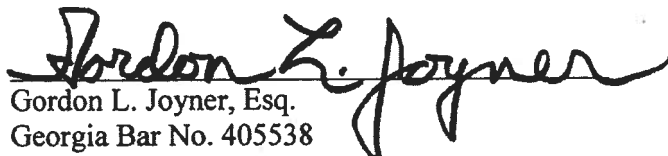


**CERTIFICATE OF SERVICE**

This is to certify that I on this day served Christopher C. Marquardt, Esq. and Derin B. Dickerson, Esq., Alston & Bird LLP, the "announced" counsel (no entry of record as counsel has been filed) for Respondent/Defendant Robert C. Davidson in the foregoing matter, with a true and correct copy of the foregoing pleading by depositing same in the United States Mail for First Class delivery, with adequate postage affixed thereon, properly addressed to said counsel, and via courtesy e-mail.

This the 19<sup>th</sup> day of January, 2017.

THE LAW OFFICES OF GORDON L. JOYNER



Gordon L. Joyner, Esq.

Georgia Bar No. 405538

[gordonjoynerlaw@comcast.net](mailto:gordonjoynerlaw@comcast.net)

Co-counsel for Petitioners/Plaintiffs

P.O. Box 92816 (mailing address)  
945 Ashby Circle, N.W. (street address)  
Atlanta, Georgia 30314  
Tel./Facs.: 404-524-2400

IN THE SUPERIOR COURT OF FULTON COUNTY

STATE OF GEORGIA

Johnathan D. Hill, Moses Washington, and  
Johntavis Williams,

Petitioners/Plaintiffs,

v.

Robert C. Davidson, Jr., Chairman of the  
Morehouse College Board of Trustees,

Respondent/Defendant.

CIVIL ACTION FILE NO.

2017CV284794

**PETITIONERS/PLAINTIFFS' POST-HEARING MEMO:  
METHINKS THAT RESPONDENT/DEFENDANT  
DO TH PROTEST THE SEARS OPINION LETTER TOO MUCH**

COME NOW student Trustees Johnathan D. Hill, Moses Washington, and Johntavis Williams, Petitioners/Plaintiffs in the above-captioned matter (hereinafter referred to "the student Trustees"), by and through their undersigned co-counsel of record herein, Gordon L. Joyner, Esq., and respectfully file this Post-Hearing Memo showing the Court, the Honorable Robert C. I. McBurney, Judge presiding, as follows:

1.

The student Trustees have submitted and provided evidence to the Court in support of the maintaining on the open record herein of the subject January 12, 2017 opinion letter from Georgia Supreme Court Chief Justice (Retired) Leah Ward Sears rendered to Morehouse College General Counsel Lacrechia G. Cade [who, as the Court is aware, attended the Court's hearing in this matter on January 13, 2017] and thereafter shared by Morehouse General Counsel Cade with

Respondent/Defendant Robert C. Davidson, the student Trustees, and others, as shown by Morehouse General Counsel Cade's e-mail transmitting said opinion letter attached to and incorporated in the student Trustees herein Petition For Temporary Restraining Order identified as Exhibit D. No objection or assertion or claim of any privilege of confidentiality has been raised or presented in this matter by any party, person, or entity with regards to said transmittal e-mail [Exhibit D].

2.

The student Trustees entered into evidence at the Court's January 13, 2017 hearing a true and correct copy of the Bylaws of the Board of Trustees of Morehouse College.

3.

Said Bylaws therein show the adoption of *Robert's Rules of Order*.

4.

Said Bylaws also therein show that decisions of the Board of Trustees are to be made and adopted by a vote of the Trustees.

5.

Respondent/Defendant has not presented or entered any evidence in this matter before the Court that the Board of Trustees ever voted to claim or assert any privilege of confidentiality with regards to the subject Sears opinion letter.

6.

The record herein shows that Morehouse College has not claimed or asserted any privilege of confidentiality with regards to the subject Sears opinion letter.

7.

In said January 12, 2017 Sears opinion letter transmittal e-mail, Morehouse General Counsel Cade state, *inter alia* quoted as follows:

**"Bob, et al.**

**My goal is to always be transparent, respectful, and fully aligned with protecting the best interest of Morehouse College.**

**Attached is an opinion from Chief Justice Leah Ward Sears (Retired) with the firm of Smith Gambrell & Russell LLP. Chief Justice Sears has not previously done work for the College, nor does she have a prior relationship with me or President Wilson.**

**The analysis she provides is that the faculty and student trustees cannot be compelled to refrain from exercising their right to vote including on matters pertaining to the President."**

8.

Christopher C. Marquardt, Esq. and Derin B. Dickerson, Esq., Alston & Bird LLP, announced to the Court at the January 13, 2017 hearing herein that he was appearing on behalf of named party Respondent/Defendant Davidson. On January 18, 2017, Mr. Marquardt submitted an e-mail communication to the Court and the counsel of record for the named party Petitioners/Plaintiffs -- the student Trustees -- in which he stated *inter alia* quoted as follows without offering or providing any evidence in support of just the mere "lawyer talk" -- no affidavit(s), no certified copies of Minutes and other records evidencing Board of Trustees votes and actions in compliance with the Bylaws, etc.:

**"Second, the plaintiffs have misstated our role as counsel. This firm was engaged by the Board of Trustees and represents Morehouse College. As the Court understands, a college Board of Trustees is the highest authority for a college, just as a company's Board of Directors is the highest authority for a corporation. The Board of Trustees is not an organization with an existence that is separate from Morehouse College. In a legal sense, the Board of Trustees is the college. We therefore serve as counsel to Morehouse College."**

9.

