IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

ELIZABETH DENISE CALDON,	*	
PLAINTIFF,	*	
	*	**Civil Action File No.:**
V.	*	**2009-CV-165267**
	*	
BOARD OF REGENTS OF THE	*	
UNIVERSITY SYSTEM OF GEORGIA,	*	
	*	
DEFENDANT.	*	
	*	

AMICUS BRIEF BY BILL SIMON IN SUPPORT OF PLAINTIFF ELIZABETH DENISE CALDON'S RESPONSE TO DEFENDANT'S OPPOSITION TO "THIRD MOTION TO LIFT PROTECTIVE ORDERS"

Non-party Bill Simon hereby files this Amicus Brief in support of Plaintiff Caldon's Response to Defendant's Opposition to "Third Motion to Lift Protective Orders."

INTRODUCTION

My name is Bill Simon, and I am a resident of the State of Georgia. I am neither an attorney, nor do I work in any position within the legal profession. My contribution to this matter is to present to the Court compelling evidence of acts by at least one person who works for the Board of Regents that appear to be in conflict with specific OCGA statutes under Title 16. And, that this presentation will show enough of a "**good cause**" to convince this Court to lift all Protective Orders applied in ***Caldon v. BOR***.

The evidence of these acts was obtained without any violation of this Court's Protective Orders by either Plaintiff Elizabeth Denise Caldon or myself. There are numbered Exhibits also included in this Amicus Brief to guide this Court to understanding what I present here.

In respect of this Superior Court of Fulton County, I did research the Uniform Rules of The Superior Courts of The State of Georgia, and found no reference to a required "format" (either in presentation style, text size, font type, etc.) for an Amicus Brief.

Regardless of any format that may be required for an Amicus Brief under rules that I am not aware of, I am relying on the Court to abide by **Canon (3)(B)(7)** of the **Judicial Qualification Commission** in attention paid to this Amicus Brief. This Canon states as follows: ***"Judges shall accord to every person who has a legal interest in a proceeding, or that person's lawyer, the right to be heard according to law."***

As a resident and a taxpayer in the State of Georgia, my "legal interest" in this matter is the interest I have in ensuring that laws and rules are followed by all entities who represent either the Executive Branch or the Judicial Branch of Georgia Government, and who are directly supported by my taxes paid to the state.

Additionally, as the owner, editor, and publisher of the news blogging Website called PoliticalVine.com, I also believe I represent a "**public interest**" to this proceeding. And if the Court determines I have no "legal interest," hopefully, the public interest will still be valid.

POTENTIAL VIOLATIONS OF OCGA BY PERSONNEL OF THE BOARD OF REGENTS

Potential Violation #1: No less than three counts of violations of OCGA 16-10-8 by Board of Regents Vice Chancellor for Legal Affairs J. Burns Newsome**.**

Potential Violation #2: No less than three counts of violations of OCGA 16-10-20 by Board of Regents Vice Chancellor for Legal Affairs J. Burns Newsome.

PRESENTATION OF EVIDENCE

Attached to this brief are documents consisting of the following Exhibits:

1) **Simon Exhibit 1**: Letter from J Burns Newsome to Denise Caldon dated 11/11/2008

2) **Simon Exhibit 2:** Letter from J Burns Newsome to Markena Guy Middlebrook dated 11/19/2009

3) **Simon Exhibit 3:** Letter from J Burns Newsome to Angela Garner dated 6/10/2011

4) **Simon Exhibit 4:** Extracted page from the Deposition of Regent Doreen Stiles Poitevint contained in E. Denise Caldon's Request for Reconsideration Appeal sent to the Georgia Court of Appeals on July 21, 2011. Extract page shows a cite from the Poitevint Deposition containing 4 questions to Poitevint, and 4 answers from Poitevint.

5) **Simon Exhibit 5:** Receipt for my purchase of copies from the Court of Appeals of E. Denise Caldon's Request for Reconsideration; COA Case# A11A0382 (14 pages at a cost of $1.50 each for a total of $21.00). This Receipt is provided to the Court so that the Court will know that no Protective Orders were violated in the obtaining of the excerpt from Regent Poitevint's Deposition.

DISCUSSION OF EVIDENCE

In **Simon Exhibit 1**, these statements (with added emphasis where needed) written on Board of Regents letterhead by J. Burns Newsome, Vice Chancellor for Legal Affairs, are of key importance to these Allegations:

> "Pursuant to the Policies (sic) of the Board of Regents of the University System of Georgia, **your Application for Review** of a decision by the President at Macon State College concerning your termination **was presented to the Board of Regents at its meeting on November 10, 2008**." [emphasis added]
>
> Please be advised that **after investigation, review and careful consideration** [emphasis added], the Board has decided to uphold the decision of the President."

