Fulton County Superior Court
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**IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA**

JOHN L. PADGETT,	)	
	)	
Plaintiff	)	
	)	Civil Action File
v.	)	No. 2021CV354612
	)	
GEORGIA REPUBLICAN PARTY, INC.	)	
	)	EXPEDITED REVIEW
Defendant	)	REQUESTED

PROPOSED *AMICI* MOTION FOR LEAVE TO FILE AN *AMICUS CURIAE* BRIEF IN OPPOSITION TO DEFENDANT'S MOTION TO FILE UNDER SEAL

Creative Destruction Media ("CDM"), William Quinn, Hank Sullivan, Hank Sullivan's Substack, and James Abely respectfully seek leave of court to submit an *amicus curiae* brief (Ex. A) in opposition to Defendant's Motion to File Under Seal, filed Friday, July 26, 2024.

We respectfully urge the court to accept the attached brief,[1] which argues that this Court should deny the Defendant's Motion to File under Seal.

Interests of the Amici

Creative Destruction Media ("CDM") is a global media company. CDM owns 13 digital properties and employees journalists around the world. More pertinently, CDM owns *The Georgia Record*,[2] a news media organization covering Georgia government and politics.

Mr. William Quinn is a former technology executive and an investigative journalist who writes for *The Georgia Record*. Mr. Quinn has been an active volunteer with the Georgia Republican Party and has donated funds to the Forsyth County Republican Party. He was a delegate to the Georgia Republican Convention in 2023 and 2024.

[1] While these *amici* would enjoy standing to file a motion under Unif. Super. Ct. R. 21.5 in the event that these records are sealed, they have elected to present this Court with this *amicus* brief prior to the seal, in the hope of avoiding a duplicate hearing.
[2] *The Georgia Record* is available at: https://www.georgiarecord.com (last accessed Aug. 14, 2024).

Hank Sullivan is a columnist focusing on Georgia politics. Mr. Sullivan is also a Georgia Republican Party donor and attended the Georgia Republican Party Convention in 2024. He runs The Hank Sullivan Substack,[3] which has done substantial investigative reporting about Georgia politics, including articles about the Georgia Republican Party.

James Abely is an attorney and Georgia resident. He is a donor to the Glynn County Republican Party, as well as to Republican candidates running for national office and Georgia office. He also attended the 2024 Georgia Republican Party Convention in May of 2024. He frequently volunteers his time for state campaigns supported by the Georgia Republican Party.

Argument

All of the proposed *amici* are journalists and politically active citizens whose perspective would likely prove valuable to this Court as it considers whether "the harm otherwise resulting to the privacy of a person in interest clearly outweighs the public interest." Unif. Super. Ct. R. 21.2.

An amicus brief is particularly appropriate here because the public always has an interest in accessing court records, and this interest reaches its apex when the records concern the conduct of public officials, who "are the trustees and servants of the people and are at all times amenable to them." GA. CONST. Art. 1, Sec. 2, Para. I (1983)); *see also Sons of Confederate Veterans v. Henry Cnty. Bd. of Commissioners,* 315 Ga. 39, 61 (2022) (explaining that "public responsibility demands public scrutiny.").

The brief is narrowly tailored to the issue of sealing court records. These *amici* respectfully request that this Court accept and consider the attached brief.

[3] The Hank Sullivan Substack is available at: https://hanksullivan.substack.com (last accessed Aug. 14, 2024).

Respectfully submitted this the 16th day of August, 2024.

Joy Ramsingh (GA Bar #862332)

RAMSINGH LEGAL
4203 Union Deposit Road, #1030
Harrisburg, Pennsylvania 17111
Phone: (844) 744-6882
joy@ramsinghlegal.com
Counsel for Amicus Curiae

EXHIBIT A

IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

JOHN L. PADGETT,	)	
	)	
Plaintiff	)	
	)	Civil Action File
v.	)	No. 2021CV354612
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GEORGIA REPUBLICAN PARTY, INC.	)	
	)	EXPEDITED REVIEW
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BRIEF OF *AMICI CURIAE* CITIZENS AND JOURNALISTS IN OPPOSITION TO DEFENDANT'S MOTION TO FILE UNDER SEAL

The undersigned *Amici* respectfully request that this Honorable Court deny Defendant's Motion to File Under Seal, for the following reasons:

I. *Savannah Coll. of Art & Design v. Sch. of Visual Arts, Inc.* is distinguishable from the case at bar.

In support of its Motion to File under Seal, Defendant relies heavily on *Savannah Coll. of Art & Design v. Sch. of Visual Arts, Inc.*, which was one extraordinarily rare case in which the Georgia Supreme Court affirmed a seal on a settlement agreement between two private entities, relating to private litigation in the private fields of commerce and private post-secondary education. *See Savannah Coll. of Art & Design v. Sch. of Visual Arts, Inc.*, 270 Ga. 791, 793 (1999). There were several factors present in that case which are not present here.

