

CAUSE NO. \_\_\_\_\_

KAY SANDOR, DIANA PUC CETTI, §  
ALLEN LECORNU §  
AND THE TEXAS FACULTY §  
ASSOCIATION §

IN THE DISTRICT COURT

VS. §

THE UNIVERSITY OF TEXAS §  
SYSTEM §  
("UT SYSTEM"), H. SCOTT CAVEN, §  
IN HIS OFFICIAL CAPACITY AS §  
CHAIRMAN OF THE UT SYSTEM §  
BOARD OF REGENTS ("CAVEN"), §  
AND JAMES R. HUFFINES §  
("HUFFINES"), ROBERT B. §  
ROWLING ("ROWLING"), JOHN W. §  
BARNHILL, JR. ("BARNHILL"), §  
JANIECE LONGORIA ("LONGORIA") §  
COLLEEN MCHUGH ("MCHUGH"), §  
JAMES D. DANNENBUM §  
("DANNENBAUM"), PAUL FOSTER §  
("FOSTER") AND PRINTICE L. GARY §  
("GARY") (COLLECTIVELY §  
"DEFENDANTS"), EACH IN THEIR §  
OFFICIAL CAPACITY AS REGENTS §  
OF THE UNIVERSITY OF TEXAS §  
SYSTEM ("BOARD OF REGENTS"), §

OF GALVESTON COUNTY, TEXAS

\_\_\_\_ JUDICIAL DISTRICT

**PLAINTIFF'S ORIGINAL PETITION FOR DECLARATORY  
RELIEF, DEMAND FOR JURY TRIAL AND REQUEST FOR DISCLOSURES**

COME NOW, Kay Sandor, Diana Puccetti, Allen LeCornu and The Texas Faculty Association ("Plaintiffs"), and file this Original Petition for Declaratory Relief, Demand for Jury

Trial and Request for Disclosures against Defendants The University of Texas System (“UT System”), H. Scott Caven, in his official capacity as Chairman of the UT System Board of Regents (“Caven”), and James R. Huffines (“Huffines”), Robert B. Rowling (“Rowling”), John W. Barnhill, Jr. (“Barnhill”), Janiece Longoria (“Longoria”), Colleen McHugh (“McHugh”), James D. Dannenbum (“Dannenbaum”), Paul Foster (“Foster”) and Printice L. Gary (“Gary”) (collectively “Defendants”), each in their official capacity as Regents of the University of Texas System (“Board of Regents”), upon personal knowledge of their own actions, and upon information and belief as to all other matters.

**I.**  
**PRELIMINARY STATEMENT**

On November 12, 2008, only two months after Hurricane Ike flooded Galveston Island, causing epic damage to lives and property, The Board of Regents, a governmental body subject to the Texas Open Meetings Act, unanimously authorized firing up to 3800 employees of the University of Texas Medical Branch in Galveston, Texas. One month before the November 12 meeting, word of the Regents intention to fire so many health care workers had leaked out, and political and civic leaders were alarmed and highly critical of the move to deprive so many employees of the means to make a living only a few weeks after suffering such an awesome natural disaster. Local leaders, the media and the general public were suspicious that the Regents were using the storm as an excuse to permanently diminish the strength of the teaching hospital (rather than honoring the loyalty and spirit of the Institution by firmly and promptly announcing the Regents’ intention to rebuild it), thereby commencing an inexorable series of events that would ultimately accomplish what the UT System leadership has found politically difficult thus far for some time: moving the medical school, in whole or in part, from Galveston to Austin. Thus, on November 12, 2008 the Board of Regents, on advice from UT System leadership, illegally deliberated an action item involving a class of up to 3800 employees in executive session. The Texas Open Meeting Act, and Attorney General Opinions and case law interpreting it, authorize this lawsuit to be brought to reverse the Regents’ November 12 decision.