In **Simon Exhibit 2,** these statements (with added emphasis where needed) written on Board of Regents letterhead by J. Burns Newsome, Vice Chancellor for Legal Affairs, are of key importance to these Allegations:

> "Pursuant to the Policies (sic) of the Board of Regents of the University System of Georgia, **your client's Application for Review** of a decision rendered by the President at Atlanta Metropolitan College concerning his removal from the position of Chairman of the Business, Mathematics, & Computer Science Department and an allegation of sexual harassment **was presented to the Board of Regents at its meeting on November 17-18, 2009."** [emphasis added]
>
> Please be advised that **after investigation, review and careful consideration** [emphasis added], the Board has decided to uphold the decision of the President."

In **Simon Exhibit 3**, these statements (with added emphasis where needed) written on Board of Regents letterhead by J. Burns Newsome, Vice Chancellor for Legal Affairs, are of key importance to these Allegations:

> "Pursuant to the Policies (sic) of the Board of Regents of the University System of Georgia, **your client's Application for Review** concerning her termination from Georgia State University **was presented to the Board of Regents at its meeting on June 7, 2011."** [emphasis added]
>
> Please be advised that **after investigation, review and careful consideration** [emphasis added], the Board has decided to uphold the decision of the university in this matter."

Simon Exhibit 4 is a page from **E. Denise Caldon's Request for Reconsideration to the Georgia Court of Appeals**. The significance for the Court's attention is what appears in the middle of this Exhibit, which is **a citation from Page 11 of the February 8, 2010 Deposition of Regent Doreen Stiles Poitevint (**Poitevint is the "**A**:"**)** in reference to the "Application for Review:"

> Q: *"Is there a review of any documents or evidence by the Board of Regents?*
> **A: "Do you mean physical documents?**
> *Q: "Yes, Ma'am."*
> **A: "No."**
> *Q: "Do the Regents review the applications for review that are submitted by the employees?"*
> **A: "No."**
> Q: *"Why not?"*
> **A: "I think just like I said time restraints."**

For the Court's understanding of the significance of this matter, an "**Application for Review**" is a written document prepared by the terminated employee/expelled student of any university or college or entity of any kind under the purview of the University System of Georgia in which the terminated employee/expelled student feels he or she has been unfairly terminated/expelled. The terminated employee/expelled student prepares a document that is sent to the Board of Regents whereby they, as an independent body, far removed from the personal nature of an employer-to-employee/faculty-to-student relationship, are presumed to be actually reviewing the Application for Review to determine if the termination/expulsion was in accordance with rules, laws, circumstances, and ethics that the Board of Regents deem to be appropriate.

Additionally, for the Court's knowledge, not only is Mr. Newsome the Vice Chancellor for Legal Affairs for the Board of Regents, he also serves as Secretary to the Board of Regents. Which means he is an integral part of the BOR, and likely attends **most**, if not all, of the regent meetings.

From the University System of Georgia's Website, Section 8.2.21 covers "Employment Appeals," and it states as follows (in its entirety):

> "Except as provided below, applications from University System employees for Board of Regents' review of presidential decisions shall be limited to instances in which an employee is terminated, demoted, or otherwise disciplined in a manner which results in a loss of pay; provided however, appeals may be heard if the Chair of the Board's Committee on Organization and Law, in consultation with the Board's chief legal officer, determines that the matter should be presented to the Board. In considering whether applications other than the types listed above shall be presented to the Board, the Chair shall consider (1) whether the record suggests that a miscarriage of justice might reasonably occur if the application is not reviewed by the Board, (2) whether the record suggests that the institutional decision, if not reviewed by the Board, might reasonably have detrimental and system-wide significance, or (3) any other facts which, in the judgment of the Chair, merit consideration by the Board of Regents. (BoR Minutes, April 2010)"

For any terminated employee, the BOR has laid-out the possible circumstances for a "review" of the termination as specified by stating "***…appeals may be heard if the Chair of the Board's Committee on Organization and Law, in consultation with the Board's chief legal officer, determines that the matter should be presented to the Board."***

Who is the Board of Regents' "chief legal officer?" J. Burns Newsome. So, Mr. Newsome would know which Applications for Review were appropriate to bring forward to the BOR, and he would, as per USG's specified guidelines, consult with the Chair of the Board's Committee on Organization and Law to decide which ones should be submitted to the BOR for their investigation.

