

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

FAIR FIGHT ACTION, *et al.*

Plaintiffs,

v.

BRAD RAFFENSPERGER, *et al.*,

Defendants.

CIVIL ACTION

FILE NO. 1:18-cv-05391-SCJ

**PLAINTIFFS' RESPONSES TO DEFENDANTS' STATEMENT OF
MATERIAL FACTS IN SUPPORT OF MOTION FOR SUMMARY
JUDGMENT ON JURISDICTION**

1.

Defendants' Statement No. 1:

The Sixth Episcopal District, Inc. did not divert financial resources as a result of the practices challenged in this litigation. 30(b)(6) Deposition of Sixth Episcopal District through Designee Bishop Reginald Jackson (“Jackson Dep.”) at 23:18-22.

Plaintiffs' Response:

Undisputed, but immaterial because: (1) past diversion of resources is not required to establish standing; anticipated diversion is sufficient, *see State Conference of NAACP v. Browning*, 522 F.3d 1153, 1165-66 (11th Cir. 2008); and

(2) the diversion need not be of *financial* resources, but can include diversion of personnel and time, *see Arcia v. Fla. Sec’y of State*, 772 F.3d 1335, 1341 (11th Cir. 2014). Defendants do not state that the Sixth Episcopal District did not anticipate diverting resources as a result of the practices challenged in this litigation at the time of the amended complaint, or that the Sixth District does not currently anticipate diverting resources. Bishop Jackson expects that the elders of the church and the pastors of AME’s 520 churches will spend more time addressing voting issues for the 2020 election than they have historically. Exh. 1, Jackson Dep. 164:17-165:2. This expected work will divert resources away from other planned activities. *Id.* 165:19-166:4. *See also* SAMF¹ ¶¶ 191-205 for additional details regarding the anticipated diversion of resources.

2.

Defendants' Statement No. 2:

The Sixth Episcopal District, Inc. did nothing different from its usual practices in the 2018 election. *Id.* at 24:14-19.

Plaintiffs' Response:

Undisputed that Bishop Jackson agreed with Statement No. 2 in his deposition, but Bishop Jackson has since clarified that the Sixth District had to

¹ SAMF refers to Plaintiffs’ Statement of Additional Material Facts.

devote additional resources during the 2018 election because of Defendants' voter suppression practices. *See* Exh. 2, Jackson Decl. ¶ 9 (“During the 2018 election, through interactions with members in the Church and public reports, Sixth Episcopal District learned that the lines at polling locations in Georgia were unreasonably long, and that many members struggled to obtain absentee ballots. As a result, Sixth Episcopal District devoted resources to assisting voters with applying for absentee ballots and encouraging voters to cast their vote early.”).

Defendants' Statement No. 2 is also immaterial because past diversion of resources is not necessary to establish standing; anticipated diversion is sufficient. *See Browning*, 522 F.3d at 1165-66. Bishop Jackson expects—and has expected since before the amended complaint—that the elders of the church and the pastors of AME's 520 churches will spend more time addressing voting issues for the 2020 election than they have historically. Exh. 1, Jackson Dep. 164:17-165:2; Exh. 2, Jackson Decl. ¶ 8 (the Sixth District recognized that it would have to divert resources “in advance of making the decision to participate in this lawsuit”). This expected work will divert resources away from other planned activities. Exh. 1, Jackson Dep. 165:19-166:4; *see also* SAMF ¶¶ 191-205 for additional details regarding the anticipated diversion of resources.

3.

Defendants' Statement No. 3:

The Sixth Episcopal District diverted no resources as a result of any contested election practices. *Id.* at 64:12-16.

Plaintiffs' Response:

Undisputed that Bishop Jackson agreed with Statement No. 3 in his deposition, but Bishop Jackson has since clarified that the Sixth District had to devote additional resources during the 2018 election because of Defendants' voter suppression practices. *See* Exh. 2, Jackson Decl. ¶ 7 (“In response to Georgia’s voter suppression tactics that Sixth Episcopal District observed in November 2018, Sixth Episcopal District has devoted more staff and members to assist with educating and assisting voters in Georgia than it devoted prior to 2018”). Defendants’ Statement No. 3 is also immaterial because past diversion of resources is not necessary to establish standing; anticipated diversion is sufficient. *See Browning*, 522 F.3d at 1165-66. Bishop Jackson expects—and has expected since before the amended complaint—that the elders of the church and the pastors of AME’s 520 churches will spend more time addressing voting issues for the 2020 election than they have historically. Exh. 1, Jackson Dep. 164:17-165:2 (Jackson has “every confidence” the Sixth District is spending more time on voting issues);

Exh. 2, Jackson Decl. ¶ 8 (the Sixth District recognized that it would have to divert resources “in advance of making the decision to participate in this lawsuit”). This expected work will divert resources away from other planned activities. Exh. 1, Jackson Dep. 165:19-166:4. Otherwise, Statement No. 3 is not disputed.

4.

Defendants' Statement No. 4:

Virginia-Highland Church, Inc. (“Virginia-Highland”) did not divert financial resources. 30(b)(6) Deposition of Virginia-Highland Church through Designee Matthew Laney (“Laney Dep.”) at 61:10-13, 66:14-24, 68:13-69:07.

Plaintiffs' Response:

Undisputed, but immaterial because: (1) past diversion of resources is not required to establish standing; anticipated diversion is sufficient, *see Browning*, 522 F.3d at 1165-66; and (2) the diversion need not be of *financial* resources, but can include diversion of personnel and time, *see Arcia*, 772 F.3d at 1341. As Defendants concede, Virginia-Highland has already diverted non-financial resources. SOF² ¶¶ 5, 12-14, 16. Virginia-Highland had done so before the amended complaint was filed. For example, Virginia-Highland used more

² SOF refers to Defendants’ Statement of Material Facts in Support of Motion for Summary Judgment on Jurisdiction.

volunteers for “SummerFest” (a large neighborhood festival that happens in front of Virginia-Highland, Exh. 3, Laney Dep. 60:16-20) in June 2018 than in 2016 because “it takes more time to explain all of these irregularities and obstacles and hoops that people have to jump through or be wary of.” *Id.* 228:20-25. Because of Defendants’ voter purges, Exact Match policy, voter roll irregularities, provisional ballot practices, absentee ballot practices, and polling place closures, Virginia-Highland has “had to expend human capital and volunteers,” which are “in many respects . . . more valuable” to the church than financial resources. *Id.* 70:14-20; 71:7-13. *See also* SAMF ¶¶ 171-88 for additional details regarding Virginia-Highland’s diversion of resources.

5.

Defendants' Statement No. 5:

All of the resources diverted by Virginia-Highland are the time of its volunteers. *Id.* at 70:14-20, 71:01-06.

Plaintiffs' Response:

Disputed. Virginia-Highland has had to “primarily” expend human capital and volunteers, but those are not the only resources Virginia-Highland has expended and expects to expend. Exh. 3, Laney Dep. 70:14-20. Virginia-Highland’s educational activities, such as its efforts to show a film about voter

suppression, also “take more time away from other ministries.” *Id.* 135:19-136:4. These activities require funding in addition to human capital. *Id.* 136:14-20 (“If we want to bring in speakers, if we want to show films again, if we want to have forums around voting rights, if we want to send people to trainings, we have funds available to expand in the future, at least for the coming year.”)

6.

Defendants' Statement No. 6:

Since 2014, Virginia-Highland’s mission included voter education and registration. *Id.* at 29:02-29:09, 56:03-57:07, 113:01-114:18.

Plaintiffs' Response:

Undisputed.

7.

Defendants' Statement No. 7:

One of Virginia-Highland’s existing ministries concentrates on voter education and registration and voting advocacy. *Id.* at 54:04-16.

Plaintiffs' Response:

Disputed to the extent Statement No. 7 suggests that activities of Virginia-Highland’s ministries have remained unchanged and continue to exist as they did prior to Defendants’ practices. The activities of this ministry have had to change as a result of Defendants’ practices. Virginia-Highland volunteers “have to spend an

increasing amount of time with each person that they're registering explaining the different issues that they will likely have to navigate through [Georgia's] election process, which has become something of an obstacle course." Exh. 3, Laney Dep. 73:10-74:1. The church used more volunteers for "SummerFest" in June 2018 than in 2016 because "it takes more time to explain all of these irregularities and obstacles and hoops that people have to jump through or be wary of." *Id.* 228:20-25. As Defendants concede, Virginia-Highland's volunteers have to spend more time with each prospective voter. SOF ¶¶ 13-14. Otherwise, Statement No. 7 is not disputed.

8.

Defendants' Statement No. 8:

Virginia-Highland identified only the "use it or lose it" statute, the exact match requirements, closing or moving polling sites, and the lack of provisional ballots at polling locations as areas of concern for the church. *Id.* at 126:16-127:09, 133:04-133:20, 183:14-184:05, 203:17-204:7, 207:10-208:16.

Plaintiffs' Response:

Undisputed that Virginia-Highland identified these issues as areas of concern, but disputed that these are the only identified areas of concern. The primary source of Virginia-Highland's injury is the additional time its volunteers

have had to expend and will continue to expend to explain the “different issues that [voters] will likely have to navigate through [Georgia’s] election process, which has become something of an obstacle course.” Exh. 3, Laney Dep. at 73:10-74:1. These issues include voter roll irregularities and the flawed absentee ballot process. *Id.* 73:10-74:1, 134:16-20 (describing education about absentee ballots).

9.

Defendants' Statement No. 9:

Virginia-Highland members and volunteers regularly register people to vote, and urge members of the congregation to vote. *Id.* at 58:11-59:22, 60:02-61:01.

Plaintiffs' Response:

Statement No. 9 is disputed to the extent it suggests that Virginia-Highland’s activities have remain unchanged and continue to exist as they did prior to Defendants’ practices. Virginia-Highland volunteers have had “to spend an increasing amount of time with each person that they’re registering explaining the different issues that they will likely have to navigate through [Georgia’s] election process, which has become something of an obstacle course.” Exh. 3, Laney Dep. 73:10-74:1. Virginia-Highland used more volunteers for “SummerFest” in June 2018 than in 2016 because “it takes more time to explain all of these irregularities and obstacles and hoops that people have to jump through or be wary of.” *Id.*

228:20-25. As Defendants concede, Virginia-Highland’s volunteers have to spend more time with each prospective voter. SOF ¶¶ 13-14. In addition, Statement No. 9 is not supported by the cited testimony—Exh. 3, Laney Dep. at 58:11-59:22, 60:02-61:01—insofar as it refers to “urg[ing] members of the congregation to vote.” The cited testimony identifies voter registration efforts, but is silent on Virginia-Highland members and volunteers urging members of the congregation to vote. Otherwise, Statement No. 9 is not in dispute.

10.

Defendants' Statement No. 10:

Approximately eight to ten members of Virginia-Highland volunteer to register voters after Sunday meetings. *Id.* at 62:01-63:03.

Plaintiffs' Response:

Statement No. 10 is disputed to the extent it suggests that Virginia-Highland’s activities have remained unchanged and continue to exist as they did prior to Defendants’ practices. Virginia-Highland volunteers have had “to spend an increasing amount of time with each person that they’re registering explaining the different issues that they will likely have to navigate through [Georgia’s] election process, which has become something of an obstacle course.” Exh. 3, Laney Dep. 73:10-19. Volunteers also “have to spend more time with each person that they’re

registering, which means they can register and talk to fewer people . . . [s]o it just dramatically reduces the amount of impact that they can have because of the amount of preparation that they have to offer.” *Id.* 226:16-227:4. Otherwise, Statement No. 10 is not in dispute.

11.

Defendants' Statement No. 11:

Virginia-Highland members and volunteers also educate and register potential voters during an annual neighborhood festival. *Id.* at 60:12-20, 61:10-25.

Plaintiffs' Response:

Statement No. 11 is disputed to the extent it suggests that Virginia-Highland’s activities have remained unchanged and continue to exist as they did prior to Defendants’ practices. Virginia-Highland used more volunteers for “SummerFest” in June 2018 than in 2016 because “it takes more time to explain all of these irregularities and obstacles and hoops that people have to jump through or be wary of.” Exh. 3, Laney Dep. 228:20-25. If some of the allegations in the complaint were cured, the church’s “registration volunteers [would] then be able to spend more time on other aspects of . . . their election mission.” *Id.* 229:7-12. Otherwise, Statement No. 11 is not disputed.

12.

Defendants' Statement No. 12:

The sole diversion of resources experienced by Virginia-Highland consists of less time from church volunteers. *Id.* at 71:24-72:14.

Plaintiffs' Response:

Disputed. Virginia-Highland has had to “primarily” expend human capital and volunteers, but those are not the only resources Virginia-Highland has expended and expects to expend. Exh. 3, Laney Dep. 70:14-20. Virginia-Highland’s educational activities, such as its efforts to show a film about voter suppression, also “take more time away from other ministries.” *Id.* 135:19-136:4. These activities require funding in addition to human capital. *Id.* 136:14-20 (“If we want to bring in speakers, if we want to show films again, if we want to have forums around voting rights, if we want to send people to trainings, we have funds available to expand in the future, at least for the coming year.”)

13.

Defendants' Statement No. 13:

Each volunteer at Virginia-Highland has to spend more time explaining voting requirements to each person as they are registering to vote. *Id.* at 73:10-74:04.

Plaintiffs' Response:

Undisputed that Virginia-Highland volunteers have needed to expend more time when they are registering voters. *See* Exh. 3, Laney Dep. 226:16-227:4 (“volunteers . . . have to spend more time with each person that they’re registering.”). These efforts reflect the new status quo as a result of voter suppression tactics, as volunteers have had “to spend an increasing amount of time with each person that they’re registering explaining the different issues that they will likely have to navigate through [Georgia’s] election process, which has become something of an obstacle course.” *Id.* 73:10-19.

