IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

DONALD J. TRUMP, in his capacity As Candidate for President, et al.,	:	
Petitioner,	:	CIVIL ACTION FILE NO.:
vs.	:	
	:	2020-CV-343255
BRAD RAFFENSPERGER, in his official capacity as the Georgia Secretary of State, et al.,	:	:
Respondents.	:	

MOTION FOR AN AWARD OF ATTORNEY'S FEES PURSUANT TO O.C.G.A. § 9-15-14

Comes now, Respondent Janine Eveler, ("Respondent Eveler") by special appearance of counsel, and files this motion for an award of attorney's fees and expenses of court pursuant to O.C.G.A. § 9-15-14. Respondent was improperly named as a defendant in this matter and she seeks to recover the legal fees and court costs incurred by the citizens of Cobb County in defending against Petitioners' meritless and legally deficient Petition.

I. INTRODUCTION

Petitioners in this matter, former President Donald J. Trump (in his capacity as a candidate), his campaign, and David J. Shafer, (collectively "Petitioners") brought this election contest against Georgia's Secretary of State and the members of the State Elections Board seeking to overturn the votes of millions of Georgians.

But Petitioners also named Respondent Eveler, in her official capacity, and other county election officials who were never proper parties to this action under O.C.G.A. §21-2-520, et seq. Petitioners continued to move forward with their unfounded claims even after this contest was mooted as a matter law. Moreover, they continued to improperly include Eveler and other county officials as respondents in their amended petitions even after this erroneous inclusion was brought to their attention.

In short, Petitioners asserted claims for which there existed such a complete absence of any justiciable issue of law or fact that it could not be reasonably believed that a court would accept the asserted claims. O.C.G.A. § 9-15-14 (a). Additionally, the action brought by Petitioners lacked substantial justification and there is ample evidence for the Court to determine that this action was brought for the purpose of delay or harassment. O.C.G.A. § 9-15-14 (b).

The Georgia Supreme Court has specifically determined that "an award of attorney fees pursuant to OCGA § 9-15-14 is permissible in an election contest…and (2) a petitioner in an election contest may not rely on mere speculation or guesswork when it comes to asserting a 'cause' for their belief that a counting error has occurred." Davis v. Dunn, 286 Ga. 582, 586, 690 S.E.2d 389, 393 (2010).

The Trump campaign and other parties filed dozens and dozens of lawsuits challenging the Presidential Election results around the country, including at least

seven cases[1] challenging Georgia's election results or its recount process. In virtually every case the claims were found to be procedurally deficient, factually unsupported, or both. Despite failing over and over, it was not until January 7, 2021 - one day after the shocking and disgraceful attack on our United States Capitol - that the Petitioners acted to dismiss their spurious and unfounded election contest.

In the present case, Janine Eveler and the Cobb County Board of Elections incurred over ten thousand dollars defending against Petitioners' claims,[2] an amount which represents just a fraction of the fees incurred by fifteen counties, the State of Georgia, and multiple interested parties that intervened in this matter. Given the number of failed lawsuits filed by the former President and his campaign, Petitioners apparently believed that they could file their baseless and legally deficient actions with impunity, with no regard for the costs extracted from the taxpayers' coffers or the consequences to the democratic foundations of our country. Respondent seeks

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[1] In addition to the present matter, at least 6 other failed lawsuits were filed seeking to undo Georgia's presidential election results. *See*, Texas. v. Georgia, No. 22O155 (U.S. Sup. Ct.) (*motion denied*); Wood v. Raffensperger, Appeal No. 20-1245-C, 2020 WL 7094866 (11th Cir. 2020) (*affirming denial of motion for to enjoin certification*); Pearson v. Kemp, No. 1:20-cv-4809 (N.D. Ga.) (*dismissed*); Wood v. Raffensperger, No. 2020cv342959 (Fulton County Superior Court) (*dismissed*); Della Polla v. Raffensperger, No. 20-1-7490-46 (Cobb County Superior Court) (*dismissed*); Boland v. Raffensperger, No. 2020cv34018 (Fulton County Superior Court) (*dismissed*).

