

**IN THE CIRCUIT COURT OF THE CITY OF SAINT LOUIS
STATE OF MISSOURI**

Ruby Freeman and Wandrea Moss,

Plaintiff(s),

v.

James Hoft, Joseph Hoft, and TGP
Communications LLC d/b/a *The Gateway
Pundit*,

Defendant(s).

Case No. 2122-CC09815

DEFENDANTS' MOTION TO STRIKE UNDER GA CODE § 9-11-11.1

Defendants James Hoft, Joseph Hoft, and TGP Communications LLC d/b/a The Gateway Pundit (“TGP”) (collectively, “Defendants”) hereby move for summary judgment under Missouri R. Civ. P. 74.04(b), invoking Georgia’s Anti-SLAPP statute, GA Code § 9-11-11.1 (2020) because Plaintiffs’ claims asserted in their Second Amended Petition are based entirely on Defendants’ exercise of their right to free speech in connection with an issue of public interest or concern, and Plaintiffs cannot establish that there is a probability of prevailing on their claims. In support of this Motion, Defendants incorporate by reference their Memorandum in Support of Motion to Strike Under GA Code § 9-11-11.1 (the “Memorandum”) and their Statement of Uncontroverted Material Facts in Support of Motion to Strike Under GA Code § 9-11-11.1 (the “SUF”), and states as follows:

1. Plaintiffs’ claims are premised exclusively on statements Defendants published online to the general public calling into question the legitimacy of the 2020 presidential election in Fulton County, Georgia, an issue of widespread public interest.

2. Defendants’ statements were based on representations, testimony, and evidence provided by third parties, including President Donald J. Trump’s legal team during legislative hearings in Georgia.

3. Georgia’s Anti-SLAPP law applies to Plaintiffs’ claims because Plaintiffs are and were Georgia residents and all alleged harm was suffered in Georgia, meaning Georgia has the most significant relationship to this dispute. *See* Restatement (Second) of Conflict of Laws, § 150 (2nd 1988).

4. Defendants’ statements are non-actionable expressions of opinion because Defendants’ statements are conclusions based on disclosed information regarding the election counting process in Fulton County, including testimony and evidence provided by Trump’s legal team and surveillance footage of the area in which ballots were counted.

5. Defendants’ statements are privileged under O.C.G.A. § 51-5-7(4), (5), (6), and (9) because they fall within the protections of GA Code § 9-11-11.1, they are fair and honest reports of claims made by third parties, including Trump legal team, during legislative and/or court hearings, and they are comments upon the acts of Plaintiffs in their public capacity as election workers during the 2020 presidential election.

6. Plaintiffs cannot show Defendants published their statements with common law malice, as there is no evidence that Defendants possessed any form of malice or will against Plaintiffs. Without any evidence of malice regarding these privileged statements, Plaintiffs cannot obtain any recovery. O.C.G.A. § 51-5-5.

7. Plaintiffs are either public officials by virtue of their status as election workers, or are involuntary public figures due to the widespread public attention they received as a result of

third party claims regarding the 2020 presidential election, which attention Defendants did not create.

8. As public officials and public figures, Plaintiffs cannot prevail on their claims unless they can show with convincing clarity that Defendants published with actual malice, meaning either knowledge of falsity or reckless disregard for truth or falsity.

9. There is no evidence of knowing falsity, as Defendants did, and still do, believe that Plaintiffs participated in election fraud in the manner described in their articles and as explained by third parties.

10. There is no evidence of reckless disregard, as Defendants did not have significant subjective doubt as to the truth of their statements. Denials by public officials (and “fact checkers” relying on statements by public officials) were not credible because such denials amounted only to the very officials involved in the fraudulent scheme denying any wrongdoing. Defendants were entitled to believe the representations of President Trump’s legal team, and no credible, trustworthy sources have conclusively refuted these representations.

11. Plaintiffs cannot prevail on their IIED claim because it is based on the reporting of a newsworthy event, making defamation their sole possible remedy. *Tucker v. News Publishing Co.*, 197 Ga. App. 85, 87 (2), 397 S.E.2d 499 (1990).

12. Plaintiffs cannot prevail on their IIED claim because Defendants’ statements were generally directed toward their readership, rather than to Plaintiffs specifically. *Munoz v. Am. Lawyer Media, L.P.*, 236 Ga. App. 462, 465 (1999).

13. Plaintiffs cannot prevail on their IIED claim because Defendants’ statements do not amount to extreme or outrageous conduct. Calling a public official or public figure a criminal amounts to no more than mere insults that cannot support an IIED claim. Furthermore, Defendants

cannot be liable for the actions of third parties that allegedly threatened Plaintiffs, as (1) there is no evidence that such third parties engaged in this conduct as a result of Defendants' statements and (2) there is no evidence of any sort of relationship between Defendants and these third parties or that Defendants directed or instructed these third parties to engage in such conduct.

WHEREFORE, for these reasons and those stated in the accompanying Memorandum, Defendants respectfully request this Court grant summary judgment in Defendants' favor on all claims and award Defendants their costs and attorneys' fees under Georgia's Anti-SLAPP statute.

Dated: April 24, 2023.

Respectfully Submitted,

/s/ John C. Burns

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CERTIFICATE OF SERVICE

I hereby certify that on April 24, 2023, the foregoing document was served on all parties or their counsel of record through this Court's e-filing system as follows:

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