

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

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

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

vs.

BRAD RAFFENSPERGER, in his
official capacity as the Secretary of
State of Georgia; *et al.*,
Defendants.

**Expert Rebuttal Report of Daniel A. Smith, Ph.D.
Professor and Chair
Department of Political Science
University of Florida
234 Anderson Hall
Gainesville, FL 32611-7325
March 4, 2020**



Daniel A. Smith, Ph.D.

I. Background and Qualifications

1. My name is Daniel A. Smith. I am Professor and Chair of Political Science at the University of Florida (“UF”). As I stated in my Original Expert Report dated December 13, 2019, counsel for the Plaintiffs in the above-captioned litigation retained me to provide consultation and analysis of Georgia’s voter registration data, as well as how Georgia handled absentee or provisional ballots across the state’s 159 counties in the 2018 General Election.

2. My curriculum vitae (including a list of cases in which I have served as an expert witness) is provided with my Original Report. I am being paid \$400 an hour for work in this case, plus any related expenses.

II. Summary of Opinions Offered

3. In my Original Report, I establish: 1) that there are clear administrative and record-keeping problems with the Georgia voter lists and voter history files, and that these problems stem from failure of the Georgia Secretary of State and the State Election Board to adequately oversee, train, and advise county officials on the proper handling of voter registration applications, the recording of voter histories, and the recording of absentee ballot and provisional ballot transactions; and 2) that registered voters in Georgia who are black are disproportionately more likely to cast an absentee ballot that is rejected by local election officials than white registered voters. I reach these conclusions based on

my analysis of voted ballots across Georgia's 159 counties drawn from public records obtained from and maintained by the Georgia Secretary of State and the State Election Board.

4. The report submitted by Defendants' expert, Dr. Thomas L. Brunell, on February 3, 2020 (Brunell Report) does not change my overall conclusions about the administrative and record keeping problems with Georgia's voter lists and voter history files and the disparities in the rejection rate of absentee ballots cast by black and white voters across Georgia. If anything, upon reviewing Dr. Brunell's claims, and taking into consideration his criticism, my empirical findings are only bolstered.

5. As in my Original Report, this Rebuttal Report draws entirely on publicly available data, follows prevailing professional standards, employs statistical methods used by fellow political scientists, and presents its findings in a clear and transparent manner.¹

¹ As with my Original Report, this Rebuttal Report does not rely on anecdotal evidence. It relies solely on the official election administration records maintained and disseminated by Georgia's Elections Division of the Secretary of State's Office and the State Election Board and my extensive experience with state elections systems. The Secretary and the State Election Board maintain the official list of registered voters (O.C.G.A. § 21-2-50(a)(14)). Included in the State Election Board and Secretary of State's official repository of election administration data are the official records of individuals registered to vote in the state, their voter histories, their method of voting, whether an absentee ballot cast by a voter is accepted or not as valid, as well as Provisional ballots cast.

III. Analyzing Georgia Secretary of State's Voter Files

6. As with my Original Report, this Rebuttal Report draws on publicly available data produced by the Georgia Secretary of State and the State Election Board, including the statewide Voter List File dated October 15, 2018 (herewith referred to as the "Voter File"); the November 6, 2018 Statewide Voter History File (herewith referred to as the "Voter History File"); and the November 6, 2018 Statewide Voter Absentee File (herewith referred to as the "Absentee File").² Dr. Brunell draws on these data for his Report, and follows the same methods and procedures as I describe in my Original Report.

7. Before assessing Dr. Brunell's Report, I would like to note that he does not challenge my characterization of Georgia having a single, uniform, top-down, centralized voter list, with voter list information provided to county election

² "Voter History File" is a Zip File 34147.zip (19.13 MB, Last Modified 11/22/2019), available from the Georgia Secretary of State, Elections Division, for download at: <https://elections.sos.ga.gov/Elections/voterhistory.do> (Select "2018" for Election Year, select "Statewide" for Election Category, select "11/06/2018 – November 6, 2018 General/Special Election" for Election Name); "Absentee File" is a Zip File 34147.zip (192.95 MB, Last Modified 01/03/2019), available from the Georgia Secretary of State, Elections Division, for download at: <https://elections.sos.ga.gov/Elections/voterabsenteefile.do> (Select "2018" for Election Year, select "Statewide" for Election Category, select "11/06/2018 -0 November 6, 2018 General/Special Election" for Election Name).

officials in real time. That is, “the state has a single platform that collects and stores all voter registration information from jurisdictions.”³

8. The fact that there are so many errors in a top-down election administration system is troubling, as it raises questions as to the reliability of the underlying data. For example, I had intended to use the ballot return date field in the Absentee File in formulating my opinions, such as identifying non-UOCAVA absentee ballots returned after the state’s deadline, and determining the difference between when an absentee ballot is issued and when it is returned by a voter. The apparent data entry errors in the official Absentee File—errors that a Secretary of State with a uniform, top-down, centralized system could easily mitigate—makes it impossible for me to utilize methods that I could otherwise leverage to make inferences about the absentee ballot process in Georgia. Examples of data entry problems in the ballot return date field are numerous. For example, there are 17 absentee ballots in the 2018 November election that supposedly have official return dates of “01/01/1900”; 32 that supposedly have official return dates of “01/11/2018”; and dozens more that have official return dates that are rife with

³ Sean Greene, Director of Research at the U.S. Election Assistance Commission (EAC), “Statewide Voter Registration Systems,” August 31, 2017, available for download: <https://www.eac.gov/statewide-voter-registration-systems/> (last accessed December 9, 2019).

errors—such as “10/30/2017”, “11/07/0208”, “10/31/0218”, “10/25/0208”, “10/22/0018.”