[2] In support of this motion for attorney's Respondent has concurrently filed the Affidavit of Daniel W. White, demonstrating that the County incurred at least $10,875.00 in attorney's fees, and setting for the basis for the reasonableness and necessity of those fees.

recovery of fees under O.C.G.A. § 9-15-14 primarily to recoup the costs incurred by the citizens of Cobb County, but also in an effort to provide a modicum of accountability for the actions of Petitioners and to send a signal that similarly deficient contests filed in the future will face similar consequences.

II. PROCEDURAL AND FACTUAL BACKGROUND

Close to 5 million Georgia voters cast ballots in the November 2020 General Election. (*See*, Certified Results of Statewide Recount, attached as Exhibit A to State Respondent's Motion to Dismiss). These ballots were counted three times, including a recount by-hand during a statewide risk-limiting audit, resulting in Georgia Secretary of State Brad Raffensperger certifying on November 20, 2020 and again on December 7, 2020 that the Democratic Presidential Electors for Joseph R. Biden and Kamala Harris had won the race by no less than 11,779 votes.

In Cobb County nearly 400,000 voters cast ballots in the 2020 Presidential Election. Those 393,728 votes were recounted twice along with the rest of the ballots in the State, and Cobb County further submitted to an audit of its absentee ballots[3] which resulted in a determination that "the Cobb County Elections Department had a 99.99% accuracy rate in performing correct signature verification

[3] *See*, December 29, 2020 Georgia Secretary of State/Georgia Bureau of Investigation ABM Signature Audit Report: https://sos.ga.gov/admin/uploads/Cobb%20County%20ABM%20Audit%20Report%2020201229.pdf

procedures." It was further noted that "No fraudulent absentee ballots were identified during the audit."

Petitioners filed their original Petition on December 4, 2020, fourteen days after the original certification by the Secretary of State and just 3 days before Georgia Governor Brian Kemp was required to certify the slate of electors and send a Certificate of Ascertainment to the Archivist of the United States pursuant to O.C.G.A. § 21-2-499 and 3 U.S.C. § 6.

Petitioner named Janine Eveler, the Director of the Cobb County Elections Department ("Cobb Elections"), along with fourteen other county election department managers, despite the fact that county election department managers are not proper parties under O.C.G.A. § 21-2-520. On December 9, 2020 Petitioners filed a motion seeking to amend their Petition to, among other things, add the members of various county boards of elections as the election superintendents who conducted the election. However, Petitioners did not dismiss Respondent Eveler or the various county election department managers even after this defect was pointed out in the State's Motion to Dismiss.

On December 11, 2020 Petitioners attempted to appeal an interim order of this court by Emergency Petition for Writ of Certiorari to the Georgia Supreme Court. The Petition was summarily dismissed by the Georgia Supreme Court the next day.

See, Order of December 12, 2020, Donald J. Trump v. Brad Raffensperger, Georgia Supreme Court, Case No. S21M0561.

On December 14, 2020 Georgia's Presidential Electors met and cast their votes in favor Joseph Biden as required by 3 U.S.C. § 7 and transmitted those votes to the United States Senate. The following day the State Respondents moved to dismiss the Petition as moot.

Petitioners failed to properly serve a single named respondent prior to December 21, 2020, two weeks after the Petition was filed. In fact, most of the named respondents were not served until December 28th or later. This extraordinary delay occurred despite the State Defendants raising the issue of service in their Answer on December 15, 2020. When service was finaly attempted it was often improper. In the case of Respondent Eveler, the Sheriff's Entry of Service filed on January 6, 2021 indicates that the sheriff attempted "Corporate Service" upon Respondent Eveler on December 29, 2020, twenty-five days after the Petition was filed. *See*, Sheriff's Entry of Service, filed January 6, 2021.

On December 30, 2020 after Petitioners finally notified the Fulton County Superior Court that they had withdrawn their Emergency Petition to the Georgia Supreme Court, the Court entered an order pursuant to O.C.G.A. § 21-2-523 selecting the Administrative Judge for the Seventh District Administrator to appoint

a judge to hear the contest. That same day the Administrative Judge for the Seventh Judicial District appointed Judge Adele Grubbs for that purpose.

