

IN THE SUPERIOR COURT OF FULTON COUNTY  
STATE OF GEORGIA

REPUBLICAN NATIONAL COMMITTEE,  
AND GEORGIA REPUBLICAN PARTY,  
INC.,

Plaintiffs,

v.

STATE ELECTION BOARD, BRAD  
RAFFENSPERGER, REBECCA SULLIVAN,  
DAVID WORLEY, MATTHEW  
MASHBURN, and ANH LE,

Defendants.

Civil Action File No.: 2020CV343319

**MOTION OF AMICI CURIAE AFRICAN METHODIST EPISCOPAL CHURCH,  
LATINO COMMUNITY FUND, INC., AND BLACK ALLIANCE FOR JUST  
IMMIGRATION TO FILE AN AMICUS BRIEF IN OPPOSITION  
TO PLAINTIFFS' MOTION FOR TEMPORARY RESTRAINING ORDER OR  
INTERLOCUTORY INJUNCTION**

Amici, the African Methodist Episcopal Church (“AME Church”); Latino Community Fund, Inc. (“LCF”); and Black Alliance for Just Immigration (“BAJI”), hereby move this Court for leave to file an amicus brief opposing Plaintiffs Republican National Committee and Georgia Republican Party, Inc.’s Motion for Temporary Restraining Order or Interlocutory Injunction. As explained in the attached brief, amici are non-profit, non-partisan organizations that have engaged in extensive voter registration, education, and mobilization efforts for the 2020 U.S. elections, including the January 5 runoff. Amici have a strong interest in ensuring that voters in the communities that they serve can vote safely and securely during the ongoing COVID-19 pandemic. Amici seek to assist this Court by offering their unique perspectives and experience regarding the consequences for voters in Fulton County and across the state should the relief requested in Plaintiffs’ motion be granted at the eleventh hour.

WHEREFORE, amici request that this Court accept and consider the BRIEF OF AMICI CURIAE AFRICAN METHODIST EPISCOPAL CHURCH, LATINO COMMUNITY FUND, INC., AND BLACK ALLIANCE FOR JUST IMMIGRATION IN OPPOSITION TO PLAINTIFFS' MOTION FOR TEMPORARY RESTRAINING ORDER OR INTERLOCUTORY INJUNCTION, attached hereto.

Respectfully submitted, this 17th day of December, 2020.

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# EXHIBIT A

**IN THE SUPERIOR COURT OF FULTON COUNTY  
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COMMUNITY FUND, INC., AND BLACK ALLIANCE FOR JUST IMMIGRATION IN  
OPPOSITION  
TO PLAINTIFFS' MOTION FOR TEMPORARY RESTRAINING ORDER OR  
INTERLOCUTORY INJUNCTION**

Amici Curiae African Methodist Episcopal Church, Latino Community Fund, Inc., and the Black Alliance for Just Immigration respectfully submit the following brief asking this Court to deny Plaintiffs' request for eleventh-hour relief that would alter rules and regulations pertaining to drop boxes in an election that is already underway, as well as place vulnerable voters at increased risk of contracting COVID-19.

**INTRODUCTION**

The wide availability of drop boxes during this election cycle has allowed Georgia voters to avoid United States Postal Service ("USPS") delays and ensure that their absentee ballots will arrive on time to be counted, all while limiting their risk of exposure to COVID-19. Now, with COVID-19 infection rates surging to record-breaking levels, Plaintiffs seek to severely limit the availability of safe, reliable, and secure drop boxes in a runoff that is already well underway.

Amici respectfully ask this Court to deny the relief requested in Plaintiffs’ motion for a temporary restraining order or interlocutory injunction, Pls.’ Mot. at 15–16, which would require the Secretary of State to prepare and disseminate guidance to county registrars and superintendents to reduce the availability of drop boxes to regular business hours ahead of the January 5 runoff elections. First, Plaintiffs’ requested relief will endanger voters’ safety and undermine an already precarious pandemic response. Voter turnout is expected to be extremely high during the January 5 runoff.<sup>1</sup> Coupled with the risk of USPS delays, especially during the holidays, the reduction of drop box hours could have disastrous health and election integrity consequences throughout the state. Second, last minute changes to drop box availability will cause voter confusion and severely disrupt the voting plans of potentially thousands of voters who intend to submit their absentee ballots by drop box due to holiday closures of early voting sites and personal holiday plans. Third, limiting the hours that voters may deliver their absentee ballot by drop box has nothing to do with Plaintiffs’ professed interest in drop box security. Fourth, giving the public—including conspiracy theorists and white supremacists around the country—real-time access to surveillance feeds is unnecessary and puts election workers and voters at risk of intimidation and violence.

