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PUBLIC OFFICERS AND EMPLOYEES General Provisions: Amend Title 45 of the Official Code of Georgia Annotated, Relating to Complaints or Information from Public Employees as to Fraud, Waste, and Abuse in State Programs and Operations, so as to Change Certain Definitions to Include a Broader List of Employees, Officials, and Administrators who May Be Protected by the Provisions of This Code Section; Change the Definition of "Retaliate;" Provide for Related Matters; Repeal Conflicting Laws; and for Other Purposes

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PUBLIC OFFICERS AND EMPLOYEES

General Provisions: Amend Title 45 of the Official Code of Georgia Annotated, Relating to Complaints or Information from Public Employees as to Fraud, Waste, and Abuse in State Programs and Operations, so as to Change Certain Definitions to Include a Broader List of Employees, Officials, and Administrators who May Be Protected by the Provisions of This Code Section; Change the Definition of “Retaliate;” Provide for Related Matters; Repeal Conflicting Laws; and for Other Purposes

CODE SECTION:	O.C.G.A. § 45-1-4 (amended)
BILL NUMBER:	HB 16
ACT NUMBER:	206
GEORGIA LAWS:	2007 Ga. Laws 298
SUMMARY:	The Act expands protection for government employees under Georgia’s Whistleblower Protection Act to include all local and municipal employees. The Act, by expanding whistleblower protection, seeks to prevent government fraud, waste, and abuse. The Act also expands how a whistleblower can report fraud, waste, or abuse.
EFFECTIVE DATE:	July 1, 2007

History

At-Will Employment and Public Policy Exceptions in Georgia

The at-will employment doctrine allows either an employer or employee to terminate an employment relationship when the employment period is of an indefinite time.¹ The Georgia General Assembly codified the at-will doctrine in Code section 34-7-1, which

1. See, e.g., Edward T. Ellis & Robin D. Leone, *Developments in State Tort Law Affecting the Employment Relationship*, SJ012 A.L.I.-A.B.A. 907, 909 (2003).

provides that “an indefinite hiring may be terminated at will by either party.”² The statute shows that “the public policy of Georgia is clear and unambiguous that, absent a definite term of employment, the contract is terminable at will and such definite term cannot be inferred, read in when absent, or supplied by a rule of construction when missing outside the statute.”³ Accordingly, decades of case law showed that, absent a specific legislative exception, Georgia courts refused to recognize public policy exceptions to the at-will doctrine.⁴ Although most states developed public policy exceptions at common law, Georgia courts hesitated to do so because of the General Assembly’s codification of the at-will doctrine.⁵

Acknowledging the employment at-will policy, courts typically adjudicate against employees claiming wrongful discharge, regardless of the reason for the termination.⁶ When criticisms of the at-will doctrine arose in recent years, the courts would refer employee plaintiffs to federal statutes for wrongful discharge.⁷ However, federal statutes do not offer relief for many discharged employees, including state government “whistleblowers,” which are defined as employees “who, believing that the public interest overrides the interest of the organization [they] serve[], publicly ‘blow[] the whistle’ if the organization is involved in corrupt, illegal, fraudulent, or harmful activity.”⁸ Consequently, Georgia courts either

2. O.C.G.A. § 34-7-1 (2004).

3. JOHN K. LARKINS, JR., *Employment Contracts and Covenants in Restraint of Trade*, in GEORGIA CONTRACTS LAW AND LITIGATION § 8-1 (2007) (quoting *Schuck v. Blue Cross & Blue Shield of Ga., Inc.*, 244 Ga. App. 147, 147 (2000)).

4. *See Reid v. City of Albany*, 276 Ga. App. 171 (2005); *Jellico v. Effingham County*, 221 Ga. App. 252 (1996); *Borden v. Johnson*, 196 Ga. App. 288 (1990).

5. *See, e.g., N. Ga. Reg’l Educ. Serv. Agency v. Weaver*, 272 Ga. 289 (2000).

