

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

US DOMINION, INC., DOMINION)	
VOTING SYSTEMS, INC., and)	
DOMINION VOTING SYSTEMS)	
CORPORATION,)	C.A. No. N21C-03-257 EMD
)	
Plaintiffs,)	CONSOLIDATED
)	
v.)	
)	
FOX NEWS NETWORK, LLC and FOX)	
CORPORATION,)	
)	
Defendants.)	

**FOX'S MOTION FOR CLARIFICATION
OF THIS COURT'S ORDER GRANTING DOMINION'S
MOTION IN LIMINE NOS. 6 AND 7**

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Dated: April 16, 2023

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The Fox defendants respectfully ask this Court to clarify its order granting Dominion's MIL No. 7 (and No. 6, in part).

In No. 7, Dominion moved to preclude Fox from "arguing that defamatory statements made by individuals or organizations other than Fox rebut or reduce Dominion's damages." Dom.MIL7 at 7. On April 11, the Court took the motion under further advisement after Dominion's counsel asked the Court to review cases like *Palmer v. N.Y. News Publ'g Co.*, 31 A.D. 210 (N.Y. App. Div. 1898), and *Sun Printing & Publ'g Ass'n v. Schenck*, 98 F. 925 (2d Cir. 1900). After doing so, the Court granted Dominion's motion, in response to which counsel for Fox pointed out that *Palmer* and *Sun Printing* addressed general damages, not special damages. On April 13, the Court informed the parties that it stood by its original decision.

Fox respectfully asks the Court to clarify its order in two respects. Specifically, while Dominion did not ask the Court to preclude Fox from arguing or introducing evidence that others made the same claims about Dominion to rebut Dominion's malice arguments, the Court suggested that Fox may not introduce that evidence for "any purpose." See Apr. 12 Hearing Tr. 5:11-14 ("You can't—said they cannot think of any circumstance where the fact that somebody else published the same defamatory statement is relevant for any purpose in the case."); Apr. 13 Hearing Tr. 294:13-15 (same). On the other hand, the Court indicated that its motion *in limine* rulings apply only to the relief actually sought in the motion (Apr. 11

Hearing Tr. 83:21-84:3), and in this case, Dominion’s motion was limited to “the damages inquiry[.]” Dom.MIL7 at 4. Fox thus makes this motion out of an abundance of caution. It respectfully asks the Court to clarify whether it is precluding Fox from introducing evidence that others (including President Trump) made the same claims about Dominion to rebut Dominion’s malice case. If the answer is yes, Fox asks the Court to reconsider that decision.

Fox also asks for clarification or reconsideration regarding whether such evidence is admissible to assist the jury in assessing whether the specific statements Dominion challenges were a “substantial factor” in causing Dominion’s claimed economic damages. This clarification is important for many reasons, not the least of which is that Dominion informed Fox on April 14 that it is walking away from lost profit damages and will pursue only “lost enterprise value” damages—knocking more than half a billion dollars off the damages claimed in its complaint. **Ex. A.**

Malice. First, as Fox explained in prior briefing (D.I. 956, FNN.MSJ.21-22), and as it intends to show at trial through competent witness testimony, President Trump accused Dominion of rigging the election in a barrage of statements and tweets during the time period at issue. FNN.MSJ.Ex.G6 (collecting tweets about Dominion from November 7, 9, 12, 13, 16, 19, 21, 22, 30; December 2, 3, 15, 16, 17; and January 5). The Fox News hosts reported on this content; Maria Bartiromo interviewed President Trump himself. See D.I. 1364, Fox’s Offer of Proof

Regarding Actual Malice Evidence at 3-4 (citing deposition testimony from Bartiromo, Carlson, Hannity, Dobbs, and Pirro).¹ Fox intends to offer similar testimony at trial—not as a “backdoor” to defenses already ruled upon, but rather to explain and contextualize the subjective state of minds of those reporters. As New York courts have observed, relying on official sources (and the U.S. President and his lawyers are plainly official sources) shows an absence of actual malice. *E.g.*, *Freeze Right Refrigeration & Air Conditioning Servs., Inc. v. City of New York*, 101 A.D.2d 175, 184-85 (N.Y. App. Div. 1984). A jury is much more likely to infer that a reporter did not know the allegations were false or harbor serious doubts about their truth when the highest official in the country was making the same claims. And the fact that the President was making the claims publicly undermines Dominion’s theory that the allegations were inherently implausible, because the jury entitled to consider and decide that allegations being made by a sitting U.S. President have credibility because of who is making the allegations. The same is true for the

¹ To the extent the Court’s ruling on Dominion MIL 6 precludes Ms. Bartiromo from testifying about her November 29 interview with President Trump, Fox respectfully requests reconsideration of that point as well. Such testimony will not be offered for the purpose of questioning why Dominion did not challenge that particular broadcast, or why Dominion did not sue President Trump (*i.e.*, the focus of MIL 6). Rather, it will be offered for the legitimate purpose of contextualizing Ms. Bartiromo’s reporting and her subjective state of mind about the President’s Dominion allegations, which is the heart of the actual malice inquiry. At minimum, it is relevant to the common law malice required for punitive damages, as it has the tendency to show that Ms. Bartiromo did not cover the Dominion allegations solely out of a desire to injure Dominion.

common law malice showing required for punitive damages: a jury is much more likely to conclude that Fox hosts did not cover the Dominion allegations because of hatred, ill will, or spite toward Dominion if they reported the claims because the President was making them. The jury should hear all of this. The Court’s remarks on Fox’s Offer of Proof and certain other MILs appear to allow such testimony for those purposes, but the Court’s “all purpose” commentary in response to MIL 7 could be construed to prohibit it. If such broad preclusion is what the Court ordered, Fox respectfully asks the Court to reconsider such preclusion. *See* Sack on Defamation §10:5.5 at 10-62 & n.275 (“[k]nowledge of other reports ... may be admissible on the issue of ‘fault’ and with respect to the assessment of punitive damages”).

Causation. Second, Fox seeks clarification of whether the Court meant to preclude Fox from introducing “other defamers” evidence for purposes of contesting Dominion’s ability to show causation. If so, Fox asks for reconsideration. Dominion “embraces its causation burden” and agrees that it must “meet the ‘substantial factor’ test” to recover “special damages.” Dom.MIL7 at 5. Evidence of “other defamers” is relevant to that test. The Restatement makes this clear:

For the defamation to be a legal cause of the special harm, it is necessary that it be a substantial factor in bringing about the harm. (Compare §431). ***In the ordinary case, this means that the defamation must be a necessary antecedent of the harm, which would not have occurred without it.*** Thus a defamatory publication concerning a candidate for public office does not make the defamer

liable for the candidate's loss of the election, when it is clear that the candidate would have been defeated even if the publication had not been made.

It is not necessary, however, that the defamation be the sole cause of the special harm, so long as it has played a substantial part in bringing it about. (Compare §432). *When two or more persons make defamatory statements to a third person, and each statement is found to have had a substantial influence upon his mind that has induced him to take some action causing special harm to the plaintiff*, each of the defamers may be liable for the special harm. This is true even though it appears that any one statement would have been sufficient in itself to induce the particular action.

Restatement (Second) Torts § 622A cmt. b (1977) (emphasis added). Dominion itself has cited Section 622A in its proposed jury instructions. See D.I. 1281, Exhibit F at Dominion's Proposed Final Instruction No. 35, n.82.

In other words, even in the context of multiple defamers, Dominion must prove that the statement in question was *itself sufficient* to cause the claimed special harm. Each statement must be “*found* to have had a substantial influence” before Dominion can recover. Both sides have designated experts to discuss the reach of coverage to help the jury make that determination. On Fox's side, Dr. Diana Ascher will rebut Dominion's claim that Fox was responsible for fueling the propagation of allegations about it. **Ex. B** at ¶¶ 7–8, 100–150. This necessarily includes an analysis of the reach and coverage of “other defamers.” Based on such analysis, the jury may determine that Fox's publication is not a “substantial factor” in causing the claimed economic harm. Or the jury may find that one or more publications from Fox, *and*

one or more publications from President Trump or other networks, had a “substantial influence” upon Dominion’s customers, making each actor liable for the proven special harm.² Either way, this is an issue for the jury, and it is improper to preclude Fox from introducing such evidence at all. In a similar way, if a customer says that it decided to cancel a contract with Dominion because it saw the allegations on the President’s Twitter account or Newsmax or OANN, it would be error for the Court to preclude Fox from eliciting such testimony.

The cases Your Honor cited are not inconsistent with this principle. *Sun Printing* explains that “[a] defendant in an action of libel ***is responsible in damages for his own wrong, and not for the wrongful acts of others, who have published similar libels of the plaintiff***[.]” 98 F. at 927-28. The *Palmer* court suggests that a publisher must “answer for that publication for all the damages ***which the jury have a right to say the publication caused***.” 31 A.D. at 212. That is the point. Causation is a jury determination, and evidence of “other defamers” is necessary and relevant to rebutting Dominion’s argument that Fox is a substantial cause of Dominion’s billion-dollar harm. The jury should hear such evidence, with a limiting instruction if appropriate.

² In that event, Fox agrees that, under principles of joint-and-several liability, the jury should not consider those other publications to reduce damages that Dominion proved Fox caused.

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EXHIBIT A

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Subject: Dominion v Fox
Date: Friday, April 14, 2023 4:40:12 PM

Counsel,

This email confirms that Dominion will not be presenting its claim for lost profits damages to the jury, given that it is duplicative of the lost enterprise value damages.

Brian

EXHIBIT B

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

US DOMINION, INC., DOMINION
VOTING SYSTEMS, INC., and
DOMINION VOTING SYSTEMS
CORPORATION,

Plaintiffs,

v.

FOX NEWS NETWORK, LLC,

Defendant.

Case No. N21C-03-257 EMD

US DOMINION, INC., DOMINION
VOTING SYSTEMS, INC., and
DOMINION VOTING SYSTEMS
CORPORATION,

Plaintiffs,

v.

FOX CORPORATION and FOX
BROADCASTING COMPANY, LLC,

Defendants.

Case No. N21C-11-082 EMD

EXPERT REBUTTAL REPORT OF DIANA L. ASCHER

December 27, 2022

CONFIDENTIAL

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I. Overview and Summary of Opinions

1. I was originally retained in this case to conduct an analysis of Fox’s coverage of the allegations about Dominion Voting Systems by then-President Donald Trump and his lawyers, Rudy Giuliani and Sidney Powell, following the 2020 U.S. Presidential Election and to provide my professional opinions about the claims in this case regarding Fox News Network’s coverage when compared to that of other news organizations and influencers.

2. On November 28, 2022, I submitted an expert report in which I explained the findings of my network analysis of tweets pertaining to Dominion, and my content analysis of articles and transcripts pertaining to Dominion (“Opening Report”).¹ Based on these findings, I concluded that the data do not support a claim that Fox was responsible for fueling the recirculation of allegations about Dominion; nor do the data support Dominion’s allegation that “Fox took a small flame and turned it into a forest fire,” giving then-President Trump and his lawyers’ allegations about Dominion “a prominence they otherwise would never have achieved.” The data show that (i) Fox and its hosts repeatedly pressed the then-President and his attorneys for evidence substantiating their allegations about Dominion, and (ii) Fox’s coverage decreased dramatically after then-President Trump and his lawyers failed to provide evidence, such that the discourse about Dominion beyond December 2020 was sustained by then-President Trump, other news organizations, and microinfluencers in December 2020 and January 2021—not Fox.

3. I have since been asked by Winston & Strawn LLP to review and evaluate the opening expert report done for Dominion by Dr. Joel H. Steckel, which was served on November 29, 2022 (“Dr. Steckel’s Report”).

¹ This report along with its errata, served on December 13, 2022, set forth my affirmative opinions in this matter. All references to my Opening Report refer to the Opening Report and errata.

4. I have reviewed Dr. Steckel’s data and analyses, and re-run some of the analyses from my original network and content analyses based on the allegedly defamatory tweets that Dr. Steckel includes in his report, and none of Dr. Steckel’s data or discussion changes my opinions in my Opening Report.

5. Instead, relying on established principles of information practice and policy, methodological standards for conducting a content analysis and a social media network analysis, the materials and scientific analyses on which I have relied, and my background and expertise, I conclude that Dr. Steckel’s assumptions and conclusions from his expert report outlined above, his so-called “content analysis” and “Social Media” analysis, and his data analysis approach are highly nonstandard, fatally flawed, and *not* based on scientific methodologies that are reasonably relied on in this field of expertise. In particular, Dr. Steckel’s assumptions, and the content and sentiment analyses in his social media analysis cannot be relied on to (i) declare that the at-issue statements he focuses on were “Fox’s statements” for purposes of his calculations and findings; (ii) draw conclusions about whether there exists a causal relationship between Fox and the spread of negative information about Dominion; nor (iii) draw conclusions that the public’s understanding of Dominion was “driven” by the supposed “promulgation” of claims by Fox. I summarize the major deficiencies in the analyses in Dr. Steckel’s Report below.

6. **First**, Dr. Steckel’s social media analysis grossly deviates from the recognized principles of a proper replicable scientific analysis, and it is subject to severe biases, undue subjectivity, and a lack of reliability, as evidenced by the flawed and misleading data that result from the study.

7. **Second**, Dr. Steckel’s data do not substantiate his conclusions that Fox was a “substantial factor” in driving the Dominion discourse because his analyses show only a correlation—not causation—between Fox and Dominion.

Correlation and causation are two related but distinct concepts. It is vital to understand the differences between them to evaluate and interpret scientific research effectively. Correlation is a term used to indicate a statistical association between variables; when one variable changes, so does the other. However, this covariation doesn't necessarily imply a direct or indirect causal link between the variables. In any event, even this correlation is based on an improper review of the wrong universe, further limiting the utility of the analysis.

8. **Third**, even adopting Dr. Steckel's various assumptions, the conclusions from my Opening Report remain the same—namely, Fox was a small part of the Dominion discourse, and the discourse was not driven by Fox.

9. If called on as a witness, I would testify under oath to these opinions and the findings of these studies, and/or those in my Opening Report. I reserve the right to amend and/or supplement this report based upon any new and/or additional documents or information that may be produced or uncovered between the filing of this report and the date of my expected testimony in this matter.

II. Assignment, Qualifications, and Compensation

A. Assignment

10. As discussed, I was retained originally by Winston & Strawn, on behalf of Fox News Network, LLC, and Fox Corporation, to analyze Fox's coverage of the allegations about Dominion by then-President Trump and his lawyers, and to provide opinions about the claims in this case regarding Fox's coverage when compared to that of other news organizations and influencers.

11. I have since been asked to review and evaluate the expert report completed for Dominion by Dr. Steckel, which was served on November 29, 2022. In particular, I have been asked to respond to the following aspects of Dr. Steckel's Report:

- The “at-issue statements” that Dr. Steckel analyzes as “Fox’s Statements about Dominion;”²
- Dr. Steckel’s use of Pex “[t]o determine the relative performance of Fox’s at issue posts” by calculating “engagement rates” for his “Post Engagement” analysis;³
- Whether Dr. Steckel’s various social media analyses⁴ are methodologically sound and support his opinions that, among other things, “public concern about Dominion and its role in the 2020 election” was “driven by the dissemination of the at-issue Fox statements;”⁵ and
- Whether any of Dr. Steckel’s analyses support his conclusions that “the Dominion brand gained prominence after the election through the promulgation of the at-issue statements by Fox;”⁶ “that there exists a substantial connection between Fox and the spread of negative information about Dominion;” that “Fox was a substantial factor in the damage done to Dominion’s brand;”⁷ or that “Dominion’s brand has been seriously damaged by the spread of these defamatory claims by Fox.”⁸

12. I conducted and directed the work presented in this report and wrote this rebuttal report to reflect the findings of my analyses and opinions.

B. Qualifications

13. My qualifications are detailed in my Opening Report. My curriculum vitae is attached again to this report as **Exhibit A**. Information about the case I testified in during the last four years is attached again as **Exhibit B**.

² Updated Expert Report of Professor Joel Steckel (“Steckel Report”), ¶¶ 11(F), 27, 119.

³ Steckel Report, ¶ 84.

⁴ Dr. Steckel’s social media analysis consists of the following: a Before/After Volume Analysis; a Content Analysis; a Refutation Analysis; an Analysis of Users Who Directly Engaged with Fox’s At-Issue Statements; a Fox Mentions Analysis; and an At-Issue Statement Days Volume Analysis. Steckel Report, Fig. 7.

⁵ Steckel Report, ¶ 11(m).

⁶ Steckel Report, ¶ 150.

⁷ Steckel Report, ¶ 132.

⁸ Steckel Report, ¶ 149.

C. Compensation

14. I am being compensated for services related to this matter at a rate of \$500 per hour. If deposed, I will be compensated at a rate of \$750 per hour for my time testifying, and if I testify at trial, I will be compensated at a rate of \$1,000 per hour. My compensation is based on a strict hourly rate for my time, and is in no way tied to either the opinions reached or the outcome of the litigation.

III. Overview of Dr. Steckel's Analyses for My Rebuttal Analyses

A. Dr. Steckel's Social Media Analyses' Scope and "At-Issue Statements"

15. To evaluate the reliability and validity (or lack thereof) of Dr. Steckel's social media studies and results, it is instructive to first review the studies' scope and Dr. Steckel's analytical and methodological approach.

16. Dr. Steckel described his assignment as follows:

I have been asked to analyze reaction to a set of statements, listed in the complaint, that were aired on Fox News or Fox Business and/or posted online by Fox or its hosts, and the degree to which these statements were disseminated on a variety of online and broadcast media. In particular, I was asked to research and analyze whether and to what extent these statements about Dominion had an impact on the public and corresponding online conversation about Dominion. Finally, I have been asked whether and how the Dominion brand was harmed by Fox's statements, and the likely implications of this harm for Dominion in the future.⁹

17. Dr. Steckel refers to the "set of statements" that he analyzed as being "the at-issue statements," which he defines as the 20 allegedly defamatory statements that are in the Complaint.¹⁰ According to Dr. Steckel, even if these

⁹ Steckel Report, ¶ 9 (footnote omitted).

¹⁰ Steckel Report, ¶ 27 & Appx D. Dr. Steckel's analyses include 22 Fox tweets despite defining the alleged

statements were made by the then-President or the then-President’s lawyers (Rudy Giuliani and Sidney Powell), Dr. Steckel assumes for his report that because those individuals were on Fox broadcasts all their statements are attributable to Fox and it therefore follows that “*Fox has falsely represented that . . .*”:

- “Dominion committed election fraud by rigging the 2020 presidential election;”
- “Dominion’s software and algorithms manipulated vote counts in the 2020 presidential election;”
- “Dominion is owned by a company founded in Venezuela to rig elections for the dictator Hugo Chávez;” and
- “Dominion paid kickbacks to government officials who used its machines in the 2020 presidential election.”¹¹

For example, even though Dr. Steckel acknowledges that it was “Sidney Powell making all four of the defamatory claims” on the November 13, 2020, episode of *Lou Dobbs Tonight*, Dr. Steckel nonetheless labels Sidney Powell’s claims as being “at-issue statements” made by Fox for the purposes of his report.¹² Similarly, even though Dr. Steckel acknowledges that, on a November 15, 2020, episode of *Sunday Morning Futures with Maria Bartiromo*, “Rudy Giuliani claimed that Dominion rigged the 2020 presidential election (claim 1), its software and algorithms manipulated vote counts (claim 2), and it has ties to Venezuela and Hugo Chávez (claim 3),” Dr. Steckel nevertheless labels Rudy Giuliani’s statements as being “at-issue statements” made by Fox.¹³

B. Dr. Steckel’s “Consumer Reaction Analysis”

18. To assess the public’s response to the at-issue statements, Dr. Steckel

defamatory statements as being the 20 set forth in the Complaint’s allegations. He confusingly states in Paragraph 73 of his Report that there were 23 allegedly defamatory tweets. This alone demonstrates that Dr. Steckel’s approach is inconsistent and lacks a coherent methodology.

¹¹ Steckel Report, ¶ 28 (footnote omitted).

¹² Steckel Report, ¶ 29.

