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C L A R E L O C K E
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Via Email, Federal Express, & Hand Delivery

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Sidney Powell
Defending the Republic
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Re: Defamatory Falsehoods About Dominion

Dear Ms. Powell:

We represent US Dominion Inc. and its wholly owned subsidiaries, Dominion Voting Systems, Inc. and Dominion Voting Systems Corporation (collectively, "Dominion"). We write regarding your wild, knowingly baseless, and false accusations about Dominion, which you made on behalf of the Trump Campaign as part of a coordinated media circus and fundraising scheme featuring your November 19 press conference in Washington, D.C. and including your "Stop the Steal" rally and numerous television and radio appearances on—and statements to—Fox News, Fox Business, Newsmax, and the Rush Limbaugh Radio Show, among others.





I. Your reckless disinformation campaign is predicated on lies that have endangered Dominion's business and the lives of its employees.

Given the sheer volume and ever-expanding set of lies that you have told and are continuing to tell about Dominion as part of your multi-media disinformation "Kraken" fundraising campaign, it would be impractical to address every one of your falsehoods in this letter. Without conceding the truth of any of your claims about Dominion, we write to demand that you retract your most serious false accusations, which have put Dominion's employees' lives at risk and caused enormous harm to the company.

For example, you falsely claimed that Dominion and its software were created in Venezuela for the purpose of rigging elections for the now-deceased Venezuelan dictator Hugo Chavez, that Dominion paid kickbacks to Georgia officials in return for a "no-bid" contract to use Dominion systems in the 2020 election, and that Dominion rigged the 2020 U.S. Presidential Election by manipulating votes, shifting votes, installing and using an algorithm to modify or "weight" votes such that a vote for Biden counted more than a vote for Trump, trashing Trump votes, adding Biden votes, and training election workers to dispose of Trump votes and to add Biden votes.

By way of example only, just last week, you made the following false assertions about Dominion to Jan Jekielek at *The Epoch Times*:¹

Effectively what they did with the machine fraud was to, they did everything from injecting massive quantities of votes into the system that they just made up, to running counterfeit ballots through multiple times in multiple batches to create the appearance of votes that weren't really there. They trashed votes.

These statements are just the tip of the iceberg, which includes similar and other false claims you made at your Washington, D.C. press conference and to other media outlets with global internet audiences.

Your outlandish accusations are demonstrably false. While soliciting people to send you "millions of dollars"² and holding yourself out as a beacon of truth, you have purposefully avoided naming Dominion as a defendant in your sham litigations—effectively denying Dominion the opportunity to disprove your false accusations in court. Dominion values freedom of speech and respects the right of all Americans—of all political persuasions—to exercise their First Amendment rights and to disagree with each other. But while you are entitled to your own opinions, Ms. Powell, you are not entitled to your own facts. Defamatory falsehoods are actionable in court and the U.S.

¹ The Epoch Times, *American Thought Leaders* (Dec. 13, 2020), available at, https://www.theepochtimes.com/exclusive-sidney-powell-on-election-lawsuits-supreme-court-decision-and-the-flynn-case_3617067.html.

² Sidney Powell's Legal Defense Fund, Defending the Republic, <https://defendingtherepublic.org/>.



Supreme Court has made clear that “there is no constitutional value in false statements of fact.” *Gertz v. Welch, Inc.*, 418 U.S. 323, 340 (1974). Dominion welcomes transparency and a full investigation of the relevant facts in a court of law, where it is confident the truth will prevail. Here are the facts:

1. Dominion’s vote counts have been repeatedly verified by paper ballot recounts and independent audits.

Dominion is a non-partisan company that has proudly partnered with public officials from both parties in accurately tabulating the votes of the American people in both “red” and “blue” states and counties. Far from being created to rig elections for a now-deceased Venezuelan dictator, Dominion’s voting systems are certified under standards promulgated by the U.S. Election Assistance Commission (“EAC”), reviewed and tested by independent testing laboratories accredited by the EAC, and were designed to be auditable and include a paper ballot backup to verify results. Indeed, paper ballot recounts and independent audits have repeatedly and conclusively debunked your election-rigging claims, and on November 12, 2020, the Elections Infrastructure Government Coordinating Council and the Election Infrastructure Sector Coordinating Executive Committees released a joint statement confirming that there is “*no evidence* that any voting system deleted or lost votes, changed votes, or was in any way compromised” and that the 2020 election was the most secure in American history.³ The Joint Statement was signed and endorsed by, among others, the National Association of State Election Directors, National Association of Secretaries of State, and the U.S. Cybersecurity & Infrastructure Security Agency (“CISA”)—then led by a Trump appointee, Chris Krebs.