On December 31, 2020 the Court issued a Rule Nisi setting the case for a hearing and trial to be held on January 8, 2021. On January 2, 2021 Petitioner Trump, still serving as President of the United States, contacted Respondent Brad Raffensperger directly, asking him during a phone conference to "to find 11,780 votes, which is one more than [the 11,779 vote margin of defeat] we have, because we won the state."[4] (See, Response to Voluntary Dismissal, dated January 7, 2021)

On January 6, 2021 the United States Congress met in a joint session to begin tallying the Electoral College votes submitted by the States. Despite that sacred and solemn ceremony being interrupted for several hours by a violent mob that attacked the Capitol Building, Congress reconvened, persevered, and by the next morning they had recognized Joseph R. Biden and Kamala Harris as the winners of the Electoral College vote, including Georgia's 16 votes.

On January 7, 2021 counsel for Petitioners filed a Notice of Voluntary Dismissal Without Prejudice, claiming the dismissal was prompted by an "out of court agreement." State Respondents then filed a "Response to Plaintiff's Notice of

[4] Fowler, Stephen (January 3, 2021). "'This Was A Scam': In Recorded Call, Trump Pushed Official To Overturn Georgia Vote", https://www.npr.org/2021/01/03/953012128/this-was-a-scam-in-recorded-call-trump-pushed-official-to-overturn-georgia-vote

Filing Voluntary Dismissal" in which they bluntly disputed Petitioner's contention that there had been any kind of settlement.

III. ARGUMENT AND CITATION TO AUTHORITY

A. Standard For Awarding Attorneys' Fees Under O.C.G.A. § 9-15-14(a) and O.C.G.A. § 9-15-14(b)

Under certain circumstances, an award of attorneys' fees and expenses of litigation is mandatory.

> Reasonable and necessary attorneys' fees and expenses of litigation ***shall be awarded*** to any party against whom another party has asserted a claim, defense or other position with respect to which there existed such a complete absence of any justiciable issue of law or fact that it could not be reasonably believed that a court would accept the asserted claim, defense or other position.

O.C.G.A. § 9-15-14(a) (emphasis added). An award under subsection (a) is reviewed on appeal under the broad "any evidence" standard. Covrig v. Miller, 199 Ga. App. 864, 406 S.E.2d 239 (1991).

In addition, courts are authorized to award attorneys' fees and litigation expenses in other circumstances:

> The court may assess reasonable and necessary attorneys' fees and expenses of litigation in any civil action in any court of record if, upon the motion of any party or the court itself, it finds that an attorney or party brought or defended an action, or any part thereof, that lacked substantial justification or that the action or any part thereof, was interposed for delay or harassment, or if it finds that an attorney or other party unnecessarily expanded the proceeding by other improper conduct, including but not limited to, abuses of discovery procedures available under Chapter 11 of this title, the "Georgia Civil Practice Act." As used in this Code section, "lacked substantial justification"

> means substantially frivolous, substantially groundless, or substantially vexatious.

O.C.G.A. § 9-15-14(b). The Court may consider "any relevant form of improper conduct." Hyre v. Denise, 214 Ga. App. 552,449 S.E.2d 120 (1994); Hill v. Doe, 239 Ga. App. 869, 522 S.E.2d 471 (1999) (sanctions awarded for expenses incurred by the county and defendant due to plaintiffs unnecessarily expanding the proceeding through cavalier treatment of defendant and the public).

"Attorney's fees and expenses under this Code section may be requested by motion at any time during the course of the action but not later than 45 days after the final disposition of the action." O.C.G.A. § 9-15-14 (e).[5] No prior notice to the offending party is required. *See*, Jones v. Bienert, 197 Ga. App. 554, 398 S.E.2d 830 (1990) ("no such bar exists regarding [9-15-14]").

[5] Petitioners dismissed the present action without prejudice on January 7, 2021, making this motion timely filed on February 22, 2021, the Monday following the forty-fifth day after dismissal, which was Sunday February 21. It should be noted that the appellate courts in Georgia have held that a voluntary dismissal does not actually start the clock for the filing of an attorney's fees motion. "[E]ven a voluntary dismissal with prejudice filed by the plaintiff is not 'a judgment (or other order) rendered by a court having jurisdiction over the matter'" for purposes of determining the 45-day window for filing attorney's fees motions. Meister v. Brock, 268 Ga. App. 849, 850, 602 S.E.2d 867, 869 (2004) (citations omitted). "Moreover, a mere voluntary dismissal under O.C.G.A. § 9-11-41 (a) is not 'final'…" and cannot be used to determine the start of the 45-day window. Thus, other parties may be entitled to file motions for attorney's fees in this matter even after February 22, 2021.

