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 Tyrone Brooks,	)	
Plaintiffs,	)	**CASE NO. 2004 CV 93494**
vs.	)	
Sonny Perdue, in his official capacity as Governor of the State of Georgia,	)	
Defendant.	)	

PLAINTIFFS' RESPONSE BRIEF IN OPPOSITION TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

For the reasons stated in Plaintiffs' Memorandum of Law in support of Plaintiffs' motion for Judgment on the Pleadings ("Plaintiffs' Initial Memorandum"), the Plaintiffs are entitled to judgment as a matter of law in this case. For the same reasons, the Defendant's Motion for Summary Judgment should be denied. Defendant's Brief provides this Court with no basis for granting judgment in Defendant's favor or for denying judgment in favor of Plaintiffs. As discussed in more detail below, Defendant's Brief instead: (i) proposes an entirely new test for examining whether a constitutional amendment satisfies the requirements of Article 10, Section 1, Paragraph 2 of the Georgia Constitution (a test contrary to decades of Supreme Court precedent); (ii) makes no attempt to reconcile the various subject matters of Amendment One with the central purpose underlying the single-subject rule of the Georgia Constitution (the prevention of unconstitutional Hobson's choices or "logrolling"); and (iii) pretends that the recognition

of marriage is the only subject addressed by subsection (b) of Amendment One (a fiction that ignores the plain language of the Amendment itself).

Defendant's Motion for Summary Judgment should be denied.

I. AMENDMENT ONE VIOLATES THE SINGLE-SUBJECT RULE.

Defendant takes essentially two approaches in an effort to rescue Amendment One from its violation of Article 10, Section 1, Paragraph 2 of the Georgia Constitution, *i.e.*, the "single-subject rule." First, Defendant suggests that the single-subject rule really does not exist and that the applicable constitutional provision only creates a "single amendment" rule that necessarily is satisfied whenever the Georgia Constitution is amended in only one place. Alternatively, Defendant attempts to squeeze the multiple subject matters addressed by Amendment One within the confines of a single subject. Neither of these approaches withstands scrutiny.

A. Defendant's Proposed "Single Amendment" Test Is Contrary to Law.

At various points in Defendant's Brief, Defendant suggests that Article 10, Section I, Paragraph II of the Georgia Constitution really is not concerned with whether a constitutional amendment addresses multiple subject matters, but is instead concerned merely with whether the amendment purports to amend the Constitution in only one place. *See, e.g.*, Defendant's Br. at 2 n. 2 ("Amendment 1 . . . patently presents a single amendment; it satisfies the Constitution on its face without the need of any inquiry into the relatedness of multiple amendments."), 7 ("[T]he question is . . . whether the referendum proposes one amendment to the constitution."), 7 ("[Amendment One] purports to amend the Constitution in only one place . . . ."), 9 (contending that the constitutional rule relates "the actual number of amendments that are actually made, not

to the number of subjects"). Defendant does not cite a single case in support of this novel proposition, and there are no such cases. Indeed, decades of Supreme Court precedent (to say nothing of logical reasoning) flatly preclude adoption of the formalistic test that Defendant proposes.

At the outset, Defendant appears to take exception to the very phrase "single-subject rule." *See* Defendant's Br. at 2, 7. This position is somewhat ironic, given that the Supreme Court itself utilized this shorthand phrase in describing the requirements of Article 10, Section 1, Paragraph 2 of the Georgia Constitution in the opinion the Supreme Court issued when allowing a vote to go forward on Amendment One. *See O'Kelley v. Cox*, No. S05A0236, 2004 WL 2381798 (Ga. Oct. 26, 2004), at *1 (majority opinion), *3 (concurring opinion of Justice Hunstein) & *5 (dissenting opinion of Justices Sears and Benham). Moreover, the Supreme Court has for decades described the rule as the "multiple subject matter rule," which is simply another way of saying the same thing. *See, e.g., Goldrush II v. City of Marietta*, 267 Ga. 683, 685, 482 S.E.2d 347, 352 (1997); *Wall v. Board of Elections*, 242 Ga. 566, 570, 250 S.E.2d 408, 413 (1978); *Sears v. State*, 232 Ga. 547, 556, 208 S.E.2d 93, 100 (1974); *Carter v. Burson*, 230 Ga. 511, 519, 198 S.E.2d 151, 156 (1973).

