

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

**COALITION FOR GOOD
GOVERNANCE, et al.,**

Plaintiffs,

v.

BRAD RAFFENSPERGER, et al.,

Defendants.

Civil Action No. 21-cv-02070-JPB

Joint Preliminary Report and Discovery Plan

The Parties respectfully submit this Joint Preliminary Report and Discovery Plan. Attached as Exhibit A is a table showing the claims in this case and the claims in the Consolidated Case, No. 1:21-5555-JPB. Attached as Exhibit B is a Joint Proposed Scheduling Order.

1. Description of Case:

(a) Describe briefly the nature of this action.

This lawsuit seeks to enjoin the enforcement of certain provisions of Georgia Senate Bill 202 (“SB 202”). Plaintiffs contend that SB 202’s challenged

provisions violate their rights under the First and Fourteenth Amendments to the United States Constitution and 52 U.S.C. § 10307.

Defendants deny that any provision of SB 202 violates any provision of the law or Constitution. Intervenor-Defendants likewise deny that any provision of SB 202 is unlawful.

Plaintiffs seek a Court order declaring that the challenged provisions of SB 202 are illegal and unconstitutional, permanently enjoining the Defendants from enforcing or giving any effect to the challenged provisions, or certain requirements of those provisions. Defendants and Intervenor-Defendants deny that Plaintiffs are entitled to any relief.

This case is related to *In re Georgia Senate Bill 202*, Master Case No. 1:21-55555-JPB (“the Consolidated Case”), and *VoteAmerica, et al. v. Raffensperger et al.*, Case No. 21-cv-01390-JPB (“*VoteAmerica*”). Attached as Exhibit A is a chart summarizing which claims the Plaintiffs bring in this case, and the claims brought in the Consolidated Case and *VoteAmerica*.

(b) Summarize, in the space provided below, the facts of this case.

The summary should not be argumentative nor recite evidence.

(1) Plaintiffs’ Statement of Facts

Plaintiffs include non-profit organizations, county election board members, members of political parties, voters, election volunteers, advocates, and journalists. In their Amended Complaint (ECF No. 14), Plaintiffs challenge provisions of SB 202 that may be grouped into four categories. First, Plaintiffs challenge SB 202 provisions that allow the State Election Board to remove and replace county election superintendents, or remove but not replace county boards of registration, without procedural due process (Count I), in violation of separation of powers (Count II), and burdening the right to vote without justification (Count III).

Second, Plaintiffs challenge SB 202 provisions that criminalize activities that are protected by the First and Fourteenth Amendment, such as simply going to vote and inevitably observing others voting (Counts IV, V, and VI), communicating information received while monitoring the processing and scanning of absentee ballots (Count VII), tallying, tabulating, estimating or attempting to tally, tabulate or estimate any of the votes “on the absentee ballots cast,” (Count VIII), and photographing voted ballots, the counting of ballots, or voters in the act of voting (Counts IX and X).

Third, Plaintiffs challenge new absentee voter ID rules that burden the right to vote by allowing an unauthorized person to request and vote another person’s absentee ballot. (Count X). Fourth, Plaintiffs challenge the SB 202’s’ narrowing of

the ballot application window as a violation of the fundamental right to vote and equal protection (Counts XI, XII and XIII).

Plaintiffs note that the claims and defenses in this case have been addressed by the Court in two comprehensive orders. *See* August 20, 2021 Order Granting in Part and Denying in Part Plaintiffs' Motion for Preliminary Injunction (ECF No. 49), and December 9, 2021 Order Denying Defendants' and Intervenor's Motions to Dismiss (ECF No. 50).

(2) Defendants' and Intervenor-Defendants' Statement of Facts

Following the 2020 election, which was conducted in a worldwide pandemic, the Georgia General Assembly undertook an effort to update Georgia election laws, culminating in Senate Bill 202. That legislation made changes to a number of areas of Georgia election law.

Plaintiffs challenge several of the changes made as unconstitutionally burdening the right to vote of all voters and on several other constitutional grounds. Defendants disagree that there is any burden on the right to vote or other violations of the Constitution and assert that the changes made in Senate Bill 202 are well within the mainstream of other states. Defendants further assert that the changes to Georgia election laws are proper exercises of the state legislative powers over elections. Additionally, any slight burdens on the right to vote further the state's

regulatory interests in orderly election administration.

