

IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

REPUBLICAN NATIONAL COMMITTEE,
AND GEORGIA REPUBLICAN PARTY,
INC.,

Plaintiffs,

Civil Action File No.: 2020CV343319

v.

STATE ELECTION BOARD, BRAD
RAFFENSPERGER, REBECCA SULLIVAN,
DAVID WORLEY, MATTHEW
MASHBURN, and ANH LE,

Defendants.

MOTION OF AMICI CURIAE AFRICAN METHODIST EPISCOPAL CHURCH,
LATINO COMMUNITY FUND, INC., AND BLACK ALLIANCE FOR JUST
IMMIGRATION TO FILE AN AMICUS BRIEF IN OPPOSITION
TO PLAINTIFFS' MOTION FOR TEMPORARY RESTRAINING ORDER OR
INTERLOCUTORY INJUNCTION

Amici, the African Methodist Episcopal Church (“AME Church”); Latino Community Fund, Inc. (“LCF”); and Black Alliance for Just Immigration (“BAJI”), hereby move this Court for leave to file an amicus brief opposing Plaintiffs Republican National Committee and Georgia Republican Party, Inc.’s Motion for Temporary Restraining Order or Interlocutory Injunction. As explained in the attached brief, amici are non-profit, non-partisan organizations that have engaged in extensive voter registration, education, and mobilization efforts for the 2020 U.S. elections, including the January 5 runoff. Amici have a strong interest in ensuring that voters in the communities that they serve can vote safely and securely during the ongoing COVID-19 pandemic. Amici seek to assist this Court by offering their unique perspectives and experience regarding the consequences for voters in Fulton County and across the state should the relief requested in Plaintiffs’ motion be granted at the eleventh hour.

WHEREFORE, amici request that this Court accept and consider ~~the~~ BRIEF OF AMICI CURIAE AFRICAN METHODIST EPISCOPAL CHURCH, LATINO COMMUNITY FUND, INC., AND BLACK ALLIANCE FOR JUST IMMIGRATION IN OPPOSITION TO

EXHIBIT A

Amici

to reduce the risk of fatality

scholarships. In coalition with other Latino-led organizations, LCF Georgia mobilizes thousands of Latino voters across Georgia through a ~~text~~ text operation, mailers, literature drops, and deploying teams of election protection volunteers for early and ~~ob~~ voting. LCF Georgia intends to again train and deploy an election protection team ahead of the January 5 runoff election and place 1 million texts and phone banking calls, send over 250,000 mailers, and canvass in five counties to motivate Latino voter turnout.

Amicus curiae Black Alliance for Just Immigration (“BAJI”) educates and engages African American and Black immigrant communities to organize and advocate for racial, social, and economic justice. The Local BAJI Organizing Committee in Georgia builds coalitions and initiates campaigns among communities to push for racial equity and human rights. This includes efforts to provide information to African Americans and Black immigrants to be able to safely vote, especially in Atlanta, which has the third highest population of African immigrants in the country. BAJI has also worked with the Leadership Conference Education Fund to launch the Black Justice is Our Justice campaign, which highlights stories and promotes acts of real and meaningful solidarity and unity among diverse immigrant groups to empower and mobilize immigrant voters.

BACKGROUND

A record number of Georgia voters are set to again exercise their fundamental right to vote in the January 5 runoff. These voters have by now participated in multiple elections conducted during a deadly pandemic and have waited in some of the longest ~~in the~~ in the country to participate in our democracy. And now, in the third and final statewide election this cycle, after a painful and difficult year, latebreaking litigation threatens to restrict voters’ avenues for casting their ballots on the thinnest of legal and factual pretexts. Pls.’ Mot. at 13 (arguing relief from “competitive harm”). Specifically, Plaintiffs disagree with the State Election Board’s emergency drop box rule

and would prefer that the Secretary of State limit the hours that a voter may deliver their ballot to a drop box. First Am. Compl. ¶¶ 58–71. Plaintiffs also shamelessly open the door to intimidation of voters and election workers with their request that security footage of the drop boxes be made “publicly available via real time ~~or~~ real time streaming,” ~~Id.~~ ¶¶ 72–79 & at 26, in an electoral environment in which death threats have already become routine.

In response to the COVID-19 emergency, the State Election Board initially permitted voters to deliver their absentee ballots to ~~drop boxes~~ tamperproof, typically weather and fire resistant metal structures built sturdier than a USPS mail box and generally weighing at least 600 pounds²—on July 1, 2020³. The rule did not limit the hours during which a voter may deliver an absentee ballot to a drop box, out of deference to the discretion of county elections officials who know their respective county’s needs best. On November 23, 2020, the State Election Board

rule, the current emergency drop box rule does not contain restrictions on the hours voters may deliver their ballots to a drop box.

Less than a month before the January 5 elections, and with voting well underway, Plaintiffs filed their Complaint in the present litigation to unduly increase the burden on voters' access to the ballot box. Specifically, their Complaint seeks declaratory, injunctive, and/or mandamus relief to require the Secretary of State to distribute guidance to county registrars that voters may only deposit absentee ballots in drop boxes during regular business hours and for a portion of the drop boxes available to the public in real time or near time. First Am. Compl. at 226. On December 11, 2020, three days before the start of the advance voting period, Plaintiffs moved for immediate relief via a temporary restraining

I. Wide Availability of Drop Boxes is Critical to Ensuring Voters Can Safely Cast a Ballot During this Ongoing Pandemic

The ability to deliver an absentee ballot to a drop box outside business hours is essential to the health and safety of voters considering widely reported issues with the United States Postal Service and as Georgia faces record COVID19 exposure and fatalities.

