

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

<hr/>	
FRAN SCHINDLER,	)
SUSAN CALDWELL, and	)
JIM CHASTAIN	)
Plaintiffs,	)
	)
vs.	)
	)
GOVERNOR GEORGE ERVIN	)
“SONNY” PERDUE, and	)
ATTORNEY GENERAL	)
THURBERT BAKER,	)
	)
Defendants.	)
<hr/>	)

CIVIL ACTION  
FILE NO.

**VERIFIED COMPLAINT**

This action challenges the constitutionality of O.C.G.A. § 16-5-5(b) (the “Georgia Offering to Assist in Suicide Statute” or simply “Statute”) on the grounds that it violates the First and Fifth Amendments of the United States Constitution and as well as Article I, Section I, Paragraph V and Article I, Section I, Paragraph IX of the Constitution of the State of Georgia because (1) it is a content and viewpoint based restriction on speech that is not the least restrictive or narrowly tailored means to achieve government interest; and (2) it is overbroad and vague, and therefore unconstitutional.

## **JURISDICTION**

1.

This action is brought pursuant to 42 U.S.C. § 1983; the First and Fourteenth Amendments of the United States Constitution; and Article I, Section II, Paragraph VII, Article I, Section I, Paragraph III, and Article I, Section I, Paragraph IX of the Constitution of the State of Georgia. This Court has subject matter jurisdiction over the federal constitutional claim pursuant to 28 U.S.C. §§ 1331 and 1343 (a) (3) and has supplemental jurisdiction over the state constitutional claims pursuant to 28 U.S.C. § 1367 (a).

2.

This Court has the authority to grant declaratory relief pursuant to the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202. Plaintiffs' action for injunctive relief is authorized by the forgoing statutes and by Rule 65 of the Federal Rules of Civil Procedure and is sought against Defendants and all persons within the scope of Rule 65(c).

## **VENUE**

3.

Venue is proper because the Office of the Governor and the Office of the Attorney General are located within this district and this district is where these

Defendants perform their official duties. 28 U.S.C. § 1391 (b) (2). In addition, a substantial portion of the Plaintiffs' past and potential future speech, giving rise to the Plaintiffs' claims, occurred or will occur in this district.

**PARTIES**

4.

PLAINTIFF FRAN SCHINDLER is a resident and citizen of North Carolina. She is also a case coordinator, Senior Exit Guide and member of the organization Final Exit Network.

5.

PLAINTIFF SUSAN CALDWELL is a resident and citizen of Georgia. She suffers from Huntington's disease and has joined Final Exit Network.

6.

PLAINTIFF Jim Chastain is a resident and citizen of Florida. He is a Senior Exit Guide and member of the organization Final Exit Network.

7

DEFENDANT GOVERNOR GEORGE ERVIN "SONNY" PERDUE is currently the Governor of the State of Georgia. His primary office is in Atlanta, Georgia. The Defendant's enforcement and administration of the Code renders

Defendant liable for nominal damages in his individual capacity for violation of the Plaintiffs' civil rights and subject to equitable relief in his official capacity.

8.

DEFENDANT THURBERT BAKER is currently the State Attorney General. He is the chief law enforcement officer and is charged with instituting proceedings necessary to enforce state statutes. His primary office is in Atlanta, Georgia. The Defendant's enforcement and administration of the Code renders Defendant liable for nominal damages in his individual capacity for violation of the Plaintiffs' civil rights and subject to equitable relief in his official capacity.

9.

Both the Governor and the Attorney General are responsible for enforcing state statutes. Defendants' position is further belied by the plain language of Fed. R. Civ. P. 65(d) and by decades of case law holding that a state governor and a state attorney general are the appropriate parties when plaintiffs are challenging the constitutionality of a state statute.

10.

Georgia law specifically provides that it is the duty of the Governor to "take care that the laws are faithfully executed." See Ga Const. art. 5, § 2, ¶ II. Both the Governor and the Attorney General are responsible for enforcing state statutes. See

Perdue v. Baker, 586 S.E.2d 606, 609 (Ga. 2003) (“[T]he Governor and Attorney General are elected constitutional officers in the executive branch of state government, which is responsible for enforcing state statutes.”).

11.

Sheriffs in Georgia are state officials who enforce the laws as the “agents” of the Governor. See Grech v. Clayton County, 335 F.3d 1326, 1333 (11<sup>th</sup> Cir. 2003)

12.

Given that Georgia’s sheriffs are “agents” of the Governor in the performance of their law enforcement functions, a temporary restraining order enjoining the Governor from enforcing an unconstitutional law would necessarily bind the sheriffs, pursuant to Fed. R. Civ. P. 65(d). This Rule states:

Every order granting an injunction and every restraining order ... is binding only upon the parties to the action, their officer, agents, servants, employees, and attorney, and upon those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise. Id. (emphasis supplied).

13.

Georgia sheriffs are not only agents of the Governor, but are acting “in active concert or participation” with him in enforcing the laws. Id.