14.

Defendants' Statement No. 14:

Because of the time required, volunteers with Virginia-Highland are contacting fewer voters and spending less time in other ministries of the congregation. *Id.* at 74:20-22, 76:09-77:02.

Plaintiffs' Response:

Undisputed.

15.

Defendants' Statement No. 15:

Virginia-Highland was not able to quantify how much time church volunteers diverted specifically to the practices that concern the church. *Id.* at

83:03-84:09, 90:01-91:17, 92:04-94:12, 98:04-100:02, 100:8-12, 101:12-23,
102:14-103:22.

Plaintiffs' Response:

Undisputed, but immaterial. Eleventh Circuit law does not require quantification of injury, *see PETA, Inc. v. Miami Seaquarium*, 189 F. Supp. 3d 1327, 1340 (S.D. Fla. 2016), and the Supreme Court has said that minimal injury is enough to establish standing, *United States v. Students Challenging Regulatory Agency Procedures (SCRAP)*, 412 U.S. 669, 689 n.14 (1973). Virginia-Highland explained that “every volunteer hour that goes to voting ministry is an hour that is diverted from something else that a person could be active in in the congregation.” Exh. 3, Laney Dep. 137:4-10.

16.

Defendants' Statement No. 16:

Virginia-Highland could identify only two members whose voting rights work caused them to step back from another church ministry. *Id.*

Plaintiffs' Response:

Disputed and immaterial. Virginia-Highland explained that “every volunteer hour that goes to voting ministry is an hour that is diverted from something else that a person could be active in in the congregation.” Exh. 3, Laney Dep. 137:4-10

(emphasis added). If the church needed less in-kind volunteer time to spend on election work, the church could “easily” redeploy those resources to other areas helpful to the church’s mission. *Id.* 232:15-233:9. Moreover, Statement No. 16 is immaterial because minimal injury is sufficient to establish standing. *See SCRAP*, 412 U.S. at 689 n.14.

17.

Defendants' Statement No. 17:

For those two members, Virginia-Highland did not quantify how much time those volunteers spent on explaining the “use it or lose it” statute, exact match requirement, or polling location as opposed to other voting rules. *Id.*

Plaintiffs' Response:

Undisputed, but immaterial. Eleventh Circuit law does not require quantification of injury, *PETA*, 189 F. Supp. 3d at 1340, and the Supreme Court has said that minimal injury is enough for standing, *see SCRAP*, 412 U.S. at 689 n.14. As Defendants acknowledge, Virginia-Highland’s volunteers have “to spend more time explaining voting requirements to each person as they are registering to vote.” SOF ¶ 13.

18.

Defendants' Statement No. 18:

Virginia-Highland did not describe any perceptible impairment in the church's usual activities. *Id.*

Plaintiffs' Response:

Disputed, and to the extent that “perceptible” is being used as a legal standard, Plaintiffs object to the statement as a legal question, not a fact. Virginia Highland’s diversion of volunteer resources to counteract Defendants’ voter suppression has impaired its ability to conduct its other church activities. As Virginia-Highland explained, “every volunteer hour that goes to voting ministry is an hour that is diverted from something else that a person could be active in in the congregation.” Exh. 3, Laney Dep. 137:4-10. Volunteers are less available for “other activities in the church because of the time that [the volunteers] are giving to [Virginia-Highland’s] voter registration ministry.” *Id.* 76:12-20. Virginia-Highland has assigned eight to ten volunteers for this work. *Id.* 83:3-9. Virginia-Highland has also had a volunteer resign from leadership in a ministry around L.G.B.T.Q. individuals “because she needed that time to devote to the voting rights work,” *id.* 83:7-13, and another would “like to get more involved in leadership for

[the church's] Lunch and Learn ministry" and personnel matters if not for her current commitments, *id.* 89:16-91:17.

19.

Defendants' Statement No. 19:

Baconton Missionary Baptist Church, Inc. ("Baconton") claims no diversion of money. 30(b)(6) Deposition of Baconton Missionary Baptist Church through Designee Hermon Scott ("Scott Dep.") at 17:19-18:15, 18:21-19:08, 28:16-22.

Plaintiffs' Response:

Undisputed, but immaterial. A diversion need not be of *financial* resources, but can include diversion of personnel and time. *See Arcia*, 772 F.3d at 1341. Baconton has devoted staff time, volunteer time, and operational resources to counteracting Defendants' illegal conduct. Exh. 4, Scott Dep. 106:21-107:15 (describing operational resources committed to prayer meetings); *id.* 28:23-29:20, 178:7-23 (diversion of Reverend Scott's time to discussing voter protection); *id.* 31:9-32:9, 173:23-174:6 (diversion of volunteer time).

20.

Defendants' Statement No. 20:

Baconton diverted resources of its staff and members in response to the "use it or lose it" statute. *Id.* at 28:23-29:2, 33:07-34:10.

Plaintiffs' Response:

Disputed to the extent the statement suggests that Baconton diverted resources exclusively to respond to the “use it or lose it” statute. Baconton also diverted resources in response to Exact Match and voter roll irregularities. *See, e.g.*, Exh. 4, Scott Dep. 165:7-15 (one goal in instructing people “was checking your registration. Make sure you’re registered. And make sure that you have an ID card—an ID that matches, so when you get there, you can vote.”). Otherwise, Statement No. 20 is not disputed.

21.

Defendants' Statement No. 21:

Baconton’s interest in voting issues stems from its interest in seeing Stacey Abrams elected as governor. *Id.* at 33:07-34:10, 125:10-129:18, Ex. 11 p. 4, 188:23-189:09.

Plaintiffs' Response:

Disputed. Baconton’s interest in voting stems from numerous interests. Voting issues are a core part of Baconton’s organizational mission. Reverend Scott explained that to make the Church’s members better Christians, the church must not “neglect [their] civic responsibilities.” Exh. 4, Scott Dep. 37:13-38:3. Reverend Scott is passionate about voting issues. *See id.* 181:5-11 (“the slightest hint that

you're going to restrict our right to vote evokes in us, at least in me, a very strong passion. And I share that passion with our church. And I don't care who you vote for. I just want you to vote. That's my passion, that you'd go vote."). Baconton does not endorse, support, or hold fundraisers for political candidates. *Id.* 45:16-22. Regardless of which candidate a voter supported, Reverend Scott simply wanted "to make sure everybody's vote got counted. And whether they voted for Stacey Abrams or not, I wanted to make sure . . . they voted and that vote counted." *Id.* 33:21-25; *see also id.* 35:13-17 ("I want to be clear that our church wanted people to go vote. We believe, regardless of how you vote, it's important that you vote. And so my—my church emphasis is up on the voting aspect, and not on how you vote.")

22.

Defendants' Statement No. 22:

One of the reasons Baconton started a new program in 2018 focusing on voter education and registration was its enthusiasm for Ms. Abrams' candidacy. *Id.* at 173:18-175:1.

Plaintiffs' Response:

Disputed and immaterial. In the cited source, Baconton's designee testified that Baconton expected that voter enthusiasm *among its members* was going to be

particularly high in the 2018 election cycle, and accordingly, Baconton was particularly concerned about the policies described in the complaint. Exh. 4, Scott Dep. 174:23-175:22 (“Q: Did Baconton’s anticipation that more people, and returning voters would participate in the election cycle make it particularly concerned about the policies mentioned in the complaint, for example, the ‘Use It or Lose It’? . . . [Rev. Scott]: I think—I think so.”)

Statement No. 22 is immaterial because, regardless of any enthusiasm among Baconton’s members for Ms. Abrams’ candidacy, Baconton would not have taken its new steps to protect voters in 2018 absent Defendants’ actions. In 2018, after hearing of the voter purge, Reverend Scott “wanted to make sure” that Baconton’s members “had checked their status and were still eligible to vote.” *Id.* 30:15-24. He “was really, really pressed to make sure” that church members’ votes counted. *Id.* 32:22-33:6.

Additionally, voting issues are a core part of Baconton’s organizational mission regardless of the candidate on the ballot. Reverend Scott explained that to make the Church’s members better Christians, the church must not “neglect [their] civic responsibilities.” *Id.* 37:13-38:3.

23.

Defendants' Statement No. 23:

Voting issues are part of Baconton's mission. *Id.* at 29:12-14, 70:06-21.

Plaintiffs' Response:

Partially disputed. It is undisputed that "civic duties, including voting," are a core part of Baconton's organizational mission. *See* Exh. 4, Scott Dep. at 37:13-38:3 (Christ is "actively involved" in the whole of a person's life, and to make its members better Christians the church must not "neglect [their] civic responsibilities."). Statement No. 23 is disputed to the extent it suggests that Baconton's activities in support of its mission have remained unchanged and continue to exist as they did prior to Defendants' practices. For at least the last 22 years, the church has "actively engaged in voter education, voter registration, and voter participation." *Id.* 30:1-7. Only in 2018, after hearing of the voter purge, did Reverend Scott become "really, really pressed to make sure" that church members' votes counted. *Id.* 30:15-24, 32:22-33:6.

24.

Defendants' Statement No. 24:

Time Baconton spent on voting issues could not be spent on other parts of the church's mission. *Id.* at 28:23-29:20.

Plaintiffs' Response:

Partially disputed. It is undisputed that time Baconton spends on voting issues is time that cannot be spent on other aspects of the church's mission, but Statement No. 24 is disputed to the extent it suggests that Defendants' voter suppression tactics have not forced Baconton to divert resources from other aspects of the church's mission. Baconton has diverted resources to countering Defendants' voter purges, voter roll irregularities, and Exact Match—both in terms of volunteer time to verify registrations, Exh. 4, Scott Dep. 31:9-32:9 (“we did have volunteers available to help to assist our parishioners in checking their statuses”), and Reverend Scott's time addressing these issues. *Id.* 178:7-23. *See also* SOF ¶ 31.

25.

Defendants' Statement No. 25:

Baconton's pastor spent an unquantified amount of time talking about the “use it or lose it” statute in sermons and Bible study classes. *Id.* at 30:15-31:08.

Plaintiffs' Response:

Undisputed, but immaterial to the extent Statement No. 25 focuses on “quantification” of diverted resources. Neither the United States Supreme Court nor the Eleventh Circuit require quantification of injury. *See PETA*, 189 F. Supp.

3d at 1340; *SCRAP*, 412 U.S. at 689 n.14. Reverend Scott was more concerned about the effects of the policies outlined in the amended complaint in 2018 than in prior cycles, and Baconton spent more time addressing the issues outlined in the complaint than it had during prior elections. Exh. 4, Scott Dep. 175:23-176:9. Additionally, Baconton’s pastor devoted time to Exact Match and voter roll irregularities, as well as “use it or lose it.” *See, e.g., id.* 165:7-15 (one goal in instructing people “was checking your registration. Make sure you’re registered. And make sure that you have an ID card—an ID that matches, so when you get there, you can vote.”).

26.

Defendants' Statement No. 26:

Baconton’s volunteer church members also spent time helping voters check their voting status instead of “some evangelical stuff perhaps.” *Id.* at 31:09-32:17, 51:12-53:01.

Plaintiffs' Response:

Disputed to the extent Statement No. 26 suggests that Baconton’s volunteers were only possibly diverted from other work. *See* Exh. 4, Scott Dep. 32:10-17 (stating that if Baconton’s volunteers had not been assisting with voter verification,

“they *would* have” spent time on other work (emphasis added)). Otherwise, Statement No. 26 is not disputed.

27.

Defendants' Statement No. 27:

Baconton’s pastor participated in “Faith Prayer Rallies” in area churches, but only two of the rallies were a Baconton church function. *Id.* at 48:17-51:04, 53:23-54:19; 134:16-136:16.

Plaintiffs' Response:

Undisputed, but incomplete. At regular prayer meetings, two of which were held at Baconton church, Exh. 4, Scott Dep. 54:5-15, Reverend Scott spoke about how important it was for members to check their voting statuses, *id.* 52:13-22. The church devoted operational resources to open the church for the two meetings held at Baconton. *Id.* 106:21-107:15. The church also provided printed voting materials such as sample ballots at the prayer meetings. *Id.* 108:25-109:13.

28.

Defendants' Statement No. 28:

Baconton was unable to quantify how much time was diverted to the “use it or lose it” statute. *Id.* at 134:16-136:16, Ex. 14, 142:24-143:15.

Plaintiffs' Response:

Undisputed, but immaterial because Eleventh Circuit law does not require quantification of injury. *See PETA*, 189 F. Supp. 3d at 1340. Baconton did divert resources to countering Defendants' voter purges, voter roll irregularities, and Exact Match—both in terms of volunteer time to verify registrations, Exh. 4, Scott Dep. 31:9-32:9 (“we did have volunteers available to help to assist our parishioners in checking their statuses”), and Reverend Scott’s time addressing these issues, *id.* 178:7-23 (“Reverend Scott would spend his time in the pulpit “talking about healthcare, or . . . talking about opioid addictions, or . . . talking about the homelessness epidemic. . . if [he] “wasn’t talking about the very basic idea of getting and maintaining the right to vote.”). *See also* SOF ¶ 31.

29.

Defendants' Statement No. 29:

In sermons and at the Faith Prayer Rallies, Baconton’s pastor spoke about a variety of voting issues. *Id.* at 30:8-31:8, 134:16-136:16, Ex. 14, 142:24-143:15.

Plaintiffs' Response:

Undisputed, but incomplete. In 2018, after hearing of the voter purge, Reverend Scott “wanted to make sure” that Baconton’s members “had checked their status and were still eligible to vote.” Exh. 4, Scott Dep. 30:15-24. Reverend

Scott covered topics including the “Use It Or Lose It” statute, the need to check voter registrations, and the need to “make sure that our polling place is still there.”

Id. 114:10-115:3.

30.