First, the settlement agreement in this case concerns the alleged misconduct of the Chairman of the GRP Inc.,[4] a former public official. The nature of the parties and their roles

[4] The Chief Executive Officer ("CEO") of the Georgia Republican Party, Inc. is Mr. Josh McKoon. Mr. McKoon is a former elected official and is currently the General Counsel of the Technical College System of Georgia, a management position within Georgia state government. The public has a very strong interest in knowing how donor money is being spent by Mr. McKoon— an interest that is much greater than the public's interest in the records of private sector entities, as was the case in *Savannah Coll. of Art & Design.*

places this dispute in the heartland of public political debate, and as such, the public's interest in viewing the documents is significantly higher than was the case in *Savannah Coll. of Art & Design. See id.*

Second, the settlement agreement in *Savannah Coll. of Art & Design* was made confidential not only by agreement of the parties, but also by a binding order of court. *Id.* at 791 ("The trial court [had previously] entered an order...expressly ordering the parties to keep all settlement documents confidential.").

Third, *Savannah Coll. of Art & Design* dealt with only a settlement agreement, while this motion also concerns corporate financial records, although "corporate" is a somewhat misleading term. *See id.* Although GRP Inc. is technically a private entity, its purpose is to influence and commandeer political positions within national, state, and local governments. *Cf. id.* at 793 ("...the presumption in favor of public accessibility to court records is clearly outweighed by SCAD's privacy interest."). GRP Inc.'s role adds to the weight of the public interest side of the balancing test. Notably, *Savannah Coll. of Art & Design* only addressed the terms of a court-ordered confidentiality agreement with negotiated exchanges between the parties— not the corporate accounting records of a powerful political institution. The *amici* before this Court strongly believe that the voting (and contributing) public has a right to know how the GRP, Inc. is spending donor dollars, and how many of those dollars are being allocated toward these types of settlement agreements.

Fourth, the GRP, Inc. states that "the Settlement Agreement <u>contains</u> material provisions related to Confidentiality/Non-Disclosure of the terms of the Settlement Agreement." Mot. To File Under Seal, ¶ 11 (emphasis added). At the very least, this Court should review the Settlement Agreement and the financial records to determine which terms, if any, should be

deemed confidential, and should then release the remainder of the documents to the public. To the extent that the agreement only "contains" confidential information and is not wholly "comprised of" confidential information, the agreement should be only partially sealed, with the same standard applying to the GRP Inc.'s financial records. Where information can be redacted in lieu of a blanket seal, redaction and partial sealing is preferred by Georgia's high courts. *See, e.g., Blau v. Georgia Dep't of Corr.,* 364 Ga. App. 1, 7 (2022), *cert. denied* (Mar. 7, 2023); *see also* Unif. Super. Ct. R. 21.1 ("[t]he order of limitation shall specify the part of the file to which access is limited....").

II. Public policy in Georgia supports transparency in politics.

Defendant cites to *Sanders v. Graves*, 279 Ga. App. 779, 779 (2009) for the proposition that the public policy of this state is to encourage parties to settle their differences, and then argues that unsealing the records would contradict Georgia's public policy. Mot. To File Under Seal, ¶ 13. However, *Sanders* did not concern sealing court records at all. *See id. Sanders* dealt with the court's construction of a settlement agreement between two former business partners, and held that although the agreement was made orally, the agreement was valid, partially because the public policy of the state is to encourage dispute resolution. *See id.* The agreement was not private, nor was the question before the court as to whether or not the records relating to the agreement should be sealed. *See id.*

To the contrary, public policy in Georgia relating to transparency in politics supports the denial of this Motion. Public officials in Georgia are required to file Personal Financial Disclosure Statements, also known as 'PFDS,' "which detail their personal financial positions, as well as the financial positions of their immediate family member, to the general public." [5]

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[5] Georgia State Ethics Commission, "What is a Personal Financial Disclosure Report?" available at: https://ethics.ga.gov/faqs/ (emphasis added) (last accessed Aug. 14, 2024).

Similarly, candidates for office must create public filings which "detail the amount and sources of their campaign contributions and the amount and end-recipients of their campaign expenditures."[6]

The financial amounts detailed in this Settlement Agreement and in the corresponding financial records speak directly to how the GRP Inc. is spending donor monies. The unsealing of these amounts, at a minimum, is perfectly in keeping with the public policy of this state. The voting public has a very strong interest in the operations of its GRP, Inc.— an interest that is much greater than the public's interest in the records of private sector entities, as was the case in *Savannah Coll. of Art & Design.*

