

**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' CORRECTED STATEMENT OF ADDITIONAL
MATERIAL FACTS**

I. THE HARM TO PLAINTIFF ORGANIZATIONS

A. Ebenezer Baptist Church (“Ebenezer”)

i. Ebenezer’s Organizational Purpose

1. Ebenezer’s organizational mission includes encouraging civic participation and exercise of the franchise. According to Ebenezer’s Pastor, Raphael Warnock, “democracy is the political expression of this idea that all human beings are created in the image of God.” Exh. 5, Nov. 7, 2019 Warnock Dep. 39:6-8. He continued, “[i]t is the best protection we have in society against the excesses of the powerful trampling the concerns of the weak.” *Id.* 39:8-10.

2. The importance of voting is tied to the church’s understanding of theology. As Reverend Warnock described, “Everybody has a voice, and voice is

about personhood. It's about one's humanity. And it's the nature of human beings that that has to be checked, people's excesses, people's tendency to encroach and to protect their interests at the cost of others. So it's about personhood, humanity. So we see it as central really to the meaning of the Gospel, Jesus who said he came to preach good news to the poor to set the captives free. If you don't have a voice, you're a captive." Exh. 5, Nov. 7, 2019 Warnock Dep. 39:5-20.

3. Accordingly, "[m]obilizing people to vote, registering people to vote, and challenging unjust policies that create unnecessary barriers to voting . . . are all a part of the mission of [Ebenezer]." Exh. 5, Nov. 7, 2019 Warnock Dep. 93:14-17; *see also id.* 93:2-4 ("civic participation is part of what it means to be a Christian in the world").

4. "Voting rights are at the core of Ebenezer's work for social transformation; without a voice, people cannot speak." Am. Compl. ¶ 22. This is because voting rights are "about people's voice, about them having a stake in their future and being able to safeguard the future of their children, which is for [Ebenezer] a moral issue and a spiritual issue." Exh. 5, Nov. 7, 2019 Warnock Dep. 39:1-4; *see also id.* 41:3-6 (agreeing that "protecting that voice, protecting voting rights is a key part of Ebenezer's mission").

5. In keeping with its mission, “[s]ince 1935 when Martin Luther King Senior led a voting rights campaign in the City of Atlanta 30 years before the voting rights law was passed,” Ebenezer has spent resources on voting efforts. Exh. 5, Nov. 7, 2019 Warnock Dep. 35:10-17. Most recently, those efforts have been particularly focused on “voter education, registration, [and] mobilization.” *Id.* 35:17-19.

6. Ebenezer has continued this tradition in recent years. Exh. 5, Nov. 7, 2019 Warnock Dep. 49:1-5 (“So our focus prior to the 2018 election had been voter registration, education and mobilization. But this election we had to add one more step and emphasize voter registration, education, verification and mobilization.”); *see also id.* 48:20-25 (“[i]n 2008, it was an historic election, . . . the focus was just getting people out, getting them registered, make sure they vote, reminding them to have the proper ID.”); *id.* 41:17-18 (the tradition of supporting voting rights is “bigger than Ebenezer. It’s a tradition of the black church.”).

7. Ebenezer has emphasized the importance of voting, reminded people of upcoming elections, and opened its doors to candidates for office, regardless of their political party, who wanted to “come by and just worship. . . .” Exh. 5, Nov. 7, 2019 Warnock Dep. 44:10-23.

8. Ebenezer has “been very involved with registering voters, primarily after church in the narthex of the church. . . .” Exh. 5, Nov. 7, 2019 Warnock Dep. 71:15-23. Ebenezer “take[s] voting seriously. [The church] think[s] that citizenship is part of [its] Christian responsibility.” *Id.* 72:8-10. And the church registers voters, even when not close to an election. *Id.* 72:11-12.

9. Ebenezer has limited paid staff who oversee and supervise volunteer efforts at the church. Exh. 5, Nov. 7, 2019 Warnock Dep. 107:11-14 (“And the way we’re structured, wherever we divert volunteers the staff have to follow. Because my paid staff are the ones who supervise all of those efforts”).

10. The same volunteers who participate in Ebenezer’s voting work also volunteer in other areas of church life. Exh. 5, Nov. 7, 2019 Warnock Dep. 107:15-25. (“So volunteer time was diverted. And the volunteers who do this kind of work in voting, they volunteer in other areas of church life as well. And so it increased, you know, the amount of hours and time spent focused on voter education and verification. And so those . . . same volunteers could have been used . . . to work in our soup kitchen, the Crisis Closet, Cutting Through Crisis, to work with our children, our youth. We have dozens of programs.”).

ii. Ebenezer Was Forced to Devote Resources to Counter Georgia’s Unlawful Voter Suppression Practices

11. Ebenezer had planned to devote its voting efforts prior to the 2018 election to its general get-out-the-vote campaign, as it did in 2016. Exh. 6, D. Reed Decl. ¶ 7 (“[W]e had intended to devote much of our time and efforts in 2018 to [a] get out the vote campaign, as we did in 2016.”).

12. Countering Georgia’s voter suppression tactics became a central focus of Ebenezer’s work in the lead-up to the 2018 election. *See, e.g.*, Exh. 5, Nov. 7, 2019 Warnock Dep. 48:5-24, 48:17-21 (“Q. And the work to counteract voter suppression has happened in elections before the 2018 election; correct? A. Not with this kind of focus that we’ve had to put forward in 2018.”); *id.* 47:7-24, 48:5-11, 104:20-105:2 (identifying tactics including voter purges, cross-matching of voter registrations that resulted in people getting kicked out of the system, long lines, and voting machine integrity).

13. The church received complaints about closing or consolidating of polling locations, Exh. 5, Nov. 7, 2019 Warnock Dep. 167:9-169:22, and the burdens on people in certain communities experiencing long lines and “having to wait for extreme periods of time to vote.” *Id.* 48:23-24.

14. Reverend Warnock described his own observation at the Butler Street polling location during the 2018 election: “I was at the Butler Street poll – polling

station on Election Day in 2018. I remember it being dark and cold, and the line was still literally wrapped around the building. People were standing in the dark waiting to vote. And this was minutes before the polls were scheduled to close.” Exh. 5, Nov. 7, 2019 Warnock Dep. 167:15-21.

15. Ebenezer was aware of “dozens” of problematic tactics, and the “overall context and climate” informed Ebenezer’s engagement on voter suppression issues. Exh. 5, Nov. 7, 2019 Warnock Dep. 106:2-9.

16. Ebenezer responded to the Defendants’ voter suppression tactics with “massive voter mobilization” and “even more vigil[ance].” Exh. 5, Nov. 7, 2019 Warnock Dep. 82:17-83:7; *see also* “The Fight for the Soul of Our Democracy,” Atlanta Daily World, <https://atlantadailyworld.com/2018/10/29/viewpoints-the-fight-for-the-soul-of-our-democracy/> (Oct. 29, 2018), Exhibit 7 to Nov. 7, 2019 Warnock Dep.

17. Reverend Warnock also distributed information to the church in the wake of the 2018 election to assist anyone who had cast a provisional ballot. Exh. 5, Nov. 7, 2019 Warnock Dep. 141:3-12; Exh. 8, Nov. 9, 2018 Email from Warnock to Church re Voting, Pltfs-Ebc-000104. Doing so, Rev. Warnock testified, was consistent with the church’s mission of “keeping [voters] informed

and making sure that they have a voice.” Exh. 5, Nov. 7, 2019 Warnock Dep. 141:3-12.

18. Ebenezer invested time in lobbying the Georgia State Legislature in response to the Defendants’ actions. Exh. 5, Nov. 7, 2019 Warnock Dep. 142:15-143:9. The time was spent, in part, combatting “an effort . . . to constrict early voting and to create fewer weekend opportunities.” *Id.*

19. As described more fully below, Ebenezer also invested in specific initiatives to respond to voter suppression practices. *See, e.g.*, Exh. 5, Nov. 7, 2019 Warnock Dep. 52:8-20, 53:5-12, 71:9-72:1.

a. Ebenezer undertook new voter verification initiatives to respond to Georgia’s voter purges, Exact Match process, and voter roll irregularities.

20. In light of the voter purges, Exact Match process, and voter roll irregularities, Ebenezer not only increased its voter-related activities overall, but also “had to spend more time focused on verifying whether people who had actually already been registered were actually registered and explaining to people why they might still need to check even though they were certain that they were registered.” Exh. 5, Nov. 7, 2019 Warnock Dep. 108:23-109:3.

21. The church “spent . . . resources and time” focused on verification, such as “time and energy, staff time, resources, and Sunday morning worship time

getting people to understand how to” verify their registrations. Exh. 5, Nov. 7, 2019 Warnock Dep. 185:8-24.

22. Beginning in 2018, Ebenezer set up a hotline to assist with voter verification issues. Exh. 5, Nov. 7, 2019 Warnock Dep. 51:7-12.

23. Volunteers from Ebenezer spent time making sure callers were registered and assisting callers with questions. Exh. 5, Nov. 7, 2019 Warnock Dep. 51:7-12. The volunteers followed a protocol depending on the issue the voter presented, and they would at times refer callers to the Secretary of State’s office to see if they were still registered. *Id.* 53:13-54:8.

24. Ebenezer’s team “worked to confirm over 10,000 people who had a whole host of problems ranging from the misspelled names, inaccurate addresses, to not even being on the voter rolls at all despite having registered. The process of checking all of their data and talking with the state and counties [sic] election offices was often frustrating, inefficient and extremely time consuming.” Exh. 6, D. Reed Decl. ¶ 14.

25. The 2018 election was the first time that Ebenezer had offered a voting hotline at the church “to help people who were having problems.” Exh. 5, Nov. 7, 2019 Warnock Dep. 52:24-53:12; *see also id.* 71:9-72:1.

26. The creation of the hotline required the church to devote physical space to the effort, which had not been required in prior elections. Exh. 5, Nov. 7, 2019 Warnock Dep. 111:8-21 (“Well, church space would have been used differently when we set up the hotline to assist people who were having issues.”)

27. Ebenezer also undertook other efforts to educate voters on registration verification. *See* Exh. 209, B. Honor Decl. ¶ 7 (“I trained EBC members on how they could check their own voting status online and where to find their registration information. I educated people to focus on the spelling of their name, their current address and their polling place to ensure there was no clerical error that could cause their vote to be discounted”).

28. Ebenezer created “educational materials to inform people about the purge,” “used social media videos,” “made flyers[,] and used direct text messaging in an effort to educate and inform members about the ongoing purge and how to address the issues associated with that.” Exh. 6, D. Reed Decl. ¶ 10.

29. In 2018, leading up to Election Day, Reverend Warnock invited staff from the New Georgia Project to the church to introduce a voting application for mobile phones that would allow people to verify if they were actually registered. Exh. 5, Nov. 7, 2019 Warnock Dep. 59:13-18.

30. Reverend Warnock used time during worship to introduce the application, and the church held a rally after the service to roll out the application. Exh. 5, Nov. 7, 2019 Warnock Dep. 59:19-24. Ebenezer plans to continue to identify and share resources to help individuals verify their voting statuses. *Id.* 59:25-60:3.

31. Ebenezer's Social Justice Ministry co-hosted a phone bank in the fall of 2018 "for the purpose of touching base with voters that were purged." Exh. 5, Nov. 7, 2019 Warnock Dep. 71:9-72:14; Exh. 210, 2018 Ebenezer Social Justice Ministry Report, Pltfs-Ebc-000064, at -000064 (describing two-day phone/text bank "to touch base with voters that were reportedly purged from the voter registration rolls"). During phone banking, Ebenezer volunteers "would call voters and walk them, one on one, through the steps to check their registration status and if needed, to re-register." Exh. 6, D. Reed Decl. ¶ 11. Prior to 2018, Ebenezer had not phone banked to verify whether voters were purged. Exh. 5, Nov. 7, 2019 Warnock Dep. 71:9-72:1.

32. Ebenezer expects its voter verification efforts to continue in the future, Exh. 5, Nov. 7, 2019 Warnock Dep. 60:17-61:4, but if this litigation is successful the efforts "certainly wouldn't continue with the same kind of vigilance," *id.* 61:5-12.

33. As long as the purge, Exact Match, and other efforts of the State continue, Ebenezer “will continue to try to respond.” Exh. 5, Nov. 7, 2019 Warnock Dep. 61:13-22.

b. Ebenezer boosted vote by mail efforts in response to voter suppression tactics.

34. Prior to 2018, Reverend Warnock had not prioritized voting by mail because it was “cumbersome.” Exh. 5, Nov. 7, 2019 Warnock Dep. 110:11-17; 49:21-50:5. But the church was “concerned enough to try to add that as one more tool in our toolbox to respond to the voter suppression tactics.” *Id.* 110:2-24.

35. In the 2018 election, the church came to see the necessity of vote by mail and it “became much more central” to the church’s efforts. Exh. 5, Nov. 7, 2019 Warnock Dep. 183:12-17.

36. Ebenezer’s 2018 “vote by mail” campaign was driven by a desire to ensure that members’ votes were counted in the face of the variety of voter suppression tactics engaged in by the state. *See* Exh. 209, B. Honor Decl. ¶ 5; *see also* Exh. 5, Nov. 7, 2019 Warnock Dep. 49:12-50:4 (“We put a lot more emphasis on verification . . . trying to encourage people to verify their registration. . . which is why we did our ‘vote by mail’ campaign . . . [b]ecause it is the one method where . . . you can track your vote. You’ve got a paper trail.”); *id.* 109:16-110:24 (“all of the [voter suppression] practices were a part of our concern . . . we were

concerned enough to try to add [vote by mail] as one more tool in our toolbox to respond to the voter suppression tactics”).

37. Through the “vote by mail” campaign, the church encouraged its members to vote by mail and trained them on how to complete an absentee ballot request, complete the ballot, and submit the ballot by mail. Exh. 209, B. Honor Decl. ¶ 5.

38. The church diverted volunteer resources, and accompanying staff time, to assist with supervision, development, and implementation of the “vote by mail” program. Exh. 5, Nov. 7, 2019 Warnock Dep. 106:22-107:25.

39. Reverend Warnock and other staff members spent staff time to participate in a video explaining the vote by mail process, which they then sought to distribute to pastors and faith leaders statewide. Exh. 5, Nov. 7, 2019 Warnock Dep. 183:21-25; 184:14-16.

40. Ebenezer spent additional funds in its social justice ministry specifically to support the vote by mail effort. Exh. 5, Nov. 7, 2019 Warnock Dep. 184:17-185:14.

41. Ebenezer intends to continue the “vote by mail” program in the future. Exh. 5, Nov. 7, 2019 Warnock Dep. 59:3-8.

iii. Ebenezer's Work to Counter Voter Suppression Practices Has Diverted Resources From Ebenezer's Other Activities

42. The need to address Defendants' unlawful suppression activities necessarily displaced other items on Ebenezer's very full agenda. Exh. 5, Nov. 7, 2019 Warnock Dep. 106:22-107:25.

43. Ebenezer's social justice ministry addresses issues including voter empowerment, mass incarceration, the poverty safety net, education and the school to prison pipeline, and access to healthcare. Exh. 210, 2018 Ebenezer Social Justice Ministry Report, Pltfs-Ebc-000064, at -000064-68; Exh. 5, Nov. 7, 2019 Warnock Dep. 68:15-25 (also identifying housing as an area on which the ministry works).

44. The volunteers who assist with Ebenezer's voting work also volunteer in other areas of church life. Exh. 5, Nov. 7, 2019 Warnock Dep. 107:15-17.

45. Diversion of volunteer time negatively affected other church programs that rely on the same volunteers. The volunteers who assisted with the vote by mail program, for instance, "could have been used . . . to work in [Ebenezer's] soup kitchen, the Crisis Closet, Cutting Through Crisis, to work with [church] children," or to participate in one of the church's other "dozens of programs." *Id.* 107:15-25.

46. Instead, “volunteer time was diverted” because the Defendants’ voter suppression tactics increased the “amount of hours and time focused on voter education and verification.” *Id.* at 107:15-20.

47. Ebenezer not only diverted its volunteers to voting rights issues, but also diverted its paid staff to voting rights issues. Because Ebenezer’s paid staff supervise all of the volunteer efforts at the church, when the church diverts volunteers from one project to another, “the staff have to follow.” *Id.* 107:5-14. And the church’s staff “is so small” that volunteer efforts “literally involve[] the entire ministerial staff and the entire administrative staff.” *Id.* 108:1-6.

48. The efforts to educate voters also diverted time from the church’s religious services. Exh. 6, D. Reed Decl. ¶ 11 (because of classes or speeches about the voter purge during services, “[t]he church had to give up time that would otherwise be devoted to religious services to educate people about the state’s purge”).

49. Diverting time to combat new voter suppression tactics also detracted from Ebenezer’s typical get-out-the-vote campaign. As Deirdra Reed, who spent 50% of her working time with Ebenezer in the lead-up to the 2018 elections, explained, Ebenezer “spent a lot of time just trying to concentrate on infrequent voters and people who would have been on the purge [list] rather than doing [the

church’s] traditional work, which would have been voter registration work.” Exh. 7, D. Reed Dep. 150:5-22; *see also id.* 171:23-172:7 (“Our efforts would have been towards getting those folks out to the polls. . . . And then in 2018, we spent our time on the front end just trying to make sure that people who thought that they were registered were registered [which] would have left us less time to do some of the stuff that we would have done in get out the vote.”)

50. According to Reverend Warnock, the church would not “allow anything to thwart [its] mission.” Exh. 5, Nov. 7, 2019 Warnock Dep. 108:7-11. And that meant, “we had to step up and be more vigilant and make sure that our mission was carried out, which was to make sure that people can vote. But it made that work much harder is what I would say.” *Id.* 108:12-16.

51. Reverend Warnock would “like to spend more time engaged in other kinds of outreach, engaged in providing people the . . . kind of quality of life that the vote helps to secure. . . . But if we need to be engaged in this, absolutely, we will.” *Id.* 190:8-16.

B. Care in Action

i. Care in Action’s Organizational Purpose

52. Care in Action’s mission is “to support the fairness and dignity of domestic workers to help them exercise their rights,” of which “[t]heir right to vote

is the most important.” Exh. 9, Oct. 22, 2019 J. Livoti Dep. 56:1-4. Care in Action believes “one of the ways that domestic workers are able to secure the fairness and dignity that’s in [the organization’s] mission is when they’re able to exercise their right to vote.” *Id.* 135:23-136:1.

53. Care in Action is organized pursuant to Section 501(c)(4) of the Internal Revenue Code; the National Domestic Workers Alliance is the 501(c)(3) entity. Exh. 9, Oct. 22, 2019 J. Livoti Dep. 67:10-24. National Domestic Workers Alliance invoices Care in Action for time and expenses and Care in Action reimburses National Domestic Workers Alliance. *Id.*

54. Care in Action’s voting-related programming focuses on women of color and, specifically, sporadic voters. According to Care in Action, “many of the reasons that people aren’t likely to vote are because of the burden that is placed on them when they go to vote.” Exh. 9, Oct. 22, 2019 J. Livoti Dep. 137:1-6.

55. To fulfill this mission, Care in Action includes canvassing and organizing as part of its regular training, but that training has not focused on what to do around provisional ballots. Exh. 9, Oct. 22, 2019 J. Livoti Dep. 54:7-13.

56. Whereas a typical get-out-the-vote program concludes on Election Day, in 2018, Care in Action “had to conduct a program past Election Day because of the voter suppression efforts.” Exh. 9, Oct. 22, 2019 J. Livoti Dep. 62:25-63:3.

During the post-election period, Care in Action diverted resources to support the provisional ballot chase. *Id.* 44:11-13.

57. As Care in Action’s Executive Director described what she observed about the 2018 general election in Georgia: “I have been working in elections for a long time. I’ve even worked on elections even bigger than this, presidential elections, and I remember on Election Day being very surprised at the amount of voter protection calls that we fielded in our one little office. And so that’s one of the reasons why we feel really motivated and recommitted to making sure that domestic workers’ right to vote is able to be exercised and they are able to have every single one of their votes counted because of our experience in 2018 where, despite record turn-out, we still saw voter suppression.” Exh. 9, Oct. 22, 2019 J. Livoti Dep. 139:22–140:11.

58. Care in Action’s provisional ballot chase was necessary because the Defendants’ wrongful conduct caused more provisional ballots to be cast than otherwise would have been. Care in Action engaged in the provisional ballot chase “to counteract voter suppression . . . because of the large [number] of provisional ballots that had been cast and the need to make sure that every vote was counted.” Exh. 9, Oct. 22, 2019 J. Livoti Dep. 99:7-12. “[Care in Action] believed that there

were a number of provisional ballots that had been cast that fell . . . outside of people – voters failing to meet legal requirements.” *Id.* 157:8-13.

59. While Care in Action had endorsed Stacey Abrams for Governor in the 2018 election, the organization, during the provisional ballot chase, did not ask voters for whom they voted. Instead, they asked “if they cast a provisional ballot and then provide[d] support based on whether or not they casted [sic] a provisional ballot.” Exh. 9, Oct. 22, 2019 J. Livoti Dep. 149:22-23; 150:6-10.

60. Care in Action had not previously conceptualized its Georgia program as focused on voter protection. *See* Exh. 211, National Domestic Workers Alliance Job Announcement, Pltfs-CIA-000182 (job announcement for Georgia State Director, Care in Action, which does not discuss voter protection work).

ii. Care in Action Was Forced to Devote Resources to Counter Georgia’s Unlawful Voter Suppression Practices

61. Care in Action diverted financial resources because of the claimed unconstitutional or otherwise unlawful acts of the Defendants. Exh. 9, Oct. 22, 2019 J. Livoti Dep. 43:5-10.

62. Care in Action diverted resources to activities it had not previously undertaken, Exh. 9, Oct. 22, 2019 J. Livoti Dep. 89:9-12, including keeping staff in Georgia for the provisional ballot chase, *id.* 235:20-236:5; all of those activities

were in addition to the organization's program work contacting voters. *Id.* 100:20-25.

63. In 2018, Care in Action changed its model "to include additional voter protection activities in the anticipation of a need to respond to potential voter suppression issues." Exh. 9, Oct. 22, 2019 J. Livoti Dep. 83:16-25.

64. According to Livoti, to carry out its efforts regarding provisional ballots, Care in Action "kept staff who had anticipated leaving Georgia directly after Election Day in Georgia for longer. We made phone calls. We recruited volunteers. We sent text messages. We did digital ads. We posted on social media. We . . . engaged social media influencers." Exh. 9, Oct. 22, 2019 J. Livoti Dep. 98:11-22; *see also id.* 43:11-20 (continuing Care in Action's program in Georgia beyond Election Day entailed "keep[ing] staff who did not live in state here longer," as well as putting in place digital ads, phone banks, text messages, and other activities).

65. Specifically referencing the post-Election Day period, when Care in Action's efforts "were focused entirely on voter protection and combatting voter suppression," Care in Action "recruited additional volunteers as a result of the immense need there was to be able to talk to as many voters as possible who had cast provisional ballots." Exh. 9, Oct. 22, 2019 Livoti Dep. 164:20-25.

66. This recruitment was “specifically for the provisional ballot push that [Care in Action] . . . would not have made otherwise.” Exh. 9, Oct. 22, 2019 J. Livoti Dep. 165:13-15.

67. Care in Action staff members who had to remain in Georgia post-election required housing and incurred travel expenses, and Care in Action was required to pay for their time. Exh. 9, Oct. 22, 2019 J. Livoti Dep. 100:15-25; *see* Exh. 11, Airbnb Reservation Change Receipt, Pltfs-CIA-000255 (Nov. 9, 2018 receipt documenting an additional \$447.15 incurred because of Care in Action’s post-election activities); Exh. 12, Flight Receipt, Pltfs-CIA-000251 (Nov. 13, 2018 receipt documenting \$662 spent to change flights for two Care in Action staff members as a result of post-election activities); *see also* Exh. 13, National Domestic Workers Alliance Invoice, Pltfs-CIA-000270 at -000270-000298 (Dec. 31, 2018 invoice listing expenses billed to Care in Action related to the provisional ballot project); Exh. 9, Oct. 22, 2019 J. Livoti Dep. 241:1-7 (explaining that all of the listed expenses reflect diverted resources due to the provisional ballot chase campaign).

68. Care in Action created a webpage as a result of its provisional ballot campaign and made the page the destination page for Care in Action’s digital ad

universe. Exh. 9, Oct. 22, 2019 J. Livoti Dep. 182:1-8; 184:13-20; *see* Exh. 212, Pltfs-CIA-000001 (webpage).

69. Care in Action expended \$107,500 on digital ads specifically for the provisional ballot chase. Exh. 9, Oct. 22, 2019 J. Livoti Dep. 242:24-243:19; Exh. 14, Pltfs-CIA-000269 (invoice for “Care In Action Ballot Chase Ad Buys”).

70. The organization provided training “in relation to anti-voter suppression efforts” around “ballots. . . , what to do around provisional ballots,” and “additional information when your vote is suppressed.” Exh. 9, Oct. 22, 2019 J. Livoti Dep. 54:7-13.

71. This training was “not training that [Care in Action] would have conducted otherwise.” Exh. 9, Oct. 22, 2019 J. Livoti Dep. 54:7-13; *see also id.* 52:20-53:12 (“Care in Action had to “do additional work that we would not have and that we wouldn’t have had to train people in as it pertains to their right to vote, how to vote, what document would they end up in, irregular situations as they go to vote or as their ballot is counted.”).

72. Care in Action did this work “to counteract voter suppression . . . because of the large [number] of provisional ballots that had been cast and the need to make sure that every vote was counted.” *Id.* 99:9-12.

73. Based on Care in Action’s 2018 experience in the State of Georgia, the organization has made changes to its job requirements for state directors, “making sure that state directors were hired with more senior level experience and had knowledge of voter protection efforts” because the organization “anticipated that [it] may need that expertise in their work going forward.” Exh. 9, Oct. 22, 2019 J. Livoti Dep. 76:8-14.

74. Care in Action learned from its 2018 experience that “Election Day is very late in the life cycle of a voter” with the result that Care in Action’s “ability to make any changes to their experience is obviously extremely limited on Election Day itself and, . . . not present after Election Day.” Exh. 9, Oct. 22, 2019 J. Livoti Dep. 200:2-8.

75. Going forward, Care in Action has determined it “need[s] to engage in additional voter protection work much earlier in the process.” Exh. 9, Oct. 22, 2019 J. Livoti Dep. 199:21-200:1.

76. As a result, Care in Action will “actually put people on the doors earlier, train [their] canvassers and potentially volunteers in more than the basic information, like, where’s your polling place, ID, and when Election Day is, and actually give them information that [it] wouldn’t otherwise about their rights as a voter, about what happens if they’re asked to cast a provisional ballot, just things

that [it] normally in the course of [their] work would not have done, but because of the experience we had we feel like we have to do to make sure that we are able to accomplish our mission.” Exh. 9, Oct. 22, 2019 J. Livoti Dep. 200:4-25.

77. Care in Action expects to devote similar resources to resolving provisional ballot issues in the future. Exh. 9, Oct. 22, 2019 J. Livoti Dep. 44:17-20, 44:25-45:15 (“we anticipate we will need to run similar types of efforts to combat voter suppression . . . [and] anticipate we’ll need to begin our program earlier, educate voters differently to be able to make sure that they are able to exercise their to vote and that their vote is counted”); *see also id.* 201:1-10 (“it doesn’t make sense to turn out a bunch of voters if they won’t be able to vote. So . . . we will engage in this new kind of effort to get people earlier and to give them more information so that they’re prepared to talk about things like long lines or provisional ballots”).

78. The organization is planning to train canvassers, and potentially volunteers, with information they would not otherwise be giving voters about “what happens if they’re asked to cast a provisional ballot,” which the organization “normally in the course of [its] work would not have done,” but must do to accomplish its mission given the voter suppression in Georgia in 2018. Exh. 9, Oct. 22, 2019 J. Livoti Dep. 200:9-25.

79. Care in Action’s concerns about Georgia’s elections have continued since 2018, and Care in Action has devoted resources to “encouraging voters to check their voter registration and polling places” in reaction to voter purges, to “educating voters on vote-by-mail procedures” in reaction to voter confusion around vote-by-mail, and to conducting “phone banks, emails, and texting campaigns to ensure Georgia residents—particularly domestic workers and women of color—were registered and able to vote in the June 9, 2020 primary.” Exh. 10, J. Livoti Decl. ¶¶ 6-9.

80. Care in Action has undertaken specific activities in 2020 to counteract Defendants’ voter suppression. *See* Exh. 10, J. Livoti Decl. ¶¶ 9-10 (describing Care in Action’s mass email and text campaign to educate voters regarding vote-by-mail procedures); *id.* ¶ 11 (“Because of [losses of absentee ballot requests] and the voter suppression tactics that Care in Action has observed in Georgia, on June 3, 2020, Care in Action sent a mass email encouraging voters to check the status of their absentee ballot requests”); *id.* ¶ 12 (“broken voting machines and very long lines and wait times” on June 9, 2020 caused Care in Action to send a mass email encouraging voters to check their polling locations and call the voter protection hotline with any issues).

iii. Care in Action’s Work to Counter Voter Suppression Practices Has Diverted Resources from Its Other Activities

81. Care in Action’s investment of time, effort, and money to respond to the Defendants’ unlawful voter suppression inhibited the organization from fulfilling other aspects of its mission. Exh. 9, Oct. 22, 2019 J. Livoti Dep. 44:11-13 (“We had to divert resources as a result of provisional ballot chase.”); *id.* 89:9-90:1 (Care in Action diverted financial resources and staff time).

82. Care in Action had to “make really tough choices about whether or not” to divert resources. Exh. 9, Oct. 22, 2019 J. Livoti Dep. 256:16-15.

83. As an example of the diversion decisions Care in Action had to make, the organization decided to keep a staff member in Georgia rather than sending the staff member to Mexico to work on immigration issues. *See* Am. Compl. ¶ 17 (“Multiple national Care in Action staff . . . stayed in Georgia for weeks after the election . . . includ[ing] . . . a person who regularly worked on immigration”); Exh. 9, Oct. 22, 2019 J. Livoti Dep. 256:19-25 (“we referenced in Paragraph 17 [of the Amended Complaint]. . . literally[,] I had to make a choice of whether or not I should send that person to our office in Mexico where we were opening up a refugee camp or whether I should keep them in Georgia.”). Because of this decision, the staffer was “not doing” their “regular[,] full-time job” doing immigration work during that period. Exh. 9, Oct. 22, 2019 J. Livoti Dep. 257:1-4.

84. The 2018 election “animated” and “motivated” Care in Action “around voting rights.” Exh. 9, Oct. 22, 2019 J. Livoti Dep. 257:6-7. Now, Care in Action, the 501(c)(4) entity, is doing voter protection work that would have traditionally been done through the 501(c)(3) organization. That, along with the need to “hire more experienced and more senior staff who have voter protection experience,” is significant. *Id.* 257:8-17.

85. Care in Action was unable to complete its strategic planning in 2018 for 2019 because that planning process had been scheduled for the period post-election, and the “unanticipated work” for the staff post-election “made it really, really hard for them to . . . catch up on work they hadn’t done.” Exh. 9, Oct. 22, 2019 J. Livoti Dep. at 257:18-25.

86. The post-election work in Georgia also meant that Care in Action was not “able to do planned work” it had anticipated in the 2019 legislative session “around a state domestic worker bill of rights.” Exh. 9, Oct. 22, 2019 J. Livoti Dep. 258:1-4.

87. Care in Action also was forced to delay its work around the introduction of a federal domestic worker bill of rights, which was not introduced until later in 2019. Exh. 9, Oct. 22, 2019 J. Livoti Dep. 258:4-9.

88. Care in Action’s diversions of resources are ongoing. Exh. 10, J. Livoti Decl. ¶ 13 (“Because of the voter suppression tactics Care in Action observed in 2018 in Georgia, and the state’s continued suppression during the June 9, 2020 primary election, Care in Action anticipates having to devote additional resources in Georgia for the general election in November 2020. Because these voter suppression tactics are ongoing, Care in Action will have to continue to expend resources in Georgia to counteract that voter suppression.”).

C. Fair Fight Action

i. Fair Fight Action’s Organizational Purpose

89. Fair Fight Action, formerly known as the Voter Access Institute (“VAI”), is a non-profit entity with a core mission of engaging the Georgia electorate and getting out the vote. Am. Compl. ¶ 10; Exh. 16, Sept. 16, 2019 L. Groh-Wargo Dep. 29:9-19 (“Fair Fight Action works to engage and educate an electorate and advocate”), *id.* 182: 9-14 (the purpose of VAI was voter engagement and get-out-the-vote work). The broad mission of VAI and Fair Fight Action “is around voter engagement overall of communities of color, voter turn-out broadly of communities of color, [and] young people, and then working on progressive issues generally.” Exh. 17, Oct. 30, 2019 L. Groh-Wargo Dep. 35:1-10.

90. When known as Voter Access Institute, the organization conducted a vote-by-mail program, provided voters with information about upcoming elections, and engaged in a get-out-the-vote campaign during the early voting period and on Election Day. Am. Compl. ¶ 11; Exh. 16, Sept. 16, 2019 L. Groh-Wargo Dep. 30:1-22 (explaining the purpose was “typical ‘get out and vote’ activities, things that Voter Access Institute did previously . . . voter education, making sure voters know how and where to vote.”), *id.* 221:17-22 (the VAI engaged people to vote).

91. Specifically, in 2014, VAI’s “primary activity was around voter engagement”—that is, “reaching out to registrants” and “providing information about voting”—“and voter turn-out.” Exh. 20, Nov. 13, 2019 S. Abrams Dep. 84:19-85:12. VAI notified voters of when and how to vote. Exh. 17, Oct. 30, 2019 L. Groh-Wargo Dep. 63:6-18. VAI also made phone calls, created mail programs, employed a paid canvasser, and undertook other “general ‘go vote’ activities.” Exh. 17, Oct. 30, 2019 L. Groh-Wargo Dep. 63:22-64:6.

92. VAI’s 2014 activities included employing door hangers to make direct contact with voters and following up when voters had pledged to vote, and mailing vote by mail request forms to voters. *See* Exh. 17, Oct. 30, 2019 L. Groh-Wargo Dep. 209:23-210:3 (discussing the use of door hangers); *id.* 210:21-211:22

(discussing use of vote by mail forms), Exh. 213, Vote Early Mail Tags, Pltfs-FFA-000128, at -000128-000129.

93. VAI also engaged in door knocks, calls, digital advertising, radio, and mail to turn out voters or remind people to vote. Exh. 17, Oct. 30, 2019 L. Groh-Wargo Dep. 213:24-214:13; *see also* Exh. 20, Nov. 13, 2019 S. Abrams Dep. 86:8-15 (“[W]e would contact them by phone. We contacted some directly by door. We sent mail. We did millions of digital impressions. We provided opportunities to convene. And we used all of the traditional mechanisms of voter outreach to help encourage, including helping people understand how the actual process of voting worked.”).

94. According to VAI’s articles of incorporation, “the object of this corporation is to promote the common good and general welfare through voter education, voter registration, voter access and other activities related to development of an informed and pro-active electorate.” Exh. 214, VAI Articles of Incorporation, Pltfs-FFA-000037, at -000037; *see also* Exh. 17, Oct. 30, 2019 L. Groh-Wargo Dep. 55:7-14 (quoting this phrase).

95. VAI’s efforts were not focused on educating voters about how to overcome the voter suppression efforts described in the Amended Complaint, nor did the work include efforts to reform the election system. *See* Exh. 215, VAI

Georgia 2015 Voter Engagement and Mobilization Info. Doc., Pltfs-FFA-000034, at -000034-35 (describing VAI’s Fall 2014 plans to “educate and mobilize new registrants” and to educate voters “on the importance *and ease of voting* in the November general election” (emphasis added)).

96. Because of voter suppression in Georgia in 2018, VAI was forced to take on additional activities aimed at combatting that suppression. *See* Exh. 20, Nov. 13, 2019 S. Abrams Dep. 10:18-11:10 (“Voter Access Institute was initially created to expand voting rights in the state of Georgia and beyond. Fair Fight Action became the new moniker as we maintained our mission but decided to expand the activities of the organization . . . to focus primarily on issues of voter suppression and addressing voter suppression both in the aftermath of the 2018 election, but anticipating additional voter suppression activities in Georgia.”).

97. On November 21, 2018, VAI’s articles of incorporation were amended to change the organization’s name to Fair Fight Action, Inc. Exh. 216, VAI Articles of Incorporation, Pltfs-FFA-000261; Exh. 16, Sept. 16, 2019 L. Groh-Wargo Dep. 29:20-25 (confirming that Fair Fight Action is the same corporate entity as the Voter Access Institute).

98. Fair Fight Action remains committed to VAI’s original mission of educating and engaging Georgia’s electorate, although it has been forced to

undertake additional activities to counteract voter suppression. As Lauren Groh-Wargo explained,

“[T]he core purpose of voter engagement, voter access, . . . voter turnout activities has remained constant. And because of the tremendous wrongdoing and threat to the right to vote and what we saw in the 2018 election, the organization has undertaken a whole bunch of activities so that folks are able to vote.” Exh. 17, Oct. 30, 2019 L. Groh-Wargo Dep. 126:23-127:10.

99. The increase in activities focused on countering voter suppression has not altered Fair Fight Action’s core mission. *See* Exh. 16, Sept. 16, 2019 L. Groh-Wargo Dep. 280:18-281:19 (“Fair Fight’s mission overall in voter engagement and voter education has taken on a significant additional set of goals and work around mitigating voter suppression and around initiating programs and diverting resources to do that work.”); Exh. 17, Oct. 30, 2019 L. Groh-Wargo Dep. 94:13-95:3 (Fair Fight Action’s “core purpose has not changed from its purpose for Voter Access Institute around voter engagement,” but Fair Fight Action has “taken on additional activities . . . that have been a fight against voter suppression.”).

100. Fair Fight Action also engages with and advocates for Georgians on other issues, including health care. Exh. 16, Sept. 16, 2019 L. Groh-Wargo Dep. 30:23-31:4 (Fair Fight Action has “advocated around abortion access, reproductive rights, healthcare”); *id.* 36:22-37:4 (noting that Fair Fight Action engaged in advocacy regarding an abortion-related bill in the Georgia General Assembly).

ii. Fair Fight Action Was Forced to Devote Resources to Counter Georgia’s Unlawful Voter Suppression Practices

101. Because of Defendants’ voter suppression practices, Fair Fight Action has had to implement new education programs and engage in election reform efforts focused specifically on counteracting the problems voters encountered in the 2018 election. *See, e.g.*, Exh. 16, Sept. 16, 2019 L. Groh-Wargo Dep. 29:9-19 (stating, “we’ve diverted a significant amount of resources to fight voter suppression in terms of expenditures and time, programs that we have implemented to counteract the wrongdoing”); *id.* 30:1-14 (“the mission was altered to take into account voter suppression that we have witnessed . . . the mission has sort of expanded and resources have been diverted to address that mission”); Exh. 17, Oct. 30, 2019 L. Groh-Wargo Dep. 27:23-28:16 (describing the new programs where the financial resources were diverted), *id.* 28:18-23 (Fair Fight Action has rented space, paid to send out text messages, and devoted staff time to counteracting voter suppression).

102. From a budgetary standpoint, one way in which Fair Fight Action has diverted financial resources is by creating two new programs—the “Democracy Warriors” Program and the “Fair Fight U” program—designed to mitigate the harms of voter suppression. Exh. 17, Oct. 30, 2019 L. Groh-Wargo Dep. 32:2-15 (confirming the diversion of financial resources to these programs); *id.* 26:24-27:7

(same). Fair Fight has devoted staff time, consultant time, and volunteer time to these two programs. *Id.* 27:23-28:16.

103. “The impetus” for Fair Fight U and Democracy Warriors was “counteracting problems that voters encountered in 2018.” Exh. 17, Oct. 30, 2019 L. Groh-Wargo Dep. 173:1-174:3.

104. The Democracy Warriors “are volunteers that are getting trained to do a whole bunch of things, to know each other so that they can work together on issues, to monitor elections officials in their locality and at the state level, to push back on voter suppression, to advocate for issues in their community.” Exh. 17, Oct. 30, 2019 L. Groh-Wargo Dep. 91:9-92:1. “The majority of their work has been around voter suppression, but not 100 percent exclusively.” *Id.* 92:6-15.

105. Fair Fight U’s main purpose is “response, push-back on voter suppression.” Exh. 17, Oct. 30, 2019 L. Groh-Wargo Dep. 92:16-23. *See also* Exh. 17, Oct. 30, 2019 L. Groh-Wargo Dep. 137:5-13 (describing the primary work of Fair Fight U).

106. Fair Fight Action has also devoted budgetary resources to hiring the organizing department of Fair Fight Action, whose members are “mainly focused on mitigation of voter suppression and were hired for that purpose.” Exh. 17, Oct. 30, 2019 L. Groh-Wargo Dep. 31:18-32:10.

107. Fair Fight has diverted staff time to counter voter suppression. All of the staff members and consultants involved in Fair Fight Action spend time “on the issues of voter suppression,” including “working on organizing, advocacy, research [and] communication efforts.” Exh. 17, Oct. 30, 2019 L. Groh-Wargo Dep. 35:1-16.¹

108. Specific efforts undertaken by Fair Fight Action to investigate and potentially educate the public about voter suppression include: working with journalists on reports of voting problems; paying for a staffer to attend a DefCon conference in Las Vegas; completing open records requests; working with county officials; sending volunteers and activists to take notes at the State Election Board, county elections, and county commission meetings; and providing questions for activists. Exh. 17, Oct. 30, 2019 L. Groh-Wargo Dep. 40:4-42:13; *see also* Exh. 217, Note Sheet, Exhibit 62 to Oct. 30, 2019 L. Groh-Wargo Dep. (additionally listing the following activities: providing questions to state legislators, organizing a hearing on HB 316, commissioning a map relating to African American provisional vote share, completing provisional ballot analysis, analyzing how many

¹ Fair Fight Action is not claiming efforts and resources expended on this litigation as its injury-in-fact. *See* Am. Compl. ¶¶ 12-13, ECF No. 41 (describing new education programs and election reform efforts); SAMF ¶¶ 98-128 (describing programs and activities to which Fair Fight has diverted resources).

machines will be needed over time, completing text campaigns for poll watchers, and researching vote by mail rejection rates for both applications and actual ballots).

109. Groh-Wargo testified that many of these activities would “cease” or be “eliminated,” “gone,” or “nearly gone” if the issues raised in this lawsuit were resolved. *See* Exh. 17, Oct. 30, 2019 L. Groh-Wargo Dep. 45:11-17 (working with journalists), *id.* 45:18-21 (attending conferences relating to elections and election administration); *id.* 46:1-2 (encouraging a DeKalb County audit); *id.* 46:6-15 (providing questions for public comment periods at legislative hearings and election meetings); *id.* 46:25-47:5 (holding hearings on H.B. 316); *id.* 47:6-10 (creating graphics to show comparison of voter share to provisional voter share); *id.* 47:11-17 (analyzing provisional ballots looking for trends); *id.* 47:18-21 (analyzing how many machines will be needed under H.B. 316); *id.* 51:5-9 (completing text campaigns for poll watchers/problems voters had casting votes); *id.* 51:17-19 (analyzing of voter protection programs in 2018); *see also id.* 46:20-24 (“most, if not all” activities with Fair Fight Action’s lawyers “would cease”).

110. Other Fair Fight Action activities would be “greatly,” “significantly,” or “vastly” reduced. Exh. 17, Oct. 30, 2019 L. Groh-Wargo Dep. 45:22-25 (making Open Records requests to state and county officials); *id.* 46:3-5 (sending staff and

volunteers to county and state election board meetings); *id.* 46:16-19 (providing questions to state legislators for hearings on election bills); *id.* 47:22-25 (analyzing provisional data from the Election Assistance Commission’s E.A.V. report); *see also id.* 48:6-10 (analysis of vote by mail rejection rates would be reduced); *id.* 48:11-49:6 (comparative work to analyze voting problems, absentee rejection rates, provisional [ballot] problems and other issues “would be reduced if not eliminated”, though Fair Fight Action could continue to compare Georgia’s basic features such as turn-out and registration rates to other states).

111. Fair Fight Action has diverted volunteer time to mitigate voter suppression. The organization has trained, supported, and deployed volunteers “on very specific actions to try and . . . specifically mitigate the harm the State has caused around confusing and problematic implementation of election administration and voting law.” Exh. 17, Oct. 30, 2019 L. Groh-Wargo Dep. 28:24-29:6.

112. Fair Fight Action has also continued some activities involving general voter education, such as pointing students involved in Fair Fight U toward voter registration resources, Exh. 17, Oct. 30, 2019 L. Groh-Wargo Dep. 80:12-22, and providing a phone bank to call voters to make sure they know about an upcoming election, *id.* 80:23-81:10. *See also id.* 210:10-17 (“We’re imminently going to be

doing some phone calls to voters around just general[ly] making sure people are aware . . . [b]ecause local elections have very low turn-out.”).

113. Fair Fight Action’s general voter education efforts have become more difficult, however, as a result of Defendants’ voter suppression. For instance, whereas VAI used to undertake phone banks to share information about when and where to vote, Fair Fight Action now must use its phone banking resources to share such information *and* to make sure voters have checked their registration statuses. Exh. 17, Oct. 30, 2019 L. Groh-Wargo Dep. 174:16-175:21 (“Other things we’re looking at, like, this weekend around a sort of hybrid phone bank to voters who have elections coming up, be it way beyond what we have done in the past in terms of telling people when and where to vote, we’re also having a conversation with them to make sure they’re checking their registration status, know where they’re to go for help. It’s a whole additional part of that conversation that would not have been there before that’s meant to address the issues we’ve seen and the injury that Georgia voters have suffered.”). *See also* Am. Compl. ¶ 12.

114. Fair Fight Action now needs to instruct voters about how to navigate new burdens and roadblocks in order to access their right to vote—which is a prerequisite to Fair Fight Action’s ultimate goal of an engaged electorate. *See* Exh. 17, Oct. 30, 2019 L. Groh-Wargo Dep. 174:4-15 (agreeing that Fair Fight Action is

“having to educate voters about something different because of the voter suppression issues” and that what Fair Fight Action is “doing and thinking about doing” “is way beyond” the “basic amount of voter education that goes in on turn-out activities”).

115. Additionally, whereas VAI had not previously engaged in direct lobbying of the State Legislature to change election laws, in response to the allegedly unconstitutional laws, Fair Fight Action engaged in these activities in the 2019 session. Exh. 17, Oct. 30, 2019 L. Groh-Wargo Dep. 201:22-202:24 (confirming that FFA began lobbying to change election laws only in the 2019 session).

116. Even when completing research that VAI might have engaged in prior to the 2018 election, Defendants’ voter suppression tactics have increased the resources required to complete research. Prior to the 2018 election, VAI was completing “simple analysis” comparing state-level registration data based on “very easy publicly available data.” Exh. 17, Oct. 30, 2019 L. Groh-Wargo Dep. 48:20-49:15.

117. Since 2018, Fair Fight has had to search for different data that are not publicly available, which requires open records requests and consultation with national experts. Exh. 17, Oct. 30, 2019 L. Groh-Wargo Dep. 49:16-50:4

(confirming the “unbelievable amount of diversion of resources” required to search for data that is not publicly available).

118. Although the activities above respond generally to the voter suppression activities alleged in the complaint, Fair Fight Action’s activities can also be traced more granularly to specific challenged practices.

119. With regard to UILI, Exact Match, and voter roll irregularities, Fair Fight Action has responded to evidence of “huge inaccuracy on the voter rolls.” Exh. 16, Sept. 16, 2019 L. Groh-Wargo Dep. 97:6-98:11.

120. Fair Fight Action has devoted time during phone banks to discussing how voters can verify their registration statuses. Exh. 17, Oct. 30, 2019 L. Groh-Wargo 174:16-175:21 (explaining that “beyond what we have done in the past in terms of telling people when and where to vote, we’re also having a conversations with them to make sure they’re checking their registration status.”).

121. After students experienced significant problems voting in 2018, including inaccuracies on voter rolls, organizers in Fair Fight U have worked with student leaders on these issues. Exh. 17, Oct. 30, 2019 L. Groh-Wargo Dep. 88:20-89:22.

122. Fair Fight Action has additionally discussed how to divert resources in the future to ensure that individuals who have been purged “understand the

registration status and get registered.” Exh. 16, Sept. 16, 2019 L. Groh-Wargo Dep. 61:23-62:9.

123. Depending on how the lawsuit progresses, Fair Fight Action plans to engage in future activities to educate voters about UILI. *See* Exh. 17, Oct. 30, 2019 L. Groh-Wargo Dep. 35:1-36:23 (explaining how Fair Fight Action will need to divert resources to make sure to educate voters and to make sure voters who were previously purged check their voter registration statuses).

124. With regard to provisional ballot issues, Fair Fight Action has allocated resources to analyzing provisional ballot trends. Those activities would cease if election workers were properly trained and provisional ballots properly used. Exh. 17, Oct. 30, 2019 L. Groh-Wargo Dep. 47:2-17 (describing how these issues would cease), *id.* 47:22-25 (same), *id.* 48:11-19 (confirming that with these resources “that activity would be reduced if not eliminated”).

125. With regard to absentee ballot issues, Fair Fight Action has devoted resources to analyzing Vote By Mail rejection rates, and this allocation of resources would be reduced if the litigation were successful. Exh. 17, Oct. 30, 2019 L. Groh-Wargo 48:6-10 (describing how these issues would cease); *see also* 48:11-19 (confirming that with these resources “that activity would be reduced if not eliminated”) .

126. Fair Fight Action also set up “Fair Fight U,” in part, to confront challenges students faced voting absentee. Exh. 17, Oct. 30, 2019 L. Groh-Wargo Dep. 88:20-89:22 (explaining that their goal is to “mak[e] sure that we’re fighting for the most opportunities possible for our citizen students to be able to cast their ballots.”).

127. If this litigation is unsuccessful, one of the activities Fair Fight Action may have to engage in is “making sure that folks’ absentee ballots are properly processed.” Exh. 17, Oct. 30, 2019 L. Groh-Wargo Dep. 175:22-176:8; *see also* Exh. 1,037, H. Holley Decl. ¶ 4 (describing text messages Fair Fight Action sent to over 900,000 Georgia residents “informing them about the process to vote by mail”); *id.* ¶ 5 (“Due to the state’s constant changes in early voting and absentee ballot procedures, [Fair Fight Action] had to devote resources to frequently update voters leading up to the primary election.”); *id.* ¶ 7 (Fair Fight Action used volunteers “to confirm the drop-off location for ballots in all 159 counties” and developed a tool for voters to confirm drop-off locations).

128. With regard to polling place closures, Fair Fight Action has devoted resources to advocating regarding, protesting, and otherwise drawing attention to potential polling location closings or consolidations in Fulton or DeKalb counties. Exh. 16, Sept. 16, 2019 L. Groh-Wargo Dep. 85:9-18; Exh. 17, Oct. 30, 2019 L.

Groh-Wargo Dep. 269:23-270:14. Fair Fight also opposed proposed closures in Randolph County. Exh. 16, Sept. 16, 2019 L. Groh-Wargo Dep. 157:13-20. Fair Fight has a “specific program . . . that trains volunteers to go and monitor and advocate . . . for voting rights broadly, and specifically around issues” including “polling locations.” Exh. 16, Sept. 16, 2019 L. Groh-Wargo Dep. 254:20-255:5.

129. Fair Fight encouraged volunteers to go to meetings and advocate against Fulton County’s proposed consolidations or closings of polling locations in 2019. Exh. 16, Sept. 16, 2019 L. Groh-Wargo Dep. 255:12-20. Fair Fight Action has also reviewed publicly available data from the state regarding polling places being moved or closed. Exh. 17, Oct. 30, 2019 L. Groh-Wargo Dep. 307:13-16.

130. With regard to voting day difficulties, Fair Fight Action has engaged in “text campaigns for poll watchers/problem[s] voters had casting votes,” which would be eliminated if the litigation were successful. Exh. 17, Oct. 30, 2019 L. Groh-Wargo Dep. 51:5-9; *see also* Exh. 1,037, H. Holley Decl. ¶ 6 (in response to long lines, Fair Fight Action “assigned volunteers to observe voters at polling locations around the state. These volunteers were diverted from voter education activities and asked to instead travel to polling locations where they could report concerns from voters.”).

131. Fair Fight Action also organized a discussion regarding HB 316 because of concerns about what the bill “would do in terms of the right to vote, people’s ability to use secure machines, have enough resources in their localities.” Exh. 17, Oct. 30, 2019 L. Groh-Wargo Dep. 112:1-13; *see* Exh. 16, Sept. 16, 2019 L. Groh-Wargo Dep. 262:10-16 (confirming the hearing on HB 316); Exh. 17, Oct. 30, 2019 L. Groh-Wargo Dep. 112:1-19 (the hearing was a forum meant to elevate the concerns with this bill; Exh. 218, March 5, 2019 Advisory Letter re Fair Fight to Hold Public Hearing on HB 316, Pltfs-FFA-001594, at -001595.

iii. Fair Fight Action’s Work to Counter Voter Suppression Practices Has Diverted Resources from Fair Fight Action’s Other Activities

132. Fair Fight Action’s work to counteract Defendants’ unlawful actions has required Fair Fight Action to divert resources from its other programs, such as get-out-the-vote campaigns, the provision of general election information to voters, and support of other progressive causes. *See* Exh. 17, Oct. 30, 2019 L. Groh-Wargo Dep. 27:14-22 (Fair Fight Action’s work to counteract voter suppression has “diverted resources from [the organization’s] general mission of voter engagement.”); Exh. 1,037, H. Holley Decl. ¶ 3 (“In response to Georgia’s voter suppression tactics that FFA observed in November 2018, FFA has diverted approximately \$200,000 from proactive voter education to address voter

suppression in Georgia.”); *id.* ¶ 8 (Fair Fight’s resources, “including monetary resources and volunteers,” “[o]rdinarily . . . would have been devoted to proactive voter education,” including “get out the vote and general voter education campaigns” and “[i]nstead, [Fair Fight Action] used its resources to educate voters about absentee ballot procedures that were constantly changing, and the process to report issues with voting.”).

133. If Fair Fight Action were not required to devote resources to voter suppression mitigation, Fair Fight Action “would love . . . to direct all of its budget [and] . . . staff time that is being spent on all of this voter suppression mitigation, . . . to turn that into how do we have really competitive, engaged elections and voters in Georgia,” which “is the fundamental core mission of Fair Fight Action, like it was in Voter Access Institute.” Exh. 17, Oct. 30, 2019 L. Groh-Wargo Dep. 96:3-97:8.

134. As Fair Fight Action looks ahead to the fall of 2020 and 2021, Fair Fight has been considering “the things [the organization] would want to do . . . generally for our mission” but has to account for its expected diversion of resources to activities such as voter education around the purge. Exh. 17, Oct. 30, 2019 L. Groh-Wargo Dep. 35:1-36:23; *see also* Exh. 1,037, Decl. of H. Holley ¶ 9 (“Because of the voter suppression tactics FFA observed in 2018 in Georgia and

the State’s continued suppression during the June 9, 2020 primary election, [Fair Fight Action] plans to increase its efforts to recruit more volunteers for the general election” who “will be responsible for observing polling locations in all counties” and will “deliver updated information about polling locations and absentee ballot procedures”).

135. As Groh-Wargo explained, the broad mission of VAI and Fair Fight “is around voter engagement overall of communities of color, voter turn-out broadly of communities of color, [and] young people, and then working on progressive issues generally.” Exh. 17, Oct. 30, 2019 L. Groh-Wargo Dep. 35:1-10.

136. Given the state’s voter suppression tactics, Fair Fight Action has had to divert significant staff time to mitigating those tactics instead of focusing on these other aspects of Fair Fight Action’s mission:

“[E]very single staff member and consultant who’s involved in the organization spends a good portion, if not a majority, of their time working on this litigation and working on organizing, advocacy, research [and] communication efforts . . . on the issues of voter suppression. . . . [T]hat means that on general sort of ‘get out the vote’ activities, general sort of typical voter engagement work that the organization has done in the past, we are unable to do very much of that now because we have learned so much from the extraordinary election of 2018, the extraordinary problems voting . . . that we’ve had to massively divert resources to deal with that harm.”

Exh. 17, Oct. 30, 2019 L. Groh-Wargo Dep. 35:11-36:1.

I mean, the core work of voter engagement and the work to turn out vote -- turn out the vote, communicate with voters, with, you know, voters of color, with young voters, et cetera, Fair Fight Action would love to do that work ...and to direct all of its budget and the many millions of dollars that this lawsuit, all these activities, staff time that is being spent on all of this voter suppression mitigation, all this voting rights work, to turn that into what we previously discussed, which is how do we have really competitive, engaged elections and voters in Georgia. That is the fundamental core purpose, that is the fundamental core mission of Fair Fight Action, like it was in Voter Access Institute. And so this litigation and all the other activities to mitigate voter suppression has diverted a significant majority of our resources to fighting voter suppression.

Id. 96:3-97:8. *See also* Exh. 1,037, H. Holley Decl. ¶ 10 (“Leading up to the general election, the volunteers will not be able to devote time to proactive voter education. Instead, the volunteers will be required to collect information about voting procedures, absentee ballots, and drop-off locations for voters. As the general election approaches, the volunteers will also be responsible for observing polling locations so that they can effectively report issues.”).

