

**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.: 20-cv-1489-AT

**PLAINTIFFS’ UNOPPOSED\* MOTION  
FOR LEAVE TO FILE SUR-REPLY**

Plaintiffs move for leave to file the four-page sur-reply brief attached as an Exhibit to this motion or, in the alternative, for this Court to disregard certain parts of DeKalb’s reply brief as mentioned below. \*DeKalb does not oppose the request to file a sur-reply but opposes the alternative request for the Court to disregard certain portions of their reply brief.

DeKalb’s<sup>1</sup> reply brief in support of their motion to dismiss the amended complaint cites a statute and a case for the very first time. Specifically, DeKalb cites O.C.G.A. §§ 21-2-30, 21-2-31 to support a new argument about the second “arm of the state” factor (state control). Doc. 111 at 3. DeKalb also newly cites *Ballard v. Chattooga County Board of Tax Assessors*, 615 Fed. Appx. 621, 628 (11th Cir. 2015), which extensively discusses *Manders v. Lee*, 338 F.3d 1304 (11th Cir. 2003), with respect to the third (source of funding) and fourth (liability for judgment) “arm of the state” factors.

A motion to file a sur-reply is granted “only in unusual circumstances, such as where a movant raises new arguments or facts in a reply brief, or where a party wishes to inform the Court of a new decision or rule implicating the motion under review.” *Roelle v. Cobb Cty. Sch. Dist.*, No. 1:13-cv-3045, 2014 WL 4457235, at \*9 (N.D. Ga. Sept. 10, 2014) (citation and quotations omitted).

As discussed below, the two new citations noted above are “new arguments.”

**O.C.G.A. §§ 21-2-30, 21-2-31.** With respect to the second “arm of the state” factor, DeKalb argues that Plaintiffs “fails to consider the overarching power of the

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<sup>1</sup> “DeKalb” refers to Defendants DeKalb County Board of Registration & Elections (the “Board”) and Anthony Lewis, Susan Motter, Dele Lowman Smith, Samuel E. Tillman, Baoky N. Vu, and Erica Hamilton, in their official capacities.

State,” citing for the very first time O.C.G.A. §§ 21-2-30, 21-2-31. Doc. 111 at 3. Plaintiffs had rebutted, point by point, the four specific arguments DeKalb made with respect to the second “arm of the state” factor. Doc. 107 at 12. Reliance on O.C.G.A. §§ 21-2-30, 21-2-31 was not one of them so Plaintiffs request an opportunity to respond to that statute citation.

***Ballard.*** DeKalb also newly cites *Ballard v. Chattooga County Board of Tax Assessors*, 615 Fed. Appx. 621, 628 (11th Cir. 2015), with respect to the third and fourth factors. Doc. 111 at 4. This is also a new argument that could have been raised earlier because it is used to support DeKalb’s initial points. DeKalb’s reliance on *Ballard*’s analysis of the fourth factor, in particular, is new because DeKalb previously appeared to concede the fourth factor. Doc. 80 at 8.

Moreover, DeKalb cites the part of *Ballard* which discusses extensively *Manders v. Lee*, 338 F.3d 1304 (11th Cir. 2003), the seminal “arm of the state” case. While DeKalb previously relied on the application of *Manders* by *Casey v. Clayton County*, No. 04-CV-00871, 2007 WL 788943 (N.D. Ga. Mar. 14, 2007), Doc. 80 at 5, DeKalb did not rely on the application of *Manders* by any other case, such as *Ballard*. Plaintiffs should have the opportunity to distinguish the Eleventh Circuit’s application of such an important Eleventh Circuit case.

In the alternative to granting Plaintiffs’ motion for leave to file a sur-reply, and in light of DeKalb’s burden to establish Eleventh Amendment immunity, Plaintiffs respectfully request that this Court disregard the following portions of DeKalb’s reply brief: on page 3, from “Plaintiffs nevertheless maintain” to “O.C.G.A. § 21-2-1 *et seq.*,” and on page 4, from “To the extent that DeKalb” to the citation to *Lightfoot*.

Respectfully submitted this 3rd day of June, 2020.

**Sean Young**

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**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**

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**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**

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