¹³ Steckel Report, ¶ 31.

says he “performed a Consumer Reaction Analysis, in which [he] analyzed whether there is empirical evidence that Dominion’s brand was negatively impacted following Fox’s campaign, through either the addition or strengthening of negative brand associations.”¹⁴ Recognizing that “other news agencies and individuals were broadcasting and posting content about Dominion,” he also analyzed “whether any such negative impact could be attributed to Fox.”¹⁵ He purports to have done so by using three measures to assess consumer reaction, including:

- *Post Engagement*, in which he purports to have analyzed the number of engagements (i.e., likes, shares, comments, etc.) generated by social media posts featuring the at-issue statements;
- *Social Media Conversations*, in which he purports to have collected and analyzed social media posts mentioning Dominion to (a) identify whether the purported defamatory claims were repeated and spread on social media and (b) whether it is possible to connect discussion of the defamatory claims to Fox; and
- *Consumer Survey*, in which he commissioned a survey asking about opinions of Dominion and which news sources shaped those opinions.¹⁶

19. My rebuttal opinions offer critiques of two of those purported measures—the “post engagement” and “social media conversations” analyses.

1. Post Engagement Measure

20. Dr. Steckel’s “Post Engagements” measure counted “the total number of likes, comments, and shares generated by each [at-issue Fox] post featuring a defamatory statement.” He then created a purported “engagement rate” “by

¹⁴ Steckel Report, ¶ 67.

¹⁵ Steckel Report, ¶ 67.

¹⁶ Steckel Report, ¶ 67.

calculating total engagements as a percentage of video views.”¹⁷

21. “To determine the relative performance of Fox’s at-issue posts,” Dr. Steckel compared those percentages to what he claims are “benchmark engagement rates from Pex, a company focused on the use of copyrighted content on the Internet,”¹⁸ which he claims to be 2-3% for Twitter and Facebook and 10% for Instagram.¹⁹

2. Social Media Conversation Measure

22. Dr. Steckel’s “Social Media Conversations”²⁰ are divided into two analyses with three sub-analyses each: (1) a Brand Impact Analysis, purportedly assessing the impact of the at-issue statements on Dominion’s brand (employing before/after volume, content, and refutation sub-analyses), and (2) an Attribution Analysis, purportedly assessing Fox’s role in driving conversations about Dominion’s brand (employing user engagement with Fox’s at-issue statements, Fox mentions, and at-issue statement days volume analyses).²¹

23. To conduct these analyses, Dr. Steckel collected Twitter and Parler posts for the period from October 1, 2020, to January 31, 2021,²² that either explicitly mention Dominion or were posted in response to a post mentioning Dominion.²³ For Twitter, Dr. Steckel collected historical posts (using Twitter’s Full-Archive Search API), posts that have been removed from Twitter (using data from a study that was presented at a conference in 2021),²⁴ and replies to posts in

¹⁷ Steckel Report, ¶ 82.

¹⁸ Steckel Report, ¶ 84.

¹⁹ Steckel Report, ¶ 84.

²⁰ Steckel Report, ¶ 86.

²¹ Steckel Report, ¶¶ 86, 117.

²² Steckel Report, ¶ 93.

²³ Steckel Report, ¶ 94 & Appx G n. 230 ((dominion OR #dominion OR dominionvoting OR #dominionvoting OR dominionvotingmachines OR #dominionvotingmachines) –“old dominion”).

²⁴ Abilov, Anton, et al. “VoterFraud2020: a Multi-modal Dataset of Election Fraud Claims on Twitter.” Proceedings of the International AAAI Conference on Web and Social Media. Vol. 15. 2021.

the historical dataset that did not themselves satisfy the search query.²⁵ Dr. Steckel obtained the Parler dataset from the authors of another paper presented at a conference.²⁶

24. This resulted in more than 2.2 million posts from more than 611,000 users, which Dr. Steckel purports to have “cleaned” using keyword searches, to remove bots²⁷ and non-English posts.²⁸ This process included removing posts with a list of “Off-Topic Query” keywords.²⁹

25. This “clean” dataset contained more than 1.9 million posts from more than 560,000 users shared 3.7 million times.³⁰

26. Dr. Steckel selected a random sample of merely 100 posts of the 1.9 million total (0.005263%) to calculate what he determined to be a false positive rate of 5%,³¹ by evaluating if the post was about Dominion Voting Systems, and if the post was in English.³² Although Dr. Steckel claims to have also evaluated if the post was “still available” to determine the dataset’s false positive rate, he admits that “he did not consider the availability of the post on Parler or Twitter when determining if a post was relevant.”³³ He further admits that the limited “available context [of those posts] impacts the ability of a manual reviewer to assess the post fully.”³⁴

²⁵ Steckel Report, Appx G ¶¶ 1–6.

²⁶ Aliapoulios, Max, et al. “A Large Open Dataset from the Parler Social Network.” Proceedings of the International AAAI Conference on Web and Social Media. 2021.

²⁷ Steckel Report, Appx G ¶ 18 (filtering: names or descriptions containing the term “bot,” users with 100,000 messages or more, and (for Twitter only) users whose ratio of friends to followers is 100 or more). Dr. Steckel’s decision to remove these contributors to the Dominion discourse is a reason he failed to detect the microinfluencers that amplified then-President Trump’s tweets about Dominion, as detailed in my Opening Report.

²⁸ Steckel Report, ¶ 94.

²⁹ Steckel Report, Appx G ¶¶ 14–15.

³⁰ Steckel Report, ¶ 94.

³¹ Steckel Report, ¶ 94.

³² Steckel Report, Appx G ¶¶ 24, 28.

³³ Steckel Report, Appx G ¶ 26.

³⁴ Steckel Report, Appx G ¶ 26.

a. Brand Impact Analyses

27. ***Before/After Volume Analysis.*** For the first of three aspects of his Brand Impact Analysis, Dr. Steckel compared the number of posts, users posting, and retweets published mentioning Dominion from November 1, 2020, to November 7, 2020, and from November 8, 2020, to November 14, 2020.³⁵ From this analysis, Dr. Steckel concluded “that Dominion was seldom discussed among the public prior to the 2020 U.S. presidential election and that public interest in the brand grew dramatically and quickly while Fox was broadcasting and publishing the at-issue statements.”³⁶

28. ***Content Analysis.*** For this analysis, Dr. Steckel applied to the dataset a list of keywords for what he considers to be the “four categories of claims in Fox’s at-issue statements”—election fraud, manipulating vote count, ties to Venezuela, and kickbacks³⁷—even though he concedes “that Fox is not the only entity alleged by Dominion to have published defamatory statements.”³⁸

29. Dr. Steckel performed a manual review of two samples of 100 posts—the first with posts containing a keyword to calculate purported false positives and the second with posts not captured by the keyword search to calculate purported

³⁵ Steckel Report, ¶ 97.

³⁶ Steckel Report, ¶ 99.

³⁷ Steckel Report, ¶¶ 100, 101. Dr. Steckel’s keywords, included in Figure 11 to his report, are listed below:

- **Election Fraud:** dominiongate, riggedelection, dominioncheatingsystems, voterfraudisreal, electionfraud, voterfraud, vote fraud, stopthesteal, stopthesteai, cheat, cheats, cheating, cheated, corrupt, corrupts, corruption, corrupted, fraud, frauds, fraudulent, illegal, rig, rigged, rigs, rigging, steal, steals, stolen, stealing
- **Manipulating Vote Count:** manipulate, manipulated, manipulation, counts, tally, tallies, flipped, flip, ballot, ballots, switched, switching, switch, votes change, votes changes, votes changed, vote changer, change vote, changed votes, changes votes
- **Ties to Venezuela:** venezuela, chávez, chavez, venezuelan, maduro, hugo, hugochavez
- **Kickbacks:** kickback, kickbacks, took money, received money, followthemoney, boughtandpaidfor

³⁸ Steckel Report, ¶ 45 & n. 179.

false negatives. Although the reviewers were asked five questions, the response to only one (whether the post was about one of the four categories of at-issue claims) determined whether the post was deemed to be a false positive.³⁹ Dr. Steckel used a different approach to determine what he purports was the false negative “rate” and considered the responses to three of the five questions—whether the post is about Dominion Voting Systems, whether the post is in English, and whether the post mentions one or more allegedly defamatory claims.⁴⁰ In practice, Dr. Steckel divided the number of times a post was determined to be about one of the four categories of at-issue claims by the number of total posts about Dominion Voting Systems or a related topic in a thread about Dominion to determine the false negative rates.⁴¹ For both sets, it made no difference whether the post was still available for analysis, even though that was one of the questions asked of reviewers.

30. For the false negative review, Dr. Steckel also had reviewers sort the posts into eight predetermined categories purportedly to provide “more insight into the contents of the posts that do not use the specific defamatory keywords,”⁴² although he does not explain any guidance given to coders to evaluate the criteria for these categories.⁴³

31. As an example of a false negative post, Dr. Steckel includes a Tweet from @rezazia replying to @JackPosobiec (at the time an OANN employee)⁴⁴ about Dominion, reproduced below.⁴⁵ Neither user is associated with Fox and

³⁹ Steckel Report, Appx H ¶¶ 36, 38.

⁴⁰ Steckel Report, Appx H ¶¶ 42, 43.

⁴¹ Steckel Report, Appx H ¶¶ 43, 44.

⁴² “Generally negative towards Dominion; Generally positive towards Dominion; Affirming a defamatory claim; Refuting a defamatory claim; Related to litigation; Unclear context; Other – Neutral; False positive – Not about Dominion.” Steckel Report, Appx H ¶ 45.

⁴³ Steckel Report, Appx H ¶¶ 45–46.

⁴⁴ “Jack Posobiec.” *Wikipedia*, Wikimedia Foundation, 26, Dec. 2022, https://en.wikipedia.org/wiki/Jack_Posobiec.

⁴⁵ Steckel Report, Fig. 13.

neither tweet mentions Fox.

Figure 13. Consumer Post Without Defamatory Keyword but Links Dominion to Election Fraud¹⁸⁴



32. **Refutation Analysis.** Dr. Steckel performed a “refutation analysis” on the “false positive” sample of 100 posts that featured a keyword associated with at least one at-issue claim described above in an attempt to categorize the posts as either “refuting at issue claims,” “affirming at-issue claims,” or “express[ing] no clear opinion.”⁴⁶

b. Attribution Analyses

33. **Analysis of Posts from Users Who Directly Engaged with Fox Statements.** Dr. Steckel claims to have “assessed whether users who engaged directly with an at-issue statement were more or less likely to post a tweet featuring defamatory-claim content (as indicated by keywords) than other users.”⁴⁷ To do so, Dr. Steckel collected all tweets of a “test group” of users whom he determined (i) “replied to an at-issue tweet,” defined as being a user who replied to any of the 22 tweets featuring an at-issue statement or replied to any of those replies;⁴⁸ (ii) “posted at least one additional, subsequent tweet in the Dominion Social Media Dataset;” and (iii) “had not mentioned a defamatory claim prior to

⁴⁶ Steckel Report, ¶¶ 112–113; *see also* Steckel Report, Appx H ¶¶ 35–40.

⁴⁷ Steckel Report, ¶ 117.

⁴⁸ Steckel Report, ¶ 119.

participating in an at-issue conversation.”⁴⁹ He also formed what he called a “control group” from Twitter users in the Dominion Social Media Dataset that replied to any tweet in the dataset, excluding users in the test group.⁵⁰

34. ***Fox Mentions Analysis.*** Dr. Steckel purports to have analyzed “whether and to what extent Fox, its shows, and its hosts were mentioned in online conversations.”⁵¹ To do so, he identified posts in the dataset after the first at-issue statement aired containing the following keywords: “Fox,” “Fox News,” “Fox Business,” the twitter handles of accounts owned by Fox or its hosts, and the names of Fox hosts and shows.⁵² Because of how replies function on Twitter, any reply to any of these handles was included in this search and, thus, counted as a Fox mention.⁵³

35. Dr. Steckel performed a manual review of 100 posts from this Fox query to determine a false positive rate.⁵⁴ Although the coders were asked four questions, the response to three of the four questions—whether the post is about Dominion Voting Systems, whether the post is in English, and whether the post mentions or links to Fox and/or its hosts—determined whether the post was deemed to be a false positive.⁵⁵ In practice, Dr. Steckel divided the number of posts coded as mentioning or linking to Fox and/or its hosts by the number of total posts about Dominion Voting Systems or a related topic in a thread about Dominion to determine the false positive rate.⁵⁶ As with his other “validation” exercises, it made

⁴⁹ Steckel Report, ¶ 119.

⁵⁰ Steckel Report, ¶ 120.

⁵¹ Steckel Report, ¶ 123.

⁵² Dr. Steckel provide the following list of keywords: “fox, foxheadlines, foxnews, fox news, foxbusiness, fox business, foxnewspolitics, bartiromo, MariaBartiromo, LouDobbs, lou dobbs, loudobbstonight, lou dobbs tonight, Laura Ingraham, LauraIngraham, IngrahamAngle, Ingraham Angle, JudgeJeanine, pirro, tuckercarlson, tucker carlson, tuckercarlson tonight, tucker carlson tonight, pdoocy, seanhannity, sean hannity, DanaPerino, dana perino, chadpergram, chad pergram, BretBaier, bret baier, davidwebbshow, saracartermc” Steckel Report, n. 192.

⁵³ Steckel Report, n. 193.

⁵⁴ Steckel Report, Appx I ¶ 51.

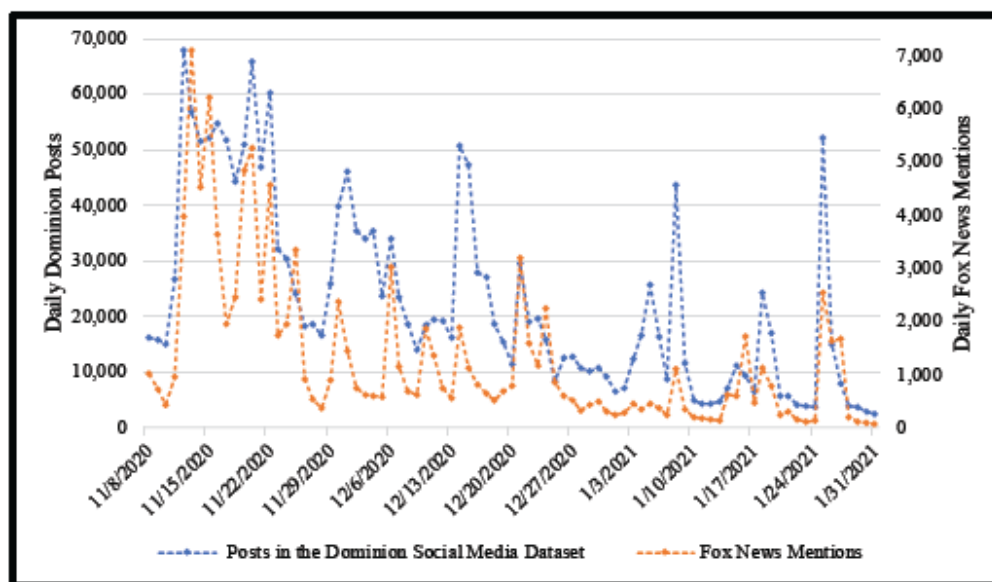
⁵⁵ Steckel Report, Appx I ¶¶ 51–54.

⁵⁶ Steckel Report, Appx I ¶¶ 54, 55.

no difference whether the post was still available for analysis, even though that was one of the questions asked of reviewers.

36. Dr. Steckel found that “Fox mentions are highly correlated with the overall conversation in the Dominion Social Media Dataset,” from which he confusingly concludes, “Fox was helping to drive the conversation.”⁵⁷ He also generated a graph, Figure 24, showing the daily volume of posts in the Dominion Social Media Dataset and the daily volume of what he defines as Fox mentions.

Figure 24. Correspondence between Daily Conversation about Dominion and the Fox



37. Again, Dr. Steckel cites select tweets as “anecdotal examples” that some posters cited Fox as a source of information regarding defamatory claims about Dominion.⁵⁸ Dr. Steckel also cites the following tweet from *then-President Trump* on November 12, 2020, as “another definitive connection between Fox and the spread of the defamatory claims.”⁵⁹

⁵⁷ Steckel Report, ¶ 125.

⁵⁸ Steckel Report, ¶ 126.

⁵⁹ Steckel Report, ¶ 128.

Figure 25. President Trump Tweet, November 12, 2020²¹²



38. *At-Issue Statement Days Volume Analysis.* The third piece of Dr. Steckel’s attribution analysis analyzed the volume of posts on days when Dr. Steckel says Fox posted to Twitter the allegedly defamatory statements in this case.⁶⁰ From November 8, 2020, to January 26, 2021, Dr. Steckel compared the average number of daily posts published on days of the at-issue statements to the average number of daily posts published on days without an at-issue statement.⁶¹ Dr. Steckel also compared the average number of Fox shows and hosts mentioned on those days.⁶²

IV. Rebuttal Opinions and Findings

39. Based on my qualifications, document review, and analyses conducted, I hold the following opinions.

A. Opinion 1: Dr. Steckel’s social media analysis grossly deviates from the established methodology for a content analysis and is not scientifically reliable or valid in the field.

40. To offer his opinions in this case, Dr. Steckel relies heavily on a “social media analysis” that he conducted with a team of consultants at

⁶⁰ Steckel Report, ¶ 129.

⁶¹ Steckel Report, ¶ 130.

⁶² Steckel Report, ¶ 131.

“Voluble.”⁶³ As discussed below, Dr. Steckel’s social media analysis was not a properly conducted content or sentiment analysis. Instead, Dr. Steckel’s social media analysis was conducted based on a mish mash of different techniques, injecting severe biases, undue subjectivity, and a lack of reliability into his studies.

1. The data for Dr. Steckel’s social media analysis were not collected in accordance with a principled or reliable content or sentiment analysis.

41. To explain Dr. Steckel’s deviation from a scientifically sound, replicable, and defensible content analysis, it is best to explain the fundamental principles required for any content analysis—including the sentiment and other sorts of analyses that are subsumed within the content analysis framework.

42. The late Dr. Klaus Krippendorff, “best-known as a pioneer in the study of content analysis,”⁶⁴ wrote multiple iterations of his seminal treatise on content analysis, entitled, *Content Analysis: An Introduction to Its Methodology*.⁶⁵ As Dr. Krippendorff explained, and as it is widely recognized in the field, “[c]ontent analysis is a research technique for making replicable and valid inferences from texts (or other meaningful matter) to the contexts of their use” and, “[a]s a technique, *content analysis involves specialized procedures*.”⁶⁶ Those procedures are part of a basic framework that Dr. Krippendorff explains “is simple and general, employing only a few conceptual components:

- A body of text, the data that a content analyst has available to begin an analytical effort
- A research question that the analyst seeks to answer by

⁶³ Steckel Report, ¶ 8.

⁶⁴ Julie Sloane and Kaihan Krippendorff, *Klaus Krippendorff, Ph.D., Pioneer of Content Analysis and Cybernetics, Dies at 90*, Annenberg School for Communication at the University of Pennsylvania (Oct. 18, 2022), <https://www.asc.upenn.edu/news-events/news/klaus-krippendorff-phd-pioneer-content-analysis-and-cybernetics-dies-90>.

⁶⁵ Krippendorff, Klaus, *Content Analysis: An Introduction to Its Methodology*. Sage Publications, Inc. 2019.

⁶⁶ Krippendorff, Klaus, *Content Analysis: An Introduction to Its Methodology*, p. 24.