In addition, your false accusation that Dominion rigged the 2020 election is based on a demonstrably false premise that wildly overstates Dominion’s very limited role in elections. Dominion provides tools such as voting machines that accurately tabulate votes for the bipartisan poll workers, poll watchers, and local election officials who work tirelessly to run elections and ensure accurate results. Dominion’s machines count votes from county-verified voters using a durable paper ballot. Those paper ballots are the hard evidence proving the accuracy of the vote counts from Dominion’s machines. If Dominion had manipulated the votes, the paper ballots would not match the machine totals. In fact, they do match. Recounts and audits have proven that Dominion did what it was designed and hired to do: accurately tabulate votes.

³ Cybersecurity & Infrastructure Security Agency, *Joint Statement From Elections Infrastructure Government Coordinating Council & The Election Infrastructure Sector Coordinating Executive Committees* (Nov. 12, 2020), available at, <https://www.cisa.gov/news/2020/11/12/joint-statement-elections-infrastructure-government-coordinating-council-election>.



2. Dominion has no connection to Hugo Chavez, Venezuela, or China.

As you are well aware from documents in the public domain and attached to your court filings, *Hugo Chavez's elections were not handled by Dominion*, but by an entirely different company—Smartmatic. This is a critical fact because you have premised your defamatory falsehoods on your intentionally false claim that Dominion and Smartmatic are the same company even though you know that they are entirely separate companies who compete with each other. Dominion was not created in or for Venezuela, has never been located there, and is not owned by Smartmatic or Venezuelan or Chinese investors. Dominion has never provided machines or any of its software or technology to Venezuela, nor has it ever participated in any elections in Venezuela. It did not receive \$400 million from the Chinese in the weeks before the 2020 election or otherwise. It has no ties to the Chinese government, the Venezuelan government, Hugo Chavez, Malloch Brown, George Soros, Bigfoot, or the Loch Ness Monster. Dominion does not use Smartmatic's software or machines, and there was no Smartmatic technology in any of Dominion's voting machines in the 2020 election.

3. You falsely claimed that Dominion's founder admitted he "can change a million votes, no problem at all" and that you would "tweet out the video later"—but you never did so because no such video exists.

During at least one of your many media appearances, you promised to "tweet out [a] video" of Dominion's founder admitting that he "can change a million votes, no problem at all." Your assertion—to a global internet audience—that you had such damning video evidence bolstered your false accusations that Dominion had rigged the election. Yet you have never produced that video because, as you know, it does not exist. Dominion's founder never made such a claim because Dominion cannot change votes. Its machines simply tabulate the paper ballots that remain the custody of the local election officials—nothing more, nothing less.

4. You falsely claimed that you have a Dominion employee "on tape" saying he "rigged the election for Biden"—but you know that no such tape exists.

In peddling your defamatory accusations, you also falsely told a national audience that you had a Dominion employee "on tape" saying that "he rigged the election for Biden." Your own court filings prove that no such tape exists. In them, you cited an interview of Joe Oltmann, a Twitter-banned "political activist" who—far from claiming he had that shocking alleged confession "on tape"—claimed he took "notes" during a conference call he supposedly joined after "infiltrating Antifa." This is a facially ludicrous claim for a number of reasons, including the fact that he lives in Colorado, where it would have been perfectly legal to record such a call if it had actually happened. As a result of your false accusations, that Dominion employee received death threats.



II. Because there is no reliable evidence supporting your defamatory falsehoods, you actively manufactured and misrepresented evidence to support them.

Despite repeatedly touting the overwhelming “evidence” of your assertions during your media campaign, every court to which you submitted that so-called “evidence” has dismissed each of your sham litigations, and even Trump appointees and supporters have acknowledged—including *after* you filed your “evidence” in court, posted it on your fundraising website, and touted it in the media—that there is *no evidence* that actually supports your assertions about Dominion. Indeed:

