

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

UNITED STATES OF AMERICA,

Plaintiff,

v.

THE STATE OF GEORGIA; *et al.*,

Defendants,

THE REPUBLICAN NATIONAL
COMMITTEE; *et al.*,

Intervenor-Defendants.

Civil Action No.
1:21-CV-2575-JPB

UNITED STATES' STATEMENT REGARDING CONSOLIDATION

On December 9, 2021, the District Court notified the parties that it is considering consolidating the above-captioned matter with the following seven other cases currently pending before this Court challenging Georgia Senate Bill 202: *The New Georgia Project v. Raffensperger*, No. 1:21-cv-1229 (N.D. Ga.); *Georgia State Conference of the NAACP v. Raffensperger*, No. 1:21-cv-1259 (N.D. Ga.); *Sixth District of the AME Church v. Kemp*, No. 1:21-cv-1284 (N.D. Ga.); *Asian Americans Advancing Justice-Atlanta v. Raffensperger*, No. 1:21-cv-1333

(N.D. Ga.); *Vote America v. Raffensperger*, No. 1:21-cv-1390 (N.D. Ga.); *Concerned Black Clergy of Metropolitan Atlanta, Inc. v. Raffensperger*, No. 1:21-cv-1728 (N.D. Ga.); and *Coalition for Good Governance v. Raffensperger*, No. 1:21-cv-2070 (N.D. Ga.).

Because these cases present common questions of law and fact, consolidation is appropriate pursuant to Rule 42 of the Federal Rules of Civil Procedure. Therefore, it is the position of the United States that the District Court should consolidate its case for purposes of discovery with the other cases challenging SB 202.¹

I. LEGAL STANDARD

Rule 42 of the Federal Rules of Civil Procedure permits consolidation when “actions before the court involve a common question of law or fact.” Fed. R. Civ. P. 42(a). Rule 42(a) “is permissive and vests a purely discretionary power in the district court.” *Young v. City of Augusta, Ga. Through DeVaney*, 59 F.3d 1160, 1168 (11th Cir. 1995) (citations and internal quotation marks omitted).

In exercising that discretion, several factors typically govern:

¹ The United States potentially would support consolidation for trial, as well, depending on the litigation schedule adopted by the court.

(1) whether the specific risks of prejudice and confusion are overborne by the risk of inconsistent adjudications of common factual and legal issues, (2) the burden on parties, witnesses, and available judicial resources posed by multiple lawsuits, and (3) the length of time required to conclude multiple suits, and (4) the relative expense of all concerned.

Daker v. Warren, 778 F. App'x 652, 653 (11th Cir. 2019) (citing *Hendrix v. Raybestos-Manhattan, Inc.*, 776 F.2d 1492, 1495 (11th Cir. 1985)).

II. ARGUMENT

Consolidation is appropriate here. First, this action and the other cases challenging SB 202 present numerous common questions of law and fact, and several of the complaints challenge whether certain provisions of Georgia Senate Bill 202 violate Section 2 of the Voting Rights Act. *Compare, e.g.*, Compl. ¶¶ 159-165, ECF No. 1, *United States v. Georgia*, with First Am. Compl., ECF No. 39, ¶¶ 167-171, *The New Georgia Project v. Raffensperger* (N.D. Ga. May 17, 2021); and First Am. Compl., ¶¶ 170-201, ECF No. 35, *Georgia State Conference of the NAACP v. Raffensperger*, No. 1:21-cv-1259 (N.D. Ga., May 28, 2021). “The proper solution to problems created by the existence of two or more cases involving the same parties and issues, simultaneously pending in the same court would be to consolidate them under Rule 42(a).” *Hargett v. Valley Fed. Sav. Bank*, 60 F.3d 754, 765-66 (11th Cir. 1995) (citation and internal quotation marks omitted).

In addition, the consolidation would promote judicial economy and minimize expense, given the extensive factual record that must be developed in Voting Rights Act litigation, often including the testimony of senior state officials. *See, e.g., LULAC v. Roscoe I.S.D.*, 123 F.3d 843, 846 (5th Cir. 1997). Here, consolidation will ensure that discovery and motions practice will not involve unnecessary duplication, will minimize any potential burdens on witnesses who might otherwise be called to testify in multiple matters, and will result in lower costs for the Court as well as the litigants. *See Sanho Corp. v. Kaijet Tech. Int'l Ltd., Inc.*, No. 1:20-cv-2150-TCB, 2020 WL 8254381, at *2 (N.D. Ga. Oct. 19, 2020).

Finally, we do not believe that any prejudice, confusion, or delay will arise as a result of consolidation, and all eight cases are in the early stages of litigation. *See Duncan v. City of Fairburn*, No. 1:20-cv-4606-SCJ-LTW, 2021 WL 2534448, at *2 (N.D. Ga. Apr. 14, 2021).

III. CONCLUSION

For the reasons set forth above, consolidation is appropriate pursuant to Rule 42 of the Federal Rules of Civil Procedure, and it is the position of the United States that the District Court should consolidate its case with the other cases challenging SB 202 for purposes of discovery.

Date: December 14, 2021

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Respectfully submitted,

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CERTIFICATE OF COMPLIANCE WITH LOCAL RULE 7.1(D)

Pursuant to Local Rule 7.1(D), I certify that the foregoing document was prepared in Times New Roman 14-point font in compliance with Local Rule 5.1(C).

/s/ Rachel R. Evans

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CERTIFICATE OF SERVICE

I hereby certify that on December 14, 2021, I electronically filed the foregoing with the clerk of the court using the CM/ECF system, which will send notification of this filing to counsel of record.

/s/ Rachel R. Evans
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