An appeal of an award under subsection (b) is reviewed under the deferential "clear abuse of discretion" standard. Doe v. HGI Realty, Inc., 254 Ga. App. 181, 561 S.E.2d 450 (2002).

The Georgia Supreme Court has specifically recognized that "an award of attorney fees pursuant to OCGA § 9-15-14 is permissible in an election contest…" Davis, *supra*, 286 Ga. 582, 586 (2010).

B. Respondent is entitled to a mandatory award of fees under O.C.G.A. § 9-15-14 (a)

1) Petitioners' claims were so bereft of factual and legal support that it cannot reasonably be believed that a court would accept them

In its ruling in Martin v. Fulton Cty. Bd. of Registration & Elections, 307 Ga. 193, 193-94, 835 S.E.2d 245, 248 (2019), the Georgia Supreme Court reiterated the extraordinarily high bar required to overturn the results of an election:

> The setting aside of an election in which the people have chosen their representative is a drastic remedy, it should not be undertaken lightly, but instead should be reserved for cases in which a person challenging an election has clearly established a violation of election procedures and has demonstrated that the violation has placed the result of the election in doubt. For these reasons, we presume that election returns are valid, and the party contesting the election has the burden of showing an irregularity or illegality sufficient to change or place in doubt the result of the election.
>
> But that is not all. We have explained that [i]t is not sufficient to show irregularities which simply erode confidence in the outcome of the election, and that [e]lections cannot be overturned on the basis of mere speculation.

Martin, 307 Ga. at 222; *citing to* Hunt v. Crawford, 270 Ga. 7, 10 (507 SE2d 723) (1998), Meade v. Williamson, 293 Ga. 142, 143 (745 SE2d 279) (2013)

Elections are presumed valid and alleged violations of the Election Code must "clearly establish[ ]. . .irregularity or illegality sufficient to change or place the result of the election." Id. Given the high bar needed to overturn an election affecting the votes of nearly 5 million Georgia voters, it was incumbent upon Petitioners to put forth concrete evidence that satisfied one or more of the grounds listed in O.C.G.A. § 21-2-522, which states:

> A result of a primary or election may be contested on one or more of the following grounds:
> (1) Misconduct, fraud, or irregularity by any primary or election official or officials sufficient to change or place in doubt the result;
> (2) When the defendant is ineligible for the nomination or office in dispute;
> (3) When illegal votes have been received or legal votes rejected at the polls sufficient to change or place in doubt the result;
> (4) For any error in counting the votes or declaring the result of the primary or election, if such error would change the result; or
> (5) For any other cause which shows that another was the person legally nominated, elected, or eligible to compete in a run-off primary or election.

In this case Petitioners' claims did not meet any of these standards. Nowhere did they offer specific examples of illegally cast ballots or erroneously counted votes in numbers sufficient to overcome the margin of victory in this case. Instead, Petitioners' claims of voter misconduct were based largely upon "data analysis"

from three individuals, none of whom are experts, and whose sworn affidavits were based upon unreliable internet sources, dubious theories about "buckets of votes" which were assigned vague levels of risk, and easily disprovable "tentative" claims of non-residents voting that were supported by unreliable public databases. *See*, Declaration of Charles Stewart, III (attached as Exhibit "E" to State Respondent's Motion to Dismiss); *and see*, Affidavit of Chris Harvey (attached as Exhibit "F" to State Respondent's Motion to Dismiss).

Petitioners offered no factual allegations to support a claim that a specific number of illegal or irregular ballots were cast that would place the election into doubt. Martin, *supra*, 307 Ga. at 222. at 222-223. There has similarly been no factual allegation to support of the types of systemic irregularities that would invalidate an election. Id. at 223-224. Rather Petitioners offer only wild theories, facially invalid claims and questionable "buckets of votes." It cannot reasonably believed that this Court would undertake such an enormous step – the undoing of an election "after millions of people had lawfully cast their ballots[,]" - based on so little. *Wood v. Raffensperger*, No. 1:20-cv-04651, 2020 WL 6817513, at *38 (N.D. Ga. Nov. 20, 2020). "To interfere with the result of an election that has already concluded would be unprecedented and harm the public in countless ways." Id.

