

**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

**RESPONSE OF SECRETARY OF STATE BRAD RAFFENSPERGER  
TO THE COURT'S SUA SPONTE ORDER OF APRIL 21, 2020  
REGARDING ABSENTEE BALLOTS IN DEKALB COUNTY**

Secretary of State Brad Raffensperger (the "Secretary") submits this response to the Court's sua sponte order directing Defendants "to file with the Court and deliver to chambers physical copies of (a) five different sample absentee ballots for DeKalb County (Democratic and Republican, each with and without prior early voting in the Presidential Preference Primary, and Independent); and (b) the two envelopes to be included in the package sent to a voter who has registered to vote by absentee ballot. Defendants shall file

images of the above by no later than today, and shall deliver physical copies by hand delivery or express mail to chambers care of Harry Martin by no later than 1pm tomorrow” (the “Order”).<sup>1</sup>

The Secretary has attached responsive ballots as a single “Exhibit 2.” Responsive envelopes are attached as a single “Exhibit 3.” The Secretary is not in possession of any hard copies of the exhibits and will be unable to produce hard copies of the exhibits for delivery to the Court tomorrow.

These documents are conditionally submitted subject to the Secretary’s respectful objection to the Court’s consideration of the documents when deliberating over the Plaintiffs’ Motion for Preliminary Injunction (the “Motion”), the Complaint, or subsequent pleadings.

The nature of this Secretary’s objection is based on principles of evidence and the burden imposed on the Plaintiffs as the party seeking extraordinary relief. It is also something that the Secretary must raise now or potentially waive. Plaintiffs have not requested the information sought by the Court, and it is the Plaintiffs who bear the burden of proof in the proceeding on their Motion. *McDonald’s Corp. v. Robertson*, 147 F.3d 1301, 1306 (11th Cir. 1998). If Plaintiffs fail to put sufficient evidence before the

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<sup>1</sup> The Order does not have a docket number. A true and accurate copy of the minute entry order is attached as “Exhibit 1.”

Court to satisfy their burden, the Motion must be denied. *Id.* It necessarily follows that the Plaintiffs should not be able to rely on evidence submitted by the Secretary at the Court's direction to satisfy their burden.<sup>2</sup>

To be sure, the Secretary recognizes the importance of this proceeding and the right to vote. The Secretary also is grateful for the commitment of this Court to reach the right conclusion on this important issue. The Secretary feels that he must raise these objections now, however, and the Secretary does so with the highest amount of respect for this Court and its obligations under the law.

Respectfully submitted this 21st day of April, 2020.

/s/ Josh Belinfante  
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<sup>2</sup> The Eleventh Circuit has addressed this issue from a slightly different perspective, and its precedent provides an alternative basis for the Secretary's objection. *See Johnson v. United States*, 780 F.2d 902, 910 (11th Cir. 1986). *Cf. Paez v. Sec'y, Florida Dep't of Corr.*, 947 F.3d 649, 652 (11th Cir. 2020) (addressing judicial notice).

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**CERTIFICATE OF COMPLIANCE**

Pursuant to L.R. 7.1(D), the undersigned hereby certifies that the foregoing RESPONSE OF SECRETARY OF STATE BRAD RAFFENSPERGER TO THE COURT'S SUA SPONTE ORDER OF APRIL 21, 2020 REGARDING ABSENTEE BALLOTS IN DEKALB COUNTY has been prepared in Century Schoolbook 13, a font and type selection approved by the Court in L.R. 5.1(B).

/s/ Josh Belinfante  
Josh Belinfante

**CERTIFICATE OF SERVICE**

I hereby certify that on this day, I electronically filed the foregoing  
RESPONSE OF SECRETARY OF STATE BRAD RAFFENSPERGER  
TO THE COURT'S SUA SPONTE ORDER OF APRIL 21, 2020 REGARDING  
ABSENTEE BALLOTS IN DEKALB COUNTY with the Clerk of Court using  
the CM/ECF system, which will automatically send counsel of record e-mail  
notification of such filing.

This 21st day of April, 2020.

/s/ Josh Belinfante  
Josh Belinfante