

THE LAW OFFICE OF R. KELLY HAMILTON, LLC

April 27, 2010

R. Lee Shepherd
6 Water Street
Shelby, Ohio 44875

Facsimile Transmission – 419.342.5116

Email Transmission – [REDACTED]

RE: IN RE John Freshwater

Dear Mr. Shepherd,

I obtained my client's consent to file the attached Motion to Close the Hearing Pursuant to Ohio Revised Code 3319.16.

I have multiple witnesses who may resist appearing if the hearing is not closed. Therefore, please advise at your earliest opportunity.

Respectfully,

s/R. Kelly Hamilton

CC:

David J. Millstone
Squire, Sanders & Dempsey L.L.P.
4900 Key Tower
Cleveland, OH 44114

Facsimile Transmission 216.479.8795

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IN THE MATTER OF JOHN FRESHWATER

Mount Vernon City School
District Board of Education

Employer

AND

REFEREE: R. Lee Shepherd

John Freshwater

Teacher

**JOHN FRESHWATER'S MOTION TO CLOSE THE HEARING PURSUANT TO
OHIO REVISED CODE 3319.16**

Now comes John Freshwater, by and through counsel, respectfully moving the Referee to close, or make private, the remainder of John Freshwater's employment hearing currently and previously conducted pursuant to Ohio Revised Code 3319.16. John Freshwater's motion is made for the reasons set forth in the following Memorandum of Support.

MEMORANDUM OF SUPPORT

This matter has proceeded in a public hearing pursuant to John Freshwater's request as provided by Ohio Revised Code 3319.16, *Termination of contract by board of education*, which states in pertinent part,

The hearing shall be private unless the teacher requests a public hearing.

However, over the course of three calendar years, circumstances have presented, which after recommendation by the undersigned counsel, John Freshwater, consents to this motion.

I. Change in Circumstances

John Freshwater is involved in multiple legal actions related to his employment with the Mount Vernon City School District Board of Education. On May 24, 2010, *John*

Doe, et al., v. Mount Vernon City School District Board of Education, et al., is scheduled for a jury trial in The United States District Court for the Southern District of Ohio Eastern Division, Case No. 2:08CV575. Upon each hearing date multiple media sources have attended the hearing and made report in various news outlets. The change in circumstances is presented in that potential jury members could be exposed to media reports that may unduly influence, create or lead to bias, detected or undetected through voir dire. The cognitive influences of primacy and recency potentially created by media reports could jeopardize John Freshwater's position in the federal trial as eventual jurors may be influenced or biased as a result of the media reports emanating from the remaining hearing testimony to be taken in this matter. An example of such influence against John Freshwater is included as Exhibit A wherein John Freshwater received an unsolicited letter of opinion from a person not familiar to John Freshwater. Media attention in this matter has been constant and at this juncture the teacher, John Freshwater, may be further unduly harmed by uninformed recipients of journalism that is designed to sell news rather than accurately present a fair and balanced report.

II. Witnesses Expression of Apprehension to Testify Due to Media Exposure

The undersigned has experienced resistance from both adult and minor witnesses from willingly committing to testify to matters favorable to John Freshwater due to the prospect of being portrayed in the media. As a result of the witnesses apprehension the end result for John Freshwater is reluctance by the witness to speak freely and fully with elaboration upon salient issues of fact. An example of this has already occurred with student witness Taylor Strack who returned to school at the conclusion of her testimony and conversed with upcoming student witness Tokayla Redman. Tokayla Redman expressed apprehension in speaking with the undersigned because of Tokayla Redman's

fear that she would be “made to look stupid” in front of others. Upcoming adult witness Ruth Frady has expressed to the undersigned her concern that she be made a “scapegoat” for actions taken by her during a Fellowship of Christian Athletes meeting.

Compounding the witnesses apprehension with the prospect of media exposure and additional speculators will harm John Freshwater.

An anonymous source has injected information into this forum upon at least two occasions. The likelihood of the anonymous source removing their anonymity is decreased if their exposure to the media is immediately imminent. John Freshwater will be harmed if the anonymous source does not have the motivation to come forward without immediate media attention. Removing the prospect of immediate media exposure could entice the anonymous source to appear at the hearing resulting in a more full disclosure of truth beneficial to John Freshwater.

III. Ohio Revised Code Creates A Statutory Right In Favor Of The Teacher

Ohio Revised Code 3319.16 creates a statutory right in favor of the teacher subject to contract termination hearing. The statutory right is that the teacher is vested with the sole and exclusive right to choose whether the contract termination hearing ***shall be private unless the teacher requests a public hearing.*** The statutory right is without further qualification or limiting interpretation. John Freshwater will be unduly harmed from circumstances that could otherwise be prevented by the closing of the hearing to a private forum.

