

Tammy Lowit

From: Salina Gill <SGill@pattersonmoorebutler.com>
Sent: Wednesday, June 8, 2022 10:28 AM
To: Tammy Lowit
Cc: Logan Butler
Subject: STATUTORY ELECTRONIC SERVICE: Response to Complaint
Attachments: Response of Paul Moore.pdf; Cos.Response of Paul Moore.pdf; Andrea Verhoff Signed Affidavit 06.02.22.pdf; Carol Cookerly Signed Affidavit 05.31.22.pdf; Jan Jacobus Signed Affidavit 05.26.22.pdf; Peyton Jamison Signed Affidavit 05.27.22.pdf; Rick Mohrig Signed Affidavit 06.06.22.pdf; Steve Krokoff Signed Affidavit 05.27.22.pdf

Caution: This email originated from outside your organization. Exercise caution when opening attachments or clicking links, especially from unknown senders.

June 8, 2022

To: Ms. Tammy Lowit
City Clerk, City of Milton
Via Email: tammy.lowit@miltonga.gov

RE: Matter of the Complaint Against Council Member Paul Moore
Board of Ethics for the City of Milton

Good Morning,

Attached please find the following documents that are being served upon you in accordance with statutory electronic service:

- ***Response to the Complaint of Tony Palazzo***
- ***Certificate of Service***
- ***Affidavit of Andrea Verhoff***
- ***Affidavit of Carol Cookerly***
- ***Affidavit of Jan Jacobus***
- ***Affidavit of Peyton Jamison***
- ***Affidavit of Rick Mohrig***
- ***Affidavit of Steven Krokoff***

Salina Gill
Paralegal



213 Kelly Mill Road
Cumming, Georgia 30040
P. (770) 889-0846
F: (678) 335-5744

Patterson Moore Butler

Book a Mediation

CONFIDENTIALITY NOTICE: *The information contained in this correspondence is legally privileged and confidential information intended only for the use of the individual or entity named above. No part of this correspondence can be used for any purpose, without the express permission of the person that generated the correspondence. If you have received this message and are not the intended recipient, you are hereby notified that any dissemination, distribution or copying of this correspondence is strictly prohibited. If you have received this correspondence in error, please kindly notify us immediately at the email address from which this correspondence was sent or at (770) 889-0846. Thank you.*

 **In an effort to become a "greener" company, any attachments to this email will NOT follow via U.S. Mail, unless otherwise stated.**

**BEFORE THE BOARD OF ETHICS
FOR THE CITY OF MILTON**

In the Matter of the Complaint Against *
Council Member Paul Moore *

Response to the Complaint of Tony Palazzo

COMES NOW, Paul Moore, Respondent in the above styled matter and provides this Response to the Complaint, showing the Ethics Board as follows:

Preliminary Statement of Facts

Respondent is an elected member of the City Council of the City of Milton, Georgia. He is also a resident of the White Columns Neighborhood located in the City of Milton. Complainant is a resident of the White Columns neighborhood as well and is the President of the board of directors of the White Columns HOA. The matter of business before the City Council giving rise to this complaint was a proposed cost sharing agreement between the City and White Columns for the purchase and installation of four radar traffic calming devices. The cost to the City, if they shared the expense, would be approximately \$6800.00. It is important to note that the White Columns HOA Board had already fully purchased and installed the four traffic calming devices. The issue before the Council was the cost sharing agreement where White Columns was presumptively seeking to recoup half of its purchase and installation costs. As is typical, there was a period of public comment, and the majority of the comments opposed the installation of the traffic calming devices. It is also important to note that White Columns had previously attempted to get City approval for the installation of traffic calming devices in 2019 and was told by the City that they needed to survey the residents to ensure that at least 67% of the residents of White

Columns approved the installation¹. This figure of 67% approval comes from the City of Milton traffic calming ordinance, which states that a neighborhood can petition the City for approval of these devices if at least 67% of the homeowners vote in favor. Milton City Ordinance Section 48-258. There is a secondary method where an HOA can make the request in lieu of the petition process which is what is occurring here. At the meeting, Respondent asked about the prior studies and the prior vote. He also asked when the most recent speed study had been completed, which he learned was completed in 2019. In reading through the minutes of the meeting in their entirety², it is clear that Respondent was simply seeking to gain information and ensure he represented the interests of all citizens. The traffic calming ordinance requires that the information of which Respondent was inquiring be gathered and considered. Milton City Ordinance Section 48-235 *et. seq.* Additionally, it was discussed at the Council meeting that the street in question served not only the White Columns neighborhood, but the 1000-member golf club as well, along with all visitors to the club or neighborhood. This is a public street and any decision regarding the installation of traffic calming devices on it involves the public at large, not just the White Columns HOA. The discussion that was initiated by the Respondent at the meeting was clearly intended to gather current information so the best public decision could be made. The information requested and discussed is designed and was intended to consider the safety of the public as well as the issues raised by the residents of White Columns. Respondent really did proceed in a manner that represented the best interest of the public.

Although Complainant states in his Complaint that Respondent proposed a removal of the signs, that is simply not true. Respondent did not make a motion to remove the signs nor did he make that proposal. Respondent actually stated “that we not require that the signs be removed for

¹ See Exhibit A – emails between City and White Columns HOA from 2019.