Georgia voters have weathered unprecedented challenges in exercising their right to vote in a world completely changed by COVID-19. Rather than work to protect voters in the January 5 runoffs, Plaintiffs now look to add to their burdens by rolling back voting methods widely known

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<sup>1</sup> See generally, Debbie Elliott, ‘*Don’t Game Our System*’: *How the Race to Georgia Senate Runoff is Heating Up*, NPR (Nov. 20, 2020), <https://www.npr.org/2020/11/20/936826277/dont-game-our-system-how-the-race-to-georgia-senate-runoff-is-heating-up>. It was recently reported that over \$125 million has already spent on advertising for this election. *Millions of dollars pour into Georgia ahead of Senate runoff elections*, CBS News (Nov. 25, 2020), <https://www.cbsnews.com/video/millions-of-dollars-pour-into-georgia-ahead-of-senate-runoff-elections/>.

to reduce the risk of fatality. Amici respectfully request that this Court consider the predicament of the voter and deny Plaintiffs' motion for temporary restraining order or interlocutory injunction.

### **STATEMENT OF INTEREST**

Amicus Curiae African Methodist Episcopal ("AME") Church was founded in 1816 and was the first independent Protestant denomination to be founded by Black people. Missionaries from the AME Church arrived in Georgia in the waning months of the civil war and played a vital role organizing new churches during the Reconstruction era. Today, there are more than 500 AME churches in Georgia, with 36 congregations in Atlanta alone. The AME Church has always placed a strong emphasis on social service. As such, the denomination folds its primary mission of preaching and religious education into a secondary mission of service to the homeless, the imprisoned, the poor, and other needy persons.

The AME Church played a key role in the civil rights movement, with AME churches serving as organizational centers for Black civil rights leaders. Today, the AME Church continues to encourage civic participation among its members and to advocate for the civil rights of Black people. In 2020, the AME Church launched its "AME Voter Alert (V-Alert)" program to increase voter education, mobilization, and registration for the 2020 US elections. Ahead of the November 3 general election, the AME Church offered up every single one of its Georgia churches to serve as polling sites if needed.

Amicus Curiae Latino Community Fund, Inc. ("LCF Georgia") is a nonprofit, nonpartisan organization supporting Latinx-serving organizations and the Latino community in Georgia by advancing people's democracy through advocacy, civic participation, and research. It also works to protect, defend, and build community through program development and technical assistance efforts, and provides access to economic opportunity through collective investments in grants and

scholarships. In coalition with other Latino-led organizations, LCF Georgia mobilizes thousands of Latino voters across Georgia through a text-to-vote operation, mailers, literature drops, and deploying teams of election protection volunteers for early and day-of voting. LCF Georgia intends to again train and deploy an election protection team ahead of the January 5 runoff election and place 1 million texts and phone banking calls, send over 250,000 mailers, and canvass in five counties to motivate Latino voter turnout.

Amicus curiae Black Alliance for Just Immigration (“BAJI”) educates and engages African American and Black immigrant communities to organize and advocate for racial, social, and economic justice. The Local BAJI Organizing Committee in Georgia builds coalitions and initiates campaigns among communities to push for racial equity and human rights. This includes efforts to provide information to African Americans and Black immigrants to be able to safely vote, especially in Atlanta, which has the third highest population of African immigrants in the country. BAJI has also worked with the Leadership Conference Education Fund to launch the Black Justice is Our Justice campaign, which highlights stories and promotes acts of real and meaningful solidarity and unity among diverse immigrant groups to empower and mobilize immigrant voters.

