

1/3/23

No. 22-826

IN THE
SUPREME COURT OF THE UNITED STATES

SOHAIL N. BUTT
Petitioner,
vs.

JOHN BRIGHAM ZIMMERMAN ET AL
Respondents.

On Petition for a Writ of Certiorari
to the United States Court of Appeals
For the Eleventh Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Petitioner Sohail N. Butt sought license to practice mental health counseling in the State of Georgia in 2014. Respondents at their board meeting evaluated, voted and unanimously agreed to grant Mr. Butt his license. The license never materialized.

Respondents violated Mr. Butt's constitutional right to equal protection before law and to due process of law with consequent denial of his constitutional right to pursue a calling of his choosing and the property right to earn a living contrary to U.S. Const., 14th Amend., Sec. 1. For almost nine years, Mr. Butt petitioned and appealed to every branch of state government seeking remedy. The State of Georgia has repeatedly "shut him down" and "tried to bury it". Now Respondents rely on *Wilson v. Garcia*, 471 U.S. 261 (1985) to claim the affirmative defense of statute of limitations to avoid liability under federal law.

Exceptional circumstances are presented to this Court. The Licensing Board did wrong but claimed sovereign immunity. Legal practitioners agreed, but in 2015 this Court stated otherwise. *N.C. State Bd. of Dental Exam'rs v. FTC*, 574 U.S. 494, 504 (2015). The Licensing Board did not enjoy sovereign immunity due to absence of supervision. In 2016 Georgia brought in law to comply with the ruling but offered no remedy and left a legal void.

The question presented is:

Petitioner is asking this court to waive the statute of limitations due to unique and exceptional circumstances. A just and equitable remedy is sought upholding the spirit and principles of laws. Justice

Elena Kagan expressed similar sentiments by asking “Isn’t the simplest thing just to say that the person isn’t harmed until the state process has come to an end and we know for a fact what the state judgment is?”¹

¹ <https://www.cnn.com/2022/10/11/politics/rodney-reed-stacey-stites-supreme-court-dna-testing>

LIST OF ALL PARTIES

The Petitioner is Sohail N. Butt.

The Respondents are: John Brigham Zimmerman, individually and in his capacity as executive director of the Georgia Composite Board for Professional Counsellors, Social Workers and Marriage & Family Therapists; and Arthur Williams², Ben Marion, Jack Perryman, Richard Long, Robert King, Steve Livingston, Tommy Black, Tonya Barbee, and Will Bacon, individually and in their capacities as board members of the Georgia Composite Board for Professional Counsellors, Social Workers and Marriage & Family Therapists.

² Mr. Arthur Williams is now deceased and should no longer be considered a Respondent in this case.

STATEMENT OF RELATED CASES

The proceedings identified below are directly related to the above-captioned case in this Court.

Sohail N. Butt v. National Board of Certified Counselors, Inc., In the Superior Court of DeKalb County, State of Georgia, No. 2015CV1201 (August 4, 2015)(written findings of fact and conclusions of law); appealed to Georgia Court of Appeals at Appeal No. A16A0268 (June 22, 2016); Cert. denied on February 6, 2017, Case No. S16C1808.

Sohail N. Butt v. Brian P. Kemp in his Official Capacity as Governor for the State of Georgia, In the Superior Court of Fulton County, State of Georgia, No. 2019CV328138 (March 23, 2022)(written findings of fact and conclusions of law); appealed to Georgia Court of Appeals at Appeal No. A22A1580, *pending*.

Sohail N. Butt v. Brad Raffensperger in his Official Capacity as Secretary of State of Georgia, In the Superior Court of Fulton County, State of Georgia, No. 2019CV329033 (Sept. 2, 2021)(written findings of fact and conclusions of law).

Sohail N. Butt v. Kimberly M. Esmond Adams in her official capacity as Judge of the Superior Court of Fulton County, In the Superior Court of Fulton County, State of Georgia, 2022CV362087 (May 12, 2022)(written findings of fact and conclusions of law); appealed at Appeal No. A23A0093 (Dec. 1, 2022).

Sohail N. Butt v. Zimmerman et al. In the Superior Court of Bibb County State of Georgia, No. 2022-CV-076681 (Oct. 18, 2022)(written findings of fact and conclusions of law); pending appeal.

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PETITION FOR WRIT OF CERTIORARI

Petitioner Sohail N. Butt respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eleventh Circuit.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Eleventh Circuit is not reported but is available at 2022 U.S. App. LEXIS 27893 and is reproduced in Appendix A.

The opinion of the United States District Court for the Middle District of Georgia, Macon Division is not reported but is available at 2021 U.S. Dist. LEXIS 236435 and is reproduced in Appendix B.

JURISDICTION

The date of the decision sought to be reviewed is October 6, 2022. The jurisdiction of the U.S. Supreme Court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS AT ISSUE

U.S. Const., Amend. 14, §1

Sec. 1. [Citizens of the United States.] All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any

person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

42 U.S.C. § 1983

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

INTRODUCTION

On April 11, 2014, almost 9 years ago, Petitioner Mr. Sohail N. Butt attended the monthly board meeting for hearing of his appeal by the Georgia Composite Board for Professional Counselors, Social Workers and Marriage and Family Therapists (the “Composite Board”). At the appeal and following its protocol, inclusive of clearance from the assistant attorney general Patricia B. Downing, esq., a unanimous vote taken by Respondents deemed Mr. Butt qualified and competent to practice as a professional counselor in the state of Georgia.³ In response to Mr. Butt’s query he was informed that the issuance of license to practice was to go online in the next seven to ten days as stated by Respondent Zimmerman in front of all attendees of the Composite Board meeting.

