UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

TIMOTHY KING, et al, Plaintiffs, v. GRETCHEN WHITMER, in her official capacity as Governor of the State of Michigan, et al, Defendants, and CITY OF DETROIT, et al, Intervenor-Defendants.	No. 2:20-cv-13134 Hon. Linda V. Parker

INTERVENOR-DEFENDANT CITY OF DETROIT'S SUPPLEMENTAL BRIEF IN SUPPORT OF SANCTIONS

INTRODUCTION

In a shocking abuse of this Court's processes, nine lawyers used their privileges as members of the bar to spread dangerous lies that undermined the credibility of the 2020 presidential election and threatened to prevent our nation's peaceful transition of power. It is now time to hold every one of them accountable.

There is no excuse for the reckless disregard for the truth that permeated this lawsuit, and there should be no safe harbor for attorneys who pretended to file legitimate claims, while misrepresenting the facts and the law. This is not a case of subtle misunderstandings. Reasonable minds cannot differ about whether Michigan has party registration, whether Michigan voters can vote absentee without using the mail, whether the Antrim County tabulation error was discovered by a hand recount, whether there was a 139% turnout in Detroit, whether "Spyder" is a military intelligence expert, or whether it was evidence of fraud that Joe Biden received a greater share of the absentee ballot vote than Donald Trump. No diligent attorney could reasonably believe that the internet mantra that "fraud vitiates everything" means that Michigan's election laws and legal precedent can be ignored. In the end, Plaintiffs' lawyers defend their presentation of false claims and their reliance on non-existent legal precedent with the argument that all of this "appears consistent with the narrative." (Ex. 1 - July 12, 2021 Hearing Tr.; Statement of Mr. Kleinhendler; Tr. 149). In other words, it's ok to say anything in court, if it fits their storyline.

These nine attorneys know that it is impossible to defend their actions, so they search for excuses to avoid accountability. Sidney Powell signed seven pleadings, motions and briefs filed in this case, and then she prepared responses to the City's sanctions motion claiming that she had never signed anything. Lin Wood argues that he cannot be sanctioned because he never entered an appearance, while the Michigan

attorneys who did file appearances say that Powell and Wood "spearheaded" the litigation, with local counsel exercising no independent judgment. All nine of these lawyers have one thing in common—they knew that their names were on the signature blocks and not one of them asked to be removed. They allowed their names and reputations as attorneys to be used to endorse this mendacious litigation, and now they should answer for the harm they caused.

ARGUMENT

I. The Rule 11 Safe Harbor Notice Was Properly Served

For the first time, at the July 12, 2021 hearing, Lin Wood and Emily Newman claimed that they did not receive the Rule 11 Motion and Safe Harbor Letter ("the Safe Harbor Letter"). (Tr. at 203; 206). That claim was not made in the briefs filed by Plaintiffs' counsel. *See* Plaintiffs' Opposition to the City of Detroit's Motion for Sanctions, for Disciplinary Action, for Disbarment Referral and for Referral to State Bar Disciplinary Bodies, ECF No. 95 and Plaintiffs' Supplemental Opposition, ECF No. 111. To the contrary, Plaintiffs' counsel admitted that "[t]he City served a copy of notice of an anticipated [Rule 11] Motion on Plaintiffs' counsel on December 15, 2020." Plaintiffs' Opposition, ECF No. 95, PageID.4118-4119.

In fact, the City served the Safe Harbor Letter on December 15, 2020, by first class mail. (Ex. 2 - Affidavit of Kimberly Hunt). It was mailed to the "last known address" for each of the attorneys named in the Rule 11 Motion, and, thus, service

was proper under Fed. R. Civ. P. 5(b)(1)(C). *Id.* The City obtained Plaintiffs' counsel's last known addresses (except Ms. Junttila's) from the signature block on the Amended Complaint (ECF No. 6, PageID.957) and found Ms. Junttila's last known address on her Appearance of Counsel (ECF No. 63, PageID.3331). None of the letters were returned. (Ex. 2). Only Lin Wood and Emily Newman claim they did not receive the Rule 11 letter. [1] (Tr. at 203; 206).

The Safe Harbor Letter was sent to Lin Wood and Emily Newman at the addresses listed on the signature block of the Amended Complaint (ECF No. 6, PageID.958):

Of Counsel:
Emily P. Newman (Virginia Bar No. 84265)
Julia Z. Haller (D.C. Bar No. 466921)
Brandon Johnson (D.C. Bar No. 491730)

2911 Turtle Creek Blvd, Suite 300
Dallas, Texas 75219

*Application for admission pro hac vice
Forthcoming

L. Lin Wood
GA Bar No. 774588
L. LIN WOOD, P.C.
P.O. Box 52584
Atlanta, GA 30305-0584
Telephone: (404) 891-1402

These same addresses appeared on the signature block of the Complaint (ECF No. 1, PageID.75) and on the signature blocks of Plaintiffs' Petition for Writ of Certiorari

[1] While Emily Newman now claims that she did not receive the Safe Harbor Letter, three other attorneys—Sidney Powell, Julia Haller and Brandon Johnson—were served by mail at the same address (the address identified for all of them on the pleadings), and none of them denied being served.

and Notice of Supplemental Authority filed in the Supreme Court of the United States. In addition to service by first class mail, as a courtesy to Plaintiffs' counsel, the City's counsel sent copies of the Safe Harbor Letter to email addresses they were able to find for seven of these attorneys. The City's counsel searched online for email addresses that were not included on Plaintiffs' counsel's filings and were not available on the docket because most of Plaintiffs' counsel had not provided their email addresses to the Court and counsel (as would have been required had they filed proper appearances in this Court). (Ex. 3 - Email to Plaintiffs' Counsel With Copy of Safe Harbor Letter).

Finally, Plaintiffs' counsel had *actual* notice of the Safe Harbor Letter. On December 15, 2020, after the City's counsel sent copies of the Safe Harbor Letter via email to Plaintiffs' attorneys, counsel for Intervenor-Defendants DNC and MDP, Marc Elias, tweeted a copy of the entire Safe Harbor Letter, with the attached Rule 11 Motion. (Ex. 4 - Law and Crime Article of Dec. 15, 2020). Shortly thereafter (and still on December 15, 2020), Lin Wood took credit for the lawsuit, tweeting a link to an article containing a copy of the City's Safe Harbor Letter, stating "[w]hen you get falsely accused by the likes of David Fink & Marc Elias of Perkins Coie (The Hillary Clinton Firm) in a propaganda rag like Law & Crime, you smile because you know you are over the target and the enemy is runningscared (sic)!" (Ex. 5 - Wood Tweet of Dec. 15, 2020). Then, on January 5, 2021, the day the City filed its Rule

11 Motion with the Court, Lin Wood tweeted a link to an article with the City's Rule 11 Motion, stating that it was "unfair" for the City to seek sanctions against him. (Ex. 6 – Wood Tweet of Jan. 5, 2021). The evidence is irrefutable that Lin Wood, Emily Newman and all of Plaintiffs' counsel were properly served with the Safe Harbor Letter, and they all had actual notice.

Despite his public statements about the City's Safe Harbor Letter, on December 15, 2020, and his public statements about the City's Rule 11 Motion, on January 5, 2021, Mr. Wood sought to escape responsibility at the July 12, 2021 hearing with the following incredible statement:

> I didn't receive any notice about this until I saw something in the newspaper about being sanctioned…Let me say, because if I had been, I would have obviously had a duty to consider whether or not to withdraw, but I can't withdraw from something I've never asked to be a part of. (Tr. at 64).

Mr. Wood cannot have it both ways. He was aggrieved by what he called false allegations on December 15, 2020, but claims ignorance of those same allegations on July 12, 2021.

II. Plaintiffs' Attorneys Refuse to Objectively Review the Ramsland Affidavit

As the Court noted at the July 12, 2021 hearing, the affidavit of Russell James Ramsland, Jr., dated November 24, 2020, incorrectly states that a discrepancy in the Antrim County results was "only discoverable through a **hand counted manual recount**." (ECF No. 6-24, PageID.1573, at ¶ 10). When the Court asked why

Plaintiffs' counsel had not corrected Ramsland's claim that the Antrim County error was discoverable only through a hand recount, when no hand recounts had been conducted in Michigan as of the date his affidavit was signed, Plaintiffs' counsel doubled down on this misrepresentation.

> First, Ms. Haller made the following claim:
>
> > Your Honor, if I may correct the record for that. It was the Michigan Secretary – the county secretary who did that **hand recount**, and that's reported on at that time. So there was what they called a **hand recount**. (Tr. at 96; emphasis added).

Then, Mr. Kleinhendler added: "My understanding was that somebody recounted it **by hand**." (Tr. at 97; emphasis added). There was no factual basis for either of those claims.

To buttress their arguments, Mr. Kleinhendler referred the Court to a December 3, 2020 report by Mr. Ramsland, with an appended report prepared by ASOG, an organization affiliated with Mr. Ramsland. Mr. Kleinhendler claimed "[Ramsland] has a photograph, a photograph of the **hand recount** that was done in Antrim County." (Tr. at 105; emphasis added; ECF No. 49-3, PageID.3119). Mr. Campbell piled on:

> Your Honor, if I can, can we have Mr. Fink explain why there's a photograph of something that shows a **hand recount** when he's telling everybody there's been no hand recount? (Tr. at 105; emphasis added).

Of course, there is no such photographic evidence. The photograph appended to the referenced affidavit simply depicts the results of a machine re-tabulation of ballots that occurred on November 6, 2020. The photograph shows printouts from tabulation machines and makes no reference to a hand recount. The ASOG report clearly states that the photograph depicts "'two separate totals tape' from Tabulator ID 2." (ECF No. 49-3, PageID.3118). The narrative accompanying the photographs explains that, at the request of the County Clerk, the Township Clerk, under the oversight of the canvassing board, "re-ran the original election day ballots" with a machine tabulator. (ECF No. 49-3, PageID.3122). There is nothing in the ASOG report that even remotely suggests that a hand recount was performed on November 6, 2020.

The photograph touted by Plaintiffs' counsel does include the word "recount," and these attorneys apparently chose to end their inquiry there. The slightest critical analysis, however, would have immediately revealed that this "evidence" provided no support for their position. Furthermore, the very photo upon which they rely shows a difference of only one vote (not 6,000)—the machine "recount" found one less vote for Donald Trump.

Yet, on July 12, 2021, all nine of these attorneys and the attorneys representing them were prepared to foist yet another misrepresentation on this Court without the slightest bit of objective inquiry. This false representation to this Court is particularly troubling when it comes fully six months after the issue of the factual basis for

Ramsland's affidavit was highlighted in the City's Motion for Sanctions and more than seven months after Ramsland's significant factual error was raised in the City's Response to Plaintiffs' Emergency Motion.

III. These Attorneys Ignored Michigan Election Law and Procedures and Support Their Claims With Internet Memes Rather Than Rigorous Legal Analysis

When the Court asked why Plaintiffs' attorneys did not avail themselves of the procedures for challenging elections under Michigan law, the responses were a strangely disconnected set of references to ripeness, the Twelfth Amendment and the Court's "inherent equitable authority." When the Court asked for case authority, Mr. Kleinhendler offered the following revealing insight into counsel's legal analysis:

> I did look it up, your Honor, just briefly while we were here…I would refer you to the United States Supreme Court case, *United States versus Throckmorton*...I believe that case states the general equitable jurisdiction that this Court has, fraud vitiates everything, and this Court has the equitable power. (Tr. at 30-33).

The Court expressed understandable surprise that Plaintiffs would cite a case decided 143 years ago. A review of the record suggests that there is a disturbing reason for this citation. The Court, in *Throckmorton,* does refer to a treatise that states "fraud vitiates everything." *United States v. Throckmorton*, 98 U.S. 61, 66 (1878). But, the *Throckmorton* Court's holding that a prior judgment confirming a land grant could **not** be collaterally attacked on the basis that the judgment was procured through fraud is directly contrary to Plaintiffs' claim that "fraud vitiates

everything." *Id*., at 68-69. Nothing about this case has any meaningful application to the issues before this Court.

On first impression, Plaintiffs' citation to an obscure 143-year-old Supreme Court case that does not support their position is puzzling; *Throckmorton* was last cited by the Supreme Court 75 years ago. *See Knauer v. United States*, 328 U.S. 654, 66 S.Ct. 1304 (1946). But the source of this "lawyering" becomes apparent with a quick internet search. *Throckmorton* and the phrase "fraud vitiates everything" have become a meme on extremist social media accounts, where it is repeatedly parroted as a basis for overturning the 2020 election. (Ex. 7 - *Throckmorton* Tweets). That *Throckmorton* has made the leap from uninformed social media commentary to citation by Plaintiffs' counsel as the legal basis for this far-reaching and unfounded lawsuit demonstrates that this suit has been driven by partisan political posturing, entirely disconnected from the law. This lawsuit is the dangerous product of an online feedback loop, with these attorneys citing "legal precedent" derived not from a serious analysis of case law, but from the rantings of conspiracy theorists sharing amateur analysis and legal fantasy in their social media echo chamber.

IV. The Shifting Sands of Plaintiffs' Attorneys' Positions

a. With Constantly Changing Rationales, Plaintiffs' Counsel Repeatedly Refused to Dismiss Their Baseless Claims

On January 19, 2021, Plaintiffs' attorneys made the following claim:

> Since its initial filings, Plaintiffs have taken every reasonable measure to expedite this proceeding and to terminate the proceeding once their claims were no longer viable. (ECF No. 95, PageID.4114).

Nothing could be further from the truth. At every stage, Plaintiffs' counsel unreasonably prolonged this litigation.

Plaintiffs admitted that "the case at bar was … effectively over on December 7, 2020…." (ECF No. 112, PageID.4610). But they did not dismiss on December 7.

In Plaintiffs Petition for a Writ of Certiorari to the Supreme Court they admitted that "[o]nce the electoral votes are cast, subsequent relief would be pointless," and "the petition would be moot." (Ex. 8 – Plaintiffs' Petition for Writ of Certiorari, p. 7). But after Michigan's presidential electors convened and cast their votes on December 14, 2020, Plaintiffs still did not dismiss, and they refused to concur in Defendants' Motions to Dismiss.[2]

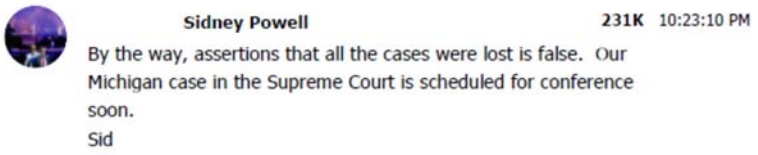
On December 15, 2020, one day after the electors voted, Plaintiffs' counsel were served with the Rule 11 Safe Harbor Letter, but not one of the nine attorneys took a single step to withdraw their claims.

[2] At the July 12, 2021 hearing, Mr. Campbell argued that the about-face on whether the case became moot arose because "three of our Plaintiffs were, **in their opinion,** elected as electors…once they were elected as electors in Lansing, **they believe,** according to the Constitution, to be the electors. That changed things, and now the Supreme Court's determination did have life." (Tr. at 44; emphasis added). The suggestion that three clients' subjective beliefs, without a shred of factual or legal support, exonerates misconduct by an attorney is farcical.

On the night of January 6, 2021, after a day of insurrection at the Capitol, Congress certified Joe Biden as the winner of the 2020 presidential election. Plaintiffs later admitted that "[o]n January 6, 2021 the US Congress 'certified the election,' rendering Plaintiffs' claims moot." (ECF No. 95, PageID.4114). And yet, Plaintiffs still did not dismiss. On January 11, 2021, the Supreme Court denied Plaintiffs' motion to expedite their Cert Petition. Because Plaintiffs would not dismiss, the Defendants were compelled to file responses in the Supreme Court. Then, at the very last minute, when Plaintiffs had no choice but to respond to Defendants' Motions to Dismiss, Plaintiffs purported to "voluntarily dismiss." Plaintiffs never responded to the Motions to Dismiss, but they did the damage they set out to do.

Plaintiffs filed purported notices of voluntary dismissal on January 14, 2021. But, even then, they did not dismiss their appeals in the Sixth Circuit or the Supreme Court. On January 18, 2021, counsel for the City, Darryl Bressack, sent an email to Ms. Lambert Junttila asking about withdrawal of the appeals. She responded by requesting the City's consent to withdraw, which was promptly given. On January 21, 2021, counsel for the City sent an email to Ms. Lambert Junttila asking if she had filed the withdrawal. She replied "[i]t's my understanding that Sidney Powell's team is preparing it and I will submit it as soon as I receive it." (Ex. 9 – Email

Exchange). But, no withdrawal was filed. Instead, two weeks later Sidney Powell posted the following to her Telegram account on February 4, 2021:



On February 22, 2021 the Supreme Court denied Plaintiffs' Cert Petition. (Ex. 10 – Order Denying Petition for Writ of Certiorari). Until that day, Plaintiffs continued to press this baseless litigation, forcing Defendants to defend against these bogus claims, all in the service of the lie that the 2020 election was stolen.

b. Each Attorney Has a Different Excuse to Avoid Accountability, But All Nine Attorneys Should be Sanctioned

The Michigan lawyers say they signed the filings, but did not prepare them, so they should not be responsible, while the out of state attorneys say they prepared the filings, but they did not sign them, so they should not be responsible. And, the out of state attorneys say that even if they did prepare and sign the filings, they are immune from this Court's review, because they never followed this Court's rules to be admitted. The cynical attempt to sidestep the authority of this Court by failing to be sworn into our District simply does not work. E.D. Mich. LR 83.20(j) states that "[a]n attorney…who practices in this court as permitted by this rule is subject to the Rules of Professional Conduct adopted by the Michigan Supreme Court…." And those rules do not reward the gamesmanship displayed here. Michigan Rule of

Professional Conduct 8.5(a) states that "[a] lawyer not admitted in this jurisdiction is also subject to the disciplinary authority of this jurisdiction if the lawyer provides or offers to provide any legal services in this jurisdiction." That rule applies to every one of the lawyers in this case.

1. Sidney Powell

On July 12, 2021, after six hours of argument, Sidney Powell, for the first time said:

> I take full responsibility myself for the pleadings in this case. Ms. Newman, Mr. Wood, Mr. Johnson, and local counsel had no role whatsoever in the drafting and content of these complaints. It was my responsibility and Mr. Kleinhendler's, not theirs. (Tr. at 231).

This is the same Sidney Powell who prepared (but did not sign) the brief arguing that she could not be sanctioned because she did not sign the pleadings.[3] (ECF No. 95, PageID.4118, 4122-4124).

[3] Directly contrary to Ms. Powell's claim, Stefanie Lambert Junttila, one of the local attorneys who Powell seeks to shelter with her eleventh hour magnanimous claim of responsibility, appeared on "The Gateway Pundit" the day after the sanctions hearing, where she admitted that she was not simply hired as local counsel, she "reached out to the Sidney Powell team and the Rudy Giuliani team to provide evidence" of supposed election fraud. Available at https://rumble.com/vjsv8v-live-at-5-pm-cdt-bombshell-report-michigan-election-2020-case-with-atty.-st.html, last accessed July 20, 2021. She then appeared on "One America News Network" on July 14, 2021 and promised that "new suits will be filed in Michigan and other states as well." Available at https://rumble.com/vjvnhx-real-america-dan-w-stefanie-lambert-july-14-2021.html, last accessed July 20, 2021.

These misrepresentations about the signing of the pleadings were not made out of ignorance or mistake, they were made by Sidney Powell herself. Attached as an exhibit to Plaintiffs' Supplemental Brief in Opposition is the affidavit of Plaintiffs' local counsel Gregory Rohl. (ECF No. 111-1, PageID.4597-4599). Rohl swears that he was asked to assist in "litigation involving alleged election fraud in Michigan which was being spearheaded by Sidney Powell and Lin Wood." (ECF No. 111-1, PageID.4597, at ¶ 2). Rohl states that he was to "serve as a conduit for pleadings and essentially 'hold the fort' until Sidney Powell's Pro Hac Vice application was accepted by the Court." (ECF No. 111-1, PageID.4598, at ¶ 7). After the filing of the City's Motion for Sanctions, Rohl states that "Ms. Lambert Junttila surprisingly advised Rohl that she was not the one preparing the response to the Rule 11 Sanction Motion, and that it was being provided for review by Sidney Powell's team." (ECF No. 111-1, PageID.4599, at ¶ 13).

Despite Sidney Powell's repeated footnotes that her application for *pro hac vice* admission was forthcoming, neither she nor any of the out-of-state Plaintiffs' attorneys ever sought admission to this Court. While this Court has not recognized *pro hac vice* admissions for forty years, the process to be admitted to the Eastern District of Michigan is not onerous. Sidney Powell never sought admission to practice before this Court, apparently hoping to evade this Court's disciplinary authority by orchestrating litigation through local counsel.

2. Lin Wood

Lin Wood argued on July 12, 2021 that he cannot be sanctioned because he claimed he had "no involvement whatsoever" in this litigation. (Tr. at 58). But his co-counsel, Mr. Rohl, said Wood, with Powell, "spearheaded" this lawsuit. (ECF No. 111-1, PageID.4597, at ¶ 2). Wood admitted during the hearing that he offered his services as a "trial lawyer" to Powell in connection with this case; that alone satisfies the MRPC 8.5(a) criterion of an attorney who "offers to provide" services. (Tr. at 58, 60-61). And, despite his denials during the hearing, he has admitted elsewhere that he "signed on" to assist with this case. (Ex. 11 – Transcript of Jan. 11, 2021 Hearing in *La Liberte v. Reid*, p. 10). Wood has taken credit for his participation in this lawsuit when he believes it is to his advantage, and, until confronted with sanctions, he had never disavowed his involvement or sought to remove his name from any filing.

Wood admitted at the July 12, 2021 hearing that he had "indicated to Sidney Powell that if she needed a…trial lawyer that [he] would certainly be willing and available to help her." (Tr. at 58). When Wood was asked why, if his name was on the pleadings without his permission, he did not notify the Court, Wood argued that, because he "never moved to be admitted *pro hac vice*" (again misstating the Local Rules) he had no duty to tell the Court that he did not represent the Plaintiffs. (Tr. at 65).

Wood's co-counsel did not confirm his story. Sidney Powell stated:

> My view, your Honor, is that I did specifically ask Mr. Wood for his permission. I can't imagine that I would have put his name on any pleading without understanding that he had given me permission to do that. (Tr. at 69).

When directly asked by the Court whether he spoke with Wood before placing his name on the pleading, Mr. Kleinhendler curiously responded "[h]onestly, your Honor, I don't recall." (Tr. at 69).

Wood's sudden modesty about his participation in Michigan is an anomaly. Throughout the post-election litigation, Wood took a high profile, supporting challenges to the election results and even endorsing martial law. Wood's signature block appears on pleadings in cases filed by many of these same lawyers seeking to overturn the election results in Georgia, Wisconsin, and Arizona.[4] In a brief submitted in the Delaware Supreme Court in an appeal of the revocation of his *pro hac vice* admission, Wood claimed, through his counsel:

> [Wood] represented plaintiffs challenging the results of the 2020 Presidential election in Michigan and Wisconsin…Among those cases in which Wood became involved were lawsuits in Wisconsin, Michigan, and Wood's own suit in the State of Georgia"

[4] *Pearson v. Kemp*, 1:20-cv-04809, filed in the Northern District of Georgia on November 25, 2020; *Feehan v. Wisconsin Elections Commission*, 2:20-cv-01771, filed in the Eastern District of Wisconsin on December 1, 2020; and *Bowyer v. Ducey*, 2:20-cv-02321, filed in the District of Arizona on December 2, 2020.

(Ex. 12 – Appellant's Opening Brief in *Page v. Oath, Inc*., p. 4 and p. 5).[5]

On January 11, 2021, in the Eastern District of New York, Wood was more candid about his involvement in the election lawsuits in Wisconsin and Michigan:

> What I have done with Sidney Powell is, she asked me to sign on to two or three lawsuits where she was the lead, in anticipation that there may be a need for a trial lawyer. I didn't draft the lawsuits. There were some typographical errors and things done in some of them that upset a judge in Wisconsin, I believe, maybe Michigan…I didn't have anything to do with that, other than I did agree to sign on to help Sidney. (Ex. 11, p. 10).

Like any bully, when Wood thought he was safe and it might help him, he admitted his involvement in Michigan, but, now that he is personally at risk, he cowardly abandons his comrades and feigns ignorance. [6]

Wood has been aware of the City's sanctions request since December 15, 2020. (Ex. 5). At that time, he took personal credit for the litigation, metaphorically thumping his chest with a military analogy claiming "you know you are over the

[5] At the hearing on July 12, 2021, Wood asserted yet another incomprehensibly-absurd defense, when he claimed, "I was not afforded any type of a hearing on the Delaware proceedings. **I didn't take any position**…So I'm not sure what he's referring to there." (Tr. at p 64; emphasis added). Every word quoted here was written by Wood's attorney, Ronald G. Poliquin, in Appellant's Opening Brief, challenging the revocation of Wood's *pro hac vice* admission to represent Carter Page in The Superior Court for the State of Delaware.

[6] Notably, in the New York federal court, Wood was fully aware of the pending sanctions motion about which he now claims ignorance. There, on January 11, 2021, after bragging that he has practiced in 27 states, he complained "Even in Michigan, the City of Detroit is trying to get me disbarred. Why? I'm not a member of the Michigan Bar." (Ex. 11, p. 16).

target," when people like the undersigned accuse you of misconduct. But, he was only "over the target" if this was his case. As long as he thought he was safe and others were doing the dirty work of protecting him, he never attempted to disavow his participation in this case. The record is clear. Lin Wood takes credit for this case when it serves his purposes, but he runs and hides when faced with the consequences.

V. Plaintiffs' Attorneys Continue To Flout This District's Civility Principles

After the sanctions hearing, Plaintiffs' counsel continued their assault on this District's Civility Principles. As this Court is aware, Lin Wood posted a video recording of the July 12, 2021, hearing on Telegram in direct contravention of Eastern District of Michigan Local Rule 83.32(e)(2). Despite being afforded a six-hour hearing at which to state his defense, Wood claimed in the now-deleted Telegram post that he "thought [he] was attending a hearing in Venezuela or Communist China. The rule of law and due process does not exist at this time in our country except in a very, very few courtrooms. Both were absent in Michigan today." (Ex. 13 – Wood Deleted Telegram post of July 12, 2021). Wood continued to display his disrespect for this Court, stating "Federal Judge Linda Parker is an Obama appointee. I think that pretty much says it all, don't you." (Ex.14 - Wood Telegram post of 22:03 on July 12, 2021).

Wood also posted an unhinged allegation implying that the City of Detroit filed the motion for sanctions on January 5, 2021, predicting interference with the

peaceful transition of power, because the undersigned was involved in the planning of the insurrection:

> David Fink said he filed the motion for sanctions against Sidney and me on January 5. Then Fink says I was responsible for causing the January 6 "insurrection" the next day!!! Wow! What timing! One might almost think it was planned!!! There are no coincidences. This is like watching a movie! (Ex. 15 – Wood Telegram post of 23:34 on July 12, 2021).

There are no words to describe how detached these lawyers are from the basic rules of professional responsibility, civility and ethical legal representation. They must not be given the opportunity to further abuse our judicial system and to undermine our democracy.

CONCLUSION

WHEREFORE, for the foregoing reasons, the City of Detroit respectfully asks this Court to grant the City's Motion for Rule 11 Sanctions in its entirety and enter an Order imposing the full measure of sanctions requested against all of Plaintiffs' counsel.

Respectfully submitted,

July 28, 2021

FINK BRESSACK

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on July 28, 2021, I electronically filed the foregoing document with the Clerk of the Court using the ECF system, which will send notification of such filing to all attorneys of record registered for electronic filing.

FINK BRESSACK

By: /s/ Nathan J. Fink

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EXHIBIT 1

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

TIMOTHY KING, MARIAN ELLEN SHERIDAN,
JOHN EARL HAGGARD, CHARLES JAMES RITCHARD,
JAMES DAVID HOOPER and DAREN WADE RUBINGH,
Plaintiffs,

V. CIVIL ACTION
NO. 20-cv-13134

GRETCHEN WHITMER, in her official capacity
As Governor of the State of Michigan
JOCELYN BENSON, in her official capacity
As Michigan Secretary of State, the Michigan
BOARD OF STATE CANVASSERS,
Defendants,

And

THE DEMOCRATIC NATIONAL COMMITTEE and THE
MICHIGAN DEMOCRATIC PARTY, and ROBERT DAVIS
And THE CITY OF DETROIT,
Intervenors,

And

SCOTT HAGERSTROM, JULIA HALLER,
ROBERT JOHNSON, L. LIN WOOD, HOWARD
KLEINHENDER, SIDNEY POWELL, and GREGORY ROHL,
Intersted Parties,

And

MICHIGAN STATE CONFERENCE NAACP,
Amicus.
_____/

MOTION HEARING
BEFORE THE HONORABLE LINDA V. PARKER
United States District Judge
Detroit, Michigan
Monday, July 12, 2021

(All parties appearing via videoconference.)

APPEARANCES:

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I N D E X

I N D E X (Cont'd)

E X H I B I T S

Exhibit No.	**Offered**	**Received**
(None Offered)		

Detroit, Michigan

July 12, 2021

8:36 a.m.

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THE CLERK: The United States District Court for the Eastern District of Michigan is now in session, the Honorable Linda V. Parker presiding.

Your Honor, the Court calls civil matter 20-13134, Timothy King and others versus Governor Whitmer and others. Today is the date and time set for a motion hearing in this matter.

THE COURT: I'd like counsel please to place their names on the record, and I will start first with counsel for Plaintiffs' counsel.

MR. ROHL: Thank you, your Honor. Good morning. For the record, may it please the court, Greg Rohl on behalf of Plaintiffs.

THE COURT: All right. Mr. Rohl, thank you.

MR. CAMPBELL: Thank you, your Honor. Donald Campbell here on behalf of the following lawyers: Sidney Powell, Howard Kleinhendler, Greg Rohl, Scott Hagerstrom, Julia Haller, Brandon Johnson, and Lin Wood. All of them are here pursuant to your order.

THE COURT: All right. Thank you.

And what about Mr. McGlinn, is he here with us this

morning?

MR. CAMPBELL: Yes, I'm sorry. Mr. McGlinn is here. He's co-counsel with me. He is in the same room. He does not have a separate video feed. He can hear things off of this computer. If necessary, he can even come and take the screen from me, but he was not going to have his own screen or his own sound to avoid any interference.

THE COURT: All right. Thank you.

And I understand that Mr. Buchanan is also representing Ms. Newman. Is he here?

MR. BUCHANAN: Yes, I am here, and so is Ms. Newman.

THE COURT: Thank you.

Now, I'm going to, in a sense take -- well, let me have Plaintiffs' counsel state their names for the record and let me -- let me start with Mr. Hagerstrom. Are you here, sir?

MR. HAGERSTROM: I am.

THE COURT: State your name.

MR. HAGERSTROM: Scott Hagerstrom.

THE COURT: Ms. Haller?

MS. HALLER: Yes, your Honor.

THE COURT: State your name, please, after I've called you.

MS. HALLER: Julia Haller.

THE COURT: All right. Mr. Brandon Johnson?

MR. JOHNSON: Yes, your Honor, Brandon Johnson.

THE COURT: Thank you.

And Ms. Stefanie Lambert.

MS. LAMBERT: Good morning, your Honor. Stefanie Lambert.

THE COURT: All right. Your name, please, for the record.

MS. LAMBERT: Stefanie Lambert Junttila, P-71303.

THE COURT: Mr. Kleinhendler.

MR. KLEINHENDLER: Howard Kleinhendler.

THE COURT: Thank, you sir.

And Ms. Newman.

MS. NEWMAN: Good morning. Emily Newman.

THE COURT: Thank you, Ms. Newman.

Ms. Powell.

MS. POWELL: Sidney Powell.

THE COURT: Thank you.

And, Mr. Rohl, you've already placed your name on the record.

Mr. Wood?

MR. WOOD: Yes. This is Lin Wood, your Honor. Good morning.

THE COURT: Good morning.

All right. Counsel, thank you very much. Have I missed anyone?

Mr. Fink, I don't recall calling your name.

MR. DAVID FINK: No, your Honor. I am counsel for the City of Detroit, and also with me is my partner and son. I have to mute so I don't get feedback.

THE COURT: Thank you. All right.

MR. NATHAN FINK: Good morning, your Honor, Nathan Fink on behalf of the Intervenor Defendant, City of Detroit.

THE COURT: All right. Thank you.

And do we have counsel on the line for the State defendants?

MS. MEINGAST: Yes, your Honor. Assistant Attorney General Heather Meingast on behalf of Governor Whitmer and Secretary Benson.

THE COURT: Thank you very much.

And I see -- I'm sorry, Ms. Gurewitz.

MS. GUREWITZ: Yes. Mary Ellen Gurewitz, on behalf of the Michigan Democratic Party and the Democratic National Committee.

MR. ELDRIDGE: Good morning, your Honor. Scott Eldridge, also on behalf of the DNC and the MDP.

THE COURT: And, Mr. Davis, are you here with counsel today, sir?

MR. DAVIS: Yes, your Honor. Mr. Paterson is on the line, your Honor.

THE COURT: All right. Thank you. You can -- so Robert Davis is here, and your counsel is Mr. Paterson. Okay.

He is not -- I see that his square appears, but I don't hear him. All right. Let me just make a note of that.

All right. I think I've covered everyone -- and Mr. Owen, Jason Owen.

INTERNET TECHNICIAN: Good morning, Judge. I'm IT support.

THE COURT: Thank you, Mr. Owen. Thank you very much. Probably one the most critical individuals on this call, would you say, counsel? All right. Thank you, Jason.

All right. Ladies and gentlemen, thank you so much for your appearance here -- your prompt appearance, and I want to just make some opening remarks and underscore that the purpose of today's hearing is to address three pending motions for sanctions. Those motions are as follows: Intervening Defendant Robert Davis' motion for sanctions against Plaintiffs and Plaintiffs' counsel in which Mr. Davis seeks sanctions pursuant to the Court's inherent authority and also under 28 U.S.C. 1927.

The second motion for sanctions has been filed by intervening Defendant City of Detroit's motion for sanctions, for disciplinary act, for disbarment referral, and for referral to state bar disciplinary bodies, and, here, the City seeks sanctions under Rule 11 of the Federal Rules of Civil Procedure.

And, finally, the State Defendants, Secretary of

State Jocelyn Benson and Governor Gretchen Whitmer, they have filed motions for sanctions under 28 U.S.C. Section 1927 in which Defendants alternatively seek sanctions under the Court's inherent authority.

All right. Now, the Court finds for this record that the referenced motions adequately put Plaintiffs and Plaintiffs' counsel on notice of the conduct alleged to be sanctionable. Plaintiffs and their counsel have had the opportunity to respond to these allegations in their briefs. However, I've called this hearing to provide them with an additional opportunity to respond to those claims and to answer questions that I deem relevant to deciding whether Rule 11 or Section 1927 have been violated, and/or, counsel, whether the Court's inherent powers to sanction should be utilized.

It bears mentioning that I recognize that there is disagreement about whether the City of Detroit followed the Safe Harbor provisions with exactitude. Nevertheless, I want to advise Plaintiffs and Plaintiffs' counsel that Rule 11 allows a court, on its own initiative, to require a party to show cause why sanctions should not be imposed under the rule and to impose Rule 11 sanctions if, after notice and a reasonable opportunity to respond, which I am providing today, the Court determines that Rule 11(b) has been violated if after that notice.

I'll tell you, counsel, I do not need today to rehear

the arguments that have been advanced in the parties' briefs at this hearing. I have thoroughly reviewed every filing. After I ask my questions, however, I will give the parties the opportunity to make a brief statement on their own to the Court concerning the matter at hand.

Now, I ordered the personal appearance at this hearing of all attorneys whose names appear on any of the Plaintiffs' pleadings and briefs because I have questions that I want to give you the opportunity to answer. I ask counsel to provide clear and direct answers to the Court's questions, and let me be clear, that these questions are not seeking the mental impressions, conclusions, opinions, or legal theories of counsel.

Each question that I ask is directed to all of the attorneys whose names appear on any of the Plaintiffs' pleadings or briefs. I will not call out any of your individual names unless the question is specifically crafted for a particular attorney, and there are a couple of those. After I ask a question, the attorney best equipped to answer the question may respond. When I've received a complete answer to a line of questioning, I will give all other attorneys the opportunity to comment or add to the answers on the record. Note that if no other attorneys speaks, the Court finds that -- will find that all other attorneys agree with the answer that has been placed on the record.

Now, that brings me, counsel, to a potential issue as we now have counsel representing counsel for Plaintiffs. The Michigan Rules of Professional Responsibility, as I'm certain everyone on this call should know, prohibit a lawyer from representing a client if the representation will be directly adverse to another client unless the lawyer reasonably believes the representation will not adversely affect the relationship of the other client, and, secondly, each client consents after consultation.

Now, at this time I would like to confirm on the record, through Mr. McGlinn and Mr. Campbell to determine -- I would like to confirm that they have addressed this potential conflict issue with their clients.

MR. CAMPBELL: I have, your Honor, and they have given me their consent to proceed. I do also wish to make an objection, so that you have it for the record, on one of the statements that you made about proceeding on the possibility of the Court's own power with regard to Rule 11 and the show cause.

THE COURT: Yes.

MR. CAMPBELL: May I, briefly?

THE COURT: Briefly, yes.

MR. CAMPBELL: Your Honor, I believe under Rule 11(c) that the court can seek a show cause on notice prior to a dismissal. I believe after the dismissal that is not part of

the power that the Court retains. So I do object, on those grounds, for the Court's consideration of its own show cause.

THE COURT: Okay. I'll make a note of that, and at this moment let me ask counsel for the Defendants if they would like to respond to that, any of counsel? Let me start with Mr. Fink.

MR. DAVID FINK: Your Honor, the rule itself does not include that requirement. The rule simply says on its own the court may order an attorney, law firm, or party to show cause why conduct specifically described in the order has not violated Rule 11(b).

Notwithstanding that, I do want to be clear for the Court that -- and I believe the Court is aware of this -- a proper Rule 11 notice was sent to all of the parties, all of the attorneys. While they make general objections to it, the notice included a detailed motion, which was, with minor exceptions, the same motion that was filed, and we can provide that to the Court.

We have met all the prerequisites for a Rule 11 proceeding, with or without a request on the part or an order to show cause from the Court. They have had several months to respond, and the issue is clearly before the Court properly today.

THE COURT: All right. Thank you, Mr. Fink.

Mr. Campbell, let me go back to you, sir. What's the

authority for your position?

MR. CAMPBELL: Your Honor, I believe it's Rule 11(c). If you give me some time, I can probably pull it up, but I wasn't prepared to address the Court's inherent or, if you will, the Court's show cause powers because we hadn't gotten notice of that coming into this proceeding so I apologize for that so I'm going off memory.

THE COURT: All right. I'm going to make a note of that, and, if needed, we'll come back to that.

MR. CAMPBELL: Happy to address that for the Court if need be and in writing.

THE COURT: We'll see if I need that. Thank you.

Counsel, if there are not any other comments at this point, the way I intend to proceed, I'm going to go ahead and move forward.

Any other housekeeping that we need to take care of at this point?

MR. BUCHANAN: Thank you, your Honor. This is Mr. Buchanan on behalf of Ms. Newman.

THE COURT: Yes.

MR. BUCHANAN: I don't believe my client was ever served with the papers at the time in question. Ultimately, she became aware generally, but my client was a contract lawyer working from home, who spent maybe five hours on this matter so she really wasn't involved in, you know, when the motions were

filed and lawyers were retained and pleadings were filed. So I just want to note that.

We're -- she's aware now. She just recently hired me, and I thank the Court for getting my admission process so quickly. Her role is de minimus; and so she was never, as I understand, sent the pleadings at the time in question. They were served on local counsel, but she was never part of a law firm. She is listed as "of counsel" on two of the pleadings, the first amended complaint and the complaint, but she was never an employee of that firm. That was something that someone put on the pleadings. She was a contract lawyer, 1099 employee, who spent five hours on the matter. I just wanted to note that for the Court. Thank you.

MR. CAMPBELL: If I may, briefly, to add to that. I know Mr. Fink will have a response. It's my belief that he did serve local counsel if he used the ECF for service. There are a number of folks who would not have received it that way. I don't know what he says is service. There is also the factual issue of what was served under the Safe Harbor provision versus what was filed. That is addressed a little bit in the briefs also, your Honor, but those same circumstances and situations would apply.

So that when he says this was properly served and this is a proper Rule 11 motion on behalf of the City, we, of course, have the initial issue of whether the City, as an

intervenor, is a proper party to bring a Rule 11, at least in this matter at all, and, secondly, I'm not sure what he means by service. So I don't want my silence to be a confirmation of that. So, with that, I've made my remarks. Thank you.

THE COURT: Mr. Fink.

MR. DAVID FINK: Your Honor, I have and can provide to the court -- I'm not sure how to do this, but we can -- I've got it -- I can provide it in a PDF. I have letter, which was sent by first class mail, and it identifies, among the addressees at Sidney Powell's office, Sidney Powell, Emily Newman, Julia Haller, and Brandon Johnson. They're all included on an e-mail that was sent -- and, I'm sorry, a letter that was sent by first class mail to Sidney Powell, P.C., at 2911 Turtle Creek Boulevard, Suite 300, in Dallas, Texas.

The issue has never been raised before in this case. We have not heard from anybody claiming that somebody or that any one of these parties did not receive the Rule 11 notice. This is hardly the time to suddenly say they didn't receive it. We did -- and we also sent it by e-mail.

What I can't confirm for the Court right now, because I'm not set up, but we're trying to find it, is whether the e-mail was directly sent to Ms. Newman. It was definitely sent to the parties who we had e-mail addresses for, but I don't believe, at the time, we may not have had an e-mail address for Ms. Newman, but we definitely sent it to her first class mail.

THE COURT: All right. That sounds like something we're obviously going to need to sort that out, and I will determine, before this proceeding is over, to what extent, if any, I'm going to need any briefs on it, all right, but it's a flagged issue.

Yes, Mr. Fink.

MR. DAVID FINK: Would the Court like us to provide a PDF to the Court right now of the -- and I'm not sure how to produce things on this record, but we can produce a PDF of the notice.

THE COURT: Mr. Flanigan, would that be a screen-sharing issue? Is that something -- I don't know if we can do that through Mr. Fink is my question.

THE CLERK: He should be able to screen share.

THE COURT: Okay. Do you know how to do that, Mr. Fink?

MR. DAVID FINK: Fortunately, the younger Mr. Fink probably does.

THE COURT: Okay.

MR. DAVID FINK: I'm going to mute for a second so he can talk to me about technology.

THE COURT: Yeah, just a few seconds, because I think I really want to move forward, and it's something -- but let's just -- I'll give you a couple minutes -- just 60 seconds. How about that? Yeah. Honestly, it is something that can be

docketed, Mr. Fink -- let me let him -- Mr. Fink.

MR. DAVID FINK: Yes, your Honor.

THE COURT: I think the better way to do this is go ahead and docket what you have, and the Court will take a look at it, and others can do the same, and I'll advise whether or not there needs to be any briefing on that issue. Okay?

MR. DAVID FINK: Yes, your Honor, I understand. My son even knows how to docket.

THE COURT: Duly noted. All right.

MR. BUCHANAN: Your Honor, one quick point. I'm not disputing Mr. Fink's representations of, you know, sending it to Sidney Powell's office. My client was working from home in Washington, D.C., a fact Mr. Fink would not have been aware of. Again, she was a contract lawyer. She was listed on the pleading as being at the location or at least "of counsel" at Ms. Powell's office, but she really was not of counsel. It was just, you know, recorded, but so that's my point that she --

THE COURT: Okay. Fair enough.

MR. BUCHANAN: She did not receive it. Thank you.

MR. DAVID FINK: Your Honor, may I very briefly speak to that point, very briefly, because it's a theme that runs through the entire case for us, and that is counsel knew that she had been presented as being an attorney representing the Plaintiffs. She knew that her address was provided to the court in the manner it was provided. It was not our obligation

or ability to do any kind of investigation. It was her responsibility to no longer use the privilege she had as an attorney to endorse this case without coming forward.

I know, your Honor, perhaps I'm getting carried away. I apologize. I just want to say it's a theme that's going to come up all through this.

THE COURT: Okay. It's -- I have been duly noted, counsel, and we will address that in due course. File what you -- docket what you need to docket and we'll pick it up from there, all right?

All right. Anything else before the Court proceeds? Good. Thank you.

All right. My first question to Plaintiffs' counsel is: Who wrote the complaint or the amended complaint in this matter?

MR. CAMPBELL: Your Honor, this is Don Campbell. You said "Plaintiffs' counsel." This is counsel for Plaintiffs' counsel. I think I am in the best position to give the initial answer to the Court on that, if I may?

THE COURT: You may.

MR. CAMPBELL: Thank you. If you're looking for the principal author, it would be Howard Kleinhendler. If you're looking for the lawyer who worked closest with him, it's Sidney Powell.

THE COURT: Okay.

MR. CAMPBELL: Between them, it is their work product primarily, if you will. There are others who helped, some very briefly, as Mr. Buchanan mentioned, some only on the amended complaint. That's Brandon Johnson, again, only with some research, but in terms of the folks who helped to draft or, really, the final product that gets filed in Michigan is primarily a product of Sidney Powell and of Howard Kleinhendler.

THE COURT: All right. Does anybody else want to add to that?

All right. Thank you. Let's move --

MR. WOOD: Your Honor, may I? Your Honor, this is Lin Wood.

THE COURT: Yes, sir.

MR. WOOD: If I might answer. I played absolutely no role in the drafting of the complaint.

THE COURT: Okay.

MR. WOOD: Just to be clear.

MR. CAMPBELL: All my clients agree on that, your Honor.

THE COURT: Okay. Is there anybody else that feels that they played no role in the drafting of the complaint?

MS. NEWMAN: Your Honor --

MR. BUCHANAN: Yes, your Honor. My client, Emily Newman, as I said, spent a total of five hours.

THE COURT: Okay. We're fine. I'm clear on that. I'm clear on that. I think -- you know what? I think I've got a straight -- a good enough, clear answer from Mr. Campbell. I understand that Mr. Wood has not played any role in that, but under -- the answer that I am taking is, is that Mr. Howard Kleinhendler, as well as Ms. Sidney Powell, were the principal drafters of the complaint. All right.

MS. NEWMAN: Your Honor, the Court should note -- I'm sorry, your Honor. The Court should know that I did not play a role in drafting the complaint.

THE COURT: I'm very -- yes, it's clear from the record. It's clear from the record that you have not. So the complaint or the amended complaint in this matter were drafted principally by Mr. Howard Kleinhendler and Ms. Sidney Powell.

The Court is moving on.

All right. Let's talk about -- I'd like to now talk about the relief that the complaint -- the amended complaint seeks, and I ask this question to counsel for Plaintiffs' counsel, or Plaintiffs' counsel, and you all can decide who you feel is best equipped to answer the question, and the first question is:

What authority enabled this Court to issue any of the relief sought in this case, such as decertifying the election results or declaring an outcome that is different than that which was declared by the State?

MR. CAMPBELL: Well, your Honor, I guess, first, you start with the Constitution of the United States; secondly, *Bush v Gore* decided 20 years earlier. That was a case where the court ordered the State of Florida to stop a count and decided the 2000 presidential election.

Since that time, there have been other cases that have been developed under the *Bush v Gore* doctrine. This idea that, again, was not invented in *Bush v Gore* but has existed since the founding fathers put it into the Constitution, and that is that the court has a role to play in challenges and deciding those challenges on due process grounds, on the Eleventh Amendment, looking at the electors clause and the Twelfth Amendment. So those things which came up, and which there was another *Bush v The Board of Canvassers*. I believe that it was decided at the same time. I have that cite from one of the briefs that we have. So, again, another example of where the court did take into consideration. Of course, ultimately, *Bush v Gore* decided the election, and other suits were no longer necessary to be held.

There's also the *Carson* case from the Eighth Circuit, and I understand -- and I, of course, read your opinion, your Honor, that this Court has adopted the dissent from *Carson*, but, as you can rightly imagine, a lawyer bringing the majority opinion as part of the basis for the bringing of the action is not unusual, extraordinary, and certainly shouldn't expose

anybody to sanctions simply because they were unable to determine ahead of time that this Court would choose to follow the dissent.

Judge, I can't, obviously, distill down into a few moments all of the authorities that were placed in the motion. I do want to point out to the Court, because the Court identified in its order, the relief that was requested, and it identified relief that was in the amended complaint, but in the request, the motion, actually, for the restraining order, there were, as I recall -- and I hope I have this accurately -- at Page 16 of what would have been, I believe, ECF 7, there were three requests, decertify or stay the delivery of the vote count and results, conserve the status quo, and, thirdly, impound the voting machines, and that was the -- those were the great relief requested within the motion.

I should also point out the names on the motion were Sidney Powell, Greg Rohl, Scott Hagerstrom, and Howard Kleinhendler. The other lawyers do not appear on that document when it was filed. So I hope that's a response -- responsive to the Court's question.

THE COURT: What is the authority, specifically, that allows a court to decertify an election? I mean what specific case are you looking at?

MR. CAMPBELL: Well, again, if you're looking at cases, I would say it's *Bush v Gore*.

Now, it is, in some respects, the obverse, right? In *Bush v Gore*, it was a direction to stop an election count. If you have the authority to stop an election count, I think it's a reasonable inference to believe that the Court has the authority to start a count. And, again, if that theory is wrong -- and in this case you ruled the Sixth Circuit didn't disturb that. The U.S. Supreme Court didn't disturb that. My clients are lawyers. They understand that, and they respect that. That's the ruling in this case, but until you gave that ruling, Judge, I don't think that result was as obvious as the Defense has made it out to be.

And I have more arguments about that, but I'll reserve that. You haven't asked me that question yet.

THE COURT: You feel that based upon basically an extrapolation of a court's ruling you can conclude the direct opposite? If it's A, then it could be B. I don't really understand that.

Let me get the Defenses' thoughts on that. Let me hear -- I'll hear from Mr. Fink, and then I'd like to hear from Ms. Meingast and Ms. Gurewitz. Go ahead.

No, I'm sorry. I'm sorry, Ms. Gurewitz. I'm just looking at those -- the State Defendants' counsel and the Intervening Defendants', including Mr. Fink.

Go ahead, Mr. Fink.

MR. DAVID FINK: Your Honor, in this case the

Plaintiffs chose to ignore centuries of precedent. They chose to ignore the procedures that are in place. They did not seek -- the Trump campaign did not seek, nor did any of the Plaintiffs, a recount. Instead, they tried, somehow, to collaterally attack everything that had happened. There was no basis.

This Court's opinion and order of December 7th, 2020, extremely well and properly addressed the weakness of all of the claims. I'm happy to argue or respond to any specific one, but there was no basis for what was argued here. This was, from the beginning to the end, an attempt to get a message out that was extrajudicial. They were trying to use the court to get a message out. We could not find a basis in law for what they were trying to do.

THE COURT: Ms. Meingast.

MS. MEINGAST: Thank you, your Honor.

I would agree with Mr. Fink. You know, I think we've argued in the numerous briefs that were submitted here really *Bush v Gore* was not even applicable to this case on a substantive theory of dilution. That wasn't even really what was pled here, and to the extent *Bush v Gore* has any meaning for being able to stop, you know, a vote, stop ballots being counted, that's not what happened here. Here we went all the way through vote counting, all the way through canvassing, and all the way through certification, and all the way of sending

the slate of electors to the U.S. archivist before this case was even filed.

So I don't believe that *Bush v Gore* has any support for disenfranchising millions of Michigan voters after the election has already been certified through our processes, and, as Mr. Fink pointed out, the proper recourse here, with respect to these claims of fraud and misconduct in the election -- which of course we disagree with -- was to seek a recount. That's the ordinary process. You go and ask for a recount. That's the remedy for mistake or fraud in the results of an election. That's the process that should have been pursued here. It was not.

We even have processes for filing a challenge if you think that the voting equipment malfunctions, and neither of those processes occurred.

It's our position that *Bush v Gore* isn't applicable and that the relief requested here is essentially undoing an election and asking this Court to choose a new winner is unprecedented and unsupported by any case law extant. Thank you.

THE COURT: Thank you -- and hang on, Mr. Campbell.

Mr. Davis, do you want to be heard on this issue or your counsel, Mr. Paterson?

MR. DAVIS: I'm not sure if Mr. Paterson's audio is working properly. So, your Honor, if you can try and -- I

defer to my counsel.

THE COURT: Well, I mean I'm here. Mr. Paterson, can you hear the Court? All right.

Mr. Campbell, what -- we don't have to -- I've asked the question. You've given me the answer. I've heard from defense counsel.

MR. CAMPBELL: Would the Court allow me to give two quick cites, one from the Eastern District of Michigan?

THE COURT: Okay.

MR. CAMPBELL: -- and one from Colorado.

So the first from the Eastern District of Michigan is *Stein versus Thomas*, 222 F.Sup.3d 539. This was cited in the briefing as well, and, there this Court said, "The fundamental right of vote by plaintiffs, the right to vote," and, "To have that vote conducted and counted accurately."

This Court began its order dismissing the request for the injunction by saying, "The right to vote is sacred, and it's uniquely American." In fact, it's this aspect of having the count conducted and challenged by petition to the judiciary that is uniquely American.

Everybody -- a lot of folks vote. Nazi Germany had plebiscites. The Soviets had regular voting. Even Hugo Chavez let you vote for him as many as times as you wanted. That's not uniquely American. What's uniquely American is the ability to challenge it, to address that and petition to this court.

That's what *Bush v Gore* decided. It decided that the court can get involved, must get involved under the Constitution.

So the other -- the continuation of that quote is, "And to have the vote conducted and counted accurately is the bedrock of our nation. Without elections that are conducted fairly and perceived to be fairly conducted, public confidence in our political institutions will swiftly erode."

It is the executive that did the counting, and that was the issue here. They created the issues that disrupted elements of society that resulted, in this instance, in a case being brought to the court, as it should be in our democracy and in our republic.

The other case, by the way, is *Common Cause Georgia versus Kemp*. That's 347 F.Supp.3d 1270, from 2018. And I think I called it Georgia. It's obviously -- I think I called it Colorado. It's obviously Georgia. There, the court looked at a combination of statistical evidence and witness declarations enough to demonstrate that there -- it could take some action.

That's what you had here. You had the eyewitness reports, which are dismissed by the Defendants as being uneducated statements or statements by uneducated --

THE COURT: Yeah, I'm going to get into those statements in just a minute.

MR. CAMPBELL: So those things all combine to show

that using what was available to determine a path, and then, remember, Judge -- this is very important -- three of the Plaintiffs -- and that would be King, Sheridan, and Haggard -- they are not just voters. All six of the Plaintiffs are voters, and every vote is important under the Constitution and the case law, but these three are electors. And, in order to bring their claims, it was the consideration of counsel in this case that certain acts had to be completed by the State. The State finally completed those on November 23rd, and this is also explained and gone over in the Supreme Court filings. The last acts were done by November 23rd, and this case was filed on November 23rd.

THE COURT: Mr. Campbell, let me ask you something: Do you agree that the state law establishes an extensive procedure for challenging elections?

MR. CAMPBELL: Yes.

THE COURT: Did the Plaintiffs avail themselves of any of these procedures?

MR. CAMPBELL: No.

THE COURT: And why is that?

MR. CAMPBELL: Well, with regard to those procedures, in part because before the claims on behalf of the electors could be fully ripe that those processes had taken place. Again, there are a number of different claims that were pending. You know, Judge, because it's bean cited that the

U.S. Attorneys, 18 U.S. -- I'm sorry, attorneys generals, 18 attorneys generals had their own claim and their own approach to this. There are a number of other suits. People took different paths, all seeking to get what they thought the Constitution permitted these courts to undertake on behalf of a petition to address a grievance from a citizen. In this case, not just citizens, but at least, in the instance, of three electors and so --

THE COURT: But the procedures --

MR. CAMPBELL: (Indiscernible.)

THE COURT: The procedures --

MR. CAMPBELL: (Indiscernible.)

THE COURT: The procedures were there for them to avail themselves of, you would not -- you disagree with that?

