

**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 THE MERITS**

I. The Plaintiffs in this lawsuit.

1.

Defendants’ Statement No. 1:

Plaintiff Fair Fight Action (“Fair Fight Action”) is a non-profit corporation organized under the laws of Georgia. 2018 Fair Fight Certificate of Amendment – Name Change, Ex. No. (42).

Plaintiffs’ Response:

Undisputed, but immaterial to the issues raised in Defendants’ summary judgment motion, as demonstrated by Defendants’ failure to discuss, cite, and rely on it in their brief. The Court considers “only facts . . . that are actually discussed

by, cited to, and relied on by the parties in their briefs.” *Sec. & Exch. Comm’n v. Watkins*, 317 F. Supp. 3d 1244, 1249 (N.D. Ga. 2018) (J. Jones).¹

2.

Defendants’ Statement No. 2:

Former candidate for governor of Georgia Stacey Abrams is the founder of Fair Fight Action and its Chief Executive Officer is Lauren Groh-Wargo, who served as Ms. Abrams’s campaign manager for her 2018 Georgia gubernatorial campaign. Fair Fight Action 30(b)(6) Dep., Ex. No. (13) at 126:9-15; L. Groh-Wargo Dep., Ex. No. (17) at 25:23-25.

Plaintiffs’ Response:

Undisputed, but immaterial to the issues raised in Defendants’ summary judgment motion, as demonstrated by Defendants’ failure to discuss it in their brief.*

3.

Defendants’ Statement No. 3:

Plaintiff Fair Fight Action previously operated under the name Voting Access Institute (“VAI”); its name was changed to Fair Fight Action on November 21, 2018. Ex. No. (13) at 79:3-7; Ex. No. (17) at 29:20-25; Ex. No. (42).

¹ Plaintiffs incorporate this objection into other Responses by denoting it with an asterisk (*).

Plaintiffs' Response:

Partially disputed. Plaintiff Fair Fight Action previously operated under the name Voter Access Institute, not Voting Access Institute. SOF (Jurisdiction) ¶ 76, ECF No. 441-2. Plaintiff Fair Fight Action's name change took place on December 14, 2018, not November 21, 2018. Defs.' Ex. 42 at Pltfs-FFA-000260. The citation to Ms. Groh-Wargo's deposition should be to 79:3-11, Exh. 16. Otherwise, Statement No. 3 is not disputed.

4.

Defendants' Statement No. 4:

The purpose of Fair Fight Action was not altered following the name change from VAI to Fair Fight Action. Ex. No. (13) at 79:21-25.

Plaintiffs' Response:

Undisputed.

5.

Defendants' Statement No. 5:

While operating as VAI, Fair Fight Action conducted a poll to test the phrase "voter suppression" in motivating its target voters. Ex. No. (17) at 205:5-206:5; Exhibit 27.

Plaintiffs' Response:

Undisputed, but immaterial to the claims and defenses in this matter.

6.

Defendants' Statement No. 6:

The phrase “voter suppression” was found to be as motivational as “educational opportunities for children, healthcare, hospital closures and Medicaid expansion, and economic opportunities for adults of all ages.” Ex. No. (17) at Exhibit 30. As a result, VAI planned to use “voter suppression” as a theme for targeted messaging. Id.

Plaintiffs' Response:

Partially disputed and immaterial to the claims and defenses in this matter. It is undisputed that VAI's draft 2014 plan 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. It is disputed, however, that the phrase “voter suppression” was included as a theme because it was found to be “as motivational” as the other phrases listed, as the source states only that these were among the themes that would be employed. This same document states 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.* at -000056 (emphasis added).

7.

Defendants' Statement No. 7:

Because the purpose of a political organization is to get its voters out to vote, Fair Fight Action is incentivized to continue employing the motivational phrase in targeted messaging. Ex. No. (13) at 35:5-36:1; 179:1016; Ex. No. (17) at 29:9-15.

Plaintiffs’ Response:

Disputed and immaterial. Fair Fight Action is not a “political organization.” *See* Exh. 15, Application for Recognition of Exemption Under Section 501(a), Pltfs-FFA-000095, at -000098 (“[VAI] will not involve itself in any way in any campaign for public office or in the appointment of any person to public office or in a political organization.”). The cited sources do not demonstrate that Fair Fight is “incentivized” to use any particular motivational phrases in targeted messaging.

Moreover, Statement No. 7 is immaterial to the issues raised in Defendants’ summary judgment motion, as demonstrated by Defendants’ failure to discuss it in their brief.*

8.

Defendants’ Statement No. 8:

In discovery, Plaintiffs provided declarations from 308 individuals² who

² Plaintiffs initially submitted 313 declarations. Doc. No. [360] at 2. Two declarants have since passed. *Id.* at 2, n.2. Plaintiffs communicated to Defense counsel they would not rely on five declarations. Doc. No. [361] at 7; *see also* Doc. No. [361-3]. Thus, 308 declarants remain. Plaintiffs agreed to withdraw four of those. Doc. No. [360] at 2, n.3.

testified they either experienced or observed some form of voting issue in 42 Georgia counties. Chart of Declarants, Ex. No. (133) (summary chart of Plaintiffs' declarants by county and whether he or she purports to offer testimony regarding a personal voting experience, offered for statistical analysis purposes).

Plaintiffs' Response:

Undisputed.

9.

Defendants' Statement No. 9:

The majority of these declarants come from four (4) counties: Fulton County (79); DeKalb County (57); Gwinnett County (38) and Cobb County (34). Id.

Plaintiffs' Response:

Undisputed.

10.

Defendants' Statement No. 10:

Nineteen (19) counties—Bartow County, Bibb County, Bleckley County, Butts County, Carroll County, Early County, Fayette County, Grady County, Lee County, Liberty County, Meriwether County, Newton County, Paulding County, Stephens County, Thomas County, Walton County, Ware County, Webster County, and Wheeler County—were each represented by a single declarant. Id.

Plaintiffs' Response:

Undisputed, but immaterial to the issues raised in Defendants' summary judgment motion, as demonstrated by Defendants' failure to discuss it in their brief.*

11.

Defendants' Statement No. 11:

In 2016, Georgia's five most heavily African-American counties, by percentage of population, were Hancock County (71.8%); Clayton County (70.9%); Dougherty County (70.1%); Calhoun County (61.6%); and Randolph County (61.4%), according to the Georgia Governor's Office of Planning and Budget. (Report publicly available at <https://opb.georgia.gov/document/publication/county-population-race-2016/download>).

Plaintiffs' Response:

Undisputed, but immaterial to the issues raised in Defendants' summary judgment motion, as demonstrated by Defendants' failure to discuss it in their brief.*

12.

Defendants' Statement No. 12:

In compiling the declarations used in this lawsuit, Plaintiffs worked with the Democratic Party of Georgia, (Aug. 21, 2019 Email: L. Conrad to S. Ghazal, Re:

Speaking to Hannah Spero, Ex. No. (43) at PLTFS-FFA-003949), and the Abrams for Governor Campaign, (Feb. 26, 2019 Email: S. Laurand to V. Abhiraman, Re: Your Voter Statement - signature needed, Ex. No. (44) at PLTFS-FFA-004887; June 4, 2019 Email: P. Nathan to Info, Re: Invite Only: Democracy Warrior Organizing Day Summit, Ex. No. (45) at PLTFS-FFA-005904; Nov. 26, 2018 Email: L. Bryan to N. Larson, RE: Draft Statement – Larson, Ex. No. (46) at PLTFS-FFA-007708; Nov. 13, 2018 Email: K. Dermody to L. Bryan, RE: Poll Watcher Issues – Fulton County, Ex. No. (47) at PLTFS-FFA-009331; Apr. 12, 2019 Email: M. Marks to J. DeLapp, M. Oliphant, Re: Looking for DeKalb Election night download, Ex. No. (48) at PLTFS-FFA-00333).

Plaintiffs’ Response:

Undisputed, but immaterial to the issues raised in Defendants’ summary judgment motion, as demonstrated by Defendants’ failure to discuss it in their brief.

13.

Defendants’ Statement No. 13:

Shortly after the November 2018 general election, Plaintiffs’ attorneys began to reach out to potential declarants and indicated they were doing so on behalf of the Abrams for Governor Campaign. See, e.g., Nov. 11, 2019 Email: B. Burruezo

to L. Bryan, RE: Poll watcher, Ex. No. (49) at PLTFS-FFA-010427.

Plaintiffs' Response:

Undisputed, but immaterial to the issues raised in Defendants' summary judgment motion, as demonstrated by Defendants' failure to discuss it in their brief.*

14.

Defendants' Statement No. 14:

Drafts of declarations prepared by Plaintiffs' counsel indicate that this litigation was to be brought by Stacey Abrams and the Abrams Campaign. See, e.g., Draft Affidavit of K. Dermody, Ex. No. (50) at PLTFS-FFA-10373-80.

Plaintiffs' Response:

Undisputed, but immaterial. Each of the declarations offered in this litigation provided specific sworn statements of fact. The declarations submitted in this litigation were signed and sworn to under oath. Any earlier drafts that were not signed or sworn to are immaterial to the accuracy of the submitted declarations. The immateriality of Statement No. 14 is further demonstrated by Defendants' failure to discuss it in their brief.*

15.

Defendants' Statement No. 15:

Plaintiffs provided declarants with template declarations containing

checklists of potential issues from which to choose. See, e.g., Declaration of P. Davis, Ex. No. (51) at PLTFS000648-49; Declaration of F. Dixon, Ex. No. (52) at PLTFS000483; Declaration of L. George, Ex. No. (53) at PLTFS000214-15.

Plaintiffs' Response:

Disputed and immaterial. Each of the declarations cited, and each of the declarations offered in this litigation, provided specific sworn statements of fact going beyond identifying what categories of difficulties the declarants experienced or witnessed. *See, e.g.*, Davis Decl., Defs.' Ex. 51 at Pltfs000649–50, ¶ 4 (stating she waited from 8:30 a.m. to noon to vote, her polling location only had three machines, and she witnessed other people leave the line without voting); Dixon Decl., Defs.' Ex. 52 at Pltfs000483–84, ¶ 4 (stating he was told he was at the incorrect polling location even though he had updated his voter registration and had successfully voted at that location previously); George Decl., Defs.' Ex. 53 at Pltfs000215–16, ¶ 4 (stating her son cast an electronic absentee ballot while he was studying overseas and received confirmation it was received, but the SOS My Voter Page did not reflect that information). The declarations submitted in this litigation were signed and sworn to under oath. Any earlier drafts that were not signed or sworn to are immaterial to the accuracy of the submitted declarations. The immateriality of Statement No. 15 is further demonstrated by Defendants'

failure to discuss it in their brief.*

16.

Defendants’ Statement No. 16:

As part of its campaign to collect declarations in support of this lawsuit, Plaintiff Fair Fight Action sent emails to various community leaders on behalf of “Leader Stacey Abrams” asking for them to connect Fair Fight Action with “3-5 individuals who experienced any issue with voting or who have a story to share about voting.” May 16, 2019 Email: L. Conrad to L. Conrad, Next steps: conversation with Leader Abrams 5/15, Ex. No. (54) at PLTFS-FFA-004137.

Plaintiffs’ Response:

Undisputed, but immaterial. The declarations submitted in this litigation were signed and sworn to under oath. Any earlier drafts that were not signed or sworn to are immaterial to the accuracy of the submitted declarations. The immateriality of Statement No. 16 is further demonstrated by Defendants’ failure to discuss it in their brief.*

17.

Defendants’ Statement No. 17:

To collect additional declarations during the March 2020 presidential primary, Fair Fight Action trained volunteers to act as “Declaration Takers,” individuals stationed outside polling locations who would speak to voters and offer

to document their experiences, and “Declaration Chasers,” who would bring hard copies of declarations drafted by Fair Fight Action to voters to be signed and collected. Feb. 2, 24 Email: L. Conrad to K. Vu, Volunteering to document voters’ experiences in March, Ex. No. (55) at PLTFS-FFA-006187.

Plaintiffs’ Response:

Undisputed, but immaterial. The declarations submitted in this litigation were signed and sworn to under oath. Any earlier drafts that were not signed or sworn to are immaterial to the accuracy of the submitted declarations. The immateriality of Statement No. 17 is further demonstrated by Defendants’ failure to discuss it in their brief.*

18.

Defendants’ Statement No. 18:

Fair Fight Action told potential declarants that they wanted to “listen to” and “uplift” their stories. May 14, 2019 Email: H. Wollensack to L. Walker, Re: Event Description, Ex. No. (56) at PLTFS-FFA-005283.

Plaintiffs’ Response:

Undisputed, but immaterial. The declarations submitted in this litigation were signed and sworn to under oath. Any earlier drafts that were not signed or sworn to are immaterial to the accuracy of the submitted declarations. The immateriality of Statement No. 18 is further demonstrated by Defendants’ failure

to discuss it in their brief.*

19.

Defendants' Statement No. 19:

When drafting declarations on behalf of declarants, Fair Fight Action would revise them to be “as effective as possible.” Sept. 28, 2019 Email: FFA Story to R. K. Hawkins, Re: Change of Address on Voter Registration, Ex. No. (57) at PLTFS-FFA-004815.

Plaintiffs' Response:

Undisputed, but incomplete and immaterial. Fair Fight Action asked declarants clarifying questions and was in conversation with declarants about potential revisions. Sept. 28, 2019 Email, Defs.' Ex. 57 at Pltfs-FFA-004815. The declarant signed the final version under oath. *Id.* The declarations submitted in this litigation were signed and sworn to under oath. Any earlier drafts that were not signed or sworn to are immaterial to the accuracy of the submitted declarations. The immateriality of Statement No. 19 is further demonstrated by Defendants' failure to discuss it in their brief.*

20.

Defendants' Statement No. 20:

Fair Fight Action informed declarants during the drafting process that they wanted the declarations to “narrate as deeply personal, compelling stories.” May 9,

2019 Email: V. Abhiraman to W. McGinniss, Re: McGinniss Voting Documents, Ex. No. (58) at PLTFS-FFA-003579.

Plaintiffs' Response:

Undisputed, but immaterial. The declarations submitted in this litigation were signed and sworn to under oath. Any earlier drafts that were not signed or sworn to are immaterial to the accuracy of the submitted declarations. The immateriality of Statement No. 20 is further to the issues raised in Defendants' summary judgment motion, as demonstrated by Defendants' failure to discuss it in their brief.*

21.

Defendants' Statement No. 21:

Some of the declarant testimony submitted by Plaintiffs in this lawsuit are unrelated to, and do not support, the claims alleged in this case, such as that of Courtney Mitchell, who complained of a power outage occurring at an early voting polling location she attempted to visit in Fulton County (Declaration of C. Mitchell, Ex. No. (59) at PLTFS000671-73), or that of Hattie M. Allen, who stated that after her absentee ballot was rejected for improper verification, she was offered a complementary ride to the polls and voted in person without issue (Declaration of H. Allen, Ex. No. (60) at PLTFS000632), or that of Kristen

Morris, who complained of how long it took the postal service to deliver her ballot (K. Morris Dep., Ex. No. (28) at 29:618).

Plaintiffs' Response:

Disputed and immaterial. Ms. Allen's declaration supports improper absentee ballot rejection practices. Her declaration states that her "absentee ballot was rejected because [she] wrote [her] name as Hattie Allen instead of Hattie M. Allen." Allen Decl., Defs.' Ex. 60 at Pltfs000632.

Moreover, Statement No. 21 is immaterial in light of the hundreds of declarations that relate to and support the claims at issue in this case, as is further demonstrated by Defendants' failure to discuss it in their summary judgment motion briefing.*

22.

Defendants' Statement No. 22:

Some declarants submitted declarations that simply confirmed their voting experience proceeded properly, such as Mona Chase, who stated in her declaration that she requested an absentee ballot, decided not to use it, and thus submitted a provisional ballot when she later voted in person.³ Declaration of M. Chase, Ex.

³ This process followed Georgia law as it existed in 2018. Following the passage of HB 316, a voter who had not yet returned his or her ballot and decided to vote in person could do so without using a provisional ballot by signing an affidavit and

No. (61) at PLTFS000261.

Plaintiffs' Response:

Disputed and immaterial. Statement No. 22 is disputed to the extent it suggests Ms. Chase's voting experience was standard and proper. Ms. Chase should have been allowed to cancel her absentee ballot and vote a regular ballot, as others were permitted to do. *See* Exh. 65, Bromley Decl., Pltfs000425 ¶ 3; Exh. 66, Hill Decl., Pltfs000472 ¶ 4.

Moreover, Statement No. 22 is immaterial in light of the hundreds of declarations that relate to and support the claims alleged in this case. The immateriality of Statement No. 22 is further demonstrated by Defendants' failure to discuss it in their summary judgment motion briefing.*

23.

Defendants' Statement No. 23:

Some of the declarations submitted by Plaintiffs in this lawsuit relate only to issues allegedly experienced with voting machines that are no longer used in this State. See, e.g., Declaration of T. Adams, Ex. No. (62) at PLTFS000355; Declaration of T. Alridge, Ex. No. (63) at PLTFS000478; Declaration of C.

having the absentee ballot cancelled. See O.C.G.A. § 21-2-388; see also HB 316, Act 24, lines 974–990.

Massiah, Ex. No. (64) at PLTFS000817; Declaration of J. McGhin, Ex. No. (65) at PLTFS000895-97.

Plaintiffs' Response:

Undisputed, but immaterial in light of the hundreds of declarations that relate to and support the claims alleged in this case. The immateriality of Statement No. 23 is demonstrated by Defendants' failure to discuss it their summary judgment motion briefing.*

24.

Defendants' Statement No. 24:

Numerous declarants admitted that whatever issue they may have experienced was resolved and that they have since been able to vote without issue. See, e.g., (J. Thomas Dep., Ex. No. (37) at 25:14-19); Robyn Roberts (R. Roberts Dep., Ex. No. (31) at 36:13-37:2 (on behalf of her daughter)); Sue Murphy (S. Murphy Dep., Ex. No. (29) 24:22-25:3; 37:2-5); Thyrsa Gravely (T. Gravely Dep., Ex. No. (15) at 64:6-10); Phoebe Einzig-Roth (P. Einzig Roth Dep., Ex. No. (12) at 29:2-7).

Plaintiffs' Response:

Partially disputed and immaterial. Statement No. 24 is disputed because the five declarations cited do not support the conclusion that the underlying issue with the declarants' registrations was necessarily resolved, even though they may have

been able to vote in subsequent elections.

Moreover, Statement No. 24 is immaterial to the issues raised in Defendants' summary judgment motion because a burden on the right to vote can be unconstitutional, even if the vote is ultimately counted. The immateriality is further demonstrated by Defendants' failure to discuss it in their brief.*

25.

Defendants' Statement No. 25:

Some declarants were unaware their declarations were being used in this lawsuit before being contacted to sit for a deposition. See, e.g., E. Walden Dep., Ex. No. (40) at 22:10-13; J. Bartley Dep., Ex. No. (4) at 28:6-12; D. Brown Dep., Ex. No. (6) at 21:7-10.

Plaintiffs' Response:

Undisputed as to these three declarants, but immaterial to the issues raised in Defendants' summary judgment motion because declarants' awareness of this litigation has no bearing on the fitness of their testimony as evidence. The immateriality of Statement No. 25 is further demonstrated by Defendants' failure to discuss it in their brief.*

26.

Defendants' Statement No. 26:

Fair Fight Action's political and policy interests are not limited to voting; for

example, Fair Fight coordinated with, and offered behind-the-scenes support to, Planned Parenthood, NARAL Pro-Choice Georgia, the ACLU of Georgia and other groups with “the ultimate goal to kill” the 201920 HB 481 Living Infants Fairness and Equality (LIFE) Act. March 19, 2019 Email: H. Holley to S. Fox, A. Rosato, Aimee, L. Simmons, HB 481 Press Conference, Ex. No. (66) at PLTFS-FFA-005428.

Plaintiffs’ Response:

Disputed. Fair Fight Action’s core mission is to engage the Georgia electorate and get out the vote. Exh. 16, Sept. 16, 2019 Groh-Wargo Dep. 29:9-19. Fair Fight Action also engages with and advocates for Georgians on other issues, including the expansion of health care, and does not attempt to hide its support for reproductive rights groups. Exh. 16, Sept. 16, 2019 Groh-Wargo Dep. 30:23-31:14 (“A variety of progressive causes . . . the organization has also advocated around abortion access, reproductive rights, healthcare.”).

Moreover, Statement No. 26 is immaterial to the issues raised in Defendants’ summary judgment motion, as demonstrated by Defendants’ failure to discuss it in their brief.*

27.

Defendants’ Statement No. 27:

Fair Fight Action sent draft form letters purporting to oppose 2019-20 HB 481 to individuals encouraging them to “fight Brian Kemp’s antiabortion bill.” March 19, 2019 Email: H. Holley to BCC [Numerous], REQUEST: Local Elected Officials Sign Onto Letter Opposing HB 481, Ex. No. (67) at PLTFS-FFA-005431-33.

Plaintiffs’ Response:

Undisputed, but immaterial because Fair Fight Action’s advocacy for the expansion of health care does not negate the fact that its core mission is to engage the Georgia electorate and get out the vote. Exh. 16, Sept. 16, 2019 Groh-Wargo Dep. 29:9-19.

The immateriality of Statement No. 27 is further demonstrated by Defendants’ failure to discuss it in their brief.*

28.

Defendants’ Statement No. 28:

Fair Fight Action and its affiliated groups also disseminate various political advertisements regarding election administration. See, e.g., Fair Fight Action, [NEW TV AD: Georgia’s chief elections officer is passing the buck on his responsibilities](#), Facebook (Jun. 16, 2020), available at <https://www.facebook.com/FairFightAction/posts/1991726570957844>.

Plaintiffs' Response:

Disputed and immaterial. The cited source is not a “political advertisement” and does not identify what “affiliated groups” references. Fair Fight Action does not have any role, and does not participate, in the Fair Fight PAC, and staff allocate and track their time between the PAC and Fair Fight Action. Exh. 17, Oct. 30, 2019 Groh-Wargo Dep. 103:18-23.

Moreover, Statement No. 28 is immaterial to the issues raised in Defendants’ summary judgment motion, as demonstrated by Defendants’ failure to discuss it in their brief.*

II. The intervening legislative and administrative actions taken since this lawsuit was filed.

29.

Defendants’ Statement No. 29:

After this lawsuit was filed, the General Assembly enacted an overhaul of Georgia’s election laws with the enactment of House Bill 316 (“HB 316”) on or about April 2, 2019 and House Bill 392 (“HB 392”) on or about July 1, 2019. HB 316, 155th Gen. Assemb., Reg. Sess. (Ga. 2019), available at <http://www.legis.ga.gov/Legislation/en-US/display/20192020/HB/316> (Signed by the Governor as Act 24); HB 392, 155th Gen. Assemb., Reg. Sess. (Ga. 2019), available at <http://www.legis.ga.gov/Legislation/en-US/display/20192020/HB/392>

(Signed by the Governor as Act 75).

Plaintiffs' Response:

Disputed. Plaintiffs object to Statement No. 29 because the effect of HB 316 and HB 392 is a legal question, not a fact, and the Court does not adopt a party's proffered legal conclusion as an undisputed fact. *See Hanover Ins. Co. v. Carroll*, No. 1:13-CV-01802-SCJ, 2015 WL 11163644, at *1 n.1 (N.D. Ga. June 16, 2015) (Jones, J.).⁴

Plaintiffs also dispute the characterization of HB 316 as an “overhaul,” as it left most of the Georgia Election Code unchanged and problems still persist after its passage. For example, even after HB 316 simplified the oath envelope to remove the address and year of birth information, jurisdictions continued to receive outdated absentee ballot envelopes and were told by the SOS to use those envelopes. *See* Exh. 67, Nov. 4, 2019 SOS Email, State-Defendants-00252500. Further, the changes HB 316 did make do not change the Georgia election system if county election officials do not adhere to the new provisions, the SOS does not enforce the new provisions, and Defendants do not obtain uniformity in the county practices pertaining to those new provisions.

⁴ Plaintiffs incorporate this objection into other Responses by denoting it with a cross (†).

30.

Defendants' Statement No. 30:

The passage of these laws constituted a “monumental” change to Georgia election law. Secretary of State Aug. 16, 2019 30(b)(6) Dep., Ex. No. (32) at 182:23-24.

Plaintiffs' Response:

Disputed. Plaintiffs object to Statement No. 30 because the effect of Georgia statutes is a legal question, not a fact.†

Moreover, Plaintiffs dispute HB 316 was “monumental.” Most of the Georgia Election Code was unchanged by HB 316. For example, even after HB 316 simplified the oath envelope to remove the address and year of birth information, jurisdictions continued to receive outdated absentee ballot envelopes and were told by the SOS to use those envelopes. *See* Exh. 67, Nov. 4, 2019 SOS Email, State-Defendants-00252500. Further, the changes HB 316 did make do not change the Georgia election system if county election officials do not adhere to the new provisions, the SOS does not enforce the new provisions, and Defendants do not obtain uniformity in the county practices pertaining to those new provisions.

31.

Defendants' Statement No. 31:

As mandated by HB 316, the Secretary procured new voting equipment

called ballot-marking devices (BMDs), which have been fully distributed and are currently in use in all counties in Georgia. C. Harvey June 29, 2020 Declaration, Ex. No. (131) at ¶ 3.

Plaintiffs' Response:

Partially disputed and immaterial. Plaintiffs object to Statement No. 31 because the requirements of HB 316 are a legal question, not a fact.† Statement No. 31 is immaterial to the issues raised in Defendants' summary judgment motion, as demonstrated by Defendants' failure to discuss it in their brief.*

32.

Defendants' Statement No. 32:

These BMDs replaced the Direct-Recording Electronic Voting Machines (DREs) that were previously used in Georgia, including during the November 2018 general elections. Id.

Plaintiffs' Response:

Undisputed, but immaterial to the issues raised in Defendants' summary judgment motion, as demonstrated by Defendants' failure to discuss it in their brief.*

33.

Defendants' Statement No. 33:

As of December 30, 2019, DREs have been decertified by the Secretary of

State and can no longer be used in Georgia elections. C. Harvey Dep., Ex. No. (19) at 365:20–367:7; C. Harvey June 29, 2020 Declaration, Ex. No. (131) at ¶ 3, Ex. A.

Plaintiffs’ Response:

Undisputed, but immaterial to the issues raised in Defendants’ summary judgment motion, as demonstrated by Defendants’ failure to discuss it in their brief.*

34.

Defendants’ Statement No. 34:

HB 392 “requires the Secretary of State to promulgate a regulation establishing industry-based security standards and to annually certify that Georgia is substantially complying with its own security regulations.” O.C.G.A. § 45-13-20(14.1).

Plaintiffs’ Response:

Disputed and immaterial. Plaintiffs object to Statement No. 34 because the requirements of HB 392 are a legal question, not a fact.†

Statement No. 34 does not correctly quote the cited source. The cited source provides: “To promulgate a regulation that establishes security protocols for voter registration information maintained and developed by the Secretary of State . . . The regulation shall be generally consistent with current industry security standards The Secretary of State shall, at least annually, certify that the State

of Georgia has substantially complied with the requirements of the regulation promulgated pursuant to this Code section.” O.C.G.A. § 45-13-20(14.1)

Moreover, Statement No. 34 is immaterial to the issues raised in Defendants’ summary judgment motion, as demonstrated by Defendants’ failure to discuss it in their brief.*

35.

Defendants’ Statement No. 35:

On or about August 13, 2019, the Secretary promulgated the regulation required by HB 392, (see Ga. Comp. R. & Regs. 590-8-3-.01), and on or about December 31, 2019 certified the State’s compliance with it. C. Harvey June 29, 2020 Declaration, Ex. No. (131) at ¶ 4, Ex. B.

Plaintiffs’ Response:

Undisputed, but immaterial. Plaintiffs object to Statement No. 35 because the requirements of HB 392 are a legal question, not a fact.† Moreover, Statement No. 35 is immaterial to the issues raised in Defendants’ summary judgment motion, as demonstrated by Defendants’ failure to discuss it in their brief.*

36.

Defendants’ Statement No. 36:

The Secretary has also joined the Electronic Registration Information Center (“ERIC”), a non-profit organization that assists states with keeping accurate voter

registration rolls. May 22, 2019 Email: S. Hamlin to [Numerous], Georgia's Membership and Public Announcement, Ex. No. (68) at STATE-DEFENDANTS-00202598; see also Secretary Raffensperger Announces Major Partnership to Enhance Voter Registration Systems, Georgia Secretary of State, available at https://sos.ga.gov/index.php/general/_secretary_raffensperger_announces_major_partnership_to_enhance_voter_registration_systems (last visited Jun. 27, 2020).

Plaintiffs' Response:

Undisputed.

37.