Of course, the meaning of the rule itself is infinitely more important than the label selected to describe it. On this point, the gulf between Defendant's suggested test and the actual test that the law requires could not be wider. Whether described as the "single-subject rule" or the "multiple subject matter rule," the test mandated by binding Supreme Court precedent requires scrutiny of whether the effects of an amendment are germane to

the accomplishment of a *single objective* – not whether an amendment purports to amend the Constitution "in only one place." As the Supreme Court has explained:

> The test of whether an Act or a constitutional amendment violates the multiple subject matter rule is whether all of the parts of the Act or of the constitutional amendment are germane to the accomplishment of a *single objective*. If so, it does not violate the rule; otherwise, it does.

Carter, 230 Ga. at 519, 198 S.E.2d at 156 (emphasis added).[1]

While the Supreme Court's holding in *Carter* (and similar precedents) is the end of the question regarding the standard against which Amendment One must be judged, it is worth noting that the test actually adopted by the Supreme Court makes much more sense as a matter of constitutional principle than the alternative test suggested by the Defendant. The actual test serves the underlying purpose of the rule by guarding against legislative "logrolling," by requiring that "'[e]ach proposition submitted to the voters should stand or fall upon its own merits.'" *Id.* (quoting *Rea v. City of La Fayette*, 130 Ga. 771, 61 S.E. 707 (1908)). By contrast, the alternative test proposed by the Defendant would provide no safeguard whatsoever against such legislative tying arrangements.

---

[1] Given the clarity of this authoritative construction of the constitutional rule at issue, Defendant's suggestion that Plaintiffs have "misquot[ed] the applicable Constitutional provision," Defendant's Br. at 7, is not well taken. Defendant purports to place great weight on the final clause of Article 10, Section 1, Paragraph 2, which provides "that one or more articles or related changes in one or more articles may be submitted as a single amendment," but this proviso clause plainly relates to circumstances not present here. Specifically, this proviso clause allows: (i) *more than one new article* to be submitted as a single amendment; and (ii) *related changes to multiple articles* to be submitted as a single amendment (provided, of course, that the changes are germane to the accomplishment of a single objective). *Cf., e.g., Carter*, 230 Ga. at 519, 198 S.E.2d at 156 (upholding amendment that expressly amended language contained in multiple articles of the Georgia Constitution, *because all of the changes at issue related to the accomplishment of a single objective, i.e*, abolition of the office of the State Treasurer). Because Amendment One directly alters only one article of the Georgia Constitution (Article 1), this proviso clause has no relevance to the constitutional challenge at issue here – whether Amendment One violates the "single-subject rule" embodied in the *preceding* clause of Article 1, Section 1, Paragraph 1. Instead, under *Carter* and similar cases, the answer to that question turns on "whether all parts . . . of the constitutional amendment are germane to the accomplishment of a *single objective*." 230 Ga. at 519, 198 S.E.2d at 156 (emphasis added).

Exalting form over substance, the test proposed by the Defendant would permit amendments on an infinite number of disparate subject matters to be lumped together as a "single amendment," provided only that the legislature styled the measure as one amendment (*i.e.,* by giving it a single amendment number and proposing to codify the amendment "in one place" in the Georgia Constitution). Settled Georgia precedent rightly requires rejection of this invitation to meaningless formalism. The test adopted by the Supreme Court is not only the law of this State; it is also the only construction of the rule that vindicates the underlying purpose of Article 10, Section I, Paragraph II of the Georgia Constitution. That test – not the alternative test proposed by Defendant – must prevail.

B. Amendment One Fails the Multiple Subject Matter Test.

Perhaps in tacit recognition that Defendant's proposed alternative test cannot be reconciled with binding precedent, Defendant eventually articulates a test more in keeping with the the law, stating that "[t]he test here is whether [the amendments] are germane to the same subject." Defendant's Br. at 8; 10. However, Amendment One fails *this* test. For the reasons stated in Plaintiffs' Initial Memorandum, Amendment One impermissibly combines four separate subjects and is unconstitutional as a result. Nothing in Defendant's Brief refutes the reasoning of Plaintiffs' Initial Memorandum.