### **BACKGROUND**

A record number of Georgia voters are set to again exercise their fundamental right to vote in the January 5 runoff. These voters have by now participated in multiple elections conducted during a deadly pandemic and have waited in some of the longest lines in the country to participate in our democracy. And now, in the third and final statewide election this cycle, after a painful and difficult year, late-breaking litigation threatens to restrict voters’ avenues for casting their ballots on the thinnest of legal and factual pretexts. Pls.’ Mot. at 13 (arguing relief from “competitive harm”). Specifically, Plaintiffs disagree with the State Election Board’s emergency drop box rule

and would prefer that the Secretary of State limit the hours that a voter may deliver their ballot to a drop box. First Am. Compl. ¶¶ 58–71. Plaintiffs also shamelessly open the door to intimidation of voters and election workers with their request that security footage of the drop boxes be made “publicly available via real time or near-real time streaming,” *Id.* ¶¶ 72–79 & at 26, in an electoral environment in which death threats have already become routine.

In response to the COVID-19 emergency, the State Election Board initially permitted voters to deliver their absentee ballots to drop boxes—tamper-proof, typically weather- and fire-resistant metal structures built sturdier than a USPS mail box and generally weighing at least 600 pounds<sup>2</sup>—on July 1, 2020.<sup>3</sup> The rule did not limit the hours during which a voter may deliver an absentee ballot to a drop box, out of deference to the discretion of county elections officials who know their respective county’s needs best. On November 23, 2020, the State Election Board ensured that drop boxes would again be a voting option during the January 5 elections. In adopting the emergency drop box rule that is currently in effect, the Board amended the language of the previous rule to make video recordings of the drop box locations “available to the Secretary of State investigators upon request or to the public, upon request, as soon as possible or at a charge that is not cost prohibitive to the public, if there is a charge.”<sup>4</sup> Like the previous iteration of the

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<sup>2</sup> See Alex Hufford, *The Rise of Ballot Drop Boxes Due to the Coronavirus*, Lawfare (Aug. 27, 2020), <https://www.lawfareblog.com/rise-ballot-drop-boxes-due-coronavirus>; see also SEB Emergency Rule 183-1-14-.08-.14, <https://sos.ga.gov/admin/uploads/SEB%20Rule%20183-1-14-0.8-.14.pdf> (adopted Nov. 23, 2020).

<sup>3</sup> See State Election Board of Georgia, Summary of State Election Board Special Meeting July 1, 2020, <https://sos.ga.gov/admin/files/Summary%20-%2007.1.20.pdf> (noting the Board’s adoption of the Secure Absentee Ballot Drop Boxes Emergency Rule).

<sup>4</sup> See SEB Emergency Rule 183-1-14-.08-.14, <https://sos.ga.gov/admin/uploads/SEB%20Rule%20183-1-14-0.8-.14.pdf> (adopted Nov. 23, 2020).



rule, the current emergency drop box rule does not contain restrictions on the hours voters may deliver their ballots to a drop box.

Less than a month before the January 5 elections, and with voting well underway, Plaintiffs filed their Complaint in the present litigation to unduly increase the burden on voters' access to the ballot box. Specifically, their Complaint seeks declaratory, injunctive, and/or mandamus relief to require the Secretary of State to distribute guidance to county registrars that voters may only deposit absentee ballots in drop boxes during regular business hours and to make footage of the drop boxes available to the public in real time or near-real time. First Am. Compl. at 25–26. On December 11, 2020, three days before the start of the advance voting period, Plaintiffs moved for immediate relief via a temporary restraining order or interlocutory injunction based on vague or nonexistent legal theories. Pls.' Mot. at 15–16. By the time the Court decides the Plaintiffs' motion, early voting will have already begun and drop boxes will have been available under the existing rules for several days.

### **ARGUMENT AND CITATIONS TO AUTHORITIES**

The Court should deny Plaintiffs' motion for temporary restraining order or interlocutory injunction. Plaintiffs' request to limit drop box availability to business hours puts voters' health at risk and goes against CDC guidance to increase alternatives to traditional in-person voting at a time when COVID-19 cases are on the rise in Georgia. Such relief also burdens potentially thousands of voters who had requested an absentee ballot in reliance on the availability of drop boxes outside business hours. Plaintiffs have also failed to show that limiting the hours that voters may deliver their absentee ballot by drop box enhances ballot security. Amici urge the Court to consider the burden that Plaintiffs' requested relief would have on voters just three weeks from the January 5 runoff election, and accordingly deny Plaintiffs' motion.

**I. Wide Availability of Drop Boxes is Critical to Ensuring Voters Can Safely Cast a Ballot During this Ongoing Pandemic**

The ability to deliver an absentee ballot to a drop box outside business hours is essential to the health and safety of voters considering widely reported issues with the United States Postal Service and as Georgia faces record COVID-19 exposure and fatalities.

