

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

FAIR FIGHT ACTION, INC; CARE IN  
ACTION, INC; EBENEZER BAPTIST  
CHURCH OF ATLANTA, GEORGIA, INC.;  
BACONTON MISSIONARY BAPTIST  
CHURCH, INC; VIRGINIA-HIGHLAND  
CHURCH, INC.; and THE SIXTH  
EPISCOPAL DISTRICT, INC.,

*Plaintiffs,*

v.

BRAD RAFFENSPERGER, in his official  
capacity as Secretary of State of the State of  
Georgia; EDWARD LINDSEY, SARAH  
TINDALL GHAZAL, MATTHEW  
MASHBURN, and JANICE JOHNSTON, in  
their official capacities as members of the  
STATE ELECTION BOARD; and STATE  
ELECTION BOARD,

*Defendants.*

Civil Action Number  
1:18-cv-05391-SCJ

**A CONFERENCE IS  
SCHEDULED FOR  
APRIL 1, 2022**

**AMENDED-FINAL CONSOLIDATED PRETRIAL ORDER**

1.

There are no motions or other matters pending for consideration by the court except as noted:

**By Plaintiffs:** In connection with Plaintiffs' addition of three may-call witnesses to their Trial Witness List, Benjamin Ansa, Michael Adaba, and Rosa Hamalainen,

Plaintiffs are filing a motion to disclose these three additional fact witnesses. Plaintiffs reserve the right to file Motions in Limine on or before the February 25, 2022, deadline established by the Court's the Court's November 30, 2021, Order, ECF 641. Plaintiffs also reserve the right to file motions for judicial notice as appropriate in advance of trial.

**By Defendants:** Defendants reserve the right to file Motions in Limine prior to trial. The Parties are also currently discussing the submission of short briefs regarding evidentiary objections in conjunction with the proposed consolidated submission of Plaintiffs' designated deposition testimony, and objections thereto, as addressed in paragraph 20.

2.

All discovery has been completed, unless otherwise noted, and the court will not consider any further motions to compel discovery. Provided there is no resulting delay in readiness for trial, the parties shall, however, be permitted to take the depositions of any persons for the preservation of evidence and for use at trial.

**By Plaintiffs:** The parties are nearing completion of discovery related to post-2018 election events. Plaintiffs made a request for documents from Defendants that arose from the February 9, 2022, deposition of Gabriel Sterling and are awaiting that production. Plaintiffs reserve the right to seek additional discovery arising from that outstanding production by Defendants. Plaintiffs also reserve the right to pursue the deposition of Defendants' may-call witness David Perdue.

Concerning the three may-call witnesses added to Plaintiffs' Trial Witness List, Benjamin Ansa, Michael Adaba, and Rosa Hamalainen, Plaintiffs will coordinate for the depositions of these three witness should the Court allow their addition and Defendants request to depose them.

**By Defendants:** Pretrial discovery is largely completed in this case but small portions remain:

- By agreement, the reconvened deposition of Plaintiff's expert, Dr. Adrienne Jones is taking place the same day as the filing of this amended pretrial order. Defendants reserve the right to seek relief from this Court

and/or amend this pretrial order as necessary with respect to this deposition.

- On February 15, 2022, Plaintiffs made informal requests to Defendants for additional documents pertaining to the February 9, 2022 deposition of Gabriel Sterling. Defendants will respond to Plaintiffs' informal requests in due course.
- Defendants have indicated to Plaintiffs that they will not object to Plaintiffs taking the deposition of Senator David Perdue prior to trial, provided such is completed sufficiently in advance, should Plaintiffs choose to do so.

In light of the outstanding discovery in this case, Defendants specifically reserve all rights to object, move, or otherwise seek relief from the Court as may be necessary before trial.

3.

Unless otherwise noted, the names of the parties as shown in the caption to this Order and the capacity in which they appear are correct and complete, and there is no question by any party as to the misjoinder or non-joinder of any party.

**Plaintiffs' Statements:** Since the filing of the parties' Consolidated Pretrial Order on December 15, 2021, Janice Johnston replaced Anh Le and Edward Lindsey replaced Rebecca Sullivan on the State Election Board. Dr. Johnston and Mr. Lindsey are now parties pursuant to Fed R Civ P 25(d) and the case caption is updated to reflect these changes.

**Defendants' Statements:** The Parties are properly named in the caption of this Order. To the extent that Plaintiffs continue to seek any equitable or injunctive relief regarding the action(s) of counties, Defendants maintain that such must be joined in this action.

4.

Unless otherwise noted, there is no question as to the jurisdiction of the court; jurisdiction is based upon the following code sections.

**Plaintiffs' Statement:**

There is no question about the Court's jurisdiction, which is based on the following statutes:

**Count I:** [28 U.S.C. § 1331](#), [42 U.S.C. § 1983](#), [42 U.S.C. § 1988\(a\)](#), [28 U.S.C. § 2201](#), [28 U.S.C. § 2202](#).

**Count II:** [28 U.S.C. § 1331](#), [42 U.S.C. § 1983](#), [42 U.S.C. § 1988\(a\)](#), [28 U.S.C. § 2201](#), [28 U.S.C. § 2202](#).

**Count III:** [28 U.S.C. § 1331](#), [42 U.S.C. § 1983](#), [42 U.S.C. § 1988\(a\)](#), [28 U.S.C. § 2201](#), [28 U.S.C. § 2202](#).

**Count V:** [52 U.S.C. § 10301](#), [28 U.S.C. § 2201](#), [28 U.S.C. § 2202](#).

**Defendants' Statement:**

Plaintiffs' claims are brought under the following amendments to the United States Constitution and the Voting Rights Act of 1965. Defendants state that the Court lacks jurisdiction over Plaintiffs' claims, in whole or in part, because of mootness and/or because Plaintiffs lack standing to bring the claims that remain at issue after summary judgment. Defendants plan to raise these issues at trial.

