

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

Chalmers Eugene Troutman, III,)	
	)	CIVIL ACTION NUMBER: 3:08-cv-449-MJP
)	
Plaintiff,)	
)	
vs.)	
)	
Leon J. Hendrix, Jr., J.J. Britton, M.D., Bill)	
L. Amick, Thomas C. Lynch, Jr., Louis B.	)	PLAINTIFF'S MEMORANDUM IN
Lynn, Patricia H. McAbee, Leslie G.	)	OPPOSITION TO DEFENDANTS'
McCraw, E. Smyth McKissick, III, Thomas	)	MOTION TO DISMISS ALL SECTION
B. McTeer, Jr., Robert L. Peeler, William	)	1983 CLAIMS FOR MONETARY
C. Smith, Jr., Joseph D. Swann, the	)	DAMAGES
Clemson University Board of Trustees,)	
Clemson University, James F. Barker, Doris)	
R. Helms and Clayton D. Steadman,)	
)	
Defendants.)	

INTRODUCTION

Plaintiff Chalmers Eugene Troutman, III ("Troutman") hereby submits this memorandum in opposition to Defendants' Motion to Dismiss All Section 1983 Claims for Monetary Damages.

DISCUSSION/ANALYSIS

Troutman respectfully submits he is entitled to maintain a claim for monetary damages against Clemson University, as a municipality, and its board of trustees as the final policymaking authority for Clemson University. Troutman does not presently seek monetary damages personally from the individually-named Defendants because they are only named in this lawsuit in their official capacity at this time.

The reasons to maintain a claim for monetary damages against the board of trustees is analogous to arguments in furtherance of monetary liability against Clemson University. (See

Plaintiff's Memorandum In Opposition to Defendant Clemson University's Motion to Dismiss Plaintiff's Section 1983 Claim).

In Leahy v. Board of Trustees of Community College Dist. No. 508, County, 912 F.2d 917, 922 (7th Cir. 1990), the Court held a "§ 1983 claim against the Board of Trustees of [a college or university] begins and ends with Monell v. Department of Social Services of the City of New York, 436 U.S. 658, 694, 98 S.Ct. 2018, 2037, 56 L.Ed.2d 611 (1978) and its progeny." Monell held that municipalities are subject to monetary liability under § 1983 claims. A suit against the board of trustees in its official capacity is treated as a suit against the municipality. See Leahy, 912 F.2d at 922 ('Leahy's suit against the Board of Trustees of City Colleges is an official-capacity suit, which we treat in all respects, except for name, as a suit against the municipality or state') (citing Kentucky v. Graham, 473 U.S. 159, 165-66, 105 S.Ct. 3099, 3104-05, 87 L.Ed.2d 114 (1985); Brandon v. Holt, 469 U.S. 464, 471-72, 105 S.Ct. 873, 877-78, 83 L.Ed.2d 878 (1985); Yeksigian v. Nappi, 900 F.2d 101, 103 (7th Cir.1990)).

The Clemson University Board of Trustees is a "body politic and corporate." It is not an arm of the state. It is the final authority making body that governs the municipality known as Clemson University. The facts are on all fours and squarely analogous to Hall v. Marion School Dist. No. 2, 31 F.3d 183 (4th Cir. 1994). In that case, the Fourth Circuit Court of Appeals held the school district in Marion County was liable for the decision of the school board to wrongfully terminate Ms. Hall, an employee of the school district who was retaliated against after she exercised her first amendment right of freedom of speech.

CONCLUSION

For these reasons, and the additional reasons set forth in Plaintiff's Memorandum In Opposition to Defendant Clemson University's Motion to Dismiss Plaintiff's Section 1983 Claim, the Court should deny Defendants' Motion.

Respectfully submitted,
COLLINS & LACY, P.C.

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August 7, 2008

IN THE UNITED STATES DISTRICT COURT
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Lynn, Patricia H. McAbee, Leslie G.)	
McCraw, E. Smyth McKissick, III, Thomas)	CERTIFICATE OF SERVICE
B. McTeer, Jr., Robert L. Peeler, William)	
C. Smith, Jr., Joseph D. Swann, all in their)	
individual capacities and in their official)	
capacities, the Clemson University Board of)	
Trustees, James F. Barker, Doris R. Helms)	
and Clayton D. Steadman, all in their)	
individual capacities and in their official)	
capacities,)	
)	
Defendants.)	

CERTIFICATE OF SERVICE

This is to certify that on this 7th day of August, 2008, a true and correct copy of the Plaintiff's Memorandum in Opposition to Defendants' Motion to Dismiss All Section 1983 Claims for Monetary Damages is being electronically transmitted to the Clerk of Court using the ECF System for filing and transmittal of a Notice of Electronic Filing to the following ECF registrants:

COUNSEL SERVED:

Joseph A. Rhodes, Jr., Esquire
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Greenville, SC 29602
Attorneys for Defendants

/s/ Joel W. Collins, Jr.

STATE OF MISSISSIPPI

)

) AFFIDAVIT OF LINDA FULTON, DVM

)

COUNTY OF HINDS

Personally appeared before me, Linda Fulton, who upon being duly sworn, deposes and states as follows:

1. I am a citizen and resident of Jackson, Mississippi. I am currently employed as a laboratory animal veterinarian by the University of Mississippi Medical Center.
2. I am a graduate of the University of Southern Mississippi and Mississippi State University College of Veterinary Medicine. In 1989, during my senior year in veterinary school, I served a laboratory animal externship at Clemson University with Dr. Hal Farris, the Clemson University Veterinarian and Director of Research Services.
3. After veterinary school, I engaged in private veterinary practice. I later taught clinical laboratory animal medicine at Ross University and served as on-site veterinarian at the St. Kitts Foundation for Biomedical Research. In 1993, I was offered and accepted a laboratory animal veterinarian position with Clemson University in the Department of Research Services, again reporting to Dr. Hal Farris. In addition to teaching undergraduate students and providing veterinary care for Clemson University animals, I also had the responsibility of assisting in maintaining legal and ethical compliance with all federal legal requirements, including the Animal Welfare Act and

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implementing regulations and policies which are administered by the United States Department of Agriculture (USDA), Public Health Service (PHS) Office of Laboratory Animal Welfare (OLAW) and the Animal Research Committee (ARC), Clemson's Institutional Animal Care and Use Committee. It was part of my job responsibility to assure humane care and use of animals used for teaching and biomedical research.

4. In the spring of 2001, Dr. Hal Farris accepted a newly created position of Director of the Office of Research Compliance and so as to preclude any potential for or perception of conflict of interest, as assured by President Barker to OLAW, Dr. Farris resigned his position as University Veterinarian and Director of Research Services. In August 2001, Dr. Greg Queen was hired in the position as the University Veterinarian and Director of Research Services. When Dr. Farris retired from Clemson University in 2004, Dr. Queen was named as Interim Director of the Office of Research Compliance while still maintaining his role as University Veterinarian and Director of Research Compliance (despite previous assurance by President Barker to OLAW that such dual role would not occur due to the potential for conflict of interest).

5. After the retirement of Dr. Farris, I witnessed problems at Clemson with the Office of Research Compliance and the workings of the Animal Research Committee. In my professional experience and opinion, there were practices which were contrary to the spirit and letter of the afore-mentioned regulations, policies, and guidelines. In late 2004 and early 2005, I followed my divisional chain of command in reporting my concerns – first reporting to Dr. Greg Queen, then to Dr. Chris Prziembel, Clemson's Vice President for Research. I also reported my concerns to Thornton Kirby, Executive Secretary to the Board of Trustees and Assistant to the President. At no point

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in my discussions did any of these individuals take steps to rectify my concerns. I attempted to make an appointment with President Barker, but my request was refused. Four months later, I was told by President Barker that Chris Przirembel had asked him not to meet with me.

6. Due to increased and continued problems, I contacted a veterinary medical officer with the USDA and administrators with OLAW for advice. Subsequently, acting in good faith, I submitted a report to the USDA and OLAW stating my concerns of possible improper reporting and non-compliance with the Animal Welfare Act and PHS Policy, the federal law and policies regulating the treatment of animals used in scientific research.

7. After accepting a new laboratory animal veterinarian position out of State, I turned in my resignation from Clemson University in April, 2005 and began my current position at the University of Mississippi Medical Center the following May. Subsequent to my resignation, I filed a grievance with the Clemson University Faculty Senate. After leaving Clemson, I learned that Dr. Greg Queen, with the knowledge and approval of Dr. Chris Przirembel, had entered negative notations on my permanent files in the Office of Human Resources at Clemson which gave the appearance that I was terminated for cause. Other negatives memos were also placed in my files after I left Clemson. Lawrence Nichols, Director of Human Resources, told me that per Dr. Chris Przirembel, this had been done due to my "poor employee relations that had gone back for years." Such documentation placed in my files had the possibility to seriously threaten my future employment prospects, not just in the near future, but probably for the rest of my professional career. Evidence (statements made by Dr. Przirembel) gathered

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by the Faculty Senate Grievance Panel determined that this was, in fact, the purpose of this documentation. Attached as Exhibit 1 to this Affidavit is a copy of a portion of the documentation I received from the Faculty Senate Grievance Panel. I am advised that these false and slanderous reports about me are against the law and the public policy of South Carolina as stated in Section 41-1-65 of the South Carolina Code of Laws. During my over twelve-year tenure at Clemson University, I had received only favorable yearly reviews (February 2002 – substantially exceeds, February 2003 – exceeds, February 2004 – substantially exceeds and a letter of commendation in February 2005 which stated, in part, “In summary, your performance as veterinary professional is excellent.”