137. Cessation of the State’s voter suppression activities would permit Fair Fight Action to return to its normal slate of voter engagement activities. *See* Exh. 17, Oct. 30, 2019 L. Groh-Wargo Dep. 353:9-16 (“The mission of the lawsuit is to get a set of relief so that we don’t have to divert funds and we can get back to more typical voter engagement activities”); *id.* 42:21-43:17 (confirming “without all of these major issues . . . Fair Fight Action would be to do normal turn-out work...”).

The organization would still engage in “basic education about voting rights,” but “not at the scale, not at the scope,” of its current efforts. Exh. 17, Oct. 30, 2019 L. Groh-Wargo Dep. 43:18-23.

138. If the voter suppression issues in the state were eliminated, Fair Fight Action “would be doing very typical ‘get out the vote’ activities as an organization,” such as phone banks, text banks, and paid canvasses like those VAI conducted in 2014, which the organization may not be able to accomplish currently because of “budget realities.” Exh. 17, Oct. 30, 2019 L. Groh-Wargo Dep. 176:10-177:18.

139. Fair Fight Action’s work has also detracted from the organization’s advocacy on issues such as abortion access and reproductive rights. As part of its efforts to develop an informed and proactive electorate, Fair Fight Action has advocated around and educated people regarding the Heartbeat Bill and healthcare, and spent money and pursued activities “around making sure people know that they can enroll in healthcare.” Exh. 17, Oct. 30, 2019 L. Groh-Wargo Dep. 81:11-82:3.

140. Fair Fight has also educated the public regarding other issues, such as gun violence. Exh. 17, Oct. 30, 2019 L. Groh-Wargo Dep. 82:23-83:13 (“there

[are] also times we use our platforms and we use our megaphone to talk about other issues that are happening in the news,” such as “gun violence”).

141. Fair Fight Action “ha[s]n’t been able to do very much” on these progressive issues, however, because it has “had to mainly divert those volunteer resources and staff time into [voter suppression mitigation].” Exh. 17, Oct. 30, 2019 L. Groh-Wargo Dep. 29:13-18; *see also* Exh. 16, Sept. 16, 2019 L. Groh-Wargo Dep. 31:1-8 (“the organization has also advocated around abortion access, reproductive rights, healthcare. There would likely be a lot more issue advocacy that the organization would take on were it not having to focus so much resources on voter suppression”); Exh. 17, Oct. 30, 2019 L. Groh-Wargo Dep. 29:7-12 (if this lawsuit were successful, Fair Fight Action would “deploy [its] volunteers in other ways,” rather than “divert[ing] them mainly into voter suppression mitigation”); Exh. 17, Oct. 30, 2019 L. Groh-Wargo Dep. 177:19-25 (if the litigation were successful, “there would be some amount of progressive issue work” that the organization would engage in, whereas currently Fair Fight Action is only “able to do just a little tiny, tiny bit this year”). Those progressive issues include seeking Medicaid expansion, seeing healthcare provided to all Georgia citizens, and working on reproductive rights. Exh. 17, Oct. 30, 2019 L. Groh-Wargo Dep. 178:5-10.

D. Baconton Missionary Baptist Church (“Baconton”)

i. Baconton’s Organizational Purpose

142. Baconton is affiliated with the general Missionary Baptist Convention, an organization that believes in being “missionaries to the world.” Exh. 4, Nov. 15, 2019 Scott Dep. 14:2-9. The church was founded in 1869 by newly freed slaves in Liberty County. *Id.* 181:16-22. Today, the church has approximately 400 members. *Id.* 14:12-13.

143. Voting issues are a core part of Baconton’s organizational mission. As Baconton’s Reverend, Herman Scott, explained, “Christ is actively involved in every aspect of a person’s life,” and to make its members better Christians the church must not “neglect [their] civic responsibilities.” Exh. 4, Nov. 15, 2019 Scott Dep. 37:13-38:3; *see also id.* 45:5-10 (“you can’t be the Christian that you ought to be if you’re not the civic person you ought to be”).

144. To Reverend Scott, “when you talk about restricting the right to vote, or whatever you want to say about that, the bottom line is, if you walk in my shows [sic], talk to the folk I talk to, and the slightest hint that you’re going to restrict our right to vote evokes in us, at least in me, a very strong passion. And I share that passion with our church. And I don’t care who you vote for. I just want you to

vote. That’s my passion, that you’d go vote.” Exh. 4, Nov. 15, 2019 Scott Dep. 179:24-181:11.

145. Baconton does not endorse, support, or hold fund raisers for political candidates. Exh. 4, Nov. 15, 2019 Scott Dep. 45:16-22. But Rev. Scott testified the 2018 election was “the first time in . . . our church history in Georgia, we had an opportunity to elect a woman who looked like us. . . . And so we were much more concerned and ready and wanted to make sure that the vote we cast . . . in that election will be counted.” *Id.* 33:7-18.

146. Regardless of which candidate a voter supported, however, Rev. Scott continued, “[w]e want to make sure everybody’s vote got counted. And whether they voted for Stacey Abrams or not, I wanted to make sure . . . they voted and that vote counted.” Exh. 4, Nov. 15, 2019 Scott Dep. 33:21-25. Had Brian Kemp wanted to come to the church, they would have had “open arms.” *Id.* 47:17-21.

147. For at least the last 22 years, the church has “actively engaged in voter education, voter registration, and voter participation.” Exh. 4, Nov. 15, 2019 Scott Dep. 30:1-7. The Reverend consistently discusses the need to vote and educates voters on how to exercise the franchise. *Id.* 30:5-14 (“I consistently talk about the need, and how important it is to go vote.”); *id.* 190:9-12 (“For the past 20 years, I’ve talked about voter education – registration, education, and participation”).

ii. Baconton Was Forced to Devote Resources to Counter Georgia’s Unlawful Voter Suppression Practices, Particularly “Use It or Lose It,” Exact Match, and Voter Roll Irregularities

148. Prior to 2018, Reverend Scott “was not as concerned about the ‘Use It or Lose It’ idea” or “about making an exact match.” Exh. 4, Nov. 15, 2019 Scott Dep. 32:22-33:2.

149. In 2018, after hearing of the alleged voter purge, Reverend Scott “wanted to make sure” that Baconton’s members “had checked their status and were still eligible to vote.” Exh. 4, Nov. 15, 2019 Scott Dep. 30:15-24. He “was really, really pressed to make sure” that church members’ votes counted. *Id.* 32:22-33:6. Accordingly, from the pulpit during Wednesday and Sunday services, during Bible study classes, and whenever the church gathered, he “spent more time talking about checking your status, and ensuring that you are still on the list to vote.” *Id.* 30:15-31:8; *see also id.* 173:18-22 (confirming that he spent more time on the pulpit discussing voter education during the 2018 elections than in previous election cycles).

150. At regular prayer meetings, two of which were held at Baconton, Exh. 4, Nov. 15, 2019 Scott Dep. 54:5-15, Reverend Scott spoke about how important it was for members to check their statuses. *Id.* 52:13-22; *see also id.* 104:17-105:11 (describing prayer meeting); Exh. 219, Prayer Meeting Announcement, Pltfs-

BMBC-000002, at -000005; Exh. 4, Nov. 15, 2019 Scott Dep. 105:22-106:5 (describing two meetings held at Baconton), *id.* 134:22-135:11 (describing second meeting held at Baconton).

151. Reverend Scott emphasized “how important it was that we get the word out that everybody need[s] to check, even if you – even if you voted . . . I said, even if you voted last year, go check your status before election day, and make sure that you are eligible to vote.” Exh. 4, Nov. 15, 2019 Scott Dep. 52:16-21.

152. “At every one” of the prayer meetings, Reverend Scott “emphasize[d] that you need to check your status.” Exh. 4, Nov. 15, 2019 Scott Dep. 52:21-22.

153. The church devoted operational resources to open the church for these two meetings. Exh. 4, Nov. 15, 2019 Scott Dep. 106:21-107:15. The church also provided printed voting materials such as sample ballots at the prayer meetings. Exh. 4, *Id.* 108:25-109:13.

154. Prayer meetings had occurred prior to 2018, but 2018 marked the first time the meetings had occurred at such a scale. Exh. 4, Nov. 15, 2019 Scott Dep. 57:19-20; *see also id.* 174:7-16 (“this was definitely a . . . new venture for us”).

155. In general, Reverend Scott conveyed the message that Baconton members should check their status and make sure their ID matched what was on

the voter registration list so that they would not have issues at the polls. Exh. 4, Nov. 15, 2019 Scott Dep. 163:1-12 (“what I did say to them consistently was, check your status, make sure your ID matches...”); *id.* 164:15-165:15 (instructing people to check that their ID matches their registration); *id.* 114:10-19 (“We talked about the ‘Use It or Lose It’ and make sure that you’ve checked your status.”).

156. Reverend Scott also mentioned that individuals needed to check to make sure that their polling places had not moved. Exh. 4, Nov. 15, 2019 Scott Dep. 114:24-115:3.

157. Baconton also diverted volunteer time to verifying voter registrations by making volunteers available on at least two to three Sundays during the period from September to November to help parishioners check their voter status. Exh. 4, Nov. 15, 2019 Scott Dep. 31:9-32:9.

158. On these Sundays, two volunteers were available to help church members check their voter registrations. Exh. 4, Nov. 15, 2019 Scott Dep. 31:21-32:1; *see also id.* 42:17-20 (confirming that volunteers helped members check their registrations).

159. Baconton also offered tablet computers after church one Sunday for individuals who did not have smartphones “to check their registration” and

encouraged individuals to check their registration online. Exh. 4, Nov. 15, 2019 Scott Dep. 173:23-174:6. This had not been done prior to 2018. *Id.*

160. Reverend Scott was more concerned about the effects of the policies outlined in the amended complaint in 2018 than in prior cycles, and Baconton spent more time addressing the issues outlined in the complaint than it had during prior elections. Exh. 4, Nov. 15, 2019 Scott Dep. 175:23-176:9.

161. Reverend Scott's testimony verified the statement in the amended complaint that, at the time of the complaint, Defendants' unlawful conduct had "frustrated BMBC's community-building mission, and w[ould] continue to do so in the future." Exh. 4, Nov. 15, 2019 Scott Dep. 62:2-9.

162. Reverend Scott also testified that he anticipates engaging in substantial voting activities for the 2020 election. Exh. 4, Nov. 15, 2019 Scott Dep. 176:17-19.

163. Baconton will continue its voting advocacy initiatives to fight voter suppression as long as voter suppression tactics are still in place. Reverend Scott anticipates that there will be prayer meetings, voter registration drives, and other initiatives of that nature in preparation for the 2020 election. Exh. 4, Nov. 15, 2019 Scott Dep. 70:22-71:14. If UILI is still in place, Baconton expects to continue to devote resources to check voter registrations, as it did in 2018. *Id.* 73:2-7; *see also*

id. 69:25-70:5 (“I will assure you that during an election cycle, where we are geared up to – to go vote, we will—we will be doing the . . . same kinds of things that we did in 2018, to make sure that people check their status.”). When asked if Baconton plans to check voter registrations again, Rev. Scott responded: “We will. Unless this suit changes all that.” *Id.* 71:11-14.

iii. Baconton’s Work to Counter Voter Suppression Practices Has Diverted Resources from Baconton’s Other Activities

164. Baconton’s efforts to counter Defendants’ voter suppression tactics required the church to divert time and resources. Exh. 4, Nov. 15, 2019 Scott Dep. 28:23-29:2. For instance, the time that Reverend Scott spent addressing the need for church members to check their voting status required him to “divert[] time from [his] primary mission” by taking away time he “could have talked about feeding the hungry.” *Id.* 28:23-29:11. *See also id.* 73:8-18 (“Maybe we would spend more time on other stuff in Matthew 25. . . Feeding the hungry, visiting prisons, visiting the sick, etc.”).

165. Baconton also diverted volunteer resources from other church projects to assist with voter verification initiatives. If the volunteers had not been assisting with voter verification, “they would have been talking about inviting [listeners] to come be a member of the church, or their relationship with the lord,” or “[a] myriad of things.” Exh. 4, Nov. 15, 2019 Scott Dep. 32:10-17.

166. If the Defendants’ voter suppression tactics were to cease, Reverend Scott would spend his time in the pulpit “talking about healthcare, or . . . talking about opioid addictions, or . . . talking about the homelessness epidemic. . . if [he] wasn’t talking about the very basic idea of getting and maintaining the right to vote.” Exh. 4, Nov. 15, 2019 Scott Dep. 178:7-23.

E. Virginia-Highland Church (“Virginia-Highland”)

i. Virginia-Highland’s Organizational Purpose

167. Virginia-Highland, which was formerly part of the Southern Baptist Convention, is now part of the United Church of Christ, a “Christian denomination in the Protestant reformed tradition.” Exh. 3, Oct. 23, 2019 M. Laney Dep. 18:1-4, 29:20-25. It is “one of the newest denominations relative to the whole history of Christianity because [it was] formed in 1957 as the merger of four other Christian groups that came together.” *Id.* 18:4-8. Virginia-Highland has roughly 320 members. *Id.* 17:14.

168. Virginia-Highland’s organizational mission includes “champion[ing] social justice for those whose voices are not heard by leading the fight for moral, spiritual and political change.” Exh. 3, Oct. 23, 2019 M. Laney Dep. 56:11-22.

169. To achieve these goals, the church has been involved in voter education and voter registration since roughly 2014. Exh. 3, Oct. 23, 2019 M.

Laney Dep. 29:2-5 (“we’ve been engaged in voter education voter registration roughly since 2014.”).

170. Virginia-Highland has a “very strict line” and does not “endorse any particular candidate.” Exh. 3, Oct. 23, 2019 M. Laney Dep. 80:4-14. While the church will lobby on particular issues, it does not endorse candidates or “allow candidates for office to speak at [the] church.” *Id.* 80:15-18.

ii. Virginia-Highland Had to Devote Resources to Counter Georgia’s Unlawful Voter Suppression Practices, Particularly Voter Purges, Exact Match, Voter Roll Irregularities, Provisional Ballot Issues, Absentee Ballot Issues, and Polling Place Closures

171. Because of Defendants’ voter suppression tactics, Virginia-Highland has “had to expend human capital and volunteers,” which are “in many respects . . . more valuable” to the church than financial resources. Exh. 3, Oct. 23, 2019 M. Laney Dep. 70:14-20; *see also id.* 71:7-13 (explaining time and personal expenses were diverted).

172. In particular, Virginia-Highland has expended resources to counteract Defendants’ UILI purges, Exact Match policy, voter roll irregularities, provisional ballot practices, absentee ballot practices, and polling place closures. As volunteers from Virginia-Highland are educating voters, they “have to spend an increasing amount of time with each person that they’re registering explaining the different

issues that they will likely have to navigate through [Georgia's] election process, which has become something of an obstacle course. So they had to spend time talking about 'exact match' or about whether or not their name is even on the rolls from being purged, if they're going to vote absentee what the numerous things they have to be prepared for around that, to check and make sure the ballot is received and counted and so forth." Exh. 3, Oct. 23, 2019 M. Laney Dep. 73:10-74:1.

173. Educating voters on these different issues "expands the amount of time that any one [Virginia-Highland] volunteer has to spend with a potential voter," and therefore reduces the number of voters volunteers can reach. Exh. 3, Oct. 23, 2019 M. Laney Dep. 74:2-4; *see id.* ("[V]olunteers . . . have to spend more time with each person that they're registering, which means they can register and talk to fewer people, which means the line is longer, which means fewer people are going to wait. So it just dramatically reduces the amount of impact that they can have because of the amount of preparation that they have to offer.").

174. The church used more volunteers for "SummerFest" (a large neighborhood festival that happens in front of Virginia-Highland, Exh. 3, Oct. 23, 2019 M. Laney Dep. 60:16-20), in June 2018 than in 2016 because "it takes more time to explain all of these irregularities and obstacles and hoops that people have to jump through or be wary of." Exh. 3, Oct. 23, 2019 M. Laney Dep. 228:20-25.

175. If some of the allegations in the complaint were cured, the church’s “registration volunteers [would] then be able to spend more time on other aspects of . . . their election mission.” Exh. 3, Oct. 23, 2019 M. Laney Dep. 229:7-12.

176. Virginia-Highland has also engaged in educational programs, such as showing a film about voter suppression. Exh. 3, Oct. 23, 2019 M. Laney Dep. 135:19-136:4.

177. If this lawsuit is not successful, Virginia-Highland will “double down on [its] education efforts and make sure people are aware of the obstacles that have happened.” Exh. 3, Oct. 23, 2019 M. Laney Dep. 134:11-16.

178. These efforts will include education on absentee ballot issues so voters are “prepared to make sure, if they’re voting absentee, that their ballot was received and logged and then counted, because we know there are cases when that didn’t happen.” Exh. 3, Oct. 23, 2019 M. Laney Dep. 134:16-20.

179. The church will also continue to educate members on the Exact Match process. Exh. 3, Oct. 23, 2019 M. Laney Dep. 134:21-23 (“We would have to double down and make sure people really understood what ‘exact match’ is all about.”).

180. The church will also educate members on Use It or Lose It and the risk that they have been purged from the voter rolls. Exh. 3, Oct. 23, 2019 M.

Laney Dep. 134:23-135:1 (“The current Secretary of State says that he will continue ‘use it or lose it,’ so we have to double down and make sure people know if they’re on the voter rolls.”).

181. If this lawsuit is successful, Reverend Laney has a list of how the church’s voter efforts might be retooled. So, for example, he testified: “[w]e would have less education to do in terms of the ongoing issues we faced in the last election. But I think we’d still have education information and just voter encouragement.” Exh. 3, Oct. 23, 2019 M. Laney Dep. 142:4-7. And he recounted the story of a member of the church who had already decided not to vote because “of all the issues and obstacles.” *Id.* 142:8-12.

182. Reverend Laney concluded, “we might angle our programs more towards restoring voter confidence, educating on the outcome of the lawsuit that many of these obstacles have been cleared and now you have a better chance of having your vote happen and be counted and to participate more fully.” Exh. 3, Oct. 23, 2019 M. Laney Dep. 142:17-22.

iii. Virginia-Highland’s Work to Counter Voter Suppression Practices Has Diverted Resources from Virginia-Highland’s Other Activities

183. Virginia-Highland’s work to counteract voter suppression diverted resources from its other planned activities. Specifically, it limited Virginia-

Highland’s ability to meet with and register voters, because conversations with each voter spanned a longer period of time. Exh. 3, Oct. 23, 2019 M. Laney Dep. 74:10-22 (“[T]he more time you spend explaining the litany of obstacles and issues you have to navigate, the less time you have to connect with other voters. . . . [T]he more time we spend with each voter, the less likely we are to get to as many voters.”).

184. By drawing on volunteer resources, this work also limited Virginia-Highland’s ability to conduct its other church activities. According to Reverend Laney, “every volunteer hour that goes to voting ministry is an hour that is diverted from something else that a person could be active in in the congregation.” Exh. 3, Oct. 23, 2019 M. Laney Dep. 137:4-10; *see id.* 76:12-20 (“With respect to the time it takes volunteers to spend with each potential voter, there’s also the time taken away from that person—that volunteer’s ability to . . . participate in other ministries of the congregation.”); *id.* (“I can call upon them less for other activities in the church because of the time that they’re giving to our voter registration ministry”).

185. Virginia-Highland has eight to ten volunteers involved in voter education and registration work. *See* Exh. 3, Oct. 23, 2019 M. Laney Dep. 83:3-9. If the church needed less in-kind volunteer time to spend on election work, the

church could “easily” redeploy those resources to other areas helpful to the church’s mission. *Id.* 232:15-233:9.

186. One of Virginia-Highland’s volunteers resigned from leadership in a ministry around L.G.B.T.Q. individuals “because she needed that time to devote to the voting rights work.” Exh. 3, Oct. 23, 2019 M. Laney Dep. 83:3-13; *see also id.* 110:3-19 (describing Crain’s step back from the L.G.B.T.Q. ministry).

187. Another volunteer would “like to get more involved in leadership for [the church’s] Lunch and Learn ministry” and in personnel matters if not for her current commitments. Exh. 3, Oct. 23, 2019 M. Laney Dep. 89:16-91:17.

188. Virginia-Highland’s educational activities, such as its efforts to show a film about voter suppression, also “take more time away from other ministries.” Exh. 3, Oct. 23, 2019 M. Laney Dep. 135:19-23.

F. AME Sixth Episcopal District (“Sixth District”)

i. The Sixth District’s Organizational Purpose

189. The Sixth District is one of twenty districts of the African Methodist Episcopal church. Bishop Jackson, the church’s Rule 30(b)(6) witness, is the Bishop of the Sixth District. Exh. 1, Oct. 21, 2019 R. Jackson Dep. 12:5-7; 11:10-11.

190. Voting rights is of great current and historical importance to the social justice mission of the Sixth District. Exh. 1, Oct. 21, 2019 R. Jackson Dep. 38:11-19. The organizational mission of the Sixth District includes registering people to vote and assisting people with voting. *Id.* 28:16-24.

ii. The Sixth District Has Been, and Will Be, Forced to Devote Resources to Counter Georgia’s Unlawful Voter Suppression Practices

191. Because of the voter suppression tactics the Sixth District observed in 2018, the Sixth District has “devoted more staff and members to assist with educating and assisting voters in Georgia than it devoted prior to 2018.” Exh. 2, R. Jackson Decl. ¶ 7.

192. Due to concerns regarding long lines and difficulties obtaining absentee ballots in the 2018 election, the Sixth District devoted resources to helping voters apply for absentee ballots and encouraged voters “to cast their vote early.” Exh. 2, R. Jackson Decl. ¶ 9. The Sixth District will continue its early voting education efforts after witnessing the same concerns in advance of and during the June primary election. *Id.* ¶ 10.

193. At the time of the amended complaint, the Sixth District anticipated that it would be harmed by Defendants’ voter suppression because it would have to divert resources to counteract Defendants’ unlawful conduct. Exh. 2, R. Jackson

Decl. ¶ 8 (“[I]n advance of making the decision to participate in this lawsuit, the Sixth Episcopal District recognized that it would need to direct more of its resources toward its voting efforts, at least leading up to and through the 2020 General Election.”).

194. This expectation has continued to the present day. Exh. 2, R. Jackson Decl. ¶ 12 (“Because of the voter suppression tactics Sixth Episcopal District observed in 2018 in Georgia, and the state’s continued suppression during the June 9, 2020 primary election, Sixth Episcopal District anticipates having to devote additional resources for the general election in Georgia. Because these voter suppression tactics are ongoing, Sixth Episcopal District will have to continue diverting resources from other endeavors to counteract that voter suppression.”).

195. Bishop Jackson expects that the elders of the church and the pastors of the Sixth District’s 520 churches will spend more time on voting issues for the 2020 election than they have historically. Exh. 1, Oct. 21, 2019 R. Jackson Dep. 164:17-165:2. The Church will change its voting-related efforts in two respects.

196. First, the church will need to invest additional resources to ensure that individuals who voted in the 2018 election are not discouraged from voting in the future and will turn out again to vote.

197. In the wake of the 2018 election, “because of the questions and the credibility surrounding 2018,” the church has “a challenge to . . . encourage [voters] that their vote will be counted.” Exh. 1, Oct. 21, 2019 R. Jackson Dep. 167:4-12; *see also id.* 167:19-22 (“[T]here are a lot of questions relating to the credibility of the 2018 election. So that in and of itself gives us an additional hurdle we have to be able to clear.”).

198. The Sixth District plans to devote “a lot of time and a lot of energy to be able to re-motivate people to go back to the polls in 2020.” Exh. 1, Oct. 21, 2019 R. Jackson Dep. 161:5-8. The Sixth District will begin by “follow[ing] up with those who [the church] registered for the 2018 election to make sure they’re not discouraged and decide to throw up their hands.” Exh. 1, Oct. 21, 2019 R. Jackson Dep. 165:6-10. “[B]ecause of the questions surrounding whether or not people’s votes were counted, whether or not their names were dropped from the rolls, all of that,” the Sixth District expects to have to “redouble” its efforts. *Id.* 171:15-19.

199. Bishop Jackson explained that “[i]t’s going to take time, it’s going to take resources, [and] it’s going to take organization.” Exh. 1, Oct. 21, 2019 R. Jackson Dep. 160:9-12.

200. The Sixth District has engaged in discussions about how to ensure that people go back to the polls and has begun the process of voter registration. Exh. 1, Oct. 21, 2019 R. Jackson Dep. 159:17-160:3.

201. The church has not previously had to undertake these types of efforts to encourage voters with a history of voting. In 2018, the Sixth District “just presumed that those who voted in the Atlanta election would turn around and vote in 2018,” and thus the Sixth District did not make direct efforts to make sure that people who registered to vote in 2017 voted again in 2018. Exh. 1, Oct. 21, 2019 R. Jackson Dep. 170:22-171:14; *see also id.* 171:2-3 (“We had confidence that those who voted in 2017 would turn out to vote.”).

202. A second aspect of the Sixth District’s plans to change its work is that the church is undertaking new efforts to ensure that votes count. The church has not previously had to research the types of issues it is now required to research, such as “what the election board is supposed to do.” Exh. 1, Oct. 21, 2019 R. Jackson Dep. 169:15-170:6.

203. The Sixth District is also being called on to provide leadership on new issues involving voting, such as how to make sure votes count. *See* Exh. 1, Oct. 21, 2019 R. Jackson Dep. 170:7-13 (Q: And the church has frequently historically provided leadership on issues involving voting; correct? A: Not on those kind of

issues. Getting—ours for us has been to get people registered and get them to vote. It’s new for us to make sure that their vote counts”). The Sixth District plans to assist voters in ensuring that they are not only registered, but that their vote gets counted. *Id.* 171:20-172:12.

iii. The Sixth District’s Work to Counter Voter Suppression Practices Has Prevented, and Will Prevent, the Sixth District from Devoting Resources to Other Planned Activities

204. Both during and since the 2018 election, the Sixth District has “diverted resources from other endeavors and programs to address voting rights in the Georgia community.” Exh. 2, R. Jackson Decl. ¶ 7.

205. The Sixth District’s expected work will divert resources away from the Sixth District’s other planned activities. As Bishop Jackson explained, the “extra effort” and “extra time” to ensure that registrants are not discouraged and vote will require “divided attention” from church leaders. Exh. 1, Oct. 21, 2019 R. Jackson Dep. 165:19-166:4.

II. HARM TO PLAINTIFFS’ MEMBERS

A. The Sixth District Has “Members”

206. Bishops of the AME church are elected. Exh. 1, Oct. 21, 2019 R. Jackson Dep. 11:7-8.

207. Parishioners of the AME church assist in the election of church leadership and can help support the Sixth District financially. *See* Exh. 2, R. Jackson Decl. ¶ 5 (“As a parishioner, I assist in the election of church leadership, and I help support the Sixth Episcopal District financially.”).

208. The AME church is a membership organization with individual parishioners as members. *See* Exh. 2, R. Jackson Decl. ¶ 6 (“The terms parishioner, congregant, and member are synonymous in the A.M.E. church so any reference to a person as a parishioner or congregant is also a reference to that person as a member of the church.”); Exh. 1, Oct. 21, 2019 R. Jackson Dep. 35:4-8 (Bishop Jackson referring to “our people”); Exh. 1, Oct. 21, 2019 R. Jackson Dep. 59:14 (Bishop Jackson referring to “members of the A.M.E. church”); Exh. 1, Oct. 21, 2019 R. Jackson Dep. 84:20-22 (“We went to Fair Fight because of all the issues that our parishioners . . . were having with the election”).

209. For instance, in discussing a November 2017 Get Out the Vote email sent to individual members of the Sixth District AME, Bishop Jackson clarified that individual parishioners are “members” of AME:

“Q. . . .[T]his E-mail, would it go to the pastors at the member churches? ...

A. It would go to more than pastors. It would go—

Q. Okay.

A. —to the Sixth District at large.

Q. Okay. Would that include individual members?

A. Yes. Uh-huh.

Q. Okay. And I'm sorry, let me just be clear.

A. Yes.

Q. When I say individuals, I mean actual persons, not just the church.

A. Yes.

Q. Okay. And what is—how should I refer to them? Are they parishioners? Are they—

A. Just as parishioners is fine.”

Exh. 1, Oct. 21, 2019 R. Jackson Dep. 47:1-20; *see also* Exh. 220, Nov. 29, 2017 Email re Get Out The Vote Rally, Pltfs-AME-000004, at -000004-000005 (Constant Contact message).

210. The Sixth District has different ministries, including a “Lay Organization,” a “Young People Division,” and a “Christian Debutantes-Masters.” Listing of Ministries, Exh. 221, Pltfs-AME-000033, at -000034.. The “Lay Organization” is made up of “anybody in the church who is not ordained.” Exh. 1, Oct. 21, 2019 R. Jackson Dep. 39:16-19. The “Young People Division” is “made up of the young people in the church . . . up to age 22.” *Id.* 39:10-12. The “Christian Debutantes-Masters” is “for those who are preparing to graduate from high school, both male and female.” *Id.* 39:22-24.

211. The goals of the AME Church are closely aligned with those of its members. AME’s voter empowerment effort was undertaken “to make sure that [AME’s] congregations were educated on the issues; and . . . [to] encourage[e] them to get out the vote.” Exh. 1, Oct. 21, 2019 R. Jackson Dep. 79:14-16.

B. Defendants' Unlawful Practices Have Injured AME and Virginia-Highland Members

212. Maurice Hayes, an AME member, was in line for the 2018 election for at least an hour and a half before he was able to vote. Exh. 224, M. Hayes Decl. ¶ 7.

213. Shanda Hartley, an AME member, waited outside of the Woodstock Library for the 2018 general election for over an hour before entering the polling place. Exh. 225, S. Hartley Decl. ¶ 5.

214. Kenneth Reeves, an AME member, experienced long lines while early voting in both the 2016 and 2018 elections. Exh. 226, K. Reeves Decl. ¶ 5. In 2018, he waited for over two hours to vote. *Id.*

215. Tracey Fletcher, an AME member, experienced long lines during early voting in 2018. Fletcher waited for about 45 minutes outside before entering the building. Exh. 227, T. Fletcher Decl. ¶ 5.

216. Melinda Borrero, a Virginia-Highland member, voted in 2018 at the Civil and Human Rights Museum. She had to wait in line for one and a half hours. She “actually came once and saw the line was so long that [she] decided to go home and come back.” Exh. 228, M. Borrero Decl. ¶ 3; *see* Exh. 235, M. Borrero Supp. Decl. ¶ 4 (describing membership). According to Borrero, “When I came back the line was even longer, but I just waited in the rain to vote. I’ve been voting

for 38 years in different states and this is by far the longest I've ever had to wait.” Exh. 228, M. Borrero Decl ¶ 3. *See also* Exh. 229, S. Kenney-Tolentino Decl. ¶ 6 (Virginia-Highland member describing wait of “over an hour”); Exh. 230, P. Kenney-Tolentino Decl. ¶ 6 (Virginia-Highland member describing wait of “over an hour”).

217. Since AME member Aquesia Grice moved from DeKalb to Gwinnett County with her husband, she has had significant difficulty voting. *See* Exh. 231, A. Grice Decl. ¶ 5. For the 2016 presidential primary, she was told she was not in the system and must either go to DeKalb to vote or complete a paper ballot. *Id.* ¶ 6. Her vote was not counted. According to Grice, “I don’t know why sometimes I am able to vote in Gwinnett and sometimes I am told that I am not in the system.” *Id.* ¶ 8.

218. Cristian Gonzalez, a member of Virginia-Highland, experienced a delay in receiving his absentee ballot and had to overnight his ballot to have it counted—and he still was not sure that it was counted. Exh. 232, C. Gonzalez Declaration ¶¶ 2h-2aa, Exh. 236, C. Gonzalez Supp. Decl. ¶ 4 (describing membership).

219. Jane Crain, a member of Virginia-Highland, experienced an extended delay in receiving her absentee ballot for the 2018 runoff election. Exh. 233, J.

Crain Decl. ¶¶ 3g-i. The county informed her that it would mail ballots to voters on Friday, November 30—even though the ballots were due to be received by the voter, marked, mailed, and received back to the Election Office by close of the business day on Tuesday, December 4. *Id.* Crain eventually voted early in person (and had her absentee ballot invalidated) because she knew that she would be traveling when the ballot would reach her. *Id.* ¶¶ 3j-k. *See also* Exh. 3, Oct. 23, 2019 M. Laney Dep. 53:24-54:3 (identifying Jane Crain as a member of Virginia-Highland).

220. Cristian Gonzalez, a member of Virginia-Highland, experienced great difficulty voting in the 2018 runoff election because of polling place changes. Exh. 232, C. Gonzalez Decl. ¶¶ 2dd-gg. Mr. Gonzalez and his wife went to their normal polling location and were told that it had been moved, then traveled to a second polling location and, after filling out their ballots, were directed to a third location. *Id.*

III. DEFENDANTS’ RESPONSIBILITY FOR GEORGIA’S ELECTIONS

A. Structure of Georgia’s Elections System

i. Role of Secretary of State

221. Georgia has a top-down system of election administration, with the Secretary of State (“SOS”) at the top. Exh. 21, Dec. 5, 2019, C. 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.”).

222. The SOS is Georgia’s Chief Elections Officer. Exh. 22, Elections Division Transition Memo: SOS Description of Duties, State-Defendants-00149713, at -00149713 (“Elections Division supports the Secretary of State’s role as Chief Election Officer”); Exh. 234, SOS GROC Registrar Training Course # 5 Training Materials, State-Defendants-00103254, at -00103270 (“A Constitutionally elected official of the State of Georgia, the Secretary of State is the Chief Election Official for the State of Georgia”). *See also* K. Brown-Dean Expert Report, ECF No. 138 at 16 & n.53 (explaining that Georgia’s Secretary of State is listed in the Federal Register as Georgia’s Chief Election Officer); O.C.G.A. § 21-2-50(11) (referring to the Secretary of State as the “chief election official”).

223. The Georgia Election Code (O.C.G.A. § 21-2-1, *et seq*) makes this designation of the SOS as the “chief elections official” in its provision setting forth the general powers and duties of the SOS. *See* O.C.G.A. § 21-2-50 (11).

224. A separate provision—O.C.G.A. § 21-2-50.2—designates the SOS as the “chief election official” for the Help America Vote Act of 2002, and specifies particular tasks for the SOS under that federal statute. *See* O.C.G.A. § 21-2-50.2.

225. The SOS describes its role regarding elections as follows: “The Elections Division of the Secretary of State’s Office *organizes and oversees all election activity*, including voter registration, municipal, state, county, and federal elections. They [sic] are responsible for certification of election results as well as certifying the qualification of candidates and the preparation of ballots and election forms and materials . . . Along with those duties, the Elections Division maintains the Statewide Voter Registration Database to ensure that voter lists are current statewide. They [sic] *are also accountable for* investigating election fraud and *enforcing state election laws.*” Exh. 24, SOS Website: Elections, Exhibit 44 to Dec. 5, 2019 C. Harvey Dep.

226. Over 100 state statutory provisions identify the key role the State’s Chief Election Official plays in “coordinating, monitoring, and overseeing the administrative functions of subordinate election administrators.” K. Brown-Dean Expert Report, ECF No. 138 at 23 and Table 2, Georgia Statutes Outlining the Secretary of State’s Duties.

227. The SOS's role is to "facilitate statewide voter registration and participation in accordance with state and federal laws." Exh. 22, Elections Division Transition Memo: SOS Description of Duties, State-Defendants-00149713, at -00149713.

228. The SOS understands that its role includes "maintaining Georgia's statewide voter registration database, providing training for local election officials regarding proper election procedures, [and] coordinating and monitoring federal, state, and local elections within the state of Georgia." Exh. 22, Elections Division Transition Memo: SOS Description of Duties, State-Defendants-00149713, at -00149713, -00149715.

229. Chris Harvey is the director of the Secretary of State's Election Division, a position he has held since July 15, 2015. Exh. 23, Aug. 16, 2019 SOS 30(b)(6) Dep. 5:12-7:6.² Prior to that, he was the Chief Investigator for the Secretary of State's investigations unit. *Id.*

230. Chris Harvey is responsible for "A to Z" in the Secretary of State's Elections Division. Exh. 23, Aug. 16, 2019 SOS 30(b)(6) Dep. 6:3-11.

² Chris Harvey was also the representative the SOS designated for the SOS's two 30(b)(6) depositions, which were taken August 16, 2019 and January 6, 2020 hereinafter referred to as "SOS Dep."

231. The role of the SOS Elections Division is to “support the Secretary of State’s role as Chief Election Officer by coordinating, monitoring, and providing guidance for many activities related to elections and voter registration as specified in Title 21 of the O.C.G.A. and State Election Board Rules.” Exh. 22, Elections Division Transition Memo: SOS Description of Duties, State-Defendants-00149713, at -00149713.

232. In an SOS Elections Division Memo describing the division and its functions, the SOS office acknowledged that the SOS is vested with responsibility to ensure that elections in Georgia are carried out “fair[ly]” and “in accordance with state and federal laws.” Exh. 22, 2018 Transition Memo, State-Defendants-00149713, at -00149713 (describing how “the Elections Division supports the Secretary of State’s role as Chief Elections Officer by coordinating, monitoring, and providing guidance for many activities related to elections and voter registration as specified in Title 21 of the O.C.G.A.”); *see also* K. Brown-Dean Expert Report, ECF No. 138 at 19 (explaining that county-level discretion over election activities “does not supersede the primary responsibility that now falls upon state election officials to ensure no procedure, device, or practice adopted at the local or state level[] impairs the rights and protections afforded at the federal level.”).

233. The SOS is aware that County election personnel look to the SOS for guidance and direction. Exh. 21, Dec. 5, 2019 C. Harvey Dep. 33:20-25 ([T]here is a lot of ... looking up at the top for guidance or for direction.”).

234. The SOS instructs counties to “[i]mmediately contact” the SOS to “inform the Elections Division of any problem or concern occurring in your county” and “[f]eel free to ask for assistance if you need help with elections planning or guidance.” Exh. 234, Georgia Registrar Official Certification Pre Election Course PowerPoint, State-Defendants-00103254, at 00103296.

ii. Role of State Election Board

235. The State Election Board (“SEB”) “is an administrative agency having authority over elections matters.” Exh. 237, SOS “MEOC Municipal Course # 2” Training Materials, State-Defendants-00107570, at -00107603.

236. The SOS is the chairperson of the State Election Board. Exh. 22, Elections Division Transition Memo: SOS Description of Duties, State-Defendants-00149713, at -00149715; *see also* O.C.G.A. § 21-2-30(d).

237. Including the SOS, the State Election Board has five members. Exh. 22, Elections Division Transition Memo: SOS Description of Duties, State-Defendants-00149713, at -00149715; *see also* O.C.G.A. § 21-2-30(a).

238. The SEB is required to promulgate rules to ensure fairness and uniformity in the practices of all local election officials. Exh. 22, Elections Division Transition Memo: SOS Description of Duties, State-Defendants-00149713, at -00149715; *see also* Exh. 238, Georgia Secretary of State, “State Election Board” (last accessed July 9, 2020) (https://sos.ga.gov/index.php/elections/state_election_board) (acknowledging these duties).

239. The SEB is also required to investigate suspected violations of the Georgia Election Code (O.C.G.A. § 21-2-1 *et seq.*) and SEB rules. *See, e.g.*, Exh. 53, Oct. 15, 2019 R. Sullivan Dep. 100:7-11, 100:14-24 (explaining that she has the authority to “investigate election boards for violations of law). *See also* O.C.G.A. § 21-2-31(2).

240. The SEB has broad enforcement powers, including levying civil penalties and issuing mandatory orders, which county actors must follow. Exh. 22, Elections Division Transition Memo: SOS Description of Duties, State-Defendants-00149713, at -00149715; *see also* O.C.G.A. § 21-2-33.1.

241. The SEB members do not receive any training on their duties and responsibilities. Exh. 239, Oct. 16, 2019 S. Harp. Dep. 7:25-8:6 (discussing lack of training), 22:22-23:9 (same); Exh. 53, Oct. 15, 2019 R. Sullivan Dep. 20:7-9 (same); Exh. 57, Oct. 10, 2019 D. Worley Dep. 10:6-12 (same).

B. The Importance of Uniformity in the Georgia Elections System and Defendants' Role in Ensuring Uniformity

242. The SEB is required to promulgate rules and regulations to obtain uniformity in the practices and proceedings of local election officials. Exh. 57, Oct. 10, 2019 D. Worley Dep. 8:9-9:10 (agreeing that the duties laid out in the statute are duties of the SEB); *see also* O.C.G.A. § 21-2-31(1).

243. The SOS has a mandate to ensure uniformity in how Georgia's elections are conducted at local election levels. *See, e.g.*, Exh. 23, Aug. 16, 2019 SOS 30(b)(6) Dep. 141:12-142:18 (referring at 142:15-17 to the SOS's "general mandate to provide training and uniformity to the counties"); Exh. 21, Dec. 5, 2019 C. 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).

244. The SOS's mandate to ensure uniformity means it is the SOS's job to make Georgia elections secure, accessible, and fair to all Georgians. Exh. 240, Aug. 6, 2019 Email between C. Harvey and T. Koval, State-Defendants-000056230 (stating "Through uniform voting practices, the Secretary of State's office works to keep elections secure, accessible, and fair to all Georgians."); Exh. 21, Dec. 5, 2019 C. Harvey Dep. 53:5-55:1 (explaining that Dep. Ex. 45 says the

SOS is to take measures to make county voting practices uniform, meaning that counties should be carrying out election laws in a uniform fashion).

245. The SOS's mandate to ensure uniformity also means it is the SOS's job to make sure voters are treated equally under the law and have essentially the same voting experience regardless of what county they live in. Exh. 240, Aug. 6, 2019 Email between C. Harvey and T. Koval, State-Defendants-000056230. *See also* Exh. 21, Dec. 5, 2019 C. Harvey Dep. 56:9-57:17, 58:14-18 ("uniformity" means that voters should have the same voting experience no matter what county they are in).

246. Following the 2000 presidential election, election procedures were revised nationwide to include an increased emphasis on training for local election officials and poll workers. Kennedy Expert Report, ECF No. 167 at 5-6. As Plaintiffs' training expert testified, these reforms established a "threshold foundation for training and holding election officials accountable that must be in place under the direction of the chief state election official to ensure elections are administered in a fair, uniform, and transparent manner." *Id.* at 5.

C. Defendants' Enforcement Powers and Responsibilities

247. The SOS is responsible for ensuring the election laws are carried out by the counties. Exh. 24, SOS Website: Elections (dated Nov. 9, 2019), Exhibit 44

to Dec. 5, 2019 C. Harvey Dep.; Dec. 5, 2019 C. Harvey Dep. 24:14-18 (“[B]y law, [the SOS is] the State election official . . . [Y]ou read Title 21 [of O.C.G.A. Chapter 2] and you’ll see all the things that have to happen, especially at the state and federal level, *it’s his responsibility to make sure . . . those things happen*”) (emphasis added); Exh. 25, Jan. 6, 2020 SOS 30(b)(6) Dep. 132:12-134:3 (“[W]e expect and remind and *require* that they [county election officials] follow the law, State Election Board rules, and all other governing statutes”) (emphasis added).

248. The investigations that the SEB is tasked with undertaking (*see supra* ¶ 239) are carried out by the SOS investigations unit. Exh. 23, Aug. 16, 2019 SOS 30(b)(6) Dep. 84:3-13 (explaining that investigations that go to the SEB are investigated by the SOS investigations unit and presented to the SEB); *id.* 115:14-116:10 (explaining that Investigation Division of the SOS handles investigations for elections); Exh. 207, SEB Minutes (April 3, 2018) ([https://sos.ga.gov/admin/files/SEB_Meeting_Minutes_April%203,%202018%20\(SIGNED\).pdf](https://sos.ga.gov/admin/files/SEB_Meeting_Minutes_April%203,%202018%20(SIGNED).pdf)) ; Exh. 156, SEB Minutes (Sept. 11, 2018) (http://sos.ga.gov/admin/files/SEB%20Meeting%20Minutes_September_11_2018.pdf).

249. Once a matter has been investigated, the SOS provides the investigation report, and a summary of that report, to the SEB for consideration. Exh. 23, Aug. 16, 2019 SOS 30(b)(6) Dep. 111:19-23.

250. At its meetings, the SEB reviews the SOS's investigation reports and determines the next steps that should be taken with respect to the investigated matter. Exh. 23, Aug. 16, 2019 SOS 30(b)(6) Dep. 110:20-112:23.

251. The SEB itself can itself issue a letter of instruction to the county or individuals who have been determined to have violated election laws or SEB rules, and this is frequently how the SEB disposes of investigated matters. *See, e.g.*, Exh. 207, SEB Minutes (April 3, 2018); Exh. 156, SEB Minutes (Sept. 11, 2018).

252. The SEB has chosen to issue letters of instruction that merely copy and paste a provision of Georgia law and instruct the offender "to refrain from further violations of the Georgia Elections Code and State Election Board rules and regulations." *See, e.g.*, Exh. 241, State-Defendants-00842626 (letter of instruction for failure to issue a provisional ballot); *see also, e.g.*, Exh. 242, State-Defendants-00842499 (letter of instruction for failure to determine whether a candidate was qualified to seek and hold public office, and for inappropriate issuance of an out-of-district absentee ballot to an elector); Exh. 243, State-Defendants-00842567 (letter of instruction for failure to properly input the address of a UOCAVA ballot elector in the computer system, causing the elector to not receive his UOCAVA ballot by the deadline). They also tell the offender "no further action needs to be taken." Exh. 243, State-Defendants-00842567.

253. The SEB is authorized to, and does, cite counties and local elections personnel for violations of state election laws and impose civil sanctions, including penalties of up to \$5,000 for each violation. Exh. 22, Elections Division Transition Memo: SOS Description of Duties, State-Defendants-00149713, at -00149715.

254. The SEB is authorized to, and does, refer some investigated matters to the Georgia Attorney General's office or to a district attorney for further investigation or proceedings. *See, e.g.*, Exh. 244, SEB Minutes (Aug. 21, 2019) ([http:// sos. ga.gov/admin/files/August%2021,%202019%20\(SIGNED\).pdf](http://sos.ga.gov/admin/files/August%2021,%202019%20(SIGNED).pdf)); Exh. 156, SEB Minutes (Sept. 11, 2018). *See also* O.C.G.A. § 21-2-31(5).

255. The SEB has no staff. Exh. 57, Oct. 10, 2019 D. Worley Dep. 33:7-17 (stating that the SEB does “not have a staff.”); Exh. 26, Dec. 11, 2019 R. Germany Dep. 18:20-19-5 (stating that the SEB “doesn’t have its own staff”).

256. The SOS sets the SEB meeting agendas and schedules the meetings. Exh. 57, Oct. 10, 2019 D. Worley Dep. 101:22-102:2, 102:14-16; *see also* Emails from SOS Investigator re Proposed Agendas for SEB Meetings: Exh. 245, State-Defendants-00410527, Exh. 246, State-Defendants-00410528; Exh. 247, State-Defendants-00410668, Exh. 248, State-Defendants-00410669; Exh. 249, State-Defendants-00414368, Exh. 250, State-Defendants-00414369.

D. Defendants' Authority and Actions to Require County Elections Personnel to Take Certain Actions

257. Separate from the SEB, the SOS can require counties to take specific actions by promulgating its own rules. Exh. 25, Jan. 6, 2020 SOS 30(b)(6) Dep. 53:20-54:1 (“[T]he Secretary of State’s Office can enact rules, for example, requiring cybersecurity training for people that use eNet.”), 66:25-67:6 (a Secretary of State rule is “something that the Secretary of State has the authority to promulgate on his or her own authority.”).

258. The SOS also proposes and drafts rules for the SEB to consider. Exh. 251, March 29, 2018 R. Germany email, State-Defendants-00684500 (sending to SEB member a draft rule the SOS had drafted for the SEB to consider); Exh. 21, Dec. 5, 2019 C. Harvey Dep. 75:18-21 (confirming that the SOS prepares draft rules and regulations for the SEB to consider).

259. The SOS has voluntarily entered into consent decrees and injunctions under which the SOS directs counties to undertake certain actions in connection with the counties’ election responsibilities. *See, e.g., Georgia Coalition for the People’s Agenda v. Kemp*, No. 1:18-cv-0427-ELR, ECF No. 22-1; Exh. 131, Nov. 29, 2018 SOS Official Election Bulletin, “Consent Order—Change to Voter Assistance Laws,” with consent order attached (State-Defendants-00007501 at -00007735-43); Exh. 131, Nov. 30, 2018 SOS Official Election Bulletin, “Consent

Order—Absentee Ballots Received After Election Day,” and attached consent order (State-Defendants-00007501 at -00007744-51); *NAACP v. Kemp*, No. 2:16-cv-219-WCO, Settlement Agreement (Feb. 8, 2017), <http://www.projectvote.org/wp-content/uploads/Settlement-Agreement-NAACP-v.-Kemp-2.9.17-1.pdf>. *See also* Exh. 21, Dec. 5, 2019 C. Harvey Dep. 44:1-9 (acknowledging the SOS enters into consent decrees directing counties to take certain actions and seeing “no problem” with the SOS doing that); Exh. 26, Dec. 11, 2019 R. Germany Dep. 21:14-23:2 (explaining that “most of the time” the SEB “reach[es] a consent order with the respondent.”)

260. The SOS requires counties to certify to the SOS that they have met Uniformed and Overseas Citizens Absentee Voting Act (“UOCAVA”) requirements with respect to absentee ballots. Exh. 25, Jan. 6, 2020 SOS 30(b)(6) Dep. 69:4-25, 70:6-15 (“[T]his year we’re going to introduce a form that we’re going to require every county to send us certifying that they’ve met the UOCAVA requirements . . . It’s requiring some kind of certification on their part.”).

261. The SOS has required certain county election personnel to undergo training chosen by the SOS. Exh. 25, Jan. 6, 2020 SOS 30(b)(6) Dep. 53:20-54:1 (“[T]he Secretary of State’s Office can enact rules, for example, requiring cybersecurity training for people that use eNet.”); *see also infra* ¶¶ 332-34.

E. Failures and Inadequacies in Defendants' Supervision and Oversight of Counties and in Defendants' Enforcement of Election Laws and Uniformity

i. The SOS's Lack of an Accountability Policy

262. The SOS's process for responding to voter complaints has not changed in at least a decade. Exh. 23, Aug. 16, 2019 SOS 30(b)(6) Dep. 120:6-14.

263. The SOS does not have a repository of its written policies. Exh. 25, Jan. 6, 2020 SOS 30(b)(6) Dep. 103:20-22.

264. "Not a lot" of the SOS's "Standard Operating Procedures" are in writing. Exh. 25, Jan. 6, 2020 SOS 30(b)(6) Dep. 104:1-10.

265. The SOS does not have an anticipated finish date for writing the standard operating procedures. Exh. 25, Jan. 6, 2020 SOS 30(b)(6) Dep. 104:11-13.

266. Despite its responsibility to enforce the election laws and its mandate to obtain uniformity in county election practices, the SOS has no formal accountability policy with respect to the counties. Exh. 23, Aug. 16, 2019 SOS 30(b)(6) Dep. 84:17-:19 ("Q: So does the Secretary of State's office have a formal accountability policy? A: No.").

267. Instead, the SOS waits until problems have already occurred and are “brought to [the SOS’s] attention.” Exh. 23, Aug. 16, 2019 SOS 30(b)(6) Dep. 84:3-13, 84:20-85:10.

268. When these problems are brought to the SOS’s attention, the only accountability program the SOS uses is initiating investigations that go to the SEB. Exh. 23, Aug. 16, 2019 SOS 30(b)(6) Dep. 84:3-13 (“I guess our accountability program is generally with investigations that go to the State Election Board.”).

269. Voter complaints can trigger SOS investigations. *See, e.g.*, Exh. 21, Dec. 5, 2019 C. Harvey Dep. 171:9-20 (stating that voter complaints can be the subject of an investigation).

270. No record is kept of the cases that are not sent for investigation. Exh. 26, Dec. 11, 2019 R. Germany Dep. 109:13-16 (stating that he does not believe the election division keeps a list of complaints received from voters or on behalf of voters).

271. It often takes years for an investigation to reach the SEB for determination. Exh. 21, Dec. 5, 2019 C. Harvey Dep. 149:13-16 (“It can” take years before an investigation even gets in front of the SEB); Exh. 252, 2014-2019 SEB Case List, State-Defendants-00821123 (spreadsheet containing SEB case data from 2014-2019, sent by SOS employee via email in State-Defendants-00821122);

Exh. 253, May 2, 2019 Email from SOS attaching 2018 SEB Case List, State-Defendants-00423979; Exh. 254, 2018 SEB Case List, State-Defendants-00423980 (list of SEB cases opened in 2018, almost all of which had not been presented to the SEB by May 2019); Exh. 255, Dec. 13, 2017 Email attaching 2017 SEB Case List, State-Defendants-00816535; Exh. 256, 2017 SEB Case List, State-Defendants-00816536 (list of SEB cases opened in 2017, none of which had been presented to the SEB by December 2017).

272. The delay in investigations reaching the SEB for determination is caused by the infrequency of SEB meetings. *See* Exh. 21, Dec. 5, 2019 C. Harvey Dep. 148: 22-149:12 (the problem with the time it takes for investigations to reach the SEB is not with the investigators but “really stems from getting cases in front of the State Election Board . . . [T]he ability to schedule cases for the State Election Board is what really moves that ball forward.”).

273. The SEB does not have a set schedule for its meetings. Exh. 21, Dec. 5, 2019 C. Harvey Dep. 84:15-18 (“I do not” know why the SEB does not have regularly scheduled meetings); *see also, e.g.*, Exh. 257, https://sos.ga.gov/index.php/elections/2017_state_election_board_meetings (dates of 2017 meetings); Exh. 258, https://sos.ga.gov/index.php/elections/2018_seb_meeting_notices_agendas_and_su

[mmaries](#) (dates of 2018 meetings); Exh. 259,

https://sos.ga.gov/index.php/elections/2019_seb_meeting_notices_agendas_and_summaries (dates of 2019 meetings).

274. The SEB typically meets to discuss investigations no more than four times a year, when the “Secretary of State calls the meetings.” Exh. 57, Oct. 10, 2019 D. Worley Dep. 100:9-23 (stating that the SEB “would meet about every quarter, for a regular meeting.”), 101:22-24.

275. In 2017, the SEB met only twice. Exh. 257, 2017 State Election Board Website, Meeting Notices, Agendas, and Summaries (https://sos.ga.gov/index.php/elections/2017_state_election_board_meetings) (listing two meetings held in 2017).

276. That delay in moving investigated matters forward is exacerbated when the SEB refers matters to the Georgia Attorney General or a district attorney for further proceedings, which it usually chooses to do. Exh. 57, D. Worley Dep. 19:16-17 (“The usual practice is that we refer it to the Attorney General for further action.”).

ii. The SOS’s Failure to Analyze or Properly Address Voter Complaints

277. The SOS identifies voter complaints as a primary source of information about whether the counties are conducting elections in accordance

with the law. Exh. 23, Aug. 16, 2019 SOS 30(b)(6) Dep. 87:14-18 (“I review all the email complaints and that’s where we get most our—see most our issues.”); *see also id.* 86:17-21 (identifying voter complaints among the top sources of information to determine what went wrong in an election).

278. Chris Harvey is the person at the SOS who manages the voter complaint process and unilaterally decides how those complaints should be handled; Kevin Rayburn sometimes assists. Exh. 23, Aug. 16, 2019 SOS 30(b)(6) Dep. 117:8-118:1 (Harvey decides how to handle voter complaints including whether to refer them for investigation), 126:16-19 (it is Harvey’s job to handle voter complaints), 129:7-19 (stating that he, Harvey, is the person who manages the voter complaints); Exh. 21, Dec. 5, 2019 C. Harvey Dep. 267:22-269:2 (stating that Harvey or Kevin Rayburn, handle complaints), 268:21-269:2 (Harvey has authority regarding how to handle voter complaints and he can decide whether or not to send them for investigation).

279. Chris Harvey relies on the SOS staff to forward him all “serious” complaints, but there are no written guidelines to tell the SOS staff what kinds of complaints must or should be brought to his attention. Exh. 21, Dec. 5, 2019 C. Harvey Dep. 270:7-11, 270:23-271:5.

280. The SOS has no written policy guiding Harvey's exercise of discretion or providing criteria for assessing the seriousness of complaints. Exh. 23, Aug. 16, 2019 SOS 30(b)(6) Dep. 115:14-18, 117:18-25, 126:16-19, 129:7-19 (all explaining there are no written procedures for SOS staff on how to handle complaints, including criteria for assessing seriousness of the complaints); Exh. 21, Dec. 5, 2019 C. Harvey Dep. 267:22-270:6 (same).

281. The SOS has no standards for how to respond to voter complaints. Exh. 23, Aug. 16, 2019 SOS 30(b)(6) Dep. 115:14-18 (the SOS does not have a complaint policy in writing), 116:21-23 (same); Exh. 21, Dec. 5, 2019 C. Harvey Dep. 271:2-5 (same); *see also* Exh. 75, Dec. 6, 2019 K. Rayburn Dep. 94:1-9 (When asked what he would do if he received a report on Election Day that poll workers were not giving provisional ballots, he said, "I hope I would reach out to the election superintendent or forward that email to the election superintendent, to bring it to their attention, because they might need to call over to the poll manager and remind them of their training."); Exh. 21, Dec. 5, 2019 C. Harvey Dep. 267:22-270:6 (he suspects there is no formal process for logging voter complaints because they "get them from so many different sources and so many different ways...").