Accordingly, the student Trustees respectfully request that said announced counsel for named party Respondent/Defendant Davidson show evidence to the Court of full compliance with and appropriate action as required by the Bylaws -- including Ad Hoc Committee action, Audit Committee action, full Board vote, etc. -- to support their assertion that they duly were engaged by the Board of Trustees as counsel prior to the Court's hearing on January 13, 2017, which the student Trustees contest.

10.


Additionally and finally, in that the Morehouse College General Counsel herself was in attendance in that capacity at the Court's hearing on January 13, 2017, the student Trustees contest that the "announced" counsel for named party Respondent/Defendant Davidson appeared or are capable of appearing in this matter in the purported "dual capacity" as counsel engaged by Morehouse College. The entirety of Exhibit D cited above vividly and concretely shows the clear conflict of interest in such claimed representation.

This 19<sup>th</sup> day of January, 2017.

Respectfully submitted,

**THE LAW OFFICES OF GORDON L. JOYNER**

P.O. Box 92816  
Atlanta, Georgia 30314-0816  
Tel. (404) 524-2400

  
Gordon L. Joyner  
[gordonjoynerlaw@comcast.net](mailto:gordonjoynerlaw@comcast.net)  
Georgia Bar No. 405538  
Co-counsel for Petitioners/Plaintiffs

IN THE SUPERIOR COURT OF FULTON COUNTY  
STATE OF GEORGIA

JOHNATHAN HILL, JOHNTAVIUS	)	
WILLIAMS, AND MOSES WASHINGTON,	)	
	)	<b>CIVIL ACTION</b>
Plaintiffs,	)	
	)	FILE NO. 2017-cv-284794
v.	)	
	)	
ROBERT C. DAVIDSON, JR., CHAIRMAN	)	
OF THE MOREHOUSE COLLEGE BOARD	)	
OF TRUSTEES,	)	
	)	
Defendant.		

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**MOTION TO SEAL EXHIBIT "E" TO PLAINTIFFS' PETITION**  
**FOR TEMPORARY RESTRAINING ORDER**

Defendant Robert C. Davidson, Jr., Chairman of the Morehouse College Board of Trustees ("Morehouse College Board") moves the Court to seal Exhibit "E" to Plaintiffs' Petition for Temporary Restraining Order. In support of this Motion, the Morehouse College Board shows the Court the following:

1. On Friday, January 13, 2017, the Plaintiffs filed a Petition for Temporary Restraining Order (the "Petition"). Plaintiffs attached to their petition a legal memorandum (the "Privileged Memo") provided to the General Counsel of Morehouse College by a law firm retained by the college to provide legal advice. (See Exhibit "E" to the Petition). Before doing so, the undersigned informed Plaintiffs' counsel that the letter was privileged and thus should not be used or filed in the public record.

2. The attorney-client privilege is triggered "when legal advice is sought from an attorney, and operates to protect from compelled disclosure any communications, made in

confidence, relating to the matter on which the client seeks advice.” *St. Simons Waterfront, LLC v. Hunter, Maclean, Exley & Dunn, P.C.*, 293 Ga. 419, 421–22, (2013). Because the Privileged Memo was drafted by “outside counsel” at the request of the General Counsel of Morehouse College to “advise Morehouse” on certain issues, it is undoubtedly protected by the attorney-client privilege. (*See* Privileged Memo, at 1). There has been no evidence—or even suggestion—that the privilege has been waived in this instance.

3. During the hearing on the Petition on January 13, 2017, the Court directed the parties to work together on a consent motion to seal the Privileged Memo. The Parties assured the Court that they would do so. The undersigned counsel for the Morehouse College Board has attempted to follow through on the Parties’ agreement stated orally in Court. Counsel for Plaintiffs, however, no longer consent to the sealing of the Privileged Memo. Accordingly, the Morehouse College Board submits this motion to seal the Privileged Memo.

4. Uniform Superior Court Rule 21.1 permits the Court to “limit access to court files respecting the action.” Because the Privileged Memo is protected by the attorney-client privilege, it would be appropriate for the Court to exercise its discretion and order that the document be sealed.

WHEREFORE, the Morehouse College Board respectfully requests that the Court enter an Order sealing Exhibit “E” to the Petition.

Dated: January 19, 2017

Respectfully submitted,

By: /s/ Derin B. Dickerson

Christopher C. Marquardt

Georgia Bar No. 471150

Derin B. Dickerson

Georgia Bar No. 220620

**Alston & Bird LLP**

1201 West Peachtree Street

Atlanta, GA 30309-3424

Telephone: 404-881-7000

**Attorneys for Defendant**



**IN THE SUPERIOR COURT OF FULTON COUNTY  
STATE OF GEORGIA**

JOHNATHAN HILL, JOHNTAVIUS	)	
WILLIAMS, AND MOSES WASHINGTON,	)	
	)	<b>CIVIL ACTION</b>
Plaintiffs,	)	
	)	FILE NO. 2017-cv-284794
v.	)	
	)	
ROBERT C. DAVIDSON, JR., CHAIRMAN	)	
OF THE MOREHOUSE COLLEGE BOARD	)	
OF TRUSTEES,	)	
	)	
Defendant.		

