

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

BLACK VOTERS MATTER FUND,
MEGAN GORDON, and PENELOPE
REID, on behalf of themselves and all
others similarly situated,

Plaintiffs,

vs.

BRAD RAFFENSPERGER, in his
official capacity as Secretary of State of
Georgia; DEKALB COUNTY BOARD
OF REGISTRATION & ELECTIONS,
ANTHONY LEWIS, SUSAN
MOTTER, DELE LOWMAN SMITH,
SAMUEL E. TILLMAN, and BOAKY
N. VU, in their official capacities as
Members of the DeKalb County Board
of Registration & Elections, and ERICA
HAMILTON, in her official capacity as
Director of Voter Registration and
Elections, and all others similarly
situated,

Defendants.

Civil Action No. 1:20-cv-1489-AT

**PLAINTIFFS’ SUPPLEMENTAL BRIEF REGARDING THE JUNE 2020
PRIMARY IN SUPPORT OF THEIR MOTION FOR PRELIMINARY
INJUNCTION**

Pursuant to the Court’s request for information following the June, 9, 2020
primary election, Plaintiffs hereby submit the following evidence.

Part I discusses evidence about the unreasonable burdens that voters faced in the June 2020 primary because of the postage requirement. Part II describes the unreasonable burdens that high-risk and other voters faced when attempting to vote in-person in the June 2020 primary, which further demonstrates how voting in-person is increasingly becoming a non-option. Part III describes the burdens that voters faced with absentee voting in the June 2020 primary, which demonstrates why lifting the postage requirement is crucial to ameliorate an already cumbersome process.

Last, Part IV puts forth empirical data on Georgians throughout the state gathered by Plaintiffs' expert, which help demonstrate that the burdens imposed by the postage requirement are significant and widespread, particularly for vulnerable communities.

I. VOTERS FACED UNREASONABLE BURDENS BECAUSE OF THE POSTAGE REQUIREMENT

The postage requirement imposed onerous burdens on voters seeking to vote in the June 2020 primary, further demonstrating that Plaintiffs are likely to succeed on their *Anderson-Burdick* claim. Many of these voters were either barred from the opportunity to vote through absentee ballot or faced substantial obstacles to voting in the primary election.

Postage Cost. The cost of postage was a barrier for many voters who did not vote by absentee ballot in the June 2020 primary. Delinda Bryant was one such

voter. Bryant is a 63-year-old physically disabled voter who “want[ed] to vote by mail this year because of the COVID pandemic.” Doc. 24 at ¶ 3. Because of her age, she has been “staying in the house almost all the time since the pandemic started.” Exhibit A (Bryant Supp. Decl.) ¶ 3. Bryant has been especially concerned about her susceptibility to the virus because “Dougherty county has been a COVID-19 hotspot, so [she didn’t] want to risk leaving the house.” *Id.* However, Bryant was unable to vote by mail because “[g]etting that stamp was just too hard for me in terms of the cost of the stamp and being able to go out to the post office to get the stamp.” *Id.* at ¶ 2. Bryant’s daughter had to take her to vote in-person in the June 2020 primary. Before she voted, Bryant had to “wait in the gym [her polling site] for about an hour,” where “voting machines were so close together,” and where she was surrounded by “a lot of people not wearing masks in the building.” *Id.* at ¶ 8. Bryant’s inability to pay for postage forced her to expose herself to the COVID-19 virus in order to vote.

Other voters also mentioned their financial insecurity caused by the COVID-19 pandemic. One voter noted the “serious financial hardships” she faced in light of the economic downturn caused by the COVID-19 pandemic, namely having to “shut down [her] business.” Exhibit B (Legnon Decl.) ¶¶ 3-4. She decided to vote in-person and had to “wait in line for about four hours and 20 minutes to vote on Election Day.” *Id.* at 10. Another voter stated how he had recently become

unemployed, “so saving money is really important. . . right now.” Exhibit C (Junior Decl.) ¶ 5. He could not vote early because “it would have cost [him] about \$70 roundtrip to take an Uber or a Lyft to go and come back from an early voting location.” *Id.* at ¶ 4. So he was forced to vote on Election Day “wait[ing] in line for about 2 hours.” *Id.* at ¶ 7.

Voting rights organizations also had to devote resources to address voters’ inability to pay for the cost of postage, thus redirecting funds that could have been used for other voter engagement purposes. One organizer noted that he “bought stamps for voters who couldn’t afford it using financial resources provided to me by Black Voters Matter as well as my own personal funds.” Exhibit D (Warren Decl.) ¶ 9. Another organizer “tried to help people who did not have access to stamps by placing stamps in publicly subsidized apartment buildings.” Exhibit E (Kendrick Supp. Decl.) ¶ 3.

