Vote, because True  
9 the Vote is the hub of all of this. And there are numerous  
10 connections. But starting with True the Vote.

11 We know that True the Vote challenged more than a  
12 quarter million voters just weeks before the January 2021  
13 runoff. And by now it's well-established that their challenge  
14 lists, consisting of over a quarter million voters, was an  
15 unmitigated disaster.

16 The Court has seen Plaintiffs' Exhibit 91, which  
17 we'll pull up briefly. And I don't want to belabor this --  
18 the next page, the next page, the next one, next.

19 I don't want to belabor this, Your Honor, but some of  
20 these errors are appalling. To challenge voters that have not  
21 even moved, that have the same moved from and moved to  
22 address. To challenge over 15,000 voters without even  
23 indicating the address they allegedly moved to. To challenge  
24 individuals whose addresses reside or reflect a military  
25 installation, to challenge students who are both students and

1 in the military, that is the height of recklessness, Your  
2 Honor.

3 And you heard Dr. Mayer testify credibly that he was  
4 in shock. He didn't just disagree, he was in shock by the  
5 quality of the challenge list and the errors that he saw.

6 We can take this down.

7 And you heard no evidence to refute Dr. Mayer's  
8 observations. Defendants did not put up an expert. They  
9 attempted to have Mr. Davis and Mr. Somerville opine on True  
10 the Vote's challenge list even while simultaneously claiming  
11 they were completely separate from True the Vote and did not  
12 know about True the Vote's methodology.

13 Then they tried to have Ms. Engelbrecht testify and  
14 give details about how the challenges were constructed, which  
15 she did, only to reveal on cross-examination that what she  
16 meant by analysis and construction was actually giving the  
17 order for somebody else to do the analysis and construction  
18 and -- and preparation of the challenge list.

19 And that other person she gave the instruction to,  
20 Gregg Phillips from OpSec. Well, you heard his deposition  
21 testimony. You heard experts from the deposition designations  
22 of all the things he didn't do. The things that  
23 Ms. Engelbrecht said True the Vote did, he said they didn't  
24 do. Didn't research how to remove military voters. Didn't  
25 research how to remove UOCAVA voters. She said she applied

1 SmartyStreets during the direct examination. On  
2 cross-examination, realized she did not. She sent a direct  
3 order, I guess, to Mr. Phillips to do it.

4 Long story short, the Court has heard no credible  
5 testimony to refute Mr. Mayer's -- or Dr. Mayer's observations  
6 in this case.

7 And the Court can make a finding just based on that  
8 chart alone, even without any further discussion, that the  
9 creation of those lists was reckless. And we know it was  
10 reckless, not just because of those errors, but because they  
11 were never caught.

12 When there are 15,000 entries that do not have a  
13 date, that do not have a move to date, when you challenge  
14 15,000 voters, that's 15,000 lines on whatever spreadsheets  
15 you've constructed where you alleged somebody moved but the  
16 address they moved to is blank and you don't see that. That  
17 means that you did not exercise the bare minimum diligence  
18 required when contesting someone's most sacred Constitutional  
19 right.

20 Now, that's what that statistic indicates, but we  
21 actually don't have to guess. Because you heard  
22 Ms. Engelbrecht testify and you heard others testify,  
23 Mr. Williams included, that they did not review those entries  
24 before they submitted the list. They took the list and they  
25 passed it off.

1           In some instances, the challengers themselves never  
2 received the list. In many instances, the challengers never  
3 received the list. In some instances, the volunteer  
4 challengers didn't even know they were submitting challenges  
5 on their behalf. You heard Mr. Martin express his shock that  
6 the challenges had been submitted in his name by True the  
7 Vote.

8           What Your Honor may not have heard but is in evidence  
9 as one of plaintiffs' deposition designations is testimony  
10 from Mr. Ron Johnson who also expressed shock that  
11 challenges -- or surprise that challenges were submitted in  
12 his name by True the Vote.

13           So obvious errors in the tens of thousands. Nobody  
14 reviewed those entries. And these are errors that you would  
15 see if you reviewed each entry. That is the height of  
16 recklessness for True the Vote's challenge list.

17           But it gets worse. They scrape together the  
18 challenge list of over 364,000 voters, they challenged about a  
19 quarter million but scraped together a list of over 364,000  
20 voters in approximately 2 weeks, according to  
21 Ms. Engelbrecht's testimony. Maybe even less.

22           Ms. Engelbrecht testified that they started preparing  
23 or conducting the data analysis in the second week of  
24 December. Then met with Mr. Davis and Mr. Somerville on  
25 December 16th. Announced the challenge effort on December

1 18th, and they were off to the races. That's a fast  
2 turnaround. And it's a fast turnaround considering that there  
3 isn't a preordained or predetermined window for filing these  
4 types of challenges in Georgia. They had all year. And they  
5 had the year before.

6 They chose to do it in the last two weeks before a  
7 hotly contested Senate runoff election. And they chose to  
8 overwhelm counties, meanwhile demanding that those counties  
9 conduct hearings and force the voters who had been challenged  
10 to present evidence of residency. And they did this even  
11 after a meeting with the Secretary of State's office.

12 You've heard a lot of discussion about that meeting.  
13 You've heard about Ms. Engelbrecht's takeaways from that  
14 meeting. And you've heard about various interpretations of  
15 that meeting. But you've only heard from one witness as to  
16 what was said in that meeting. The only witness who has been  
17 able to tell you what was said in that meeting reliably with  
18 admissible evidence is Ryan Germany.

19 And you can believe what Ryan Germany says because  
20 Ryan Germany does not have, you know, any stake in this fight.  
21 Ryan Germany met with True the Vote willingly with the  
22 Secretary of State's Office. And he told them, submitting  
23 spreadsheets with just names of voters is not going to  
24 accomplish what you hope to accomplish. It's not going to  
25 establish probable cause. Relying on that alone is not

1 enough. But they persisted anyway.

2 Then they heard from one of their challengers, Joe  
3 Martin, who told them problems with the challenge list,  
4 concerns about the quality. He said some of the folks he  
5 challenged were residents, had homes in Toliver County. They  
6 didn't revisit their lists, they didn't regroup. They said,  
7 fine, we'll find somebody else. James Cooper said I'll find  
8 somebody else to submit the same challenges. That's reckless.

9 And so with Dr. Mayer's unrefuted testimony  
10 explaining just how reckless True the Vote was in compiling  
11 these challenges, the Court should compare that with the  
12 purpose of the challenges. The purpose of the challenges, as  
13 Ms. Engelbrecht has testified and as she stated in her  
14 deposition, was to require voters to provide proof of  
15 residence, to challenge voters to provide proof of residence.  
16 So that means when a voter who goes to vote in person who can  
17 typically use a student ID or who can typically use a  
18 government employed ID, would no longer be able to use that  
19 ID. They've have to present something with proof of residence  
20 or an absentee voter, who at the time, could submit a ballot  
21 without additional evidence, would have to provide proof of  
22 residence. That was the stated purpose of these challenges.

23 And there's more even. You heard evidence that True  
24 the Vote created a -- we'll call it a whistleblower program,  
25 to use their words. To compensate individuals who report

1 fraud. And yet in private conversations, when discussing how  
2 to implement this program, Ms. Engelbrecht called it a bounty  
3 and revealed that she offered a Georgia whistleblower \$50,000  
4 in cash.

5 Now, the e-mail says what it says. It's in  
6 Exhibit 28. When this Court asked Ms. Engelbrecht about that  
7 \$50,000 offer, which was, again, contingent upon evidence  
8 leading to prosecution, and in addition to securing  
9 representation for that -- for that whistleblower, the Court  
10 should take note of Ms. Engelbrecht's response. She didn't  
11 say that's not true. She didn't say I didn't make that  
12 statement. What she gave was the equivalent of a word salad  
13 that didn't really tell us why a voter was being offered  
14 \$50,000 in order to report fraud.

15 And then that, Your Honor, is combined with the  
16 increased monitoring of polling places, with the references  
17 to -- the reference to Navy SEALs monitoring ballot drop  
18 boxes. Those are the activities that brought True the Vote  
19 here, and those are the reasons that True the Vote and  
20 Ms. Engelbrecht are defendants in this lawsuit.

21 During last week's argument, the Court asked about  
22 Ron Johnson, James Cooper, Mark -- well, they didn't ask about  
23 Mark Williams, but I'll address him as well.

24 So True the Vote and Ms. Engelbrecht, they're not  
25 Georgia residents. They don't have the right to file

1 challenges in any county in Georgia. So that's where these  
2 individuals come in. That's where Mr. Johnson, Mr. Cooper,  
3 and Mr. Williams come in. And they weren't just bystanders in  
4 this process.

5 Mr. Williams personally challenged more than 32,000  
6 voters in Gwinnett County. And you heard him testify that he  
7 didn't review any of those entries before he submitted the  
8 challenge. He assumed that -- he claimed to have run NCOA at  
9 some point in the past and saw that True the Vote had run NCOA  
10 and figured they were both correct and submitted the  
11 challenge.

12 And he helped True the Vote print and submit  
13 challenges to other counties. Mr. Cooper and Mr. Johnson  
14 recruited voter challengers.

15 And let me take a step back. Mr. Williams, in  
16 addition to challenging 32,000 voters in Gwinnett County, he  
17 demanded an investigation of every voter on this list, even  
18 though he didn't himself conduct any review of that list.

19 Mr. Johnson and Mr. Cooper were the head recruiters.  
20 True the Vote admitted that they assisted with recruiting  
21 hundreds of voter challengers across the state of Georgia.  
22 They admitted this in Plaintiffs' Exhibit 10 in their  
23 interrogatory responses.

24 And as Mr. Cooper testified in his deposition, which  
25 we've admitted as Plaintiffs' Exhibit 96, Mr. Johnson took



1 North Georgia, Mr. Cooper took South Georgia. This was a  
2 coordinated recruiting effort to ensure that they had enough  
3 challengers to carry out True the Vote's plan, carry out  
4 Ms. Engelbrecht's plan, carry out a plan that they could not  
5 implement themselves in Georgia.

6 And then the Court saw the e-mails from Mr. Cooper  
7 soliciting potential challengers, repeating false statements  
8 about the challenge lists, that 99.9 percent of the  
9 individuals on the challenge list were unlawfully registered.  
10 Well, we know that's false based on Dr. Mayer's analysis. Or  
11 stating that these efforts would have kept former President  
12 Trump in office if they had started earlier, if they started  
13 before the general election.

14 So Mr. Johnson and Mr. Cooper are integral to this  
15 effort. So is Mr. Williams and his 32,000 voter challenge in  
16 Gwinnett County. They're all part of the same enterprise.

17 And then the next question Your Honor asked is how do  
18 Mr. Davis and Mr. Somerville factor into this equation? Well,  
19 they collaborated with True the Vote in launching their  
20 challenges. They discussed the data, where to get the data,  
21 what it looks like. They shared talking points for the  
22 challengers. They invited their volunteer challengers to True  
23 the Vote strategy calls. Ms. Engelbrecht and Mr. Somerville  
24 exchanged more than 60 texts, many of which they failed to  
25 disclose during the discovery process, mostly related to their

1 challenge effort.

2           They even talked about jointly suing counties that  
3 did not process their challenges. And Mr. Somerville added  
4 his name and Mr. Davis' name to the press release announcing  
5 the challenges. And they told their volunteers that they were  
6 collaborating with True the Vote.

7           But putting that aside, even assuming that their  
8 challenge effort was entirely separate, the Court doesn't need  
9 to find that Mr. Davis and Mr. Somerville were collaborating  
10 with True the Vote or were operating in some joint enterprise  
11 with True the Vote in order to find them liable, because their  
12 separate challenges create liability under Section 11(b).  
13 Their actions in creating the challenge lists of 40,000 voters  
14 who they accuse of being unlawfully registered based on  
15 nothing more than NCOA data, that is enough.

