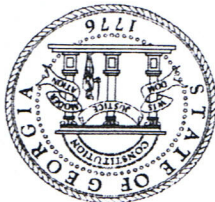


Steve Farrow
Chairman
Jack Williams
Vice-Chairman
C. Theodore Lee
Executive Secretary

State Ethics Commission



205 Jesse Hill Jr. Dr. S.E.
East Tower - Suite 478
Atlanta, Georgia 30334
(404) 463-1980
Facsimile (404) 463-1988

December 19, 2005

Ms. Viola Davis
Unhappy Taxpayer and Voter Alliance
909 Rays Road
Stone Mountain, Georgia 30083

RE: Viola Davis (Unhappy Taxpayer and Voter Alliance) v. Dekalb County CEO
Vernon Jones and Dekalb County Board of Commissioners

Dear Ms. Davis:

Enclosed please find a copy of the Response of Commissioner Burrell Ellis, Commissioner Larry Johnson, and Commissioner Henry C. Johnson, Jr. in the above-styled matter.

Respectfully yours,

Jennifer Ward
Jennifer Ward
Compliance Coordinator

Enclosure: Filed Response (Richard H. Sinkfield, Esq.)

Sonny Watson
Member

David H. Moskowitz
Member

Emmett W. Bowers
Member

ROGERS & HARDIN

ATTORNEYS AT LAW
A LIMITED LIABILITY PARTNERSHIP

WRITER'S DIRECT DIAL NUMBER:
404-420-4605
E-MAIL: RSINKFIELD@RH-LAW.COM

2700 INTERNATIONAL TOWER, PEACHTREE CENTER
229 PEACHTREE STREET, N.E.
ATLANTA, GEORGIA 30303-1601
(404) 522-4700
FACSIMILE: (404) 525-2224

December 16, 2005

BY E-MAIL (PDF) AND OVERNIGHT DELIVERY

State Ethics Commission
c/o C. Theodore Lee, Esq.
Executive Secretary
State Ethics Commission
205 Jesse Hill Jr. Dr., S.E.
East Tower - Suite 478
Atlanta, Georgia 30334

Re: Complaint No. 2005-107, filed by Viola Davis

Dear Mr. Lee:

We represent Respondents Burrell Ellis, Larry Johnson, and Henry C. "Hank" Johnson, Jr., in their individual but not their official capacities. I write to respond to the complaint filed with the State Ethics Commission (the "Commission") by Viola Davis on November 7, 2005 (the "Complaint") to the extent that it alleges that these Respondents acted in their individual capacities in the matters complained of. The Acting County Attorney for DeKalb County, Viviane Ernstes, is filing a separate response to the Complaint to the extent that it alleges that these and the other Respondents acted in their official capacities ("the County Response"). The County Response is incorporated by reference in this response as appropriate.

I. The Complaint.

On November 7, 2005, Viola Davis filed the Complaint alleging that these Respondents violated the Ethics in Government Act, O.C.G.A. § 21-5-1, et seq., in connection with a bond referendum approved by the voters of DeKalb County in the November 2005 election. The Complaint contains eight numbered paragraphs, preceded and followed by general summary allegations. The Complaint alleges, in general, that the Respondents, with other members of the DeKalb County Commission and Vernon Jones, Chief Executive Officer of DeKalb County, cut off public comment against the bond and urged voters to vote in favor of the referendum. With the sole exception of part of Paragraph

3, the allegations against these Respondents in their individual capacities relate to actions that are outside the scope of the matters regulated by the Ethics in Government Act and that are not within the jurisdiction of the Commission. Paragraph 3 relates in part to the Respondents' alleged use of their campaign funds and to that extent is within the jurisdiction of the Commission.

II. Allegations Against These Respondents In Their Official Capacities.

To the extent that Paragraphs 1 through 8 of the Complaint include any allegations against these Respondents in their official capacities as Dekalb County Commissioners, these Respondents refer to and incorporate by reference the response filed on their behalf by the Acting County Attorney for Dekalb County.

III. Allegations Against These Respondents In Their Individual Capacities.

Paragraph 1. These Respondents do not understand Paragraph 1 to allege any conduct by any of these Respondents in their individual capacities. Therefore, the allegations of Paragraph 1 should be dismissed as to these Respondents in their individual capacities.

