

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

FAIR FIGHT ACTION, *et al.*,

Plaintiffs,

vs.

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

Defendants.

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

**DEFENDANTS’ CONSOLIDATED MOTION FOR ORAL ARGUMENT  
WITH BRIEF IN SUPPORT**

Defendants Secretary Brad Raffensperger, the State Election Board, and State Election Board Members Rebecca Sullivan, David Worley, and Anh Le (collectively “Defendants”), submit this Motion for Oral Argument on Defendants’ Motions for Summary Judgment, Doc. Nos. [441] and [450], and Defendants’ motions to exclude the expert testimony of Plaintiffs’ experts<sup>1</sup> (“Defendants’ Daubert Motions”).

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<sup>1</sup> Defendants have filed motions to exclude Plaintiffs’ eleven (11) experts who have submitted reports in this case: Khalihah Brown-Dean, Doc. No. [387]; Stephen Graves, Doc. No. [400]; Alex Halderman, Doc. No. [401]; Michael Herron, Doc. No. [406]; Adrienne Jones, Doc. No. [386]; Kevin Kennedy, Doc. No. [403]; Kenneth Mayer, Doc. No. [394]; Michael McDonald, Doc. No. [402];

## INTRODUCTION

The claims in this case relate directly to the conduct of elections in Georgia and present a number of issues of first impression in the Eleventh Circuit. In addition, the factual record in this case is extensive, to say the least. Defendants request oral hearings on both of their motions for summary judgment as well as on Defendants' Daubert Motions. Defendants believe such a hearing or hearings on their motions would be of assistance to the Court in navigating this important and complex case.

## ARGUMENT AND CITATION OF AUTHORITY

Under Local Rule 7.1(E), courts will typically decide motions on the written filings of the parties "unless a hearing is ordered by the Court." Setting an oral hearing is within the discretion of the Court and may be granted upon motion or request for hearing explaining "why oral argument would be helpful or necessary." White v. Sears, Roebuck & Co., No. CIV.A.103CV00002GET, 2006 WL 2617136, at \*1 (N.D. Ga. Sept. 12, 2006). See also, Cuyler v. Kroger Co., No. 1:14-CV-1287-RWS-AJB, 2015 WL 12618775, at \*2 (N.D. Ga. Apr. 22, 2015); and Frame v. Frankenmuth Mut.

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Lorraine C. Minnite, Doc. No. [392]; Peyton McCrary, Doc. No. [404]; and Daniel Smith, Doc. No. [405].

Ins. Co., No. 1:17-CV-02288-LMM, 2017 U.S. Dist. LEXIS 224981, at \*28 (N.D. Ga. June 20, 2017) (district court's standing order stating that requests for oral hearing will be considered when the requesting party specifies why the hearing will be helpful to the court and what issues are to be focused on at the hearing).

**I. The importance of the issues presented in this case warrant a hearing on Defendants' motions.**

The parties agree that the right to vote is one of the most important rights we share as citizens. Equally important is the protection of the integrity of the administration of elections in Georgia by elections officials. Plaintiffs challenge a multitude of election issues ranging from the Secretary of State's training efforts and programs to the length of lines at polling places and changes in polling place locations to list-maintenance efforts to Georgia's HAVA-match program.

The evidence related to these claims is significant. The various statements of material facts with responses total nearly 1,500 individual paragraphs. In order to assist the Court in navigating what is material, what is admissible, what is disputed or disputable, and whether the facts raise any genuine issue to be tried under Fed. R. Civ. P. 56.1, oral argument will

greatly assist the Court in navigating the core issues of materiality in this case.

It is no secret that this case has played out in the court of public opinion which, unlike courts of law, is unconstrained by legal standards and evidentiary requirements. Having a hearing focused on the evidentiary burdens of the relief sought will further ensure that the public has access to the legal issues in this case, not just the press releases.

**II. This case presents issues of first impression in the Eleventh Circuit.**

It is not only the facts that are significant—the legal issues are unique as well.

**First**, Plaintiffs' failure-to-train-claim, for example, presents an issue of first impression in the courts of the Eleventh Circuit (and the State of Georgia) in the context of elections and the Secretary's authority.

**Second**, this case is also one of the first vote-denial cases under Section 2 of the Voting Rights Act to be decided under the standards set forth in the Eleventh Circuit's recent decision in Greater Birmingham Ministries v. Sec'y of State of Alabama, No. 18-10151, 2020 U.S. App. LEXIS 22672 (11th Cir. July 21, 2020).

**Third**, Plaintiffs’ argument that a showing of disparate impact alone is sufficient to state a claim for discrimination in the voting context is also a novel approach to these types of claims in this Circuit.

**Finally**, Plaintiffs seek an extraordinary level of court intervention in the conduct of nearly every aspect of Georgia elections—yet no Court has imposed the expansive duties on the Secretary that Plaintiffs seek to impose in this case. Even if this Court were to rule that Plaintiffs cannot overcome summary judgment on only some of the challenged practices (e.g., training, list maintenance) or claims (e.g., Fifteenth Amendment), the facts, witnesses, and time to try the case would be greatly reduced.

**III. Requests for hearings in cases involving multiple experts are often helpful.**

While hearings on Daubert motions are not required by law or the Federal Rules, “they are almost always fruitful uses of the court’s time and resources in complicated cases involving multiple expert witnesses” such as in this case. City of Tuscaloosa v. Hacros Chems., Inc., 158 F.3d 548, 564 n.21 (11th Cir. 1998); see also U.S. v. Hansen, 262 F.3d 1217, 1234 (11th Cir. 2001). Plaintiffs have submitted reports from no fewer than eleven experts on various election-related issues and procedures and Defendants have asserted grounds to exclude each of those witnesses. Making a hearing even more

necessary is that Plaintiffs rely on virtually all of their experts' testimony to overcome summary judgment, and it will be difficult to argue one without the other. Given the complexity of the issues in this case, a hearing covering Defendants' Daubert Motions would also assist the Court in its consideration of those motions. In the alternative, this Court could limit the number of Daubert motions on which it will hear oral argument, and the parties (or Defendants) can inform the Court of which proffered experts would be subject to oral argument.

### **CONCLUSION**

For these reasons, Defendants' request for oral argument on their summary judgment motions and Daubert motions should be granted. A proposed order is attached to this brief.

Respectfully submitted, this 17th day of August, 2020.

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**CERTIFICATE OF COMPLIANCE**

I hereby certify that the foregoing **DEFENDANTS' CONSOLIDATED MOTION FOR ORAL ARGUMENT WITH BRIEF IN SUPPORT** was prepared double-spaced in 13-point Century Schoolbook pursuant to Local Rule 5.1(C).

/s/ Bryan P. Tyson

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