8. Correspondence dated March, 2006 from the Faculty Senate Grievance Panel reflect a finding by this Panel supporting and validating my claim that the actions of Dr. Greg Queen and Dr. Chris Przirembel were “absolutely” without justification, detrimental and likely representative of retaliation. In an April, 2006 letter from President Barker after his review of the Faculty Senate findings, he stated that the negative notations and memos were to be removed from my files even though he found no evidence of retaliation on the part of either Dr. Queen or Dr. Przirembel. In this same correspondence, President Barker stated that if I had questions or concerns regarding his decision, I should direct those to him in writing. Through email correspondence, I was directed to contact the Office of General Counsel for any clarifications.

9. Since President Barker found no evidence of retaliation, I asked for clarification through the Office of General Counsel for the reasons of Dr. Queen’s and Dr. Przirembel’s actions. I was not given any clarification on this matter. I believe the evidence strongly supports reprisal and retaliation against me. I also believe President

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Barker and the University General Counsel's response, or lack thereof, was an attempt to ignore improper acts and behavior on the part of higher level administrators at Clemson.

10. During my grievance process, Clay Steadman made several proposals for a process that did not conform to the *Faculty Manual* procedures (or any other previously approved grievance procedures at Clemson University). Such resulted in a delay in the grievance process in that, with Mr. Steadman's knowledge, the administration delayed in providing necessary requested documents. The "alternate" proposal and the delay in receipt of requested documents is detailed and supported by the Attached Exhibit 2.

11. In the fall of 2005, I learned that Greg Queen had made disparaging remarks in regards to my character to my colleagues. I contacted Clay Steadman to object to my past supervisor making such remarks. Initially, Mr. Steadman responded that legally he could do nothing about this. Later when Clemson University tried to fill my position, they interviewed several of my colleagues. I later learned from one of them that when asked why the previous veterinarian had left, he was told, "She created a hostile work environment." On the day that I learned of this, I sent an email to Mr. Steadman, expressing my concern. Dr. Queen was acting in an official capacity in representing Clemson University in talking with these candidates. In an email correspondence (Attached as Exhibits 3), Mr. Steadman agreed with me that such behavior was "unprofessional and un-called for". He at no time gave me any indication that such slanderous reports about me are against the law and the public policy of South Carolina as stated in Section 41-1-65 of the South Carolina Code of Laws. Instead Mr. Steadman responded by encouraging me to sign a document that essentially required me

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to have no further contact with the Office of Research Compliance. He told me that if I would sign that document, the problem would go away. A copy of the document he sought to have me sign is attached as Exhibit 4 to this Affidavit. I never signed it. I did not (and still do not) understand why/how the signing of this document would have made the person making such a statement about me subject to disciplinary action. It seems to me that if Mr. Steadman believed that such statements were "unprofessional and un-called for", he would have made such person subject to disciplinary action regardless or whether or not I signed the document.

12. The Animal Welfare Act Regulations (AWAR - Public Law 99-198) is also called the Improved Standards for Laboratory Animals Act. In a Code of Federal Regulations, 9CFR part 2.32,c,4, there are specific protections for employees against discrimination or other reprisals for reporting violations of the AWAR or the AWA itself. Those employees include members of the Institutional Animal Care and Use Committee (ARC at Clemson) and laboratory personnel.

13. I regard the negative campaign by Dr. Greg Queen and Dr. Chris Przirembel against me after my resignation from Clemson University to be acts of reprisal and retaliation for my attempts, as a last resort through contact with federal officials, to carry out my legal and ethical responsibilities as a laboratory animal veterinarian and to uphold all federal and institutional regulations and guidelines to assure appropriate and quality use of animals for research and teaching.

14. I was recently advised by Dr. Ellen Magid, a supervisor for the veterinary medical officers in the Eastern Region of USDA Animal Care, that the findings of the Clemson University Faculty Senate, along with other documentation,

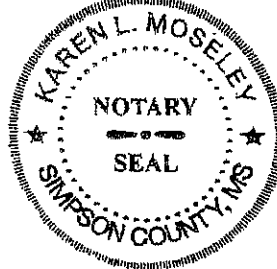
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provide evidence sufficient for her agency to go forward with an investigation of my treatment as reprisal by Clemson University for reporting my concerns to federal agencies. That investigation, to the best of my knowledge, is ongoing.

FURTHER, YOUR AFFIANT SAYETH NAUGHT.

Linda Fulton

LINDA FULTON, DVM



SWORN to and SUBSCRIBED before me

This 20th day of July, 2008

Karen L. Moseley (L.S.)

NOTARY PUBLIC for ~~South Carolina~~ Mississippi (24)

My Commission Expires: MY COMMISSION EXPIRES:
FEBRUARY 25, 2011

ATTACHMENT H**Personnel Data Entry Form (PDE) filed by Dr. Queen**

April 22, 2005, at Greg Queen's direction, a personnel action in regard to Dr. Fulton's upcoming departure from Clemson was entered into PeopleSoft. The action was described as "termination" and the reason for the action was given as "would not rehire." This clearly conveyed an impression that Dr. Fulton had been terminated for cause by Clemson University. When Dr. Fulton discovered this document, several months later, Dr. Fulton believed that this represented retaliation for her protest against the previous memos. Dr. Fulton was deeply disturbed about the possible damage to her future career, since future employers, or Federal Government employees(ers) doing a background check on her for security purposes, would be likely to learn of it if they asked Clemson about her employment at Clemson.

Both Dr. Queen and Dr. Przirembel agreed, when they spoke with the Hearing Panel, that this document conveyed an impression that Dr. Fulton had been terminated for cause, and both of them agreed that this impression was misleading. Dr. Queen said that despite this misleading impression, the document should remain in the file, unaltered. Dr. Przirembel initially said this document should be changed so as no longer to convey this misleading implication, but later changed his mind and said this document should remain as it was. Dr. Przirembel gave a clearer explanation of the rationale for this than Dr. Queen did. Dr. Przirembel said that it was so important to ensure that Petitioner never be rehired by Clemson University, even ten or twenty years from now when memories of her last employment at Clemson had faded, that it was justified to have this document in her file, giving a misleading impression of the circumstances of her departure.

Dr. Przirembel suggested to one of the Hearing Panel members that Dr. Fulton's fears for the impact of this document on her future career were unfounded, because this document would not be revealed to external enquiries about Dr. Fulton's record at Clemson. He said that the only circumstance in which this document would be seen and acted on would be if some administrator within Clemson University were thinking of hiring Petitioner. This assumption was false. The document is in a file at Human Resources, where it would be routinely reported to other institutions, or the Federal Government, if they were doing background checks when considering Petitioner for employment.

If the "action" is "termination" a "reason" is required and the only "reasons" that can be used with "termination" are

"Uncertain About Rehire,"

"Would Not Rehire,"

"Would Not Rehire Same Job/Dept," and

"Would Rehire."

When the Hearing Panel asked Mr. Byron Wiley about the "would not rehire" he stated that he did not know about it, but added that he felt it was "inappropriate" because it "does color the record."

To have a document in Dr. Fulton's file giving a false impression that she was terminated for cause, creating a serious danger of both near-term and long-term damage to her career, is absolutely unacceptable. For that matter, even if the false claim that this document would be seen only by Clemson administrators had been true, the document would be unacceptable. It is just as improper for Dr. Queen and Dr. Przirembel to give future administrators at Clemson, who might be considering Dr. Fulton for a job ten or twenty years from now, a false impression that Dr. Fulton was terminated for cause, as it is for Dr. Queen and Dr. Przirembel to give that false impression to administrators at other institutions who might be considering Dr. Fulton for a job in the near future.

If there is no alternative to "terminate" as the action, then the reason on the PDE should state "Would Rehire."

CLEMSON
UNIVERSITYExhibit 2
page 1 of 3

October 6, 2005

Linda Fulton, PhD
750 Oakwood Street
Jackson, Mississippi 39202**FILE COPY**

Dear Dr. Fulton:

It has come to my attention that you filed a Grievance Petition II under the Clemson University *Faculty Manual* grievance process. According to the language set forth in the *Faculty Manual* and approved by the Faculty Senate, your grievance cannot be heard by the Faculty Senate grievance board.

The *Faculty Manual* states that the Faculty Grievance Procedure II applies to "teaching, research, and extension faculty, librarians, academic administrators and all other persons holding faculty appointments (See page v-5 D (1))." It further explains that "[a]ppointments to special faculty ranks include visiting, adjunct, and part-time positions as well as the special ranks of lecturer and post doctoral research fellow in academic units that are under the jurisdiction of the Provost (emphasis added) (see page iii-4. E)." Although your title was "lecturer," you were not employed in an academic unit under the jurisdiction of the Provost. Your lecturer appointment reported to Dr. Queen who reports to the Vice President for Research, Dr. Chris Przirembel. Since you were not assigned to an academic unit under the Provost, you did not have a faculty appointment as defined by the *Faculty Manual*.

The Faculty Senate changed the definition of special faculty ranks in their manual but left no provision for non-academic lecturers. As a result, some lecturers such as yourself do not fall within the grievance procedure for faculty, nor are you covered by our classified staff procedures. You are the first non-academic lecturer to file a grievance since this change was made to the *Faculty Manual*. I sincerely apologize for the resulting confusion.

Since there is no formal grievance procedure at Clemson for non-academic lecturers, such as yourself, we have decided to provide you an ad hoc procedure that will ensure full due process and an opportunity for your grievance to be heard. We will follow the basic procedure outlined in the Clemson University *Faculty Manual* for a Grievance Procedure II beginning with Section D.3.g (see attached) with the exceptions that (a) your grievance hearing panel will be composed of three non-academic lecturers, instead of faculty and (b) Mr. Lawrence Nichols, Director of Human Resources, will carry out the duties and functions that the Provost is responsible for under the Faculty Grievance II procedure.