- One federal judge observed that you submitted “nothing but speculation and conjecture that votes for President Trump were destroyed, discarded or switched to votes for Vice President Biden.” Op. & Order Den. Pl.’s Emer. Motion. for Decl., Emer., and Inj. Relief at 34, *Whitmer v. City of Detroit*, No. 20-cv-12134 (E.D. Mich. Dec. 7, 2020) [Dkt. 62].
- Another federal judge commented that the attachments to your complaint were “only impressive for their volume,” are “largely based on anonymous witnesses, hearsay, and irrelevant analysis of unrelated elections,” and include “expert reports” that “reach implausible conclusions, often because they are derived from wholly unreliable sources.” Order at 24-25, *Bowyer v. Ducey*, No. 2-20-cv-02321 (D. Ariz. Dec. 9, 2020) [Dkt. 84].
- Despite your claim that you have so much “evidence” that it feels as if you are drinking from a “fire hose,” when asked by your interviewers and other media outlets to provide that evidence, you have failed to do so each and every time. Conservative television host Tucker Carlson even called you out for failing to provide any evidence to support your assertions.⁴
- After you put the purported “evidence” in your court filings, Trump loyalist and U.S. Attorney General Bill Barr stated, “There’s been one assertion that would be systemic fraud and that would be the claim that machines were programmed essentially to skew the election results. And the DHS and DOJ have looked into that, and so far, *we haven’t seen anything to substantiate that.*”⁵

⁴ Tucker Carlson SLAMS Sidney Powell for not Providing Evidence Election was Taken from Trump, YouTube (Nov. 19, 2020), available at, <https://www.youtube.com/watch?v=57156j47xhk>.

⁵ Michael Malsmo, *Disputing Trump, Barr says no widespread election fraud*, Associated Press (Dec. 1, 2020), available at, <https://apnews.com/article/barr-no-widespread-election-fraud-b1f1488796c9a98c4b1a9061a6c7f49d>.



- Long-time Trump ally Chris Christie said your claims were a “national embarrassment.”⁶
- Trump appointee Chris Krebs, then the director of CISA, determined that the “Hammer and Scorecard” conspiracy theory advanced by your so-called cybersecurity expert, Navid Keshavarz-Nia, was “nonsense.”⁷ And Mr. Keshavarz-Nia’s “expert” declaration alleges a pattern of improbable vote reporting in “Edison County, Michigan,” even though no county by that name exists in Michigan.
- Similarly, another one of your so-called “experts,” Russell Ramsland, in alleging fraud in Michigan, discussed places in Minnesota. He also falsely claimed that voter turnout in Detroit was 139.29% and that turnout in North Muskegon was an eye-popping 781.97%; in reality, the turnout in those places was 50.88% and 78.11%, respectively.⁸ But Mr. Ramsland did not just make sloppy and inexcusable mistakes. He is also a notorious conspiracy theorist, having given a presentation in 2018 in which he claimed that the “Deep State” was formed when the Muslim Brotherhood, President George H.W. Bush’s father, leftists, and George Soros came together in Nazi Germany in the 1930s— notwithstanding the fact that Mr. Soros was born in 1930.⁹
- Another one of your “experts” relied on a list of allegedly ineligible Georgia voters who allegedly voted illegally; but that data included voters who were, in fact, eligible to vote and was rejected by a federal judge for its “sheer unreliability.”¹⁰

⁶ Paul Kane and Felicia Sonmez, *Chris Christie calls the conduct of Trump’s legal team a ‘national embarrassment’*, Washington Post (Nov. 22, 2020), available at, https://www.washingtonpost.com/politics/republicans-christie-trump-concede/2020/11/22/05c280e6-2cda-11eb-bae0-50bb17126614_story.html.

⁷ Zach Montellaro and Kyle Cheney, *Pro-Trump legal crusade peppered with bizarre blunders*, Politico (Dec. 3, 2020), available at <https://www.politico.com/news/2020/12/03/sidney-powell-trump-election-lawsuit-442472>.

⁸ Clara Hendrickson, *Affidavit in Michigan lawsuit seeking to overturn election makes wildly inaccurate claims about vote*, PolitiFact (Dec. 4, 2020), available at, <https://www.politifact.com/factchecks/2020/dec/04/russell-james-ramsland-jr/affidavit-michigan-lawsuit-seeking-overturn-electi/>.

⁹ John Savage, *Texas Tea Partiers Are Freaking Out Over ‘Deep State’ Conspiracy Theories*, Vice (Sept. 30, 2018), available at, <https://www.vice.com/en/article/mbwgxx/texas-tea-partiers-are-freaking-out-over-deep-state-conspiracy-theories>.

