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

LAMAR GRIZZLE and
KELVIN SIMMONS,

Plaintiffs,

v.

HON. BRIAN KEMP,
in his official capacity as Secretary
of State of Georgia and Chairperson of the
Georgia State Election Board;
THE STATE ELECTION BOARD of the
State of Georgia; and the
COUNTY EXECUTIVE COMMITTEE
OF THE BARTOW COUNTY
REPUBLICAN PARTY.

Defendants.

CIVIL ACTION
FILE NO. _____

4:10-CV-[redacted]

HTM

COMPLAINT FOR DECLARATORY

AND INJUNCTIVE RELIEF

COME NOW Plaintiffs in the above-styled action, and seek to have the provisions of the 2009 amendment to O.C.G.A. 20-2-51(c), as adopted in HB 251(Act 164), declared unconstitutional both on its face and as applied, and seek to enjoin its enforcement, and in support thereof respectfully show the Court the following:

PARTIES

1.

Plaintiff Lamar Grizzle is a citizen of the State of Georgia and is legally registered and duly qualified to vote in local, state and national elections in Georgia. Plaintiff is also a current duly elected member and Chairman of the Board of Education of Bartow County and has an immediate family member as defined by O.C.G.A. § 20-2-51(c)(2) (in this case, his daughter) serving as an Assistant Principal of Pine Log Elementary, which is in the Bartow County School District. Plaintiff was elected in 2006 as a Republican.

2.

Plaintiff Grizzle's term expires at the end of 2010, and he must qualify for the Republican primary for reelection during the fourth week in April, 2010, under O.C.G.A. § 21-2-153. Barring a change or injunction for the law, Mr. Grizzle cannot qualify to run for reelection for his post as Chairman of the Board of Education of Bartow County due to the provisions of newly amended O.C.G.A. § 20-2-51(c)(2).

3.

Plaintiff Kelvin Simmons is a citizen of the State of Georgia and is legally registered and duly qualified to vote in local, state and national elections in

Georgia. Plaintiff Kelvin Simmons has been a member of the Board of Education of the City of Gainesville since 1991, and despite his intent to run for reelection, was disqualified for running for reelection in November of 2009 by the application of newly amended O.C.G.A. § 20-2-51(c)(2). Plaintiff Kelvin's wife is an Assistant Principal at Gainesville Middle School, which is in the School District for the City of Gainesville.

4.

Defendant Brian Kemp is sued in his official capacity as the Secretary of State of the State of Georgia, and also in his capacity as the Chairperson of the State Election Board pursuant to O.C.G.A. § 21-2-30(d). Defendant Kemp is the Chief Election Official pursuant to O.C.G.A. § 21-2-50. Defendant Kemp is subject to the jurisdiction and venue of this Court and may be served at his Executive Office, 214 State Capitol, Atlanta, Fulton County, Georgia 30334.

5.

Defendant State Election Board is that official body charged with supervision and coordination of Georgia elections under O.C.G.A. § 21-2-31 and should be notified of any litigation involving elections under O.C.G.A. § 21-2-32. The State Election Board may be served by serving its Chairperson Brian Kemp,

the Georgia Secretary of State, at his Executive Office, 214 State Capitol, Atlanta, Fulton County, Georgia 30334.

6.

Defendant County Executive Committee of the Bartow County Republican Party is the body charged under O.C.G.A. § 21-2-154 with certifying qualified candidates for partisan county elections. The County Chairman of the County Executive Committee of the Bartow County Republican Party is Michael Huneke, who can be served at his residence, 11 Berkshire Drive NW, Cartersville, Bartow County, Georgia 30120.

7.

The primary for the office on the Chairman of the Board of Education of Bartow County is partisan, and under O.C.G.A. § 21-2-154, Plaintiff Grizzle would be required to qualify with the County Executive Committee of the Bartow County Republican Party to run for school board as a Republican. Mr. Grizzle is a Republican and would run in 2010 as a Republican. The County Executive Committee of the Bartow County Republican Party certifies that a candidate is qualified to be on the primary ballot under Georgia law, and so would be charged with enforcing O.C.G.A. § 21-2-51(c)(2), the challenged election qualification

provision that affects Plaintiffs. Therefore, the County Executive Committee of the Bartow County Republican Party is a proper defendant.