9. Turning to Dr. Brunell’s Rebuttal Report, rather than performing his analysis using the original data I obtained from the Georgia Secretary of State and which I understand was provided to Defendants in discovery, Dr. Brunell relies instead on a statewide “Voter History File” with a timestamp (December 19, 2019) that is about one month after the one I use in my Original Report and that I continue to use in this Rebuttal Report. Although the two files are quite similar, Georgia’s official December 2019 “Voter History File” documenting the November 2018 General Election that Dr. Brunell uses for his analysis contains “104 more people than the [November 2019] version that Prof. Smith used.” Brunell Report at 3. Even though Dr. Brunell without explanation chose not to use the same dataset I used in my analysis, following the procedures I outline in my Original Report, Dr. Brunell is able to link the three fixed-length text files by associating a unique voter ID in the Voter List File with the unique ID in the Voter History File and Absentee File, respectively, to conduct his analysis.⁴

10. Dr. Brunell notes in his Report that “it is unclear how the final tally on the [Georgia Secretary of State] webpage accounts for provisional and

⁴ The field name for a voter’s unique identifier in the Voter History File is “Registration Number,” whereas the field name for a voter’s unique identifier in the Absentee File is “Voter.Registration.”

supplemental ballots cast,” Brunell Report at 3, an issue that I also encountered when doing the analysis for my Original Report. Dr. Brunell also notes that the Voter History File that he downloaded in December “is slightly different,” Brunell Report at 3, from the version that I downloaded a month earlier. That the state of Georgia’s official statewide Voter History File is not stable a year after the 2018 General Election—as apparently “updates to this file are on-going,” Brunell Report at 3—is a matter of concern. In Dr. Brunell’s Report, he does not evince concern that “104 more people” have a recorded vote history in the state’s December 2019 Voter History File compared to its November 2019 Voter History File. In my extensive experience as a scholar researching voting in various states, I have not previously encountered a situation where more than a year after a general election, the state’s official Voter History File for that election continues to fluctuate.

11. Dr. Brunell also notes that the “total number of ballots cast” as reported on the Secretary of State’s webpage differs from the voter history file by only 708 ballots, “0.018 percent of the total ballots cast.” Brunell Report at 3. In my Original Report, I note that “the Voter History File has 604 more votes cast than what the state reported soon after the election,” this discrepancy appears to be the result of the additional 104 voters included in the December 2019 Voter History File that Dr. Brunell relies on. But it is important to note that the discrepancy—between the state’s official total votes cast and either the November

2019 or December 2019 Voter History File is actually far greater than just 708 (or 604) ballots when county by county results are considered, due to an aggregation bias, or an “ecological fallacy.” If we examine the official number of total ballots recorded across each of the state’s 159 counties according to the Secretary of State’s website, and compare them to the total number of votes cast in each county according to the November 2019 Voter History File, the absolute difference across the total votes cast is greater than 5,000 ballots cast.⁵ This is to say that on the whole, the aggregate numbers across the state differ by 604 or 708 depending on what version of the Voter History File is used, but this aggregation hides the magnitude of the discrepancy, because under count discrepancies in counties are cancelled out by over count discrepancies in other counties. Essentially, Dr. Brunell misses the trees for the forest.

12. Table 1 shows the discrepancies at the county level of the official votes cast, that is, “votes received by choice in each contest for all participating counties,” according to the Secretary of State’s Official Results, and the total votes

⁵ Official county election results for the November 6, 2018 General Election are available as a Zip file, <https://results.enr.clarityelections.com/GA/91639/222278/reports/detailxls.zip>, (Last Accessed 03/01/2020), available from the Georgia Secretary of State, Elections Division, for download at: <https://results.enr.clarityelections.com/GA/91639/Web02-state.221451/#/>. The datafile provides, “County level details for election results. Contains votes received by choice in each contest for all participating counties.”

cast according to the November 22, 2019 snapshot of the Voter History File downloaded from the Secretary of State's website. The second to the most-right column shows the difference in the number of total votes cast according to the November 2019 Voter History File and the total votes cast according to the Secretary of State's Official Results that continue to be publicized on its website. The final column shows the absolute difference between the total votes cast according to the November Voter History File and the Official Results as publicized on the Secretary of State's website. The discrepancies in the total votes cast across many counties are not small, underlying the ecological fallacy when making comparisons at the statewide level. The 604 (or 708) difference in votes cast between the two official data sources from the Georgia Secretary of State no longer appear insignificant. Indeed, rather than a difference of just 0.018 percent of the total ballots cast, as Dr. Brunell reports, the absolute difference in total votes cast across the state's counties is 0.13 percent (more than seven times greater).

13. Further, in some counties, the discrepancy in official vote totals across the Secretary of State's two official data sources is substantial. For Floyd County, the difference between the total votes cast according to the Secretary of State's Voter History File and the Official Results is 995 votes; that is, the state's Official Results tally is 995 votes less than what is reported in the state's Voter History File, which amounts to 3.27 percent of the total ballots cast. The difference is 802

for DeKalb County, which amounts to 0.26 percent of the total votes cast. There are also substantial differences in the opposite direction. For example, the difference between the Official Results total and the total votes cast according to the Secretary of State’s Voter History File is 210 votes for Dougherty County, amounting to roughly 0.67 percent of the total votes cast. For Fulton County, the discrepancy is 761 ballots cast, or 0.18 percent of the total votes cast.

