

No. 20-815
In the Supreme Court of the United States

TIMOTHY KING, Et Al.,
Petitioners,
v.

GRETCHEN WHITMER,
GOVERNOR OF MICHIGAN, Et Al.,
Respondents

**BRIEF OF CITY OF DETROIT IN OPPOSITION TO
PETITION FOR WRIT OF CERTIORARI**

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QUESTIONS PRESENTED

1. Whether Petitioners should be granted the writ of certiorari where their factual allegations and legal claims are frivolous and where they sought extraordinary relief that could not possibly be available even if they stated a legitimate claim.

2. Whether the District Court was correct that Petitioners were not entitled to the extraordinary relief they sought, the effective reversal of the 2020 presidential election.

3. Whether the District Court was correct that Petitioners' claims are barred by Eleventh Amendment Immunity.

4. Whether the District Court was correct that the relief sought by Petitioners was moot and whether subsequent events have further mooted the case.

5. Whether the District Court was correct that Petitioners' claims are barred by laches.

6. Whether the District Court was correct that abstention is appropriate in deference to State court proceedings.

7. Whether the District Court was correct that Petitioners do not have Article III standing.

PARTIES TO THE PROCEEDINGS

Petitioners are plaintiffs Timothy King, Marian Ellen Sheridan, John Earl Haggard, Charles James Ritchard, James David Hooper, and Daren Wade Rubingh, all of whom purport to be registered Michigan voters and nominees of the Republican Party to be Presidential Electors on behalf of the State of Michigan.

Respondents are as follows: defendant Gretchen Whitmer, Governor of the State of Michigan; defendant Jocelyn Benson, Secretary of State of the State of Michigan; intervenor-defendant, the City of Detroit; intervenor-defendants Democratic National Committee and Michigan Democratic Party, and; intervenor-defendant Michigan citizen Robert Davis.

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The District Court’s Opinion and Order denying Petitioners’ Request for Injunctive Relief is reported as *King v. Whitmer*, No. CV 20-13134, 2020 WL 7134198 (E.D. Mich. Dec. 7, 2020).

JURISDICTION

Petitioners argue this Court has jurisdiction pursuant to 28 U.S.C. § 1343, because the case purportedly involves a “significant departure from the legislative scheme for appointing Presidential electors...” Petition at *4 (citing *Bush v. Gore*, 531 U.S. 98, 113 (2000) (Rehnquist, C.J., concurring)). But, Petitioners do not—and cannot—present any legitimate argument as to how the State’s actions departed from the legislative scheme.

Petitioners argue this Court has jurisdiction under the All Writs Act, 28 U.S.C. § 1651(a), and Supreme Court Rule 20, because “Petitioners will suffer irreparable harm if they do not obtain immediate relief ... [as] Electors are set to vote on December 14, 2020.” Petition at *6. Setting aside the fact that Petitioners do not state a legitimate claim, the December 14, 2020 deadline has passed, rendering Petitioners’ request fully moot and thus insufficient to invoke jurisdiction.

STATEMENT OF THE CASE

Petitioners filed this case to halt the orderly workings of the democratic process, by preventing the State of Michigan from certifying the electoral college results for the November 3, 2020 presidential election. The City of Detroit (the “City”) intervened to protect the rights of its citizens and because most of the allegations of purported fraud are based on allegations relating to the processing and tabulation of absentee ballots by the City.

There is no question that the District Court was correct when it denied Petitioners’ request for injunctive relief. Petitioners’ factual allegations have no merit. As detailed in the City’s Motion to Dismiss and Motion for Sanctions, both of which are pending as of the date of this brief, this case is predicated almost entirely on falsehoods. *See City of Detroit Appendix (“COD Appx.”) 001-274.* Nothing Petitioners allege could possibly support an injunction that would prevent the vote of every single Michigan citizen from being counted.

SUMMARY OF THE ARGUMENT

1. Petitioners have not made—and cannot make—a colorable argument in favor of this Court granting the writ of certiorari. Nor can they make a colorable argument in favor of bypassing the Sixth Circuit Court of Appeals. The “facts” in the Complaint have been rejected in numerous courts and debunked every time they have been tested. This unprecedented case was predicated on an extraordinary collection of intentional falsehoods and startlingly-weak “expert” reports.

2. As the District Court concluded, the case is barred by Eleventh Amendment Immunity.

3. The District Court was correct that this case is moot. Even by December 7, the date the Complaint was filed, the time had passed to provide most of the relief Petitioners requested. Numerous subsequent events have further mooted the claims. Petitioners asked the District Court to enjoin the Michigan Secretary of State and Governor from transmitting election results to the Electoral College or to transmit results somehow stating that President Trump was entitled to Michigan’s electoral college votes. That request is moot; the actual results were sent. Petitioners asked the District Court to order “that no votes received or tabulated by machines not certified as required by federal and state law be counted.” But the results have already been certified. The electoral college for each State has met and sent results

to the United States Congress. And, Congress has counted the results. The election is over. This case is moot.

4. As the District Court found, the case was barred by laches because, Petitioners “waited too long to knock on the Court’s door.”

5. The District Court was correct that abstention was appropriate under the doctrine announced in *Colorado River Water Conservation District v. United States*, 424 U.S. 800 (1976), because the same allegations and claims were being litigated in Michigan state courts.

6. As the District Court concluded, Petitioners do not have Article III standing to pursue their purported claims under the Equal Protection or Elections/Electors clauses.

ARGUMENT

I. Petitioners’ Allegations of Fact are Primarily Deliberate Falsehoods

Supreme Court Rule 15 states that a brief in opposition to a request for certiorari “should address any perceived misstatement of fact or law in the petition that bears on what issues properly would be before the Court if certiorari were granted.” Here, the allegations of purported facts made by Petitioners would not properly be before the Court if certiorari were granted, because Petitioners appeal from the denial of an injunction that they frivolously requested. The underlying factual claims are irrelevant, because, as the District Court concluded, Petitioners request failed on numerous legal grounds, such as mootness, Eleventh Amendment Immunity, laches, abstention and lack of Article III standing.

That said, it must be noted that nearly all of Petitioners’ allegations are deliberate falsehoods. It is unlikely that any other party has sought such extraordinary relief—overturning the results of a democratic election—based on such a flimsy and false pretext. The allegations of “electoral fraud” in Michigan are premised on supposed violations of state law during the City of Detroit’s processing and tabulation of absentee ballots. The rest of the allegations appear to be intended to show that bad actors *could* change election results. *None* of the allegations are true.

The allegations relating to the City of Detroit have been presented to federal and state courts in Michigan at least nine times since the November general election. In the cases that were not withdrawn before a ruling could be entered on the requested injunctive relief, the court either found the claims to be without merit or not worthy of an injunction. In fact, Michigan's Supreme Court has now considered these allegations in three separate post-election lawsuits and each time concluded that the plaintiffs were not entitled to an injunction. *See Costantino v. Detroit*, No. 162245, 2020 WL 6882586 (Mich. Nov. 23, 2020); *Johnson v. Secy of State*, No. 162286, 2020 WL 7251084 (Mich. Dec. 9, 2020); *Donald J. Trump for President, Inc. v. Secy of State*, No. 162320, 2020 WL 7315923 (Mich. Dec. 11, 2020).

Petitioners recycle the same affidavits and same allegations which were rejected in the other cases. For instance, the Complaint recirculates the falsehood that Republican challengers were not given "meaningful" access to the ballot processing and tabulation at the Absent Voter Counting Board for the City of Detroit. Pet. Appx. Ex. 1, R6, ¶¶ 13, 42, 47, 57, 59-61. This claim was disproven before Petitioners raised it here. As Michigan's Wayne County Circuit Court concluded the first time this claim was addressed, while six feet of separation was necessary for health reasons, "a large monitor was at the table where individuals could maintain a safe distance from poll workers

to see what exactly was being performed.” COD Appx. 275-87; *Costantino v. Detroit*, Opinion and Order, Wayne County Circuit Court Case No. 20-014780-AW (Nov. 13, 2020).

Similarly, the Complaint repeats the false claim that Republican challengers were exclusively barred from entering the Detroit absentee ballot counting center. Pet. Appx. Ex. 1, R6. In fact, there was a short period of time, where Republican *and* Democratic challengers were “prohibited from reentering the room because the maximum occupancy of the room had taken place.” COD Appx. 275-87; *Costantino* Opinion, at *8. As stated by that court, “[g]iven the COVID-19 concerns, no additional individuals could be allowed into the counting area ... Democratic party challenger David Jaffe and special consultant Christopher Thomas in their affidavits both attest to the fact that neither Republican nor Democratic challengers were allowed back in during the early afternoon of November 4th as efforts were made to avoid overcrowding.” *Id.* And, it is undisputed that at all times some Republican challengers were in the room.

The allegations of “pre-dating” (Pet. Appx. Ex. 1, R6, ¶¶ 88 and 90) were also based on claims initially submitted and rejected in *Costantino*. COD Appx. 275-87, *4. The employees were not “pre-dating”; they were accurately marking dates the ballots had been received, consistent with time-stamps on the ballot envelopes. *Id.*

The allegations of ballots being repeatedly run

through tabulation machines in Wayne County, Michigan or votes being switched in Antrim County, Michigan were proven false before Petitioners latched on to the conspiracy theories and alleged them in this case. The actual canvass of votes in Wayne County conclusively disproved any claim of ballots being counted more than once. COD Appx, 288-302; Affidavit of Chris Thomas, ¶¶ 18-20. Similarly, the hand recount audit in Antrim County conclusively refuted any claim that votes had been changed. COD Appx. 303.

To the extent they are actually relevant to any of Petitioners' claims, the "expert" reports, declarations and affidavits are fundamentally flawed. For instance, Petitioners rely on an affidavit from someone whose name they redacted, but who they identified as a "former electronic intelligence analyst with 305th Military Intelligence." Pet. Appx. Ex. 1, R6, ¶¶ 17, 161. When the identity of the declarant was inadvertently revealed by Petitioners, it was discovered that the individual was never in Military Intelligence, but instead was a person who failed out of the courses to join intelligence. COD Appx. 304-07. He reportedly said that counsel for Petitioners added the false claim to his affidavit. *Id.*

The other "expert" analyses lack the basic underpinnings of proper expert testimony. The reports are rife with misstatements of Michigan law and procedure (e.g. that Michigan voters can be tracked by party registration,

when the State has not had party registration since 1992; that every Michigan absentee voter voted by mail, when many Michigan voters cast absentee ballots in person at the local clerk's office; and, that thousands of ballots could be counted multiple times, when there are multiple steps in Michigan's tabulation, canvassing and certification process where such errors would be detected and corrected). The experts also rely on obviously incorrect factual assumptions (e.g. that every voter who supported Donald Trump in 2016 voted for Donald Trump again in 2020; that a larger margin of victory for Joe Biden, measured by raw vote totals, in several counties is "statistically anomalous," when the counties identified happen to be the counties with the most voters in the State; and, that there is no reason to believe that, in 2020, when President Trump discouraged mail-in voting, Biden voters would be more likely to vote by mail than Trump voters). These "expert" reports fail to use even elementary statistical methods, rely upon transparently-unscientific surveys, include numerical inconsistencies, and are prepared with the sort of sloppiness that would be rejected even in low-stakes litigation. The reports are all clearly intended to support a pre-determined conclusion. Not one of them comes close to satisfying *Daubert*.¹

¹ Many of the fabrications and flaws are identified in the City's Motion for Sanctions. COD Appx. 054-274.

As the District Court concluded in denying injunctive relief, “this lawsuit seems to be less about achieving the relief Plaintiffs seek—as much of that relief is beyond the power of this Court—and more about the impact of their allegations on People’s faith in the democratic process and their trust in our government.” Pet. Appx. Ex. 42 R. 62, *35-36. “Plaintiffs ask this Court to ignore the orderly statutory scheme established to challenge elections and to ignore the will of millions of voters ... This, the Court cannot, and will not, do.” *Id.*

II. As the District Court Correctly Concluded, this Lawsuit is Barred by Eleventh Amendment Immunity

The named Defendants in this lawsuit are Michigan’s Governor, Secretary of State and Board of State Canvassers (the “Board”). The claim against the Board was clearly barred by Eleventh Amendment Immunity, because the Board is a State entity. *See McLeod v. Kelly*, 7 N.W.2d 240 (Mich. 1942); *see also* Pet. Appx. Ex. 42 R. 62, *8-13. Congress has not abrogated immunity, and the State has not waived immunity. *See, e.g., Carten v. Kent State Univ.*, 282 F.3d 391, 398 (6th Cir. 2002).

The claims against the Governor and Secretary of State are barred because they do not fall within the exception to immunity first articulated by this Court in *Ex parte Young*, 209 U.S. 123 (1908). The immunity

“unquestionably” barred the state law claims. Pet. Appx. Ex. 42 R. 62, *11 (citing, *inter alia*, *Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89, 106 (1984)). And, the immunity barred the federal claims because, as the District Court concluded, the lawsuit was an attempt to undo something which had already occurred—certification and transmission of Michigan’s election results—not an attempt to end an ongoing violation of law. *See Russell v. Lundergan-Grimes*, 784 F.3d 1037, 1047 (6th Cir. 2015).

III. As the District Court Correctly Concluded, this Lawsuit is Moot

As the District Court held in its December 7 Opinion and Order, as of the date this case was filed (November 25, 2020) it was already moot. The operative Complaint asked the District Court to:

(a) order Defendants to decertify the results of the election; (b) enjoin Secretary Benson and Governor Whitmer from transmitting the certified election results to the Electoral College; (c) order Defendants “to transmit certified election results that state that President Donald Trump is the winner of the election”; (d) impound all voting machines and software in Michigan for expert inspection; (e) order that no votes received or tabulated by machines not certified as required by federal and state law be counted; and, (f) enter a declaratory judgment that mail-in and absentee ballot fraud must be remedied with a manual recount or statistically valid sampling.

Pet. Appx. Ex. 42 R. 62, *13-14 (quoting First Amended

Complaint, Pet. Appx. Ex. 1, R6). However, the request was moot because, by the time the Complaint was filed, “all 83 counties in Michigan had finished canvassing their results for all elections and reported their results ... The State Board had certified the results of the 2020 General Election and Governor Whitmer had submitted the slate of Presidential Electors to the Archivists.” Pet. Appx. Ex. 42 R. 62, *14 (citing record and M.C.L. § 168.843). The time to request a special election had expired, as “had the time for requesting a recount for the office of President.” *Id.* at *14-15. (citing record and M.C.L. §§ 168.831, 168.832 and § 168.879).

Michigan state courts have reached similar conclusions. As early as November 6, 2020, the Michigan Court of Claims determined that these challenges to the election were moot. In *Donald J. Trump Inc. v Benson, supra*, the plaintiffs sought an order in the Michigan Court of Claims that the “counting and processing of absentee votes cease immediately.” The court stated that:

the complaint and emergency motion were not filed until approximately 4:00 p.m. on November 4, 2020—despite being announced to various media outlets much earlier in the day. By the time this action was filed, the votes had largely been counted, and the counting is now complete. Accordingly, and even assuming the requested relief were available against the Secretary of State—and overlooking the problems with the factual and evidentiary record noted above—the matter is now moot, as it is impossible to issue the

requested relief. See *Gleason v Kincaid*, 323 Mich App 308, 314; 917 NW2d 685 (2018).

COD Appx. 308-13. Donald J. Trump for President, Inc. and the other plaintiff delayed 24 days in perfecting their appeal, so the Michigan Court of Appeals looked at the mootness question anew, holding:

Once the election results have been certified, “[a] candidate for office who believes he or she is aggrieved on account of fraud or mistake in the canvass or returns of the votes by the election inspectors may petition for a recount of the votes cast for that office in any precinct or precincts as provided by in this chapter.” MCL 168.862

Here, plaintiff filed its purportedly emergent application on November 6, 2020, but did not perfect the filing until 11:21 p.m. on November 30, 2020, when it filed its brief in support. The Wayne County Board of Canvassers certified the results of the November 3rd election on November 17, 2020, almost a full two weeks before plaintiff perfected the instant application. The Michigan Board of State Canvassers certified the presidential election results on November 23, 2020, a full week before plaintiff perfected its application. Plaintiff does not address whether the certification of the election result by the Board of State Canvassers had any impact on the viability of its suit below or on the viability of the instant application.

Perhaps the reason for plaintiff failing to discuss the impact of the certification is because such action by the Michigan State Board of Canvassers clearly rendered plaintiff’s claims for relief moot. The Michigan State Board of Canvassers’ certification of the presidential election results and the legislative directive found in MCL

168.862, requires plaintiff to pursue its fraud allegations by way of a recount of the ballots cast in Wayne County. Because plaintiff failed to follow the clear law in Michigan relative to such matters, their action is moot. MCL 168.862.

COD Appx. __. The Michigan Supreme Court rejected leave to appeal from the Michigan Court of Claims and Court of Appeals decisions.

Additional events which have transpired subsequent to the District Court's December 7 Opinion have further mooted the case. The federal "safe harbor" provision regarding certification of electors by states passed on December 8. *See* 3 U.S.C. § 5. On December 14, Michigan's presidential electors convened in Lansing. M.C.L. § 168.47; 3 U.S.C. § 7. There, Michigan's electors voted and confirmed that all Michigan electoral college votes were for Joe Biden. COD Appx. 316-21. Joe Biden defeated Donald Trump in the State of Michigan by 154,188 votes. *Id.* On that same day, the Electoral College in all 50 states met and cast their votes. COD Appx. 322-25. Finally, on January 6, 2021 and into the morning of January 7, a joint session of Congress met and certified the results for Michigan and all other states. COD Appx. 326-28.

IV. As the District Court Correctly Concluded, this Lawsuit is Barred by Laches

Laches arises from a "(1) lack of diligence by the party against whom the defense is asserted ... and (2) prejudice to

the party asserting the defense.” *Chirco v. Crosswinds Communities, Inc.*, 474 F.3d 227, 231 (6th Cir. 2007) (citation omitted)).

All of Petitioners’ claims arise from allegations relating to supposed events which occurred before the election (including years before the election) or on the 3rd and 4th of November. If Petitioners had legitimate claims regarding Dominion Voting Systems, they could have brought those claims years ago. If Petitioners had legitimate claims relating to the processing and tabulation of ballots in Detroit, they could have brought the claims before that tabulation was completed. Instead of bringing the claims when they were timely (albeit not meritorious), Petitioners chose to wait until after the election had been certified. The claims are thus barred by laches.

V. As the District Court Correctly Concluded, this Lawsuit is Barred Under the Colorado River Doctrine

The *Colorado River* doctrine counsels deference to parallel state court proceedings. *Colorado River Water Conservation District v. United States*, 424 U.S. 800 (1976). Virtually all of the allegations of purported fraud relate to the processing and tabulation of ballots in Detroit. *See, e.g.*, Pet. Appx. Ex. 1, R6, ¶¶ 180-192, 206, 211, 213-228. The “facts” identified in the Counts—which are the only “facts” actually offered in support of the relief in the Counts—are

claims that election officials: did not allow Republican challengers to observe the counting and processing of ballots; discriminated against Republican challengers; added “batches” of ballots; added voters to the Qualified Voter File; changed dates on ballots; altered votes on ballots; double counted ballots; violated ballot security; accepted “unsecured” ballots; counted ineligible ballots; and, failed to check ballot signatures. Besides their falsity, the one thing the allegations have in common is that they are based on claims raised in Michigan state courts. In fact, each and every one of those allegations is based on the allegations and “evidence” submitted in the *Costantino* matter, *supra*.²

All of the claims were being litigated in, or had been resolved by, Michigan courts. The Wayne County Circuit Court has already decided that the claims were frivolous and not worthy of injunctive relief. The Michigan Court of Appeals and the Michigan Supreme Court reviewed the District Court’s decision on an expedited basis and did not disagree. The claims remained before Michigan courts, which were the proper courts to see them through to their

² The other allegations in the Complaint are essentially offered to provide “support” for the theory that there *could have been* widespread fraud in Michigan that resulted in President Elect Biden receiving 154,000 more votes than Donald Trump in the State. Of course, if the Trump campaign believed those claims, the proper avenue for relief was a hand recount—no recount was requested.

inevitable dismissal with prejudice.

VI. As the District Court Correctly Concluded, Petitioners Do Not Have Standing

Article III of the United States Constitution restricts the jurisdiction of federal courts to actual “Cases” and “Controversies.” U.S. Const. art. III, § 2, cl. 1. “To satisfy this ‘case-or-controversy’ requirement, ‘a plaintiff must establish three elements: (1) an injury in fact that is concrete and particularized; (2) a connection between the injury and the conduct at issue—the injury must be fairly traceable to the defendant’s action; and (3) [a] likelihood that the injury would be redressed by a favorable decision of the Court.’” *Courtney v. Smith*, 297 F.3d 455, 459 (6th Cir. 2002), *quoting Blachy v. Butcher*, 221 F.3d 896, 909 (6th Cir.2000).

The first requirement—that the plaintiff establish an “injury in fact”—limits justiciability to those cases involving a well-defined injury to the plaintiff, which allows the parties to develop the necessary facts and seek responsive remedies. As this Court has repeatedly instructed, “[t]he requirement of ‘actual injury redressable by the court’ . . . tends to assure that the legal questions presented to the court will be resolved, not in the rarified atmosphere of a debating society, but in a concrete factual context conducive to a realistic appreciation of the consequences of judicial action.” *Valley Forge Christian Coll. v. Americans United for Separation of Church and State, Inc.*, 454 U.S. 464, 472 (1982) . To that

end, this Court “repeatedly has rejected claims of standing predicated on the right, possessed by every citizen, to require that the Government be administered according to law.” *Id.* at 482–83. Moreover, this Court has “consistently held that a plaintiff raising only a generally available grievance about government—claiming only harm to his and every citizen's interest in proper application of the Constitution and laws, and seeking relief that no more directly and tangibly benefits him than it does the public at large—does not state an Article III case or controversy.” *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 573–74 (1992).

A. Elections and Electors Clauses

Count I of the Complaint purports to bring a claim under the Elections and Electors clause of the U.S. Constitution. But, the underlying “factual allegations” are the same “allegations” made throughout the Complaint: that the named Defendants supposedly failed to follow the Michigan Election Code, relating to election challengers and the processing and tabulation of ballots in Detroit. *See, e.g.*, Pet. Appx. Ex. 1, R6, ¶ 180. Petitioners *do not* allege that their ballots were not counted or that they were not allowed to vote. Instead, they allege their votes were somehow diluted.

But that claim is “predicated on the right, possessed by every citizen, to require that the Government be administered according to law” that is insufficient to confer

standing. *See, e.g., Valley Forge*, 454 U.S. at 472. Petitioners’ reliance on *Carson v. Simon* is misplaced. Petition at 29, *citing Carson v. Simon*, 978 F.3d 1051, 1057 (8th Cir. 2020). *Carson* is an outlier that erroneously conflated candidates for electors with candidates for office based on a quirk of Minnesota law. *Id.* Meanwhile, this Court has been clear that citizens do not have Article III standing under the clauses. *See, e.g., Lance v. Coffman*, 549 U.S. 437, 442 (2007) (Holding plaintiffs did not have standing because the “only injury plaintiffs allege is that the law—specifically the Elections Clause—has not been followed. This injury is precisely the kind of undifferentiated, generalized grievance about the conduct of government that we have refused to countenance in the past.”). And, all other courts ruling on similar challenges to the November 2020 general election have held that the expansion of standing in *Carson v. Simon* was unwarranted and that plaintiffs (citizens, electors, and candidate) do not have standing under the clause. *See, e.g., Bognet v. Secretary Commonwealth of Pennsylvania*, 980 F.3d 336 (3rd Cir., Nov. 13, 2020); *Hotze v. Hollins*, 4:20-CV-03709, 2020 WL 6437668 at *2 (S.D. Tex. Nov. 2, 2020); *Wood v. Raffensperger*, 1:20-CV-04651, 2020 WL 6817513, at *5 (N.D. Ga. Nov. 20, 2020) (L. Lin Wood as plaintiff); *Feehan v. Wisconsin Elections Comm’n*, No. 20-CV-1771, 2020 WL 7250219, at *12 (E.D. Wis. Dec. 9, 2020); *Bowyer v. Ducey*, CV-20-02321, 2020 WL 7238261 (D. Ariz. Dec. 9, 2020).

Additionally, these particular Petitioners do not have standing for the claims, because they are actually purporting to bring claims that, if they could be brought, could only be brought by the Michigan Legislature. Petitioners are effectively seeking to enforce “rights” of that body, not rights that are particular to themselves. *See, e.g., Bognet*, 980 F.3d at 349-50 (concluding that the plaintiffs’ Elections and Electors Clause claims “belong, if they belong to anyone, only to the Pennsylvania General Assembly”) (citation omitted)

B. Equal Protection, Due Process and Michigan Election Law Theories

The equal protection, due process and Michigan Election Law theories (Counts II – IV) also rely on the allegations relating to the processing and tabulation of votes in Detroit. *See* Pet. Appx. Ex. 1, R6, ¶¶ 118-192, 206, 211, 213-228. Once again, Petitioners do not—and cannot—allege an actual, particularized injury in fact. They do not claim they were denied the right to vote; instead, they claim that the grant of the franchise to others somehow infringed on their right to equal protection, due process and compliance with Michigan law. Setting aside just how misplaced this theory is, it is clear that these Petitioners do not have standing to pursue it.

Petitioners are alleging an “injury” identical to the injury supposedly incurred by every Michigan voter. Under Petitioners’ theory, the “effect” of an erroneously counted

vote will proportionally impact every Michigan voter to the same mathematical degree. Because the approximately 5.5 million Michigan voters in the Presidential election suffer the identical incremental dilution, the alleged injury constitutes a quintessential generalized injury incapable of conferring standing. Federal courts have addressed this “novel” voter dilution claim, with each court finding the claim fails to constitute an injury in fact. *See Paher v. Cegavske*, 457 F. Supp. 3d 919, 926–27 (D. Nev. 2020); *Martel v. Condos*, No. 5:20-cv-131, — F.Supp.3d —, 2020 WL 5755289, at *4 (D. Vt. Sept. 16, 2020); *Am. Civil Rights Union v. Martinez-Rivera*, 166 F. Supp. 3d 779, 789 (W.D. Tex. 2015). Numerous courts have also addressed the issue in the context of the post-election lawsuits filed in the “battleground” states, also concluding the plaintiffs lacked standing. *See, e.g., Bognet v. Pennsylvania*, 980 F.3d at 352-60; *Wood v. Raffensperger*, 2020 WL 6817513, at *5; *Feehan v. Wisconsin*, 2020 WL 7250219, at *8-10 ; *Bowyer v. Ducey*, 2020 WL 7238261 at *5-6; *Georgia Republican Party v. Secy of State of Georgia*, No. 20-14741, 2020 WL 7488181 (11th Cir. Dec. 21, 2020); *Donald J. Trump for President, Inc. v. Boockvar*, No. 4:20-CV-02078, 2020 WL 6821992, at *1 (M.D. Pa. Nov. 21, 2020), *aff’d sub nom. Donald J. Trump for President, Inc. v. Pennsylvania*, No. 20-3371, 2020 WL 7012522 (3d Cir. Nov. 27, 2020);

This is not to say that a claim under the label of “voter

dilution” can never be brought in federal court; but such claims can only survive with facts starkly different from the case at bar. First, voter dilution claims may be appropriate in cases of racial gerrymandering, where the legislature impermissibly relied on race when drawing legislative districts. *See, e.g., United States v. Hays*, 515 U.S. 737, 744–45 (1995). Second, voter dilution claims may proceed in apportionment cases, where un-updated legislative districts disfavor voters in specific districts merely due to the voter’s geographic location. *See, e.g., Reynolds v. Sims*, 377 U.S. 533 (1964). Neither theory provides any support for Petitioners’ claims. The injury in the colorable dilution claims is particularized to a specific group. In contrast to the specific class of minority voters in a racially gerrymandered district, or voters living in a growing but un-reapportioned district, the supposed dilution here is shared in proportion by *every* single Michigan voter. In alleging a generalized injury rather than an actual and particularized injury in fact, Petitioners lack standing.

CONCLUSION

The Court should DENY Petitioners’ Request for the Writ of Certiorari.

Respectfully submitted,

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January 14, 2021

APPENDIX

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

<p>TIMOTHY KING, MARIAN ELLEN SHERIDAN, JOHN EARL HAGGARD, CHARLES JAMES RITCHARD, JAMES DAVID HOOPER and DAREN WADE RUBINGH,</p> <p style="text-align: center;">Plaintiffs,</p> <p style="text-align: center;">v.</p> <p>GRETCHEN WHITMER, in her official capacity as Governor of the State of Michigan, JOCELYN BENSON, in her official capacity as Michigan Secretary of State and the Michigan BOARD OF STATE CANVASSERS,</p> <p style="text-align: center;">Defendants.</p>	<p>No. 2:20-cv-13134</p> <p>Hon. Linda V. Parker</p>
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THE CITY OF DETROIT’S MOTION TO DISMISS

AND

FOR AN AWARD OF SANCTIONS

The City of Detroit (the “City”) respectfully submits this Motion to Dismiss Plaintiffs’ Complaint with Prejudice and with Sanctions.

This Motion is supported by the accompanying Brief.

Pursuant to Local Rule 7.1(a), on December 22, 2020, Counsel for the City contacted Counsel for the Plaintiffs and explained the nature of this Motion and its

legal bases and requested concurrence in the relief sought but the Plaintiffs did not concur.

WHEREFORE, for the foregoing reasons and the reasons stated in the accompanying brief, the City of Detroit respectfully requests that this Court enter an Order dismissing Plaintiffs' Complaint with prejudice and requiring Plaintiffs and their counsel to pay all costs and fees incurred by all Defendants and Intervenor-Defendants.

December 22, 2020

Respectfully submitted,

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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

<p>TIMOTHY KING, MARIAN ELLEN SHERIDAN, JOHN EARL HAGGARD, CHARLES JAMES RITCHARD, JAMES DAVID HOOPER and DAREN WADE RUBINGH,</p> <p style="text-align: center;">Plaintiffs,</p> <p style="text-align: center;">v.</p> <p>GRETCHEN WHITMER, in her official capacity as Governor of the State of Michigan, JOCELYN BENSON, in her official capacity as Michigan Secretary of State and the Michigan BOARD OF STATE CANVASSERS,</p> <p style="text-align: center;">Defendants.</p>	<p>No. 2:20-cv-13134</p> <p>Hon. Linda V. Parker</p>
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**BRIEF IN SUPPORT OF
THE CITY OF DETROIT’S MOTION TO DISMISS
AND
FOR AN AWARD OF SANCTIONS**

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STATEMENT OF THE ISSUES PRESENTED

I. Should the Complaint be dismissed because Plaintiffs do not have standing?

The City answers: “Yes.”

II. Should the Complaint be dismissed under abstention principles?

The City answers: “Yes.”

III. Should the Complaint be dismissed based on laches?

The City answers: “Yes.”

IV. Should Plaintiffs’ counsel be ordered to pay sanctions pursuant to 28 U.S.C. § 1927?

The City answers “Yes”

CONTROLLING OR MOST APPROPRIATE AUTHORITIES

Ashcroft v. Iqbal, 556 U.S. 662 (2009)

Colorado River Water Conservation District v. United States, 424 U.S. 800 (1976)

Costantino v. Detroit et al, Wayne County Circuit Case No. 20-014780-AW

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U.S. Const. art. III, § 2

28 U.S.C. § 1927

Fed. R. Civ. P. 9(b)

INTRODUCTION

Plaintiffs and their counsel surely know that this case is built on lie upon lie, each easily disproven by basic objective facts. They know that their so-called experts rely on conspiracy theories to spew obviously flawed conclusions, based on junk science. But they choose to deliberately spread their falsehoods by filing them with this Court and not withdrawing them when given the opportunity (after the various Defendants sought concurrence). While one might be tempted to laugh at the absurdity of their claims, the point of these lawsuits is not to prevail. Certainly, no court in the free world would ever seriously entertain this nonsense. No, the point of all of these lawsuits was to sow doubt, to delegitimize the Biden presidency, to create space for people to press the President to declare martial law, and, perhaps, to fundraise from the millions who believe there must be some truth to these spurious allegations because they are included in court filings and “affidavits.”

Some numbers put this in perspective:

- Certified popular vote totals for Biden/Harris: **81,281,888**¹
- Certified popular vote totals for Trump/Pence: **74,223,251**²
- Michigan certified vote totals for Biden/Harris: **2,804,040**³

¹ *2020 Presidential Election Results & Electoral Map*, USA Today, https://www.usatoday.com/elections/results/2020-11-03/presidential/?itm_source=oembed&itm_medium=news&itm_campaign=electionresults-home&itm_content=presidential (last visited December 22, 2020).

² *Id.*

³ *Id.*

- Michigan certified vote totals for Trump/Pence: **2,649,852**⁴
- Electoral College votes committed to Biden/Harris: **306**⁵
- Electoral College votes committed to Trump/Pence: **232**⁶
- Post-elections lawsuits challenging election lost or dismissed: **59**⁷
- Vote tally net change in Georgia's three recounts: **891 for Trump**⁸
- Vote tally net change in Wisconsin recount: **132 for Biden**⁹
- Vote tally net change in Antrim County hand count audit: **11 for Trump**¹⁰
- Number of recounts requested by Trump in Michigan: **0**
- Percentage of Americans who reportedly believe the election lies: **36%**¹¹

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ Running tally which changes almost daily, and includes cases where the relief was denied, but case not yet formally dismissed.

⁸ David Wickert, Patricia Murphy and Mark Niesse, *Georgia recount confirms Biden win, again, but Trump still battling*, Atlanta Journal Constitution (December 7, 2020), <https://www.ajc.com/politics/election/georgia-recount-confirms-biden-win-again-but-trump-still-battling/OZGAOQCMKVFG7G43L5PSF3BNHM/>.

⁹ Joe Biden gains votes in Wisconsin county after Trump-ordered recount, *The Guardian*, <https://www.theguardian.com/us-news/2020/nov/28/joe-biden-gains-votes-in-wisconsin-county-after-trump-ordered-recount> (last visited December 22, 2020).

¹⁰ Beth LeBlanc, *Antrim County audit shows 12-vote gain for Trump*, The Detroit News, <https://www.detroitnews.com/story/news/local/michigan/2020/12/17/antrim-county-audit-shows-12-vote-gain-trump/3938988001/> (last visited December 22, 2020).

¹¹ https://www.rasmussenreports.com/public_content/politics/elections/election_2020/most_say_mail_in_voting_worked_but_47_say_fraud_likely. According to the Rasmussen poll, 47% of likely voters say it is likely that Democrats stole votes or destroyed pro-Trump ballots in several states to ensure that Joe Biden would win. 49% consider that unlikely. This includes 36% who say voter fraud was very likely.