¹⁰ Order at 26, *Bowyer v. Ducey*, No. 2-20-cv-02321 (D. Ariz. Dec. 9, 2020) [Dkt. 84]; Michelle Ye Hee Lee, *Here’s what happened when a Georgia lawmaker scrutinized the Trump campaign’s list of allegedly illegal votes*, Washington Post (Dec. 10, 2020), available at, <https://www.washingtonpost.com/politics/heres-what-happened-when-a-georgia-lawmaker->



- Although you cherry-picked statements by Princeton professor Andrew W. Appel in support of your election-rigging claims, he and 58 other specialists in election security have forcefully rebutted your claims, explaining that they “have never claimed that technical vulnerabilities have actually been exploited to alter the outcome of any US election.”¹¹ They further explained that “*no credible evidence* has been put forth that supports a conclusion that the 2020 election outcome in any state has been altered through technical compromise.”¹²

Recognizing the obvious deficiencies and credibility problems of your “evidence,” you actively misrepresented and manufactured evidence to support your defamatory falsehoods. For example:

- You deliberately misrepresented that you had a top secret “military intelligence expert” code-named “Spyder” supporting your defamatory accusations about Dominion. But your purported “military intelligence expert” has now admitted that he never actually worked in military intelligence and that the declaration your team wrote for him to sign is misleading.¹³ This was no good faith mistake. He has confirmed that the original paperwork he sent to you didn’t say that, and that your clerks wrote the misleading statement even though he “was trying to backtrack” on it.¹⁴
- Two of the Venezuelan declarations attached to your court filings contain nearly identical explanations for why the “witnesses” purportedly claim they came forward, proving that those witnesses did not each write their declarations independently and strongly suggesting that the below manifestos and allegations of a decade-old international conspiracy were written or edited by you or your team—not by the witnesses themselves.

[scrutinized-the-trump-campaigns-list-of-allegedly-illegal-votes/2020/12/10/1400d628-3b06-11eb-bc68-96af0daae728_story.html](https://www.mattblaze.org/papers/election2020.pdf).

¹¹ See *Scientists say no credible evidence of computer fraud in the 2020 election outcome, but policymakers must work with experts to improve confidence* (Nov. 16, 2020), available at, <https://www.mattblaze.org/papers/election2020.pdf>.

¹² *Id.*

¹³ Emma Brown, Aaron C. Davis & Alice Crites, *Sidney Powell’s secret ‘military intelligence expert,’ key to fraud claims in election lawsuits, never worked in military intelligence*, Washington Post (Dec. 11, 2020), available at, https://www.washingtonpost.com/investigations/sidney-powell-spider-spyder-witness/2020/12/11/0cd567e6-3b2a-11eb-98c4-25dc9f4987e8_story.html.

¹⁴ *Id.*



<p>Declaration of an anonymous source claiming to have been selected for the “national security guard detail of the President of Venezuela.” <i>Pearson v. Kemp</i>, No. 1:20-cv-04809 (N.D. Ga. Nov. 25, 2020) [Dkt. 1-2 at ¶ 4].</p>	<p>Statement by Ana Mercedes Diaz Cardozo, <i>Pearson v. Kemp</i>, No. 1:20-cv-04809 (N.D. Ga. Nov. 25, 2020) [Dkt. 1-3 at ¶ 3].</p>
<p>“I want to alert the public and let the world know the truth about the corruption, manipulation, and lies being committed by a conspiracy of people and companies intent upon betraying the honest people of the United States and their legally constituted institutions and fundamental rights as citizens. This conspiracy began more than a decade ago in Venezuela and has spread to countries all over the world. It is a conspiracy to wrongfully gain and keep power and wealth. It involves political leaders, powerful companies, and other persons whose purpose is to gain and keep power by changing the free will of the people and subverting the proper course of governing.”</p>	<p>“I want to alert the public and let the world know the truth about corruption, manipulation, and lies being committed through a conspiracy of individuals and businesses with the intention of betraying the honest people of the United States and its legally constituted institutions and fundamental rights as citizens. This conspiracy began more than a decade ago in Venezuela and has spread to countries all over the world. It is a conspiracy to unjustly gain and maintain power and wealth. It involves political leaders, powerful companies, and other persons whose purpose is to gain and maintain power by changing people’s free will and subverting the proper course of governing.”</p>

- It also appears that you or your team doctored and misrepresented at least one government document in support of your defamatory accusations about Dominion, attaching and citing an “undated” copy of a certificate from Georgia’s Secretary of State and insinuating that the fact that it was undated supported your defamatory falsehoods. That too was false. In reality, the authentic certificate is both dated and publicly available online.¹⁵

In sum, knowing that you had no reliable evidence, you were actively involved in creating and misrepresenting the so-called “evidence” that you touted during your defamatory media campaign.