III. The public and the media have a well-defined right to access court records.

The press and public share a qualified First Amendment right to court proceedings and records. In *Richmond Newspapers, Inc. v. Virginia*, Chief Justice Burger, writing for the plurality, wrote, "People in an open society do not demand infallibility from their institutions, but it is difficult for them to accept what they are prohibited from observing." *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 559 (1980); *see also Nixon v. Warner Commc'ns, Inc.*, 435 U.S. 589, 597 (1978) ("[C]ourts of this country recognize a general right to inspect and copy public records and documents, including judicial records and documents."). The press enjoys access to court and public records as a mechanism for reporting to the public on issues of public concern.[7]

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[6] Georgia State Ethics Commission, "What is a Campaign Contribution Disclosure Report?" available at: https://ethics.ga.gov/faqs/ (last accessed Aug. 14, 2024).
[7] *See, e.g.*, The Atlanta Journal-Constitution, *Georgia GOP spends more than $1.7M in legal fees linked to Trump court fight*, available at: https://www.ajc.com/politics/georgia-gop-spends-more-than-17m-in-legal-fees-linked-to-trump-court-fight/PZ4PPCR4BVBSTDV2FVLD3WVITM/ (last accessed Aug. 14, 2024).

Georgia law "is more protective of the concept of open courtrooms than federal law." *R.W. Page Corp. v. Lumpkin*, 249 Ga. 576, 578 (1982). Indeed, "[a] Georgia trial court judge ... [has] less discretion than his federal counterpart because our constitution commands that open hearings are the nearly absolute rule and closed hearings are the rarest of exceptions." *Id.* at 579; *see also* Uniform Superior Court Rule 22(A) (recognizing that there is no distinction between criminal and civil proceedings in regard to the public's right of access). "[The Supreme Court of Georgia] has sought to open the doors of Georgia's courtrooms to the public and to attract public interest in all courtroom proceedings because it is believed that open courtrooms are the sine qua non of an effective and respected judicial system which, in turn, is one of the principal cornerstones of a free society." *R.W. Page v. Lumpkin*, 249 Ga. 576, 576, n. 1. ((1982)).

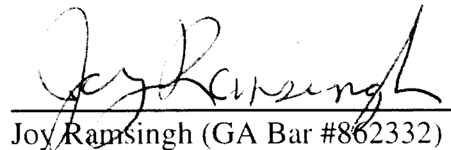
In *Atlanta Journal v. Long*, the late Justice Richard Bell wrote this about the public's right to access to court records: "Public access protects litigants both present and future, because justice faces its gravest threat when courts dispense it secretly. Our system abhors Star Chamber proceedings with good reason. Like a candle, court records hidden under a bushel make scant contribution to their purpose." *Atlanta Journal v. Long*, 258 Ga. 410, 411 (1988).

In addition to these historical and constitutional implications, sealing settlement agreements is not common. In fact, a study ordered by the Civil Rules Advisory Committee, conducted across federal civil litigation by the Federal Judicial Center, overwhelmingly demonstrated that it is quite rare for courts to seal settlement agreements. *See* Robert Timothy Reagan, *The Hunt for Sealed Settlement Agreements*, 81 Chic.-Kent L.R., 439, 439 (2006). Perhaps this is because courts are mindful of the fact that "civil lawsuits quite often cause litigants to experience an invasion of privacy and public embarrassment, yet that fact alone does not permit trial courts to routinely seal court records." *In re Atlanta Journal Constitution*, 271

Ga. 436, 438 (1999). This case should not be the exception to the rule, because not only does the agreement detail the actions of public officials involved in the underlying litigation and conduct, but it also reveals how the Georgia Republican Party, Inc.— under the leadership of a public figure and a high-level state government employee— is conducting its affairs and spending donor money.

GRP Inc. is asking for permission to seal a full 30 pages of court records— possibly the most important 30 pages in the many pages of records in the case. Mot. To File Under Seal, ¶ 12. The request is unreasonable in its scope, overbroad in its time frame, and above all, the public interest in these records simply outweighs the GRP Inc.'s interest in keeping the agreement sealed. The Defendant's Motion to File Under Seal should be denied.

Respectfully submitted this the 16th day of August, 2024.



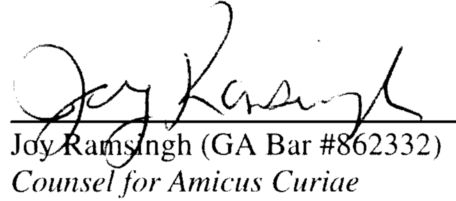
Joy Ramsingh (GA Bar #862332)

RAMSINGH LEGAL
4203 Union Deposit Road, #1030
Harrisburg, Pennsylvania 17111
Phone: (844) 744-6882
joy@ramsinghlegal.com
Counsel for Amicus Curiae

CERTIFICATE OF SERVICE

I hereby certify that on this 16th day of August, 2024, I caused a true and correct copy to be sent to opposing counsel via Statutory Electronic Service.

Respectfully submitted,



Joy Ramsingh (GA Bar #862332)
Counsel for Amicus Curiae