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

WALTER SMILEY, et al.	:	
	:	
Plaintiffs,	:	
	:	
v.	:	CIVIL ACTION NO.
	:	
SONNY PERDUE, et al.,	:	4:06-CV-140-CC
	:	
Defendants.	:	

DEFENDANTS PERDUE, BAKER[1] AND DEAN'S SUPPLEMENTAL BRIEF ON ARTICLE III AND CLASS CERTIFICATION ISSUES

Come now Defendants the Governor of Georgia; the Attorney General of Georgia; and Scot Dean, Probation Officer with the Georgia Department of Corrections; by counsel, the Attorney General of the State of Georgia, and pursuant to this Court's order of September 13, 2011 (doc-305) file this Supplemental Brief in regard to Article III and class certification issues.

[1] It should be noted that the Defendants names should reflect the changes in executive officers that have occurred since the inception of this litigation; Nathan Deal is now Governor of Georgia and Samuel S. Olens is now Attorney General.

I. Statement of the Case

Plaintiffs filed this action on June 20, 2006, complaining that the enactment of changes in O.C.G.A. § 42-1-15 and O.C.G.A. § 42-1-12 contained in House Bill 1059, Georgia's sex offender statute, would cause "catastrophic" results for sex offenders in Georgia (doc-1, 2). The Complaint alleged that the residence requirements in Georgia's sex offender law were too restrictive, that "Plaintiffs cannot find anywhere to live" and that "hundreds, if not thousands, of people on the registry will lose their jobs" (doc-1, 2,4). The complaint alleged that "[t]he Act banishes Plaintiffs from their homes and communities" (doc-1, 34).

This case has had a long history and, with changes in the law, the issues in this case, as of September of 2010, had been distilled down to the following issues:

i. "School bus stop" claim as to substantive due process.

ii. "School bus stop" claim as to vagueness.

iii. Whether the term "areas where minors congregate" (which includes the term "school bus stop") is vague.

The parties twice previously filed Motions for Summary Judgment, including the motions filed in September of 2010 on the above issues. This Court has denied the motions without prejudice (doc-283, doc-305).

The Plaintiffs in this case now consist of four individuals: Walter Smiley, a resident of Chatham County; Ruben Luna, a resident of Columbia County; G.W., who Plaintiffs concede is incarcerated (doc-280, 5, n. 8); and R.W., a resident of Chatham County.

The only remaining sub-class previously certified by this Court was the class of persons who registered, are required to register, or in the future will be required to register as sex offenders pursuant to O.C.G.A. §42-1-12 for acts committed on or after July 1, 2006 who (1) reside in counties in which the school board has designated school bus stops for purposes of O.C.G.A. §42-1-15 or §42-1-16; and (2) do not fall within the exemptions in O.C.G.A. § 42-1-15(e) or (f) or §42-1-16(e) or (f).

As of the filing of the motions for summary judgment in September of 2010, there were only three counties in Georgia that had designated school bus stops during the four and a half years since enactment of the law: Columbia, Bulloch, and Chatham counties. Since the filings of the motions for summary judgment, the boards of education in all three of these counties have rescinded those designations (doc-300, doc-302). There are now no counties in Georgia in which the boards of

education have designated school bus stops.[2] As a result, there are no named plaintiffs of the class of persons living in counties that have designated school bus stops. Nor are there any named plaintiffs with standing.

In regard to the definition of "areas where minors congregate," none of the named plaintiffs has expressed any specific complaint except in regard to the inclusion of the term "school bus stop" in that definition.

II. Argument and Citation of Authority

A.

ARTICLE III STANDING AND MOOTNESS

"No principle is more fundamental to the judiciary's proper role in our system of government than the constitutional limitation of federal-court jurisdiction to actual cases or controversies." *Hein v. Freedom From Religion Foundation*, 551 U.S. 587, 127 S. Ct. 2553, 2562 (2007) citing *Raines v. Byrd*, 521 U.S. 811, 818 (1997).

[2] Woodward Academy, a private school in Fulton County, reported in 2008 that they had 4 school bus stops in Cobb County, 25 in Fulton County, 10 in DeKalb County, 3 in Fayette County, 3 in Clayton County, 2 in Douglas County, 2 in Gwinnett County, 1 in Spalding County and 1 in Henry County. These were for the 2008-2009 school year. There is no evidence that this school has officially designated school bus stops since that time nor do any named Plaintiffs live in any of these counties. There is also no evidence any registered sex offender has ever been impacted or threatened with any injury as a result of any designation by this school.