¹⁵ Georgia Secretary of State, *Dominion Certification* (Aug. 9, 2019), available at, https://sos.ga.gov/admin/uploads/Dominion_Certification.pdf.



III. You have intentionally disregarded the reliable evidence conclusively debunking your claims and have manufactured defamatory accusations in an effort to discredit the Republican state officials who confirmed the validity of Georgia's election results.

Your falsehoods have been repeatedly and conclusively debunked by the real evidence—*i.e.*, the independent audits and hand recounts of paper ballots that have verified the election results, as confirmed by both Democratic and Republican state officials. For example:

- A spokesperson for the Michigan Secretary of State confirmed, “We have not seen any evidence of fraud or foul play in the actual administration of the election. What we have seen is that it was smooth, transparent, secure and accurate.”¹⁶
- In Arizona, the Chairman of the Maricopa County Board of Supervisors released a statement explaining, “The evidence overwhelmingly shows the system used in Maricopa County is accurate and provided voters with a reliable election ... The Dominion tabulation equipment met mandatory requirements during logic and accuracy testing before the Presidential Preference Election, the Primary Election and the General Election. And after each of these 2020 elections, the hand count audit showed the machines generated an accurate count.”¹⁷
- And in Georgia, the Trump-supporting Republican Secretary of State Brad Raffensperger explained that “Georgia’s historic first statewide audit reaffirmed that the state’s new secure paper ballot voting system accurately counted and reported results.”¹⁸ And, Georgia’s Trump-supporting Republican Governor Brian Kemp likewise refused to overturn the state’s election results.

¹⁶ Nick Corasaniti, Reid J. Epstein & Jim Rutenberg, *The Times Called Officials in Every State: No Evidence of Voter Fraud*, *The N. Y. Times* (Nov. 10, 2020), available at, <https://www.nytimes.com/2020/11/10/us/politics/voting-fraud.html>.

¹⁷ Letter from Clint Hickman to Maricopa Cty. Voters (Nov. 17, 2020), available at, [https://www.maricopa.gov/DocumentCenter/View/64676/PR69-11-17-20-Letter-to-Voters#:~:text=Here%20are%20the%20facts%3A&text=The%20evidence%20overwhelmingly%20shows%20the,voters%20with%20a%20reliable%20election.&text=As%20required%20by%20la w%20\(A.R.S.used%20in%20any%20Arizona%20elections.](https://www.maricopa.gov/DocumentCenter/View/64676/PR69-11-17-20-Letter-to-Voters#:~:text=Here%20are%20the%20facts%3A&text=The%20evidence%20overwhelmingly%20shows%20the,voters%20with%20a%20reliable%20election.&text=As%20required%20by%20la w%20(A.R.S.used%20in%20any%20Arizona%20elections.)

¹⁸ Georgia Secretary of State, *Historic First Statewide Audit of Paper Ballots Upholds Result of Presidential Race*, available at, <https://sos.ga.gov/index.php/elections/historic-first-statewide-audit-of-paper-ballots-upholds-result-of-presidential-race#:~:text=2020%20Qualifying%20Packet-Historic%20First%20Statewide%20Audit%20of%20Paper%20Ballots%20Upholds%20Result%20of,machine%20tally%20of%20votes%20cast.>



In order to punish and discredit these “disloyal” Republicans for daring to debunk your false accusations, you falsely accused Dominion of paying them kickbacks to get a “no-bid” contract for the use of its systems in the 2020 election. You have never put forward even a shred of evidence—except perhaps for the doctored Secretary of State certificate—in support of these false bribery accusations. No such evidence exists because your accusations are categorically false. Indeed, public records show that, contrary to your false accusations, there was a bid process for the contract in Georgia and that Dominion offered Georgia the lowest-cost system among three companies that submitted bids.¹⁹ Notably, publicly-available records on the Georgia Secretary of State’s website also reflect that *Smartmatic* was one of the other companies that competed with Dominion for that contract, further debunking your false assertions that Dominion and Smartmatic are the same company. *Id.*

IV. There is clear and convincing evidence that you acted with actual malice in making your false and defamatory accusations about Dominion.

While there is no reliable evidence supporting your wild accusations—and compelling reliable evidence debunking them—there is clear and convincing evidence that you knowingly or recklessly disregarded that your claims about Dominion were false and made them anyway, and therefore acted with actual malice. In addition to the direct evidence that you deliberately misrepresented and manufactured purported “evidence” to support your claims, there is also a wealth of circumstantial evidence that you acted with actual malice.

