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

IN RE GEORGIA SENATE BILL 202	Master Case No. 1:21-MI-55555-JPB

CONSOLIDATED/JOINT DISCOVERY STATEMENT

The United States, being unable to resolve a discovery dispute with the State

Defendants, submits this discovery statement pursuant to the Court's standing order. On

February 14, 2022, the plaintiffs in these consolidated cases served a discovery request

seeking data from the Georgia Department of Driver Services ("DDS"). Ex. A (Request

6). The request sought certain fields from the State driver's license database that could

be used to match individual DDS records to the Georgia voter registration database to

determine whether a voter possesses a driver's license or personal ID card ("DDS ID").

On March 16, 2022, counsel for the State declined to produce the requested data,

objecting that the request is overly broad, unduly burdensome, and seeks confidential

information, sensitive security information, and/or state secrets. Ex. B (Response to

Request # 6). Counsel for the parties discussed this request by video conference and

telephone on April 20, May 20, and June 2, and exchanged information by email

throughout. Despite these efforts, the parties have been unable to resolve the dispute.

A. <u>The United States' Position</u>

SB 202 imposes new voter identification requirements on absentee voters. First,

when a voter submits an absentee ballot application, the voter must provide a DDS ID

number that matches the information on file in the county elections office. If the voter

does not possess a DDS ID, the voter must submit a copy of an alternative form of ID.

O.C.G.A. §§ 21-2-381(a)(1)(C) & (b)(1). Second, when returning a completed absentee

ballot, a voter must provide either their DDS ID number or, if they do not have one, the

last four digits of their social security number ("SSN"). If a voter has neither a DDS ID nor a SSN, they must include a copy of an alternative form of ID with their completed absentee ballot. *Id.* § 21-2-385(a). Various groups of voters will be impacted by these requirements, including voters without DDS ID. In addition, voters who have a DDS ID that is not reflected in the voter file, and voters who have an incorrect or outdated DDS ID number on file, will find that the information they write down does not match their voter record. Their ballots will likely be rejected unless they submit a cure affidavit and a copy of an alternative ID. *See* O.C.G.A. §§ 21-2-381(b)(3), 21-2-386(a)(1)(C).

To assess the impact of SB 202's requirements, the United States' expert will match individual records in the State voter file to individual records in the driver's license database to determine which voters fall into the various categories described above, among others. This process is complicated for several reasons, including because there is no unique identifier that is common to the two databases. The voter registration number, which uniquely identifies each voter, does not appear in the driver's license file, and there will be many voters whose current DDS ID number does not appear in the voter file. Inconsistencies and errors in how data are stored in the two databases also impact the ability to link records between the datasets. To account for these challenges, the United States' expert will develop matching criteria and a matching protocol based on the particular needs of this case and the data available. This is an iterative process that is best done by the expert himself with visibility into the data on each side of the match.

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Because of data privacy and security concerns, however, the State has refused to produce a list of DDS ID holders with the identifying information the United States requested.

Federal law specifically permits state driver's license data to be provided to federal agencies carrying out official functions, *see, e.g.*, 18 U.S.C. §§ 2721(b)(1), (4), and the United States has received precisely this kind of data from state driver's license databases in other voting rights cases in Texas, North Carolina, and South Carolina.[1] Concerns about the privacy and security of state driver's license data were addressed through protective orders in those cases, and the United States has offered to do the same here. To further address Defendants' privacy concerns, all plaintiffs in the consolidated cases have agreed that the State may provide the DDS data to the United States exclusively, with other plaintiff groups relying on the results of the United States' expert's matching analysis. Finally, the United States has agreed to narrow the request to exclude individuals who are deceased or are too young to register to vote.