The Supreme Court of the United States has held any inquiry into the meaning of a statute begins with the statutory text, and ends there as well if the text is unambiguous. *BedRoc Ltd., LLC v. United States* (2004), 541 U.S. 176, 183.

Upon at least two occasions, the Supreme Court of Ohio has directed how to interpret a statute. In *Specialty Restaurants Corp. v. Cuyahoga Cty. Bd. of Revision*, (2002) 96 Ohio St.3d 170, the Court held, when a statute is unambiguous in its terms, courts must apply it rather than interpret it. Similarly, "If a review of the statute conveys a meaning that is clear, unequivocal, and definite, the court need look no further." *Columbus City School Dist. Bd. of Edn. v. Wilkins*, (2004) 101 Ohio St.3d 112.

The plain language of R.C. 3319.16 is clear, definite and unequivocal in permitting Mr. Freshwater to elect to have a public hearing if he so chooses. Nowhere in the plain language of R.C. 3319.16 does there exist a clear statement, a conditional, or qualifying language to controvert the plain language that a teacher, such as John Freshwater, to have the sole and exclusive option to elect a public or private hearing. The statute does not permit the employer to qualify or limit the teacher's choice of a public versus a private hearing. In contrast, the statute gives either the employer or the employee the statutory right to choose a hearing to be held before a referee or members of the school board. If the legislative intent of R.C. 3319.16 was to permit either the employer or employee to choose whether to elect a public versus private hearing, surely the legislators would have enacted language to that effect. The language of R.C. 3319.16 grants only to the teacher the option of choosing a public or private hearing. Therefore, Mr. Freshwater's election to have a "public hearing" cannot be challenged as the plain language of R.C. 3319.16 grants to him the statutory right to choose.

IV. Conclusion

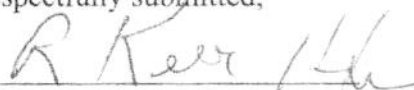
This is a matter of first impression in that no recorded case located by the undersigned establishes precedent that a public school teacher is presumed without remedy to effectively address a change in circumstances during a statutory hearing

pursuant to R.C. 3319.16. John Freshwater has an overriding interest that is likely to be prejudiced if the hearing is not closed to further media report. The undersigned pledges to commit to this course for the remainder of the hearing. Upon consideration of the following:

1. The approaching federal trials and potential for undue juror influence;
2. Articulated witness apprehension;
3. The prospect of revealing the anonymous source identity; and
4. The exclusive statutory right vested in the public school teacher,

John Freshwater consents to the undersigned's motion to close the hearing pursuant to Ohio Revised Code 3319.16.

Respectfully submitted,


R. Kelly Hamilton (Supreme Court No. 0066403)
Mail to: P.O. Box 824, Grove City, Ohio 43123
Office: 3800 Broadway, Grove City, Ohio 43123
Phone 614-875-4174 / Fax 614-875-4188

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing John Freshwater's Motion to Close the Hearing Pursuant to Ohio Revised Code 3319.16 was delivered this April 27, 2010 by counsel to:

David Millstone
4900 Key Tower
127 Public Square
Cleveland, Ohio 44114


R. Kelly Hamilton, (0066403)

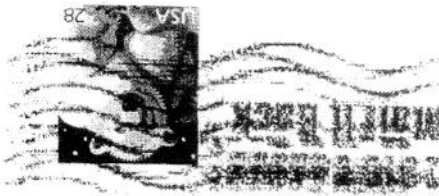
March 24, 2010 It is sad and offensive that anyone should be subjected to your presumption that you have the right to impose your religious beliefs or practices in any way on anyone else, no matter their age, no matter how you may come in contact with them. That right is respected for parents to a degree and to a certain age. After that, you have no right to be imposing with anyone about religion. You have brought all your troubles on yourself. Your determination to persist makes you deserving of those troubles. This country, though you may deny it, was founded primarily for religious liberty. The only way there can be religious liberty is to have and enforce our constitutional and other lawful requirements to keep people like you from even attempting to interfere with the rights of others in any way. Using your position as a public school teacher, paid with public funds, is an outrageous violation of religious liberty and constitutional and other legal rights. No matter how ardently you may hold your own beliefs, that gives you absolutely no right to abrogate the rights of others. Religious liberty was considered a natural right by our Founders and the Framers of our Constitution. History convinced them of that. We have fought wars for that. If you studied the history of religion, you would have to admit that no greater violence of rights was ever committed than in the name of religion. Maintaining a separation of religion from our public affairs is not only the strongest protection of religious rights, it is the only protection for religious and civil rights. You need to spend lots of intense time considering your behavior. Hopefully it will bring you to respect others and their equal rights.

Gilbert Cantlin



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John Freshwater
7760 New Delaware Rd.
Mount Vernon, OH 43050-9159



CREWSTER, OH 44017
25 MAR 2010 PM 4:17

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