(c) The legal issues to be tried are as follows:

(1) Statement of Legal Issues to Be Tried

(1) Whether SB 202 threatens to violate the procedural due process rights of the Board Member Plaintiffs by not providing sufficient predeprivation or postdeprivation notice and opportunity to be heard (Count I);

(2) Whether SB 202 constitutes a delegation of legislative authority to the executive in violation of the Georgia Constitution, and implicates the very integrity of the electoral process, in denial of substantive due process under the Fourteenth Amendment to the U.S. Constitution (Count II);

(3) Whether SB 202 and its implementation violate the First and Fourteenth Amendments to the U.S. Constitution by imposing severe burdens on the rights of eligible Georgians to vote that are not justified by any rational or compelling state interest by (a) allowing the State Election Board to remove, but not replace, boards of registration (Count III); (b) criminalizing the intentional observance of an elector while casting a ballot (Count IV); (c) unreasonably relaxing the voter identification requirements for absentee voting (Count XI); and (d) unreasonably narrowing the absentee ballot application window (Count XII);

(4) Whether SB 202 violates the Fourteenth Amendment to the U.S. Constitution by defining the criminal offenses of the intentional observance of an elector while casting a ballot (Count V), the tallying, tabulating, estimating or attempting to tally, tabulate or estimate any of the votes “on the absentee ballots cast,” (Count VIII) and the photographing or recording of the counting of ballots or voters in the act of voting, or of a voted ballot (Count X), with insufficient definiteness that ordinary people can understand what conduct is prohibited and in a way that encourages arbitrary and discriminatory enforcement;

(5) Whether SB 202 violates the First and Fourteenth Amendments to the U.S. Constitution by imposing severe burdens on the right of Georgians to engage in speech, expression, political association, and to petition the government, that are not justified by any rational or compelling state interest by (a) criminalizing the communication of information received while monitoring the processing and scanning of absentee ballots (Count VII), or (b) criminalizing the photographing or recording of the counting of ballots or voters in the act of voting, or of a voted ballot (Count IX);

(6) Whether SB 202 and its implementation violate 52 U.S.C. § 10307 by unlawfully intimidating voters by criminalizing the intentional observance of an elector while casting a ballot (Count VI);

(7) Whether SB 202 and its implementation violate the Equal Protection Clause of the Fourteenth Amendment to the U. S. Constitution by narrowing the absentee ballot application window (Counts XIII and XIV); and,

(8) Whether Plaintiffs have standing to bring these claims.

(d) The cases listed below (include both style and action number) are:

(1) Pending Related Cases:

The parties have identified the following related cases that challenge SB 202 and are pending before this Court:

1. *VoteAmerica, et al. v. Raffensperger et al.*, Case No. 21-cv-01390-JPB;
2. *The New Georgia Project et al. v. Raffensperger et al.*, Case No. 21-cv-01229-JPB (“NGP Case”);
3. *Georgia State Conference of the NAACP et al. v. Raffensperger et al.*, Case No. 21-cv-01259-JPB (“GA NAACP Case”);
4. *Sixth District of the African Methodist Episcopal Church et al. v. Kemp et al.*, Case No. 1:21-CV-01284-JPB (“AME Case”);
5. *Asian Americans Advancing Justice-Atlanta, et al. v. Raffensperger et al.*, Case No. 1:21-cv-01333-JPB (“AJ-ATL Case”);

6. *The Concerned Black Clergy of Metropolitan Atlanta, Inc. et al. v. Raffensperger et al.*, Case No. 21-cv-01728-JPB (“CBC Case”);

7. *United States of America v. The State of Georgia et al.*, Case No. 1:21-cv-02575-JPB (“USA Case”).

(2) Previously Adjudicated Related Cases:

None

2. This case is complex because it possesses one or more of the features listed below (please check):

Plaintiffs assert that the case is not complex and that the case does not possess any of the features listed below.

Defendants assert that the case is complex because of the following features:

- X (1) Unusually large number of parties
- _____ (2) Unusually large number of claims or defenses
- _____ (3) Factual issues are exceptionally complex
- _____ (4) Greater than normal volume of evidence
- _____ (5) Extended discovery period is needed

- _____ (6) Problems locating or preserving evidence
- _____ (7) Pending parallel investigations or action by government
- X (8) Multiple use of experts
- _____ (9) Need for discovery outside United States boundaries
- _____ (10) Existence of highly technical issues and proof
- _____ (11) Unusually complex discovery of electronically stored information

3. Counsel:

The following individually-named attorneys are hereby designated as the lead counsel for the parties:

For Plaintiffs:

Bruce P. Brown

For Defendants:

Bryan Tyson and Gene Schaerr

For Intervenor-Defendants:

Tyler Green and Brad Carver

4. Jurisdiction:

Is there any question regarding this Court's jurisdiction?