- Number of stabbings at pro-Trump white supremacist rally in D.C.: **4**¹²
- Violent incidents by paid election fraud “investigators”: **3**^{13 14}
- Dollars raised by Sidney Powell based upon election lawsuits: **undisclosed**
- Dollars raised off election lawsuits by Trump: **at least \$200 million**.¹⁵

The City has served Plaintiffs with a proposed Rule 11 Motion and intends to file that Motion at an appropriate time. But, for now, Plaintiffs’ counsel should be sanctioned under 28 U.S.C. § 1927 and ordered to pay the City of Detroit the costs, expenses, and attorneys’ fees incurred because of their conduct.

The reasons for dismissal are straightforward and were explained by this Court in its December 7, 2020, Opinion and Order Denying Plaintiffs’ “Emergency Motion for Declaratory, Emergency, and Permanent Injunctive Relief.” *King v. Whitmer*, No. CV 20-13134, 2020 WL 7134198 (E.D. Mich. Dec. 7, 2020). There, this Court made numerous rulings, which not only applied to the denial of injunctive relief, but which also apply to dismissal.

¹² https://www.washingtonpost.com/local/public-safety/enrique-tarrio-proud-boys-black-lives-matter-sign/2020/12/18/c056c05e-415a-11eb-8db8-395dedaaa036_story.html.

¹³ Eric Miller, *Fake ballots, Q Anon, and a Virginia senator: “Alarming” incident prompts gun charges for men outside Philly vote-counting center*, MSN.com, <https://www.msn.com/en-us/news/politics/fake-ballots-q-anon-and-a-virginia-senator-alarming-incident-prompts-gun-charges-for-men-outside-a-philly-vote-counting-center/ar-BB1aMpKA> (last visited December 22, 2020).

¹⁴ US election: Texas ex-officer charged for botched conspiracy, *BBC.com*, (December 16, 2020), <https://www.bbc.com/news/world-us-canada-55342288>.

¹⁵ https://www.theguardian.com/us-news/2020/dec/19/trump-raised-200m-from-false-election-claims-what-happens-to-the-money-now?CMP=oth_b-aplnews_d-1.

First, the Court ruled that Plaintiffs' claims against Defendants (Governor Whitmer, Secretary of State Benson and the Board of State Canvassers) are barred by Eleventh Amendment immunity. *Id.* at *3-5. Second, the case is moot because, even by December 7, the time had "passed to provide most of the relief Plaintiffs request in their Amended Complaint" with the remaining relief "beyond the power of any court." *Id.* at *5-6. Third, the case was barred by laches as of November 7 because Plaintiffs "waited too long to knock on the Court's door." *Id.* at *6-7. Fourth, abstention is appropriate under the *Colorado River* doctrine¹⁶ because the same allegations and claims are being (and have been) litigated in Michigan state courts. *Id.* at *7-9. Fifth, the Plaintiffs did not have standing to pursue their purported claims under the Equal Protection or Elections/Electors clauses. *Id.* at *9-11.

This Court's Opinion and Order denying injunctive relief was entered on December 7. All subsequent court decisions relating to the election in Michigan have only lent further support for dismissal. As of December 7, the Michigan Court of Appeals had rejected the request for injunctive relief in *Donald J. Trump for President, Inc v. Secy' of State*, Mich. Court of Claims Case No. 20-000225-MZ, Opinion and Order (Nov. 4, 2020) (Ex. 1). The Michigan Supreme Court had already denied the Application for Leave to Appeal from the denial of injunctive relief in the

¹⁶ *Colorado River Water Conservation District v. United States*, 424 U.S. 800 (1976).

Costantino matter. *Costantino v Detroit*, No. 162245, 2020 WL 6882586 (Mich. Nov. 23, 2020). The Michigan Third Judicial District had denied injunctive relief in *Stoddard v. City Elect Comm of the City of Detroit*, Wayne County Circuit Court Case No. 20-014604-CZ, Opinion and Order (Nov. 6, 2020) (Ex. 2). Since December 7, the Michigan Supreme Court has rejected the Application for Appeal from the denial of injunctive relief in *Donald J. Trump for President, Inc. v. Secy of State*, No. 162320, 2020 WL 7315923 (Mich. Dec. 11, 2020). The Michigan Supreme Court also rejected the petition for extraordinary writs in *Johnson v. Secy of State*, No. 162286, 2020 WL 7251084 (Mich. Dec. 9, 2020). And, the U.S. Supreme Court rejected the lawsuit filed by the State of Texas. *Texas v Pennsylvania*, No. 155 ORIG., 2020 WL 7296814, *1 (U.S., Dec. 11, 2020).¹⁷

Every attempt to overturn the election has been turned away by the judiciary. That is something we should all be proud of as Americans. There is no reason for a different result here. Nevertheless, Plaintiffs refuse to dismiss their case, continuing to use this Court to promote and profit from their false narrative. The case should be dismissed and Plaintiffs and their counsel should be severely sanctioned.

¹⁷ Since this Motion is being filed under Fed. R. Civ. P. 12(b)(6), the City is not including a rebuttal of the numerous falsehoods and outlandish claims in the Complaint. The City, however, relies on the rebuttals contained in its Response to Plaintiffs' Emergency Motion for Declaratory, Emergency and Permanent Injunctive Relief. ECF No. 39. The City intends to file a Motion for Rule 11 sanctions (after the safe harbor expires) laying out many of the intentional misrepresentations made by Plaintiffs in their filings in this case.

ARGUMENT

I. Applicable Legal Standards

Under Fed R. Civ. P. 12(b)(6), a court should dismiss a claim where a plaintiff fails to plead facts sufficient to state a claim upon which relief can be granted. A “complaint must contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). “Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice.” *Iqbal* at 678. Allegations that are mere conclusions “are not entitled to the assumption of truth.” *Id.* Claims that are “conceivable” or “possible,” but not plausible, also fall short of the standard. *Twombly* at 570.

In alleging fraud, a party must state with particularity the “circumstances constituting fraud.” Fed. R. Civ. P. 9(b). The complaint must “alert the defendants to the precise misconduct with which they are charged” to protect them “against spurious charges of immoral and fraudulent behavior.” *Sanderson v. HCA-Healthcare Co.*, 447 F.3d 873, 877 (6th Cir. 2006) (internal quotations omitted). A complaint must “(1) specify the statements that the plaintiff contends were fraudulent, (2) identify the speaker, (3) state where and when the statements were made, and (4) explain why the statements were fraudulent.” *Frank v. Dana Corp.*, 547 F.3d 564, 570 (6th Cir. 2008) (internal quotations omitted).

I. The Complaint Should be Dismissed Because the Case is Moot¹⁸

As this Court held in its December 7 Opinion and Order, as of November 25, the date this case was filed, it was already moot. The operative Complaint asked the Court to:

(a) order Defendants to decertify the results of the election; (b) enjoin Secretary Benson and Governor Whitmer from transmitting the certified election results to the Electoral College; (c) order Defendants “to transmit certified election results that state that President Donald Trump is the winner of the election”; (d) impound all voting machines and software in Michigan for expert inspection; (e) order that no votes received or tabulated by machines not certified as required by federal and state law be counted; and, (f) enter a declaratory judgment that mail-in and absentee ballot fraud must be remedied with a manual recount or statistically valid sampling.

King, 2020 WL, at *5 (quoting ECF No. 6 at Pg ID 955-56, ¶ 233). However, the request was moot because by the time the Complaint was filed, “all 83 counties in Michigan had finished canvassing their results for all elections and reported their results ... The State Board had certified the results of the 2020 General Election and Governor Whitmer had submitted the slate of Presidential Electors to the Archivists.” *Id.*, at *6 (citing record and M.C.L. § 168.843). The time to request a special election had expired, as “had the time for requesting a recount for the office of President.” *Id.* (citing record and M.C.L. §§ 168.831, 168.832 and § 168.879).

¹⁸ Although the City does not repeat them here, the City full concurs with the State’s arguments regarding Eleventh Amendment immunity.

Michigan state courts have reached similar conclusions. As early as November 6, 2020, the Michigan Court of Claims determined that these challenges to the election were moot. In *Donald J. Trump Inc. v Benson*, *supra*, the plaintiffs sought an order in the Michigan Court of Claims that the “counting and processing of absentee votes cease immediately.” The court stated that:

the complaint and emergency motion were not filed until approximately 4:00 p.m. on November 4, 2020—despite being announced to various media outlets much earlier in the day. By the time this action was filed, the votes had largely been counted, and the counting is now complete. Accordingly, and even assuming the requested relief were available against the Secretary of State—and overlooking the problems with the factual and evidentiary record noted above—the matter is now moot, as it is impossible to issue the requested relief. See *Gleason v Kincaid*, 323 Mich App 308, 314; 917 NW2d 685 (2018).

Ex. 1. Donald J. Trump for President, Inc. and the other plaintiff delayed 24 days in perfecting their appeal, so the Michigan Court of Appeals looked at the mootness question anew, holding:

Once the election results have been certified, “[a] candidate for office who believes he or she is aggrieved on account of fraud or mistake in the canvass or returns of the votes by the election inspectors may petition for a recount of the votes cast for that office in any precinct or precincts as provided by in this chapter.” MCL 168.862

Here, plaintiff filed its purportedly emergent application on November 6, 2020, but did not perfect the filing until 11:21 p.m. on November 30, 2020, when it filed its brief in support. The Wayne County Board of Canvassers certified the results of the November 3rd election on November 17, 2020, almost a full two weeks before plaintiff perfected the instant application. The Michigan Board of State Canvassers certified the presidential election results on November 23, 2020, a full week before plaintiff perfected its application. Plaintiff does not

address whether the certification of the election result by the Board of State Canvassers had any impact on the viability of its suit below or on the viability of the instant application.

Perhaps the reason for plaintiff failing to discuss the impact of the certification is because such action by the Michigan State Board of Canvassers clearly rendered plaintiff's claims for relief moot. The Michigan State Board of Canvassers' certification of the presidential election results and the legislative directive found in MCL 168.862, requires plaintiff to pursue its fraud allegations by way of a recount of the ballots cast in Wayne County. Because plaintiff failed to follow the clear law in Michigan relative to such matters, their action is moot. MCL 168.862.

Ex. 3.¹⁹ The Michigan Supreme Court rejected leave to appeal from the Court of Claims and Court of Appeals decisions.

¹⁹ Instead of immediately perfecting the appeal (by submitted the required application for leave to appeal), Donald J. Trump for President, Inc. went forum shopping in the Western District of Michigan, filing a new Complaint there as part of a group of election cases, where the plaintiffs submitted a notice of related action for a case assigned to Judge Robert Jonker, even though the supposedly related action clearly had no relation whatsoever to the post-election lawsuits. *Donald J. Trump for President Inc. v. Secy' of State*, W.D. Mich. Case No. 20-cv-01083 (filed Nov 11, 2020). The gambit to choose their own judge failed and the cases were assigned to District Judge Janet T. Neff. Within days of the judicial reassignment, all of the plaintiffs in the Western District voluntarily dismissed their cases under Fed. R. Civ. P. 41(a)(1)(A). The filing by Donald J. Trump for President, Inc., effectively conceded the case was being dismissed because it was mooted by the fact that the Wayne County Board of Canvassers had met. Even though the plaintiffs speciously asserted that the Board had refused to certify the election results (belied by the obvious fact that the certification occurred in open public session) they cannot deny that they stated they were dismissing because their request to enjoin certification by Secretary Benson, the Board of State Canvassers and the Wayne County Board of Canvassers was moot.

Additional events which have transpired subsequent to this Court’s December 7 Opinion have further mooted the case. The federal “safe harbor” provision regarding certification of electors by states passed on December 8. *See* 3 U.S.C. § 5. On December 14, Michigan’s presidential electors convened in Lansing. M.C.L. § 168.47; 3 U.S.C. § 7. There, Michigan’s electors voted and confirmed that all Michigan electoral college votes were for Joe Biden.²⁰ Joe Biden defeated Donald Trump in the State of Michigan by 154,188 votes. On that same day, the Electoral College in all 50 states met and cast their votes. Joe Biden will be our next President and Kamala Harris will be our next Vice-President.

II. The Complaint Should be Dismissed Pursuant to the Doctrine of Laches

Laches arises from a “(1) lack of diligence by the party against whom the defense is asserted, here the plaintiffs, and (2) prejudice to the party asserting the defense.” *Chirco v. Crosswinds Communities, Inc.*, 474 F.3d 227, 231 (6th Cir. 2007) (citation omitted)).

All of Plaintiffs’ claims arise from allegations relating to supposed events which occurred well-before the election (including years before the election) or on the 3rd and 4th of November. If Plaintiffs had legitimate claims regarding Dominion Voting Systems, they could have brought those claims years ago. If Plaintiffs had

²⁰ <https://www.mlive.com/politics/2020/12/michigan-casts-electoral-college-votes-for-president-elect-joe-biden.html>.

legitimate claims relating to the processing and tabulation of ballots in Detroit, they could have brought the claims at the time. Instead of bringing the claims when they were timely (albeit still frivolous), they issued press releases and fundraised. Plaintiffs chose to wait until after the election had been certified. The claims cannot proceed.

III. The Complaint Should be Dismissed Under Abstention Principles

The *Colorado River* doctrine counsels deference to parallel state court proceedings. *Colorado River Water Conservation District v. United States*, 424 U.S. 800 (1976). While there is much extraneous noise in the Complaint, it is clear from the actual legal Counts that virtually all of the “factual” assertions actually relevant to the Counts relate to the processing and tabulation of ballots in Detroit, primarily at the TCF Center. *See, e.g.*, Compl. ¶¶ 180-192, 206, 211, 213-228. The integrity of the process in Detroit has already been litigated in state court in active lawsuits (all of which denied any injunctive or declaratory relief based on the specious claims). The “facts” identified in the Counts—which are the only “facts” actually offered in support of the relief in the Counts—are claims that election officials: did not allow Republican challengers to observe the counting and processing of ballots; discriminated against Republican challengers; added “batches” of ballots; added voters to the Qualified Voter File; changed dates on ballots; altered votes on ballots; double counted ballots; violated ballot security; accepted “unsecured” ballots;

counted ineligible ballots; and, failed to check ballot signatures. Besides their falsity, the one thing the allegations have in common is that they are based on claims raised in Michigan state courts. In fact, each and every one of those allegations is based on the allegations and “evidence” submitted in the *Costantino* matter.²¹

All of Plaintiffs’ claims (frivolous as they may be) are being (or have been) litigated in State Court. The fact that the Plaintiffs here may, incredibly enough, be making even more frivolous allegations than the litigants in *Costantino* does not change the fact that the same underlying issue—the integrity of the process employed in Detroit—is already in suit. The Wayne County Circuit Court has already decided that the claims were frivolous and not worthy of injunctive relief. The Michigan Court of Appeals and the Michigan Supreme Court reviewed the trial court’s decision on an expedited basis and did not disagree. The claims remain before Judge Kenny, which is the proper court to see them through to their inevitable dismissal with prejudice. The claims were also brought and rejected in: *Donald J. Trump for President, Inc. v. Secy of State*, 2020 WL 7315923 ; *Stoddard v. City Elect*

²¹ The other allegations in the Complaint are essentially offered to provide “support” for the central theory that there was somehow widespread fraud in Detroit that resulted in President Elect Biden receiving 154,000 more votes than Donald Trump in the State.

Comm of the City of Detroit, 20-014604; and, *Johnson v. Secy of State*, No. 2020 WL 7251084.²²

IV. The Complaint Must be Dismissed Because Plaintiffs do not have Standing

Article III of the United States Constitution restricts the jurisdiction of federal courts to actual “Cases” and “Controversies.” U.S. Const. art. III, § 2, cl. 1. “To satisfy this ‘case-or-controversy’ requirement, ‘a plaintiff must establish three elements: (1) an injury in fact that is concrete and particularized; (2) a connection between the injury and the conduct at issue—the injury must be fairly traceable to the defendant’s action; and (3) [a] likelihood that the injury would be redressed by a favorable decision of the Court.’” *Courtney v. Smith*, 297 F.3d 455, 459 (6th Cir. 2002), *quoting Blachy v. Butcher*, 221 F.3d 896, 909 (6th Cir.2000).

The first requirement—that plaintiffs establish an “injury in fact”—limits justiciability to those cases involving a well-defined injury to the plaintiff, which allows the parties to develop the necessary facts and seek responsive remedies. As the Supreme Court has repeatedly instructed, “[t]he requirement of ‘actual injury

²² Various pre-election lawsuits filed in Michigan made somewhat related claims against the Secretary of State: *Cooper-Keel v. Benson*, Mich. Court of Claims Case No. 20-000091-MM (filed May 20, 2020); *Black v. Benson*, Mich. Court of Claims Case No. 20-000096-MZ (filed May 26, 2020); *Davis v Benson*, Mich. Court of Claims Case No. 20-000099-MM (filed May 28, 2020); *Election Integrity Fund v. Benson*, Mich. Court of Claims Case No. 20-000169-MM; *Ryan v. Benson*, Mich. Court of Claims Case No. 20-000198-MZ (filed Oct. 5, 2020).

redressable by the court’ . . . tends to assure that the legal questions presented to the court will be resolved, not in the rarified atmosphere of a debating society, but in a concrete factual context conducive to a realistic appreciation of the consequences of judicial action.” *Valley Forge Christian Coll. v. Americans United for Separation of Church and State, Inc.*, 454 U.S. 464, 472 (1982) . To this end, the Supreme Court “repeatedly has rejected claims of standing predicated on the right, possessed by every citizen, to require that the Government be administered according to law.” *Id.* at 482–83. Moreover, the Court has “consistently held that a plaintiff raising only a generally available grievance about government—claiming only harm to his and every citizen's interest in proper application of the Constitution and laws, and seeking relief that no more directly and tangibly benefits him than it does the public at large—does not state an Article III case or controversy.” *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 573–74 (1992).

A. Plaintiffs Do Not Have Standing to Pursue Claims Under the Electors and Election Clauses

Count I of the Complaint purports to bring a claim under the Elections and Electors clause of the U.S. Constitution. But, the underlying “factual allegations” are the same “allegations” made throughout the Complaint: that Defendants supposedly failed to follow the Michigan Election Code, relating to election challengers and the processing and tabulation of ballots in Detroit. *See, e.g.*, Compl. ¶ 180. Plaintiffs *do not* allege that their ballots were not counted or that they were

not allowed to vote. Plaintiffs’ claim is precisely the type of claim that is “predicated on the right, possessed by every citizen, to require that the Government be administered according to law” that is insufficient to confer standing. *See, e.g., Valley Forge*, 454 U.S. at 472.

Plaintiffs reliance on *Carson v. Simon* is misplaced. Brief at 8, *citing Carson v. Simon*, 978 F.3d 1051, 1057 (8th Cir. 2020). *Carson* is an outlier that erroneously conflated candidates for electors with candidates for office based on a quirk of Minnesota law. *Id.* Meanwhile, the Supreme Court has been clear that citizens do not have Article III standing under the clauses. *See, e.g., Lance v. Coffman*, 549 U.S. 437, 442 (2007) (Holding plaintiffs did not have standing because the “only injury plaintiffs allege is that the law—specifically the Elections Clause—has not been followed. This injury is precisely the kind of undifferentiated, generalized grievance about the conduct of government that we have refused to countenance in the past.”). And, all other courts ruling on similar challenges to the November 2020 general election have held that the expansion of standing in *Carson v. Simon* was unwarranted and that plaintiffs (citizens, electors, and candidate) do not have standing under the clause. *See, e.g., Bognet v. Secretary Commonwealth of Pennsylvania*, 980 F.3d 336 (3rd Cir., Nov. 13, 2020); *Hotze v. Hollins*, 4:20-CV-03709, 2020 WL 6437668 at *2 (S.D. Tex. Nov. 2, 2020); *Wood v. Raffensperger*, 1:20-CV-04651, 2020 WL 6817513, at *5 (N.D. Ga. Nov. 20, 2020) (L. Lin Wood

as plaintiff); *Feehan v. Wisconsin Elections Comm'n*, No. 20-CV-1771, 2020 WL 7250219, at *12 (E.D. Wis. Dec. 9, 2020) (one of the three Sidney Powell, L. Lin Wood “Kraken” cases); *Bowyer v. Ducey*, CV-20-02321, 2020 WL 7238261 (D. Ariz. Dec. 9, 2020) (one of the three Sidney Powell, L. Lin Wood “Kraken” cases).

Additionally, these particular Plaintiffs do not have standing for the claims, because they are actually purporting to bring claims that, if they could be brought, could only be brought by the Michigan Legislature. Plaintiffs are effectively seeking to enforce “rights” of that body, not rights that are particular to themselves. *See, e.g., Bognet*, 980 F.3d at 349-50 (concluding that the plaintiffs’ Elections and Electors Clause claims “belong, if they belong to anyone, only to the Pennsylvania General Assembly”) (citation omitted).

B. Plaintiffs Do Not Have Standing to Pursue Their Equal Protection, Due Process or Michigan Electoral Law Theories

The equal protection, due process and Michigan Election Law theories (Counts II – IV) also rely on the allegations relating to the processing and tabulation of votes in Detroit. *See* Compl. ¶¶ 118-192, 206, 211, 213-228. Once again, Plaintiffs do not—and cannot—allege an actual, particularized injury in fact. They do not claim they were denied the right to vote; instead, they claim that the grant of the franchise to others, somehow infringed on their right to equal protection, due process and compliance with Michigan law. The apparent remedy for allowing the “wrong type

of people” to vote, is to take away the vote from everyone. Setting aside just how absurd this theory is, it is clear that these Plaintiffs do not have standing to pursue it.

Plaintiffs are alleging an “injury” identical to the injury supposedly incurred by every Michigan voter. Under Plaintiffs’ theory, the “effect” of an erroneously counted vote will proportionally impact every Michigan voter to the same mathematical degree. Because the approximately 5.5 million Michigan voters in the Presidential election suffer the identical incremental dilution, the alleged injury constitutes a quintessential generalized injury incapable of conferring standing. Federal courts have addressed this “novel” voter dilution claim, with each court finding the claim fails to constitute an injury in fact. *See Paher v. Cegavske*, 457 F. Supp. 3d 919, 926–27 (D. Nev. 2020); *Martel v. Condos*, No. 5:20-cv-131, — F.Supp.3d —, 2020 WL 5755289, at *4 (D. Vt. Sept. 16, 2020); *Am. Civil Rights Union v. Martinez-Rivera*, 166 F. Supp. 3d 779, 789 (W.D. Tex. 2015). Numerous courts have also addressed the issue in the context of the post-election lawsuits filed in the “battleground” states, also concluding the plaintiffs lacked standing. *See, e.g., Bognet v. Pennsylvania*, 980 F.3d at 352-60; *Wood v. Raffensperger*, 2020 WL 6817513, at *5; *Feehan v. Wisconsin*, 2020 WL 7250219, at *8-10 ; *Bowyer v. Ducey*, 2020 WL 7238261 at *5-6; *Georgia Republican Party v. Secy of State of Georgia*, No. 20-14741, 2020 WL 7488181 (11th Cir. Dec. 21, 2020); *Donald J. Trump for President, Inc. v. Boockvar*, No. 4:20-CV-02078, 2020 WL 6821992, at

*1 (M.D. Pa. Nov. 21, 2020), *aff'd sub nom. Donald J. Trump for President, Inc. v. Pennsylvania*, No. 20-3371, 2020 WL 7012522 (3d Cir. Nov. 27, 2020);

This is not to say that a claim under the label of “voter dilution” can never be brought in federal court; but such claims can only survive with facts starkly different from the case at bar. First, voter dilution claims may be appropriate in cases of racial gerrymandering, where the legislature impermissibly relied on race when drawing legislative districts. *See, e.g., United States v. Hays*, 515 U.S. 737, 744–45 (1995). Second, voter dilution claims may proceed in apportionment cases, where un-updated legislative districts disfavor voters in specific districts merely due to the voter’s geographic location. *See, e.g., Reynolds v. Sims*, 377 U.S. 533 (1964). Neither theory provides any support for Plaintiffs’ claims. The injury in the colorable dilution claims is particularized to a specific group. In contrast to the specific class of minority voters in a racially gerrymandered district, or voters living in a growing but un-reapportioned district, the supposed dilution here is shared in proportion by *every* single Michigan voter. In alleging a generalized injury rather than an actual and particularized injury in fact, Plaintiffs lack standing.

V. The Complaint Should be Dismissed on its Lack of Merit

The Complaint should also be dismissed because Plaintiffs’ legal theories are untenable. Plaintiffs’ equal protection, due process, and state law claims are predicated on their “voter dilution” theories. Equal protection voter dilution claims

exist only under a narrow set of circumstances. *See, e.g., Reynolds*, 377 U.S. at 568 (“Simply stated, an individual’s right to vote for state legislators is unconstitutionally impaired when its weight is in a substantial fashion diluted when compared with votes of citizens living in other parts of the State.”). In those unique cases, the plaintiffs can allege disparate treatment from similarly situated voters. *See, e.g., id.* at 537 (The plaintiffs alleging devalued voting power when compared to similarly situated voters in other parts of the state.).

In contrast, the gravamen of Plaintiffs’ claim—that Michigan voters will have the value of their votes diluted—falls far wide of the mark. Plaintiffs allege breaches of the Michigan Election Code due to a lack of access provided to poll watchers, as well as a number of often hyper-localized violations of the Michigan Election Code. However, even if Plaintiffs successfully showed an impermissible lack of meaningful access for poll challengers, such a showing is plainly insufficient to prove fraudulent votes were *actually* counted. And with regard to the allegations of localized Election Code violations, the fundamental principle at issue is that “[t]he Constitution is not an election fraud statute.” *Minn. Voters All. v. Ritchie*, 720 F.3d 1029, 1031 (8th Cir. 2013), *quoting Bodine v. Elkhart Cnty. Election Bd.*, 788 F.2d 1270, 1271 (7th Cir. 1986). No case supports the notion that the Equal Protection Clause of the U.S. Constitution can be turned into the weapon of oppression sought by Plaintiffs.

The Michigan law claims fair no better. Plaintiffs allege violations of M.C.L. §§ 168.730, 168.733, 168.764a, 168.765a and 168.765(5) (all supposedly at the TCF Center) but for each claim either don't understand the statute or rely on facts that have been rejected by Michigan courts, especially the Circuit Court, Court of Appeals and Supreme Court in *Costantino*.

M.C.L. §§ 168.730 and 168.733 are statutory provisions allowing partisan challengers to observe the vote counting process. As the *Costantino* court concluded, Republican challengers were always in the TCF Center, and, as long as they were not yelling and causing disruptions (including by chanting "stop the vote"), they were allowed to observe the process in full compliance with the law. Even if the allegations were true, they could not possibly entitle Plaintiffs to any *post-election* remedy. The "remedy" is in the statute itself, and does not include disenfranchisement of all voters.

M.C.L. § 168.765(5) relates to a deadline to post certain information relating to absentee ballots. Tellingly, as has been the case each time plaintiffs filed Complaints derived from the same allegations, the allegation is made "upon information and belief." FAC ¶ 221. No plaintiff has ever presented an iota of evidence, let alone a claim not made "upon information and belief" about this issue. And, again, the "remedy" of disregarding the Constitution and throwing out

thousands or millions of votes is not something that could possibly be available for an alleged violation of the deadline.

M.C.L. § 168.764a provides that ballots received after 8:00 p.m. on election day cannot be counted. This allegation is also based “upon information and belief.” FAC ¶ 224. Obviously, an “information and belief” allegation is woefully deficient to obtain any relief, let alone the extraordinary relief Plaintiffs’ seek. And, even if Plaintiffs proved that some ballots received after the deadline were counted (they cannot), the “remedy” is not wholesale disenfranchisement.

MCL § 168.765a provides for ballots to be duplicated under the supervision of *inspectors* (i.e., paid workers) from both major parties. Plaintiffs’ claim is based on their conflation of the role of ballot *inspectors* and ballot *challengers*. Plaintiffs’ false claim about Republicans being excluded from the TCF Center, relates to challengers, not inspectors. There was a short period of time when excess overflow challengers of all parties were not able to enter the TCF Center until a challenger of their party left, but there was never a time when *inspectors* were disallowed. And, the “remedies” sought are not available even if Plaintiffs were correct.

Plaintiffs bring false claims, ostensibly available to every Michigan voter in the event of any voting error, with the outrageous “remedy” being the rejection of hundreds of thousands, if not millions, of votes. As a district court recently held in one of the Trump election lawsuits brought in Pennsylvania, “[t]his Court has been

unable to find any case in which a plaintiff has sought such a drastic remedy in the contest of an election, in terms of the sheer volume of votes asked to be invalidated.” *Donald J. Trump for President, Inc. v. Boockvar*, 2020 WL 6821992, at *1. Plaintiffs are asking for “relief” that would easily rank among the most momentous and most reviled legal decisions in U.S. history, joining the ranks of cases we know by shorthand, *Dred Scott*, the *Civil Rights Cases*, *Plessy v. Ferguson*, *Breedlove*, and *Korematsu*.²³ Even though Plaintiffs and their lawyers strongly desire to be on the wrong side of a reviled court decision, nothing they allege, or could allege, could possibly entitle them to that actual relief. They must be content with knowing that their filing of this lawsuit already puts them on the wrong side of history, even though the lawsuit cannot accomplish anything more than line the attorneys’ pockets with cash.

²³ *Dred Scott v. Sandford*, 60 U.S. 393 (1857) (denying citizenship and basic rights for all black people, slave or free), *superseded* (1868); *Civil Rights Cases*, 109 U.S. 3 (1883) (precluding Congress from outlawing racial discrimination); *Plessy v. Ferguson*, 163 U.S. 537 (1896) (affirming constitutionality of “separate but equal” segregation), *overruled by Brown v. Bd. of Ed. of Topeka, Shawnee Cty., Kan.*, 347 U.S. 483 (1954); *Breedlove v. Suttles*, 302 U.S. 277 (1937) (upholding poll taxes), *overruled by Harper v. Virginia State Bd. of Elections*, 383 U.S. 663 (1966); *Korematsu v. United States*, 323 U.S. 214 (1944) (affirming internment of American citizens of Japanese descent), *abrogated by Trump v. Hawaii*, 138 S. Ct. 2392 (2018).

VI. Plaintiffs and their Counsel Should be Sanctioned

28 U.S.C. § 1927 provides that any attorney “who so multiplies the proceedings in any case unreasonably and vexatiously may be required by the court to satisfy personally the excess costs, expenses, and attorneys’ fees reasonably incurred because of such conduct.” Sanctions under § 1927 “are warranted when an attorney objectively “falls short of the obligations owed by a member of the bar to the court and which, as a result, causes additional expense to the opposing party.” *Ruben v. Warren City Sch.*, 825 F.2d 977, 984 (6th Cir. 1987). They deter dilatory litigation practices and punish tactics that exceed zealous advocacy. *See Jones v. Continental Corp.*, 789 F.2d 1225, 1230-31 (6th Cir. 1986); *see also Thurmond v. Wayne Cty. Sheriff Dep’t*, 564 F. App’x 823, 834 (6th Cir. 2014) (Affirming § 1927 where plaintiff “ignored opposing counsel’s reasonable requests to voluntarily withdraw the complaint, necessitating the filing of a motion to dismiss and motion for sanctions.”). Thus, the sanctioned attorney is required to personally satisfy the excess costs attributable to their conduct. *See In re Ruben*, 825 F.2d at 983.

If sanctions are not deserved in this case, it is hard to imagine a case where they would be. Sidney Powell has stated that the courts have rejected her lawsuits “because the corruption goes deep and wide.”²⁴ But, in truth, she filed lawsuits devoid of any factual or legal merit, hoping not to prevail but to damage democracy.

²⁴ https://twitter.com/AKA_RealDirty/status/1338401580299681793.

This Court correctly concluded that Plaintiffs have “nothing but speculation and conjecture” and that “this lawsuit seems to be less about achieving the relief Plaintiffs seek—as much of that relief is beyond the power of this Court—and more about the impact of their allegations on People's faith in the democratic process and their trust in our government.” *King*, 2020 WL 7134198, at *13.

This lawsuit is part a dangerous attack on the integrity of the democratic process for the election of the President of the United States. Sidney Powell’s co-counsel L. Lin Wood has said on Twitter that “Georgia, Michigan, Arizona, Nevada, Wisconsin, Minnesota & Pennsylvania are states in which martial law should be imposed & machines/ballots seized.” Wood has said “[p]atriots are praying tonight that @realDonaldTrump will impose martial law in disputed states, seize voting machines for forensic examination, & appoint @SidneyPowell as special counsel to investigate election fraud.” And, he has said “[i]t is time for Chief Justice John Roberts to resign, admit his corruption & ask for forgiveness.”²⁵

²⁵ Greg Rohl, another attorney for the Plaintiffs in this case, and the only one admitted to the Eastern District of Michigan, has previously been sanctioned for filing a case which was deemed “frivolous from its inception” and ordered to pay over \$200,000 in costs and attorneys fees. *See DeGeorge v. Warheit*, 276 Mich. App. 587, 589, 741 N.W.2d 384 (2007). He was then held in criminal contempt and sentenced to jail—affirmed by the Court of Appeals—for attempting to transfer assets to evade payment. *Id.* The Court of Appeals noted that a bankruptcy court had concluded that Rohl “intended to hinder, delay and defraud ... and create a sham transaction to prevent [a creditor] from reaching Rohl’s interest in his law firm through the appointment of a receiver.” *Id.* at 590.

In a case involving the election of the President of the United States, the parties and their attorneys should be held to the highest standards of factual and legal due diligence; instead, they have raised false allegations and pursued unsupportable legal theories. Apparently, this frivolous lawsuit continues because it serves other, more nefarious, purposes. While the pending complaint cannot possibly result in meaningful relief, it does serve the purpose of conveying to the world the impression that something fraudulent occurred in Detroit's vote count. This is not a legitimate lawsuit; it is a public relations and fundraising weapon being used to advance the false narrative that our democratic system is broken. Plaintiffs are trying to send the message that our democracy cannot be trusted. It is time for this Court to send a message back: lies and frivolous claims will not be tolerated. This abuse of our legal system deserves the strongest possible sanctions. For now, those sanctions should be under § 1927, later they should be under Rule 11.

CONCLUSION

WHEREFORE, for the foregoing reasons, the City of Detroit respectfully requests that this Court enter an Order dismissing Plaintiffs' Complaint with prejudice and requiring Plaintiffs and their counsel to pay all costs and fees incurred by all Defendants and Intervenor-Defendants.