### **FACTUAL ALLEGATIONS**

14.

Georgia does not criminalize suicide or attempted suicide. Neither suicide nor

attempted suicide is a crime in Georgia.

15.

In 1994, the Georgia legislature enacted O.C.G.A. § 16-5-5(b). The statute states:

Any person who publicly advertises, offers, or holds himself or herself out as offering that he or she will intentionally and actively assist another person in the commission of suicide and commits any overt act to further that purpose is guilty of a felony and, upon conviction thereof, shall be punished by imprisonment for not less than one nor more than five years.

Pursuant to subsection (a), these terms are defined as follows:

(1) "Intentionally and actively assisting suicide" means direct and physical involvement, intervention, or participation in the act of suicide which is carried out free of any threat, force, duress, or deception and with understanding of the consequences of such conduct.

(2) "Suicide" means the intentional and willful termination of one's own life.

16.

Thus, the Statute makes it a crime if someone (1) "publicly offers," "advertises," or "holds himself or herself out as offering that he or she will" have "direct physical involvement, intervention, or participation" in the act of suicide, and (2) commits an "overt act to further that purpose." O.C.G.A. § 16-5-5(b).

17.

The statute is unclear as to whether the "overt act" must be in furtherance of the

advertising or offering to assist in suicide, or in furtherance of the “involvement, intervention, or participation” in the act of suicide. These multiple interpretations render the statute unconstitutionally vague and overbroad and grant unbridled discretion to law enforcement officials.

18.

The statute does not define what type of conduct constitutes “direct physical involvement,” “intervention,” or “participation.” These terms are unconstitutionally vague and grant unbridled discretion to law enforcement officials.

19.

The Statute prohibits a person from “publicly offer[ing], advertis[ing], or hold[ing] himself or herself out as offering” to assist another in the commission of suicide. This provision of the statute criminalizes pure speech based on its content and viewpoint, as it bans individuals from providing information and counseling to terminally ill individuals interested in learning more about dying with dignity, a legal act in Georgia.

20.

O.C.G.A. § 16-5-5 does not criminalize assisted suicide via physician or otherwise, so long as the individual assisting in the suicide does not “publicly offer, advertise, or hold himself or herself out as offering” to assist. Accordingly, an

individual may assist another in the commission of suicide so long as that individual *privately* offered to assist.

### **THE FINAL EXIT NETWORK ARRESTS AND INDICTMENT**

21.

In addition to suffering from the above-stated constitutional defects, O.C.G.A. § 16-5-5(b) already has been interpreted and applied to criminalize constitutionally protected speech. Plaintiffs seek, through this lawsuit, to clarify their constitutional rights and reasonable fear of further future prosecution.

22.

In 2009, four Final Exit Network volunteers were arrested and charged under O.C.G.A. § 16-5-5-(b).

23.

The Final Exit Network (hereinafter often referred to as “FEN”) is a national volunteer organization that advocates for and raises awareness of the basic right for a person to end his or her life when suffering from fatal or irreversible illness or intractable pain that has become more than they can bear.

24.

The organization also raises awareness of right-to-die issues and advanced directives, and it sponsors research on peaceful and reliable methods to end life.



Additionally, the organization offers a free "Exit Guide" program to approved members.

25.

Individuals wishing to be approved for the Exit Guide program must initiate contact with a Case Coordinator, who then consults with the individual and gathers information about their medical situation, quality of life, psychological condition, and family relationship. The Member must send medical records and a letter explaining why they want to hasten their death and must complete a telephone interview with a Final Exit Volunteer.

26.

The Case Coordinator forwards all of the foregoing information to the Medical Evaluation Committee, wherein a group of three doctors reviews the individual's file and determines if the individual qualifies.

27.

If an individual passes these initial screenings with the Case Coordinator and the Medical Evaluation Committee, two Exit Guides are assigned.

28.

The Exit Guides then participate in telephone and in-person counseling with the approved individual.

29.

The Exit Guides recommend that the individual consult with hospice, spiritual advisors, psychiatrists, and medical specialists.

30.

The Exit Guides provide information and demonstrations on end-of-life alternatives, including all legal and painless methods of self-deliverance.

31.

A commonly recommended and demonstrated method is the use of a helium gas tank and a hood.

32.

If the individual so wishes, the Exit Guides will be present for the individual's final hours to provide counseling and comfort, including holding the individual's hand if so requested.

33.

The Exit Guides do not buy any materials, encourage any individual to end his or her life, initiate the death procedure, or physically assist in any way in the death procedure.

34.

