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

SARA LARIOS, et al.,	)	
	)	
Plaintiffs,	)	CIVIL ACTION
	)	NO. 1:03-CV-693-CAP
v.	)	(Three-Judge Court)
	)	
CATHY COX, in her official capacities as Secretary of State and Chair of the State Election Board,	)	
	)	
Defendant.	)	

REPLY BRIEF IN SUPPORT OF DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

Plaintiffs' Joint Response to Defendant's Motion for Summary Judgment ("Pls.' Resp. to DSJ") is contains factual inaccuracies, misstatements of Defendant's legal position, and an erroneous view of the current law applicable to the deviations in the House, Senate,[1] and Congressional Plans.

[1] Plaintiffs misinterpret footnote 1 of the Brief in Support of Defendant's Motion for Summary Judgment. The constitutionality of the 2002 Senate Plan should not be decided until the district court in Georgia v. Ashcroft issues a final decision, and the stay previously entered by this Court should remain in force. The 2002 Senate Plan is the only plan currently in effect. In an effort to expedite consideration of Plaintiffs' claims against the 2002 Senate Plan in the event the Ashcroft court rules against the State of Georgia, the parties have now fully briefed those issues, and this Court could decide the challenge to the 2002 Senate Plan *after* the issuance of such a ruling. However, should the Ashcroft court decide in favor of the State of Georgia and preclear the 2001 Senate Plan, Plaintiffs' claims against the 2002 Senate Plan would become moot. Plaintiffs would have to amend their Complaint to challenge the 2001 Senate Plan, and the parties would have to file amended summary judgment motions concerning that plan.

A. One Person, One Vote Claims – Legislative Plans.

As an initial matter, Defendant disputes Plaintiffs' assertion that the deviations in the legislative plans were created for the purpose of making the plans "as Democratic as possible." Pls.' Resp. to DSJ at 2. The evidence in fact is uncontroverted that the deviations in both the House and Senate Plans exist due to a myriad of factors, including the loss of population in rural South Georgia, the increase of population in rural North Georgia, the protection of incumbents on both sides of the political aisle, and the personal preferences of individual members of the House and Senate. Meggers Aff. ¶¶ 47-73; Brown Decl. ¶¶ 31-53.

Plaintiffs' allegation that the deviations were caused solely by Democrats trying to "pack" Republican districts is based on speculation and not fact. See Johnson Depo. at 66-67 (opinion on why deviations occurred "entirely based on [Johnson's] surmise and observation of the final product as opposed to any conversations with anybody that was involved in actually drawing the plan"). Not one Republican witness has testified that they ever heard about or observed any strategy in which districts were drawn for the purpose of creating larger deviations based upon political party status. Westmoreland Depo. at 75; Johnson Depo. at 65-67; Tyson Depo. at 113-114; Perry Depo. at 54. That alleged "strategy" has been denied by the two persons most responsible for crafting the House and Senate

Plans. Meggers Aff. ¶ 40; Brown Decl. ¶ 39. Politics was certainly a consideration in the drawing of individual districts, as in every reapportionment, but it was never a motivation for the creation of any deviations, whether positive or negative ones.

Contrary to Plaintiffs' assertion, Defendant is not insisting that the law requires an absolute "safe harbor" for legislative plans that have a deviation under 10%, and the plans were not drawn with any "safe harbor" in mind. Brown Depo. at 18-20.[2] While there is some judicial support for the 10% "safe harbor" concept, see, e.g., Colleton County Council v. McConnell, 201 F. Supp. 2d 618, 631 (D.S.C. 2002) (three-judge court); Fund for Accurate & Informed Representation, Inc. v. Weprin, 796 F. Supp. 662, 668 (N.D.N.Y. 1992) (three-judge court), aff'd, 506 U.S. 1017 (1992), case law is consistent in holding that legislative plans with deviations less than 10% are considered *de minimus* deviations which can be successfully challenged *only* if Plaintiffs carry the burden "to establish the unconstitutionality of the plan," Larios v. Perdue, No. 1:03-CV-693-CAP, slip. op. at 26 (N.D. Ga. Aug. 29, 2003) (three-judge court). It is not enough to allege that