"The requirement that a claimant have 'standing is an essential and unchanging part of the case-or-controversy requirement of Article III.'. . . [A] claimant must present an injury that is concrete, particularized, and actual or imminent; fairly traceable to the defendant's challenged behavior; and likely to be redressed by a favorable ruling." *Davis v Federal Election Commission*, 554 U.S. 724; 128 S. Ct. 2759, 2768 (2008), citing *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560; 112 S. Ct. 2130 (1992). The duty of this court, as of every other judicial tribunal, is to decide actual controversies by a judgment which can be carried into effect, and not to give opinions upon moot questions or abstract propositions, or to declare principles or rules of law which cannot affect the matter in issue in the case before it. *Mills v. Green*, 159 U.S. 651 (1895).

The controversy must remain "extant at all stages of review, not merely at the time the complaint is filed." *United States v. Juvenile Male*, ____U.S. ____, 131 S. Ct. 2860, 2864 (2011), citing *Arizonans for Official English v. Arizona*, 520 U.S. 43, 67 (1997). " '[A] plaintiff must demonstrate standing for each claim he seeks to press' and 'for each form of relief' that is sought." *Davis v Federal Election Commission*, 554 U.S. 724; 128 S. Ct. 2759, 2769 (2008), citing *DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332, 352 (2006).

" '[T]hroughout the litigation' the party seeking relief 'must have suffered, or be threatened with, an actual injury traceable to the defendant and likely to be redressed by a favorable judicial decision.' " *United States v. Juvenile Male*, ____U.S. ____, 131 S. Ct. 2860, 2864 (2011), citing *Spencer v. Kemna*, 523 U.S. 1, 7 (1998).

All of the original plaintiffs in this case have departed from this litigation. The four substitute plaintiffs were from the three counties that had designated school bus stops. Those counties no longer have designated school bus stops. Those plaintiffs no longer have standing.

None of the plaintiffs should harbor any fear of arrest or prosecution. They cannot be prosecuted because there are no designated school bus stops. A generalized fear of prosecution is insufficient to create standing. *Pittman v. Cole*, 267 F.3d 1269, 1283-84 (11th Cir. 2001). No injury or threat of injury can be shown. Injury must be distinct and palpable, not abstract, conjectural, or hypothetical. *Saladin v. City of Milledgeville*, 812 F.2d 687, 691 (11th Cir. 1987). Thus, standing in this case can no longer be established by these new Plaintiffs.

In addition, this matter is moot. This is not a damages case, in which a past injury is to be addressed. Like the case of *Alvarez v. Smith*, ___U.S. ____, 130 S. Ct. 576, 580 (2009), "we have before us a complaint that seeks only declaratory

and injunctive relief, not damages." Like the dispute in *Alvarez*, "that dispute is no longer embedded in any actual controversy about the plaintiffs' particular legal rights. Rather, it is an abstract dispute about the law. . ." *Alvarez v. Smith,* 130 S. Ct. at 580. As such, this case falls outside the definition of cases and controversies. The elimination of designated school bus stops in Bulloch, Columbia and Chatham counties leaves nothing but the abstract question of law.

This case does not fit within the exception to the mootness doctrine for cases that are "capable of repetition yet evading review." "The capable-of-repetition doctrine applies only in exceptional situations." *Alvarez v. Smith,* 130 S. Ct. at 581. "This exception, however, only applies where '(1) the challenged action [is] in its duration too short to be fully litigated prior to cessation or expiration; and (2) there [is] a reasonable expectation that the same complaining party [will] be subject to the same action again.' " *United States v. Juvenile Male*, ____U.S. ____, 131 S. Ct. 2860, 2864 (2011), citing *Spencer v. Kamna*, 523 U.S. 1, 17, (1998). Plaintiffs obviously do not meet the first of these two requirements. This action has been pending for over five years. This was not a matter with an expiration date or of limited duration. Neither is this a matter in which one can show that there is a reasonable expectation that school bus stops will again be designated and that the same issue will recur. Such would be pure speculation.

This matter is moot.