JURISDICTION AND VENUE

8.

This case arises under the Constitution and laws of the United States and of the State of Georgia. This Court has subject matter jurisdiction of this action under 28 U.S.C. §§ 1331, 1343(3) and (4), 1367(a) and 42 U.S.C. § 1983. This Court has jurisdiction to grant both declaratory and injunctive relief under 28 U.S.C. §§ 2201 and 2202.

9.

Venue in this district and division is proper under 28 U.S.C. § 1391(b) because at least one Defendant resides in the Rome Division of the Northern District. All Defendants reside in this State.

10.

House Bill 251 (HB 251) was introduced to the Georgia House of Representatives on February 2, 2009. See Exhibit 1, unofficial status history from Georgia General Assembly; see Exhibit 2, House Journal, p. 205.

11.

The original official title of HB 251 was as follows:

> A BILL to be entitled an Act to amend Part 13 of Article 6 of Chapter 2 of Title 20 of the Official Code of Georgia Annotated, relating to organization of schools and school systems under the "Quality Basic Education Act," so as to provide that a public school student can attend any school in the local school systems under certain conditions; to provide for statutory construction; to provide for related matters; to repeal conflicting laws; and for other purposes.

Exhibit 2, House Journal, p. 205.

12.

On February 19, 2009, the House passed a Committee on Education substitute version of HB 251, titled as follows:

A BILL

> To amend Part 13 of Article 6 of Chapter 2 of Title 20 of the Official Code of Georgia Annotated, relating to organization of schools and school systems under the "Quality Basic Education Act," so as to provide that a public school student can attend any school in the local school systems under certain conditions; to provide for statutory construction; to provide for related matters; to repeal conflicting laws; and for other purposes.

See Exhibit 2, House Journal, p. 565.

13.

The original title and text of HB 251 as passed by the House on February 19 only contains provisions relating to transfer of students among schools of their choice provided class room space is available. It contains no provisions relating to qualification for being elected to local school boards. See Exhibit 2, House Journal, p. 566.

14.

Once HB 251 was passed by the House, the Georgia Senate took it up on February 24, 2009. See Exhibit 3, Senate Journal, p. 358.

15.

On March 20, 2009, the Senate passed a substitute version of HB 251 proposed by the Senate Education and Youth Committee. See Exhibit 3, Senate Journal, p. 3002.

16.

The Senate version of HB 251 passed on March 20, 2009 was titled as follows:

A BILL TO BE ENTITLED
AN ACT

> To amend Chapter 2 of Title 20 of the Official Code of Georgia Annotated, relating to elementary and secondary education, so as to provide the option for parents to enroll their child in another school within the local school system or in a school in another local school system; to provide for definitions; to provide for statutory construction; to provide for related matters; to provide for an effective date and applicability; to repeal conflicting laws; and for other purposes.

See Exhibit 3, Senate Journal, p. 3000.

17.

A considerable amount of parliamentary maneuvering occurred on the 40th and last day of the 2009 legislative session, April 3, 2009. On that day, the House

reported it passed the Senate version with various provisions deleted, then the Senate disagreed and insisted on its original version, and a Conference Committee was appointed. See Exhibit 3, Senate Journal, pp. 4139-4140, 4446, 4460-4461; see Exhibit 2, House Journal, pp. 5011, 5317, 5623.

18.

The House considered the Conference Committee report later on April 3, 2009, and the Conference Committee proposed a substitute version of HB 251. The House passed that version. See Exhibit 2, House Journal, pp. 6278-6282.

19.

The title of the Conference Committee substitute HB 251 was:

A BILL

> To amend Chapter 2 of Title 20 of the Official Code of Georgia Annotated, relating to elementary and secondary education, so as to provide the option for parents to enroll their child in another school within the local school system or in a school in another local school system; to provide for definitions; to provide for statutory construction; to provide for certain notifications regarding available space in classrooms; **to provide for nepotism restrictions for eligibility for members of local boards of education and for local school superintendents;** to provide for related matters; to provide for an effective date and applicability; to repeal conflicting laws; and for other purposes. [Emph. added]

See Exhibit 2, House Journal, p. 6279. See Exhibit 3, Senate Journal, p. 5432.