The State has proposed that the United States stand by while the State attempts a limited match between the voter file and the DDS database, and then produces a subset of the requested records. The United States should not be required to rely on Defendants' untested, non-transparent, and incomplete matching exercise when the underlying data

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[1] *E.g.*, *La Union Del Pueblo Entero v. Abbott*, 21-cv-844 (W.D. Tex. 2021); *NC State Conf. of the NAACP v. McCrory*, 13-cv-861 (M.D.N.C. 2013); *Veasey v. Perry*, 13-cv-193 (S.D. Tex. 2013); *South Carolina v. United States*, 12-cv-203 (D.D.C. 2012).

are readily available and can be analyzed under carefully-developed protocols by the United States' expert, as in multiple other voting rights cases involving state driver's license data. Accordingly, the United States respectfully requests that the Court order the State of Georgia to produce to the United States the DDS data requested in RFP # 6.

B. State Defendants' Position

In this litigation, DOJ requested the *entire* Department of Driver Services' (DDS) *database*, along with dictionaries and programing information for that database. DDS, a non-party to this litigation, has agreed to provide all information sought by DOJ for registered voters. However, DDS objects to providing DOJ with its entire database, including persons who have never registered to vote or are disqualified from registering to vote, and dictionaries and other programming information describing their proprietary database.[2] DDS has records with highly confidential information for almost 9 million active customers. For those customers that are on the SOS registered voter file, DDS has agreed to provide DOJ, for DOJ attorneys' eyes' only, with the confidential information they seek. But DOJ nonetheless demands *all* of DDS' database, including the confidential

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[2] While DOJ characterizes their request as seeking only the confidential information of voters, their requests seek the database dictionaries and programming information sufficient for DOJ to interpret a data dump of the entire database. *See* Request No. 5 (seeking "[a]ll database dictionaries, code books, and user manuals related to DDS's driver's license and personal identification card database."); Request No. 7 ("For all database exports produced in response to these Requests, include the unique voter identification numbers assigned to individual registered voters, and all look-up tables necessary to decode information in the main data files.")

information for hundreds of thousands of persons who are not even qualified to register to vote. That is the information DDS objects to producing—the confidential records of persons not even registered to vote, together with dictionaries and other programming information for DDS' proprietary database.

Importantly, with certain limited exceptions, 18 U.S.C. §2721(a) prohibits DDS, or any employee or officer of DDS, from disclosing both "personal information" and "highly restricted personal information." Additionally, social security numbers are protected by the federal Privacy Act.[3] *See* Sec. 7(b) of the Privacy Act, 88 Stat. at 2194, 5 U.S.C. 552a note; *Schwier v. Cox*, 340 F.3d 1284, 1289 (11th Cir. 2003). Additionally, state law also prohibits sharing "records or personal information available on any driver except as otherwise provided in [Title 40] or as otherwise specifically required by 18 U.S.C. § 2721." O.C.G.A. § 40-5-2(b).

In light of the foregoing, and to balance the competing interests, DDS has proposed undertaking the burden of matching the voter registration list to its database to provide DOJ with the data it actually needs for each *registered voter*. DDS even offered to allow DOJ's expert to dictate the parameters of this match criteria. In other words, DOJ's expert could decide, for each step, how closely the search criteria must match in the two databases for

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[3] Pursuant to HAVA, 52 U.S.C. §21083(c), the last 4 digits of the social security number are not considered to be a social security number for purposes of section 7 of the Privacy Act of 1974. However, DDS files contain more than just the last 4 digits of drivers' social security numbers.

it to be considered a match. That would allow DOJ to obtain the data it wanted, while DDS would maintain the privacy of records of non-voters and its database dictionaries and other programming. However, DOJ declined DDS' invitation to formulate the search criteria. Thus, DDS has begun the process of matching these databases using criteria provided to DOJ, which is attached as Ex. C.

To do so, DDS is undergoing the expense of developing a program to extract the data from their file and add the information to the SOS file. DDS has undertaken this expense in an effort to provide DOJ with the data it seeks while maintaining, as much as possible, the privacy of their records. DDS expects to be done with the matching process outlined above by Friday, July 8, 2022. The data provided by DDS will provide Plaintiffs with the data they state they need to measure the impact of SB 202 on registered voters. Plaintiffs will have information on how many registered voters in the SOS database have no DDS identification, or no DDS ID number, or a wrong DDS ID number.

