

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

THE CONCERNED BLACK CLERGY
OF METROPOLITAN ATLANTA,
INC., *et al.*,

Plaintiffs,

v.

BRAD RAFFENSPERGER, in his
official capacity as the Georgia
Secretary of State, *et al.*,

Defendants.

CIVIL ACTION

FILE NO. 1:21-CV-01728-JPB

STATE DEFENDANTS' CONSOLIDATED¹
REPLY BRIEF IN SUPPORT OF ITS STATEMENT ON
CONSOLIDATION OF SB 202 CASES

Plaintiffs in six of the eight SB 202 cases do not oppose consolidation. This fact speaks to the degree of relatedness between the various SB 202 cases and demonstrates the correctness of State Defendants' position that all eight cases should be consolidated.

Only two sets of plaintiffs oppose consolidation on the grounds that their claims are sufficiently unique as to warrant discrete treatment:

¹ In accordance with the Court's December 9, 2021 minute order in this case, this same consolidated reply statement is filed in all eight of the SB 202 cases covered by the Court's order with only the caption changed for each case.

VoteAmerica, et al. v. Raffensperger, et al., Case No. 1:21-cv-01390-JPB, and *Coalition for Good Governance, et al., v. Kemp, et al.*, Case No. 1:21-cv-02070-JPB. But despite some differences that plaintiffs correctly identify, both cases still involve nearly identical facts still merit consolidation with the other six SB 202 cases.

The facts surrounding passage of SB 202 are the same for all SB 202 cases now before the Court. Even without intentional discrimination claims under the Voting Rights Act, discovery must proceed on absentee-ballot processes and election administration. As a result, discovery and the litigation process will significantly benefit from consolidation because it will allow State Defendants to respond to all plaintiffs in a timely and thorough manner. The few plaintiffs opposing consolidation of the SB 202 cases do so largely because they believe their claims will be resolved in an untimely manner by having to share a discovery track with other, more complex SB 202 cases. They claim that their cases would be resolved more quickly if they were standing alone. But this misunderstands the purpose of consolidation here.

First, isolating two cases will not create more hours in a day, nor grant State Defendants more resources to litigate the SB 202 cases. Whether or not the cases are consolidated, the State Defendants' resources and time are finite. And rather than attempting to structure two or three separate discovery

tracks, it will be far more efficient for all plaintiffs if the cases to proceed on a single discovery track. This will allow plaintiffs to raise objections to deadlines and extensions in a timely manner because all plaintiffs will be made aware of the State Defendants' resource limitations as they occur, especially when close to elections like the May primary. Handling the cases this way will benefit both the plaintiffs and State Defendants, rather than attempting a piecemeal, case-by-case approach, which will likely delay all cases.

Second, the burden on State Defendants in defending these distinct but highly interconnected lawsuits substantially outweighs the (unknown) burden any delay in claim resolution might have on plaintiffs in *VoteAmerica* and *Coalition*. Indeed, at this stage, it is entirely unknowable if consolidation will delay resolution of the non-consenting plaintiffs' claims at all. Thus, it is not a sufficient basis upon which to separate some of the cases from the others.

Third, even if the Court were to assume the *VoteAmerica* and *Coalition* plaintiffs are correct that their cases would proceed at different paces, this would create an outsized burden on Georgia's 159 counties and their respective election officials. If plaintiffs were successful on their claims, the counties would be forced to implement piecemeal changes. This creates an undue burden on election officials and, as we approach each of the upcoming primaries and general elections, also creates a *Purcell* problem. "Court orders

affecting elections, especially conflicting orders, can themselves result in voter confusion and consequent incentive to remain away from the polls. As an election draws closer, that risk will increase.” *Purcell v. Gonzalez*, 549 U.S. 1, 4-5 (2006).

Finally, any outsized burden that may be created by consolidation can, once identified, be alleviated by bifurcating the cases for trial if the Court finds that remedy necessary. *See* Fed. R. Civ. P. 42(b). While bifurcating the case after consolidating it might be unconventional, the Court may utilize it to the extent it determines justice and fairness or expediency so require.

CONCLUSION

This Court should consolidate all eight SB 202 cases, at least for purposes of discovery, and place reasonable limits on discovery to avoid duplication and undue burden on both State Defendants and all non-party counties in Georgia in a year when State Defendants have numerous and important duties regarding the 2022 elections. While the overlap among claims is not entirely perfect, consolidation offers the best path to a speedy and definitive resolution of the issues raised by Plaintiffs in each case—and the certainty needed for voters and election officials.

Respectfully submitted this 17th day of December, 2021.

Christopher M. Carr
Attorney General
Georgia Bar No. 112505
Bryan K. Webb
Deputy Attorney General
Georgia Bar No. 743580
Russell D. Willard
Senior Assistant Attorney General
Georgia Bar No. 760280
Charlene McGowan
Assistant Attorney General
Georgia Bar No. 697316
**Office of the Georgia Attorney
General**
40 Capitol Square, S.W.
Atlanta, Georgia 30334

/s/ Bryan P. Tyson

Bryan P. Tyson
Special Assistant Attorney General
Georgia Bar No. 515411
btyson@taylorenghish.com
Bryan F. Jacoutot
Georgia Bar No. 668272
bjacoutot@taylorenghish.com
Loree Anne Paradise
Georgia Bar No. 382202
lparadise@taylorenghish.com
Taylor English Duma LLP
1600 Parkwood Circle
Suite 200
Atlanta, GA 30339
Telephone: 678-336-7249

Gene C. Schaerr*
gschaerr@schaerr-jaffe.com
Erik Jaffe*

ejaaffe@schaerr-jaffe.com
H. Christopher Bartolomucci*
cbartolomucci@schaerr-jaffe.com
Brian J. Field*
bfield@schaerr-jaffe.com
SCHAERR | JAFFE LLP
1717 K Street NW, Suite 900
Washington, DC 20006
Telephone: (202) 787-1060
Fax: (202) 776-0136
* Admitted *pro hac vice*

Counsel for State Defendants

RETRIEVED FROM DEMOCRACYDOCKET.COM

CERTIFICATE OF COMPLIANCE

Pursuant to L.R. 7.1(D), the undersigned hereby certifies that the foregoing STATE DEFENDANTS' CONSOLIDATED REPLY BRIEF IN SUPPORT OF ITS STATEMENT ON CONSOLIDATION OF SB 202 CASES has been prepared in Century Schoolbook 13, a font and type selection approved by the Court in L.R. 5.1(B).

/s/ Bryan P. Tyson
Bryan P. Tyson

RETRIEVED FROM DEMOCRACYDOCKET.COM