[2] Nevertheless, "'the use of a plus or minus five percent population window' is not an illegitimate state purpose or objective" that itself would result in invalidating a legislative plan which has a deviation under 10%. Montiel v. Davis, 215 F. Supp.2d 1279, 1286 (S.D. Ala. 2002) (three-judge court) (citing Marylanders for Free Representation v. Schaefer, 849 F. Supp. 1022, 1034 (D. Md. 1994) (three-judge court)).

the plans were not drawn close to zero deviation and could have been drawn "better" with lower deviations. Gaffney v. Cummings, 412 U.S. 735, 750-51 (1973).

Plaintiffs believe that they can fulfill their burden to show the "unconstitutionality" of the plans without establishing any constitutional violation apart from a mere showing that the deviations did not approach zero: "Plaintiffs' burden is to show a lack of a legitimate state interest. . . . if Plaintiffs can prove that no legitimate state interest existed to excuse the State's failure to create such districts [with deviations near zero], Plaintiffs are entitled to summary judgment." Pls.' Resp. to DSJ at 3. This is not the law as recognized by *any* court.

Indeed, the adoption of Plaintiffs' argument would reverse a long line of cases, including Supreme Court precedent, which hold that the only way for a plaintiff to successfully sustain its burden of overturning a *de minimus* legislative deviation is under "*another theory*, such as a violation of the Voting Rights Act or as an unconstitutional racial gerrymander under Shaw v. Reno and Miller v. Johnson." Daly v. Hunt, 93 F.3d 1212, 1221 (4th Cir. 1996) (citations omitted). Only legislative plans with population deviations over 10% must be justified by the State as the product of an "acceptable state policy." Brown v. Thompson, 462 U.S. 835, 842 (1983); see also Voinovich v. Quilter, 507 U.S. 146, 161 (1992). An

argument that a deviation under 10% resulted from the advancement of a "political agenda" causing the division of city and county lines "do[es] not, as a matter of law, run afoul of the equal protection clause of the Fourteenth Amendment." Cecere v. County of Nassau, 274 F. Supp. 2d 308, 319 (E.D.N.Y. 2003); see also Gaffney v. Cummings, 412 U.S. 735, 739-41 (1973).

In order to rebut the presumption of constitutionality where legislative plans are below a 10% deviation, Plaintiffs first have "the burden of showing that the 'minor' deviation in the plan results *solely* from the promotion of an unconstitutional or irrational state policy." Montiel, 215 F. Supp. 2d at 1286 (citing Marylanders, 849 F. Supp. at 1032; emphasis in original). Plaintiffs are next required to "demonstrate . . . that the asserted unconstitutional or irrational state policy is the actual *reason* for the deviation." Id. (citing Karcher v. Daggett, 462 U.S. 725, 740-44 (1983); emphasis in original). After those two burdens are met, "the plaintiff[s] must prove that the minor population deviation is *not* caused by promotion of legitimate state policies." Id. (citing Marylanders, 849 F. Supp. at 1032 (emphasis in original)).

Plaintiffs have failed to show that the minor deviations in the legislative plans result *solely* from an unconstitutional or irrational state policy, and that any such unconstitutional or irrational state policy is the actual *reason* for the

deviations. Their attempt to show that there was no "legitimate state interest" to justify the deviations gets them nowhere in their attempt to invalidate either the House or Senate Plan and, as a matter of law, should result in the granting of summary judgment for Defendant.

If Plaintiffs were correct in their position that the failure of a State to establish a "legitimate state interest" in drawing deviations under 10% in legislative plans renders such plans unconstitutional, then "the 10% rule would be rendered virtually meaningless." Cecere, 274 F. Supp. 2d at 318. The Supreme Court in Brown v. Thompson made it clear that only those legislative plans with deviations over 10% have to be justified in furtherance of a legitimate state policy. Plaintiffs have failed to establish that the deviations in the legislative plans were the result of any unconstitutional or irrational state action.