On February 1, 2016, Respondent Zimmerman admitted to Mr. Butt that “we [the Composite Board] do not doubt your competence [to practice as a professional counselor].”⁴ On July 9, 2020, counsel Senior Assistant Attorney General Bryon Thernes and

³ Mr. Butt holds a Master of Arts degree in Cognitive Behavioral Therapy from the Irish College of Humanities and Life Sciences, Ireland, 2011, as well as a Bachelor of Arts in psychology (Government Murray College, Pakistan, 1979), a Bachelor of Arts in Counselling (Irish College of Humanities and Life Sciences, Ireland, 2009), an Associate’s Degree in Community Education (National University of Ireland Galway, Ireland, 2005) and a post-doctoral in Assessment and Treatment of Alcohol and Drug Problems (UC Berkley, 2013). Mr. Butt practiced counseling in the U.K and Republic of Ireland for circa 20 years before relocating to the United States. Mr. Butt is a naturalized citizen.

⁴ This was stated in a face-to-face conversation between Mr. Zimmerman and Mr. Butt on February 1, 2016. There is no written record of this conversation.

Assistant Attorney General Betsy Cohen for the State of Georgia, admitted that it was clear and evident that their client, Respondent Zimmerman lied during his deposition which was taken by Mr. Butt on July 8, 2020.⁵ There was no question about the statements of fact and truth as narrated by Mr. Butt, they acknowledged.

On August 4, 2016, former attorney general for the State of Georgia for seventeen years, Michael Bowers, Esq. informed Mr. Butt that “they [the State of Georgia] are dirty and you will never get a full hearing” on the merits of Mr. Butt’s case – “they [State of Georgia] will make sure of it.”⁶

The facts of this case illustrate how the rule of law has repeatedly failed Mr. Butt in pursuance of his established constitutional rights with abuse of authority to the fore and even the basic principles of law that even a first-year law student should know, as stated by former Dean Steven Kaminshine and former Associate Dean Roy Sobelson, Georgia State University College of Law, being ignored by state judiciary, repeatedly. *Prima facie* arbitrary application of law by the State of Georgia and its judiciary is practiced and present in all documents in

⁵ This admission was made on July 9, 2020, by Senior Assistant Attorney General Bryon Thernes in the presence of Mr. Butt and assistant attorney general Betsy Cohen in related case *Sohail N. Butt v. Brian P. Kemp in his Official Capacity as Governor for the State of Georgia*, In the Superior Court of Fulton County, State of Georgia, No. 2019CV328138.

⁶ This warning was conveyed to Mr. Butt by Mr. Bowers at a lunch meeting organized to discuss the conduct of the Composite Board and potential remedies. This discussion was not recorded but was witnessed by Ms. Rachel O’Toole, Esq. and Mr. Salim Jetha.

hand. Prevalence of judicial corruption in the state of Georgia and especially in Mr. Butt's case, incumbent Georgia Supreme Court Judge, Shawn LaGrua attested to the said fact in presence of Dean Kaminshine et.al. in November 2015.⁷ Certiorari is a lottery, and merit sees neither reason nor the light of day. Substantive issues become drowned by or subservient to procedural rules and laws limiting what cases and when such cases can come before the courts for proper adjudication and do not reflect the rule of law. Historically they usually end with legally defunct and constitutional non-compliant practices and court orders.

At its core, the rule of law requires the ruled and the rulers to be pliant, compliant and obedient to the rule of law. They must have the capacity to act as a restraint on arbitrary state power. For the rule of law to be present, the law must be capable of imposing meaningful restraint on the state. Arrogance and criminal negligence serve neither the individual nor en masse and become contraire to the very principles and functions of law.

If rules of procedures and precedent cause impediments to a person's constitutional rights through no fault of the petitioner due to flaws in constitution of the state statutes or their application and civil procedures, then lack of checks and balances nullifies the entire principle, application and practice of law. Lack of accountability hinders, impedes and even nullifies the application of true law and that, Honorable Justices should deem the entire legal

⁷ This discussion is unrecorded and was stated during the November 2015 Georgia State University College of Law admission to the Georgia Bar ceremony.

process unconstitutional and thereby unlawful. Without checks and balances, and without integrity and honesty in application, in this case the law has been applied in manners illegal and unconstitutional because they repeatedly contradict and defy the very principles for and upon which law was formulated. Evidence in hand shows egregious disregard of ethicata and respective code of ethics, repeatedly.

Agents and agencies of the State of Georgia have repeatedly exhibited all the traits of arbitrary exercise of state power. Its own agency refused to obey its laws. And the State of Georgia did nothing to rectify, remedy or offer remedy for egregious violations of law and civility. Mr. Butt went through every step and every hurdle, from direct appeal to the agency⁸, petitioning the state representatives⁹, calling upon the Secretary of State to act,¹⁰ meeting with chair of the judiciary committee to seeking intervention from the office of the Governor¹¹ and ultimately filing suit in state courts¹². All and sundry refused remedy or rectification.

