

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

COALITION FOR GOOD  
GOVERNANCE, *et al.*,

*Plaintiffs,*

v.

BRIAN KEMP, Governor of the State  
of Georgia, in his official capacity, *et*  
*al.*,

*Defendants.*

CIVIL ACTION

FILE NO. 1:21-CV-02070-JPB

**STATE DEFENDANTS' CONSOLIDATED<sup>1</sup> STATEMENT ON  
CONSOLIDATION OF SB 202 CASES**

**I. The SB 202 Cases involve common questions of law and fact and should be consolidated.<sup>2</sup>**

Consolidation is available if “actions before the court involve a common question of law or fact.” Fed. R. Civ. P. 42(a). The Eleventh Circuit also encourages “trial judges to ‘make good use of Rule 42(a) . . . in order to expedite the trial and eliminate unnecessary repetition and confusion.’” *Hendrix v.*

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<sup>1</sup> In accordance with the Court’s December 9, 2021 minute order in this case, this same consolidated 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.

<sup>2</sup> State Defendants have conferred with Intervenor-Defendants, who also support consolidation.

*Raybestos-Manhattan, Inc.*, 776 F.2d 1492, 1495 (11th Cir. 1985) (quoting *Dupont v. Southern Pacific Co.*, 366 F.2d 193, 195 (5th Cir. 1966)).

These eight SB 202 cases share common questions of law or fact—in fact, many of them challenge the same practices, as the chart below demonstrates:

Topic area of challenge	NGP	Sixth AME	NAACP	Vote America	AAAJ	CBC	CGG	US
<b>ABSENTEE BALLOTS</b>								
Identification requirements for absentee ballot applications	X	X	X		X	X	X	X
Limiting absentee ballot application harvesting					X			
Timeframes for requesting and receiving absentee ballots	X				X	X	X	
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	X			
Use of drop boxes for returning absentee ballot	X	X	X		X	X		
Disclaimer on absentee-ballot applications				X				
Prohibition on prefilled absentee-ballot applications				X				

<b>Topic area of challenge</b>	<b>NGP</b>	<b>Sixth AME</b>	<b>NAACP</b>	<b>Vote America</b>	<b>AAAJ</b>	<b>CBC</b>	<b>CGG</b>	<b>US</b>
Date of birth on absentee ballot envelope	X							
<b>IN PERSON VOTING</b>								
Changes to out-of-precinct provisional ballots	X	X	X			X		X
Limitations on interactions with voters in line	X	X	X			X		X
Limitations on mobile voting units	X	X				X		
Expansion of hours of early voting			X					
Penalties for violating ballot secrecy							X	
<b>ELECTION ADMINISTRATION</b>								
Removal of Secretary from SEB			X					
SEB authority over local election officials			X			X	X	
Timeline for early voting in runoff elections	X	X				X		
Prohibition on observations and estimating during tabulation							X	
Prohibition on photographing ballots							X	
<b>VOTER REGISTRATION</b>								
Clarification on number of voter challenges	X	X	X					

While State Defendants recognize that there are a variety of legal

theories (including that the practices cumulatively violate various constitutional and statutory provisions), the questions of *fact* about each practice will be similar.<sup>3</sup> For example, all cases challenge absentee-ballot processes from SB 202 and all but two challenge in-person voting processes from SB 202. Consolidating these cases will not “adversely affect[] the substantial rights” of any party. *Wright v. Dougherty Cty.*, 358 F.3d 1352, 1354 (11th Cir. 2004) (quoting *Hargett v. Valley Fed. Sav. Bank*, 60 F.3d 754, 760 (11th Cir. 1995)). As discussed below, consolidating these cases will also result in efficiencies to expedite the handling of this case and eliminate repetition.