- Count I – Fundamental Right to Vote under the First and Fourteenth Amendments of the U.S. Constitution.
- Count II – Ban on Racial Discrimination in Voting under the Fifteenth Amendment of the U.S. Constitution.
- Count III – Equal Protection under the Fourteenth Amendment of the U.S. Constitution.

- Count V – Section 2 of the Voting Rights Act of 1965, 52 U.S.C. § 10301.

5. \_\_\_\_\_

The following individually named attorneys are hereby designated as lead counsel for the parties:

**Plaintiffs:**

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**Defendants:**

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6.

Normally, the plaintiff is entitled to open and close arguments to the jury. (Refer to LR39.3(B)(2)(b)). State below the reasons, if any, why the plaintiff should not be permitted to open arguments to the jury.

**Plaintiffs' and Defendants' Statement:** This case will not be tried before a jury. Plaintiffs request the opportunity to present opening and closing arguments to the court.

7.

The captioned case shall be tried (\_\_\_\_) to a jury or (  X  ) to the court without a jury, or (\_\_\_\_) the right to trial by jury is disputed.

8.

State whether the parties request that the trial to a jury be bifurcated, i.e. that the same jury consider separately issues such as liability and damages. State briefly the reasons why trial should or should not be bifurcated.

**Plaintiffs' and Defendants' Statement:** This case will be tried to the court.

9.

Because this case will be tried to the court, the parties do not request any *voir dire* questions.

10.

Because this case will be tried to the court, the parties do not request any *voir dire* questions.

11.

Because this case will be tried to the court, the parties do not request any *voir dire* questions.

12.

Because this case will be tried to the court, the parties are not requesting any strikes.

13.

State whether there is any pending related litigation. Describe briefly, including style and civil action number.

**Plaintiffs' and Defendants' Statement:** This case is not related to any other pending matter.

14.

Attached hereto as Attachment "C" is plaintiffs' outline of the case which includes a succinct factual summary of plaintiffs' cause of action and which shall be neither argumentative nor recite evidence. All relevant rules, regulations, statutes, ordinances, and illustrative case law creating a specific legal duty relied upon by plaintiffs shall be listed under a separate heading. In negligence cases, each and every act of negligence relied upon shall be separately listed. For each item of damage claimed, plaintiffs shall separately provide the following information: (a) a brief description of the item claimed, for example, pain and suffering; (b) the dollar amount claimed; and (c) a citation to the law, rule, regulation, or any decision authorizing a recovery for that particular item of damage. Items of damage not identified in this manner shall not be recoverable.

15.

Attached hereto as Attachment "D" is defendants' outline of the case which includes a succinct factual summary of all general, special, and affirmative defenses relied upon and which shall be neither argumentative nor recite evidence. All relevant rules, regulations, statutes, ordinances, and illustrative case law relied



upon as creating a defense shall be listed under a separate heading. For any counterclaim, the defendants shall separately provide the following information for each item of damage claimed: (a) a brief description of the item claimed; (b) the dollar amount claimed; and (c) a citation to the law, rule, regulation, or any decision authorizing a recovery for that particular item of damage. Items of damage not identified in this manner shall not be recoverable.

16.

No stipulations were received by the Court prior to March 25, 2022. In the event of a trial stipulation, no further evidence will be required as to the facts contained in the stipulation and the stipulation may be read into evidence at the beginning of the trial or at such other time as is appropriate in the trial of the case. It is the duty of counsel to cooperate fully with each other to identify all undisputed facts. A refusal to do so may result in the imposition of sanctions upon the noncooperating counsel.

17.

The legal issues to be tried are as follows:

**By Plaintiffs:**

The legal issues to be tried are as follows:

- Count I: Whether the verification of voter registration identity pursuant to the Exact Match policy or its application violates the fundamental right to vote guaranteed by the First and Fourteenth Amendments?
- Count I: Whether the verification of registrants' citizenship status pursuant to the Exact Match policy or its application violates the fundamental right to vote guaranteed by the First and Fourteenth Amendments?
- Count I: Whether the Defendants' mismanagement of the voter database violates the fundamental right to vote guaranteed by the First and Fourteenth Amendments?



- Count I: Whether the Defendants' Secretary of State or the State Election Board members' failures to ensure or obtain uniform and proper practices for absentee ballot cancellations at the polls violate the fundamental right to vote guaranteed by the First and Fourteenth Amendments?
- Count II: Whether the Exact Match policy or its application violates the ban on racial discrimination in voting guaranteed by the Fifteenth Amendment?
- Count III: Whether the Exact Match policy or its application violates the right to vote on an equal basis regardless of race or color as guaranteed by the Equal Protection Clause of the Fourteenth Amendment?
- Count III: Whether the Exact Match policy or its application violates the right of naturalized citizens to vote on an equal basis as native-born citizens as guaranteed by the Equal Protection Clause of the Fourteenth Amendment?
- Count III: Whether the lack of statewide uniformity in the application of the Exact Match policy violates the Equal Protection Clause of the Fourteenth Amendment?
- Count III: Whether the lack of statewide uniformity in the treatment of absentee ballot cancellations violates the Equal Protection Clause of the Fourteenth Amendment?
- Count V: Whether the Exact Match policy or its application violates Section 2 of the Voting Rights Act?

**By Defendants:**

The legal issues to be tried are as follows:

1. Whether Plaintiffs have suffered any particularized injuries so as to confer standing to bring their claims against Defendants, and if so, whether those particularized injuries are traceable to and redressable by the Defendants.
2. Whether Plaintiffs' allegations constitute generalized grievances regarding

election administration and not actionable burden(s) on the right to vote.