Defendants' Statement No. 30:

Baconton estimated that its pastor spent “about five minutes or less” on the “use or lose it” statute in each Sunday sermon. *Id.* at 163:01-12.

Plaintiffs' Response:

Undisputed, but incomplete. The time that Reverend Scott spent addressing the need for church members to check their voting status required him to “divert[] time from [his] primary mission” by taking away time he “could have talked about feeding the hungry.” Exh. 4, Scott Dep. 28:23-29:11. Reverend Scott also spoke about the issue at regular prayer meetings, two of which were held at Baconton. *Id.* 52:13-22.

31.

Defendants' Statement No. 31:

Baconton testified that its pastor could have spent those five minutes talking about other topics that were also related to the church’s mission. *Id.* at 177:21-178:23.

Plaintiffs' Response:

Undisputed.

32.

Defendants' Statement No. 32:

Baconton also admitted that its pastor has talked about voting in sermons for the past 20 years, but that he spends more time talking about registration, education, and participation “when there is a candidate that is a bigger ticket.” *Id.* at 190:3-20.

Plaintiffs' Response:

Partially disputed and immaterial. Disputed to the extent Statement No. 32 suggests the sole reason Baconton’s pastor devoted more time to talking about the specific voting issues he addressed in 2018 was because there was a big ticket. Reverend Scott explained that in 2018, after hearing of the voter purge, Reverend Scott “wanted to make sure” that Baconton’s members “had checked their status and were still eligible to vote.” Exh. 4, Scott Dep. 30:15-24. He was “really, really pressed to make sure” that church members’ votes counted, and accordingly spent more time talking about these issues because doing so was necessary to overcome new hurdles to voting. *Id.* 32:22-33:6. Additionally, Baconton’s designee testified that Baconton expected that voter enthusiasm *among its members* was going to be

particularly high in the 2018 election cycle, and accordingly, Baconton was particularly concerned about the policies described in the complaint. *Id.* 174:23-175:22 (“Q: Did Baconton’s anticipation that more people, and returning voters would participate in the election cycle make it particularly concerned about the policies mentioned in the complaint, for example, the ‘Use It or Lose It’? . . . [Rev. Scott]: I think—I think so.”).

Moreover, Statement No. 32 is immaterial because Reverend Scott’s discussions regarding voter suppression would not have been necessary if not for Defendants’ actions. *See* Exh. 4, Scott Dep. 32:22-33:6.

33.

Defendants' Statement No. 33:

Baconton did not describe any perceptible impairment in the church’s usual activities. *Id.* at 177:21-178:23.

Plaintiffs' Response:

Disputed, and the citations do not support Statement No. 33. To the extent that “perceptible” is being used as a legal standard, Plaintiffs object to Statement No. 33 as a legal question, not a fact. Baconton’s efforts to counter Defendants’ voter suppression tactics required the church to divert time and resources. Exh. 4, Scott Dep. 28:23-29:2. Baconton also diverted volunteer resources from other

church projects to assist with voter verification initiatives. If the volunteers had not been assisting with voter verification, “they would have been talking about inviting [listeners] to come be a member of the church, or their relationship with the lord,” or “[a] myriad of things.” *Id.* 32:10-17. If Defendants’ voter suppression tactics were to cease, Baconton “would spend . . . less time . . . on voting issues” and would “spend more time on other” avenues to fulfill its mission, such as feeding the hungry, visiting prisons, and visiting the sick. *Id.* 73:8-18.

34.

Defendants' Statement No. 34:

Since 1935, when Martin Luther King Sr. led a voting-rights campaign in Atlanta, Ebenezer Baptist Church (“Ebenezer”) has been spending resources on voter registration, education, and mobilization, with its current engagement level beginning after Hurricane Katrina. 30(b)(6) Deposition of Ebenezer Baptist Church through Designee Raphael Warnock (“Warnock Dep.”) at 35:10-36:23.

Plaintiffs' Response:

Partially disputed. Undisputed that Ebenezer has a long tradition of devoting resources to voting rights efforts, and that Ebenezer more recently has spent resources on voter “registration, education, [and] mobilization.” Exh. 5, Warnock Dep. 35:10-17. Disputed that Ebenezer’s current engagement level began after

Hurricane Katrina. In light of Defendants' voter suppression, Ebenezer not only increased its voter-related activities overall, but also "had to spend more time focused on verifying whether people who had actually already been registered were actually registered and explaining to people why they might still need to check even though they were certain that they were registered." *Id.* 108:23-109:3.

Reverend Warnock testified that the church had *not* previously worked to counteract voter suppression "with this kind of focus that we've had to put forward in 2018." *Id.* 48:17-50:11. The 2018 election was the first time that Ebenezer offered a voting hotline at the church "to help people who were having problems." *Id.* 52:24-53:12. Ebenezer also had not previously conducted phone banks to verify whether individuals were on the rolls, *id.* 71:9-72:1, and only in 2018 did absentee voting, by necessity, "bec[o]me much more central" to the church's efforts, *id.* 183:6-17.

35.

Defendants' Statement No. 35:

Protecting voting rights and "challenging unjust policies that create unnecessary barriers to voting" are key parts of Ebenezer's mission, especially because those efforts are also part of the tradition of the black church. *Id.* at 41:3-43:2, 92:7-93:17.

Plaintiffs' Response:

Partially disputed. Undisputed that Reverend Warnock agreed that protecting voting rights is “a key part of Ebenezer’s mission” that connects to the tradition of the Black church. Exh. 5, Warnock Dep. 41:3-43:2; *see also id.* 93:13-14 (“Encouraging people to vote is critical to the mission”). Reverend Warnock, however, described “challenging unjust policies that create unnecessary barriers to voting” as “a part of the mission of [the] church” and did not link those challenges to the tradition of the Black church. *Id.*

36.

Defendants' Statement No. 36:

All of Ebenezer’s efforts related to voting are paid for from the social-justice budget. *Id.* at 33:13-35:9.

Plaintiffs' Response:

Disputed, and immaterial to the extent the statement focuses only on financial resources. A diversion need not be of *financial* resources, but can include diversion of personnel and time, *see Arcia*, 772 F.3d at 1341. Reverend Warnock testified that “voter education, registration, [and] mobilization” would fall under the social-justice budget “for the most part,” but that certain costs may not have come directly out of that budget. Exh. 5, Warnock Dep. 33:19-34:20.

37.

Defendants' Statement No. 37:

Ebenezer's social-justice budget does not specify the type of voting-related activity within that line item. Id.

Plaintiffs' Response:

Undisputed but immaterial. A diversion need not be of *financial* resources, but can include diversion of personnel and time, *see Arcia*, 772 F.3d at 1341. Whether the budget is or is not granular is immaterial to the existence of an injury-in-fact.

38.

Defendants' Statement No. 38:

Ebenezer had no documentation that it spent any funds differently in 2018 from prior-year elections. Id. at 32:8-17, 55:1-58:8.

Plaintiffs' Response:

Undisputed, but incomplete, and immaterial to the extent the statement focuses only on diversion of financial resources. A diversion need not be of *financial* resources, but can include diversion of personnel and time. *See Arcia*, 772 F.3d at 1341. Ebenezer did testify that it spent funds differently in 2018 compared to prior elections. Ebenezer's 2018 "vote by mail" campaign was driven by a desire to ensure that members' votes were counted in the face of the variety of

voter suppression tactics engaged in by Defendants. Exh. 5, Warnock Dep. 49:12-50:4. Ebenezer “spent additional funds in [its] social justice ministry in order to support [the vote by mail] effort.” *Id.* 184:17-185:14.

39.

Defendants' Statement No. 39:

In the 2018 election, Ebenezer continued its prior efforts to register voters, engage in a vote-by-mail campaign, and educate members about voting. *Id.* at 72:2-12, 51:13-52:4, 48:17-50:11, 135:24-136:20.

Plaintiffs' Response:

Disputed to the extent Statement No. 39 implies that Ebenezer’s efforts in 2018 represented a mere continuation of its prior efforts and that its prior efforts were not affected by Defendants’ wrongdoing. *See, e.g.*, Exh. 5, Warnock Dep. 48:5-24; *id.* 48:17-21 (“Q. And the work to counteract voter suppression has happened in elections before the 2018 election; correct? A. Not with this kind of focus that we’ve had to put forward in 2018.”). Only in 2018 did absentee voting, by necessity due to Defendants’ wrongdoing, “became much more central” to the church’s efforts. *Id.* 183:6-17. Because countering the suppression tactics became a central focus of Ebenezer’s work in the lead-up to the 2018 election, *id.* 48:5-24, Ebenezer’s typical get-out-the-vote campaign was negatively affected. Exh. 6,

Reed Decl. ¶ 7; Exh. 7, Reed Dep. 150:5-22 (testifying that Ebenezer “spent a lot of time just trying to concentrate on infrequent voters and people who would have been on the purge rather than doing [the church’s] traditional work, which would have been voter registration work”); *id.* 169:24-170:14 (explaining that Ebenezer did not have resources to run a “souls to the polls” operation as they had in 2016); *id.* 171:2-172:7 (“Our efforts would have been towards getting those folks out to the polls. So very little time spent on the front end. All of our time spent in what we considered get out the vote, period. And then in 2018, we spent our time on the front end just trying to make sure that people who thought that they were registered were registered would have left us less time to do some of the stuff that we would have done in get out the vote.”).

40.

Defendants' Statement No. 40:

The vote-by-mail effort “increased” in its focus from earlier vote-by-mail efforts in 2014 and 2016. *Id.* at 52:5-16, 113:25-114:9, 117:23-119:9.

Plaintiffs' Response:

Undisputed, but incomplete. Prior to 2018, Reverend Warnock had not prioritized voting by mail because it was “cumbersome.” Exh. 5, Warnock Dep. 110:11-17; 50:5. In the 2018 election, because of Defendants’ wrongdoing, the

church came to see the necessity of vote by mail and it “became much more central” to the church’s efforts. *Id.* 183:12-17.

41.

Defendants' Statement No. 41:

The church plans to continue the vote-by-mail efforts in the future. *Id.* at 59:25-61:4.

Plaintiffs' Response:

Undisputed, but incomplete and the cited source does not support the statement. The cited testimony discusses only registration verification and does not mention vote by mail. Ebenezer expects its voter verification efforts to continue in the future, *id.* 60:17-61:4, but if this litigation is successful the efforts “certainly wouldn’t continue with the same kind of vigilance,” *id.* 61:5-12. Ebenezer also testified that “[a]s long as we have those kinds of efforts, cross-matching, other kinds of efforts,” Ebenezer will “continue to try to respond.” *Id.* 61:20-22.

42.

Defendants' Statement No. 42:

The only activity added in 2018 was an emphasis on “verification,” to confirm that members were registered to vote. *Id.* at 48:17-50:11.

Plaintiffs' Response:

Partially disputed. Undisputed that, in 2018, the church “spent . . . resources and time” focused on verification, such as “time and energy, staff time, resources, and Sunday morning worship time getting people to understand how to” verify their registrations. Exh. 5, Warnock Dep. 185:8-24. Ebenezer also set up a hotline to assist with voter verification issues beginning in 2018. *Id.* 51:7-12.

Disputed that verification activities were Ebenezer’s “only” new activities. Reverend Warnock also distributed information to the church in the wake of the 2018 election to assist anyone who had cast a provisional ballot. *Id.* 141:3-12; Exh. 8, Email from Bronson Woods, Pltfs-Ebc-000104, at -000104-000106. Additionally, Ebenezer invested time in lobbying the state legislature in response to the Defendants’ actions, Exh. 5, Warnock Dep. 142:15-143:9, and diverted volunteer resources, and accompanying staff time, to assist with supervision, development, and implementation of the “vote by mail” program, *id.* 106:22-107:25.

43.

Defendants' Statement No. 43:

The only diversions Ebenezer could identify as part of its activity in “verification” were (1) volunteers who spent more time in voting work than they

typically would have, *id.* at 106:22-108:6; (2) the addition of a hotline at the church, like what the church previously added in response to Hurricane Katrina, *id.* at 52:24-53:12; and (3) church space for the hotline, *id.* at 111:1-21.

Plaintiffs' Response:

Disputed. First, these were not the only diversions Ebenezer identified. For instance, Ebenezer also diverted “staff time, resources, and Sunday morning worship time getting people to understand how to” verify their registrations. Exh. 5, Warnock Dep. 185:8-24. Because Ebenezer’s paid staff supervise all volunteer efforts at the church, when the church diverts volunteers from one project to another, “the staff have to follow.” *Id.* 107:5-14. The church’s staff “is so small” that volunteer efforts “literally involve[] the entire ministerial staff and the entire administrative staff.” *Id.* 108:1-6. Ebenezer also identified a diversion of funds to support the vote by mail effort. *Id.* 184:17-185:14.

Second, volunteers did not merely “spen[d] more time in voting work.” The diversion of volunteer time negatively affected other church programs that rely on those same volunteers. The volunteers who assisted with the vote by mail program, for instance, “could have been used . . . to work in [Ebenezer’s] soup kitchen, the Crisis Closet, Cutting Through Crisis, to work with [church] children,” or to participate in one of the church’s other “dozens of programs.” *Id.* 107:15-25.

Third, the hotline added in 2018 was not like the hotline added after Katrina. The 2018 election was the first time that Ebenezer had offered a voting hotline at the church “to help people who were having problems.” *Id.* 52:24-53:12, 71:9-72:1. The hotline created after Katrina served an entirely different purpose: to allow evacuees to call in and request a ride to the polls. *Id.* 52:24-53:12. Otherwise, Statement No. 43 is not disputed.

44.

Defendants' Statement No. 44:

The hotline did not maintain records of voters' questions, but instead sent the voters who needed assistance to other organizations. *Id.* at 168:15-169:22.