Paragraph 2. Paragraph 2 relates only to actions of Dekalb County's Chief Executive Officer Vernon Jones ("Mr. Jones").

Paragraph 3. Paragraph 3 alleges, in part, that the campaign committees for these Respondents made contributions to the Committee for a Better Dekalb in support of passage of the bond referendum. These Respondents admit that in October 2005 their campaign committees made contributions from their campaign funds to the Committee for a Better Dekalb. Since that time, the contributions have been returned by the Committee for a Better Dekalb to the respective campaign committees. See Affidavits of Messrs. Ellis, H. Johnson, and L. Johnson, filed herewith.

The Respondents further show that the statute on permissible uses of campaign funds, O.C.G.A. § 21-5-33, allows a campaign committee to contribute excess campaign contributions to "any charitable organization" under 26 U.S.C. § 170(c) "which additionally shall include educational, eleemosynary, and nonprofit organizations." O.C.G.A. § 21-5-33(b)(1)(A). The list of organizations to which contributions may be made is not limited to traditional charitable organizations in that the second term in the list of organizations at the end of the subsection ("eleemosynary") itself means either charitable or relating to charity. The addition of "educational" and "nonprofit organizations" to the list therefore refers to

something other than purely charitable organizations. The list of terms could be argued and reasonably believed to include a nonprofit organization like the Committee for a Better Dekalb which, as the mail-out attached to the complaint suggests, seeks to promote benefits for the larger public in the County.

Since the Respondents have received the return of their contributions, they do not insist on this construction of the statute but rather observe that their conduct in making the contributions may have been lawful. They nevertheless are willing to enter into a consent agreement under which they would not make such a contribution in the future absent a change in Georgia law.

Paragraph 3 also refers to a voice message from elected officials urging voters to vote in favor of the referendum. Any actions of these Respondents in connection with the alleged voicemail were in their individual capacities as private citizens. See the Affidavits of these Respondents filed with the County Response. These actions are not prohibited by the Ethics in Government Act and are protected political speech in which the Respondents are entitled to engage in their individual capacities. See Harrison v. Rainey, 227 Ga. 240, 179 S.E.2d 923 (1971), which barred the use of county funds in seeking approval of a constitutional amendment but observed that:

Clearly the chairman and the members of the Board of Commissioners have the right, in their individual capacities, to support the adoption of the Constitutional Amendment by the voters of Dekalb County. They may expend their time, effort, and money to procure its adoption.

227 Ga. at 241. Also U.S. Constitution, Amendments 1 and 14; Ga. Constitution, Article 1, Section 1, Paragraph V.

Paragraph 4 alleges that the Committee for a Better Dekalb used a mail-out that featured the Dekalb County Commissioners and Mr. Jones supporting the passage of the bond referendum. These alleged actions were conducted by these Respondents in their individual capacities. See the Affidavits of these Respondents filed with the County Response. These alleged actions are not prohibited by the Ethics in Government Act and are protected political speech for the reasons stated above with respect to the voice message alleged in Paragraph 3.

Paragraph 5 relates only to actions of Mr. Jones.

Paragraph 6. Paragraph 6 relates only to actions of Mr. Jones.

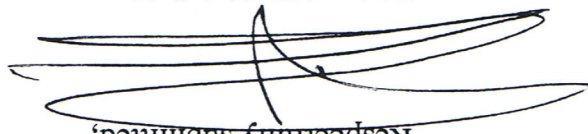
Paragraph 7. These Respondents do not understand Paragraph 7 to allege any conduct by any of these Respondents in their individual capacities. Therefore, the allegations of Paragraph 7 should be dismissed as to these Respondents in their individual capacities.

Paragraph 8. These Respondents do not understand Paragraph 8 to allege any conduct by any of these Respondents in their individual capacities. If, however, the Commission were to read Paragraph 8 as alleging any conduct by Respondent Henry "Hank" Johnson in his individual capacity, then the principles cited in response to Paragraphs 3 and 4 above would apply and the conduct would not be prohibited by the Ethics in Government Act and would be protected political speech. In either event, the allegations of Paragraph 8 should be dismissed as to these Respondents in their individual capacities.