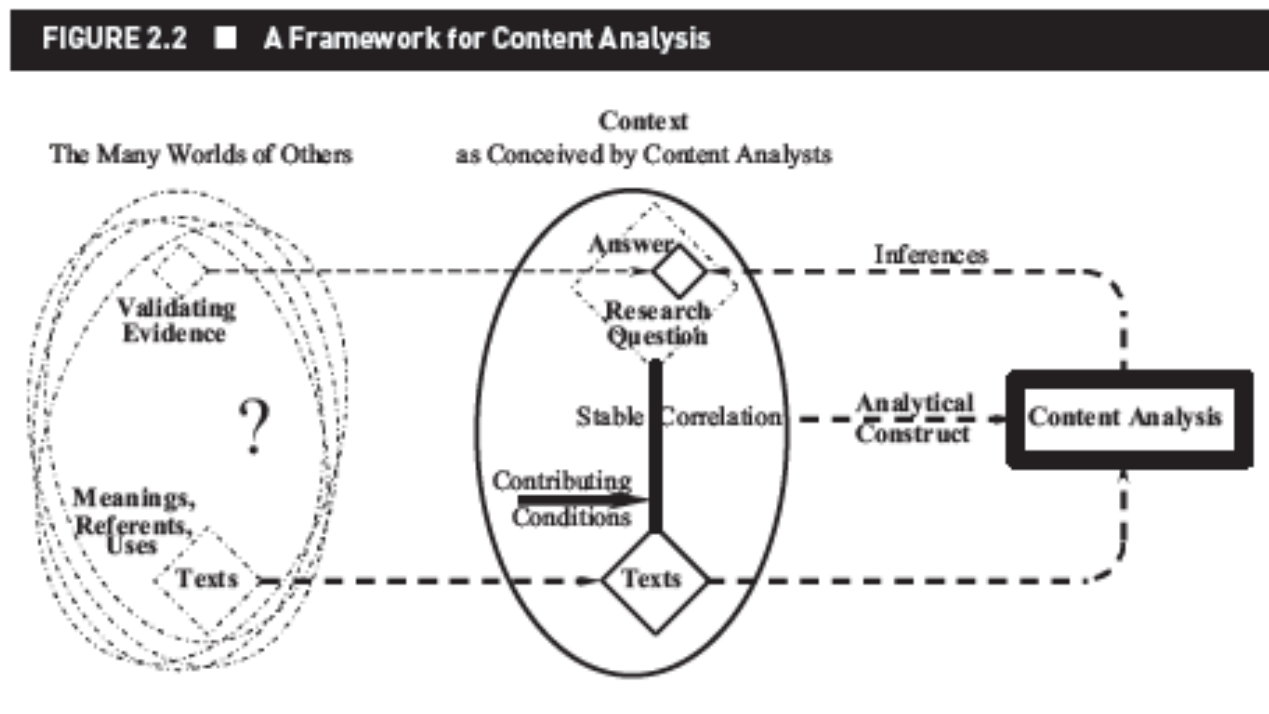
examining the body of text

- A context of the analyst's choice within which to make sense of the body of text
- An analytical construct that operationalizes what the analyst knows about the context of the body of text
- Inferences that are intended to answer the research question, which constitute the basic accomplishment of the content analysis
- Validating evidence, which is the ultimate justification of the content analysis.”⁶⁷

Dr. Krippendorff's content analysis framework is shown in Figure 1.

Figure 1

Dr. Krippendorff's Framework for Content Analysis

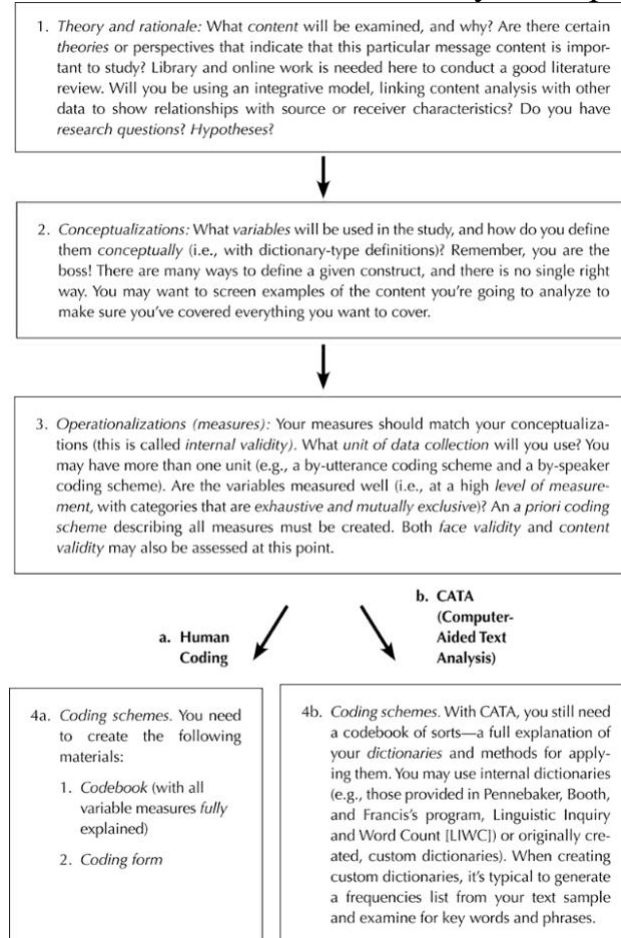


43. These components (and the order in which they are implemented) may

⁶⁷ Krippendorff, *Content Analysis: An Introduction to Its Methodology*, pp. 37–38.

vary depending on who is framing or using them,⁶⁸ but the general framework is well established. For example, Dr. Kimberly Neuendorf takes the view that “quantitative content analysis should be considered a research technique that conforms to the rules of science,” including all the criteria of the scientific method: “validity (internal and external), reliability, sample representativeness, the principle of maximum information, and objectivity (or intersubjectivity).”⁶⁹ For these reasons, she states that “content analysis ought to be conducted in line with procedures appropriate to good science,” with nine steps outlined in Figure 2.⁷⁰

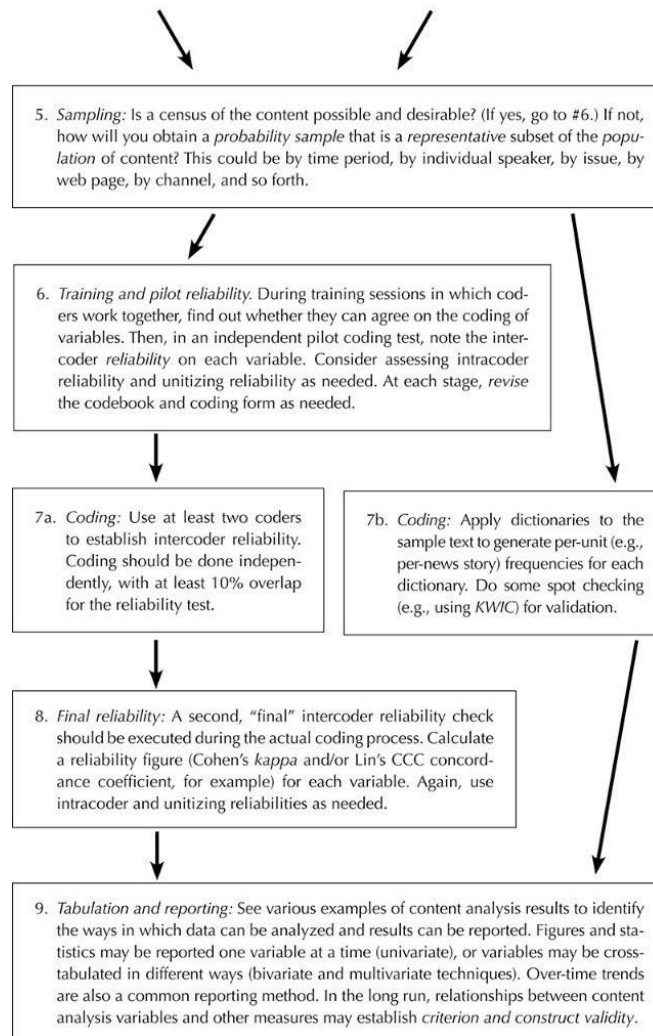
Figure 2
Dr. Neuendorf’s Content Analysis Steps



⁶⁸ Indeed, as Dr. Krippendorff notes, his “six components of content analysis do not need to be organized as linearly as suggested by Figure 4.2.” Krippendorff, *Content Analysis: An Introduction to Its Methodology*, p. 90.

⁶⁹ Neuendorf, Kimberly, *The Content Analysis Guidebook*. Sage Publications, Inc., 2017, p. 36.

⁷⁰ Neuendorf, *The Content Analysis Guidebook*, Box 2.1, pp. 40–41.

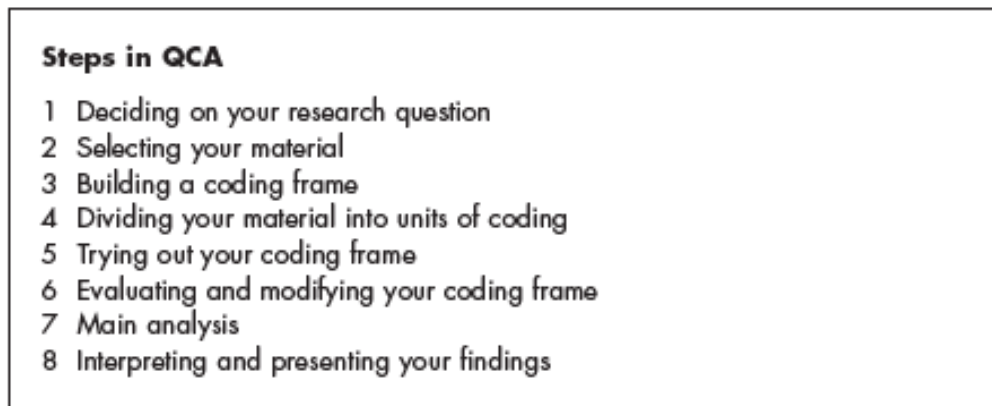


44. As another example, Dr. Margrit Schreier specializes in qualitative content analysis (“QCA”), and has emphasized that “[t]he *systematic* nature of QCA is probably its most distinctive feature.”⁷¹ The systematic, replicable, and objective nature of a content analysis is rooted in the fact that it “always involves the *same sequence of steps*: deciding on a research question; selecting your material; building a coding frame that will usually comprise several main categories, each with their own set of subcategories; dividing your material into units of coding; trying out your coding frame through double-coding, followed by

⁷¹ Schrier, Margrit, *Qualitative Content Analysis in Practice*. SAGE Publications, 2012, p. 5.

a discussion of units that were coded differently; evaluating your coding frame in terms of the consistency of coding and in terms of validity and revising it accordingly; coding all your material, using the revised version of your coding frame, and transforming the information to the case level; interpreting and presenting your findings.”⁷²

Figure 3
Dr. Schreier’s Steps in QCA



45. Across all these examples, there are fundamental steps that are required—be it a quantitative or qualitative content analysis, a sentiment analysis, or a network analysis: “[d]eciding on a research question, selecting your material, and interpreting and presenting your findings are an important part of all research, *regardless of the method you are using.*”⁷³

46. The problem here is that Dr. Steckel, and presumably his team at Voluble, did little to none of the above. As a result, there is no scientifically valid way to frame or characterize Dr. Steckel’s social media analysis as being the result of a research design that is suitable in our field such that it is “replicable, not merely understandable.”⁷⁴ The design and application of Dr. Steckel’s analysis is neither replicable nor understandable from a research analysis standpoint because

⁷² Schreier, *Qualitative Content Analysis in Practice*, p. 6.

⁷³ Schreier, *Qualitative Content Analysis in Practice*, p. 6.

⁷⁴ Krippendorff, *Content Analysis: An Introduction to Its Methodology*, p. 86.

his “descriptive account of the analysis” is not “complete enough to serve as a set of *instructions* to coders, fellow researchers, and critics.”⁷⁵

a. Dr. Steckel has no valid research question.

47. From the outset, Dr. Steckel’s social media analysis is flawed because there is no research question. A replicable, defensible content analysis must have a research question.⁷⁶ Crafting the research question “is by far the most important conceptual task that analysts face, for it is the key to a successful research design.”⁷⁷ Without one, the researcher is not conducting a methodologically sound content analysis, as “it is methodologically unsound to obtain results that have nothing to do with the context of the analyzed texts.”⁷⁸ Stated otherwise, without a research question, one is doing nothing more than providing “an abstract representation without empirical basis.”⁷⁹

48. Dr. Steckel’s analysis has no research question. There is no research question in his report. There is no research question in any of his appendixes.

49. Reading the report generously, one could infer that perhaps what Dr. Steckel was researching was in the “Assignment” portion of his report, such that he was trying to determine “whether and to what extent” the allegedly defamatory set of statements in the Complaint “had an impact on the public and corresponding online conversations about Dominion” and “whether and how the Dominion brand was harmed by Fox’s statements.”⁸⁰

50. Even assuming these were the questions, however, these would not be

⁷⁵ Krippendorff, *Content Analysis: An Introduction to Its Methodology*, p. 86.

⁷⁶ “Even in the instance of non-scholarly content analyses, it is recommended that careful research questions and/or research hypotheses be made. This process ensures a logical progression from conceptualization of an issue through measurement and results that address what the researcher has in mind.” Neuendorf, *The Content Analysis Guidebook*, p. 114.

⁷⁷ Krippendorff, *Content Analysis: An Introduction to Its Methodology*, p. 387.

⁷⁸ Krippendorff, *Content Analysis: An Introduction to Its Methodology*, p. 387.

⁷⁹ Krippendorff, *Content Analysis: An Introduction to Its Methodology*, p. 387.

⁸⁰ Steckel Report, ¶ 9.

proper research questions, as “not all questions qualify as research questions.”⁸¹

51. Dr. Steckel’s assignment does not have proper research questions for a content analysis because the assignment does not (a) leave room for “several possible answers” or (b) “provide for at least two ways of selecting from among these answers—if not in practice, then at least in principle.”⁸²

52. Indeed, the first half of Dr. Steckel’s “assignment” begs a single answer, that FNN’s coverage about Dominion “had an impact on the public and corresponding online conversations about Dominion,”⁸³ because Dr. Steckel did not consider the influence of any other information source in the broader context of the Dominion discourse. *The assignment leaves no room for several conceivable answers because it presumes the very conclusion it seeks to study.* Dr. Steckel seeks to analyze “whether and how the Dominion brand was harmed by Fox’s statements,” but this presumes that “Fox’s statements” (and only Fox’s statements) harmed Dominion’s brand. This is an example of one of the “pernicious . . . pseudoquestions that exclude alternative answers” and is improper because “[c]ontent analysts must not confuse proving one’s point in a public debate with pursuing a research question that has several possible answers.”⁸⁴

53. This failure is critical, because well-formulated research questions guide the research design and “constitute one-third of a content analyst’s world construction, the framework within which the analysis is to be undertaken.”⁸⁵

b. Dr. Steckel does not use a proper, stable “world construction” based on testable correlations at the outset of his analyses.

54. Dr. Steckel also fails to satisfy the “second third of the content analyst’s world construction,” because he fails to set up a “network of stable

⁸¹ Krippendorff, *Content Analysis: An Introduction to Its Methodology*, p. 387.

⁸² Krippendorff, *Content Analysis: An Introduction to Its Methodology*, p. 387.

⁸³ Steckel Report, ¶ 9.

⁸⁴ Krippendorff, *Content Analysis: An Introduction to Its Methodology*, p. 388.

⁸⁵ Krippendorff, *Content Analysis: An Introduction to Its Methodology*, p. 388.

correlations” for locating relevant texts. To the contrary, he concludes his purported *causal* analysis with conclusions based on the very *correlations* that should have served as the starting point for his analysis.⁸⁶

55. To do a proper analysis, the inference “that content analysis relies on presupposes some knowledge on the analysts’ part of how the research questions relate to available texts.”⁸⁷ “Questions whose answers are not correlated with anything observable, readable, or accomplishable with texts cannot be answered.”⁸⁸ And when, as here, the assignment in analyzing texts is to determine “*causes*, such as when researchers attempt to infer audience perceptions or media-induced anxieties,” “analysts’ task at this step of a research project is to ascertain a reliable network of . . . correlations that researchers can rely on to be stable and general (invariant over time and in various situations), certain (able to determine or be determined), and selective (able to narrow the set of possible answers to a research question).”⁸⁹

56. Here, however, because Dr. Steckel had no proper research question (indeed, he had no research question), he failed to conduct an analysis that could test or analyze the *causal* assignment that he was tasked to analyze—namely, “whether and how the Dominion brand was harmed by Fox’s statements,” such that he could legitimately “conclude that Fox was a substantial factor in the damage done to Dominion’s brand.”⁹⁰

57. The flaw in Dr. Steckel’s analysis lies in the fact that his “findings” are based on the very correlations that he *should* have used as a starting point to analyze whether and how the Dominion brand was harmed by the alleged

⁸⁶ Krippendorff, *Content Analysis: An Introduction to Its Methodology*, p. 390.

⁸⁷ Krippendorff, *Content Analysis: An Introduction to Its Methodology*, p. 389.

⁸⁸ Krippendorff, *Content Analysis: An Introduction to Its Methodology*, p. 389.

⁸⁹ Krippendorff, *Content Analysis: An Introduction to Its Methodology*, p. 389.

⁹⁰ Steckel Report, ¶ 132.

defamatory statements in the Complaint. Tellingly, Dr. Steckel’s Figure 35 (labeled “Summary of My Analyses and Conclusions”) demonstrates that each of Dr. Steckel’s “Social Media Impact” analyses result in concepts of correlation, not causation:

- The “Before/After Analysis” merely shows that the volume of posts about Dominion in the week after Fox’s coverage about Dominion increased nearly 800% from the week before—a correlation, not a cause;
- The “Content Keyword Analysis” merely shows that, in Dr. Steckel’s words, “the fluctuations in conversations about the defamatory claims are highly *correlated* with the overall fluctuations of the volume of conversation about Dominion”—a correlation, not a cause;
- The “Refutation Analysis” merely shows that 82.5% of posts generally “affirmed or repeated” claims about Dominion—a correlation, not a cause;
- The “Attribution” Analysis merely shows, again, in Dr. Steckel’s words, that “Fox, its shows, and its hosts are regularly referred to in posts about Dominion, and the volume of Fox mentions is *correlated* with the overall conversation about Dominion”—a correlation, not a cause; and
- The “Statement Day Volume Analysis” merely shows that, “[o]n average, . . . Fox, its shows, and its hosts are more than three times more likely to be mentioned than on non-statement days”—a correlation, not a cause.⁹¹

58. These correlations should have been the *starting point* from which Dr. Steckel could collect a series of texts and “channel, almost in an information theoretical sense, the diversity encountered in texts to the possible answers to a research question.”⁹² But because Dr. Steckel had no valid research question, he had no basis from which to develop a coherent universe of data for his analysis—

⁹¹ Steckel Report, Fig. 35 (emphasis added).

⁹² Krippendorff, *Content Analysis: An Introduction to Its Methodology*, p. 390.

his analysis ended where it should have begun and, as a result, his universe of texts and his research method were flawed.

c. Because he had no valid research question, Dr. Steckel did not have a justifiable, relevant population of texts for review.

59. Given the above, Dr. Steckel had no justifiable basis for “the starting point for content analysis: locating relevant texts.”⁹³ While Dr. Steckel did collect texts, the fact remains that the texts “must be sampled from populations of texts that can be informative in th[e] sense” that they “inform analysts’ questions.”⁹⁴

60. Looking back at Dr. Steckel’s assignment, we see that the universe of texts he collected was not justifiable and far too narrow. He was tasked with figuring out “whether and to what extent” the allegedly defamatory statements in the Complaint “had an impact on the public and corresponding online conversations about Dominion” and “whether and how the Dominion brand was harmed by Fox’s statements.”⁹⁵ To conduct such an analysis, Dr. Steckel should have analyzed *all* potential causes for the various surges in the Dominion discourse to determine the relative impact of Fox’s statements. But Dr. Steckel excluded such data, making it impossible for him to conduct any scientifically rigorous analysis.

61. If Dr. Steckel were responding to a research question about the supposed harm of “Fox’s statements,” at minimum he should have tried to collect all “Fox statements” about Dominion. But he did not. Dr. Steckel merely analyzed the “20 allegedly defamatory statements” from the “complaint in this matter.”⁹⁶

62. Dr. Steckel did not try to apply any of the objective methods that

⁹³ Krippendorff, *Content Analysis: An Introduction to Its Methodology*, p. 390.

⁹⁴ Krippendorff, *Content Analysis: An Introduction to Its Methodology*, p. 390.

⁹⁵ Steckel Report, ¶ 9.

⁹⁶ Steckel Report, ¶ 27. While I also analyzed the allegedly defamatory Fox tweets for my network analysis, my content analysis was designed to capture both the allegedly defamatory Fox broadcasts and other content produced by Fox during the relevant time period, so as to provide a more complete dataset of Fox’s coverage of Dominion.