2) Petitioners asserted claims against Janine Eveler and the other county election officials that were void of any basis in law

Respondent Eveler and the other county election department managers should have never been named as defendants in this matter. This assertion of claims against improper defendants amounted to the assertion of "a claim…with respect to which there existed such a complete absence of any justiciable issue of law or fact that it could not be reasonably believed that a court would accept the asserted claim." O.C.G.A. §9-15-14(a).

The Georgia Election Code sets forth very specific categories of defendants to be named in an election contest petition in O.C.G.A. § 21-2-520:

> (2) "Defendant" means:
> (A) The person whose nomination or election is contested;
> (B) The person or persons whose eligibility to seek any nomination or office in a run-off primary or election is contested;
> (C) The election superintendent or superintendents who conducted the contested primary or election; or
> (D) The public officer who formally declared the number of votes for and against any question submitted to electors at an election.

Respondent Eveler was named in the Complaint "in her official capacity as the Director of Registrations and Elections for Cobb County." However, the director of a county elections department is not a proper defendant under the Georgia Elections Code. Rather, O.C.G.A. § 21-2-520 (2)(c) indicates that for counties, the

appropriate defendant is "the election superintendent…who conducted the contested primary election or primary."

Under O.C.G.A. § 21-2-40(b) the Georgia General Assembly is empowered to create, by local Act, "a board of elections and registration in any county of this state and empower the board with the powers and duties of the election superintendent relating to the conduct of primaries and elections and with the powers and duties of the board of registrars." For Cobb County, the Legislature created the Cobb County Board of Elections and Registrations by Local Act, codified at Ga. Laws 1985, p. 4653, Act #437 (H.B. 623), which consists of five members appointed for four-year terms. Janine Eveler is not a member of the Board, nor does she have any authority over the Board. She is not the elections superintendent for Cobb County and, therefore, she was improperly named as a defendant in this matter. Petitioner continued to name Respondent Eveler and the other county election department managers in their official capacity even in its proposed Amended Petition, after it had realized it must name the county election superintendents. Nor did Petitioners dismiss Respondent Eveler or the other county managers after the defective inclusion was pointed out to them in the State's Motion to Dismiss.

Even if Petitioners intended only to include Respondent Eveler only in regards to their Equal Protection, Due Process, and Declaratory Judgment claims, it was improper for them to name her as a defendant unless they could demonstrated a

waiver of sovereign immunity. Sovereign immunity applies to suits against public officials sued in their official capacities unless the State, through the General Assembly, specifically waives the immunity. *See,* Lathrop v. Deal, 301 Ga. 408, 444 (2017); *see also* Ga. Const. Art. I, § 2, para. IX(e) ("The sovereign immunity of the state and its departments and agencies can only be waived by an Act of the General Assembly which specifically provides that sovereign immunity is thereby waived and the extent of such waiver."). Petitioners named each Respondent in his or her official capacity, so Petitioners must show a waiver of sovereign immunity. *See*, Ga. Dept. of Cmty. Health v. Neal, 334 Ga. App. 851, 855 (2015) ("It is axiomatic that the party seeking to benefit from the waiver of sovereign immunity bears the burden of proving such waiver."). Petitioners never made such a showing, and therefore the claims they asserted against Eveler and the other county election department managers had no basis in law, entitling those defendants to an award of attorney's fees.

C. This Court is authorized to make an award of attorney's fees and costs under O.C.G.A. § 9-15-14 (b)

1) This Court may assess attorney's fees because Petitioner's claims lacked substantial justification

O.C.G.A. § 9-15-14 (b) permits the Court to award attorney's fees when it determines that the claims brought by Petitioner lacked "substantial justification,"

which it further defines as "substantially frivolous, substantially groundless, or substantially vexatious."

As noted above, Petitioners did not set forth specific factual allegations of illegal votes cast or counted in sufficient numbers to overturn the nearly five million votes cast by Georgians in the Presidential Election. Rather, Petitioner's claims were generalized theories of "voting irregularities" largely based on speculative analyses produced by witnesses who were unqualified to make such assessments. Even if Petitioners' flimsy factual allegations and strained legal theories could survive the higher standard for mandatory attorney's fees awards under O.C.G.A. § 9-15-14(a), this Court is given discretion to find that the claims were substantially frivolous, groundless, and vexatious.

