

**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’ RESPONSE TO DEFENDANT’S STATEMENT OF  
MATERIAL FACTS AS TO WHICH THERE EXIST NO  
GENUINE ISSUE AND THEORY OF RECOVERY**

Pursuant to O.C.G.A. § 9-11-56 and Uniform Superior Court Rule 6.5, Plaintiffs respectfully submit their Response to Defendant’s Statement of Material Facts as to Which There Exist No Genuine Issue and Theory of Recovery. While Plaintiffs are unable to agree completely with certain of the characterizations contained in Defendant’s Statement, Plaintiffs agree that there are no factual disputes material to the Court’s resolution as a matter of law of the claims raised in Plaintiffs’ Verified Complaint or the defenses raised by the Answer thereto.

Plaintiffs’ specific responses to Defendant’s Statement are set forth below:

**I. MATERIAL FACTS AS TO WHICH NO GENUINE ISSUE EXISTS**

1.

Defendants agree that no genuine issue exists with respect to this fact as stated, but submit that the described ratification of Amendment One is void as a matter of law as

a result of the legal deficiencies identified in Plaintiffs' Verified Complaint, which deficiencies are the subject of this litigation.

2.

Defendants agree that no genuine issue exists with respect to the language contained in Senate Resolution 595 ("SR 595") as set forth in the certified copy of SR 595 submitted as an attachment to the Defendant's Notice of Filing dated December 6, 2004.

3.

Defendants are aware of no evidence contrary to this fact as stated, but submit that this asserted fact is not material to the resolution of the legal issues raised by Plaintiffs' Verified Complaint.

4.

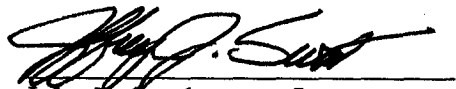
Defendants agree that the two principal claims raised in this case involve issues substantially identical to the the two principal legal issues raised by the Plaintiffs' Verified Complaint in *O'Kelley, et. al. v. Cathy Cox, in her official capacity as Secretary of State of Georgia*, Civil Action File No. CV-04-91122 ("*O'Kelley I*"). Defendants further submit, however, that: (i) the question of whether the claims raised in this case are substantially identical to those raised in *O'Kelley I* is a question of law, not of fact; (ii) this question may be resolved based upon facts about which the Court is entitled to take judicial notice; and (ii) this question is not material to the resolution of the legal issues raised in the present case, given that this Court did not reach the merits of the claims raised in *O'Kelley I* and resolved *O'Kelley I* solely on jurisdictional grounds.

## II. THEORY OF RECOVERY

Plaintiffs disagree with Defendant's asserted defenses to Plaintiffs' claims, as set forth and summarized under the caption "Theory of Recovery" and submit that they are entitled to the declaratory relief requested in this action. Plaintiffs agree, however, that the question of whether Amendment One offends the Georgia Constitution as a result of the issues raised by Plaintiffs' Verified Complaint may be resolved by this Court as a matter of law.

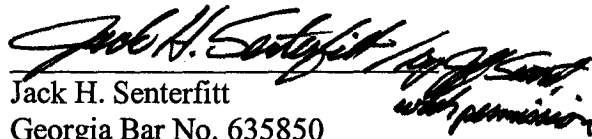
Respectfully submitted this 20<sup>th</sup> day of December, 2004.

*[Signatures appear on following page.]*



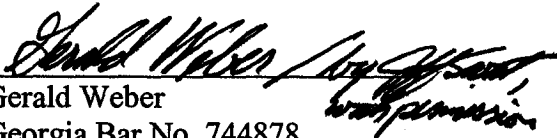
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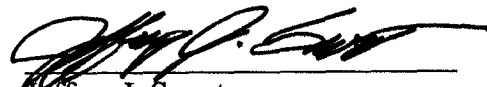
**CASE NO.  
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**CERTIFICATE OF SERVICE**

This is to certify that the foregoing “Plaintiffs’ Response to Defendant’s Statement of Material Facts as to Which There Exist No Genuine Issue and Theory of Recovery” 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](mailto:Stefan.Ritter@LAW.State.GA.US)

This 20<sup>th</sup> day of December, 2004.

  
\_\_\_\_\_  
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