20.

The Conference Committee substitute, introduced on the last day of the legislative session, was the first time the mention of "nepotism restrictions" entered HB 251.

21.

The first motion to pass the Conference Committee HB 251 failed 77-78, and the Representative from District 43, Bobby Franklin, had the following statement inserted into the House Journal:

> House of Representatives
> Atlanta, Georgia 30034
>
> This version of HB 251 contains more than one subject matter. Article III, Section V, Paragraph III of the Constitution of the State of Georgia states in part that "No Bill shall pass which refers to more than one subject matter…"
>
> It would have been a violation of my oath of office to have voted to pass this version of HB 251.
>
> /s/ Bobby Franklin
> Representative, District 43

See Exhibit 2, House Journal, p. 6282.

22.

A motion for reconsideration was called, and the Conference Committee version of HB 251 was passed by the House on April 3, 2009, with a vote of 103-62. See Exhibit 2, House Journal, p. 6283.

23.

The Senate passed the Conference Committee version of HB 251 on April 3, 2009, with a vote of 42-11. See Exhibit 3, Senate Journal, p. 5435.

24.

Thus, in one legislative day, April 3, 2009, the 40th and final legislative day of the 2009 General Assembly, a Conference Committee was appointed, apparently met and agreed to a version of HB 251 that inserted a number of new provisions entirely unrelated to school choice, and both the House and Senate adopted the Conference Committee version.

25.

The version of HB 251 as passed is attached hereto as Exhibit 4.

26.

HB 251 was signed by the Governor on May 5, 2009 and became effective that day.

27.

As a change affecting voting and elections, HB 251 was subject to the Voting Rights Act, and was subject to pre-clearance from the Department of Justice under Section 5 of that Act. See 42 USCA § 1973 et seq; 28 CFR part 51. HB 251 received preclearance from the Justice Department.

28.

HB 251 amended Georgia Code Section 20-2-51 relating to the qualifications of persons to run for local boards of education by adding subsection (c)(2) as follows:

> (2) No person who has an immediate family member sitting on a local board of education or serving as the local school superintendent or as a principal, assistant principal, or system administrative staff in the local school system shall be eligible to serve as a member of such local board of education. As used in this paragraph, the term "immediate family member" means a spouse, child, sibling, or parent or the spouse of a child, sibling, or parent. This paragraph shall apply only to local board of education members elected or appointed on or after July 1, 2009. Nothing in this Code section shall affect the employment of any person who is employed by a local school system on or before July 1, 2009, or who is employed by a local school system when an immediate family member becomes a local board of education member for that school system.

29.

Plaintiff Kelvin Simmons was barred from running for reelection to the Board of Education of the City of Gainesville by O.C.G.A. § 20-2-51(c)(2) as amended.

30.

Mr. Simmons sought to be a candidate on the November 3, 2009 ballot for reelection to his post on the Board of Education of the City of Gainesville, a post he has held since 1991.

31.

Since HB 251 took effect for elections after July 1, 2009, and since Mr. Simmons' wife is an Assistant Principle at Gainesville Middle School, a school in the School District of the City of Gainesville, he was barred from running for that office. His term expired December 31, 2009, and he was off the school board as of January 1, 2010.

32.

Plaintiff Simmons has suffered an injury in fact and an actual injury as a result of the adoption of HB 251 and the amendments contained therein. The harm is 1) concrete and particularized in that he was barred from running for office; and 2) actual and not conjectural or hypothetical, in that it occurred.

33.

Plaintiff Lamar Grizzle desires to be reelected to the Board of Education of Bartow County, where he has served since 2003. That election is scheduled to occur on November 2, 2010.

34.

Mr. Grizzle will need to qualify during the fourth week in April, 2010 to qualify for the partisan elections for the Board of Education of Bartow County, pursuant to O.C.G.A. § 21-2-153 and Georgia Election Law.

35.