Plaintiffs' Response:

Disputed and immaterial. Volunteers from Ebenezer did not simply send voters who needed assistance to other organizations, but spent time making sure callers were registered to vote and assisting callers with questions. Exh. 5, Warnock Dep. 51:7-12. The volunteers followed a protocol depending on the issue the voter presented, and if necessary, they would at times refer callers to the Secretary of State's office to see if the callers were still registered. *Id.* 53:13-54:8.

Moreover, it is immaterial whether Ebenezer itself solved the callers' issues. Ebenezer undertook its actions to help counteract Defendants' wrongdoing, and the

Defendants' voter suppression tactics increased Ebenezer's "hours and time focused on voter education and verification." *Id.* 107:15-20.

45.

Defendants' Statement No. 45:

Several other activities of the church in the voting space were actually the work of the New Georgia Project, which designed an app for voters that was unveiled in a service at the church, handled the absentee-ballot applications for the church, designed the church's vote-by-mail program, and participated in an email encouraging everyone in the church to vote early or vote by mail. *Id.* at 59:9-60:3, 182:16-183:5, 131:20-135:22, 137:4-138:20.

Plaintiffs' Response:

Disputed and immaterial. Ebenezer devoted its own resources and time to these efforts, and it is only those resources that Ebenezer claims as injury-in-fact. Reverend Warnock spent time during worship to introduce the app, and the church held a rally after the service to roll out the application. Exh. 5, Warnock Dep. at 59:19-24. The church diverted volunteer resources, and accompanying staff time, to assist with supervision, development, and implementation of the "vote by mail" program. *Id.* 106:22-107:25. Reverend Warnock and other staff members also spent staff time participating in a video explaining the vote by mail process, which

they then sought to distribute to pastors and faith leaders statewide. *Id.* 183:21-25, 184:14-16.

Statement No. 45 is also immaterial because Ebenezer is not claiming, as its injury-in-fact, any of New Georgia Project's work.

46.

Defendants' Statement No. 46:

Ms. Abrams founded the New Georgia Project and Ms. Groh-Wargo served as its director for a period of time. Stacey Abrams, *Our Time is Now* 50 (2020); 30(b)(6) Deposition of Fair Fight Action through Designee Lauren Groh-Wargo ("FFA Dep.") at 62:13-16.

Plaintiffs' Response:

Undisputed, but immaterial.

47.

Defendants' Statement No. 47:

The diversions were in response to "voter purges" and "cross-matching" within the voter-registration system, along with possibly polling stations being moved. Warnock Dep. at 47:4-48:16, 61:5-22, 103:12-106:9.

Plaintiffs' Response:

Partially disputed. Undisputed that the diversions were in response to the tactics identified in Statement No. 47, but disputed to the extent Statement No. 47

suggests that the diversions were *exclusively* in response to the listed tactics. Ebenezer was aware of “dozens” of problematic tactics, and the “overall context and climate” informed Ebenezer’s engagement on voter suppression issues. Exh. 5, Warnock Dep. 106:2-9. The church received complaints about closing or consolidating polling locations, *id.* 167:9-169:22, and was concerned about “polling stations being moved,” *id.* 105:17-19. Ebenezer was also focused on many other tactics of voter suppression, including voter purges, cross-matching of voter registrations that resulted in people being removed from the system, long lines, provisional and absentee ballot issues, and voting machine integrity. *Id.* 47:7-24, 48:5-11, 104:20-105:2, 141:3-12, 183:12-17.

48.

Defendants' Statement No. 48:

Ebenezer did not identify what its volunteers would have done otherwise or how it would have used the church space if it had not hosted the hotline. *Id.* at 106:22-108:6, 111:1-21.

Plaintiffs' Response:

Disputed. The hotline was time consuming; Ebenezer’s team “worked to confirm over 10,000 people who had a whole host of problems ranging from the misspelled names, inaccurate addresses, to not even being on the voter rolls at all

despite having registered. The process of checking all of their data and talking with the state and counties [sic] election offices was often frustrating, inefficient and extremely time consuming.” Exh. 6, Reed Decl. ¶ 14. Ebenezer explained that diversion of volunteer time to voting issues negatively affected other church programs that rely on the same volunteers. The volunteers “could have been used . . . to work in [Ebenezer’s] soup kitchen, the Crisis Closet, Cutting Through Crisis, to work with [church] children,” or to participate in one of the church’s other “dozens of programs.” Exh. 5, Warnock Dep. 107:15-25. Ebenezer testified that “church space would have been used differently when [Ebenezer] set up the hotline to assist people who were having issues.” *Id.* 111:8-21.

49.

Defendants' Statement No. 49:

Ebenezer’s diversions did not thwart its mission. *Id.* at 108:7-16.

Plaintiffs' Response:

Undisputed, but immaterial because *Defendants’* actions, not Ebenezer’s actions, are the actions relevant to whether Ebenezer’s mission was thwarted. *See* MTD Order at 15-19, ECF No. 68. An organization has standing to sue on its own behalf when it is forced to “divert resources to counteract [a defendant’s] illegal acts,” thus impairing the organization’s “ability to engage in its projects.”

Browning, 522 F.3d at 1165. To the extent case law considers whether the organization’s mission has been thwarted, it is exclusively in the context of a whether the *defendant’s* conduct hindered the organization’s mission. *See id.*, 522 F.3d at 1164-66 (“plaintiffs contend that [defendants’ actions] will hinder their abilities to carry out their missions of registering voters in their respective communities . . . Plaintiffs have made a sufficient showing that they will suffer a concrete injury”).

50.

Defendants' Statement No. 50:

Care in Action, Inc. (“Care in Action”), claims to have needed to divert both financial resources, 30(b)(6) Deposition of Care in Action through Designee Jessica Livoti (“Livoti Dep.”) at 43:05-10, 89:09-12, and time resources of its personnel, *id.* at 43:11-20, 89:15-90:01.

Plaintiffs' Response:

Undisputed, but incomplete. Care in Action not only claims to have diverted, but did in fact divert financial and other resources, including the time of its personnel. In 2018, Care in Action “had to conduct a program past Election Day because of the voter suppression efforts.” Exh. 9, Livoti Dep. 62:25-63:3. To

conduct that program, Care in Action diverted resources to support the provisional ballot chase. *Id.* 44:11-13.

51.

Defendants' Statement No. 51:

The entirety of the “diversion” in 2018 was related only to Care in Action’s efforts in counting provisional ballots after the 2018 election. *Id.* at 44:05-13.

Plaintiffs' Response:

Undisputed, except to the extent Defendants’ use of quotation marks imply Defendants are calling into question whether Care in Action’s efforts did constitute a diversion of resources. Statement No. 51 is also immaterial in that Care in Action anticipated diverting resources to counteract Defendants’ unlawful tactics at the time of the amended complaint and anticipates continuing such diversions. *See* Exh. 9, Livoti Dep. 44:14-45:6 (“We anticipate, based on our experience in 2018, . . . that we will need to run program[s] to help ensure that we don’t have the same experience that we had around voter suppression.”); Exh. 10, Livoti Decl. ¶¶ 6-13 (describing resources devoted to counteracting long lines, absentee ballot issues, polling place closures, and Use It or Lose It).

52.

Defendants' Statement No. 52:

Care in Action anticipates similar diversions in future elections. Id. at 44:14-45:15.

Plaintiffs' Response:

Undisputed, but incomplete. Care in Action anticipated diverting resources at the time the amended complaint was filed and currently expects that it will need to devote similar resources to resolving voter suppression issues in the future. Exh. 9, Livoti Dep. 44:17-20, 44:25-45:15 (“we anticipate we will need to run similar types of efforts to combat voter suppression . . . [and] anticipate we’ll need to begin our program earlier, educate voters differently to be able to make sure that they are able to exercise their right to vote and that their vote is counted.”); Exh. 10, Livoti Decl. ¶ 13 (“Because of the voter suppression tactics Care in Action observed in 2018 in Georgia, and the State’s continued suppression during the June 9, 2020 primary election, Care in Action anticipates having to devote additional resources in Georgia for the general election. . . . Care in Action will have to continue to expend resources in Georgia to counteract that voter suppression.”). In addition, Care in Action is also planning to train canvassers and potentially volunteers about “what happens if they’re asked to cast a provisional ballot,”

which the organization “normally in the course of [its] work would not have done,” but must do to accomplish its mission given the voter suppression in Georgia in 2018. Exh. 9, Livoti Dep. 200:9-25.

53.

Defendants' Statement No. 53:

Care in Action’s mission is to support nannies, housekeepers, caregivers for the elderly and other domestic workers in order to advance the rights and socioeconomic well-being of domestic workers. *Id.* at 47:03-48:02.

Plaintiffs' Response:

Undisputed, but incomplete. Care in Action’s mission is “to support the fairness and dignity of domestic workers to help them exercise their rights,” of which “[t]heir right to vote is the most important.” Exh. 9, Livoti Dep. 56:1-4. Care in Action’s voting-related programming focuses on women of color and, specifically, sporadic voters. According to Care in Action, “many of the reasons that people aren’t likely to vote are because of the burden that is placed on them when they go to vote.” *Id.* 137:1-6.

54.

Defendants' Statement No. 54:

Care in Action's mission includes encouraging domestic workers to vote. Id. at 48:06-11; 260:01-17.

Plaintiffs' Response:

Undisputed, but incomplete. Care in Action believes "one of the ways that domestic workers are able to secure the fairness and dignity that's in [the organization's] mission is when they're able to exercise their right to vote." Exh. 9, Livoti Dep. 135:23-136:1; *see also* Plfs.' Response to SOF ¶ 53.

55.

Defendants' Statement No. 55:

Beginning with the 2018 election, Care in Action organized get-out-the-vote activities. Id. at 50:10-52:03, 97:02-21.

Plaintiffs' Response:

Undisputed.

56.

Defendants' Statement No. 56:

Care in Action claims that it had to keep staff in Georgia longer than it had anticipated in order to count provisional ballots. Id. at 100:15-25.

Plaintiffs' Response:

Undisputed, but incomplete. Care in Action not only “claims” that it had to keep staff in Georgia longer than anticipated, but it did so. Exh. 9, Livoti Dep. 98:11-22 (Care in Action “kept staff who had anticipated leaving Georgia directly after Election Day in Georgia for longer”); *see also id.* at 43:11-20 (continuing Care in Action’s program in Georgia beyond Election Day entailed “keep[ing] staff who did not live in state here longer,” as well as putting in place digital ads, phone banks, text messages, and other activities). Care in Action was required to engage in provisional ballot chase activities to counteract Defendants’ voter suppression; it engaged in its unanticipated post-election work “because of the large amount of provisional ballots that had been cast and the need to make sure that every vote was counted.” *Id.* 99:9-12.

57.

Defendants' Statement No. 57:

Care in Action identified some travel expenses, although it was unable to testify to specific details about the staff travel or expenses. *Id.* at 102:02-104:20, 104:25-107:06, 107:10-109:01, 109:15-110:22, 233:17-241:09, Exs. 6-9, 21.

Plaintiffs' Response:

Partially disputed. It is undisputed that Care in Action identified travel expenses, but it is disputed that Care in Action's testimony was limited to travel expenses or that Care in Action failed to provide specific details about staff travel or expenses. According to Livoti, Care in Action "kept staff who had anticipated leaving Georgia directly after Election Day in Georgia for longer. We made phone calls. We recruited volunteers. We sent text messages. We did digital ads. We posted on social media. We . . . engaged social media influencers." Exh. 9, Livoti Dep. 98:11-22; *see also id.* 43:11-20 (continuing Care in Action's program in Georgia beyond Election Day entailed "keep[ing] staff who did not live in state here longer," as well as putting in place digital ads, phone banks, text messages, and other activities.) Care in Action staff members who had to remain in the state post-election required housing and incurred travel expenses that Care in Action reimbursed, and Care in Action was also required to pay for their time. *Id.* 100:15-25; *see* Exh. 11, Airbnb Reservation Change Receipt, Pltfs-CIA-000255, at -000255-000257 (documenting additional \$447.15 incurred because of Care in Action's post-election activities); Exh. 12, Flight Receipt, Pltfs-CIA-000251, at -000251-000252 (documenting \$662 spent to change flights for two Care in Action staff members as a result of post-election activities); *see also* Exh. 13, National

Domestic Workers Alliance Invoice, Pltfs-CIA-000270, at -000270-000298 (listing expenses billed to Care in Action related to the provisional ballot project); Exh. 9, Livoti Dep. 241:1-7 (explaining that *all* of the listed expenses reflected diverted resources due to the provisional ballot chase campaign).

58.

Defendants' Statement No. 58:

Care in Action failed to identify how many of those expenditures, such as airplane tickets, were unique to its post-election counting of provisional ballots. *Id.*

Plaintiffs' Response:

Disputed. Whereas a typical get-out-the-vote program concludes on Election Day, in 2018, Care in Action “had to conduct a program past Election day because of the voter suppression efforts.” Exh. 9, Livoti Dep. 62:25-63:3. Care in Action “kept staff who had anticipated leaving Georgia directly after Election Day in Georgia for longer.” *Id.* 98:11-22; *see also id.* 43:11-20 (continuing Care in Action’s program in Georgia beyond Election Day entailed “keep[ing] staff who did not live in state here longer”). Care in Action staff members who had to remain in the state post-election required housing and incurred travel expenses, and Care in Action was required to pay for their time. *Id.* 100:15-25. Livoti testified that all

of Care in Action's post-election activities in Georgia were to counteract Defendants' wrongdoing. *Id.* 43:21-44:13.

59.

Defendants' Statement No. 59:

Care in Action identified \$76,257.22 that it spent on a text messaging service, *id.* at Ex. 22, but it could not identify how much of that amount was due to post-election provisional ballot activities versus its election-related activities, *id.* at 241:14-242:22.