Lack of Postage. For many voters, not having a stamp in the household during a global pandemic was a significant barrier to voting by mail in the June 2020 primary. Fantasia Smith was a voter who did not apply for an absentee ballot because she did not “have stamps at home, so it would have been very inconvenient for [her] to get them.” Exhibit F (Smith Decl.) ¶ 3. She added that “it doesn’t make sense to me that you would have to pay to vote by having to buy stamps.” *Id.* She planned on voting at Parkside Elementary in Fulton County, the

location that had been assigned to her according to a “letter and voter registration card” she had received when she officially changed her address in February of 2020. *Id.* at ¶ 5. On Election Day, Smith waited in line at Parkside Elementary for “approximately three hours.” *Id.* at ¶ 8. She even took time off from work “on a day where [she] was supposed to physically be present at the office.” *Id.* at ¶ 10. When Smith got to the front of the line, she was told that her polling location was “somewhere in East Point,” not at Parkside Elementary. *Id.* at ¶ 8. When she asked for more information, she found out “they [the poll workers] had an address on file where [she] had last lived approximately a decade ago.” *Id.* At that point, she “did not have time to go stand in a long line in East Point to vote.” *Id.* at ¶ 11. Smith was unable to vote in the June primary election.

Other voters also experienced burdens based on not having postage in the household. One voter “wanted to vote through absentee ballot” because she was “not really leaving the house much right now.” Exhibit B (Legnon Decl.) ¶¶ 4-5. “[B]ut since [she] had recently moved and did not have stamps in my house, [she] decided [she] should vote in-person.” *Id.* at ¶ 5. While other voters happened to have stamps for the June 2020 primary, they were concerned about how they would replenish their supply of stamps to use for other purposes during an ongoing global pandemic. Plaintiff Penelope Reid stated, “I’m starting to run out of stamps now, so I’m not sure how I will get more stamps when I don’t have any more left.”

Doc. 38 (Reid Decl.) at ¶ 2; Exhibit G (Reid Supp. Decl.) ¶ 5. A disabled voter who has had “both of [his] legs amputated” and “now use[s] a power wheelchair to move around” noted that if he “didn’t have the stamps at home and [his] home health aide couldn’t get it for [him], it would be difficult for [him] to get stamps.” Exhibit AB (Lewis Decl.) ¶¶ 3, 11.

Some voters applied for an absentee ballot but never received one, as discussed *infra* Part III. Such voters noted that even if they had received their absentee ballot, they would have had to find a way to acquire stamps to use on their ballots. One voter succinctly explained why he did not have stamps: “I don’t have any stamps at home because I never use them.” Exhibit H (Bassols Decl.) ¶ 10. Another voter stated that he doesn’t “usually have stamps at home,” and if it wasn’t for his girlfriend who had stamps in her own household, he “would have needed to figure out where to get stamps.” Exhibit I (Kuttig Decl.) ¶ 10. One voter who did not receive her absentee ballot explained the lengths she was willing to go to vote despite not having postage in her temporary residence in Colorado. “Even though I did not have postage stamps in my household in Colorado, I was willing to break my social distancing practices and quarantine measures to go to the post office and buy stamps to place on my absentee ballot if I had received the ballot on time.” Exhibit J (Moore Decl.) ¶ 16. She added that she “was willing to do this

even though [she has] a one-year old child and a pregnant sister who [she is] currently living with.” *Id.*

Elections officials were cognizant of the burdens imposed by the postage requirement to participating in the June 2020 primary. A member of the Gwinnett County Board of Registration and Elections (“BRE”) raised the possibility that “even the voters who put one stamp on their ballot envelope and not two run the risk of a non delivered ballot” in an email to the Chair of the BRE. Exhibit AD. The next week, the member told the Chair that “[w]hen the dust settles on this primary I do think we need to discuss providing return postage on absentee by mail applications and ballots. It just seems to me to be the right thing to do. The cost would not be that significant.” Exhibit AE.

II. VOTERS FACED UNREASONABLE BURDENS WHEN VOTING IN-PERSON IN THE JUNE 2020 PRIMARY

The disastrous June 2020 primary illustrated why voting in-person imposed material, unreasonable, and life-threatening burdens on voters. The difficulties of voting in-person further establish the significant or severe burdens on voters for purposes of the *Anderson-Burdick* analysis. In addition, they highlight why it is unconstitutional to abridge the right to vote by reason of a poll tax. June 2020 voters were forced to choose between paying a poll tax and surmounting material and unreasonable hurdles to vote in-person.

Jerry Thomas could not vote at all in the June 2020 primary. Thomas is a 68-year-old voter who had requested an absentee ballot for the June 2020 primary. Exhibit AC (Thomas Decl.) ¶ 4. A week before the election, Thomas “still had not received [his] absentee ballot, and [he] was concerned.” *Id.* at ¶ 5. On June 5, 2020, Thomas had still not received his absentee ballot, “so, [he] went to two early voting locations: the C.T. Martin Recreation Center and the Sandy Springs Library.” *Id.* at ¶ 10. However, “[t]here were long lines of cars and people at both places.” *Id.* at ¶ 11. Because of Thomas’s age, he was “considered high-risk,” and he did not want to “risk [his] health or life because of the COVID-19 pandemic.” *Id.* Thomas also did not want to “contract [COVID-19] and pass it along to [his] wife who is also in a high-risk category.” *Id.* He decided to go home and contact his elections office again, hoping to receive his absentee ballot by Election Day. *Id.* at ¶ 12. Despite the elections office assuring Thomas that his ballot would arrive before Election Day, he did not receive his ballot until the day after Election Day. *Id.* at ¶ 15. Because Jerry could not risk waiting in long lines and potentially contracting the COVID-19 virus, he was unable to vote in the June 2020 primary.