If the newly adopted subsection O.C.G.A. § 20-2-51(c)(2) is not enjoined and declared unconstitutional, Plaintiff Grizzle will be barred from running for reelection to the Board of Education of Bartow County. Mr. Grizzle's daughter is an Assistant Principal at Pine Log Elementary, a school in the Bartow County School District.

36.

It is indisputable that Plaintiff Grizzle will suffer actual harm as a result of the adoption of the challenged provision of HB 251, specifically the adoption of new subsection O.C.G.A. § 20-2-51(c)(2). The harm is 1) concrete and particularized in that he will be barred from running for office, and 2) imminent and not conjectural or hypothetical, in that it is certain that he will be barred from running from office in April, 2010.

37.

This case therefore presents a live case or controversy that requires adjudication.

38.

The adoption of HB 251 by the Georgia General Assembly was state action.

39.

The adoption of HB 251 caused Plaintiffs a deprivation of constitutionally protected interests and rights.

40.

The adoption of HB 251 caused Plaintiff Simmons to suffer an actual harm and injury to his constitutionally protected interests and rights because he was not permitted to qualify for reelection.

41.

It is certain that the adoption of HB 251 will cause Plaintiff Grizzle to suffer an actual harm and injury to his constitutionally protected interests and rights. This harm is imminent, and will occur in April, 2010 when he will be barred from qualifying.

42.

Plaintiffs are both voters as well as candidates for election.

43.

Plaintiffs challenge the above-stated provision of HB 251 both on its face, as voters, and as applied to them, as candidates.

44.

Both Plaintiffs have the fundamental constitutional right to be a candidate and the fundamental constitutional right to vote.

45.

The challenged provision of HB 251 does not simply impose a requirement on a candidate, such as the requirement to pay a filing fee; it imposes a restriction that bars a large group of candidates from being on the ballot under any circumstances.

46.

Georgia has 159 county school systems (one per county) and 21 independent municipal school systems (examples include Atlanta, Cartersville, Dalton, Decatur, Gainesville, Marietta, Rome, etc.). Each is governed by a school board. Each employs a superintendent.

47.

At a minimum, each school system has three schools: one high school, one middle school and one elementary school. Some have far more.

48.

The Georgia Department of Education website lists 2172 public schools statewide for which it tracks statistics under the federal No Child Left Behind Act of 2001 (Pub.L. 107-110).

49.

Each school typically has at least one principal and one assistant principal, and some have multiple assistant principals.

50.

Therefore, it is reasonable to conclude that the challenged provision of HB 251 (i.e., O.C.G.A. § 20-2-51(c)(2)) affects the rights to be a candidate for school board for the listed relatives (spouse, child, sibling, or parent or the spouse of a child, sibling, or parent) of at least 4,500 citizens of this state, if not more (180 superintendents, 2172 principals, at least 2172 assistant principals, plus unknown numbers of "system administrative staff.")

51.

In other words, for each of the 180 superintendents, their holding of that job restricts their parents, the spouse of their parents if divorced or widowed, their children, the spouse of their children, and their brothers and sisters, and the

spouses of their brothers and sisters, from running for local school board. The same applies to all principals, assistant principals and system administrative staff.

52.

With each person potentially barring several individuals from holding school board office, the challenged provision of HB 251 affects likely more than 10,000 citizens of the State of Georgia.

53.

The challenged provision of HB 251 (i.e., O.C.G.A. § 20-2-51(c)(2)) places burdens on two different, although overlapping, kinds of rights – the right of individuals to associate for the advancement of political beliefs, and the right of qualified voters, regardless of their political persuasion, to cast their votes effectively. These are fundamental rights.

54.

Not all restrictions imposed by the States on candidates' eligibility for the ballot impose constitutionally-suspect burdens on voters' rights to associate or to choose among candidates. Generally-applicable and evenhanded restrictions that protect the integrity and reliability of the electoral process itself are generally upheld.

55.

However, the challenged provision of HB 251 is not generally-applicable and evenhanded. It irrationally restricts a certain class of citizens from running for school board.

56.