Although Plaintiffs assert that they do not have to establish a constitutional violation independent from a failure of the plans to achieve as close to zero deviation as practicable, Plaintiffs at the same time argue as follows: "Plaintiffs' complaint is not that politics was involved in redistricting – an inherently political process – but that partisan politics was elevated over constitutional rights, resulting in the unconstitutional plans before this Court." Pls.' Resp. to DSJ at 7. Now Plaintiffs appear to be contending that politics itself caused the plans to become

unconstitutional. Of course, the only cognizable claim that has been recognized by the Supreme Court as one alleging that "partisan politics" violates "constitutional rights" is a political gerrymandering claim under Davis v. Bandemer, 478 U.S. 109 (1986). Although Plaintiffs have previously insisted that their Davis claim is separate from their one person, one vote claim, their above admission reveals that such is not the case. By alleging that politics "trumped" the pursuit of "legitimate state interests," Plaintiffs hope to create some new standard of review over legislative plans drawn with *de minimus* deviations. This would effectively lower the bar for Davis political gerrymandering claims: rather than having to show an "actual discriminatory effect" that a plaintiff has been effectively "shut out of the political process," id. at 139, a plaintiff could file a one person, one vote claim and would only have to show that a plan with *any* deviation was created on the basis of "partisan politics."

Plaintiffs have failed to rebut the presumption of constitutionality inherent in the *de minimus* deviations contained in the House and Senate Plans. By maintaining that Defendant failed to show a "legitimate state interest" in the drawing of the plans or, alternatively, that politics rose to an unconstitutional level (but not enough to create a Davis claim), Plaintiffs have failed to carry their burden

of proof. Summary judgment should be entered on behalf of Defendant on the one person, one vote claim against both legislative plans.

B. One Person, One Vote Claim – Congressional Plan.

Once again, Plaintiffs misstate the law on congressional deviations: "The burden is upon the State to prove the deviations were necessary to achieve some legitimate goal." Pls.' Resp. to DSJ at 46. That is not the legal standard. When numerical equality is not reached in a congressional plan, "the burden rests with [the State] to demonstrate the unavoidability of these variances or to otherwise justify them." Larios v. Perdue, No. 1:03-CV-693-CAP, slip. op. at 29 (N.D. Ga. Aug. 29, 2003) (three-judge court); see also Karcher v. Daggett, 462 U.S. 725, 730 (1983) ("Article 1, § 2, therefore, 'permits only the limited population variances which are unavoidable despite a good-faith effort to achieve absolute equality, or for which justification is shown.'") (citation omitted). The degree of justification required depends upon the size of the deviation. Karcher, 462 U.S. at 741.

Defendant has shown justification for the seventy-two person variance in the 2001 Congressional Plan. See Meggers Aff. ¶¶ 31-39 & Exh. A, included as Exh. 3 to Defendant's Motion for Summary Judgment. As a part of this justification, Ms. Meggers stated:

> Although splitting precincts allowed us to obtain a .01% deviation, our desire to avoid splitting more precincts than were already split

> prevented the plan from reaching zero. To move closer to a zero deviation within split precincts would have required the district lines to further intrude into discrete neighborhoods, which could have increased confusion among election boards and voters.

Id. ¶ 38.

Plaintiffs try to counter Defendant's justification of the seventy-two person variance in the Congressional Plan by submitting the "Second Affidavit of Bryan Tyson," the Republican's House map drawer, in an effort to try to prove that a zero deviation plan could be drawn. Mr. Tyson's affidavit actually proves Ms. Meggers' point, since the "Fair Congress 1" plan, which Mr. Tyson admittedly drew to present in the 2003 session of the General Assembly, or two years *after* the redistricting special sessions (Tyson Second Aff. ¶ 11), splits a large number of precincts and also tears apart neighborhoods (sometimes to displace only a few individuals) to a much greater extent than the 2001 Congressional Plan, in order to achieve a zero deviation.

