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AUG 21 2003

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

LUTHER B. THOMAS, Clerk
By: *[Handwritten Signature]* Deputy Clerk

SARA LARIOS, et al.,)	
)	
Plaintiffs,)	CIVIL ACTION
)	NO. 1:03-CV-0693-CAP
v.)	(Three-Judge Court)
)	
GEORGE E. "SONNY" PERDUE,)	
et al.,)	
)	
Defendants.)	
)	

**NOTICE OF SUPPLEMENTAL AUTHORITY IN SUPPORT OF
DEFENDANTS PERDUE, COLEMAN, AND COX'S
MOTION TO DISMISS OR STAY CONSIDERATION OF
PLAINTIFFS' FIRST AMENDED COMPLAINT CHALLENGING
GEORGIA'S STATE SENATE REDISTRICTING PLAN**

COME NOW Defendants George E. "Sonny" Perdue, Terry Coleman, and Cathy Cox, and give notice of the recent Order of the three-judge district court in Georgia v. Ashcroft, No. 01-2111 (HTE EGS LFO) (D.D.C. Aug. 20, 2003) (copy attached as Exhibit A). This Order requires the Department of Justice and the Republican Intervenors to show cause within 30 days why judgment should not be entered on behalf of the State of Georgia preclearing the 2001 State Senate redistricting plan under Section 5 of the Voting Rights Act, given the decision of the United States Supreme Court in Georgia v. Ashcroft, 123 S. Ct. 2498 (2003).

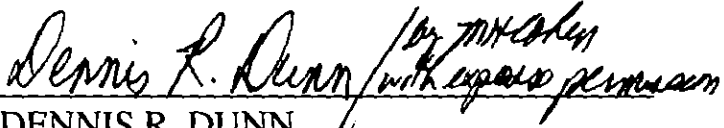
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As stated in the Perdue Defendants' earlier motion and briefs on this issue, and also in response to this Court July 3, 2003 Order, if the 2001 State Senate redistricting plan is precleared by the three-judge court in Ashcroft, it will supercede the 2002 Senate plan currently being challenged by Plaintiffs.

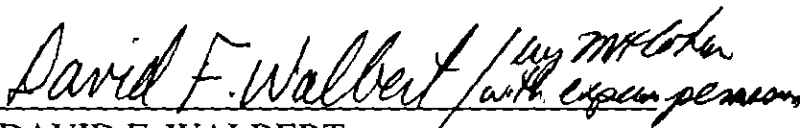
Respectfully submitted,

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Local Rule 7.1D Certification

By signature below, counsel certifies that the foregoing document was prepared in Times New Roman, 14-point font in compliance with Local Rule 5.1B.



MARK H. COHEN

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

FILED

AUG 20 2003

NANCY MAVER WHITTINGTON, CLERK
U.S. DISTRICT COURT

THE STATE OF GEORGIA,)
)
Plaintiff,)
)
v.)
)
JOHN ASHCROFT, <i>et al.</i> ,)
)
Defendants.)

Civil Action No. 01-2111 (HTE
EGS LFO)

THREE-JUDGE COURT

Before: EDWARDS, *Circuit Judge*, SULLIVAN, *District Judge*, and OBERDORFER, *Senior District Judge*.

ORDER

ORDERED, on the court's own motion, that John Ashcroft, Attorney General, and the private party intervenors in this case, show cause, within 30 days of the date of this order, why judgment should not be entered for the State of Georgia, preclearing Georgia's State Senate redistricting plan under § 5 of the Voting Rights Act of 1965, 79 Stat. 439, as renumbered and amended, 42 U.S.C. § 1973c (1994). The response to this order to show cause may not exceed 20 pages.

In *Georgia v. Ashcroft*, 195 F. Supp. 2d 25 (D.D.C. 2002), this court held that Georgia's State Senate apportionment violated § 5, and was therefore not entitled to preclearance. *See id.* at 97. Judge Sullivan, joined by Judge Edwards, over the dissent of Judge Oberdorfer, concluded that Georgia had "not demonstrated by a preponderance of the evidence that the State Senate redistricting plan would not have a retrogressive effect on African American voters[']" effective exercise of the electoral franchise. *Id.* The court found that reductions in black voting age population in Senate Districts 2, 12, and 26 would "diminish African American voting strength in these districts," and that Georgia had "failed to present any . . . evidence" that the retrogression in those districts "will be offset by gains in other districts." *Id.* at 88. On June 26, 2003, the Supreme Court vacated the judgment of this court and remanded the case for further proceedings. *Georgia v. Ashcroft*, 539 U.S. ___, 123 S. Ct. 2498 (2003).