⁸ Respondent Zimmerman, executive director of the Composite Board in April 2014, April 2015, December 2015, January and February 2016, May 2016, August – October 2016, May 2017, April 2019.

⁹ Representatives Matt Ramsey and Ronnie Mabra, January - May 2016; Governor's floor leader, Representative Chad Nimmer, March 2016 – July 2016; Representative Debra Bazemore, - January 2017 – January 2018; Chair of the Judiciary Committee, Representative Wendell Willard, July-December 2017.

¹⁰ January 2016 – May 2016.

¹¹ February 2016 – December 2016.

¹² 2015 to date. Not one court has heard the merits of Mr. Butt's petitions, with one except on a discrete issue of compliance or non-compliance with the Georgia Open Records Act, related case, *Butt v. Raffensperger*, 2019-CV-329033. Appendix E.

In continuum Mr. Butt's representations and petitions to every branch of government from 2014 till now, matters of law were brought to light that conflict with federal laws and in precedent are acts of felonious criminality. In elementary school the dog ate my homework was not an acceptable excuse but according to Georgia statue, O.C.G.A. § 50-14-70 *et seq.*, it is the law of the land. If we do not have the documents in hand, we do not have to produce them even though Georgia Archives clearly stated in their communication that such documents should be in their possession at the end of the gubernatorial term.¹³

Interestingly the disappearance and destruction of incriminating communications between Mr. Butt and Mr. Zimmerman coincided with hacking and destruction of the same from Mr. Butt's emails. These statutes are in direct conflict with federal laws. The state has repeatedly behaved in a criminal manner under the Open Records Act and the judges have concurred that the documents they don't have they do not have to produce. Mr. Butt was able to access and obtain one of these documents from another state agency through a simple personal request. What efforts did the state make? What efforts did the defendants make? The Georgia Archives stated in writing those documents should have been transferred to Georgia Archives, but the Office of the Governor neglected to transfer them upon change of administration. Surely by now God has blocked the State of Georgia from 'their' GPS by now.

It appears that the State of Georgia has granted itself a license to make all incriminating evidence disappear which flies in the face of federal law,

¹³ Related case, *Butt v. Kemp*, 2019-CV-328138. Appendix D.

something that is becoming evident from investigations and proceedings against former president Trump. In one of the said cases, *Butt v. Kemp*, the superior court judge mandated by statute, O.C.G.A. § 15-6-21(b) to rule upon a motion within 90 days, did not rule in over two years, such that Mr. Butt was forced to file a petition for writ of mandamus¹⁴ to compel her to do her job in accordance with statute.

The statute of limitations ran out, again.

What happened to Mr. Butt's constitutional rights? What Mr. Butt is asking this court to rule is: in the absentia of law and the existence of law which is contrary to federal law, the state of Georgia be held in contempt and humbly and respectfully begs of this court to make an order facilitating Mr. Butt and his pleadings to proceed for hearing in a federal court of law. The Federal court below has ruled that the statute of limitations has run out and thereby granted the state of Georgia its motion to dismiss due to expiry of time as applied in the statute of limitations. It is the state that ensured that statute of limitations ran out, repeatedly and not Mr. Butt's fault as evidence will show.

Mr. Butt is asking this court, *suo moto*, to make ruling facilitating this hearing in a federal court. Even in 2022 the State of Georgia has continued to persist in breaking the law to Mr. Butt's detriment. Emotional harm and mental distress continue to mount while financial demise remains critical.

¹⁴ Related case, *Butt v. Kimberly M. Esmond Adams in her official capacity as Judge of the Superior Court of Fulton County*, No. 2022-CV-362087.

Everything that is stated is contrary to law, hence can be deemed unlawful and a request is being made of the U.S. Supreme Court to clarify this matter of extreme concern, to uphold the principle of the Constitution and law and allow Mr. Butt remedy in federal court and in state court. This is necessitated because the Georgia Department of Law have repeatedly stated in their own submissions, especially in the federal Court that there are other avenues open to Mr. Butt where none seem to exist and neither has one been identified. Furthermore, all non-litigation avenues were pursued to exhaustion by Mr. Butt prior to his filing suit. Each and every court has unabashedly treated Mr. Butt abominably and denied lawful and justified platform in his search for remedy. If former attorney general Bowers words were to be taken on face value, then it can safely be deduced that all matters were dictated by the gubernatorial authority and facilitated by the Supreme Court of Georgia. The evidence is overwhelming.

None of what has occurred within the legal framework of the state of Georgia will stand up to scrutiny. It's unashamedly unlawful. It's unconstitutional. On October 3, 2022, Superior Court Judge Jeffrey O. Monroe stated from the bench, "of course [it's based in contract]."¹⁵ So how did Superior Court Judge Asha F. Jackson rule on August 4, 2015, that there was no contract? How does any of this stand up to scrutiny? How did the Georgia court of appeals fail on a very basic principle of law. It makes no sense, legal or otherwise because everything that occurred has crossed boundaries of law and accepted and acceptable legal practice/s. Former Dean of the

¹⁵ Related case, *Butt v. Zimmerman et al*, No. 2022-CV-076681, Transcript of oral hearing.

Georgia State University College of Law, Steven Kaminshine, and incumbent Supreme Court of Georgia Justice Shawn E. LaGrua's (graduation) impromptu retort rings true "they're all corrupt." Is this what the U.S. practice and profession of law has come down to – that a person is being 'lynched' and you say "ah well sure, they are all corrupt"?