6. *See Ga. Ports Auth. v. Rogers*, 173 Ga. App. 538, 539 (1985); *see also Borden*, 196 Ga. App. at 289-90 (deciding no relief available for employee discharged on basis of pregnancy when legislature failed to codify exceptions to at-will rule).

7. *See, e.g., Borden*, 196 Ga. App. at 290 (referring plaintiff to federal statutes, but failing to name an example); *see also Nancy Baumgarten, “Sometimes the Road Less Traveled is Less Traveled for a Reason:” The Need for Change in Georgia’s Employment At-Will Doctrine and Refusal to Adopt the Public Policy Exception*, 35 GA. L. REV. 1021, 1038 (2004) (noting that Georgia courts refer wrongfully discharged employees to federal statutes for relief).

8. *See Lois A. Lofgren, Whistleblower Protection: Should Legislatures and the Courts Provide a Shelter to Public and Private Sector Employees Who Disclose the Wrongdoing of Employers?*, 38 S.D. L. REV. 316 (1993).

refused to or were unable to balance the inequity created in wrongful discharge cases involving whistleblowers.⁹

Responding to judicial reluctance to create public policy exceptions, the Georgia General Assembly did codify several exceptions to provide relief from the at-will doctrine for certain factual situations.¹⁰ However, though the General Assembly enacted some exceptions prior to 1993, lawmakers generally failed to offer full protection for whistleblowers in both the private and public sectors.¹¹

History of Whistleblower Protection in Georgia

The Whistleblower Protection Act

In 1993, the Georgia Legislature drafted and enacted Code section 45-1-4, the “Whistleblower Protection Act” (WPA).¹² The statute provided protection for certain government employees, but limited the extent of its coverage in different sections.¹³ First, the WPA only protected individuals “employed by the executive branch of the state,” excluding “the office of the Governor, the judicial branch, [and] the legislative branch.”¹⁴ Second, the Act only pertained to employers acting on behalf of the “executive branch of the state,” excluding again the office of the Governor, the judicial branch, and the legislative branch.¹⁵ Third, while the Act provided an expansive definition of “retaliation,” defined as “the discharge, suspension, or demotion by a public employer of a public employee . . . taken by a public employer against a public employee . . . for disclosing a violation of or noncompliance with a law, rule, or regulation to either

9. See *id.*; see also *Balmer v. Elan Corp.*, 278 Ga. 227 (2004) (acknowledging that the court was barred from creating a public policy exception for whistleblowers in a wrongful discharge case).

10. See O.C.G.A. § 34-1-3 (2004) (prohibiting discharge because of employee absence to attend a court-ordered judicial proceeding); O.C.G.A. § 18-4-7 (2004) (stating no employer may discharge an at-will employee by reason of garnishment); O.C.G.A. § 34-1-2 (2004) (stating no employer may discharge an at-will employee by reason of age).

11. See *Baumgarten*, *supra* note 7, at 1033.

12. See O.C.G.A. § 45-1-4 (1993) (amended 2005).

13. See *id.*

14. O.C.G.A. § 45-1-4(a)(1) (1993) (amended 2005).

15. O.C.G.A. § 45-1-4(a)(2) (1993) (amended 2005).

a supervisor or state agency,” the Act only provided reinstatement as a remedy to whistleblowers.¹⁶

Despite the General Assembly’s attempt to modify at-will employment, courts subsequently interpreted the WPA to provide minimal protection.¹⁷ The WPA provided successful whistleblowers the remedy of setting aside the adverse employment action.¹⁸ The Georgia court interpreted the “set aside” provision of the WPA to only allow for the remedy of reinstatement.¹⁹ Thus, the Georgia courts forced whistleblowers to come forward despite the only protection available for a successful judgment being reinstatement to the very job where their employer had retaliated against them.²⁰ Although the WPA attempted to modify at-will employment to protect government employees, the General Assembly’s choice of language ultimately caused the Georgia courts to interpret the WPA as providing minimal protection to whistleblowers.²¹ Desiring to provide more protection, the Georgia Legislature amended the WPA in 2005.²²

