

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

BLACK VOTERS MATTER FUND, et
al.,

Plaintiffs,

vs.

BRAD RAFFENSPERGER, in his
official capacity as Secretary of State of
Georgia, et al.,

Defendants.

Civil Action No. 1:20-cv-1489-AT

**PLAINTIFFS' UNOPPOSED MOTION TO FILE SECOND AMENDED
COMPLAINT**

In the interests of justice and judicial economy, and pursuant to Federal Rule of Civil Procedure 15, Plaintiffs submit this Unopposed Motion to File a Second Amended Complaint, a copy of which is attached hereto. For the Court's convenience, Plaintiffs have also attached a redline version of the proposed Second Amended Complaint. The Second Amended Complaint maintains the Count 1 claim ("the poll tax claim") from the First Amended Complaint but eliminates the Count 2 claim ("the *Anderson-Burdick* claim") and any references to it. Plaintiffs

have conferred with Defendants, and all parties have consented to this motion in writing.

Rule 15(a)(2) provides that “a party may amend its pleading only with the opposing part’s written consent or the court’s leave,” and that a “court should freely give leave” to amend a complaint “when justice so requires.” As noted above, Plaintiffs have obtained Defendants’ consent in writing as to this motion. “Justice [also] requires” that this Court grant the motion. In light of the Court’s most recent order, Doc. 139, the interests of justice and judicial economy do not favor pursuing the remaining *Anderson-Burdick* claim to a potential trial. Instead of initiating a lengthy period of discovery based on the sole remaining claim, Plaintiffs believe that the best course forward would be to dismiss the *Anderson-Burdick* claim without prejudice. If this Court grants Plaintiffs’ motion, that would pave the way for a final judgment in favor of Defendants on the poll tax claim, which in turn would allow for the possibility of appeal on that claim.

The Eleventh Circuit has explicitly endorsed using Rule 15(a)(2) as a vehicle to eliminate remaining claims such as this one. *Perry v. Schumacher Grp. of Louisiana*, 891 F.3d 954, 958 (11th Cir. 2018). In *Perry*, the plaintiff sought immediate appellate review of the District Court’s disposition of seven of her eight claims against multiple defendants and wished to drop her claim against the

remaining defendant so that the dismissed claims could be appealed. *Id.* The Eleventh Circuit held that the plaintiff, in an attempt to drop the remaining claim, had incorrectly used Rule 41(a), which “permits voluntary dismissals only of entire ‘actions,’ not claims.” *Id.* at 956. However, the court noted that the plaintiff could have sought and obtained leave to amend the complaint to achieve this end because “Rule 15 was designed for situations like this.” *Id.* at 958. “Had she amended her complaint to remove that claim, the District Court would have entered final judgment against her and she could have appealed everything at once.” *Id.* Plaintiffs seek the same result as to their poll tax claim.

Therefore, Plaintiffs respectfully request that the Court grants Plaintiffs leave to file the Second Amended Complaint.

Respectfully submitted this 24th day of August, 2020.

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CERTIFICATE OF COMPLIANCE

Pursuant to N.D. Ga. Local Civil Rule 7.1(D), I hereby certify that the foregoing has been prepared in compliance with N.D. Ga. Local Civil Rule 5.1(C) in Times New Roman 14-point typeface.

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CERTIFICATE OF SERVICE

I hereby certify that on August 24, 2020, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system.

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