Plaintiffs have previously argued that a defendant may not render a matter moot by "voluntary cessation" of the challenged practice (see doc-301). The doctrine, however, applies to voluntary cessation of the challenged practice *by the defendant*. The defendants here have not ceased any challenged practice; only unrelated third parties beyond the control of the defendants have ceased any activity (local boards of education have withdrawn the designation of school bus stops). The very footnote of a case cited by Plaintiffs in their previous pleadings (doc-301) shows that the "voluntary cessation" principle does not apply here. In *City News and Novelty v. City of Waukesha*, 531 U.S. 278, 284; 121 S. Ct. 743, 747, n. 1 (2001) the Court notes that "that rule traces to the principle that a party should not be able to evade judicial review, or to defeat a judgment, by temporarily altering questionable behavior." The Court further notes that the principle does not aid the plaintiff, City News, for it was not the conduct of its adversary (the defendant) "whose conduct saps the controversy of vitality." The rule only applies if the defendant has ceased the challenged practice; that has not happened in this case. Other factors, beyond the control of the parties, has rendered the case moot.

Lacking standing and being faced with a moot matter, this Court lacks Article III jurisdiction.

B.

PLAINTIFFS CAN NO LONGER SHOW THE ELEMENTS REQUIRED TO MAINTAIN THIS ACTION AS A CLASS ACTION UNDER FEDERAL RULE OF CIVIL PROCEDURE 23(a)

A. Standard for Decertification

In moving for class certification Plaintiffs bore the burden of establishing that that they satisfied the requirements of Fed. R. Civ. P. 23. *Buford v. H & R Block*, 168 F.R.D. 340, 348 (S.D. Ga. 1996), *aff'd* 117 F.3d 1433 (11th Cir. 1997)(party seeking class certification bears the burden of proof). Because "actual, not presumed," conformance with Rule 23(a) is "indispensable" throughout the litigation, Plaintiffs continue to bear the burden of showing, with evidence, that certification is appropriate. *See General Telephone Co. of Southwest v. Falcon*, 457 U.S. 147, 160 (1982); *In re Dennis Greenman Secs. Litig.*, 829 F.2d 1539, 1543 n. 4 (11th Cir. 1987)(reversing certification of class; "Since a district court is free to modify the certification, all class certifications are essentially temporary until a final judgment is entered.").

Accordingly, if Plaintiffs cannot show, with evidence, that this class action continues to satisfy the requirements of Fed. R. Civ. Pro. 23--including that Rule's express requirement that common questions of law and fact "predominate over any questions affecting only individual members"--the class should be decertified.

Bradberry v. John Hancock Mut. Life Ins. Co., 222 F.R.D. 568, 573 (W.D. Tenn. 2004)(decertifying class where remaining claims would require "fact-intensive, individualized inquiry" to resolve).

1. Plaintiffs are not adequate class representatives

Since none of the named Plaintiffs has standing to represent the "class" in regard to issues related to designated school bus stops, there no longer exist any appropriate class representatives.

The standing of each of the four Plaintiffs (one of whom is incarcerated) was dependent on the existence of designated school bus stops in Bulloch, Columbia and Chatham counties. There are no longer any designated school bus stops in any of these counties.

2. The requirements of Fed. R. Civ. P. 23

Class certification decisions must be based on a determination by the Court that the prerequisites set out in Rule 23 of the Federal Rules of Civil Procedure have been met.

Rule 23(a) provides as follows:

> (a) Prerequisites to a class action. One or more members of a class may sue or be sued as representative parties on behalf of all only if (1) the class is so numerous that joinder of all members is impracticable, (2) there are questions of law or fact common to the class, (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class,

and (4) the representative parties will fairly and adequately protect the interests of the class. Fed. R. Civ. P. 23 (a).

Rule 23(b) provides as follows:

(b) Class Actions Maintainable. An action may be maintained as a class action if the prerequisites of subdivision (a) are satisfied, and in addition:
(1) the prosecution of separate actions by or against individual members of the class would create a risk of
(A) inconsistent or varying adjudications with respect to individual members of the class which would establish incompatible standards of conduct for the party opposing the class, or
(B) adjudications with respect to individual members of the class which would as a practical matter be dispositive of the interests of the other members not parties to the adjudications or substantively impair or impede their ability to protect their interests; or
(2) the party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole; or
(3) the court finds that the questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy. The matters pertinent to the findings include (A) the interest of members of the class in individually controlling the prosecution or defense of separate actions; (B) the extent and nature of any litigation concerning the controversy already commenced by or against members of the class; (C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; (D) the difficulties likely to be encountered in the management of a class action. Fed. R. Civ. P. 23(b)

Plaintiffs sought certification as a Rule 23(a) class and under Rule 23(b) (Pl.'s motion for class certification p. 19, 23). Continued certification under either of these provisions would be inappropriate.