---

**CERTIFICATE OF SERVICE**

This is to certify that I have this day served copies of the within and foregoing **Motion to Seal Exhibit “E” to Plaintiffs’ Petition for Temporary Restraining Order** on counsel for Plaintiffs by depositing a true and correct copy of the same in the United States mail with adequate first class postage affixed thereon, addressed as follows:

Harold Spence, Esq.  
Robert O. Bozeman, Esq.  
Mawuli M. Davis, Esq.  
**DAVIS BOZEMAN LAW FIRM, P.C.**  
4153 C Flat Shoals Parkway – Suite 332  
Decatur, GA 30034  
Telephone: 404-244-2004

This 19<sup>th</sup> day of January, 2017.

By: /s/ Derin B. Dickerson  
Georgia Bar No. 220620

**IN THE SUPERIOR COURT OF FULTON COUNTY  
STATE OF GEORGIA**

JOHNATHAN HILL, JOHNTAVIUS	)	
WILLIAMS, AND MOSES WASHINGTON,	)	
	)	<b>CIVIL ACTION</b>
Plaintiffs,	)	
	)	FILE NO. 2017-cv-284794
v.	)	
	)	
ROBERT C. DAVIDSON, JR., CHAIRMAN	)	
OF THE MOREHOUSE COLLEGE BOARD	)	
OF TRUSTEES,	)	
	)	
Defendant.		

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**[PROPOSED ORDER] GRANTING DEFENDANT’S MOTION TO SEAL EXHIBIT “E”  
TO PLAINTIFFS’ PETITION FOR TEMPORARY RESTRAINING ORDER**

This matter, having come before the Court pursuant to Uniform Superior Court Rule 21, on Defendant Robert C. Davidson, Jr.’s, Chairman of the Morehouse College Board of Trustees (“Morehouse College Board”) motion to seal Exhibit “E” to Plaintiffs’ Petition for Temporary Restraining Order; and it appearing to the Court that the parties have not reached a resolution regarding same; both parties having been heard and for good cause shown, this Court hereby **GRANTS** the Morehouse College Board’s motion to seal Exhibit “E” to Plaintiffs’ Petition for Temporary Restraining Order.

This Court also makes the following findings:

1. On Friday, January 13, 2017, the Plaintiffs filed a Petition for Temporary Restraining Order (the “Petition”). Plaintiffs attached to their Petition Exhibit “E”, a legal memorandum (the “Privileged Memo”) provided to the General Counsel of Morehouse College by a law firm retained by the College to provide legal advice. (*See* Exhibit “E” to the Petition). Before doing so, counsel for the Morehouse College Board advised Plaintiffs’ counsel that the letter was privileged and thus should not be used or filed in the public record.

2. It is well settled in Georgia that the attorney-client privilege is triggered “when legal advice is sought from an attorney, and the privilege operates to protect from compelled disclosure any communications, made in confidence, relating to the matter on which the client seeks advice.” *St. Simons Waterfront, LLC v. Hunter, Maclean, Exley & Dunn, P.C.*, 293 Ga. 419, 421–22, (2013).

3. Because the Privileged Memo was drafted by “outside counsel” at the request of the General Counsel of Morehouse College to “advise Morehouse” on certain issues, it is protected by the attorney-client privilege. (*See* Privileged Memo., at 1). Relatedly, there has been no evidence proffered to suggest that the privilege has been waived in this instance.

Therefore, it is hereby ORDERED AND ADJUDGED that the Privileged Memo is protected by the attorney-client privilege, and because disclosure of same would contravene well-settled Georgia law, this Court hereby GRANTS Morehouse College Board’s motion. The Privileged Memo, attached as Exhibit “E” to Plaintiffs’ Petition, will be sealed and access to same is hereby limited for \_\_\_\_\_ days and until such time ordered by the Court.

**IT IS SO ORDERED.**

This \_\_\_\_ day of January, 2017

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The Honorable Robert McBurney, Judge  
Superior Court of Fulton County, State of  
Georgia

IN THE SUPERIOR COURT OF FULTON COUNTY  
STATE OF GEORGIA

JOHNATHAN HILL,  
JOHNTAVIS WILLIAMS, AND  
MOSES WASHINGTON

Petitioners/Plaintiffs,

v.

ROBERT C. DAVIDSON, JR.,  
CHAIRMAN OF THE MOREHOUSE  
COLLEGE BOARD OF TRUSTEES,

Respondent/Defendant.

CIVIL ACTION FILE NO.

2017CV284794

**PETITION FOR TEMPORARY RESTRAINING ORDER**

COME NOW, the Petitioners and pursuant to O.C.G.A. §§ 9-11-65 and 9-5-1 petition the Court for a temporary restraining order preventing Morehouse College, acting through its Board of Trustees ("the Board") or otherwise, from preventing the Petitioners, the duly elected student Trustees of the Board, from full and unfettered participation, including their attendance, right to be heard, and voting participation in all aspects of the January 13, 2017 Morehouse College Board of Trustees meeting in which the By-Laws of the Morehouse College Board of Trustees allow them to participate.

In support of this Petition, the Petitioners submit and rely on the contemporaneously filed documents:

- a) Certification of Atty. Harold W. Spence concerning notice provided to Respondent of filing of Request/Petition for Temporary Restraining Order (Exhibit "A");
- b) Affidavit of Atty. Harold W. Spence concerning the basis for seeking the temporary restraining order (Exhibit "B");
- c) January 9, 2017 email from David Rice to Johnathan Hill, informing Hill of the January 13, 2017 Morehouse College Board of Trustees Meeting (Exhibit "C");

- d) January 12, 2017 email from Morehouse College General Counsel Lacrechia G. Cade to Chairman of the Morehouse College Board of Trustees, Robert Davidson (Exhibit "D");
- e) Legal Opinion of the Honorable Leah Ward Sears, Retired Chief Justice of the Supreme Court of Georgia and a current partner with the law firm of Smith Gambrell & Russell, LLP (Exhibit "E");


Counsel for the Petitioners notified Respondent's General Counsel on January 13, 2017 of the filing of the Petition for Temporary Restraining Order, see attached Exhibit "A").