2) The Court may award attorney's fees under O.C.G.A. §9-15-14(b) when an improper defendant is named

The Georgia Supreme Court has ruled that attorney's fees may be awarded to a party under O.C.G.A. §9-15-14(b) when that party was improperly included as a defendant in an action. In Stancil v. Gwinnett Cty., 259 Ga. 507, 384 S.E.2d 666 (1989), the trial court dismissed the City of Lawrenceville from the case and awarded attorney's fees because "the plaintiff made inaccurate allegations which could have been easily verified, and because the complaint lacked substantial justification." Id at 509. The Supreme Court affirmed the dismissal and award of fees, "[b]ecause

there was no basis for the action against the city, and because the appellant could have made this determination with a minimum amount of diligence." Id.

In the present action, the Petitioners could have determined that Respondent Eveler was an improper party with a minimum amount of diligence. Indeed, even after Petitioners seem to have realized their mistake - prompting them to amend their Petition - they still continued to name Respondent Eveler and the other county election managers as defendants in their official capacities. Accordingly, this Court has discretion to award attorney's fees to Respondent Eveler and the other county election managers due to Petitioners' failure to exercise minimal diligence in determining the proper parties to this action.

3) Petitioners' conduct in this action and similar lawsuits indicates that this action was interposed for the purpose of delay or harassment

O.C.G.A. § 9-15-14 (b) also permits this Court to award fees if it finds that "the action, or any part thereof, was interposed for delay or harassment." From the outset of this election contest Petitioners' conduct has demonstrated an intent to delay and slow-play this matter as part of an orchestrated effort to sew confusion and chaos after the election. This pattern of delay begins with Petitioners' decision to bring this matter on December 4th, over a month after the election, instead of brining it immediately after the Secretary of State's original certification on November 20, 2020. Given that nearly all of the allegations leveled by Petitioners occurred well before, or immediately after Election Day on November 3rd, it was

inexcusable for Petitioners to wait until 3 days before the State was to required to certify its Electoral College slate.

This pattern of delay continued when Petitioners made a wholly improper and legally unjustified attempt to appeal an interim order of this Court to the Georgia Supreme Court and then failed to withdraw that appeal or notify this Court that the appeal had been rejected for several weeks.

Likewise, instead of pursuing service of process with the highest levels of diligence, it stood by and let multiple weeks pass before the first respondent was even served. The legislature has demonstrated that election contests are to be heard with the greatest of expedition by requiring the petition be filed within five days of the consolidation of returns. OCGA § 21-2-524 (a). "This short time period reflects the legislature's strong desire to avoid election uncertainty and the confusion and prejudice which can come in its wake. Certainly, the swift resolution of election contests is vital for the smooth operation of government." Swain v. Thompson, 281 Ga. 30, 31, 635 S.E.2d 779, 781, (2006), *citing to*, Plyman v. Glynn County, 276 Ga. 426, 427 (578 SE2d 124) (2003). Because service was made outside the limitation period "the [Petitioners had] the burden of showing that due diligence was exercised." Id at 32, *citing to*, Strickland v. Home Depot, 234 Ga. App. 545, 546 (507 SE2d 783) (1998).

Multiple parties brought the lack of service to Petitioners' attention in motions to dismiss, but even after they were made aware of the lack of service, Petitioners failed to exercise the diligence required to expedite service of process. The Supreme Court held in Swain that: "[o]nce the plaintiff becomes aware of a problem with service…his duty is elevated to an even higher duty of the greatest possible diligence to ensure proper and timely service." *citing to*, Harris v. Johns, 274 Ga. App. 553, 554 (618 SE2d 1) (2005). Despite this duty to serve the parties as quickly as possible Petitioners continued to delay, failing to demonstrate the urgency required of them.