MR. CAMPBELL: Oh, no --

THE COURT: They were --

MR. CAMPBELL: In terms of the procedures under the statutes were there, and, Judge, if this is a case that my clients, those are the lawyers, misjudged the timeline and got it wrong, then that's -- then that's what it is, but that is a long way from anything that could be sanctionable or has been argued by the Defendants, and in terms of issues --

THE COURT: Let me -- all right. Let me -- Mr. Fink, I'm going to give everybody -- I have one more question to ask about the relief that's been sought here and then I'll give you

an opportunity to speak.

MR. DAVID FINK: Your Honor, I didn't want to speak to substance. It wasn't substance. It was a point of concern. That is, it appears that Sidney Powell has left the proceeding, and at least we don't see her, and I just -- I know we want all of the Plaintiffs to be present.

THE CLERK: It looks here as if she turned the camera off.

THE COURT: Okay. All right. There we go. Maintain the camera, Ms. Powell, please. I'd like to have everyone here.

All right. My question to Plaintiffs' counsel or counsel for --

MR. KLEINHENDLER: Your Honor, I apologize. Before you move to your next question, I just wanted to add something to what Mr. Campbell said, if I may.

THE COURT: Okay.

MR. KLEINHENDLER: You asked what is the authority for the relief requested.

THE COURT: Yes.

MR. KLEINHENDLER: This Court, in the face of a claim of fraud, has inherent equitable authority to do as it sees fit. Fraud vitiates everything, and that is another basis that this Court has.

I also want to make another point that I think is

escaping, particularly what Ms. Meingast had mentioned. There was no way on this planet that the electors could have used the State of Michigan electoral processes, because that's not what they were trying to accomplish. What they were trying to accomplish was what are their rights under the Twelfth Amendment and what are their rights heading into the vote of an electoral college, which had not yet taken place, and that was the purpose of the TRO, not to have what is typically considered -- and that's what you're hearing from the Defense. A candidate who loses an election, what resources does that specific candidate have in order to unwind or preserve his or her position?

THE COURT: Mr. Kleinhendler, do you have any case authority for the proposition of inherent equitable authority to address fraud?

MR. KLEINHENDLER: Your Honor, I haven't. I don't have it with me. I did look it up, your Honor, just briefly while we were here. There is a -- there are many cases that -- I would refer you to the United States Supreme Court case, *United States versus Throckmorton*. It's old. 98 U.S. 61 in 1878. I believe that case states the general equitable jurisdiction that this Court has, fraud vitiates everything, and this Court has the equitable power.

And I also just want to point out one other thing that Mr. Campbell --

THE COURT: I can't imagine it's been over 100 years since -- that this is --

MR. KLEINHENDLER: Sorry. It's just the quickest case I could pull up. There are more modern cases, and I'd be happy to present them to you, your Honor, but that's just one case that came up quickly while we are here. And --

THE COURT: That's fine. Okay. Let me stop you, Mr. Kleinhendler. I'm going to move on. I need to move on, and I want to ask, and it's relevant, too. It's really a segue to what you're saying.

So let me just ask -- this is a timing issue, and the question from the Court is, is that why did the Plaintiffs wait for almost three weeks after the election to assert challenges regarding voting machines and election procedures, some of which Plaintiffs themselves claim were well-known far before the November 3rd election and others which were known by the close of election day?

So, again, we're talking about State procedures that are there, that were there when you -- you know, had been in place for Plaintiffs, Plaintiffs' counsel to for -- counsel to access. Why -- what was -- what was the reason for the delay?

Let me direct that to Mr. Campbell, and then I'll hear from whomever else.

MR. CAMPBELL: Well, as we've already expressed, my clients have already expressed, in the written matters both

before this Court and also through the United States Supreme Court filings, the reasons for the delay had to do with, one, the gathering of that information. The Court says, "Well, all this was well-known." It wasn't known that the election was going to go as the election did until the election; right? In fact, it's the day after the election because --

THE COURT: Okay.

MR. CAMPBELL: -- people went to bed. On election night there was one result anticipated, and another came out, at least in Michigan, the next day. So there is a reaction time to that.

THE COURT: Certainly, but three weeks?

MR. CAMPBELL: Judge, if anything, and it's said already in the briefing, it was filed too early. It shows you -- again, you've seen the number of lawyers who did contribute. It's not that there was a lack of effort to get it done. It's not that there was a lack of direction to get it done, although this is a novel proceeding, we candidly admit.

Now, it's not completely novel. It was pursued in other states, but this was really the first of those states that it was pursued in, but it was believed to be done in good faith by everybody. And, again, I haven't talked to Emily Newman, but I talked to her counsel. It was believed to be done in good faith by everybody, and they -- they worked diligently to get it done, and, as Mr. Kleinhendler has said

and as I will reiterate, the fact is that part of the theory rested on certain processes being completed by the State so that the electors could raise their particular and specialized causes of action and claims. So there is a ripeness issue here, along with the clock that the Court said was running for three weeks.

THE COURT: Any response from Defense counsel?

You can start, Mr. Fink.

MR. DAVID FINK: Absolutely, your Honor. This is a case about the election of the President of the United States. There simply is no case that could be of greater magnitude, and, in considering the extent of diligence necessary in going forward, certainly, no case warranted more serious due diligence and hard work on the part of the attorneys. The suggestion that it would take three weeks to file a lawsuit to raise issues that became -- many of which were stale by the time they were brought. The possibility that they say they were pulling together the facts, when, in fact, all they did was append affidavits that were filed in other cases and, by the way, rejected in those other cases. This is a case in which the most diligence received the least.

This Court has said in its ruling that the -- correctly, "That this case was stunning in its scope and breathtaking in its reach," very well-worded of course. And I have to -- excuse me, your Honor, but I have to say that the

Court summed it up: It was "breathtaking in its reach." In a case like that, you do the hard work. The suggestion that people couldn't work long hours and put something out quickly is absolutely insulting to the Court and to all of the parties.

We all worked on the schedule that was created by this. We filed briefs in the Supreme Court on just a couple days' notice. We filed briefs in this Court on just a couple of days' notice, and our briefs were comprehensive. What they filed, in the first complaint in this case, was an embarrassment to the legal profession. It was sloppy. It was unreadable. It was mocked publicly until they then filed another version a couple of days later. The fact is this was a sloppy, careless effort, and it was long delayed. They had plenty of time, and they absolutely should have filed more quickly.

THE COURT: Thank you, Mr. Fink.

MR. DAVID FINK: Obviously, it should never have been filed.

THE COURT: Ms. Meingast, would you like to add anything to that? You don't have to.

MS. MEINGAST: I agree with what Mr. Fink just said, your Honor.

THE COURT: All right. Mr. Paterson, counsel for Mr. Davis, you're on a phone line. Did you want to add anything?

Can you hear the Court, sir?

All right. We're going to move on.

MR. KLEINHENDLER: Your Honor, I'd --

THE COURT: Mr. Paterson?

MR. PATERSON: I would agree with Mr. Fink and Ms. Meingast, Mr. Davis, on behalf of the five-and-a-half-million voters in the state of Michigan, who were attempted to be misled by this complaint. It was an absolute effort on the part of the Plaintiffs not to challenge the results of the election but to throw shade on the election. I think it's entirely appropriate to have this proceeding and to proceed and make the Court's determination. So I would agree with Mr. Fink and Ms. Meingast and urge the Court to grant the relief that's being sought.

THE COURT: Thank you, Mr. Paterson.

Let me just say to counsel, at the close of this hearing I am going to give you -- everyone an opportunity to make a statement. Please do not feel that you need to comment every opportunity given to you. Please, if you want to add something that you feel that has not yet been stated, please feel free to do so. I'm not trying to chill your right at all. I want you to be able to make your record.

MR. KLEINHENDLER: Yes, your Honor.

THE COURT: All right. Thank you. All right.

MR. KLEINHENDLER: I wanted to say --

THE COURT: Let me move --

MR. KLEINHENDLER: No, your Honor, I would like to make a record here, and this is not been said. Number one, we've been criticized that the attachments --

THE COURT: Hang on, Mr. Kleinhendler. Let me ask you something, sir. What -- tell me -- now, you have already spoken, and I was asking -- that my specific last question was "Why did Plaintiffs wait three weeks after the election?" Are you going to address that? Without regard to what Mr. Fink or others have said, did you want to address that to --

MR. KLEINHENDLER: Yes, your Honor.

THE COURT: -- the Court?

MR. KLEINHENDLER: Yes, that's exactly what I wanted to address.

THE COURT: All right. Proceed, sir.

MR. KLEINHENDLER: Your Honor, yes, there was suspicion about the voting machines prior to the election. Yes, there was a court decision in Georgia that had called into question the security of the Dominion machines, but it wasn't until the voting was counted, and that took multiple days, even in Michigan, until the scope of what many people perceived to be irregularities was understood. So we didn't even get a -- I don't even think the networks announced the winner of the election until November 7th or November 8th.

One second.

Okay. Now, it took us time to put together the Ramsland affidavit, the affidavit from Spider, the affidavit from many of the other people, and what Mr. Fink said is simply not accurate. To say that every single affidavit, declaration that was presented to you in this complaint was filed in other cases is absolutely false. Okay. Look at what we filed. Look at the record.

Second, it took time to put together those affidavits. We did not -- we chose not to simply file a speaking complaint. We chose to file the complaint supported by 960 pages, your Honor, of documents, affidavits, many of which were original to this proceeding.

Further, your Honor, I want to make the point very clear to you. It was not possible to bring this complaint before the election was certified because we are here on behalf of electors. This is a case that is heading towards the electoral college. This mantra that you're hearing over and over again that we're looking to disenfranchise millions of voters is not what we were trying to do. What we are trying to do is, hey, wait a second, let's take a look at these machines. Let's slow the locomotive train down so a court of law can take a look at the allegations raised in these 960 pages. It takes time to put that together.

Last point.

THE COURT: Hang on.

MR. KLEINHENDLER: Last point and I'm done.

Mr. Fink criticized our initial complaint, says it was horrible, it's garbage. If that's the way he wants to talk, I'll will leave it to the Court if that's --

THE COURT: Please make your point.

MR. KLEINHENDLER: The point is we had an error in converting the Word document to the PDF document. I even told this to Mr. Fink. We spoke for -- I even sent him --

THE COURT: And what was the impact of the error as relates to time?

MR. KLEINHENDLER: The error was many paragraphs, many paragraphs, the words were slammed so close together you couldn't read them. Okay.

THE COURT: Okay. All right.

MR. KLEINHENDLER: So we -- one more second. So we --

THE COURT: No, Mr. Kleinhendler, that's enough. I've heard enough, and there's time reserved at the end. If you want to use your time in addressing that, you may do so.

The Court is prepared now to move on to the issue --

MR. CAMPBELL: If I can, your Honor. Very briefly, your Honor, only to put dates on this.

I've had a chance to look this up. The county boards finished on November 17th, according to my records. The Board of Canvassers finished on November 23rd. So this case was

filed on November 25th. So with respect to the Court, although that's obviously three weeks from the election --

THE COURT: Yes.

MR. CAMPBELL: -- it's not three weeks from when the case could have been filed.

THE COURT: Yeah. Okay. Thank you.

Let's talk about mootness, counsel, a couple questions about that. This is directed, again, to Plaintiffs' counsel and counsel for Plaintiffs.

As you acknowledged before, the U.S. Supreme Court, in a filing before it, once electoral votes were cast on December 14th, subsequent -- these are the words that Plaintiffs' counsel inserted in a brief to the Supreme Court -- "Subsequent relief would be pointless and the petition would be moot."

Is that right, Mr. Campbell? Was that the assertion?

MR. CAMPBELL: I believe that is accurate. There wasn't -- the first assertion, and I think this Court is aware in the filing before this --

THE COURT: No, no --

MR. CAMPBELL: -- your Honor --

THE COURT: I'm not asking whether that was the first assertion. I'm asking if that was the assertion that was made to the Supreme Court.

MR. CAMPBELL: At that time, and it was believed to

be accurate at that time, as the first assertion was believed to be accurate when it was made, but things change. This Court I think is well aware of what changed actually on the 14th. If I'm correct, your Honor, that assertion was made on December 11th in good faith.

THE COURT: All right. Given that statement -- I don't know about that December 11th date. I'm talking about the statement that was made to the Supreme -- and it could have been made. I wasn't saying that it was made --

MR. CAMPBELL: I believe that's right, your Honor.

THE COURT: Right. Okay. I was just referencing the date. December 14th is the date upon which the electoral votes were cast.

MR. CAMPBELL: Correct.

THE COURT: My question is, given the statement to the Supreme Court that subsequent relief would be pointless and the petition would be moot after votes were cast on the 14th, why did the Plaintiffs not recognize this lawsuit as moot and dismiss it voluntarily on that date, on the 14th of December?

Mr. Campbell.

MR. CAMPBELL: Because my clients are lawyers, and lawyers have a duty to zealously advocate for their clients.

Your Honor, things change. This was a fluid situation, and, if I may, by historical reference, I believe when this case was filed originally before your Honor we

thought -- my clients thought honestly and truly that the drop-dead date was December 8th, and that's what we've said to this Court. Turns out that another judge in Wisconsin did a different set of calculations and said, "Well, why are you guys all hurrying for December 8th. It should be December 14th."

I think Defendants agree that it's December 14th because that's what they said in their briefing. Again, we -- my clients thought honestly and truly it was December 8th. Somebody else came along and said, "Why not December 14th?" and we didn't argue with that. That's the date that we gave to the Court on December 11th because by that time the analysis was made in Wisconsin, and it was adopted, basically, by all parties.

On December 14th, your Honor, something happened that nobody anticipated and nobody on my side instigated or commanded happen, but three of our Plaintiffs were, in their opinion, properly elected as electors. That's not something that anybody, in terms of the lawyers in this case, had anticipated, expected, or, necessarily, had even wanted. However, once they were in their -- you can call it, again, a Trump election by the Republicans -- once they were elected as electors in Lansing, they believe, according to the Constitution, to be the electors.

That changed things, and now the Supreme Court's determination did have life. It had life it did not have

before, and so, in order to respect the desires, the goals that are set by the client, it was decided by -- again, not everybody. Obviously, Emily Newman didn't have any role. Brandon Johnson didn't have any. Lin Wood didn't have any role in this. But, Howard Kleinhendler, Sidney Powell, they decided -- and, again, I believe appropriately so given their responsibilities as lawyers to their clients -- that this case was not proper to be dismissed after December 14th because there were still issues that existed and remain. When those were cleared, and they were cleared in early January, shortly thereafter this case was dismissed.

THE COURT: All right. Let me hear from Ms. Meingast on that issue, please.

MS. MEINGAST: Thank you, your Honor. I'm not even sure I even know what to say. You know, as we put forth in our brief, your Honor, as you indicated, in their pleadings to the U.S. Supreme Court, the highest court in our land, Plaintiffs indicated this case would be moot by the time the electors voted. This whole idea or notion that this was somehow untrue or their case was revitalized because some of the Plaintiffs, who were purported Republican Party electors, took a vote outside the Capitol electing themselves electors is preposterous. There is no mechanism for having an alternative slate of electors sent anywhere, to the archivist or anything.

So I think the suggestion that somehow their case was

reinvigorated or that they were wrong, by their own pleadings that December 14th was the date by which really this would be moot, as far as any relief this Court could enter, I mean, really at the point that December 14th, we've sent the electoral slate, the college votes, our electors vote, and it goes to the archivist.

At this point, if you want to bring a case, you want some relief, you're going to have to go sue Congress. You're going to have to go to, you know, a different -- a different playing field and not this Court. So I'm flabbergasted by this idea that somehow their case was newly invigorated on the 14th and that this was not something simply made up here to avoid the claims that we've put forth in our pleadings.

THE COURT: To that point -- thank you, Ms. Meingast.

To that point, Mr. Campbell, how -- explain to me how you think that electing themselves as electorates changed anything. I've never heard this as a reason, by the way, as to why your clients were not willing to dismiss after December 14th. In fact, what had been said, as I understand it, was that it was -- your clients believed that I didn't have any jurisdiction to consider a motion to dismiss while the decision on the injunction was still on appeal. That's what I heard. So I've never heard this explanation about there being some reinvigoration because of the electors having been elected, air quotes. I never have heard that.

MR. CAMPBELL: I'm not sure I've heard air quotes --

THE COURT: I'm sorry, sir?

MR. CAMPBELL: I'm not sure I've heard air quotes in a case before, but I appreciate that.

THE COURT: All right. Well, you see them. Okay.

MR. CAMPBELL: Your Honor, again, my understanding is that argument is made by Defense from an e-mail exchange with Stefanie Lambert, who can tell you what she was thinking about.

It seems to me a reasonable consideration, if I'm appellate attorney, is to decide whether or not this Court has jurisdiction, but I don't think there was a flat statement there was no jurisdiction. I believe it was, if I recall the e-mail that was addressed in one of the pleadings, that it was that there was wondering whether or not there was jurisdiction. I don't think there's been any pleading ever filed in this court saying that it was without jurisdiction to do something or to not do something.

Again, the only pleadings that occur after this Court rules are, basically, the Defendants and the Intervenors who decided that they needed to go and file things, rather than asking for an extension of time, for example. They decided to file a motion to dismiss. That's their election.

I hope this Court understands why, in part, they wanted to do that rather than take the courtesy of an extension. They wanted to do something that they could later

hang a hat on and say, "Hey, this is stuff we should be able to collect on either under 1927 or Rule 11," or whatever theory they were going to come up with.

So in terms of what our clients' clients and what my clients did in this case, they let a claim pend long enough so that there was a final resolution of the issues clearly and absolutely. And, again, your Honor practiced law long enough to know. You make the decision to dismiss that case, and it turns out that there is some relief for your client, there's no policy in the world that's going to cover the loss that occurred because of that.

This is, again, basic lawyering. It's done every day in this country --

THE COURT: Yeah, I haven't -- let me stop you, Mr. Campbell. Again, my question: Are you arguing this for the first time?

MR. CAMPBELL: I'm sorry, when you say arguing?

THE COURT: This issue that you're bringing up about, you know, the claims have been reinvigorated after December 14th. Is that a new argument that you're advancing?

MR. CAMPBELL: Well, I don't believe the issue of the date of dismissal in the Supreme Court, the filing that has come up in these proceedings, as a basis for anything, and, again, I know you might not love the arguments about jurisdiction, but I don't believe you have Rule 11

jurisdiction. That's something that's said in the Supreme Court or the Sixth Circuit. I don't believe you have Section 1927 jurisdiction over -- it hasn't been a part of any of the pleadings. If I'm the first person that happens to argue it, it's because it's not been raised by anybody until you asked the question, Judge.

MR. DAVID FINK: Your Honor --

MR. KLEINHENDLER: Your Honor, if I might point out --

THE COURT: Hang on a moment. One at a time. Let me hear from Mr. Fink.

MR. DAVID FINK: Your Honor --

MR. CAMPBELL: Your Honor, if can intervene, and I apologize --

THE COURT: No, Mr. Campbell. Mr. Campbell --

MR. CAMPBELL: Yes, I just want to suggest, it might --

THE COURT: No, no --

MR. CAMPBELL: -- be better to hear from Mister --

THE COURT: No --

MR. CAMPBELL: -- Kleinhendler --

THE COURT: I'm sorry, sir.

MR. CAMPBELL: -- before Mr. Fink.

THE COURT: Excuse me. Excuse me.

MR. CAMPBELL: Apologize. I'll mute. Thank you.

THE COURT: Thank you.

Mr. Fink.

MR. DAVID FINK: Your Honor, we've now heard for the very first time the theory from the Plaintiffs that the subjective belief of three of the Plaintiffs that they had somehow been elected as electors, because that was their subjective belief, the attorneys had to pursue that claim.

Now, there's a couple of problems with it. One, of course, the attorneys have a duty to only go forward with something for which there is a valid, legitimate, legal theory to present to the Court and facts to support it, but, the more important issue, in terms of the question this Court poses, which was mootness, was not once, until this hearing today, not once did that distinction come up in this case, and on December 14th, the date when they said the case would be moot, on December 14th, if in fact they decided that due to a change in circumstances it was not moot, they could have and should have amended their complaint or otherwise filed something with this Court to notify us of the new proceeding that they were taking.

Now, counsel said something that I have to take personally as outrageous, when he suggests that the reason that we filed our motion to dismiss in this case at the time that we did and the reason the State filed the motion at the time that they did, was because we had some venal interest in collecting

funds in a Rule 11 sanction.

The fact is in this case the basis of the election of the President of the United States was under attack. These folks were putting in jeopardy the safety of our republic, and we chose to step up and to say, "No, this case must be and should be dismissed," and, ironically, their response at the time was, "Well, it's pending on appeal so it can't be dismissed yet." Of course, that was absurd that the other sanction was pend -- that the motion -- the temporary relief motion was pending on appeal didn't interfere with it.

We moved forward with our motion to dismiss. We're being asked today why we didn't adjourn it. We did everything we could to expedite it, as we should have.

Now, I will say this. After we filed that motion and they saw all the grounds, they still didn't dismiss. They also still didn't dismiss after January 7th when the United States Congress accepted the electors. Certainly, by then, the case would have been moot, if not on December 14th, and they still didn't dismiss. They still didn't dismiss, even though they had in one of their briefs on sanctions, they've said that the January 6th certification rendered their claims moot, but they didn't dismiss that day.

Instead, they kept moving forward, and then they waited until January 12th, which was the date that the response to our motion to dismiss was due, and on that date what did

they do? They asked for an extension. We said, "No, we don't want an extension." We opposed it. The Court, understandably, under the circumstances granted them two days. During those two days we were compelled -- we didn't choose to do this. We were compelled to file responses to a writ of cert in the Supreme Court of the United States, hardly a minor matter, again, only because they wouldn't dismiss.

And then even when they did choose to so-call voluntarily dismiss on January 14th, even when they did that, they didn't dismiss the appeal. They didn't dismiss their petition for cert. We asked them if they would. On January 18th, we asked Stefanie Junttila if they were going to dismiss the appeal. She asked us if we would consent. Of course we said we'd consent to dismissal of the appeals, but, instead, after we did this, we reached out -- or my late partner reached out to Ms. Junttila and said, "What's happening with the dismissal of the appeals?" And the answer she got -- he got was, "It's my understanding that Sidney Powell's team is preparing, it and I will submit it as I receive it."

And then, one last point, while the Supreme Court has the petition for writ pending -- and this case is clearly moot. Everybody agrees today that it's moot. They agree it was moot in the pleadings they're filing now.

On February 4th, Sidney Powell sends out a social media message on Telegram saying -- this February 4th -- "By

the way, assertions that all cases were lost is false. Our Michigan case in the Supreme Court is scheduled for conference soon." Signed Sid. They never dismissed this case. It was moot from the beginning, as this Court found in its first ruling. At every stage they'd say, "It will be moot when this happens, it will be moot when that happens," but they kept it going.

THE COURT: Final response. Thank you. Mr. Campbell, I'll give you the last word on that.

MR. KLEINHENDLER: Ma'am, I just want to point out something I think is very important.

We've raised this precise argument in ECF 112, pages 27-30. I'm just going to read you just to where you can start reading. "Opposing counsel and Defendants" -- this is page 27 of ECF 112 that was in response to ECF 105.

"Opposing counsel and Defendants also allege the case was moot and vexatious over the pleadings in the case that this argument based on the event of the Michigan Republican slate of electors voting a dual slate of electors." We raised this issue square front and center before you. That's number one.

Number two, your Honor, it's not merely that three electors believed subjectively that they were still in the game. All 16 electors, Michigan electors, which we have nothing to do with, appeared before the capitol. They weren't allowed in, and they decided to hold a vote. That is based on

their rights under the Twelfth Amendment, and it figures into what happens in Congress on January 6th when, under the Twelfth Amendment, and even under the ECA, the Electoral Count Act, objections to electors are permitted. That's what the Constitution says.

So, A, it's before you in the briefing; B, it renders this thing not moot.

To the last point -- and this is also in the brief before you, your Honor. Again, this is ECF 112.

THE COURT: I understand.

MR. KLEINHENDLER: Okay. Even after January 6th, I'm going to push this, and I'm going to read you the last sentence. "There is still a nonmootness issue, because the matters that were raised in this lawsuit are likely to be repeated and evading review." And we cited *Del Monte Fresh Produce versus U.S.* 570 F.3d 316, D.C. Circuit, 2009.

So, yes, the election was moot. Mr. Biden was elected. However, the issues raised in this lawsuit, because they were likely to be repeated and evaded review, could have still been decided by the Supreme Court.

Thank you, your Honor.

THE COURT: All right. I'm going to move on. Thank you. I'm going to move on to that section looking at legal authority. I'm going to move on now to the actual evidence that's been submitted in this case.

The answers, counsel, to the following questions will be assessed to determine whether sanctions under Rule 11, Section 1927 and/or the Court's inherent sanctions authority should be imposed. Specifically, the questions are structured to determine whether Plaintiffs and/or counsel for Plaintiffs should be sanctioned under Rule 11 for failure to make a reasonable inquiry into fact or law, knowingly asserting a groundless position, or asserting a claim for an improper purpose; secondly, whether counsel for Plaintiffs should be sanctioned under Section 1927 for unreasonable and vexatious behavior that prolonged this litigation; and, three, whether Plaintiffs and/or Plaintiffs' counsel should be sanctioned under the Court's inherent authority for litigation practices undertaken in bad faith through the advancement of claims without merit for an improper purpose.

So that's noticed. Those are the various sources of sanctions, and now I will proceed.

And this first question here is for Plaintiffs or Plaintiffs' counsel -- I'm sorry, Plaintiffs' counsel or counsel for Plaintiffs' counsel.

Do you believe that a lawyer has a legal obligation to review the plausibility of the facts alleged in the pleading before signing and filing it?

Mr. Campbell.

MR. CAMPBELL: I believe the answer, on behalf of all

my clients, would be yes.

THE COURT: All right. Let me then ask you as relates to Mr. Russell Ramsland's affidavit. Before -- I would like to know who read Russell Ramsland's declaration before attaching it to the pleadings in this case and submitting it in support of the motion for TRO? Who on the team read it?

MR. CAMPBELL: I don't have that information, your Honor. I --

THE COURT: Okay. Does anybody have --

MR. CAMPBELL: I know who didn't read it.

MR. KLEINHENDLER: I read it, your Honor.

THE COURT: Wait a minute. Hang on one second.

MR. KLEINHENDLER: Howard Kleinhendler. I read it.

THE COURT: Okay. All right. So all right. Are you the only person, Mr. Kleinhendler, that did? Anyone else?

MR. KLEINHENDLER: I don't know if others reviewed it as well.

THE COURT: Well, I need to know. That's what this hearing is for. I need to know. If you read it before it was attached, raise your hand or speak up.

Okay. Mr. Johnson read it. When did you read it, sir? You read it?

MR. JOHNSON: I don't recall when I read it. I read it before it was filed.

THE COURT: Okay. And, Mr. Kleinhendler, you read

it?

MR. KLEINHENDLER: Yes.

THE COURT: And, Mr. Rohl, you read it, sir?

MR. ROHL: I read it prior to the -- the day of filing I read the entirety of what was sent to me, including that.

THE COURT: Okay.

MR. WOOD: Your Honor, this is Lin Wood.

THE COURT: So the question here is read before it was filed in support of -- before it was filed.

MR. ROHL: That's correct. That is correct, your Honor, the day of.

THE COURT: Okay. All right. Thank you.

MR. HAGERSTROM: Same here.

MR. WOOD: Your Honor --

THE COURT: I'm sorry, Mr. Wood?

MR. HAGERSTROM: Scott Hagerstrom. I read through -- on the day it was filed, I read through --

THE COURT: No, no, no. I'm not asking if you looked at it after it was filed. The Court's question is --

MR. HAGERSTROM: No --

THE COURT: -- the Court's question is: Was it read before --

MR. HAGERSTROM: Yes, prior to the filing.

THE COURT: Okay. Mr. Wood, you had your hand up,

sir?

MR. WOOD: Thank you, your Honor. I just want to make a point, which I think I made earlier. I did not review any of the documents with respect to the complaint.

THE COURT: Okay.

MR. WOOD: My name was placed on there, but I had no involvement. So I haven't read -- didn't read the complaint, wasn't aware of the affidavits. I just had no involvement whatsoever in it.

THE COURT: Did you give your permission to have your name included on the pleadings or the briefs, sir? Mr. Wood, this is directed to you.

MR. WOOD: Yes, your Honor. Let me answer that. I do not specifically recall being asked about the Michigan complaint, but I had generally indicated to Sidney Powell that if she needed a, quote/unquote, trial lawyer that I would certainly be willing and available to help her.

In this case obviously my name was included. My experience or my skills apparently were never needed so I didn't have any involvement with it.

Would I have objected to being included by name? I don't believe so, but I did not apply for pro hoc vice admission. I had no intentions. It's not indicated on the -- if you look on the complaint and the amended complaint --

THE COURT: All right. You gave your permission.

MR. WOOD: -- there's no indication. I'm sorry.

THE COURT: You didn't --

MR. WOOD: I didn't object to it, but I did not know -- I actually did not know at the time that my name was going to be included, but I certainly told Ms. Powell in discussions that I would help her if she needed me in any of these cases, and in this particular matter apparently I was never needed so I didn't have anything to do with it.

THE COURT: Did you read it before it was filed, Mr. Wood, or are you saying you had no knowledge?

MR. WOOD: I had no notice.

THE COURT: Right.

MR. WOOD: I didn't have any involvement in the filing so I did not read it before it was filed. It was only afterwards when I found out my name was even on there.

So I just -- you know, I haven't received a motion for sanctions. I didn't get served with anything. I'm just -- I'm here because your Honor warned me to be here, but I'm here subject to my defense that I just don't think there's any personal jurisdiction over me because I didn't do anything in Michigan. I didn't do anything with respect to this lawsuit.

THE COURT: But you did --

MR. WOOD: I didn't put my name --

THE COURT: -- but you gave a general --

MR. WOOD: No, I didn't --

THE COURT: Hold on. So that I can properly characterize your testimony. You gave general permission to Ms. Powell to use your name on any pleading that -- what? Finish that sentence or restate it if I'm wrong.

MR. WOOD: I didn't give permission for my name specifically to be on any pleading. I told Sidney, when she asked, if she needed my help, I would help her from a trial lawyer standpoint. That's it.

THE COURT: Okay. So you were not -- were you surprised to see that your name was included?

MR. WOOD: When I found out it was included, your Honor --

THE COURT: That was my next question --

MR. WOOD: I guess I was --

THE COURT: Yeah, when did you find out?

MR. WOOD: I don't -- it would have been sometime well after the filing. I didn't follow the litigation.

I think I first became aware that my name -- I know that I was away when I saw an article in the newspaper about this motion for sanctions being filed, and I was trying to figure out why I was named in it and I didn't receive a copy of the sanctions. I looked. I was on the pleadings, but only on the complaint and the amended complaint. On the subsequent filings that were made with respect to the injunction, my name doesn't even appear.

So I'm only saying that I'm assuming that Sidney Powell knew that I would help her. For whatever reason, whoever was drafting the complaint put my name only there, but, your Honor, I just didn't have anything to do with this so I -- I didn't read anything.

THE COURT: All right.

MR. WOOD: I wasn't asked to read anything and so I didn't specifically say, "Hey, put my name on there. I want to endorse this lawsuit." I just, in general, told Ms. Powell, and I think she'll affirm this, that I was there to help her from a trial lawyer standpoint. On that matter or any other matter, I don't -- I didn't have any specific involvement in it.

THE COURT: All right. Let me --

MS. HALLER: Your Honor --

MR. DAVID FINK: Your Honor --

THE COURT: Hang on. One moment. Hang on for one moment. Ms. Haller, can you hang on for one moment, please.

Mr. Fink, you may be heard.

MR. DAVID FINK: Yes, if I may, your Honor. Mr. Wood just indicated that he did not know about the sanctions motion. Mr. Wood was served with our December 15th notice and opportunity to withdraw the pleadings and through the Safe Harbor provision. He was served by e-mail and he was served by first class mail using the addresses provided in the pleadings,

and the other representation by him is blatantly false.

I also would indicate that Mr. Wood in Delaware Circuit Court -- in Delaware court trying to defend against a claim brought there --

MR. CAMPBELL: Your Honor, I'm going to object --

THE COURT: Hang on. No, no, no. Excuse me.

Excuse me, Mr. Campbell. Please. Please. I will handle this. I am going to give everyone who I need to hear from an opportunity to speak.

You may proceed, Mr. Fink.

MR. DAVID FINK: Thank you. In Delaware, Mr. Wood, attempting to burnish his credentials in some way, explicitly made the representation to the superior court that he was, in fact, in the words of that case, "Among those cases in which Wood became involved were lawsuits in Wisconsin, Michigan, and Wood's own suit in the state of Georgia." This is the case in Michigan.

So he's ready to tell people when it helps him that he's involved in this case. He also broadcast on social media regularly his participation and his advancement and endorsement of this. That said, most importantly and most relevantly here, he could at any time have withdrawn the pleading or withdrawn his participation.

We didn't want -- we didn't choose to give them a chance to back out. We did it because the court rule required

it. The court rule said we couldn't seek Rule 11 sanctions if we didn't give them notice and an opportunity to withdraw their allegations. We did it. He had the notice, and he didn't withdraw the allegations. Thank you.

THE COURT: All right. Thank you, Ms. Haller --

MR. WOOD: Your Honor --

THE COURT: Hang on, please.

MR. WOOD: Your Honor, may I be permitted --

MS. HALLER: (Indiscernible.)

THE COURT: Mr. Wood, hang on, sir. I'm going to let you speak momentarily, and I see that Ms. Wabeke, our court reporter, and we all know, is legitimately concerned. So one at a time, and I will come right back to you, but I want to go to Ms. Haller because I said that I would. So please go ahead.

MS. HALLER: Thank you, your Honor. I just wanted to clarify that I was one the reviewers of Russ -- Russ Ramsland's affidavit in the complaint that we filed. I couldn't remember if I had, but I do recall I did.

THE COURT: Okay. All right. And so you -- and you actually -- you reviewed it before it was filed, counselor?

MS. HALLER: Yes, your Honor.

THE COURT: All right. Very well. And let me do a housekeeping piece right here because I want to hear -- but I need everyone to raise your hand and I can see you, and we'll take it in that order.

Mr. Wood, you may respond to what Mr. Fink has said.

MR. WOOD: Thank you, your Honor. I was not afforded any type of a hearing on the Delaware proceedings. I didn't take any position. I didn't have an opportunity to. That matter is on appeal now to the Supreme Court of Delaware based on the trial court's lack of authority to sua sponte issue a ruling (indiscernible) with respect to disciplinary matters and failure to have any type of a hearing. So I'm not sure what he's referring to there.

What I have said, I'm involved -- well, I'm involved. My name showed up so I can't say I'm not involved generally, but, again, I have to tell you, your Honor, I didn't receive any notice about this until I saw something in the newspaper about being sanctioned. So I disagree with Mr. Fink.

THE COURT: Okay. Well, that can be fleshed out. That can be fleshed out.

MR. WOOD: Sure.

THE COURT: I'm going to move on at this point.

MR. WOOD: Because --

THE COURT: Yes, sir.

MR. WOOD: Let me say, because if I had been, I would have obviously had a duty to consider whether or not to withdraw, but I can't withdraw from something I've never asked to be a part of. I never moved to be admitted to this court, to in any way be involved as counsel of record.

THE COURT: Did you feel that you had a duty --

MR. WOOD: So I just don't think that --

THE COURT: Did you feel you had a duty --

MR. WOOD: (Indiscernible.)

THE COURT: Did you feel, Mr. Wood, you needed to notify this Court of that?

MR. WOOD: Notify --

THE COURT: I don't know, I mean, that, you know, that your name was used and you're not really sure, you know, you hadn't given full permission for that --

MR. WOOD: I --

THE COURT: -- any kind of notification to the Court and saying this seems to be a --

MR. WOOD: (Indiscernible.)

THE COURT: This appears to the Court to be an after-the-fact assessment.

MR. WOOD: Well, I just don't understand that at all. If the Court -- if the Court knew from the Court's record that I had never moved to be admitted pro hoc vice. So you knew, the Court knew that I was not of record in this case so why would I have a duty to tell the Court what you already knew?

Now --

THE COURT: We don't even --

MR. WOOD: Listen, I don't know anything --

THE COURT: -- have pro hoc vice status.

MR. WOOD: So you have --

THE COURT: Excuse me. We do not even have pro hoc vice status here in Michigan. So everybody -- you know, I mean there's an assumption, certainly, that I am able to make, that when you come into the Eastern District of Michigan, you familiarize yourself with the local rules.

MR. WOOD: I didn't (indiscernible) --

THE COURT: So there's no responsibility --

MR. WOOD: I didn't --

THE COURT: -- that the Court has to do that.

MR. WOOD: I didn't come into the district. My name was placed on a pleading. You seem to assume that I said, "Hey, I want to be part of the Michigan case." I've made it clear that that's not what happened factually.

THE COURT: Okay.

MR. WOOD: And that factual presentation is undisputed.

THE COURT: Okay. Well, I don't believe it's undisputed, and, certainly when you put your name --

MR. WOOD: Who's disputing it, your Honor? Who's disputing it?

THE COURT: Mr. Fink has --

MR. WOOD: Who's disputing?

THE COURT: -- disputed it. Have you been tracking with Mr. Fink?

MR. WOOD: He hasn't -- Mr. Fink only knows that my name appeared on the pleading. He doesn't know how it got there.

THE COURT: Okay.

MR. WOOD: So he has no basis to dispute what I'm saying about the conversation --

COURT REPORTER: Excuse me.

MR. WOOD: He understands --

COURT REPORTER: Excuse me.

MR. WOOD: -- that I have --

COURT REPORTER: Excuse me. I'm sorry, Judge, I'm going to have to say that please stop interrupting. It's hard enough on a Zoom hearing, let alone in open court when we are live, so please stop.

THE COURT: Thank you, Ms. Wabeke. Absolutely, absolutely. So, counsel, here are the rules again. One at a time. Let the court recognize you to speak after you've raised your hands.

Mr. Fink, you may speak.

MR. DAVID FINK: Thank you, your Honor. To be clear, Mr. Wood indicates what I do and do not know. What I do know and what we put on this record is the following: One, we served him with a Rule 11 notice. Now, he should have known already before that because it was not only public, but I think we have social media comments from him, but that's irrelevant.

That's not necessary today.

On December 15th we e-mailed him, and it did not come back to us. Then we sent first class mail to us [sic.] that did not come back to us in which we notified him of the potential Rule 11 filing. It also ended up in the Twitter-verse, if you will. It became public, and, interestingly, it became public not because of anything we did. But, rather, because another attorney, Mark Elias, who saw our notice, which was not filed with the court but only sent to the parties, Mr. Elias Tweeted that notice out, and, after he did that, Mr. Wood posted a Tweet saying something about he knew -- "You know you're over the target when you're in the sights of David Fink," or something like that.

The point is, he knew. He even commented publicly. Equally importantly, today he's representing to this Court that he did not participate in -- I think that's what I heard him say -- that he had no chance to respond in Delaware. In fact, we offered, and, understandably, it wasn't at that point something the Court felt was pertinent or relevant, but we offered, as a potential supplemental brief with an attachment, the opening brief of Ronald Poliquin, an attorney purporting to represent Lin Wood in the Supreme Court of the State of Delaware and filed on May 5th, 2021, and that is the document in which his attorney said, "Among those cases in which Wood became involved were lawsuits in Wisconsin, Michigan, and

Wood's own suit." I didn't make this stuff up.

THE COURT: Thank you, Mr. Fink, and I would -- I'm going to ask a question to Ms. Powell, and my question, Ms. Powell, to you is: Did you -- did you have an opportunity to speak to Mr. Wood? Let me -- let me restate this.

Did you ever at any point tell Mr. Wood you were going to place his name on the pleading?

MS. POWELL: My view, your Honor, is that I did specifically ask Mr. Wood for his permission. I can't imagine that I would have put his name on any pleading without understanding that he had given me permission to do that. Might there have been a misunderstanding? That's certainly possible.

THE COURT: All right. And, Mr. Kleinhendler, sir, one specific question to you, yes or no: Did you have an opportunity to speak to Mr. Wood before you placed his name on the pleading?

MR. KLEINHENDLER: Honestly, your Honor, I don't recall.

THE COURT: Okay.

MR. KLEINHENDLER: I don't recall. Sorry.

THE COURT: All right.

MR. BUCHANAN: Your Honor?

THE COURT: Yes, Mr. Buchanan.

MR. BUCHANAN: Thank you, your Honor. I just wanted

to respond to your question about who had a role in the affidavit of a witness in question that you mentioned, and my client doesn't recall specifically when she looked at this affidavit. She said she saw it at some point, but, again, she was working at home doing basic editing, research, and so, you know, she didn't have any role in terms of investigating or doing due diligence on these particular affidavits. She's not saying they're accurate or inaccurate, but her role was more limited.

THE COURT: All right. Let me move on in terms of experts, those affidavits that have been submitted, and my questions are going to pertain to who spoke with these individuals for purposes of understanding the source of their facts that they were referenced in the affidavit and basis for their conclusions. Who spoke to these experts before submitting their reports as evidence? Dealing with expert reports.

So let me start with Joshua Merritt. Who spoke with him for purposes of determining the source of his facts and the basis for his conclusions before submitting?

And if there is counsel here who doesn't know the answer to that question because they had no involvement in it, because they didn't speak, please raise your hand. If you are not -- if you were not an individual who spoke in advance to Joshua Merritt about the source of his facts and the basis for

his conclusion in the report that he provided, raise your hand if you weren't involved with it.

Okay. So I'm going -- okay. Let me name the individuals because I want to -- please keep your hand up.

MR. WOOD: Your Honor, could you restate the question, please?

THE COURT: The question -- yes, I will. The question -- as relates to the affidavit that was submitted by Joshua Merritt, my question is: Who spoke to him in advance before including his affidavit to the complaint? You know, did you speak to him for purposes of determining the source of his facts around the basis of his conclusions? Who on this call had that type of conversation with Mr. Merritt?

MR. JOHNSON: Your Honor, perhaps --

THE COURT: No, no. Go ahead, Mr. Johnson. Let me just do this: Raise your hand if you had the conversation with him, if anybody spoke with Joshua Merritt in advance of the submission of his affidavit.

So right now we have Mr. Kleinhendler.

Mr. Johnson, did you have your hand up for that?

MR. JOHNSON: I had my hand up that I did not speak with him or, for that matter, with any of the experts.

THE COURT: Okay. Okay. We'll make a note of that.

But, Mr. Kleinhendler, you spoke with him before the affidavit was submitted, Joshua Merritt; is that true?

MR. KLEINHENDLER: Yes.

THE COURT: All right. And did you have an opportunity to speak to him about the source of his facts?

MR. KLEINHENDLER: Your Honor, he was recommended to us. As there are certain things I cannot disclose, unfortunately, in public about his sources, about his qualifications, and the reason for that is he has worked as an undercover confidential informant for multiple federal law enforcement and intelligence services. It's beyond merely what is stated briefly in his declaration.

He did -- he did tell me what those -- you know, what the basis is, what type of experience he had, and, based on that, looking at what he had presented, with the detail, with the URLs that he had cited, with the vulnerability to the Dominion pass codes that were available to be hacked on what they call the dark web, it was my honest belief that what he was saying was correct.

I will take the opportunity, your Honor, to point out that the one area in his affidavit that has come into dispute was his role in the 305th military intelligence. At the time it was my understanding that he had spent a reasonable amount of time with that unit. Subsequently -- subsequently I did learn that he did train with them, your Honor. He trained with the unit. I think it's called Fort Huachuca. I can't remember the exact one. However, he subsequently was transferred out of

there.

However, I point out to you that that -- that one point is minor and practically irrelevant because the basis of his expert opinion and his factual opinion are based on, and I'm happy to talk to you in camera and give you more detail of his years and years of experience in cyber security as a confidential informant working for the United States Government.

THE COURT: Did you feel that it was -- did you make that correction to the Court at any time? I'm not aware of it.

MR. KLEINHENDLER: I didn't have the time because when I first learned of it, your Honor, when I first learned of it, it was after all the cases had been decided and dismissed and then we withdraw. We never made a further representation to this Court, an argument to this Court about his qualification in that regard, and, technically, your Honor -- technically, your Honor, the statement is not false. He trained with the 305th. Okay. It's not technically false. However, had I known in advance that he had transferred out, I would have made that clear, but I didn't. I had no reason to doubt.

THE COURT: Thank you, Mr. Kleinhendler.

Hang on a second.

Mr. Campbell, why do you have your hand up, sir?

MR. CAMPBELL: Because I wanted to let you know,

Judge, if your questions tread into the area that you have acknowledged you're going to avoid, which is the area of work product or privilege, I will -- I'm asking the Court permission to be able to interrupt then with objections that are direct and express on that. Hopefully your questions don't get there, but I wanted to make sure that I was within your protocol to do so.

THE COURT: All right. You may raise your hand. Anyone who wants to address the Court, please raise your hand.

Mr. Fink.

MR. DAVID FINK: Yes. I just want to speak to the comments regarding Mr. Merritt, and as most people know --

THE COURT: Okay. Mr. Fink, let me do this, sir. I'm going to give you and Defense counsel an opportunity to -- after I have asked a couple of more questions about a couple of additional purported experts, I'm going to give you a chance to follow up on that. If I could just understand -- get the lay of the land in terms of these experts.

So let me proceed.

And I'd like to ask about Mr. Matthew Braynard, and I'd like to know who reviewed his affidavit and who spoke to him in relation to what was attached, in relation to the statements in his affidavit.

Ms. Julia Haller, you have your hand up?

MS. HALLER: Yes. May I clarify, your Honor?

THE COURT: Yes.

MS. HALLER: Matt Braynard had data that we cited to through our expert, William Briggs, who is also known as Matt. So William "Matt" Briggs cited to Matt Braynard. Matt Braynard had information, and we did communicate with Matt Braynard to the extent that we could. He had an agreement with a different attorney so our communications were more limited, and I do not feel comfortable discussing all the attorney work product that's involved in my communications, but I will say there were communications.

THE COURT: Okay. Anyone else speak to Mr. Braynard?

All right. How about Mr. Briggs, William Briggs? Who, as has been said, he did seem to be one who interpreted or provided analysis about the materials that Mr. Braynard submitted.

Yes, Ms. Haller.

MS. HALLER: Yes, your Honor.

THE COURT: Did you speak with Mr. Briggs?

MS. HALLER: Yes, your Honor. I communicated with William Briggs -- Dr. Briggs. Yes, I communicated with Dr. Briggs.

THE COURT: All right. And you were able to speak to him about the source of his facts?

MS. HALLER: Your Honor, everything's documented in his report, including his source and information, and we

addressed this in 112, as well as in our other oppositions, that we thoroughly had vetted and gone over with the information that's cited in Dr. Briggs' report, yes.

THE COURT: All right. I don't know that that's clearly stated, but we'll revisit that.

MS. HALLER: Thank you, your Honor.

THE COURT: How about Mr. Watkins? Who reviewed the affidavit of Ronald Watkins and did anyone speak to him? Please raise your hand.

MS. HALLER: Your Honor, I can qualify that I have spoken to Mr. Watkins. I do not know at what point in time exactly, but I have communicated with Mr. Watkins about his reports.

THE COURT: All right. And you've spoken to him about his sources as well?

MS. HALLER: Yes, your Honor.

THE COURT: And the basis for his conclusions?

MS. HALLER: Yes, your Honor.

THE COURT: All right. And how about -- all right. So we did -- we talked about Mr. James Ramsland already, and, Ms. Haller, you said that you did in fact -- what did you say? You said that you reviewed it, his affidavit?

MS. HALLER: Yes, your Honor.

THE COURT: And you spoke with him?

MS. HALLER: No, your Honor, I did not.

THE COURT: You did not speak with him?

MS. HALLER: I did review the filing -- I mean the report, but I have not communicated with him, no.

THE COURT: All right. Did anybody on the -- speak with Mr. Ramsland?

Mr. Kleinhendler, go ahead, sir.

MR. KLEINHENDLER: Yes, your Honor. Not only did I speak with him, about ten days or so before the complaint, I met with him.

THE COURT: Okay.

MR. KLEINHENDLER: I spoke with him often I reviewed drafts of his report. I asked him clearly, "Are you comfortable making these allegations? Are you comfortable with the language in the affidavit? What are your sources? Who else has assisted you?"

Because he writes an affidavit that he lists ASOG (ph.) He spoke -- he briefly described some of the folks that were working with him, and he submitted, your Honor, two reports, an initial report and then a rebuttal -- the initial was an affidavit sworn, his sworn testimony, and the rebuttal was more of a 26(b) rebuttal report.

I worked with him on a rebuttal report after analyzing and reviewing what the Defendants and the Intervenor Defendants had placed before the Court, and I was involved with that. And, yes, I spoke with him, and I was comfortable, your

Honor, that what we were putting before the Court was true and correct.

THE COURT: All right. Thank you.

MR. BUCHANAN: Your Honor, this is Mr. Buchanan. I just wanted to clarify something. My client, Ms. Newman, did communicate with Mr. Ramsland on a limited basis.

THE COURT: For what purpose?

MR. BUCHANAN: I think, you know, she was talking to him about his affidavit in general, but, again, she was more of a -- someone that was doing editing and, you know, trying to gather the affidavits, including this particular one, but it wasn't a substantive conversation where she was doing due diligence on all the background. She asked some questions, but it was limited conversation.

THE COURT: All right. Thank you. All right. I have concluded --

MR. CAMPBELL: Your Honor, Ms. Powell has her hand raised.

THE COURT: Oh, thank you. Ms. Powell.

MS. POWELL: Yes, I just wanted to make clear that I have spoken with Mr. Ramsland a number of times.

THE COURT: Okay.

MS. POWELL: I cannot say whether it was before the filing or after, and I can't remember when I reviewed his affidavit, whether it was before or after.

THE COURT: Okay. All right. Let me -- as relates to this section of presuit investigation and these particular experts, does counsel for the Defendants or the Defendant Intervenors or Plaintiffs' counsel wish to say anything related to the questions or the answers that I've received with that section?

MR. DAVID FINK: I would.

THE COURT: All right. Raise your hand if you'd like to be heard.

Okay. We're going to only hear from Mr. Fink.

Go ahead.

MR. DAVID FINK: Thank you, your Honor. I will not go into the detail, nor do I think I need to, of what our concerns were with all of these affidavits. That's laid out pretty clearly in our briefing. What I do want to first do is respond to something quite disturbing that Mr. Kleinhendler said.

He said that he couldn't have known while the case was pending, didn't learn until later, during the sanctions process, about the issues related to the Merritt affidavit.

And, by the way, we're calling it the Merritt affidavit, but of course this is the one that's identified as Spider, in what was attempted to be an anonymous presentation in redacted documents, which were so poorly redacted that we found out the name.

But here's what's important for the Court to know. We attach as Exhibit 17 to our brief in support of sanctions a *Washington Post* article that details all of the issues regarding Mr. Merritt. Now, the reason that's so important is not the accuracy of that article, but, rather, that article put the world on notice on December 11th of 2020 -- *Washington Post* let the world know that this man was not a military intelligence expert. He washed out of training. That he, himself, disavowed participation in the case.

All of that was in that article, and if that did not put counsel on some kind of inquiry notice so they should have exercised some due diligence at that point and advised the Court that they had, apparently unintentionally they're saying, made a major misrepresentation to the Court, I don't know what could have put them on notice. They were on notice.

Now, the experts that we're talking about now, the Court correctly asks the question, "Did you talk to those experts?" I would simply add one more thing, which is very relevant, which is talking to those experts or not, just reading those reports, if they were properly vetted, would have immediately told any diligent attorney that the reports were desperately flawed, and I'll be very specific. For example, we heard about the concerns about -- that Mr. Ramsland raised about Antrim County and the Dominion machines. What's important --

THE COURT: Okay. Mr. Fink, wait a minute. Hang on. I want to stop you because I am going to cover some of that, and we can -- and, you know, why don't we stop there because I have some additional questions. Of course, I'm going to let everyone be heard, okay?

MR. KLEINHENDLER: Your Honor, can I respond to Mr. Fink just on Mr. Merritt?

THE COURT: Yes.

MR. KLEINHENDLER: Okay. Your Honor, I learned of the issues when I saw the *Washington Post* article.

THE COURT: Okay.

MR. KLEINHENDLER: I can tell you that many of the allegations in the *Washington Post* article are false, and I want to make this very clear to the Court and all counsel. I spoke with Mr. Merritt Sunday. He is prepared to appear before your Honor and discuss his qualifications and discuss, in detail, his findings. That may require a closed session for part of it. We'll let you decide. But I want to make it clear to everyone that he is prepared to come here and testify and put his qualifications and his opinions to the test. We have asked in our pleadings for an evidentiary hearing.

Mr. Fink wants to wave around a *Washington Post* article. He can do that. Mr. Merritt is ready to come to court and put to bed any issues regarding his qualifications and regarding his testimony.

MR. DAVID FINK: Your Honor, the only point I'm making is, not whether this man is or isn't qualified, that Mr. Kleinhendler has told us he learned that they made a misrepresentation, whether intentional or otherwise, regarding his qualifications, and he never advised the Court. Yes, there might be things in that article that aren't true. I don't know, but I know he was put on inquiry notice. He apparently did some investigation and did not notify the parties or the Court. That's --

THE COURT: Your response to that, Mr. Kleinhendler?

MR. KLEINHENDLER: My response to that, your Honor, is when I learned of it, number one, it took awhile to contact Mr. Merritt; number two, there was no further proceedings before the Court. Your Honor had already ruled on December 8th that it had no subject matter jurisdiction, no standing, a whole laundry list. There was never -- there was never a further opportunity, or, in my view, a reason to make a correction in a case that had already been decided, and, again --

THE COURT: And it was on appeal?

MR. KLEINHENDLER: Your Honor?

THE COURT: And that was on appeal?

MR. KLEINHENDLER: It was on appeal, but I want to make the point. What he said is technically not wrong. He did spend, from my understanding, seven months training with the

305th. Now, it may not be the full story, but I disagree with the characterization that it's inaccurate, it's not true.

THE COURT: All right. Okay. All right. Thank you.

I have some follow-up questions about the affidavit of Mr. Merritt, and the first one is: Why was his affidavit filed using a pseudonym?

Are you the person that can answer that question, Mr. Kleinhendler?

MR. KLEINHENDLER: Yes. Your Honor, as we pointed out -- okay, your Honor, as we pointed out, and I have it here -- hold on.

This motion is a motion to seal. This is ECF 50 -- okay, your Honor -- and this is his affidavit that he gave us explaining it. "He had worked in the areas that have made him a known target, has had death threats and a price put on his head by terrorist organizations. For the safety of myself and my family, I've requested to remain redacted. I found listening devices in my home and have had attempts on myself," meaning he had been tried to be killed.

Next paragraph, "Because of work I have done as a confidential human source, confidential informant, as well as work investigating spies across the globe, my identity is redacted, not work which I have just done here in America, but work with foreign nations."

Final paragraph, "I request that these extreme cases

be taken into consideration for my personal safety, my family's safety, the safety of sources I have worked with. I respectfully request my persona remain redacted."

Those are the reasons I submitted the redaction.

THE COURT: Thank you. Next question: Whose decision was it to identify this individual as a former U.S. military intelligence expert?

MR. KLEINHENDLER: Your Honor, he drafted his affidavit. No one corrected that sentence. That came directly from him.

THE COURT: Okay. All right. Anyone else have an answer to that?

All right. Let the record reflect that no one has said that they do.

At any point, next question, during the course of this litigation did anyone ask any of the attorneys or suggest that Merritt was not a military intelligence expert?

MS. HALLER: No.

THE COURT: And that's Ms. Powell is saying no? I'm sorry who said, "No"?

MS. HALLER: Excuse me, your Honor. Julia Haller, no.

THE COURT: All right. Mr. Kleinhendler, did anyone ask you?

MR. KLEINHENDLER: No, your Honor.

THE COURT: Okay. Ms. Powell, I wanted to direct my next question to you, and did anyone ask you if, or suggest to you that, he was not a military intelligence expert?

MS. POWELL: No, your Honor.

