

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

SENATOR VINCENT D. FORT)
and GEORGE ANDERSON,)

Plaintiffs,)

Civil Action File No.

RENEE W. UNTERMAN,)
in her official capacity as)
Chairman of the Georgia)
Senate Ethics Committee,)

Defendant.)

_____)

VERIFIED COMPLAINT

Plaintiffs Vincent D. Fort and George Anderson bring this Complaint against Defendant Renee W. Unterman, in her official capacity as Chairman of the Georgia Senate Ethics Committee, seeking declaratory and injunctive relief with respect to enforcement of Rule 1-4.11(c) of the Rules of the Georgia State Senate, which impermissibly restricts the freedom of speech of a party who has made an ethics complaint against a member of the Georgia State Senate, in violation of the First and Fourteenth Amendments of the United States Constitution and Article I, Section I, Paragraph V of the Georgia Constitution:

JURISDICTION AND VENUE

1. This Court has jurisdiction over this action under 28 U.S.C. § 1331, 28 U.S.C. § 1343, 28 U.S.C. § 1367, 28 U.S.C. § 2201, and 42 U.S.C. § 1983.
2. Venue is proper in this Court under 28 U.S.C. § 1391(b).

PARTIES

3. Plaintiff Vincent D. Fort is a resident of Fulton County, Georgia who is serving his fourth term as the Georgia State Senator from the 39th District of Georgia, Fulton County. Senator Fort has filed ethics complaints with the Georgia Judicial Qualifications Commission and with other governmental entities.

4. Plaintiff George Anderson is a resident of Floyd County, Georgia who is directly involved in legislative activity or business. Mr. Anderson (a) regularly monitors the activities of Georgia legislators; (b) has filed ethics complaints with the Georgia State Ethics Commission and other entities challenging certain activities of Georgia legislators; and (c) expects, in the normal course of conducting his affairs, to file complaints with the Georgia Senate Ethics Committee and to speak publicly regarding such complaints.

5. Renee S. Unterman is a resident of Gwinnett County, Georgia who currently serves as the Chairman of the Georgia Senate Ethics Commission. She

is sued in her official capacity for equitable relief relating to administration and enforcement of Rule 1-4.11(c) of the Rules of the Georgia State Senate.

FACTUAL ALLEGATIONS

6. The Georgia Senate adopts “Rules of the Georgia State Senate” (the “Rules”) at the beginning of each year’s session. The Rules adopted for one year’s session normally are re-adopted for the succeeding year’s session.

7. At the beginning of the 2006 Session, the Georgia Senate re-adopted the Rules that had been adopted at the beginning of the 2005 Session. These Rules include Rule 1-4.11, a detailed provision governing “Ethics Complaints” (“Rule 1-4.11”) Attached hereto as Exhibit A is a true and correct copy of the Rules adopted at the beginning of the 2006 session, together with a copy of the Secretary of the Senate's certification.

8. Subsection (a) of Rule 1-4.11 authorizes the filing of an ethics complaint “by any Senator or staff or others who are directly involved in legislative activity or business.” The complaint must “specifically describe the nature of the alleged violation” and must be signed and “verified under oath.” Once a complaint is filed, it is referred to the Chairman of the Senate Ethics Committee, who “shall schedule a meeting of the Committee to investigate the complaint”

9. Subsection (a) does not contain a time limit for the Committee to meet to investigate an ethics complaint.

10. Subsection (c) of Rule 1-4.11 mandates strict confidentiality with respect to any ethics complaint:

Any complaint brought by or before the Committee shall remain confidential until the Committee has determined that substantial cause exists that a violation occurred. If the Committee determines that substantial cause does not exist that a violation occurred, the complaint shall remain confidential.

Pursuant to subsection (c), all complaints must be kept confidential pending the completion of the Committee's investigation, and any complaints found by the Committee to lack substantial cause must be kept confidential forever.

11. Subsection (d) of Rule 1-4.11 provides that a written report detailing the results of any investigation of an ethics complaint must be prepared and presented to the Committee. If the Committee "does not find that evidence exists to provide substantial cause to determine that a violation has occurred," then the complaint is dismissed.

12. Subsections (c) and (d) thus permanently bar disclosure of any ethics complaint determined by the Committee to lack "substantial cause."

13. Subsection (i) of Rule 1-4.11 provides that “the confidentiality provisions contained herein” must not be “abridged.”

14. The effect of Rule 1-4.11 is to prohibit a complaining party from ever disclosing the contents of an ethics complaint ultimately rejected by the Committee; from ever criticizing the rejection of an ethics complaint by the Committee or the rules and procedures leading to that rejection; and from disclosing the contents of any ethics complaint, regardless of merit, pending the Committee’s investigation.

CLAIMS FOR RELIEF

15. Plaintiffs incorporate by reference, as if fully set forth herein, the allegations contained in Paragraphs 1-14 of this Complaint.

16. The confidentiality provisions of Rule 1-4.11 constitute a prior restraint.

17. The confidentiality provisions of Rule 1-4.11 are content-based.

18. The confidentiality provisions of Rule 1-4.11 are not narrowly tailored to achieve compelling state interests.

19. The confidentiality provisions of Rule 1-4.11 violate Plaintiffs’ right to free speech and right to petition under the First and Fourteenth Amendments of the United States Constitution.

20. The confidentiality provisions of Rule 1-4.11 violate Plaintiffs' right to free speech under Article I, Section I, Paragraph V of the Georgia Constitution.

21. The confidentiality provisions of Rule 1-4.11 are facially invalid.

22. The confidentiality provisions of Rule 1-4.11 are vague and overbroad, in violation of Plaintiffs' rights under the due process clause of the Fourteenth Amendment of the United States Constitution.

23. The confidentiality provisions of Rule 1-4.11 violate Plaintiffs' privileges and immunities of citizenship under the Fourteenth Amendment of the United States Constitution.

24. The confidentiality provisions of Rule 1-4.11, as applied to Plaintiffs, violate Plaintiffs' constitutional rights.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court:

(A) Issue a declaratory judgment that the confidentiality provisions of Rule 1-4.11 are unconstitutional;

(B) Issue a preliminary and permanent injunction against administration and enforcement of the confidential provisions of Rule 1-4.11;

(C) Award reasonable attorneys fees and costs as permitted by law; and

(D) Grant any and all additional relief as this Court deems just and proper.

Respectfully submitted this 13th of February, 2006.

/s/ Gerald Weber
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