

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

GEORGIA STATE CONFERENCE OF
THE NAACP, as an organization;
LAVELLE LEMON, MARLON REID,
LAURETHA CELESTE SIMS,
PATRICIA SMITH, COLEY TYSON,

Plaintiffs,

v.

STATE OF GEORGIA and BRIAN
KEMP, in his official capacity as
Secretary of the State for the State of
Georgia

Defendants

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

**PLAINTIFFS' RESPONSE TO DEFENDANT'S
MOTION TO CONSOLIDATE**

Plaintiffs respectfully submit this response to Defendant's motion to consolidate this action with *Brooks, et al. v. Kemp*, CA No. 1:17cv3856-AT. While the two actions do raise closely related issues, and some form of consolidation or coordination may be appropriate, Plaintiffs submit that neither consolidation nor coordination should be allowed to delay adjudication of Plaintiffs' claims in this case. Prompt resolution of those claims is essential to avoid further confusion in the 2018 election cycle and irreparable harm to Plaintiffs and the public interest.¹

This case was filed on April 24, 2017, almost a year before the beginning of the 2018 election cycle. Plaintiffs challenge the redistricting of certain legislative districts by the State of Georgia on the grounds that the methods used by the State constitute unlawful racial and partisan gerrymandering. That challenge should be resolved before the onset of the 2018 election cycle in order to avoid confusion, the possibility of elections being held in unlawfully gerrymandered legislative districts, and irreparable harm to Plaintiffs and the public interest. Plaintiffs expect candidate qualifying—which depends upon the boundaries of legislative districts—to begin in mid-March, 2018; the primary election to be held on May 22, 2018; and the general election on November 6, 2018. Plaintiffs believe that their claims can

¹ Plaintiffs have previously requested an expedited status conference pursuant to Rule 16 to address the scheduling order entered by the Court on September 6, 2017, and related matters. Defendant joined in the request for a conference.

and should be resolved in advance of the beginning of the election cycle. To the extent the Court determines that remedial measures are necessary to cure unlawful gerrymandering, such measures will be far less effective once the election cycle begins, if they can be implemented at all.

Analogous issues were confronted by the three-judge district court in *Larios v. Cox*, 305 F.Supp.2d 1335 (D. Ga. 2004). There, in February 2004, the Georgia Secretary of State sought a stay pending appeal of the district court's decision holding Georgia's 2001 House of Representatives and 2002 Senate redistricting plans unlawful. The district court rejected the stay request, finding, among other things, that the plaintiffs and the general public would be irreparably harmed if they were forced to vote under unconstitutional redistricting plans in the 2004 election cycle. *Id.* at 1342, 1343. The court held that "the irreparable harm to the plaintiffs, and to all voters in Georgia who have had their votes unconstitutionally debased, outweighs the harm the state may encounter by being unable to resolve an appeal ... prior to the 2004 election." *Id.* at 1343. The court emphasized that "we have a responsibility to ensure that future elections will not be conducted under unconstitutional plans, a responsibility that cannot be accomplished if the stay is granted." *Id.* at 1344.

Here, similarly, plaintiffs and the general public will be irreparably harmed if they are forced to vote under unlawful redistricting plans in the 2018 election cycle. That harm far outweighs any inconvenience to the State or witnesses of

potentially having some individuals deposed more than once. Indeed, Plaintiffs believe that the Court and parties can formulate discovery coordination procedures that will minimize, if not eliminate, any “burden [to] the parties and witness[es] [of] unnecessary and largely duplicative discovery.” Motion to Consolidate at 3.