THE COURT: Thank you. And my next question for Plaintiffs' counsel or counsel for Plaintiffs' counsel: Should an attorney be sanctioned for his or her failure to correct or withdraw allegations that the attorney comes to know or came to know are untrue? Is this sanctionable behavior?

Mr. Campbell, I'll hear from you.

MR. CAMPBELL: Again, it's going to depend on the circumstances. As the circumstances exist here, the answer would be no. One, because of the statements that you've just heard. There's an issue as to whether or not he correctly identified himself. Nobody knew that to be wrong.

Secondly, with the information, you've heard the explanation. It's not an inaccurate statement, although, as Mr. Kleinhendler had said, he would have expanded upon that. That's not the difference between being false, as Mr. Fink accuses, and not.

So on this circumstance, with an affidavit that this Court, again, did not reach the merits of, there was no *Daubert* motion, there was no consideration of any of his information, because this Court found that it was moot, found that there was lack of standing and all these other issues, never reached the

affidavits.

Certainly, these lawyers, who, within I think it's four days of this Court's order in ECF number 7, I think, are in the United States Supreme Court, not just on this case but on three others, that somehow, some way this clarification or further explanation that Mr. Kleinhendler clearly says he would have provided if there was a means and a basis to do so or if he had noted originally, is that what would qualify for what the Court's asked? The answer I think is, resoundingly, no.

THE COURT: Did Mr. Merritt draft the affidavit on his own with no assistance from counsel?

MR. KLEINHENDLER: Yes, your Honor. I got the affidavit fully drafted.

MS. HALLER: Your Honor, we can bring him forward to testify. We know that this is a qualification question, which is appropriate on a *Daubert* motion. We do not believe it is grounds related to a sanctions motion when we have not had an evidentiary hearing. We've not had discovery. We've not had an opportunity to make this witness available.

So, again, as Mr. Kleinhendler pointed out, we would like an evidentiary hearing. We will bring forward our witnesses. We will have *Daubert* motions addressed because Plaintiffs are capable of making them. The same attorney made motions in other courts with *Daubert* motions. So we can address the questions of qualification at that time as your

Honor would like.

THE COURT: Yeah. All right. We'll --

MR. CAMPBELL: So the court is aware the record is clear.

THE COURT: I will make those --

MR. CAMPBELL: If I may, briefly.

The request for an evidentiary hearing is not new, your Honor. It's been in the pleadings as well. I know it's in ECF 112, and it's in other places. We have offered that to the Court, my clients have, repeatedly. There's been no acceptance by the Defendants' at all.

THE COURT: All right. Let me ask what steps were taken to investigate the expertise of Matthew Braynard, and I specifically just need to know: Who reviewed his affidavit prior to submission and who spoke with him?

MS. HALLER: Your Honor, I have represented to this Court, and I repeat what I stated earlier --

THE COURT: Okay. You did speak to Braynard.

MS. HALLER: Indicated we communicated, including me, personally communicated with Mr. Braynard. I cannot give you the times and the dates specifically at this moment, but I can tell you that there were communications, more than one, with Mr. Braynard.

THE COURT: Okay. Anyone else? All right.

Now, let me move on. I want to talk of more about

some of the -- the content, more about the content of the reports that have been submitted. I want to talk about, specifically, about the Briggs -- Mr. Briggs' survey, which was based on -- I'm sorry, looking at his analysis, which was based on data provided by Matthew Braynard.

My question is: What kind of survey did Mr. Braynard conduct? Who can answer that question?

MS. HALLER: Dr. Briggs, your Honor, his name is Dr. William Briggs, Ph.D., Cornell professor, made his report and all the work underlying it, available to this Court for free. He was not charging for what he provided, and he can also testify. He will also make --

THE COURT: I'm just asking. Hang on. Hang on.

I just want to know, after having reviewed the various documents related to Matthew Braynard's interpretation -- no, I'm sorry it's Dr. Briggs' interpretation.

MS. HALLER: Yes, your Honor.

THE COURT: Sorry. Of Matthew Braynard's survey. My question is -- it's not clear to me what type of survey Mr. Braynard conducted. What is it?

MS. HALLER: Dr. Briggs is a statistician who, to a reasonable degree of professional certainty, would be anticipated to testify in accordance with the survey provided as an exhibit to the complaint. As this case has not yet

gotten to evidentiary proceedings or *Daubert* motions, we can address this and make him available. Dr. William M. Briggs, Ph.D., can be available --

THE COURT: I understand what his credentials are.

MS. HALLER: Well, your Honor, I'm just trying to make it clear that he would be anticipated to testify in accordance with the report that was attached to the complaint.

THE COURT: Okay. Counsel for the City, question for you, Mr. Fink: What would be the basis, in your view, of sanctioning counsel for the submission of this report? And this report I'm referring to would be the report that was provided by Dr. Briggs.

MR. DAVID FINK: The basis would be that the slightest bit of due diligence, by any attorney knowledgeable in the way the election proceeded, would have revealed that the report was founded on -- based on, not just bad statistical analysis, but bad legal analysis. For example, in the record there is a reference to the number of voters with indefinitely confined status. That's a status that doesn't exist in the state of Michigan. That's from another state.

There's a reference to the individuals who apply for an absentee ballot and the State mails it out to them. State of Michigan has never mailed out absentee ballots and didn't mail out absentee ballots in this case.

There's reference to early voters. We've never had

what's called early voting in Michigan.

Apparently, apparently he believed that every time a voter's residence changed that automatically that voter is disenfranchised. So people who happen to travel to Florida for the winter but continue to vote absentee, he deemed them to be fraudulent voters.

Furthermore, the actual analysis really just took the simplest review to see that the numbers just didn't line up, and this -- I'm not a statistician, but I play one in Court, and -- but, seriously, I'm not a statistician, but I do know how to look at two numbers and see if they match, and, in this report, there are statistics that are just directly inconsistent and stated over and over in the same report.

So now they also claim, for example, that -- and this is fascinating because this comes up in multiple cases because people rely on others. A ballot is applied for -- an application is applied for and on the same day a ballot is cast, and they use that as evidence of fraud because they say that's impossible because you couldn't mail it and get it back that soon. Well, the fact is that's exactly how I vote and a lot of other people do. You go into the clerk's office. You fill out the application. The clerk gives you the ballot. You fill out your ballot. You hand it in. It all happens in one day. This is part of the fraud they claim. They claim --

MS. HALLER: Your Honor, may I respond?

THE COURT: No, no, not yet, Ms. Haller.

Go ahead, Mr. Fink.

MR. DAVID FINK: There's also a discussion about ballots based on a survey. They did a survey, an unscien -- I think it's an unscientific survey. Maybe it was scientific, but there's no law that says you can do a survey and find out the percentage of people who don't remember that they applied for an absentee ballot or who applied for an absentee ballot and don't remember if they received it. Based on silly things like that, they came to their conclusions.

THE COURT: I understand, yes.

MR. DAVID FINK: So the short answer to your question -- I'm sorry.

THE COURT: No problem.

MR. DAVID FINK: The short answer -- I'm sorry, the shorter answer to the Court's question -- I guess there's no short answer. I apologize.

The shorter answer to the Court's question is we believe anybody who closely reviewed this study and looked at the way it was prepared, and I don't mean going behind what was written, the document as submitted to the Court itself on its face is a clearly and desperately flawed document, and they should have known that. They had that duty. Lawyers don't get to just throw things out and see what the Court will do with them. We have a duty.

THE COURT: All right. Let me --

MS. HALLER: Your Honor, may I respond?

THE COURT: Ms. Haller, briefly.

MS. HALLER: Yes, your Honor. We can make Dr. Briggs available and to testify, and Mr. Fink can then cross-examine him as in accordance with the Rules of Evidence and Rules of Civil Procedure. At this time, there is no *Daubert* motion pending.

Mr. Fink is arguing as if he is both expert and attorney. He is not a statistician, but he is opining on the lack of statisticianal basis for a report where he's never questioned the witness. Is that admissible in this court, in this federal court? Are we no longer applying the Rules of Civil Procedure?

We have witnesses, and we have them examined, and whether or not their testimony stands up under a motion is a question that has yet to be addressed by this Court, and to have it now as a basis -- suggested as a basis for sanctions, when we have not had the opportunity to bring Dr. Briggs to this court, when we have not had the opportunity to have an expert opine or the question of whether he's an expert to be qualified --

THE COURT: Ms. Haller.

MS. HALLER: Yes.

THE COURT: Ms. Haller, let me point out to you that

I see a distinction between what you're saying and what Mr. Fink is saying, and the distinction is, is that Mr. Fink is pointing out areas which he thinks would have been obvious to Plaintiffs' counsel before the material by Dr. Briggs was submitted, and I have a series of questions that follow that along those same lines. I am not -- no one is, at this point, purporting to be an expert who can understand the underlying statistical analysis. That's not being questioned.

The question is, is that on the face of these submissions is there anything there that would give counsel pause to say, hold on, need to know a little bit more? I see that as being a distinction, and that is the Court's response.

I want to move on, and you'll see from my next line of questioning how that's borne out.

So I want to talk about Mr. Ramsland's affidavit, and I want to ask specifically can anyone question the improbable turnout numbers as shown in his declaration, which was attached to the original compliant, numbers such as 781 percent of the voting population in North Muskegon casted votes, 460 percent of individuals in Zeeland Charter Township showed up. Did anyone feel that that type of a representation should be questioned?

MR. KLEINHENDLER: Your Honor.

THE COURT: More importantly, did anybody question it?

MR. KLEINHENDLER: I did.

THE COURT: Okay. Mr. Kleinhendler.

MR. KLEINHENDLER: And "Russ, Russ, are you sure about these numbers?" And he said, "Yes, yes, I did question them. Yes, I did review, and yes, it was an error" that he corrected on his reply affidavit.

MR. CAMPBELL: ECF 49, I believe.

THE COURT: He also goes on to talk about vote switching discovered through hand counts when there have been no hand recounts in Michigan as of the date that he made the statement, something of which Plaintiffs, who include Republican Party chairs, would have known. What about that kind of a statement, talking about the vote switching discovered through hand counts when there have been no hand recounts at that point? Was that also corrected, Mr. Kleinhendler?

MR. KLEINHENDLER: I'm trying to find where you're referring to.

MR. CAMPBELL: Which paragraph, your Honor?

MR. KLEINHENDLER: Do you have a -- because, offhand, I don't --

THE COURT: We might be able to pull that.

MR. KLEINHENDLER: I don't -- I don't know what hand counting looks like. What paragraph?

MR. DAVID FINK: Your Honor, that would be -- that

would be Paragraph 10 of his affidavit when he claims that the Antrim County error, which was actually reported by the clerk the night of the election, that the Antrim County error was only discoverable through a hand counted manual recount.

THE COURT: That is the paragraph.

MR. KLEINHENDLER: I'm looking, your Honor. I'm getting into Paragraph 10.

MR. DAVID FINK: Your Honor, if I may, what's astounding to me is, after we have briefed this issue at least twice, probably more than twice but twice to these lawyers, explicitly addressing the fact that there were no hand recounts in the state of Michigan at that point, that everybody should have known, and that one of the Plaintiffs was the chair of the Republican Party of Antrim County, of all things, who clearly would have known there wouldn't have been a hand recount as of November 29th, despite that, Mr. Kleinhendler, even as of today, isn't even aware of where the claim is being made.

MR. KLEINHENDLER: I don't see it in Paragraph 10. Please read me the language --

MR. CAMPBELL: I'll read that --

THE COURT: Hang on.

MR. CAMPBELL: (Indiscernible.)

THE COURT: Hang on. Stop, please. Please stop.

Mr. Campbell, do you have the language in front of you?

MR. CAMPBELL: I believe I do, your Honor.

THE COURT: Read it, please.

MR. CAMPBELL: "One red flag has been seen in Antrim County, Michigan. In Michigan, we have seen reports, 6 of 6,000 votes in Antrim County that were switched from Donald Trump to Joe Biden. They were only discoverable through a hand counted manual recount. While the first reports have suggested that it was due to a, quote/unquote, glitch -- my air quotes. After an update, it was recanted and later attributed to a, quote, clerical error, unquote. This change is important because if it were not due to clerical error but due to a, quote, glitch, end quote, emanating from an update, the system would be required to be recertified, according to Dominion officials."

THE COURT: All right. Mr. Campbell, my question goes specifically to the reference of there having been -- this information having been discovered through a hand recount, where we know now that the statement was made, there was no such hand recount. That is my question.

MS. HALLER: Your Honor, if I may correct the record for that. It was the Michigan Secretary -- the county secretary who did that hand recount, and that's reported on at that time. So there was what they called a hand recount. Maybe it's not under the law that defines the definition, but that is heavily reported at that time.

MR. DAVID FINK: No, your Honor. It was not. I'm sorry.

MR. CAMPBELL: It wasn't.

THE COURT: Hang on.

MR. DAVID FINK: I'm sorry. I'm sorry.

MR. CAMPBELL: The Court is acting as if you've seen proof that the statement made by that -- no statement was made by the county person. That hasn't been attached to the pleadings here.

THE COURT: Well, I mean all right.

MR. KLEINHENDLER: Your Honor, you asked for my understanding. My understanding when I read this was that, specifically with regard to these 6,000 votes in that specific county, somebody did a hand recount. It wasn't a State-sanctioned full Board of Election recount. My understanding was that somebody recounted it by hand.

THE COURT: All right.

MR. KLEINHENDLER: And that's how they discovered.

THE COURT: All right.

MR. KLEINHENDLER: Again, what you're hearing -- I want to make this clear here. You're hearing a lot of factual representations by Mr. Fink, and I would please ask you to double check the record before you just take it because --

THE COURT: I don't -- I don't need to be -- I don't need that cautionary instruction from you. Thank you.

Mr. Fink, your response, please.

MR. DAVID FINK: Only to the specific statement by Ms. Haller and, apparently, Mr. Kleinhendler.

Nobody, nobody said there was a hand recount. A clerk said that there had been an error on the publicly reported but not official results the night of the election. Within a day it was clarified that there had been a transposition of numbers, not a recount of any kind. A hand recount is a term of art. It is possible to obtain a hand recount in this state.

It turns out that the Trump campaign never requested such a hand recount, but, eventually, there were audits. As of this November date, it is absolutely uncontroverted and uncontrovertible that no hand recount had occurred, and anyone knowing the facts in this case, anyone understanding how Michigan elections work, which could have been local counsel, should have flagged that and seen it in Ramsland's report.

MS. HALLER: Ramsland's report -- excuse me, your Honor -- actually said "hand counting." He does not say "hand count," which is the legal term.

MR. DAVID FINK: It says "hand counted manual recount."

"Hand counted manual recount" is the exact --

MS. HALLER: Hand counted --

MR. DAVID FINK: -- what it states --

MS. HALLER: -- is a different term --

THE COURT: Hang on.

MS. HALLER: -- from hand count.

MR. DAVID FINK: And there was no hand counting.

THE COURT: All right. Mr. Campbell --

MR. CAMPBELL: But there's the lead, your Honor. There was a report about it. He doesn't say that it happened. He doesn't swear that he was there to see it. He says he got that report, and, again, it's the point to say then they said there was a glitch. Well, if there's a glitch, this has to happen.

So, again, as lawyers, we all know there are conditions precedent and conditions subsequent. This is not a material statement, and if he happens -- if the report happens to be inaccurate, then Mr. Ramsdale [sic.] can tell you whether that impacts his opinion if he were here to testify at the evidentiary hearing that my clients have been asking for, but, otherwise, again, you are letting Mr. Fink act like he's the expert to tell us what hand recount means.

MR. KLEINHENDLER: Your Honor --

THE COURT: Excuse me.

MR. KLEINHENDLER: This is very important.

THE COURT: Excuse me. I have already asked that if anyone would like to speak that you raise your hand. Please honor that. Not right now, Mr. Kleinhendler. Just hold on a

minute.

I just want to note for the record that Mr. Ramsland did in fact submit a subsequent filing on December 3rd, and he indicated that the original data that he provided, in terms of turnout, voter turnout, was based on unidentified state-level data that no longer exists. However, as indicated above, these results that I have shared with you, the results in the city of Detroit deemed to have been 139.29 percent. I said Zeeland was an astronomical number. I believe North Muskegon, 790 percent. He indicated that that information was obtained from the State and that it no longer exists.

However, he indicated -- however, this Court will take note of the fact that there were official results that were available to him even before his original claims were filed, and I understand that there could be some, you know, parsing of words here, but that is the point that I am getting at, and Mr. Ramsland did submit what one could argue was his effort and attempt to correct, but he really did not go far enough because he's simply saying that the data that he relied upon seems to be saying that it was inaccurate, but it's no longer available.

All right. So my question becomes: Should an attorney be sanctioned for his failure to correct or withdraw allegations that he comes to know were not true?

Let me hear from Mr. Campbell.

MR. CAMPBELL: Well, if you're asking me is that what the rule says? Yeah, the rule says if you have knowledge. Now, knowledge is also defined, Judge. It's defined as actual knowledge of the fact in question. Under the MRPC, the Michigan Rules of Professional Conduct, that rule is defined. So whether there's actual knowledge, your question is really not a question; it's an answer.

Here, there is no evidence that any of the lawyers had the statistical background or understanding. I mean this is why they have reports. Nobody was confronted with proof, knowledge that information was in error, inaccurate, or untrue, for sure. So -- and, again, it would have to be knowledge that it was presented falsely and you don't have that here.

THE COURT: All right.

MR. CAMPBELL: And, again, I join the chorus. Let's have the evidentiary hearing if you have a question as to whether the people who made the reports did so in good faith or not.

THE COURT: And, again, as I've already indicated, I am simply inquiring as to counsel's review of affidavits that, on its face, raise questions. That is what my questioning is about.

Mr. Fink.

MR. DAVID FINK: If I may. I want to speak simply to the Detroit issue. Certainly, when we saw the Ramsland report,

the very first time we saw it, we had the reaction that all counsel should have had, which was that it was astounding that 139 percent could have voted in the city of Detroit. We immediately checked the records, and the record was clear that something like 50.88 percent had actually voted in the city of Detroit. It was easy to find, it was publicly available, and they had to be on notice that when they are making such an extremely powerful, potent, and dangerous allegation they have a duty of inquiry to at least look into it, and all it took was 30 seconds on the Internet for me to find out the correct answer.

I also want to point out the danger that came from this because --

THE COURT: Mr. Fink, no.

MS. HALLER: (Indiscernible.)

THE COURT: Excuse me.

MS. HALLER: -- as to this Court --

THE COURT: Excuse me.

MS. HALLER: -- we have to object.

THE COURT: Ms. Haller, I will recognize you when you have raised your hand. Mr. Fink is allowed to finish, and I will give you an opportunity to speak thereafter.

Go ahead, Mr. Fink.

MR. DAVID FINK: Okay. The suggestion that this was some kind of harmless error because it was ultimately corrected

flies in the face of the reality of what actually happened. These lies were put out into the world, and when they were put out in the world, they were adopted and believed by some of the most potent recipients of this information.

So that, in the infamous January 2nd, 2021 phone conversation when then President Trump attempted to extort Secretary of State Brad Raffensperger to try to help him win his election which he'd already lost, President Trump explicitly referenced the 139 percent voting statistic in Detroit as though it were fact. These are the consequences. It's the consequence of what they did and how they abused this system by not having made that correction, and they should have. They never should have filed this.

And, no, we don't want -- we're not looking for any kind of *Daubert* hearings on any of these so-called experts. No, we don't think they're experts. Our issue is the slightest bit of due diligence would have alerted the lawyers that they were in the position of making misrepresentations to the Court and to the world.

THE COURT: All right. Ms. Haller.

MS. HALLER: Yes. Thank you, your Honor. Mr. Fink just cited to an Internet source unnamed as the source to say that one of our experts, designated or anticipated to be an expert, in the time that discovery would allow or an evidentiary hearing would allow as a basis for a lie. Mr. Fink

is citing to unnamed Internet sources, and I submit he is opining as an expert as well as arguing as an attorney without foundation. So he lacks foundation. He's citing to hearsay, and all his submissions are to claim that there are lies here. We submit that that is done without legal foundation and basis. Hearsay is not a basis. Thank you, your Honor.

MR. DAVID FINK: Your Honor, one second.

THE COURT: Mr. Fink.

MR. DAVID FINK: Just to be clear, I was not citing an Internet source. What I said was 30 seconds on the Internet got you to the public record, which is not hearsay. The public record of the number of voters, the percentage of the registered voters who voted, the public record is all I'm referring to. It was always available. It was available to all of these attorneys.

THE COURT: And I wanted to just point out, it was available on November 19th of 2020.

Let me go to Mr. Campbell, and then I'm going to move on.

MR. CAMPBELL: You know what, Judge, I think the points have now been made relative to this, but, again, as to what these numbers mean within the report and how they're to be interpreted, Mr. Fink can't be the source for that.

THE COURT: Yes, and that's -- I don't believe that's his point. It is just the matter of what an attorney, who had

reviewed the information, what they would make of that data.

Go ahead.

MR. CAMPBELL: But, Judge, you just asked me can a lawyer say something that's false. So just because it's not his point, he shouldn't be able to spread the falsehoods.

THE COURT: All right. I'm going to move on.

MR. KLEINHENDLER: Your Honor, I have a very important point that I think would help you, your Honor, and that is Mr. Fink talked about the recount in Antrim County. I just want to refer you to Mr. Ramsland's rebuttal. It's ECF 49, and at pages 8-9 he has a photograph, a photograph of the hand recount that was done in Antrim County and to which he referred to in the moving affidavit. That's my point, your Honor.

THE COURT: I'm going to move on to some specific --

MR. CAMPBELL: Your Honor, if I can, can we have Mr. Fink explain why there's a photograph of something that shows a hand recount when he's telling everybody there's been no hand recount?

MR. DAVID FINK: Absolutely, but, I'm sorry, Ms. Meingast is --

THE COURT: Go ahead, Mr. Fink, did you want to respond to that?

MR. DAVID FINK: I've got to pull up the document. I don't have it in front of me.

THE COURT: Okay.

MR. DAVID FINK: Because there was no hand recount, as stated, but I think Attorney General Meingast has the answer.

THE COURT: Ms. Meingast, please.

MS. MEINGAST: Just briefly, your Honor. I'm the attorney in the Antrim County *Bailey* case.

THE COURT: Yes.

MS. MEINGAST: The questions about this case, I'm happy to shed some light. There was certainly not any kind of hand count recount that occurred before the Secretary of State and the County actually did one later in December. So what the, you know, the clerks -- the county clerk and the local clerks did during the canvass or during, you know, the election night and the days that followed was simply look at tabulary tapes and comparisons and look at those things. There wasn't a hand count of ballots or anything like that nature. You can't -- it's not even appropriate or allowed under election law to do something like that at that time.

THE COURT: All right.

MR. CAMPBELL: Again, your Honor, the story isn't what Mr. Fink said, that there's absolutely no hand recount. There is something going on there, and nobody is -- neither of the two counsel have said, "Hey, that's a false document."

So it turns out that they were aware of it, having

seen ECF 49. It turns out they have no rebuttal to that document. It turns out that the expert, the person who made the report, had a basis for making the statement, and we have spent I don't know how long talking about a line from --

THE COURT: And that may well be the case, that may well be the case, but it is -- if that's how I choose to proceed, that's how I will proceed.

Mr. Fink, last word on this, and I'm moving on.

MR. DAVID FINK: I apologize, your Honor. I know I had my hand up. I'm with somebody who is going to bring me the document so I can look at it, and I can tell you and I can tell Mr. Campbell unequivocally there was no hand recount as of the date of this report. I'm guessing whatever the photo is is of something that was done later than that.

THE COURT: All right. I would like to move on now, and I'm going to give you all -- you can make a note, and I really don't even -- I don't know what the picture is that you're referring to, but when you can pull that together, and I will revisit that during the course of this hearing. We're going to move on right now.

All right. Now, the amended complaint states that Defendants violated the Equal Protection Clause by taking several specific actions. To be very clear, Plaintiffs' Equal Protection claim was based on the notion that the votes of those who voted for former President Trump were diluted.

Plaintiff submitted many affidavits as evidence that specific things happened, thereby causing vote dilution.

Considering this, and the fact that counsel knows it could not submit affidavits to the Court with impunity, despite the fact that the affidavits are executed by others, the Court is concerned that these affidavits were submitted in bad faith. For this reason, I have questions about specific affidavits and the factual allegations they were alleged to support.

I would like to first look at -- Plaintiffs assert, first of all, that Defendants, "Fraudulently added tens of thousands of new ballots and/or new voters to the qualified voter file in two separate batches on November 4th, all or nearly all of which were votes for Joe Biden."

Now, the amended complaint cites three pieces of evidentiary support for that conclusion. One is the affidavit that's been submitted by Mr. Sitto. That's ECF number 6-4, PDF 40-42 -- Pages 40-42. The amended complaint states, "Sitto observed tens of thousands of new ballots being brought into the counting room."

Did I understand that correctly, per the affidavit, that is what the affidavit states?

Here's my question for counsel. First of all -- and this is referenced in the amended complaint. As I read Mr. Sitto's affidavit, the affidavit does not state that he actually saw these ballots brought in. Counsel seems to be

making an assumption that he had them brought in.

Who had anything to do with this affidavit? Let's start there. Who prepared that affidavit at ECF number 6-4, PDF? Anybody?

No one knows about that, huh?

MS. HALLER: Your Honor, can we have a moment to find the document? Because it's kind of hard to do when you have this on the computer, as I do.

THE COURT: Yes. He said he observed tens of thousands -- this is what the compliant says. "He observed tens of thousands of new ballots" -- here it is here on the screen, the shared screen, and this is actually -- let's see.

So the question becomes -- that is a statement that's made in the complaint, that Sitto observed tens of thousands of new ballots being brought into the counting room, but, in fact, the affidavit does not state that he actually saw it. All right.

All right. He says he "heard other challengers say that vehicles with out-of-state plates pulled up and unloaded boxes of ballots, and, approximately 4:30, tens of thousands of ballots were brought in and placed on eight long tables. Unlike the other ballots, these boxes were brought in from the rear of the room."

MS. HALLER: Your Honor, what ECF document is this? Because it doesn't show at the top of the screen showing.

THE COURT: 104.

MR. CAMPBELL: If I may, your Honor, up above -- you've highlighted Paragraph 10. Paragraph 5 describes a time frame in which he is standing in the room that he's describing the conduct in Paragraph 10. I think that puts him personally.

THE COURT: Okay. So let me -- let me move on then, and that was Mr. Campbell. Please say your name before you speak. I think it will be helpful.

All right. So even if the Court assumes -- even assuming Mr. Sitto saw the ballots brought in, what is the basis for concluding that there were tens of thousands, and what steps, if any, did counsel take to investigate his basis? And again --

MR. CAMPBELL: This is Don Campbell.

THE COURT: I'm not --

MR. CAMPBELL: This is Don Campbell.

THE COURT: Yes.

MR. CAMPBELL: The basis for the tens of thousands is I think that's what he says in the affidavit there. I will note this, that the only contrary statement that was provided by the Defendants in any of its briefing up to this hearing was to say that it might look like to uneducated, untrained folks.

THE COURT: Sorry. Hold on just one moment, please. I'm sorry, hang on one moment, please.

Apologies, go ahead.

MR. CAMPBELL: Thank you. I haven't read all of Mr. Sitto's affidavit here obviously at this moment, but I can't recall whether he had training or not, and I don't know whether he expressed his level of education, but, you know, the City seems to concede that, yeah, it could look like this stuff, it's just you don't know what's really going on.

Now, of course the Court has not had the opportunity to hear what these people actually saw or to put those people under examination in an evidentiary hearing, if that's what it required, and nor has it had an opportunity to really test the City's position, even though it looks like that, it didn't actually happen --

THE COURT: Mr. Campbell, let me be clear, that this -- I said at the outset of these particular affidavits that I'm going to be questioning counsel about is that I wanted to determine whether or not -- whether counsel had done its proper level of investigation before submitting an affidavit. It's quite similar to what the other areas that we discussed previously, in terms of was there anything in the content that would trigger your duty as counsel to determine whether or not these statements were based in facts.

And for someone to say tens of thousands, and if you're telling me that it is just an eyeball view of it and they pulled that out, I ask you: Is it acceptable to place into an affidavit? Do you think it is, Mr. Campbell?

MR. CAMPBELL: I've got to tell you, Judge, if a jury believed it, it would be enough to convict somebody of a crime of election fraud in a moment, yes, absolutely.

THE COURT: Okay.

MR. CAMPBELL: If you saw that. I mean what other proof would you have, Judge, other than your own eyes? It's outrageous --

THE COURT: And --

MR. CAMPBELL: I've got to get three witnesses --

THE COURT: Excuse me. Excuse me. I'm asking you -- my question really is: How would anyone know that that's tens of thousands?

MR. CAMPBELL: We can ask Mr. Sitto under examination, but I don't think that's something he needs to put into an affidavit.

THE COURT: Question: Did you -- that is really my question. Was that question asked? And I don't think I got an answer from any of the attorneys on this here today at the hearing as to whether or not -- you know, who, who actually put together this affidavit? Did anyone on the call have anything to do with it? Anyone?

MR. KLEINHENDLER: Your Honor, this is Howard Kleinhendler. I believe this affidavit and others were filed in a companion case. The companion case had nothing to do with us, and on behalf of -- I believe it might have been

the Trump campaign in connection with a challenge, a different challenge that was made. These were affidavits that were submitted by counsel in that case.

THE COURT: So there was no effort on -- even though these affidavits -- this particular affidavit was submitted, and if I'm not mistaken, attached to the complaint, you didn't feel that you needed to review it before it was filed?

MR. KLEINHENDLER: We reviewed it. Of course we reviewed it, and, frankly, it was not that inconsistent with what our experts were saying. If you look at our expert reports, and -- your Honor, I don't know -- forgive me -- what standard are you using here for filing a complaint? We had a good faith basis, no reason not to believe --

THE COURT: I'm looking at the standards that are set forth in the variety of options I have to impose sanctions. That's what I'm looking at and --

MR. KLEINHENDLER: Well, I'm looking at the standard --

THE COURT: Okay. Thank you.

Mr. Fink, what is it you would like to say?

MR. DAVID FINK: First, to be clear, it's astounding that even today Mr. Kleinhendler isn't able to tell us what the source of this is, just saying he thought it was a Trump lawsuit. This is from the *Constantino* and *McCall* case that was filed in the Wayne County Circuit Court. The case was heard by

Judge Kenney, and at the time that it was before Judge Kenney, Chris Thomas, the former elections director, the elections director of the State of Michigan for something like 38 years, under Democratic and Republican administrations, and was involved in this litigation, Chris Thomas filed a detailed affidavit addressing these very issues, explaining why Mr. Sitto misunderstood what he may have observed, very clearly.

Judge Kenney reviewed that and made conclusions, none of which are ever referred to by the Plaintiffs, but, certainly, again, I'm not saying this Court needs to or should make a finding of truth or falsity of these affidavits, but the Court is appropriately asking about the duty of inquiry during this three-week period. This was filed first in Wayne County the week of the election. That's when these affidavits were available to them. There clearly was an issue of fact as to whether this was true, as it was responded to so clearly by Chris Thomas and by Judge Kenney.

They had a duty at that point to investigate. Lawyers -- unfortunately this kind of case is going to make people around the world believe that lawyers can say or do whatever they want and it doesn't have to be true; they don't have to inquire. It isn't that way. You can't put something in a pleading that you know to be false, and I do want to say one thing.

Earlier today the question came up about pro hoc vice, and I just want to say every lawyer in Detroit, including the three local counsel who signed on here, should know that in the Eastern District of Michigan it's been 40 years since we had pro hoc vice admission, but what we do have, what we do have is an admission process in which everybody who gets admitted fills out a form or takes an oath that they must swear or affirm that they will honor the civility principles of this court, and as Mr. Campbell well knows, one of those civility principles is we are not to make factual misrepresentations to the Court. We are not to misrepresent the law or the facts to the Court, and they seem to have chosen not to be sworn into our district.

So they didn't know -- and, by the way, if somebody on this call, if one of these lawyers says they didn't know because they're going -- everybody blames everybody else here, apparently. They're going to say, "Local counsel didn't tell us." Again, Google it. Google "admission to Eastern District of Michigan," and it pops up right away. There is no pro hoc vice, and there hasn't been since 1981.

They should tell the truth. They have a duty to tell the truth, and they have a duty to not submit an affidavit to this Court, whether it's attached to a complaint or not, not to submit an affidavit to this Court that they have reasonable cause to believe has false statements in it and to rely on it

in the allegations they then make in the complaint.

Thank you. I'm sorry if I went too long.

THE COURT: All right. Let me stop --

MS. HALLER: Your Honor --

THE COURT: Hang on. I'm going to -- let me tell you what my plan is. I will hear from counsel, from Ms. Haller, from Mr. Campbell, and Mr. Davis appears he wants to say something. After I have done that, we're going to take a ten-minute break. All right. It is now 11:00. We've been on for the last two-and-a-half hours. I have more areas of questioning.

Ms. Haller, I'll hear from you.

MS. HALLER: Thank you, your Honor.

I would just briefly say that this was the complaint and we had good faith to attach exhibits, and we spoke to our anticipated experts and we reviewed the materials, and I simply am confused as to the standard that's being applied when it comes to filing a complaint because this was not a verified complaint so I'm a little confused at the standard.

We did not submit falsehoods, and we have not had an opportunity to have our witnesses examined, which I'm sure your Honor understands that we will make the witnesses available. They can be cross-examined by Mr. Fink, who doesn't need to opine on what constitutes the public record without citations.

THE COURT: All right.

MS. HALLER: So citations are helpful, the standard would be helpful, and thank you for your time, your Honor.

THE COURT: All right. Mr. Campbell.

MR. CAMPBELL: Yeah, I just want to make sure the record Mr. Fink has highlighted is understood and appreciated by this Court. Other members of the State Bar of Michigan, other lawyers saw this and admitted it in a different proceeding, and I've got to tell you, Judge, you've got to be able to trust when something has been submitted by counsel because of the oath that we take, because of the reliability on everybody else within this profession that, yes, that should have tremendous value. In fact, I would say it's -- it ends the discussion on whether there's good faith to submit it.

The counter-argument, which they want to promote, they can do so at their time. Judge Kenney did not rule that that affidavit was in error. He did not rule to any of the merits in the *Constantino* case.

THE COURT: All right. Thank you.

MR. CAMPBELL: So with regard to that, that is further basis for the good faith to apply.

THE COURT: Let me answer Ms. Merritt -- thank you Mr. Campbell -- Ms. Merritt -- Ms. Haller's question as to determining what the standard is that I'm applying here, and I've said it before, but the standard is that Plaintiffs' counsel submitted affidavits that the Court may believe should

have been obviously questionable, if not false, on their face. That is what I am getting to. There is a responsibility. There's a duty that counsel has to ensure that when you're submitting a sworn statement in support of your case, actually as -- presenting it as evidentiary support of your claims, that you have reviewed it, that you have done some minimal due diligence and that is what I am getting at. All right. All right.

MS. HALLER: Thank you, your Honor.

THE COURT: We're going to take a ten-minute break.

MR. CAMPBELL: May I ask for a slightly longer break?

MR. WOOD: Your Honor --

THE COURT: Hang on a second, Mr. Wood.

MR. WOOD: I just wanted to ask when we come back from the break if I could have a couple of minutes to respond to something that Mr. Fink had earlier said?

THE COURT: Yes, you can do that briefly -- all right -- when we come back from the break.

Mr. Campbell.

MR. CAMPBELL: Your Honor, I would ask for a 20-minute break and we reconvene at 11:30, if that's not a problem.

THE COURT: That's fine.

MR. CAMPBELL: Thank you.

THE COURT: All right. So hang on.

Mr. Flanigan, are we -- just how are we handling this from a technology standpoint, and Mr. Owen, does everyone sign off?

THE CLERK: I think Mr. Owen can stop the stream and everybody can stay signed into the room, and they can simply mute and turn their camera off.

THE COURT: All right. So those who are on this screen need to mute your mics and turn the camera off.

THE CLERK: Court is in recess until 11:30.

(Recess taken 11:14 a.m.)

(Back on the record at 11:45 a.m.)

THE COURT: All right. Thank you everyone. As promised, we will begin with Mr. Wood. What would you like to say on this record, sir?

MR. WOOD: Thank you, Judge. If you just give me just a short few minutes, I think I will be listening for the rest of the day because I don't have anything to really add to the questions your Honor is asking.

What I wanted to make it clear is, as I said at the beginning, that I'm appearing subject to my Defense that I'm not subject to the jurisdiction of the Court personally or by having appeared in the case. My name appears on the complaint and the amended complaint. It does not contain my e-mail address, does not contain any reference to me filing for any type of admission, including under Local Rule 83.20. I did not

sign this pleading. You'll see I do not have a slash-S signature line. I did not have anything to do with submitting the pleading. I haven't advocated for the pleadings.

So when you talk about, well, the content of the complaints or the content of these affidavits, I had nothing to do with it, and I feel like before I am in any way subject to sanctions that I ought to have the benefit of an evidentiary hearing that will establish, and we could probably do it today, any lawyer whose name appears on the pleadings for the Plaintiffs I believe will affirm to you that, regardless of whether there was some misunderstanding about why my name got put on there, each lawyer will affirm to you that I did not have any input into any one of these pleadings or affidavits and I was not asked to have any input into them.

So I feel like I've been kind of lumped as counsel for the Plaintiffs when I did not ever agree to appear, particularly as it would apply to Rule 11. I've practiced law for 44 years, and I think I've covered 27 different states outside of Georgia. I have never appeared in a case without having sought the local rules permission to do so, knowing that I might, in federal court, be subjected to Rule 11.

So I did not subject myself to Rule 11 sanctions. Section 1927 certainly does not apply to me in terms of multiplying any type of proceedings, and I feel like I'm entitled to due process or an evidentiary hearing that would

show that I was not asked, nor was it ever intended, that I be represented as a signer or as a counsel of record to be held to the standards of Rule 11. I did not receive any e-mail notice from counsel about the Safe Harbor. I've had my office check, and we've received nothing by mail.

So I wanted to make that position clear so that the record is protected in terms of my request for the evidentiary hearing, and perfected as to the record where I am taking the position my appearance today is subject to my defense of lack of jurisdiction either under Rule 11 or Section 1927.

THE COURT: All right.

MR. WOOD: So, going forward, if your Honor has questions about who had involvement, I just want to go ahead and in one lump sum let you know I had no involvement in any of this in terms of the substantive input or with you.

Thank you very much, Judge.

THE COURT: Okay, right, and let me just say -- and, Mr. Fink, I'm not going to allow to you respond to that simply because I am going to table that issue until the end of this hearing where that is going to be the time in which I address the issue of supplemental briefing, and I'm going to tell you, Mr. Wood, right now, I'm going to allow you to submit a brief on this issue and then allow Mr. Fink, or whomever else would like to respond because I know that this issue factually is in dispute.

All right. Now, having said that --

MR. WOOD: Thank you, your Honor.

THE COURT: You're welcome, sir.

All right. Let's move on now, counsel, to the issue of the Carone affidavit, which is ECF number 6-5. Ms. Carone indicates that there were -- just a moment, please, and -- uh-oh. We have a little technical glitch on our end, and we will get that fixed.

Mr. Flanigan, are you aware of it? Okay. He may have gotten kicked off --

THE CLERK: Your Honor, I am having trouble with my audio that I'm trying to work out with Jason currently. I can hear, but it's very faint.

THE COURT: Okay. I think that we have -- Ellen has been kicked off as well. So we need to figure it out.

THE CLERK: Yes, she has.

THE COURT: See if you can bring her back in. All right.

So, counsel, I'm going to proceed, and we're, again, focusing on the Carone affidavit, wherein it stated, "There were two -- "there was two vans that pulled into the garage of the counting room, one on day shift and one on night shift. These vans were apparently bringing food into the building. I never saw any food coming out of these vans. Coincidentally, it was announced on the news that Michigan had discovered over

100,000 more ballots not even two hours after the last van left." The amended complaint calls this an illegal dump.

Let me ask: Who -- did anyone have an opportunity -- who had the opportunity to speak with Ms. Carone? Raise your hands if you did.

MS. HALLER: Your Honor, may I?

MR. CAMPBELL: Is there --

THE COURT: Hang on, Ms. Haller.

MR. CAMPBELL: Is there a particular paragraph you're referring to?

THE COURT: I just read it.

MR. CAMPBELL: I didn't get the number, your Honor. I apologize.

THE COURT: Okay. So this is going to be a bit of a challenge. I think I can pull it up.

MR. CAMPBELL: If you have the number, I have it in front of me.

THE COURT: It's 6-5.

MR. CAMPBELL: Thank you. That's the Carone affidavit. You said there's an allegation in the complaint.

THE COURT: I'm sorry?

MR. CAMPBELL: As to an illegal dump.

THE COURT: Okay. I don't know what paragraph that is in.

MR. CAMPBELL: Thank you. I don't mean to burden you

with that, but I was going to look at it and understand the context. Thank you.

THE COURT: Okay. Now, let me just say that the questions that the Court has on this -- and I thought I saw another hand, but I'll just give you a moment. Oh, I asked the question as to who spoke with Ms. Carone, if anyone.

All right. Ms. Lambert. Thank you. Please unmute.

MS. LAMBERT: Thank you, your Honor. I have spoken with Ms. Carone but not regarding the complaint. As the Court knows, I filed the notice of appeal before this Court.

THE COURT: Right.

MS. LAMBERT: I have spoken with her regarding her information regarding election vendors and the role that she participated with an election vendor.

THE COURT: Okay. So you did not speak to her regarding her observations that she set forth in the affidavit; is that true?

MS. LAMBERT: That's true, your Honor. I just wanted to be accurate and let the Court know that I have spoken with her.

THE COURT: I appreciate that.

So, yes, Mr. Kleinhendler, sir.

MR. KLEINHENDLER: Thank you, ma'am. I refer you to the Ramsland moving affidavit, yes, which is ECF 6, Exhibit 24, page 4 of 8, and the bottom of paragraph 13. He refers to the

Melissa Carone affidavit. It was my understanding that our expert had in fact spoken with her. I can't state the truth because my memory is a little foggy, but I believe I had a conversation with Mr. Ramsland about this Carone affidavit. He, in turn, told me -- and, again, this is my belief, it's awhile back -- that he in fact had spoken with her.

I do know, your Honor, that she had publicly testified, I believe, in Michigan about her findings, okay, and so while I don't have any recollection of directly speaking with her, I am referring you to my expert, who refers to her affidavit, vouches for her, and it should have been attached, your Honor. For some reason, I don't know, I guess when we filed it, it wasn't attached.

THE COURT: What wasn't attached, her vouching -- your expert --

MR. KLEINHENDLER: No, no, the affidavit says, "See Melissa Carone affidavit."

THE COURT: Oh, okay.

MR. KLEINHENDLER: And I think we had it. I know we had it, but for some reason I don't -- I don't know if it was included.

MS. HALLER: It was included.

THE COURT: It was included. I know that there was a statement saying that it was not in one of the briefs, but it has in fact been included.

All right. Anybody else have any contact with her? All right. Thank you.

So my question then -- Mr. Fink, I'm sorry, sir. I didn't acknowledge you.

MR. DAVID FINK: Of course I'm not suggesting I had contact with her, but, rather, I wanted to respond briefly to that and also to something that I did not respond to yet from -- regarding Mr. Sitto because we took the break.

THE COURT: Okay. Let me -- before you do that, Mr. Fink, let me ask the question that I wanted to ask other than who had spoken with Ms. Carone.

I wanted to ask the question: She, again, she talks about her observations seeing vans pull up and then she connects what she considers to be the coincidental announcement from local media having stated that -- and no reference to which local media to which she's referring but stating that there had been a statement made that Michigan had discovered over 100,000 more ballots.

My question is: Is it counsel's position that coincidence -- that a coincidence can serve as an evidentiary -- as the basis for evidentiary support for an allegation? Because that's what this sentence is saying.

Mr. Campbell, you look like you want to respond.

MR. CAMPBELL: Yes, I -- here's what I think we can safely say, and maybe this is responsive. We have an expert

who has relied on that affidavit for purposes related to his statistical analysis, and, again, going back to the Georgia case that says if you have affidavits of witnesses and you have statistical data, that's enough to, in that case it was, to have the court act.

Here we have attached the actual affidavit, but, as you know, your Honor, an expert can rely on hearsay. So in terms of, you know, the information that's there, I think it's properly presented, and I have to say, if a witness says things that don't turn out to be entirely accurate, that can be discovered through the processes that this Court is very familiar with, and that happens all the time.

But, you know, including what they have to say because they say it is not inappropriate in any way. In fact, it may turn out that we don't believe some things that they said, but to give only half the story isn't how we want to plead the case.

So, again, I'm not sure about the context in which the Court is asking this. This is a claim by the Plaintiffs drafted by the lawyers to bring their claim under the various federal laws that they believe apply, and we thought we were timely when we did it.

THE COURT: All right. Mr. Fink, this is your time to respond, sir.

Thank you, Mr. Campbell.

MR. DAVID FINK: First, with respect to Ms. Carone, we have another classic situation where if in fact -- and, by the way, it's not just the expert. The complaint explicitly references, in Paragraph 94, explicitly references the Carone affidavit.

Now, Carone makes the allegation -- and, to be clear, she's not a trained election worker. She was -- and there's no dispute about this. She was a subcontractor doing some work on maintaining machines on the day of the election -- or the day of the count. She claimed that she witnessed batches of ballots being run through the scanner multiple times, 50 at a time, 8 or 10 times in a precinct.

Now, if any expert reviewing it -- and the expert relied on that. Any expert reviewing that affidavit with the slightest knowledge of election procedures would know that it was patently absurd because, if you ran 50 ballots through 8 times, you would have 350 more votes in that precinct than there were voters, and there isn't a single precinct in the TCF Center that had more than an 11-vote disparity.

Nonetheless, because they did no due diligence, they didn't look at this. They didn't check it. They continue to rely upon these findings, which are just blatantly factually false.

Now, I want to briefly, if I may, say this. This was addressed and looked at very closely, as well as the other

allegations that she made, by Judge Kenney. Earlier today, just before the break, Mr. Campbell made a representation to this Court that I assume comes, not out of intentional intent to misrepresent the facts, but out of ignorance that comes from his recent involvement in this case.

He said that Judge Kenney did not make findings. That could not be further from the truth. Judge Kenney made extensive findings in his Opinion and Order dated November 13th and very widely published and available at the time. Certainly counsel knew about this. November 13th in his Opinion and Order he explicitly discussed why it was that Ms. Carone was mistaken in the representations in what she saw.

Importantly, in response to something this Court raised earlier, he also very explicitly, directly contrary to what Mr. Campbell told us before the break, Judge Kenney very explicitly addressed Andrew Sitto's allegations. He had three paragraphs. He pointed out that Andrew Sitto was a Republican challenger who did not attend the walk-through meeting that trained the challengers.

He explained, and I'll quote from him, "Mr. Sitto's affidavit, while stating a few general facts, is rife with speculation and guesswork about sinister motives. Mr. Sitto knew little about the process of the absentee vote counting" -- "voter county board activity. His sinister motives attributed to the city of Detroit were negated by Christopher Thomas'

explanation that all ballots were delivered to the back of Hall E at TCF Center. Thomas," he goes on to say, "also indicated the City utilized a rental truck to deliver ballots. There's no evidentiary basis to attribute any evil activity by virtue of the City using a rental truck with out-of-state licenses plates."

He also directly addressed the tens of thousands ballots allegation, explaining that "That number was speculation on the part of Mr. Sitto," and, he said, "It's not surprising that many of the votes being observed by Sitto were cast for Mr. Biden."

Now, my main point here is not the facts. My point --

MS. HALLER: Your Honor.

MR. DAVID FINK: -- is a lack of due diligence, and Mr. Campbell tells us, in representing seven of these nine Plaintiffs' attorneys, including, incidentally, both Mr. Wood and Mr. Rohl, who seem to have diametrically opposed views of what happened, but Mr. Campbell told us that Judge Kenney had not ruled. Judge Kenney had ruled. These folks were on notice, and this was important. This was the election of the President of the United States. They should have been extra careful, not just diligent, but extra careful.

And I have to say, the statement by Mr. Campbell, as though it's a precept of law that we should all except as black

letter law, that if something is in a pleading that someone else has filed then it's fair game for me to repeat it and say it's true with no due diligence on my part, I've never seen a case like that.

MS. HALLER: May I respond?

THE COURT: Yes, you may. You have your hand up.

MS. HALLER: Thank you, your Honor.

I would just point out that the affidavit that's attached as an exhibit, which is an exhibit to the complaint, which is what you're referencing as the Carone affidavit, 6-5, that's documented as a document from the court, in your state of Michigan circuit court. It is not represented to be a document that was created by us. It is not represented to be anything other than what it was, which is a document from a different court.

That court had its proceedings, as we all know, that later, you know, in rulings in *Constantino* and that line of cases, and we know that Justice Zahra spoke out about the meaningful assessment of allegations by an evidentiary hearing and that -- Plaintiffs' right to an evidentiary hearing as a general matter.

THE COURT: What was the purpose for which you attached it?

MS. HALLER: Because Russ Ramsland cited to it and it's a source for his exhibit, as well as an identification of

a potential witness who may be anticipated to testify in accordance with the exhibit at the time of a trial or an evidentiary hearing or in a court process. We had the ability to cite to information making as much information as possibly available to identify anticipated witnesses who would testify in accordance with the statements or affidavits that were included, but this particular affidavit was cited to by Russ Ramsland.

MR. CAMPBELL: If I may, your Honor?

THE COURT: Go ahead, Mr. Fink.

MR. DAVID FINK: I just want to say Ms. Haller is simply wrong. The affidavit is connected to the previous lawsuit, but it is directly cited in their complaint, in their complaint in Paragraph 94. They directly quote from that --

MS. HALLER: (Indiscernible.)

MR. DAVID FINK: -- as though it is true, not just the expert.

MS. HALLER: That's right, Mr. Fink. As you well know, it's not hearsay. It's a sworn statement in a court of law, and, yet, we have citations to hearsay in other documents that are similarly attached, but we are not in a *Daubert* motion. We are not on a motion for discovery as being in contention.

The bottom line is it's a complaint where we attached information to include a witness from another court, and we

cited to that in a complaint as sworn testimony, and, as such, it's available and relied upon by our expert.

THE COURT: Question for you, Counselor. So then you're saying that you did not attach the Carone affidavit in support of your factual assertions; is that what you're saying?

MS. HALLER: No, your Honor. Thank you. I am simply saying that it's information in support of the complaint. It's cited to in the complaint. It is a document that is not hearsay. It is a simple document that is a sworn statement from another court that is cited to by our expert, and we rely upon it to the extent that it's cited in the complaint.

THE COURT: Well, you cited it. You referenced it. You all are the ones that placed it in the complaint, and you didn't place it in there in support of your allegation?

MR. CAMPBELL: Judge, it's there because --

MS. HALLER: No, it is in support --

THE COURT: Excuse me, Mr. Campbell.

MR. CAMPBELL: -- it's believed --

THE COURT: Mr. Campbell, excuse me.

MR. CAMPBELL: Yes.

THE COURT: I'm directing my question to Ms. Haller.

MS. HALLER: It's there as it is cited. We stand by the citation, the citation Mr. Fink is referencing. I'm not sure I understand.

THE COURT: All right. What -- Mr. Kleinhendler,

what do you have to say?

MR. KLEINHENDLER: I'd like to say something --

THE COURT: Briefly.

MR. KLEINHENDLER: -- that would help us here.

THE COURT: Okay.

MR. KLEINHENDLER: You're looking at a specific document at an isolated paragraph, but I think it's pretty clear you have to read a complaint through its four corners. We are writing a complaint with multiple inputs from various areas, experts, fact witnesses, other statisticians, and when we see that Carone affidavit, what we're seeing is this is consistent with what our experts -- with what we're hearing happened in Detroit. And, your Honor, to try to take one document in isolation and use that document to infer what the intent was or what the due diligence of the attorneys should be without looking at the entire complaint and the entire submission as to what we're getting, I believe is not correct. I think --

THE COURT: I reject your premise, that that's what I'm doing.

MR. KLEINHENDLER: No, no, sorry. Sorry. Your Honor, I apologize. That's what Mr. Fink --

THE COURT: All right.

MR. KLEINHENDLER: I apologize. Sorry. That is what Mr. Fink is asking of the Court, and that's the point I want to

make.

The second point I want to make, your Honor, is just because in a preliminary election hearing a court found that one affidavit trumped another affidavit, your Honor, that does not render the allegations of Ms. Carone to be false. Okay.

Until she appears before you or before a jury, a fact finder, and you make a decision what she's saying is false, all you have is argument, and that's the point. Mr. Fink is arguing in the form of stating facts, and I have a problem with that. I'd like to make that clear for the record.

THE COURT: All right. Thank you. We're going to move on.

Mr. Campbell, what --

MR. CAMPBELL: Again, my name was raised earlier by Mr. Fink, if I may respond?

THE COURT: Briefly.

MR. CAMPBELL: Thank you. You can check the record. I'll tell you what I intended to say and what I thought I said, that Judge Kenney did not hold a hearing and did not make any determinations of credibility with regard to the weight of the affidavits based on having heard from affiants themselves. I didn't say anything as effusive as that, but that's what I thought I said, and that is -- I don't think he would contest that point.

THE COURT: All right. Okay. Moving on.

I'd like to look on the Connarn affidavit set forth in ECF number 6-6, and I want to quote specifically from it. Let's see, we may need to do some screen sharing, but I will quote from it.

"I was working as the attorney acting as poll challenger with the Michigan Republican Party. When I was approached by -- where I was approached by a Republican Party poll challenger, who stated that a hired poll worker of the TCF Center in Wayne County was nearly in tears because she was being told by other hired poll workers" -- with an S -- "at her table to change the date the ballot was received when entering ballots into the computer."

Again, I want to emphasize the sequencing here. "The affiant is stating he was working as an attorney acting as a poll challenger with the Republican Party in Michigan. He was therefore -- or there he was approached by a Republican Party poll challenger, who stated that a hired poll worker at the TCF Center was nearly in tears because she was being told by other poll workers at her table to change the data" -- I'm sorry, "to change the date that the ballot was received when entering ballots into the computer."

So here it appears to the Court that Connarn is saying that she was told by an initial person that a second person, who was told by a third person and other additional persons, that the second person should back date ballots.

Question for counsel: Does counsel believe it is appropriate to support allegations on such third-hand knowledge, triple hearsay testimony that counsel has no hope of ever introducing into evidence?

Who would like to answer that question for the Plaintiffs or counsel for the Plaintiffs' counsel?

Okay. Mr. Campbell, go ahead.

MR. CAMPBELL: Thank you. Judge, that's Paragraph 1, and then in Paragraph 2 there is evidence of an actual note being slipped. It gives context. It's not even hearsay.

THE COURT: Who is JJ? Are you talking about that note JJ?

MR. CAMPBELL: Yeah, I'm talking about -- again, that's the portion of the affidavit you put on the screen, but I've got to tell you, I have no encyclopedic knowledge of that particular affidavit, and I'm the latest person, other than maybe Mr. Buchanan, to this case, but I mean that seems pretty obvious. It's -- you're establishing a circumstance that explains the rest of the information relative to the -- what's going to follow. Again, I'm -- I'm -- I'm surprised, and a little troubled, that the Court would even have a problem with that.

THE COURT: Oh, really? Okay. Because that's just layers of hearsay. I don't know why that would be surprising to you. I'll give --

MR. CAMPBELL: But it's not hearsay --

THE COURT: -- counsel an opportunity to --

MR. CAMPBELL: -- it's not offered for the truth of the matter asserted.

THE COURT: Excuse me.

MR. CAMPBELL: It's not offered for the truth of the matter asserted. Again, I've got to tell you, Judge, that...

THE COURT: Did anyone here take any steps to identify the Republican Party poll challenger, the hired poll worker, the other hired poll workers? Any inquiry made into that?

I will move on.

Let's go to Ms. Jessy Jacob's affidavit set forth at ECF number 6-4 at PDF pages 36-38 and the amended complaint states that "On November 4th, 2020, Jacob was instructed to predate the absentee ballots received" -- I'm sorry, "Jacob was instructed to predate the absentee ballots received date that were not in -- that were not in the qualified voter's file, as if they had been received on or before November 3rd."