The challenged provision of HB 251 is not a "nepotism restriction," as it does not bar the appointment of a relative of a school member to a school position. Instead, they are ballot access restrictions in that the existence of a relative in a job bars an individual from running for an elective school board post.

57.

Actions by school board officials that constitute a conflict of interest are already barred by Georgia common law.

58.

Actions by school board officials that constitute a conflict of interest are already barred by statutes, rules and regulations.

59.

The challenged provision of HB 251 is referred to as a "nepotism restriction," but rather than prohibiting an elected school board official from favoring a relative who is an employee, it allows a relative to block another

relatives' access to the ballot and to running for school board on the basis of their job.

60.

For example, a teacher in a school district offered a promotion to assistant principal whose stepfather was on the school board would thus have it in their power to force their stepfather off the school board.

61.

The challenged provision of HB 251 does not bar an existing school board member from hiring or promoting an existing family member, nor does it bar favoritism for relatives outside its definition of "immediate family," including grandchildren, cousins and so forth. Therefore, it is not narrowly tailored to serve its purported interest.

62.

If the purported goal of the legislation is to prevent nepotism (i.e., favoritism of relatives), HB 251 is not well-suited to achieving that objective, and that objective is in fact already achieved by existing state conflict of interest laws, board of education policies and procedures as well as other school board members, which all serve to ensure that a board member could not irrationally or unreasonably favor a relative in employment decisions.

63.

The challenged provision of HB 251 is irrational and does not serve any legitimate or compelling state interest.

COUNT ONE: VIOLATION OF UNITED STATES CONSTITUTION, FOURTEENTH AMENDMENT EQUAL PROTECTION

64.

Plaintiffs incorporate herein the allegations contained in the paragraphs preceding this Count.

65.

The equal protection clause of the Fourteenth Amendment to the United States Constitution, which applies to state action, requires that similarly situated people be treated alike.

66.

While most equal-protection cases allege discrimination on the basis of suspect classifications such as race, sex, or national origin, the equal protection clause more generally protects citizens from arbitrary or irrational state action.

67.

Citizens also have a constitutionally protected right to run for public office.

68.

While states enjoy broad powers to determine qualifications and the manner of elections, this power must be exercised in a manner consistent with the Equal Protection Clause of the Fourteenth Amendment.

69.

The challenged provision of HB 251 imposes a severe restriction on the rights of Plaintiffs to run for office, since they are totally barred from running for the school board based solely on the jobs held by certain family members. A restriction this severe and total is appropriately reviewed under strict scrutiny, and the Defendants must demonstrate the precise and compelling government interest and show how this legislation is narrowly tailored to serve that interest.

70.

The challenged provision of HB 251 is not narrowly tailored to serve a compelling government interest.

71.

Even if a lesser standard of review were applied, the challenged provision of HB 251 is not reasonably necessary to accomplish a legitimate government interest, as demonstrated above.

72.

The challenged provision of HB 251 arbitrarily bars a large group of citizens from running for elective office to local school boards without justification, as demonstrated above.

73.

On their face, the challenged provision of HB 251 violates equal protection and is arbitrary and irrational.

74.

The challenged provision of HB 251 serves to deny Plaintiffs as *voters* their choice of candidate.

75.

The challenged provision of HB 251 violates the equal protection rights of Plaintiffs as applied specifically to them as *candidates* for local school board office.

76.

Plaintiffs as both *voters* and *candidates* have suffered harm or will indisputably suffer harm from the application of the challenged provision of HB 251.

77.

Plaintiffs seek a declaration that the challenged provision of HB 251, both facially and as applied to them, is unconstitutional, and seek a preliminary and permanent injunctive relief preventing its enforcement.

COUNT TWO: VIOLATION OF UNITED STATES CONSTITUTION, FIRST AMENDMENT FREE ASSOCIATION

78.

Plaintiffs incorporate herein the allegations contained in the paragraphs preceding Count One.

79.

The First Amendment to the U.S. Constitution protects, inter alia, "the right of the people peaceably to assemble...." U.S. Const. Amend. I. Such protections apply to state action under the Fourteenth Amendment.

80.

The free association right in an election context is also referred to as a right of ballot access.

81.