282. The SOS Elections Division has no formal record-keeping process to log and track voter complaints. Exh. 23, Aug. 16, 2019 SOS 30(b)(6) Dep. 117:8-19, 124:3-24 (there is no formal record-keeping process to log complaints); Exh. 26, Dec. 11, 2019 R. Germany Dep. 109:13-16 (stating that he does not believe the election division keeps a list of complaints received from voters or on behalf of voters).

283. The SOS does not prepare any report regarding voter complaints it has received. Exh. 23, Aug. 16, 2019 SOS 30(b)(6) Dep. 136:2-7 (stating he does not have “any kind of report like that.”).

284. After an election, the SOS does not analyze voter complaints qualitatively or quantitatively, or even categorize complaints received on particular issues. Exh. 23, Aug. 16, 2019 SOS 30(b)(6) Dep. 135:12-136:7 (explaining that Harvey “did not in a formal way” do any analysis about the complaints and does not “have any kind of report like that.”), 206:207:6 (after an election, the SOS does not categorize voter complaints systematically to show how many complaints were received about particular issues); Exh. 75, Dec. 6, 2019 K. Rayburn Dep. 206:21-207:5 (“I don’t think after the election we take all the complaints” and categorize them).

285. When Chris Harvey was asked why the SOS does no formal qualitative or quantitative analysis of voter complaints was, the only reason he provided was: “oftentimes, they’re—they’ll be cross-pollinated with different issues. You know, we just haven’t done that [performed an analysis].” Exh. 21, Dec. 5, 2019 C. Harvey Dep. 272:4-:15.

286. The SOS received hundreds of voter complaints regarding the 2018 election.³

287. In the 2018 general election, the SOS received complaints about several topics, including the voting machines; the security of the voter registration system; people trying to vote and being told they were not registered or were not registered at the proper address; people not receiving absentee ballots after they requested them; counties not showing that people’s absentee ballots had been received; not having enough polling places during advance voting; and the length of the lines. Exh. 23, Aug. 16, 2019 SOS 30(b)(6) Dep. 129:22-131:7.

288. The Secretary of State initiated few investigations with respect to those complaints. *See generally* Exh. 252, State-Defendants-00821123 (compilation of investigations, showing only 25 investigations initiated in

³ Plaintiffs will file these complaints on this Court’s request.

November 2018, with titles indicating that fewer than ten addressed the issues above).

289. The SOS received a “comparable” number of complaints in the 2016 and 2018 elections, with no material change in the subject matter of voter complaints from the 2016 election. Exh. 21, Dec. 5, 2019 C. Harvey Dep. 264:10-14; 265:16-24.

290. It is unusual to have the same number of complaints in a mid-term election as opposed to a presidential election. Exh. 21, Dec. 5, 2019 C. Harvey Dep. 265:10-15.

iii. Non-performance of Post-Election Assessments

291. The SOS has no formal policy or procedure for reviewing elections after they occur. Exh. 23, Aug. 16, 2019 SOS 30(b)(6) Dep. 85:16-86:16 (stating that there is no formal process for reviewing); Exh. 75, Dec. 6, 2019 K. Rayburn Dep. 74:1-10 (there’s “[n]ot a formal process like a report or anything like.”).

292. The SOS does not have a formal process for conducting post-election assessments; the only post-election assessment that is performed is through informal conversations. Exh. 23, Aug. 16, 2019 SOS 30(b)(6) Dep. 85:16-87:18 (“It’s an informal process where, you know, we go back and say, okay, what worked well, what didn’t . . . we’ll often do that at the state conference”); Exh. 75,

Dec. 6, 2019 K. Rayburn Dep. 74:1-10 (SOS has no formal policy post-election process “like a report or anything:” there are meetings after an election “and we do kind of talk about those things.”).

293. The SOS conducts no formal post-election analysis of itself or the election even though the SOS’s training materials for county election superintendents say that counties should undertake “detailed post-election analyses” because they are “the only way an election official can obtain a clear view of what actually happened on Election Day.” Exh. 48, Georgia Election Official Course, County Course #5 re: How to Manage Your Poll Workers, State-Defendants-00007980, at slide 60.

294. The SOS does not do anything to ensure that counties undertake post-election analyses of their own conduct of the election. Exh. 21, Dec. 5. 2019 C. Harvey Dep. 128:12-15.

iv. Lack of Monitoring County Election Practices

295. Other than learning of election problems through voter complaints and conducting SOS investigations, the SOS’s only monitoring or supervision of counties’ compliance with election laws is sending investigators to visit various polling places during early voting and on Election Day; conducting training of county superintendents and registrars; monitoring the counties’ compliance with

UOCAVA absentee ballot requirements; and SOS personnel checking with counties sporadically. *See* Exh. 25, Jan. 6, 2020 SOS 30(b)(6) Dep. 67:20-72:18 (stating that this is everything that SOS office does to monitor whether counties are in compliance with the law). *But see also id.* 134:10-:17 (when asked later in the deposition “what the SOS is doing to make sure that the counties are obeying the law,” the answer was limited to: “We’re responding to complaints. We’re making sure what the law is, informing them of the law, verifying in some cases if there’s a question. I think that’s it.”).

a. Boots on the Ground Monitoring

296. The SOS’s monitoring through sending investigators to polling places consists of approximately 40 to 45 SOS investigators visiting various polling places during early voting and on Election Day to monitor elections. Exh. 21, Dec. 5, 2019 C. Harvey Dep. 61:13-19 (“there are usually about 40, maybe 45” people on the ground looking at polling places).

297. The SOS investigators are not at the polling place to offer assistance to the voters or poll workers. *See* Exh. 21, Dec. 5, 2019 C. Harvey Dep. 61:1-62:4 (explaining that the SOS investigators are there to perform “random inspection[s]”).

298. Georgia has over 2,300 polling places. Expert Report of M. Herron, ECF No. 241 at 42 (Georgia had 2,349 polling places in the 2018 general election).

299. Those 40-45 on-site investigators cannot cover a significant number of polling places for any given election. Expert Report of K. Kennedy, ECF No. 167 at 22.

b. Lack of Monitoring of Voter Registration Applications

300. The SOS has the ability to monitor the number of voter registration applications counties have pending in e-Net. *See* Exh. 21, Dec. 5, 2019 C. Harvey Dep. 64:1-65:4 (explaining “we are able to monitor . . . in e-Net”).

301. Chris Harvey testified that certain SOS personnel will “keep an eye on that [pending voter registrations],” Exh. 21, Dec. 5, 2019 C. Harvey Dep. 66:2-10, but Chris Harvey did not know if there is any documentation of that and the SOS has no any written protocol requiring SOS personnel to check on pending voter registration applications. *Id.* 66:11-67:2 (saying he does not believe any such protocols exist).

F. The SOS’s Training Responsibilities and Training

302. The SOS has a “general mandate” to train county elections officials. Exh. 23, Aug. 16, 2019 SOS 30(b)(6) Dep. 141:12-142:18. *See also* Exh. 22, Elections Division Transition Memo: SOS Description of Duties, State-

Defendants-00149713, at -00149713 (the SOS’s activities include “providing training for local election officials regarding the proper election procedures”).

303. The SOS knows that “[p]roper training of everyone involved in the elections process is fundamental to achieving” the SOS’s “mission . . . to ensure the smooth operation of safe, accessible, and fair elections throughout the state of Georgia.” Exh. 22, Elections Division Transition Memo: SOS Description of Duties, State-Defendants-00149713, at -00149713. *See also* Exh. 21, Dec. 5, 2019 C. Harvey Dep. 175:19-20 (“[T]raining is important, yes, I agree with that”), 154:14-22 (agreeing that voting is too important for poll workers not to be trained).

304. The SOS knows that training by the SOS is a way to make sure that county practices are uniform. Exh. 21, Dec. 5, 2019 C. Harvey Dep. 57:19-58:8; Exh. 25, Jan. 6, 2020 SOS 30(b)(6) Dep. 62:5-25 (identifying training as one of the ways the SOS makes sure local election officials are engaging in uniform practices), 132:12-133:25.

305. The SOS knows that training is essential to protecting voters’ constitutional right to vote. *See, e.g.*, Exh. 260, GEOC SOS Training Materials, State-Defendants-00120682, at -00120729 (“On Election Day, the citizen’s right to cast a vote rests . . . in the hands of poll workers,” to whom “[e]lection officials must provide the training and tools poll workers need”); *see also* Exh. 21, Dec. 5,

2019 C. Harvey Dep. 154:14-22 (agreeing that voting is too important for poll workers not to be trained), 175:19-20 (“[T]raining is important, yes, I agree with that”).

i. The SOS’s Superintendent and Registrar Training

306. The federal government makes funding available for the SOS to train local election officials, poll workers, and election volunteers. *See, e.g.*, 52 U.S.C. § 20901(b)(1); Consolidated Appropriations Act of 2018. *See also* Expert Report of K. Kennedy, ECF No. 167 at 7-8 (discussing the funding available from the federal government).

307. County election superintendents and registrars are required to be certified by the SOS. Exh. 23, Aug. 16, 2019 SOS 30(b)(6) Dep. 175:8-176:5.

308. The SOS provides the training the county superintendents and registrars must take to receive their certification. Exh. 21, Dec. 5. 2019 C. Harvey Dep. 121:15-122:4 (stating, “it’s the [SOS’s] responsibility to train the counties”); Exh. 261, GEOC SOS Training Materials, State-Defendants-00100006, at -100010-11 (showing these materials as SOS training materials).

309. The SOS mandates this training only for the highest-level election personnel in each county. Exh. 23, Aug. 16, 2019 SOS 30(b)(6) Dep. 97:25-98:12 (“the superintendents are required to be certified by us . . . When the counties do

the training of their local officials, it's up to them."); Exh. 261, GEOC SOS Training Materials, State-Defendants-00100006, at -00100010-12.

310. The training courses are not actually taught by the SOS, but instead are a "read, self-directed thing." Exh. 23, Aug. 16, 2019 SOS 30(b)(6) Dep. 31:22-32:6.

311. The SOS describes its training of county election superintendents as a "train- the-trainer" scenario, with the SOS training the superintendents and the superintendents training the poll workers. 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. 121:21-122:4 ("[I]t's a train the trainer scenario").

312. The SOS knows that if the SOS does not adequately train the superintendents, the superintendents do not have the knowledge base to be able to train their personnel, including poll workers. 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.").

313. The materials the SOS uses to train and certify county election superintendents and registrars do not cover everything they need to know. Exh. 23, Aug. 16, 2019 SOS 30(b)(6) Dep. 180: 13-18 (“certainly not everything is covered in the certification process”; only “the big picture items are covered”).

314. The SOS does not confirm before elections that each county’s superintendent or board designee has completed the required courses. Exh. 23, Aug. 16, 2019 SOS 30(b)(6) Dep. 176:6-21 (“The training director will sometimes do an audit to see who’s certified and who’s not certified...”).

315. For example, in the Candler County Presidential Preference Primary in 2016, the SOS received complaints that “the Office of the Registrar did not know how to conduct the election” and “everyone was new and obviously untrained.” Exh. 962, June 9, 2016 Investigations Division Case Summary re Candler County, State-Defendants-00824593, at -00824593, -00824594, and -00824596.

316. An SOS investigation discovered that the county’s Election Supervisor never completed the SOS training that state law required or submitted a waiver. Exh. 962, June 9, 2016 Investigations Division Case Summary re Candler County, State-Defendants-00824593. But the damage had already been done.

317. The SOS also issues Official Election Bulletins to the highest-level election officials in each county. Exh. 1035, Official Election Bulletin, State-Defendants-00007710 (Official Election Bulletin issued to “County Election Officials and County Registrars”); Exh. 735, Feb. 7, 2018 OEB, State-Defendants-00233060 (Official Election Bulletin issued to “County Election Officials and County Registrars”); *see also* Exh. 21, Dec. 5, 2019 C. Harvey Dep. 86:8-10, 184:3-11.

318. The Official Election Bulletins include information about changes in election law and procedures. *See, e.g.*, Exh. 735, Feb. 7, 2018 OEB, State-Defendants-00233060; Exh. 910, Oct. 23, 2018 OEB, State-Defendants-00729096; Exh. 131, April 3, 2019 OEB, at 305; Exh. 23, Aug. 16, 2019 SOS 30(b)(6) Dep. 62:22-63:17 (“we often had to write OEBs on the fly last year as a result of judge orders...”); Exh. 21, Dec. 5, 2019 D. Harvey Dep. 89:6-90:1 (discussing an OEB providing advice on counting of absentee ballots).

319. The SOS transmits the Official Election Bulletins by email and by posting them to a restricted document repository called Firefly. Exh. 21, Dec. 5, 2019 D. Harvey Dep. 108:22-109:7.

320. The SOS does not issue Official Election Bulletins to lower-level personnel who implement them, such as poll workers. Exh. 23, Aug. 16, 2019 C.

Harvey Dep. 31:9-21; Exh. 21, Dec. 5, 2019 C. Harvey Dep. 202:22-203:7 (acknowledging that Official Election Bulletins are not sent to poll workers, but “hopefully” the material is “conveyed” to them).

321. The SOS does not know whether county superintendents and registrars read the Official Election Bulletins. Exh. 21, Dec. 5, 2019 D. Harvey Dep. 184:3-185:16.

ii. The SOS’s Poll Worker Training

322. The SOS deems poll workers essential to the election process. Exh. 493, SOS Training Materials, State-Defendants-00005805, at -00005807, -00005825 (describing poll workers as “essential to the elections process”).

323. The SOS knows that inadequate training of poll workers can cause voters to be deprived of their constitutional right to vote. The SOS training materials for county election superintendents and registrars state:

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. Election officials must provide the training and tools poll workers need to carry out these important tasks. How well poll workers carry out their responsibilities reflects the quality of their training and the support they receive on Election Day.

Exh. 48, Georgia Election Official Course, County Course #5 re: How to Manage Your Poll Workers, State-Defendants-00007980, at -00008025 (Slide 46) (emphasis added); Exh. 494, SOS Training Course Materials for Registrars, State-Defendants-00008567, at -00008613 (Slide 47) (same). *See also* Exh. 21, Dec. 5, 2019 C. Harvey Dep. 125:23-127:2 (agreeing that if poll workers are not well-trained, the result can be that a citizen is not able to have his or her vote counted).

324. As the quoted language in the SOS training materials above show, the SOS knows that the quality of poll worker training is tied directly to poll worker performance at the polls and to voters' ability to exercise their constitutional right to vote. *See* Exh. 494, SOS Training Course Materials for Registrars, State-Defendants-00008567, at -00008613 (Slide 47).

325. The SOS prepares poll worker training manuals. Exh. 23, Aug. 16, 2019 SOS 30(b)(6) Dep. 33:3-10; Exh. 21, Dec. 5. 2019 C. Harvey Dep. 134:21-135:6; 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. 36, SOS "Poll Worker Training" Presentation, State-Defendants-00131303; Exh. 208, Georgia Poll Worker Manual (April 2020) (last accessed July 10, 2020)

(<https://georgiapollworkers.sos.ga.gov/>

[Shared%20Documents/Georgia%20Poll%20Worker%20Training%20Manual.pdf](#)).

326. The SOS has also created a 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, Oct. 20, 2015 Press Release re Poll Worker Training Website, State-Defendants-00124523.

327. Although the SOS believes it would be a “good idea” for counties to use its training materials, the SOS does not require counties to use them. 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), 137:20-25 (“I think it would be a good idea if the counties used the training materials we gave them”); Exh. 1004, SEB Minutes at 18 (Mar. 23, 2016) (“https://sos.ga.gov/admin/uploads/03-23-2016_SEB_Summary1.pdf”) (SOS Kemp touts a host of new SOS-prepared poll worker training videos counties can use to conduct training); Exh. 48, SOS Superintendent Training Course Materials, State-Defendants-00007980 at -00007980, -00008027-28 (describing the 2016 SOS-prepared poll worker manual as an “excellent resource” and the SOS-prepared poll worker training videos as “great things to incorporate into your training classes” and saying the SOS website training materials will “help you to learn how to be a successful part of the polling

place operations on Election Day”); Exh. 493, SOS Training Materials, State-Defendants-00005451, at -00005453 (describing SOS-prepared poll worker training materials as a “great resource”); Exh. 493, SOS Training Materials, State-Defendants-00005805, at -00005807, -00005825 (encouraging use of SOS-prepared training materials).

G. Failures in in Defendants’ Supervision and Oversight of Counties’ Training

i. Defendants Do Not Require Uniformity in the Counties’ Training of Their Election Personnel

328. Training is a primary tool for obtaining the uniformity that the SOS and SEB are both required to obtain in order to keep elections uniform. *See supra* ¶¶ 243-46; Exh. 21, Dec. 5, 2019 C. Harvey Dep. 53:3-56:9 (stating that the law requires “the uniformity” and “it’s our conversation with county election officials and clarification and pointing things out in training that we get that compliance that the law requires” and agreeing “that when the law requires that counties do X, that the counties should be carrying out the law in a uniform fashion”); Exh. 25, Jan. 6, 2020 SOS 30(b)(6) Dep. 130:16-133:25 (“we expect counties to uniformly follow the law and we do our best to train them on what the law is and what those requirements are...”).

329. Although the counties' election practices and proceedings are required to be uniform and the SOS says that is accomplished in large measure through training, neither the SOS nor the SEB requires that the training materials used to achieve uniformity are themselves uniform in what or how they teach. *See infra* ¶¶ 330-35, 337-40.

330. The SEB has promulgated no rules or regulations requiring uniformity in the counties' training of their elections personnel. *See generally* Ga. Comp. R. & Regs. §§ 183-1-1 *et seq.*

331. The SOS has not recommended rules or regulations for the SEB to promulgate that would require counties to use training materials specified by the SOS. Exh. 21, Dec. 5, 2019 C. Harvey Dep. 138:7-11 (confirming that the SOS has not recommended rules).

332. Aside from a specific SOS-mandated training course about cybersecurity, the SOS does not require counties to use uniform training materials. Exh. 21, Dec. 5, 2019 C. Harvey Dep. 137:20-138:6 (confirming that he “think[s] it would be a good idea if counties used the materials we gave them” but he has not asked anybody about whether the SOS can require uniform training materials); Exh. 25, Jan. 6, 2020 SOS 30(b)(6) Dep. 28:3-12 (the SOS requires uniform cybersecurity training).

333. Nothing in the Georgia Election Code prohibits the SOS from requiring counties to use certain training materials related to any aspect of election administration. Exh. 21, Dec. 5, 2019 C. Harvey Dep. 136:17-137:14 (“I know of many, many things that the state election codes says we cannot require . . . I’m not aware of anything that says we can’t require them to do it”).

334. The SOS has required county election personnel to take SOS-prescribed training when, in 2019 and 2020, the SOS required all county election personnel with access to the SOS’s eNet system to take cybersecurity training. The SOS selected the vendor for the training, customized the training as the SOS saw fit, chose the local election personnel who would be required to take the training, and monitored the progress of the personnel who took the training. Exh. 23, Aug. 16, 2019 SOS 30(b)(6) Dep. 93:9-96:2 (explaining the course and confirming that the SOS can monitor the training); Exh. 25, Jan. 6, 2020 SOS 30(b)(6) Dep. 26:12-28:12 (“we’ve got a mandatory cyber training”).

335. There is no evidence that the SOS has followed a similar proactive approach with respect to training of county elections personnel on other topics or procedures.

336. Plaintiffs' expert, Kevin Kennedy, testified that mandatory training prescribed by the SOS is necessary to ensure counties' election practices are uniform. Expert Report of K. Kennedy, ECF No. 167 at 18-19.

a. The SOS Does Not Know What Training Materials Counties Use to Train Their Personnel.

337. The SOS does not know what training materials the counties use to train their election personnel. Exh. 23, Aug. 16, 2019 SOS 30(b)(6) Dep. 56:19-25; Exh. 21, Dec. 5, 2019 C. Harvey Dep. 57:1-10.

338. The SOS does not require counties to submit their training materials to the SOS and does not review and approve those materials. Exh. 23, Aug. 16, 2019 SOS 30(b)(6) Dep. 57:1-10.

339. The SOS has no insight into whether the counties develop their own training materials and does not know if the counties use SOS-provided training materials or something else. Exh. 23, Aug. 16, 2019 SOS 30(b)(6) Dep. 56:19-25, 57:1-10.

340. Even with respect to counties with a known history of noncompliance with election laws, the SOS does not review the county's training materials, procedures, or policies. Exh. 21, Dec. 5, 2019 C. Harvey Dep. 261:12-13, 262:1-6.

b. The SOS Does Not Assess the Adequacy of the Counties' Training Materials or Require the Counties to Demonstrate the Adequacy of Their Training.

341. The SOS is not prohibited from requiring counties to demonstrate to the SOS that they have adequately trained their poll workers. Exh. 21, Dec. 5, 2019 C. Harvey Dep. 171:4-8.

342. Aside from the certification course for the top officials in each county, the SOS does not require any county elections employee to demonstrate proficiency in any area of election administration. Exh. 23, Aug. 16, 2019 SOS 30(b)(6) Dep. 97:25-98:12.

343. The SOS determines the counties' training has been adequate when counties, as they are required to do, send a report to the SOS confirming that they have completed poll worker training. "Once they report that, that's generally adequate." Exh. 21, Dec. 5, 2019 C. Harvey Dep. 171:21-25.

344. The report counties submit to the SOS, however, provides no information about the content or adequacy of the training a county gave its poll workers; it confirms only the fact that training has been given. Exh. 21, Dec. 5, 2019 C. Harvey Dep. 168:17-169:12, 170:6-21; Exh. 25, Jan. 6, 2020 SOS 30(b)(6) Dep. 34:6-17.

ii. Defendants Know County Training is Inadequate.

345. The SOS has repeatedly pointed to county-level training as an explanation for problems that voters have brought to its attention. Exh. 21, Dec. 5, 2019 C. Harvey Dep. 139:10-16 (agreeing that he frequently responded to problems voters brought to his attention by telling county officials that the problem “could very well be a training problem”).

346. The SOS often blames inadequate poll worker training for the problems identified in voter complaints and ensuing SEB proceedings. *See, e.g.*, Exh. 23, Aug. 16, 2019 SOS 30(b)(6) Dep. 97:25-98:21 (stating, at 98:13-18, that county superintendents will be talking to Chris Harvey or the SEB if they don’t get training right); Exh. 21, Dec. 5, 2019 C. Harvey Dep. 139:10-16 (stating that he has responded to complaints from voters by telling county election officials it is a training problem), 153:20-156:13 (voter complaint was a training issue), 171:9-20 (county officials don’t train their poll workers correctly); Exh. 584, Nov. 11, 2018 Email from C. Harvey to L. Ledford re: Elections Complaint, State-Defendants-000057279; Exh. 567, Nov. 1, 2018 Email from C. Harvey to H. Brennen re: Elections Complaint, State-Defendants-000054427.

347. At SEB discussions of SOS investigations, violations of the election laws are often attributed to training failures and inadequacies. *See, e.g.*, Exh. 1,004,

SEB Minutes (Mar. 23, 2016) (problems in Coffee County attributed to training problems; absentee ballot clerk complaining that she had not received adequate training; Glynn County BOE member saying the county was not properly training).

348. The SOS is also aware from other sources that counties' training is inadequate to ensure that the election laws are carried out. For example, during a 2017 election, David Worley, Defendant and long-time SEB member, notified Chris Harvey that Cobb County poll workers were incorrectly telling voters who had received absentee ballots that they could not cancel their absentee ballots at the polling place and vote in person. Exh. 21, Dec. 5, 2019 C. Harvey Dep. 144:20-145:23 (confirming that there was a problem regarding provisional ballot denials); Exh. 499, June 20, 2017 Email from D. Worley to C. Harvey re Cobb County Voting Issue, State-Defendants-000017802. *See also* Exh. 21, Dec. 5, 2019 C. Harvey Dep. 146:2-10 ("If we did [take any action after getting this email], apparently it wasn't sufficient.").

349. The same problem occurred again in Cobb County in the 2018 election and David Worley again sent Chris Harvey an email complaining about it. Exh. 21, Dec. 5, 2019 C. Harvey Dep. 141:21-142:1 (confirming that the instructions in the training manual about offering provisional ballots was not correct), 145:17-23 (confirming this problem regarding provisional ballot denials

existed in June 2017); Exh. 508, Nov. 6, 2019 Email from D. Worley to C. Harvey re Cobb Absent Ballot Issue, State-Defendants-000018599 (“there is no instruction that the poll worker can call the main office to resolve the absentee ballot cancellation without the voter having to leave the” polling place).

350. At that point, David Worley told Chris Harvey that the problem appeared to stem from an inaccuracy in the Cobb County poll worker manual about how this situation should be handled. Exh. 21, Dec. 5. 2019 C. Harvey Dep. 142:2-143:8; Exh. 508, Nov. 6, 2019 Email from D. Worley to C. Harvey re Cobb Absent Ballot Issue, State-Defendants-000018599.

351. When shown Mr. Worley’s emails from 2017 and 2018, Mr. Harvey agreed the Cobb County poll workers were giving voters the wrong instructions. Exh. 21, Dec. 5. 2019 C. Harvey Dep. 143:6-8 (stating the instructions are not correct).

352. There is no evidence that the SOS took any action in response to either of Mr. Worley’s complaints but, even had the SOS taken action, Chris Harvey acknowledged, twice, that the action was “insufficient.” Exh. 21, Dec. 5. 2019 C. Harvey Dep. 146:2-10 (“If we did [take action], apparently it wasn’t sufficient”), 150:5-9 (“Like I said, if we did something, apparently it wasn’t sufficient”). *See also* Exh. 802, March 19, 2019 Email exchange between SOS and

county official, State-Defendants-00319291 (local official warned SOS that a poll worker did not know how to complete basic tasks after “successfully passing” training on the same subject and said “God help us all in 2020.”).

353. The SOS is aware that the Cobb County’s inaccurate poll worker training materials could have deprived voters of the ability to vote. Exh. 21, Dec. 5, 2019 C. Harvey Dep. 150:10-15.

354. The SOS made no changes to its level of oversight of counties’ training between 2016 and 2018 elections, or after the 2018 election. Exh. 21, Dec. 5, 2019 C. Harvey Dep. 253:5-12 (answering that the complaint in this action has not caused the SOS to look into the adequacy of its oversight of counties); Exh. 25, Jan 6, 2020 SOS Dep. 34:6-23 (the SOS has not made changes to its policies or practices with respect to monitoring how the counties train poll workers).

H. Failures and Inadequacies in Defendants’ Training Materials

i. Failure to Provide Understandable and Accurate Training Materials

355. The SOS’s training regurgitates “what the law is,” usually without explanation or priorities for implementation and compliance. *See, e.g.*, Exh. 25, Jan. 6, 2020 SOS Dep. 132:22-133:2, 134:10-16; *see generally* Exh. 34, 2018 Poll Worker Manual, State-Defendants-00146399 (copying and pasting legal provisions

without explanation of how to implement them); Exh. 35, 2020 Poll Worker Manual, State-Defendants-00867638 (same).

356. Training materials frequently provide dense quotations from statute or SEB rules, rather than walking trainees through practical instructions. *See, e.g.*, Expert Report of K. Kennedy, ECF No. 167 at 17, 19; Exh. 152, Training PowerPoint Orr-Chattooga County-000918 (provides instructions for handling provisional ballots).

357. Kevin Kennedy, Plaintiffs' training expert, who viewed more than 5,148 pages of PowerPoint presentations and additional training materials, opines that the SOS training materials are inadequate because they do little more than convey what the law says, and they are difficult to understand. Expert Report of K. Kennedy, ECF No. 167 at 11, 17-18.

358. For example, the training materials have frequently taken "an inappropriately passive approach to issuing provisional ballots," "suggest that issuing a provisional ballot is an optional procedure," and "do not provide the full context for provisional ballots or a reference to where complete information can be found." *See* Expert Report of K. Kennedy, ECF No. 167 at 17, 19.

359. SOS trainings also acknowledged the problem that poll workers may reject out-of-precinct voters who do not have time to make it to their correct

precincts, and noted: “There is no set cutoff time. Based on circumstances, it might be insufficient time for the elector even at 9 AM. Be generous and understanding when making the determination.” Exh. 639, Provisional Ballot Training PowerPoint, State-Defendants-00115221 at 19. But the SOS trainings did not give any clear guidance on how to apply the rule, and further, noted only that “(i)f the Registrar or poll manager determines that insufficient time remains for the elector to cast a ballot at their assigned precinct, the poll worker *may* issue this person a provisional ballot.” *Id.* (emphasis added).

360. Both versions of the SOS’s 2020 Poll Worker Manual exhibit the same problems Plaintiffs’ expert Kevin Kennedy identified in Defendants’ earlier training materials: offering complicated instructions, using legal language, failing to ensure that poll workers understand the “why” of provisional ballots as well as their importance to protecting voters’ right to vote, and generally failing to stress the importance of facilitating voters’ rights to vote. *See* Expert Report of K. Kennedy, ECF No. 167 at 19-20.

361. The SOS-prepared poll worker manuals further contain numerous errors, and they provide confusing advice that is inconsistent with law and other SOS instructions. For example, in its 2020 Poll Worker Manual—both the version produced in this litigation (Exh. 35, State-Defendants-00867638) and the updated

April 2020 version 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 both versions of the 2020 Poll Workers Manuals quote a prior rule, SEB Rule 183-1-12-.06. *See* 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>), at 56-57.

362. As another example, the version of the SOS’s 2020 Poll Worker Manual Defendants produced in this litigation in March 2020, in the “Troubleshooting” section, directs poll workers to send a voter to the county registrar’s office if the voter requested an absentee ballot but does not have it in hand. Exh. 35, State-Defendants-00867638. This is despite the fact that O.C.G.A. § 21-2-388 allows a voter who has not yet received or returned a ballot to cancel that ballot “by appearing in person before the managers of the elector’s precinct” and requesting in writing that the ballot be canceled.”

363. The version of the 2020 Poll Worker Manual that was updated in April 2020, however, and was online during the June 9, 2020 primary election, has

deleted the “Troubleshooting” section and offers no instructions for how to address voters who are listed as having applied for absentee ballots but had not received those ballots. *See* Exh. 208, The Poll Worker Manual: 2020 Edition, Ga. Sec’y St. (Apr. 2020),

<https://georgiapollworkers.sos.ga.gov/Shared%20Documents/Georgia%20Poll%20Worker%20Training%20Manual.pdf>. The SOS deleted these instructions despite knowing that absentee ballot requests were at all-time highs.

364. As yet another example, the 2020 poll workers’ manual does not include driver’s licenses as an option for proving citizenship, Exh. 208,

<https://georgiapollworkers.sos.ga.gov/Shared%20Documents/Georgia%20Poll%20Worker%20Training%20Manual.pdf> at 75,

even though the Secretary of State’s website does. *See* Exh. 1,005, “Acceptable Proof of Citizenship,”

[https://sos.ga.gov/index.php/general/acceptable_proof_of_citizenship#:~:text=\(1\)%20Birth%20certificate%2C%20issued,the%20U.S.%20Embassy%20or%20Consulate](https://sos.ga.gov/index.php/general/acceptable_proof_of_citizenship#:~:text=(1)%20Birth%20certificate%2C%20issued,the%20U.S.%20Embassy%20or%20Consulate)) (accessed July 7, 2020).

ii. Failure to Monitor County Officials’ Review or Understanding of the SOS’s Training Materials

365. Training will not be effective unless it comes with accountability mechanisms. Expert Report of K. Kennedy, ECF No. 167 at 9.

366. Accountability mechanisms include an assessment to ensure that election officials have learned the information presented, a method for reviewing performance such as an audit, and clear procedures for identifying and tracking errors in implementing the law. Expert Report of K. Kennedy, ECF No. 167 at 9.

367. The SOS recognizes the importance of accountability in training in certain circumstances. Quizzes are part of the SOS's county superintendent and registrar training. Exh. 21, Dec. 5, 2019 C. Harvey Dep. 178:14-179:1 (superintendents and registrars are required to take a quiz to be certified).

368. Part of a cyber-training program the SOS recently rolled out is "accountability." Exh. 23, Aug. 16, 2019 SOS 30(b)(6) Dep. 95:12-18.

369. The training includes quizzes that the trainees must take along the way, and the SOS will be able to track the trainees' progress and run a report and find out who has not taken the training. Exh. 23, Aug. 16, 2019 SOS 30(b)(6) Dep. 95:12-96:2. *See also* Exh. 25, Jan. 6, 2020 SOS 30(b)(6) Dep. 28:5-12.

370. Other than (a) the quizzes that are part of the training required for county election superintendents and registrars to be certified, and (b) the SOS's required training program for cybersecurity, the SOS does not track or monitor whether county superintendents and registrars are reading or understanding the

SOS's training materials. Exh. 23, Aug. 16, 2019 SOS 30(b)(6) Dep. 97:4-24 (confirming there is no other formal method of tracking).

371. With respect to the Webinar training that the SOS provides, the SOS cannot tell whether people were paying attention or what they learned from the training. Exh. 23, Aug. 16, 2019 SOS 30(b)(6) Dep. 96:5-18 (testifying, "we don't have a way necessarily to know how much they were paying attention or what they got from it").

372. Instead of monitoring counties' understanding of its training, the SOS assumes that counties understand it. Then the SOS then waits for complaints to arise when counties do not follow the law. *See, e.g.*, Exh. 25, Jan. 6, 2020 SOS 30(b)(6) Dep. 132:10-133:2 (testifying, "We expect counties to uniformly follow the law and we do our best to train them on what the law is . . . telling them to follow the law, follow the [SEB] rules, follow judicial orders when they come..."), 134:10-16 (stating, in response to being asked what the SOS is doing to make sure the counties are following the law, "We're responding to complaints.").

iii. Inadequacies Regarding Constitutional Protections and the Voting Rights Act

373. Based on his expertise and experience in election administration and training, Kevin Kennedy, Plaintiffs' expert, opines that the SOS's training materials do not emphasize to county officials the protection of voters' rights or

how to facilitate voters' ability to vote. *See* Expert Report of K. Kennedy, ECF No. 167 at 15-17.

374. Kevin Kennedy further opines that the SOS training materials are inadequate because they do not focus on the voter, and the missing material related to serving the voter is important to protecting the right to vote and mitigating the impact of discrimination. Expert Report of K. Kennedy, ECF No. 167 at 17-18.

375. The SOS's training on "How do . . . Constitutional Amendments affect a Georgia's registrar's duties" does not mention protecting the right to vote. Exh. 595, GEOC Training Course #3, State-Defendants-00079588, at State-Defendants-00079595.

376. The SOS has no written or even unwritten policy regarding compliance with the Voting Rights Act ("VRA"). Exh. 23, Aug. 16, 2019 SOS 30(b)(6) Dep. 192:2-11 (responding "no" when asked if there are any unwritten policies relating to compliance with the VRA); Exh. 21, Dec. 5, 2019 C. Harvey Dep. 211:19-212:10 ("I don't think there's a document that says, you must comply with the Voting Rights Act.").

377. A few of the SOS's training materials set forth the provisions of Section 2 of the Voting Rights Act and set forth the *Gingles* factors, but even those materials do not provide any substantive or practical training on the obligations of

elections officials to guard against making elections changes that could have a disparate impact on voters of color prohibited by the Voting Rights Act. *See* Exh. 636, GROC Training Course # 3, State-Defendants 00102947, -00102958 through -00102968 (Slides 12-22); *see also* Expert Report of K. Kennedy, ECF No. 167 at 17 (“The conference training materials on the Voting Rights Act were all limited to a description of the law.”).

378. In those training materials, which are part of the mandatory course materials for certification of county superintendents and registrars, twelve slides are dedicated to the VRA. Exh. 636, GROC Training Course # 3, State-Defendants-00102947, -00102958 through -00102968 (Slides 11-22). Of those, almost half focus on how pre-clearance with the DOJ is no longer being required. *Id.* *See also* Exh. 635, GEOC Training Course #3, State-Defendants-00100120, -0010030 through -00100141 (slides 11-22) (same).

379. When asked what the Voting Rights Act protected against, Mr. Harvey, who oversees the SOS’s training, described it as prohibiting treating voters differently regardless of race. Exh. 21, Dec. 5. 2019 C. Harvey Dep. 212:11-213:23 (describing Voting Rights Act and stating “It prohibits, [] in very big picture, things like procedures or hurdles for people to jump through, discrimination,

arbitrary obstacles or conditions that are designed to keep people from voting.”); *see also* Exh. 23, Aug. 16, 2019 SOS 30(b)(6) Dep. 5:18-6:2.

380. When asked whether disparate impact under the Voting Rights Act was referring to minority voters, he answered: “Any voters. I mean, for anyone to be disparately impacted by anything would be problematic.” Exh. 21, Dec. 5. 2019 C. Harvey Dep. 213:4-23.

381. When Mr. Harvey testified as the SOS’s representative at the August 16, 2019 30(b)(6) deposition, he thought the deposition notice’s reference to the VRA was a reference to the NVRA. Exh. 23, Aug. 16, 2019 SOS 30(b)(6) Dep. 191:2-13 (“I misunderstood and though you were talking about the NVRA, not the [VRA]. So I did not speak with anyone in the office about the [VRA].”).

382. When asked what training the SOS practices and policies the SOS followed to comply with the VRA, Mr. Harvey answered that he told SOS personnel they needed to be non-partisan and not talk politics in the office. Exh. 23, Aug. 16, 2019 SOS 30(b)(6) Dep. 192:2-193:2.

383. Several months later, when Mr. Harvey again testified as the SOS’s 30(b)(6) representative and was asked about the counties’ compliance with the VRA, Mr. Harvey stated that if counties “maintain compliance” with laws *other*

than the Voting Rights Act, they are “staying consistent with the Voting Rights Act.” Exh. 25, Jan. 6, 2020 SOS 30(b)(6) Dep. 142:16-25.

384. In his deposition, Ryan Germany, general counsel to the Secretary of State, stated that no people of color had management positions in the Secretary of State’s Office. Exh. 26, Dec. 11, 2019 R. Germany Dep. 133:25-134:9 (neither managers nor deputy division directors are people of color).

385. One of the SOS’s descriptions of its election activities in an internal memorandum succinctly reveals the SOS’s attitude about the VRA: When the description lists “Important Federal Laws,” the Voting Rights Act is not included. Exh. 22, Elections Division Transition Memo: SOS Description of Duties, State-Defendants-00149713, at -00149718.

386. The SOS has not engaged in any formal or informal self-evaluation or review about its own compliance with the Voting Rights Act. Exh. 23, Aug. 16, 2019 SOS 30(b)(6) Dep. 193:18-194:2.

IV. EXACT MATCH

A. The Development of Exact Match

i. The SOS’s Responsibility for Exact Match

387. State law assigns responsibility for the voter verification process to the SOS. *See* O.C.G.A. § 21-2-50.2(a) (“The Secretary of State, as the chief

election official designated under the federal Help America Vote Act of 2002, shall be responsible for coordinating the obligations of the state under the federal Help America Vote Act of 2002”); O.C.G.A. § 21-2-50(b) (the SOS is the State’s “chief election official”); O.C.G.A. § 21-2-216(g)(7) (the SOS “shall establish procedures to match an applicant’s voter registration information to the information contained in the data base maintained by the Department of Driver Services for the verification of the accuracy of the information provided on the application for voter registration, including whether the applicant has provided satisfactory evidence of United States citizenship”).

388. Counties receive verification data—including who is in MIDR status and who is in pending status—only after the matching coordinated by the SOS has been completed. Exh. 30, Verification Changes due to H.B. 316 training presentation, State-Defendants-00095888, at -00095892-00095896; Exh. 75, Dec. 6, 2019 Rayburn Dep. 196:8-197:9 (“There’s an overnight check that takes this data, checks it against [DDS]”); Exh. 23, Aug. 16, 2019 SOS 30(b)(6) Dep. 240:12-25 (“Q: So how is the Secretary of State’s interpretation relayed to the county registrars or whomever was tasked with deciding whether a voter is eligible to be registered? A: Well, it’s handled in eNet. So the county doesn’t make the

individual decision, unless they—somebody provides ID and they get that checkbox”).

389. The SOS is responsible for the implementation of Exact Match, including updates to the process, *see* Exh. 116, Feb. 23, 2017 Official Election Bulletin, State-Defendants-00166398 (removing the time limit for certain applications in pending status), Exh. 117, May 8, 2019 J. Hallman email, State-Defendants-00065567 (describing change to the criteria), and providing training on Exact Match, *see, e.g.*, Exh. 30, Training Presentation, State-Defendants-00095888.

ii. Exact Match Pre-H.B. 316

390. The Help America Vote Act (“HAVA”) requires each State to implement a uniform voter registration list. 52 U.S.C. § 21083(a)(1). HAVA also requires the chief State election official and the official responsible for the State motor vehicle authority to “enter into an agreement to match information in the database of the statewide voter registration system with information in the system of the motor vehicle authority . . . to enable each such official to verify the accuracy of the information provided.” *Id.* § 21083(a)(5)(B).

391. HAVA does not specify which information must be matched between the databases. 52 U.S.C. § 21083(a)(5)(B).

392. HAVA also does not establish any consequences for a non-match. 52 U.S.C. § 21083(a)(5)(B).

393. According to Ryan Germany, “HAVA requires the match to be run, but . . . it d[oes] not say what the State then does with that information.” Exh. 26, Dec. 11, 2019 R. Germany Dep. 122:12-19. *Id.* 122:25-123:3 (stating, “HAVA also doesn’t say what the consequences of a failing match are”).

394. SEB member Rebecca Sullivan testified that, to her recollection, during her time on the State Election Board, the Board did not discuss the Exact Match requirements, do any rulemaking around those requirements, or make any recommendations to the General Assembly around the requirements. Exh. 53, Oct. 15, 2019 R. Sullivan Dep. 84:7-85:1.

395. SEB member David Worley testified that the State Election Board never promulgated a regulation requiring an Exact Match in connection with voter registration, absentee ballots, or provisional ballots or when a voter went to the polls to vote. Exh. 57, Oct. 10, 2019 D. Worley Dep. 126:9-127:3.

396. Ryan Germany testified that the SOS’s office “is authorized to . . . promulgate rules in certain circumstances,” but he was not “aware of the match policy ever being submitted as a rule.” Exh. 26, Dec. 11, 2019 R. Germany Dep. 86:14-23.

397. Germany said he knew of efforts “to clarify. . . inaccurate information” about the Exact Match process, but he did not “think there was anything we put out at the beginning as to here’s –here’s how it all works.” Exh. 26, Dec. 11, 2019 R. Germany Dep. 88:4-14.

398. The Secretary of State has no written document explaining what constitutes a “match,” Exh. 23, Aug. 16, 2019 SOS 30(b)(6) Dep. 239:22-240:11, even though unpublished agency policies are unenforceable. *See* O.C.G.A. § 50-13-3(b) (“No agency rule, order, or decision shall be valid or effective against any person or party nor may it be invoked by the agency for any purpose until it has been published or made available for public inspection as required in this Code section”).

399. In March 2007, the SOS entered into an information-sharing agreement with Georgia’s Department of Driver Services (DDS). *Morales v. Handel*, No. 1:08-CV-3172, 2008 WL 9401054, at *5 (N.D. Ga. Oct. 27, 2008); *see also* Expert Report of P. McCrary, ECF No. 339 at 56 (citing to “Memorandum of Understanding Between the Georgia Department of Driver Services and the Office of the Secretary of State” (March 27, 2007)).

400. Under the SOS’s Exact Match policy, registration application information which did not *exactly* match the DDS database’s information in certain

categories (applicant's driver's license number, last name, first name, DOB, last four digits of social security number, and citizenship status) would be flagged as unverified. *Morales*, 2008 WL 9401054 at *6; *see also* Expert Report of P. McCrary, ECF No. 339 at 56.

401. As of January 2008, DDS verified all immigration documents through a federally-administered program containing information that could date back prior to a citizen's naturalization and thus be inaccurate when an individual applied for voter registration. O.C.G.A. § 40-5-21.1; Exh. 1,006, U.S. Citizenship and Immigration Services, Save Verification Process, <https://www.uscis.gov/save/about-save/save-verification-process>; Immigration Policy Center, "Using the Systematic Alien Verification for Entitlements (SAVE) Program for Voter Eligibility Verification" (August 2012), p.1, available at <https://www.americanimmigrationcouncil.org/sites/default/files/research/usingthesaveprogramsforvotereligibilityverification.pdf>; *see also* Expert Report of P. McCrary, ECF No. 339 at 57-58.

402. DDS also coordinated with the Social Security Administration (SSA) to verify an applicant's status when the applicant lacked a driver's license. *see also* Expert Report of P. McCrary, ECF No. 339 at 58 (citing to "User Agreement for Voter Registration Information Verification System Services between the Georgia

Department of Driver Services (MVA) and the Social Security Administration (SSA),” (signed February 14, 2007 by the Commissioner of DDS and April 23, 2007 by the Regional Commissioner of SSA).

403. An Inspector General report found that SSA could provide a match for only 69% of applicants nationwide, and a “no match” response for 31% of applicants. *See* Expert Report of P. McCrary, ECF No. 339 at 59.

404. The Inspector General noted the SSA’s matching program searched “for exact matches on the full first and last name, which is problematic because it does not consider possible human error (that is, data entry errors, transpositions [of characters], and nicknames).” Expert Report of P. McCrary, ECF No. 339 at 59 (citing “Quick Response Evaluation: Accuracy of the Help America Vote Verification Program Responses,” A-03-09-29115, June 2009, at 6).

405. The Inspector General concluded the program “provided the States with responses that may have prevented eligible individuals from registering to vote and allowed ineligible individuals to vote.” Expert Report of P. McCrary, ECF No. 339 at 59 (citing “Quick Response Evaluation: Accuracy of the Help America Vote Verification Program Responses,” A-03-09-29115, June 2009, at 11).

406. In 2009, DOJ denied preclearance to Georgia’s Exact Match program. Exh. 1,007, Loretta King, Acting Assistant Attorney General, to Attorney General Thurbert Baker, May 29, 2009, p. 1-3, available at: <https://www.justice.gov/crt/voting-determination-letter-58>. *See also* Expert Report of P. McCrary, ECF No. 339 at 60-61 (discussing preclearance).

407. DOJ explained the program “[did] not produce accurate and reliable information” and cited testimony “that an error as simple as transposition of one digit of a driver license number can lead to an erroneous notation of a non-match across all compared fields.” Exh. 1,007, Loretta King, Acting Assistant Attorney General, to Attorney General Thurbert Baker, May 29, 2009, p. 1-3, available at: <https://www.justice.gov/crt/voting-determination-letter-58>.

408. In denying preclearance, DOJ noted that “[t]he impact of these errors falls disproportionately on minority voters.” Exh. 1,007, Loretta King, Acting Assistant Attorney General, to Attorney General Thurbert Baker, May 29, 2009, p. 4 (available at: <https://www.justice.gov/crt/voting-determination-letter-58>). *See also* Exh. 26, Dec. 11, 2019 R. Germany Dep. 83:10-20 (noting the SOS’s initial request for preclearance was rejected).

409. In 2010, Georgia again sought preclearance of its Exact Match procedures. Expert Report of P. McCrary, ECF No. 339 at 62 (citing *Georgia v.*

Holder, 748 F. Supp. 2d 16 (D.D.C. 2010)) and submission letter from Anne W. Lewis to T. Christian Herren, August 17, 2010).

410. Its stated procedure called for daily monitoring of the voter verification process and prompt notice to applicants who could not be verified. Expert Report of P. McCrary, ECF No. 339 at 63.

411. DOJ agreed to preclear the process. Exh. 637, K. Rayburn, “Georgia HAVA Verification” presentation, State-Defendants -00114398, at -00114404 (undated, but based on internal evidence prepared in 2017), p. 7. *See also* Expert Report of P. McCrary, ECF No. 339 at 63; Exh. 593, DOJ Approval, State-Defendants-00078191 (discussing preclearance); Exh. 594, 2010 Submission for Preclearance, State-Defendants-00078192.

412. From 2010-2016, Georgia’s voter verification procedures “remained largely unchanged.” Exh. 637, K. Rayburn, “Georgia HAVA Verification” Presentation, State-Defendants-00114398, at -00114404 (undated, but based on internal evidence prepared in 2017), p. 7); *see also* Expert Report of P. McCrary, ECF No. 339 at 62-63; Exh. 644, Georgia HAVA Verification presentation, State-Defendants-00131676, at -00131682.

413. If applicants registered to vote using a driver’s license number, their information would be compared against DDS’s database for verification. *Morales*,

2008 WL 9401054 at *6; *see also* Expert Report of P. McCrary, ECF No. 339 at 56, 64 (discussing verification); Exh. 123, DDS Interface Manual, revised 2013, State-Defendants-00264433, at -00264437; Exh. 124, DDS Verification Technical Guide, dated Oct. 10, 2013, State-Defendants-00264426 at -00264428.

414. If applicants had no driver's license and instead sought to rely on the last four digits of their social security numbers, the applicants would be required to provide documentary proof of citizenship. Exh. 125, Verification of United States Citizenship of Applicants for Voter Registration, June 2015, State-Defendants-00127461; *see also* Expert Report of P. McCrary, ECF No. 339 at 64 (discussing verification).

415. Staff in the SOS's office have given conflicting information about how the Exact Match process works. *See* Expert Report of K. Mayer, ECF No. 238 at 10 (“[O]ne official said that a mismatched space character between DDS and voter registration records would trigger a non-match. Another said he was not sure. The General Counsel did not know whether a hyphen in one data set but not the other would result in a verification failure. The Director of Elections testified that matching is done on ‘last name, first name, date of birth, and last four of social,’ but the General Counsel testified that the match is only done on the first letter of the first name (and that some counties were using the entire first name)”).

416. According to Elections Director Chris Harvey, both before and after H.B. 316, the SOS has interpreted the statute to require “an exact match on last name, first name, date of birth, and last four of social. That has to match exactly.” Exh. 23, Aug. 16, 2019 SOS 30(b)(6) Dep. 238:12-18. *See also* Exh. 596, Mar. 25, 2019 Legislation and Litigation presentation, State-Defendants-00080648, at - 00080654 (stating that HAVA Verification checks “First Name, Last Name, Last 4 of SSN, DOB, driver’s license number, and citizenship”); *but see* Exh. 26, Dec. 11, 2019 R. Germany Dep. 143:24-144:23 (SOS General Counsel Ryan Germany: “My understanding at the time was the match that DDS used only used the first letter of the first name . . . I was under the impression that that’s how the process worked . . . We learned at some point that . . . they actually were matching the entire first name, and we asked them to change it to just do first letter.”).

417. According to Harvey, a name with an extra space would create a non-match when it went to DDS: “[I]f DDS didn’t enter it with the same – exact same set, with or without a hyphen or space or something like that, it could not match.” Exh. 23, Aug. 16, 2019 SOS 30(b)(6) Dep. 244:1-16; *but see* Exh. 26, Dec. 11, 2019 R. Germany Dep. 145:22-146:18 (Germany was “not sure” how an applicant would be treated if they had filled out the application with a hyphenated last name

but DDS showed the name as non-hyphenated), *id.* 146:19-22 (testifying that he was “not sure” how a double last name, non-hyphenated, would be treated).

418. According to analysis by Plaintiffs’ expert, individuals can be flagged for a verification failure even if the failure results from “a minor mistake on a registration form, such as a one-character difference in spelling or spacing in a name, an apostrophe, a misplaced hyphen or a typographical error; errors made by Georgia election officials manually entering information from paper registration forms; incorrect data in the verification files, such as outdated citizenship or name data in Georgia DDS or SSA files; [or] differences in data for the same individual in voter registration, DDS, or Social Security Administration files” Expert Report of K. Mayer, ECF No. 238 at 6.

419. If an individual does not have a driver’s license, then the system will run a match with the SSA using the last four digits of the individual’s Social Security number. Exh. 26, Dec. 11, 2019 R. Germany Dep. 90:18-24.

420. The error rates for the match process with the SSA are high. Exh. 26, Dec. 11, 2019 R. Germany Dep. 91:6-17 (testifying that, “I think the error rates I’ve seen are 20 or 30 percent, so it seems pretty ridiculous.”).

421. Prior to H.B. 316, applicants who failed the verification process were placed in “Pending” status. Exh. 125, State-Defendants-00127461, -00127476. *See also* Expert Report of P. McCrary, ECF No. 339 at 65.

422. Applicants would receive a notification letter, triggering a 40-day clock to provide the necessary documentation or have their registrations cancelled. Exh. 125, State-Defendants-00127461, -00127479. *See also* Expert Report of P. McCrary, ECF No. 339 at 65-66.

423. In 2017, the SOS entered into a settlement agreement to resolve a suit challenging the Exact Match Policy. Expert Report of P. McCrary, ECF No. 339 at 78.

424. Under the agreement, voter registration applications that failed to match DDS or SSA records would be placed in pending status *without* an expiration date, regardless of whether the non-match related to DDS, SSA, or citizenship. Expert Report of P. McCrary, ECF No. 339 at 79-80; *see also* Harvey Decl. ¶ 6 in *Georgia Coalition v. Kemp*, No. 18-cv-04727, ECF No. 22; Exh. 858, Feb. 23, 2017, Official Election Bulletin, State-Defendants-00340038.

425. The state also agreed to send certain cancelled applications back through the match process. Expert Report of P. McCrary, ECF No. 339 at 80. *See*

also Exh. 858, Feb. 23, 2017, Official Election Bulletin, State-Defendants-00340038.

426. In 2017, shortly after this settlement, Georgia enacted a bill, H.B. 268. H.B. 268 did not codify the SOS’s Exact Match Policy. Instead, it provided that verification of registration applicants’ information could happen in one of two ways: (1) the driver’s license number or last four digits of the social security number could be matched against DDS or SSA files; or (2) the applicant could provide sufficient evidence to the board of registrars to verify the applicant’s identity. O.C.G.A. § 21-2-220.1 (Jul. 1, 2017).

427. H.B. 268 provided that applicants whose information was not verified would be placed in pending status and would be allowed to vote if they provided identification on or before Election Day, but that their registration would be rejected if they did not correct the verification error within 26 months. *See* O.C.G.A. § 21-2-220.1 (Jul. 1, 2017).

428. The SOS marked applicants in pending status on the electronic poll book at every precinct with either a “V”—indicating that a non-match resulted from information *other* than citizenship status—or an “X”—indicating a non-match on the basis of citizenship. Expert Report of P. McCrary, ECF No. 339 at

83; Exh. 130, Georgia HAVA Verification presentation, GA00780351, at -00780367.

429. Individuals flagged as a “V” were supposed to be able to cast a regular ballot if they produced photo identification to a poll worker, *see* Exh. 26, Dec. 11, 2019 R. Germany Dep. 98:7-10, whereas individuals flagged as an “X” as potential non-citizens could not cast a regular ballot unless they presented proof of citizenship to the satisfaction of a deputy registrar. Expert Report of P. McCrary, ECF No. 339 at 84. *See also* Exh. 130, Georgia HAVA Verification presentation, GA00780351, at -00780367.

430. In October 2018, voting rights organizations filed suit against the implementation of this new law and moved for emergency relief. Expert Report of P. McCrary, ECF No. 339 at 82. *See Georgia Coal. for People’s Agenda, Inc. v. Kemp*, 347 F. Supp. 3d 1251 (N.D. Ga. 2018).

431. The SOS maintained in that suit that voters in pending status due to citizenship had five options to vote, including presenting proof of citizenship to a poll manager or, after offering proof of citizenship, casting a provisional ballot that would count as a regular vote. *Georgia Coal. for People’s Agenda, Inc. v. Kemp*, 347 F. Supp. 3d 1251, 1261-62 (N.D. Ga. 2018). But the court found the evidence before it “contradict[ed] Defendant’s position that the five (5) Options to prove

citizenship and vote in the upcoming election [were] being implemented.” *Id.* at 1262-63.

432. The court noted the SOS provided inadequate training to county officials and poll workers about the citizenship verification process, stating:

First, the October 23 Memorandum [outlining the five options] was simply posted to an online bulletin board for election officials, where, according to Mr. Harvey, county election and registration officials regularly communicate regarding election matters, but it was not sent directly to anyone. Second, the Georgia Poll Worker Manual is incomplete, leaving out Options 3 and 4 for voting and leaving out information about how to convert a provisional ballot in Option 5 into a non-provisional ballot. Ga. Poll Worker Manual (2018 ed.) at 42 [Doc. 17-9]. This indicates a lack of training to poll workers about the citizenship verification process. Finally, Defendant's website titled, “Information for Pending Voters,” merely says that an individual in “pending status” due to citizenship may “show acceptable proof of citizenship when you go to vote or when you request an absentee ballot.” The site further provides that to specifically vote in the November 6, 2018 election, the individual will need to show proof of citizenship to a deputy registrar. This confusing information does not match the five (5) Options Defendant has presented to the Court as to how these individuals can vote on Election Day.

Kemp, 347 F. Supp. 3d at 1263.