14. Dr. Brunell characterizes my expectation that these numbers should match as “overly optimistic.” Brunell Report at 3. However, not only do these numbers not match exactly, as shown in Table 1, across many of Georgia’s 157 counties, the total votes cast across these two official data sources are not even in the same ballpark. But because Dr. Brunell commits an ecological fallacy, he is unable to grasp the magnitude of the discrepancy.

Table 1: County Differences in the Total Votes Cast between the Secretary of State’s Voter History File and the Secretary of State’s Official Results

County Code	County Name	“N” Voter History File	“Y” Voter History File	Total Voter History File	Total Registered Voters, SOS Website	Total Ballots Cast, SOS Website	Difference, Voter History File – SOS Website Total	Absolute Difference, Voter History File – SOS Website Total
1	Appling	2988	3844	6832	10613	6827	5	5
2	Atkinson	1155	1377	2532	4252	2527	5	5
3	Bacon	830	3007	3837	6010	3836	1	1
4	Baker	557	626	1183	2232	1297	-114	114
5	Baldwin	6202	9489	15691	23399	15690	1	1
6	Banks	3869	2997	6866	10807	6867	-1	1
7	Barrow	13949	13518	27467	47514	27459	8	8

8	Bartow	19659	17786	37445	64074	37441	4	4
9	Ben Hill	1640	3952	5592	9258	5565	27	27
10	Berrien	2785	3485	6270	10247	6265	5	5
11	Bibb	30140	30746	60886	99934	60867	19	19
12	Bleckley	1794	3074	4868	6944	4872	-4	4
13	Brantley	2647	3037	5684	9984	5711	-27	27
14	Brooks	2849	2901	5750	9911	5749	1	1
15	Bryan	6074	8949	15023	25712	15019	4	4
16	Bulloch	11475	12303	23778	39983	23746	32	32
17	Burke	4564	4181	8745	14449	8758	-13	13
18	Butts	2344	6683	9027	15280	8892	135	135
19	Calhoun	1119	797	1916	2982	1912	4	4
20	Camden	7802	9306	17108	31632	17119	-11	11
21	Candler	1079	2464	3543	5572	3549	-6	6
22	Carroll	20284	21685	41969	72908	41959	10	10
23	Catoosa	9578	14261	23839	40513	23836	3	3
24	Charlton	1672	1721	3393	6072	3391	2	2
25	Chatham	65261	38648	103909	188315	103841	68	68
26	Chattahoochee	578	499	1077	3132	1107	-30	30
27	Chattooga	3772	3696	7468	11099	7464	4	4
28	Cherokee	52655	53970	106625	165612	106632	-7	7
29	Clarke	20432	23127	43559	70597	43450	109	109
30	Clay	465	721	1186	1856	1191	-5	5
31	Clayton	38756	53671	92427	169574	92403	24	24
32	Clinch	917	1348	2265	3884	2268	-3	3
33	Cobb	174857	137675	312532	486696	312488	44	44
34	Coffee	4561	8104	12665	21900	12669	-4	4
35	Colquitt	6391	6614	13005	21948	13001	4	4
36	Columbia	29093	32690	61783	95779	61779	4	4
37	Cook	2495	3324	5819	9423	5816	3	3
38	Coweta	29712	28541	58253	91585	58194	59	59
39	Crawford	2144	2810	4954	7459	4953	1	1
40	Crisp	2509	4582	7091	11674	7082	9	9
41	Dade	2778	2702	5480	10496	5478	2	2
42	Dawson	4132	7477	11609	18278	11606	3	3
43	Decatur	4347	4821	9168	15201	9172	-4	4
44	DeKalb	143252	171102	314354	494731	313552	802	802
45	Dodge	3196	3872	7068	11055	7079	-11	11
46	Dooly	1716	2094	3810	5669	3811	-1	1
47	Dougherty	18217	13110	31327	57817	31537	-210	210
48	Douglas	21850	33550	55400	89305	55358	42	42

49	Early	2101	2056	4157	6992	4159	-2	2
50	Echols	341	799	1140	1929	1146	-6	6
51	Effingham	11932	11496	23428	38132	23426	2	2
52	Elbert	3114	4303	7417	11123	7418	-1	1
53	Emanuel	3914	3831	7745	12343	7751	-6	6
54	Evans	1091	2368	3459	5569	3461	-2	2
55	Fannin	5226	6025	11251	17200	11250	1	1
56	Fayette	24350	33759	58109	83763	58118	-9	9
57	Floyd	15417	16018	31435	52469	30440	995	995
58	Forsyth	36431	57114	93545	143680	93526	19	19
59	Franklin	4266	3905	8171	13069	8171	0	0
60	Fulton	182526	241852	424378	703177	425139	-761	761
61	Gilmer	5680	6879	12559	19069	12554	5	5
62	Glascock	569	734	1303	1837	1304	-1	1
63	Glynn	13365	19428	32793	54274	32767	26	26
64	Gordon	9170	8693	17863	30086	17858	5	5
65	Grady	4118	4274	8392	13546	8398	-6	6
66	Greene	2787	6237	9024	12081	9025	-1	1
67	Gwinnett	157818	158059	315877	525568	315815	62	62
68	Habersham	4638	10903	15541	24707	15540	1	1
69	Hall	39513	27884	67397	114817	67582	-185	185
70	Hancock	1529	2016	3545	5601	3554	-9	9
71	Haralson	6006	4608	10614	17923	10612	2	2
72	Harris	8018	7995	16013	22877	16019	-6	6
73	Hart	3983	5682	9665	14706	9666	-1	1
74	Heard	2356	1711	4067	6678	4065	2	2
75	Henry	34973	63773	98746	154376	98743	3	3
76	Houston	21283	38111	59394	93924	59370	24	24
77	Irwin	1379	2175	3554	5277	3569	-15	15
78	Jackson	10986	15968	26954	42272	26950	4	4
79	Jasper	2547	3382	5929	9030	5949	-20	20
80	Jeff Davis	1913	2915	4828	7556	4830	-2	2
81	Jefferson	3364	3420	6784	10349	6789	-5	5
82	Jenkins	1134	1757	2891	4677	2889	2	2
83	Johnson	1277	2210	3487	5060	3489	-2	2
84	Jones	4695	7777	12472	18194	12469	3	3
85	Lamar	3140	4231	7371	11288	7373	-2	2
86	Lanier	914	1773	2687	5034	2689	-2	2
87	Laurens	9187	9786	18973	28805	18998	-25	25
88	Lee	7396	6176	13572	21012	13571	1	1
89	Liberty	6294	9121	15415	31051	15404	11	11