According to the indictment filed on March 9, 2010 (hereinafter "the Indictment"), the four Final Exit Network members were charged because they

did publicly advertise, offer, and hold themselves out as offering that they would intentionally and actively assist another person, to wit: John D. Celmer, in the commission of suicide by inhalation of helium, and committed an overt act to further that purpose, to wit: assigned a "first responder" to John C. Celmer, reviewed John D. Celmer's medical records, approved John D. Celmer for assistance in his suicide, assigned John D. Celmer an "exit guide," provided forms to John D. Celmer to sign, surveyed the home of John D. Celmer for security purposes to determine if said accused would assist in his suicide, held the hands of John D. Celmer while he inhaled helium and waited with John D. Celmer while he inhaled helium to ensure the suicide was completed and that he died.

Indictment, Count I.

35.

Based on a plain reading of the Indictment, the State of Georgia has adopted an interpretation of O.C.G.A. § 16-5-5 such that a person who volunteers for Final Exit Network as a Case Coordinator or Exit Guide thereby "holds himself or herself out as offering that he or she will" have "direct physical involvement, intervention, or participation" in the act of suicide.

36.

Based on a plain reading of the Indictment, the State of Georgia has adopted an interpretation of O.C.G.A. § 16-5-5 such that the "overt act" necessary to prosecute an individual under the statute includes numerous speech activities, such as compassionate holding of a person's hand, demonstrations on end-of-life alternatives, communicating with doctors regarding an individual's medical situation, or approving an FEN member for assistance - a process that solely

involves counseling and discussion among FEN volunteers and members.

37.

Ms. Schindler and Mr. Chastain have both volunteered for FEN by participating in its "Exit Guide" program.

38.

As part of her volunteer roles, Ms. Schindler engaged in the following acts of expression and compassion (hereinafter often referred to as "compassionate speech activities") for a Georgia resident.

39.

Ms. Schindler has spoken with one Georgia resident who was interested in being accepted into the Exit Guide program and fears this could be considered an "overt act" by the Defendants.

40.

Ms. Schindler consulted with this Georgia resident and gathered information about her medical situation, quality of life, psychological condition, and family relationships and fears this would be considered an "overt act" by the Defendants.

41.

After extensive conversations, Ms. Schindler encouraged this Georgia resident not to commit suicide. Due to the statutory language of the Assisted Suicide Statute,

Ms. Schindler fears this also would be considered an "overt act" by Defendants.

42.

Ms. Schindler encouraged this Georgia resident to consider the use of hospice care and fears this would be considered an "overt act" by the Defendants.

43.

Ms. Schindler encouraged this Georgia resident to consult with spiritual advisors and medical specialists and fears this would be considered an "overt act" by the Defendants.

44.

Ms. Schindler provided information about end-of-life alternatives to this Georgia resident and fears this would be considered an "overt act" by the Defendants.

45.

Since the indictment in Georgia of members of FEN for compassion speech activities and their realization that Final Exit Guides were needed in Georgia, Plaintiffs Mr. Chastain and Ms. Schindler have wanted to offer their services to Georgia residents.

46.

Ms. Schindler would like to obtain and submit medical information about individuals seeking to be part of the Final Exit program in Georgia, but fears such

conduct would be considered an “overt act” by the Defendants.

47.

Ms. Schindler would like to be able to demonstrate end-of-life methods to individuals in Georgia, including the commonly recommended method of a helium gas tank and a hood and fears this would be considered an “overt act” by the Defendants.

48.

Ms. Schindler also would like to provide in-person verbal counseling and comfort in Georgia during a person’s final hours, including compassionate holding of an individual’s hand and to encourage family to do the same if so requested and fears this would be considered an “overt act” by the Defendants.

49.

Ms. Schindler would never buy any of the materials necessary for an individual to commit suicide, encourage an individual to end anyone’s life, initiate the death procedure, or physically assist in the death procedure in any way.

50.

As part of his volunteer role, Mr. Chastain would like to engage in the following acts of expression and compassion (hereinafter often referred to as “compassionate speech activities”) for Georgia residents.

51.

Mr. Chastain would like to speak with FEN members who are interested in being accepted into the Exit Guide program and fears this would be considered an “overt act” by the Defendants.

52.

Mr. Chastain would like to consult with the individual and gather information about their medical situation, quality of life, psychological condition, and family relationships and fears this would be considered an “overt act” by the Defendants.

53.

Mr. Chastain would like to forward individuals’ medical information to the Medical Committee and fears this would be considered an “overt act” by the Defendants.

54.

Mr. Chastain would like to assign individuals an “Exit Guide” and fears this would be considered an “overt act” by the Defendants.

55.

Mr. Chastain would like to encourage the use of hospice care and fears this would be considered an “overt act” by the Defendants.

56.

Mr. Chastain would like to encourage consultations with spiritual advisors and medical specialists and fears this would be considered an “overt act” by the Defendants.

57.

Mr. Chastain would like to provide information about end-of-life alternatives, but fears this would be consistent an “overt act” by the Defendants.

58.

Mr. Chastain would like to demonstrate end-of-life methods, including the commonly recommended method of a helium gas tank and a hood, but fears this would be considered an “overt act” by the Defendants.

59.