² See Exhibit D attached to the Complaint, the Minutes from the City Council Meeting of May 2, 2022.

the time being”³ Respondent did request the signs be turned off so that a current speed study could be conducted and he did not want the traffic calming signs to inappropriately influence the speed study. Respondent was concerned that drivers would slow down as a result of the speed signs and that would not provide an accurate speed study result. His intent was to determine the accurate data regarding speeding on the road now that additional stop signs had been installed. Additionally, stop signs are to be installed in the White Columns neighborhood which would further assist in reducing speeds on the streets. The City has conducted a new speed study in 2022 that has demonstrated additional reduction in speed in White Columns from the studies conducted in 2016 and 2019. Even though the stop signs have not been installed yet, the education and enforcement efforts have generated positive results further reducing the need for speed calming devices. Ultimately, Respondent made a motion to defer the matter for 90 days in order to obtain more current information and additional information regarding the traffic calming devices, for the 2022 updated speed study to be completed, input from law enforcement and community input. No action was taken on the measure before the city council that night. However, Complainant still sees fit to make his allegations, which really amount to a complaint that would stop the gathering of important updated information so the City Council can make the best decision for the public as a whole.

Complainant has filed an ethics complaint alleging that Respondent should abstain from any business involving the White Columns neighborhood because he resides in that neighborhood. However, Complainant has failed to articulate a cognizable ethics violation, which is his burden. All the City Council members, other than the newest member Juliette Johnson, had personal knowledge that Respondent lived in White Columns prior to the meeting giving rise to this

³ See Meeting Minutes, page 22, 3rd Para.

complaint. Moreover, Respondent stated very early in the meeting that he lived in White Columns⁴, which is when council member Johnson was made aware of his residence. Respondent has never hidden the fact that he resides in White Columns and announced the same during the meeting. There is no evidence presented that Respondent works for or is otherwise involved with an organization whose mission is to oppose the traffic calming devices. However, since Respondent does in fact live in that neighborhood, he has a constitutional right to participate in the governance of his community as he sees fit. Moreover, the Ethics Ordinance defines a remote interest as one where a city official would be affected in the same way as the general public. Since the matter at issue is a traffic calming device on a public road, travelled by the general public at large and such devices are placed on other public roads, Respondent's interest is remote at best as the impact to him is the same as to any other member of the public that may drive that roadway. There is no evidence presented that the installation of a common traffic calming device would have any pecuniary impact on Respondent at all. While he may like or dislike such signs, the impact to him is general. Moreover, there is no evidence of any pecuniary interest involving Respondent relative to the installation of the traffic calming devices or cost sharing of the same.

First Defense

For his first defense, Respondent raises this Motion to Dismiss and/or Strike Complaint Pursuant to O.C.G.A. § 9-11-11.1 commonly referred to as the Anti-SLAPP (Strategic Litigation Against Public Participation) statute. This statute states that it is in the public interest to encourage participation by the citizens of this state in matters of public significance and that such participation should not be chilled through the abuse of process. This statute is to be construed broadly. O.C.G.A. § 9-11-11.1(b)(1) states that a claim for relief against a person arising from any act of

⁴ See Meeting Minutes, page 13, 3rd Para.

that person which could be reasonably construed as an act in furtherance of the person's right of petition or free speech under the Constitutions of the United States and Georgia made in connection with an issue of public interest or concern is subject to a motion to strike. Further, this statute requires that any such complaint be certified, and this complaint was not. The Georgia Anti-SLAPP statute applies to any written or oral statement or writing or petition made before a legislative, executive, or judicial proceeding, or any other official proceeding authorized by law, to any written or oral statement made in connection with an issue under consideration or review by any official proceeding authorized by law, and statements made in public regarding issues of public concern. O.C.G.A. § 9-11-11.1(c)(1) – (4).

A SLAPP action is filed with the intent to silence and intimidate a party's critic or opponent by overwhelming them with the cost of a legal defense until they abandon their criticism or opposition. Rogers v. Dupree, 349 Ga. App. 777 (2019). Further, SLAPP actions are meritless actions brought not to vindicate legally cognizable rights, but instead to deter or punish the exercise of constitutional rights of petition and free speech. Geer v. Phoebe Putney Health System, Inc., 310 Ga. 279 (2020). The Anti-SLAPP statute allows a Respondent who believes they have been subjected to a SLAPP an avenue for ending the suit quickly, summarily, and at minimal expense. Id.

This Complaint is absolutely a Strategic Lawsuit Against Public Participation (SLAPP). Respondent resides in the White Columns neighborhood along with Complainant. Complainant is currently the President of the HOA Board for their community. Complainant raises numerous issues not relevant to this matter, such as Respondent campaigning against him and the Board, that Respondent has supported other candidates⁵, and has attached emails and letters attributed to

⁵ See page 3 and 4 of the Complaint

Respondent. These emails and letters are considered protected communications under the Constitution. See Barnett v. Holt Builders, 338 Ga. App. 291 (2016)(an email and correspondence among members of a neighborhood about the subject of the litigation was subject to the Anti-SLAPP statute.) All of the frivolous and meritless allegations raised by Complainant involve Respondent exercising his Constitutional rights to free speech and petition. There is no law that prevents him from being an active member of his HOA simply because he is an elected council member for the city in which his neighborhood is located.

The City Council meeting forming the basis of this complaint occurred on May 2, 2022 in the evening. Complainant verified his approximately 64-page complaint on May 5 and filed it May 6. The issue before the council was a cost sharing agreement between the City and White Columns so that each entity would equally bear the cost of the installation of four traffic calming devices (Radar Feedback Signs) on White Columns Drive. Complainant alleges that Respondent steered the meeting in favor of removal of the signs.⁶ However, the meeting did not result in action being taken other than postponing the issue so that further research could be undertaken. Respondent did not move to remove the signs. The Complaint alleges that Respondent wants to endanger public safety by the removal of the signs, but that position is not supported by the transcript of the meeting. In fact, the Complaint states that the signs have already been installed and this was confirmed at the Council Meeting⁷. The issue was simply about the cost sharing agreement. The Complaint, as drafted, shows the clear intent of the Complainant to intimidate, harass and deter Respondent from exercising his Constitutional rights and violates the SLAPP statute. Moreover, Complainant's prayer for relief is that Respondent be directed to abstain from

⁶ Page 5 of the Complaint, 3rd Para.