2005 Amendment

Recognizing the need for government accountability and protective coverage, the Georgia Legislature amended the WPA in 2005.²³ The bill, HB 665, was part of the Comprehensive Ethics Reform package, which sought to increase government accountability by expanding

16. O.C.G.A. § 45-1-4(a)(5), (e) (1993) (amended 2005).

17. See Noah A. Peeters, *Don’t Raise That Hand: Why, Under Georgia’s Anti-SLAPP Statute, Whistleblowers Should Find Protection from Reprisals for Reporting Employer Misconduct*, 38 GA. L. REV. 769, 791 (2004); see, e.g., *N. Ga. Reg’l Educ. Serv. Agency v. Weaver*, 272 Ga. 289 (2000) (affirming reinstatement as the lone remedy in whistleblower cases); *Hughes v. Ga. Dep’t of Corr.*, 267 Ga. App. 440 (2004) (determining that only public employers in the executive branch were held accountable under the WPA); *Jones v. Bd. of Regents of the Univ. Sys. of Ga.*, 262 Ga. App. 75 (2003) (also affirming reinstatement as the lone remedy in whistleblower cases).

18. O.C.G.A. § 45-1-4(e) (1993) (amended 2005) (granting public employees the right to “set aside” adverse employment action).

19. See *id.*

20. See *id.* (granting public employees the right to “set aside” adverse employment action); see also *Jones v. Bd. of Regents of the Univ. Sys. of Ga.*, 262 Ga. App. 75 (2003) (affirming reinstatement as the lone remedy in whistleblower cases based on interpretation of “set aside” in existing statute).

21. See *Hughes*, 267 Ga. App. at 444-45; see also *Jones*, 262 Ga. App. 75.

22. See O.C.G.A. § 45-1-4 (Supp. 2007).

23. See *id.*

whistleblower protection to employees in all branches of state government.²⁴ HB 665 effectively rewrote several sections of the WPA, expanding whistleblower protection to “any person who is employed by the executive, judicial, or legislative branch of the state or by any other department, board, bureau, commission, authority, or other agency of the state,” and expanding remedies for whistleblowers, authorizing courts to order injunctive relief, lost wages, attorney fees, and other compensatory damages allowable at law, as well as reinstatement.²⁵

In amending the WPA, the General Assembly changed its protective coverage to provide relief for all state level employees by expanding the coverage beyond just the “executive branch” to include all three branches of state government.²⁶ Likewise, the class of public employers now covered under the statute included any “agency of the state which employs or appoints a public employee or public employees.”²⁷ Further, the General Assembly amended the “set aside” language by adding a non-exhaustive list of remedies, including compensatory damages and other monetary relief.²⁸ The statute as amended protected all state employees against retaliatory discharge by any state employers for reporting fraud, waste, and corruption either internally or externally.²⁹ Further, in addition to the prior remedy of reinstatement, successful petitioners could now be awarded monetary compensation.³⁰ The new list of remedies demonstrated the most significant improvement because it did not force a successful petitioner to return to a potentially hostile work environment.³¹

24. See Video Recording of House Floor Debate, Mar. 19, 2007 at 108 min., 39 sec. (remarks by Rep. Rich Golick (R-34th)), http://www.georgia.gov/00/article/0,2086,4802_6107103_72682804,00.html.