Mr. Chastain would like to provide in-person verbal counseling and comfort in Georgia during a person’s final hours, including compassionate holding of an individual’s hand and to encourage family to do the same if so requested and fears this would be considered an “overt act” by the Defendants.

60.

Mr. Chastain will not buy any of the materials, encourage the individual to end his or her life, initiate the death procedure, or physically assist in the death procedure



in any way.

61.

Like her mother, grandfather, and uncle, Plaintiff Susan Caldwell has Huntington's disease. Huntington's disease is an incurable hereditary disease that causes progressive disintegration of the nervous system, dementia, severe psychiatric and personality disorders, and death.

62.

Ms. Caldwell witnessed these symptoms progress in her mother, Glenda Caldwell, who was so distraught with the possibility that her children would develop the disease that she killed her son and attempted to kill Ms. Caldwell.

63.

Glenda Caldwell eventually died from the disease in 2001. Ms. Caldwell began experiencing symptoms of Huntington's disease in 2002, including severe depression, neurological problems, and cognitive disorders that prevented her from working.

64.

Knowing that a complete loss of quality of life awaited her and not wanting her family to endure the inevitable suffering associated with caring for a Huntington's patient, Ms. Caldwell unsuccessfully attempted to commit suicide

alone in August 2008 using a helium tank and hood.

65.

In hopes of preventing another failed suicide attempt and in order to receive information about suicide, end-of-life method demonstrations, and compassionate counseling, Ms. Caldwell joined the Final Exit Network in 2008.

66.

Upon joining FEN, Ms. Caldwell received counseling from FEN members, who ultimately encouraged Ms. Caldwell to recognize that she still had a sufficient quality of life so as not to end her life at that time, but made her realize that she need not fear the future and attempt suicide alone again so long as she could receive an end-of-life counseling and an in person demonstration when the appropriate time came. Now, Mr. Chastain and Ms. Schindler would like to assign Ms. Caldwell an Exit Guide, but fear such conduct would be considered an “overt act” by Defendants. Plaintiffs must also refrain from other compassionate speech activities for fear the conduct would be considered “overt acts” by Defendants.

67.

Following the arrest, indictment, and prosecution of the four Final Exit Network members in 2009 for violating O.C.G.A. § 16-5-5(b), Plaintiffs have refrained from disseminating and receiving constitutionally protected information

and ideas in Georgia because they face a credible fear of future prosecution.

68.

Specifically, Plaintiffs Fran Schindler and Jim Chastain would like to have the opportunity to provide services as an FEN “Case Coordinator” or an “Exit Guide” for individuals in Georgia, including Ms. Caldwell which at this point they fear they are is not allowed to do without risking prosecution under Georgia’s Assisted Suicide Statute and this prohibition of their rights of free speech and association are a direct violation of the Plaintiffs’ First and Fifth Amendment rights. Ms. Schindler and Mr. Chastain would like to hold themselves out as Final Exit Volunteers that would conduct in Georgia the service of Compassionate Speech Activities described more fully above.

69.

Once Plaintiff Caldwell decides that her irreversible, fatal disease has become more than she can bear, Ms. Schindler and Mr. Chastain would like to engage in the Compassionate Speech Activities on Ms. Caldwell’s behalf.

70.

Because these Compassionate Speech Activities have been prosecuted under O.C.G.A. § 16-5-5 as “overt acts” necessary to prosecute an individual under the statute,” and because the State of Georgia has adopted an interpretation of O.C.G.A.

§ 16-5-5 such that a person who volunteers for Final Exit Network thereby “holds himself or herself out as offering that he or she will” have “direct physical involvement, intervention, or participation” in the act of suicide, Ms. Schindler is now refraining from volunteering in these roles because she has a credible fear that she would be prosecuted under O.C.G.A. § 16-5-5. If the fear of prosecution were removed, Ms. Schindler and Mr. Chastain would like to engage in these First Amendment-protected activities for individuals residing in Georgia.

71.

Plaintiff Susan Caldwell desires to immediately retain FEN and Ms. Schindler to provide her with information, demonstrations, and counseling regarding assisted suicide. Once Ms. Caldwell decides that her irreversible, fatal disease has become more than she can bear, Ms. Caldwell would like Ms. Schindler to demonstrate end-of-life methods for her and compassionately hold her hand during her final hours. Because Ms. Schindler and Mr. Chastain are refraining from such expression out of a credible fear of prosecution under O.C.G.A. § 16-5-5, Ms. Caldwell’s reciprocal First Amendment right to receive such information has been infringed.

**CLAIMS FOR RELIEF**

**FIRST CLAIM FOR RELIEF:**

**O.C.G.A. § 16-5-5(b) is Vague and therefore violates Constitution of the United States**

72.

The allegations set forth above and below are incorporated herein by reference.

73.

A basic principle of due process holds that a statute is void for vagueness if its prohibitions are not clearly defined.

74.