WHEREFORE, the Petitioners respectfully request this Court grants their Request for Temporary Restraining Order.

This 13<sup>th</sup> day of January, 2017.

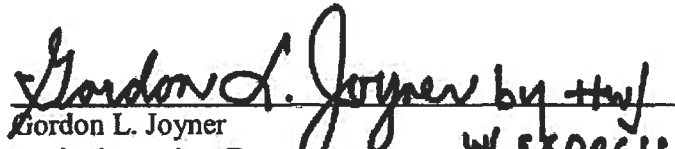
Respectfully submitted,

**DAVIS BOZEMAN LAW FIRM, P.C.**

  
HAROLD SPENCE  
Georgia Bar No. 671150  
ROBERT O. BOZEMAN  
Georgia Bar No. 073561  
MAWULI M. DAVIS  
Georgia Bar No. 212029  
*Attorneys for Plaintiffs*

4153 C Flat Shoals Parkway - Suite 332  
Decatur, GA 30034  
(404) 244-2004 (Office)  
(404) 446-2834 (Direct)  
(404) 244-2020 (Facsimile)

THE LAW OFFICES OF GORDON L. JOYNER

  
Gordon L. Joyner  
[gordonjoynerlaw@comcast.net](mailto:gordonjoynerlaw@comcast.net) w/ express permission  
Georgia Bar No. 405538  
Co-counsel for Petitioners/Plaintiffs

P.O. Box 92816 (mailing address)  
945 Ashby Circle, N.W. (street address)  
Atlanta, Georgia 30314  
(404) 524-2400

**IN THE SUPERIOR COURT OF FULTON COUNTY  
STATE OF GEORGIA**

**JOHNATHAN HILL,  
JOHNTAVIS WILLIAMS, AND  
MOSES WASHINGTON**

**Petitioners/Plaintiffs,**

**v.**

**ROBERT C. DAVIDSON, JR.,  
CHAIRMAN OF THE MOREHOUSE  
COLLEGE BOARD OF TRUSTEES,**

**Respondent/Defendant.**

**CIVIL ACTION FILE NO.**  
\_\_\_\_\_

**CERTIFICATION OF NOTICE TO RESPONDENT/DEFENDANT**

COMES NOW, Counsel for the Petitioners, and pursuant to O.C.G.A. § 9-11-65(b)(2) files this Certification of Notice to Respondent/Defendant and shows as follows:

1. After filing the underlying Request for Temporary Restraining Order Petitioners counsel contacted the General Counsel of Morehouse College, Atty. Lacrechia G. Cade ("Atty. Cade").
2. The undersigned spoke directly with Atty. Cade.
3. The undersigned informed Atty. Cade of the following:
  - a. That the Request for Temporary Restraining Order had been filed;
  - b. The names of the Petitioners in whose behalf the Request for Temporary Restraining Order had been filed;
  - c. The purpose of the filing;
  - d. The immediate and irreparable injury the Petitioners face if the requested relief was not granted;
  - e. The intention to seek a hearing this day (01/13/17) before the Judge to whom the matter is assigned;
  - f. The intention to notify Atty. Cade of the name of the Judge to whom the matter has been assigned;
  - g. The intention to notify Atty. Cade of the time and place of any hearing to be held, upon the scheduling of such hearing;
  - h. Petitioners counsel intend to present the testimony of some or all of the Petitioners, at any hearing on the application for a temporary restraining order.
  - i. The cell phone number of Petitioners counsel so that Atty. Cade could maintain immediate contact if desired;
  - j. The readiness to immediately forward via email or fax (at Atty. Cade's election) the documents filed with the Court.

Ex "A"

4. This Certificate is submitted to satisfy the requirements of O.C.G.A. § 9-11-65(b)(2) and does in fact satisfy the statutory notice requirements.

This 13<sup>th</sup> day of January, 2017.

Respectfully submitted,

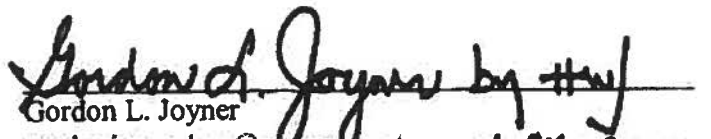
DAVIS BOZEMAN LAW FIRM, P.C.

  
HAROLD SPENCE

Georgia Bar No. 671150  
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Georgia Bar No. 073561  
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Georgia Bar No. 212029  
*Attorneys for Plaintiffs*

4153 C Flat Shoals Parkway - Suite 332  
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THE LAW OFFICES OF GORDON L. JOYNER

  
Gordon L. Joyner  
[gordonjoynerlaw@comcast.net](mailto:gordonjoynerlaw@comcast.net)  
Georgia Bar No. 405538  
Co-counsel for Petitioners/Plaintiffs  
w/ EXPRESS PERMISSION

P.O. Box 92816 (mailing address)  
945 Ashby Circle, N.W. (street address)  
Atlanta, Georgia 30314  
(404) 524-2400



**IN THE SUPERIOR COURT OF FULTON COUNTY  
STATE OF GEORGIA**

**JOHNATHAN HILL,  
JOHNTAVIS WILLIAMS, AND  
MOSES WASHINGTON**

**Petitioners/Plaintiffs,**

**v.**

**ROBERT C. DAVIDSON, JR.,  
CHAIRMAN OF THE MOREHOUSE  
COLLEGE BOARD OF TRUSTEES,**

**Respondent/Defendant.**

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\*  
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\*

