

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

**GEORGIA COALITION FOR THE
PEOPLES’ AGENDA, INC., et al.,**

Plaintiffs,

vs.

**BRAD RAFFENSPERGER, in his
official capacity as Secretary of State
for the State of Georgia,**

Defendant.

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* **Civil Action No.:**
* **1:18-cv-04727-ER**
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DEFENDANT’S INITIAL DISCLOSURES

Comes now Defendant, Brad Raffensperger, sued in his official capacity only, by and through counsel, the Attorney General for the State of Georgia, and makes the following Initial Disclosures pursuant to Rule 26 of the Federal Rules of Civil Procedure and the Northern District Local Rules:

(1) If the defendant is improperly identified, state defendant’s correct identification and state whether defendant will accept service of an amended summons and complaint reflecting the information furnished in this disclosure response.

Brad Raffensperger is automatically substituted as Defendant in this action per operation of Rule 25(d), Fed. R. Civ. Procedure.

(2) Provide the names of any parties whom defendant contends are necessary parties to this action, but who have not been named by

Plaintiff. If defendant contends that there is a question of misjoinder of parties, provide the reasons for defendant's contention.

Defendant does not contend that there are necessary parties to this action that have not been named. However, to the extent that Plaintiffs' claims challenge the specific actions of any individual county supervisor of elections, then that county election official will become a necessary party.

(3) Provide a detailed factual basis for the defense or defenses and any counterclaims or crossclaims asserted by defendant in the responsive pleading.

Defendant is not asserting any counterclaims.

Defendant's res judicata and/or collateral estoppel defense is premised on the parties' settlement in *NAACP v. Kemp*, CA No. 2:16cv219-WCO (N.D. Ga. 2017) and asserted to the extent that the same Plaintiffs are challenging aspects of HB 268 (O.C.G.A. § 21-2-220.1) which are consistent with the parties' settlement. Defendant does not assert that Plaintiffs are barred from challenging the twenty-six (26) month provision in the statute which was not part of the prior challenged policy or settlement.

O.C.G.A. § 21-2-220.1 codifies Georgia's obligations under the Help America Vote Act (HAVA), 52 U.S.C. § 21083(a)(5). HAVA requires applicants for voter registration to provide their state driver's license or state identification number, or the last four digits of a social security number, if available, as part of the registration process. 52 U.S.C. § 21083(a)(5)(A). It puts the burden on states to "determine whether the information provided by an individual is sufficient" to determine the validity of the numbers provided. 52 U.S.C. § 21083(a)(5)(A)(iii). Additionally, HAVA requires that state officials "match" the information provided by applicants with information in state databases "to the extent required to enable each such official to verify the accuracy of the information provided on applications for voter registration." 52 U.S.C. § 21083(a)(5)(B)(i). Accordingly, information from voter registration applications is verified against the DDS database if a Georgia driver's license or Georgia identification number are used for registration. If an applicant uses the last four digits of their social

security number, instead of Georgia identification number, then the information is compared to the SSA database.

O.C.G.A. § 21-2-220.1 provides that if a registrar is unable to verify an applicant's identification number by matching an applicant's information with the information contained in the DDS or SSA databases, then the applicant's identity may be verified by "the applicant providing sufficient evidence to the board of registrars to verify the applicant's identity, which sufficient evidence includes, *but is not limited to*, providing one of the forms of identification listed in subsection (a) of Code Section 21-2-417."

O.C.G.A. § 21-2-220.1(c)(2) (emphasis added). An application is only rejected if it is not verified *and* "the applicant fails to present sufficient evidence to the board of registrars to verify the applicant's identity within 26 months following the date of the application." O.C.G.A. § 21-2-220.1(d)(4). By allowing a full 26 months before an application may be rejected, every applicant will have at least one federal election cycle wherein they may verify their identity at the polls.

Additionally, in late 2016, the process for voter registration in conjunction with an application for a Georgia driver's license or renewal was changed. Rather than inquire whether the DDS applicant wanted to register to vote, and requiring an affirmative response in addition to the signature on registrant's oath, the DDS application is now treated as an application for voter registration *unless* the applicant chooses not to register to vote. This change in process has resulted in a surge of voter registration applications processed directly through DDS, and these applications are not subject to the HAVA match. Therefore, registration applicants whose paper registration applications have not been verified, may become verified if they have any contact with DDS during the 26 month period when their application is pending.

Since no voter registration application can be rejected due to the HAVA match process prior to April 21, 2020, 26 months after the changes in code to the statewide system were pushed to production, the effect of O.C.G.A. § 21-2-220.1 are not yet known.

(4) Describe in detail all statutes, codes, regulations, legal principles, standards and customs or usages, and illustrative case law which defendant contends are applicable to this action.