**II.**  
**DISCOVERY CONTROL PLAN**

1. Discovery shall be conducted under Discovery Control Plan Level 2 pursuant to Texas Rule of Civil Procedure 190.

**III.**  
**PARTIES**

2. Plaintiffs Sandor, Puccetti and LeCornu are interested persons pursuant to Government Code § 551.142, and they are Texas residents with their principal place of residence in Galveston County, Texas. The Texas Faculty Association, the statewide affiliate of the Texas State Teachers Association and the National Education Association, unites, organizes, and empowers higher education advocates, faculty, and personnel to provide a quality education to every student in higher education in Texas. The Texas Faculty Association operates as a non-profit organization and is certified by the United States Internal Revenue Service as a tax-exempt 501 (c) 5 non-profit organization.

3. Defendant the University of Texas System is a governmental body with component locations throughout the State of Texas, including Galveston, Texas. It may be served via its Chairman H. Scott Caven at the following address: Ashbel Smith Hall, Suite 820 201 West 7th Street Austin, Texas 78701.

4. Defendant Caven, Chairman of the Board of Regents, is a resident of the State of Texas. He may be served at his home address 2169 Troon Rd. Houston, Texas 77019.

5. Defendant Huffines is a resident of the State of Texas. He may be served at his home address 1602 Leigh St. Austin, TX 78703.

6. Defendant Rowling is a resident of the State of Texas. He may be served at his home address 3828 Beverly Drive Dallas, Texas 75205.

7. Defendant Barnhill is a resident of the State of Texas. He may be served at 4800 Old Chappell Hill Rd. Brenham, Texas 77833.

8. Defendant Longoria is a resident of the State of Texas. She may be served at 711 Louisiana, Suite 1900 Houston, Texas 77002.

9. Defendant McHugh is a resident of the State of Texas. She may be served at 4350 Ocean Drive, Unit 603 Corpus Christi, Texas 78413.

10. Defendant Dannenbaum is a resident of the State of Texas. He may be served at 3100 W. Alabama St. Houston, Texas 77098.

11. Defendant Foster is a resident of the State of Texas. He may be served at 837 Rosinante Rd. El Paso, Texas 79922.

12. Defendant Gary is a resident of the State of Texas. He may be served at 16304 Ranchita Dr. Dallas, Texas 75248.

#### **IV.** **JURISDICTION AND VENUE**

13. Jurisdiction is proper in this Court pursuant to, *inter alia*, Texas Const., Art. 5, § 8.

14. Venue is proper in this Court pursuant to Tex. Civ. Prac. & Rem. Code § 15.002. A substantial part of the events or omissions giving rise to the claim occurred in Galveston County. Specifically, all or a substantial number of the employees made the subject of Defendants' illegal deliberation all work or reside in Galveston County. Additionally, the component campus and medical facility made the basis of Defendants' illegal deliberation is located in Galveston County. Finally, the reason Defendants chose to shield their deliberations from the public was because political and civic leaders from Galveston County, along with members of the Galveston County media and the general public, were critical of Defendants transparent attempts to dismantle the University of Texas Medical Branch.

15. The Court has personal jurisdiction over all Defendants. The UT System is a governmental body within the State of Texas, and all Regents reside in the State of Texas.

**V.**  
**REQUEST FOR DISCLOSURES**

16. Plaintiffs request that Defendants make all disclosures required by Texas Rule of Civil Procedure 194 within 50 days of the service of this Original Petition and Request for Disclosures.

**VI.**  
**STATEMENT OF RELEVANT FACTS**

17. Prior to September 13, 2008, UTMB was the major economic engine for the City and County of Galveston, employing 12,500 full time employees throughout Galveston and Texas, generating approximately \$110 million annually in federal grants, and millions more in endowments, and enrolling approximately 2500 students in nursing, medical school and allied health fields. It has performed loyal service to the State of Texas since 1891, serving as the *alma mater* of Texas medical education for well over a century.

