

**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’ MOTION FOR LEAVE TO SUBMIT ATTACHED CHART
RE: DROP BOX CALCULATIONS**

Plaintiffs respectfully move for leave to file the attached chart exhibit in response to Defendant Secretary of State’s drop box-related filing on July 17, 2020. Doc. 130. This exhibit (“Exhibit A”) is nothing more than a chart that mathematically calculates how many drop boxes there should be in each county pursuant to a formula recommended by the United States Department of Homeland Security (“DHS”), through the Cybersecurity and Infrastructure Security Agency

(“CISA”). This formula was adopted in a 2020 report (“DHS Report”),¹ which was created in direct response to the COVID-19 crisis and its impact on voting.

This Court should grant Plaintiffs’ motion to submit this chart. Motions to submit supplemental material are granted when the interests of justice will be served. *See generally Brown v. Hertz*, No. 3:07–cv–00117–PMF, 2011 WL 5325519, at *3 (S.D. Ill. Nov. 3, 2011) (“The interests of justice will be served by permitting the defendants to supplement their evidence.”). Here, the attached chart serves the interests of justice by providing factual context around Defendant’s drop box-related filing on July 17, 2020.

The DHS Report recommends that one drop box be made available per 15,000 to 20,000 registered voters² in each county. *See* DHS Report at 2. The DHS

¹ *See Ballot Drop Boxes (2020)*, available at https://www.eac.gov/sites/default/files/electionofficials/vbm/Ballot_Drop_Box.pdf (“DHS Report”).

² Plaintiffs include both “active” and “inactive” voters in its computation of total registered voters. So-called “inactive voters” have the same ability to vote as “active” voters, and therefore are included in the total number of registered voters for the purposes of determining the number of drop boxes to be used in elections. *See generally* O.C.G.A. § 21-2-235.

The DHS Report also suggests that this formula may be insufficient in rural areas if it results in only one drop box “every 50 miles.” Plaintiffs do not waive the ability to argue that this factor (or any number of additional factors) should be taken into account in a future request for relief. But because this rule does not lend itself to a clear mathematical calculation, the chart does not take it into account.

Report also states that a minimum of one drop box should be installed in each county (i.e., at the “main county or city office building”) regardless of its population, so that every voter in the state may have an opportunity to place their absentee ballot in a drop box. *Id.*

The attached chart shows the number of registered voters in each county, how many drop boxes were placed in each county for the June 2020 primary (based on Defendant’s submission at Doc. 130-3 and 130-4), and how many drop boxes should be placed in each county pursuant to the DHS report based on a ratio of one drop box per every 15,000 registered voters.³

For example, Defendant Dekalb County⁴ used two drop box locations for the June 2020 primary. Exhibit A at 3. According to DHS guidelines, Dekalb County should maintain drop boxes at 31 locations. *Id.* According to the Dekalb County Voter Information website, there are currently eight drop box locations in the

³ Plaintiffs have calculated the DHS-recommended number of drop boxes by dividing the total number of registered voters by 15,000 and rounding to the nearest whole number. For example, if a county has 15,001 registered voters, the DHS formula used would yield one drop box. If the number rounds down to zero, it has been revised upward to one to reflect DHS guidelines recommending a minimum of one drop box per county.

⁴ “DeKalb County” refers to Defendants DeKalb County Board of Registration & Elections, and Anthony Lewis, Susan Motter, Dele Lowman Smith, Samuel E. Tillman, Baoky N. Vu, and Erica Hamilton, in their official capacities.

county for the August runoff. August 11, 2020 Runoff Election, *available at* <https://www.dekalbcountyga.gov/voter-registration-elections/our-mission>. If Dekalb County has planned eight (or more) drop boxes for November, it will be easier for them to meet the DHS recommendations.⁵

To provide additional factual and procedural context, Plaintiffs note that this Court had previously considered additional drop boxes as a potential alternative remedy as it related to the June 2020 primary election. On April 17, 2020, Plaintiffs proposed alternative remedies for the June elections following a teleconference, including a drop box option. Doc. 44. The Court rejected this drop box proposal in part because of timing. Doc. 83 at 10.

The barriers for elections officials to implement a drop box solution should be lower now. At the time of the April 17, 2020 filing, the State Election Board emergency rule that authorized counties to set up drop boxes had been in place for two days. Doc. 44 at 8. Now, the State Election Board emergency rule has substantively been in effect for 98 days. *See also* Doc. 130-2 (reenacting same emergency rule in substance). On April 17, there were 53 days left before the June

⁵ The DHS Report notes that in determining locations for drop boxes, governmental authorities should “[c]onsider adding more drop boxes to areas where there may be communities with historically low vote by mail usage.” DHS Report at 2.

2020 primary. Now, there are 104 days until the November 2020 election. On April 17, zero drop boxes had been used in any Georgia election (as far as Plaintiffs are aware). Now, elections officials have used a total of 139 drop boxes across 98 counties in an actual election. Doc. 130-3; 130-4; Exhibit A.

Plaintiffs submit this filing without waiving their claims and requests for relief as articulated in its pending motion for a preliminary injunction as to the November elections. Should this Court be considering a drop box remedy for the November elections as alternative relief, Plaintiffs respectfully ask that such a remedy satisfy the recommendations in the DHS Report as reflected in Exhibit A. 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
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