

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

FAIR FIGHT ACTION, *et al.*,

Plaintiffs,

v.

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

Defendants.

Civil Action File

No. 1:18-cv-05391-SCJ

DEFENDANTS' MOTION TO POSTPONE AND ORDER BRIEFING

COME NOW DEFENDANTS Brad Raffensperger, in his official capacity as Secretary of State of the State of Georgia and Chairman of the State Election Board of Georgia (“Secretary Raffensperger”), Rebecca N. Sullivan, David J. Worley, Anh Lee, and Seth Harp, in their official capacities as members of the State Election Board (collectively, “State Election Board Members”), and the State Election Board by and through their undersigned counsel, and request that the Court postpone the hearing on Defendants’ Renewed Motion to Dismiss (Doc. 48) and order an expedited briefing schedule regarding House Bill 316 and its effect on this case, stating as follows:

1. Defendants filed a Renewed Motion to Dismiss Plaintiffs' Amended Complaint on March 5, 2019 stating, generally, that Plaintiffs have not: (1) alleged sufficient facts to confer standing; (2) joined all proper parties; (3) sufficiently pleaded a failure-to-train theory; (4) stated a claim regarding voter list maintenance; (5) stated a claim against the State Election Board Members permissible under the 11th Amendment nor 42 U.S.C. § 1983; and (6) stated sufficient causation against the State Election Board nor its Members. *See generally* [Doc. 48 and 48-1].

2. At the time of Defendants' Motion to Dismiss, House Bill 316 ("HB 316") was pending before the Georgia Senate. Since then, the bill passed the Senate, was agreed to by the Georgia House of Representatives, and was signed by the Governor on April 2, 2019 as Act 24. For the convenience of the Court and the parties, an electronic scan of a Certified Copy of Act 24 and an electronic version of House Bill 316, as passed by the House and Senate, are attached to this Motion as Exhibits 1 and 2, respectively.

3. Since HB 316 had not passed the General Assembly at the time of Defendants' Renewed Motion to Dismiss, Defendants made only a short reference to the pending legislation to make the Court and Plaintiffs aware of its potential impact. Specifically, Defendants noted HB 316's general contents and explained

to the Court that the change in law could substantially affect Plaintiffs' claims because "the Eleventh Amendment limits Plaintiffs to prospective relief only, [thus] any statutory change automatically moots any claims of harm caused by current law and policy." [Doc. 48-1 at 3].

4. The Court, on April 8, 2019, ordered a two-hour hearing on Defendants' Renewed Motion to Dismiss Plaintiffs' Amended Complaint be held on April 29, 2019. [Doc. 56]. In addition to the grounds stated in Defendants' Renewed Motion to Dismiss, the Court directed the parties be prepared to address the following: "(1) the effect of HB 316 on the question of standing; (2) whether any subsequent changes in the law should be considered under the mootness doctrine and the procedural mechanism/timing for such consideration; and (3) whether the election boards/officials of each of Georgia's 159 counties are necessary parties and the feasibility of joining said entities to this lawsuit." *Id.*

5. Given the significant effect HB 316 has on Plaintiffs' claims and, because the law was not enacted until after the filing of Defendants' Renewed Motion to Dismiss, the parties have not fully briefed the Court on the effect of HB 316 on this litigation. Defendants believe that the Court would be assisted by briefing on the impact of HB 316 to provide a clearer picture of the changes in the electoral process prior to the hearing. Defendants, therefore, propose an expedited

briefing schedule on the narrow issue of HB 316 to avoid any confusion at the hearing on Defendants' Renewed Motion to Dismiss. Specifically, this narrow briefing should address issues one and two raised by the Court in its April 8th Order [Doc. 56]: "(1) the effect of HB 316 on the question of standing; [and] (2) whether any subsequent changes in the law should be considered under the mootness doctrine and the procedural mechanism/timing for such consideration." Defendants have communicated their intent to request this briefing with Plaintiffs' counsel and requested Plaintiffs join in, or not oppose, this Motion.¹ As of this filing, Defendants have not received a response.

6. For the foregoing reasons, Defendants respectfully request the Court postpone the April 29, 2019 hearing for up to sixty (60) days and order an expedited briefing on the narrow issue of HB 316 and its effect on Plaintiffs' pending claims.² This postponement period will accommodate an initial briefing

¹ Defendants' Letter to Allegra J. Lawrence-Hardy, counsel for Plaintiffs, is attached to this Motion as Exhibit 3.

² In light of the Court's April 8th Order, to accommodate this schedule and appropriate briefing on the matter consistent with that Order, and as a demonstration of good faith, Defendants will not file a motion to dismiss for mootness nor a supplemental motion to dismiss for lack of standing in light of HB 316 at this time, though such a filing would be appropriate under the Federal Rules of Civil Procedure. Defendants, however, reserve the right to raise these jurisdictional issues at a later time if such a motion is then appropriate and will not frustrate the efficient disposition of this matter.

by Defendants on the narrow topics proposed herein by May 13, 2019, a Response from Plaintiffs by May 27, 2019, and a Reply from Defendants (if necessary), by June 10, 2019. This briefing schedule would allow both the parties and the Court to proceed efficiently with the hearing on Defendants' Renewed Motion to Dismiss and benefit from a full briefing on the issues raised in the Court's April 8th Order. Defendants have attached a Proposed Order to this effect for the convenience of the Court, labeled as Exhibit 4.

WHEREFORE, Defendants respectfully request this Court postpone the Hearing on Defendants' Renewed Motion to Dismiss, scheduled for April 29, 2019, for up to sixty (60) days. Defendants also request the Court order briefing by the parties on the issue of HB 316 and its effect on Plaintiffs' claims.

This 19th day of April, 2019.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this date electronically filed the foregoing **DEFENDANTS' MOTION TO POSTPONE AND ORDER BRIEFING** with the Clerk of the Court using the CM/ECF system which will automatically send email notification of such filing to the attorneys of record listed on the case.

This 19th day of April, 2019.

/s/ Josh B. Belinfante

Josh B. Belinfante

GA Bar No. 047399