Defendants' Statement No. 37:

The Georgia General Assembly considered legislation offered by the Secretary this year which addressed lines at polling places. As introduced, that legislation would require local officials monitor wait times at polling locations for precincts with more than 2,000 electors and require that precinct to be reduced in size if voters experienced a wait time in excess of one hour. See Senate Bill 463, version LC 28 9567 (2020), available at <http://www.legis.ga.gov/Legislation/20192020/191511.pdf>.

Plaintiffs' Response:

Undisputed, but immaterial. Plaintiffs object to Statement No. 37 because

the effect of the proposed legislation is a legal question, not a fact.† Moreover, Statement No. 37 is immaterial to the issues raised in Defendants’ summary judgment motion, as demonstrated by Defendants’ failure to discuss it in their brief.*

38.

Defendants’ Statement No. 38:

Fair Fight Action opposed the provision of this legislation intended to remedy wait times longer than one hour at large precincts. See Mark Niese, Bill to add Georgia precincts faces unexpected opponent: voting groups, Atlanta-Journal Constitution (Mar. 25, 2020), <https://www.ajc.com/news/state--regional-govt--politics/bill-add-georgia-precincts-faces-unexpected-opponent-voting-groups/CqngPZCnA9mSNBqQcRYyxO/>.

Plaintiffs’ Response:

Undisputed, but incomplete. The referenced legislation purported to reduce wait times at polling places by giving counties the option to split precincts, but the legislation did not require counties to notify voters if their precincts were split, and their polling places reassigned. Exh. 1,037, Decl. of Hillary Holley ¶ 11. Fair Fight Action opposed this legislation because, without notice, voters in split precincts would go to the wrong polling place on election day, and be forced to

vote provisionally. *Id.* The legislation created a real risk of voter confusion that Fair Fight Action would have to divert resources to address. *Id.* Moreover, if not offered provisional ballots, these voters might not be able to vote at all. *See* SAMF ¶¶ 1012-25.

In any event, Statement No. 38 is immaterial to the issues raised in Defendants' summary judgment motion, as demonstrated by Defendants' failure to discuss it in their brief.*

III. There is no evidence of intentional discrimination by the State Defendants.

39.

Defendants' Statement No. 39:

The Founder of Fair Fight Action, Stacey Abrams, admitted that she could not point to any evidence of an intentionally discriminatory act by the Secretary of State to disenfranchise Georgia voters. Abrams Dep., Ex. No. (1) at 58:20-59:3.

Plaintiffs' Response:

Disputed. It is disputed because Ms. Abrams did not "admit[] that she could not point to any evidence of an intentionally discriminatory act." Exh. 20, Abrams Dep. 58:20-59:3. To the contrary, she stated that concerns were brought to Brian Kemp's attention but Mr. Kemp took no action to remedy them. Exh. 20, Abrams Dep. 58:20-59:3.

40.

Defendants' Statement No. 40:

Fair Fight Action's CEO, Lauren Groh-Wargo, testified on behalf of Fair Fight Action that intentional discrimination by the State of Georgia was implied by its legislatures' adoption of O.C.G.A. 21-2-220.1, the so-called "exact match" law, which she believed had previously been rejected for preclearance by the United State Department of Justice. Ex. No. (13) at 191:925).

Plaintiffs' Response:

Disputed. Ms. Groh-Wargo testified that the Exact Match process had previously failed DOJ preclearance on the basis that it would disproportionately impact voters of color, and did not testify or imply that it did not obtain preclearance later. *See* Exh. 17, Oct. 30, 2019 Groh-Wargo 30(b)(6) Dep. 191:9-25 ("... the D.O.J. sent to the State of Georgia during the Obama era that, no, State of Georgia, you cannot implement 'exact match' in this way, it will disproportionately impact voters of color, naturalized citizens."). Plaintiffs further dispute Statement No. 40 because it incorrectly refers to O.C.G.A. § 21-2-220.1 as an "exact match" law. O.C.G.A. § 21-2-220.1 did not require, and as amended by HB 316 does not require, the exact match required by the SOS's Exact Match Policy.

41.

Defendants' Statement No. 41:

As Plaintiffs' expert Dr. McCrary testified, the HAVA-match process Georgia first implemented was pre-cleared pursuant to a settlement agreement, (Ex. No. (25) at 187:1-188:8),⁵ and the Secretary of State's representative testified that the intent of the law was to verify voter accuracy. Ex. No. (19) at 186:17-19.

Plaintiffs' Response:

Partially disputed. Statement No. 41 is disputed to the extent it suggests that Georgia's match process is required by HAVA and that the match process Georgia *first* implemented was pre-cleared. HAVA does not require an exact match of a registration applicant's first name, last name, and date of birth and does not specify the consequences for a failure to match. *See* 52 U.S.C. § 21083(a)(5)(B). And Dr. McCrary's discussion of the settlement referred to Georgia's "newly revised voter verification process." *See* Exh. 68, McCrary Dep. 187:1-188:4. Plaintiffs do not dispute that the Secretary of State's representative testified that he did not "know that we ever talked beyond the idea of the goal of 'match' was to verify voter accuracy." Exh. 21, Dec. 5, 2019 Harvey Dep. 186:1-19. Plaintiffs dispute

⁵ Code Section 21-2-220.1, Georgia's existing HAVA-match process, was first adopted in 2017, after pre-clearance ended following Shelby Cty., Ala. v. Holder, 570 U.S. 529 (2013).

Statement No. 41, however, to the extent it suggests that the only intent of the Exact Match policy was to verify voter accuracy.

42.

Defendants' Statement No. 42:

The only two individuals identified by Plaintiffs as having been affected by the so-called "exact match" law, Ms. Ngoc Anh Thi Tran and Dr. Carlos Del Rio, did not claim that they were intentionally discriminated against. Declaration of N. Tran, Ex. No. (69) at PLTFS-001119-22; Declaration of C. del Rio, Ex. No. (70) at PLTFS000363-64.⁶

Plaintiffs' Response:

Partially disputed and immaterial. It is undisputed that Ms. Tran and Dr. del Rio did not allege intentional discrimination in their declarations, but this is immaterial because whether the Exact Match policy is intentionally discriminatory

⁶ Plaintiffs produced a signed declaration from Mrs. Tran that is not in English. Defendants understand that Mrs. Tran's first language is Vietnamese and assume that her declaration is in Vietnamese. Plaintiffs also produced an unsigned declaration bearing Mrs. Tran's name that is written in English. Defendants refer here to the English-language document. In doing so, they do not admit that the document is authentic, admissible, or an accurate translation of Mrs. Tran's signed declaration. Defendants also refer to the declaration and deposition testimony of Cam Ashling, a volunteer who met Mrs. Tran while canvassing and described Mrs. Tran's experience from her perspective. Declaration of C. Ashling, Defs.' Ex. No. (71) at PLTFS000946-47.

is outside of the scope of their personal knowledge and their declarations.

Plaintiffs dispute that these are the only individuals Plaintiffs have identified as affected by the SOS's Exact Match Policy. Plaintiffs have identified Phoebe Rachael Einzig-Roth and Kia Marlene Carter, both of whom were informed that they were non-matches for citizenship when they arrived at the polls. Exh. 69, Einzig-Roth Decl. ¶ 4; Exh. 70, Carter Decl. ¶ 4. Plaintiffs also have identified others, including Vanessa Alva, whose status displayed as "pending" on her My Voter Page and whose absentee ballot was listed as in "challenged" status for DDS and Citizenship verification as a result of the Exact Match policy. Exh. 71, Email Correspondence with SOS, Ga01225644-645. Plaintiffs also identified Gokulakrishnan Parthasarathy, who became a naturalized citizen on August 23, 2019, and registered to vote online. When his status still did not display as "active" by November 5, 2019, he contacted the Secretary of State. Exh. 72, Email Correspondence with SOS, State-Defendants-00742577. Kevin Rayburn replied to Parthasarathy that Fulton County had processed the application, but required "one more step" and that the county "*is mailing . . . the attached letter*"—indicating that the county had not previously mailed Parathasarathy's letter. Exh. 72, Email Correspondence with SOS, State-Defendants-00742577 (emphasis added). Subsequent emails between Parthasarathy and Rayburn demonstrate that the

“attached letter” from the SOS requested that Parthasarathy supply proof of citizenship. Exh. 73, Email Correspondence, State-Defendants-00743503.

43.

Defendants’ Statement No. 43:

Ms. Groh-Wargo could not identify a specific instance when former Secretary of State Brian Kemp intentionally discriminated against Georgia minority voters. Ex. No. (17) at 82:7-16.

Plaintiffs’ Response:

Undisputed, but incomplete. Ms. Groh-Wargo testified that both the “actions” and “inactions” of the SOS have led to discriminatory voting barriers. Exh. 17, Oct. 30, 2019 Groh-Wargo Dep. 188:17-189:12. Ms. Groh-Wargo testified that “[i]nactions like lack of training, lack of resources, lack of enforcing the law and the constitution, all of those add up together to be reminiscent of the Jim Crow era in terms of intent and practical outcomes.” Exh. 17, Oct. 30, 2019 Groh-Wargo Dep. 189:8-12. In addition, Ms. Groh-Wargo said the state evinced intent through a “compendium of actions and inactions:” “large-scale ‘use it or lose it’ purges,” the “implementat[ion] and execut[ion] of ‘exact match’ after being shut down by the D.O.J. under Obama and then later implementing it,” the “200 some polling places that were closed in the past couple of years, knowing full well those

are disproportionately in communities of color,” the “inaccuracy in voter rolls,” the “hackable voting technology,” and “the inadequate training and resourcing around absentee ballots and provisional ballots.” Exh. 17, Oct. 30, 2019 Groh-Wargo Dep. 114:25-115:20.

In addition, Statement No. 43 is immaterial because evidence of intentional discrimination is not limited to direct testimony assessing a particular individual’s subjective intent. *See Village of Arlington Heights v. Metropolitan Housing Development Corp.*, 429 U.S. 252, 267-68 (1977). To the contrary, evidence of intentional discrimination is often the result of inferences from objective information including the historical background of decisions, the sequence of events surrounding decisions, and procedural and substantive departures from standard process, among other facts. *See id.*

44.

Defendants’ Statement No. 44:

When asked, Ms. Groh-Wargo also could not identify an example of how the State Election Board members have intentionally discriminated against minority groups. *Id.* at 82:2-6.

Plaintiffs’ Response:

Undisputed, but immaterial because evidence of intentional discrimination is

not limited to direct testimony assessing a particular individual's subjective intent. *See Village of Arlington Heights v. Metropolitan Housing Development Corp.*, 429 U.S. 252, 267-68 (1977). To the contrary, evidence of intentional discrimination is often the result of inferences from objective information including the historical background of decisions, the sequence of events surrounding decisions, and procedural and substantive departures from standard process, among other facts. *See id.*

45.

Defendants' Statement No. 45:

Ms. Groh-Wargo testified that she had no knowledge of a Georgia voter being told they could not vote due to their race (*Id.* at 118:14-18), and when testifying on behalf of Fair Fight Action, she, like Ms. Abrams, pointed only to State Defendants' alleged inaction as implying intentional discrimination. Ex. No. (13) at 189:8-12.

Plaintiffs' Response:

Disputed and immaterial. Statement No. 45 is disputed because Ms. Groh-Wargo testified that both the "actions" and "inactions" of the SOS have led to discriminatory voting barriers. Exh. 17, Oct. 30, 2019 Groh-Wargo Dep. 188:17-189:12. Ms. Groh-Wargo testified that "[i]nactions like lack of training, lack of

resources, lack of enforcing the law and the constitution, all of those add up together to be reminiscent of the Jim Crow era in terms of intent and practical outcomes.” Exh. 17, Oct. 30, 2019 Groh-Wargo Dep. 189:8-12. In addition, Ms. Groh-Wargo said the state evinced intent through a “compendium of actions and inactions:” “large-scale ‘use it or lose it’ purges,” the “implementat[ion] and execut[ion] of ‘exact match’ after being shut down by the D.O.J. under Obama and then later implementing it,” the “200 some polling places that were closed in the past couple of years, knowing full well those are disproportionately in communities of color,” the “inaccuracy in voter rolls,” the “hackable voting technology,” and “the inadequate training and resourcing around absentee ballots and provisional ballots.” Exh. 17, Oct. 30, 2019 Groh-Wargo Dep. 114:25-115:20.

In addition, Statement No. 45 is immaterial because evidence of intentional discrimination is not limited to direct testimony assessing a particular individual’s subjective intent. *See Village of Arlington Heights v. Metropolitan Housing Development Corp.*, 429 U.S. 252, 267-68 (1977). To the contrary, evidence of intentional discrimination is often the result of inferences from objective information including the historical background of decisions, the sequence of events surrounding decisions, and procedural and substantive departures from standard process, among other facts. *See id.*

46.

Defendants' Statement No. 46:

Ms. Groh-Wargo identified various alleged voting-related problems in Georgia while testifying on behalf of Fair Fight Action, such as alleged inaccurate voter rolls and a lack of provisional ballots at the polls, but was unable to provide evidence that these issues occurred as a result of intentional discrimination by Defendants. Id. at 192:1-12.

Plaintiffs' Response:

Disputed and immaterial. Fair Fight Action, as a plaintiff, has provided ample evidence of Defendants' intentional discrimination and Ms. Groh-Wargo pointed to instances of "intentional discrimination" in her testimony. Ms. Groh-Wargo stated that the state evinced intent through a "compendium of actions and inactions:" "large-scale 'use it or lose it' purges," the "implementat[ion] and execut[ion] of 'exact match' after being shut down by the D.O.J. under Obama and then later implementing it," the "200 some polling places that were closed in the past couple of years, knowing full well those are disproportionately in communities of color," the "inaccuracy in voter rolls," the "hackable voting technology," and "the inadequate training and resourcing around absentee ballots and provisional ballots." Exh. 17, Oct. 30, 2019 Groh-Wargo Dep. 114:25-115:20.

In addition, Statement No. 46 is immaterial because evidence of intentional discrimination is not limited to direct testimony assessing a particular individual's subjective intent. *See Village of Arlington Heights v. Metropolitan Housing Development Corp.*, 429 U.S. 252, 267-68 (1977). To the contrary, evidence of intentional discrimination is often the result of inferences from objective information including the historical background of decisions, the sequence of events surrounding decisions, and procedural and substantive departures from standard process, among other facts. *See id.*

47.

Defendants' Statement No. 47:

Care in Action's representative admitted that he [sic] could not testify to Defendants' intent at all, stating: "I've never spoken to Brian Kemp, so I'm not sure that I can determine what his intention is." Care in Action 30(b)(6) Dep., Ex. No. (8) at 141:3-7.

Plaintiffs' Response:

Partially disputed and immaterial. It is undisputed that the quoted testimony has been quoted accurately, but disputed in that the quoted testimony refers only to Brian Kemp.

In addition, Statement No. 47 is immaterial because evidence of intentional

discrimination is not limited to direct testimony assessing a particular individual's subjective intent. *See Village of Arlington Heights v. Metropolitan Housing Development Corp.*, 429 U.S. 252, 267-68 (1977). To the contrary, evidence of intentional discrimination is often the result of inferences from objective information including the historical background of decisions, the sequence of events surrounding decisions, and procedural and substantive departures from standard process, among other facts. *See id.*

48.

Defendants' Statement No. 48:

The representative from Virginia Highland Church, when asked if he believed Defendants intended to discriminate against voters based on race, said “[I]t’s impossible for me to know what anyone’s intentions are.” Virginia Highland Church 30(b)(6) Dep., Ex. No. (39) at 138:10-16.

Plaintiffs' Response:

Undisputed, but immaterial because evidence of intentional discrimination is not limited to direct testimony assessing a particular individual's subjective intent. *See Village of Arlington Heights v. Metropolitan Housing Development Corp.*, 429 U.S. 252, 267-68 (1977). To the contrary, evidence of intentional discrimination is often the result of inferences from objective information including the historical

background of decisions, the sequence of events surrounding decisions, and procedural and substantive departures from standard process, among other facts.

See id.

49.

Defendants’ Statement No. 49:

When the representative from Ebenezer Baptist Church was asked whether the church had any “evidence of a designed intent behind the current Georgia elections system,” he responded only that the church “apparently felt that there was enough evidence to vote unanimously to sue the state of Georgia,” but offered no evidence to support this belief. Ebenezer Baptist Church 30(b)(6) Dep., Ex. No. (11) at 89:21-90:15.

Plaintiffs’ Response:

Undisputed, but immaterial because evidence of intentional discrimination is not limited to direct testimony assessing a particular individual’s subjective intent. *See Village of Arlington Heights v. Metropolitan Housing Development Corp.*, 429 U.S. 252, 267-68 (1977). To the contrary, evidence of intentional discrimination is often the result of inferences from objective information including the historical background of decisions, the sequence of events surrounding decisions, and procedural and substantive departures from standard process, among other facts.

See id.

50.

Defendants’ Statement No. 50:

When asked, the Sixth Episcopal District AME representative could not point to any intentional act of the State Defendants. Sixth Episcopal District AME 30(b)(6) Dep., Ex. No. (34) at 130:10-17; 138:19-139:8; 143:13-17.

Plaintiffs’ Response:

Disputed and immaterial. Statement No. 50 is disputed because Reverend Jackson did point to Exact Match and “Use It or Lose It” as examples of intentional voter suppression. Exh.1, Jackson Dep. 127:2-12. He also pointed to the “Secretary of State’s office [being] responsible for the oversight of the election” and that they “put counties in a position where they could suppress votes.” *Id.* 127:22-128:2.

In addition, Statement No. 50 is immaterial because evidence of intentional discrimination is not limited to direct testimony assessing a particular individual’s subjective intent. *See Village of Arlington Heights v. Metropolitan Housing Development Corp.*, 429 U.S. 252, 267-68 (1977). To the contrary, evidence of intentional discrimination is often the result of inferences from objective information including the historical background of decisions, the sequence of

events surrounding decisions, and procedural and substantive departures from standard process, among other facts. *See id.*

51.

Defendants' Statement No. 51:

The representative from Sixth Episcopal District AME stated that he did not know whether or not the Secretary of State's office intentionally intended to impact the results of the 2018 General Election. Ex. No. (34) at 78:5-9.

Plaintiffs' Response:

Undisputed, but immaterial because evidence of intentional discrimination is not limited to direct testimony assessing a particular individual's subjective intent. *See Village of Arlington Heights v. Metropolitan Housing Development Corp.*, 429 U.S. 252, 267-68 (1977). To the contrary, evidence of intentional discrimination is often the result of inferences from objective information including the historical background of decisions, the sequence of events surrounding decisions, and procedural and substantive departures from standard process, among other facts. *See id.*

52.

Defendants' Statement No. 52:

The Sixth Episcopal District AME said of then-Secretary Brian Kemp's actions regarding the 2018 General Elections: "I don't think he did anything

intentionally.” Ex. No. (34) at 117:11-12.

Plaintiffs’ Response:

Undisputed, but immaterial because evidence of intentional discrimination is not limited to direct testimony assessing a particular individual’s subjective intent. *See Village of Arlington Heights v. Metropolitan Housing Development Corp.*, 429 U.S. 252, 267-68 (1977). To the contrary, evidence of intentional discrimination is often the result of inferences from objective information including the historical background of decisions, the sequence of events surrounding decisions, and procedural and substantive departures from standard process, among other facts. *See id.*

53.

Defendants’ Statement No. 53:

Similarly, the representative from Sixth Episcopal District AME asserted that the State Election Board did a “lousy job of handling elections,” but did not assert that it intentionally stopped Georgia electors from voting. Ex. No. (34) at 117:14-21.

Plaintiffs’ Response:

Undisputed, but immaterial because evidence of intentional discrimination is not limited to direct testimony assessing a particular individual’s subjective intent. *See Village of Arlington Heights v. Metropolitan Housing Development Corp.*, 429

U.S. 252, 267-68 (1977). To the contrary, evidence of intentional discrimination is often the result of inferences from objective information including the historical background of decisions, the sequence of events surrounding decisions, and procedural and substantive departures from standard process, among other facts. *See id.*

54.

Defendants' Statement No. 54:

The representative on behalf of Baconton Missionary Baptist Church ("Baconton") admitted that it did not possess firsthand knowledge of any of the allegations contained in the Amended Complaint and that its understanding of the issues was based on media reports and discussions with counsel. Baconton 30(b)(6) Dep., Ex. No. (3) at 87:7-19.

Plaintiffs' Response:

Disputed and immaterial. Statement No. 54 is disputed because the Reverend Scott stated that he became aware of these issues through the church's youth ministry. Exh. 4, Scott 30(b)(6) Dep. 87:10–18. Baconton also came to learn of the conduct alleged in the complaint through firsthand knowledge, as it expended resources to verify its parishioners' voter status. *Id.* 31:9-32:9.

In addition, Statement No. 54 is immaterial because there is no requirement that an individual plaintiff have firsthand knowledge of all facts alleged in a complaint. Moreover, Statement No. 54 is immaterial to the issues raised in Defendants' summary judgment motion, as demonstrated by Defendants' failure to discuss the statement in their brief.*

55.

Defendants' Statement No. 55:

Baconton's representative admitted that it could not confirm whether the media reports it relied upon were truthful or accurate. Ex. No. (3) at 88:10-15.

Plaintiffs' Response:

Disputed and immaterial. Statement No. 55 is disputed because Reverend Scott was not asked about the truthfulness or accuracy of media reports in the cited portion of the deposition, and explained that he learned about these issues from members of the church's youth ministry who wanted to get involved. Exh. 4, Scott 30(b)(6) Dep. 87:10-18.

In addition, Statement No. 55 is immaterial because there is no requirement that an individual plaintiff have firsthand knowledge of all facts alleged in a complaint.

Moreover, Statement No. 55 is immaterial to the issues raised in Defendants'

summary judgment motion, as demonstrated by Defendants' failure to discuss it in their brief.*

56.

Defendants' Statement No. 56:

When asked, Baconton's representative could not testify as to any instance of any policy or action challenged in this lawsuit disproportionately affecting voters or color or minority voters. Ex. No. (3) at 156:6-22.

Plaintiffs' Response:

Disputed and immaterial. Statement No. 56 is disputed because Reverend Scott was not asked in the cited portion of the deposition about the disparate impact of the policies and actions challenged in this lawsuit on voters of color or minority voters. *See* Exh. 4, Scott 30(b)(6) Dep. 156:6-22. He was asked only about whether he viewed Defendants as having the discretion to enforce state laws. *See id.*

Moreover, Statement No. 56 is immaterial because the fitness of Plaintiffs' evidence of the disproportionate impact of Defendants' policies on voters of color does not turn on whether an individual Plaintiff was able to recall that evidence in a deposition.

57.

Defendants' Statement No. 57:

47

Plaintiffs' declarant witness Hank Bromley, a poll watcher during the 2018 elections, claimed that while he witnessed several African-American individuals being told that they were not on the voter rolls, he did not contend that such was caused by discriminatory intent. Declaration of H. Bromley, Ex. No. (72) at PLTFS000423-46.

Plaintiffs' Response:

Undisputed, but immaterial because Mr. Bromley was not asked to contend or consider whether such acts were caused by discriminatory intent; intent was outside the scope of his declaration. Bromley Decl., Defs.' Ex. 72 at Pltfs000423-6. Further, evidence of intentional discrimination is not limited to direct testimony assessing a particular individual's subjective intent. *See Village of Arlington Heights v. Metropolitan Housing Development Corp.*, 429 U.S. 252, 267-68 (1977). To the contrary, evidence of intentional discrimination is often the result of inferences from objective information including the historical background of decisions, the sequence of events surrounding decisions, and procedural and substantive departures from standard process, among other facts. *See id.*

58.

Defendants' Statement No. 58:

Mr. Bromley admitted that he did not speak to the individuals that were

turned away, and that he could not testify as to the reason they were turned away or whether they were properly registered at that polling location. H. Bromley Dep., Ex. No. (5) at 41:7-23.

Plaintiffs' Response:

Undisputed, but incomplete and immaterial. Mr. Bromley did testify that he observed these individuals' statements to poll workers, the poll workers' statements to these individuals, and these individuals' actions after their conversation with the poll workers. *See* Bromley Dep., Defs.' Ex. 5, at 41:7-23.

In any event, Statement No. 58 is immaterial because evidence of intentional discrimination is often the result of inferences from objective information including the historical background of decisions, the sequence of events surrounding decisions, and procedural and substantive departures from standard process, among other facts. *See id*

59.

Defendants' Statement No. 59:

Poll watcher Diana Cofield claimed that she observed poll workers providing several African-American voters with provisional ballots, but did not state that such was the result of intentional discrimination—she did not know if the individuals were registered to vote or at the right precinct. D. Cofield Dep., Ex.

No. (9) at 32:20-33:1.

Plaintiffs' Response:

Undisputed, but incomplete and immaterial. Ms. Cofield did testify that she spoke to the poll manager Mary Bridges about these African American voters going to the provisional table. And, Ms. Bridges stated that the poll workers were not properly trained. Ms. Cofield also reported the incident to the Troup county election board. Cofield Dep., Defs.' Ex. 9, at 32:20-33:1.

In any event, Ms. Cofield's failure to opine on intentional discrimination is immaterial because evidence of intentional discrimination is often the result of inferences from objective information including the historical background of decisions, the sequence of events surrounding decisions, and procedural and substantive departures from standard process, among other facts. *See id.*

60.

Defendants' Statement No. 60:

Poll watcher Carolyn Stephens noted that several black voters encountered registration problems at the polls, but she did not state that the County or State officials caused such issues, much less that they did so purposefully. Declaration of C. Stephens, Ex. No. (73) at PLTFS000047-48.

Plaintiffs' Response:

Undisputed, but incomplete and immaterial. Ms. Stephens did testify that she

witnessed the poll manager directing these voters to go to other polling locations, or telling them to return to the same polling site later. Stephens Decl., Defs.' Ex. 73, at Pltfs000047-48.

Statement No. 60 is immaterial because whether any individual attributed voting difficulties to any affirmative conduct by Defendants is irrelevant to Defendants' constitutional obligations for the additional reason that the legal standard for intentional discrimination under *Village of Arlington Heights v. Metropolitan Housing Development Corp.*, 429 U.S. 252, 267-68 (1977), does not hinge on the personal knowledge of lay witnesses.

61.

Defendants' Statement No. 61:

Carol Sealey, another of Plaintiffs' declarants, stated in her declaration that Clay County, which is predominately African-American, had all polling locations closed except one, but she did not blame State Defendants for such closures; instead, she blamed County officials: "Voting in Clay County had always been confusing, and then the county just shut down all the polling locations except the one." Declaration of C. Sealey, Ex. No. (74) at PLTFS000881-82.

Plaintiffs' Response:

Partially disputed. Undisputed that the quoted testimony has been cited

correctly, but disputed that the quoted testimony establishes that Ms. Sealey does not attribute any blame to State Defendants for polling place closures.

In any event, Statement No. 61 is immaterial because whether any individual attributed voting difficulties to any affirmative conduct by Defendants is irrelevant to Defendants' constitutional obligations. The legal standard for intentional discrimination under *Village of Arlington Heights v. Metropolitan Housing Development Corp.*, 429 U.S. 252, 267-68 (1977), does not hinge on the personal knowledge of lay witnesses.

62.

Defendants' Statement No. 62:

Margaret Tyson, who opined in her declaration that insufficient notice was given to voters when a polling location was relocated due to the prior location being used as a FEMA disaster recovery center following Hurricane Michael (Declaration of M. Tyson, Ex. No. (75) at PLTFS000677-78), suggested the problem stemmed from a mistake by county personnel rather than intentional conduct. M. Tyson Dep., Ex. No. (38) at 16:22-24.

Plaintiffs' Response:

Partially disputed, but immaterial. It is undisputed that the polling location was relocated due to the prior location being used as a FEMA disaster recovery

center. It is disputed that Ms. Tyson suggested that the problem stemmed from a mistake by county personnel rather than intentional conduct. Ms. Tyson testified that she wanted votes to be counted, “even if it was a mistake.” Tyson Dep., Defs.’ Ex. 38 at 16:22-24. Ms. Taylor’s testimony does not address whether intentional mistakes caused the voting difficulties that she observed on Election Day.

Moreover, Statement No. 62 is immaterial because whether any individual attributed voting difficulties to any affirmative conduct by Defendants is irrelevant to Defendants’ constitutional obligations for the additional reason that the legal standard for intentional discrimination under *Village of Arlington Heights v. Metropolitan Housing Development Corp.*, 429 U.S. 252, 267-68 (1977), does not hinge on the personal knowledge of lay witnesses.

63.

Defendants’ Statement No. 63:

Dr. Herron,⁷ who opined on polling place adjustments in Georgia, did not weigh in on whether Georgia officials knew of the purported effects on voters of moving polling locations. M. Herron Dep., Ex. No. (20) at 28:1229:20.

Plaintiffs’ Response:

⁷ Defendants have moved to exclude, in its entirety, the testimony of Dr. Herron. See Doc. No. [406].

