

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

BLACK VOTERS MATTER FUND,  
et al.,

Plaintiffs,

v.

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

Defendants.

CIVIL ACTION FILE NO.  
1:20-CV-01489-AT

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**DEFENDANTS ANTHONY LEWIS, SUSAN MOTTER, DELE LOMAN  
SMITH, SAMUEL E. TILLMAN, BAOKY N. VU, ERICA HAMILTON  
AND THE DEKALB COUNTY BOARD OF REGISTRATION AND  
ELECTIONS' RESPONSE TO PLAINTIFFS' MOTION FOR  
PRELIMINARY INJUNCTION**

COME NOW Defendants Anthony Lewis, Susan Motter, Dele Lowman Smith, Samuel E. Tillman, Baoky N. Vu, in their official capacities as members of the DeKalb County Board of Registration and Elections, Erica Hamilton, in her official capacity as Director of the DeKalb County Department of Voter Registration and Elections (collectively, the "Individual DeKalb Defendants"), and the DeKalb County Board of Registration and Elections (the "DeKalb BRE" and together with

the Individual DeKalb Defendants, the “DeKalb Defendants”), specially appearing<sup>1</sup> to submit this response to Plaintiffs Black Voters Matter Fund and Megan Gordon’s Motion for Temporary Restraining Order and/or Preliminary Injunction and for Expedited Briefing (“Plaintiffs’ Motion”), showing this Court as follows:

On April 8, 2020, plaintiffs Black Voters Matter Fund and Megan Gordon (together, “Plaintiffs”) filed this lawsuit against DeKalb BRE and Brad Raffensperger, in his official capacity as the Secretary of State of Georgia (the “Secretary of State” and together with DeKalb BRE, “Defendants”), alleging that requiring electors to pay postage on absentee ballot applications (“absentee applications”) and absentee ballots constitutes an unconstitutional poll tax and an undue burden on the fundamental right to vote, particularly in light of the current health crisis caused by COVID-19 and the resulting increase in absentee voting. *See* [DOC 1]. To address these alleged infringements, Plaintiffs seek various equitable relief, including requiring Defendants to provide prepaid postage for absentee applications and ballots going forward. *Id.*

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<sup>1</sup> On May 11, 2020, the complaint was amended to add two additional plaintiffs and the Individual DeKalb Defendants (“Amended Complaint”). *See* [DOC 88]. Due to Plaintiffs’ request for an expedited briefing schedule on Plaintiffs’ Motion, this response is being filed prior to the Individual DeKalb Defendants’ response to the Amended Complaint. As a result, the Individual DeKalb Defendants specially appear and reserve their right to file any motion pursuant to Fed. R. Civ. P. R. 12.

Simultaneous with their Complaint, Plaintiffs filed a Motion for Preliminary Injunction [DOC 2], seeking a preliminary injunction requiring the Secretary of State to: (1) issue guidance to all counties that they must provide postage prepaid envelopes with absentee ballots, and (2) revise the absentee application so that it can be mailed with prepaid postage and require county election officials to use the revised application.<sup>2</sup> *See* [DOC 2]. The Court denied Plaintiffs' Motion for Preliminary Injunction with respect to the election scheduled for June 9, 2020, but reserved ruling with respect to the relief requested for any August runoff and the November general election. *See* Order dated April 30, 2020 [DOC 83].

Plaintiffs then filed the present Motion<sup>3</sup> on May 12, 2020. *See* [DOC 93]. In their Motion, Plaintiffs restate and incorporate by reference the arguments asserted in their Motion for Preliminary Injunction. Plaintiffs acknowledge that in their present Motion that they do not currently seek injunctive relief against the DeKalb BRE or the Individual DeKalb Defendants. *See* [DOC 93], pp. 2-3 (expressly acknowledging that Plaintiffs currently do not seek injunctive relief specific to the

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<sup>2</sup> In a teleconference with the Court on April 14, 2020, Plaintiffs' counsel clarified that with respect to the absentee application, Plaintiffs' request was that the Secretary of State revise the absentee application available for download on the Secretary of State's website to include prepaid postage on the application return card, and require the counties to provide preaddressed, postage prepaid envelopes with any absentee applications provided directly by the counties.

<sup>3</sup> Although the Amended Complaint added two additional plaintiffs, those plaintiffs are not movants in the pending Motion. *See* [DOC 93], p. 2.

DeKalb BRE because the Secretary of State is the controlling authority, but reserve their right to seek injunctive relief against the DeKalb BRE or county board of registrations and elections if they fail to follow the Secretary of State's guidance, and stating that "[t]he motion is not being brought...against new defendants").

The DeKalb Defendants hereby restate and incorporate by reference as if fully stated herein, on behalf of all of the DeKalb Defendants, the arguments set forth in DeKalb BRE's Response to Plaintiffs' Motion for Preliminary Injunction [DOC 50] and the Dekalb BRE's Motion to Dismiss and Memorandum of Law in Support Thereof [DOC 80]. If Plaintiffs' claims for temporary restraining order and/or preliminary injunctive relief change such that Plaintiffs seek the entry of a temporary restraining order or preliminary injunction directly against the DeKalb Defendants, the DeKalb Defendants request a fair opportunity to respond to any such amended motion before the Court issues a ruling thereon.

The DeKalb Defendants further note that in their Amended Complaint, Plaintiffs seek certification of a defendant class of all 159 County boards of registrars or absentee ballot clerks, with the DeKalb Defendants as Defendant class representatives. [DOC 88], ¶¶ 53-61. This Court has not considered class certification as of the date of this filing. Accordingly, this response is filed only on behalf of the DeKalb Defendants.

Respectfully submitted this 14th day of May, 2020.

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/s/ IRENE B. VANDER ELS  
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BOARD OF REGISTRATION AND  
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**CERTIFICATE OF SERVICE**

I hereby certify that I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system (which document was prepared in Times New Roman font, 14-point type, one of the font and point selections approved by the Court in N.D. Ga. L.R. 5.1(C)), which will automatically send e-mail notification of such filing to counsel of record.

This 14th day of May, 2020.

/s/ IRENE B. VANDER ELS  
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ASSISTANT COUNTY ATTORNEY  
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