Like many states, Georgia continues to grapple with the catastrophic consequences of COVID-19. Just last week, Georgia became the tenth state to reach 10,000 deaths due to COVID-19.<sup>5</sup> Georgia also set a new record for the highest seven-day average for new, daily confirmed cases, with daily averages of new confirmed cases far surpassing the records set earlier this summer.<sup>6</sup> The Georgia Department of Public Health alarmingly reported at the beginning of the month that many of the state's hospitals were running out of beds, with some hospitals at 97% capacity and just two ICU beds remaining and others with absolutely no space to accept referred patients.<sup>7</sup> And the worst is still to come.<sup>8</sup>

The State Election Board's emergency rule is consistent with the recommendations issued by the Centers for Disease Control and Prevention ("CDC"). Specifically, the CDC recommends election officials offer "[l]ower risk election polling settings," which include having "a wide variety of voting options" and "longer voting periods (more days and/or more hours)," which reduce the likelihood that voters will need to gather at the same time and same place to cast a

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<sup>5</sup> *Deaths from COVID-19 in Georgia surpass 10,000*, Fox 5 Atlanta, (Dec. 12, 2020), <https://www.fox5atlanta.com/news/deaths-from-covid-19-in-georgia-surpass-10000>.

<sup>6</sup> *Id.*

<sup>7</sup> Johnny Edwards & Ariel Hart, *Georgia hospitals already pushing capacity as they brace for COVID surge* (Dec. 4, 2020), <https://www.ajc.com/news/coronavirus/georgia-hospitals-already-pushing-capacity-as-they-brace-for-holiday-peak/2UWSZ2NAH5E2XIBPDIDGHZJ3NE/>.

<sup>8</sup> *Id.*

ballot.<sup>9</sup> One of the “voting options” critical to slowing the spread of COVID-19 is the ballot drop box, which the Cybersecurity and Infrastructure Security Agency (“CISA”) describes as “a secure and convenient means for voters to return their mail ballot.”<sup>10</sup> For the voter, drop boxes “minimize[] the number of COVID-19-related risks associated with in-person voting,”<sup>11</sup> such as coming into close contact with poll workers or poll watchers who may or may not be wearing masks,<sup>12</sup> or waiting in a slow-moving line amongst hundreds of voters—an unfortunate reality for too many Georgians.<sup>13</sup> Drop boxes that are available outside of business hours further minimize the risk of crowding and alleviate the potential for long lines at the polls.

Drop boxes are not only a safer option for voters, but a more reliable one. In light of the widely reported issues with the USPS during the COVID-19 pandemic, and due to inevitable mailing delays during the holiday season, many voters are not comfortable returning their absentee ballots by mail.<sup>14</sup> Many others may not have received their absentee ballot with enough time to

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<sup>9</sup> Centers for Disease Control and Prevention, *Polling Locations and Voters*, <https://www.cdc.gov/coronavirus/2019-ncov/community/election-polling-locations.html> (last visited Dec. 13, 2020).

<sup>10</sup> Cybersecurity and Infrastructure Security Agency Elections Infrastructure Government Coordinating Council and Sector Coordinating Council’s Joint COVID Working Group, *Ballot Drop Box*, [https://www.eac.gov/sites/default/files/electionofficials/vbm/Ballot\\_Drop\\_Box.pdf](https://www.eac.gov/sites/default/files/electionofficials/vbm/Ballot_Drop_Box.pdf), at 1 (last visited Dec. 15, 2020).

<sup>11</sup> *Id.* at 1–2.

<sup>12</sup> See *Mask requirements at election polls cause concern for voters and workers*, WSB-TV ATLANTA (Sept. 30, 2020), <https://www.wsbtv.com/news/mask-requirements-election-polls-cause-concern-voters-workers/7I62V7E3ZJHY5NZBGFMC6ACF3I/>.

<sup>13</sup> See Mark Niese & Brad Schrade, *Election troubles fuel suppression worries in Georgia*, Atlanta Journal-Constitution (Oct. 23, 2020), <https://www.ajc.com/politics/election-troubles-fuel-suppression-worries-in-georgia/JAMSJSGRLNGJZMXLQ5FWPMPETM/>; see also Stephen Fowler, *Why Do Nonwhite Georgia Voters Have to Wait in Line For Hours? Too Few Polling Places* (Oct. 17, 2020), <https://www.npr.org/2020/10/17/924527679/why-do-nonwhite-georgia-voters-have-to-wait-in-line-for-hours-too-few-polling-pl>.

