

IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

DONALD J. TRUMP, in his capacity as a)
Candidate for President, et al.,)

Petitioners,)

v.)

Civil Action No. 2020CV343255

BRAD RAFFENSPERGER, in his official)
capacity as Secretary of State of Georgia, et)
al.,)

Respondents.)

RESPONSE TO PLAINTIFFS' NOTICE OF FILING VOLUNTARY DISMISSAL

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

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

Without notifying Defendants' counsel, Plaintiffs and their litigation counsel participated in a phone conference with Defendant Raffensperger on Saturday January 2, 2020. The participation of counsel for Plaintiffs in that call appears to be in violation of the Georgia Rules of Professional Conduct Rule 4.2, as Plaintiffs' counsel neither notified litigation counsel for Defendant Raffensperger nor sought nor obtained consent to conduct or participate in a conversation with Defendant Raffensperger. This action by Plaintiffs' counsel was undertaken

despite the fact that the substance of the call concerned not only this action but also another pending state superior court matter, a federal district court matter, and a pending appeal in the Georgia Supreme Court in which Defendant Raffensperger was represented by counsel, all of which was known to Plaintiffs' counsel.

After that call, Defendants' counsel told Plaintiffs there would be no discussions between the parties until Plaintiffs dismissed all of their litigations. *See* Notice Ex. 1. Yesterday evening at 9:36 p.m., Plaintiffs' counsel sent a letter to Defendants' counsel stating that they would dismiss their various frivolous complaints pursuant to a "settlement" between the Parties. *See* Notice Ex. 2.

Defendants' counsel responded by email yesterday evening confirming there was absolutely no settlement between the Parties and reiterating that Plaintiffs' claims were frivolous. ***See Exhibit A*** attached hereto. Plaintiffs' 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 Defendants. ***See Exhibit B*** attached hereto. Plaintiffs' 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 Defendants are appreciative of this voluntary dismissal and the cessation by Plaintiffs 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 Defendants make this response to ensure that the actual record of what has transpired is accurately reflected in the docket.

Respectfully submitted this 7th day of January, 2021.

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/s/ Christopher S. Anulewicz

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*Attorneys for Respondents Brad Raffensperger,
Rebecca N. Sullivan, David J. Worley, Matthew
Mashburn, and Anh Le*

CERTIFICATE OF SERVICE

I hereby certify that on the 7th day of January, 2021 I electronically filed the foregoing with the Clerk of Court using the Odyssey eFileGA eFiling system, which will automatically send email notifications of such filing the following counsel of record:

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Augusta, GA 30901

/s/ Christopher S. Anulewicz

Christopher S. Anulewicz
Georgia Bar No. 020914

EXHIBIT A

RETRIEVED FROM DEMOCRACYDOCKET.COM

Anulewicz, Chris

From: Anulewicz, Chris
Sent: Thursday, January 7, 2021 12:29 AM
To: Kurt Hilbert
Cc: ccarr@law.ga.gov; trevis@hilbertlaw.com; Ray S. Smith, III; dfg@guldenschuhlaw.com; rwillard@law.ga.gov
Subject: Re: Confidential

Follow Up Flag: Flag for follow up
Flag Status: Flagged

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.

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



Christopher S. Anulewicz, Partner, Balch & Bingham LLP
30 Ivan Allen Jr. Boulevard, N.W. • Suite 700 • Atlanta, GA 30308-3036
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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

<image001.png>

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EXHIBIT B

RETRIEVED FROM DEMOCRACYDOCKET.COM

Anulewicz, Chris

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

[External Email] Please use caution.

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

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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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Chris Anulewicz

Sent from my iPhone

<Balch_Logo_17db8ea2-760c-49c3-b0ff-19f80bb6a179.jpg>

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[External Email] Please use caution.

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Kurt R. Hilbert, Esq.
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