

**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,)

vs.)

**Sonny Perdue, in his official capacity as
Governor of the State of Georgia,**)

Defendant.)

CASE NO. 2004 CV 93494

PLAINTIFFS’ MOTION FOR JUDGMENT ON THE PLEADINGS

Plaintiffs hereby move this Court for judgment on the pleadings declaring that the amendment to the Georgia Constitution contained in Senate Resolution 595, which appeared on the November 2, 2004 ballot as Amendment One to the Georgia Constitution (“Amendment One”): (i) unconstitutionally covers multiple subjects, and (ii) was unconstitutionally presented through misleading ballot language that described only one of the multiple subjects addressed by the amendment.


In deciding a motion for judgment on the pleadings, the court must determine whether the undisputed facts appearing from the pleadings entitle the movant to judgment as a matter of law. *Rolling Pin Kitchen Emporium, Inc. v. Kaas*, 241 Ga. App. 577, 578, 527 S.E.2d 248, 249 (1999).

Judgment on the pleadings in a declaratory judgment action is appropriate in a case where, as here, the constitutionality of an amendment to the Georgia Constitution can be determined “based upon the allegations of the complaint admitted by the

defendant[] and based upon facts which, though not admitted, are deemed to be judicially known.” *Carter v. Burson*, 230 Ga. 511, 516, 198 S.E.2d 151, 154 (1973) (reviewing judgment on the pleadings granted in a declaratory judgment action brought to challenge an amendment to the Georgia Constitution).

Plaintiffs respectfully request that the Court grant their Motion for Judgment on the Pleadings because there are no disputed issues of fact and because Plaintiffs are entitled to judgment as a matter of law for the reasons stated in the accompanying Memorandum. *See* O.C.G.A. § 9-4-2 (stating that superior courts have power to declare rights when there is an actual controversy, “notwithstanding the fact that the complaining party has any other adequate legal or equitable remedy or remedies”).

Respectfully submitted this 6th 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)

*Attorney 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 / by G. Weber, with permission

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,)
)
)
vs.)
)
)
**Sonny Perdue, in his official capacity as
Governor of the State of Georgia,**)
)
)
Defendant.)
)


**CASE NO.
2004 CV 93494**

CERTIFICATE OF SERVICE

This is to certify that the foregoing "Plaintiffs' Motion for Judgment on the Pleadings" 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 6TH day of December, 2004.



Jeffrey J. Swart
Georgia Bar No. 697310