The statute is unclear as to whether the “overt act” must be in furtherance of the advertising or offering to assist in suicide, or in furtherance of the “involvement, intervention, or participation” in the act of suicide. The statute also does not define what type of conduct constitutes “direct physical involvement,” “intervention,” or “participation.” For example, it is unclear whether an individual is “participating” in the suicide of another if that person is present at the time of death and merely provides information or literature regarding end-of-life alternatives. These and other terms are unconstitutionally vague, overbroad restrictions on speech and grant unbridled discretion to law enforcement officials.

75.

Should Plaintiffs Schindler and Chastain act in a manner not consistent with the

State's interpretation and act in accordance with her political beliefs, they would be in violation of criminal law and guilty of a felony.

**SECOND CLAIM FOR RELIEF:**

**O.C.G.A. § 16-5-5(b) is Vague and therefore Violates the Georgia State Constitution**

76.

The allegations set forth above and below are incorporated herein by reference.

77.

A basic principle of due process holds that a statute is void for vagueness if its prohibitions are not clearly defined.

78.

The statute is unclear as to whether the "overt act" must be in furtherance of the advertising or offering to assist in suicide, or in furtherance of the "involvement, intervention, or participation" in the act of suicide. The statute also does not define what type of conduct constitutes "direct physical involvement," "intervention," or "participation." For example, it is unclear whether an individual is "participating" in the suicide of another if that person provides literature or demonstration regarding end-of-life alternatives. These and other terms are unconstitutionally vague, overbroad restrictions on speech and grant unbridled discretion to law

enforcement officials.

79.

Should Plaintiff Schindler act in a manner not consistent with the State's interpretation and act in accordance with her political beliefs, she would be in violation of criminal law and guilty of a felony.

**THIRD CLAIM FOR RELIEF:**

**O.C.G.A. § 16-5-5(b) is Unconstitutional for Overbreadth**

80.

The allegations set forth above and below are incorporated herein by reference.

81.

A person who alleges statutory overbreadth in the context of the First Amendment may allege the impact of the statute on the rights of others without even alleging that the statute would have an impact on his/her personal rights.

*Virginia v. Hicks*, 539 U.S. 113, 118 (2003).

82.

An overbroad law may be invalidated if the law reaches a substantial amount of First Amendment speech.

83.

The Statute makes it a crime if someone both (1) "publicly offers," "advertises,"

or “holds himself or herself out as offering that he or she will” have “direct physical involvement, intervention, or participation” in the act of suicide, and (2) commits an “overt act to further that purpose.” O.C.G.A. § 16-5-5.

84.

A plain reading of the statute indicates that it criminalizes a significant amount of speech undoubtedly protected by the First Amendment. For example, a therapist or counselor cannot advertise that he or she will intervene in the suicide of another, and then commit any “overt act to further that purpose.”

#### **FOURTH CLAIM FOR RELIEF:**

#### **O.C.G.A. § 16-5-5(b) is a Content and Viewpoint-based Restriction on Speech that Violates the First Amendment**

85.

The allegations set forth above and below are incorporated herein by reference.

86.

O.C.G.A. § 16-5-5(b) violates Plaintiffs’ First Amendment right to freedom of speech because it is a content and viewpoint based restriction on speech. Specifically, the statute only criminalizes speech that relates to suicide and assisted suicide (content), and only that speech which assists in those ends (viewpoint).

87.

“Regulations which permit the Government to discriminate on the basis of



the content of the message cannot be tolerated under the First Amendment.” Regan v. Time, 468 U.S. 641, 648 (1984).

88.

O.C.G.A. § 16-5-5(b) does not regulate speech in such a manner to criminalize unprotected speech such as libel, obscenity, fighting words, or incitement.

89.

As a content-based restriction, the law is subject to strict scrutiny the government must prove that the statute is the *least restrictive means possible* to serve a compelling interest. O.C.G.A. § 16-5-5(b) is not the least restrictive means possible to achieve the government’s interest in preserving life.

90.

Incitement requires speech that “is directed to inciting or producing imminent lawless action and is likely to incite or produce such action.” Brandenburg v. Ohio, 395 U.S. 444, 447 (1969). Because suicide is not a crime in Georgia, speech advocating suicide cannot institute incitement.

91.

The least restrictive means available to prevent suicide would be (1) criminalizing suicide, or at the very least, (2) criminalizing physician-assisted

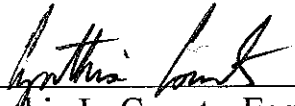
suicide. O.C.G.A. § 16-5-5(b) does neither. Rather, the statute irrationally criminalizes only those individuals who publicly speak about assisted suicide and then participate in the suicide – even if the participation is only holding the hand of a terminally ill person as they peacefully end their life.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs respectfully pray that this Court:

- (1) Assume jurisdiction over this action.
- (2) Declare O.C.G.A. § 16-5-5(b) unconstitutional on its face.
- (3) Enter a preliminary and permanent injunction, prohibiting Defendants, their successors, and assigns, and all persons acting in concert therewith and all persons subject to Federal Rule of Civil Procedure 65's scope from *any future enforcement of* O.C.G.A. § 16-5-5(b), on its face or as applied to Plaintiffs' conduct set out herein.
- (4) Enter judgment in Plaintiffs' favor for nominal damages.
- (5) Award Plaintiffs' reasonable attorneys' fees and costs as allowed by law.
- (6) Order such additional relief as the Court may deem just and proper.