90	Lincoln	1682	2297	3979	5748	3983	-4	4
91	Long	1842	2131	3973	7606	4007	-34	34
92	Lowndes	12632	23165	35797	67459	35817	-20	20
93	Lumpkin	3721	7869	11590	19567	11587	3	3
94	Macon	1638	2593	4231	6569	4244	-13	13
95	Madison	5944	5780	11724	18018	11724	0	0
96	Marion	1471	1464	2935	4468	2935	0	0
97	McDuffie	2853	5902	8755	13587	8819	-64	64
98	McIntosh	2027	3392	5419	8962	5425	-6	6
99	Meriwether	5342	3340	8682	13710	8678	4	4
100	Miller	1154	1166	2320	3814	2322	-2	2
101	Mitchell	3551	3911	7462	13324	7470	-8	8
102	Monroe	5949	7040	12989	18724	12987	2	2
103	Montgomery	1905	1626	3531	5145	3535	-4	4
104	Morgan	3741	5837	9578	13100	9580	-2	2
105	Murray	5728	5393	11121	19170	11114	7	7
106	Muscogee	31128	32197	63325	112540	63451	-126	126
107	Newton	21210	22012	43222	69805	43213	9	9
108	Oconee	8102	12648	20750	27538	20796	-46	46
109	Oglethorpe	2667	3836	6503	9473	6500	3	3
110	Paulding	25200	36199	61399	98948	61399	0	0
111	Peach	3219	7212	10431	16632	10472	-41	41
112	Pickens	7670	5748	13418	21151	13394	24	24
113	Pierce	1967	4948	6915	10855	6897	18	18
114	Pike	3772	4787	8559	12212	8561	-2	2
115	Polk	4683	8211	12894	20970	12901	-7	7
116	Pulaski	871	2763	3634	5293	3635	-1	1
117	Putnam	3894	5455	9349	13578	9363	-14	14
118	Quitman	419	518	937	1519	951	-14	14
119	Rabun	1855	5751	7606	11513	7605	1	1
120	Randolph	1251	1557	2808	4154	2805	3	3
121	Richmond	36238	34158	70396	122747	70360	36	36
122	Rockdale	12044	24704	36748	58299	36731	17	17
123	Schley	517	1420	1937	2645	1937	0	0
124	Screven	2484	2963	5447	8594	5438	9	9
125	Seminole	1882	1352	3234	5341	3248	-14	14
126	Spalding	10109	14366	24475	41325	24471	4	4
127	Stephens	2406	6687	9093	17058	9118	-25	25
128	Stewart	870	904	1774	2917	1829	-55	55
129	Sumter	4168	6361	10529	16395	10594	-65	65
130	Talbot	1900	1048	2948	4334	2962	-14	14

131	Taliaferro	323	614	937	1211	938	-1	1
132	Tattnell	2722	3950	6672	11036	6663	9	9
133	Taylor	1182	2092	3274	5068	3301	-27	27
134	Telfair	1631	2020	3651	5525	3650	1	1
135	Terrell	1996	1956	3952	6366	3951	1	1
136	Thomas	7900	9402	17302	27686	17297	5	5
137	Tift	5492	8219	13711	22064	13702	9	9
138	Toombs	3320	5556	8876	15700	8887	-11	11
139	Towns	1852	4319	6171	9386	6167	4	4
140	Treutlen	807	1816	2623	4025	2621	2	2
141	Troup	11454	12519	23973	38876	23977	-4	4
142	Turner	1207	2068	3275	5126	3285	-10	10
143	Twiggs	1997	1813	3810	5849	3807	3	3
144	Union	4776	7140	11916	17800	11912	4	4
145	Upson	3234	7362	10596	15930	10602	-6	6
146	Walker	9576	12003	21579	38613	21574	5	5
147	Walton	22590	16181	38771	61655	38771	0	0
148	Ware	4937	6134	11071	18506	11064	7	7
149	Warren	808	1464	2272	3519	2273	-1	1
150	Washington	3556	4648	8204	11988	8200	4	4
151	Wayne	3767	6376	10143	15675	10158	-15	15
152	Webster	405	693	1098	1493	1102	-4	4
153	Wheeler	1367	570	1937	2751	1942	-5	5
154	White	5510	5967	11477	18137	11479	-2	2
155	Whitfield	16758	10675	27433	46058	27432	1	1
156	Wilcox	1415	1408	2823	4237	2824	-1	1
157	Wilkes	2002	2376	4378	6345	4394	-16	16
158	Wilkinson	2435	1839	4274	6016	4276	-2	2
159	Worth	4445	3425	7870	12645	7867	3	3
Total		1833052	2117457	3950509	6428581	3949905	604	5016