Since DDS has taken on the burden and expense of matching the SOS list of registered voters to the DDS database, DDS has eliminated the need for DOJ to obtain its entire database, and to obtain confidential programming information about the database. Requiring DDS to provide DOJ with its entire database, together with database dictionaries, code books, and user manuals related to the database, is unduly burdensome and not "proportional to the needs of the case or the scope of the relief sought in the case." Fed. R. Civ. Proc. 26(b)(1).

Date: July 7, 2022

                                        Respectfully submitted,

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CERTIFICATE OF COMPLIANCE WITH LOCAL RULE 7.1(D)

Pursuant to Local Rule 7.1(D), I certify that the foregoing document was prepared

in Times New Roman 14-point font in compliance with Local Rule 5.1(C).

/s/ Elizabeth M. Ryan
ELIZABETH M. RYAN
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CERTIFICATE OF SERVICE

I hereby certify that on July 7, 2022, I electronically filed the foregoing with the

clerk of the court using the CM/ECF system, which will send notification of this filing to

counsel of record.

> /s/ Elizabeth M. Ryan
> ELIZABETH M. RYAN
> Attorney, Voting Section
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> U.S. Department of Justice

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Exhibit A

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

IN RE GEORGIA SENATE BILL 202	Master Case No.: 1:21-MI-55555-JPB

**CONSOLIDATED PLAINTIFFS' FIRST SET OF REQUESTS FOR
PRODUCTION OF DOCUMENTS TO STATE DEFENDANTS**

Pursuant to Rules 26 and 34 of the Federal Rules of Civil Procedure and any

discovery orders to be entered by this Court, Plaintiffs in the consolidated cases,[1] by

and through their undersigned counsel, hereby request that Defendants BRAD

RAFFENSPERGER; BRIAN KEMP; GEORGIA STATE ELECTION BOARD

("SEB") and ED LINDSEY, SARA TINDALL GHAZAL, MATTHEW

MASHBURN, and JANICE JOHNSTON, in their official capacities as members of

the SEB; and the STATE OF GEORGIA (collectively, "State Defendants") respond

to Consolidated Plaintiffs' First Set of Requests for Production of Documents within

thirty (30) days of service.   State Defendants should produce for inspecting and

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[1] The consolidated cases are *New Georgia Project v. Raffensperger*, No. 1:21-cv-01229 (N.D. Ga.); *Georgia State Conference of the NAACP v. Raffensperger*, No. 1:21-cv-01259 (N.D. Ga.); *Sixth District of the African Methodist Episcopal Church v. Kemp*, No. 1:21-cv-01284 (N.D. Ga.); *Asian Americans Advancing Justice-Atlanta v. Raffensperger*, No. 1:21-cv-01333 (N.D. Ga.); *Concerned Black Clergy of Metropolitan Atlanta, Inc. v. Raffensperger*, No. 1:21-cv-01728 (N.D. Ga.); and *United States of America v. The State of Georgia*, Case No. 1:21-cv-02575 (N.D. Ga.).

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the 2020 general or 2021 elections.

5. All database dictionaries, code books, and user manuals related to DDS's driver's license and personal identification card database.

6. The contents of all fields contained within DDS's driver's license and personal identification card database, as they exist as of the date of the voter file export described in 3.a., above, that could be used to match individuals against the Georgia voter registration database to determine voter eligibility, or to determine whether an individual currently possesses a Georgia driver's license or personal identification card (collectively, "DDS-issued ID"). This request includes the content of all fields reflecting the full name, address (including city, state, county, and ZIP code, and any alternative addresses), date of birth, Social Security number, race, ethnicity, sex, DDS-issued ID number, and disability status of all DDS-issued ID holders, as well as the content of fields reflecting whether the DDS-issued ID has expired or been suspended, confiscated, lost, or surrendered, whether the DDS-issued ID holder has been issued multiple DDS-issued IDs, and whether the DDS-issued ID holder is deceased.