As shown by the Second Affidavit of Linda Meggers (attached hereto as Exh. A), Mr. Tyson's "Fair Congress 1" map carves up neighborhoods in several districts, pulling out single census blocks and, more importantly, *individual voters* in order to achieve a "0/1" person deviation. For example, a line is drawn in District 10 off a major road and precinct boundary in order to pick up two eligible voters. Meggers Second Aff. ¶ 5. Another line deviates between Districts 7 and 9

to pick up a single census block with five persons. Id. ¶ 6. A similar "dip" off another major road was done to pick up twelve persons between Districts 4 and 7, and three persons in District 13. Id. ¶¶ 8, 10. Perhaps the most egregious example of violating discrete neighborhoods is where a single voter is removed from the City of Atlanta in District 5 and placed in District 13, making it impossible for this one person to cast a secret ballot, since he or she will be the *only* voter from the City of Atlanta in District 13. Id. ¶ 9.

On the other hand, Mr. Tyson complains about the removal of 272 people in one district and 948 people in another in the 2001 Congressional Plan. Tyson Second Aff. ¶¶ 8, 9. Obviously, the shifting of hundreds of people in order to approach zero deviation is a far cry from the displacement of from one to twelve persons in order to attain absolute zero. Nothing in Mr. Tyson's analysis rebuts Ms. Meggers' justification for not achieving absolute zero in the 2001 Congressional Plan; indeed, Mr. Tyson's effort to displace individuals from their neighborhoods in order to achieve that perfect zero deviation supports Defendant's justification for the seventy-two person deviation.

C. Racial Gerrymandering.

In order to succeed on their claim that the 2002 Senate Plan was a racial gerrymander, Plaintiffs must put forth evidence to establish that the plan is

"inexplicable except as an effort to separate voters into different districts on the basis of race," Shaw v. Reno, 509 U.S. 630, 649 (1993); race must be "the predominant factor" motivating the legislature's decision, Bush v. Vera, 517 U.S. 952, 959 (1996). Plaintiffs present no evidence to support their claim, but instead believe they have created a disputed issue of material fact because of (1) Defendant's "admissions" in Georgia v. Ashcroft, 123 S. Ct. 2498 (2003), and (2) the "bizarre configurations" of districts in the Senate Plan, allegedly created to maintain "racial quotas." Pls.' Resp. to DSJ at 27-28.

First, Defendant Cox was not even a party in the Ashcroft litigation.[3] Moreover, the fact that the State of Georgia in the Section 5 litigation presented evidence to show the Senate Plan endeavored to maintain or increase minority voting strength (required in order to obtain Section 5 approval) does not satisfy Plaintiffs' burden to offer evidence in this case proving that race was the predominant factor in the creation of the Senate Plan. Whatever positions were taken by the State of Georgia in Ashcroft were based on the record developed in

[3] Plaintiffs attempt to "explain" their differing positions on the race issue between Ashcroft and this case by first contending their position in Ashcroft is "not relevant to the Court's decision on this matter" (notwithstanding that, unlike Defendant Cox, one of the named Plaintiffs herein was a party in Ashcroft) and then asserting that they could not argue that race was a predominant factor in Ashcroft, given the nature of the Section 5 proceeding. Pls.' Resp. to DSJ at 30-31. However, the fact remains that Plaintiff Benton contended in Ashcroft that the Senate Plan retrogressed from the benchmark plan, and that the State failed to consider race to a larger extent than it did.

light of the sole issue in that case – whether the Senate Plan diluted the position of African Americans with respect to their effective exercise of the electoral franchise. The State introduced evidence to show that the Senate Plan either maintained or enhanced the position of African Americans. That does not constitute proof of a Shaw claim that fulfills Plaintiffs' evidentiary burden to defeat summary judgment in this case.

Second, Plaintiffs assert that "bizarre shapes" of certain Senate districts "are driven by the State's insistence on specific racial quotas in specific districts." Pls.' Resp. to DSJ at 28. Plaintiffs proffer no evidence to support such an allegation. In fact, in Plaintiffs' one person, one vote claim, they assert that the overriding reason for the districts in the Senate Plan was politics. Indeed, as the Supreme Court in Ashcroft found, the effort to increase the number of Democratic seats in the State Senate was accomplished, in part, by the dispersion of African Americans into various districts. Ashcroft, 123 S. Ct. at 2506. This does not create any racial classification or gerrymander as a matter of law. Bush, 517 U.S. at 968 ("If district lines merely correlate with race because they are drawn on the basis of political affiliation, which correlates with race, there is no racial classification to justify . . . ."); see also Hunt v. Cromartie, 526 U.S. 541, 552 (1999).

