IN THE SUPERIOR COURT OF COLQUITT COUNTY
STATE OF GEORGIA

DR. WILLIAM LEAMON MADISON *Plaintiff,* v. **COLQUITT COUNTY SCHOOL DISTRICT;** *Defendant.*	Civil Action No. 2021CV0431

PLAINTIFF'S RESPONSE TO DEFENDANT COLQUITT COUNTY SCHOOL DISTRICT AND NON-PARTIES JON SCHWALLS AND DOUG HOWELL'S O.C.G.A. § 9-11-30(d) and § 9-11-26(c) MOTION TO LIMIT EXAMINATION AND FOR PROTECTIVE ORDER AND MOTION TO STAY DISCOVERY

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COMES NOW Plaintiff, Dr. William Leamon Madison, and files his Response to Defendant Colquitt County School District And Non-Parties Jon Schwalls And Doug Howell's O.C.G.A. § 9-11-30(d) and § 9-11-26(c) Motion To Limit Examination And For Protective Order And Motion To Stay Discovery.

I. FACTUAL SUMMARY

This case centers on emails and text messages about race discrimination and how the Defendant is thwarting the Georgia Open Records Act to hide evidence of such race discrimination.

A. The Racial Discrimination That Plaintiff Dr. Leamon Madison Spoke Out Against:

On February 23, 2020 a young Black man named Ahmaud Arbery was murdered while jogging in south Georgia[1]. All three of his killers were convicted of murder in a state jury trial along with a federal trial prosecuted by the U.S. DOJ, all three receiving lengthy prison sentences including two who were put away for life. Fn 1. Some of the evidence that came forth at trial included text messages they had exchanged containing racial slurs, as well as racist posts on social media, and the actual video of the murder that had been caught on one of the defendant's cell phone. Fn 1. One cell phone record showed that one of Mr. Arbery's murderers had exchanged sixteen phone calls with the Glynn County District Attorney shortly after his killing, one that lasted over twenty-one minutes.[2] This would later lead to the District Attorney's arrest and indictment for violating her oath as a public officer. Fn 2.

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[1]https://www.ajc.com/news/ahmaud-arbery-shooting-investigation/;
https://en.wikipedia.org/wiki/Murder_of_Ahmaud_Arbery
[2]https://www.wtoc.com/2022/05/05/ag-prosecutors-detail-their-case-against-former-brunswick-da/

One month after Mr. Arbery was murdered while jogging, Breanna Taylor, a 26-year-old Black emergency medical technician was minding her business at home when she was fatally shot by three police officers in Louisville, Kentucky on March 13, 2020. These officers have now been recently arrested and indicted by the U.S. DOJ[3].

On May 25, 2020, a mere two months after Ms. Taylor's murder and three months Mr. Arbery's murder, a Black man named George Floyd, who had been arrested on the suspicion he had used a counterfeit $20 bill, was murdered in the city of Minneapolis by a white police officer who knelt on his neck for over nine minutes.[4] Mr. Floyd's murderer remained on his neck the entire nine minutes despite him calling out for mercy and crying out to his dead mother in the final moments of his life as he struggled to breathe. Fn 4. This God-awful scene was caught on the ubiquitous piece of evidence in all of these cases—the cell phone. The white officer was sentenced in state court to twenty-two and a half years in prison and he and the other three officers who assisted him were all also convicted of federal civil rights crimes. Fn 4.

It was the murders of Mr. Arbery, Ms. Taylor, and Mr. Floyd that caused worldwide protest and caused enormous distress to many Americans, but especially to Black people such as the young Black students who attend Colquitt County Schools and who had no way of knowing if they might be next. Consequently, Dr. Madison, an African American Principal and leader in the Colquitt County School System, was compelled to speak out against these murders and address the fears that his Black students in South Georgia faced. *See* Exhibit A. This is an ever-present reality of racial discrimination that still, in 2022, is the legacy of slavery, Jim Crow, and the dismantling consequences of *Brown v. Board of Education* that still today, permeate public schools throughout our great state of Georgia.