OFFICE OF THE GENERAL COUNSEL

207 Sikes Hall Clemson, SC 29634-5003

Linda Fulton, Ph.D.
October 6, 2005
Page Two

Your grievance, this letter and all materials collected by the Faculty Grievance Committee and/or the Provost pursuant to your formal grievance will be forwarded to Mr. Nichols for his immediate action.

Again, we apologize for the confusion created by this situation. Feel free to contact me directly if you have any questions about this letter or the procedure explained.

Sincerely,



Clayton Steadman
General Counsel

cc: Lawrence Nichols, Director of Human Resources ✓
Doris Helms, Vice President, Academic Affairs and Provost
Chris Pizirembel, VP, Research and Economic Development (Responding Party)
Greg Queen, University Veterinarian (Responding Party)
Beth Kunkel, Chair, Faculty Senate Grievance II Hearing Panel
Eleanor Hare, Chair, Hearing Panel

ATTACHMENT LEdict 2
page 3 of 3**Other****Interference in Grievance Process**

The Hearing Panel did not receive requested documents from the administration in a timely manner. Since the Faculty Manual provides that panels normally meet only during spring and fall semesters, the Hearing Panel began hearing witnesses in early September 2005. It was immediately apparent that the Hearing Panel needed access to certain documents (especially evaluations) in Dr. Fulton's personnel files before proceeding with interviews of respondents. Therefore, on September 9, 2005, the Hearing Panel requested "copies of every piece of paper that went into Dr. Fulton's personnel files in the past three (3) years," "Dr. Fulton's last seven (7) annual evaluations," and other selected documents. The Hearing Panel made additional attempts to obtain these documents until on November 15, Mr. Clay Steadman wrote (in e-mail) that "... the attempt to resolve Dr. Fulton's grievances with the University has not been successful. ... At this point, we will need to resume the grievance process. I will contact Dr. Przirembel and am available to assist him in collecting and copying the materials requested of him by the Hearing Panel."

The Faculty Senate office received documents from Dr. Fulton's personnel file (evidently everything placed in her file since she joined Clemson in 1993, although this went far beyond what we had requested) on December 5, 2005, three months after they were first requested. Copies were made available to the Hearing Panel on December 8, 2005. With exams and Christmas break approaching, and needing time to read the voluminous documentation to find the information requested, meetings with the respondents were scheduled for early in the spring semester (January 5). The delay in receiving the documents had caused a 4-month delay in hearing this grievance. The *Faculty Manual* calls for an "expeditious ... review of the matter." This review was not expeditious because the administration delayed providing the necessary documents.

The *Faculty Manual* provides a grievance process for faculty. While the Hearing Panel was conducting its review, an attorney for the university made several proposals for processes that did not conform to the *Faculty Manual* procedures. His last such proposal was that the Hearing Panel report be sent to the Vice President for Student Affairs for final review. This action would be a violation of the *Faculty Manual*. Since the Provost has recused herself from this proceeding, the *Faculty Manual* provides that the findings and recommendations of the Hearing Panel are sent to the President, who will review the matter and make a decision.

Conflict Between Dr. Fulton and Dr. Queen

Mr. Lawrence Nichols told the Hearing Panel that Dr. Fulton told him that she felt that she was the victim of sexual discrimination. Mr. Nichols told her that Human Resources

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[as New](#)[Forward](#) | [Forward as Attachment](#) | [Reply](#) | [Reply All](#)**Subject:** Re: Proposed Agreement**From:** lfulton@clermson.edu**Date:** Tue, November 8, 2005 11:32 am**To:** "Clayton Steadman" <steadmn@CLEMSON.EDU>**Cc:** biol110@clermson.edu**Bcc:** scathy@clermson.edu ([more](#))**Priority:** Normal**Options:** [View Full Header](#) | [View Printable Version](#) | [Download this as a file](#) | [View Message details](#) | [Add to Addressbook](#) | [Bounce](#)*Exhibit 3
page 1 of 3*

Clay

This is getting sooooo out of hand. I am currently at a national lab animal science meeting (over 4,000 attendees). By chance, I met an individual who had applied for my position at Clemson. I was told that Greg told this person that I had created a hostile work environment (this person's wording) and that also I left because I wanted to take GSRC's program in a different direction (whatever that means). I asked this person if he/she thought this was being said to other candidates for the position - I was told and I quote "without a doubt". This needs to stop! It obviously is not in my best interest for these comments to be perpetuated. It is also not in the best interest of Clemson University. It becomes no longer someone's "opinion" that I am a "bitch", as this seems to come across as some "official" statement. Greg does officially represent Clemson in talking with these candidates; it is inappropriate for comments such as these to be made.

Linda

>
> Linda,
>
> Here is the modified settlement agreement. The only change is to Para. 6,
> as we discussed. Again, I appreciate your concerns and continue to hope
> that we can resolve them short of a formal grievance. Have a good trip and
> call or email when you return, or anytime before then. Thanks.
>
> clay

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Subject: Re: Proposed Agreement

From: "Clayton Steadman" <steadmn@CLEMSON.EDU>

Date: Wed, November 9, 2005 4:26 pm

To: ifulton@CLEMSON.EDU

Priority: Normal

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*Exhibit 3
page 2 of 3*

This is in response to my email of Nov 8, 2005

Linda,

I agree with you that these kinds of statements are unprofessional and un-called for. I think that the agreement we have been discussing will stop them from occurring; or if they do, the person making such a statement will be subject to disciplinary action. I look forward to hearing from you next week. Enjoy your conference.

clay

At 03:55 PM 11/7/2005, you wrote:

>Clay

>Thank you so very much for your willingness to work with me and also for
>your empathy with me in this dilemma - it seems that everyone who has been
>willing to talk with me agrees that personality conflicts should not
>warrant such a severe notation on my personnel record that is available to
>anyone who calls HR (especially if I have not had the opportunity to
>respond to such allegations). It is difficult for me to comprehend all
>that has gone on over the past year or so. Now finding out that there is
>some (one or more?) document, that was written after submitting my
>resignation and I think after my leaving campus, in some file (my
>personnel file in GSRC or Barckett or somewhere else) that details info on
>the potential for my creating a hostile work environment for Mervet to the
>point that she was unable to perform her job truly disturbs me. At this
>point, since I do not have access to this document, I am reluctant to make
>any decisions. Actually it raises even more questions in my mind. I
>don't see how I can really, with informed consent (since I have not been
>fully informed), agree to anything at this point. Any suggestions?

>Thanks!

>Linda

>

>

> >

> > Linda,

> >

> > Here is the modified settlement agreement. The only change is to Para. 6,

> > as we discussed. Again, I appreciate your concerns and continue to hope
> > that we can resolve them short of a formal grievance. Have a good trip and
> > call or email when you return, or anytime before then. Thanks.
> >
> > clay

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Exhibit 3
page 3 of 3

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Subject: Proposed Agreement

From: "Clayton Steadman" <steadmn@CLEMSON.EDU>

Date: Fri, October 28, 2005 5:20 pm

To: ifulton@CLEMSON.EDU

Priority: Normal

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Prof. Fulton,

Attached is the draft settlement agreement we discussed yesterday. I apologize for the delay in getting this to you but it has been an extremely hectic week. Please review this document and feel free to call or email if you have any questions. I am sending you a hard copy to your home address (750 Oakwood). I look forward to your response.

clay

Attachments:

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*Exhibit 4
page 1 of 2*

Exhibit 4
page 2 of 2

MUTUAL RELEASE AND SETTLEMENT AGREEMENT

The undersigned parties to this Agreement mutually desire to resolve the dispute between them related to certain grievances filed by the Grievant, Linda Fulton, and arising out of her employment by Respondent, Clemson University. Therefore, in exchange for the mutual promises and conditions described below, Grievant and Respondent hereby agree as follows:

1. Respondent will amend Grievant's official employment record to remove the "Would not rehire" designation.
2. Respondent will amend Grievant's official employment record to remove a certain memorandum dated November 13, 2004, and which is addressed to Grievant and signed by Dr. Gregory Queen and said memorandum.
3. Grievant agrees to withdraw her grievance, filed pursuant to Respondent's faculty grievance policy and currently pending before the Faculty Grievance Committee.
4. Grievant agrees that she will not file any claim, demand, suit or cause of action against Respondent, or any individual or group of individuals employed by Respondent, for any injury or damages arising from or related to Grievant's employment at Clemson University, provided that Grievant shall not be precluded from filing a claim, demand, suit or cause of action for any injury or damages arising from or related to Grievant's employment at Clemson University if such injury or damages was not known or reasonably should have been known to Grievant at the time this Agreement is executed.
5. Respondent and Grievant mutually agree that neither Party, including any employee or other person acting on behalf of Respondent, shall make any disparaging comments or remarks regarding the other Party, provided this does not preclude Grievant or Respondent, or any employee or other person acting on behalf of Respondent, from offering opinions on the other Party's professional credentials or qualities.
6. Grievant agrees to refrain from making contact with any person employed by Respondent in the Office of Research Compliance. The current incumbents in this Office are: Mervet Behery, Daniel Harris, Bridgette Owens, Lane Swanson and Marlene Ventura. "Contact" for purposes of this Agreement, shall mean the initiation of communication by Grievant by verbal or physical means, whether in-person, electronically or by telephone. Inadvertent contact, such as calling a main office extension which is answered by a person in one of the identified job positions, shall not be considered contact.

Neither party admits to any wrong-doing in this matter and this Agreement shall not be construed as an admission of any wrong-doing.