D. Political Gerrymandering.

Plaintiffs have presented no evidence to show that the Republican Party has suffered "actual discriminatory effect" as that term is defined in Davis v. Bandemer, 478 U.S. 109 (1986). There has been no showing that Republicans are "shut out of the political process," id. at 139, or that the electoral system is arranged "in a manner that will consistently degrade [their] influence on the political process as a whole," id. at 132. Plaintiffs assert that this gerrymander "is effective and will continue through the decade" without one iota of evidence to support that claim. As stated in Defendant's opening brief, Plaintiffs' Davis claim is the weakest of any federal case in which one has been asserted, all unsuccessfully. See Br. in Supp. of Def.'s Mot. for Summ. J. at 63.

E. First Amendment Claim.

Again, Plaintiffs offer no evidence to support the contention that their right to freedom of association has been infringed due to the redistricting plans. They claim that the State has relegated voters on the basis of party affiliation, which somehow deprives them of their right to free association. There is no allegation that Plaintiffs have been deprived of access to the ballot, of their right to vote, or of their right to participate in the political process in any way. The fact that Republicans win in some districts and lose in others does not create a First

Amendment claim. There is no evidence of any device that directly inhibits Republican's participation in the political process, so summary judgment should be granted to Defendant on this claim.

F. Article 1, § 4 Claim.

There is no evidence proferred by Plaintiffs that the Congressional Plan violates the Constitutional provision concerning the "time, place, and manner" of elections because the election results are somehow "predetermined." Plaintiffs contend "the evidence is clear that the State attempted to determine, for a decade, who would win the seats," Pl. Resp. to DSJ at 54, but fail to produce any such evidence, or to establish how it would violate Article 1, § 4. Once again, mere allegations cannot defeat the granting of summary judgment to Defendant.

CONCLUSION

In order to defeat a motion for summary judgment, a party must set forth specific evidentiary facts showing there is a genuine issue for trial. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 257 (1986) (requiring the nonmovant to go beyond the pleadings and present affirmative evidence that a genuine issue of material fact does exist). It is not enough to allege there are disputed facts; those alleged disputed facts must be shown by specific evidence. Celotex Corp. v. Catrett, 477 U.S. 317, 323-24 (1986). The mere existence of some factual dispute

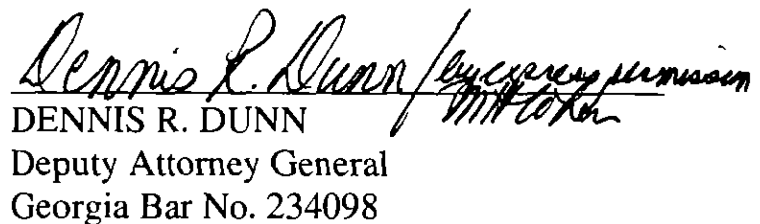
will not defeat summary judgment unless the factual dispute is material to an issue affecting the outcome of the case. Chapman v. AI Transport, 229 F.3d 1012, 1023 (11th Cir. 2000). Because Plaintiffs have presented no evidence to create a factual dispute on any material issue, summary judgment should be entered for Defendant on all remaining claims.

For the reasons set forth above, and well as in Defendant's prior briefs and exhibits, Defendant respectfully requests that the Court grant her Motion for Summary Judgment on all remaining claims and deny Plaintiffs' Motion for Summary Judgment.

This 24th day of November, 2003.