Breaking Quarantine to Vote In-Person. Other voters who had been following strict social distancing and quarantine measures in light of the COVID-19 pandemic made the difficult decision to potentially expose themselves and their families to the virus by voting in-person in the June 2020 primary. One voter was

concerned that “[b]efore voting in-person, the last time I was in a building with people outside my household for an extended period of time was late March of 2020.” Exhibit K (Burke Supp. Decl.) ¶ 8. Similarly, another voter stated that “[g]oing to vote was the most I’ve been exposed to the outside world in a while.” Exhibit L (Wise Decl.) ¶ 11. One voter who applied for an absentee ballot but never received one stated that “[m]y wife and I have been social distancing as much as possible, and I didn’t want to expose myself to a lot of people if there was a way I could vote through the mail.” Exhibit H (Bassols Decl.) ¶ 4.

A voter who lives in an area that has been especially hard hit by COVID-19 had hoped to vote through absentee ballot to protect herself from the virus, stating that she has “been staying in the house almost all the time since the pandemic started. A friend of mine goes grocery shopping for me. Dougherty county has been a COVID-19 hotspot, so I don’t want to risk leaving the house.” Exhibit A (Bryant Supp. Decl.) ¶ 3. But the voter was forced to vote in-person because “[g]etting that stamp was just too hard for me in terms of the cost of the stamp and being able to go out to the post office to get the stamp.” *Id.* at ¶ 2. Another voter who has “been trying to minimize the time [she has] spent outside [her] apartment” was forced to vote in-person when she “never ended up receiving [her] absentee ballot in the mail.” Exhibit M (Waddoups Decl.) ¶¶ 4-5. She noted that this was

especially difficult because she has “a one-year old child, so leaving the apartment isn’t easy. . . even without the pandemic.” *Id.* at ¶ 6.

For voters who had strictly been following social distancing and quarantine protocols, the decision to exercise their fundamental right to vote in-person voting in-person in the face of virus exposure was harrowing. One voter described her family’s deliberations after not receiving her absentee ballot, stating that “[m]y husband and I discussed whether it was safe to vote in-person during the pandemic.” Exhibit K (Burke Supp. Decl.) ¶ 7. She and her husband decided to vote-in person because “[a]lthough we were nervous about the risks of in-person voting, we felt that it was important to vote.” *Id.* One voter stated “I was pretty nervous having people on both sides of me.” Exhibit M (Waddoups Decl.) ¶ 9. Another voter stated that she “was nervous about voting in person but I wanted to make sure my vote was counted. So I put on two masks and goggles and went to vote in-person.” Exhibit N (Jackson Decl.) ¶ 13.

One voter was a cancer survivor with diabetes and high blood pressure who had applied for an absentee ballot but never received one. She stated that “I felt uneasy about voting with my medical conditions. I felt like I was putting myself at a greater risk by having to vote in-person.” Exhibit O (I. Hudson Decl.) ¶ 9. Bryant stated that one of the reasons she had taken so many social distancing precautions was because her “friend. . .was hospitalized after getting COVID-19.” Doc. 24 at ¶

2 (Bryant Decl.); Exhibit A (Bryant Supp. Decl.) ¶ 3. These fears weighed on voters as they were forced to vote in-person during a global pandemic.

Unreasonable Wait Times. Most voters who had to go to the polls during the early voting period or on Election Day could only vote after waiting an unconscionable amount of time in line. Exhibit P (Enriquez Decl.) ¶ 8 (stating “my wait in line was about 8 hours”); Exhibit Q (Parikh Decl.) ¶ 9 (stating she “spent nearly three hours waiting to cast [her] ballot that day”); Exhibit O (I. Hudson Decl.) ¶ 6 (stating that she “waited for approximately two hours in line to vote that day”); Exhibit N (Jackson Decl.) ¶ 18 (stating that she “finally finished voting after about four hours of waiting”); Exhibit C (Junior Decl.) ¶ 7 (stating that he “had to wait in line for about 2 hours”); Exhibit L (Wise Decl.) ¶ 6 (stating that by the time he arrived at his polling location at 6:30 a.m., “there were already forty or fifty people ahead of me”); Exhibit B (Legnon Decl.) ¶ 11 (stating “I had to wait in line for about four hours and 20 minutes to vote”); Exhibit F (Smith Decl.) ¶ 8 (stating “it took me approximately three hours to get to the desks close to the front of the line”); Exhibit H (Bassols Decl.) ¶ 9 (stating “[i]t took me about four hours to vote in-person that day.”); Exhibit A (Bryant Supp. Decl.) ¶ 8 (stating she “had to wait [at the polling location] for about an hour.”); Exhibit R (Pruitt Decl.) ¶ 7 (stating “[i]t took me 5 hours and 20 minutes to vote because of the lines.”).