Are we still living in the seventeenth century where a judge marches down the street, observes a lynching and talks to the attendees about Sunday school attendance? A real-life story narrated to Mr. Butt by a, Mr. Henry Sinkfield, an arborist and born and bred native of Senoia, Georgia "... this is what the judge used to do. While as a teenager I'm trussed up being pistol whipped by the sheriff's deputy, the judge looks at me and ignores me as if I don't exist "boys, how are you doin'? Just hangin' judge, just hanging'. The Judge laughed, tipped his hat and simply stated "don't be late for Sunday school." Justices, that man is still alive – Mr. Henry Sinkfield.

Old white men accused of lynching are still being arrested in the state of Georgia. This is another lynching that needs intervention. Like the officer's knee on George Floyd's neck which lasted 9 minutes and 29 seconds (9.29), the State of Georgia has knelt on Petitioner's neck for almost nine years. This needs to end.

STATEMENT OF THE CASE

In and around early March 2014, Mr. Butt applied to the Composite Board for license as a marriage and family therapist ("MFT") through endorsement. Doc. 1, ¶ 11. By letter emailed to Mr. Butt dated March 17, 2014, the Composite Board

denied Mr. Butt's application specifically informing Mr. Butt that he had the right to appeal the decision if he so requested in writing within 30 days. Doc. 1, ¶ 13, Doc. 1-3. Mr. Butt requested an appeal in writing. Doc. 1, ¶ 14.

Mr. Butt appeared before the Composite Board for hearing of his appeal on April 11, 2014. Doc. 1, ¶¶ 15-17; Doc. 1-4, p. 3 of 11. During the appeal hearing, the Board Members agreed that Mr. Butt could convert his application from one for license as MFT through endorsement to one for license as Licensed Professional Counselor ("LPC") through endorsement subject to a twelve-month period during which Mr. Butt would first practice as a licensed associate professional counselor ("LAPC"). Doc. 1, 62. The Board Members voted to grant Mr. Butt license as LAPC for twelve months and thereafter as LPC through endorsement. Doc. 1, ¶ 17.

The minutes of the April 11, 2014, Composite Board meeting do not record any vote taken on Mr. Butt's appeal. Doc. 1, ¶¶ 19-20; Doc. 1-4. The minutes of the Composite Board meetings on May 16, 2014, June 13, 2014, July 11, 2014, and August 8, 2014, do not record the vote proposed, seconded, and unanimously passed granting Mr. Butt license as LAPC through endorsement for twelve months, as LPC through endorsement, or any matter including Mr. Butt's appeal of denial of his application for MFT through endorsement. Doc. 1, ¶¶ 24-27; Docs. 1-6, 1-7, 1-8, 1-9. The minutes of meeting record votes on motions proposed, seconded, and taken with respect to hundreds of applicants for license. *Id.*

The license details were to go online within seven to ten days as per normal procedure as stated by

Mr. Zimmerman during the said meeting. Mr. Butt repeatedly emailed Respondent Zimmerman for issuance of Mr. Butt's license throughout the latter part of April and the months of May, June, and July 2014. Doc. 1, ¶ 22. Numerous of those near contemporaneous emails which confirm Mr. Butt's recollection of the appeal hearing were never retained or preserved by Respondents and were not produced in response to Mr. Butt's several subsequent open records requests. Appendix E.

On August 14, 2014, Mr. Butt was emailed a letter stating he was approved to register for and take the professional Counselors Licensure examination (the "NCMHCE") with the promise that upon passage of which he would be issued a license as LPC. Doc. 1, ¶ 23; Doc. 1-5. There is no record at all of any vote taken by the Composite Board to unilaterally approve Appellant to register for the NCMHCE. *Id.*, Doc. 1, ¶ 45. Mr. Butt never applied for license by examination.

Finding no alternative and in an attempt to obtain a license to practice, Mr. Butt took the NCMHCE on October 6, 2014. Doc. 1, ¶ 31. As a result of the NCMHCE's incorrect presentation of Georgia law pertaining a counselor's legal responsibilities and inaccurate presentation of approved evidence based clinical practice, Mr. Butt was marked as having failed the examination by approximately 2%. Doc. 1, ¶ 32. Neither the examination provider, NBCC, nor Respondents provided any avenue of resolution of complaints pertaining to NCMHCE. Doc. 1, ¶ 33. Mr. Butt sought resolution from both NBCC and Respondents. Doc. 1, ¶¶ 34-35. Neither provided any remedy or resolution. Doc. 1, ¶¶ 34-35.

Upon The Georgia Professional Regulation Reform Act becoming law in July 2016, and upon advice from then Secretary of State Brian Kemp's staff attorney, Ms. Candace Broce and then Secretary of state's special adviser, Mr. Grant Thomas, Mr. Butt submitted a petition pursuant to this to the Governor's office seeking oversight and remedy for the actions of the Composite Board's actions since the April 11, 2014, hearing as it pertained to Mr. Butt. The petition was denied on December 19, 2016. Appendix H

As a consequence of this and other subsequent unlawful conduct by Respondents all within the framework of the Complaint, Mr. Butt has been unable to secure employment, to earn a living or to pursue the calling of his choosing and has no income despite extraordinary talent and ability in the field of mental health counseling. Doc. 1, ¶¶ 8, 36-39, 46; see also Doc. 1 generally.