In witness of this Agreement, Grievant and Respondent's authorized representative have set their hand and seal below this _____ day of November, 2005.

GRIEVANT: Linda Fulton, DVM

RESPONDENT: Chris Przirembel, PhD, VP for Research and Economic Development

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

Chalmers Eugene Troutman, III,)	
	)	CIVIL ACTION NUMBER: 3:08-cv-449-MJP
)	
Plaintiff,)	
)	
vs.)	
)	
Leon J. Hendrix, Jr., J.J. Britton, M.D., Bill)	
L. Amick, Thomas C. Lynch, Jr., Louis B.)	
Lynn, Patricia H. McAbee, Leslie G.	)	PLAINTIFF'S MEMORANDUM IN
McCraw, E. Smyth McKissick, III, Thomas	)	OPPOSITION TO DEFENDANT
B. McTeer Jr., Robert L. Peeler, William C.	)	CLEMSON UNIVERSITY'S MOTION TO
Smith, Jr., Joseph D. Swann, the Clemson	)	DISMISS PLAINTIFF'S SECTION 1983
University Board of Trustees, Clemson	)	CLAIM
University, James F. Barker, Doris R.)	
Helms and Clayton D. Steadman,)	
)	
Defendants.)	
)	
)	

INTRODUCTION

Plaintiff Chalmers Eugene Troutman, III ("Troutman") submits this memorandum in opposition to Defendant Clemson University's Motion to Dismiss Plaintiff's 1983 claim [Doc. Entry No. 75]. Defendant Clemson University claims it is neither a "person" nor a "municipality" and is therefore outside the reach of 42 U.S.C. § 1983. Defendant Clemson University also argues it is immune pursuant to the eleventh amendment to the Constitution of the United States. For the reasons set forth herein, Troutman will show these arguments lack merit.

DISCUSSION/ANALYSIS

(1) Clemson University is a municipality and is subject to suit under 42 USC § 1983.

Clemson University is a municipality pursuant to S.C. Code Ann. § 59-119-310 (“A municipal corporation is hereby created, known as Clemson University. . . .”). S.C. Code §§ 59-119-310 *et seq.* is entitled “Municipal Corporation of Clemson University.” “The board of trustees of Clemson University and their successors in office shall have perpetual control and direct the affairs of such municipal corporation.” S.C. Code Ann. § 59-119-310. “The board of trustees is hereby declared to be a body politic and corporate, under the name and style of Clemson University.” S.C. Code Ann. § 59-119-310. The board of trustees under the name of Clemson University “may sue and be sued and plead and be impleaded in its corporate name and may do all things necessary.” S.C. Code Ann. § 59-119-60.

Under well-established jurisprudence, a municipal corporation, or municipality, can be subject to monetary damages liability under § 1983. A municipality is considered a “person” under § 1983 and is not merely an alter ego of the state. See Monell v. Department of Social Services of the City of New York, 436 U.S. 658 (1978); Hall v. Marion School Dist. No. 2, 31 F.3d 183 (4th Cir. 1994).

As explained in Hall, a municipal corporation can be held liable for wrongfully discharging an employee in violation of his freedom of speech:

First, ... municipalities may be held liable under § 1983 only for acts for which the municipality itself is actually responsible, that is, acts which the municipality has officially sanctioned or ordered. Second, only those municipal officials who have “final policymaking authority” may by their actions subject the government to § 1983 liability. Third, whether a particular official has “final policymaking authority” is a question of state law. Fourth, the challenged action must have been taken pursuant to a policy adopted by the official or officials responsible under state law for making policy in that area of the city’s business.

Hall, 31 F.3d at 195.

In Hall, a teacher of Marion School District 2 was terminated by the final policymaking authority decision of the Marion County School Board. The fourth circuit held that Marion School Dist. No. 2¹ was vicariously liable for its board's affirmative decision to terminate a teacher in violation of her constitutional rights of free speech. The Court held that Marion County School District No. 2 was liable for the acts or omissions of its board. Here, the board of trustees, as final policymaking authority for Clemson University, voted to terminate Troutman, just as the school board, as final policymaking authority for Marion School Dist. No. 2. Thus, Clemson University can be held vicariously liable for the actions of its board.

Defendants' argument that Clemson University is not a municipality is wholly without merit. Defendants rely on two unpublished district court opinions Larebo v. Clemson Univ., No. 97-1935 (D.S.C. Jul. 23, 1998) and Clemson Univ. v. W.R. Grace & Co., No. 86-2005 (D.S.C. Jul 15, 1998) to support their contention. These unpublished opinions are not binding precedent upon this court. Neither opinion addresses the matters set forth in this memorandum of law and its attachments.

By virtue of state statute S.C. Code § 59-119-60, Clemson University is clearly a municipality. Clemson University is "a body politic and corporate" separate and distinct from the State. The South Carolina General Assembly clearly intended for Clemson University to be a municipality, because it calls it a "municipal corporation." There is no language in the statute which would warrant a contrary conclusion.

¹ S.C. Code Ann. 59-17-10 provides that school districts such as Marion School District No. 2 are a "body politic and corporate" and "it may sue and be sued and be capable of contracting and being contracted with to the extent of its school fund and holding such real and personal estate as it may have or come into possession of." This statute is substantially similar if not identical to the statutory provision making Clemson University a municipality.

(a) There is binding precedent of the United States Supreme Court which refutes Defendants' contention.

In Hopkins v. Clemson Agric. College, 221 U. S. 636 (1911), the United States Supreme Court held that Clemson College was not such an agent of the state as to be immune to suit under the eleventh amendment. The Court recognized that Clemson is a "public corporation" and the "act of 1894, confer[s] municipal powers on Clemson." Id. at 640. The Court reasoned that "the record indicated that besides the state's annual appropriation and the interest on securities held under the residuary clause of Dr. [sic] Clemson's will, the college has other sources of income. It appears to own some land in fee simple. The charter authorizes it to receive bequests. So that if the Fort Hill place is not subject to levy and sale, it does not follow that the institution may not now or hereafter own property out of which a judgment in plaintiff's favor could be satisfied." Id. at 648.

Hopkins has never been overturned. It, therefore, is dispositive of Defendants' unfounded claim that Clemson University is merely an arm of the State. Clearly, Clemson University is not an arm of the State. It has steadfastly opposed such labelings as will be shown herein.

(b) Other courts have rejected Defendants' position regarding municipal Universities.

Other federal courts have held that universities that are municipalities are not entitled to eleventh amendment immunity. See Brown v. Strickler, 422 F.2d 1000, 1001 (6th Cir. 1970), (holding the University of Louisville is not entitled to eleventh amendment immunity because it is a municipal university.); Leahy v. Board of Trustees of Community College Dist. No. 508, County of Cook, State of Ill., 912 F.2d 917 (7th Cir. 1990) (indicating that colleges and universities can be municipalities subject to municipal liability under § 1983).

In Soni v. Board of Trustees of the University of Tennessee, 513 F.2d 347 (6th Cir. 1975), cert. denied, 426 U.S. 919 (1976) (later abrogated by state statute), the sixth circuit held that the University of Tennessee was subject to suit for monetary damages under § 1983 because it was not an arm of the state. The court reasoned the University was managed and controlled by a board of trustees, empowered to borrow money and to issue bonds which are not subject to state tax. The Court also held that Tennessee waived the immunity by consenting to suits because statute provides the University may “sue or be sued, pled or be impleaded.” The court correctly concluded that “the power to sue grants the University the right to recover a money judgment. Consent to be sued inescapably subjects the University to the hazards of having a money judgment rendered against it.” Id. at 353.

Clemson University is similar in form and governance to the University of Tennessee at the time of Soni. Clemson is managed and controlled solely by its board of trustees. However, the board of trustees at Clemson is far more independent and autonomous than the board at University of Tennessee. The board of trustees at Clemson University is completely independent of the State by the deliberate and well considered terms of the will of Thomas Green Clemson. Seven members of the Board are self-perpetuating “Life Trustees” insulated from the State. Only six trustees are elected by the General Assembly in joint assembly. The will makes it clear the number of trustees can never be increased. The board of trustees at Clemson embraces this independence and separation from the State. On several occasions, the trustees have “boasted” that Clemson University is unique and unlike other state-supported schools because the will of Thomas Green Clemson sets up a governance model to create autonomy and prevent control by the General Assembly. (See Affidavit, ¶ 4).

(c) **Defendants' contention that the University is an arm of the State is refuted by its own General Counsel and its Trustees.**

The Clemson University General Counsel, the Defendant Clay Steadman, prepared a memorandum in the summer of 2006 prior to the trustees' summer retreat. The main topic for discussion at that retreat was the University's legal status and its relationship to the State. (See Affidavit, ¶ 3, Exhibit 1 of Affidavit).

Troutman understands and believes Defendant Clayton D. Steadman has been heavily involved in the formulation of defense positions in this case. It is troubling to consider that he is supportive of the positions set forth in the Defendants' motion, including the claims that Clemson is not a municipality, that it is an arm of the State and that it is not a "person" as that term is used in 42 U.S.C. § 1983. On or about May 11, 2006, Defendant Steadman voluntarily and unsolicited gave Plaintiff a copy of a memorandum he prepared entitled "THE LAST WILL AND TESTAMENT OF THOMAS GREEN CLEMSON: A BRIEF LEGAL ANALYSIS." In the transmittal memorandum to Defendant J.J. Britton, Vice Chairman of the Board of Trustees, Defendant Steadman stated:

"...I will note that distributing the document to persons other than Trustees (active or emeritus) or administrators of the University may compromise any attorney - client privilege that might otherwise apply."

(Affidavit, ¶ 3, Exhibit 1 of Affidavit).