Unsafe Conditions at Polling Locations. Voters also reported unsafe conditions at polling locations given the ongoing public health crisis, as alluded to in Plaintiffs’ most recent brief. Doc. 123 at 24-25. One voter described the situation inside a polling location as a “nightmare,” noting that “there was no way they could fit so many people and maintain six feet apart.” Exhibit N (Jackson Decl.) ¶ 15. The conditions inside the polling location “freaked out” the voter, and she “felt like [she] would have a panic attack.” *Id.* at ¶ 17. Bryant “thought there would be plenty of space to spread out the voting machines” at her polling location inside a school gymnasium was similarly alarmed by the unsafe conditions on Election Day. Doc. 24 (Bryant Decl.) at ¶ 2; Exhibit A (Bryant Supp. Decl.) ¶ 7. She noted that she “was uncomfortable about waiting in the gym for so long because the voting machines were so close together and because there were a lot of people not wearing masks in the building.” *Id.* at ¶ 8.

Many voters also reported a lack of social distancing enforcement at the polls. One voter stated that “[n]o poll workers were enforcing any social distancing,” and that [i]t was mainly just people on their own who were making sure they were staying six feet apart.” Exhibit B (Legnon Decl.) ¶ 9. Another voter explained that the lack of enforcement meant that “[t]here were some people who were staying six feet apart, but others who were not.” Exhibit H (Bassols Decl.) ¶ 8. Yet another voter stated that “almost no voters were social distancing.” Exhibit

R (Pruitt Decl.) ¶ 12. One voter described how “there were people handing out food and water” at his polling location. Exhibit P (Enriquez Decl.) ¶ 12. While the voter found the gesture “necessary and kind,” he acknowledged “that was another risk of transmission that did not make me feel comfortable.” *Id.* Because he had to spend nearly eight hours in line, the voter eventually put aside his fears and took “a total of three apples, a cookie, and two water bottles” over the course of his long wait. *Id.* at ¶ 13. He added that “[m]ultiple people were reaching into the same bag of apples, and of course, no one was wearing gloves.” *Id.*

Voters also reported having to spend unnecessary time inside the polling locations because of a lack of clarity on where to report. One voter stated that the inside of a polling location was “pretty confusing,” noting that he “spent some time wandering aimlessly in the building until [he] finally figured out where [he] was supposed to go.” Exhibit L (Wise Decl.) ¶ 9. Another voter similarly mentioned that he “had to spend some time inside the polling location figuring out where to go,” and that it took additional time “getting poll workers’ attention so [he] could go where [he] needed to go.” Exhibit I (Kuttig Decl.) ¶ 9.

The burdens of in-person voting in the run-up to the June 2020 primary were so widespread that elections officials privately and publicly acknowledged them. Shortly before the June 9, 2020 primary, the Chair of the Fulton County Board of Registration and Elections (“BRE”), told the Director of the Fulton County BRE,

that “[w]ith so many who have tried to vote absentee deciding that they’d better vote in person, I predict that June 9 won’t be pretty because of long lines.” Exhibit AF. Earlier, she had encouraged a voter “not to early-vote on June 5, which will see a lot of voter traffic, and not to vote on June 9, same reason.” Exhibit AG.

Some elections officials went further, expressing support for conducting the June primary election through mail-in ballot exclusively because of the mounting problems with in-person voting. In March of 2020, the Director of the Fulton County BRE noted to members of the Fulton County BRE that “It could be that the May election goes all mail if this situation gets worse. It may be the smartest thing to do the May election by mail since we have no idea when this is going to end.” Exhibit AH. Similarly, a member of the Gwinnett County Board of Registration and Elections stated to Chair of the Board that “[a]s big an advocate as I am of early voting I wouldn’t be upset if the Governor made this a strictly by mail election.” Exhibit AE. He addressed the risks posed to both voters and poll-workers: “The in person voters are at risk but a much greater exposure risk is to our poll workers. Age and ethnicity are showing up as strong correlations regarding deaths from covid 19. Our average poll workers fall into these categories.” *Id.*

III. THE POSTAGE REQUIREMENT EXACERBATED THE PROBLEMS WITH VOTING BY MAIL

In addition to the problems detailed above, there were serious problems with the absentee ballot voting process in the June 2020 primary. These problems demonstrate why lifting the postage requirement is crucial to ameliorating an already cumbersome process, and continue to highlight the burdens faced by voters for *Anderson-Burdick* purposes.

Absentee Ballots Did Not Arrive. A number of voters in the June 2020 primary either did not receive absentee ballots after submitting an application for a ballot or received a ballot after the election was over. *See e.g.* Exhibit S (Aguillard Decl.) ¶ 9 (“I never ended up receiving an absentee ballot”); Exhibit Q (Parikh Decl.) ¶ 7 (“[t]he week before the election, I still had not received my ballot”); Exhibit J (Moore Decl.) ¶¶ 13-14 (“I never ended up receiving my absentee ballot” and was told by county registrar’s office that “there was nothing they could do to help me vote that day [Election Day]”); Exhibit K (Burke Supp. Decl.) ¶ 4 (“I never received my ballot in the mail”); Exhibit M (Waddoups Decl.) ¶ 4 (“I never ended up receiving my absentee ballot in the mail”); Exhibit N (Jackson Decl.) ¶ 11 (“[t]o this day, I have not received my absentee ballot”); Exhibit O (I. Hudson Decl.) ¶ 3 (“I submitted an application for an absentee ballot at the beginning of April, but never received a ballot in the mail”); Exhibit T (K. Hudson Decl.) ¶ 15 (“When I still had not received my absentee ballot by mail as of June 4, 2020, I

decided that I was not going to wait any longer”); Exhibit U (Kennedy Decl.) ¶ 8 (“I never received my absentee ballot in the mail”); Exhibit H (Bassols Decl.) ¶ 5 (“I never received an absentee ballot”); Exhibit I (Kuttig Decl.) ¶ 7 (“[t]o this day I have not received my absentee ballot”); Exhibit AC (Thomas Decl.) ¶ 7 (“I received my absentee ballot... the day after Election Day”).