3. Whether Plaintiffs' allegation that Defendants do not maintain accurate voter rolls identifies an act or policy of the State that imposes systemic or otherwise widespread burden(s), or burdens that are of a material character and magnitude on Georgians' right to vote as established by the First and Fourteenth Amendments to the Constitution of the United States.
4. Whether the State has a sufficiently important interest in its current method(s) of maintaining voter lists to overcome any purported burdens imposed on Georgia voters due to purported inaccurate data.
5. Whether Plaintiffs' allegation that Defendants fail to train local election superintendents regarding absentee ballot cancellations constitutes an act or policy of the state that imposes systemic or otherwise widespread burden(s), or burdens that are of a material character and magnitude on Georgians' right to vote as established by the First and Fourteenth Amendments to the Constitution of the United States.
6. Whether the State has a sufficiently important interest in its current training model(s) to overcome any purported burdens imposed on Georgia voters due to training on addressing the situation where a voter requests an absentee ballot but appears to vote in person (either early or on Election Day).
7. Whether the State of Georgia has violated the First, Fourteenth, and/or Fifteenth Amendments of the United States Constitution, and or Section 2 of the Voting Rights Act of 1965, by virtue of its implementation of verification procedures required by the Help America Vote Act ("HAVA").

18.

Attached hereto as Attachment "F-1" for the plaintiffs and Attachment "F-2" for the defendants is a list of all the witnesses and their addresses for each party. The list must designate the witnesses whom the party will have present at trial and those witnesses whom the party may have present at trial. Expert (any witness who might express an opinion under Rule 702), impeachment, and rebuttal witnesses whose use as a witness can be reasonably anticipated must be included. Each party

shall also attach to the list a reasonable specific summary of the expected testimony of each expert witness.

All of the other parties may rely upon a representation by a designated party that a witness will be present unless notice to the contrary is given fourteen (14) days prior to trial to allow the other party(s) to subpoena the witness or to obtain the witness' testimony by other means.

Witnesses who are not included on the witness list (including expert, impeachment and rebuttal witnesses whose use should have been reasonably anticipated) will not be permitted to testify, unless expressly authorized by court order based upon a showing that the failure to comply was justified.

**By Plaintiffs:** Plaintiffs look forward to exploring with the Court and Defendants ways to streamline the presentation of voter evidence.

**By Defendants:** Defendants similarly agree and look forward to exploring with the Court and Plaintiffs how the presentation of evidence may be streamlined at trial.

19.

Attached hereto as Attachment "G-1" for the plaintiffs and Attachment "G-2" for the defendants are the typed lists of all documentary and physical evidence that will be tendered at trial. Learned treatises which are expected to be used at trial shall not be admitted as exhibits. Counsel are required, however, to identify all such treatises under a separate heading on the party's exhibit list.

Each party's exhibits shall be numbered serially, beginning with 1, and without the inclusion of any alphabetical or numerical subparts. Adequate space must be left on the left margin of each party's exhibit list for court stamping purposes. A courtesy copy of each party's list must be submitted for use by the judge.

Prior to trial, counsel shall mark the exhibits as numbered on the attached lists by affixing numbered yellow stickers to plaintiff's exhibits, numbered blue stickers to defendant's exhibits, and numbered white stickers to joint exhibits. When there are multiple plaintiffs or defendants, the surname of the particular

plaintiff or defendant shall be shown above the number on the stickers for that party's exhibits.

Specific objections to another party's exhibits must be typed on a separate page and must be attached to the exhibit list of the party against whom the objections are raised. Objections as to authenticity, privilege, competency, and, to the extent possible, relevancy of the exhibits shall be included. Any listed document to which an objection is not raised shall be deemed to have been stipulated as to authenticity by the parties and shall be admitted at trial without further proof of authenticity.

Unless otherwise noted, copies rather than originals of documentary evidence may be used at trial. Documentary or physical exhibits may not be submitted by counsel after filing of the pretrial order, except upon consent of all the parties or permission of the court. Exhibits so admitted must be numbered, inspected by counsel, and marked with stickers prior to trial.

Counsel shall familiarize themselves with all exhibits (and the numbering thereof) prior to trial. Counsel will not be afforded time during trial to examine exhibits that are or should have been listed.

**By Plaintiffs:** Plaintiffs identify and exchanged with Defendants Plaintiffs' Exhibit Nos. 2000 – 2005 on February 18, 2022. Plaintiffs do not object to Defendants submitting objections to these additional exhibits, if necessary, by amendment after the submission of this Amended Pretrial Order. Also on February 18, 2022, Defendants identified and exchanged with Plaintiffs Defendants' Exhibit Nos. 334 - 711. Plaintiffs reserve the right to assert objections to Defendants' Exhibit Nos. 334 – 711 by subsequent amendment to this Amended Pretrial Order. Plaintiffs further reserve the right to supplement or amend their exhibit list as necessary in light of the outstanding discovery in this case and upon reasonable notice to Defendants.

**By Defendants:** Defendants provided an amended exhibit list to Plaintiffs on February 18, 2022, along with a sharefile link containing the additional exhibits identified. Defendants do not object to Plaintiffs submitting objections to these additional exhibits, if necessary, by amendment after the entry of this pretrial order. Defendants further reserve the right to supplement or amend their exhibit list as necessary in light of the outstanding discovery in this case.

20.

The following designated portions of the testimony of the persons listed below may be introduced by deposition:

**By Plaintiffs:** Due to the length of Plaintiffs' designations, Plaintiffs have attached hereto as Attachment "I" the designated portions of testimony that may be introduced by deposition. The parties continue to confer on a proposal to streamline their presentation to the Court concerning objections to designated portions of testimony to be introduced by deposition.

**By Defendants:** The Parties are currently discussing a proposed consolidated submission of deposition testimony and objections thereto for Plaintiffs' designated witnesses.

Any objections to the depositions of the foregoing persons or to any questions or answers in the depositions shall be filed in writing no later than the day the case is first scheduled for trial. Objections not perfected in this manner will be deemed waived or abandoned. All depositions shall be reviewed by counsel and all extraneous and unnecessary matter, including non-essential colloquy of counsel, shall be deleted. Depositions, whether preserved by stenographic means or videotape, shall not go out with the jury.

21.

Attached hereto as Attachment "H-2" for the defendants are any trial briefs which counsel may wish to file containing citations to legal authority concerning evidentiary questions and any other legal issues which counsel anticipate will arise during the trial of the case.