433. The court ordered the state to allow individuals placed in pending status due to citizenship to vote if they furnished proof of citizenship to deputy registrars *or* poll managers. *Kemp*, 347 F. Supp. 3d at 1269; *see also* Expert Report of P. McCrary, ECF No. 339 at 86, 90; Exh. 223, ORR-Lumpkin County-003181, at 3869-3871, 3874-3875.

iii. Exact Match Post-H.B. 316

434. In 2019, the Georgia General Assembly enacted H.B. 316. H.B. 316 revised O.C.G.A. § 21-2-220.1 to provide that in cases of an inexact match, “the applicant shall nevertheless be registered to vote but shall be required to produce proof of his or her identity . . . at or before the time that such applicant requests a ballot for the first time.” O.C.G.A. § 21-2-220.1.

435. H.B. 316 did not change the citizenship verification and identification requirements. *See* Exh. 131, June 26, 2019 OEB, State-Defendants -00007766 (stating, “The citizenship verification and identification requirements remain unchanged”).

436. Since April 2, 2019, registrants who fail the verification process are either placed on the active rolls with an “MIDR” notation (for “Missing ID Required”), or placed in pending status and not added to the voter rolls if they are flagged as potential non-citizens. Exh. 26, Dec. 11, 2019 R. Germany Dep. 123:4-20; Exh. 23, Aug. 16, 2019 SOS 30(b)(6) Dep. 243:17-24; Exh. 131, April 3, 2019 election bulletin, State-Defendants-00007501, at 305; *see also* Expert Report of K. Mayer, ECF No. 238 at 5-6.

437. Ryan Germany stated that the result of being placed in Active-MIDR status is that “you’ve got to come with ID and then you can vote.” Exh. 26, Dec. 11, 2019 R. Germany Dep. 123:18-124:5.

438. Absentee ballots can be rejected on the basis of “MIDR-ID not provided,” and voters can be forced to vote a provisional ballot if they are missing proof of citizenship. Exh. 775, Nov. 26, 2019 J. Hallman email, State-Defendants-00287712; Exh. 776, List of Absentee Ballot Rejection Reasons, State-Defendants-00287713.

B. The SOS’s Exact Match Process Burdens Eligible Voters

i. The Exact Match Citizenship Match Process Erroneously Flags Eligible Voters as Non-Citizens

439. Plaintiffs’ expert Kenneth Mayer is “certain that the verification process imposes a burden on eligible individuals by incorrectly flagging citizens as noncitizens” Expert Report of K. Mayer, ECF No. 238 at 7. Of the nearly 460,000 voting-age naturalized citizens in Georgia in 2017, “over 80% . . . were members of minority groups.” *Id.* at 4, 22.

440. Lawfully present individuals are eligible for Georgia driver’s licenses regardless of citizenship status and people are not required to update their citizenship information with DDS. Mayer Expert Rep. at 4. As a result, newly naturalized citizens can continue to be listed in DDS’s records as non-citizens.

Exh. 26, Dec. 11, 2019 R. Germany Dep. 125:11-23 (testifying that, “the DDS record may well show that [a newly naturalized citizen] ha[s] a driver’s license but [is]n’t a citizen”); Mayer Expert Rep. at 4.

441. Ryan Germany has acknowledged that DDS will flag naturalized citizens as a non-match for citizenship in some circumstances, and that documentation should resolve the problem but he does not know how the process takes place. Exh. 26, Dec. 11, 2019 R. Germany Dep. 125:6-127:18.

442. In response to litigation regarding the citizenship match process, in October 2018, Kevin Rayburn contacted Polk, Cobb, DeKalb, Banks, Spalding, and Gwinnett counties about voters who appeared to be improperly placed in pending status despite having provided proof of citizenship with their applications. *See* Exh. 898, Oct. 27, 2018 K. Rayburn email, State-Defendants-00579708 (sent to Polk county officials); Exh. 900, Oct. 27, 2018 K. Rayburn email, State-Defendants-00579768 (sent to Cobb county officials); Exh. 903, Oct. 27, 2018 K. Rayburn email, State-Defendants-00579854 (sent to DeKalb county officials); Exh. 899, Oct. 27, 2018 K. Rayburn email, State-Defendants-00579719 (sent to Banks county officials); Exh. 896, Oct. 27, 2018 K. Rayburn email, State-Defendants-00579655 (sent to Spalding county officials); Exh. 902, Oct. 27, 2018 K. Rayburn email, State-Defendants-00579846 (sent to Gwinnett county officials).

443. In 2018, Eduardo Antonio Feliz Minaya was placed in pending status and directed to produce evidence of citizenship, even though he is a U.S. citizen. Gwinnett County Board of Registrars letter and E. Feliz Minaya passport scan, Exh. 773, State-Defendants-00287385. *See also* Exh. 772, Oct. 15, 2018 D. Stewart email, State-Defendants-00287383 (explaining that Mr. Minaya was “very excited to vote”).

444. In 2018, Vanessa Alva was erroneously placed in pending status for citizenship verification, even though she had become a U.S. citizen prior to registering to vote. Exh. 480, Nov. 4, 2018 J. Houk email, GA01225647 at - 01225653-01225654.

445. In 2016, voter Gabrielle Marisa Hernandez was left in pending status due to citizenship verification even though she submitted her passport when she applied. Exh. 986, Nov. 4, 2016 J. Houk email, State-Defendants-00892523, at - 00892523-00892524. After an attorney contacted the State, Hernandez was moved to active status. *Id.*

446. In 2018, U.S. citizen Kia Marlene Carter was “shocked” to be informed at the polls on Election Day that she had been flagged as a non-citizen. Exh. 70, Decl. of K. Carter ¶ 4.

447. In 2018, U.S. citizen Phoebe Rachael Einzig-Roth was informed at the polls on Election Day that she had been flagged as a non-citizen. Exh. 69, Decl. of P. Einzig-Roth ¶ 4.

448. In December 2018, an SOS employee acknowledged that registrars did not have a way to indicate that new citizens had provided proof of citizenship documents with their applications. Exh. 761, Dec. 18, 2018 IT ticket, State-Defendants-00269285, at -00269286. The result was that “a number of new citizens . . . fail the citizenship check with DDS when going through the verification process.” *Id.* at -00269285. *See also* Exh. 560, Jan. 2, 2019 S. Shetty email, State-Defendants-00052240, at -00052241.

449. Registrars could then override that failure, but if a registrar failed to complete the check then the individual would be incorrectly marked as a non-citizen. Exh. 761, Dec. 18, 2018 IT ticket, State-Defendants-00269285, at -00269286.

450. Although the SOS announced a change to this process in January of 2019 to permit proof of citizenship entered into a voter record to “be held and override” the DDS check, Exh. 633, Feb. 21, 2019 Election Forum training presentation, State-Defendants-00096460, at -00096463, *see also* Exh. 223, ORR-Lumpkin County-003181, at 3853-3854, the SOS’s revised process still requires

individuals flagged as non-citizens to provide documentary proof of citizenship to override the non-match and relies on that proof being entered into the applicant's record, Exh. 633, Feb. 21, 2019 Election Forum Training presentation, State-Defendants-00096460, at -00096463.

ii. The Exact Match Process Erroneously Flags Eligible Voters as Non-Matches Because of Immaterial Differences Between Records

451. Because the Exact Match process seeks to link data sets without a unique identifier appearing in both data sets, the linkage is likely to produce false non-matches, “particularly when alphanumeric data are used, and even more . . . when *names* are used.” Expert Report of K. Mayer, ECF No. 238 at 12; *see also id.* at 7 (“I am certain that the verification process imposes a burden on eligible individuals by . . . failing to verify individuals because of false non-matches into DDS or SSA files, or errors in the data entry process.”).

452. Mayer demonstrated that exact matching produces false non-matches by comparing two pending voter files. Expert Report of K. Mayer, ECF No. 238 at 14-15. Even in databases based on the *same* underlying data, there were still 19 non-matching names (out of 5,543), 89% of which belonged to minority groups. *Id.* at 15. Exact matching “will incorrectly result in registrants not matching into

DDS and SSA data because of minor differences in spelling, formatting, or errors.”

Id. at 13.

453. For instance, the SOS’s Exact Match process placed a voter in pending status because the voter’s registration used the name “Smith-Jones” and the voter’s driver’s license and certificate of naturalization used the name “Smith Jones.” Exh. 446, Email from Morgan County Official to SOS re Hyphenated Last Name, GA00777539.

454. A voter failed verification twice in Townes County because her first name had two different spellings in the systems (Kathlynn and Katlynn). Exh. 765, May 2, 2018 H. Smith email, State-Defendants-00279677.

455. A voter in Fulton County was rejected twice because the system could not accommodate her hyphenated last name. Exh. 826, May 21, 2018 Elections Complaint from J. Kohut-Bartels, State-Defendants-00331993.

456. Voter Casey Brooks was placed in pending status for SSN verification because his year of birth was incorrectly listed in eNet as 1997 instead of 1970. Exh. 441, Sept. 26, 2018 K. Rayburn email, GA00768848.

457. Chris Harvey acknowledged in an internal email in 2019 that failures to verify “could be caused by erratic handwriting on a voter registration application

or by a clerk committing a typing error when entering information.” Exh. 725, June 25, 2019 C. Harvey email, State-Defendants-00223441.

458. Voter Ra’Shad Johnson completed a paper application in 2016 and the county entered his registration with the first name “Reshed,” which resulted in a non-match with DDS and Mr. Johnson’s application being placed in pending status. Exh. 450, Oct. 16, 2018 K. Rayburn email, GA00780564, at -00780564.

459. According to Kevin Rayburn, it was “likely the county just misinterpreted” Mr. Johnson’s “a’s as e’s.” Exh. 450, Oct. 16, 2018 K. Rayburn email, GA00780564, at -00780564.

460. Voter Franklin Javier Viloría was improperly placed in pending status because of a data entry error—Gwinnett County had entered his name as “Viloriq.” Exh. 480, Nov. 5, 2018 B. Sells, email GA01225647, at-01225649, -01225651.

461. Marsha Appling-Nunez had a voting record flagged for pending status when she moved from one county to another because she was listed as “Ppling-Nunez” instead of “Appling-Nunez”—an error she is sure she did not make. Exh. 917, Nov. 20, 2018 S. Levine email, State-Defendants-00738881, at -00738881-82; *see also* Exh. 918, Nov. 20, 2018 C. Broce email, State-Defendants-00738960, at -00738960 (Candice Broce stating that Ms. Appling-Nunez had both a “pending” and an “active” voter record “at the same time”).

462. Voters are frequently placed in MIDR or IDR status incorrectly simply because of data entry or other processing errors. *See* Exh. 444, Mar. 16, 2018 IT tickets, GA00769673, Exh. 118, GA00777881 (documenting a fix “so that voters that pass verification through the [DDS] or [SSA] are automatically updated to remove the MIDR status” and explaining that a “data clean-up” would be required); Exh. 122, May 7, 2018 S. Weaver email, State-Defendants-00310483 (Chattooga County notifying the SOS Elections Division that the county had sixteen 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”); Exh. 760, Dec. 12, 2018 J. Hallman email, State-Defendants-00269153, at -00269154 (SOS employee stating that voter “was previously in MIDR status when they legally should not have been” because the system had been marking individuals incorrectly); Exh. 430, July 11, 2018 K. Rayburn email, GA00764166; Exh. 894, July 3, 2018 K. Rayburn email, State-Defendants-00577970 (identifying a Taylor County voter who had been improperly rejected due to a non-matching SSN, even though the voter’s record had verified with DDS).

463. Voters also frequently *remain* in these statuses incorrectly. *See* Exh. 652, N. Scott Meyer voter registration form, State-Defendants-00155255; Exh.

132, Oct. 18, 2016 B. Kish email, State-Defendants-00155254; Exh. 650, Dec. 23, 2016 J. Hallman email, State-Defendants-00154768 (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”); Exh. 649, Dec. 23, 2016 IT ticket, State-Defendants-00154670 (stating “[t]he ExpressPoll In process needs to be changed so that it will move voters out of MIDR status automatically when an MIDR voter received credit for voting”); Exh. 642, 2014 Election Update, State-Defendants-00128752 (describing 2014 DDS verification failure that left applicants in “pending verify” status); Exh. 876, Mar. 21, 2018 B. Wile email, State-Defendants-00468517 (Gwinnett County was unable to move twenty-seven voters from “pending missing information” status to “active” status, and the system was instead putting the voters in “pending verification” status); Exh. 448, May 2, 2018 IT ticket, GA00777637, at GA00777638 (stating “[t]here have been several instances when we resolved an issue on a record that initially failed verification only to have that same record reappear with the same issue as if we hadn’t resolved it”).

iii. The SOS Does Not Require Counties to Double Check for Data Entry Errors When a Record is Flagged as a Non-Match.

464. The SOS’s office has stated it is a “Best Practice[] and Reminder[]” for counties to “[a]udit all records that fail for identifiers for data entry accuracy.”

Exh. 495, Apr. 18, 2019 Election Forum training presentation, State-Defendants-00008732 at -00008911 (Dec. 11, 2019 R. Germany Dep. Ex. 116); *see also* Exh. 21, Dec. 5, 2019 C. Harvey Dep. 192:15-19 (“Q: Now, this says this is a best practice. Do you think of a best practice as a required practice? A: No. I think a required practice should be identified as a required practice.”).

465. The SOS’s office does not require the counties to observe this “best practice.” *See* Exh. 21, Dec. 5, 2019 C. Harvey Dep. 192:15-19 (“Q: Now, this says this is a best practice. Do you think of a best practice as a required practice? A: No. I think a required practice should be identified as a required practice.”). And, although the SOS says counties should check the accuracy of their data entry, its training materials make clear that, “[h]ow often this audit is conducted is based on your office’s workload.” Exh. 495, Apr. 18, 2019 Election Forum training presentation, State-Defendants-00008732 at -00008911 (Dec. 11, 2019 R. Germany Dep. Ex. 116); *see also* Exh. 21, Dec. 5, 2019 C. Harvey Dep. 192:20-193:12 (Q: Because this certainly as a best practice leaves the possibility that, depending on a particular county’s workload, somebody’s registration application is going to be treated differently if it comes back with a non-match; correct? A: I could see that being a concern.”).

466. Ryan Germany also acknowledged the SOS's office does not mandate audits, and certainly not of any particular frequency. Exh. 26, Dec. 11, 2019 R. Germany Dep. 128:1-129:16 (“Q. The final bullet says, How often this audit is conducted is based on your office’s workload but should be a priority. What does that mean to you? A. To me, it means exactly what it says”); *id.* 130:8-14 (“Q. But the Secretary of State, in providing its training to the counties, is not requiring that this be done, are they? A. I don’t think we are.”).

467. Harvey testified in August 2019 that county election officials might or might not correct typographical errors in voter registrations that fail the verification process. Exh. 23, Aug. 16, 2019 SOS 30(b)(6) Dep. 241:1-242:3 (testifying that “some counties would...go back and make sure that they had entered the information correctly into the system” and if they notice a mistake “they could say...I typed an ‘O’ instead of an ‘A,’ and [county officials] could send it back”), *id.* 242:24-243:24 (testifying that “they could go back and say, okay, . . . Now that I look at the application again, that could be an ‘I’”); *see also id.* 244:22-245:8 (testifying that for an obvious spacing or capitalization problem that caused a non-match, the county “could go back” and correct the issue).

468. Harvey testified in December 2019 that H.B. 316 created a requirement for counties to “go back and make sure that you’ve entered the

information correctly, double-check your work” as “a requirement under the law.” Exh. 21, Dec. 5, 2019 C. Harvey Dep. 190:5-18. *See id.* 190:19-24 (“it does give them the obligation to make sure that they’ve double-checked their work”). But a month later, testifying as the SOS 30(b)(6) representative, he was shown H.B. 316 and acknowledged it contains no such requirement. Exh. 25, Jan. 6, 2020 SOS 30(b)(6) Dep. 79:18-80:21.

469. In January 2020, Harvey testified that he “believe[d]” “some of [the SOS’s] conference presentations . . . encourage[.]” counties to double-check their data entry when an application fails to match DDS or SSA records. Exh. 25, Jan. 6, 2020 SOS 30(b)(6) Dep. 80:22-81:3.

470. When asked if the SOS has made any changes to its policies or practices so that counties are now *required* to double-check their data entry in the event of a non-match, Harvey responded, in his capacity as the SOS’s 30(b)(6) witness, “I don’t believe so.” Exh. 25, Jan. 6, 2020 SOS 30(b)(6) Dep. 81:9-13. Harvey stated he did not know whether the SOS anticipated making any changes to require such double-checking by the counties. *Id.* 81:14-18.

471. In 2017, a Morgan County official requested guidance from the SOS on how to handle a voter with a hyphenated last name who had been placed in “pending status” because of a non-match between the names “Smith Jones” and

“Smith-Jones.” Exh. 446, May 11, 2017 J. Doran email, GA00777539, at -00777539.

472. The Morgan County official asked whether they needed to send a letter to the voter informing him of the non-match or instead could make changes directly to the voter’s record so that the names matched. Exh. 446, May 11, 2017 J. Doran email, GA00777539, at -00777539.

473. One of the county liaisons in the Secretary of State’s office, Ameika Pitts, instructed the county “this is a circumstance that is a call of the county” whether to send the voter a letter or to verify using documents. Exh. 446, May 12, 2017 A. Pitts email, GA00777539 (Aug. 16, 2019 SOS 30(b)(6) Dep. Ex. 57).

474. Harvey testified that in such a situation the county could manually override the non-match if they received valid documents, and that the voter otherwise could verify at the polls. Exh. 23, Dec. 5, 2019 SOS Dep. 196:4-197:13.

475. Ryan Germany testified that Pitts’ advice was “appropriate” even though it would be “hypertechnical” to reject a voter because of a missing hyphen. Exh. 26, Dec. 11, 2019 R. Germany Dep. 153:18-154:22.

476. In other words, and underscoring the lack of uniformity in the counties’ application of Exact Match, the county either could have overridden the non-match and approved the applicant’s voter registration or could have left the

non-match as it was, resulting in the applicant being placed in pending status. Exh. 446, May 12, 2017 A. Pitts email, GA00777539 (Aug. 16, 2019 SOS 30(b)(6) Dep. Ex. 57).⁴

477. Rayburn testified that it “was part of [county officials’] training, for them to audit themselves and double-check” when a record failed the verification process. Exh. 75, Dec. 6, 2019 K. Rayburn Dep. 193:21-194:8; *see also id.* 194:23-195-5 (“if someone at the time fails the verification process, they should go back to make sure it wasn’t due to the clerical error of the county staff, if my recollection of what the point we were trying to get across”).

478. Rayburn could not remember whether the SOS’s office did anything to see if counties were actually undertaking such audits with regard to non-matches unrelated to citizenship. Exh. 75, Dec. 6, 2019 K. Rayburn Dep. 195:6-18.

479. In September of 2018, John Hallman told a Columbia County elections official that there was “not much else you need to do” apart from printing the automatically generated letters and updating the voter information if the voter wrote back. Exh. 436, Sept. 7, 2018 J. Hallman email, GA00765296, at -00765297.

⁴ The applicant would have been placed in pending status, not MIDR status, because this occurred prior to HB 316.

Hallman added that it is “a *best practice* to double check to make sure that you did not make a typo before sending out any letters.” *Id.* (emphasis added).

480. The SOS’s training materials sometimes fail even to mention the “best practice.” On April 18, 2019, the SOS held a training webinar that stated that e-Net was being updated for voters who failed verification. Exh. 641, April 18, 2019 Election Forum training presentation, State-Defendants-00128541, at -00128547. The presentation described the verification process without stating that counties should double-check that there are no typos or errors before sending the MIDR letter. *Id.*

481. Other training materials do refer to the “best practice,” but do not thereby establish a requirement. On June 27, in a training webinar, the SOS’s office did not state that counties were required to double check data entry for typos before mailing a MIDR letter. *See* Exh. 495, June 27, 2019 Election Forum training presentation, State-Defendants-00008732, at -00008899 (“If no ID was provided and the record fails the verification process, the record will be flagged as Missing Identification Required (MIDR). The system generated MIDR letter at the Batch print queue are required to be mailed to the voters in a timely manner.”).

482. This presentation stated that auditing of records for data entry accuracy was a “best practice.” Exh. 495, June 27, 2019 Election Forum training presentation, State-Defendants-00008732, at -00008911.

iv. Voters Flagged as Non-Matches Experience Burdens in Voting.

a. SOS and County Election Officials Do Not Understand How The Verification Process Works.

483. In response to a 2017 election bulletin, a Brooks County official asked for clarification from Chris Harvey on “appropriate verification documents” that an applicant in “pending” status could use to update the applicant’s status to “active.” *See* Exh. 128, Feb. 23, 2017 Official Election Bulletin, State-Defendants-00177398, at -00177398; Exh. 674, Feb. 23, 2017 K. Collins email, State-Defendants-00165968, at -00165969.

484. The official said that “[i]f a voter registration fails to clear DDS because of a name problem that’s one thing,” but he asked whether a voter who fails SSA verification needs to have proper SSA documents “to clear those problems.” Exh. 674, Feb. 23, 2017 K. Collins email, State-Defendants-00165968, at -00165969

485. Chris Harvey forwarded the email to SOS employee Melanie Frechette, a liaison lead for local officials, with a note that, “I think the answer to

his question is ‘Yes,’ but it concerns me that he would even have to ask it.” Exh. 674, Feb. 23, 2017 K. Collins email, State-Defendants-00165968, at -00165968.

486. Frechette responded, “I am not sure why he has a question” and added that the recent announcements had not changed “[t]he providing of information and actual documents and updating of the voter’s identifiers to run back through the Verification process.” Exh. 674, Feb. 23, 2017 K. Collins email, State-Defendants-00165968, at -00165968.

487. Harvey replied, “But to clarify, [t]he people are not even run back through verification if they show up with good ID.” Exh. 674, Feb. 23, 2017 K. Collins email, State-Defendants-00165968, at -00165968.

488. Frechette then responded: “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?” Exh. 129, Feb. 24, 2017 M. Frechette email, State-Defendants-00165978, at -00165978. Frechette added, “I think we need to chat for a minute” before calling the county official back. *Id.* at -00165968.

489. In October 2018, an Oconee County official wrote to SOS employee John Hallman to ask how to update a voter’s status from “ID Required” (IDR) in the context of absentee voting. Exh. 756, Oct. 17, 2018 J. Stone email, State-

Defendants-00265844. The official explained that a voter had requested an absentee ballot and the county had sent her a ballot and reminded the voter that she needed to provide ID because she was in IDR status. *Id.* When the voter provided ID, the official reported that she was not able to change the voter's status to no ID required. *Id.*

490. In July 2018, a Gwinnett County official asked Melanie Frechette whether voters can establish citizenship with a driver's license. Exh. 786, July 25, 2018 M. Krzak email, State-Defendants-00310892. Frechette responded: "A Georgia Driver's license is not on the list of documents or ids that can be presented as proof of citizenship." Exh. 879, July 26, 2018 M. Frechette email, State-Defendants-00469120. But an Official Election Bulletin issued on October 23, 2018 stated, "A Georgia driver's license or ID card is proof of citizenship unless it says LIMITED-TERM." Exh. 910, State-Defendants-00729096, at -00729098.

491. Plaintiffs' expert Kenneth Mayer observed, "officials could not fully describe the matching process used in verification, and their description of how registrants were moved from pending to active status post-HB 316 did not always match the data in the pending and active files." Expert Report of K. Mayer, ECF No. 238 at 31.

492. According to Mayer, “The verification process is opaque, subject to a wide exercise of discretion by county registrars, and not uniformly implemented. Staff from the Secretary of State’s office did not know all of the details, and their description of the process did not always match the data in the pending or active voter files. The evidence suggests strongly that election officials do not know how the verification process actually operates in practice.” Expert Report of K. Mayer, ECF No. 238 at 4.

493. In 2017, the Randolph County Elections Supervisor wrote to Melanie Frechette: “I have 56 pending DDS verifications. They have been posted on the viewing list for a long time. . . . What needs to be done?” Exh. 709, July 31, 2017 S. Thompson email, State-Defendants-00183732.

494. County officials have contacted the SOS for assistance when an applicant does not have a driver’s license or a social security number. *See* Exh. 804, Oct. 30, 2019 K. Reaves email, State-Defendants-00324724 (questions from Cobb County regarding whether the officials needed to seek verification from voters whom the system had placed in active status). But as documented above, the SOS itself does not understand the verification requirements in any uniform manner or detail, much less consistently instruct the county officials or poll workers.

b. Voters Flagged as Non-citizens Experience Burdens Including Disenfranchisement.

495. Applicants in pending status for citizenship must produce documentary proof of citizenship to become an “active voter,” and their registration will be rejected if they cannot do so within 26 months. Exh. 23, Aug. 16, 2019 Harvey Dep. 242:24-243:24; Exh. 30, State-Defendants-00095893, at - 00095898.

496. In January 2020, over 3,000 voter registrations were in pending status due to a citizenship flag. Expert Report of K. Mayer, ECF No. 238 at 21. For the parallel 2014-2019 pending file, over 99% of noncitizen flags were generated using DDS data. *Id.* at 21-22.

i. Burdens Prior to Appearing at the Polls

497. “Of the 2,671 registrants who were pending in July 2019 because of a noncitizenship flag, only 630—23.6%—had been restored to active status by January 2020.” Expert Report of K. Mayer, ECF No. 238 at 24.

498. “[T]he battle faced by persons whose registration was cancelled or pending carries additional burdens . . . In addition to the need for sufficient education to understand the application form, trying to secure approval of their voter registration requires rejected applicants to ‘overcome a series of unduly

burdensome and arbitrary hurdles.” Expert Report of P. McCrary, ECF No. 339 at 74.

499. First, each failed applicant must find “out just why his or her registration application was flagged as a non-match—and how to cure the defect.” Expert Report of P. McCrary, ECF No. 339 at 74.

500. Applicants required to provide proof of citizenship may be left without notice, sometimes for months. *See* Exh. 651, Oct. 17, 2016 G. Saleh email, State-Defendants-00155223 (“I provided a copy of my citizenship [documents] and have not heard on the status of my registration. It has been [a] few months . . . I am at odds as to what may have gone wrong.”).

501. For instance, when Vanessa Alva registered to vote and requested an absentee ballot around October 1, 2018, she was placed in pending status for citizenship. Exh. 480, Nov. 4, 2018 J. Houk email, GA01225647, at-01225654.

502. The registrar’s office then cancelled her application for an absentee ballot and informed her that she was not registered to vote in Gwinnett County. Exh. 480, Nov. 4, 2018 J. Houk email, GA01225647, at-01225654.

503. After Ms. Alva contacted the registrar on November 2nd, the registrar informed her verbally that she would have to produce proof of citizenship, but then sent her a pending applicant notice letter informing her that she was in pending

status for a failure to match DDS records and would have to produce photo ID to vote (*not* that she would need to produce proof of citizenship). Exh. 480, Nov. 4, 2018 J. Houk email, GA01225647, at-01225654.

504. After a lawyer contacted the county, Gwinnett claimed that it had “already resolved the issues outlined through its normal processes” and that Ms. Alva’s citizenship documentation had been used to update Ms. Alva’s records. Exh. 480, Nov. 4, 2018 J. Houk email, GA01225647, at -01225652.

505. The next day, however, Ms. Alva received an email from Gwinnett advising her that she was in pending status due to DDS mismatch. Exh. 480, Nov. 4, 2018 J. Houk email, GA01225647, at -01225650.

506. Only after Ms. Alva’s lawyer again contacted Gwinnett did they confirm that Ms. Alva no longer needed to present any additional information. Exh. 480, Nov. 4, 2018 J. Houk email, GA01225647, at -01225648.

507. Still, two days later, Ms. Alva’s status displayed as “pending” on the My Voter Page and her absentee ballot was listed as in “challenged” status for DDS and Citizenship verification. Exh. 71, Nov. 7, 2018 J. Houk email, GA01225644, at -01225644-01225645. *See also* Exh. 481, V. Alva My Voter Page, GA01225659.

508. Gokulakrishnan Parthasarathy became a naturalized citizen on August 23, 2019, and registered to vote online. Exh. 72, Nov. 5, 2019 Election Web Mail Alerts email, State-Defendants-00742577.

509. When his status still did not display as “active” by November 5, 2019, he contacted the Secretary of State. Exh. 72, Nov. 5, 2019 Election Web Mail Alerts email, State-Defendants-00742577.

510. Kevin Rayburn responded that Fulton County had processed Parathasarathy’s 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, Nov. 5, 2019 Election Web Mail Alerts email, State-Defendants-00742577 (emphasis added).

511. Subsequent emails between Parathasarathy and Rayburn demonstrate that the “attached letter” requested that Parathasarathy supply proof of citizenship. Exh. 73, Nov. 7, 2019 G. Parathasarathy email, State-Defendants-00743503, at - 00743503.

ii. Burdens at the Polls

512. On Election Day in 2018, Phoebe Rachael Einzig-Roth went to her polling place in DeKalb County. Exh. 69, Decl. of P. Einzig-Roth Delc. ¶ 4a. She

was told by a poll worker that she could not vote with a regular ballot because the poll worker could not confirm that she was a U.S. citizen. *Id.*

513. Ms. Einzig-Roth, who was born in New York, produced a passport card as proof of citizenship. Exh. 69, P. Einzig-Roth Decl. ¶¶ 4a, b. She also produced her driver's license and school ID card to prove her identity. *Id.*

514. Ms. Einzig-Roth was then given a provisional ballot to vote. Exh. 69, P. Einzig-Roth Decl. ¶ 4c. She was assured it would be counted, yet she was not provided with a receipt or told that she needed to follow up on the ballot. *Id.*

515. Three days later, on November 9, 2018, Ms. Einzig-Roth went to the DeKalb County voter registration office to confirm her ballot. Exh. 69, P. Einzig-Roth Decl. ¶ 4d. The employee working told Ms. Einzig-Roth that she could not help her because Ms. Einzig-Roth did not have the documents or receipt that the poll workers were supposed to give to her when she completed the provisional ballot. *Id.*

516. On Election Day in 2018, Kia Carter arrived at the voter registration building with the intention of voting there, but she was told by an employee that she needed to vote at a different location. Exh. 70, K. Carter ¶¶ 4a-b. The employee used Ms. Carter's ID to find Ms. Carter's polling place. *Id.*

517. Ms. Carter arrived at the polling location the registration office directed her to, filled out the necessary information card, and gave her ID to the poll worker. Exh. 70, K. Carter Decl. ¶¶ 4b-c. After scanning Ms. Carter's ID, the poll worker told Ms. Carter she could not vote because "It says you are not a US Citizen." *Id.* ¶ 4c-d.

518. Ms. Carter was born in Virginia and previously voted in Georgia. Exh. 70, K. Carter Decl. ¶ 4e.

519. Ms. Carter then offered the poll workers her Social Security card, but was told it "won't work" because "that just has numbers on it." Exh. 70, K. Carter Decl. ¶ 4g.

520. Ms. Carter then went back to the voter registration office where she was told that she needed to get the issue fixed before the next election. Exh. 70, K. Carter Decl. ¶ 4i.

521. At this point, it was too late to vote. Exh. 70, K. Carter Decl. ¶ 4i. Ms. Carter was not able to vote and was not offered a provisional ballot. *Id.* ¶ 4j.

522. According to an SOS investigation summary, voter Tuba Ozgunes produced documents verifying her citizenship when she registered in June 2009. She voted in the 2010 and 2012 elections, but in the 2013 election was denied her right to vote because she was shown as a non-citizen. Despite objecting, Ozgunes

was not offered a provisional ballot. Exh. 519, Mar. 6, 2014 SOS investigations summary, State-Defendants-00032170, -00032174.

523. According to an SOS investigation summary, a voter was prevented from voting in the March 1, 2016 primary in Fulton County because of a citizenship non-match. The voter had been listed as a non-match for citizenship through the DDS verification process in 2014 and subsequently had her registration cancelled in February 2016. Exh. 526, Apr. 13, 2017, SOS investigations summary, State-Defendants-00034540, -00034545-00034546. The voter, “[t]hen believing” herself to be registered, “attempted to vote” in the 2016 primary and was found ineligible. *Id.* at -00034548. The voter subsequently verified her citizenship. *Id.* at -00034546.

524. According to an SOS investigation summary, voter Matthys Serfontein was prevented from voting in the March 1, 2016 primary in Fulton County because of a citizenship non-match. Exh. 528, June 15, 2016 SOS investigation summary, State-Defendants-00034606. Serfontein and his wife had received a request from the county for citizenship verification documents and had provided the requested documents. *Id.* at -00034609. The county failed to update Mr. Serfontein’s record, and when he attempted to vote he was told he was not an active voter and that he could only vote a provisional ballot. *Id.*

c. Voters Flagged for Reasons Other than Citizenship Experience Burdens in Voting

i. Burdens Prior to Appearing at the Polls

525. The notification process for voters who are flagged through Exact Match has been inadequate both pre- and post-H.B. 316. *See, e.g.*, Exh. 924, Dec. 27, 2018 K. Rayburn email, State-Defendants-00741926; Exh. 559, Aug. 6, 2019 K. Royston email, State-Defendants-00047371.

526. Before H.B. 316, many voters did not receive notice of their pending status. *See* Exh. 924, Dec. 27, 2018 K. Rayburn email, State-Defendants-00741926; Exh. 925, Aug. 3, 2018 pending status letter, State-Defendants-00741927 (Arundella Beeram submitted a registration form in July 2018 and had not received notice as of December 27, 2018, although the SOS said that a notice of pending status due to a date of birth non-match was mailed in August).

527. Individuals placed in pending status were often unsure of how to resolve the issue and experienced difficulty getting the information they needed. *See* Exh. 788, Oct. 22, 2018 T. Douglas email, State-Defendants-00312607 (reporting that a family member had been placed in pending status, “[t]he letter did not inform as to why,” and she needed to vote absentee but the absentee ballot application required a Georgia ID and her ID was a U.S. passport, not a state ID); Exh. 655, Oct. 26, 2016 C. McDonald email, State-Defendants-00156282

(registrant reporting that she had “heard nothing” after registering to vote, and SOS employee responding that her status was “Pending for Social Security Verification”).

528. Post-H.B. 316, the flaws in the notice process have continued. After counties mailed a number of letters to voters in pending status due to citizenship and in MIDR status, Gwinnett County reported receiving “several phone calls from residents stating that the individuals do not live at their address and/or have never lived at that address.” Exh. 559, Aug. 6, 2019 K. Royston email, State-Defendants-00047371, at -00047372.

529. When voters try to correct their statuses, voters can experience confusing communications from county officials. *See* Exh. 271, C. Thi Ashling Decl. ¶¶ 3d-e (describing conflicting information conveyed to Mrs. Ngoc Anh Thi Tran). *See also* Exh. 136, N. Tran Decl.

530. Jane Kohut-Bartels reported that she was dropped from the rolls, then tried unsuccessfully to re-register because her driver’s license does not have a hyphen in her last name. Exh. 826, May 21, 2018 J. Kohut-Bartels email, State-Defendants-00331993. She had “redone” her registration “to their specifications” twice but still had not heard back. *Id.*

531. Asia VanHeyningne wrote that she received a request to correct her social security number, submitted the required information on June 15, 2018, and had received no further communication as of July 9, 2018. Exh. 783, July 9, 2018 A. VanHeyningene email, State-Defendants-00309007, at -00309009.

532. The SOS initially directed Ms. VanHeyningne to the Fayette County Elections Office, but she responded that she had “called and emailed” the office previously and received no response. *Id.* at -00309008.

533. Only then did the SOS help Ms. VanHeyningen correct her information. *Id.* at -3009007; Exh. 785, July 11, 2018 M. Frechette email, State-Defendants-00310815.

ii. Burdens at the Polls

534. “Of the 3,672 MIDR pending registrants in July 2019, only 429—13%— had provided identification to registrars and were restored to active non-MIDR status by January 2020.” Expert Report of K. Mayer, ECF No. 238 at 24.

535. Chris Harvey testified that MIDR status does not trigger any additional process because all voters must offer a photo ID that qualifies under Georgia’s voter ID statute. Exh. 23, Aug. 16, 2019 SOS 30(b)(6) Dep. 235:2-22 (“So they’re made an active voter, they’re sent a precinct card, but they’re in what’s called MIDR status, which means they need to show ID”).

536. According to Mayer, however, claims by election officials that registrants in MIDR status will experience no difference in how they are treated at a polling place are likely incorrect because “It is possible, even likely, that voters, local election officials and poll workers may be confused about what a registrant in MIDR must do in order to vote.” Expert Report of K. Mayer, ECF No. 238 at 5.

537. The SOS materials repeatedly state that voters in MIDR status must provide “HAVA ID” to vote, but do not clarify how that ID differs from the regular ID voters must show at the polls. *See* Exh. 131, April 3, 2019 Official Election Bulletin, State-Defendants-00007501, at 305 (stating that voters that previously would have been in an “unverified” pending status will “now . . . go into ‘Active’ status with an MIDR flag (ID Required: YES) on their voter registration). These voters will get precinct cards and will be able to vote upon showing HAVA ID (which will remove the MIDR from the registration status).”). *See also* Exh. 720, August 2019 poll worker training video script, State-Defendants-00195340, at -00195341 (stating: “Remember the list of acceptable IRD ID to complete their registration is different that than [sic] photo ID to vote.”); O.C.G.A. § 21-2-417(c) (permitting first time voters who register by mail without ID to present several forms of non-photo ID—including a copy of a utility bill or a bank statement—when voting in person).

538. In terms of poll workers evaluating ID at the polls, Harvey testified that he thought, “it was clear” that “this was not a spelling contest where, you know, everything had to be exactly right.” Exh. 23, Aug. 16, 2019 SOS 30(b)(6) Dep. 247:4-21; *see also id.* 253:8-12 (“I think it’s a reasonable, reasonable person standard.”). He believed this was true of the policy in 2014 and 2016, as well as in 2018. *Id.* at 247:19-21. No such policy, however, is apparent from the documents Defendants have produced or from the SOS training materials, including the 2018 and 2020 Poll Worker Manuals. 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>.

539. Harvey said that if an individual “were to show up without identification that was . . . not essentially the same,” then the poll worker “may have to decide” whether or not to give the voter in MIDR status a provisional ballot. Exh. 23, Aug. 16, 2019 SOS 30(b)(6) Dep. 245:9-246:2.

540. Harvey said that IDs should be “substantially the same” and that “if they can confirm, verify their identity, that’s . . . what the poll workers are supposed to do.” Exh. 23, Aug. 16, 2019 SOS 30(b)(6) Dep. 245:9-246:8.

541. Harvey could not identify “the exact wording” that “has been given” to poll workers “or will be given [to] them” “as to where that line gets drawn.” Exh. 23, Aug. 16, 2019 SOS 30(b)(6) Dep. 246:9-25.

542. The SOS recognizes a risk that poll workers will apply an exact match standard to voters’ ID at the polls. Exh. 23, Aug. 16, 2019 SOS 30(b)(6) Dep. 245:9-246:25; Exh. 21, Dec. 5, 2019 SOS 30(b)(6) Dep. 202:22-203:13 (Q: I know that you have sent out O.E.B.’s in the past that have said, don’t apply “exact match” . . . [B]ut what’s told to the poll workers? . . . A: That’s a good question. . . . [T]he goal is to get that necessary information to pollworkers. Q: Do you know if that information is in the new 2019 poll worker manual? A: I don’t know.”). The risk is significant enough that the SOS sent an Official Election Bulletin in 2018 telling county officials that an exact match standard should not be applied to voter ID at the polls. Exh. 592, 2018 Official Election Bulletin, State-Defendants-00069565.

543. Official Election Bulletins, however, go only to county superintendents and registrars, not to poll workers, and the SOS has no way of knowing whether superintendents and registrars receive or read those bulletins or whether they relay the bulletin information to poll workers. *See supra* ¶ 432; Exh. 21, Dec. 5, 2019 C. Harvey Dep. 184:3-185:22.

544. Harvey was unsure of whether training for poll workers specifically included training to not require an exact match between voter identification and the information in e-Net, and he could not say whether upcoming trainings would address the issue. Exh. 21, Dec. 5, 2019 C. Harvey Dep. 201:2-202:7 (“Q. And is that training going to be...about the issue of poll workers not applying ‘exact’ match? A. I can’t say that it’s –I’m not doing the training . . . I don’t know that it’s scheduled to be addressed that granularly”). Harvey further testified that an instruction like that could be provided to the counties. *Id.* 202:4-7 (“I can certainly add it to the list of things that we provide to the counties either through Webinars or as we get ready for 2020.”).

545. In January 2020, Harvey was asked whether the SOS’s Office had made any changes to its training materials to ensure that poll workers did not apply exact match to voter identification, and he responded that the Office was “in the process . . . of updating [its] poll worker manual” but the project “hasn’t been completed.” Exh. 25, Jan. 6, 2020 SOS 30(b)(6) Dep. 78:21-79:5.

546. Harvey could not say whether he had talked to the training director specifically about this topic. Exh. 25, Jan. 6, 2020 SOS 30(b)(6) Dep. 79:6-11.

547. The SOS’s 2020 Poll Worker Manuals, including the manual in effect at the time of the June 9, 2020 primary, contain no such instruction. 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](https://georgiapollworkers.sos.ga.gov/Shared%20Documents/Georgia%20Poll%20Worker%20Training%20Manual.pdf).

548. In response to a question from a journalist as to how a voter can prove identity at the polls, Harvey said, “The identity of the voter is proved by the photo ID. If the voter was inaccurately listed as John Z Smith, but his name is John B. Smith presumably, his ID will have John B Smith, and will be allowed by the poll worker to vote.” Exh. 781, Oct. 30, 2019 C. Harvey email, State-Defendants-00304009. The journalist followed up to ask how “dissimilar . . . the names [would] have to be” for a poll worker to not allow a voter to vote. Exh. 723, Nov. 1, 2019 S. Mestel email, State-Defendants-00206400. The SOS’s Office does not appear to have responded to this question.

549. The SOS’s Office maintains that voters should not experience “exact match”-style verification at the polls. According to Ryan Germany, individuals on the “pending” list for a non-citizenship non-match prior to 2019 could vote if they brought proper ID to the polls. Exh. 26, Dec. 11, 2019 R. Germany Dep. 98:7-99:2 (“Q. . .if you’re in the pending list, you can show up and show an ID and vote; right? A. Yes, sir”).

550. In response to a voter query on November 8, 2016, SOS employee John Hallman stated that the voter should not be concerned about a mismatch between her legal name and her registration because “[i]t is very common for voters to change their last names, and the poll workers will be trained on how to handle the situation.” Exh. 658, Nov. 8, 2016 J. Hallman email, State-Defendants-00156744. But the SOS-prepared poll worker manuals do not train poll workers on that and the SOS has no idea what the county poll worker training materials say. *See supra* ¶¶ 544, 547.

551. SOS Press Secretary Candice Broce stated in 2018 “every single pending voter can vote in the November 6th election” and “[a]ny claims to the contrary are politically motivated and utterly false.” Exh. 995, Oct. 23, 2018 C. Broce email, State-Defendants-00966596. *See also* Exh. 994, Oct. 22, 2018 C. Broce email, State-Defendants-00966583, at -00966584 (same); Exh. 434, Oct. 15, 2018 C. Broce email, GA00765140 (identifying Candice Broce’s position within the SOS’s office).

552. She stated that “[i]f a pending voter goes to vote at the polls and shows the same photo ID that every other person must show, they vote a regular ballot on the spot. . . O.C.G.A. 21-2-220.1 . . . gives local officials some discretion on what constitutes ‘sufficient evidence’ to rectify the verification issue. Photo ID

will always be ‘sufficient evidence,’ but local officials may determine that other information is sufficient to fix the verification issue.” Exh. 995, Oct. 23, 2018 C. Broce email, State-Defendants-00966596.

553. In October 2018, Dwight Brower, a Fulton County employee, wrote to the SOS local liaison, Melanie Frechette, for information about the treatment of voters who failed exact match at the polls stating: “How will those voters who failed to be an ‘exact match’ be resolved at the polls? Will they appear on the express in a pending status or will they not appear at all? If so . . . how do we resolve without requiring those failing to be an exact match having to vote a provisional ballot?” Exh. 454, Oct. 23, 2018 D. Brower email, GA00782032, at -00782033; Exh. 453, GA00780874.

554. Frechette responded that “[t]he procedures to be put in place for handling the pending voters at the polls without sending those individuals to the Provisional Station is mostly up to your county and what you think will work.” Exh. 454, Oct. 23, 2018 D. Brower email, GA00782032, at -00782032. *See also* Exh. 789, Oct. 23, 2018 M. Frechette email, State-Defendants-00312612 (same). In other words, even in response to a direct inquiry from a county election official, the SOS does not provide clear guidance.

555. In November 2018, a poll watcher in Gwinnett County reported that a voter was informed he was on the pending list, and then the poll worker said she would have to call the registrar because the electronic poll book did not give the reason for his pending status and the poll worker could not determine what documents he would need to present to vote. Exh. 126, Nov. 6, 2018 C. Harvey email, State-Defendants-00054589 (“The whole process caused significant delay.”).

556. Subsequent correspondence among SOS employees demonstrates that the County was following the wrong procedures. *See* Exh. 1,051, Nov. 6, 2018 K. Rayburn email, 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”).

557. In 2016, a voter in pending status due to DDS verification was unable to vote. *See* Exh. 609, Oct. 21, 2018 A. Camarda email, State-Defendants-00087836 (inquiry from same voter seeking help to resolve the issue before the 2018 election); Exh. 904, Oct. 25, 2018 K. Rayburn email, State-Defendants-00579876 (sent to county official saying that the voter “tried to vote in 2016 and wasn’t able to”).

558. Kevin Rayburn has acknowledged that insignificant differences in name spelling can create problems for voters at the polls. Exh. 930, Sept. 23, 2019 SOS Email discussing voter name misspelling, State-Defendants-00742344, at - 00742344-45.

559. In 2019, the SOS's office received a complaint from a voter on the pending list for failure to verify with the Social Security Administration. Exh. 927, Apr. 18, 2019 K. Rayburn email, State-Defendants-00742117. The voter reported that she had to submit a provisional ballot on November 1, 2018, despite having completed four registration forms. *Id.* In internal correspondence, Kevin Rayburn suggested that the voter might have failed to verify because she was listed in e-Net as "Onh" rather than "Ona." *Id.*; *see also* Exh. 926, Apr. 18, 2019 L. Combs email, State-Defendants-00742116 (subsequent internal correspondence).

560. Germany has acknowledged that Exact Match is not supposed to apply at the polls. Exh. 26, Dec. 11, 2019 R. Germany Dep. 146:23-147:2.

561. Germany has also conceded, however, that he did not know if poll workers were in fact refusing to permit voters to vote because of some failure to match the registration roll. He stated:

"We got reports—I got some—I remember getting a report. I think it involved DeKalb County, that poll workers were checking the address on your ID with your address on – in your voter registration roll. To my recollection, we called DeKalb County and said, hey, here's what

we're hearing, is this happening? And Erica checked and said, you know, they're saying it's not—the poll manager is saying no, that didn't happen, and I'll remind them not to do that. So I don't know if it was happening or not.”

Exh. 26, Dec. 11, 2019 R. Germany Dep. 147:3-148:11. *See also id.* 149:14-150:3

(Q. Do you remember in DeKalb County poll workers applying some sort of a match requirement that was improper? A. I remember getting a report that was happening”).

562. In 2018, a voter reported seeing a poll worker in DeKalb County consistently misinterpreting the process for verifying voters' identities. Exh. 563, Oct. 25, 2018 C. Harvey email, State-Defendants-00054294, at -00054294-95.

563. The poll worker had been turning voters away when the addresses on their licenses did not match the county where they are registered and reportedly admitted “[w]e've been sending people home all day.” Exh. 563, Oct. 25, 2018 C. Harvey email, State-Defendants-00054294, at -00054294-95; *see also* Exh. 901, Nov. 1, 2018 S. Young email, State-Defendants-00579839 (reporting “hearing a fair # of anecdotes from voters in DeKalb county being turned away from the polls because the address on their photo ID does not match the address on file”).

564. In April of 2017, NAACP President for Carroll County James Stock wrote Harvey to notify him that Shanice Bonner “was denied the opportunity to

vote and had to cast a provisional ballot due to an error on her driver's license.”

Exh. 598, Apr. 24, 2017 J. Stocks letter, State-Defendants-00081447, at 00081482.

565. Her ballot was not counted in an election decided by one vote. Exh. 598, Apr. 24, 2017 J. Stocks letter, State-Defendants-00081447, at -00081482.

566. A handwritten note says that the complaint was forwarded to investigations and that it “sounds like voter did not update registration w/ new address in district.” Exh. 598, Apr. 24, 2017 J. Stocks letter, State-Defendants-00081447, at 00081482.

567. In 2019, Alicia Shillington reported that her ballot was cancelled and she was forced to vote a provisional ballot because her “address did not match [her] ID.” Exh. 853, Mar. 7, 2019 A. Shillington Complaint, State-Defendants-00334753.

568. Germany did not know whether the SOS's office had ever told the counties that the match process does not apply at the polls. Exh. 26, Dec. 11, 2019 R. Germany Dep. 148:12-20 (“[M]aybe, maybe not. I don't know.”).

569. When Ernesto Munoz de Cote Esquino moved from Gwinnett County to Fulton, he attempted to register twice but was unsuccessful. Exh. 930, Sept. 23, 2019 SOS Email discussing voter name misspelling, State-Defendants-00742344, at -00742345. Kevin Rayburn found that his last name was missing an “o” in the

registration system, and said the SOS should “help get the last name issue cleared up now *so it’s not an issue at the polls.*” *Id.* (emphasis added).

570. Racquel Parham reported that she was not allowed to vote in 2016 at Kilpatrick Elementary because “she” (presumably a poll worker) “questioned my middle initial even after she viewed my Georgia License.” Exh. 829, Nov. 9, 2016 R. Parham Complaint, State-Defendants-00332287.

571. When Jessica E. Dasilva Souza wrote that she “had trouble at the polling booth . . . when [she] went to vote,” Exh. 931, Aug. 1, 2019 J. Dasilva Souza Complaint, State-Defendants-00742856, at-00742857, Kevin Rayburn informed her that her last name was in the system as “D Souza,” and recommended that she contact the county about “straightening out the last name issue.” *Id.* at - 00742856.

572. A voter filed a complaint that the voter was “repeatedly asked about either the origin or spelling” of the voter’s name “and/or whether [the voter] normally vote[s]” at their polling place. Exh. 716, June 20, 2017 S. Cornell Complaint, State-Defendants-00191185.

573. The voter also reported being “questioned about [the voter’s] identification and name repeatedly” and noted “this [did] not happen to other

voters.” Exh. 716, June 20, 2017 S. Cornell Complaint, State-Defendants-00191185.

574. The voter is Arab-American and described their name as “distinctively Arab-American.” Exh. 716, June 20, 2017 S. Cornell Complaint, State-Defendants-00191185.

575. The voter said that it was clear the voter was being singled out for this line of questioning and that the voter presented their driver’s license as identification. Exh. 716, June 20, 2017 S. Cornell Complaint, State-Defendants-00191185.

576. As a poll watcher at Dougherty Precinct 28, Gary Ratner observed voters being turned away and told they did not appear on the rolls. Exh. 389, G. Ratner Decl. ¶ 4.

577. Ratner spoke with at least six voters who had hyphens or apostrophes in their names or non-traditional name spellings and who had been told they did not appear on the Dougherty County rolls. Exh. 389, G. Ratner Decl. ¶ 5.

578. After he informed each voter that they might be found if the poll worker checked the database using the first initial and last name of the voter, at least five voters agreed to try again—and in each case the poll worker *did* locate

the voter on the Dougherty County rolls and allowed him or her to cast a regular ballot. Exh. 389, G. Ratner Decl. ¶¶ 6-7.

579. Carmen M. DeLeon reported that she was turned away from early voting in 2018 because of her social security number. Exh. 133, Nov. 5, 2018 C. DeLeon Complaint, State-Defendants-00088263.

580. Elizabeth Bleakley was turned away from the polls in April of 2017 because she “was told there was a[n] N at the end of [her] name” and she would not be able to cast a vote. Exh. 942, Apr. 19, 2017 E. Bleakley Complaint, State-Defendants-00810714.

581. The county office informed the poll worker that the “n” should not be next to her name and to let her vote, but the poll worker told her she could only vote a provisional ballot and only downtown at the Fulton County Board of Elections, and she was unable to make it downtown to vote provisionally. Exh. 965, SOS Response re E. Bleakley Complaint, State-Defendants-00825828.

582. Ada Burkhardt was made to vote a provisional ballot because her name was misspelled in the system as “Burjart.” Exh. 485, Problem form (her provisional ballot was counted).

583. In 2018, Surabhi Beriwal’s out of state driver’s license was rejected by a poll worker, who later said, “we do accept out of state driver’s licenses but we

prefer Georgia identification because it is easier to look you up that way.” Exh. 276, S. Beriwal Decl. ¶ 13.

584. De’Niyah Smith registered a few months before the 2018 election. On Election Day, a poll worker reviewed Smith’s driver’s license and told her that she had no record on the rolls. Exh. 401, D. Smith Decl. ¶ 6. Smith was only able to vote because a poll watcher was able to verify Smith’s registration online and call someone to verify if there had been a mistake. Exh. 401, D. Smith Decl. ¶ 10.

585. In the 2020 primary, Deirdre Montgomery was told by a poll worker that even though the picture on her license matched her face, since the bar code on her license did not match she would not be able to use the license as identification to vote. Exh. 1,046, D. Montgomery Decl. ¶ 8. Montgomery was only able to vote because she had brought a second form of identification. Exh. 1,046, D. Montgomery Decl. ¶ 9.

586. Carlos del Rio, a resident of DeKalb County and the Hubert Professor and Chair of the Department of Global Health at the Rollins School of Public Health at Emory University, registered to vote through the Georgia DMV in 2008. Exh. 134, C. Del Rio Decl. ¶ 2.

587. Because the DMV does not allow spaces in last names, Dr. del Rio’s driver’s license listed his name as “Delrio.” Dr. del Rio registered using his correct

last name (del Rio), but when he arrived at the polls the poll worker informed him he was not registered to vote. Exh. 134, C. Del Rio Decl. Ex. 1.

588. After Dr. del Rio presented evidence of his registration, the volunteer eventually allowed him to vote “for this time.” Exh. 134, C. Del Rio Decl. Ex. 1.

589. The process of poll workers applying Exact Match at the polls has caused voter apprehension. *See, e.g.*, Exh. 852, Jan. 9, 2019 F. Serpico Email, State-Defendants-00334725 (Frank L. Serpico III wrote to the SOS to ask whether the suffix at the end of his name, which created a minor mismatch between his driver’s license and voter registration, would prevent his vote from counting); Exh. 606, Oct. 15, 2018 L. Graf-Juarez Email, State-Defendants-00087612 (Lindsay Graf-Juarez expressed concern that her application to vote could be rejected because her name is hyphenated on her photo ID but not on her social security card); Exh. 451, Oct. 12, 2018 T. Florio Email, GA00780660 (Thomas Florio asked how the fact that his driver’s license had his name as “Thomas Florio” but he was registered as “Thomas F. Florio” would affect him).

590. The problems with exact matching methods when no unique identifier is present in the linked data sets—such as in the SOS’s Exact Match process—have been well known for years. Expert Report of K. Mayer, ECF No. 238 at 12-14, 15 (citing to scholarship from 2012 and noting that a 2004 audit of New York City’s

registration records found that 20% of records in the files “failed to match into state driver’s license files because of typographical errors by election officials”).

C. The SOS’s Exact Match Process Does Not Serve the State’s Interests

591. According to Ryan Germany, the purpose of Exact Match “is to make sure that it’s a real person and that you’re getting accurate information.” Exh. 26, Dec. 11, 2019 R. Germany Dep. 85:11-17. *See also* Exh. 637, Georgia HAVA Verification Presentation, State-Defendants-00114398 at -00114399-00114400 (statements about the need to deter fraud).

592. In response to a question about whether the SOS is worried about people registering who should not be registering to vote, Germany said: “I think Georgia law . . . does have basically a protection so that only eligible voters are added to the—to the polls.” Exh. 26, Dec. 11, 2019 R. Germany Dep. 155:20-156:1.

593. Candice Broce maintained a similar emphasis on Exact Match as an anti-fraud device, stating that the system used prior to H.B. 268 in 2017 “was important to accurately maintain the voter rolls and prevent illegal votes from being cast in our state’s elections.” Exh. 995, Oct. 23, 2018 C. Broce Email, State-Defendants-00966596, at -00966597.

594. According to Plaintiffs' expert Laurie Minnite, however, "[t]he recent record of voter fraud in Georgia is consistent with the recent record of voter fraud elsewhere in the U.S., which is to say there is very little evidence of voters intentionally corrupting the electoral process in Georgia." Expert Report of L. Minnite, ECF No. 148 at 16.

595. Minnite was "unable to identify a single criminal conviction for voter impersonation at the polls in Georgia over the last decade." Expert Report of L. Minnite, ECF No. 148 at 16.

596. Minnite states that there is "no evidence of voter impersonation in recent Georgia elections, and very little evidence of any other kind of fraud perpetuated by voters." Expert Report of L. Minnite, ECF No. 148 at 20; *see also* Exh. 23, Aug. 16, 2019 C. Harvey Dep. 151:9-153:7 ("[T]hings that actually turned into clear voter fraud, I don't know that there were a lot of specific cases.").

