No. S21A0618

In the

Supreme Court of Georgia

Paul Andrew Boland,

Appellant-Plaintiff,

v.

Brad Raffensperger, in his official capacity as Secretary of State, *et al.*

Appellees-Defendants.

On Appeal from the *Boland v. Raffensperger, et al.*,
Fulton County Superior Court Case No. 2020CV343018

RESPONSE OF APPELLEES RAFFENSPERGER, SULLIVAN, LE, MASHBURN, AND WORLEY TO APPELLANT'S NOTICE OF VOLUNTARY DISMISSAL

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Appellees do not object to the voluntary dismissal. Appellees do object to the false grounds articulated in the Notice. Appellant voluntarily dismissed this appeal contending the dismissal is a result of settlement between the Parties. It is not. There is no "settlement." The demonstrably false characterizations by Appellant's counsel are addressed herein in this response.

Appellant's counsel inquired on numerous occasions about settling the disputes, including pending state and federal court matters, between the Parties[1]. Those inquiries were repeatedly rebuffed by Appellees on the grounds that the litigation efforts of Appellant's counsel were frivolous and the certified results of the November 3, 2020, Election were valid.

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Without notifying Appellees' counsel, Appellant's litigation counsel participated in a phone conference with Appellee Raffensperger on Saturday January 2, 2020. The participation of

[1] The Parties referenced herein include Donald J. Trump, unsuccessful candidate for President of the United States in the November 3, 2020, general election who is a party-plaintiff in the federal court action and one of the state court actions referenced in Appellant's notice.

counsel for Appellant in that call appears to be in violation of the Georgia Rules of Professional Conduct Rule 4.2, as Appellant's counsel neither notified litigation counsel for Appellee Raffensperger nor sought nor obtained consent to conduct or participate in a conversation with Appellee Raffensperger. This action by Appellant's counsel was undertaken despite the fact that the substance of the call concerned not only this action but also two pending state superior court matters and a federal court matter in which Appellee Raffensperger was represented by counsel, all of which was known to Appellant's counsel.

After that call, counsel for Appellee in other pending cases, at the direction of the undersigned, sent correspondence to Appellant's counsel there would be no discussions between the parties until Appellant's counsel dismissed all of their pending litigation against Appellees. *See* Anulewicz letter in Notice of Voluntary Withdrawal, pp. 3-4. Yesterday evening at 9:36 p.m., Appellant's counsel sent a letter to counsel for Appellee stating that they would dismiss their various frivolous complaints

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pursuant to a "settlement" between the Parties. *See* Hilbert letter in Notice of Voluntary Withdrawal, pp. 5-6.

Counsel for Appellees in other pending litigation, again at the direction of the undersigned, responded by email yesterday evening confirming there was absolutely no settlement between the Parties and reiterating that the claims brought by Appellant's counsel were frivolous and the State was confident in prevailing in the litigation. ***See* Exhibit A** attached hereto. Appellant's counsel responded to that email notification that no "settlement" was contemplated nor agreed to by stating his intention to unilaterally dismiss all pending actions against Appellees. ***See* Exhibit B** attached hereto. Appellant's counsel failed to include that response or his reply after that clear statement that this was not pursuant to a settlement but instead a unilateral dismissal in his filed Notice of Voluntary Dismissal. While Appellees are appreciative of this voluntary dismissal and the cessation by Appellant of this groundless litigation, as officers of the court it is expected that all matters before the Court will be handled with complete candor. The Appellees make this response to ensure that

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the actual record of what has transpired is accurately reflected in the docket.

Respectfully submitted.