The fundamental purpose of the class action device is to provide a consistent and efficient mechanism for addressing factually and legally connected claims. *General Telephone Co. of the Southwest v. Falcon*, 457 U.S. 147, 155 (1982). The mere fact that there is an allegation of discrimination or wrongdoing does not determine whether a class action can be maintained, nor does it define the putative class, since there is often a gap between an individual's claim and the existence of a class of persons who have suffered the same injury as that individual. *See Falcon*, 457 U.S. at 156-57; *Jackson v. Motel 6 Multipurpose, Inc.*, 130 F.3d 999, 1004 (11th Cir. 1997).

A class action may be maintained only when it satisfies all of the requirements of Fed. R. Civ. P. 23(a) and at least one of the alternative requirements of Rule 23(b). *Jackson*, 130 F.3d at 1005. The requirements for maintaining a class action set forth in Rule 23 are designed to ensure that only those actions which advance this objective are certified for class treatment. The burden of establishing these requirements *by specific evidence* is on the plaintiffs who seek to certify the class. *Falcon*, 457 U.S. at 157-58. In evaluating whether this burden has been met, a court must ensure the named plaintiffs' compliance with Rule 23 is "actual," as compliance cannot be merely "presumed." Id. at 158-60 (reversing the Court of Appeals' affirmation of the district court's certification

due to its failure to evaluate the across-the-board class allegations for actual compliance with Rule 23(a)). Class certification is strictly a procedural matter, and the merits of the claims at stake are not to be considered when determining the propriety of the class action vehicle. *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 177-78 (1974). "The burden of proving these prerequisites is on the representative party or parties seeking class certification." *Hudson, et al. v. Delta Air Lines*, 90 F.3d 451, 456 (11th Cir. 1996).

Assuming Plaintiffs ever were able to do so, they can no longer meet this burden with respect to requirements stated in F.R.C.P. 23 and therefore their class must be decertified.

B. Plaintiffs have failed in their continuing duty to meet their burden under F.R.C.P 23 (a).

The Court is required to undertake a "rigorous analysis" to ensure that Rule 23(a) requirements have been met. *Falcon*, 457 U.S. at 161. To assist the Court in this analysis, Defendants will treat each requirement separately.

1. **Plaintiffs Fail to Satisfy the Requirements of Rule 23(a)(1)-Numerosity.**

"It is elementary that in order to maintain a class action, the class sought to be represented must be adequately defined and clearly ascertainable." *DeBremaecker v. Short*, 433 F.2d 733, 734(11th Cir. 1970). The class that was previously defined has since disappeared, first as a result of changes in the law in 2010, and more recently with the disappearance of designated school bus stops. The only recent claims remaining related to the school bus stops. Those claims no longer exist as there are no designated school bus stops.

The Supreme Court has repeatedly held that: "a class representative must be a part of the class and 'possessed the same interest and suffer the same injury' as the class members," *a requirement which effectively limits class claims to those fairly encompassed by the named plaintiffs' claims*. *General Telephone Company of the Southwest v. Falcon,* 457 U.S. 147, 156 (1982). Looking at the "class" as one which must be defined and limited to persons sharing plaintiffs' experience and "injury," the injury suffered for the named Plaintiffs is non-existent; thus, they cannot meet this prong of the test.

Since none of the named Plaintiffs has standing to globally challenge what remains of the statute, Plaintiffs have not shown numerosity. Moreover, none of the statistical data collected during the course of discovery has any merit because

the numbers are not reflective of the impact on the statute since the changes in the law in 2010 (House Bill 571) and the lack of any designated school bus stops. There is no one who left who has shown any injury or threat of injury; there is no one left in any class.

Broad across-the-board claims are inadequate to support a class action. *Griffin v. Dugger*, 823 F.2d 1476, 1486-87 (11th Cir. 1987); *see also East Texas Motor Freight Systems*, 431 U.S. at 405-406 (noting that casual and over broad certification can jeopardize the claims of absent individuals).