597. From 2001 through 2017, the DOJ Criminal Division Public Integrity Section filed charges in only 19 election-fraud related cases involving 37 individual defendants across the nation. Expert Report of L. Minnite, ECF No. 148 at 14.

598. The U.S. Attorneys' Offices across the nation filed only 185 election fraud-related cases over the same period, of which fifteen cases were jointly filed

with the Public Integrity Section and thus overlapped with the number above.

Expert Report of L. Minnite, ECF No. 148 at 14.

599. Alternatives exist to exact matching, such as the contextual matching algorithm employed by the Electronic Registration Information Center. Expert Report of K. Mayer, ECF No. 238 at 15.

D. The SOS's Exact Match Process Disproportionately Burdens Minority Voters

600. “The evidence is conclusive that [the burdens of the verification process] fall disproportionately on racial or ethnic minority registrants who are members of protected classes of voters under Section II of the Voting Rights Act.” Expert Report of K. Mayer, ECF No. 238 at 7.

601. “At nearly every level, and at every combination of status, no matter when individuals registered, registrants in the pending file are disproportionately minority: this includes registrants in pending status, registrants in ‘Missing ID Required’ (MIDR) status, registrants flagged as noncitizens, registrants who failed the Georgia [DDS] or [SSA] verification process, registrants whose names did not match into DDS or SSA records, and pending registrants who were not moved to the active voter file. The only category of registrants not disproportionately minority are those who are pending because of age.” Expert Report of K. Mayer, ECF No. 238 at 4.

602. Registrants in pending status (excluding those under 18) are disproportionately people of color. 39.4% are Black, compared to 29.6% of the state's active registrants. Expert Report of K. Mayer, ECF No. 238 at 16-17.

603. Only 14.7% are non-Hispanic White, even though those individuals make up 52.9% of the active registrants in the state. Expert Report of K. Mayer, ECF No. 238 at 16-17.

604. Over three-quarters of those in pending status are members of minority groups (76.3%), even though minority registrants are only 37.0% of the active registered voters. Expert Report of K. Mayer, ECF No. 238 at 18.

605. Hispanic and Asian registrants make up 31.2% of registrants in pending status even though they make up only 5.7% of active registrants. Expert Report of K. Mayer, ECF No. 238 at 18.

606. "Minority registrants are between 6 and 10 times more likely to be in MIDR status than non-Hispanic White registrants." Expert Report of K. Mayer, ECF No. 238 at 19.

607. "Without exception, minority registrants are disproportionately present in every category of pending or MIDR status. In some cases, the disparities are stark: Asian and Pacific Islanders comprise only 2.4% of all active registrants, but are 16.8% of pending voters and 23.2% of registrants flagged as noncitizens.

Hispanic registrants are 3.3% of all active registrants, but are 15.3% of pending registrants and 20.9% of registrants flagged as noncitizens. African Americans are 29.6% of active registrants, but are 69.4% of those in MIDR status and 55.9% of those in pending status for reasons other than citizenship verification. Non-Hispanic Whites make up over half of all registrants, but are only 14.7% of pending, 13.0% of flagged noncitizens, 11.4% of MIDR status, and 15.6% of pending for reasons other than citizenship verification.” Expert Report of K. Mayer, ECF No. 238 at 24.

608. “The burden will fall most heavily on individuals without a Georgia driver’s license or ID. License and ID possession rates among minority populations are lower than for non-Hispanic Whites, both generally . . . and in Georgia.” Expert Report of K. Mayer, ECF No. 238 at 13.

609. The Secretary of State has long been on notice of the disproportionate impact of Exact Match on voters of color protected by the Voting Rights Act. Exh. 645, *See* Oct. 12, 2018 NAACP LDF Letter, State-Defendants-00148010, at -00148011 (stating that Exact Match has blocked the registration of more than 53,000 Georgia voters, over 70% of whom are reportedly people of color, and that the SOS knows or should know that the protocol “imposes discriminatory burdens on Black, Latinx, and Asian-American voters”); Exh. 440, July 18, 2018 Lawyer’s

Committee for Civil Rights Under Law and CLC Letter, GA00767552, at -00767555 (stating “As you are . . . aware, the ‘exact match’ verification process disproportionately prevented tens of thousands of eligible African-American, Latino-American and Asian-American Georgia citizens from successfully completing the voter registration process between 2010 and 2016.”).

610. The Secretary of State created an analysis of pending voters as of October 17, 2018, which showed that, out of 46,946 non-duplicate records pending for exact match (unrelated to citizenship), 69.96% were African American, and 74.03% of that group registered using paper applications and failed SSN verification. Exh. 770, SOS Pending Voter List Analysis, State-Defendants-00286326, at -00286327.

611. Candice Broce of the SOS’s office told Reuters in 2018 that 65.82% of first-time applicants placed in pending status self-identified as non-Latinx Black. She blamed the minority voters’ use of handwritten applications for the higher rate of verification failures. Exh. 449, Mar. 6, 2018 C. Broce Email, GA00779850, at -00779851.

612. According to Ryan Germany, “of the [records] that failed verification, I would say our office was aware that it was a largely African American population, and I think we tried to kind of figure out why is this the case.” Exh. 26,

Dec. 11, 2019 R. Germany Dep. 142:16-143:23; *see also* Exh. 23, Aug. 16, 2019 SOS 30(b)(6) Dep. 258:3-18 (stating that the SOS's analysis completed in 2017 found that 70% of the people on the pending list were Black); *id.* 257:21-24 (“the analysis showed that the people that were in pending status as a result of not being verified were majority African American”).

613. Throughout 2018, the SOS's office fielded questions from journalists about the Exact Match process, including its impact on newly naturalized citizens. Exh. 994, *See, e.g.*, Oct. 22, 2018 H. Golden Email, State-Defendants-00966583 (Elite Daily); Exh. 993, Oct. 29, 2018 T. Pratt Email, State-Defendants-00966032 (Who What Why); Exh. 913, Nov. 3, 2018 C. Broce Email, State-Defendants-00734032 (Broce admitting to a journalist that 70% of the 46,946 applicants in pending status for failed verification at DDS or SSA were Black).

614. Even though the SOS knew of the disparate impact of Exact Match, it did not take action to eliminate that disparate impact, and the disparate impact continues today. According to Plaintiffs' expert Peyton McCrary, “Georgia’s implementation of its voter verification process under HAVA since 2006 has exercised a persistent discriminatory effect on minority voters’ opportunity to register and vote . . . [and] forms a very substantial obstacle to fair and equal registration.” Expert Report of P. McCrary, ECF No. 339 at 6-7.

615. Georgia’s implementation of Exact Match is closely linked to Georgia’s history of discriminatory voter registration policies. *See* Expert Report of P. McCrary, ECF No. 339 at 12-16 (describing the history of racial discrimination affecting registration prior to the 1965 Voting Rights Act); *id.* 16-21 (describing similar history from 1965 to 1999); *id.* 98 (the “current pattern” of Exact Match “has its analogue in the system of voter registration in the Jim Crow era before 1965”).

616. Following the passage of the VRA, “Georgia refused to comply with [the VRA] generally and with the preclearance process specifically. Georgia government—large and small—immediately passed laws and enacted procedural changes to voting to minimize the impact of regulation under the VRA and to ensure white supremacy. The state passed a new election code that made registration for blacks even harder than before the VRA, and established majority vote protocols, numbered post requirements, and other procedures to dilute black voting power. These provisions were intentionally designed to curtail black enfranchisement.” Expert Report of A. Jones, ECF No. 92 at 5-6.

E. The SOS's Exact Match Process Is Applied Non-Uniformly Across the State

617. Implementation of election laws varies considerably within jurisdictions, often in ways “that are biased against minority voters.” Expert Report of K. Mayer, ECF No. 238 at 27.

618. When asked, Ryan Germany could not say whether the SOS had ever looked into the issue that giving governmental officials discretion has a negative impact on voters of color. Exh. 26, Dec. 11, 2019 R. Germany Dep. 131:25-133:15.

619. Germany acknowledged that it was possible that voters in different counties may be treated differently and that “processes in different counties are going to be different based on . . . a host of different reasons.” Exh. 26, Dec. 11, 2019 R. Germany Dep. 130:15-25.

620. The application of Exact Match is geographically disparate. The rates at which registrants are placed in MIDR and pending status vary widely by county, suggesting county officials handling registrations have adopted different practices for identifying and correcting typographical errors in applications. Expert Report of K. Mayer, ECF No. 238 at 26.

621. Nearly all of the registrants whose status is pending because of a “pending hearing” are located in Walton County. Expert Report of K. Mayer, ECF No. 238 at 28.

622. “More than 2/3 of MIDR status registrants (69.5%) are in five counties that contain less than one-third of all registrants. The highest rate of voters in MIDR status (Fulton County, 3.22%) is 135 times larger than the lowest rate (Treutlen County, 0.024%).” Expert Report of K. Mayer, ECF No. 238 at 29.

623. With the exception of one county, “every county with a MIDR rate greater than 1% is majority-minority.” Expert Report of K. Mayer, ECF No. 238 at 29.

V. THE VOTER PURGE

624. In odd-numbered years, the SOS cancels the registration of voters through the “NGE” (hereinafter “purge”) process. Exh. 4, Aug. 16, 2019 SOS 30(b)(6) Dep. 206:10-25 (“There are ways you can end up on the inactive list of voters . . . It’s done in odd-numbered years and it’s generally done towards the end of odd-numbered years.”), 219:5-8 (“NGE . . . is the cancellation of people that have been on the . . . inactive voter list . . . for more than two general elections.”); Exh. 26, Dec. 11, 2019 R. Germany Dep. 55:14-18, 65:5-11.

625. Before voters are purged, they are moved to “inactive” status if they do not respond to a mailed notice sent to them for one of three reasons: the SOS identified the voter as (i) having submitted a National Change of Address (“NCOA”) form; (ii) having elections mail returned as undeliverable; or (ii) having “no contact” with elections officials for a certain period of time. Exh. 26, Dec. 11, 2019 R. Germany Dep. 32:18-33:2; Expert Report of M. McDonald, ECF No. 240 at 5.

626. “Contact” means filing an updated voter registration card, filling out a change of name or address, signing a petition, signing a voter certificate, submitting an absentee ballot application, voting an absentee ballot, or confirming continued residence at the voter’s registration address. Hearing Tr. 65:16-66:10, ECF No. 180 (Dec. 19, 2019) (Testimony of C. Harvey); *see also* O.C.G.A. § 21-2-234(a)(1).

627. After a voter in “inactive” status has “no contact” for a period spanning two general elections, the SOS moves the voter’s registration to “cancelled status.” Exh. 4, Aug. 16, 2019 SOS 30(b)(6) Dep. 206:20-25; Exh. 26, Dec. 11, 2019 R. Germany Dep. 55:14-22.

628. 591,548 voters’ registrations were cancelled in the purge on July 28, 2017. Exh. 497, July 31, 2017 R. Germany Email re Voter Purge, State-

Defendants-00017343; Exh. 438, July 31, 2017 C. Broce Email re Voter List Maintenance, GA00766351.

629. 313,243 voters were on the SOS's list of voters subject to cancellation in the purge that took place on December 16, 2019 (the "2019 Purge List"). Expert Report of M. McDonald, ECF No. 240 at 5; Order, ECF No. 188 at 2, 7.

630. Voters in "cancelled" status cannot vote and do not have their votes counted. Exh. 26, Dec. 11, 2019 R. Germany Dep. 50:12-51:2; Exh. 737, Aug. 21, 2017 Letter re GA SOS Voter List Maintenance Practices, State-Defendants-00234459, at -00234460.

631. In order to have their votes counted in future elections, voters in "cancelled" status must re-register before the applicable registration deadline. Exh. 26, Dec. 11, 2019 R. Germany Dep. 50:12-51:20.

632. Registration deadlines in Georgia are approximately 30 days before elections. Exh. 26, Dec. 11, 2019 R. Germany Dep. 51:1-2.

633. The SOS has no written protocol for which SOS employees are authorized to execute the purge process. Exh. 23, Aug. 16, 2019 SOS 30(b)(6) Dep. 212:6-213:12 ("Q: Is there a written protocol on who gets [administrative rights]? A: don't believe there's a written protocol.").

634. The SEB has never promulgated rules related to the purge process. Exh. 53, Oct. 15, 2019 R. Sullivan Dep. 80:18-23.

A. The SOS's Voter-Purge Process Disenfranchises Eligible Voters

i. The SOS Purges Voters Based on Inaccurate Data

635. The SOS has no quality-control procedure to ensure that the purge accurately identifies voters who meet the State's criteria. It does not conduct any audit of the quality of the information input into its database. Hearing Tr. 76:11-20, ECF No. 180 (Dec. 19, 2019) (Testimony of C. Harvey).

ii. The SOS Purges Voters Based on Incorrect Addresses

636. Having erroneous mailing addresses in the SOS's database leads to voters' election mail being returned as undeliverable, which starts the voter purge process. Exh. 667, Jan. 26, 2017 Email re P.O. Box, State-Defendants-00159264; Exh. 665, Jan. 27, 2017 Email re P.O. Box for Mailing Address, State-Defendants-00158754; Exh. 711, Feb. 6, 2017 Email re Return to Sender, State-Defendants-00187855; Exh. 678, April 24, 2017 Email re Mailing Address, State-Defendants-00173416; Exh. 683, June 14, 2017 Email re Mailing Address Doesn't Match, State-Defendants-00175965; Exh. 87, Nov. 6, 2018 Email re Registration Not in System, State-Defendants-00741716; Exh. 88, Nov. 7, 2018 Email re Voter Registration Cancelled in DeKalb County, State-Defendants-00741719.

637. Likewise, having erroneous mailing addresses in the SOS's database leads to voters not receiving the mailed notification that they will be purged. Exh 667, *See* Jan. 26, 2017 Email re Residence Address and Mailing Address, State-Defendants-00159264; Hearing Tr. 79:11-12, ECF No. 180 (Dec. 19, 2019) (Testimony of C. Harvey).

638. Many voters in Georgia have a mailing address that is different from the registration address where they reside. Exh. 668, Jan. 18, 2017 Email re DDS Applications and Mailing Addresses, State-Defendants-00160552, at -00160553 (SOS Election Systems Manager explaining that "a lot of voters . . . cannot receive mail at their physical addresses," so the SOS records "both residential and mailing addresses" such as P.O. Box addresses).

639. The majority of voter registration applications in Georgia come through the Georgia Department of Driver Services ("DDS"), which sends the applications to the SOS. Exh. 738, Feb. 8, 2017 Email re SOS Data for Motor Voter, State-Defendants-00238458, at -00238459.

640. For voters with different mailing and residential addresses, the SOS did not receive mailing addresses from DDS until at least 2018. Exh. 732, Jan. 26, 2018 Email re Mailing Addresses Not Imported from DDS Applications, State-Defendants-00227356; Exh. 738, Feb. 8, 2017 Email re SOS Data for Motor Voter,

State-Defendants-00238458; Exh. 668, Jan. 18, 2017 Email re DDS Applications and Mailing Addresses, State-Defendants-00160552; Exh. 669, Jan. 18, 2017 Email re DDS and Voter Registration System, State-Defendants-00160557; Exh. 706, Jan. 30, 2017 Email re Mailing Addresses Not Matching, State-Defendants-00179642; Exh. 705, May 22, 2017 Email re Missing Mailing Addresses, State-Defendants-00178886; Exh. 680, June 14, 2017 Email re Incorrect Mailing Addresses, State-Defendants-00175933; Exh. 682, June 14, 2017 Email re Incorrect Mailing Addresses with DDS, State-Defendants-00175943; Exh. 681, June 9, 2017 Registration Record, State-Defendants-00175940; Exh. 670, June 15, 2017 Email re DDS Not Transferring Mailing Addresses, State-Defendants-00161399; Exh. 671, June 15, 2017 List of Registration Numbers Missing Proper Mailing Address, State-Defendants-00161400; Exh. 715, June 20, 2017 Email re P.O. Box Did Not Show as Mailing Address, State-Defendants-00191050; Exh. 726, Jan. 25, 2018 Email re Address Issues with DDS Applications, State-Defendants-00224048.

641. The SOS was aware that it was not receiving accurate mailing addresses for voters. Exh. 732, Jan. 26, 2018 Email re Mailing Addresses Not Imported from DDS Applications, State-Defendants-00227356; Exh. 738, Feb. 8, 2017 Email re SOS Data for Motor Voter, State-Defendants-00238458; Exh. 668,

Jan. 18, 2017 Email re DDS Applications and Mailing Addresses, State-Defendants-00160552; Exh. 669, Jan. 18, 2017 Email re DDS and Voter Registration System, State-Defendants-00160557; Exh. 706, Jan. 30, 2017 Email re Mailing Addresses Not Matching, State-Defendants-00179642; Exh. 705, May 22, 2017 Email re Missing Mailing Addresses, State-Defendants-00178886; Exh. 680, June 14, 2017 Email re Incorrect Mailing Addresses, State-Defendants-00175933; Exh. 682, June 14, 2017 Email re Incorrect Mailing Addresses with DDS, State-Defendants-00175943; Exh. 681, June 9, 2017 Registration Record, State-Defendants-00175940; Exh. 670, June 15, 2017 Email re DDS Not Transferring Mailing Addresses, State-Defendants-00161399; Exh. 671, June 15, 2017 List of Registration Numbers Missing Proper Mailing Address, State-Defendants-00161400; Exh. 715, June 20, 2017 Email re P.O. Box Did Not Show as Mailing Address, State-Defendants-00191050; Exh. 726, Jan. 25, 2018 Email re Address Issues with DDS Applications, State-Defendants-00224048.

642. Another reason the SOS has not recorded accurate addresses is that for voters whose “address contains both numbers and letters,” the SOS database did not record those addresses accurately because “the address field is set up to only allow for numeric characters.” Exh. 740, Feb. 2, 2017 Email re Addresses Containing Both Numbers and Letters, State-Defendants-00239247.

643. For voters living in a shelter, the SOS has advised that a local official's office address be used as the voters' mailing address, without any indication that the voters would receive election mail at the official's office address. Exh. 443, July 18, 2017 Email re Voters in Battered Woman's Shelter, GA00769580.

644. For voters living at an address that does not match the "street types" listed in the SOS's system, officials could not input addresses until at least July 2017. This limitation "prevent[ed] voters from receiving election mail because the address cannot be input correctly." Exh. 672, July 31, 2017 Email re Street Types, State-Defendants-00162367.

645. Nonetheless, the only notification sent to voters about the purge is through election mail. Exh. 737, Aug. 21, 2017 Letter re GA SOS Voter List Maintenance Practices, State-Defendants-00234459, at -00234460; *see also* O.C.G.A. §§ 21-2-234, 21-2-235.

iii. The SOS Purges Voters Based on an Incomplete Record of Voters' "Contacts"

646. In 2014, voters were purged because they erroneously were not given credit for having voted. Exh. 718, March 14, 2017 Email re Manual Credit for Voting, State-Defendants-00193109.

647. In 2015, the SOS did not run the purge process in part because the SOS system failed to reflect voters' "contacts." Exh. 21, Dec. 5, 2019 C. Harvey Dep. 341:14-25.

648. Voters frequently complain that their registration status does not accurately reflect their "contacts." Exh. 83, Oct. 25, 2018 Email re Inactive Status, State-Defendants-00289052; Exh. 851, Nov. 4, 2017 Email re Wrongly Put on Inactive Voter List, State-Defendants-00334511; Exh.98, Nov. 22, 2017 Email re Registration Showing Inactive Status, State-Defendants-00183789; Exh. 919, Oct. 19, 2018 Email re Registration Cancelled, State-Defendants-00740960; Exh. 850, Oct. 28, 2018 Email re Removed Due to Inactive Voting Status, State-Defendants-00333751; Exh. 91, Sept. 25, 2018 Email re Voting Record Purged, State-Defendants-00329628; Exh. 114, 2015 SOS Investigation Report, State-Defendants-00024145, at -00024146; Exh. 625, Feb. 11, 2019 Email re Voter Placed on Inactive List, State-Defendants-00088985; Exh. 809, Nov. 2, 2017 Email re Voter Registration Purged, State-Defendants-00329966; Exh. 564, Oct. 27, 2018 Email re Voter Report, State-Defendants-00054309, at -00054310 (voter complained he was not appearing in the MYP Voting Registration).

649. Government officials, including the SOS, have repeatedly recognized that the SOS's system has failed to reflect voters' "contacts" correctly. Exh. 659,

Nov. 8, 2016 Email re Missing Credit for Voting, State-Defendants-00156757; Exh. 741, June 15, 2019 Email re Update Cards, State-Defendants-00242232; Exh. 653, Dec. 2, 2016 Email re Provisional Ballot Status, State-Defendants-00155578; Exh. 442, Feb. 1, 2017 Email re Duplicate Voter, GA00769001, at GA00769004; July 13, 2018 Exh. 764, Email re Voted on Wrong Ballot, State-Defendants-00279010; Exh. 100, March 15, 2019 Email re Data Request, State-Defendants-00395066; Exh. 719, April 17, 2017 Email re Incorrect Underage Marker, State-Defendants-00193507; Hearing Tr. 75:1-13, ECF No. 180 (Dec. 19, 2019) (Testimony of C. Harvey).

650. For example, in July 2017, the SOS's registration system had 873 records in which the voter's registration date was listed as the same date as his or her birthdate, creating the false impression that recently-registered voters had "no contact" for at least eighteen years. Exh. 686, June 1, 2017 Email re Registration Date and Date of Birth, State-Defendants-00177870; Exh. 687 June 1, 2017 Chart re Registration Date and Date of Birth, State-Defendants-00177871.

651. The SOS understood that this error could lead to erroneous cancellations of voters for "no contact." The SOS reached out to counties to notify them of this error, but did not (a) initiate any kind of check of the rest of the data used to determine a voter's eligibility to be purged; or (b) confirm that even this

error was resolved. Exh. 696, June 2, 2017 Email re Colquitt County Voter Registration Date Issues, State-Defendants-00177899, at -00177900; Exh. 685, June 2, 2017 Email re Bacon County Voter Registration Date Issues, State-Defendants-00177835, at -00177836; Exh. 697, June 2, 2017 Email re Fannin County Voter Registration Date Issues, State-Defendants-00178107; Exh. 698, June 2, 2017 Email re Gordon County Voter Registration Date Issues, State-Defendants-00178113; Exh. 704, June 2, 2017 Email re Paulding County Voter Registration Date Issues, State-Defendants-00178217; Exh. 699, June 2, 2017 Email re Floyd County Voter Registration Date Issues, State-Defendants-00178115; Exh. 691, June 2, 2017 Email re Long County Voter Registration Date Issues, State-Defendants-00177886; Exh. 688, June 1, 2017 Email re Decatur County Voter Registration Date Issues, State-Defendants-00177873; Exh. 690, June 1, 2017 Email re Jeff Davis County Voter Registration Date Issues, State-Defendants-00177884; Exh. 692, June 2, 2017 Email re Mitchell County Voter Registration Date Issues, State-Defendants-00177887; Exh. 695, June 2, 2017 Email re Thomas County Voter Registration Date Issues, State-Defendants-00177896; Exh. 689, June 2, 2017 Email re Early County Voter Registration Date Issues, State-Defendants-00177882; Exh. 693, June 2, 2017 Email re Ware County Voter Registration Date Issues, State-Defendants-00177890; Exh. 694, June 2,

2017 Email re Wayne County Voter Registration Date Issues, State-Defendants-00177891; Exh. 703, June 2, 2017 Email re Heard County Voter Registration Date Issues, State-Defendants-00178215; Exh. 684, June 2, 2017 Email re Dougherty County Voter Registration Date Issues, State-Defendants-00177833; Exh. 700, June 1, 2017 Email re Clayton County Voter Registration Date Issues, State-Defendants-00178205; Exh. 702, June 2, 2017 Email re Fulton County Voter Registration Date Issues, State-Defendants-00178211; Exh. 701, June 2, 2017 Email re Fayette County Voter Registration Date Issues, State-Defendants-00178209.

652. Even when counties corrected this error in voters' registration dates, voters were improperly purged. That is because correcting an erroneous registration date was not enough to fix an erroneous date of last "contact" in the SOS system. Exh. 439, Aug. 11, 2017 Email re Purge Issue in Jefferson County, GA00766656; Exh. 707, Aug. 11, 2017 Email re Purge Issue in Coffee County, State-Defendants-00182648; Exh. 708, Aug. 11, 2017 Email re Purge Issue in Liberty County, State-Defendants-00183393; Exh. 583, Aug. 11, 2017 Email re Purge Issue, State-Defendants-00056870.

653. The SOS has no system in place to ensure that all "contacts" are recorded before voters are purged. *See infra* ¶¶ 654-60.

654. County officials manually enter responses to the confirmation notices into eNet. Exh. 26, Dec. 11, 2019 R. Germany Dep. 49:12-24 (“The counties will get [the response], and then they will put it into eNet.”).

655. The SOS set up its system so that voters will be moved to “inactive” status, and then ultimately purged, if county officials forget to manually enter confirmation notices that are returned. Exh. 99, National Change of Address List Maintenance Process, State-Defendants-00287546, at -00287548.

656. The SOS does not require counties to confirm that returned confirmation notices have been entered into the database before proceeding with the purge. *Id.*

657. As of March 2018, the SOS had not conveyed procedures to counties for giving voters credit for “contacts” made by signing petitions. Exh. 736, March 6, 2018 Email re Forsyth County Voter Credits, State-Defendants-00233507, at -00233508.

658. In some circumstances, credit for voting needs to be added “manually” by local officials. Exh. 640, March 2015 SOS 3T Presentation, State-Defendants-00127769, at -00127798. In others, local officials must deliver ExpressPoll memory cards so credit for voting can be “applied.” *Id.*

659. Ten days before cancelling the registrations of over 100,000 voters for “no contact” in 2019, Chris Harvey notified the SOS systems manager, John Hallman, that the SOS had instructed county representatives to convey voters’ recent “contacts” to the SOS by bringing “bags” of “ExpressPoll Memory Cards” to an upcoming “conference.” Exh. 647, Dec. 6, 2019 Email re ExpressPoll Memory Cards, State-Defendants-00149866.

660. The SOS’s plan was for SOS representatives to bring the bags back to the SOS office and then have Hallman “get credit for voting assigned” based on whatever information the submitted memory cards contained. *Id.*

661. The SOS has acknowledged that its system “always” gives credit for voting for a fewer number of voters than actually voted. Exh. 100, March 15, 2019 Email re Data Request, State-Defendants-00395066.

662. The SOS processes involved for recording credit for voting are prone to error, in contexts such as entering credit during early voting, when voting cards are issued for “supplemental” voters at the polls, and when provisional ballots are submitted. Exh. 100, March 15, 2019 Email re Data Request, State-Defendants-00395066.

iv. The SOS Purges Voters Based on an Overinclusive and Error-Prone Search of the NCOA Database

663. The SOS identifies voters as having filed an NCOA form if they changed their mailing address, even if they did *not* change their residential address. Exh. 99, National Change of Address List Maintenance Process, State-Defendants-00287546, at -00287547; Supplemental Report of M. McDonald, ECF No. 293 at 7.

664. The SOS has acknowledged that this is not the way the process should be run. Exh. 774, Proposed Changes to the National Change of Address Process, State-Defendants-00287545.

665. Nonetheless, the SOS used tens of thousands of voters' P.O. Box addresses in 2015 and 2019 to match voters to the NCOA database. As a result, these voters would be flagged for purging because of a change in a P.O. Box address rather than a change in residential address. Exh. 654, 2015 NCOA Processing Report, State-Defendants-00155641; Exh. 767, 2019 NCOA Processing Report, State-Defendants-00286190, at -00286191.

666. The SOS identifies voters as having filed an NCOA form even if they did so for a change of business address, rather than a change of *residential* address. Exh. 99, National Change of Address List Maintenance Process, State-Defendants-

00287546, at -00287547; Supplemental Report of M. McDonald, ECF No. 293 at 9.

667. As a result of changes to *business* addresses, the SOS treated hundreds of voters in both 2015 and 2019 as having filed NCOA forms for a change of *residential* address. Exh. 857, July 11, 2015 National Change of Address Report, State-Defendants-00336463; Exh. 769, April 17, 2019 National Change of Address Report, State-Defendants-00286196.

668. The SOS also identifies a voter as having filed an NCOA form if a form is submitted for a family move and the voter's last name and address match information in the Postal Service database. Exh. 99, National Change of Address List Maintenance Process, State-Defendants-00287546, at -00287547. As a result, the SOS flags voters as appearing in the NCOA database even if their first name does not match any entry in the NCOA database. Supplemental Report of M. McDonald, ECF No. 293 at 8.

669. The SOS identifies a voter as having filed an NCOA form without checking whether birth dates or any ID number match the information in the Postal Service database. Supplemental Report of M. McDonald, ECF No. 293 at 7-8; Exh. 99, National Change of Address List Maintenance Process, State-Defendants-

00287546, at -00287547; Exh. 710, Jan. 13, 2017 Email re National Change of Address Process – Remove DOB, State-Defendants-00187261, at -00187261.

670. The SOS treats a voter as having filed an NCOA form even if the apartment numbers in the SOS database and the apartment numbers in the NCOA database do not match. Exh. 99, National Change of Address List Maintenance Process, State-Defendants-00287546, at -00287548; Supplemental Report of M. McDonald, ECF No. 293 at 8.

671. As a result, thousands of voters residing in apartment buildings were flagged in 2015 and 2019 as having filed NCOA forms. Exh. 856, July 11, 2015 National Change of Address Report, State-Defendants-00336462; Exh. 768, April 17, 2019 National Change of Address Report, State-Defendants-00286195.

672. More than 13% of voters the SOS purged in 2019 on the basis that they filed NCOA forms—14,732 voters—did not actually file NCOA forms. Expert Report of M. McDonald, ECF No. 240 at 4, 12.

673. The SOS matches voters to the NCOA database by outsourcing the matching task to a vendor called Total Data Technologies. Exh. 99, National Change of Address List Maintenance Process, State-Defendants-00287546, at -00287547.

674. Total Data Technologies is a one-employee business operated out of a single-family home in Omaha, Nebraska. Exh. 771, State-Defendants-00287072 (invoice from Total Data Technologies to the SOS listing Total Data Technologies' address); https://www.zillow.com/homedetails/11802-Washington-Cir-Omaha-NE-68137/118741353_zpid/ (listing the address as a "single family home"); https://opencorporates.com/companies/us_ne/1639369 (listing the same person as occupying all officer positions of Total Data Technologies).

675. Defendants have not adopted any rule or written protocol for how the SOS's vendor must match the Georgia voter database to the U.S. Postal Service's NCOA database. Instead, their only written description of the procedure is a three-page "NCOA List Maintenance Process Overview" document that was internally circulated among SOS staff in 2019. Exh. 99, Jan. 23, 2019 National Change of Address List Maintenance Process, State-Defendants-00287546.

v. The SOS Has Been Made Aware of Additional Errors in Identifying Voters to be Purged

676. The SOS database maintains duplicate registrations for some voters. As a result, the SOS mailed notices to some voters falsely warning that they would be unable to vote if they did not respond. As a result, those voters believed that attempting to vote in the next election would be futile. Exh. 350, T. Jordan Decl. ¶¶

4-7, Pltfs001092; Exh. 303, D. Eidnani Decl. ¶ 3, State-Defendants-00968877; Hearing Tr. 62:14-63:25, ECF No. 180 (Dec. 19, 2019) (Testimony of C. Harvey).

677. Voters have complained about being flagged in the purge process even though they did not have “no contact,” submit an NCOA form, or have an address where mail is undeliverable. *See, e.g.*, Exh. 84, March 14, 2019 Email re Voter Removed from Rolls in Fulton County, State-Defendants-00043168; Exh. 801, Feb. 4, 2019 Email re Inactive Voter, State-Defendants-00318345.

vi. The SOS Fails to Identify Errors on the Purge List Before it De-Registers Voters

678. The SOS has no documented procedure for reviewing registrations to be cancelled for accuracy. Exh. 23, Aug. 16, 2019 SOS 30(b)(6) Dep. 211:22-212:5.

679. Instead, SOS officials conduct an ad hoc “spot check” to identify errors that appear on the face of the Purge List. Exh. 75, Dec. 6, 2019 K. Rayburn Dep. 168:6-10 (“We would also just spot-check a bunch of them just to see if there’s something we’re not thinking of that ... will tell us whether this person is correctly identified for this process or not.”); Exh. 23, Aug. 16, 2019 SOS 30(b)(6) Dep. 211:1-5 (“We get the list and then we, we do spot-checking.”); Exh. 21, Dec. 5, 2019 C. Harvey Dep. 340:4-9 (“[Y]ou get the first list ... [a]nd you evaluate it,

you spot check it ... and you get what you believe is an accurate list, and you find if you've left something out.”).

680. This “spot check” was insufficient for the SOS to identify nearly 300 voters who were on the Purge List in error in 2019. Exh. 75, Dec. 6, 2019 K. Rayburn Dep. 172:7-16, 173:9-14; Exh. 907, *see also* Nov. 1, 2019 Email re Voters Incorrectly Flagged as “No Contact,” State-Defendants-00597967; Hearing Tr. 75:3-13, ECF No. 180 (Dec. 19, 2019) (Testimony of C. Harvey).

681. This “spot check” was also insufficient to identify more than 22,000 voters who were on the Purge List in error in 2019. Hearing Tr. 26:22-27:6, ECF No. 180 (Dec. 19, 2019) (Testimony of M. McDonald).

682. The SOS reinstated these voters after this error was pointed out by Plaintiffs’ expert, Dr. Michael McDonald, in an emergency motion filed in this case. Hearing Tr. 59:14-25, ECF No. 180 (Dec. 19, 2019) (Testimony of C. Harvey).

vii. The SOS’s Mailings Provide Inadequate Notice to Prevent Eligible Voters from Being Purged

683. The SOS creates and prints the notices that are mailed to voters before they are moved to inactive status or cancelled status in the purge process. Exh. 640, March 2015 Webinar, State-Defendants-00127769, at -00127801.

684. The SOS mails the confirmation notices to county offices. It instructs the counties to, upon receipt of the notices, “apply postage and mail immediately.” Exh. 640, March 2015 Webinar, State-Defendants-00127769, at -00127803.

685. The SOS does not confirm with each county that it has, in fact, applied postage and mailed the confirmation notices. Exh. 26, Dec. 11, 2019 R. Germany Dep. 43:24-44:19 (“I don’t think there’s like an official audit, but I do think that’s something we would know about if it happened. I don’t think it happens.”).

686. The SOS does not conduct any audit to determine whether the confirmation notices were mailed. Exh. 26, Dec. 11, 2019 R. Germany Dep. 44:7-19.

687. Thus, when SOS records show that confirmation notices have been mailed to voters, those records are not based on any proof that the notices were in fact mailed to voters; it is only based on the SOS’s instruction to counties to mail the notices. Exh. 26, Dec. 11, 2019 R. Germany Dep. 44:7-19 (“I don’t think there’s like an official audit, but I do think that’s something we would know about if it happened. I don’t think it happens.”).

688. Counties sometimes do not send the confirmation notices, leading voters’ status to be changed “without ever being sent a card” to verify their

address. Exh. 515, Jan. 27, 2016 SOS Report re Echols County, State-Defendants-00023905, at -00023906, -00023915 (confirming that 107 confirmation notices were not sent).

689. The SOS does not make sure that voters actually receive confirmation notices. Exh. 21, Dec. 5, 2019 C. Harvey Dep. 353:9-16 (“[W]e know they’ve been sent. As far as knowing that they got them, that’s a different story.”); Hearing Tr. 79:13-17, ECF No. 180 (Dec. 19, 2019) (Testimony of C. Harvey) (“We can’t guarantee that they get delivered.”).

690. The SOS acknowledges that the mailed confirmation notices are not necessarily effective because “there are a lot of people that don’t check their mail,” and voters who do check their mail might misunderstand the notices. Hearing Tr. 79:4-10, ECF No. 180 (Dec. 19, 2019) (testimony of C. Harvey).

691. In July 2019, out of 425,859 address confirmation requests mailed to voters with NCOA matches, only about 5% of the return cards included in the mailings were sent back. Exh. 745, Voter Registration Data, State-Defendants-00256426; Exh. 803, July 22, 2019 Email re National Change of Address Process, State-Defendants-00321954.

692. In November 2019, out of 314,985 address confirmation requests mailed to voters set to be purged the following month, fewer than 1% of the return

cards included in the mailings were sent back. Exh. 112, Nov. 2019 Elections Data Report, State-Defendants-00296909.

693. The SOS has access to many voters' email addresses and phone numbers. Voter registration forms include areas to list phone numbers and email addresses, and the SOS's voter complaint form asks for voters' phone numbers and email addresses. Exh. 26, Dec. 11, 2019 R. Germany Dep. 69:11-18 ("If you register online, I believe we have your email address."); Exh. 85, *see, e.g.*, State-Defendants-00656974 (example showing the format in which the SOS receives voter complaints with the voter's name, phone number, address, and e-mail address all listed).

694. The SOS does not attempt to contact voters by email or phone before or after cancelling their registrations. Hearing Tr. 77:25-78:19, ECF No. 180 (Dec. 19, 2019) (Testimony of C. Harvey) (acknowledging that voters who are not notified before the purge by the mailing that is supposed to be sent would need to affirmatively check their registration status to find out they were purged); *see also id.* 78:22-79:18.

695. Numerous voters have submitted complaints based on having been purged from the rolls without notice. Exh. 85, *See e.g.* Oct. 11, 2018 Email re Cancelled Registration in Cobb County, State-Defendants-00656974; Exh. 86,

Nov. 28, 2018 Email re Cancelled Registration in Cook County, State-Defendants-00741800; Exh. 87, Nov. 6, 2018 Email re Cancelled Registration in DeKalb County, 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; Exh. 91, Sept. 25, 2018 Email re Voting Record Purged, State-Defendants-00329628; Exh. 92, Nov. 1, 2016 Email re Voter Registration Cancelled, State-Defendants-00334195; Exh. 93, Nov. 8, 2016 Email re Voter Registration Cancelled, State-Defendants-00332387; Exh. 809, Nov. 2, 2017 Email re Voter Registration Purged, State-Defendants-00329966; Exh. 484, Nov. 10, 2014 Letter re Gwinnett County Polling Location, Orr-Gwinnett-County-000830; Exh. 923, Nov. 28, 2018 Email re Voter Registration Cancelled in Glynn County, State-Defendants-00741798.

696. In many of these cases, the voters found out that they were purged after it was too late to reregister to vote in the upcoming general election. *See e.g.*, Exh. 87, Nov. 6, 2018 Email re Voter Registration in DeKalb County, 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; Exh. 92, Nov. 1, 2016 Email re Voter Registration Cancelled, State-Defendants-00334195; Exh. 93, Nov. 8, 2016 Email re Voter Registration Cancelled, State-Defendants-00332387; Exh. 484, Nov. 10, 2014 Letter re Gwinnett County Polling Location, Orr-Gwinnett-County-000830; Exh. 923, Nov. 28, 2018 Email re Voter Registration Cancelled in Glynn County, State-Defendants-00741798.

697. SOS investigations have revealed that voters have been purged without their knowledge. Exh. 113, *See, e.g.*, Jan. 22, 2013 SOS Report re Upson County, State-Defendants-00036409; Exh. 80, May 6, 2016 SOS Report re Fulton County, State-Defendants-00023366, at -00023369-70.

698. Certain voters on the 2019 Purge List did not read or receive any notice from the SOS that their registrations were set to be purged. *See, e.g.*, Exh. 94, C. Thomas Decl. ¶ 6, State-Defendants-00968881; Exh. 95, D. Hopkins Decl. ¶ 5, State-Defendants-00968884; Exh. 96, C. Young Decl. ¶ 10; Exh. 97, Kilton Smith Decl. ¶ 6, Pltfs001135.

699. The SOS does not notify purged voters *after* the purge takes place, leading voters to be unaware that they have been purged and that they cannot

exercise their right to vote unless they re-register in time for the next election. Hearing Tr. 77:25-78:19, ECF No. 180 (Dec. 19, 2019) (Testimony of C. Harvey) (acknowledging that voters who are not notified before the purge by the mailing that is supposed to be sent would need to affirmatively check their registration status to find out they were purged); *see also* O.C.G.A. §§ 21-2-234, 21-2-235.

700. Voters have difficulty re-registering after they have been purged. This has led to voters not being able to vote. Exh. 114, May 27, 2015 SOS Investigation Report, State-Defendants-00024145, at -00024148 (verifying purged voter's claim that his effort to reregister at DDS was unsuccessful and so he missed the deadline to reregister); Exh. 115, C. Banez Decl. ¶¶ 3, 6, 7-33 (describing an arduous reregistration process after the voter was purged, preventing her from voting).

701. The SOS recognizes that its mailings do not provide adequate notice, and that adding notice by email and phone would reduce the risk of erroneous disenfranchisement such that any fiscal or administrative burdens involved would be worth bearing. *See* Exh. 721, Jan. 22, 2019 Email re 2019 Strategic Plans Memo, State-Defendants-00200644; Exh. 722, Jan. 22, 2019 Strategic Plans Memo, State-Defendants-00200645, at -00200645 (recommending, as a "priority" action, that the SOS adopt "email/text notifications when their voter registration

information is updated/changed,” including “going into ‘inactive’ status,” which would impose a “low to medium cost”).

702. The SOS recognizes that voters are not adequately informed of voter registration deadlines. Exh. 721, Jan. 22, 2019 Email re 2019 Strategic Plans Memo, State-Defendants-00200644; Exh. 722, Jan. 22, 2019 Strategic Plans Memo, State-Defendants-00200645, at -00200645 (recommending, as a “priority” action, that the SOS create an “email/text newsletter that, at a minimum, provides . . . registration deadlines,” which would impose a “low or nominal cost”).

B. The Voter Purge Disenfranchises Voters Who Have Not Become Ineligible by Changing Residency

703. For the 2018 election, a federal court ordered Defendants to collect the reasons provisional ballots were not counted in a subset of Georgia’s counties. Exh. 548, Nov. 15, 2018 Email re Provisional Voters List, State-Defendants-00046400, at -00046401.

704. In 22 of Georgia’s 159 counties,⁵ hundreds of voters appeared at the polls to vote in the 2018 general election, affirmed in writing that they continued to

⁵ These are all of the counties for which Defendants produced data indicating how many provisional ballots were rejected as a result of the voter purge. Plaintiffs’ calculation includes only the voters listed on these spreadsheets for whom the purge was listed as the reason the ballot was rejected (using notations such as “No Activity,” “NOACT2GE,” and “canceled due to nonactivity”).

meet all requirements to vote in that election, and did not have their votes counted because they had been purged. *See* Exh. 557, Lists of Rejected Provisional Ballots for the November 6, 2018 Election, State-Defendants-00046500; Exh. 546, State-Defendants-00046389; Exh. 794, State-Defendants-00313405; Exh. 796, State-Defendants-00313442; Exh. 556, State-Defendants-00046492; Exh. 630, State-Defendants-00092685; Exh. 797, State-Defendants-00313465; Exh. 558, State-Defendants-00046513; Exh. 886, State-Defendants-00471999; Exh. 553, State-Defendants-00046419; Exh. 551, State-Defendants-00046412; Exh. 554, State-Defendants-00046422; Exh. 989, State-Defendants-00951831; Exh. 799, State-Defendants-00313540; Exh. 555, State-Defendants-00046452; Exh. 552, State-Defendants-00046415; Exh. 550, State-Defendants-00046406; Exh. 576, State-Defendants-00055300; Exh. 885, State-Defendants-00471858; Exh. 549, State-Defendants-00046403; Exh. 547, State-Defendants-00046392; Exh. 545, State-Defendants-00046379; *see also* O.C.G.A. § 21-2-418 (requiring these voters to, among other things, “affirm in writing” that they meet all eligibility requirements including residency).

705. These records do not count the purged voters who did not know they were purged, showed up to vote, and then were not offered provisional ballots. Exh. 82, Nov. 8, 2018 Email re Not Allowed to Vote, State-Defendants-00330694

(reporting that voters “who had not voted in years” were turned away and “not offered provisional ballots”); *see also infra* ¶¶ 909, 914 (addressing poll workers’ frequent failure to give voters provisional ballots).

706. These figures also do not count the purged voters who did not undertake the futile act of attempting to vote while in cancelled status. *See* Exh. 26, Dec. 11, 2019 R. Germany Dep. 50:12-51:20 (“Q: If somebody is canceled . . . and goes in to vote, they can’t vote that day; right? A: Correct. It’s assuming they’re not – they’re not properly registered to vote.”); *see also, e.g.*, Exh. 80, May 6, 2016 SOS Report re Fulton County, State-Defendants-00023366, at -00023370.

707. The 2019 Purge List contained voters who continued to reside at their voter registration address. *See, e.g.*, Exh. 111, L. Bradshaw Decl. ¶¶ 3-4; Exh. 94, C. Thomas Decl. ¶ 3; Exh. 95, D. Hopkins Decl. ¶ 5; Exh. 96, C. Young Decl. ¶ 10; Exh. 97, K. Smith Decl. ¶ 3, Pltfs001135.

708. The majority of voters cancelled in the 2019 voter purge for “no contact” did not actually move from their registration address. Expert Report of M. McDonald, ECF No. 240 at 3-4, 14, 17-18.

709. In December 2019, the SOS cancelled the registrations of at least 59,866 “no contact” voters who continued to reside at their voter registration address. Expert Report of M. McDonald, ECF No. 240 at 18.

710. According to Defendants' expert, Dr. Thomas Brunell, it was "no surprise" that many of the people the SOS designated "no contact" had not changed residences. Supplemental Report of T. Brunell, ECF No. 276 at 4. In his view, "the no contact list would . . . catch some" people who have moved, but it would also "catch a lot of other people that haven't moved." May 21, 2020 T. Brunell Dep. 158:11-24, ECF No. 449-2 at 59. The NCOA list, in contrast, would be a more effective way to identify people who have moved. *Id.* 158:25-159:3, ECF No. 449-2 at 59-60.

711. SOS investigations and searches of its own database have revealed that voters have been purged for "no contact" even though they did not move. *E.g.*, Exh. 80, May 6, 2016 SOS Report re Fulton County, State-Defendants-00023366, at -00023369-70; Exh. 81, Oct. 27, 2018 Email re Voter Record, State-Defendants-00054325.

C. The SOS's Voter-Purge Process Does Not Serve the Government's Interests

712. In 2017, then-SOS Kemp explained in writing to the U.S. Department of Justice that the voter-purge process—including the No Contact, NCOA, and Returned Mail categories—is meant to identify voters who have "changed residency." Exh. 737, Aug. 21, 2017 Letter re GA SOS Voter List Maintenance Practices, State-Defendants-00234459; *see also* Exh. 26, Dec. 11, 2019 R.

Germany Dep. 52:17-23 (explaining that SOS uses “no contact and national change of address and returned mail” to determine whether registrants have moved); Exh. 75, Dec. 6, 2019 K. Rayburn Dep. 169:2-4 (explaining in the context of discussing the notices mailed to registrants before they are moved to cancelled status “[i]t’s going to this person’s address who we believe is likely no longer there, that’s why they’re in this process.”); Exh. 437, Sept. 18, 2018 Email re Change of Address Process, GA00766311, at -00766311 (explaining in the context of discussing the notices mailed to registrants before they are moved to inactive status “[t]he purpose of the letter is to confirm that the address where the elector is registered to vote is still their correct address”); https://sos.ga.gov/index.php/elections/2019_list_maintenance (describing the purge of No Contact registrants and others as “removing [voters] from the voter rolls due to a change in address.”).

713. Defendants engage in separate “list maintenance” processes to remove voters from the rolls who have died; who are serving a felony sentence; and who have been declared mentally incompetent. Exh. 737, Aug. 21, 2017 Letter re GA SOS Voter List Maintenance Practices, State-Defendants-00234459, at -00234459-61.

714. The SOS has not done any analysis to determine whether someone who has had “no contact” is likely to have actually moved. Exh. 21, Dec. 5, 2019 C. Harvey Dep. 342:23-343:4.

715. The SOS does not have any reason to believe purging voters for “no contact” would improve voter list accuracy. Exh. 21, Dec. 5, 2019 C. Harvey Dep. 343:24-352:23.

716. Harvey was unaware of any reason to purge voters for “no contact” aside from his belief that state law requires it. Exh. 21, Dec. 5, 2019 C. Harvey Dep. 345:7-346:5.

717. The SOS recognizes that its list-maintenance activities do not accurately identify ineligible voters. Exh. 721, Jan. 22, 2019 Email re 2019 Strategic Plans Memo, State-Defendants-00200644; Exh. 722, Jan. 22, 2019 2019 Strategic Plans Memo, State-Defendants-00200645, at -00200645 (identifying a “priority” action to “increase accuracy of list-maintenance activities”).

718. Cancelling the registrations of only voters who have in fact filed an NCOA form would better serve the Government’s interest in voter-list accuracy, without cancelling the registrations of voters who have not moved. *See* Expert Report of M. McDonald, ECF No. 240 at 3-4, 14, 17-18; May 21, 2020 T. Brunell Dep. 158:25-159:3, ECF No. 449-2 at 59-60 (Q: So if your goal is to get rid of all –

all and only the people who moved, the NCOA would be a more effective way to do that? A: That – that seems – that seems right to me.”).

719. According to the SOS, “Georgia had no cases of illegal voting in the 2016 election.” Exh. 712, Jan. 30, 2017 Letter, State-Defendants-00189270.

720. Data from ERIC is the “gold standard” regarding information about voters’ movement. Feb. 28, 2020 M. McDonald Dep. 14:1-21, ECF 414-1 at 15. But ERIC is not the system Defendants use to identify registrants who have moved from their registration address.

721. The Government’s interests are in removing voters from the rolls who would be ineligible to register and reducing barriers to registration for voters who *are* eligible to register. Exh. 737, Aug. 21, 2017 Letter re GA SOS Voter List Maintenance Practices, State-Defendants-00234459; Exh. 869, 2019 SOS Talking Points, State-Defendants-00443449, at -00443449 (SOS talking points describing Georgia’s goal “to register more voters” by making “voter registration a virtually thoughtless and effortless act”).

722. As noted above, however, substantial proportions of the registrants who are purged did not, in fact, move from their registration addresses and thus remain eligible voters. *See infra* ¶¶ 704-11. Accordingly, the SOS’ voter purge

unnecessarily cancels many voters' registrations and does not serve the State's purported interests in removing ineligible voters.

VI. VOTER REGISTRATION DATABASE

723. Georgia's Secretary of State, presently Defendant Raffensperger, is Georgia's "chief election official," O.C.G.A. § 21-2-50.2(b), and has a statutory duty to "maintain the official list of registered voters . . . and the list of inactive voters." *Id.* § 21-2-50(a)(14); *see also* Ga. Op. Att'y Gen. No. 2005-3 (explaining that the SOS is authorized to "maintain the statewide voter registration system"); O.C.G.A. §§ 21-2-219 through 21-2-225 (describing various ways in which the SOS maintains the voter registration list, including the security of the list).

724. The SOS maintains the "statewide voter registration system," called eNet, ElectioNet, or GVRS. Exh. 26, Dec. 11, 2019 R. Germany Dep. 11:18-12:5; Exh. 636, GROC Registrar Course No. 3, Legal Framework of Elections, State-Defendants-00102947, at -00102996.

725. The SOS accepted more than \$10 million in federal funding for activities including "improving voter registration database management" and "updating the online voter registration page." 2018 HAVA Election Security Grant Award Letter from Georgia Secretary of State to the U.S. Election Assistance

Committee (July 10, 2018) (Attachment C to Expert Report of K. Brown-Dean, ECF No. 91); *see also* Expert Report of K. Brown-Dean, ECF No. 138 at 16-17.

726. County officials regularly turn to the SOS for instruction on how to perform tasks affecting data in the voter registration system. *See e.g.*, Exh. 739, Jan. 17, 2017 Email from Hall County re 40 Day Clock, State-Defendants-00238801; Exh. 713, Jan. 25, 2017 Email from Decatur County re Moving City of Bainbridge Residents into Different Precinct, State-Defendants-00189385; Exh. 28, Feb. 23, 2017 Email from Houston County re Commercial Addresses, State-Defendants-00166546; Exh. 664, March 15, 2017 Email to DDS re Voter Addresses, State-Defendants-00158302; Exh. 29, March 17, 2017 Email from Richmond County re DDS Application, State-Defendants-00171403; Exh. 766, April 19, 2018 Email from Catoosa County re DDS Transfer, State-Defendants-00282643.

727. The SOS regularly directs county officials to take specific actions that modify data in the voter registration system. *See e.g.*, Exh. 27, Jan. 27, 2017 SOS Email with Bulloch County re Voter Registration, State-Defendants-00337007; Feb. 23, 2017 SOS Email with Houston County re Commercial Addresses, Exh. 28, State-Defendants-00166546; Exh. 29, Mar. 17, 2017 SOS Email with Richmond County re DDS Application, State-Defendants-00171403; Exh. 676,

Apr. 25, 2017 SOS Email with Dougherty County re Merge Process, State-Defendants-00170183; Exh. 763, Mar. 16, 2018 SOS Email with Columbus County re Loose Matches, State-Defendants-00270173; Exh. 766, Apr. 19, 2018 Email from Catoosa County re DDS Transfer, State-Defendants-00282643; Exh. 790, Oct. 25, 2018 Email with Coweta County re Voter Registration Lost Form, State-Defendants-00312734; Exh. 757, Nov. 9, 2018 Email from Lowndes County re Adjustment on eNet to Prevent Voter Registration Updates, State-Defendants-00267834.

728. Georgia’s voter registration system has numerous technical problems. As the SOS’s records reveal, the registration system has erroneously “cancelled” voter registration applications, causing those voters’ applications not to be processed. Exh. 58, Mar. 1, 2017 Email with Columbia County re “Canceled” Voters, GA00766353; Exh. 59, Feb. 20, 2018 Email with Richmond County re Transferred Voters, GA00769373; Exh. 714, July 10, 2017 Email re Canceled Voters Error, State-Defendants-00189958.

729. Georgia’s system has erroneously marked some eligible voters as non-citizens, Exh. 560, Jan. 2, 2019 Notification re Verification of Citizenship Documentation, State-Defendants-00052240; Exh. 448, May 2, 2018 Notification re Glitches in Verification, GA00777637; Exh. 543, Nov. 7, 2018 Email re Voter

Incorrectly Flagged as Non-Citizen, State-Defendants-00046345, and as felons ineligible to vote, Exh. 433, Oct. 23, 2017 Email re Felon Process Corrections, GA00765125-27; Exh. 872, Oct. 9, 2018 Email re Voter Flagged as Cancelled Felon, State-Defendants-00447907; Exh. 830, Nov. 9, 2016 Email re Complaint from Voter Turned Away, State-Defendants-00332331; Exh. 784, June 28, 2018 Email re First Offender Act, State-Defendants-00310795.

730. Georgia's voter registration system also has had difficulty merging records of registered voters. Exh. 643, Mar. 28, 2014 SOS Election Update, State-Defendants-00128820; Exh. 666, Jan. 27, 2017 Email re Merging Voters, State-Defendants-00158872; Exh. 677, Mar. 17, 2017 Email re Merging Voters with Cancelled Status, State-Defendants-00171419; Exh. 676, Apr. 26, 2017 Email re Duplicate Merge, State-Defendants-00170183; Exh. 27, Jan. 27, 2017 Email re Duplicate Voter to Merge, State-Defendants-00337007; Exh. 870, May 30, 2018 Email re Duplicate Voter, State-Defendants-00444749.

731. When records are merged, the combined record sometimes does not correctly reflect all the information for the voter. Exh. 643, Mar. 28, 2014 SOS Election Update, State-Defendants-00128820; Exh. 666, Jan. 27, 2017 Email re Merging Voters, State-Defendants-00158872.

732. The records of two different voters also sometimes merge into one record. Exh. 870, May 30, 2018 Email re Duplicate Voter, State-Defendants-00444749.

733. The SOS has communicated internally and with county officials regarding these problems on many occasions. Exh. 676, Apr. 26, 2017 Email re Duplicate Merge, State-Defendants-00170183; Exh. 27, Jan. 27, 2017 Email re Duplicate Voter to Merge, State-Defendants-00337007.

734. These problems have sometimes resulted in voter records being removed from the registration system or voters being marked as “cancelled.” *See, e.g.*, Exh. 871, Aug. 7, 2018 Email re Voter Merged in Error, State-Defendants-00446057; Exh. 877, June 13, 2018 Email re Voters Merged in Error, State-Defendants-00468910; Exh. 532, Apr. 30, 2015 SOS Investigations Division Report, State-Defendants-00037787.

735. The voter registration system also has erroneously changed voters’ addressees and failed to properly update addresses. *See* Exh. 613, Nov. 6, 2018 Email re Voter Address Error, State-Defendants-00088360 (voter’s registration changed back to prior county of registration, even though voter had already successfully voted in the new county); Exh. 602, Mar. 29, 2019 Email re Third Attempt to Register in Gwinnet County, State-Defendants-00086560 (voter tried

three times to change registration to Gwinnett County, but was still registered in Cobb County).

736. In one instance, the voter registration system erroneously marked over 300 voters as having voted provisional ballots. Exh. 445, Jan. 30, 2017 Email re Provisional Voters, GA00777227.