7. For all database exports produced in response to these Requests, include the unique voter identification numbers assigned to individual registered voters, and all look-up tables necessary to decode information in the main data files.

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Exhibit B

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

IN RE GEORGIA SENATE BILL 202

Master Case No.
1:21-MI-55555-JPB

**STATE DEFENDANTS' RESPONSES TO CONSOLIDATED
PLAINTIFFS' FIRST SET OF REQUESTS FOR PRODUCTION OF
DOCUMENTS**

Pursuant to Rules 26 and 34 of the Federal Rules of Civil Procedure, Defendants the State of Georgia; Brian Kemp, in his official capacity as Governor of Georgia; Brad Raffensperger, in his official capacity as Secretary of State of Georgia, and State Election Board members Sara Tindall Ghazal, Janice Johnston, Edward Lindsey, and Matthew Mashburn ("State Defendants") by their undersigned counsel, hereby serve their responses to Consolidated Plaintiffs' First Set of Requests for Production of Documents ("Requests").

OBJECTIONS TO DEFINITIONS

1. State Defendants object to Definition Nos. 2, 12, 13, and 19 because those definitions include attorneys for State Defendants. Plaintiffs cannot, through those definitions, impose an obligation on State Defendants to disclose information or documents that were prepared in anticipation of

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State Defendants further object to this Request as it is unduly burdensome and overly broad in that it seeks irrelevant information and is therefore beyond the scope of discovery. Fed. R. Civ. Proc. 26(b)(1) (requiring that discovery be relevant to the claims "and proportional to the needs of the case or the scope of the relief sought in the case"); *Porter v. Ray*, 461 F.3d 1315, 1324 (11th Cir. 2006) (providing that discovery fishing expeditions are not allowed). The request seeks voluminous documents that are outside the scope of the claims and defenses in this case.

Subject to and without waiving the foregoing objections, State Defendants will produce relevant manuals, to the extent they exist, related to the DDS database that contains driver's license and personal identification card information. State Defendants will not produce programming information related to the database based on the above objections. Additionally, any manuals produced will also redact any production data inadvertently copied into a screen shot.

6. The contents of all fields contained within DDS's driver's license and personal identification card database, as they exist as of the date of the voter file export described in 3.a., above, that could be used to match individuals against the Georgia voter registration database to determine voter eligibility, or to determine whether an individual currently possesses a Georgia driver's license or personal identification card (collectively, "DDS-issued ID"). This

request includes the content of all fields reflecting the full name, address (including city, state, county, and ZIP code, and any alternative addresses), date of birth, Social Security number, race, ethnicity, sex, DDS-issued ID number, and disability status of all DDS-issued ID holders, as well as the content of fields reflecting whether the DDS-issued ID has expired or been suspended, confiscated, lost, or surrendered, whether the DDS-issued ID holder has been issued multiple DDS-issued IDs, and whether the DDS-issued ID holder is deceased.

RESPONSE:[2]

State Defendants object to this Request because it seeks documents that contain confidential information, sensitive security information, and/or state secrets. Much of the information sought in this request is protected by both federal and state law. With certain limited exceptions, 18 U.S.C. §2721(a) prohibits DDS, or any employee or officer of DDS, from disclosing both "personal information" and "highly restricted personal information."

> (3) "personal information" means information that identifies an individual, including an individual's photograph, social security number, driver identification number, name, address (but not the 5-digit zip code), telephone number, and medical or disability information, but does not include information on vehicular accidents, driving violations, and driver's status.[;]

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[2] State Defendants respond to this particular request for the convenience of the parties but do not concede that DDS can be properly served with and respond to discovery through State Defendants.