Given the distribution of this memorandum to Troutman and others, any claim of privilege or work product has been waived. Defendant Steadman's analysis in this memorandum destroys any notion that Clemson University considers itself a State agency. This memorandum also contradicts the notion any of the trustee Defendants could in good faith embrace and put before this Honorable Court such a claim.

Referring to the will of Thomas Green Clemson, Defendant Steadman's memorandum states:

"Item 2 clearly states that the Board of Trustees shall never increase to a number greater than thirteen, making it clear that the life trustees are always to be in the majority, thereby allowing the Legislature to influence but not control the governance of the University.

Item 2 also specifically states that the rights of the Board of Trustees shall never be 'taken away or conferred upon any other man or body of men.' The Preamble to the Will confers on the Board 'the full authority and power to regulate all matters pertaining to said institution.' ...The power thus delegated to the Board is without limitation or exception."

Elsewhere in his memorandum, Defendant Steadman opines that the legal entity created by Mr. Clemson's will is a "charitable trust". In relevant part, he states:

"In the case of the Will, the intent is very simply to establish a college to be governed by a Board of Trustees with full authority and power to regulate all matters pertaining to its governance. ... Furthermore, there is currently no State or Federal law which has been interpreted as making it 'illegal' for Clemson University to be governed by a Board of Trustees as provided in the Will.

...

His [Clemson's] reference in the Will to the governing structure of the 'Agricultural College of Mississippi' (now Mississippi State University), his specific direction that the authority of the Board never be taken away or abridged by the Legislature..."

Defendant Steadman's memorandum also noted the significance, in his view, of the act passed by the South Carolina General Assembly on November 27, 1889, whereby the State accepted the bequest of Mr. Clemson. He went on to state:

"The Act of Acceptance expressly acknowledges that the University shall be under the management and control of a Board of Trustees appointed as specified in the Will."

Under the heading "Authority of the Board of Trustees", Defendant Steadman advised the Trustees as follows:

"The Will expressly grants to the Board the authority to govern the University. As already noted, the powers are without restriction or limitation. Any attempt by the State to usurp all or any part of that authority would be a direct violation of the condition of the Will that forbade the Board's authority from being taken away or abridged by any 'man or body of men.' The Board cannot be compelled or forced to accept such an action by the Legislature or any other entity. Therefore, no entity or body that would exercise any authority over the governance of the University would be valid unless the Board chose to accept that authority."

Defendant Steadman's memorandum shows that the Defendants' current position is concocted, advanced solely for purposes of this litigation, and made without regard to the University's own prior admissions.

(d) Various statutes of this State refute the Defendants' contention that the University is not a municipality.

Clemson University is separately incorporated, has the power to sue and be sued and to enter into contracts, its property is immune from state taxation, and the state has immunized itself from responsibility for Clemson's operations or backing of bonds. The board of trustees is "a body politic and corporate" which functions under the municipality of Clemson University and "[it] may sue and be sued and plead and be impleaded in its corporate name and may do all things necessary." S.C. Code § 59-119-60. Thus it has consented to a money judgment being rendered against it and has waived the claim that it is not subject to an award of monetary damages under § 1983.

The board of trustees through Clemson University as a municipality "may contract for, purchase and hold property" and "may take any property or money given or conveyed by deed, devise or bequest to said university and hold the same for its use and benefit" *and* "that the board

shall not by the acceptance thereof incur any obligation on the part of the State.” Id. Further, the Board “shall securely invest all funds and keep all property which may come into its possession and may sell any of the personal property not subject to the trust and reinvest the same in such way as it deems best for the interest of said university.” “The board of trustees of Clemson University may sell and make title to, upon such terms and conditions as it deems advisable, any real estate....” S.C. Code Ann. § 59-119-70. Clemson University may issue municipal revenue bonds which shall be deemed a “contract between the university and the several holders of such bonds....” S.C. Code Ann. §§ 59-119-510 – 520. These bonds are exempt from state taxation and expressly “shall not be obligations of the State.” S.C. Code Ann. §§ 59-119-540 – 590.

In addition to revenue bonds, Clemson University may also incur debt through Auxiliary Facilities Revenue Bonds and Athletic Facilities Revenue Bonds. S.C. Code Ann. §§ 59-119-710 – 1050. These bonds are also state tax exempt and the state is without any obligation for these bonds. Id. Statutory provision provide “The faith and credit of the State may not be pledged for the payment of the principal and interest of the bonds.” S.C. Code Ann. §§ 59-119-760 & 960.

Thus, the General Assembly’s express establishment of Clemson University as a “municipal corporation,” conferred upon it full corporate powers upon it as a “body politic and corporate.” Its governance model makes Clemson University virtually autonomous from the State. The authority of Clemson University to raise money and incur debt without any obligations of the State is further proof it is not a mere state agency. These provisions and distinctions make Clemson University different and therefore unique among state-supported colleges and universities. This Court must conclude that Clemson University is a municipality and not a mere arm of the state for purposes of § 1983.

(e) **For other reasons, Clemson University should be found to be a “person” for the purposes of § 1983.**

Even if this Court were to accept Defendant Clemson University’s contention that it is only a “special purpose district” or “political subdivision”, this type of local government is also considered a “person” under § 1983. S.C. Code Ann. § 4-8-10 expressly provides that a “special purpose district” is considered “local government” and not deemed a state agency or department. Thus, if Clemson University is deemed a “special purpose district” it is still deemed a “person” subject to suit under § 1983. Monell, 436 U.S. at 663, 98 S.Ct. 2018; 18 U.S.C. § 1983 (holding that political subdivisions of states, along with their agencies and officials, are “person[s]” for the purpose of § 1983 liability and that states, state agencies, and state officials sued in their official capacity are not.); see also Will v. Michigan Dept. of State Police, 491 U.S. 58, 71, 109 S.Ct. 2304, 105 L.Ed.2d 45 (1989); Holloway v. Brush, 220 F.3d 767, 772 (6th Cir.2000) (holding that Political subdivisions of a state are “persons” for purposes of § 1983 liability).

(2) **Troutman was an employee of Clemson University**

Defendants claim that Troutman was not an employee of Clemson University, but rather an employee of the board. This contention is also disingenuous and without merit. Troutman amended his Complaint to add Clemson University, in large part, due to allegations pled in Defendants initial answer that Clemson University is the correct party in interest. (Answer to Am. Compl. ¶ 20).

Troutman was employed by Clemson University as the executive secretary of the board. The Amended Complaint alleges that Troutman was an employee of Clemson University. (Am. Compl. ¶ 23). For purposes of this motion, the Court must accept these allegations as true. Jenkins v. McKeithen, 395 U.S. 411, 421-22, 89 S.Ct. 1843, 23 L.Ed.2d 404 (1969). His attached W-2 Form indicates that he was employed by Clemson University. (Affidavit, Exhibit 3

of Affidavit). The State Employer ID # is 25030630-6. The Federal Employer ID # is 57-6000254. Both employer identification numbers are for Clemson University. Thus, Defendants' argument that Troutman was not employed by Clemson University is without merit.

(3) Clemson University has waived any claim of sovereign immunity.

Clemson University has waived any defense of sovereign immunity because this case was unilaterally removed from the Richland County Court of Common Pleas² to the Federal District Court of South Carolina. Under Lapides v. Board of Regents of the University System of Georgia, 535 U.S. 613 (2002), the Supreme Court held that removing a lawsuit from state court to federal court waives sovereign immunity otherwise afforded by the eleventh amendment. In Lapides, a professor brought against the University System of Georgia and university officials in State Court. The Defendants moved the case to the United States District Court. The Supreme Court in its decision established a bright line rule that removal of an action filed in state court without consent of the Plaintiff waives any sovereign immunity claim.

The Court reasoned: "It would seem anomalous or inconsistent for a State both (1) to invoke federal jurisdiction, thereby contending that the "Judicial power of the United States" extends to the case at hand, and (2) to claim eleventh amendment immunity, thereby denying that the "Judicial power of the United States" extends to the case at hand. And a Constitution that permitted States to follow their litigation interests by freely asserting both claims in the same case could generate seriously unfair results." Id. In Lapides the Supreme Court reiterated the long standing rule first pronounced in Clark v. Barnard, 108 U.S. 436, 447, 2 S.Ct. 878, 27 L.Ed. 780 (1883) that a state's voluntary appearance in federal court amounts to a waiver of its Eleventh Amendment immunity.

² It is important to note under the South Carolina Tort Claims Act, S.C. Code Ann. § 15-78-10 *et. seq.*, sovereign immunity was abrogated and the General Assembly expressly provided that public policy demanded limited liability for tortious conduct limited under the Act.

The holding of Lapides is squarely applicable in this case. Troutman filed his action in state court. Defendants removed it to federal court and now claim eleventh amendment immunity. This unfair result is what the Lapides decision intended to prevent. Thus, Defendants waived the defense of sovereign immunity.

Defendants attempt to make something out of the fact that Clemson University was not added as a Defendant until after the case was removed to federal court. As the Court is well aware, Troutman could not amend his Complaint in state court since the case was unilaterally removed by the Defendants. See Fed. R. Civ. P. 81(c) and 15(a). Troutman amended his complaint, in large part, for the reason Defendants filed an answer alleging that Clemson University was the proper entity to be named. (Answer to Am. Compl. ¶ 20). In order to name the correct legal defendant, Clemson University was added. Further, under S.C. Code Ann. § 56-119-60, a suit against the board must be brought in “its corporate name” of Clemson University. Additionally, Defendants’ prior assertion that a suit against the board of trustees is a suit against Clemson University undermines its argument that sovereign immunity is applicable.