Plaintiffs' Response:

Undisputed, but incomplete. The bill includes planned activity as well as the post-election unplanned provisional ballot voter protection work, and the company that issued the bill only issues one invoice a month. Exh. 9, Livoti Dep. 242:17-22. Livoti testified that all of Care in Action's post-election activities in Georgia were to counteract Defendants' wrongdoing. *Id.* 43:21-44:13.

60.

Defendants' Statement No. 60:

Care in Action spent \$107,500.00 in ads that it testified were unique to its post-election provisional ballot activities, although Ms. Livoti was unable to describe the content of the ads or provide copies. Id. at 242:24-244:18, Exh. 23.

Plaintiffs' Response:

Undisputed, but immaterial as to Ms. Livoti's supposed inability to describe the content of the ads or provide copies. Care in Action testified that the organization's "ballot chase content focused on whether or not people had cast provisional ballots," Exh. 9, Livoti Dep. 253:9-12, and produced an invoice describing these ad buys as "Care in Action *Ballot Chase* Ad Buys," Exh. 14, STG Invoice, Pltfs-CIA-000269, at -000269 (emphasis added).

61.

Defendants' Statement No. 61:

Care in Action refused to identify the amount of its entire budget. Id. at 82:01-82:10.

Plaintiffs' Response:

Undisputed, but immaterial because Care in Action provided budget information pertaining to the expenditures it is claiming as its injury-in-fact, including travel, lodging, and advertising expenses incurred for its unanticipated

provisional ballot chase activities. *See, e.g.*, Exh. 14, STG Invoice, Pltfs-CIA-000269, at -000269 (invoice for ad buy); Exh. 9, Livoti Dep. 100:15-25; Exh. 11, Airbnb Reservation Change Receipt, Pltfs-CIA-000255, at -000255–000256 (documenting additional \$447.15 incurred because of Care in Action’s post-election activities).

62.

Defendants' Statement No. 62:

Care in Action spent funds on its provisional ballot program in furtherance of its stated mission of helping Stacey Abrams get elected. Livoti Dep. at 146:20-150:10, 242:22-253:25, Exs. 15, 16, 24.

Plaintiffs' Response:

Disputed. As Defendants’ SOF ¶¶ 53-54 show, Care in Action’s organizational mission does not include electing Stacey Abrams. Care in Action’s mission is “to support the fairness and dignity of domestic workers to help them exercise their rights,” of which “[t]heir right to vote is the most important.” Exh. 9, Livoti Dep. 56:1-4. According to Care in Action, “many of the reasons that people aren’t likely to vote are because of the burden that is placed on them when they go to vote.” *Id.* 137:1-6. Care in Action did this work to counteract voter suppression “because of the large amount of provisional ballots that had been cast and the need

to make sure that every vote was counted.” *Id.* 99:9-12. Care in Action did not ask “people who they voted for” when it contacted voters about their provisional ballots and “would have treated [a vote for Brian Kemp] the same as [Care in Action] treated any voter.” *Id.* 149:22-150:10.

63.

Defendants' Statement No. 63:

Care in Action endorsed Ms. Abrams. *Id.* at 149:19-25

Plaintiffs' Response:

Undisputed, but immaterial to the claims in this case.

64.

Defendants' Statement No. 64:

Care in Action’s get-out-the-vote activities included handing out literature supporting Ms. Abrams. *Id.* at 146:20-150:10, Ex. 15.

Plaintiffs' Response:

Undisputed, but immaterial to the claims in this case.

65.

Defendants' Statement No. 65:

Care in Action’s texting campaign supported Ms. Abrams. *Id.* at Ex. 16.

Plaintiffs' Response:

Disputed to the extent Statement No. 65 suggests that Care in Action's texting campaign was primarily designed to support Ms. Abrams. Care in Action's texting campaign primarily educated voters regarding provisional ballots. During the provisional ballot chase, Care in Action did not ask voters who they voted for. Exh. 9, Livoti Dep. 150:6-7 ("We don't ask people who they voted for when we engage in communications."). Instead, they asked "if they cast a provisional ballot and then provide[d] support based on whether or not they casted [sic] a provisional ballot." *Id.* 149:22-23; 150:6-10.

66.

Defendants' Statement No. 66:

Care in Action identified the texting-service cost and ad buys as contributions to Ms. Abrams' campaign in its Campaign Contribution Disclosure Report. *Id.* at Ex. 24 at p. 8; 242:22-253:25.

Plaintiffs' Response:

Undisputed, but immaterial to the claims in this case because, regardless of any enthusiasm among Care in Action's members for Ms. Abrams' candidacy, Care in Action would not have had to take its new steps to protect voters in 2018 absent Defendants' actions. *See* Exh. 9, Livoti Dep. 99:9-12 ("The work that we

did to counteract voter suppression was because of the large amount of provisional ballots that had been cast and the need to make sure that every vote was counted.”).

67.

Defendants' Statement No. 67:

Care in Action trains domestic workers in election-related activities. Livoti Dep. at 50:10-52:03.

Plaintiffs' Response:

Undisputed, but incomplete. While Care in Action has included canvassing and organizing as part of its regular training, that training has not previously focused on what to do to counter voter suppression. Exh. 9, Livoti Dep. 54:7-13 (“The training that I reference in relation to anti-voting suppression efforts . . . you know, what to do around provisional ballots . . . is not training that we would have conducted otherwise”).

68.

Defendants' Statement No. 68:

Care in Action claims that it had to do additional training for post-election activities, but never identified which of its usual activities suffered as a result. Id. at 54:04-54:16.

Plaintiffs' Response:

Disputed. Care in Action's investment of time, effort, and money to respond to Defendants' unlawful provisional ballot practices inhibited the organization from fulfilling other aspects of its mission. Exh. 9, Livoti Dep. 44:11-13 ("We had to divert resources as a result of provisional ballot chase"); *id.* 89:9-90:1 (Care in Action diverted financial resources and staff time). As an example of the diversion decisions Care in Action had to make, the organization decided to keep a staff member in Georgia rather than sending the staff member to Mexico to work on immigration issues. *See* Exh. 9, Livoti Dep. 256:19-25 ("literally I had to make a choice or whether or not I should send that person to our office in Mexico where we were opening up a refugee camp or whether I should keep them in Georgia").

The post-election work in Georgia also meant that Care in Action was not "able to do planned work" it had anticipated in the 2019 legislative session "around a state domestic worker bill of rights." *Id.* 258:1-4. Care in Action also was forced to delay its work around the introduction of a federal domestic worker bill of rights, which was not introduced until later in 2019. *Id.* 258:4-9.

69.

Defendants' Statement No. 69:

Care in Action's post-election efforts did not diminish its regular training or its regular get-out-the-vote activities. *Id.* at 52:20-53:12, 62:16-63:03.

Plaintiffs' Response:

Disputed and immaterial. It is disputed that the cited sources support the statement that Care in Action's post-election efforts did not diminish its regular get-out-the-vote activities. Exh. 9, Livoti Dep. 62:16-63:03 (“Q: Have Care in Action's ‘get out the vote’ activities been diminished as a result of the allegations in the complaint? A: . . . [W]e had to engage in activities we would not have otherwise without voter suppression.”).

Moreover, Statement No. 69 is immaterial because Care in Action's investment of time, effort, and money to respond to the Defendants' unlawful provisional ballot practices need not have diminished the specific activities Defendants identify. An organization has standing to sue on its own behalf when it is forced to “divert resources to counteract [a defendant's] illegal acts,” thus impairing the organization's “ability to engage *in its projects.*” *Browning*, 522 F.3d at 1165 (emphasis added). The appropriate question is whether Care in Action had

to divert resources from its other projects, not just training or voting-related activities.

70.

Defendants' Statement No. 70:

Care in Action was unable to identify any differences between its pre-election and post-election texting activities. Id. at 163:20-165:17.

Plaintiffs' Response:

Disputed and immaterial. Post-election day, Care in Action's texting activities were focused entirely on combatting voter suppression, while pre-election the organization engaged in get-out-the-vote texting activities such as "voter contact about voting, voting on Election Day, having your ID, looking up your polling place." Exh. 9, Livoti Dep. 164:9-25. Defendants' Statement No. 70 is also immaterial given the many other resources Care in Action expended in counteracting Defendants' wrongdoing.

71.

Defendants' Statement No. 71:

Care in Action was able to identify only one staffer who was diverted from other work to the Georgia post-election activity. Id. at 256:06-257:04.

Plaintiffs' Response:

Disputed and immaterial. Multiple staff members remained in Georgia for post-election activity. *See* Exh. 9, Livoti Dep. 98:11-22 (Care in Action “kept staff who had anticipated leaving Georgia directly after Election Day in Georgia for longer”); *id.* 43:11-20 (continuing Care in Action’s program post-election entailed “keep[ing] staff who did not live in state here longer”); Exh. 12, Flight Receipt, Pltfs-CIA-000251, at -000251-000252 (documenting \$662 spent to change flights for two Care in Action staff members as a result of post-election activities). Care in Action explained that these diversions of resources harmed Care in Action’s advocacy for domestic and federal worker bills of rights, and also impaired the organization’s 2019 planning process. Exh. 9, Livoti Dep. 258:1-4 (state domestic worker bill of rights); *id.* 258:4-9 (federal domestic worker bill of rights); *id.* 257:18-25 (planning process). Statement No. 71 is also immaterial given the many other resources Care in Action expended in counteracting Defendants’ wrongdoing.

72.

Defendants' Statement No. 72:

Care in Action did not quantify how the diversion of that one staff member impacted those other activities. Id.

Plaintiffs' Response:

Disputed and immaterial. Care in Action explained the staffer was “not doing” their “regular[,] full-time job” during the post-election period, and otherwise would have been in Mexico to open a refugee camp, Exh. 9, Livoti Dep. 257:1-4. Additionally, Statement No. 72 is immaterial because no “quantification” is required. *See SCRAP*, 412 U.S. at 689 n.14; *PETA*, 189 F. Supp. 3d at 1340.

73.

Defendants' Statement No. 73:

The 2018 election in Georgia was the first time that Care in Action had conducted get-out-the-vote activities in support of a candidate. *Id.* at 97:02-97:21.

Plaintiffs' Response:

Disputed to the extent Statement No. 73 suggests that Care in Action’s get-out-the-vote activities were exclusively undertaken to support a particular candidate. Care in Action’s get-out-the-vote program was consistent with its philosophy that “one of the ways that domestic workers are able to secure the fairness and dignity that’s in [the organization’s] mission is when they’re able to exercise their right to vote.” Exh. 9, Livoti Dep. 135:23-136:1. During the provisional ballot chase, Care in Action did not ask voters who they voted for. *Id.* 150:6-7 (“We don’t ask people who they voted for when we engage in

communications.”) Instead, they asked “if they cast a provisional ballot and then provide[d] support based on whether or not they casted [sic] a provisional ballot.” *Id.* 149:22-23; 150:6-10. Statement No. 73 is also immaterial to the claims in this case.

74.

Defendants' Statement No. 74:

Care in Action coordinated its post-election ballot activities with other organizations supporting the Abrams for Governor campaign. *Id.* at 63:09-64:13, 165:19-167:21.

Plaintiffs' Response:

Undisputed, but immaterial to the claims in this case.

75.

Defendants' Statement No. 75:

Care in Action’s activities supported the Abrams for Governor campaign. *Id.* at Exs. 16-17.

Plaintiffs' Response:

Disputed and immaterial. Statement No. 75 is disputed because it does not identify the Care in Action activities to which it refers and Care in Action’s post-election activities were undertaken regardless of which candidate voters were supporting. Exh. 9, Livoti Dep. 150:6-7 (“We don’t ask people who they voted for

when we engage in communications.”). Instead, Care in Action asked “if they cast a provisional ballot and then provide[d] support based on whether or not they casted [sic] a provisional ballot.” *Id.* 149:22-23, 150:6-10. Moreover, Statement No. 75 is immaterial because Care in Action’s activities were in response to, and to counteract, Defendants’ wrongdoing. Care in Action engaged in its post-election activities to counteract voter suppression “because of the large amount of provisional ballots that had been cast and the need to make sure that every vote was counted.” *Id.* 99:9-12; *see also* Plfs.’ Response to SOF ¶ 62.

76.

Defendants' Statement No. 76:

Fair Fight Action, Inc. (“Fair Fight Action”) was originally founded in 2014 as the Voter Access Institute (VAI), to advocate for “voter enfranchisement” and “state laws that make voting more accessible.” FFA Dep. at 57:3-58:2; Ex. 118, p. 2.

Plaintiffs' Response:

Disputed to the extent Statement No. 76 suggests that Fair Fight Action and VAI’s founding purpose was anything other than voter engagement. The cited source refers to some of the planned activities of VAI, but does not suggest that the quoted phrases, standing alone, describe VAI’s founding purpose. Exh. 15,

Application for Recognition of Exemption Under Section 501(a), Pltfs-FFA-000095, at -000096 (“[Q:] Provide a detailed narrative description of all the activities of the organization. . . . [A:] The Institute will provide information and education to disadvantaged, under-served and minority communities regarding access to voting and promotion of voter participation. The Institute will also advocate for expansion of voter enfranchisement, including making it easier for disadvantaged and minority voters to understand the issues in an election, as well as the logistics involved. This includes how and where to register to vote and how and where to obtain the picture identification required by state law. The Institute may also advocate for state laws that make voting more accessible. . . .”).

This source’s description is consistent with Fair Fight Action’s testimony that its core mission is engaging the Georgia electorate and getting out the vote. Exh. 16, Sept. 16, 2019 Groh-Wargo Dep. 29:9-19 (“Fair Fight Action works to engage and educate an electorate and advocate”); *id.* (the purpose of VAI was voter engagement and get-out-the-vote work). The broad mission of VAI and Fair Fight Action “is around voter engagement overall of communities of color, voter turn-out broadly of communities of color, [and] young people, and then working on progressive issues generally.” Exh. 17, Oct. 30, 2019 Groh-Wargo Dep. 35:5-10.