18. UTMB's Level-one Trauma Center served a 9-county region, including Houston, which depended upon its services. The Trauma Center has been ranked Number One in the nation. UTMB-Galveston routinely served the health care needs of the regional and national energy industry, both onshore and offshore, and played a critical role in providing emergency medical care following explosions and other catastrophic events for decades. Further, the Galveston National Laboratory opened this year on the UTMB-Galveston campus; and the proximity of a Level-one Trauma Center is essential to its success.

19. Until Hurricane Ike wrought its devastation, UTMB was providing vital medical and psychiatric care to the citizens of Galveston and to Texans from throughout the state, with over 41,000 Texans annually receiving inpatient care. A significant percentage of these patients were uninsured or underinsured Texans, many of them minorities, who have no other reasonable health care options.

20. On September 13, 2008 Hurricane Ike made a direct hit on Galveston Island. The storm flooded the Island, causing widespread damage, and reportedly caused \$710 million worth of storm related losses to UTMB-Galveston facilities and operations, mostly in the form of anticipated future revenue losses.

21. Previously, in late spring 2008, The UT System Board of Regents made a business decision, pursuant to their fiduciary responsibilities as appointed Regents, to purchase only \$100 million worth of flood insurance to respond in the event of a flood event affecting UTMB-Galveston. That is, the Regents made a business decision essentially to – in part - self insure UTMB-Galveston in the event of a major flood or windstorm. Following Hurricane Ike, the Regents are faced with \$610 million in uninsured losses (physical damage and revenue loss) to repair and recover UTMB-Galveston.

22. The Permanent University Fund, the UT System Endowment, is considerable in amount, third only to that of Harvard and Yale Universities. On June 30, 2008 the market value and book value of the PUF was \$11.9 billion and \$10.8 billion, respectively, exclusive of land acreage.

23. According to the Texas Comptroller, the State of Texas budget surplus going in to the 81<sup>st</sup> Legislature (which commences on January 13, 2009) is between \$10.7 billion and \$15 billion. After satisfying property tax cuts and Rainy day Fund commitments, the remaining surplus will still register at least between \$2 billion and \$4 billion.

24. The State of Texas Rainy Day Fund is presently worth over \$6 billion.

25. If the Regents wanted to restore UTMB-Galveston, Senate Finance Chairman Steve Ogden has made clear that there is ample money available to do so, from public and private sources (source: *Texas Monthly*'s Paul Burka in a November 24, 2008 letter to the editor of the Galveston County Daily News).

26. Prior to a scheduled town hall meeting on October 7, 2008 to discuss UTMB's fate, it was rumored that the Regents had instructed UTMB-Galveston President David Callender to fire thousands of employees. The rumor circulated to Galveston political leaders who joined thousands of employees at Levin Hall on the UTMB-Galveston campus to hear from President Callender. On information and belief, the Regents and UT System leadership had instructed the President to announce massive firings at the October 7 meeting, but in the face of political pressure from State and local leaders the announcement was postponed until after the November 4, 2008 elections.

27. On October 8, 2008 the Regents convened a special called telephone meeting of the Board to discuss, among other matters, “legal issues related to recovery from Hurricane Ike.” This was held in executive session purportedly pursuant to Government Code § 551.071 which permits a closed session to discuss pending or contemplated litigation or a settlement offer. Later in the October 8, 2008 meeting, the Regents discussed in closed session personnel matters involving “UT System and Institutional employees” purportedly pursuant to Government Code § 551.074.

28. On October 27, 2008 the Regents convened a special called telephone meeting of the Board to discuss in closed session, among other matters, personnel matters involving “UT System and Institutional employees” purportedly pursuant to Government Code § 551.074. Later in the same meeting, the Regents consulted with their attorney on a publicly unknown topic (the agenda failed to identify the topic) purportedly pursuant to Government Code § 551.071.