16           And Mr. Davis and Mr. Somerville admit that they  
17 collaborated with Dan Gasaway to provide a challenge list for  
18 Banks County. And Jocelyn Heredia was challenged by Mr. Dan  
19 Gasaway.

20           So that's why these defendants are here, Your Honor.  
21 And moving through the elements of Section 11(b), these  
22 defendants cross and check every box for establishing  
23 liability.

24           First, the first question Your Honor posed in his  
25 order and the first question I'll address is whether there was

1 direct action toward voters caused by their actions. And the  
2 answer is a resounding yes. It was direct action because by  
3 creating these challenge lists and soliciting challengers,  
4 they sought to act through a third party, the counties, the  
5 election officials, to confront these challenge voters and to  
6 force them to present evidence of their residence.

7 Now, you have heard throughout trial, you've heard  
8 opposing counsel ask witnesses whether they've ever met the  
9 challenge voters, whether they have accosted or caused any  
10 harm to the challenged voters, whether they confronted the  
11 challenged voters in person. Numerous variations of that  
12 question. Those are legally irrelevant questions.

13 This Court has already recognized that is not the  
14 standard. Nothing about Section 11(b) suggests that the  
15 interaction or the acts must be violent or made personally in  
16 order to be considered intimidation. In fact, the Court  
17 emphasized twice in its order that direct contact need not be  
18 made by defendants themselves. A person cannot escape  
19 liability for doing indirectly through another what he or she  
20 would be liable for doing directly themselves.

21 So conduct through third parties we know can  
22 intimidate voters just the same as conduct initiated directly  
23 through defendants. And defendants have told us what they  
24 intended to do. They intended to use third parties to force  
25 voters to prove their residence. That is a direct action.

1           It's also true of the bounty on fraud. That is  
2 another direct action. When True the Vote or Ms. Engelbrecht  
3 offers a third party \$50,000 to report claims of fraud,  
4 they're acting through a third party. But they're also  
5 directly intimidating voters by making these announcements.

6           Now, given that the Court has rejected the idea that  
7 there needs to be some direct contact or some communication or  
8 some physical act, I'll move on to causation and how we  
9 establish that defendants' actions caused intimidation, both  
10 among Georgia voters in general and among the defendants.

11           So the first step is what is now I believe settled  
12 law in that interpreting Section 11(b), defendants are deemed  
13 to intend the natural consequence of their acts. And the  
14 conduct must generate the possibility that voters would feel  
15 threatened, intimidated, or coerced.

16           So is intimidation the natural consequence of voter  
17 challenges, whether individual voter challenges or mass voter  
18 challenges?

19           I believe in prior arguments or prior discussions,  
20 counsel and the parties have wrestled with that discussion.  
21 And, Your Honor, one of the reasons we've wrestled with that  
22 discussion is because there are a number of things that I  
23 think we know to be true but have not explicitly put in the  
24 record until Mr. -- until Dr. Burton got up there and  
25 testified. And that is, we know that voter challenges result

1 in intimidation because that was the motivation behind  
2 enacting voter challenge laws to begin with. When the first  
3 voter challenge law in Georgia was introduced in the early  
4 20th Century, the 1908 peer registration law, that law, as  
5 Dr. Burton testified and as his expert report shows, that law  
6 required that "registration lists shall be placed on exhibit  
7 in the office of the clerk of the court where all may inspect  
8 and may challenge those who are thought not to be worthy of a  
9 place." And then it was incorporated into the 1910 code of  
10 the state of Georgia.

11 And that law, as Mr. Burton testified, was designed  
12 to disenfranchise Black Georgians. And it was exploited for  
13 that very purpose, with devastating effect, particularly in  
14 the 1946 gubernatorial election.

15 So the resulting intimidation, coercion, and threats,  
16 it's not just a byproduct or something we have to guess may be  
17 a product of challenges at this point. It's the entire point.  
18 It is the very purpose of the challenge law.

19 Now, we're not alleging or seeking to strike down the  
20 challenge law, but we are recognizing that sometimes it's  
21 important to call these challenges what they are. It started  
22 as a tool to disenfranchise. It has evolved into a tool that  
23 citizens can use to ensure election integrity. But it can  
24 still be a tool to disenfranchise. It can still be a tool to  
25 intimidate. And we cannot ignore and pretend that its origins

1 do not exist.

2           And that historical perspective allows us to sort of  
3 dispense with this awkward dance where we try to figure out  
4 what types of challenges intimidate voters and what types of  
5 challenges don't intimidate voters. Or whether a voter should  
6 expect to be challenged, as Mr. Davis suggested, whether a  
7 voter who files an NCOA list should expect to be challenged.  
8 We know that challenges are intimidating because they were  
9 meant to be intimidating.

10           And we know that these challenges caused our  
11 plaintiffs to be intimidated. Jocelyn Heredia, who was  
12 challenged by Jerry Bowling, a True the Vote volunteer,  
13 testified that she was intimidated, that she thought she had  
14 violated the law.

15           Scott Berson gave the same testimony.

16           Gamaliel Turner, Stephanie Stinetorf. They all  
17 testified about the fear they felt when they were challenged.

18           Now, you'll hear from defendants that some of those  
19 individuals were not challenged by them or that there's no  
20 causation, but we have to look at exactly what the evidence  
21 shows, Your Honor, and differentiate the evidence with  
22 attorney statements.

23           So the first question: Was Jocelyn Heredia  
24 challenged by defendants? Did defendants cause her  
25 intimidation? Of course they did.

1           Because Ms. Engelbrecht admitted on the stand that  
2 Jerry Bowling was a True the Vote volunteer. And Jerry  
3 Bowling, as established in Plaintiffs' Exhibit 49, challenged  
4 Ms. Jocelyn Heredia.

5           Mr. Davis and Mr. Somerville, their challenge list  
6 for Banks County was submitted by Mr. Gasaway. They testified  
7 that they collaborated or worked with Mr. Gasaway to provide  
8 him a challenge list. And Jocelyn was challenged by  
9 Mr. Gasaway, again, Plaintiffs' Exhibit 49.

10           Then we go to the Muscogee County voters. Defendants  
11 suggest that the Muscogee County voters were challenged by  
12 Alton Russell and not by True the Vote. But the evidence  
13 doesn't establish that.

14           Amy Holsworth testified on the stand that True the  
15 Vote kept a list of challengers that it was recruiting. And  
16 on that list, under Muscogee County, she testified that Alton  
17 Russell's name was listed there. So on the list of  
18 challengers that True the Vote maintained, challengers that  
19 True the Vote maintained that Amy Holsworth testified that  
20 were individuals True the Vote was either -- had either  
21 recruited to submit challenges or was recruiting or had been  
22 referred to True the Vote, Alton Russell's name was listed  
23 there.

24           We know that Alton Russell submitted a challenge for  
25 Muscogee County. Defendants, who are in the best position to

1 refute that inference, have provided nothing other than their  
2 own statements that they did not work with Alton Russell. But  
3 they why was he on their recruited challenger list?

4 They've offered no explanation as to why Mr. Russell  
5 was on that list, on that list of challengers that they  
6 recruited. And even assuming, even assuming that Mr. Russell  
7 went off and filed his own challenges, even if we accept that,  
8 the list still shows that they attempted to recruit him to  
9 submit challenges in Muscogee County. And Section 11(b)  
10 forecloses both attempts and actual intimidation.

11 So they can't escape liability by just pointing to  
12 Alton Russell without providing any explanation or any  
13 evidence to explain why Mr. Russell was on their list of  
14 challenge recruiters.

15 THE COURT: Explain to me again. You said it doesn't  
16 matter whether they recruited him or not if he filed the  
17 challenges. Go over that again.

18 MR. NKWONTA: Certainly.

19 So Section 11(b) prohibits attempts, attempts to  
20 intimidate. And if True the Vote attempted to submit a  
21 challenge in Muscogee County through Alton Russell, the fact  
22 that they were not successful doesn't absolve them from  
23 liability under Section 11(b).

24 And the same -- the same issues that plagued the  
25 challenge list that they submit, that they submitted, also



1 plague the challenges that they attempted to submit. The  
2 challenges that they attempted to submit were not any more  
3 refined than the challenges they submitted. The challenges  
4 that they attempted to submit would not have created any less  
5 of a burden on voters who would have been forced to show their  
6 residence. And the challenges that they attempted to submit  
7 were not -- were not supported by any stronger legal argument  
8 or law. They were still based on shoddy NCOA data analysis.

9 And so the completion of the act is not necessary to  
10 find a Section 11(b) violation.

11 Now, that is the most charitable interpretation of  
12 the evidence when it comes to defendants. But in terms of  
13 what is most likely, what the preponderance of the evidence  
14 shows, the preponderance of the evidence shows that Mr. Alton  
15 Russell was on their list of recruited challengers and was  
16 listed under Muscogee County. And Mr. Alton Russell submitted  
17 a challenge in Muscogee County. And the only thing they have  
18 offered to refute that is to say, no, he didn't.

19 The next question that the Court may have is whether  
20 these challenges or whether the intimidation that resulted  
21 from the challenges was objectively reasonable. And here I  
22 admit there's not a whole lot of guidance in the statutory  
23 text and not a ton of guidance in the case law as to what  
24 objectively reasonable means.

25 But the Court has sketched out some parameters

1 through its multifactor test. And using those factors as a  
2 guide, the evidence has clearly demonstrated that these --  
3 that intimidation is objectively reasonable under these  
4 circumstances.

5 The first factor the Court mentioned was proximity to  
6 the runoff election. We've already established these  
7 challenges were submitted mere weeks, as little as two weeks,  
8 sometimes less, before the runoff election. The frivolity of  
9 the challenges. We've established through Dr. Mayer's  
10 testimony that these challenges were largely frivolous for  
11 multiple reasons.

12 First, True the Vote's challenges were error prone.  
13 The lists were sloppy. The lists were rife with errors that  
14 were shocking to Dr. Mayer, errors that should have been  
15 obvious. As I've mentioned, people warned True the Vote that  
16 the challenges they were submitting were both inaccurate and  
17 were not sufficient to establish probable cause.

18 So beyond the errors in the list itself, they were  
19 also legally baseless, because they relied solely on NCOA data  
20 to establish that the challenged voter did not reside in the  
21 specific county.

22 And that's not how Georgia law determines residence.  
23 Georgia law determines residence through a set of interrelated  
24 factors. There are approximately 15 rules in OCGA 21-2-217.  
25 Many of those rules focus on intent. In fact, intent is the

1 common theme that's woven through pretty much all of those  
2 rules.

3           And then the statute lists a number of factors as  
4 well to consider. Factors like financial independence,  
5 business pursuits, employment, income sources, residence,  
6 income tax purposes, age, marital status, residence of  
7 parents, spouse and children, sites of personal and real  
8 property, motor vehicle and other property registrations.

9           And NCOA database doesn't reveal any of that. It  
10 does not reveal any information that would tell you much about  
11 the factors I just listed. Nor does it reveal anything that  
12 will tell you about the highly individualized intent focused  
13 rules set forth in Section 21-2-217.

14           So to rely on NCOA data alone to determine that an  
15 individual -- or to allege that an individual is not a proper  
16 resident or is not voting correctly in a specific county, is  
17 to rely on evidence that is by definition insufficient to  
18 establish somebody's residence or to refute somebody's  
19 residence.

20           And how do we know that it's insufficient by  
21 definition? I've previously referred to the NVRA in numerous  
22 circumstances. And we've talked at length about the NVRA,  
23 Your Honor. I'm not suggesting that there's some potential  
24 NVRA violation that we're trying to litigate here. That's not  
25 the purpose of bringing up the NVRA.