DATED this 9<sup>th</sup> day of ~~November~~<sup>December</sup>, 2010.

  
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Cynthia L. Counts, Esq.  
Georgia Bar No. 190280

The Counts Law Group  
400 Colony Square, Suite 2020  
1201 Peachtree Street NE  
Atlanta, Georgia 30361  
Phone: (404) 550-6233  
Fax: (404) 521-4013  
email: [ccounts@lawcounts.com](mailto:ccounts@lawcounts.com)

JS44 (Rev. 1/08 NDGA)

**CIVIL COVER SHEET**

The JS44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form is required for the use of the Clerk of Court for the purpose of initiating the civil docket record. (SEE INSTRUCTIONS ATTACHED)

<p><b>I. (a) PLAINTIFF(S)</b>                  FRAN SCHINDLER,                  SUSAN CALDWELL, and                  JIM CHASTAIN</p> <p><b>(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF</b> <u>Orange County, Chapel Hill, NC</u>  <small>(EXCEPT IN U.S. PLAINTIFF CASES)</small></p>	<p><b>DEFENDANT(S)</b>                  GOVERNOR GEORGE ERVIN                  "SONNY" PERDUE, and                  ATTORNEY GENERAL                  THURBERT BAKER,</p> <p><b>COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT</b> <u>Fulton</u>  <small>(IN U.S. PLAINTIFF CASES ONLY)</small></p> <p><small>NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED</small></p>
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<p><b>(c) ATTORNEYS</b> (FIRM NAME, ADDRESS, TELEPHONE NUMBER, AND E-MAIL ADDRESS)</p> <p>Counts Law Group                  400 Colony Square, Suite 2020                  1201 Peachtree Street, NE                  Atlanta, GA 30361                  404-685-8271                  ccounts@lawcounts.com</p>	<p><b>ATTORNEYS</b> (IF KNOWN)</p>
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**II. BASIS OF JURISDICTION**  
(PLACE AN "X" IN ONE BOX ONLY)

1 U.S. GOVERNMENT PLAINTIFF      3 FEDERAL QUESTION (U.S. GOVERNMENT NOT A PARTY)

2 U.S. GOVERNMENT DEFENDANT      4 DIVERSITY (INDICATE CITIZENSHIP OF PARTIES IN ITEM III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES**  
(PLACE AN "X" IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT) (FOR DIVERSITY CASES ONLY)

PLF	DEF	PLF	DEF
<input type="checkbox"/> 1	<input type="checkbox"/> 1	<input type="checkbox"/> 4	<input type="checkbox"/> 4
CITIZEN OF THIS STATE		INCORPORATED OR PRINCIPAL PLACE OF BUSINESS IN THIS STATE	
<input type="checkbox"/> 2	<input type="checkbox"/> 2	<input type="checkbox"/> 5	<input type="checkbox"/> 5
CITIZEN OF ANOTHER STATE		INCORPORATED AND PRINCIPAL PLACE OF BUSINESS IN ANOTHER STATE	
<input type="checkbox"/> 3	<input type="checkbox"/> 3	<input type="checkbox"/> 6	<input type="checkbox"/> 6
CITIZEN OR SUBJECT OF A FOREIGN COUNTRY		FOREIGN NATION	

**IV. ORIGIN** (PLACE AN "X" IN ONE BOX ONLY)

1 ORIGINAL PROCEEDING      2 REMOVED FROM STATE COURT      3 REMANDED FROM APPELLATE COURT      4 REINSTATED OR REOPENED

5 TRANSFERRED FROM ANOTHER DISTRICT (Specify District)      6 MULTIDISTRICT LITIGATION      7 APPEAL TO DISTRICT JUDGE FROM MAGISTRATE JUDGE JUDGMENT

**V. CAUSE OF ACTION** (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE - DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY)

*Action challenges the constitutionality of O.C.G.A. § 16-5-5(b) on grounds that it violates the First and Fifth Amendments of the United States Constitution and Article I, Section I, Paragraph 5, Article I, Section I, Paragraph IX of the Georgia Constitution. Action is brought pursuant to the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202*

(IF COMPLEX, CHECK REASON BELOW)

<input type="checkbox"/> 1. Unusually large number of parties.	<input type="checkbox"/> 6. Problems locating or preserving evidence
<input type="checkbox"/> 2. Unusually large number of claims or defenses.	<input type="checkbox"/> 7. Pending parallel investigations or actions by government.
<input type="checkbox"/> 3. Factual issues are exceptionally complex	<input type="checkbox"/> 8. Multiple use of experts.
<input type="checkbox"/> 4. Greater than normal volume of evidence.	<input type="checkbox"/> 9. Need for discovery outside United States boundaries.
<input type="checkbox"/> 5. Extended discovery period is needed.	<input type="checkbox"/> 10. Existence of highly technical issues and proof.