Undisputed, but immaterial. Statement No. 63 is immaterial because intent was outside the scope of Dr. Herron's report and Dr. Herron's report is only part of Plaintiffs' evidence pertaining to polling place closures and changes. *See* SAMF ¶¶ 958-93. The immateriality of Statement No. 63 is further demonstrated by Defendants' failure to discuss it in their summary judgment motion briefing.*

64.

Defendants' Statement No. 64:

Dr. Stephen Graves,⁸ who opined on polling place wait times, stated that he could not testify about the intent of Georgia State or County policymakers. S. Graves Dep., Ex. No. (16) at 20:15-24.

Plaintiffs' Response:

Undisputed, but immaterial. Statement No. 64 is immaterial because intent was outside the scope of Dr. Graves's report. The immateriality of Statement No. 64 is further demonstrated by Defendants' failure to discuss it in their summary judgment motion briefing.*

65.

Defendants' Statement No. 65:

⁸ Defendants have moved to exclude, in its entirety, the testimony of Dr. Graves. *See* Doc. No. [400].

Dr. Minnite,⁹ who opined on voter fraud in Georgia, did not allege that Georgia legislators intentionally passed discriminatory laws. L. Minnite Dep., Ex. No. (27) at 51:13-16.

Plaintiffs' Response:

Undisputed, but immaterial. Statement No. 65 is immaterial because intent was outside the scope of Dr. Minnite's report. The immateriality of Statement No. 65 is further demonstrated by Defendants' failure to discuss it in their summary judgment motion briefing.*

66.

Defendants' Statement No. 66:

Regarding voting machines, Plaintiffs' proffered expert Dr. Halderman¹⁰ admitted he did not review or allege any intentional conduct. A. Halderman Dep., Ex. No. (18) at 15:7-15.

Plaintiffs' Response:

Undisputed, but immaterial. Statement No. 66 is immaterial because intent was outside the scope of Dr. Halderman's report. The immateriality of Statement

⁹ Defendants have moved to exclude, in its entirety, the testimony of Dr. Minnite. See Doc. No. [392].

¹⁰ Defendants have moved to exclude, in its entirety, the testimony of Dr. Halderman. See Doc. No. [401].

No. 66 is further demonstrated by Defendants' failure to discuss it in their summary judgment motion briefing.*

67.

Defendants' Statement No. 67:

Dr. Halderman agreed the voting system was not intentionally designed to be vulnerable to hacking. Ex. No. (18) at 192:15-20.

Plaintiffs' Response:

Undisputed, but incomplete and immaterial. The statement is incomplete because Dr. Halderman testified that the system was negligently maintained. Exh. 74, Halderman Dep. 192:15-20. The statement is also immaterial because intent was outside the scope of Dr. Halderman's report.

68.

Defendants' Statement No. 68:

Dr. Halderman admitted that he never looked at any racial data to determine if there was any disparate impact regarding the State's voting machines. Ex. No. (18) at 13:25-15:15.

Plaintiffs' Response:

Undisputed, but immaterial. Statement No. 68 is immaterial because it is outside the scope of Dr. Halderman's report. The immateriality of Statement No. 68 is further demonstrated by Defendants' failure to discuss it in their summary

judgment motion brief.*

69.

Defendants' Statement No. 69:

Mr. Kennedy,¹¹ who opined regarding training, did not offer any opinion as to the alleged discriminatory intent of Defendants. Kennedy Dep., Ex. No. (22) at 27:11-16.

Plaintiffs' Response:

Undisputed, but immaterial. Statement No. 69 is immaterial because intent was outside the scope of Mr. Kennedy's report. The immateriality of Statement No. 69 is further demonstrated by Defendants' failure to discuss it in their summary judgment motion briefing.*

70.

Defendants' Statement No. 70:

Dr. Daniel Smith¹² said he was "absolutely not" saying that election officials were engaged in intentional discrimination against African-American voters in rejecting absentee ballots. D. Smith Dep., Ex. No. (35) at 139:2-7. He also did not

¹¹ Defendants have moved to exclude, in its entirety, the testimony of Mr. Kennedy. See Doc. No. [403].

¹² Defendants have moved to exclude, in its entirety, the testimony of Dr. Smith. See Doc. No. [405].

opine that Defendants had engaged in “voter” suppression, stating that the term “carries more baggage than utility” and “has become a partisan term.” Ex. No. (35) at 154:17-24; 155-19-156:13.

Plaintiffs’ Response:

Undisputed, but immaterial. Statement No. 70 regarding intentional discrimination is immaterial because intent was outside the scope of Dr. Smith’s report. The statement regarding voter suppression is also immaterial because the propriety of the phrase “voter suppression” was also outside the scope of Dr. Smith’s report. The immateriality of these statements is further demonstrated by Defendants’ failure to discuss them in their summary judgment motion briefing.*

71.

Defendants’ Statement No. 71:

Dr. McDonald¹³ admitted that he did not “have any knowledge of the intent of the Secretary of State’s office behind their list maintenance procedures.” M. McDonald Dep., Ex. No. (26) at 18:11-15.

Plaintiffs’ Response:

Undisputed, but immaterial. Statement No. 71 is immaterial because intent

¹³ Defendants have moved to exclude, in its entirety, the testimony of Dr. McDonald. See Doc. No. [402].

was outside the scope of Dr. McDonald report.

72.

Defendants' Statement No. 72:

Dr. McDonald took no position on any racial relation to the particular voting practices he evaluated. Ex. No. (26) at 38:17-38:23; 40:4-12.

Plaintiffs' Response:

Undisputed, but immaterial. Statement No. 72 is immaterial because it is outside the scope of Dr. McDonald's report. The immateriality of Statement No. 72 is further demonstrated by Defendants' failure to discuss it in their summary judgment motion briefing.*

73.

Defendants' Statement No. 73:

Dr. Peyton McCrary,¹⁴ another of Plaintiffs' experts who opined about the history of Georgia's voter-registration practices and systems, specifically did not offer any opinion about whether any part of the current voting system was adopted or enacted with discriminatory intent. P. McCrary Dep., Ex. No. (25) at 120:25-121:20; 209:2-210:18.

Plaintiffs' Response:

¹⁴ Defendants have moved to exclude, in its entirety, the testimony of Dr. McCrary. See Doc. No. [404].

Undisputed, but immaterial. Statement No. 73 is immaterial because intent was outside the scope of Dr. McCrary's report. The immateriality of Statement No. 73 is further demonstrated by Defendants' failure to discuss it in their summary judgment motion briefing.*

74.

Defendants' Statement No. 74:

Dr. McCrary did not opine on the intent behind any Georgia election practice. Ex. No. (25) at 121:05-121:08; 121:16-121:04; 170:02-09; 199:13-200:10; 210:09-210:18. He did opine, without evidence, that voter suppression "tends to be the work of Republican Parties and state legislatures." Ex. No. (25) at 72:21-73:16.¹⁵

Plaintiffs' Response:

Partially disputed and immaterial. Undisputed as to the first sentence, but immaterial because it is outside the scope of Dr. McCrary's report, and the immateriality of this sentence is further demonstrated by Defendants' failure to discuss it in their summary judgment motion briefing.* Disputed as to the second

¹⁵ Plaintiffs' proffered expert Dr. Adrienne Jones opined, also without evidence, that the federal government is engaging in voter suppression. Ex. 78. No. (21) at 64:7-11. She also alleged that Georgia engaged in intentional voter disenfranchisement in 2018, without evidence, based on largely the same theories of Plaintiffs' Complaint. *Id.* at 48:7-10; 48:15-22.

sentence because Dr. McCrary provided a lengthy history to support his statement. For example, he discussed partisan politics driving enforcement decisions during the George W. Bush administration. Exh. 68, McCrary Dep. 108:4-109:3.

75.

Defendants' Statement No. 75:

The representative of the Secretary of State's office, Chris Harvey, testified unequivocally that there is nothing "[it] do[es] that encourages or allows or suggests any discrimination in voting." Secretary of State Jan. 6, 2020 30(b)(6) Dep., Ex. No. (33) at 140:6-8.

Plaintiffs' Response:

Undisputed that the testimony is quoted correctly but disputed as to the testimony's accuracy. The Secretary of State's office has encouraged discrimination in voting by, *inter alia*, failing to provide adequate training regarding compliance with the Voting Rights Act, *see* Exh. 75, Rayburn Dep. 162:18-22; Exh. 25, Jan. 6, 2020 SOS 30(b)(6) Dep. 142:16-144:9; Exh. 76, Kemp Dep. 67:5-17, 67:23-68:3; Exh. 35, 2020 Poll Worker Manual, State-Defendants-00867638 at -00867692-98; 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>.

IV. Training of superintendents and registrars.

76.

Defendants' Statement No. 76:

In carrying out the statutory obligations imposed upon the Office of the Secretary of State, the Secretary conducts annual training courses in conjunction with the Georgia Association of Voter Registration and Election Officials (GAVREO).¹⁶ Ex. No. (33) at 35:18-23; see also GAVREO Presentations, Ex. No. (90) at STATE-DEFENDANTS-00002381–00007528.

Plaintiffs' Response:

Partially disputed. Undisputed that the SOS conducts annual training courses in conjunction with GAVREO but disputed that the SOS carries out its statutory obligations given the inadequacy of the SOS's training. *See generally* Expert Report of Kennedy, ECF No. 167; SAMF ¶¶ 309-321, 327-388.

77.

Defendants' Statement No. 77:

Superintendents and registrars must also become certified by completing a certification program approved by the Secretary of State and maintain certification

¹⁶ The Georgia Association of Election Officials and the Voter Registrars Association of Georgia were previously two separate entities that consolidated to form GAVREO. Ex. No. (32) at 35:16-18.

by completing a minimum of 12 hours' training annually. Ex. No. (32) at 98:22-99:10; Ex. No. (33) at 35:18-21; Georgia Election Official and Registrar Certification Courses, Ex. No. (90) at STATE-DEFENDANTS-00007768–00008731.

Plaintiffs' Response:

Partially disputed. Statement No. 77 is disputed to the extent it suggests that all superintendents and registrars actually complete this program or that the program is adequate to address the election problems at issue in this case.

Defendants do not enforce the certification requirement, and the certification program is not adequate to address the election problems at issue in this case. *See* Exh. 23, Aug. 16, 2019 SOS 30(b)(6) Dep. at 176:6-21, 180:13-18; SAMF ¶¶ 309-321, 327-388.

78.

Defendants' Statement No. 78:

The Secretary's office disseminates "Election Updates," "Election Nuggets," and monthly webinars ("3T's") to provide additional guidance to superintendents and registrars in the form of webinars and bulletins. Ex. No. (32) at 30:20-31:13; see also 3T's Through 2018, Ex. No. (90) at STATE-DEFENDANTS-00000001–00002029; Election Nuggets Through 2018, Ex. No. (90) at STATE-

DEFENDANTS-00002030–00002068; Election Updates Through 2018, Ex. No. (90) at STATE-DEFENDANTS-00002069–00002380; GEOA-VRAG Presentations, Ex. No. (90) at STATE-DEFENDANTS-00002381-00007528; Certification Courses, Ex. No. (90) at STATE-DEFENDANTS-00007768-00008731; 3T’s From 2019, Ex. No. (90) at STATE-DEFENDANTS-00008732–00008951.

Plaintiffs’ Response:

Partially disputed. Statement No. 78 is disputed to the extent it suggests superintendents and registrars receive adequate guidance from the SOS. The SOS does not require anyone to view these “guidance” documents and does not know who read, watched or understood the training materials. Exh. 23, Aug. 16, 2019 SOS 30(b)(6) Dep. 96:5-97:3 (“Q: Do you have any, any way to make sure that local officials review stuff that you put out? A: I think the answer to that is no. We can’t assure that they do it. No, we don’t have a way to do that.”). Further, as described in SAMF ¶¶ 309-321, 327-388, 464-470, 480-482, 537, the SOS’s training materials inadequately address the election problems at issue in this case.

79.

Defendants’ Statement No. 79:

To facilitate the prompt and efficient distribution of these materials, the

Secretary utilizes “Firefly,” a central repository for training materials and election information. K. Rayburn Dep., Ex. No. (30) at 103:9104:2).

Plaintiffs’ Response:

Partially disputed. Not disputed that the SOS uses Firefly and that Firefly is a central repository for training materials and election information, but disputed to the extent that Statement No. 79 implies Firefly is an appropriate or effective distribution mechanism for training materials and election information. While Firefly allows these materials and information to be distributed, the SOS does not know whether county election officials actually read or understand the training materials and election information that is distributed. Exh. 21, Dec. 5, 2019 Harvey Dep. 185:13-18 (“Q: Am I correct that you don’t have any way of knowing who – which county election officials will actually go into Firefly and read – A: Correct. Q: --what you’ve told them is there? A: Correct.”). Further, as described in SAMF ¶¶ 309-321, 327-388, the materials that exist on Firefly inadequately address the election problems at issue in this case.

80.

Defendants’ Statement No. 80:

Each county is assigned a liaison within the Secretary’s Office, who distributes materials directly to their assigned counties and is a central point of

contact between a county and the Secretary's Office. Ex. No. (19) at 60:9–11.

Plaintiffs' Response:

Partially disputed. It is undisputed that each county is assigned a liaison, but it is disputed that these liaisons provide meaningful or effective training and oversight on the issues Plaintiffs' claims address. *See, e.g.*, Exh. 77, Aug. 19, 2019 SOS Email, State-Defendants-00068966, at State-Defendants-00068966–00068967 (Ted Koval response to email identifying “serious errors” in liaisons' presentation regarding precinct changes, showing that liaisons did not “understand the fundamentals of the topic” and raising a “larger concern” that liaisons “are not showing proficiency in the subject matter”); Exh. 21, Dec. 5, 2019 Harvey Dep. 196:4-198:4 (admitting county liaison's advice to county official was not “a complete answer and maybe not a helpful answer” on an Exact Match failure due to a hyphenation in a voter's name).

81.

Defendants' Statement No. 81:

Firefly is maintained by the Secretary of State's office and is accessible to authorized users of the counties through an ID and password system. Ex. No. (32) at 31:9-21.

Plaintiffs' Response:

Undisputed, but immaterial. Statement No. 81 is immaterial to the issues

raised in Defendant's summary judgment motion, as demonstrated by Defendants' failure to discuss it in their brief.*

82.

Defendants' Statement No. 82:

The Secretary of State is responsible for training the head election officials of a county, usually an election director or board, and those county elections officials are responsible for training poll workers and their staff. Ex. No. (19) at 121:23-122:4.

Plaintiffs' Response:

Partially disputed. It is undisputed that the SOS is responsible for training the county election superintendents and registrars, but the rest of the statement is disputed to the extent that it suggests that the SOS has no responsibility for poll worker and staff training. The SOS is responsible for poll worker and staff training because of its ultimate responsibility to ensure legality and uniformity in local election operations, which it has acknowledged. *See, e.g.*, Exh. 23, Aug. 16, 2019 SOS 30(b)(6) Dep. 141:12-142:18 (referring to the SOS's "general mandate to provide training and uniformity to the counties"); Exh. 21, Dec. 5, 2019 Harvey Dep. 137:15-19 (the SOS is tasked with having uniform practices among the counties), 174:9-12 (it is up to the SOS to ensure uniformity in what the counties

do). The SOS knows that these responsibilities include the duty to train poll workers, as evidenced by the SOS's own preparation of poll worker training materials that the SOS urges counties to use. Exh. 21, Dec. 5, 2019 Harvey Dep. 134:21-135:6 (“[The SOS] provide[s] 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, 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. The SOS has an entire poll worker training website that contains, in addition to the poll worker manuals, poll worker training videos, training tips and links to legal references. Exh. 78, Press Release on New Poll Worker Training Website, State-Defendants-00124523.

83.

Defendants’ Statement No. 83:

Ms. Abrams, on the other hand, stated that the Secretary of State “is the person who is responsible under the Constitution of Georgia for the oversight and management of the entire elections system.” Ex. No. (1) at 32:7–18; 40:7–19. Ms. Abrams believes that obligation under the Georgia Constitution also applies to the State Election Board. Id. at 40:20–41:3

Plaintiffs’ Response:

Undisputed.

84.

Defendants’ Statement No. 84:

Counties are responsible for hiring and firing poll workers and staff. Ex. No. (19) at 35:21-36:25.

Plaintiffs’ Response:

Disputed. The SOS exercises responsibility when it comes to hiring poll workers, as evidenced by its 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”). Moreover, the SOS training on hiring poll workers provides the knowledge base that counties use when making hiring and firing decisions. *See, e.g.*, Exh. 51, Elections Divisions Training Presentation on Poll Officials and Poll Watchers, State-

Defendants-00126152, at -00126153 (agenda including “Recruitment, Hiring and Retention” of poll officials). *See also* Exh. 23, Aug. 16, 2019 SOS 30(b)(6) Dep. 178:15-179:13 (“It really is sort of a Train The Trainer scenario where we’re giving . . . the information to them, for them to take back and customize for their offices”); Exh. 21, Dec. 5. 2019 C. Harvey Dep. 178:4-10 (answering “right” when asked “[i]f the superintendents and registrars aren’t well-trained . . . they don’t really have the knowledge base to be able to train their people.”).

85.

Defendants’ Statement No. 85:

While it is the counties who provide poll worker training (Ex. No. (32) at 178:9-9; Ex. No. (22) at 66:21-24), the Secretary of State does prepare materials county officials may (but are not required) to use in training their poll workers. (Ex. No. (32) at 30:3-19).

Plaintiffs’ Response:

Partially disputed. It is undisputed that the SOS prepares materials for poll worker training and that the SOS does not require counties to use the SOS-prepared materials for poll worker training. The statement is disputed to the extent it 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. The SOS recognizes that training is a primary way uniformity is achieved. Exh. 21, Dec. 5, 2019 C. Harvey Dep. 53:3-56:9; Exh. 25, Jan. 6, 2020 SOS 30(b)(6) Dep. at 130:16-133:25. Training of poll workers must be uniform if the practices they perform are uniform. Expert Report of Kennedy, ECF No. 167 at 18-19. Only Defendants have the authority and mandate to achieve that uniformity.

The SOS knows that these responsibilities include the duty to train poll workers, as evidenced by its decision to exercise responsibility for poll worker training. 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. *See, e.g.*, Exh. 21, Dec. 5, 2019 Harvey Dep. 134:21-135:6; 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, 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.

86.

Defendants’ Statement No. 86:

These materials include, but are not limited to, videos, webinars, power points and other documents. Ex. No. (32) at 30:20-31:6.

Plaintiffs’ Response:

Undisputed.

87.

Defendants’ Statement No. 87:

All poll worker and other training materials are available on Firefly and officials are encouraged to sign up for webinars addressing poll worker training. Ex. No. (32) at 179:4-13.

Plaintiffs’ Response:

Partially disputed. Statement No. 87 is disputed to the extent it suggests that these materials are adequate or widely used. The poll worker training materials and webinars the SOS prepared and provided through Firefly are inadequate in addressing the election problems at issue in this case, and the SOS and SEB do not

require uniform training materials for poll workers. *See generally* Expert Report of Kennedy, ECF No. 167; *see also* SAMF ¶¶ 309-321, 327-388, 538-547, 892, 935. The SOS does not know what training materials the counties use. Exh. 23, Aug. 16, 2019 SOS 30(b)(6) Dep. 56:19-25, 57:1-10; Exh. 21, Dec. 5. 2019 Harvey Dep. 57:1-10.

88.

Defendants' Statement No. 88:

Additionally, the Secretary publishes a public-facing webpage containing a poll worker manual, various election day tips, and videos regarding certain common issues. See Poll Worker Training Resources, Office of the Secretary of State Brad Raffensperger, available at <https://georgiapollworkers.sos.ga.gov/Pages/default.aspx> (last visited Jun. 28, 2020).

Plaintiffs' Response:

Partially disputed. Statement No. 88 is partially disputed to the extent it suggests that these resources are adequate. To the contrary, these materials are difficult to understand, misleading, incorrect and otherwise inadequate and because Defendants do not require counties to use uniform training materials for poll workers. *See generally* Expert Report of Kennedy, ECF No. 167; *see also* SAMF

¶¶ 309-321, 327-364, 538-547. As one of myriad examples, in its 2020 Poll Worker Manual that was on the SOS's website at least through the June 9, 2020 election, the SOS included and quoted the wrong SEB rule on provisional ballots. The current provisional ballot rule is 183-1-12-.18, Ga. Admin. Code § 183-1-12-.18, but the manual on the SOS website quoted the prior rule, which no longer governs. *See* 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>, at 56-57.

89.

Defendants' Statement No. 89:

The Secretary of State's office encourages counties to use the poll worker training materials prepared by the Secretary of State's office and is unaware of any counties that do not use them. Ex. No. (19) at 135:10-136:5.

Plaintiffs' Response:

Undisputed that the SOS encourages the counties to use the training materials the SOS has prepared, but disputed to the extent Statement No. 89 implies that most or all counties use the SOS-prepared training materials or that the SOS has any idea whether counties use the SOS-prepared training materials. After

Mr. Harvey made the statement cited in the above statement, he was forced to admit that he did not know what training materials counties use, and in earlier testimony as the SOS's 30(b)(6) representative, he said the SOS has no idea what training materials counties use because the SOS is not required to, and does not, review the counties' training materials. *See* Exh. 21, Dec. 5, 2019 SOS Dep. 136:6-16 (“Q. ... I think you testified before, you don't know what the counties are using, you're not required to look at those materials, you don't look at those materials, right? A. Right.”); *see also* Exh. 23, Aug. 16, 2019 SOS 30(b)(6) Dep. 56:19-25 (“In some cases [the superintendents and registrars] use their own [training materials], in some cases they may use ours directly. I don't know what each county does.”).

90.

Defendants' Statement No. 90:

Communications from the Secretary of State's office are made through both Firefly and email to superintendents and registrars, monthly webinars are posted to Firefly, and often county liaisons and Director Harvey himself would follow-up those communications by telephone. Ex. No. (32) at 55:11-23; Ex. No. (33) at 27:3-29:5.

Plaintiffs' Response:

Partially disputed. Statement No. 90 is partially disputed because Plaintiffs are not aware of evidence to corroborate that county liaisons or Mr. Harvey “often” follow up on Firefly communications by telephone. Also, Firefly is not an appropriate or effective distribution mechanism for training materials and election information. While Firefly allows these materials and information to be distributed, the SOS does not know whether county election officials actually read or understand the training materials and election information that is distributed. Exh. 21, Dec. 5, 2019 Harvey Dep. 185:13-18 (“Q: Am I correct that you don’t have any way of knowing who – which county election officials will actually go into Firefly and read – A: Correct. Q: --what you’ve told them is there? A: Correct.”). In addition, these communications have failed to provide meaningful training and oversight with respect to the practices Plaintiffs challenge. *See* SAMF ¶¶ 309-321, 327-388, 464-466 , 483-488, 494, 490.

91.

Defendants’ Statement No. 91:

Within the past three years, the Elections Director of the Secretary of State’s office, Chris Harvey, has personally responded to inquiries on specific issues from the top county election officials, either registrars or election directors, for a majority of counties throughout the State. Ex. No. (32) at 180:19-181:20.

Plaintiffs' Response:

Partially disputed and immaterial. It is undisputed that Chris Harvey is the director of the SOS's election division and that he testified as stated. It is disputed that his testimony is accurate. Plaintiffs are not aware of evidence to corroborate that, within the past three years, Chris Harvey has personally responded to inquiries on specific issues with top county election officials, either registrars or election directors, for a majority of counties throughout the State. Statement No. 91 is immaterial because there is no evidence that these inquiries, if they occurred, address the practices at issue in this case, or that Chris Harvey's responses protected, rather than undermined, voters' rights.

92.

Defendants' Statement No. 92:

The training and advice provided by Secretary of State officials on poll worker training is dictated by the Georgia Code and State Election Board rules. Ex. No. (32) at 178:15-180:3.

Plaintiffs' Response:

Partially disputed. It is undisputed that the SOS's training and advice on poll worker training should ensure that poll workers uniformly follow the Georgia Election Code and SEB rules. It is disputed that Georgia law and SEB rules are all that poll workers must be trained to follow uniformly; they must also be trained on

and follow federal law, including the United States Constitution. It is also disputed that the source cited for Statement No. 92 supports the statement. When asked whether the SOS has “any policies or procedures for training superintendents and registrars on what they should train their personnel about, their poll workers, their people that they supervise,” the SOS testified that it “generally teach[es] them and instruct[s] them to train them that this is the law”; the SOS did not testify that the substance of its training and advice is limited or dictated by the Georgia Code and SEB rules. *See* Exh. 23, Aug. 16, 2019 SOS 30(b)(6) Dep. 178:15-180:3.

Statement No. 92 is further disputed to the extent it suggests that the Georgia Code or SEB rules dictate who must provide the content for or substance of poll worker training and what training methodologies must be used. *See generally* O.C.G.A. § 21-2-1 *et seq.*; Ga. Comp. R. & Regs § 183-1-1 *et seq.*

93.

Defendants’ Statement No. 93:

Plaintiffs’ proffered expert regarding the sufficiency of training produced by the Secretary, Kevin Kennedy, acknowledged that the Secretary “has developed a large portfolio of training materials and methods for county superintendents and registrars.” Doc. No. [167] at 11.

Plaintiffs’ Response:

Undisputed, but incomplete. It is undisputed that Mr. Kennedy stated the quoted language in his expert report, but he also testified that, despite that portfolio, the SOS's training is inadequate: "What is missing and crucial to ensuring Georgia elections comply with state and federal election laws and the United States Constitution is a robust training initiative for poll workers under the direction of the Secretary of State. There are several essential elements that need to be integrated into a state directed poll worker training program. These essential elements should also be incorporated into the current training program for county election officials." Expert Report of Kennedy, ECF No. 167 at 11. Mr. Kennedy described the elements that were missing and deficient from the training materials produced by the SOS. *Id.* at 11-23.

In any event, whether the SOS "has developed a large portfolio of training materials and methods for county superintendents and registrars" is immaterial because these training materials and methods are inadequate in addressing the election problems at issue in this case and because Defendants do not require counties to use uniform training materials when training their poll workers. *Id.* at 18-19; *See* SAMF ¶¶ 309-321, 327-388, 464-482.

94.

Defendants' Statement No. 94:

Defendants produced to Plaintiffs an index of all documents hosted on Firefly, (Ex. No. (90) at STATE-DEFENDANTS-00084463), and all messages—or “Buzz” posts—therein, (Ex. No. (90) at STATE-DEFENDANTS-00084462).

Plaintiffs’ Response:

Undisputed. Plaintiffs object to Statement No. 94 as the cited Bates Numbers do not match that of Defendants’ Exhibit 90.

95.

Defendants’ Statement No. 95:

The documents posted to Firefly include training documents, webinars, and updates dating back to at least 2014, (Ex. No. (32) at 45:646:5), but Mr. Kennedy was not provided access to Firefly nor did he review the index of files posted to Firefly produced by Defendants, (Ex. No. (22) at 130:11-24).

Plaintiffs’ Response:

Undisputed, but incomplete and immaterial because Mr. Kennedy reviewed the Firefly training materials that Defendants produced. *See* Expert Report of Kennedy, ECF No. 167 at Appendix A (listing materials Mr. Kennedy reviewed, including “hundreds of documents produced by [Defendants]”); at 10 (“Although the Georgia Secretary of State has developed a large portfolio of training materials and methods for county superintendents and registrars since 2012, that portfolio is lacking key ingredients required to ensure Georgia elections are administered

fairly, effectively and in a uniform manner that protects the voting rights of Georgia electors.”). *See also* SAMF ¶¶ 309-321, 327-388, 464-482.

96.

Defendants’ Statement No. 96:

Mr. Kennedy opined on what he believes are components of a good election worker training program and that Georgia’s training materials “lack[] key ingredients” in areas he finds important. Doc. No. [167] at 10.

Plaintiffs’ Response:

Partially disputed and incomplete because Mr. Kennedy opined on the components of an election worker training program he considers necessary to protect voters’ constitutional right to vote and that the SOS’s training is lacking. Expert Report of Kennedy, ECF No. 167 at 10-12 (“Although the Georgia Secretary of State has developed a large portfolio of training materials and methods for county superintendents and registrars since 2012, that portfolio is lacking *key ingredients required to ensure Georgia elections are administered fairly, effectively and in a uniform manner that protects the voting rights of Georgia electors.*”) (emphasis added). He further testified about accountability mechanisms a chief election officer must have in place, but that the SOS does not have in place, in order to protect voters’ constitutional rights. *Id.* at 19-22.

97.

Defendants' Statement No. 97:

Mr. Kennedy's opinion is informed by his experience as a state election official in Wisconsin, Doc. No. [167] at 3, and he admitted that his opinions regarding Georgia's training procedures are not based on a comparison to any national or accepted standard for training. See, e.g., Ex. No. (22) at 174:11-21; 84:17-23.