**CIVIL ACTION FILE NO.**

**AFFIDAVIT OF HAROLD W. SPENCE, ESQ.**

Personally appeared before the officer duly authorized to administer oaths came Harold W. Spence, who being duly sworn deposes and states as follows:

1. That I am Harold W. Spence, am sui juris, and otherwise competent to make this Affidavit.
2. That I am an attorney, duly licensed and authorized to practice law in the State of Georgia.
3. That I am co-counsel for the Petitioners in the underlying Petition for Temporary Restraining Order.
4. On January 13, 2017 Petitioners counsel notified Respondent's General Counsel that Petitioner was seeking injunctive relief enjoining the Respondent from prohibiting the Petitioner student trustees of the Morehouse College Board of Trustees from full and unfettered participation, including their attendance, right to be heard, and voting participation in all aspects of the January 13, 2017 Morehouse College Board of Trustees

meeting in which the By-Laws of the Morehouse College Board of Trustees allow them to participate.

5. The Petitioners are duly elected student members of the Morehouse College Board of Trustees ("the Board").
6. The Petitioners' received written notice of the January 13, 2017 meeting of the Board.
7. The written notice informed the Petitioners that part of the agenda for the January 13, 2017 Board meeting would "be exclusively devoted to completing the discussion begun by the [B]oard at the October 2016 meeting, regarding the renewal of President Wilson's Employment Agreement."
8. The Chairperson of the Board, ostensibly invoking a provision of the Board's By-Laws, excused the Petitioner student trustees from the portion of the Board meeting devoted to the renewal of the College President's employment agreement.
9. The Petitioner student trustees were not allowed to participate in the employment agreement discussion and decision in any respect and were totally excluded from that portion of the meeting.
10. Consistent with the representation in the email agenda forwarded to the Petitioners' and upon information and belief, the Petitioners believe that that the matter of the renewal of the President's employment agreement will be and/or was discussed, debated, deliberated about, and voted on.
11. The actions by the Board, through its Chairperson, irreparably interfere with the Petitioners' rights to full and unfettered participation in the important decision regarding leadership of the College.

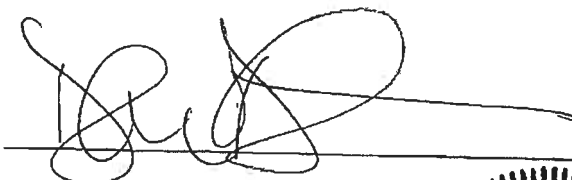
12. The irreparable harm to the Petitioners from the denial of the temporary restraining order substantially outweighs any harm to the Respondent resulting from a grant of the temporary restraining order. Granting the temporary restraining order will preserve the status quo and the rights of the Petitioners, allowing further proceedings on this matter and will serve the best interests, at least temporarily, of all parties concerned.
13. This Affidavit is based on my own personal knowledge.

This 13<sup>th</sup> day of January, 2017.

  
HAROLD W. SPENCE

Sworn to and subscribed

before me this 13<sup>th</sup> day  
of January, 2017.

  
NOTARY PUBLIC

My Commission Expires: \_\_\_\_\_



**From:** "Rice, David"

**Date:** Thursday, January 12, 2017 at 6:45 PM

**To:** Johnathan Hill

**Subject:** Fwd: January Meeting Information and Follow Up from October

On Jan 9, 2017, at 9:09 PM, Bob Davidson <[bob@rcdavidson.com](mailto:bob@rcdavidson.com)> wrote:

Dear Colleagues,

I look forward to seeing you at our board and committee meetings scheduled for the afternoon of January 13<sup>th</sup> and the full day of January 14<sup>th</sup>. You can expect to receive a detail meeting schedule from the staff very soon.

Our meetings for later this week are organized into two phases. The first phase of our meetings will commence on Friday afternoon at 12 noon, eastern. This will be an Executive Session for Elected Trustees and Visitors only. This session will be exclusively devoted to completing the discussion begun by the board at the October 2016 meeting, regarding the renewal of President Wilson's Employment Agreement. Only those who are either an Elected Trustee or a Visitor are invited to participate in this Friday afternoon session.

The second phase of our meetings commence on Saturday morning, January 14<sup>th</sup>. This phase will include a full schedule of committee meetings followed by a full board meeting. The committee meetings will start at 8:00am and will run right up to the full board meeting, which is scheduled to start at 2:00pm. The committees which are scheduled to meet are:

- Educational Policy
- Investment
- Finance
- Trusteeship & Governance
- Audit
- Development

I expect to adjourn our full board meeting by 4:00pm. Hopefully, this will allow those that are trying to catch return flights home to do so.