December 22, 2020

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on December 22, 2020, I electronically filed the foregoing document with the Clerk of the Court using the ECF system, which will send notification of such filing to all attorneys of record registered for electronic filing.

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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

<p>TIMOTHY KING, MARIAN ELLEN SHERIDAN, JOHN EARL HAGGARD, CHARLES JAMES RITCHARD, JAMES DAVID HOOPER and DAREN WADE RUBINGH,</p> <p style="text-align:center">Plaintiffs,</p> <p style="text-align:center">v.</p> <p>GRETCHEN WHITMER, in her official capacity as Governor of the State of Michigan, JOCELYN BENSON, in her official capacity as Michigan Secretary of State and the Michigan BOARD OF STATE CANVASSERS,</p> <p style="text-align:center">Defendants.</p>	<p>No. 2:20-cv-13134</p> <p>Hon. Linda V. Parker</p>
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**THE CITY OF DETROIT’S MOTION TO DISMISS
AND
FOR AN AWARD OF SANCTIONS**

Index of Exhibits

Exhibit 1 – November 4, 2020 Opinion and Order in *Donald J. Trump for President, Inc v. Secy’ of State*

Exhibit 2 – November 6, 2020 Opinion and Order in *Stoddard v. City Elect Comm of the City of Detroit*

Exhibit 3 – December 4, 2020 Order in *Donald J. Trump for President, Inc v. Secy’ of State*

EXHIBIT 1

STATE OF MICHIGAN
COURT OF CLAIMS

DONALD J. TRUMP FOR PRESIDENT, INC.
and ERIC OSTEGREN,

OPINION AND ORDER

Plaintiffs,

v

Case No. 20-000225-MZ

JOCELYN BENSON, in her official capacity as
Secretary of State,

Hon. Cynthia Diane Stephens

Defendants.
_____ /

Pending before the Court are two motions. The first is plaintiffs' November 4, 2020 emergency motion for declaratory relief under MCR 2.605(D). For the reasons stated on the record and incorporated herein, the motion is DENIED. Also pending before the Court is the motion to intervene as a plaintiff filed by the Democratic National Committee. Because the relief requested by plaintiffs in this case will not issue, the Court DENIES as moot the motion to intervene.

According to the allegations in plaintiffs' complaint, plaintiff Eric Ostegren is a credentialed election challenger under MCL 168.730. Paragraph 2 of the complaint alleges that plaintiff Ostegren was "excluded from the counting board during the absent voter ballot review process." The complaint does not specify when, where, or by whom plaintiff was excluded. Nor does the complaint provide any details about why the alleged exclusion occurred.

The complaint contains allegations concerning absent voter ballot drop-boxes. Plaintiffs allege that state law requires that ballot containers must be monitored by video surveillance. Plaintiff contends that election challengers must be given an opportunity to observe video of ballot drop-boxes with referencing the provision(s) of the statute that purportedly grant such access, . See MCL 168.761d(4)(c).

Plaintiffs' emergency motion asks the Court to order all counting and processing of absentee ballots to cease until an "election inspector" from each political party is allowed to be present at every absent voter counting board, and asks that this court require the Secretary of State to order the immediate segregation of all ballots that are not being inspected and monitored as required by law. Plaintiffs argue that the Secretary of State's failure to act has undermined the rights of all Michigan voters. While the advocate at oral argument posited the prayer for relief as one to order "meaningful access" to the ballot tabulation process, plaintiffs have asked the Court to enter a preliminary injunction to enjoin the counting of ballots. A party requesting this "extraordinary and drastic use of judicial power" must convince the Court of the necessity of the relief based on the following factors:

(1) the likelihood that the party seeking the injunction will prevail on the merits, (2) the danger that the party seeking the injunction will suffer irreparable harm if the injunction is not issued, (3) the risk that the party seeking the injunction would be harmed more by the absence of an injunction than the opposing party would be by the granting of the relief, and (4) the harm to the public interest if the injunction is issued. [*Davis v Detroit Fin Review Team*, 296 Mich App 568, 613; 821 NW2d 896 (2012).]

As stated on the record at the November 5, 2020 hearing, plaintiffs are not entitled to the extraordinary form of emergency relief they have requested.

I. SUBSTANTIAL LIKELIHOOD OF SUCCESS ON THE MERITS

A. OSTEGREN CLAIM

Plaintiff Ostegren avers that he was removed from an absent voter counting board. It is true that the Secretary of State has general supervisory control over the conduct of elections. See MCL 168.21; MCL 168.31. However, the day-to-day operation of an absent voter counting board is controlled by the pertinent city or township clerk. See MCL 168.764d. The complaint does not allege that the Secretary of State was a party to or had knowledge of, the alleged exclusion of plaintiff Ostegren from the unnamed absent voter counting board. Moreover, the Court notes that recent guidance from the Secretary of State, as was detailed in matter before this Court in *Carra et al v Benson et al*, Docket No. 20-000211-MZ, expressly advised local election officials to admit credentialed election challengers, provided that the challengers adhered to face-covering and social-distancing requirements. Thus, allegations regarding the purported conduct of an unknown local election official do not lend themselves to the issuance of a remedy against the Secretary of State.

B. CONNARN AFFIDAVIT

Plaintiffs have submitted what they refer to as “supplemental evidence” in support of their request for relief. The evidence consists of: (1) an affidavit from Jessica Connarn, a designated poll watcher; and (2) a photograph of a handwritten yellow sticky note. In her affidavit, Connarn avers that, when she was working as a poll watcher, she was contacted by an unnamed poll worker who was allegedly “being told by other hired poll workers at her table to change the date the ballot was received when entering ballots into the computer.” She avers that this unnamed poll worker later handed her a sticky note that says “entered receive date as 11/2/20 on 11/4/20.” Plaintiffs contend that this documentary evidence confirms that some unnamed persons engaged in

fraudulent activity in order to count invalid absent voter ballots that were received after election day.

This “supplemental evidence” is inadmissible as hearsay. The assertion that Connarn was informed by an unknown individual what “other hired poll workers at her table” had been told is inadmissible hearsay within hearsay, and plaintiffs have provided no hearsay exception for either level of hearsay that would warrant consideration of the evidence. See MRE 801(c). The note—which is vague and equivocal—is likewise hearsay. And again, plaintiffs have not presented an argument as to why the Court could consider the same, given the general prohibitions against hearsay evidence. See *Ykimoff v Foote Mem Hosp*, 285 Mich App 80, 105; 776 NW2d 114 (2009). Moreover, even overlooking the evidentiary issues, the Court notes that there are still no allegations implicating the Secretary of State’s general supervisory control over the conduct of elections. Rather, any alleged action would have been taken by some unknown individual at a polling location.

C. BALLOT BOX VIDEOS

It should be noted at the outset that the statute providing for video surveillance of drop boxes only applies to those boxes that were installed after October 1, 2020. See MCL 168.761d(2). There is no evidence in the record whether there are any boxes subject to this requirement, how many there are, or where they are. The plaintiffs have not cited any statutory authority that requires any video to be subject to review by election challengers. They have not presented this Court with any statute making the Secretary of State responsible for maintaining a database of such boxes. The clear language of the statute directs that “[t]he city or township clerk must use video monitoring of that drop box to ensure effective monitoring of that drop box.” MCL 168.761d(4)(c). Additionally, plaintiffs have not directed the Court’s attention to any authority directing the

Secretary of State to segregate the ballots that come from such drop-boxes, thereby undermining plaintiffs' request to have such ballots segregated from other ballots, and rendering it impossible for the Court to grant the requested relief against this defendant. Not only can the relief requested not issue against the Secretary of State, who is the only named defendant in this action, but the factual record does not support the relief requested. As a result, plaintiffs are unable to show a likelihood of success on the merits.

II. MOOTNESS

Moreover, even if the requested relief could issue against the Secretary of State, the Court notes that the complaint and emergency motion were not filed until approximately 4:00 p.m. on November 4, 2020—despite being announced to various media outlets much earlier in the day. By the time this action was filed, the votes had largely been counted, and the counting is now complete. Accordingly, and even assuming the requested relief were available against the Secretary of State—and overlooking the problems with the factual and evidentiary record noted above—the matter is now moot, as it is impossible to issue the requested relief. See *Gleason v Kincaid*, 323 Mich App 308, 314; 917 NW2d 685 (2018)

IT IS HEREBY ORDERED that plaintiff's November 4, 2020 emergency motion for declaratory judgment is DENIED.

IT IS HEREBY FURTHER ORDERED that proposed intervenor's motion to intervene is DENIED as MOOT.

This is not a final order and it does not resolve the last pending claim or close the case.

November 6, 2020

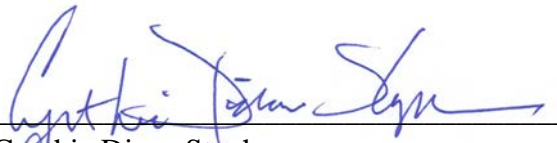

Cynthia Diane Stephens
Judge, Court of Claims

EXHIBIT 2

STATE OF MICHIGAN

IN THE THIRD JUDICIAL CIRCUIT COURT FOR THE COUNTY OF WAYNE

Sarah Stoddard and
Election Integrity Fund,

v

Hon. Timothy M. Kenny
Case No. 20-014604-CZ

City Election Commission of
The City of Detroit and
Janice Winfrey, in her official
Capacity as Detroit City Clerk and
Chairperson of the City Election
Commission, and
Wayne County Board of
Canvassers,
_____ /

OPINION & ORDER

At a session of this Court
Held on: November 6, 2020
In the Coleman A. Young Municipal Center
County of Wayne, Detroit, MI

PRESENT: Honorable Timothy M. Kenny
Chief Judge
Third Judicial Circuit Court of Michigan

Plaintiffs Sarah Stoddard and the Election Integrity Fund petition this Court for preliminary injunctive relief seeking:

1. Defendants be required to retain all original and duplicate ballots and poll books.
2. The Wayne County Board of Canvassers not certify the election results until both Republican and Democratic party inspectors compare the duplicate ballots with original ballots.
3. The Wayne County Board of Canvassers unseal all ballot containers and remove all duplicate and original ballots for comparison purposes.
4. The Court provide expedited discovery to plaintiffs, such as limited interrogatories and depositions.

When considering a petition for injunctive relief the Court must apply the following four-prong test:

1. The likelihood the party seeking the injunction will prevail on the merits.
2. The danger the party seeking the injunction will suffer irreparable harm if the injunction is not granted.
3. The risk the party seeking the injunction would be harmed more by the absence of an injunction than the opposing party would be by the granting of the injunction.
4. The harm to the public interest if the injunction is issued. *Davis v City of Detroit Financial Review Team*, 296 Mich. App. 568, 613; 821 NW2d 896 (2012).

In the *Davis* opinion, the Court also stated that injunctive relief “represents an extraordinary and drastic use of judicial power that should be employed sparingly and only with full conviction of its urgent necessity” Id at 612 fn 135, quoting *Senior Accountants, Analysts & Appraisers Ass’n v. Detroit*, 218 Mich. App. 263, 269; 553 NW2d 679 (1996).

When deciding whether injunctive relief is appropriate MCR 3.310 (A)(4) indicates that the plaintiff bears the burden of proving the preliminary injunction should be granted.

Plaintiffs' pleadings do not persuade this Court that they are likely to prevail on the merits for several reasons. First, this Court believes plaintiffs misinterpret the required placement of major party inspectors at the absent voter counting board location. MCL 168.765a (10) states in part “At least one election inspector from each major political party must be present at the absent voter counting place...” While plaintiffs contends the statutory section mandates there be a Republican and Democratic inspector at each table inside the room, the statute does not identify this requirement. This Court believes the plain language of the statute requires there be election inspectors at the TCF Center facility, the site of the absentee counting effort.

Pursuant to MCL 168.73a the County chairs for Republican and Democratic parties were permitted and did submit names of absent voter counting board inspectors to the City of Detroit Clerk. Consistent with MCL 168.674, the Detroit City Clerk did make appointments of inspectors. Both Republican and Democratic inspectors were present throughout the absent voter counting board location.

An affidavit supplied by Lawrence Garcia, Corporation Counsel for the City of Detroit, indicated he was present throughout the time of the counting of absentee

ballots at the TCF Center. Mr. Garcia indicated there were always Republican and Democratic inspectors there at the location. He also indicated he was unaware of any unresolved counting activity problems.

By contrast, plaintiffs do not offer any affidavits or specific eyewitness evidence to substantiate their assertions. Plaintiffs merely assert in their verified complaint "Hundreds or thousands of ballots were duplicated solely by Democratic party inspectors and then counted." Plaintiffs' allegation is mere speculation.

Plaintiffs' pleadings do not set forth a cause of action. They seek discovery in hopes of finding facts to establish a cause of action. Since there is no cause of action, the injunctive relief remedy is unavailable. *Terlecki v Stewart*, 278 Mich. App. 644; 754 NW2d 899 (2008).

The Court must also consider whether plaintiffs will suffer irreparable harm. Irreparable harm requires "A particularized showing of concrete irreparable harm or injury in order to obtain a preliminary injunction." *Michigan Coalition of State Employee Unions v Michigan Civil Service Commission*, 465 Mich. 212, 225; 634 NW2d 692, (2001).

In *Dunlap v City of Southfield*, 54 Mich. App. 398, 403; 221 NW2d 237 (1974), the Michigan Court of Appeals stated "An injunction will not lie upon the mere apprehension of future injury or where the threatened injury is speculative or conjectural."

In the present case, Plaintiffs allege that the preparation and submission of "duplicate ballots" for "false reads" without the presence of inspectors of both parties violates both state law, MCL 168.765a (10), and the Secretary of State election manual. However, Plaintiffs fail to identify the occurrence and scope of any alleged violation. The only "substantive" allegation appears in paragraph 15 of the First Amended Complaint, where Plaintiffs' allege "on information and belief" that hundreds or thousands of ballots have been impacted by this improper practice. Plaintiffs' Supplemental Motion fails to present any further specifics. In short, the motion is based upon speculation and conjecture. Absent any evidence of an improper practice, the Court cannot identify if this alleged violation occurred, and, if it did, the frequency of such violations. Consequently, Plaintiffs fail to move past mere apprehension of a future injury or to establish that a threatened injury is more than speculative or conjectural.

This Court finds that it is mere speculation by plaintiffs that hundreds or thousands of ballots have, in fact, been changed and presumably falsified. Even with this assertion, plaintiffs do have several other remedies available. Plaintiffs are entitled to bring their challenge to the Wayne County Board of Canvassers pursuant to MCL 168.801 *et seq.* and MCL 168.821 *et seq.* Additionally, plaintiffs can file for a recount of the vote if they believe the canvass of the votes suffers from fraud or mistake. MCL 168.865-168.868. Thus, this Court cannot conclude that plaintiffs would experience irreparable harm if a preliminary injunction were not issued.

Additionally, this Court must consider whether plaintiffs would be harmed more by the absence of injunctive relief than the defendants would be harmed with one.

If this Court denied plaintiffs' request for injunctive relief, the statutory ability to seek relief from the Wayne County Board of Canvassers (MCL 168.801 *et seq.* and MCL 168.821 *et seq.*) and also through a recount (MCL 168.865-868) would be available. By contrast, injunctive relief granted in this case could potentially delay the counting of ballots in this County and therefore in the state. Such delays could jeopardize Detroit's, Wayne County's, and Michigan's ability to certify the election. This in turn could impede the ability of Michigan's elector's to participate in the Electoral College.

Finally, the Court must consider the harm to the public interest. A delay in counting and finalizing the votes from the City of Detroit without any evidentiary basis for doing so, engenders a lack of confidence in the City of Detroit to conduct full and fair elections. The City of Detroit should not be harmed when there is no evidence to support accusations of voter fraud.

Clearly, every legitimate vote should be counted. Plaintiffs contend this has not been done in the 2020 Presidential election. However, plaintiffs have made only a claim but have offered no evidence to support their assertions. Plaintiffs are unable to meet their burden for the relief sought and for the above-mentioned reasons, the plaintiffs' petition for injunctive relief is denied.

It is so ordered.

November 6, 2020
Date



Hon. Timothy M. Kenny
Chief Judge
Third Judicial Circuit Court of Michigan

EXHIBIT 3

Court of Appeals, State of Michigan

ORDER

Donald J Trump for President Inc v Secretary of State	Stephen L. Borrello Presiding Judge
Docket Nos. 355378; 355397	Patrick M. Meter
LC No. 2020-000225-MZ	Amy Ronayne Krause Judges

The motions for immediate consideration are GRANTED.

The motion to intervene filed by the City of Detroit is DENIED, without prejudice to refile the motion in the proceedings below should the City of Detroit still deem intervention necessary.

The Democratic National Committee's motion for leave to file amicus brief in Docket No. 355378 is GRANTED, and the brief received on December 3, 2020 is accepted for filing.

The applications for leave to appeal are DENIED. However, the Democratic National Committee shall retain its status as amicus curiae in the Court of Claims.

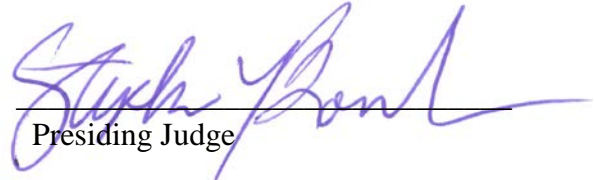
We respond to our dissenting colleague because his assertions are not supported by law or by fact. As the defendant correctly points out, Michigan's election results have been certified. Once the election results have been certified, "[a] candidate for office who believes he or she is aggrieved on account of fraud or mistake in the canvass or returns of the votes by the election inspectors may petition for a recount of the votes cast for that office in any precinct or precincts as provided by in this chapter." MCL 168.862; see also MCL 168.847, MCL 168.867; MCL 168.879. Recounts are remedial in nature. *Attorney General v Board of State Canvassers*, 318 Mich App 242, 252; 896 NW2d 485 (2016), lv den 500 Mich 917 (2016). "The purpose of a recount is to determine whether the results of the first count of the ballots should stand or should be changed because of fraud or mistake in the canvass of the votes" *Id.*, quoting *Michigan Education Ass'n Political Action Committee v Secretary of State*, 241 Mich App 432, 440; 616 NW2d 234 (2000), lv den 463 Mich 997 (2001).

Here, plaintiff filed its purportedly emergent application on November 6, 2020, but did not perfect the filing until 11:21 p.m. on November 30, 2020, when it filed its brief in support. The Wayne County Board of Canvassers certified the results of the November 3rd election on November 17, 2020, almost a full two weeks before plaintiff perfected the instant application. The Michigan Board of State Canvassers certified the presidential election results on November 23, 2020, a full week before plaintiff perfected its application.¹ Plaintiff does not address whether the certification of the election

¹ The Secretary of State represents that the Governor has sent Michigan's official slate of presidential electors to the United States Secretary of the Senate.

result by the Board of State Canvassers had any impact on the viability of its suit below or on the viability of the instant application.

Perhaps the reason for plaintiff failing to discuss the impact of the certification is because such action by the Michigan State Board of Canvassers clearly rendered plaintiff's claims for relief moot. The Michigan State Board of Canvassers' certification of the presidential election results and the legislative directive found in MCL 168.862, requires plaintiff to pursue its fraud allegations by way of a recount of the ballots cast in Wayne County. Because plaintiff failed to follow the clear law in Michigan relative to such matters, their action is moot. MCL 168.862.


Presiding Judge

Meter, J., would grant leave to appeal in each case, with the direction that the Clerk draw a random 3 judge panel to decide the cases within 3 days of filing of these orders, without oral argument.

The issue of mootness is more than the "elephant in the room". The issues are not moot because state electors have not yet been seated, the Electoral College has not yet been assembled, and Congress has not yet convened to consider whether to exercise its powers under Art.2, Sec. 1 and Am 20.

Further plaintiff's prayer for segregation of absentee ballots has, on information, not yet been ordered by defendant Secretary of State. Also, the right of plaintiff to election inspectors and to observe video of ballot drop boxes is self-evident under state law, thus entitling plaintiff to, at the least, declaratory relief.



A true copy entered and certified by Jerome W. Zimmer Jr., Chief Clerk, on

December 4, 2020
Date


Chief Clerk

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

<p>TIMOTHY KING, MARIAN ELLEN SHERIDAN, JOHN EARL HAGGARD, CHARLES JAMES RITCHARD, JAMES DAVID HOOPER and DAREN WADE RUBINGH,</p> <p style="text-align: center;">Plaintiffs,</p> <p style="text-align: center;">v.</p> <p>GRETCHEN WHITMER, in her official capacity as Governor of the State of Michigan, JOCELYN BENSON, in her official capacity as Michigan Secretary of State and the Michigan BOARD OF STATE CANVASSERS,</p> <p style="text-align: center;">Defendants</p> <p style="text-align: center;">and</p> <p>CITY OF DETROIT, DEMOCRATIC NATIONAL COMMITTEE and MICHIGAN DEMOCRATIC PARTY,</p> <p style="text-align: center;">Intervenor-Defendants.</p>	<p>No. 2:20-cv-13134</p> <p>Hon. Linda V. Parker</p>
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**THE CITY OF DETROIT’S MOTION FOR SANCTIONS, FOR
DISCIPLINARY ACTION, FOR DISBARMENT REFERRAL AND FOR
REFERRAL TO STATE BAR DISCIPLINARY BODIES**

Intervenor-Defendant City of Detroit (the “City”), by and through counsel,
respectfully moves for sanctions against Plaintiffs and their counsel pursuant to

Federal Rule of Civil Procedure 11. The City further moves for disciplinary action and referrals to be initiated against counsel.

The undersigned counsel certifies that counsel communicated in writing with opposing counsel, explaining the nature of the relief to be sought by way of this motion and seeking concurrence in the relief; opposing counsel thereafter denied concurrence. Such concurrence was sought on December 15, 2020 and January 5, 2021.

The City also served Plaintiffs with a Motion for Sanctions under Fed. R. Civ. P. 11 on December 15, 2020. Plaintiffs did not withdraw or correct any of the false factual allegations and frivolous legal theories in their pleadings during the 21 day “safe harbor” period.¹ Thus, this Motion is timely.

¹ No lawyer for the Plaintiffs responded to the email message forwarding the Rule 11 motion. Instead, at least two of their attorneys made public statements, with military analogies and references to opposing counsel as “the enemy.” According to the news website Law and Crime, Plaintiffs’ counsel, Sidney Powell, when asked about the proposed Rule 11 motion, “replied cryptically: ‘We are clearly over the target.’” Ex. 1. Similarly, Plaintiffs’ counsel, L. Lin Wood, posted the following on his Twitter account on December 17, 2020:

When you get falsely accused by the likes of David Fink & Marc Elias of Perkins Coie (The Hillary Clinton Firm) in a propaganda rag like Law & Crime, you smile because you know you are over the target & the enemy is running scared!

L. Lin Wood (@llinwood), Twitter (Dec. 17, 2020). Perhaps the lack of civility is related to counsels’ failure to apply for admission to the Eastern District of Michigan’s bar. at least they would have been compelled to review and affirm their commitment to our court’s Civility Principles.

This Motion is supported by the accompanying Brief.

Sanctions Pursuant to Fed. R. Civ. P. 11(b)(1)

1. Sanctions should be imposed under Fed. R. Civ. P. 11(b)(1) when a pleading or other filing is presented for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation.

2. Sanctions pursuant to the sub-rule should be imposed against Plaintiffs and their counsel because they initiated the instant suit for improper purposes, including harassing the City and frivolously undermining “People’s faith in the democratic process and their trust in our government.” Opinion and Order Denying Plaintiffs’ “Emergency Motion for Declaratory, Emergency, and Permanent Injunctive Relief,” ECF No. 62, PageID.3329-30.

3. Plaintiffs and their counsel understood that the mere filing of a suit (no matter how frivolous) could, without any evidence, raise doubts in the minds of millions of Americans about the legitimacy of the 2020 presidential election. As this Court noted, “Plaintiffs ask th[e] Court to ignore the orderly statutory scheme established to challenge elections and to ignore the will of millions of voters.” *Id.* PageID.3330.

4. The Complaints (ECF Nos. 1 and 6), Emergency Motion for Declaratory, Emergency, and Permanent Injunctive Relief and Memorandum in

Support Thereof (ECF No. 7), and Emergency Motion to Seal (ECF No. 8) were devoid of merit and thus could only have been filed for improper purposes.

Sanctions Pursuant to Fed. R. Civ. P. 11(b)(2)

5. Sanctions under Fed. R. Civ. P. 11(b)(2) are appropriately entered where the claims, defenses, and other legal contentions are not warranted by existing law or by a non-frivolous argument for extending, modifying, or reversing existing law or for establishing new law.

6. Sanctions pursuant to Rule 11(b)(2) should be imposed against counsel for Plaintiffs because the causes of action asserted in the Complaints (ECF Nos. 1 and 6), Emergency Motion for Declaratory, Emergency, and Permanent Injunctive Relief and Memorandum in Support Thereof (ECF No. 7), and Emergency Motion to Seal (ECF No. 8) were frivolous and legally deficient under existing law and because Plaintiffs failed to present any non-frivolous arguments to extend, modify, or reverse existing law.

7. The majority of Plaintiffs' claims were moot. As this Court noted, "[t]he time has passed to provide most of the relief Plaintiffs request in their Amended Complaint; the remaining relief is beyond the power of any court. For these reasons, this matter is moot." ECF No. 62, PageID.3307.

8. Plaintiffs' claims were also barred by laches because "they waited too long to knock on the Court's door." *Id.* at PageID.3310. Indeed, "Plaintiffs showed

no diligence in asserting the claims at bar.” *Id.* at PageID.3311. This delay prejudiced the City. *Id.* at PageID.3313.

9. Plaintiffs lacked standing to pursue their claims. *Id.* at PageID.3317-3324.

10. Plaintiffs’ claim for violation of the Elections and Electors Clauses is frivolous. As this Court held, “Plaintiffs ask the Court to find that any alleged deviation from state election law amounts to a modification of state election law and opens the door to federal review. Plaintiffs cite to no case – and this Court found none – supporting such an expansive approach.” *Id.* at PageID.3325.

11. Plaintiffs’ due process and equal protection clause claims are also baseless. With regard to the due process claim, this Court held that “Plaintiffs do not pair [the due process claim] with anything the Court could construe as a developed argument. The Court finds it unnecessary, therefore, to further discuss the due process claim.” *Id.* at PageID.3317. As to the equal protection claim, this Court stated that “[w]ith nothing but speculation and conjecture that votes for President Trump were destroyed, discarded or switched to votes for Vice President Biden, Plaintiffs’ equal protection claim fails.” *Id.* at PageID.3328.

12. For each of Plaintiffs’ claims, Plaintiffs did not identify valid legal theories and the controlling law contradicted the claims. The claims were not

warranted by existing law or by a non-frivolous argument for extending, modifying, or reversing existing law or for establishing new law.

13. Plaintiffs' Emergency Motion for Declaratory, Emergency, and Permanent Injunctive Relief and Memorandum in Support Thereof (ECF No. 7) was without any legal basis because, as described above, the underlying claims are baseless, and the requests for relief were frivolous.

14. Plaintiffs' Emergency Motion to Seal (ECF No. 8) was without any legal basis because Plaintiffs seek to anonymously file supposed evidence of a broad conspiracy to steal the 2020 presidential election without providing any authority whatsoever to attempt to meet their heavy burden to justify the sealed filing of these documents.

Sanctions Pursuant to Fed. R. Civ. P. 11(b)(3)

15. Sanctions can be imposed under Fed. R. Civ. P. 11(b)(3) where factual contentions do not have evidentiary support or will likely not have evidentiary support after a reasonable opportunity for further investigation or discovery.

16. Sanctions should be entered against Plaintiffs and their counsel pursuant to Fed. R. Civ. P. 11(b)(3) because the factual contentions raised in the complaints and motions were false.

17. The key "factual" allegations from the supposed fact witnesses, some of whom attempt to cloak their identities while attacking democracy, have been

debunked. The allegations about supposed fraud in the processing and tabulation of absentee ballots by the City at the TCF Center have been rejected by every court which has considered them. If any of the claims in this lawsuit had merit, that would have been demonstrated in those cases. The City refers the Court to its Response to Plaintiffs' Emergency Motion for Declaratory, Emergency, and Permanent Injunctive Relief for a detailed debunking of Plaintiffs' baseless factual contentions. ECF No. 39, PageID.2808-2933.

Disciplinary Proceedings

18. E. D. Mich. LR 83.22 authorizes the Court to levy punishments other than suspension or disbarment on a practicing attorney whose conduct has violated the Rules of Professional Conduct, the Local Rules, the Federal Rules of Civil or Bankruptcy Procedure, orders of the Court, or who has engaged in conduct considered to be "unbecoming of a member of the bar of this court."

19. The Rule also authorizes the Court to refer counsel to the Chief Judge of this District for disbarment or suspension proceedings.

20. And, the Rule authorizes the Court to refer counsel to the Michigan Attorney Discipline Board and to the disciplinary authorities of counsels' home jurisdictions for purposes of disciplinary proceedings.

WHEREFORE, for the foregoing reasons and the reason stated in the accompanying brief, the City of Detroit respectfully requests that this Court enter an Order:

(a) Imposing monetary sanctions against Plaintiffs and their counsel in an amount determined by this Court to be sufficient to deter future misconduct (such amount should be, at the least, the amount that Plaintiffs' counsel have collected in their fundraising campaigns, directly or through entities they own or control, for their challenges to the 2020 election);

(b) Requiring Plaintiffs and their counsel to pay all costs and attorney fees incurred by the City in relation to this matter (as well as costs and fees incurred by all other Defendants);

(c) Requiring Plaintiffs and/or their counsel to post a bond of \$100,000 prior to the filing of any appeal of this action (and to maintain their present appeal);

(d) Requiring Plaintiffs and their counsel to post a bond of \$100,000 prior to filing, in any court, an action against the City, or any other governmental entity or their employees, relating to or arising from the facts alleged in this matter;

(e) Requiring Plaintiffs to post a substantial bond, in an amount determined by the Court, prior to filing an action in the Eastern District of Michigan;

(f) Requiring Plaintiffs and their counsel to obtain certification from a magistrate judge that the proposed claims are not frivolous or asserted for an

improper purpose, before filing an action in the Eastern District of Michigan (and, if the magistrate determines that the proposed claims are frivolous or asserted for an improper purpose, requiring the plaintiff[s] to post a bond before filing the proposed action in an amount the magistrate determines is sufficient to protect the defendant[s]);

(g) Requiring Plaintiffs and their counsel to certify, via affidavit, under penalty of perjury, that they have paid all amounts required to fully satisfy any non-appealable orders for sanctions entered by any court, prior to filing an action in the Eastern District of Michigan;

(h) Barring Plaintiffs' counsel from practicing law in the Eastern District of Michigan (after the issuance of a show cause order);

(i) Referring Plaintiffs' counsel to the Chief Judge of this District for initiation of disbarment proceedings;

(j) Referring all Plaintiffs' counsel to the Michigan Attorney Grievance Commission (and also to the disciplinary authorities of their home jurisdictions, including: Sidney Powell to the Michigan Bar and to the Texas bar; L. Lin Wood to the Michigan Bar and to the Georgia bar; Greg Rohl to the Michigan bar; Emily Newman to the Michigan Bar and to the Virginia bar; Julia Haller to the Michigan Bar and to the Washington D.C. bar; Brandon Johnson to the Michigan Bar and to

the Washington D.C. bar; Scott Hagerstrom to the Michigan bar; Howard Kleinhendler to the Michigan Bar and to the New York bar); and,

(k) Granting any other relief that the Court deems just or equitable.

January 5, 2021

Respectfully submitted,

FINK BRESSACK

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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

<p>TIMOTHY KING, MARIAN ELLEN SHERIDAN, JOHN EARL HAGGARD, CHARLES JAMES RITCHARD, JAMES DAVID HOOPER and DAREN WADE RUBINGH,</p> <p style="text-align: center;">Plaintiffs,</p> <p style="text-align: center;">v.</p> <p>GRETCHEN WHITMER, in her official capacity as Governor of the State of Michigan, JOCELYN BENSON, in her official capacity as Michigan Secretary of State and the Michigan BOARD OF STATE CANVASSERS,</p> <p style="text-align: center;">Defendants.</p>	<p>No. 2:20-cv-13134</p> <p>Hon. Linda V. Parker</p>
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**BRIEF IN SUPPORT OF
THE CITY OF DETROIT’S MOTION FOR SANCTIONS, FOR
DISCIPLINARY ACTION, FOR DISBARMENT REFERRAL AND FOR
REFERRAL TO STATE BAR DISCIPLINARY BODIES**

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STATEMENT OF THE ISSUES PRESENTED

I. Should the Court sanction Plaintiffs and their counsel pursuant to Fed. R. Civ. P. 11?

The City answers: “Yes.”

II. Should the Court discipline Plaintiffs’ counsel, refer them to the Chief Judge of this District for disbarment proceedings and refer them to the Michigan Attorney Grievance Commission and their home state bars for disciplinary proceedings?

The City answers: “Yes.”

CONTROLLING OR MOST APPROPRIATE AUTHORITIES

Fed. R. Civ. P. 11(b)(1)

Fed. R. Civ. P. 11(b)(2)

Fed. R. Civ. P. 11(b)(3)

E. D. Mich. LR 83.22

Bowyer v. Ducey, CV-20-02321, 2020 WL 7238261 (D. Ariz. Dec. 9, 2020)

Costantino v. Detroit, Opinion and Order, Wayne County Circuit Court Case No. 20-014780-AW (Nov. 13, 2020)

Ex parte Young, 209 U.S. 123 (1908)

King v. Whitmer, No. CV 20-13134, 2020 WL 7134198 (E.D. Mich. Dec. 7, 2020)

Mann v. G & G Mfg., Inc., 900 F.2d 953 (6th Cir. 1990)

INTRODUCTION

This Court has already concluded that Plaintiffs present “nothing but speculation and conjecture” and that “this lawsuit seems to be less about achieving the relief Plaintiffs seek—as much of that relief is beyond the power of this Court—and more about the impact of their allegations on People’s faith in the democratic process and their trust in our government.” *King v. Whitmer*, No. CV 20-13134, 2020 WL 7134198, at *13 (E.D. Mich. Dec. 7, 2020). Now, it is time for Plaintiffs and their counsel to answer for that misconduct.

It is indelibly clear that this lawsuit was filed for an improper purpose, and the failure to dismiss or amend the Complaint after service of a Rule 11 motion warrants the strongest possible sanctions. There are so many objectively false allegations in the Complaint that it is not possible to address all of them in a single brief. This brief will address some of the more extreme examples.