Plaintiffs' Response:

Partially disputed. Statement No. 97 is partially disputed because Mr. Kennedy did not base his opinion exclusively on his experience "as an election official in Wisconsin," and it is further disputed to the extent that Defendants' Statement No. 97 suggests that national or accepted standards for training are required or that Mr. Kennedy had no basis upon which to assess the adequacy of the SOS's training.

In addition to serving as Wisconsin's Chief Election Official, Mr. Kennedy has served on several prominent election-related boards and commissions, and as the president of the National Association of State Elections Directors ("NASED"). ECF No. 167 at 28-30; Exh. 79, Kennedy Dep. 18:1-10; 73:15-19; 123:3-22. Mr. Kennedy currently sits on the Board for the Center for Election Innovation and

Research. Exh. 79, Kennedy Dep. 18:1-10. Mr. Kennedy also was heavily involved for nearly thirty years in the country's premier election training organization, the Election Center. ECF No. 167 at 30. The Election Center, in conjunction with Auburn University faculty, administers a nationally recognized certification program for election officials. ECF No. 167 at 4-5; Exh. 79, Kennedy Dep. 87:16-88:1.

Defendants' Statement No. 97 ignores all the sources Mr. Kennedy identified in his report and deposition testimony as his bases for his opinions about the inadequacy of the SOS's training. Those sources include the training the Georgia SOS herself used in 2002 when implementing Georgia's first uniform voting system in 2002; training Mr. Kennedy personally received from the premier national election training center (the Election Center); training methods used by other states, with which Mr. Kennedy was familiar through his long-time membership and past presidency of the National Association of State Election Directors; training he wrote, reviewed, and presented to Wisconsin election personnel; and training materials and methodologies with which he was familiar through his participation in several national organizations. *See, e.g.*, Exh. 79, Kennedy Dep. 31:17-32:5; 72:20-73:21; 97:11-98:12; 105:6-106:9; 174:11-175:8.

Defendants' Statement No. 97 also assumes a national or accepted standard is required as support for Mr. Kennedy's opinions, which is an improper legal conclusion.†

98.

Defendants' Statement No. 98:

Mr. Kennedy's proposal for a "mandatory state-directed uniform training program for poll workers" is not based on any determinable standard or case study. Ex. No. (22) at 168:4-9.

Plaintiffs' Response:

Disputed and immaterial. Mr. Kennedy did not testify that his proposal is not based on "any determinable standard." Exh. 79, Kennedy Dep. 168:4-9 ("No, there were not case studies. It's again, based on my experience that if there is not leadership at the state level, you're not going to get uniformity . . ."). *See also* Pltfs.' Response to SOF ¶ 97.

99.

Defendants' Statement No. 99:

Mr. Kennedy acknowledges that poll workers are subject to sanction by the State Election Board, (Doc. No. [167] at 19–20), and that in instances where an election official leaves government service before the complaint is heard, "it tells you that the process is working." Ex. No. (22) at 181:24-25.

Plaintiffs' Response:

Disputed. First, Mr. Kennedy did not “acknowledge[] that poll workers are subject to sanction by the State Election Board,” but instead was re-stating Mr. Harvey’s deposition testimony on this point. Expert Report of Kennedy, ECF No. 167 at 20 (“In his deposition, Chris Harvey suggests that if local election officials do not comply with the law they are subject to sanctions from the State Election Board.”).

Second, Mr. Kennedy casts doubt on Mr. Harvey’s deposition testimony by pointing out that the SEB “meets on ad hoc basis at most a few times a year” and that “[his] review of complaints considered by the [SEB] shows a large number are disposed of without any action.” Expert Report of Kennedy, ECF No. 167 at 20.

Third, Mr. Kennedy’s discussion of an election official leaving government office—suggesting “the process is working”—was limited to “two, three, [or] four” instances. Exh. 79, Kennedy Dep. 181:4-12. These instances are the exception, not the rule.

100.

Defendants' Statement No. 100:

Mr. Kennedy did not review the Secretary’s publicly available Poll Worker Training Resource webpage, first disseminated by Secretary Kemp in 2015, and

continuously updated since. Press Release, Secretary of State Brian P. Kemp Announces New Poll Worker Training Website, Oct. 20, 2015, Ex. No. (76) at STATE-DEFENDANTS-00124523. Nor did Mr. Kennedy review the 2020 Poll Worker Manual. Ex. No. (22) at 7:16–21; 2020 Poll Worker Manual, Ex. No. (90) at STATE-DEFENDANTS-00867638–867744.

Plaintiffs’ Response:

Partially disputed. It is undisputed that Mr. Kennedy did not review the 2020 Poll Worker Manual, but disputed that it was actually possible for him to do so. Mr. Kennedy’s expert report was dated December 16, 2019, so he could not have reviewed materials that were not available at the time he drafted his report. *See* Expert Report of Kennedy, ECF No. 167. Mr. Kennedy stated in his report that if future renditions of the SOS-prepared poll worker manuals contained the problems present in the 2018 materials, his opinion would remain the same. *Id.* at 18 (“My opinion is based on The Poll Worker Manual, 2018 Edition. To the extent the new poll worker manual contains the same deficiencies I identify in this report, my opinion also addresses the new manual.”). Mr. Kennedy has since read the SOS-prepared 2020 poll worker manuals (one of which Defendants produced shortly before Mr. Kennedy’s deposition and the other of which was updated after Mr. Kennedy’s deposition); because those manuals contain the same problems present

in the 2018 poll worker manual, his opinions remain the same.

101.

Defendants' Statement No. 101:

Mr. Kennedy testified that he had no opinion on materials prepared by counties for their poll workers. Ex. No. (22) at 127:5-10.

Plaintiffs' Response:

Disputed and immaterial. Statement No. 101 is disputed because Mr. Kennedy testified only that he had no opinion on the "county training manuals for poll workers." Exh. 79, Kennedy Dep. 180:12-182:16. Statement No. 101 is immaterial because what is at issue here is the inadequacy of the SOS's training and supervision of county election officials and the need for Defendants to ensure counties are using uniform training materials in order for county practices to be uniform.

102.

Defendants' Statement No. 102:

Mr. Kennedy admitted that he was not opining that Georgia's training approach was rooted in anything other than enabling participation for all voters. Ex. No. (22) at 164:2-21.

Plaintiffs' Response:

Disputed and immaterial. Statement No. 102 is disputed because Mr.

Kennedy's answer and report make clear that, regardless of the foundation of, or intent behind, Georgia's training, the training itself does is not focused on ensuring voters' right to vote is protected. Mr. Kennedy's testimony that Defendants cite is: "And I wasn't suggesting that that [referring to enabling full participation by all voters] wouldn't be the foundation, but to ensure that people who participate in the process understand that. That's what my recommendations are going toward." Def. Ex. No. (22) at 164:2-21. *See also* Expert Report of Kennedy, ECF No. 167 at 16-18 (making clear that the SOS training does not adequately emphasize enabling participation for all voters).

Statement No. 102 is immaterial because the issue of the foundation of or intent behind the SOS's election training approach is outside of the scope of Mr. Kennedy's expert report. Statement No. 102 is also immaterial to the issues raised in Defendants' summary judgment motion, as demonstrated by Defendants' failure to discuss, it in their brief.*

103.

Defendants' Statement No. 103:

Mr. Kennedy agreed that so long as poll workers are following the law, a voter's rights are protected. Ex. No. (22) at 159:13–20.

Plaintiffs' Response:

Disputed. Mr. Kennedy was asked whether complying with a particular law would result in “a diminution of that voter’s rights articulated in that law”; he was not asked about the protection of “a voter’s rights” in general. In the cited testimony, Mr. Kennedy goes on to point out: “The idea -- the idea of the training is simply to reinforce that it's [compliance with the law] done.” He went on to testify immediately after the cited testimony that election workers “have to know what [the law] is and understand it and know what the ... consequences are.” Exh. 79, Kennedy Dep. 159:13–160:3.

104.

Defendants’ Statement No. 104:

Mr. Kennedy does not offer any opinion as to how many errors make a problem systemic. Ex. No. (22) at 127:19-128:3

Plaintiffs’ Response:

Undisputed, but immaterial. Statement No. 104 is immaterial to the issues raised in Defendants’ summary judgment motion, as demonstrated by Defendants’ failure to discuss it in their brief.*

105.

Defendants’ Statement No. 105:

Mr. Kennedy likewise does not provide any evidence that the training materials from the Secretary of State have a racial impact of any kind, other than

that because the pictures of acceptable identification in the 2018 Poll Worker Manual included only one picture of an African-American resident, the Manual does not reinforce that poll workers are dealing with a diverse population. Ex. No. (22) at 163:6-18; 175:9-177:3; see also 2018 Poll Worker Training Manual, Ex. No. (90) at STATE-DEFENDANTS-00008952009070.

Plaintiffs' Response:

Partially disputed and immaterial. Statement No. 105 is disputed to the extent that it incorrectly limits the scope of Mr. Kennedy's opinion, which addressed the importance of ensuring voters and election personnel fully understand that race cannot influence how a voter is treated. Exh. 79, Kennedy Dep. 175:25-176:11 (“[W]hat I’m saying is that it goes to reinforcing to the poll workers you’re dealing with a diverse population. It’s not a judgment on what they think. It’s a question of how can you make your training materials more effective and create an atmosphere that doesn’t suggest that only certain people are entitled to vote or only certain people are going to show up to vote.”). Mr. Kennedy also testified to examples where deficient training have led to potential racial discrimination. *See, e.g., id.* 94:18-95:17. He also testified that the SOS training materials were missing elements that “will mitigate the impact of discrimination.” Expert Report of Kennedy, ECF. No. 167 at 17.

Statement No. 105 is immaterial to the issues raised in Defendants' summary judgment motion, as demonstrated by Defendants' failure to discuss it in their brief.*

V. Georgia's list maintenance activities pursuant to O.C.G.A. § 21-2-234.

106.

Defendants' Statement No. 106:

The State has an interest in the maintenance of reliable voter lists. Doc. No. [188] at 28–29.

Plaintiffs' Response:

Partially disputed. Statement No. 106 is disputed to the extent that it suggests the SOS list maintenance process serves the State's interest in the maintenance of reliable voter lists. To the contrary, the SOS's list maintenance process undermines the reliability of the voter lists by removing voters from the list who have not moved. Expert Report of McDonald, ECF No. 240 at 18; *see also* SAMF ¶¶ 703-711.

107.

Defendants' Statement No. 107:

Accurate voter rolls are necessary for the State to assess where and to what degree to deploy equipment and personnel on election day. Doc. No. [188] at 29.

Plaintiffs' Response:

Partially disputed. Statement No. 107 is disputed to the extent it suggests that the SOS's list-maintenance process makes the voter rolls more accurate or assists election officials in equipment-deployment decisions. Inactive voters are not counted under Georgia's equipment deployment requirements. *See* O.C.G.A. § 21-2-235(a). Thus, concerns about equipment deployment do not justify moving voters from inactive status to cancelled status. This also means that voters improperly moved to inactive status are not being counted for purposes of equipment deployment, leading to insufficient equipment per voter. Overall, the SOS's list maintenance process undermines the accuracy of the voter list by removing voters from the list who have not moved. *See* Expert Report of McDonald, ECF No. 240 at 18; *see also* SAMF ¶¶ 703-711.

108.

Defendants' Statement No. 108:

The State and the Secretary have an interest in enforcing Georgia election laws as written. Doc. No. [188] at 29.

Plaintiffs' Response:

Disputed and immaterial. Statement No. 108 is disputed to the extent that it applies to unconstitutional laws: the State and the SOS do not have an interest in enforcing unconstitutional laws. Moreover, Statement No. 108 is immaterial

because Plaintiffs' constitutional challenge to Defendants' list maintenance process does not require this court to interpret any Georgia election law, "as written" or otherwise.

109.

Defendants' Statement No. 109:

Georgia's voter list maintenance scheme reduces voter confusion and improves election day operations. Doc. No. [188] at 29.

Plaintiffs' Response:

Disputed. The SOS's list maintenance procedures remove from the rolls voters who have not moved. *See, e.g.*, Expert Report of McDonald, ECF No. 240 at 3-4, 14, 17-18; Exh. 80, May 2016 SOS Investigation Summary, State-Defendants-00023366, at -00023369-70; Exh. 81, Oct. 27, 2018 SOS Response re: Voter Complaint, State-Defendants-00054325 (Harvey 2018 response to email regarding voter complaint). Those voters appear at the polls, are confused when they are told they cannot be found on the rolls, slow down election officials' processing of voters in line, and either go home or vote provisional ballots that do not count. Exh. 82, State-Defendants-00330694 (reporting that voters "who had not voted in years" were turned away and "not offered provisional ballots"). They are also confused when the SOS changes their registration status based on erroneous

information. *E.g.*, Exh. 83, Oct. 25, 2018 Email re Inactive Status, State-Defendants-00289052; Exh. 84, March 14, 2019 Email re Voter Removed from Rolls in Fulton County, State-Defendants-00043168. *See also* SAMF ¶¶ 635-682, 703-711.

110.

Defendants’ Statement No. 110:

Georgia’s voter list maintenance process by which inactive voters are moved to cancelled status was significantly altered by the passage of HB 316. See supra, ¶ 29, HB 316, lines 253-280.

Plaintiffs’ Response:

Disputed and immaterial. Plaintiffs dispute the characterization of HB 316 as “significantly alter[ing]” the list maintenance process. Those changes do not “alter[]” any of the reasons or processes by which voters are flagged for inclusion in the cancellation process, or whether Defendants cancel the registration of voters who have moved. They solve none of the problems Plaintiffs challenge. For example, the expert report of Dr. McDonald, Plaintiffs’ expert, analyzes voter purges that took place *after* the passage of HB 316, finding over 70,000 voters erroneously moved to cancelled status. Expert Report of McDonald, ECF No. 240 at 18.

Moreover, Statement No. 110 is immaterial to the issues raised in Defendants' summary judgment motion, as demonstrated by Defendants' failure to discuss it in their brief.*

111.

Defendants' Statement No. 111:

Prior to the passage of HB 316, if a voter had no contact with the elections or voter registration system for three calendar years,¹⁷ they would be sent a confirmation notice by their respective county to confirm whether the voter wished to remain on the voting rolls. Ex. No. (32) at 200:22-201:4.

Plaintiffs' Response:

Partially disputed. It is undisputed as to the changes mandated by HB 316, but disputed that those confirmation notices were always mailed and that the notices asked voters to "confirm whether they wished to remain on the voting rolls." The SOS does not confirm with each county that it has applied postage and mailed the confirmation notices. Exh. 26, Germany Dep. 43:24-44:19. The SOS does not conduct any audit to determine whether the confirmation notices were mailed. Exh. 26, Germany Dep. 44:7-19. And many voters do not receive the

¹⁷ Following the passage of HB 316, the "no contact" period before a voter is moved to inactive status has been extended to five calendar years. See O.C.G.A. § 21-2-234; see also HB 316, Act 24, lines 264 and 267.

notices. *See, e.g.*, Exh. 85, State-Defendants-00656974; Exh. 86, State-Defendants-00741800; Exh. 87, State-Defendants-00741716; Exh. 88, State-Defendants-00741719; Exh. 89, State-Defendants-00334225; Exh. 90, State-Defendants-00089078; Exh. 91, State-Defendants-00329628; Exh. 92, State-Defendants-00334195; Exh. 93, State-Defendants-00332387; Exh. 94, Thomas Decl. ¶ 6; Exh. 95, Hopkins Decl. ¶ 5; Exh. 96, Young Decl. ¶ 10; Exh. 97, Smith Decl. ¶ 6. *See also* SAMF ¶¶ 637-645, 683-704. Moreover, the notices are not “to confirm whether the voter wished to remain on the voting rolls”; they are notices to confirm “the elector’s current address.” O.C.G.A. § 21-2-234(c).

112.

Defendants’ Statement No. 112:

If the voter returned the confirmation notice, he or she would remain in active status; if he or she did not, he or she would be moved to inactive status. Ex. No. (32) at 201:5-10.

Plaintiffs’ Response:

Partially disputed. It is undisputed that Statement No. 112 describes the way this process is supposed to work, but it is disputed that if a voter returns a confirmation notice, he or she will reliably remain in active status. Voters return confirmation notices and report that their status was changed to inactive anyway.

See, e.g., Exh. 98, State-Defendants-00183789. Moreover, the SOS has set up its system to automatically move voters to inactive status 40 days after confirmation notices are supposed to be mailed out, so voters who return confirmation notices will be moved to inactive status when local officials fail to manually update voters' records in response to returned notices in time. Exh. 99, State-Defendants-00287546, at -00287548.

113.

Defendants' Statement No. 113:

Voters in inactive status may still vote and doing so will move them out of inactive status and to active status. Ex. No. (32) at 201:11-18.

Plaintiffs' Response:

Partially disputed. It is undisputed that voters in inactive status are legally entitled to vote, but it is disputed that those who voted were then always moved out of inactive status. Numerous voter roll problems, including in awarding credit for voting, prevented voters who voted from being moved out of inactive status. *See, e.g.*, Exh. 100, State-Defendants-00395066, at -00395066; *see also* SAMF ¶¶ 646-662.

114.

Defendants' Statement No. 114:

Any voter activity with the Department of Driver Services updates the

State's voter registration lists and results in an inactive voter becoming active unless the voter specifically opts out. Doc. No. [183], Tr. 44:6–9.

Plaintiffs' Response:

Partially disputed. Plaintiffs do not dispute that this is how the system is supposed to work, but dispute that this is how the system does work. In many cases, voters' "activity with the Department of Driver Services" has failed to update voters' records on the State's voter registration list and voters have thus experienced difficulty becoming active voters at their correct address. *See* Exh. 101, State-Defendants-00825867 (voter registered to vote at the Department of Drivers Services, but the registration was not reflected in the SOS system); Exh. 102, State-Defendants-00811829, at 00811831-32 (same); Exh. 103, State-Defendants-00330332 (same); Exh. 104, State-Defendants-00265851 (same); Exh. 105, State-Defendants-00331300 (same); Exh. 106, State-Defendants-00333507 (voter updated her address at the Department of Drivers Services, but the change was not reflected in the SOS registration system); Exh. 107, State-Defendants-00330010 (same); Exh. 108, State-Defendants-00750665 (same); Exh. 109, State-Defendants-00743852 (same); Exh. 110, State-Defendants-00333907 (same).

115.

Defendants' Statement No. 115:

A voter will move from inactive to active upon request for an absentee ballot. *Id.* at 44:14–15.

Plaintiffs’ Response:

Partially disputed. Plaintiffs do not dispute this is how the system is supposed to work, but do dispute this is how the system does work. Voters have complained they were moved to inactive or cancelled status even though they had voted an absentee ballot in recent years. *See* Exh. 111, L. Bradshaw Decl. ¶¶ 4, 5 (after voting by absentee ballot in 2017, Bradshaw declared she “recently received a letter from the State of Georgia alerting me to the fact that I am on a list of individuals slated to be removed from [sic] the voting rolls”). In addition, this system of moving from inactive to active upon request for an absentee ballot was not in effect prior to HB 316. *See* O.C.G.A. § 21-2-234(a)(1) (2018). Voters who were moved to “inactive” status *without* absentee ballot requests counting as “contact” were purged in prior purges and will be purged in 2021. *See* O.C.G.A. §§ 21-2-234, 21-2-235 (under which voters moved to “inactive” status up until the passage of HB 316 will not have been inactive for two general elections until after the 2020 election, and then will be purged in 2021).

116.

Defendants’ Statement No. 116:

Once a voter is in inactive status after following expiration of the five-year “no contact” period, if he or she remains inactive for another two federal election cycles, his or her voter registration would be changed to cancelled status. Ex. No. (32) at 201:19-23.

Plaintiffs’ Response:

Undisputed.

117.

Defendants’ Statement No. 117:

This process in Georgia is also known as NGE (no general election). Ex. No. (30) at 143:12-17.

Plaintiffs’ Response:

To the extent “this process” refers to the process described in SOF ¶ 116, Statement No. 117 is undisputed. If Statement No. 117 refers to something else, it is disputed.

118.

Defendants’ Statement No. 118:

Georgia’s NGE, as laid out in the National Voter Registration Act, is the process of moving inactive voters to cancelled status, “after providing them notice and waiting for two federal elections where they have not voted.” Id.

Plaintiffs’ Response:

Partially disputed. It is undisputed that Georgia’s “NGE” process refers to the process of moving inactive voters to cancelled status, but it is disputed that the National Voter Registration Act lays out this process as it is actually run in Georgia, disenfranchising large numbers of voters who have not changed residency. *See generally* 52 U.S.C. § 20501. It is also disputed that voters are in fact notified before they are moved to cancelled status. *See, e.g.*, Exh. 26, Germany Dep. 43:24-44:19 (SOS does not confirm that notices are mailed); Exh. 112, State-Defendants-00296909 (fewer than 1% of notices received and returned to the State); Exh. 85, State-Defendants-00656974 (voter complaint of being purged without prior notice); Exh. 21, Dec. 5, 2019 Harvey Dep. 353:9-16 (SOS not confirming whether voters actually receive notice); SAMF ¶¶ 683-704.

119.

Defendants’ Statement No. 119:

At present, following the passage of HB 316, cancellations of voter registrations occur only in odd-numbered years and notices must be sent to potentially affected voters between 30 and 60 days before a voter’s registration is cancelled. Ex. No. (32) at 140:12-15; 206:23-2017:15.

Plaintiffs’ Response:

Partially disputed and immaterial. Statement No. 119 is disputed to the

extent that it suggests that voters are notified before their registration is cancelled. The SOS's purge process flags people for cancellation even though they did not move, and the statutorily required mailings have not succeeded in actually providing voters with notice. *See, e.g.*, Expert Report of McDonald, ECF No. 240 at 18; SAMF ¶¶ 683-717. The immateriality of Statement No. 119 is demonstrated by Defendants' failure to discuss it in their summary judgment motion briefing.*

120.

Defendants' Statement No. 120:

Voters removed from Georgia's inactive list and placed in cancelled status are not "purged" from the voter registration database, as they remain in the State's voter database. Ex. No. (26) at 25:9-27:5; Ex. No. (32) at 208:1-4; 216:2-4.

Plaintiffs' Response:

Partially disputed. Statement No. 120 is disputed to the extent that it suggests that, from the voters' perspective, they are not "purged." When purged voters appears at the polls to vote, they are told they are simply not on the rolls—and thus they have been "purged." *See, e.g.*, Exh. 113, State-Defendants-00036409, at State-Defendants-00036412 (SOS Investigation Report detailing how a purged voter "was told by the poll workers ... that she was not on the voter registration list and would not be able to vote.").

121.

Defendants' Statement No. 121:

Any voter moved to cancelled status, after being sent notice and failing to respond, can reregister to vote, and will be placed back in active status. Ex. No. (32) at 201:19-23.

Plaintiffs' Response:

Partially disputed. It is undisputed that Statement No. 121 describes the way in which the process is supposed to work, but it is disputed that this is how the process actually does work. Voters often do not realize they were moved to cancelled status until it is too late for them re-register in time to vote in an election. *See, e.g.*, Exh. 87, State-Defendants-00741716; Exh. 78, State-Defendants-00741719; Exh. 89, State-Defendants-00334225; Exh. 90, State-Defendants-00089078; Exh. 92, State-Defendants-00334195; Exh. 93, State-Defendants-00332387. In addition, voters have difficulty re-registering after they have been purged. This has led to voters not being able to vote. Exh. 114, State-Defendants-00024145, at -00024148 (SOS investigation verifying purged voter's claim that his effort to reregister at DDS was unsuccessful and so he missed the deadline to reregister); Exh. 115, Decl. of Caroline Banez ¶¶ 3, 6, 7-33.

122.

Defendants' Statement No. 122:

Voters can re-register on-line, by mail, or by renewing their driver's license.

Doc. No. [183], Tr. 47:1-48:4 (C. Harvey testimony).

Plaintiffs' Response:

Undisputed, but immaterial because the voters at issue do not know that they need to reregister until after the deadline. *See, e.g.*, Exh. 87, State-Defendants-00741716; Exh. 88, State-Defendants-00741719; Exh. 89, State-Defendants-00334225; Exh. 90, State-Defendants-00089078; Exh. 92, State-Defendants-00334195; State-Defendants-00332387; SAMF ¶¶ 688-699, 701-706. The immateriality of Statement No. 122 is further demonstrated by Defendants' failure to discuss it in their summary judgment motion briefing.*

123.

Defendants' Statement No. 123:

Dr. McDonald found that on the list of voters to be moved to cancelled status, white voters were overrepresented (by two percentage points) and Black voters were underrepresented (by 2.9 percentage points) when compared to their presence on voter file as a whole, indicating that white voters were disproportionately more likely to be on the list of those moving to cancelled status. Doc. No. [240] at 10; Ex. No. (26) at 36:22-37:20.

Plaintiffs' Response:

Undisputed to the extent Statement No. 123 is limited to the 2019 purge list.

Disputed to the extent that Statement No. 123 applies to purges in other years. *See* ECF No. 240 at 3-4.

124.

Defendants' Statement No. 124:

On the inactive list for reason of “no contact,” Black voters were underrepresented compared to their presence on the voter file as a whole. Doc. No. [240] at 10; Ex. No. (26) at 38:11-38:23.

Plaintiffs' Response:

Undisputed to the extent that Statement No. 124 is limited to the 2019 purge list. Disputed to the extent that Statement No. 124 applies to purges in other years. *See* Expert Report of McDonald, ECF No. 240 at 3-4. In addition, Plaintiffs object to Statement No. 124 as duplicative of SOF ¶ 123.

125.

Defendants' Statement No. 125:

McDonald offered no opinion on intent regarding Georgia's list maintenance, made no conclusions regarding racial demographic characteristics of “purge list,” and offered no opinion on significance of demographic percentages. Ex. No. (26) at 18:11-18:15; 38:17-38:23; 40:4-12. He offered no opinion as to whether any changes to voters' statuses were legally improper. Ex. No. (26) at 16:17-22.

Plaintiffs' Response:

Undisputed, but immaterial. Statement No. 125 is immaterial because it is outside the scope of Dr. McDonald's report. Moreover, Plaintiffs object to Statement No. 125 as duplicative of SOF ¶¶ 71-72.

126.

Defendants' Statement No. 126:

Dr. McDonald's investigation did not address whether individuals received confirmation notices sent pursuant to O.C.G.A. §§ 21-2-234 and -235. Ex. No. (26) at 75:8-12.

Plaintiffs' Response:

Undisputed, but immaterial. Statement No. 126 is immaterial because it is outside the scope of Dr. McDonald's report and because Defendants did not discuss Statement No. 126 in their summary judgment motion briefing.*

127.

Defendants' Statement No. 127:

Plaintiffs previously identified eight voters who, they said, improperly would be moved from inactive to cancelled status under the State's execution of the list-maintenance policy. Doc. No. [188] at 25-26.

Plaintiffs' Response:

Undisputed, but immaterial because Plaintiffs' current evidence goes beyond

those particular voters. *See, e.g.*, Expert Report of McDonald, ECF No. 240 at 18; SAMF ¶¶ 635-722.

128.

Defendants’ Statement No. 128:

Of those eight, four were in active status and not subject to being moved to the cancelled list. *Id.* at 26; Doc. No. [183], Tr. 50:4-53:8, Exs. D-2 – D-5 (C. Harvey testimony and Enet voter records).

Plaintiffs’ Response:

Undisputed, but immaterial because Plaintiffs’ current evidence goes beyond those particular voters. *See, e.g.*, Expert Report of McDonald, ECF No. 240 at 18; SAMF ¶¶ 635-722.

129.

Defendants’ Statement No. 129:

The remaining four properly were moved to cancelled status in accordance with state law, and one of those four subsequently was moved to inactive status at the Secretary’s direction. Doc. No. [188] at 26; Doc. No. [183], Tr. 53:14-58:15, Exs. D-6 – D-9 (C. Harvey testimony and Enet voter records).

Plaintiffs’ Response:

Partially disputed and immaterial. Statement No. 129 is disputed because the voter who “subsequently was moved to inactive status” was not “properly ...

moved to cancelled status in accordance with state law.” To the contrary, this voter was cancelled in violation of Georgia law, because she did not get the benefit of the full period of inactivity Georgia law provides. *See* Exh. 21, Dec. 5, 2019 Harvey Dep. 58:1-5, 59:14-20, 66:16-23 (Dec. 19, 2019). Moreover, Statement No. 129 is immaterial because none of these four voters was properly moved to cancelled status in accordance with the U.S. Constitution because they were removed from the voter rolls despite their continued eligibility. Exh. 97, Smith Decl. ¶ 3 (“I have been living at my home in Warner Robbins for over fifty years.”); Exh. 94, Thomas Decl. ¶ 3 (“I have lived at my current address for nearly thirty years.”); Exh. 95, Hopkins Decl. ¶ 5 (“My wife and I have not moved from our home.”); Exh. 96, Young Decl. ¶ 10 (“I have not moved[.]”).