So this is the predating of absentee ballots, and Ms. Jacob estimates that this was done to "thousands of ballots."

Question to counsel: Did anyone engage in any inquiry to determine if there was an explanation for why such predating would have taken place?

MS. HALLER: Your Honor, I'm sorry, which exhibit are

we talking about?

THE COURT: We're looking at -- certainly. We're looking at ECF number 6-4, the Jessy Jacob's affidavit, and it's in PDF format pages 36 through 38. So the allegation here is that she was instructed to predate absentee ballots to the date of -- to before November 3rd.

And the Court's question is simply: Did counsel engage in any inquiry to determine if there was an explanation for why such predating may have occurred or would be happening?

MS. HALLER: I don't remember, your Honor. I just don't remember. I know that I may have, but I can't say.

THE COURT: All right. Was anyone, Ms. Haller, working on the Jacob affidavit with you? You were -- correct -- working on it?

MS. HALLER: I mean I have a recollection of reviewing, but I don't have a specific recollection as to -- I need to refresh my recollection, to be honest.

THE COURT: All right. Mr. Fink.

MR. DAVID FINK: The Jacob affidavit was filed in the *Constantino* case. Importantly, Miss Jacob was a City employee who did not do work for the city clerk's office. She was on furlough from another department, and she was called in when they needed additional people to assist on the election and on the counting.

Chris Thomas provided an affidavit, which provided

some detail and explanation of Ms. -- of Jessy -- Ms. Jacob's misunderstanding. Most notably, she did not understand that the ballots had already been checked and verified before they arrived at the TCF Center, and she did not understand that nobody was predating anything. They were, on occasion, told to put dates into the computer which had not yet gone into the computer, but the important issue here isn't the facts.

What's important is Mr. Thomas had a conflicting affidavit, and Judge Kenney ruled -- I won't read it. I won't bore the parties with the reading of it. I guess it's not boring, but I won't take the extra time.

On Page 4 of his opinion judge Kenney, in extreme detail, explained why Ms. Jacob was wrong, and, nonetheless, this complaint repeats what was said by Ms. Jacob as though it is the gospel.

MS. HALLER: Your Honor, what it does is not speak to the gospel, but what it does is -- we briefed in 112 -- ECF 112 the holding of the *Constantino* court's ruling, and the three dissents by the Supreme Court judges -- the justices in Michigan, and how they made clear that there was in fact no evidentiary hearing in that case and that they said there that should be a need.

It was Justice Zahra who urged the circuit court to meaningfully address Plaintiff's allegations by an evidentiary hearing, particularly with respect to the credibility of the

competing affidavits, and Justice Viviano says, "A court may, and given the exigencies of time, sometimes must act on a motion for preliminary injunctive relief based on the parties' bare affidavits."

So the courts may rely on, in Michigan, on bare affidavits, and, in doing so, that they point out the fact that there needed to be an evidentiary hearing, which did not actually occur, and so what happened when -- this hasn't actually been heard, and so if we do have the opportunity for an evidentiary hearing, we will seek to have this witness brought forward.

THE COURT: And so, again -- Mr. Fink, hold on -- the issue, again, that I have here is, is that we've got a few affidavits that were filed in the *Constantino* case, and the question, again, that I have for counsel on the *King versus Whitmer* matter is: To what extent did you review the contents of those affidavits before including them? I understand that they came from another -- I understand what the Supreme Court rulings were, but my question is so much more simpler in that I'm asking what did counsel do? Did you do anything for purposes of reviewing the content, and did you see anything that will make you say, "Wait a minute, let me understand what this is." That's my question.

Ms. Haller can you answer that for the Court?

MS. HALLER: Sorry, your Honor, I'm trying to unmute.

I guess I'm confused by the standard. We submitted the information to the Court on a good-faith basis that this is a signed and sworn statement in another court of law so I'm a little confused by the questions because we didn't put forth false documents. We didn't act in bad faith, and that -- and my understanding is for sanctions, which is what I believe we're here -- we're supposed to be talking about bad faith, and I simply am at a loss because, yes, this information was included in our complaint as a source, which is what typically defendants want. They want your sources, and they want an opportunity to investigate those sources. That's why we have this process called discovery. So I am confused as to what we're actually talking about.

THE COURT: Oh, okay. Let me ask Mr. Campbell what he thinks about that because I just -- I don't understand -- you don't think that there's -- it seems to me you're concluding that you don't have any obligation, as long as you have an affidavit that's been, you know, that's been sworn, a sworn affidavit, that relieves counsel of any obligation to go further? Is that how you feel about that Mr. Campbell? What is your --

MR. CAMPBELL: On the bare bones of your scenario, anything that is sworn, no. But this isn't anything that was sworn. This is somebody who was there. That's not in dispute, and now it's a question of what they saw. But, yeah, if

they're willing to swear under oath as to what they saw, that makes them at least a res gestae witness --

THE COURT: But this is not even an issue.

MR. CAMPBELL: I'm sorry, Judge, can I finish, please?

So what we have here, and this is not just a statement from somebody who was there. This is somebody whose statement was, as noted, submitted in a different case, which means other lawyers saw it. They believed it to be appropriate for submission to the Court in that circumstance.

THE COURT: So that's enough?

MR. CAMPBELL: If I may?

On top of that, you have an expert with a report who expressly says he's relying in part on some of the information, and, oh, by the way, it supports the statistical analysis. So this is not just a statement that somebody happened to say under oath, and the Court is wrong to frame it in that manner.

THE COURT: All right. Mr. Fink.

MR. CAMPBELL: That question is not really indicative of anything in this case, with due respect.

THE COURT: Mr. Fink.

MR. DAVID FINK: Ms. Haller said it exactly right when she said she doesn't understand what the question is. I think that's true. The question is what responsibility did they have to vet the facts they were presenting to the Court?

They keep saying "it's an affidavit" and, therefore, they can put it into evidence, but this is not an unquestioned affidavit. This is an affidavit that was already questioned in another proceeding, and in that proceeding, not only did the judge make a determination that the affidavit was not -- was based on ignorance and a misunderstanding of the facts, but also there were competing affidavits. In fact, the judge said that there were multiple affidavits that disagreed, but the point -- with what she said, but here's what matters. What matters is they didn't talk to her and create a new affidavit. They didn't --

MS. HALLER: Has Mr. Fink --

MR. DAVID FINK: -- work with her.

THE COURT: Hang on, Ms. Haller.

MS. HALLER: But Mr. Fink --

THE COURT: Ms. Haller.

MS. HALLER: -- is accusing us of --

THE COURT: Ms. Haller.

MS. HALLER: Yes, your Honor.

THE COURT: Let him finish.

Go ahead, Mr. Fink.

MR. DAVID FINK: I'm simply going to guess that Ms. Haller is going to say that they did talk to her, and perhaps they did. The point is that the allegations she made were very effectively refuted and then repeated here in the

complaint, repeated in the compliant as though there was nothing, no issue, no issue of concern. I'm sorry.

THE COURT: Thank you. I understand. All right.

Ms. Haller, you want anything else to add?

MS. HALLER: Thank you, your Honor. I would just ask Mr. Fink if he has spoken to this witness because he is making allegations related to her testimony or anticipated testimony, but I'm not clear if Mr. Fink has spoken to the witness about his conclusions.

THE COURT: Okay. I don't even know that that is a relevant question.

MS. HALLER: Because --

THE COURT: What do you have to respond to that, Mr. Fink?

MR. DAVID FINK: I will respond, I guess.

MS. HALLER: May I respond?

MR. DAVID FINK: Because I don't think my due diligence is before the Court.

MS. HALLER: Well, in an evidentiary hearing you would have an opportunity to examine any of the witnesses that we would bring forward. So I -- I -- I simply do not understand how you can impugn the credibility of a witness who is not before this Court and go as far as to say that we've provided falsehoods or acted in bad faith in some manner, and that is simply all I'm saying.

THE COURT: All right. Thank you.

Mr. Fink, you don't need to respond to that.

Mr. Kleinhendler, you don't need to respond to it.

The Court's moving on to the Bomer affidavit, and that's set forth at 6-3, ECF 6-3, page ID 1008-10.

Now, the Plaintiffs' pleadings allege that Defendants changed votes for Trump and other Republican candidates. The Bomer affidavit is provided in support of that claim, and, specifically, the affidavit states in part, "I observed a station where election workers were working on scanned ballots that had issues that needed to be manually corrected. I believe some of these workers had been changing votes that had been cast for Donald Trump and other Republican candidates."

There we go.

The amended complaint calls this eyewitness testimony of election workers manually changing votes for Trump to votes for the Biden, and, again, the amended complaint calls this, "eyewitness testimony of election workers merely changing votes for Trump for votes to Biden."

Question from this Court: Does an affiant belief that something occurred constitute evidence that the thing actually occurred?

Who would like to take that question on from counsel for -- Plaintiffs' counsel or Plaintiffs' counsel.

MR. CAMPBELL: Again, if that belief is based on

circumstantial or actual physical viewing of that evidence, yes.

THE COURT: And it doesn't appear to be because there isn't any -- this affiant, Miss Bomer, does not say -- he says, it's stated "I believe some of these workers," and I think the question becomes also does counsel know what formed the basis for the belief because it certainly is not apparent to this court. What's the basis of Mr. Bomer's belief that there was something as significant as votes being changed from one candidate to another? What's the basis of that belief? He didn't say that he saw it.

MR. CAMPBELL: I have to draw the line there, Judge. I'm not so sure that you can say in the world of language that that statement excludes seeing it. In other words, one can believe it because they saw it but not write it that way, and so I think you have to allow for where language might play a role here in how the thought is expressed. Now, I'm not saying that it says -- it says that she saw it, but I think this Court is wrong to conclude that it means she didn't see it because, if you see it, that would certainly help you to form a belief.

THE COURT: Well, I think it's wrong for an affidavit to be submitted in support -- as evidentiary support if there's been no kind of minimal vetting. I mean if you -- if you can't determine from the plain language of the affidavit, what am I -- how am I supposed to draw any kind of inference from it?

MR. CAMPBELL: It's called an evidentiary hearing.

THE COURT: And it's also called -- it's also called you need to preliminarily -- every lawyer has that duty to do a minimal amount of investigation before filing evidence or what's purported to be evidence to this Court.

Mr. Kleinhendler, yes.

MR. KLEINHENDLER: Thank you, your Honor.

We reviewed each one of these affidavits. We read them. We realized they were filed in other proceedings, and, as I said earlier, they purported and were consistent with the findings of our experts and the other information placed before you, and that's -- you cannot -- I propose to you, your Honor, you cannot look at -- you can't nitpick one and one and one and say this, standing alone, has no evidentiary basis.

We have an affidavit from Russ Ramsland, in detail, saying that the machines themselves flipped votes, detailed analysis from an expert sworn before this court. It's, therefore, unremarkable and, frankly, consistent, and now we have an eyewitness who saw it or believes she saw it.

So the notion that we did no due diligence is incorrect. We did a ton of due diligence, and also keep in mind that we are -- we are -- we are proffering this to the Court, and the Court can give little or no weight to this evidence.

This is not the whole case, and if we came in with a

complaint and we had one exhibit, this affidavit, I get it, okay, what are you doing, but we come into court with 960 pages basically the same theme of what we're doing, okay, and this, to us, appears consistent with the narrative, with the evidence, with the expert testimony that we're getting, and that's my response to your specific question on paragraph whatever it was of this affidavit.

THE COURT: Thank you. I'm moving on to another -- Mr. Fink, quickly.

MR. DAVID FINK: Just very quickly. This support for no matter what they say goes back to, well, it's consistent with what the experts said, and now they say Mr. Ramsland said that there was evidence that these machines flipped votes. We haven't talked about that. I think it's worth talking about it for a moment.

Machines cannot possibly flip votes in the state of Michigan. It is legally impossible. Machines tabulate votes in Michigan. They don't have votes in them. Votes in Michigan are on paper ballots. They're scanned by machines, they're counted by machines, but the machines can't flip them, and the recount process is the way that you address it.

They can't just keep saying they didn't need to do due diligence on any of these affidavits just because they have some subjective belief that some of the tabulating machines could have made mistakes. If they made mistakes, they'd be

rejected.

At a later time, at an appropriate time, I'll respond to the issue in Antrim County and why that wasn't a hand recount.

MR. KLEINHENDLER: Your Honor, if I may add --

THE COURT: No, no, no. Let me -- I am going to ask a follow-up question, sir.

Does anyone -- did anybody -- and, again, which has been my focus, did anyone inquire as to whether or not Mr. Bomer actually saw someone change a vote? Anyone?

Okay. Let the record reflect that nobody made that inquiry, which was central to his affidavit.

All right. I'd like to move on to -- this is going back to Ms. Jacob, the affidavit wherein she -- where Plaintiffs allege that Defendants permitted double voting by persons that had voted by absentee ballot and in person, and one piece of evidentiary support that is provided is the affidavit from Ms. Jessy Jacob, and she, in that, it's stated, "I observed a large number of people who came to the satellite location to vote in person, but they had already applied for an absentee ballot."

And the question that I'm asking was: Jacob, from my view of this affidavit, does not state that these people voted in person and through absentee ballot, correct, because I mean that -- there's a conclusion here that there was double voting?

The Court is asking where in this affidavit does Ms. Jacob state that persons that she saw vote in person as well as through absentee ballots?

Can anyone answer that question?

MS. HALLER: Your Honor, I would respectfully submit that we can make these witnesses available for an evidentiary hearing.

THE COURT: No, no.

MS. HALLER: And the Court at that time can evaluate the witness' testimony.

THE COURT: Okay. Yeah. You know what, I understand that and I appreciate that, and, again, I will state that my question is going to the minimal duty that any attorney has in presenting a sworn affidavit to the Court for consideration in terms of anything.

What is the inquiry that was made in this scenario?

And I'm not hearing that -- I've heard nothing.

MR. CAMPBELL: Well, Judge, your question there is about the affidavit? Because the affidavit is as you've read it. I thought your inquiry was as to the paragraph that was written and not the affidavit so I don't understand how the inquiry about the affidavit would have anything to do with it.

THE COURT: Well, you understand, sir, that I am referencing a quote from the affidavit?

MR. CAMPBELL: I understand you're referencing her

quote. Now, I don't hear you to take issue with the fact -- I mean that's certainly not an astounding moment, right, that some people would show up and ask to vote on the same day even though they had previously asked for absentee?

THE COURT: No, it isn't. It is not an astounding moment, but the astounding moment here is, is that the affiant appears to conclude that this is double voting taking place.

MR. CAMPBELL: I didn't read that part of the -- I didn't hear you say that part of the affidavit.

THE COURT: Oh, I'm sorry. I did. Well, I stated that the Plaintiffs allege that --

MR. CAMPBELL: Right.

THE COURT: -- the Defendants permitted double voting by persons that had voted by absentee ballot and in person and cites, in evidentiary support of that claim, Ms. Jacob's affidavit, the Jacob affidavit.

MR. CAMPBELL: I get that, but, again, so -- but it's in a complaint that makes that allegation that, again, if it's not -- if that affidavit doesn't have to support that claim, that claim may not be good. There are other bases that is, as you've indicated, the one that they pick for the footnote, if you will, for where it's something to be done, and I think there's inferences that can be drawn, and it should not shock this Court that somebody could show up, after having asked for an absentee ballot, and then decided to show up on game day --

election day and make the vote, but it shouldn't shock this Court to learn that there are some people who get an absentee ballot vote and then show up and vote again.

THE COURT: I don't see any evidence of that. I haven't -- yeah, it does shock me.

MR. CAMPBELL: Again --

THE COURT: It shocks me in the sense that --

MR. CAMPBELL: What's there evidence of --

THE COURT: I haven't seen.

MR. CAMPBELL: (Indiscernible.)

THE COURT: I don't see any evidence of that. I'm -- again, you can stick with what I'm presenting here.

Mr. Fink, you may speak.

MR. DAVID FINK: Only very briefly.

When this issue was raised by Ms. Jacob, it was responded to. I don't have the affidavit in front of me. It was responded to by Chris Thomas, who explained the process in which voting works.

People could not vote twice. If an attempt was made to enter the second vote, the qualified voter file would have reported the problem that somebody had already voted, and there's a process. It happens. People forget. People make mistakes. But there's a process, and she was no expert. She was very new to the process. She came in. She didn't know what she was looking at, and I don't even know that she's still

making these allegations, but what I do know is the allegations were refuted. The judge addressed them, and when the Plaintiffs came back, they did no due diligence to find out if they were true or even possible.

I just want to say real quickly that several of the things they claimed here, it isn't just somebody's observation. It's physical impossibility. They're claiming things that couldn't have happened either by law or fact, and they're not vetting anything in what they filed. Thank you.

MR. KLEINHENDLER: Your Honor, I'd like to respond to that, and this is what I wanted to say before.

THE COURT: Briefly.

MR. KLEINHENDLER: We're consistently hearing testimony from Mr. Fink as to what factually happened because it's against the law. Mr. Fink has not been sworn in as a witness here.

THE COURT: I'm aware of that.

MR. KLEINHENDLER: He's not qualified as an expert, your Honor. That's all you're getting.

Now, I just want to refer to these questions you're asking, and I come back to the same refrain.

THE COURT: Hang on for a second before you go any further. Do you have direct information on the questions that I'm asking? Because that's the only reason that I would allow you to speak at this point, sir. I mean did you talk to any of

these affiants? Why are you -- why are you -- what information do you have?

MR. KLEINHENDLER: My point is we talked to experts.

THE COURT: Okay. I understand that.

MR. KLEINHENDLER: Okay. And what they were telling us confirmed what these affiants were telling us.

THE COURT: Okay. You know --

MR. KLEINHENDLER: So there's nothing surprising about what these affiants were saying.

THE COURT: Thank you, Mr. Kleinhendler. I've heard that answer before. I'm taking it under consideration. Thank you.

All right. I'm going now into affidavits -- we have multiple affidavits that have been submitted by parties pertaining to -- relating to the Plaintiffs' pleading which claims that Defendants counted ineligible ballots, and, in many cases, did so multiple times, and there's a group, if you will, of evidentiary support set forth at ECF Number 6, Page ID 903, Paragraph 94, and it indicates that these are the multiple affidavits from challengers stating that batches of ballots were repeatedly run through the vote tabulation machine.

These are affidavits referenced, and they are from Helminen -- this next name I'm not even going to try. Well, I can try. Waskilewski, Mandelbaum, the Rose affidavit, the Sitek affidavit, the Posch affidavit, and the Champagne

affidavit, as well as the Bomer affidavit.

Where is our court reporter? Andrea -- Ms. Wabeke is okay. There you are. Thank you.

Okay. Question, counsel, as relates to this claim.

Hang on, Ms. Haller.

Did counsel inquire as to why a stack of ballots may be run through tabulation machines more than once? Not anything to do with experts. You know, simple question, counsel of record. Did you make that inquiry, yes or no?

Who did? Raise your hand if you made the inquiry after reviewing this reference in the complaint as to why a stack of ballots might be run through tabulation machines. These were obviously statements that were made or observations that were made, conclusions that were drawn in multiple affidavits.

Did anyone ask the simple question as to -- make an inquiry as to why would that happen? Anyone?

MS. HALLER: Yes, your Honor.

THE COURT: Thank you, Ms. Haller. Go ahead.

MS. HALLER: Can you, just for clarification, for the record --

THE COURT: Yes.

MS. HALLER: -- please give me the citations of what we're talking about.

THE COURT: Yes. So I'm talking about the

Plaintiffs' pleading referenced at ECF Number 6 at Page ID 942, Paragraph 190g.

MS. HALLER: Okay. ECF 6, Page 942.

THE COURT: Right. Page ID 942, Paragraph 190g, which references Section 2b and 2c.

MS. HALLER: Okay. Your Honor, would it be a lot of trouble to put that up on the screen?

THE COURT: Let's see if I can do that.

MS. HALLER: Judge, we haven't downloaded the complaint --

THE CLERK: You want to see a copy of the complaint or you want to see these affidavits?

MS. HALLER: The Court is asking questions about certain exhibit numbers, which I can't track.

THE COURT: Ms. Mandel --

THE CLERK: You're citing to the pleadings that -- your citation is to the pleading itself?

MS. HALLER: It is.

THE CLERK: The affidavits would take us several minutes to pull out since there's no indexing by Plaintiffs.

MS. HALLER: Is it easier to post it on the screen?

THE CLERK: It will take us a few minutes.

THE COURT: It will take some time.

MS. HALLER: Are you going by names? Can you give me the names again because they're not numbered --

THE COURT: Let me do a quick check on -- it's referenced as a group of evidentiary support at ECF Number 6 at Page ID 903, Paragraph 94. Is that section the section wherein these multiple affidavits are referenced, correct?

All right. So those names, Ms. Haller, and that's the operative section I'm referring to is the ECF Number 6 document at Page ID 903, Paragraph 94.

MS. HALLER: Okay. Earlier your Honor had said --

THE COURT: I did. I did, and I'm correcting myself. I actually am correcting myself in saying that in Paragraph 94, ECF Number 6 at Page ID 903. This is all part of the complaint.

MS. HALLER: No, I understand, your Honor. It's just not consistent with the documents as I -- at least as I have them on the ECF filing. So I'm just trying to get the numbers because I don't have them saved by page number, to be clear. I have them by ECF number like 06-18, 06-26. So I'm just trying to find where your Honor might be.

THE COURT: Well, if you wrote -- yeah, well, the ECF at Number 6 at Page ID 903. What is this here? Bring it down just a little more so I can see the top. Okay.

THE CLERK: This is the paragraph you were citing from, Judge, from the amended complaint.

THE COURT: Right. Yes, it's Paragraph 94, and it references there -- as you can see, Ms. Haller, we're

highlighting it now -- these are affidavits that are referenced.

MS. HALLER: Okay.

THE CLERK: It would take us several minutes to pull them up if you need to see them on the screen.

MS. HALLER: No. Thank you for the citation. I was very confused. Now I see you're citing to the complaint itself.

THE COURT: Oh, yes, each time. Each time I was.

MS. HALLER: I see. Okay. Thank you.

THE COURT: Yep. And so my question is whether counsel queried as to why a stack of ballots might be run through tabulation machines more than once, as is claimed in those series of affidavits set forth in Paragraph 94 of the complaint.

MS. HALLER: Without disclosing too much attorney work product, as I think we may be, but we certainly had conversations on how the tabulation machines worked. We certainly did investigations in relation to the tabulation machines. We went through the Dominion handbook, their manufacturing book. We went through all of the information posted on the Michigan government website.

THE COURT: Okay. So you saw other explanations as to why this could -- is that true -- that it would not necessarily be a fraudulent reason why this could have

occurred?

MS. HALLER: I'm not sure I'm clear on your Honor's question.

THE COURT: My question is: The documents that you reviewed that you just kind of referenced just a moment ago, did those documents provide an all -- a reason as to why ballots could be run through the tabulation machines more than once, an explanation --

MS. HALLER: Your Honor, the question depends on context. So if somebody's just testing a machine and they're going through the process of testing it, then you would want to do it multiple times possibly, but if you're talking about within the actual counting or tabulation process, those ballots are never supposed to leave the subject precinct. Those ballots are not supposed to be put through more than once. Absolutely not. That would violate Michigan law.

So it depends on the context of the question because, of course, outside of the actual election, if you're testing or if you're checking to see if the machine works, that's a different question.

THE COURT: All right. Mr. Fink, did you want to say something?

MR. DAVID FINK: Yes, your Honor. Thank you.

First of all, the issue of whether they're not supposed to leave the precinct had nothing to do with what was

being asked. The question was is there, in the ordinary course in counting, a time which ballots would be fed more than once through a tabulating machine, and the answer is an unequivocal yes, absolutely, happens all the time, and there was an affidavit from Chris Thomas that explained the process. That was filed in -- early on in this matter.

Now, what we learned -- what we learned --

MS. HALLER: Can you cite for that, Chris Thomas' affidavit, just because --

MR. DAVID FINK: There were two. He filed one affidavit.

THE COURT: Can you give that cite? It was attached to the State Defendants' response. I think it's Exhibit 2 of the State Defendants' response.

Go ahead, Mr. Fink.

MR. DAVID FINK: Thank you. There were two affidavits by Mr. Thomas, and I'm not sure which one that is, but in Paragraph 20 of an affidavit that was filed in the -- I apologize, I don't know which case this was filed in, but Mr. Thomas explained that with these high-speed readers, after they go through, sometimes there's a jam and they have to rerun the ballots. Sometimes there's one bad ballot in the stack. Sometimes a problem ballot, pulls it out, they have to rescan the ballots. It happens all the time.

But what Ms. Carone didn't understand, and what the

rest of these witnesses didn't understand, was when this occurs the election worker cancels the previous count so it doesn't get counted twice. But if there is a mistake, as I explained earlier, even if there's a mistake, it would mean that more votes were counted in a precinct than voters appeared, and, in the entire city of Detroit, at this TCF Center, there were only 111 additional votes over the number of voters.

In any one precinct --

MS. HALLER: Your Honor, we object because he is testifying --

MR. DAVID FINK: I'm sorry, I can do this without it being testimony.

The point is that anyone knowledgeable in election procedures would know that a discrepancy of more than a dozen votes would jump out, would stick out like a sore thumb. The so-called experts absolutely should have known that, and there were no such discrepancies.

THE COURT: Anything else, Ms. Haller?

MS. HALLER: Yes. We object to what counsel just represented.

THE COURT: Yeah, I understand that. All right. Let me move on then.

The Plaintiffs have alleged in their pleading that Defendants authorized "counting ballots without signatures or without attempting to match signatures and ballots without post

marks." There are three pieces of evidentiary support that has been provided in support of that allegation.

Now, there are three affidavits stating that the affiants witnessed no signature or postmark on the ballot envelopes of some counted ballots. These affidavits were from Brunell, Spalding -- all right, hang on, Mr. Johnson -- and Sherer.

Now, my question is very straightforward, and that is, simply, did any of the affiants indicate that the votes in question, you know, the ballots I guess in question, if they were -- if the vote ultimately was for President Biden such that these affidavits would constitute evidence sufficient to support Plaintiffs' vote dilution equal protection claim?

So that means that, as relates to Brunell, Spalding and Sherer, was there an inquiry made by counsel as to whether or not, at bottom, the votes in question were for President Biden such that this representation, if you will, these allegations would constitute evidence to support the vote dilution claim?

Who can respond to that?

And before Ms. Haller may perhaps have an answer to that, let me ask Mr. Johnson, did you want to respond -- did you -- what did you want to say, sir?

MR. JOHNSON: I was attempting to respond to Mr. Fink's prior statement.

THE COURT: Okay. Let me hold you off on that, and I'll give you a moment later.

Ms. Haller, did you want to respond to this?

MS. HALLER: I'm sorry, your Honor, I had to unmute.

I would point to Dr. Briggs' expert report because in there he explains how the absentee ballots would -- that are identified as missing would actually lower the count -- the counted votes, and because those are -- his report does address disenfranchised voters. So I raise that as a point that relates to this, but as for additional information, maybe Brandon can answer.

THE COURT: Did you ever -- all right. That's fine. I'm sorry, Mr. Kleinhendler.

MR. KLEINHENDLER: Your Honor, I have to make a point here. It doesn't -- we don't have to show in this Paragraph 95, where I think you've only mentioned two or three of I think there might be a dozen affidavits highlighted there, we don't have to show that a vote flipped from Biden to Trump or Trump to Biden. It is enough under the law that the integrity of the voting was compromised. That is enough in itself to call --

THE COURT: Well, the reason I say -- the reason that I have asked that question is, is because it pertains directly to your equal protection claim.

MR. KLEINHENDLER: Exactly right, and that's the

point I'm trying to make to you. For the equal protection claim, we don't have to show a flip. We can show fraud in the counting. It doesn't matter who got the vote. If we show that --

THE COURT: Ultimately, sir, the relief that you're requesting -- that you requested of the Court was -- it was not just to decertify the vote. It was to -- it was to attribute votes that Plaintiffs believe were mistakenly taken away from Trump and given to Biden, so that is why I am asking that question. I think it's a legitimate question, and let me just say this. It's fine. Your objection to the question and to the causation here is noted, but -- I don't have to have -- you don't have to argue that point with me.

I'll let you finish up your thoughts, sir.

MR. KLEINHENDLER: I'm not -- I'm not trying to argue with you.

THE COURT: No, no, no.

MR. KLEINHENDLER: Not the point I'm trying to make.

THE COURT: Okay.

MR. KLEINHENDLER: The point is we had multiple layers of requested relief, and the question you had, specifically, was where in these affidavits does it show that the malfeasance we've identified flipped the vote, and my point is that's not necessary. If there's malfeasance, then the vote becomes not countable, and, therefore, you can't certify one

group of electors based on votes that have these type of problems with them. You don't have to reach the conclusion that you have posited, which is show that it flipped from one side to the other. That's my point.

THE COURT: Okay. All right. Thank you.

Let me go on and ask as a follow up to the allegation about absentee ballots and, you know, that they had been counted without a signature, without attempting to match signatures and without postmarks. In Michigan -- question: In Michigan, must absentee ballots be received through U.S. Mail and, therefore, be postmarked to be counted?

MS. HALLER: I think your Secretary of State was actually admonished by a court this year because of the guidance that she issued on the process related to absentee ballots, and in that decision by the Court of Claims it was made clear that the Secretary of State did not follow the process as actually required under law, which brings all the absentee ballots, I would submit, into question, as to how they were counted. You know, so, your Honor, in direct response to your question about the process, we cannot rely on the Secretary of State's guidance.

THE COURT: Mr. Fink.

MR. DAVID FINK: Your Honor, even now --

THE COURT: Mr. Fink, I'm sorry, let me go to Ms. Meingast, and then I'll come to you.

MR. DAVID FINK: Absolutely.

THE COURT: Counselor.

MS. MEINGAST: Thank you, your Honor. I guess I'm not hearing it right, but there was a question. Absentee ballots this year in November were counted the same as they have been in every other year. In other words, they had to be received by 8:00 p.m. at the right precinct on election day. There was nothing different in the way we counted absentee ballots this year.

There was an earlier case in which Plaintiffs moved for an extension of the 8:00 p.m. deadline in order to receive ballots after 8:00 p.m. and for several days thereafter. There was an injunction to that effect. It was undone by the Court of Appeals, and their reasoning was count it the same way we have done for every year on absent voter ballots. So there wasn't any change in the way absent voter ballots were handled or processed this year.

MS. HALLER: And we would just object to any testimony by counsel, especially without citation or evidence.

MS. MEINGAST: That would be the published opinion from the Court of Appeals that reversed the injunction.

MS. HALLER: Okay. And thank you. As far as the Court of Appeals decision, we also have a dissent in that case.

THE COURT: All right. Mr. Fink, quickly, please.

MR. DAVID FINK: Yeah, may I speak?

First, the Court's direct question was: Is a postmark necessary? Does a ballot have to be mailed?

And of course the answer is no. Ballots are often handed in by hand. Some of them are handed-in boxes in front of clerk's offices by hand. Sometimes it's done right across the table, right across the desk in the clerk's office, as we talked earlier, but the most telling part about the answer to the Court's question was that not one of the nine lawyers representing the Plaintiffs interrupted or corrected Ms. Haller when she repeated the misunderstanding that the Secretary of State somehow handles absentee ballots. In the state of Michigan, the Secretary of State does not touch an absentee ballot.

The absentee ballots are sent out, received, and counted by local units of government, not the county, not the state, but local units of government. To the extent there could have been any misunderstanding, it was corrected early on in the Court of Claims by Judge Cynthia Stevens in the first Trump lawsuit, but after all these months, after all this time, that counsel doesn't understand -- that neither local counsel nor national counsel understands that in Michigan elections are run by local units of government tells the Court that there was zero due diligence performed in the most important -- potentially important case ever filed in this state.

THE COURT: Thank you, Mr. Fink.

Mr. Johnson.

MR. JOHNSON: Thank you, your Honor.

I just want to take this opportunity to make two points. I'll start with the most recent point. Obviously, the *Genetski V Benson* decision, which Ms. Haller referenced, it -- you know, it found that the Secretary of State had issued a binding rule. So whether or not the Secretary of State actually physically handled ballots is irrelevant. She issues binding guidance. That was the holding in the case, and that is why it was ultimately found that she failed to apply the proper rule-making process.

Second point goes back to Mr. Fink's testimony regarding the Detroit count. We had affidavits from Commissioner Hartmann, and I forget the name of the other woman, but the two Republican members of the Wayne County Board of Canvassers who attempted to decertify the results of Wayne County. This goes to the fact of, you know, the discrepancies, the irregularities in Wayne County in general, and the absentee ballot counts in Detroit in particular, and that's where, I believe the number was something like 76 percent of the precincts were out of ballots. He also discussed earlier problems in the primary.

So we have public officials charged with certification of the election, two of which attempted to decertify. They claimed they faced threats of physical

violence and harassment. That explained the initial certification despite their misgivings, but the public officials in charge of absentee ballot counting in Detroit went on record publicly, in testimony, not just with us, describing the tremendous irregularities in the counts in absentee ballots in Detroit. So that is the point I wanted to make. Thank you.

THE COURT: All right. Mr. Fink, last word on this, and then I'm going to move on.

MR. DAVID FINK: Very briefly. The percentage of precincts out of balance does not mean anywhere near what it's suggested. If it's 76 percent, we're talking about precincts that are out of balance by one, two, or three votes, not by a lot of votes. The total out of balance would be the issue, and President Trump lost the state by 154,000 votes. It was never at issue.

Now, regarding those commissioners. As everybody knows, they tried retroactivity to rescind the decision that they made. That's -- the courts have -- there's just no point to really get into that issue.

The real issue here is that the question is, and to get way back to where the Court was in the first place, the question is these allegations were made about the way votes were counted and is there a basis to say that the absence of a postmark or the failure to compare a signature proves fraud, and there isn't.

THE COURT: Thank you. I'm ready to move on to the Larsen affidavit set forth at ECF 6-4, PDF Pages 25-34.

Plaintiffs state in their pleadings that Defendants authorized, "systematic violations of ballot secrecy." One piece of evidentiary support that they provide is the Larsen affidavit.

The amended complaint specifically states, "Mr. Larsen observed that some ballots arriving without any -- observed some ballots arrive without any secrecy sleeve. These ballots were counted after visual inspection, whereas many ballots without a secrecy sleeve were placed in the problem ballot box. He found this, quote, perplexing and raised concerns that some ballots were being marked as, quote, problem ballots based on who the person had voted for."

I would like to know if counsel would agree that Larsen being perplexed and his stated concern do not serve as evidence that ballots were placed in the problem box because of who the vote was for. I mean can anyone agree to that, Mr. Campbell?

MR. CAMPBELL: I can't agree to what you have said, that somehow the word "perplexed," as describing his circumstances, undercuts any of the evidence that's there, and it should be perplexing that somebody is picking the troubled ballots or the questioned ballots based on who's being voted for.

THE COURT: And you think being perplexed by an observation is sufficient enough to get into court? It's sufficient to support an affidavit? Do you feel that that constitutes evidentiary support, sir?

MR. CAMPBELL: Absolutely in this case without --

THE COURT: Wow, okay.

MR. CAMPBELL: Matters that are there -- I'm shocked to hear a suggestion to the contrary.

THE COURT: Yeah. Okay. And you're -- and this is based on your theory that all of these affidavits need to be viewed in context; right?

MR. CAMPBELL: All of them need to be viewed in context, of course, your Honor. How else would you do it?

THE COURT: I'm looking at the -- I'm looking at them, in fact, individually. I understand --

MR. CAMPBELL: Right, not in context. That's very clear, Judge.

THE COURT: Good, good, because I feel that every affidavit that is going to be submitted in support of any of these claims, there has to be a minimal belief on the part of counsel that these allegations are rooted in fact, and --

MR. CAMPBELL: And I think that's very clear.

THE COURT: Excuse me, excuse me.

If you have language in an affidavit that is vague, and it's clear that this language is -- this is based on his

own belief. He sees something that looks a little different for him so he's perplexed by it. That's quite a low standard for submission of an affidavit, but I will move on.

MR. CAMPBELL: He's perplexed --

THE COURT: My plan --

MR. CAMPBELL: No, no, your Honor, he's perplexed because there appears to be a choice on which ballots get questions and which don't. That -- again, if this is the subjective nature in which this Court is going to view the sanctions questions, which usually are objective, what can I do? But objectively, seriously, the word "perplexed" is what you think is worth the time and effort of the -- all the lawyers, your staff on this proceeding to talk about sanctions?

THE COURT: And I asked you: Did you really think that it was worth it to file in support of your claims that have taken up the time, energy, and space over these last several months? So I would caution you to do not question my procedure. I'm here to question what you've done, sir. I'm here to evaluate. Hear me out --

MR. CAMPBELL: And I am not a potted plant.

THE COURT: I'm here to evaluate --

MR. CAMPBELL: I am not a potted plant. I will represent my client --

THE COURT: That is quite fine, but you -- don't worry about what I'm doing at this point. You are here to

answer my questions.

Mr. Fink.

MR. DAVID FINK: Judge, it's probably not my place to say this, but I'm concerned by the disrespect for the Court that Mr. Campbell is showing, particularly in light of the history of this litigation and how patient the Court has been. I want to make a quick comment that the reason that "perplexed" is such a significant reference in this particular affidavit. This is the affidavit of an individual who claims to have served as an assistant attorney general, claims to have some expertise in this area, claims to understand election law. For him to then just say he's perplexed by something rather than actually explaining where he sees some violation of law or practice. We thought that was significant when we saw it a long time ago.

My concern goes back to the same issue all along, and I'll get out and I'll stop here, which is just some diligence should have been applied. What diligence is due might be a question for the Court, but not when there's no diligence at all, and, in this case, Mr. Larsen's affidavit had already been reviewed by Judge Kenney, and, in many respects, rejected and counsel should have been, I believe, to our case, I believe that counsel should have undertaken a serious inquiry to determine the facts before making all of these allegations.

MS. HALLER: Mr. Fink, we are available for an

evidentiary hearing, as we stand by every affidavit and document in this complaint. We did not file false statements. We made the documents clearly identified as they were. We did not alter documents, and any allegations that we have done something that is improper really lacks foundation, and I would just generally say that going through each affidavit or each paragraph in the complaint, we'll do so as your Honor requests. I would, just for clarity, for efficiency sake, ask that we -- if we can put it up side by side with the hearing so we can see where the paragraph is that we're talking about.

THE COURT: We'll try to do that. I have to admit that I'm a little surprised that counsel is coming to a sanctions hearing and does not have the documents that they themselves filed in fronts of them to be able to answer these questions, but, be that as it may, we will try to do what we can in terms of screen sharing.

Yes, Mr. Campbell.

MR. CAMPBELL: Judge, you're aware that you began this sanction hearing by saying it was your announcement of a show cause here today. These types of questions that you've asked were not raised by the Defendants in their proceedings, and, again, there's been a lot of opportunities for them to submit things. So I don't believe that statement about surprise or suggesting in any way that we've come here unprepared to look at the things that the Court wants us to be

directed towards, and, again, you have had all sorts of opportunities to speak with the people who were responsible for putting together this complaint and all of the attorneys who stand behind its filing.

THE COURT: All right. Thank you.

I'm going to now go to the affidavit of Mr. Gustafson. That's set forth at ECF Number 6-4 at PDF Pages 48-49.

Now, Plaintiffs allege that unsecured ballots arrived at the TCF Center loading garage, not in sealed ballot boxes, without any chain of custody and without envelopes, after the 8:00 p.m. election day deadline. They provide three pieces of evidentiary support, and I want to look first at the Gustafson affidavit.

That affidavit states, "Large quantities of ballots were delivered to the TCF Center" -- here we go. Here we go. "Large quantities of ballots were delivered to the TCF Center in what appeared to be mail bins with open tops. These ballot bins and containers did not have lids, were not sealed and did not have the capability of having a metal seal. The ballot bins were not marked or identified any way to indicate their source of origin."

My question to counsel at this point is: What is counsel's understanding of Michigan's requirements as to the container ballots and how they are to be transported after

they've been removed from the ballot drop boxes?

In other words, what do you understand about the requirements here for ballot bins?

MS. HALLER: Your Honor.

THE COURT: Yes.

MS. HALLER: I would just say we do not purport to be experts in Michigan's process, but I would point out that these exhibits are -- these Larsen and Gustafson are exhibits to a filing in the *Constantino* case, which is attached to the complaint. It's one of the exhibits that I believe your Honor is referencing. Note that these are exhibits for the Court and information that has been found in another court of law just --

THE COURT: As has been stated, Ms. Haller, a few times, and again --

MS. HALLER: We're going to a different document, your Honor.

THE COURT: Well, I mean yeah, but we're still dealing with the same kind of scenario with affidavits having been filed. Are you saying this particular affidavit was filed in the *Constantino* case?

MS. HALLER: Yes. I'm saying this is Exhibit 6-4B. I believe it's B, as opposed to Larsen, which is A, and then there's a C, in that these are exhibits to a filing by *Constantino,* which the whole thing was attached.

THE COURT: Okay. Again, I think, again, the Court

and counsel have a different view, and that's clear throughout this hearing, as to what obligations, and, again, I really just want to clarify that the Court -- I know that none of us are experts in election. We're not necessarily experts in Michigan election process, but the bottom line is is that if you're going to file an affidavit, in this Court's view, there should be some general understanding of the process such that when you see a statement by an affiant that you're willing to submit as evidentiary support, is that not why an affidavit is being filed?

If you have not asked at least the minimal questions, you know, I find that problematic, and I'm just trying to determine the level of inquiry that has been made here, and I really do think that that's a misunderstanding that counsel has in terms of where the Court is going, and I -- and I won't entertain, at this point, any argument as to why you would think that that's an inappropriate inquiry, because I feel that it is an appropriate inquiry.

Mr. Fink?

MR. DAVID FINK: Yes, your Honor. This allegation by Mr. Gustafson -- as stated by Mr. Gustafson, occurred in the *Constantino* case, and so, in that case, on November 11th, Chris Thomas -- Christopher Thomas did file an affidavit explaining that there is no requirement that ballots be transported in sealed ballot boxes. He's not aware of any jurisdiction in

Michigan sealing these ballots prior to election day and employees bringing the ballots would bring the ballots to the TCF Center, consistent with chain of custody. They weren't just left out someplace, but that's a factual statement. I could be wrong. I don't think I am, but I could be wrong, but what's important they certainly were on inquiry notice.

Once this affidavit was filed by Mr. Thomas, once they'd seen this other litigation, two weeks before they filed their case, all they had to do is ask and if they'd asked any election official in Michigan, any clerk in Michigan would have told them we don't even have sealed ballots for transferring ballots around. After the vote count, yes, you seal the ballots, but before the vote count, you can't seal the ballots, and they're not sealed and they're not transported that way. It's them saying "we are not experts" tells us all we need to know. They didn't get experts. They're not experts, and, nonetheless, they threw this information in front of the Court, hoping something would stick, in the most important litigation imaginable.

THE COURT: Thank you, Mr. Fink. Mr. Campbell?

MR. CAMPBELL: I hear Mr. Fink not taking any issue with the facts that are described in the affidavit. I'm not --

MR. DAVID FINK: Right, they don't mean anything. I'm sorry, I didn't mean to respond.

MR. CAMPBELL: They mean something. Somebody has to

say it, right, and all you did is produce another affidavit that said, yeah, that's what was done, but until the first person said it, the second person didn't comment on it, and I think you can take some notice that things that are unsealed, that things are unprotected, the things that are not -- that are handled in the manner that even Chris Thomas says -- you know, I never met Chris Thomas. He's not here. We don't even have the chance of going over his affidavit in this kind of detail. Love to do that in an evidentiary hearing, but, again, all this is is a fact of what somebody saw, and, in fact, it appears that you're here to testify that it's true. So how is it -- what more diligence was needed to produce a truthful affidavit from you?

Apologize, I should not have asked him the question.

THE COURT: All right. Let me --

MR. DAVID FINK: I can speak to it, only if the Court wants to.

THE COURT: Yeah, let me say, again, I feel like I have to respond again that, you know, I need to point out here that my concern is is that counsel here has submitted affidavits to suggest and make the public believe that there was something wrong with the election. Isn't that what this is all about? That's what these are affidavits are designed to do, to show that there was something wrong in Michigan. There was something wrong in Wayne County. These are the

observations of what took place at the TCF Center.

I am simply taking those affidavits, which counsel submitted, in support of the general proposition that there was fraud in the Michigan election. I'm looking at that, looking at the language of the affidavit and saying is that what this even says? What level of inquiry have you made to even know -- I mean, you know, what -- for a person who doesn't have a lot of experience, maybe they -- some of them, of course, I know the poll challengers went through a training, and so -- but the bottom line is is that if you see something and you're not that familiar with the process, it doesn't always mean that what you're seeing is what you think you're seeing. It doesn't matter that -- it doesn't always mean that what you see as being odd, that it is in fact odd if you don't know the process.

All I'm asking, counsel, is if you took the time to look at those affidavits and say, well, wait a minute, there might be something here in the sense of is that part of Michigan's process? I want -- that's my question: Were those -- that type of inquiry made? And it's a germane question, because the premise of this lawsuit is is that Michigan election was fraudulent.

All right. So, Mr. Kleinhendler, I'm sorry, sir, Mr. Kleinhendler.

MR. KLEINHENDLER: Yes, your Honor.

THE COURT: You may comment briefly, sir, and then I'm going to move on.

MR. KLEINHENDLER: I can't say -- I reviewed some of these affidavits. I had people working with me reviewed every single one. I believe we did speak to some of them. I think we did speak to some of the attorneys, at least that was my understanding, and, with regard to your specific question, it's just basic knowledge when you're transporting a bunch of documents in an unsealed container that can be tampered with from a remote location, that raises a suspicion. Whether it's required under Michigan law or not, it's completely irrelevant. We're not saying here even that Michigan poll workers knew that they might be doing something wrong. We have alleged here that there was things going on that maybe even some of the workers themselves unknowingly let slide, and so I want to make that point clear. If you're bringing something from far away and it's open, that raises an issue. Your Honor, if I handed you a can of Coke that was open and I told you don't worry I didn't drink from it --

THE COURT: These are elections that have been run in the state of Michigan for years. The analogy is certainly not on point, sir; it is not.

MR. KLEINHENDLER: The second point -- well, the second point I'd like to raise is the notion that we filed this lawsuit as some kind of public relations. That is not correct.

We filed this lawsuit on behalf of clients, who were electors, who asked us to file this lawsuit. What the public did with it or didn't do it with it is beyond our control, and I reject, categorically, the mantra you've heard in the papers and you're hearing again now that we did this as a publicity stunt. I reject that wholeheartedly, your Honor. We did not. We filed it on behalf of Plaintiffs who asked us to file it, and I'd like to make that point clear.

THE COURT: Okay. And, you know, again, the analysis will always be -- part of the analysis, in certain of the sanctions that are available to the Court, is was the purpose for which the lawsuit was filed, was it an improper purpose, and this is also -- you know, I think that things can also be drawn from the amount of effort that you put into a lawsuit in terms of what are you really trying to do, you know, and I've not drawn any conclusions at this point, but I am trying to, again, drill down --

MR. KLEINHENDLER: Your Honor, I just want to leave you --

THE COURT: Excuse me, Mr. Kleinhendler.

MR. KLEINHENDLER: -- with --

THE COURT: I have not finished.

I am trying to drill down as to the level of inquiry that was made by counsel in these multiple affidavits, all right, and there is no way that I could not do that and then

put myself in a position where I could accurately assess whether behavior here has been sanctionable, and when I say here, I'm talking about through the course of the litigation.

All right. I am going to move on, counsel, to the Meyers' affidavit and Meyers -- part of the amended complaint, it is stated that Meyers -- I'm sorry, let me give you, it's ECF 6-3. This is the Meyers affidavit at PDF Pages 130-131. Per the amended complaint, Plaintiff states, "Meyers observed" -- Meyers "observed passengers in cars dropping off more ballots than there were people in the car."

In Michigan, may people other than the voter drop off a ballot? Is that allowable in Michigan, to have someone, other than the person who has voted, drop off a ballot for someone? That's my question.

MR. CAMPBELL: The answer is that you can deliver somebody else's ballot.

THE COURT: Right.

MR. CAMPBELL: If it's legally voted, it should be legally counted.

THE COURT: All right. I want to point everyone's attention to the next affidavit, which is the Ciantar -- certainly, I'm certain I botched this person's name. I apologize. I will spell it. It is C-i-a-n-t-a-r, set forth at ECF Number 6-7 at Page ID 1312-14. There it is right there.

And the amended complaint states that Mr. Ciantar,

independent -- "independently witnessed," while walking his dog, a young couple deliver three to four large plastic clear bags that appeared to be, "express bags," as reflected in photographs taken contemporaneously, to a U.S. postal vehicle waiting. The use of clear express bags is consistent with the -- there's a whistleblower complaint that's been referenced in the context of this lawsuit. I have not ever seen any underlying documents, but it's a whistleblower suit by a U.S. Postal Service worker, Jonathan Clark.

Putting aside the fact that Plaintiffs have not provided any evidence, as I just stated, regarding the postal service whistleblower claim, here are a few excerpts from the Ciantar affidavit which are now on the screen.

"I witnessed a young couple pull into the parking lot of post office and proceed to exit their van, had no markings, and open up the back hatch and proceed to take three to four very large clear plastic bags out and walk them over to a running postal service vehicle that appeared as if it was 'waiting' for them."

Let me go further. "There was no interaction between the couple and any postal service employee, which I felt was very odd. They did not walk inside the post office like a normal customer to drop off mail. It was as if the postal worker was told to meet and stand by until these large bags arrived."

"As you can see in the pictures," the affidavit goes on to say, "the bags were clear plastic with markings in black on the bag, and on the inside of these clear bags was another plastic bag that was not clear, could not see what was inside. There were markings on the clear bag and what looked like a black security zip tie on each bag, as if it were tamper evident, as if it were a tamper type of device to secure the bag. This looked odd. What I witnessed and considered that what could be in those bags could be ballots going to the TCF Center or coming from the TCF Center."

Now, this is quite a -- I don't -- I don't think I've really ever seen an affidavit that has made so many leaps. This is really fantastical. So my question to counsel here is: How can you, as officers of the Court, present this type of an affidavit? This is pure -- is there anything in here that's not speculative, other than the fact that the individual saw individuals with plastic bags? They don't know what were in them, happened to be located at the post office, and then there's a leap made there. Someone answer that question for the Court.

Ms. Haller. Thank you.

MS. HALLER: Yes, your Honor. The witness is stating or setting forth exactly what he observed and his information that he bases it on and he includes pictures.

THE COURT: What --

MS. HALLER: He does not say more. He does not say less than what he knows to be true. It is a true affidavit. It is a person with some information, and he is setting forth that information. When we put the case together, we put forth a pattern of evidence that shows fraud. So it's a pattern of evidence that comes together, and this is one piece of a pattern. He is testifying, in his sworn statement, as to what he knows to be true. He saw these plastic bags. He's explaining what he saw, and he takes pictures of them.

THE COURT: Okay.

MS. HALLER: I would submit, your Honor, that it's not fantastical. It's simply what he knew to be true.

THE COURT: You think that he is actually thinking -- do you think, by the language in the affidavit, Ms. Haller, that he is actually stating that he believes his conclusions to be true when he says things like "could be, it appeared as if they might have been waiting for him." Where is the truth in that? I mean this is pure speculation.

All right. Let me move on.

MS. HALLER: It's in the --

THE COURT: Is there any -- Ms. Haller.

MS. HALLER: Your Honor --

THE COURT: Let me ask you this question: Was there any information -- what information did the affiant have to make any of these conclusions in his affidavit? I mean

we're -- stay with me.

MS. HALLER: He was speaking in the present tense and he took photos. So he saw what he saw and he documented it as he did, and we don't typically rewrite what an affiant says.

THE COURT: But don't we also as -- doesn't counsel also have an obligation to evaluate that and say, "What is this actually going to prove?" He's -- he has made conclusions based upon what he's observed, but there is clearly, within this affidavit, nothing to support those conclusions. This is what he has -- what else is there? This is anybody driving down a street and seeing somebody with plastic bags. You automatically jump to the point, and, most importantly, Ms. Haller, counsel, what is your duty here? You said you don't rewrite the observations --

MS. HALLER: (Indiscernible.)

THE COURT: Absolutely not.

MS. HALLER: But your Honor --

THE COURT: Ms. Haller, let me ask this final question and then I'll let you speak.

My question to you is: At what point do you have that duty to say, you know what, there's really not enough here? You don't feel that -- I mean at what point do you say that?

MS. HALLER: May I respond, your Honor?

THE COURT: Yes, please do.

MS. HALLER: I would simply submit that we identified a witness as a potential source in a complaint to support information that we would then hope to call that person as a witness who would testify, would be anticipated to be testify in accordance with what he or she had stated in a declaration or affidavit. This particular witness did not jump to any conclusions and made that clear in his affidavit, and he did believe -- I believe he believed that he saw ballots, but I think he was hesitant to actually express that, and his hesitancy comes through in his declaration, but there's nothing untruthful about what he says.

THE COURT: All right. I saw another hand up. All right.

THE CLERK: It was Ms. Powell, your Honor.

THE COURT: Ms. Powell, yes, and then I'll get to you.

Ms. Powell, yes, ma'am.

MS. POWELL: Yes, we filed a massive and detailed complaint in federal court that doesn't even require us to append affidavits to.

THE COURT: Right.

MS. POWELL: The very fact that we filed 960 pages of affidavits with the complaint shows extraordinary due diligence on our part. Virtually, every question the Court has raised about these affidavits calls into question the veracity of the

affiants, and the only way to test that is in the crucible of a trial or an evidentiary hearing, which the Court has denied at every stage.

THE COURT: All right. Well, let me say volume, certainly for this Court, doesn't equate with legitimacy or veracity. So please understand that is certainly my position.

Mr. Kleinhendler.

MR. KLEINHENDLER: Yes, your Honor.

THE COURT: Very briefly, sir.

MR. KLEINHENDLER: Yes.

THE COURT: Very briefly.

MR. KLEINHENDLER: Yes, with regard to this specific affidavit.

THE COURT: Yes, sir.

MR. KLEINHENDLER: We have amassed evidence in Pennsylvania, and we've actually -- we can present it to the Court, I think we have, where there was proof positive evidence of United States Postal Service collusion and malfeasance in connection with the delivery of ballots.

THE COURT: Oh, so that's why you thought that was --

MR. KLEINHENDLER: I'm giving you my impression on this specific affidavit, where it seems to you to appear bizarre to, you know, why -- you know what's the big deal, and I'm telling you, your Honor, in good faith, that prior to filing this, we have evidence that these very clear reports

that, in connection with Pennsylvania, there was malfeasance in connection with the United States Postal Service. So when I looked at this or when I heard about it, it did not appear unusual to me.

Now, we could have -- you know, we could have a discussion of what that evidence is. I don't want to get into it now, but I want to make the point for the record, we had clear, very credible evidence that the United States Postal Service, believe it or not, had mishandled, had done illegal acts in connection with the ballots that they delivered in the 2020 presidential election.

THE COURT: Got it. Mr. Fink.

Let me just ask one last question of you. The reports are based on this kind of spec -- well, I just -- let me ask you this: Did you -- is there a reason that you did not submit that other evidence on the postal service, which is quite, quite an inflammatory claim? Is there a reason you did not submit any evidence on that?

MR. KLEINHENDLER: Your Honor.

THE COURT: Yes, sir.

MR. KLEINHENDLER: I believe at the time that we filed this complaint, we just had reports. We had one whistleblower, who I believe we had interviewed. It wasn't yet hard enough, your Honor, what I would call hard evidence. However, however, should there be an evidentiary hearing at

this point, we have the who, what, and where of what happened in Pennsylvania.

THE COURT: All right.

MR. KLEINHENDLER: What and where.

THE COURT: Mr. Fink, quickly.

MR. DAVID FINK: Your Honor, if I may. We are in the state of Michigan; we are not in Pennsylvania, and in the state of Michigan, they made this allegation based on some paranoid delusions of some witness, who never even gets to a punchline. The fact is, if they've got evidence, and he says they've got evidence, it should have been in the complaint. If they don't have evidence or if they don't have direct allegations, then they shouldn't throw out these miscellaneous defamatory and, frankly, phony allegations.