For instance, Plaintiffs claim that their self-proclaimed experts include a military intelligence analyst, but when they accidentally disclosed his name, the “expert” was revealed to have washed out of the training course for military intelligence. Plaintiffs’ counsel did not redact the information to “protect” the “informant,” they did so to hide their fraud on the court.²

² In addition to this case, Plaintiffs’ attorneys filed three other remarkably similar, and similarly frivolous, “release the kraken” lawsuits. The requested relief

Plaintiffs’ “expert” reports are rife with misstatements of Michigan law and election procedures. Those reports lack the simplest foundation of technical expertise, fail to use even elementary statistical methods and reach conclusions that lack any persuasive value. But, those unscientific conclusions, based upon false premises and faulty techniques are presented here as though they embody the uncontroverted truth.

Plaintiffs have no apparent interest in the accuracy of their allegations and there is no innocent explanation for the numerous misrepresentations. They claim that turnout in some jurisdictions in the State exceeded 100%, even up to 781.91%, with turnout for Detroit at 139.29%. *See Ramsland Aff.*, ECF No. 6-24, PageID.1574. But they had to know that claim was false; the actual results were readily available at the time Plaintiffs and their “experts” made the claim, and show turnout well below 100%, including in Detroit at 50.88%. Ex. 2.³

was quickly denied or the case was dismissed for each. *See Feehan v. Wisconsin Elections Comm’n*, No. 20-CV-1771, 2020 WL 7250219 (E.D. Wis. Dec. 9, 2020); *Bowyer v. Ducey*, CV-20-02321, 2020 WL 7238261 (D. Ariz. Dec. 9, 2020); and *Pearson v. Kemp*, No. 1:20-cv-4809 (N.D. Ga. Dec. 7, 2020) (Ex. 3).

³ Plaintiffs made the same claim about Michigan in the lawsuit they filed in Georgia, but apparently because the “expert” confused the postal code abbreviation for Minnesota with that of Michigan, used Minnesota jurisdictions to make the argument that turnout exceeded 100%. Ex. 4. The fact that Plaintiffs’ counsel discovered the error regarding postal abbreviations (after it was widely mocked in the media), but then proceeded to make the same false claim here, substituting Michigan jurisdictions, shows that the point was to make the claim, not to present the truth. As stated by the district court in the Arizona “kraken” lawsuit when

Meanwhile, President Trump continues to use these lawsuits in his desperate campaign to thwart the will of the voters. On January 2, 2021, during a call with Georgia's Secretary of State, Brad Raffensperger, in which the President is heard attempting to extort Secretary Raffensperger into committing election fraud, Trump trotted out the same hoary canards as the Plaintiffs falsely argue to this Court:

I mean there's turmoil in Georgia and other places. You're not the only one, I mean, we have other states that I believe will be flipping to us very shortly. And this is something that — you know, as an example, I think it in Detroit, I think there's a section, a good section of your state actually, which we're not sure so we're not going to report it yet. But in Detroit, we had, I think it was, 139 percent of the people voted. That's not too good.

See Ex. 5, pp. 3-4 (Transcript of January 2, 2021 Telephone Call, as transcribed for the Washington Post).⁴

The City gave Plaintiffs and their counsel the opportunity to retract their lies and baseless legal claims, and they have refused. The extent of the factual and legal errors in this Complaint would warrant sanctions under any circumstances, but here the Court's processes are being perverted to undermine our democracy and to upset

dismissing the claims, and as equally applicable here, “[t]he various affidavits and expert reports are largely based on anonymous witnesses, hearsay, and irrelevant analysis of unrelated elections.” *Bowyer v. Ducey*, No. CV-20-02321, 2020 WL 7238261, at *13 (D. Ariz. Dec. 9, 2020).

⁴ President Trump also continues to use this lawsuit (and the suits filed in other swing states which voted for President-Elect Biden) to fundraise. As of early December 2020, Trump had reportedly raised \$207.5 million in post-election fundraising. Ex. 6.

the peaceful transition of power. The Plaintiffs and all of their attorneys deserve the harshest sanctions this Court is empowered to order.

ARGUMENT

I. Rule 11 Standards

Sanctions under Fed. R. Civ. P. 11(b)(1) are appropriate when a pleading or other filing is presented for an improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation. Fed. R. Civ. P. 11(b)(1). Sanctions under Fed. R. Civ. P. 11(b)(2) are appropriate where the claims, defenses, and other legal contentions of the offending party are not warranted by existing law or by a non-frivolous argument for extending, modifying, or reversing existing law or for establishing new law. Fed. R. Civ. P. 11(b)(2). Sanctions are appropriate under Fed. R. Civ. P. 11(b)(3) where factual contentions do not have evidentiary support or will likely not have evidentiary support after a reasonable opportunity for further investigation or discovery.⁵

To determine whether a party's pleading is frivolous or was filed for an improper purpose, courts use an objective standard of reasonableness under the circumstances and then weigh the evidence to determine if the pleadings, motions or

⁵ Monetary sanctions cannot be imposed against a represented party for violation of Fed. R. Civ. P. 11(b)(2). *See* Fed. R. Civ. P. 11(c)(5). Thus, the City requests non-monetary sanctions, as identified below, against Plaintiffs for violation of 11(b)(2) and monetary and non-monetary sanctions against counsel.

papers are well-grounded in facts or warranted by existing law. *Mann v. G & G Mfg., Inc.*, 900 F.2d 953 (6th Cir. 1990).⁶

II. The Complaint was Filed for an Improper Purpose

It is clear that this lawsuit was not filed for any purpose consistent with the Federal Rules of Civil Procedure. This Court has already addressed many of the reasons that the Plaintiffs “are far from likely to succeed in this matter.” *King*, 2020 WL 7134198, at *13. The claims are barred by Eleventh Amendment Immunity; the claims are barred by mootness and laches; Plaintiffs lack standing; and, even if Plaintiffs could show a violation of state law, they have not offered a colorable claim under federal statutory or constitutional law. To make matters worse, Plaintiffs were always aware that their Complaint was deficient; no other inference can be drawn from their failure to serve the Defendants before this Court issued its December 1, 2020, text-only order.⁷

⁶ Moreover, for the purposes of Rule 11 sanctions, a showing of “good faith,” is not sufficient to avoid sanctions. *INVST Financial Group, Inc. v. Chem-Nuclear Systems, Inc.*, 815 F.2d 391 (6th Cir. 1987).

⁷ A similar circumstance was noted on January 4, 2021, in a ruling by the United States District Court for the District of Columbia, addressing another groundless Trump election lawsuit:

[Plaintiffs’] failure to make any effort to serve or formally notify any Defendant — even after a reminder by the Court in its Minute Order — renders it difficult to believe that the suit is meant seriously. Courts are not instruments through which parties engage in such gamesmanship or symbolic political gestures. As a result, at the conclusion of this litigation, the Court will determine whether to issue an order to show

This lawsuit is the quintessential example of a case filed for an improper purpose. As this Court concluded, in denying preliminary relief:

this lawsuit seems to be less about achieving the relief Plaintiffs seek—as much of that is beyond the power of this Court—and more about the impact of their allegations on People’s faith in the democratic process and their trust in our government.

King, at *13. Plaintiffs’ counsel have not hidden their contempt for our courts and for our democracy. Plaintiffs’ counsel Sidney Powell claims that courts have rejected the election lawsuits, “because the corruption goes deep and wide.”⁸ She re-tweets calls to impose martial law, to “suspend the December Electoral College vote,” and to “set up Military Tribunals immediately.” @sidneypowell1, Twitter (Nov. 30, 2020). Her co-counsel, L. Lin Wood, unabashedly expresses his contempt for our democratic processes and openly promotes a military coup:

Georgia, Michigan, Arizona, Nevada, Wisconsin, Minnesota & Pennsylvania are states in which martial law should be imposed & machines/ballots seized. 7 states under martial law. 43 states not under martial law. I like those numbers. Do it @realDonaldTrump! Nation supports you. (@llinwood, Twitter (Dec. 20, 2020)).

Patriots are praying tonight that @realDonaldTrump will impose martial law in disputed states, seize voting machines for forensic

cause why this matter should not be referred to its Committee on Grievances for potential discipline of Plaintiffs’ counsel.

Wisconsin Voters Alliance v. Pence, No. 1:20-cv-03791 (D.C. Jan. 4, 2021) (Ex. 7).

⁸ Quote from video interview of Sidney Powell, promoted on her twitter account at https://twitter.com/AKA_RealDirty/status/1338401580299681793.

examination, & appoint @SidneyPowell as special counsel to investigate election fraud. (Dec. 19, 2020).

When arrests for treason begin, put Chief Justice John Roberts, VP Mike Pence @VP @Mike_Pence, & Mitch McConnell @senatemajldr at top of list. (Jan. 1, 2021).

If Pence is arrested, @SecPompeo will save the election. Pence will be in jail awaiting trial for treason. He will face execution by firing squad. He is a coward & will sing like a bird & confess ALL. (Jan. 1, 2021).⁹

These are the lawyers who are trying to use this Court's processes to validate their conspiracy theories and to support their goal of overturning the will of the people in a free and fair election. They were given an opportunity to dismiss or amend their Complaint, but they chose to continue to use this case to spread their false messages.

Those false messages are not the result of occasional errors or careless editing. Those false messages are deliberately advanced by these attorneys to support their goals of undermining our democracy. Like Sidney Powell, L. Lin Wood, is a QAnon disciple.¹⁰ He recently stated:

This country's going to be shocked when they find the truth about who's been occupying the Oval Office for some periods of years. They're going to be shocked at the level of pedophilia. They are going

⁹ While Mr. Wood's wrath was initially focused on Democrats, he has shifted to attacking Republican officials (and judges and justices who he views as Republican) for their perceived disloyalty to Trump and refusal to abuse the Constitution.

¹⁰ A judge in Delaware is currently considering revoking Mr. Wood's right to practice in Delaware, where he is currently representing former Trump adviser Carter Page, based on his conduct in suits challenging the results of the general election as a plaintiff in Georgia and as counsel in Wisconsin. Ex. 8.

to be shocked at what I believe is going to be a revelation in terms of people who are engaged in Satanic worship.”¹¹

A review of Mr. Wood’s Twitter account reveals a dark strain of paranoia—the same strain which infects this lawsuit.

Mr. Wood repeatedly makes false allegations about the 2020 election, the most secure in our country’s history.¹² The following is a sampling of his tweets:

There should be NO Electoral College vote in any state today. Fraud is rampant in all state elections. If U.S. Supreme Court does not have courage to act, I believe our President @realDonaldTrump has the courage. (Dec. 14, 2020).

We The People must now launch massive campaign to prevent our state electors from EVER casting vote in Electoral College for Joe Biden & Kamala Harris. Unless you want them to vote for Communism. In that event, get out of our country & go enjoy your life in Communist China. (Dec. 20, 2020).

Joe Biden & Kamala Harris are Communists by either ideology, corruptness or extortion. Still want your state electors to vote for Biden on 1/6? Want Communism & tyranny or a free America where you can enjoy life, liberty & pursuit of happiness? (Dec. 20, 2020).

¹¹ <https://welovetrump.com/2020/11/23/lin-wood-americans-will-be-shocked-at-level-of-pedophilia-satanic-worship-occupying-oval-office-for-years-before-trump/>.

¹² The November 2020 general election was declared by the federal government to be the most secure in the nation’s history. *See* Joint Statement from Elections Infrastructure Government Coordinating Council & The Election Infrastructure Sector Coordinating Executive Committees (“CISA”), issued Nov 12, 2020 (“The November 3rd election was the most secure in American history.”) (Ex. 9). The CISA statement further concluded “[t]here is no evidence that any voting system deleted or lost votes, changed votes, or was in any way compromised.” *Id.* Five days after this statement was released, Chris Krebs, director of CISA, was terminated by presidential tweet.

When courts refuse to accept his invitation to disregard the fundamental tenets of our democracy, he blames corruption and communism in the judiciary:

Attempted theft of Presidential election will NOT stand. Not on our watch, Patriots. Communists & Communist sympathizers have infiltrated our judicial system, including lawyers & judges in Georgia. (Dec. 23, 2020).

Communism has infiltrated ALL levels of our government, including our judiciary. Communism infiltrates by ideology, by corruption/money & by extortion. (Dec. 20, 2020).

Too many of us have been asleep at switch in the past. ... We believed too many of our judges. Many are corrupt & traitors. (Dec. 19, 2020).

Some state & federal lower court rulings to date are troubling. Courage lacking in some members of judiciary. (Dec. 10, 2020).

We CANNOT trust courts to save our freedom. They are IGNORING massive evidence of fraud & unlawful election procedures. (Dec. 13, 2020).

We have had reports of judges & their families being threatened. This would certainly explain some of the bizarre rulings by lower courts that have refused to even mention the overwhelming evidence of fraud in cases filed by @SidneyPowell. (Dec. 14, 2020).

When, the Supreme Court denied *certiorari* in Texas's lawsuit against the "swing states" which voted for Joe Biden,¹³ and when the Supreme Court took no action on the nonsensical direct appeal in this case, Mr. Wood displayed his utter contempt for that institution:

It is time for Chief Justice John Roberts to resign, admit his corruption & ask for forgiveness. Roberts has betrayed his sacred oath office. He

¹³ *Texas v. Pennsylvania*, No. 155 ORIG., 2020 WL 7296814 (U.S. Dec. 11, 2020).

has betrayed his country. He has betrayed We The People. (Dec. 19, 2020).

I think many are today learning why SCOTUS is rejecting petitions seeking FAIR review. Roberts & Breyer are “anti-Trumpers” They should resign immediately. CJ Roberts has other reasons to resign. He is a disgrace to office & to country. (Dec. 17, 2020).

Corruption & deceit have reached most powerful office in our country - the Chief Justice of U.S. Supreme Court. This is a sad day for our country but a day on which we must wake up & face the truth. Roberts is reason that SCOTUS has not acted on election cases. (Dec. 17, 2020).

Justice John Roberts is corrupt & should resign immediately. Justice Stephen Breyer should also resign immediately. (Dec. 17, 2020).

I am disappointed. I thought Justices Roberts & Breyer would avoid public scandal & simply resign. Only a fool wants their dirty laundry aired in public. Maybe I should consider filing a formal motion for recusal & hang their laundry on the clothesline to be exposed to sunlight? (Jan. 2, 2021).

This is the same L. Lin Wood who appears on the pleadings of this case, but who has apparently chosen not to be sworn into the bar for the Eastern District of Michigan and to affirm our Civility Principles.

Sidney Powell—who President Trump has reportedly considered appointing as “special counsel,” who apparently has the ear of the President and who has advocated for martial law—is less prolific on Twitter but shares Mr. Wood’s perspective. She has tweeted that “[t]his ‘election’ was stolen from the voters in a massive fraud.” @sidneypowell1, Twitter (Jan. 2, 2021). And, like Mr. Wood, she channels 1950s McCarthy paranoia, seeing communists around every electoral

corner, stating “[i]t is impossible not to see the fraud here unless one is a communist or part of it or part of the coup.” @sidneypowell1, Twitter (Jan. 2, 2021).¹⁴

As poorly presented as their pleadings were, as careless as they were in vetting their allegations and expert reports, and as detached as their claims are from the law and reality, the Plaintiffs and their counsel were provided 21 days to take corrective action. So, 21 days before filing this motion, the City gave Plaintiffs an opportunity to withdraw or amend their contemptuous pleadings. Rather than withdraw or amend their Complaint, they chose to stand firm with their objectively false claims, ridiculously incompetent expert reports and patently unsupportable arguments.

Why was this Complaint not dismissed or amended? Surely, in light of this Court’s December 7, 2020, Opinion and Order, Plaintiffs cannot be expecting to obtain judicial relief. Then, what purpose can this lawsuit serve? The answer to that question goes to the heart of Rule 11. Much can be inferred from Plaintiffs’ actions. Initially, this was one of several lawsuits used to support calls for state legislatures to reject the will of the voters, to ignore the statutory process for selecting presidential electors, and to instead elect a slate of Trump electors (six of whom are Plaintiffs in this case). When the Michigan Legislature did not attempt to select a

¹⁴ Perhaps her motivation is less paranoid and more venal. The front page of her website, “defendingtherepublic.org,” has a prominently placed “contribute here” form, soliciting donations for her “Legal Defense Fund for Defending the American Republic.”

slate of electors inconsistent with the will of the voters, despite the personal demands of the President of the United States, who summoned their leaders to the White House, this lawsuit took on a different meaning. It was then used to support arguments for the United States Congress to reject the Michigan electors on January 6, 2021. On Saturday, January 2, 2021, false claims made by “experts” in this case were cited by Donald Trump in his apparent attempt to extort Georgia Secretary of State Brad Raffensperger. And, most ominously, these claims are referenced and repeated by L. Lin Wood and others in support of martial law.

Irrespective of these attempts to overturn our democratic processes, the continued pendency of this lawsuit accomplishes exactly the harm addressed by this Court in its December 7, 2021, Opinion and Order. By undermining “People’s faith in the democratic process and their trust in our government,” this lawsuit is being used to delegitimize the presidency of Joe Biden.

While the First Amendment may protect the right of political fanatics to spew their lies and unhinged conspiracy theories, it does not grant anyone a license to abuse our courts for purposes which are antithetical to our democracy and to our judicial system. Plaintiffs and their counsel cannot be allowed to use the court system to undermine the constitutional and statutory process by which we select our leaders.

III. The Factual Assertions in the Complaint Were Frivolous and Based on Assertions Which Had Been Rejected by Michigan Courts

The Complaint in this matter relies heavily on affidavits submitted in *Costantino v. Detroit*, Wayne County Circuit Court Case No. 20-014780-AW. The Plaintiffs here either incorporate the affidavits into their allegations or attach them as exhibits to their Complaint.

A. Allegations Regarding Republican Challengers

The Complaint repeatedly asserts that Republican challengers were not given “meaningful” access to the ballot processing and tabulation at the Absent Voter Counting Board located in Hall E of the TCF Center. First Amended Complaint (“Compl.”) at ¶¶ 13, 42, 47, 57, 59-61. This claim was disproven long before Plaintiffs raised it here. As Judge Kenny concluded in *Costantino*, while six feet of separation was necessary for health reasons, “a large monitor was at the table where individuals could maintain a safe distance from poll workers to see what exactly was being performed.” *Costantino v. Detroit*, Opinion and Order, Wayne County Circuit Court Case No. 20-014780-AW (Nov. 13, 2020) (Ex. 10). This had been proven with photographic evidence. *See, e.g.*, Ex. 11 (Nov. 11, 2020 Affidavit of Christopher Thomas at last page). And, prior to the filing of this case, the Michigan Supreme Court had already rejected the application for appeal from the trial court’s ruling, deeming the same claims unworthy of injunctive relief. *See Costantino v Detroit*, No. 162245, 2020 WL 6882586 (Mich. Nov. 23, 2020).

Similarly, the Complaint repeats the false claim that Republican challengers were exclusively barred from entering the TCF Center. Compl. ¶¶ 62-63. Judge Kenny rejected this claim, finding that there was a short period of time, where Republican *and* Democratic challengers were “prohibited from reentering the room because the maximum occupancy of the room had taken place.” *Costantino* Opinion, at *8. As stated by the court, “[g]iven the COVID-19 concerns, no additional individuals could be allowed into the counting area ... Democratic party challenger David Jaffe and special consultant Christopher Thomas in their affidavits both attest to the fact that neither Republican nor Democratic challengers were allowed back in during the early afternoon of November 4th as efforts were made to avoid overcrowding.” *Id.*

B. Allegations of “Pre-Dating”

Plaintiffs’ allegations of “pre-dating” were also based on claims initially submitted and rejected in *Costantino*. Compl. ¶¶ 88 and 90.

The claims come from Jessy Jacob, a furloughed City employee, with no known prior election experience, who was assigned to the Department of Elections on a short-term basis. Ex. 12 (Affidavit of Daniel Baxter, ¶ 7). Her claim regarding pre-dating is demonstrably false because all absentee ballots she handled at the TCF Center had been received by 8:00 p.m. on November 3, 2020. For a small number of ballots, election workers at the TCF Center were directed to enter the date the

ballots were received into the computer system, as stamped on the envelope. Ex. 11. Ms. Jacob was simply marking the date the ballot had been received. *Id.* Thus, as explained by the court in *Costantino*, “[a]s to the allegation of ‘pre-dating’ ballots, Mr. Thomas explains that this action completed a data field inadvertently left blank during the initial absentee ballot verification process.” *Costantino* Opinion, *4. As the court noted, “[t]he entries reflected the date the City received the absentee ballot.” *Id.*

C. Allegations Regarding Ballots Supposedly Counted More than Once

Plaintiffs claim challengers observed ballots repeatedly run through tabulation machines, including “a stack of about fifty ballots being fed multiple times into a ballot scanner counting machine.” Compl. ¶ 94. This allegation primarily comes from Melissa Carone, a contractor working for Dominion, who claimed that stacks of 50 ballots were fed through tabulators as many as eight times. Exh. 5 to Compl., ¶¶ 4-5.¹⁵ The allegation was obviously false when it was first raised by Carone in *Costantino*. Whatever Carone and other challengers think they saw, ballots cannot be counted in that manner. If they were correct, hundreds of extra votes would show up in numerous precinct (or absent voter counting boards). This would obviously be

¹⁵ The Complaint states that “[p]erhaps the most probative evidence comes from Melissa Carone” Compl. ¶ 84.

caught very quickly on site during the tabulation process or soon thereafter during the County and State canvasses. Ex. 13 (Thomas Dec. 10, 2020 Aff. ¶¶ 18-20).

But, by the time the Plaintiffs here latched onto the absurd allegation, it had already been conclusively disproven by the Wayne County canvass. Detroit had 501 precincts and 134 absent voter counting boards. Less than 36% of the total were out of balance. *Id.* ¶ 12. A counting board is out of balance if there are: (1) more ballots than voters or (2) more voters than ballots. In total 591 voters and ballots account for the imbalances. *Id.* When voters and ballots are separated in Detroit there are 148 more names than ballots—out of 174,384 votes there are 148 more names in the poll books than there are ballots. *Id.* The fact that there were more names than ballots shows that ballots were not counted more than once. The total imbalance was .0008 (eight ten-thousandths of a 1%). *Id.* Of the 94 Detroit out of balance counting boards, there were 87 with an imbalance of 11 or fewer voters/ballots; within those 87 counting boards, 48 were imbalanced by 3 or fewer voters/ballots. *Id.* There were seven counting boards with higher imbalances that range from 13 more ballots to 71 fewer voters. *Id.* This minimal level of imbalance conclusively demonstrated that the allegation was false, weeks before Plaintiffs filed this case.

D. Allegations Regarding Tabulating Machines

Perhaps the most baseless of Plaintiffs' allegations is a conspiracy theory about Dominion vote tabulators. Plaintiffs in the first election cases initially cited

two instances of errors—one in Antrim County and one in Oakland County (Rochester Hills) to insinuate that the tabulating system used in many counties was flawed. Certainly understanding the weakness of the initial theory, Plaintiffs here wove in a nonsensical tale that a theoretical software weakness upended Michigan’s election results. This Court readily recognized that the claims could not hold up.

The Michigan Department of State released a statement titled “Isolated User Error in Antrim County Does Not Affect Election Results, Has no Impact on Other Counties or States,” explaining what happened in Antrim County. Ex. 14. The statement explains that the “error in reporting unofficial results in Antrim County Michigan was the result of a user error that was quickly identified and corrected; did not affect the way ballots were actually tabulated; and would have been identified in the county canvass before official results were reported even if it had not been identified earlier.” *Id.* Essentially, the County installed an update on certain tabulators, but not others. *Id.* The tabulators worked correctly, but when they communicated back to the County, the discrepancy in the software versions led to a discrepancy in the reporting. *Id.* This was quickly discovered and would certainly have been uncovered in the post-election canvass. *Id.* In fact, the integrity of the vote in Antrim County was conclusively proven by the recent audit of the paper ballots.

The Republican clerk of Rochester County, Tina Barton, discredited the allegations of fraud in that City. Officials realized they had mistakenly counted votes

from Rochester Hills twice, according to the Michigan Department of State. Oakland County used software from a company called Hart InterCivic, not Dominion, though the software was not at fault. Ms. Barton stated in a video she posted online: “As a Republican, I am disturbed that this is intentionally being mischaracterized to undermine the election process This was an isolated mistake that was quickly rectified.” Ex. 15.¹⁶ Plaintiffs knew all of this before they filed this lawsuit.¹⁷

E. The Declarations and Analyses “Supporting” the Complaint Were Full of Intentional Lies

The Complaint also relies heavily on “expert” declarations and affidavits, many heavily redacted. As the district court held in *Bowyer*, “the ‘expert reports’

¹⁶ An audit of the paper ballots in Antrim County conclusively demonstrated that the claim was false. The official tally was only off by 11 net votes. Ex. 16.

¹⁷ The Plaintiffs here added in a string of falsehoods about Dominion software. The district court in *Bowyer* addressed those claims head on: “The Complaint is equally void of plausible allegations that Dominion voting machines were actually hacked or compromised in Arizona during the 2020 General Election. [...] These concerns and stated vulnerabilities, however, do not sufficiently allege that any voting machine used in Arizona was in fact hacked or compromised in the 2020 General Election.” *Bowyer v. Ducey*, No. CV-20-02321, 2020 WL 7238261, at *14 (D. Ariz. Dec. 9, 2020). Just like here, “what is present is a lengthy collection of phrases beginning with the words ‘could have, possibly, might,’ and ‘may have.’” *Id.* Ramsland, similar to his claims here, “asserts there was ‘an improbable, and *possibly impossible* spike in processed votes’ in Maricopa and Pima Counties at 8:46 p.m. on November 3, 2020 ... [however, the defendant] points to a much more likely plausible explanation: because Arizona begins processing early ballots before the election, the spike represented a normal accounting of the early ballot totals from Maricopa and Pima Counties, which were reported shortly after in-person voting closed.” *Id.* “Plaintiffs have not moved the needle for their fraud theory from conceivable to plausible, which they must do to state a claim under Federal pleading standards.” *Id.*

reach implausible conclusions, often because they are derived from wholly unreliable sources.” *See Bowyer v. Ducey*, No. CV-20-02321, 2020 WL 7238261, at *14 (D. Ariz. Dec. 9, 2020).

From the outset, the “Michigan 2020 Voting Analysis Report” appended to the Amended Complaint departs from any rational statistical analysis. PageID.1771-1801. Stanley Young identifies nine counties as “outliers,” because those counties reported larger increases in Democratic votes for President. PageID.1776. His analysis, however, is based entirely on raw vote totals with no consideration of percentage changes. Not surprisingly, eight of the nine counties he identifies are among the nine counties with the largest voting age population. Much of the remaining analysis by Young and the other experts focuses on these counties, which are allegedly “outliers.”

This sloppy analysis is followed by “another anomaly that indicates suspicious results.” His “anomaly” is nothing more than the fact that President Trump did not do as well with “mail-in votes” as he did with election day votes. PageID.1777. Of course, that was widely expected and understood, for an election in which President Trump discouraged absentee voting and Democrats promoted it.

Revealing an almost incomprehensible ignorance of Michigan election law for supposed “experts,” Dr. Quinnell, together with Dr. Young, offer the finding that in two Michigan counties (Wayne and Oakland) demonstrate “excessive vote in

favor of Biden often in excess of new Democrat registrations.” PageID.1778. Apparently, none of the experts, none of the Plaintiffs and none of the Plaintiffs’ attorneys are aware that Michigan does not have party registration.

1. Spyder/Spider

Plaintiffs’ “experts” rely on the partially redacted declaration of “Spider” or “Spyder,” who Plaintiffs identify as “a former US Military Intelligence expert” and a “former electronic intelligence analyst with 305th Military Intelligence” Compl. ¶¶ 17, 161. But this was a lie *by Plaintiffs’ counsel*. Plaintiffs did not properly redact the declarant’s name when they filed the same affidavit in a different court, and it was publicly disclosed that the declarant’s name was Joshua Merritt. While in the Army, Merritt enrolled in a training program at the 305th Military Intelligence Battalion, the unit he cites in his declaration, but he never completed the entry-level training course. A spokeswoman for the U.S. Army Intelligence Center of Excellence, which includes the battalion, stated “[h]e kept washing out of courses ... [h]e’s not an intelligence analyst.” Ex. 17. According to the Washington Post, “Merritt blamed ‘clerks’ for Powell’s legal team, who he said wrote the sentence [and] said he had not read it carefully before he signed his name swearing it was true. *Id.* He stated that “My original paperwork that I sent in didn’t say that.” *Id.* He later stated that “he had decided to remove himself from the legal effort altogether” (which has not happened). *Id.*

It is a near certainty that if Plaintiffs are compelled to publicly file unredacted declarations and affidavits, as they should be, numerous other redacted names and assertions will reveal that the redactions were made to keep the public from discovering more fraud perpetrated on this Court.

2. Russell James Ramsland, Jr.

Plaintiffs’ “expert” Russell James Ramsland Jr. extrapolates large vote discrepancies from the Antrim County error in reporting early *unofficial* results. In doing so, he intentionally ignores the Secretary of State’s report or simply does not do his homework. Ramsland reports “In Michigan we have seen reports of 6,000 votes in Antrim County that were switched from Donald Trump to Joe Biden *and were only discoverable through a hand counted manual recount.*” Ramsland Affidavit ¶10; emphasis added. But, there were no hand recounts in Michigan as of that date.¹⁸ The Secretary of State report is not even discussed. Incredibly, Ramsland has since doubled down on his perjury, after gaining access to a voting machine in Antrim County. He now claims, in support for the request for Certiorari to the Supreme Court in this action, that “[w]e observed an error rate of 68.05%” which

¹⁸ Plaintiffs, who include six nominees to be Trump electors, including the Republican County Chair for Antrim County, the Republican County Chair of Oceana County and the Chair of the Wayne County Eleventh Congressional District, as well as their attorneys, should also know that when the expert report was prepared there had been no hand recount in Antrim County. An actual hand recount did occur at a later time, and that recount confirmed the accuracy of the official results, within 11 votes.

“demonstrated a significant and fatal error in security and election integrity.” Although the basis for the percentage is unclear, the Antrim County clerk stated that “the 68% error rate reported by Ramsland may be related to [the] original error updating the ballot information.” Ex. 18. The clerk of the Republican-heavy County said: “[t]he equipment is great — it’s good equipment ... [i]t’s just that we didn’t know what we needed to do (to properly update ballot information) ... [w]e needed to be trained on the equipment that we have.” *Id.* The claim was also proven to be false by the hand recount audit of the paper ballots in Antrim County, which added 11 net votes to the tally, not the 15,000 predicted by Ramsland. Ex. 16.

Ramsland makes the claim that turnout throughout the state was statistically improbable; but as discussed above, he bases this on fabricated statistics. He claims turnout of 781.91% in North Muskegon, where the publicly-available official results were known, as of election night, to be approximately 78%. Ex. 2. He claims turnout of 460.51% (or, elsewhere on the same chart, 90.59%) in Zeeland Charter Township, where it was already known to be 80%. *Id.* The *only* result out of 19 (not including the duplicates) that Ramsland got right was for Grand Island Township, with a turnout of 96.77%, comprised of 30 out of the township’s 31 registered voters. *Id.*¹⁹

¹⁹ Ramsland also claims it was “suspicious” that Biden’s share of the vote increased as absentee ballots were tabulated. But, that suspicion require Ramsland to close his eyes to the incontrovertible fact that for the 2020 general election, absentee ballots favored Biden throughout the country, even in the deep red state of

President Trump repeated this blatantly false claim in his tape-recorded January 2, 2021 telephone conversation with Brad Raffensperger. Ex. 5.

Similarly, Ramsland relies upon the affidavit of Mellissa Carone in support of his claim that “ballots can be run through again effectively duplicating them.” Ramsland Affidavit; Compl. Exh. 24 at ¶13. It is understandable that inexperienced challengers and Ms. Carone (who was a service contractor with no election experience) with conspiratorial mindsets might not understand that there are safeguards in place to prevent double counting of ballots in this way, but that does not excuse Plaintiffs’ “experts,” who choose to rely on these false claims, even after the official canvass had conclusively disproven the allegations.²⁰

3. William Briggs/Matt Braynard

Plaintiffs rely on an “analysis” by William M. Briggs of “survey” results apparently posted in a tweet by Matt Braynard. Braynard’s survey was submitted in

Tennessee. <https://tennesseestar.com/2020/11/05/republicans-dominate-the-2020-tennessee-election-cycle/>.

²⁰ Emblematic of Plaintiffs’ contempt for facts is another “expert” report that was filed with the original Complaint in this case, but not submitted with the Amended Complaint. Paragraph 18 of the original Complaint introduced “Expert Navid Kashaverez-Nia” and alleged that “[h]e concludes that hundreds of thousands of votes that were cast for President Trump in the 2020 general election were transferred to former Vice-President Biden.” Notably, the “expert” relied on a finding that in “Edison County, MI, Vice President Biden received more than 100% of the votes....” There is no Edison County in Michigan (or anywhere in the United States). The fabrication was only removed after it was discovered and reported by the news media.

a different case (*Johnson v. Secy of State*, Michigan Supreme Court Original Case No. 162286),²¹ so its underlying falsehoods have been exposed. Braynard misrepresents Michigan election laws, and completely disregards standard analytical procedures to reach his contrived conclusions. He refers to voters who have “indefinitely confined status,” something which has never existed in our state. He refers to individuals “who the State’s database identifies as applying for *and the State sending an absentee ballot*,” when, in Michigan, absentee ballots are never sent by the State. He refers repeatedly to “early voters,” when Michigan has absentee voters, but, unlike some other states, has never allowed “early voting.” He apparently believes (incorrectly) that every time a voter’s residence changes before election day that voter is disenfranchised. Mr. Thomas addresses these factual and legal errors in the attached Affidavit. Ex. 13.

The disturbing inadequacy of Braynard’s survey is also explained in the affidavit of Dr. Charles Stewart III, the Kenan Sahin Distinguished Professor of Political Science at the Massachusetts Institute of Technology. Dr. Stewart’s credentials are impeccable and directly applicable to the subject matter. Ex. 20

²¹ The “survey” as submitted in *Johnson* is attached here as Ex. 19. The request for relief was denied by the Supreme Court *Johnson*. See *Johnson v. Secy of State*, No. 162286, 2020 WL 7251084 (Mich. Dec. 9, 2020).

(Affidavit of Charles Stewart II) (originally submitted in *Johnson*).²² At the request of the City of Detroit, Dr. Stewart reviewed the Braynard survey and came to the unqualified opinion that “Mr. Braynard’s conclusions are without merit.” (*Id.* ¶10). He explains the basis for his opinion in clear and understandable detail.

