IN THE SUPREME COURT
OF THE STATE OF GEORGIA

NO. S20C0577

ANTHONY TRICOLI

Plaintiff/Appellant/Petitioner

v.

ROB WATTS, ET AL.

Defendants/Appellees/Respondents

MOTION TO DISQUALIFY JUSTICES

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Petitioner Anthony Tricoli moves pursuant to Supreme Court Rule 26 to disqualify--for bias in favor of the State or prejudice against Tricoli, as outlined in the accompanying affidavit--the following Justices: McMillian, Ellington, Peterson, Warren, Blackwell, Nahmias, and Melton, C.J. Justices Boggs and Bethel are requested to review the factors raising questions and affirm whether they can review Tricoli's pending Petition for Certiorari with impartiality, unaffected by the biases shown by their colleagues.

Pursuant to Canon II of the Canons of Judicial Conduct (Canons), Rule 2.11, judges must disqualify themselves in any proceeding in which their impartiality might reasonably be questioned. That includes when they have a bias or prejudice concerning a party of a party's lawyer. Rule 2.11(A)(1). It also includes instances in which the judge has had direct involvement in the matter of controversy. Rule 2.11(a)(6).

Justices demonstrate impartiality when they comply with and are faithful to the law. Canon Rules 1.1 and 2.4. The failure to follow the law, however, is a sign of impermissible partiality, prejudice, or bias, in violation of Canon Rule 2.3.

Bias or prejudice may be demonstrated by violation of other Canons, such as denying a party the right to be heard (Rule 2.6), and being swayed by external influences. Rule 2.4.

The goal of the judiciary should be fairness to all parties. Canon Rule 2.2. Disqualification does not require proof of actual bias or impropriety. Matters that cause a judge's impartiality to reasonably be questioned suffice for disqualification. *King v. State*, 246 Ga. 386 (1980). It is imperative that the public have faith and trust in the justice system. *Friends of the Chattahoochee v. Longleaf Energy Associates*, 285 Ga. 859 (2009).

In support of this motion, Tricoli relies on the contemporaneously filed affidavit reciting the facts bearing on disqualification. While each Justice has a background, or has taken prior positions, that may raise questions about impartiality, some fall into categories more questionable than others.

The first category includes Justices who may in no way consider taking part in these proceedings, and for whom care must be taken that they do not influence other Justices. Newly-appointed Justice Carla McMillian falls into the must-disqualify category, along with Justices Ellington, Warren, and Peterson.

Justice Ellington previously served on a Court of Appeals panel that considered *Tricoli v. Watts* on its first trip through the appellate system in 2016.[1] The majority panel failed to follow the law, leading to Tricoli's principal complaints today, in violation of Rules 1.1 and 2.4--for which they were remonstrated for failing to follow the law and due process by Court of Appeals

[1] *Tricoli v. Watts*, 336 Ga. App. 837 (2016).

Judge Yvette Miller in her dissenting opinion. *Tricoli*, 336 Ga. App. at 840-42. See Affidavit re Recusal (Aff.), ¶¶ 37-39.

These transgressions included an illegal conversion of a Rule 12(b)(1) motion to summary judgment, at the appellate level, without the dispositive facts before the court and without any notice or opportunity for Tricoli to respond. *Contra*, OCGA § 9-11-12(b) & 9-11-56(c). The transgressions included tacit approval of a bounder's ruse employed below to evade the waiver of sovereign immunity effected by Tricoli's admitted written contract with the state. *Contra*, OCGA § 50-21-1. They also included what amounts to a political pronouncement that state officials are beyond being held accountable for RICO felonies--without examining either the controlling precedents or the language of the RICO statute for waiver of sovereign immunity. *Contra*, *Caldwell v. State*, 253 Ga. 400, 402 (1984) (statutory language expressly authorizes civil RICO action against state officials).

Justice McMillian also crossed Tricoli's path before as a judge on the Court of Appeals, in 2019, in Tricoli's second trip through the appellate system on motions to set aside the judgments against him for due process violations, as well as new evidence of fraud affecting the judgments committed by the Attorney General and University System of Georgia (USG) Respondents. Aff., ¶¶ 9-37. At the May 7, 2019 oral argument, then-Judge McMillian openly manifested prejudice in violation of Canon Rule 2.3(B) by characterizing Tricoli's constitutional

arguments—that the state could not pass statutes protecting certain conduct and then punish it—as a "rant." ¶¶ 11-18. *Contra*, *Wright v. Georgia*, 373 US 284, 292 (1963) (no law against playing basketball); *Reich v Collins*, 513 U.S. 106, (1994) (no statutory bait and switch); *Bouie v. City of Columbia*, 378 U.S. 347, 354 (1964) (no punishment where the law gives no warning)[2]; *Shuttlesworth v. City of Birmingham*, 382 U.S. 87, 93 (1965) (state evading controlling law violates constitutional due process under the Fourteenth Amendment).

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[2] In Tricoli, Georgia went beyond punishing conduct for which there was no warning. There were actually statutes enacted by the legislature that affirmatively created a safe harbor prohibiting the actions taken against Tricoli. The Court of Appeals converted a Rule 12(b)(1) motion to dismiss on its own initiative, with no notice or opportunity for Tricoli to respond, in violation of two Georgia statutes–as was vehemently argued by the Attorney General iwhen he was insisting Tricoli had to produce his written contract with the state (which was in the possession of the USG and Attorney General) to show waiver of sovereign immunity. The Attorney General, however, changed his position that OCGA 9-11-12(b) & 9-11-56(c) and two pages of case law cited by the Attorney General barred the summary judgment conversion—but the Attorney General only changed his position on summary judgment conversion with no notice or opportunity to respond after the Court of Appeals went ahead and did it, anyway. The Attorney General, after the fact, never offered any authority for taking advantage of this windfall from the court. The prohibiting statutes and case law remain the same. Similarly, the state of Georgia seeks to impose thousands of dollars in sanctions On Tricoli—for documenting and exposing state government corruption and arguing in court that state officials do not enjoy sovereign immunity protection to commit RICO felonies. Those sanctions are being imposed in direct, wanton contradiction of the safe harbor provision of Georgia's own sanctions statute—which prohibits ("shall not") penalizing an attorney for advancing a theory supported by recognized authority, such as the controlling Supreme Court precedent in Caldwell v. State, or even persuasive authority, such as the Miller dissent in Tricoli. OCGA § 9-15-14(c). The Miller dissent by itself clearly forecloses the monetary sanctions imposed by the state on Tricoli. Yet Justice McMillian, sitting below on the Court of Appeals, "affirmed [the sanctions] without opinion." The Court of Appeals had to affirm without opinion because there was no other way on Earth to explain this bald defiance of the legislature's statute by the executive and judicial branches.

It has now been more than a year since April 1, 2019, when Tricoli filed a motion to set aside the Court of Appeals summary judgment entered in 2016—based in part on continuing investigation that uncovered fraud by the Attorney General--to conceal the extent of the RICO scheme first alleged by Tricoli, and to deceive the courts. At oral argument, then-Judge McMillian feigned no awareness of this pending motion, to which the Attorney General had not responded. Aff., ¶¶ 22-33. A year later, Attorney General Chris Carr has still never responded, admitting that the USG—joined by the state department of audits and the Attorney General—falsified and misrepresented state financial reports as part of a billion-dollar fraud against the federal government and bond rating agencies, thence defrauding the public.

Then-Judge McMillian overlooked that billion-dollar fraud, *affirming without opinion* the knowing misrepresentations and due process violations below. While she was overlooking that state financial scandal, she also allowed sanctions to stand against Tricoli for seeking to bring this government corruption to public attention by taking the claims to court in a civil RICO action. Allowing the sanctions to pass unmolested required ignoring the statutory prohibition against penalizing an attorney who pleads a new theory supported by the persuasive authority of a dissent, much less a controlling Supreme Court authority. OCGA § 9-15-14(c). Affirming the sanctions without opinion also required losing sight of

the protections in both state and federal law from retaliation for the exercise of the First Amendment Right to Petition. OCGA § 9-11-11.1. This could reasonably be construed as a failure to comply with the law as required by Canon Rule 1.1. It also a sign of bias and prejudice under Rule 2.3.

While both Justices McMillian and Ellington could easily be disqualified for demonstrated bias or prejudice, and failure to comply with the law, there is no leeway to dispute their reliability or impartiality one way of the other. Justices McMillian and Ellington, having previously reviewed the Tricoli action in a lower court are disqualified by statute. OCGA § 15-1-8(a)(3). It would take a considerable demonstration of remorse for past prejudicial conduct to convince Tricoli to waive this statutory prohibition.

Justice Warren worked in the Attorney General's office for most of the duration of the Tricoli litigation, and was correctly disqualified from the related case, *Richards v. Olens*, for which a motion to consolidate with *Tricoli* is pending, and which involves claims that the USG appointed former Attorney General Sam Olens president of Kennesaw State University (KSU) after Olens obstructed criminal investigation of the USG financial fraud alleged in the Tricoli action—and after Dr. Dan Papp was coerced by the USG with threats of false smears if he did

not vacate the KSU presidency with Olens waiting in the wings, aware of the campaign against Dr. Papp and standing in line to take Dr. Papp's position.[3]

The allegations of bribery and extortion in the KSU case also stand admitted, like the USG financial fraud in the Tricoli case, by Attorney General Chris Carr's failure to respond to the documented allegation in the KSU action--for more than three years now.

Justice Peterson is a KSU graduate who worked as in-house legal counsel to the USG during the Tricoli litigation and in the run-up to the KSU litigation. He did not participate in the March 26, 2020 decision by the Court to deny certiorari in the related case of *Richards v. Olens* arising from the alleged quid pro appointment of Olens as KSU president. Like Justice Warren, he should more properly be disqualified, both in the KSU case and in the instant action. He should not have participated in the decision to deny Tricoli permission to file a supplemental brief detailing the ethical breaches by the Attorney General who is seeking to impose sanctions on Tricoli.

Justices Blackwell and Nahmias and Chief Justice Melton fall into a third category of being damned, not by faint praise, but by their silence. On November

[3] Given a rather glaring apparent conflict of having served as Solicitor General under Attorneys General Sam Olens and Chris Carr, Justice Warren should not have participated in the decision to deny Tricoli permission to file a supplemental brief detailing the ethical breaches by the Attorney General who is seeking to impose sanctions on Tricoli. Tricoli's motion to file the supplemental brief was denied, within an hour of being filed, on January 22, 2020. Aff., ¶ 46, Exhibits 2 & 3

7, 2016, all three eschewed, without explanation, review of the Court of Appeals' one reported decision in the Tricoli case–even though the appeals court utterly failed to analyze the Georgia RICO statute for waiver of sovereign immunity, as required by the Constitution, and lost all sight of the controlling authority on that subject from this very Court in Caldwell. Aff., ¶¶ 50-81.

Undersigned counsel has publicly criticized the sovereign immunity decisions of this Court in the media, and frankly criticized the originalism of Justices Nahmias and Blackwell as extreme. Aff., ¶¶ 68-69 & Exhs 7-8.

While counsel would welcome the opportunity to sit down for coffee with Justice Blackwell so that two UGA Law First Honor Graduates could let their minds race in competition and trace support for their respective ideas all the way back to Lord Coke in 1608, counsel reasonably fears that these three Justices' minds are closed to hear Tricoli's arguments, however compelling and supported by controlling authority

That leaves only Justices Bethel and Boggs (Aff., ¶¶82-88), who do not present red flags to the same degree--the main concern being that they have been influenced by their colleagues, especially the Justices who reviewed this case as judges on the Court of Appeals, and those with whom Tricoli and his counsel has long been in direct confrontation, or their appointment by Governor Deal, a

defendant in the related KSU action. Tricoli would respectfully ask any Justices to disqualify themselves if they question their own impartiality.

The manifestations of bias and prejudice by members of the Georgia judiciary throughout the Tricoli litigation—a highly-charged case involving billions of dollars in fraud that could shake the state government to its foundations, and even send high state officials to prison—is unfortunate. The judiciary is supposed to remain independent of external political and economic pressures. The preamble to the Canons of Judicial Conduct states: *Our legal system is based on the principle that an independent, fair, and competent judiciary will interpret and apply the laws that govern us.* Petitioner Tricoli prays that this guidance will be followed in the review of his action, and that the Justices participate or recuse accordingly.

Respectfully submitted this 29th day of April, 2020.

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/s/ Stephen F. Humphreys

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CERTIFICATE OF SERVICE

I hereby certify that I have this date served the above and foregoing motion electronically through the Court's E-Fast System, which serves all parties of record by electronic means and by placing a true and correct copy of same in the United States Mail, first-class postage prepaid and addressed to the following counsel of record:

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IN THE SUPREME COURT OF GEORGIA

AFFIDAVIT RE: RECUSAL

I, STEPHEN F. HUMPHREYS, before the below-named officer duly authorized to administer oaths, do hereby swear and attest to the following:

1.

I am over the age of 18 and am not suffering from any mental or physical disabilities that would prevent me from testifying under oath. I attest to the truth of the facts described herein from my own personal knowledge, as supported in the public record of *Tricoli v. Watts* and the related case of *Richards v. Olens*.

2.

I offer this affidavit pursuant to Georgia Supreme Court Rule 37, for consideration whether Justices should recuse themselves from cases arising within the University System of Georgia (USG)--for financial fraud, obstruction, and extortion at Georgia Perimeter College (GPC), as alleged in *Tricoli v Watts* (Tricoli), and at Kennesaw State University (KSU), in *Richards v. Olens*.

3.

I, undersigned counsel, engaged in this consideration of recusal of justices when a new Justice was appointed by the Governor who has shown demonstrable prejudice already in the Tricoli case, characterizing constitutional arguments as a "rant" at oral argument and affirming without opinion objectively illegal proceedings below. The new Justice was appointed by Governor Brian Kemp, who has ignored repeated requests to appoint a special attorney general to conduct an independent investigation of the billion-dollar financial fraud in Georgia state government that underlies the litigation.

4.

This recent appointment triggered a review of the current Justices that found multiple actions that could raise questions about impartiality and inclination to follow the controlling law. Certain Justices already demonstrated conduct reasonably perceived as prejudicial against Tricoli and KSU Petitioners, and as

biased in favor of the Attorney General and USG, where two of the sitting justices formerly served. A majority of Justices have already affirmatively stated that the billion-dollar fraud, extortion, and bribery—extensively documented and largely admitted—that lies at the root of these cases does not represent a matter of public importance worthy of the Court's review, a position that does not appear to be tenable in the public interest.

5.

Three of the sitting Justices previously found the *Tricoli* case of insufficient public importance to review at the time when the known fraud consisted of $10 million "gone with no explanation" from Georgia Perimeter College, and before new evidence showed this was part of a billion-dollar fraud on the federal government. The same three Justices violated the statute mandating appellate review of the appeals court's summary judgment conversion--in denying review of the summary judgment entered with no notice or opportunity to respond by the Court of Appeals in the Tricoli case.

6.

I have publicly criticized decisions of sitting Justices for failing to follow the law as it is written—in other cases, as well as *Tricoli* and *Richards*--in what I have described as a zeal to expand sovereign immunity protections and shield state actors from accountability to the public and the law.

7.

Two appendices are incorporated by reference into this affidavit and covered by the oath, one on the procedural history that provides the context for the potential grounds for recusal, as well as an appendix listing the rules and statutes violated by the designated Justices.

8.

An outline of the grounds for examination of potential prejudice, bias, lack of impartiality, and failure to follow the law—as to each Justice—in which their impartiality might reasonably be questioned, according to Rule 2.11 of the Canons of Judicial Conduct, follows.

Justice Carla Wong McMillian

9.

Justice McMillian was appointed by the Governor and took office April 10, 2020.

Prior to appointment to the Supreme Court by Governor Kemp, McMillian sat on a three-judge panel that considered *Tricoli*, which is related to the KSU case as stated in pending motions to consolidate. See Appendix on procedural history.

10.

Oral argument in the *Tricoli* case was held before the three-judge panel on which Judge McMillian sat on May 7, 2019. A true and correct recording of the oral argument may be accessed at the Court of Appeals website:
https://www.gaappeals.us/oav/A19A1071.php

11.

On the recording, then-Judge McMillian can be heard denigrating Tricoli's constitutional due process arguments as a "rant."

12.

The "rant" centered on Tricoli's constitutional argument, based on US Supreme Court decisions, that the state could not renege on statutory safe harbors or punish conduct that was held out in a state statute as protected.

13.

For example, the Court of Appeals could not convert Tricoli's case to a summary judgment standard of review—as it did, anyway, in 2016--simply because he produced his written contract with the state at the demand of the Attorney General, when such conversion is prohibited by the case law and statutory authority cited by the Attorney General himself in demanding production of the written contract to prove the state's waiver of sovereign immunity.

14.

Similarly, according to the argument characterized as a "rant," Tricoli could not be sanctioned for persisting in arguing, in a motion to set aside the judgment against him, that state officials do not enjoy sovereign immunity protection for the commission of RICO felonies, since Tricoli's position is supported by controlling authority from this very Court in *Caldwell v. State*, and by Court of Appeals Judge Yvette Miller's dissenting opinion in the *Tricoli* case itself.

15.

As stated at oral argument before Judge McMillian, these propositions are directly supported by numerous US Supreme Court authorities, including opinions directed at the violation of this due process principle by the state of Georgia. Representative cases that prohibit such a bait and switch by the state include *Bouie v. City of Columbia*, *Wright v. Georgia*, *Reich v. Collins*, *Shuttlesworth v. City of Birmingham*, and *NAACP v. Alabama*.

16.

Thus, the argument characterized as a "rant" goes, the sanctions already imposed on Tricoli, and *affirmed without opinion* on October 24, 2019 by the appeals panel including then-Judge McMillian, blatantly violate the prohibition on imposing sanctions for positions supported by recognized or even persuasive authority in OCGA 9-15-14(c). Thus the panel affirmed without opinion in a "do not publish" order without explanation, not only a prima facie violation of Georgia's own sanctions statute, but a grave constitutional violation, as well.

17.

Undersigned counsel suggests that rejecting this weight of controlling authority and dismissing it as a rant gives a strong appearance of prejudice and bias to a reasonable person in violation of Canon of Judicial Conduct Rule 2.3.

18.

Judge McMillian's derogatory reference, followed by an affirmance without opinion of the illegal sanctions, also appears to violate Canon of Judicial Conduct Rules 1.1 and 2.4, requiring judges to comply with and be faithful to the law.

19.