Respectfully submitted,

THURBERT E. BAKER
Attorney General of the State of Georgia
Georgia Bar No. 033887



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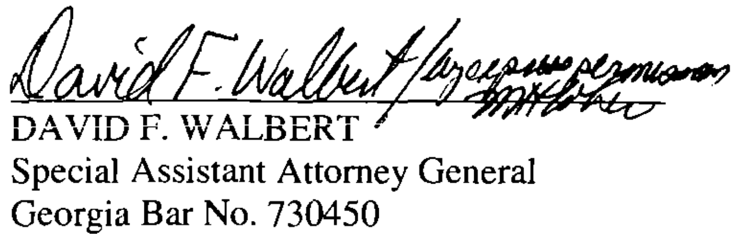

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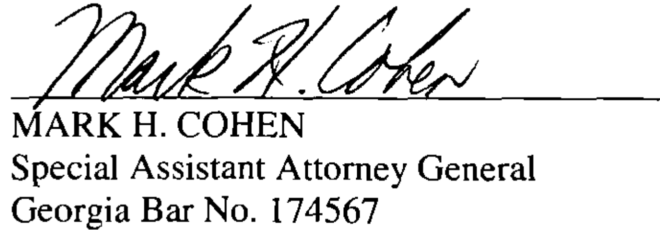

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Local Rule 7.1D Certification

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

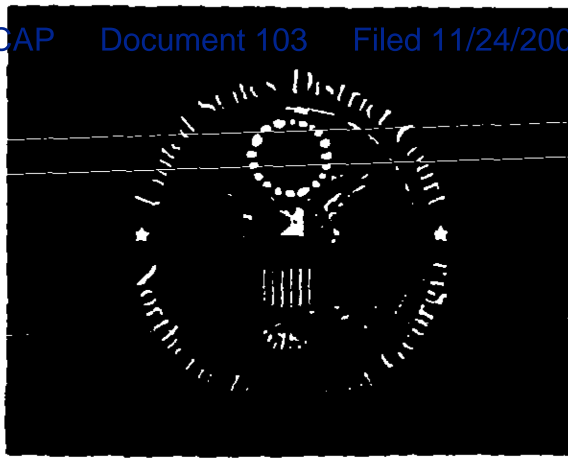

EXHIBIT / ATTACHMENT

A

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

SARA LARIOS, et al.,	)	
	)	
Plaintiffs,	)	CIVIL ACTION
	)	NO. 1:03-CV-693-CAP
v.	)	(Three-Judge Court)
	)	
CATHY COX, in her official capacities as Secretary of State and Chair of the State Election Board,	)	
	)	
Defendant.	)	

SECOND AFFIDAVIT OF LINDA MEGGERS

Personally appeared before me the undersigned, LINDA MEGGERS, known to be the person herein and after being duly sworn, stated and deposed that the following statements are true and correct.

1.

My name is Linda Meggers. I am over the age of legal majority and competent to testify with regard to the matters stated herein.

2.

I serve as director of the reapportionment office providing technical assistance to the Georgia General Assembly.

EXHIBIT A

3.

I have reviewed the congressional redistricting plan labeled "Fair Congress 1" which has been offered by Plaintiffs in support of their response in opposition to Defendant's Motion for Summary Judgment, as well as the Second Affidavit of Bryan Tyson, which indicates that this plan achieved a zero/one person deviation by splitting "only 71 precincts" as opposed to the 88 precincts split in the 2001 Congressional Plan enacted by the Georgia General Assembly.

4.

Although I have not conducted an exhaustive review of the effect of all precinct splits in "Fair Congress 1" upon all neighborhoods, I have reviewed that plan sufficiently to determine that there are numerous instances where neighborhoods, and especially precincts, have been disrupted to a much greater extent than in the 2001 Congressional Plan. I have discussed some of these instances in more detail in Paragraphs 5 through 12, below.

5.

In Forsyth County in "Fair Congress 1," the line dividing Districts 6 and 10 follows Drew Campgound Road, the precinct boundary, but then dips below this major road to pick up one side of Drew Circle comprised of one census block with

four persons (only two of which are eligible to vote) in order to place it in District 10.

6.

In Walton County along the boundary between Districts 7 and 9 in "Fair Congress 1," the line follows Little Sandy Creek which is also the precinct line but then deviates to pick up a single census block bordered by Double Bridges and Sheets Cemetery Roads in the Blasingame precinct. In this example, the census block has five persons. It is possible to maintain the integrity of this precinct and residential area and achieve close to zero deviation by utilizing blocks in other split precincts along the border of these two districts.