IV. Casting an Absentee Ballot in Georgia

15. Dr. Brunell criticizes my use of the October 15, 2018 statewide Voter File. Brunell Report at 5. As I state in my original Report, I rely on this file because it is well within the state's 29-day registration window prior to Election

Day, and should, therefore, contain all registrants who are eligible to vote in the November election. Despite his criticism, Dr. Brunell does not suggest that I should use a different statewide Voter File.

16. Dr. Brunell criticizes my use of the “MAILED” ballot style as contained in the Secretary of State’s Absentee File to determine whether or not a voter cast an absentee mail ballot. Brunell Report at 5. He assumes that Georgia’s ballot style field indicates “the method by which the ballot was delivered to the voter, not how the ballot was cast.” Brunell Report at 5 (emphasis removed). Notwithstanding Dr. Brunell’s criticism of my Original Report, he relies on the exact same assumption that I rely upon—that the ballot delivery method (according to the ballot style field of the Absentee File) is also the method by which a voter casts his or her ballot.

17. Dr. Brunell writes in a footnote in his Report, without citation to any source, that “[e]lectronically delivered ballots are overwhelmingly Georgia residents in the military who are living overseas during the election. They can request a ballot be delivered via email. Those ballots have to be printed out and mailed back.” Brunell Report at 5 n.3.

18. For this report, I adopted Dr. Brunell’s assumptions as described above, and reran my analysis to include all ballots in the Absentee File that have either a “MAILED” or “ELECTRONIC” code in the ballot style field, assuming

for the sake of argument that these types of delivered ballots were returned in the mail by a voter. This approach added 4,036 ELECTRONIC ballots to the 227,068 MAILED ballots in the Absentee File field, which totals 231,104 absentee ballots that Dr. Brunell and I assume were returned by voters via mail.

19. My analysis that follows in the next section—after the addition of 4,036 individuals who have an ELECTRONIC code in the ballot style field—is consistent with the analysis I offer in my Original Report. This is not surprising, given that Dr. Brunell’s ballot style assumption increases the number of ballots considered to be mailed in by less than 2 percent.

III. Racial/Ethnic Breakdown of Rejected Absentee (Vote by Mail) Ballots in the 2018 General Election, including the Ballot Status Code of MAILED and ELECTRONIC

20. Adopting Dr. Brunell’s assumption that ballots with a ballot style code of MAILED or ELECTRONIC were returned by mail, I calculate there to be 223,776 absentee ballots that were accepted (an increase from the 219,731 in my Original Report) and 7,328 that were rejected (an increase from the 7,074 in my Original Report) by local election officials, for a total of 231,104 MAILED or ELECTRONIC absentee ballots. Of the 7,328 MAILED or ELECTRONIC absentee ballots that were rejected, 7,074 (96.5%) have a ballot style code of MAILED, and 254 (3.47%) have a ballot style code of ELECTRONIC. Proportionately, however, absentee ballots with a ballot style code of

ELECTRONIC have a considerably higher rejection rate (5.91%) compared to those with a ballot style code of MAILED (3.12%).

21. As in my Original Report, I join the Voter File with the Voter History File and the Absentee File to calculate the rejection rates of absentee ballots (that is, that have a ballot style code of MAILED or ELECTRONIC) that were cast by black voters and white voters. There are 390 individuals (out of the 231,104, or 0.17%) with an absentee ballot status of Accepted or Rejected in the Absentee File who are not found in the Voter File; as such, I drop them from the forthcoming analysis, which leaves me with 230,714 individuals who have a ballot style code of MAILED or ELECTRONIC and a ballot status code of either Accepted or Rejected, and who have race or ethnicity data.

22. Of the 230,714 records in the Absentee File with a MAILED or ELECTRONIC code in the ballot style field that were recorded as either accepted or rejected in the ballot status field, 85.5% were cast by white or black voters in the 2018 General Election. With the addition of absentee voters with an ELECTRONIC ballot style field, this percentage remains the same as in my Original Report that limits the analysis to only those absentee voters with a MAILED ballot style. Of the 111,532 absentee ballots (both MAILED and ELECTRONIC) cast by white voters, 2.35% were rejected by local election officials, up slightly from the figure in my Original Report (2.3%). Of the 85,773

absentee ballots (both MAILED and ELECTRONIC) cast by black voters, 3.74% were rejected by local election officials, again, up slightly from the figure in my Original Report (3.7%).