⁷ It is also important to note that the City Council was not aware that the signs had been installed already.

all matters pertaining to White Columns Community Association.⁸ By his own pleadings, Complainant is asking this Panel direct the Respondent to abstain from all matters involving a community that he lives in⁹. It is clear that Complainant is abusing this process in order to silence and intimidate Respondent. Claimant has stated as much in his own pleadings and as a result, his complaint must be dismissed.

SECOND DEFENSE

For his second defense, Respondent raises the defense of Wrongful Use of this Article pursuant to Section 2-896 of the Code of Ordinances of the City of Milton. Respondent incorporates the allegations and information contained above into this second defense. Section 2-896(c) states that a wrongful use of the Ethics Ordinance occurs when a frivolous, false, or politically motivated ethics complaint is filed in a negligent, reckless, or purposeful manner without a basis in law or fact and for purpose other than reporting an ethics violation¹⁰. The ordinance provides certain criteria to examine in reviewing a defense of wrongful use of this article. Relevant to this case, is the timing of the complaint¹¹, the publicity surrounding the filing of the complaint¹², the relationship between the Complainant and the Respondent¹³, the Complainant knew his allegations were not based in law or fact¹⁴, and the Complainant's motives¹⁵. All of these criteria are discussed above and hereafter in this response. However, Respondent has just learned that the local newspaper has submitted an open records request

⁸ See Conclusion, Page 16 of the Complaint.

⁹ Taking this request to its logical conclusion, Respondent would be barred from voting on the millage rate because it would have some impact on White Columns. This request is absurd and shows that Complainant's true intentions are to silence Respondent on all matters regarding his neighborhood.

¹⁰ Complainant has averred that Respondent has been involved in HOA business that Complainant does not like and obviously feels threatened by. None of these averments in the Complaint involve or regard the traffic calming devices.

¹¹ See City of Milton Code of Ordinances Section 2-896(e)1

¹² See City of Milton Code of Ordinances Section 2-896(e)2

¹³ See City of Milton Code of Ordinances Section 2-896(e)3

¹⁴ See City of Milton Code of Ordinances Section 2-896(e)5

¹⁵ See City of Milton Code of Ordinances Section 2-896(e)6

seeking to obtain a copy of the complaint. These matters are not typically publicized by the City. While Respondent does not know who tipped off the news so they could submit their open records request, the most likely culprit is Complainant, as he is the only person with the knowledge of the complaint and the motive to use the media against Respondent.

As Respondent will discuss below in response to each allegation of the complaint, there is no basis in law or fact for this complaint¹⁶. And as discussed above, Complainant is clearly using this complaint process to intimidate, harass and silence Respondent. The timing of the complaint, the underlying issues raised in the complaint that are not relevant to the immediate matter and the fact that the only action taken at the meeting was to defer the matter so more information could be obtained, clearly shows that the Complaint was initiated to remove Respondent from further discussion of the matter, and it was filed without being based in law or fact.

The Complaint itself is paradoxical. Complainant's Exhibit C is a letter, written by Complainant to Respondent and other city officials asking for a meeting between the City and the White Columns HOA and residents. It seems the Complainant has no problem involving Respondent in this matter when Complainant thinks it will support his end game. However, when Respondent moves to defer the matter to obtain more information and just does not bow down to the demands of Complainant, Complainant then files his 63-page complaint three days later, based on an alleged conflict of interest. However, Complainant does not point to any actual fact that would meet the definition of a conflict of interest under the ordinance. An actionable conflict of interest is one that provides a direct or indirect pecuniary interest or a material benefit to the city official. In this case, the HOA has already paid for and installed the signs, without a financial assessment against its residents. Complainant speculates that an assessment could occur, but this

¹⁶ Most counts of the complaint only allege bare speculation and innuendo.

speculation does not support a legal conflict of interest. The HOA clearly had the funds to buy and install the signs and now they seek to recoup some expense. There simply is no direct or indirect pecuniary interest to Respondent, nor is there any material benefit to Respondent. In fact, the cases cited by Complainant in his citations of authority are distinguishable from this case and not relevant¹⁷.

Complainant relies on the Ianicelli v. McNeely¹⁸ case for the supposition that Respondent is a public trustee and that his actions violate the public trust. However, the issue in the Ianicelli case was whether sitting school board members could vote on the school system budget where each of them were married to a school system employee and thus their vote approved the salaries of their spouses. The Court held that such a vote did not violate public trust. Moreover, the Court found that the allegations in the Ianicelli case were based on supposition and innuendo, just like the instant case. Although cited by Complainant, the Ianicelli case supports Respondent. Much like the council members married to school employees, Respondent is one of hundreds of residents living in White Columns. The issue before the Milton City Council was a public roadway that not only serves the residents of the neighborhood, but their families, visitors and the 1000 members of the Golf Club. The issue was one of public import, not specific to the HOA or the residents of a single street. There was a closer relationship between the school board members and their spouses' salaries in the Ianicelli case than there is to any alleged interest between Respondent and the traffic calming devices at issue in this case. If the Ianicelli Court did not find a violation of public trust

¹⁷ In the Dunaway case cited by Complainant, the public official was an owner of the business involved in the matter. In the Wyman case cited by Complainant, the public official was the largest vendor of the business involved in the matter. In the Brooks case cited by Complainant, the public official held an interest in the sub-contractor that would be awarded the work. In the Vickers case cited by Complainant, the public official owned land beside the land being voted on and said vote immediately and directly negatively impacted his land's value. In the Columbus case cited By Complainant, the public official was also serving on a city board. In THIS case, Respondent has absolutely no ownership interest in anything regarding the traffic calming devices and there is absolutely no immediate and direct effect that this matter has on Respondent.