First, your accusations—essentially that Dominion conspired with Republican state officials and thousands of local election workers across the country to perpetrate the greatest fraud in human history—are inherently improbable. You need look no further than the incontrovertible facts that numerous counties in Wisconsin and Pennsylvania that used Dominion systems went for Trump²⁰ and that some states that used Dominion systems were projected to go for Biden, but actually ended up going for Trump. For example, in the final polls, Florida, which uses Dominion systems,²¹ was

¹⁹ Georgia Secretary of State, *Elections Security Is Our Top Priority: Security-Focused Tech Company, Dominion Voting to Implement New Verified Paper Ballot System*, available at <https://sos.ga.gov/securevoting/>.

²⁰ See *Wisconsin presidential results*, Politico, available at <https://www.politico.com/2020-election/results/wisconsin/>; *Pennsylvania presidential results*, Politico, available at <https://www.politico.com/2020-election/results/pennsylvania/>; *Verified Voting*, available at [https://verifiedvoting.org/verifier/#mode/search/year/2020/state/55/make/Dominion%20Voting%20Systems](https://verifiedvoting.org/verifier/#mode/search/year/2020/state/55/make/Dominion%20Voting%20Systems;); Verified Voting, available at <https://verifiedvoting.org/verifier/#mode/search/year/2020/state/42/make/Dominion%20Voting%20Systems>.

²¹ See *Verified Voting*, available at <https://verifiedvoting.org/election-system/dominion-imagecast-evolution/>; *Verified Voting*, available at <https://verifiedvoting.org/election-system/dominion-imagecast-central/>.



projected to be a Biden win. Instead, Trump won the state by over 3%.²² Similarly, Ohio was projected to be extremely close, with some polls even showing Biden in the lead. Yet, on election day, Ohio, which also used Dominion systems,²³ went for Trump by over 8%.²⁴ Indeed, across the board in all of the swing states, Trump greatly outperformed the polling averages and final polls.²⁵

Even if we entertain your fantasy for just a moment, why would Dominion have rigged the election for the Democratic nominee for President, but let Democrats lose ground in the House and let the Georgia Senate races proceed to a run-off, rather than handing the Senate majority to the Democrats on November 3?²⁶ Indeed, Dominion systems were used in Iowa,²⁷ Alaska,²⁸ and Georgia²⁹—and yet, none of the four Democratic candidates in those races won the election even though just two wins would have secured the Senate for the Democrats.

²² See RealClear Politics, *Florida: Trump vs. Biden*, available at, https://www.realclearpolitics.com/epolls/2020/president/fl/florida_trump_vs_biden-6841.html (final RCP polling average in Florida was Biden +0.9 and the final result was Trump +3.3).

²³ See Verified Voting, *ImageCast X*, available at, <https://verifiedvoting.org/election-system/dominion-imagecast-x/>; Verified Voting, *ImageCast Evolution*, available at, <https://verifiedvoting.org/election-system/dominion-imagecast-evolution/>; Verified Voting, *ImageCast Central*, available at <https://verifiedvoting.org/election-system/dominion-imagecast-central/>.

²⁴ See RealClear Politics, *Ohio: Trump vs. Biden*, available at, https://www.realclearpolitics.com/epolls/2020/president/oh/ohio_trump_vs_biden-6765.html (final RCP polling average for Ohio was Trump +1.0 and final result was Trump +8.2).

²⁵ See RealClear Politics, *Top Battlegrounds: Wisconsin, Michigan, Pennsylvania, North Carolina Florida, Arizona*, available at, <https://www.realclearpolitics.com/elections/trump-vs-biden-top-battleground-states/>. Trump beat the polling average in Michigan by 1.5%, Wisconsin by 6%, and Arizona by 0.6%.

²⁶ See Fox News, *Presidential Election Results*, available at, <https://www.foxnews.com/elections/2020/general-results>. At present, Republicans have gained at least 8 House seats with 2 races still too close to call.

²⁷ See Verified Voting, *ImageCast X*, available at, <https://verifiedvoting.org/election-system/dominion-imagecast-x/>; Verified Voting, *ImageCast Precinct*, available at, <https://verifiedvoting.org/election-system/dominion-imagecast-precinct/>.

²⁸ See Verified Voting, *ImageCast X*, available at, <https://verifiedvoting.org/election-system/dominion-imagecast-x/>; Verified Voting, *ImageCast Remote*, available at, <https://verifiedvoting.org/election-system/dominion-imagecast-remote/>; Verified Voting, *ImageCast Precinct*, available at, <https://verifiedvoting.org/election-system/dominion-imagecast-precinct/>.

