

In the
Supreme Court of the United States



ANTHONY TRICOLI,

Petitioner,

v.

ROB WATTS ET AL.,

Respondents.

On Petition for a Writ of Certiorari to the
Court of Appeals of Georgia

SUPPLEMENTAL BRIEF OF PETITIONER

STEPHEN F. HUMPHREYS
COUNSEL OF RECORD
STEPHEN F. HUMPHREYS, P.C.
P.O. Box 192
ATHENS, GA 30603
(706) 207-6982
ATHENSLAW@GMAIL.COM

TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES	ii
SUPPLEMENTAL BRIEF OF PETITIONER.....	1

TABLE OF AUTHORITIES

Page

CASES

<i>Caldwell v. State</i> , 253 Ga. 400 (1984)	1
<i>Dorsey v. State</i> , 279 Ga. 534, 615 S.E.2d 512 (2005)	1
<i>NAACP v. Alabama</i> , 357 U.S. 449 (1958)	1, 3
<i>Tricoli v. Watts</i> , 336 Ga. App. 839 (2016)	1
<i>Wilkes & McHugh v. LTC Consulting</i> , 306 Ga. 252 (2019)	2, 3

CONSTITUTIONAL PROVISIONS

U.S. Const. amend. I	passim
U.S. Const. amend. XIV, § 1	6

STATUTES

OCGA § 9-11-11.1(d)	2, 3
OCGA § 9-15-14(c)	2

OTHER AUTHORITIES

Bruce Fein, <i>Shielding Government Lawlessness Through Sovereign Immunity Taken to New Lawless Level by Georgia Supreme Court</i> , HUFFINGTON POST, July 18, 2017: http:// www.huffingtonpost.com/entry/ 596e5ddbe4b05561da5a5b3e	4
--	---

TABLE OF AUTHORITIES – Continued

Page

Chris Joyner, <i>Did Confederate Constitution of 1861 Spur Sovereign Immunity Ruling?</i> ATLANTA JOURNAL-CONSTITUTION, April 2017: https://www.ajc.com/news/state-regional-govt-politics/did-confederate-constitution-1861-spur-sovereign-immunity-ruling/7Aow1MAvha5E0frEy4ZF4K	4
Janel Davis, <i>Investigator Sought to Examine Ex- University System Employees' Cases</i> , ATLANTA JOURNAL-CONSTITUTION, October 31, 2014: https://www.ajc.com/news/state-regional-govt-politics/investigator-sought-examine-university-system-employees-cases/HhHTT0hpUeyBIUWbVMwRwO/	5
Stephen Humphreys, <i>Georgia's Statute Slaughterhouse</i> , CL ATLANTA, December 31, 2020, https://creativeloafing.com/content-478115-outlandish-conspiracy-theories-georgia-s-statute	6
Stephen Humphreys, <i>Opinion: Who Needs Confederate Statues? We've Got the Georgia Supreme Court</i> , FULTON COUNTY DAILY REPORT, June 27, 2017: https://drive.google.com/file/d/1AljO4hInQPwzfLdVKVhaFq868Dy3z8Uu/view?usp=sharing	5

TABLE OF AUTHORITIES – Continued

Page

Steven Humphreys, <i>The Ga. Supreme Court's Monument to Confederate Law</i> , INSIDER ADVANTAGE, July 10, 2017: http://insideradvantage. com/2017/07/10/the-ga-supreme-courts- monument-to-confederate-law/	4
WABE September 7, 2014: http://wabe.org/post/judge-hears-rico- complaint-brought-ex-perimeter-college- president	5



SUPPLEMENTAL BRIEF OF PETITIONER

On March 15, 2021, the Georgia Supreme Court gave a further demonstration of the State’s selective and prejudicial application of Georgia’s anti-SLAPP statute—that is supposed to protect the First Amendment rights to petition the courts for redress of grievances and to speak out on issue of public importance—contrary to this Court’s prohibition against states evading their own procedural requirements to harass and penalize disfavored parties. *NAACP v. Alabama*, 357 U.S. 449, 456-57 (1958).