The complaint in the action below was filed on June 28, 2021, after Mr. Butt had filed several related cases and those had either stalled (*Butt v. Kemp*, an action to enforce compliance with the Open Records Act)¹⁶ or had worked their way through the court system to finality without resolution (*Butt v. NBCC*; *Butt v. Raffensperger*). Respondents were served in accordance with law on various dates between July 13, 2021, and August 20, 2021. Docs. 5-9, 11-14, 26, 31.¹⁷ Respondents filed their motion to dismiss on August 3, 2021. Doc. 17, 17-1. Mr. Butt filed his Response in Opposition to the Motion to Dismiss on August 17,

¹⁶ In this case, the assigned judge failed to rule on a motion to dismiss for in excess of 2 years despite statutory mandate, O.C.G.A. § 15-6-21(b), that she rule within 90 days.

¹⁷ These document numbers reference the District Court's Docket Numbers assigned to the affidavits of service on all Appellees.

2021. Doc. 27. Respondent Steve Livingston, who was not served until August 20, 2021, joined in the other Respondents' Motion to Dismiss by motion filed on August 27, 2021. Doc. 32. Respondents filed their Reply Brief on August 30, 2021. Doc. 34. Mr. Butt filed his Response in Opposition to Respondent Livingston's Motion to Dismiss on September 18, 2021, within the time expressly allowed by the Court. Docs. 33, 35. The District Court granted Respondents' Motion to Dismiss. Docs. 36 and 37. On November 24, 2021, Mr. Butt filed his Notice of Appeal.

Mr. Butt filed his Appellant Brief on January 10, 2022. Respondents filed their Appellee Brief on March 11, 2022. On October 6, 2022, the United States Court of Appeals for the Eleventh Circuit filed its Opinion of the Court. Appendix A.

REASONS FOR GRANTING THE WRIT

1. Mr. Butt has valid and enforceable claims under Federal Law.

Mr. Butt's right to pursue a calling of his choosing is a property right protected by the U.S. Constitution. *Buchanan v. Warley*, 245 U.S. 60 (1917) stating that "[p]roperty is more than mere thing which person owns; it includes right to acquire, use, and dispose of it; and Constitution, in Fourteenth Amendment, protects these essential attributes." Under Georgia law, one's calling is a property right. See *Dale v. City Plumbing & Heating Supply Co.*, 112 Ga. App. 723 (1965) stating, at 727, "One's employment, trade or calling is likewise a property right and the wrongful interference therewith is an actionable wrong." Federal courts look to state law definition of what is property. See *Kovats v. Rutgers*, 749 F.2d 1041, (3d Cir. 1984) stating that the

“[d]efinition of property may turn on question of state law, but if property interest is found to exist question of what process is due is matter of federal law.”

It has long been recognized that a state has the power to regulate professions by requiring those practicing to hold a state issued license for the health, safety, and protection of its citizens. Mr. Butt is not disputing this right and is not asking this Court to step in and dictate how the State of Georgia should regulate mental health counselling or to substitute its own judgment for that of the State of the Georgia as to whom a license should issue.

At issue is Respondents' repeated actions in bad faith, its failure to issue the license approved by the Composite Board's vote, and their failure to record events as occurred and especially the carriage of vote in their minutes of meeting as mandated by Georgia law. Georgia Open Meetings Act, Section 50-14-1(e)(20(B)). These actions and omissions by Respondents amount to unequal treatment before the law contrary to U.S. Constitution, Amend. 14, Sec. 1. The Composite Board's minutes of meeting recorded the motions proposed, seconded and the vote taken thereon with respect to hundreds of applicants for licensure, but not so for Petitioner. Georgia law requires that all motions proposed, seconded, and voted upon be recorded in an agency's minutes. O.C.G.A. § 50-14-1(e)(2)(B). All agencies are required to vote on an official action and to record that vote. This, Justices, shows that the Composite Board, an agency of the executive branch of Government, violated Petitioner's constitutional right to equal protection of the law.

Mr. Butt's right to due process was also violated. While the Composite Board granted Mr. Butt a hearing on his appeal which comports with due process of law, that is where due process ended. Even though Respondents proposed, seconded, and voted to grant Mr. Butt license through endorsement, the Composite Board never articulated that vote contrary to O.C.G.A. § 50-14-1(e)(2)(B), and never recorded that final agency decision in writing thereby frustrating and ultimately denying Mr. Butt the license through endorsement they voted upon and unanimously agreed for its issuance.

Under Georgia law, Mr. Butt has the right to seek judicial review of a final agency decision. O.C.G.A. § 50-13-1 *et seq.* Pursuant to O.C.G.A. § 50-13-19(a) Mr. Butt had the right to judicial review had he been aggrieved by a final agency decision in a contested case. Mr. Butt's appeal to the Composite Board heard on April 11, 2014, was a contested hearing. A "[c]ontested case" is defined as "a proceeding, including, but not restricted to, rate making, price fixing, and licensing, in which the legal rights, duties, or privileges of a party are required by law to be determined by an agency after an opportunity for hearing." O.C.G.A. § 50-13-2(2). Mr. Butt's legal rights, duties and privileges were directly and significantly affected by the April 11, 2014, appeal hearing. See Doc. 1, ¶¶ 36-39.