In three separate letters written by Vice Chancellor for Legal Affairs J. Burns Newsome, over three separate time periods (2008, 2009, and 2011), the Vice Chancellor claimed in ***writing*** on official letterhead of the University System of Georgia (thus, all of these letters were written in his **official** capacity as an employee of a State of Georgia agency/department) that Applications for Review were "presented to the Board of Regents" on specific dates in which meetings were supposedly held by the Board of Regents to discuss such matters and that each of the terminated employees' Applications for Review were **investigated, reviewed, and carefully considered by the Board of Regents**.

According to Regent Poitevint's responses to the 3rd and 4th questions from **Simon Exhibit 4,** the Applications for Review are **not** reviewed by the Board of Regents due to "**time restraints**."

If an appointed Regent, who is also an active eyewitness to meetings held by the Board of Regents, in her sworn testimony, claims that ***no*** Applications for Review are **ever** reviewed in the meetings of the Board of Regents, then how does ***that*** reconcile with Mr. Newsome's claim that each of the Applications for Review were, according to him in his signed letters, "presented to the Board of Regents" on his specified dates?

If Applications for Review are not "reviewed" by the Board, then how can they be "investigated" by the Board? If no one has the time to "review physical documents **or** evidence," then how can ***any*** Application for Review be "investigated" or "carefully considered" as Mr. Newsome's letters state they were by the Board of Regents?

Because of this conflict between Mr. Newsome's claim, and my assumption that Regent Poitevint's sworn testimony was truthful regarding Applications for Review, **on a minimum of three counts, Vice Chancellor Newsome appears to be in direct violation of OCGA 16-10-8**, which states as follows as of the 2011 online version of this law (with the applicable part of this law to this situation being emphasized in **bolded text**):

> "**An** officer or **employee of the state** or any political subdivision thereof or other person **authorized by law to make or give a** certificate or other **writing who knowingly makes and delivers such a** certificate or **writing containing any statement which he knows to be false shall, upon conviction thereof, be punished by imprisonment for not less than one nor more than five years.**"

Additionally, due to this conflict between what Vice Chancellor Newsome claims in writing, and what Regent Poitevint claims in her sworn deposition, it may be that **on no less than three counts, Mr. Newsome has also violated OCGA 16-10-20**, which states as follows as of the 2011 online version:

> "**A person who knowingly and willfully** falsifies, conceals, or covers up by any trick, scheme, or device a material fact; makes a false, fictitious, or fraudulent statement or representation; or **makes or uses any false writing or document, knowing the same to contain any false, fictitious, or fraudulent statement or entry, in any matter within the jurisdiction of any department or agency of state government** or of the government of any county, city, or other political subdivision of this state **shall, upon conviction thereof, be punished by a fine of not more than $1,000.00 or by imprisonment for not less than one nor more than five years, or both."**

ADDITIONAL EVIDENCE

Late in the writing of this brief, two more examples of letters written by Mr. Newsome came to me. These are nearly identical to the ones previously presented whereby the terminated employees were informed that their Applications for Reviews were "presented to the BOR," and the BOR "denied their appeal." These are attached as **Simon Exhibit 6 (Mr. Dale Owens) and Simon Exhibit 7 (Mr. Harrison Hartman)**.

Lest the Court get the idea that there are just "five" examples of Newsome's letters, attached is **Simon Exhibit 8**, which is a 12-page document that shows over 150 examples of terminated employees who filed Applications for Review, and who all likely received letters of similar content from Mr. Newsome.

Also, this list is only the list of "terminated employees." Due to FERPA, the Applications for Review of "expelled students" were not subject to Open Records Request, but those letters likely exist, and the same statements that Mr. Newsome wrote to terminated faculty members about their appeals are likely similar.

CONCLUSION

My role in writing this Amicus Brief is to demonstrate to the Court that evidence currently sealed under protective orders is evidence of potential criminal violations of state law by a state employee. These potential violations are based on what appears to be a rather blatant discrepancy in what the truth is by two different principals connected with the University System of Georgia. One of those principals is an appointed Regent, and her full version of the truth is sealed by this Court under the auspice of it being a Covered Entity and Protected Health Information under "HIPPA."