²⁹ See Verified Voting, *ImageCast X*, available at, <https://verifiedvoting.org/election-system/dominion-imagecast-x/>; Verified Voting, *ImageCast Precinct*, available at, <https://verifiedvoting.org/election-system/dominion-imagecast-precinct/>.



Although the indisputable facts all point to the conclusion that this was a free and fair election, you launched a media circus and fundraising campaign that undermined confidence in American democracy and peddled false, inherently improbable, and defamatory claims about Dominion participating in an international conspiracy to rig the election, deeply damaging Dominion's hard-earned reputation and business in the process. Your conduct is evidence of actual malice. See *St. Amant v. Thompson*, 390 U.S. 727, 732 (1968) (the publication of allegations that are "inherently improbable" is strong evidence of actual malice); *Lohrenz v. Donnelly*, 223 F. Supp. 2d 25, 46 (D.D.C. 2002), *aff'd*, 350 F.3d 1272 (D.C. Cir. 2003) ("evidence that the story was so inherently improbable that only a reckless person would have put it in circulation" is "likely [to] support a finding of actual malice").

Second, as set forth above, you had multiple reasons to know that your sources were not reliable, including their lack of relevant credentials, sloppy work product (e.g., confusing Michigan and Minnesota and relying on unreliable data claiming that eligible Georgia voters were not eligible), and unwillingness to be identified publicly. In addition, you had Joe Oltmann's interview making it clear that he does **not** have any recording to substantiate his ludicrous claim that he infiltrated Antifa and heard a Dominion employee saying he rigged the election. Your reliance on these facially unreliable sources—and your **knowing** lie that there was a recording substantiating Mr. Oltmann's claim—is evidence that you acted with actual malice. See *St. Amant*, 390 U.S. at 732 ("[R]ecklessness may be found where there are obvious reasons to doubt the veracity of the informant."); *Wells v. Liddy*, 186 F.3d 505, 542-43 (4th Cir. 1999) (actual malice may be shown where publisher had reason to believe a source might not be credible); *Jankovic v. Int'l Crisis Grp.*, 822 F.3d 576, 590 (D.C. Cir. 2016) (relying on a facially unreliable source is evidence of actual malice); *Celle v. Filipino Rep. Enters., Inc.*, 209 F.3d 163, 190 (2d Cir. 2000) (same).

Third, you intentionally disregarded the key sources who have forcefully, publicly, and repeatedly debunked your dubious claims—namely, the state officials, including respected Republicans like Secretary of State Brad Raffensperger and Governor Brian Kemp, who have confirmed the validity of the election results after hand recounts of paper ballots. Your intentional disregard of these sources is evidence of actual malice. See e.g., *Dongguk Univ. v. Yale Univ.*, 734 F.3d 113, 124 (2d Cir. 2013) ("evidence of an intent to avoid the truth ... [can be] sufficient to satisfy the [actual malice standard]") (quoting *Harte-Hanks Commc'ns, Inc. v. Connaughton*, 491 U.S. 657, 693 (1989)); *Parsi v. Daiouleslam*, 595 F. Supp. 2d 99, 106 (D.D.C. 2009) ("Purposeful avoidance of truth can constitute actual malice").

Fourth, you made these false accusations because they conformed to your preconceived storyline—despite the inherent improbability of your accusations, the unreliability of your sources, and the credibility of the sources debunking your assertions. This too is evidence of actual malice. *Harris v. City of Seattle*, 152 F. App'x 565, 568 (9th Cir. 2005) (quoting 1 Rodney Smolla, *Law of Defamation* § 3:71 (2d ed.)); *Gertz v. Robert Welch, Inc.*, 680 F.2d 527, 539 (7th Cir. 1982) ("[E]vidence that a defendant conceived a story line in advance of an investigation and then consciously set out to make the evidence conform to the preconceived story is evidence of actual malice").



malice, and may often prove to be quite powerful evidence.”). Indeed, you were peddling your false and preconceived storyline before the polls closed on election day.³⁰

Fifth, you had a financial incentive in making the defamatory accusations. Your own conduct and statements at the press conference, media tour, and on your websites make it clear that you were publicizing your wild accusations as part of a fundraising scheme and in order to drum up additional business and notoriety for yourself. Your financial incentive and motive to make the defamatory accusations is further evidence of actual malice. See *Brown v. Petrolite Corp.*, 965 F.2d 38, 47 (5th Cir. 1992); *Enigma Software Grp. USA, LLC v. Bleeping Computer LLC*, 194 F. Supp. 3d 263, 288 (S.D.N.Y. 2016).