The Plaintiffs' class should thus be decertified.

2. <u>Plaintiffs Fail to Satisfy the Requirements of Rule 23(a)(2)-Commonality.</u>

The second requirement of Rule 23 (a) is that "there are questions of law or fact common to the class." Fed. R. Civ. P. 23 (a)(2). Plaintiffs cannot show commonality between what remains of their claims and any potential other persons.

To satisfy the commonality requirement, a plaintiff must show the presence of questions of law or fact common to the entire class. "[A] plaintiff who has been subject to injurious conduct of one kind [does not] possess by virtue of that injury the necessary stake in litigating conduct of another kind, although similar, to which he has not been subject." *Blum v. Yaretsky*, 457 U.S. 991, 999 (1982). The

commonality requirement demands that a class action must involve issues that are susceptible to class-wide proof. *Murray v. Auslander*, 244 F.3d 807, 811 (11th Cir. 2001)(citation omitted). As amplified by the Eleventh Circuit, "[e]ach claim must be analyzed separately, and a claim cannot be asserted on behalf of a class unless at least one plaintiff has suffered the injury that gives rise to that claim." *Griffin*, 823 F.2d at 1483. The requirements of Rule 23(a) "effectively limit the class claims to those fairly encompassed by the named plaintiffs' claims." *Griffin*, 823 F.2d at 1486 (citing *Falcon*, 457 U.S. at 156). None of the named Plaintiffs retains standing and none can show any actual harm or even a threat of harm that relates commonly to any class.

As a general rule, commonality may be disproved by showing that the various departments or subdivisions of the offending organization are not interdependent, are extremely autonomous, and decisions are independently made at each subdivision or department without input from the other subdivisions. *See Stastny v. Southern Bell Tel. and Tel. Co.*, 628 F.2d 267, 279 (4th Cir. 1980) (holding that distinctions between employer's subdivisions can thwart a plaintiff's attempt to establish commonality); *see also Lumpkin v. E.I. Du Pont de Nemours & Co.*, 161 F.R.D. 480, 482 (M.D. Ga. 1995) (holding that plaintiffs did not meet commonality because they were employed by different departments and supervised

by different people). "Commonality requires that generalized proof will be applicable to the class as a whole." *Lumpkin*, 161 F.R.D. at 482 (citation omitted). Since proof of harm, even if any existed, will be specific to the individual, this case is inappropriately brought as a class action.

3. Plaintiffs Fail to Satisfy the Requirements of Rule 23(a)(3)-Typicality

Under Rule 23(a)(3), the claims of the proposed class representatives must be "typical" of the class. "The claim of a party is typical if it arises from the same event or course of conduct which gives rise to the claims of other class members and is based on the same legal theory." *Meyer v. Citizens & Southern National Bank*, 106 F.R.D. 356, 361 (MD Ga. 1985). Since the named plaintiffs lack standing and can show no injury of threat of injury, they have no claims and neither does any other person in a similar situation. To the extent the named Plaintiffs claims are typical, then there are no remaining claims for the class. Plaintiffs do not meet the requisite typicality to raise all the claims on behalf of the proposed class because the named Plaintiffs lack standing to raise the claims. *See Hines v. Widnall*, 334 F.3d 1253 (11th Cir. 2003)(holding that if a class representative does not have individual standing to raise a legal claim, the class representative does not have the required typicality to raise the claim on behalf of the class).

4. Defendants do not contest Plaintiffs' satisfaction of Rule 23(a)(4)-Class Representation.

Defendants do not dispute that Plaintiffs meet this criteria.

C.

THE PLAINTIFFS' CLAIMS DO NOT SATISFY THE REQUIREMENT OF RULE 23(b)(2) AS TO THE GOVERNOR OR THE ATTORNEY GENERAL.

The Plaintiffs in this case chose to seek class certification through Rule 23(b)(2), which requires that the Plaintiff show that "the party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole." The Governor and the Attorney General are proper parties simply for the facial challenge to the statute. Plaintiffs repeatedly make reference to individualized enforcement and misapplication of the statute. This prerequisite does not apply to the Defendants. Neither the Governor nor the Attorney General have the authority to arrest or charge persons who fail to comply with the residency provision and the Chief Probation Officer of Polk County has no ability to act outside the scope of his county. Moreover, the best Plaintiffs have been able to show is pure speculation. Plaintiffs cannot rely on speculation to

support an element of Fed. R. Civ. P. 23. *See Kornick v. Talley*, 86 F.R.D. 715 (ND Ga. 1980).