130.

Defendants’ Statement No. 130:

None of these four voters were precluded from returning the two confirmation notices, which are prepaid and addressed. Doc. No. [188] at 26.

Plaintiffs’ Response:

Disputed and immaterial. Statement No. 130 is disputed because these voters testified that they did not receive either of the two confirmation notices, and thus they were precluded from returning them. Exh. 97, Smith Decl. ¶ 6 (“I did not

receive any notice that I was going to be removed from the voting rolls.”); Exh. 94, Thomas Decl. ¶ 6 (“I have not received anything from the Secretary of State’s office about my voter status[.]”); Exh. 95, Hopkins Decl. ¶ 5 (“I have not received a notice from the Secretary of State[.]”); Exh. 96, Young Decl. ¶ 10 (“I have not received a notice from the Secretary of State[.]”).

Moreover, Statement No. 130 is immaterial to the issues raised in Defendants’ summary judgment motion, as demonstrated by Defendants’ failure to discuss it in their brief.*

131.

Defendants’ Statement No. 131:

None of these four were precluded from re-registering to vote. Doc. No. [188] at 27.

Plaintiffs’ Response:

Undisputed, but immaterial. Statement No. 131 is immaterial to the issues raised in Defendants’ summary judgment motion, as demonstrated by Defendants’ failure to discuss it in their brief.*

132.

Defendants’ Statement No. 132:

Re-registering after being moved to cancelled status for “no contact” is no different from registering to vote in the first instance. Doc. No. [183], Tr. 47:23-

48:2 (C. Harvey testimony).

Plaintiffs' Response:

Partially disputed and immaterial. Statement No. 132 is disputed to the extent that it suggests voters in cancelled status know that they need to register to vote and have an easy time reregistering. To the contrary, voters often do not know they need to reregister and therefore are not permitted to vote. *See, e.g.*, Exh. 87, State-Defendants-00741716; Exh. 88, Nov. 7, 2018 Email re Voter Registration Cancelled in DeKalb County, State-Defendants-00741719; Exh. 89, Nov. 1 2016 Email re Voter Registration Cancelled in Gwinnett County, State-Defendants-00334225; Exh. 90, Nov. 2, 2018 Email re Voter Registration in Douglas County, State-Defendants-00089078; *see also* SAMF ¶¶ 683-706. Voters also have difficulty reregistering after they have been purged. Exh. 114, State-Defendants-00024145, at -00024148 (SOS investigation verifying purged voter's claim that his effort to reregister at DDS was unsuccessful and so he missed the deadline to reregister); Exh. 115, Banez Decl. ¶¶ 3, 6, 7-33. Furthermore, Statement No. 132 is immaterial to the issues raised in Defendants' summary judgment motion, as demonstrated by Defendants' failure to discuss it in their brief.*

133.

Defendants' Statement No. 133:

A voter can re-register to vote by going online to use the Online Voter Registration system, renewing one's driver's license or identification card with the Department of Driver Services or "with pen and pencil". Doc. No. [183], Tr. 48:2-4 (C. Harvey testimony).

Plaintiffs' Response:

Undisputed, but incomplete and immaterial. It is undisputed that these are ways for voters to fill out voter registration applications, but many voters fill out voter registration applications and still are not found on the rolls. In any event, Statement No. 133 is immaterial to the issues raised in Defendants' summary judgment motion, as demonstrated by Defendants' failure to discuss it in their brief.*

134.

Defendants' Statement No. 134:

Of these four voters, three have reregistered and one remains in inactive status. One of the voters, Clifford Thomas, voted in the June primary. C. Harvey June 29, 2020 Declaration, Ex. No. (131) at ¶¶ 5-6, Exs. C and D.

Plaintiffs' Response:

Undisputed, but immaterial. Statement No. 134 is immaterial to the issues raised in Defendants' summary judgment motion, as demonstrated by Defendants' failure to discuss it in their brief.*

VI. Georgia’s application of the Help America Vote Act pursuant to O.C.G.A. § 21-2-220.1.

135.

Defendants’ Statement No. 135:

Georgia’s voter verification process, by which the county election officials confirm the identities of voters whose information does not match that which is on file with the Georgia Department of Driver Services (“DDS”), was altered by the passage of HB 316. See generally supra, ¶ 29, HB 316.

Plaintiffs’ Response:

Partially disputed and immaterial. Plaintiffs also object to Statement No. 135 as stating a legal conclusion rather than a statement of fact.†

Statement No. 135 is disputed to the extent it suggests that Georgia’s voter verification process is a county function as opposed to an SOS function. The Exact Match process occurs pursuant to an SOS policy and is performed at the State level, not the county level. *See, e.g.*, Exh. 116, Feb. 23, 2017 Official Election Bulletin, State-Defendants-00166398 (SOS update to the match process), Exh. 117, May 8, 2019 J. Hallman email, State-Defendants-00065567 (describing change to the match criteria); *see also* SAMF ¶ 387-89. Further, the SOS’s broader role is to “facilitate statewide voter registration and participation in accordance with state and federal laws.” Exh. 22, SOS Transition Memo, State-Defendants-00149713, at

-00149713. This includes “coordinating, monitoring, and providing guidance for many activities relating to elections and voter registration,” such as “providing resources to counties and groups for voter registration, maintaining Georgia’s statewide voter registration database, [and] providing training for local election officials regarding proper election procedures.” Exh. 22, SOS Transition Memo, State-Defendants-00149713, at -00149713. The SOS’s role is further detailed in SAMF ¶¶ 221-261, 302-327. Otherwise, Statement No. 135 is not disputed.

The statement, however, is immaterial to the issues raised in Defendants’ summary judgment motion because the Exact Match process still imposes unconstitutional burdens on voter registration applicants. The immateriality of Statement No. 135 is further demonstrated by Defendants’ failure to discuss it in their summary judgment motion briefing.*

136.

Defendants’ Statement No. 136:

Plaintiffs are aware and have acknowledged that counties, not the Secretary of State, handle voter registrations. Ex. No. (43) at PLTFS-FFA-003949.

Plaintiffs’ Response:

Disputed and immaterial. Plaintiffs also object to Statement No. 136 as stating a legal conclusion rather than a statement of fact.†

In the cited source, Sara Tindall Ghazal (Voter Protection Director for the Democratic Party of Georgia) did not state that only counties, not the SOS, are responsible for or “handle” voter registrations. Email Correspondence, Defs.’ Ex. 43, at Pltfs-FFA-003949. Exact Match is a policy created by the SOS and the SOS runs the Exact Match process at the State level. *See, e.g.*, Exh. 116, Feb. 23, 2017 Official Election Bulletin, State-Defendants-00166398 (SOS update to the match process), Exh. 117, May 8, 2019 J. Hallman email, State-Defendants-00065567 (describing change to the criteria); *see also* SAMF ¶¶ 387-89. Further, the SOS’s broader role is to “facilitate statewide voter registration and participation in accordance with state and federal laws.” Exh. 22, SOS Transition Memo, State-Defendants-00149713, at -00149713. This includes “coordinating, monitoring, and providing guidance for many activities relating to elections and voter registration,” such as “providing resources to counties and groups for voter registration, maintaining Georgia’s statewide voter registration database, [and] providing training for local election officials regarding proper election procedures.” Exh. 22, SOS Transition Memo, State-Defendants-00149713, at -00149713. The SOS’s role is further detailed in SAMF ¶¶ 221-234, 236, 243, 247-249, 258, 302, 387-389.

Moreover, Statement No. 136 is immaterial to the issues raised in Defendants' summary judgment motion, as demonstrated by Defendants' failure to discuss it in their brief.*

137.

Defendants' Statement No. 137:

Since the 2016 implementation of automatic voter registration, when a voter updates information at DDS, their voter registration information is automatically updated based upon the information in the DDS database if the individual does not specifically opt out. Ex. No. (30) at 138:2324.

Plaintiffs' Response:

Partially disputed and immaterial. It is undisputed that Statement No. 137 describes the way in which the process is supposed to work, but it is disputed that this is how the process actually does work. Registration processing is not entirely automatic and without room for error. *See, e.g.*, Exhs. 59, 118, Ga00769673, Ga00777881 (IT tickets documenting a problem and an attempted fix "so that voters that pass verification through the [DDS] or [SSA] are automatically updated to remove the MIDR status" and noting a "data clean-up" would be required); Exh. 119, State-Defendants-00164121 (2017 email from John Hallman acknowledging that an application may have initially been sent from DDS to an incorrect county,

which “ha[d] been happening with some DDS apps recently”); Exh. 120, State-Defendants-00165285 (2017 IT ticket explaining that addresses submitted through DDS that contained letters and numbers were not being retained with letters in the system, which had caused “mailing issues”); Exh. 121, State-Defendants-00225242 (2018 IT ticket noting that three test registration files were not conveyed from DDS to a county). Otherwise, Statement No. 137 is not disputed.

In any event, Statement No. 137 is immaterial to the issues raised in Defendants’ summary judgment motion, as demonstrated by Defendants’ failure to discuss it in their brief.*

138.

Defendants’ Statement No. 138:

The DDS registration information automatically goes into the State’s voter registration system each night, is divided up according to county as per the address from DDS, and shows up on county registrars’ dashboards for processing. Ex. No. (30) at 139:2-7.

Plaintiffs’ Response:

Partially disputed and immaterial. It is undisputed that Statement No. 138 describes the way in which the process is supposed to work, but it is disputed that this is how the process actually does work. Registration processing is not entirely

automatic and without room for error. *See, e.g.*, Exhs. 59, 118, Ga00769673, Ga00777881 (IT tickets documenting a problem and an attempted fix “so that voters that pass verification through the [DDS] or [SSA] are automatically updated to remove the MIDR status” and noting a “data clean-up” would be required); Exh. 119, State-Defendants-00164121 (2017 email from John Hallman acknowledging that an application may have initially been sent from DDS to an incorrect county, which “ha[d] been happening with some DDS apps recently”); Exh. 120, State-Defendants-00165285 (2017 IT ticket explaining that addresses submitted through DDS that contained letters and numbers were not being retained with letters in the system, which had caused “mailing issues”); Exh. 121, State-Defendants-00225242 (2018 IT ticket noting that three test registration files were not conveyed from DDS to a county). Otherwise, Statement No. 138 is not disputed.

In any event, Statement No. 138 is immaterial to the issues raised in Defendants’ summary judgment motion as demonstrated by Defendants’ failure to discuss it in their brief.*

139.

Defendants' Statement No. 139:

If a person registers to vote with a paper application at a local board of election office, the information is put into eNet (the state's voter registration system). Ex. No. (30) at 156:6-17.

Plaintiffs' Response:

Partially disputed and immaterial. Statement No. 139 is disputed to the extent it suggests that registration processing is without room for error. County officials can and do commit data entry errors and overlook documentation accompanying registration applications. *See, e.g.*, Exh. 122, State-Defendants-00310483, 00310483-00310484 (2018 notification from Chattooga County to the SOS Elections Division that the county had 16 voters with an ID-required "flag," even though "some of the voters should never have been ID required," and response from the SOS's office liaison that "[t]his is more than likely a data entry error"). Otherwise, Statement No. 139 is not disputed.

In any event, Statement No. 139 is immaterial to the issues raised in Defendants' summary judgment motion, as demonstrated by Defendants' failure to discuss it in their brief.*

140.

Defendants' Statement No. 140:

There is an overnight electronic process whereby the following fields from paper applications are checked against DDS' database: first name, last name, date of birth, driver's license number, and social security number. Id.

Plaintiffs' Response:

Undisputed.

141.

Defendants' Statement No. 141:

The information is compared to the federal Social Security Administration ("SSA") records for verification if the verification process cannot complete using DDS records. Ex. No. (32) at 233:21-234:4.

Plaintiffs' Response:

Partially disputed. It is disputed that the cited deposition testimony mentions the SSA verification process, but undisputed that if an individual does not have a driver's license, the system will run a match with SSA records using the last four digits of the individual's Social Security number. Exh. 26, Germany Dep. 90:18-24.

Statement No. 141 is also disputed to the extent it suggests the SSA matching process is reliable, which it is not. *See, e.g., id.* 90:25-91:17 (referring to the error rates as "pretty ridiculous"); June 2009 Inspector General Report, A-03-

09-29115 at 1 (finding that SSA could provide a match for only 69% of applicants nationwide, and a “no match” response for 31% of applicants); *see also* Expert Report of McCrary, ECF No. 339 at 59 (discussing the Inspector General report’s finding).

142.

Defendants’ Statement No. 142:

The system also compares the registrants’ citizenship status as it was presented to DDS. Ex. No. (30) at 156:18-21.

Plaintiffs’ Response:

Partially disputed. The statement is disputed to the extent it suggests the DDS citizenship check is reliable, which it is not. *See, e.g.*, Exh. 26, Germany Dep. 126:20-127:18 (Q: In any event, this will flag naturalized citizens in some circumstances as being noncitizen, won’t it, when they’re run through the DDS process? A: If they have not provided a document, yes, that’s possible.”).

Otherwise, Statement No. 142 is not disputed.

143.

Defendants’ Statement No. 143:

Prior to the passage of HB 316, if an applicant’s information did not match that which was on file with either DDS or the SSA, his or her registration would be placed in “pending” status. Ex. No. (32) at 234:16-234:2.

Plaintiffs' Response:

Partially disputed. It is disputed that an applicant's information would be checked against the files of *both* the DDS *and* the SSA. If an applicant registered to vote using a driver's license number, his or her information would be compared against DDS's database for verification. *See* Exh. 123, DDS Interface Manual (Revised 2013), State-Defendants-00264433, at -00264437; Exh. 124, 2013 DDS Verification Technical Guide, State-Defendants-00264426 at -00264428; *see also* Expert Report of McCrary, ECF No. 339 at 64-65 (discussing verification process prior to the passage of HB 316). If the applicant had no driver's license and instead sought to rely on the last four digits of his or her social security number, DDS would send the information to SSA for verification of non-citizenship information, and the applicant would be required to provide documentary proof of citizenship. Exh. 125, SOS Training Presentation, State-Defendants-00127461, at -00127470, -00127475; *see also* Expert Report of McCrary, ECF No. 339 at 64 (discussing verification process prior to the passage of HB 316). Otherwise, Statement No. 143 is not disputed.

144.

Defendants' Statement No. 144:

A voter who had been placed in “pending” status could provide a photo ID at the polls, or anytime beforehand, to cure the verification issue and vote normally.

Ex. No. (32) at 234:16-234:2.

Plaintiffs' Response:

Disputed. Statement No. 144 is disputed to the extent it suggests that voters in “pending status” could vote normally if they provided a photo ID.

First, voters in pending status for reasons other than citizenship had difficulty voting at the polls even when they presented photo ID. For example, in November 2018, a poll worker could not determine what documents a voter on the pending list would need to present to vote. “The whole process caused significant delay.” Exh. 126, State-Defendants-00054589. Subsequent correspondence among SOS employees demonstrated that the county was following the wrong procedures. *See* Exh. 127, State-Defendants-00085329 (“[t]he specific reason why the person is in V status should not be necessary to let them vote if they have proper identification”).

Second, county and SOS officials have been confused about the types of documentation that can fix a non-match regarding non-citizenship information. For

example, in response to a 2017 election bulletin, a Brooks County official asked for clarification from the SOS on “appropriate verification documents” that a voter in “pending” status could use to update their status to “active.” *See* Exh. 128, State-Defendants-00177398, at -00177398. The ensuing communications within the SOS’s office demonstrated confusion regarding whether a voter in pending SSA status who presented ID should be moved to active status. *See* Exh. 129, State-Defendants-00165978, at -00165978 (asking, “So, if a voter in Pending SSA status brings in their DL, the voter’s identifiers will not be changed and put back through verification but just the voter’s status will be changed to Active?”).

Statement No. 144 is further disputed because voters could be in pending status due to a citizenship non-verification, and in such instances, they would need to provide citizenship documentation, not just photo ID, to resolve the verification issue. Exh. 130, SOS Presentation, Ga00780351, at Ga00780367 (quoting Poll Worker Training Manual regarding verification).

145.

Defendants’ Statement No. 145:

Now, following the passage of HB 316, an applicant who registers using a paper application, and whose information cannot be verified, is nevertheless considered an active voter and issued a precinct card. Ex. No. (32) at 235:3-5.

Plaintiffs' Response:

Partially disputed. Statement No. 145 is disputed because applicants whose information cannot be verified for a basis other than citizenship are placed in “active-MIDR” status, which the SOS has stated “means they need to show ID in order to complete the registration,” Exh. 23, Aug. 16, 2019 SOS 30(b)(6) Dep. 235:3-7, and the source does not show that these applicants will be treated the same as “active voters” at the polls. In addition, the cited source does not discuss the use of a paper application.

It is undisputed that Statement No. 145 describes the way in which precinct cards are supposed to be issued to voters, but it is disputed that this is how the process actually does work. It is too early to tell whether the new process is being followed consistently, and the cited source does not demonstrate that a precinct card is, in practice, issued to every applicant who registers using a paper application and cannot be verified.

Statement No. 145 is further disputed because voters whose *citizenship* information cannot be verified continue to be placed in “pending” status. Exh. 131, Apr. 3, 2019 Election Bulletin, State-Defendants-00007501, -00007761; Expert Report of Mayer at 5-6.

Defendants' Statement No. 146:

The applicant is placed in Missing Identification Required (“MIDR”) status, which means he or she will have to provide valid photo ID to complete his or her registration but is nevertheless considered an active voter. Ex. No. (32) at 235:5-7.

Plaintiffs' Response:

Partially disputed. Statement No. 146 is disputed to the extent it implies the voters with MIDR status do not experience extra scrutiny and burden at the registration stage and at the polls, as did voters in “pending” status previously. *See, e.g.*, Exh. 126, Voter Complaint, State-Defendants-00054589 (describing difficulties faced by voter in pending status).

Statement No. 146 is also disputed to the extent it suggests the SOS's guidance has been clear that applicants in MIDR status must provide “photo ID” to complete their registrations. According to the SOS's April 3, 2019 Official Election Bulletin, voters in MIDR status “will be able to vote upon showing HAVA ID.” Exh. 131, State-Defendants-00007501, -00007761. HAVA ID, as defined by Georgia law, includes photo ID and “a copy of a current utility bill, bank statement, government check, paycheck, or other government document that shows the name and address of such elector.” O.C.G.A. § 21-2-417(c); *see also*

Expert Report of Mayer at 5 (noting inconsistent descriptions of ID that voters in MIDR status can present). Statement No. 146 is otherwise not disputed.

147.

Defendants' Statement No. 147:

If an applicant registers by paper application and includes a photo ID with the registration, the verification process with DDS and the SSA will not affect his or her registration. Ex. No. (32) at 234:3-6.

Plaintiffs' Response:

Disputed because there are instances where an applicant who is flagged for a mismatch on noncitizenship information and who has provided proper documentation is nevertheless put in a pending or MIDR status. *See, e.g.*, Exh. 132, Email Correspondence, State-Defendants-00155254 (county official offering an example of “a voter who has voted multiple times in person, and ENet has not updated the IDR” and stating that “[p]eople should not have to prove their identity over and over”).

148.

Defendants' Statement No. 148:

The process for an affected applicant to cure the verification issue and vote both before and after HB 316 is largely the same; he or she may provide a valid

photo ID at the polling location (or beforehand) and vote normally. Ex. No. (32) at 236:9-237:21.

Plaintiffs' Response:

Partially disputed. It is undisputed that the process for affected applicants to cure verification issues before and after HB 316 is “largely the same.” It is disputed that either the pre- or post-HB 316 process allows the affected applicant to “vote normally.” *See, e.g.*, Exh. 126, Voter Complaint, State-Defendants-00054589 (noting “significant delay” for voter in pending status); *see also* Exh. 93, Voter Complaint, State-Defendants-00332287 (noting that voter was prevented from voting because of an issue concerning her middle initial); Exh. 133, Voter Complaint, State-Defendants-00088263 (voter was turned away from early voting because of her social security number.).

Statement No. 148 is also disputed to the extent it suggests the SOS’s guidance has been clear that applicants in MIDR status must provide “valid photo ID” to complete their registrations. According to the SOS’s April 3, 2019 Official Election Bulletin, voters in MIDR status “will be able to vote upon showing HAVA ID.” Exh. 131, State-Defendants-00007501, -00007761. HAVA ID, as defined by Georgia law, includes photo ID and “a copy of a current utility bill, bank statement, government check, paycheck, or other government document that

shows the name and address of such elector.” O.C.G.A. § 21-2-417(c); *see also* Expert Report of Mayer at 5 (noting inconsistent descriptions of ID that voters in MIDR status can present). Statement No. 148 is otherwise not disputed.

149.

Defendants’ Statement No. 149:

A photo ID is required to vote in-person in Georgia. Ex. No. (32) at 237:1-5.

Plaintiffs’ Response:

Partially disputed. Statement No. 149 is disputed because certain voters who register to vote by mail and are first-time Georgia voters can provide “a copy of a current utility bill, bank statement, government check, paycheck, or other government document that shows the name and address of such elector” instead of a photo ID. O.C.G.A. § 21-2-417(c). Otherwise, Statement No. 149 is not disputed.

150.

Defendants’ Statement No. 150:

Voters are not removed from the voter rolls pursuant to Georgia’s voter-verification law. Ex. No. (32) at 233:12-19.

Plaintiffs’ Response:

Undisputed, but incomplete. Prior to the passage of HB 316, voters’ registrations would be rejected after 26 months in “pending” status pursuant to Georgia’s voter-verification law. *See* SOF ¶ 151.

151.

Defendants' Statement No. 151:

Prior to the passage of HB 316, if an applicant whose information could not be verified did not cure his or her registration and remained in "pending" status for 26 months, his or her registration would be rejected. Ex. No. (32) at 237:25-238:5.

Plaintiffs' Response:

Partially disputed. Statement No. 151 is disputed to the extent it suggests that the rejection "clock" was consistently set at 26 months prior to the passage of HB 316. As of 2015, applicants who failed the Exact Match process and were placed in pending status would have their registrations rejected if they did not correct the verification error within 40 days. *See* Exh. 125, SOS Training Presentation, State-Defendants-00127461, -00127469. Otherwise, Statement No. 151 is not disputed.

152.

Defendants' Statement No. 152:

Following the passage of HB 316, because an applicant is labelled an active voter regardless of the verification process, this no longer occurs; an affected voter will remain in MIDR status until either the registration issue is cured or the voter is placed in inactive status for some other reason. Ex. No. (32) at 238:6-9.

Plaintiffs' Response:

Partially disputed. Statement No. 152 is disputed to the extent it could be read to apply to voters flagged as noncitizens, because those voters have their applications rejected after 26 months if they do not provide citizenship documentation. Exh. 23, Aug. 16, 2019 SOS 30(b)(6) Dep. 243:17-24; Exh. 30, State-Defendants-00095888, -00095898 (SOS training presentation).

Statement No. 152 is also disputed to the extent it suggests that applicants flagged through the non-citizenship Exact Match process are in normal "active" status, rather than active-MIDR status. Exh. 23, Aug. 16, 2019 SOS 30(b)(6) Dep. 235:3-7. Otherwise, Statement No. 152 is not disputed.

153.

Defendants' Statement No. 153:

During the 2018 general election, Dr. Carlos del Rio, a declarant witness identified by Plaintiffs as being affected by Georgia's voter-verification law, presented his voter form and driver's license to the poll worker and was told he was not registered to vote. C. del Rio Dep., Ex. No. (10) at 33:18-34:1.

Plaintiffs' Response:

Undisputed.

154.

Defendants' Statement No. 154:

Dr. del Rio told the poll worker he was, in fact, registered and showed her his registration on his phone. Id. at 34:2-7.

Plaintiffs' Response:

Undisputed.

155.

Defendants' Statement No. 155:

The poll worker noticed a discrepancy in the spelling of his last name on his license and in the voter-registration database, consulted her supervisor, and then told Dr. del Rio that he was allowed to vote, which he did. Id. at 34:8-35:1.

Plaintiffs' Response:

Disputed. The discrepancy the poll worker noticed was not in the spelling of Dr. del Rio's name; the only discrepancy was in the lack of spacing between "del" and "Rio." The poll worker eventually allowed Mr. del Rio to vote "for this time," instead of clearing him for all future voting. Exh. 134, del Rio Decl., Pltfs-000363, at -000365; Exh. 135, del Rio Dep. 34:15-23 ("[T]his person came back and said . . . honey, this time we're going to let you vote.").

156.

Defendants’ Statement No. 156:

In total, Dr. del Rio’s entire experience lasted between eight and ten minutes.

Id. at 44:24-45:17.

Plaintiffs’ Response:

Undisputed.

157.

Defendants’ Statement No. 157:

Ngoc Anh Thi Tran, the only other declarant identified by Plaintiffs as having a voting experience involving Georgia’s voter-verification law, discovered prior to the November 2018 election that she was registered to vote but her registration was not in active status.¹⁸ Ex. No. (69) at PLTFS-001119.

Plaintiffs’ Response:

Disputed. Ms. Tran’s declaration does not say that she discovered “that she was registered to vote”; instead, Ms. Tran stated that the registration website said

¹⁸ The evidence is unclear as to the precise status of Mrs. Tran’s registration—e.g., whether it was pending status or inactive status—at the time. It seems Mrs. Tran previously had been registered to vote but never actually voted in Georgia until the November 2018 election. Ex. No. (69) at PLTFS-001119; see also Ex. No. (2) at 33:4-15 (describing the indicated status of Mrs. Tran’s voter registration as “like not active or non-active or pending or something, but it wasn’t active”).)

her “file was not active” and that she learned her “voter status wasn’t valid” because of her listed name and gender. Exh. 136, Tran Decl., Pltfs-001119-001120.

In addition, Ms. Tran and Dr. del Rio are not the only people affected by Exact Match that Plaintiffs have identified. For example, Plaintiffs have identified Vanessa Alva, whose status displayed as “pending” on the My Voter Page and whose absentee ballot was listed as in “challenged” status for DDS and Citizenship verification as a result of the Exact Match process. Exh. 71, Email Correspondence with SOS, Ga01225644-645 (discussing Exact Match and Ms. Alva being improperly placed in pending status). As further examples, Phoebe Rachael Einzig-Roth and Kia Marlene Carter were informed they were non-matches for citizenship when they arrived at the polls. Exh. 69, Einzig-Roth Decl. ¶ 4; Exh. 70, Carter Decl. ¶ 4. Otherwise, Statement No. 157 is not disputed.

158.

Defendants’ Statement No. 158:

The Secretary’s My Voter Page directed Mrs. Tran to call her county election office, which Cam Ashling, who met Mrs. Tran while canvassing for an Asian American political action committee, did on Mrs. Tran’s behalf. Ex. No. (69) at PLTFS-001119; Ashling Dep., Ex. No. (2) at 24:23-25:6; 33:4-11.

Plaintiffs' Response:

Undisputed, but immaterial. Statement No. 158 is immaterial to the issues raised in Defendants' summary judgment motion, as demonstrated by Defendants' failure to discuss it in their brief.*

159.

Defendants' Statement No. 159:

Cam Ashling is the Chair/Treasurer of the Georgia Advancing Progress Political Action Committee (GAP PAC), which advocates against Georgia's new BMD voting machine technology. April 11, 2019 Email: C. Ashling to C. Ashling, Georgia's Voting Machine 'Reform' Is a Threat to Free and Fair Elections, Ex. No. (77) at PLTFS-FFA-005913.

Plaintiffs' Response:

Undisputed, but immaterial. Statement No. 159 is immaterial to the issues raised in Defendants' summary judgment motion, as demonstrated by Defendants' failure to discuss it in their brief.*

160.

Defendants' Statement No. 160:

Ms. Ashling told Mrs. Tran that the county required verification of Mrs. Tran's citizenship to update her registration status. Ex. No. (69) at PLTFS-001119.

Plaintiffs' Response:

Undisputed.

161.

Defendants' Statement No. 161:

Mrs. Tran's husband located Mrs. Tran's naturalization papers, and Ms. Ashling drove Mrs. Tran to the county election office. Ex. No. (69) at PLTFS-001119; Ex. No. (2) at 34:15-35:9.

Plaintiffs' Response:

Undisputed.

162.

Defendants' Statement No. 162:

There, a staff member at the county election office told Mrs. Tran that the spacing in her name on her naturalization document did not exactly match what appeared in the voter-registration database, and that her gender was listed as male instead of female. Ex. No. (69) at PLTFS-001119; Ex. No. (2) at 47:17-48:2, 50:17-51:12.

Plaintiffs' Response:

Partially disputed. Disputed that the county election office's issue concerned a "match" between Mrs. Tran's naturalization document and what appeared in the voter-registration database. Ms. Ashling did not identify what the naturalization

document was matched against. She said, “they must have been matching another thing to know that it wasn’t matching.” Exh. 137, Ashling Dep. 48:20-24.

Otherwise, Statement No. 162 is not disputed.