Some voters who did not receive their absentee ballots were vulnerable to complications from COVID-19. One voter was a “cancer survivor who also has diabetes and high blood pressure issues.” Exhibit O (I. Hudson Decl.) ¶ 3. Another voter had applied for an absentee ballot this year “because [she has] high blood pressure, which makes the COVID-19 virus more dangerous for [her].” Exhibit N (Jackson Decl.) ¶ 3. One voter had recently been “diagnosed with Bell’s Palsy” and “had to take a lot of steroids to treat [her] condition.” Exhibit S (Aguillard Decl.) ¶ 6. Three senior citizens noted that their age put them at higher risk for complications from the virus. Exhibit U (Kennedy Decl.) ¶ 4 (68 years old); Exhibit T (K. Hudson Decl.) ¶ 3 (65 years old); Exhibit AC (Thomas Decl.) ¶ 11 (68 years old). Some voters who did not receive absentee ballots had requested to vote via mail because, as essential healthcare workers who are in close contact with members of the general public, they did not want to risk transmitting the virus to others. Exhibit Q (Parikh Decl.) ¶ 3 (stating “I am an optometrist, so I have to be in very close contact with patients for my work”); Exhibit S (Aguillard Decl.) ¶ 4

(stating “I work as a pharmacist at Walgreens” and that “there is always a chance that I am interacting with a customer who has COVID-19”). None of these voters received an absentee ballot in time.

Lack of Familiarity with Postal System. Another burden that voters faced was a sheer lack of familiarity and experience with the postal system. One voter was “confused about how many stamps [she] had to put on the ballot” because there were no instructions provided. Exhibit V (Kite Supp. Decl.) ¶ 2. Another said that “[t]he last time I used the postal service before this was over a year ago when I had to return a package.” Exhibit W (Kirslis Supp. Decl.) ¶ 2. On that occasion, the voter “had to go to the post office to help [him] figure out how to do that.” *Id.* This time, however, he “didn’t have the option of going to the post office to ask them if [he] had the right amount of postage” because of the social distancing measures he was taking. *Id.* One voter couldn’t “even remember the last time [he] had to mail something out.” Exhibit I (Kuttig Decl.) ¶ 10.

Other Problems with Absentee Ballots. Even voters who did receive their absentee ballots often experienced problems voting. One voter “received a second absentee ballot” after completing and returning her first ballot, and “was nervous that [her] first ballot wouldn’t be counted anymore.” Exhibit X (Arkin Decl.) ¶ 15. Two voters requested absentee ballots in their temporary out-of-state residences but found out that their ballots were incorrectly sent to their Georgia addresses.

Exhibit U (Kennedy Decl.) ¶ 16; Exhibit J (Moore Decl.) ¶ 14. One voter sent her daughter to the local elections office because she had not received her absentee ballot and “found out that they had sent [her] absentee ballot to a post office box that [she] had not used in about twenty years.” Exhibit Y (Simmons Decl.) ¶ 7. Two other voters reported that their ballot did not come with an envelope to return the completed ballot. Exhibit G (Reid Supp. Decl.) ¶ 2; Exhibit Z (P. Robinson Supp. Decl.) ¶ 2.

Besides having to pay for postage, potentially expose themselves to COVID-19, and wait in extremely long lines, some voters were forced to take extraordinary measures to vote in the June 2020 primary. One 68-year-old voter was temporarily residing in North Carolina and had never received an absentee ballot after requesting one. He then “booked a flight through Travelocity” two days before Election Day so he could vote in-person and then fly back to his temporary residence. Exhibit U (Kennedy Decl.) ¶ 10. When he arrived at the airport early on the morning of June 9, 2020, he “found out that [his] flight had been overbooked and [he] would not be able to take [his] scheduled flight.” *Id.* at ¶ 13. When he could not re-book a ticket on another flight that would allow him to vote in time, he “considered driving back to Georgia to vote in-person, but [he] decided against it because the drive is an eight hundred mile round -trip, and [he is] not in the best physical shape to do such a long drive on such short notice.” *Id.* at ¶ 15. He “spent

about \$100 in cab fares going back and forth from the airport that day.” *Id.* at ¶ 14. Despite his extraordinary efforts, he was unable to vote the June 2020 primary.