**CONTINUED ON REVERSE**

**FOR OFFICE USE ONLY**

RECEIPT # \_\_\_\_\_ AMOUNT \$ \_\_\_\_\_ APPLYING IFP \_\_\_\_\_ MAG. JUDGE (IFP) \_\_\_\_\_

JUDGE \_\_\_\_\_ MAG. JUDGE \_\_\_\_\_ (Referral) NATURE OF SUIT \_\_\_\_\_ CAUSE OF ACTION \_\_\_\_\_

**VI. NATURE OF SUIT** (PLACE AN "X" IN ONE BOX ONLY)

**CONTRACT - "0" MONTHS DISCOVERY TRACK**

- 150 RECOVERY OF OVERPAYMENT & ENFORCEMENT OF JUDGMENT
- 152 RECOVERY OF DEFAULTED STUDENT LOANS (Excl. Veterans)
- 153 RECOVERY OF OVERPAYMENT OF VETERAN'S BENEFITS

**CONTRACT - "4" MONTHS DISCOVERY TRACK**

- 110 INSURANCE
- 120 MARINE
- 130 MILLER ACT
- 140 NEGOTIABLE INSTRUMENT
- 151 MEDICARE ACT
- 160 STOCKHOLDERS' SUITS
- 190 OTHER CONTRACT
- 195 CONTRACT PRODUCT LIABILITY
- 196 FRANCHISE

**REAL PROPERTY - "4" MONTHS DISCOVERY TRACK**

- 210 LAND CONDEMNATION
- 220 FORECLOSURE
- 230 RENT LEASE & EJECTMENT
- 240 TORTS TO LAND
- 245 TORT PRODUCT LIABILITY
- 290 ALL OTHER REAL PROPERTY

**TORTS - PERSONAL INJURY - "4" MONTHS DISCOVERY TRACK**

- 310 AIRPLANE
- 315 AIRPLANE PRODUCT LIABILITY
- 320 ASSAULT, LIBEL & SLANDER
- 330 FEDERAL EMPLOYERS' LIABILITY
- 340 MARINE
- 345 MARINE PRODUCT LIABILITY
- 350 MOTOR VEHICLE
- 355 MOTOR VEHICLE PRODUCT LIABILITY
- 360 OTHER PERSONAL INJURY
- 362 PERSONAL INJURY - MEDICAL MALPRACTICE
- 365 PERSONAL INJURY - PRODUCT LIABILITY
- 368 ASBESTOS PERSONAL INJURY PRODUCT LIABILITY

**TORTS - PERSONAL PROPERTY - "4" MONTHS DISCOVERY TRACK**

- 370 OTHER FRAUD
- 371 TRUTH IN LENDING
- 380 OTHER PERSONAL PROPERTY DAMAGE
- 385 PROPERTY DAMAGE PRODUCT LIABILITY

**BANKRUPTCY - "0" MONTHS DISCOVERY TRACK**

- 422 APPEAL 28 USC 158
- 423 WITHDRAWAL 28 USC 157

**CIVIL RIGHTS - "4" MONTHS DISCOVERY TRACK**

- 441 VOTING
- 442 EMPLOYMENT
- 443 HOUSING/ ACCOMMODATIONS
- 444 WELFARE
- 440 OTHER CIVIL RIGHTS
- 445 AMERICANS with DISABILITIES - Employment
- 446 AMERICANS with DISABILITIES - Other

**IMMIGRATION - "0" MONTHS DISCOVERY TRACK**

- 462 NATURALIZATION APPLICATION
- 463 HABEAS CORPUS- Alien Detainee
- 465 OTHER IMMIGRATION ACTIONS

**PRISONER PETITIONS - "0" MONTHS DISCOVERY TRACK**

- 510 MOTIONS TO VACATE SENTENCE
- 530 HABEAS CORPUS
- 535 HABEAS CORPUS DEATH PENALTY
- 540 MANDAMUS & OTHER
- 550 CIVIL RIGHTS - Filed Pro se
- 555 PRISON CONDITION(S) - Filed Pro se

**PRISONER PETITIONS - "4" MONTHS DISCOVERY TRACK**

- 550 CIVIL RIGHTS - Filed by Counsel
- 555 PRISON CONDITION(S) - Filed by Counsel

**FORFEITURE/PENALTY - "4" MONTHS DISCOVERY TRACK**

- 610 AGRICULTURE
- 620 FOOD & DRUG
- 625 DRUG RELATED SEIZURE OF PROPERTY 21 USC 881
- 630 LIQUOR LAWS
- 640 R.R. & TRUCK
- 650 AIRLINE REGS.
- 660 OCCUPATIONAL SAFETY / HEALTH
- 690 OTHER