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[3]https://abcnews.go.com/US/doj-announces-charges-connection-raid-killed-breonna-taylor/story?id=87926113
[4]https://en.wikipedia.org/wiki/Murder_of_George_Floyd

B. Plaintiff Dr. Madison's Emails Engaging In Protected Activity Which Are Subject to the Georgia Open Records Act:

Dr. Madison grew up as a hometown son of Colquitt County Schools, a former high school football athlete who worked his way up for nearly two decades within the school system from paraprofessional all the way to elementary school principal. He obtained praise for his job for seventeen years until he spoke out against these murders and against racial discrimination. *See* Complaint ¶8, 15-20. Approximately a week after George Floyd's murder, Dr. Madison sent an email on June 4th to the faculty and staff at Cox Elementary School:

> "Greetings Cox Family. I'm sure that you are all aware of what's currently going on across our nation. People from every walk of life are marching and protesting against police brutality toward people of color but more directly Black Unarmed Males. This phenomenon, if you will, is nothing new. This has been taking place for years, and had almost become so commonplace that it didn't seem to bother us as a city, state or nation. However, times are a changing, as they should! We as educators, charged with preparing the next generation of leaders have to ask ourselves, do we continue to turn a blind eye to such egregious societal matters as these? Do we intentionally avoid conversations about such matters and not educate our students on how to properly conduct themselves when interacting with law enforcement, especially those that look like me, Mr. Nate or Mr. Taylor as they are usually the ones who could very well lose their lives from a routine traffic stop? Do we not educate all of our students on how egregious and heinous these acts are, and how they go against the very thing our flag and nation purports to stand for, which is liberty, equality and justice for all? Enough is enough, and we as educators, community leaders and God fearing people have to join forces and take a stand for what's right! It would be so hypocritical of us to continue to allow our black males in this great city, state and nation to be brutally attacked and killed by the very people who are charged with serving and protecting them while simultaneously teaching them that racism no longer exists and ignore the fact that black males (even unarmed) are attacked and killed at an extremely higher rate by police than any other race of males. I was proud to see our peaceful protestors on the courthouse square joining forces and standing up against these senseless acts of violence. I am proud of each and everyone of you and honored to be your leader here at Cox Elementary School. I would not be worthy of being your leader if I were not willing to address issues in our society that impacts us all as the educators of future leaders. Moreover, these issues could have an even greater impact on the majority of the students we teach which are black males. I always say that we are charged with teaching the whole child. Well, here's a perfect example of why it is so important. This is also a perfect opportunity for us as a school family to help equip our students with the tools that are sadly necessary to survive police encounters. We are the

> Standard for Student Achievement! We do Set the Stage for Success! And as we get ready to Roll out the Red Carpet for Success for our Celebrities, let's remember that we are charged with preparing them for life in the 21st Century. Sadly, in the 21st Century we are still battling with, dealing with and addressing racism. So let's ask ourselves, Are we going to stand idle and do nothing? Are we going to join the stance for what's right and to speak and act against racism? Are we going to be open and honest with our students and educate them on how horrendous these acts are? Are we going to be an active participant in the fight against racism, not only in words but in actions? I love you all and would go to battle for any of you! We are family and we are the C.O.X.! Remember, our students are counting on us to do the right thing. If we don't stand for something, we will fall for anything! Let's be the difference in Colquitt County, Georgia and the world! Thank you for all you do!"
>
> (*See* Exhibit A.)

On July 4, 2020, Dr. Madison sent another email to faculty and staff as an educational tool concerning these issues of race. (*See* Exhibit B.) On July 17, 2020, he sent another email to faculty and staff encouraging them how to maintain an encouraging and positive learning environment for students returning back to school and learning how to cope with the social unrest that was occurring relating to issues of racism and discrimination. (*See* Exhibit C.)

C. Public Records That Fall Under The Georgia Open Records Act That Display Evidence of Retaliatory Intent Against Plaintiff Dr. Madison For Speaking Out Against Race Discrimination:

In response to these communications about race discrimination, Dr. Madison was subjected to much revulsion and retaliation by the District administration, in particular a white School Board candidate named Jon Schwalls, who seemingly made it his mission to go after Dr. Madison with a vengeance. Mr. Schwalls sent the entire Board in an email that became part of public records under the Georgia Open Records Act calling for the ***"immediate removal of Mr. Madison from his position of leadership"*** while criticizing the emails Dr. Madison sent that spoke out against race discrimination and condemned the unjustified killings of Black people. (*See* Exhibit D.) Mr. Schwalls would continue going after Dr. Madison by seeking his removal as Principal. Complaint ¶11.