Another voter, who was 72 years old, explained the steps she took to vote through absentee ballot this year. She said “I have an immune system disorder called hypogammaglobulinemia. Because of my medical condition, I am more susceptible to infectious diseases.” Exhibit AA (Wright Decl.) ¶ 3. She stated that if she “contract[s] the virus, [she] could die.” *Id.* at ¶ 4. Although she was concerned she would not receive her absentee ballot in time, she “finally received her ballot the weekend before the primary election.” *Id.* at ¶ 8. However, in order for her vote to be counted, she had to physically drop her ballot in the nearest ballot box located to her, which was in Sandy Springs. *Id.* at ¶ 10. She stated, “Sandy Springs is a 20-mile round trip for me. Even though it was a long distance, I had no other option if I wanted to have my vote counted since voting in-person was not possible for me.” *Id.* at 11.

IV. EMPIRICAL EVIDENCE DEMONSTRATES WIDESPREAD BURDENS ASSOCIATED WITH POSTAGE REQUIREMENT

Plaintiffs have also submitted an expert declaration authored by political scientist and voting expert Dr. Matthew A. Barreto. Dr. Barreto is a Professor of Political Science and Chicana/o Studies at the University of California, Los Angeles (“UCLA”) and the faculty director of the UCLA Voting Rights Project. Dr. Barreto has taught courses on voting, published multiple peer-reviewed

academic research papers on voting behavior, and regularly provides his expertise in expert witness reports and declarations relied upon by courts throughout the country. Exhibit AI (Barreto Decl.) ¶¶ 3-7. He has also studied and written about state policies and laws that create burdens and impediments for voters. *Id.* at ¶ 6. In this case, Dr. Barreto was asked “whether there are burdens that voters in Georgia would possibly face if required to obtain and pay for postage on their absentee ballots (vote-by-mail).” *Id.* at ¶ 9.

To conduct his evaluation, Dr. Barreto reviewed two main sources of information. *Id.* First, he conducted a literature review and demographic analysis of the population in Georgia, “to review what effect COVID-19 has had on election access, the process and modes by which voters could obtain proper postage, and the process of how to cast an absentee ballot through the mail.” *Id.* Second, he analyzed the statewide voter file for Georgia to determine the distance between voter’s addresses and the nearest postal facility or location that sells stamps. *Id.* This allowed him “to determine what share of voters reside in ‘postal deserts’ using a methodology developed by the U.S. Department of Agriculture to identify ‘food deserts.’” *Id.*

Based on his analysis, Dr. Barreto concluded that “millions of Georgia voters are in at-risk categories of being burdened by the stamp requirement.” *Id.* at ¶ 12. He identified factors that “present a barrier for a voter to access a post office

or stamp retailer and obtain the necessary number of stamps to cast their mail ballot.” *Id.* The factors identified by Dr. Barreto include:

- the decline in mail familiarity and usage;
- high levels of poverty, low wages or inability to meet self-sufficiency;
- no or limited access to a personal vehicle or reliable transportation;
- language barriers for voters coupled with inadequate service at post office locations for non-English speakers;
- limited access to computer and internet to purchase stamps online;
- high rates of being unbanked; and
- population with many high risk factors for COVID-19.

Id. Dr. Barreto’s report analyzes each of these factors and describes how they burden voters seeking to vote by mail.

Postal Deserts. Dr. Barreto’s empirical analysis shows that a significant number of voters in Georgia cannot easily access stamps and live in “postal deserts.” Dr. Barreto defines a voter as having “postal desert” status if they “1) live more than 0.5 miles away from a postal service in an urban area or 10 miles away from a postal service in a rural area and 2) live in a census tract with a poverty rate above 20%.” *Id.* at ¶ 74. Using the Georgia voter file and a complete list of USPS locations and national retailers who sell stamps, Dr. Barreto “conducted a spatial analysis of distance to measure how near or far voters live from locations that sell

stamps.” *Id.* at ¶ 71. Dr. Barreto notes that his methodology closely adheres to the U.S. Department of Agriculture (“USDA”) methodology for classifying “food deserts.” *Id.* He explains that “[t]he USDA low-access and food desert designations are based on rigorous methodology and considered critical to understanding barriers and disparities in America.” *Id.* at ¶ 75. He further notes that the USDA’s Economic Research Service has applied this rigorous methodology in collaboration with the U.S. Departments of the Treasury and Health and Human Services. *Id.*

This analysis shows that “[o]verall, 40% of voters in Georgia can be described as having low-access to any postal service provider where they could purchase stamps, which would represent 2.78 million currently registered voters.” *Id.* at ¶ 77. A voter is defined as having “low access” to any postal service provider if “they are more than 1 mile away from a postal service providing postage stamps in an urban area or more than 15 miles in a rural area.” *Id.* at ¶ 74. Dr. Barreto explains that this result is exacerbated when controlling for race and ethnicity: “Statewide, while 8% of White voters face postal desert designation, 17% of Latinos and 28% of Blacks on the voter file are mapped as living in postal deserts.” *Id.* at ¶ 79.