Joining in an affirmance-without-opinion of proceedings below which appear to egregiously violate basic principles of the Constitution as declared by the US Supreme Court would also appear to violate Canon 2.7, mandating a duty to decide issues before the court. When an appellate court affirms without opinion, it does not write its own order, reference any dispositive facts, cite any legal authorities, or otherwise explain its ruling. It merely makes a vague reference to the proceedings below, indicating that the result is supported somewhere in the law or in the briefs or orders, without specifying where. A reasonable person could consider that failure to decide inappropriate in the case of a weighty matter of whether state government may impose sanctions on an attorney who went to court and exposed state government corruption in the exercise of the First Amendment Right to Petition.

20.

Since the imposition of sanctions in this instance is actually quite explicitly prohibited by statute, it would be impossible for the panel to point to any argument, authority, or order below that lawfully supports them.

21.

The accusation that counsel was ranting when making these arguments, by itself, raises questions of adherence to Canon 2.3(B) concerning manifestations of bias or prejudice, as well as Canon 2.8 regarding courtesy to litigants.

22.

Judge McMillian's conduct would also reasonably appear to be a determined defense of the state, in particular the USG, Attorney General, and state department of audits—for engaging in a corruption scheme involving numerous RICO felonies that started with $10 million "gone with no explanation" from GPC. Considering that further investigation of the conspiracy scheme, after Tricoli's case was originally thrown out in 2016, detected a billion-dollar fraud on the federal government, the judge's conduct could also be construed as defending what would truly be a massive scandal in state government.

23.

Tricoli first filed these documented allegations of billion-dollar fraud on the federal government, based on ongoing investigation (not conducted by Attorney General Chris Carr), in a pleading before Judge McMillian's Court of Appeals panel on April 1, 2019. Attorney General Chris Carr has never responded to that and supplemental pleadings, thus admitting the allegations of falsification of state financial reports to defraud the federal government and bond rating agencies as true, as well as obstruction of related investigations.

24.

Undersigned counsel has written four letters on the subject of this fraud to Governor Kemp, who appointed Justice McMillian to her current post. Though it has been verified that Kemp is personally familiar with the correspondence, Kemp has not answered the letters and has taken no action to investigate the fraud conceded by Attorney General Chris Carr. A true and correct copy of a July 13, 2019 letter to Governor Kemp is attached to this affidavit as Exhibit 1.

At the May 7, 2019 oral argument, undersigned counsel was not able to deliver any of the planned presentation of these matters, as the entire time was taken by McMillian and another member of the panel in what appeared to be badgering Tricoli's counsel with incorrect statements of the law—for example, the incorrect statement that a motion to set aside a judgment based on new evidence of fraud is barred by the law of the case rule. Judge Andrew McFadden also seemed to protest that counsel could not file a motion for First Amendment protection under Georgia statute OCGA 9-11-11.1--after the trial judge, Daniel Coursey, quashed all Tricoli's evidentiary subpoenas without legal authority and announced an intention to disregard the prohibition against sanctions in OCGA 9-15-14(c)—but before Judge Coursey actually entered a sanctions order, with no reference to that statutory prohibition, a month later.

25.

All the allotted time for argument was taken up with these questionable and seemingly biased pronouncements. Tricoli was denied time for rebuttal of numerous misrepresentations by the Attorney General, after all of Tricoli's time was taken by the two judges' protests. This at least creates an appearance of inconsistency with the right to be heard under Canon 2.7 and the duty to adjudicate proceedings fairly under Canon 2.8.

26.

There is a reasonable appearance these two judges showed inappropriate prejudice and disfavor against Tricoli, contrary to Canon 2.3. Judges McMillian and McFadden can also be said to have shown bias in favor of the state, in a case of billion-dollar fraud against the federal government by the state, though that case was uncontested by the Attorney General.

27.

At the May 7 oral argument, the panel, including Judge McMillian, was given actual notice of obstruction by the trial court and Attorney General of criminal investigation into this fraud scheme.

28.

The panel was also given irrefutable in-person notice concerning the sanctions the panel was considering—whether to punish Tricoli by forcing him to pay thousands of dollars for filing a motion to set aside based on new evidence of fraud by defendants affecting the prior judgment. That penalty—which the appeals panel did affirm without opinion--was based on Tricoli's related contention that the USG Respondents and Attorney General did not enjoy sovereign immunity protection to commit RICO felonies including fraud on the federal government and bond rating agencies. Judge McMillian was alerted at oral argument, as well as in the briefing, that Tricoli could not be sanctioned for taking this position that Respondents could be held accountable in a civil RICO action—because such sanctions were prohibited by statute by dint of Judge Miller's dissenting opinion that expressly agreed with Tricoli on that point. OCGA 9-15-14(c).

29.

Judge McMillian appeared to visibly flinch at the mention of Judge Miller's dissent, and started back in her chair with a look of concern at the reference to obstruction of the ongoing criminal investigation.

30.

The third Judge on the panel, Stephen Goss, never said a word during oral argument, but by his facial expressions and body language appeared to be disturbed at the events as they unfolded on May 7, 2109.

31.

According to news reports, Judge Goss tragically committed suicide as the panel's decision was pending in this case involving billion-dollar fraud, by state agencies and officials, against the federal government.

32.

There are additional documented allegations of fraud on bond-rating services to protect state agency bond ratings, as well as fraud on the federal government, which Tricoli was barred from adding to the record by the Court of Appeals panel, including then-Judge McMillian, on May 5, 2019, just before the May 7 oral argument.

33.

Then-Judge McMillian indicated by her comments at oral argument that she had no awareness of another motion still pending before the panel. That motion--to set aside the summary judgment review self-initiated by the Court of Appeals--was filed over a month before the oral argument, on April 1, 2019, based on new evidence showing that the Respondents engaged in a billion-dollar fraud against the federal government, as well as a campaign of obstruction of criminal investigation and retaliation against Tricoli and his counsel. Judge McFadden was on the appeals court panel that issued the summary judgment with no notice to Tricoli or opportunity to respond, in 2016, which was directly challenged by the April 1 motion.

34.

After the deceased judge, Stephen Goss, was replaced, the panel on which McMillian sat denied the motion to set aside she indicated she was not aware of at oral argument. They denied it under the rule of the case, OCGA 9-11-60(h). Since the rule of the case, according to Georgia authority, does not apply to a motion to set aside a judgment for new evidence of fraud by the defendants affecting the

judgment, or to a motion to set aside alleging constitutional due process violations, this gives the strong appearance of being another instance in which Justice McMillian violated Canons 1.1 and 2.4, which require her to follow the law.

35.

As a consequence of the failure to entertain the grounds for the motion to set aside the judgment in *Tricoli v. Watts*, petitioner Tricoli has never been afforded his right to be heard in the summary judgment deliberations that were decided against him. That failure to be heard was compounded, as recounted below, by the failure of Justices Melton, Nahmias and Blackwell, the three Justices sitting on the Supreme Court at that time, to review the grant of summary judgment as required by OCGA 9-11-56(h). The denial of the right to be heard violates Canon Rule 2.6.

36.

All this judicial conduct that is not explicable according to the governing law raises the concern that political and economic considerations outside the proceedings are influencing judicial decisions, in violation of Canons 1.1, 2.4 and 2.9.

37.

All the actual evidence of bias and prejudice witnessed personally by undersigned counsel supports the statutory prohibition on Justice McMillian reviewing the conduct of Judge McMillian below in the Court of Appeals. OCGA 15-1-8(a)(3).

Justice John J. Ellington

38.

According to the Georgia Supreme Court website, Justice John J. Ellington was elected to the Supreme Court of Georgia in 2018. Prior to his election, Justice Ellington served on the Georgia Court of Appeals for more than 19 years.

39.

According to the order of record, Justice Ellington, like Justice McMillian, also reviewed the *Tricoli* case as a judge on the Court of Appeals. Justoce Ellington did

so in the order issued on March 30, 2016. Justice Ellington was one of the six judges on the seven-judge panel who voted against Tricoli, overriding the dissenting opinion of Judge Yvette Miller.

40.

Accordingly, Justice Ellington is subject to the same concerns that he failed to comply with the law when the panel majority converted the matter to summary judgment with no notice or opportunity to respond, in violation of OCGA 9-11-12(b) and other authority cited by the Attorney General himself. See Appendix on rules and statutes violated. Judge Miller also stated in her dissent that this summary judgment conversion with no notice to Tricoli or opportunity to respond violated due process.

41.

Tricoli alleges that the panel majority members did not comply with the law, in violation of Canon Rule 1.1, when they effectively granted summary judgment against Tricoli on his contract claims, making findings of fact about his contract terms and the circumstances of his coerced departure from GPC—when the only issue before the courts was whether Tricoli had a written contract with the state. This written contract, according to Georgia statutory and constitutional authority, waives sovereign immunity. Therefore, the summary judgment joined by Justice Ellington evaded this controlling authority on the issue actually before the court, once again implicating Canon Rule 1.1 for failure to comply with the governing law.

42.

The panel majority, including Justice Ellington, also failed to consider the language of the RICO statute for waiver of sovereign immunity—another alleged due process violation for which Tricoli filed the motion to set aside the Court of Appeal's summary judgment. This is one of the issues now directly before the Supreme Court on Tricoli's Petition for Certiorari.

43.

Then-Judge Ellington violated the requirements of the Georgia Constitution when he and the panel majority failed to consider the controlling Supreme Court authority argued by Tricoli, *Caldwell v. State*, in which the 1984 Georgia Supreme

Court held that the RICO statute expressly authorized a civil RICO action against state officials. This satisfies the standard for waiver of sovereign immunity that was previously disregarded by both the Court of Appeals and the Georgia Supreme Court of 2016 in the Tricoli case. This raises a concern that Justice Ellington violated Canon Rules 1.1 and 2.4, which could reasonably be an indicator of bias or prejudice under Rule 2.3 or external influences under Rule 2.4.

44.

Confidential sources within state government reported, before the Court of Appeals order throwing out Tricoli's case was entered on March 30, 2016, that the Tricoli case was going to be an exemplar and a landmark case used to solidify a bulwark of protection for state officials against claims of wrongdoing—and, in particular, against claims they committed criminal acts harming individuals and the public, the very harms contemplated by the legislature in OCGA 16-14-2. This creates an appearance of improper ex parte communications about this case throughout state government in 2016, in violation of Canon Rule 2.9.

45.

The issue of whether panel member Judge Miller's dissenting opinion bars the sanctions imposed by Judge Daniel Coursey, and affirmed without opinion by then-Judge McMillian, is also directly at issue in the Tricoli Petition, along with the question whether this is illegal and unconstitutional state government retaliation against an attorney for exposing government corruption in court pleadings, in the exercise of the First Amendment Right to Petition.

46.

On January 22, 2020, Justice Ellington joined all the then-sitting Justices to deny Supplemental Brief outlining the ethical violations committed by the Attorney General. These ethical lapses include the Attorney General arguing and citing two pages of authority that Tricoli's case could not be converted to summary judgment review, and then applauding the Court of Appeals panel when they illegally did just that. See Exhibits 2 & 3, Motion to File Supplement Brief and Supplemental Brief.

47.

Despite having sat on the appeals panel that issued the summary judgment against Tricoli in the Court of Appeals on March 30, 2016, the January 22, 2020 Supreme Court order denying permission to file the supplemental brief outlining unethical conduct by the Attorney General (who seeks to impose sanctions on Tricoli) does not reflect that Justice Ellington recused himself from the deliberations on the motion. This action would violate OCGA 15-1-8(a)(3).

48.

On March 26, 2020, Justice Ellington also voted to deny certiorari, thus denying review of the related KSU case, *Richards*, without considering the motion to consolidate with the related *Tricoli* case, on which Justice Ellington rendered an opinion as a Court of Appeals judge in 2016. Given that Justice Ellington sat on the appeals panel that threw out Tricoli's case in 2016, it appears questionable that he did not disqualify himself from considering the KSU matter and joining in the denial of certiorari. This left in place the same admitted fraud and government corruption, and the same legal issues of sovereign immunity for RICO felonies, at issue in the *Tricoli* case.

49.

In counsel's considered legal opinion, it may not be seriously contested that Justice Ellington is barred from reviewing the *Tricoli* case in its second appellate appearance, under the same statutory prohibition and indices of failure to follow the law and inferable bias or prejudice as Justice McMillian.

Chief Justice Harold D. Melton

50.

Justice Melton served on the Court since being appointed by Governor Sonny Perdue in 2005, and was a member of the court that denied cert of *Tricoli*--in its first appellate appearance, on November 7, 2016--in violation of OCGA 9-11-56(h). This raises an issue of failure to comply with the law under Canon Rule 1.1, which could reasonably appear to be the product of bias under Rule 2.3 or external influences under Rule 2.4.

51.

This denial of certiorari in violation of the governing statute deprived Tricoli of the right to be heard in the summary judgment proceedings against him, in violation of Canon Rule 2.6.

52.

The Court on which Justice Melton sat convened the morning of November 7, 2016, the same morning as a motion for a temporary injunction was being heard in *Richards*, the KSU case to block the appointment of former Attorney General Sam Olens, in part on the grounds that Olens obstructed investigation of the USG for the $10 million gone with no explanation at GPC—which was later revealed to be part of a billion-dollar fraud in the federal government and scheme to defraud bond rating agencies, and therefore the public, with respect to USG-issued bonds.

53.

The coincidence of the Supreme Court convening early the morning of November 7 and passing an order to deny cert just in time for the Attorney General to present it at the KSU hearing early the same morning, creates a reasonable appearance of unlawful ex parte communications between the Court and the Attorney General.

54.

Based on the denial of cert in Tricoli, leaving the appeals court opinion standing--that state officials enjoy sovereign immunity protection for RICO felonies--was used as the basis for an order written by the Attorney General to dismiss the KSU case. The KSU case was initially dismissed on grounds of sovereign immunity even though the Georgia RICO statute expressly authorizes injunctive relief to reorganize state governmental entities and to rescind approvals by state agencies. OCGA 16-14-6(a). This due process violation was part of the basis for KSU filing a motion to set aside the judgment for violation of due process.

55.

The Supreme Court, including Justice Melton, denied certiorari in the KSU case on March 26, 2020. However, it is still pending before the Court on a motion to consolidate and forthcoming motion for reconsideration.

56.

The Georgia Supreme Court order denying cert in *Tricoli*, entered the morning of the November 7 hearing, and carried into the hearing by the Attorney General that morning, was the principal basis of the order in the KSU case in which the law was illegally evaded in violation of constitutional due process and Canon Rule 1.1.

57.

As stated above, Justice Melton was a member of the Court that denied the Supplemental Brief detailing the ethical violations of the Attorney General

58.

Petitioner Tricoli's motion to permit a supplemental brief was denied immediately upon filing, with an order entered less than two hours after the motion was filed. Thus it appears the order of denial was entered on the docket before time had elapsed to read the motion and proposed brief. This gives a reasonable appearance of bias or prejudice.

59.

Chief Justice Melton was part of the Court that denied cert for the KSU case on March 26, 2020, without addressing the motion to consolidate with related Tricoli case.

60.

By the March 26 denial of certiorari, the proceedings below in the KSU were allowed to stand, even though Attorney General Chris Carr never filed a responsive pleading to the documented allegations that KSU President Dan Papp was extorted into leaving KSU in order to cover up financial fraud by the USG and to make way for the appointment of Attorney General Sam Olens as KSU president.

61.

Similarly, Chris Carr never filed a responsive pleading--over the course of three-and-a-half years now--to the documented allegations that the USG appointed former Attorney General Sam Olens president of KSU after Olens obstructed

hearings and a criminal investigation into the USG fraud at GPC. That fraud, for which state records show Olens obstructed the investigation, turned out to be a billion-dollar fraud on the federal government and bond rating agencies.

62.

Chief Justice Melton's prior role in the *Tricoli* and KSU cases raise questions about impartiality and compliance with the law that are grounds for recusal.

Justice Keith Blackwell

63.

Like Chief Justice Melton and Justice Nahmias, Justice Blackwell was also serving on the Georgia Supreme Court in 2016 when it violated OCGA 9-11-56(h) to refuse the mandatory review of the Court of Appeal's summary judgment conversion in *Tricoli*.

64.

This denial of certiorari in violation of the governing statute deprived Tricoli of the right to be heard in the summary judgment proceedings against him, in violation of Canon Rule 2.6.

65.

Similarly, Justice Blackwell was one of the Justices who entered that order denying certiorari the morning of November 7, which was passed on to the Attorney General in time for use at the hearing in the related KSU case—clearing the way for the USG to appoint former Attorney General Sam Olens president of KSU, after Olens admittedly obstructed a criminal investigation of the USG, and after the USG admittedly extorted Dr. Dan Papp to leave the KSU presidency to make way for Olens.

66.

Because of that connection to thwarting the KSU injunction against Sam Olens, it creates an appearance of bias for Justice Blackwell to vote to deny certiorari in the KSU case, as he did on March 26, 2020. The KSU case, *Richards v. Olens*, was

highly unusual in that the Attorney General never filed a responsive pleading to the documented allegations of USG financial fraud, bribery, and extortion, or obstruction by the Attorney General, and no court has ever addressed the uncontested criminal allegations.

67.

The Supreme Court's March 26 denial of review now means that the KSU case has passed through the entire Georgia judicial system with no substantive response from the Attorney General and no court ever explaining why relief was denied in this uncontested action. Instead, the state has relied on a series of one-sentence orders with no reference to any dispositive fact and no citation to relevant legal authority.

68.

Undersigned counsel for Tricoli has written articles criticizing the Supreme Court's extra-legal expansion of sovereign immunity, including criticism of the Justice Blackwell opinion in *Lathrop v Deal* that relied at its bottom on a provision of Georgia's Confederate Constitution of 1861. See Exhibits 4-6.

69.

Counsel has also published public statements criticizing Blackwell's plan to retire in November 2020, while the Secretary of State cancels a scheduled election for the seat so Governor Kemp can appoint Justice Blackwell's replacement—though the Georgia Constitution calls for election of Supreme Court justices. In particular, counsel has criticized this scheme as a means of safeguarding the extra-legal expansion of sovereign immunity. Judge Miller's dissent has exposed the problems caused by having even a single dissenting vote—which has totally undermined the plan to impose sanctions on Tricoli for calling attention to the ruses by which the wall of separation between the judicial and executive branches has collapsed and the state government corruption that is being shielded from any accountability by the expansion of sovereign immunity to cover RICO felonies. See Exhibits 7 & 8.

70.

Justice Blackwell was appointed by Governor Deal who ignored no less than seven letters advising of the RICO conspiracy in the USG, as well as the Attorney General's obstruction.

71.