As Defendant describes it, the purpose of Amendment One is to prevent recognition of "marriages that are not the union of a man and a woman." Defendant's Br. at 13 ("The purpose of the . . . amendment is to prevent such recognition."). Plainly, this objective is accomplished by subsection (a) of the amendment. While Defendant makes several attempts to shoehorn the balance of Amendment One within the confines of this

single subject, each of these efforts is unavailing. Amendment One simply does not fit within a single subject, because it is not limited to the definition of *marriage*, but instead sweeps much more broadly into other subjects (including civil unions and related benefits) about which many voters have sharply different views than the views they hold about creating a constitutional definition of marriage.

1. Prohibiting Recognition of Other Unions of Same-Sex Couples and/or the Provision of Certain Benefits to Such Couples Is a Different Subject than Defining Marriage.

As an initial matter, it bears emphasis that Defendant has *admitted* that Amendment One "does relate to certain forms of 'civil unions' and limits the power of Georgia's courts related to unions between persons of the same sex to the extent such unions involve the benefits of marriage." Answer at ¶ 18. Having admitted that certain civil union benefits are covered by subsection (b) of the amendment, Defendant nevertheless attempts to show that although this additional objective is accomplished through subsection (b), both subsections of the amendment "relate to marriage between men and women." Defendant's Br. at 11. This attempt does not withstand scrutiny.

Defendant first insists emphatically that "[t]he words 'union' and 'marriage' are used interchangeably throughout [the amendment]." *Id.* (emphasis omitted). This assertion is demonstrably erroneous. *See Burns v. Burns*, 253 Ga. App. 600, 560 S.E.2d 47 (2002). As a test of Defendant's theory, Plaintiffs respectfully suggest that the Court engage in the exercise suggested by Defendant, substituting the words "marriage" and "union" for each other in every place those words appear in Amendment One. As this exercise immediately reveals, the meaning of Amendment One is *not* the same when

these words are interchanged. In fact, the interchanging of these words renders portions of Amendment One nonsensical.

Equally unavailing is Defendant's suggestion that subsection (b) merely "elaborates on" subsection (a). Defendant's Br. at 12. This position is grounded on a presumption that the recognition of civil union rights is inherently incompatible with a legal regime that affords the status of marriage exclusively to opposite-sex couples. This presumption is demonstrably false. Nothing about defining marriage solely as the union of man and woman creates even the slightest implication that civil union rights between persons of the same sex must necessarily and logically also be constitutionally banned.[2] To the contrary, the prohibition against marriages between persons of the same sex coexists simultaneously with the recognition of other unions of legal significance between persons of the same sex (in Vermont and elsewhere in the world).[3] Accordingly, a constitutional rule banning recognition of civil unions or related benefits is no mere "elaboration" of a rule prohibiting recognition of marriages between persons of the same gender.

Regardless of one's views on the relative merits of each proposition, the fact is that a constitutional amendment defining marriage addresses a substantively *different* subject than a constitutional amendment forever barring the General Assembly from

---

[2] Defendant's arguments to the effect that that subsection (b) merely "elaborates on" subsection (a) echoes a remarkably similar argument made by the Defendant in *O'Kelley I*, in which the Defendant contended that the effects of subsection (b) are somehow "implied" by subsection (a) and that, in essence, subsection (b) is mere surplusage. However, as discussed in Plaintiff's Initial Memorandum, established rules of contruction in this State mandate the opposite conclusion. *See, e.g., Tolbert v. Maner*, 271 Ga. 207, 208, 518 S.E.2d 423, 425 (1999) (holding that courts must "avoid[] constructions that make any part of the statute mere surplusage"); *State v. Lockett*, 259 Ga. App. 179, 180, 576 S.E.2d 582, 584 (2003) (holding that courts must "'avoid constructions which result in surplusage and meaningless language'").