**By Plaintiffs:** Plaintiffs are not submitting a trial brief at this time because they believe the Court is well-familiar with the issues in this extensively briefed case. Plaintiffs reserve the right to submit briefing on issues that may arise as the Parties approach and conduct the trial of this case.

**By Defendants:** Defendants reserve the right to supplement or amend their trial brief as necessary in light of the outstanding discovery in this case.

22.

Because this case will not be tried to a jury, the parties do not intend to submit requests for charge.

23.

Because this case will not be tried to a jury, the parties are not proposing a special verdict form.

24.

Unless otherwise authorized by the court, arguments in all jury cases shall be limited to one-half hour for each side. Should any party desire any additional time for argument, the request should be noted (and explained) herein.

**Plaintiffs' Statements:** Given the complexity of the issues involved in this case, Plaintiffs request that opening and closing arguments be limited to one hour for each side.

**Defendants' Statements:** Defendants agree that the complexity of the issues involved in this case, combined with the novel legal theories at issue, warrant extending the typical time for opening and closing argument from thirty (30) minutes per side to sixty (60) minutes per side.

25.

If the case is designated for trial to the court without a jury, counsel are directed to submit proposed finding of fact and conclusions of law no later than five (5) days after the completion of trial.

26.

Pursuant to LR 16.3, lead counsel and persons possessing settlement authority to bind the parties met in person on \_\_\_\_\_, 20\_\_\_\_, to discuss in good faith the possibility of settlement of this case. The court (\_\_\_\_) has or (\_\_\_\_) has not discussed settlement of this case with counsel. It appears at this time that there is:



- ☐ A good possibility of settlement.
- ☐ Some possibility of settlement.
- ☐ Little possibility of settlement.
- ☐ No possibility of settlement.

27.

This case has been set for trial to begin the week of April 11, 2022.

28.

The plaintiffs estimate that they will require fifteen (15) days to present their evidence. The defendants estimate that they will be able to present their case in the time allotted by the Court for this trial, provided that Plaintiffs do not exceed their stated estimate. It is estimated that the total trial time is \_\_\_\_ days.

29.

IT IS HEREBY ORDERED that the above constitutes the pretrial order for the above captioned case approved by the court after conference with the parties.

IT IS FURTHER ORDERED that the foregoing, including the attachments thereto, constitutes the pretrial order in the above case and that it supersedes the pleadings which are hereby amended to conform hereto and that this pretrial order shall not be amended except by Order of the court to prevent manifest injustice. Any attempt to reserve a right to amend or add to any part of the pretrial order after the pretrial order has been filed shall be invalid and of no effect and shall not be binding upon any party or the court, unless specifically authorized in writing by the court.

IT IS SO ORDERED this 25th day of March, 2022.



**HONORABLE STEVE C. JONES**  
**UNITED STATES DISTRICT JUDGE**



Each of the undersigned counsel for the parties hereby consents to entry of the foregoing pretrial order, which has been prepared in accordance with the form pretrial order adopted by this court.

/s/ Allegra J. Lawrence  
Counsel for Plaintiff

/s/ Josh Belinfante  
Counsel for Defendant

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

FAIR FIGHT ACTION, INC, *et al.*,  
*Plaintiffs,*

v.

BRAD RAFFENSPERGER, *et al.*,  
*Defendants.*

Civil Action No.  
1:18-cv-05391-SCJ

**PLAINTIFFS' ATTACHMENT C (STATEMENT OF THE CASE)**

**I. Plaintiffs' Factual Statement**

This case is about Georgians' right to vote. Plaintiffs contend that Defendants the Georgia Secretary of State (SOS), the State Election Board (SEB) and the SEB members are denying and abridging Georgians' right to vote through: (1) the SOS's "Exact Match" policy and its application; (2) extensive mismanagement of the statewide voter registration list; and (3) non-uniform and improper practices regarding in-person cancellation of absentee ballots. These three policies and practices violate federal law, as follows:

- The Exact Match policy and its application: (a) violate the fundamental right to vote as guaranteed by the First and Fourteenth Amendments; (b) racially discriminate against Georgians of color in violation of the

Fifteenth Amendment and the Equal Protection Clause of the Fourteenth Amendment; (c) discriminate against Georgians based on where they live and based on naturalized citizenship status in violation of the Equal Protection Clause of the Fourteenth Amendment; and (d) deny or abridge the right to vote in violation of the Voting Rights Act.

- Defendants' extensive mismanagement of the statewide voter registration list violates Georgians' fundamental right to vote in violation of the First and Fourteenth Amendments.
- The non-uniform and improper practices regarding in-person cancellation of absentee ballots (a) violate Georgians' fundamental right to vote in violation of the First and Fourteenth Amendments; and (b) discriminate against Georgians based on where they live, in violation of the Equal Protection Clause of the Fourteenth Amendment.

A. Exact Match Policy

The SOS's Exact Match policy and processes apply to voter registration applications in Georgia. The Exact Match policy needlessly burdens would-be voters by erroneously flagging people eligible to vote as "non-matches." The improper flags impose burdens on would-be-voters through no fault of their own.

Defendants have not identified any evidence that the Exact Match policy prevents voter fraud or serves any other legitimate state interest.

Under the Exact Match policy, information from voter registration applications is matched against information contained in either the Georgia Department of Driver Services (DDS) or Social Security Administration (SSA) databases. This matching process has two components: (1) matching the applicant's United States citizenship as reflected in DDS records; and (2) matching the applicant's identity, specifically the applicant's first name; last name; date of birth; and Georgia drivers' license number, Georgia identification card number, or the last four digits of the applicant's Social Security number.

The Exact Match citizenship matching protocol works differently for naturalized citizens than it does for native-born citizens. The DDS database used to "verify" citizenship is known to be outdated and unreliable. Many naturalized citizens lawfully obtain their Georgia drivers' licenses before becoming United States citizens. When these non-citizens attain United States citizenship, they are not required to update their citizenship status with DDS, and many do not do so. As a result, when the SOS matches their citizenship status against the DDS database, as required by the Exact Match policy, the DDS database erroneously flags naturalized citizens as non-citizens. Neither the DDS nor SOS warns

naturalized citizens that, unless they update their citizenship information with DDS, they will be flagged as non-citizens when they try to register to vote.