In response to Jon Schwalls,[5] then Superintendent Doug Howell met with Dr. Madison to discuss the "George Floyd email" and informed him that several Board of Education members were upset by the email and calling for Dr. Madison's job. Complaint ¶11. For the first time in his career, subsequent to writing the letter opposing discrimination, Dr. Madison received a letter from the Superintendent reprimanding him and criticizing his performance. Complaint ¶12. Throughout the 2020-2021 school year, the retaliation continued against Dr. Madison as various white teachers became emboldened by the Board's discriminatory actions and directly spoke with Central Office and the Board Members. Complaint ¶15. Dr. Madison was threatened with lynching and reported this hate crime. Complaint ¶¶16-19. Three days after reporting the lynching threat, the Board of Education voted to non-renew Dr. Madison's contract. *See* Complaint, ¶¶15-20.

D. Defendant's Efforts To Thwart The Georgia Open Records Act In Order To Hide Evidence Of Racial Discrimination:

Dr. Madison would seek to obtain emails and texts messages that he knew existed about the racial discriminatory treatment he was subjected to, however the Open Records Act responses Dr. Madison received back from the school were incomplete and deficient, specifically as it related to his requests for cell phone text messages between various Board Members, the Superintendent, and other District employees. Complaint ¶25. Dr. Madison alerted the District of the deficiency in their response and the Defendant, through counsel, made clear that it did not produce such electronic messages sourced from the District employee or Board Member's cell phones that would be responsive to such open records request as it was not in the possession of these District employee or Board Members' cell phones. Complaint ¶26. Nevertheless, Georgia public records that are subject to Open Records Act requests include electronic messages that are exchanged via

[5]A white man whose highest level of educational degree is a high school diploma (Schwalls Dep. 14:21-22) yet was elected to the Board of Education where he sought to remove a Black principal with a doctorate from his job.

cell phones of public employees and officials. O.C.G.A. § 50-18-71. Complaint ¶27.

Public officials routinely seek to evade the Georgia Open Records Act by exchanging electronic messages subject to public records requests on their personal cell phone devices and personal email accounts. In response, Georgia Attorney General Chris Carr has criminally prosecuted public employees who have evaded the Georgia Open Records Act by failing to produce text messages on their cell phones and stated that he hopes this will "encourage others to bring to light instances of open records abuses… [i]f there are other instances out there and the facts take us to where they took us in this trial then we are willing to stand up again for the people of Georgia."[6]

Georgia Courts have, in fact, ordered Board of Education members and Superintendents to submit their personal cell phone devices to computer forensic examination to search for racial slurs and derogatory terms against African Americans where they evaded Open Records Act requests by failing to produce text messages that were on their personal devices. *See* Exhibit E.

Dr. Madison is entitled to obtain text messages that were exchanged to and from Board of Education Members and the Superintendent concerning his employment. When electronically stored information (ESI) is sought, a party's counsel should not simply rely on an 'honesty policy' which depends on potential 'bad actors' to produce potentially self-damning disclosures and allows them to evade it by simply producing an affidavit claiming such communications are not there. Rather, best practices in e-discovery require that Parties utilize ESI vendors, electronic tools, and electronic search protocols and methodologies that will solely extract relevant, key word search terms from both personal computer and cell phone devices while maintaining the owner's privacy. E.g. The Sedona Conference, *Best Practices Commentary on the Use of Search and*

[6]https://www.ajc.com/news/reed-aide-first-official-convicted-public-records-violations/ImqpLWZLh9aMU89t6vcwtI/

Information Retrieval Methods in E-Discovery, 15 Sedona Conf. J. 217-263 (2014); *The Sedona Conference Commentary on Achieving Quality in the E-Discovery Process,* 15 Sedona Conf. J. 265-304 (2014); *Managing E-Discovery and ESI From Pre-Litigation Through Trial* 441 (Michael D. Berman, Courtney Ingraffia Barton, and Paul W. Grimm, eds., 2011); *United States v. O'Keefe*, 537 F. Supp. 2d 14 (D.D.C. 2008); *Equity Analytics, LLC v. Lundin*, 248 F.R.D. 331 (D.D.C 2008); *Victor Stanley, Inc. v. Creative Pip, Inc.*, 250 F.R.D. 251, 262 (D. Md. 2008) (Compliance with the Sedona Conference Best Practices for use of search and information retrieval will go a long way towards convincing the court that the method chosen was reasonable and reliable.)