When this action was originally filed, the restrictions on persons living near school bus stops appeared to apply to all registered sex offenders. Since that time, with the passage of House Bill 571 by the 2010 session of the Georgia General Assembly, the number of sex offenders subject to restriction shrank to a very small number as the adoption of that legislation specifically excluded most sex offenders from the restriction. Since the reversal of designation by the only three counties ever to designate school bus stops, there is no one left in any class.

"Actual, not presumed" conformance with Rule 23(a) is "indispensable" throughout the litigation. See *General Telephone Co. of Southwest v. Falcon*, 457 U.S. 147, 160 (1982); *In re Dennis Greenman Securities Litigation*, 829 F. 2d 1539, 1543, n. 4 (11th Cir. 1987)(reversing certification of class; "Since a district court is free to modify the certification, all class certifications are essentially temporary until a final judgment is entered.") Plaintiffs no longer have a certifiable class.

D.

PLAINTIFFS HAVE NOT SUSTAINED THEIR BURDEN

Plaintiffs have the burden of proof. They must establish their case by a preponderance of evidence. The claim should be supported by showing facts "consistent with the allegations in the complaint." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 127 S. Ct. 1955, 1969 (2007). This they have not done.

In addition, "[l]egislative classifications . . . are presumed to be constitutional, and the burden of showing a statute to be unconstitutional is on the challenging party, *not* on the party defending the statute." *New York State Club Association v. City of New York*, 487 U.S. 1, 17; 108 S. Ct. 2225, 2236 (1988)(*emphasis in original).* Courts have an obligation to interpret a statute "in a manner that renders it constitutionally valid." *Communications Workers of America v. Beck*, 487 U.S. 759, 762; 108 S. Ct. 2641, 2657 (1988).

III. Conclusion

For all of the above and foregoing reasons, Defendants request that the Court dismiss this action for failure to have Article III jurisdiction and decertify any remaining classes.

Respectfully submitted this 12th day of October, 2011.

SAMUEL S. OLENS
Georgia Bar No. 551540
Attorney General

MARY BETH WESTMORELAND
Georgia Bar No. 750150
Deputy Attorney General

KATHLEEN M. PACIOUS
Georgia Bar No. 558555
Deputy Attorney General

/s/ Joseph Drolet _____
Georgia Bar No. 231000
Senior Assistant Attorney General

/s/ Devon Orland _____
Georgia Bar No. 554301
Senior Assistant Attorney General

Please Serve:
JOSEPH DROLET
Senior Assistant Attorney General
40 Capitol Square, S.W.
Atlanta, Georgia 30334-1300
Telephone: (404) 657-3983
Facsimile: (404) 463-8864
E-mail: jdrolet@law.ga.gov

CERTIFICATION AS TO FONT

Pursuant to N.D. Ga. Local Rule 7.1 D, I hereby certify that this document is submitted in Times New Roman 14 point type as required by N.D. Ga. Local Rule 5.1(b).

/s/ Joseph Drolet
Georgia Bar No. 231000
Senior Assistant Attorney General

CERTIFICATE OF SERVICE

I hereby certify that on this day, I electronically filed this SUPPLEMENTAL BRIEF IN REGARD TO ARTICLE III JURISDICTION AND CLASS CERTIFICATION with the Clerk of Court using the CM/ECF system which will automatically send email notification of such filing to the following attorneys of record:

Sarah Geraghty
Stephen Bright
Gerald Weber
Southern Center for Human Rights
83 Poplar Street, N.W.
Atlanta, Georgia 30303-2122

Mr. David E. Hudson
Hull, Towill, Norman, Barrett & Salley, PC
P.O. Box 1564
Augusta, GA 30903-1564

This 12th day of October, 2011.

/s/ Joseph Drolet_____
Georgia Bar No. 231000
Senior Assistant Attorney General

Please Serve:
JOSEPH DROLET
Senior Assistant Attorney General
40 Capitol Square, S.W.
Atlanta, Georgia 30334-1300
Telephone: (404) 657-3983
Facsimile: (404) 463-8864
E-mail: jdrolet@law.ga.gov