In addition, Dr. Barreto later warns that “while some grocery stores sell stamps, not every community has access to a grocery store.” *Id.* at ¶ 87. Citing the Atlanta Journal Constitution, he notes that “nearly 2 million Georgia residents[]

live in food deserts.” *Id.* (citing Gracie Bonds Staples, *Part 1: Starving for Nutrition*, *The Atlanta Journal-Constitution* (Mar. 6, 2016), <https://www.ajc.com/news/starving-for-nutrition/o1PScQcQVfdVvubk2Zt9AJ/>).

Burdens Purchasing Stamps. Dr. Barreto also examines the cost of postage and the burdens Georgia voters face in purchasing stamps online. He notes that the cost of postage increased by 10% in 2019—“the largest single-year price hike in the history of the U.S. postal service.” *Id.* at ¶ 39. He states that “many retailers only sell stamps in booklets of 20 for a cost of \$11.” *Id.* He identifies large discrepancies in stamp availability and payment options across retailers. *See, id.* at ¶¶ 88-89.

Dr. Barreto also examines the burdens that Georgia voters face when purchasing stamps online. He explains that in order to purchase stamps online, a voter must, at minimum, have the following: “a credit card or PayPal account linked to a bank account with \$7.90 available funds, access to a smartphone or computer, and access to an internet connection, sufficient literacy in English, Spanish or Chinese, an e-mail address and a mailing address.” *Id.* at ¶ 39. Access to the internet or internet-connected devices can pose a significant burden to Georgia voters. *Id.* at ¶ 44. According to Census data, “23% of households in Georgia do not have a desktop or laptop computer (891,283 total households) and 14% do not have a smartphone (537,672 total households).” *Id.* Additionally,

“611,188 households, or about 16%, do not have access to the Internet.” *Id.* In “low-income households in Georgia earning less than \$20,000. . . 38% have no Internet access.” *Id.*

As for the bank account requirement, Dr. Barreto cites a Federal Deposit Insurance Corporation (“FDIC”) survey, noting that “10.6 percent of Georgians are unbanked and 24.1 percent are underbanked.” *Id.* at ¶ 47. These statistics are even more dire at lower income levels. Dr. Barreto notes that “20.5 percent of Georgians with incomes below \$30,000 are unbanked.” *Id.*

Dr. Barreto also explains that there is a time delay that must be accounted for when purchasing stamps online. *Id.* at ¶ 44. He states that “[c]urrently the usps.com website advises there is a five to seven-day delay before postage a postage order is shipped. After this, additional shipping time varies and could take another week.” *Id.* (For one voter, it took two weeks. Doc. 48.)

Declines in USPS Mail Usage. Dr. Barreto notes the “lessened use of the post office” as a barrier that is exacerbated by the postage requirement. *Id.* at ¶ 21. He explains how the “lack of mail usage has also translated to a lack of awareness of the services offered at the USPS.” *Id.* A study conducted by the Office of the Inspector General emphasizes that there must be an effort to research younger users’ lack of “awareness of current services and identification of enhanced features, price, placement, and availability to encourage use.” *Id.* at ¶ 22 (citing

Declines in U.S. Postal Service Mail Volume Vary Widely across the United States. Office of Inspector General. RARC Report Number RARC-WP-15-010. April 27, 2015. https://www.uspsoig.gov/sites/default/files/documentlibrary-files/2017/RARC-WP-15-010_0.pdf). Dr. Barreto concludes that this “[l]ack of general awareness can make a voter less likely to engage with USPS or postal service,” thus making the postage requirement even more onerous. *Id.*

Lack of Transportation Access. Not having access to forms of transportation make it difficult, if not impossible, for voters to go to a local post office or a retailer to purchase postage. Citing data from the Census American Community Survey, Dr. Barreto notes that “237,296 total households in Georgia had no vehicle available.” *Id.* at ¶ 51. Public transportation options are also often not available to Georgia voters. Dr. Barreto states that “[o]f Georgia’s 159 counties, only 124 of them have public transit services, leaving 35 counties without any public transit services.” *Id.* at ¶ 54. Even in metropolitan areas, public transportation can be inadequate to address commuters’ needs. *Id.* at ¶ 56. According to one study analyzing American Community Survey data, “Atlanta was one of three metro areas that ‘left over 100,000 zero-vehicle households without access to transit.’” *Id.*

Language Barriers. Dr. Barreto also concludes that “[l]imited-English-proficient Spanish-speaking voters are heavily burdened by Georgia’s absentee

voting process.” *Id.* at ¶ 59. According a June 2020 report authored by the USPS Office of the Inspector General (“OIG”), the USPS was not providing adequate services for non-English/limited-English-speaking customers. *Id.* at ¶ 68. Dr. Barreto notes that according to the OIG’s investigation, “retail customer service clerks did not use available tools and resources to facilitate communication with non-English-speaking customers.” *Id.* Based on demographic data, Dr. Barreto estimates that “statewide there are over half-million Georgians who do not speak English well and may face burdens in obtaining postage.” *Id.* at ¶ 59.

