

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

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

Plaintiffs,

v.

BRIAN KEMP, et al.,

Defendants.

Civil Action No. 21-cv-02070-JPB

PLAINTIFFS' STATEMENT ON POSSIBLE CONSOLIDATION

December 14, 2021

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PLAINTIFFS' STATEMENT ON POSSIBLE CONSOLIDATION

Plaintiffs file this Statement on Possible Consolidation in response to this Court's Order dated December 9, 2021. Plaintiffs oppose consolidation of this case with the other cases challenging Georgia Senate Bill 202 because this case is distinctive in ways that are highly material to the consolidation question.

First, unlike every other case challenging SB202, with one exception, this case does *not* raise the fact-intensive claim of intentional discrimination or discriminatory results under Section 2 of the Voting Rights Act or under the Fourteenth and Fifteenth Amendments. Compare *The New Georgia Project, et al. v. Raffensperger, et al.*, No. 1:21-cv-01229 (VRA counts discussed by the Court at *id.*, Doc. 86, at 25 to 33); *Georgia State Conference of the NAACP, et al. v. Raffensperger, et al.*, No. 1:21-cv-01259 (VRA and Fourteenth and Fifteenth Amendment claims discussed at *id.*, Doc. 64 at 15 – 25); *Sixth District of the African Methodist Episcopal Church, et al. v. Kemp, et al.* No. 1:21-cv-01284 (VRA and Fourteenth and Fifteenth Amendment claims discussed at *id.*, Doc. 110 at 16 – 25); *Asian Americans Advancing Justice-Atlanta, et al. v. Raffensperger*, No. 1:21-cv-01333 (*see id.* Doc. 69 at 15 – 21 (discussing VRA claims); *id.* at 21 – 24 (discussing Fourteenth and Fifteenth Amendment claims); *The Concerned Black Clergy of Metropolitan Atlanta, Inc. et al. v. Raffensperger, et al.*, No. 1:21-

cv-01728 (VRA and Fourteenth and Fifteenth Amendment claims discussed at *id.*, Doc. 64 at 14 – 23); *United States v. Georgia*, 1:21-cv-02575 (VRA claim discussed *id.*, Doc. 69 at 6 – 16).

The only other case that does not bring a discrimination claim is *VoteAmerica, et al. v. Raffensperger, et al.*, No. 1:21-cv-01390. But *VoteAmerica* does not challenge any of the provisions of SB202 that are challenged in this case, and this case does not challenge in any of the provisions of SB202 that are challenged in *VoteAmerica*.

As the Court explained in detail in its Orders denying the Motions to Dismiss, the discrimination claims that dominate these six other lawsuits are unusually complex and fact-intensive, regardless of whether and to what extent the Court employs the non-prescriptive “guideposts” of *Brnovich v. Democratic National Committee*, 141 S. Ct. 2321, 2336 (2021), the lengthy but “non-exhaustive” list of factors set forth in *Village of Arlington Heights v. Metropolitan Housing Development Corp.*, 429 U.S. 252, 267-68 (1977), the illustrative factors identified by the Court in *Thornburg v. Gingles*, 478 U.S. 30, 36-37 (1986), or the “totality of circumstances” as required by the statute itself. 52 U.S.C. § 10301(b). Plaintiffs in this case do not allege discrimination and the success of their claims does not depend upon the resolution of the fact issues that will dominate discovery or the legal issues that will dominate motions practice.

Second, this case also does not challenge a number of the other provisions of SB202 that are challenged in many of the other cases, including claims relating to: the distribution of food and drink to voters waiting in line to vote, drop boxes, mobile voting units, the timeline for early voting in runoff elections, the number of voter challenges, penalties for sending absentee-ballot applications, the prohibition on sending unsolicited absentee-ballot applications, and changes to out-of-precinct provisional ballots. Discovery, and motions practice, relating to these claims will have no bearing on the resolution of this case.

Third, the first ten counts of Plaintiffs' Complaint assert claims that are *not* raised in any of the other cases. No other plaintiff brings a procedural due process or separation of powers claim challenging the Takeover provisions (Counts I and II). No other plaintiffs challenges the provision allowing the State Election Board to remove, but not replace, boards of registration (Count III). No other plaintiff challenges the Observation Rule (Counts IV, V and VI), the Communication Rule (Count VII), the Tally Rules (Count VIII), or the Photography Rules (Count IX and X).

Other plaintiffs do challenge the new voter identification rule (Count XI), but not for the reason asserted by Plaintiffs, that is, that the rule makes it too easy for individual voters to be disenfranchised because the information that is now required to obtain an absentee ballot is available to anyone bent on voting illegally.

(Doc. 14 at 151). Other cases also challenge the narrowing of the absentee-by-mail ballot application, (Counts XII, XIII and XIV), but this marginal overlap does not warrant a consolidation of the cases, particularly given the dominance of the claims that do not overlap.

Fourth, Plaintiffs claims in general are not nearly as fact-intensive and, for that reason, can and should be tried long before the discrimination claims that dominate the other cases will be ready for trial. Plaintiffs' procedural due process and separation of powers challenges to the Takeover Provision (Counts I, II and III) are based almost entirely on the terms of the statute which, of course, are not in dispute. As the Court is aware from its ruling on Plaintiffs' Motion for Preliminary Injunction, the next seven counts (Observation Rule, Communications Rule, Tally Rule, Photograph Ban), while not free of disputed facts at the margins, will not involve the massive discovery, and expert testimony, necessary for the resolution of the discrimination claims. And the law on many of the Coalition Plaintiffs' claims has already been briefed and litigated in connection with the Motion for a Preliminary Injunction. These claims are much closer to being ready for trial than any of the claims in the other cases.

Finally, the distinctiveness of this case means that if it is consolidated with the other cases, not only will this litigation be slowed, but the other cases will be prolonged as well while Plaintiffs, Defendants, and the Court address factual and

legal issues unique to this case that have no bearing on the resolution of the other cases.

For the foregoing reasons, this case should not be consolidated with the other cases.

Respectfully submitted this 14th day of December, 2021.

/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 14th day of December, 2021.

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