

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

THOMAS HAYDEN BARNES,

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Plaintiff,

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-vs-

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Case No. 1:08-cv-00077-CAP

RONALD M. ZACCARI, *et al.*,
individually and in his official
Capacity as President of Valdosta
State University; VALDOSTA

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Federal Rules of Appellate Procedure 3 and 4(a)(3), from the Order entered in this action on September 3, 2010.

Defendants Ronald M. Zaccari and the Board of Regents of the University System of Georgia filed a Notice of Appeal of the same Order on October 1, 2010. In their Notice of Appeal, Defendants asserted that “[t]he Order of the District Court denying qualified immunity to Defendant Zaccari is immediately appealable ... on an interlocutory basis.” They also asserted pendent jurisdiction over a claim against the Board of Regents by asserting it “is inextricably intertwined” with the denial of qualified immunity to Defendant Zaccari.

Plaintiff cross-appeals certain portions of the District Court’s September 3, 2010 Order on summary judgment. *Barnes v. Zaccari et al.*, __ WL __ at *43 (N.D. Ga. Sept. 3, 2010). In particular, Plaintiff seeks appellate review of the District Court’s decision to dismiss Plaintiff’s First Amendment retaliation claim against Defendant Zaccari. *See Bennett v. Hendrix*, 423 F.3d 1247, 1255 (11th Cir. 2005); *Georgia Ass’n of Educators v. Gwinnett County Sch. Dist.*, 856 F.2d 142, 145 (11th Cir. 1988). As such, Plaintiff appeals the District Court’s decision to grant Defendants’ motion for summary judgment as to Defendant Zaccari on Count III and to deny Plaintiff’s motion for summary judgment as to Defendant Zaccari on Count III.

Plaintiff also appeals the District Court's decision that because a public education is not a "fundamental right," Plaintiff's substantive due process rights were not violated by Defendant Zaccari's decision to expel Plaintiff from Valdosta

Plaintiff as a “clear and present danger” to VSU or its personnel. This harm is

from final judgment, the Court of Appeals holds that Defendants were liable on the merits, the Court's interlocutory review of the qualified immunity issue "will be rendered nugatory, thereby frustrating the interests of judicial economy." *Bryant v. Jones*, 575 F.3d 1281, 1302 (11th Cir. 2009) (citing *Schmelz v. Monroe County*, 954 F.2d 1540, 1543 (11th Cir.1992) (*per curiam*) (exercising pendent appellate jurisdiction over merits of case along with qualified immunity question so as to dispense with all federal issues)).

Respectfully submitted this 14th day of October, 2010.

/s/ Robert Corn-Revere

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