25. HB 665, 151st Gen. Assem., Reg. Sess. (Ga. 2005).

26. Compare O.C.G.A. § 45-1-4(a)(3) (Supp. 2007) with O.C.G.A. § 45-1-4(a)(1) (1993) (amended 2005).

27. Compare O.C.G.A. § 45-1-4(a)(4) (Supp. 2007) with O.C.G.A. § 45-1-4(a)(2) (1993) (amended 2005).

28. Compare O.C.G.A. § 45-1-4(e)(Supp. 2007) with O.C.G.A. § 45-1-4(e)(2) (1993) (amended 2005).

29. See O.C.G.A. § 45-1-4(a)(3)-(4) (Supp. 2007).

30. See O.C.G.A. § 45-1-4(e)(2) (Supp. 2007).

31. See generally *Hughes v. Ga. Dep’t of Corr.*, 267 Ga. App. 440 (2004) (requiring successful whistleblower under initial WPA to return to work reasoning “set aside” language only allowed for reinstatement to old job).

Notably, another bill, HB 8, was also introduced in 2005 to amend the WPA.³² HB 8 would have defined “public employee” to include, in addition to all state level employees, “any local or regional governmental entity that receives any funds from Georgia or any state agency.”³³ Similarly, “public employer” would be amended to include “any local or regional governmental entity that received any funds from the State of Georgia or any state agency.”³⁴ HB 8 also sought to prohibit any governmental recipient of state funds from retaliating against a public employee for whistleblowing activity.³⁵ HB 8 met with opposition from both the Georgia School Boards Association (GSBA) and Georgia legislators who feared that the bill would open the “floodgates of litigation” by allowing local and municipal employees relief via the judicial process.³⁶ The GSBA further believed that adding local and municipal employees would undercut local school boards’ own internal grievance procedures in place for Georgia school employees.³⁷ This opposition stifled the passage of HB 8, leaving only HB 665 to amend the WPA in 2005.³⁸ Although HB 8 was passed over, its purpose of extending whistleblower protection to all government employees was eventually realized by the passage of HB 16.

Bill Tracking

Consideration and Passage by the House

Representatives Rich Golick (R-34th), Steve Tumlin (R-38th), Edward Lindsey (R-54th), Mark Hatfield (R-177th), Mike Jacobs (R-80th), and Robert Mumford (R-95th) sponsored HB 16.³⁹ On January

32. See HB 8, 151st Gen. Assem., Reg. Sess. (Ga. 2005).

33. *Id.*

34. *Id.*

35. See GSBA Capitol Watch Online, HB 8 - Complaints Regarding Fraud, Waste and Abuse (2006) (on file with the Georgia State University Law Review).

36. See Telephone Interview with Don Rooks, Director of Legislative Services, Georgia School Boards Association (May 30, 2007) [hereinafter Rooks Interview]; Interview with Rep. Rich Golick (R-34th) (May 4, 2007) [hereinafter Golick Interview].

37. See Rooks Interview, *supra* note 36.

38. See *id.*; H.B. 665, 151st Gen. Assem., Reg. Sess. (2005) (amending O.C.G.A. § 45-1-4).

39. HB 16, as introduced, 2007 Ga. Gen. Assem.

25, 2007, the House of Representatives first read HB 16.⁴⁰ After the second read, which occurred the next day, Speaker of the House Glenn Richardson (R-19th) assigned it to the House Judiciary Committee.⁴¹

The House Judiciary Committee expanded the definition of “retaliate” and added new language to HB 16.⁴² Committee Chair Representative Wendell Willard (R-49th), Representative Mary Margaret Oliver (D-83rd), and Representative Golick were concerned that an employer-initiated transfer of a public government whistleblower would represent an uncovered retaliatory action; to address the issue, they proposed a substitute expanding the definition of “retaliate” to include “transfer.”⁴³ The House Judiciary Committee also removed the limiting term “state” to allow for the more expansive reading of “government” agency in order to clarify and expand the available government agencies on which a public whistleblower can report fraud, waste, and abuse in government.⁴⁴

The House Judiciary Committee also added an additional section to the bill, which sought to clarify the jurisdictional scope of activities a public employer may receive information about and investigate under the law.⁴⁵ The new subsection (b) of 45-1-4 would remove the word “state,” substitute the “and” before “operations” with an “or,” and add the language “or any noncompliance with any law, rule, or regulation relating to any programs or operations under the jurisdiction of such public employer.”⁴⁶ The House Judiciary Committee favorably reported the House Committee Substitute on February 14, 2007.⁴⁷

40. State of Georgia Final Composite Status Sheet, HB 16, June 5, 2007.

41. *Id.*

42. *See* HB 16 (HCS), 2007 Ga. Gen. Assem.