Ex. "C"

---

**From:** "Cade, Lacrechia" <[lacrechia.cade@morehouse.edu](mailto:lacrechia.cade@morehouse.edu)>

**Date:** January 12, 2017 at 8:10:51 PM EST

**To:** Chairman Davidson <[bob@rcdavidson.com](mailto:bob@rcdavidson.com)>, Jim Moss <[jim.moss@prmconsulting.com](mailto:jim.moss@prmconsulting.com)>, Dale Jones <[dale.jones@divsearch.com](mailto:dale.jones@divsearch.com)>, "ROBERT LEVIN" <[robertl895@me.com](mailto:robertl895@me.com)>, Avery Munnings <[amunnings@deloitte.com](mailto:amunnings@deloitte.com)>, "Rice, David" <[David.Rice@morehouse.edu](mailto:David.Rice@morehouse.edu)>, Ron Thomas <[ron.thomas@morehouse.edu](mailto:ron.thomas@morehouse.edu)>, "Onifade, Emmanuel" <[Emmanuel.Onifade@morehouse.edu](mailto:Emmanuel.Onifade@morehouse.edu)>, Johnathan Hill <[Johnathan.Hill@morehouse.edu](mailto:Johnathan.Hill@morehouse.edu)>, Moses Washington <[Moses.Washington@morehouse.edu](mailto:Moses.Washington@morehouse.edu)>, Johntavis Williams <[Johntavis.Williams@morehouse.edu](mailto:Johntavis.Williams@morehouse.edu)>

**Subject:** Key Question Received Re: Faculty and Student Trustees

Bob, et al.,

As we push towards this pivotal board meeting, I want to make sure I don't make the same mistake I made in October and generate a scenario where trustees feel blindsided in an already intense situation. My goal is to always be transparent, respectful, and fully aligned with protecting the best interest of Morehouse College.

Recently, I've received increased inquiries from elected trustees, student & faculty trustees themselves, as well as the students and faculty that have elected them about the justification for their exclusion from discussions and decisions regarding the President's contract, and other board related matters. I fielded many of the inquiries by sharing the conflict of interest analysis you've stated, but many did not accept that. So, in the spirit of no-surprises on the meeting room floor, I write to share some critical and eye-opening analysis that I sought this week to give us greater insight into this key question that speaks to the empowerment of faculty and students, two critical constituencies.

Attached is an opinion from Chief Justice Leah Ward Sears (Retired) with the firm of Smith Gambrell & Russell LLP. Chief Justice Sears has not previously done work for the College, nor does she have a prior relationship with me or President Wilson.

The analysis she provides is that the faculty and student trustees cannot be compelled to refrain from exercising their right to vote

EX"D"

including on matters pertaining to the President. This is also aligned with the precedent I found recently, which is attached hereto, from the April 28, 2007 meeting when Robert M. Franklin was selected as President. As reflected in the meeting minutes, two faculty trustees, Dr. Paul Wiebe and Dr. Joseph McCray, along with at least two student trustees I've been able to identify, Marcus Edwards (then SGA President) and Sean Brazier were present and voted during the roll call vote to select the President. Now, interestingly, in 2012 when Dr. Franklin's contract was non-renewed, the student and faculty trustees were asked to leave the room. So, there seems to be a pattern of allowing student and faculty trustees in the room for selection, but not evaluation and contract decisions, which is contradictory because similar evaluative judgments are used in each situation.

In light of the profound importance of this precedent and analysis, I have asked Chief Justice Sears to be available tomorrow to potentially present her analysis to the Board and field any questions. Bob, I trust you will allow her to do this on such an important issue. This fundamental question about Morehouse's unique governance structure deserves due consideration and deliberation by this body. We might even be able to arrange a conversation with the board leadership and the faculty and student trustees before the meeting begins at noon.

I await your response.

**Lacrecia G. Cade | MOREHOUSE COLLEGE | General Counsel and Chief of Staff**

830 Westview Drive, S.W. | Atlanta, Georgia 30314

**PLEASE NOTE MY UPDATED PHONE NUMBER**

470.639.0225(p) | 404.659.6536(f) | [www.morehouse.edu](http://www.morehouse.edu)

"Morehouse College: Demonstrating Acuity... Practicing Integrity...  
Exhibiting Agency...  
Committing to Brotherhood and Leading Consequential Lives"

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Prattville, Suite 1100  
1230 Peachtree Street, N.E.  
Atlanta, Georgia 30309-1592  
Main: 404.815.3500  
www.sgrlaw.com

**SMITH, GAMBRELL & RUSSELL, LLP**  
*Attorneys at Law*

*Honorable Leah Ward Sears*  
Direct Tel: 404.815.3506  
Direct Fax: 404.685.6806  
lsears@sgrlaw.com

January 12, 2017

**VIA E-MAIL AND U.S. MAIL**

Lacrecia G. Cade  
General Counsel and Chief of Staff  
Morehouse College  
830 Westview Drive, S.W.  
Atlanta, Georgia 30314

*Re: Review of Trustee Voting Rights*

Dear Ms. Cade:

We understand that you have received a number of questions about the propriety of excusing from the upcoming meeting of the Morehouse College Board of Trustees the faculty and student Trustees during a discussion and/or subsequent vote on the contract of employment for the President of Morehouse College ("Morehouse"). To help answer these various inquiries, you have asked us, as outside counsel, to review the Amended and Restated Bylaws of Morehouse, as well as other relevant materials and documents referenced therein (such as *Robert's Rules of Order Newly Revised, 11<sup>th</sup> ed.* (Da Capo Press, 2011)), especially as they pertain to the right of the Board Chair to excuse faculty and student Trustees from the Board meeting juxtaposed against the voting rights of those Trustees. You have asked us to advise Morehouse on these issues. We have done so, and have found two overarching problems.

First is the legal problem. That is to say, we believe Morehouse would be in breach of its' own Bylaws were the faculty and student Trustees excused by the Board Chair from a Board meeting, or any part thereof, wherein a discussion takes place and a vote is taken, on the President's employment contract.

Why?



Atlanta, Georgia | Austin, Texas | Frankfurt, Germany | Jacksonville, Florida | New York, New York | Washington, D.C.