7.

In Gwinnett County along the boundary between Districts 4 and 7 in "Fair Congress 1," the line follows Jones Mill Road and then deviates to take an awkward portion of the Ashley Lakes Subdivision. There are many other opportunities in other split precincts within Gwinnett County to avoid the awkward split in this neighborhood.

8.

Continuing in Gwinnett County along the boundary of Districts 4 and 7 in "Fair Congress 1," the line dips south of Buford Highway to pick one block from

the Pinckney A precinct containing only twelve persons. It is hard to understand this choice since the precinct just to the north offers many opportunities to balance the population without making a dip south of a major thoroughfare, resulting in the removal of a single block in a residential area.

9.

The precinct split with one of the more serious consequences in "Fair Congress 1" occurs in Fulton County in the Atlanta Precinct 10A. In this instance, one census block with one person is placed in District 13. This is the *only* census block within the City of Atlanta that is placed in District 13. The entire remainder of the city has been placed in District 5. This proposed split would preclude the casting of a secret ballot by this one individual.

10.

There is another instance in Fulton County in "Fair Congress 1" along Roosevelt Highway where a small residential street on the north side of the road is placed in District 13. This block contains only three persons. However, along the line between Districts 5 and 13 there are several blocks that could be traded back and forth that would better keep neighborhoods and put precincts back together while also achieving close to a zero deviation.

11.

In DeKalb County along the boundary of Districts 4 and 5 in "Fair Congress 1," a single block was removed from the Candler precinct. This block contains seven persons with five eligible voters. This results in removing part of an established neighborhood. There are several split precincts along the boundary of these two districts that could have been combined in a different fashion that would have prevented the removal of this single block from this neighborhood.

12.

In Chatham County, "Fair Congress 1" splits six precincts. Bamboo Farm precinct loses two census blocks with a total of only three persons and the Bartlett Middle School precinct loses only two census blocks with a total of two persons that are placed in District 12. Obviously, residential areas are violated with these splits. The split that occurs in the Riverside Baptist precinct between Districts 1 and 12 leaves only one person to vote in that precinct in District 12. Only a few blocks with small numbers of population were removed from the Immanuel Baptist Church and the Howard Jordan Building precinct.

13.

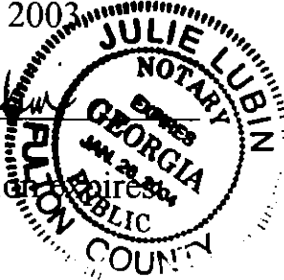
The foregoing analysis shows that any person drawing a congressional redistricting plan in Georgia that strives for absolute zero deviation will have to

split a number of voting precincts and will also have the effect of intruding into many residential areas. In drawing the 2001 Congressional Plan with a seventy-two person deviation, the General Assembly, with my technical assistance, enacted a plan which splits only 17 more precincts than "Fair Congress 1" (out of a total of over 2,600 precincts in Georgia). However, in order to get to a zero/one person deviation in the 2001 Congressional Plan, or in any congressional plan, additional district lines would have to be altered to further intrude into discrete neighborhoods, which could increase confusion among voters.

FURTHER AFFIANT SAYETH NOT.

Linda D Meggers
Linda Meggers

Sworn to and subscribed
before me this 21st day
of November, 2003.



Notary Public
My Commission Expires:

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 **REPLY BRIEF IN SUPPORT OF DEFENDANT'S MOTION FOR SUMMARY JUDGMENT**, prior to filing the same, by email transmission and by first class mail, with adequate postage addressed thereon, properly addressed to:

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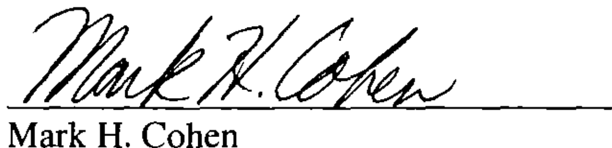
This 24th day of November, 2003.



Mark H. Cohen