In Ga. Dep't of Behavioral Health & Developmental Disabilities v. United Cerebral Palsy of Ga., Inc., 298 Ga. 779 (2016), the Georgia Supreme Court stated:

Under longstanding Georgia law, the failure of plaintiffs to exhaust their available administrative remedies ordinarily precludes

judicial relief. *See Georgia Dept. of Community Health v. Georgia Society of Ambulatory Surgery Centers*, 290 Ga. 628, 629 (724 SE2d 386) (2012). See also *Perkins*, 252 Ga. App. at 37 (“[T]imely judicial review of a final agency decision after an administrative appeal can be made to the superior court only if the condition precedent of exhaustion of an administrative appeal has first been completed. O.C.G.A. §§ 49-4-153 (c); 50-13-19.”).

Id. at 786-787. The court went on to state that “a party aggrieved by a state agency’s decision must raise all issues before that agency and exhaust available administrative remedies before seeking any judicial review of the agency’s decision” and that “generally speaking, procedural issues are subject to the exhaustion requirement just like substantive issues.” *Id.* at 788-789 (internal citation omitted). In Georgia judicial review of a final agency decision requires service of that final agency decision on the affected party. O.C.G.A. § 50-13-19(b). Respondents never issued Mr. Butt a final agency decision on his application for license through endorsement leaving him in a substantive and procedural legal limbo.

Mr. Butt attempted to elicit that final agency decision by communicating via email with Mr. Zimmerman. However, crucial and critical emails exchanged between Mr. Butt and Respondent Zimmerman detailing the discussions and vote taken during the appeal hearing between April 11, 2014, and June 17, 2014, disappeared. Mr. Butt’s email account was hacked on or about April 25, 2015, and his entire email history deleted. Deposition of Sohail Butt, taken on July 13, 2020, by counsel for Brad Raffensperger in his official capacity as Secretary of State of Georgia in

related case 2019-CV-329033, p. 16, ll. 3-19 [Mr. Butt stating his email account was hacked and all his emails wiped out] and p. 20, ll. 24-25 [Mr. Butt attested to the date his email account was hacked and his emails wiped out].

The Composite Board failed to produce any of the emails exchanged, even though specific detail of their content was provided of communication between Mr. Butt and Respondent Zimmerman during this timeframe in response to Mr. Butt's open records requests made pursuant to the Georgia Open Records Act, O.C.G.A. § 50-14-70 *et seq.*, in May 2016, August through October 2016, and May 2017. Complaint, related case 2019-CV-329033 (hereinafter referred to as "*Butt v. Raffensperger*"), ¶¶ 6-8 and Exhibit A and B.¹⁸

2. The Eleventh Circuit has held that exhaustion of State remedies triggers the commencement of period of limitations for §1893 action but did not so hold below.

In *Butt v. Raffensperger*, Mr. Butt filed suit against Brad Raffensperger in his official capacity as Secretary of State of the State of Georgia in October 2019 seeking to enforce compliance with the Georgia Open Records Act. This case went through the initial pleadings stage, discovery and was disposed of at summary judgment stage. Appendix E. It became apparent to Mr. Butt during discovery stage that he had negligible chance for recovery of the missing emails and unlikely to succeed in obtaining remedy through that litigation (which is what ultimately happened). He filed the case below in June 2021 after discovery had closed in *Butt v. Raffensperger*. Recovery of the emails would have provided sufficient

¹⁸ See Appendix E.

circumstantial evidence to prove the fact that Respondents had voted to grant Mr. Butt license through endorsement during his April 11, 2014, appeal to the Composite Board.

Mr. Butt's recollection of the appeal hearing was acknowledged by Respondent Zimmerman's counsel, senior assistant attorney general Mr. Bryon Thernes and assistant attorney general Ms. Betsy Cohen, when they stated that it was clear and evident that their client, Respondent Zimmerman had lied during his deposition taken by Mr. Butt on July 8, 2020, and there was no question about the statements of fact and truth as narrated by Mr. Butt. *Butt v. Raffensperger*, unrecorded discussion held on July 9, 2020. Recovery of the emails would have opened the doors to a complete and adequate remedy – a remedy which had been denied through all other avenues.

The time within which to file his 42 U.S.C. § 1983 action commenced running when Mr. Butt had exhausted all state remedies. Exhaustion of all state remedies does not jump out upon cursory review of the facts in this case. Ascertaining the date of exhaustion of all state law remedies can only be determined after the facts are unpacked.

The Composite Board failed to issue a final agency decision on Mr. Butt's application for license through endorsement.¹⁹ As argued in his Appellant

¹⁹ Applying for license by examination and applying for license through endorsement are two separate applications and processes under state law requiring separate application forms and criteria for consideration by the Composite Board. See O.C.G.A. § 43-10A-10 (endorsement); O.C.G.A. § 43-10A-9 (examination); Ga. Comp. R. & Regs. R. 135-3-04 (Licensure by Endorsement); Ga. Comp. R. & Regs. R. 135-3-03 (Licensure by Examination).

Brief to the court below, the time within which to file his Section 1983 action had not commenced to run as of the date of filing Mr. Butt's federal action. In the appeal below, Mr. Butt argued that the harm caused him by Respondents was interlocutory, ongoing, and inchoate. Appellant Brief, pp. 30-32.