1           But I think the NVRA provisions can provide a little  
2 bit of guidance, some guidance, as to how to view NCOA data  
3 within the context of voter registration and voter  
4 eligibility. And I'll give you one example.

5           The NVRA lists a number of sources of data that can  
6 be used by election officials to identify and remove  
7 ineligible voters. For instance, ineligible voters can be  
8 removed for evidence or information showing prior convictions,  
9 or eligible voters can be removed under the NVRA for  
10 information showing that the individual had died.

11           For those reasons, the NVRA allows county officials  
12 to remove voters without further examination, without voter  
13 notification, without the procedural steps that you see for  
14 the NCOA.

15           When it comes to the NCOA, NVRA does not allow  
16 removal for residency-based reasons alone. NVRA does not  
17 allow removal based simply on data showing a person changed  
18 their address.

19           Instead, there's a two-step process that the State  
20 and election officials must engage in. So while an individual  
21 can be removed for prior conviction or because of information  
22 indicating that that individual has died; when it comes to  
23 residency, when it comes to change of address, when it comes  
24 to information that would be revealed by the NCOA, election  
25 officials have to confirm with the voter. And if the voter

1 does not confirm that they have moved, election officials have  
2 to wait two election cycles, two general election cycles.

3 So putting aside what's an NVRA violation and what's  
4 not, the treatment of that source of data and the distinction  
5 between that source of data and other sources of data that the  
6 NVRA contemplates, should tell you something about how  
7 reliable the NCOA is in determining whether somebody is a  
8 registrant in a specific county or not.

9 And as the Court recognized in a summary judgment  
10 order, if defendants only used NCOA data to make their lists,  
11 then such fact might weigh in favor of finding that the  
12 challenges were frivolous, because a change of address alone  
13 is not sufficient to remove a voter from the rolls.

14 And that's exactly right. Because it's all  
15 defendants have recognized, or defendants that have testified,  
16 Ms. Engelbrecht, Mr. Davis, Mr. Somerville. People change  
17 their address for a host of reasons that are unrelated to a  
18 change in their permanent residence.

19 And if we -- next I want to point to the motivations  
20 at stake here. Because that's one of the factors that the  
21 Court considered, what were defendants' motivations.

22 Now, Section 11(b) does not require proof of intent.  
23 But it's notable, the motivations of the defendants, which  
24 they've admitted to in filing these challenges, again, it was  
25 to force voters who were challenged to provide evidence of

1 their residence, to do something more, something extra, to  
2 learn that they were challenged and to prove that they were  
3 entitled to vote.

4 As Dr. Mayer reliably testified, under the cost of  
5 voting framework, the increased legal risk and the additional  
6 steps required to establish one's eligibility, that  
7 dramatically increases the cost of voting and that burdens  
8 voters and discourages them from participating in the  
9 elections.

10 It sounds a lot like Jocelyn Heredia. And defendants  
11 have offered nothing to rebut that.

12 Now, True the Vote's -- that intent analysis or  
13 motivation, that applies to all defendants. But True the  
14 Vote's intent is even more fraught with improper attempts to  
15 reshape the electorate and nullify votes.

16 You've heard evidence about the Validate the Vote  
17 program and the effort to overturn the result of the 2020  
18 election. And how True the Vote converted the Validate the  
19 Vote program for the general election to Validate the Vote  
20 Georgia, merely changed the logo, and in Ms. Engelbrecht's own  
21 words, used the same resources, applied the same resources to  
22 Georgia.

23 And if we pull up Plaintiffs' Exhibit 1, under the  
24 Validate the Vote plan, you'll see that everything listed  
25 under that plan, True the Vote did in Georgia. Solicit

1 whistleblower testimonies of those impacted or involved in  
2 election fraud. Ms. Engelbrecht offered \$50,000 to an  
3 individual if his information would lead to prosecution.

4 Build momentum through broad publicity. We saw True  
5 the Vote's press releases and press statements announcing the  
6 challenge effort, exaggerating the challenge effort even,  
7 announcing the election integrity hotline, announcing  
8 partnership with GOP. Galvanized Republican legislative  
9 support in key states. You heard about all the legislators  
10 that Ms. Engelbrecht met with. You heard it again about the  
11 partnership with the Georgia GOP.

12 Aggregate and analyze data to identify patterns of  
13 election subversion. And it lists OpSec Group. Well, you  
14 heard about OpSec Group's analysis of the Georgia voter file  
15 and NCOA analysis to identify what they consider ineligible  
16 voters.

17 File lawsuits in federal court with capacity to be  
18 heard by SCOTUS. That's exactly what True the Vote did. They  
19 filed a lawsuit in Plaintiffs' Exhibit 27. They filed a  
20 lawsuit where they named eight counties as defendants and  
21 sought to overturn the presidential election results in those  
22 eight counties. They didn't even have plaintiffs that lived  
23 in those eight counties. They didn't even allege fraud  
24 occurred in those eight counties. Yet, those eight counties  
25 matched up perfectly with the eight counties with the largest

1 Black voting age populations in Georgia, per the Secretary of  
2 State's website.

3           And then we know about the bounty, which we just  
4 discussed, which Ms. Engelbrecht had a lot of difficulty  
5 explaining why she was explicitly stating that she was  
6 offering someone \$50,000 to report fraud. You heard  
7 statements about medical bills and you heard statements about  
8 everything that was going on. But it's still not clear, Your  
9 Honor, what that had to do with offering \$50,000 in exchange  
10 for information leading to prosecution of voter fraud.

11           And then publication. Defendants knew that these  
12 challenge lists could or would become public. They knew that  
13 they'd be subject to public records request. And there's  
14 strong evidence that True the Vote, or someone affiliated with  
15 True the Vote, and Ms. Engelbrecht and Mr. Phillips published  
16 a tweet on Twitter, the Time For a Hero tweet. The Crusade  
17 For Freedom tweet. Threatening to release the list of  
18 challenged voters. That's in addition to defendants'  
19 knowledge that these lists would become public or that they  
20 had become public.

21           Now, before delving too much and eating too much into  
22 my rebuttal time, the last thing I'll point out for Your  
23 Honor, as we established the elements of Section 11(b) and the  
24 elements of voter intimidation, is that this -- this case and  
25 the evidence we've provided and defendants have provided, will



1 require the Court to make credibility determinations.

2 For some of these issues, there is conflicting  
3 testimony. We acknowledge that. But the Eleventh Circuit  
4 does provide some guidance as to what factors this Court  
5 should take into account when making credibility  
6 determination, when deciding who to believe and what it can  
7 believe.

8 For instance, variations in a witness's testimony and  
9 any failure of memory throughout the course of discovery  
10 create an issue of credibility. The Eleventh Circuit said  
11 that in *Tippens v. Celotex*, 805 F.2d 949, Insight 954.

12 And you've seen some of that already. You saw some  
13 of that today, where Ms. Engelbrecht claimed that she  
14 conducted all this analysis yesterday on the challenge list,  
15 and today testified that she actually did not punch the  
16 button, she authorized the analysis for someone else -- for  
17 Mr. Phillips to conduct. And Mr. Phillips conducted the  
18 analysis and he said he actually did not do some of the things  
19 that Ms. Engelbrecht said that he did.

20 Another factor that the Court can take into account  
21 when assessing credibility. The directness in answering -- or  
22 lack thereof in answering questions. The recall of events,  
23 noteworthy events. Contradictions between testimony and other  
24 evidence and self-interest.

25 And this comes from a Southern District of Florida

1 case, *Bernal v. All American Investment Realty, Inc.*, 479 F.  
2 Supp. 2d 1291. And, again, we saw some of this. We saw  
3 defendants' responses to direct questions. We saw  
4 Ms. Engelbrecht's responses to direct questions about the  
5 \$50,000 offer. We saw Ms. Engelbrecht's responses to direct  
6 questions about the analysis of the challenge lists, about the  
7 attempt to remove -- or the so-called attempt to remove  
8 military voters.

9 Also, another factor the Court can take into account  
10 is litigation or discovery conduct. Courts have found that a  
11 party's failure to abide by discovery, a party's failure to  
12 provide documents, responsive documents, despite repeated  
13 requests for documents, despite knowing the documents were  
14 pertinent, that that is something to take into account when  
15 considering credibility. And that's *Fernandez v. Havana*  
16 *Gardens, LLC*, 562 F. App'x 854.

17 And as we mentioned, you -- this Court has seen  
18 numerous instances in which defendants have withheld material  
19 from discovery. That 60 -- those 60 text messages that I  
20 mentioned earlier between Ms. Engelbrecht and Mr. Somerville,  
21 those text messages, the majority of them were not produced.  
22 We received them shortly before this trial.

23 And then, Your Honor, as you saw in my  
24 cross-examination of Ms. Engelbrecht, you saw the  
25 embellishments in the December 14th press release or the blog

1 post claiming that True the Vote had partnered with the GOP,  
2 with the Georgia GOP and had reached out to the Democratic  
3 Party in Georgia, only to reveal that they did not reach out  
4 until at least a week later.

5 Or December 18th blog post claiming that True the  
6 Vote challenges 364,000 voters in all 159 counties. They did  
7 not do that.

8 Or when analyzing the Validate the Vote document,  
9 Plaintiffs' Exhibit 1. When Ms. Engelbrecht was asked whether  
10 True the Vote had evidence of illegal votes in Democratic  
11 counties, as they stated in their proposal. And her response  
12 in her deposition was "No, it's just promotional."

13 So a finder of fact can take these elements into  
14 account and can assess that against the testimony that this  
15 Court heard from plaintiffs, who credibly testified about  
16 their experience. Their experience being intimidated comports  
17 with everything we know about how challenges have been used in  
18 Georgia's history, about how bounties have been used in  
19 Georgia's history, and confirms for this Court that defendants  
20 accomplished exactly what they set out to do. And which is,  
21 to threaten, coerce, and intimidate these voters into  
22 believing that they were not eligible to vote or that they had  
23 to provide evidence that the law would not otherwise have  
24 required of them to vote.

25 And these actions have consequences, Your Honor. And

1 we ask the Court to provide plaintiffs the protection that  
2 they need so they can participate in our electoral process.

3 I reserve the reminder of my time for rebuttal.

4 Thank you.

5 THE COURT: How much time does he have left,  
6 Ms. Wright?

7 THE DEPUTY CLERK: Ten minutes.

8 THE COURT: All right. Thank you, Counsel.  
9 Counsel?

10 MR. EVANS: We're ready to go, but I'm just -- I'll  
11 go now.

12 THE COURT: I've got time. I'm going to deal with  
13 DOJ. You-all go ahead and start.

14 I have not forgotten you.

15 MR. WYNNE: There may be a case where mass challenge,  
16 lacking rhyme or reason, would be actionable under  
17 Section 11(b). This is not that case.

18 We're ailing in this country, as we've seen with  
19 imprecision, our choice of words, exacerbated by social media,  
20 24-hour news cycle.

21 What we're talking about here is eligibility  
22 inquiries. A finding of massive voter fraud, whatever that  
23 is, is not a prerequisite to the exercise of one's right to  
24 free speech, freedom of assembly, freedom of association, even  
25 with people from Texas. Loaded phrases like "voter fraud,"

1 "voter challenge" have become and have taken on ill-starred  
2 meaning in our common parlance.

3 Voter fraud is one of the things I was trying to  
4 bring out the meaning of in the cross of Dr. Burton, pointing  
5 out in what I hope was an artful way, I wasn't trying to be  
6 cute, a lie is a lie. When you tell someone who's manning a  
7 voting location that you live somewhere where you don't,  
8 that's a lie. It is a lie told by someone who is in the act  
9 of voting, that -- that is voter fraud.