/s/ *Russell D. Willard*
Christopher M. Carr 112505
Attorney General
Bryan K. Webb 743580
Deputy Attorney General
Russell D. Willard 760280
Senior Assistant Attorney General

Office of the Attorney General
40 Capitol Square, SW
Atlanta, Georgia 30334
(404) 656-3300
rwillard@law.ga.gov
Counsel for Appellees

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CERTIFICATE OF SERVICE

I hereby certify that on January 7, 2021, I served this Response of Appellees Raffensperger, Sullivan, Le, Mashburn, and Worley by mailing a copy of the response to be delivered via United States mail and by electronic filing notification, addressed as follows:

Kurt R. Hilbert
205 Norcross Street
Roswell, GA 30075

David F. Guldenschuh
512 East 1st Street
Rome, Georgia 30161

Susan Coppedge
Joyce Lewis
Halsey Knapp
Adam Sparks
KREVOLIN & HORST LLC
1201 W Peachtree Street NW Suite 3250
Atlanta, Georgia 30309

Matthew Mertens
PERKINS & COIE LLP
1120 NW Couch Street 10th Floor
Portland, Oregon 97209

/s/ *Russell D. Willard*
Senior Assistant Attorney General

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EXHIBIT A

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Russell D. Willard

From: Anulewicz, Chris <canulewicz@balch.com>
Sent: Thursday, January 7, 2021 12:29 AM
To: Kurt Hilbert
Cc: Chris Carr; trevis@hilbertlaw.com; Ray S. Smith, III; dfg@guldenschuhlaw.com; Russell D. Willard
Subject: Re: Confidential
Attachments: image001.png; Balch_Logo_17db8ea2-760c-49c3-b0ff-19f80bb6a179.jpg

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Mr. Hilbert—

Thank you for your correspondence of earlier tonight. While I appreciate the willingness of you and your clients to avoid protracted litigation in which, as indicated in my letter of January 3, 2020, we strongly believe the State will prevail, I want to make sure that there are no misunderstandings about either my letter or what the Secretary is willing to do once the pending cases have been dismissed. The letter was not a settlement offer, as you characterize it, but simply a statement that my client was not able to sit down and discuss the issues raised by your clients while there was active litigation by your clients against my client and other state officials. As a result, unless and until your clients met the condition precedent of dismissing all pending cases against state officials, my client would not be able to sit down and discuss the data analysis included in your clients' complaints, including showing how both the underlying data and the accompanying analysis are flawed.

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As your clients have now indicated an intent to dismiss the pending cases, my client's offer to voluntarily sit down and discuss, as stated in my letter of January 3, 2020, "as much information with you as we can" outside of the context of ongoing litigation can proceed following your clients' voluntary dismissal of the identified litigation. We cannot agree to provide you access to information that is required by law to remain confidential, but that information should not be necessary to complete the type of discussion contemplated in the prior conversation with Ryan Germany comparing the information relied upon by your experts with the information utilized in the conduct of Georgia's electoral process. While your letter does not specifically state that your clients desire access to confidential information, I wanted to make clear that the Secretary cannot agree to such a request if that was contemplated in your stated intention to dismiss the litigation to complete the Secretary's condition precedent to voluntarily sitting down with you outside the threat of ongoing litigation.

Once your client has voluntarily dismissed the litigation identified in your letter, you can work through Russell Willard and Charlene McGowan in the Attorney General's office to set up a meeting with the Secretary's office. Once the litigation is dismissed, my appointment as a Special Assistant Attorney General will conclude. I look forward to receiving confirmation of the dismissal of the identified litigation. Otherwise, we stand ready to proceed with the scheduled hearing and trial on Friday.

Chris Anulewicz

Sent from my iPhone

[[image]]

Christopher S. Anulewicz, Partner, Balch & Bingham LLP
30 Ivan Allen Jr. Boulevard, N.W. • Suite 700 • Atlanta, GA 30308-3036
t: (404) 962-3562 f: (866) 320-6758 e: canulewicz@balch.com
www.balch.com<http://www.balch.com>

On Jan 6, 2021, at 9:36 PM, Kurt Hilbert <khilbert@hilbertlaw.com> wrote:

[External Email] Please use caution.

General Carr and Chris-

Please see the attached acceptance letter of your settlement terms from Sunday.

