

IN THE SUPERIOR COURT OF FULTON COUNTY

STATE OF GEORGIA

Judith R.T. O’Kelley, Charles R.T. O’Kelley, St. Johns Missionary Baptist Church, Rabbi Scott Saulson, Reverend Timothy McDonald III, Senator David Adelman, Representative Tyronne Brooks,

Plaintiffs,

vs.

Cathy Cox, in her official capacity as Secretary of State of Georgia,

Defendant.

CASE NO.

PLAINTIFFS’ MOTION FOR CONSOLIDATED AND EXPEDITED PRELIMINARY AND PERMANENT INJUNCTION

Plaintiffs hereby respectfully move this Court for a preliminary and permanent injunction. This case involves a challenge to a proposed constitutional amendment and the ballot language voters will view when deciding how to cast their votes on the proposed constitutional amendment. The issues raised by this motion are pure questions of law for the Court and do not depend on the resolution of any disputed factual matters. Specifically, Plaintiffs allege that the proposed amendment violates the Georgia Constitution by (1) addressing multiple subject matters in a single amendment, and (2) using affirmatively misleading ballot language that disguises the consequences of ratification from the voting public. Voting on this proposed amendment is scheduled for November 2, 2004. Accordingly, Plaintiffs request that the Court expedite its hearing of this motion and consolidate the preliminary injunction hearing with a trial on the merits so that the parties will have a final ruling and the opportunity for reasonable appellate review prior to the date of the election.

Expedited review. Plaintiffs have filed this lawsuit as a pre-ballot challenge to a proposed constitutional amendment that (1) includes multiple subject matters about which many voters have conflicting views, thereby disabling those voters from casting a vote consistent with their conscience on these important issues, and (2) is identified on the ballot in misleading language that suggests to the voters that the proposed amendment only addresses the definition of marriage when the amendment actually also covers other subjects, including civil unions, the jurisdiction of Georgia courts, and the full faith and credit afforded judgments of other states.

The proposed amendment will be presented to the voters on the November 2, 2004 ballot. In order to ensure that this issue will be finally resolved prior to that election, Plaintiffs respectfully request an expedited hearing on the legal issues presented. *See generally Mead v. Sheffield*, No. S04A1982, 2004 WL 1944824 (Ga. Sept. 2, 2004) (“requiring that a new statewide election be held”).

Equitable Relief. Plaintiffs seek preliminary and permanent injunctive relief. Given the November 2, 2004 election date, Plaintiffs respectfully request consolidation of the preliminary injunction hearing with a trial on the merits.

This Court has broad authority to issue an interlocutory injunction. *Outdoor Adver. Ass’n v. Garden Club of Ga., Inc.*, 272 Ga. 146, 147, 527 S.E.2d 856, 859 (2000). ““In an application for an interlocutory injunction there should be a balancing of conveniences and a consideration of whether greater harm might be done by refusing rather than granting the injunction.”” *Zant v. Dick*, 249 Ga. 799, 799, 294 S.E.2d 508, 509 (1982) (quoting *Maddox v. Willis*, 205 Ga. 596, 54 S.E.2d 632 (1947)). The focus is on the existence of a violation of law and a balancing of harms. *See Dep’t of Transp. v. City of Atlanta*, 259 Ga. 305, 306, 380 S.E.2d 265, 267 (1989) (holding

that the “trial court should consider whether the denial of a petition for injunctive relief would work an ‘irreparable injury’”).

For the reasons stated in the Verified Complaint and accompanying brief, Plaintiffs have demonstrated that the proposed amendment violates the Georgia Constitution by (1) addressing multiple subject matters in a single amendment, and (2) using affirmatively misleading ballot language that disguises the consequence of ratification from the voting public. As the Georgia Supreme Court recently reiterated, “[nothing] could possibly constitute a more vitally essential element of an election than the contents of the ballot furnished to the voters.” *See Mead v. Sheffield*, 2004 WL 1944824, at *1 (Sept. 2, 2004) (quoting *Alexander v. Ryan*, 202 Ga. 578, 582, 43 S.E.2d 654, 659 (1947)). Indeed, where the “contents of the ballot itself” are legally insufficient, “the election is, of course, invalid.” *Id.* (quoting *State v. Carswell*, 78 Ga. App. 84, 88, 50 S.E.2d 621, 624 (1948)). Therefore, if the ballot and proposed constitutional amendment are themselves violative of the Georgia Constitution, voters will suffer a harm that outweighs any administrative burdens the Defendant may claim. *See Mead*, 2004 WL 1944824, at *2, 5 (“requiring that a new statewide election be held” because of the “preparation of an irregular ballot and the receipt of illegal votes”).

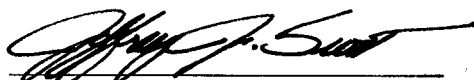
In order to resolve this matter prior to the November 2, 2004 election, and in light of the purely legal issues presented, consolidation of the preliminary injunction hearing with the trial on the merits is warranted. Consolidation pursuant to O.C.G.A. § 9-11-65(a)(2) is particularly appropriate here given that (1) Plaintiffs have provided proper notice of their request to consolidate, (2) the issues presented are legal not factual, and (3) urgent action is required. *Smith v. Guest Pond Club, Inc.*, 277 Ga. 143, 144-45, 586 S.E.2d 623, 624-25 (2003); *Focus Entm’t Int’l, Inc. v. Partridge Greene, Inc.*, 253 Ga. App. 121, 124, 558 S.E.2d 440, 443 (2001) (“trial

court can convert an interlocutory injunction hearing by consolidating it into a final trial on the merits where notice has been given of such intent and where urgency demands immediate action”); *Kim v. State*, 272 Ga. 343, 344, 528 S.E.2d 798, 799 (2000) (consolidation appropriate over a party’s objection where “no issues of fact remain unresolved”).

Therefore, for all the above reasons, and based upon the Verified Complaint and related Memorandum of Law and arguments, Plaintiffs hereby request that this Court:

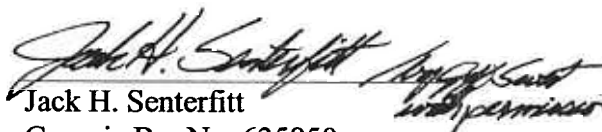
- Schedule an expedited hearing on this matter;
- Enter an order consolidating the preliminary injunction hearing with the trial on the merits;
- (3) Grant a preliminary and permanent injunction against the presentation of a constitutionally deficient ballot to the voters;
- (4) Grant such other and further relief as may be warranted.

This 16TH day of September, 2004.



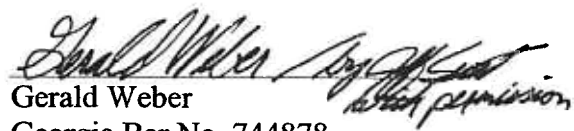
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