

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

FILED IN CLERK'S OFFICE
 U.S.D.C. Atlanta
 MAY 11 2001
 LUTHER D. THOMAS, Clerk
 By: *[Signature]*
 Deputy Clerk

SUNTRUST BANK as Trustee of)
 the Stephens Mitchell Trusts f/b/o Eugene)
 Muse Mitchell and Joseph Reynolds Mitchell)
)
 Plaintiff,)
)
 v.)
)
 HOUGHTON MIFFLIN COMPANY,)
)
 Defendant.)
 _____)

Civil Action File
 No. 1:01 CV-701-CAP

**DEFENDANT'S REPLY MEMORANDUM IN SUPPORT OF ITS
 MOTION FOR IMMEDIATE SUSPENSION OF
PRELIMINARY INJUNCTION PENDING APPEAL**

On April 24, 2001, Defendant moved the Court pursuant to Fed.R.Civ.P. 62(c) for an immediate suspension of the preliminary injunction in this case. Plaintiff submitted a brief in opposition on May 4, 2001.

Contrary to Plaintiff's assertions, staying the injunction pending appeal in this case would neither cause irreparable harm to plaintiff nor moot the appeal. To the contrary, it would merely allow Defendant to continue its carefully coordinated pre-publication campaign of promoting the novel in order that Defendant could begin offering the book for sale around the end of June. Staying the injunction pending appeal would also lessen the harm resulting from the denial of Defendant's rights under the First Amendment.

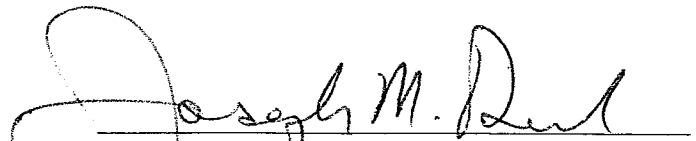
The Eleventh Circuit has set oral argument on Defendant's appeal of the preliminary injunction for May 25, 2001, and may rule on the appeal before the end of

June. If the injunction is ultimately affirmed on appeal, Plaintiff will have the relief it seeks. However, if the Eleventh Circuit vacates the injunction and allows the book to be published, Defendant will nevertheless have been irreparably harmed by the freezing of its promotional campaign for the book during the critical period between the effective date of the preliminary injunction and its reversal on appeal.

Defendant believes the current bond of \$250,000 is likely to be inadequate to cover harm already caused Defendant; however, the greater harm would be to prolong the injunction pending a hearing on the bond. Under the circumstances, if the injunction is not lifted by this Court or by the Eleventh Circuit on the day of oral argument or shortly thereafter, Defendant respectfully requests permission to submit evidence as to the inadequacy of the bond.

For the foregoing reasons, Defendant's motion to suspend the preliminary injunction issued by this Court pending appeal should be granted.

This 10th day of May, 2001.

A handwritten signature in black ink, appearing to read "Joseph M. Beck". The signature is written in a cursive style and is positioned above a horizontal line.

Miles J. Alexander

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Jerre B. Swann

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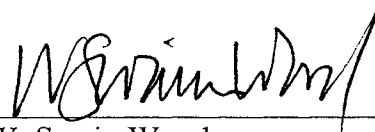
Attorneys for Defendant

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Defendant's Reply Memorandum in Support of Its Motion for Immediate Suspension of Preliminary Injunction Pending Appeal has been hand-delivered to counsel of record as follows:

William B. B. Smith
Ralph R. Morrison
Anne M. Johnson
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This 11th day of May, 2001.



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