The Georgia courts demonstrated that selective prejudice by allowing to stand, inconsistent with the conduct in every other anti-SLAPP case, an order forcing Tricoli to pay the state’s legal fees for arguing that Georgia law does not afford sovereign immunity protection to state officials who commit RICO felonies.¹ In this case, those uncontested RICO felonies include falsification of University System of Georgia (USG)

¹ With the exception of dissenting Georgia Court of Appeals Judge Yvette Miller, Georgia courts completely ignored—including while imposing sanctions and ignoring the First amendment protection statute—the controlling Georgia authority on immunity for crimes: *Caldwell v. State*, 253 Ga. 400, 402 (1984) (Georgia RICO statute expressly authorizes civil RICO action against state officials for pattern of criminal predicate acts); *Dorsey v. State*, 279 Ga. 534, 615 S.E.2d 512, 519 (2005) (criminal RICO predicate acts do not merge with torts of negligence covered by the Georgia Tort Claims Act; see Miller Dissent, “This Court cannot overlook a [RICO] remedy the legislature, in its wisdom, saw fit to create.” *Tricoli v Watts*, 336 Ga. App. 839, 843 (Miller dissenting); also, Tricoli’s due process rights were violated 336 Ga. App. at 841.

financial records to defraud the US Department of Education—and Georgia Attorney General Chris Carr never responded, despite a succession of pleadings laying out the evidence from state records, starting April 1, 2019.

Tricoli was ordered to pay the state’s alleged prior legal costs (of course, there could be no charges for pleadings to which the State never responded) in violation of the state’s own sanctions statute.²

What is even more grave, in entering the sanctions order, the trial court completely ignored Tricoli’s motion for First Amendment protection under a statute that mandates a hearing, along with other procedural requirements.³ *Contra, Wilkes & McHugh v. LTC Consulting*, 306 Ga. 252 (2019) (Georgia Supreme Court required strict adherence to procedural requirements of Georgia anti-SLAPP statute).

The sequence of Georgia Supreme Court actions is instructive:

- On March 15, 2021, the Georgia Supreme Court granted certiorari in *ACLU v. Zeh* (Case No. S20C1473) to consider nuances of anti-SLAPP legal standards⁴ and elements.

² OCGA 9-15-14 [Section 14(c)] prohibits imposing sanctions for taking a position supported by recognized authority (such as the Georgia Supreme Court opinions in Caldwell and Dorsey (see note 1), or even persuasive authority such as the Miller dissent).

³ OCGA 9-11-11.1(d) required the State’s motion for sanctions to be stayed “until a final decision on the [First Amendment protection] motion” and also a required a “hearing within 30 days”—a hearing that *never* happened.

⁴ For example, the court granted certiorari on the question: On appeal of an order on a defendant’s motion to dismiss under OCGA

- On June 24, 2019, the Georgia Supreme Court entered an order requiring strict adherence to SLAPP procedural requirements, laying out a two-step process in the hearing required by OCGA 9-11-11.1(d). *Wilkes & McHugh v. LTC Consulting*, 306 Ga 252 (2019) (court must follow procedural mechanics of anti-SLAPP statute).
- On June 16, 2020, in between those fastidious observances of the procedural requirements of OCGA 9-11-11.1, the Georgia Supreme Court, with five justices disqualified for conflicts of interest and three more who refused to recuse, denied certiorari in Tricoli's case—where the trial court completely ignored the anti-SLAPP motion for First Amendment protection, as well as the statute and its procedural requirements, including the hearing required by OCGA 9-11-11.1(d) that never occurred—to impose sanctions on Tricoli for going to court to dispute sovereign immunity for RICO felons, as well as criticizing the *fugazi* court rulings in the public media.

This selective and prejudicial exception to the state's own rule of law flies in the face of *NAACP v. Alabama*. Of course, there is no more fundamental denial of due process than denial of a hearing required by law. OCGA 9-11-11.1(d).

The other factors that jump out are:

§ 9-11-11.1, must the reviewing court consider the complaint independently or in the light most favorable to the plaintiff when assessing the likelihood that the plaintiff will prevail . . .

1. The Georgia Supreme Court strictly enforces the anti-SLAPP statute requirements against private parties—but not against the State of Georgia, the most powerful and dangerous of potential infringers of First Amendment rights, most capable of intimidation, and
2. The Georgia Supreme Court makes an exception to that fastidious enforcement for a party challenging the State for corrupt practices and publicly criticizing the Georgia courts for seeming to enter into the RICO conspiracy by conferring faux sovereign immunity for the criminal conduct of fellow state officials.

