



FAIR FIGHT

v.

TRUE THE VOTE

TO: Interested Parties
FROM: Fair Fight
RE: Five Key Takeaways from Court's Ruling in *Fair Fight v. True the Vote*

Background: *On January 2, 2024, Judge Steve C. Jones of the United States District Court for the Northern District of Georgia issued a 145-page Opinion in the Fair Fight v. True The Vote litigation. Despite expressing concern over the mass challenges orchestrated by True the Vote in the 2021 runoff election cycle, the Court did not find unlawful voter intimidation or order relief against True the Vote and its co-defendants.*

Five Key Takeaways from the Court's Opinion in *Fair Fight v. True the Vote*

- 1. After considering the evidence amassed over three years of litigation and presented during the three-week trial, the Court began the final order by expressing concern about TTV's mass challenge tactics.**

From the opening paragraph of the opinion, the Court reiterates the concern first expressed at the outset of the case about True the Vote's (TTV) use of Georgia's challenge law to orchestrate a mass challenge to hundreds of thousands of Georgia registrants before the 2021 U.S. Senate runoff elections. (Order at 1.) And the **Court ultimately concludes TTV's challenges "utterly lacked reliability" and "verge[d] on recklessness."** (Order at 90.) Although the Court's order does not forbid TTV from engaging in additional challenge activity in Georgia during the 2024 election cycle and beyond, the final opinion does **state in no uncertain terms that the Court does not condone TTV's tactics.** (Order at 123.)

The Court's concern over mass challenges is well-founded, as **over 100,000 Georgia voters have been challenged since October 2021**, adding to the 364,000 voters targeted by TTV's challenges in December 2020. This ruling sounds the alarm about the use of mass challenges in our state.

Implications: Fair Fight agrees with the Court—mass challenges are a cause for concern. And Fair Fight expects TTV, unrestrained by a court order, will pursue additional mass challenges in Georgia this year, adding to the cause for concern. During a webcast hosted while trial was ongoing, TTV Founder Catherine Engelbrecht stated:

"2024 is going to be one for the ages, and this is just a warm up act."

(Onward Social Webcast, Oct. 29, 2023.)


FAIR FIGHT
v.
TRUE THE VOTE

And just last month, one of TTV’s collaborators, Gregg Phillips, [claimed](#) there are “443,000...people that are on the voter rolls in Georgia that are ineligible to vote in their county based on the fact that they’ve moved.”

These claims harken to the rhetoric used ahead of TTV’s mass challenge effort in 2020. But we also know there are new tools and tactics in play that could expand and exacerbate the threat in the next election cycle. As the Court’s Opinion recognizes:

“TTV has created a platform called ‘IV3’...to facilitate voter eligibility challenges in the states that allow such challenges.” (Order at 32.)

And in a recently-deleted post on Truth Social, Phillips refers to the imminent re-release of that platform:



(source: <https://prnt.sc/gKSK3alnSCjb>)

2. The Court’s opinion is rife with criticism for True the Vote’s methods, and it should discourage those who might copy the Defendants’ tactics in future election cycles.

After citing the opinions of Plaintiffs’ expert criticizing the methodology used by TTV to create its challenge list, the Court concludes:

“It is clear that TTV did not engage in a quality control process to create the [challenge] list, nor did they have proper review or controls in place. Even the sheer size of the list spurred concerns by TTV’s co-Defendants, who thought the mass list verged on being a systemic challenge.” (Order at 91.)

TTV’s approach to mass challenges — an approach that relied on National Change of Address data criticized for its “high risk of false positives” that **“are more likely to [affect] minority voters than white voters,”** (Order at 78) — “carried the enormous possibility of challenging voters’ eligibility who were in fact eligible Georgia voters...” (Order at 94.)



FAIR FIGHT
v.
TRUE THE VOTE

But the Court’s findings were not limited to TTV’s tactics. The Court concluded that TTV collaborator Phillips was “**an unreliable witness lacking credibility.**” (Order at 26; see also Order at 109.) The Court also found that TTV’s founder Catherine Engelbrecht was impeached—or discredited—“a number of times at trial” and added:

“[T]he Court cannot ignore that many of Engelbrecht’s skillful answers were obviously self-serving—and to the detriment of her overall candor.” (Order at 34.)

