

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

BLACK VOTERS MATTER FUND, et al., Plaintiffs, vs. BRAD RAFFENSPERGER, in his official capacity as Secretary of State of Georgia, et al., Defendants.	} } } } } } } } } } }	Civil Action No. 1:20-cv-1489-AT
---	---	----------------------------------

**PLAINTIFFS’ REPLY TO THE SECRETARY’S RESPONSE REGARDING
PLAINTIFFS’ JUNE 30 SUPPLEMENTAL SUBMISSION**

Plaintiffs respectfully submit the following reply regarding Defendant Secretary of State’s response to Plaintiffs’ Supplemental Brief Regarding the June 2020 Primary in Support of Their Motion for Preliminary Injunction (“Supplemental Brief”), which was filed on June 30, 2020. Doc. No. 129.

Plaintiffs’ June 30 Supplemental Brief was appropriate because it was filed to comply with what Plaintiffs believed was a court order. At a May 12, 2020 telephone conference, the Court noted that in deciding whether to provide relief that, “I would rather also have some evidence in the June election myself.” Doc. 95 at 12. Later, this Court noted in a subsequent order that “the Court [had] expressed

concern about ruling on the important questions presented by Plaintiffs' Motion for Preliminary Injunction before the June 2020 Primary plays out." Doc. 101 at 3.

This Court had also previously "encourage[d] the Plaintiffs . . . to provide supplemental voter affidavits or declarations" "as soon as possible on a rolling basis." Doc. 9 at 2 (internal alteration omitted). Based on these statements from the Court and as the party seeking injunctive relief, Plaintiffs believed they were under an obligation to present supplemental evidence to the Court following the June 2020 Primary.

Defendant's remaining procedural arguments are meritless. Plaintiffs' original preliminary injunction motion ("PI Motion") is still pending before the Court at least with respect to the November elections. Doc. 2. The reason is simple. This Court has not granted or denied the motion with respect to the November elections. Plaintiffs filed a second motion for emergency relief, Doc. 93, which was denied, Doc. 101, but there is no such resolution with respect to the first motion as to the November elections. Defendant argues that Plaintiffs "should likely have" renewed their PI motion after filing the Amended Complaint, Doc. 129 at 6, but neither of the two cases relied upon by Defendant so holds.

Defendant's substantive arguments fare no better. Defendant argues that some of the declarations "do[]not evidence a burden placed on voters due to the alleged postage requirement." Doc. 129 at 9. But they do, because the declarations

illustrate the lack of reasonable alternatives to voting by mail during a global pandemic (e.g., voting in person). This is relevant to both of Plaintiffs' claims. *See* Doc. 2 at 12 ("a poll tax is an unconstitutional abridgement of the right to vote even if there are alternative ways to vote that are free but are still materially burdensome."); *id.* at 15 (with respect to *Anderson-Burdick*, "Due to the pandemic, voting by mails is now the only meaningful option"). The remaining declarations demonstrate the burdens directly imposed by the postage requirement. Doc. 124.¹

For these reasons, the Court should consider the Supplemental Brief in deciding whether to grant Plaintiffs' pending PI Motion.

Respectfully submitted this 22nd day of July, 2020.

Sean Young

Attorney Bar Number: 790399
AMERICAN CIVIL LIBERTIES UNION
FOUNDATION OF GEORGIA, INC.
P.O. Box 77208
Atlanta, GA 30357
Telephone: (678) 981-5295
Email: syoung@acluga.org

Sophia Lin Lakin

¹ Defendant continues to cling to an alleged U.S. Postal Service ("USPS") policy, Doc. 129 at 11 (citing Defendant's opposition to Plaintiffs' motion for preliminary injunction, Doc. 51), which fails for the reasons Plaintiffs previously argued in their reply three months ago. *See* Doc. 57 at 10-11; *see also* Doc. 75 at 46-48. To date, Defendant's repeated invocation of this alleged USPS policy fails to rebut or address any of these arguments raised in Plaintiffs' reply. Nor have they once explained why, if this USPS policy exists, they continue to misrepresent to voters that postage is required and ask that voters completely ignore an explicit requirement at the risk of a voter fraud prosecution.

Dale E. Ho
AMERICAN CIVIL LIBERTIES UNION
125 Broad Street, 18th Floor
New York, NY 10004
Telephone: 212-519-7836
Email: slakin@aclu.org
dho@aclu.org

Attorneys for Plaintiffs

CERTIFICATE OF COMPLIANCE

Pursuant to N.D. Ga. Local Civil Rule 7.1(D), I hereby certify that the foregoing has been prepared in compliance with N.D. Ga. Local Civil Rule 5.1(C) in Times New Roman 14-point typeface.

Sean Young

Attorney Bar Number: 790399

Attorney for Plaintiffs

AMERICAN CIVIL LIBERTIES UNION FOUNDATION OF GEORGIA, INC.

P.O. Box 77208

Atlanta, GA 30357

Telephone: (678) 981-5295

Email: syoung@acluga.org

CERTIFICATE OF SERVICE

I hereby certify that on the aforementioned date, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system.

Sean Young

Attorney Bar Number: 790399

Attorney for Plaintiffs

AMERICAN CIVIL LIBERTIES UNION FOUNDATION OF GEORGIA, INC.

P.O. Box 77208

Atlanta, GA 30357

Telephone: (678) 981-5295

Email: syoung@acluga.org