¹⁸ 272 Ga. 234 (2000)

under those facts, there is clearly no ethics violation in this case. Complainant knew his complaint was not based in law or fact because he first cited to Ianicelli but still brought his baseless complaint and in doing so is abusing the process of the ethics ordinance.

The Complaint must be dismissed. Additionally, Claimant must be required to reimburse Respondent his legal fees due to Claimant bringing his complaint both in violation of the Anti-SLAPP statute and the Ordinance's prohibition on abusive claims.

THIRD DEFENSE

Respondent's third defense is that Claimant has failed to state a claim upon which relief may be granted and the complaint must be dismissed pursuant to Milton City Ordinance Section 2-882(e) because the complaint fails to produce or show specific, substantiated evidence from a credible source to support a reasonable belief that there has been a violation of the Ethics Ordinance. The Ethics Panel is hereby moved to dismiss the complaint pursuant to Sec. 2-882(f) of the Milton City Ordinances.

FOURTH DEFENSE

Respondent's fourth defense is a general denial of all allegations against him, and he will specifically address each alleged violation of the Ethics Ordinance below:

Count I – Violation of Sec. 2-861: Abstention to avoid conflicts of interest

Complainant alleges that Respondent has a conflict of interest in this matter because he has a conflict based on his self-serving statements made during the meeting. However, when you review all of the statements made by Respondent at the meeting you see that he was not pushing a personal agenda but was responding to opposition raised during public comment, inquiring into the previous request by White Columns to install traffic calming devices, and he was following the requirements of the traffic calming ordinance in asking his questions. Complainant utterly fails

to articulate a cognizable conflict of interest. Respondent simply lives in the neighborhood in which the street is located where the HOA has already installed traffic calming signs. Respondent is not alleged to be the owner of the company from which the signs were bought or a competing company. Respondent is not alleged to have obtained any immediate and direct pecuniary interest in the matter. There simply is not a conflict of interest. If Complainant's position were based in law or fact, then City Council members could not vote on such things as millage rates simply because they live in the City. However, out of an abundance of caution and in due diligence, Respondent did discuss with the City Manager if there would be a conflict of interest since he lived in the neighborhood. Respondent was advised that it was not a conflict of interest for him to participate in this matter. Which is good advice, since Respondent had not direct or immediate benefit coming to him and the matter was one of public significance as it dealt with a public roadway within the city limits of Milton.

Complainant makes broad and general allegations in this Count I, but none rise to a conflict of interest. While it is true that self-interested or conflicted participation by a public official can support a conflict of interest, the actual type of self-interested or conflicted participation that legally rises to such a conflict is significantly narrower than Complainant acknowledges. Complainant wants you to find that because Respondent lives in the neighborhood and may have an inclination that diverts from that held by Complainant, he is acting in a self-serving or self-interested manner. This is simply incorrect, legally and factually. "The type of conflict or self-interest that voids a zoning decision is financial; the conflict arises when a public officer, in the discharge of his public function, acts upon a measure relating to a specific transaction and such transaction shall directly and immediately affect his pecuniary interest. A remote or speculative financial interest will not support a conflict-of-interest allegation." White v. Board of

Commissioners of McDuffie County, 252 Ga. App. 120 (2001)(Emphasis added). In White, the plaintiffs alleged that since a commissioner was vice president of the bank that loaned money for the property that was rezoned, he had a conflict. However, there was no evidence presented that the commissioner directly benefited financially as a result of performing his public duties. The Court found the allegations of Plaintiff were remote and speculative and that a conflict of interest did not exist.

In our case, Respondent is much further removed from any alleged conflict than the commissioner in White because Respondent has no interest in any business relative to this matter, which is a huge distinction. The law is clear that there must be a direct and immediate effect on Respondent's pecuniary interest to establish a conflict of interest. In fact, the definition of conflict of interest in the Ordinance complies with this legal directive. Complainant has failed to show that Respondent had a conflict of interest and failed to show that Respondent's pecuniary interest was going to be immediately and directly affected by his participation in the matter before the City Council. Since there is no conflict of interest, there is nothing on which Respondent would be required to abstain. Complainant has failed to meet his burden on Count I and it must be dismissed.

Count II – Sec. 2-825: Code of Ethics for Municipal Service generally

Complainant alleges that “upon information and belief” Respondent has held himself out as representative of a view against the traffic calming devices. As an initial matter, the phrase “upon information and belief” really means that Complainant has no actual proof but wants to raise an allegation and attempt to protect himself by saying it was based upon information and belief. Unfortunately for Complainant, he did not provide any information upon which the Ethics Panel can reach the same belief. There is no evidence that a special favor has been dispensed by Respondent. There is no evidence Respondent made a private promise to vote for or against the

matter. Rather, Respondent's comments acknowledge the comments made by the public participation individuals who opposed the matter and sought to gain further and more current information as is required by the traffic calming ordinance. In fact, Respondent even made a motion to defer the matter to get more information. He did not make a motion to any other effect. Now Complainant wants Respondent completely removed from all matters involving White Columns. Maybe that is because Complainant knows the updated information does not support his position and he is trying to remove someone he views as an obstacle to his personal agenda. This is abuse of the system. Complainant must bring more than speculation and innuendo¹⁹ that Respondent has dispensed a special favor. The fact is Respondent has not dispensed any favors. He has not employed his position in a manner that violates the code of ethics by using the council as his proxy. It is difficult to prove a negative as they say. Respondent simply has not violated this provision of the ethics code and Complainant has failed to set forth any evidence that he has, other than "information and belief" or more accurately, speculation and innuendo, which is insufficient. As such it must be dismissed.

Count III – Sec. 2-831 – Code of Ethics for City Officials and department directors.