> (4) "highly restricted personal information" means an individual's photograph or image, social security number, medical or disability information;

18 U.S.C. §2725(3) and (4). Social security numbers are further protected by the federal Privacy Act.[3] *See* Sec. 7(b) of the Privacy Act, 88 Stat. at 2194, 5 U.S.C. 552a note; *Schwier v. Cox*, 340 F.3d 1284, 1289 (11th Cir. 2003). State law also prohibits sharing "records or personal information available on any driver except as otherwise provided in [Title 40] or as otherwise specifically required by 18 U.S.C. § 2721." O.C.G.A. § 40-5-2(b).

State Defendants further object to this Request as it is unduly burdensome, requiring an entire agency database, and overly broad in that it seeks irrelevant information and therefore beyond the scope of discovery. Fed. R. Civ. Proc. 26(b)(1) (requiring that discovery be relevant to the claims "and proportional to the needs of the case or the scope of the relief sought in the case"); *Porter v. Ray*, 461 F.3d 1315, 1324 (11th Cir. 2006) (providing that discovery fishing expeditions are not allowed). The request seeks voluminous documents that are outside the scope of the claims and defenses in this case and information that is protected by federal law.

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[3] Pursuant to HAVA, 52 U.S.C. §21083(c), the last 4 digits of the social security number are not considered to be a social security number for purposes of section 7 of the Privacy Act of 1974. However, DDS files contain more than just the last 4 digits of drivers' social security numbers.

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Pursuant to these objections, State Defendants will not produce the requested DDS database records.

7. For all database exports produced in response to these Requests, include the unique voter identification numbers assigned to individual registered voters, and all look-up tables necessary to decode information in the main data files.

RESPONSE:

State Defendants object to this Request as it is unduly burdensome, vague, confusing, and overly broad because the phrase "all look-up tables necessary to decode information" is confusing and unclear.

State Defendants will provide voter identification numbers where those exist and can be exported. If Plaintiffs request additional information after reviewing the produced data, State Defendants will provide what is reasonably necessary to understand the data.

8. For all database exports provided to Consolidated Plaintiffs in this case, provide all documents sufficient to explain coding rules and interpretations of each database field, including documents relating to:

> a. Data cleaning/editing/checking procedures applied to data after collection (e.g., capitalization, range tests, white space, punctuation);

> b. Additional language/character set information;

Exhibit C

EX. C – DDS Proposed Matching Process

1. Where the SOS file includes a DOB[1] *and* DDS number[2], DDS will compare the data in the SOS file to the data in the DDS database for matches on both DOB and DDS number. After an initial review of the data, it appears that the vast majority of the records fall into this category. Only approximately 160,000 records of over 7.6 million voters, are missing DDS numbers.

2. Where the SOS file does *not* include a DDS number, but does include the last four digits of a social security number, DDS will compare the data in the SOS file to the data in the DDS database for matches on both DOB and social security number. Only approximately 106,000 records in the SOS file of over 7.6 million voters, are missing both a DDS number and social security number.

3. Where the SOS file is missing both a DDS number and a social security number, DDS will compare the DOB and full last name and first character of the first name for both databases. As noted above, DDS estimates that approximately 106,000 records in the SOS file fall within this category.

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[1] All records in both databases include a date of birth.

[2] A DDS number could be either a driver's license number or an identification card number.

4. After completing the above steps, and determining how many records in the SOS registration file still have not been matched to a record in the DDS database,[3] DDS will evaluate the remaining SOS records to consider other matching criteria.

For each record in the SOS file that is matched to a record in the DDS database, DDS will provide that voter's DDS record. More specifically, DDS will add fields to the SOS file with the following information:

1. DDS DL or ID number;

2. Whether DDS number is for a DL or ID;

3. Whether the DDS DL or ID has been confiscated or surrendered, and if so, the date of surrender;

4. Whether the DDS DL or ID has expired, and if so, the date of expiration;

5. Whether the person associated with the DDS DL or ID number has any disability status on file.

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[3] Of course, not every registered voter will have a driver's license or DDS identification card. Therefore, it is anticipated that some persons on the SOS list will not be in the DDS database.