(N)

EXHIBIT A

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In reaching its judgment, the Supreme Court held that

Section 5 gives States the flexibility to implement the type of plan that Georgia has submitted for preclearance--a plan that increases the number of districts with a majority-black voting age population, even if it means that in some of those districts minority voters will face a somewhat reduced opportunity to elect a candidate of their choice. Cf. *Thornburg v. Gingles*, *supra*, at 89, 106 S. Ct. 2752 (O'CONNOR, J., concurring in judgment).

Id. at 2516.

. . . While courts and the Department of Justice should be vigilant in ensuring that States neither reduce the effective exercise of the electoral franchise nor discriminate against minority voters, the Voting Rights Act, as properly interpreted, should encourage the transition to a society where race no longer matters. . . .

Id. at 2517. And in rejecting the judgment of this court, the Supreme Court made the following critical findings:

The District Court ignored the evidence of numerous other districts showing an increase in black voting age population, as well as the other evidence that Georgia decided that a way to increase black voting strength was to adopt a plan that "unpacked" the high concentration of minority voters in the majority-minority districts. Its statement that Georgia did not "presen[t] evidence regarding potential gains in minority voting strength in Senate Districts other than Districts 2, 12 and 26" is therefore clearly erroneous.

Id. at 2514.

In the face of Georgia's evidence that the Senate plan as a whole is not retrogressive, the United States introduced nothing apart from the evidence that it would be more difficult for minority voters to elect their candidate of choice in Districts 2, 12, and 26.

Id. at 2515.

Given the evidence submitted in this case, we find that Georgia likely met its burden of showing nonretrogression. The increase in black voting age population in the other districts likely offsets any marginal decrease in the black voting age population in the three districts that the District Court found retrogressive.

Id.

The testimony from those who designed the Senate plan confirms what the statistics suggest--that Georgia's goal was to "unpack" the minority voters from a few districts to increase blacks' effective exercise of the electoral franchise in more districts.

Id. at 2516.

Other evidence supports the implausibility of finding retrogression here. An examination of black voters' opportunities to participate in the political process shows, if anything, an increase in the effective exercise of the electoral franchise. It certainly does not indicate retrogression.

Id.

In light of the legal standard enunciated by the Court and the Court's foregoing findings, the Government and intervenors should address what, if any, facts there are in the record for this court to "reweigh," 123 S. Ct. at 2517, to determine whether Georgia's State Senate redistricting plan is retrogressive as compared to its previous, benchmark districting plan. The State of Georgia may submit a brief within 30 days of the filings of the Government's and intervenors' briefs. Georgia's brief may not exceed 20 pages. The Government and the intervenors may then submit reply briefs within 10 days of the filing of Georgia's brief.

IT IS SO ORDERED FOR THE THREE-JUDGE COURT.

8/20/03

DATE

Harry T. Edwards

HARRY T. EDWARDS
UNITED STATES CIRCUIT JUDGE

Notice to:

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CERTIFICATE OF SERVICE

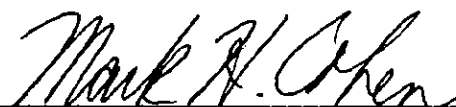
This is to certify that I have this day served or caused to be served a copy of the within and foregoing **NOTICE OF SUPPLEMENTAL AUTHORITY IN SUPPORT OF DEFENDANTS PERDUE, COLEMAN, AND COX'S MOTION TO DISMISS OR STAY CONSIDERATION OF PLAINTIFFS' FIRST AMENDED COMPLAINT CHALLENGING GEORGIA'S STATE SENATE REDISTRICTING PLAN**, prior to filing the same, by first class mail, with adequate postage addressed thereon, properly addressed to:

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This 21th day of August, 2003.



Mark H. Cohen