

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

Fair Fight, Inc., John Doe, and Jane Doe, <i>Plaintiffs,</i> v. True the Vote, Catherine Engelbrecht, Derek Somerville, Mark Davis, Mark Williams, Ron Johnson, James Cooper, and John Does 1-10, <i>Defendants.</i>	Civ. No. 2:20-cv-00302-SCJ Hon: Steve C. Jones Defendant True the Vote's Motion to Dismiss for Insufficient Process under Rule 12(b)(4)
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**Defendant True the Vote's Motion to Dismiss for Insufficient Process under
Rule 12(b)(4)**

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Defendant True the Vote (“TTV”) respectfully moves this Court to dismiss or amend the complaint, pursuant to Rule 12(b)(4) of the Federal Rules of Civil Procedure, all claims against it in the above-captioned case. TTV so moves on the grounds that the summons received by TTV is deficient in that it does not properly name the parties.

Rule 12(b)(4) of the Federal Rules of Civil Procedure establishes a defense of insufficient process, and insufficient process is established under Rule 4 of the Federal Rules of Civil Procedure. *See Hoffman v. Bailey*, 996 F. Supp. 2d 477, 481 (E.D. La. 2014).

Rule 4(a)(1)(A) of the Federal Rules of Civil Procedure requires that a summons must name the court and the parties. In both the summons and complaint, Plaintiff names as a party “True the Vote.” *See Complaint*, ¶17. While the Complaint states that “True the Vote” is incorporated in Texas, the summons and complaint are addressed to “True the Vote” which is not the correct name of a legal entity. *See Id.* “The [defendant] had the right to be accurately named in the process and pleadings of the court; and misnomer was properly raised by motion to dismiss...” *United States v. A.H. Fischer Lumber Co.*, 162 F.2d 872, 873 (4th Cir. 1947). A summons and complaint directed at “True the Vote” does not properly name a party to this suit. Accordingly, the summons does not meet the

requirements of Rule 4(a)(1)(A) and is deficient because it does not correctly name a party. Under the “misnomer rule,” a Plaintiff is required to “Correct[] a defendant's name pursuant to Rule 15 at any time where a plaintiff has sued a defendant by an incorrect name.” *Pears v. Mobile Cty.*, 645 F. Supp. 2d 1062, 1082 (S.D. Ala. 2009) Therefore, this Court should dismiss Defendant True the Vote from the above captioned case, or require Plaintiff to amend the complaint with the proper name of the defendant.

Dated: December 30, 2020

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Respectfully Submitted,

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CERTIFICATE OF COMPLIANCE

The undersigned counsel certifies that the foregoing has been prepared in Times New Roman (14 point) font, as required by the Court in Local Rule 5.1 (B).

Respectfully submitted this 30th day of December, 2020.

SMITH & LISS, LLC

/s/ Ray S. Smith, III

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Certificate of Service

I hereby certify that the foregoing document was served electronically on December 30, 2020, upon all counsel of record via the United States District Court for the Northern District of Georgia, electronic filing system.

/s/ Ray Smith, III
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