10 The phrase has been turned on its head by the mass  
11 media, and I dare to say by the plaintiffs in this courtroom.  
12 And it's divided us. But, ironically, this is the exact state  
13 of affairs that True the Vote has been trying to address in  
14 multiple projects for years and years. Voter Latino, the  
15 Prairie View A&M initiative, training people, encouraging them  
16 to work the polls in precincts where you can't get three  
17 people or can't find them, encouraging people to embrace their  
18 democracy, Tocqueville style.

19 Now, it just so happens that at this time Georgia was  
20 at the center, making manifest this tension. And it was,  
21 perhaps, a potential tinder box. So you've got to insert a  
22 fuse to identify and let those interested know about a middle  
23 lane for citizen participation, informing Georgians in this  
24 instance that their Legislature had codified, had codified in  
25 230 a First Amendment right and put bounds on it, a right to

1 petition, assembly, speak, association.

2 And, again, people in Texas, people in Georgia can  
3 associate. When you get up, oh, maybe a mile, you can see  
4 there aren't lines between states and you don't see different  
5 pastel colors. We're all Americans. And we associate with  
6 one another. And, watch out, Texas is coming to the SEC.

7 Now --

8 THE COURT: They're in trouble.

9 MR. WYNNE: Yeah, I think so. A&M has already shown  
10 that.

11 This is a lawful, measured, and an important thing in  
12 our civic life.

13 Now, 230, like all legislation, might be understood  
14 as the product of an argument between and among multiple  
15 interests that took place in the legislature.

16 Now, ideally when that happens, we, through our  
17 elected representatives, we search ourselves and our souls and  
18 we see if we can identify some type of shared principles.  
19 This one, I'll submit, is relatively easy to find, hard to  
20 disagree with.

21 Voter rolls should be kept up-to-date. People should  
22 vote in the right place. This sustains confidence that  
23 elections reflect the people who actually live there and that  
24 citizens elect the people that will be representing them and  
25 they vote for or against the propositions that will impact

1 them and the taxes, increases, that they actually have to pay.

2 This is democracy.

3 It is an alternative to the Kraken or taking to the  
4 streets. Now, this is important. The concern underlying all  
5 of this is strikingly nonpartisan. It's about addressing, in  
6 this instance, the introduction of vulnerabilities and  
7 uncertainty, as our society evolves, which Ms. Engelbrecht  
8 chronicled in her response to the Court's question.

9 And on a microscale, the consequences of voting in  
10 the wrong place, or a couple of people doing that, is  
11 sustainable. On a much larger scale, it is not. And it  
12 undermines confidence in our system.

13 Now, plaintiffs' self-righteous exertation is to the  
14 contrary. Finding massive voter fraud, again, is not a  
15 prerequisite to exercising one's rights as codified in Georgia  
16 by Section 230.

17 THE COURT: Let me ask you a question.

18 MR. WYNNE: Yes, sir.

19 THE COURT: If this Court found that some of the  
20 defendants were reckless in putting together this challenge,  
21 could that lead to a finding of attempted intimidation?

22 MR. WYNNE: This is not that case.

23 THE COURT: Okay.

24 MR. WYNNE: That is not that case.

25 THE COURT: Tell me.

1 MR. WYNNE: Because the kind of case you're talking  
2 about -- you've got to remember, the average citizen does not  
3 have access to the NCOA. You've got to go through a licensee.  
4 That licensee is regulated. They don't have access to -- you  
5 can't subpoena bank records, all these other things. We  
6 cannot lower ourselves to society where not being reckless  
7 means you've got to spy on your neighbor. You've got to  
8 search their social media. That's not what the Legislature  
9 intended.

10 I think the standard is, for recklessness in this  
11 context, is not that you have, you know, some sort of surety  
12 measured in probable cause, you don't have to have the  
13 resources to hire a Derek Somerville or a Mark Davis or even  
14 Catherine Engelbrecht and a statistical technician with a  
15 Ph.D. in order to do what this law says you can do. And as  
16 counsel was -- my co-counsel will say, you know, there is some  
17 type of firewall. You can't call the NCOA garbage. Who said  
18 that is the standard?

19 Look, for the reasonable person, the reasonable  
20 Georgian, the reasonable Texan, I look at it and I say, okay,  
21 somebody expressed an intent, a permanent intent to move.  
22 Now, I'm no busybody, if going into that, I have to try to  
23 figure out, well, you know, do I go to college thinking I'm  
24 going to come back, this, that or the other? You can't get  
25 into subjective intent.



1           What you're asking is what a reasonable person,  
2 reasonable person, has an opportunity, as the law reads, and  
3 it doesn't give a limit on it, says you know what, NCOA, you  
4 know, I'd say that's sufficient to send it on to the people  
5 who are supposed to know what they're doing to tailor it to  
6 their communities. All right? They're the ones. Some of  
7 these counties have 1700 people. And your neighbor is the one  
8 who is sitting at that table. All right. And some people,  
9 some people are going to say, well, thank you, sir. You know,  
10 I appreciate it. I forgot to update it when I moved. I did  
11 driver's license, I did my magazine subscription, this, that,  
12 or the other, but forgot that. Thanks for telling me. And,  
13 in fact, what I'm going to do is go across the expressway and  
14 vote for the guy who's -- guy or woman who's going to  
15 represent me, or the bond issue I've got to pay.

16           I mean, that is -- as I've tried to say, that's a  
17 public good. And the average person, average person who  
18 doesn't have all of the statistical knowledge, and there are  
19 some down on the street I was talking to last night who have  
20 been sitting in this courtroom. And those people are  
21 concerned. They're concerned about the integrity of our  
22 system.

23           This case is not about Donald Trump. It's not about  
24 January 6. And I'll submit to you that -- that Catherine  
25 Engelbrecht, in the midst of what could have become a tinder

1 box and finally did, not because of her, that could have  
2 happened here. But these people are mad. And instead of  
3 yelling at their TVs, or Lord knows what, you know, because  
4 like it or not, they listen to one side. All right. You  
5 watch Sean Hannity every night, or whoever does; right? You  
6 get that perspective and you get that, let's create a fuse. A  
7 lawful system for that person to feel like they are an  
8 American exercising their right. Okay.

9 So you -- shoot, I would have thought NCOA, that's  
10 regulated. There's nothing wrong with the U.S. Postal System.  
11 But leaving a roll unchecked for two years? I mean, that  
12 ain't fair. That ain't right.

13 And we got someone who is stepping in, trying to  
14 solve the problem. And maybe, maybe that'll leave us in  
15 better status we otherwise hurdle. We hurdle towards a  
16 tumultuous 2024. What this Court says will really, really  
17 matter.

18 As Benjamin Franklin reportedly said in response to a  
19 question he was asked emerging from the Constitutional  
20 Convention about the form of a government, "The new States now  
21 have found themselves bound together to form a union of any  
22 sort, a more perfect one." Not a perfect one. A more perfect  
23 one. A democracy, if you can keep it.

24 And you know when we're all reading that back when in  
25 high school, middle school, I didn't imagine, you know, and I

1 was watching the convention when Jimmy Carter was nominated.  
2 I couldn't imagine a world in which we -- our democracy would  
3 be threatened. But that's happening.

4 I ain't seeing -- I'm not saying either side is  
5 right. But both sides have to feel that they have a way to  
6 participate other than some of the crazy things we've all been  
7 seeing.

8 And Ms. Engelbrecht is not part of that. And I hope,  
9 I pray that she showed you that during the course of her  
10 testimony. She is a precise person, articulate, studied. All  
11 right. Maybe she didn't have her hands on the keyboard, but  
12 she's the one who is the project manager. She's the one who  
13 had to know, you don't tell somebody or ask somebody to do  
14 something and observe the results and study the results and be  
15 in -- I mean, you know, my wife's a contractor. She hires  
16 people to, you know, frame the house and put in the plumbing,  
17 electrician stuff. Does she actually put in the plumbing?  
18 No. But she sure better know how it works when the building  
19 inspector comes around. Sure better.

20 This is not intimidation or coercion. It may be  
21 inconvenient. It may be at the poll you've got to reboot your  
22 phone. Maybe you've got to dig into your pocket. Maybe  
23 you've got to go out to your car in the glove compartment and  
24 get something. Maybe it's inconvenient.

25 I'll tell you, I think those are necessary sacrifices

1 to maintain our democracy and its manifest and things we do  
2 every day. I had to take out all my electronics and stuff  
3 going through security here. I lost my key -- card key for  
4 the hotel there, I don't know how many times in the past three  
5 weeks. I couldn't just go up to the desk and say, hey, you  
6 know, I'm in 619, give me another. No. Show your ID, or  
7 maybe show two forms of ID. My credit card, something, too.

8           You know, that's not coercion. And the person across  
9 the desk may be a different race than me, a different  
10 background. Shoot, you know, they may have three earrings in  
11 their nose and face and ears and red hair; right? Okay.  
12 Maybe I'm -- it's just simple. Okay. If you got to -- sorry  
13 it's inconvenient, but you've got to follow the -- we've got  
14 to have some rules.

15           No one is challenging anyone's right to vote.  
16 Ms. Engelbrecht doesn't want to remove anybody from any voter  
17 roll.

18           Thanks to your question, I skipped a lot of this.

19           Was enacting Section 223 a good policy choice?  
20 That's an issue to be brought up before the Legislature,  
21 frankly.

22           Does the lawfulness of setting in motion the  
23 procedural the Legislature has outlined in Section 230 change  
24 when the exercise is supported or even encouraged  
25 systematically? No. There's a statutory basis for doing it.

1 True the Vote -- let me say something else. Deadwood  
2 should not be thrown around so cavalierly. Shouldn't it be  
3 laudable, if not consistent, with Democratic principles, to  
4 minimize deadwood -- as plaintiffs' expert used that term.

5 The choice of word by whatever academic has chosen it  
6 is telling. Deadwood doesn't sound like something you want to  
7 have around littering your yard, your beach, your public  
8 space.

9 I'm done just about. One more paragraph.

10 Okay. Plaintiffs' complaint at its core is not  
11 about -- not the True the Vote or anyone else honed in on  
12 African Americans or anyone else. It's not true. Evidence  
13 doesn't support it. Plaintiff didn't even try to make the  
14 case in a serious manner.

15 Mr. Turner, Dr. Burton, raised some serious points,  
16 we should never forget. I commend them for raising it. This  
17 is not that case. This is not a civil rights case. Any  
18 suggestion to the contrary does not hold up.

19 I know Your Honor sees that. I know Your Honor would  
20 never take that kind of thing into account and would weigh  
21 this case differently. But others out there surely will.

22 I'm just telling it like it is. Let's acknowledge  
23 it. And let's acknowledge our past and instead look at the --  
24 but then look at the evidence and whether plaintiffs have met  
25 their burden under Section 11(b).

1           This case is not about anything else that was going  
2 on in the aftermath of 2020. You know -- and, again, it's  
3 really not about control of the Senate. What happened here  
4 will have aftereffects. People will be involved. They'll  
5 know about the system. It's not a core about that Senate  
6 runoff.

7           This is about a moment where election integrity  
8 finally came to the forefront. Issues that have long  
9 interested Catherine Engelbrecht, Derek Somerville, Mark  
10 Davis. Issues which perhaps only they and a select few were  
11 passionate. Those issues were now front and center. It could  
12 have been anywhere.

13           That's why they chose to engage in this election in  
14 Georgia at this time through this lawful vehicle. It has  
15 nothing to do with threats, intimidation, or coercion. Again,  
16 there may be a case out there some day, there may be a case  
17 where some random mass challenges, I'm going to challenge  
18 everybody, I don't know, over 50 or some type of group. All  
19 right? Every Georgia Tech fan, throw that out. Whatever it  
20 is, this is not that case. This is not that case.