[3] *Compare* Vt. Stat. Ann. tit. 15, § 1201(4) (defining marriage as "the legally recognized union of one man and one woman") *with* Vt. Stat. Ann. tit. 15, § 1201(2) (allowing for the formation of civil unions between persons of the same sex).

passing a meaningful civil union bill (should it determine that such legislation is in the interest of the State). The Georgia Constitution guarantees Georgia voters the right to consider these objectives separately and to vote their consciences on each. The vote on Amendment One trampled on this right, and Amendment One is invalid as a result of that constitutional violation.

2. *Stripping Georgia Courts of Jurisdiction is a Different Subject than Defining Marriage.*

With respect to the jurisdictional modification that Amendment One purports to accomplish, Defendant's analysis is limited to a single paragraph that does not fairly meet the language of amendment itself. *See* Defendant's Br. at 13. Indeed, Defendant repeatedly insists that the jurisdictional modification merely prevents *recognition of marriages* between persons of the same sex. *See id.* Defendant might have a valid point if the jurisdictional modification in the Amendment provided only that "[t]he courts of this state shall have no jurisdiction to recognize a marriage between persons of the same sex." But this is *not* what the amendment says. Instead, the actual language of the Amendment provides: "The courts of this state shall have no jurisdiction . . . to consider or rule on *any of the parties' respective rights arising as a result of or in connection with such relationship.*" Amendment One (emphasis added).

Plainly, the jurisdictional deprivation that Amendment One purports to accomplish sweeps much more broadly than depriving Georgia courts of jurisdiction to "recognize such marriages." Defendant's Br. at 13. In doing so, subsection (b) addresses a different objective than allowing recognition only of marriages comprised of persons of the opposite sex. The Georgia Constitution does not allow such multiple objectives to be submitted as a single amendment.

3. *Denying Full Faith and Credit to Acts and Judgments of Other States Is a Different Subject than Defining Marriage.*

With respect to the portion of Amendment One that purports to address full faith and credit issues, Defendant first makes an argument to the effect that substantive federal constitutional law permits the goals of Amendment One to be accomplished without offending the Full Faith and Credit Clause of the United States Constitution. *See* Defendant's Br. at 14 (asserting that "[t]he States may refuse full faith and creidt to proceedings in other States that violate the forum State's public policy"). That argument, though legally inaccurate as articulated,[4] is wholly irrelevant to the issues before the Court. With respect to the single-subject rule analysis, the issue is not whether the State of Georgia has the federal constitutional power to withhold full faith and credit to certain out-of-state acts, records, and judicial decrees (not just marriages). Instead, the issue is whether the purported *exercise* of such power addresses a different subject than creating a constitutional definition of marriage.

With respect to the issue really before the Court, Defendant again turns a blind eye to the actual language of the amendment, arguing that subsection (b) merely prevents circumvention of subsection (a) by barring recognition of "out-of-state *marriages*" between persons of the same sex. *See* Defendant's Br. at 14 (emphasis added). Again, the language of the amendment itself supplies the answer to this argument: "This state shall not give effect to *any public act, record or judicial proceeding* of any other state or jurisdiction respecting a relationship between persons of the same sex that is treated as

[4] As the Supreme Court has explained: "A final judgment in one State, if rendered by a court with adjudicatory authority over the subject matter and persons governed by the judgment, qualifies for recognition throughout the land. . . . [O]ur decisions support no roving 'public policy exception' to the full faith and credit due *judgments*." *Baker ex rel. Thomas v. Gen. Motors Corp.*, 522 U.S. 222, 233, 118 S. Ct. 657, 663-64 (1998) (citations omitted).

marriage under the laws of such other state or jurisdiction." Amendment One (emphasis added).

Notwithstanding the impression that might otherwise be conveyed by Defendant's argument, the amendment does *not* simply say: "This state shall not give effect to a *marriage* between persons of the same sex that is treated as such by the laws of another state or jurisdiction." Instead, the plain language of Amendment One purports to reach "*any* public act, record, or judicial proceeding . . . respecting a relationship between persons of the same sex that is treated as a marriage" under the laws of another jurisdiction. Contrary to Defendant's suggestion, the broad sweep of this language is not the result of some "attempt to parse Amendment 1." Defendant's Br. at 14. It is instead what the language of the amendment actually says.