163.

Defendants’ Statement No. 163:

After Mrs. Tran presented her naturalization document, the county election official updated Mrs. Tran’s registration status, and Mrs. Tran was able to complete the early voting process. Ex. No. (69) at PLTFS-001119-20.

Plaintiffs’ Response:

Undisputed.

164.

Defendants’ Statement No. 164:

Mrs. Tran’s declaration states that the combined process of verifying her registration status and voting took “the entire day.” Ex. No. (69) at PLTFS-001120.

Plaintiffs’ Response:

Undisputed.

165.

Defendants' Statement No. 165:

Ms. Ashling testified that it took less time than that, stating that her interaction with Mrs. Tran began around 11:00 am and lasted between three and four hours. Ex. No. (2) at 35:14-36:8.

Plaintiffs' Response:

Disputed. Ms. Ashling testified that a *portion* of her assistance of Ms. Tran took between three and four hours, but that the full process took an "entire day." Exh. 137, Ashling Dep. 35:14-36:8. Ms. Ashling stated:

"God. It was like hours. It was like three or four hours from when I got there to, you know, to calling, to trying to find naturalization paper. Then trying to figure out where to go, taking her to lunch and driving her there, and waiting in line. And then, you know, getting the person who needed to talk to, and then that person calling the manager. And then the manager, you know, is talking back to the person at the desk, the admin. And then they changed the status. And then we had to get into the other line to actually vote and do, you know, regular voting. And then go through all that, and then I got to drive her all the way back home. So it was like my entire day." Ashling Dep. 35:14-36:8.

166.

Defendants' Statement No. 166:

Both Ms. Tran and Dr. del Rio successfully cast ballots in the November 2018 elections. Ex. No. (69) at PLTFS-001119-22; Ex. (70) at PLTFS000363-64; see also Ex. No. (10) at 34:8-35:1.

Plaintiffs’ Response:

Undisputed, but immaterial. Statement No. 166 is immaterial to the issues raised in Defendants’ summary judgment motion because an unconstitutional burden on the franchise can occur without an individual being deprived of the ability to successfully cast a ballot. *See Democratic Exec. Comm. of Fla. v. Lee*, 915 F.3d 1312, 1318–19 (11th Cir. 2019) (“[E]ven when a law imposes only a slight burden on the right to vote, relevant and legitimate interests of sufficient weight still must justify that burden”); *Georgia Coal. for People’s Agenda, Inc. v. Kemp*, 347 F. Supp. 3d 1251, 1263 (N.D. Ga. 2018). The immateriality of Statement No. 166 is further demonstrated by Defendants’ failure to discuss it in their summary judgment motion briefing.*

167.

Defendants’ Statement No. 167:

Both were able to correct the apparent mismatches by showing one piece of additional documentation prior to voting. Ex. No. (70) at PLTFS000365; Ex. No. (69) at PLTFS-001120.

Plaintiffs’ Response:

Disputed. Statement No. 167 discounts the additional burdens each voter faced in correcting the mismatch. The mismatches required Ms. Tran and Dr. del Rio to take additional time, to travel, and/or to provide explanation to officials. *See*

Exh. 136, N. Tran Decl., Pltfs-001119-001120; Exh. 134, C. del Rio Decl., Pltfs-000363-000365.

168.

Defendants’ Statement No. 168:

Dr. Mayer,¹⁹ Plaintiffs’ proffered expert regarding voter-verification, identified particular processes that he said “produce higher verification failure rates and noncitizenship flags for minority registrants compared to non-Hispanic White registrants.” Doc. No. [238] at 5.

Plaintiffs’ Response:

Undisputed.

169.

Defendants’ Statement No. 169:

Dr. Mayer was not, however, able to say if this disparity was the result of people improperly failing verification, because he could not determine “whether someone is in that status and shouldn’t be” K. Mayer Dep., Ex. No. (24) at 40:20-43:2.

¹⁹ Defendants have moved the Court to exclude, in its entirety, the testimony of Dr. Mayer. See Doc. No. [394].

Plaintiffs' Response:

Undisputed, but incomplete. Dr. Mayer testified that he was “absolutely certain” that the number of people incorrectly placed in MIDR or pending status “was greater than zero” and that this was “not a matter of belief, [but] a matter of certainty.” Exh. 138, Mayer Dep. 41:24-43:22.

170.

Defendants' Statement No. 170:

Dr. Mayer only made comparisons to the entire voter file to find a disparity, not the number of registrants in any particular time period (such as the universe of registrants after the adoption of HB 316). Ex. No. (24) at 111:1-112:20; 116:7-118:24.

Plaintiffs' Response:

Undisputed, but incomplete Dr. Mayer explained that “there’s no reason to think that the overall conclusion of minority voters being disproportionately affected would change” by looking at a different time period. Exh. 138, Mayer Dep. 112:4-15; *see also* Mayer Dep. 115:14-23 (“[G]iven the total number of people who likely registered between these two periods, I don’t think there’s any chance that the results wouldn’t show that minority registrants are disproportionately affected. I don’t think that the percentage of white registrants in pending status would go from 14 percent to 50 percent.”).

171.

Defendants' Statement No. 171:

Dr. Mayer could not opine on the cause as to why an individual may be in a particular status because he did not "have information on any particular individuals."

Ex. No. (24) at 159:5-159:15.

Plaintiffs' Response:

Undisputed, but immaterial because it is outside the scope of Dr. Mayer's expert report. The immateriality of Statement No. 171 is further demonstrated by Defendants' failure to discuss it in their summary judgment motion briefing.*

172.

Defendants' Statement No. 172:

Dr. McCrary relied in part on Dr. Mayer's analysis in reaching his conclusions on the voter-verification process. Ex. No. (25) at 123:1-18. But Dr. McCrary never reviewed or considered HB 316 and its effect on Georgia's matching process. Ex. No. (25) at 114:12-19.

Plaintiffs' Response:

Partially disputed and immaterial. It is undisputed that Dr. McCrary relied in part on Dr. Mayer's analysis, as well as the analysis of the Department of Justice, the Inspector General of the Social Security Administration, and analysis by North Carolina elections administrator Gary Bartlett. Exh. 68, McCrary Dep. 123:1-18. It

is disputed that Dr. McCrary “never reviewed or considered HB 316.” Dr. McCrary explained that he “looked at [HB 316] in general” and “looked at news coverage of its adoption,” but did not discuss it in his report. Exh. 68, McCrary Dep. 114:12-19. Otherwise, the statement is not disputed.

VII. Application of Georgia’s no-excuse absentee-by-mail law and process.

173.

Defendants’ Statement No. 173:

The absentee ballot process is handled at the county level, not by the Secretary of State. GEOC County Course #8 – Absentee Ballot Procedures, Ex. No. (78) at STATE-DEFENDANTS-00008134-38; Ex. No. (19) at 37:19-38:18.

Plaintiffs’ Response:

Disputed. Defendants’ statement suggests that the SOS does not have the authority or duty to be involved in the absentee ballot process, but that is incorrect. The SOS is responsible for absentee ballot processes because of its responsibilities for training, uniformity, and ensuring that counties do what the law requires them to do. *See, e.g.*, Exh. 23, Aug. 16, 2019 SOS 30(b)(6) Dep. 141:12-142:18 (referring to the SOS’s “general mandate to provide training and uniformity to the counties”); *see also* Pltfs.’ Response to SOF ¶ 82.

The SOS conducts substantial oversight over certain absentee ballot processes, including the timely distribution of ballots to uniformed and overseas

voters. *See, e.g.*, Exh. 25, Jan. 6, 2020 SOS 30(b)(6) Dep. 69:4-70.5 (explaining “this 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.”). The SOS also enlisted third-party vendors to process and mail absentee ballots for the June 2020 Primary. *See* Exh. 222, Press Release, One Millionth Absentee Ballot Highlights Election Success Under Covid-19, Ga. Sec’y State, https://sos.ga.gov/index.php/elections/one_millionth_absentee_ballot_highlights_election_success_under_covid19 (last visited July 26, 2020). The SOS further provides advice to individual counties on absentee ballot issues. *See* Exh. 139, Nov. 9, 2018, SOS Email, State-Defendants-00313204 (discussing a change that needed to be made to My Voter Page to allow voters to see whether their previously challenged ballots were accepted); Exh. 140, Jan. 13, 2016, SOS FAQ Document, State-Defendants-00131475 (informing counties (albeit incorrectly) that failure to provide accurate absentee oath information, including listing the current address instead of the voter’s date of birth, “could be considered grounds for rejection”).

The SEB promulgates and has the power to enforce rules for the timely and accurate administration of absentee ballots. *See, e.g.*, Ga. Admin. Code. ch. 183-1-14 (imposing requirements for absentee ballot processing).

See also SAMF ¶¶ 766, 768, 775-78, 788, 813, 821, 825-26, 833-36, 847-57, 872-73, 884, 890-91 for additional evidence of Defendants’ responsibility for absentee ballot processes.

174.

Defendants’ Statement No. 174:

County election officials mail absentee ballots to voters. GEOC County Course #8 – Absentee Ballot Procedures, Ex. No. (79) at STATE-DEFENDANTS-00008136-38.

Plaintiffs’ Response:

Disputed and immaterial. During the June 2020 Primary, the SOS engaged third-party vendors to mail absentee ballots to voters. *See* Exh. 222, Press Release, One Millionth Absentee Ballot Highlights Election Success Under Covid-19, Ga. Sec’y State, https://sos.ga.gov/index.php/elections/one_millionth_absentee_ballot_highlights_election_success_under_covid19 (last visited July 26, 2020) (“Instead of leaving the sending of absentee ballot request forms to local elections offices or third party organizations, the Secretary of State’s office took on that responsibility, coordinating with experienced state vendors for the printing and mailing of the request forms. The Secretary of State’s office also contracted with outside mail vendors for the fulfillment of the absentee ballot requests, including the provision

of processing equipment and printing and mailing ballots, to take that burden off of local elections officials.”). Statement No. 174 is also immaterial to the issues raised in Defendants’ summary judgment motion, as demonstrated by Defendants’ failure to discuss it in their brief.*

175.

Defendants’ Statement No. 175:

Voted absentee ballots are received and processed by county election officials, which includes validating the signature and other identifying information on the voted ballot. GEOC County Course #8 – Absentee Ballot Procedures, Ex. No. (80) at STATE-DEFENDANTS-00008139.

Plaintiffs’ Response:

Partially disputed. Statement No. 175 is disputed to the extent it suggests that county election officials have sole authority to process absentee ballots, with no involvement by Defendants. Defendants have the authority and duty to oversee counties’ processing of absentee ballots. *See* Pltfs.’ Response to SOF ¶ 173. The SOS is also responsible for certifying state election results and directing counties to recertify incorrect returns. *See* O.C.G.A. § 21-2-499. Otherwise, Statement No. 175 is not disputed.

176.

Defendants’ Statement No. 176:

145

Some of Plaintiffs' declarants indicated that they experienced difficulty in either obtaining (see, e.g., Declaration of N. Broderick, Ex. No. (81) at PLTFS000611; Declaration of J. Allen, Ex. No. (82) at PLTFS-001130-31) or submitting (see, e.g., Declaration of M. Fumo, Ex. No. (83) at PLTFS000563; Declaration of S. Thaxton, Ex. No. (84) at PLTFS000630) their absentee ballots, but none attributed their experiences to Defendants' conduct.

Plaintiffs' Response:

Undisputed as to these four declarants only, but immaterial. Whether these four declarants attributed their experiences to affirmative conduct by Defendants is immaterial to the claims at issue because their personal understandings of who is responsible for the burdens on voting they experienced are not relevant to Defendants' liability. The immateriality of Statement No. 176 is further demonstrated by Defendants' failure to discuss it in their summary judgment motion briefing.*

177.

Defendants' Statement No. 177:

In some instances, the declarations contained incorrect information as to the issue alleged. For example, Nicolas Winbush stated in his declaration that he never received his absentee ballot. Declaration of N. Winbush, Ex. No. (85) at

PLTFS000418-19. Mr. Winbush walked back this assertion in his deposition, testifying that he did in fact receive his absentee ballot, he just did not vote it. N. Winbush Dep., Ex. No. (41) at 23:9-21.

Plaintiffs' Response:

Undisputed as to this one declaration only, but disputed that there are other instances of this and that the Winbush declaration is an “example,” erroneously suggesting there are other such situations. Statement No. 177 is also immaterial to the issues raised in Defendants’ summary judgment motion, as demonstrated by Defendants’ failure to discuss it in their brief.*

178.

Defendants' Statement No. 178:

In other instances, absentee ballot issues were a result of declarants’ own mistakes. Natalya Kelly’s absentee ballot was rejected for insufficient oath information, and she admits her own error in not filling in her date of birth on her absentee ballot. Declaration of N. Kelly, Ex. No. (86) at PLTFS000804-05.

Plaintiffs' Response:

Disputed and immaterial. Disputed because the absentee ballot issue with respect to Ms. Kelly was the result of an unlawful rejection of her ballot. Date of birth information is immaterial and an invalid basis for rejecting an absentee ballot, as this Court found in *Dem. Party of Ga., Inc. v. Crittenden*, 347 F. Supp. 3d 1324,

1347 (N.D. Ga. 2018), and Judge May found in *Martin v. Crittenden*, 347 F. Supp. 3d 1302, 1311 (N.D. Ga. 2018). *See also* Nov. 13, 2018 Email from David Worley, State-Defendants-00018630 (discussing opinion from the Georgia Attorney General in Telfair County Case # 2012-31, concluding that it violated federal law to reject ballots with immaterial errors). Statement No. 178 is also immaterial because the question that is relevant to the claims at issue is whether the rejection of absentee ballots for immaterial errors was unlawful, not whether an individual voter made a mistake in filling out the oath. The immateriality of Statement No. 178 is further demonstrated by Defendants' failure to discuss it in their summary judgment motion briefing.*

179.

Defendants' Statement No. 179:

Dinesh Chandra's absentee ballot was likewise rejected due to her failure to include her date of birth. Declaration of D. Chandra, Ex. No. (87) at PLTFS000077-78.

Plaintiffs' Response:

Disputed because the absentee ballot issue with respect to Ms. Chandra was the result of an unlawful rejection of her ballot. *See* Pltfs.' Response to SOF ¶ 178. Statement No. 179 is also immaterial because the question that is relevant to the

claims at issue is whether the rejection of absentee ballots for immaterial errors was unlawful, not whether an individual voter made a mistake in filling out the oath. The immateriality of Statement No. 179 is further demonstrated by Defendants' failure to discuss it in their summary judgment motion briefing.*

180.

Defendants' Statement No. 180:

Date of birth is no longer a required field on the absentee ballot oath form. See O.C.G.A. § 21-2-384; see also supra, ¶ 29, HB 316, Act 24, lines 772–775.

Plaintiffs' Response:

Undisputed, but incomplete because the SOS has nonetheless approved of local officials using the old version of the absentee ballot envelope that requested date of birth. *See* Exh. 67, Nov. 4, 2019 R. Simmons Email, State-Defendants-00252500.

181.

Defendants' Statement No. 181:

Many declarants are aware that their respective counties mail, receive, and process absentee ballots and do not allege conduct on the part of Defendants. For example, Natalya Kelly called her local elections office when she did not receive her absentee ballot and again when she wanted to confirm it was received and counted (Ex. No. (86) at PLTFS000804-05); Dinesh Chandra returned her voted

absentee ballot in person to her county elections office and then went back upon learning they rejected it (Ex. No. (87) at PLTFS000077-78); and Maya Cross contacted her county elections board when she did not receive her absentee ballot, and then again to question whether it was received (Declaration of M. Cross, Ex. No. (88) at PLTFS000638-39).

Plaintiffs' Response:

Undisputed as to these three declarants only, but immaterial. Whether these three declarants interacted with their counties is immaterial to the claims at issue. Plaintiffs claim that Defendants are responsible for overseeing and supervising counties, training elections officials, enforcing state election law, and ensuring uniformity in Georgia elections.

In addition, voters have frequently complained directly to the SOS about their counties' failures to process their absentee ballot applications promptly, believing the SOS could rectify the problem. *See* Exh. 141, Oct. 2016 Complaint from Peach County voter Cheryl Lowery, State-Defendants-00156523; Exh. 142, Nov. 2016 Complaint from Habersham County voter Gail Hayden, State-Defendants-00892529; Exh. 143, Dec. 2017 Complaint from Fulton County voter Ryan Cook, State-Defendants-00815990 (investigation opened, SEB2017-084); Exh. 144, Dec. 2017 Complaint from Fulton County voter Jamie Panarites, State-

Defendants-00816529 (complaint added to SEB2017-084); Exh. 145, Complaint from Hancock voter Robin Rhodes, State-Defendants-00054370 (stating the county said it was behind schedule and ballots had not been sent out; SOS replied that the county said all ballots had been mailed); Exh. 146, Nov. 2018 Complaint from DeKalb County voter Eriss Donaldson, State-Defendants-00057465; Exh. 147, Nov. 2018 Complaint from Glynn County voter John Morrison, State-Defendants-00018609; Exh. 148, Nov. 2018 Complaint from DeKalb County voter Anna Sosnoff, State-Defendants-00057505; Exh. 149, Dec. 2018 Complaint from Chatham County voter Donne Rolfes, State-Defendants-00836278; Exh. 150, Apr. 2019 Communications from Stephens County Candidate, State-Defendants-00057535, State-Defendants-00092457 (alleging widespread mishandling of absentee ballots).

The immateriality of Statement No. 181 is further demonstrated by Defendants' failure to discuss it in their summary judgment motion briefing.*

182.

Defendants' Statement No. 182:

No superintendent provided a declaration to Plaintiffs, nor did any registrar; thus, no declarant offers statements based on their personal knowledge regarding training provided by the Secretary to such officials.

Plaintiffs’ Response:

Undisputed, but immaterial. Defendants produced the SOS’s training materials, so the evidence described in Statement No. 182 is irrelevant. The immateriality of Statement No. 182 is further demonstrated by Defendants’ failure to discuss it in their summary judgment motion briefing.*

183.

Defendants’ Statement No. 183:

Plaintiffs’ proffered expert, Kevin Kennedy, opined that training “shortcomings” occur when insufficient attention is given to absentee ballots, (Ex. No. (22) at 99:1-7), but does not offer an opinion that counties were incorrectly or improperly training on the timely provision and proper acceptance of ballots.

Plaintiffs’ Response:

Disputed. Mr. Kennedy testified that “not enough information and not enough focus is given to how do we treat provisional ballots and absentee ballots and how do I properly manage my responsibilities—by my, I mean the county official—with respect to the Georgia voter registration system.” Exh. 79, Kennedy Dep. 99:5-10. Further, if the SOS does not adequately train county elections officials, those officials do not have the necessary knowledge base to train poll workers. *See* Pltfs.’ Responses to SOF ¶¶ 82, 85.

184.

Defendants’ Statement No. 184:

Mr. Kennedy concedes that if elections workers follow the law, voters’ rights are protected. Ex. No. (22) at 159:13–20.

Plaintiffs’ Response:

Disputed. Mr. Kennedy was asked whether complying with a particular law would result in “a diminution of that voter’s rights articulated in that law”; he was not asked about the protection of “a voter’s rights” in general. In the cited testimony, Mr. Kennedy goes on to point out: “The idea—the idea of the training is simply to reinforce that it’s [compliance with the law] done.” He went on to testify immediately after the cited testimony that election workers “have to know what [the law] is and understand it and know what the ... consequences are.” Exh. 79, Kennedy Dep. 159:13–160:3. Moreover, Plaintiffs object to Statement No. 184 as duplicative of SOF ¶ 103.

185.

Defendants’ Statement No. 185:

Mr. Kennedy does not have an opinion on whether there is discrimination against persons of color in voting in Georgia, (Ex. No. (22) at 163:6-14), nor does he offer an opinion as to any discriminatory intent on the part of Defendants (Ex. No. (22) at 27:11-16).

Plaintiffs' Response:

Undisputed, but immaterial because it is outside the scope of Mr. Kennedy's report. The immateriality of Statement No. 185 is further demonstrated by Defendants' failure to discuss it in their summary judgment motion briefing.* Moreover, Plaintiffs object to Statement No. 185 as duplicative of SOF ¶ 69.

186.

Defendants' Statement No. 186:

Another of Plaintiffs' proffered experts, Dr. Smith, calculates a rejection rate of 2.35% for white voters' absentee ballots in the 2018 election, with a rejection rate of 3.74% for Black voters.²⁰ Doc. No. [259] at 17-18.

Plaintiffs' Response:

Partially disputed. Plaintiffs dispute the footnote in Statement No. 186 to the extent it suggests that this racial disparity will not affect voters after the passage of HB 316. Applications may still not be accepted and ballots may still be rejected for many of the same reasons applications and ballots could be rejected in 2018, but voters now have an opportunity to submit provisional absentee ballots (in the case of applications rejected for signature mismatch) or to cure their absentee ballots (in

²⁰ Dr. Smith's report only covers "roughly 100 counties with more than zero rejected" absentee ballots, (Doc. No. [259] at 22), and does not address how the changes to absentee-ballot laws as a result of HB 316 could affect his analysis.

the case of rejected ballots). *See* O.C.G.A. §§ 21-2-381(b)(3), 21-2-386(a)(1)(C).

Otherwise, Statement No. 186 is not disputed.

187.

Defendants’ Statement No. 187:

Dr. Smith does not offer an opinion on why absentee ballot rejection rates are higher for black voters than for white voters. Ex. No. (35) at 134:2-14.

Plaintiffs’ Response:

Undisputed, but immaterial. Statement No. 187 is immaterial because it is outside the scope of Dr. Smith’s report. The immateriality of Statement No. 187 is further demonstrated by Defendants’ failure to discuss it in their summary judgment motion briefing.*

188.

Defendants’ Statement No. 188:

Dr. Smith agreed that the difference in the rejection rate could have been caused by any number of non-racial factors, including age, voting experience, or several other categories besides race. Ex. No. (35) at 134:2136:6; 139:2-140:4; 141:7-141:19.

Plaintiffs’ Response:

Disputed. Plaintiffs dispute Statement No. 188 because Dr. Smith did not “agree” that the rejection rate could have been caused by any number of factors.

Dr. Smith said only that he “did not” examine other factors such as whether voters were first time voters or experienced voters. Exh. 151, Smith Dep. 134:2–136:6.

VIII. Use of provisional ballots.

189.

Defendants’ Statement No. 189:

The administration of provisional ballots is handled by county officials, not the Secretary of State. Ex. No. (19) at 278:6-16, 317:6-318:7.

Plaintiffs’ Response:

Disputed. Defendants play an integral role in managing provisional ballot processes, so county officials do not exclusively “handle[]” provisional ballots. Defendants are responsible, *inter alia*, for obtaining uniformity in Georgia elections and ensuring that county election officials are complying with the law. For example, the SOS trains elections officials on provisional ballot processes. *See* Exh. 152, Undated SOS Provisional Ballots Presentation, Orr-Chattooga County-000917 at -000918. The SOS also investigates potential violations of law related to provisional ballot practices as part of ongoing SEB cases. *See, e.g.*, Exh. 153, 2015 Fulton County Investigation Report, GA00759177 (addressing multiple provisional ballot failures by Fulton County in the 2012 elections); Exh. 154, Nov. 6, 2018 SOS Email, State-Defendants-0046162–65 & Exh. 38, State-Defendants-00423160 (SOS informs a voter that a county’s failure to offer provisional ballot may violate

the law or SEB rules, and forwards the issue to SOS investigators); Exh. 155, State-Defendants-00128972 (stating SOS would not refer violations to SEB as long as counties complied with SOS's new certification deadline, suggesting SOS could refer violations as part of its oversight of counties). The SEB can issue sanctions against counties that it determines are not following appropriate provisional ballot processes. *See* Exh. 156, Sept. 11, 2018 SEB Hearing Transcript at 109-14 (deciding to issue sanctions against Cobb County for improper rejection of provisional ballots). *See also* SAMF ¶¶ 911-12, 927, 929-31, 946 for further details/explanation.

190.

Defendants' Statement No. 190:

Counties print their own provisional ballots. Ex. No. (33) at 10:13-21; 111:5-20. The Secretary's Office does not provide them. Ex. No. (33) at 10:20-21.

Plaintiffs' Response:

Partially disputed. Disputed to the extent Statement No. 190 suggests the SOS plays no pre-election role in the availability of provisional ballots. The SOS builds ballots for counties based on information counties provide to SOS about their races and counties must receive their finalized form ballots before they may print paper ballots. *See* Exh. 157, Nov. 26, 2018 SOS Email, State-Defendants-

00240725 (stating some counties did not yet have paper ballots and SOS could send PDFs of the ballots); *see also* Exh. 158, Nov. 26, 2018 Email between SOS and County, State-Defendants-00240692 (stating county official had “no way of provisional voting, if called for” without SOS providing paper ballots). Otherwise, Statement No. 190 is not disputed.

191.

Defendants’ Statement No. 191:

Counties also determine whether to accept or reject provisional ballots. GEOC County Course #8 – Absentee Ballot Procedures, Ex. No. (89) at STATE-DEFENDANTS-00008147.

Plaintiffs’ Response:

Partially disputed. Disputed to the extent Statement No. 191 suggests that Defendants have no role in provisional ballot acceptance or rejections. Defendants play an integral role in overseeing provisional ballot processes and training county officials, including decisions about acceptance or rejections. For example, the SEB is required to promulgate rules and regulations to obtain uniformity in county election practices and investigative and sanctioning authority over counties. The SEB has sanctioned counties for improperly rejecting provisional ballots. *See* Exh. 156, Sept. 11, 2018 SEB Meeting Tr., Exhibit 71 to Dec. 5., 2019 C. Harvey Dep.

(addressing Cobb County rejections of provisional ballots); Exh. 159, 2017 Troup County Consent Order, State-Defendants-00025269 (addressing Troup County rejections of provisional ballots); *see also* SAMF ¶¶ 963-966 for further details/explanation. The SOS, among other things, trains county election officials, is responsible for ensuring county election officials are carrying out their tasks in accordance with law, and certifies election results. *See* O.C.G.A. § 21-2-499.

Otherwise, Statement No. 191 is not disputed.

192.

Defendants’ Statement No. 192:

The 2018 Poll Worker Manual contains roughly twenty-six pages of source material detailing the use of provisional ballots, (2018 Poll Worker Training Manual, Ex. No. (90) at STATE-DEFENDANTS-00009004–29), as does the 2020 Poll Worker Manual (Ex. No. (91) at STATE-DEFENDANTS-00867688-713).

Plaintiffs’ Response:

Undisputed, but incomplete because the quantity of source material is irrelevant to whether the training materials effectively and accurately train poll workers on provisional ballot processes. As Mr. Kennedy opined, the cited materials did not effectively train poll workers on when to distribute provisional ballots. He opined that Defendants’ training materials have been “woefully

deficient” in establishing clear guidelines and standards for distributing provisional ballots and often just quote statutes or regulations in full without providing more concrete directions. Exh. 160, Poll Worker Manual, 2018 Edition, State-Defendants-00008952-9059; Expert Report of Kennedy, ECF No. 167 at 17, 19. He also opined that Defendants’ provisional ballot training materials take “an inappropriately passive approach to issuing provisional ballots,” “suggest that issuing a provisional ballot is an optional procedure,” “are overly simplified,” and fail to “provide the full context for provisional ballots or a reference to where complete information can be found.” Expert Report of Kennedy, ECF No. 167 at 17, 19. The 2020 Poll Worker Manual exhibits similar defects, including quoting an outdated SEB regulation on provisional ballots. *See* Exh. 35, 2020 Poll Worker Manual, State-Defendants-00867638 at -92-98; Exh. 208, Georgia Poll Worker Manual at 56-57 (April 2020) (last accessed July 10, 2020) (<https://georgiapollworkers.sos.ga.gov/Shared%20Documents/Georgia%20Poll%20Worker%20Training%20Manual.pdf>). *See* SAMF ¶¶ 360-363 for additional details of Mr. Kennedy’s assessment of the ineffectiveness of the Poll Worker Manuals.

193.

Defendants’ Statement No. 193:

The Secretary's public-facing poll worker webpage provides further instruction on provisional ballots: "please, do not discourage a person eligible to cast a provisional ballot from casting it, ALWAYS OFFER A PROVISIONAL BALLOT! A good rule to remember is: when in doubt, give it out." Poll Worker Training Resources, *Provisional Ballots*, Office of the Secretary of State, at 8:40, <https://player.vimeo.com/video/391053063?autoplay=1&title> (last visited Jun. 22, 2020) (emphasis in original); see also Script for Video Number 16 – Provisional Ballots, Ex. No. (92) at STATE-DEFENDANTS-00887999.

