

IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

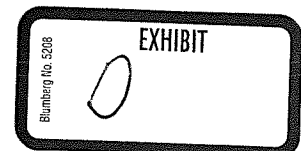
DONALD J. TRUMP, in his capacity	}	
As Candidate for President, et al.,	}	
Petitioners,	}	CIVIL ACTION FILE
v.	}	NO.:2020CV343255
Brad Raffensperger, in his official capacity	}	
As Secretary of State of Georgia, et al.,	}	
Respondents.	}	

**MOTION FOR LEAVE TO AMEND VERIFIED PETITION TO CONTEST
GEORGIA'S PRESIDENTIAL ELECTION RESULTS FOR VIOLATIONS OF THE
CONSTITUTION AND LAWS OF THE STATE OF GEORGIA, AND REQUEST FOR
EMERGENCY DECLARATORY AND INJUNCTIVE RELIEF AND TO ADD PARTIES**

NOW COMES Donald J. Trump, pursuant to O.C.G.A. § 9-11-15, 9-11-19, 9-11-20, 9-11-21 and/or the Georgia Election Code, in his capacity as a Candidate for President, Donald J. Trump for President, Inc., and David J. Shafer, in his capacity as a Georgia Registered Voter and Presidential Elector pledged to Donald Trump for President (collectively "Petitioners"), Petitioners in the above-styled civil action, by and through their undersigned counsel of record, and file this, their Motion for Leave To Amend Verified Petition to Contest Georgia's Presidential Election Results for Violations of the Constitution and Laws of the State of Georgia, and Request for Emergency Declaratory and Injunctive Relief and to Add Parties (the "Petition"), respectfully showing this honorable Court as follows:

I. Legal Standard.

A party may amend his pleading as a matter of course and without leave of court at any time before the entry of a pretrial order.... Leave shall be freely given when justice so requires. A party may plead or move in response to an amended pleading and, when required by an order of the court, shall plead within 15 days after service of the amended pleading, unless the court otherwise orders. O.C.G.A. § 9-11-15. "The right to amend pleadings under the Civil Practice



Act is exceedingly broad.” *Cook Pecan Company, Inc. v. McDaniel*, 337 Ga. App. 186, 190-191, 786 S.E.2d 852, 856, (2016); (citing to *Bandy v. Hosp. Auth. of Walker Cty.*, 174 Ga. App. 556, 557 (1) (b) (332 S.E.2d 46) (1985)). Further, pursuant to O.C.G.A. § 21-2-524, amendments to election contests can be granted with leave of court. The Court may set a reasonable time for response to any opposing litigant. *Id.* Parties must be added by Order of Court under O.C.G.A. 9-11-19, 9-11-20, 9-11-21. It is unclear whether the Board of Elections and its particular members are required to be added to this action as indispensable parties; however, in an abundance of caution, we are also requesting leave of Court to add the Boards of Elections/Registrations of the various counties and their respective members in their official capacities as additional parties as may be required by the Georgia Election Code.

II. Relevant Facts

The matters at issue here are of such gravitas and importance that leave of court should be freely given to enable Petitioner to amend his Verified Complaint in this matter to have their day in Court and prove the verified *data* that was attached to the Verified Complaint. This action is not like any other action that has been filed; it is not based on conjecture, speculation or guesswork, or even some statistical theory. This action is based on simple math based on the data from Respondent Secretary of State Raffensberger’s own public website and other reliable public sources.

True, this action was originally filed on December 4, 2020. Due to the voluminous amount of evidence and exhibits and through an apparent administrative error, it was not assigned a case number by the Clerk of Court until December 7, 2020. December 4, 2020, was a Friday; December 7, 2020 was the following Monday. However, The Honorable Clerk of Court, Cathelene Robinson filed stamped the Verified Complaint as having been filed as of December 4, 2020, at 6:26pm.