“content analysts go about [when] deciding on the informativeness of the texts they propose to analyze”—e.g., “[r]eading a small sample,” which “is a good start”; “[e]xamining headlines or abstracts for clues to the relevance of texts,” which “is a common practice”; or “[p]ursuing citation networks to the key publications,” which “is a strategy familiar as snowball sampling.”⁹⁷

63. That is likely why he only analyzed the limited set of “negative” Fox output in Figure 5 of his report and ignored the posts of positive content from Fox from individuals like Eric Shawn,⁹⁸ Tucker Carlson,⁹⁹ Dana Perino,¹⁰⁰ Neil Cavuto,¹⁰¹ and others at Fox who did not post or cover Dominion in a negative light. This is indefensible in setting up the universe, given that Dominion’s own Complaint acknowledges these other voices at Fox that were making other “Fox Statements.”¹⁰²

64. Dr. Steckel’s failure to include all “Fox statements” in his analyses underscores how his universe is improperly limited, because it excludes entire analyses of entire populations relevant to identify “whether and how the Dominion brand was harmed by Fox’s statements.”¹⁰³

65. While Dr. Steckel does put together a dataset to try to determine how the Dominion brand was harmed, Dr. Steckel excludes all sources other than Fox—he does not look at then-President Trump, Giuliani, Powell, OANN, Newsmax, or any highly newsworthy public events, including press conferences, rallies, and other world events that may be more closely tied to discourse about Dominion. As shown in Dr. Steckel’s Figure 28, Dr. Steckel’s attribution analysis

⁹⁷ Krippendorff, *Content Analysis: An Introduction to Its Methodology*, p. 391.

⁹⁸ FNN002_00004646-64, at FNN002_00004655.

⁹⁹ FNN018_02408831-45, at FNN018_02408834.

¹⁰⁰ FNN008_00022483-87, at FNN008_00022483.

¹⁰¹ FNN002_00003925-44, at FNN002_00003933.

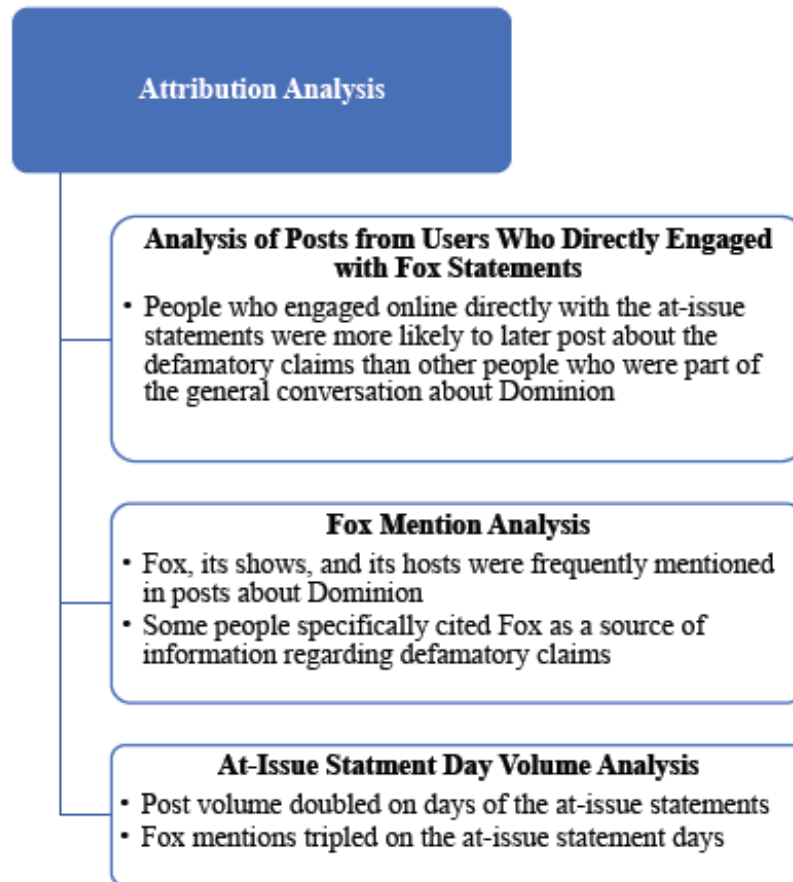
¹⁰² Dominion Complaint, ¶ 181.

¹⁰³ Steckel Report, ¶ 9.

is limited to evaluating a single correlation: Fox.

Steckel's Figure 28

Figure 28. Findings from the Social Media Attribution Analysis



He only looks at Fox, yet concludes from his attribution analysis that “Fox was a substantial factor in the damage done to Dominion’s brand.”¹⁰⁴ Dr. Steckel cannot reach this conclusion from this analysis—he has not examined the full set of factors that may have contributed to the Dominion discourse, much less determined what actions by what entities *caused* any damage to Dominion’s reputation.

66. Another deficiency in Dr. Steckel’s study design is that his “analysis

¹⁰⁴ Steckel Report, ¶ 132.

does not incorporate any engagements generated by . . . suspended users”¹⁰⁵ on Twitter. Glaringly, this resulted in the exclusion of then-President Trump’s Twitter activity, even though Trump was not suspended as of the time of Dr. Steckel’s Report on November 28, 2022, as Dr. Steckel’s Report admits.¹⁰⁶ It does not appear that Dr. Steckel did *any* analysis of then-President Trump’s tweets—let alone a comparative analysis—even though Dominion’s multiple lawsuits and my network analysis indicate that then-President Trump, his lawyers, microinfluencers, and others retweeting then-President Trump (who has nearly 88 million Twitter followers) were significant contributors to the Dominion discourse.

67. Dr. Steckel’s exclusion of then-President Trump and Trump’s lawyers from his analysis is perplexing, because Dr. Steckel’s Report details the efforts he made to evaluate other suspended accounts: a Twitter-Realtime dataset (acquired because Dr. Steckel “sought to analyze messages that have since been removed” from Twitter) and a Parler dataset (which he had to obtain from the authors of an academic paper because Parler data prior to its relaunch in February 2021 is no longer available on the platform).¹⁰⁷ Dr. Steckel does not mention any attempts to gain access to datasets inclusive of then-President Trump’s tweets, and his analysis ignores the role of then-President Trump in driving conversations about Dominion following the 2020 election. Tellingly, Dr. Steckel cherry-picks one tweet from then-President Trump, but only because he believes it serves as an example of a “definitive connection between Fox and the spread of defamatory content.”¹⁰⁸ Dr. Steckel identifies then-President Trump as a source promoting the Dominion discourse, yet he fails to acknowledge the pivotal role, as demonstrated in my

¹⁰⁵ Steckel Report, ¶ 85.

¹⁰⁶ Steckel Report, n. 162 (“President Trump was suspended from Twitter on January 6, 2021 but was reinstated on November 19, 2022. The social media analysis I conducted, including the manual review, was completed before his account was reinstated.”)

¹⁰⁷ Steckel Report, ¶¶ 3, 5, 92 & Appx G.

¹⁰⁸ Steckel Report, ¶ 128 & Fig. 25.

report, played by then-President Trump in driving that discourse.

68. Dr. Steckel’s singular focus on Fox is also problematic because he notes that he “decided to consider posts only through the end of January 2021 to minimize the number of posts in the dataset that are about Dominion’s defamation lawsuits.”¹⁰⁹ This explanation for the period studied demonstrates that Dr. Steckel sought to exclude evidence that media outlets—and Dominion itself—propagated coverage of allegations surrounding the company by publicizing pending litigation. For example, since Dr. Steckel is talking about long-term harm to Dominion’s brand, it is unclear why he failed to include examples of Dominion’s lawyers and Dominion’s CEO discussing Dominion in February 2021,¹¹⁰ March 2021,¹¹¹ and August 2021,¹¹² or Dominion’s CEO doing a full primetime interview with Anderson Cooper on *60 Minutes* in October 2022:¹¹³



¹⁰⁹ Steckel Report, ¶ 93.

¹¹⁰ *Dominion Voting Systems CEO says company’s intention is to get the facts on the table*, CNBC (Feb. 21, 2021), www.cnbc.com/video/2021/02/23/dominion-voting-systems-ceo-our-intent-is-to-get-facts-on-the-table.html.

¹¹¹ *Dominion sues Fox for \$1.6B over election claims*, USA Today (Mar. 26, 2021), <https://www.usatoday.com/videos/news/nation/2021/03/26/dominion-sues-fox-16-b-over-election-claims/7015922002/>; *Dominion Voting Systems lawyer explains lawsuit against Fox*, CNN Business (Mar. 29, 2021), www.cnn.com/videos/business/2021/03/28/dominion-voting-systems-lawyer-explains-lawsuit-against-fox.cnn.

¹¹² *What’s next for Dominion’s Big Lie Lawsuits?*, CNN Business (Aug. 15, 2021), <https://www.cnn.com/videos/business/2021/08/15/whats-next-for-dominions-big-lie-lawsuits.cnn>.

¹¹³ *Dominion Voting Systems and the baseless conspiracy theories about the 2020 Election*, CBS News (Oct. 23, 2022), www.cbsnews.com/video/dominion-voting-systems-conspiracy-theories-60-minutes-video-2022-10-23/.



69. None of this is mentioned or analyzed by Dr. Steckel. Instead, for his comparison of “post volume,” Dr. Steckel compared the seven days before the election (November 1, 2020 – November 7, 2020) with the seven days after the election (November 8, 2020 – November 14, 2020) to conclude that “[p]rior to Fox’s at-issue statements, conversations about Dominion were minimal.”¹¹⁴ This is problematic for many reasons: it does not evaluate any other explanations for the volume change at that point in time, this period ignores any conversation *after* this two-week period, and this period ignores any *previous* conversations about Dominion that existed during prior election cycles, which existed as captured in my Media Index.

70. Put simply, Dr. Steckel’s data collection is troubling because, as he acknowledges, “Fox is not the only entity alleged by Dominion to have published defamatory statements.”¹¹⁵ Indeed, Dominion is suing multiple entities for what

¹¹⁴ Steckel Report, ¶ 97.

¹¹⁵ Steckel Report, ¶ 45.

Dr. Steckel inexplicably labels as the “Fox Statements.”¹¹⁶ Dr. Steckel’s analysis is improper because it is designed to ignore the contributions of *all* other media sources and influential persons to the Dominion discourse, even those that Dominion alleges “published defamatory statements” about Dominion.

71. Even so, despite acknowledging and obviously being aware that there were other voices making these allegedly defamatory claims, Dr. Steckel simply collects Fox data—and not data of the other actors—and states “I address below only Fox’s role in spreading the at-issue claims.”¹¹⁷ Thus, in his “Before/After Analysis,” Dr. Steckel does not account for the fact that other media were talking about Dominion, as well, and he improperly attributes an 800% increase in volume of the Dominion discussion to Fox alone based on mere correlation, not causation. It should come as no surprise that he only ultimately comes up with a correlation to Fox, because he never collected a universe of texts to make a reasoned analysis that included the other voices in the discourse.

d. With no proper research question, and no justifiable universe, Dr. Steckel is merely “adding up the total” numbers of a flawed universe to fit a preconceived narrative.

72. What data there are in Dr. Steckel’s Report are further undermined by fundamental errors in processing and tabulation, as his analysis of engagement is based entirely on erroneously adding up various social media metrics without any focus on causation. Looking at Dr. Steckel’s Figure 5 is instructive, as he analyzes “post engagement” of his selectively crafted world of Fox statements “to determine if the statements resonated with viewers leading to negative effects on Dominion’s

¹¹⁶ *US Dominion, Inc. v. Patrick Byrne*, 21-cv-2131 (D.D.C. Aug. 10, 2021), Complaint; *US Dominion, Inc. v. Rudolph W. Giuliani*, 21-cv-213 (D.D.C. Jan. 25, 2021), Complaint; *US Dominion, Inc. v. Herring Networks, Inc., d/b/a One America News Network*, 21-cv-2130 (D.D.C. August 10, 2021) (“*Dominion v. OANN*”), Complaint; *US Dominion, Inc. v. My Pillow, Inc.*, 21-cv-445 (D.D.C. Feb. 22, 2021), Complaint; *US Dominion, Inc. v. Newsmax Media Inc.*, 21C-08-063 EMD (Del. Super. Ct. Aug. 10, 2021), Complaint; *US Dominion, Inc. v. Sidney Powell*, 21-cv-40 (D.D.C. Jan. 8, 2021), Complaint.

¹¹⁷ Steckel Report, ¶ 45.

brand.”¹¹⁸

73. In Figure 5, Dr. Steckel and his team selectively collect a narrow universe of Fox media coverage on social media and then, “by adding up the total number of likes, comments, and shares generated by each post featuring a defamatory statement” determine “total engagements as a percentage of views.”¹¹⁹ Based on “adding up” the numbers, Dr. Steckel reaches the unremarkable conclusion that his selective segment of FNN’s election coverage “posted online got the attention of viewers.”¹²⁰ Despite absolutely no causal analysis, Dr. Steckel claims that his summation of engagement metrics “unequivocally demonstrate[s] that Fox’s defamatory statements have damaged the Dominion brand by injecting negative associations into the brand.”¹²¹

74. This is the danger of an improperly crafted and implemented content analysis. All he did was add up tweets, yet “categorizing textual units is considered the most elementary form of measurement.”¹²²

75. Dr. Steckel’s post-engagement calculations suffer from multiple flaws, including his decision to merely sum the number of likes, comments, and shares. By simply adding up the various indicators of user engagement, Dr. Steckel gives equal weight to different measures that are indicative of different levels of engagement. For example, clicking “like” on a post is far less significant than commenting on that post or sharing that post with someone else. For this reason, organizations like Brandwatch¹²³ use weighted engagement metrics for Twitter,

¹¹⁸ Steckel Report, ¶ 81.

¹¹⁹ Steckel Report, ¶ 82.

¹²⁰ Steckel Report, ¶ 84.

¹²¹ Steckel Report, ¶ 148.

¹²² Krippendorff, *Content Analysis: An Introduction to Its Methodology*, p. 91.

¹²³ Brandwatch is an “[o]nline consumer intelligence and social media listening platform.” Mike Butcher, *Brandwatch is acquired by Cision for \$450M, creating a PR, marketing and social listening giant*, TechCrunch+ (Feb. 26, 2021), <https://techcrunch.com/2021/02/26/brandwatch-is-acquired-by-cision-for-450m-creating-a-pr-marketing-and-social-listening-giant/>; About us, Brandwatch, <https://www.brandwatch.com/company/about/>.

demonstrating that large social media monitoring companies recognize the need for weighted metrics to better reflect user engagement.¹²⁴ Dr. Steckel’s post engagement calculations completely ignore such nuances of social media interaction.

76. Flaws in Dr. Steckel’s elementary post-engagement measurement are amplified by his decision to focus only on “viewers” who also were selectively chosen, because they constitute a subpopulation likely to have pre-existing negative attitudes toward Dominion: Parler users. Dr. Steckel states that he used Parler because it is “a niche platform popular among Trump supporters and the political right (*i.e.*, Fox’s primary audience).”¹²⁵ But he provides no explanation for this assumption that this was Fox’s primary audience. And, unlike with the use of Twitter, he cites no literature remotely suggesting that Parler is a reliable or effective representation of public sentiment. Nevertheless, Dr. Steckel alleges that including both Twitter and Parler supposedly “provides insight into the kinds of conversations a large number of users were having about Dominion on a popular platform and a platform used by those especially likely to have been exposed to Fox’s statements.”¹²⁶ Dr. Steckel notes that Parler became popular around the time of the 2020 election and that “Fox News and Fox Business hosts also used Parler during the weeks and months after the 2020 election.” Noticeably, Dr. Steckel does not explain whether he looked at any of these accounts for his analysis.¹²⁷ Dr. Steckel’s conclusion that Parler users are “especially likely to have been exposed to Fox’s statements” is unsupported and biased.

¹²⁴ Mike Ross, *List of Measure Metrics by Network*, Brandwatch (Dec. 12, 2022), <https://social-media-management-help.brandwatch.com/hc/en-us/articles/4568227788445-List-of-Measure-Metrics-by-Network> . Brandwatch, or a similar company, would have been a better source of data than Pex, as Brandwatch uses weighted engagement metrics.

¹²⁵ Steckel Report, ¶ 89.

¹²⁶ Steckel Report, ¶ 89.

¹²⁷ Steckel Report, ¶ 91.

77. Dr. Steckel states that his “analysis indicated that people who directly viewed and responded to the at-issue tweets were more likely than other participants in the conversation about Dominion to later repeat the defamatory claims in their own posts.”¹²⁸ But Dr. Steckel fails to recognize that it is entirely possible that people held *prior* negative beliefs about Dominion, which may have been influenced by other actors, such as then-President Trump. At the end of the day, people tend to watch news programs that confirm their beliefs, not the other way around.¹²⁹ Dr. Steckel recognizes that Fox’s viewership leans right politically, yet he implies that Fox caused this political leaning, rather than understanding that many Fox viewers lean right, politically, and watch Fox because the programming confirms their pre-existing beliefs. Dr. Steckel’s analysis does not provide a causal link. Dr. Steckel’s tendency to select the sample for analysis based on where Fox’s audience tends to operate is a significant flaw to the design of his analyses.

78. Based on this flawed universe and these flawed bases, Dr. Steckel merely adds up the data even though “quantification cannot be a defining criterion for content analysis”¹³⁰ because “[c]ounting is an operation performed on a body of text” and “[i]ts result says nothing other than someone has counted something.”¹³¹

79. The dangers of grabbing a large set of data and cherry-picking the findings that support what one wishes to prove are on full display in Dr. Steckel’s Report, given his use of the “anecdotal” samples to demonstrate the “negativity” that he claims Fox caused. As an example of a false negative post, Dr. Steckel includes a Tweet from @rezazia replying to @JackPosobiec (at the time an OANN

¹²⁸ Steckel Report, ¶ 159.

¹²⁹ Elizabeth Grieco, *Americans’ main sources for political news vary by party and age*, Pew Research Center (Apr. 1, 2020), <https://www.pewresearch.org/fact-tank/2020/04/01/americans-main-sources-for-political-news-vary-by-party-and-age/>.

¹³⁰ Krippendorff, *Content Analysis: An Introduction to Its Methodology*, p. 91.

¹³¹ Krippendorff, *Content Analysis: An Introduction to Its Methodology*, p. 387.

employee)¹³² about Dominion.¹³³ But without doing any real analysis, this presentation is biased and misleading, because neither user is associated with Fox and neither tweet mentions Fox. As another example, he also notes that while his analysis was limited to Twitter and Parler only, “[a]necdotally” he observed “similar patterns in the replies to the at-issue Instagram and Facebook posts.”¹³⁴ Dr. Steckel supports this statement, which he admits he cannot verify “due to data access limitations imposed by [Instagram and Facebook],” with hand-picked examples of posts on these platforms.¹³⁵

80. He again relies on “anecdotal examples” of posts in his dataset where posters “cite Fox as a source of information regarding defamatory claims.”¹³⁶ From his dataset of 1.9 million posts, Dr. Steckel provides 9 Twitter posts and 7 Parler posts to bolster his unsupported conclusion that attributes allegedly defamatory discourse about Dominion to Fox.¹³⁷ These cherry-picked, anecdotal examples lack any context and tell us nothing about causation.

81. Perhaps recognizing as much, Dr. Steckel tried to use what he calls “publicly-available benchmark engagement rates” in some instances to distract from the fact that he is unable to tie his content analysis to another analysis to demonstrate causation.

82. In the process, Dr. Steckel reveals additional flaws and biases in his study. For example, his “objective” benchmark improperly focuses on likes/reactions, replies, and video views, which are not acceptable measures in this context. For example, video views likely do not even include the alleged

¹³² “Jack Posobiec.” *Wikipedia*, Wikimedia Foundation (Dec. 26, 2022), https://en.wikipedia.org/wiki/Jack_Posobiec.

¹³³ Steckel Report, Fig. 13.

¹³⁴ Steckel Report, ¶ 122.

¹³⁵ Steckel Report, ¶ 122; *see* Steckel Report, Figs. 20, 21.

¹³⁶ Steckel Report, ¶ 126.