Finally, it is well settled that political subdivisions such as Clemson University are not entitled to eleventh amendment immunity. See, e.g., Bd. of Trustees of Univ. of Ala. v. Garrett, 531 U.S. 356, 369, 121 S.Ct. 955, 148 L.Ed.2d 866 (2001) (holding that eleventh amendment immunity does not extend to forms of local government); Moor v. County of Alameda, 411 U.S. 693, 717-721, 93 S.Ct. 1785, 36 L.Ed.2d 596 (1973).

CONCLUSION

For these reasons, Plaintiff respectfully submits this Honorable Court should deny Defendant Clemson University's Motion to Dismiss Plaintiff's Section 1983 Claim.

Respectfully submitted,
COLLINS & LACY, P.C.

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August 7, 2008

ATTORNEYS FOR PLAINTIFF

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

Chalmers Eugene Troutman, III,)	
	)	CIVIL ACTION NUMBER: 3:08-cv-449-MJP
)	
Plaintiff,)	
)	
vs.)	
)	
Leon J. Hendrix Jr., J.J. Britton, M.D., Bill)	
L. Amick, Thomas C. Lynch Jr., Louis B.)	
Lynn, Patricia H. McAbee, Leslie G.)	
McCraw, E. Smyth McKissick III, Thomas	)	CERTIFICATE OF SERVICE
B. McTeer Jr., Robert L. Peeler, William C.)	
Smith Jr., Joseph D. Swann, all in their)	
individual capacities and in their official)	
capacities, the Clemson University Board of)	
Trustees, James F. Barker, Doris R. Helms)	
and Clayton D. Steadman, all in their)	
individual capacities and in their official)	
capacities,)	
)	
Defendants.)	

CERTIFICATE OF SERVICE

This is to certify that on this 7th day of August, 2008, a true and correct copy of Plaintiff's Memorandum in Opposition to Defendant Clemson University's Motion to Dismiss Plaintiff's Section 1983 Claim is being electronically transmitted to the Clerk of Court using the ECF System for filing and transmittal of a Notice of Electronic Filing to the following ECF registrants:

COUNSEL SERVED:

Joseph A. Rhodes, Jr., Esquire
Thomas A. Bright, Esquire
Lewis T. Smoak, Esquire
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Greenville, SC 29602
Attorneys for Defendants

/s/ Joel W. Collins, Jr.

Chalmers Eugene Troutman, III,

Plaintiff,

vs.

Leon J. Hendrix, Jr., J.J. Britton, M.D., Bill
L. Arnick, Thomas C. Lynch, Jr., Louis B.
Lynn, Patricia H. McAbee, Leslie G.
McCraw, E. Smyth McKissick, III, Thomas
B. McTeer Jr., Robert L. Peeler, William C.
Smith, Jr., Joseph D. Swann, the Clemson
University Board of Trustees, Clemson
University, James F. Barker, Doris R.
Helms and Clayton D. Steadman,

Defendants.

CIVIL ACTION NUMBER: 3:08-cv-449-MJP

**AFFIDAVIT OF CHALMERS EUGENE
TROUTMAN, III**

PERSONALLY APPEARED BEFORE ME, CHALMERS EUGENE TROUTMAN, III,

who upon being duly sworn, deposes and states as follows:

1. I was requested by my attorneys to review my files to see if I had any documents bearing on the legal status of Clemson University. I am advised the Defendants claim Clemson University is a mere agency of the Government of the State of South Carolina.
2. I have reviewed S.C. Code Ann. 59-119-310 which defines Clemson University as a municipality. I have reviewed the "Life Trustee Oath."
3. I have in my possession a memorandum prepared by Clemson University General Counsel Clay Steadman, a copy of which is attached as Exhibit 1 to this Affidavit. This document was given to me and my secretary, and several non-administrators of the University,

including Brett Dalton and Alan Godfrey, who attended the Summer 2006 Clemson University Board of Trustees Retreat, unsolicited, by Mr. Steadman himself. I received this memorandum prior to the retreat as part of a briefing book. These books were given to all non-administrators who participated in the retreat. I believe it addresses the issue of the status of Clemson University. At that meeting, the Trustees stated, as reflected in the notes of the meeting by the meeting facilitator, Nancy Loeb, the Clemson University Board of Trustees, as the governing authority of Clemson University, would never cede to the State of South Carolina, abrogate, or in any way diminish their complete authority to govern Clemson as provided by the will of Thomas Green Clemson.

4. I have attended numerous meetings of the Clemson University Board of Trustees. I have heard most, if not all, of the Trustees state that Clemson University and its Board of Trustees are autonomous from and independent of the South Carolina General Assembly, the Governor of the State of South Carolina, the Commission on Higher Education, and any other agency of the State. I have heard Trustees boastfully claim they can do "anything they want to do" or words to that effect. In the course of these conversations and discussions, I have heard all of the Trustees verbally state that Clemson University is not subject to any state governmental restraint, control or exercise of authority. The Life Trustees have sworn and signed an Oath that they "will uphold, protect, and defend the will of Thomas Green Clemson." Attached as Exhibit 2 is a copy of that oath. I have heard certain life trustees, including Bill Hendrix, J.J. Britton, Les McCraw, Lawrence Gressette and Tom McPeet, say in meetings of the life trustees where the elected trustees were excluded, that their authority and powers are superior to those of the elected trustees. The Trustees and various members of the University administration have often stated in my presence that Clemson University enjoys a unique independent status unlike the

other public colleges and universities not only within the State of South Carolina, but also those in the entire nation.

5. At all times mentioned in this lawsuit, I understood that I was an employee of Clemson University, which is a municipality. Attached to this affidavit as Exhibit 3 is one of my W-2 Wage and Tax Statements indicating that "Clemson University" is my employer. The Statement shows a South Carolina Employer's State ID Number and a Federal Employer Identification Number for Clemson University.

6. In support of Plaintiff's Memorandum in Opposition to Defendants' Motion to Strike Punitive Damages, attached hereto as Exhibit 4 is a letter I received on August 4, 2008 from Dr. Linda Fulton.

FURTHER, YOUR AFFIANT SAYETH NAUGHT.

Chalmers Eugene Troutman III
CHALMERS EUGENE TROUTMAN, III

SWORN to and SUBSCRIBED before me
this 7th day of August, 2008

Kendra L. McAlister
NOTARY PUBLIC for South Carolina

My Commission Expires: August 29, 2013

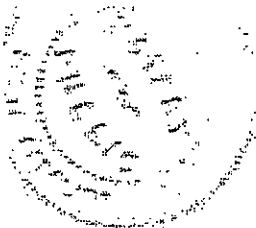


EXHIBIT 1

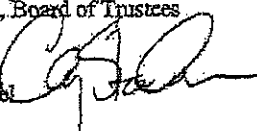
CLEMSON
UNIVERSITY

RETREAT 2006

CONFIDENTIAL ATTORNEY - CLIENT PRIVILEGE
CONFIDENTIAL ATTORNEY WORK PRODUCT

MEMORANDUM

TO: J.J. Britton, M.D.
Vice Chairman, Board of Trustees

FROM: Clay Steadman
General Counsel 

DATE: May 11, 2006

SUBJECT: Legal Analysis of Thomas Green Clemson Will

Attached, per your request, is a legal analysis of the Clemson Will. I have focused on those provisions of the Will that relate to governance and to the authority and powers of the Board of Trustees. As this is a legal opinion rendered to you in your capacity as Vice Chairman of the Board of Trustees, I have not shared this document with any other persons. It is entirely up to your discretion with whom you share this material, however, I will note that distributing the document to persons other than Trustees (active or emeritus) or administrators of the University may compromise any attorney-client privilege that might otherwise apply.

I hope that I have addressed those areas of specific interest to you but please let me know if you have any questions or if there is anything further I can do to be of assistance to you.



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THE LAST WILL AND TESTAMENT

OF

THOMAS GREEN CLEMSON;

A BRIEF LEGAL ANALYSIS

Thomas Green Clemson died on April 6, 1888 leaving in his Last Will and Testament a gift of historic implications for the people and State of South Carolina. The Will provided for the donation of Clemson's estate at Fort Hill totaling approximately 814 acres, along with cash and other assets valued at the time at approximately \$100,000, to the State of South Carolina for the purpose of establishing an "agricultural college". The Will is an inspiring work of foresight and legal craftsmanship. Its straight-forward simplicity belies the subtlety of Clemson's design in establishing the creation and governance of the institution that has become its namesake's University. The purpose of this paper is to examine those specific provisions of this remarkable document that affect the governance of Clemson University.

The Will

There are a number of specific provisions in the Will that bear directly on the governance and operation of Clemson University and while they are in many cases already well-known, it may be helpful to summarize those items that may be relevant to the issue of the authority to govern.

Item 1 of the Will contains the basic devise of Clemson's estate to the State of South Carolina for the express purpose of establishing an agricultural college at that location. This gift is conditioned upon the South Carolina legislature affirmatively accepting the gift, including all terms and conditions stated in the Will, within a period of three years from the probate of the Will. This section also specifies that the property is to be held by the State "so long as it, in good faith, devotes said property to the purposes of the donation".

Item 2 describes the selection and duties of the Board that is to govern the affairs of the institution created by the Will. Seven initial trustees are named by Clemson and these "life Trustees" are expressly empowered to fill all vacancies among their members. Additionally, the Will allows the S.C. Legislature to appoint up to six additional trustees in the event it accepts the gift in the manner proscribed in the Will. Item 2 clearly states that the Board of Trustees shall never increase to a number greater than thirteen, making it clear that the life trustees are always to be in the majority, thereby allowing the Legislature to influence but not control the governance of the University.