Governor Deal was defendant in the KSU case for failure to appoint a special attorney general to investigate a state government RICO enterprise in which both Attorneys General Olens and Carr were compromised. Governor Deal appointed Carr to replace Olens, after Olens replaced Dr. Papp at KSU.

Justice David Nahmias

72.

Like Chief Justice Melton and Justice Blackwell, Justice Nahmias was also serving on the Georgia Supreme Court on November 7, 2016, when it violated OCGA 9-11-56(h) to refuse the mandatory review of the Court of Appeal's summary judgment conversion in *Tricoli*.

73.

This denial of certiorari in violation of the governing statute deprived Tricoli of the right to be heard in the summary judgment proceedings against him, in violation of Canon Rule 2.6.

74.

Like Justice Blackwell, Justice Nahmias is mentioned by name in the articles written by undersigned counsel criticizing the expansion of sovereign immunity and the reliance on Confederate law in the *Lathrop v Deal* opinion. See Exhibit 4.

75.

Justice Nahmias also participated in the denial of cert in the Tricoli case the morning of November 7, 2016, in time for the order to be presented by the Attorney General at the hearing that same morning in the injunction against Olens in the KSU case.

76.

Justice Nahmias, along with Justices Melton and Blackwell, also participated--in the Tricoli case, in 2015--in an episode that gives a reasonable appearance of

harassment of Tricoli's counsel in violation of Canon Rule 2.3 (B). Tricoli originally appealed the trial court's dismissal of his case to the Georgia Supreme Court on constitutional grounds. Tricoli's Appellant Brief was due the day after the July 4 holiday weekend in 2016. Tricoli timely filed for an extension of the deadline so that it would not fall the day after the holiday. However, no order was forthcoming so counsel was forced to spend the entire holiday weekend preparing to file the day after the long holiday weekend.

77.

The day following the holiday, the Court entered an order that morning declining jurisdiction—without, of course, having read the brief that had not yet been filed to see what constitutional questions were raised—and transferring the appeal to the Georgia Court of Appeals, where Justice Ellington and the panel majority were later to treat it so harshly. The immediate upshot of the due-date morning transfer order, of course, as that counsel spent the entire Fourth of July holiday slaving to finish a brief that turned out not to be due that day. That raises the question: Could that reasonably reviewed as harassment and retaliation for Tricoli's opposition to state government authorities? If that were the case, this would also raise clear issues of bias and prejudice under Canon Rule 2.3.

78.

When the Court of Appeals later rendered summary judgment--on its own motion, against Tricoli in March of 2016--Tricoli filed a hybrid petition for certiorari in which Tricoli renewed his prior appeal, this time based on the grant of summary judgment that made appellate review of the appeals court-initiated summary judgment mandatory under OCGA 9-11-56(h).

79.

As previously stated, however, the Supreme Court denied certiorari the morning of the November 7, 2016 KSU hearing in a one-sentence order with no explanation—which ignored the issue of mandatory appellate review required by the summary judgment statute.

80.

This connection to the 2016 cert denial in *Tricoli* renders Justice Nahmias participation in the order to deny cert in the KSU case—on March 26, 2020—even

more problematic by way of public appearances. That order to deny cert in *Richards* was entered without considering the motion to consolidate the KSU case with Tricoli.

81.

All these actions require strong consideration of whether Justice Nahmias has acted upon or manifested bias or prejudice under Canon Rule 2.3, or has been influenced by external factors under Rule 2.4.

Justice Michael Boggs

82.

Justice Boggs was appointed in 2016 by Governor Deal, afore-mentioned defendant in the KSU case, who failed to respond to letters seeking independent investigation of the fraud in the USG and obstruction by the Attorney General—all of which have been admitted by Attorney General Chris Carr's failure to respond to court pleadings.

83.

Justice Boggs participated in the March 26, 2020 decision to deny cert in the related KSU case without considering motion to consolidate with *Tricoli*.

84.

There is a reasonable possibility, which should be fairly considered, that Justice Bethel may have been influenced by his colleagues on the Court who have participated in the Tricoli and KSU cases, especially with respect to Justices Warren and Peterson who may potential witnesses who participated in the state agency actions at issue.

Justice Charles Bethel

85.

Justice Bethel was appointed in 2016 by Governor Deal, afore-mentioned defendant in the KSU case, who failed to respond to letters seeking independent investigation of the fraud in the USG and obstruction by the Attorney General—all of which have been admitted by Attorney General Chris Carr's failure to respond to court pleadings.

86.

Then-Judge Bethel served on the appeals court in 2016 at time of the landmark Tricoli decision intended to stymie claims against state government officials, but did not sit on that panel.

87.

Justice Bethel participated in the March 26, 2020 decision to deny cert in the related KSU case without considering motion to consolidate with *Tricoli*.

88.

There is a reasonable possibility, which should be fairly considered, that Justice Bethel may have been influenced by his colleagues on the Court of Appeals and Supreme Court who have participated in the Tricoli and KSU cases, especially with respect to Justices Warren and Peterson who may potential witnesses who participated in the state agency actions at issue.

Justice Sarah Warren

89.

Justice Warren was appointed to the Supreme Court by Governor Deal. Governor Deal is a named defendant in the *Richards v. Olens*, the KSU case, because Governor Deal failed to respond to repeated requests to appoint an independent investigator, using his authority under OCGA 45-15-18, with respect to the documented allegations of criminal conduct in state government in the *Tricoli* and KSU cases.

90.

Prior to joining the Court, Justice Warren served as Solicitor General under Attorney General Sam Olens and also under Chris Carr, whom Governor Deal appointed to replace Olens after the USG appointed Olens as president of KSU—giving rise to *Richards v. Olens*. The Attorneys General are defendants in *Tricoli* and *Richards*. After Carr replaced Olens, a motion was made to add Carr as a party to the KSU case, but the motion was denied by the trail court judge even though the Attorney General never filed a responsive pleading in the case.

91.

Justice Warren's prior work experience reasonably raises a question as to her involvement in the matters of controversy, pursuant to Canon Rule 2.11(6).

92.

Justice Warren was listed as disqualified on the order denying cert in the KSU case. That raises a strong suggestion that she was a witness to events in both the *Tricoli* and KSU actions while serving in the Attorney General's office.

Justice Nels Peterson

93.

Justice Peterson served as Vice Chancellor of Legal Affairs for the USG in 2015, the year the Tricoli case was under review by the Court of Appeals, and rejected for review by the Georgia Supreme Court. Justice Peterson's prior work experience raises a question as to his involvement in the matters of controversy, pursuant to Canon Rule 2.11(6).

94.

Like Justices Warren and Blackwell, Justice Peterson was appointed by Governor Nathan Deal to the Supreme Court. As previously stated, Governor Deal was a named defendant in the KSU case for failure to respond to requests to appoint an independent investigator to review the USG financial fraud and Attorney General obstruction documented in the Tricoli case. This financial fraud and obstruction led

to the documented and admitted extortion of Dr. Papp and the quid pro quo in the USG's appointment of former attorney General Sam Olen's appointment to Dr. Papp's suddenly-vacated position.

95.

Justice Peterson was also appointed by Governor Deal to the Georgia Court of Appeals--where Peterson served as judge in 2016, the year *Tricoli* was first thrown out of court, but did not sit on the panel that issued that order.

96.

Justice Peterson is a graduate of KSU. Of course, the USG's ouster of Papp by extortion and replacement by Olens as KSU president forms a significant part of the matter in controversy of the *Tricoli* and KSU cases.

97.

Justice Peterson did not participate in the decision to deny cert in the KSU case, but was not deemed disqualified despite his service as counsel for the USG and Board of Regents during the relevant time frame of the *Tricoli* litigation. This raises a serious question whether Justice Peterson was a participant in or a witness to events in controversy. It also raises the question whether Justice Peterson acted in an adversarial capacity to the Tricoli and KSU Petitioners, on behalf of defendants who are Respondents in these actions.

Further the Affiant sayeth naught

Stephen F. Humphreys, Affiant

Sworn and subscribed before me this 28th day of April, 2020.

Notary Public

ALEXANDER J. PROSKEY NOTARY PUBLIC ALABAMA STATE AT LARGE

My commission expires:

My Commission Expires 8/20/2023

STEPHEN F. HUMPHREYS PC
ATTORNEY AT LAW

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706 207 6982

July 13, 2019

The Honorable Brian Kemp
Office of the Governor
206 Washington St.
Suite 203, State Capitol
Atlanta, GA 30334

http://gov.georgia.gov/

Dear Governor Kemp:

I am writing to follow up my three previous letters to you—on February 11,[1] April 1[2], and June 3,[3] 2019—concerning my request that you exercise your authority under OCGA § 45-15-18 to appoint a special investigator to look into pervasive criminal fraud in the University System of Georgia (USG)[4] and other state government agencies that have been affected. As you know, these letters to you follow a series of unanswered letters to Governor Nathan Deal documenting

[1] For ease of reference, the letter is included here:
https://drive.google.com/file/d/1FV3aIVT8eMr_lYCO44Zv6fjLvsePHNew/view?usp=sharing
[2] For ease of reference, the letter is included here:
https://drive.google.com/file/d/1n7U0cyV1Of7eK7PcxcDAZZqjR7Xf_Wkx/view?usp=sharing
[3] For ease of reference, the letter is included at the following link:
https://drive.google.com/file/d/12eMnSL6cxmEYH8FLfpgr7uRf7Y3shexV/view?usp=sharing
[4] See, for example, GPC Crimes Timeline:
https://drive.google.com/file/d/1kRsX_hheAGyXQiwLh9z-7F4LpyN8Z-5c/view?usp=sharing

criminal conduct in the USG and obstruction of criminal investigations by the Attorney General.[5]

My last letter of June 3 documented criminal fraud in the University System of Georgia (USG) and the State Department of Audits and Accounting (DOAA), which together constitute fraud in the accreditation process,[6] and therefore fraud on the federal government, which requires accreditation for distribution of any federal financial assistance.

That fraud, during the 2012-2013 fiscal years in which the fraud resulting in $10 million "gone with no explanation"[7] from the reserves of Georgia Perimeter College (GPC) has been documented, amounts to approximately one billion dollars in Pell Grants to USG students alone,[8] without accounting for any other federal grant money.

This represents a clear harm to the State, as contemplated by OCGA § 16-14-2. Since the letter of June 3, continuing investigation has revealed additional related fraud in state government. The truth of this progressively unfolding evidence is *admitted* by Attorney General Chris Carr, who has not responded to court pleadings laying out the documentation of the pervasive scheme of fraud that has spread from the USG throughout state government.

The Attorney General, for example, has not responded and therefore admitted documented allegations of accounting and accreditation fraud on the federal government filed into the Georgia Court of Appeals on April 1, 2019. Over a hundred days have now passed without a response from the Attorney General, though Georgia court rules give a maximum response time of 30 days.

Even worse, the Attorney General has not responded to documented allegations of fraud in the ouster of Daniel Papp as President of Kennesaw State University (KSU) and the replacement of Dr. Papp by former Georgia Attorney

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[5] For your convenience, all prior letters to Governor Deal are included at this link: https://drive.google.com/file/d/1FV3aIVT8eMr_lYCO44Zv6fjLvsePHNew/view

[6] The regional accrediting agency, the Southern Association of Colleges and Schools (SACS), appears to have been compromised in the process, violating its own rules requiring independent audits and financial statements.

[7] As documented at **https://drive.google.com/file/d/1M5Tr39y64UY4nxhuUgN37J-mzeUnjm0m/view?usp=sharing**

[8] The figures from the US Department of Education can be found at this link: https://www2.ed.gov/finaid/prof/resources/data/pell-institution.html

General Sam Olens, after evidence shows that the Attorney General obstructed a criminal investigation of the USG. Olens' successor, Chris Carr, has not responded to these allegations of fraud at KSU and within the USG--for over *two and a half years*.

The KSU action is also pending before the Georgia Court of Appeals, which attempted to dismiss it, with no motion before the court, and with no responsive pleading ever filed by the Attorney General, on June 12, 2019.

This dismissal--on technical grounds that are not supported by legal authority and were never raised by any party--occurred on the very day briefing by the parties was due. This saved the Attorney General, who has admitted our contentions by more than two years of silence, from having to respond to the allegations and evidence in the KSU action *yet again*.

After more than two years, the people of Georgia deserve a response to the allegations of state agencies operating as a criminal enterprise.

Since this attempt to dismiss the KSU action to which the State has never responded, additional evidence of fraud by state officials concerning the Georgia Election Center at KSU has come to public attention.

On July 3, the Associated Press reported a failure by the Attorney General to secure evidence from KSU servers[9] concerning potential election fraud in the special congressional election in 2017, and also in the presidential election in 2016—when, as we found out a year ago today, the KSU election servers were hacked by Russian military intelligence officers named in the Special Counsel indictment of July 13, 2018.

These events implicating the election center at KSU in potential fraud occurred while Carr was Attorney General, Olens was KSU president, and you were Secretary of State overseeing elections in Georgia. This is further evidence that the fraud emerging from the USG is compromising the entire Georgia system of government at every level. It also states a compelling case for why you must appoint an independent investigator to review these matters that potentially impact our most basic institutions of government, both in Georgia and nationally.

[9] https://www.apnews.com/0117a85d02ff4890b5a66f1c9f3c376e (data erased from servers at KSU on July 7, 2017).

Moreover, since I last communicated with you, the ongoing criminal investigation has uncovered even more troubling information about systematic fraud on the federal government by high state officials.

Most notably, we have learned that the Attorney General knowingly misrepresented DOAA audit reports[10] in order to obstruct criminal investigation into the USG--as well as to obstruct hearings required by state law, Board of Regents Policy, and constitutional due process under both US and Georgia Constitutions.[11] This is especially troubling since the USG appointed Attorney General Sam Olens to a $500,000 a year position as president of Kennesaw State University after this obstruction occurred.

The destruction of evidence at the Georgia Election Center on the KSU campus, erasing the computer servers after federal election results were contested in court proceedings, followed.

There are numerous state officials in the USG and Attorney General's office, with knowledge of these omissions and misrepresentations in violation of OCGA 16-10-20 and other criminal statutes. That is all the more egregious now that these falsifications of matters under state jurisdiction implicate fraud on the federal government, including potential fraud in federal elections.[12]

A formal request for a meeting is still pending with your office. We look forward to bringing your attention to these issues in person.

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[10] These misrepresentations are documented, for example, in a July 3, 2012 letter from the Attorney General's office that can be found at the following link: **https://drive.google.com/file/d/1Q7q07YHq5F-JcpFVkUMxMXeIFewgllnJ/view?usp=sharing**

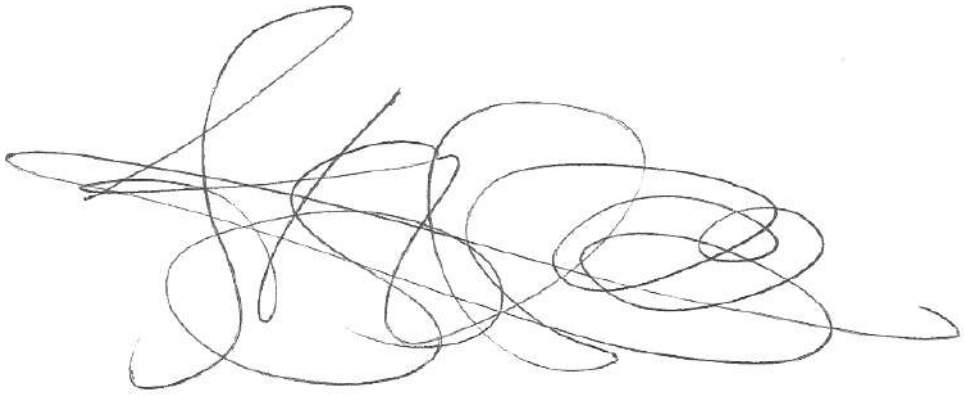
[11] An annotation of the Attorney General's fraud and obstruction can be found at the following link: **https://drive.google.com/file/d/1tBR4DzXVb6jOht1YSKPi-QKbiwjNShNs/view?usp=sharing**

[12] 18 U.S. Code § 4. Misprision of felony

Whoever, having knowledge of the actual commission of a felony cognizable by a court of the United States, conceals and does not as soon as possible make known the same to some judge or other person in civil or military authority under the United States, shall be fined under this title or imprisoned not more than three years, or both.

Thank you for your attention to these important matters.

Sincerely



Stephen F. Humphreys

cc: Sandra Bruce, Acting Inspector General, US Department of Education
Senator Lindsey Tippins, Chair, Senate Higher Education Committee
[redacted] Office of Special Investigations
Vic Reynolds, Georgia Bureau of Investigation
Kenneth B. Hodges III, President, Georgia Bar Association
Ben Easterlin, Director, Judicial Qualifications Commission
Deborah Wallace, Georgia Inspector General

IN THE SUPREME COURT
OF THE STATE OF GEORGIA

NO. S20C0577

ANTHONY TRICOLI

Plaintiff/Appellant/Petitioner

v.

ROB WATTS, ET AL.

Defendants/Appellees/Respondents

MOTION TO FILE SUPPLEMENTAL BRIEF ON APPLICATION OF RULES OF PROFESSIONAL CONDUCT

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Counsel for Petitioner

The Attorney General's exclusive focus on imposing sanctions on Petitioner Anthony Tricoli—because Tricoli filed court documents exposing corruption in state government, including criminal obstruction by the Attorney General[1]—raises serious questions regarding the application of the code of legal ethics to the Attorney General's conduct in the Tricoli litigation.

These questions go far beyond the Attorney General's continuing silence on the controlling authority supporting Tricoli's motion to set asdie for which the Attorney General seeks to have Tricoli sanctioned. As Tricoli points out in his Petition, the Attorney General and the courts below have all studiously avoided the controlling authority of *Caldwell v. State*, 253 Ga. 400, 402 (1984). That Georgia Supreme Court decision holds that the Georgia RICO statute expressly authorizes, consistent with the sovereign immunity waiver requirements of the Georgia Constitution,[2] a civil action against state officials--meaning they are *not* immune for the criminal conduct specified by the legislature in the statute, such as felony violations of OCGA § 16-10-20. That also means Tricoli cannot be sanctioned for

[1] See Attorney General Brief in Opposition to Certiorari, in which the Attorney General makes the totally unsupported contention that sanctions against Tricoli is the only issue pending before this Court, despite the flagrant evasion of much more important issues, such as the First Amendment Right to Petition embodied in Georgia's anti-SLAPP statute and Tricoli's April 1, 2019 OCGA § 9-11-60 (Rule 60) motion to set aside based on documented allegations of billion-dollar fraud on the federal government and felony misrepresentations to conceal it.