Now, this might all be true. If you read it closely, what it says is absolutely nothing, but it does fuel the fires of the online conspirators and conspiracy theorists who want to reprocess and use this to support their efforts, and that's what happened here. We'll get back to that later, but this was not an accident. This was not a case -- I'm sorry, let me just finish this one thought. I apologize, your Honor.

If they don't make out a legal theory with the facts they're presenting, it's right for the Court to ask why they're presenting the facts, and we'll get to that at the end.

THE COURT: Let me -- I'm very close to counsel

wrapping up, and what that will mean for you is is that you'll have an opportunity to, very briefly, address the Court on anything that you might want to clarify, just a closing statement. Please do not rehash, but based upon what has been discussed here today, but before I do that, I wanted to address Ms. Lambert Junttila. Are you still with us?

MS. LAMBERT: Yes, your Honor, I'm here.

THE COURT: Thank you so much. And so in your latest filing, you state that "Plaintiffs' counsel had a First Amendment right to bring this election challenge and, therefore, they could not be subjected to sanction." You further state, Counselor, that "The U.S. Supreme Court cases that support this argument are just too numerous to mention, and any attempt to string cite them here would be insulting to all involved."

I will not be insulted. I will not be insulted. If you can tell me whether the First Amendment prevents sanction -- well, let me just start here in terms of is there a point where a lawyers' conduct becomes sanctionable and is no longer protected by the First Amendment? Because you seem --

MS. LAMBERT: Your Honor --

THE COURT: -- to be quite --

MS. LAMBERT: Thank you, Judge, and I appreciate the opportunity. The purpose of this lawsuit, I heard the Court address it earlier, whether or not it was an improper purpose

or to -- the premise of it was to show that the Michigan election was fraudulent. I think that these suits are critical to our country to show that every vote counts and ensure that every vote counts as it's intended to count. It's not a partisan issue to me. Everyone should be able to bring lawsuits to ensure election integrity, and the court system is the appropriate place to bring those suits.

With regards to this particular case, the Court didn't hear much about my role. I filed the notice of appeal before the Court. Sidney Powell was lead counsel on this case. I've spoken with her no more than two times for brief conversations. I've had a number of conversations with Howard Kleinhendler, and all pleadings and briefs were prepared by Howard and Sidney. Even e-mail responses to opposing counsel, I would check with them to see how they wanted me to respond and then I would respond.

I viewed my role as the local attorney. It was my understanding that they would apply to be admitted to the bar in the Eastern District of Michigan. I know this case was only alive for essentially seven days before this Court before it was appealed.

So does that answer the Court's question?

THE COURT: No, and thank you for letting me say that and give you -- let me restate. Again, pertaining to your position that Plaintiffs' counsel had a First Amendment right

to bring this election challenge, my question to you, because I find that the brief itself is extremely broad as to what you consider to be an attorney's First Amendment right, in their capacity as an attorney, in a courtroom, and my question to you is: Is there a point where a lawyer's conduct becomes sanctionable and is no longer protected by the First Amendment, or are you speaking of a right that is completely unbridled? Help me.

MS. LAMBERT: Your Honor, I think that an attorney's obligation is to be an advocate for their client, and as long the attorney is putting forth accurate pleadings, accurate information before the Court, which I have done, that, no, it is protected by the First Amendment and it would be unconstitutional, and the Court is the appropriate place to redress grievances.

THE COURT: Let me just -- I want you to take some time and look at -- this is a case from the Sixth Circuit. It's the *Mezibob* case, which you, I'm certain are familiar with, *versus Allen* at 411 Fed 3rd 712.

And the Supreme Court has noted that "It is unquestionable that in the courtroom itself, whatever right to free speech an attorney has is extremely circumscribed. Furthermore, it appears that no circuit court has ever granted an attorney relief under the First Amendment for this narrow category of speech, because an attorney, by the very nature of

his job, voluntarily agrees to relinquish his right to free expression in the judicial proceeding. Our Sixth Circuit sees no basis for concluding that free speech rights are violated by a restriction on that expression. In filing motions and advocating for clients in court, an attorney is not engaged in free expression. She is simply doing her job."

And I think that is -- I was concerned, and you have not done anything to put aside my concerns, Ms. Lambert, that there is in fact, that is a circumscribed right that an attorney has when they are acting in a capacity as a lawyer in a courtroom.

All right. So that is, counsel, where I'm going to leave my questions here at this point, and what I would like to do is to give counsel an opportunity, and I'll tell you the order in which this may proceed, an opportunity to just give some closing remarks and let the Court know if there's anything that you would want to clarify, and I also would like to ask each of you, if you feel that there is any basis upon which a supplemental briefing would be helpful to this Court, based upon what has been discussed today. Please think long and hard about that, because we've killed a lot of trees here, and so we just -- we really want to know, you know, if you think it is something that would be beneficial to the Court. All right.

So let me begin with hearing from Plaintiffs' counsel, and I'm going to start with Mr. Campbell.

MR. CAMPBELL: So I understand, your Honor, this is the Defendants' motion but you're asking me to go first.

THE COURT: Yeah, I am.

MR. CAMPBELL: I'm prepared to do so.

THE COURT: I figured that you would.

MR. CAMPBELL: Thank you. The right to vote, quote, the right to vote is among the most sacred rights of our democracy, and, in turn, uniquely defines us as Americans.

Judge, I'm sure you like that, because you wrote that. That was the opening line of your 36-page opinion and order denying the motion for injunctive relief, and I appreciate the Court's point, but, respectfully, that statement stops short of capturing what actually uniquely defines us as Americans.

History shows us that the totalitarian regimes and authoritarian rulers gladly let their subjects vote. Nazi Germany had plebiscites. The Soviet Union held regular elections, and even Hugo Chavez was happy to let folks vote for him and touted himself as being popularly elected.

What separates our republic from the totalitarian and authoritarian regimes is our system of checks and balances created by the founders and preserved by generations. That guarantees each citizen a right to petition and redress grievances and to challenge to the judicial branch the executive's conduct of an election.

To ensure that each of our votes count, every vote must be legally and properly counted. It is this system of voting, counting, and challenging that the public can draw confidence from, and they usually do.

This Court has recognized and articulated the importance of both capturing legal votes on a properly counting them. That's the *Stein V Thomas* case cited in our briefing, and I gave the cite earlier as well, where this Court said, "The fundamental right invoked by the Plaintiffs the right to vote and to have that vote conducted and counted accurately is the bedrock of our nation. Without elections that are conducted fairly and perceived to be fairly conducted, public confidence in our political institutions will swiftly erode."

This lawsuit was an opportunity to challenge whether it was fairly conducted and to have a decision from this Court on whether it was and then to move forward.

Twenty years ago in *Bush v Gore*, the United States Supreme court, for the first time in our nation's history, exercised its indispensable role in ensuring fair and accurate counts in the election of a president. The Court did not invent that power for itself. The power and authority to control the outcome is firmly rooted in the Constitution. It did, however for, the first time, use its power, and it did so all because one party petitioned for relief. The relief in 2000 in *Bush v Gore* was an order from the Court to the state of Florida to

stop counting votes.

In its most straightforward terms, this lawsuit asks, and especially the injunctive relief asks that this Court order the State of Michigan, the Secretary of State, to start counting the votes and for the Governor to hold off announcing a winner until the court-ordered count was completed. Your order labeled the request to be "stunning in scope" or "breathtaking in its reach." That came earlier. I think Mr. Fink provided us that also.

Respectfully, securing the promise of the cherished right to vote by having your vote counted with only other legally cast votes should not be considered so extraordinary. Certainly, to my clients' clients, it was viewed as self-evident and fair. The suit and injunction were not designed to disenfranchise a single lawful vote, rather, they were filed to seek the relief promised in the Constitution, given in *Bush v Gore* and premised on the good faith desire of my clients and their clients.

This Court disagreed with the timing of the filing of this case. It was, however, filed as soon as it was capable of being filed.

There may be some additional briefing you'd like on that.

It was filed after the deadline in the state statutes, but it was largely filed as a federal claim and the due process grounds.

This Court applied laches to the request for an injunction, but, as this Court knows, that is an affirmative defense and does not usually diminish the quality of the claim made. This Court found no standing, but, in doing so, adopted the dissent and not the majority from an Eighth Circuit Court of Appeals case in denying the injunctive relief. It cannot be that this Court would hold that lawyers and litigants will be sanctioned for essentially not knowing how another circuit's law would be interpreted before it.

The claims here failed to win the injunction. They failed before you, and neither the Sixth Circuit, nor the U.S. Supreme Court, disturbed your ruling. That is the law of this case, and my clients, the lawyers, all understand and respect that. This Court wrote eloquently, "The Plaintiffs' alleged injuries do not entitle them to seek their requested remedy, because the harm of having one's vote invalidated or diluted is not remedied by denying millions of others their right to vote."

That's Page 25 of your opinion.

This sentiment, and I think it's fair to describe it as that, because the Court doesn't rely on stare decisis. It doesn't cite a case for this point, can be read differently in the case law of the United States Supreme Court. Good lawyers, my lawyers, could easily read a different view in *Bush v Gore*, when the Court there said, "The right to vote is protected in more than the initial allocation of the franchise. Equal

protection applies as well to the manner of its exercise. Having once granted the right to vote on equal terms, the state may not later arbitrarily or disparagingly in treatment value one person's vote over that of another."

And that's 531 U.S. 98 at 104 and 105.

The Plaintiffs are electors and voters. Your ruling can be fairly read to say that diluting one vote might be okay or even some votes. This concept of one vote might cost others theirs. My clients and their clients read the precedent differently. That should not be sanctionable.

City of Detroit argues in their brief that the Plaintiffs bringing the action raised doubts in minds of millions of Americans about the legitimacy of the 2020 presidential election. So let's get this right, part of the executive is saying that court filing somehow create doubts. The fact is that folks doubted this election. It happened. Folks doubted the 2016 election. We saw in *Stein versus Thomas*. Folks doubted the 2000 election, *Bush v Gore*, and I grew up, as many ever us, did hearing the rumors, that were more than doubts, about the 1960 election.

Leaving aside that the doubts come from the way that the executive conducted its vote and gathered those votes for counting, Defendants simply have it wrong. This case was driven by doubts arising from the eyewitness accounts and the statistical evidence, and it was merely part of the necessary

and proper process intended to settle such doubts.

They followed the precedent. They followed *Common Cause Georgia versus Kemp*, and they brought you statistical evidence and they brought you witness declarations, but, still, doubling down, the State says, in ECF 105, "The terrible byproduct of Plaintiffs and their counsel's efforts is reflected in January insurrection of our nation's capital." Civil complaints do not foment revolution. Bringing claims based on affidavits from those who were there and others who were able to study the available information does not provoke insurrection.

Dismissing eyewitnesses that the Defendants label, in their pleadings here, as uneducated and denying access to the courts to those same citizens who seek to have their petitions heard and grievances redressed is what is dangerous, and it is contrary to the promise and guarantees of our republic.

THE COURT: All right, Mr. Campbell. Thank you. Let me ask a question, sir: Is there anything that you think that you would like to submit? Do you think that there will be any benefit to a supplemental brief on behalf of Plaintiffs' counsel?

MR. CAMPBELL: Your Honor, yes is my answer to that.

THE COURT: What's the issue so I can see if I would agree with you, sir?

MR. CAMPBELL: Well, you have highlighted various portions of affidavits and asked them for context and for an

understanding. You've essentially grabbed several, and, again I hope you don't find this as an unfair example, but it's my view, you've held us puzzle pieces, and you've asked us where does this fit? Where does this fit? I think we ought to have the opportunity to show you the cover of the box that shows where those pieces fit. I'm sure that would be helpful.

THE COURT: Okay. Let me say this. Let us continue. Mr. Buchanan is there anything, sir, you'd like to say on behalf your client, Ms. Newman? I understand, sir, your position that she did not have a lot of involvement in this matter.

MR. BUCHANAN: That's all I would have, your Honor. She didn't sign any pleadings. She never made an appearance. There was no intent for her. She was a contract lawyer, 1099 employee basically, and her role was very limited, and although Mr. Fink pointed out he sent the motions for sanctions to Ms. Powell at that address, she never received those, and she was never given the opportunity, obviously, to make any decision of how to proceed or not proceed. I got into this case just recently because she just received notice of this hearing.

THE COURT: Let me ask you --

MR. BUCHANAN: So --

THE COURT: I'm sorry, go ahead.

MR. BUCHANAN: That's it. Her role was very limited.

THE COURT: All right. Thank you, Mr. Buchanan.

Mr. Fink, let me ask you a quick question: Are you disputing notice requirements as relates to Mr. Buchanan's client?

MR. DAVID FINK: Absolutely, we sent the letter --

THE COURT: No, no, no, you don't have to. Thank you so much.

What I would like to do is give you, Mr. Fink, an opportunity to provide a supplemental brief on this whole issue of who knew -- you know, who received notice of your moving for sanctions, and I would give anyone who feels that they have not received the notice an opportunity to file a supplemental brief on that, all right, and we can talk about time frame. I don't want to be unfair.

MR. CAMPBELL: Your Honor, might I make a suggestion?

MR. BUCHANAN: I have one quick comment. I'm not disputing to Mr. Fink's assertion that he sent his motion to Sidney Powell's office. The thing is my client was working from home as a 1099 contract employee. So you know, as a legal matter, whether that constitutes notice, I don't know. I'm just saying that -- and I'm not questioning Mr. Fink's representation at all. I'm just saying that she never received them after that.

So she played -- had no role in like whether to go forward or not in this case, or, you know, the Safe Harbor

thing, and, most importantly, your Honor, I'm emphasizing -- I don't know Mr. Fink's disputes this -- she worked five hours on the matter. She played a very limited role. So I don't think Rule 11 covers that level of involvement. Thank you.

THE COURT: Mr. Fink.

MR. DAVID FINK: Your Honor, we can file a brief -- supplemental brief. It will just indicate what we did do. I believe that we used the address on the pleadings. We'll see.

THE COURT: Okay. So let me do this right. So, you, Mr. Fink, I am asking that you file a supplemental brief identifying those individuals who you believe have received notice of sanctions and then -- and the time frame in which those notices were -- that notice was provided, and then whoever is subject of that brief thing can also respond.

MR. DAVID FINK: Your Honor, it would be helpful, and I think probably save some paper and time for everybody, if we could just find out -- no argument is necessary, but which Plaintiffs' attorneys claim or believe they did not receive notice so we'll only address the ones that say they didn't get notice. Mr. Wood said something.

THE COURT: Right. Mr. Wood. So he's going to be able to -- and Mr. Campbell is representing Mr. Wood, correct?

MR. WOOD: Yes, your Honor.

MR. CAMPBELL: If anybody is capable of doing that, but, yes, Judge.

THE COURT: Okay. All right.

MR. WOOD: Judge, what I would say is, based on the fact that I discern from today's hearing that my position may be somewhat unique to the others, I'd like to have an opportunity, and I will do this in conference with Mr. Campbell, and I may have to get an independent counsel to file formal documents and pleadings for me to seek a dismissal, based on lack of jurisdiction and lack of a factual basis upon which to bring a Rule 11 or a Section 1927 action against me. So I'd like to be able to address that.

I'd also like to be able to address this issue of notice. I've already indicated I did not receive it. So I'd like to have a couple of weeks, because if I have to get separate counsel, that will take sometime to get them up to speed. I would say this, that if you have all the Plaintiffs' lawyers here, and if you ask them whether I asked to provide substantive input into the pleadings, I think they'll tell you no; whether I actually provided, they'll tell you no; whether they asked me to, they'll tell you no; whether I had any involvement in preparing the affidavits --

THE COURT: I'm not going --

MR. WOOD: -- they'll say no.

THE COURT: Yeah, that's fine, Mr. Wood. I'm not going to do that. What I am going to do, sir --

MR. WOOD: If we don't have it here today, then I'm

entitled to an evidentiary hearing and due process, because the evidence will show that there is no factual basis upon which this Court can sanction me --

THE COURT: I'm giving you an opportunity --

MR. WOOD: -- from an evidentiary standpoint. I haven't had an opportunity for an evidentiary hearing --

THE COURT: And the Court --

MR. WOOD: And I didn't have anything to do with the drafting of the pleading. I'm sorry.

THE COURT: Before I give you an opportunity for an evidentiary hearing, I don't know that I will be doing that, I would allow you an opportunity to file a brief stating your position, all right, and you know, because you're --

MR. WOOD: I'm just saying --

THE COURT: Because you are in a bit of unique position in that you might need to have separate counsel, I'm going to give you a little bit longer to submit, and I will give you -- I can't -- you know, I'll give you -- I'll give you two weeks to submit something to this Court setting forth your position, and we'll take it from there, all right?

MR. WOOD: Thank you, your Honor.

THE COURT: You're welcome, sir.

Let me go on to -- so, Mr. Fink, you're clear? You're going to go ahead -- yes, I would like for you to go ahead and -- you wanted me to just see who you needed to

include in your supplemental briefing. So who, of the attorneys that are at this hearing, who, by hand show, who is contesting the receipt of notice?

And so we have Mr. Kleinhendler.

MR. KLEINHENDLER: Your Honor, I want to be clear, your Honor.

THE COURT: Yes, please.

MR. KLEINHENDLER: I am contesting receipt of notice, pursuant to Federal Rules of Civil Procedure 5, which is the service that is required for a Rule 11 notice. We did not receive, I don't believe, Rule 5 service, and none of us, at least I didn't, waive it. So I want to preserve that, your Honor, for the record.

THE COURT: All right. So you've heard that. Anyone else? Mr. Wood? Yes, Mr. Wood, we have you, sir.

Ms. Powell, you are also contesting notice?

Unmute, please.

MS. POWELL: Yes, your Honor, on the same basis as Mr. Kleinhendler.

THE COURT: Thank you.

MR. DAVID FINK: So --

THE COURT: And I'll let you ask a question. Let me just get the head count.

Mr. Johnson, you, too sir?

MR. JOHNSON: Yes, your Honor, and on the same

grounds as Mr. Kleinhendler just asserted.

THE COURT: Go ahead, Mr. Fink.

MR. DAVID FINK: All I wanted to be clear about is are these attorneys saying they did not receive, by first class mail and/or e-mail, what we sent, or are they saying what they received was inadequate notice because they were entitled to some other type of service? That's important because that changes how we brief this. Apparently, Mr. Wood and Ms. Newman claim they had no idea because they didn't get actual notice, but I think Mr. Kleinhendler is saying that he didn't -- he wasn't satisfied with the form of the notice.

THE COURT: Mr. Kleinhendler?

MR. KLEINHENDLER: Yes, I received an e-mail, your Honor. I received the mailing, yes, of what they mailed, your Honor. In our opposition, we argue, and I don't want that to be waived by your questioning here, we argued that the Rule 11 motion had other procedural defectiveness. For example, they bundled other arguments in the same motion. They served a notice without the brief that was ultimately filed --

THE COURT: We have Safe Harbor briefing already.

MR. KLEINHENDLER: Yes, yes. All I'm -- the point I'm trying to make here, your Honor, is I don't want to waive any of that Safe Harbor briefing by your questioning. I just want to raise the point that there was no, in my view, there was no Rule 5 service, which is required for a Rule 11 motion.

That's it. But I did get the e-mail. I did get the first class mailing of what they mailed.

THE COURT: All right. There's no waiver here. You're not waiving anything.

All right. Ms. Powell?

MS. POWELL: Yes, your Honor. I simply can't verify actual notice today, but I will undertake the research and advise on that later.

THE COURT: All right. Would that involve a phone call to Mr. Fink or you would rather speak through your submission?

MS. POWELL: I'll speak through our submission.

THE COURT: Okay. All right. And, Mr. Johnson, you're taking the same position that Mr. Kleinhendler is taking; is that correct, sir?

MR. JOHNSON: Yes.

THE COURT: That you received it but it's -- it's not just the receipt of it that you're challenging, correct?

MR. JOHNSON: I received an e-mail. I can verify that. I don't know if I received the first class mail. So I guess I need to verify that as well but the -- you know, the service issue that he raised, yes, I'm making the same claim there.

THE COURT: Okay. All right. Clear, Mr. Fink?

MR. DAVID FINK: Yes, very. Thank you, your Honor.

THE COURT: Thank you. All right. Before we go further to hear these kind of winding -- I'm sorry, closing remarks, Ms. Lambert, I'm going to allow you to submit two cases for me, if don't mind.

MS. LAMBERT: Sure.

THE COURT: That speak on the unbridled protection that the First Amendment offers to an attorney. So I'm looking for that.

MS. LAMBERT: Thank you, Judge. I'd also like the opportunity to prepare a supplemental brief regarding a number of issues that were addressed by the Court today. Today was not set for an evidentiary hearing of the witnesses, and I'd request one regarding these witnesses, as well as new witnesses with new evidence that support the pleadings, your Honor.

THE COURT: You can file that.

MS. LAMBERT: Thank you, Judge.

MR. WOOD: Judge, this is Lin Wood again. I hate to butt in again. I appreciate the two weeks. Could I indulge the Court to allow me to have two weeks from the receipt of transcript of the hearing today? Because if I do have to engage new counsel, I think, in fairness, they're going to have to review the transcript from today, as well as, obviously, the pleadings that have been filed --

THE COURT: I'm going to decline --

MR. WOOD: -- (indiscernible) from the date of the

transcript --

THE COURT: Sure. Yeah, I'm going to decline that request. We need to kind -- we're going to take this step by step. I need to first see what it is that you're claiming, and I do not want to delay that aspect of it, because it's going to have implications for how quickly we can really just address the sanction motion. I would just ask, sir, that you work with what you have. I know -- you know, and reach out and try to obtain counsel, if in fact you feel that that's what is appropriate. Because I'm not going --

MR. WOOD: I --

THE COURT: Go ahead.

MR. WOOD: No, no. I'm just saying I would feel like if somebody came to me and said would you represent me in connection with this matter, they would first want to know what happened today, and so I'm just asking for the time to have the transcript to be available to someone that might be interested in looking at it, because, obviously, I don't want to jump in asking a lawyer to do something without knowing, you know, exactly what the status of the matter is, and, today, most of this would not address the issues that I believe were pertinent to my situation, but some parts of it would, and so that's the reason I ask for the request.

I don't know how long it takes to get the transcript. I certainly don't want an inordinate delay. That's why I was

hoping we might just go through the lawyers today and verify I was not involved, but I'll do whatever your Honor wants to me to do. I'm just asking for a reasonable time.

THE COURT: Yeah, I'm going to give you the 14 days.

Ms. Powell.

MS. POWELL: I believe all the lawyers need time to review the transcript and consult with our counsel before we know what supplemental briefing might be needed and appropriate.

THE COURT: I don't know if I really agrees with that. You're working through -- you all have retained counsel is that your position, Mr. Campbell? I think 14 days -- 14 days for everybody, all right, and that would include -- we will try to do whatever we can to expedite the provision of the transcript, but I don't want that to be a delay. So everyone would have 14 days to submit supplemental briefing.

Now, I will tell you what I've done here is is that I'm still trying to limit what you will provide a supplemental briefing on. I don't need to be, you know, supplied with arguments that have already been made.

Ms. Powell, did you want to say something?

MS. POWELL: Yes, your Honor. We need to be able to consult with counsel after this hearing and the record of this hearing before we can properly provide supplemental briefing.

THE COURT: Fourteen days is out the gate. That's

where I am right now, 14 days. If counsel feels that they need more time because of a delay -- not even a delay, but because of the amount of time it would take to prepare the transcript, I will consider it, but I urge you to do as much as you can without that transcript. So there we have it.

Who's next? Doesn't look like anybody.

All right. So we're going to go back to the order in which we were proceeding. So Mr. Buchanan has already spoken his concerns about his client. Is there anything else that you want to say?

MR. BUCHANAN: No, your Honor. Thank you very much.

THE COURT: All right. And Ms. Lambert Junttila, is there anything else you would like to say? I already asked for you to submit two cases, and, Madam, just, please, keep your remarks short. You all have had ample opportunity -- and I should say you have availed yourselves of the opportunities, you know, through briefing, and I really don't need a wrap up kind of closing remarks that rehashes your views.

Where is Miss Lambert Junttila? Where are you?

MS. LAMBERT: I'm here, your Honor.

THE COURT: There you are.

MS. LAMBERT: I didn't hear the Court's question.

THE COURT: My question is: Do you feel there's anything else that you need to provide to this Court in order to get me closer to making a decision, anything that you feel

that there's a supplemental briefing --

MS. LAMBERT: I'm sorry, I thought the Court already ruled on that, and I apologize. I thought the Court ruled that I could file a supplemental brief regarding issues that were brought up today and the cases that the Court asked me about.

THE COURT: Okay. I'm going to limit -- I'm really -- I really feel it's in everyone's best interest, you know, to not go over the top, if you will, and that's really not a legal term, but I don't need -- can we agree on a limit?

MS. LAMBERT: Your Honor, would you like a page limit?

THE COURT: Yes.

MS. LAMBERT: Okay. What page limit would the Court like me to do?

THE COURT: Ten, no more than ten.

MS. LAMBERT: Thank you, Judge.

THE COURT: Okay. Good. For everyone. All right.

MR. WOOD: What if we have an affidavit, that would not be over the 10-page limit, would it?

THE COURT: You can attach an affidavit. That would not count. That would not go toward the page limit.

Yes, who is speaking? Mr. Campbell?

MR. CAMPBELL: Don Campbell, yes. On your proposed 10-page limit, your Honor. You addressed more than 10 items and 10 affidavits that, respectfully, I'd ask to at least have

a 25-page limit.

THE COURT: You know what, I'm going to give you the 10-page limit. You start writing and then you come back and ask me if you think you need more, really. That's my decision, all right.

MR. CAMPBELL: Thank you, your Honor.

THE COURT: All right. Now, let me -- is Ms. Gurewitz still on the line?

MS. GUREWITZ: Yes, your Honor, I am.

THE COURT: Ms. Gurewitz, would you like to be heard?

MS. GUREWITZ: Yes, I would like to say on behalf of the MDP and the DNC, Democratic National Committee, that the briefs filed by Mr. Fink and the arguments made by him, as well as the briefs filed by the attorney general on behalf of Governor Whitmer, more than demonstrate that sanctions are warranted here, and we would request that you order sanctions against all of the attorneys who have failed to exercise their responsibility.

THE COURT: Thank you, Miss Gurewitz.

Mr. Paterson, are you still on the line, sir? It seems to be that you are. Would you like to say anything in closing?

MR. PATERSON: I am, your Honor.

THE COURT: Would you like to say anything in closing?

MR. PATERSON: I would, just briefly. Mr. Campbell indicated that they did not intend to foment revolution or insurrection by this filing but merely foment partisan advantage I presume, and I think that has been achieved by the use of the 982 pages of affidavits from a federal court filing.

It's important, it's important that it was filed in a federal court and under the judicial process. That's how it will be cherry picked. The 982 pages will be interpreted throughout as a partisan advantage and cherry picking of each particular or any particular fact will be utilized for that partisan advantage. To me, that is the abuse that this filing has caused. It is the abuse of the judicial system, and it seems to me that the grant of a motion for sanctions is critical to reestablishing and minimizing the damage this filing has done and the use of the judicial system in attempting to support a partisan advantage. So I would ask that the Court grant this motion.

THE COURT: Thank you, Mr. Paterson.

Mr. Fink.

MR. DAVID FINK: Thank you, your Honor. Before I begin, I'd like to say, just broadly, a quick overview of what I would like to do. I would like to respond. I will respond to what Mr. Wood indicated, as the Court recall, we said we'll save that to the end. I will respond to what Mr. Wood indicated regarding his nonparticipation. I also do want to

address Mr. Rohl's affidavit, because that's something that we have never briefed or discussed, and, then, finally I'll conclude, but before I do that --

THE COURT: Before you -- before you begin, I have a question for you regarding Mr. Wood's -- his position. Is it necessary, do you think, sir, to take care of that now, given you're going to be the supplemental briefing on this? Is this dealing with participation in the case?

MR. DAVID FINK: Yes, I can limit it to a very few words.

THE COURT: All right.

MR. DAVID FINK: I'll limit it to a very few words. I appreciate that, your Honor.

I'm not certain what our supplemental briefing will involve. Are we going to be -- will we be responding -- of course I'm going to brief on the notice issue. We'll do that up front. We'll do that quickly. Then the question is I'm assuming we respond to their supplemental briefing?

THE COURT: If you need to, yep, you can.

MR. DAVID FINK: Okay. What I'm suggesting, though, is maybe that's the time that I address in writing the issues regarding Mr. Wood. I'm trying to avoid creating confusion for the Court.

THE COURT: Good. I'm going to issue an order after this hearing is done, and it will be laid out in terms of time

frames and exactly how I want you all to proceed, but go ahead.

MR. DAVID FINK: Thank you, your Honor. Your Honor, at the outset, before I speak on the substance that we talked about, there's one personal matter that I want to address.

THE COURT: Go ahead.

MR. DAVID FINK: And that is with the Court's indulgence -- well, this is important, your Honor, if I may. With the Court's indulgence, I want to take a moment to honor the memory of my late partner, our late partner, Darryl Bressack. As some parties here are aware and some are not, Darryl Bressack had pulled the laboring oar on most of the briefs filed in this case, and, tragically, Darryl died suddenly from a heart attack on the night of January 24th, right in the middle of these proceedings. In fact, we had a reply brief we filed on January 26.

Darryl was an attorney who took his oath very seriously. He was a brilliant, dedicated, passionate, and ethical lawyer, and he cared so deeply about the work that he did. I miss him for many reasons, but today he's in all of our hearts in this office and at the city, because we know how deeply he felt about this matter, and I only wish that he could be here today, and I appreciate the Court's indulgence so I could say that. It's been on my mind for days.

THE COURT: Certainly.

MR. DAVID FINK: Thank you, your Honor. Now, I will

limit my response regarding Mr. Wood. The reason I need to talk about it a little bit is it ties into the Rohl affidavit, and that's this, Mr. Rohl filed an affidavit, and when I say he filed the affidavit, he prepared an affidavit. He signed the affidavit. It was filed in this case on behalf of all the Plaintiffs, and it was filed by Ms. Junttila.

Now, in that affidavit, he tells us, point blank, that the litigation was in, in his words, spearheaded by Sidney Powell and Lin Wood, and while those are his words -- I'm sorry.

THE COURT: I'm sorry, I was telling Mr. Campbell that I would not allow him to speak until you're done.

MR. DAVID FINK: Thank you. Now, while those are Mr. Rohl's words, his words were submitted to the Court by Ms. Lambert Junttila, and none of the lawyers, whose names appear on these pleadings, contested anything in his affidavit. Now, Mr. Rohl, as of now, is represented by the same lawyer who represents Lin Wood, who represents Sidney Powell, who represents all of the Plaintiffs' counsel. I think we have to assume that when something is filed, a representation is made by one of the attorneys in this case, we have a right to believe that we can rely on that.

What's happened here is -- and just to be clear, I understand Mr. Campbell is an expert in ethics. So he certainly would not represent Mr. Rohl and Ms. Powell and

Mr. Wood if their positions and interests were adverse, and this didn't just -- representation didn't start during this hearing today. They filed their appearance a little while ago, and the responses on the motions were filed in February. We've been following this case for months. They've been following it for months, and nobody's corrected this.

Now, what's happened in this case is very frustrating, and that is the Plaintiffs have played a very strange game of passing the buck. Mr. Rohl and Mr. Junttila and Mr. Hagerstrom say they're not responsible because someone else prepared the documents for filing.

THE COURT: Now, Mr. Fink, let me stop you. I appreciate your advocacy here, but I mean you're going to have an opportunity -- I'm giving you that opportunity, sir, to bring it up in the brief, and the reason that I'm stopping you is because it's going to be difficult for your statements to be said and me not give the other attorneys an opportunity to respond, and I really want to be fair, and so I would just ask you to wrap that aspect of your remarks up, sir.

MR. DAVID FINK: Okay. We can -- regarding the Rohl affidavit, without advocating, I would just point out that in that affidavit, he does indicate that he was to hold the fort while -- until a pro hoc vice application was accepted, and of course was never filed because it doesn't apply.

I will move beyond that and we'll leave that for

briefing later, and, instead, I'd like to conclude more broadly.

THE COURT: Thank you.

MR. DAVID FINK: And that is this: Today, your Honor, we are all grateful that the Court is holding this hearing, because today is a very important day. It's been six months -- a little over six months since our nation faced what threatened to be the greatest constitutional crisis since the Civil War. On January 6th, that insurrection, which occurred in the Capitol, which horrified most of us, maybe not everyone on this screen, but most of us when we watched it, and that insurrection can be directly, directly linked to the lies that were spread by the attorneys in this litigation. Shielded --

MR. WOOD: Your Honor, I object --

MR. DAVID FINK: Shielded by --

MR. WOOD: Your Honor, I object to that type of speculation.

THE COURT: Okay.

MR. DAVID FINK: I since suggested --

THE COURT: Hang on --

MR. WOOD: -- person who doesn't want to be accused unfairly.

THE COURT: Hang on.

MR. DAVID FINK: I haven't even stated your name yet, but I will.

I'm sorry, your Honor.

(Indiscernible cross-talk.)

THE COURT: Mr. Wood.

(Indiscernible cross-talk.)

THE COURT: Mr. Wood, I ask --

(Indiscernible cross-talk.)

THE COURT: I ask for silence, Mr. Wood.

Mr. Fink, finish up, please.

MR. WOOD: I object (indiscernible) --

THE COURT: Duly noted.

MR. DAVID FINK: These attorneys, shielded by --

THE CLERK: Judge, I'm sorry to interrupt. The court reporter is trying to get your attention.

THE COURT: Okay. I'm sorry, Ms. Wabeke, where are you? There you are.

COURT REPORTER: So counsel, we've been going since 8:30.

THE COURT: Oh, my goodness.

COURT REPORTER: With a 20-minute break, and you're all interrupting each other, and that's the kind of record you want for a case like this, with interruptions, dashes, and unintelligible? So, please, can we finish up, or I will have to get someone else to finish up this last little bit.

THE COURT: Oh, Ms. Wabeke, let me -- let me apologize and say that I certainly don't want to -- I know that

you're under a great deal of stress, and, please, always know that you just need to tell me that you need to take a break. You know that.

COURT REPORTER: Yes, Judge.

THE COURT: Mr. Wood, and everybody else on this call, I am cautioning you, do not speak when another attorney is -- another co-counsel, another brother counsel, sister counsel is speaking -- you know, in the Eastern District of Michigan, we have civility principles -- no, no comment, Mr. Campbell.

Mr. Fink, you may proceed, and I'm looking for you, sir, to wrap it up.

MR. DAVID FINK: I'm sorry.

THE COURT: Do you have water there you can drink because you sound -- all right.

MR. DAVID FINK: That's okay, but thank you very much.

The reason we brought this proceeding, the reason that we brought this motion, is that these attorneys wielded the weapons afforded to them by the privilege of being admitted to the bar, and they wielded these weapons in this case to abuse the processes of this Court in a devastating way.

Earlier today, Mr. Campbell was saying -- talking about what this complaint did and didn't do, what it was and wasn't intended to do. To be clear, the complaint was clear.

It explicitly said that it sought -- they sought in the complaint and order requiring Governor Whitmer to transmit certified election results that states that President Donald Trump is the winner of the election. That's what they were seeking.

Now, that said, when we filed our Rule 11 sanctions motion -- yes, we definitely talked about all the misrepresentations, the failures to do due diligence, the inadequacies of the expert reports, but what we focused on was we filed this motion on January 5th, one day before the civil insurrection in Washington.

In our motion, we explicitly reported to the Court, not just what we said were lies being spread in the pleadings in this case, but the vile and dangerous messages that were being broadcast by the attorneys in this case on social media. We raised the critical question. We said, "Why was this complaint not dismissed or amended by the Plaintiffs once this became moot?" And we said, "In light of the Court's decisive ruling on December 7th, what purpose could this lawsuit serve?"

We answered that question, and with the Court's indulgence, I'm going to mostly paraphrase, quickly read from one part of our complaint -- our motion, because this was filed on January 5th, and on January 5th we wrote, "Initially this was one of several lawsuits used to support calls for state legislatures to reject the will of the voters. When the

Michigan legislature did not attempt to select a slate of electors inconsistent with the will of the voters, this lawsuit took on a different meaning." On January 5th, we wrote this.

It was then used to support arguments for the United States Congress to reject the Michigan electors on January 6th, 2021. We then went on to say, "And most ominously, these claims are referenced and repeated by L. Lin Wood and others in support of a call for martial law." That was before the violence occurred.

Now, we went on to say, "The continued pendency of this lawsuit accomplishes exactly the harm addressed by this Court in its December 7th, 2021 opinion and order by undermining people's faith in the democratic process and the trust in our government. This lawsuit has been used to delegitimize the Presidency of Joe Biden." One day later that ominous prophecy became true.

To a great extent, because of the lies told in this lawsuit, even today, millions of Americans believe the big lie the big lie that Joe Biden didn't win this election, that somehow the election was stolen, and there's no evidence to support that, but they don't know that, because people think the judicial process has some fairness in it. People think if lawyers say it in court, it must be true. Even Mr. Campbell said, if somebody said it in court, we should be able to repeat it, again, because, after all, it was said in court. So we can

repeat it or at least present it to a court. So we can repeat it.

Now, nobody can undo what happened that day, but because the lies spread in this courtroom, not only did people die on January 6th, but many people throughout the world, many governments and people throughout the world and the United States came to doubt the strength of our democratic institutions in this country about. Now, we can't undo what happened on January 6th, but this Court can do something to let the world know that attorneys in this country are not free to use our courts to tell lies.

So today we ask this Court to issue the strongest possible sanctions, and, to be specific, we seek the following meaningful relief:

One, the taxpayers should be reimbursed for the extraordinary expense that was paid to defend this litigation both by the State and by the City.

These lawyers should be punished for their behavior. I use that word advisedly. Their behavior was sanctionable, and they should be punished.

Three, whatever sanction this Court imposes should be strong enough and significant enough to deter future misconduct, assuming the Court comes to the conclusion that we believe it will, that there was misconduct;

And, four, these attorneys should never again be

allowed to appear in a court in our jurisdiction or, frankly, anywhere else, and because of that, because of the way these lawyers have dishonored our profession, because of the way that these lawyers have taken advantage of this Court and this courtroom, we believe that the most important sanction is for this Court to refer all of these attorneys, first, to their own state bar associations, where investigations should be conducted and proper disciplinary proceedings should occur, but just as important, if not more important, we ask this Court refer to the Chief Judge of the Eastern District of Michigan a recommendation that these attorneys be barred from practicing in this district ever again, and that applies to all of the attorneys here.

Your Honor, I may have gone a little too long on the end, but I really appreciate it. It's been a very long day and we really appreciate it.

THE COURT: It has been. Thank you, Mr. Fink, and I'm going to now hear from Ms. Meingast.

MR. WOOD: Your Honor, may I?

THE COURT: No, no.

MR. WOOD: This is Mr. Wood. He mentioned my name several times. May I respond?

THE COURT: Excuse me, Mr. Wood. Let me stop you. Mr. Fink -- I'm not going to allow you an opportunity to respond to Mr. Fink's remarks. We're moving on to --

MR. WOOD: Are you silencing me?

THE COURT: Excuse me?

MR. WOOD: I'm sorry. He referred specifically to me.

THE COURT: I do understand that.

MR. WOOD: I feel like I'm entitled to due process to respond.

THE COURT: No, you're not. I asked. I gave everyone an opportunity --

MR. WOOD: So I'm being denied a response? I think the record shows --

THE COURT: Mr. Wood.

MR. WOOD: I think the record shows --

THE COURT: Mr. Wood.

MR. WOOD: (Indiscernible.)

THE COURT: Mr. Wood.

MR. WOOD: (Indiscernible.)

THE COURT: Mr. Wood, this is not a debate.

MR. WOOD: I'm not debating you, I said --

THE COURT: Listen, let me warn you right now. I am not granting your request --

MR. WOOD: I'm not debating you --

THE COURT: Listen, let me warn you right now. I am not granting your request to respond to what Mr. Fink said. I am moving on, and I will now hear from Ms. Meingast.

Madam, proceed.

MS. MEINGAST: Thank you, your Honor, Heather Meingast, on behalf of Governor Whitmer and Secretary Benson.

Just briefly, your Honor, because it's clear we've all had a long day. I appreciate the Court's time and attention to these motions. I echo many of the comments that Counsel Fink said. You know, as the Court knows we moved for sanctions against Ms. Powell, Mr. Rohl, Mr. Hagerstrom, Ms. Junttila Lambert, here Junttila Lambert so we've done a segment.

And, as the Court knows, our motion is brought under Section 1927 and the Court's inherent authority. You know, I think we've -- nothing today that we've heard today from Plaintiffs has changed the arguments that we've made in our brief that we've demonstrated that sanctions are warranted under Section 1927 here.

It's plain that Plaintiffs multiplied the case far beyond that when it was moot and should have been dismissed, as we've laid out in our briefing. They had really no response for that, this made-up idea that somehow their case was somehow reinvigorated on December 14th, and we've also asked, alternatively, for sanctions under this Court's inherent authority, and part of that is showing improper purpose for this litigation. I think that's been clearly demonstrated to -- our arguments, by Mr. Fink, and through our briefing,

and, so with that, we would respectfully request that the Court grant our motion for sanctions as we've written it.

THE COURT: All right. Ms. Meingast, thank you.

Counsel, I want to thank you all for being here today. This was very long, but it was all very necessary. This Court will be issuing an opinion and order, but, in the interim, I will be issuing an order that captures the tasks, if you will, the opportunities, if you will, that the Court is giving counsel to address the issues that we've discussed here today. I will take -- Ms. Powell, what is your question? Unmute.

MS. POWELL: Yes, your Honor. I would like to speak to all of these issues and reiterate the points of our briefing. We're not waiving anything. We object to virtually everything Mr. Fink has said. I have practiced law for 43 years and never witnessed a proceeding like this, including representing attorneys in sanctions proceedings themselves. I take full responsibility myself for the pleadings in this case. Ms. Newman, Mr. Wood, Mr. Johnson, and local counsel had no role whatsoever in the drafting and content of these complaints. It was my responsibility and Mr. Kleinhendler's, not theirs.

The affidavits in support of the complaint are valid. Were we to have an evidentiary hearing, we would produce the witnesses to testify to those affidavits. This is not the kind

of proceeding in which the affidavits can be challenged. They weren't even required to be attached to the complaint. The very fact that we attached 960 pages of affidavits reflect how seriously we took this matter, how concerned we were about the constitutional issues that we raised on behalf of electors, who are, themselves, mentioned in the Constitution.

We had a legal obligation to the country and to the electors to raise these issues. It is the duty of lawyers and the highest tradition of the practice of law to raise difficult and even unpopular issues. The fact that there may have been even adverse precedent against us does not change that fact. Were that true, there would not have been a decision called *Brown versus the Board of Education*.

We have practiced law with the highest standards. We would file the same complaints again. We welcome an opportunity to actually prove our case. No court has ever given us that opportunity. Instead, we are met with proceedings like this brought by Mr. Fink and others, who are themselves the ones who have abused the process for political gamesmanship and their political purposes, and this is one of the proceedings that leaves the American public with no confidence either in our election system or in our judicial system.

THE COURT: All right. Thank you for those remarks.

As the Court has indicated, I will be following up

with an opinion and order a little bit later and, in the interim, as I said, I will issue an order referencing supplemental briefings and time frames.

I want to thank, once again, counsel for appearing today. It has been a long day. Again, it has been a necessary day.

Mr. Flanigan.

THE CLERK: Thank you all. Court is adjourned.

(Proceedings concluded 2:32 p.m.)

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C E R T I F I C A T I O N

I, Andrea E. Wabeke, official court reporter for the United States District court, Eastern District of Michigan, Southern Division, appointed pursuant to the provisions of Title 28, United States Code, Section 753, do hereby certify that the foregoing is a correct transcript of the proceedings in the above-entitled cause on the date hereinbefore set forth. I do further certify that the foregoing transcript has been prepared by me or under my direction.

/s/Andrea E. Wabeke July 14, 2021

Official court Reporter Date
RMR, CRR, CSR

- - -

EXHIBIT 2

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

TIMOTHY KING, MARIAN ELLEN SHERIDAN, JOHN EARL HAGGARD, CHARLES JAMES RITCHARD, JAMES DAVID HOOPER and DAREN WADE RUBINGH, Plaintiffs, v. GRETCHEN WHITMER, in her official capacity as Governor of the State of Michigan, et al, Defendants, and CITY OF DETROIT, et al, Intervenor-Defendants.	No. 2:20-cv-13134 Hon. Linda V. Parker

AFFIDAVIT OF KIMBERLY S. HUNT

STATE OF MICHIGAN)
)
COUNTY OF OAKLAND)

I, Kimberly S. Hunt, being first duly sworn, depose and state as follows:

1. I am over the age of 18 and capable of testifying to the facts set forth in this Affidavit.

2. I make this Affidavit upon my own personal knowledge.

3. I am presently employed as the Office Manager at Fink Bressack PLLC and was so employed on December 15, 2020.

4. As Office Manager, I am responsible for mailing outgoing mail and collecting incoming mail.

5. On December 15, 2020, I mailed via First Class U.S. Mail copies of the City of Detroit's Safe Harbor Notice Letter and Rule 11 Motion to each of the lawyers listed as Plaintiffs' counsel on the pleadings, and to Stefanie Lambert Junttila, who had filed an appearance in the case on behalf of the Plaintiffs.

6. A copy of the City of Detroit's Safe Harbor Notice Letter and Rule 11 Motion as mailed to Plaintiff's counsel is attached to this Affidavit as Exhibit A.

7. The mailing addresses used for each of Plaintiffs' lawyers were obtained from the pleadings themselves, or in the case of Stefanie Lambert Junttila, from her notice of appearance filed with the Court.

8. None of the copies of the City's Safe Harbor Notice Letter and Rule 11 Motion mailed to Plaintiffs' counsel were returned as undeliverable.

FURTHER AFFIANT SAYETH NOT.

Kimberly S. Hunt

Subscribed and sworn before me on
this 28th day of July 2021.

_____, Notary Public
Oakland County, Michigan,
acting in Oakland County, Michigan
My commission expires on: 05/27/2024

CAROLYN J WILHELM
NOTARY PUBLIC - MICHIGAN
OAKLAND COUNTY
MY COMMISSION EXPIRES 05/27/2024
ACTING IN OAKLAND COUNTY

EXHIBIT A

FINK BRESSACK

December 15, 2020

VIA E-MAIL/FIRST-CLASS MAIL

Sidney Powell
Emily P. Newman
Julia Z. Haller
Brandon Johnson
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Howard Kleinhendler
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369 Lexington Ave., 12th Flr.
New York, NY 10017

Re: ***Timothy King, et al v Gretchen Whitmer, et al***
U.S. District Court, Eastern District of Michigan Case No. 2:20-cv-13134

Dear Counsel:

Please find enclosed, and served, a copy of ***Intervenor-Defendant City of Detroit's Motion for Rule 11 Sanctions*** in the above-entitled matter.

Very truly yours,

FINK BRESSACK

Nathan J. Fink /KSH

Nathan J. Fink

NJF:ksh
Encl.
cc: All Counsel for Defendants and
Intervenor-Defendants (via e-mail only)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

TIMOTHY KING, MARIAN ELLEN SHERIDAN, JOHN EARL HAGGARD, CHARLES JAMES RITCHARD, JAMES DAVID HOOPER and DAREN WADE RUBINGH, Plaintiffs, v. GRETCHEN WHITMER, in her official capacity as Governor of the State of Michigan, et al, Defendants, and CITY OF DETROIT, et al, Intervenor-Defendants.	No. 2:20-cv-13134 Hon. Linda V. Parker

INTERVENOR-DEFENDANT CITY OF DETROIT'S MOTION FOR RULE 11 SANCTIONS

Intervenor-Defendant City of Detroit (the "City"), by and through counsel, respectfully moves for sanctions against Plaintiffs and their counsel pursuant to Federal Rule of Civil Procedure 11.

The undersigned counsel certifies that counsel communicated in writing with opposing counsel, explaining the nature of the relief to be sought by way of this

motion and seeking concurrence in the relief; opposing counsel thereafter denied concurrence.[1]

Sanctions Pursuant to Fed. R. Civ. P. 11(b)(1)

1. Sanctions should be imposed under Fed. R. Civ. P. 11(b)(1) when a pleading or other filing is presented for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation.

2. Sanctions pursuant to the sub-rule should be imposed against Plaintiffs and their counsel because they initiated the instant suit for improper purposes, including harassing the City and frivolously undermining "People's faith in the democratic process and their trust in our government." Opinion and Order Denying Plaintiffs' "Emergency Motion for Declaratory, Emergency, and Permanent Injunctive Relief," ECF No. 62, PageID.3329-3330.

3. Plaintiffs and their counsel understood that the mere filing of a suit (no matter how frivolous) could, without any evidence, raise doubts in the minds of millions of Americans about the legitimacy of the 2020 presidential election. As this Court noted, "Plaintiffs ask th[e] Court to ignore the orderly statutory scheme established to challenge elections and to ignore the will of millions of voters." *Id.* PageID.3330.

---

[1] Ms. Powell, this paragraph is included in our proposed motion in anticipation that you will not concur. If you do concur, we will not be filing the Motion.

4. The Complaints (ECF Nos. 1 and 6), Emergency Motion for Declaratory, Emergency, and Permanent Injunctive Relief and Memorandum in Support Thereof (ECF No. 7), and Emergency Motion to Seal (ECF No. 8) were devoid of merit and thus could only have been filed to harass the City.

Sanctions Pursuant to Fed. R. Civ. P. 11(b)(2)

5. Sanctions under Fed. R. Civ. P. 11(b)(2) are appropriately entered where the claims, defenses, and other legal contentions are not warranted by existing law or by a non-frivolous argument for extending, modifying, or reversing existing law or for establishing new law.

6. Sanctions pursuant to Rule 11(b)(2) should be imposed against counsel for Plaintiffs because the causes of action asserted in the Complaints (ECF Nos. 1 and 6), Emergency Motion for Declaratory, Emergency, and Permanent Injunctive Relief and Memorandum in Support Thereof (ECF No. 7), and Emergency Motion to Seal (ECF No. 8) were frivolous and legally deficient under existing law and because Plaintiffs failed to present any non-frivolous arguments to extend, modify, or reverse existing law.

7. The majority of Plaintiffs' claims were moot. As this Court noted, "[t]he time has passed to provide most of the relief Plaintiffs request in their Amended Complaint; the remaining relief is beyond the power of any court. For these reasons, this matter is moot." ECF No. 62, PageID.3307.

8. Plaintiffs' claims were also barred by laches because "they waited too long to knock on the Court's door." *Id.* at PageID.3310. Indeed, "Plaintiffs showed no diligence in asserting the claims at bar." *Id.* at PageID.3311. This delay prejudiced the City. *Id.* at PageID.3313.

9. Plaintiffs lacked standing to pursue their claims. *Id.* at PageID.3317-3324.

10. Plaintiffs' claim for violation of the Elections and Electors Clauses is frivolous. As this Court held, "Plaintiffs ask the Court to find that any alleged deviation from state election law amounts to a modification of state election law and opens the door to federal review. Plaintiffs cite to no case – and this Court found none – supporting such an expansive approach." *Id.* at PageID.3325.

11. Plaintiffs' due process and equal protection clause claims are also baseless. With regard to the due process claim, this Court held that "Plaintiffs do not pair [the due process claim] with anything the Court could construe as a developed argument. The Court finds it unnecessary, therefore, to further discuss the due process claim." *Id.* at PageID.3317. As to the equal protection claim, this Court stated that "[w]ith nothing but speculation and conjecture that votes for President Trump were destroyed, discarded or switched to votes for Vice President Biden, Plaintiffs' equal protection claim fails." *Id.* at PageID.3328.

12. For each of Plaintiffs' claims, Plaintiffs did not identify valid legal theories and the controlling law contradicted the claims. The claims were not warranted by existing law or by a non-frivolous argument for extending, modifying, or reversing existing law or for establishing new law.

13. Plaintiffs' Emergency Motion for Declaratory, Emergency, and Permanent Injunctive Relief and Memorandum in Support Thereof (ECF No. 7) was without any legal basis because, as described above, the underlying claims are baseless, and the requests for relief were frivolous.

14. Plaintiffs' Emergency Motion to Seal (ECF No. 8) was without any legal basis because Plaintiffs seek to anonymously file supposed evidence of a broad conspiracy to steal the 2020 presidential election without providing any authority whatsoever to attempt to meet their heavy burden to justify the sealed filing of these documents.

Sanctions Pursuant to Fed. R. Civ. P. 11(b)(3)

15. Sanctions can be imposed under Fed. R. Civ. P. 11(b)(3) where factual contentions do not have evidentiary support or will likely not have evidentiary support after a reasonable opportunity for further investigation or discovery.

16. Sanctions should be entered against Plaintiffs and their counsel pursuant to Fed. R. Civ. P. 11(b)(3) because the factual contentions raised in the complaints and motions were false.

17. The key "factual" allegations from the supposed fact witnesses, some of whom attempt to cloak their identities while attacking democracy, have been debunked. The allegations about supposed fraud in the processing and tabulation of absentee ballots by the City at the TCF Center have been rejected by every court which has considered them. If any of the claims in this lawsuit had merit, that would have been demonstrated in those cases. The City refers the Court to its Response to Plaintiffs' Emergency Motion for Declaratory, Emergency, and Permanent Injunctive Relief for a detailed debunking of Plaintiffs' baseless factual contentions. ECF No. 39, PageID.2808-2933.

Relief Requested

WHEREFORE, for the reasons specified in this Motion and Brief in Support, the City respectfully request that this Court enter an order, among other things:

a) Imposing monetary sanctions against Plaintiffs and their counsel in an amount sufficient to deter future misconduct;

b) Requiring Plaintiffs and their counsel to pay all costs and attorney fees incurred by the City in relation to this matter;

c) Requiring Plaintiffs and their counsel to post a bond of $100,000 prior to the filing of any appeal of this action;

d) Requiring Plaintiffs and their counsel to post a bond of $100,000 prior to filing, in any court, an action against the City, or any other governmental

entity or their employees, relating to or arising from the facts alleged in this matter;

e) Requiring Plaintiffs to post a substantial bond, in an amount determined by the Court, prior to filing an action in the Eastern District of Michigan;

f) Requiring Plaintiffs and their counsel to obtain certification from a magistrate judge that the proposed claims are not frivolous or asserted for an improper purpose, before filing an action in the Eastern District of Michigan;

g) Requiring Plaintiffs and their counsel to certify, via affidavit, under penalty of perjury, that they have paid all amounts required to fully satisfy any non-appealable orders for sanctions entered by any court, prior to filing an action in the Eastern District of Michigan;

h) Barring Plaintiffs' counsel from practicing law in the Eastern District of Michigan;

i) Referring Plaintiffs' counsel to the State Bar of Michigan for grievance proceedings; and,

j) Granting any other relief for the City that the Court deems just or equitable.

December 15, 2020

Respectfully submitted,

FINK BRESSACK

By: /s/ David H. Fink
David H. Fink (P28235)

Darryl Bressack (P67820)
Nathan J. Fink (P75185)
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CITY OF DETROIT
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garcial@detroitmi.gov
raimic@detroitmi.gov
nosej@detroitmi.gov

CERTIFICATE OF SERVICE

I hereby certify that on December 15, 2020, I served the foregoing paper on counsel of record via email and caused it to be served by first class mail on counsel for Plaintiffs.