43. Video Recording of House Judiciary Meeting, Feb. 13, 2007 at 11 min., 49 sec. (remarks by Rep. Wendell Willard (R-49th)), http://www.legis.state.ga.us/legis/2007_08/house/Committees/judiciary/judyArchives.htm [hereinafter House Committee Video]; *id.* at 12 min., 10 sec. (remarks by Rep. Rich Golick (R-34th)); *id.* at 13 min., 56 sec. (remarks by Rep. Mary Margaret Oliver (D-83rd)).

44. *See id.* at 35 min., 18 sec. (remarks by Rep. Mike Jacobs (R-80th)); HB 16 (HCS), 2007 Ga. Gen. Assem.

45. *See* HB 16 (HCS), 2007 Ga. Gen. Assem.

46. *Compare* HB 16, as introduced, 2007 Ga. Gen. Assem., with HB 16 (HCS), 2007 Ga. Gen. Assem.

47. State of Georgia Final Composite Status Sheet, HB 16, June 5, 2007.

The House Rules Committee then considered the bill and removed “transfer” and the additional language in subsection (b) from the House Judiciary Committee version.⁴⁸ The House of Representative leaders believed “transfer” would conflict with federal laws purportedly covering transfers.⁴⁹ Recognizing both his and other House Judiciary Committee members’ concerns over “transfer” equaling a retaliatory action in the employment context, Representative Golick stated that the issue may need to be considered in future debate over Code section 45-1-4.⁵⁰ The House of Representatives unanimously adopted the House Rules Committee substitute and passed HB 16 on March 19, 2007.⁵¹

Consideration and Passage by the Senate

On March 20, 2007, the Senate first read HB 16 and Senate President Pro Tempore Eric Johnson (R-1st) assigned it to the Senate Ethics Committee.⁵² Without making any changes, the Senate Ethics Committee favorably reported HB 16 on April 17, 2007.⁵³ Although tabled earlier in that same day, HB 16 was eventually removed from the table and presented by Senator Renee Unterman (R-45th).⁵⁴ After introducing HB 16, the Senate quickly and unanimously passed HB 16 by a vote of 48 to 0 on April 19, 2007.⁵⁵ Governor Sonny Perdue signed the bill into law on May 23, 2007.⁵⁶

The Act

The Act amends Code section 45-1-4, known as the Whistleblower Protection Act, by expanding its protective coverage to all public

48. Compare HB 16 (HCS) 2007 Ga. Gen. Assem., with HB 16 (HRCS), 2007 Ga. Gen. Assem.

49. See Golick Interview, *supra* note 36.

50. See *id.*

51. Georgia House of Representatives Voting Record, HB 16 (Mar. 19, 2007).

52. State of Georgia Final Composite Status Sheet, HB 16, June 5, 2007.

53. *Id.*

54. *Id.*; Video Recording of Senate Proceedings, Apr. 19, 2007 at 27 min., 20 sec., http://www.georgia.gov/00/article/0,2086,4802_6107103_72682316,00.html [hereinafter Senate Video].