[2] Ga. Const., Art. I, Sec. II, Par. IX(e).

insisting on this authority despite the best efforts of the Attorney General and the courts below to ignore it. OCGA § 9-15-14(c).

This controlling authority in *Caldwell* is only one of numerous controlling authorities that have never been mentioned by the Attorney General, or any of the courts below, in their attempts to maintain that state officials enjoy immunity to commit criminal RICO predicate acts with impunity, and to sanction Tricoli for seeking to hold them accountable under the law. This evasion, central to the attempt to sanction Tricoli in retaliation for exposing criminal corruption in state government, also defies constitutional due process, which means the judgments employing this artful dodge are not supported by any evidence at all. *Shuttlesworth v. City of Birmingham*, 382 U.S. 87, 93 (1965). This evasion of controlling authority has continued unabated for five years now.

In one of the most flagrant evasions in his Brief in Opposition calling for sanctions on Tricoli, Attorney General Chris Carr makes no mention of Section 14(c) of the sanctions statute.[3] In fact, Carr has never mentioned this statutory prohibition since he filed for sanctions two years ago. Section 14(c) prohibits imposing sanctions on Tricoli where Tricoli's position is supported by controlling authorities that the Attorney General and the courts below have ignored, such as *Caldwell*, and also where Tricoli's position is also supported by persuasive

[3] OCGA § 9-15-14(c).

authority such as the dissent by Georgia Court of Appeals Judge Yvette Miller.[4] *Tricoli v. Watts*, 336 Ga. App. 837, 842 (2016) (Miller, PJ., dissenting).

But more than due process violations and evasions of controlling authority, including the sanctions statute, are at stake here. Chris Carr never responded to the post-judgment evidence of fraud Tricoli raised in his motions to set aside. By not responding in any fashion to Tricoli's April 1, 2019 motion to set aside, Carr has admitted the documented allegations of financial fraud on the federal government by the University System of Georgia (USG), falsification of financial reports by the state audit department (DOAA), and the Attorney General's misrepresentation of the audit information for purposes of obstructing criminal investigation. Carr has, furthermore, admitted to the efforts to conceal from public view the multi-billion dollar fraud by which the USG sought to hide its failure to meet federal financial requirements for reaccreditation.[5]

As investigation of the USG financial fraud has unfolded, an even darker motive for the evasion of the law and facts has been revealed--as the Attorney

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[4] In the first action by a private plaintiff to hold state government officials liable for their criminal conduct in a civil RICO proceeding, OCGA § 9-15-14(c) prohibits imposing sanctions on Tricoli for asserting a "theory of law… based on some recognized precedential or persuasive authority." The controlling precedents of *Caldwell* is such "recognized precedential authority." The Miller dissent is persuasive authority within the meaning of Section 14(c) of the sanctions statute enacted by the Georgia legislature.

[5] The effect of the Attorney General's admissions of criminal conduct by state officials is addressed in the request to Governor Kemp to appoint an independent investigator, which may be accessed at **https://drive.google.com/file/d/1Z4OP-AqsBJToxcEYU70td-PrsNiOnBsi/view?usp=sharing**

General has gone beyond merely offering a bad faith legal defense and taken active steps to allow a criminal enterprise to function within the state, in violation of federal criminal fraud and obstruction statutes—in order to commit fraud with respect to federal financial assistance to the University System of Georgia (USG). 18 USC §§ 1510 & 1512, 31 USC § 3729 et seq.[6] That is the gravest conceivable defiance of legal ethics, in support of government corruption, by an Attorney General who seeks to sanction Tricoli for exposing Respondents' admitted criminal conduct.

The Attorney General's Violations of the Rules of Professional Conduct

Attorney General's Carr's actions and omissions described above clearly violate the Georgia Rules of Professional Conduct (GRPC), as well as criminal statutes and constitutional due process.

GRPC Rule 1.2(d) prohibits an attorney from assisting a client in the commission of a crime. Yet Chris Carr has shielded felony financial fraud and obstruction by agencies he represents, including the USG and the State Department of Audits and Accounting (DOAA), as well as the Attorney General's office itself.

[6] Post-judgment evidence of USG fraud on the federal government, filed by Tricoli in connection with his Rule 60 motions to set aside, and to which the Attorney General has admitted by never responding to Tricoli's pleadings, can be accessed at **https://drive.google.com/file/d/12eMnSL6cxmEYH8FLfpgr7uRf7Y3shexV/view?usp=sharing**

Post-judgment evidence shows that the Attorney General made knowing misrepresentations in violation of OCGA § 16-10-20 for the express purpose of depriving Tricoli of legal representation, blocking a hearing before the Board of Regents required by BOR Policy 2.4.3 (now BOR 2.5.3), and obstructing a criminal investigation into financial fraud in the USG.[7] The post-judgment evidence shows that the Attorney General misrepresented the existence of evidence of financial fraud in the USG in order to obstruct the required hearing and criminal investigation.[8] State agencies represented by the Attorney General, including the USG[9] and DOAA[10], issued falsified reports to conceal the documented financial

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[7] Post-judgment evidence, never reviewed by the courts below pursuant to Tricoli's Rule 60 motions to set aside the judgments based on fraud and due process violations, post-judgment evidence documenting the Attorney General's illicit actions can be accessed at **https://drive.google.com/file/d/1Q7q07YHq5F-JcpFVkUMxMXeIFewgllnJ/view?usp=sharing**

[8] Post-judgment evidence of felony financial fraud in the USG, never reviewed by the courts below and readily available to the Attorney General at the time of the alleged knowing misrepresentations can be accessed at **https://drive.google.com/file/d/1kRsX_hheAGyXQiwLh9z-7F4LpyN8Z-5c/view?usp=sharing**

[9] The USG self-review illegally used in place of an independent audit for reaccreditation purposes can be accessed at **https://drive.google.com/file/d/16sfe2IG-zWDlj7ldMK6NAJbFUCWgnNpI/view?usp=sharing**
An annotation of post-judgment evidence of alleged USG financial fraud, including accreditation fraud on the federal government, never reviewed by the courts below, can be accessed at **https://drive.google.com/file/d/1pGPN5Jyd40xCzR6u2yZ5UT8Id1lHF0oC/view?usp=sharing**

[10] The allegedly fraudulent DOAA report in question can be accessed at **https://drive.google.com/file/d/1qCPezNWpIYe0ixMG1J7uAZ6aP8pYSu_-/view?usp=sharing**
An annotation of the post-judgment evidence of fraud in the state audit report can be accessed at **https://drive.google.com/file/d/1otaQeOm-x8qZckeJoYnA7YmLQ3dDE0Po/view?usp=sharing**

fraud, also in violation of OCGA § 16-10-20. The Attorney General turned a blind eye to this readily available evidence of financial fraud by these state agencies.[11]

In a matter of even more grave concern, the Attorney General went beyond closing his eyes to pretend no evidence of crime in state government existed when the Attorney General affirmatively misrepresented state audit information for purposes of obstructing a required hearing and criminal investigation of the USG financial fraud.[12]

Post-judgment evidence also shows that the USG financial fraud was part of a widespread scheme spanning several agencies to defraud the federal government, as Tricoli alleged in a series of Rule 60 motion to set aside pleadings beginning on April 1, 2019. The Attorney General never responded to these pleadings documenting financial fraud by the USG against the federal government and obstruction by the Attorney General. Therefore, Chris Carr has admitted this

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[11] The Attorney General at the time investigation of the USG financial fraud was obstructed, Sam Olens, was appointed by the USG to a $500,000 a year position as president of Kennesaw State University (KSU)—only after the USG engaged in fraud and extortion to remove the sitting KSU president, Dr. Daniel Papp. Post-judgment evidence never reviewed by the courts below shows Olens had notice of the illicit means of Dr. Papp's removal at the time it occurred. See S20C0106.

[12] See note 7. An annotation of post-judgment evidence supporting Tricoli's Rule 60 motions to set aside, evidence never reviewed by the courts below, of the fraud and obstruction documented in official Attorney General correspondence can be accessed at **https://drive.google.com/file/d/1tBR4DzXVb6jOht1YSKPi-QKbiwjNShNs/view?usp=sharing**

criminal corruption in state government[13]—at the same time Carr seeks sanctions against Tricoli for coming to court, under the First Amendment Right to Petition, to expose this serious wrongdoing that poses a grave and existential threat to Georgia's system of higher education.

At every step, including by maintaining silence in the face of these documented allegations of financial fraud and obstruction, the Attorney General has sought to prevent the Georgia public from knowing about a felony criminal enterprise operating at the heart of their state government. That has allowed the criminal conspiracy to proceed and prevented the conspirators from being held accountable. This aiding and abetting, as well as accessory after the fact liability, clearly violates Rule 1.2(d). This represents perhaps the gravest and most serious ethical violation an attorney can commit.

Rule 1.7 Conflict of Interest would seem to bar the Attorney General for engaging in the representation of Respondent co-defendants in the USG, as the Attorney General clearly has his own interests to protect as a civil defendant facing documented criminal RICO allegations.

[13] Post-judgment evidence addressing Carr's failure to respond to documented allegations of fraud and obstruction can be accessed at **https://drive.google.com/file/d/1Z4OP-AqsBJToxcEYU70td-PrsNiOnBsi/view?usp=sharing**

Because the propriety of the Attorney General's own conduct in making fraudulent misrepresentations and obstructing hearings and criminal investigations--in support of the RICO felonies documented by the post-judgment evidence--the Attorney General should be precluded from engaging in a representation for the purpose of concealing criminal conduct by Respondent state government officials charged as the Attorney General's co-defendants.[14]

This Attorney General's knowing misrepresentations--in defense of documented allegations of felony obstruction by the Attorney General--clearly calls into question the fair administration of justice,[15] and therefore breaches the code of legal ethics.

Rule 3.3 Candor Toward the Tribunal would also seem to preclude knowing misrepresentations to the courts below by the Attorney General in defense of a criminal RICO conspiracy to defraud the federal government.

The Attorney General is not saved by his failure to file any responsive pleading to Tricoli's April 1, 2019 motion to set aside and successive pleadings, all based on evidence Respondents defrauded the courts to conceal the USG's billion-dollar fraud on the federal government. Chris Carr may believe that he can avoid violation of the ethics code by silence, in which he does not confirm or deny the

[14] Comment 6 to RPC Rule 1.7.
[15] Comment 15 to RPC Rule 1.7.

allegations of financial fraud, extortion, bribery, and obstruction laid out in the Tricoli and KSU pleadings.[16]

In fact, Carr's conduct has exposed a serious potential shortcoming in Rule 3.3, which appears to allow a party to fail to address controlling authority if it is raised by opposing counsel. This has allowed the Attorney General to tacitly urge the courts below to also ignore and bypass those controlling authorities such as *Caldwell*[17] and Section 14(c).[18]

This "see no evil" approach does not work, however, because Rule 3.3 prohibits Carr's knowing failure to make a disclosure necessary to avoid assisting a criminal or fraudulent act by the client. Carr's silence on the fraudulent financial reports issued by the USG and DOAA, not to mention the documented obstruction of hearings and criminal investigations by agents of the Attorney General, has allowed a criminal fraud scheme to live at the heart of Georgia state government.

As the comments to Rule 3.3 make clear, a lawyer must not allow a tribunal to be misled by false statements of law or fact or evidence the lawyer knows to be

[16] Chris Carr never filed a single responsive pleading to the documented allegations, first filed in October 2016, of USG fraud and extortion in the removal of Dr. Dan Papp as KSU president—to make way to place former Attorney General Sam Olens in that position after Olens obstructed hearings and criminal investigations into the USG related to the Tricoli case. Now, more than three years later, Carr has never responded to those allegations.

[17] Caldwell v. State, 253 Ga. 400, 402 (1984) expressly authorizes the RICO action against state officials for criminal conduct—for which the state officials including the Attorney General maintain they are immune, and seek to sanction Tricoli for asserting the *Caldwell* waiver of immunity under the Georgia RICO Act.

[18] OCGA 9-15-14(c) prohibits the sanctions the attorney General insists on imposing on Tricoli.

false.[19] There are, moreover, circumstances where failure to make a disclosure is the equivalent of an affirmative misrepresentation.[20]

Perhaps Chris Carr's most serious violation of Rule 3.3 was committed through knowing misrepresentations, including omissions and non-disclosures, to induce Judge Coursey to issue an ex parte order quashing Tricoli's subpoenas.[21] The Attorney General's efforts to bar the relevant evidence was essential to Judge Coursey's statements that Tricoli had no support for his contentions—statements that are completely contradicted by the post-judgment evidence Judge Coursey and the Attorney General tried, unlawfully, to make disappear.

This conduct with respect to Tricoli's evidentiary subpoenas also violates Rule 3.4, which prohibits a lawyer from unlawfully obstructing another party's access to evidence or unlawfully concealing a document or other evidence. Carr's conduct also violates Rule 4.1, which prohibits a lawyer from knowingly failing to make a disclosure to avoid assisting a fraudulent or criminal act by a client. Carr has stood silent in the face of documented financial fraud in the USG and DOAA

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[19] RPC Rule 3.3, comment 2.

[20] RPC Rule 3.3 comment 3.

[21] Judge Coursey's ex parte order quashing Tricoli's subpoenas without the slightest reference to relevant facts or citations to authority--based on the Attorney General's misrepresentations that the subpoenaed witnesses had no knowledge of USG financial fraud or obstruction of criminal investigations, a knowingly false assertion that is contradicted by all the post-judgment evidence--can be accessed at **https://drive.google.com/file/d/132p_IyYk0CYHCwgeF7Zgpx4mq584w73i/view?usp=sharing**

of which Carr has actual knowledge, allowing accreditation fraud to continue for purposes of the USG receiving federal financial assistance.[22]

Conclusion

According to the Georgia Rules of Professional Conduct: "Lawyers have a special obligation to protect a tribunal against criminal or fraudulent conduct that undermines the integrity of the adjudicative process." [23] Attorney General Chris Carr has failed to meet that test.

This troubling dereliction of duty must be addressed because, as stated in Rule 8.4: Persons holding public office assume responsibilities going beyond those of other citizens.[24] We should, in fact, expect more from the Attorney General than to act as an unethical criminal defense lawyer for state officials who have committed felonies harming the public interest.

The Court of Appeals, moreover, clearly cannot be permitted to simply rely on the Attorney General's misrepresentations in violation of the code of legal ethics, whether by commission of omission, in order to affirm without opinion the judgments against Tricoli. That includes relying on the Attorney General's fraud-riddled pleadings—and ignoring the admissions in the Attorney General's outright

[22] GRPC Rule 1.2(d), comment 10.
[23] GRPC Rule 3.3 comment 12.
[24] GRPC Rule 8.4 comment 6.

failures to respond—to impose sanctions against Tricoli for exposing the same criminal corruption the Attorney General has been forced to admit, which represents a grave miscarriage of justice.

Rather, it is essential that the Court accept certiorari and defend the integrity of these fundamental Rules of Professional Conduct, as well as others, as outlined in Tricoli's proposed supplemental brief.

Respectfully submitted this 22nd day of January, 2020.

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CERTIFICATE OF SERVICE

I hereby certify that I have this date served the above and foregoing motion to file a supplemental brief electronically through the Court's E-Fast System, which serves all parties of record by electronic means and by placing a true and correct copy of same in the United States Mail, first-class postage prepaid and addressed to the following counsel of record:

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IN THE SUPREME COURT
OF THE STATE OF GEORGIA

NO. S20C0577

ANTHONY TRICOLI

Plaintiff/Appellant/Petitioner

v.

ROB WATTS, ET AL.

Defendants/Appellees/Respondents

SUPPLEMENTAL BRIEF ON APPLICATION OF RULES OF PROFESSIONAL CONDUCT

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The Attorney General's exclusive reliance, in his Brief in Opposition, on Judge Coursey's statements—that no reasonable person could believe that Tricoli has a case--has repeatedly backfired in Chris Carr's face. In an extraordinary display of willful blindness, the courts below have pretended not to notice that Attorney General Carr apparently does not count Georgia Court of Appeals Judge Yvette Miller as a reasonable person capable of apprehending the governing law and the material facts in this action.

The Attorney General and the courts below have not once mentioned Judge Miller's dissenting opinion, which wholly supports the position taken by Tricoli in his Rule 60 motion to set aside the prior judgments based on fraud and due process violations.[1] The Miller dissent, therefore, unequivocally brings the attempt to illegally impose sanctions on Tricoli within the statutory prohibition of OCGA § 9-15-14(c), which forbids the imposition of sanctions on Tricoli for arguing to overturn a precedent when he is supported by persuasive authority.

This also brings Tricoli's arguments, in support of his Rule 60 motion to set aside, clearly within the Georgia code of legal ethics[2] promulgated by this Court since they are, at the very least "supported by good faith argument for an extension, modification, or reversal of existing law." Rule 3.1b.

[1] Tricoli v. Watts, 336 Ga. App. 837, 842 (2016) (Miller, PJ., dissenting).
[2] Georgia Rules of Professional Conduct (GRPC)

Moreover, the Attorney General's contention that Tricoli should be sanctioned for moving, based on new evidence of fraud, to set aside an appellate opinion, is also contradicted by the additional, contrary controlling authority that Carr and the courts below have both ignored.[3] As for the post-judgment evidence of financial fraud in the University System of Georgia (USG), camouflaged within falsified reports by the Georgia Department of Audits and Accounting (DOAA), Chris Carr has never filed a single pleading in response to Tricoli's April 1 motion to set aside and supplemental documentation.

It is indeed strange for Chris Carr to assert that Tricoli should be sanctioned for filing documented allegations of fact and assertions of law—complaining of criminal corruption in Georgia state government, according to Tricoli's constitutional right under the First Amendment Right to Petition—documented allegations of state government corruption to which Carr is unable to respond.[4]

The only response has been silence, by which Chris Carr has admitted the veracity and accuracy of Tricoli's pleadings, based on the post-judgment evidence, in their entirety.

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[3] *Guthrie v. Wickes*, 295 Ga. App. 892, 895 (Ga. App., 2009); *Brown v. Piggly Wiggly Southern*, 228 Ga.App. 629 (1997).

[4] Tricoli did raise the question of who should be sanctioned, between himself and the Attorney General, but Judge Coursey ignored it and refused to hold a hearing on Tricoli's cross-motion for sanctions. Order of May 17, 2018.

