

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

**GEORGIA STATE CONFERENCE OF *
THE NAACP, et al., ***

Plaintiffs, *

v. *

**CA No. 1:17cv01427-
TCB-WSD-BBM**

**BRIAN KEMP, in his official capacity *
as Secretary of State for the State of *
Georgia, ***

Defendants. *

**DEFENDANT’S MOTION TO CONSOLIDATE
AND BRIEF IN SUPPORT**

COMES NOW Defendant, by and through counsel, the Attorney General for the State of Georgia, and pursuant to FED. R. CIV. P. 42(a) moves to consolidate and merge cases. Defendant submits that consolidation is appropriate because both cases involve a challenge to the same legislation, and concern the same questions of fact and law.

STATEMENT OF FACTS

On October 3, 2017 eleven (11) individual voters filed an action challenging the same 2015 redistricting legislation that is the subject of this litigation. *Brooks, et al., v. Kemp*, CA No. 1:17cv3856-AT.¹ Like the Plaintiffs in this action, the *Brooks* Plaintiffs are challenging the redistricting of House Districts 105 and 111 as racial gerrymanders. *Brooks*, Doc. 1, Count III. The *Brooks* Plaintiffs have also brought two claims pursuant to Sec. 2 of the Voting Rights Act. *Brooks*, Doc. 1, Counts I and II.

ARGUMENT AND CITATION OF AUTHORITY

As the above stated facts show, two sets of Plaintiffs are now challenging the same redistricting legislation. Both sets of Plaintiffs are bringing claims premised on their assertions that the 2015 redistricting legislation is intentionally racially discriminatory.

Federal Rule of Civil Procedure 42(a) states in pertinent part that

If actions before the court involve a common question of law or fact, the court may . . . consolidate the actions.

Rule 42(a)(2). The above rule is one of convenience and exists to give the court discretion to decide how cases on its docket are to be handled so that the business

¹ A copy of the *Brooks* complaint is attached hereto as Exhibit 1.

of the court may be dispatched with expedition and economy while providing justice to the parties. *See Miller v. U.S. Postal Service*, 729 F.2d 1033, 1036 (5th Cir 1984); *Miller Brewing Co. v. Meal Co.*, 177 F.R.D. 642, 643 (E.D. Wis. 1998).

Factors the court must consider are:

Whether the specific risks of prejudice and possible confusion [are] overborne by the risk of inconsistent adjudications of common factual and legal issues, the burden on parties, witnesses and available judicial resources posed by multiple lawsuits, the length of time required to conclude multiple suits as against a single one, and the relative expense to all concerned of the single-trial, multiple-trial alternatives.

Hendrix v. Raybestos-Manhattan, Inc., 776 F.2d 1492, 1495 (11th Cir. 1985)

(quoting *Arnold v. Eastern Air Lines, Inc.*, 681 F.2d 186, 193 (4th Cir. 1982), *cert.*

denied, 460 U.S. 1102 (1983) and 464 U.S. 1040 (1984)). Here, all of the factors

weigh in favor of consolidation. Consolidation poses no risk of confusion to the

parties as the substantive claims are largely the same. A failure to consolidate does

however, risk inconsistent adjudications on common legal issues and would burden

the parties and witnesses with unnecessary and largely duplicative discovery.

Moreover, as in this litigation, pursuant to 28 U.S.C. § 2284(a) a three judge panel

must be appointed to hear and determine the merits of the *Brooks* Plaintiffs'

claims. Absent consolidation two three judge panels will be required to conduct

largely duplicative proceedings. "District court judges in this circuit have been

urged to make good use of Rule 42(a) ... in order to expedite the trial and eliminate unnecessary repetition and confusion.” *Young v. City of Augusta ex rel. DeVaney*, 59 F.3d 1160, 1169 (11th Cir. 1995).

Here, where both actions challenge the same redistricting plan and are premised on the same or closely related legal theories, consolidation is appropriate. While there are some differences with respect to the additional statutory claims included in the *Brooks* complaint that are not included in this action, the witnesses and evidence is expected to largely overlap. The consolidation and merger of the instant case with *Brooks, et al., v. Kemp*, CA No. 1:17cv3856-AT will facilitate witness convenience, minimize the cost of litigation, and eliminate any potential confusion and possible inconsistencies that two cases may cause. Pursuant to FED. R. CIV. P. 42, the cases should be consolidated.

III. CONCLUSION

For the foregoing reasons, Defendants respectfully urge that the Court grant this motion, and consolidate and merge *Brooks, et al., v. Kemp*, CA No. 1:17cv3856-AT with this case.²

² Contemporaneous with this filing, Defendant will file a Notice of Related Filing in the *Brooks* litigation and attach a copy of this motion to that filing.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

Pursuant to Local Rule 7.1(D), I hereby certify that the foregoing has been prepared in compliance with Local Rule 5.1(B) in 14-point New Times Roman type face.

CERTIFICATE OF SERVICE

I hereby certify that on October 6, 2017, I electronically filed the foregoing **MOTION TO CONSOLIDATE AND BRIEF IN SUPPORT** with the Clerk of Court using the CM/ECF system which will automatically send email notification of such filing to the following attorneys of record:

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I hereby certify that I have mailed by United States Postal Service, postage prepaid, the document to the following non-CM/ECF participants: NONE

This 6th day of October, 2017.

/s/Cristina Correia
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