<sup>14</sup> See Nicole Carr & Matt Johnson, *Postal Service Funding, Delays Lead to Mail-in Voting Concerns in Georgia*, WSB-TV ATLANTA (Aug. 16, 2020),

return their ballot to their county election office. Because absentee ballots that arrive to the county election office after 7:00 p.m. on Election Day will be disqualified,<sup>15</sup> many voters will be concerned that the USPS may not deliver their absentee ballot by the deadline and will instead choose to vote by drop box.

Drop boxes are an especially critical voting option for elderly voters and those who have certain underlying medical conditions that place them at greater risk of severe illness from COVID-19.<sup>16</sup> Drop boxes that are available 24 hours a day, seven days a week may also be the only acceptable option to vote for essential workers who need to exercise extra precautions, such as doctors and nurses, grocery store clerks, and package delivery couriers who work during business hours to treat us, feed us, and deliver us goods. Moreover, these workers are disproportionately people of color<sup>17</sup> who face increased risk of severe illness and death from COVID-19 based on longstanding systemic and social inequities.<sup>18</sup>

Plaintiffs' requested relief would severely limit a reliable and relied upon voting option for those who are especially vulnerable in this ongoing pandemic as well as those that we depend on to keep us safe.

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<https://www.wsbtv.com/news/local/atlanta/postal-service-funding-delays-lead-mail-in-voting-concerns-georgia/M3T2T2B2MBCIFAC2IZ67UKWIM4/>.

<sup>15</sup> O.C.G.A. § 21-2-386(a)(1)(F).

<sup>16</sup> Centers for Disease Control and Prevention, *COVID-19 (Coronavirus Disease): People with Certain Medical Conditions*, <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-with-medical-conditions.html> (last updated Dec. 1, 2020).

<sup>17</sup> Celine McNicholas & Margaret Poydock, *Who are essential workers?*, Economic Policy Institute (May 19, 2020), <https://www.epi.org/blog/who-are-essential-workers-a-comprehensive-look-at-their-wages-demographics-and-unionization-rates/> (last visited Dec. 13, 2020).

<sup>18</sup> *See generally* Centers for Disease Control and Prevention, *Health Equity Considerations and Racial and Ethnic Minority Groups*, <https://www.cdc.gov/coronavirus/2019-ncov/community/health-equity/race-ethnicity.html> (last updated July 24, 2020).

## II. The Relief Requested Would Disrupt Voting in an Ongoing Election

The Court should reject Plaintiffs' request to disrupt voters' settled expectations particularly in the middle of an election particularly with 18 days remaining before January 5 and with COVID-19 cases surging across the state. Georgia voters have relied on access to drop boxes outside business hours in multiple state and federal elections this cycle, including in the underlying federal elections giving rise to the January 5 runoff. Georgia voters reasonably expect to have the same access to drop boxes for the January 5 runoff election, for which voting is already well underway.

Drop boxes have been available to Georgia voters in every state and federal electoral contest held since July 1, 2020, when the State Election Board promulgated emergency rule 183-1-14-0.8-.14 (the "drop box rule").<sup>19</sup> While the rule imposes extensive security requirements, including continuous video surveillance, it gives counties the discretion to determine the hours during which voters will have access to drop boxes. In reliance on this rule, counties, assisted by state and federal grant programs,<sup>20</sup> have invested significant time and resources purchasing and erecting drop boxes across the state. Fulton County alone has made 36 drop boxes available for the January 5 runoff. Georgia voters and elections officials alike reasonably expect that drop boxes will continue to be available on the same terms as they have been for the January 5 runoff.

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<sup>19</sup> The State Election Board renewed the rule in November 2020 to extend through mid-2021. *See* Ga. State Election Bd. Hearing, at 9:30-20:49 (Nov. 23, 2020), <https://sos.ga.gov/admin/uploads/November%202020%20State%20Election%20Board%20Meeting.mp4>; *see also* Ga. State Election Bd. Emergency Rule 183-1-14.08-.14, <https://sos.ga.gov/admin/files/Table%20of%20Contents%20for%20SEB%20Rule%20183-1-14-0.8-.14.pdf> (rule passed at November 23, 2020 meeting).