To date, the District remains deficient in producing cell phone text messages exchanged between District employees including the HR Director, Board of Education members, and the Superintendent concerning Dr. Madison, in an effort to hide evidence of their racially discriminatory intent.

II. HISTORICAL SIGNIFICANCE OF COLQUITT COUNTY SCHOOLS' EFFORTS TO THWART THE GEORGIA OPEN RECORDS ACT IN ORDER TO HIDE RACIALLY DISCRIMINATORY MISTREATMENT OF DR. MADISON

What is happening is not integration; rather it is disintegration—the near total disintegration of Black authority in every area of the system of public education.
—National Educational Association[7].

A. History of Colquitt County School District Desegregation:

Colquitt County School District did not willingly go along with the United States Supreme Court's Order to desegregate in *Brown v Topeka Board of Education*. Courageous African Americans seeking to enforce desegregation in Colquitt County were represented by the famous civil rights leader and attorney C.B. King[8] and former civil rights attorney, the current sitting Court of Appeals Judge Herbert Phipps in the suit against the Colquitt County School Board. *Wilma*

[7] https://www.politico.com/news/magazine/2022/05/17/brown-board-education-downside-00032799
[8] https://en.wikipedia.org/wiki/Chevene_Bowers_King

Joyce Harrington et al v. Colquitt Cnty. Bd. of Ed., 460 F.2d 193, 194 (5th Cir. 1972.)

Because of widespread pervasive racial discrimination within Colquitt County and throughout the south, the result of enforcing *Brown* has "had an unintended consequence, the effects of which are still felt today: It caused the dismissal, demotion, or forced resignation of many experienced, highly credentialed black educators who staffed black-only schools. After the decision, tens of thousands of black teachers and principals lost their jobs as white superintendents began to integrate schools but balked at putting black educators in positions of authority over white teachers or students."[9] *See* Exhibit F.

Disintegration, rather than integration, of Black public educational leadership was set in motion and Black educators ***to date*** are ongoingly "purged from public schools in southern and border states" starting with decades of "White resistance to the *Brown* decision…[This] expulsion of Black principals and teachers [is] not exclusively a loss to Blacks and the South; it represented the most significant brain drain from the US public education system that the nation has ever seen. It was so pervasive and destabilizing that, even a half-century later, the nation's public schools still have not recovered." LESLIE T. FENWICK, JIM CROW'S PINK SLIP: THE UNTOLD STORY OF BLACK PRINCIPAL AND TEACHER LEADERSHIP, xxiii, Harvard Ed. Press (2022). "Massive White resistance to the *Brown v Topeka Board of Education* decision prompted the firings, demotions, and dismissals of legions of highly credentialed and effective Black principals and teachers. The fight to decimate the ranks of Black educators was so pervasive and severe that its fallout eventually reached the ears of Congress." FENWICK, at 3.

[9] https://www.edweek.org/policy-politics/65-years-after-brown-v-board-where-are-all-the-black-educators/2019/05

In 1971, the US Senate Select Committee on Equal Education Opportunity held a series of hearings about the displacement and status of Black school principals in desegregated schools as a result of "NAACP's and other civil and human rights organizations' presence, reach and advocacy" at the time in Washington D.C. FENWICK, at 3. The data was well documented in the transcript *Hearings before the Select Committee on Equal Educational Opportunity of the U.S. Senate on the Displacement and Present Status of Black School Principals in Desegregating School Districts* along with the numerous books and scholarly articles written about the tragic firings and demotions that have befell Black teachers and principals as a result. FENWICK, at xvi. "As testimony at the hearings confirmed, 'resistance to the prospect of Black principals supervising white teachers or of Black teachers for white students remains firmly entrenched in southern White communities. As a result, Black educators are being dismissed, removed, or phased out.'" FENWICK, at 10. In the words of a United States Department of Education commissioner, this displacement was "delimitating the ranks of Black teachers and threatening Black principals with extinction." FENWICK, at 11.

"By the late 1970's White resistance—or rather, White racism—had systematically and ruthlessly decimated the ranks of Black principals and teachers…in this annihilation the nation lost at least 100,000 Black principals and teachers." FENWICK, at 129. As Black student enrollment grew, the Black principal and teacher pipeline of exceptionally credentialed Black educators fell dramatically. FENWICK, at 2. In contrast, white educator appointments thrived, even as white student enrollment declined due to white flight. FENWICK, at 2.