Count III is basically a restatement of Count II regarding special favors and Count I regarding breach of public trust. However, Complainant fails to make any specific allegations at all under Count III but states, due to the foregoing reasons respondent has breached the public trust. Count III must be dismissed as Complainant has failed to make a single factual allegation to support the count. If the Ethics Panel considers this count on the "foregoing", Respondent shows that he has addressed these issues specifically in Counts I and II above and hereby incorporates his responses to Count I and II above into this Count III. There has been no evidence

¹⁹ See the White case referenced above.

presented that Respondent has a conflict of interest as required by law and ordinance, no evidence presented that he has received a direct and immediate pecuniary interest to support a finding there is a conflict, no evidence presented that he has dispensed or promised to dispense a special favor, and no evidence that he has violated the allegations of this Count III. As such it must be dismissed.

Count IV – Sec. 2-848 Conflict of Interest Transactions

Complainant alleges that Respondent has a conflict of interest because if the cost sharing measure were to be approved that community assessments in White Columns are likely to be impacted. First, this is remote, speculative, and full of innuendo, which as discussed above is legally insufficient to support a conflict of interest. The ordinance cited in this Count says that the official shall not engage in any business or transaction or have a financial interest which is incompatible with the proper discharge of his duties. Respondent has no monetary interest in this decision. Respondent has no business interest in this decision. Complainant alleges that the “mere presence” of a pecuniary interest is sufficient. This is incorrect, the law requires a direct and immediate pecuniary interest and here there is not one and Complainant has failed to produce any evidence of a mere interest. This Count must also be dismissed.

Count V – Sec. 2-852: Withholding Information

Complainant alleges that Respondent has withheld from the Council information that he advocates for a particular group within the community²⁰. However, Complainant has provided no evidence to support this allegation. Complainant did provide a group letter on which Respondent’s name was added along with many others in the community. This letter dealt with elections to the Board of the HOA, it did not relate to traffic calming devices at all and is therefore irrelevant to

²⁰ Interestingly, in Count II above Complainant makes this same allegation “upon information and belief” and does not provide any evidence in support. Once again, he makes a claim without proof.

this discussion as it relates to Respondent²¹. Rather, the council members were either already aware that Respondent resided in White Columns or were made aware when he announced it at the meeting. He disclosed his residence. His alleged and potential bias, if there is even bias at all, is therefore known to all council members. There is no evidence that he advocates for a particular group as to the issue before the Council. This Count must also be dismissed.

Count VI – Sec. 2-855: Political Recrimination and activity

Complainant alleges that Respondent has used his public office to aid the cause of the group for which he speaks²². First, there is no group for which Respondent speaks and Complainant has failed to particularly identify any evidence to support this claim. Second, the issue before the Council involves a public roadway and therefore the public at large. The ordinance prohibits city official to use government time or equipment to aid a political candidate, party, or cause. I assume that Complainant characterizes the HOA dispute as political, but that is not correct. Political activity ordinances such as this deal with political campaigning for elected office. This ordinance simply does not apply to HOA disputes. Ordinance 2-855, when read as whole, shows its intent is to regulate political campaigning, which must be associated with a political party, candidate, or cause. The matter regarding traffic calming devices does not involve a political candidate, it does not involve a political party, and it most definitely does not involve a political cause. Every count of this complaint is frivolous, but this count especially, it simply does not apply to the allegations at hand. Count VI must also be dismissed.

Count VII – Sec. 2-859: Disclosure of Interest

²¹ The inclusion of this letter by Claimant is relevant to the issue of his intent in filing a baseless and frivolous complaint in violation of the Anti-SLAPP statute and the Ordinance. It simply shows that Complainant views Respondent as a homeowner who is “against” him on other HOA matters, so Complainant is attacking him through this frivolous ethics complaint.

²² Interestingly, in Count II above Complainant makes this same allegation “upon information and belief” and does not provide any evidence in support. Once again, he makes a claim without proof.

Complainant alleges that Respondent has failed to disclose his personal pecuniary interest in the matter before, the council, and somehow believes Respondent has a personal interest in the cost sharing of traffic calming devices. Respondent has no personal pecuniary interest to disclose. He is not involved financially in any matter related to the traffic calming devices. He is not immediately and directly receiving any money nor is he immediately and directly having to pay any money. Respondent did disclose that he lived in White Columns, there was nothing else to disclose. Count VII must be dismissed.

CONCLUSION

Every count of this Complaint is frivolous, baseless, and simply intended to harass, intimidate, and silence Respondent. Complainant is abusing the process, he has initiated this matter in violation of the Georgia Anti-SLAPP statute and the City of Milton Ethics Ordinance regarding abusive claims. The factual allegations raised by Complainant deal almost entirely with matters that do not relate directly to the business item before the Council for which it is alleged Respondent has a conflict of interest. Complainant clearly dislikes Respondent and views Respondent as a threat to his position on the HOA board of White Columns, why else would Complainant spend so much time talking about other HOA matters not relevant to his actual complaint. Complainant has initiated a 63 page, seven count complaint that is based on speculation, innuendo, and Complainant's personal animosity against Respondent. The Complaint must be dismissed.

The Counts raised are redundant and, in some cases, not applicable even to the facts as raised. Simplified, Complainant is attempting to allege that Respondent has a conflict of interest regarding the cost sharing of traffic calming signs already installed and paid for by the HOA. As discussed above, a legal and actionable conflict of interest exists when there is an immediate and direct pecuniary interest to the public official because of his participation in a public matter. In

this case, there is NO immediate and direct pecuniary interest to or against Respondent. In fact, there is no remote interest. There are only broad and general allegations that barely amount to speculation and innuendo, which is legally insufficient to state a claim.