Rather, these and many other evasions Petitioner Tricoli will address reveal Chris Carr's efforts to deny due process. The evasions reveal the pure retaliatory nature of Chris Carr's demand for sanctions. More alarmingly, the end game of the evasions is to suppress the evidence of financial fraud committed by state agency officials that Chris Carr represents as Attorney General. In other words, Carr was assisting clients in the commission and concealment of continuing crimes, which constitutes the most serious possible violation of the Georgia Rules of Professional Conduct (GRPC).[5]

Post-judgment evidence--that both Judge Coursey and the Court of Appeals refused to consider—shows that the Attorney General of Georgia, the top law enforcement official in this state, obstructed hearings and investigations that could have done much more than call into question the fraudulent grounds on which the USG ousted President Anthony Tricoli at Georgia Perimeter College (GPC) and Dr. Daniel Papp at Kennesaw State University (KSU).

Those hearings and investigations could have unearthed what Respondents sought to cover up by scapegoating two USG presidents: criminal schemes the Attorney General of Georgia helped to conceal, and that continue today, including a multi-billion dollar fraud on the federal government. That fraud, that corrupted multiple government agencies, could have also been brought to light through

[5] GRPC Rule 1.2d.

discovery in this and related RICO actions, but that discovery was denied to Tricoli.

Through all the stonewalling and obstruction, it was not until April 1, 2019 that Tricoli was able to file a Rule 60 motion to set aside outlining the falsification of state agency financial reports for the purpose of accreditation fraud, so that the USG could continue receiving billions in federal assistance based on those misrepresentations.

That scheme endangered Georgia's entire system of higher education. Tricoli filed supplements to that April 2019 motion documenting additional fraud by state agencies in June and July of 2019. Chris Carr has never filed a single responsive pleading. In fact, Carr ignores the existence of the motion in his Brief falsely asserting that the Court of Appeals' denial of Tricoli's April 1 motion is not an issue before this Court.

The only conclusion that can be drawn from that failure to respond is that Tricoli's allegations of financial fraud, bribery, and extortion by state government officials stand admitted. Unable to deny the criminal RICO enterprise,[6] Carr continues to protect it through silence—and by redoubling his efforts at intimidation and retaliation by imposing sanctions against Petitioner Anthony

[6] The Georgia RICO statute expressly provides, in the definition of a criminal enterprise, that suc a criminal enterprise can consist of a governmental entity. OCGA 16-14-3(3).

Tricoli, the bringer of this bad news that the Attorney General does not want the people of Georgia to hear.

Timeline of Ethical Violations

January 2012: a closed circle of Respondents secreted a written complaint that millions of dollars were "gone with no explanation" from GPC reserves.[7] This alert was withheld by Respondents from the GPC administration. Respondent Ron Carruth continued to make knowingly false reports, in his capacity as vice president of finance, of budget surpluses equaling or exceeding the amount of the actual deficit.

March 2012: in a USG hearing on GPC's budget, Respondents Carruth, Champion, Huckaby and Wrigley continued to withhold the deficit information from Petitioner, GPC President Anthony Tricoli.

April 26, 2012: USG Respondents falsely announced they just discovered the multi-million-dollar shortfall at GPC. Respondent Hank Huckaby, then-USG Chancellor, demanded Tricoli's immediate resignation, though post-judgment evidence shows Huckaby knew that the financial condition of GPC had been misrepresented to Tricoli by Respondents for months, if not years.

[7] The email warning of a financial scandal--that was kept under wraps--can be accessed at **https://drive.google.com/file/d/1M5Tr39y64UY4nxhuUgN37J-mzeUnjm0m/view?usp=sharing**

May 1, 2012: post-judgment evidence[8] shows that Huckaby and Wrigley selected Tricoli's replacement as GPC president and began the process of presenting Rob Watts to the Board of Regents for appointment to Tricoli's position.

May 7, 2012: unbeknownst to Tricoli, the USG appointed Alan Jackson as acting president, effectively relieving Tricoli. Later that same day, Huckaby announced to the media that Tricoli had been transferred to the USG central office. Post-judgment evidence shows that Tricoli learned of this "transfer" in the media, and wrote Huckaby to accept that position in writing, but disputed Huckaby's characterization that Tricoli had resigned as GPC president.

May 8-9, 2012: Board of Regents met and appointed Respondent Rob Watts interim president of GPC, still without Tricoli's knowledge.

May 10, 2012: Huckaby informed Tricoli that the Board of Regents did not reappoint him—still not divulging that Tricoli had already been replaced beforehand and that Tricoli's name had never been presented to the Board of Regents to consider his reappointment.

This ruse proved important as post-judgment evidence was gathered because Tricoli's purported resignation has been used as grounds for bypassing the waiver

[8] Not all of the post-judgment evidence was produced because it is part of an ongoing criminal investigation, but Tricoli has made limited disclosures in his pleadings and made extensive proffers and requests for a hearing that were ignored by Judge Coursey.

of sovereign immunity from Tricoli's written contract with the state pursuant to OCGA § 50-21-1.

As Tricoli also learned post-judgment, this resignation ruse was used to deprive Tricoli of a hearing required under Board of Regents Policy 2.4.3 if Tricoli were removed outside the Board's annual reappointment process. As discussed below, the Attorney General played a central role in this scheme to deprive Tricoli of a hearing required by Regents policy and constitutional due process—which also served to cover up felony financial fraud in the USG.

July 3, 2012: post-judgment evidence in the form of correspondence from the Attorney General's office shows that the Attorney General made knowing misrepresentations for the explicitly expressed purpose of depriving Tricoli of legal representation against Respondents, as well as blocking a hearing to which Tricoli was entitled under Regents policy and constitutional due process.

In a more serious obstruction that allowed the criminal scheme within the USG and DOAA to continue, the **Attorney General misrepresented readily available evidence of the financial fraud in order to prevent a criminal investigation into the USG.**

Post-judgment evidence also shows the Attorney General knowingly misrepresented state audit information for these illicit purposes. Tricoli was not aware of the fraud connected with the DOAA until June of 2019 and incorporated

it into the April 1 motion to set aside—to which the Attorney General has never responded to this day.

September 2012: the USG released a report to justify the scapegoating of Tricoli for the GPC financial crisis, but this self-review falsifies what happened to the millions "gone with no explanation." Contrary to the governing rules, this USG self-review was used in place of the required independent audit for purposes of GPC's ten-year reaccreditation process, which was getting underway when the red alert went off in January 2012.

January 2013: post-judgment evidence shows that the DOAA falsified an audit to conform to the USG's fraudulent misrepresentations in the self-review used for reaccreditation. Tricoli was not aware of this until May of 2019, more than three years after the remittitur in the judgment against him.

May 2014: Tricoli filed suit for breach of his written contract with the state, for which sovereign immunity is waived. Tricoli added claims under the Georgia RICO statute, OCGA § 16-14-1 et seq,, for Respondents' pattern of related criminal predicate acts—such as serial falsification of GPC financial reports in felony violation of OCGA § 16-10-20.

June 2014: The Attorney General filed a motion to dismiss on grounds of sovereign immunity. Attorney General Sam Olens made various arguments never adopted by any court that Tricoli's written contract with the state, which waives

sovereign immunity, was not really a contract. Olens also argued that state officials enjoyed sovereign immunity from Tricoli's RICO claims even though the claims were based on admitted criminal predicate acts.

November 2014: Tricoli filed a motion for a preliminary injunction based on admissions that Respondents falsified the financial reports to Tricoli, in felony violation of OCGA § 16-10-20. Judge Coursey entered an order the same day dismissing the case.

Judge Coursey did not adopt Olens' position that Tricoli's contract was not a contract, but held that Tricoli lost all rights in his contract when the USG tricked him into resigning—evading the waiver of sovereign immunity under OCGA § 50-21-1. This resignation ruse is now contradicted by the post-judgment evidence.

Judge Coursey also held that Respondent state officials enjoyed sovereign immunity against RICO claims of felony financial fraud because they were performing their state "financial oversight" functions when they were conducting the criminal scheme.

March 30, 2016: Georgia Court of Appeals converted Tricoli's contract claims to summary judgment, with no notice or opportunity for Tricoli to respond, and bypassed the issue of whether his written contract waived sovereign immunity to hold that he was an at-will employee. That finding is contradicted by all the actual

evidence and the Regents policies specifically incorporated into Tricoli's contract, which the Court of Appeals did not consider.

Without examining the language of the RICO statute or the controlling authority of *Caldwell v Georgia*, 253 Ga. 400, 402 (1984), holding that the RICO statute expressly authorizes a civil action against state officials such as Respondents, the Court of Appeals dismissed Tricoli's assertion that "the state itself could be held accountable" as "pure imagination."

Judge Miller's dissent supported Tricoli's contentions in his subsequent motions to set aside that the RICO Act did waive sovereign immunity for a series of predicate crimes, that it denied due process to ignore the language of the RICO statute and the controlling authority of *Caldwell*, and that the appeals court could not enter a summary judgment finding against Tricoli with no notice or opportunity to respond.

May 2016: post-judgment evidence shows the USG removed KSU president Dan Papp by fraud and extortion, in part to disguise financial fraud by the USG, in part to open a high-paying position for Attorney General Sam Olens.

October 2016: the USG appointed Sam Olens to a $500,000 a year position at KSU, replacing Dr. Papp. KSU students and faculty in opposition filed a RICO action alleging an illegal quid pro quo for appointing Olens as the sole candidate--

after Olens obstructed criminal investigation of the USG in connection with the financial fraud at GPC.

The new Attorney General, Chris Carr, never filed a responsive pleading to the successive documented KSU allegations over the course of more than three years.

November 2017: Tricoli filed Rule 60 motion to set aside, under OCGA §§ 9-11-60 (a & d), based on the due process violations and post-judgment evidence of fraud affecting the judgment known at the time. Attorney General Carr responded with a motion for sanctions against Tricoli for seeking to overturn the prior judgment, as specifically authorized by statute, OCGA § 9-11-60.

January 30, 2018: Tricoli filed limited post-judgment evidence from the criminal investigation and stated the need for hearing in light of the delicacy of the situation. Judge Coursey entered an order denying Tricoli's Rule 60 motion within two hours of Tricoli's filing of evidence supporting his Rule 60 motion to set aside the judgment.

Coursey's order set a March 7 date for a hearing on Carr's motion for sanctions against Tricoli, seeking to force Tricoli to pay the state's legal expenses.

February 2018: at the request of law enforcement authorities, Tricoli subpoenaed witnesses from the USG and Attorney General's office to question them under oath at the sanctions hearing on evidence from the criminal investigation.

March 2018: Attorney General made a series of email entreaties to Judge Coursey, seeking to "excuse" the subpoenaed witnesses.[9]

March 6, 2018: the day before the sanctions hearing, Carr filed a motion to quash the subpoenas, misrepresenting that Respondents had no knowledge of their documented criminal conduct and that the author the July 3, 2012 correspondence documenting obstruction by the Attorney General had to go out of town.

Tricoli responded to this motion to quash within two hours, but Tricoli was already too late. Judge Coursey had already entered an order quashing Tricoli's subpoenas with no reference to relevant facts or citation to legal authority.

March 7, 2018: at the sanctions hearing, Coursey, after barring Tricoli's evidence, ignored the prohibition of OCGA § 9-15-14(c) argued by Tricoli, and announced an intention to sanction Tricoli. But no order was entered till more than a month later.

March 2018: Tricoli responded to Coursey's stated intent to sanction Tricoli with a series of proffers of what the evidence would show and requests for a hearing with the subpoenaed witnesses. With knowledge of the criminal investigation, Coursey ignored all the proffers and hearing requests.

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[9] This improper email string can be accessed at **https://drive.google.com/file/d/141NT4j4QTXqdghCqXuuTw7R_f_RcuUCS/view?usp=sharing**

April 3, 2018: based on Judge Coursey's unlawful actions, Tricoli filed a motion for First Amendment Right to Petition protection under Georgia's anti-SLAPP statute, OCGA § 9-11-11.1[10].

April 18, 2018: Coursey ignored the requirements of the anti-SLAPP statute—which include a stay of all proceedings, a hearing, and findings on the First Amendment retaliation issue—and entered a sanctions order against Tricoli to pay the state's legal expenses. The order did not mention the prohibition of OCGA 9-15-14(c), the Miller dissent, or the controlling authority of *Caldwell v. State*. Nor did it mention the evidence supporting Tricoli's motion that Coursey barred from the hearing without legal justification.

May 17, 2018: Coursey finally addressed Tricoli's anti-SLAPP motion, entering an order denying it without the required First Amendment findings or any other explanation. By the same order, Coursey denied Tricoli's cross-motion for sanctions, motion for reconsideration of denial of the Rule 60 motion to set aside, and repeated requests for a hearing with the subpoenaed witnesses—all also without explanation.

Tricoli filed a timely notice of appeal, including for denial of Tricoli's anti-SLAPP motion, as explicitly authorized by the statute. OCGA 9-11-11.1(d).

[10] OCGA § 9-11-11.1(d).

April 1, 2019: After the appeal was docketed, Tricoli filed a separate Rule 60 motion to set aside in the Court of Appeals, challenging the appeals court's 2016 opinion for denial of due process, as described in Judge Miller's dissent.

The April 1 motion also included the first filing of post-judgment evidence that the millions "gone with no explanation" from GPC and the fraudulent USG reports were part of a much larger and widespread scheme of financial and accreditation fraud on the federal government—which the Attorney General had been attempting to conceal through obstruction of hearings, subpoenas, and criminal investigation since at least July 3, 2012.[11]

The Attorney General never responded to the April 1 motion, or to supplements filed in June and July of 2019. Though Tricoli's motion to set aside based on post-judgment evidence of fraud was uncontested, the Court of Appeals denied it under the law of the case, contrary to the controlling authorities of *Guthrie v. Wickes*, 295 Ga. App. 892, 895 (Ga. App., 2009); *Brown v. Piggly Wiggly Southern*, 228 Ga.App. 629 (1997).

The Court of Appeals denied Tricoli's appeal of the First Amendment, sanctions, quashing of subpoenas, Rule 60, and related issues—affirming without

[11] Tricoli filed a motion to supplement the record with the post-judgment evidence, but the Court of Appeals denied it.

opinion under Rule 36—relying on the judgments of Judge Coursey and the pleadings of the Attorney General to supply the rationale.

Rules Violated by the Attorney General

Post-judgment evidence shows that the Attorney General made knowing misrepresentations in violation of OCGA § 16-10-20 for the express purpose of depriving Tricoli of legal representation, blocking a hearing before the Board of Regents required by BOR Policy 2.4.3, and obstructing a criminal investigation into financial fraud in the USG.[12] The post-judgment evidence shows that the Attorney General misrepresented the existence of evidence of financial fraud in the USG in order to obstruct the hearing and criminal investigation.[13] State agencies

[12] Post-judgment evidence, never reviewed by the courts below pursuant to Tricoli's Rule 60 motions to set aside the judgments based on fraud and due process violations, post-judgment evidence documenting the Attorney General's illicit actions can be accessed at **https://drive.google.com/file/d/1Q7q07YHq5F-JcpFVkUMxMXeIFewgllnJ/view?usp=sharing**

[13] Post-judgment evidence of felony financial fraud in the USG, never reviewed by the courts below and readily available to the Attorney General at the time of the alleged knowing misrepresentations can be accessed at **https://drive.google.com/file/d/1kRsX_hheAGyXQiwLh9z-7F4LpyN8Z-5c/view?usp=sharing**

represented by the Attorney General, including the USG[14] and DOAA[15], issued falsified reports to conceal the documented financial fraud, also in violation of OCGA § 16-10-20. The Attorney General turned a blind eye to this readily available evidence of financial fraud by these state agencies.[16]

In a matter of even more grave concern, the Attorney General went beyond closing his eyes to pretend no evidence of crime in state government existed when the Attorney General affirmatively misrepresented state audit information for purposes of obstructing a required hearing and criminal investigation of the USG financial fraud.[17]

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[14] The USG self-review illegally used in place of an independent audit for reaccreditation purposes can be accessed at
https://drive.google.com/file/d/16sfe2IG-zWDlj7ldMK6NAJbFUCWgnNpI/view?usp=sharing
An annotation of post-judgment evidence of alleged USG financial fraud, including accreditation fraud on the federal government, never reviewed by the courts below, can be accessed at
https://drive.google.com/file/d/1pGPN5Jyd40xCzR6u2yZ5UT8Id1lHF0oC/view?usp=sharing

[15] The allegedly fraudulent DOAA report in question can be accessed at
https://drive.google.com/file/d/1qCPezNWpIYe0ixMG1J7uAZ6aP8pYSu_-/view?usp=sharing
An annotation of the post-judgment evidence of fraud in the state audit report can be accessed at
https://drive.google.com/file/d/1otaQeOm-x8qZckeJoYnA7YmLQ3dDE0Po/view?usp=sharing

[16] The Attorney General at the time investigation of the USG financial fraud was obstructed, Sam Olens, was appointed by the USG to a $500,000 a year position as president of Kennesaw State University (KSU)—only after the USG engaged in fraud and extortion to remove the sitting KSU president, Dr. Daniel Papp. Post-judgment evidence never reviewed by the courts below shows Olens had notice of the illicit means of Dr. Papp's removal at the time it occurred. See S20C0106.

[17] An annotation of post-judgment evidence supporting Tricoli's Rule 60 motions to set aside, evidence never reviewed by the courts below, of the fraud and obstruction documented in official Attorney General correspondence can be accessed at

Post-judgment evidence also shows that the USG financial fraud was part of a widespread scheme spanning several agencies to defraud the federal government, as Tricoli alleged in a series of Rule 60 motion to set aside pleadings beginning on April 1, 2019. The Attorney General never responded to these pleadings documenting financial fraud by the USG against the federal government and obstruction by the Attorney General. Therefore, Chris Carr has admitted this criminal corruption in state government[18]—at the same time Carr seeks sanctions against Tricoli for coming to court under the First Amendment Right to Petition to expose this serious wrongdoing that poses a grave and existential threat to Georgia's system of higher education.

The Attorney General Relies on Due Process Violations

Attorney General Carr asserts circular appellate reasoning by relying on the courts below, the ones alleged to be in error, to support Carr's assertions—including that Tricoli should be sanctioned. Where due process is violated by the courts below, however, no evidence supports the judgment. *Shuttlesworth v. City of Birmingham*, 382 US 87, 93-94 (1965). Accordingly, no evidence supports the

https://drive.google.com/file/d/1tBR4DzXVb6jOht1YSKPi-QKbiwjNShNs/view?usp=sharing

[18] Post-judgment evidence addressing Carr's failure to respond to documented allegations of fraud and obstruction can be accessed at **https://drive.google.com/file/d/1Z4OP-AqsBJToxcEYU70td-PrsNiOnBsi/view?usp=sharing**

judgments against Tricoli, contrary to Court of Appeals Rule 36 relied on by the Court of Appeals to affirm without opinion.