In a riveting account, shared with the Senate Select Committee, Dr. Bettie M. Smith, a Georgia educator explained why the displacement of principals constituted such a painful and unfair loss of talent—explaining that "I speak for all the Black principals in the state of Georgia"

where she watched her organization's membership of Black principals dwindle from 190 in 1969 to 6 in 1970. FENWICK, at 11. "The chipping away of the pipeline of Black principals was persistent and pervasive. The fate of Black teachers followed suit." FENWICK, at 14. As the NEA noted in an amicus curiae brief filed in the Senate hearings, "Even where Black teachers are retained at the high school level, they are often reassigned to lower track and vocationally oriented classes. And almost always, they lose positions as department heads." FENWICK, at 14. Cited in that same NEA amicus curiae brief, the patterns of Black educator displacement was widespread across the southern states: "Georgia had 7,687 Black teachers in 1968 and decreased that number by 526. During that same time period, the state had 22,943 white teachers and increased their ranks by 1,086." FENWICK, at 15. Oftentimes, the Black educators who resisted illegal firings were subjected to an extraordinary range of reprisals including physical threats of violence; demotion, out of subject placement, and "promotion" (i.e. sidelining) to head district based federally funded programs like Title I where they could easily be dismissed once the funding ran out. FENWICK, at 16-17. Nearly decades after *Brown* became law of the land, "White school boards, superintendents, and citizens, purposely resisted the new law of the land, often going to extremes to maintain and perpetuate White control of the nation's public schools." FENWICK, at 122. In fact, when Blacks were removed from principalship and replaced by Whites, Black teachers and students suffered the same fate according to a NEA report "submersion of their interest and identities" and decimation of "every symbol of Black identity." FENWICK, at 124.

Dr. Benjamin E. Mays, the iconic civil rights leader who was a mentor to Dr. Martin Luther King, Jr., president of Morehouse College, and an Atlanta Public Schools Board Member, "characterized the annihilation of Black principals and teachers as traumatic. The trauma that resulted from White racist resistance to Brown was at least fourfold: a decline in the economic and

political power of southern Blacks; a reduction in the caliber of public school leadership for the south; a dampening of the professional aspirations of Black educators; and measurable harm to the intellectual and social development and wellbeing of Black youth." FENWICK, at 131.

The fallout of this decimation of Black principals and teachers hits Black students the hardest, as studies have shown that Black students with higher percentages of Black educational leaders are more likely to graduate; more likely to be tested for gifted; less likely to be misplaced in special education; more likely to engage in positive school behaviors; more likely to be described as intellectually capable; are less likely to be suspended or expelled; have higher expectations for academic success; achieve more beneficial outcomes in reading, testing, attendance, and college matriculation FENWICK, at 140.

For students in the Colquitt County School community and beyond "the loss of Black principals and teachers" is "keenly felt by Black students who often found themselves in unwelcoming and hostile new surroundings. Their intellectual models, guides, protectors, and encouragers....[t]he ones [like Dr. Madison] who would model and teach them how to negotiate a racist world [are] gone." FENWICK, at 144.

B. The Ongoing Decimating Purge of Black Educators Continues To Date Because Of White Racism:

And, most insidiously, it continues to date, where in the year 2022 Black educators are terminated, demoted, and denied equal employment opportunities throughout our state of Georgia as a result of continued racial discrimination. Prior to *Brown*, principals and teachers who composed nearly fifty percent of the education workforce were Black, nearly seventy years later to date, no state begins to approach those percentages. FENWICK, at 137. According to the National Center for Education Statistics (NCES) study published in 2020, the nation's schools have "93,200 principals, only 11 percent of them are Black. Of the nation's 3.2 million teachers, only 7 percent

of Black. Fewer than 3 percent of the nation's 13,800 school districts are led by Black superintendents." FENWICK, at 138. These low numbers exist even though Black principals and teachers, both then and now, are consistently the nation's most academically credentialed and experienced educators, more likely to hold a doctorate and have more years of professional experience compared to their white peers. FENWICK, at 138.

Yet the ongoing purge of Black educators continues to inflict irreparable damage here in Georgia, where African American principals and educators, like Dr. Leamon Madison, continue to be terminated, demoted, and denied equal employment opportunities as a result of continued racial discrimination.