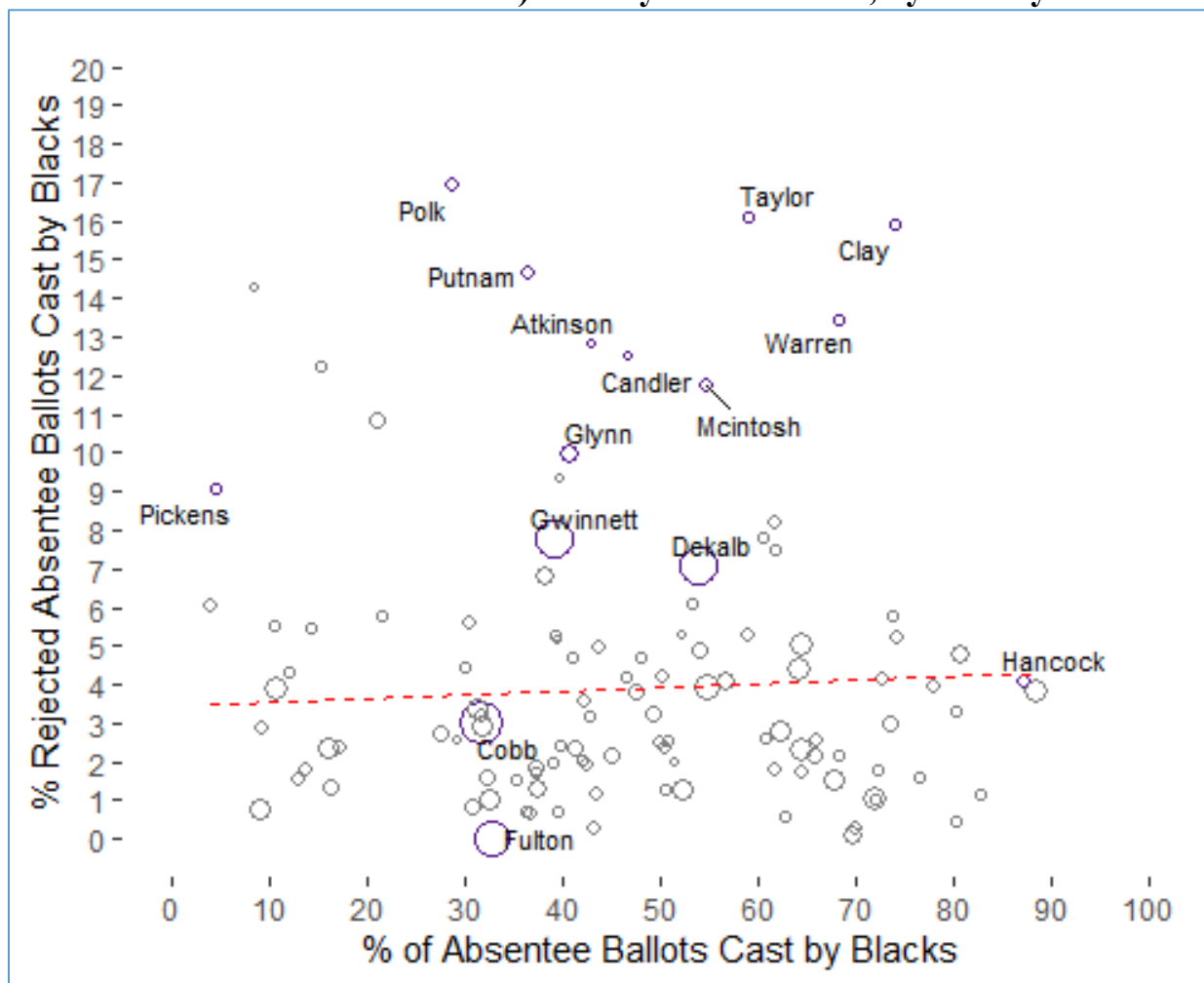
23. As in my Original Report, Figure 1 and Figure 2 provide a visualization of the considerable variation in rejected absentee ballots with a ballot style of MAILED or ELECTRONIC cast by black and white voters across Georgia's 159 counties in the 2018 General Election.⁶ Each circle (or dot) in Figure 1 represents a Georgia county, and the size of the circle is proportional to the total number of MAILED or ELECTRONIC absentee ballots that were cast in each county.⁷ The X-axis (horizontal) in Figure 1, labeled “% of Absentee Ballots Cast by Blacks,” is the percentage (from 0% to 100%) of all (valid and rejected) MAILED or ELECTRONIC absentee ballots cast in a county by black voters. The Y-axis (vertical) in Figure 1, labeled “% Rejected Absentee Ballots Cast by Blacks,” is the percentage (from 0% to 20%) of MAILED or ELECTRONIC absentee ballots cast by black voters that were rejected in a county. The weighted (by the number of MAILED or ELECTRONIC absentee ballots) red regression

⁶ Counties with no rejected MAILED or ELECTRONIC absentee ballots cast by either black or white voters are dropped from Figures 1 through Figure 3. Some small counties, because they have too few MAILED or ELECTRONIC absentee ballots, cannot be seen on these graphs.

⁷ For reference purposes, the figure labels counties with the greatest number of MAILED or ELECTRONIC absentee ballot as well as some with rejection rates that are outliers.

line in Figure 1 shows the positive relationship between the percentage of MAILED or ELECTRONIC absentee ballots cast in a county by black voters and the rejection rate of MAILED or ELECTRONIC absentee ballots cast by black voters in a county.

