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

By:   
Deputy Clerk

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

**REPLY BRIEF IN SUPPORT OF  
DEFENDANTS PERDUE, COLEMAN, AND COX'S  
MOTION TO DISMISS OR STAY CONSIDERATION OF PLAINTIFFS'  
COMPLAINT CHALLENGING STATE SENATE REDISTRICTING PLAN**

Plaintiffs' response to Defendant Perdue, Coleman, and Cox's motion to dismiss or stay consideration of Plaintiffs' challenge to the current State Senate redistricting plan, the continued legality of which is under review by the United States Supreme Court in State of Georgia v. Ashcroft, 123 S.Ct. 964 (2003) (prob. juris. noted), is twofold.

First, Plaintiffs contend that the Supreme Court's decision on appeal "in no way affects this case, other than perhaps to make the relevant plan the first Senate plan." Plaintiffs' Response, at 3. Plaintiffs reason that since they would also maintain one person/one vote challenges to the original State Senate plan, should

that one be precleared in the appellate litigation, they can continue to challenge a plan that may not receive Section 5 approval. This would be the equivalent of filing an action for breach of contract, attaching a superceded version of the actual contract in existence, and maintaining the lawsuit on the grounds that the contentions against both versions are similar.

There are differences in the composition of the districts in the Senate plan challenged in the complaint and in the first Senate plan enacted by the General Assembly. The first plan was enacted following particular committee meetings, discussions, and votes in the General Assembly; the revised interim plan was enacted in response to the district court's decision in State of Georgia v. Ashcroft, 195 F. Supp. 2d 25 (D.D.C. 2002). The evidence concerning the adoption of each will not, as Plaintiffs assert, be identical.

Perhaps more importantly, if the Supreme Court reverses or vacates the decision of the District Court, the State Senate plan being challenged by Plaintiffs will have not received preclearance under Section 5 of the Voting Rights Act. It would be error for this Court to consider a constitutional challenge to a plan not precleared under Section 5. Connor v. Waller, 421 U.S. 656 (1975) (per curiam). While the reversion language in the statute enacting the interim plan does not in itself nullify its preclearance by the district court, a reversal of the decision by the

Supreme Court surely does. As shown by the cases cited in Defendants' opening brief, stays are routinely granted by district courts when an imminent decision by the United States Supreme Court would alter the case under consideration by the district court.

Second, Plaintiffs admit that if the State Senate plan currently under challenge is ruled unlawful by the Supreme Court, they would be required to amend their complaint to substitute whatever new State Senate plan would come into existence. Plaintiffs' Response, at 3. Defendants should not be required to engage in discovery over a version of a plan which may very well be ruled illegal. The alteration of the three districts required by the district court's decision in the interim State Senate plan also required certain changes to neighboring districts, so the two plans are far from the same. The entry of a stay will not prejudice either party, while the consideration of Plaintiffs' challenge to a State Senate plan that may be invalid under Section 5 would be prejudicial to Defendants.

Accordingly, Defendants Perdue, Coleman, and Cox urge this Court to dismiss or stay consideration of the State Senate plan under challenge from Plaintiffs until such time as the United States Supreme Court issues its decision in the Ashcroft litigation.

This 17<sup>th</sup> day of June, 2003.

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  
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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 **REPLY BRIEF IN SUPPORT OF DEFENDANTS PERDUE, COLEMAN, AND COX'S MOTION TO DISMISS OR STAY CONSIDERATION OF PLAINTIFFS' COMPLAINT CHALLENGING GEORGIA'S SENATE REDISTRICTING PLAN**, prior to filing the same, by causing to be hand delivered a copy thereof properly addressed upon:

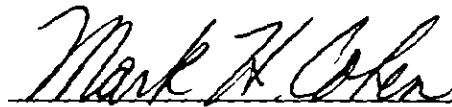
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This 17<sup>th</sup> day of June, 2003.



Mark H. Cohen