737. In another instance, the database held a voter registration in “limbo” and failed to process it. Exh. 675, Jan. 23, 2017 Email re Delayed Registration, State-Defendants-00168604.

738. Before the 2018 election, the SOS knew about problems regarding Georgia’s voter database, both from correspondence with county elections officials and through receipt of complaints from voters themselves. *See, e.g.*, Exh. 428, June 5, 2018 Email from SOS to Cobb, Gwinnett, DeKalb, Fulton, and Forsyth Counties, GA00763921; Exh. 447, Mar. 28, 2017 Email re Pending Status, GA00777582; Exh. 75, Dec. 6, 2019 Rayburn Dep. 150:4-159:19 (discussing problems with the database); Exh. 25, Jan. 6, 2020 SOS 30(b)(6) Dep. 41:7-44:12 (discussing the voter database and explaining the lack of protections to the database).

739. The SOS was aware that that inaccurate voter rolls can lead voters to be unable to vote and that many voters had experienced problems voting because of inaccurate voter rolls. Exh. 21, Dec. 5, 2019 C. Harvey Dep. 296:1-6.

740. The SOS's Assistant General Counsel Kevin Rayburn has admitted that the Secretary of State does not regularly conduct checks of counties' voter registration data at all. Exh. 75, Dec. 6, 2019 Rayburn Dep. 158:4-161:3.

741. As a result of these problems, eligible voters have severe difficulties casting ballots. In the 2018 midterm election, many voters who had properly registered arrived at their polling station and were informed that they were not registered. *See, e.g.*, Exh. 297, S. Cramer Decl. ¶¶ 8-10; Exh. 294, S. Clark Decl. ¶ 4; Exh. 577, Nov. 6, 2018 Email re Turned Away at Poll, State-Defendants-00055464; Exh. 127, Nov. 28, 2018 Email re Voter Registered but Not in System, State-Defendants-00085595; Exh. 605, Oct. 11, 2018 Email re No Record of Registration, State-Defendants-00087589; Exh. 562, Oct. 24, 2018 Email re Registration Information Could Not Be Located, State-Defendants-00054160; Exh. 610, Oct. 25, 2018 Email re Registration Issues, State-Defendants-00087941; Exh. 992, July 24, 2018 Email re Former City Councilman Missing from System, State-Defendants-00964000; Exh. 805, I. Owens Decl., State-Defendants-00328521; *see also* Exh. 316, L. Goldstrom Decl. ¶ 3.

742. Some eligible voters were told erroneously that they were not U.S. citizens and therefore could not cast ballots. *See* Exh. 69, P. Einzig-Roth Decl. ¶ 4; Exh. 70, K. Carter Decl. ¶ 4. Other voters were told incorrectly that they could not vote because they were felons. Exh. 373, K. Neal Decl. ¶ 3.

743. In addition to voters who were wrongly told they were ineligible, many voters appeared at their polling stations to vote in the 2018 general election and were told that they were registered in a different location, and/or that they needed to vote at a different polling station. *See* Exh. 343, K. Jackson Decl. ¶¶ 5-11; Exh. 170, F. Lucas Decl. ¶¶ 5-9; Exh. 302, C. Duncan Decl. ¶ 3; Exh. 347, A. Johnson Decl. ¶ 3; Exh. 301, V. DeRosa Decl. ¶ 3; Exh. 382, J. Peterson Decl. ¶¶ 4-6; Exh. 169, E. Walden Decl. ¶ 4; Exh. 417, C. White Decl. ¶ 4; *see also* Exh. 189, M. Church Decl. ¶ 3; Exh. 300, K. Dermody Decl. ¶ 9; Exh. 278, R. Boyd Decl. ¶¶ 9-10; Exh. 565, Oct. 31, 2018 Email re New Address Not Reflected on Registration, State-Defendants-00054330; Exh. 810, Nov. 2, 2018 Email re Address Changed, State-Defendants-00330138; Exh. 816, Nov. 8, 2018 Email re Sent to Wrong Polling Place, State-Defendants-00330674; Exh. 286, A. Burleson Decl..

744. In many instances, local election officials told these individuals that they were not registered at their current addresses, despite their having filed change

of address documentation and, in some instances, voted previously at their polling stations. Exh. 302, C. Duncan Decl. ¶ 3; Exh. 301, V. DeRosa Decl. ¶ 3; Exh. 382, J. Peterson Decl. ¶¶ 4-6; Exh. 169, E. Walden Decl. ¶ 4; Exh. 417, C. White Decl. ¶ 4.

745. Moreover, some voters were told to vote at different polling locations than family members who lived with them at the same address. Exh. 347, A. Johnson Decl. ¶ 3; Exh. 382, J. Peterson Decl. ¶¶ 4-6; Exh. 169, E. Walden Decl. ¶ 4; Exh. 286, A. Burleson Decl.

746. As a direct result of these errors, many eligible voters were unable to cast ballots. *See, e.g.*, Exh. 70, K. Carter Decl. ¶ 4; Exh. 294, S. Clark Decl. ¶ 4; Exh. 347, A. Johnson Decl. ¶ 3; Exh. 496, June 18, 2018 Email re Voter Not Allowed to Vote, State-Defendants-00017329; Exh. 810, Nov. 2, 2018 Email re Address Changed, State-Defendants-00330138.

747. Other voters had no choice but to cast provisional ballots. *See, e.g.*, Exh. 302, C. Duncan Decl. ¶ 3; Exh. 69, P. Einzig-Roth Decl. ¶ 4; Exh. 373, K. Neal Decl. ¶ 3; Exh. 417, C. White Decl. ¶ 4; Exh. 297, S Cramer Decl. ¶¶ 10-12; Exh. 382, J. Peterson Decl. ¶¶ 4-7; Exh. 992, July 24, 2018 Email re Former City Councilman Missing from System, State-Defendants-00964000; Exh. 805, I.

Owens Decl., State-Defendants-000328521; Exh. 816, Nov. 8, 2018 Email re Sent to Wrong Polling Place, State-Defendants-00330674; Exh. 286, A. Burlson Decl..

748. The SOS received complaints in the 2018 election about people trying to vote and being told that they were not registered. Exh. 21, Dec. 5, 2019 C. Harvey Dep. 295:17-25.

749. The SOS also received complaints in the 2018 election about people trying to vote and being told that the voter rolls did not reflect their address changes. Exh. 21, Dec. 5, 2019 C. Harvey Dep. 295:17-25; Exh. 822, Sept. 6, 2018 Email re Cannot Register at New Address, State-Defendants-00331586.

750. As recently as January 2020, the SOS's Elections Director, Chris Harvey, stated that there are no plans to change the Secretary of State's policies or practices to ensure that the rolls correctly reflect address changes initiated by voters. Exh. 25, Jan. 6, 2020 SOS 30(b)(6) Dep. 44:2-12. To the contrary, Harvey stated that the SOS is "satisfied that it's working now." *Id.* 45:13-20.

751. In June 2020, many of the problems associated with the voter registrations system reoccurred during Georgia's primary election. Numerous voters were told that they were registered at incorrect old addresses (despite their having alerted the SOS to address changes), *see* Exh. 325, A. Harrison Decl; Exh. 406, M. Tabakovic Decl.; Exh. 411, S. Vaughn Decl.; Exh. 422, A. Wolkin Decl.,

or under incorrect names, *see* Exh. 385, K. Plazyk Decl., or were erroneously told that they were not eligible to vote, *see* Exh. 400, A. Smith Decl.

VII. ABSENTEE BALLOTS

752. In 2012, 2016, and 2018, over 200,000 Georgia voters cast absentee ballots.⁶ Exh. 1,048, State-Defendants-00587759. Given the health risks presented by the COVID-19 pandemic, that number skyrocketed to at least 1,100,000 in the June 2020 primary election. *See* Mark Niese, *Election Workers Struggle To Finish Counting Georgia Absentee Ballots*, Atlanta J.-Const. (June 16, 2020), <https://www.ajc.com/news/state--regional-govt--politics/election-workers-struggle-finish-counting-georgia-absentee-ballots/ra6euGvP4I5ikiami0SmBP/>.

753. A voter seeking to vote absentee in Georgia must first complete an absentee application and mail, email, or fax the application to local election officials. *See* O.C.G.A. § 21-2-381(a)(1). The county then processes the application. *See* O.C.G.A. § 21-2-381(b).

754. Georgia law requires that election officials issue absentee ballots within three business days of receiving an application for an absentee ballot. *See* O.C.G.A. § 21-2-384(a)(2) (requiring the issuance of ballots to applicants 45 days

⁶ Plaintiffs continue to refer to absentee by mail ballots as “absentee ballots,” as opposed to absentee in person “early voting” ballots.

in advance of a general election or, if a voter applies after that point, “immediately upon determining their eligibility”); Ga. Admin. Code § 183-1-14-.11 (requiring counties to issue absentee ballots within three business days of receiving voter’s request for an absentee ballot).

755. In the past, officials have rejected absentee applications for signature mismatch; now county officials must issue “provisional absentee ballots” to voters whose signatures do not match, which voters can cure by providing identification. *See* O.C.G.A. § 21-2-381.

756. If the county cannot identify the voter from the information provided for some other reason, the county must write to request additional information from the voter. *See* O.C.G.A. § 21-2-381(b)(4).

757. Absentee ballots must be returned to the county by 7 p.m. on Election Day. Voters who wish to cancel their absentee ballots and vote in person may do so. *See* O.C.G.A. § 21-2-388.

758. Counties must decide whether to accept or reject absentee ballots that are returned. If a ballot is rejected, a voter may be able to “cure” the ballot by providing photo identification to the county by the end of the period for curing provisional ballots. *See* O.C.G.A. § 21-2-386(a)(1)(C).

759. The SOS recognizes that if people did not receive their absentee ballots at all or in time to vote, that could prevent them from being able to vote. Exh. 21, Dec. 5, 2019 C. Harvey Dep. 301:11-14.

A. Delays in Receiving and Returning Absentee Ballots

760. “[T]he closer you get to the election, the bigger the obstacle it is to getting” an absentee ballot out to a voter and back. Exh. 21, Dec. 5, 2019 C. Harvey Dep. 68:20–69:2. Although Georgia law allows voters to request absentee ballots on the Friday before an election, “putting a ballot in the mail on a Friday or a Saturday and expecting it to get to the voter and get back is certainly increasing the odds that it won’t happen.” *Id.* 69:3–12.

761. The stated deadline to submit an absentee ballot application is the end of the Friday before Election Day. *See How Do I Request an Absentee Ballot?*, GA.gov, <https://georgia.gov/vote-absentee-ballot> (last visited June 26, 2020).

762. SOS employees recognize that absentee ballot requests filed before the official deadline may not be processed in time for voters to receive and return their ballots by Election Day. *See* Exh. 455, Feb. 7, 2017 K. Rayburn Email, GA00782118 (“[I]f ballots are originally sent by the voter right before the deadline, there usually isn’t enough time to correct and mail the ballot back in.”);

Exh. 928, Aug. 21, 2019 K. Rayburn Email, State-Defendants-00742278 (responding to voter question re deadline for requesting absentee ballot).

763. In one instance in November 2018, SOS employees internally expressed concern that an organization’s failure to submit a stack of absentee applications until November 1—well before the stated deadline—may “make it very difficult to get the ballot to the voter and the voter getting it back to the office by election day.” Exh. 984, Nov. 1, 2018 C. Harvey Email, State-Defendants-00887727.

764. One Gwinnett County voter contacted Gwinnett County at least five times between October 22 and October 30, 2018, to make sure they would mail her son’s ballot. They told her that the ballot would be mailed “in the next day or two,” but only mailed it on October 30, a week after they received the application by fax. Exh. 415, S. Washington Decl. ¶ 3, Pltfs000679.

765. Another voter emailed her ballot request directly to a Fulton County official at that official’s instruction, then was told six days later that the request had never been submitted. Exh. 1,050, M. McClure Decl. ¶ 3, Pltfs000719.

766. SOS investigations have substantiated failures to process absentee ballots in a timely fashion or at all, resulting in voters receiving their ballots too late to return them in time for the election or not receiving them at all. *See* Exh.

153, Report, 2012 Fulton County Elections, GA00759177 at -00759197–98 (identifying complaints re absentee ballot system); Exh. 531, Proposed Consent Order re 2009 and 2011 Violations by City of Wadley, State-Defendants-00036746; Exh. 503, May 24, 2013 Letter of Instruction to Decatur County, State-Defendants-00018210; Exh. 937, SOS Investigation Report, State-Defendants-00794701.

767. The SOS has further been made aware of this issue from voters complaining about county failures to promptly process their applications. *See* Exh. 141, Oct. 27, 2016 C. Lowery Complaint, State-Defendants-00156523; Exh. 142, November 2016 G. Hayden Complaint re Habersham County, State-Defendants-00892529; Exh. 143, December 2017 R. Cook Complaint re Fulton County, State-Defendants-00815990; Exh. 144, December 2017 J. Panarites Complaint re Fulton County, State-Defendants-00816529; Exh. 145, R. Rhodes Complaint re Hancock County, State-Defendants-00054370; Exh. 146, November 2018 E. Donaldson Complaint re DeKalb County, State-Defendants-00057465; Exh. 147, November 2018 J. Morrison Complaint re Glynn County, State-Defendants-00018609; Exh. 148, November 2018 A. Sosnoff re DeKalb County, State-Defendants-00057505; Exh. 149, December 2018 D. Rolfes Complaint re Chatham County, State-Defendants-00836278; Exh. 150, April 2019 D. Gasaway Emails, State-

Defendants-00057535; Exh. 628, State-Defendants-00092457 (alleging widespread mishandling of absentee ballots).

768. SOS employees have recognized that some counties have more problems regarding absentee ballots than others. *See* Exh. 908, October 2019 Email from G. Holland to K. Rayburn, State-Defendants-00654773 (stating DeKalb County “had a lot of problems regarding absentee ballots”); Exh. 997, Dec. 11, 2017 Email from R. Lewis to J. Howard, State-Defendants-00984960 (“I have a few more absentee ballot requests complaints for Fulton County. I’ll be forwarding them to you for inclusion in the file you already have.”).

769. The SOS eNet system shows, among other things, when counties have received absentee ballot applications from voters, when counties have sent absentee ballots to voters, and when counties have received completed absentee ballots from voters. Exh. 21, Dec. 5, 2019 C. Harvey Dep. 64:1- 65:22 (“we can check there in E-Net . . . we are able to monitor the number of applications, voter registration applications they have pending in E-net for registration.”).

770. “[A]ll of the absentee ballot [information] is done through eNet,” so “frankly, anybody could [do] some spot-checks to see if counties are meeting the requirements.” Exh. 25, Jan. 6, 2020 SOS 30(b)(6) Dep. 95:13-98:20.

771. The SOS collects “individualized information at the voter level for absentee ballot requests, issued ballots, and returned ballots.” Exh. 897, Oct. 21, 2018 SOS Email re Voter Absentee File Explanation, State-Defendants-00579688. This gives the SOS the information that would enable it to “see if ballots are being sent” and “if there is a delay” and then intervene accordingly, if it chose to do so. Exh. 21, Dec. 5, 2019 C. Harvey Dep. 65:5-10.

772. In spite of this, the SOS has no protocol for ensuring that counties are actually sending ballots to voters within three business days of receiving applications. Exh. 21, Dec. 5, 2019 C. Harvey Dep. 65:5-22, 67:3-68:18 (“there’s not a specific requirement that [SOS personnel] monitor all their counties for absentee ballot performance or absentee ballot issuance”), 69:19-70:4 (saying “No, there is not” when asked whether the SOS has any protocol, practice or procedure requiring someone in the SOS’s office to monitor whether counties are getting out their absentee ballots within three days).

773. Although Chris Harvey alluded in January 2020 to the possibility of “some kind of at least spot-checking to see if [there’s] compliance” for the presidential primary, he conceded that he did not “know that [the SOS was] going to have an entire system set up to do that,” and that no “solid” steps had been taken to put that into place. Exh. 25, Jan. 6, 2020 SOS 30(b)(6) Dep. 98:12–20.

774. As of the SOS's January 6, 2020 deposition, the SOS had no "hard plans" to monitor whether the counties were getting absentee ballots sent out within the required three-day period. Exh. 25, Jan. 6, 2020 SOS 30(b)(6) Dep. 97:16-96:2.

775. In contrast, the SOS monitors eNet to ensure that counties are not issuing ballots before the statutory cutoff of 49 days before an election, as mandated by O.C.G.A. § 21-2-384(a)(2). *See* Exh. 752, Sept. 19, 2018 J. Hallman Email re Forsyth County, State-Defendants-00264902; Exh. 753, Sept. 20, 2018 J. Hallman Email re Gwinnet County, State-Defendants-00264983; Exh. 755, Sept. 19, 2018 J. Hallman Email re Glynn County, State-Defendants-00265017; Exh. 754, Sept. 19, 2018 J. Hallman Email re Decatur County, State-Defendants-00265016; Exh. 787, Sept. 18, 2018 J. Hallman Email re Fulton County, State-Defendants-00311685.

776. The SOS contacts counties to ensure that "rollover voters"—elderly voters or voters who are otherwise entitled to automatically receive absentee ballots—have received their ballots. *See, e.g.*, Exh. 859, June 5, 2017 Email to Fulton County, State-Defendants-00340613.

777. The SOS monitors the issuance of ballots to military and oversees voters to ensure compliance with the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA). *See* Exh. 21, Dec. 5, 2019 C. Harvey Dep. 64:1–20.

778. With respect to UOCAVA absentee ballot compliance, the SOS recently began requiring counties to certify their compliance. 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.”).

779. The SOS also had SOS personnel contact the counties on deadline dates to make sure the counties said they had complied with the UOCAVA requirements. Exh. 21, Dec. 5. 2019 C. Harvey Dep. 64:1-65:22 (“we will call the county”).

780. The SOS has no comparable monitoring of counties’ compliance with state law requirements for absentee ballots. *See supra* ¶¶ 769-74.

781. Exacerbating these administrative failures, voters frequently face insurmountable obstacles to receiving and returning their absentee ballots by mail. *See* Exh. 274, C. Bailey Decl. ¶ 3, Pltfs000361; Exh. 370, B. Morris Decl. ¶ 3, Pltfs000522.

782. County officials have raised concerns regarding returned mail, *see* Exh. 873, May 2018 Emails with Chatham County, State-Defendants-00456601, and about receiving absentee ballots a week after the postmark, *see* Exh. 779, Feb. 21, 2019 Email from Macon-Bibb County Official, State-Defendants-00290868.

783. Voters have complained to the SOS about not having received their ballots weeks or months after submitting applications, often preventing them from voting. *See* Exh. 23, Aug. 16, 2019 SOS 30(b)(6) Dep. 129:22-131:7 (listing the subject matter of the complaints received); Exh. 848, Dec. 2, 2017 Fulton County Complaint, State-Defendants-00333661 (ballot was listed as received on 11/17/17 and issued on 11/22/17, but voter had not received ballot as of 12/2/17); Exh. 846, State-Defendants-00333533 (voter's daughter received her ballot too late to return it but was ultimately able to vote in person); Exh. 968, Dec. 8, 2017 Fulton County Complaint, State-Defendants-00834583 (voter mailed in request for absentee ballot on Nov. 8 and did not receive ballot before Nov. 26); Exh. 974, June 6, 2017 Complaint re Absentee Ballot Problem, State-Defendants-00836044; Exh. 843, Dec. 10, 2017 Fulton County Complaint, State-Defendants-00333496; Exh. 839, Dec. 12, 2017 Fulton County Complaint, State-Defendants-00333433 (voter was told her absentee ballot for runoff election was mailed on Nov. 25 but ballot arrived on Dec. 4, which was too late to vote); Exh. 821, Dec. 17, 2017 Fulton

County Complaint, State-Defendants-00331304 (voter faxed in absentee ballot request for runoff election in early November but did not receive ballot until after election); Exh. 935, Dec. 20, 2017 Fulton County Complaint, State-Defendants-00746200 (voter requested ballot for her son on Nov. 12 but ballot was not received until Nov. 29); Exh. 823, Aug. 20, 2018 Kennesaw County Complaint, State-Defendants-00331754; Exh. 827, Oct. 4, 2018 Decatur County Complaint, State-Defendants-00332269; Exh. 607, Oct. 11, 2018 Cobb County Complaint, State-Defendants-00087679; Exh. 932, Oct. 11, 2018 Meriweather County Complaint, State-Defendants-00743263; Exh. 777, Oct. 22, 2018 Glynn County Complaint, State-Defendants-00289114; Exh. 880, Oct. 23, 2018 Fulton County Complaint, State-Defendants-00470444; Exh. 561, Oct. 24, 2018 Fulton County Complaint, State-Defendants-00054158; Exh. 921, Oct. 27, 2018 Lowndes County Complaint, State-Defendants-00741219; Exh. 819, Oct. 29, 2018 Kennesaw County Complaint, State-Defendants-00331088; Exh. 611, Oct. 29, 2018 Cobb County Complaint, State-Defendants-00088107; Exh. 566, Oct. 30, 2018 DeKalb County Complaint, State-Defendants-00054343; Exh. 568, Nov. 1, 2018 Gwinnett County Complaints, State-Defendants-00054435; Exh. 586, Nov. 5, 2018 Chatham County Complaints, State-Defendants-00057501; Exh. 574, Nov. 5, 2018, Gwinnett County Complaint, State-Defendants-00054619; Exh. 866, Nov. 6, 2018

Stephens County Complaint, State-Defendants-00417431; Exh. 891, Dec. 4, 2018
Fulton County Complaint, State-Defendants-00565078; Exh. 612, Nov. 5, 2018
Complaint on Behalf of Nursing Home Residents, State-Defendants-00088275;
Exh. 884, Nov. 12, 2018 Fulton County Complaint, State-Defendants-00471614;
Exh. 922, Nov. 27, 2018 Fulton County Complaint, State-Defendants-00741769;
Exh. 840, Dec. 11, 2017 Fulton County Complaint, State-Defendants-00333447;
Exh. 842, Dec. 6, 2017 Fulton County Complaint, State-Defendants-00333493;
Exh. 662, Nov. 8, 2016 Fulton County Complaint, State-Defendants-00156909;
Exh. 573, Nov. 5, 2018 Emails with Cobb County Voter, State-Defendants-
00054564.⁷

784. Even in light of a court order requiring the acceptance of all ballots postmarked by Election Day on December 4 and received by December 7, voters complained that they received their ballots *after* Election Day. *See* Exh. 824, Dec. 7, 2018 McDuffie County Complaint, State-Defendants-00331852; Exh. 890, Dec. 6, 2018 Jackson County Complaint, State-Defendants-00564903; Exh. 778, Dec. 6, 2018 Clarke County Complaint, State-Defendants-00289828.

⁷ This list omits the many complaints the SOS received from DeKalb County voters in 2018 complaining about not having received their absentee ballots and related issues, due to a unique situation that makes it impossible to discern which of the complaints were caused by the routing of ballot applications to Washington, D.C. through an issue not attributable to elections officials.

785. Still more voters were unaware they could still have their ballots counted if they were postmarked by December 4. *See* Exh. 825, State-Defendants-00331866 [December 2018 complaint from Gwinnett voter Merrick Ackermans]; Exh. 854, December 5, 2018 Complaint from Fulton County Voter, State-Defendants-00334811.

786. Voters' mailed absentee applications or ballots also experience delays or are lost entirely. *See* Exh. 327, D. Hart Decl., Pltfs000075; Exh. 370, B. Morris Decl. Pltfs000522; Exh. 402, M. Soori-Arachi Decl., Pltfs000235; Exh. 305, T. Evans Decl., Pltfs000357; Exh. 342, C. Jackson Decl. ¶ 4, Pltfs000528; Exh. 383, T. Phillips Decl. ¶ 3, Pltfs000606; Exh. 398, J. Schuster Decl. ¶ 4, Pltfs000617; Exh. 284, W. Brown Decl. ¶ 3, Pltfs000641; Exh. 277, M. Blossomgame Decl. ¶ 3, Pltfs000646.

787. The SOS has been made aware of issues voters experienced in returning their absentee applications or ballots to the counties. *See* Exh. 920, Oct. 26, 2018 Fulton County Complaint, State-Defendants-00741213; Exh. 587, Nov. 6, 2018 Bibb County Complaint, State-Defendants-00057507; Exh. 980, Nov. 16, 2018 Thomas County Complaint, State-Defendants-00836282; Exh. 808, Nov. 28, 2018 Clarke County Complaint, State-Defendants-00329766; Exh. 837, Nov. 5, 2018 Rockdale County Complaint, State-Defendants-00333053; Exh. 814, Nov. 8,

2018 Rockdale County Complaint, State-Defendants-00330654; *see also* Exh. 914, Nov. 9, 2018 Email from Reporter re Clarke County Absentee Ballots, State-Defendants-00736996.

788. The SOS only began adding the official U.S. Postal Service Elections Logo to all of its mailed forms in 2019, to “show that we took an extra step to help counties resolve issues like these.” Exh. 539, State-Defendants-00044245; *see* Exh. 743, May 14, 2019 Meeting to Discuss USPS Elections Logo, State-Defendants-00249581; Exh. 744, May 28, 2019 Email re Elections Logo, State-Defendants-00249582.

789. For the June 2020 primary, the SOS sent absentee ballot request forms to only active voters, not inactive voters. *See* 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) (“[T]he Secretary of State sent absentee ballot request forms to all of Georgia’s 6.9 million active voters.”). It also engaged outside vendors to process absentee ballot applications and mail ballots. *See id.* (“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.”).

790. Despite this, some voters who submitted their applications by email experienced week- or month-long delays in having their ballots processed. For example, Fulton County voter Carol Ansley's absentee ballot request was listed as being received on April 30, 2020 on MVP, but the ballot was only listed as being issued on May 31, 2020. Exh. 269, C. Ansley Decl. ¶¶ 4-5, attachment. She never received the ballot and did not vote over concerns about Covid-19.

791. Fulton County voter Chelsea Calhoun submitted an application by email on April 6, 2020, but was only told her ballot was being processed on May 29, 2020, and never received her ballot. Exh. 289, C. Calhoun Decl. ¶¶ 4-8.

792. Cobb County voter Lila Dalton saw that her request was listed as received on May 11, 2020, but that her ballot was only mailed on May 31, 2020, and never received her ballot. Exh. 299, L. Dalton Decl. ¶¶ 4-6.

793. Gwinnett County voter Carolyn Harrison saw on MVP that her request had been received on May 4, 2020, but was only listed as issued on May 20, 2020. Exh. 326, C. Harrison Decl. ¶ 6. Then, she was told by SOS employees

that the “issue” date was not the same as the date of mailing, and that her ballot had only been mailed on May 26, 2020. *Id.* ¶¶ 8-9.

794. By emergency rule, the SEB has authorized but does not require counties to establish one or more drop box locations for voters to return absentee ballots. SEB Rule 183-1-14-0.8-.14.

795. One Fulton County voter had to travel by public transit for one hour and forty minutes round trip to deliver an absentee ballot to the closest drop box. Exh. 353, T. Kotak Decl. ¶ 8.

796. Even when voters submitted ballots in designated drop boxes, their ballots were not always reliably recorded as received by counties by Election Day, forcing those voters to vote in person to ensure their votes were counted. *See* Exh. 304, S. Embry Decl. ¶¶ 5-10; Exh. 423, K. Womack ¶¶ 6-9.

797. In other cases, ballots placed in drop boxes were never recorded as received, even weeks after the election. *See* Exh. 1042, Decl. of D. Gold ¶¶ 3-11; Exh. 337, Decl. of J. Horowitz ¶¶ 4-11.

798. One voter placed her ballot in a Douglas County drop box before the 6pm deadline on Election Day, June 9, 2020, and then was told it had been rejected because it was received on June 10, 2020. Exh. 419, Decl. of Keosha Williams ¶¶ 4-5.

799. Third-party organizations are not permitted to deliver voters' ballots directly to local elections offices. *See* O.C.G.A. § 21-2-385.

B. Discrepancies in Absentee Ballot Recordkeeping

800. The SOS's processes for monitoring whether counties mailed their ballots *too early* has also made the SOS aware of obvious discrepancies in counties' absentee ballot recordkeeping. Exh. 787, Sept. 18, 2018 Emails re Fulton County Incorrect Issue Dates, State-Defendants-00311685 (voter who applied for an absentee ballot in October 2016 listed as having a ballot issued in September 2018); Exh. 755, Sept. 19, 2018 Email re Glynn County Absentee Ballots, State-Defendants-00265017 (two voters who applied for ballots in April and May 2018 listed as having them issued in or after September 2018); Exh. 754, Sept. 18, 2018 Email re Decatur County Absentee Ballots, State-Defendants-00265016 (ballots had invalid issue dates including dates months in the future); Exh. 753, Sept. 20, 2018 Email re Gwinnett County Absentee Ballots, State-Defendants-00264983 (certain ballots had issue dates a year or more in the future).

801. One Chatham County voter knew from the USPS tracking information she paid for that her ballot had been received and signed for on November 5, 2018, but it only showed in MVP as having been received on November 6. Exh. 348, E. Johnson Decl. ¶ 3, Pltfs000729.

802. A DeKalb County voter living temporarily overseas received confirmation that his ballot request had been received on October 22, 2018, but MVP showed it as having been both requested and issued October 29. Exh. 368, I. Mirza Decl. ¶ 3, Pltfs000733. He was further told his ballot had not been received by Election Day, even though he had confirmation it had been delivered on November 2; he had to call to get DeKalb County to “track[] down” the ballot one of its employees had signed for. *Id.*

803. On May 22, 2018, an Irwin County employee called to report that two voters had submitted absentee requests on May 8, but the ballots were not mailed until May 18 and then were “back dated . . . in ENet to show they were sent within 3 days of being requested. Exh. 976, State-Defendants-00836103. Chris Harvey forwarded to investigators but there appears to have been no resolution. *Id.*

804. Voters have also complained that counties gave inaccurate information about when their ballot applications or ballots were received. *See* Exh. 141, Oct. 27, 2016 Peach County Complaint, State-Defendants-00156523; Exh. 964, State-Defendants-00825811; Exh. 149, Dec. 7, 2018 Chatham County Complaint, State-Defendants-00836278.

805. The counties continued to enter highly inaccurate information in the June 2020 Primary. *See* Exh. 351, J. Jupin Decl. ¶¶ 9-11 (received confirmation

email from Fulton County on May 29, 2020, after emailing application on April 14, but MVP showed ballot request as received and issued on June 5, 2020).

C. Inaccurate Information About Absentee Ballot Status

806. The SOS's MVP system is the interface that "enables Georgia voters to review their voter registration status, locate early voting and poll locations, check the status of mail-in applications, view sample ballots, and review the status of their provisional ballots." Expert Report of K. Brown-Dean, ECF No. 138 at 22.

807. MVP frequently provides a broken user interface or contradictory or flatly incorrect information even when counties have entered accurate information. *See* Exh. 313, L. George Decl. ¶ 4, Pltfs000214; Exh. 392, R. Roberts Decl. ¶ 3, Pltfs000627 ¶ 3; Exh. 310, T. Fortune-Coles Decl. ¶ 3, Pltfs000654 ¶ 3; Exh. 418, E. White Decl. ¶¶ 5-6, Pltfs000712 ¶¶ 5-6.

808. In October 2018, a Stephens County voter emailed county and state officials complaining that MVP was inaccurately reporting absentee ballot information. Exh. 542, State-Defendants-00046299. Kemp circulated the email to Elections Division employees, asking, "Have we looked into this?" *Id.*

809. On November 5, 2018, SEB member David Worley complained that that he and an acquaintance had both seen that their children's absentee ballots were listed as received on MVP, then were listed as not received. Exh. 570, State-

Defendants-00054475. In one case, the county said they had received the ballot and did not know why it was showing as not received; in another case, the county said they had not received the ballot and did not know why it was showing as received. *Id.*

810. Worley later stated that other voters were seeing ballots listed as “issued” from DeKalb County and then as “not issued.” Exh. 505, Nov. 5, 2018 Email re MVP Issues, State-Defendants-00018564.

811. On November 7 and 8, 2018, several voters complained that they were not seeing their ballots listed as received, or saw their ballots listed as rejected or cancelled, even though the counties said otherwise. *See* Exh. 893, Nov. 2018 Emails re DeKalb County Absentee Voters, State-Defendants-00577594; Exh. 792, Nov. 8, 2018 Email to Forsyth County Official re MVP Site, State-Defendants-00313095.

812. One voter had been told that her ballot was rejected, but it did not even show as having been received on MVP, let alone having been rejected. *See* Exh. 414, T. Warren Decl. ¶¶ 7–11, Pltfs000567 ¶¶ 7–11.

813. The SOS had limited absentee ballot information due to an “attempted hacking,” preventing voters from receiving critical information about whether their

ballots had been received and counted. *See* Exh. 792, Nov. 8, 2018 Email to Forsyth County Official re MVP Site, State-Defendants-00313095.

814. Several other voters complained to the SOS that their ballots were not listed as received even though they had been. *See* Exh. 758, Nov. 13 2018 Email re Columbia County Voter Showing as Cancelled, State-Defendants-00267981; Exh. 621, Nov. 8, 2018 Bulloch County Complaint, State-Defendants-00088591; Exh. 815, Nov. 8, 2018 Gwinnett County Complaint, State-Defendants-00330672.

815. On November 3, 2018, a reporter told Candice Broce that MVP did not reflect changes to “challenged” status, leading some voters to believe that their ballots had still not been accepted. Exh. 912, State-Defendants-00734026. Broce conceded that this appeared to be “a good area to improve” the system. *Id.*

816. On November 9, 2018, John Hallman communicated with a Catoosa County official about the same issue, conceded it could be confusing, and said that it would take about a month to change the code to eliminate the problem. Exh. 139, State-Defendants-00313204.

817. There is no evidence that Hallman or anyone else in the SOS notified all counties about this issue so that they could communicate the information to voters.

818. A Gwinnett official asked the same question on November 26, 2018, and Hallman gave no indication that the SOS was even in the process of changing the system. Exh. 1043, State-Defendants-00268492.

819. This led to confusion on the part of voters who thought they had successfully submitted absentee ballots after their first ballots were rejected. *See* Exh. 759, M. Romero Decl. ¶ 3, Pltfs000575 ¶ 3.

820. In the June 2020 primary, voters continued to see that their ballots were listed as “challenged” on MVP despite having submitted cure paperwork. Exh. 295, Decl. of Natalie Collins ¶¶ 4-5; Exh. 338, Decl. of S. Hudson ¶¶ 7-12; Exh. 345, Decl. of M. Jenkins ¶¶ 3-8; Exh. 384, Decl. of S. Piccola ¶ 9.

821. The Sunday before an election, the SOS makes MVP “static” and freezes the information as of that morning. Exh. 21, Dec. 5, 2019 C. Harvey Dep. 305:18-308:15. This means that voters cannot confirm through MVP that their absentee ballots had been received in the days leading up to the election. *Id.* 307:16-22.

822. Beyond the MVP system, Defendants have implemented no systematic process through which voters can track and be informed of the status of their absentee ballots.

D. Other County/SOS Errors

823. When a county mails an absentee ballot to the incorrect address, the voter frequently will not learn of the error in time to get a new ballot. *See* Exh. 280, Pltfs000610 ¶ 5 [Broderick Decl.]; Exh. 412, Pltfs000625 ¶ 3 [Wang Decl.].

824. In many cases, voter complaints about absentee ballot delays lead to no response or follow-up. In other cases where voters have complained before an election that they would not get an absentee ballot in time to return it for the election, SOS officials have told voters to contact the county, *see, e.g.*, Exh. 568, State-Defendants-00054435; Exh. 922, State-Defendants-00741769, or have sent the complaints directly to the counties, with no instructions on how to improve or additional steps to take to make sure absentee voters can vote. *See* Exh. 146, State-Defendants-00057465 [November 2018 complaint from DeKalb voter Eriss Donaldson]; Exh. 566, State-Defendants-00054343.

825. If voters complain on or after Election Day that they did not receive an absentee ballot, their complaint may be forwarded to investigators. *See, e.g.*, Exh. 574, State-Defendants-00054619 [November 2018 complaint from Gwinnett voter Alana Miller].

826. Defendants will sometimes open investigations when several voters from the same county complain that they have not received ballots on time. *See,*

e.g., Exh. 891, Materials re 2018 Absentee Ballot Issues in Fulton County, State-Defendants-00565078.

827. The SOS, however, has no standards or protocols for whether and when complaints about absentee ballots are sent to SOS investigators. *See supra* ¶¶ 279-85.

828. Counties can use eNet to generate pre-printed mailing labels for absentee ballots. *See, e.g.*, Exh. 634, Absentee Voting Training Presentation, State-Defendants-00097120.

829. On May 22, 2018, a Chatham County official emailed John Hallman stating, “We have recently noticed an increase in the amount of absentee ballots returned to our office here in Chatham County as undeliverable. In working with the U.S. Postal Service, . . . we’ve been informed that the system generated mailing labels we are using are not being read correctly by USPS scanners at the Post Office.” Hallman responded with some proposed changes to the mailing label. The Chatham County official asked, “Do you know if other counties are having this problem or is it just ours?” and received no response. Exh. 873, State-Defendants-00456601.

830. There is no evidence that the SOS more generally put counties on notice that they may have had returned mail issues.

831. Chatham County continued to report problems with returned mail in November 2018. *See* Exh. 916, Nov. 9, 2018 Email to C. Broce Attaching Voter's Facebook Post re Absentee Ballot, State-Defendants-00737380.

832. Although the SOS has access to information about how many absentee ballots counties have ordered, it has put no processes in place to ensure that counties have ordered adequate numbers of ballots. *See* Exh. 23, Aug. 16, 2019 SOS 30(b)(6) Dep. 171:4–14.

833. In some cases, counties have been unable to mail absentee ballots in a timely fashion because they were still waiting for ballots from the SOS. On October 22, 2018, a Fulton County official emailed Rachell Simmons saying, “We ordered some inner absentee envelopes and only received a partial order. We desperately need that shipment.” Exh. 748, State-Defendants-00257551.

834. On November 26, 2018, Ameika Pitts emailed county officials asking them to tell her immediately if they had not started mailing absentee ballots for the runoff because they had not received their ballots. A Hart County official responded saying they had not received ballots yet. Exh. 646, State-Defendants-00149661.

835. Also on November 26, 2018, Melanie Frechette emailed Chris Harvey that, for the December 4, 2018 runoff, Dade County had just received their paper

ballots and were mailing them that day, that Catoosa County received their ballots around noon, and that Lumpkin and Walker Counties did not have paper ballots. Exh. 157, State-Defendants-00240725.

836. Chris Harvey told Michael Barnes on November 26, 2018, that the SOS should send PDFs to counties that had not received their ballots so they could “at least send out absentee ballots.” *Id.* At this point, however, these ballots only had slightly over a week to reach voters before the election even if they were all mailed that day.

E. Unpredictable Rejections of Absentee Applications and Ballots

837. In 2018, voters were not notified promptly when their applications or ballots were denied, preventing them from being able to obtain a new absentee ballot. *See* Exh. 60, Pltfs000175 ¶ 4 [Matz Decl.]; Exh. 292, Pltfs000078 ¶ 3 [Chandra Decl.]; Exh. 365, Pltfs000185 ¶ 5 [Mason Decl.]; Exh. 61, Pltfs000274 [Haas Decl.]; Exh. 62, Pltfs000278 ¶ 5 [Gadson Decl.]; Exh. 279, Pltfs000351 ¶ 4 [Boyum Decl.]; Exh. 369, Pltfs000389 ¶ 3 [Moore Decl.]; Exh. 322, Pltfs000517 ¶ 3 [Hargrave Decl.]; Exh. 414, Pltfs000567 ¶ 6 [Warren Decl.]; Exh. 311, Pltfs000570 ¶ 4 [Friall Decl.].

838. The SOS’s own internal documents reflect different potential approaches, with different versions of the *same investigative report* concluding that

a county may or may not have violated state election law by rejecting an online ballot application based on a missing signature. *Compare* Exh. 1044, 2015 Investigation re Gwinnett County, State-Defendants-00819416, *with* Exh. 1045, State-Defendants-00812872 (same).

839. Defendants have also been made aware that counties' processes for rejecting absentee ballot applications and ballots for signature mismatch have resulted in active registered voters being denied the ability to vote absentee.

840. For example, a March 2017 investigation into Towns County concluded that a voter had two different types of signatures on file with the elections office, one shorthand and one more formal, but concluded that the county nonetheless properly rejected the voter's ballot. Exh. 940, State-Defendants-00809658.

841. In May 2018, Gwinnett County voter John Carroll complained that he and his wife applied for absentee ballots but were told the signatures did not match. Exh. 849, State-Defendants-00333691.

842. In 2012, the Georgia Attorney General issued guidance stating that under a Georgia Supreme Court decision, "an election official does not violate O.C.G.A. § 21-1-386(a)(1)(C) when they accept an absentee ballot despite the omission of a day and month of birth and/or an address, if the election official can

determine the identity of the voter with the voter's signature and whatever other information is provided." *Democratic Party of Ga., Inc. v. Crittenden*, No. 1:18-cv-05181-SCJ, ECF No. 1-2, at 3-4.

843. The Attorney General further stated that this was consistent with 52 U.S.C. § 10101, which prohibits the denial of the right to vote due to immaterial omissions. *Democratic Party of Ga., Inc. v. Crittenden*, No. 1:18-cv-05181-SCJ, ECF No. 1-2, at 4. Despite this, the SOS has consistently provided—at best—misleading and incomplete guidance to counties.

844. In an SOS FAQ document from January 13, 2016, the SOS informed counties that failure to provide oath information, such as listing a mailing address instead of a residential address or listing the current address instead of the voter's date of birth, "could be considered grounds for rejections." Exh. 140, State-Defendants-00131475.

845. Other SOS training materials have also explicitly advised counties to reject absentee ballots that provide the current date instead of the voter's date of birth, or the voter's mailing address instead of the voter's residence. Exh. 486, SOS Training Material, Orr-Newton-County-0005339.

846. A December 2016 investigative report found that a county had not violated any state law by rejecting two absentee ballots for failure to provide the voters' addresses and dates of birth. Exh. 516, State-Defendants-00026046.

847. On May 11, 2018, a Treutlen County official emailed Breanna Thomas asking whether it was mandatory for the voter to have filled in the day and month of the date of birth. Thomas responded, "The code does require that information to be listed on the envelope. You will have to reject the ballot unless you are able to get in touch with the voter. If so, they can come and finish filling out the envelope." Exh. 488, Orr-Treutlen-County-000062.

848. On November 12, 2018, the SOS issued a bulletin referencing the 2016 Attorney General guidance. This bulletin, however, did not inform counties that they must accept ballots with immaterial errors or omissions under 52 U.S.C. § 10101. *Martin v. Kemp*, No. 1:18-cv-04776-LMM, ECF No. 54, at 15-16.

849. Around midnight on November 13, 2018, SEB member David Worley contacted the SEB to state: "The effect [of] omitting this reference to the Voting Rights Act is to create the impression that state law can permit the counties to reject ballots which only omit information unnecessary to identify a voter, **when in fact federal law, as cited by the Attorney General, prohibits rejection of a ballot when the omitted information is immaterial.** I pointed this out to SOS

General Counsel Ryan Germany in a call this evening, and his only response was silence. I understand from Ryan Germany that Secretary Crittenden and Attorney General Carr themselves participated in the negotiations over this language, with his assistance. It is clear that the omission of the language on the requirements of the Voting Rights Act is nothing but a deliberate, cheap, underhanded trick to signal to some counties that they may still ignore the Attorney General and State Election Board and reject ballots that federal law clearly requires to be counted.” Exh. 509, State-Defendants-00018630.

850. Also on November 13, 2018, Judge May enjoined the Gwinnett County Board of Voter Registrations and Elections from rejecting absentee ballots containing errors or omissions relating to the absentee voter’s year of birth. *Martin v. Crittenden*, 347 F. Supp. 3d 1302, 1311 (N.D. Ga. 2018). Judge May found a strong likelihood of success that the defendants had violated the Voting Rights Act, which prohibits disqualifying voters “because of an error or omission on any record or paper relating to any application, registration, or other act requisite to voting, if such error or omission is not material to determining whether such individual is qualified under State law to vote in such election.” *Id.* at 1308-09 (citing 52 U.S.C. § 10101(a)(2)(B)).

851. Following Judge May’s order, Worley reiterated his concerns the afternoon of November 13, 2018, and requested that Secretary Crittenden issue guidance instructing counties that they were required to accept ballots with errors or omissions in the date of birth under federal law. *See* Exh. 510, Nov. 13, 2018 Email from D. Worley, State-Defendants-00018634.

852. Secretary Crittenden responded on November 14, “I have discussed your request with the Attorney General’s office. Given the impending order from Judge Steve Jones on this issue, we agree that we should not take any action until we see what the Court orders.” Exh. 998, State-Defendants-00988362.

853. Also on November 14, this Court enjoined the SOS from certifying the State Election results before confirming that each county had accepted ballots with errors or omissions in the date of birth. *Dem. Party of Ga., Inc. v. Crittenden*, 347 F. Supp. 3d 1324, 1347 (N.D. Ga. 2018). Like Judge May, this Court found the plaintiffs had a substantial likelihood of success in showing that the practice of omitting such ballots violated the Voting Rights Act. *Id.* at 1340-41.

854. The SOS circulated an OEB notifying counties of this Court’s decision. Exh. 435, GA00765197.

855. At least one SOS employee—the SOS “liaison” whose job it was to be the SOS contact for certain counties assigned to her—continued to advise counties

that they *could* accept ballots with immaterial omissions, without stating that they were required to do so. *See* Exh. 487, Nov. 15, 2018 B. Thomas Email, Orr-Treutlen-County -000056; Exh. 431, Nov. 28, 2018 B. Thomas Email, GA00764304.

856. The SOS has allowed counties to use outdated envelopes requesting information that is no longer required from voters. *See* Exh. 895, Oct. 16, 2018 R. Germany Email, State-Defendants-00578403; Exh. 861, October 2018 Emails between C. Harvey and Georgia Alliance for Social Justice, State-Defendants-00357209.

857. In fact, 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 R. Simmons Email, State-Defendants-00252500.

858. The SOS is aware that “not all counties” report rejected ballot information. Exh. 897, Oct. 21, 2018 SOS Email re Voter Absentee File Explanation, State-Defendants-00579688.

859. Except for UOCAVA ballots, Ga. Admin. Code § 183-1-14-.04, Defendants do not require counties to report the number of absentee ballots

rejected for any particular reason. Exh. 909, December 2018 C. Broce Emails, State-Defendants-00720145.

860. The SOS does not require counties to input rejected ballot information into eNet. Exh. 897, Oct. 21, 2018 K. Rayburn Email, State-Defendants-00579688 (explaining Voter Absentee File available on the SOS website).

861. Chris Harvey described the standard to determine the identity of the applicant for an absentee ballot as a “reasonable person” test. Exh. 23, Aug. 16, 2019 SOS 30(b)(6) Dep. 251:19–253:11.

862. Harvey also confirmed that counties have the ultimate authority to determine whether a signature is a good match. Exh. 21, Dec. 5, 2019 C. Harvey Dep. 55:3-55:21.

863. SEB board members have not taken any steps to codify standards for absentee ballot and application-processing, and have not investigated whether counties were addressing absentee ballots and applications in the same ways. *See* Exh. 53, Oct. 15, 2019 R. Sullivan Dep. 103:22–125:14; Exh. 239, Oct. 16, 2019 B. Harp Dep. 44:19–44:25.

864. In January 2020, over a year after the November 2018 election, SOS investigators opened an investigation to determine whether absentee applications and ballots rejected for signature mismatch had in fact been submitted by the

electors themselves, even though county officials concluded the signatures did not match. Exh. 936, State-Defendants-00794674.

865. In the June 2020 primary, at least one voter was not made aware that an absentee ballot had been challenged for signature mismatch or that it was possible to cure the deficiency with proof of identification. *See* Exh. 288, Decl. of J. Calderon ¶¶ 5-8.

866. SOS investigations have also regularly substantiated mishandling and improper tabulation practices. *See, e.g.*, Exh. 159, February 23, 2017, City of Lumpkin Consent Order, State-Defendants-00025139, 00025165-69; Exh. 159, Recommended Consent Order Related to July 31, 2012 General Primary in Montgomery County, State-Defendants-00025139, at -00025248.

867. Discrepancies exist between Georgia's absentee records and its general election voter history records, involving different numbers of absentee voters, missing votes, or contrasting information about whether a vote was counted. *See* Expert Report of D. Smith, ECF No. 168 at 7–23, 30; Expert Rebuttal Report of D. Smith, ECF No. 259 at 6–10.

F. Difficulty Canceling Absentee Ballots

868. Many voters choose to vote in person even if they initially requested an absentee ballot. *E.g.*, Exh. 846, Dec. 8, 2017 M. Gupton Complaint re Fulton County, State-Defendants-00333533.

869. Other voters are erroneously listed as having voted absentee even though they did not vote early in person *or* request an absentee ballot. *See, e.g.*, Exh. 333, C. Hollis Decl., Pltfs000052; Exh. 404, P. Stephens Decl., Pltfs000283; Exh. 302, C. Duncan Decl. ¶ 3, Pltfs000378; Exh. 66, J. Hill Decl. ¶ 4, Pltfs000472.

870. The SOS regularly receives complaints from voters who were erroneously told they had already voted absentee or had requested absentee ballots. *See* Exh. 868, Nov. 15, 2018 Cobb County Complaint, State-Defendants-00417955; Exh. 544, Nov. 8, 2018 Email re Complaint from Muscogee County Voter, State-Defendants-00046365; Exh. 584, Nov. 6, 2018 Gwinnett County Complaint, State-Defendants-00057279.

871. A training presentation presented by Richmond County explained a wide-ranging variety of approaches taken by different counties to allowing voters to cancel absentee ballots, including (a) forcing the voter to obtain a Notice of Eligibility from the main office if the voter did not have the physical absentee

ballot; (b) allowing the voter to vote on a voting machine after calling the main office; or (c) allowing the voter to vote provisionally. *See* Exh. 717, State-Defendants-00193039.

872. SOS investigations routinely substantiated that voters were not allowed to cancel their absentee ballots or even to vote provisionally because they were viewed as already having voted. *See* Exh. 911, State-Defendants-00732749 [2010 investigation into Fulton County]; Exh. 534, State-Defendants-00037949 [2012 investigation into Gwinnett County].

873. In September 2017, the SEB agreed to issue Liberty County a letter of instruction requiring it to allow voters to cancel absentee ballots even if they did not have the physical ballots. Exh. 530, State-Defendants-00036164 at 62.

874. There is no evidence that Defendants informed other counties of this requirement.

875. Sometimes, voters have been allowed to vote after poll workers call the county office, which is a time-consuming process that causes further delays. *See* Exh. 514, State-Defendants-00022855 [2015 letter from Towns County official].

876. Some voters have complained that they were able to vote only after arguing with poll workers and convincing them to call the county office or to

produce a necessary form. *See* Exh. 939, State-Defendants-00334277 [July 2017 complaint from Atkinson County voter William Kirkland]; Exh. 847, State-Defendants-00333621 [December 2017 complaint from Fulton County voter Krystin Tran].

877. Other voters have complained that they were required to go to the main election office to cancel their ballots and were not allowed to vote otherwise, even provisionally. *See* Exh. 499, State-Defendants-00017802 [June 2017 email from David Worley]; Exh. 661, Nov. 8, 2016 Voter Complaint Form, State-Defendants-00156887; *see also* Exh. 860, June 21, 2017 Cobb County Complaint, State-Defendants-00342845 (had to convince poll workers to let him vote provisionally instead of being turned away).

878. On June 20, 2017, SEB member David Worley emailed Chris Harvey complaining that Cobb County poll workers were telling voters who were shown as having been sent absentee ballots but did not have those ballots with them when they went to the polls that they needed to go to the Cobb County registrar's office to cancel their absentee ballots. Exh. 499, State-Defendants-00017802; Exh. 21, Dec. 5, 2019 C. Harvey Dep. 143:21-146:20. Harvey could not recall whether the SOS did anything in response to this complaint. *Id.* 146:15-146:20.

879. On November 6, 2018, David Worley again emailed Chris Harvey, again complaining that Cobb County was telling voters they either had to go before the registrar in person to cancel their ballots or have their ballots with them in person. Exh. 508, State-Defendants-00018599.

880. Chris Harvey said he had told the county's elections director, and she had told the specific polling places, not to do that but declined to make a universal announcement. Exh. 508. State-Defendants-00018599.

881. Worley responded that the Cobb County poll worker training manual itself was giving poll workers those instructions, so the problem would likely recur and that the county elections director needed to make a universal announcement. Exh. 508, State-Defendants-00018599.

882. Chris Harvey conceded in his deposition that the Cobb County instructions were incorrect and that he did not know whether the SOS had taken any further actions to ensure that the Cobb County poll worker manual had been updated on that point, let alone reviewing the manual as a whole. Exh. 21, Dec. 5, 2019 C. Harvey Dep. 141:21–143:17.

883. Harvey admitted that if the SOS did take action in response to Mr. Worley's complaints, whatever the SOS did was not "sufficient." Exh. 21, Dec. 5, 2019 C. Harvey Dep. 150:8-9.

884. On November 11, 2018, Chris Harvey forwarded a voter complaint to a Gwinnett County official with a note saying “Another one for you to review for training.” The complaint explained that the voter requested an absentee ballot and never received one. When she went to vote in person, she was initially told she had to go to the main election office to cancel her absentee ballot, but she knew to ask for an affidavit saying she did not vote, which should have enabled her to vote. “The workers had never heard of this form and according to them, they did not have such a document.” The voter was also told she could not vote provisionally. When she pushed back, the poll workers managed to locate the affidavit form and she was eventually allowed to vote. Exh. 584, State-Defendants-00057279. Her complaint to the SOS stated, “Voting is too important . . . for poll workers not to be trained.” *Id.*

885. In sum, voters who did not have their absentee ballots in hand when they went to the polls were given very different options depending on their county. Some were allowed to cancel their absentee ballots and vote on machines. *See* Exh. 65, Bromley Decl., Pltfs000425 ¶ 3 [Bromley Decl.]; Exh. 66, Hill Decl., Pltfs000472 ¶ 4 [Hill Decl.]. Some were allowed to cancel their ballots and vote provisionally. *See* Exh. 377, Oki Decl., Pltfs000055 ¶ 10 [Oki Decl.; DeKalb County]; Exh. 293, Chase Decl., Pltfs000261 [Chase Decl.]; Exh. 267, Pltfs000272

¶ 4 [Anachuna Decl.]; Exh. 396, Pltfs000328 [Sabusa Decl.]; Exh. 302, Duncan Decl., Pltfs000378 ¶ 3 [Duncan Decl.]; Exh. 283, E. Brown Decl., Pltfs000416 ¶ 4 [Elan Brown Decl.]; Exh. 241, Winbush Decl., Pltfs000418 ¶ 4 [Winbush Decl.]; Exh. 275, Bell Decl., Pltfs000435 ¶ 4 [Bell Decl.]; Exh. 306, Eziefula Decl., Pltfs000461 [Eziefula Decl.]; Exh. 340, Ingram Decl., Pltfs000468 ¶ 4 [Ingram Decl.]. Some were sent to a county's main election office, *see* Exh. 341, A. Jackson Decl., Pltfs000032 [Audrey Jackson Decl. ¶ 3(c)], or told they could not vote, *see* Exh. 285, Brundage Decl., Pltfs000325 ¶ 4 [Brundage Decl.]; Exh. 335, Hoover Decl., Pltfs000546 ¶ 3 [Hoover Decl.].

886. SOS employees have treated failure to allow absentee ballot cancellation as a discrete county-by-county issue rather than a statewide training issue. Exh. 864, November 6, 2018, Email from Candice Broce, State-Defendants-00392820 (“I’m not sure of the best way to break out these concerns to the specific counties if we don’t have the voter’s contact information. What do you think?”).

887. HB 316 clarified the requirement, already sporadically enforced, that counties allow voters to cancel ballots even without having the physical ballot in person. *See* O.C.G.A. § 21-2-388(2). It also allows poll managers to administer an affidavit for voters to cancel their ballots at the polls. *See id.*

888. But the SOS's training materials have continued to provide only vague generalities about how a voter should be able to cancel an absentee ballot and vote a normal ballot by signing an affidavit at the polling place. *See* Exh. 44, Oct. 16, 2019 Training Materials, State-Defendants-00096192.

889. And in fact the same problem persisted in 2019, when a Webster County voter was told multiple times she could only cancel her absentee ballot if she had it in person and could not vote otherwise. Exh. 585, State-Defendants-00057491.

890. On the day of the election, Chris Harvey asked an SOS employee to contact the county and clarify, and the employee responded that the county election supervisor "is now aware of the process and affidavit she is required to receive." Exh. 585, State-Defendants-00057491.

891. An SOS investigation later substantiated this, Exh. 892, State-Defendants-00565573, and a court approved a consent order nullifying the local election because the voter had not been able to cast her ballot, Exh. 648, State-Defendants-00151803.

892. The SOS's 2020 training materials for poll workers still do not give accurate instructions on how to allow voters to cancel their absentee ballots in person at the polls; one of the 2020 manuals provides the wrong information about

how to allow voters to cancel their absentee ballots in person at the polls and the other (updated) one contains no information at all about how to handle that situation. *See supra* ¶ 545-57.