3. Omnibus anti-voter law SB 202—which expanded Georgia’s challenge law to allow unlimited challenges—stood in the way of relief for voters.

The Court identifies Georgia’s challenge law — amended by SB 202 to make mass challenges even easier — as the “**most evident problem**” standing in the way of relief under **Section 11(b) of the Voting Rights Act.** (Order at 122.) In reaching this conclusion, the Court focuses on three features of Georgia’s challenge law:

1. It allows unlimited challenges;
2. It allows challenges right up until election day; and
3. It contains no quality control requirement for challengers to meet.

(Order at 123.)

After finding these features of the Georgia law “in tension” with federal law (Order at 124), the Court ultimately declined to find a violation of the Voting Rights Act. Importantly, however, the opinion states:

“... [T]he Court does not mean to suggest that Section 230 challenges can never be a violation of Section 11(b).” (Order at 137.)

Implications: The decision does not foreclose liability for Section 230 challenges in the future. The Court explicitly states its opinion does not “imply that the manner in which Defendants made these challenges **should be permissible** under Georgia law,” stating it is for the General Assembly to decide what our state law should tolerate. (Order at 138.)

4. The Court’s opinion highlights the significant burdens placed on county boards of elections fielding mass voter challenges.

The Court’s opinion contemplates the role of county officials when processing mass voter challenges, describing county boards of elections as an “intermediary” between mass challenges and the voters targeted by such challenges. (Order at 122, 129.)



FAIR FIGHT
v.
TRUE THE VOTE

And yet, the Court also recognizes that Georgia law does not “require any particular quality control over the challenges made” to county boards. (Order at 123.) Thus, **the burden on county officials grappling with frivolous mass challenges filed by the thousands can be extreme.** The Court even quotes Defendant Derek Somerville, who expressed concern that Boards of Elections would be “overwhelmed by the number of challenges TTV intended.” (Order at 103.)

Implications: The opinion reveals how mass challenges, particularly “seemingly frivolous challenges,” as the Court describes TTV’s efforts (Order at 123 n. 60), can bog down county officials and distract from their important work of facilitating elections.

5. The Court’s opinion exposes the continued importance of amplifying voter stories to establish what voter intimidation looks like in today’s climate.

Thanks to the brave voters who participated in this case, **the Court’s opinion reflects that mass challenges made voters feel “overwhelmed” and “discouraged”** (Order at 11), “othered,” “isolate[d],” and “confused” (Order at 12, 17), and that one voter experienced “[p]ossible PTSD [Post Traumatic Stress Disorder].” (Order at 60.)

The Court additionally recognized voter testimony that gathering and presenting documents to overcome an eligibility challenge caused “stress and nervousness,” about whether the documents would be sufficient. (Order at 16.) The challenge process also caused challenged voters “concern[] about voting in future elections.” (Order at 63.) Finally, the Court cited expert evidence that **“voter challenges may be intimidating given the historical context of voter challenges.”** (Order at 136.)

Despite these significant findings about the historical and present-day impact of mass challenges on voters, the Court declined to find that TTV and its collaborators committed unlawful voter intimidation.

Implications: As the threshold for proving violations of the Voting Rights Act has become increasingly difficult due to recent rulings, it also has become increasingly important to invest in voter protection infrastructure to ensure voters have the resources they need to navigate hurdles like mass challenges.

Absent court-ordered relief, and absent legislative reform that curtails the use of Georgia’s challenge law to carry out frivolous mass challenges of hundreds of thousands of voters at once, voters will continue to lean on voting rights advocates, voter protection groups, and local election administrators to be able to cast a ballot free from intimidation and coercion. Fair Fight and other voting rights advocates must continue the critical work of giving voice to the voter experience and expanding the current understanding of intimidation tactics at play in our elections system.