¹³⁷ Steckel Report, ¶ 126.

defamation that Dr. Steckel purports to be trying to study. Indeed, Twitter itself says that a “‘video view’ is when your video is watched in 50% view for 2 seconds or more, or when someone clicks to expand/unmute your video. This is an industry standard view.”¹³⁸ None of the alleged defamatory statements in these clips occurred in the first two seconds, and Dr. Steckel provides no reason to believe that any “video view” resulted from watching the full video. Further, Dr. Steckel relies on an engagement metric provided by a company called “Pex,” which focuses on music videos, *not* news videos. Dr. Steckel’s strange choice of database is not supported as a reliable resource for this type of research in academic literature. I was unable to locate any academic literature that recommends use of the Pex database for analyses of the sort required for this case. Regardless, even Pex, itself, notes that viewers tend not to watch news and politics videos in their entirety, claiming, “[t]he bigger the views, the more viewers snooze.”¹³⁹

83. Thus, the use of Pex for “benchmarking,” rather than doing an actual analysis to support his content analysis is a serious flaw. Dr. Steckel uses no other measures for any of his analyses. Yet some measure of validation and reliability is required to compare results with other findings. For example, to “validate inferences from . . . media messages, content analysts have compared their results with survey results, with information from interviews with experts, and with focus group data—all sources of validation on which social scientists rely heavily.”¹⁴⁰

¹³⁸ *Create a video views campaign*, Twitter, <https://business.twitter.com/en/help/campaign-setup/create-a-video-views-campaign.html#:~:text=Viewing%20your%20results&text=A%20video%20view%20is%20when,expands%20or%20unmutes%20your%20video>.

¹³⁹ James Calabrese, *You like me! Analysis of user engagement with videos on the world’s biggest social sites*, Pex, <https://pex.com/blog/analysis-of-user-engagement-videos-worlds-biggest-social-sites/>.

¹⁴⁰ Krippendorff, *Content Analysis: An Introduction to Its Methodology*, p. 388. For example, in my Opening Report, I did a network analysis to supplement my content analysis and gauge whether FNN’s coverage differed from that of other media organizations. I found that there was no deviation in terms of duration nor topic of coverage, and that the key voices in the Dominion discourse were then-President Trump, his lawyers, and the microinfluencers who amplified the allegations against Dominion.

But as explained below, even though Dr. Steckel does a survey, he does not ensure that the results of his social media analysis are reliable such that they can serve as a proper benchmark for his survey analysis.

2. Dr. Steckel’s social media analysis is plagued by a lack of reliability and validity.

84. The threshold problems with the design and collection of data for Dr. Steckel’s purported content analysis, which led to a flawed implementation, are exacerbated by the fact that Dr. Steckel fails to take properly any steps to ensure the reliability and validity of his social media analyses. A “researcher’s descriptive account of the analysis must be complete enough to serve as a set of *instructions* to coders, fellow researchers and critics.”¹⁴¹ That is not the case here.

a. Dr. Steckel has no codebook, no coding categories, and no coding instructions.

85. A key flaw with the analysis of such a large dataset in this case is that Dr. Steckel has not generated a coding scheme for review—also known as a “codebook.” When the volume of texts exceeds a single researcher’s analytical capabilities (which is the case here, with a dataset of 1.9 million posts),¹⁴² analysts must work in teams (which is the case here, and why Dr. Steckel apparently used Voluble), analysis needs to be objective and replicable so the results can satisfy scientific standards, and the analysts doing the work must have results that are comparable.¹⁴³ “The coordination this requires is accomplished through the formulation of clear instructions for coders . . . to describe the same textual units in the same analytical terms,” and “[t]o ensure replicability, such instructions may include the following:

- A list of the qualifications that coders (observers,

¹⁴¹ Krippendorff, *Content Analysis: An Introduction to Its Methodology*, p. 86.

¹⁴² Steckel Report, Appx G Fig. 4.

¹⁴³ Krippendorff, *Content Analysis: An Introduction to Its Methodology*, p. 394.

interpreters, judges) need for the task

- Descriptions of training procedures and instructional materials used to calibrate coders' conceptions
- Operational definitions of the recording and context units and rules on how to distinguish them
- Operational definitions of the syntax (form) and semantics (meanings) of the data language (the categories or analytical terms) that coders are to apply in describing, translating, or categorizing each textual unit (Ideally, these definitions inform the cognitive operations that coders are asked to employ in reading and recording the texts. The definitions may be supplemented by examples of what should not be coded and why, including examples of what should not be included...)
- Copies of the form(s) or electronic records to be used in creating records and entering data for processing: spreadsheets, examples of completed questionnaires, and initial tabulations.”¹⁴⁴

86. “Typically, *before* these instructions are applied by several coders and to a large body of text, the analysts need to pretest them on a small sample of texts and then modify and retest them until they satisfy reasonable reliability standards.”¹⁴⁵ “All decisions on variables, their measurement, and coding rules *must* be made *before* the final measurement process begins,” and, “[i]n the case of human coding, the codebook and coding form *must* be constructed *in advance*.”¹⁴⁶

87. None of that happened here. Though Dr. Steckel mentions “human validation,” there is no codebook in his report or its appendixes. Once the data were pulled from Twitter, there is no explanation about how the data were analyzed. It appears that there was no coding or work done *before* the final measurement process or *in advance* of any coding—instead, Dr. Steckel’s Report

¹⁴⁴ Krippendorff, *Content Analysis: An Introduction to Its Methodology*, p. 394.

¹⁴⁵ Krippendorff, *Content Analysis: An Introduction to Its Methodology*, p. 394 (emphasis added).

¹⁴⁶ Neuendorf, *The Content Analysis Guidebook*, p. 18 (emphasis added).

only talks about “human validation.” Dr. Steckel has neither provided or described any training materials or iterative process for coder analysis. There does not appear to have been any immersion in the texts and no iterative process to ensure that coders would reach the same results. There is nothing in Dr. Steckel’s Report indicating that he provided his coders with “tasks” or a “research question” or any objective measure to guide them in making uniform assessments that could later be cross-referenced and scrutinized to demonstrate reliability in approach. This, alone, undermines his analysis, as there is nothing in Dr. Steckel’s Report or appendixes showing how other researchers would be able to replicate his study and achieve the same results.

b. Dr. Steckel did not test for any intercoder reliability among his team.

88. There is also nothing in Dr. Steckel’s Report showing that he took any of the necessary steps to ensure reliability. “When human coders are used in content analysis, this typically translates to *intercoder reliability*, or the amount of agreement or correspondence on a measured variable among two or more coders or raters.”¹⁴⁷ “Reliability is sometimes viewed as related to replicability.”¹⁴⁸ And “[g]iven that a goal of content analysis is to identify and record relatively objective (or at least intersubjective) characteristics of messages, reliability is paramount.”¹⁴⁹ “Achieving an acceptable level of intercoder reliability is important for two reasons:” (a) “[t]o provide basic validation of a coding scheme” and (b) “[s]plitting up the coding task allows for more messages to be processed, as long as two or more coders are ‘calibrated’ against one another.”¹⁵⁰

89. Using computer-assisted review, Dr. Steckel collected a dataset of 1.9

¹⁴⁷ Neuendorf, *The Content Analysis Guidebook*, p. 165.

¹⁴⁸ Neuendorf, *The Content Analysis Guidebook*, p. 165.

¹⁴⁹ Neuendorf, *The Content Analysis Guidebook*, p. 19.

¹⁵⁰ Neuendorf, *The Content Analysis Guidebook*, p. 166.

million posts, and purports to have had his team do a manual review of sets of 100 posts, or 0.005263% of the final dataset.

90. But Dr. Steckel never applies any of the standards or practices of intercoder reliability. For example, he did not “[u]se reliability statistics designed to accommodate multiple-coder statistics;” “use two-coder reliability statistics in a pairwise fashion, creating a matrix of reliabilities for each variable;” “[a]verage reliability coefficients across all pairs of coders;” or establish “a *distribution* for the reliability coefficient across the coders on each variable to examine its shape and look for outliers for possible exclusion.”¹⁵¹ This leads to all the known threats of reliability including “a poorly executed coding scheme,” “inadequate coder training,” “coder fatigue and coder drift,” and the “presence of a rogue coder.”

91. Dr. Steckel’s content analysis has no discussion, analysis, or indication that he or his team completed any of these steps for intercoder reliability, making his “manual validation” indefensible, because, “[w]ithout the establishment of reliability, content analysis measures are useless.”¹⁵²

c. Dr. Steckel did not use a statistically significant sample to validate his human analysis.

92. This lack of any intercoder reliability is made more problematic by the fact that Dr. Steckel also did not attempt to explain or justify the sample size that he used as part of the supposed manual validation that he claims he and his team undertook in this case. While Dr. Steckel mentions that he did “validation through manual review,” that after-the-fact validation was flawed, due to the inadequate sample size he used for validation.

93. As discussed above, using computer-assisted review, Dr. Steckel collected a dataset of 1.9 million posts, and purports to have had his team do a

¹⁵¹ Neuendorf, *The Content Analysis Guidebook*, p. 190.

¹⁵² Neuendorf, *The Content Analysis Guidebook*, p. 165.

manual review on 4 sets of 100 posts from the final dataset. Dr Steckel performed four manual reviews to calculate a false positive rate for the dataset, a false positive rate for the defamatory claim analysis, a false negative rate for the defamatory claim analysis, and a false positive rate for the Fox mentions analysis.

94. To calculate a false positive rate for the dataset, Dr. Steckel had coders answer three questions about the sample of 100 posts: “1) Is this post about Dominion Voting Systems? 2) Is the post still available? 3) Is the post in English?”¹⁵³ Posts were considered irrelevant if the coder answered either “no” or “unsure” to either the first or third question.¹⁵⁴ Dr. Steckel calculated a false positive rate of 5%, all based on responses to question 1, whether the posts were about Dominion Voting Systems (3 posts were marked “no” and 2 were marked unsure).¹⁵⁵

95. Dr. Steckel also performed a manual validation using a sample of 100 posts that “matched the defamatory queries” to “identify a false positive rate for the set of posts that matched a defamatory query” and “determine what proportion of posts featuring a defamatory claim affirm or refute the claim.”¹⁵⁶ For this validation, coders answered five questions: “1) Is this post about Dominion Voting Systems? 2) Is the post still available? 3) Is the post in English? 4) Is this post about one of the four categories of at-issue claims? (Election fraud, vote manipulation, Venezuela, and/or kickbacks.) 5) If yes, does the post affirm or refute the at-issue claim?”¹⁵⁷ Dr. Steckel’s coders found that one post did not mention an at-issue claim and, for two posts, the coder could not determine if the posts mentioned an at-issue claim.¹⁵⁸ He also calculated an affirming rate (or posts

¹⁵³ Steckel Report, Appx G ¶ 24.

¹⁵⁴ Steckel Report, Appx G ¶ 28.

¹⁵⁵ Steckel Report, Appx G Fig. 5.

¹⁵⁶ Steckel Report, Appx H ¶ 35.

¹⁵⁷ Steckel Report, Appx H ¶ 36.

¹⁵⁸ Steckel Report, Appx H ¶ 38.

affirming an allegedly defamatory claim) of 82.5% and a refuting rate of 16.5%.¹⁵⁹

96. For his false negative manual validation, Dr. Steckel analyzed a sample of 100 posts “that did not match the defamatory claims queries.”¹⁶⁰ Dr. Steckel had coders answer the same five questions used for the false positive rate for posts matching defamatory queries.¹⁶¹ He then divided the number of posts in the sample “about the defamatory claims by the number of posts in the same that were about Dominion (or in a thread about Dominion) and in English.”¹⁶² Dr. Steckel’s summary of his calculations and the results from the coding sample in Figure 13 of Appendix H are difficult to reconcile. He also had coders “sort all posts in the sample into eight predetermined topics...:

- Generally negative towards Dominion
- Generally positive towards Dominion
- Affirming a defamatory claim
- Refuting a defamatory claim
- Related to litigation
- Unclear context
- Other – Neutral
- False positive – Not about Dominion.”¹⁶³

97. Lastly, Dr. Steckel performed manual validation “[t]o verify the accuracy of the Fox query”¹⁶⁴ by reviewing a sample of 100 posts “from the set of posts that matched the Fox query.”¹⁶⁵ Coders answered four questions: “1) Is this post about Dominion Voting Systems? 2) Is the post still available? 3) Is the post

¹⁵⁹ Steckel Report, Appx H ¶ 39.

¹⁶⁰ Steckel Report, Appx H ¶ 41.

¹⁶¹ Steckel Report, Appx H ¶ 42.

¹⁶² Steckel Report, Appx H ¶ 43.

¹⁶³ Steckel Report, Appx H ¶ 45.

¹⁶⁴ Steckel Report, Appx I ¶ 51.

¹⁶⁵ Steckel Report, Appx I ¶ 51.

in English? 4) Does the post mention and/or is the post linked to Fox, its shows, and/or its hosts?” Dr. Steckel calculated a false positive rate of 5%.¹⁶⁶

98. The problem is that Dr. Steckel does not explain at all how he determined his sample size, and he does not provide any explanation about any of the three approaches that are appropriate for selecting a sample size—namely, “by reducing the research question so that it can be answered, given statistical sampling theory; by experimenting with the accuracy of different sampling techniques and sample sizes; or by applying the split-half technique.”¹⁶⁷

99. As Dr. Boedeker explains in detail, Dr. Steckel purports to use “statistically-significant random sample[s]” of 100 posts, but has failed to set up the sample, analyze the results, and report the results.¹⁶⁸ Moreover, the analysis shows that the data cleaning, defamatory, and Fox mentions false positive and negative rates have upper bounds ranging from 11.3% to 39.3%, so Dr. Steckel’s analysis relies on social media data that suffer from severe quality issues.¹⁶⁹

B. Opinion 2: At best, Dr. Steckel’s data show only a “correlation” between Fox and Dominion; not any sort of causation.

100. Dr. Steckel’s analyses and data do not substantiate his conclusions that “Fox was a substantial factor in the damage done to Dominion’s brand.”¹⁷⁰

101. As an initial matter, even though Dr. Steckel purports to evaluate whether the at-issue statements “resonated with viewers leading to negative effects on Dominion’s brand” through three measures—post engagement, general social media conversations, and a consumer survey¹⁷¹—he only concludes that Fox was a

¹⁶⁶ Steckel Report, Appx I ¶ 55.

¹⁶⁷ Krippendorff, *Content Analysis: An Introduction to Its Methodology*, p. 124.

¹⁶⁸ Boedeker Report, ¶¶ 63–69.

¹⁶⁹ Boedeker Report, ¶ 69 & Table 8.

¹⁷⁰ Steckel Report, ¶ 132.

¹⁷¹ Steckel Report, ¶ 81.

“substantial factor” through his social media attribution analyses.¹⁷² Even then, to the extent they show anything at all,¹⁷³ these analyses do nothing more than demonstrate that there was a *correlation* between Fox’s coverage and the Dominion discourse.

1. Dr. Steckel’s “Post Engagements” analysis draws no conclusions regarding whether Fox drove coverage on the Dominion discourse.

102. Dr. Steckel’s “Post Engagements” analysis does nothing more than tally engagement with the alleged “at-issue statements” and compare that to what he incorrectly describes as industry benchmarks. As noted above, I dispute the methodology of this measure of analysis outright. Regardless, the analysis does not shed *any* light on the question of the impact of those at-issue statements on the general Dominion discourse. It makes no comparison to user engagement with statements by OANN, CNN, Newsmax, or any other news organization, nor does it compare post engagement with then-President Trump’s or his lawyer’s social media posts. Significantly, this analysis does nothing to determine what *drove* any discourse regarding Dominion at the time—just because users engage with particular statements does not mean those statements caused other discussions or impressions. Simply put, this analysis yields no insight on any causal relationship between the purported at-issue statements and any Dominion coverage.

2. Dr. Steckel’s social media conversation analyses fail to substantiate his conclusion about Fox being a “substantial factor” in driving the Dominion discourse.

103. While Dr. Steckel’s social media analyses purport to measure the “impact of the at-issue claims on Dominion’s brand” (his so-called “Brand Impact

¹⁷² Steckel Report, ¶ 132.

¹⁷³ The many design and methodology flaws render these analyses wholly irrelevant. *See supra* Op. 1.

Analysis”) and “Fox’s role in driving conversations about Dominion’s brand” (his so-called “Attribution Analysis”), none of Dr. Steckel’s six social media sub-analyses evaluate any *causal* relationship between Fox’s Dominion-related coverage and the overall Dominion discourse. Indeed, they certainly fail to justify his conclusion that Fox was a “substantial factor” in the Dominion-related discourse. At best, his analyses evaluate a correlation between Fox’s Dominion-related coverage and the overall Dominion discourse, but, by design, those analyses do not and *cannot* show what was, in fact, driving that discourse.

104. Nowhere does Dr. Steckel evaluate whether Fox drove any social media conversation. Instead, Dr. Steckel’s six social media analyses purport to measure the following:¹⁷⁴

- ***Before/After Volume Analysis:*** The volume of posts, users posting, and retweets published mentioning Dominion from November 1, 2020, to November 7, 2020, compared to that from November 8, 2020, to November 14, 2020;¹⁷⁵
- ***Content Analysis:*** The posts that contain keywords for what he considers to be the “four categories of claims in Fox’s at-issue statements”—election fraud, manipulating vote count, ties to Venezuela, and kickbacks¹⁷⁶—from October 1, 2020, to January 31, 2021;
- ***Refutation Analysis:*** Whether the content analysis posts are “refuting at-issue claims,” “affirming at-issue claims,” or “express no clear opinion;”¹⁷⁷
- ***Analysis of Posts from Users Who Directly Engaged with Fox Statements:*** “[W]hether users who engaged directly with an at-issue statement were more or less likely to post a tweet featuring defamatory-claim content

¹⁷⁴ Steckel Report, ¶ 86.

¹⁷⁵ Steckel Report, ¶ 97.

¹⁷⁶ Steckel Report, ¶¶ 100–101 & Fig. 11.

¹⁷⁷ Steckel Report, ¶¶ 112–113; *see also* Steckel Report, Appx H ¶¶ 35–40.

(as indicated by keywords) than other users;”¹⁷⁸

- ***Fox Mentions Analysis:*** “[W]hether and to what extent Fox, its shows, and its hosts were mentioned in online conversations;”¹⁷⁹
- ***At-Issue Statement Days Volume Analysis:*** The average number of daily posts published on days of the at-issue statements compared with the average number of daily posts published on days without an at-issue statement from November 8, 2020, to January 26, 2021, and the average Fox shows and hosts mentioned on those days, respectively.¹⁸⁰

105. Based on these social media analyses, Dr. Steckel reaches various conclusions, including “that Dominion was seldom discussed among the public prior to the 2020 U.S. presidential election and that public interest in the brand grew dramatically and quickly while Fox was broadcasting and publishing the at-issue statements,”¹⁸¹ “Dominion’s brand is associated with the defamatory concepts,”¹⁸² “simply being part of a widespread online conversation in which defamatory claims are discussed is enough to cause harm,”¹⁸³ “Fox-Engaged users are more likely to post about a defamatory claim after engaging with an at-issue tweet than other similar users who post about Dominion,”¹⁸⁴ “Fox mentions are highly correlated with the overall conversation in the Dominion Social Media Dataset,”¹⁸⁵ the “days Fox broadcast an at-issue statement on TV or social media coincided with many of the highest-volume days of posts about Dominion,”¹⁸⁶ and “Fox, its shows, and its hosts are more commonly mentioned in posts published on

¹⁷⁸ Steckel Report, ¶ 117.

¹⁷⁹ Steckel Report, ¶ 123.

¹⁸⁰ Steckel Report, ¶¶ 130–131.

¹⁸¹ Steckel Report, ¶ 99.

¹⁸² Steckel Report, ¶¶ 108–109.

¹⁸³ Steckel Report, ¶ 113.

¹⁸⁴ Steckel Report, ¶ 121.

¹⁸⁵ Steckel Report, ¶ 125.