## II. The timeline of 2022 elections favors consolidation.

The timeline for the 2022 elections should also be a factor. A copy of the Secretary of State’s 2022 State Elections and Voter Registration Calendar is attached as Exhibit A. Several dates are worth noting. First, while the general primary and nonpartisan general election is set for May 24, 2022, the voting process effectively begins on March 7, 2022 when voters may begin applying for absentee ballots. O.C.G.A. § 21-2-381(a)(1)(A). Registrars can then begin to send absentee ballots to voters on April 5, 2022. O.C.G.A. § 21-2-384(a)(2). In-

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<sup>3</sup> In challenges to Florida’s election legislation, the Florida district court consolidated the cases for discovery purposes and later consolidated the cases for trial. See *League of Women Voters of Florida Inc. v. Lee*, Case No. 4:21-cv-00186-MW-MAF, ECF Nos. 92 (June 17, 2021) and 365 (Dec. 8, 2021).

person early voting for the general primary begins on May 2, 2022. O.C.G.A. § 21-2-385(d)(1)(A).

The June 21, 2022 primary runoff election faces similar timelines, with the deadline for submitting an absentee ballot application of June 10, 2022, O.C.G.A. § 21-2-381(a)(1)(A), and in-person early voting beginning on June 13, 2022, O.C.G.A. § 21-2-385(d)(1)(B).

The voting process for the November 8, 2022 general election begins on August 22, 2022 when voters can apply for an absentee ballot. O.C.G.A. § 21-2-381(a)(1)(A). Absentee ballots can be mailed to voters beginning on September 20, 2022, with early voting beginning on October 17, 2022.

**A. Availability of relief.**

Since SB 202's passage, State Defendants have been implementing its provisions, including redesigning the absentee-ballot application, updating training materials for county election superintendents and registrars (and training them), and instituting a performance audit of at least one county's election processes. As the Court is aware, Plaintiffs seek major changes in those election processes. Any orders altering Georgia's statutory structure would require significant effort and place additional burdens on county election officials in their efforts to recruit and train pollworkers, which remains a challenge. *See Atlanta-Journal Constitution, Election depends on hiring many*

*new poll workers across Georgia*, <https://www.ajc.com/politics/election-depends-on-hiring-many-new-poll-workers-across-georgia/UPWQRQ6KXFAENAZFCBPSK6KTYI/> (Aug. 26, 2020).

As this Court is further aware, there are times when “an impending election is imminent and a [s]tate’s election machinery is already in progress.” *Coal. for Good Governance v. Kemp*, Case No. 1:21-cv-02070-JPB, ECF No. 37 (July 7, 2021). This Court has recognized the peril of changing rules between an election and a runoff. *Id.* Consolidation will minimize duplication of effort and help reach a resolution of this case to bring certainty for election officials.

**B. Unique burdens on election officials in 2022.**

In addition to the normal duties of an election year, election officials have once-in-a-decade responsibilities in 2022. The General Assembly recently passed new redistricting plans for the state House of Representatives, state Senate, and Congressional districts that now await the Governor’s signature. Local legislation to update boundaries for county commission and school board districts will be considered by the General Assembly beginning in January.

During early 2022, county and state election officials will be reassigning voters to new districts based on those changes—a process that only happens once every ten years. The time devoted to discovery in this case will take time away from the time election officials need to carry out their statutory

responsibilities. This likewise counsels in favor of consolidating the cases, so that duplication of effort and its required staff time can be avoided. For example, instead of the Secretary's office sitting for eight distinct Rule 30(b)(6) depositions on largely overlapping topics, the discovery process could proceed on a more efficient basis for all election officials if the cases are consolidated. Avoiding duplication also reduces the risk that these cases will affect the ability of election officials to administer the 2022 elections.

### **III. Advantages of a consolidated discovery process.**

A consolidated discovery process offers distinct advantages, but the scope of discovery will also be relevant to the timeline for these cases. State Defendants offer several examples that might be of assistance to the Court and the parties.