Ex. "E"

Because there is no question that under the Bylaws, both the faculty and student Trustees, like all the other Trustees of the College, are voting members of the Morehouse Board with the right, under Article I, to nominate and elect the President of the College, set the conditions of his employment, including his compensation, and support and assess his performance. Section 3.6 of those Bylaws also provide that if a faculty or student Trustee is unable to attend a Board meeting, he or she "may appoint any other member of the Board of Trustees to act as his or her proxy," at that meeting and may, therefore, vote in abstentia.

Further to this issue, Section 3.9 of the Bylaws expressly stipulates that "the meetings of the Board shall be conducted in accordance with the parliamentary procedure outlined in the latest edition of *Robert's Rules of Order*" ("*Robert's Rules*"). *Robert's Rules* lists some principles of interpretation to help deliberating assemblies determine what their Bylaws mean when they appear to be ambiguous or in conflict. One of these principles is this one: If Bylaw provisions appear to conflict with each other and one interpretation makes another impossible to reconcile, then the Bylaws should be interpreted in such a way that does not have a negative effect on any right existing under the Bylaws. RONR (11th ed.) pp. 588-591. Said another way, *Roberts Rules* would seem to prohibit the invocation of the procedural discretionary right of the Board Chair to excuse the faculty and student Trustees from a Board meeting if it thwarted the substantive right of the faculty and student Trustees to cast a vote.

That student and faculty Trustees should be allowed to participate in Board deliberations as to matters on which they have a right to vote naturally flows from the legal principle that corporate directors and trustees have a fiduciary obligation to conduct the affairs of the enterprise in an informed matter. See *FDIC v. Loudermilk*, 295 Ga. 579, 585 (2014) (directors not personally liable for their actions except when their decisions "are shown to have been made without deliberation, without the requisite diligence to ascertain and access the facts and circumstances upon which the decisions are based"). Excluding student and faculty Trustees from deliberations over matters addressing subjects on which those directors have a right to vote jeopardizes the ability of those Trustees to properly exercise their fiduciary obligations.

Can the Board Chair excuse a faulty or student Trustee from a Board meeting because he, and others, believes they may have a conflict of interest and, therefore, should not engage in discussions about, nor should they vote on, the President's employment contract?



Lacrecia G. Cade, Esq.

January 12, 2017

Page 3

We believe the short answer is no, since Section 9.1 of the Bylaws has a very narrow definition of what is a conflict of interest for a Morehouse Trustee. In a nutshell, a conflict of interest under the Bylaws exists when a Trustee, or his business or a relative, has a direct financial or other interest in a matter involving the college. And that is not the case here.

Specifically, Section 9.1 of the Bylaws defines a conflict as: (1) an "existing or potential financial or other interest which impairs or might reasonably impair such member's independent, unbiased judgment in the discharge of his or her responsibilities to the College," or (2) a member of the Trustee's family or any organization of which the Trustee has a relationship has such an existing or potential financial or other interest.

We just do not see how a faculty or student Trustee voting on an issue relating to the President's contract fits in any way into the carefully delineated, narrow, definition of a conflict of interest in the Bylaws.

Of course Sections 2.5 and 2.7 of the Bylaws both provide that faculty and student Trustees "are bound by the confidentiality and conflict of interest guidelines that apply to Elected Trustees and should declare any conflicts and excuse themselves from discussions that may lead to a conflict of interest." As such, their obligations are the same as the Elected Trustees, no more and no less. Section 45 of *Robert's Rules of Order*, according to which the Board meetings must be conducted, however, is clear that although no Trustee "should vote on any matter in which he has a direct personal or pecuniary interest not common to the other members of the organization"...no member can be compelled to refrain from voting in such circumstances." Emphasis added. Said another way, a Trustee is the one who must decide whether to abstain from voting when a conflict of interest arises and cannot be prevented from voting by others.

Potentially even more damaging than the legal problem which we have made plain here, however, is the optics problem.

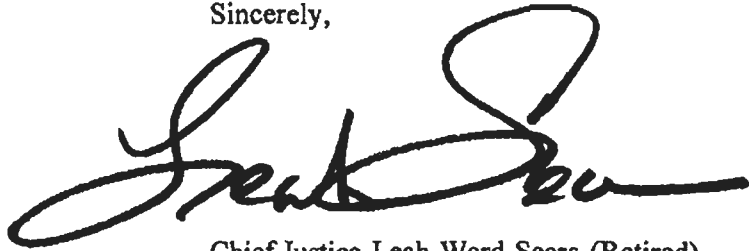
What do we mean?

It seems to us that anything less than a fully transparent effort to keep certain classes of Trustees who now have the right to vote from exercising that right because others believe they won't vote the way they want them to is simply an act of voter suppression to which a college with the history of Morehouse cannot abide, especially since it appears from the minutes of prior Board meetings that both faculty and student Trustees have been present when presidential selection decisions were made in the past. With that said, if, going forward, it is the will of the Board that faculty and student Trustees should have limited or no voting rights, the Bylaws should be amended

Lacrecia G. Cade, Esq.  
January 12, 2017  
Page 4

accordingly following the proper procedures, after careful consideration and a full, fair, and frank debate.

Sincerely,

A handwritten signature in black ink, appearing to read "Leah Ward Sears". The signature is fluid and cursive, with a large initial "L" and "S".

Chief Justice Leah Ward Sears (Retired)

LWS/bww

cc: Edward Wasmuth, Jr., General Counsel, Smith, Gambrell & Russell, LLP



IN THE SUPERIOR COURT OF FULTON COUNTY, GEORGIA  
136 PRYOR STREET, ROOM C-103, ATLANTA, GEORGIA 30303

JOHNATHAN HILL

SUMMONS

2017CV284794

JOHN TAVIS WILLIAMS  
MOSES WASHINGTON

Plaintiff,

vs.