¹⁸⁶ Steckel Report, ¶ 130.

those days.”¹⁸⁷

106. At best, these conclusions demonstrate correlation, as Dr. Steckel affirmatively concludes in certain instances.¹⁸⁸ Indeed, these analyses confirm what any rational person would conclude is an obvious correlation: That the discourse about Dominion during the period from November 1, 2020, through January 31, 2021, ebbed and flowed at similar rates as the topics of the allegations then-President Trump and his lawyers made against Dominion. In other words, when people posted about Dominion, they also often posted about election fraud, voter fraud, foreign influence, and sometimes kickbacks. Of course, these were the topics identified in the discourse about Dominion, because these allegations were in the news, as my Opening Report and rebuttal analyses show.

107. As Dr. Steckel well knows, correlation does not imply causation.¹⁸⁹ In scientific research, a researcher cannot legitimately deduce a cause-and-effect relationship between two variables solely on the basis of an observed correlation between them.

108. Correlation studies test for a relationship between two variables. Causation studies ascertain whether a change one variable *causes* a change in another variable. Simply seeing two variables with similar trends does not mean one of those variables affects the other. Correlation does not imply causation.

109. A strong correlation *might* indicate causality, but there easily could be other explanations. The correlation may be the result of random chance, where the variables appear to be related, but there is no true underlying relationship. Or, there may be a third, unmeasured variable that makes the relationship appear to be stronger or weaker than it is.

¹⁸⁷ Steckel Report, ¶ 131.

¹⁸⁸ Steckel Report, ¶ 125.

¹⁸⁹ *Correlation vs. Causation*, JMP Statistical Discovery, https://www.jmp.com/en_au/statistics-knowledge-portal/what-is-correlation/correlation-vs-causation.html.

110. None of Dr. Steckel’s analyses evaluated other possible causal relationships. Even though Dr. Steckel concedes “Fox is not the only entity alleged by Dominion to have published defamatory statements,”¹⁹⁰ his analyses do not evaluate how many people who watch OANN have a negative opinion of Dominion or how many people engaged or posted on Twitter about Dominion in response to information from then-President Trump, CNN, Newsmax, OANN, a coordinated campaign by far-right extremists determined to undermine faith in the outcome of the election, nor even Dominion itself.

111. Dr. Steckel’s study design precludes evaluating other alternatives, which invalidates his findings completely.¹⁹¹

112. For example, he claims that a tweet from @rezazia replying to @JackPosobiec (at the time an OANN employee)¹⁹² about Dominion, reproduced below, should have counted in his analysis of the defamatory discourse about Dominion (which he later concludes was driven by Fox).¹⁹³ But neither user is associated with Fox and neither tweet mentions Fox. Even so, because Dr. Steckel has failed to analyze data or impact related to other sources, he improperly attributes this post (and activity generally in the Dominion discourse) to Fox.

¹⁹⁰ Steckel Report, n. 179.

¹⁹¹ “Distinguishing between what does or does not provide causal evidence is a key piece of data literacy. Determining causality is never perfect in the real world. However, there are a variety of experimental, statistical and research design techniques for finding evidence toward causal relationships: e.g., randomization, controlled experiments and predictive models with multiple variables. Beyond the intrinsic limitations of correlation tests (e.g., correlations cannot not measure trivariate, potentially causal relationships), it’s important to understand that evidence for causation typically comes not from individual statistical tests but from careful experimental design.” See *Correlation vs. Causation*, JMP Statistical Discovery, https://www.jmp.com/en_au/statistics-knowledge-portal/what-is-correlation/correlation-vs-causation.html.

¹⁹² “Jack Posobiec.” *Wikipedia*, Wikimedia Foundation (Dec. 26, 2022), https://en.wikipedia.org/wiki/Jack_Posobiec.

¹⁹³ Steckel Report, Fig. 13.

Figure 13. Consumer Post Without Defamatory Keyword but Links Dominion to Election Fraud¹⁸⁴



113. Dr. Steckel also cherry-picks the following tweet from *then-President Trump* on November 12, 2020, and declares that it is “another definitive connection between Fox and the spread of the defamatory claims.”¹⁹⁴

Figure 25. President Trump Tweet, November 12, 2020²¹²



114. But a review of more than just this one cherry-picked tweet from then-President Trump makes it clear that the spread of the defamatory claims was not based on a connection to Fox and that, instead, it was then-President Trump who

¹⁹⁴ Steckel Report, ¶ 128.

was the “direct connection” to the spread, as he was driving the Dominion discourse on Twitter by linking to multiple media outlets (like OANN and NBC) and other sources throughout the relevant period:



11:34 AM · Nov 12, 2020

113.6K Retweets 62.3K Quote Tweets 447.8K Likes

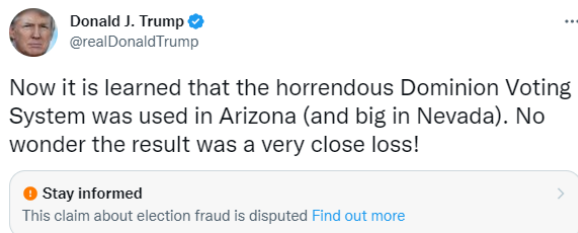
<https://twitter.com/realdonaldtrump/status/1326926226888544256>



1:35 PM · Nov 13, 2020

44.3K Retweets 14.8K Quote Tweets 279.6K Likes

<https://twitter.com/realdonaldtrump/status/1327319294057848832>



3:38 PM · Nov 13, 2020

35.9K Retweets 9,713 Quote Tweets 220.5K Likes


<https://twitter.com/realdonaldtrump/status/1327350069947936768>




3:07 PM · Nov 14, 2020

37.2K Retweets 10.3K Quote Tweets 190.9K Likes

<https://twitter.com/realdonaldtrump/status/1327704841964183552>

Donald J. Trump  @realDonaldTrump · Nov 15, 2020 ...
Why does the Fake News Media continuously assume that Joe Biden will ascend to the Presidency, not even allowing our side to show, which we are just getting ready to do, how badly shattered and violated our great Constitution has been in the 2020 Election. It was attacked,...

Donald J. Trump  @realDonaldTrump · Nov 15, 2020 ...
....perhaps like never before! From large numbers of Poll Watchers that were thrown out of vote counting rooms in many of our States, to millions of ballots that have been altered by Democrats, only for Democrats, to voting after the Election was over, to using Radical Left

 Stay informed
This claim about election fraud is disputed [Find out more](#)

9,288 18.6K 119.3K


Donald J. Trump  @realDonaldTrump ...

....owned Dominion Voting Systems, turned down by Texas and many others because it was not good or secure, those responsible for the safeguarding of our Constitution cannot allow the Fake results of the 2020 Mail-In Election to stand. The World is watching!

 Stay informed
This claim about election fraud is disputed [Find out more](#)

8:46 PM · Nov 15, 2020

18.2K Retweets 2,973 Quote Tweets 125.8K Likes

<https://twitter.com/realDonaldTrump/status/1328152466752491526>


Donald J. Trump  @realDonaldTrump ...

The only thing secure about our 2020 Election was that it was virtually impenetrable by foreign powers. On that, the Trump Administration takes great credit. Unfortunately, the Radical Left Democrats, Dominion, and others, were perhaps more successful!

 Stay informed
This claim about election fraud is disputed [Find out more](#)

7:25 PM · Nov 17, 2020


23.6K Retweets 5,522 Quote Tweets 156.8K Likes

<https://twitter.com/realDonaldTrump/status/132885693201167744>

Donald J. Trump  @realDonaldTrump ...

Dominion is running our Election. Rigged!


 Stay informed
This claim about election fraud is disputed [Find out more](#)

Donald J. Trump  @realDonaldTrump · Nov 14, 2020



8:26 AM · Nov 16, 2020

22K Retweets 3,851 Quote Tweets 110.1K Likes

<https://twitter.com/realDonaldTrump/status/1328328547598000130>

Donald J. Trump  @realDonaldTrump ...

"Dominion-izing the Vote"


 Stay informed
This claim about election fraud is disputed [Find out more](#)




youtube.com
Cyber Analyst on Dominion Voting: Shocking Vulnerabilities
A cyber analyst shares alarming insights into the scandal ridden voting software Dominion. One America's Chanel Ri...

12:41 AM · Nov 19, 2020

24.4K Retweets 5,504 Quote Tweets 120.4K Likes


   


<https://twitter.com/realDonaldTrump/status/1329298668403499009>

Donald J. Trump  @realDonaldTrump · Nov 21, 2020 ...
"Dominion-izing the Vote"
Part One via @OANN @ChanelRion
twitter.com/TeamTrump/stat...

 Stay informed
This claim about election fraud is disputed [Find out more](#)

12.3K 25.3K 85.6K


Donald J. Trump  @realDonaldTrump · Nov 21, 2020 ...
"Dominion-izing the Vote"
Part Two via @OANN @ChanelRion
twitter.com/TeamTrump/stat...

 Stay informed
This claim about election fraud is disputed [Find out more](#)

3,215 11.7K 45.5K

Donald J. Trump  @realDonaldTrump ...

"Dominion-izing the Vote"
Part Three via @OANN @ChanelRion
twitter.com/TeamTrump/stat...

 Stay informed
This claim about election fraud is disputed [Find out more](#)

11:32 PM · Nov 21, 2020

9,910 Retweets 1,815 Quote Tweets 43.6K Likes

<https://twitter.com/realDonaldTrump/status/1330367988621594625>
<https://twitter.com/realDonaldTrump/status/1330368206968643584>
<https://twitter.com/realdonaldtrump/status/1330368448552169474>

Donald J. Trump  @realDonaldTrump ...


.@60Minutes never asked us for a comment about their ridiculous, one sided story on election security, which is an international joke. Our 2020 Election, from poorly rated Dominion to a Country FLOODED with unaccounted for Mail-In ballots, was probably our least secure EVER!

 Stay informed
This claim about election fraud is disputed [Find out more](#)

8:05 PM · Nov 29, 2020

22K Retweets 4,585 Quote Tweets 123.9K Likes

<https://twitter.com/realDonaldTrump/status/1333215466022727686>

Donald J. Trump  @realDonaldTrump ...


What does GSA being allowed to preliminarily work with the Dems have to do with continuing to pursue our various cases on what will go down as the most corrupt election in American political history? We are moving full speed ahead. Will never concede to fake ballots & "Dominion".

 Stay informed
This claim about election fraud is disputed [Find out more](#)

11:07 PM · Nov 23, 2020

42.1K Retweets 17.1K Quote Tweets 237.4K Likes

<https://twitter.com/realdonaldtrump/status/1331086969183621120>

Donald J. Trump  @realDonaldTrump ...

This is BIG NEWS. Dominion Voting Machines are a disaster all over the Country. Changed the results of a landslide election. Can't let this happen. Thank you for the genius, bravery, and patriotism of the Judge. Should get a medal! twitter.com/KMCRadio/statu...

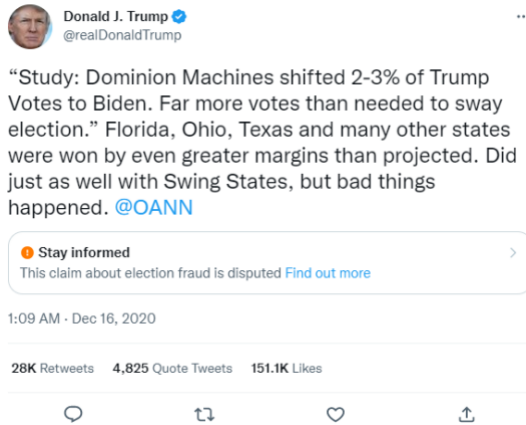
 Stay informed
This claim about election fraud is disputed [Find out more](#)

This Tweet is from a suspended account. [Learn more](#)

12:21 AM · Dec 15, 2020

31K Retweets 5,806 Quote Tweets 144.5K Likes

<https://twitter.com/realdonaldtrump/status/1338715842931023873>



<https://twitter.com/realdonaldtrump/status/1339090279429775363>



<https://twitter.com/realdonaldtrump/status/1339453818996727809>

115. In fact, the only other time then-President Trump tweeted about Dominion in connection with Fox was on November 15, when he tweeted about an unchallenged broadcast in which a Fox anchor was discussing mail-in voting, yet then-President Trump drove the discussion toward Dominion:¹⁹⁵



¹⁹⁵ <https://twitter.com/realdonaldtrump/status/1327956491056279552>.

116. Not only was then-President Trump driving the Dominion discussion, other findings in Dr. Steckel’s analysis show that even Dominion was driving the discussion. One of Dr. Steckel’s content analyses found that 13% of the discourse during the period related to Dominion’s defamation litigation against others.¹⁹⁶

117. In fact, a review of the timing of the at-issue statements and the surge in social media activity demonstrates that at least some of those surges occurred prior to the Fox at-issue statements, meaning those statements could not possibly have caused that activity.

118. Even ignoring the many criticisms of Dr. Steckel’s analyses set forth in Opinion 1, Dr. Steckel has no basis to conclude anything other than that Fox’s Dominion coverage correlated with a larger Dominion discourse—he has no basis to conclude that Fox caused that discourse.

C. Opinion 3: Even adopting Dr. Steckel’s assumptions regarding the “at-issue statements,” analyses show that Fox was a small part of the Dominion discourse, which was not driven by Fox.

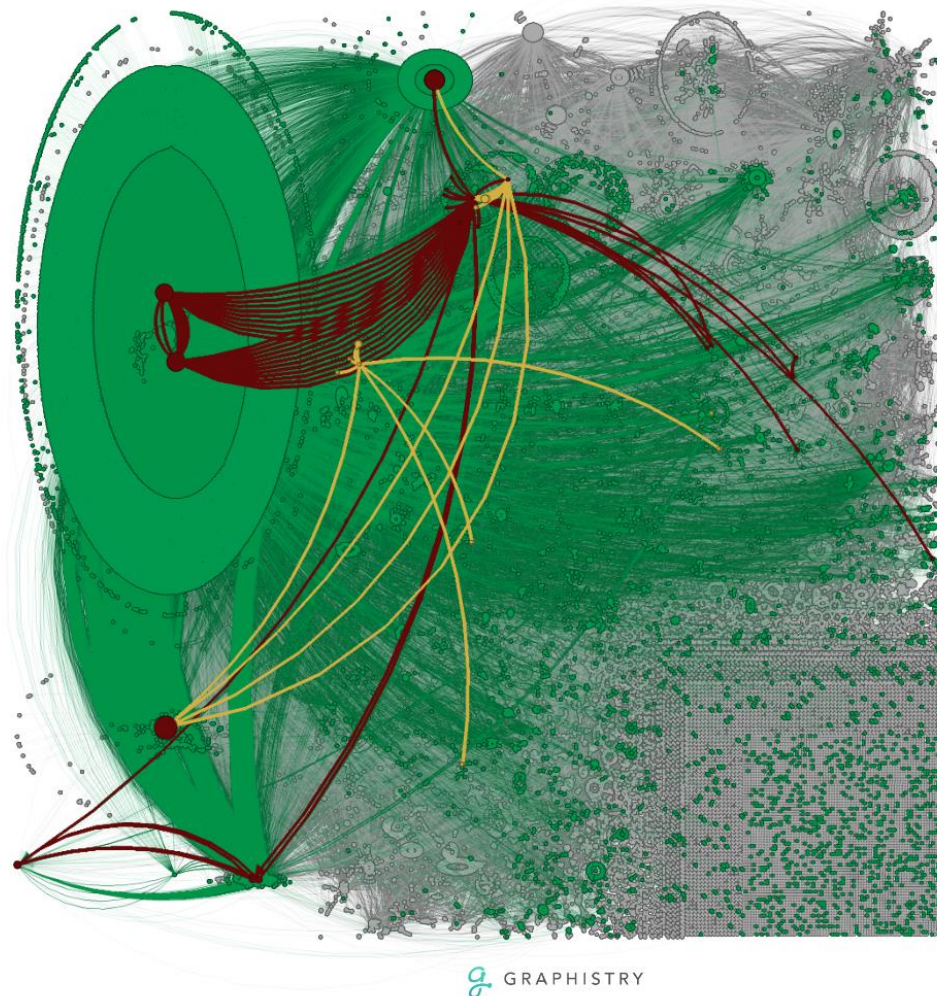
119. In my Opening Report, I performed a network analysis showing that 15 allegedly defamatory Fox tweets (the “Opening Report Fox tweets”) lacked the reach and influence of others—including tweets by then-President Trump, his lawyers, and microinfluencers—after the 2020 election. For this rebuttal report, I have re-run this network analysis including the Steckel tweets—the 22 Fox tweets that I understand Dr. Steckel defines to be the at-issue statements in this litigation. Even using Dr. Steckel’s assumptions, my conclusions have not changed: Contrary to Dr. Steckel’s flawed conclusions, Fox was a small part of the Dominion discourse, which would have occurred with or without the 22 at-issue statements attributed to Fox News.

¹⁹⁶ For example, see Steckel Report, Appx H Fig. 14.

1. A renewed focus on the 22 at-issue statements supports my initial analysis.

120. **Figure 4**, below, is the network graph representative of the Twitter discourse (including the 22 Steckel tweets) about Dominion from November 1, 2020, through January 31, 2021.

Figure 4
The Dominion Discourse Network
November 1, 2020–January 31, 2021



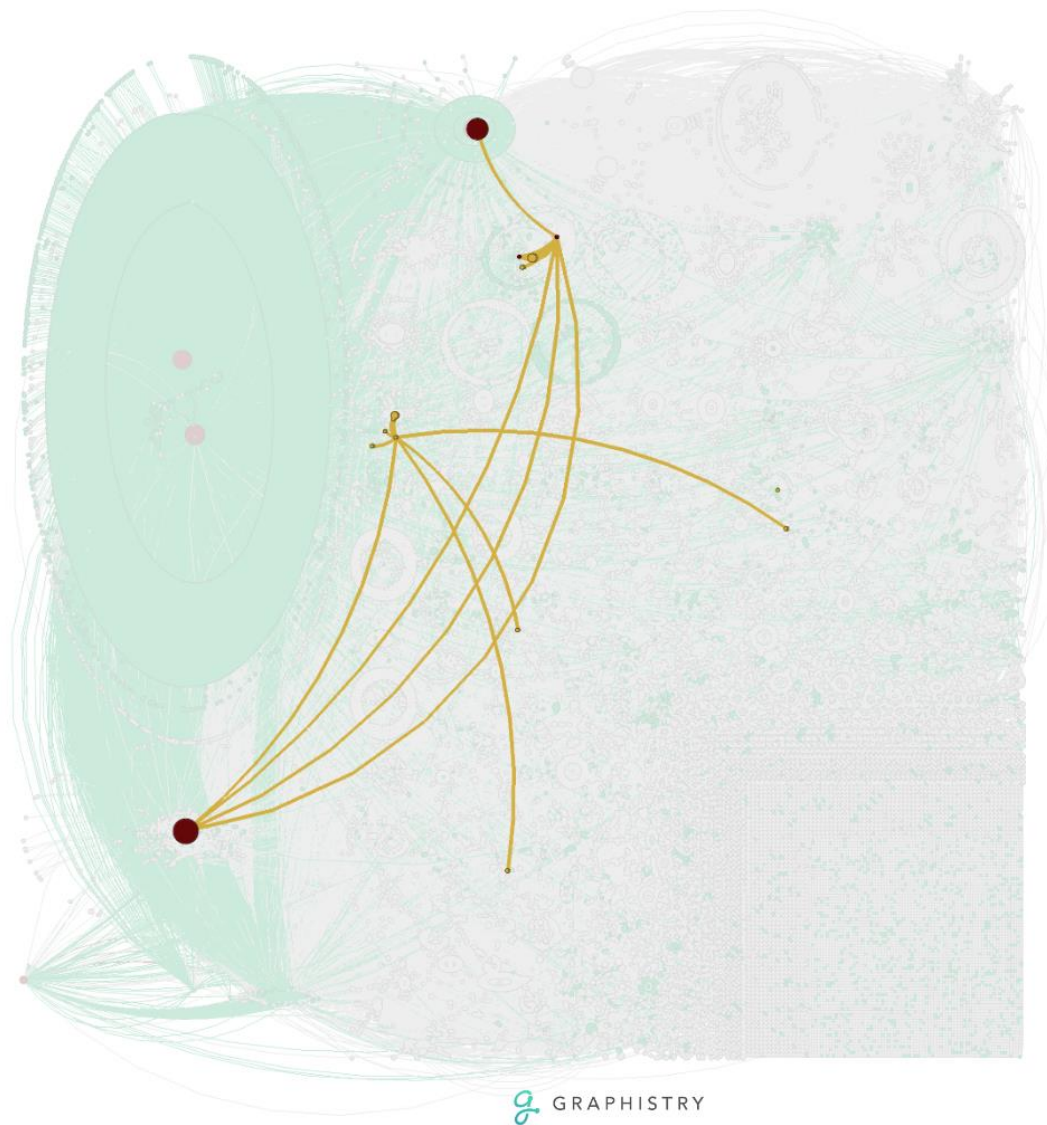
121. This graph shows then-President Trump's tweets about Dominion in red, microinfluencer amplification in green, the 22 Steckel tweets in yellow, and others (organic retweets and replies in gray). As demonstrated in the graph, red

edges representing then-President Trump's tweets about Dominion are picked up and retransmitted by microinfluencers (the green activity), demonstrating that then-President Trump's tweets were amplified by microinfluencers. By contrast, the yellow nodes, representing the Fox accounts that posted the 22 Steckel tweets (yellow edges), are barely visible and not central to the network.