**LABOR - "4" MONTHS DISCOVERY TRACK**

- 710 FAIR LABOR STANDARDS ACT
- 720 LABOR/MGMT. RELATIONS
- 730 LABOR/MGMT. REPORTING & DISCLOSURE ACT
- 740 RAILWAY LABOR ACT
- 790 OTHER LABOR LITIGATION
- 791 EMPL. RET. INC. SECURITY ACT

**PROPERTY RIGHTS - "4" MONTHS DISCOVERY TRACK**

- 820 COPYRIGHTS
- 840 TRADEMARK

**PROPERTY RIGHTS - "8" MONTHS DISCOVERY TRACK**

- 830 PATENT

**SOCIAL SECURITY - "0" MONTHS DISCOVERY TRACK**

- 861 HIA (1395(f))
- 862 BLACK LUNG (923)
- 863 DIWC (405(g))
- 863 DIWW (405(g))
- 864 SSID TITLE XVI
- 865 RSI (405(g))

**FEDERAL TAX SUITS - "4" MONTHS DISCOVERY TRACK**

- 870 TAXES (U.S. Plaintiff or Defendant)
- 871 IRS - THIRD PARTY 26 USC 7609

**OTHER STATUTES - "4" MONTHS DISCOVERY TRACK**

- 400 STATE REAPPORTIONMENT
- 430 BANKS AND BANKING
- 450 COMMERCE/ICC RATES/ETC.
- 460 DEPORTATION
- 470 RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS
- 480 CONSUMER CREDIT
- 490 CABLE/SATELLITE TV
- 810 SELECTIVE SERVICE
- 875 CUSTOMER CHALLENGE 12 USC 3410
- 891 AGRICULTURAL ACTS
- 892 ECONOMIC STABILIZATION ACT
- 893 ENVIRONMENTAL MATTERS
- 894 ENERGY ALLOCATION ACT
- 895 FREEDOM OF INFORMATION ACT
- 900 APPEAL OF FEE DETERMINATION UNDER EQUAL ACCESS TO JUSTICE
- 950 CONSTITUTIONALITY OF STATE STATUTES
- 890 OTHER STATUTORY ACTIONS

**OTHER STATUTES - "8" MONTHS DISCOVERY TRACK**

- 410 ANTI TRUST
- 850 SECURITIES / COMMODITIES / EXCHANGE

**OTHER STATUTES - "0" MONTHS DISCOVERY TRACK**

- ARBITRATION (Confirm / Vacate / Order / Modify)

(Note: Mark underlying Nature of Suit as well)

**\* PLEASE NOTE DISCOVERY TRACK FOR EACH CASE TYPE. SEE LOCAL RULE 26.3**

**VII. REQUESTED IN COMPLAINT:**

CHECK IF CLASS ACTION UNDER F.R.Civ.P. 23 DEMANDS Award of Reasonable Attorney Fees & Costs, Declaratory Judgment and  
 JURY DEMAND  YES  NO (CHECK YES ONLY IF DEMANDED IN COMPLAINT)

**VIII. RELATED/REFILED CASE(S) IF ANY**

JUDGE \_\_\_\_\_ DOCKET NO. \_\_\_\_\_

*Injunction Against Future Enforcement*

CIVIL CASES ARE DEEMED RELATED IF THE PENDING CASE INVOLVES: (CHECK APPROPRIATE BOX)

- 1. PROPERTY INCLUDED IN AN EARLIER NUMBERED PENDING SUIT.
- 2. SAME ISSUE OF FACT OR ARISES OUT OF THE SAME EVENT OR TRANSACTION INCLUDED IN AN EARLIER NUMBERED PENDING SUIT.
- 3. VALIDITY OR INFRINGEMENT OF THE SAME PATENT, COPYRIGHT OR TRADEMARK INCLUDED IN AN EARLIER NUMBERED PENDING SUIT.
- 4. APPEALS ARISING OUT OF THE SAME BANKRUPTCY CASE AND ANY CASE RELATED THERETO WHICH HAVE BEEN DECIDED BY THE SAME BANKRUPTCY JUDGE.
- 5. REPETITIVE CASES FILED BY PRO SE LITIGANTS.
- 6. COMPANION OR RELATED CASE TO CASE(S) BEING SIMULTANEOUSLY FILED (INCLUDE ABBREVIATED STYLE OF OTHER CASE(S)):

7. EITHER SAME OR ALL OF THE PARTIES AND ISSUES IN THIS CASE WERE PREVIOUSLY INVOLVED IN CASE NO. \_\_\_\_\_, WHICH WAS DISMISSED. This case  IS  IS NOT (check one box) SUBSTANTIALLY THE SAME CASE.

Cynthia L. Coats  
 SIGNATURE OF ATTORNEY OF RECORD

November 9, 2010  
 DATE