This Complaint must be dismissed in its entirety due to Complainant violating Georgia Law (the Anti-SLAPP statute) and the ordinance itself in filing his Complaint motivated by personal animosity and a personal desire to intimidate, harass, and silence a fellow neighbor that he views as a threat to his seat as President of the HOA Board. This is absolutely abuse of process. This type of complaint is the very reason the Anti-SLAPP statute exists and why the City Ordinance prohibits abuse of process. Complainant could not even articulate a single fact that would support the legal definition of a conflict of interest. Rather he relies on irrelevant matters, supposition, speculation, and innuendo to attempt to create an appearance of a conflict. Complainant has failed to show any conflict of interest exists at all and has failed to produce any evidence to support a reasonable belief that a conflict exists. For all of the above reasons, Respondent respectfully requests that the Ethics Panel dismiss this matter summarily.

Respondent also requests that Complainant be required to pay all of his legal fees incurred in defending this frivolous action as allowed by the Anti-SLAPP statute and City Ordinance Section 2-896. Respondent requests that this matter be held open for the limited purpose of providing a final billing statement to the Panel so that costs and fees may be assessed against Complainant.

Respectfully submitted this 8 day of June, 2022.




E. Logan Butler
Attorney for Respondent
GA Bar No. 142532

Patterson Moore Butler, LLC
213 Kelly Mill Road
Cumming, Georgia 30040
770-889-0846
lbutler@pattersonmoorebutler.com

**STATE OF GEORGIA
COUNTY OF FORSYTH**

VERIFICATION

Personally appeared before me the undersigned officer, authorized by law to administer oaths, Paul Moore in his capacity as a member of the City Council of the City of Milton, who, being first duly sworn, deposes and says on oath that the information contained in the foregoing Response to the Complaint of Tony Palazzo is true and correct to the best of his knowledge, information and belief.



Paul Moore

Sworn and subscribed before me

this 8 day of June, 20 22



Notary Public

My Commission Expires:



**BEFORE THE BOARD OF ETHICS
FOR THE CITY OF MILTON**

In the Matter of the Complaint Against *
Council Member Paul Moore *

CERTIFICATE OF SERVICE


I hereby certify that I have this day served a true and correct copy of the foregoing
Response of Paul Moore by email to the following persons:

Tammy Lowit
City Clerk, City of Milton
Tammy.lowit@miltonga.gov

Tony Palazzo
Complainant
Tony.palazzo@berkeleycp.com

This 8th day of June, 2022.

PATTERSON MOORE BUTLER, LLC
213 Kelly Mill Road
Cumming, Georgia 30040
(770) 889-0846
lbutler@pattersonmoorebutler.com



E. LOGAN BUTLER
Georgia Bar No. 142532
Guardian Ad Litem

STATE OF GEORGIA
COUNTY OF FULTON

AFFIDAVIT OF: ANDREA VERHOFF

After having been duly sworn, the affiant, ANDREA VERHOFF made the following statements, swearing, under penalty of perjury, that the statements contained herein are true and correct to the best of affiant's knowledge, information and belief.

1.

I am over eighteen years of age and I am of competent mind. I give this statement under penalty of perjury and state these facts to be true.

2.

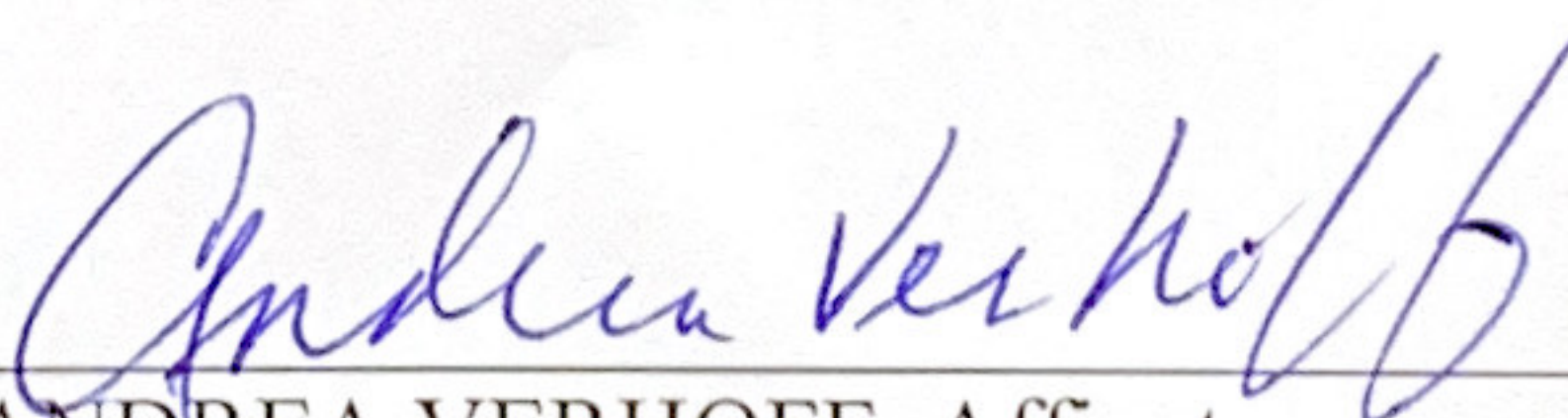
I understand that these statements are to be used in regard to the complaint raised against Paul Moore by Tony Palazzo alleging violations of the City of Milton's Ethics Ordinance.

3.