Barring recognition of out-of-state *marriages* between persons of the same sex is a different subject than barring recognition of out-of-state *judgments* arising from such marriages – just as barring the enforcement of gambling debts is legally distinct from barring enforcement of judgments arising from such debts. *See Hargreaves v. Great Bay Hotel & Casino*, 182 Ga. App. 852, 852, 357 S.E.2d 305, 305 (1987) (holding that an out-of-state judgment based on a gambling debt is entitled to full faith and credit even though "it is against the public policy of the State of Georgia to enforce such a debt"). If such distinct issues are to be submitted to the public for a vote, the voters of this State are entitled to consider and vote on each of them separately. Amendment One did not comply with this constitutional mandate.

C. Amendment One Presented Georgia Voters With an Unconstitutional Dilemma at the Voting Booth.

Importantly, all of Defendant's various attempts to fit Amendment One within the four corners of any single subject disregard the manifest purpose for which the single-subject rule exists in the first instance – to prevent legislative "log rolling" and improper dilemmas at the voting booth. Respectfully, Plaintiffs submit that the proper test of whether an amendment violates the single-subject rule should not turn on conclusory allegations of whether one party or another is "attempt[ing] to parse" the amendment, *see* Defendant's Br. at 14, but should instead be informed by a disciplined analysis of whether the amendment implicates the harm that the rule is designed to prevent. In other words, Plaintiffs submit that the Court should ask: *Is there a real, nonhypothetical likelihood that this amendment as presented compelled a voter "in order to support a measure which he favors, to vote also for a wholly different one which his judgment disapproves"? Rea v. City of LaFayette*, 130 Ga. 771, 772, 61 S.E. 707, 708 (1908) (emphasis added). If the answer is "yes," then it is exceedingly unlikely that an arbitrary "attempt to parse" the amendment is at work.

Here, of course, there is a certainty (not just a strong likelihood) that Amendment One's unlawful combination of multiple subject matters deprived many Georgians of the right to vote their consciences on November 2, 2004. Plaintiff Reverend Timothy McDonald certainly could not, as he "supported amending the Georgia Constitution to define marriage as the union of man and woman, but opposed amending the Georgia Constitution to ban the legal recognition of civil unions comprised of same-sex couples."

Verified Complaint at ¶ 12. The position of Reverend McDonald is hardly unusual.[5] *See* Verified Complaint at ¶¶ 8-13.

The unconstitutional dilemma that Amendment One presented to many Georgia voters resulted from an objective violation of Article 10, Section 1, Paragraph 2 of the Georgia Constitution, not "parsing" of the amendment's language or "creative lawyer[ing]." Defendant's Br. at 9. This violation cannot be tolerated if the rights of Georgia voters and citizens are to be protected. To hold otherwise is to indulge the utilization of a coercive balloting procedure that prevented Reverend McDonald, various members of the St. John's Missionary Baptist Church, multiple congregants of Rodeph Shalom, numerous members of Senator David Adelman's and Representative Tyrone Brooks' districts, and an untold number of like-minded Georgia voters from voting their consciences on the multiple subjects address by Amendment One – each of which is independently of enormous moment for the future of our Constitution and State. This Court should not countenance such a result.

II. AMENDMENT ONE WAS PRESENTED TO THE PUBLIC THROUGH AFFIRMATIVELY MISLEADING BALLOT LANGUAGE.

As recognized in Plaintiffs' Initial Memorandum, Georgia courts have traditionally given great deference to the General Assembly in the selection of ballot language. Plaintiffs respectfully suggest, however, that this deference is not and cannot be without limits and that the General Assembly has crossed the line in this case. Deferential review does not mean no review at all.

---

[5] As noted in Plaintiffs' Initial Memorandum, polling data suggests that a significant proportion of the electorate simultaneously opposes marriage by same-sex couples while favoring civil union rights. *See, e.g.*, http://www.pollingreport. com/civil.htm (compiling recent polling data revealing that Americans view marriage differently from legal unions which provide economic and social benefits for same-sex couples).