FINK BRESSACK

By: */s/ Nathan J. Fink*
Nathan J. Fink (P75185)
38500 Woodward Ave., Suite 350
Bloomfield Hills, MI 48304
Tel: (248) 971-2500
nfink@finkbressack.com

EXHIBIT 3

Nate Fink

From: Nate Fink
Sent: Tuesday, December 15, 2020 4:21 PM
To: sidney@federalappeals.com; attorneystefanielambert@gmail.com; howard@kleinhendler.com; gregoryrohl@yahoo.com; Scotthagerstrom@yahoo.com; lwood@linwoodlaw.com; Julia.Z.Haller@hud.gov
Cc: David Fink; Darryl Bressack; Lawrence Garcia; James Noseda; Charles Raimi; Glenn Gayer; Kim Hunt; eldridge@millercanfield.com; grille@michigan.gov; megurewitz@gmail.com; meingasth@michigan.gov; aap43@hotmail.com; melias@perkinscoie.com; jjasrasaria@perkinscoie.com; wstafford@perkinscoie.com; jhawley@perkinscoie.com; john.walsh@wilmerhale.com; brian.boynton@wilmerhale.com; seth.waxman@wilmerhale.com
Subject: Timothy King, et al v. Gretchen Whitmer, et al - E.D. Mich. Case No. 2:20-cv-13134
Attachments: King - Intervenor-Defendant City of Detroit's Letter Enclosing Rule 11 Motion (00045162xE249C).PDF

Counsel,

Please find attached, and served, Intervenor-Defendant City of Detroit's Motion for Rule 11 Sanctions in *Timothy King, et al v. Gretchen Whitmer, et al* - E.D. Mich. Case No. 2:20-cv-13134.

Nate Fink

FINK BRESSACK

Nathan J. Fink
T: 248-971-2500
E: nfink@finkbressack.com | W: http://www.finkbressack.com

A: 38500 Woodward Ave., Suite 350, Bloomfield Hills, MI 48304
A: 535 Griswold St., Suite 1000, Detroit, MI 48226

FINK BRESSACK

December 15, 2020

VIA E-MAIL/FIRST-CLASS MAIL

Sidney Powell
Emily P. Newman
Julia Z. Haller
Brandon Johnson
Attorneys at Law
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Dallas, TX 75219

Gregory J. Rohl
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Novi, MI 48375

Stefanie L. Junttila
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L. Lin Wood
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L. LIN WOOD, PC
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Atlanta, GA 30305-0584

Howard Kleinhendler
Attorney at Law
369 Lexington Ave., 12th Flr.
New York, NY 10017

Re: ***Timothy King, et al v Gretchen Whitmer, et al***
U.S. District Court, Eastern District of Michigan Case No. 2:20-cv-13134

Dear Counsel:

Please find enclosed, and served, a copy of ***Intervenor-Defendant City of Detroit's Motion for Rule 11 Sanctions*** in the above-entitled matter.

Very truly yours,

FINK BRESSACK

Nathan J. Fink /KSH

Nathan J. Fink

NJF:ksh
Encl.
cc: All Counsel for Defendants and
Intervenor-Defendants (via e-mail only)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

TIMOTHY KING, MARIAN ELLEN SHERIDAN, JOHN EARL HAGGARD, CHARLES JAMES RITCHARD, JAMES DAVID HOOPER and DAREN WADE RUBINGH, Plaintiffs, v. GRETCHEN WHITMER, in her official capacity as Governor of the State of Michigan, et al, Defendants, and CITY OF DETROIT, et al, Intervenor-Defendants.	No. 2:20-cv-13134 Hon. Linda V. Parker

INTERVENOR-DEFENDANT CITY OF DETROIT'S
MOTION FOR RULE 11 SANCTIONS

Intervenor-Defendant City of Detroit (the "City"), by and through counsel, respectfully moves for sanctions against Plaintiffs and their counsel pursuant to Federal Rule of Civil Procedure 11.

The undersigned counsel certifies that counsel communicated in writing with opposing counsel, explaining the nature of the relief to be sought by way of this

motion and seeking concurrence in the relief; opposing counsel thereafter denied concurrence.[1]

Sanctions Pursuant to Fed. R. Civ. P. 11(b)(1)

1. Sanctions should be imposed under Fed. R. Civ. P. 11(b)(1) when a pleading or other filing is presented for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation.

2. Sanctions pursuant to the sub-rule should be imposed against Plaintiffs and their counsel because they initiated the instant suit for improper purposes, including harassing the City and frivolously undermining "People's faith in the democratic process and their trust in our government." Opinion and Order Denying Plaintiffs' "Emergency Motion for Declaratory, Emergency, and Permanent Injunctive Relief," ECF No. 62, PageID.3329-3330.

3. Plaintiffs and their counsel understood that the mere filing of a suit (no matter how frivolous) could, without any evidence, raise doubts in the minds of millions of Americans about the legitimacy of the 2020 presidential election. As this Court noted, "Plaintiffs ask th[e] Court to ignore the orderly statutory scheme established to challenge elections and to ignore the will of millions of voters." *Id.* PageID.3330.

[1] Ms. Powell, this paragraph is included in our proposed motion in anticipation that you will not concur. If you do concur, we will not be filing the Motion.

4. The Complaints (ECF Nos. 1 and 6), Emergency Motion for Declaratory, Emergency, and Permanent Injunctive Relief and Memorandum in Support Thereof (ECF No. 7), and Emergency Motion to Seal (ECF No. 8) were devoid of merit and thus could only have been filed to harass the City.

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7. The majority of Plaintiffs' claims were moot. As this Court noted, "[t]he time has passed to provide most of the relief Plaintiffs request in their Amended Complaint; the remaining relief is beyond the power of any court. For these reasons, this matter is moot." ECF No. 62, PageID.3307.

8. Plaintiffs' claims were also barred by laches because "they waited too long to knock on the Court's door." *Id.* at PageID.3310. Indeed, "Plaintiffs showed no diligence in asserting the claims at bar." *Id.* at PageID.3311. This delay prejudiced the City. *Id.* at PageID.3313.

9. Plaintiffs lacked standing to pursue their claims. *Id.* at PageID.3317-3324.

10. Plaintiffs' claim for violation of the Elections and Electors Clauses is frivolous. As this Court held, "Plaintiffs ask the Court to find that any alleged deviation from state election law amounts to a modification of state election law and opens the door to federal review. Plaintiffs cite to no case – and this Court found none – supporting such an expansive approach." *Id.* at PageID.3325.

11. Plaintiffs' due process and equal protection clause claims are also baseless. With regard to the due process claim, this Court held that "Plaintiffs do not pair [the due process claim] with anything the Court could construe as a developed argument. The Court finds it unnecessary, therefore, to further discuss the due process claim." *Id.* at PageID.3317. As to the equal protection claim, this Court stated that "[w]ith nothing but speculation and conjecture that votes for President Trump were destroyed, discarded or switched to votes for Vice President Biden, Plaintiffs' equal protection claim fails." *Id.* at PageID.3328.

12. For each of Plaintiffs' claims, Plaintiffs did not identify valid legal theories and the controlling law contradicted the claims. The claims were not warranted by existing law or by a non-frivolous argument for extending, modifying, or reversing existing law or for establishing new law.

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15. Sanctions can be imposed under Fed. R. Civ. P. 11(b)(3) where factual contentions do not have evidentiary support or will likely not have evidentiary support after a reasonable opportunity for further investigation or discovery.

16. Sanctions should be entered against Plaintiffs and their counsel pursuant to Fed. R. Civ. P. 11(b)(3) because the factual contentions raised in the complaints and motions were false.

17. The key "factual" allegations from the supposed fact witnesses, some of whom attempt to cloak their identities while attacking democracy, have been debunked. The allegations about supposed fraud in the processing and tabulation of absentee ballots by the City at the TCF Center have been rejected by every court which has considered them. If any of the claims in this lawsuit had merit, that would have been demonstrated in those cases. The City refers the Court to its Response to Plaintiffs' Emergency Motion for Declaratory, Emergency, and Permanent Injunctive Relief for a detailed debunking of Plaintiffs' baseless factual contentions. ECF No. 39, PageID.2808-2933.

Relief Requested

WHEREFORE, for the reasons specified in this Motion and Brief in Support, the City respectfully request that this Court enter an order, among other things:

a) Imposing monetary sanctions against Plaintiffs and their counsel in an amount sufficient to deter future misconduct;

b) Requiring Plaintiffs and their counsel to pay all costs and attorney fees incurred by the City in relation to this matter;

c) Requiring Plaintiffs and their counsel to post a bond of $100,000 prior to the filing of any appeal of this action;

d) Requiring Plaintiffs and their counsel to post a bond of $100,000 prior to filing, in any court, an action against the City, or any other governmental

entity or their employees, relating to or arising from the facts alleged in this matter;

e) Requiring Plaintiffs to post a substantial bond, in an amount determined by the Court, prior to filing an action in the Eastern District of Michigan;

f) Requiring Plaintiffs and their counsel to obtain certification from a magistrate judge that the proposed claims are not frivolous or asserted for an improper purpose, before filing an action in the Eastern District of Michigan;

g) Requiring Plaintiffs and their counsel to certify, via affidavit, under penalty of perjury, that they have paid all amounts required to fully satisfy any non-appealable orders for sanctions entered by any court, prior to filing an action in the Eastern District of Michigan;

h) Barring Plaintiffs' counsel from practicing law in the Eastern District of Michigan;

i) Referring Plaintiffs' counsel to the State Bar of Michigan for grievance proceedings; and,

j) Granting any other relief for the City that the Court deems just or equitable.

December 15, 2020

Respectfully submitted,

FINK BRESSACK

By: /s/ David H. Fink
David H. Fink (P28235)

Darryl Bressack (P67820)
Nathan J. Fink (P75185)
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raimic@detroitmi.gov
nosej@detroitmi.gov

CERTIFICATE OF SERVICE

I hereby certify that on December 15, 2020, I served the foregoing paper on counsel of record via email and caused it to be served by first class mail on counsel for Plaintiffs.

FINK BRESSACK

By: */s/ Nathan J. Fink*
Nathan J. Fink (P75185)
38500 Woodward Ave., Suite 350
Bloomfield Hills, MI 48304
Tel: (248) 971-2500
nfink@finkbressack.com

EXHIBIT 4


'I Deserve It': Man Sentenced to Hundre in Prisc Murde Family


Man Drives on Sidewalk, Runs Over Woman, and Returns to Hit Her Again: Police

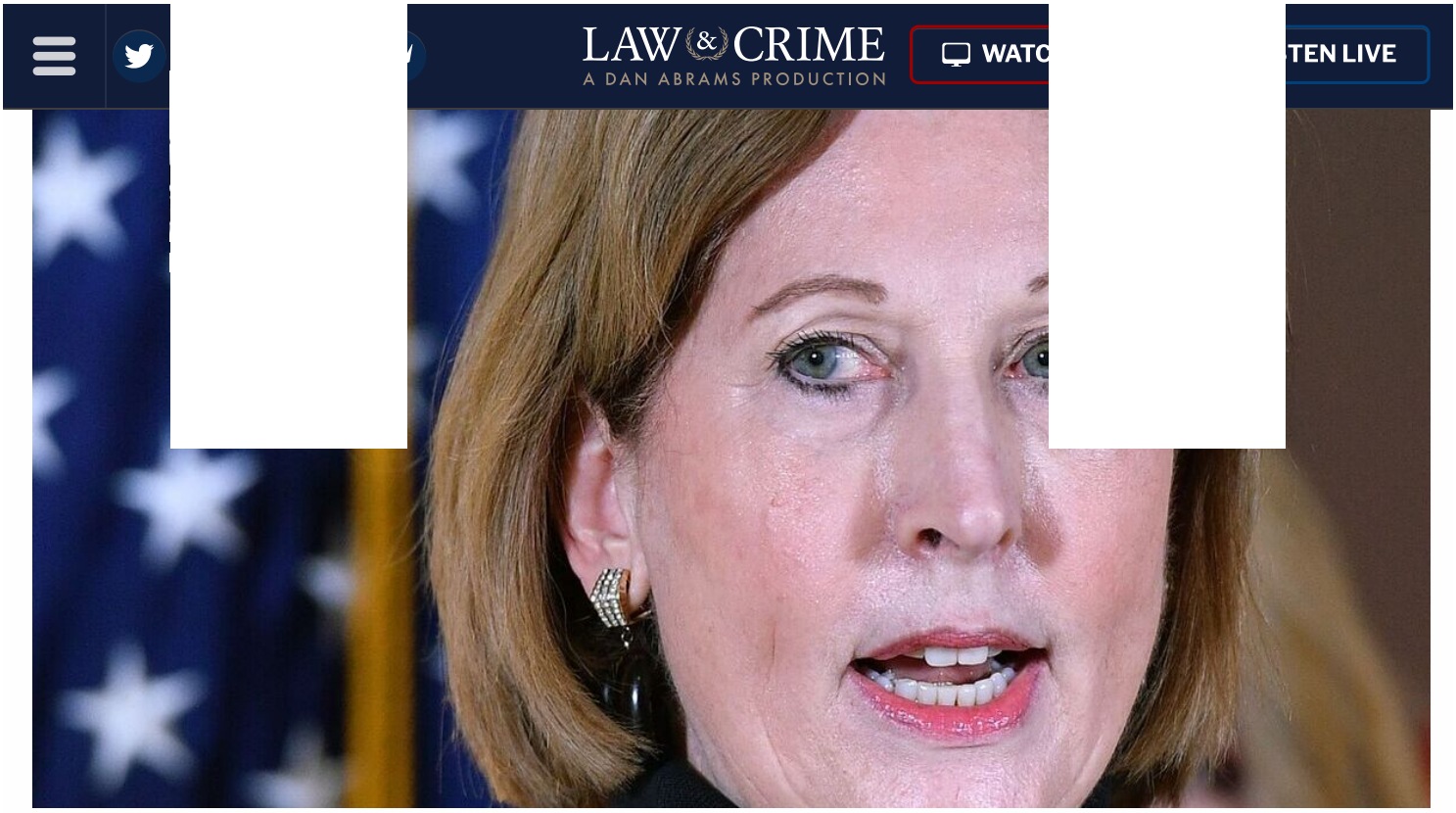

Federal Appeals Court Rules Against Web Designer Who Refuses to Make Wedding Videos for Same-Sex Couples


Upstate New York Man Sentenced to More Tha Century Time for Sexual Al Children


U.S. Government Sells One-of-a- d Wu-Tang n Album feited by arma Bro' rtin Shkreli

Detroi g to Get Sidney Powell Fi ned from C l Referred to the Bar for 'Krake

ADAM KLASFELD | 814



The City of Detroit wants **Sidney Powell** and her self-styled "Kraken" team to face sanctions for "frivolously undermining 'People's faith in the democratic process and their trust in our government.'"

The Motor City's motion asks a federal judge to fine the lawyers, ban

"It's time for this nonsense to end," Detroit's lawyer **David Fink** told Law&Crime in a phone interview.

"The lawyers filing these frivolous cases that undermine democracy must pay a price," Fink added.

Under standard procedures for Rule 11 sanctions, opposing counsel must be granted a 21-day window to withdraw offending litigation before a request is filed in court. The motion has not yet been filed, and it was briefly tweeted out by **Marc Elias**, an attorney from the Washington-based firm Perkins Coie who has regularly intervened in these cases on behalf of the Democratic Party and the Biden campaign.

"Plaintiffs and their counsel understood that the mere filing of a suit (no matter how frivolous) could, without any evidence, raise doubts in the minds of millions of Americans about the legitimacy of the 2020 presidential election," Fink's 9-page motion states. "As this Court noted, 'Plaintiffs ask th[e] Court to ignore the orderly statutory scheme established to challenge elections and to ignore the will of millions of voters.'"

Fink had been quoting a scathing ruling by U.S. District Judge **Linda Parker**, who dismissed Powell's litigation with a resounding invocation of the will of the Michigan electorate: "The People have spoken."

"The right to vote is among the most sacred rights of our democracy and, in turn, uniquely defines us as Americans," Parker noted in her 36-page ruling. "The struggle to achieve the right to vote is one that has been both hard fought and cherished throughout our country's history. Local, state, and federal elections give voice to this right through the ballot. And elections that count each vote celebrate and secure this cherished right."

Powell and her co-counsel **Lin Wood** have filed three other suits like it in Wisconsin, Arizona and Georgia, losing each of them in turn. They claim to be en route to fighting them to the Supreme Court, but there is no sign of a single cert petition on the high court's docket.

Asked about the sanctions motion, Powell replied cryptically: "We are clearly over the target."

On the other hand, every court that has heard her conspiracy theories about a supposed plot involving Dominion voting machines, dead Venezuelan strongman **Hugo Chavez**, bipartisan government officials and election workers in counties across the United States found that narrative untethered to reality.

"The key 'factual' allegations from the supposed fact witnesses, some of whom attempt to cloak their identities while attacking democracy, have been debunked," the sanctions motion states. "The allegations about supposed fraud in the processing and tabulation of absentee ballots by the City at the TCF Center have been rejected by every court which has considered them. If any of the claims in this lawsuit had merit, that would have been demonstrated in those cases."

Powell has deployed a parade of anonymous and supposedly confidential witness, including a purported military intelligence expert code-named "Spyder" who later admitted to the *Washington Post* that he was actually an auto mechanic named **Joshua Merritt** with no such work experience.

Though the cases get quickly booted out of court, Detroit and other cities across the country have been forced to defend them and their appeals on the taxpayer dime.

"This abuse of the legal process at the expense of states should not go unpunished," Fink said.

If the sanctions motion moved forward in court, Powell could be forced to post a $100,000 bond before filing any more appeals of her lawsuit, on top of the other penalties Fink requested.

Even if Powell withdraws her case in response to Detroit's motion, Judge Parker can choose to sanction the "Kraken" team—so-named after the mythical, octopus-like creature—on her own initiative.

Fink has earned distinction for his passionate and indignant effort to turn the tables on attacks on the U.S. democratic process by outgoing President **Donald Trump** and his allies. Their flood of litigation reminded him of Bill Murray's "Groundhog Day," only a deadly serious version that amounted to an effort to bring about what he called a "court-ordered coup d'état." He has sought to sanction pro-Trump lawyers before for a campaign of "lies" and "frivolous" litigation.

Also on Tuesday, Detroit asked a judge in Wayne County to sanction two pro-Trump non-profits behind a state court case that was thrown out because it was backed by "no evidence."

"This is not a legitimate lawsuit; it is a public relations weapon being used to advance the false narrative that our democratic system is broken," Detroit's motion thunders. "This abuse of our legal system deserves the strongest possible sanctions."

Brought by the so-called Election Integrity Fund—whose website describes itself as 501(c)4 formed this year—the case was one of several lawsuits filed across the country by the Thomas More Society. That 501(c)3 named after the Catholic saint and author of "Utopia" counted Rudy Giuliani as a "partner" in a spate of lawsuits dubbed the Amistad Project.

Like "Utopia," none of the lawsuits described factual allegations that another judge found to exist.

"This is not a minor lawsuit; it is a dangerous attack on the integrity of the democratic process for the election of the President of the United States," Fink wrote. "The parties and their attorneys should be held to the highest standards of factual and legal due diligence; instead, they have raised false allegations and pursued unsupportable legal theories. Then, after being corrected by the defendants and the Courts, they refuse to dismiss their lawsuit. Apparently this frivolous lawsuit continues because it serves other, more nefarious, purposes. While the pending complaint cannot possibly result in meaningful relief, it does serve the purpose of conveying to the world the impression that something fraudulent occurred in Detroit's vote count."

Several other pro-Trump non-profits filed and lost meritless lawsuits across the country.

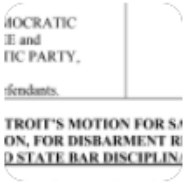
EXHIBIT 5


Tweet
Lin Wood @LLinWood · Dec 15, 2020
When you get falsely accused by the likes of David Fink & Marc Elias of Perkins Coie (The Hillary Clinton Firm) in a propaganda rag like Law & Crime,you smile because you know you are over the target & the enemy is runningscared!
Detroit Is Trying to Get Sidney Powell Fined, Banned from Court, and Re...The city of Detroit wants Sidney Powell and her self-styled "Kraken" teamto face sanctions for "frivolously undermining 'People's faith in the ...
lawandcrime.com
750
9.1K
28.2K

EXHIBIT 6

Lin Wood @LLinWood · Jan 5

Talk about unfair! Last defamation case I handled in Detroit (which went well for my client), I made a few trips there for some fun (for me) depositions. Stayed at MGM Grand & contributed to city tax revenues & salaries for Detroit workers. And this is the thanks I get???



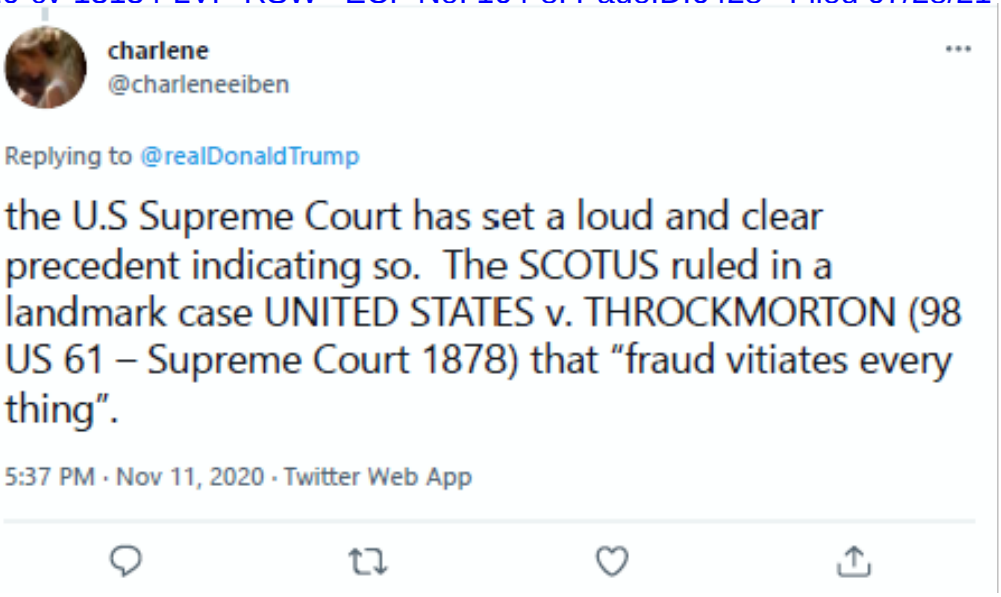
Alan Feuer @alanfeuer

NEW: The city of Detroit has just asked a federal judge to refer Sidney Powell, Lin Wood and the rest of Team Kraken for disbarment proceedings.

Show this thread

1.9K 7.0K 21K

EXHIBIT 7

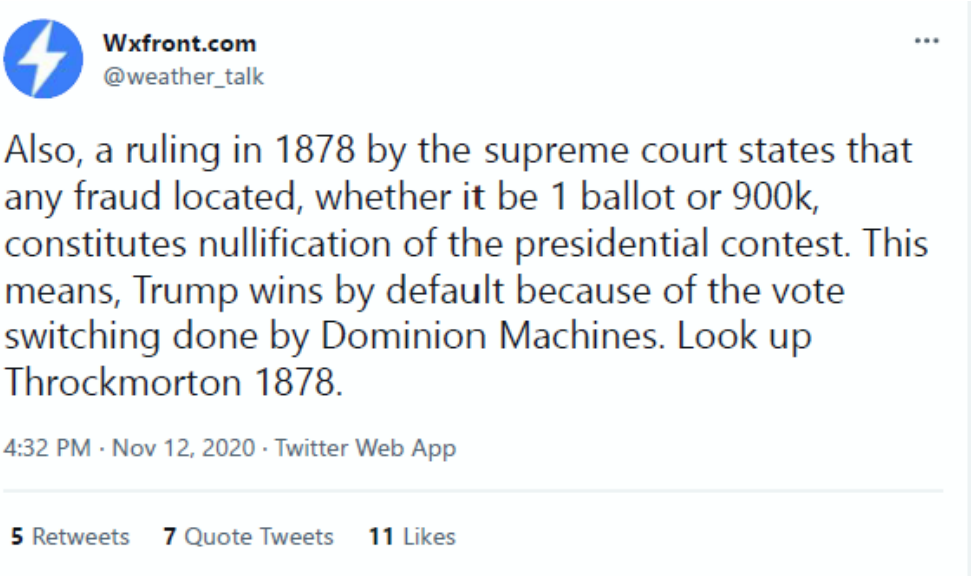


charlene
@charleneeiben

Replying to @realDonaldTrump

the U.S Supreme Court has set a loud and clear precedent indicating so. The SCOTUS ruled in a landmark case UNITED STATES v. THROCKMORTON (98 US 61 – Supreme Court 1878) that "fraud vitiates every thing".

5:37 PM · Nov 11, 2020 · Twitter Web App

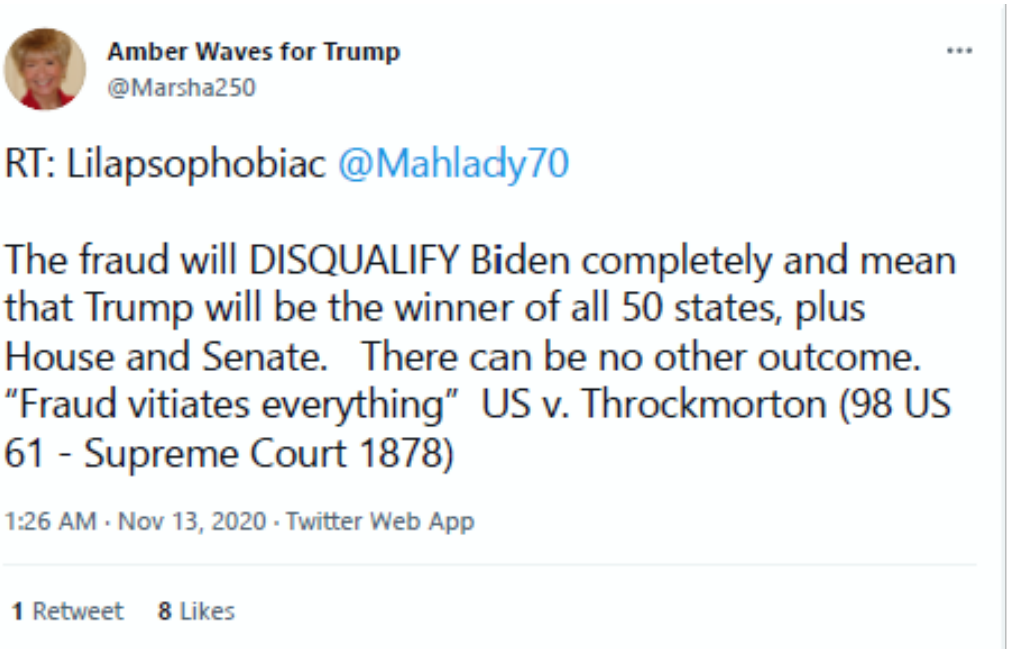


Wxfront.com
@weather_talk

Also, a ruling in 1878 by the supreme court states that any fraud located, whether it be 1 ballot or 900k, constitutes nullification of the presidential contest. This means, Trump wins by default because of the vote switching done by Dominion Machines. Look up Throckmorton 1878.

4:32 PM · Nov 12, 2020 · Twitter Web App

5 Retweets **7** Quote Tweets **11** Likes



Amber Waves for Trump
@Marsha250

RT: Lilapsophobiac @Mahlady70

The fraud will DISQUALIFY Biden completely and mean that Trump will be the winner of all 50 states, plus House and Senate. There can be no other outcome. "Fraud vitiates everything" US v. Throckmorton (98 US 61 - Supreme Court 1878)

1:26 AM · Nov 13, 2020 · Twitter Web App

1 Retweet **8** Likes

Sodman
@Timothy59096522

@SidneyPowell1 Good evening. Can you please confirm this is valid for consumption?

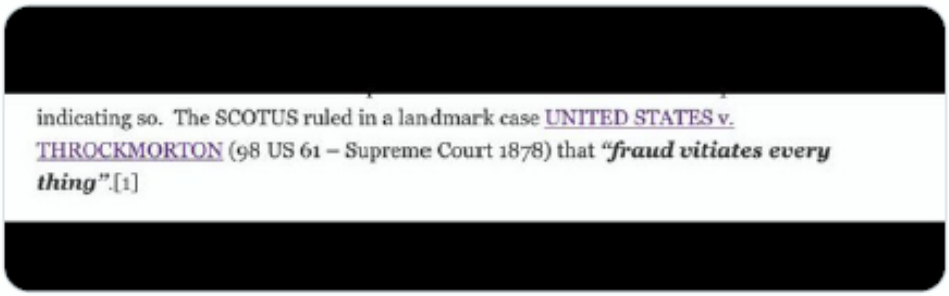
"The SCOTUS ruled in a landmark case UNITED STATES v. THROCKMORTON (98 US 61 – Supreme Court 1878) that "fraud vitiates everything".[1] "
@tom2badcat @prayingmedic @doqholliday

6:45 PM · Nov 18, 2020 · Twitter Web App

1 Quote Tweet

Dr. Interracial
@sandyleevincent

.@LLinWood @RudyGiuliani @SidneyPowell1
1878 USA vs Throckmorton;
(Fraud vitiates everything).



indicating so. The SCOTUS ruled in a landmark case UNITED STATES v. THROCKMORTON (98 US 61 – Supreme Court 1878) that ***"fraud vitiates every thing"***.[1]

9:41 AM · Nov 19, 2020 · Twitter for iPhone

4 Retweets **25** Likes

Conti, LTC (Ret) @frfldres12 · Nov 17, 2020
I agree light @ end of tunnel. The key word "vitiates" SCOTUS ruled in a landmark case U.S. Vs. Trockmorton (98 US 61 Supreme Court 1878) "that fraud vitiates everything"
Meaning one state commits voter fraud they all go down! So DJTrump wins the 2020 election. There you have it!

> **Haley Kennington** @kenningtonsays · Nov 17, 2020
> I'm tired from knowing too much and yet knowing nothing at all. It's exhausting.

3 7

संजीव
@ballerinaaa2

@SidneyPowell1 you're the lawyer but havebyoublookes at U.S. vs Throckmorton? Supreme court rule "Fraud Vitiates Everything". The Nevada commissioner election...they've already admitted to Fraud. Precedent is there. Nationwide fraud is there. Don't need certification.

7:42 PM · Nov 19, 2020 · Twitter for Android

Roy Wagner
@royw07

Americans are totally fed up with the 2020 Election FRAUD!
We expect and demand that the #SCOTUS honor the Landmark decision in United States v. THROCKMORTON (1878): "Fraud vitiates everything."

> **Tom Fitton** @TomFitton · Dec 2, 2020
> State Legislatures Have a Constitutional Duty to Make Sure Ballots Were Counted Appropriately! @LouDobbs @JudicialWatch @realDonaldTrump
> youtu.be/ZNSFZAsBvzk

4:22 PM · Dec 2, 2020 · Twitter for iPhone

#GoBucs!
@ed122672

Replying to @SuzInKS @MariaBartiromo and 3 others

Joe will be disqualified if he knew about or was involved in even 1 fake vote like he admitted here "fraud vitiates everything" per Supreme Court UNITED STATES v. THROCKMORTON

Joe Biden says he's built most extensive "voter fraud" org in ...
Joe Biden: "We have put together I think the most extensive and inclusive voter fraud organization in the history of ...
youtube.com

6:57 PM · Dec 6, 2020 · Twitter Web App

1 Quote Tweet **1** Like

Jenna Ryan @dotjenna · Dec 15, 2020
Fraud Vitiates Everything - Supreme Court Case Law

Court in the above referenced case of the United States versus Throckmorton.

Ipso facto, the outcome of a POTUS election that is rife with one-sided fraud and criminality is rendered null and void. Especially any result which saw the winner attain his or her victory through fraudulent means and/or criminal conduct is automatically canceled and invalid under the law.

3 13

Tweet

Unlearnt Redneck
@RedneckUnlearnt

Replying to @SidneyPowell1 @realDonaldTrump and 3 others

United States v Throckmorton.....

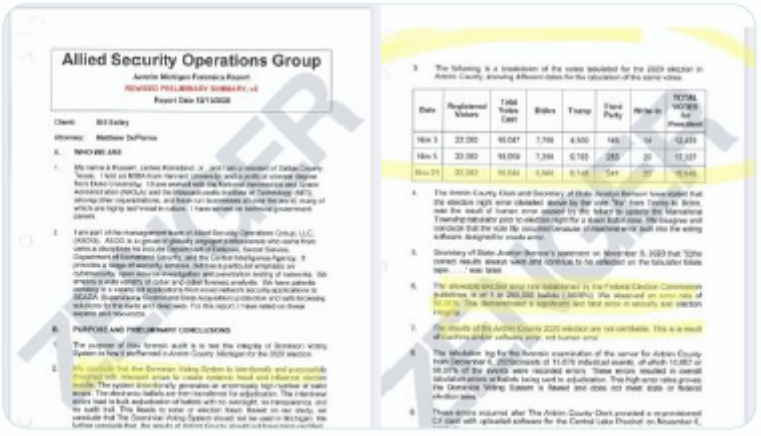
Fraud vitiates everything...

6:51 AM · Dec 15, 2020 · Twitter for Android

2 Likes

Tricia Flanagan (R-NJ) @NewDayForNJ · Dec 27, 2020
Powell Report is released & provides basis for both the full nullification of the 2020 election results & 12th Amendment Constitutional trigger for #January6th

#SCOTUS precedence demands that fraud vitiates everything—
Evidence of fraud is overwhelming.
wpcdn.zenger.news/wp-content/upl...



56 969 1.5K

indietexan
@realindietexan

Fraud vitiates everything it touches. UNITED STATES v. THROCKMORTON, 98 U.S. 61 (1878)

"Vitiates" means negates, quashes, annuls, invalidates, revokes and abrogates.

Thus the Biden\Harris "swearing in" is negated, quashed annulled, invalidated, revoked and abrogated.

10:23 PM · Jan 20, 2021 · Twitter Web App

Hokeypokey
@Hokeypo62242131

He is NOT the President. "Fraud vitiates everything." That enduring opinion was the crux of the landmark decision handed down by the U.S. Supreme Court in the above referenced case of the United States versus Throckmorton.

> **Mark Lutchman** @marklutchman · Jan 21
> There is no way in hell Joe Biden will be a two term president.
>
> Who feels the same?

2:48 PM · Jan 21, 2021 · Twitter Web App

luke hawker
@lukehawker7

Fraudulent elections will not stand!!! I'm hangin in there!
The SCOTUS ruled in a landmark case UNITED STATES v. THROCKMORTON (98 US 61 - Supreme Court 1878) that "fraud vitiates everything".[1] Read More @ StateOfTheNation.co

12:35 PM · Jan 25, 2021 · Twitter Web App

EXHIBIT 8

CASE NO.

IN THE SUPREME COURT OF THE UNITED STATES

IN RE: TIMOTHY KING, MARIAN ELLEN SHERIDAN, JOHN EARL HAGGARD, CHARLES JAMES RITCHARD, JAMES DAVID HOOPER and DAREN WADE RUBINGH,

Plaintiffs/Petitioners.

PETITION FOR WRIT OF CERTIORARI PURSUANT TO 28 U.S.C. § 1651(a), On Petition for a Writ of Certiorari to the United States Federal District Court for the Eastern District of Michigan

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STEFANIE LAMBERT JUNTTILA
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ISSUES PRESENTED

I. THE TRIAL COURT ERRED WHEN IT DENIED THE PETITIONERS' EMERGENCY MOTION WITOUT EVEN A HEARING OR ORAL ARGUMENT FOR DECLARATORY, EMERGENCY, AND PERMANENT INJUNCTIVE RELIEF WHEN THE PETITIONERS HAD PRESENTED A PRIMA FACIE CASE SETTING FORTH CLAIMS OF WIDESPREAD VOTER IRREGULARITIES AND FRAUD IN THE STATE OF MICHIGAN IN THE PROCESSING AND TABULATION OF VOTES AND ABSENTEE BALLOT. THE TRIAL COURT COMPLETELY AND UTTERLY IGNORGED THE DOZENS OF AFFIDAVITS, TESTIMONIALS, EXPERT OPINIONS, DIAGRAMS AND PHOTOS THAT SUPPORTED THE PETITIONERS' CLAIM SEEKING AN INJUNCTION OF THE VOTING PROCESS.

A. WHETHER THE PETITIONERS HAVE PRESENTED SUFFICIENT EVIDENCE TO SUPPORT THREE CLAIMS PURSUANT TO 42 USC§ 1983: (Count I) VIOLATION OF THE ELECTIONS AND ELECTORS CLAUSES; (Count II) VIOLATION OF THE FOURTEEN AMENDMENT EQUAL PROTECTION CLAUSE AND (Count III) DENIAL OF THE FOURTEENTH AMENDMENT DUE PROCESS CLAUSE AND A VIOLATION OF THE MICHIGAN ELECTION CODE?

B. WHETHER THE PETITIONERS PRESENTED SUFFICIENT EVIDENCE WHICH WAS IGNORED BY THE DISTRICT TO WARRANT A PRELIMINARY INJUNCTION WHERE THE PROFFERED EVIDENCE ESTALBLISHED LIKEHOOD OF SUCCESS ON THE MERITS, THAT THE PETITIONERS WOULD SUFFER IRREPARABLE HARM IN THE ABSENCE OF PRELIMINARY RELIEF AND THAT THE BALANCE OF EQUITIES TIPS IN THIE FAVOR AND THAT AN INJUNCTION IS IN THE PUBLIC INTEREST?

II. WHETHER THE DISTRICT COURT ERRED WHEN IT DISMISSED THE PETITIONERS EMERGENCY MOTION AND REQUEST FOR PRELIMINARY INJUNCTION WHEN THE COURT HELD THAT THE PETITIONERS STATE LAW CLAIMS AGAINST RESPONDENTS WERE BARRED BY ELEMENTH AMENDMENT IMMUNITY?

III. WHETHER THE DISTRICT COURT ERREONEOUSLY HELD THAT THE PETITIONERS CLAIMS SEEKING A PRELIMINARY INJUNCTION WERE BARRED AS BEING MOOT WHEN THE ELECTORAL COLLEGE HAS YET TO CERTIFY THE NATIONAL ELECTION AND AS SUCH THE RELIEF REQUESTED IS TIMELY?

IV. WHETHER THE DISTRICT COURT ERRED WHEN IT HELD THAT THE PETITIONERS CLAIMS WERE BARRED BY THE DOCTRINE OF LACHES WHEN THE CLAIMS WERE IN FACT TIMELY MADE AND ARE ADDRESSING HARM THAT IS CONTINUING AND FORTHCOMING AND THE RESPONDENTS ARE NOT PREJUDICIED BY ANY DELAYS IN THE FILING BY THE PETITIONERS?

V. WHETHER THE DISTRICT COURT ERRED WHEN IT DISMISSED THE PETITIONERS CLAIMS BASED ON THE ABSTENTION DOCTRINE IDENTIFIED IN THE US SUPREME COURT CASE OF COLORADO RIVER WITHOUT ANY SHOWING OF PARALLEL STATE COURT PROCEEDINGS THAT ADDRESS THE IDENTICAL RELIEF SOUGHT?

VI. WHETHER THE DISTRICT COURT ERRED WHEN IT FOUND THAT THE PETITIONERS FAILED TO SHOW THAT THEIR INJURY CAN BE REDRESSED BY THE RELIEF SOUGHT AND HELD THAT THE PETITIONERS POSSESS NO STANDING TO PURSUE THEIR EQUAL PROTECTION CLAIM WHEN GIVEN THE EVIDENCE PRESENTED AND THE RELIEF SOUGHT, THE ISSUE OF VOTER FRAUD AND VALIDATION OF ELECTION IS THE VERY RELIEF THAT A COURT CAN REDRESS PURSUANT TO THE EQUAL PROTECTION AND THE PETITIONERS CLEARLY HAVE STANDING?

VII. WHETHER THE DISTRICT COURT ERRED WHEN IT FOUND THAT PETITIONERS CLAIMS WERE BARRED BECAUSE THE COURT DETERMINED THE PETITIONERS "ASSERT NO PARTICULARIZED STAKE IN THE LITIGATION" AND FAILED TO ESTABLISH AN INJURY-IN-FACT AND THUS LACK STANDING TO BRING THEIR ELECTIONS CLAUSE AND ELECTORS CLAUSE CLAIMS WHEN THE PETITIONERS ARE THE VERY INDIVIDUALS WHO CAN ASSERT THIS CLAIM AND HAVE PROPER STANDING TO DO SO?

PARTIES TO THE PROCEEDINGS AND STANDING

All parties appear in the caption of the case on the cover page.

Each of the following Plaintiffs/Petitioners are registered Michigan voters and nominees of the Republican Party to be a Presidential Elector on behalf of the State of Michigan: Timothy King, a resident of Washtenaw County, Michigan; Marian Ellen Sheridan, a resident of Oakland County, Michigan; and, John Earl Haggard, a resident of Charlevoix, Michigan;

Each of these Plaintiffs/Petitioners has standing to bring this action as voters and as candidates for the office of Elector under MCL §§ 168.42 & 168.43 (election procedures for Michigan electors).As such, Presidential Electors "have a cognizable interest in ensuring that the final vote tally reflects the legally valid votes cast," as "[a]n inaccurate vote tally is a concrete and particularized injury to candidates such as the Electors." Carson v. Simon, 978 F.3d 1051, 1057 (8th Cir. 2020) (affirming that Presidential Electors have Article III and prudential standing to challenge actions of Secretary of State in implementing or modifying State election laws); see also McPherson v. Blacker, 146 U.S. 1, 27 (1892); Bush v. Palm Beach Cty. Canvassing Bd., 531 U.S. 70, 76 (2000) (per curiam). Each brings this action to set aside and decertify the election results for the Office of President of the United States that was certified by the Michigan Secretary of State on November 23, 2020. The certified results showed a plurality of 154,188 votes in favor of former Vice-President Joe Biden over President Trump.

Petitioner James Ritchard is a registered voter residing in Oceana County. He is the Republican Party Chairman of Oceana County. Petitioner James David Hooper is a registered voter residing in Wayne County. He is the Republican Party Chairman for the Wayne County Eleventh District. Petitioner Daren Wade Ribingh is a registered voter residing in Antrim County. He is the Republican Party Chairman of Antrim County.

Respondent Gretchen Whitmer (Governor of Michigan) is named herein in her official capacity as Governor of the State of Michigan. Respondent Jocelyn Benson ("Secretary Benson") is named as a defendant/respondent in her official capacity as Michigan's Secretary of State. Jocelyn Benson is the "chief elections officer" responsible for overseeing the conduct of Michigan elections. Respondent Michigan Board of State Canvassers is "responsible for approv[ing] voting equipment for use in the state, certify[ing] the result of elections held statewide…." Michigan Election Officials' Manual, p. 4. See also MCL 168.841, etseq. On March 23, 2020, the Board of State Canvassers certified the results of the 2020 election finding that Joe Biden had received 154,188 more votes than President Donald Trump.

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Lower Court King Et al vs. Whitmer Et al, Case No. 20-cv-13134, US District Court, Eastern District of Michigan, Exhibits 1-43, PgID 958-1831)

TABLE OF AUTHORITIES

STATUTES, RULES, CONSTITUTIONAL CITATIONS

CORPORATE DISCLOSURE STATEMENT

Pursuant to Supreme Court Rule 29.6, the Petitioners herein disclose the following: There is no parent or publicly held company owning 10% or more of Respondent's stock or corporate interest.

INTRODUCTION

Petitioners file this motion seeking immediate relief in anticipation of their petition for certiorari from the judgment of the District Court dated December 7, 2020, dismissing their case after denying their motion for a Temporary Restraining Order. (R.62). Petitioners filed a notice of appeal to the Sixth Circuit on December 8, 2020. (R.64). Because of the exigencies of time, they have not presented their case to the Sixth Circuit but, rather, will seek certiorari before judgment in the court of appeals pursuant to S. Ct. R. 11. This motion for immediate preliminary relief seeks to maintain the status quo so that the passage of time and the actions of Respondents do not render the case moot, depriving this Court of the opportunity to resolve the weighty issues presented herein and Respondents of any possibility of obtaining meaningful relief.

Petitioners seek review of the district court's order denying any meaningful consideration of credible allegations of massive election fraud, multiple violations of the Michigan Election Code, see, e.g., MCL §§ 168.730-738 and Equal Protection Clause of the U.S. Constitution that occurred during the 2020 General Election throughout the State of Michigan. Petitioners presented substantial evidence consisting of sworn declarations of dozens of eyewitnesses and of experts identifying statistical anomalies and mathematical impossibilities, as well as a multistate, conspiracy, facilitated by foreign actors, including China and Iran, designed to deprive Petitioners to their rights to a fair and lawful election. The district court ignored it all. It failed to hear from a single witness or consider any expert and made findings without any examination of the record.

The scheme and artifice to defraud illegally and fraudulently manipulate the vote count to manufacture the "election" of Joe Biden as President of the United States. The fraud was executed by many means, but the most fundamentally troubling, insidious, and egregious ploy was the systemic adaptation of old-fashioned "ballot-stuffing." It has now been amplified and rendered virtually invisible by computer software created and run the vote tabulation by domestic and foreign actors for that very purpose. The petition detailed an especially egregious range of conduct in Wayne County and the City of Detroit, though this conduct occurred throughout the State with the cooperation and control of Michigan state election officials, including Respondents.

The multifaceted schemes and artifices to defraud implemented by Respondents and their collaborators resulted in the unlawful counting, or outright manufacturing, of hundreds of thousands of illegal, ineligible, duplicate, or purely fictitious ballots in Michigan. The same pattern of election fraud and vote-counting fraud writ large occurred in all the swing states with only minor variations in Michigan, Pennsylvania, Arizona, and Wisconsin. See Ex. 101, William M. Briggs, Ph.D. "An Analysis Regarding Absentee Ballots Across Several States" (Nov. 23, 2020) ("Dr. Briggs Report"). Unlike some other petitions currently pending, this case presented an enormous amount of evidence in sworn statements and expert reports. According to the final certified tally in Michigan, Mr. Biden had a slim margin of 146,000 votes.

The election software and hardware from Dominion Voting Systems ("Dominion") used by the Michigan Board of State Canvassers was created to achieve election fraud. See Ex. 1, Redacted Declaration of

Dominion Venezuela Whistleblower ("Dominion Whistleblower Report"). The Dominion systems derive from the software designed by Smartmatic Corporation, which became Sequoia in the United States.

The trial court did not examine or even comment on Petitioners' expert witnesses, including Russell James Ramsland, Jr. (Ex. 101, "Ramsland Affidavit"), who testified that Dominion alone is responsible for the injection, or fabrication, of 289,866 illegal votes in Michigan. This is almost twice the number of Mr. Biden's purported lead in the Michigan vote (without consideration of the additional illegal, ineligible, duplicate or fictitious votes due to the unlawful conduct outlined below). This, by itself, requires that the district court grant the declaratory and injunctive relief Petitioners sought. Andrew W. Appel, et al., "Ballot Marking Devices (BMDs) Cannot Assure the Will of the Voters" at (Dec. 27, 2019), attached hereto as Exhibit 2 ("Appel Study").

In addition to the Dominion computer fraud, Petitioners identified multiple means of "traditional" voting fraud and Michigan Election Code violations, supplemented by harassment, intimidation, discrimination, abuse, and even physical removal of Republican poll challengers to eliminate any semblance of transparency, objectivity, or fairness from the vote counting process. Systematic violations of the Michigan Election Code cast significant doubt on the results of the election and call for this Court to set aside the 2020 Michigan General Election and grant the declaratory and injunctive relief requested herein. King Et al vs. Whitmer Et al, No. 20-cv-13134, Eastern District of Michigan, Exhibits 1-43, PgID 958-1831.

OPINION BELOW

Judge Linda Parker, in the Eastern District of Michigan, without an evidentiary hearing or even oral argument, denied Petitioners "Emergency Motion for Declaratory, Emergency, and Permanent Injunctive Relief." The court held the Eleventh Amendment bars Petitioners claims against Respondents (R, 62, PgID, 3307); Petitioners claims for relief concerning the 2020 General Election were moot (R, 62, PgID, 3310); Petitioners claims were barred by laches as a result of "delay" (R,62, PgID, 3313); and abstention is appropriate under the *Colorado River* doctrine; (R, 62, PgID 3317). The Court further held that petitioners lacked standing. (R, 62, PgID 3324).

The Court stated, "it appears that Petitioners' claims are in fact state law claims disguised as federal claims" (R, 62, PgID 3324) and held there was no established equal protection claim (R, 62, PgID 3324). The Court declined to discuss the remaining preliminary injunction factors extensively. (R, 62, PgID, 3329). Opinion and Order Attached Denying Petitioner's' Emergency Motion for Declaratory, Emergency, and Permanent Injunctive Relief. (R. 62).

JURISDICTION

The district Court had subject matter over these federal questions under 28 U.S.C. § 1331 because it presents numerous claims based on federal law and the U.S. Constitution. The district court also has subject matter jurisdiction under 28 U.S.C. § 1343 because this action involves a federal election for President of the United States. "A significant departure from the legislative scheme for appointing Presidential

electors presents a federal constitutional question." Bush v. Gore, 531 U.S. 98, 113 (2000) (Rehnquist, C.J., concurring); Smiley v. Holm, 285 U.S. 355, 365(1932).

The district court had authority to grant declaratory relief under 28 U.S.C. §§ 2201and 2202 and by Fed. R. Civ. P. 57. The district court had supplemental jurisdiction over the related Michigan constitutional claims and state-law claims under 28 U.S.C.§ 1367.

This Court has jurisdiction under 28 USC § 1254(1) because the case is in the Court of Appeals for the Sixth Circuit and petitioners are parties in the case. This Court should grant certiorari before judgment in the Court of Appeals pursuant to Supreme Court Rule 11 because "the case is of such imperative public importance as to justify deviation from normal appellate practice and to require immediate determination in this Court." The United States Constitution reserves for state legislatures the power to set the time, place, and manner of holding elections for Congress and the President, state executive officers, including but not limited to Secretary Benson, have no authority to unilaterally exercise that power, much less flout existing legislation. Moreover, Petitioners Timothy King, Marian Ellen Sheridan, John Earl Haggard, Charles James Ritchard, James David Hooper, and Daren Wade Rubingh, are candidates for the office of Presidential Electors who have a direct and personal stake in the outcome of the election and are therefore entitled to challenge the manner in which the election was conducted and the votes tabulated under the authority of this Court's decision in *Bush v. Gore*, 531 U.S. 98 (2000).

Additionally, this Court has jurisdiction pursuant to the All Writs Act, 28 U.S.C. § 1651(a) and United States Supreme Court Rule 20, Procedure on a Petition for an Extraordinary Writ. Petitioners will suffer irreparable harm if they do not obtain immediate relief. The Electors are set to vote on December 14, 2020. The issues raised are weighty as they call into question who is the legitimate winner of the 2020 presidential election. These exceptional circumstances warrant the exercise of the Court's discretionary powers, particularly as this case will supplement the Court's understanding of a related pending case, State of Texas v. Commonwealth of Pennsylvania et al, S.Ct. Case No. 220155.

The All Writs Act authorizes an individual Justice or the full Court to issue an injunction when (1) the circumstances presented are "critical and exigent"; (2) the legal rights at issue are "indisputably clear"; and (3) injunctive relief is "necessary or appropriate in aid of the Court's jurisdiction." *Ohio Citizens for Responsible Energy, Inc. v. NRC*, 479 U.S. 1312 (1986) (Scalia, J., in chambers) (citations and alterations omitted).

A submission directly to this Court for a Writ of Certiorari, a Stay of Proceeding and a Preliminary Injunction is an extraordinary request, but it has its foundation. While such relief is rare, this Court will grant it "where a question of public importance is involved, or where the question is of such a nature that it is peculiarly appropriate that such action by this Court should be taken." *Ex Parte Peru*, 318 U.S. 578, 585 (1943). *See also* Cheney v. U.S. Dist. Court, 542 U.S. 367, 380–81 (2004).

Here, Petitioners and the public will suffer irreparable harm if this Court does not act without delay. Once the electoral votes are cast, subsequent relief would be pointless. In *Federal Trade Commission v. Dean Foods Co.*, 384 U.S. 597 (1966), the Court affirmed the Seventh Circuit, finding authority under 28 U.S.C. § 1651(a) to enjoin merger violating Clayton Act, where the statute itself was silent on whether injunctive relief was available regarding an application by the FTC. "These decisions furnish ample precedent to support jurisdiction of the Court of Appeals to issue a preliminary injunction preventing the consummation of this agreement upon a showing that an effective remedial order, once the merger was implemented, would otherwise be virtually impossible, thus rendering the enforcement of any final decree of divestiture futile." *Id.* at 1743. This Court rendered a similar decision in *Roche v. Evaporated Milk Assn*, 319 U.S. 21 (1943), granting a writ of mandamus, even though there was no appealable order and no appeal had been perfected because "[o]therwise the appellate jurisdiction could be defeated and the purpose of the statute authorizing the writ thwarted by unauthorized action of the district court obstructing the appeal."

CONSTITUTIONAL AND STATUTORY PROVISIONS

The Fourteenth Amendment of the United States Constitution provides "nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

The Electors Clause states that "[e]ach State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors" for president. U.S. Const. art. II, §1, cl. 2.

The Elections Clause states: "The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of chusing Senators." U.S. Const. art. I, §4, cl. 1.

The Constitution of Michigan, Article II, § 4, clause 1(h) states: "The right to have the results of statewide elections audited, in such a manner as prescribed by law, to ensure the accuracy and integrity of elections. All rights set forth in this subsection shall be self-executing. This subsection shall be liberally construed in favor of voters' rights in order to effectuate its purposes."

The Michigan Election Code provides voting procedures and rules for the State of Michigan. M.C.L. § 168.730, designation, qualifications, and number of challengers, M.C.L. § 168.733,challengers, space in polling place, rights, space at counting board, expulsion for cause, protection, threat or intimidation, MCL § 168.31(1)(a) Secretary of state, duties as to elections, rule MCL 168.765a absent voter counting board.

STATEMENT OF THE CASE

Petitioners brought this case to vindicate their constitutional right to a free and fair election ensuring the accuracy and integrity of the process pursuant to the Michigan Constitution, art. 2, sec. 4, par. 1(h), which states all Michigan citizens have: "The right to have the results of statewide elections audited, in such a manner as prescribed by law, to ensure the accuracy and integrity of elections."

The Mich. Const., art.2, sec.4, par. 1(h) further states, "All rights set forth in this subsection shall be self-executing. This subsection shall be liberally construed in favor of voters' rights in order to effectuate its purposes."

These state-law procedures, in turn, implicate Petitioners' rights under federal law and the U.S. Constitution. "When the state legislature vests the right to vote for President in its people, the right to vote as the legislature has prescribed is fundamental; and one source of its fundamental nature lies in the equal weight accorded to each vote and the equal dignity owed to each voter." *Bush v. Gore*, 531 U.S. at 104. "[I]n the context of a Presidential election, state-imposed restrictions implicate a uniquely important national interest. For the President and the Vice President of the United States are the only elected officials who represent all the voters in the Nation." *Anderson* v. *Celebrezze*, 460 U.S. 780, 794-795 (1983) (footnote omitted).

Based upon all the allegations of fraud, statutory violations, and other misconduct, as stated herein and in the attached affidavits, this Court should exercise its authority to issue the writ of certiorari and stay the vote for the Electors in Michigan.

Fact Witness Testimony of Voting Fraud & Other Illegal Conduct

Respondents and their collaborators have executed a multifaceted scheme to defraud Michigan voters, resulting in the *unlawful counting of hundreds of thousands* of illegal, ineligible, duplicate or purely fictitious ballots in the State of Michigan. Evidence included in Respondents' complaint and reflected in Section IV herein shows with specificity the minimum number of ballots that should be discounted, which is more than sufficient to overturn and reverse the certified election results. This evidence, provided in the form of dozens of affidavits and reports from fact and expert witnesses, further shows that the entire process in Michigan was so riddled with fraud and illegality that certified results cannot be relied upon for any purpose by anyone involved in the electoral system.

There were three broad categories of illegal conduct by election workers in collaboration with other state, county and/or city employees and Democratic poll watchers and activists.

First, election workers illegally forged, added, removed or otherwise altered information on ballots, the Qualified Voter File (QVF) and Other Voting Records, including:

A. Fraudulently adding "tens of thousands" of new ballots and/or new voters to QVF in two separate batches on November 4, 2020, all or nearly all of which were votes for Joe Biden.

B. Forging voter information and fraudulently adding new voters to the QVF Voters, in particular, e.g., when a voter's name could not be found, the election worker assigned the ballot to a random name already in the QVF to a person who had not voted and recorded these new voters as having a birthdate of 1/1/1900.