893. Unsurprisingly given that absentee ballot requests were at all-time highs given the Covid-19 pandemic, voters faced difficulty canceling their ballots after requesting but not receiving them for the June 2020 primary. Some voters were forced to vote provisionally. Exh. 299, *See* Decl. of L. Dalton ¶¶ 15; Exh. 352, Decl. of A. Karp ¶¶ 7-10; Exh. 379, Decl. of A. Osterholm ¶¶ 12-20; Exh. 391, Decl. of N. Reymond ¶ 3.

894. Other voters were told they could not vote at all, *see* Exh. 318, Decl. of M. Graves ¶ 10; Exh. 399, Decl. of D. Sims ¶ 6-16, or had to argue with poll workers to obtain the necessary affidavit, *see* Exh. 359 Decl. of N. Lieu ¶ 8.

895. Even voters who were able to cancel their absentee ballots and vote regular ballots incurred additional delays on top of already-long lines. Exh. 265, Decl. of D. Allen ¶¶ 17-21; Exh. 320, Decl. of M. Hafitz ¶¶ 9-14; Exh. 352, Decl. of A. Karp ¶¶ 6-8; Exh. 374, Decl. of L. Nguyen ¶ 6; Exh. 355, Decl. of A. Lampert ¶ 10 (polling place out of affidavits); Exh. 372, Decl. of J. Mosbacher ¶ 12 (poll worker only told partway through that they did not need to call the registrar individually for each voter).

G. Absentee Ballot Practices Vary Arbitrarily Among Counties, Resulting in Voters Being Treated Unequally Depending on Where They Live.

896. According to the SOS's absentee ballot data, counties varied widely in their rejection rates for absentee ballot applications and ballots in the November 2018 general election. For example, in November 2018, Cobb County, Gwinnett County, and DeKalb County all received over 20,000 absentee ballots in "mailed" or "electronic" format.⁸ Cobb County rejected 705 ballots, while Gwinnett rejected 1728 and DeKalb rejected 1263.

897. County officials were not made aware of whether they are outliers in absentee ballot rejections, leading to some counties being harsher than others in rejecting absentee ballots. Exh. 1014, *See* Chris Joyner & Jennifer Peebles, *Analysis: Absentee Voting Pitfalls Tripped Thousands of Ga. Voters*, Atlanta J.-Const. (Dec. 20, 2018), <https://www.ajc.com/news/state--regional-govt--politics/ajc-analysis-absentee-voting-pitfalls-tripped-thousands-voters/5Qu6ynxydaKrT4le1edtPL/>.

⁸ *See* Elections Div., *Voter Absentee Files*, Ga. Secy' State, <https://elections.sos.ga.gov/Elections/voterabsenteefile.do> (last visited July 28, 2020). The files for Cobb County, Gwinnett County, and DeKalb County can be accessed by opening the zip file for the November 6, 2018 General/Special Election and then opening the spreadsheets for 033 (Cobb), 044 (DeKalb), and 067 (Gwinnett). These numbers reflect rejected ballots with a ballot style of "mailed" or "electronic."

H. Discriminatory Impact of Absentee Ballot Rejections

898. In the 2018 general election, the statewide absentee ballot rejection rate for Black voters was 3.74%. Expert Rebuttal Report of D. Smith, ECF No. 259 at 18.

899. In the 2018 general election, the statewide absentee ballot rejection rate for white voters was 2.35%. Expert Rebuttal Report of D. Smith, ECF No. 259 at 17.

900. In the 2018 general election, the absentee ballot rejection rate for Black voters was higher than the absentee ballot rejection rate for white voters across 70% of Georgia's counties statewide. *See* Expert Report of D. Smith, ECF No. 168 at 24–30; Expert Rebuttal Report of D. Smith, ECF No. 259 at 14–23.

VIII. PROVISIONAL BALLOTS

901. Provisional ballots operate as a “failsafe” to ensure that voters are not disenfranchised due to errors in their registration or other issues. Testifying as the SOS, Chris Harvey explained that, “if you don’t get your provisional ballot in there, then you have no chance of voting. If you get a provisional ballot in there, there’s a chance that whatever your issue is going to be resolved.” Exh. 23, Jan. 6, 2020 SOS 30(b)(6) Dep. 32:14-19. Therefore, as an elections official, “if you don’t offer someone a provisional ballot, they don’t get a chance” to vote. *Id.* 32:3-5.

A. Background on Provisional Ballots

902. Following the November 2018 general election, Defendants tabulated the total number of provisional ballots cast in each county by type of provisional ballot and how many were accepted. Exh. 862, *See* Feb. 1, 2019 Email from J. Hallman, State-Defendants-00388798.

903. Defendants' data indicate that 21,600 provisional ballots were submitted and 11,905 were counted. 2018 Provisional Ballot Survey for November General Election. Exh. 863, State-Defendants-00388800; *see* Expert Report of K. Brown-Dean, ECF No. 138 at 29 Table 5.

904. After a voter casts a provisional ballot, even if that voter could not initially be found on the rolls (*i.e.*, a "PR" provisional voter), it is possible to identify errors that resulted in that voter's registration failing to be processed or being incorrectly changed. Exh. 875, Oct. 22, 2019 Email from C. Harvey re Provisional Data from EAVS Report, State-Defendants-00464551 (if someone was "on the list under their maiden name, or their name was misspelled, or the poll workers made a mistake loo(k)ing them up(.) . . . the PR provisional *should* normally count after investigation.").

905. For example, it is possible to determine whether DDS improperly failed to process the voter's registration, and DDS may be able to provide records

showing that the voter properly changed his or her registration when renewing a driver's license. *See* Exh. 660, Nov. 8, 2016 Email, State-Defendants-00156788 (email re voters who experienced DDS transfer errors); Exh. 513, 2014 Greene County Investigation Report, State-Defendants-00021128; Exh. 791, Nov. 7, 2018 Email from Cherokee County State-Defendants-00313028-29 (request from Cherokee County that the SOS look into the DDS records for provisional voters).

906. It is also possible to identify spelling or technical errors that resulted in a voter not being found in the system by poll workers. *See* Exh. 629, Nov. 2018 Re-Certification Email from Decatur County, State-Defendants-00092683 (stating that three provisional ballots were initially rejected incorrectly); Exh. 927, April 2019 Email from K. Rayburn, State-Defendants-00742117 (recognizing that a Fulton County voter may have been forced to vote a provisional ballot in November 2018 and may still be showing as a pending voter because of a potential name misspelling).

907. If a voter appears to be listed as registered to vote in a different precinct—whether as the result of a voter roll issue, failure to notify the voter of a precinct change, or some other error—voting provisionally allows the voter to cast votes for every race in which the voter would have been able to vote in her precinct of registration. O.C.G.A. § 21-2-419(c)(2).

908. Similarly, provisional ballots allow voters to cast ballots even if they forget identification or have to provide additional identification. O.C.G.A. §§ 21-2-417(b)-(c).

B. Processes for Receiving Provisional Ballots

909. Poll workers consistently fail to offer provisional ballots to voters, resulting in voters leaving polling places without being able to vote. *See* Exh. 377, PltfS000005 (Oki Decl.); Exh. 395, PltfS000034 (Ross Decl.); Exh. 166, PltfS000073 (Powers Decl.); Exh. 389, PltfS000179 (Ratner Decl.); Exh. 167, PltfS000190 (Baiye Decl.); Exh. 196, PltfS000254 (Manning Decl.); Exh. 168, PltfS000294 (Platt Decl.); Exh. 278, PltfS000298 (Boyd Decl.); Exh. 334, PltfS000383 (Holt Decl.); Exh. 70, PltfS000446 (K. Carter Decl.); Exh. 408, PltfS000440 (Terry Decl.); Exh. 420, PltfS000543 (Wilson Decl.).

910. The SOS has regularly been made aware by voters that poll workers fail to offer provisional ballots. *See* Voter Complaints re Provisional Ballots: Exh. 934, State-Defendants-00744089 (3/17 complaint from Fulton County voter Colette Abissi); Exh. 941, State-Defendants-00810631 (4/17 complaint from Fulton County voter Brent Walker); Exh. 983, State-Defendants-00837341 (6/17 complaint from Milton County voter Brandi Hughes); Exh. 106, State-Defendants-00333507 (12/17 complaint from Courtney Asik); Exh. 958, State-Defendants-

00820303 (12/17 complaint from Jeffrey Chestnut); Exh. 747, Nov. 6, 2018 Email re Cobb County, State-Defendants-00256696; Exh. 946, State-Defendants-00811473 (12/17 complaint from Fulton County voter Harriet Ellis that she had voted for 40 years and voted in 2016 but was told she was not registered).

911. SOS investigation reports routinely note failure to offer provisional ballots as a potential violation of state election law. *See* Exh. 534, SOS Investigation Reports: State-Defendants-00037949 (2012 Gwinnett County investigation report); Exh. 511, State-Defendants-00019206 (2013 Bibb County investigation report); Exh. 524, State-Defendants-00034330 (2014 Fulton County investigation report); Exh. 536, State-Defendants-00038082 (same); Exh. 945, State-Defendants-00811117 (same); Exh. 943, State-Defendants-00810909 (same); Exh. 950, State-Defendants-00816583 (February 2018 emails between investigators about a draft investigation report).

912. Even the SOS's internal reports, however, have been inconsistent in whether they identify failure to offer a provisional ballot as a violation of state law. *See* Exh. 518, 2017 Henry County Investigation Report, State-Defendants-00030858 at -00031046 ("This Investigator found no regulation that mandates a poll worker must provide information and or (sic) offer a provisional ballot to a

voter who does not present a photographic form of identification, and or (sic) does not ask for a provisional ballot.”).

913. The SEB is aware of these problems given the SOS investigation reports. In a September 20, 2017 meeting, SEB members lamented the counties’ consistent failures to offer voters provisional ballots when they should. *See* Exh. 530, 9/20/17 SEB Meeting Transcript, State-Defendants-00036164, 00036180–00036185, 00036238-00036242. Poll workers nonetheless continued to fail to offer provisional ballots. *See supra* ¶ 909.

914. Poll workers have also consistently denied provisional ballots to voters or discouraged voters from casting ballots. *See* Exh. 169, Walden Decl. ¶ 4, PltfS000380 (denied ballot); Exh. 170, Lucas Decl. ¶¶ 8-9, PltfS000886 (denied ballot); Exh. 389, Ratner Decl. ¶ 10, PltfS000179 (discouraged provisional voting); Exh. 381, Pearson Decl. ¶¶ 8-9, 12, PLTFS000246 (discouraged provisional voting); Exh. 330, Mathis Decl. ¶ 9, PltfS000818 (discouraged provisional voting).

915. The SOS has been made aware of these problems through complaints from voters who believed they properly registered to vote, but were told they could not vote provisionally, or were told that their ballots would be denied so they should not bother casting a ballot. Exh. 153, Fulton County 2012 investigation report, GA00759177 (detailing problems with provisional ballots); Exh. 987,

November 2016 Voter Complaint, State-Defendants-00892535 (Fulton County voter Daniel Hayes complaint re denied ballot); Exh. 820, 2017 Voter Complaint, State-Defendants-00331164 (Hart County voter Kenneth Hunter denied ballot); Exh. 599, November 2018 Voter Complaint, State-Defendants-00084863 (Brittaney Harvey on behalf of her cousin about being discouraged from voting provisionally); Exh. 154, November 2018 Voter Complaint, State-Defendants-00046162 (Pickens County voter Janet Rodning on behalf of her daughter about being discouraged from voting provisionally).

916. The SOS Chief Investigator told a voter who had been discouraged from casting a provisional ballot that her provisional ballot “would have been rejected by law”—even though she insisted she had changed her voter registration address to her new county of residence through DDS. Exh. 970, November 2018 Emails between SOS Investigator and Voter, State-Defendants-00834869 (SOS Investigator Russell Lewis response to voter McKenzie Jackson’s complaint that she was denied a provisional ballot).

917. The SOS has received complaints about denials or attempts to discourage voting of provisional ballots in circumstances where SOS officials acknowledged a voter should have been allowed to vote provisionally or directed a voter to ask for a provisional ballot. *See* Exh. 657, Nov. 2016 Emails with Cobb

County voter, State-Defendants-00156676, at -00156677 (denied provisional ballot); Exh. 988, Nov. 2018 Emails with Fulton County voter, State-Defendants-00951511 (denied provisional ballot); Exh. 154, Nov. 2018 Emails with Pickens County voter, State-Defendants-00046162 (discouraged from voting provisionally).

918. In other circumstances, poll workers have allowed a voter to cast a provisional ballot only upon presenting some proof of registration, such as a screenshot of their registration page on the Secretary of State's app. *See* Exh. 972, May 2017 Complaint from Cobb County voter, State-Defendants-00835223.

919. Chris Harvey testified that the SOS tells counties, "if in doubt, issue a provisional ballot." Exh. 23, Dec. 5, 2019 C. Harvey Dep. 166:24-167:14; *see also id.* 251:18-252:13 (stating, "when in doubt, give it out" regarding provisional ballots).

920. Mr. Harvey acknowledged, however, that problems persist in how counties handle provisional ballots. He further acknowledged that, given the persistence of the problems, the SOS's training has not been adequate, saying "I think we can do better." Exh. 23, Dec. 5. 2019 C. Harvey Dep. 252:20-253:2

921. As discussed *supra* ¶¶ 743-45, a voter may arrive at the wrong polling place due to inaccuracies in Defendants’ voter registration records, misinformation, or failure to notify voters adequately of precinct or polling place changes.

922. In 2018, poll workers regularly turned away voters who appeared to be registered in different precincts. *See* Exh. 395, Ross Decl. ¶¶ 7-8, PltfS000034; Exh. 296, Corona Decl. ¶ 3, PltfS000063.

923. In one instance, a poll watcher observed a poll worker turn away an out-of-precinct voter and then say that the voter had been “too lazy” to go to the other polling place. Exh. 296, Corona Decl. ¶3(i), PltfS000063.

924. In other instances, election officials stated that there was a “rule” or “no exceptions” that out-of-precinct voters could not cast provisional ballots before a certain hour. *See* Exh. 1,047, Demordy Decl. ¶ 9(a), PltfS000507; Exh. 356, Leech Decl. ¶ 9, PltfS000280.

925. Even when out-of-precinct voters have been allowed to vote provisional ballots, they have been “questioned[] extensively” about whether they could return to their correct precinct, causing further delays. Exh. 187, Van Zajac Decl. ¶ 8, PltfS000070; *see also* Exh. 294, Clark Decl. ¶ 4(i), PltfS000577.

926. The SOS has consistently received voter complaints stating that voters were turned away for being in the wrong precinct. *See* Exh. 973, 2017 J. Miller

Voter Complaint State-Defendants-00835228; Exh. 953, July 2018 R. Ovenden

Voter Complaint, State-Defendants-00818818; Exh. 541, November 2018 A. Thys

Voter Complaint, State-Defendants-00046172.

927. SOS investigation substantiated that, in 2016, a Fulton County voter was denied a provisional ballot even when he said he did not have time to make it to his correct precinct. Exh. 529, 2016 SOS Investigation involving voter Joshua Griffiths, State-Defendants-00035100.

928. SEB member David Worley also has repeatedly notified the SOS Elections Division that county election directors were instructing poll workers that they had no obligation to give out provisional ballots to people who had time to get to another precinct, even if the voter requested a ballot. *See, e.g.*, Exh. 498, Nov. 4, 2014 Email from D. Worley re Provisional Ballot Issues in Douglas County, State-Defendants-00017493; Exh. 506, Nov. 6, 2018 Email from D. Worley re Provisional Ballot Issues in Floyd County, State-Defendants-00018586.

929. In April 2018, the SEB considered whether to sanction Douglas County for refusing to give provisional ballots to voters who said they did not have time to get to another precinct. Exh. 1040, *See* April 3, 2018 SEB Transcript, State-Defendants-00544856, 00544930-00544933; Exh. 39, 2018 Douglas County Investigation Report, State-Defendants-00825813.

930. The SEB members recognized that there was an apparent tension between the SEB rules and HAVA, which requires that an individual “shall be permitted to cast a provisional ballot” if “an election official asserts that the individual is not eligible to vote.” *See id.*; 52 U.S.C. § 21082(a).

931. The Board agreed to issue a letter of instruction to Douglas County directing it to give out provisional ballots when requested. Exh. 207, April 3, 2018 SEB Minutes (available at: [https://sos.ga.gov/admin/files/SEB_Meeting_Minutes_April%203,%202018%20\(SIGNED\).pdf](https://sos.ga.gov/admin/files/SEB_Meeting_Minutes_April%203,%202018%20(SIGNED).pdf)). Despite this, neither the SOS nor the SEB more generally instructed counties that they were required to give provisional ballots to out-of-precinct voters upon request.

932. Voters continued to be turned away for being in the wrong precinct in November 2018 even after requesting provisional ballots. *See* Exh. 395, Ross Decl. ¶¶ 7-8, Pltfs000034; Exh. 296, Corona Decl. ¶ 3, Pltfs000063; Exh. 1,047, Demordy Decl. ¶ 9, Pltfs000507; Exh. 506, Voter Complaint, State-Defendants-00018586.

933. It was not until 2020 that the SEB finally amended the SEB provisional ballot rule to require poll workers to offer voters provisional ballots. *See* Ga. Admin. Code § 183-1-12-.18.

934. The same rule change requires poll workers to offer and give voters provisional ballots if they appear to be registered in a different precinct, as long as a voter states that “it is not practicable for such person to go to such other precinct before the polls close.” *See* Ga. Admin. Code § 183-1-12-.18(d).

935. The SOS 2020 Poll Workers Manuals, however, did not contain the amended provisional ballot rules even though they had gone into effect well before the June 9, 2020 primary. Instead, the SOS 2020 Poll Worker Manual produced by Defendants in March 2020 and the April 2020 update of the SOS Poll Worker Manual that was on the SOS’s website during the June 9, 2020 primary quoted the old provisional ballot rule, not the amended rule. *See supra* ¶¶ 361.

936. Despite the amended rule, in the June 2020 primary, poll workers continued not to offer provisional ballots to voters who were entitled to vote provisionally, including out-of-precinct voters, , *see* Exh. 287, Decl. of C. Butler ¶¶ 4-10, or to discourage voters from casting provisional ballots, Exh. 357, *see* Decl. of C. Lewis ¶ 8, 11.

937. Voters also experience the opposite problem when they vote out of county and are incorrectly informed their votes will be counted. For example, Macon County resident Alvilynn Callaway asked the Clayton County elections board if she would be able to vote in Clayton County early, despite not being

registered there, while she visited her mother-in-law in hospice. Exh. 290, Callaway Decl. ¶ 3, Pltfs000564. She was told by county officials and poll workers that she could cast a provisional ballot, so she did so—but she was never told that as an out-of-county voter, her ballot would be rejected in its entirety. *Id.* ¶¶ 6-7.

938. The SOS received multiple complaints in the 2018 general election from voters who learned too late that their out-of-county provisional ballots would not be counted. *See* Exh. 544, Voter Complaint, State-Defendants-00046365 (discussing 11/18 complaint from Bulloch County voter Melinda McGowan); Exh. 575, Voter Complaint, State-Defendants-00055257 (11/18 complaint from Lowndes County voter Nastassia Sanks).

939. SEB member David Worley emailed Chris Harvey on Election Day in November 2018 about “severe problems in Clarke County,” including that students registered outside of Clarke County were being told that their provisional ballots would count instead of being told to vote in their counties of registration. Exh. 507, State-Defendants-00018594.

C. Provisional Ballot Instructions to Voters

940. Poll workers are not well trained in the process of completing a provisional ballot. *See* Exh. 309, Fore Decl. ¶ 4, PltfS000066; Exh. 409, Thurman-Jetter Decl. ¶¶ 5-6, PltfS000438; Exh. 380, Parrott Decl. ¶ 4, PltfS000601.

i. Poll workers may miscode provisional ballots, preventing them from being counted if the voter is not able to catch the error.

941. For instance, a Chatham County voter was given a provisional ballot because poll workers could not locate her information, despite her showing them a screenshot of her registration on the SOS website. Exh. 375, Niederwanger Decl., PltfS000228. She was given a paper ballot “without any explanation,” and only learned that she was given a provisional ballot when she called her political party’s local office. *Id.* When she went to the county’s voter registration office, a supervisor told her that the ballot was coded for failure to present identification, even though Niederwanger had presented her identification at the polling site. *Id.*

942. In another case, a Cobb County voter voted using a provisional ballot because she was told she was in the wrong polling place and her allegedly correct polling place had already closed. Exh. 315, Goff Decl. ¶ 4, PltfS000391. She was later told that she had been categorized as having voted a “PR” ballot, reserved for voters who could not be found on the rolls. *Id.*

ii. Poll workers often fail to communicate accurate information about how to cure provisional ballots or ascertain that they have been counted.

943. Poll workers regularly fail to communicate information about the procedure for determining that a provisional ballot will be counted, or even communicate inaccurate information. *See* Exh. 321, Hall Decl. ¶ 4, PltfS000041; Exh. 382, Peterson Decl. ¶ 8, PltfS000198; Exh. 360, Lindsey Decl. PltfS000203; Exh. 375, Niederwanger Decl., PltfS000227; Exh. 191, Zeigler Decl. ¶ 4(e), PltfS000321; Exh. 192, Gaggero Decl., PltfS000330; Exh. 302, Duncan Decl. ¶ 3, PltfS000378; Exh. 409, Thurman-Jetter Decl. ¶ 5, PltfS000438; Exh. 390, Resler Decl., PltfS000520; Exh. 317, Grant Decl. ¶¶ 15-17, PltfS000900; Exh. 2, Jackson Decl. ¶ 8, PltfS000796; Exh. 286, Burleson Decl. PltfS000765; Exh. 330, Mathis Decl. ¶ 9, PltfS000818; Exh. 190, Nathan Decl. ¶¶ 5-6; PltfS000286; Exh. 272, Awad Decl. ¶ 9, PltfS000318.

944. Voters have similarly complained to the SOS directly that poll workers gave sparse or incorrect instructions about how to cure a provisional ballot. Exh. 853, *See* Mar. 7, 2019 Chatham County Complaint, State-Defendants-00334753; Exh. 452, Nov. 8, 2018 Email to R. Germany re Fulton County Voter Complaint, GA00780742.

D. Shortages of Provisional Ballot Supplies

945. Polling places regularly run out of provisional ballots because elections officials fail to provide polling places with enough provisional ballots at the outset, voting machines malfunction and polling places use provisional ballots when voting machines malfunction or other problems cause delays. Exh. 163, *See* A. Gordon Decl. ¶ 6, PltfS000028; Exh. 189, M. Church Decl. ¶ 3, PltfS-000241 at -243; Exh. 65, H. Bromley Decl. ¶ 3, PltfS000425; Exh. 195, B. McKusick Liscord Decl. ¶ 11, PltfS000457; Exh. 180, J. Crawford Decl. ¶ 9, PltfS001070.

946. Investigation reports into SEB cases authored by SOS investigators have documented shortages of provisional ballots alongside more general supply shortages, *see infra* ¶ 1096. Exh. 153, 2013 Fulton County Investigation GA00759177, at -80; Exh. 535, 2014 Whitfield County Investigation, State-Defendants-00038067.

947. Voters have also raised this issue in complaints to the SOS. Exh. 981, *See* July 2018 Email Reporting Phone Voter Complaint, State-Defendants-00836938 (voter complained that the express poll was down and the polling place didn't have enough provisional ballots for everyone); Exh. 161, Nov. 6, 2018 Fulton County Complaint, State-Defendants-00088497 (voter complained that she was told at her polling place that there were no provisional ballots).

948. Some problems with provisional ballot shortages have been raised on Election Day, when there may still have been time to address the problem. For example, during the 2018 primary, an SOS investigator who had been visiting precincts reported that she was told that a Macon County polling place “ha(d) no provisional ballots at that location” and that “they were never given any.” Exh. 961, May 22, 2018 Email from SOS Investigator re Polling Place Lacking Provisional Ballots, State-Defendants-00823295. The investigator was told to document the issue, but there was no indication the SOS took further action that day. *Id.*

949. Similarly, in July 2018 a Sumter County voter complained that a polling place only had six provisional ballots at the beginning of the day and no envelopes, so was not able to use them when the voting machines malfunctioned. Exh. 959, July 24, 2018 Email to SOS re Sumter County Complaint, State-Defendants-00822940, at -00822941.

950. SOS Investigator Russell Lewis told other SOS officials “(t)here were provisional ballots on hand,” with no indication of having addressed the allegation that there were only six provisional ballots for the entire polling place. Exh. 960, July 24, 2018 SOS Email re Sumter County, State-Defendants-00822958.

951. Chris Harvey admitted in his deposition that the SOS does not tell counties what quantities of supplies to obtain for elections. Exh. 23, Aug. 16, 2019 SOS 30(b)(6) Dep. 170:1-20 (stating that, “the counties know what they need”).

952. Despite this, the SOS sometimes takes responsibility for ensuring that elections officials have sufficient supplies. In November 2018, the new superintendent for Bogart City asked how many provisional ballots they would need. SOS employee Rachell Simmons responded: “I can get everything to you. I have a municipal package that will have the posters, election day forms, voter certificates, I voted stickers, and the provisional ballot supplies . . . The package will cover the number of registered voters that you have.” Exh. 746, Nov. 1, 2018 SOS Email re Provisional Ballots, State-Defendants-00256665.

953. Even though running out of provisional ballots can prevent people from voting at all, the problem continues with no meaningful steps from Defendants to ensure counties obtain adequate supplies of provisional ballots. Exh. 239, *See* Oct. 16, 2019 B. Harp. Dep. 41:1-11 (responding to the question that as a SEB member, he has “absolutely not” done anything to ensure that precincts had adequate numbers of provisional ballots).

954. Although SEB rules direct election superintendents to “provide each polling place with an adequate supply of provisional ballots” and envelopes, *see*

Ga. Admin. Code. § 183-1-12-.18(3), there is no evidence that Defendants have put procedures in place to ensure that counties comply with directives to ensure that polling places have an “adequate supply” of provisional ballots.

955. It was not until 2020 that the SEB directed superintendents to be prepared to resupply polling places with provisional ballots. *See* Ga. Admin. Code § 183-1-12-.18(3). Here too, there is no evidence that Defendants put procedures in place to ensure that counties complied with this directive.

956. Despite the SEB rule changes, problems involving provisional ballot shortages were placed into sharp relief in the recent June 2020 primary election, where polling places ran out of provisional ballots or provisional ballot envelopes. *See* Exh. 264, N. Aldridge Decl. ¶¶ 4-8 (no envelopes); Exh. 324, A. Harris-Mack Decl. ¶ 6 (no envelopes); Exh. 318, M. Graves Decl. ¶ 10 (no ballots).

E. Insufficient Oversight Over Provisional Ballot Rejections

957. The SOS takes few, if any, steps to determine whether counties have properly determined whether to accept or reject individual provisional ballots: “there is ample evidence that (the SOS) and the (SEB) need to take additional steps to ensure that local officials have better election administration record keeping of Provisional ballots, including detailed records of why the more than 22,000

Provisional ballots that were cast in the (November 2018) election were accepted or rejected.” Expert Report of D. Smith. ECF No. 168 at 24.

958. Typically, counties provide the SOS with lists of provisional voters that contain minimal information about why ballots were rejected. *See, e.g.*, Exh. 800, Numbered List of Provisional Challenged Voters Gwinnett County, State-Defendants-00317290.

959. In response to Judge Totenberg’s order in the *Common Cause Georgia v. Kemp* lawsuit, 347 F. Supp. 3d 1270, 1297 (N.D. Ga. 2018), the SOS emailed county officials for counties with over 100 provisional ballots on November 14, 2018, to collect more detailed information on why ballots coded “PR”—*i.e.*, for voters who could not be found on the voter rolls—were rejected. Exh. 887, Nov. 2018 SOS Email Correspondence re Rejected Provisional Ballots, State-Defendants-00472015.

960. Chris Harvey instructed that these “detailed” lists should identify whether voters were “out of county, cancelled, registered after deadline not registered, etc.” Exh. 887, November 2018 SOS Emails re Rejected Provisional Ballots, State-Defendants-00472015, at -17.

961. This instruction required counties to provide “more information than what is normally shown on a numbered list of provisional/challenged voters,” Exh.

905, Jan. 7, 2019 Emails with SOS re Provisional Ballots, State-Defendants-00587723, and counties did not necessarily have even this basic information on hand because they were typically not required to provide it to the SOS, Exh. 887, *see* November 2018 SOS Emails re Rejected Provisional Ballots, State-Defendants-00472015 (Fulton County official describing collecting the information at a warehouse by going through individual ballots).

962. There is no evidence the SOS intends to continue to require counties to provide even this minimal degree of information to document that they properly researched the validity of each provisional voter.

F. SOS fails to notice the rejection of provisional ballots until too late.

963. In February 2015, an SOS investigation concluded that Cobb County had rejected 340 provisional ballots in the November 2014 general election because the voters were initially allowed to cast ballots as out-of-precinct voters, but the county then retroactively determined that they could have reached their correct polling places before the close of polls. *See* Exh. 517, 2015 SOS Investigation Report re Cobb County, State-Defendants-00028417, at -00028421-22.

964. At the September 11, 2018 SEB meeting, the SEB again complained about provisional ballot failures. *See* Exh. 156, Sept. 11, 2018 SEB Hearing

Transcript at 109-114. At that meeting, one SEB member recounted his own problem getting a poll worker to give him a provisional ballot. *See id.* at 110.

965. SEB member David Worley recommended that, as a warning to counties, the SOS should send the counties an SEB order disciplining Cobb County for its mishandling of provisional ballots. *Id.* at 113-14. The SOS, however, did not do so. Exh. 21, Dec. 5, 2019 C. Harvey Dep. 337:13-338:3.

966. The SEB ultimately entered into a consent order with Cobb County imposing a \$1,500 fine, and agreed to recommend that the AG and SOS publicize the decision to local officials. *See* Exh. 156, Sept. 11, 2018 SEB Hearing Transcript (Plfs. Ex. 71).

967. Although SOS training materials from 2017 stated that “(v)oters should not be misled that their ballot will count only to have it rejected at a later time after a determination is made after that the voter would have had time to travel to his correct precinct,” the SOS does not instruct counties that they must count such ballots. Exh. 638, 2017 SOS Training PowerPoint, State-Defendants-00114746 at -32.

968. In fact, in the 2018 general election, 2,134 of the 10,917 “OP” provisional ballots—cast by out-of-precinct voters—were rejected. Exh. 863, Feb.

1, 2019 Summary of Provisional & Challenged Ballot Surveys, State-Defendants-00388800.

969. Although elections officials are required by federal and state law to set up a free access system allowing voters to ascertain whether their provisional ballots were rejected and the reason for the rejection, *see* 42 U.S.C.

§ 15482(a)(5)(A); O.C.G.A. § 21-2-419(d), Judge Totenberg observed on November 12, 2018, that “there (was) no indication of the required free access hotline number being posted on the Secretary of State’s website or many (or very possibly any) of the county or county election sites as of (that) date,” and “there (was) no indication of an interactive confidential website for individualized provisional balloting disposition information.” *Common Cause Ga.*, 347 F. Supp. 3d at 1297.

970. The SOS had to contact counties to determine whether they had actually been complying with this requirement—sending an email on November 13, 2018, informing them of the free-access-system requirement under Georgia law and asking them to “(a)s soon as possible . . . respond with the telephone number, website, etc. you use to allow voters to see if their provisional ballot was counted.” Exh. 483, Nov. 13, 2018 Email from SOS re Provisional Ballots, Orr-Emanuel County-000097.

G. Defendants have been aware of consistent, widespread problems with the administration of provisional ballots and have not taken reasonable steps to remedy these failures.

971. In 2015, the SEB heard cases arising out of Fulton County's failures during the 2012 primary and general elections. *See* Exh. 153, 2013 SOS Investigation Report re Fulton County, GA00759177.

972. The investigation revealed extensive, systematic failures at virtually every level of the provisional ballot process. *See* Exh. 153, 2013 SOS Investigation Report re Fulton County, GA00759177.

973. In the SEB hearing regarding whether to approve a proposed consent order, the lawyer for the Georgia Attorney General noted, "Fulton County had been a problem child in the past. They're not the only problem child this Board has dealt with." Exh. 1015, June 10, 2015 SEB Meeting Transcript at 10.

974. Despite this, the SEB agreed that it would not approve a consent order mandating specific improvements to Fulton County's election systems. Exh. 1015, June 10, 2015 SEB Meeting Transcript at 11-12.

975. The SEB ultimately agreed to a consent order imposing a \$150,000 civil penalty and \$30,000 in investigative costs, and requiring Fulton County to evaluate its current policies and procedures and to implement a new online training system "with a demonstrated previous record of effectiveness as a training tool in

use by election officials elsewhere.” Exh. 512, August 13, 2015 Consent Order, State-Defendants-00020523.

H. Defendants’ own statements reveal that they have failed to provide clear guidance about when voters are entitled to provisional ballots.

976. Despite the fact that SEB rules at the time explicitly authorized poll workers to determine, in their discretion, whether voters had adequate time to reach their correct polling places, Rebecca Sullivan testified in her deposition that she believed the law required that an out-of-precinct voter “should be offered a provisional ballot but be directed to go to a correct polling location.” Exh. 53, Oct. 15, 2019 R. Sullivan Dep. 90:24-95:8.

977. When asked about what would happen if a poll worker believed that the voter had time to reach the correct precinct, Sullivan further testified that she believed that the SOS would train election supervisors on provisional ballots. Exh. 53, Oct. 15, 2019 R. Sullivan Dep. 92:11-94:2.

978. Reflecting a different view of things, Chris Harvey has repeatedly stated that there is “ambiguity” and lack of clarity over whether a voter is required to affirmatively ask for a provisional ballot or should be offered one under Georgia law. *See* Exh. 567, October and November 2018 Emails re Gwinnett County Voter Complaint, State-Defendants-00054427; Exh. 21, Dec. 5, 2019 C. Harvey Dep.

164:17-168:24 (stating that, “there’s some ambiguity” if a voter must affirmatively ask for a provisional ballot).

979. Reflecting yet another perspective, Kevin Rayburn stated that if a voter could not be found on the voter list, “then we should direct them to the provisional ballot station and kind of walk them through their options.” Exh. 75, Dec. 6, 2019 K. Rayburn Dep. 92:1-5.

980. Kevin Rayburn also stated that it should not matter “(w)hether the voter asked for a provisional ballot,” and that “they should go to the provisional ballot table to get them out of the line so other people can keep voting, and then you . . . explain to them their options, to vote a provisional, depending on the circumstances.” Exh. 75, Dec. 6, 2019 K. Rayburn Dep. 92:6-18.

981. Kevin Rayburn further stated that, if the voter responds affirmatively to questions about whether they registered in that jurisdiction, “then have them fill out a voter certificate for provisionals where they have to affirm both those things are true, and then allow them to cast.” Exh. 75, Dec. 6, 2019 K. Rayburn Dep. 92:19-93:4.

982. Kevin Rayburn then explained that, if the voter was in the wrong precinct, “I would also let them know they could vote—if they feel like they don’t have time to go over there, they can vote a provisional ballot, and that the races

that they are entitled or eligible to vote for would be counted, but any race that they normally wouldn't see in their correct polling place would not be counted. So they need to make that decision.” Exh. 75, Dec. 6, 2019 K. Rayburn Dep. 93:17-25.

983. The SOS has been made aware of internal confusion among county officials about provisional ballot practices, including about whether there was an obligation to proactively offer provisional ballots to voters. *See* Exh. 579, Dec. 4, 2018 Correspondence between Gwinnett County Official and SOS re Provisional Ballots, State-Defendants-00055503 (providing guidance on provisional ballots, stating that a voter who shows up as an incorrect precinct should not be offered a provisional ballot “unless they ask or state they can't/don't want to go to the correct precinct.”).

I. The SOS's own investigations and communications have revealed obvious gaps in poll worker training.

984. As discussed in more detail *supra* Section III.H, Defendants' training materials have been “woefully deficient” in establishing clear guidelines and standards for distributing provisional ballots. *See* Expert Report of K. Kennedy, ECF No. 167 at 17, 19.

985. Beyond this, Defendants have been aware of blatant inadequacies in poll worker training. A 2016 investigation into Hancock County revealed that a poll worker had received no instruction on completing a provisional ballot. *See*

Exh. 525, SOS Investigation Report, State-Defendants-00034501 (among other violations in the March 2016 election, a Hancock County poll worker said that she had received no instruction on completing a provisional ballot).

986. A 2017 investigation into Henry County revealed that a poll worker believed that if someone did not have identification, the person could not vote, and accordingly turned away a voter in the December 2016 runoff for lack of identification without giving her the opportunity to vote provisionally. *See* Exh. 948, SOS Investigation Report, Henry County, State-Defendants-00813082. The investigator nonetheless recommended finding no violations of state election law. *Id.*

987. On June 5, 2018, the Cobb County Director of Elections & Registration emailed Chris Harvey with questions about how to handle a specific set of provisional ballots, and asked, “Also, will you be providing some poll worker directions or something in writing that we can adapt? Because we still have no idea how we’re supposed to train to (sic) our workers. Sorry, this is not sinking in for me.” Exh. 429, Correspondence between Counties and SOS re Ballot Questions, GA00763929.

988. When voters report Election Day issues related to provisional ballots that could be solved through prompt action, SOS officials sometimes forward their

communications to investigators as an initial step. *See* Exh. 161, Nov. 6, 2018 Fulton County Voter Complaint, State-Defendants-00088497 (forwarded voter complaint where voter complained that she attempted to vote via provisional ballot, but was told that she could not); Exh. 580, Dec. 4, 2018 Correspondence between Gwinnett County Official and SOS re Voter Complaint, State-Defendants-00055508.

989. SOS employees may ask follow-up questions, and sometimes explicitly direct counties to allow voters to vote provisionally. *See* Exh. 987, State-Defendants-00892535, at -00892536 (explicitly directing a county that “(t)he law allows a voter to vote a provisional ballot if the voter believes they are registered to vote”).

990. Based on Defendants’ productions, the more frequent outcome is that the SOS will pass voter complaints to counties without instructing them to allow the voters to vote provisionally. *See, e.g.*, Exh. 838, Nov. 2, 2018 Voter Complaint, State-Defendants-00333275; Exh. 954, Nov. 21, 2018 Investigator Email re Instructions, State-Defendants-00819137 (email from Russell Lewis to Alyssa Thys saying that he would like to pass the information to Fulton County “for their review”).

991. Even when the SOS contacts counties before the polls are closed, it generally does not explicitly direct them to let a voter cast a provisional ballot and also does not ask follow-up questions after they assert that they did not improperly deny a provisional ballot. *See* Exh. 955, November 2018 Emails re Voter Complaint, State-Defendants-00819139 (communication with Alyssa Thys being denied provisional ballot); Exh. 985, Nov. 2016 Email from SOS to Fulton County re Poll Workers Denying Provisional Ballots, State-Defendants-00892509 (communication about denying provisional ballots at the Therrell High School precinct, which the county denied).

J. Provisional ballot practices vary arbitrarily among counties, resulting in voters being treated unequally depending on where they live.

992. Poll workers in different counties have exhibited vastly different practices for handling provisional ballots. *Compare* Exh. 202, B. Gravely Decl. ¶ 3, PltfS000429 (Henry County; positive view of treatment of provisional voters); Exh. 290, A. Callaway Decl. ¶ 3, PltfS000564 (Clayton County; allowed to vote provisionally when stated she was not registered in the county), *with* Exh. 377, A. Oki Decl. ¶ 6 (DeKalb County); Exh. 296, C. Corona Decl. ¶ 3, PltfS000063 (Fulton County; treating provisional ballot voters negatively); Exh. 389, G. Ratner

Decl. ¶¶ 3-5, PltfS000179 (Fulton County; same); Exh. 395, B. Ross. Decl. ¶¶ 6-10, PltfS000034 (Muscogee County, same).

IX. POLLING PLACE CHANGES

A. The Closure and Relocation of Hundreds of Polling Places in Georgia—Made with the Defendants’ Active Encouragement—Severely Burdened Voters.

993. In 2013, the Supreme Court’s decision in *Shelby County v. Holder*, 570 U.S. 529 (2013), removed a critical limitation on Georgia’s ability to erect barriers to voting: *Shelby County* eliminated the “preclearance” requirement of the VRA, which mandated that states obtain authorization from the United States Department of Justice before implementing changes to its elections. *Shelby County v. Holder*, 570 U.S. 529, 557 (2013); *see also* Expert Report of M. Herron, ECF No. 241 at 5, 10; Jones Report, ECF No. 92 at 27.

994. Changing the location of or closing voter polling places was one of the elections changes that, prior to *Shelby County*, had required preclearance. *Shelby County v. Holder*, 570 U.S. 529 (2013). *See, e.g.*, Expert Report of M. Herron, ECF No. 241 at 5, 10; Jones Report, ECF No. 92 at 27.

995. With preclearance no longer in place, counties in Georgia began closing and relocating polling places throughout the State in earnest.⁹ Expert Report of M. Herron, ECF No. 241 at 44-45 & Fig. 2.

996. Between the 2014 and 2018 General Elections, 459 polling places closed. Expert Report of M. Herron, ECF No. 241 at 44-45 & Fig. 2.

997. During this same period, counties changed the polling places of around 18 percent of voters who remained at the same registered address for all four years—over 650,000 people. Expert Report of M. Herron, ECF No. 241 at 60.

998. The SOS actively promoted polling place closure and relocation, by directly training county elections offices on how and when to change their polling places. *See* Exh. 42, SOS Training Document, Orr-Randolph County-000579; Exh. 41, SOS Training Document, GA00785368; Exh. 43, Training PowerPoint, State-Defendants-00114659; Exh. 40, Apr. 8, 2019 SOS Talking Points re Closures, State-Defendants-00050375; Exh. 44, Oct. 16, 2019 Training Materials re Unvoted Ballots, State-Defendants-00096192; *see also* K. Kennedy Expert Report, ECF No. 167 at 11.

⁹ Although precincts—“geographical area[s] . . . from which all electors vote at one polling place,” O.C.G.A. § 21-2-2—and polling places—the physical place where people can vote on Election Day—are not technically the same, Defendants, and other election officials in Georgia often appear to use the terms interchangeably. *See* Exh. 41, SOS Training Document, GA00785368.

999. The SOS went so far as to make review of its training materials on changing polling places a part of the job description for its deputy general counsel. Exh. 23, Aug. 16, 2019 SOS 30(b)(6) Dep. 67:9-68:1.

1000. A February 2015 SOS training document advised that, after *Shelby County*, counties begin consolidating and changing polling places “[n]ow.” Exh. 41, SOS Training Document, GA00785368; *see also* Exh. 25, Jan. 6, 2020 SOS 30(b)(6) Dep. 121:4-9 (admitting that this training document is still in use); Exh. 171, July 28, 2017 Email between Crisp County and SOS re Polling Place Guidance, GA00785473 (SOS inserting a reminder about *Shelby County* having removed the pre-clearance requirement even where it was not responsive to the county’s question).

1001. Counties request assistance from the SOS in implementing precinct consolidation. Exh. 466, May 25, 2017 Email from Bacon County Election Supervisor to SOS re Consolidating Precincts, GA00784797 (“We did it!!!!”); Exh. 472, June 30, 2017 Email to SOS re Consolidating Precincts, GA00785307; Exh. 205, July 25, 2017 Email from Columbia County to SOS re Consolidating Precincts, GA00785320; Ex. 467, Feb. 2, 2018 SOS Email re Consolidating Precincts, GA00784924; Exh. 463, Feb. 9, 2018 Email to SOS re Consolidating

Precincts, GA00784751; Exh. 456, Feb. 27, 2018 Email between SOS and Rockdale County re Consolidating Precincts, GA00784437.

1002. Counties rely on SOS direction in making decisions about whether to make polling place changes and closures. Exh. 173, Feb. 2, 2017 Email from City of Snellville to SOS re Guidance, State-Defendants-00192683; Exh. 174, Feb. 24, 2017 Email from Columbia County to SOS re Guidance, GA00784742; Exh. 663, Mar. 3, 2017 Email from Irwin County to SOS re Guidance, State-Defendants-00157545 (county asking for SOS advice on “what to do” about proposal to consolidate 8 precincts to 2); Exh. 46, Dec. 12, 2017 Email from County to SOS re Guidance, GA00785272 (county asking for “any advice” from the SOS on consolidating 13 precincts to 1); Exh. 540, June 11, 2019 Email from Cook County Supervisor of Elections to SOS, State-Defendants-00044774 (county asking the SOS whether consolidating “precincts/polling places” would have any “negative repercussions” and seeking “[a]ny advice you could provide”); Exh. 47, June 11, 2019 Email from Cook County to SOS re Guidance, State-Defendants-00052539 (SOS employee confirming that Harvey is “positioned” to render advice on whether there would be “negative repercussions” arising from potential consolidation); Exh. 588, May 14, 2019 Email from Columbia County to SOS re Guidance, State-Defendants-00057787, at -00057788 (asking for the SOS’s

“thoughts” on a potential polling place change); Exh. 25, Jan. 6, 2020 SOS 30(b)(6) Dep. 126:1-5 (acknowledging that counties sometimes “consult with the Secretary of State’s Office before closing polling places”).

1003. The SOS is aware that hundreds of polling places have been closed in Georgia since the *Shelby County* decision issued. Exh. 21, Dec. 5, 2019 C. Harvey Dep. 216:5-10.

1004. Defendants are also aware of how drastically some counties cut polling places—they knew of numerous counties that eliminated over half of their polling places and of counties with only one or two polling places after consolidation. Exh. 504, Sept. 11, 2015 Email Precinct Consolidation, State-Defendants-00018235; Exh. 502, June 28, 2016 Email re Polling Places, State-Defendants-00018032; Exh. 45, Feb. 3, 2017 Email re Precinct Consolidation, GA00784382; Exh. 673, Feb. 3, 2017 Email re Consolidation of Irwin County, State-Defendants-00165728; Exh. 473; Feb. 16, 2017 Email re Counties Consolidating into One Precinct, GA00785478; Exh. 474; Feb. 17, 2017 Email re Counties Consolidating into One Precinct, GA00785510; Exh. 462, Mar. 1, 2017 Email re Wayne County Consolidating Precincts, GA00784732; Exh. 205, July 25, 2017 Email re Columbia County Combining Precincts, GA00785320; Exh. 171, July 28, 2017 Email from Crisp County re Closing a Polling Place, GA00785473;

Exh 46, Dec. 12, 2017 Email re One Precinct Counties, GA00785272; Exh. 475, July 17, 2017 Email re Polling Place Locations, GA00785526; Exh. 471, Nov. 1, 2017 Email from Wayne County re Consolidating Precincts, GA00785260; Ex. 459, Dec. 12, 2017 Email from Wayne County re Decrease in Precincts, GA00784677; Exh. 463, Feb. 8, 2018 Email from Greene County re Precinct Paperwork for Consolidation, GA00784751; Exh. 464, GA00784754; Exh. 888, Mar. 5, 2019 Email from Wayne County re Advantages of Consolidating to One Precinct, State-Defendants-00473325; Exh. 47, June 11, 2019 Email from Cook County re Advice on Consolidating Precincts, State-Defendants-00052539; Exh. 172, Aug. 30, 2019 Email from Glynn County re Consolidating Precincts, State-Defendants-00056443; Exh. 502, June 28, 2016 Email re Consolidating Polling Places, State-Defendants-00018032; Exh. 465, Jan. 9, 2017 Email from Lanier County re Consolidating Precincts, GA00784768-69; Exh. 461, Mar. 22, 2017 Email from Bacon County re Consolidating Precincts, GA00784697; Exh. 469, Aug. 7, 2017 Email from City of Butler to Consolidate all Polling Places, GA00785122-23.

1005. Chris Harvey expressed “uneas[e]” with a county “having only a single polling place.” Exh. 500, June 30, 2016 Email from C. Harvey re Polling Place Consolidation, State-Defendants-00018031.

1006. Despite this, Defendants publicly maintain they are helpless to stop counties from closing and relocating polling places, even when voters complain that these changes will affect many voters. Exh. 40, Apr. 8, 2019 SOS Talking Points re Closures, State-Defendants-00050375 (stating that the office “offer[s] guidance.”); Exh. 457, Sept. 17, 2018 Email from SOS re Polling Place, GA00784474 (Harvey asserting lack of authority to intervene where a voter complained that a polling place change would create a voting impediment for 700 voters); Exh. 589, May 8, 2019 Email from SOS re Polling Place, State-Defendants-00057911 (Harvey responding to a voter concerned about voter suppression resulting from consolidation of polling places: “There is no truth to the allegation that the state has required the consolidation” and “I recommend you talk with your county and city officials to get clarification.”).

1007. But after Randolph County’s plan to reduce its number of polling places from 9 to 2—including 7 polling places in majority-black areas—attracted public outcry and negative media attention in 2018, the SOS intervened to stop the reduction. Exh. 458, July 25, 2018 Email from Randolph County re Consolidating Precincts, GA00784612; Exh. 482, Aug. 15, 2008 Email from WABE re Randolph County, GA01225679; Exh. 203, Aug. 17, 2018 Email re Possible Randolph County Investigation, GA00784987; Exh. 468, GA00784990; Exh. 479, Aug. 17,

2018 Email re Randolph County Polling Place Closures, GA01225054; Exh. 597, Aug. 23, 2018 Email from C. Harvey re Consolidation, State-Defendants-00081262.

1008. After fielding questions from the media about the “negative impact” of the Randolph County polling place closures on “minority voters,” the SOS began to change its messaging on polling place closures. *See* Exh. 21, Dec. 5, 2019 C. Harvey Dep. 218:11-17 (claiming that the SOS has “actively been encouraging” and “caution[ing]” counties with respect to polling place changes.); Exh. 25, Jan. 6, 2020 SOS 30(b)(6) Dep. 115:10-20 (stating that the SOS would “discourage anyone from closing or consolidating polling places” and even “encouraged...opening new places rather than closing existing places”).

1009. Defendants, however, did not otherwise try to address the closure and relocation of polling places. One SEB member, Seth Harp, testified that the SEB, to his knowledge, had not made or discussed any rules to address polling place changes, and had no plans to adopt any such rules. Exh. 239, Oct. 16, 2019 B. Harp. Dep. 37:19-38:7.

1010. The SEB has never asked the SOS to analyze the effects of polling places on minority voters. Exh. 239, Oct. 16, 2019 B. Harp. Dep. 37:19-38:7.

1011. Another SEB member, Rebecca Sullivan, knew nothing about the systematic closure or relocation of polling places, “[o]utside of what [she] read in the press.” Exh. 53, Oct. 15, 2019 R. Sullivan Dep. 85:2-9. She was not certain about whether state law required giving notice to voters of a polling place closure, and could not recall the SEB ever discussing the issue. Nor did she know the number of polling places that had been closed or relocated since 2014. *Id.* 85:20-86:18. *See also* Exh. 75, Dec. 6, 2019 K. Rayburn Dep. 162:2-9 (the SOS just files the notices and “that’s the extent to it”).

1012. The SOS designs the precinct cards that notify voters of changes to polling places. Exh. 23, Aug. 16, 2019 SOS 30(b)(6) Dep. 273:18-19.

1013. The SOS reviews and approves the precinct cards counties order. Automated Notifications From Counties to SOS Needing Approval For Precinct Cards: Exh. 727, State-Defendants-00225038 (Ware County); Exh. 728, State-Defendants-00225098 (Heard County); Exh. 733, State-Defendants-00229346 (Cobb County); Exh. 729, State-Defendants-00225374 (Meriwether County); Exh. 734, State-Defendants-00232210 (Paulding County); Exh. 730, State-Defendants-00225477 (Jefferson County); Exh. 731, State-Defendants-00225608 (Charlton County); Exh. 750, State-Defendants-00257907 (Clayton County); Exh. 751, State-

Defendants-00257910 (Baker County); Exh. 749, State-Defendants-00257906 (Grady County).

1014. The SOS does not require counties to send precinct cards to all registered voters. Exh. 878, July 9, 2018 Email from Fulton County to SOS re Special Precinct Card Order State-Defendants-00468982 (the county tells SOS they only want active voters to be included in the special precinct card order and SOS approves the order); Exh. 631, Sept. 11, 2019 Email from Clayton County to SOS re Polling Place Change, State-Defendants-00095374 (SOS responded “I noticed that you did not include inactive voters when ordering the precinct cards. Would you like to include these voters so they will be notified of the changes as well?”).

1015. In January 2019, the SOS was aware that its precinct cards did not meet the U.S. Postal Service’s requirements and therefore were being delivered late or to inaccurate addresses. Exh. 722, Jan. 22, 2019 Letter from J. Fuchs to C. Harvey re Plans for Early 2019, State-Defendants-00200645, at -00200646 (plans included “Redesign[ing] voter precinct cards to be fully compliant with USPS standards to increase the accuracy and efficiency of delivery.”).

1016. The SOS failed to fix this problem. In October 2019, “many” SOS-designed precinct cards were delivered to polling places and therefore did not

“reach the voters.” Exh. 780, Oct. 30, 2019 Email from J. Scherie to C. Harvey re Precinct Cards – Four Sided Update, State-Defendants-00295594 (requesting IT to change design of precinct card due to cards being delivered to polling places instead of voters).

1017. The SOS operates My Voter Page (“MVP”), which Georgia voters use to check their polling place information. Exh. 21, Dec. 5, 2019 C. Harvey Dep. 310:15-22.

1018. The SOS encourages voters to use MVP to check their registration status and find their voting location shortly before elections. Exh. 999, June 15, 2017 Email from SOS re Talking Points, State-Defendants-00998862 (SOS talking points prepared five days before an election).

1019. Unbeknownst to voters, the SOS does not update MVP during the three days before “a large election.” Exh. 21, Dec. 5, 2019 C. Harvey Dep. 306:11-307:4.

1020. This means that any new information entered by the counties during the days immediately preceding an election would not be visible to voters checking MVP on Election Day. Exh. 21, Dec. 5, 2019 C. Harvey Dep. 306:11-307:4.

1021. The SOS does nothing to ensure that all polling place information is accurate before it stops updating MVP. *See* Exh. 21, Dec. 5, 2019 C. Harvey Dep.

310:15-20 (answering “no” when asked if the SOS has done anything to check into the MVP accuracy).

1022. These polling place changes had a direct and negative effect on voters’ ability and willingness to vote: overall 2016 and 2018 voter turnout, among all registered voters who received a new polling place during the 2014 to 2018 period but did not move, was lower than turnout for registered voters who did *not* receive a new polling place. Expert Report of M. Herron, ECF No. 241 at 71-72; Herron Suppl. Report, ECF No. 294 at 42. Voters whose polling places changed, in other words, voted less than voters who had the same polling places. Expert Report of M. Herron, ECF No. 241 at 71-72; Herron Suppl. Report, ECF No. 294 at 42.

1023. These changes made voting more difficult for Georgia voters in two ways. First, many voters did not receive notice that their polling places had been closed or relocated. Exh. 528, June 15, 2016 Report of Investigation re Fulton County Poll Location, State-Defendants-00034606; Exh. 529, May 18, 2017 Report of Investigation re Fulton County, Precinct Changes, State-Defendants-00035100; Exh. 807, Mar. 3, 2017 Voter Complaint re Combining Polling Places, State-Defendants-00329526; Exh. 427, Apr. 18, 2017 Voter Complaint re Change in Polling Place, GA00758997; Exh. 527, May 18, 2017 Report of Investigation re Fulton County, Precinct Changes, State-Defendants-00034556; Exh. 523, June 6,

2017 Report of Investigation re Hall County, Notice of Poll Change, State-Defendants-00033393; Exh. 966, Sept. 4, 2018 Email re Investigation Findings, State-Defendants-00831572; Exh. 603, Sept. 18, 2019 Voter Complaint re Change in Polling Location, State-Defendants-00087149; Exh. 836, Nov. 9, 2017 Voter Complaint re Change in Polling Place, State-Defendants-00332903; Exh. 845, Dec. 8, 2017 Voter Complaint re Change in Polling Place, State-Defendants-00333517; Exh. 604, Nov. 6, 2019 Email re eNet Issue, State-Defendants-00087239.

1024. Therefore, voters were turned away, confused, from polling places where they had voted for years without issue. Exh. 603, Sept. 18, 2019 Voter Complaint re Change in Polling Location, State-Defendants-00087149; Exh. 427, Apr. 18, 2017 Voter Complaint re Change in Polling Place, GA00758997; Exh. 812, Nov. 7, 2017 Voter Complaint re Change in Polling Location, State-Defendants-00330238; Exh. 836, Nov. 9, 2017 Voter Complaint re Change in Polling Place, State-Defendants-00332903.

1025. In addition, voters who arrived at their old polling places late on Election Day, and who were not offered provisional ballots, were forced to choose between trying to make it to their new polling places in time to vote, or not voting at all. Exh. 520, Jan. 21, 2015 Report of Investigation re Hancock County

Qualifying, State-Defendants-00032179; Exh. 522, Sept. 11, 2018 SEB Meeting and Hearing Minutes, State-Defendants-00032960.