In submitting Amendment One as a single amendment, the General Assembly attempted to make a constitutional "double play" by simultaneously: (i) combining multiple objectives into a single amendment; and (ii) employing ballot language that described only the first of those multiple objectives. The combined effect of these choices is especially pernicious and, so far as Plaintiffs have been able to determine, presents a unique circumstance that the Georgia Supreme Court has never addressed. Plaintiffs respectfully submit that the synchronized duplicity at work when a multiple-subject amendment is affirmatively disguised through language that describes only one subject makes a mockery of the intended constitutional process.

By submitting a multiple-subject amendment through ballot language designed to address only the definition of marriage – the most widely popular of the amendment's multiple subjects – the General Assembly violated the Georgia Supreme Court's admonition to avoid "interject[ing] its own value judgments concerning the amendments into the ballot language," in order to "propagandize the voters in the very voting booth, in denigration of the integrity of the ballot." *Sears v. State,* 232 Ga. 547, 555-56, 208 S.E.2d 93, 100 (1974). In doing so, the General Assembly has abused the wide latitude that historically has been afforded it in the selection of ballot language. If there ever were a time to recognize a crossing of the constitutional line and to curtail the potential for future abuse, the time is now.

CONCLUSION

The test of whether a constitutional amendment violates Article 10, Section 1, Paragraph 2 of the Georgia Constitution is whether all of its parts are germane to the accomplishment of a single objective, not whether the amendment purports to amend the Constitution in only one place. Properly applied, the relevant constitutional test considers whether the amendment implicates the constitutional principle that the "single-subject rule" or "multiple subject matter rule" is designed to vindicate, *i.e.*, the prevention of legislative "logrolling" that prevents each proposition before the voters from standing or falling on its own merits. Amendment One fails this test, because it shackles the creation of constitutional definition of marriage to the accomplishment of multiple additional objectives about which many voters hold a different view. Compounding this violation, Amendment One was presented to the voters through ballot language that, at least when considered in view of the simultaneous single-subject rule violation, was so affirmatively misleading as to offend Georgia due process standards. Accordingly, Amendment One is unconstitutional and void, and this Court should declare it as such.

For all of the foregoing reasons, Plaintiffs respectfully request that the Court deny Defendant's motion for summary judgment.

[Signatures appear on the following page.]

Respectfully submitted this 20th day of December, 2004.

John E. Stephenson, Jr.
Georgia Bar No. 679825
Jeffrey J. Swart
Georgia Bar No. 697310
ALSTON & BIRD LLP
1201 West Peachtree Street, NE
Atlanta, Georgia 30309-3424
(404) 881-7000 (telephone)
(404) 881-7777 (facsimile)

Attorneys for Plaintiffs 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, and Representative Tyrone Brooks

Jack H. Senterfitt
Georgia Bar No. 635850
LAMBDA LEGAL DEFENSE AND EDUCATION FUND, INC.
1447 Peachtree Street, NE, Suite 1004
Atlanta, Georgia 30309-3027
(404) 897-1880 (telephone)

Attorneys for Plaintiffs Judith R.T. O'Kelley, Charles R.T. O'Kelley, St. Johns Missionary Baptist Church, Rabbi Scott Saulson, Senator David Adelman, and Representative Tyrone Brooks

Gerald Weber
Georgia Bar No. 744878
Beth Littrell
Georgia Bar No. 454949
AMERICAN CIVIL LIBERTIES UNION OF GEORGIA
70 Fairlie Street, Suite 340
Atlanta, Georgia 30303
(404) 523-6201 (telephone)

Attorneys for Plaintiffs 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, and Representative Tyrone Brooks

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 Tyrone Brooks,	)	
Plaintiffs,	)	**CASE NO. 2004CV93494**
vs.	)	
Sonny Perdue, in his official capacity as Governor of the State of Georgia,	)	
Defendant.	)	

CERTIFICATE OF SERVICE

This is to certify that the foregoing "Plaintiffs' Response Brief in Opposition to Defendant's Motion for Summary Judgment" has been served this day by facsimile transmission and by electronic mail to the following counsel of record for Defendant via the facsimile number and electronic mail address indicated below:

Stefan Ritter, Esq.
Senior Assistant Attorney General
Facsimile No. 404-657-9932
Email: Stefan.Ritter@LAW.State.GA.US

This 20TH day of December, 2004.

Jeffrey J. Swart
Georgia Bar No. 697310