C. Changing dates on absentee ballots received after the 8:00 PM Election Day deadline to indicate that such ballots were received before the deadline.

D. Changing votes for Trump and other Republican candidates.

E. Adding votes to "undervote" ballots and removing votes from "overvote" ballots.[1]

Second, to facilitate and cover up the voting fraud and counting of fraudulent, illegal or ineligible voters, election workers:

A. Denied Republican election challengers' access to the TCF Center, where all Wayne County, Michigan ballots were processed and counted.

B. Denied Republic poll watchers at the TCF Center meaningful access to view ballot handling, processing, or counting, and locked credentialed challengers out of the counting room so they could not observe the process, during which time tens of thousands of ballots were processed.

[1] As explained in *Bush v. Gore*, "overvote" ballots are those where "the [voting] machines had failed to detect a vote for President," 531 U.S. at 102, while "overvote" ballots are those "which contain more than one" vote for President. *Id.* at 107.

C. Engaged in a systematic pattern of harassment, intimidation and even physical removal of Republican election challengers or locking them out of the TCF Center.

D. Systematically discriminated against Republican poll watchers and favored Democratic poll watchers.

E. Ignored or refused to record Republican challenges to the violations outlined herein.

F. Refused to permit Republican poll challengers to observe ballot duplication and other instances where they allowed ballots to be duplicated by hand without allowing poll challengers to check if the duplication was accurate.

G. Unlawfully coached voters to vote for Joe Biden and to vote a straight Democrat ballot, including by going over to the voting booths with voters in order to watch them vote and coach them for whom to vote. As a result, Democratic election challengers outnumbered Republicans by 2:1 or 3:1 (or sometimes 2:0 at voting machines).

H. Collaborated with Michigan State, Wayne County and/or City of Detroit employees (including police) in all of the above unlawful and discriminatory behavior.

Third, election workers in some counties committed several additional categories of violations of the Michigan Election Code to enable them to accept and count other illegal, ineligible or duplicate ballots, or reject Trump or Republican ballots, including:

A. Permitting illegal double voting by persons that had voted by absentee ballot and in person.

B. Counting ineligible ballots – and in many cases – multiple times.

C. Counting ballots without signatures, or without attempting to match signatures, and ballots without postmarks, pursuant to direct instructions from Respondents.

D. Counting "spoiled" ballots.

E. Systematically violating of ballot secrecy requirements.

F. Counted unsecured ballots that arrived at the TCF Center loading garage, not in sealed ballot boxes, without any chain of custody, and without envelopes, after the 8:00 PM Election Day deadline, in particular, tens of thousands of ballots that arrived on November 4, 2020.

G. Accepting and counting ballots from deceased voters.

Expert Witness Testimony Regarding Voting Fraud

In addition to the above fact witnesses, this Complaint presented expert witness testimony demonstrating that several hundred thousand illegal, ineligible, duplicate or purely fictitious votes must be thrown out, in particular:

(1) A report from Russel Ramsland, Jr. showing the "physical impossibility" of nearly 385,000 votes tabulated by four precincts on November 4, 2020 in two hours and thirty-eight minutes, that derived from the processing of nearly 290,000 more ballots than available machine counting capacity (which is based on statistical analysis that is independent of his analysis of Dominion's flaws).

(2) A report from Dr. William Briggs, showing that there were approximately 60,000 absentee ballots listed as "unreturned" by voters that either never requested them, or that requested and returned their ballots.

(3) A report from Dr. Eric Quinell analyzing the anomalous turnout figures in Wayne and Oakland Counties showing that Biden gained nearly 100%, and frequently more than 100%, of all "new" voters in certain townships/precincts over 2016, and thus indicated that nearly 87,000 anomalous and likely fraudulent votes were accepted and tabulated from these precincts.

Foreign actors interfered in this election. As explained in the accompanying redacted declaration of a former electronic intelligence analyst who served in the 305th Military Intelligence Unit with experience gathering SAM missile system electronic intelligence, the Dominion software was accessed by agents acting on behalf of China and Iran in order to monitor and manipulate elections, including the most recent U.S. general election in 2020. This Declaration further includes a copy of the patent records for Dominion Systems in which Eric Coomer, Dominion's security director, is listed as the first of the inventors of Dominion Voting Systems. (See Attached hereto as Ex. 105, copy of redacted witness affidavit, November 23, 2020).

Another expert explains that U.S. intelligence services had developed tools to infiltrate foreign voting systems, including Dominion. He states that Dominion's software is vulnerable to data manipulation by unauthorized means and permitted election data to be altered in all battleground states. He concludes that hundreds of thousands of votes that were cast for President Trump in the 2020 general election were probably transferred to former Vice-President Biden. (Ex. 109).

These and other irregularities provide substantial grounds for this Court to stay or set aside the results of the 2020 General Election in Michigan and provide the other declaratory and injunctive relief requested herein.

Irreparable harm will inevitably result for both the public and the Petitioners if the Petitioners were required to delay this Court's review by first seeking relief in the United States Court of Appeals, Sixth Circuit. Once the electoral votes are cast, subsequent relief would be pointless and the petition would be moot. As such, petitioners are requesting this Honorable Court grant the petition under the most extraordinary of circumstances. A request which, although rare, is not without precedent.

Similar relief was granted in FTC v. Dean Foods Co., 86 S.Ct. 1738 (1966) affirming the Seventh Circuit, involving an application by the FTC and a holding by this Court that found authority under 28 U.S.C. § 1651(a) to enjoin merger violating Clayton Act, where statute itself was silent on whether injunctive relief was available. "These decisions furnish ample precedent to support jurisdiction of the Court of Appeals to issue a preliminary injunction preventing the consummation of this agreement upon a showing that an effective remedial order, once the merger was implemented, would otherwise be virtually impossible, thus rendering the enforcement of any final decree of divestiture futile." *Id.* at 1743. A similar decision was reached in In *Roche Evaporated Milk Ass'n*, 63 S.Ct. 938, 941 (1943), the Supreme Court granted a writ of mandamus where there was no appealable order or where no appeal had been perfected because "[o]therwise the appellate jurisdiction could be defeated and the purpose of the statute authorizing the writ

thwarted by unauthorized action of the district court obstructing the appeal."

For these reasons, this Honorable Court should exercise its authority to review this pending application, to stay the Electoral College Vote pending disposition of the forthcoming petition for writ of certiorari and to allow Petitioners a full and fair opportunity to be heard.

ARGUMENT

I. THE TRIAL COURT ERRED WHEN IT DENIED THE PETITIONERS' EMERGENCY MOTION BECAUSE PETITIONERS PRESENTED A PRIMA FACIE CASE OF WIDESPREAD VOTER IRREGULARITIES AND FRAUD IN THE STATE OF MICHIGAN IN THE PROCESSING AND TABULATION OF POLLING-PLACE VOTES AND ABSENTEE BALLOTS.

The record includes overwhelming evidence of widespread systemic election fraud and numerous serious irregularities and mathematical impossibilities not only in the state of Michigan but numerous states utilizing the Dominion system. Sworn witness testimony of "Spider", a former member of the 305th Military Intelligence Unit, explains how Dominion was compromised and infiltrated by agents of hostile nations China and Iran, among others. (R. 49, PgID, 3074). Moreover, expert Russell Ramsland testified that 289,866 ballots must be disregarded as a result of voting machines counting 384,733 votes in two hours and thirty-eight minutes when the actual, available voting machinery was incapable of counting more than 94,867 votes in that time frame. (R. 49, PgID, 3074). According to the final certified tally in Michigan, Mr. Biden has a slim margin of 146,000 votes over President Trump.

In the United States, voting is a sacrament without which this Republic cannot survive. Election integrity and faith in the voting system distinguishes the United States from failed or corrupt nations around the world. Our very freedom and all that Americans hold dear depends on the sanctity of our votes.

Judge Parker issued a Notice of Determination of Motion without Oral Argument (R. 61, PgID, 3294) on this most sensitive and important matter. She ignored voluminous evidence presented by Petitioners proving widespread voter fraud, impossibilities, and irregularities that undermines public confidence in our election system and leaves Americans with no reason to believe their votes counted. It the face of all Petitioners' evidence, it cannot be said that the vote tally from Michigan reflects the will of the people. From abuses of absentee ballots, fraudulent ballots, manufactured ballots, flipped votes, trashed votes, and injected votes, not to mention the Dominion algorithm that shaved votes by a more than 2% margin from Trump and awarded them to Biden, the Michigan results must be decertified, the process of seating electors stayed, and such other and further relief as the Court finds is in the public interest, or the Petitioners show they are entitled.

A. PETITIONERS PRESENTED SUFFICIENT EVIDENCE, WHICH WAS IGNORED BY THE DISTRICT COURT, TO WARRANT A PRELIMINARY INJUNCTION WHERE THE PROFFERED EVIDENCE ESTABLISHED A LIKELIHOOD OF SUCCESS ON THE MERITS, THAT PETITIONERS WOULD SUFFER IRREPARABLE HARM IN THE ABSENCE OF INTERLOCUTORY RELIEF, THAT THE BALANCE OF EQUITIES TIPS IN THIER FAVOR AND THAT AN INJUNCTION IS IN THE PUBLIC INTEREST.

Respondents have submitted a number of affidavits, consisting mostly of recycled testimony from ongoing State proceedings, that purport to rebut Plaintiffs' fact witnesses all of which boil down to: (1) they did not see what they thought they saw; (2) maybe they did see what they thought they saw, but it was legal on the authority of the very government officials engaged in or overseeing the unlawful conduct; (3) the illegal conduct described could not have occurred because it is illegal; and/or (4) even if it happened, those were independent criminal acts by public employees over whom State Respondents had no control.

Below are a few examples of State Defendant affiants' non-responsive responses, evasions and circular reasoning, followed by Plaintiff testimony and evidence that remains unrebutted by their testimony.

- **Illegal or Double Counted Absentee Ballots**. Affiant Brater asserts that Plaintiffs' allegation regarding illegal vote counting can be "cursorily dismissed by a review of election data," and asserts that if illegal votes were counted, there would be discrepancies in between the numbers of votes and numbers in poll books. ECF No. 31-3 ¶19. Similarly, Christopher Thomas, asserts that ballots could not, as Plaintiffs allege, see FAC, Carrone Aff., have been counted multiple times because "a mistake like that would be caught very quickly on site," or later by the Wayne County Canvassing Board. ECF No. 39-6 ¶6. Mr. Brater and Mr. Thomas fail to acknowledge that is precisely what happened: The Wayne County Canvassing Board found that over 70% of Detroit Absentee Voting Board ("AVCB") were unbalanced, and that two members of Wayne County Board of Canvassers initially refused to certify results and conditioned certification on a manual recount and answers to questions such as "[w]hy the pollbooks, Qualified Voter Files, and final tallies do not match or balance." FAC ¶¶105-107 & Ex. 11-12 (Affidavits of Wayne County Board of Canvasser Chairperson Monica Palmer and Member William C. Hartmann). Further, Plaintiffs' affiants testified to observing poll workers assigning ballots to different voters than the one named on the ballot. FAC ¶86 & Larsen Aff. Defendants do not address this allegation, leaving it un-rebutted.

- **Illegal Conduct Was Impossible Because It Was Illegal**. Mr. Thomas wins the Begging the Question prize in this round for circular reasoning that "[i]t would have been impossible for any election worker at the TCF Center to count or process a ballot for someone who was not an eligible voter or whose ballot was not received by the 8:00 p.m. deadline on November," and "no ballot could have been backdated," because no ballots received after the deadline "were ever at the TCF Center," nor could the ballot of an ineligible voter been "brought to the TCF Center." ECF No. 39-5 ¶20; id. ¶27. That is because it would have been illegal, you understand. The City of Detroit's absentee voter ballot quality control was so airtight and foolproof that only 70% of their precincts were unbalanced for 2020 General Election, which exceeded the standards for excellence established in the August 2020 primary where 72% of AVCB were unbalanced. FAC Ex. 11 ¶¶7&14.

State Respondents Affiants did not, however, dismiss all of Plaintiff Affiants' claims. Rather, they made key admissions that the conduct alleged did in fact occur, while baldly asserting, without evidence, that this conduct was legal and consistent with Michigan law. Defendants admitted that:

- Election Workers at TCF Center Did Not Match Signatures for Absentee Ballots.

- Election Workers Used Fictional Birthdates for Absentee Voters. ECF No. 39- 5 ¶15. The software made them do it.

Election Workers Altered Dates for Absentee Ballot Envelopes. Mr. Thomas does not dispute Affiant Jacob's testimony that "she was instructed by her supervisor to adjust the mailing date of absentee ballot packages" sent to voters, but asserts this was legal because "[t]he mailing date recorded for absentee ballot packages would have no impact on the rights of the voters and no effect on the processing and counting of absentee votes." This is not a factual assertion but a legal

conclusion—and wrong to boot. Michigan law the Michigan Constitution provides all registered voters the right to request and vote by an absentee ballot without giving a reason. MICH. CONST. art. 2, § 4. M.C.L. § 168.759(3). That statute limits the procedures for requesting an absentee ballot to three specified ways: An application for an absent voter ballot under this section may be made in any of the following ways: By a written request signed by the voter on an absent voter ballot application form provided for that purpose by the clerk of the city or township. Or on a federal postcard application. M.C.L. § 168.759(3) (emphasis added). The Michigan Legislature thus did not include the Secretary of State as a means for distributing absentee ballot applications. *Id*. § 168.759(3)(b). Under the statute's plain language, the Legislature explicitly gave *only local clerks* the power to distribute absentee voter ballot applications. *Id.* Secretary Benson lacked authority to distribute even a single absentee voter ballot application—much less the *millions* of absentee ballot applications Secretary Benson chose to flood across Michigan.

Secretary Benson also violated Michigan law when she launched a program in June 2020 allowing absentee ballots to be requested online, *without* signature verification as expressly required under Michigan law. The Michigan Legislature did not approve or authorize Secretary Benson's unilateral actions. MCL § 168.759(4) states in relevant part: "An applicant for an absent voter ballot shall sign the application. Subject to section 761(2), a clerk or assistant clerk shall not deliver an absent voter ballot to an applicant who does not sign the application." MCL § 168.761(2), in turn, states: "The qualified voter file must be used to determine the genuineness of a signature on an application for an absent voter ballot. Signature comparisons must be made with the digitized signature in the qualified voter file." Nowhere does Michigan Law authorize counting of an absent voter's ballot without verifying the voter's signature.

II. THE DISTRICT COURT ERRED WHEN IT DISMISSED PETITIONERS' EMERGENCY MOTION AND REQUEST FOR PRELIMINARY INJUNCTION BY HOLDING THAT THE PETITIONERS STATE-LAW CLAIMS AGAINST RESPONDENTS WERE BARRED BY ELEVENTH AMENDMENT IMMUNITY.

The Sixth Circuit recently addressed the scope of Eleventh Amendment sovereign immunity in the election context in *Russell v. Lundergan-Grimes*, 784 F.3d 1037, 1045 (6th Cir. 2015). In *Russell*, the appellate court held that federal courts do in fact have the power to provide injunctive relief where the defendants, "The Secretary of State and members of the State Board of Elections," were, like State Respondents in this case, "empowered with expansive authority to "administer the election laws of the state." *Russell*, 784 F.3d at 1047 (internal quotations omitted).

> The appellate court held that the Eleventh Amendment does not bar"[e]njoining a statewide official under *Young* based on his obligation to enforce a law is appropriate" where the injunctive relief requested sought to enjoin actions (namely, prosecution) that was within the scope of the official's statutory authority." *Id.*

This is precisely what the Petitioners request in the Amended Complaint, namely, equitable and injunctive relief "enjoining Secretary [of State] Benson and Governor Whitmer from transmitting the currently certified election results to the Electoral College." (See ECF No. 6 ¶1). Under *Russell,* the Eleventh Amendment is no bar to this Court granting the requested relief. (R. 49, PgID 3083).

III. THE DISTRICT COURT ERREONEOUSLY HELD THAT THE PETITIONERS CLAIMS SEEKING A PRELIMINARY INJUNCTION WERE MOOT WHEN THE ELECTORAL COLLEGE HAS YET TO CERTIFY THE NATIONAL ELECTION AND AS SUCH THE RELIEF REQUESTED IS TIMELY.

This Court can grant the primary relief requested by Petitioners – de- certification of Michigan's election results and an injunction prohibiting State Respondents from transmitting the certified results – as discussed below in Section I.E. on abstention. There is also no question that this Court can order other types of declaratory and injunctive relief requested by Petitioners – in particular, impounding Dominion voting machines and software for inspection – nor have State Respondents claimed otherwise. (R. 49, PgID 3082). The District Court erroneously held that the Petitioners claims seeking a preliminary injunction were barred as being moot when the Electoral College has yet to certify the national election and as such the relief is timely.

IV. THE DISTRICT COURT ERRED WHEN IT HELD THAT THE PETITIONERS' CLAIMS WERE BARRED BY LACHES WHEN THE CLAIMS WERE IN FACT TIMELY MADE AND ADDRESS HARM THAT IS CONTINUING AND FORTHCOMING, AND THE RESPONDENTS ARE NOT PREJUDICIED BY ANY DELAYS IN THE FILING BY THE PETITIONERS.

Laches consists of two elements, neither of which are met here: (1) unreasonable delay in asserting one's rights; and (2) a resulting prejudice to the defending party. *Meade v. Pension Appeals and Review Committee*, 966 F.2d 190, 195 (6th Cir. 1992). The bar is even higher in the voting rights or election context, where Respondents asserting the equitable defense must show that the delay was due to a "deliberate" choice to bypass judicial remedies and they must do so "by clear and

convincing" evidence. *Toney v. White*, 488 F.2d 310, 315 (5th Cir. 1973). Petitioners' "delay" in filing is a direct result of Respondents failure to complete counting until November 17, 2020. Further, Petitioners' filed their initial complaint on November 25, 2020, two days after the Michigan Board of State Canvassers certified the election on November 23, 2020. (R. 49, PgID 3082).

Additionally, the "delay" in filing after Election Day is almost entirely due to Respondents failure to promptly complete counting until weeks after November 3, 2020. Michigan county boards did not complete counting until November 17, 2020, and Defendant Michigan Board of State Canvassers did not do so until November 23, 2020, ECF No. 31 at 4—a mere two days before Petitioners filed their initial complaint on November 25, 2020. Petitioners admittedly would have preferred to file sooner, but needed time to gather statements from dozens of fact witnesses, retain and engage expert witnesses, and gather other data supporting their Complaint, and this additional time was once again a function of the sheer volume of evidence of illegal conduct by Respondents and their collaborators. Respondents cannot now assert the equitable defense of laches, when any prejudice they may suffer is entirely a result of their own actions and misconduct.

Moreover, much of the misconduct identified in the Complaint was not apparent on Election Day, as the evidence of voting irregularities was not discoverable until weeks after the election. William Hartman explains in a sworn statement dated November 18, 2020, that "on November 17th there was a meeting of the Board of Canvassers to determine whether to certify the results of Wayne County" and he had "determined that approximately 71% of Detroit's 134 Absentee Voter

Counting Boards were left unbalanced and unexplained." He and Michele Palmer voted *not* to Certify and only later agreed to certify after a representation of a full audit, but then reversed when they learned there would be no audit. (See ECF No. 6, Ex. 11 &12.) Further, filing a lawsuit while Wayne County was still deliberating whether or not to certify, despite the demonstrated irregularities, would have been premature. Respondents appropriately exhausted their non-judicial remedies by awaiting the decision of the administrative body charged with determining whether the vote count was valid. Id.

It is also disingenuous to try to bottle this slowly counted election into a single day when in fact waiting for late arriving mail ballots and counting mail ballots persisted long after "Election Day."

III. THE DISTRICT COURT ERRED WHEN IT DISMISSED THE PETITIONERS' CLAIMS BASED ON *COLORADO RIVER* ABSTENTION WITHOUT IDENTIFYING ANY PARALLEL STATE-COURT PROCEEDINGS THAT ADDRESS THE IDENTICAL RELIEF SOUGHT.

The District Court accepted State Respondent' abstention claim arguments based on Colorado River Water Conservation Dist. v. United States, 424 U.S. 800, 808 (1976), a case addressing concurrent federal and state jurisdiction over water rights. See ECF No. 31 at 19-20. Presumably it did so because the case setting the standard for federal abstention in the voting rights and state election law context, Harman v. Forssenius, 380 U.S. 528, 534, (1965) is not favorable to the Respondents.

This Court rejected the argument that federal courts should dismiss voting rights claims based on federal abstention, emphasizing that abstention may be appropriate where "the federal constitutional question is dependent upon, or may be materially altered by, the determination of an uncertain issue of state law," and "deference to state court adjudication only be made where the issue of state law is uncertain." Harman, 380 U.S. at 534 (citations omitted). But if state law in question "is not fairly subject to an interpretation which will render unnecessary or substantially modify the federal constitutional question," then "it is the duty of the federal court to exercise its properly invoked jurisdiction." *Id.* (citation omitted).

Respondents described several ongoing state proceedings where there is some overlap with the claims and specific unlawful conduct identified in the Complaint. See ECF No. 31 at 21-26. But State Respondents have not identified any uncertain issue of state law that would justify abstention. See ECF No 31 at 21-26. Instead, as described below, the overlaps involve factual matters and the credibility of witnesses, and the finding of these courts would not resolve any uncertainty about state law that would impact Petitioners' constitutional claims (Electors and Elections Clauses and Equal Protection and Due Process Clauses).

Respondents' reliance on *Colorado River* is also misplaced insofar as they contend that abstention would avoid "piecemeal" litigation, *see id.* at 38, because abstention would result in exactly that. The various Michigan State proceedings raise a number of isolated factual and legal issues in separate proceedings, whereas Plaintiffs' Complaint addresses most of the legal claims and factual evidence submitted in

Michigan State courts, and also introduces a number of new issues that are not present in any of the State proceedings. Accordingly, the interest in judicial economy and avoidance of "piecemeal" litigation would be best served by retaining jurisdiction over the federal and state law claims.

Respondents cited to four cases brought in the State courts in Michigan, none of which have the same plaintiffs, and all of which are ongoing and have not been resolved by final orders or judgments. (See ECF Nos. 31-6 to 31-15.)

The significant differences between this case and the foregoing State proceedings would also prevent issue preclusion. A four-element framework finds issue preclusion appropriate if: (1) the disputed issue is identical to that in the previous action, (2) the issue was actually litigated in the previous action, (3) resolution of the issue was necessary to support a final judgment in the prior action, and (4) the party against whom issue preclusion is sought had a full and fair opportunity to litigate the issue in the prior proceeding. See Louisville Bedding Co. v. Perfect Fit Indus., 186 F. Supp. 2d 752, 753-754, 2001 U.S. Dist. LEXIS 9599 (citing Graco Children's Products, Inc. v. Regalo International, LLC, 77 F. Supp. 2d 660, 662 (E.D. Pa. 1999). None of these requirements have been met with respect to petitioners or the claims in the Complaint.

Of equal importance is the fact that the isolated claims in State court do not appear to present evidence demonstrating that a sufficient number of illegal ballots were counted to affect the result of the 2020 General Election. The fact and expert witnesses presented in the Complaint do. As summarized below, the Complaint alleges and

provides supporting evidence that the number of illegal votes is potentially multiples of Biden's 154,188 margin in Michigan. (See ECF No. 6 ¶16).

A. A report from Russell Ramsland, Jr. showing the "physical impossibility" of nearly 385,000 votes injected by four precincts/township on November 4, 2020, that resulted in the counting of nearly 290,000 more ballots processed than available capacity (which is based on statistical analysis that is independent of his analysis of Dominion's flaws), a result which he determined to be "physically impossible" (see Ex. 104 ¶14).

B. A report from Dr. Louis Bouchard finding it to be "statistically impossible" the widely reported "jump" in Biden's vote tally of 141,257 votes during a single time interval (11:31:48 on November 4), see Ex. 110 at 28).

C. A report from Dr. William Briggs, showing that there were approximately 60,000 absentee ballots listed as "unreturned" by voters that either never requested them, or that requested and returned their ballots. (See Ex. 101).

D. A report from Dr. Eric Quinell analyzing the anomalous turnout figures in Wayne and Oakland Counties showing that Biden gained nearly 100% and frequently more than 100% of all "new" voters in certain townships/precincts when compared to the 2016 election, and thus indicates that nearly 87,000 anomalous and likely fraudulent votes came from these precincts. (See Ex. 102).

E. A report from Dr. Stanley Young that looked at the entire State of Michigan and identified nine "outlier" counties that had both significantly increased turnout in 2020 vs. 2016, almost all of which went to Biden totaling over 190,000 suspect "excess" Biden votes (whereas turnout in Michigan's 74 other counties was flat). (See Ex. 110).

F. A report from Robert Wilgus analyzing the absentee ballot data that identified a number of significant anomalies, in particular, 224,525 absentee ballot applications that were both sent and returned on the same day, 288,783 absentee ballots that were sent and returned on the same day, and 78,312 that had the same date for all (i.e., the absentee application was sent/returned on same day as the absentee ballot itself was sent/returned), as well as an additional 217,271 ballots for which there was no return date (i.e., consistent with eyewitness testimony described in Section II below). (See Ex. 110).

G. A report from Thomas Davis showing that in 2020 for larger Michigan counties like Monroe and Oakland Counties, that not only was there a higher percentage of Democrat than Republican absentee voters in every single one of hundreds of precincts, but that the Democrat advantage (i.e., the difference in the percentage of Democrat vs. Republican absentee voter) was consistent (+25%-30%) and the differences were highly correlated, whereas in 2016 the differences were uncorrelated. (See Ex. 110).

H. A report by an affiant whose name must be redacted to protect his safety concludes that "the results of the analysis and the pattern seen in the included graph strongly suggest a systemic, system-wide algorithm was enacted by an outside agent, causing the results of Michigan's vote tallies to be inflated by somewhere between three and five-point six percentage points. Statistical estimating yields that in Michigan, the best estimate of the number of impacted votes is 162,400. However, a 95% confidence interval calculation yields that as many as 276,080 votes may have been impacted." (See Ex. 111 ¶13).

IV. THE DISTRICT COURT ERRED WHEN IT HELD THAT PETITIONERS, WHO ARE CANDIDATES FOR THE OFFICE OF PRESIDENTIAL ELECTOR, LACKED STANDING TO PURSUE THEIR EQUAL PROTECTION AND OTHER CLAIMS

Petitioners are not simply voters seeking to vindicate their rights to an equal and undiluted vote, as guaranteed by Michigan law and the Equal Protection Clause of the U.S. Constitution, as construed by this court in *Reynolds v. Sims*, 377 U.S. 533 (1964) and its progeny. Rather, Petitioners are candidates for public office. Having been selected by the Republican Party of Michigan at its 2019 Fall convention, and their names having been certified as such to the Michigan Secretary of States pursuant to Michigan Election Law 168.42, they were nominated to the office of Presidential Electors in the November 2020 election pursuant to MCL § 168.43. Election to this office is limited to individuals who have been citizens of the United States for 10 years, and registered voters of the district (or the

state) for at least 1 year, and carries specific responsibilities defined by law, namely voting in the Electoral College for President and Vice-President. MCL §168.47. While their names do not appear on the ballot, Michigan Law makes it clear that the votes cast by voters in the presidential election are actually votes for the presidential electors nominated by the party of the presidential candidate listed on the ballot. MCL § 168.45.[2]

The standing of Presidential Electors to challenge fraud, illegality and disenfranchisement in a presidential election rests on a constitutional and statutory foundation—as if they are candidates, not voters.[3] Theirs is not a generalized grievance shared by all other voters; they are particularly aggrieved by being wrongly denied the responsibility, emoluments and honor of serving as members of the Electoral College, as provided by Michigan law. Petitioners have the requisite legal standing, and the district court must be reversed on this point. As in the Eighth Circuit case of *Carson v. Simon*, 978 F.3d 1051 (8th Cir. 2020),"[b]ecause Minnesota law plainly treats presidential electors as candidates, we do, too." *Id*. at 1057. And this Court's opinion in *Bush v. Gore*, 531 U.S. 98 (2000) (failure to set state-wide standards for recount of votes for presidential electors violated federal Equal Protection), leaves no doubt that presidential candidates have standing to raise post-election challenges to the

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[2] This section provides: " Marking a cross (X) or a check mark ( ) in the circle under the party name of a political party, at the general November election in a presidential year, shall not be considered and taken as a direct vote for the candidates of that political party for president and vice-president or either of them, but, as to the presidential vote, as a vote for the entire list or set of presidential electors chosen by that political party and certified to the secretary of state pursuant to this chapter."

[3] *See* https://sos.ga.gov/index.php/Elections/voter_registration_statistics, last visited November 5, 2020.

manner in which votes are tabulated and counted. The district court therefore clearly erred in concluding that Petitioners lack standing to raise this post-election challenge to the manner in which the vote for *their* election for public office was conducted.

There is further support for Petitioners' standing in the Court's recent decision in *Carney v. Adams* involving a challenge to the Delaware requirement that you had to be a member of a major political party to apply for appointment as a judge. In Adams, the Court reiterated the standard doctrine about generalized grievance not being sufficient to confer standing and held that *Adams* didn't have standing because he "has not shown that he was 'able and ready' to apply for a judicial vacancy in the imminent future". In this case, however, Petitioners were not only "able and ready" to serve as presidential electors, they were nominated to that office in accordance with Michigan law.

The Respondents have presented compelling evidence that Respondents not only failed to administer the November 3, 2020 election in compliance with the manner prescribed by the Michigan Legislature in the Michigan Election Code, MCL §§ 168.730-738, but that Respondents executed a scheme and artifice to fraudulently and illegally manipulate the vote count to ensure the election of Joe Biden as President of the United States. This conduct violated Petitioners' equal protection and due process rights, as well their rights under the Michigan Election Code and Constitution. *See generally* MCL §§ 168.730-738 & Mich. Const. 1963, art. 2, §4(1).

In considering Petitioners' constitutional and voting rights claims under a "totality of the circumstances" standard, this Court must consider the cumulative effect of the specific instances or categories of Respondents' voter dilution and disenfranchisement claims. Taken together, these various forms of unlawful and unconstitutional conduct destroyed or shifted tens or hundreds of thousands of Trump votes, and illegally added tens or hundreds of thousands of Biden votes, changing the result of the election, and effectively disenfranchising the majority of Michigan voters. If such errors are not address we may be in a similar situation as Kenya, where voting has been viewed as not simply irregular but a complete sham. (Coram: Maraga, CJ & P, Mwilu, DCJ & V-P, Ojwang, Wanjala, Njoki and Lenaola, SCJJ)

CONCLUSION

WHEREFORE, the Petitioners respectfully request this Honorable Court enter an emergency order instructing Respondents to de-certify the results of the General Election for the Office of the President, pending disposition of the forthcoming Petition for Certiorari. Alternatively, Petitioners seek an order instructing the Respondents to certify the results of the General Election for Office of the President in favor of President Donald Trump.

Petitioners seek an emergency order prohibiting Respondents from including in any certified results from the General Election the tabulation of absentee and mailing ballots which do not comply with the Michigan Election Code, including the tabulation of absentee and mail-in ballots Trump Campaign's watchers were prevented from observing

or based on the tabulation of invalidly cast absentee and mail-in ballots which (i) lack a secrecy envelope, or contain on that envelope any text, mark, or symbol which reveals the elector's identity, political affiliation, or candidate preference, (ii) do not include on the outside envelope a completed declaration that is dated and signed by the elector, (iii) are delivered in-person by third parties for non-disabled voters, or (iv) any of the other Michigan Election Code violations set forth in Section II of the petition.

Petitioners respectfully request an order of preservation and production of all registration data, ballots, envelopes, voting machines necessary for a final resolution of this dispute.

Respectfully submitted,

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Date: December 10, 2020

CERTIFICATE OF COMPLIANCE

The attached Writ of Certiorari complies with the type-volume limitation. As required by Supreme Court Rule 33.1(h), I certify that the document contains 8,324 words, excluding the parts of the document that are exempted by Supreme Court Rule 33.1(d).

Respectfully submitted,

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Date: December 11, 2020

CASE NO.

IN THE SUPREME COURT OF THE UNITED STATES

TIMOTHY KING, MARIAN ELLEN SHERIDAN, JOHN EARL HAGGARD, CHARLES JAMES RITCHARD, JAMES DAVID HOOPER and DAREN WADE RUBINGH,

Plaintiffs/Petitioners,

v.

GRETCHEN WHITMER, in her official capacity as Governor of the State of Michigan, JOCELYN BENSON, in her official capacity as Michigan Secretary of State and the Michigan
BOARD OF STATE CANVASSERS

Defendants/Respondents,

and

CITY OF DETROIT, DEMOCRATIC NATIONAL COMMITTEE and MICHIGAN DEMOCRATIC PARTY, and ROBERT DAVIS,

Intervenor-Defendants/Respondents.

PROOF OF SERVICE

STATE OF MICHIGAN)
)ss
COUNTY OF WAYNE)

STEFANIE LAMBERT JUNTTILA, affirms, deposes and states that on the 11th day of December, 2020, she did cause to be served the following:

1. PETITION FOR WRIT OF CERTIORARI On Petition for a Writ of Certiorari to the United States Federal District Court for the Eastern District of Michigan;
2. Attached Exhibits;
3. Certificate of Conformity;
4. Proof of Service

UPON:

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By email and by placing said copies in a properly addressed envelope with sufficient postage fully prepaid, and placing in a U.S. Mail Receptacle.

FURTHER AFFIANT SAYETH NOT.

/s/ Stefanie Lambert Junttila
STEFANIE LAMBERT JUNTTILA

EXHIBIT 9

Nate Fink

From: Stefanie Lambert <attorneystefanielambert@gmail.com>
Sent: Thursday, January 21, 2021 7:22 PM
To: Darryl Bressack
Subject: Re: King v Whitmer - 2:20-cv-13134

It's my understanding that Sidney Powell's team is preparing it and I will submit it as soon as I receive it.

On Thu, Jan 21, 2021 at 7:17 PM Darryl Bressack <dbressack@finkbressack.com> wrote:

> Have you submitted this yet?
>
> ---
>
> **From:** Darryl Bressack <dbressack@finkbressack.com>
> **Sent:** Monday, January 18, 2021 3:43 PM
> **To:** Stefanie Lambert <attorneystefanielambert@gmail.com>
> **Subject:** Re: King v Whitmer - 2:20-cv-13134
>
> I consent on behalf of the city of Detroit
>
> Sent from my iPhone
>
> ---
>
> **From:** Stefanie Lambert <attorneystefanielambert@gmail.com>
> **Sent:** Monday, January 18, 2021 3:41:54 PM
> **To:** Darryl Bressack <dbressack@finkbressack.com>
> **Subject:** Re: King v Whitmer - 2:20-cv-13134
>
> Counsel,
>
> Please advise if you will you consent to dismissal/withdrawal of the appeal and petition for certiorari?
>
> Sincerely,

Stefanie Lambert Junttila

On Mon, Jan 18, 2021 at 10:53 AM Darryl Bressack <dbressack@finkbressack.com> wrote:

Counsel,

Have you filed a dismissal/withdrawal of the appeal and petition for certiorari in the King v Whitmer case? If not, please advise when you intend to do so.

Darryl Bressack

Darryl Bressack

T: 248-971-2500 | M: 734-255-4004
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EXHIBIT 10

(ORDER LIST: 592 U.S.)

MONDAY, FEBRUARY 22, 2021

CERTIORARI -- SUMMARY DISPOSITIONS

20-31 McCOY, PRINCE V. ALAMU, TAJUDEEN

The petition for a writ of certiorari is granted. The judgment is vacated, and the case is remanded to the United States Court of Appeals for the Fifth Circuit for further consideration in light of *Taylor* v. *Riojas*, 592 U. S. ___ (2020) (*per curiam*).

20-683 WILKE, DIRK, ET AL. V. PCMA

The petition for a writ of certiorari is granted. The judgment is vacated, and the case is remanded to the United States Court of Appeals for the Eighth Circuit for further consideration in light of *Rutledge* v. *Pharmaceutical Care Management Assn.*, 592 U. S. ___ (2020).

ORDERS IN PENDING CASES

20A63 TRUMP, DONALD J. V. VANCE, CYRUS R., ET AL.

The application for a stay presented to Justice Breyer and referred to the Court is denied.

20M50 SEIDMAN, LAWRENCE T. V. WEILER, FRANK D., ET AL.

The motion to direct the Clerk to file a petition for a writ of certiorari out of time is denied.

20M51 THOMAS, BERNARD V. UNITED STATES

The motion for leave to file a petition for a writ of certiorari with the supplemental appendix under seal is granted.

20-6980 WEST, MICHAEL R. V. UNITED STATES

20-6989 SIMS, RODNEY L. V. SEIBEL, WARDEN

The petitions for writs of certiorari are denied.

20-477 DAY, SHANIKA, ET AL. V. WOOTEN, FRANKLIN, ET AL.

The petition for a writ of certiorari is denied. Justice Barrett took no part in the consideration or decision of this petition.

20-565 MATTHEWS, GEORGE, ET UX. V. BECKER, ANDREW J., ET AL.

The motion of respondents for damages and costs pursuant to Rule 42.2 is denied. The petition for a writ of certiorari is denied.

20-634 ROBINSON, FELICIA V. WEBSTER COUNTY, MS, ET AL.

The motion of Network for Victim Recovery of DC for leave to file a brief as *amicus curiae* is granted. The petition for a writ of certiorari is denied.

20-810 KELLY, MIKE, ET AL. V. PENNSYLVANIA, ET AL.

The motion of 28 Current Members of the House of Representatives for leave to file a brief as *amici curiae* is granted. The petition for a writ of certiorari is denied.

20-815 KING, TIMOTHY, ET AL. V. WHITMER, GOV. OF MI, ET AL.

The petition for a writ of certiorari before judgment is denied.

20-845 DONALD J. TRUMP FOR PRESIDENT V. DEGRAFFENREID, ACTING SEC. OF PA, ET AL.

The motion of Constitutional Attorneys for leave to file a brief as *amici curiae* is granted. The motion of Republican Party of Pennsylvania for leave to file a brief as *amicus curiae* is granted. The petition for a writ of certiorari is denied.

EXHIBIT 11

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

ROSLYN LA LIBERTE, Plaintiff,	:	18-CV-5398 (DLI)(VMS)
	:	January 11, 2021
V.	:	Brooklyn, New York
JOY REID, Defendant.	:	

TRANSCRIPT OF CIVIL CAUSE FOR TELEPHONE CONFERENCE
BEFORE THE HONORABLE VERA M. SCANLON
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

For the Plaintiff: DAVID OLASOV, ESQ.
LUCIEN L. WOOD, ESQ.

For the Defendant: JOHN REICHMAN, ESQ.
DAVID YEGER, ESQ.
THEODORE BOUTROUS, ESQ.

Audio Operator:

Court Transcriber: ARIA SERVICES, INC.
c/o Elizabeth Barron
102 Sparrow Ridge Road
Carmel, NY 10512
(845) 260-1377

Proceedings recorded by electronic sound recording, transcript produced by transcription service

THE COURT: La Liberte v. Reid, 18-CV-5398.

Let's start with plaintiff's counsel's appearance.

MR. OLASOV: David Olasov for Roslyn La Liberte and Lin Wood for Roslyn La Liberte.

MR. WOOD: Yes, good morning, your Honor, this is Lin Wood.

THE COURT: Hello.

All right, for the defendant?

MR. REICHMAN: Good morning, your Honor. This is John Reichman from John Reichman Law, and I am joined by my colleague, David Yeger. We also have our co-counsel from Gibson Dunn, who will introduce themselves.

MR. BOUTROUS: Yes, your Honor. This is Theodore Boutrous from Gibson Dunn & Crutcher for Ms. Reid, and I'm joined by my colleagues, Marissa Moshell and Marcellus McRea.

THE COURT: All right. So we're here for the discovery issues since you're back from the circuit. So we have at 57 your proposed order and then at 58, the letter complaining about the initial disclosures. I've read the letter. I think it's premature. We don't have a scheduling order and so you can complain that there wasn't a need to have these

initial disclosures done. I know you submitted your initial -- proposed initial scheduling order having some earlier dates on there but they're not the effective dates from a court order, so I'm just going to reset it.

Plaintiff, you should look at the criticism that the defendant is offering as to the alleged incompleteness of your initial disclosures and you should both have a conversation. Then if you still can't work it out, you can let me know.

Obviously, there's a fairly extensive record already in this case on that legal issue. Is there anything anybody wants to say with regard to the merits that you think I should know. Mostly, does it affect discovery, and then we'll talk about the particulars of the discovery schedule. So for plaintiff?

MR. OLASOV: This is David Olasov. Mr. Reichman and I have had a conversation in which I pointed out to him that the answer to the amended complaint that was filed after the Second Circuit's decision in our view pleaded matters that we believe are foreclosed by the decision. I've agreed to -- for plaintiff to provide them with a letter that indicates which defenses that they've raised we believe are foreclosed by this decision. Of course, that has some

bearing on the scope of discovery since there's no point in having discovery on matters that are foreclosed by the decision.

THE COURT: All right. Defendants, your view?

MR. REICHMAN: Well, we await the letter but I don't think it's really going to have an impact whatsoever on discovery. In our view, I think the only defense that is arguably precluded is the legal defense with respect to whether the posts were opinion or not, but that wouldn't be the subject of discovery in any event.

THE COURT: All right. And before we dive into the discovery, is there any possibility of having settlement discussions? You've been at this for a while now. Has there been anything? I mean, you could have discussions with each other, you could have a mediator try to bridge whatever gap there is because you obviously having been doing this, what, since 2018?

MR. WOOD: Your Honor, this is Lin Wood. I think it's standard handling, from my experience at least, that from the plaintiff's perspective, the plaintiff is always willing to listen to any reasonable offer that a defendant makes. But if the defendant has no interest, then obviously, our hands our tied. So I

would kind of throw the ball over to the defense to say if there's an interest and, if so, if there are any suggestions on how a discussion could take place. If there's no interest, then we obviously can just continue to move forward.

MR. REICHMAN: This is John Reichman, your Honor. I think for reasons that we set out already to the Court with respect to the initial disclosures, we don't know of any real damages that the plaintiff has sustained. And before even considering any kind of settlement, we need to know at least what the plaintiff's damages are and the basis for them, and we could then take it from there.

THE COURT: All right, so I'll take that as a maybe and say that we're going to set the dates --

MR. WOOD: I like -- Judge, I appreciate someone who is always on the optimistic side.

THE COURT: I try. All right, what --

MR. REICHMAN: Your Honor -- I'm sorry. There is another matter that we'd like to bring to the Court's attention, and it involves Mr. Wood, plaintiff's lead counsel. Over the weekend, we have come across some very disturbing information about the conduct of Mr. Wood. I'm sure you're aware that since the election, Mr. Wood has been actively engaged in

attempting to overturn the election results. All of those cases have been dismissed. There have also been sanctions and disqualification motions filed.

MR. WOOD: I have not been sanctioned.

MR. REICHMAN: Now Mr. Wood --

THE COURT: One at a time.

MR. REICHMAN: -- has taken an even far darker turn. He is actively and has actively supported the insurrection against our government and called for the execution of the Vice President.

MR. WOOD: Oh, nonsense.

MR. REICHMAN: He's been permanently barred from Twitter and his recent attempt to submit a post on Parler calling for the Vice President's execution was not permitted. In fact, the posting of his tweet on Parler was one of the reasons cited by Apple and Google to ban Parler from their platforms. The right to appear pro hac vice in this District is a privilege and not a right, and we believe there are at least three reasons why that privilege should be revoked by the Court.

First, in New York, every attorney pledges to solemnly swear that he or she will support the Constitution of the United States. Mr. Wood is seeking to undermine, not support the U.S. Constitution. His

call for violence in the streets and his tweets and public utterances have been an impetus of the insurrections to seize the Capitol. It's noteworthy that the last tweet of the woman shot at the Capitol, Ashley Babbitt, was a re-posting of one of Mr. Wood's posts.

Second, in violation of the disciplinary rules, Mr. Wood has gone around the country filing utterly frivolous lawsuits based on outright lies and nonexistent legal theories. In Delaware, a court has issued a show-cause order, citing his conduct in Wisconsin and Georgia actions, asking him to show cause why he should not be disqualified from practicing law in Delaware. In Michigan, after the dismissal of the lawsuit he filed there, a motion has been filed seeking sanctions and disqualification and disbarment.

Third, Mr. Wood is actively threatening the well-being of the judiciary, especially Justice Roberts. He has painted Justice Roberts as a murderous pedofile. He suggested that the Chief Justice was mixed up in the death of Justice Scalia, was trafficking in children, and apparently hinting that he may have had Epstein killed if he was killed at all. He recently tweeted, "My information from reliable sources is that Roberts arranged an illegal adoption of

two children from Wales through Jeffrey Epstein."

Now, as we all now clearly and sadly know, words can and will lead to violence. So under the Disciplinary Rules at Section 8.3, we believe we have an ethical duty to report this matter to the Court and we would --

MR. OLASOV: Who is speaking now?

MR. REICHMAN: Please.

MR. OLASOV: Who is speaking?

MR. REICHMAN: John Reichman.

THE COURT: Please stop, stop interrupting.

MR. REICHMAN: And we welcome --

THE COURT: All right, continue.

MR. REICHMAN: So we welcome the Court's guidance with respect to whether and how to further this issue. You know, we are prepared to provide more information about Mr. Wood's activity. I would add that all of these are matters of public record. It seems to us there are at least two options with respect to how to proceed. We could submit a letter brief under your Honor's rules directly seeking the revocation of the pro hac vice order. The other way would be to present the information and ask the Court whether it could issue a show-cause order such as was done in Delaware. That's a procedure that some judges

have used in considering the revocation of the right to practice.

THE COURT: All right, let's first hear from Mr. Wood. Then we'll talk about the procedure.

Go ahead, Mr. Wood.

MR. WOOD: Thank you, your Honor. It's kind of hard to respond to such serious accusations when I am not at all sure about the accuracy of some of the things that have been said to the Court. In fact, I know some of them are inaccurate. And I have not been sanctioned by any court in 43 and a half years, not any court over the course of my career, nor any court now.

It's almost like I'm being -- trying to make me into a scapegoat. I've had nothing to do, number one, with what happened in Washington D.C. I didn't call for the people to go up there and meet, I didn't call for anybody to go to the Capitol. I certainly didn't call for anybody to create a scene of what appeared to be some type of violence. So whether this lady that died had re-tweeted me, I have no control over that.

What I can say to the Court and, if necessary, at the appropriate time, present to the Court is that what I have said publicly, I have reliable information to support the truth of it. What

I have done with Sidney Powell is, she asked me to sign on to two or three lawsuits where she was the lead counsel, in anticipation that there may be a need for a trial lawyer. I didn't draft the lawsuits. There were some typographical errors and things done in some of them that upset a judge in Wisconsin, I believe, maybe Michigan. But if you had a full hearing on what happened there, I didn't have anything to do with that, other than I did agree to sign on to help Sidney.

I know for a matter of fact that all of the information that Sidney Powell has presented in the litigation with respect to the fraud in the election, there is a mountain of admissible evidence in the form of affidavits, authenticated videos, expert evidence from reliable and credible experts. So the lawsuits were filed as they are allowed to be filed.

The only other lawsuits that I've been involved in, I filed for myself as it related to the Georgia election, where I contended that the election was conducted illegally and in violation of precedent of the Supreme Court that requires that the election rules be set by the state legislature. In Georgia, they conducted the election with absentee ballots and mail-in ballots based on a procedure that came up -- that came up from a settlement agreement by the

Secretary of State with the Democratic Party. It was never adopted by the legislature, so that any allegation that I filed a frivolous lawsuit is in fact frivolous.

The lawsuit that I have presently have is pending before the United States Supreme Court in a writ of certiorari. It has not yet been ruled on but yet it's been pending for some almost three weeks. They may still accept it. So the Georgia litigation I'm involved in is certainly within the rules and the laws of this country. The litigation that Sidney Powell has filed, where I've been asked to sign on to, is also based on legitimate causes of action, and I know for a fact based on a wealth of material and admissible evidence to support the allegations.

No court in any of the rulings -- no court for some reason has mentioned the evidence of the election fraud. So there's been no finding by any court that the evidence of election fraud is lacking. In fact, if they discussed it, they would have to say it was literally conclusive that there was fraud. So now I'm being attacked for taking legitimate actions as a lawyer, legitimate actions as a plaintiff in Georgia. They're trying to pin on me the sad tragedy of what happened in Washington D.C., and now they're even

saying that my tweet brought down Parler. I've never heard of where one man -- I know the pen is mightier than the sword but what I tweeted about the Vice President was rhetorical hyperbole. I did not call for any violence against any individual that would result in immanent harm or a serious threat of harm to that person.

I've seen tweets and posts where people have asked protestors to be shot. I didn't do that. I've seen tweets where they hold the President's head up where it's been beheaded. I didn't do that. So this is a matter of what's in the eye of the beholder. What I did was, I posted a photograph of where a Capitol police officer had opened the doors to let people in that appear to be, and the evidence seems to be suggesting, were members of either Antifa or Black Lives Matter. I posted the photograph of that and I said, they let them in. They're all traitors, get the firing squads ready, tense first.

Now, I don't control firing squads. I couldn't run out and put together a firing squad and go shoot the Vice President. But the law is that if you are guilty of treason, one of the penalties available, as publicly ratified recently in the last month by the Department of Justice is the death penalty by firing

squad, even by hanging.

If you look over and say that the doctor who commits an abortion is a murderer, that's rhetorical hyperbole. So what I said, because I know the law of defamation, my statement was rhetorical hyperbole. It was not intended, nor did anybody seriously think that that was a call to run out and put the Vice President in front of a firing squad. But for some reason, my voice has reached a level, not because I wanted it to -- I've never sought recognition in my life as a lawyer. I just do my job. But for some reason, my voice has reached a level where many people listen to me. That's their choice. But I talk about facts and truth, I don't make things up.

But what I do differently than most I guess people that are voices to be heard is I relate almost all of what I say to people to my belief in God, so that my voice is one both of truth and a voice that talks about things from a faith basis. So I'm entitled to those opinions and I don't think I ought to be chastised and called upon to be put on trial in effect for doing what the law allows me to do and saying things that I believe are consistent with what I know to be the teachings of Jesus Christ.

So I've been accused of being crazy, nuts.

I've never read such things about me. If you went back a few months ago, people would have told you I was the greatest, smartest defamation lawyer in the world. I've fought for truth and I've handled some big cases, starting with Richard Jewell in 1996, where I went up against the FBI and the media through representing a number of other people in high-profile cases.

I've had cases of success against CNN, Washington Post, a number of media outlets. I represent Nicholas Sandman (ph) and we've had very good success in Kentucky. Nobody has complained about my conduct in Kentucky. I just won a motion to dismiss against Gannett newspapers, and then I did some work when I formed a 501(c)(4) foundation this summer, #fightback. The foundation's purpose was, I thought and still believe that the country is undergoing a color revolution. So I said our constitutional rights are going to be at risk and I formed that foundation to, in the future, be an advocate for maintaining and protecting our constitutional rights.

Right after I formed it, people asked me to help a young man named Kyle Rittenhouse. I did. I went out and I took the time and made the effort to raise two million dollars to make the boy's cash bond in Kenosha. Actually -- yeah, in Kenosha. Then since

that time, I'm not doing anything with respect to raising any more money for Kyle, but I was trying to help the young boy because I believe, based on the video evidence, that the young man was exercising his right of self defense and he was in effect a political prisoner and he ought to be let out. I was worried about them hurting him when he was in jail.

So if you want to, your Honor, look at these recent accusations against me, I would question why are they being made, who's behind it? But I would also urge the Court to take the time to look at the body of my life's work for 43 years. I love this country. I love the rule of law. I have never advocated that anyone should break the law. I've advocated for people to follow the law.

I've been upset with what I've seen from the evidence about how this election was conducted. I believe it was a fraud. Now, I'm not going to be the ultimate arbiter of that but I have the right to serve as a lawyer for people that do litigate it, and I have the right, in the case of Georgia, to be a plaintiff because I believe my constitutional right to vote has been diminished and it's in violation of equal protection.

So how Lin Wood, the lawyer, has become now

Lin Wood, the guy that this man would sit there and represent to you is advocating the overthrow of our government, the death of our Vice President, and violence in the streets, you know, I can only say this: It's errant nonsense. I believe it's part of a political agenda to harm me because of my message. If you can't shoot the message because it's solid, shoot the messenger. That's what they're trying to do, Judge. They're trying to attack the messenger because they can't attack the message.

THE COURT: So --

MR. WOOD: So I would ask for at least -- if the Court is interested in hearing all of this stuff, I believe I'm entitled to due process and an opportunity to respond to, with evidence and other information, any type of accusation that's made against me before your Honor does something that has never been done to me. I've practiced law in 27 states. Even in Michigan, the City of Detroit is trying to get me disbarred. Why? I'm not a member of the Michigan Bar. They're taking action -- they're saying that I ought to be sanctioned in Delaware for what I did in Wisconsin. Well, Wisconsin hasn't taken any action against me. So something is not right about this, your Honor, and I hope that you'll treat me fairly because I've spent my

life working for the law, representing people that needed help, putting them first and myself second.

MR. McRAE: Your Honor --

MR. WOOD: So I would -- I would simply end by saying I'm entitled to respond with due process to any of these accusations being made against because they're false. I reject the idea that I'm a scapegoat in all of this. I think it's an effort to hurt the messenger because the message frightens them. I don't know. That's up to them to decide.

THE COURT: So the question --

MR. McREA: Your Honor, Mr. Boutrous got dropped from the call. I'm sorry to interrupt. This is Mr. McRea.

THE COURT: Okay.

MR. McREA: I wouldn't interrupt, except my partner got dropped from the call and the host has to let him back in. He got dropped a while ago but I didn't want to interrupt.

THE CLERK: I can do that. The only problem is, the other conference will be let in as well, Judge.

THE COURT: That's fine. If you do that, then I'll ask them to --

THE CLERK: Okay.

THE COURT: -- not to speak.

MR. McREA: Thank you, your Honor.

THE CLERK: It takes a few minutes.

MR. REICHMAN: Your Honor, if I may --

THE COURT: Hold on, just wait until everybody is back.

MR. BOUTROUS: I'm back. Thank you, your Honor.

THE COURT: We only heard one person come in. If anyone is on --

MR. BRAND: Your Honor, Ian Brand (ph) for plaintiff in the Hargrave/State Farm litigation.

THE COURT: If you're on for Hargrave, just mute yourself. We're not on the Hargrave case yet.

MR. BRAND: Okay.

THE COURT: We have probably another five or ten minutes on what we're talking about now. It's up to you. You can stay on or you can call back in a couple of minutes, whatever you like.

MR. BRAND: I'll mute.

THE COURT: So on this point about whether plaintiff's counsel should continue as counsel in this case, I think the cleanest posture of this would be, if the defendants want to make a motion to disqualify or revoke the pro hac grant, then you can do that. Let's then have a schedule for your papers and counsel's

papers, and a brief reply if that's what you want. I think it's a serious set of allegations so if you're pursuing it, I think -- yes, I agree, I normally do things by letter motion but this probably should have some more formality.

So on the defendant's side, if you're going to do this motion, what do you think, two weeks?

MR. REICHMAN: That would be fine.

THE COURT: All right. So you will serve your papers by the 25th of January.

And then, plaintiff's counsel, if you want to respond, can you do that by the 8th?

MR. WOOD: The date for the defense's papers would be when?

THE COURT: The 25th.

MR. WOOD: The 25th? And then two weeks for us to respond on the 8th? Is that what I understood?

THE COURT: Yes. And then a reply by -- is the 15th a holiday weekend that weekend?

MR. REICHMAN: Yes, the 15th if Presidents' Day.

THE COURT: So the 16th for your reply.

MR. REICHMAN: Okay. Thank you, your Honor, that works for us.

THE COURT: All right. Now let's talk about

the discovery schedule. In terms of the initial disclosures, they should both -- both of your sets of papers should be exchanged by the same date. Except for this motion practice, I would say two weeks is enough time given the length of time that this case has been pending, so you can tell me. What I want obviously is that before you raise anything with me, that you speak with each other about it.