21           MR. EVANS: All right, Judge. I'm going to reference  
22 a PowerPoint. I've got a courtesy copy if I could approach  
23 real quickly.

24           THE COURT: All right.

25           MR. EVANS: May it please the Court, my name's Jake

1 Evans. I represent the defendants in this case, and I'm going  
2 to present our closing argument.

3 I think -- and I'll do this whenever -- I'm ready.

4 Next slide.

5 I think to begin, we have to look at this case for  
6 what it is. What this case is, is it's a partisan manipulated  
7 fact set to support a narrative which simply does not exist.

8 Mr. Berson testified the only reason why he filed  
9 this case was because Fair Fight told him to do it. They have  
10 tried to concoct a bunch of arbitrary unrelated facts to  
11 support something which simply does not exist.

12 So as we look at the evidence in the case, and I'll  
13 go through, Judge, very quickly, each of the voters. I know  
14 you have heard their testimony, you've heard argument on it  
15 from plaintiffs' counsel, now you'll hear from me.

16 What the testimony showed is, in my opinion, and what  
17 the evidence showed, is Fair Fight trying to find many, many  
18 voters to come forward and testify about something which did  
19 not happen.

20 Scott Berson is the first one. Scott Berson, if  
21 anything, is someone that shows the reason why NCOA is  
22 accurate. The reason why the voter lists were 100 percent  
23 accurate. You have an individual who lived in Muscogee, who  
24 moved to Auburn, Alabama, who then moved back to Muscogee, who  
25 then moved to North Carolina and who now lives in

1 Pennsylvania.

2 He admitted, when he was on the stand, it would be  
3 very difficult, if you didn't know who he was, where he really  
4 lived. And, in fact, if a full eligibility hearing went  
5 forward on him, who knows what an impartial county Board of  
6 Election would ultimately determine in where he really  
7 resided. We don't know.

8 But what we do know is this was not someone who had  
9 lived in the same place for 30 years and never moved and there  
10 was no dispute over whether or not they really lived in  
11 Muscogee County. That was not in any suggestion, shape, or  
12 form a frivolous challenge.

13 And even more, Scott Berson did not know any of the  
14 defendants in this case, couldn't name one defendant in the  
15 case, had never talked to a defendant in the case, and knew  
16 nothing about True the Vote. Didn't mention their name.

17 Next, Judge, we have Gamaliel Turner. Mr. Turner was  
18 someone who moved to California four years ago at this point,  
19 had a year-to-year contract that he continued to renew, looked  
20 at his Facebook page, which said he lived in California.  
21 Looked at his ancestry page, which said he lived in  
22 California. Looked at his LinkedIn page, which said he lived  
23 in California.

24 He said he may go back at some point to Georgia.  
25 Right now he hasn't. And, in fact, he's another example,



1 Judge Jones, of someone who, if they had an eligibility  
2 challenge, your intent can change over time. You may  
3 initially move somewhere and intend to go back to Georgia, but  
4 at some point the facts show that maybe you're not going back.  
5 So if an eligibility challenge went forward on him, who knows  
6 what an impartial county Board of Elections would find. But  
7 what they wouldn't find was that was a wholly frivolous  
8 challenge because the facts show that it wasn't.

9 The other additional point is Mr. Turner didn't know  
10 any of the defendants, couldn't name any of the defendants,  
11 and had no way of connecting his alleged challenge to any of  
12 the defendants.

13 Lastly, Mr. Turner said the only way he found out  
14 about any alleged challenge was because he was calling to find  
15 out why he didn't get his ballot. And he didn't get his  
16 ballot, not because of a challenge, but because the U.S.  
17 Postal Service doesn't forward official ballots. And when he  
18 gave them the address, they sent it to him, he got it, his  
19 vote was counted.

20 Ms. Stinetorf is next. Ms. Stinetorf was a voter in  
21 Muscogee County. She was in Germany, didn't know anything  
22 about the environment here in the U.S., but what's most  
23 notable about her is the e-mail that the Court has judicially  
24 noticed, is when she had sent the e-mails, her vote had  
25 already been counted ten days before.

1 Nobody called Ms. Stinetorf and said listen, you've  
2 been challenged, your vote's not going to be counted. She's  
3 the one that made the proactive means to do it, and she  
4 testified on the stand the only way that she had any  
5 discomfort was because she logged on and when she logged on it  
6 said, allegedly, challenged.

7 This is a challenge that what happened, likely, was  
8 even if she was challenged, the county Board of Elections  
9 shows she was a military person. They immediately resolved  
10 that challenge. It never took one step forward further than  
11 that because she was, in fact, a military person overseas.

12 Ms. Heredia. Ms. Heredia is another one that if you  
13 look at the record, she left Banks County, she moved to  
14 Decatur. She lived in Decatur for a period of time then she  
15 moved to Midtown Apartment 1. She lived there for a period of  
16 time, and then she lived in Midtown Apartment 2. She stayed  
17 there for a period of time, and now she lives in Athens,  
18 Georgia.

19 I would believe that if there was an eligibility  
20 hearing on determining where she resided and it endeavored to  
21 do the full analysis, that there is a more than likely  
22 probability that she was not a Banks County voter.

23 Now, that's not what is before this Court. This is  
24 not an eligibility case. This is a Section 11(b) voter  
25 intimidation case.

1 But the reason why that's important is because that  
2 shows not only in this case was it not frivolous, in this case  
3 it may have been meritorious.

4 And taking it further, she didn't know any of the  
5 defendants. She hadn't talked to any of the defendants. She  
6 hasn't updated, even though she testified voting is very  
7 important to me, I would never miss the opportunity to vote,  
8 she took directly contrary actions in that she didn't take the  
9 initiative to in any way ensure her voter registration was  
10 active.

11 And, likely, all she had to do was fill out a form  
12 that said, under oath, under penalty of perjury, I still live  
13 in Banks County. Why would she not do that? Maybe because  
14 she didn't want to purger herself and not say she lived  
15 somewhere she didn't.

16 I don't know what happened. You're the trier of  
17 fact. I will say actions often speak louder than words. And  
18 in this case, it's pretty clear she didn't take actions. And  
19 plaintiffs' counsel began their argument on the fact she  
20 didn't vote. The fact, in my opinion, she didn't vote, is she  
21 didn't want to purger herself and she didn't take the actions  
22 to do that. I'll let the judge make that determination.

23 Next we heard from Dr. Mayer. Dr. Mayer we heard  
24 about a decent amount. There's a lot of problems with  
25 Dr. Mayer's analysis, some -- many of which the Court can make

1 the determination based upon reading his testimony.

2 He has no knowledge of NCOA. He doesn't know the  
3 error rate of NCOA and its predictive value. The database  
4 that he evaluates says it doesn't have any middle initials,  
5 yet every defendant that in any way submitted eligibility  
6 inquiries in this case had middle initials.

7 He had clear combination issues because he said he  
8 had formula -- there was formulas in his database. There was  
9 no formulas in any of the eligibility inquiry data that was  
10 submitted in this case.

11 In his analysis he includes every address that's in a  
12 military town or a college town, suggesting that everyone that  
13 lives in those towns were improperly included in any  
14 eligibility challenge list.

15 I will tell you, I went to the University of Georgia.  
16 There are people there that are called the locals. And the  
17 locals oftentimes don't like the students, and a lot of times  
18 the locals hang out at different bars than the students did,  
19 and restaurants. I remember that very well.

20 I think if I went to the locals and I said, hey, just  
21 because you're a local here, we're going to assume you're a  
22 student and you go to the University of Georgia and you deal  
23 with all this mess over here, I don't think that they would  
24 appreciate that too much. That's exactly what Dr. Mayer did.  
25 And it underscores the lack of legitimacy in his analysis.

1 Dr. Burton. Dr. Burton, quite frankly, offered  
2 completely and totally irrelevant testimony in this case. He  
3 attempted to offer testimony about whether these voters would  
4 be intimidated.

5 Dr. Burton is not a behavioral psychologist. He's  
6 not a psychiatrist. He has no expertise in determining the  
7 way stimuli creates emotion in human beings. He knows  
8 history, and he knows history in a very unfortunate time in  
9 our country's history.

10 But in any way extrapolating upon the history way  
11 back when into creating this voter in this moment felt this  
12 way, is not testimony that is probative on the issue that is  
13 before this Court. He admitted on the stand he's not trying  
14 to offer any testimony about any motivation of any of the  
15 defendants. He's not trying to say any of the defendants  
16 wanted to burn crosses or races, et cetera, et cetera. He  
17 limited his own testimony to testifying about people feeling a  
18 certain way based upon historical references, taking history,  
19 what happened many, many years ago, can't be extrapolated  
20 until today.

21 Any psychologist would tell you the way people feel  
22 depends on a number of subjective life experiences, subjective  
23 value sets that they accumulate over the course of their life.  
24 We didn't hear testimony about how people feel the way that  
25 they do in certain life situations. That would have been

1 probative. Talking about history way back when is not  
2 probative and, quite frankly, inflammatory, in my opinion.

3           Going to the defendants' case. The defendants' case  
4 was short, sweet, to the point, and completely and totally  
5 debunked, a strung together smoke and mirrors case presented  
6 by plaintiffs.

7           First we have Mr. Somerville. Mr. Somerville is a  
8 military veteran. He's a former Marine. As Your Honor saw  
9 him on the stand, very methodical. Takes tremendous pride in  
10 what he does, what he stands for. And he worked meticulously  
11 in generating these lists.

12           Mr. Somerville, in my opinion, is every instance of  
13 what the word "active and admirable citizen" is. This is a  
14 guy that went after the former Speaker of the House, David  
15 Ralston, for a number of factors that he testified about. And  
16 in this instance, he found and felt public sentiment was at an  
17 all-time low. And the way that we get away from the crazy is  
18 we focus on getting people engaged and focusing on projects  
19 that truly can make a difference.

20           And in this case what could make a difference is  
21 voters rolls that were outdated for a long period of time.  
22 Voter rolls that were frozen by NC -- NVRA for at least 90  
23 days.

24           He did a multilevel funnel, which the Court heard at  
25 great lengths. He went through NCOA. He went through

1 military. He went through Social Security Death Index. I'm  
2 not even going to try to go through all the stuff because I'm  
3 not an expert on it. The record reflects he was extremely  
4 methodical. He was extremely diligent. He was extremely  
5 exclusive, trying to get a list that, at the end of the day,  
6 only folks that at an incredible level could be challenged is  
7 exactly what he did.

8           Next we heard Mark Davis. Mark Davis is a friend of  
9 mine. He's a man that's been doing this for a very, very,  
10 very long time. His record spoke for itself. He has been  
11 experts in cases. He has been talking about the importance  
12 and necessity of ensuring voter rolls are maintained, updated.

13           He is someone that didn't jump into this game  
14 recently. He is someone that took exactly what he did  
15 extremely seriously. He did the NCOA search. He removed  
16 folks to the maximum extent he could, like Mr. Somerville,  
17 from college towns, from military bases.

18           He made sure that the Court would know this is  
19 something that is not a recent phenomenon. It was something  
20 that was extenuated in the 2020 election, and it was something  
21 that for a long time the majority of the public had wholly  
22 neglected but had come to the forefront.

23           So people like Mr. Davis, Ms. Engelbrecht, this is  
24 something that they have created, is their life's work. But a  
25 lot of times people don't appreciate the importance of your

1 life's work until it really, really is in the forefront. And  
2 that presents an opportunity to engage the citizens, to bring  
3 the issue to the table, to make sure that everybody can  
4 appreciate the importance of it so you can make positive  
5 change.

