

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

BLACK VOTERS MATTER FUND,  
and MEGAN GORDON, on behalf of  
herself and all others similarly  
situated,

*Plaintiffs,*

v.

BRAD RAFFENSPERGER, in his  
official capacity as Secretary of State  
of Georgia; DEKALB COUNTY  
BOARD OF REGISTRATION &  
ELECTIONS,

*Defendants.*

CIVIL ACTION

FILE NO. 1:20-cv-01489-AT

**SECRETARY OF STATE BRAD RAFFENSPERGER'S  
RESPONSE TO PLAINTIFFS' SUPPLEMENTAL LETTER**

Secretary of State Brad Raffensperger (“Secretary” or “State Defendant”) submits this response to the “supplemental letter” [Doc. 74] (“Letter”) and attached declaration of Representative David Dreyer [Doc. 74-1] (“Declaration”) Plaintiffs filed April 27, 2020.

The Plaintiffs raise the United States Supreme Court’s decision in *Maine Community Health Options v. United States*, 590 U.S. \_\_\_, Nos. 18-1023, 18-1028, and 18-1038 (April 27, 2020). That case is irrelevant to the issues before this Court. Most obviously, the Supreme Court there did not

conduct any *Anderson/Burdick* analysis or any other kind of balancing test that takes into account the government's interest in a particular policy. To the contrary, the *Maine Community Health Options* decision involved a question of whether a particular statute required particular payment. *Id.* at 30. Even if some form of balancing were required, unlike the Federal Government, the State of Georgia must operate pursuant to a balanced budget. Ga. Const. Art. III, Sec. IX, Par. IV. This means the burden on the State is significantly greater, as deficit spending is not an option available to State policymakers.

Plaintiffs also submitted Representative Dreyer's Declaration post-hearing as "supplemental authority," but it is not and should be given no weight by this Court for four reasons: (1) Representative Dreyer's ability to participate in State financial policy making is relatively low, which diminishes the usefulness to the Court of his opinions; (2) Plaintiffs easily could have but chose not to call Representative Dreyer as a fact witness during the April 24, 2020 preliminary injunction hearing (the "Hearing"); (3) at most, the Declaration serves as a reminder that Plaintiffs' dispute is one about policy, not law; and (4) the Declaration does not dispute the existence of the State's impending, severe budget challenges and is otherwise undertheorized. The Secretary further shows the Court as follows:

First, Representative Dreyer is an accomplished lawyer and legislator who serves in Georgia's General Assembly as a member of the minority party. He is not, however, a member of the Georgia House of Representatives' Ways and Means Committee, which handles tax policy; nor is he a member of the House Appropriations Committee, which works on the State budget.<sup>1</sup> Consequently, Representative Dreyer's votes on tax and budget legislation are restricted to those times the bills are before the full House of Representatives. His involvement with the budget is, therefore, relatively limited, and his discussion on future possibilities with respect to Georgia fiscal policy therefore is of relatively low probative value to the Court.

Second, Representative Dreyer could have opined on the issues in this case, including the Declaration of Stephanie Beck, Deputy Director of the Governor's Office of Planning and Budget [Doc. 51-5], at the April 24 Hearing. As the Letter and Declaration confirm, Representative Dreyer and Plaintiffs' counsel spoke the night before the Hearing. [Doc. 74-1 ¶ 10. *See* Doc. 74 at 2.] Representative Dreyer, whose name appeared on the Hearing's Zoom list, was apparently available during the Hearing itself. Plaintiffs

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<sup>1</sup> Representative Dreyer's legislative profile is available at: <http://www.house.ga.gov/Representatives/en-US/member.aspx?Member=4888&Session=27>.

chose not to call him during the Hearing, and they should not be able to rely on his opinion after the fact.

Third, even if this Court considers the merits of Representative Dreyer's Declaration, neither it nor the *Maine Community Health Options* decision provide any compelling *legal* argument or reason to grant Plaintiffs' Motion for Preliminary Injunction. To the contrary, Representative Dreyer's Declaration emphasizes the policy and political nature of Plaintiffs' Complaint without speaking to any legal or constitutional issues before the Court. Indeed, Representative Dreyer's Declaration itself advocates for policy positions he and other members of the minority party support: Medicaid expansion; increasing tobacco taxes; a new vaping tax; and rollback of prior tax cuts.<sup>2</sup> [Doc. 74-1 ¶ 10.] Whatever merits these policy positions may have, they serve as a reminder that the proper venue for such policy and budget

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<sup>2</sup> *E.g.*, *Georgia Democrats, Health Care Providers Highlight Impact of Coronavirus for Rural Georgians, Need for Medicaid Expansion*, GeorgiaDemocrat.org (April 16, 2020), <https://www.georgiademocrat.org/georgia-democrats-health-care-providers-highlight-impact-of-coronavirus-for-rural-georgians-need-for-medicaid-expansion/> (last visited April 28, 2020); Jill Nolan, *Planned cuts to state health spending projected as campaign fodder*, Georgia Recorder (Feb. 12, 2020), <https://georgiarecorder.com/2020/02/12/proposed-cuts-to-state-health-spending-projected-as-campaign-fodder/> (last visited April 28, 2020).

debates is Georgia’s elected legislature, not a federal court deciding significant questions of law in an expedited manner.

The point remains—and Representative Dreyer does not disagree—that Georgia legislators soon will be facing the harsh financial reality of drastically falling tax revenue and a concurrently expanding demand for state expenditures, which circumstances make achieving Plaintiffs’ desired relief extraordinarily burdensome for the State. In the light of this undisputed evidence, Representative Dreyer offers no analysis of the amount of public revenue his proposal(s) would raise or when the State could realize that hypothetical revenue. Consequently, the Declaration fails to assist Plaintiffs in overcoming their stout burden.

In sum, the *Maine Community Health Options* case is not “supplemental authority” that speaks to the issues before this Court. The Court further should disregard the Declaration or, at a minimum, give it no more than minimal weight.

Respectfully submitted, this 29th day of April, 2020.

/s/ Josh Belinfante  
Vincent R. Russo  
Georgia Bar No. 242628  
vrusso@robbinsfirm.com  
Josh Belinfante  
Georgia Bar No. 047399  
jbelinfante@robbinsfirm.com

Alexander Denton  
Georgia Bar No. 660632  
adenton@robbinsfirm.com  
Brian E. Lake  
Georgia Bar No. 575966  
blake@robbinsfirm.com  
Melanie Johnson  
Georgia Bar No. 466756  
mjohnson@robbinsfirm.com  
Robbins Ross Alloy Belinfante Littlefield LLC  
500 14th Street, N.W.  
Atlanta, Georgia 30318  
Telephone: (678) 701-9381  
Facsimile: (404) 856-3250

Christopher M. Carr  
Attorney General  
Ga. Bar No. 112505  
Bryan K. Webb  
Deputy Attorney General  
Ga. Bar No. 743580  
Russell Willard  
Sr. Asst. Attorney General  
Ga. Bar No. 760280  
Charlene McGowan  
Asst. Attorney General  
Ga. Bar No. 697316

**Georgia Department of Law**  
40 Capitol Square SW  
Atlanta, GA 30334  
cmcgowan@law.ga.gov  
Tel: 404-656-3389  
Fax: 404-651-9325

*Counsel for State Defendant*

**L.R. 7.1(D) CERTIFICATION**

I certify that this Brief has been prepared with one of the font and point selections approved by the Court in Local Rule 5.1(C). Specifically, this Brief has been prepared using 13-pt Century Schoolbook font.

/s/ Josh Belinfante  
Josh Belinfante  
Georgia Bar No. 047399