Plaintiffs' Response:

Undisputed, but incomplete because not all of Defendants' training materials provide clear instructions on an affirmative obligation to offer provisional ballots. *See* Exh. 35, Poll Worker Manual, 2020 Edition, State Defendants-00867638–86774 (quoting an outdated SEB regulation on provisional ballots); Exh. 160, Poll Worker Manual, 2018 Edition, State-Defendants-00008952-9059 (reflecting no affirmative obligation for poll workers to offer a provisional ballot); Exh. 35, Poll Worker Manual, 2020 Edition, State-Defendants-00867638–867744 (same); *see also* Pltfs.' Response to SOF ¶ 192. Further, in light of widespread failures in provisional ballot practices, Mr. Harvey acknowledged the inadequacy of SOS's "when in doubt, hand it out" training to counties. Exh. 21, Dec. 5, 2019 C. Harvey

Dep. 252:20—253:3 (“I think we [SOS] can do better.”). Finally, this and any similar instructions are meaningless if Defendants have taken inadequate steps to ensure compliance. Defendants’ failure to ensure compliance is described in SAMF ¶¶ 909-936.

194.

Defendants’ Statement No. 194:

Mr. Harvey testified that the Secretary’s Office did not receive many complaints concerning insufficient numbers of provisional ballots during the 2018 general election. Ex. No. (32) at 131:18-132:21.

Plaintiffs’ Response:

Disputed. SOS received complaints from voters about insufficient numbers of provisional ballots during the 2018 election. *See* Exh. 161, November 6, 2018 Voter Complaint from Thys, State-Defendants-00088497 (complainant told SOS there were “no provisional ballots” available at Fulton County polling location); *see also* Exh. 162, Apr. 18, 2017 Voter Complaint from Carlson, State-Defendants-00748148 (complainant reported insufficient number of provisional ballots in phone call to SOS); Exh. 162, Apr. 18, 2017 Voter Complaint from Henderson, State-Defendants-00748148 (same); Exh. 162, Apr. 18, 2017 Voter Complaint from Owen, State-Defendants-00748148 (same). Further, several of Plaintiffs’

declarants identified polling locations that ran out of provisional ballots. *See* Exh. 163, Gordon Decl., Pltfs000030 (Chatham County location ran out of ballots, so declarant had to go to Randolph County to vote); Exh. 164, Walker Decl., Pltfs000221 (declarant was told “there were no Provisional Ballots for the entire county” at a Sumter County polling location).

195.

Defendants’ Statement No. 195:

Some of Plaintiffs’ declarants indicated they experienced difficulty in either obtaining (see, e.g., Declaration of D. Powers, Ex. No. (93) at PLTFS000073; Declaration of F. Freeman, Ex. No. (94) at PLTFS000999) or submitting (see, e.g., Declaration of M. Bell, Ex. No. (95) at PLTFS000436; Declaration of A. Burleson, Ex. No. (96) at PLTFS000765-76) their provisional ballots.

Plaintiffs’ Response:

Undisputed.

196.

Defendants’ Statement No. 196:

Some declarants who were upset they were required to vote using a provisional ballot had to do so because of their own error or conduct. For example, Ikechukwu Eziefula stated he was “forced” to vote using a provisional ballot, but this is because he requested, received, and then lost his absentee ballot. Declaration

of I. Eziefula, Ex. No. (97) at PLTFS000461-62. Mona Chase had to vote using a provisional ballot because she had previously requested and received an absentee ballot but then attempted to vote in person without it. Ex. No. (61) at PLTFS000261. Still others knowingly went to the wrong polling location, necessitating their vote be cast by provisional ballot. Declaration of C. Hall, Ex. No. (98) at PLTFS000041-42; Declaration of S. Awad, Ex. No. (99) at PLTFS000318-19.

Plaintiffs' Response:

Disputed as to Eziefula and Chase and immaterial as to all of the declarations cited. None of the cited incidents involved declarants who were unable to vote by provisional ballot due to their "own error or conduct." In the case of Eziefula and Chase, the declarants should not have been required to vote a provisional ballot. Ikechukuwu Eziefula cancelled his absentee ballot at the polling location, but was informed by poll workers that he and his wife "would still not be able to vote on a voting machine" and "would have to cast a provisional ballot." Eziefula Decl., Defs.' Ex. 97 at Pltfs000461-62. Mona Chase "told the officials [she] never used the absentee ballot" she had received but decided not to use, and was still erroneously "told [she] either had to go back home to get the absentee ballot or that [she] would have to vote provisionally." Chase Decl., Defs.' Ex. 61 at

Pltfs000261.

In addition, Statement No. 196 is immaterial because these examples are irrelevant to whether other voters are either improperly required to vote provisionally when they should have been allowed to vote regular ballots or are prevented from voting provisionally when they were eligible to do so.

197.

Defendants' Statement No. 197:

Many declarants are aware that their respective counties provide and process provisional ballots. For example, when Felicia Freeman was upset with her voting experience and not being offered a provisional ballot, she contacted the Cherokee County Board of Elections. Ex. No. (94) at PLTFS000999. Similarly, Courtnie Fore followed up with the Cobb County Board of Elections to determine if her provisional vote was counted. Declaration of C. Fore, Ex. No. (100) at PLTFS000068.

Plaintiffs' Response:

Undisputed, but immaterial because whether any individual voter attributed his or her experience to any affirmative conduct by Defendants is irrelevant to Defendants' constitutional obligations.

198.

Defendants' Statement No. 198:

The declaration of Ms. Gwendolyn Lee, a poll worker in Dekalb County for the 2018 elections, does not address any conduct or directions given by the State Defendants, but rather consists of complaints against her polling manager, that she did not get paid by Dekalb County, and that she was not trained by Dekalb County. Declaration of G. Lee, Ex. No. (101) at PLTFS000665-68.

Plaintiffs’ Response:

Disputed. Ms. Lee’s declaration is not limited to the issues identified in Defendants’ Statement No. 198. Ms. Lee stated in her declaration that she “was not able to vote” because her “absentee ballot never arrived.” Lee Decl., Defs.’ Ex. 101 at Pltfs000668. She also stated that she “did not get any training before [she] started the job,” *id.* at Pltfs000665, and described other failures in training at the polling location where she worked. *Id.* at Pltfs000665–67. Further, nothing in Ms. Lee’s declaration indicates that these failures are not attributed to any conduct or directions given by Defendants.

199.

Defendants’ Statement No. 199:

Ms. Alvilynn Callaway submitted a declaration regarding her provisional ballot—cast out-of-county in Clayton County rather than Macon County where she is registered. Declaration of A. Callaway, Ex. No. (102) at PLTFS000564-65.

Plaintiffs’ Response:

Undisputed, but incomplete. When Ms. Callaway asked the Clayton County elections board whether she could vote in Clayton County early, the County elections board erroneously informed Ms. Callaway that she could cast a provisional ballot and that it would count even though she was not registered there. Callaway Decl., Defs.’ Ex. 102 at Pltfs000565-65.

200.

Defendants’ Statement No. 200:

Ms. Callaway testified that she would have preferred if Clayton County poll workers had told her that her out-of-county provisional ballot would not count, rather than offering one with no comment as to its effect, since she “had enough time to go to Macon County . . . [and she] would have went home and voted.” A. Callaway Dep., Ex. No. (7) at 43:20–24.

Plaintiffs’ Response:

Disputed. Ms. Callaway testified that “[a]t every point in the process,” officials from the Board of Elections told her “that [she] could cast [her] provisional ballot in Clayton County and it would count”—including when she contacted the Board of Elections “ahead of time.” Callaway Decl., Defs.’ Ex. 102 at Pltfs000565, ¶ 7; *see also* Exh. 165, Callaway Dep. 39:14–23 (testifying that Macon County elections board told her that she “could cast a provisional ballot in

another county”), 42:17–20 (“I was allowed to cast a provisional ballot. I actually voted.”).

201.

Defendants’ Statement No. 201:

Mr. Jeffrey Marion submitted a declaration largely concerning his long wait due to a lack of voter access cards at his precinct in Gwinnett County. Declaration of J. Marion, Ex. No. (103) at PLTFS000669.

Plaintiffs’ Response:

Disputed. Beyond a lack of voter access cards, Mr. Marion identified extensive technical issues with the “license verification machine.” Marion Decl., Defs.’ Ex. 103 at Pltfs000669, at ¶¶ 4-5 (“The polling place was supposed to open at 7 am, but the machines were down until about 11am. So no votes were cast before 11am. . . . At first we were told that the license verification machine was broken. We waited about an hour and [a] half. Then someone brought new power cords for the machine, but it still would not work.”).

202.

Defendants’ Statement No. 202:

Mr. Marion’s wait was exacerbated by his refusal to use a provisional ballot, offered by the poll workers, because he did not trust provisional ballots and preferred to vote on a DRE. J. Marion Dep., Ex. No. (23) at 23:23-24:3; 31:1-

32:11.

Plaintiffs' Response:

Disputed, to the extent Defendants imply Mr. Marion's "wait" was caused by his refusal to use a provisional ballot, rather than by the unavailability of operating voting machines. *See* Pltfs.' Response to SOF ¶ 202. Additionally, Statement No. 202 is immaterial because a voter should not have to vote provisionally to avoid unconstitutional burdens posed by long lines.

203.

Defendants' Statement No. 203:

Mr. Kennedy opines that training "shortcomings" occur when provisional ballots are not given enough focus. Ex. No. (22) at 99:1-7.

Plaintiffs' Response:

Undisputed.

204.

Defendants' Statement No. 204:

His criticism of Georgia's provisional ballot training is limited to opining that, based only on his experience in Wisconsin, more could be done. Doc. No. [167] at 16; Ex. No. (22) at 99:1-7.

Plaintiffs' Response:

Disputed. Defendants' statement ignores the many bases in addition to his

experience in Wisconsin for his opinions. *See* Pltfs. Response to SOF ¶ 97.

Defendants' statement further ignores the many reasons Mr. Kennedy cited in his expert report deposition for the failures and inadequacies in the SOS's training materials. Mr. Kennedy opined that Defendants' poll worker training materials set forth unclear guidelines and standards for distributing provisional ballots, were steeped in incomprehensible legalese, "suggest that issuing a provisional ballot is an optional procedure," and fail to relay why provisional ballots are important and how poll workers should navigate real-life scenarios regarding provisional ballots, among other deficiencies. Exh. 160, Poll Worker Manual, 2018 Edition, State-Defendants-00008952-9059; Expert Report of Kennedy, ECF No. 167 at 7, 17-20.

205.

Defendants' Statement No. 205:

Mr. Kennedy based his provisional ballot training opinion on a perceived "large number of instances where people didn't get a provisional ballot" even where he was "not sure whether or not [the voters] were entitled to it." Ex. No. (22) at 173:7-13.

Plaintiffs' Response:

Disputed that Mr. Kennedy "based his provisional ballot training opinion" on the quoted statement. Mr. Kennedy offered the quoted statement in response to

a narrow question from Defendants’ counsel regarding whether he had “reason to believe that it is not the case [that the default rule in Georgia is to hand out a provisional ballot].” Exh. 79, Kennedy Dep. 173:2-17. Mr. Kennedy responded that he did have reason to believe that is not the case, based on “the complaints that came in,” including “a large number of instances where people didn’t get a provisional ballot,” although he was “not sure whether or not they were entitled to” a provisional ballot. *Id.* 173:2-17. Mr. Kennedy explained that the voter complaints were consistent with his review of the 2018 edition of Defendants’ training materials and his expert report. *See id.* 173:2-17 (“I’m looking at . . . the complaints that came in. It seemed like there were a large number of instances where people didn’t get a provisional ballot. I’m not sure whether or not they were entitled to it, but it certainly generated concerns that they were willing to reach out to the Secretary of State’s office and say, ‘I don’t know why I didn’t get a provisional ballot,’ or other people were deserving and someone was not getting offered that opportunity.”). That voters were not provided provisional ballots, regardless of whether they were entitled to them, also shows that the SOS’s “when in doubt, hand it out” message was ineffective. *See also* Pltfs.’ Response to SOF ¶ 203.

206.

Defendants' Statement No. 206:

It is unknown what effect Mr. Kennedy's contention that the Poll Worker Manual should not refer to when a voter "may" be offered a provisional ballot, (Doc. No. [167] at 20), would have on circumstances such as Mr. Marion's and Ms. Callaway's, supra, ¶¶ 199-202.

Plaintiffs' Response:

Undisputed, but immaterial to Mr. Kennedy's opinion about the serious shortcomings in the SOS's training materials and immaterial in light of circumstances in which voters were not offered or were refused provisional ballots to which they were plainly entitled. *See, e.g.*, Exh. 166, Powers Decl., Pltfs000073 (not offered provisional ballot when told she was in the incorrect precinct); Exh. 167, Baiye Decl., Pltfs000190 (not offered provisional ballot when told he had been cancelled for inactivity); Exh. 168, Platt Decl., Pltfs000292 (turned away from one polling place and sent to a polling place that did not exist; never offered a provisional ballot); Exh. 169, Walder Decl., Pltfs000380 (told a provisional ballot would be thrown out after learning she was registered at an old address where she had not lived for years); Exh. 170, Lucas Decl., Pltfs000886 (denied provisional ballot after being improperly listed as registered in his previous county of

residence). Further, Chris Harvey acknowledged that training inadequacies often generate the problems that result in voter complaints made to the SOS and the SOS's own training materials acknowledge that poll worker mistakes are a reflection of poor training. *See* Exh. 21, Dec. 5, 2019, Harvey Dep. 124:4-126:2; Exh. 48, Georgia Election Official Course, County Course #5 re: How to Manage Your Poll Workers, State-Defendants-000007980, at -00008025 (Slide 46) (“*On Election Day, the citizen’s right to cast a vote rests not in the hands of election officials but in the hands of poll workers. Ultimately, poll workers ensure that eligible citizens are able to cast a vote and have that vote counted.*” (emphasis added); *see also* SAMF ¶¶ 345-353 for additional evidence.

IX. Polling place closure or consolidation, provision of equipment, and lines at polling places.

- A. Long wait times at polling places are rare and equipment is provided by local officials.

207.

Defendants’ Statement No. 207:

When they occur, lines form at polling locations due to factors generally within counties’ control, such as the number of polling places, the training and operations of poll workers, and the allocation of resources to polling locations. Ex. No. (33) at 128:21-129:5.

Plaintiffs’ Response:

Disputed, except to the extent Defendants’ statement acknowledges that long lines are attributable to the training and operations of poll workers and the number of polling places. The SOS trains the county superintendents and understands that, in this “train the trainer” scenario, if the SOS does not adequately train those superintendents, they cannot adequately train the poll workers. *See* Pltfs.’ Response to SOF ¶ 208. In addition, the SOS prepares poll worker training materials and urges counties to use those materials. Exh. 49, 2016 Poll Worker Manual, State-Defendants-00095472; Exh. 34, 2018 Poll Worker Manual, State-Defendants-00146399; Exh. 35, 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. The SOS also provides counties guidance on whether they should close or change polling places. *See* 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.”); *see also* Exh. 44, Oct. 16, 2019 Training Document, State-Defendants-00096192 (noting requirement that superintendents

must provide 30-days' notice in legal organ prior to precinct alterations); Exh. 41, Feb. 2015 SOS Training Document, GA00785368 (advising counties preclearance would no longer be required for polling place changes: "Plan to spend 2015 making all the changes so that you, your county and your voters are ready for the 2016 elections"); Exh. 171, July 28, 2017 Email between SOS and County, GA00785473 (Crisp County sought guidance on closing a polling place from SOS, and SOS responded with a list of rules and a reference to DOJ preclearance no longer being required in light of *Shelby County*); Exh. 23, Aug. 16, 2019 SOS 30(b)(6) Dep. 67:9-68:1 (noting SOS added review of training materials to the job duties of its deputy general counsel); Exh. 172, Aug. 30, 2019 Email between SOS and County, State-Defendants-00056443 (Glynn County Elections Board Supervisor requested SOS input on "co-locating two precincts into one polling location"); Exh. 173, Feb. 2, 2017 Email between SOS and City, State-Defendants-00192683 (City of Snellville clerk requested SOS guidance on changing a polling place); Exh. 174, Feb. 24, 2017 Email between SOS and County, GA00784742 (Columbia County asked SOS whether it was "possible" for county to consolidate polling places despite aging inventory, inability to purchase more voting units, and growing population). Thus, the SOS is directly involved in the very things Defendants' Statement No. 207 identifies as causing long lines.

208.

Defendants' Statement No. 208:

The Secretary of State's office was notified that a Fulton County polling location experienced long lines in the 2018 General Election when an election director inadvertently read a spreadsheet wrong and ordered the wrong number of voting machines for that location. Ex. No. (19) at 292:14-18.

Plaintiffs' Response:

Undisputed, but immaterial. It is undisputed that Mr. Harvey testified, "I know in Fulton County that there was a park where they just mistakenly sent too few voting machines. And the elections director acknowledged he, I think he read a spreadsheet wrong and he put the wrong number to be delivered." Exh. 21, Dec. 5, 2019 Harvey Dep. 292:14-18. Statement No. 208 is immaterial to the claims at issue, however, because it relates to one polling place out of many that experienced long lines during the 2018 General Election. Exh. 175, Nov. 6 2018 SOS Line Survey, State-Defendants-00065192-00065193 (reflecting that 40 counties—including those with Georgia's largest populations—experienced lines "longer than 30 minutes," the "2012 Presidential Commission on Election Administration's benchmark"); Expert Report of Graves, ECF No. 166, at 1, 2 (citing BPS/MIT Report, and confirming Fulton County had the longest lines in the country).

209.

Defendants’ Statement No. 209:

A Gwinnett County polling place had issues with long lines when it inadvertently misplaced power cords that the location needed to operate. Ex. No. (19) at 292:19-21.

Plaintiffs’ Response:

Undisputed, but immaterial. It is undisputed that Chris Harvey testified, “Gwinnet County had an issue with some power cords that were left or not packed in with the stuff, and that resulted in long lines.” Exh. 21, Dec. 5, 2019 Harvey Dep. 292:19-21. Statement No. 209 is immaterial to the claims at issue, however, because it relates to one polling place out of many that experienced long lines during the 2018 General Election. Exh. 175, Nov. 6 2018 SOS Line Survey, State-Defendants-00065192 -00065193 (reflecting that 40 counties—including those with Georgia’s largest populations—experienced lines “longer than 30 minutes,” the “2012 Presidential Commission on Election Administration’s benchmark”); Expert Report of S. Graves, ECF No. 166, at 1, 2 (citing BPS/MIT Report, and confirming Fulton County had the longest lines in the country).

210.

Defendants’ Statement No. 210:

Georgia counties have access to the “election store” to equip polling stations

and they have the superior knowledge about what their particular needs are for a given election. Ex. No. (32) at 170:1-171:10; 172:11-173:1.

Plaintiffs' Response:

Partially disputed. It is undisputed that counties have access to the “election store,” but this is immaterial to the claims at issue, such as whether Defendants breached their election duties, including to train and supervise local election officials. It is disputed that counties have superior knowledge about what their particular needs are for a given election. Exh. 176, Nov. 6, 2018 Voter Complaint from Noll, State-Defendants-00088523 (line was 3.5 hours long because there was 1 working card reader and 3 voting machines); Exh. 177, Nov. 6, 2018 Voter Complaint from Bisard, State-Defendants-00084901 (only one machine out of a total of two machines worked); Exh. 178, Nov. 6, 2018 SOS Email, State-Defendants-00261210 (same); Exh. 223, ORR-Lumpkin County-003181, at 3914 (reflecting SOS awareness of high turnout in 2016 election cycle, and referring to “what will almost surely be a constantly rising tide of applications” approaching October 2016); Exh. 179, Sept. 26, 2019 SOS Email, State-Defendants-00284764-65 (SOS draft OEB to urge counties to prepare for greater voter turnout with more well-trained poll workers, acknowledging there were changes to the election laws and registration enabling SOS “to continue to lead the way in election

excellence”); *see also* SAMF ¶¶ 952-956, 1078-1082 for further evidence.

211.

Defendants’ Statement No. 211:

The Secretary of State’s office reminds counties through emails, the Firefly system, OEBs, and other means to obtain supplies for upcoming elections, but such decisions are ultimately within the counties’ control. Ex. No. (32) at 174:15-175:7.

Plaintiffs’ Response:

Partially disputed.

It is undisputed that SOS “reminds counties” through the identified means “to obtain supplies for upcoming elections.” But to the extent the statement implies that the SOS has no involvement in county decisions regarding supplies, it is disputed. The structure of elections in Georgia relies on the State to control the operation of elections and to be intimately involved in operating elections. Georgia has a top-down structure of operating elections, with the SOS at the top. *See* 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.”); *see also* Pltfs.’ Responses to SOF ¶¶ 207, 210.

212.

Defendants’ Statement No. 212:

Dr. Graves, Plaintiffs’ proffered expert regarding lines at polling places, submitted a three-page report (Doc. No. [166]), that relies almost exclusively on the data and findings of a different report (to which Dr. Graves did not contribute) by the Bipartisan Policy Center entitled *The 2018 Voting Experience: Polling Place Lines* and published in November of 2019 (the “BPC Report”). *Id.* at 9

Plaintiffs’ Response:

Disputed. Dr. Graves’ report provides his own analysis of Fulton County, Georgia data—which he obtained independently, but which was also cited in the Bipartisan Policy Center Report (“BPC/MIT Report”)—to determine whether the data was consistent with the BPC/MIT Report’s overall finding that long lines at polling places have a disparate impact on Black and non-white Hispanic voters. Dr. Graves’ analysis concluded that the Fulton County data was consistent with those findings. *See* Expert Report of Graves, ECF No. 166, at 1, 2, 5-6; *see also* Response of Expert Graves, ECF No. 208, at 1 (“[T]he intent of my work was to provide support for the findings reported in [the] BPC Report,” and reiterating “main finding” that Fulton County findings in BPC Report “are accurately stated”).

213.

Defendants’ Statement No. 213:

In his report, Dr. Graves opines on the wait times during the 2018 general

election in Fulton County – one of Georgia’s 159 counties (or 0.62% of the counties) during one election. Doc. No. [166] at 1.

Plaintiffs’ Response:

Undisputed, but immaterial because an opinion on wait times for all counties in Georgia, or for any election other than the 2018 general election, is outside the scope of Dr. Graves’ report.

214.

Defendants’ Statement No. 214:

Dr. Graves only analyzed the wait times in 68 of the 373 (18%) polling sites in Fulton County. *Id.* at 1; Ex. No. (16) at 25:1-26:25.

Plaintiffs’ Response:

Undisputed, but immaterial because an opinion on the wait times for all polling places in Fulton County is outside the scope of Dr. Graves’ report.

215.

Defendants’ Statement No. 215:

Dr. Graves’s [elections] analysis considered only 59,000 of the 425,139 ballots cast in Fulton County (or 7.2%). November 6, 2018 General and Special Election, CLARITY ELECTIONS,
<https://results.enr.clarityelections.com/GA/Fulton/91700/Web02.221448/#/turnout>.

Plaintiffs’ Response:

Undisputed, but immaterial because an opinion on all ballots cast in Fulton County during the 2018 general election is outside the scope of Dr. Graves' report.

216.

Defendants' Statement No. 216:

Dr. Graves made no attempt to apply these numbers statewide and, in fact, testified that he was not even "trying to make a conclusion about Fulton County in general." Ex. No. (16) at 24:17-18.

Plaintiffs' Response:

Undisputed, but immaterial because applying the numbers statewide is outside the scope of Dr. Graves's report.

217.

Defendants' Statement No. 217:

Dr. Graves, analyzing a handful of precincts in Fulton County in 2018, concluded that in that election and pursuant to that limited sample of precincts, voters in majority-Black precincts waited in line 1.6 minutes more than in majority white precincts. Doc. No. [166] at 5-6.

Plaintiffs' Response:

Partially disputed. Dr. Graves' analysis was not limited to "a handful of precincts." Expert Report of Graves, ECF No. 166, at 1 (reporting that sample was composed of data from 68 polling places and over 59,000 voters). Dr. Graves'

analysis also did not opine on “majority-Black precincts” or “majority white precincts.” *Id.* at 2-3 (finding average wait times for “Black majority sites” and “non-Black majority sites,” determined by the percentage of Black registered voters at each polling place in sample). Otherwise, Statement No. 217 is not disputed.

218.

Defendants’ Statement No. 218:

Specifically, Dr. Graves’ report found that the average wait time for Black-majority polling places was 18.8 minutes and the wait time at non-Black-majority sites was 17.2 minutes, a difference of 96 seconds. Doc. No. [166] at 5-6. Both these average times are below the 30-minute recommendation the BPC Report indicated was set by the Presidential Commission on Election Administration. Doc. No. [166] at 13.

Plaintiffs’ Response:

Partially disputed and immaterial. Dr. Graves did not opine on “Black-majority polling places.” Expert Report of Graves, ECF No. 166, at 1, 5-6.; *see also* Pltfs.’ Response to SOF ¶ 217. Otherwise, Statement No. 218 is not disputed. Statement No. 218 is immaterial, however, because an opinion on how the average wait times at the sampled polling places in Fulton County compares to any external

data point is outside the scope of Dr. Graves' report. *See* Pltfs.' Response to SOF ¶ 212.

219.

Defendants' Statement No. 219:

Dr. Graves further testified that he never made any finding of any statistically significant relationship between the African-American percentage of voters assigned to a precinct and the wait time at the polls. Ex. No. (16) at 43:24-44:5.

Plaintiffs' Response:

Undisputed, but immaterial because an opinion on whether any relationship between the percentage of Black voters "assigned to a precinct" and "the wait time at the polls" was statistically significant is outside the scope of Dr. Graves' report.

220.

Defendants' Statement No. 220:

Dr. Graves also did not analyze whether the 68 polling locations he studied accurately reflect the racial demographics of Fulton County voters even though any conclusion based on racial differences should be based on a sample set that reflect the county's demographics at large. Ex. No. (16) at 28:20-29:11; 29:18-22; 43:24-44:5; Doc. No. [208] at 2.

Plaintiffs' Response:

Disputed that Dr. Graves' testimony that "any conclusion based on racial differences should be based on a sample set that reflect[s] the county's demographics at large" concerned the analysis offered in his report. *See* Defs.' Ex. 16 at 29:7-11 ("[I]f I were trying to develop a sample and use that sample to *make conclusions about Fulton County*, I would want the sample to be representative of the demographics across the county." (emphasis added)). Undisputed as to the remainder, but immaterial because an opinion on all polling places in Fulton County, or all Fulton County voters, is outside the scope of Dr. Graves' report.

221.

Defendants' Statement No. 221:

Dr. Graves agreed that he did not make "any causal statements" in his report about line length or the impact of a line on voters. Ex. No. (16) at 20:15-24; 40:13-18.

Plaintiffs' Response:

Undisputed, but immaterial because an opinion on causality is outside the scope of Dr. Graves' report.

222.

Defendants' Statement No. 222:

Dr. Graves offers no opinion as to whether the state or county is responsible for polling locations or the intent of policymakers in either category. Ex. No. (16)

at 20:19-21:11.

Plaintiffs' Response:

Undisputed, but immaterial because an opinion on state responsibility or intent is outside the scope of Dr. Graves' report.

223.

Defendants' Statement No. 223:

Beyond the analysis of Dr. Graves, 63 of Plaintiffs' 308 declarant witnesses mention in their declarations that they experienced or observed long lines at polling locations during certain elections held in the State. Ex. No. (133).²¹

Plaintiffs' Response:

Disputed. Several of Plaintiffs' other declarant witnesses mention in their declarations that they experienced or observed long lines at polling locations. *E.g.*, Exh. 180, Crawford Decl., Pltfs001070-71, ¶ 7 (Fulton County) ("The lines were

²¹ The declarants who mention lines in their declarations are as follows: S. Antione; S. Awad; A. Baier; N. Barnridge; H. Barnridge; L. Bell; M. Borrero; A. Brown; C. Carter; M. Church; C. Corona; S. Cramer; P. Davis; K. Feenie; T. Fletcher; F. Freeman; S. Gaggero; T. Gilliam; S. Goff; A. Gordon; B. Gravely; A. Greenberg; C. Hall; S. Hartley; M. Hayes; B. Herbert; B. Honor; T. Jackson-Campbell; V. Lambert; K. Lewis; B. Liscord; M. Lockwood; J. Maciejewski; M. Manning; J. Marion; D. Marshall; D. Mathis; S. Murray; C. Muzio; P. Nathan; D. Oatis; A. Oki; K. O'Malley; A. Poventud; D. Powers; M. Price; K. Reeves; B. Resler; L. Schnellinger; S. Southall; V. Stancescu; P. Terkhova; E. Underwood-Jackson; S. Urquhart; D. Van Zajac; C. Vanzant; K. "Kavi" Vu Ngan; T. Warren; C. Williams; M. Wolfe; G. Wooten; J. Young; S. Zeigler.

long, and the room was chaotic.”); Exh. 181, Evering Decl., Pltfs000689, ¶ 4(a) (Cobb County) (“My daughter and I waited in line for about an hour and a half.”); Exh. 182, Harris Decl., Pltfs000083 (referencing “long lines”); Exh. 183, Huguet Decl., Pltfs000024 (Fulton County) (same); *see also* Exh. 184, Rodrigues Decl., Pltfs000003-04 (DeKalb County) (observing “longer wait times” for individuals “waiting to vote provisionally”). Additionally, two of Plaintiffs’ declarants are named Hollie and Noell Barnidge, not Barnridge. Exhs. 185-186, Barnidge Decl., Pltfs000183; Barnidge Decl., Pltfs000266.