III. ARGUMENT

Defendant's efforts to file a motion for protective order is a continued delay tactic to thwart and evade the Georgia Open Records Act to hide evidence of widespread racial discrimination and civil rights abuses that they have systematically engaged in post-*Brown*. Plaintiff, alongside the Georgia Association of Educators (the state affiliate of the NEA) and the NAACP are calling for the United States Attorney General and the Department of Justice to investigate these civil rights violations engaged by the Defendant. These organizations are carefully watching this case, in particular the Defense counsel's ongoing improper discovery tactics in civil rights cases throughout south Georgia. Regrettably, it is not his first rodeo at doing such. (*See* Exhibit G, Affidavit of Julie Oinonen.)

Defendant's counsel, Mr. Apu Paul, communicated to Plaintiff's counsel, Julie Oinonen that he would not permit the deponents to be questioned on matters pertaining to race discrimination, and improperly sought to terminate the depositions in response. (*See* Exhibit G, Affidavit of Julie Oinonen; Plaintiff's Motion for Sanctions; *see also* Howell Dep. 85-88, Schwalls

Dep. 33-47.) Plaintiff filed two motions for sanctions against Defendant and Counsel once Defendant's counsel made good on his threat and terminated the depositions after a line of questioning concerning race commenced.

A. Under the Georgia Open Records Act, Motive and Intent Is Dispositive To Show Whether The Person or Entity Knowingly and Willfully Failed Or Refused To Provide Access To Open Records:

Motive and intent are both relevant, pursuant to the Georgia Open Records Act, regarding both criminal as well as civil penalties. Notably, the Attorney General for the State of Georgia considered an individual's motive and intent pursuant to the Georgia Open Records Act quite relevant, having criminally prosecuted intentional violations of the Georgia Open Records Act.[10] Likewise, the Court of Appeals also found motive and intent a relevant jury question in this same analysis. *See Garland v. State*, 361 Ga. App. 724, 731, 865 S.E.2d 533, 540 (2021) ("Intent may be found by the jury upon consideration of the words, conduct, demeanor, motive and all other circumstances connected with the act for which the accused is being prosecuted.")

Georgia law is clear that the standard for both criminal and civil penalties centers around whether the entity/person's motive and intent (for criminal penalties: ***knowingly and willfully*** violated the provisions by failing or refusing to provide access to such records; for civil penalties: ***negligence)***:

> "(a) Any person or entity ***knowingly and willfully*** violating the provisions of this article by failing or refusing to provide access to records not subject to exemption from this article, by ***knowingly and willingly*** **failing or refusing to provide access to such records within the time limits set forth in this article**, or by ***knowingly and willingly*** **frustrating or attempting to frustrate the access to records by intentionally making records difficult to obtain or review shall be guilty of a misdemeanor** and upon conviction shall be punished by a fine not to exceed $1,000.00 for the first violation. Alternatively, a civil penalty may be imposed by the court in any civil action brought pursuant to this article against any person who

[10]https://www.valdostadailytimes.com/news/ga_fl_news/zachary-public-records-conviction-upheld/article_4fa4f029-09fc-5af1-b1ba-e54110d2e78d.html

negligently violates the terms of this article in an amount not to exceed $1,000.00 for the first violation." O.C.G.A. § 50-18-74.

Consequently, the intent and motive (including racially discriminatory motives, intent, and reasons) as to why a person ***knowingly and willfully or negligently*** withheld public records is relevant and discoverable. O.C.G.A. § 9-11-26. (A party can obtain discovery regarding any matter, not privileged, relevant to the subject matter of the pending action.)

B. Under the Georgia Open Records Act, Motive and Intent Is Dispositive To Show Whether The Party Acted "Without Substantial Justification" or "With Good Faith Reliance."

Moreover, under the Georgia Open Records Act, a Court must determine whether a party acted "without substantial justification" or with "good faith reliance," (their motive and intent) is relevant to determine whether attorney fees and cost will be assessed in favor of the complaining party:

> (a) The superior courts of this state shall have jurisdiction in law and in equity to entertain actions against persons or agencies having custody of records open to the public under this article to enforce compliance with the provisions of this article. Such actions may be brought by any person, firm, corporation, or other entity. In addition, the Attorney General shall have authority to bring such actions in his or her discretion as may be appropriate to enforce compliance with this article and to seek either civil or criminal penalties or both.
> (b) In any action brought to enforce the provisions of this chapter in which the court determines that either party acted ***without substantial justification*** either in not complying with this chapter or in instituting the litigation, the court shall, unless it finds that special circumstances exist, assess in favor of the complaining party reasonable attorney's fees and other litigation costs reasonably incurred. Whether the position of the complaining party was substantially justified shall be determined on the basis of the record as a whole which is made in the proceeding for which fees and other expenses are sought.
> (c) Any agency or person who provides access to information in ***good faith reliance*** on the requirements of this chapter shall not be liable in any action on account of such decision.
> O.C.G.A. § 50-18-73.