Like many states, Georgia continues to grapple with the catastrophic consequences of COVID-19. Just last week, Georgia became the tenth state to reach 10,000 deaths due to COVID 19.⁵ Georgia also set a new record for the highest seven-day average for new, daily confirmed cases, with daily averages of new confirmed cases far surpassing the records set earlier this summer.⁶ The Georgia Department of Public Health alarmingly reported at the beginning of the month that many of the state's hospitals were running out of beds, with some hospitals at 97% capacity and just two ICU beds remaining and others with absolutely no space to accept referred patients.⁷ And the worst is still to come.⁸

The State Election Board's emergency rule is consistent with the recommendations issued by the Centers for Disease Control and Prevention ("CDC"). Specifically, the CDC recommends election officials offer "[l]ow-risk election polling settings," which include having "a wide variety of voting options" and "longer voting periods (more days and/or more hours) which reduce the likelihood that voters will need to gather at the same time and same place to cast a

⁵ Deaths from COVID-19 in Georgia surpass 10,000, Fox 5 Atlanta, (Dec. 12, 2020), <https://www.fox5atlanta.com/news/deaths-from-covid-19-in-georgia-surpass-10000>.

⁶ Id.

⁷ Johnny Edwards & Ariel Hart, Georgia hospitals already pushing capacity as they brace for COVID surge (Dec. 4, 2020), <https://www.ajc.com/news/coronavirus/georgia-hospitals-already-pushing-capacity-as-they-brace-for-holiday-peak/2UWSZ2NAH5E2XIBPDIDGHZJ3NE/>.

⁸ Id.

ballot.⁹ One of the

return their ballot to their county election office. Because absentee ballots that arrive to the county election office after 7:00 p.m. on Election Day will be disqualified,¹⁵ many voters will be concerned that the USPS may not deliver their absentee ballot by the deadline and will instead choose to vote by drop box.

Drop boxes are an especially critical voting option for elderly voters¹⁵ who have certain underlying medical conditions that place them at greater risks¹⁶ of severe illness from COVID-19.¹⁶ Drop boxes that are available 24 hours a day, seven days a week may also be the only acceptable option to voters¹⁷ essential workers who need to exercise extra precautions¹⁷ as doctors and nurses, grocery store clerks, and package delivery couriers who work during business hours to treat us, feed us, and deliver us.¹⁷ Moreover, these workers are disproportionately people of color¹⁷ who face increased risk of severe illness¹⁸ and death from COVID-19 based on longstanding systemic and social inequities.¹⁸

Plaintiffs' requested relief¹⁸ would severely limit a reliable and relied upon voting option for those who are especially vulnerable in this ongoing pandemic as well as those¹⁸ we depend on to keep us safe.

<https://www.wsbtv.com/news/local/atlanta/postal-service-funding-delays-lead-mail-in-voting-concerns-georgia/M3T2T2B2MBCIFAC2IZ67UKWIM4/>

¹⁵ O.C.G.A. § 212-386(a)(1)(F).

¹⁶ Centers for Disease Control and Prevention, COVID-19 (Coronavirus Disease) People with Certain Medical Conditions, <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-with-medical-conditions.html> (last updated Dec. 1, 2020).

¹⁷ Celine McNicholas & Margaret Poydod, Who are essential workers?, Economic Policy Institute (May 19, 2020), <https://www.epi.org/blog/who-are-essential-workers-a-comprehensive-look-at-their-wages-demographics-and-unionization-rates/> (last visited Dec. 13, 2020).

¹⁸ See generally Centers for Disease Control and Prevention, Health Equity Considerations and Racial and Ethnic Minority Groups, <https://www.cdc.gov/coronavirus/2019-ncov/community/health-equity/race-ethnicity.html> (last updated July 24, 2020).

(6) be checked multiple times a week.²⁷

These security measures are

officials by realtime access to surveillance footage are real and immediate. On multiple occasions since the November 3 general election, online agitators and the country and conspiracy theorists have taken footage out of context to engage in harassment campaigns of elections officials who have done nothing wrong. During the post-Election Day vote count, a Fulton County election worker was forced into hiding after online observers falsely claimed that video footage from State Farm arena depicted him throwing out a ballot

CERTIFICATE OF SERVICE

I hereby certify that I have this day caused a true and correct copy of the foregoing Motion to File Amicus Brief to be served upon all counsel of record by the Odyssey E

This 17th day of December, 2020.

s/Nancy G. Abudu
Nancy G. Abudu
Bar No.111881
Southern Poverty Law Center
P.O. Box 1287
Decatur, GA 30031-287
Tel: 404521-6700
Fax: 404221-5857
nancy.abudu@splcenter.org

Counsel for Amici Curiae African Methodist
Episcopal Church, Latino Community Fund,
Inc., Black Alliance for Just Immigration