The opinion of the court below is erroneous because it makes an untrue factual assumption unsupported by evidence that the letter received by Mr. Butt on August 14, 2014, was a denial of his application for license through endorsement. The letter states no such thing.

The violation of due process of law matured after Mr. Butt had exhausted all state remedies. *Van Poyck v. McCollum*, 646 F.3d 865, 867 (11th Cir. 2011) (per curiam). Exhaustion of state remedies means when there are no further avenues of redress and typically that is when the highest court of the state has ruled on the issue, or when the appeal process has expired. This had not yet happened whilst *Butt v. Raffensperger* was still pending for the reasons set out above, and *Butt v. Raffensperger* was still pending at the time Mr. Butt filed his federal action in the case below.

3. Mr. Butt's claim should not be barred by Statute of Limitations.

An old adage of law rightly rebukes a person for sleeping on his rights and urges one aggrieved to act before it is too late. Mr. Butt did not sleep on his rights and immediately took his case to the state capitol. He called upon every branch of government to do their job and to do what is just and right. The endeavor entailed processing of accountability, transparency and most of all the obedience of law.

The United States of America proclaims to be governed by the rule of law. At its core, the rule of law requires the ruled and the rulers to be obedient and comply with the law. Law as practiced and applied must have the capacity to restrain arbitrary state power. For the rule of law to be present, the law must be capable of imposing meaningful restraint on the state. Law is there to protect the innocent, the vulnerable, and the powerless. Its purpose is not to aid and enable the burial of legitimate grievances.

In July 2017, Mr. Butt met with the chair of the Georgia judiciary committee, Representative Wendell Willard, Esq. Representative Willard stated, “you do know we have to run this by the Governor’s office, and as you said everything gets buried there.” This is blatant abuse of state power, the ability and intent to stop investigations, to obstruct and prevent ascertaining the truth and failure to halt abuses of state power. This is not just turning a blind eye but criminal conduct with intent that is contrary to the rule of law. It is the exercise of state power in an arbitrary fashion contrary to the rights and freedoms conferred by the United States Constitution and specifically by the 14th Amendment.

Mr. Butt is not asking this Court to overturn and undo decades of application of the two-year statute of limitations deemed applicable to actions filed in Georgia seeking relief under 42 U.S.C. §1983. There are two avenues of redress, for this Court to act within its authority and jurisdiction.

The first is to apply the rule in *Van Poyck v. McCollum*, 646 F.3d 865, 867 (11th Cir. 2011) to Mr. Butt’s case and other civil actions where there have been violations of due process and not limit them to

cases seeking access to evidence for DNA testing, that is the statute of limitations commences running after exhaustion of state remedies.

Alternatively, this court has the power to, *suo moto*, call the State of Georgia to account. If this requires appointing a special master to investigate and make recommendations to this court or the courts below then so should be done. This court can follow its own precedent. If sufficient terms of reference are defined, then they should suffice ascertaining the truth, and hold those responsible accountable.

4. The relief sought by Mr. Butt is not barred by Sovereign Immunity.

Sovereign immunity never protected Respondents from liability for these constitutional violations. *N.C. State Bd. of Dental Exam'rs v. FTC*, 574 U.S. 494 (2015). At the time of the violations, the Composite Board as a state agency did not have active state supervision as defined by this Court in *N.C. State Bd. of Dental Exam'rs*. Governor Brian P. Kemp, then Secretary of State of the State of Georgia, in a face-to-face meeting with Mr. Butt during the 2016 legislative session acknowledged the lack of his offices authority to hold the board accountable for its actions. As he stated they are appointed by the governor and only Governor Nathan Deals office had authority to hold them accountable.

The same was narrated and affirmed by Mr. Chuck Harper, Secretary of state Brian Kemp's director of legislative affairs at a later meeting with Mr. Butt.

The same was confirmed by then Special Adviser to Secretary of State Kemp, Grant Thomas and Candice Broce, staff attorney.²⁰

The Georgia legislature recognized the lack of supervision and rushed to bring into law House Bill 952 during the 2016 legislative session. House Bill 952 came into law on July 1, 2016, as the Georgia Professional Regulation Reform Act, O.C.G.A. §43-1C-1, *et seq.* The new law gave the governor supervisory powers over licensing boards to avoid a federal finding of waiver of immunity due to lack of executive oversight as happened in *N.C. State Bd. of Dental Exam'rs.*

Upon its becoming law, Mr. Butt submitted a petition pursuant to the Professional Regulation Reform Act to the Governor's office seeking oversight and remedy for the actions of the Composite Board's actions since the April 11, 2014, hearing as it pertained to Mr. Butt. The petition was denied on December 19, 2016. Appendix I.

The active supervision purportedly conferred by this law was a meaningless exercise. The law lacked any enforcement provisions and provides no right to a hearing. Mr. Butt submitted written petition and the office of the Governor requested written response from Mr. Zimmerman. Mr. Butt's petition was summarily denied. Appendix H. Upon denial of his petition, Mr. Butt requested a meeting with Deputy Counsel to Governor Nathan Deal, Mr. Corey Miller who was in

²⁰ Unrecorded meeting held in May, 2016. Present were Mr. Grant Thomas, special adviser to the Secretary of State, Ms. Candice Broce, staff attorney, Ms. Jan Brown, executive assistant to the then State House Representative Matt Ramsey, and Mr. Butt.

charge of the supervisory process. The request was promptly denied.