It is not up to me to pass judgment on whether or not Vice Chancellor Newsome has knowingly written false statements, or knowingly covered-up a material fact that, according to Regent Poitevint, **none** of the Applications for Review are ***ever*** actually presented to the Board of Regents for their consideration. Since it is not up to me, I feel obligated to bring it to the attention of this Court, and my hope is that this Court will know to which proper state authority (an authority *other* than the Attorney General's office, as that office is conflicted out of this new matter) this information should be submitted for review and investigation.

It is hoped that the Court pays special attention to the fact that, with only 4 questions and 4 answers (a total of 55 words) legally excerpted from one deposition, that there is ***compelling*** evidence of at least one state employee employed by the University System of Georgia's Board of Regents potentially committing violations of statutes of Title 16 of OCGA. And that this evidence provides "good cause" to the Court.

And perhaps the Court, upon consideration of what 55 words shows in just this one deposition, will consider a) what the remainder of this one deposition shows beyond the 4 questions and 4 answers, and b) what ***other*** evidence of potential wrongdoing by other personnel of the Board of Regents, or the University System of Georgia, is contained in the Depositions, Affidavits, and any other non-HIPPA protected evidence that this Court has sealed under Protective Orders.

Additionally, in light of what the **Georgia Court of Appeals** discussed in a 2004 case titled *BankWest, Inc. v. Oxendine, 266 Ga.App. 771, 598 S.E.2d 343 (Ga. App., 2004)* regarding USCR 21, it will be rather curious to anyone examining this case as to what the basis will be for ***this*** Court to ***continue*** to maintain any Protective Orders on any evidence from ***Caldon vs. Board of Regents*** from this point forward. In the aforementioned Court of Appeals case, in their discussion of "Case No. A03A2357," the appeals court stated the following:

> "6. The Commissioner appeals the trial court's decision to grant the motion for protective order filed by Advance America and BankWest, which required that certain documents be filed under seal, and its later ruling that the protective order would remain in effect until further order of the court. Because the trial court failed to follow the required procedures for allowing court records to be sealed, we reverse.
>
> "USCR 21 states that '[a]ll court records are public and are to be available for public inspection unless public access is limited by law or by the procedure set forth below.' A superior court may grant a civil litigant's motion for limited access to court files in a particular action, after conducting a hearing on the motion. 'The order of limitation shall specify the part of the file to which access is limited, the nature and duration of the limitation, and the reason for limitation. An order limiting access shall not be granted except upon a finding that the harm otherwise resulting to the privacy of a person in interest clearly outweighs the public interest.' "

In my review of this Court's Consent Protective Order from September 2009, I find no mention of what specific part of the file to which access is limited other than a reference to anything marked "confidential." Who determined what evidence would be marked "confidential?" Why was it marked "confidential?" And, was each document determined to be "confidential" according to what the Court of Appeals refers to be the "…***required procedures for allowing court records to be sealed***"…?

When it concerns the activities and depositions from **public employees** in the carrying-out of their **public duties**, employees whose salaries are paid by ***public*** taxpayer dollars, there is almost ***nothing*** "confidential" or "personal" that ***can*** be claimed about the documents or evidence.

Public employees, when engaging in their duties on the taxpayer dime, do not have a "right to privacy" or a "right to personal confidentiality" when it comes to their **public acts** or **statements taken on the *record*** about ***their*** **duties** and **actions** taken during ***their*** employment with the State of Georgia.

And, the expression "public employees" includes, not only paid public employees, but also anyone appointed to the Board of Regents who, while they may receive no salaried compensation from the State, do get paid per diem reimbursement from public tax dollars, as well as enjoy the pleasure of their appointed state titles.

In light of the **proven** inapplicability of "HIPPA-protected evidence" to originally seal all evidence due to claims by the Attorney General's office, I believe this Court now has a duty to **1)** recognize that it was misled, and **2)** seek to correct that situation as soon as possible by removing all protective orders that were made on the basis of **any** claims with regards to **any** evidence obtained through discovery in this case (whether those documents are depositions, affidavits, emails between Plaintiff Caldon and any member of the Board of Regents, copies of pornographic material taken from a state-owned computer, etc.) **being** "protected and confidential health information" under federal HIPPA laws.

By removing all protective orders in ***Caldon vs. BOR***, this Court will demonstrate to the public that, while it may have originally been misled by a false claim from Defendant's attorneys, it knows ***its'*** proper role in ensuring that the needs of the public interest will be met and maintained in this matter as per USCR 21.

Respectfully submitted,

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Encl: Exhibits Attached