122. As detailed below, the updated network graphs including the 22 Steckel tweets support the conclusion that Fox's allegedly defamatory tweets were a small proportion of the overall network and were not driving the Dominion discourse.

123. **Figure 5**, below, depicts the subnetwork of the 22 Fox tweets from Dr. Steckel's Report, in yellow. As shown in the graph, this network is very small relative to the Dominion discourse during the period from November 1, 2020, to January 31, 2021.

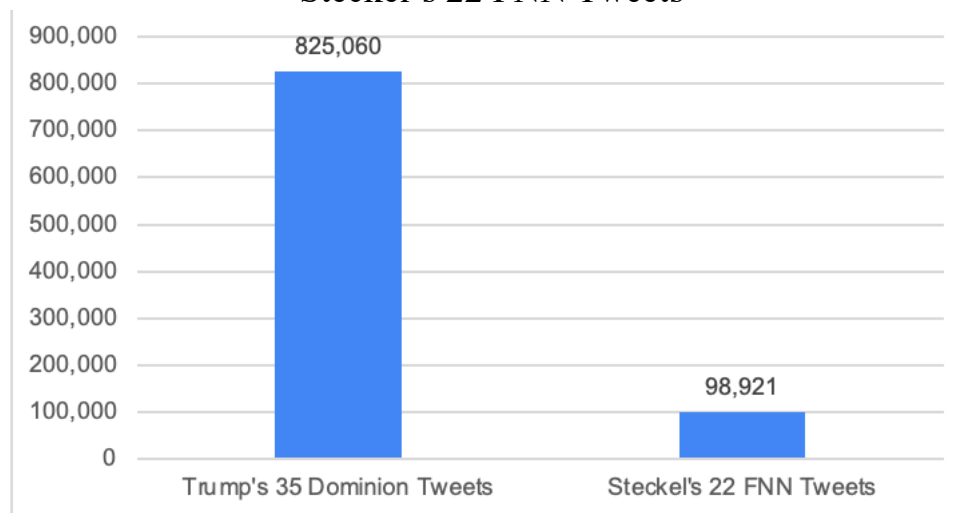
Figure 5
Dr. Steckel's 22 Fox Tweets



For this report, I also calculated the comparison of the retweets for the 22 Steckel tweets against those of then-President Trump's tweets about Dominion.¹⁹⁷ These results are depicted in **Figure 6**.

¹⁹⁷ As explained above in section IV(A)(d), Dr. Steckel's engagement analysis wrongly gave equal weight to "liking, sharing, or commenting." Steckel Report, ¶ 82. Here, I have compared the retweets for President Trump's 35 Dominion tweets and the 22 Steckel tweets because retweet is a more meaningful measure of engagement than merely liking a tweet.

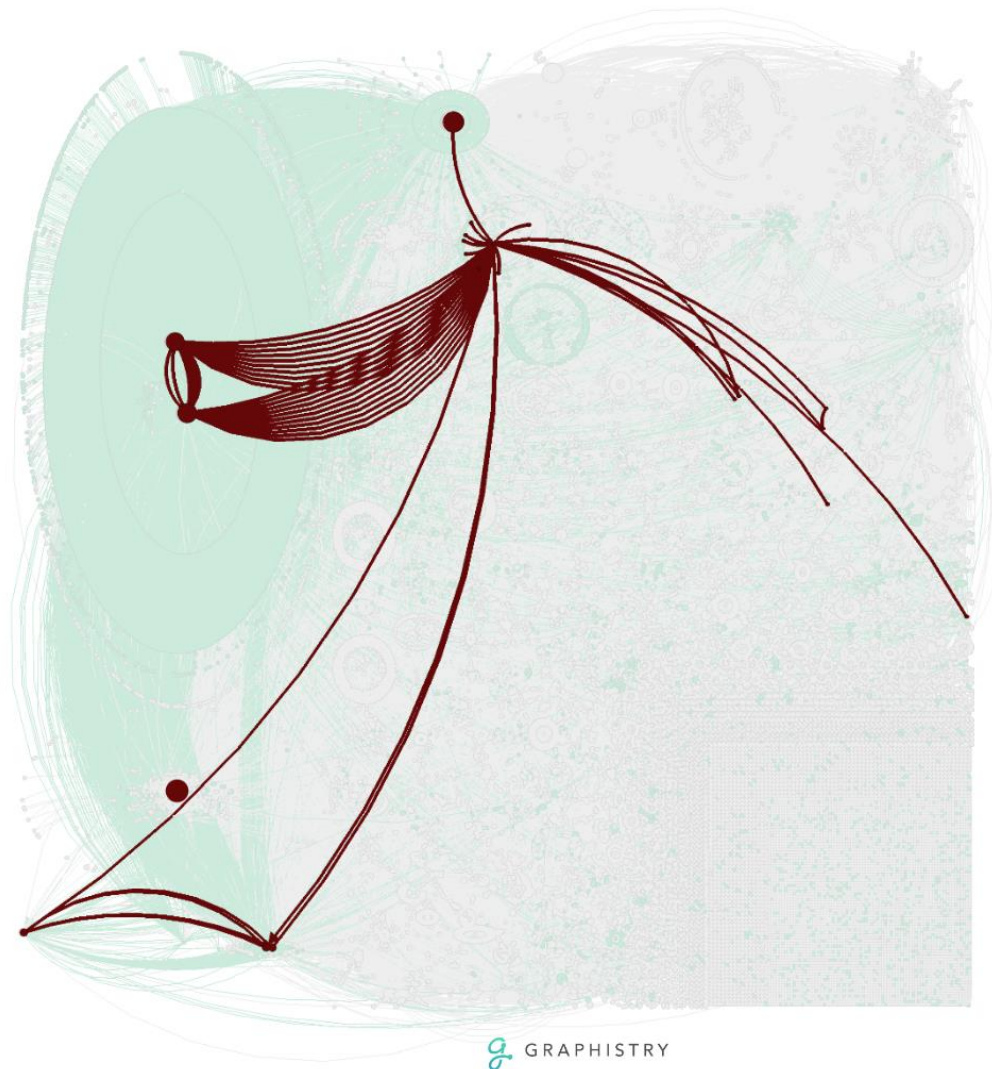
Figure 6
Comparison of Retweets of Trump's 35 Dominion Tweets versus
Steckel's 22 FNN Tweets



124. As **Figure 6** shows, the 22 Steckel tweets were retweeted a total of 98,921 times, whereas then-President Trump's tweets about Dominion were retweeted 825,060 times. These results show that, whether comparing the 15 tweets in my Opening Report or the 22 Steckel tweets, the retweets of Fox's at-issue tweets pale in comparison (less than 12%) to the retweets of then-President Trump's Dominion posts.

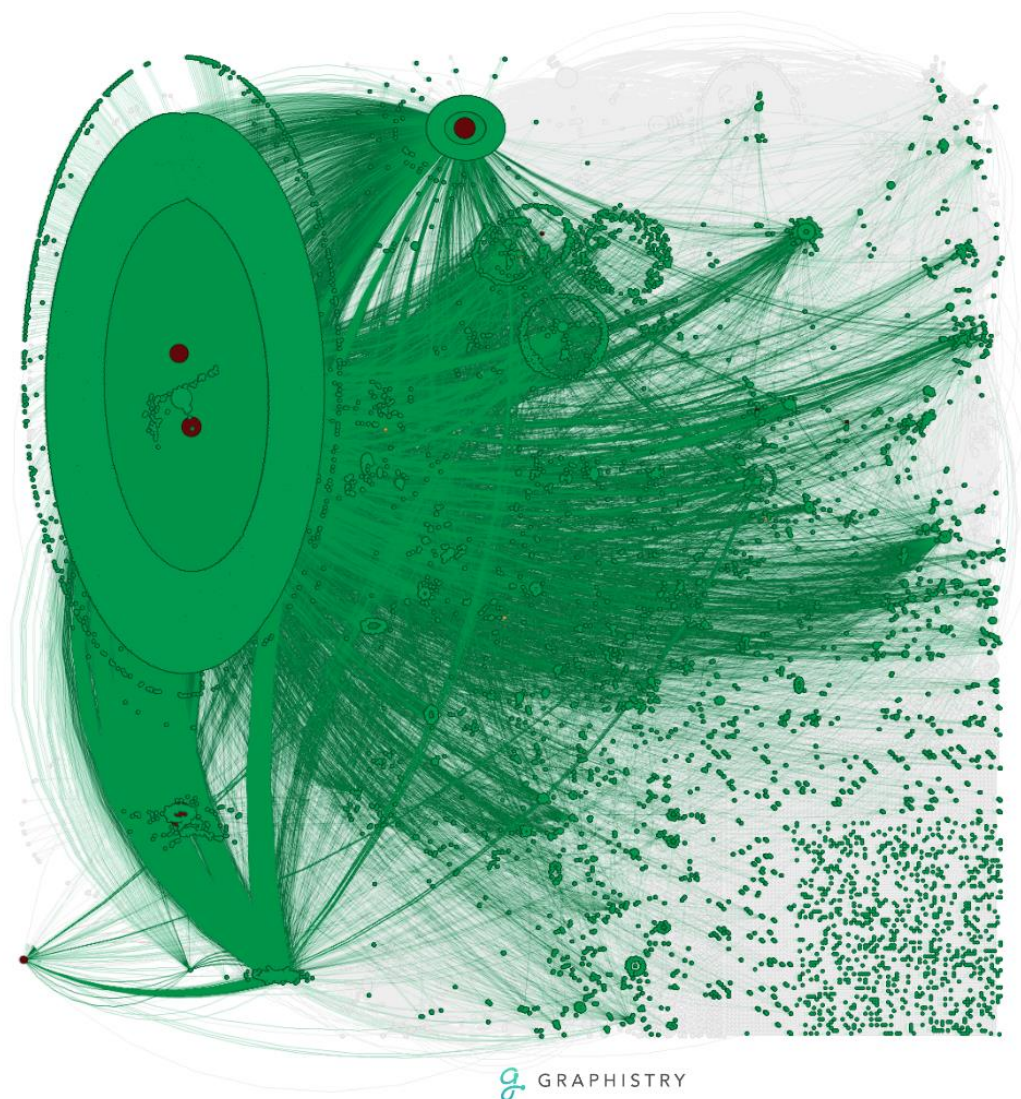
125. **Figure 7**, below, depicts the 35 tweets that then-President Trump posted about Dominion from November 1, 2020, through January 31, 2021 (in red). This network is far greater than the network created by the 22 Steckel tweets (in yellow) in **Figure 7**.

Figure 7
Trump's 35 Dominion Tweets



126. **Figure 8** depicts the proliferation by microinfluencers of then-President Trump's 35 Dominion tweets from November 1, 2020, to January 31, 2021, in my updated network analysis.

Figure 8
Microinfluencer Proliferation of Trump's 35 Dominion Tweets



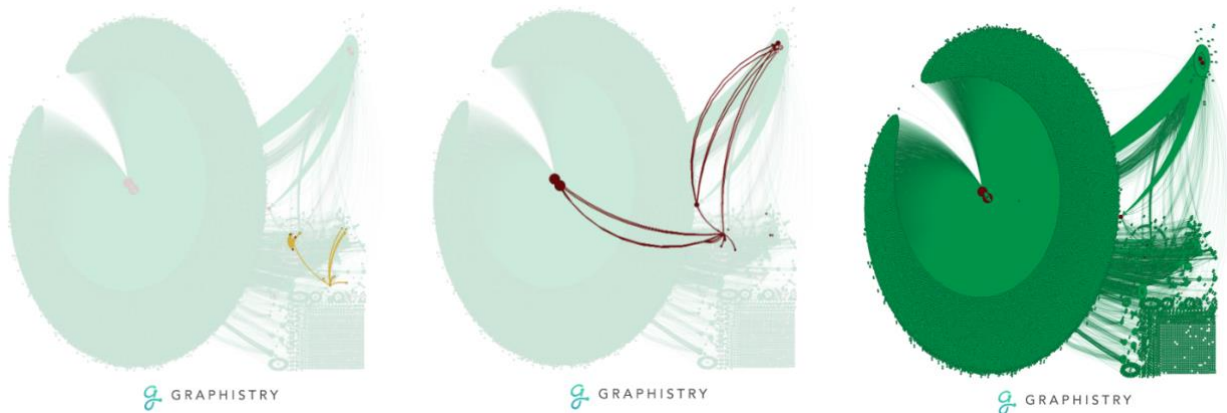
127. As **Figure 8** demonstrates, microinfluencers (in green) were responsible for massive proliferation that dwarfs the network created by the 22 Steckel tweets. As explained in my Opening Report, this subnetwork is great in scale and driven by the practice of copying and pasting the content of then-President Trump's 35 Dominion-related tweets into new tweets with targeted mentions to amplify the content.

128. Again, this updated network analysis continues to support the conclusion in my Opening Report that the data show that the Dominion discourse spread primarily as a result of propagation of then-President Trump’s tweets about Dominion by a large group of microinfluencers, not 22 allegedly defamatory Fox tweets.¹⁹⁸

129. **Figures 9, 10, and 11** also show the comparisons of the Fox tweets, 35 Dominion tweets by then-President Trump, and microinfluencers in Periods 2, 3, and 4 (as detailed in my Opening Report, Fox did not discuss Dominion during Period 1). These figures show that, with the network analysis updated to include the 22 Steckel tweets, the graphs continue to show that the allegedly defamatory Fox tweets were not the driver of (nor even central to) the Dominion discourse during any of these periods.

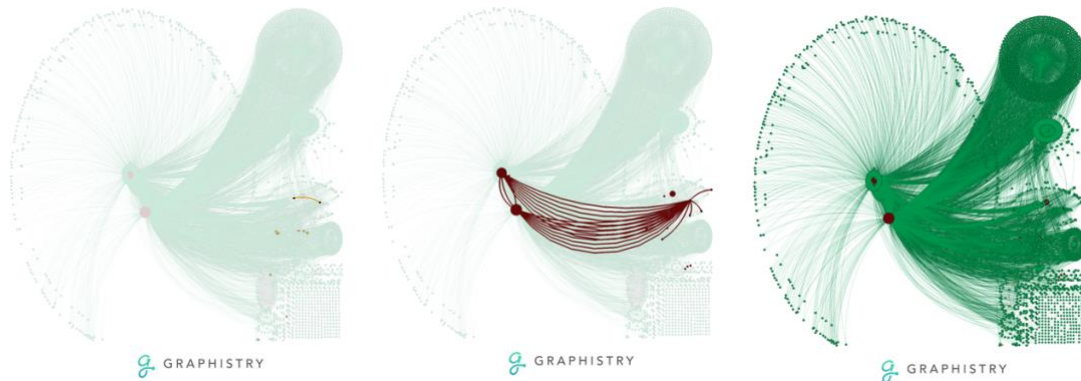
130. For example, **Figure 9** and **Figure 10** show that, in the network including the 22 Steckel tweets, Fox’s allegedly defamatory tweets (in yellow) were a much smaller network than the tweets of then-President Trump (in red) and microinfluencers propagating the Dominion allegations (in green).

Figure 9
Comparison of Fox, Trump, and Microinfluencers in Period 2



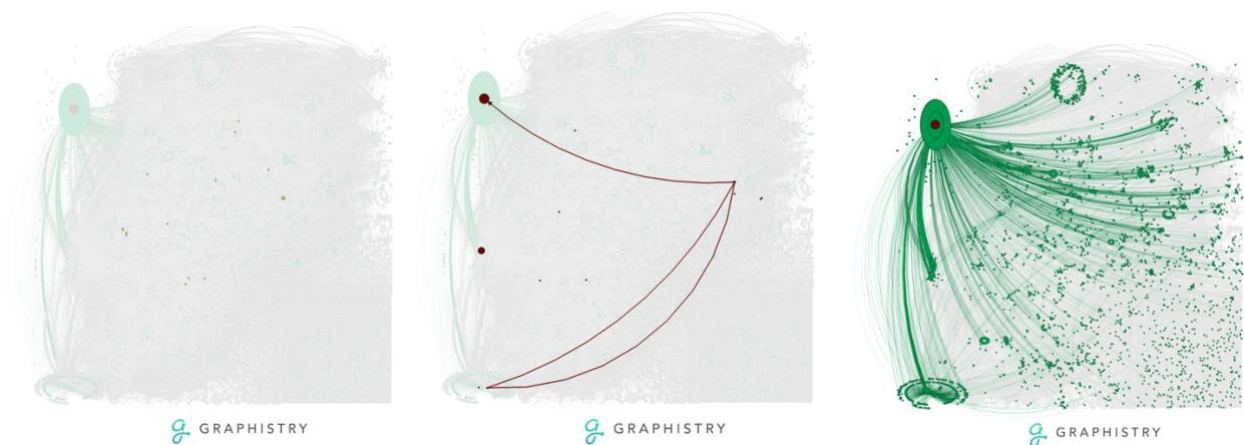
¹⁹⁸ Opening Report, ¶ 59.

Figure 10
Comparison of Fox, Trump, and Microinfluencers in Period 3



131. **Figure 11**, below, confirms that in the network including the 22 Steckel tweets, during Period 4 Fox’s allegedly defamatory tweets were nearly nonexistent, while then-President Trump (in red) and the microinfluencers (in green) continued propagating the Dominion allegations.

Figure 11
Comparison of Fox, Trump, and Microinfluencers in Period 4



2. Of all the Fox outlets, Dr. Steckel’s data show that FBN was the key contributor to the Dominion discourse, which was only a small portion of the FNN coverage.

132. In his “Fox Mentions Analysis,” which he purports to use “[t]o assess Fox’s role in damaging Dominion’s brand,”¹⁹⁹ Dr. Steckel used a keyword list he associated with Fox and its hosts or shows to search within his Dominion Social Media Dataset. This exercise suffers from the flaws detailed above as pervasive throughout Dr. Steckel’s methodology, and resulted in Figure 23, reproduced below.

Figure 23. Fox Mentions

	No. of Posts	Users	Retweets
Lou Dobbs Tonight / Lou Dobbs	32,006	19,568	33,130
All Fox Entities	111,108	61,227	156,778

133. In his analysis, Dr. Steckel notes that “nearly one-third of the Fox mentions were from posts that mentioned Lou Dobbs or Lou Dobbs Tonight. Lou Dobbs and guests on Lou Dobbs Tonight were the source of 12 of the 22 statements.”²⁰⁰ Lou Dobbs Tonight aired on Fox Business.

134. Accordingly, I revisited the content analysis I performed, as detailed in my Opening Report, to consider the results as broken out with Fox Business and Fox News as distinct entities. The results show that, of the Fox content covering Dominion, Fox Business was the primary contributor of the coverage.

135. For example, **Figure 12** shows the duration of coverage about Dominion after the 2020 election. As this table shows, CNN had the most texts with coverage about Dominion (166), followed by *The Washington Post* (126), while Fox Business had 47 texts in the Corpus and Fox News had 62. The data

¹⁹⁹ Steckel Report, ¶ 123.

²⁰⁰ Steckel Report, ¶ 124.

show that CNN had the most snippets—the portions of the texts devoted to Dominion—with 781, followed by *Washington Post* (532), and Fox Business News (455), then Fox News (404).