By relying on defiance of due process, Chris Carr has done more than show disregard for the Constitution. The due process denials have been used to conceal criminal conduct by state officials. The Attorney General has acted to hide the criminal conduct of state officials from the public. That has allowed the criminal conspiracy to proceed—in order to defraud the federal government, no less, with billions of dollars at stake. Seeking sanctions against Tricoli, for exposing this criminal corruption, is an added ethical violation.

The Attorney General's ethical problems go beyond trying to mask the authority under OCGA 9-11-60(a)[19] that voids the orders below for denial of due process—by evading controlling authority such as *Caldwell*. Such due process violations void the orders below under yet another controlling Georgia Supreme Court authority also completely evaded by the Attorney General and the courts below. *Johnson v. Carrollton*, 249 Ga. 173, 175-76 (1982) (judgments violating constitutional due process are void).

In other words, Tricoli was subjected to sham proceedings in which the judgments are void under US Supreme Court authority. An order rendered upon a denial of due process is deemed a decision without any evidence to support it.

[19] Otherwise known as Rule 60(a)

Shuttlesworth v. City of Birmingham, 382 US 87, 93-94 (1965); *NAACP v Alabama*, 357 US 449, 456-57 (1958) (state cannot selectively manipulate its own procedural requirements to deny justice); *Bouie v. City of Columbia*, 378 U.S. 347, 354 (1964) (state cannot offer statutory protections such as Section 14(c) that it then fails to observe); *Wright v. Georgia*, 373 US 284, 292 (1963) (state cannot make up the law as it goes along to suit its own interests in a particular case).

Perhaps more importantly, for purposes of the Attorney General's ethical violations, Judge Miller sides with Tricoli's contention that the courts below denied due process, which voids the judgments under Rule 60(a), and even succumbed to fraud by Respondents, by deciding issues against Tricoli that were not before the courts—with no notice or opportunity for Tricoli to respond. According to another controlling authority the Attorney General and courts below have never mentioned, deciding issues not before the courts with no notice or opportunity to respond actually deprived the courts below of jurisdiction to issue an opinion. *Coweta County v. Simmons*, 269 Ga. 694, 695 (1998).

The evasions of clear and controlling authority throughout these proceedings, that make a mockery of constitution due process, do no credit to the courts below. They are a more serious concern for the Attorney General, where the evasions served the purpose of shielding state officials committing felonies from accountability. Where it can be shown that the courts were also aware that they, by

evading controlling law and disregarding subpoenas out of hand, were also obstructing ongoing criminal investigation,[20] that may be the most serious concern of all.

The Brief in Opposition is Itself riddled with knowing misrepresentations.

Space does not permit a catalogue of the entire range of misrepresentations the Attorney General made in his Brief in Opposition. The highlights must be viewed with an eye to the Attorney General's attempts, not only to defend a criminal enterprise within state government that he ought to be prosecuting. This Court must view them, for purposes of Rules 1.2d, 3.3b, 4.1, and 8.4, with a view towards the active steps the Attorney General took to keep this criminal enterprise in business at the heart of state government. That includes the AG's own obstruction, by way of knowing misrepresentations, of hearings and investigations that could have snuffed out the campaign of fraud on the federal government. That includes the Attorney General's misrepresentation of state audit information for the same illicit purpose.

Fraud in the Question Presented

The question presented, as stated by Chris Carr, is misrepresented. First, it is misrepresented as a question of the trial court's discretion—despite the mandatory

[20] 18 USC 1510(a) & 1512(b-d).

prohibition of Section 14(c) that has been completely overlooked by the AG and the trial court, in blatant defiance of constitutional due process.

Furthermore, the Question Presented asserts that Tricoli should be sanctioned for "for filing a motion to set aside a judgment that had been affirmed on appeal." Tricoli's motion is expressly authorized by statute. The affirmance on appeal does not alter the application of OCGA § 9-11-60. In fact, controlling authority negates the appellate decision and requires post-judgment evidence of fraud to be considered.[21] The Attorney General's assertion is a pure misrepresentation. Not every misrepresentation violates the code of legal ethics, but misrepresentations are more problematic when bootstrapped to efforts to conceal and protect criminal conduct.

The AG also asserts that the trial court found the motion "devoid of support in fact and law." However, the trial court also quashed evidentiary subpoenas in an ex parte order devoid of support in fact and law, barred evidence at the sanctions hearing, ignored repeated requests for hearings including the subpoenaed witnesses, including hearings explicitly required by statute,[22] and ignored extensive documented proffers of evidence in the process. Moreover, the trial court never

[21] *Guthrie v. Wickes*, 295 Ga. App. 892, 895 (Ga. App., 2009); *Brown v. Piggly Wiggly Southern*, 228 Ga.App. 629 (1997).
[22] OCGA 9-11-11.1(d).

addressed controlling authorities such as Section 14(c) of the sanctions statute, *Caldwell*, or the Miller dissent in *Tricoli*. This render the trial court's statement on Tricoli's supposed lack of supporting authority an unsupported statement, devoid of due process, and contradicted by the record.

Furthermore, the post-judgment evidence and documentation of due process violations raises a serious question of whose contentions are "riddled with expansive and baseless assertions that display stubborn ignorance and purposeful disregard of the facts and the law." Brief, p 1, R1731.

False Statements in the Factual Background

The Attorney General relies on the Court of Appeals for the disputed statement that Tricoli "resigned." This purported resignation, contradicted by the post-judgment evidence, is the false basis for ignoring the waiver of sovereign immunity on Tricoli's written contract—which should have allowed Tricoli to present evidence at trial to a jury to decide these questions that were snuffed out by the baseless and expansive assertions of the courts below.

The resignation ruse is also an issue contested in the post-judgment evidence Coursey ignored and to which the Chris Carr has never responded. Post-judgment evidence on which Tricoli's motion to set aside was based shows that Tricoli had already been fired and replaced before Huckaby tried to coerce and fraudulently induce Tricoli's resignation. In collusion with the Attorney General, the USG used

this resignation ruse to avoid a hearing and a criminal investigation into the financial fraud that has since been uncovered more fully since Tricoli's case was so ignominiously dismissed.

Misrepresenting Proceedings Below

The Attorney General knowingly misrepresents that "Tricoli's grounds for setting aside the judgment were a repeat of arguments he made previously to the trial court." That is a bold assertion since Chris Carr has never responded to the Rule 60 motion filed on April 1, 2019—with its documented allegations of USG financial fraud on the federal government and obstruction of criminal investigation, including by knowingly misrepresenting state audit information, by the Attorney General.

False Statements in Reasons for Denying Petition

Chris Carr states that the only issue remaining for review is sanctions on Tricoli for filing the motion to set aside. Brief, p. 7. One could wonder, of course, where the denial of Tricoli's motion for protection from retaliatory sanctions under the First Amendment Right to Petition went to—since the Court of Appeals did not issue an opinion on one of the most important constitutional issues in the republic.

One might also wonder how that statement that there is nothing else to review encompasses Tricoli's April 1, 2019 motion to set aside—documenting

USG fraud on the federal government and Misrepresentations by the AG to obstruct criminal investigation. The Court of Appeals denied that motion based on the law of the case, which does not apply to a Rule 60 motion based on post-judgment evidence of fraud. *Guthrie v. Wickes*, 295 Ga. App. 892, 895 (Ga. App., 2009); *Brown v. Piggly Wiggly Southern*, 228 Ga.App. 629 (1997).

All related matters can be considered by this Court, such as the wrongful quashing of Tricoli's subpoenas and the denial of his anti-SLAPP motion, regardless of whether they are independently appealable. *Keogh v. Bryson*, 319 Ga. App. 294, 297- 298 (Ga. App., 2012).

AG Carr went on to misrepresent that Judge Coursey had discretion to ignore the prohibition of Section 14(c). Brief, p. 8. That unsupported assertion is contradicted by the mandatory language of prohibition: "No attorney or party shall be assessed attorney's fees…" This evasion is more evidence that the sanctions are sought for the improper purpose of intimidation and retaliation, to prevent Tricoli from exercising his First Amendment Right to Petition to come to court to expose the criminal corruption of the Respondents.

Misrepresentation in the AG's Conclusion

After making all these misleading statements in further support of criminal corruption in state government, the AG makes the absurd statement that there is nothing unusual about the documented fraud and obstruction, and avoids the

necessity of this Court addressing these grave matters of extreme public importance, including severe violations of the Rules of Professional Conduct. If state officials can commit felony financial fraud with impunity, misrepresent their actions to the courts, and retaliate against Tricoli for exposing the criminal fraud and obstruction—without being held accountable—it is hard to imagine a graver injustice or disservice to the public.

Conclusion

The Brief in Opposition only adds to Chris Carr's ethical problems arising from the history of misrepresentations and obstruction. That includes violations of the Rules of Professional Conduct that aided state officials in committing crimes, and continues to shelter them to this day.

So far, the entire Georgia state government establishment has gone along with this stonewalling of lawful claims, as well as the blatantly unlawful intimidation and retaliation through the threat of sanctions. It beggars belief how Tricoli, acting within the safe harbor of Section 14(c) and the GRPC Rule 3.1, could be subject to sanctions—while the courts would not even hear Tricoli's cross motion for sanctions against a state attorney general actively obstructing criminal investigation and hearings required by law and due process—all in aid of a criminal enterprise that is actively defrauding the federal government to the tune of

billions of dollars of federal assistance received on a fraudulent basis. Worse, Respondent have destroyed the lives and careers of Drs. Tricoli and Papp to protect their criminal enterprise. The Attorney General has played an active role in that travesty, in violation of the code of legal ethics.

This would be a good time for Georgia to stop the bleeding, to quit pouring pollution on top of corruption. We should turn, instead, to the best of our legal tradition, as the US Supreme Court has instructed us in its best moments:

Shuttlesworth v Birmingham taught that legal and constitutional rights cannot be denied out of prejudice or preference. *US v Nixon* told us no one is above the law and no public official can avoid accountability for crimes against the public.

Atlanta can have the same Spotlight[23] moment as Boston did when the city stopped hiding a dark truth at the heart of the community. It's time for Georgia's current state government establishment to have its Chernobyl[24] moment where it stops telling the public obvious, absurd, and outrageous lies--to hide behind. If it were not for the desperation to protect a corrupt USG, everyone can see and agree that Judge Yvette Miller is a reasonable jurist who should not be sanctioned for her legal position--that the RICO statute waives sovereign immunity protection for

[23] https://www.youtube.com/watch?v=ogW6YDmEb1M
[24] https://www.youtube.com/watch?v=5aNxqbZDNBM

criminal RICO predicate acts--in order to allow a criminal conspiracy of state government officials to proceed, with sovereign immunity protection, unmolested on their path of destruction. Next time, it might be Georgia's entire system of higher education--not just honorable men like Drs. Papp and Tricoli, who served the USG with excellence--that Respondents destroy.

Respectfully submitted this 22nd day of January, 2020.

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CERTIFICATE OF SERVICE

I hereby certify that I have this date served the above and foregoing supplemental brief electronically through the Court's E-Fast System, which serves all parties of record by electronic means and by placing a true and correct copy of same in the United States Mail, first-class postage prepaid and addressed to the following counsel of record:

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Opinion: Who Needs Confederate Statues? We've Got the Georgia Supreme Court

Stephen Humphreys, Daily Report
June 27, 2017 | 1 Comments
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Stephen Humphreys, Athens Ga.

I feel certain many law school graduates were scratching their heads and checking their prescriptions when they thought they read the Georgia Supreme Court rule last week that it cannot review the constitutionality of a state statute without the Legislature's express consent. Sovereign immunity, dating from the days of divine right kings, will not permit it.

Didn't they teach us in Constitutional Law class that the question of judicial review of the acts of the other branches was settled by John Marshall in 1803?

Well, law school was a long time ago for some of us, so we could be wrong. Still, our aroused curiosity might be stifled by Justice Keith Blackwell's 71-page opinion in Lathrop v. Deal, citing a maze of decisions from remote times like 1935 and 1872.

Call me crazy, but I actually read the whole opinion and learned many other things they never taught in law school.

Blackwell is a strong proponent of the judicial doctrine now in vogue among conservatives, Originalism, the idea that you should go back to the time of the framers of the Constitution, or any other legal document, to determine what they meant.

Only Blackwell goes farther, to the time of his long lost cousin and fellow Tory, Sir William Blackstone, to a time when good King George III reigned over a colony newly christened in his name. But Justice Blackwell has an even more interesting source for his theory, employing the laser-like dissecting scalpel of originalism, that sovereign immunity trumps the doctrine of judicial review we read about so naively in Marbury v. Madison.

In his very original originalist thinking, Blackwell created a whole new theory for interpreting the texts of statutes and Constitutional provisions.

I remember, I am almost certain of it, learning in law school that, when interpreting such texts, the most-recent version controls. So if a constitution or statute is revised or amended, the most-recent writing controls. But, in only 71 pages, I learned that is backward thinking.

Blackwell has colluded with Justice David Nahmias, who set the stage in an earlier concurring opinion, to write into Georgia jurisprudence a new formula which states that you have to look at the intent behind the statute or Constitutional provision at its first enactment. Those later versions? You can forget them.

That may sound backward to you, but you are not a Supreme Court justice appointed by the governor. Furthermore, though it may sound like pure poppycock, all the other justices went along without a single dissenting voice. They must be right—right?

But just when things were looking so easy, just when we had all the justices figure this out for us, to save our lawyerly energy to curry favor with these intellectual giants—which is the way to win our cases—there had to be another catch to it.

Here's the problem: The Georgia Constitution has long had a judicial review clause, for well over 100 years, which should satisfy an originalist who, understandably, does not care for anything newfangled.

But I digress. For over 100 years, up to today, the Georgia Constitution has explicitly given the judiciary the right to void unconstitutional laws. Exactly what the petitioners in this case were asking for!

But not so fast, because the gears of originalism grind all the way back to Genesis. It seems that the first enactment of the judicial review clause in the Georgia Constitution did not explicitly say that courts had the power to void statutes as unconstitutional. That did not come till a little later, in 1865. The first enactment of the judicial review clause only says that the courts have the right to review fundamental law. That must mean something entirely different from judicial review, as we know it, of course. Our justices just told us so.

That first rendition of the judicial review clause is found in the Georgia Constitution of 1861. That Constitution was adopted on March 23, 1861. Just in case you were wondering (the date rings a bell with some historians), the state of Georgia seceded from the Union earlier that year, on Jan. 19, 1861.

So Justice Blackwell is relying for his main premise, barring review of the constitutionality of statutes, on the first Georgia Legislature sitting in the C.S.A. That does not pose any problems of constitutional authority, does it? It was the first version of judicial review in the Georgia Constitution, even though later versions were changed—after the War of Northern Aggression.

We can overlook those postsecession modifications, can't we, as committed originalists? We are comfortable going with a strict interpretation of the Confederate version. Right?

In case it makes you feel better about this, we also know that Georgia's Confederate Legislature could not have contemplated a declaratory judgment action, at that time, to declare a statute unconstitutional, because—as Justice Blackwell so eruditely instructs us—Georgia had no declaratory judgment statute till 1945. Sorry, that statute was not in time for 2014, when the current challenged law was enacted. Don't you just love this originalist thinking? Great for parlor games!

Better yet, in case you are squeamish about such a modest proposal, that the State Supreme Court must ask the Legislature's permission to do its job, Blackwell has a theory that Georgia's sovereign immunity—which trumps any current Constitution people in this century would bother to enact as an afterthought—carries in unbroken succession (never mind that the cases are all over the place on this subject) all the way back to English common law—the one that says the King can do no wrong—before the U.S. Constitution, or the American Revolution—where Cornwallis surrendered to Washington, not vice versa.

And Justice Blackwell relies on Georgia cases from the 1960s (OK, one is from the 1930s) to make this primordial connection. And that is consistent, to rely first on a secessionist legislature and then a segregationist judiciary to plot our course for the 21st century. It has a symmetry to it, as well as a 100-year cycle. What could be neater?

And never fear, Justice Blackwell tells us, there is a common law remedy. Though sovereign immunity, given royal prerogatives, says we cannot bring

a legal action against the state or state officials in their official capacities, we can sue state officials as individuals, which was permitted in England, thank goodness.

Does that mean that Gov. Nathan Deal, from his front porch in Gainesville, can declare statutes unconstitutional on his own dime? We'll just have to wait and see the next time the originalists convene.

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The Ga. Supreme Court's Monument to Confederate Law

by Stephen Humphreys | Jul 10, 2017 | The Forum | 0 comments

Who knew a court with a conservative philosophy— favoring restraints on government power and judicial fiat— could have so much power? While no one was looking, the GOP-packed Georgia Supreme Court just reversed the results of both the American Revolution and the Civil War.

When the Georgia legislature passed a statute a few years back imposing potential criminal liability on doctors performing abortions, a group of Georgia OB-GYNs challenged the statute as unconstitutional. In a ruling that would have surprised John Marshall, the Georgia Supreme Court ruled recently that it is barred by the state's sovereign immunity from reviewing the law for constitutionality.

The principal basis for that opinion was the constitution passed by Georgia's legislature in 1861, the court ruled in a unanimous decision. How did the court arrive at that conclusion? It was a multi-step process.

First, the court looked at Georgia law on judicial review of statutes. Starting in 1865, there has been a clause in the Georgia Constitution that specifically says Georgia courts can void an act of the legislature that is unconstitutional, consistent with the landmark US Supreme Court decision, Marbury vs. Madison, in 1803.

End of story? Not so fast. According to the author of the Georgia Supreme Court decision, who claims to hold the same view of originalism as new U.S. Supreme Court Justice Neil Gorsuch, the court must look at a legal provision of law at its "initial inception" to get to the thinking of the originators of our laws who are long since dead.

Applying that standard, the first inception of the Judicial Review Clause, in Georgia's Constitution of 1861, allowed courts to review "fundamental law," and did not explicitly, in those exact words, authorize judicial review for constitutionality.

If you noticed the date, you may be able to guess the reason, at that time. There was no U.S. Constitution in the picture, no U.S. Supreme Court, because the Georgia Constitution of 1861 was adopted on March 23. Earlier that same year, Georgia seceded from the Union, on January 19, 1861.

So this year's abortion law decision is based on Georgia's Confederate Constitution adopted in the first sitting of Georgia's Confederate legislature, back in the good old Confederate States of America.

In June of 2017, the Georgia Supreme Court gave precedence to Georgia's Confederate Constitution over Marbury vs. Madison. Breaking news: Grant surrendered to Lee!