MR. REICHMAN: Yes, your Honor. This is John Reichman again. We did -- each side has already served the initial disclosures.

THE COURT: Yes.

MR. REICHMAN: I don't think the plaintiff has any problem with our disclosures and our problem is limited to the disclosure with respect to damages, as we've laid out. So I'm not sure if -- so I'm not sure where that puts us in terms of what you are suggesting.

THE COURT: So let's say you try to work out your concerns about the damages and have a date -- today is the 11th. By the 29th of January, a revised, complete set of the initial disclosures. And then if you still have your concerns about the damages issues or any other issues, you can raise it as you go.

Then initial document requests and interrogatories -- defendants, you've said you've done

it, and plaintiff, you're going to. You can start obviously responding as you like but the time line for when those responses are due -- we'll count off. So I'm going to put you down as the same date. So by February 8th, thirty days from there. Is there any possibility of joinder or amendment at this stage, given again how long this has been around for?

MR. OLASOV: We don't think so.

MR. REICHMAN: I don't think either side -- we don't, either.

THE COURT: Okay, all right, so we'll just leave that as it is. All right, the fact discovery date is fine. I'm going to change some of the dates for the expert disclosures. So the expert disclosure should be provided with the close of fact discovery, and I'll just tell you how I look at it. I don't know if this is going to match with what you have as a general matter.

The way I would see it is, whoever is carrying the burden of proof or raising an issue uniquely -- so for example, if one of those defenses that was mentioned required the burden of proof and you were offering an expert with regard to that, that's the moving report, the initial report. So if you fall into that category, your initial report disclosures would be

due May 31st, and then we'll put the June 30th date for the initial report, so that's 7(b) on this list. Then I will for now leave 8/6 as the rebuttal. I think it depends on what the topics are, whether a month is a reasonable turnaround time or not. I don't know yet and we don't need to figure it out on this call. We'll have a status conference before you get to that. Then the other dates you have are largely -- they're all fine.

So with the text order that comes out of this conference, we'll have a status conference set sometime in April. And then a week or a little more than a week before that, I'll ask you for -- submit a letter letting me know what you've covered, what you still have to cover. And then particular at that point, I would like to know, are you going to have expert discovery or not? If you're not, then many of these dates will be moved up. You won't need the couple of months that are indicated on the schedule for that.

A pretrial conference, that will be with the district judge. You have dates here that you put in for having a demand and a response, and I see that you're not asking for ADR at this point. If you change your mind and you want a referral to ADR, we could give

you that.

A couple of other things. Let me just pull up the docket here. So you do have a jury demand. Again, this is something we can talk about more in the future. But as you can imagine, the trial calendar is quite backed up. Just so you know, there haven't been many trials here since March of last year and the general preference will be given to criminal trials over civil trials. The (ui) that was taken in the fall when we were having trials was to have a criminal trial calendar and a backup civil trial-ready calendar. So basically, if the criminal cases pled out, we would bring the civil cases in because the jurors have been summoned and we could move along that way.

I imagine in this case, there will be some motion practice. So this issue of when you're having a jury trial, if you're having a jury trial, may be a ways out. To the extent you're thinking about how long you're going to be litigating this, if you're envisioning a trial at the end or almost the end, it's going to be a while. So just take that into account when you're thinking about whether you want to have settlement discussions or not.

All right, anything else? Let me just say, if you have (ui) on the way, for example if you don't

resolve your question of what damages information needs to be turned over, you can raise it, preferably by a joint letter. Other issues we should talk about?

MR. WOOD: Your Honor, this is Mr. Wood. Because I'm not the best note taker in the world --

THE COURT: There will be an order.

MR. WOOD: Could I ask the Court to also have, and we'll certainly pay whatever cost, an expedited transcript of this hearing prepared and filed with the record of the Court?

THE COURT: So we'll do two things: There will be a text order coming out of this and on the text order, it will have the time stamp for the recording. If you look on our court's website, there's a number for ESR, which is our transcription service, and you order the transcript there. They give different rates for the speed at which they do it, so I think you have a couple of options with regard to the turnaround time.

MR. WOOD: I bet the sooner you ask for it, the more it costs, as it should.

THE COURT: Yeah. It's quite a difference and you can decide what you need.

Okay, anything else?

MR. REICHMAN: No, your Honor.

THE COURT: All right, take care, Happy New

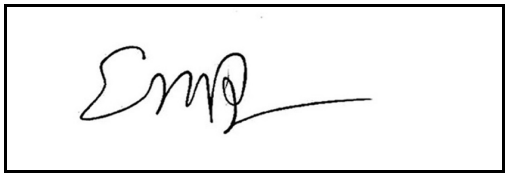
Year.

MR. OLASOV: Thank you very much, your Honor.

MR. WOOD: Thank you very much, your Honor.

* * * * * * *

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.



ELIZABETH BARRON January 12, 2021

EXHIBIT 12

EFiled: May 05 2021 12:03PM EDT
Filing ID 66573355
Case Number 69,2021

IN THE SUPREME COURT OF THE STATE OF DELAWARE

CARTER PAGE, an individual, Plaintiff-Below, Appellant,	)	
v.	)	No.: 69, 2021
OATH, INC., a corporation, Defendant-Below, Appellee,	)	

FROM THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR SUSSEX COUNTY

APPELLANT'S OPENING BRIEF

BY: /s/Ronald G. Poliquin, Esquire
Ronald G. Poliquin, Bar ID # 4447
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DATED: May 5, 2021

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NATURE AND STAGE OF PROCEEDINGS

On July 27, 2020, Carter Page filed a complaint alleging, *inter alia*, defamation of character against Oath, Inc., a Delaware corporation that is the parent company of Yahoo! News and TheHuffingtonPost.com. Appellant L. Lin Wood ("Wood") is an attorney licensed to practice law in the State of Georgia. By order dated August 18, 2020, the Superior Court of the State of Delaware granted Wood's motion for admission *pro hac vice* pursuant to Delaware Superior Court Civil Rule 90.1 and Wood subsequently entered his appearance on Page's behalf. Oath, Inc. filed a Motion to Dismiss Page's complaint pursuant to Superior Court Civil Rule 12(b)(6) on September 18, 2020. That motion was briefed by the parties and argued before the Superior Court.

On December 18, 2020 the Superior Court, *sua sponte*, issued to Wood a Rule to Show Cause probing why he should be permitted to continue practicing before it *pro hac vice*. The Rule to Show Cause did not take issue with any of Wood's actions in the Carter Page litigation before the Delaware Superior Court, but instead focused on unrelated litigation in which Wood was involved as counsel or a party. Wood responded to the Rule to Show Cause by affidavit dated January 6, 2021 as directed. On January 11, 2021, without conducting an evidentiary hearing, the Superior Court issued an order revoking Wood's *pro hac vice* admission to practice as Plaintiff

Carter Page's counsel of record. The Superior Court denied Wood's request to reargue the Rule to Show Cause.

After the revocation, Wood, as a *pro se* litigant, filed a timely Motion for Reargument on January 19, 2021. In its February 11, 2021 Memorandum and Order, the trial court references in a footnote that Wood failed to file the motion electronically.

Following argument on January 27, 2021, the Superior Court granted Oath, Inc.'s Motion to Dismiss by memorandum opinion dated February 11, 2021. This is Wood's timely Appeal from the Superior Court's revocation of his *pro hac vice* privilege.

SUMMARY OF THE ARGUMENT

1. The Superior Court abused its discretion by *sua sponte* revoking Appellant L. Lin Wood's *pro hac vice* privileges where that revocation was based upon conduct unrelated to the litigation for which Wood was admitted to practice *pro hac vice*, where the conduct in those other jurisdictions was not found to have violated any those jurisdictions' rules of professional conduct, and where Wood's conduct before the Superior Court met the requirements of the Delaware Lawyers' Rules of Professional Conduct and did not threaten to prejudice the fairness of the proceedings.

STATEMENT OF FACTS

Appellant L. Lin Wood is a well-known attorney who enjoys a stellar reputation in his home state of Georgia where he is licensed to practice law. With Wood's reputation comes a degree of notoriety attributable to his involvement in numerous high-profile cases around the United States where he has been admitted to practice before both state and Federal tribunals on a *pro hac vice* basis. By way of illustration, Wood represented plaintiffs challenging the results of the 2020 Presidential election in Michigan and Wisconsin. (A0071). Wood also filed suit *pro se* in Georgia challenging the 2020 General Election. (A0096). Many of the high-profile cases brought or prosecuted by Wood have conservative-leaning political undertones.

Carter Page's ("Page") defamation suit against Oath, Inc. ("Oath") carried such political undertones with it. Page's case against Oath alleged that articles published by its subsidiaries Yahoo! News ("Yahoo") and TheHuffingtonPost.com ("Huffington") falsely accused him of colluding with Russian agents to interfere with the 2016 Presidential election. (A0079 – A0082). Page's suit against Oath was filed on July 27, 2020 in the Superior Court of the State of Delaware. (A0081). Wood was admitted as Page's counsel *pro hac vice* pursuant to a Motion and Order under Superior Court Civil Rule 90.1 on August 18, 2020. (A0002). At all times relevant to Wood's representation of Page, he acted in compliance with the Delaware

Lawyers' Rules of Professional Conduct and the Superior Court Rules of Civil Procedure, including Superior Court Civil Rule 90.1.

While Page's case was pending before the Superior Court, the highly controversial General Election of 2020 took place. In the days and weeks following the election, Wood became involved in litigation contesting the election's results or the manner votes were taken or counted in critical "swing states". (A0071; A0096). Among those cases in which Wood became involved were lawsuits in Wisconsin, Michigan, and Wood's own suit in the State of Georgia. (A0071; A0096). Each of these matters was unrelated to Page's Delaware defamation lawsuit where Wood was Page's *pro hac vice* counsel of record.

On December 18, 2020, following national attention surrounding litigation challenging the outcome of the 2020 Presidential election, the trial judge in Page's case issued Wood a Rule to Show Cause and directed him to respond on or before January 6, 2021. (A0005; A0009). In that Rule to Show Cause, the trial judge focused primarily on Wood's involvement in election-related cases. (A0005 – A0008). The trial judge particularly took umbrage with Wood's involvement in litigation in Wisconsin and Georgia; the Michigan litigation is addressed only in passing in the December 18, 2020 Rule to Show Cause. (A0005 – A0008).

With respect to the Wisconsin litigation, the Superior Court focused its ire on several factors, many of which were not directly attributable to Wood. (A0006 –

A0008). Specifically of interest were the initial pleadings which contained multiple typographical errors and a response to a Motion to Dismiss that relied upon a fictitious citation. (A0006). It is unclear what, if any involvement Wood had in drafting the initial pleadings in that case. Regarding the response to the Motion to Dismiss, although Wood was listed as counsel of record, his signature was not affixed to the pleading. (A006).

When assessing the Georgia litigation where Wood was the plaintiff, the Superior Court gave significant weight to the Georgia court's dismissal of the case. (A0071; A0074). In its order dismissing the case, the Georgia trial court stated that Wood did not suffer any demonstrable harm and that there was consequently no basis in law or fact to grant the injunctive relief he sought. (A0007). The Superior Court judge held that Wood's conduct filing the Georgia suit "*may* violate DRPC Rule 3.1". (A0007, emphasis added).

In its February 11, 2021 Order revoking Wood's *pro hac vice* admission, the Superior Court gave little weight to Wood's response to the Rule to Show Cause. In his response, Wood set forth that he had violated no ethical rules before the Superior Court and that neither the Wisconsin nor Georgia courts had found any ethical violation. (A0072). Moreover, the Superior Court ignored an affidavit submitted by Charles Slanina, Esq. setting forth that it is the province of authorities other than the Superior Court to make determinations respecting ethical violations. (A0072 –

A0073). Likewise, the Superior Court ignored Wood's proposal to voluntarily withdraw from the case and instead elected to issue an extra-disciplinary order revoking Wood's *pro hac vice* admission. (A0012; A0069 – A0076).

Following the Superior Court's revocation of his *pro hac vice* admission, defense counsel in an unrelated matter in the Eastern District of New York moved for revocation of Wood's *pro hac vice* admission to that court. (A0119). Among other things, the motion to revoke Wood's *pro hac vice* admission to the Eastern District of New York cited to the Superior Court's memorandum opinion and order revoking Wood's admission *pro hac vice*. (A0140 – A0141).

ARGUMENT

I. THE SUPERIOR COURT ABUSED ITS DISCRETION WHEN IT REVOKED WOOD'S *PRO HAC VICE* ADMISSION *SUA SPONTE*.

Question Presented

Whether the Superior Court's *sua sponte* revocation of Wood's *pro hac vice* admission constitutes an abuse of discretion where the identified offending conduct took place in other jurisdictions, in unrelated matters, where no rules of professional conduct had been violated, and where the conduct did not prejudice the fair and efficient administration of justice constitutes an abuse of the Superior Court's discretion under Delaware Superior Court Rule of Civil Procedure 90.1.

Standard and Scope of Review

This Court has held that an out-of-state attorney, upon entry of final judgment in the underlying case, has a right of appeal independent of his former client where his *pro hac vice* status has been revoked.[1] This Court reviews a trial court's decision to impose sanctions for an abuse of discretion.[2] When reviewing the imposition of sanctions, including revocation of an attorney's *pro hac vice* status on motion of an adverse party, the Third Circuit has adopted an abuse of discretion standard of review.[3] Similarly, the Third Circuit has held that abuse of discretion is the

[1] See, *Gottlieb v. State*, 697 A.2d 400, 403 (Del. 1997).
[2] *Crumplar v. State*, 56 A.3d 1000 (Del. 2012).
[3] *In re Surrick*, 338 F.3d 224, 229 (3d Cir. 2003).

appropriate standard of review in determining the appropriateness of a trial court's response to alleged attorney misconduct.[4] Likewise, the Commonwealth of Pennsylvania applies an abuse of discretion standard to review of a trial court's revocation of an out-of-state attorney's *pro hac vice* status.[5] A trial court's *sua sponte* revocation of an out-of-state attorney's *pro hac vice* admission, however, appears to present a case of first impression to this Court.

Merits of Argument

A. The Superior Court has limited authority to revoke an out-of-state attorney's *pro hac vice* status.

Parties to litigation have a fundamental right to choose their counsel and that right should not be abrogated except under exceptional circumstances.[6] Delaware courts, like courts in its sister jurisdictions, acknowledge this fundamental right of litigants by permitting out-of-state attorneys to practice before them on a *pro hac vice* basis. An out-of-state attorney's *pro hac vice* admission is not infallible and without limitations, however, and it may be revoked under appropriate circumstances.[7]

[4] *Forrest v. Beloit Corp*., 424 F.3d 344, 349 (3d Cir. 2005).
[5] *Blue Ribbon Packing Corp. v. Hughes*, 2019 WL 210449 (Pa. Super. Ct. Jan. 16, 2019) (citing *ACE Am. Ins. Co. v. Underwriters at Lloyds & Cos.*, 939 A.2d 935, 948 (Pa. Super. Ct. 2007).
[6] *Lendus, LLC v. Goede*, 2018 WL 6498674 at *8 (Del. Ch. Dec. 10, 2018).
[7] Del. Super. Ct. Civ. R. 90.1(e)

In admitting an out-of-state attorney to practice before them *pro hac vice*, Delaware courts are guided by their rules of procedure.[8] A trial court's authority to revoke an out-of-state attorney's *pro hac vice* status, however, is limited.[9] Where a party to litigation seeks the sanction of revocation of an out-of-state attorney's *pro hac vice* privileges, the moving party must demonstrate by clear and convincing evidence that the out-of-state attorney's behavior is sufficiently egregious to "call into question the fairness or efficiency of the administration of justice."[10] Delaware trial courts also have inherent power to revoke an out-of-state attorney's *pro hac vice* status *sua sponte* in circumstances where the out-of-state attorney's continued admission *pro hac vice* would be "inappropriate or inadvisable."[11] A trial court seeking to revoke an out-of-state attorney's *pro hac vice* admission *sua sponte* may do so only after it has given notice of the offending conduct and conducted a hearing or given the out-of-state attorney a meaningful opportunity to respond to the court.[12]

Delaware courts' inherent power to sanction attorney misconduct which occurs before it was reinforced by this Court in *Ramunno*.[13] In that case, a Delaware trial judge found a Delaware attorney to have engaged in undignified and

[8] See, e.g., Del. Ch. R. 170; Del Super Ct. Civ. R. 90.1; Del. Super. Ct. Crim. R. 63; Del. Ct. Comm. Pl. Civ. R. 90.1; Del. Ct. Comm. Pl. Crim. R. 62.
[9] *Crowhorn v. Nationwide Mut. Ins. Co.*, 2002 WL 1274052 (Del. Super. Ct. May 6, 2002).
[10] *Manning v. Vellardita*, 2012 WL 1072233, at *2 (Del. Ch. 2012).
[11] Del. Super. Ct. Civ. R. 90.1(e); accord *In the Matter of Rammuno*, 625 A.2d 248, 249 (Del. 1993) (court raised issue of sanctions *sua sponte*).
[12] *Id*.
[13] *In the Matter of Ramunno*, 625 A.2d 248 (Del. 1993).

discourteous behavior when during an office conference; the offending attorney referred to opposing counsel in a "crude, but graphic, anal term."[14] The attorney's remark was not overheard by opposing counsel but was heard clearly by the presiding judge and he was summarily cited for contempt.[15] In a pre-trial hearing the following day, the Delaware attorney at issue moved for the presiding judge to recuse himself arguing that the prior day's contempt citation biased the judge against the attorney's client.[16] In presenting his motion to the trial court, the attorney engaged in a terse colloquy with the court which resulted in further contempt sanctions.[17]

Following the trial in *Ramunno*, opposing counsel referred the matter to the Board on Professional Responsibility which charged the attorney with engaging in "undignified or discourteous conduct which is degrading to a tribunal" in violation of Delaware Lawyers Rule of Professional Conduct 3.5(c).[18] The Board dismissed the charges following a hearing on the basis that there had been no clear and convincing showing that the attorney engaged in misconduct warranting further sanctions.[19] On appeal, this Court remanded the matter to the Board in that its finding was inconsistent with Board Rules directing that "conviction for any crime

[14] *Id*. at 249
[15] *Id*.
[16] *Id*.
[17] *Id*.
[18] *Id*.
[19] *Id*.

is conclusive evidence of the commission of that crime".[20] In reaching its final ruling upon the matter, this Court set forth that the appropriate standard in determining the appropriateness of sanctions is "whether [the attorney's] rude and uncivil behavior was degrading to the court below.[21]

1. Delaware trial courts have clear guidance in reaching the decision whether to revoke an out-of-state attorney's *pro hac vice* status upon motion of a party.

In *State v. Grossberg*, the Superior Court, upon motion by opposing counsel, revoked an out-of-state attorney's *pro hac vice* status after the out-of-state attorney blatantly disregarded the Superior Court's order limiting extra-judicial statements pertaining to the case before it.[22] In *Grossberg*, the defendant was charged with multiple homicide offenses under Title 11 of the Delaware Code.[23] The case had garnered significant local and national media attention.[24] Following an office conference with counsel, the Superior Court entered an order limiting pretrial publicity and further limiting all persons "assisting or associated with counsel" from making "extrajudicial statements that counsel for the State would be prohibited from making under Rule 3.6" of the Delaware Lawyers' Rules of Professional Conduct.[25] Shortly after entering the preceding order, the Superior Court expanded its order

[20] *Id*.
[21] *Id*. at 250.
[22] 705 A.2d 608 (Del. Super. 1997).
[23] *Id*. at 609.
[24] *Id*. at 609-10.
[25] *Id.* at 610.

directing that "parties make no comment to the media other than on scheduling matters.[26]

Several months after the Superior Court had entered its orders pertaining to pretrial publicity and extrajudicial statements, Grossberg's Delaware counsel moved for the admission *pro hac vice* of Robert C. Gottlieb, Esq.[27] Gottlieb was a well-accomplished member of the New York Bar.[28] In his affidavit of admission *pro hac vice*, Gottlieb affirmed that he would be bound by the Delaware Lawyers' Rules of Professional Conduct and he was thus admitted *pro hac vice*.

Within days of his *pro hac vice* admission, Gottlieb made a television appearance speaking about the venire and others associated with the Case.[29] He also appeared on a local news broadcast stating that Grossberg "didn't commit a crime."[30] Around the same time, Gottlieb had arranged for Grossberg, her parents, and himself to be interviewed by Barbara Walters on a national news broadcast.[31] Shortly after the Barbara Walters interview was recorded, Gottlieb wrote to the court and opposing counsel ensuring that the interview strictly adhered to the court's prior order limiting media exposure and extrajudicial commentary.[32] His letter further

[26] *Id.*
[27] *Id.* at 611.
[28] *Id.*
[29] *Id.*
[30] *Id.*
[31] *Id.*
[32] *Id.*

reassured the court that Grossberg, her parents, and he "did not [. . .] discuss the evidence pertaining to the case or expected testimony.[33]

During the interview, which aired a short time after Gottlieb's letter to the court and opposing counsel, Gottlieb expressed his personal opinion that Grossberg had not committed a crime and that she should not have been charged with a crime.[34] Gottlieb further stated that "it's never too late to do what is right based on the evidence" during his portion of the interview.[35] Gottlieb concluded his portion of the interview asking the State to look at the case anew.[36]

During her portion of the interview, Grossberg described herself as a child.[37] She also responded to questions pertaining to what the past several months had been like, her feelings toward her co-defendant, and her physical health in the time leading up to the acts forming the basis of the charges against her.[38] Grossberg further responded to interview questions by stating she "would never hurt anything or anybody, especially something that could come from me."[39] Grossberg concluded her portion of the interview stating "I wouldn't hurt anybody or anything, especially something of mine."[40]

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[33] *Id.* at 613.
[34] *Id.* at 611.
[35] *Id.*
[36] *Id.*
[37] *Id.*
[38] *Id.*
[39] *Id.*
[40] *Id.* at 612.

Following the interview being aired, the State moved for sanctions against Gottlieb arguing that he had violated the Superior Court's order limiting pretrial publicity and that he was in violation of the Rules of Professional Conduct.[41] Gottlieb took the position that he had not violated the courts order nor the rules of professional conduct.[42] In reaching its decision to revoke Gottlieb's *pro hac vice* status, the Superior Court found that his letter to the court prior to the airing of the interview was a misstatement of fact.[43] The Superior Court further found that Gottlieb's statements to local news outlets and during the nationally televised Barbara Walters interview plainly conveyed his personal opinion as to Grossberg's innocence in violation of Delaware Lawyers' Rule of Professional Conduct 3.6 and that they were strategically timed to rekindle public interest in the Grossberg case.[44] The Superior Court further found that Gottlieb had violated Delaware Lawyers' Rule of Professional Conduct 3.6 by orchestrating the Barbara Walters interview and assisting Grossberg and her parents in violating the rule.[45] In light of these factors, the Superior Court sanctioned Gottlieb with revocation of his admission *pro hac vice*.[46]

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[41] *Id.*
[42] *Id.*
[43] *Id.* at 613.
[44] *Id.*
[45] *Id.*
[46] *Id.*

In *Mumford*, out-of-state counsel was admitted *pro hac vice* to represent the defendant in a condemnation matter before the Superior Court.[47] Prior to his admission *pro hac vice*, the out-of-state attorney affirmed that he would comport his behavior to the Rules of Professional Conduct and of the Superior Court.[48] During a deposition of the defendant where he used crude and profane language and engaged in threatening behavior toward opposing counsel, the defendant's out-of-state counsel failed to intervene to control the deponent.[49] Following the offending deposition, plaintiff's counsel moved revocation of the out-of-state attorney's *pro hac vice* admission.[50] The court based its conclusion that the out-of-state attorney's continued admission was inappropriate and inadvisable heavily upon the offending party's profane, hostile, and disrespectful demeanor in conjunction with the out-of-state attorney's failure to "take steps to restrain" the offending party's behavior and "attempt to restore decorum."[51]

2. *Sua sponte* imposition of sanctions upon an attorney requires Delaware trial courts to apply an objective standard.

As *Ramunno* demonstrates, Delaware trial courts have broad discretion in raising the issue of sanctions *sua sponte* to address incidents of attorney misconduct

[47] *State v. Mumford* 731 A.2d 831, 832 (Del. Super. 1999).
[48] See e.g. *State v. Mumford*, 731 A.2d 831 (Del. Super. 1999).
[49] *Id*.
[50] *Id*. at 835.
[51] *Id*. at 835-36.

which occur in their presence.[52] Delaware trial courts do not, however, have authority to conduct disciplinary proceedings.[53] This is consistent with *Crowhorn* where the Superior Court acknowledged that it does not have authority to conduct disciplinary proceedings despite it having the inherent power to "disqualify an attorney for unethical conduct that is committed *in proceedings before it*."[54]

In *Crumplar v. Superior Court*, this Court first addressed the question of the standard and process required of a Delaware trial court in raising the issue of Rule 11 sanctions *sua sponte*.[55] The Superior Court in *Crumplar* sanctioned an attorney for two perceived violations of Rule 11 *sua sponte*.[56] The Superior Court issued its first order to show cause after the attorney had supplied the court with the incorrect case name for a correct proposition of law.[57] The second order to show cause was issued after the attorney failed to distinguish precedent that was cited by opposing counsel.[58] The attorney responded to the court's first order by describing the steps that he had taken in identifying the correct case name.[59] With respect to the court's second order, the attorney responded that Rule 11 did not impose a duty to cite

[52] *In the Matter of Ramunno*, 625 A.2d 248 (Del. 1993).
[53] *Crumplar v. Superior Court*, 56 A.3d 1000, 1009 (Del. 2012).
[54] *Crowhorn*, 2002 WL 1274052 (Del. Super. May 6, 2002).
[55] 56 A.3d 1000 (Del. 2012).
[56] *Id*. at 1003-04.
[57] *Id*. at 1003.
[58] *Id*. at 1004.
[59] *Id*. at 1003.

contrary authority that had already been raised by the opposing party.[60] After finding the attorney's responses to the orders to show cause were insufficient, the Superior Court imposed a $25,000.00 penalty and justified the sanction by noting that asbestos settlements and verdicts are typically many times the sanction imposed.[61]

On appeal this Court acknowledged that Rule 11 imbues trial courts with authority to impose sanctions for violations of the Rule *sua sponte*.[62] Pursuant to the Rule however, sanctions may only be imposed following notice and a reasonable opportunity to respond.[63] Because the legal profession in Delaware "demands more than pure hearts and empty minds", this Court adopted an objective standard where trial courts are to determine whether Rule 11 sanctions are merited.[64]

3. A Delaware trial court lacks authority to disqualify counsel for technical violations of the Delaware Lawyers' Rules of Professional Conduct.

Delaware trial courts may not disqualify an attorney from representing a party upon a finding of a technical violation of the Delaware Lawyers' Rules of Professional Conduct relating to conflicts of interest.[65] Where a trial court seeks to

[60] *Id*. at 1004.
[61] *Id*.
[62] *Id*. at 1005.
[63] *Id*.
[64] *Id.* at 1008.
[65] *In re Infotechnology, Inc*., 582 A.2d 215 (Del. 1990); see also *Kaplan v. Wyatt,* 1984 WL 8274 at *6 (Del. Ch. 1984) (adopting *Hahn v. Boeing Co.,* 621 P.2d 1263, 1266-67 (Wash. 1980) (Holding that a trial court lacks authority to conduct quasi-disciplinary proceedings in ruling upon motion for *pro hac vice* admission where out-of-state attorney applicant may have violated a Rule of Professional Conduct)).

disqualify an attorney from representation in a case, there must be a showing that continued representation is prejudicial to the fairness of the proceeding.[66] This Court based its *Infotechnology* holding upon its exclusive authority to enforce the Rules of Professional Conduct and to oversee the practice of law in Delaware.[67]

4. This Court should apply an objective standard to a trial court's *sua sponte* revocation of an out-of-state attorney's *pro hac vice* admission.

Revocation of an out-of-state attorney's *pro hac vice* admission is the ultimate sanction that a Delaware trial court may impose upon an out-of-state attorney and carries far-reaching consequences to the out-of-state attorney's reputation.[68] A trial court moving to revoke an out-of-state attorney's *pro hac vice* admission *sua sponte* is an extraordinary action. Though Rule 90.1(e) states that the admitting court may revoke the out-of-state attorney's *pro hac vice* upon notice and "after [. . .] a meaningful opportunity to respond" where the "continued admission *pro hac vice* [would] be inappropriate or inadvisable[,]"[69] there is little else to guide courts in determining the meaningfulness of the opportunity to respond or what constitutes inappropriate or inadvisable continued admission. This Court's Rule 11 jurisprudence pertaining to *sua sponte* sanctions is illustrative. In *Crumplar*, this Court acknowledged the seriousness of a trial court's imposition of Rule 11

[66] *Id.* at 221.
[67] *Id*. at 216-17.
[68] *Raub v. US Airways, Inc*. 2017 WL 5172603 (E.D. Pa. Feb. 8, 2017).
[69] Del. Super. Ct. Civ. R. 90.1(e).

sanctions *sua sponte*.[70] As such, this Court required that a trial court apply an objective standard to determine whether an attorney's duties under Rule 11 were reasonable under the circumstances.[71] Similarly, where a court seeks to revoke an out-of-state attorney's *pro hac vice* admission *sua sponte*, an objective standard should be applied to determine whether the offending conduct is serious enough to merit the extraordinary action of *pro hac vice* revocation and whether continued admission is inappropriate or inadvisable.

5. An out-of-state attorney must be notified of the conduct subjecting their *pro hac vice* admission to revocation and the out-of-state attorney must be given an opportunity to present evidence and respond orally.

Because of the seriousness of repercussions that follow an out-of-state attorney's *pro hac vice* admission being revoked, trial courts must have clear guidance upon the standard that applies to such a drastic action. It is an extraordinary course of action "that should not be taken simply out of hypersensitivity to ethical nuances or the *appearance* of impropriety.[72] This Court held that where a trial court raises the issue of Rule 11 sanctions *sua sponte*, the responding attorney must be given notice of the error and a meaningful opportunity to present evidence and respond *orally*.[73] Similarly, the seriousness, far-reaching consequences, and quasi-

[70] See *Crumplar v. Superior Court*, 56 A.3d 1000 (Del. 2012).
[71] *Id*. at 1008.
[72] *Sheller v. Superior Court*, 158 Cal. App. 4th 1697, 1711 (Cal. Ct. App. 2008).
[73] *Crumplar*, 56 A.3d at 1003. (Emphasis added).

disciplinary nature of a trial court's revocation of an out-of-state attorney's *pro hac vice* demand that the out-of-state attorney be given adequate notice of the offending conduct and an opportunity to present evidence and respond orally.[74]

Revocation of an out-of-state attorney's *pro hac vice* admission *sua sponte* is a quasi-disciplinary proceeding, thus, a trial court should be limited to acting upon misconduct that happens before it or within the ambit of the underlying litigation.[75] This Court has repeatedly held that it alone is responsible for the regulation of attorney conduct.[76] When moving for an out-of-state attorney's *pro hac vice* admission to be revoked *sua sponte*, a trial court should follow the same criteria as is required for the out-of-state attorney's admission to be revoked on motion of a party; that is the trial court should be convinced by clear and convincing evidence that the out-of-state attorney's continued admission *pro hac vice* would prejudice the "fair and efficient administration of justice" thus making continued admission inappropriate or inadvisable.[77]

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[74] See *Id*; *Mruz v. Caring, Inc.*, 107 F.Supp.2d 596, 604 (D.N.J. 2000) ("Notice should consist of two things: "the conduct of the attorney that is subject to the inquiry and the specific reason this conduct may justify revocation"").

[75] Accord, 11 *Del.C.* § 1272; *Lendus*, 2018 WL 6498674 at *8.

[76] *Crumplar*, 56 A.3d at 1009 (where a trial judge believes that attorney misconduct has occurred, the proper recourse is referral to the Office of Disciplinary Counsel); *Infotechnology*, 582 A.2d at 216-17 (Court rules may not be used in extra-disciplinary proceedings; this Court has sole responsibility to govern the Bar).

[77] *Sequoia Presidential Yacht Group LLC v. FE Partners LLC*, 2013 WL 3362056 at *1-*2 (Del. Ch. Jul. 5, 2013).

At a minimum, this Court should require that trial courts invoking their inherent power to revoke an out-of-state attorney's *pro hac vice* admission *sua sponte* give the out-of-state attorney the same procedural protections as those that required under Rule 11(c)(1)(B).[78] While sanctions under Rule 11 represent an attorney being held accountable for a serious infraction, the consequences of revoking an out-of-state attorney's *pro hac vice* admission have much more dire and far-reaching effect.[79] Thus, out-of-state attorneys admitted *pro hac vice* should be granted an opportunity to present evidence and to be heard orally when responding to a trial court's *sua sponte* motion to revoke that admission.

B. The Superior Court exceeded the boundaries of its inherent power to sanction when it revoked Wood's *pro hac vice* admission *sua sponte*.

1. The Superior Court's revocation of Wood's *pro hac vice* admission was tantamount to a prohibited extra-judicial disciplinary proceeding.

The Superior Court justified its *sua sponte* revocation of Wood's admission *pro hac* vice by pointing to matters in other jurisdictions in unrelated cases which it interpreted as violations of the Delaware Lawyers' Rules of Professional Conduct by Wood. None of the grounds relied upon by the Superior Court in revoking Wood's *pro hac vice* status occurred in its presence, nor could they reasonably be

[78] *Crumplar*, 56 A.3d at 1111-12.

[79] *Lendus*,2018 WL 6498647 at *9 (Reporting requirements for *pro hac vice* revocation work a punitive effect); *Mruz v. Caring*, 166 F.Supp.2d 61, 70-71 (D.N.J. 2001) ("revocation of [*pro hac vice* admission] , once bestowed, sends a strong message which works a lasting hardship on an attorney's reputation.") (internal citations omitted); see also (A0119; A0140 – A0141).

viewed as prejudicing the fair and efficient administration of justice in the underlying litigation.[80] The Superior Court thus acted in derogation of this Court's holdings in *Crumplar* and *Infotechnology*, prohibiting trial courts from applying their rules "in extra-disciplinary proceedings solely to vindicate the legal profession's concerns [with attorney conduct]."[81] Trial courts freely acknowledge that their extraordinary power to revoke an out-of-state attorney's *pro hac vice* admission must be exercised with constraint.[82]

None of the conduct that the Superior Court relied upon in revoking Wood's *pro hac vice* admission occurred in the proceedings before it, thus, it cannot sanction those actions unless they are prejudicial to the fair and efficient administration of justice.[83] In the case at bar, while admitted *pro hac vice*, the behavior at issue consisted of Wood representing clients in unrelated matters in other jurisdictions.[84] Though the cases that Wood was pursuing on his clients' behalf were controversial, there appear to have been no disciplinary actions pursued against Wood.

In the Wisconsin litigation, the Superior Court fixated on reports of poorly drafted initial pleadings and inclusion of an incorrect citation upon which the plaintiff in that matter relied in response to a motion to dismiss. Though

[80] See *Id.*
[81] *Crumplar*, 56 A.3d at 1010; *Infotechnology*, 582 A.2d at 2016-17.
[82] See *Lendus*, 2018 WL 6498674 at *8; *Sequoia*, 2013 WL 3362056 at *1-*2; *Crowhorn*, 2002 WL 1274052 at *15-*16; *Mruz*, 166 F.Supp.2d at 70-71' .
[83] *Crumplar*, 56 A.3d at 1009; *Infotechnology*, 582 A.2d at 216-17.
[84] (A0005) – (A0008).

unprofessional, inartful pleadings and incorrect citations do not alone violate rules of professional conduct.[85] Moreover, Wood's level of participation in the drafting and filing of the initial pleadings in the Wisconsin litigation is unclear and Wood did not himself sign the response to the motion to dismiss in that matter. Had these actions occurred in Delaware before the Superior Court in the relevant litigation, the trial court would not have had adequate ground to impose Rule 11 sanctions *sua sponte* upon this record, revocation of Wood's *pro hac vice* admission upon these grounds, therefore, constitutes an abuse of discretion by the Superior Court.[86]

The Superior Court's reliance upon Wood's Georgia litigation as grounds for exercising its inherent power to revoke his *pro hac vice* admission is similarly improper. Specifically, the Superior Court relied on the Northern District of Georgia's finding that Wood was not able to establish a factual or legal basis entitling him to the injunctive relief sought in his suit.[87] The Superior Court entirely ignored the Northern District of Georgia's threshold finding that Wood had not established the required Article III standing for his case to go forward.[88] The

[85] See, e.g. *Bradshaw v. Unity Marine Corp, Inc.*, 147 F.Supp.2d 668 (S.D. Tex. 2001) (Parties' counsel submitted poorly drafted and presented pleadings on motion for summary judgment including citation to non-existent volume of Federal Reporter series. The District Court did not exercise discretion to find violation of professional rules in that matter.).
[86] Accord, *Crumplar*, 56 A.3d at 1009-10.
[87] See (A0007).
[88] (A0100).

Georgia litigation, thus, was disposed of on procedural grounds.[89] The remainder of the Northern District of Georgia's written decision addressing the merits of Wood's Georgia litigation, was therefore mere dicta.

The Superior Court, however, termed Wood's Georgia lawsuit as "textbook frivolous litigation".[90] The court does not, however, fails to then define or explain why the Georgia litigation is "textbook frivolous litigation".[91] The decision in *Wood, Jr. v. Raffensperger, et al*, does not at any point term the litigation as vexatious, "textbook frivolous", or as being brought in bad faith.[92] No sanctions were issued against Wood nor his counsel nor was Wood directed to pay the defendants' attorneys' fees.[93]

Invoking attorney discipline every time a case were dismissed would have a significant chilling effect on litigation. A case may be dismissed for any number of reasons and it is not a *per se* instance of attorney misconduct as implied by the Superior Court. Though the Northern District of Georgia's decision in *Wood, Jr. v. Raffensberger* was pending appeal, the Superior Court revoked Wood's *pro hac vice* admission on the basis that his filing suit "may violated DRPC 3.1". By contrast, the Georgia trial court did not seek disciplinary action against wood for violation of

[89] (A0100); accord U.S. Const. art. III, § 2, cl. 1; *Jacobson v. Fla. Sec'y of State*, 974 F.3d 1236, 1245 (11th Cir. 2020).
[90] (A0074).
[91] (A0074).
[92] 2020 WL 6817513 (N.D. Ga. Nov. 20, 2020).
[93] *Id*.

a rule of professional conduct therein. Wood's participation in the Georgia litigation was not a violation of Rule 3.1 of the Delaware Lawyers' Rules of Professional conduct.[94]

With respect to the Wisconsin litigation, the Superior Court was further "troubled that an error-ridden affidavit of an expert witness would be filed in support of Mr. Wood's case."[95] Incidentally, the Superior Court mistakenly states that Russell James Ramsland, Jr. submitted a false affidavit in the Georgia litigation in its Rule to Show Cause. The Superior Court conducted no inquiry as to Wood's involvement in drafting and submitting the expert affidavit. In reality, Wood's involvement with the Wisconsin litigation was limited; he was not admitted to practice *pro hac vice* and was only listed as "Counsel for Notice"; he did not at any point file a Notice of Appearance on behalf of any party.[96] The Superior Court is plainly holding Wood accountable for the errors of others directly involved in the litigation. Had Wood been afforded an opportunity to respond orally to the Court's Rule to Show Cause, his *pro hac vice* admission likely would not have been revoked.

Furthermore, the Wisconsin litigation cited by the Superior Court does not cite reference Ramsland's affidavit. The Superior Court made not effort to

[94] See, e.g. *Republican Party of Penn. v. Degraffenreid, et al*, 592 U.S.___ (2021), (Thomas, J. dissenting).
[95] (A0074).
[96] (A0050-A0051).

substantiate the basis for its allegation that the Ramsland affidavit contained materially false information, misidentifying the counties as to which claimed fraudulent voting occurred. Wood was not directly involved in the drafting or submission of the Wisconsin litigation. Wood, instead, was standby trial counsel if necessary. Similar to the Georgia litigation, the Wisconsin litigation was dismissed on procedural grounds for lack of standing. The misidentification of the Ramsland affidavit is only mentioned to demonstrate that individuals acting in good faith make errors, both litigators and lawyers.

Assuming, arguendo, that Wood's conduct in the Wisconsin and Georgia did constitute violations of the rules of professional conduct, the Superior Court lacked the requisite authority to revoke Wood's *pro hac vice* admission on that basis; doing so would be tantamount to the Superior Court conducting an extra-judicial disciplinary proceeding.[97] Furthermore, none of the conduct which the Superior Court deemed improper happened in the presence of the court or in direct relation to the case before it. This Court and Delaware trial courts have routinely held that a trial court's inherent power to sanction attorney conduct is limited to misconduct

[97] *Crowhorn*, 2002 WL 1274052 a*16 ("It is not for this court to determine if behavior which occurred [in an] unrelated case is *per se* unethical under the Delaware Rules of Professional Conduct.").

which happens in the court's presence, in proceedings related to the case before the court, or to conduct prejudicial to the fairness of the proceeding before it.[98]

2. Wood was given an inadequate opportunity to respond to the Superior Court's rule to show cause.

Rule 11 of the Delaware Rules of Evidence require that an attorney be given written notice of offending conduct and an opportunity to present evidence and respond thereto when a trial court raises the issue of sanctions *sua sponte*.[99] The heightened procedural protections are mandated because of the extraordinary nature of the action.[100] A trial court's *sua sponte* revocation of an out-of-state attorney's *pro hac vice* admission is an equally extraordinary action mandating similar procedural protections. In the case at bar, Wood was issued a rule to show cause by the Superior Court and required to respond in writing. Wood did so. Following Wood's response, the Superior Court took the matter under advisement, and without affording Wood an opportunity to present evidence or respond orally, revoked his *pro hac vice* admission. The Superior Court then proceeded to deny Wood's motion for reargument.

At no point in the process of responding to the Superior Court's rule to show cause was Wood given a meaningful opportunity to respond. Wood's written

[98] *Nat'l Union Fire Ins. Co. of Pittsburgh, Pa., v. Stauffer Chem. Co.*, 1990 WL 197864 (Del. 1990); *Ramunno*, 625 A.2d at 250; *Crowhorn*, 2002 WL 1274052 at *15-*16; *Crumplar*, 56 A.3d at 1009; *Sequoia*, 2013 WL 3362056 at *1-*2; *Lendus*, 2018 WL 6498674 at *8.
[99] *Crumplar*, 56 A.3d at 1111-12.
[100] *Id*. at 1010-12.

response to the rule to show cause was given little weight by the presiding judge. This is evidenced in the court's January 11 memorandum order revoking Wood's *pro hac vice* admission. The court's memorandum opinion disregards *Crumplar*'s mandate that enhanced procedural protections be afforded to an attorney responding to a trial court's *sua sponte* imposition of extraordinary sanctions.[101]

As anticipated in *Mruz*, the Superior Court's January 11 revocation of Wood's *pro hac vice* admission sent a "strong message" and has begun working considerable hardship upon Wood. Within days of the Superior Court's revocation order being entry, counsel for the defendant in an unrelated matter moved the Eastern District of New York for revocation of Wood's *pro hac vice* admission relying, among other things, upon the Superior Court's January 11 revocation order.[102] It is precisely occurrences such as this which mandate that this Court extend *Crumplar*'s procedural protections to *sua sponte* actions under Superior Court Civil Rule 90.1(e).

The Superior Court exercised its extraordinary power under Rule 90(e) to revoke Wood's *pro hac vice* admission for what it perceived to be violations of the Rules of Professional Conduct. Though Wood was given an opportunity to respond, in light of the extraordinary nature of the sanction, that opportunity to respond was procedurally deficient.[103] Moreover, the Superior Court's revocation of Wood's *pro*

[101] (A0073).
[102] (A0140).
[103] *Crumplar,* 56 A.3d at 1111-1112.

hac vice admission invaded the province of this Court's exclusive authority to police attorney misconduct with regard to the Rules of Professional Conduct; this despite the Superior Court's acknowledgement that the Office of Disciplinary Counsel and this Court have the sole authority to determine whether violations of the Rules of Professional Conduct have occurred.[104] The Superior Court's exercise of its authority under Rule 90.1(e) neglected that none of Wood's challenged conduct prejudicially disrupted the proceedings before it.

In Delaware, a trial court is justified in revoking an out-of-state attorney's *pro hac vice* admission on motion of a party only where it can be shown by "clear and convincing evidence, that the [behavior] of the attorney in question . . . will affect the fairness of the proceedings in [in the case before it]."[105] Though *Crowhorn* addressed a trial court's inherent authority to impose Rule 11 sanctions *sua sponte*, the same standard should apply to the Superior Court's exercise of its inherent authority to revoke an out-of-state attorney's admission *pro hac vice sua sponte*. The *Crowhorn* standard of clear and convincing evidence of serious misconduct that is prejudicial to the fairness of the proceedings before the court should not be waived because the sanction is imposed by the Court *sua sponte*.

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[104] *Infotechnology*, 582 A.2d at 220 ("[T]he Rules [of Professional Conduct] are to be enforced by a disciplinary agency"); *Crumplar*, 56 A.3d at 1009 ("If a trial judge believes an attorney has committed misconduct, referral to the Office of Disciplinary Counsel [. . .] is the proper recourse in the absence of prejudicial disruption of the proceeding."); (A0071) – (A0073).

[105] *Crowhorn*, 2002 WL 1274052 at *15-16.

Here, the Superior Court made no finding by clear and convincing evidence that Wood's continued admission *pro hac vice* would be prejudicial to the fundamental fairness of the proceedings before it, thus making continued admission "inappropriate or inadvisable."[106] The trial court initially scheduled oral argument for the Rule to Show cause on Wednesday, January 13, 2021 at 9:30 a.m. However, the Superior Court issued its decision on January 11, 2021 thus depriving Wood of a meaningful opportunity to respond to the Rule to Show Cause orally. If Wood had been afforded the opportunity to respond orally, the allegations contained in the January 11, 2021 Opinion and Order could have been corrected and be put in proper context.

The Superior Court made no finding by clear and convincing evidence that Wood's continued representation would prejudicially impact the fairness of the proceedings before it. There was no allegation that Wood acted in an inappropriate fashion in regard to the case before the Superior Court. Despite making no factual determination as to whether Wood's continued representation of Page would be prejudicial to the underlying litigation, the trial court carried out an extra-judicial disciplinary proceeding to publicly sanction Wood with revocation of his admission *pro hac vice*. The sanction occurred despite Wood's pending request to

[106] Del. Super. Ct. Civ. R. 90.1(e).

withdraw his *pro hac vice* admission.[107] Granting Wood's request would have obviated the need for the Sanctions Order and complied with the standard this Court sought to enforce making the revocation unnecessary. Instead of granting Wood's request, the trial court sanctioned Wood in a decision that received worldwide media coverage. The sanction was issued without an oral hearing and without a finding of any professional misconduct.

The last portion of the decision pontificates on Wood's "tweets" regarding the 2020 Presidential Election. Wood was unable to respond to this portion of the decision since the incident took place after the Rule to Show Cause was issued and the trial judge cancelled oral argument on the matter. The Superior Court's order implies that Wood's "tweets", "and many other things", incited these riots (in reference to the events of January 6, 2021 in Washington D.C.). Although the court below states it makes no finding regarding this conduct, and it may be considered dicta, an official court decision declaring that Wood's "tweets" no doubt incited the January 6, 2021 riot carries significant weight in the arena of public opinion. Wood was not able to respond to such a serious and acrimonious allegation.

After the revocation, Wood, now a *pro se* litigant, filed a timely Motion for Reargument on January 19, 2021. In its February 11, 2021 Memorandum and

[107] (A0014).

Order, the Superior Court references in a footnote that Wood failed to file the motion electronically. However, Wood, as a *pro se* litigant at this point, was not able to file electronically and therefore filed a paper copy. In addition, the Court states that "Wood's disregard for our Rules is consistent with his practice in other courts, part of the reason his *pro hac vice* status was revoked."

Wood's admission was not revoked for any conduct in the Delaware case. Rather, Wood's admission was revoked after the Superior Court's review of out-of-state decisions involving the 2020 Presidential Election. The Superior Court ignored Wood's *pro se* Motion for Reargument because it was not electronically filed. The Superior Court abused its discretion by rejecting Wood's *pro se* Motion for Reargument.

CONCLUSION

The lower court revoked Wood's pro hac admission based on out of state court actions where no ethical violations were found. As a result of that decision, not only is Wood's admission to practice in Delaware revoked but sister courts are relying on the Superior Court's January 11 Order to revoke his *pro hac vice* admission elsewhere.

Remand for future hearings is futile as neither opposing counsel nor did the other courts assert misconduct by Wood to support a remedy of revocation. In the alternative of an outright dismissal of the trial court's revocation decision, this Court should vacate the revocation decision and allow Wood to withdraw his admission *pro hac vice*, hereby rendering the issue moot.

For the foregoing reasons, Appellant L. Lin Wood respectfully requests that this Honorable Court dismiss the January 11, 2021 order of the Superior Court revoking Wood's admission *pro hac vice*.

Respectfully submitted,

/s/ Ronald G. Poliquin, Esquire
Ronald G. Poliquin I.D. # 4447
Marc J. Wienkowitz I.D. # 5965
The Poliquin Firm
1475 South Governors Avenue
Dover, DE 19904
(302) 702-5500

Dated: May 5, 2021

EXHIBIT 13

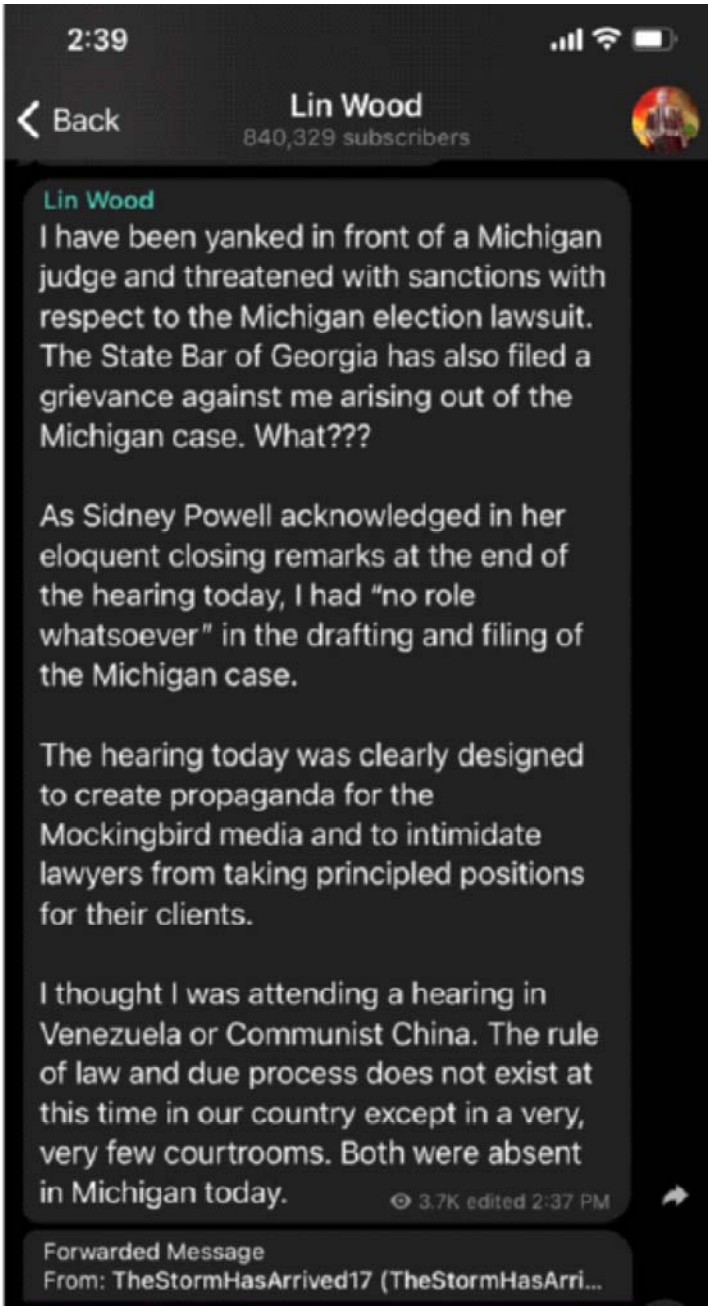

2:39
Back
Lin Wood
840,329 subscribers
Lin Wood
I have been yanked in front of a Michigan judge and threatened with sanctions with respect to the Michigan election lawsuit. The State Bar of Georgia has also filed a grievance against me arising out of the Michigan case. What???
As Sidney Powell acknowledged in her eloquent closing remarks at the end of the hearing today, I had "no role whatsoever" in the drafting and filing of the Michigan case.
The hearing today was clearly designed to create propaganda for the Mockingbird media and to intimidate lawyers from taking principled positions for their clients.
I thought I was attending a hearing in Venezuela or Communist China. The rule of law and due process does not exist at this time in our country except in a very, very few courtrooms. Both were absent in Michigan today.
3.7K edited 2:37 PM
Forwarded Message
From: TheStormHasArrived17 (TheStormHasArri...

EXHIBIT 14

As Sidney Powell stated today, I had no role whatsoever in drafting or preparing the pleadings filed in the Detroit election case. But despite my lack of involvement, I am threatened with disciplinary actions and the loss of my right to practice law in Michigan and Georgia. When truth is not relevant, injustice follows. When due process and a fair opportunity to be heard are denied, tyranny rears its ugly head.

Here is the TRUTH:

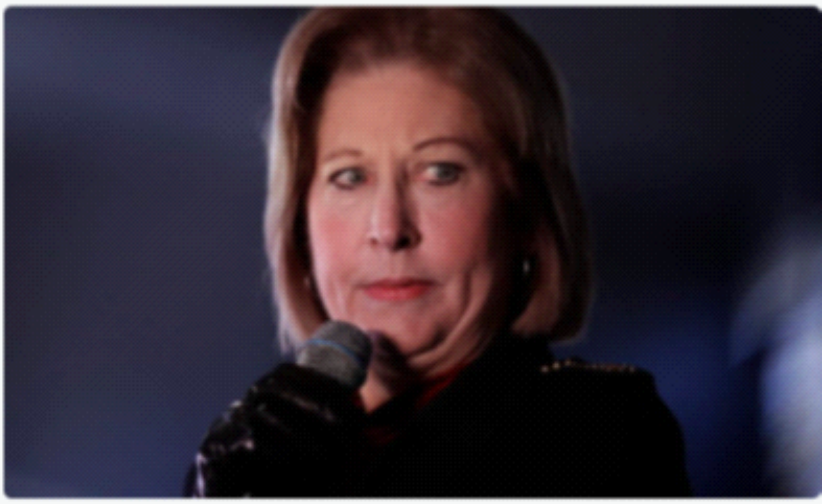
I do not lie. Sidney Powell does not lie.

The Detroit Free Press is a liar. Detroit lawyer David Fink is a liar.

Federal Judge Linda Parker is an Obama appointee.

I think that pretty much says it all, don't you?

https://www.freep.com/story/news/politics/2021/07/12/michigan-elections-lawsuit-sidney-powell/5334859001/



Detroit Free Press

Federal judge grills Sidney Powell's legal team in Michigan elections sanctions case

U.S. District Judge Linda Parker pushed Powell's legal team to justify legal actions taken in lawsuit to overturn the election.

edited 160.9K 22:03

EXHIBIT 15

Now don't go and get me in trouble by telling on me with the court but many times today I moved away from the camera because I was chuckling at the errant nonsense being spewed by David Fink and his supporters at the Zoom hearing.

Michigan was one of the most corrupt states in the November 2020 election! President Trump won Michigan in a massive landslide.

Who do these people think they are fooling? Do they really believe that they can successfully hide the TRUTH from We The People?

David Fink said he filed the motion for sanctions against Sidney and me on January 5. Then Fink says I was responsible for causing the January 6 "insurrection" the next day!!! Wow! What timing! One might almost think it was planned!!!

There are no coincidences.

This is like watching a movie!

P.S. I do kinda wish the day would come when I could go one on one in a fair courtroom with Ol' David The Fink. Now that would be entertaining! But I have better things to do right now than to waste my time with the likes of Fink.

153.1K 23:34