ROBERT C. DAVIDSON, JR.

Defendant

) Case

) No.:

TO THE ABOVE NAMED DEFENDANT(S):

You are hereby summoned and required to file electronically with the Clerk of said Court at <https://efilega.tylerhost.net/ofswb> and serve upon plaintiff's attorney, whose name and address is:

HAROLD W. JENSEN  
4153-C FLAT SHOUL PARKWAY  
JTC.332  
DECATUR, GA 30034

An answer to the complaint which is herewith served upon you, within 30 days after service of this summons upon you, exclusive of the day of service; unless proof of service of this complaint is not filed within five (5) business days of such service. Then time to answer shall not commence until such proof of service has been filed. IF YOU FAIL TO DO SO, JUDGMENT BY DEFAULT WILL BE TAKEN AGAINST YOU FOR THE RELIEF DEMANDED IN THE COMPLAINT.

1/13/2017

This \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

Honorable Cathelene "Tina" Robinson  
Clerk of Superior Court

By *Della Wright*  
Deputy Clerk

To defendant upon whom this petition is served:

This copy of complaint and summons was served upon you \_\_\_\_\_, 20\_\_\_\_

Deputy Sheriff

IN THE SUPERIOR COURT OF FULTON COUNTY  
STATE OF GEORGIA

JOHNATHAN HILL,  
JOHNTAVIS WILLIAMS, AND  
MOSES WASHINGTON

Petitioners/Plaintiffs,

v.

ROBERT C. DAVIDSON, JR.,  
CHAIRMAN OF THE MOREHOUSE  
COLLEGE BOARD OF TRUSTEES,

Respondent/Defendant.

CIVIL ACTION FILE NO.

2017CV284794

**ORDER GRANTING PETITIONERS' PETITION FOR A TEMPORARY  
RESTRAINING ORDER AND INTERLOCUTORY INJUNCTION**

On January 13, 2017 the Court held a hearing on the Petitioners' Petition for Temporary Restraining Order. Upon consideration of the Petition, the supporting documents, the testimony of witnesses, and the argument of counsel, the Court finds that there is evidence to support that:

1. On January 13, 2017 Petitioners' counsel notified Respondent's General Counsel that Petitioners were seeking injunctive relief enjoining the Respondent from prohibiting the Petitioner student trustees of the Morehouse College Board of Trustees from full and unfettered participation, including their attendance, right to be heard, and voting participation in all aspects of the January 13, 2017 Morehouse College Board of Trustees meeting in which the By-Laws of the Morehouse College Board of Trustees allow them to participate.
2. The Petitioners are duly elected student members of the Morehouse College Board of Trustees ("the Board").
3. The Petitioners received written notice of the January 13, 2017 meeting of the Board.

4. The written notice informed the Petitioners that part of the agenda for the January 13, 2017 Board meeting would "be exclusively devoted to completing the discussion begun by the [B]oard at the October 2016 meeting, regarding the renewal of President Wilson's Employment Agreement."
5. The Chairperson of the Board, ostensibly invoking a provision of the Board's By-Laws, excused the Petitioner student trustees from the portion of the Board meeting devoted to the renewal of the College President's employment agreement.
6. The Petitioner student trustees were not allowed to participate in the employment agreement discussion and decision in any respect and were totally excluded from that portion of the meeting.
7. Consistent with the representation in the email agenda forwarded to the Petitioners and upon information and belief, the Petitioners believe that that the matter of the renewal of the President's employment agreement was discussed, debated, deliberated about, and voted on.
8. The actions by the Board, through its Chairperson, irreparably interfere with the Petitioners rights to full and unfettered participation in the important decision regarding leadership of the College.
9. The irreparable harm to the Petitioners from the denial of the temporary restraining order substantially outweighs any harm to the Respondent resulting from a grant of the temporary restraining order. Granting the temporary restraining order will preserve the status quo and the rights of the Petitioners, allowing further proceedings on this matter and will serve the best interests, at least temporarily, of all parties concerned.

10. The Court finds it unnecessary for a bond or other security to be deposited with the clerk of the court in this action.

THE COURT THEREFORE ORDERS THAT:

1. Petitioners Petition for Temporary Restraining Order is GRANTED;
2. Respondent and all who are in active concert or participation with the respondent are TEMPORARILY RESTRAINED AND ENJOINED from:
  - a. Taking any action, including discussion of, debate on, deliberation regarding, or voting on the renewal of the employment contract of the College's President without full and unfettered participation, as allowed by the College's governing by-laws, of the Petitioner student trustees.
3. Petitioners shall not be required to post any bond or other security pursuant to O.C.G.A. § 9-11-65(c);
4. This Order shall be effective immediately and shall remain in force until resolution of further proceedings on the Petitioners request for permanent injunctive relief. Further proceedings shall be determined by further Order of the Court.

IT IS SO ORDERED this \_\_\_\_\_ day of \_\_\_\_\_, 2017.

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JUDGE, SUPERIOR COURT OF FULTON COUNTY

Order prepared by:

Harold W. Spence, Esq.  
[hspence@davisbozemanlaw.com](mailto:hspence@davisbozemanlaw.com)  
4153-C Flat Shoals Parkway  
Suite 332  
Decatur, Georgia 30034  
(404) 244-2004 (office)  
(404) 446-2834 (direct)  
(404) 244-2020 (fax)