

IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

DONALD J. TRUMP, in his capacity as a)
Candidate for President, *et al.*)
Petitioners,)
) Civ. Act. No. 2020CV343255
v.)
BRAD RAFFENSPERGER, in his official capacity)
As Secretary of State of Georgia, *et al.*,)
)

RESPONSE AND OBJECTION TO [PROPOSED] INTERVENOR-DEFENDANTS'
EMERGENCY MOTION TO INTERVENE

COME NOW PETITIONERS, by and through counsel, and for their Response and Objection to [Proposed] Intervenor-Defendants' Emergency Motion to Intervene and state as follows:

Petitioners hereby formally OBJECT to the [Proposed] Intervenor Defendant's Emergency Motion to Intervene. Because this Motion to Intervene has incorporated as an exhibit a Motion to Dismiss it violates the Uniform Superior Court Rules. A Motion to be heard cannot be attached as a mere exhibit to another Motion. It also conflates the Motion to Intervene with a Motion to Dismiss by a non-party making the entire pleading subject to objection. See USCR Rule 6.1. Petitioners hereby further OBJECT that evidence must conform to the pleadings and exhibits to a motion are supposed to be evidence and not motions, and exhibits are deemed to control over the pleading/motion itself. Id.

Further, Petitioners object that there is no "emergency" basis for this motion. Petitioners have withdrawn their Motion for Emergency TRO. The so-called "Safe Harbor" deadline has

passed, and Intervenors are not in any different position warranting emergency relief of any kind. The proposed motion is not ripe to be heard on an emergency basis.

INTRODUCTION

As the Proposed Intervenor-Defendants (“Proposed Intervenors”) acknowledge this is the *FIRST* and only election challenge brought by the President of the United States of America in the State of Georgia. As such, the hyperbole of the Proposed Intervenors is unfounded. Like all citizens of these United States, the President may avail himself of all legal remedies available at law and equity. That this fact is inconvenient for the Proposed Intervenors does not form the basis of a legal claim for which this Court can provide a remedy.

This Honorable Court should not be distracted by red herring arguments from unrelated cases brought by different parties. The Proposed Intervenors spend six full pages reciting the actions of persons not parties to this case and the findings (or more specifically the failure to make factual findings) of other tribunals. The Petitioners prefer to deal with the instant case. This case is brought by the President of the United States, in his capacity as a Candidate for the Presidency of the United States, his campaign, and David J. Shafer in his capacity as an Elector for President of the United States and as a qualified register voter in the State of Georgia. It does *not* rely on statistical analysis. It does *not* rely on speculation. It does *not* rely on conjecture. It is based entirely on documented, provable facts and observations and simple arithmetic. Petitioners only seek their day in Court to lay out cold hard numbers that prove the true result -- that this election result is in doubt and fails the other applicable legal grounds set forth in O.C.G.A. 21-2-522.

Simply put, the scenario described by the Proposed Intervenors as to the circumstances surrounding the conduct of the November 3, 2020, general election does not now and did not then

exist - the election was “impure” and the Respondents are “Violators” under the Election Code. As detailed in the proposed Amended Complaint, numerous irregularities, documented misconduct, and shockingly, outright lies by election officials have clouded the results of the election such that the outcome is in doubt. *See* Petitioner’s Amended Complaint. This Honorable Court should not be swept up in the tidal wave of public opinion, nor decisions of other courts based on facts limited to their cases. Georgia law provides a remedy for the well-grounded facts alleged by Petitioners who *only* seek to have the law as it is written enforced and followed.

NO EMERGENCY EXISTS

Petitioners have withdrawn their Emergency Motion for a Temporary Restraining Order. As such, no emergency currently exists to warrant an Emergency Motion to Intervene.

PROPOSED INTERVENORS DO NOT HAVE STANDING TO INTERVENE

GEORGIA’S ELECTION CODE DOES NOT PERMIT INTERVENTION

Proposed Intervenors seek to intervene in this case pursuant to O.C.G.A. §9-11-24. However, the Georgia Civil Practice Act does not apply to challenges under the Georgia Election Code, O.C.G.A. §21-2-520 et seq. (the “Election Code”) While it is true that the Proposed Intervenors have been allowed to intervene in other election challenge cases in the state of Georgia, the Proposed Intervenors have only been allowed to do so in the absence of any objection. Ergo, no tribunal has been asked to rule on the standing of the Proposed Intervenors to intervene and thus these prior interventions should not be considered by this Court when rendering its decision.