When the voter registration applications of naturalized citizens fail the DDS match on citizenship, the applications are placed in “pending” status, which means these citizens cannot vote until they provide documentary proof of citizenship to a county election official. By contrast, the SOS requires no documentary proof of citizenship from people who do not provide a Georgia drivers’ license number when registering to vote. These applicants need only attest to their citizenship by checking a box on the application form and the SOS accepts their word as true. And Georgia residents who are native-born citizens are not required to present documentary proof of citizenship when registering to vote, because those registrants do not undergo a citizenship-status change that would render their outdated DDS data erroneous.

To match voter registration applicants’ identity (the other component of the matching process), the Exact Match policy requires voter registration application information—specifically the first letter of the applicant’s first name, the applicant’s entire last name, the applicant’s birthday, and the applicant’s Georgia drivers’ license number or Georgia identification card number—to be matched against DDS records. If the applicant does not have a Georgia drivers’ license or

Georgia identification card number but provides the last four digits of the applicant's Social Security number, the applicant's information is sent to the Social Security Administration for matching.

The Exact Match policy requires these matches to be exact. Differences as minor or irrelevant as a transposed letter or a missing hyphen or apostrophe in the applicant's last name will be flagged as non-matches. Identity non-matches result in voter registration applications being placed in "Active MIDR" status ("MIDR" for "Missing Identification Required"), and applicants must provide identification to county election officials to vote a regular ballot.

Data entry errors, made when county election personnel type voter registration application information into the voter registration database so it can be matched against the DDS or SSA databases, cause many of these match failures. Despite their duty to obtain uniformity in county election practices, neither the SOS nor the SEB has set statewide quality control protocols that would prevent these data entry errors.

Georgia law requires that people in pending or MIDR status be sent a notice of the match failure and directions on how to cure it, but the required notice is often ineffective. First, many applicants do not receive the notice. Second, the notice is published only in English except in Gwinnett County, where the notice is

also in Spanish. Thus, even if naturalized citizens receive the notice, they may not understand what they are being told to do.

The Exact Match policy also discriminates against voters of color, violating the Equal Protection Clause of the Fourteenth Amendment, the Fifteenth Amendment, and Section 2 of the Voting Rights Act (VRA). Georgia has tried to keep voters of color from voting or having their ballots counted since the Fifteenth Amendment was ratified. The Exact Match policy perpetuates this history of voter suppression.

Before adopting the Exact Match policy in 2010, the SOS, who at the time was Brian Kemp, was told by the United States Department of Justice that the Exact Match policy was unreliable for accurately matching identity and citizenship and that the burdens of that unreliability would fall disproportionately on voters of color. The SOS nonetheless adopted the policy. And, in 2018, after learning from an analysis conducted in-house that 70 percent of the people whose voter registration applications failed the Exact Match test were African American, the SOS did not alleviate, or even attempt to alleviate, the disproportionate burden of its policy on voters of color.

The motive underlying the Exact Match policy is clear. When running for re-election as Secretary of State in 2014, Brian Kemp warned supporters at a fund-



raiser of the threat to his campaign posed by the large number of “minorities” registering to vote. He repeated the theme in 2018, when he was still Secretary of State but was running for governor, although in 2018 referred to these voters as the Democratic Party “base.” During that same 2018 campaign, Secretary of State Kemp ran a television campaign ad in which he boasted that he owns a big pick-up truck so he can round up “criminal illegals.”

Race discrimination is not the only way the Exact Match policy violates the Equal Protection Clause. The policy also violates the Equal Protection Clause by: (1) subjecting voters to differential treatment based on their geographic location; and (2) treating naturalized citizens differently from native-born citizens.

The differential treatment based on geographic location comes from counties applying Exact Match differently. As described above, the SOS and SEB set no statewide protocols for counties’ data entry. In addition, the SOS gives counties discretion to disregard questionable non-matches but does not provide statewide standards for how counties exercise that discretion. Therefore, significant discrepancies exist among the counties’ pending and MIDR rates for voter registration applications.

The differential treatment based on naturalized versus native-born citizen status is caused by the Exact Match Policy’s use of outdated DDS records to match

citizenship status, as set forth above. Because the outdated DDS information creates citizenship mismatches for naturalized citizens but not for native-born citizens, only naturalized citizens are prohibited from voting until they provide documentary proof of citizenship. Meanwhile, the SOS requires no documentary proof of citizenship from voter registration applicants who do not provide a Georgia drivers' license number with their applications or who are native-born citizens in the DDS database.

B. Extensive Mismanagement of Statewide Voter Registration Database

The SOS, by law, is responsible for maintaining an accurate statewide voter database. Georgia's voter database, called eNet, is both the backbone of the Georgia voting system and the gateway for Georgians to be able to cast ballots and have their ballots counted. Election personnel use eNet data to determine whether voters can be given a ballot at the polls, whether voters are entitled to receive absentee ballots, and whether absentee and provisional ballots should be counted. For voters to vote and have their votes counted, eNet must be accurate.

But ENet is not accurate. It is error-ridden. Those errors are not just the result of occasional and unavoidable human errors. Instead, those errors result directly and predictably from avoidable design flaws within eNet programming itself; the nearly unfettered discretion the SOS chooses to give counties to enter,

modify, and remove voter information in the database; and the SOS's decision not to place various basic and reasonable controls on county users to ensure accuracy and consistency. The result is a voter database in which eligible voters' registrations have been deleted erroneously and in which voter' names, dates of birth, voter histories, addresses, and precinct information are incorrect. These errors lead to severe burdens on voters.