6 Mark Williams is the next witness we heard. Mark  
7 Williams may not be the most articulate man in the world, I  
8 probably am not either, but he did a good job explaining  
9 exactly what he is and what he stands for.

10 He created a printing company. Many years ago there  
11 was a family printing company. In this printing company they  
12 send out thousands upon thousands of mail on a daily basis.  
13 He understands the importance of NCOA, the value that it has,  
14 the underlying issues that NCOA highlights.

15 And in this instance exactly what it highlighted was  
16 that many, many, many people moved out of the area in which  
17 they lived at the point at which December 2020 occurred. Many  
18 folks were absolutely and totally surprised and shocked. He  
19 was one of those.

20 Before he ever spoke to True the Vote, he did his own  
21 analysis, created his own list. And he saw that list and was  
22 taken aback. And at that point, being someone that had been  
23 in this business for decades, being someone that is active in  
24 his community, understanding the importance of voter rolls,  
25 understanding the importance of voicing his voice for election



1 integrity, he took at his own initiatives to say this needs to  
2 be fixed. Around that time he was introduced to True the Vote  
3 who was looking at getting engaged as well and that is how the  
4 pair happened.

5 But he didn't just take, his own testimony says --  
6 confirms, he didn't just take the list and run with it. He  
7 took the list, compared it to what he had already done,  
8 ensured that he was comfortable, he was confident the match  
9 was sufficient, and he went for it and did it.

10 He testified he didn't know any of the voters in this  
11 case. He testified he didn't know who Alton Russell was. He  
12 submitted a challenge in one county, in one county only, which  
13 is Gwinnett County. There is no voter in this case who is a  
14 plaintiff or who is a fact witness who has anything to do with  
15 Gwinnett County.

16 Next we have Ms. Engelbrecht. Ms. Engelbrecht, as  
17 the Court noted, we had a long direct, but it was an important  
18 direct for the Court to know where Ms. Engelbrecht came from,  
19 who she is as a person, what she stands for, how she got  
20 involved, and why that she is here today.

21 She grew up in a small town in Texas. She was an  
22 early home provider for her family. She started a company, a  
23 family company. Her ex-husband was involved with it, her  
24 husband was involved with it, which forced her to generate  
25 very significant skill sets early on for managing, handling

1 datasets, handling adversity, overcoming adversity.

2           Around 2009, she had -- she felt -- found a calling  
3 in many respects where she gave up a high paying job helping  
4 run her family company to pursuing a passion of fighting for  
5 election integrity.

6           2009 is a long time ago. Back in 2009, no one talked  
7 about safe and secure elections. Election integrity wasn't  
8 something that was a mainstream issue. It wasn't something  
9 you do to get on TV or get publicity or get sued or get  
10 involved in anything like that. It was something that she did  
11 because she felt she could make an impact and a difference.

12           For the next ten years, she continued that fight.  
13 She engaged in multiple numerous public empowerment  
14 initiatives getting people involved. Prairie View A&M, as  
15 Mr. Wynne referred to, is one of them. But, ultimately, how  
16 it all culminated in many respects is looking at Georgia in  
17 2020.

18           And we tried -- she went back to where we were in  
19 2020. 2020 was not a typical year. I don't think anyone can  
20 disagree with that statement. We were hit with a  
21 once-in-century global pandemic. No one knew how to respond,  
22 no one knew how to react. That includes Secretaries of State  
23 throughout the U.S.

24           Many mail-in ballots were sent out. Most objective  
25 nonpartisan people would agree the least secure way to vote is

1 mail-in voting. You can't verify identification. And, as a  
2 result, we had a presidential election, the election was  
3 close, and public sentiment hit an all-time low.

4 Georgia, as all of us here know, saw the commercials.  
5 Was ground zero. Not only did we have one Senate runoff,  
6 because of Senator Isakson's passing we had two. They would  
7 both be decided on the same days. And not only two Senate  
8 races on the same day, but they would decide control of the  
9 U.S. Senate.

10 A lot of focus is sealed (phonetic) down to Georgia.  
11 And that's how Ms. Engelbrecht first got involved. But she  
12 didn't willy-nilly jump in to the Georgia arena. She did  
13 diligence. She met with the Georgia Secretary of State. She  
14 asked them what they thought. She ensured that if she didn't  
15 have the assurances that she needed she would not have went  
16 forward.

17 But she didn't stop there. She talked to not one,  
18 not two, three attorneys. She talked to folks in the  
19 Department of Justice. She talked to folks in election  
20 administration. She did significant diligence that took time.  
21 And it took time, which delayed her ability to move forward  
22 and ultimately take any action here in Georgia.

23 Whenever she testified, she testified to her  
24 involvement with generating and making these lists. She took  
25 great pains and lengths to make sure that she could utilize

1 the experience she got running True the Vote, the experience  
2 she got running CoverMe, to ensure these lists were very  
3 targeted -- or not targeted -- very diligent, methodical, and  
4 well done. And she did multiple layers in generating and  
5 making each and every one of the lists. And that's the  
6 testimony.

7 So now let's get to the law. And the Judge and the  
8 Court is well aware of the law in this case. So this is a  
9 case that is under Section 11(b) of the Voting Rights Act.  
10 The Court, I think the parties can appreciate, took a major  
11 endeavor in articulating a standard which controls this case.  
12 And this standard is highly, highly, highly important to the  
13 ultimate determination the Court will make, the way that I'm  
14 going to generate my remaining remarks, and the ultimate  
15 inevitable conclusion that must be brought about.

16 As the Court is well aware, the law -- case law in  
17 this is somewhat nebulous, but it does underscore each of  
18 these factors. And each of these factors hit on a question  
19 that the Court asked earlier about recklessness and I will get  
20 to that in one moment.

21 The first factor is the defendants must directly, or  
22 through means of a third party, direct some type of action.  
23 In this case, not only did no defendant direct any action,  
24 either directly or through someone else, but it, quite  
25 frankly, would not have been possible if they act within the

1 confines of Georgia law, Section 230, which is exactly what  
2 they did.

3 No one -- there is no evidence in the record, in fact  
4 all of the evidence in the record says, no defendant  
5 communicated with any of the four folks that testified. And  
6 that is a very important point. Because plaintiffs have  
7 alleged there's been tens of thousands Georgia, or quabillions  
8 of zillions of challenges and so many before people testified.  
9 I would not -- we can say a lot of things about the plaintiffs  
10 in this case, I wouldn't say they're not well staffed. They  
11 have many folks that can get, call, reach out to, like they  
12 called Mr. Berson, to find people and they had four. And  
13 those are the four that the Court must consider as we evaluate  
14 the record.

15 Mr. Berson never talked to, never heard of a  
16 defendant. Every defendant that I called testified, never  
17 talked to him, never heard of him, never directed any  
18 communication at him.

19 Mr. Turner, Ms. Stinetorf, Ms. Heredia, the facts are  
20 the same. They don't know any defendants. They never talked  
21 to any defendant. No defendant talked to them. There is no,  
22 either directly or through a third party directed by the  
23 defendants, to talk to them.

24 To show the weakness in plaintiffs' case they have  
25 suggested that the defendants directed a county Board of

1 Elections to talk to them.

2 I will tell you many things, any time I try to tell a  
3 judge or whoever or an impartial arbitrator what to do, they  
4 don't always listen to me and they're definitely not forced to  
5 listen to what I have to say. I think the Judge and the Court  
6 can agree with me.

7 When these are submitted, the record is -- the law  
8 and the record in this case is very clear. You submit an  
9 eligibility challenge. That goes to, what I regard and what  
10 the facts regard, is an inevitable firewall. And it's not  
11 just a firewall, Judge. This is a firewall that must be, by  
12 the letter of the law, impartial, nonpartisan.

13 Each county elects and selects who is on their  
14 firewall Board of Elections. There must be two Democrats, two  
15 Republicans, and then the chairman can be appointed by  
16 typically someone on the county board of -- the Board of  
17 Commissioners. These folks are created by design to be an  
18 impartial, nonpartisan body that will decide eligibility  
19 challenges.

20 No -- there is no evidence in this record that any  
21 defendant talked to any county Board of Elections and said,  
22 hey, I want you to talk to this person. In fact, the county  
23 Board of Elections takes an oath of office when they are sworn  
24 in that they must uphold the letter of the law. That is  
25 exactly what they did. If they don't find probable cause,

1 they go no further. There is no dispute on that. Mr. Germany  
2 testified to that when he was on the stand.

3 So here the only direct connection by plaintiffs  
4 counsels' own admission is telling county Board of Elections,  
5 who were -- take an oath of office, must uphold the letter of  
6 the law, by design must be nonpartisan, that, hey, you need to  
7 take action to ensure this person is talked to. The case  
8 really ends there.

9 But I'm not going to stop. I'm going to continue  
10 going. The direct element is not met. It's not met through  
11 any of the four, despite the quabillions of people that were  
12 alleged challenged, testified no defendant talked to them.

13 Next let's get to causation. The Court in its order  
14 very well articulates that there has to be a casual link  
15 between the parties. Here there's no casual link. There's no  
16 causal link because Mr. Berson, Mr. Turner, Ms. Stinetorf are  
17 Muscogee County. There is nothing that connects any defendant  
18 in this case to Muscogee County.

19 The only allegation that plaintiffs admit is a  
20 spreadsheet that was not admitted into the record. And  
21 Ms. Amy testified that, well, white means that we didn't reach  
22 out to them; yellow means they are -- may be; green means that  
23 they've submitted. So we have a hearsay statement, which is  
24 not corroborated by witness testimony, somehow having a guy's  
25 name on a list trying to outweigh every other witness

1 testifying I have no idea who that was, he never submitted it.

2 Plaintiffs have to prove their case by a  
3 preponderance of the evidence. That's not a close call. That  
4 is completely and totally insufficient to show by a  
5 preponderance of the evidence that there is any connection.

6 And that is still assuming you can get passed prong  
7 one, which is direct communication, which cannot happen in  
8 this instance. There is nothing in the record that says.

9 Ms. Heredia, same -- same issue. Ms. Heredia -- it  
10 is impossible to know how many people made challenges. It is  
11 impossible to know how those challenges resulted in any  
12 activity because of the necessary mechanism that is at play in  
13 this case. Unlike any case ever under 11(b), you have a  
14 necessary firewall, an impartial, sworn by the letter of the  
15 law firewall, to stop any direction communication with voters.

16 Let me see how long I've got? Is that a 15? 15  
17 minutes.

18 THE DEPUTY CLERK: About 14.

19 MR. EVANS: So getting to the last section is  
20 reasonable -- or the intimidation. It's very difficult to do  
21 intimidation, so the Court admirably put together each of  
22 these factors.

23 Proximity. Proximity is 100 percent explained here,  
24 given the tight timeline between when the general took place  
25 and when January 5th runoff happened.



1 Frivolity. There is no frivolity here. I mean, each  
2 of the four -- I mean, we can't -- we're not talking about  
3 pontificating maybe some voters somewhere someplace. They are  
4 well-resourced. They had an opportunity to present their  
5 case. They presented four. And the four were not frivolous,  
6 in fact could be meritorious.

7 Defendants motivation in making the case. Each of  
8 the defendants that we called, testified they did this  
9 100 percent credible reasons. The only contrary evidence is a  
10 historian that said he's not actually testifying about  
11 motivations.

12 The bounty. That's unsupported by evidence. That is  
13 a one liner and underscores the weakness of plaintiffs' case  
14 that they have to bring forward completely unrelated, in my  
15 opinion, grossly inflammatory statements to try to make facts  
16 exist which don't exist.

17 The mention of Navy SEALs. Same way. That was a  
18 small speech -- that was a small statement unsupported by any  
19 evidence.

20 Publication of challenged voters. It never happened  
21 in this case. There is no evidence in this case at any point  
22 saying here's the list of voters.