224.

Defendants’ Statement No. 224:

Of these 63, 47 declarants were voters and 16 were not, and those in the latter group of individuals were largely volunteering on behalf of the Democratic Party of Georgia or other political action groups. Id.

Plaintiffs’ Response:

Disputed and immaterial. The “latter group of individuals” identified by Defendants did not testify that they volunteered as poll workers “on behalf of the Democratic Party of Georgia or any other political action group.” *See* Exh. 187, Van Zajac Decl., Pltfs000070, ¶ 3 (testifying that she simply “served as a poll watcher,” but never mentioning the Democratic Party of Georgia or any other

political organization); Exh. 188, Schnellinger Decl., Pltfs000223-27 (same); Exh. 189, Church Decl., Pltfs000241 (same); Exh. 196, Manning Decl., Pltfs000254, ¶ 3 (same); Exh. 190, Nathan Decl., Pltfs000286 (same); Exh. 191, Ziegler Decl., Pltfs000321, ¶ 3 (same); Exh. 192, Gaggero Decl., Pltfs000330, ¶ 3 (same); Exh. 193, Southall Decl., Pltfs000333 (same); Exh. 194, Urquhart Decl., Pltfs000345, ¶ 4 (same); Exh. 195, Liscord Decl., Pltfs000457, ¶¶ 4-5 (same). Further, the statement is immaterial because the fact that testimony is given by Democrats or other political action groups does not render it inadmissible.

225.

Defendants' Statement No. 225:

These declarants represent 10 of Georgia's 159 Counties (about 6.2%): Fulton, Cobb, Gwinnett, DeKalb, Clayton, Chatham, Cherokee, Dougherty, Henry, and Houston. 77% (49 out of 63) of the declarants are from four Metro-Atlanta Counties: Fulton, Cobb, Gwinnett, and DeKalb. Three Counties—Clayton, Houston, and Dougherty—had only one declarant apiece. Id.

Plaintiffs' Response:

Undisputed, but immaterial. Plaintiffs contend that Georgia voters experienced hours-long wait times to vote, and these ten counties are counties in

Georgia. The precise county breakdown of declarants' residences does not affect this claim.

226.

Defendants' Statement No. 226:

Within the 10 Counties represented, several declarants complained of the same few polling locations regarding long lines. Specifically, 6 declarants complained of experiencing long lines at Pitman Park Recreational Center in Fulton County (Declaration of A. Brown, Ex. No. (104) at PLTFS000021; Declaration of B. Herbert, Ex. No. (105) at PLTFS001127; Declaration of A. Poventud, Ex. No. (106) at PLTFS000009-10; Declaration of E. Underwood-Jackson, Ex. No. (107) at PLTFS000714-15; Ex. No. (51) at PLTFS000648; Declaration of B. Honor, Ex. No. (108) at PLTFS001016); 3 declarants cited Rothwell Baptist Church in Chatham County (Declaration of N. Barnridge, Ex. No. (109) at PLTFS000265; Declaration of H. Barnridge, Ex. No (110) at PLTFS000182; Declaration of P. Terekhova, Ex. No. (111) at PLTFS0000991); 3 declarants cited Annistown Elementary School (Gwinnett) (Declaration of K. Lewis, Ex. No. (112) at PLTFS000925; Ex. No (103) at PLTFS000669; Declaration of J. Young, Ex. No. (113) at PLTFS000196); and Central United Methodist Church (Fulton) (Declaration of M. Church, Ex. No. (114) at PLTFS000241; Declaration of C. Carter, Ex. No. (115) at PLTFS000581),

IGL Bautista Nueva Jerusalem (Gwinnett) (Declaration of M. Manning, Ex. No. (116) at PLTFS000254; Declaration of A. Oki, Ex. No. (117) at PLTFS000005), and Argyle Elementary School (Cobb), (Declaration of S. Goff, Ex. No. (118) at PLTFS000391; Declaration of S. Southall, Ex. No. (134) at PLTFS00333), were each referenced by 2 declarants apiece. In total, Plaintiffs' declarants identified only about 49 individual polling places that they claim exhibited "long lines."

Plaintiffs' Response:

Undisputed. Additionally, two of Plaintiffs' declarants are named Hollie and Noell Barnidge, not Barnridge. Exs. 185-186, Barnidge Decl., Pltfs000183; Barnidge Decl., Pltfs000266.

227.

Defendants' Statement No. 227:

There are approximately 2,300 polling places across the state. C. Harvey June 29, 2020 Declaration, Ex. No. (131) at ¶ 7.

Plaintiffs' Response:

Undisputed.

228.

Defendants' Statement No. 228:

Of the 5 declarants who allege that long lines prevented them from voting, two refused or failed to appear for depositions by Defendants. Ex. No. (111) at

PLTFS0000991; P. Terekova Dep., Ex. No. (36) at 4; Declaration of A. Gordon, Ex. No. (119) at PLTFS000030; A. Gordon Dep., Ex. No. (14) at 4:11-16.

Plaintiffs' Response:

Undisputed, but immaterial. Several of Plaintiffs' declarants testified that long lines prevented them from voting, and others observed other voters leaving polling places due to long lines. *See* SMF ¶ 223; Defs.' Ex. 133.

229.

Defendants' Statement No. 229:

Most declarants did not speculate as to the cause of the lines they observed or experienced (See, e.g., Declaration of T. Fletcher, Ex. No. (120) at PLTFS001080-81); those that did generally cited either insufficient number of machines or other equipment or technical issues or machine malfunctions. Declaration of A. Baier, Ex. No. (121) at PLTFS000692; Declaration of S. Gaggero, Ex. No. (122) at PLTFS000330-32; Ex. No. (112) at PLTFS000925-27; Ex. No. (107) at PLTFS000714-15.

Plaintiffs' Response:

Disputed. Plaintiffs' declarants did not "speculate" about the cause of wait times, because they personally experienced and observed long wait times. *See, e.g.*, Exh. 188, Schnellinger Decl., Pltfs000223 (testifying "based on my first-hand, personal knowledge"). Further, there are hundreds of declarants in this case and

Defendants' citation to just five declarations does not support its statement regarding what "most declarants" observed or experienced. *E.g.*, Exh. 196, Manning Decl., Pltfs000254-56 (testifying that "the process at the polling site [was] inefficient, which resulted in long lines all day"); Exh. 188, Schnellinger Decl., Pltfs000223-24 (identifying issues related to refusing to offer provisional ballots and turning voters away from polls); Exh. 1919, Zeigler Decl., Pltfs000321, at -000323 (identifying issues beyond machines or equipment, including insufficient numbers of "poll workers" at the polling site); Exh. 194, Urquhart Decl., Pltfs000345, at -000347-48 (citing delays related to poll workers sending voters "back and forth" between polling locations); Exh. 197, Wolfe Decl., Pltfs000742, at -000743 (citing "varying instructions given by poll workers" to voters on "who should be in which line" at a location with "[m]ultiple long lines").

230.

Defendants' Statement No. 230:

Ngan Kim Vu stated in her declaration that the delay was the result of "over 100 people" attempting to vote at the wrong location in Fulton County. Declaration of N. Kim Vu, Ex. No. (123) at PLTFS001060.

Plaintiffs' Response:

Disputed. Defendants' statement incorrectly implies that the voters were at

fault for going to the wrong polling location and thus were the cause of the long wait times. The cited source does not support Statement No. 230. Ngan Kim Vu stated that “over 100 voters” were “found in the wrong location,” but did not state that this was the cause of a delay. Vu Decl., Defs.’ Ex. 123, at Pltfs001061-62, ¶ 9. Instead, Ms. Vu said “[m]any people had been voting here their whole lives and had never received notice that their polling location had changed” and “most of these [100 voters] were assigned to a polling location only a few minutes down the street, and they thanked us and headed to the correct location.” *Id.* at ¶ 7.

231.

Defendants’ Statement No. 231:

Sam Awad, another of Plaintiffs declarants, admitted in his declaration that he knew he was attempting to vote at the wrong polling location in Cobb County. Ex. No. (99) at PLTFS000318-19.

Plaintiffs’ Response:

Undisputed, but incomplete. Mr. Awad stated: “Another poll worker told me that I could vote at Chalker, but that it would take a long time. After being told that I could vote at Chalker, I waited in line for an hour and a half. After waiting in line for an hour and a half, another poll worker told me that I could not vote at Chalker.” Awad Decl., Defs.’ Ex. 99 at Pltfs000318-19. He also stated: “The poll

worker told me that I would have to cast a provisional ballot and that I would have to wait in another line to do so. I waited in line for another 30 minutes to cast my provisional ballot.” *Id.* at PltfsS000319.

232.

Defendants’ Statement No. 232:

Jeffrey Marion complained of long lines in Gwinnett County, but his wait was exacerbated by his refusal to use the provisional ballot offered by the poll workers, preferring instead to vote on the machines. Ex. No. (23) at 23:23-24:3; 31:1-32:11.

Plaintiffs’ Response:

Disputed and immaterial. Mr. Marion’s wait was not “exacerbated by his refusal to use the provisional ballot offered by the poll workers.” He never testified that he was ever offered a provisional ballot by any poll worker. Exh. 198, Marion Dep. 22:24—24:19 (noting he saw others voting on paper ballots, but could not recall “what time they started”); Exh. 199, Decl. of Marion, Pltfs000669, at ¶¶ 4-5 (“At first we were told that the license verification machine was broken. We waited about an hour and [a] half. Then someone brought new power cords for the machine, but it still would not work.”). Further, Mr. Marion did not know when poll workers began providing provisional ballots in light of the extensive delay,

and waited hours before votes were first cast on DRE machines at 11:00 a.m. Exh. 198, Marion Dep. 22:24-24:19; Exh. 199, Decl. of Marion, Pltfs000669. Finally, it is immaterial that Mr. Marion could have voted a provisional ballot when he should not have needed to vote provisionally.

B. Counties' decisions to close or consolidate polling places.

233.

Defendants' Statement No. 233:

Dr. Michael C. Herron testified that “[t]he adjustments made to Georgia’s polling places between 2014 and 2018 were not racially neutral” Doc. No. [241] at 5.

Plaintiffs' Response:

Undisputed.

234.

Defendants' Statement No. 234:

Dr. Herron takes no position, however, as to who is responsible for closing polling places. Doc. No. [294] at 26; Ex. No. (20) at 25:12-19.

Plaintiffs' Response:

Undisputed, but immaterial because the issue of “who is responsible for closing polling places” is outside the scope of Dr. Herron’s report.

235.

Defendants’ Statement No. 235:

Dr. Herron also takes no position on any matter of intent on the part of the State of Georgia or the Secretary. Ex. No. (20) at 27:18-22.

Plaintiffs’ Response:

Undisputed, but immaterial. Statement No. 235 is immaterial because the “intent on the part of the State of Georgia or the Secretary” is outside the scope of Dr. Herron’s report. Moreover, Plaintiffs object to Statement No. 235 as duplicative of SOF ¶ 63.

236.

Defendants’ Statement No. 236:

Dr. Herron does not opine on the reasons or motives behind decisions to move polling locations, (Ex. No. (20) at 25:4-11), or whether State or County officials had knowledge of the alleged impacts of changing polling locations. (Ex. No. (20) at 28:12-29:20).

Plaintiffs’ Response:

Undisputed, but immaterial because an opinion “on the reasons or motives behind decisions to move polling locations . . . or whether State or County officials had knowledge of the alleged impacts of changing polling locations” is outside the scope of Dr. Herron’s report.

237.

Defendants’ Statement No. 237:

Dr. Herron found that, for Election-Day voting in the 2018 general election where voters actually had to go to a particular polling location (versus an early-voting site), white voters were more affected by precinct changes than African-American voters. Doc. Nos. [241] at 72-74 and [294] at 33-34.

Plaintiffs’ Response:

Disputed. Dr. Herron’s report demonstrates that polling place changes have a larger effect on Black voters’ overall turnout. Expert Report of Herron, ECF No. 241, at 70 (overall turnout in 2018, for Black registered voters who had their polling places changed or relocated between 2014 and 2018, was lower than for white registered voters who also had their polling places changed); *id.* at 71-72 (concluding turnout was lower even for those Black registered voters who had their polling places changed, and who voted in 2014); Herron Suppl. Report, ECF No. 294, at 45-46 (“[T]he drop in turnout rates associated with receiving a new polling place was greater for Black registered voters than for White registered voters.”); *see also id.* at 40, 42, 44. Dr. Herron’s report does not opine on voting at “early-voting sites.” *See generally* Expert Report of Herron, ECF No. 241.

238.

Defendants’ Statement No. 238:

Defendants’ expert used the same data as Dr. Herron and demonstrated the

same pattern of a greater effect on white voters in both the 2016 and 2018 elections for voters who vote on election day. Doc. No. [350] at 14-16.

Plaintiffs' Response:

Disputed. Defendants' expert did not "demonstrate[] the same pattern of a greater effect on white voters in both the 2016 and 2018 elections for voters who vote on election day." Herron Suppl. Report, ECF No. 294, at 34 (explaining that Defendants' expert improperly "focus[e]d on election day turnout in 2018," but that the relevant analysis instead involves "the consequences of polling place closures and changes on *overall* voter turnout," (emphasis added)); *see also id.* at 37-41 (providing additional findings "qualitatively similar" to Dr. Herron's original findings for the 2014-2016 period); *id.* at 41-45 (providing additional similar findings for 2016-2018 time periods.)

239.

Defendants' Statement No. 239:

Dr. Herron provided no analysis of how far polling locations moved, (Ex. No. (20) at 50:5-10), nor did he engage with the rationale of changes to precincts and offered no opinion as to why polling places changed (Ex. No. (20) at 79:17-80:16).

Plaintiffs' Response:

Undisputed, but immaterial because analyzing "how far polling locations

moved,” “the rationale of changes to precincts,” and “why polling places changed” is outside the scope of Dr. Herron’s report.

240.

Defendants’ Statement No. 240:

The selection and number of polling places is a decision within the sole authority and discretion of the Counties. Ex. No. (19) at 227:12-17; 234:9-10; 238:19-20; Ex. No. (33) at 122:1-3.

Plaintiffs’ Response:

Disputed. The structure of elections in Georgia relies on the State to control the operation of elections and to be intimately involved in operating elections. Georgia has a top-down structure of operating elections, with the 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 SEB has the authority and the obligation to promulgate rules and regulations to obtain uniformity in counties’ practices. O.C.G.A. § 21-2-31(1). Further, the SOS issues guidance to counties on polling place closures and relocations, and advises individual counties on how to implement such polling place changes. *See also* Pltfs.’ Response to SOF ¶ 207.

241.

Defendants' Statement No. 241:

Plaintiffs' proffered historical expert,²² Dr. Adrienne Jones,²³ acknowledges the role of the counties as the decisionmaker for closing polling locations (A. Jones Dep., Ex. No. (21) at 110:8-11), as did declarants Annette Cox (Declaration of A. Cox, Ex. No. (124) at PLTFS000879) and Carol Sealy (Ex. No. (74) at PLTFS000881).

Plaintiffs' Response:

Disputed and immaterial. Dr. Jones did not state that the counties were the decision makers for closing polling location. In response to a question about the role of local election officials in closing, moving, or otherwise changing precinct locations, she responded that she "knows that the Secretary of State [] provided information to locals about when and how" to close, move, or otherwise change precinct locations." Exh. 200, Jones Dep. 110:12-20. She continued: "The

²² Dr. Jones's report mentioned only four events occurring within the last 30 years. Doc. [92] at 1-10, 13-27. Other than her own belief, Dr. Jones could not explain how the historical events she does discuss relate to this lawsuit. Ex. No. (21) at 109:16-21.

²³ Defendants have moved the Court to exclude, in its entirety, the testimony of Dr. Jones. See Doc. No. [386].

Secretary of State has issued information to – since Shelby, about closures to assist local jurisdictions” *Id.* 110:23-25.

In addition, neither Ms. Cox nor Ms. Sealy stated that the counties were the decisionmakers for closing polling locations. *See* Cox Decl., Defs.’ Ex. 124; Sealy Decl., Defs.’ Ex. 74.

242.

Defendants’ Statement No. 242:

At least two of Plaintiffs’ declarants acknowledged that closures occurred because of legitimate reasons. *See, e.g.*, Ex. No. (51) at PLTFS000648 (indicating polling location was closed for renovations); Declaration of B. Gravely, Ex. No. (125) at PLTFS000429 (indicating polling location was closed due to construction). Others speculated about issues while conceding that everyone could vote despite the changes. Declaration of C. Schexnyder, Ex. No. (132) at PLTFS-001123.

Plaintiffs’ Response:

Disputed. Plaintiffs’ declarants made no statements regarding whether the closures occurred “because of legitimate reasons.” Instead, they reported burdens on their ability to vote caused by the closure of their polling places. *See* Exh.201, Davis Decl., Pltfs000648, at Pltfs000649-50 (declarant’s “regular polling place

was closed,” declarant waited “3.5 hours” in line at a polling place with “3 voting machines” and “only 39 cards”); Exh. 202, Gravely Decl., Pltfs000429 (declarant’s “usual polling location was changed due to construction,” but declarant never “received a notice by mail of the new location” and waited “two hours” before being told he “was a the wrong place and . . . told where to vote”).

243.

Defendants’ Statement No. 243:

Plaintiffs’ declarant Lottie Moore stated that the polling place near her closed and that her new polling location was an hour’s drive away, (Declaration of L. Moore, Ex. No. (126) at PLTFS000916), but in fact her home is located about nine miles from her polling location in Fort Gaines, Georgia. See Google Maps, directions from [Address], Morris, Georgia to 159 Wilson Street, Fort Gaines, Georgia, Ex. No. (130).

Plaintiffs’ Response:

Undisputed, but immaterial. Beyond this statement in a single declaration, Plaintiffs’ declarants identify numerous instances where voters were unable to vote or observed others unable to vote due to long lines at polling locations. *See, e.g.*, Pltfs.’ Response to SOF ¶ 229.

244.

Defendants’ Statement No. 244:

The Secretary's interaction with local officials providing notice to the Secretary of State is limited to reiterating the demands of Georgia law regarding notice and timing. See, e.g., Jan. 3, 2018 Email: A. Pitts to S. Payne, RE: Question-Notification of Change of Polling Place, Ex. No. (127) at GA00784681; August 21, 2017 Email: C. Harvey to S. Hicks, RE: Relocating a Voting Precinct Timeline, Ex. No. (128) at GA00785126.

Plaintiffs' Response:

Disputed. The SOS's interaction with "local officials providing notice" to SOS is not "limited to reiterating the demands of Georgia law regarding notice and timing." The SOS advised counties that preclearance would no longer be required for polling place changes and highly recommended consolidating precincts and closing polling locations. Exh. 41, Feb. 2015 SOS Training Document, Ga00785368 ("you are no longer required to submit polling place changes to the Department of Justice for preclearance"); *id.* (affirmatively advising counties: "When should you begin the plan of consolidation or making changes to precincts or polling places? Now. Plan to spend 2015 making all the changes so that you, your county and your voters are ready for the 2016 elections."); Exh. 203, Aug. 20, 2018 Email re: Precinct Consolidation, Ga00784987-90, at -00784990 (discussing a consultant's presentation advocating consolidation of precincts and closure of 7

out of 9 polling places, claiming that “consolidation has come highly recommended by the Secretary of State” and that SOS recommended that consultant do work for Randolph County). The SOS also routinely advises counties regarding polling place closures. *See also* Pltfs.’ Response to SOF ¶ 207.

245.

Defendants’ Statement No. 245:

While the selection, opening, or closure of a polling place is ultimately within counties’ authority, the Secretary of State has advised counties to be skeptical of closures as there will be an increased need for polling places. Ex. No. (19) at 226:7-227:17.

Plaintiffs’ Response:

Disputed. The structure of elections in Georgia relies on the State to control the operation of elections and to be intimately involved in operating elections. Georgia has a top-down structure of operating elections, with the 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.”). *See also* Pltfs.’ Responses to SOF ¶¶ 207, 244.

Pursuant to its authority, Defendants advised county officials on how to

implement polling place changes. Exh. 46, Dec. 12, 2017 Email between SOS and County, Ga00785272 (SOS advising county wishing to consolidate 13 precincts to 1 “to have a consistent message” in rolling out the closures); Exh. 204, Sept. 13, 2017, Email between SOS and County, Ga00785451 (after Paulding County consolidated 14 precincts to 12 and sought guidance from SOS, SOS facilitated the closures); Exh. 205, July 25, 2017 Email between SOS and County, Ga00785320-22 (same, regarding Columbia County combining precincts and moving polling places); *see also* Exh. 41, Feb. 2015 SOS Training Document, GA00785368 (advising counties preclearance would no longer be required for polling place changes”); *id.* (affirmatively advising counties: “When should you begin the plan of consolidation or making changes to precincts or polling places? Now. Plan to spend 2015 making all the changes so that you, your county and your voters are ready for the 2016 elections.”).

Further, Defendants have not identified evidence corroborating the cited testimony on polling place closures and creating new polling places. In the cited testimony, the SOS notes that only three counties have opened or plan to open more polling places and that the total number of new polling places was less than ten. Exh. 25, Jan. 6, 2020 SOS 30(b)(6) Dep. 24:5-25:16.

Defendants' Statement No. 246:

The Office of the Secretary of State often cautions against the closing of polling locations and encourages counties to carefully consider any such decision, (Ex. No. (19) at Dep. 217:21-218:17), and encourages counties to “take into consideration the convenience of the voters and the public interest” while acknowledging the decision is the counties’ to make. See February 2015 Precinct and Polling Place Training Document, Ex. No. (129) at GA00785702.

Plaintiffs' Response:

Disputed. The SOS was aware of and facilitated the closing of polling locations. The SOS advised counties that preclearance would no longer be required for polling place changes, and highly recommended consolidating precincts and closing polling locations. Exh. 41, Feb. 2015 SOS Training Document, Ga00785368 (“you are no longer required to submit polling place changes to the Department of Justice for preclearance”); *id.* (affirmatively advising counties: “When should you begin the plan of consolidation or making changes to precincts or polling places? Now. Plan to spend 2015 making all the changes so that you, your county and your voters are ready for the 2016 elections.”); Exh. 203, Aug. 20, 2018 Email re: Precinct Consolidation, Ga00784987-90, at -00784990 (discussing a consultant’s presentation advocating consolidation of precincts and closure of 7

out of 9 polling places, claiming that “consolidation has come highly recommended by the Secretary of State” and that SOS recommended that consultant do work for Randolph County). *See also* Pltfs.’ Response to SOF ¶¶ 244, 245.

Moreover, the process and decision of closing polling locations is not within the exclusive control of the counties. The structure of elections in Georgia relies on the State to control the operation of elections and to be intimately involved in operating elections. Georgia has a top-down structure of operating elections, with the 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 also Georgia’s Chief Elections Officer and chair of the SEB. (Exh. 22, SOS Description of Duties, 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 Secretary of State as the “chief election official”); O.C.G.A. § 21-2-30(d). The SEB is required to promulgate rules and regulations to obtain uniformity in counties’ election practices. O.C.G.A. § 21-2-31(1). *See also* Pltfs.’ Response to SOF ¶ 207.

247.

Defendants' Statement No. 247:

Some counties, such as Paulding County, Forsyth County, and Chatham County, have taken the Secretary of State's advice on this issue and have opened, or plan to open, additional polling locations for future elections. Ex. No. (33) at 24:5-21.

Plaintiffs' Response:

Undisputed, but immaterial. The SOS testified that Paulding County, Forsyth County, and Chatham County planned to add a total of fewer than ten additional polling places, reflecting counties did not meaningfully respond to Defendants' cited "advice." Exh. 25, Jan. 6, 2020 SOS 30(b)(6) Dep. 24:22-25:16. Statement No. 247 is also immaterial to the issues raised in Defendants' summary judgment motion, as demonstrated by Defendants' failure to discuss it in their brief.*

248.

Defendants' Statement No. 248:

In 2018, when Randolph County indicated it planned to close several polling locations, the Secretary of State's office urged them to reconsider. Ex. No. (19) at 217:22-218:1; Exhibit 62.

Plaintiffs' Response:

Disputed and immaterial. The SOS made an about-face only after Randolph County's consolidation plan "created a national media spectacle." *See* Exh. 206, Aug. 23, 2018 SOS Letter, State-Defendants-00081256, at -00081262-63 ("We [SOS] do not support the proposed consolidation," and expressing SOS's "frustration with the inaccurate statement about our office's role throughout this entire process"); *see also* SAMF ¶¶ 1007-08.

Moreover, Statement No. 248 is immaterial to the issues raised in Defendants' summary judgment motion, as demonstrated by Defendants' failure to discuss it in their brief.*

249.

Defendants' Statement No. 249:

Randolph County ultimately did reconsider and did not close the polling locations they had planned on. Ex. No. (19) at 218:1-2.

Plaintiffs' Response:

Undisputed, but immaterial to the issues raised in Defendants' summary judgment motion, as demonstrated by Defendants' failure to discuss it in their brief.*

250.

Defendants' Statement No. 250:

Fair Fight Action admitted in its 30(b)(6) deposition that it did not have

knowledge of the Secretary encouraging the closure of polling locations. Ex. No. (13) at 199:25-200:4.

Plaintiffs’ Response:

Disputed. Ms. Groh-Wargo stated “I believe there was – there has been information put out by the Secretary of State encouraging counties that [] Shelby is over, they no longer have to pre-clear it, you can go ahead and close locations, . . .” Exh. 16, Groh-Wargo Dep. 199:10-25. When Ms. Groh-Wargo was asked to list the counties, other than Randolph County, for which the SOS encouraged the closure of polling places, she responded “I’m not sure” and that she could not do so “offhand.” Groh-Wargo Dep. 199:25-200:4.

251.

Defendants’ Statement No. 251:

Dr. Jones discusses polling place closure in only one context in her report, regarding Randolph County’s proposal that was ultimately abandoned. See Doc. No. [92] at 11.

Plaintiffs’ Response:

Disputed and immaterial. Dr. Jones’ report describes the history of polling place changes disproportionately affecting Black communities, dating to the First Reconstruction Act in 1867, not “in only one context.” Expert Report of Jones, ECF No. 92, at 15 (“In many localities, blacks were ‘not allowed, under penalties

of severe reprisals, to show their faces in town on election day.’ . . . Polling places were established at significant distances from black communities and common modes of transportation to access polling places were destabilized at election time. Polling places were moved without notice[.]”).

Moreover, Statement No. 251 is immaterial to the issues raised in Defendants’ summary judgment motion, as demonstrated by Defendants’ failure to discuss it in their brief.*

252.

Defendants’ Statement No. 252:

Dr. Jones acknowledged local Boards of Elections decide whether to close precincts. Ex. No. (21) at 110:8-11.

Plaintiffs’ Response:

Disputed. Dr. Jones did not “acknowledge[.]” that local Boards of Elections “decide whether to close precincts.” *See* Exh. 200, Dec. 19, 2019 Jones Dep. 111:8-20 (“It would be my impression that the Secretary of State has oversight over the State’s voting, opening, closing of polls, the use of exact match, et cetera. . . . [H]e might not be the individual who directly sanctions that [the State’s voting, opening, closing of polls, the use of exact match, et cetera.] in your particular neighborhood, but he runs the voting and electoral apparatus in the state.”). In

addition, Statement No. 252 is immaterial because whether local Boards of Elections decide whether to close precincts is outside the scope of Dr. Jones' report. The immateriality of Statement No. 252 is further demonstrated by Defendants' failure to discuss it in their summary judgment motion briefing.*

253.

Defendants' Statement No. 253:

Aside from reviewing issues prior to 1965, Dr. McCrary only opined about the voter-verification matching process in Georgia since 2006. Ex. No. (25) at 125:19-126:7.

Plaintiffs' Response:

Disputed. Dr. McCrary's report documents the evolution of the voter registration process in Georgia from 1945 through 2018. Expert Report of McCrary, ECF No. 339, at 6. His report discussed in depth how Georgia implemented the Voting Rights Act from 1965 to 1999, including changes to the state's process for "keeping statewide voter registration data." Expert Report of McCrary, ECF No. 339, at 16-20. In addition, Dr. McCrary's report explained extensive problems with Georgia's voter registration process from 1965 to 1999, *id.* at 16-20, and problems with the state's voter verification program from 2002 to 2018, *see id.* at 54-60.

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.

/s/ Allegra J. Lawrence

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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 THE MERITS** 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