But the unanimous justices of the Georgia Supreme Court did not stop there. They tell us that the Confederate legislators, when they adopted the first judicial review clause in a Georgia constitution, could not possibly have contemplated that courts could declare a statute unconstitutional. They know that because Georgia did not pass its Declaratory Judgment Act, adding constitutional review to the statute books, until the 1940s.

According to Georgia's high court, that was not soon enough for the act authorizing declaratory judgments to be taken into consideration this year. The Confederate legislators never heard of it.

So Damn the Declaratory Judgment Act, full speed ahead!

Added for good measure, the court opinion in Georgia posited an unbroken connection to the common law in the days of King George III. Pretermitting the American Revolution, under English common law, the King could do no wrong. Under that theory, the state of Georgia has sovereign immunity and cannot be sued— even to challenge a statute as unconstitutional—without the state's consent.

The Georgia court examined the legislature's abortion restriction and found no provision in which the Legislature gave such consent to have its act reviewed. Sovereign immunity rules.

Never mind Chisolm vs. Georgia, another U.S. Supreme Court decision, decided in 1793 (let alone the intervening U.S. Constitution, that abolished royal prerogatives). In that case, the U.S. Supreme court majority held that sovereign immunity, as it was known at English common law, did not apply to bar a suit against the state of Georgia (for not paying its debts).

Since originalism is supposed to get at what people were thinking at the inception of the Constitution, those U.S. Supreme Court justices in 1793 clearly did not know what they were thinking back then. The error of their ways has now been corrected, over 200 years later, by the justices of the Georgia Supreme Court, with a little help from their Confederate ancestors.

As much as I appreciate their sticking to their conservative principles, and as much as I admire the genius and daring of Stonewall Jackson as a general, let's keep them from erecting artificial legal barriers to our constitutional rights today.

Stephen Humphreys is an Athens attorney who once was a staffer for former U.S. Sen. Wyche Fowler, D-Georgia.

Fulton Co. DA Faces More Abuse of Office Charges

After being accused by the state ethics panel of 12 public disclosure violations, a paralegal and records supervisor is also suing **Fulton County District Attorney Paul Howard**. The allegation: 15 years of "overt, manipulative and aggressive sexual

Bruce Fein, Contributor
Constitutional Scholar

Shielding Government Lawlessness Through Sovereign Immunity Taken to New Lawless Level by Georgia Supreme Court

07/18/2017 03:16 pm ET

By Bruce Fein and Stephen Humphreys

What if a 400-pound blogger, straining the bedsprings in his parents' New Jersey basement, authoritatively announced that superannuated laws of the Confederate States of America superseded definitive decisions of the United States Supreme Court and immunized state statutes from judicial review? You'd think, "Fake news, a prank."

But what if the Georgia Supreme Court announced the same result, based on the same authority, in a unanimous opinion? You'd be even more incredulous. After all, state judges are required to defend and support the United States Constitution under the Supremacy Clause, not to nullify it. General Robert E. Lee surrendered to General U.S. Grant at Appomattox Courthouse, not vice versa.

But in June of 2017 (A.D., just to be clear on the era), the incredulous happened. Georgia's highest court held that sovereign immunity barred a constitutional challenge to a state statute imposing criminal liability on obstetricians for therapeutic abortions. The decision marked a stunning departure from precedent permitting constitutional challenges to state action based on due process.

The Georgia Supreme Court anchored its holding to a provision in the Georgia Constitution of 1861 adopted in the wake of the state's ordinance of succession. Paragraph 17 of Article I provided: "Legislative Acts in violation of the fundamental law are void; and the Judiciary shall so declare them." According to Georgia's most exalted jurists, this language meant Georgia courts were not empowered to declare statutes unconstitutional.

That, of course, is humoring the Georgia justices to assume Confederate law controls, contrary to the U.S. Supreme Court holding in *Texas v. White* and companion cases that the Confederate States of America never achieved legal standing in the eyes of the U.S. Constitution. More importantly, *Marbury v. Madison* established the doctrine of judicial review of legislation to insure obedience to the Constitution as a separation of powers imperative. Finally, in *Chisolm v. Georgia*, U.S. Supreme Court Justices who were present at the creation of the republic voted 4-1 that neither common law nor the Constitution barred suits against a state under the doctrine of sovereign immunity. Indeed, the American Revolution was fought to repudiate the Blackstone tyranny that the king can do no wrong and cannot even entertain a wrongful thought.

State immunity is an instrument of injustice that has no place in any civilized legal system. The immunity effectuates a taking of a citizen's cause of action without compensation to advance a generalized public interest in the fearless execution of the laws. But if the public benefits from the immunity, the public should pay just compensation through taxes for the injuries the government inflicts in providing that public benefit. If the State takes real property or tangible personal property for public use, just compensation is constitutionally required under the Fifth or Fourteenth Amendments. Why should the case be different when the State takes intangible personal property, i.e., a chose in action which may be even more valuable, under the banner of sovereign immunity?

Consider this cavalcade of injustices that has been perpetrated under that banner in Georgia:

A Georgia State trooper was sued for sexually molesting a female motorist during a traffic stop. If he was on duty wearing his uniform he was cloaked with immunity, according to the Georgia judiciary.

A State college official cannot be sued for the rape of a college student.

A State supervisor conducted a 13-month campaign of sexual harassment of a female subordinate, and threatened to kill her dog and stuff it in her mailbox when she reported his knavery. Immunity protected his outrageous abuse of power.

In 2014, the Georgia Supreme Court ruled that the state agency charged with managing the coastal environment could not be enjoined to follow the coastal management laws the agency is charged with enforcing. Sovereign immunity shielded lawlessness.

State Agriculture Department inspectors took bribes to falsely calibrate gas pumps. Georgia motorists paid for gas they never received, and nearby stations were closed because they could not compete. The corrupt calibrators were held immune because they were performing their “inspection functions” on behalf of the state.

Under that reasoning, a Governor who ordered a state agency to rescind a state contract with a political rival and award it to his own cronies, in exchange for a bribe, would likewise be immune from suit.

As Russian President Vladimir Putin has been derided for his party of crooks and thieves, Georgia’s government may soon be similarly disparaged for housing felons.

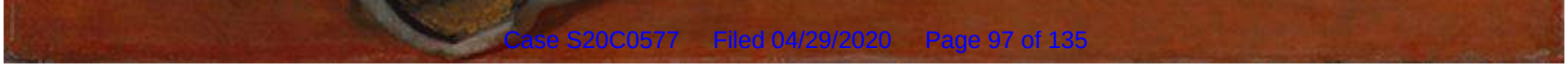
The Georgia Supreme Court turned a deaf ear to a case challenging the immunity of state officials from civil RICO suits for misusing power to commit felonies. Georgia’s highest jurists merely declined to hear the case against state officials for falsifying state agency records to conceal the theft of $9 million from Georgia Perimeter College. One of us was the attorney for the plaintiff in that lawsuit.

Article IV, section 4 of the United States Constitution guarantees to every state a “republican form of government.” But the state immunity decisions of the Georgia Supreme Court are earmarks of a monarchical form of government that we repudiated 241 years ago in the Declaration of Independence. The Georgia justices should not be allowed to hide behind the robes of King George III or Jefferson Davis’ cloak to raise the state above accountability to the people and their constitutional rights. All that is necessary for this evil to triumph is for Georgia lawyers and legislators to do nothing, and for the judiciary to submit.

OUTLANDISH CONSPIRACY THEORIES: Counterfeiting sovereign immunity

Those who know the past are doomed to take advantage of it


HONI SOIT
Tho: Hudson. Pinxit.



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IN THE NAME OF THE STATE: KING "GEORGE II" (OIL ON CANVAS), HUDSON, THOMAS (1701-79)

By STEPHEN HUMPHREYS Friday April 17, 2020 06:23 pm EDT

"The Court cannot overlook a remedy the legislature, in its wisdom, saw fit to create." — Georgia Court of Appeals Judge Yvette Miller

Sovereign immunity is an ancient doctrine from the days of divine right kings that has now been repackaged and expanded for Georgia's ruling class. Even in the days of our state's namesake, King George II, sovereign immunity never absolved the King's ministers for committing crimes, but since 2016, Georgia claims it immunizes state officials for any felony you can think of — from murder to rape to theft of taxpayer money.

The question the governor, attorney general, and the courts of Georgia are now avoiding, is whether sovereign immunity

likewise allows them to commit fraud on the federal government with impunity. But that is getting ahead of the story.

Sovereign immunity proponents are backward-looking and argue the doctrine is founded in immutable common law from the mists of prehistory. That is only because sovereign immunity protection for crimes can nowhere be found in modern law of Georgia.

It is important, however, before debunking the theory, to explain exactly what sovereign immunity means, since not everyone has gone to law school or studied Blackstone's Commentaries from the 1700s.

It means, in a word, you're screwed. Even if King George II's Chancellor of the Exchequer or the chancellor of the University System of Georgia were to falsify government financial records to frame you for embezzlement, or threatened you with the vilest extortion, you could not go to court and sue them. Even if you have hard evidence a state official committed crimes against you that would inflame a jury to award a hundred-million-dollar judgment against the man who abused his government position of public trust to harm you, he gets to laugh in your face, because sovereign

immunity bars you from taking him to trial altogether. You don't get a judge or jury. You never even get to present your evidence. It's over before it begins. Of course, that sounds downright un-American.

Sovereign immunity, nonetheless, has been expanded to such an extent, in Georgia, that either of those chancellors (if the king's chancellor could come back from the past) could commit murder most vile on you. The attorney general of this state could shoot you on Peachtree Street, but unless the attorney general decided to criminally prosecute himself, you are out of luck. You have no options in civil court.

Some may say sovereign immunity sounds like a stupid idea in a country with no king, and should be abolished altogether. In fact, in 1792 the US Supreme Court told the state of Georgia it had no sovereign immunity protection under the U.S. Constitution.

But the white male landed gentry — the only people who had any say in the 1790s — has been going ape ever since. Suffice it to say that the law handed down over the centuries only provides one avenue of relief: A state, like the most

beneficent king you could ever find in the Bible, can waive its sovereign immunity protection — and consent to be sued.

Reviving the rule of King George II

Remember when I said the modern Georgia Tories say sovereign immunity has been the law from time immemorial, as though carved in stone by Moses. That does not turn out to be true.

In the last installment, I said that in the course of expanding sovereign immunity, with the support of the governor and the attorney general, the courts have spearheaded a spirited campaign of judicial retroactivism. By retroactive I mean they are taking society backward in time. Whether to the time of King Edward Longshanks or General Longstreet does not matter.

As to judicial activism, the important point is that while the retroactive judges are changing the rules to coincide with their antebellum viewpoint, they are ignoring the law as they found it written on the books today.

And this rewriting of the laws — by judicial officers lacking that authority, which properly belongs to the legislature — has been done with judges appointed by the governors leading the way, and sometimes with the assistance of an attorney general also appointed by a governor, as if it were a single branch of government as opposed to two separate branches.

Sovereign immunity, meanwhile, is not the bedrock principle, from which there is no escaping, they make it out to be. Until 1991, in Georgia, sovereign immunity was waived — meaning you *could* sue the state — if the state was covered by liability insurance for the claim. Today, the state has insurance coverage for any and all legal claims brought against it. Whenever the state is sued, insurance even covers the state's legal fees. That would seem to solve the problem, but that isn't the law anymore because Georgia changed it. In 1991, without even knowing it, Georgians passed a constitutional amendment to say that sovereign immunity can only be waived — to allow a lawsuit against a state agency or officer — if the legislature, in its infinite wisdom, expressly authorizes a particular kind of lawsuit — and thereby gives the state's consent to be sued, not for anything, but within that specific limitation.

So how does that law apply in everyday life?

Sovereign immunity for racketeering attorney generals

The issue of sovereign immunity came up, in my experience, about 10 years ago. I was just a corporate lawyer minding my own business when I was called upon to defend a University of Georgia professor. Then-UGA president Michael Adams was trying to revoke the tenure of Adams' most vocal critic, UGA professor Dezso Benedek, so that Adams could fire him for his unfavorable opinions. The task of defending Benedek against the University of Georgia, where I was once First Honor Graduate, fell to me, not because I was some tenure revocation genius, but only because nobody else would do it.

Benedek won the tenure battle. The revocation failed miserably, and Benedek is a UGA professor today because of it.

The reason we won the tenure battle, though, is what has caused the commotion in the pro-sovereign immunity community. We won because the Georgia attorney was caught red-handed trying to hide evidence that showed the charges against Professor Benedek were false, and that

Adams and the attorney general knew it from the start. The attorney general of Georgia was caught in the act of manufacturing fake evidence to try to frame Benedek, and also caught suborning perjury — that is, trying to get witnesses to lie on the stand under oath — among other felonies.

So I, not knowing any better than to follow the facts and the law, did something that had never been done before: I sued the Board of Regents of the University System of Georgia (USG), the attorney general, the UGA dean who impersonated real UGA students online (which is computer and identity fraud, among other crimes) to manufacture false evidence, the UGA witnesses who perjured themselves, and the kingpin of this whole racketeering scheme, then-UGA president Michael Adams.

I sued them under the RICO statute — which, where there is a pattern of related crimes spelled out in the statute, allows for either a criminal prosecution (which in Benedek's case could only be brought by the attorney general, against himself, among others). Or, on the same terms as the criminal prosecution, the statute also authorizes a civil RICO action, just like the kind of civil lawsuit for which anybody could go

to court for a slip and fall or a car wreck. Those ordinary civil litigants go before a judge and jury to hear their cases, and they get to present their evidence.

But not Dezso Benedek.

Professor Benedek is not Donald Trump with billions to fund a hundred lawsuits at once. But Benedek's case has bounced for the last 10 years before 13 different judges, and not one of them wanted to hear it, and they all tried their hardest to throw it out without a trial for any reason they could think of.

The important thing to remember is that this is where Attorney General Sam Olens started the argument that state officials have sovereign immunity to commit these RICO felonies. So even if a state office clerk or the attorney general himself were to extort you or attempt to rub you out — much less commit lesser felonies such as evidence tampering, wire fraud, and perjury — you cannot sue them for it.

Take your evidence of crime, said Attorney General Olens, and show it to your mother or your third-grade homeroom teacher — because you are never going to show it to a judge.

Sovereign immunity even bars you from doing discovery that normally occurs in a civil action in order to find more evidence. Sovereign immunity, according to judicial retroactivism in Georgia, prevents you from using the courts to force the government to produce documents and witnesses that may shed more light on the wrong they did to you, or on a criminal conspiracy.

In the vernacular of sovereign immunity, you get thrown out of court like a bum — even if the state cost you a million bucks or, in King George's day, cut off your head. It is not a doctrine redeemed by any sense of fairness. According to the supposedly conservative judicial activists, that is true even if the wrong was done to you deliberately, with criminal intent.

The RICO statute dethrones sovereign immunity

That is where I have been respectfully begging to differ for the last 10 years, because the Georgia RICO Act meets the new 1991 state constitutional requirement of expressly authorizing a civil RICO action (and the state does have insurance coverage, so it will never cost the state treasury or the taxpayers a thing) against government officials.

In fact, once before, State Labor Commissioner Sam Caldwell and some henchmen in his office were extorting campaign contributions and then stealing the money for themselves. Commissioner Caldwell was criminally prosecuted, but there was also a civil RICO action — just like Professor Benedek's case against Michael Adams — filed against Caldwell.

Sam Caldwell tried to tell the plaintiff, in that civil RICO action against him, you cannot sue me in a civil RICO action because *I am a state official*. But the Georgia Supreme Court said not so fast, Sam, we read the RICO statute, and it expressly authorizes a civil RICO action against state government agencies and officials. So there.

The Georgia Supreme Court pointed out, in the case against State Labor Commissioner Sam Caldwell and the other state employees, that the RICO statute defines a "racketeering (or RICO) *enterprise*" to include "any person," without limitation, and also to include "governmental entities." So every time the word *enterprise* appears in the statute, you can write in its place, instead, *governmental entity*. And, in fact, enterprise is an important word that is written in the statute in several places.

Based on that reading of the RICO statute, the Georgia Supreme Court told Sam Caldwell to take a hike. Imagine doing extortion and theft and then claiming you could not be held accountable — because you are too high and mighty as a state government official.

In fact, using the statutory language and logic of the controlling *Caldwell* opinion, the RICO statute says, in the words of the Georgia legislature that conservatives say they respect so much, that a RICO injunction can be lodged against a state government entity (though the Georgia courts recently contradicted this clear conclusion by saying that sovereign immunity barred an injunction to prevent the USG

from engaging in RICO extortion and bribery to oust Dr. Daniel Papp and replace him with none other than Sam Olens himself).

The RICO statute also explicitly says that state government employees and agents can violate the statute, and therefore be subject to the remedies, including treble and punitive damages, spelled out by the statute.

One strict rule of statutory interpretation by the courts is to never render any language of the statute meaningless. After all, the legislature put the words in there for some reason. In Georgia, in 2020, we are still waiting for the current courts to tell us why the legislators did not mean anything when they said the RICO statute authorized an injunction against the state and a civil action for damages against employees and officials. We are also waiting for them to tell us why the Georgia Supreme Court did not mean what it said in *Caldwell*.

Moreover, the crimes listed in the statute that qualify for a RICO action (otherwise known as RICO predicate acts) also include many felonies that would tend to be committed by government officials — such as falsifying state agency

financial records and audits to conceal the illegal diversion of taxpayer funds, and using state agency computers to commit financial fraud — which brings us to Anthony Tricoli.

State financial oversight by embezzlers

Since I did not know better than to take on a racketeering conspiracy in state government that had the full cooperation of the courts, other victims who have been steamrolled by the state have come calling.

Anthony Tricoli, the former president of Georgia Perimeter College (GPC), was fired and replaced by the University System of Georgia literally before he knew it — after it was discovered (and later verified by the USG itself) that GPC's vice president of finance Ron Carruth falsified the financial reports of GPC, and not by some rounding error, but by as much as $37 million at one point.

Anthony Tricoli sued for the financial fraud by Carruth and other complicit state officials that harmed Tricoli. The state of Georgia claimed its officials may commit these crimes with impunity under the protection of sovereign immunity. Even

if the defendants did commit the crimes, and Tricoli can prove it, no dice on any trial, no dice on any remedy for the wrong. The state just waves you goodbye.

Tricoli's trial judge in DeKalb Superior Court, Dan Coursey, put it this way: He said the state officials involved in the fraud were immune because when they were falsifying financial records to steal millions of dollars they were dutifully performing their state "financial oversight activities."