29. On November 6, 2008 the Regents convened a special called telephone meeting of the Board to discuss in closed session purportedly pursuant to Government Code § 551.071 “U. T. Medical Branch - Galveston: Legal issues related to recovery from Hurricane Ike.” Later in the same meeting, the Regents discussed “U.T. Medical Branch – Galveston” in closed session purportedly pursuant to Government Code sections 551.072 (Deliberations Regarding the Purchase, Exchange, Lease, Sale, or Value of Real Property) and 551.073 (Negotiated Contracts for Prospective Gifts or Donations). Later in the same meeting, the Regents discussed “U. T. Medical Branch - Galveston: Discussion and appropriate action regarding individual personnel matters relating to appointment, employment, evaluation, compensation, assignment, and duties of U. T. Medical Branch – Galveston employees” purportedly pursuant to Government Code § 551.074.

30. On November 12, 2008 in El Paso, Texas the Regents convened a regular meeting of the Board to discuss in closed session “U. T. Medical Branch - Galveston: Discussion and appropriate action regarding individual personnel matters relating to appointment, employment, evaluation, compensation, assignment, and duties of U. T. Medical Branch - Galveston employees” purportedly pursuant to Government Code § 551.074. Later in the same meeting, the Regents discussed in closed session “U. T. Medical Branch - Galveston: Legal issues related to recovery from Hurricane Ike” purportedly pursuant to Government Code § 551.071. Later in the

same meeting, the Regents discussed in closed session “U. T. Medical Branch - Galveston: Deliberations Regarding the Purchase, Exchange, Lease, Sale, or Value of Real Property” purportedly pursuant to Government Code § 551.072. Finally, later in the same meeting, the Regents discussed in closed session “U. T. Medical Branch - Galveston: Negotiated Contracts for Prospective Gifts or Donations” purportedly pursuant to Government Code § 551.073. Then, in open session, after illegally deliberating the topic in closed session, the Regents voted unanimously to authorize the firing of up to 3800 UTMB-Galveston employees.

31. As of November 24, 2008, three thousand (3000) UTMB-Galveston employees have been fired since the November 12, 2008 Board of Regents meeting.

## **VII.**

### **DEFENDANTS VIOLATED THE TEXAS OPEN MEETINGS ACT**

32. The Texas Open Meetings Act (“the Act”) proceeds from the requirement that all meetings of any governmental body be open to the public. The Act applies to all meetings involving a “quorum” of a governmental body. The U.T. System Board of Regents is a governmental body, and all meetings described above involved a quorum being present.

33. The Act permits closed meetings only under very limited circumstances, each of which is narrowly construed consistent with the overarching principle of open governmental meetings. Naturally, the limited exceptions do not apply if a third-party is present at the closed meeting. The Act also requires that in most instances, unless an exception to recording is applicable, minutes or tape recordings must be kept of all closed or executive sessions.

34. Violations of the Act are not taken lightly. Initially, all actions taken in violation of the Act are voidable. Declaratory relief is an appropriate remedy to address violations of the Act. Further, the Act makes it a crime (misdemeanor) to circumvent the Act, to participate in an improperly closed meeting, to close a regular public meeting to the public and discuss topics not covered by a closed meeting exception, or to participate in a closed meeting knowing that a certified agenda or a tape recording is not being made.

35. Texas Government Code § 551.074 authorizes executive session deliberations concerning an individual officer or employee. Of course, § 551.074(b) authorizes the individual