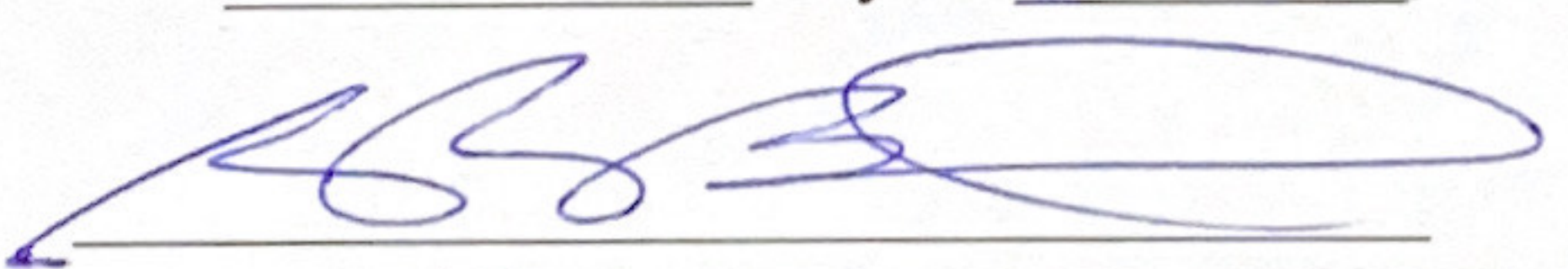
I hereby state and affirm that:

I am an elected Council Member of the City Council of Milton and I personally know Paul Moore. Prior to the Council meeting on May 2, 2022 I was aware that Paul Moore resided in the White Columns Community.

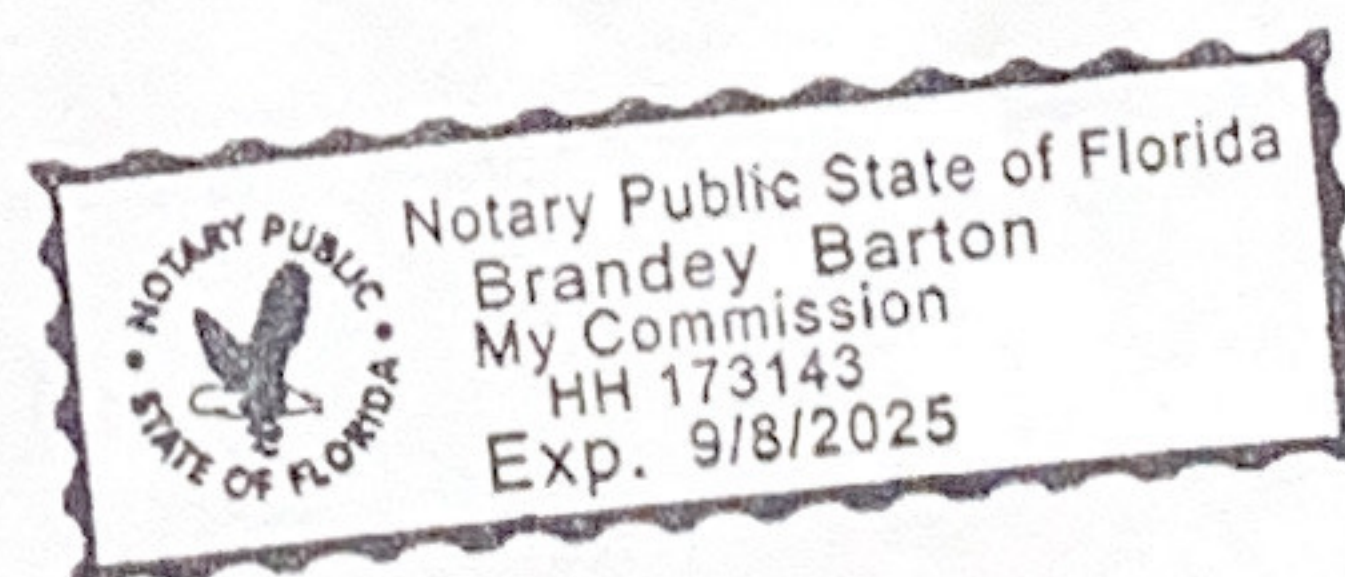
Further affiant say not.


ANDREA VERHOFF, Affiant

Sworn to and subscribed before me
this 2nd day of JUNE, 2022.


Notary Public

My commission expires 09/08/2025



STATE OF GEORGIA
COUNTY OF FULTON

AFFIDAVIT OF: CAROL COOKERLY

After having been duly sworn, the affiant, CAROL COOKERLY made the following statements, swearing, under penalty of perjury, that the statements contained herein are true and correct to the best of affiant's knowledge, information and belief.

1.

I am over eighteen years of age and I am of competent mind. I give this statement under penalty of perjury and state these facts to be true.

2.

I understand that these statements are to be used in regard to the complaint raised against Paul Moore by Tony Palazzo alleging violations of the City of Milton's Ethics Ordinance.

3.

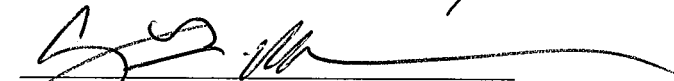
I hereby state and affirm that:

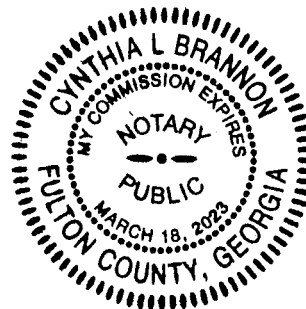
I am an elected Council Member of the City Council of Milton and I personally know Paul Moore. Prior to the Council meeting on May 2, 2022 I was aware that Paul Moore resided in the White Columns Community.

Further affiant say not.


CAROL COOKERLY, Affiant

Sworn to and subscribed before me
this 31 day of May, 2022.


Notary Public
My commission expires March 18, 2023



STATE OF GEORGIA
COUNTY OF FULTON

AFFIDAVIT OF JAN JACOBUS

After having been duly sworn, the affiant, JAN JACOBUS made the following statements, swearing, under penalty of perjury, that the statements contained herein are true and correct to the best of affiant's knowledge, information and belief.

1.

I am over eighteen years of age and I am of competent mind. I give this statement under penalty of perjury and state these facts to be true.

2.

I understand that these statements are to be used in regard to the complaint raised against Paul Moore by Tony Palazzo alleging violations of the City of Milton's Ethics Ordinance.

3.