Item 2 also specifically states that the rights of the Board of Trustees shall never be "taken away or conferred upon any other man or body of men". The Preamble to the Will confers on the Board "the full authority and power to regulate all matters pertaining to said institution". The Will goes on to enumerate some of these specific powers as the right to "fix the course of studies, to make rules for the government"

of the institution and to change the rules "as in their judgment, experience may prove necessary". The power thus delegated to the Board is without limitation or exception.

Finally, in Item 3, the Will provides for an alternative disposition of Clemson's estate in the event that the Legislature fails to accept his donation in the manner mandated in the Will. In the event of such a default, his land and other property — exclusive of some minor bequests to friends and family — would go to a trust for the establishment and operation of a school for the youth of South Carolina. The details of this alternative bequest are of limited interest given the fact that the Legislature did in fact accept Clemson's bequest. However, the fact that an alternative was explicitly included in the Will is important in analyzing the seriousness with which he considered the conditions his Will places upon the State's acceptance of his proposed gift.

Charitable Trust

Having provided a summary review of the key terms of the Will, it is important to discuss their legal implications, beginning with the type of legal entity created. That legal entity is a charitable trust.

To qualify as a charitable trust, it must be established that the donor's intent was charitable and that the beneficiaries are an indefinite group composed of society as a whole or a reasonably large segment of society as a whole. Clemson clearly expresses the charitable intent of his gift when he states in the Will that his "purpose is to establish an agricultural college which will afford useful information to the farmers and mechanics" of the State of South Carolina. Similarly, the "farmers and mechanics" of South Carolina would meet the test of an indefinite group composed of a reasonably large segment of society as a whole. Thus, the Will would seem to conform to the legal definition of a charitable trust.

Charitable trusts are accorded "particular favor" and courts will construe them, if at all possible, so as to carry out the general intent of the donor. Generally, once a charitable trust is created it cannot be modified. However, South Carolina courts have recognized a concept known as administrative or equitable deviation which authorizes a court to make changes in the administration of the trust provided certain, very narrow criteria are met. It is possible that the Will could be challenged on the basis of equitable deviation, however, it is unlikely that such a challenge would be successful.

For a court to apply equitable deviation it must first be proven that the intent of the trust is impractical or illegal to enforce. Second, it must be established that the provision which is alleged to be impractical or illegal is due to circumstances not known or anticipated by the donor at the time the gift was made. In the case of the Will, the intent is very simply to establish a college to be governed by a Board of Trustees with full authority and power to regulate all matters pertaining to its governance. The fact that Clemson University has existed and thrived for over one hundred years pursuant to this form of governance would seem to offer conclusive evidence that it is not "impractical" to continue enforcing the terms of the Will as it is written. Furthermore, there is currently no State or Federal law which has been interpreted as making it "illegal" for Clemson University to be governed by a Board of Trustees as provided in the Will.

Whether or not a State statute mandating the creation of a state-wide governance structure for higher education would render the charitable trust created by the Clemson Will "illegal" is an interesting question. It seems unlikely that the Legislature would enact a statute that expressly made the existence of a governing board for an institution of higher education a crime. The harder question is whether or not a court considering a challenge to the Will under equitable deviation would find that a law mandating that all public universities subject themselves to the authority of a state-wide governing body would render the provision of the Will creating the Board of Trustees "illegal". Assuming, *arguendo*, that such a proposition was accepted by a court, it would still not resolve the issue. The second criterion necessary for an equitable deviation is that the condition giving rise to the claim of impracticality or illegality is one not known or anticipated at the time of the gift. In the case of the Will, this is clearly not so.

At the time of the Will's drafting, and at the time it was probated and its terms accepted by the State, the possibility of the State governing the administration of the proposed college to be created was fully known to Clemson. His reference in the Will to the governing structure of the "Agricultural College of

Mississippi" (now Mississippi State University), his specific direction that the authority of the Board never be taken away or abridged by the Legislature, and the stipulation for an alternative bequest in the event that the Legislature did not accept his gift with all of its conditions, all demonstrate Clemson's knowledge of the possibility of some form of governance which would usurp the power he specifically delegates to the Board in his Will.

In the event that a court determined that a statute creating a state-wide governance structure made the Will's purpose illegal but found that the second criteria – that of the illegality being unknown at the time of the bequest – was not met, the court would seem to have no option but to declare the Will void. The effect of this would be to essentially "privatize" the University by judicial fiat. This seems a highly unlikely scenario.

Based upon an analysis of the terms and their probable construction in the event of a legal challenge, it seems virtually certain that the Will would be deemed to be a charitable trust, duly established according to the laws of this State. Furthermore, any challenge to the application of the Will insofar as the power and authority of the Board of Trustees to govern in all matters pertaining to the University, would not succeed on the basis of equitable deviation.

Enforceable Obligations of the State of South Carolina

As noted at the outset, the Will conditioned the gift of Clemson's property to the State of South Carolina upon several specific occurrences. These include the establishment of an agricultural college on the real property conveyed by the Will, the application of all other assets (essentially cash) for the creation and operation of the college, and that the college would be governed by a Board of Trustees appointed and perpetuated according to the terms contained therein. Finally, the creation of the trust was contingent upon the S.C. Legislature formally accepting the gift and all of its conditions no later than three years after the death of Clemson.

On November 27, 1889, the South Carolina General Assembly enacted an Act accepting the "devise and bequest of Thomas G. Clemson subject to the terms and conditions set forth in said last will and testament". The Act was duly approved by the Governor on November 27, 1889. On December 6, 1889, Chief Justice W.D. Simpson issued an opinion confirming that in taking this action, the Legislature and the Governor had accepted Clemson's gift "subject to the terms and conditions set forth in his last will and testament". The cumulative effect of these three, independent acts of the three constitutional branches of State government was to create the charitable trust discussed earlier.

The Act of Acceptance expressly acknowledges that the University shall be under the management and control of a Board of Trustees appointed as specified in the Will. The Act further states that the Board shall have the following express powers: to prescribe the course of study, to declare and elect professors*, to fix the salaries of the professorate, and to make "all rules and regulations for the government of the college". Also noteworthy is language in the Act which specifies that the number of professors shall not exceed ten, that student tuition shall be forty dollars per annum, and that indigent students shall not be required to pay tuition.

The Act further states that a two-thirds vote of the Board of Trustees shall be necessary to authorize expenditure of any moneys appropriated by the State for use by the college and for the transfer or investment of any money or property. It also provides that any property purchased by the Board of Trustees with funds appropriated by the State shall be deemed to be State property.

The language of the Will, the Act and Chief Justice Simpson's opinion are all so clear and unambiguous as to leave no doubt of the validity of the trust thereby created. However, it is much less clear what legally enforceable obligations the State has assumed by virtue of its acceptance of the Will. The only reference in the Will to an on-going obligation of the State to support the University is a reference in the Preamble where Clemson says that he hopes he does not "overrate the intelligence of the legislature of South

Carolina...in assuming that such appropriations will be made as are necessary to supplement the fund resulting from the bequest herein made." The Will does not contain any requirement that the State provide any specific financial or other support for the creation or operation of the University. It is possible that an argument could be made that the language in Item 1 (e.g., "the State of South Carolina may accept said property as a donation from me, for the purpose of thereupon founding an agricultural college" and that the gift is to be held by the State "so long as it, in good faith, devotes said property to the purposes of the donation") implies an obligation on the part of the State to provide financial support for the University. It is also possible that an argument could be made that there is an implied obligation of the State to provide some minimal level of funding and other support by virtue of its acceptance of the gift. However, anyone opposing such interpretations would undoubtedly cite the language of the Will, and the lack of any explicit *quid pro quo* regarding State support as evidence that Clemson expressly chose not to make such support a condition of his bequest. It would be hard to overcome such an argument.

If we assume that neither the Will nor the Act of Acceptance create any obligation on the part of the State to provide support to the University, then we must accept the consequence that the State could withdraw all support at any time and that the University would have no legal grounds to challenge such an action.

Authority of the Board of Trustees

The Will expressly grants to the Board the authority to govern the University. As already noted, the powers are without restriction or limitation. Any attempt by the State to usurp all or any part of that authority would be a direct violation of the condition of the Will that forbade the Board's authority from being taken away or abridged by any "man or body of men". The Board cannot be compelled or forced to accept such an action by the Legislature or any other entity. Therefore, no entity or body that would exercise any authority over the governance of the University would be valid unless the Board chose to accept that authority.

Although the Board has unlimited authority relative to the governance of the University, it is not necessarily compelled to exercise that power. Again, the Will is very clear that the Board shall have "full power and authority" regarding all matter pertaining to the institution. They are expressly authorized to make decisions and to change them, bound only by their own collective judgment. Implicit in this authority is the right not to exercise their authority or to delegate it to some other person or body. The Board has delegated many of the routine, administrative tasks of the University to the President and others, including the faculty. These delegations do not diminish or abridge the powers of the Board, nor are they irrevocable. The Board may at any time revoke or amend any such delegation of authority "as in their judgment, experience may prove necessary".

It would seem that a delegation of the Board's authority to an external entity, including a governmental entity, would be analogous to its delegation of authority to a University administrator. Clearly the Board has the authority to do so and equally clearly its right to revoke or change that delegation. The Board has made many such delegations over the course of the life of the University. These delegations of authority to a governmental entity, state or federal, are not irrevocable abdications of the Board's powers but defined and limited agreements on the part of the Board not to exercise one of its specific powers in exchange for some benefit or consideration on the part of the governmental entity. They are essentially a series of "contracts" between the Board and the government entity wherein the consideration is the acceptance of some right or benefit in exchange for the Board's agreement not to enforce one or more of its enumerated powers. A recent S.C. Supreme Court decision reinforces the concept that a "contract" exists between a state agency and a private entity when the private entity agrees to concede a right it would otherwise have in exchange for the receipt of a governmental benefit. See, *Layman, et al. v. The State of South Carolina and the South Carolina Retirement System*, S.C. Sup. Ct., Opinion No. 25146, May 4, 2006.