Have a pleasant evening. I look forward to coordinating promptly as per the letter attached.

Kurt R. Hilbert, Esq.
Managing Member
<http://www.hilbertlaw.com/>
<image001.png>
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F: 770-551-9311
khilbert@hilbertlaw.com<mailto:khilbert@hilbertlaw.com>
www.hilbertlaw.com<http://www.hilbertlaw.com/>

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EXHIBIT B

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Russell D. Willard

From: Kurt Hilbert <khilbert@hilbertlaw.com>
Sent: Thursday, January 7, 2021 9:18 AM
To: Anulewicz, Chris
Cc: Chris Carr; Timothy Revis; Ray S. Smith, III; dfg@guldenschuhlaw.com; Russell D. Willard; Hollis, Jim
Subject: RE: Confidential

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We will be filing our dismissals this morning. I will notify the court after doing so, and will copy you on that email.

Kurt R. Hilbert, Esq.
Managing Member

THE HILBERT LAW FIRM, LLC
Mailing Address:
205 Norcross Street
Roswell, GA 30075
T: 770-551-9310
F: 770-551-9311
khilbert@hilbertlaw.com
www.hilbertlaw.com

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-----Original Message-----
From: Anulewicz, Chris <canulewicz@balch.com>
Sent: Thursday, January 7, 2021 9:16 AM
To: Kurt Hilbert <khilbert@hilbertlaw.com>
Cc: ccarr@law.ga.gov; trevis@hilbertlaw.com; Ray S. Smith, III <rsmith@smithliss.com>; dfg@guldenschuhlaw.com; rwillard@law.ga.gov; Hollis, Jim <jhollis@balch.com>

Subject: Re: Confidential

Kurt—

I left you a voice message. Please confirm you are withdrawing these cases and please email me copies of these withdrawals. We need to also let the Court know.

—Chris

Sent from my iPhone

On Jan 7, 2021, at 12:28 AM, Anulewicz, Chris <canulewicz@balch.com> wrote:

Mr. Hilbert—

Thank you for your correspondence of earlier tonight. While I appreciate the willingness of you and your clients to avoid protracted litigation in which, as indicated in my letter of January 3, 2020, we strongly believe the State will prevail, I want to make sure that there are no misunderstandings about either my letter or what the Secretary is willing to do once the pending cases have been dismissed. The letter was not a settlement offer, as you characterize it, but simply a statement that my client was not able to sit down and discuss the issues raised by your clients while there was active litigation by your clients against my client and other state officials. As a result, unless and until your clients met the condition precedent of dismissing all pending cases against state officials, my client would not be able to sit down and discuss the data analysis included in your clients' complaints, including showing how both the underlying data and the accompanying analysis are flawed.

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voluntary dismissal of the identified litigation. We cannot agree to provide you access to information that is required by law to remain confidential, but that information should not be necessary to complete the type of discussion contemplated in the prior conversation with Ryan Germany comparing the information relied upon by your experts with the information utilized in the conduct of Georgia's electoral process. While your letter does not specifically state that your clients desire access to confidential information, I wanted to make clear that the Secretary cannot agree to such a request if that was contemplated in your stated intention to dismiss the litigation to complete the Secretary's condition precedent to voluntarily sitting down with you outside the threat of ongoing litigation.

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Once the litigation is dismissed, my appointment as a Special Assistant Attorney General will conclude. I look forward to receiving confirmation of the dismissal of the identified litigation. Otherwise, we stand ready to proceed with the scheduled hearing and trial on Friday.

Chris Anulewicz

Sent from my iPhone

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www.balch.com<http://www.balch.com>

On Jan 6, 2021, at 9:36 PM, Kurt Hilbert <khilbert@hilbertlaw.com> wrote:

[External Email] Please use caution.

General Carr and Chris-

Please see the attached acceptance letter of your settlement terms from Sunday.

Have a pleasant evening. I look forward to coordinating promptly as per the letter attached.

Kurt R. Hilbert, Esq.
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