Sixth, you cannot simply claim ignorance of the facts. As a licensed attorney, you were obligated to investigate the factual basis for your claims before making them in court.³¹ There is no factual basis for your defamatory accusations against Dominion and numerous reliable sources and documents in the public domain have repeatedly debunked your accusations. As such, you either conducted the inquiry required of you as a licensed attorney and violated your ethical obligations by knowingly making false assertions rebutted by the information you found, or you violated your ethical obligations by purposefully avoiding undertaking the reasonable inquiry required of you as a member of the bar. Either is additional evidence of actual malice.

Taken together, your deliberate misrepresentation and manufacturing of evidence, the inherent improbability of your accusations, your reliance on facially unreliable sources, your intentional disregard of reliable sources, your preconceived storyline, your financial incentive, and your ethical violations are clear and convincing evidence of actual malice. See *Eramo v. Rolling Stone*, 209 F. Supp. 3d 862, 872 (W.D. Va. 2016) (denying defendant’s motion for summary judgment and finding “[a]lthough failure to adequately investigate, a departure from journalistic standards, or ill

³⁰ See OAN, *Sidney Powell: Dems will use ‘lawfare’ to alter election*, YouTube (Nov. 3, 2020), available at, https://www.youtube.com/watch?v=Vh5U_6apzvl&feature=emb_logo.

³¹ See, e.g., Fed. R. Civ. P. 11(b) (“By presenting to the court a pleading, written motion, or other paper ... an attorney ... certifies that to the best of that person’s knowledge, information, and belief, formed after an inquiry reasonable under the circumstances ... the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery”); Texas Disciplinary Rules of Professional Conduct 3.01 (“A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless the lawyer reasonably believes that there is a basis for doing so that is not frivolous.”); *id.*, Comment 2 (“All judicial systems prohibit, at a minimum, the filing of frivolous or knowingly false pleadings, motions or other papers with the court or the assertion in an adjudicatory proceeding of a knowingly false claim or defense.”); *id.*, Comment 3 (prohibiting a filing “if it contains knowingly false statements of fact.”).



will or intent to injure will not singularly provide evidence of actual malice, the court believes that proof of all three is sufficient to create a genuine issue of material fact”).

V. Your false and defamatory accusations must be retracted.

Your false accusations about Dominion are defamatory *per se* and have exposed you, the entities you control, and the Trump Campaign to substantial legal risk for defamation. As a result of your false accusations, Dominion has suffered enormous harm, and its employees have been stalked, have been harassed, and have received death threats. For the safety of Dominion’s employees and for the sake of the truth and confidence in American democracy, we demand that you immediately and publicly retract your false accusations and set the record straight. If you refuse to do so and instead choose to stand by your defamatory falsehoods, that will be viewed as additional evidence of actual malice. See *Zerangue v. TSP Newspapers, Inc.*, 814 F.2d 1066, 1071 (5th Cir. 1987) (“[r]efusal to retract an exposed error tends to support a finding of actual malice.”).

Until these claims are resolved, please ensure that you, your principals, and all your sources are preserving and retaining all emails, text messages, audiovisual recordings, voice mails, drafts, notes, communications, documents, data, and electronically stored information of any kind that relates in any way to these matters. Without limitation, this requires you to preserve all financial and corporate records of your “legal defense fund” Defending the Republic, all versions of all documents attached to any of your lawsuits relating to the election, including the undoctored and doctored version of the Secretary of State certificate referenced above, all drafts of and comments to all declarations attached to your complaints, and all communications with:

- Any member, volunteer, staff, or employee of the Trump Campaign;
- Your associates, clerks, and paralegals; and Rudy Giuliani, Jenna Ellis, Lin Wood, and each of their associates and paralegals;
- Every individual who submitted a declaration attached to any of your complaints relating to the election;
- Every reporter, editor, blogger, host, or other member of the media with whom you communicated about Dominion or the 2020 election, regardless of whether they published any of your claims; and
- Donors to your “legal defense fund,” Defending the Republic.



Your document preservation obligations apply both to you individually, as well as to any entities you control, including but not limited to your law firm and your “legal defense fund,” Defending the Republic. Please confirm receipt of this letter and that you intend to adhere to our request to retain documents as set forth above. This is not a complete recitation of our client’s rights and remedies, all of which are expressly reserved.

We look forward to your prompt response.

Regards,

Thomas. A. Clare, P.C.

Megan L. Meier