At the next level in the judicial system, the Georgia Court of Appeals did not adopt Coursey's colorful theory that cooking the books to hide the theft of taxpayer funds equaled financial oversight.

Nonetheless, they issued an opinion that was curious in many ways, but seconded Coursey's opinion that victims harmed by the crimes of state officials had no right to sue.

Their reason, without exaggerating: State officials are above it all.

The Court of Appeals opinion, throwing Tricoli's RICO case out in 2016, said I had advanced an imaginative theory that the state itself could be held accountable, but that was all it was. Imagination.

I did not imagine the language of the RICO statute or the controlling precedent in *Caldwell*, but the Court of Appeals did not bother to get into that.

Analysis of the impact of the controlling authority in *Caldwell*: None.

Examination of the language of the RICO statute, as required by the Georgia Constitution: Zero.

One judge was brave enough to read the law

Only one judge on the appeals court panel actually looked at the law and wrote a dissenting opinion. Georgia Court of Appeals Judge Yvette Miller agreed with me that the RICO statute expressly authorizes a suit against the state, waiving sovereign immunity. So maybe it was not just my imagination after all.

Judge Miller is the only judge in the last 10 years to mention anything about the language of the RICO statute and follow it to the same logical conclusion as the Supreme Court previously did in *Caldwell* (now the state is trying to sanction me and make me pay the state's legal expenses, because they say no reasonable person could ever believe what the RICO statute says, but they really should not talk about Judge Miller that way).

What is even more extraordinary, in light of the state's contention that I should be fined many thousands of dollars for arguing state officials have no immunity for RICO felonies, is that an even higher authority than Judge Miller also agrees with me, the Georgia Supreme Court in the days of *Caldwell*. The attorney general does not like to mention that case — in fact, neither Sam Olens nor his replacement Chris Carr has ever said a word about it in any legal brief or argument.

The *Caldwell* Supreme Court's reading of the RICO statute — no sovereign immunity for criminal RICO predicate acts, which is consistent with the statute and Judge Miller's dissent — also conforms to another provision of the Georgia Constitution.

The Georgia Constitution says that state employees can be held liable in a civil lawsuit for acts taken with actual malice and intent to cause harm — which is consistent with the English common law from the time of Blackstone, before the American Revolution ended the very notion of royalty or any other person standing above the law in this country.

Caldwell was decided in 1984, and the Georgia Constitution says decisions by the Supreme Court are binding — which begs the question of how the opinion rejecting Sam Caldwell's claim that he could not be subjected to a civil RICO action has been ignored for the last 10 years. The current Georgia Supreme Court, so far, has never addressed the question of whether it agrees with the Georgia Supreme Court in *Caldwell* that the language of the RICO statute satisfies the constitutional requirement for waiving sovereign immunity protection and allowing civil lawsuits to go forward.

How can it be that the same judicial entity is decided against itself and gives its own *Caldwell* opinion the silent treatment?

The politically correct court sends a subliminal message to criminals

The Georgia Supreme Court broke the law governing Tricoli's appeal by refusing to review the case, and left the appeal court opinion standing to deter any other victim of crimes committed by state officials with the temerity to try to hold them accountable. Today, the *Tricoli* case stands for the proposition that no one can sue a state official who harms a citizen in the commission of a RICO felony.

The *Tricoli* case was rejected by the state Supreme Court the same morning a hearing was being held on a case filed by Kennesaw State University faculty for an injunction to prevent the USG from forcing Sam Olens on them as KSU president. Thus the Court of Appeals "imagination" opinion in *Tricoli*, given the Georgia Supreme Court's silence that came just in time, was the sole basis of throwing out the case against the USG for hiding its own financial fraud by extorting Dr. Dan Papp to resign as president of KSU so that Sam Olens could be appointed to that position. That case was thrown out on the pretense of sovereign immunity, even though the RICO statute expressly authorizes the injunctive relief against the state sought by the KSU plaintiffs, waiving sovereign immunity — and even though the documented

allegations in the KSU case of financial fraud, bribery, and extortion had to be admitted by the state in the course of three years of appeals.

The allegations of financial fraud, bribery, and extortion at KSU were filed November of 2016. Three and a half years later, Attorney General Chris Carr — who was appointed to replace Olens — has never answered them. The KSU faculty filed supplemental pleadings since then, with additional evidence of wrongdoing such as real racketeering-style extortion of Dr. Papp, and the Board of Regents changing its policies to cover the tracks of illegal USG activity.

As of April 2020, Attorney General Chris Carr has never filed a responsive pleading to any of them. He never responded to any correspondence on the subject, or answered in any other forum. But the trial court and appeals court ruled in Carr's favor with no explanation, in one-sentence orders that did not reference a single fact or cite any legal authority.

On March 26, 2020, the Georgia Supreme Court declined to hear the KSU case without explanation, the same as the court

did in the *Tricoli* case. Both times, the highest court in the state allowed its own binding precedent in *Caldwell* to be steamrolled.

Simply put, it appears the *Caldwell* precedent no longer suits the philosophy of the current retroactivist court, but the appointed justices don't know what to do with the binding Supreme Court precedent. That binding precedent is grounded in an analysis of the very words of the RICO statute. Conservatives claim to defer to the legislature, but not when it comes to holding themselves accountable, apparently — or, rather, allowing ordinary citizens of the state to call these latter-day sovereigns before the dock.

From $10 million fraud to a billion

After Tricoli's case was thrown out without allowing any discovery in 2016, continuing investigation found that the 10 million dollars never accounted for from GPC, to this day, were part of a billion-dollar fraud on the federal government. Five times Tricoli has been barred from adding that evidence to the court record to reopen Tricoli's case, and Judge

Coursey actually blocked a federal criminal investigation by quashing subpoenas and refusing to let Olens, Carruth, and others be confronted with the new evidence.

Attorney General Chris Carr has never answered the new evidence of USG fraud on the federal government, assisted by other state agencies, including the attorney general's office. In the legal system, such a failure to respond constitutes an admission of the allegations, which are heavily documented. Yet Carr still maintains this attorney should be punished by the state, forced to pay the state's legal fees, for exposing this state government corruption for which Chris Carr has no answer. Carr has not yet even opined one twit on whether the state enjoys sovereign immunity for defrauding the federal government.

Civil versus criminal RICO

Now, after all this inconclusive wrangling over sovereign immunity protection from a civil RICO action, you may ask why Ron Carruth and his co-conspirators were never simply prosecuted for criminal conduct, for falsifying those financial reports that led to a financial scandal where someone had to

be the scapegoat? Why weren't other state officials prosecuted for committing far greater crimes (while the attorney general who could bring the prosecution is, instead, defending the alleged criminals against the civil RICO actions)?

No one has ever argued that a Georgia government official cannot be criminally prosecuted under the RICO statute. Sam Caldwell was, as we have already noted. And former DeKalb County Sheriff Sidney Dorsey was prosecuted under the RICO statute for gunning his campaign opponent down in his driveway, and also for financial fraud against the county.

Georgia is saying, now, that if Dorsey defrauded you, a private citizen, or gunned you down in your driveway, you could not sue him — in a civil action expressly authorized in the same RICO statute.

There is some indication of why no one was ever criminally prosecuted though $10 million was never accounted for at GPC — that later turned out to be part of a billion-dollar fraud on the federal government, as admitted by Attorney General Carr.

That indication comes in additional evidence that was also discovered after Tricoli's case was thrown out by the courts on grounds of sovereign immunity. Assistant Attorney General Annette Cowart wrote in a letter right after Tricoli was fired that if Ron Carruth lied to Anthony Tricoli and misled Tricoli on GPC's finances to the tune of tens of millions of dollars — then that was a private matter between Carruth and Tricoli.

Yes, Cowart actually did write that. Common sense probably tells you that is wrong, on several levels. But, even more to the point, the Georgia legislature has stepped in again and made such misrepresentation of state agency finances a felony — a crime which very explicitly makes it the public's business under OCGA § 16-10-20.

It certainly makes Carruth's multimillion-dollar boo-boos the business of the attorney general charged with enforcing the criminal statutes enacted by the Georgia legislature. But Sam Olens did not see it that way, which is why Assistant Attorney General Cowart also wrote in her letter that the attorney general's office would not conduct a criminal investigation — because there was no evidence of criminal activity at GPC, where financial reports were falsified.

State records later confirmed that two sets of books were kept at GPC , but this criminal violation of OCGA 16-10-20 was taken to be a private matter, as previously noted by Cowart. So, instead of conducting a criminal investigation, Attorney General Olens allowed the USG to investigate itself (the USG, coincidentally, found nothing amiss with the USG), and then the USG appointed Olens to a $500,000 a year position, in violation of its own policies, as president of KSU (after extorting Dr. Papp to leave).

Suffice it to say that Cowart and Olens were not following the law — which it is the attorney general's job to enforce. Instead, Cowart falsified and misrepresented state audit information to torpedo Tricoli's case and deny him a hearing before the Board of Regents to which he was entitled by law. On top of the obvious deprivation of constitutional due process, there are several felonies there, but no attorney general ever prosecuted anyone for it.

Nor was anyone ever prosecuted for the evidence and witness tampering, mail and wire fraud, identity and computer fraud, perjury and subornation of perjury that

were proven in the Benedek case. Attorney generals do not seem to perceive crimes that are committed in their own office.

As you can see, Georgia's state government is asking sovereign immunity to cover a lot of ground when it comes to covering for public officials violating their oath of office and violating the state's criminal statutes.

The logic behind sovereign immunity for crimes

Proponents of sovereign immunity claim, ironically, to be conservatives in favor of limited government. It is no small hypocrisy to argue in the same breath that government officials may act with total impunity, and no one can hold them accountable.

In the RICO cases filed against the government, Georgia claims immunity for a related pattern of crimes — just like a mafia family — including theft of taxpayer funds, intentional falsification of financial reports, fraud on the federal government, mail fraud, wire fraud, identity fraud, computer fraud, false use of Social Security identification, obstruction

of justice, obstruction of federal proceedings, evidence tampering, witness tampering, perjury, subornation of perjury, bribery, and extortion.

Attorney General Olens admitted he never investigated any of the crimes committed against Benedek or Tricoli, or against the citizens of this state. Instead, Olens, and his successor Chris Carr, have defended the admitted criminals against the civil RICO actions — on grounds of sovereign immunity.

Throughout the 10 years of litigation, every state governor and attorney general, the USG and Board of Regents, and, most importantly, every court has ignored what the Georgia Constitution says about how sovereign immunity is waived.

These state officials (including judicial) have ignored the constitutional requirement to examine the language of statutes enacted by the legislature to see if they waive sovereign immunity, and they specifically ignored the language of the RICO statute itself.

They have ignored the binding Georgia Supreme Court precedent in *Caldwell* that plainly says the RICO statute expressly authorizes a civil RICO action against the state, satisfying the constitutional requirement for waiving sovereign immunity.

Therefore, they have ignored the legislature's express consent, authorizing a civil action against the state for RICO felonies.

Moreover, by ignoring the law at every level, they have ignored, violated, and denied constitutional due process — a principle of fairness that really does lie at the bedrock of our republic, peddling a counterfeit coin of the realm with their own image on it instead.

STEPHEN HUMPREYS

Most importantly, where the average citizen of Georgia sits, the promoters of sovereign immunity protection have ignored the corruption and crimes committed by Georgia officials. After all this judicial

activism to expand sovereign immunity for a new class of royals, the only thing an average Georgia citizen can do is pray that he or she is not the next victim. —**CL**—

OUTLANDISH CONSPIRACY THEORIES:The paradox of conservative judicial activism

'Justices resign in midterm so that the governor can appoint someone to the liking of the party currently in control of the machinery of government'

By STEPHEN HUMPHREYS Friday April 10, 2020 10:57 am EDT

See: All Outlandish Conspiracy Theories columns

"Who needs Confederate monuments?

We've got the Georgia Supreme Court."

— *Fulton County Daily Report* op-ed headline

Georgians just got a rare dose of awareness of who their Georgia Supreme Court justices actually are. The highest court in the state is in the headlines because of a more brazen than usual court-packing plan to call off a scheduled election and allow Governor Brian Kemp to appoint Justice Keith Blackwell's successor.

Blackwell is resigning in November, but tendered his resignation six months ahead of time. Blackwell will keep working till November — when his pension vests. But Kemp is already in the process of appointing a new justice to the "vacancy."

The attorney for would-be candidate John Barrow, who planned to run in the election scheduled for this May, before Barrow was turned away by state election officials on Kemp's orders, likened this gambit to the shenanigans of a banana republic.

The fact is that, while the Georgia Constitution calls for Supreme Court justices to be elected, the reality since the days of Sonny Perdue has been that the justices resign in

midterm so that the governor can appoint someone to the liking of the party currently in control of the machinery of government.

Seven of the current justices, counting Blackwell, were appointed by Governors Perdue and Deal. Only one of the current justices first got on the Supreme Court by being elected. One spot that was vacant due to a midterm retirement, has just been filled by Governor Kemp. Blackwell is angling to give Kemp two picks.

Why is it so important to keep this decision — who should be the next Georgia Supreme Court justice — out of the hands of the voting public? Spoiler alert: It has not led to the independence of the executive and judicial branches required by the Georgia Constitution.

One main thrust of the Georgia Supreme Court in its current Federalist Society, Republican-only composition has been steadily expanding sovereign immunity protection.

Sovereign immunity increases the power and eliminates the accountability of the state by placing state officials above and beyond the law. Sovereign immunity traditionally means

state officials cannot be sued to hold them accountable for wrongful, negligent acts.

The cadre currently in power is trying to expand that protection to unconstitutional, and even criminal, acts.

This expansion of state power has been created largely by judicial activism — that means with little regard for the actual existing, current law on the books.

Here are some examples in the last decade of what the appointed court has done:

Citizens for a Sustainable Coast v. DNR, 2014

When an environmental group tried to force the Department of Natural Resources (DNR) to stop bypassing the required permitting process for coastal development, the Georgia Supreme Court ruled that the doctrine of sovereign immunity barred such an injunction against a state agency.

Think of the implications of that grant of sovereign immunity: A state agency cannot be required to follow the very law the agency was created to administer and enforce.

That is a paradox worthy of Zeno.

The Supreme Court ignored language in the statute creating the DNR that provided for injunctive relief. That is more than judicial activism. It is intellectual dishonesty, and the people of Georgia are not the beneficiaries.

The Sustainable Coast decision also did away with an existing precedent that state officials who were acting illegally, or outside their authority, were not acting on behalf of the state and therefore were not protected by sovereign immunity. It was necessary to eliminate that distinction in order to take the next step of protecting state officials for abusing their power to commit crimes.

There were many more strange twists of logic in this and all the cases mentioned below, but they will have to wait for another day, or we will never get to the next case.

Lathrop v. Deal, 2017

Saying no one can make a state agency perform its duties sounds pretty awful, but the Georgia Supreme Court went even further to stop a constitutional challenge to a law

making doctors criminally liable for abortions. To reach this result, the Georgia Supreme Court reduced itself to relying on Confederate law for the absurd proposition that state laws enacted by the legislature cannot be challenged as unconstitutional without the legislature's express permission.

Of course, this ruling violates basic constitutional rules laid down by the U.S. Supreme Court — including that laws enacted by the Confederacy have no force and effect.

The court also turned a basic legal proposition on its head. We are taught in first-year law school that, as laws are rewritten by the legislature, the latest version controls. The Georgia Supreme Court said no, the earlier Confederate law controls our reading of the laws subsequently enacted in the U.S. of A. That's a perverse extreme of a doctrine — one that has taken over our Supreme Court — called originalism, but that will also have to wait till another day for a full explanation of this curious logic.

Tricoli v. Watts, 2016-2020

The Tricoli case arose from falsifications of University System of Georgia (USG) financials, in which the state admits that two separate sets of books were kept, to hide 10 million dollars' worth of fraud. The Georgia Supreme Court violated the state's procedural statutes, in violation of constitutional due process, to let an appeals court opinion stand — that it was "pure imagination" to think anyone at the state level could be held accountable for cooking the books to steal millions of dollars.

This decision was used to put a stop to a range of RICO cases against state officials for using their state government positions to commit crimes against the pubic, starting with Benedek v. Adams. Imagine that: The state is insisting its officials have sovereign immunity protection to commit RICO felonies, including evidence tampering, witness tampering, perjury, bribery, and extortion — acting like racketeers, in other words.

Despite the state's ardent attempts to shut down the Tricoli case, further investigation showed that the USG and the Georgia attorney general were hiding over a billion dollars in fraud on the federal government. The attorney general has

now gone for a year without responding to these documented allegations, first filed in April of 2019, thus admitting them as true.

To top that, the Georgia attorney general has gone for more than three years without responding to the allegations in Richards v. Olens, that the USG appointed the former attorney general as president of Kennesaw State University (KSU) after Olens obstructed criminal investigation of the aforementioned billion-dollar USG fraud on the federal government.

Georgia's new attorney general, Chris Carr, has similarly admitted that the USG used extortion to hide its own financial fraud and oust former KSU president Dan Papp to make way for Olens. Carr has even admitted that Olens knew about the crimes committed against Dr. Papp while Olens was waiting in line for Papp's job. I told you these cases would each require their own in-depth account in future columns.

Imagine that: A succession of attorneys general have gone from calling the RICO cases "outlandish conspiracy theories" to complete silence, failing to respond to official court

pleadings.

These RICO cases challenging sovereign immunity for felony misrepresentations, theft of taxpayer funds, fraud on the federal government, extortion, bribery, and obstruction, are presently pending before the high court. That is the same Supreme Court that already held in 1984 that state officials are not immune for criminal acts in a civil RICO action — but in all the conservative judicial activism, that controlling precedent has been ignored, and I could not find a Confederate precedent.

That is also the same Supreme Court they want to keep Democrat John Barrow off so Governor Kemp can appoint the next Supreme Court justice.

Interestingly enough, the whole sovereign immunity expansion movement has its roots in the defense of sexual assault and sexual harassment by state officials. One of the initiatives Governor Kemp is promoting is stronger action against sexual harassment in state government.

You'd think they'd start by walking back the law created to give sovereign immunity to state troopers for sexually molesting female motorists during a traffic stop, or to a college dean for the rape of a college student, or to a state office supervisor for a year-long campaign of sexual harassment against a female subordinate, and for threatening to kill her dog and stuff it in her mailbox when she reported him. All of these state officials went scot-free under the current conservative judicial activist interpretation.

That is the legacy of impunity, for wrongs ranging from abusing power to committing felonies, impunity arising from the Supreme Court's expansion of sovereign immunity in Georgia. So why don't the people of Georgia get a vote? — **CL** —