55. Georgia Senate Voting Record, HB 16 (April 19, 2005).

56. Georgia General Assembly, HB 16, Bill Tracking,

http://www.legis.state.ga.us/legis/2007_08/sum/hb16.htm.

employees.⁵⁷ The Act seeks to prevent all local and municipal government employers from retaliating against public employees who “blow the whistle” on waste, fraud, or abuse in Georgia government.⁵⁸

The Act adds language under the definitions found in paragraphs (3) and (4) of subsection (a) of the WPA.⁵⁹ The definition of “public employee” now includes “all employees, officials, and administrators of any agency covered under the State Merit System of Personnel Administration and any local or regional governmental entity that receives any funds from the State of Georgia or any state agency.”⁶⁰ The definition of “public employer” now includes “any local or regional governmental entity that receives any funds from the State of Georgia or any state agency.”⁶¹ The Act provides judicial protection to all public government employees and exists as an alternative remedial option to any existing remedial procedures already in place for government employees.⁶²

The Act further amends Code section 45-1-4 by changing the definition of “retaliate” to remove the limiting term “state” and insert “government,” in order to expand the available government reporting agencies from just state agencies to all public government agencies.⁶³ By removing the term “state,” subsection (5) of section (a) can safely be read in conjunction with the expansive theme of the Act.⁶⁴

Analysis

The Act completes the initial expansion of whistleblower protection in public government by including all public employees and employers under Code section 45-1-4.⁶⁵ According to Representative Rich Golick (R-34th), the main reasoning behind the completed expansion is to ensure that public employees are not afraid

57. O.C.G.A. § 45-1-4 (Supp. 2007).

58. *See id.*

59. *See id.*

60. O.C.G.A. § 45-1-4(3) (Supp. 2007).

61. O.C.G.A. § 45-1-4(4) (Supp. 2007).

62. O.C.G.A. §§ 45-1-4(3)-(4) (Supp. 2007).

63. O.C.G.A. § 45-1-4(5) (Supp. 2007).

64. *Id.*

65. *See* O.C.G.A. § 45-1-4 (Supp. 2007).

to report fraud, waste, and abuse by any state-funded employers.⁶⁶ Recognizing whistleblower importance, the Georgia General Assembly sought to secure government accountability by allowing public employees to “do the right thing” without the fear of retaliation in the form of an adverse employment action.⁶⁷ Ultimately, the Act’s purpose is two-fold: employee protection and government accountability.⁶⁸

Although the Act will likely increase protection for state government employees, the Act has several potential problems.⁶⁹ First, the omission of “transfer” from the Act may provide a loophole that a public employer could exploit to deny protection to whistleblowers.⁷⁰ A “transfer” could be tantamount to a wrongful discharge if an employer were to impose a lateral shift on an employee that does not resemble a demotion but is nevertheless an employment action that leads to the employee’s resignation.⁷¹

The potential that a “transfer” could equal a retaliatory action was the focus of considerable lobbying on both sides of the issue.⁷² During the House Judiciary Committee meeting, a representative from the Police Benevolent Association in Georgia, Mr. Grady Dukes, spoke in favor of adding “transfer” to Code section 45-1-4.⁷³ Mr. Dukes felt that the required nexus between the transfer and the whistleblowing would sufficiently bar any bad-faith “transfer” related claims.⁷⁴ However, in 2005, the GSBA opposed adding local teachers to state whistleblower protective coverage based on the risk that an employee legitimately transferred could pursue a false retaliatory transfer claim under the WPA.⁷⁵ The GSBA believed previous standards for determining false claims allowed whistleblowers a low

66. See Golick Interview, *supra* note 36.

67. See *id.*; Peeters, *supra* note 17, at 794.

68. See Golick Interview, *supra* note 36.

69. See *id.*; Rooks Interview, *supra* note 36.

70. See House Committee Video, *supra* note 43, at 13 min., 56 sec. (remarks by Rep. Mary Margaret Oliver (D-83rd)).

71. See *id.*

72. See Golick Interview, *supra* note 36; Rooks Interview, *supra* note 36.

73. See House Committee Video, *supra* note 43, at 32 min., 30 sec. (remarks by Grady Dukes, Police Benevolent Association in Georgia).