<sup>20</sup> Mark Niese, *Drop boxes for absentee ballots to be added across Georgia*, Atlanta Journal-Constitution (Aug. 20, 2020), <https://www.ajc.com/politics/drop-boxes-for-absentee-ballots-to-be-added-across-georgia/5NENK6ZEMZAPZMJGYS4CXG75B4/>.

As of the date of this filing,

- 1,277,908 voters have requested absentee mail-in ballots;
- counties have issued 1,268,853 absentee mail-in ballots in response to these requests; and
- counties have received 453,343 absentee ballots.<sup>21</sup>

The hundreds of thousands of Georgia voters who have already submitted absentee ballot requests for the January 5 runoff did so with the settled expectation that they would have access to drop boxes outside of regular business hours. Granting the relief requested by Plaintiffs would necessarily mean changing the rules for absentee voting after hundreds of thousands of Georgia voters have already committed to voting absentee.<sup>22</sup>

Indeed, throughout this election cycle, state and county elections officials have urged voters to “make a plan” to vote early and safely during the pandemic.<sup>23</sup> For the reasons discussed in Part I, *supra*, drop boxes are among the safest and most reliable methods of voting available in the State of Georgia. Abruptly restricting access to drop boxes at this late hour threatens to disrupt the voting plans of thousands of Georgia voters, with little time to change them.

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<sup>21</sup> These statistics are based on the publicly available data provided by the Secretary of State of Georgia at this address: <https://elections.sos.ga.gov/Elections/voterabsenteefile.do>.

<sup>22</sup> Because voting has already begun under existing rules, granting Plaintiffs’ requested relief will confuse county election officials and voters and give rise to further litigation.

<sup>23</sup> *Cf.* Beau Evans, ‘*Make a plan*’: *Georgia facing final days of early voting for Nov. 3 election*, *The Augusta Chronicle* (Oct. 28, 2020), <https://www.augustachronicle.com/story/news/politics/elections/state/2020/10/28/make-plan-georgia-facing-final-days-of-early-voting-for-nov-3-election/42896111/> (“Raffensperger urged Georgians still needing to vote to ‘make a plan’ for the last two days of early voting or for Election Day[.]”); *DeKalb Encourages Voters to Vote Early* (Oct. 21, 2020), DeKalb County, <https://www.dekalbcountyga.gov/news/dekalb-encourages-voters-vote-early>; Fulton County Georgia (@FultonInfo), Twitter (Oct. 9, 2020, 11:01 AM), <https://twitter.com/FultonInfo/status/1314581780129816579>.

It is particularly important that voters' plans not be disrupted over the holidays. Most, if not all, counties plan to close their early voting locations on the following state holidays: Christmas Eve, December 24, 2020; Christmas Day, December 25, 2020; and New Year's Day, January 1, 2021.<sup>24</sup> Furthermore, voters may have holiday travel schedules that will take them away from their home jurisdictions during early voting. It is critical that Georgia counties keep as many alternative avenues for voting open as possible.<sup>25</sup>

### **III. Limiting Hours Does Not Make Drop Boxes More Secure**

It is not clear what risks, if any, Plaintiffs believe that the accessibility of drop boxes outside of business hours poses to the "twin imperatives of transparency and electoral integrity." Pls.' Mot. at 1. That is because there are no such risks. The current rule already requires that drop boxes:

- (1) be placed on government property,
- (2) have adequate lighting,
- (3) be under continuous 24-hour video surveillance,<sup>26</sup>
- (4) be constructed of "durable material" with an opening slot resistant to tampering,
- (5) display signage warning against tampering, and

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<sup>24</sup> Cf. *Voting and Elections: Early Voting Locations*, Fulton County, <https://www.fultoncountyga.gov/services/voting-and-elections/early-voting-locations> (omitting December 24, December 25, and January 1 from the early voting calendar); *Advance Voting: January 5, 2021 Runoff Election*, Cobb County, <https://www.cobbcounty.org/elections/events/advance-voting-january-5-2021-runoff-election> (same).

<sup>25</sup> Plaintiffs avoid discussion of the actual, concrete harms that Georgia voters would experience should the Court grant the relief requested. Instead, Plaintiffs bemoan the "unlawfully structured competitive electoral environment" that the current rule purportedly creates. Pls.' Mot. at 13. To state the obvious, drop boxes are available to all Georgia voters, regardless of party affiliation.