Consequently, evidence to show the motive and intent (such as racially discriminatory motive or intent to hide racial discrimination) for failing or refusing to provide access to records

is relevant and discoverable to show whether the party acted "without substantial justification". Likewise, a racially discriminatory motive or intent to hide racial discrimination would be probative and relevant to analyze whether the Defendant had "good faith reliance."

In a neighboring case, the Chief Judge of the Superior Court of Charlton County issued an order after a trial finding the School District in violation of the Georgia Open Records Act in the case of *Dr. Sherilonda Green v. Charlton County Schools*, Civil Action No. SUCV202000211, Superior Court of Charlton County (February 22, 2022). There, the Court discussed the evidence of race discrimination throughout the Order as **"compelling and relevant"** to establish motive in the case:

> This record is replete with evidence of systemic discrimination and discrimination against Dr. Green personally. The Court finds Dr. Green's testimony and evidence of systemic and personal discrimination compelling and relevant to establish motive in this case. However, the existence of racial discrimination or the lack thereof does not give rise to proof of an ORA violation. Motive-here, racial discrimination-is a mere factor which the Court considers, as it does all other facts in the case. (*See* Exhibit H, Trial Order, p. 8.)

Plaintiff has filed two motions for sanctions and argues that counsel for the Defendant, Mr. Apu Paul, should be sanctioned because he improperly directed his client, Jon Schwalls, a Board Member who wrote an extremely critical letter against Plaintiff Dr. Madison for speaking out against race discrimination, "not to answer" questions pertaining to race. (*See* Exhibit D, Schwalls Letter; Schwalls Dep. 33-47.)

This is not the first motion for sanctions that Plaintiff's counsel has had to file against Defendant's counsel, Mr. Apu Paul, for improper discovery abuse—specifically instructing his client "not to answer" pertaining to civil rights claims currently pending in Georgia. *See* Exhibit G, Affidavit of Julie Oinonen. In this case, deponents were noticed for their depositions and subpoenaed to bring "[a]ll paper and electronic documents, including emails and text messages,

that pertain to Dr. Leamon Madison and the facts set forth in his complaint" (which of course included facts of race discrimination). (*See* Exhibit I, Schwalls Notice and Subpoena; Exhibit J Howell Notice and Subpoena.) It was wholly improper, a violation of the Georgia Civil Practices Act, and sanctionable conduct for Defense counsel to instruct his clients not to answer questions pertaining to race discrimination, relevant, discoverable information that goes to show the intent and motive of the Defendant which is pertinent to show whether they acted "without substantial justification" or in "good faith reliance." O.C.G.A. § 50-18-73

Defendant's efforts to prevent Plaintiff from inquiring into matters race discrimination is wholly improper. *See* Def. Br. pp. 10-11. Under the Georgia Civil Practice Act, a party can obtain discovery regarding any matter, not privileged, relevant to the subject matter of the pending action. O.C.G.A. § 9-11-26. Notably, Georgia courts have also held that, where relevance is doubtful, the evidence should normally be admitted, and its weight left to the determination of the jury. *Kalish v. King Cabinet Co.*, 140 Ga. App. 345, 346, (1976). Concerning discovery however, the information **sought need not be admissible at trial, only reasonably calculated to lead to the discovery of admissible evidence**. *E.g., Ambassador College v. Goetzke*, 244 Ga. 322, 323 (1979) Moreover, "Discovery is an integral and necessary element of our civil practice. **Wide latitude is given to make complete discovery possible. The broad purpose** of the discovery rules, under the Civil Practice Act, **is to enable the parties to prepare for trial** so that each party will know the issues and be fully prepared on the facts. Discovery is specifically designed to fulfill a two-fold purpose: issue formulation and factual revelation. The use of the discovery process has been held to be **broadly construed**." § 15:2. Scope of discovery: in general, Ga. Practice & Procedure § 15:2 (2018-2019 ed.); *E.g., Travis Meat & Seafood Co. v. Ashworth*, 127 Ga. App. 284, 285 (1972).