Plaintiffs acknowledge that, while there should be considerable overlap in the discovery of Defendants’ witnesses between that required in the *Georgia NAACP* case and that required in the *Brooks* case, the *Brooks* case, because its focus might extend beyond Districts 105 and 111, may entail additional discovery of those witnesses. That should not, however, lead to delay of the first-filed *Georgia NAACP* case. With or without consolidation, the *Brooks* parties may be cross-noticed for the depositions of the State’s witnesses in the *Georgia NAACP* case. The parties in the *Brooks* case may agree to allow the *Brooks* plaintiffs to question the State’s witnesses on issues beyond those involved in the *Georgia NAACP* case before issue is joined in the *Brooks* case, or they may agree that those witnesses may be subject to additional questioning limited to the issues involved only in the *Brooks* case after issue is joined. The minor inconvenience of either allowing limited discovery before issue is joined or allowing additional limited discovery after issue is joined pales in comparison to the prejudice that would result to Plaintiffs and the public interest from delay of the first-filed *Georgia NAACP* case.

This Court has a responsibility to ensure that the 2018 election is not conducted under unlawful redistricting plans. Plaintiffs believe that the current schedule could, with a few important modifications, enable the Court to fulfill that responsibility.² Any further delay of discovery and trial would, however, almost certainly render it impossible for the Court to do so.

For these reasons, Plaintiffs respectfully submit that consolidation or coordination of this action with *Brooks v. Kemp* should occur, if at all, only under conditions that ensure trial of this action will not be delayed.

Respectfully submitted, this 20th day of October, 2017.

By: /s/ William V. Custer
William V. Custer, Georgia Bar No. 202910
Jennifer B. Dempsey, Georgia Bar No. 217536
Bryan Cave LLP
One Atlantic Center, Fourteenth Floor
1201 West Peachtree Street, NW
Atlanta, GA 30309-3488
Telephone: (404) 572-6600
Fax: (404) 572-6999
Email: *bill.custer@bryancave.com*
jennifer.dempsey@bryancave.com

Bradley S. Phillips (*admitted pro hac vice*)
Gregory D. Phillips (*admitted pro hac vice*)
Thomas P. Clancy (*admitted pro hac vice*)
Munger, Tolles, & Olson LLP

² The Court could, for example, extend the candidate qualifying period for a short time if that proves necessary to ensure lawful elections. *See Larios v. Cox*, 305 F.Supp.2d at 1343-44 (“there is no reason why the court could not extend that [candidate qualifying] period if this proves necessary to ensure constitutional elections”).

350 South Grand Avenue, Fiftieth Floor
Los Angeles, CA 90071-1560
Telephone: (213) 683-9100
Facsimile: (213) 687-3702
Email: *Bradley.Phillips@mto.com*
Gregory.Phillips@mto.com
Thomas.Clancy@mto.com

Jon Greenbaum (*admitted pro hac vice*)
Ezra D. Rosenberg, Esq. (*admitted pro
hac vice*)
Julie Houk, Esq. (*admitted pro hac vice*)
John Powers, Esq. (*admitted pro hac vice*)
Lawyers' Committee for Civil Rights Under
Law
1401 New York Ave., NW, Suite 400
Washington, DC 20005
Telephone: (202) 662-8600
Facsimile: (202) 783-0857
Email: *jgreenbaum@lawyerscommittee.org*
erosenberg@lawyerscommittee.org
jhouk@lawyerscommittee.org
jpowers@lawyerscommittee.org

Counsel for Plaintiffs

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 Time Roman type face.

/s/ William V. Custer

William V. Custer, Georgia Bar No. 202910

Bryan Cave LLP

One Atlantic Center, Fourteenth Floor

1201 West Peachtree Street, NW

Atlanta, GA 30309-3488

Telephone: (404) 572-6600

Fax: (404) 572-6999

Email: bill.custer@bryancave.com

Counsel for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on the 20th day of October, 2017, I filed the foregoing **PLAINTIFFS' RESPONSE TO DEFENDANT'S MOTION TO CONSOLIDATE** with the Clerk of Court using the CM/ECF system, which will send notification of such filing to all counsel of record.

/s/ William V. Custer

William V. Custer, Georgia Bar No. 202910

Bryan Cave LLP

One Atlantic Center, Fourteenth Floor

1201 West Peachtree Street, NW

Atlanta, GA 30309-3488

Telephone: (404) 572-6600

Fax: (404) 572-6999

Email: bill.custer@bryancave.com

Counsel for Plaintiffs