The Election Code provides the procedures for which all challenges to an election must follow in the state of Georgia including who may bring a challenge and who may defend against such action. This Election Code is in derogation of the common law. Statutes in derogation of the

common law must be strictly construed. *Resnick v. Pittman*, 203 Ga. App 835, 835 (1992). Petitioners filed suit against the named Respondents only. Notably, Petitioners did not sue the Proposed Intervenors. O.C.G.A. §21-2-520 establishes who may be a Defendant in an election contest using the disjunctive “or.” It is disjunctive. O.C.G.A. §21-2-524 provides that “any other person who was a candidate at such primary or election for the nomination or office involved may set up by way of answer or cross action any right of interest or claim he or she may have.” As such, the Election Code contemplates that not everyone who may be able to assert some claim must be a “Defendant” for purposes of an election contest under the Election Code. Proposed Intervenors have not attempted to file an answer or cross action, rather they merely seek to enter an existing suit in a manner that is not authorized by the Election Code in a special statutory election contest proceeding. Therefore, the Court should deny the Proposed Intervenors extra textual Motion. Absent any case precedent or law to the contrary, this Court would be creating new law that does not exist in the plain language of the Election Code and would completely violate equity and sense of fairness in this proceeding.

THE CIVIL PRACTICE ACT DOES NOT AUTHORIZE THIS INTERVENTION

Alternatively, should the Court determine the Civil Practice Act applies, the Proposed Intervenors still do not have standing to intervene by “right” or “permissively.” O.C.G.A. §9-11-24(a) grants the ability to intervene by right if a statute confers an unconditional right to intervene. However, the statute claimed to grant such right, O.C.G.A. 21-2-524(f), (*see* Memorandum of Law in Support of Emergency Motion to Intervene pg. 7), does no such thing on its face. The Proposed Intervenors own brief belies their asserted right to intervene by, in fact, correctly quoting the statute. Proposed intervenors may “set up by way of **answer or cross action** any right of interest or claim he or she may have,” *id* (emphasis added). Nowhere does the statute use the word

“intervene.” An answer or cross-action as contemplated under the Election Code may only be made by a party to that special statutory proceeding. Petitioner is the master of his own pleadings, and giving great deference in who the Respondents are to be sued. If Respondents desire to raise an objection based on indispensable parties they should have. These Respondents have not even answered the Petition.

Proposed Intervenors further cite *Williams v. Heard*, 302 GA 114, 115 (2017) as support for their *ultra vires* Motion to intervene in this proceeding. However, it is unclear why such authority is cited as it **does not stand for the proposition that intervention should be allowed**. While in the underlying facts of that case, a retired juvenile court judge allowed a candidate to intervene in an election contest, the question of whether intervention should have been permitted was not presented to the Court. Further, the decision of that retired juvenile court judge was vacated by the Supreme Court of Georgia as being both moot and improperly given as the **judge had no authority to hear an election contest**. That case simply does not stand for the proposition asserted by the Proposed Intervenors. Proposed Intervenors claim no other authority for which they should be entitled to intervene by right under O.C.G.A. §9-11-24(a)(1). Absent such authority, there is no basis in law or fact to grant their Motion; and, therefore, the Motion fails as a matter of law.

Proposed Intervenors also claim the right to intervene under O.C.G.A. §9-11-24(a)(2). However, Proposed Intervenors do not have a “ripe” interest or potential claim. This election contest is brought to determine whether the Georgia Election Code was followed by the named Respondents in the conduct of the November 3, 2020, general election. The Proposed Intervenors had absolutely no role in the conduct of the election and absolutely no claim is made by Petitioners against the Proposed Intervenors. Proposed Intervenors can claim no viable legal or other interest

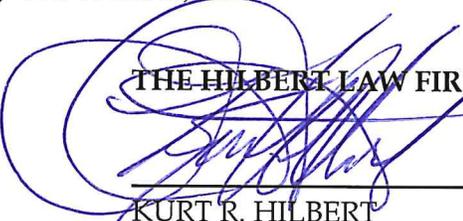
in this action and merely seek to delay the proceedings and unnecessarily expend the Petitioners' resources. This Honorable Court should not allow this distraction from the merits.

Any purported interest claimed by the Proposed Intervenors is adequately represented by the named Respondents to this action. The Petitioners have made verified allegations against each of the named Respondents under all sections but one under O.C.G.A. § 22-2-522. Each named Respondent has a strong interest in defending their actions, which if upheld, would completely **vindicate and provide entire relief** of the interests of the Proposed Intervenors without need for them to be an actual party to this action.