Briggs’ analysis of Braynard’s report estimate that “29,611 to 36,529 ballots out of the total 139,190 unreturned ballots (21.27% - 26.24%) were recorded for voters who had not requested them.” Braynard says 834 people agreed to answer the question of whether they requested an absentee ballot. But he does not report how many respondents did not answer. More to the point, he does not explain how he confirms that these respondents understood what it meant for them to “request” an absentee ballot. Some might have gone to their local clerk’s office to vote, where they signed a form, received a ballot and voted, without realizing that that form is an absentee ballot “request.” Braynard concludes that certain people who failed to return a ballot never requested that ballot. But he does not address the possibility that the very people (139,190 out of more than 3.5 million) who would neglect to return a ballot would likely be those who might forget that they had requested one.

Braynard offers a baffling array of inconsistent numbers. On Page 8 of his report, he refers to “96,771 individuals who the State’s database identifies as having

²² Dr. Stewart is uniquely suited to address these issues. He is a member of the Caltech/MIT Voting Technology Project and the founding director of the MIT Election Data and Science Lab.

not returned an absentee ballot,” when for his first two opinions that number is 139,190. On page 8, he reports a percentage of 15.37% not having mailed back their ballots, but on page 5 he identifies that percentage as 22.95%. Then, the actual numbers of individuals answering the question in that manner, described on page 8 (241 out of 740), would establish a percentage of 32.56%. If this were not sloppy enough, at the top of page 9, he reports, with no explanation “Based on these results, 47.52% of our sample of these absentee voters in the State did not request an absentee ballot.” Even if his percentages were completely off and inconsistent, the data would be meaningless. Braynard ignores Michigan election procedures when he declares that there is evidence of illegal activity because some voters are identified in the State’s database as having not returned an absentee ballot when those voters “did in fact mail back an absentee ballot....” But, when millions of citizens voted absentee, some of those mailed ballots were not received by election day. He also does not consider the possibility of a voter either not remembering accurately or not reporting accurately whether a ballot was mailed.²³

Braynards’ analysis of address changes is equally invalid. He misrepresents how change of address notifications work. It is not at all uncommon for one person

²³ A slightly modified version of the Briggs/Braynard analysis was rejected by the *Bowyer* court. *Bowyer*, 2020 WL 7238261, at *14 (“The sheer unreliability of the information underlying Mr. Briggs’ ‘analysis’ of Mr. Braynard’s ‘data’ cannot plausibly serve as a basis to overturn a presidential election, much less support plausible fraud claims against these Defendants.”).

to move and file a change of address that appears to affect more household members, or a person might file a change of address for convenience during a temporary period away from home, without changing their legal residence. Stewart Aff ¶ 21. Every year, tens of thousands of Michigan voters spend long periods of time in other states (e.g., Florida or Arizona) without changing their permanent residence or voting address. Clerks have procedures in place to address these issues. Even voters who do make a permanent move can vote at their prior residence for sixty days if they do not register to vote at their new address.²⁴

IV. Plaintiffs' Legal Theories Were Frivolous

Rule 11 places the failure to plead colorable legal theories squarely on the attorney making the claim. In addition to pleading false allegations, this lawsuit has always been legally dubious.

²⁴ It is not possible that these experts were simply negligent. They consistently ignore the obvious explanations for their so-called anomalies. For instance, Bouchard intentionally ignores the fact that unofficial results are released on a rolling basis, i.e. in “data dumps” accounting for hours of tabulation, to claim it was somehow anomalous for there to be large increases in the number of votes between data releases. Quinnell ignores the fact that voter turnout and preferences will change between elections based on the identities of the candidates, when he claims it was somehow anomalous for turnout to have increased for the 2020 election and for Biden to have picked up votes in suburban areas (a phenomenon seen throughout the country). He also ignores the well-known fact that urban core precincts in this country are strongholds for the Democratic Party, when he claims there was something anomalous about the fact that such precincts in Detroit strongly favored Biden. Many of these issues are addressed in the responses, and supporting exhibits, to Plaintiffs’ Motion for Temporary Restraining Order. ECF Nos. 31, 36 and 39.

First, even if there had been a semblance of truth to any of Plaintiffs' allegations, the lawsuit would still have been frivolous because the relief requested could, in no way, be supported by the claims. As this Court stated, the relief Plaintiffs seek is to "disenfranchise the votes of the more than 5.5 million Michigan citizens who, with dignity, hope, and a promise of a voice, participated in the 2020 General Election." *King*, 2020 WL 7134198, at *1. Nothing Plaintiffs allege—or could allege—could lead to the "stunning" and "breathtaking" relief sought. *See, e.g., Id.* (Stating Plaintiffs "seek relief that is stunning in its scope and breathtaking in its reach.")

Second, there has never been a colorable basis for Plaintiffs' attorneys to assert that the Plaintiffs had standing. The Complaint does not allege that Plaintiffs were denied the right to vote—an injury which would be particularized to the individual Plaintiffs—it alleges Plaintiffs' votes were diluted. As numerous courts have concluded, a dilution theory does not satisfy the Article III requirements of causation and "injury in fact." *See, e.g., Georgia Republican Party v. Secy of State of Georgia*, No. 20-14741, 2020 WL 7488181 (11th Cir. Dec. 21, 2020); *Bognet v. Secy Commonwealth of Pennsylvania*, 980 F.3d 336 (3rd Cir. Nov. 13, 2020).

Importantly, as this Court concluded, even if Plaintiffs had met those two elements, the Plaintiffs would still not meet the redressability element, because "an order de-certifying the votes of approximately 2.8 million people would not reverse

the dilution of Plaintiffs' vote." *King*, 2020 WL 7134198, at *9. Counsel for Plaintiffs knew, or should have known, that their clients did not have Article III standing.

Third, there was never a legitimate basis to believe the lawsuit could proceed in the face Eleventh Amendment immunity. The one possibly applicable exception, *Ex Parte Young*, "does not apply, however, to *state law* claims against state officials, regardless of the relief sought." *King*, at *4 (citing *Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89 (1984) and *Ex Parte Young*, 209 U.S. 123 (1908)). As this Court noted, the issue has been long settled by the Supreme Court. *See Pennhurst*, at 106. And, with respect to the § 1983 claim, before this lawsuit was filed "the Michigan Board of State Canvassers had already certified the election results and Governor Whitmer had transmitted the State's slate of electors to the United States Archivist ... [therefore] [t]here is no continuing violation to enjoin." *King*, at *5.

Fourth, there was never a basis to believe this case was not moot as of the date it was filed. As this Court stated, "[t]he Michigan Election Code sets forth detailed procedures for challenging an election, including deadlines for doing so ... Plaintiffs did not avail themselves of the remedies established by the Michigan legislature." *Id.*, at *6. The deadline to pursue any such remedies had passed by the time the Complaint was filed, therefore, "[a]ny avenue for this Court to provide meaningful relief" was foreclosed from the start. *Id.*

Fifth, there was no reason for Plaintiffs’ counsel to believe the case would not be barred by laches. As this Court concluded, the relief sought was barred by laches because “Plaintiffs could have lodged their constitutional challenges much sooner than they did, and certainly not three weeks after Election Day and one week after certification of almost three million votes.” *Id.*, at *7.

Sixth, there was no reason to believe that alleging violations of the Michigan Election Code could support a claim for violation of the Elections & Electors Clauses. As this Court concluded, “Plaintiffs cite to no case—and this Court found none—supporting such an expansive approach.” *Id.*, at *12.

Seventh, there was no basis to believe that the allegations could support an equal protection claim. The equal protection claim “is not supported by any allegation that Defendants’ alleged schemes caused votes for President Trump to be changed to votes for Vice President Biden” with “the closest Plaintiffs get” being a statement by one affiant stating “I *believe* some of these workers were changing votes that had been cast for Donald Trump ...” *Id.* (citing to record). Similarly, “[t]he closest Plaintiffs get to alleging that election machines and software changed votes for President Trump to Vice President Biden in Wayne County is an amalgamation of theories, conjecture, and speculation that such alterations were *possible*.” *Id.* (citing to record). It was patently obvious from the day this lawsuit was filed, that “[w]ith nothing but speculation and conjecture that votes for President Trump were

destroyed, discarded or switched to votes for Vice President Biden, Plaintiffs' equal protection claim fails." *Id.*, at *13 (citation omitted).

V. The Sanctions Which Should be Imposed Pursuant to Rule 11

This lawsuit, and the lawsuits filed in the other states, are not just damaging to our democratic experiment, they are also deeply corrosive to the judicial process itself. When determining what sanctions are appropriate, the Court should consider the nature of each violation, the circumstances in which it was committed, the circumstances of the individuals to be sanctioned, the circumstances of the parties who were adversely affected by the sanctionable conduct, and those sanctioning measures that would suffice to deter that individual from similar violations in the future. *Orlett v. Cincinnati Microwave, Inc.*, 954 F.2d 414 (6th Cir. 1992). Moreover, when considering the type of sanctions to impose, the Court should be mindful that the primary purpose of Rule 11 is to deter future, similar actions by the sanctioned party. *Mann*, 900 F.2d at 962.

Accordingly, this Court should impose monetary sanctions against Plaintiffs and their counsel in an amount sufficient to deter future misconduct. *See, e.g., INVST Financial Group, Inc. v. Chem-Nuclear Systems, Inc.*, 815 F.2d 391, 401 (6th Cir. 1987) (courts have wide discretion in determining amount of monetary sanctions necessary to deter future conduct). Here, an appropriate sanction amount is, at the least, the amount that Plaintiffs' counsel have collected in their fundraising

campaign, directly or through entities they own or control, for their challenges to the 2020 election. They should not be allowed to profit from their misconduct.

It is also appropriate for Plaintiffs and their counsel to pay all costs and attorney fees incurred by Defendants. *See, e.g., id.; see also Roberson v. Norfolk Southern Railway Co.*, 2020 WL 4726937, at *7 (E.D. Mich. Aug. 14, 2020) (awarding costs incurred by Defendant as a sanction against Plaintiff and Plaintiff's counsel for filing frivolous claims unsupported by law). In *Stephenson v. Central Michigan University*, No. 12-10261, 2013 WL 306514, at *14 (E.D. Mich. Jan. 25, 2013), attorney fees and costs were awarded as sanctions after the plaintiff's refusal to withdraw her frivolous claims during the 21-day safe harbor period provided by Rule 11. Sanctions were warranted because the plaintiff "brought a frivolous lawsuit which lacked evidentiary support, and continued to pursue her claims once the lack of support was evident" *Id.* The same applies here. Plaintiffs' claims were frivolous from the start, yet they refused to withdraw them when provided the opportunity. As a result, Defendants should be reimbursed for their attorney fees and costs.

Plaintiffs should also be required to post a bond of \$100,000 to maintain their present (frivolous) appeal and for each additional appeal in this action. *See, e.g., SLS v. Detroit Public Schools*, No. 08-14615, 2012 WL 3489653, at *1 (E.D. Mich. Aug. 15, 2012) (requiring the plaintiff to file \$300,000.00 security bond).

To protect against their future filing of frivolous lawsuits in this District, Plaintiffs and their counsel should be required to obtain pre-clearance by a magistrate judge of any proposed lawsuit. If the magistrate determines that the proposed claims are frivolous or asserted for an improper purpose, the plaintiff[s] would be required to post a bond before filing the proposed action in an amount the magistrate determines is sufficient to protect the defendant[s]. *See, e.g., Feathers v Chevron U.S.A., Inc.*, 141 F.3d 26, 269 (6th Cir. 1998) (“There is nothing unusual about imposing prefiling restrictions in matters with a history of repetitive or vexatious litigation.”); *see also, Ortman v. Thomas*, 99 F.3d 807, 811 (6th Cir. 1996) (permanently enjoining plaintiff from filing action based on particular factual or legal claims without first obtaining certification from a United States Magistrate that the claim is not frivolous).

Much of this brief addresses attorney misconduct, but this is the rare case where the Plaintiffs themselves deserve severe sanctions. Each plaintiff in this case is an experienced Michigan politician; each plaintiff was selected as a candidate to serve as a Trump elector; and, each plaintiff had to know that the Complaint is rife with false allegations. None of the Plaintiffs had any legitimate basis to believe any of the factual assertions in the Complaint, yet they signed on. And, indeed, they signed on to claims they had to know were false, including the numerous claims by their supposed experts.

The Plaintiffs know that Michigan does not have party registration. They know that Michigan does not have “early voting.” They know that the nine counties identified as “outliers” because of larger raw vote shifts are simply some of the largest counties in the State. They know that the State does not mail ballots to voters. They know that it is common in Michigan for voters to vote absentee by appearing at the clerk’s office, signing an application, receiving a ballot and returning it, all on the same day. They know that some absentee ballots are mailed by voters but received too late to be counted. They know that counting fifty ballots eight or ten times (as alleged by Mellissa Carone) would be found and corrected at multiple stages of the tabulation and canvassing process. They know that there could not have been a hand recount in Antrim County before the lawsuit was filed. They know that absentee ballots took longer to tabulate than in-person ballots and that Biden supporters were more likely to vote absentee than Trump supporters. And, these experienced Michigan politicians know that their “experts” based their findings on disregarding all of these facts.

In a case of this magnitude, intended to upend the election of the President of the United States, the Plaintiffs owed this Court the highest degree of due diligence before filing suit. Instead, there are only two possibilities—these six Plaintiffs did not read the Complaint and the expert reports supporting it; or, they did read the Complaint and the faulty expert reports and did not care that false representations

were being made to this Court. Either way, this case cries out for sanctions to deter this behavior in the future.

VI. Plaintiffs' Counsel Should also be Disciplined and Referred to the Chief Judge for Disbarment

In addressing attorney misconduct, the most important sanction here is not a Rule 11 sanction, but a disciplinary action pursuant to the Local Rules. The message must be sent that the Eastern District of Michigan does not tolerate frivolous lawsuits. The out of state attorneys appearing on the pleadings for the Plaintiffs never sought admission to the Eastern District of Michigan and never affirmed their acceptance of our Civility Principles. They have demonstrated their unwillingness to be guided by those principles, and they should be barred from returning to our courts.

E. D. Mich. LR 83.20(a)(1) defines “practice in this court,” to include: “appear in, commence, conduct, prosecute, or defend the action or proceeding; appear in open court; sign a paper; participate in a pretrial conference; represent a client at a deposition; or otherwise practice in this court or before an officer of this court.”²⁵ “When misconduct or allegations of misconduct that, if substantiated, would warrant

²⁵ The Rule requires that a “person practicing in this court must know these rules, including the provisions for sanctions for violating the rules.” Under 83.20(j) an attorney “who practices in this court” is subject to the Michigan Rules of Professional Conduct, “and consents to the jurisdiction of this court and the Michigan Attorney Grievance Commission and Michigan Attorney Discipline Board for purposes of disciplinary proceedings.”

discipline of an attorney” who is a member of the bar or has “practiced in this court” come to the attention of a judicial officer by complaint or otherwise, the judicial officer may refer the matter to: (1) the Michigan Attorney Grievance Commission, (2) another disciplinary authority that has jurisdiction over the attorney, or (3) the chief district judge for institution of disciplinary proceedings ...” LR 83.22.

This case clearly warrants the full imposition of each disciplinary option in the Local Rules. This Court should enter an Order requiring Plaintiffs’ to show cause why they should not be disciplined. LR 83.22(d) authorizes the Court to levy punishments other than suspension or disbarment on a practicing attorney whose conduct has violated the Rules of Professional Conduct, the Local Rules, the Federal Rules of Civil or Bankruptcy Procedure, orders of the Court, or who has engaged in conduct considered to be “unbecoming of a member of the bar of this court.” In *Holling v. U.S.*, 934 F. Supp. 251 (E.D. Mich. 1996), this Court levied monetary sanctions and a formal reprimand against counsel for raising frivolous arguments. “Enforcing Rule 11 is the judge’s duty, albeit unpleasant. A judge would do a disservice by shying away from administering criticism ... where called for.” *Id.*, at 253 n. 6 (quoting *Thomas v. Capital Sec. Servs., Inc.*, 836 F.2d 866, 878 (5th Cir. 1988)). The conduct of Plaintiffs’ counsel in knowingly asserting false and frivolous claims while seeking relief with massive implications for our democracy warrants the strongest possible disciplinary action.

The Court should refer Plaintiffs’ counsel to the Chief Judge of this District for disbarment proceedings and to their state bars for disciplinary actions. It appears that only one of the Plaintiffs’ attorneys in the case—Greg Rohl—is admitted to practice in this District; he should be barred from further practice in the District.²⁶ The other attorneys should be prohibited from obtaining admission to this District or practicing in it in any manner, including, where, as here, they do not seek formal admission, but sign the pleadings.

All Plaintiffs’ attorneys should also be referred for disciplinary proceedings to the Michigan Attorney Grievance Commission as well as to the disciplinary authorities in their home states (Sidney Powell, Texas; L. Lin Wood, Georgia; Emily

²⁶ Greg Rohl is the one attorney for Plaintiffs currently admitted to the Eastern District of Michigan. He has previously been sanctioned for filing a case which was deemed “frivolous from its inception” and ordered to pay over \$200,000 in costs and attorney fees. *See DeGeorge v. Warheit*, 276 Mich. App. 587, 589, 741 N.W.2d 384 (2007). He was then held in criminal contempt and sentenced to jail—affirmed by the Court of Appeals—for attempting to transfer assets to evade payment. *Id.* The Court of Appeals noted that a bankruptcy court had concluded that Rohl “intended to hinder, delay and defraud ... and create a sham transaction to prevent [a creditor] from reaching Rohl’s interest in his law firm through the appointment of a receiver.” *Id.* at 590. Rohl was also suspended by the Michigan Attorney Discipline Board in 2016 based on his convictions for disorderly conduct, in violation of M.C.L. § 750.1671F, “telecommunications service - malicious use, in violation of M.C.L. § 750.540E” and based on his admissions to at least two additional allegations of professional misconduct. Ex. 21. Those prior sanctions and disciplines were insufficient to discourage Mr. Rohl from filing the case at bar, leaving this Court with only one way to stop his behavior—he should be barred from practice in the Eastern District of Michigan.

Newman, Virginia; Julia Haller, D.C.; Brandon Johnson, D.C.; Howard Kleinhendler, New York). Those authorities can determine the appropriate response.

It is only by responding with the harshest possible discipline that these attorneys and those who would follow in their footsteps will learn to respect the integrity of the court system.

CONCLUSION

WHEREFORE, for the foregoing reasons, the City of Detroit respectfully requests that this Court enter an Order sanctioning Plaintiffs and their counsel and initiating disciplinary proceedings in the manner identified in the Motion.

January 5, 2021

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on January 5, 2021, I electronically filed the foregoing document with the Clerk of the Court using the ECF system, which will send notification of such filing to all attorneys of record registered for electronic filing.

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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

<p>TIMOTHY KING, MARIAN ELLEN SHERIDAN, JOHN EARL HAGGARD, CHARLES JAMES RITCHARD, JAMES DAVID HOOPER and DAREN WADE RUBINGH,</p> <p style="text-align: center;">Plaintiffs,</p> <p style="text-align: center;">v.</p> <p>GRETCHEN WHITMER, in her official capacity as Governor of the State of Michigan, JOCELYN BENSON, in her official capacity as Michigan Secretary of State and the Michigan BOARD OF STATE CANVASSERS,</p> <p style="text-align: center;">Defendants</p> <p style="text-align: center;">and</p> <p>CITY OF DETROIT, DEMOCRATIC NATIONAL COMMITTEE and MICHIGAN DEMOCRATIC PARTY,</p> <p style="text-align: center;">Intervenor-Defendants.</p>	<p>No. 2:20-cv-13134</p> <p>Hon. Linda V. Parker</p>
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INDEX OF EXHIBITS TO:

THE CITY OF DETROIT’S MOTION FOR SANCTIONS, FOR
DISCIPLINARY ACTION AND FOR DISBARMENT REFERRAL

1. News article (<https://lawandcrime.com/2020-election/detroit-is-trying-to-get-sidney-powell-fined-banned-from-court-and-referred-to-the-bar-for-filing-the-kraken/>)
2. Official Turnout Results – Detroit, North Muskegon and Zeeland Twp
3. Slip Opinion, *Pearson v. Kemp*, No. 1:20-cv-4809 (N.D. Ga. Dec. 7, 2020)

4. Affidavit filed in Georgia lawsuit
5. Transcript of Telephone Call Between Donald Trump and Brad Raffensperger
6. News article (<https://www.politico.com/news/2020/12/03/trump-pac-fundraising-442775>)
7. Slip Opinion, *Wisconsin Voters Alliance v. Pence*, No. 1:20-cv-03791 (D.C. Jan. 4, 2021)
8. News article (<https://www.law360.com/articles/1339984>)
9. CISA Statement
10. Costantino Opinion and Order
11. Nov. 11, 2020 Affidavit of Christopher Thomas
12. Affidavit of Daniel Baxter
13. Dec. 10, 2020 Affidavit of Christopher Thomas
14. Michigan Department of State Press Release regarding Antrim County
15. News report (<https://www.bridgemi.com/michigan-government/gop-calls-michigan-election-probe-officials-say-their-claims-are-weak>)
16. Antrim County Audit Results
17. News report (https://www.washingtonpost.com/investigations/sidney-powell-spider-spyder-witness/2020/12/11/0cd567e6-3b2a-11eb-98c4-25dc9f4987e8_story.html)
18. News report (<https://www.freep.com/story/news/politics/elections/2020/12/15/trump-fact-check-defect-voting-machines-michigan/3902951001/>)
19. Braynard Survey (as submitted in Johnson)
20. Affidavit of Charles Stewart
21. Rohl Notice of Suspension

EXHIBIT 1



Woman Admits to Hate Crimes After Threatening to 'Bomb' Catholic School That Included Gay Weddings in Alumni Magazine



'Charm City Kings' Actress Allegedly Stabbed Girlfriend to Death in Early Hours of New Year's Day



'Conspiracy Theorist' Pharmacist Who Ruined Hundreds of Moderna Doses Said He Believed COVID-19 Vaccine Could Change DNA: Police



Proud Boy Leader Arrested Hours After Historic Black Church Sues Over Black Lives Matter Sign Destruction



WikiLeaks Founder Julian Assange's Mental Unraveling Drives U.K. Judge to Block Extradition to United States

Detroit Is Trying to Get Sidney Powell Fined, Banned from Court, and Referred to the Bar for Filing the 'Kraken'

ADAM KLASFELD | Dec 15th, 2020, 8:41 pm | 817

Tweet Share Reddit



The City of Detroit wants **Sidney Powell** and her self-styled "Kraken" team to face sanctions for "frivolously undermining 'People's faith in the democratic process and their trust in our government.'"

The Motor City's motion asks a federal judge to fine the lawyers, ban them from practicing in the Eastern District in Michigan and refer them to the Wolverine State's bar for grievance proceedings.

"It's time for this nonsense to end," Detroit's lawyer **David Fink** told Law&Crime in a phone interview.

"The lawyers filing these frivolous cases that undermine democracy must pay a price," Fink added.

Under standard procedures for Rule 11 sanctions, opposing counsel must be granted a 21-day window to withdraw offending litigation before a request is filed in court. The motion has not yet been filed, and it was briefly tweeted out by **Marc Elias**, an attorney from the Washington-based firm Perkins Coie who has regularly intervened in these cases on behalf of the Democratic Party and the Biden campaign.

"Plaintiffs and their counsel understood that the mere filing of a suit (no matter how frivolous) could, without any evidence, raise doubts in the minds of millions of Americans about the legitimacy of the 2020 presidential election," Fink's 9-page motion states. "As this Court noted, 'Plaintiffs ask th[e] Court to ignore the orderly statutory scheme established to challenge elections and to ignore the will of millions of voters.'"

Fink had been quoting a scathing ruling by U.S. District Judge **Linda Parker**, who dismissed Powell's litigation with a resounding invocation of the will of the Michigan electorate: "The People have spoken."

"The right to vote is among the most sacred rights of our democracy and, in turn, uniquely defines us as Americans," Parker noted in her 36-page ruling. "The struggle to achieve the right to vote is one that has been both hard fought and cherished throughout our country's history. Local, state, and federal elections give voice to this right through the ballot. And elections that count each vote celebrate and secure this cherished right."

Powell and her co-counsel **Lin Wood** have filed three other suits like it in Wisconsin, Arizona and Georgia, losing each of them in turn. They claim to be en route to fighting them to the Supreme Court, but there is no sign of a single cert petition on the high court's docket.

Asked about the sanctions motion, Powell replied cryptically: "We are clearly over the target."

On the other hand, every court that has heard her conspiracy theories about a supposed plot involving Dominion voting machines,

Top of Today



Trump Lawyer Rudy Giuliani, in Bizarre Year-End Video, Says Americans 'Foolishly' Anointed Dr. Fauci the 'Greek' or 'Roman God of the Left Wing'



'Conspiracy Theorist' Pharmacist Who Ruined Hundreds of Moderna Doses Said He Believed COVID-19 Vaccine Could Change DNA: Police



Texas GOP Official Says Call for Mitt Romney's Head Was Just a Metaphor About 'Separation' of Romney from Voters



This is the Democratic DA for Atlanta Looking to Investigate Trump's Phone Call with Georgia's Secretary of State



Tom Cotton Fears Supporting Trump on Jan. 6 Will Help Dems Abolish Electoral College, So Trump Is Trying to Abolish Tom Cotton

Tips



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dead Venezuelan strongman **Hugo Chavez**, bipartisan government officials and election workers in counties across the United States found that narrative untethered to reality.

"The key 'factual' allegations from the supposed fact witnesses, some of whom attempt to cloak their identities while attacking democracy, have been debunked," the sanctions motion states. "The allegations about supposed fraud in the processing and tabulation of absentee ballots by the City at the TCF Center have been rejected by every court which has considered them. If any of the claims in this lawsuit had merit, that would have been demonstrated in those cases."

Powell has deployed a parade of anonymous and supposedly confidential witness, including a purported military intelligence expert code-named "Spyder" who later admitted to the *Washington Post* that he was actually an auto mechanic named **Joshua Merritt** with no such work experience.

Though the cases get quickly booted out of court, Detroit and other cities across the country have been forced to defend them and their appeals on the taxpayer dime.

"This abuse of the legal process at the expense of states should not go unpunished," Fink said.

If the sanctions motion moved forward in court, Powell could be forced to post a \$100,000 bond before filing any more appeals of her lawsuit, on top of the other penalties Fink requested.

Even if Powell withdraws her case in response to Detroit's motion, Judge Parker can choose to sanction the "Kraken" team—so-named after the mythical, octopus-like creature—on her own initiative.

Fink has earned distinction for his passionate and indignant effort to turn the tables on attacks on the U.S. democratic process by outgoing President **Donald Trump** and his allies. Their flood of litigation reminded him of Bill Murray's "Groundhog Day," only a deadly serious version that amounted to an effort to bring about what he called a "court-ordered coup d'état." He has sought to sanction pro-Trump lawyers before for a campaign of "lies" and "frivolous" litigation.

Also on Tuesday, Detroit asked a judge in Wayne County to sanction two pro-Trump non-profits behind a state court case that was thrown out because it was backed by "no evidence."

"This is not a legitimate lawsuit; it is a public relations weapon being used to advance the false narrative that our democratic system is broken," Detroit's motion thunders. "This abuse of our legal system deserves the strongest possible sanctions."

Brought by the so-called Election Integrity Fund—whose website describes itself as 501(c)4 formed this year—the case was one of several lawsuits filed across the country by the Thomas More Society. That 501(c)3 named after the Catholic saint and author of "Utopia" counted Rudy Giuliani as a "partner" in a spate of lawsuits dubbed the Amistad Project.

Like "Utopia," none of the lawsuits described factual allegations that another judge found to exist.

"This is not a minor lawsuit; it is a dangerous attack on the integrity of the democratic process for the election of the President of the United States," Fink wrote. "The parties and their attorneys should be held to the highest standards of factual and legal due diligence; instead, they have raised false allegations and pursued unsupportable legal theories. Then, after being corrected by the defendants and the Courts, they refuse to dismiss their lawsuit. Apparently this frivolous lawsuit continues because it serves other, more nefarious, purposes. While the pending complaint cannot possibly result in meaningful relief, it does serve the purpose of conveying to the world the impression that something fraudulent occurred in Detroit's vote count."

Several other pro-Trump non-profits filed and lost meritless lawsuits across the country.

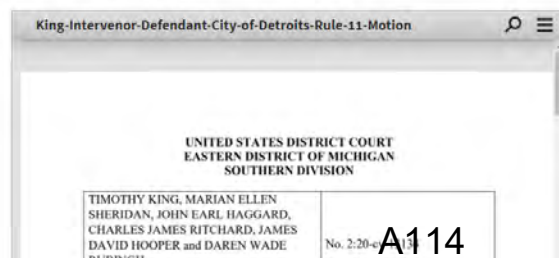


EXHIBIT 2

Election Summary Report November 3, 2020 - General Election **Detroit**, Michigan OFFICIAL RESULTS

Precincts Reported: 637 of 637 (100.00%)

Registered Voters: 257,619 of 506,305 (50.88%)

Ballots Cast: 257,619

Straight Party (Vote for 1)

Precincts Reported: 637 of 637 (100.00%)

	Election Day	AV Counting	Total	
Times Cast	83,235	174,384	257,619 / 506,305	50.88%
Candidate	Party	Election Day	AV Counting Board	Total
Democrat Party	DEM	61,710	135,381	197,091 94.99%
Republican Party	REP	3,787	3,448	7,235 3.49%
Libertarian Party	LIB	310	292	602 0.29%
U.S. Taxpayers Party	UST	378	271	649 0.31%
Working Class Party	WCP	610	550	1,160 0.56%
Green Party	GRN	218	219	437 0.21%
Natural Law Party	NLP	183	131	314 0.15%
Total Votes		67,196	140,292	207,488
	Election Day	AV Counting Board	Total	
Unresolved Write-In	0	0	0	



Precinct Results**Muskegon County, Michigan****Official Results**

Election Night Results

General Election

Registered Voters

96730 of 148377 = 65.19%

Precincts Reporting

75 of 75 = 100.00%

Run Time 5:55 PM
Run Date 11/13/2020

11/3/2020

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City of North Muskegon, Precinct 1

1,178 of 1,602 registered voters = 73.53%

United States Senator - Vote for not more than 1

Choice	Party	Absentee Voting		Election Day Voting		Total	
Gary Peters	DEM	391	58.53%	160	32.79%	551	47.66%
John James	REP	266	39.82%	314	64.34%	580	50.17%
Valerie L. Willis	UST	3	0.45%	8	1.64%	11	0.95%
Marcia Squier	GRN	5	0.75%	4	0.82%	9	0.78%
Doug Dern	NLP	3	0.45%	2	0.41%	5	0.43%
Leonard Paul Gadzinski (W)		0	0.00%	0	0.00%	0	0.00%
Rober william Carr (W)		0	0.00%	0	0.00%	0	0.00%
Cast Votes:		668	100.00%	488	100.00%	1,156	100.00%
Overvotes:		0		1		1	

Representative in Congress 2nd District - Vote for not more than 1

Choice	Party	Absentee Voting		Election Day Voting		Total	
Bryan Berghoef	DEM	368	55.59%	145	30.15%	513	44.88%
Bill Huizenga	REP	281	42.45%	321	66.74%	602	52.67%
Max Riekse	LIB	8	1.21%	9	1.87%	17	1.49%
Gerald T. VanSickle	UST	0	0.00%	4	0.83%	4	0.35%
Jean-Michel Creviere	GRN	5	0.76%	2	0.42%	7	0.61%
Cast Votes:		662	100.00%	481	100.00%	1,143	100.00%
Overvotes:		2		0		2	

Representative in State Legislature 92nd District - Vote for not more than 1

Choice	Party	Absentee Voting		Election Day Voting		Total	
Terry J. Sabo	DEM	452	68.69%	206	43.64%	658	58.23%
Michael L. Hauelsen	REP	206	31.31%	266	56.36%	472	41.77%
Cast Votes:		658	100.00%	472	100.00%	1,130	100.00%
Overvotes:		0		0		0	

Precinct Results**Muskegon County, Michigan****Official Results**

Election Night Results

General Election

Registered Voters

96730 of 148377 = 65.19%

Precincts Reporting

75 of 75 = 100.00%

Run Time 5:55 PM
Run Date 11/13/2020

11/3/2020

Page 467

City of North Muskegon, Precinct 2

1,470 of 1,788 registered voters = 82.21%

Straight Party Ticket - Vote for not more than 1

Choice	Party	Absentee Voting		Election Day Voting		Total	
Democratic Party	DEM	209	62.20%	86	35.54%	295	51.04%
Republican Party	REP	125	37.20%	153	63.22%	278	48.10%
Libertarian Party	LIB	2	0.60%	1	0.41%	3	0.52%
US Taxpayers Party	UST	0	0.00%	1	0.41%	1	0.17%
Working Class Party	WCP	0	0.00%	1	0.41%	1	0.17%
Green Party	GRN	0	0.00%	0	0.00%	0	0.00%
Natural Law Party	NLP	0	0.00%	0	0.00%	0	0.00%
Cast Votes:		336	100.00%	242	100.00%	578	100.00%
Overvotes:		0		1		1	

Electors of President and Vice-President of the United States - Vote for not more than 1

Choice	Party	Absentee Voting		Election Day Voting		Total	
Joseph R. Biden Kamala D. Harris	DEM	491	57.23%	208	34.55%	699	47.88%
Donald J. Trump Michael R. Pence	REP	350	40.79%	381	63.29%	731	50.07%
Jo Jorgensen Jeremy Cohen	LIB	17	1.98%	9	1.50%	26	1.78%
Don Blankenship William Mohr	UST	0	0.00%	0	0.00%	0	0.00%
Howie Hawkins Angela Walker	GRN	0	0.00%	3	0.50%	3	0.21%
Rocky De La Fuente Darcy Richardson	NLP	0	0.00%	1	0.17%	1	0.07%
Brian T. Carrol (W)		0	0.00%	0	0.00%	0	0.00%
Jade Simmons (W)		0	0.00%	0	0.00%	0	0.00%
Kasey Wells (W)		0	0.00%	0	0.00%	0	0.00%
Tara Renee Hunter (W)		0	0.00%	0	0.00%	0	0.00%
Tom Hoefling (W)		0	0.00%	0	0.00%	0	0.00%
Cast Votes:		858	100.00%	602	100.00%	1,460	100.00%
Overvotes:		0		1		1	