X Yes _____ No

Plaintiffs have no question regarding this Court's jurisdiction.

Defendants' questions regarding this Court's jurisdiction are explained in their motion to dismiss.

Intervenor-Defendants have not questioned this Court's jurisdiction to date but reserve the right to do so based on the facts developed in discovery.

5. Parties to This Action:

(a) The following persons are necessary parties who have not been joined:

- (1)** Plaintiffs are not aware of any at this time.
- (2)** Defendants and Intervenor-Defendants contend that all 159 county election superintendents are necessary parties to this case for at least some of the relief sought.

(b) The following persons are improperly joined as parties:

None.

(c) The names of the following parties are either inaccurately stated or necessary portions of their names are omitted:

The Parties agree that various State Election Board members need to be substituted pursuant to Fed. R. Civ. P. 25(d). Specifically, Edward Lindsey and Janice Johnston have replaced Rebecca Sullivan and Anh Le on the State Election Board and are substituted as defendants in their official capacities.

The parties shall have a continuing duty to inform the Court of any contentions regarding unnamed parties necessary to this action or any contentions regarding misjoinder of parties or errors in the statement of a party's name.

6. Amendments to the Pleadings:

- (a) List separately any amendments to the pleadings that the parties anticipate will be necessary:**

Plaintiffs intend to amend their complaint to add a First Amendment challenge to Tally Rule 1 (as that rule is defined by the Court in its Order on Plaintiffs' Motion for Preliminary Injunction, Doc. 49).

- (b) Amendments to the pleadings submitted LATER THAN THIRTY DAYS after the Joint Preliminary Report and Discovery Plan is filed, or should have been filed, will not be accepted for filing, unless otherwise permitted by law.**

7. Filing Times For Motions:

- (a) *Motions to Compel*:** before the close of discovery or within the extension period allowed in some instances. Local Rule 37.1.
- (b) *Summary Judgment Motions*:** within thirty days after the close of discovery, unless otherwise permitted by court order. Local Rule 56.1.
- (c) *Other Limited Motions*:** Refer to Local Rules 7.2A; 7.2B, and 7.2E, respectively, regarding filing limitations for motions pending on removal, emergency motions, and motions for reconsideration.
- (d) *Motions Objecting to Expert Testimony*:** Daubert motions with regard to expert testimony no later than the date that the proposed pretrial order is submitted. Refer to Local Rule 7.2F.

8. Initial Disclosures:

The parties are required to serve initial disclosures in accordance with Fed.R.Civ.P. 26. If any party objects that initial disclosures are not appropriate, state the party and basis for the party's objection.

No parties object to serving initial disclosures and agree that Initial Disclosures should be served fourteen (14) days after the start of discovery.

9. Request for Scheduling Conference:

Does any party request a scheduling conference with the Court? If so, please state the issues which could be addressed and the position of each party.

Yes. All parties believe it would benefit the Court and the parties to discuss the scope and timeline of discovery, summary judgment motions, and for a trial on the merits.

10. Discovery Period:

The parties recognize that discovery has been stayed in this matter and will not commence until the date that the Court orders discovery to open.

The Parties propose that discovery begin on February 1, 2022.

Please state below the subjects on which discovery may be needed:

The parties anticipate that discovery may be needed in the following subject areas:

(1) Facts related to the State's purported justifications for enacting and enforcing the challenged provisions of SB 202;

(2) Facts relating to the extent Defendants, or Georgia county election superintendents and registrars, have adopted policies or practices concerning the implementation of SB 202;

(3) Facts relating to the interests of the Board Member Plaintiffs in their tenure as board members;

(4) Facts relating to how the challenged criminal provisions of SB 202 are being enforced;

(5) Facts relating to the initiation by Defendants, or other parties, of any investigation or processes that would lead to the removal and replacement of county election superintendents or the removal of county registrars;

(6) Facts relating to whether and to what extent SB 202 burdens the right to vote;

(7) Facts relating to whether SB 202 violates equal protection;

(8) Facts relating to whether and to what extent the enforcement of SB 202 unlawfully intimidates voters in violation of Section 10307 of the Civil Rights Act;

(9) The amount of fees and expenses of litigation that Plaintiffs are entitled to recover; and,

(10) Facts related to Plaintiffs' standing to bring this litigation.