IV. Conclusion.

These Respondents have, with the exception of part of the allegations of Paragraph 3, engaged in activities in their individual capacities that are outside the scope of the matters regulated by the Ethics in Government Act, that are not within the jurisdiction of the Commission, and that are protected activities under Georgia law. In the case of the contributions to the Committee for a Better DeKalb, all of the contributions have been returned to the respective campaign committees, and the Respondents are prepared to agree to limit the political contributions from their campaigns in the future to those permitted by O.C.G.A. § 21-5-33(b)(1)(B) except to the extent of future changes in the law of the State of Georgia. The Respondents submit herewith a proposed Compliance Agreement embodying this commitment.

Best regards.

Respectfully submitted,

Richard H. Sinkfield

**BEFORE THE STATE ETHICS COMMISSION
STATE OF GEORGIA**

**IN THE MATTER OF
Complaint Filed by
Viola Davis**

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CASE No. 2005-0107

COMPLIANCE AGREEMENT

This matter came before the State Ethics Commission pursuant to a sworn, written complaint filed by Viola Davis alleging violations of the Ethics in Government Act, O.C.G.A. § 21-5-1, *et seq.*, in connection with a bond referendum approved by the voters of DeKalb County in the November 2005 election (the "Complaint"). This Compliance Agreement is addressed only to the Complaint against Respondents Burrell Ellis, Henry C. Johnson, Jr., and Larry Johnson ("the Respondents").

The Commission, having considered the Complaint, the responses filed, and the preliminary investigation conducted by the staff, now makes the following findings and conclusions:

The Commission finds that, with the exception of Paragraph 3 of the Complaint, all of the allegations against the Respondents relate to actions taken that: (1) are within their official capacities and are not prohibited by the Ethics in Government Act; or (2) are within their individual capacities, are not prohibited by the Ethics in Government Act, and are protected conduct under Georgia law. The Commission dismisses all of these allegations.

With respect to Paragraph 3 of the Complaint, the Commission finds that in October 2005 the campaign committees for the Respondents made contributions from their campaign funds to the Committee for a Better DeKalb. The contributions were not retained by the

Committee for a Better DeKalb and have all been returned to the respective campaign committees, thus rectifying the matter. The Respondents have agreed that they will in the future cause their campaign funds to be used for political contributions only as specified in O.C.G.A. § 21-5-33(b)(1)(B) except to the extent of future changes in the law of the State of Georgia.

The Commission concludes its investigation of the Complaint against the Respondents and adopts the foregoing statements and conclusions as its findings of fact and conclusions of law. The Commission orders the implementation of the terms of this Compliance Agreement.

The Respondents represent that the foregoing findings of fact are true, agree to the conclusions of law, and further agree to abide by all terms hereof.

RESPONDENT

Burrell Ellis

Signature of Burrell Ellis
Attested to on this _____ day of _____, 200__

By: _____

RESPONDENT

Larry Johnson

Signature of Larry Johnson
Attested to on this _____ day of _____, 200__

By: _____

RESPONDENT

Henry C. Johnson, Jr.

Signature of Henry C. Johnson, Jr.
Attested to on this _____ day of _____, 200_

By: _____

SO ORDERED this _____ day of _____, 200_.

STATE ETHICS COMMISSION

By: Steve Farrow, Chairman

**BEFORE THE STATE ETHICS COMMISSION
STATE OF GEORGIA**

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CASE No. 2005-0107

IN THE MATTER OF
Complaint Filed by
Viola Davis

AFFIDAVIT OF BURRELL ELLIS

Before the undersigned officer authorized to administer oaths comes Burrell Ellis,

who, being first duly sworn, deposes and says:

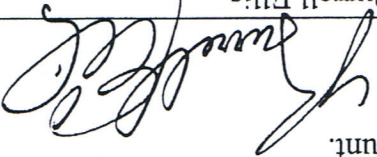
1. My name is Burrell Ellis, I am over the age of majority, and I am competent to give this Affidavit.

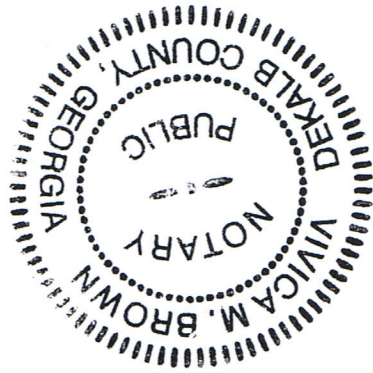
2. I give this Affidavit on personal knowledge and for use in connection with the above-styled proceeding.