public officer or employee under consideration to request a public hearing; in that event, the meeting must remain open. *See City of Dallas v. Parker*, 737 S.W.2d 845, 848 (Tex. Civ. App. – Dallas 1987, no writ). Deliberations concerning a class or group of employees, however, must be held in open session. *Gardner v. Herring*, 21 S.W.3d 767, 777 (Tex. App. – Amarillo, 2000) (“discussing policy and the like as it relates to a generic group of employees or officers reasonably falls outside the interests sought to be protected in section 551.074 and, therefore, should be addressed publicly”); Tex. Att’y Gen. Op. No. H-496 (1975) (construing predecessor to Government Code, section 551.074). For example, when a governmental body discusses salary scales without referring to a specific employee, it must meet in an open session. Tex. Att’y Gen. Op. No. H-496 (1975). Likewise, to discuss in closed session firing a large population of loyal employees – essentially considering a combined number of salaries to eliminate to “make budget” – is not authorized by Texas law. The exception allowing a closed session exists to protect the *individual* from embarrassment – not the governing body. Accordingly, the November 12, 2008 closed session where the Regents discussed and deliberated whether to authorize these 3800 firings was illegal under Texas law. Their unanimous vote to fire these employees is, therefore, voidable.

36. In addition, upon information and belief, Plaintiffs aver that Defendants violated Texas law on October 8, October 27 and November 6, 2008. It appears that Defendants were discussing in executive session these firings in these three special called telephone meetings on these dates. Discovery pursuant to the Texas Rules of Civil Procedure will ferret out whether there were violations of the Texas Open Meetings Act in addition to the violation committed by Defendants on November 12, 2008.

**VIII.**  
**PLAINTIFFS’ REQUEST FOR**  
**DECLARATORY RELIEF AND ATTORNEYS FEES**

37. Plaintiffs repeat the preceding paragraphs.

38. As shown above, an actual, substantial and justiciable controversy exists with regard to Defendants’ compliance with the Texas Open Meetings Act in authorizing on November 12, 2008 the firing of 3800 UTMB-Galveston employees. Plaintiffs maintain that the

November 12, 2008 authorization is invalid and void. Defendants' violations of the Texas Open Meetings Act make the authorization voidable.

39. Accordingly, Plaintiffs request that this Honorable Court issue a declaratory judgment that: (i) the UT System Board of Regents violated the Texas Open Meetings Act with respect to the November 12, 2008 authorization to fire up to 3800 UTMB-Galveston employees; and (ii) the Regents' authorization to fire up to 3800 UTMB-Galveston employees is void *ab initio*.

40. Plaintiffs request that Defendants be required to produce to the Court, for *in camera* review, all minutes and/or recordings of all executive session meetings of the Board of Regents relating to the November 12, 2008 decision to fire up to 3800 UTMB-Galveston employees to determine which, if any, should be immediately made available to Plaintiffs and to the public, and upon completion of the Court's *in camera* review, Plaintiffs request the entering of an order requiring the release of such minutes and/or recordings.

41. As a result of Defendants' conduct, Plaintiffs were forced to retain undersigned counsel to pursue these causes of action. Plaintiffs are, therefore, entitled to recover attorneys' fees pursuant to Texas Civil Practice & Remedies Code § 37.001 *et seq.*

**IX.**  
**DEMAND FOR JURY TRIAL**

42. Plaintiffs demand a jury trial on all applicable issues.

**X.**  
**REQUEST FOR RELIEF**

WHEREFORE, Plaintiffs respectfully request that this Honorable Court enter judgment for Plaintiffs and award Plaintiffs the following relief:

- a. A declaratory judgment declaring that Defendants violated the Texas Open Meetings Act;
- b. A declaratory judgment declaring that Defendants' November 12, 2008 decision authorizing up to 3800 firings of UTMB-Galveston employees is invalid and void *ab initio*;

- c. An order requiring Defendants to produce to the Court for *in camera* review all minutes and/or recordings of all executive session meetings of the Board of Regents relating to the November 12, 2008 decision to fire up to 3800 UTMB-Galveston employees to determine which, if any, should be immediately made available to Plaintiffs and to the public, and entering of an order requiring the release of such minutes and/or recordings;
- d. All attorneys fees and reimbursement of the costs incurred in connection with this suit; and
- e. All other applicable relief to which Plaintiffs are entitled.

Respectfully submitted,

**THE JAWORSKI LAW FIRM**

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