Regardless of the lack of provisions to enforce the Georgia Professional Regulation Reform Act, the fact remains that the Composite Board did not enjoy sovereign immunity in 2014, 2015 and until at least July 1, 2016. The Composite Board and Respondents can be held liable for wrongdoing during this period. Any argument that Mr. Butt's case is futile on grounds of sovereign immunity or Eleventh Amendment immunity is foreclosed and this Court's consideration of this Petition is necessary.

5. There is no State Remedy: The State of Georgia has repeatedly failed to Act and has intentionally shut down all possible remedial avenues.

It is crucial for this Court to act and grant certiorari. The State of Georgia has acted in an arbitrary fashion.

Despite being presented with the opportunity and having an obligation to correct the actions of Respondents, the Office of the Governor failed to conduct any form of investigation into the actions of the Composite Board. Instead, it shut down Mr. Butt's petition by way of a meaningless and empty "Certificate of Active Supervision" (Appendix H). A mere facade to meet the federal criteria of active supervision over a state agency as pronounced by this Court in *N.C. State Bd. of Dental Exam'rs*.²¹

²¹ This case held that there is no sovereign immunity where an agency of a state is not adequately supervised by the state and fails to act in accordance with clearly defined state policy. See *N.C. State Bd. of Dental Exam'rs*, 574 U.S. at 504.

Culpability and blame rests solely on the State of Georgia and it must be held accountable. So says the constitution, the law and all things ethical. Mr. Butt has followed each and every legal avenue and continues to do so.

Respondents claimed sovereign immunity when none existed. Why did the office of the secretary of state not offer remedy once it became aware of this ruling? Why did the office of the governor not offer remedy once it became aware that something was amiss in law? Because of processes in place inclusive of seeking redress through the judiciary committee 2017 and 2018 had long disappeared and the statute of limitations was in a distant past. None of them offered remedy of any kind. They had the authority and the power to offer remedy, but none was forthcoming.

Mr. Butt had consulted with partners at leading law firms such as Smith, Gambrell and Russell, Arnall Golden Gregory, Parks, Chastain, Walberg, Deans of colleges of law, former attorneys general and the advice was always the same, state of Georgia enjoys sovereign immunity. Facts state otherwise. The concurrence and ruling by the U.S Supreme Court. State of Georgia did not enjoy sovereign immunity till House Bill 952 was signed into law by Governor Nathan Deal and took effect on July 1, 2016. The statute of limitations had expired. What was Mr. Butt supposed to do? In principle they did have sovereignty immunity but The U.S. Supreme Court ruling of 2015 overrode it. Also, if criminal activities could be proven, then the governor had the power and could and should have removed sovereign immunity. Evidence was present and was there for all to see.

Because of the legal void, the statute of limitations ran out.

In 2019 California enacted legislation to accommodate adults who were victims of child sexual abuse and granted a three-year window to file their cases. New York State has enacted a two-year window for filing cases by historical sexual abuse victims. These are once-off statutes granting a new statute of limitations to instigate court proceedings. Mr. Butt requests the same due to extra ordinary and unique circumstances. This falls within the remit of the Supreme Court to cover the legal void as in existence till July 2016. Now the duty for provision of remedy and equitable relief rests with you, The U.S. Supreme Court.

Can you, the Supreme Court of the United States of American, sit idly by in the face of arbitrary abuse? Should this Court appoint a special master to investigate and make recommendations to this Court or the courts below, for appropriate accountability and remedy to Petitioner?

Should this Court make an exception to the two-year statute of limitations applicable in Georgia to 42 U.S.C. § 1983 actions in circumstances where Respondents, an agency of state government, has conducted constitutional wrongdoing and provided no relief at state level? It should. All it needs to do is extend the rule currently applicable in the Eleventh Circuit that the statute of limitations for 42 U.S.C. § 1983 actions seeking access to evidence for DNA testing commences on the date that state law remedies have been exhausted. See *Van Poyck v. McCollum*, 646 F.3d 865, 867 (11th Cir. 2011) (per curiam). In

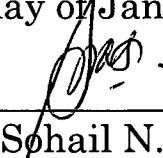
that case, the Eleventh Circuit held that the statute of limitations for a § 1983 action seeking DNA testing runs from “the end of the state litigation in which [the] Plaintiff unsuccessfully sought access to the evidence.” The rule was affirmed in *Pettway v. McCabe*, 510 F. App’x 879 (11th Cir. 2013). The contrast between this rule of the Eleventh Circuit and the contrasting rule of the Fifth and Seventh Circuits which held the statute of limitations run from the denial of access to evidence for DNA testing by the trial court, is the subject of *Rodney Reed v. Bryan Goertz*, et. al., Supreme Court Case no. 21-442, which was argued on October 11, 2022, and is pending issuance of decision by this Court.

The relief sought in Mr. Butt’s Complaint does not foreclose this argument or limit the relief sought by Mr. Butt because Fed. R. Civ. Pro. 54(c) states “final judgment should grant the relief to which each party is entitled, even if the party has not demanded that relief in its pleadings.” This rule permits Mr. Butt to proceed and, upon final trial of the action, to receive such relief he is entitled to by law even if he has not specifically pled such relief in his complaint.

CONCLUSION

The petition for writ of certiorari should be granted.

Respectfully submitted this 3rd day of January 2023.



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