The illegal and unconstitutional conduct of the Georgia courts is even worse because it targets a vocal critic of the Georgia Supreme Court for its extremist expansion of sovereign immunity.⁵ That includes, to give one example out of many, the Georgia Supreme Court holding that sovereign immunity bars any challenge to unconstitutional acts by the State—because Georgia’s Confederate Constitution of 1861 pre-empts the judicial review clause in Georgia’s current state constitution.⁶

⁵ ATLANTA JOURNAL-CONSTITUTION, April 2017: <https://www.ajc.com/news/state-regional-govt-politics/did-confederate-constitution-1861-spur-sovereign-immunity-ruling/7Aow1MAvha5E0frEy4ZF4K/>

⁶ FULTON COUNTY DAILY REPORT, June 4, 2020: https://drive.google.com/file/d/1Hl7XQj5aMqkBJQ_lXvZqTRfZmnUumvsL/view?usp=sharing; HUFFINGTON POST, July 18, 2017: <http://www.huffingtonpost.com/entry/596e5ddbe4b05561da5a5b3e>; INSIDER ADVANTAGE, July 10, 2017: <http://insideradvantage.com/2017/07/10/the-ga-supreme-courts-monument-to-confederate-law/>;

Moreover, the retaliatory sanctions in *Tricoli*, for which the Georgia anti-SLAPP statute was brushed aside, are just the culmination of a smear and intimidation campaign by the Georgia Attorney General who refused to investigate Tricoli's claims, calling the request for an investigation an "attention-seeking gimmick,"⁷ disparaging at the outset of the litigation claims that are now admitted to be true as "outlandish conspiracy theories."⁸ The resistance was so fierce to Tricoli's attempts to enforce the Georgia RICO statute as written that money damages were illegally sought against Tricoli's counsel for filing a mandamus petition. Former Georgia Attorney General Sam Olens ended his career as Georgia's chief law enforcement officer (replaced by Governor Nathan Deal with Chris Carr) by asking a federal court to bar Tricoli's counsel from filing RICO pleadings in the state and federal courts of Georgia, supposedly for violating a prior court order—only it turned out that the order in question had been reversed and vacated. These are the sorts of misrepresentations the Attorney General of Georgia has traded in throughout this litigation.

Worse, the Georgia courts have allowed this free-for-all, including the imposition of sanctions on Tricoli's counsel for arguing no sovereign immunity

FULTON COUNTY DAILY REPORT, June 27, 2017: <https://drive.google.com/file/d/1AljO4hInQPwzfLdVKVhaFq868Dy3z8Uu/view?usp=sharing>

⁷ ATLANTA JOURNAL-CONSTITUTION, October 31, 2014: <https://www.ajc.com/news/state-regional-govt-politics/investigator-sought-examine-university-system-employees-cases/HhHTT0hpUeyBIUWbVMwRwO/>

⁸ WABE, September 7, 2014: <http://wabe.org/post/judge-hears-rico-complaint-brought-ex-perimeter-college-president>

for criminals—while completely ignoring the Section 14(c) prohibition of the sanctions statute, as well as the procedural and substantive provisions of the Georgia anti-SLAPP statute.⁹

As Tricoli prepared to file his Petition on January 7, 2021, an attack on the Capitol was underway to stop the Electoral College count, and the Fulton County District Attorney has since opened an investigation of public officials, state and federal, who sought to alter the vote count in Georgia, possibly by discounting lawful ballots.¹⁰

What is the difference in principle between stopping the Electoral College count and ignoring the mandatory procedural requirements of Georgia anti-SLAPP statute for protection of First Amendment rights? In both cases, the legal processes must be scrupulously adhered to for the rule of law, fragile as it has proved to be by recent events, to prevail in this country.

That is why Petitioner Tricoli prays that this Court will grant certiorari in order to address the wrecking ball the State of Georgia has taken to the Right to Petition in the First Amendment and the Due Process Clause of the Fourteenth Amendment to the US

⁹ For a more complete list of the Georgia statutes the state courts and attorney general bypassed and ignored in the instant case, see CL ATLANTA, December 31, 2020, *Georgia's Statute Slaughterhouse*, <https://creativeloafing.com/content-478115-outlandish-conspiracy-theories-georgia-s-statute>

¹⁰ Tricoli counsel is cooperating with law enforcement authorities on interconnections between these investigations and the RICO investigations on behalf of Anthony Tricoli, who died on January 26, 2021 without ever seeing justice in his case.

Constitution—in defense of state government corruption and immunity for RICO felonies.

This prayer isn't just for Anthony Tricoli, whose life and career was destroyed by criminals who falsified and misrepresented state agency financial records, and the Attorney General who obstructed the investigation. It isn't just to help clean up rampant corruption in Georgia. It is for the basic rule of law for all Americans—with the First Amendment intact.

Respectfully submitted,

STEPHEN F. HUMPHREYS

COUNSEL OF RECORD

STEPHEN F. HUMPHREYS, P.C.

P.O. Box 192

ATHENS, GA 30603

(706) 207-6982

ATHENSLAW@GMAIL.COM

COUNSEL FOR PETITIONER

MARCH 25, 2021