These inaccuracies prevent eligible voters from voting or at a minimum abridge their rights by imposing barriers beyond "the usual burdens of voting." Those burdens include (but are not limited to) having to travel to another location to vote, having to first go to the county's central election office and then having to return to the polls to vote, or having to vote a provisional ballot—a ballot that will not be counted unless the voter provides proof, within three days of the election, of eligibility to have voted. The SOS has no legitimate state interest in having an inaccurate database. Thus, the inaccuracies in eNet caused by the SOS violate Georgians' fundamental right to vote under the First and Fourteenth Amendments.

### C. Absentee Ballot Cancellation

Georgia permits voters who have requested absentee ballots to cancel their ballots and vote in person if the ballot has not yet been returned and accepted. Voters cancel their ballots for many reasons, including not having received their

ballots on time or out of a concern their ballots will not reach election officials by the deadline. Voters who try to cancel their absentee ballots face a variety of obstacles that should not exist and depend on where the voter lives. For example, some voters trying to cancel their absentee ballots have been turned away from the polls outright, some have been sent to the main county office, and some have been permitted to vote only provisionally.

These obstacles stem from inadequate SOS training of county election superintendents and poll workers and from the failure of the SOS and SEB to obtain statewide uniformity in county election practices. Defendants have no legitimate state interest in improper or varied practices for cancelling absentee ballots. These improper and geography-specific absentee ballot cancellation practices violate Georgians' fundamental right to vote under the First and Fourteenth Amendments and violate the Equal Protection Clause of the Fourteenth Amendment.

#### D. Remedies

Plaintiffs seek declaratory and injunctive relief sufficient to remedy these unlawful practices. Plaintiffs also seek their reasonable attorney's fees and costs.

## II. Relevant Authority

Relevant regulations, statutes, and ordinances creating specific legal duties on the Defendants include:

1. Amendments I, XIV, and XV to the United States Constitution
2. [42 U.S.C. § 1983](#)
3. Section 2 of the Voting Rights Act, [52 U.S.C. § 10301](#)
4. Sections 301-303 of the Help America Vote Act of 2002, 52 U.S.C. §§ 21081-83
5. [O.C.G.A. §§ 21-2-31, 21-2-32, 21-2-33, 21-2-33.1, 21-2-33.2, 21-2-50, 21-2-50.2, 21-2-99, 21-2-101, 21-2-210, 21-2-216, 21-2-220, 21-2-220.1, 21-2-231, 21-2-388](#)
6. [Ga. Comp. R. & Regs. 183-1-6-.03, 183-1-14-.09](#)

Cases articulating Defendants' relevant legal duties include:

1. *Burdick v. Takushi*, [504 U.S. 428](#) (1992)
2. *Brnovich v. Democratic Nat'l Comm.*, [141 S. Ct. 2321](#) (2021)
3. *Bush v. Gore*, [531 U.S. 98](#) (2000)
4. *Thornburg v. Gingles*, [478 U.S. 30](#) (1986)
5. *Monell v. N.Y.C. Dep't of Soc. Servs.*, [436 U.S. 658](#) (1978)

6. *Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, [429 U.S. 252](#) (1977)
7. *Graham v. Richardson*, [403 U.S. 365](#) (1971)
8. *Schneider v. Rusk*, [377 U.S. 163](#) (1964)
9. *Democratic Exec. Comm. of Fla. v. Lee*, [915 F.3d 1312](#) (11th Cir. 2019)
10. *Grizzle v. Kemp*, [634 F.3d 1314](#) (11th Cir. 2011)
11. *Common Cause Ga. v. Kemp*, [347 F. Supp. 3d 1276](#) (N.D. Ga. 2018)
12. *Ga. Coal. for the People's Agenda v. Kemp*, [347 F. Supp. 3d 1251](#) (N.D. Ga. 2018)

The preceding citations are illustrative only; Plaintiffs incorporate by reference and may rely on other authorities identified in, for example, their prior briefing, their forthcoming motions in limine, and their Proposed Findings of Fact and Conclusions of Law.

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

FAIR FIGHT ACTION, *et al.*,

Plaintiffs,

v.

BRAD RAFFENSPERGER, in his  
official Capacity as Secretary of  
State of Georgia, *et al.*,

Defendants.

Civil Action File

No. 1:18-cv-05391-SCJ

**Defendants' Attachment D (Statement of the Case)**

**I. Defendants' Succinct Factual Statement and Affirmative Defenses:**

Plaintiffs filed this lawsuit immediately after the 2018 gubernatorial election wherein Plaintiff Fair Fight Action's ("Fair Fight") founder, Stacey Abrams, lost to then-Secretary of State of Georgia, Brian Kemp. The lawsuit was initially broad in scope, challenging virtually every aspect of Georgia's election administration. Most of Plaintiffs' claims, however, were dismissed at the summary judgment stage. What remains are three discrete issues, spread across four counts:<sup>1</sup> (1) alleged insufficient training by the Secretary of State of county election superintendents and registrars regarding in-person absentee ballot cancellation procedures; (2) alleged insufficient efforts by the Secretary of State to maintain accurate voter registration lists; and (3) a challenge to the State's implementation of the verification procedures set forth in the Help America Vote Act ("HAVA"), whereby information provided by individuals registering to vote is cross-referenced with information on file with the Georgia Department of Driver Services ("DDS") or United States Social Security Administration ("SSA"), as required by 52 U.S.C. § 21083(a)(5) ("HAVA Match" a/k/a "Exact Match").

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<sup>1</sup> In the interests of clarity, Defendants address Plaintiffs' remaining claims by issue rather than by cause of action due to the overlapping factual and legal theories under which they are brought.



Plaintiffs' claims are not supported by the evidence. Plaintiffs have identified a small set of individuals who allegedly experienced problems while voting, but the number, geographic scope, and severity of alleged problem(s) experienced by these voters do not rise to a level sufficient to demonstrate an unconstitutional burden on voting in Georgia and certainly not in a manner that is linked to Plaintiffs' alleged diversion of resources. Moreover, any purported burdens are not caused by or traceable to Defendants. In addition, as to Plaintiffs' Fifteenth Amendment and VRA claims regarding HAVA-Match, there is no evidence of discriminatory intent on behalf of the State in either its adoption or implementation of the process. As to training, Plaintiffs' evidence does not establish a causal link between the training provided by the Secretary of State to county election officials and any alleged problem(s) experienced by voters.