77.

Defendants' Statement No. 77:

In 2014, VAI worked to turn out low-propensity voters of color, using messages that included “fighting voter suppression” because it found those messages “motivational” for voters. *Id.* at 73:12-21, 75:13-77:1; Deposition of Lauren Groh-Wargo (“Groh-Wargo Dep.”) at 205:2-206:5.

Plaintiffs' Response:

Undisputed, but incomplete. It is undisputed that the VAI’s draft 2014 plan referred to in Lauren Groh-Wargo’s deposition states that VAI planned to use “voter suppression” as one theme for targeted messaging. Exh. 18, Voter Access Institute Prospectus, Pltfs-FFA-000055, at -000058. This same document states, however, that VAI’s efforts in Fall 2014 were aimed at educating and mobilizing new registrants, and educating voters “on the importance and *ease of voting* in the November general election.” *Id.* -000056 (emphasis added).

78.

Defendants' Statement No. 78:

VAI did not participate in elections after 2014 and became inactive in late 2016 or early 2017—remaining inactive for the remainder of 2017 and most of 2018. FFA Dep. at 209:7-14, 52:6-23, 52:24-53:4, 237:8-16.

Plaintiffs' Response:

Undisputed.

79.

Defendants' Statement No. 79:

VAI became active again on November 17, 2018—the day after Ms. Abrams suspended her campaign—adopting the new name “Fair Fight Action” on November 19, 2018 and then filing this lawsuit on November 27, 2018. Id. at 52:6-23, 79:3-25; Doc. No. [1].

Plaintiffs' Response:

Partially disputed. Plaintiff Fair Fight Action’s name change took place on December 5, 2018, not November 21, 2018. Exh. 19, Defs.’ Ex. 42. Otherwise, Statement No. 79 is undisputed.

80.

Defendants' Statement No. 80:

Fair Fight Action continued its organizational mission of making voting more accessible, explaining to donors that its “*first step* was to file a federal lawsuit to ask the courts to enact broad, bold, sweeping election reform in the state of Georgia” and announcing plans for further action on progressive issues in the future. Id. at Ex. 75 (emphasis added), 105:17-106:7.

Plaintiffs' Response:

Partially disputed. Undisputed that Fair Fight Action continued VAI's organizational mission, but disputed to the extent the statement suggests that Fair Fight Action's core organizational mission is anything other than voter engagement. Exh. 20, Abrams Dep. 10:24-11:10 ("Voter Access Institute was initially created to expand voting rights in the state of Georgia and beyond. Fair Fight Action became the new moniker as we maintained our mission but decided to expand the activities of the organization . . . to focus primarily on issues of voter suppression and addressing voter suppression both in the aftermath of the 2018 election, but anticipating additional voter suppression activities in Georgia."). Fair Fight Action remains committed to VAI's original mission of educating and engaging Georgia's electorate, although it has been forced to undertake additional activities to counteract voter suppression. Exh. 17, Oct. 30, 2019 Groh-Wargo Dep. 126:23-127:10.

81.

Defendants' Statement No. 81:

Fair Fight Action's seeks to have "Election reform litigation run like a campaign." Groh-Wargo Dep. at 161:5-23.

Plaintiffs' Response:

Undisputed, but immaterial to the claims in the case.

82.

Defendants' Statement No. 82:

Fair Fight Action's website explains that its mission is to "promote fair elections in Georgia and around the country," noting that it "has mounted significant programs to combat voter suppression in Georgia and nationally." FFA Dep. at Ex. 70.

Plaintiffs' Response:

Undisputed, but incomplete. Fair Fight's core mission has remained consistent. Its actions to combat voter suppression protect that mission. *See* Exh. 16, Sept. 16, 2019 Groh-Wargo Dep. 281:6-19 ("Fair Fight's mission overall in voter engagement and voter education has taken on a significant additional set of goals and work around mitigating voter suppression and around initiating programs and diverting resources to do that work."); Exh. 17, Oct. 30, 2019 Groh-Wargo Dep. 94:20-95:3 (Fair Fight Action's "core purpose has not changed from its purpose for Voter Access Institute around voter engagement," but Fair Fight Action has "taken on additional activities . . . that have been a fight against voter suppression").

83.

Defendants' Statement No. 83:

In Ms. Groh-Wargo's personal-capacity deposition in September 2019, she explained that the mission of the organization is "to engage and educate voters *and fight voter suppression broadly in the state*, and particularly in communities of color . . ." Groh-Wargo Dep. at 39:12-20 (emphasis added).

Plaintiffs' Response:

Undisputed, but incomplete. As Ms. Groh-Wargo further explained, Fair Fight Action's "core purpose has not changed from its purpose for Voter Access Institute around voter engagement," but Fair Fight Action has "taken on additional activities . . . that have been a fight against voter suppression." Exh. 17, Oct. 30, 2019 Groh-Wargo Dep. 94:20-95:3. The increase in activities focused on countering voter suppression has not altered Fair Fight Action's core mission. *See* Exh. 16, Sept. 16, 2019 Groh-Wargo Dep. 281:6-19 ("Fair Fight's mission overall in voter engagement and voter education has taken on a significant additional set of goals and work around mitigating voter suppression and around initiating programs and diverting resources to do that work.").

84.

Defendants' Statement No. 84:

Ms. Abrams discussed the purpose of Fair Fight Action in her new book, explaining she founded “Fair Fight Action to focus on voting rights and voter suppression in Georgia.” *Our Time is Now* 137.

Plaintiffs' Response:

Undisputed that the quoted language has been cited correctly, but disputed to the extent Statement No. 84 suggests that Fair Fight Action’s founding purpose was anything other than voter engagement. The broad mission of Fair Fight Action “is around voter engagement overall of communities of color, voter turn-out broadly of communities of color, [and] young people, and then working on progressive issues generally.” Exh. 17, Oct. 30, 2019 Groh-Wargo Dep. 35:5-10. Its actions to combat voter suppression protect that mission. *See* Exh. 16, Sept. 16, 2019 Groh-Wargo Dep. 281:6-19 (“Fair Fight’s mission overall in voter engagement and voter education has taken on a significant additional set of goals and work around mitigating voter suppression and around initiating programs and diverting resources to do that work.”).

85.

Defendants' Statement No. 85:

The day before Fair Fight Action became active again in November 2018, a political action committee (“PAC”) named Fair Fight, Inc. (the “PAC”) incorporated using the same address as VAI. Certification of Incorporation, attached as Ex. K.

Plaintiffs' Response:

Undisputed, but immaterial to the claims in this case.

86.

Defendants' Statement No. 86:

While all individuals are employees of Fair Fight Action, the PAC reimburses Fair Fight Action for time staff spent on non-political projects. FFA Dep. at 103:3-23, 150:14-152:1, 157:11-159:1.

Plaintiffs' Response:

Partially disputed. The PAC reimburses Fair Fight Action for time staff spent on projects for the PAC, and employees decide whether work is for the PAC based on the advice of counsel and a compliance team. Exh. 17, Oct. 30, 2019 Groh-Wargo Dep. 150:19-151:11.

87.

Defendants' Statement No. 87:

In Fair Fight Action's 30(b)(6) deposition, its representative explained that its mission was actually *not* to fight voter suppression:

Q: And I think we've covered this, but it's not correct to say that Fair Fight Action was founded to "combat voter suppression in Georgia." Correct?

A: That is correct. The organization was founded in 2014 to do voter engagement work.

Id. at 139:6-11.

Plaintiffs' Response:

Undisputed that the broad mission of Fair Fight Action "is around voter engagement overall of communities of color, voter turn-out broadly of communities of color, [and] young people, and then working on progressive issues generally." Exh. 17, Oct. 30, 2019 Groh-Wargo Dep. 35:5-10. Fair Fight Action's work to combat voter suppression has been to protect that mission. *See* Exh. 16, Sept. 16, 2019 Groh-Wargo Dep. 281:6-19 ("Fair Fight's mission overall in voter engagement and voter education has taken on a significant additional set of goals and work around mitigating voter suppression and around initiating programs and diverting resources to do that work.").

88.

Defendants' Statement No. 88:

The *PAC* focuses on voter suppression, unlike the mission of Fair Fight Action. *Id.* at 161:1-10.

Plaintiffs' Response:

Partially disputed. Undisputed that the PAC focuses on voter suppression. Disputed to the extent Statement No. 88 suggests that Fair Fight Action does not engage in extensive activities to combat voter suppression. *See* Exh. 16, Sept. 16, 2019 Groh-Wargo Dep. 281:6-19 (“Fair Fight’s mission overall in voter engagement and voter education has taken on a significant additional set of goals and work around mitigating voter suppression and around initiating programs and diverting resources to do that work.”).

89.

Defendants' Statement No. 89:

Fair Fight Action identified only three areas of diversion of resources: (1) the creation of the Democracy Warriors program, (2) the creation of the Fair Fight U program, and (3) staff time that it diverted to other projects, *Id.* at 34:5-20.

Plaintiffs' Response:

Disputed and immaterial to the extent that Statement No. 89 implies that three areas of diversion of resources are insufficient. Fair Fight Action has diverted financial resources, staff time, volunteer time, and consultant time to counteract voter suppression. Exh. 17, Oct. 30, 2019 Groh-Wargo Dep. 27:23-30:3. Fair Fight Action hired an organizing department to respond to the activities described in the complaint. *Id.* 34:5-20. The organization has trained, supported, and deployed volunteers “on very specific actions to try and . . . specifically mitigate the harm the State has caused around confusing and problematic implementation of election administration and voting law.” *Id.* 28:24-29:6. Fair Fight Action also now needs to instruct voters about how to navigate new burdens and roadblocks in order to access their right to vote—which is a prerequisite to Fair Fight Action’s ultimate goal of an engaged electorate. *See id.* 174:4-15 (agreeing that Fair Fight Action is “having to educate voters about something different because of the voter suppression issues” and that what Fair Fight Action is “doing and thinking about doing” “is way beyond” the “basic amount of voter education that goes in on turnout activities”). Additionally, whereas VAI had not previously engaged in direct lobbying of the state legislature to change election laws, Fair Fight Action engaged

in those activities in the 2019 legislative session in response to the unconstitutional laws. *Id.* 201:22-202:24.

90.

Defendants' Statement No. 90:

None of these three diversions took place at the time of the filing of the complaint and Fair Fight Action could not provide any specific dollar amounts for diversion of funds. *Id.* at 30:13-32:16, 34:5-20.

Plaintiffs' Response:

Undisputed, but immaterial because (1) past diversion of resources is not required to establish standing; anticipated diversion is sufficient, *see Browning*, 522 F.3d at 1165-66; and (2) the diversion need not be of *financial* resources, but can include diversion of personnel and time, *see Arcia*, 772 F.3d at 1341.

91.

Defendants' Statement No. 91:

Fair Fight Action also testified that it would plan to engage in broader get-out-the-vote activities if the issues in this lawsuit were resolved. *Id.* at 176:10-177:25.

Plaintiffs' Response:

Undisputed.

92.

Defendants' Statement No. 92:

While Democracy Warriors and Fair Fight U work on “voter suppression” issues, they also work on the progressive issues the organization supports more broadly. *Id.* at 91:9-93:7.

Plaintiffs' Response:

Undisputed, but incomplete and immaterial. Counteracting voter suppression is the primary purpose of these two programs. Exh. 17, Oct. 30, 2019 Groh-Wargo 30(b)(6) Dep. 174:16-175:6 (“[T]he Democracy Warriors, Fair Fight U, are very specific discrete programs meant to counteract the wrongdoing and deal with these issues that we see in terms of the right to vote in Georgia.”); *id.* at 91:20-92:23 (“The focus [of Democracy Warriors] has been on voter suppression. . . . [T]he majority of their work has been around voter suppression, but not 100 percent exclusively.... [Fair Fight U’s] main purpose, similar to Democracy Warriors, is rep response, push-back on voter suppression, advocacy around that fight against voter suppression.”). Fair Fight Action has explained that if it were not required to devote its resources to voter suppression mitigation, the organization “would love . . . to direct all of its budget . . . , all these activities, staff time that is being spent on

all of this voter suppression mitigation, . . . to turn that into how do we have really competitive, engaged elections and voters in Georgia.” *Id.* 96:13-97:8.

Statement No. 92 is also immaterial in that the law does not require all of these programs’ activities to be focused on voter suppression. Because those programs engaged in activities to counteract voter suppression and those activities diverted from other FFA activities, those activities constitute injury-in-fact under Eleventh Circuit law. *See Browning*, 522 F.3d at 1165-66.

93.

Defendants' Statement No. 93:

Fair Fight U also does political work that is paid for by the PAC. *Id.* at 135:9-16.

Plaintiffs' Response:

Partially disputed. The cited source does not indicate Fair Fight U necessarily does work paid for by the PAC. Fair Fight Action testified that Fair Fight U is “overwhelmingly a Fair Fight Action activity. It is possible that they might allocate some time to the P.A.C., but it’s overwhelmingly a Fair Fight Action activity.” Exh. 17, Oct. 30, 2019 Groh-Wargo 30(b)(6) Dep. 135:9-16.

94.

Defendants' Statement No. 94:

Fair Fight Action has not engaged in “voter education activities” since 2014. *Id.* at 73:12-21, 75:13-77:1, 209:20-212:25; Groh-Wargo Dep., 205:2-206:5.

Plaintiffs' Response:

Disputed. Fair Fight Action has continued activities involving general voter education, such as directing students toward voter registration resources, Exh. 17, Oct. 30, 2019 Groh-Wargo Dep. 80:14-22, and providing a phone bank to call voters to make sure they know about an upcoming election, *id.* 81:1-10, 210:12-17 (“We’re imminently going to be doing some phone calls to voters around just general making sure people are aware . . . [b]ecause local elections have very low turn-out.”). In addition, Fair Fight Action’s general voter education efforts have become more difficult as a result of Defendants’ voter suppression. For instance, whereas VAI used to undertake phone banks to share information about when and where to vote, Fair Fight Action must now use its phone-banking resources to share that information *and* to make sure voters have checked their registration statuses. *Id.* 174:25-175:21.