Where state election laws are at issue, the Supreme Court has declared that regulations imposing severe burdens on plaintiffs' free association rights must be narrowly tailored and advance a compelling state interest.

82.

Less severe restrictions on ballot access are subject to lesser levels of scrutiny, including an intermediate level of review, and for the least restrictive, a rational basis review. This approach has been described as a balancing test, depending on the particular circumstances.

83.

A reviewing court must determine whether the totality of the restrictive laws taken as a whole imposes a burden on voting and associational rights.

84.

The complete restriction of thousands of potential candidates based solely on the employment of certain family members imposes a severe burden on free association rights. This restriction violates the rights of candidates and the rights of voters. The challenged provisions of HB 251 should be reviewed under the strict scrutiny level of review and be forced to demonstrate precisely how the

stated government interest is compelling and how the legislation is narrowly tailored to serve that interest.

85.

The U.S. Supreme Court has held that the rights of voters and the rights of candidates do not lend themselves to neat separation; laws that affect candidates always have at least some theoretical, correlative effect on voters. Ballot access restrictions tend to limit the field of candidates from which voters might choose, which dampens their associational rights as well as their right to effectively cast their vote. See Bullock v. Carter, 405 U.S. 134, 143 (1972).

86.

Therefore, the rights asserted in this case are asserted by both Plaintiffs as *voters*, who were denied and will be denied the right to vote for a candidate of their choice; and also as *candidates* for elective office, who were denied or will be denied access to the ballot.

87.

The Plaintiffs in this case are completely barred as *candidates* from appearing on the ballot, which is a severe restriction on free association rights.

88.

The challenged provision of HB 251 is not narrowly tailored to serve a compelling government interest.

89.

Plaintiffs' rights as *voters* under a free association theory are also abridged by the challenged provision of HB 251.

90.

Plaintiffs seek a declaration that the challenged provision of HB 251, both facially and as applied to them, is unconstitutional, and seek a preliminary and permanent injunctive relief preventing its enforcement.

COUNT THREE: VIOLATION OF UNITED STATES CONSTITUTION FOURTEENTH AMENDMENT DUE PROCESS

91.

Plaintiffs incorporate herein the allegations contained in the paragraphs preceding Count One.

92.

The challenged provision of HB 251, O.C.G.A. § 20-2-51(c)(2), bars any person from serving on a local board of education if they have an immediate family member (as defined) who is "serving as the local school superintendent or

as a principal, assistant principal, or **system administrative staff** in the local school system." [Emph. added].

93.

The term "system administrative staff" is not defined anywhere in HB 251.

94.

The term "system administrative staff" is not defined anywhere in Title 20, the Education Title of the Georgia Code.

95.

The term "system administrative staff" is not used anywhere in the entire Georgia Code except for the two subsections enacted by HB 251.

96.

It is not clear what persons would qualify as "system administrative staff."

97.

Under one possible interpretation, the term would apply to any "administrator" in the school system, which would imply supervisory authority. Under another possible interpretation, it would apply to any staff in the central Board of Education office, right down to receptionists and secretaries. It may or may not include folks who perform administrative tasks at individual schools, or who have supervisory authority over some but not all schools.

98.

A law is void for vagueness if persons of common intelligence must necessarily guess at its meaning and differ as to its application. A law that is void for vagueness violates due process, which is protected by the Fourteenth Amendment to the United States Constitution.

99.

The challenged provision of HB 251 does not give individuals fair notice of whom it applies to. It engenders the possibility of arbitrary and discriminatory enforcement. A person barred from running in one county might not be barred in a different county, depending on the interpretation of local officials.

100.

Plaintiffs seek a declaration that the challenged provision of HB 251, on its face, is unconstitutionally void for vagueness, and seek a preliminary and permanent injunctive relief preventing its enforcement.

COUNT FOUR: VIOLATION OF GEORGIA CONSTITUTION

ARTICLE 3, SECTION 5, PARAGRAPH III

101.

Plaintiffs incorporate herein the allegations contained in the paragraphs preceding Count One.

102.

Article 3, Section 5, Paragraph III of the Constitution of the State of Georgia states "No bill shall pass which refers to more than one subject matter or contains matter different from what is expressed in the title thereof."