Given Petitioners' repeated failures in multiple other lawsuits in Georgia and around the country, it is not a surprise that they sought to string this matter out so they might continue their political strategy of creating chaos and discord in the weeks leading up to January 6, 2021. As late as January 2, 2021 President Trump was referencing this lawsuit during his call to Secretary of State Raffensperger seeking to use it as leverage to "find" the votes needed to overturn the results in Georgia.[6] *See*, Response to Plaintiff's Notice of Filing Voluntary Dismissal. Indeed, Trump and his campaign made little secret that by filing lawsuits and publicly voicing other unfounded claims of election fraud he hoped to create enough doubt to take the election out of the hands of the Electoral College and place it in the hands of

[6] https://apnews.com/article/trump-raffensperger-phone-call-georgia-d503c8b4e58f7cd648fbf9a746131ec9

Congress, going so far as proclaiming on the morning of January 6th that "All Mike Pence has to do is send [the electoral college votes] back to the States, AND WE WIN. Do it Mike, this is a time for extreme courage!"[7]

Petitioners' strategy of delay and his attempt to harass the Georgia Secretary of State into "finding" votes for his election under the pretext of a phone call seeking to settle this matter were part of a broader campaign of misinformation that led to the chaos and destruction that unfolded of January 6, 2021. While this Court does not have authority in the context of this litigation to address all of the damage caused on that day, O.C.G.A. § 9-15-14 (b) clearly gives this Court discretion to impose sanctions for the conduct of Petitioners and their attorneys in unjustifiably delaying this matter or harassing other parties during the course of this baseless lawsuit.

IV. CONCLUSION

In closing, it is proper to repeat again the Georgia Supreme Court's reminder that "The setting aside of an election in which the people have chosen their representative is a drastic remedy that should not be undertaken lightly," Martin v. Fulton Cty. Bd. of Registration & Elections, 307 Ga. 193, 222, 835 S.E.2d 245, 266 (2019). Such a dire remedy "should be reserved for cases in which a person challenging an election has clearly established a violation of election procedures and

[7] https://www.politico.com/news/2021/01/06/do-it-mike-trump-leans-on-pence-to-reject-bidens-electoral-college-certification-455319

has demonstrated that the violation has placed the result of the election in doubt." Despite this high standard, Petitioners brought a factually unsupported and legally meritless election contest case seeking to overturn a statewide election, asking this court to nullify the votes of nearly 5 million Georgia voters. The threadbare factual allegations in the Petition propped up by wildly speculative theories from apparent internet sleuths plainly justify a finding by this Court that there was "such a complete absence of any justiciable issue of law or fact that it could not be reasonably believed that a court would accept the asserted claim[s]." O.C.G.A. §9-15-14 (a).

Further, Petitioners named Respondent Eveler and other county election department managers as defendants in this matter when a small amount of diligence would have revealed that this was improper under Georgia election law. Petitioners delayed too long in filing this matter, choosing to wait until just days before the State of Georgia was required to certify its Electoral College slate to the United States. And then it pursued this action in a manner that demonstrated an intent to delay and harass, only dismissing this action on January 7, 2021, when it was finally apparent to the whole country the harm that their meritless claims had wrought. These actions lacked substantial justification, giving this Court discretion to enter an order under O.C.G.A. §9-15-14 (b).

Accordingly, Respondent respectfully requests an order from the Court awarding her attorney's fees and expenses of litigation. In support of her motion,

Respondent Eveler submits the Affidavit of Daniel W. White, supporting an award of attorney's fees and costs in the amount of $10,875.00.[8] Because "a party opposing a claim for attorney fees has a basic right to confront and challenge testimony as to the value and need for legal services." C.A. Gaslowitz & Assocs. v. Zml Promenade L.L.C, 230 Ga. App. 405, 406, 496 S.E.2d 470, 471 (1998), Respondent requests that, if the Court determines an award is appropriate, the Court set this matter down for a hearing not earlier than thirty days from the filing of this motion so that the parties may present evidence as to the reasonableness and necessity of the fees sought.

Respectfully submitted this 22nd day of February, 2021.

HAYNIE, LITCHFIELD & WHITE, PC

/s/Daniel W. White
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[8] Respondent reserves the right to update the amounts requested to include additional fees incurred in preparing, filing, and defending this motion.

CERTIFICATE OF SERVICE

I hereby certify that on February 22, 2021 I electronically filed the foregoing MOTION FOR AN AWARD OF ATTORNEY'S FEES PURSUANT TO O.C.G.A. § 9-15-14 with the Clerk of Court using the Court's electronic filing system which will automatically send email notification of such filing to all attorneys of record.

/s/ Daniel W. White
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