#### **A. Discovery in other voting cases in the Northern District.**

Other voting cases in this Court have taken two distinct paths for discovery. First is the path trod by *Fair Fight Action v. Raffensperger* (1:18-cv-05391-SCJ), which was a wide-ranging challenge to Georgia election practices, and *Curling v. Raffensperger* (1:17-cv-02989-AT), which focuses on election technology. In those cases, plaintiffs sought extensive electronically stored information, requiring the review and production of hundreds of thousands to millions of pages of records. Both cases also saw dozens of experts between

them. And discovery took a long time—discovery opened in *Fair Fight Action* on July 15, 2019 [*FFA* Doc. 79, p. 2] and motions for summary judgment were not filed until June 29, 2020 [Doc. 441]. Likewise in *Curling*, discovery opened on May 21, 2019 [*Curling* Doc. 375, p. 61] and is still ongoing.

On the other side of the equation are *Georgia Coalition for the People's Agenda v. Raffensperger* (1:18-cv-04727-ELR), which deals with a single election practice, and *Rose v. Raffensperger* (1:20-cv-02921-SDG), which challenged the method of election for Public Service Commissioners. In each of those cases, discovery was targeted and primarily drew on expert testimony, allowing a much-more-efficient completion of the discovery process, including completion of all discovery in four months in *Rose*.

Consolidating these cases and requiring Plaintiffs to combine and narrow their discovery efforts provides the best path for reaching resolution of these cases. That being said, as the Court noted in its analysis of Plaintiffs' requirements to prove their standing allegations, State Defendants will still require discovery about each organizational and individual plaintiff—but that must take place regardless of consolidation.

#### **B. Options for streamlining discovery.**

Consolidation also offers the Court several options for streamlining the discovery process.



First, consolidation offers the ability to have combined document requests in a centralized database for all plaintiffs to access. In a consolidated discovery proceeding, the Court should require Plaintiffs to negotiate a limited number of document requests with accompanying search terms that would cover all the areas required for discovery. That would allow State Defendants to make a single review for privilege and responsiveness to document requests instead of requiring State Defendants to respond to document requests in each case, which could conceivably octuple the amount of attorney time required.

Second, the Court should take a page from mass-tort litigation and select individual SB 202 cases on certain topics for bellwether treatment. Bellwether trials can “assist in maturation of any given dispute by providing an opportunity for coordinating counsel to organize the products of pretrial common discovery, evaluate the strengths and weaknesses of their arguments and evidence, and understand the risks and costs associated with the litigation.” THE PROBLEM OF MULTIDISTRICT LITIGATION: Bellwether Trials in Multidistrict Litigation, 82 Tul. L. Rev. 2323, 2338 (2008). For example, one case would be the bellwether on absentee-ballot processes and another would deal with in-person processes.<sup>4</sup> This kind of approach would avoid duplication

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<sup>4</sup> For instance, *AAAJ* and *NGP* substantially overlap with other cases raising challenges to absentee voting. For in-person voting, *NGP*, *Sixth AME*, and

of effort and could form a central repository of documents and data that could narrow further litigation on the remaining cases after the bellwether case moves forward.

Third, the Court can limit the number of experts on each topic area. If the cases were not consolidated and each involved four experts, that would mean more than 30 expert reports and depositions would have to be conducted on largely overlapping topics. Consolidation and limitations on experts in each subject area would promote efficiency in the process of litigating these actions.

Fourth, the Court should hold a discovery conference with the parties as soon as possible to ensure efficiency in the discovery process.

### 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 in a year when State Defendants have numerous and important duties regarding the 2022 elections. Consolidation offers the best path to a resolution of the issues raised by Plaintiffs—and the certainty needed for voters and election officials.

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*NAACP* overlap with all cases. Similarly, for election administration claims, *CBC* overlaps with several other cases. And for claims related to voter registration, *NGP*, *Sixth AME*, and *NAACP* raise similar claims

Respectfully submitted this 14th day of December, 2021.

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**CERTIFICATE OF COMPLIANCE**

Pursuant to L.R. 7.1(D), the undersigned hereby certifies that the foregoing STATE DEFENDANTS' CONSOLIDATED 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*  
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