1026. Talisha Warren, then a resident of Gwinnett County, had her polling place change three times in one year. Exh. 414, Nov. 18, 2018 T. Warren Decl. ¶¶ 3.a.-3.b. After voting in 2016 at the third polling place without incident, Warren returned to that polling place to vote in 2018. *Id.* ¶ 3.c. After standing in line to vote for two hours, elections officials informed her that her polling place had again changed. *Id.* Warren, the mother of a special needs daughter, did not have the time to go to another polling place to vote, and had to vote provisionally. *Id.* ¶¶ 3.c.-3.d.

1027. Second, many voters found that their neighborhood polling places, just a few blocks away, had been closed and that their new voting places were miles farther from where they lived. Exh. 476, Aug. 9, 2017 Voter Complaint re Polling Place Change, GA00785553; Exh. 569, Nov. 2, 2018 Voter Complaint re Polling Place Change, State-Defendants-00054453; Exh. 627, Aug. 18, 2019 Voter Complaint re Polling Place Change, State-Defendants-00089245; Exh. 626, Mar. 20, 2019 Voter Complaint re Request to Change Polling Place, State-Defendants-00088998.

1028. Kenneth Reeves, a Cobb County resident, and a member of Turner Chapel AME Church, had been able to vote at his church, which was “only a block

and a half” from his home, “[f]or a long time.” Exh. 226, Oct. 26, 2019 K. Reeves Decl. ¶ 3. In 2016, his polling place was moved six miles away. *Id.* Reeves found it a “hindrance to get to this polling place instead of [his] church down the road.” *Id.* At his new polling place, even doing early voting, he found himself waiting over two hours to vote in 2018, forced to stand in a line that extended outside of the polling place building. *Id.* ¶¶ 4-5. Reeves was willing to wait, though, “to make sure [he] got [his] vote in.” *Id.* ¶ 5.

1029. In the June 2020 primary, voters again were not properly notified that their polling places had changed, and thus had to go to multiple polling places to vote. Exh. 405, R. Straut Decl. ¶¶ 4-12; Exh. 336, K. Horace Decl. ¶¶ 3-6; Exh. 386, K. Ponder Decl. ¶¶ 4-10.

B. Counties, with Defendants’ Awareness and Approval, Closed and Relocated a Disproportionately High Number of Polling Places in a Disproportionately Low Number of Counties.

1030. From 2014 to 2018, polling places did not close or relocate in a uniform way in Georgia. Instead, these changes were concentrated in select parts of the State. Expert Report of M. Herron, ECF No. 241 at 44.

1031. 101 counties closed at least one polling place over this four-year period. Expert Report of M. Herron, ECF No. 241 at 44. This meant that 58 counties did not close any polling places during this same period. *Id.*

1032. Nor did those counties with polling place closures have the same rates of closures. Expert Report of M. Herron, ECF No. 241 at 45-47. 18 counties closed at least half of their polling places; 4 of these counties closed *all* of their polling places. *Id.* The remaining 83 counties closed less than half of their polling places. *Id.* at 45.

1033. Instead, these polling place closures, the rates of closure, and the burden of these closures on voters, were distributed unevenly across the State. Expert Report of M. Herron, ECF No. 241 at 46.

1034. 128 counties in Georgia had voters who had their polling places change, despite remaining at the same address from 2014 to 2018. Expert Report of M. Herron, ECF No. 241 at 65. This meant that 31 counties had no non-moving voters who had their polling places change during this same period. *Id.*

1035. The rates of non-moving voters who had their polling places change also varied. *See* Expert Report of M. Herron, ECF No. 241 at 64. At least 50% of non-moving voters in just 16 counties had their polling places change; and again, only 4 counties relocated polling places for 100% of their non-moving voters. *Id.*

1036. The remaining 112 counties relocated polling places for less than half of their non-moving voters, and almost half of these counties relocated polling

places for less than 10 non-moving voters. Expert Report of M. Herron, ECF No. 241 at 64-65.

C. The Closure and Relocation of Hundreds of Polling Places in Georgia—Made with the Defendants’ Active Encouragement—Disproportionately Burdened Black Voters.

1037. From 2014 to 2018, more Black registered voters in Georgia had their polling places closed than white registered voters. Expert Report of M. Herron, ECF No. 241 at 52-53.

1038. Black registered voters in racially homogenous neighborhoods had their polling places changed at a higher rate than white registered voters in racially homogenous neighborhoods. Expert Report of M. Herron, ECF No. 241 at 51.

1039. The rate of closures among polling places in Black-majority precincts was also higher than the closure rate in non-Black majority precincts. Expert Report of M. Herron, ECF No. 241 at 54-56.

1040. This trend was true for polling place relocations as well: Black registered voters who did not move had their polling places relocated at a higher rate than white registered voters who did not move. Expert Report of M. Herron, ECF No. 241 at 61-62.

1041. Polling place closures and relocations burdened all Georgians voters who experienced them. Expert Report of M. Herron, ECF No. 241 at 71-72;

Supplemental Report of M. Herron, ECF No. 294 at 42. That burden was compounded for Black voters, who had their polling places changed at a higher rate than white voters. *Id.*

1042. 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. Expert Report of M. Herron, ECF No. 241 at 70; Supplemental Report of M. Herron, ECF No. 294 at 40, 44.

1043. “Even among politically active” Black voters, “being assigned a new voting place between 2014 and 2018” was “associated with lower 2018 General Election turnout.” Expert Report of M. Herron, ECF No. 241 at 71-72.

1044. Defendants were well aware that the burden of polling place closures and relocations could disproportionately fall on Black voters in Georgia. One county notified the SOS about a planned consolidation that would eliminate polling places in the precinct where most of the “minorities” lived. Exh. 45, Feb. 2, 2017 Email from Irwin County re Consolidation for Irwin County, GA00784382.

1045. Another notified the SOS about its plans to relocate two majority-Black polling locations. Exh. 477, Nov. 14, 2017 Email from Fulton County re Approved Proposal, GA00785561-63.

1046. SEB member David Worley acknowledged that closing polling places could have a disparate impact on Black voters. Exh. 57, Oct. 10, 2019 D. Worley Dep. 129:15-19.

1047. Despite Defendants' awareness that these polling place changes might harm Black voters more than others, Defendants did not take any action to review, much less disapprove such changes. Rebecca Sullivan testified that, upon receiving an email from a voter expressing concerns about the effects of a polling place closure on Black voters in the area, she did nothing more than forward the email to Ryan Germany. Exh. 53, Oct. 15, 2019 R. Sullivan Dep. 97:16-21.

1048. But the SEB never discussed that voter's concerns, or the possibility that polling place closures in Georgia might disproportionately affect Black voters more generally. *Id.* 97:25-98:6.

1049. Nor did the SOS ever study, or even discuss, the effects on polling place closures and changes on Black voters. Exh. 21, Dec. 5, 2019 C. Harvey Dep. 216:11-217:1.

1050. Instead the SOS reminded counties that preclearance was no longer required for making polling place changes, and provided training and guidance to counties on how to change polling places. Exh. 41, SOS Training Document,

GA00785368; Exh. 171, July 28, 2017 Email from Crisp County to SOS re Consolidation, GA00785473.

1051. The SOS represents to localities that its training materials contain “everything you will need to know about making changes to precincts & polling places.” Exh. 41, Mar. 9, 2017 Email from SOS to Dooly County re Changes to Precincts and Polling Places, GA00785365.

1052. Regarding decisions to “open, close or consolidate polling places,” the SOS claims that it “offer[s] guidance to our Counties and stress[es] careful consideration of all factors in making these decisions.” Exh. 40, Apr. 8, 2019 Talking Points re Polling Places, State-Defendants-00050375.

1053. The SOS does not tell counties to consider the need to comply with the Constitution and the VRA when making decisions about polling place changes. Exh. 588, May 8, 2019 Email from Columbia County Board of Elections re Polling Place, State-Defendants-00057787, at -00057787-88 (in response to a county request for the SOS’s “thoughts” on a potential polling place change, Harvey responded only that [y]ou have to make the best call you can” and reminded the county that “the SEB doesn’t have veto power over the moves”); Exh. 41, Feb. 2015 SOS Training Document, GA00785368; Exh. 25, Jan. 6, 2020 SOS 30(b)(6) Dep. 141:24-142:7 (there’s no specific training documents regarding complying

with VRA), 142:16-144:9 (would not have referenced the VRA when counties consult with him in connection with closures or consolidation).

1054. The SOS does not train or advise counties on VRA implications of polling place closures. Exh. 75, Dec. 6, 2019 K. Rayburn Dep. 162:18-22; Exh. 25, Jan. 6, 2020 SOS 30(b)(6) Dep. 142:16-144:9.

1055. Kevin Rayburn acknowledged that the SOS did not advise counties on the potential issues with VRA compliance that polling place closures might raise. Exh. 75, Dec. 6, 2019 K. Rayburn Dep. 162:18-22.

1056. Former SOS Brian Kemp similarly admitted that, to his knowledge, SEB did not promulgate any rules designed to ensure VRA compliance in the wake of *Shelby County*'s elimination of preclearance. Exh. 76, Jan. 8, 2020 B. Kemp Dep. 67:5-17, 67:23-68:3.

X. THE SOS'S FAILURE TO PREVENT HOURS-LONG LINES ON ELECTION DAY SEVERELY BURDENED VOTERS.

1057. Voter turnout for Georgia's 2018 Gubernatorial Election hit historical highs—a record 6.9 million voters came out to vote. SOS Historical Voter Registration Statistics, 1988-Present, SOS Website (<https://sos.ga.gov/admin/files/Voter%20Registration%20Statistics%20Historical%20-%20Updated%2011-26-18.pdf>).

1058. Voter turnout in Georgia had been steadily on the rise since 1998. *Id.* It continued to tick upwards after the *Shelby County* decision was issued in 2013. *Id.*

1059. Over 6 million voters turned out to vote during the 2014 Gubernatorial Election—only 30,000 more voters, or a difference of less than 1%, voted during the 2016 Presidential Election. *Id.*

1060. But almost 6.7 million voters turned out to vote during the primary before the 2018 Gubernatorial Election—almost a million more voters than turnout during the last off-year primary, in 2014. *Id.*

1061. The SOS had early warning that high turnout was projected for the 2018 Gubernatorial Election. Exh. 21, Dec. 5, 2019 C. Harvey Dep. 286:21-289:2.

1062. The SOS did nothing to ensure the counties were aware of the SOS's expectation that turnout would be particularly high in the 2018 election. *See* Exh. 21, Dec. 5, 2019 C. Harvey Dep. 287:6-13 (“I feel confident that I would have related that to the counties in telephone calls and conversations. I don't know if there was something written sent out.”).

1063. As Chris Harvey acknowledged, “everyone – just about everyone realized very soon, as soon as advance voting started, that this was unusually high turn-out.” Exh. 21, Dec. 5, 2019 Dep. C. Harvey 287:14-16.

1064. The SOS receives complaints about long lines in every election. Exh. 21, Dec. 5, 2019 C. Harvey Dep. 285:25-286:8.

1065. The SOS is aware that long lines, and thus long wait times, can cause voters not to vote. Exh. 21, Dec. 5, 2019 C. Harvey Dep. 286:18-20.

1066. The SOS also knew that if local polling places did not have adequate numbers of working voting machines or adequate poll worker training, voters could face hours-long waits to vote¹⁰—and that some voters would be unable to wait that long to vote. During the 2016 Presidential Election, in which over 6.6 million voters voted, the SOS received multiple complaints from voters who had to wait hours to vote because of insufficient numbers of working voting machines, poorly-trained poll workers who opened polling places late, which left dozens of voters waiting to vote while multiple voting machines remained unused. *See* Exh. 818, State-Defendants-00330810 (voter complaint of two-hour wait, with only six voting machines for hundreds of people); Exh. 831, State-Defendants-00332339 (voter complaint of long lines and only one working voting machine); Exh. 828, State-Defendants-00332281 (voter complaint of more than two-hour wait, and inadequate number of voting machines for turnout); Exh. 833, State-Defendants-

¹⁰ Chris Harvey has also testified that “encouraging [counties] to expand polling places and add polling places is directly responsive to trying to keep lines down.” Exh. 21, Dec. 5, 2019 C. Harvey Dep. 293:19-21.

00332365 (voter complaint of nearly two-hour wait, even though “[a]t any point in time, 4 voting machines were empty”).

1067. Some voters complained of having to leave the long lines to vote, or of seeing others leave the lines, without voting at all. Exh. 831, State-Defendants-00332339; Exh. 818, State-Defendants-00330810.

1068. A nationwide study of wait times during the 2018 mid-terms, conducted by the Bipartisan Policy Center, found that Fulton County, Georgia—the only Georgia jurisdiction included in the survey—had the longest wait times of the 3,119 polling places surveyed. S. Graves Expert Report, ECF No. 166 at 3.

1069. Wait times in Fulton County were 2.5 times the national average. Fulton County was an outlier not just compared to other states in 2018, but to other states with large turnout increases in 2018 *and* to wait times in 2014. S. Graves Expert Report, ECF No. 166 at 15-16, 18.

1070. The study noted that, because “[s]everal states with equally large turnout increases saw relatively minor increases in their wait times[,] [i]t must be the case that the states that experienced big wait-time increases in 2018 pushed the resources at hand, mainly check-in locations and voting machines, to their capacity limits or beyond.” S. Graves Expert Report, ECF No. 166 at 18.

1071. Despite the SOS's awareness that turnout for the 2018 Gubernatorial Election would be unusually high, the SOS did nothing to prevent the long waiting times that Georgia voters experienced in 2016 and the 2018 mid-terms. When asked whether, prior to the 2018 Gubernatorial Election, SOS had taken "any measures to try to ensure that wait times would not exceed 30 minutes," Chris Harvey answered, "I don't believe so." Exh. 21, Dec. 5, 2019 C. Harvey Dep. 290:13-19; *see also* Exh. 26, Dec. 11, 2019 R. Germany Dep. 215:7-16 (testifying that he "d[id not] know" if the SOS did "anything to warn the counties that [the 2018 Gubernatorial Election] might be a really big turnout election").

1072. Defendants did not take any steps to prevent long wait times at polling places during the 2018 Gubernatorial Elections. *See* K. Kennedy Expert Report, ECF No. 167 at 8-10, 17-18.

1073. The SEB abdicated all responsibility for preventing long waits to vote. Seth Harp testified that he had only heard "second or third hand" complaints of long lines at polling locations, and that the SEB never investigated those complaints. Exh. 239, Oct. 16, 2019 S. Harp Dep. 40:8-40:25.

1074. The SOS's poll worker 2016 and 2018 training manuals state that "[a]t each polling place, there should be a plan to deal with a scenario where there is a line that is well out the door," and suggest "questions and options for a well-

maintained voting lines.” Exh. 49, State-Defendants-00095503; Exh. 34, State-Defendants-00146427. But the manuals do not propose ways to prevent long polling place lines or wait times. *Id.*

1075. The SOS also trains counties that “[i]t is essential that an adequate supply of absentee, challenged, provisional and regular ballots are ordered,” but does not provide any training on how to calculate the amount of supplies that are “adequate.” Exh. 234, Georgia Registrar Official Certification Training Document, State-Defendants-00103254, at 103317.

1076. The SOS just assumes that counties know the amount of supplies they need. Exh. 23, Aug. 16, 2019 SOS 30(b)(6) Dep. 170:1-13 (“the counties know what they need”); Exh. 25, Jan. 6, 2020 SOS 30(b)(6) Dep. 18:3-11 (“counties, knowing their history and knowing their polling places and their turnout numbers . . . would have a good idea of what, what kind of provisional ballots or emergency ballots might be necessary.”).

1077. But Georgia law requires the number of ballots on hand to equal the number of electors in the precinct. O.G.C.A. § 21-2-290.

1078. Counties order certain election supplies on a website operated by the SOS, and the SOS sends them from its warehouse. Exh. 23, Aug. 16, 2019 C.

Harvey Dep 161:17-162:12 (the SOS has an online store where counties can order election supplies).

1079. The SOS generally does not give counties any information about the quantity of election supplies to order. Exh. 742, Oct. 15, 2019 Email from SOS to Catoosa County re Poll Pads for Election Day, State-Defendants-00248173; Exh. 23, Aug. 16, 2019 SOS 30(b)(6) Dep. 170:1-20 (asking how many Poll Pads it wants assigned to each location on election day).

1080. The SOS sometimes is unable to give counties all of the supplies that they request. Exh. 23, Aug. 16, 2019 SOS 30(b)(6) Dep. 170:1-20 (“sometimes we have to deal with limited amounts.”).

1081. The SOS decides how many voting machines, printers, electronic poll books, poll pads, scanners, and other associated supplies each county will receive. Exh. 25, Jan. 6, 2020 SOS 30(b)(6) Dep. 20:17-21:21 (explaining how the SOS calculates the number and stating that the “numbers don’t always [] reflect” the numbers the counties have been using in the past).

1082. The SOS procures that equipment and sends it to the counties. Exh. 25, Jan. 6, 2020 SOS 30(b)(6) Dep. 10:3-11:12 (explaining the SOS obtains the equipment to send out). *See also* Exh. 782, Email from County to SOS, State-

Defendants-00306611 (asking how the number of machines are calculated for each county).

1083. As a consequence of Defendants' inaction, Georgians during the 2018 Gubernatorial Election waited as much as four and a half hours to vote. *See* Exh. 199, Decl. of Jeffrey Marion ¶ 4-8 (4.5-hour wait); Exh. 185, Decl. of Hollie Barnidge ¶ 3-4 (4.5-hour wait); Exh. 314, Decl. of Tunnizia Gilliam ¶ 3-4 (4-hour wait); Exh. 426, Decl. of Jeffery Young ¶ 3 (4-hour wait); Exh. 358, Decl. of Karen Lewis ¶ 14-23 (4-hour wait); Exh. 321, Decl. of Carl Hall ¶ 4 (3-4-hour wait); Exh. 201, Decl. of Patricia Davis ¶ 3-4 (3.5-hour wait); Exh. 344, Decl. of Tobias Jackson-Campbell ¶ 3 (3-hour wait); Exh. 202, Decl. of Blakke Gravely ¶ 3 (2-hour wait); Exh. 354, Decl. of Alexandra Lambert ¶ 3 (2.75-hour wait); Exh. 376, Decl. of Derrick Oatis ¶ 3-4 (2.5-hour wait); Exh. 414, Decl. of Talisha Warren ¶ 3 (2-hour wait); Exh. 281, Decl. of Jamal Brooks ¶ 3 (2-hour wait); Exh. 1,039, Decl. of Jennifer Maciejewski ¶ 3 (2-hour wait); Exh. 373, Decl. of Keteria Neal ¶ 3 (2-hour wait); Exh. 272, Decl. of Sam Awad ¶ 7 (2-hour wait); Exh. 270, Decl. of Shanna Antoine ¶ 4 (2-hour wait); Exh. 363, Decl. of Dawn Marshall ¶ 4 (2-hour wait); Exh. 319, Decl. of April Greenberg ¶ 3 (1.5-2-hour wait); Exh. 307, Decl. of Kristi Feenie ¶ 3 (1.5-2-hour wait); Exh. 291, Decl. of Chad Carter ¶ 3 (1.5-hour wait); Exh. 181, Decl. of Jessica Evering ¶ 4 (1.5-hour wait); Exh. 410,

Decl. of Carrie Vanzant ¶ 3-4 (1-hour wait); Exh. 378, Decl. of Kevin O'Malley ¶ 3 (1.5 hour wait); Exh. 273, Decl. of April Baier ¶ 3 (1-hour wait).

1084. Poll watchers similarly reported observing lengthy waits throughout Election Day. *See* Exh. 195, Decl. of Barbara Liscord ¶ 4-14 (4 hour wait); Exh. 361, Decl. of Mollye Lockwood ¶ 3 (3-hour wait); Exh. 387, Decl. of Angel Poventud ¶ 3-4 (2-4 hour wait); Exh. 193, Decl. of Sharman Southall ¶ 3-9 (1.5-2.5-hour wait); Exh. 188, Decl. of Lisa Schnellinger ¶ 4-18 (1.5-2-hour wait); Exh. 192, Decl. of Shannon Gaggero ¶ 3-13 (1-2 hour wait).

1085. The SOS also received multiple complaints from voters of hours-long waiting times for voting on Election Day across the State. *See* Exh. 617, Nov. 6, 2018 Voter Complaint re Fulton County, State-Defendants-00088525 (almost 4-hour wait); Exh. 176, Nov. 6, 2018 Voter Complaint re Fulton County, State-Defendants-00088523 (3.5-hour wait); Exh. 618, Nov. 6, 2018 Voter Complaint re Fulton County, State-Defendants-00088527 (3-hour wait); Nov. 7, 2018 Voter Complaint re Cobb County, Exh. 883, State-Defendants-00471427 (over 2-hour wait); Exh. 614, Nov. 6, 2018 Voter Complaint re Loganville, GA, State-Defendants-00088423 (2-hour wait); Exh. 600, Nov. 6, 2018 Voter Complaint re Cobb County, State-Defendants-00085075 (2-hour wait); Exh. 619, Nov. 6, 2018 Voter Complaint re Gwinnett County, State-Defendants-00088531 (2-hour wait);

Exh. 881, Nov. 6, 2018 Voter Complaint re Cross Keys Voting Location, State-Defendants-00470888 (1.5-hour wait); Exh. 161, Nov. 6, 2018 Voter Complaint re Fulton County, State-Defendants-00088497 (1-hour wait); Exh. 615, Nov. 6, 2018 Voter Complaint re Cobb County, State-Defendants-00088452 (1-hour wait); Exh. 793, Nov. 7, 2018 Voter Complaint re Cobb County, State-Defendants-00313170 (1-hour wait).

1086. Some voters waited to vote multiple times on Election Day: these voters arrived at the polls in the morning, waited until they had to leave for work or other obligations, and then returned later in the day, only to find that they would still have to wait hours to vote. *See* Exh. 281, Decl. of Jamal Brooks ¶ 3; Exh. 314, Decl. of Tunnizia Gilliam ¶ 3-4; Exh. 185, Decl. of Hollie Barnidge ¶ 3-4; Exh. 378, Decl. of Kevin O'Malley ¶ 3.

1087. Tunnizia Gilliam, a Cobb County resident, left her home at 6:30 a.m. on Election Day, and waited one hour at her polling place, until she had to leave the line to get to her job. Exh. 314, Decl. of Tunnizia Gilliam ¶ 4. She returned to her polling place on her lunch break—for which she was allotted one hour—and waited over three more hours to vote. *Id.* As a consequence of the wait, she lost two hours of pay. *Id.*

1088. The SOS received a similar complaint from a voter who left a long line at his polling place, only to return later in the day to the same long line. *See* Exh. 883, Nov. 7, 2018 Voter Complaint re Multiple Attempts to Vote, State-Defendants-00471427 (complaint from voter who attempted to vote four times at polling place where line was two-hours long).

1089. Many of the voters who stood in hours-long lines to vote on Election Day observed that their polling locations had fewer voting machines than in past elections. *See* Exh. 314, Decl. of Tunnizia Gilliam ¶ 4 (recalling that, during the 2016 Election “there appeared to be twice as many machines”); Exh. 344, Decl. of Tobias Jackson-Campbell ¶ 3; Exh. 1,039, Decl. of Jennifer Maciejewski ¶ 3.

1090. The SOS received similar complaints from voters who recalled their polling places have more voting machines in prior elections. Exh. 793, Nov. 7, 2018 Voter Complaint re Reduced Number of Voting Machines, State-Defendants-00313170 (complaint that polling location had only seven voting machines, instead of the usual fourteen); Exh. 600, Nov. 6, 2018 Voter Complaint re Inadequate Number of Voting Machines, State-Defendants-00085075; Exh. 616, Nov. 6, 2018 Voter Complaint re Reduced Number of Voting Machines, State-Defendants-00088492; Exh. 618, Nov. 6, 2018 Voter Complaint re Reduced Number of Voting Machines, State-Defendants-00088527; Exh. 617, Nov. 6, 2018 Voter Complaint

re Reduced Number of Voting Machines, State-Defendants-00088525; Exh. 620, Nov. 7, 2018 Voter Complaint re Inadequate Number of Voting Machines, State-Defendants-00088572.

1091. Other voters who waited for hours to vote on Election Day reported that some of the machines at their polling locations were broken or malfunctioning. Exh. 354, Decl. of Alexandra Lambert ¶ 3 (observing that four of seven voting machines “were not working and turned off”); Exh. 199 Decl. of Jeffery Marion ¶ 4 (reporting that voting machines were down from the opening of the polls at 7 a.m. until 11am); Exh. 358, Decl. of Karen Lewis ¶ 15-18 (reporting that poll workers did not allow voting at the opening of the polls because “a machine was broken,” and that after a nearly two-hour wait, another machine arrived that did not work either); Exh. 378, Decl. of Kevin O’Malley ¶ 3 (observing that “five of the seven” voting machines at his polling place were down mid-day); Exh. 183, Decl. of Arnaud Huguet ¶ 4 (observing there were only “three operational voting machines” for “1200 registered voters”); Exh. 376, Decl. of Derrick Oatis ¶ 4 (reporting that the voting machines were not working from 7 am until 9:40 am); Exh. 281, Decl. of Jamal Brooks ¶ 3 (was unable to vote in the morning due to “problems with the verification machines”); Exh. 410, Decl. of Carrie Vanzant ¶ 4 (observing that some of the voting machines were not being used since “there were

only two machines to get voting cards,” and “they were having trouble with the [voting card] machines”); Exh. 426, Decl. of Jeffery Young ¶ 3 (reporting that the voters were told the machines were initially down, new machines were brought in, which did not work either, and the issue was with the cards and not the machines).

1092. Poll watchers also described observing voting machine malfunctions at polling locations with long wait times. Exh. 192, Decl. of Shannon Gaggero ¶ 3-13 (observed “the lines at the precinct were quite long” and “one of the Express Polls (there were only two at this location) malfunctioned on a number of occasions”); Exh. 196, Decl. of Melanie Manning ¶ 3-13 (observed multiple bottleneck delays which resulted from one of the two Express Poll computers repeatedly freezing up or rebooting”); Exh. 387, Decl. of Angel Poventud ¶ 3-4 (observed “there were only three voting machines that were operable. Given the anticipated voter volume, there should have been 10-12”); Exh. 361, Decl. of Mollye Lockwood ¶ 3 (observed long lines and machines down, and noted “out of fourteen machines, only eleven tapes printed correctly”).

1093. When polls opened at Pitman Recreation Center in Fulton County, both a voter, Arnaud Huguet, and a poll worker, Angel Poventud, reported that the polling place—which had been consolidated with a nearby polling place under

construction—had only three operable machines, for 2,100 voters. Exh. 183, Decl. of Arnaud Huguet ¶ 3-4; Exh. 387, Decl. of Angel Poventud ¶ 3-4.

1094. Although five additional machines were brought to Pitman at around 11:30 am, “none of the additional five machines came with any additional staff to assist or with the proper equipment to make them fully operable.” Exh. 387, Decl. of Angel Poventud ¶ 4.

1095. Poventud noted that “[t]he voting wait times were extraordinarily long throughout the day because there was insufficient staff to assist voters and an inadequate number of operable voting machine[s] to handle the volume of the combined polling places.” Exh. 387, Decl. of Angel Poventud ¶ 4.

1096. The SOS again received complaints from voters about malfunctioning voting machines and supplies at polling places with long lines. Exh. 571, State-Defendants-00054499 (complaint that there was trouble with the Express Poll machines in Gwinnett County); Exh. 176, State-Defendants-00088523 (complaint that there were long lines as well as limited and broken voting machines at Pittman Park); Exh. 177, State-Defendants-00084901 (complaint that only one machine out of two worked at Chatham County polling location); Exh. 178, State-Defendants-00261210 (same); Exh. 622, State-Defendants-00088597 (complaint that machines did not work from 7 am – 10 am in Suwanee, Gwinnett County).

1097. Georgia's flawed registration data, inadequately trained poll workers, and polling place changes compounded the burden of waiting hours to vote for a number of voters. Exh. 363, Decl. of Dawn Marshall ¶ 4; Exh. 414, Decl. of Talisha Warren ¶ 3; Exh. 202, Decl. of Blake Gravely ¶ 3; Exh. 181, Decl. of Jessica Evering ¶ 4.

1098. Dawn Marshall, a resident of Fulton County for fourteen years, waited two hours to vote, before a poll worker scanned her identification and told her that she was registered to vote in Gwinnett County, and would have to vote there. Exh. 363, Decl. of Dawn Marshall ¶ 4. Marshall drove to Gwinnett County and waited another twenty minutes to vote in a county she had not lived in for years. *Id.*

1099. Talisha Warren and Blakke Gravely each had their polling places change without notice, and did not discover that they were at the wrong polling places until they had waited two hours to vote. Exh. 414, Decl. of Talisha Warren ¶ 3; Exh. 202, Decl. of Blakke Gravely ¶ 3.

1100. Because Warren and Graven each had child care responsibilities that prevented them from driving to their correct polling places, they each voted provisionally. Exh. 414, Decl. of Talisha Warren ¶ 3; Exh. 202, Decl. of Blakke Gravely ¶ 3.

1101. After Jessica Evering had waited to vote for one and a half hours, a poll worker incorrectly told her that she could not vote unless she first drove to another location to void an absentee ballot she had requested but not used; she, too, voted provisionally once she discovered the poll worker's mistake. Exh. 181, Decl. of Jessica Evering ¶ 4.

1102. Melanie Manning, a poll watcher at Igelsia Bautista Nueva Jerusalem in Gwinnett County, observed “numerous occasions where no voters were voting at all while the line was held up” with poll workers searching for voters in the Express Poll computers. Exh. 196, Decl. of Melanie Manning ¶ 3-13.

1103. Another poll watcher at New Life Presbyterian Church in Fulton County, Mollye Lockwood, reported that so many voters—who had waited for hours to vote—were told that they were at the wrong polling place that a bus was chartered to drive them to the correct location. Exh. 361, Decl. of Mollye Lockwood ¶ 3.

1104. The hours-long wait to vote drove many Georgians away from the polls without voting. Voters reported seeing dozens of people leave their polling places' long lines; others reported seeing people walk or drive up to the polling place, and then turn around after registering how long the lines were, and how long the wait to vote would be. Exh. 354, Decl. of Velma Lambert ¶ 3-5 (observed

“approximately 50 people leave without voting because the line was too long”); Exh. 358, Decl. of Karen Lewis ¶ 14-26 (observed “30-40 people leave”); Exh. 378, Decl. of Kevin O’Malley ¶ 3 (observed “an estimated 20 people” leave); Exh. 319, Decl. of April Greenberg ¶ 3 (observed “several voters leave due to the confusion and chaos”); Exh. 307, Decl. of Kristi Feenie ¶ 3 (observed while waiting in line between 1.5-2 hours “many people complaining to themselves and each other that they wouldn’t be able to vote because they needed to get back to work, or take their kids to daycare, or had other obligations”); Exh. 201, Decl. of Patricia Davis ¶ 3-4 (observed during the 3.5 hours it took to vote “my neighbor and others leave who didn’t want to wait in line”); Exh. 376, Decl. of Derrick Oatis ¶ 3-4.

1105. Forty-five minutes after the polls opened on Election Day, no one had voted at Gwinnet County resident Derrick Oatis’ polling place because “none of the [voting] machines were working” because the machines were not “reading the voter cards.” Exh. 376, Decl. of Derrick Oatis ¶ 4.

1106. A poll worker told voters lined up at the polling place that another poll worker had gone to get new cards, and that it would take around one and a half to two hours for the poll worker to return with the cards. Exh. 376, Decl. of

Derrick Oatis ¶ 4. “Within a matter of five minutes,” Oatis observed, “of the 70+ people who were in line, about 90% of the people just left.” *Id.*

1107. Poll watchers observed people, unable to wait any longer, leave the lines and others, unable to wait at all, walk away from the polling places once they saw the lines; they observed few of these people return. Exh. 192, Decl. of Shannon Gaggero ¶ 3-13 (observed “a number of voters who left” who “indicated that they would have difficulty returning”); Exh. 195, Decl. of Barbara Liscord ¶ 4-14 (observed that “[b]y about 4:00 p.m., the line was four hours long. I know many people didn’t vote because they couldn’t wait that long”); Exh. 196, Decl. of Melanie Manning ¶ 3-13 (noted “[i]n my opinion, the length of the line negatively affected the number of people voting”); Exh. 377, Decl. of Andrea Oki ¶ 5; Exh. 387, Decl. of Angel Poventud ¶ 3-4 (“observed dozens of people leave the line in frustration” due to wait times “from an average of 2-4 hours”); Exh. 193, Decl. of Sharman Southall ¶ 3-9 (“observed about 20-25 voters who abandon the line” and only recognized two people return to vote”); Exh. 361, Decl. of Mollye Lockwood ¶ 3 (observed “people getting out of line throughout the day because they could not wait any longer”).

1108. Barbara Liscord, a poll watcher at Pooler Church in Chatham County, spoke with a woman who, at 8 p.m., had been waiting for two hours, and had to

leave without voting because “she had to be at work at 4:00 a.m., and she had to get her kids to bed.” Exh. 195, Decl. of Barbara Liscord ¶ 10.

1109. Sharman Southall, a poll watcher at Argyle Elementary School in Cobb County, observed “about 20-25 voters” who, after waiting almost two hours, “got very close to the front of the line[,] but had to abandon the line to pick up their children from daycare or return to work.” Exh. 193, Decl. of Sharman Southall ¶ 7. These voters, she noted “had run out of time to wait any longer and left without voting”; and though most of these voters told her they would return later, she only saw two of these voters return. *Id.*

1110. The SOS received complaints from voters who could not vote because they could not wait in long lines at their polling places, and from voters who reported seeing other people leave their polling places’ long lines without voting. Exh. 831, State-Defendants-00332339 (reported that due to a long line outline voter “had to leave to go to work and could not vote”); Exh. 818, State-Defendants-00330810 (observed that long lines created due to shortages of voting stations caused people to start “giving up to get back to work”); Exh. 817, State-Defendants-00330728 (observed that people were “waiting in long lines. Some people left.”); Exh. 590, State-Defendants-00063978 (observed “people were leaving because of the inefficiencies” at the polling place); Exh. 601, State-

Defendants-00085321 (response to State-Defendants-00063978 noting the location is “packed”); Exh. 881, State-Defendants-00470888 (observed that inefficiencies with scanning IDs were “definitely discouraging voters. I have seen several people leave due to this delay.”); Exh. 622, State-Defendants-00088597 (observed that due to technical difficulties the line was very long and “people behind and in front of me left”).

1111. For some voters, the hours-long waits to vote prevented them from voting at all. Exh. 282, Decl. of Ann Brown ¶ 3-5 (due to waiting over an hour, as well as physical issues and the safety of the voting location “I had to leave”); Exh. 407, Decl. of Pamela Terekhova ¶ 4 (noted that “I went to the polls three times and stood in line twice, and was not able to vote”); Exh. 186, Decl. of Noell Barnidge ¶ 3-4, 9 (noted that due to long lines “I could not stay over three hours to vote with my daughter, so I had to leave. I was not able to vote.”); Exh. 183, Decl. of Arnaud Huguet ¶ 3-4 (reported that after trying to vote in the afternoon, but due to long lines, returned in the evening but was told it would be a “3-4 hour waiting period... I was not able to vote”).

1112. Ann Brown, a Fulton County resident, went to vote at Pitman Park Recreation Center on Election Day. Exh. 282, Decl. of Ann Brown ¶ 3-5. She waited to vote for an hour, but due to bone issues that made it difficult for her to

stand for long periods of time, and a pinched nerve that made it difficult for her to sit for long periods of time, she had to leave without voting. *Id.*

1113. Arnaud Huguet, another Fulton County resident, also went to vote at Pitman Park Recreation Center on Election Day. Exh. 183, Decl. of Arnaud Huguet ¶ 3-4. He first arrived at noon to vote, and waited thirty minutes. *Id.* After being told that he would have another hour to wait before could vote, he left to go back to his job. *Id.* He returned to the polling place after work, at 4 p.m., and waited another thirty minutes. *Id.* After being told that the wait would now be two to three hours, he left, and returned for the last time at 6:30 p.m. *Id.* By this point, he could not find a place to park, and was told that the wait would be three to four hours to vote. *Id.* Unable to find parking and unable to wait another four hours, he left without voting. *Id.*

1114. When Pamela Terekhova, a Chatham County resident, first arrived at Rockwell Methodist Church at 7 a.m., she found that the line to vote was already so long that “[m]ost of the parking lot” a nearby field, and the street “were being used for the line.” Exh. 407, Decl. of Pamela Terekhova ¶ 4. She stood in line, in the street, for thirty minutes, before leaving out of fear that a car would hit her. *Id.*

1115. Terekhova returned at 1:30 p.m.; by then, around two hundred people were lined up in the parking lot and the field. Exh. 407, Decl. of Pamela Terekhova

¶ 4. She waited for two hours, moving only “half the distance” in that time; after hearing a group of people who had just voted say that they had been at the polling place from 10:30 a.m. to 2:30 p.m., she “gave up hope.” *Id.*

1116. Terekhova left to pick up her son from school, and returned to the polling place at 6:30 p.m. Exh. 407, Decl. of Pamela Terekhova ¶ 4. She again saw people waiting in the parking lot and the street. *Id.* Unable to find a parking spot, and concerned about waiting in line in the street at night, she went home. *Id.*

1117. Noell Barnidge, another Chatham County resident, went with her six-year-old daughter to vote at 5 p.m. on Election Day. Exh. 186, Decl. of Noell Barnidge ¶ 3-4. She asked an officer present at the polling place how long the wait was, and the officer told her that if she was “about 20 yards ahead in line,” the wait would be three hours and fifteen minutes long. *Id.* Because Barnidge could not wait over three hours to vote with her young daughter, she could not vote. *Id.*

1118. These problems were compounded in some instances by Defendants’ failure to ensure that all polling places had an adequate number of emergency paper ballots for use in the event of voting machine malfunctions or excessively long lines, or that poll workers were trained on providing emergency paper ballots under these circumstances. Defendants have long been aware that shortages of paper ballots for use in emergency situations have impeded Georgia voters’ ability

to vote. *See* Exh. 535, State-Defendants-00038067 (2014 Whitfield County Investigation); Exh. 981, State-Defendants-00836938 (July 2018 Voter Complaint about Sumter County); Exh. 951, State-Defendants-00817233 at 2 (May 22, 2018 Voter Complaint about Chatham County).

1119. Defendants also have been aware more broadly about shortages of provisional ballots. *See supra* Section VIII.D.

1120. Defendants did nothing to ensure that polling places were given adequate supplies of emergency paper ballots. *See* Exh. 23, Aug. 16, 2019 C. Harvey 30(b)(6) Dep. 174:15-21 (discussing procedures generally for ensuring counties have adequate supplies); Exh. 53, Oct. 15, 2019 R. Sullivan Dep. 98:12–101:5 (same); Exh. 239, Oct. 16, 2019 B. Harp Dep. 41:6–11 (addressing shortages of provisional ballots).

1121. During the November and December 2018 elections, polling places faced shortages of paper ballots, causing delays or preventing voting entirely during periods of machine malfunction. *See* Exh. 581, State-Defendants-00055563 (discussing December 2018 issue in Fulton County); Exh. 582, State-Defendants-00055565 (same); Exh. 281, Jamal Brooks Decl. ¶ 3 (describing November 2018 issue in Gwinnett County).

1122. But Defendants did not instruct counties to use emergency ballots to address persistently long lines. Exh.21, Dec. 5, 2019 C. Harvey Dep. 135:15-25. The 2016 and 2018 Poll Worker Manuals both merely quote the state law requiring distribution of emergency ballots when machines malfunction, but do not otherwise explain how and when these ballots should be given out. Exh. 49 at STATE-DEFENDANTS-00095530; Exh. 34, State-Defendants-00146454.

1123. In many cases, voters waited in lines for hours without ever being offered emergency paper ballots. *See supra* ¶¶ 1097-1117.

1124. Even when one polling place began distributing paper ballots, it waited so long to do so that lines accumulated and voters had to wait hours to vote. *See* Exh. 426, J. Young Decl. ¶ 3, Pltfs00196.

1125. Further, even though state law requires that paper ballots used in emergency situations or in the case of voting machine malfunctions “shall not be considered provisional ballots and shall not require verification,” O.C.G.A. § 21-2-418, polling places that distributed emergency ballots failed to inform voters that such ballots would be automatically counted if the voter had been found on the voter list. *See* Exh. 996, State-Defendants-00967161 (court order discussing November 2018 Gwinnett County issue); Exh. 376, D. Oatis Decl. ¶ 4 (stating that

when machines were not working, a poll worker offered provisional ballots but told voters their ballots would not be counted until the following Tuesday).

1126. Despite these problems in 2018, the problems continued in the June 2020 primary election.

1127. In the June 2020 primary, voters waited as much as 7 hours to vote. Exh. 323, L. Harris Decl. ¶¶ 6 (7-hour wait); Exh. 328, J. Henderson Decl. ¶ 24 (7-hour wait); Exh. 386, K. Ponder Decl. ¶ 10 (6-hour wait); Exh. 388, D. Price Decl. ¶¶ 5, 12 (5-hour wait); Exh. 312, E. Frisch Decl. ¶¶ 5-7 (5-hour wait); Exh. 367, S. Milburn Decl. ¶ 5 (5-hour wait); Exh. 416, S. Webb-Pennywell Decl. ¶ 7, 12 (4-hour wait); Exh. 364, D. Marvin Decl. ¶ 3, 5 (4-hour wait); Exh. 339, C. Huff Decl. ¶¶ 13 (4-hour wait); Exh. 349, M. Jones Decl. ¶ 16 (4-hour wait); Exh. 394, J. Rosenfeld Decl. ¶ 14 (3.5-hour wait); Exh. 294, S. Clark Decl. ¶ 8 (3.5-hour wait); Exh. 424, S. Worthy Decl. ¶¶ 5-6 (3-hour wait); Exh. 308, B. Ferry Decl. ¶ 5 (3-hour wait); Exh. 397, C. Salazar Decl. ¶¶ 3-5 (2-hour wait); Exh. 266, B. Allward-Theimer Decl. ¶¶ 3-4, 10 (2-hour wait).

1128. Some voters were again unable to wait hours to vote, and thus did not vote. Exh. 413, G. Ward Decl. ¶¶ 7-11; Exh. 268, L. Anderson Decl. ¶¶ 6-10; Exh. 298, H. Curtis Decl. ¶¶ 3-6; Exh. 1,038, J. Japka Decl. ¶¶ 6-11.

1129. In the June 2020 primary, polling places experienced significant machine malfunctions, but voters were not offered the opportunity to vote by provisional or emergency ballot. *See* Exh. 1041, M. Eckstine Decl. ¶ 5; Exh. 355, A. Lampert Decl. ¶ 9.

1130. Other polling places offered provisional ballots but ran out of ballots or envelopes. *See supra* ¶ 956.

XI. GEORGIA HAS A LONG HISTORY OF DISENFRANCHISING RACIAL MINORITY—AND ESPECIALLY BLACK—VOTERS

1131. Georgia's first constitution, of 1777, as well as its 1789, 1861, and 1865 constitutions, denied Black Georgians the right to vote. Expert Report of A. Jones, ECF No. 92 at 2.

1132. Despite extending the franchise to Black voters in 1867, from the end of Reconstruction to the mid-20th century, Georgia denied and limited Black Georgians' right to vote through, *inter alia*, violence and threats of violence, literacy tests, poll taxes, residency requirements, registration restrictions, voter challenges and purges, and the creation of primary elections in which only white people were allowed to vote. Expert Report of A. Jones , ECF No. 92 at 2-4; Expert Report of P. McCrary, ECF No. 339 at 13-15.

1133. The VRA was passed in 1965 to abolish these kinds of state-erected barriers to Black voters' access to the franchise. Expert Report of A. Jones , ECF No. 92 at 6; Expert Report of P. McCrary, ECF No. 339 at 16-17.

1134. Georgia legislators opposed passage of the VRA and its preclearance provision, and argued against the VRA's reauthorization until *Shelby County* struck down preclearance in 2013. Expert Report of A. Jones, ECF No. 92 at 5, 6, 9-10.

1135. After the VRA's passage, Georgia supported and brought its own legal challenges to the law. Expert Report of A. Jones, ECF No. 92 at 5, 9, 27.

1136. When challenges to the VRA failed, Georgia repeatedly refused to comply with the preclearance process by submitting changes to state and local elections laws to the Department of Justice ("DOJ") for review, or with the law more generally. Expert Report of A. Jones, ECF No. 92 at 6, 8.

1137. When Georgia did submit laws for preclearance review, many were blocked—prior to *Shelby County*, DOJ blocked 177 changes to the State's election laws proposed by Georgia and its counties and municipalities, finding that each law had a retrogressive impact on voters of color in Georgia. Expert Report of P. McCrary, ECF No. 339 at 21.

1138. In Georgia, voting patterns are racially polarized. Expert Report of P. McCrary, ECF No. 339 at 30-36.

1139. Around 25% of white voters in Georgia voted Democratic beginning in 2002 (down from 30% to 45% in the 1990s), and 85% to 92% of Black voters favoring Democratic candidates. Expert Report of P. McCrary, ECF No. 339 at 31, 32. Since 1992, between 81% and 92% of Black voters have supported Democratic candidates. *Id.* at 32.

1140. During the 2014 Gubernatorial Election in Georgia, only 25% of white voters voted for the Democratic gubernatorial candidate, compared to 89% of Black voters; 73% of white voters, and just 10% of Black voters, voted for the Republican candidate. Expert Report of P. McCrary, ECF No. 339 at 35.

1141. Black Georgians have worse health outcomes than white Georgians. Black Georgians die of cancer, heart disease, and diabetes at higher rates than white Georgians; almost twice as many Black Georgians die from diabetes as white Georgians. *See* Exh. 1,017, *Diabetes*, GA. DEP'T OF CMTY. HEALTH, <https://dch.georgia.gov/diabetes> (last visited July 1, 2020); Exh. 1,018, Kaiser Family Foundation, Number of Diabetes Deaths per 100,000 Population by Race/Ethnicity (2018), <https://www.kff.org/other/state-indicator/diabetes-death-rate-by-raceethnicity/?currentTimeframe=0&selectedRows=%7B%22states%22>:

<https://www.kff.org/other/state-indicator/number-of-heart-disease-deaths-per-100000-population-by-raceethnicity-2/?currentTimeframe=0&selectedRows=%7B%22states%22:%7B%22georgia%22:%7B%7D%7D%7D&sortModel=%7B%22colId%22:%22Location%22,%22sort%22:%22asc%22%7D>; Exh. 1,019, Kaiser Family Foundation, Number of Heart Disease Deaths per 100,000 Population by Race/Ethnicity (2018), <https://www.kff.org/other/state-indicator/number-of-heart-disease-deaths-per-100000-population-by-raceethnicity-2/?currentTimeframe=0&selectedRows=%7B%22states%22:%7B%22georgia%22:%7B%7D%7D%7D&sortModel=%7B%22colId%22:%22Location%22,%22sort%22:%22asc%22%7D>; Exh. 1,020, Kaiser Family Foundation, Number of Cancer Deaths per 100,000 Population by Race/Ethnicity (2018), <https://www.kff.org/other/state-indicator/cancer-death-rate-by-raceethnicity/?currentTimeframe=0&selectedRows=%7B%22states%22:%7B%22georgia%22:%7B%7D%7D%7D&sortModel=%7B%22colId%22:%22Location%22,%22sort%22:%22asc%22%7D>.

1142. The infant mortality rate in Georgia is over twice as high for Black infants as the rate for white infants. *See* Exh. 1,021, Kaiser Family Foundation, Infant Mortality Rate by Race/Ethnicity (2018), <https://www.kff.org/other/state-indicator/infant-mortality-rate-by-race-ethnicity/?currentTimeframe=0&selectedRows=>

[%7B%22states%22:%7B%22georgia%22:%7B%7D%7D%7D&sortModel=%7B%22colId%22:%22Location%22,%22sort%22:%22asc%22%7D.](#)

1143. More recently, Black Georgians have been disproportionately impacted by COVID-19: A survey of eight hospitals conducted in April by the Centers for Disease Control and Prevention found that out of 305 individuals hospitalized for COVID-19, 83 percent were Black. *See* Exh. 1,022, Centers for Diseases Control and Prevention, *Characteristics and Clinical Outcomes of Adult Patients Hospitalized with COVID-19 — Georgia, March 2020*, 69 MORBIDITY & MORTALITY WEEKLY REP. 545, 545 (May 8, 2020), https://www.cdc.gov/mmwr/volumes/69/wr/pdfs/mm6918e1-H.pdf?deliveryName=USCDC_921-DM26922. Another study reports that Black Georgians account for nearly half of Georgia’s deaths from COVID-19, despite only making up 31 percent of the state’s population. Exh. 1,023, *The Color of Coronavirus: COVID-19 Deaths by Race and Ethnicity in the U.S.*, APM RESEARCH LABS, <https://www.apmresearchlab.org/covid/deaths-by-race> (last updated June 24, 2020).

1144. Black Georgians have worse employment outcomes than white Georgians. The unemployment rate among Black Georgians is over twice as high as the rate for white Georgians. Expert Report of P. McCrary, ECF No. 339 at 76-

77; see also Exh. 1,024, Economic Policy Institute, *Report: Black unemployment is at least twice as high as white unemployment at the national level and in 14 states and the District of Columbia* (Apr. 4, 2019),

<https://www.epi.org/publication/valerie-figures-state-unemployment-by-race/>.

1145. Over twice as many Black Georgians as white Georgians live below the poverty line. Expert Report of P. McCrary, ECF No. 339 at 76; see also Exh. 1,025, *American Community Survey 2018: Poverty Status in the Past 12 Months*, U.S. CENSUS BUREAU, <https://data.census.gov/cedsci/table?q=S1701&g=0400000US13&tid=ACSST1Y2018.S1701> (accessed June 30, 2020).

1146. Black Georgians have worse education outcomes than white Georgians. Black Georgians are less likely than white Georgians to attain a high school or college degree. Expert Report of P. McCrary, ECF No. 339 at 76; Exh. 1,026, Jennifer Lee, *2019 Georgia Higher Education Data Book 6*, Ga. Budget & Policy Institute (Sept. 2019), <http://gbpi.org/georgia-higher-education-data-book-2019/>. Black Georgians who do attain a bachelor's degree nonetheless earn, on average, less than white Georgians with the same degree. *Id.* at 9.

1147. Politicians in Georgia have long run racist campaigns in the State. In the early twentieth century, “Hoke Smith of Georgia made black disenfranchisement a focus of his successful campaign for governor and connected

disenfranchisement to protection against race mingling.” A. Jones Report, ECF No. 92 at 20. Other gubernatorial candidates in the years afterwards ran similarly racist campaigns. *Id.* at 4.

1148. Racist political appeals in Georgia have continued into the modern era. During the 2018 Gubernatorial Election, a robo-call producer who pretended to be Oprah Winfrey called Georgian voters and made racist comments about Stacey Abrams. Exh. 1,027, Cleve R. Wootson Jr., *Racist ‘magical Negro’ robo-call from ‘Oprah’ targets Stacey Abrams in Georgia governor’s race*, Wash. Post (Nov. 5, 2018), <https://www.washingtonpost.com/politics/2018/11/04/racist-magical-negro-robo-call-oprah-targets-stacey-abrams-georgia-governors-race/>.

1149. In 2006, Georgia legislators adopted SB 529, the “Security and Immigration Compliance Act,” which required verification of citizenship for employment and public benefits applications. Expert Report of P. McCrary, ECF No. 339 at 41. As then-Governor Sonny Perdue signed the bill, he commented: “It is simply unacceptable for people to sneak into this country illegally on Thursday, obtain a government-issued ID on Friday, head for the welfare office on Monday, and go to vote on Tuesday.” *Id.* at 43.

1150. In September 2016, a Douglas County commissioner was recorded making disparaging statements to voters about Black candidates in local races,

stating that a government run by African American leadership would “bankrupt you.” Exh. 1,028, Ernie Suggs, *Douglas Leader’s Racial Comments Spark Calls that He Resign*, Atlanta J. Const. (Sept. 30, 2016), <https://www.ajc.com/news/local/douglas-leader-racial-comments-spark-calls-that-resign/AVjoe8BDCXLsut6OBpjIHI/>. He also warned voters that a Black sheriff candidate would put unqualified African Americans in high-ranking positions if elected. *Id.*

1151. In May 2017, the husband of Republican congressional candidate Karen Handel shared a meme on Twitter stating that votes for his wife would help “free the black slaves from the Democratic plantation.” Exh. 1,029, Sophia Tesfaye, *Karen Handel's Husband Shares Meme Urging Voters to “Free the Black Slaves from the Democratic Plantation,”* Salon (May 3, 2017), <https://www.salon.com/2017/05/03/karen-handels-husband-shares-meme-urging-voters-to-free-the-black-slaves-from-the-democratic-plantation/>.

1152. During the 2018 Republican gubernatorial primary, then-candidate state Sen. Michael Williams conducted a “deportation bus” tour with a school bus emblazoned with the words “Fill this bus with illegals.” Exh. 1,030, Johnny Kauffman, *Georgia Candidate For Governor Doesn't Plan to Use 'Deportation Bus' to Deport Anyone*, NPR (May 16, 2018), <https://www.npr.org/2018/05/16/611680288/georgia-candidate-for-governor-doesnt-plan-to-use-deportation-bus-to->

[deport-anyo](#). The back of the bus read: “Danger! Murderers, rapists, kidnappers, child molesters, and others on board.” *Id.* Williams’ bus tour followed a similarly-themed television ad from then-SOS Kemp, a gubernatorial candidate (and future governor), who stated that he had “a big truck ... Just in case I need to round up criminal illegals and take them home myself.” *Id.*

1153. In April 2020, former U.S. congressman Paul Broun, Jr., running to reclaim his former seat, posted a campaign ad in which he offered to give away an assault rifle, stating that such guns were needed to protect against the “looting hordes from Atlanta.” *See* Exh. 1,031, Ed Kilgore, *Georgia Republican Raffles Assault Rifle to Defend Against ‘Looting Hordes From Atlanta,’* N.Y. Mag.: Intelligencer (Apr. 7, 2020), <https://nymag.com/intelligencer/2020/04/ga-candidate-raffles-ar-15-for-looting-hordes-from-atlanta.html>.

1154. In May 2020, state Rep. Matt Gurtler, a Republican U.S. Congressional candidate, posed for a photo with a Georgia man with longstanding ties to numerous white supremacist groups. Exh. 1,032, Chris Joyner and Tia Mitchell, *Georgia Candidates Embrace Group with Extremist Ties*, Atlanta J. Const. (May 16, 2020), <https://www.ajc.com/news/state--regional-govt--politics/georgia-candidates-embrace-group-with-extremist-ties/LtUVaLX44kEFMvK7ECIOdP/>.

1155. A Republican candidate in another Congressional district, Marjorie Taylor Greene, was also criticized for posing for a photo with the same man.

1156. In June 2020, Greene received national criticism for racist, Islamophobic, and anti-Semitic views expressed in a series of Facebook videos. Exh. 1,033, Ally Mutnick & Melanie Zanona, *House Republican Leaders Condemn GOP Candidate Who Made Racist Videos*, Politico (June 17, 2020), <https://www.politico.com/news/2020/06/17/house-republicans-condemn-gop-candidate-racist-videos-325579>. Specifically, Greene suggested that Muslims do not belong in government; that Black people “are held slaves to the Democratic Party”; that George Soros is a Nazi; and that African Americans should feel “proud” to see a Confederate monument because it symbolizes progress made since the Civil War. *Id.*

1157. After *Shelby County*, the SOS provided a manual to counties, with guidance on how to close and relocate counties—and how to decide when and which polling places to close. Exh. 41, SOS Training Document, GA00785368.

1158. The manual emphasized that preclearance was no longer required before counties closed or relocated polling places, noting that “[a]s a result of the *Shelby vs. Holder* Supreme Court decision, [counties] are no longer required to submit polling place changes to the Department of Justice for preclearance.” Exh.

41, SOS Training Document, GA00785368, at 5. The memo was silent as to counties' obligation to enforce section 2 of the VRA.

1159. Before *Shelby County*, preclearance had been required for polling place changes because officials had deliberately located and closed polling places to deny Black people the franchise. A. Jones Report, ECF No. 92 at 15.

1160. In Georgia and other Deep South states during and after Reconstruction, “[p]olling places were established at significant distances from black communities . . . common modes of transportation to access polling places were destabilized at election time. . . [and] [p]olling places were moved without notice.” A. Jones Report, ECF No. 92 at 15.

1161. During and after Reconstruction, Georgia further disenfranchised Black voters by letting ballots go “unrecognized,” stuffing ballot boxes with fraudulent ballots, and manipulating vote counts. A. Jones Report, ECF No. 92 at 15.

1162. Georgia also placed barriers to registration by imposing stringent qualification criteria or citizenship-based obstacles on prospective voters. Expert Report of P. McCrary, ECF No. 339 at 13-14; A. Jones Report, ECF No. 92 at 5-6, 20, 25.

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 5th day of August, 2020.

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CERTIFICATE OF SERVICE

I hereby certify that, on August 5, 2020, I filed the within and foregoing **PLAINTIFFS' CORRECTED STATEMENT OF ADDITIONAL MATERIAL FACTS** 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 5th day of August, 2020.

/s/ Allegra J. Lawrence

Allegra J. Lawrence