Figure 1: Percentage of Rejected Absentee Ballots (MAILED or ELECTRONIC) Cast by Black Voters, by County

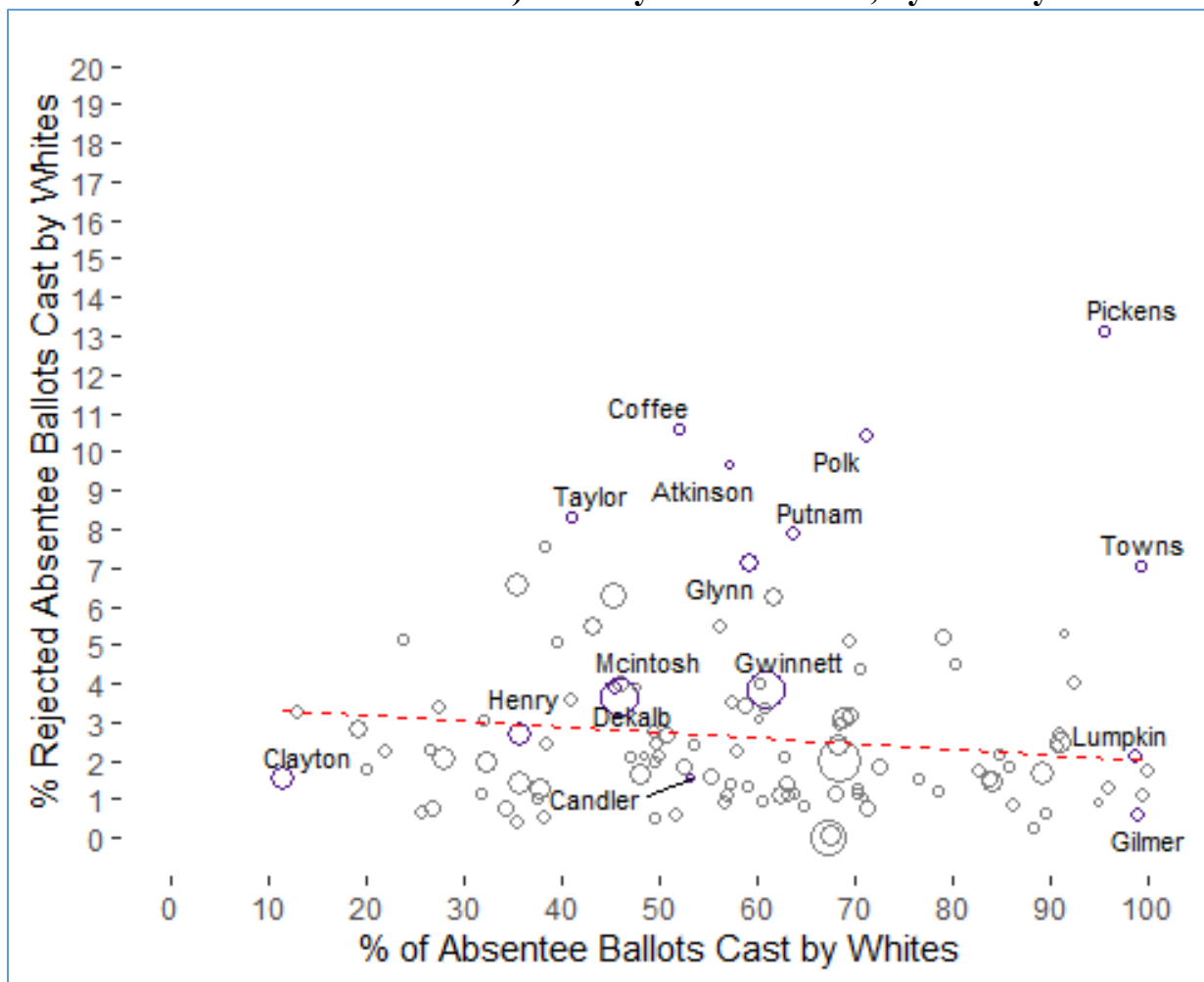


24. For example, it is clear from Figure 1 that although black voters made up roughly 40% of all MAILED or ELECTRONIC absentee ballots cast in

Gwinnett County, nearly 8% of MAILED absentee ballots cast by black voters were rejected. Other counties, including Glynn, Atkinson, Candler, Putnam, Polk, and Pickens counties, where less than half of all MAILED or ELECTRONIC absentee ballots were cast by black voters, between 9% and 17% of MAILED or ELECTRONIC absentee ballots cast by black voters were rejected. These figures are nearly identical to those in my Original Report.

25. Figure 2 replicates this visual analysis for the percentage of all MAILED or ELECTRONIC absentee ballots cast by white voters in a given county, and the respective rejection rate of MAILED or ELECTRONIC absentee ballots cast by white voters. The weighted red regression line in Figure 2 has a negative slope, indicating that as the percentage of all MAILED or ELECTRONIC absentee ballots cast by white voters in a county increases, the rejection rate of MAILED or ELECTRONIC absentee ballots cast by white voters *decreases*. Again, these figures are nearly identical to those in my Original Report.

Figure 2: Percentage of Rejected Absentee Ballots (MAILED or ELECTRONIC) Cast by White Voters, by County