<sup>26</sup> Counties have the option of continuously recording the drop box or of utilizing cameras that begin recording when motion is detected. SEB Rule 183-1-14-0.8-.14(4).

(6) be checked multiple times a week.<sup>27</sup>

These security measures are in effect no matter the time of day that voters deposit their ballots. Furthermore, all absentee ballots deposited in drop boxes go through the same identity verification processes as do absentee ballots received from any other source.<sup>28</sup> Plaintiffs do not offer any explanation, much less a compelling one, as to why these security measures are insufficient or ineffective for drop boxes that are accessible after business hours. Therefore, their alleged concern about ballot security is a mere pretext for limiting voters' ability to cast a ballot in the January 5th runoff. Plaintiffs' attempts and end goal through this lawsuit are what pose the real threats to the integrity of Georgia's elections and would further undermine voters' confidence in our electoral system.

#### **IV. Public Real-Time Access to Surveillance Feeds Puts Voters and Election Officials at Risk**

Although amici have thus far focused on Plaintiffs' demand that drop box access be restricted to business hours, we close by emphasizing the dangers posed by Plaintiffs' argument that surveillance footage should be available in real or near-real time.<sup>29</sup> Unlike the inchoate harms that Plaintiffs claim will result from an "unlawfully structured competitive electoral environment" (translation: rules that make it harder for them to win), the risks posed to voters and elections

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<sup>27</sup> SEB Rule 183-1-14-0.8-.14(2)-(4), (6)-(7), (9)-(10).

<sup>28</sup> O.C.G.A. § 21-2-386(a)(1)(B).

<sup>29</sup> Plaintiffs also request that surveillance footage of drop boxes be made available to them at no or minimal cost. But the drop box rule as amended already requires counties to make video recordings "available to Secretary of State investigators upon request or to the public, upon request, as soon as possible or at a charge that is not cost prohibitive to the public, if there is a charge." *see also* SEB Emergency Rule 183-1-14.08-.14, <https://sos.ga.gov/admin/files/Table%20of%20Contents%20for%20SEB%20Rule%20183-1-14-0.8-.14.pdf> (rule passed at November 23, 2020 meeting).



officials by real-time access to surveillance footage are real and immediate. On multiple occasions since the November 3 general election, online agitators around the country and conspiracy theorists have taken footage out of context to engage in harassment campaigns of elections officials who have done nothing wrong. During the post-Election Day vote count, a Fulton County election worker was forced into hiding after online observers falsely claimed that video footage from State Farm arena depicted him throwing out a ballot and circulated his personal information.<sup>30</sup> A young Dominion Voting technician in Gwinnett County received death threats and a noose after footage circulated online of what proponents falsely claimed was an attempt to manipulate vote counts.<sup>31</sup>

In this charged environment, providing real-time or near-real time access to surveillance footage of drop boxes would open Pandora's box. White supremacists monitoring the live feed could attempt to intimidate or even physically accost voters who arrive to deposit their ballots. They could also attempt to harass or interfere with the election officials emptying or servicing drop boxes. Plaintiffs' generalized interest in "transparency" does not outweigh the real risk of harm that their proposed relief could pose to voters and election officials.

### **CONCLUSION**

For the foregoing reasons, Amici Curiae respectfully asks this Court to deny Plaintiffs' motion for temporary restraining order or interlocutory injunction.

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<sup>30</sup> Nicole Carr, *County says election worker in hiding after false claims of throwing out ballot*, WSB-TV (Nov. 6, 2020), <https://www.wsbtv.com/news/politics/county-says-election-worker-hiding-after-false-claims-throwing-out-ballot/ECRLRMOTZVEIDG4WRF7EJYJBBY/>.

<sup>31</sup> Ella Lee, *Fact check: Video claim that Dominion tech manipulated Georgia votes is false*, USA Today (Dec. 2, 2020), <https://www.usatoday.com/story/news/factcheck/2020/12/02/fact-check-claim-dominion-tech-altered-georgia-votes-false/3792599001/>.

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**CERTIFICATE OF SERVICE**

I hereby certify that I have this day caused a true and correct copy of the foregoing Motion to File Amicus Brief to be served upon all counsel of record by the Odyssey E-file GA System and by U.S. First Class mail as follows:

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