Precinct Report**Ottawa County, Michigan****Official Results**

Ottawa County Canvass of Votes

General Election

Registered Voters

169960 of 221421 = 76.76%

Precincts Reporting

105 of 105 = 100.00%

Run Time 4:20 PM
Run Date 11/11/2020

11/3/2020

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Zeeland Charter Township, Precinct 1

1,580 of 2,122 registered voters = 74.46%

Straight Party Ticket - Vote for not more than 1

Choice	Party	Election Day Voting		Absentee Voting		Total	
Democratic Party	DEM	96	15.92%	155	33.55%	251	23.57%
Republican Party	REP	500	82.92%	297	64.29%	797	74.84%
Libertarian Party	LIB	2	0.33%	3	0.65%	5	0.47%
U.S. Taxpayers Party	UST	1	0.17%	0	0.00%	1	0.09%
Working Class Party	WCP	1	0.17%	4	0.87%	5	0.47%
Green Party	GRN	1	0.17%	3	0.65%	4	0.38%
Natural Law Party	NLP	2	0.33%	0	0.00%	2	0.19%
Cast Votes:		603	100.00%	462	100.00%	1,065	100.00%
Undervotes:		297		218		515	
Overvotes:		0		0		0	

Electors of President and Vice-President of the United States - Vote for not more than 1

Choice	Party	Election Day Voting		Absentee Voting		Total	
Joseph R. Biden Kamala D. Harris	DEM	177	19.82%	267	39.50%	444	28.30%
Donald J. Trump Michael R. Pence	REP	696	77.94%	395	58.43%	1,091	69.53%
Jo Jorgensen Jeremy Cohen	LIB	13	1.46%	7	1.04%	20	1.27%
Don Blankenship William Mohr	UST	2	0.22%	3	0.44%	5	0.32%
Howie Hawkins Angela Walker	GRN	3	0.34%	4	0.59%	7	0.45%
Rocky De La Fuente Darcy Richardson	NLP	1	0.11%	0	0.00%	1	0.06%
Brian T. Carroll (W)		1	0.11%	0	0.00%	1	0.06%
Jade Simmons (W)		0	0.00%	0	0.00%	0	0.00%
Kasey Wells (W)		0	0.00%	0	0.00%	0	0.00%
Tara Renee Hunter (W)		0	0.00%	0	0.00%	0	0.00%
Tom Hoefling (W)		0	0.00%	0	0.00%	0	0.00%
Cast Votes:		893	100.00%	676	100.00%	1,569	100.00%
Undervotes:		6		4		10	
Overvotes:		1		0		1	

Precinct Report**Ottawa County, Michigan****Official Results**

Ottawa County Canvass of Votes

General Election

Registered Voters

169960 of 221421 = 76.76%

Precincts Reporting

105 of 105 = 100.00%

Run Time 4:20 PM
Run Date 11/11/2020

11/3/2020

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Zeeland Charter Township, Precinct 2

2,110 of 2,626 registered voters = 80.35%

Straight Party Ticket - Vote for not more than 1

Choice	Party	Election Day Voting		Absentee Voting		Total	
Democratic Party	DEM	75	15.86%	185	21.64%	260	19.58%
Republican Party	REP	389	82.24%	666	77.89%	1,055	79.44%
Libertarian Party	LIB	7	1.48%	4	0.47%	11	0.83%
U.S. Taxpayers Party	UST	0	0.00%	0	0.00%	0	0.00%
Working Class Party	WCP	1	0.21%	0	0.00%	1	0.08%
Green Party	GRN	1	0.21%	0	0.00%	1	0.08%
Natural Law Party	NLP	0	0.00%	0	0.00%	0	0.00%
Cast Votes:		473	100.00%	855	100.00%	1,328	100.00%
Undervotes:		298		484		782	
Overvotes:		0		0		0	

Electors of President and Vice-President of the United States - Vote for not more than 1

Choice	Party	Election Day Voting		Absentee Voting		Total	
Joseph R. Biden Kamala D. Harris	DEM	157	20.60%	464	34.97%	621	29.73%
Donald J. Trump Michael R. Pence	REP	584	76.64%	841	63.38%	1,425	68.21%
Jo Jorgensen Jeremy Cohen	LIB	20	2.62%	17	1.28%	37	1.77%
Don Blankenship William Mohr	UST	0	0.00%	3	0.23%	3	0.14%
Howie Hawkins Angela Walker	GRN	1	0.13%	2	0.15%	3	0.14%
Rocky De La Fuente Darcy Richardson	NLP	0	0.00%	0	0.00%	0	0.00%
Brian T. Carroll (W)		0	0.00%	0	0.00%	0	0.00%
Jade Simmons (W)		0	0.00%	0	0.00%	0	0.00%
Kasey Wells (W)		0	0.00%	0	0.00%	0	0.00%
Tara Renee Hunter (W)		0	0.00%	0	0.00%	0	0.00%
Tom Hoefling (W)		0	0.00%	0	0.00%	0	0.00%
Cast Votes:		762	100.00%	1,327	100.00%	2,089	100.00%
Undervotes:		9		12		21	
Overvotes:		0		0		0	

Precinct Report**Ottawa County, Michigan****Official Results**

Ottawa County Canvass of Votes

General Election

Registered Voters

169960 of 221421 = 76.76%

Precincts Reporting

105 of 105 = 100.00%

Run Time 4:20 PM
Run Date 11/11/2020

11/3/2020

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Zeeland Charter Township, Precinct 3

2,046 of 2,531 registered voters = 80.84%

Straight Party Ticket - Vote for not more than 1

Choice	Party	Election Day Voting		Absentee Voting		Total	
Democratic Party	DEM	72	10.94%	179	27.33%	251	19.12%
Republican Party	REP	581	88.30%	471	71.91%	1,052	80.12%
Libertarian Party	LIB	4	0.61%	3	0.46%	7	0.53%
U.S. Taxpayers Party	UST	0	0.00%	0	0.00%	0	0.00%
Working Class Party	WCP	0	0.00%	1	0.15%	1	0.08%
Green Party	GRN	1	0.15%	1	0.15%	2	0.15%
Natural Law Party	NLP	0	0.00%	0	0.00%	0	0.00%
Cast Votes:		658	100.00%	655	100.00%	1,313	100.00%
Undervotes:		365		366		731	
Overvotes:		2		0		2	

Electors of President and Vice-President of the United States - Vote for not more than 1

Choice	Party	Election Day Voting		Absentee Voting		Total	
Joseph R. Biden Kamala D. Harris	DEM	176	17.27%	387	37.98%	563	27.63%
Donald J. Trump Michael R. Pence	REP	831	81.55%	618	60.65%	1,449	71.10%
Jo Jorgensen Jeremy Cohen	LIB	9	0.88%	6	0.59%	15	0.74%
Don Blankenship William Mohr	UST	0	0.00%	2	0.20%	2	0.10%
Howie Hawkins Angela Walker	GRN	2	0.20%	2	0.20%	4	0.20%
Rocky De La Fuente Darcy Richardson	NLP	1	0.10%	0	0.00%	1	0.05%
Brian T. Carroll (W)		0	0.00%	4	0.39%	4	0.20%
Jade Simmons (W)		0	0.00%	0	0.00%	0	0.00%
Kasey Wells (W)		0	0.00%	0	0.00%	0	0.00%
Tara Renee Hunter (W)		0	0.00%	0	0.00%	0	0.00%
Tom Hoefling (W)		0	0.00%	0	0.00%	0	0.00%
Cast Votes:		1,019	100.00%	1,019	100.00%	2,038	100.00%
Undervotes:		6		2		8	
Overvotes:		0		0		0	

Precinct Report**Ottawa County, Michigan****Official Results**

Ottawa County Canvass of Votes

General Election

Registered Voters

169960 of 221421 = 76.76%

Precincts Reporting

105 of 105 = 100.00%

Run Time 4:20 PM
Run Date 11/11/2020

11/3/2020

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Zeeland Charter Township, Precinct 4

1,239 of 1,461 registered voters = 84.80%

Straight Party Ticket - Vote for not more than 1

Choice	Party	Election Day Voting		Absentee Voting		Total	
Democratic Party	DEM	41	9.60%	91	22.47%	132	15.87%
Republican Party	REP	375	87.82%	313	77.28%	688	82.69%
Libertarian Party	LIB	6	1.41%	1	0.25%	7	0.84%
U.S. Taxpayers Party	UST	1	0.23%	0	0.00%	1	0.12%
Working Class Party	WCP	0	0.00%	0	0.00%	0	0.00%
Green Party	GRN	4	0.94%	0	0.00%	4	0.48%
Natural Law Party	NLP	0	0.00%	0	0.00%	0	0.00%
Cast Votes:		427	100.00%	405	100.00%	832	100.00%
Undervotes:		221		186		407	
Overvotes:		0		0		0	

Electors of President and Vice-President of the United States - Vote for not more than 1

Choice	Party	Election Day Voting		Absentee Voting		Total	
Joseph R. Biden Kamala D. Harris	DEM	102	15.84%	199	33.90%	301	24.45%
Donald J. Trump Michael R. Pence	REP	525	81.52%	379	64.57%	904	73.44%
Jo Jorgensen Jeremy Cohen	LIB	11	1.71%	8	1.36%	19	1.54%
Don Blankenship William Mohr	UST	0	0.00%	0	0.00%	0	0.00%
Howie Hawkins Angela Walker	GRN	5	0.78%	1	0.17%	6	0.49%
Rocky De La Fuente Darcy Richardson	NLP	1	0.16%	0	0.00%	1	0.08%
Brian T. Carroll (W)		0	0.00%	0	0.00%	0	0.00%
Jade Simmons (W)		0	0.00%	0	0.00%	0	0.00%
Kasey Wells (W)		0	0.00%	0	0.00%	0	0.00%
Tara Renee Hunter (W)		0	0.00%	0	0.00%	0	0.00%
Tom Hoefling (W)		0	0.00%	0	0.00%	0	0.00%
Cast Votes:		644	100.00%	587	100.00%	1,231	100.00%
Undervotes:		4		4		8	
Overvotes:		0		0		0	

EXHIBIT 3

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

**1:20-cv-04809-TCB
Pearson et al v. Kemp et al
Honorable Timothy C. Batten, Sr.**

Minute Sheet for proceedings held In Open Court on 12/07/2020.

TIME COURT COMMENCED: 10:00 A.M.

TIME COURT CONCLUDED: 11:06 A.M.

TIME IN COURT: 1:06

OFFICE LOCATION: Atlanta

COURT REPORTER: Lori Burgess

DEPUTY CLERK: Uzma Wiggins

ATTORNEY(S)

PRESENT:

Joshua Belinfante representing Brad Raffensperger
Joshua Belinfante representing Brian Kemp
Joshua Belinfante representing David J. Worley
Joshua Belinfante representing Matthew Mashburn
Joshua Belinfante representing Rebecca N. Sullivan
Amanda Callais representing DCCC
Amanda Callais representing DSCC
Amanda Callais representing Democratic Party of Georgia, Inc.
Julia Haller representing Brian Jay Van Gundy
Julia Haller representing Carolyn Hall Fisher
Julia Haller representing Cathleen Alston Latham
Julia Haller representing Coreco Jaqan Pearson
Julia Haller representing Gloria Kay Godwin
Julia Haller representing James Kenneth Carroll
Julia Haller representing Vikki Townsend Consiglio
Harry MacDougald representing Brian Jay Van Gundy
Harry MacDougald representing Carolyn Hall Fisher
Harry MacDougald representing Cathleen Alston Latham
Harry MacDougald representing Coreco Jaqan Pearson
Harry MacDougald representing Gloria Kay Godwin
Harry MacDougald representing James Kenneth Carroll
Harry MacDougald representing Vikki Townsend Consiglio
Charlene McGowan representing Anh Le
Charlene McGowan representing Brad Raffensperger
Charlene McGowan representing Brian Kemp
Charlene McGowan representing David J. Worley

Charlene McGowan representing Matthew Mashburn
Charlene McGowan representing Rebecca N. Sullivan
Carey Miller representing Anh Le
Carey Miller representing Brad Raffensperger
Carey Miller representing Brian Kemp
Carey Miller representing David J. Worley
Carey Miller representing Matthew Mashburn
Carey Miller representing Rebecca N. Sullivan
Sidney Powell representing Brian Jay Van Gundy
Sidney Powell representing Carolyn Hall Fisher
Sidney Powell representing Cathleen Alston Latham
Sidney Powell representing Coreco Jaqan Pearson
Sidney Powell representing Gloria Kay Godwin
Sidney Powell representing James Kenneth Carroll
Sidney Powell representing Vikki Townsend Consiglio
** Abigail Frye

PROCEEDING
CATEGORY:

Motion Hearing(PI or TRO Hearing-Evidentiary);

MOTIONS RULED
ON:

[43]Motion to Dismiss GRANTED
[63]Motion to Dismiss GRANTED

MINUTE TEXT:

Defendants' motions are GRANTED. TRO is DISSOLVED. Case is
DISMISSED. Clerk shall close the case.

HEARING STATUS:

Hearing Concluded

EXHIBIT 4

Affidavit of Russell James Ramsland, Jr.

1. My name is Russell James Ramsland, Jr., and I am a resident of Dallas County, Texas.
2. I am part of the management team of Allied Security Operations Group, LLC, (ASOG). ASOG provides a range of security services, but has a particular emphasis on cyber security, OSINT and PEN testing of networks. We employ a wide variety of cyber and cyber forensic analysts. We have patents pending in a variety of applications from novel network security applications to SCADA protection and safe browsing solutions for the dark and deep web.
3. In November 2018, ASOG analyzed audit logs for the central tabulation server of the ES&S Election Management System (EMS) for the Dallas, Texas, General Election of 2018. Our team was surprised at the enormous number of error messages that should not have been there. They numbered in the thousands, and the operator ignored and overrode all of them. This led to various legal challenges in that election, and we provided evidence and analysis in some of them.
4. As a result, ASOG initiated an 18-month study into the major EMS providers in the United States, among which is Dominion/Premier that provides EMS services in Michigan. We did thorough background research of the literature and discovered there is quite a history from both Democrat and Republican stakeholders in the vulnerability of Dominion. The State of Texas rejected Dominion/Premier's certification for use there due to vulnerabilities. Next, we began doing PEN testing into the vulnerabilities described in the literature and confirmed for ourselves that in many cases, vulnerabilities already identified were still left open to exploit. We also noticed a striking similarity between the approach to software and EMS systems of ES&S and Dominion/Premier. This was logical since they share a common ancestry in the Diebold voting system.
5. Over the past three decades, almost all of the states have shifted from a relatively low-technology format to a high-technology format that relies heavily on a handful of private services companies. These private companies supply the hardware and software, often handle voter registrations, hold the voter records, partially manage the elections, program counting the votes and report the outcomes. Michigan is one of those states.
6. These systems contain a large number of vulnerabilities to hacking and tampering, both at the front end where Americans cast their votes, and at the back end where the votes are stored, tabulated, and reported. These vulnerabilities are well known, and experts in the field have written extensively about them.
7. Dominion/Premier ("Dominion") is a privately held United States company that provides election technologies and services to government jurisdictions. Numerous counties across the state of Michigan use the Dominion/Premier Election

Management System. The Dominion/Premier system has both options to be an electronic, paperless voting system with no permanent record of the voter's choices, paper ballot based system or hybrid of those two.

8. The Dominion/Premier Election Management System's central accumulator does not include a protected real-time audit log that maintains the date and time stamps of all significant election events. Key components of the system utilize unprotected logs. Essentially this allows an attacker the opportunity to arbitrarily add, modify, or remove log entries, causing the machine to log election events. When a log is unprotected, and can be altered, it can no longer serve the purpose of an audit log.

9. My colleagues and I at ASOG have studied the information that is publicly available concerning the November 3, 2020, election results. Based on the significant anomalies and red flags that we have observed, we believe there is a significant probability that election results have been manipulated within the Dominion/Premier system in Michigan. Dr. Andrew Appel, Princeton Professor of Computer Science and Election Security Expert has observed, with reference to Dominion Voting machines, "I figured out how to make a slightly different computer program that just before the polls were closed it switches some votes around from one candidate to another. I wrote that computer program into a memory chip and now to hack a voting machine you just need 7 minutes alone with it and a screwdriver." Some of those red flags are listed below. Until a thorough analysis is conducted, it will be impossible to know for certain.

10. One red flag has been seen in Antium County, Michigan. In Michigan we have seen reports of 6,000 votes in Antium County that were switched from Donald Trump to Joe Biden and were only discoverable through a hand counted manual recount. While the first reports have suggested that it was due to a glitch after an update, it was recanted and later attributed to "clerical error." This change is important because if it was not due to clerical error, but due to a "glitch" emanating from an update, the system would be required to be "re-certified" according to Dominion officials. This was not done. We are skeptical of these assurances as we know firsthand this has many other plausible explanations and a full investigation of this event needs to be conducted as there are a reported 47 other counties using essentially the same system in Michigan. It is our belief (based on the information we have at this point) that the problem most likely did occur due to a glitch where an update file didn't properly synchronize the ballot barcode generation and reading portions of the system. If that is indeed the case, there is no reason to assume this would be an isolated error. This glitch would cause entire ballot uploads to read as zero in the tabulation batch, which we also observed happening in the data (provisional ballots were accepted properly but in-person ballots were being rejected (zeroed out and/or changed (flipped))). Because of the highly vulnerable nature of these systems to error and exploits, it is quite possible that some, or all of these other counties may have the same problem.

11. Another statistical red flag is evident in the number of votes cast compared to the number of voters in some precincts. A preliminary analysis using data obtained

from the Michigan Secretary of State pinpoints a statistical anomaly so far outside of every statistical norm as to be virtually impossible. There are a stunning 3,276 precincts where the Presidential Votes Cast compared to the Estimated Voters based on Reported Statistics ranges from 84% to 350%. **Normalizing the Turnout Percentage of this grouping to 80%, (still way above the national average for turnout percentage), reveals 431,954 excess ballots allegedly processed.** There were at least 19 precincts where the Presidential Votes Cast compared to the Estimated Voters based on Reported Statistics exceeded 100%.

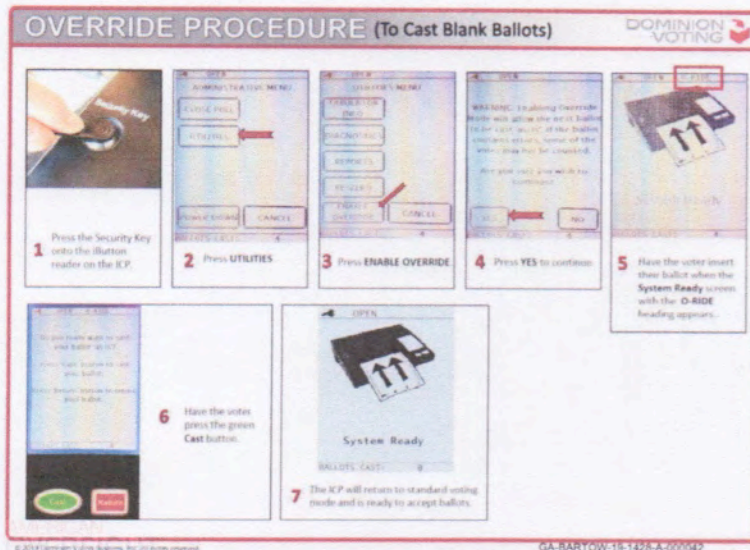
Precinct Township	Votes/SOS Est. Voters
BENVILLE TWP	350%
MONTICELLO P-1	144%
MONTICELLO P-2	138%
ALBERTVILLE P-2	138%
ALBERTVILLE P-1	136%
BRADFORD TWP.	104%
VELDT TWP.	104%
CHAMPION TWP	104%
KENT CITY	103%
WANGER TWP.	102%
KANDIYOHI TWP.	102%
LAKE LILLIAN TWP.	102%
HOKAH TWP.	102%
HOUSTON TWP.	101%
HILL RIVER TWP.	101%
SUNNYSIDE TWP.	101%
BROWNSVILLE TWP.	101%
OSLO	101%
EYOTA TWP.	101%

This pattern strongly suggests that the additive algorithm (a feature enhancement referred to as “ranked choice voting algorithm” or “RCV”) was activated in the code as shown in the Democracy Suite EMS Results Tally and Reporting User Guide, Chapter 11, Settings 11.2.2. It reads in part, “**RCV METHOD: This will select the specific method of tabulating RCV votes to elect a winner.**” For instance, blank ballots can be entered into the system and treated as “write-ins.” Then the operator can enter an allocation of the write-ins among candidates as he wishes. The final result then awards the winner based on “points” the algorithm in the compute, not actual votes. The fact that we observed raw vote data that includes decimal places suggests strongly that this was, in fact, done. Otherwise, votes would be solely represented as whole numbers. Below is an excerpt from Dominion’s direct feed to news outlets showing actual calculated votes with decimals.

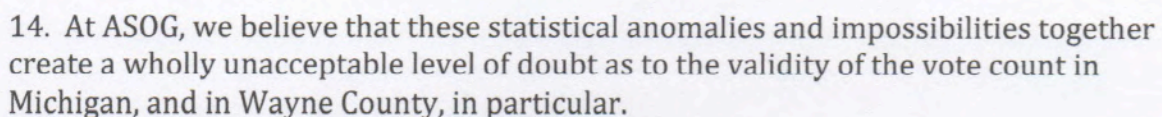
state	timestamp	eevp	trump	biden	TV	BV
michigan	2020-11-04T06:54:48Z	64	0.534	0.448	1925865.66	1615707.52
michigan	2020-11-04T06:56:47Z	64	0.534	0.448	1930247.664	1619383.808
michigan	2020-11-04T06:58:47Z	64	0.534	0.448	1931413.386	1620361.792
michigan	2020-11-04T07:00:37Z	64	0.533	0.45	1941758.975	1639383.75
michigan	2020-11-04T07:01:46Z	64	0.533	0.45	1945297.562	1642371.3
michigan	2020-11-04T07:03:17Z	65	0.533	0.45	1948885.185	1645400.25

12. Yet another statistical red flag in Michigan concerns the dramatic shift in votes between the two major party candidates as the tabulation of the turnout increased. A significant irregularity surfaces. Until the tabulated voter turnout reached approximately 83%, Trump was generally winning between 55% and 60% of every turnout point. Then, after the counting was closed at 2:00 am, the situation dramatically reversed itself, starting with a series of impossible spikes shortly after counting was supposed to have stopped. The several spikes cast solely for Biden could easily be produced in the Dominion system by pre-loading batches of blank ballots in files such as Write-Ins, then casting them all for Biden using the Override Procedure (to cast Write-In ballots) that is available to the operator of the system. A few batches of blank ballots could easily produce a reversal this extreme, a reversal that is almost as statistically difficult to explain as is the impossibility of the votes cast to number of voters described in Paragraph 11 above.

Dominion also has a "Blank Ballot Override" function. Essentially a save for later bucket that can be manually populated later.



13. The final red flag is perhaps the greatest. Something occurred in Michigan that is physically impossible, indicating the results were manipulated on election night within the EMS. The event as reflected in the data are the 4 spikes totaling 384,733



15. If ASOG, or any other team of experts with the equivalent qualifications and experience, could be permitted to analyze the raw data produced during the course of the election, as well as the audit logs that the Dominion system generates, we would likely be able to determine whether or not any fraudulent manipulation of the election results occurred within the Dominion Election Management System. These audit logs are in the possession of Dominion.

16. However, there are several deficiencies with the Dominion audit logs: (1) because the logs are “voluntary” logs, they do not enforce the logging of all actions; (2) the logs can be altered by the people who are operating the system; and (3) the logs are not synchronized. Because of these deficiencies, it is of critical importance that all of the daily full records of raw data produced during every step of the election process also be made available for analysis (in addition to the audit logs), so that gaps in the audit logs may be bridged to the best extent possible. This raw data, which is in Dominion’s possession, should be individual and cumulative.

17. Wayne County uses Dominion Equipment, where 46 out of 47 precincts/townships display a highly unlikely 96%+ as the number of votes cast, using the Secretary of State’s number of voters in the precinct/township; and 25 of those 47 precincts/townships show 100% turnout.

Precinct Township	Votes/SOS Est. Voters
SPRUCE GROVE TWP	100%
ATLANTA TWP	100%
RUNEBERG TWP	100%
WOLF LAKE TWP	100%
HEIGHT OF LAND TWP	100%
EAGLE VIEW TWP	100%
WOLF LAKE	100%
SHELL LAKE TWP	100%
SAVANNAH TWP	100%
CUBA TWP	100%
FOREST TWP	100%
RICEVILLE TWP	100%
WALWORTH TWP	100%
OGEMA	100%
BURLINGTON TWP	100%
RICHWOOD TWP	100%
AUDUBON	100%
LAKE EUNICE TWP	100%
OSAGE TWP	100%
DETROIT LAKES W2 P1	100%
CORMORANT TWP	100%
LAKE VIEW TWP	100%

AUDUBON TWP	100%
DETROIT LAKES W3 P1	100%
FRAZEE	100%

This pattern strongly suggests both the additive algorithm (a feature enhancement referred to as “ranked choice voting algorithm” or “RCV”) was activated in the code as discussed in paragraph 11 above, as well as batch processing of blank votes, as outlined in Paragraphs 12 and 13 above, where 74,119 more ballots were cast than the capacity to cast them during the spike.

18. In order to analyze the data and determine the cause of these anomalies, ASOG would need Administrator logs for the EMS Election Event Designer (EED) and EMS Results Tally & Reporting (RTR) Client Applications. The following would be required from Premier:

XML and XSLT logs for the:

- Tabulators
- Result Pair Resolution
- Result Files
- Provisional Votes
- RTM Logs
- Ranked Profiles and entire change history Audit Trail logs
- Rejected Ballots Report by Reason Code

**Identity of everyone accessing the domain name
Admin.enr.dominionvoting.com and**

- Windows software log,
- Windows event log and
- Windows security log of the server itself that is hosted at Admin.enr.dominionvoting.com.
- Access logs to their full extent and DNS logs.
- Internal admin.enr.dominionvoting.com logs
- Ranked Contests and entire change history Audit Trail logs

FTP Transfer Points Log

19. In order to evaluate the raw data of the election, the following records would be required from Dominion.

- Daily and Cumulative Voter Records for those who voted with sufficient definition to determine:
 - Voters name and Registered Voting address
 - Address to for correspondence
 - D.O.B.
 - Voter ID number
 - How Voted (mail, in-person early, in person Election Day)
 - Where Voted (if applicable)

AUDUBON TWP	100%
DETROIT LAKES W3 P1	100%
FRAZEE	100%

This pattern strongly suggests both the additive algorithm (a feature enhancement referred to as “ranked choice voting algorithm” or “RCV”) was activated in the code as discussed in paragraph 11 above, as well as batch processing of blank votes, as outlined in Paragraphs 12 and 13 above, where 74,119 more ballots were cast than the capacity to cast them during the spike.

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 - Voter ID number
 - How Voted (mail, in-person early, in person Election Day)
 - Where Voted (if applicable)

Date voted (if applicable)
Party affiliation (if recorded)
Ballot by mail Request Date
Ballot by mail sent date
Ballot by mail voted date (if applicable)
Ballot cancelled date (if applicable)


- .RAW, HTML, XHTML and SVG files (Ballot Images)

20. Any removable media (such as thumbdrives, USB, memory cards, PCMCIA cards, etc.) used to transfer ballots to central counting from voting locations.

21. Access or control of ALL routers, tabulators or combinations thereof (some routers are inside the tabulator case) in order to garner the system logs. At the same time, the public IP of the router should be obtained.

22. Any key, authorization key & yubikey

Further affiant sayeth naught.


Russell James Ramsland, Jr.

11/17/2020
Date

Sworn before me on _____

Notary public:

EXHIBIT 5

The Washington Post

Democracy Dies in Darkness

Here's the full transcript and audio of the call between Trump and Raffensperger

By **Amy Gardner** and **Paulina Firozi**

Jan. 3, 2021 at 4:15 p.m. EST



About 3 p.m. Saturday, President Trump held an hour-long call with Brad Raffensperger, Georgia's secretary of state, in which he repeatedly urged him to alter the outcome of the presidential vote in the state. He was joined on the call by White House Chief of Staff Mark Meadows and several lawyers, including longtime conservative attorney Cleta Mitchell and Georgia-based attorney Kurt Hilbert. Raffensperger was joined by his office's general counsel, Ryan Germany, and Deputy Secretary of State Jordan Fuchs.

The Washington Post obtained a copy of a recording of the call. This transcript has been edited to remove the name of an individual about whom Trump makes unsubstantiated claims.

Meadows: Okay. Alright. Mr. President, everyone is on the line. This is Mark Meadows, the chief of staff. Just so we all are aware. On the line is secretary of state and two other individuals. Jordan and Mr. Germany with him. You also have the attorneys that represent the president, Kurt and Alex and Cleta Mitchell — who is not the attorney of record but has been involved — myself and then the president. So Mr. President, I'll turn it over to you.

Trump: Okay, thank you very much. Hello Brad and Ryan and everybody. We appreciate the time and the call. So we've spent a lot of time on this, and if we could just go over some of the numbers, I think it's pretty clear that we won. We won very substantially in Georgia. You even see it by rally size, frankly. We'd be getting 25-30,000 people a rally, and the competition would get less than 100 people. And it never made sense.

But we have a number of things. We have at least 2 or 3 — anywhere from 250 to 300,000 ballots were dropped mysteriously into the rolls. Much of that had to do with Fulton County, which hasn't been checked. We think that if you check the signatures — a real check of the signatures going back in Fulton County — you'll find at least a couple of hundred thousand of forged signatures of people who have been forged. And we are quite sure that's going to happen.

Another tremendous number. We're going to have an accurate number over the next two days with certified accountants. But an accurate number will be given, but it's in the 50s of thousands — and that's people that went to vote and they were told they can't vote because they've already been voted for. And it's a very sad thing. They walked out complaining. But the number's large. We'll have it for you. But it's much more than the number of 11,779 that's — the current margin is only 11,779. Brad, I think you agree with that, right? That's something I think everyone — at least that's a number that everyone agrees on.

But that's the difference in the votes. But we've had hundreds of thousands of ballots that we're able to actually — we'll get you a pretty accurate number. You don't need much of a number because the number that in theory I lost by, the margin would be 11,779. But you also have a substantial numbers of people, thousands and thousands, who went to the voting place on November 3, were told they couldn't vote, were told they couldn't vote because a ballot had been put on their name. And you know that's very, very, very, very sad.

We had, I believe it's about 4,502 voters who voted but who weren't on the voter registration list, so it's 4,502 who voted, but they weren't on the voter registration roll, which they had to be. You had 18,325 vacant address voters. The address was vacant, and they're not allowed to be counted. That's 18,325.

Smaller number — you had 904 who only voted where they had just a P.O. — a post office box number — and they had a post office box number, and that's not allowed. We had at least 18,000 — that's on tape, we had them counted very painstakingly — 18,000 voters having to do with [name]. She's a vote scammer, a professional vote scammer and hustler [name]. That was the tape that's been shown all over the world that makes everybody look bad, you, me and everybody else.

Where they got — number one they said very clearly and it's been reported that they said there was a major water main break. Everybody fled the area. And then they came back, [name] and her daughter and a few people. There were no Republican poll watchers. Actually, there were no Democrat poll watchers, I guess they were them. But there were no Democrats, either, and there was no law enforcement. Late in the morning, early in the morning, they went to the table with the black robe and the black shield, and they pulled out the votes. Those votes were put there a number of hours before — the table was put there — I think it was, Brad, you would know, it was probably eight hours or seven hours before, and then it was stuffed with votes.

They weren't in an official voter box; they were in what looked to be suitcases or trunks, suitcases, but they weren't in voter boxes. The minimum number it could be because we watched it, and they watched it certified in slow motion instant replay if you can believe it, but slow motion, and it was magnified many times over, and the minimum it was 18,000 ballots, all for Biden.

You had out-of-state voters. They voted in Georgia, but they were from out of state, of 4,925. You had absentee ballots sent to vacant, they were absentee ballots sent to vacant addresses. They had nothing on them about addresses, that's 2,326.

And you had dropboxes, which is very bad. You had dropboxes that were picked up. We have photographs, and we have affidavits from many people.

I don't know if you saw the hearings, but you have dropboxes where the box was picked up but not delivered for three days. So all sorts of things could have happened to that box, including, you know, putting in the votes that you wanted. So there were many infractions, and the bottom line is, many, many times the 11,779 margin that they said we lost by — we had vast, I mean the state is in turmoil over this.

And I know you would like to get to the bottom of it, although I saw you on television today, and you said that you found nothing wrong. I mean, you know, and I didn't lose the state, Brad. People have been saying that it was the highest vote ever. There was no way. A lot of the political people said that there's no way they beat me. And they beat me. They beat me in the . . . As you know, every single state, we won every state. We won every statehouse in the country. We held the Senate, which is shocking to people, although we'll see what happens tomorrow or in a few days.

And we won the House, but we won every single statehouse, and we won Congress, which was supposed to lose 15 seats, and they gained, I think 16 or 17 or something. I think there's a now difference of five. There was supposed to be a difference substantially more. But politicians in every state, but politicians in Georgia have given affidavits and are going to that, that there was no way that they beat me in the election, that the people came out, in fact, they were expecting to lose, and then they ended up winning by a lot because of the coattails. And they said there's no way, that they've done many polls prior to the election, that there was no way that they won.

Ballots were dropped in massive numbers. And we're trying to get to those numbers and we will have them.

They'll take a period of time. Certified. But but they're massive numbers. And far greater than the 11,779.

The other thing, dead people. So dead people voted, and I think the number is close to 5,000 people. And they went to obituaries. They went to all sorts of methods to come up with an accurate number, and a minimum is close to about 5,000 voters.

The bottom line is, when you add it all up and then you start adding, you know, 300,000 fake ballots. Then the other thing they said is in Fulton County and other areas. And this may or may not be true . . . this just came up this morning, that they are burning their ballots, that they are shredding, shredding ballots and removing equipment. They're changing the equipment on the Dominion machines and, you know, that's not legal.

And they supposedly shredded I think they said 300 pounds of, 3,000 pounds of ballots. And that just came to us as a report today. And it is a very sad situation.

But Brad, if you took the minimum numbers where many, many times above the 11,779, and many of those numbers are certified, or they will be certified, but they are certified. And those are numbers that are there, that exist. And that beat the margin of loss, they beat it, I mean, by a lot, and people should be happy to have an accurate count instead of an election where there's turmoil.