If the parties anticipate that additional time beyond that allowed by the assigned discovery track will be needed to complete discovery or that discovery should be conducted in phases or be limited to or focused upon particular issues, please state those reasons in detail below:

The parties agree on the dates for discovery in the table below, except as noted in italics below. The proposed dates describe a six-month discovery schedule. The parties agree that the case should be bifurcated between (a) the merits of Plaintiffs' claims and whether Plaintiffs are entitled to an award of attorney's fees and (b) the amount of an attorney's fee award, and that discovery on the latter should occur after the merits of the case have been decided by the Court. Plaintiffs do not concede, however, that the bifurcation of these issues at trial necessarily forecloses the award and recovery of attorney's fees in the event of the granting of preliminary injunctive relief or other appropriate circumstances. Defendants assert that Plaintiffs are not entitled to any fees.

Date	Action
February 1, 2022	Discovery opens.
May 16, 2022	Expert Reports Due
June 1, 2022	Expert Rebuttal Reports Due
June 15, 2022	Expert Sur-Rebuttal Reports Due
June 15 to July 1, 2022	Expert Depositions
July 1, 2022	Close of Discovery
August 1, 2022	Motions for Summary Judgment Due
August 22, 2022	Responses to Summary Judgment Motions Due
September 5, 2022	Replies in Support of Motions for Summary Judgment Due

11. Discovery Limitation and Discovery of Electronically Stored Information:

(a) What changes should be made in the limitations on discovery imposed under the Federal Rules of Civil Procedure or Local Rules of this Court, and what other limitations should be imposed?

i. Limitations on discovery

Plaintiffs propose that they may collectively serve 50 interrogatories on Defendants, and that the Defendants may serve 50 interrogatories upon Plaintiffs, and that Plaintiffs may serve 5 interrogatories on Intervenor-Defendants and Intervenor-Defendants may serve 5 interrogatories upon Plaintiffs.

Defendants and Intervenor-Defendants propose that the Local Rules and Federal Rules for interrogatories should apply and that Defendants be able to take a deposition of each plaintiff and expert, with five additional depositions allowed beyond that number.

ii. Other Limitations on Discovery

None.

(b) Is any party seeking discovery of electronically stored information?

 X Yes No

If “yes,”

(1) The parties have discussed the sources and scope of the production of electronically stored information and have agreed to limit the scope of production (e.g., accessibility, search terms, date limitations, or key witnesses) as follows:

The parties are negotiating the terms of an agreement governing discovery of electronically stored information (“ESI”).

(2) The parties have discussed the format for the production of electronically stored information (e.g., Tagged Image File Format (TIFF or .TIF files), Portable Document Format(PDF), or native), method of production (e.g., paper or disk), and the inclusion or exclusion and use of metadata, and have agreed as follows:

The parties are negotiating the terms of an agreement governing discovery of electronically stored information (“ESI”).

In the absence of agreement on issues regarding discovery of electronically

stored information, the parties shall request a scheduling conference.

12. Other Orders:

What other orders do the parties think that the Court should enter under Rule 26(c) or under Rule 16(b) and (c)?

The parties anticipate requesting the entry of a consent protective order to protect the confidentiality of voter data and other personally identifiable information. The parties have exchanged drafts of a proposed consent protective order and expect to use the same order as that being proposed in the Consolidated Case. The parties are also negotiating the terms of an agreement governing discovery of ESI and anticipate requesting the entry of an order governing the discovery of ESI that will match the proposal in the Consolidated Case.

13. Settlement Potential:

Lead counsel for the parties certify by their signatures below that they conducted a Rule 26(f) conference via Zoom on January 26, 2022, and that they participated in settlement discussions. Other persons who participated in the settlement discussions are listed according to party.

For Plaintiffs: Bruce P. Brown

For Defendants: Bryan Tyson, Brian Field and H. Christopher Bartolomucci

For Intervenor: Brad Carver

Other participants: Counsel for the Parties also participated in the 26(f) conference in the Consolidated Cases.

a. All parties were promptly informed of all offers of settlement and following discussion by all counsel, it appears that there is now:

() A possibility of settlement before discovery.

() A possibility of settlement after discovery.

() A possibility of settlement, but a conference with the judge is needed.

(X) No possibility of settlement.

b. Counsel () do or (X) do not intend to hold additional settlement conferences among themselves prior to the close of discovery.

c. The following specific problems have created a hindrance to settlement of this case.

14. Trial by Magistrate Judge:

Note: Trial before a Magistrate Judge will be by jury trial if a party is otherwise entitled to a jury trial.

(a) The parties () do consent to having this case tried before a

magistrate judge of this Court. A completed Consent to Jurisdiction by a United States Magistrate Judge form has been submitted to the clerk of court this day _____, of 2022.