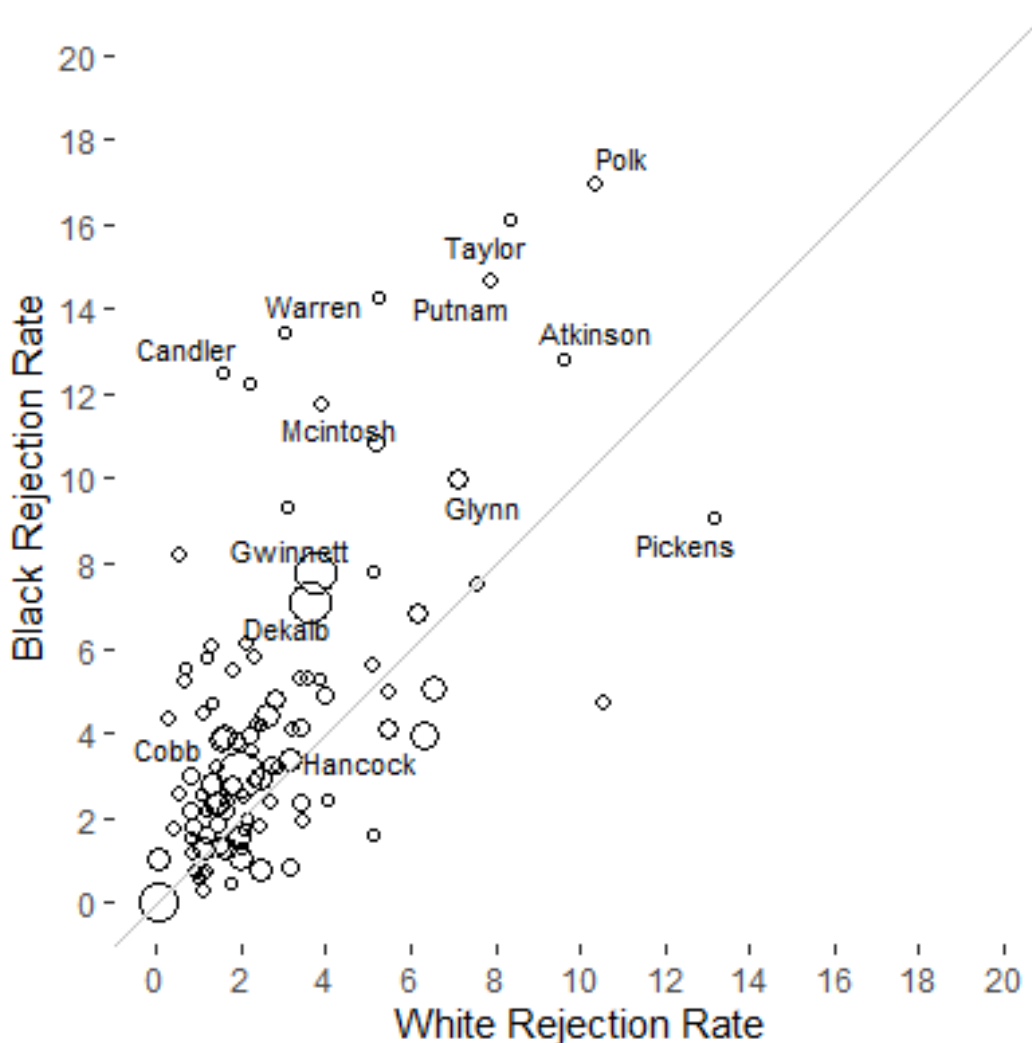
26. Since Dr. Brunell was apparently confused by these two figures: “...the logic behind Figures 1 and 2 in his report escapes me.” Brunell Report at 9. I offer a new plot that is very easy to interpret. In order to visualize the sizeable disparity in the rates of rejected absentee ballots cast by black and white voters across Georgia’s 159 counties, Figure 3 displays the percentage of rejected absentee ballots (MAILED or ELECTRONIC) cast by black voters in a county,

compared to the percentage of rejected absentee ballots cast by white voters in that county. If the absentee ballot rejection rates were the same for white and black voters, all the counties would fall along the diagonal 45 degree dashed line. The horizontal (x-axis) is the rejection rate of absentee ballots (from 0 percent to 20 percent) cast by white voters in a county, and the vertical (y-axis) is the rejection rate of absentee ballots (from 0 percent to 20 percent) cast by black voters in each county.

27. As is clear from the plot, of the roughly 100 counties with more than zero rejected MAILED or ELECTRONIC absentee ballots cast by either black or white voters, 70% fall *above* the 45 degree line, indicating that in the 2018 General Election, the rejection rate for black voters casting an absentee ballot through the mail (MAILED or ELECTRONIC style code) exceeded that of white voters across most of Georgia's counties. For example, in Warren County, over 13% of absentee ballots cast by black voters were rejected, but less than 4% of absentee ballots cast by white voters were rejected. In Gwinnett and DeKalb counties, black voters were nearly twice as likely to have their absentee ballot rejected than white voters. Even in Polk County, where more than 10% of white voters' absentee ballots were rejected, nearly 17% of absentee ballots cast by black voters were rejected. The pattern is clear: black voters who cast an absentee ballot with a ballot style of

MAILED or ELECTRONIC were more likely to have their absentee ballot rejected across Georgia’s counties than white voters.

Figure 3: Percentage of Rejected Absentee Ballots (MAILED or ELECTRONIC) Cast by Black Voters and White Voters, by County



V. Conclusion

28. In conclusion, notwithstanding Dr. Brunell’s criticisms, my analysis of Georgia’s voter lists and individual voting records continues to identify election administration record keeping problems. Furthermore, after adopting Dr. Brunell’s

assumptions regarding the ballot style field, I continue to find that black absentee voters (MAILED or ELECTRONIC) are more likely to cast ballots that are rejected than white voters.

29. I would like to reserve the right to continue to supplement my declarations in light of additional facts, data, and testimony.

30. I declare under penalty of perjury that the foregoing is true and correct. Executed this 4th day of March, 2020, at Alachua County, Florida.



Daniel A. Smith, Ph.D. _____

CERTIFICATE OF SERVICE

I hereby certify that on this, the 4th day of March 2020, I electronically filed the foregoing **Expert Rebuttal Report of Daniel A. Smith, Ph.D.** with the Clerk of Court using the CM/ECF system, which will automatically send notification of such filing to Counsel of Record:

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