74. See *id.* Mr. Dukes felt that adding “transfer” as a covered retaliatory action would not open the floodgates for false whistleblower claims, reasoning the statute required a whistleblower to have a good faith belief that government misconduct was taking place. *Id.*

75. See Rooks Interview, *supra* note 36.

standard of accountability.⁷⁶ Although the GSBA believes the current accountability standard can filter the bad claims by barring whistleblower relief under the “reckless disregard for its truth or falsity” standard, the GSBA and Representative Golick, anticipate that “transfer” might represent a future point of contention in state whistleblower protection.⁷⁷

In addition to the “transfer” issue, the ever-present fear of the “floodgates of litigation” could still arise from expanding whistleblower protection to local and municipal employees.⁷⁸ Although no new causes of action arising under the WPA were decided during the brief period between the 2005 amendment and the July 1, 2007, effective date, the Act now expands Code section 45-1-4 to affect an exponentially larger number of employees.⁷⁹ Considering that whistleblower protection now reaches all local and municipal employees, it remains unclear whether the increase in coverage will lead to a proportional influx of court cases.⁸⁰

A possible source of litigants may stem from certain local commissions, like school boards, which have internal grievance procedures in place.⁸¹ The Act allows previously denied employees to seek relief in a judicial forum without having to use internal grievance procedures.⁸² During the House Judiciary Committee meeting, the general counsel for the Georgia Association of Educators (GAE) informed the committee that the organization receives “thousands of calls from members every year” who previously held back from reporting government misconduct for fear of retaliatory action without sufficient redress.⁸³ Believing the internal grievance procedures are not impartial and unbiased, the

76. See *id.* Prior to the 2005 amendment, the standard for accountability in whistleblower claims was “false or with willful disregard for its truth or falsity.” O.C.G.A. § 45-1-4 (d)(1993) (amended 2005).

77. O.C.G.A. § 45-1-4 (d)(2) (Supp. 2007); see Golick Interview, *supra* note 36; Rooks Interview, *supra* note 36.

78. See House Committee Video, *supra* note 43, at 10 min., 50 sec. (remarks by Rep. Barry Fleming (R-117th)); Golick Interview, *supra* note 36.

79. See House Committee Video, *supra* note 43, at 10 min., 57 sec. (remarks by Rep. Rich Golick (R-34th)).

80. See Rooks Interview, *supra* note 36.

81. See *id.*

82. See *id.*; see also House Committee Video, *supra* note 43, at 18 min., 25 sec. (remarks by Mr. Michael Kramer on behalf of the Georgia Association of Educators).

83. House Committee Video, *supra* note 43, at 18 min., 25 sec. (remarks by Mr. Michael Kramer on behalf of the Georgia Association of Educators).

GAE prefers the neutral judge now guaranteed to public government whistleblowers under Code section 45-1-4.⁸⁴

Unlike the GAE, the GSBA fears those “thousands of calls” will now turn into a stream of retaliatory action claims that the courts will be forced to adjudicate.⁸⁵ Although the “reckless disregard for its truth or falsity” standard allows courts to hold whistleblowers accountable for pleading unjustified claims of retaliatory action, the possibility remains that those “thousands of calls from members every year,” previously unprotected, will now turn into court cases.⁸⁶ Acknowledging the extreme factual inquiry required by judicial review of whistleblower retaliation cases, the Act’s success hinges on whether the Georgia courts can maintain the balance between public employee protection and government accountability without subjecting government employers to defend against a sea of false claims.⁸⁷

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84. *See id.* at 26 min., 20 sec. (remarks by Mr. Michael Kramer on behalf of the Georgia Association of Educators); O.C.G.A. § 45-1-4 (Supp. 2007).

85. *See Rooks Interview, supra* note 36.

86. *See id.* The GSBA was concerned about government employers spending considerable amounts of money to defend against bad-faith claims. *Id. See generally* O.C.G.A. § 45-1-4(d)(2) (Supp. 2007).

87. *See generally* discussion *supra* History; Golick Interview, *supra* note 36.