

In the
Supreme Court of the United States

BATASKI BAILEY,

Petitioner,

v.

FAIR & WALKER UNIT OWNERS ASSOCIATION, INC.;
ACCESS MANAGEMENT GROUP, L.P.;
AND EMPIRE PARKING SERVICES, INC.,

Respondents.

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

BRIEF IN OPPOSITION OF RESPONDENTS
FAIR & WALKER UNIT OWNERS ASSOCIATION, INC.
AND ACCESS MANAGEMENT GROUP, L.P.

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CORPORATE DISCLOSURE STATEMENT

Fair & Walker Unit Owners Association, Inc. has no parent corporation, is not publicly traded, and no public company owns 10% or more of its stock.

Access Management Group, L.P. has no parent corporation, is not publicly traded, and no public company owns 10% or more of its stock.

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MISSTATEMENTS OF FACT IN PETITION

Respondents dispute Petitioner's allegations that counsel involved in proceedings in the lower courts intentionally made false statements under oath to the trial court, or otherwise. Petitioner's Motion for New Trial based on these allegations was denied because the allegations were and are meritless.



THE INSTANT PETITION IS UNTIMELY AND THERE IS NO COMPELLING REASON FOR IT TO BE GRANTED

A litigant's right to seek review by the United States Supreme Court by way of writ of certiorari is quite limited, and rightly so. "Review on a writ of certiorari [to the U.S. Supreme Court] is not a matter of right, but of judicial discretion. A petition for a writ of certiorari will be granted only for compelling reasons." United States Supreme Court Rule 10. This Court's rules set forth a non-exhaustive set of bases for a petition to be granted:

- (a) A United States court of appeals has entered a decision in conflict with the decision of another United States court of appeals on the same important matter; has decided an important federal question in a way that conflicts with a decision by a state court of last resort; or has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a

lower court, as to call for an exercise of this Court's supervisory power;

- (b) A state court of last resort has decided an important federal question in a way that conflicts with the decision of another state court of last resort or a United States court of appeals;
- (c) A state court or a United States court of appeals has decided an important question of federal law that has not been, but should be, settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this Court.

U.S. Supreme Court Rule 10. The rule further states that "a petition for a writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law." U.S. Supreme Court Rule 10.

The instant petition meets none of these articulated reasons for certiorari to be granted. There has been no decision by a United States court of appeals, nor by a state court of last resort. Further, the petition clearly seeks this Court to evaluate alleged erroneous factual findings of a Georgia trial court which do not involve a federal question.

Alternatively,

Final judgments or decrees rendered by the highest court of a State . . . may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty or statute of the United States is drawn in question or where the validity of a statute of any State is drawn in question on the

ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution[.]

28 U.S.C.A. § 1257(a).

However, a State Supreme Court's decision that a litigant's State certiorari petition is untimely does not raise a federal statutory or constitutional issue that gives rise to certiorari review under 28 U.S.C. § 1257(a). *Phillips v. Warden*, 908 F.3d 667, 672-73 (11th Cir. 2018).

In this matter, the Georgia Court of Appeals issued judgment on September 23, 2020. Georgia Supreme Court Rule 38(2) provides:

The petition for certiorari shall be filed with the Clerk of the Supreme Court within 20 days after the date of entry of judgment or the date of the disposition of the motion for reconsideration, if one is filed. A copy of the notice of intent is not to be filed in the Supreme Court.

Petitioner's Petition for Writ of Certiorari was filed October 21, 2020, more than 20 days after the judgment by the Georgia Court of Appeals. On May 3, 2021, the Georgia Supreme Court issued its order dismissing Petitioner's petition for certiorari as untimely.



CONCLUSION

Petitioner has not and cannot articulate a compelling reason to grant certiorari that is consistent with this Court's rules. As such, this Court should deny the subject petition.

WHEREFORE, Respondents respectfully request this Court deny Petitioner's Petition for Certiorari.

Respectfully submitted,

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