COVID-19 Limitations on Voters’ Post Office Access. Dr. Barreto also analyzes the effects of COVID-19 and how exposure to the virus “places a burden on voters who lack the ability to go to the post office because of their high risk of contracting the virus and because the Post Office presents an opportunity to become infected.” *Id.* at ¶ 95. He cites data from the Georgia Department of Public Health which states that Georgians over the age of 60 “comprise 85.6% of the state’s total COVID-19 related deaths.” *Id.* at ¶ 100. Dr. Barreto notes that “more than half of those currently affected by the virus reported a comorbidity – the presence of two chronic diseases in the same patient.” *Id.* at ¶ 102. He lists the individuals at greatest risk for severe illness in Georgia, as designated by the CDC:

- 146,633 adults aged 85 and older;
- 233,885 adults 18 years and older that have a chronic kidney disease;

- 545,733 adults 18 years and older that suffer from chronic obstructive pulmonary disease (COPD);
- 2,533,761 adults 18 years and older are obese (BMI 130 or higher);
- 935,542 adults 18 years and older have a cardiovascular disease; and
- 919,951 adults 18 years and older have some form of diabetes. *Id.*

It is important to note that Dr. Barreto's figures likely underestimates the number of Georgians at risk of severe illness because the CDC has recently expanded the categories of people deemed high-risk of severe illness or death from COVID-19. Exhibit AJ.

Dr. Barreto also notes that these findings are even more alarming considering that Georgia has begun experiencing a resurgence of COVID-19. He states that “[a]ccording to the Centers for Disease Control and Prevention (CDC), Georgia ranks as a top ten state for COVID-19 cases. As of June 10 [one day after the June 2020 primary], Georgia has 71,276 total positive cases, of which 69,381 are confirmed for COVID-19.” Exhibit AI (Barreto Decl.) ¶ 105. According to the Georgia Department of Public Health, African-Americans have both the most reported confirmed cases of COVID-19 (30% of total confirmed cases) as well as the most deaths attributed to the virus (48% of all confirmed deaths). *Id.* at ¶ 106.

As Dr. Barreto notes, “[t]he spread of COVID-19 in Georgia makes waiting in line at the postal office for postage a heightened risk for contracting the virus.”

Id. at ¶ 110. Dr. Barreto finds that this risk is heightened by the problems which have already plagued the USPS. According to the USPS Office of the Inspector General, “[r]esidents in Atlanta have complained that they received their mail only four or five times a week, and stated that their USPS office is inconsistent, sporadic, slow, and often behind schedule.” *Id.* According to a 2018 Performance Report, “USPS achieved a score of 39.19%, significantly lower than the 69.17% target. The primary issue that led to USPS falling short of target scores in consecutive years was the lengthy wait times to speak to USPS representatives at post offices.” *Id.* at ¶ 111.

Dr. Barreto also highlighted the dangers of in-person voting. According to a National Bureau of Economic Research study of the Wisconsin primary held in April of 2020 cited by Dr. Barreto, there was a “a significant association between in-person voting and the spread of COVID-19 in the weeks after the Wisconsin election.” *Id.* at ¶ 115. Dr. Barreto notes that according to this study, “in-person voting was related to nearly 700 more or about 7.7% of the total number of confirmed cases during the weeks following the election.” *Id.*

Demographic Obstacles. Dr. Barreto concludes that “millions of people will be burdened by not receiving an absentee ballot with postage included” because of “increased COVID-19 related unemployment, unemployment generally, poverty, homelessness, disabilities, the expense of childcare, lack of internet,

limited grocery and retail options, and other demographic issues in Georgia.” *Id.* at ¶ 24. Citing data from the United States Census Bureau, Dr. Barreto notes that “12.1% of households in the state of Georgia earn less than \$15,000 in annual income and overall, 14.3% live below the poverty line.” *Id.* at ¶ 26. Dr. Barreto explains that “[p]overty rates in Georgia are particularly stratified among racial lines.” *Id.* As such, Dr. Barreto concludes that “low-income Georgians, especially Black and Latino Georgians will face a burden if they do not have access to a pre-paid postage for an absentee ballot.” *Id.*

Education and disability rates can also be crucial in understanding the barrier that the postage requirement imposes on voters. Dr. Barreto notes that “[n]umerous academic studies in the fields of public policy and public administration have identified educational attainment as a key characteristic in being able to successfully interpret government regulation and navigate and engage public bureaucracies.” *Id.* at ¶ 27. He also explains that “[p]eople with disabilities will face additional burdens in obtaining a stamp.” *Id.* at ¶ 30. Given that 12.2% of people over the age of 18 have a disability in Georgia, this represents a significant barrier to voting. *Id.*

Finally, Dr. Barreto notes that economic considerations such as homelessness, childcare needs, disabilities, and COVID-19 unemployment will also aggravate the burden of the postage requirement on Georgia voters. *Id.* at ¶ ¶

27-36. Dr. Barreto notes that the rising unemployment rate in Georgia between February and May of 2020, as well as the commensurate increase in unemployment insurance claims presages economic burdens on voters that are exacerbated by the postage requirement. *Id.* at ¶ 32.

CONCLUSION

The aforementioned documents show that the postage requirement imposed serious burdens on voters in the June 9, 2020 primary, and will continue to impose serious burdens on voters in the November general election. The Plaintiffs' motion for injunctive relief should therefore be granted.

Respectfully submitted this 30th day of June, 2020.

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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.

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CERTIFICATE OF SERVICE

I hereby certify that on June 30, 2020, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system.

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