95.

Defendants' Statement No. 95:

Staff of Fair Fight Action, including in the Democracy Warrior and Fair Fight U programs, work extensively on efforts related to this lawsuit. FFA Dep. at 235:3-236:19, 246:14-247:19, 276:9-277:9, 282:7-15.

Plaintiffs' Response:

Partially disputed and immaterial. The cited sources do not indicate that Democracy Warrior and Fair Fight U participants work “extensively” on lawsuit-related efforts. Statement No. 95 is also immaterial because Fair Fight Action is not claiming an injury-in-fact due to costs associated with this lawsuit. *See PETA*, 189 F. Supp. 3d at 1340 (“[U]tilizing litigation to achieve organizational goals does not negate Article III standing”).

96.

Defendants' Statement No. 96:

For staff time not spent on litigation, if not for this lawsuit, staff at Fair Fight Action currently working on litigation support would spend all their time doing political work paid for by the PAC. *Id.* at 159:13-160:25.

Plaintiffs' Response:

Disputed. The cited source refers to only one Fair Fight Action staff member. Exh. 17, Oct. 30, 2019 Groh-Wargo 30(b)(6) Dep. 159:13-160:25. If Fair

Fight Action were not required to devote resources to voter suppression mitigation, Fair Fight Action “would love . . . to direct all of its budget . . . , all these activities, staff time that is being spent on all of this voter suppression mitigation, . . . to turn that into how do we have really competitive, engaged elections and voters in Georgia,” which “is the fundamental core mission of Fair Fight Action, like it was in Voter Access Institute.” *Id.* 96:13-97:8. If the voter suppression issues in the state were eliminated, Fair Fight Action “would be doing very typical ‘get out the vote’ activities as an organization,” such as phone banks, text banks, and paid canvasses like those VAI conducted in 2014, which the organization may not be able to accomplish currently because of “budget realities.” *Id.* 176:20-177:18. Additionally, if this lawsuit were successful, Fair Fight Action would “deploy [its] volunteers in other ways,” rather than “divert[ing] them mainly into voter suppression mitigation.” *Id.* 29:7-12.

97.

Defendants' Statement No. 97:

The overall structure of elections in Georgia relies on counties to operate elections. Deposition of Chris Harvey (12/5) (“Harvey Dep.”) 33:7-34:11.

Plaintiffs' Response:

Disputed and immaterial. The cited source does not specifically mention operation of elections.

Additionally, the structure of elections in Georgia relies on the SOS and SEB to control the operation of elections and for the SOS to be intimately involved in operating elections. Georgia has a top-down structure of operating elections, with the Secretary of State (“SOS”) at the top. Exh. 21, Dec. 5, 2019 Harvey Dep. 33:20-25 (Georgia has a “top-down uniform voting system where all counties basically do the same thing, follow the same procedures. . . . [T]here is a lot of uniformity and looking up at the top for guidance or for direction.”). The SOS is Georgia’s Chief Elections Officer. SOS Description of Duties, Exh. 22, State-Defendants-00149713, at -00149713 (“Elections Division supports the Secretary of State’s role as Chief Election Officer”); O.C.G.A. § 21-2-50(11) (referring to the SOS as the “chief election official”).

As a result, the SOS plays a number of key, active roles in operating elections. These include:

- “[M]aintaining Georgia’s statewide voter registration database, providing training for local election officials regarding proper election procedures, [and] coordinating and monitoring federal, state, and local

elections within the state of Georgia.” Exh. 22, SOS Transition Memo, State-Defendants-00149713, at -00149713, -00149715.

- Furnishing election supplies and equipment. O.C.G.A. §§ 21-2-50(5), 21-2-211(b)(2).
- Computing votes. *Id.* § 21-2-50(6).
- Determining the form of ballots. *Id.* § 21-2-50(7).
- Creating and reviewing ballots. *Id.* § 21-2-50(15).
- Creating and furnishing notices that are used in elections. *Id.* § 21-2-50(12).
- Providing citizens the information they need for voting and registration. *Id.* § 21-2-50(13).
- Training county superintendents and registrars. Exh. 23, Aug. 16, 2019 SOS 30(b)(6) Dep. 175:8-176:5 (affirming, “we have the certification requirements for election officials...”); Exh. 21, Dec. 5, 2019 Harvey Dep. 121:15-122:4 (stating, “it’s the [SOS’s] responsibility to train the counties”).
- Ensuring counties comply with elections laws. O.C.G.A. § 21-2-31; *see also* Exh. 24, SOS Website: Elections (dated Nov. 9, 2019), Exhibit 44 to Dec. 5, 2019 C. Harvey Dep; Exh. 21, Dec. 5, 2019 Harvey Dep.

24:14-18 (“[B]y law, [the SOS is] the State election official . . . [Y]ou read Title 21 [of O.C.G.A. Chapter 2] and you’ll see all the things that have to happen, especially at the state and federal level, *it’s his responsibility to make sure . . . those things happen*”) (emphasis added); Exh. 25, Jan. 6, 2020 SOS 30(b)(6) Dep. 132:12-134:3 (“[W]e expect and remind and *require* that they [county election officials] follow the law, State Election Board rules, and all other governing statutes”) (emphasis added).

- “[O]perat[ing] elections” by “coordinating, monitoring, and providing guidance for many activities related to elections and voter registration as specified in Title 21 of the O.C.G.A. and State Election Board Rules.” Exh. 22, SOS Transition Memo, State-Defendants-00149713, at - 00149713).

Moreover, Statement No. 97 is immaterial because the operation of the challenged aspects of elections at the state versus county level has always been irrelevant to the way courts in this circuit adjudicate election-law cases against state officials. *See, e.g., Democratic Exec. Comm. of Fla. v. Lee*, 915 F.3d 1312 (11th Cir. 2019) (adjudicating a constitutional challenge against state-level defendants where the challenged scheme was fully implemented by county

personnel, without county-level operations affecting the analysis whatsoever). In addition, county-level operations are irrelevant to Defendants' breach of their duties to train and supervise local election officials.

98.

Defendants' Statement No. 98:

County officials process voter-registration applications. Id. at 348:5-24.

Plaintiffs' Response:

Disputed and immaterial. Plaintiffs also object to Statement No. 98 because the cited source does not mention county officials. In the cited source, the SOS was asked whether registration removal due to failure to contact the SOS would make the voter rolls more accurate, and he responded that the voter did not necessarily need to contact the SOS, but could "make a change or vote in a county election or sign a petition or update their name or their address in their county." The source does not mention what county officials do or do not do regarding voter-registration processing. Exh. 21, Dec. 5, 2019 SOS Dep. 348:5-24.

Statement No. 98 is disputed to the extent it suggests county officials are solely responsible for processing voter registration applications.

First, the SOS is responsible for maintaining an accurate voter registration list. O.C.G.A. § 21-2-50 (14) (duty to maintain official list of registered voters and

inactive voters); O.C.G.A. § 21-2-50.2 (SOS duties designated under HAVA); 52 U.S.C. § 21083(a)(1), (a)(4) (duties under HAVA include responsibility to maintain accurate voter registration list). To comply with those responsibilities, the SOS maintains the “statewide voter registration system,” called eNet, ElectionNet, or GVRS. Exh. 26, Germany Dep. 11:18-12:5 (“In Georgia, the State maintains a statewide voter registration system . . .”).

Second, county officials regularly turn to the SOS for instruction on how to perform tasks affecting data in the voter registration system, and the SOS regularly provides directions. *See, e.g.*, Exh. 27, Email between SOS and County Officials regarding Registration, State-Defendants-00337007; Exh. 28, State-Defendants-00166546; Exh. 29, State-Defendants-00171403.

Third, the SOS created the Exact Match Policy for voter registration applications and implements the policy’s verification process with the Georgia Department of Drivers Services and the Social Security Administration. That verification process is a driving force behind processing voter-registration applications. To the extent counties are involved in the Exact Match process, the SOS provides the training to county election personnel (including registrars) on the procedures they must or should employ in response to the results of the SOS’s exact match policy and process. *See* Exh. 23, Aug. 16, 2019, SOS 30(b)(6) Dep.

62:7-24 (“We do have training documents on [the exact match policy]...”); Exh. 30, Training Documents on Registration Including Exact Match, State-Defendants-00095888, Exh. 31, State-Defendants-00105899, Exh. 32, State-Defendants-00095943.

Moreover, Statement No. 98 is immaterial because the SOS is responsible for the voter registration system at issue in this case, and the SOS is responsible for ensuring that counties are carrying out their tasks uniformly and in accordance with election law. *See also* SAMF ¶¶ 221-61, 723-27.

99.

Defendants' Statement No. 99:

County officials process absentee ballot requests and absentee ballots. *Id.* at 37:19-38:18.

Plaintiffs' Response:

Disputed and immaterial. Statement No. 99 is disputed to the extent it suggests only county officials are responsible for or involved in processing absentee ballot requests and absentee ballots. The SOS and SEB are required to enforce the counties' compliance with election laws and to obtain uniformity in counties' practices, including through promulgating rules, training, investigations,

enforcement proceedings, and other accountability mechanisms. *See* SAMF ¶¶ 221-240, 242-261, 302-312, 325-326, 328, 334.

For example, the SOS requires counties to certify that they have met UOCAVA requirements with respect to absentee ballots. Exh. 25, Jan. 6, 2020 SOS 30(b)(6) Dep. 69:4-25, 70:6-15 (“[T]his year we’re going to introduce a form that we’re going to require every county to send us certifying that they’ve met the UOCAVA requirements It’s requiring some kind of certification on their part.”). The SOS can, and should, do the same for other absentee ballot processes. *See, e.g.*, Exh. 25, Jan. 6, 2020 SOS 30(b)(6) Dep. 95:13-98:20 (stating “because all the absentee ballot is done through eNet, which is our [SOS] voter registration system, it’s something we have the ability to pull reports on and check those dates...”).

And, with respect to the June 8, 2020 primary, the SOS itself contracted with outside vendors to send absentee ballot request forms and print and mail absentee ballots. *See* Exh. 222, Press Release, Ga. Sec’y State, One Millionth Absentee Ballot Highlights Election Success Under COVID-19, https://sos.ga.gov/index.php/elections/one_millionth_absentee_ballot_highlights_election_success_under_covid19 (last visited July 24, 2020).

Defendants' Statement No. 99 is also immaterial because it does not affect Defendants' own duties and authority with respect to absentee ballots.

100.

Defendants' Statement No. 100:

County officials are responsible for the printing and processing of provisional ballots. *Id.* at 278:6-16, 317:6-318:7.

Plaintiffs' Response:

Disputed and immaterial. Statement No. 100 is disputed to the extent it suggests only county officials are responsible for the provisional ballots processing. Defendants are granted authority over provisional ballot processes and play an active role in managing those processes, including:

- Advising counties on provisional ballots. *See, e.g.*, Exh. 33, SOS Email, State-Defendants-00747699, at -00747701 (advising county whether to count a provisional ballot).
- Training poll workers and other county election personnel on provisional ballots. *E.g.*, Exh. 34, 2018 Poll Worker Manual, State-Defendants-00146399; Exh. 35, 2020 Poll Worker Manual, State-Defendants-00867638; Exh. 36, SOS "Poll Worker Training" Presentation, State-Defendants-00131303; Exh. 208, Georgia Poll Worker Manual (April

2020) (last accessed July 10, 2020) (<https://georgiapollworkers.sos.ga.gov/Shared%20Documents/Georgia%20Poll%20Worker%20Training%20Manual.pdf>); Exh. 37, GEOC County Course #9, State-Defendants-00100636, at -00100655 (slide 20).

- Promulgating rules on supplies and handling of provisional ballots. *See, e.g.*, Ga. Admin. Code § 183-1-12-18 (amended SEB rule requiring counties to have adequate supplies of provisional ballots and requiring county election personnel to offer voters provisional ballots).
- Conducting investigations into county election personnel’s non-compliance with provisional ballot statutes and regulations. *See, e.g.*, Exh. 38, Email between SOS and Voter, State-Defendants-00423160, at -00423161 (acknowledging SOS “could investigate and ask the State Election Board to sanction them for failures or wrongdoing.”); *see also* SAMF ¶¶ 911-13, 927, 929-31, 946, 948, 963-66, 971-75, 985-86.
- Sanctioning counties or county election personnel for non-compliance with provisional ballot statutes and regulations. *See, e.g.*, Exh. 207, April 3, 2018 SEB Minutes (available at: [https://sos.ga.gov/admin/files/SEB_Meeting_Minutes_April%203,%202018%20\(SIGNED\).pdf](https://sos.ga.gov/admin/files/SEB_Meeting_Minutes_April%203,%202018%20(SIGNED).pdf)) (last

accessed July 21, 2020) (issuing letter of instruction to Douglas County for provisional ballot violation).

Defendants' Statement No. 100 is also immaterial because it does not affect Defendants' own duties and authority with respect to provisional ballots.

101.

Defendants' Statement No. 101:

County officials are responsible for the opening, closing, and moving of polling places. *Id.* at 226:3-227:17.

Plaintiffs' Response:

Disputed. Statement No. 101 is disputed because, with respect to decisions to “open, close or consolidate polling places,” the SOS “offer[s] guidance to [] Counties and stress[es] careful consideration of all factors in making these decisions.” Exh. 40, Talking Points, State-Defendants-00050375, at -00050375.