103.

The test of whether a bill violates the "multiple subject matter" restriction is whether all of the parts of the bill are germane to the accomplishment of a single objective.

104.

The rationale upon which this rule rests, as expressed by the Georgia Supreme Court, is the notion that all proposed legislation shall stand or fall upon its own merits. No legislator should be compelled, in order to vote against the proposition which he or she desires to defeat, to vote also against the one which commends itself to the approval of his or her judgment. See Carter v. Burson, 230 Ga. 511, 519 (1973).

105.

The title of the Conference Committee substitute HB 251 was:

A BILL

To amend Chapter 2 of Title 20 of the Official Code of Georgia Annotated, relating to elementary and secondary education, so as to provide the option

> for parents to enroll their child in another school within the local school system or in a school in another local school system; to provide for definitions; to provide for statutory construction; to provide for certain notifications regarding available space in classrooms; **to provide for nepotism restrictions for eligibility for members of local boards of education and for local school superintendents;** to provide for related matters; to provide for an effective date and applicability; to repeal conflicting laws; and for other purposes. [Emph. added]

See Exhibit 2, House Journal, p. 6279. See Exhibit 3, Senate Journal, p. 5432.

106.

HB 251 contains more than one subject matter: the so-called "nepotism restriction" provision being challenged in this lawsuit and the provisions relating to providing students choice among schools if there is space available. (See Exhibit 4, HB 251).

107.

The two provisions of HB 251 do not relate to a single objective. One section relates to allowing students to move freely among schools in their school district if there is room; the other relates to restrictions on who can run for school board. It would not be unreasonable to presume that a "school choice" provision would be very popular, and that amending the bill during the last day of the legislative session and during a conference committee was nothing less than an attempt to take advantage of that popularity to adopt what would be a less popular provision on an entirely different subject.

108.

This Court should exercise supplemental jurisdiction under 28 U.S.C. § 1367 and declare HB 251 to be void for violation of Art. 3, Sec. 5, Para. III of the Georgia Constitution.

109.

Plaintiffs further seek preliminary and permanent injunctive relief preventing the enforcement of the challenged provisions of HB 251.

COUNT FIVE: CLAIMS UNDER 42 U.S.C. SECTION 1983

ATTORNEY'S FEES UNDER 42 U.S.C. SECTION 1988

110.

Plaintiffs advance Counts One, Two and Three under 42 U.S.C. § 1983, which authorizes actions to secure the deprivation of rights secured under the United States Constitution. Plaintiffs assert claims under the First and Fourteenth Amendments of the U.S. Constitution.

111.

To articulate a cognizable claim under 42 U.S.C. § 1983, Plaintiffs must show that a person, acting under color of any statute, ordinance, regulation, custom, or usage, deprived him of a right, privilege, or immunity secured by the Constitution.

112.

Plaintiffs have alleged above how the actions of the State of Georgia in adopting HB 251 deprived them of rights of free association, due process, equal protection and other rights secured under the First and Fourteenth Amendments of the U.S. Constitution.

113.

Under 42 U.S.C. § 1988, Plaintiffs seek attorney's fees and costs for bringing this action to secure their constitutionally protected rights.

114.

As a challenge to a state statute, Plaintiffs will serve a copy of the Complaint on Attorney General pursuant to O.C.G.A. § 9-4-7.

WHEREFORE, Plaintiffs pray as follows:

a) That the summons issue and process be served on the Defendants;

b) That the Court declare the challenged provisions of HB 251 to be unconstitutional;

c) That the Court declare that HB 251 was adopted in violation of the Georgia Constitution's prohibition of multi-subject bills;

d) That the Court grant a preliminary injunction against enforcement of the challenged provision of HB 251 prior to the qualifying in the fourth week in April, 2010;

e) That the Court grant a permanent injunction against enforcement of the challenged provision of HB 251;

f) That the Court award the Plaintiffs attorney's fees and costs as prevailing parties under 42 U.S.C. § 1988; and

g) That the Court issue such other relief as is just and proper.

Respectfully submitted,

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Georgia Bar Number 553102

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