Help America Vote Act, (HAVA), 52 U.S.C. § 21083(a)(5);

National Voter Registration Act, (NVRA), 52 U.S.C. § 20507;

Sec. 2 of the Voting Rights Act, (VRA), 52 U.S.C. §10301;

First Amendment;

Fourteenth Amendment;

O.C.G.A. § 21-2-220.1;

Anderson v. Celebrezze, 460 U.S. 780 (1983);

Burdick v. Takushi, 504 U.S. 428 (1992);

Common Cause/Georgia v. Billups, 554 F.3d 1340 (11th Cir. 2009);

Crawford v. Marion County Election Bd., 553 U.S. 181 (2008);

Fla. State Conf. of the NAACP v. Browning, 522 F.3d 1153 (11th Cir. 2008);

Fla. State Conference of the NAACP v. Browning, 569 F. Supp. 2d 1237

(N.D. Fla. 2008);

Storer v. Brown, 415 U.S. 724 (1974);

Thornburg v. Gingles, 478 U.S. 30 (1986);

Timmons v. Twin Cities Area New Party, 520 U.S. 351 (1997);

This list is not exhaustive and Defendant reserves the right to supplement.

(5) Provide the name and, if known, the address and telephone number of each individual likely to have discoverable information that you may use to support your claims or defenses, unless solely for impeachment, identifying the subjects of the information. (Attach witness list to Initial Disclosures as Attachment A.)

See Attachment A.

- (6) Provide the name of any person who may be used at trial to present evidence under Rules 702, 703, or 705 of the Federal Rules of Evidence. For all experts described in Fed. R. Civ. P. 26(a)(2)(B), provide a separate written report satisfying the provisions of that rule. (Attach expert witness list and written reports to Initial Disclosures as Attachment B.)**

Any expert witness disclosure will be made in accordance with the Federal Rules of Civil Procedure and the Local Rules of this Court and the Discovery Order entered by the Court.

- (7) Provide a copy of, or description by category and location of, all documents, data compilations or other electronically stored information, and tangible things in your possession, custody, or control that you may use to support your claims or defenses unless solely for impeachment, identifying the subjects of the information. (Attach document list and descriptions to Initial Disclosures as Attachment C.)**

See Attachment C.

- (8) In the space provided below, provide a computation of any category of damages claimed by you. In addition, include a copy of, or describe by category and location of, the documents or other evidentiary material, not privileged or protected from disclosure on which such computation is based, including materials bearing on the nature and extent of injuries suffered, making such documents or evidentiary material available for inspection and copying under Fed. R. Civ. P. 34. (Attach any copies and descriptions to Initial Disclosures as Attachment D.)**

N/A

- (9) If Defendant contends that some other person or legal entity is, in whole or in part, liable to the plaintiff or defendant in this matter, state the full name, address, and telephone number of such person or entity and describe in detail the basis of such liability.**

N/A

(10) Attach for inspection and copying as under Fed. R. Civ. P. 34 any insurance agreement under which any person carrying on an insurance business may be liable to satisfy part or all of a judgment which may be entered in this action or to indemnify or reimburse for payments to satisfy the judgment. (Attach copy of insurance agreement to Initial Disclosures as Attachment E.)

N/A

Respectfully submitted,

CHRISTOPHER M. CARR 112505
Attorney General

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Deputy Attorney General

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Certificate of Service

This 25th day of January, 2019.

/s/Cristina M. Correia
Cristina M. Correia 188620
Senior Assistant Attorney General

ATTACHMENT A

1. John Hallman, Election Systems Manager, Office of the Secretary of State. This witness is expected to have knowledge of the Enet system and how the 26 month verification period was implemented. He is also likely to have information regarding the reports available to track voter applicants in pending status. The witness may be contacted through Defendant's counsel.
2. Rick Singletary, Information Technology Manger, DDS. This witness is expected to have information regarding the HAVA match algorithm. The witness may be contacted through Defendant's counsel.
3. Representative Barry Fleming is likely to have information regarding the legislative history of HB 268. He may be reached through the Office of Legislative Counsel.
4. Chris Harvey, Elections Director, Office of the Secretary of State. He is likely to have information regarding the implementation of O.C.G.A. § 21-2-220.1.
5. Plaintiffs.
6. Any person identified by Plaintiffs.

In the event that additional witnesses become known to Defendants, this response will be supplemented in accordance with the Federal Rules of Civil Procedure and the Local Rules of this Court.

ATTACHMENT C

1. Settlement Agreement in *NAACP v. Kemp*, CA No. 2:16cv00219-WCO (N.D. Ga. 2017);
2. Enet contains information on all voter applicants in pending status;
3. Enet contains information on all voter applicants that were moved from cancelled status to pending status as a result of the settlement in *NAACP v. Kemp*;
4. Enet contains information on all voter applicants that moved from pending status to active during the 2018 general election;
5. Enet contains information on all active and inactive voters;
6. DDS maintains a database of all driver license applicants.

This response will be supplemented in accordance with the Federal Rules of Civil Procedure and the Local Rules of this Court.