Figure 12
Duration of Coverage
November 1, 2020–January 31, 2021

News Organization	Texts	Snippets
ABC	5	20
Business Insider	84	393
CBS	18	96
CNN	166	781
Fox Business	47	455
Fox News	62	404
MSNBC	20	30
NBC	4	18
NY Post	14	53
Newsmax	37	196
NPR	8	56
PBS	3	5
Russia Today	38	206
USA Today	71	330
Wall Street Journal	26	141
Washington Post	126	532

136. **Figure 13** shows the duration of coverage, measured by word count (per text and per snippet) by news organization and by period. As **Figure 13** shows, neither Fox Business nor Fox News covered Dominion during Period 1. During Period 2, Fox Business had the greatest word count at 17,123 (with 951.3 per text and 64.4 per snippet). In contrast, Fox News had a word count of 9,486 (with 395.3 per text and 57.1 per snippet). During Period 3, Fox Business' word count (12,021) was again greater than Fox News (8,096), including per text (546.4 versus 385.5) and per snippet (70.7 versus 44.7). During Period 3, Fox Business (12,021) and the Washington Post (8,532) both had greater word counts than Fox News (8,096).

137. As explained in my Opening Report, Fox Business and Fox News did not have either Rudy Giuliani or Sidney Powell on as guests during Period 4. Instead, while Fox Business and Fox News continued to cover Dominion during Period 4, the data show that the duration of coverage of Dominion on these Fox channels was much less than that of other news organizations (including CNN, Business Insider, Washington Post, and USA Today). The Dominion discourse during Period 4 was driven by other news organizations and primarily in coverage of Dominion’s lawsuits.

Figure 13
Duration by News Organization & Period

	P1 11.01.20 – 11.07.20			P2 11.08.20 – 11.21.20			P3 11.22.20 – 12.12.20			P4 12.13.20 – 1.31.21		
News Organization	Word Count	Per Text	Per Snippet	Word Count	Per Text	Per Snippet	Word Count	Per Text	Per Snippet	Word Count	Per Text	Per Snippet
ABC	0	-	-	432	216.0	39.3	184	184.0	184.0	138	69.0	17.3
Business Insider	169	169	24.1	386	77.2	38.6	3063	139.2	43.8	13102	234.0	42.8
CBS	0	-	-	532	177.3	33.3	686	228.7	42.9	2816	234.7	44.0
CNN	178	178	44.5	7372	307.2	49.5	6835	145.4	62.1	23475	249.7	45.3
Fox Business	0	-	-	17123	951.3	64.4	12021	546.4	70.7	911	130.1	47.9
Fox News	0	-	-	9486	395.3	57.1	8096	385.5	44.7	3572	210.1	62.7
MSNBC	0	-	-	278	92.7	55.6	655	131.0	109.2	1254	104.5	66.0
NBC	0	-	-	255	255.0	31.9	122	122.0	122.0	176	88.0	19.6
NY Post	0	-	-	322	80.5	46.0	647	107.8	24.9	377	94.3	18.9
Newsmax	121	121	60.5	2182	145.5	25.7	2224	148.3	30.9	1453	242.2	39.3
NPR	0	-	-	0	-	-	83	83.0	83.0	2550	364.3	46.4
PBS	0	-	-	0	-	-	276	138.0	69.0	53	53.0	53.0
Russia Today	0	-	-	1383	153.7	26.1	1552	110.9	27.7	3073	204.9	31.7
USA Today	54	27	27	3018	188.6	43.1	3232	153.9	41.4	6609	206.5	36.7
Wall Street Journal	0	-	-	2297	287.1	45.9	1109	184.8	61.6	2280	190.0	31.2
Washington Post	0	-	-	3929	187.1	43.2	8532	181.5	48.2	10973	189.2	41.6

138. For example, the two articles shown below, included in my Corpus, are stories published in Period 4 by the two news organizations with the highest word counts during that period: CNN (23,475 words) and Business Insider (13,102 words). The CNN article, published January 8, 2021, is titled “Dominion Voting

sues Trump lawyer Powell for defamation, seeking \$1.3 billion in damages,”²⁰¹ and the Business Insider article, published January 25, 2021, is titled “Dominion is suing Rudy Giuliani, seeking \$1.3 billion in damages, after he spread the conspiracy theory that the vote-machine company rigged the election.”²⁰² As evident from the titles, both articles were written in response to Dominion’s lawsuits.

Dominion Voting sues Trump lawyer Powell for defamation, seeking \$1.3 billion in damages

By Katelyn Polantz, CNN
Published 4:53 PM EST, Fri January 8, 2021



Video Ad Feedback

Dominion is suing Rudy Giuliani, seeking \$1.3 billion in damages, after he spread the conspiracy theory that the vote-machine company rigged the election

Grace Dean and Jacob Shamsian Jan 25, 2021, 11:02 AM



Rudy Giuliani, the lawyer for then-President Donald Trump, at a news conference on November 19 about lawsuits contesting the results of the presidential election. Sarah Singer for The Washington Post via Getty Images



3. Data show that Fox contributed an incremental, negligible effect, if anything, to the Dominion discourse.

139. Finally, the data show—if anything—that Fox’s contributions to the Dominion discourse at most contributed an incremental, negligible effect. Fox’s coverage was not a central aspect or driver of the Dominion discourse. As explained in my Opening Report, betweenness centrality “is a measure of the relative role that a node holds in network formation” and “is a widely used measure that captures an entity’s role in allowing information to pass from one part of the network to the other.”²⁰³ A simple way of explaining betweenness centrality

²⁰¹ Katelyn Polantz, *Dominion Voting sues Trump lawyer Powell for defamation, seeking \$1.3 billion in damages*, CNN (Jan. 8, 2021), <https://www.cnn.com/2021/01/08/politics/dominion-voting-defamation-lawsuit/index.html>.

²⁰² Grace Dean and Jacob Shamsian, *Dominion is suing Rudy Giuliani, seeking \$1.3 billion in damages, after he spread the conspiracy theory that the vote-machine company rigged the election*, Insider (Jan. 25, 2021), <https://www.businessinsider.com/dominion-sues-rudy-giuliani-13-billion-over-election-fraud-claim-2021-1>.

²⁰³ Opening Report, ¶ 61.

is that this measure captures how instrumental or necessary a vertex is to information passing through a network. If a vertex has a low betweenness centrality score, that indicates that the existence of the network does not depend on the vertex—the network would exist regardless of whether that vertex contributed to the discourse.

140. **Figure 14**, below, shows the betweenness centrality of tweets within the Dominion discourse from November 1, 2020, to January 31, 2021.

141. The Fox handles responsible for the 22 Steckel tweets are represented as yellow nodes, or vertexes, on this graph. Vertexes are connected by lines, or edges, that represent tweets. The graph also depicts the 10 vertexes with the highest betweenness centrality scores in this graph. These vertexes are also listed in **Figure 15**. As **Figure 14** and **Figure 15** show, the vertexes that represent the Fox handles that posted Dr. Steckel’s purported at-issue statements are minuscule within the network, and none of the top 10 vertexes by betweenness centrality are Fox-affiliated accounts.

Figure 14
Betweenness Centrality of Fox's Allegedly Defamatory Tweets (Steckel) &
Trump's Dominion Tweets within the Dominion Discourse Network
November 1, 2020 – January 31, 2021

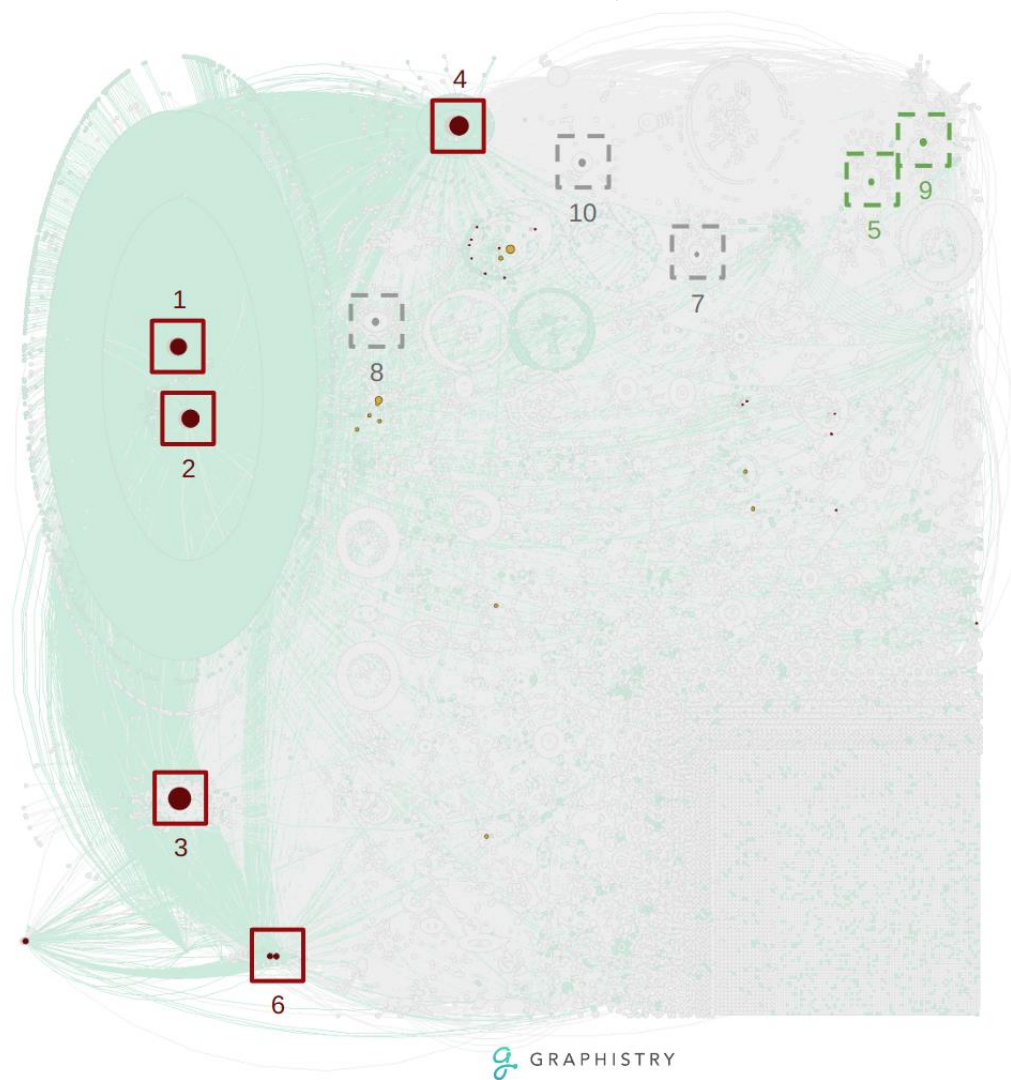


Figure 15
Top Ten Vertexes by Betweenness Centrality

Vertex	type	betweenness centrality
chanelrion	trump	0.232796
oann	trump	0.195083
rudylgiuliani	trump	0.158749
jsolomonreports	trump	0.077985
funder	minion	0.037802
dcexaminer	trump	0.026825
justinbaragona	other	0.024883
kylegriffin1	other	0.023335
nytimes	minion	0.022483
duty2warn	other	0.018532

142. None of the top 10 betweenness centrality scores belonged to a Fox vertex. This is not surprising, as the key driver of the Dominion discourse, then-President Trump, was encouraging his followers to engage with news organizations other than Fox. Dr. Steckel cherry-picks a single tweet from then-President Trump mentioning Sean Hannity and Lou Dobbs, calling it “another definitive connection between Fox and the spread of the defamatory claims.”²⁰⁴ Yet Dr. Steckel does not acknowledge that then-President Trump was also telling his followers not to watch Fox and encouraging them to watch OANN and Newsmax, including in a tweet included in Dominion’s complaint against OANN.



²⁰⁴ Steckel Report, ¶ 128.

²⁰⁵ *Dominion v. OANN*, Complaint, ¶ 147; <https://twitter.com/realdonaldtrump/status/1332773351018942465>.



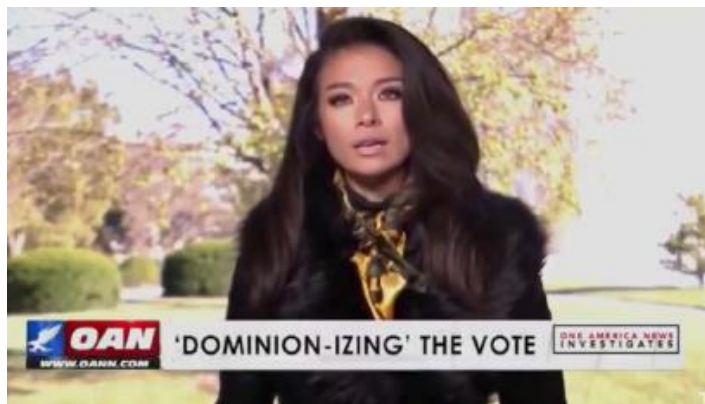
143. As **Figure 15** shows, the vertex with the greatest betweenness centrality score belongs to Chanel Rion (an OANN reporter), with OANN having the second-highest score, and Rudy Giuliani having the third-highest score.

²⁰⁶https://twitter.com/realDonaldTrump/status/1327950785959915520?ref_src=twsrc%5Etfw.

²⁰⁷ https://twitter.com/realDonaldTrump/status/1326920264203046915?ref_src=twsrc%5Etfw. In his next tweet, less than 30 minutes later, then-President Trump tweeted about Dominion and tagged @ChanelRion and @OANN, <https://twitter.com/realdonaldtrump/status/132692622688544256>.

144. As mentioned in my Opening Report, a November 9, 2020, tweet by Chanel Rion had a greater reach than all 15 allegedly defamatory Fox tweets considered in my Opening Report.²⁰⁸

145. It appears that Dominion is well aware of the role that Chanel Rion and OANN, among others, played in propagating the Dominion discourse, as demonstrated by the complaint Dominion has filed against OANN.²⁰⁹ Dominion's complaint is replete with images of Chanel Rion's tweets (including engaging with then-President Trump) and on-air coverage of Dominion, along with that of other OANN employees.



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²⁰⁸ Opening Report, Fig. 10.

²⁰⁹ *Dominion v. OANN*, Complaint.

²¹⁰ *Dominion v. OANN*, Complaint, ¶ 5.

²¹¹ *Dominion v. OANN*, Complaint, ¶ 117.



146. In the complaint against OANN, Dominion describes Rion as “an in-house spokesperson for all Dominion-related content,”²¹³ “one of the country’s most prominent voices perpetuating falsehoods about Dominion,”²¹⁴ and (with OANN) on a “campaign to destroy Dominion.”²¹⁵ Dominion alleges that “OAN and Rion began producing an entire line of programming exclusively devoted to defaming Dominion, descriptively named ‘*Dominion-izing the Vote*,’ which branded OAN’s disinformation and defamation campaign against Dominion into a single catchy phrase that is now synonymous with fraudulently flipping votes.”²¹⁶ Indeed, then-President Trump even posted Rion’s *Dominion-izing the Vote* special to his YouTube channel on November 21, 2020.²¹⁷ This YouTube link was the fourth most-shared URL in my network analysis.

147. Indeed, Dominion’s complaint against OANN even cites Rion’s Twitter activity on November 9, 2020, the date of the tweet referenced in my Opening Report, as the beginning of OANN’s “race to the bottom” of Dominion

²¹² *Dominion v. OANN*, Complaint, ¶ 119.

²¹³ *Dominion v. OANN*, Complaint, ¶ 5.

²¹⁴ *Dominion v. OANN*, Complaint, ¶ 102.

²¹⁵ *Dominion v. OANN*, Complaint, ¶ 117.

²¹⁶ *Dominion v. OANN*, Complaint, ¶ 5.

²¹⁷ OANN, *WATCH: Chanel Rion on “Dominion-izing the Vote”*, YouTube (Nov. 21, 2020), <https://www.youtube.com/watch?v=746HTjhFifA>.

allegations for profit.²¹⁸

148. As demonstrated by Fox’s low betweenness centrality scores, depicted in **Figures 14** and **15**, the data show that the Dominion discourse would have existed without Fox. Fox’s role in this network amounts to, at most, an incremental, negligible effect—Fox did not drive the discourse. In contrast, Rion and her employer OANN had much greater betweenness centrality scores and were instrumental to the Dominion discourse from November 1, 2020, through January 31, 2021 (as Dominion appears to be aware).

149. Thus, the alleged defamation in the network analysis cannot be attributed to Fox. This alleged defamation, which Dr. Steckel purportedly measured through his defamation keywords and flawed refutation analysis, cannot be attributed to Fox as the speaker or driver. As the betweenness centrality scores show, the Dominion discourse online from November 1, 2020, through January 31, 2021, would have existed with or without Fox.

V. Conclusion

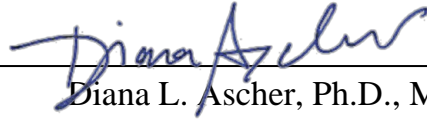
150. In conclusion, after reviewing Dr. Steckel’s Report, I conclude that Dr. Steckel’s social media analysis grossly deviates from the recognized principles of a proper, replicable scientific analysis, and is subject to severe biases, undue subjectivity, and a lack of reliability, as evidenced by the flawed and misleading data that result from the study. Further, I conclude that Dr. Steckel’s data do not substantiate his conclusion that Fox was a “substantial factor” in driving the Dominion discourse, which aligns with my findings in my Opening Report, because his analyses show only a correlation—not causation—between Fox and Dominion. Even this correlation is based on an improper review of the wrong universe, further limiting the utility of the analysis. And, finally, I conclude that

²¹⁸ *Dominion v. OANN*, Complaint, ¶¶ 95–96.

even adopting various of Dr. Steckel's assumptions, the conclusions from my Opening Report remain the same—namely, Fox was a small part of the Dominion discourse, and the discourse was not driven by Fox.

December 27, 2022

Date

A handwritten signature in blue ink, reading "Diana Ascher", written over a horizontal line.

Diana L. Ascher, Ph.D., M.B.A

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

US DOMINION, INC., DOMINION)	
VOTING SYSTEMS, INC., and)	
DOMINION VOTING SYSTEMS)	
CORPORATION,)	C.A. No. N21C-03-257 EMD
)	
Plaintiffs,)	CONSOLIDATED
)	
v.)	
)	
FOX NEWS NETWORK, LLC and)	
FOX CORPORATION,)	
)	
Defendants.)	

**NOTICE OF FOX’S MOTION FOR CLARIFICATION
OF THIS COURT’S ORDER GRANTING DOMINION’S
MOTION IN LIMINE NOS. 6 AND 7**

TO: ALL DELAWARE COUNSEL OF RECORD:

PLEASE TAKE NOTICE that Defendants Fox News Network, LLC and Fox Corporation (together, “Fox”) will present their Motion for Clarification of this Court’s Order Granting Dominion’s Motion in Limine Nos. 6 and 7 at the convenience of the Court.

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Dated: April 16, 2023

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IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

US DOMINION, INC., DOMINION)	
VOTING SYSTEMS, INC., and)	
DOMINION VOTING SYSTEMS)	
CORPORATION,)	C.A. No. N21C-03-257 EMD
)	
Plaintiffs,)	CONSOLIDATED
)	
v.)	
)	
FOX NEWS NETWORK, LLC and)	
FOX CORPORATION,)	
)	
Defendants.)	

**[PROPOSED] ORDER TO FOX’S MOTION FOR CLARIFICATION OF
THIS COURT’S ORDER GRANTING DOMINION’S
MOTION IN LIMINE NOS. 6 AND 7**

WHEREAS, upon consideration of Fox’s Motion for Clarification of this Court’s Order Granting Dominion’s Motion in Limine Nos. 6 and 7, and any opposition thereto, the Court clarifies that:

1. Fox may introduce evidence that others (including President Trump) made similar claims about Dominion for purposes of rebutting Dominion’s malice case;
2. Fox may introduce evidence of “other defamers” for purposes of contesting causation.

IT IS SO ORDERED, this ____ day of _____, 2023.

The Honorable Eric M. Davis

CERTIFICATE OF SERVICE

I, Katharine L. Mowery, hereby certify that on April 16, 2023, I caused a copy of the foregoing to be filed and served on this date via File & ServeXpress upon the following counsel of record:

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