Examples of the SOS's involvement in these decisions include:

- The SOS issued guidance in February 2015 to counties about changing polling places and precincts, guidance the SOS is still using. Exh. 41, Email Correspondence with County, Ga00785365 (attaching and describing the February 2015 guidance, Ga00785368 (“everything

you will need to know about making changes to precincts & polling places”).

- The SOS actively promoted polling place closure and relocation by training county elections offices on how and when to change their polling places. *See* Exh. 42, SOS Training Documents Involving Polling Place Changes, Orr-Randolph County-000579; Exh. 41, Ga00785368; Exh. 43, State-Defendants-00114659; Exh. 44, State-Defendants-00096192.
- The SOS received and responded to inquiries from county officials seeking guidance on how to close and relocate polling places, and the SOS has advised county officials on whether to implement these changes. *See, e.g.*, Exh. 45, Email Correspondences, Ga00784382 (Irwin County asking SOS about consolidation); Exh. 46, Ga00785272 (county asking for “any advice” from the SOS on consolidating 13 precincts to 1); Exh. 47, State-Defendants-00052539 (SOS employee confirming SOS is “positioned” to render advice on whether there would be “negative repercussions” arising from potential consolidation); *see also* Exh. 25, Jan. 6, 2020 SOS 30(b)(6)

Dep. 126:1-5 (acknowledging that counties sometimes “consult with the Secretary of State’s Office before closing polling places”).

102.

Defendants' Statement No. 102:

County officials are responsible for providing training materials for poll workers. Id. at 135:15-136:24.

Plaintiffs' Response:

Disputed to the extent Statement No. 102 implies that county election officials have exclusive authority for preparing or prescribing the content and methodology used for training poll workers. The SEB is required to promulgate rules and regulations to obtain uniformity in county election practices and proceedings. O.C.G.A. § 21-2-31(1). The SOS has a “mandate” to provide training and obtain uniformity in county election practices. Exh. 23, Aug. 16, 2019 SOS 30(b)(6) Dep. 141:12-142:18 (referring at 142:15-17 to the SOS’s “general mandate to provide training and uniformity to the counties”). Training of poll workers must be uniform if the practice they perform are uniform. Expert Report of K. Kennedy, ECF No. 167 at 18-19. The SOS recognizes that training is a primary way uniformity is achieved. Exh. 21, Dec. 5. 2019 Harvey Dep. 53:3-56:9 (stating that “it’s our conversation with county election officials and clarification

and point things out in training that we compliance with the law” and that “it is fair” to say that when the law requires that counties do X, that the counties should be carrying out the law in a uniform fashion); Exh. 25, Jan. 6, 2020 SOS 30(b)(6) Dep. at 130:16-133:25 (“we expect counties to uniformly follow the law and we do our best to train them on what the law is and what those requirements are...”). Only Defendants have the authority and mandate to achieve that uniformity.

The SOS acknowledges that training of poll workers is key to ensuring voters can exercise their constitutional right to vote and that that inadequate training of poll workers often causes non-compliance with election laws and ensuing voter complaints made to the SOS. *See, e.g.*, Exh. 48, Georgia Election Official Course, County Course #5 re: How to Manage Your Poll Workers (State-Defendants-00007980, at -00008025 (Slide 46)); Exh. 23, Aug. 16, 2019 SOS 30(b)(6) Dep. 97:25-98:21. SEB enforcement proceedings also show inadequate training has causing non-compliance with election laws. *See, e.g.*, Exh. 21, Dec. 5, 2019 Harvey Dep. 139:10-16 (stating that he has responded to complaints from voters by telling county election officials it is a training problem), *id.* 153:20-156:13 (voter complaint was a training issue), *id.* 171:9-20 (county officials do not train their poll workers correctly).

The SOS prepares poll worker training materials, including poll worker manuals and videos that the SOS urges county election personnel to use when training poll workers. Exh. 21, Dec. 5, 2019 Harvey Dep. 134:21-135:6 (“[The SOS] provide some training materials for poll workers.”); Exh. 23, Aug. 16, 2019 SOS 30(b)(6) Dep. 30:11-17 (SOS training materials are intended to be a resource for the counties); *id.* 137:20-25 (“I think it would be a good idea if the counties used the training materials we gave them”); Exh. 49, 2016 Poll Worker Manual, State-Defendants-00095472; Exh. 34, 2018 Poll Worker Manual, State-Defendants-00146399; Exh. 35, March 2020 Poll Worker Manual, State-Defendants-00867638; Exh. 208, Georgia Poll Worker Manual (April 2020) (last accessed July 10, 2020) (<https://georgiapollworkers.sos.ga.gov/Shared%20Documents/Georgia%20Poll%20Worker%20Training%20Manual.pdf>); Exh. 36, SOS “Poll Worker Training” presentation, State-Defendants-00131303.

103.

Defendants' Statement No. 103:

County officials are responsible for hiring and firing poll workers. *Id.* at 35:21-36:25.

Plaintiffs' Response:

Disputed. The SOS operates a poll worker hiring program. Exh. 50, AFY 18 & FY19 Joint Budget Hearing Talking Points, State-Defendants-00398947, at -00398948 (reporting that the Elections Division's "poll worker initiative to hire veterans and students continues to assist our election officials throughout the state"); *see also* Exh. 51, Elections Divisions Training Presentation on Poll Officials and Poll Watchers, State-Defendants-00126152, at -00126153 (agenda includes "Recruitment, Hiring and Retention" of poll officials).

104.

Defendants' Statement No. 104:

County officials are responsible for the number and deployment of voting machines. *Id.* at 365:24-367:7.

Plaintiffs' Response:

Disputed. The Georgia Election Code specifies a minimum number of voting machines per a certain number of voters. O.C.G.A. 21-2-323(b). The SOS is also responsible for determining the number of voting machines counties receive. *See, e.g.*, Exh. 52, Email between SOS and County, State-Defendants-00307024 (discussing allocation of voting equipment).

105.

Defendants' Statement No. 105:

The only method for the State Election Board to enforce state election laws is through an investigation and possible sanctions by the Board, because the State Election Board does not control to direct [sic] county officials to take particular actions. Id. at 41:5-43:15.

Plaintiffs' Response:

Disputed. Plaintiffs also object to Statement No. 105 as the phrase “control to direct county officials” is ambiguous; for the purposes of responding to Statement No. 105, Plaintiffs interpret this phrase as “control or direct county officials.”

Statement No. 105 is disputed because the State Election Board (“SEB”) has other methods to enforce the state election laws and make county officials take particular actions besides investigation and sanctions by the Board.

First, the SEB is required to promulgate rules to obtain fairness and uniformity in the practices of all local election officials. O.C.G.A. § 21-2-31(1); Exh. 22, SOS Transition Memo, State-Defendants-00149713, at -00149715 (“In order to ensure uniformity and the fair, legal, and orderly conduct of Georgia’s primaries and elections, the SEB has promulgated various rules and regulations.”).

Counties are required to follow those rules; failure to do so can be investigated and sanctioned by the SEB. Exh. 23, Aug. 16, 2019 SOS 30(b)(6) Dep. 110:20-112:23 (discussing how SEB conduct investigation and render sanctions over cases presented to them during their meeting).

Second, the SEB can issue letters of instruction to the county or individuals who have been determined to have violated election laws or SEB rules, and this is frequently how the SEB disposes of investigated matters. Exh. 53, Sullivan Dep. 76:22-78:8 (testifying that SEB would “request the [SOS Office] to issue letters of instruction in some of the complaints”); Exhs. 54-56, Letters of Instructions, State-Defendants-00842553; State-Defendants-00842569; State-Defendants-00842572.

Third, the SEB is authorized to refer investigated matters to the Georgia Attorney General’s office or to a district attorney for further investigation or proceedings, O.C.G.A. § 21-2-31(5), and has done so. *See, e.g.*, Exh. 1,001, Sept. 20, 2017 SEB Meeting Tr. 19-20, https://sos.ga.gov/admin/uploads/September_20,_2017_Transcript.pdf (referring case no. 2014-084 concerning a voter receiving a precinct card with her correct home address and poll location, but was told at the poll location that she had to drive to a different poll location); Exh. 1,036, Dec. 13, 2016 SEB Meeting Tr. 83-86, https://sos.ga.gov/admin/uploads/December_13,_2016_Transcript.pdf

(referring case no. 2014-022 concerning three individuals who were not listed in the voter list due to faulty GIS information and were denied provisional ballots); Exh. 57, Worley Dep. 108:12-109:16 (describing SEB’s overseeing and enforcement methods as including “refer[ring] the case to a district attorney for prosecution if there are criminal violations”).

Fourth, the SEB is authorized to “institute or to intervene as a party in any action ... to compel compliance with any election or primary law of the state or with any valid rule or regulation of the board” O.C.G.A. § 21-2-32(a).

106.

Defendants' Statement No. 106:

The Secretary of State decertified the entire DRE system on December 30, 2019. Doc. No. [266-1].

Plaintiffs' Response:

Undisputed, but immaterial to Plaintiffs’ current claims.³

³ The effectiveness and security of Georgia’s voting machines are the subject of the *Curling* litigation in this district (Dkt. No. 17-cv-2989-AT). In the interest of judicial economy, Plaintiffs will not reiterate those claims in this litigation.

107.

Defendants' Statement No. 107:

The state's new ballot-marking devices ("BMDs") were certified on August 9, 2019. Certification, attached as Ex. L.

Plaintiffs' Response:

Undisputed, but immaterial to Plaintiffs' current claims. *See* Plfs.' Response to SOF ¶ 106.

108.

Defendants' Statement No. 108:

The BMD system is implemented and completely replaced the DRE system. Doc. No. [239], p. 4; Deposition of Alex Halderman at 187:18-23.

Plaintiffs' Response:

Undisputed, but immaterial to Plaintiffs' current claims. *See* Plfs.' Response to SOF ¶ 106.

109.

Defendants' Statement No. 109:

On August 13, 2019, the regulation required by HB 392, Georgia's "Standards for Security of Voter Registration System," became effective and describes the industry standards that "eliminates the alleged harms" of Plaintiffs' claims about the voter list. Ga. Comp. R. & Regs. r. 590-8-3-.01.

Plaintiffs' Response:

Partially disputed. Undisputed that the regulation became effective, but disputed that the regulation “eliminates the alleged harms” Plaintiffs claim are caused by problems with the SOS’s voter list. Plaintiffs’ claims about the voter list concern inaccuracies that exist regardless of security defects. *See, e.g.*, Exh. 58, March 1, 2017 Email with Columbia County re “Canceled” Voters, GA00766353; Exh. 59, Feb. 20, 2018 Email with Richmond County re Transferred Voters, GA00769373; *see generally* SAMF ¶¶ 635-682, 728-51.

110.

Defendants' Statement No. 110:

The “Standards for Security of Voter Registration System” regulation sets forth 27 industry standards covering numerous aspects of data security, including hardware, software, malware, firewalls, secure protocols for vendors, intrusion detection, data back-up procedures and training along with requirements for regular cyber-security assessments and annual certifications of compliance. *Id.*

Plaintiffs' Response:

Undisputed, but immaterial because Plaintiffs’ claims about the voter registration system concern inaccuracies that exist regardless of security defects. *See* Plfs.’ Response to SOF ¶ 109.

111.

Defendants' Statement No. 111:

On December 31, 2019, the Secretary of State certified compliance with the Standards for Security of Voter Registration regulation. Certification, attached as Ex. M.

Plaintiffs' Response:

Undisputed, but immaterial because Plaintiffs' claims about the voter registration system concern inaccuracies that exist regardless of security defects. *See* Plfs.' Response to SOF ¶ 109.

112.

Defendants' Statement No. 112:

In mid-2019, the Secretary of State announced that Georgia became the 26th state to join the Electronic Registration Information Center (“ERIC”). Deposition of Kevin Rayburn at 145:23-146:22; Press Release, *Secretary Raffensperger Announces Major Partnership to Enhance Voter Registration Systems*, https://sos.ga.gov/index.php/general/secretary_raffensperger_announces_major_partnership_to_enhance_voter_registration_systems (May 2019).

Plaintiffs' Response:

Undisputed.

113.

Defendants' Statement No. 113:

ERIC is “a non-profit organization with the sole mission of assisting states to improve the accuracy of America’s voter rolls and increase access to voter registration for all eligible citizens.” *See* ERIC Home Page, www.ericstates.org.

Plaintiffs' Response:

Undisputed.

114.

Defendants' Statement No. 114:

County registrars must notify voters of a rejected absentee ballot no later than three business days after rejecting the ballot. Ga. Comp. R. & Regs. 183-1-14-13.

Plaintiffs' Response:

Undisputed that this notification is required, but immaterial because this rule is not followed by counties or enforced by the SOS or SEB. For example, in 2018, voters were not notified within three business days of having their applications or ballots denied, preventing them from being able to obtain a new absentee ballot. *See, e.g.*, Exh. 60, Matz Decl., Pltfs000176 ¶ 4; Exh. 61, Haas Decl., Pltfs000276 ¶ 4; Exh. 62, Gadson Decl., Pltfs000278 ¶ 5; Exh. 63, Voter Complaint, State-Defendants-00330640; Exh. 64, Voter Complaint, State-Defendants-00424416.

CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing has been prepared with a font size and point selection (Times New Roman, 14 pt.) which is approved by the Court pursuant to Local Rules 5.1(C) and 7.1(D).

Respectfully submitted this 29th day of July, 2020.

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CERTIFICATE OF SERVICE

I hereby certify that, on July 29, 2020, I filed the within and foregoing **PLAINTIFFS' RESPONSES TO DEFENDANTS' STATEMENT OF MATERIAL FACTS IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT ON JURISDICTION** with the Clerk of Court using the CM/ECF electronic filing system which will automatically send counsel of record e-mail notification of such filing.

This the 29th day of July, 2020.

/s/ Allegra J. Lawrence

Allegra J. Lawrence