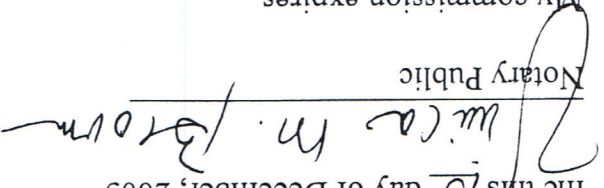
3. On or about October 24, 2005, my campaign committee (Committee to Elect Burrell Ellis) contributed \$2,000.00 to the Committee for a Better DeKalb. The Committee

for a Better DeKalb has returned the contribution, and the returned funds have been

deposited in my campaign committee's account.


Burrell Ellis



Sworn to and subscribed before
me this 15th day of December, 2005
Notary Public

My commission expires

Notary Public, DeKalb County,
Vivica M. Brown
My Commission Expires, Oct. 7, 2007

BEFORE THE STATE ETHICS COMMISSION
STATE OF GEORGIA

IN THE MATTER OF
Complaint Filed by
Viola Davis

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CASE No.
2005-0107

AFFIDAVIT OF LARRY JOHNSON

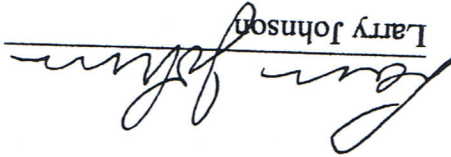
Before the undersigned officer authorized to administer oaths comes Larry Johnson,
who, being first duly sworn, deposes and says:

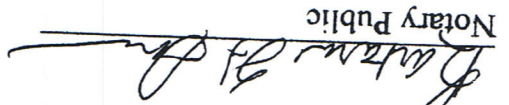
1. My name is Larry Johnson, I am over the age of majority, and I am competent
to give this Affidavit.

2. I give this Affidavit on personal knowledge and for use in connection with the
above-styled proceeding.

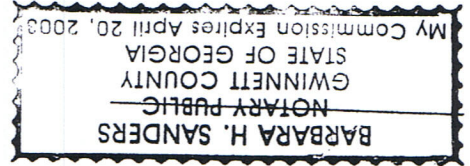
3. On or about October 22, 2005, my campaign committee (Friends of Larry
Johnson) made two contributions of \$500.00 each to the Committee for a Better DeKalb.

The Committee for a Better DeKalb has returned the contributions, and the returned funds
have been deposited in my campaign committee's account.


Larry Johnson

Sworn to and subscribed before
me this 2nd day of December, 2005

Notary Public

My commission expires



BEFORE THE STATE ETHICS COMMISSION
STATE OF GEORGIA

IN THE MATTER OF
Complaint Filed by
Viola Davis

*
*
*
CASE NO. 2005-0107

AFFIDAVIT OF HENRY C. JOHNSON, JR.

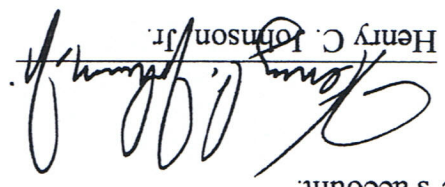
Before the undersigned officer authorized to administer oaths comes Henry C. Johnson, Jr., who, being first duly sworn, deposes and says:

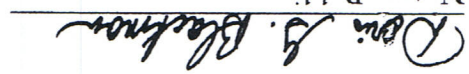
1. My name is Henry C. "Hank" Johnson, Jr., I am over the age of majority, and I am competent to give this Affidavit.

2. I give this Affidavit on personal knowledge and for use in connection with the above-styled proceeding.

3. On or about October 18, 2005, my campaign committee (Committee to Re-elect Hank Johnson) contributed \$2,000.00 to the Committee for a Better Dekalb. The

Committee for a Better Dekalb has returned the contribution, and the returned funds have been deposited in my campaign committee's account.


Henry C. Johnson, Jr.

Sworn to and subscribed before me this 15th day of December, 2005

Doris G. Blackman
Notary Public

My commission expires

DORIS G. BLACKMAN
Notary Public, Fulton County, Georgia
My Commission Expires August 21, 2008