(b) The parties (X) do not consent to having this case tried before a magistrate judge of this Court.

Respectfully submitted this 26th day of January, 2022.

For Plaintiffs:

/s/ Bruce P. Brown

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CERTIFICATE OF SERVICE AND CERTIFICATE OF COMPLIANCE WITH
LOCAL RULE 5.1

Pursuant to N.D. Ga. L.R. 5.1(C), I certify that the foregoing was prepared using Times New Roman 14 font. I electronically filed this using CM/ECF, thus serving all counsel of record.

This 26th day of January, 2022.

/s/ Bruce P. Brown

Bruce P. Brown

Georgia Bar No. 064460

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Exhibit A to the Joint Preliminary Report and Discovery Plan**Claims by Case:**

Claim	CGG Case	NGP Case	GA NAACP Case	AME Case	AJ-ATL Case	CBC Case	USA Case
Section 2 of the Voting Rights Act, 52 U.S.C. § 10301, <i>et seq.</i>		X	X	X	X	X	X
Civil Rights Act, 51 U.S.C. § 10101, <i>et seq.</i>	X	X	X	X		X	
42 U.S.C. § 1983	X	X	X	X	X	X	
Title II of Americans with Disabilities Act, 42 U.S.C. § 12131				X		X	
Section 504 of the Rehabilitation Act, 29 U.S.C. § 794				X			
First Amendment	X	X	X	X	X	X	
Fourteenth Amendment	X	X	X	X	X	X	
Fifteenth Amendment			X	X	X	X	

Challenged Provisions by Case:

Provision of SB-202	CGG Case	NGP Case	GA NAACP Case	AME Case	AJ-ATL Case	CBC Case	USA Case
The Criminal “Observation Rule”	X						
The Criminal “Communication Rule”	X						
The Criminal “Tally Rules”	X						
The Criminal “Photograph Rules”	X						
The County Board “Suspension Rule”	X						
Identification requirements for absentee ballot applications	X	X	X	X	X	X	X
Penalties for delivering or returning absentee ballots			X	X	X		
Timeframes for requesting and	X	X	X	X	X	X	X

Provision of SB-202	CGG Case	NGP Case	GA NAACP Case	AME Case	AJ-ATL Case	CBC Case	USA Case
receiving absentee ballots							
Prohibition on governments mailing unsolicited absentee ballot applications		X	X		X		X
Penalties for sending absentee-ballot applications after voter already requested/voted a ballot			X	X	X		X
Restriction of drop boxes for returning ballots		X	X	X	X	X	X
Repeal law requiring officials to mail absentee ballots to unregistered eligible voters who later register before the deadline		X					
Date of birth on absentee ballot envelope		X	X	X			

Provision of SB-202	CGG Case	NGP Case	GA NAACP Case	AME Case	AJ-ATL Case	CBC Case	USA Case
Changes to out-of-precinct provisional ballots		X	X	X		X	X
Line relief restrictions		X	X	X		X	X
Limitations on mobile voting units		X	X	X		X	
Restriction of time for early voting			X	X			
Removal of Secretary from SEB			X			X	
SEB authority over local election officials	X		X			X	
Restriction of early voting in runoff elections		X	X	X		X	
Expansion of voter challenges		X	X	X			

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GOVERNANCE, et al.,

Plaintiffs,

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BRAD RAFFENSPERGER, et al.,

Defendants.

Civil Action No. 21-cv-02070-JPB

JOINT [PROPOSED] SCHEDULING ORDER

Upon review of the information contained in the Joint Preliminary Report and Discovery Plan form completed and filed by the parties, the Court orders that the time limits for adding parties, amending the pleadings, filing motions, completing discovery, and discussing settlement are as set out in the Federal Rules of Civil Procedure, the Local Rules of this Court, except as follows:

Date	Action
February 1, 2022	Discovery opens.
February 14, 2022	Initial Disclosures Due

May 16, 2022	Expert Reports Due
June 1, 2022	Expert Rebuttal Reports Due
June 15, 2022	Expert Sur-Rebuttal Reports Due
June 15 to July 1, 2022	Expert Depositions
July 1, 2022	Close of Discovery
August 1, 2022	Motions for Summary Judgment Due
August 22, 2022	Responses to Summary Judgment Motions Due
September 5, 2022	Replies in Support of Motions for Summary Judgment Due

IT IS SO ORDERED, this _____ day of _____, 2022.

Honorable J.P. Boulee
UNITED STATES DISTRICT JUDGE