I mean there's turmoil in Georgia and other places. You're not the only one, I mean, we have other states that I believe will be flipping to us very shortly. And this is something that — you know, as an example, I think it in Detroit, I think there's a section, a good section of your state actually, which we're not sure so we're not going to report it yet. But in Detroit, we had, I think it was, 139 percent of the people voted. That's not too good.

In Pennsylvania, they had well over 200,000 more votes than they had people voting. And that doesn't play too well, and the legislature there is, which is Republican, is extremely activist and angry. I mean, there were other things also that were almost as bad as that. But they had as an example, in Michigan, a tremendous number of dead people that voted. I think it was, I think, Mark, it was 18,000. Some unbelievably high number, much higher than yours, you were in the 4-5,000 category.

And that was checked out laboriously by going through, by going through the obituary columns in the newspapers.

So I guess with all of it being said, Brad, the bottom line, and provisional ballots, again, you know, you'll have to tell me about the provisional ballots, but we have a lot of people that were complaining that they weren't able to vote because they were already voted for. These are great people.

And, you know, they were shellshocked. I don't know if you call that provisional ballots. In some states, we had a lot of provisional ballot situations where people were given a provisional ballot because when they walked in on November 3 and they were already voted for.

So that's it. I mean, we have many, many times the number of votes necessary to win the state. And we won the state, and we won it very substantially and easily, and we're getting, we have, much of this is a very certified, far more certified than we need. But we're getting additional numbers certified, too. And we're getting pictures of dropboxes being delivered and delivered late. Delivered three days later, in some cases, plus we have many affidavits to that effect.

Meadows: So, Mr. President, if I might be able to jump in, and I'll give Brad a chance. Mr. Secretary, obviously there is, there are allegations where we believe that not every vote or fair vote and legal vote was counted, and that's at odds with the representation from the secretary of state's office.

What I'm hopeful for is there some way that we can, we can find some kind of agreement to look at this a little bit more fully? You know the president mentioned Fulton County.

But in some of these areas where there seems to be a difference of where the facts seem to lead, and so Mr. Secretary, I was hopeful that, you know, in the spirit of cooperation and compromise, is there something that we can at least have a discussion to look at some of these allegations to find a path forward that's less litigious?

Raffensperger: Well, I listened to what the president has just said. President Trump, we've had several lawsuits, and we've had to respond in court to the lawsuits and the contentions. We don't agree that you have won. And we don't — I didn't agree about the 200,000 number that you'd mentioned. I'll go through that point by point.

What we have done is we gave our state Senate about one and a half hours of our time going through the election issue by issue and then on the state House, the government affairs committee, we gave them about two and a half hours of our time, going back point by point on all the issues of contention. And then just a few days ago, we met with our U.S. congressmen, Republican congressmen, and we gave them about two hours of our time talking about this past election. Going back, primarily what you've talked about here focused in on primarily, I believe, is the absentee ballot process. I don't believe that you're really questioning the Dominion machines. Because we did a hand re-tally, a 100 percent re-tally of all the ballots, and compared them to what the machines said and came up with virtually the same result. Then we did the recount, and we got virtually the same result. So I guess we can probably take that off the table.

I don't think there's an issue about that.

Trump: Well, Brad. Not that there's not an issue, because we have a big issue with Dominion in other states and perhaps in yours. But we haven't felt we needed to go there. And just to, you know, maybe put a little different spin on what Mark is saying, Mark Meadows, yeah we'd like to go further, but we don't really need to. We have all the votes we need.

You know, we won the state. If you took, these are the most minimal numbers, the numbers that I gave you, those are numbers that are certified, your absentee ballots sent to vacant addresses, your out-of-state voters, 4,925. You know when you add them up, it's many more times, it's many times the 11,779 number. So we could go through, we have not gone through your Dominion. So we can't give them blessing. I mean, in other states, we think we found tremendous corruption with Dominion machines, but we'll have to see.

But we only lost the state by that number, 11,000 votes, and 779. So with that being said, with just what we have, with just what we have, we're giving you minimal, minimal numbers. We're doing the most conservative numbers possible; we're many times, many, many times above the margin. And so we don't really have to, Mark, I don't think we have to go through . . .

Meadows: Right

Trump: Because what's the difference between winning the election by two votes and winning it by half a million votes. I think I probably did win it by half a million. You know, one of the things that happened, Brad, is we have other people coming in now from Alabama and from South Carolina and from other states, and they're saying it's impossible for you to have lost Georgia. We won. You know in Alabama, we set a record, got the highest vote ever. In Georgia, we set a record with a massive amount of votes. And they say it's not possible to have lost Georgia.

And I could tell you by our rallies. I could tell you by the rally I'm having on Monday night, the place, they already have lines of people standing out front waiting. It's just not possible to have lost Georgia. It's not possible. When I heard it was close, I said there's no way. But they dropped a lot of votes in there late at night. You know that, Brad. And that's what we are working on very, very stringently. But regardless of those votes, with all of it being said, we lost by essentially 11,000 votes, and we have many more votes already calculated and certified, too.

And so I just don't know, you know, Mark, I don't know what's the purpose. I won't give Dominion a pass because we found too many bad things. But we don't need Dominion or anything else. We have won this election in Georgia based on all of this. And there's nothing wrong with saying that, Brad. You know, I mean, having the correct — the people of Georgia are angry. And these numbers are going to be repeated on Monday night. Along with others that we're going to have by that time, which are much more substantial even. And the people of Georgia are angry, the people of the country are angry. And there's nothing wrong with saying that, you know, that you've recalculated. Because the 2,236 in absentee ballots. I mean, they're all exact numbers that were done by accounting firms, law firms, etc. And even if you cut 'em in half, cut 'em in half and cut 'em in half again, it's more votes than we need.

Raffensperger: Well, Mr. President, the challenge that you have is the data you have is wrong. We talked to the congressmen, and they were surprised.

But they — I guess there was a person named Mr. Braynard who came to these meetings and presented data, and he said that there was dead people, I believe it was upward of 5,000. The actual number were two. Two. Two people that were dead that voted. So that's wrong.

Trump: Well, Cleta, how do you respond to that? Maybe you tell me?

Mitchell: Well, I would say, Mr. Secretary, one of the things that we have requested and what we said was, if you look, if you read our petition, it said that we took the names and birth years, and we had certain information available to us. We have asked from your office for records that only you have, and so we said there is a universe of people who have the same name and same birth year and died.

But we don't have the records that you have. And one of the things that we have been suggesting formally and informally for weeks now is for you to make available to us the records that would be necessary —

Trump: But, Cleta, even before you do that, and not even including that, that's why I hardly even included that number, although in one state, we have a tremendous amount of dead people. So I don't know — I'm sure we do in Georgia, too. I'm sure we do in Georgia, too.

But we're so far ahead. We're so far ahead of these numbers, even the phony ballots of [name] , known scammer. You know the Internet? You know what was trending on the Internet? "Where's [name]?" Because they thought she'd be in jail. "Where's [name]?" It's crazy, it's crazy. That was. The minimum number is 18,000 for [name] , but they think it's probably about 56,000, but the minimum number is 18,000 on the [name] night where she ran back in there when everybody was gone and stuffed, she stuffed the ballot boxes. Let's face it, Brad, I mean. They did it in slow motion replay magnified, right? She stuffed the ballot boxes. They were stuffed like nobody has ever seen them stuffed before.

So there's a term for it when it's a machine instead of a ballot box, but she stuffed the machine. She stuffed the ballot. Each ballot went three times, they were showing: Here's ballot No 1. Here it is a second time, third time, next ballot.

I mean, look. Brad. We have a new tape that we're going to release. It's devastating. And by the way, that one event, that one event is much more than the 11,000 votes that we're talking about. It's, you know, that one event was a disaster. And it's just, you know, but it was, it was something, it can't be disputed. And again, we have a version that you haven't seen, but it's magnified. It's magnified, and you can see everything. For some reason, they put it in three times, each ballot, and I don't know why. I don't know why three times. Why not five times, right? Go ahead.

Raffensperger: You're talking about the State Farm video. And I think it's extremely unfortunate that Rudy Giuliani or his people, they sliced and diced that video and took it out of context. The next day, we brought in WSB-TV, and we let them show, see the full run of tape, and what you'll see, the events that transpired are nowhere near what was projected by, you know —

Trump: But where were the poll watchers, Brad? There were no poll watchers there. There were no Democrats or Republicans. There was no security there.

It was late in the evening, late in the, early in the morning, and there was nobody else in the room. Where were the poll watchers, and why did they say a water main broke, which they did and which was reported in the newspapers? They said they left. They ran out because of a water main break, and there was no water main. There was nothing. There was no break. There was no water main break. But we're, if you take out everything, where were the Republican poll watchers, even where were the Democrat pollwatchers, because there were none.

And then you say, well, they left their station, you know, if you look at the tape, and this was, this was reviewed by professional police and detectives and other people, when they left in a rush, everybody left in a rush because of the water main, but everybody left in a rush. These people left their station.

When they came back, they didn't go to their station. They went to the apron, wrapped around the table, under which were thousands and thousands of ballots in a box that was not an official or a sealed box. And then they took those. They went back to a different station. So if they would have come back, they would have walked to their station, and they would have continued to work. But they couldn't do even that because that's illegal, because they had no Republican pollwatchers. And remember, her reputation is — she's known all over the Internet, Brad. She's known all over.

I'm telling you, "Where's [name]" was one of the hot items . . . [name] They knew her. "Where's [name]?" So Brad, there can be no justification for that. And I, you know, I give everybody the benefit of the doubt. But that was — and Brad, why did they put the votes in three times? You know, they put 'em in three times.

Raffensperger: Mr. President, they did not put that. We did an audit of that, and we proved conclusively that they were not scanned three times.

Trump: Where was everybody else at that late time in the morning? Where was everybody? Where were the Republicans? Where were the security guards? Were the people that were there just a little while before when everyone ran out of the room. How come we had no security in the room. Why did they run to the bottom of the table? Why do they run there and just open the skirt and rip out the votes. I mean, Brad. And they were sitting there, I think for five hours or something like that, the votes.

Raffensperger: Mr. President, we'll send you the link from WSB.

Trump: I don't care about the link. I don't need it. Brad, I have a much better —

Mitchell: I will tell you. I've seen the tape. The full tape. So has Alex. We've watched it. And what we saw and what we've confirmed in the timing is that they made everybody leave — we have sworn affidavits saying that. And then they began to process ballots. And our estimate is that there were roughly 18,000 ballots. We don't know that. If you know that . . .

Trump: It was 18,000 ballots, but they used each one three times.

Mitchell: Well, I don't know about that.

Trump: I do think we had ours magnified out.

Mitchell: I've watched the entire tape.

Trump: Nobody can make a case for that, Brad. Nobody. I mean, look, you'd have to be a child to think anything other than that. Just a child.

Mitchell: How many ballots, Mr. Secretary, are you saying were processed then?

Raffensperger: We had GBI . . . investigate that.

Germany: We had our — this is Ryan Germany. We had our law enforcement officers talk to everyone who was, who was there after that event came to light. GBI was with them as well as FBI agents.

Trump: Well, there's no way they could — then they're incompetent. They're either dishonest or incompetent, okay?

Mitchell: Well, what did they find?

Trump: There's only two answers, dishonesty or incompetence. There's just no way. Look. There's no way. And on the other thing, I said too, there is no way. I mean, there's no way that these things could have been, you know, you have all these different people that voted, but they don't live in Georgia anymore. What was that number, Cleta? That was a pretty good number, too.

Mitchell: The number who have registered out of state after they moved from Georgia. And so they had a date when they moved from Georgia, they registered to vote out of state, and then it's like 4,500, I don't have that number right in front of me.

Trump: And then they came back in, and they voted.

Mitchell: And voted. Yeah.

Trump: I thought that was a large number, though. It was in the 20s.

Germany: We've been going through each of those as well, and those numbers that we got, that Ms. Mitchell was just saying, they're not accurate. Every one we've been through are people that lived in Georgia, moved to a different state, but then moved back to Georgia legitimately. And in many cases —

Trump: How many people do that? They moved out, and then they said, "Ah, to hell with it, I'll move back." You know, it doesn't sound like a very normal . . . you mean, they moved out, and what, they missed it so much that they wanted to move back in? It's crazy.

Germany: They moved back in years ago. This was not like something just before the election. So there's something about that data that, it's just not accurate.

Trump: Well, I don't know, all I know is that it is certified. And they moved out of Georgia, and they voted. It didn't say they moved back in, Cleta, did it?

Mitchell: No, but I mean, we're looking at the voter registration. Again, if you have additional records, we've been asking for that, but you haven't shared any of that with us. You just keep saying you investigated the allegations.

Trump: Cleta, a lot of it you don't need to be shared. I mean, to be honest, they should share it. They should share it because you want to get to an honest election.

I won this election by hundreds of thousands of votes. There's no way I lost Georgia. There's no way. We won by hundreds of thousands of votes. I'm just going by small numbers, when you add them up, they're many times the 11,000. But I won that state by hundreds of thousands of votes.

Do you think it's possible that they shredded ballots in Fulton County? Because that's what the rumor is. And also that Dominion took out machines. That Dominion is really moving fast to get rid of their, uh, machinery.

Do you know anything about that? Because that's illegal, right?

Germany: This is Ryan Germany. No, Dominion has not moved any machinery out of Fulton County.

Trump: But have they moved the inner parts of the machines and replaced them with other parts?

Germany: No.

Trump: Are you sure, Ryan?

Germany: I'm sure. I'm sure, Mr. President.

Trump: What about, what about the ballots. The shredding of the ballots. Have they been shredding ballots?

Germany: The only investigation that we have into that — they have not been shredding any ballots. There was an issue in Cobb County where they were doing normal office shredding, getting rid of old stuff, and we investigated that. But this stuff from, you know, from you know past elections.

Trump: It doesn't pass the smell test because we hear they're shredding thousands and thousands of ballots, and now what they're saying, "Oh, we're just cleaning up the office." You know.

Raffensperger: Mr. President, the problem you have with social media, they — people can say anything.

Trump: Oh this isn't social media. This is Trump media. It's not social media. It's really not; it's not social media. I don't care about social media. I couldn't care less. Social media is Big Tech. Big Tech is on your side, you know. I don't even know why you have a side because you should want to have an accurate election. And you're a Republican.

Raffensperger: We believe that we do have an accurate election.

Trump: No, no you don't. No, no you don't. You don't have. Not even close. You're off by hundreds of thousands of votes. And just on the small numbers, you're off on these numbers, and these numbers can't be just — well, why won't? — Okay. So you sent us into Cobb County for signature verification, right? You sent us into Cobb County, which we didn't want to go into. And you said it would be open to the public. So we had our experts there, they weren't allowed into the room. But we didn't want Cobb County. We wanted Fulton County. And you wouldn't give it to us. Now, why aren't we doing signature — and why can't it be open to the public?

And why can't we have professionals do it instead of rank amateurs who will never find anything and don't want to find anything? They don't want to find, you know they don't want to find anything. Someday you'll tell me the reason why, because I don't understand your reasoning, but someday you'll tell me the reason why. But why don't you want to find?

Germany: Mr. President, we chose Cobb County —

Trump: Why don't you want to find . . . What?

Germany: Sorry, go ahead.

Trump: So why did you do Cobb County? We didn't even request — we requested Fulton County, not Cobb County. Go ahead, please. Go ahead.

Germany: We chose Cobb County because that was the only county where there's been any evidence submitted that the signature verification was not properly done.

Trump: No, but I told you. We're not, we're not saying that.

Mitchell: We did say that.

Trump: Fulton County. Look. Stacey, in my opinion, Stacey is as dishonest as they come. She has outplayed you . . . at everything. She got you to sign a totally unconstitutional agreement, which is a disastrous agreement. You can't check signatures. I can't imagine you're allowed to do harvesting, I guess, in that agreement. That agreement is a disaster for this country. But she got you somehow to sign that thing, and she has outsmarted you at every step.

And I hate to imagine what's going to happen on Monday or Tuesday, but it's very scary to people. You know, when the ballots flow in out of nowhere. It's very scary to people. That consent decree is a disaster. It's a disaster. A very good lawyer who examined it said they've never seen anything like it.

Raffensperger: Harvesting is still illegal in the state of Georgia. And that settlement agreement did not change that one iota.

Trump: It's not a settlement agreement, it's a consent decree. It even says consent decree on it, doesn't it? It uses the term consent decree. It doesn't say settlement agreement. It's a consent decree. It's a disaster.

Raffensperger: It's a settlement agreement.

Trump: What's written on top of it?

Raffensperger: Ryan?

Germany: I don't have it in front of me, but it was not entered by the court, it's not a court order.

Trump: But Ryan, it's called a consent decree, is that right? On the paper. Is that right?

Germany: I don't. I don't. I don't believe so, but I don't have it in front of me.

Trump: Okay, whatever, it's a disaster. It's a disaster. Look. Here's the problem. We can go through signature verification, and we'll find hundreds of thousands of signatures, if you let us do it. And the only way you can do it, as you know, is to go to the past. But you didn't do that in Cobb County. You just looked at one page compared to another. The only way you can do a signature verification is go from the one that signed it on November whatever. Recently. And compare it to two years ago, four years ago, six years ago, you know, or even one. And you'll find that you have many different signatures. But in Fulton, where they dumped ballots, you will find that you have many that aren't even signed and you have many that are forgeries.

Okay, you know that. You know that. You have no doubt about that. And you will find you will be at 11,779 within minutes because Fulton County is totally corrupt, and so is she totally corrupt.

And they're going around playing you and laughing at you behind your back, Brad, whether you know it or not, they're laughing at you. And you've taken a state that's a Republican state, and you've made it almost impossible for a Republican to win because of cheating, because they cheated like nobody's ever cheated before. And I don't care how long it takes me, you know, we're going to have other states coming forward — pretty good.

But I won't . . . this is never . . . this is . . . We have some incredible talent said they've never seen anything . . . Now the problem is they need more time for the big numbers. But they're very substantial numbers. But I think you're going to find that they — by the way, a little information — I think you're going to find that they are shredding ballots because they have to get rid of the ballots because the ballots are unsigned. The ballots are corrupt, and they're brand new, and they don't have seals, and there's a whole thing with the ballots. But the ballots are corrupt.

And you are going to find that they are — which is totally illegal — it is more illegal for you than it is for them because, you know, what they did and you're not reporting it. That's a criminal, that's a criminal offense. And you can't let that happen. That's a big risk to you and to Ryan, your lawyer. And that's a big risk. But they are shredding ballots, in my opinion, based on what I've heard. And they are removing machinery, and they're moving it as fast as they can, both of which are criminal finds. And you can't let it happen, and you are letting it happen. You know, I mean, I'm notifying you that you're letting it happen. So look. All I want to do is this. I just want to find 11,780 votes, which is one more than we have because we won the state.

And flipping the state is a great testament to our country because, you know, this is — it's a testament that they can admit to a mistake or whatever you want to call it. If it was a mistake, I don't know. A lot of people think it wasn't a mistake. It was much more criminal than that. But it's a big problem in Georgia, and it's not a problem that's going away. I mean, you know, it's not a problem that's going away.

Germany: This is Ryan. We're looking into every one of those things that you mentioned.

Trump: Good. But if you find it, you've got to say it, Ryan.

Germany: . . . Let me tell you what we are seeing. What we're seeing is not at all what you're describing. These are investigators from our office, these are investigators from GBI, and they're looking, and they're good. And that's not what they're seeing. And we'll keep looking, at all these things.

Trump: Well, you better check on the ballots because they are shredding ballots, Ryan. I'm just telling you, Ryan. They're shredding ballots. And you should look at that very carefully. Because that's so illegal. You know, you may not even believe it because it's so bad. But they're shredding ballots because they think we're going to eventually get there . . . because we'll eventually get into Fulton. In my opinion, it's never too late. . . . So, that's the story. Look, we need only 11,000 votes. We have are far more than that as it stands now. We'll have more and more. And . . . do you have provisional ballots at all, Brad? Provisional ballots?

Raffensperger: Provisional ballots are allowed by state law.

Trump: Sure, but I mean, are they counted, or did you just hold them back because they, you know, in other words, how many provisional ballots do you have in the state?

Raffensperger: We'll get you that number.

Trump: Because most of them are made out to the name Trump. Because these are people that were scammed when they came in. And we have thousands of people that have testified or that want to testify. When they came in, they were proudly going to vote on November 3. And they were told, "I'm sorry, you've already been voted for, you've already voted." The women, men started screaming, "No. I proudly voted till November 3." They said, "I'm sorry, but you've already been voted for, and you have a ballot." And these people are beside themselves. So they went out, and they filled in a provisional ballot, putting the name Trump on it.

And what about that batch of military ballots that came in. And even though I won the military by a lot, it was 100 percent Trump. I mean 100 percent Biden. Do you know about that? A large group of ballots came in, I think it was to Fulton County, and they just happened to be 100 percent for Trump — for Biden — even though Trump won the military by a lot, you know, a tremendous amount. But these ballots were 100 percent for Biden. And do you know about that? A very substantial number came in, all for Biden. Does anybody know about it?

Mitchell: I know about it, but —

Trump: Okay, Cleta, I'm not asking you, Cleta, honestly. I'm asking Brad. Do you know about the military ballots that we have confirmed now. Do you know about the military ballots that came in that were 100 percent, I mean 100 percent, for Biden. Do you know about that?

Germany: I don't know about that. I do know that we have, when military ballots come in, it's not just military, it's also military and overseas citizens. The military part of that does generally go Republican. The overseas citizen part of it generally goes very Democrat. This was a mix of 'em.

Trump: No, but this was. That's okay. But I got like 78 percent of the military. These ballots were all for . . . They didn't tell me overseas. Could be overseas, too, but I get votes overseas, too, Ryan, in all fairness. No they came in, a large batch came in, and it was, quote, 100 percent for Biden. And that is criminal. You know, that's criminal. Okay. That's another criminal, that's another of the many criminal events, many criminal events here.

I don't know, look, Brad. I got to get . . . I have to find 12,000 votes, and I have them times a lot. And therefore, I won the state. That's before we go to the next step, which is in the process of right now. You know, and I watched you this morning, and you said, well, there was no criminality.

But I mean all of this stuff is very dangerous stuff. When you talk about no criminality, I think it's very dangerous for you to say that.

I just, I just don't know why you don't want to have the votes counted as they are. Like even you when you went and did that check. And I was surprised because, you know . . . And we found a few thousand votes that were against me. I was actually surprised because the way that check was done, all you're doing, you know, recertifying existing votes and, you know, and you were given votes and you just counted them up, and you still found 3,000 that were bad. So that was sort of surprising that it came down to three or five, I don't know. Still a lot of votes. But you have to go back to check from past years with respect to signatures. And if you check with Fulton County, you'll have hundreds of thousands because they dumped ballots into Fulton County and the other county next to it.

So what are we going to do here, folks? I only need 11,000 votes. Fellas, I need 11,000 votes. Give me a break. You know, we have that in spades already. Or we can keep it going, but that's not fair to the voters of Georgia because they're going to see what happened, and they're going to see what happened. I mean, I'll, I'll take on anybody you want with regard to [name] and her lovely daughter, a very lovely young lady, I'm sure. But, but [name] . . . I will take on anybody you want. And the minimum, there were 18,000 ballots, but they used them three times. So that's, you know, a lot of votes. And they were all to Biden, by the way, that's the other thing we didn't say. You know, [name] , the one thing I forgot to say, which was the most important. You know that every single ballot she did went to Biden. You know that, right? Do you know that, by the way, Brad?

Every single ballot that she did through the machines at early, early in the morning went to Biden. Did you know that, Ryan?

Germany: That's not accurate, Mr. President.

Trump: Huh. What is accurate?

Germany: The numbers that we are showing are accurate.

Trump: No, about [name] . About early in the morning, Ryan. Where the woman took, you know, when the whole gang took the stuff from under the table, right? Do you know, do you know who those ballots, do you know who they were made out to, do you know who they were voting for?

Germany: No, not specifically.

Trump: Did you ever check?

Germany: We did what I described to you earlier —

Trump: No no no — did you ever check the ballots that were scanned by [name] , a known political operative, balloteer? Did ever check who those votes were for?

Germany: We looked into that situation that you described.

Trump: No, they were 100 percent for Biden. 100 percent. There wasn't a Trump vote in the whole group. Why don't you want to find this, Ryan? What's wrong with you? I heard your lawyer is very difficult, actually, but I'm sure you're a good lawyer. You have a nice last name.

But, but I'm just curious, why wouldn't, why do you keep fighting this thing? It just doesn't make sense. We're way over the 17,779, right? We're way over that number, and just if you took just [name] , we're over that number by five, five or six times when you multiply that times three.

And every single ballot went to Biden, and you didn't know that, but now you know it. So tell me, Brad, what are we going to do? We won the election, and it's not fair to take it away from us like this. And it's going to be very costly in many ways. And I think you have to say that you're going to reexamine it, and you can reexamine it, but reexamine it with people that want to find answers, not people that don't want to find answers. For instance, I'm hearing Ryan that he's probably, I'm sure a great lawyer and everything, but he's making statements about those ballots that he doesn't know. But he's making them with such — he did make them with surety. But now I think he's less sure because the answer is, they all went to Biden, and that alone wins us the election by a lot. You know, so.

Raffensperger: Mr. President, you have people that submit information, and we have our people that submit information. And then it comes before the court, and the court then has to make a determination. We have to stand by our numbers. We believe our numbers are right.

Trump: Why do you say that, though? I don't know. I mean, sure, we can play this game with the courts, but why do you say that? First of all, they don't even assign us a judge. They don't even assign us a judge. But why wouldn't you . . . Hey Brad, why wouldn't you want to check out [name] ? And why wouldn't you want to say, hey, if in fact, President Trump is right about that, then he wins the state of Georgia, just that one incident alone without going through hundreds of thousands of dropped ballots. You just say, you stick by, I mean I've been watching you, you know, you don't care about anything. "Your numbers are right." But your numbers aren't right. They're really wrong, and they're really wrong, Brad. And I know this phone call is going nowhere other than, other than ultimately, you know — Look, ultimately, I win, okay? Because you guys are so wrong. And you treated this. You treated the population of Georgia so badly. You, between you and your governor, who is down at 21, he was down 21 points. And like a schmuck, I endorsed him, and he got elected, but I will tell you, he is a disaster.

The people are so angry in Georgia, I can't imagine he's ever getting elected again, I'll tell you that much right now. But why wouldn't you want to find the right answer, Brad, instead of keep saying that the numbers are right? 'Cause those numbers are so wrong?

Mitchell: Mr. Secretary, Mr. President, one of the things that we have been, Alex can talk about this, we talked about it, and I don't know whether the information has been conveyed to your office, but I think what the president is saying, and what we've been trying to do is to say, look, the court is not acting on our petition. They haven't even assigned a judge. But the people of Georgia and the people of America have a right to know the answers. And you have data and records that we don't have access to.

And you can keep telling us and making public statement that you investigated this and nothing to see here. But we don't know about that. All we know is what you tell us. What I don't understand is why wouldn't it be in everyone's best interest to try to get to the bottom, compare the numbers, you know, if you say, because . . . to try to be able to get to the truth because we don't have any way of confirming what you're telling us. You tell us that you had an investigation at the State Farm Arena. I don't have any report. I've never seen a report of investigation. I don't know that is. I've been pretty involved in this, and I don't know. And that's just one of 25 categories. And it doesn't even. And as I, as the president said, we haven't even gotten into the Dominion issue. That's not part of our case. It's not part of, we just didn't feel as though we had any to be able to develop —

Trump: No, we do have a way, but I don't want to get into it. We found a way . . . excuse me, but we don't need it because we're only down 11,000 votes, so we don't even need it. I personally think they're corrupt as hell. But we don't need that. All we have to do, Cleta, is find 11,000-plus votes. So we don't need that. I'm not looking to shake up the whole world. We won Georgia easily. We won it by hundreds of thousands of votes. But if you go by basic, simple numbers, we won it easily, easily. So we're not giving Dominion a pass on the record. We don't need Dominion because we have so many other votes that we don't need to prove it any more than we already have.

Hilbert: Mr. President and Cleta, this is Kurt Hilbert, if I might interject for a moment. Ryan, I would like to suggest that just four categories that have already been mentioned by the president that have actually hard numbers of 24,149 votes that were counted illegally. That in and of itself is sufficient to change the results or place the outcome in doubt. We would like to sit down with your office, and we can do it through purposes of compromise and just like this phone call, just to deal with that limited category of votes. And if you are able to establish that our numbers are not accurate, then fine. However, we believe that they are accurate. We've had now three to four separate experts looking at these numbers.

Trump: Certified accountants looked at them.

Hilbert: Correct. And this is just based on USPS data and your own secretary of state data. So that's what we would entreat and ask you to do, to sit down with us in a compromise and settlements proceeding and actually go through the registered voter IDs and the registrations. And if you can convince us that 24,149 is inaccurate, then fine. But we tend to believe that is, you know, obviously more than 11,779. That's sufficient to change the results entirely in and of itself. So what would you say to that, Mr. Germany?

Germany: I'm happy to get with our lawyers, and we'll set that up. That number is not accurate. And I think we can show you, for all the ones we've looked at, why it's not. And so if that would be helpful, I'm happy to get with our lawyers and set that up with you guys.

Trump: Well, let me ask you, Kurt, you think that is an accurate number. That was based on the information given to you by the secretary of state's department, right?

Hilbert: That is correct. That information is the minimum, most conservative data based upon the USPS data and the secretary of state's office data that has been made publicly available. We do not have the internal numbers from the secretary of state. Yet we have asked for it six times. I sent a letter over to . . . several times requesting this information, and it's been rebuffed every single time. So it stands to reason that if the information is not forthcoming, there's something to hide. That's the problem that we have.

Germany: Well, that's not the case, sir. There are things that you guys are entitled to get. And there's things that under law, we are not allowed to give out.

Trump: Well, you have to. Well, under law, you're not allowed to give faulty election results, okay? You're not allowed to do that. And that's what you done. This is a faulty election result. And honestly, this should go very fast. You should meet tomorrow because you have a big election coming up, and because of what you've done to the president — you know, the people of Georgia know that this was a scam — and because of what you've done to the president, a lot of people aren't going out to vote. And a lot of Republicans are going to vote negative because they hate what you did to the president. Okay? They hate it. And they're going to vote. And you would be respected. Really respected, if this thing could be straightened out before the election. You have a big election coming up on Tuesday. And I think that it is really is important that you meet tomorrow and work out on these numbers. Because I know, Brad, that if you think we're right, I think you're going to say, and I'm not looking to blame anybody, I'm just saying, you know, and, you know, under new counts, and under new views, of the election results, we won the election. You know? It's very simple. We won the election. As the governors of major states and the surrounding states said, there is no way you lost Georgia. As the Georgia politicians say, there is no way you lost Georgia. Nobody. Everyone knows I won it by hundreds of thousands of votes. But I'll tell you it's going to have a big impact on Tuesday if you guys don't get this thing straightened out fast.

Meadows: Mr. President, this is Mark. It sounds like we've got two different sides agreeing that we can look at those areas, and I assume that we can do that within the next 24 to 48 hours, to go ahead and get that reconciled so that we can look at the two claims and making sure that we get the access to the secretary of state's data to either validate or invalidate the claims that have been made. Is that correct?

Germany: No, that's not what I said. I'm happy to have our lawyers sit down with Kurt and the lawyers on that side and explain to him, hey, here's, based on what we've looked at so far, here's how we know this is wrong, this is wrong, this is wrong, this is wrong, this is wrong.

Meadows: So what you're saying, Ryan, let me let me make sure . . . so what you're saying is you really don't want to give access to the data. You just want to make another case on why the lawsuit is wrong?

Germany: I don't think we can give access to data that's protected by law. But we can sit down with them and say —

Trump: But you're allowed to have a phony election? You're allowed to have a phony election, right?

Germany: No, sir.

Trump: When are you going to do signature counts, when are you going to do signature verification on Fulton County, which you said you were going to do, and now all of a sudden, you're not doing it. When are you doing that?

Germany: We are going to do that. We've announced —

Hilbert: To get to this issue of the personal information and privacy issue, is it possible that the secretary of state could deputize the lawyers for the president so that we could access that information and private information without you having any kind of violation?

Trump: Well, I don't want to know who it is. You guys can do it very confidentially. You can sign a confidentiality agreement. That's okay. I don't need to know names. But on this stuff that we're talking about, we got all that information from the secretary of state.

Meadows: Yeah. So let me let me recommend, Ryan, if you and Kurt will get together, you know, when we get off of this phone call, if you could get together and work out a plan to address some of what we've got with your attorneys where we can we can actually look at the data. For example, Mr. Secretary, I can you say they were only two dead people who would vote. I can promise you there are more than that. And that may be what your investigation shows, but I can promise you there are more than that. But at the same time, I think it's important that we go ahead and move expeditiously to try to do this and resolve it as quickly as we possibly can. And if that's the good next step. Hopefully we can, we can finish this phone call and go ahead and agree that the two of you will get together immediately.

Trump: Well, why don't my lawyers show you where you got the information. It will show the secretary of state, and you don't even have to look at any names. We don't want names. We don't care. But we got that information from you. And Stacey Abrams is laughing about you. She's going around saying these guys are dumber than a rock. What she's done to this party is unbelievable, I tell you. And I only ran against her once. And that was with a guy named Brian Kemp, and I beat her. And if I didn't run, Brian wouldn't have had even a shot, either in the general or in the primary. He was dead, dead as a doornail. He never thought he had a shot at either one of them. What a schmuck I was. But that's the way it is. That's the way it is. I would like you . . . for the attorneys . . . I'd like you to perhaps meet with Ryan, ideally tomorrow, because I think we should come to a resolution of this before the election. Otherwise you're going to have people just not voting. They don't want to vote. They hate the state, they hate the governor, and they hate the secretary of state. I will tell you that right now. The only people that like you are people that will never vote for you. You know that, Brad, right? They like you, you know, they like you. They can't believe what they found. They want more people like you. So, look, can you get together tomorrow? And, Brad, we just want the truth. It's simple.

And everyone's going to look very good if the truth comes out. It's okay. It takes a little while, but let the truth come out. And the real truth is, I won by 400,000 votes. At least. That's the real truth. But we don't need 400,000 votes. We need less than 2,000 votes. And are you guys able to meet tomorrow, Ryan?

Germany: I'll get with Chris, the lawyer who's representing us in the case, and see when he can get together with Kurt.

Raffensperger: Ryan will be in touch with the other attorney on this call, Mr. Meadows. Thank you, President Trump, for your time.

Trump: Okay, thank you, Brad. Thank you, Ryan. Thank you. Thank you, everybody. Thank you very much. Bye.