In the case at bar, it is essential that individuals be deposed in order to obtain discovery concerning the Defendant's ***intentional and knowing*** conduct in thwarting the Open Records Act due to their ***motive and intent*** to hide evidence of race discrimination.

Every party is entitled to discover *all* relevant, non-privileged information in the possession or control of any person, including a corporate defendant. O.C.G.A. §9-11-26. "Relevance," in the context of discovery, is a far less stringent burden than "admissibility" at trial. *Id* at (b)(1). In "the context of discovery, courts should and ordinarily do interpret "relevant" very broadly to mean matter that is relevant to anything that is or may become an issue in the litigation. Even if the information sought would be inadmissible at trial, it is not a ground for objection if the information sought appears reasonably calculated to lead to the discovery of admissible evidence. *Speedy Care Transport*, Ga.App. at 329-330 (2), 822 S.E.2d 687 (citations and punctuation omitted)." *Ortho Sport & Spine Physicians, LLC v. City of Duluth*, 352 Ga. App. 215, 216, 834 S.E.2d 315, 317 (2019)

The Georgia Supreme Court has cited the United States Supreme Court in determining what evidence in fact is "relevant" and discoverable stating:

> "As the United States Supreme Court explained in interpreting the analogous federal rule of civil procedure as it read at that time: The key phrase in this definition—"relevant to the subject matter involved in the pending action"—has been **construed broadly to encompass any matter that bears on, or that reasonably could lead to other matter that could bear on, any issue that is or may be in the case**. *Oppenheimer Fund, Inc. v. Sanders,* 437 U.S. 340, 351, 98 S.Ct. 2380, 57 L.Ed.2d 253 (1978) (footnote and citations omitted). Thus, in the discovery context, **courts " 'should and ordinarily do interpret "relevant" very broadly to mean matter that is relevant to anything that is or may become an issue in the litigation**.' " Id. at 351 n. 12, 98 S.Ct. 2380 (citation omitted). See generally Richard L. Marcus, Federal Practice & Procedure § 2008 (3d ed. updated 2015). In accordance with this view, this Court has explained that "through the discovery process, non-privileged information which is in the possession of one party and which gives that party a tactical advantage may be required to be shared with the opposing side," and we have **cautioned trial courts that in exercising their discretion to determine the permissible scope of discovery, they should**

> **"keep[ ] in mind that the discovery procedure is to be construed liberally in favor of supplying a party with the facts."** *Tenet Healthcare Corp. v. Louisiana Forum Corp.,* 273 Ga. 206, 210, 538 S.E.2d 441 (2000). *See also Hampton Island Founders, LLC v. Liberty Capital, LLC,* 283 Ga. 289, 297, 658 S.E.2d 619 (2008) (noting that the discovery rules are designed to remove the potential for secrecy and to provide parties with knowledge of all the relevant facts to reduce the element of surprise at trial); Wayne M. Purdom, Georgia Civil Discovery § 4.5 (updated 2015) (discussing the Georgia courts' broad view of what is relevant for discovery purposes). *Bowden v. The Med. Ctr., Inc.*, 297 Ga. 285, 290–92, 773 S.E.2d 692, 696 (2015.) (bold emphasis added.)

In our case at bar, the evidence will show that the Defendant is not only committing civil rights abuses by racially discriminating against African Americans, but is engaged in thwarting the Georgia Open Records Act to hide evidence of such concerning a Black Principal who was threatened with lynching and terminated after speaking out against discrimination. Consequently, Plaintiff should be entitled to ask such questions pertaining to race discrimination to show intent and motive for thwarting the Open Records Act as it is reasonably calculated to lead to the discovery of admissible evidence, a standard that is to be "construed broadly" as made clear by the U.S. Supreme Court, the Georgia Supreme Court, and every Georgia treatise that exists. *E.g.* § 15:2. Scope of discovery: in general, Ga. Practice & Procedure § 15:2 (2018-2019 ed.); *Oppenheimer Fund, Inc. v. Sanders,* 437 U.S. 340, 351, 98 S.Ct. 2380, 57 L.Ed.2d 253 (1978); *Bowden v. The Med. Ctr., Inc.*, 297 Ga. 285, 290–92, 773 S.E.2d 692, 696 (2015); Wayne M. Purdom, Georgia Civil Discovery § 4.5.