23 And to accentuate greatly the weakness of the case,  
24 plaintiffs have went on to say, well, somebody could submit an  
25 open records request and request this and, therefore, the

1 causation tenuousness highlighted by the fact that you have to  
2 make that argument shows there is no causation.

3 Proximity. I just want -- we'll skirt through these.

4 Proximity was close.

5 Go ahead. Keep going. Right here.

6 So when you look at the six factors taken  
7 conclusively.

8 First, there is no direct contact. We really should  
9 stop this. The analysis stops at that point in time. There's  
10 a nonpartisan firewall. Bam. Over.

11 Causation. Muscogee voters. We've got nothing in  
12 the record, an exhibit's not in the record. Even if it was,  
13 it still be -- would not be enough to controvert the  
14 overwhelming testimony nobody knows who Alton Russell is.  
15 Nobody has connected them. No witness has. No document.

16 They didn't meet the burden on causation as Muscogee.  
17 Heredia. It's really impossible to know who  
18 submitted what eligibility challenge. We have a nonpartisan,  
19 bound by the letter of the law, firewall which stops any  
20 communication.

21 So, bam, case is over.

22 Let's go to three. Three here, you've got to show  
23 the reasonableness of intimidation. If you look at these  
24 factors collectively.

25 Proximity. 100 percent explained.

1 Motivation. You've heard it. There was no testimony  
2 offered as to what the motivation was. Trying to pull  
3 together random facts said and one-off text messages or  
4 e-mails at one point to extrapolate a motivation is highly,  
5 highly problematic, unfair, and in no way a credible use of  
6 evidence.

7 I can't imagine what I've said about the Florida  
8 Gators at some point in my life. Does that mean I'm a bad  
9 person? I don't know. Maybe, maybe not.

10 The reality is that that's not enough.

11 Bounty. Not enough. Because that's nothing there.

12 Navy SEALs. Nothing there.

13 No publication of names.

14 Okay. Next.

15 What the plaintiffs -- this is a very, very  
16 significant point. Notwithstanding the overwhelming factual  
17 weakness in this case, if you look at the case law, what the  
18 plaintiffs are asking for is a wholesale departure of existing  
19 jurisprudence on 11(b).

20 The first case we've got the National Coalition of  
21 Black Civic Participation. That was a case about robocalls.  
22 And if you take a look at this robocall, I would agree, voter  
23 intimidation -- voter mail-in sounds great. But did you know  
24 that if you vote by mail, your personal information will be  
25 part of a public database that will be used by the police

1 department to track down --

2 (The reporter asks for clarification.)

3 MR. EVANS: Sorry. I'm trying to get through it. I  
4 only have so much time.

5 THE COURT REPORTER: You've got to repeat that.

6 THE COURT: Hold on, hold on. She has to record it,  
7 though.

8 MR. EVANS: I've got it.

9 THE COURT: Why don't you say, Judge, I refer you to  
10 reading this.

11 MR. EVANS: I refer you to reading that section.

12 Point being that is a robocall, direct communication.  
13 You read it. If someone was going to -- if I was going to be  
14 contacted by the police department, I agree.

15 Let's go to the next one. Following -- I'm sorry.  
16 Stay on that slide.

17 Following Native Americans at polling places. Taking  
18 notes. Tracking license plates. Having loud conversations in  
19 polling places.

20 You've got direct communication. Right there. Or  
21 act. Go to the -- don't -- stay on the slide.

22 Next case here. Willingham. Going to voters' homes,  
23 disseminating false information. Direct contact. Talking to  
24 people.

25 The next one. Arizona Democratic Party. Coordinate

1 poll watchers. Acting improperly over polls where people are  
2 voting.

3 It's the same thing. This is what 11(b) is about.

4 11(b) is not about operating within the confines of  
5 the law, submitting an eligibility challenge to a non-partial  
6 im -- nonpartisan a county Board of Elections to determine  
7 whether or not you will take any further action.

8 And if you want to go to a motivation here, if the  
9 defendants in this case really wanted to intimidate a voter,  
10 would they have done what they did? Or would they have sent  
11 out a mass text? Or made a robocall? Or sent people to the  
12 polls? Or did a big post about here are the people.

13 If they really wanted to intimidate a voter, they  
14 would have done what these people did. They would have done  
15 what courts throughout the United States have found to be  
16 intimidating to potential voters.

17 But that's not what they did. What they did was they  
18 operated within the letter of the law. They exercised great  
19 diligence in getting there to ensure voter rolls were  
20 important.

21 But before we go to the next factor, Judge, what's  
22 really, really important in the law is that that is where the  
23 analysis should stop. We should not get into recklessness if  
24 all of these three requisites and elements are not met. And  
25 they weren't met.

1           The recklessness element came out relatively recently  
2 in a U.S. Supreme Court case.

3           Now, I also agree that they weren't reckless, and we  
4 will get to that quickly in one moment. But the Court's  
5 analysis only gets to recklessness if 11(b) elements, pursuant  
6 to the summary judgment order is found, we cannot get there.  
7 It's not possible with the record before the Court.

8           Okay. So we have First Amendment rights. And one of  
9 the balances the Court will make is if we find those elements  
10 were met, which they were, then you have to weigh that with  
11 the First Amendment.

12           Okay. Next.

13           First Amendment applies, the Johnson case. When you  
14 have an intent to convey a particularized message. Here the  
15 Court has already found that. Whether the likelihood was  
16 great that the message would be understood to those who viewed  
17 it.

18           Next.

19           Here, courts concluded, element one is met.

20           Next.

21           And then element two is also met.

22           You have communications. I've asked her on the  
23 stand, did you voice your opinion, is this important in  
24 voicing your opinion. Yes, it is. Yes, it is. They did  
25 that -- True the Vote did it publicly. They didn't name many

1 people, but they did voice it. Undoubtedly First Amendment  
2 here is met.

3 Next.

4 So if the Court gets through all of the first three  
5 elements, which I would highly argue there is no way that's  
6 possible, it would require a complete departure with  
7 jurisprudence and would set a very, very dangerous precedent  
8 to almost eviscerate Section 230.

9 If it gets there, then we say, okay, we also have a  
10 First Amendment right here. This recklessness, we really  
11 don't even need to think about it unless we get to these other  
12 ones, but let's do it just for the heck of it.

13 Here recklessness is not negligence. Recklessness is  
14 you're acting with disregard of your actions. You're not  
15 operating methodically. You're not operating with diligence.  
16 You're not operating and spending significant sums and times  
17 and efforts to make eligibility inquiries to the best way that  
18 you know how.

19 Because we have to remember, to submit an eligibility  
20 inquiry, you don't have to be a genius, you don't have to be  
21 an expert, you just have to be a citizen of that county.  
22 Because we want citizens to be engaged.

23 It's just like a leadership class I took years ago,  
24 what is the best way to make people engaged and feel a part of  
25 the process? You empower them. You bring them in. That's

1 what we want to do with the citizens of Georgia. That's the  
2 whole purpose of Section 230.

3 There is no limit on how many you can submit. There  
4 is no limit on what you can submit. And why? Because there  
5 is a nonpartisan sworn by the letter of law firewall that  
6 stops any frivolous, negligent inquiries from going forward.

7 So here, plaintiffs provided no error rate as the  
8 NCOA. They needed an expert. And really they found just  
9 about whoever they could get. But notwithstanding all of  
10 that, Judge, it doesn't matter, because the law was complied  
11 with.

12 Go ahead.

13 So this is important. These are a number of quotes  
14 from Brad Raffensperger. I'm not going to read them. I will  
15 encourage them -- maybe I'll read one, but I'll encourage the  
16 Court to read them.

17 "The election integrity of free and fair, secure is  
18 two of the things American is founded on. We must protect  
19 vigorously and prosecute people who undermine them just as  
20 vigorously."

21 Each of these quotes are pretty strong quotes. That  
22 if you few break the law, that if you don't do what you're  
23 supposed to do, there are going to be consequences. We are a  
24 society based upon the rule of law.

25 But is that intimidation? No. Is that reckless?



1 No. Is that free speech? Yes.

2 That is -- I would argue the defendants did far less  
3 than this in this case. They didn't scream out on a blow horn  
4 I will vigorously prosecute you. Voting -- one of these is  
5 kind of cut off on mine. One of these is, "Felony is not  
6 enough."

7 That's pretty strong words there. A reasonable  
8 person, maybe somewhere, I don't know if they read that, could  
9 feel intimidated. But you know what? The First Amendment  
10 protects that. That's not reckless. I mean, maybe someone  
11 could argue it is, I don't think it is.

12 But what is for sure is that is less than operating  
13 within the confines of the law. Submitting an eligibility  
14 inquiry that a firewall will stop any further action from  
15 coming forward.

16 This one I'll hit briefly. Diverted funds, Fair  
17 Fight, they lack standing in the case. They haven't shown any  
18 quantifiable claim of any sort. But given that they -- they  
19 can't prevail on 11(b) or getting by the First Amendment, it  
20 doesn't really matter. The case should be dismissed in  
21 totality.

22 So at the end of the day, Judge, what this case is  
23 about. This case is about a plaintiff pursuing a narrative.  
24 Trying to string together not only fake facts out of context,  
25 but unfortunately people. And getting them here to testify to

1 things that simply aren't supported by the law.

2           The law is clear. Under 11(b), as the Court has  
3 pointed out, you have to meet those three factors. Those  
4 incontrovertibly cannot be met here. Only then, only then  
5 does the First Amendment come into play. And only then do we  
6 have to meet recklessness, which is a high threshold to meet.  
7 It must be disregarded for actions -- am I out of time?

8           THE COURT: Thank you.

9           MR. EVANS: The case should be dismissed. Thank you.

10          THE COURT: Thank you, Mr. Evans.

11          Counsel, you have ten minutes for rebuttal.

12          MR. NKWONTA: Your Honor, I'd like to address a few  
13 points that defendants made and reiterate a few points that we  
14 made that I believe have been distorted.

15                 First, based on the evidence that has come in in this  
16 trial, the First Amendment really just has no application  
17 here, because we are talking about baseless challenges. We're  
18 talking about challenges that are based solely on NCOA data  
19 that we know is not enough to determine whether someone is a  
20 resident. And that's why it's baseless, Your Honor.

21                 The definition of a baseless challenge, Your Honor,  
22 is one in which the proponent of that challenge has no  
23 reason -- or has no reasonable expectation of success on the  
24 merits. And they didn't have a reasonable expectation of  
25 success on the merits.

1           The Secretary of State's Office, Ryan Germany told  
2 them that their challenges were going to fail. True the  
3 Vote's challenger told them that their challenges were  
4 inaccurate.

5           Mr. Davis and Mr. Somerville, they knew that what  
6 they were putting out there was going to be a burden on the  
7 counties. And nobody was surprised when their challenges did  
8 not achieve any success because it was a baseless petition.  
9 It was a baseless challenge.

10           Another reason why you can tell it was a baseless  
11 challenge is that when you compare it to the residency law  
12 that I mentioned earlier, you compare it to the 15-factor test  
13 and you compare it to all the other enumerated factors like  
14 income, where the individual pays their taxes, where their car  
15 is registered, et cetera, when you compare it to all those  
16 factors and intent, the NCOA list sheds light on none of that.  
17 It sheds light on none of that.

18           So to suggest that -- that these challenges are  
19 somehow protected by the First Amendment is to reinvent the  
20 standard for determining eligibility and residence in Georgia.  
21 No reasonable litigant could realistically expect success on  
22 the merits. That is the definition of a baseless challenge.  
23 That's the definition the Court used in its summary judgment  
24 order. And that definition applied here.