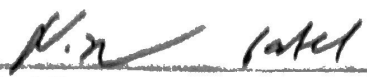
I hereby state and affirm that:

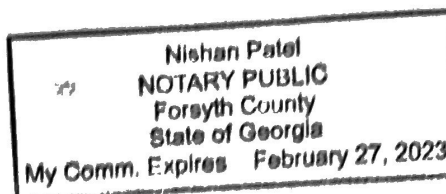
I am an elected Council Member of the City Council of Milton and I personally know Paul Moore. Prior to the Council meeting on May 2, 2022 I was aware that Paul Moore resided in the White Columns Community.

Further affiant say not.


JAN JACOBUS, Affiant

Sworn to and subscribed before me
this 26 day of MAY, 2022.


Notary Public
My commission expires 02/27/2023



STATE OF GEORGIA
COUNTY OF FULTON

AFFIDAVIT OF: JAN JACOBUS

After having been duly sworn, the affiant, JAN JACOBUS made the following statements, swearing, under penalty of perjury, that the statements contained herein are true and correct to the best of affiant's knowledge, information and belief.

1.

I am over eighteen years of age and I am of competent mind. I give this statement under penalty of perjury and state these facts to be true.

2.

I understand that these statements are to be used in regard to the complaint raised against Paul Moore by Tony Palazzo alleging violations of the City of Milton's Ethics Ordinance.

3.

I hereby state and affirm that:

I am an elected Council Member of the City Council of Milton and I personally know Paul Moore. Prior to the Council meeting on May 2, 2022 I was aware that Paul Moore resided in the White Columns Community.

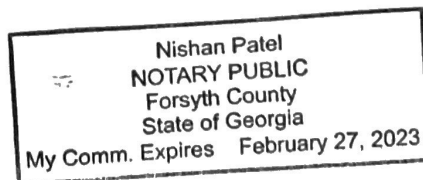
Further affiant say not.


JAN JACOBUS, Affiant

Sworn to and subscribed before me
this 26 day of MAY, 2022.


Notary Public

My commission expires 02/27/2023



STATE OF GEORGIA
COUNTY OF FULTON

AFFIDAVIT OF: PEYTON JAMISON

After having been duly sworn, the affiant, PEYTON JAMISON made the following statements, swearing, under penalty of perjury, that the statements contained herein are true and correct to the best of affiant's knowledge, information and belief.

1.

I am over eighteen years of age and I am of competent mind. I give this statement under penalty of perjury and state these facts to be true.

2.

I understand that these statements are to be used in regard to the complaint raised against Paul Moore by Tony Palazzo alleging violations of the City of Milton's Ethics Ordinance.

3.

I hereby state and affirm that:

I am the elected Mayor of the City of Milton and I personally know Paul Moore. Prior to the Council meeting on May 2, 2022 I was aware that Paul Moore resided in the White Columns Community.

Further affiant say not.

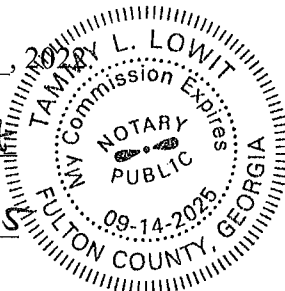

PEYTON JAMISON, Affiant

Sworn to and subscribed before me

this 27 day of May, 2022


Notary Public

My commission expires 9-14-2025



STATE OF GEORGIA
COUNTY OF FULTON

AFFIDAVIT OF: RICK MOHRIG

After having been duly sworn, the affiant, RICK MOHRIG made the following statements, swearing, under penalty of perjury, that the statements contained herein are true and correct to the best of affiant's knowledge, information and belief.

1.

I am over eighteen years of age and I am of competent mind. I give this statement under penalty of perjury and state these facts to be true.

2.

I understand that these statements are to be used in regard to the complaint raised against Paul Moore by Tony Palazzo alleging violations of the City of Milton's Ethics Ordinance.

3.

I hereby state and affirm that:

I am an elected Council Member of the City Council of Milton and I personally know Paul Moore. Prior to the Council meeting on May 2, 2022 I was aware that Paul Moore resided in the White Columns Community.

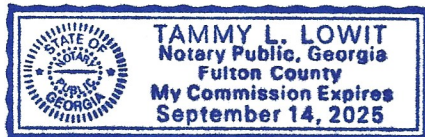
Further affiant say not.


RICK MOHRIG, Affiant

Sworn to and subscribed before me
this 6th day of June, 2022.


Notary Public

My commission expires 9/14/2025



STATE OF GEORGIA
COUNTY OF FULTON

AFFIDAVIT OF: STEVEN KROKOFF

After having been duly sworn, the affiant, STEVEN KROKOFF made the following statements, swearing, under penalty of perjury, that the statements contained herein are true and correct to the best of affiant's knowledge, information and belief.

1.

I am over eighteen years of age and I am of competent mind. I give this statement under penalty of perjury and state these facts to be true.

2.

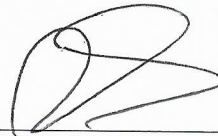
I understand that these statements are to be used in regard to the complaint raised against Paul Moore by Tony Palazzo alleging violations of the City of Milton's Ethics Ordinance.

3.

I hereby state and affirm that:

I am the City Manager of the City of Milton and I personally know Paul Moore. Prior to the Council meeting on May 2, 2022 I was aware that Paul Moore resided in the White Columns Community. Further, prior to the May 2, 2022 City Council meeting Paul Moore asked, in sum and substance, if the business item regarding the proposed cost sharing agreement between the City and White Columns would create a conflict or otherwise cause Paul to recuse from participating in that business item. I responded, in sum and substance, that I did not believe a conflict existed.

Further affiant say not.



STEVEN KROKOFF, Affiant

Sworn to and subscribed before me
this 27 day of May, 2022


Notary Public

My commission expires 9-14-2025