During that same period of time, Respondent Secretary of State Raffensberger “officially” certified the election in the State of Georgia. Of extreme importance, Respondent Raffensberger certified the election for Mr. Biden despite the fact that at least one Georgia County, Coffee County, had sent a letter to the Secretary of State on December 4, 2020, informing the Secretary that the County could not replicate the election results on a repeated basis and therefore could not officially certify the results according to the audit required by the Election Code. *See Exhibit “A”* attached hereto and incorporated by reference.

Specifically, Mrs. Ernestine Thomas-Clark, the Chairperson for the Coffee County Board of Elections and Registration said “...given its inability to repeatedly duplicate creditable election results. Any system, financial, voting, or otherwise, that is not repeatable nor dependent should not be used. To demand certification of patently inaccurate results neither serves the objective of the electoral system nor satisfies the legal obligation to certify the electronic recount.” *Id.* Mrs. Clark also stressed that: “NO local election board has the ability to reconcile the anomalies reflected in the attached” (capitalization in original) and thereby, has called into question the certification of election recount throughout the entire State of Georgia. This letter was just disclosed to Petitioners on December 8, 2020, and provides absolute evidence from a Georgia County that their election results cannot be certified.¹ Respondent Raffensperger, himself, stated that these matters must be addressed by the Courts.

Coffee County voted only to certify election night results not audit results, and tendered them to Respondent Raffensberger, who then in an *ultra vires* act, disregarded the letter and certified the election for the entire State of Georgia. He misrepresented that the certification was

¹ This creates an absolute new actual controversy and cannot render this action moot or subject to any laches argument.

based on the certified audits received from all 159 Georgia counties. This action falls squarely under the “Misconduct, fraud, or irregularity” “sufficient to change or place the result in doubt” standard under O.C.G.A. §21-2-522(1), and proves a need for an audit to determine if illegal votes were received under O.C.G.A. § 21-2-522(3), any error in counting if the error would change the result under O.C.G.A. § 21-2-522(4), or any “other cause” which shows that another person was elected under O.C.G.A. § 21-2-522(5). Accordingly, manifest justice and the balance of the equities in this matter should weigh heavily in the favor of Petitioners to enable them to amend their pleadings to challenge the certification, request de-certification by amendment based on the illegal acts of Respondent Secretary of State Raffensberger, including without limitation, an independent audit ordered and to ultimately prove Petitioners case on the merits.

III. ARGUMENT AND CITATION OF AUTHORITIES

The law permits amendment of pleadings as a matter of right and the Election Code permits a Court to allow amendment of pleadings. While it is not known how the Georgia Civil Practice Act plays into this special statutory proceeding, equity should intercede to permit this amendment. The recent actions of Respondent Raffensberger in certifying the election and the *ultra vires* act of certifying the election despite the letter from Coffee County, Georgia, makes Respondent Raffensberger a “Violator” as defined in the Georgia Election Code. O.C.G.A. § 21-2-2(37). “It is declared to be the Policy of this State, in furtherance of its responsibility to protect the integrity of the democratic process and to ensure fair elections for constitutional offices....” and this must be upheld in equity and the Court should intervene in situations where our elected officials have engaged in improper conduct. See O.C.G.A. § 21-5-2. Based on O.C.G.A. § 9-11-15 and the Election Code, and the balance of the equities, amendment is just and proper, as Petitioners are now irreparably harmed and prejudiced if they are not permitted to amend their Verified

Complaint. Petitioners seek to challenge not only certification, but now de-certification, and pursue the illegal acts of the Respondent Raffensberger and audit remedies attendant thereto. Petitioners respectfully show that the outcome of a Presidential Election is fundamental to our system of justice and democracy, that leave should be freely given to get to the merits of what actually happened in this 2020 election. The proposed Amended Complaint is attached hereto for the Court's consideration as **Exhibit "B"**.

WHEREFORE, Petitioners respectfully request that its Motion be granted and for such other and further relief as is just proper and equitable.

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

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