Proposed Intervenors also seek to intervene permissively. This too should be denied. Proposed Intervenors are not indispensable parties to this case. No action or cessation of action by the Proposed Intervenors, of any kind, will serve to grant the Petitioners the relief they seek and their intervention in this case only serves to delay and expend the resources of the Petitioners, and unnecessarily expand these proceedings. The Answer filed by the proposed Intervenors is a nullity as they were never sued and thus have no right to answer. If the Civil Practices Act even applies, O.C.G.A. § 9-11-12 expressly provides only "A Defendant shall serve his answer...." Petitioners are now suing the proposed Intervenors in any manner or capacity. Such prejudice to the Petitioners is fatal to their attempt to intervene permissively.

WHEREFORE the [Proposed] Intervenor-Defendants' Emergency Motion to Intervene should be DENIED WITH PREJUDICE, and the Court should grant such other and further relief as is just, and proper. The Petitioners reserve all rights under O.C.G.A. § 9-15-14 with respect to the Intervenor Motion and having to file this response.

Respectfully submitted, this 9th day of December, 2020.


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CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true and correct copy of the above and foregoing **RESPONSE AND OBJECTION TO [PROPOSED] INTERVENOR-DEFENDANTS' EMERGENCY MOTION TO INTERVENE** upon all parties and their counsel via this Court's e-file system, via STATUTORY ELECTRONIC SERVICE (O.C.G.A. § 9-11-5) and/or by placing a copy of the same in the United States mail, first class, with sufficient postage thereon to ensure delivery, addressed as follows:

Brad Raffensperger, in his official capacity as Secretary of State of Georgia
214 State Capitol
Atlanta, Georgia 30334

Rebecca N. Sullivan, in her official capacity as Vice Chair of the Georgia State Election Board,
214 State Capitol
Atlanta, Georgia 30334

David J. Worley, in his official capacity as a Member of the Georgia State Election Board
214 State Capitol
Atlanta, Georgia 30334

Matthew Mashburn, in his official capacity as a Member of the Georgia State Election Board
214 State Capitol
Atlanta, Georgia 30334

Anh Le, in her official capacity as a Member of the Georgia State Election Board
214 State Capitol
Atlanta, Georgia 30334

Richard L Barron in his official capacity as Director of Registration and Elections for Fulton
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141 Pryor St. SW
Atlanta, GA 30303

Janine Eveler in her official capacity as Director of Registration and Elections for Cobb County
P.O. Box 649
Marietta, GA 30061-0649

Erica Hamilton, in her official capacity as Director of Voter Registration and Elections for
DeKalb County

1300 Commerce Drive
Decatur, GA 30030

Kristi Royston, in her official capacity as Elections Supervisor for Gwinnett County
455 Grayson Highway
Lawrenceville, GA 30046

Russell Bridges, in his official capacity as Elections Supervisor for Chatham County
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Savannah, Georgia 31406

Anne Dover, in her official capacity as Acting Director of Elections and Voter Registration for
Cherokee County,
2782 Marietta Highway, Suite 100
Canton, GA 30114

Shauna Dozier, in her official capacity as Elections Director for Clayton County,
112 Smith Street
Jonesboro, GA 30236

Mandi Smith, in her official capacity as Director of Voter Registration and Elections for Forsyth
County
1201 Sawnee Drive
Cumming, GA 30040

Ameika Pitts, in her official capacity as Director of the Board of Elections & Registration for
Henry County,
140 Henry Parkway
McDonough, GA 30253

Lynn Bailey, in her official capacity as Executive Director of Elections for Richmond County
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Augusta, GA 30901

Debra Presswood, in her official capacity as Registration and Election Supervisor for Houston
County
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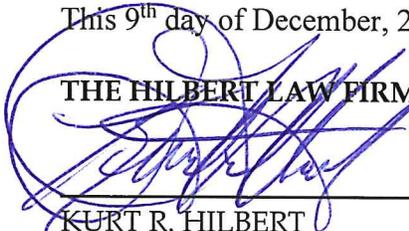
Vanessa Waddell, in her capacity as Chief Clerk of Elections for Floyd County
12 East 4th Avenue, Suite 20
Rome, GA 30161

Julianne Roberts, in her official capacity as Supervisor of Elections and Voter Registration for
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Jasper, GA 30143

Joseph Kirk, in his official capacity as Elections Supervisor for Bartow County
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Cartersville, GA 30120

Gerald McCown, in his official capacity as Elections Supervisor for Hancock County
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This 9th day of December, 2020.


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