In addition, Defendants assert the following affirmative defenses against Plaintiffs' claims:

Affirmative Defense: The allegations in Plaintiffs' Second Amended Complaint fail to state a claim upon which relief may be granted. Plaintiffs' claims as to (a) training of county election officials on absentee ballot cancellations; and (b) voter list accuracy are generalized grievances regarding election administration and not cognizable claims under the U.S. Constitution. They do not challenge any law, regulation, or rule enforced or maintained by Defendants.

Affirmative Defense: Plaintiffs' claims are barred for failure to name necessary and indispensable parties. To the extent that Plaintiffs continue to seek relief from alleged harms caused by county action(s), rather than those of Defendants, the counties must be made parties to this action.

Affirmative Defense: This court lacks jurisdiction over Plaintiffs' claims because Plaintiffs lack standing to bring this action. Plaintiffs have not suffered any particularized injuries because of any diversion of resources to address the alleged harms that remain at issue in this case.

Affirmative Defense: This court lacks jurisdiction over Plaintiffs' claim as to training of county election officials on absentee ballot cancellation procedures because this claim is moot.

Affirmative Defense: Plaintiffs' federal claims against Defendants are barred by the Eleventh Amendment to the United States Constitution.

Affirmative Defense: Plaintiffs' federal claims against Defendants are barred as they raise political questions that should not be addressed by the Court.

## **II. All Relevant Rules, Regulations, Statutes Ordinances, and Illustrative Case Law Relied Upon Creating a Defense in this Lawsuit**

1. *A&M Gerber Chiropractic LLC v. Geico Gen. Ins. Co.*, [925 F.3d 1205](#) (11th Cir. 2019)
2. *Acosta v. Democratic City Comm.*, CV 17-1462, [2018 WL 4178522](#) (E.D. Pa. Aug. 30, 2018), *aff'd* [767 Fed. Appx. 392](#) (3d Cir. 2019)
3. *Already, LLC v. Nike, Inc.*, [568 U.S. 85](#) (2013)
4. *Anderson v. Celebrezze*, [460 U.S. 780](#) (1983)
5. *Arcia v. Sec'y of Fla.*, [772 F.3d 1335](#) (11th Cir. 2014)
6. *Bd. of Comm'rs of Bryan Cty. v. Brown*, [520 U.S. 397](#) (1997)
7. *Bognet v. Degraffenreid*, [141 S. Ct. 2508](#) (2021)
8. *Bognet v. Sec'y Commonwealth of Pennsylvania*, [980 F.3d 336](#) (3d Cir. 2020)
9. *Bonner v. City of Prichard*, [661 F.2d 1206](#) (11th Cir. 1981) (en banc)
10. *Brnovich v. Democratic Nat'l Comm.*, [141 S. Ct. 2321](#) (2021)
11. *Brown v. Crawford*, [906 F.2d 667](#) (11th Cir. 1990)
12. *Bush v. Gore*, [531 U.S. 98](#) (2000)
13. *Cigar Ass'n of Am. v. U.S.*, [323 F.R.D. 54](#) (D.C. Dist. 2017)
14. *City of Canton, Ohio v. Harris*, [489 U.S. 378](#) (1989)
15. *City of Mobile, Ala. v. Bolden*, [446 U.S. 55](#) (1980)
16. *Cole v. Nat'l Collegiate Athletic Ass'n*, [120 F. Supp. 2d 1060](#) (N.D. Ga. 2000)
17. *Common Cause of Ga. v. Billups*, [554 F.3d 1340](#) (11th Cir. 2009)
18. *Connick v. Thompson*, [563 U.S. 51](#) (2011)
19. *Curry v. Baker*, [802 F.2d 1302](#) (11th Cir. 1986)
20. *Democratic Executive Committee of Florida v. Lee*, [915 F.3d 1312](#) (11th Cir. 2019) (J. Tjoflat, dissenting)
21. *Donald J. Trump for President, Inc. v. Boockvar*, [493 F. Supp. 3d 331](#) (W.D. Pa. 2020)
22. *Eberhardinger v. City of York*, [341 F. Supp. 3d 420](#) (M.D. Pa. 2018), *aff'd* [782 F. App'x 180](#) (3d Cir. 2019)