25           There was no reasonable chance of success. No

1 reasonable chance that a list of 250,000 voters would be  
2 vetted and would be somehow investigated such that those  
3 voters would all be forced to show proof of residence before  
4 the election. They were frivolous from the get-go.

5           Second, we know that the allegations in the  
6 challenges were false. They were defamatory. They were false  
7 because they alleged that individuals were unlawfully voting  
8 or that were not registered in their counties. We know that's  
9 not true. One voter after another has had the courage to step  
10 up and testify to that effect.

11           But we also know it's not true because even True the  
12 Vote's own challenger, Joe Martin, has recognized that's not  
13 true and told True the Vote that's not true.

14           We also know it's not true because it's based on a  
15 faultily premise, that you can determine one's residence based  
16 solely on NCOA data. So because it's defamatory, it doesn't  
17 matter whether they put it in a petition. It doesn't matter  
18 where they put it in a filing.

19           And I'll direct the Court to *McDonald v. Smith*, a  
20 U.S. Supreme Court case, 472 U.S. 479. In that case, the  
21 Court recognized that defamatory material does not receive  
22 protection because it's placed in a petition. You cannot  
23 defame someone, you cannot falsely accuse someone of being an  
24 unlawful voter and receive protection for that statement  
25 because it's in a petition.

1           And then recklessness. Their conduct was reckless.  
2 The definition of recklessness is when a person consciously  
3 disregards a substantial and unjustifiable risk that the  
4 conduct will cause harm to another.

5           This case and the evidence we've presented is filled  
6 with alarm bells of unjustifiable risks of harm. That entire  
7 chart that Dr. Mayer presented, that is a red flag,  
8 unjustifiable risk after unjustifiable risk. Statements from  
9 the Secretary of State's Office in a meeting with Ryan  
10 Germany. Statements from True the Vote's only challenger.

11           Unjustifiable risk that True the Vote navigated,  
12 disregarded and trampled over in order to make a big slash to  
13 challenge 250,000-plus voters.

14           THE COURT: Are the voter election's firewalls in  
15 this case -- not only this case, any case -- challenged?

16           MR. NKWONIA: The Board of Elections are not  
17 firewalls, Your Honor. And for two reasons.

18           One, we saw in this case that the Board of Elections  
19 in some select counties did, in fact, process the challenges  
20 and held hearings.

21           Two, Jocelyn Heredia's name was published on the  
22 website. It was publicized. And she saw her name on the  
23 website as being challenged.

24           Suggesting that the Board of Elections is like a --  
25 is a firewall is equivalent of individuals calling the cops on

1 people who are voting and suggesting that it's not voter  
2 intimidation because the cops get to decide whether they  
3 actually enforce the law or whether they prosecute.

4 Yes, the Board of Elections gets to decide, but  
5 defendants advocated for the outcome that would result in  
6 intimidation. They pushed the Board of Elections to accept  
7 those challenges. And they even considered filing a lawsuit  
8 against Board of Elections that did not accept those  
9 challenges and did not approach voters and require voters to  
10 show their proof of residence.

11 And I also want to talk about the funnel approach  
12 that you've heard, which has been used to suggest that perhaps  
13 NCOA data was not the only data that Mr. Davis and  
14 Mr. Somerville used to identify the 39,000 list of challenged  
15 voters.

16 That is not true. That's a lot of smoke and mirrors  
17 there. But as you saw in the cross-examination, that, yes,  
18 Mr. Davis and Mr. Somerville relied on military data to  
19 exclude some military voters. Yes, they may have relied on  
20 data to exclude some UOCAVA voters. But once they excluded  
21 voters, excluded military voters, UOCAVA voters, and whittled  
22 it down to 40,000, at the end of the day, the only information  
23 they had about that 40,000 list of challenged voters is that  
24 they filed an NCOA change of address request. That was the  
25 only information.

1           And because they relied on that solely, what they  
2 filed and what they submitted was a baseless petition.

3           And, lastly, in terms of petitions, True the Vote and  
4 Catherine Engelbrecht have no right to petition to challenge  
5 any voter in Georgia. So whatever right to petition  
6 individuals -- individuals on this side of the v. may claim,  
7 or defendants may claim, that does not apply to True the Vote.  
8 That does not apply to Ms. Engelbrecht.

9           And any petition they would file would be baseless on  
10 their own. So they don't have First Amendment rights  
11 implicated there.

12           And then, with my remaining few minutes, Your Honor,  
13 I want to talk about the plaintiffs. I want to bring this  
14 back to the plaintiffs who -- whose testimony has been  
15 unfairly mischaracterized.

16           Mr. Gamaliel Turner. His return date to Georgia is  
17 not uncertain. He testified that he is returning to Georgia.  
18 He testified that his contract is ending and he's returning to  
19 the home that he currently owns and has always owned in  
20 Muscogee County.

21           Ms. Stephanie Stinetorf. She looked up her voting  
22 record on the My Voter page. And, yes, she saw on the My  
23 Voter page that she had been challenged. But that's not a  
24 surprise.

25           Voters determine and check whether their ballots have

1 been counted. Voters show up in person, like Scott Berson  
2 did, and try to vote. And that's when they learn that they  
3 have been challenged.

4 In other words, these voters were all confronted with  
5 the idea that they had been challenged.

6 And Ms. Jocelyn Heredia. Like I mentioned, she was  
7 challenged -- the list, the challenge list was published  
8 online, on the Internet, for her to see, for anyone to see.  
9 And on that challenge list that was Plaintiffs' Exhibit 46 it  
10 showed that she was challenged by two individuals, Mr. Jerry  
11 Bowling, associated with True the Vote, and Mr. Don Gasaway,  
12 associated with Mr. Davis and Mr. Somerville.

13 They have presented no evidence of any other  
14 individual who challenged Jocelyn, but yet they want to  
15 suggest there was some mystery challenge that may have broken  
16 causation. There is no such thing. There was no mystery  
17 challenge to have broken causation.

18 And Fair Fight here clearly diverted resources in  
19 response to these challenges. And the suggestion that Fair  
20 Fight has not calculated the amount of resources, that  
21 transgresses Eleventh Circuit case law, specifically Florida  
22 *NAACP v. Browning*, which recognizes it's the act of diverting  
23 resources, not the amount.

24 And, lastly, defendants have pointed to all of the  
25 different moves that Jocelyn has made, moving to Decatur,



1 moving to Atlanta, renewing her lease, and all of these things  
2 that occurred after January 2021, which has no bearing on what  
3 her residence was in January 2021, where she was a resident of  
4 Banks County where she took care of her little brother and was  
5 a staple in her household, even though she had an apartment  
6 that would get her closer to work. She was a resident of  
7 Banks County.

8 But even if -- putting aside -- putting that aside,  
9 yes, Jocelyn had an apartment in Decatur. Yes, she eventually  
10 moved to a different apartment closer to Atlanta. So what?

11 The challenge law does not allow you to challenge an  
12 individual for bases that are not covered under the grounds  
13 set forth in -- under Georgia law. Georgia's residency law  
14 sets forth the grounds of which one can establish residency.  
15 And intent is what's required. Jocelyn's intent has not been  
16 show.

17 THE COURT: Thank you, sir.

18 MR. NKWONTA: Can I just make one more point, Your  
19 Honor?

20 THE COURT: No. I stopped Mr. Evans mid sentence. I  
21 have to stop you there. Thank you.

22 MR. NKWONTA: Thank you.

23 THE COURT: At this point in time, I have a question  
24 for the plaintiffs and I have a question for the defendants.  
25 In this case the Department of Justice, representing the

1 United States of America, intervened on a protection of  
2 Section 11(b) of the Civil Rights Act.

3 I have not heard anything during the course of this  
4 trial where I've come to the conclusion that the plaintiffs  
5 are challenging 11(b); is that correct?

6 MR. NKWONTA: Sorry, can you repeat that, Your Honor?

7 THE COURT: I have not heard any evidence or argument  
8 during the course of this trial where the plaintiffs are  
9 challenging the constitutionality of Section 11(b) of the  
10 Civil Rights Act; is that correct?

11 MR. NKWONTA: That's correct Your Honor.

12 THE COURT: Through the course of this trial, I have  
13 not heard any evidence or argument from the defendants that  
14 indicate that you are challenging the constitutionality of  
15 Section 11(b) of the Civil Rights Act.

16 MR. WYNNE: That is correct, Your Honor.

17 THE COURT: That's correct?

18 If you-all would like to be heard, but at this point  
19 in time, I -- my findings is that Section 11(b) of the Civil  
20 Rights Act is Constitutional. But if you-all want to be heard  
21 on that before I close out for the day, I will.

22 MS. PAIKOWSKY: Your Honor.

23 THE COURT: Yeah, yeah.

24 MS. PAIKOWSKY: Thank you, Your Honor.

25 We just want to clarify for the record that

1 defendants are not challenging the constitutionality of  
2 Section 11(b) with their -- the Constitutional defenses that  
3 they have discussed. The constitutionality of 11(b) as  
4 applied here. If they are, we would like to be heard and we  
5 would be happy to present argument on the Constitutional  
6 issues.

7 MR. WYNNE: No, we are not challenging the  
8 constitutionality of Section 11(b). Something, in fact, we're  
9 very proud of and we honor. We're not challenging it in any  
10 respect.

11 MS. PAIKOWSKY: Okay, Your Honor. As long as we're  
12 all clear that if the Court finds a violation here, then it  
13 can properly impose a remedy consistent with the First  
14 Amendment. Thank you.

15 THE COURT: Okay. Thank you.

16 I want to commend all the lawyers and the parties in  
17 this case. You all have done an excellent job preparing for  
18 this case. You have given me a lot of information I need to  
19 try to make a decision. I would agree, I think everybody  
20 agrees that voting is very important. And the Court is going  
21 to try to get you an answer on this matter as soon as  
22 possible.

23 Also I need, by 5 p.m. next Wednesday, the 14th, your  
24 findings of fact and conclusions of law. Whatever you send to  
25 me, obviously, send to the other side. And then as soon as I

1 get that, we'll go through the information.

2 I wish I could give you an exact date for a ruling to  
3 be coming out. There's a lot of information, a lot of facts.  
4 And I agree to both sides it's a very important decision the  
5 Court has to make. So we will be very thorough as possible in  
6 rendering a verdict or a decision in this case.

7 Anything else from the plaintiffs?

8 MR. NKWONTA: Nothing further, Your Honor.

9 THE COURT: Yeah. I thank you the plaintiffs for  
10 your effort and everything you-all presented.

11 Anything else from the defendants?

12 MR. WYNNE: No, Your Honor.

13 THE COURT: I thank the defendants for everything  
14 you-all presented and your efforts as well. Everybody have a  
15 great week. And it's been a pleasure working with you-all.

16 MR. SHELLY: I'm sorry, Your Honor, to get in the  
17 last word.

18 I think you said it's due on Tuesday -- on Wednesday  
19 the 14th? I think that Tuesday is the 14th. Would you like  
20 it on Wednesday?

21 THE COURT: That's right. Wednesday the 15th. Yeah.  
22 So you've eight days rather than seven.

23 I don't think we mind, do we, Ms. Conkel? No.

24 Thank you-all. Have a great week.

25 (The hearing concluded at 12:40 p.m.)

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C E R T I F I C A T E

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF GEORGIA

I do hereby certify that the foregoing pages are a true and correct transcript of the proceedings taken down by me in the case aforesaid.

This the 7th day of November, 2023.

/s/Viola S. Zborowski  
VIOLA S. ZBOROWSKI,  
RDR, FAPR, CMR, CRR, RPR, CRC  
OFFICIAL COURT REPORTER TO  
THE HONORABLE STEVE C. JONES

RETRIEVED FROM [WWW.LIACRYDOCKET.COM](http://WWW.LIACRYDOCKET.COM)

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**Y**

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**Z**

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