A notable example of a voluntary agreement to accept obligations associated with a governmental benefit are the University's agreement to comply with the terms of the Federal Educational Rights to Privacy Act in exchange for the right to receive federal funds from the U.S. Government through the Department of Education. Another example is the University's decision to submit all new degree offerings to the South Carolina Commission on Higher Education for approval as partial consideration for its receipt of an annual

appropriation from the S.C. General Assembly. In both cases, the Board could have elected not to accept the proffered conditions and therefore not be entitled to the benefits thereby conferred.

The voluntary and contractual nature of these governmental regulations is further illustrated by the fact that virtually all private institutions adhere to them to the same extent as public institutions do. If they wish to accept the government's largesse, they must be willing to accept the conditions attached to them. Interestingly, one of the most notable examples to the contrary exists just next-door to Clemson at Bob Jones University. Due to the religious beliefs of their founder and governing body, they are unwilling to accept many of the conditions that attach to eligibility for receipt of state and federal funds.

Not only does the Board have the right to refuse to accept conditions attached to the receipt of state and federal benefits, the Board has the right to rescind any authority it has ceded as a result. If it were willing to accept the consequences of the loss of benefits that would ensue, the Board could refuse to accept any such benefits.

Conclusion

In summary, there seems to be little doubt as to the validity of the terms of the Clemson Will or to their enforceability. The authority of the Board of Trustees to determine all matters pertaining to the governance and operation of the University is unbridged. Inherent in that authority is the right of the Board to choose not to exercise any or all of its authority or to delegate some or all of its powers to a third party. The obligation of the State of South Carolina to support the operations of the University is ambiguous. There is no express language in the Will or the Act of Acceptance that gives the University a clearly enforceable legal right to compel any level of financial support on the part of the State.

EXHIBIT 2



LIFE TRUSTEE OATH

I do solemnly swear (or affirm) that I voluntarily accept the duties of a Life Trustee of Clemson University, to which office I have been elected, and that I will, to the best of my ability, discharge the duties and responsibilities thereof in accordance with the laws of this State and the policies of the Life Trustees, as may be changed from time to time by the Life Trustees, and that I will preserve, protect and defend the constitution of this State and of the United States, and that I will uphold, protect and defend the will of Thomas Green Clemson.

David H. Wilkins

EXHIBIT 3

EXHIBIT 4

RECEIVED

AUG 04 2008

Gene Troutman

Here,

Stapled is the packet (affidavit)
I sent to Joel - I thought of
a couple of other supporting
documents that I should have
added - if helpful I can
send to Joel or you can give
to him - if helpful I can get
them notarized also -

If there is any other way I
can be of help let me know -
In preparing this affidavit
and reviewing these documents
it became clear to me that
Clemson will do whatever to
cover up wrong doings of those in
power - this is widely known
now by others at the University -
Others who are aware of problems,
but who are not willing to
report them because they know
how reported concerns have been

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handled (or not handled and covered up) in the past. No one can go to the General Council's office, Baker's office, and now know that even the Board of Trustees office would be no help!!

Hope all OK with you -
Thanks again for keeping your ideals - perhaps it will actually help to make Clemen a better place for all!

Junker

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

Chalmers Eugene Troutman, III,

Plaintiff,

vs.

Leon J. Hendrix, Jr., J.J. Britton, M.D., Bill
L. Amick, Thomas C. Lynch, Jr., Louis B.
Lynn, Patricia H. McAbee, Leslie G.
McCraw, E. Smyth McKissick, III, Thomas
B. McTeer, Jr., Robert L. Peeler, William
C. Smith, Jr., Joseph D. Swann, the
Clemson University Board of Trustees,
Clemson University, James F. Barker,
Doris R. Helms and Clayton D. Steadman,

Defendants.

CIVIL ACTION NUMBER: 3:08-cv-449-MJP

**PLAINTIFF'S MEMORANDUM IN
OPPOSITION TO DEFENDANTS'
MOTION TO STRIKE PUNITIVE
DAMAGES CLAIM IN PRAYER FOR
RELIEF SUBSECTION (g)**

Plaintiff Chalmers Eugene Troutman, III ("Troutman") hereby submits this memorandum in opposition to Defendants' Motion to Strike Punitive Damages Claim in Prayer for Relief Subsection (g). The argument advanced by the Defendants' is based solely on the case of City of Newport et. al. v. Fact Concerts, Inc., et. al., 453 U.S. 247 (1981).

(1) City of Newport does not create a bright line rule that punitive damages are unrecoverable.

Defendants argue that City of Newport creates a bright line rule that punitive damages are not available against a municipality under a § 1983 claim. City of Newport does not go this far. City of Newport held that municipalities are immune from punitive damages under the factual circumstances of that case. In advancing this argument, Defendants must concede that Clemson University is a municipality or City of Newport would not apply.

In Footnote 29 of City of Newport, the Supreme Court states: “It is perhaps possible to imagine an extreme situation where [municipalities] are directly responsible for perpetrating an outrageous abuse of constitutional rights. Nothing of that kind is presented by this case. Moreover, such an occurrence is sufficiently unlikely that we need to anticipate it here.” The Court further states that “punitive damages might be award in appropriate circumstances in order to punish violations of constitutional rights.” Id. at 267-68. Troutman submits this case presents these circumstances and would warrant a ruling that punitive damages should be allowed.

In a § 1983 action, a plaintiff is entitled to recover the full measure of damages typically available, including damages for the emotional distress caused by the government’s unreasonable conduct, and even punitive damages in the proper case. See Memphis Cmty. Sch. Dist. v. Stachura, 477 U.S. 299, 305-06 (1986) (“We have repeatedly noted that 42 U.S.C. § 1983 creates a species of tort liability in favor of persons who are deprived of rights, privileges, or immunities secured to them by the Constitution. Accordingly, when § 1983 plaintiffs seek damages for violations of constitutional rights, the level of damages is ordinarily determined according to principles derived from the common law of torts.”) (footnote, citations, and internal quotation marks omitted); Smith v. Wade, 461 U.S. 30, 56 (1983) (“[A] jury may be permitted to assess punitive damages in an action under § 1983 when the defendant’s conduct is shown to be motivated by evil motive or intent, or when it involves reckless or callous indifference to the federally protected rights of others.”); Presley v. City of Charlottesville, 464 F.3d 480 (4th Cir. 2006) (J. Traxler, concurring).

Troutman is expected to present evidence at trial that Defendants acted with evil motive and intent, and that their actions were reckless. Evidence of similar rights violations will be offered to prove that Defendants acted with callous indifference to Plaintiff’s and others’

federally-protected right of freedom of speech. In support of this position, attached hereto is an affidavit from Dr. Linda Fulton, a former employee of Clemson University. (Exhibit 1, Affidavit of Linda Fulton). Also attached as an exhibit to Troutman's affidavit filed in opposition to Defendant Clemson University's Motion to Dismiss, is a letter he received from Dr. Fulton discussing Defendants' pattern and practice of retaliation. (See Exhibit 4 to Plaintiff's Affidavit).

(2) Defendants waived any immunity from punitive damages by removing this case to federal court.

Defendants waived sovereign immunity by removing this lawsuit from state court to federal court. See Lapides v. Board of Regents of the University System of Georgia, 535 U.S. 613 (2002). The immunity afforded in City of Newport from punitive damages was based on sovereign immunity.

Municipal immunity for punitive damages is the direct offspring of sovereign immunity. City of Newport v. Fact Concerts, Inc., 453 U.S. 247, n. 19 (1981). Sovereign immunity begins with the notion that "the King can do no wrong," and that he could not be sued in his own courts. W. Prosser, The Law of Torts 125, at 996-97 (3d ed.1964). Therefore, Defendants have waived any immunity defense to punitive damages by waiving its sovereign immunity defense.

Thus, because Defendants expressly waived their right to sovereign immunity when they removed this case to federal court, they have also waived their claim of immunity from punitive damages under City of Newport.

CONCLUSION

For these reasons, Troutman respectfully requests this court deny Defendants' Motion to Strike Punitive Damages Claim contained in the Complaint, Prayer for Relief, Subsection (g).

Respectfully submitted,
COLLINS & LACY, P.C.

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August 7, 2008

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

Chalmers Eugene Troutman, III,

Plaintiff,

vs.

Leon J. Hendrix Jr., J.J. Britton, M.D., Bill
L. Amick, Thomas C. Lynch Jr., Louis B.
Lynn, Patricia H. McAbee, Leslie G.
McCraw, E. Smyth McKissick III, Thomas
B. McTeer Jr., Robert L. Peeler, William C.
Smith Jr., Joseph D. Swann, all in their
individual capacities and in their official
capacities, the Clemson University Board of
Trustees, James F. Barker, Doris R. Helms
and Clayton D. Steadman, all in their
individual capacities and in their official
capacities,

Defendants.

CIVIL ACTION NUMBER: 3:08-cv-449-MJP

CERTIFICATE OF SERVICE

CERTIFICATE OF SERVICE

This is to certify that on this 7th day of August, 2008, a true and correct copy of the Plaintiff's Memorandum in Opposition to Defendants' Motion to Strike Punitive Damages Claim in Prayer for Relief Subsection (g) is being electronically transmitted to the Clerk of Court using the ECF System for filing and transmittal of a Notice of Electronic Filing to the following ECF registrants:

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/s/ Joel W. Collins, Jr.