23. *Fed. Trade Comm'n v. U.S. Work All., Inc.*, No. 1:08-CV-2053-WSD, [2010 WL 11509130](#) (N.D. Ga. Jan. 28, 2010)
24. *Fla. State Conf. of N.A.A.C.P. v. Browning*, [522 F.3d 1153](#) (11th Cir. 2008)
25. *Focus on the Family v. Pinellas Suncoast Transit Auth.*, [344 F.3d 1263](#) (11th Cir. 2003)
26. *Food & Water Watch, Inc. v. Vilsack*, [808 F.3d 905](#) (D.C. Cir. 2015)
27. *Frank v. Walker*, [768 F.3d 744](#) (7th Cir. 2014)
28. *Franklin v. Massachusetts*, [505 U.S. 788](#) (1992)
29. *Friedman v. Snipes*, [345 F. Supp. 2d 1356](#) (S.D. Fla. 2004)
30. *Ga. Latino Alliance for Human Rights v. Deal*, [691 F.3d 1250](#) (11th Cir. 2012)
31. *Ga. Republican Party v. SEC*, [888 F.3d 1198](#) (11th Cir. 2018)
32. *Gamza v. Aguirre*, [619 F.2d 449](#) (5th Cir. 1980)
33. *Gardner v. Mutz*, [962 F.3d 1329](#) (11th Cir. 2020)
34. *Greater Birmingham Ministries v. Sec'y of State for State of Alabama*, [992 F.3d 1299](#) (11th Cir. 2021)
35. *Gwinnett Cty. NAACP v. Gwinnett Cty. Bd. of Registration & Elections*, [446 F. Supp. 3d 1111](#) (N.D. Ga. 2020)
36. *Hennings v. Grafton*, [523 F.2d 861](#) (7th Cir. 1975)
37. *Hollingsworth v. Perry*, [570 U.S. 693, 706](#) (2013)
38. *Holton v. City of Thomasville Sch. Dist.*, [425 F.3d 1325](#) (11th Cir. 2005)
39. *Hubbard v. Ammerman*, [465 F.2d 1169](#) (5th Cir. 1972)
40. *Hunter v. Hamilton Cty. Bd. of Elections*, [850 F. Supp. 2d 795](#) (S.D. Ohio 2012)
41. *Jacobson v. Fla. Sec'y of State*, [974 F.3d 1236](#) (11th Cir. 2020)
42. *Jews for Jesus, Inc. v. Hillsborough Cty. Aviation Auth.*, [162 F.3d 627](#) (11th Cir. 1998)
43. *Kerr v. City of W. Palm Beach*, [875 F.2d 1546](#) (11th Cir. 1989)
44. *Lewis v. Governor of Ala.*, [944 F.3d 1287](#) (11th Cir. 2019)
45. *Lewis, Grizzle v. Kemp*, [634 F.3d 1314](#) (11th Cir. 2011)
46. *Lucas v. Townsend*, [967 F.2d 549](#) (11th Cir. 1992)
47. *Lujan v. Defs. of Wildlife*, [504 U.S. 555](#) (1992)
48. *Macuba v. Deboer*, [193 F.3d 1316](#) (11th Cir. 1999)
49. *Minnesota Majority v. Mansky*, [708 F.3d 1051](#) (8th Cir. 2013)
50. *Nat'l Treasury Emps. Union v. United States*, [101 F.3d 1423](#) (D.C. Cir. 1996)
51. *New Georgia Project v. Raffensperger*, [976 F.3d 1278](#) (11th Cir. 2020)
52. *Owaki v. City of Miami*, [491 F. Supp.2d 1140](#) (S.D. Fla. 2007)
53. *Pennhurst State Sch. & Hosp. v. Halderman*, [465 U.S. 89](#) (1984)

54. *People for the Ethical Treatment of Animals, Inc. v. Miami Seaquarium*, [189 F. Supp. 3d 1327](#) (S.D. Fla. 2016)
55. *Riley v. Univ. of Alabama Health Servs. Found., P.C.*, [990 F. Supp. 2d 1177](#) (N.D. Ala. 2014)
56. *Saxon v. Fielding*, [614 F.2d 78](#) (5th Cir. 1980)
57. *SEC v. Goble*, [682 F.3d 934](#) (11th Cir. 2012)
58. *Shipley v. Chicago Bd. of Election Commissioners*, [947 F.3d 1056](#) (7th Cir. 2020)
59. *Sierra Club v. Morton*, [405 U.S. 727](#) (1972)
60. *Spokeo, Inc. v. Robins*, [578 U.S. 330, 339](#) (2016), as revised (May 24, 2016)
61. *Staub v. Proctor Hosp.*, [562 U.S. 411](#) (2011)
62. *Steel Co. v. Citizens for a Better Env't*, [523 U.S. 83](#) (1998)
63. *Steffel v. Thompson*, [415 U.S. 452](#) (1974)
64. *Thornburg v. Gingles*, [478 U.S. 30](#) (1986)
65. *Timmons v. Twin Cities Area New Party*, [520 U.S. 351](#) (1997)
66. *Town of Chester v. Laroe Estates, Inc.*, [137 S. Ct. 1645](#) (2017)
67. *Trump v. Hawaii*, [138 S.Ct. 2392](#) (2018)
68. *U.S. v. Amodeo*, [916 F.3d 967](#) (11th Cir. 2019)
69. *United States v. Jayyousi*, [657 F.3d 1085](#) (11th Cir. 2011)
70. *United States v. Sanchez-Gomez*, [138 S. Ct. 1532](#) (2018)
71. *Veasey v. Abbott*, [13 F.4th 362](#) (5th Cir. 2021)
72. *Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, [429 U.S. 252](#) (1977)
73. *Washington v. Trump*, [858 F.3d 1168](#) (9th Cir. 2017)
74. *Whole Woman's Health v. Jackson*, No. 21-463, [2021 U.S. LEXIS 6144](#) (Dec. 10, 2021)
75. *Wood v. Raffensperger*, [981 F.3d 1307](#) (11th Cir. 2020), cert. denied, [141 S. Ct. 1379](#) (2021)
76. Jonathan F. Mitchell, *The Writ-of-Erasure Fallacy*, 104 Va. L. Rev. 933 (2018)
77. [U.S. Const. art. III, § 2](#)
78. U.S. Const., 11<sup>th</sup> Amendment
79. [42 U.S.C. § 1983](#)
80. [52 U.S.C. § 21083](#)
81. [O.C.G.A. § 21-2-50](#)
82. [O.C.G.A. § 21-2-99](#)
83. [O.C.G.A. § 21-2-215](#)
84. [O.C.G.A. § 21-2-216](#)
85. [O.C.G.A. § 21-2-220.1](#)
86. [O.C.G.A. § 21-2-226](#)

- 87. [O.C.G.A. § 21-2-381](#)
- 88. [O.C.G.A. § 21-2-384](#)
- 89. [O.C.G.A. § 21-2-385](#)
- 90. [O.C.G.A. § 21-2-386](#)
- 91. [O.C.G.A. § 21-2-388](#)
- 92. [O.C.G.A. § 21-2-417](#)
- 93. [Fed. R. Evid. 401](#)
- 94. [Fed. R. Evid. 403](#)
- 95. [Fed. R. Evid. 602](#)
- 96. [Fed. R. Evid. 801](#)
- 97. [Fed. R. Evid. 803](#)
- 98. [Fed. R. Evid. 807](#)
- 99. SEB Rule 183-1-6-.06

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