EXHIBIT 6

WHITE HOUSE

Trump's post-election cash grab floods funds to new PAC

The Trump campaign announced Thursday evening that the president's fundraising operation raised \$207.5 million since Election Day, including a hefty chunk to a new leadership PAC Trump formed in November.



The Trump campaign announced Thursday evening that the president's fundraising operation raised \$207.5 million since Election Day. (Key Del Rio/Getty Images)

By EACH MONTELLANO and ELENA SCHNEIDER
12/02/2020 07:14 PM EST
Updated: 12/04/2020 10:56 AM EST



President Donald Trump has been on a relentless, misleading and highly lucrative fundraising drive since losing reelection, telling supporters that they can help overturn the results if they donate while directing the bulk of the cash to his newest political group instead of the entities fighting in court.

The Trump campaign announced Thursday evening that the president's fundraising operation raised \$207.5 million since Election Day, parts of which were detailed in campaign finance reports filed later Thursday night. It's a remarkable sum for a post-election period, usually the time when campaigns wind down.

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Trump has ginned up much of that money with alarmist fundraising pitches multiple times a day, pleading for help. "We MUST defend the Election from the Left!" one text signed by Trump and sent on Wednesday read. "I've activated a 1000% offer for 1 HOUR to put America FIRST. Step up & act NOW."

But the majority of that money is likely not going to any sort of legal account. Trump's fundraising operation is instead sending it to a new political organization created by the president: a leadership PAC called Save America PAC, a type of vehicle popular with both parties on Capitol Hill but long derided by watchdogs as essentially a type of slush fund, with few restrictions on how the money they raise can be spent.

Trump's frenzied fundraising pitches are channeling most of the money raised to Save America, the leadership PAC he created just days after major media outlets projected Biden had defeated him. Current fundraising appeals from Trump solicit money for a joint fundraising committee, the Trump Make America Great Again Committee, which is directing 75 percent of each contribution to Save America, up to a \$5,000 legal limit. Only after that point does money start flowing into a recount account set up by Trump's presidential campaign. (The remaining 25 percent of donations go to various accounts for the Republican National Committee.)

"Leadership PACs can be used to effectively keep your campaign staff on the payroll, keep them in your orbit, pay for travel, pay for rallies, even for polling," said Brendan Fischer, the director of the federal reform program at the Campaign Legal Center, which supports greater regulation of these entities. "Trump could potentially use his new leadership PAC to not only preserve his influence within the Republican party after he leaves the White House, but also to potentially to benefit him and his family financially."

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One thing Trump wouldn't be allowed to use the leadership PAC money for: directly financing a 2024 presidential bid, should he announce plans to run again. But in addition to other campaign-like activities, Trump could use his PAC to weigh in on Republican primaries through big-money independent ad buys.

The Trump campaign also announced that the fundraising operation will report raising \$495 million in various post-election filings, which cover activity from Oct. 15 through Nov. 23, due to the FEC on Thursday. That total will not include Save America, which was formed after the election. Fox News first reported the massive-post Election Day haul.

Republicans are acutely aware that Trump can wield his platform — along with his leadership PAC war chest and email list, easily the most valuable donor list in Republican politics — as a cudgel to shape the future of the party.

"This is about maintaining relevance in 2022 to potentially set up 2024, all while freezing the [presidential primary] field," said Dan Eberhart, a major Republican donor, who also noted that if Trump is able to "be a part of the story of taking back the House" in 2023, he could "show momentum in the midterms. he could be exceedingly relevant in 2024."

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The Trump campaign is also eager to stoke the fact that the rank-and-file is still on the president's side. "These tremendous fundraising numbers show President Trump remains the leader and source of energy for the Republican Party, and that his supporters are dedicated to fighting for the rightful, legal outcome of the 2020 general election," Bill Stepien, Trump 2020 campaign manager, said in a statement, alluding to the president's conspiracy theories that he actually won the election.

Matt Gorman, another GOP strategist, noted that Trump's post-White House strength won't be determined by a PAC. Rather, "the power of Trump has always laid more in his megaphone than in his money," he said.

President-elect Joe Biden also broke a major milestone: His campaign reported raising and spending more than a billion dollars. His campaign spent down close to zero to defeat Trump, reporting just \$1.6 million left in cash reserves. Only one presidential campaign in history spent more than Biden's: Mike Bloomberg's short-lived, self-funded primary run earlier this year, which shelled out more than \$1.1 billion.

Biden, who started off his campaign struggling to equal other Democrats' fundraising during the primary, ended up overseeing the most successful fundraising operation in the history of American politics while defeating an incumbent president. Trump's campaign, for comparison, raised just under \$690 million and spent a little under \$734 million. It ended the filing period with \$18.4 million in the bank and \$11.3 million in debt.

Biden's presidential transition has also been raising money to fund its operations, especially before the General Services Administration [made government funding](#) available 10 days ago. The Biden transition fund, which is organized as a nonprofit, does not file with the Federal Election Commission. It will disclose its donors in February.

Other campaign finance disclosures reveal more than just the president's haul. From the ludicrously expensive Georgia Senate runoff to the full extent of Democrats' strong small-dollar fundraising, here are four other notable takeaways from the campaign finance filings covering Oct. 15 through Nov. 23.

Georgia Senate races attract big money

With control of the Senate hanging in the balance, the pair of Georgia Senate runoffs between GOP Sen. David Perdue and Democrat Jon Ossoff and Republican Sen. Kelly Loeffler and Democrat Raphael Warnock are expected to be among the most expensive ever. The races already attracted a ton of big money just in the first few weeks.

The NRSC, Senate Republicans' campaign arm, had \$36.8 million in the bank, as of Oct. 23, to help fund its defense of the two incumbents. It also reported raising over \$75.5 million — including an \$8 million loan — in the roughly five-week period [the report covers](#), a major fundraising boon for the party. (For comparison's sake: the NRSC reported raising \$32.7 million in September, the last full month covered in a single FEC report.)

Republicans have launched an all-hands-on-deck fundraising effort for the pair of runoffs, with famed Republican strategist Karl Rove helming a joint fundraising committee between the NRSC and the two GOP candidates that has already [raised tens-of-millions-of-dollars](#).

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Senate Democrats' DSCC, meanwhile, raised about half that in the same time period. The [party committee reported](#) raising \$35.6 million, without taking in any loans. Republican also maintain a cash advantage, carrying \$36.8 million in reserves (with \$18 million in debt) to Democrats' \$17.5 million in the bank (with \$20.6 million in debt).

The Georgia candidates themselves are not required to file new FEC reports until Christmas Eve.

Super PACs are also poised to play a major role in the race as well, as they have in cycles-past.

The Senate Leadership Fund, the Republican super PAC helmed by allies of Senate Majority Leader Mitch McConnell, brought in over \$104 million in the filing period, with over 70 percent of that coming after Election Day. The group spent an eye-popping \$112.6 million in that same period.

"Money isn't everything, but fundraising is an early leading indicator of enthusiasm," Steven Law, the president of the group, said in an [interview with Fox News](#) on Wednesday announcing the totals.

SLF's opposite number, Democrats' Senate Majority PAC, similarly raised and spent a lot of money in the same time period. SMP raised just shy of spending \$90 million and dropped \$107 million in spending.

What separated the two super PACs was how much they had in cash reserves on Nov. 23. SLF had \$60.8 million in the bank, while SMP spent itself down much closer to zero, with just \$2.1 million left in reserves.

Still, some Republicans complained that the party's efforts in Georgia could have even more support, if Trump weren't redirecting resources to himself. Eberhart, the GOP donor, said that Trump was "taking resources and attention away from Georgia."

"As a Republican, the thing to do right now is to make [Mitch] McConnell stronger by winning these two seats in Georgia," Eberhart said. "Trump has taken both money and oxygen away from the party and is more likely to concede and fundraising

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reports," Biden said.

ActBlue continued to rake in small-dollar cash

ActBlue, the preferred Democratic digital fundraising platform, notched another record in 2020, processing \$4.8 billion in online donations to 22,000 left-leaning candidates and causes throughout the two-year election cycle, ActBlue announced.

That enormous total showed up in Democratic coffers up and down the ballot, where those candidates routinely smashed fundraising records. But cash wasn't enough to carry Democrats to major down-ballot victories, with the party narrowly holding onto its House majority and the Senate still hanging in the balance in Georgia.

Even so, ActBlue's strength is clear: More than 71 percent of the 14.8 million unique donors were first-time donors to the platform, demonstrating its exponential growth in just two years. Of those donors, more than half contributed more than once during the cycle, and about half also gave to a presidential primary candidate and another campaign later in the cycle — a sign of how they were able to turn small-dollar donors into a renewable resource for Democrats.

WinRed, the GOP's answer to ActBlue, has handled \$1.9 billion in donations in the last 16 months. (It only launched in mid-2019). The platform said it has processed \$80.4 million in October and November — and \$350 million since Election Day.

Senate Dems make strange bedfellows with Never Trumpers

The Lincoln Project was spawned by a group of "Never Trump" Republican operatives trying to [sink the president's reelection bid](#). But the group, flush with cash from enraged Democratic donors, soon set its sights on Senate Republicans the group deemed to be Trump enablers.

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The Lincoln Project launched bombastic ads that mirrored its attacks on the president. (One, for example, compared South Carolina Sen. Lindsay Graham to a ["parasite"](#) that used footage of a decomposing fox.)

And for that mission, it found a willing partner: Senate Democrats' main outside groups. Senate Majority PAC, which is run by allies of Senate Minority Leader Chuck Schumer, gave \$550,000 to The Lincoln Project on Oct. 30, according to new FEC reports. Majority Forward, the nonprofit group affiliated with SMP, also gave \$650,000 to The Lincoln Project in mid-October, after previously donating to the group.

The disclosure that Senate Democrats' big money arm was working with a group of Republican consultants, even ones who disavowed the president, provoked eye-rolls from some Democrats.

"WTF SMP," a Democratic aide who worked on a Senate campaign texted after a POLITICO reporter tweeted out the fundraising figures. "This is why Dems lose. I'm just stunned."

The GOP's most prolific donors never abandoned Trump

Trump's formidable campaign fundraising machine was eventually lapped by Biden's huge financial surge. But big donors stepped into the void to try to close the gap.

Several prominent Republican megadonors shelled out millions to Preserve America PAC in the closing weeks of the presidential race, which was [launched at the tail end of the summer](#) as Trump was getting drubbed on the TV airwaves.

The biggest donors were Sheldon and Miriam Adelson, who collectively gave the super PAC \$15 million in the latter half of October. Altogether, the megadonor couple donated \$90 million to Preserve America over the course of the campaign, part of an enormous \$200 million they gave in disclosed donations to outside groups in 2019 and 2020. Before Thursday's filing deadline, the Adelsons had given \$180 million, according to a tracker from [the Center for Responsive Politics](#).

Bernie Marcus, the founder of Home Depot, also gave \$5 million at the end of October to Restoration PAC.

America First Action, the super PAC Trump endorsed as his preferred vehicle for outside spending, also had its patrons in the closing weeks of the race. The group raised over \$21 million over the same period, with \$10 million of that coming from Linda McMahon, Trump's former small business administrator who now leads the super PAC.

On the Democratic side, Priorities USA Action, one of the largest pro-Biden super PACs, brought in \$14 million in that same time period.

Anita Kumar contributed to this report.

FILED UNDER: FUNDRAISING, PACS, PAC, POLITICAL FUNDRAISING, 2020 ELECTIONS. (U)

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EXHIBIT 7

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

WISCONSIN VOTERS ALLIANCE, *et al.*,

Plaintiffs,

v.

VICE PRESIDENT MICHAEL R.
PENCE, *et al.*,

Defendants.

Civil Action No. 20-3791 (JEB)

MEMORANDUM OPINION

Plaintiffs' aims in this election challenge are bold indeed: they ask this Court to declare unconstitutional several decades-old federal statutes governing the appointment of electors and the counting of electoral votes for President of the United States; to invalidate multiple state statutes regulating the certification of Presidential votes; to ignore certain Supreme Court decisions; and, the *coup de grace*, to enjoin the U.S. Congress from counting the electoral votes on January 6, 2021, and declaring Joseph R. Biden the next President.

Voter groups and individual voters from the states of Wisconsin, Pennsylvania, Georgia, Michigan, and Arizona have brought this action against Vice President Michael R. Pence, in his official capacity as President of the Senate; both houses of Congress and the Electoral College itself; and various leaders of the five aforementioned states. Simultaneous with the filing of their Complaint, Plaintiffs moved this Court to preliminarily enjoin the certifying of the electors from the five states and the counting of their votes. In addition to being filed on behalf of Plaintiffs without standing and (at least as to the state Defendants) in the wrong court and with no effort to even serve their adversaries, the suit rests on a fundamental and obvious misreading of the

Constitution. It would be risible were its target not so grave: the undermining of a democratic election for President of the United States. The Court will deny the Motion.

I. Background

To say that Plaintiffs’ 116-page Complaint, replete with 310 footnotes, is prolix would be a gross understatement. After explicitly disclaiming any theory of fraud, see ECF No. 1 (Complaint), ¶ 44 (“This lawsuit is not about voter fraud.”), Plaintiffs spend scores of pages cataloguing every conceivable discrepancy or irregularity in the 2020 vote in the five relevant states, already debunked or not, most of which they nonetheless describe as a species of fraud. E.g., id., at 37–109. Those allegations notwithstanding, Plaintiffs’ central contention is that certain federal and state election statutes ignore the express mandate of Article II of the Constitution, thus rendering them invalid. Id. at 109–12. Although the Complaint also asserts causes of action for violations of the Equal Protection and Due Process Clauses, those are merely derivative of its first count. Id. at 112–15.

In order to provide an equitable briefing and hearing schedule on a very tight timetable, this Court immediately instructed Plaintiffs to file proofs of service on Defendants so that they could proceed on their preliminary-injunction Motion. See 12/23/20 Min. Order; Fed. R. Civ. P. 65(a)(1) (“The court may issue a preliminary injunction only on notice to the adverse party.”). Twelve days later, Plaintiffs have still not provided proof of notice to any Defendant, let alone filed a single proof of service or explained their inability to do so.

II. Legal Standard

“A preliminary injunction is an extraordinary remedy never awarded as of right.” Winter v. NRDC, 555 U.S. 7, 24 (2008). “A plaintiff seeking a preliminary injunction must establish [1] that he is likely to succeed on the merits, [2] that he is likely to suffer irreparable harm in the

absence of preliminary relief, [3] that the balance of equities tips in his favor, and [4] that an injunction is in the public interest.” Sherley v. Sebelius, 644 F.3d 388, 392 (D.C. Cir. 2011) (quoting Winter, 555 U.S. at 20). “The moving party bears the burden of persuasion and must demonstrate, ‘by a clear showing,’ that the requested relief is warranted.” Hospitality Staffing Solutions, LLC v. Reyes, 736 F. Supp. 2d 192, 197 (D.D.C. 2010) (citing Chaplaincy of Full Gospel Churches v. England, 454 F.3d 290, 297 (D.C. Cir. 2006)).

Before the Supreme Court’s decision in Winter, courts weighed these factors on a “sliding scale,” allowing “an unusually strong showing on one of the factors” to overcome a weaker showing on another. Davis v. Pension Ben. Guar. Corp., 571 F.3d 1288, 1291–92 (D.C. Cir. 2009) (quoting Davenport v. Int’l Bhd. of Teamsters, 166 F.3d 356, 361 (D.C. Cir. 1999)). Both before and after Winter, however, one thing is clear: a failure to show a likelihood of success on the merits alone is sufficient to defeat the motion. Ark. Dairy Coop. Ass’n, Inc. v. USDA, 573 F.3d 815, 832 (D.C. Cir. 2009) (citing Apotex, Inc. v. FDA, 449 F.3d 1249, 1253–54 (D.C. Cir. 2006)); Archdiocese of Wash. v. Wash. Metro. Area Transit Auth., 281 F. Supp. 3d 88, 99 (D.D.C. 2017), aff’d on other grounds, 897 F.3d 314 (D.C. Cir. 2018).

III. Analysis

Given that time is short and the legal errors underpinning this action manifold, the Court treats only the central ones and in the order of who, where, what, and why. Most obviously, Plaintiffs have not demonstrated the “irreducible constitutional minimum of standing.” Lujan v. Defs. of Wildlife, 504 U.S. 555, 560 (1992). Although they claim to have been “disenfranchised,” ECF No. 4 (PI Mem.) at 37, this is plainly not true. Their votes have been counted and their electors certified pursuant to state-authorized procedures; indeed, any vote nullification would obtain only were their own suit to succeed. To the extent that they argue

more broadly that voters maintain an interest in an election conducted in conformity with the Constitution, id. at 38, they merely assert a “generalized grievance” stemming from an attempt to have the Government act in accordance with their view of the law. Hollingsworth v. Perry, 570 U.S. 693, 706 (2013). This does not satisfy Article III’s demand for a “concrete and particularized” injury, id. at 704, as other courts have recently noted in rejecting comparable election challenges. See Wood v. Raffensperger, 981 F.3d 1307, 1314–15 (11th Cir. 2020); Bowyer v. Ducey, No. 20-2321, 2020 WL 7238261, at *4–5 (D. Ariz. Dec. 9, 2020); King v. Whitmer, No. 20-13134, 2020 WL 7134198, at *10 (E.D. Mich. Dec. 7, 2020). Plaintiffs’ contention that the state legislature is being deprived of its authority to certify elections, moreover, cannot suffice to establish a distinct injury-in-fact to the individuals and organizations before this Court. Finally, to the extent that Plaintiffs seek an injunction preventing certain state officials from certifying their election results, see PI Mem. at 1, that claim is moot as certification has already occurred. Wood, 981 F.3d at 1317.

Moving on from subject-matter jurisdiction, the Court must also pause at personal jurisdiction. Plaintiffs cannot simply sue anyone they wish here in the District of Columbia. On the contrary, they must find a court or courts that have personal jurisdiction over each Defendant, and they never explain how a court in this city can subject to its jurisdiction, say, the Majority Leader of the Wisconsin State Senate. Absent personal jurisdiction over a particular Defendant, of course, this Court lacks authority to compel him to do anything.

Even if the Court had subject-matter and personal jurisdiction, it still could not rule in Plaintiffs’ favor because their central contention is flat-out wrong. “Plaintiffs claim that Article II of the U.S. Constitution provides a voter a constitutional right to the voter’s Presidential vote being certified as part of the state legislature’s post-election certification of Presidential electors.

Absence [*sic*] such certification, the Presidential electors’ votes from that state cannot be counted by the federal Defendants toward the election of President and Vice President.” Compl., ¶ 32 (emphasis added); see also PI Mem. at 1. More specifically, “Plaintiffs [*sic*] constitutional claims in this lawsuit are principally based on one sentence in Article II of the U.S. Constitution.” Compl., ¶ 54; see also PI Mem. at 1. That sentence states in relevant part that the President “shall hold his Office during the Term of four Years, and . . . be elected[] as follows: [¶] Each State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors” U.S. Const., art. II, § 1.

Plaintiffs somehow interpret this straightforward passage to mean that state legislatures alone must certify Presidential votes and Presidential electors after each election, and that Governors or other entities have no constitutionally permitted role. See Compl., ¶ 55. As a result, state statutes that delegate the certification to the Secretary of State or the Governor or anyone else are invalid. Id., ¶ 58. That, however, is not at all what Article II says. The above-quoted language makes manifest that a state appoints electors in “such Manner as the Legislature thereof may direct.” So if the legislature directs that the Governor, Secretary of State, or other executive-branch entity shall make the certification, that is entirely constitutional. This is precisely what has happened: in each of the five states, the legislature has passed a statute directing how votes are to be certified and electors selected. See Ariz. Rev. Stat. Ann. § 16-212(B); Ga. Code Ann. § 21-2-499(b); Mich. Comp. Laws Ann. § 168.46; Wis. Stat. Ann. § 7.70(5)(b); 25 Pa. Stat. § 3166.

For example, Georgia requires its Secretary of State to “certify the votes cast for all candidates . . . and lay the returns for presidential electors before the Governor. The Governor shall enumerate and ascertain the number of votes for each person so voted and shall certify the

slates of presidential electors receiving the highest number of votes.” Ga. Code Ann. § 21-2-499(b). Similarly, under Michigan law, “the governor shall certify, under the seal of the state, to the United States secretary of state, the names and addresses of the electors of this state chosen as electors of president and vice-president of the United States.” Mich. Comp. Laws Ann. § 168.46. Plaintiffs’ theory that all of these laws are unconstitutional and that the Court should instead require state legislatures themselves to certify every Presidential election lies somewhere between a willful misreading of the Constitution and fantasy.

Plaintiffs readily acknowledge that their position also means that the Supreme Court’s decisions in Bush v. Gore, 531 U.S. 98 (2000), and Texas v. Pennsylvania, No. 155 (Orig.), 2020 WL 7296814 (U.S. Dec. 11, 2020), “are in constitutional error.” Compl., ¶ 76. They do not, however, explain how this District Court has authority to disregard Supreme Court precedent. Nor do they ever mention why they have waited until seven weeks after the election to bring this action and seek a preliminary injunction based on purportedly unconstitutional statutes that have existed for decades — since 1948 in the case of the federal ones. It is not a stretch to find a serious lack of good faith here. See Trump v. Wis. Elections Comm’n, No. 20-3414, 2020 WL 7654295, at *4 (7th Cir. Dec. 24, 2020).

Yet even that may be letting Plaintiffs off the hook too lightly. Their failure to make any effort to serve or formally notify any Defendant — even after reminder by the Court in its Minute Order — renders it difficult to believe that the suit is meant seriously. Courts are not instruments through which parties engage in such gamesmanship or symbolic political gestures. As a result, at the conclusion of this litigation, the Court will determine whether to issue an order to show cause why this matter should not be referred to its Committee on Grievances for potential discipline of Plaintiffs’ counsel.

IV. Conclusion

As Plaintiffs have established no likelihood of success on the merits here, the Court will deny their Motion for Preliminary Injunction. A contemporaneous Order so stating will issue this day.

/s/ James E. Boasberg
JAMES E. BOASBERG
United States District Judge

Date: January 4, 2021

EXHIBIT 8



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Atty Lin Wood Under Fire From Del. Judge For Election Suits

By **Dave Simpson**

Law360 (December 21, 2020, 11:42 PM EST) -- Attorney L. Lin Wood's representation of former Trump adviser Carter Page in Delaware state court could be revoked based on his conduct in suits challenging the results of the general election as a plaintiff in Georgia and as counsel in Wisconsin, a state court judge said Friday.

Delaware Superior Court Judge Craig A. Karsnitz ordered Wood to show why his representation of Page in the case should not be revoked, given that Wood's Georgia suit was found to have "no basis in fact or law" and the Wisconsin suit had "multiple deficiencies."

Wood, a high-profile trial attorney in Atlanta, was given permission to represent Page in the Delaware suit in August but, Judge Karsnitz said, the cases filed since the election appear to violate the Delaware Lawyers' Rules of Professional Conduct.

Wood's Nov. 13 suit against Georgia Secretary of State Brad Raffensperger and Georgia Election Board members challenged the election officials' March settlement agreement with the Democratic Party of Georgia to strengthen signature checks for absentee ballots. Wood, as the plaintiff, claimed the change in procedure was made without authority and went against what was approved by the state's Legislature.

But a week later U.S. District Judge Steven D. Grimberg **denied on multiple grounds** the emergency bid to halt the certification of Georgia's general election results, saying the request by Wood was too late, without merit and would disenfranchise millions of voters.

The judge said Wood had no standing as a private citizen, individual voter or campaign donor to bring his claims of constitutional violations against his rights to equal treatment under the law, a fair and transparent election, and due process. He also criticized Wood for waiting more than eight months to challenge the March settlement agreement, a stretch in which there were three state elections.

Judge Karsnitz also said Friday that in the Georgia case Wood "filed or caused to be filed" an affidavit with "materially false information" misidentifying the counties as to which claimed fraudulent voting occurred.

In the Wisconsin litigation Wood was not the plaintiff, but the suit was "filed on behalf of a person who had not authorized it," Judge Karsnitz said.

And the complaint and related filings had "multiple deficiencies," the judge said.

"All of the foregoing gives the court concerns as to the appropriateness of continuing the order granting Mr. Wood authorization to appear in the court pro hac vice," Judge Karsnitz said.

He gave Wood until Jan. 6 to respond.

Wood became known nationally for representing Richard Jewell, the security guard falsely accused of planting a bomb at the 1996 Summer Olympics in Atlanta, in his defamation suits against NBC News, the New York Post and other media outlets.

Wood did not immediately respond to requests for comment Monday night.

Attorneys attempting to overturn the election are taking heat in other venues as well.

Earlier this month, hundreds of attorneys, including retired judges and former American Bar Association presidents, called for bar associations to investigate and condemn the **lawyers behind Trump's lawsuits** seeking to overturn the results of the presidential election.

More than 1,500 attorneys signed an open letter calling out Rudy Giuliani, Joseph diGenova, Jenna Ellis, Victoria Toensing and Sidney Powell as being in violation of the ABA's rules of professional conduct, which prohibit lawyers from making frivolous claims and engaging in conduct involving dishonesty and deceit in or out of court, the nonpartisan organization Lawyers Defending American Democracy said.

Late last month, U.S. Rep. Bill Pascrell, D-N.J., told disciplinary authorities in five states that Giuliani and nearly two dozen other lawyers **should be disbarred** for representing Trump's campaign in "absurd" election-related lawsuits.

But experts told Law360 last month that attorney ethics enforcers are unlikely to target Trump's lawyers for trying to overturn Biden's election win in court.

The case is Carter Page v. Oath Inc., case number S20C-07-030 CAK, in the Superior Court for the State of Delaware.

--Editing by Bruce Goldman.

EXHIBIT 9



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JOINT STATEMENT FROM ELECTIONS INFRASTRUCTURE GOVERNMENT COORDINATING COUNCIL & THE ELECTION INFRASTRUCTURE SECTOR COORDINATING EXECUTIVE COMMITTEES

Original release date: November 12, 2020

WASHINGTON – The members of Election Infrastructure Government Coordinating Council (GCC) Executive Committee – Cybersecurity and Infrastructure Security Agency (CISA) Assistant Director Bob Kolasky, U.S. Election Assistance Commission Chair Benjamin Hovland, National Association of Secretaries of State (NASS) President Maggie Toulouse Oliver, National Association of State Election Directors (NASED) President Lori Augino, and Escambia County (Florida) Supervisor of Elections David Stafford – and the members of the Election Infrastructure Sector Coordinating Council (SCC) – Chair Brian Hancock (Unisyn Voting Solutions), Vice Chair Sam Derheimer (Hart InterCivic), Chris Wlaschin (Election Systems & Software), Ericka Haas (Electronic Registration Information Center), and Maria Bianchi (Democracy Works) – released the following statement:

"The November 3rd election was the most secure in American history. Right now, across the country, election officials are reviewing and double checking the entire election process prior to finalizing the result.

"When states have close elections, many will recount ballots. All of the states with close results in the 2020 presidential race have paper records of each vote, allowing the ability to go back and count each ballot if necessary. This is an added benefit for security and resilience. This process allows for the identification and correction of any mistakes or errors. **There is no evidence that any voting system deleted or lost votes, changed votes, or was in any way compromised.**

"Other security measures like pre-election testing, state certification of voting equipment, and the U.S. Election Assistance Commission's (EAC) certification of voting equipment help to build additional confidence in the voting systems used in 2020.

"While we know there are many unfounded claims and opportunities for misinformation about the process of our elections, we can assure you we have the utmost confidence in the security and integrity of our elections, and you should too. When you have questions, turn to elections officials as trusted voices as they administer elections."

###

Topics: Election Security

Keywords: CISA, Election security

Last Published Date: November 12, 2020

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EXHIBIT 10

STATE OF MICHIGAN

IN THE THIRD JUDICIAL CIRCUIT COURT FOR THE COUNTY OF WAYNE

Cheryl A. Costantino and
Edward P. McCall, Jr.
Plaintiffs,

Hon. Timothy M. Kenny
Case No. 20-014780-AW

City of Detroit; Detroit Election
Commission; Janice M. Winfrey,
in her official capacity as the
Clerk of the City of Detroit and
the Chairperson and the Detroit
Election Commission; Cathy Garrett,
In her official capacity as the Clerk of
Wayne County; and the Wayne County
Board of Canvassers,
Defendants.

_____ /

OPINION & ORDER

At a session of this Court
Held on: November 13, 2020
In the Coleman A. Young Municipal Center
County of Wayne, Detroit, MI

PRESENT: Honorable Timothy M. Kenny
Chief Judge
Third Judicial Circuit Court of Michigan

This matter comes before the Court on Plaintiffs' motion for preliminary injunction, protective order, and a results audit of the November 3, 2020 election. The Court having read the parties' filing and heard oral arguments, finds:

With the exception of a portion of Jessy Jacob affidavit, all alleged fraudulent claims brought by the Plaintiffs related to activity at the TCF Center. Nothing was alleged to

have occurred at the Detroit Election Headquarters on West Grand Blvd. or at any polling place on November 3, 2020.

The Defendants all contend Plaintiffs cannot meet the requirements for injunctive relief and request the Court deny the motion.

When considering a petition for injunction relief, the Court must apply the following four-pronged test:

1. The likelihood the party seeking the injunction will prevail on the merits.
2. The danger the party seeking the injunction will suffer irreparable harm if the injunction is not granted.
3. The risk the party seeking the injunction would be harmed more by the absence an injunction than the opposing party would be by the granting of the injunction.
4. The harm to the public interest if the injunction is issued. *Davis v City of Detroit Financial Review Team*, 296 Mich. App. 568, 613; 821 NW2nd 896 (2012).

In the *Davis* opinion, the Court also stated that injunctive relief “represents an extraordinary and drastic use of judicial power that should be employed sparingly and only with full conviction of its urgent necessity.” *Id.* at 612 fn 135 quoting *Senior Accountants, Analysts and Appraisers Association v Detroit*, 218 Mich. App. 263, 269; 553 NW2nd 679 (1996).

When deciding whether injunctive relief is appropriate MCR 3.310 (A)(4) states that the Plaintiffs bear the burden of proving the preliminary injunction should be granted. In cases of alleged fraud, the Plaintiff must state with particularity the circumstances constituting the fraud. MCR 2.112 (B) (1)

Plaintiffs must establish they will likely prevail on the merits. Plaintiffs submitted seven affidavits in support of their petition for injunctive relief claiming widespread voter

fraud took place at the TCF Center. One of the affidavits also contended that there was blatant voter fraud at one of the satellite offices of the Detroit City Clerk. An additional affidavit supplied by current Republican State Senator and former Secretary of State Ruth Johnson, expressed concern about allegations of voter fraud and urged "Court intervention", as well as an audit of the votes.

In opposition to Plaintiffs' assertion that they will prevail, Defendants offered six affidavits from individuals who spent an extensive period of time at the TCF Center. In addition to disputing claims of voter fraud, six affidavits indicated there were numerous instances of disruptive and intimidating behavior by Republican challengers. Some behavior necessitated removing Republican challengers from the TCF Center by police.

After analyzing the affidavits and briefs submitted by the parties, this Court concludes the Defendants offered a more accurate and persuasive explanation of activity within the Absent Voter Counting Board (AVCB) at the TCF Center.

Affiant Jessie Jacob asserts Michigan election laws were violated prior to November 3, 2020, when City of Detroit election workers and employees allegedly coached voters to vote for Biden and the Democratic Party. Ms. Jacob, a furloughed City worker temporarily assigned to the Clerk's Office, indicated she witnessed workers and employees encouraging voters to vote a straight Democratic ticket and also witnessed election workers and employees going over to the voting booths with voters in order to encourage as well as watch them vote. Ms. Jacob additionally indicated while she was working at the satellite location, she was specifically instructed by superiors not to ask for driver's license or any photo ID when a person was trying to vote.

The allegations made by Ms. Jacob are serious. In the affidavit, however, Ms. Jacob does not name the location of the satellite office, the September or October date these

acts of fraud took place, nor does she state the number of occasions she witnessed the alleged misconduct. Ms. Jacob in her affidavit fails to name the city employees responsible for the voter fraud and never told a supervisor about the misconduct.

Ms. Jacob's information is generalized. It asserts behavior with no date, location, frequency, or names of employees. In addition, Ms. Jacob's offers no indication of whether she took steps to address the alleged misconduct or to alter any supervisor about the alleged voter fraud. Ms. Jacob only came forward after the unofficial results of the voting indicated former Vice President Biden was the winner in the state of Michigan.

Ms. Jacob also alleges misconduct and fraud when she worked at the TCF Center. She claims supervisors directed her not to compare signatures on the ballot envelopes she was processing to determine whether or not they were eligible voters. She also states that supervisors directed her to "pre-date" absentee ballots received at the TCF Center on November 4, 2020. Ms. Jacob ascribes a sinister motive for these directives. Evidence offered by long-time State Elections Director Christopher Thomas, however, reveals there was no need for comparison of signatures at the TCF Center because eligibility had been reviewed and determined at the Detroit Election Headquarters on West Grand Blvd. Ms. Jacob was directed not to search for or compare signatures because the task had already been performed by other Detroit city clerks at a previous location in compliance with MCL 168.765a. As to the allegation of "pre-dating" ballots, Mr. Thomas explains that this action completed a data field inadvertently left blank during the initial absentee ballot verification process. Thomas Affidavit, #12. The entries reflected the date the City received the absentee ballot. *Id.*

The affidavit of current State Senator and former Secretary of State Ruth Johnson essentially focuses on the affidavits of Ms. Jacob and Zachery Larsen. Senator Johnson believed the information was concerning to the point that judicial intervention was needed and an audit of the ballots was required. Senator Johnson bases her assessment entirely on the contents of the Plaintiffs' affidavits and Mr. Thomas' affidavit. Nothing in Senator Johnson's affidavit indicates she was at the TCF Center and witnessed the established protocols and how the AVCB activity was carried out. Similarly, she offers no explanation as to her apparent dismissal of Mr. Thomas' affidavit. Senator Johnson's conclusion stands in significant contrast to the affidavit of Christopher Thomas, who was present for many hours at TCF Center on November 2, 3 and 4. In this Court's view, Mr. Thomas provided compelling evidence regarding the activity at the TCF Center's AVCB workplace. This Court found Mr. Thomas' background, expertise, role at the TCF Center during the election, and history of bipartisan work persuasive.

Affiant Andrew Sitto was a Republican challenger who did not attend the October 29th walk- through meeting provided to all challengers and organizations that would be appearing at the TCF Center on November 3 and 4, 2020. Mr. Sitto offers an affidavit indicating that he heard other challengers state that several vehicles with out-of-state license plates pulled up to the TCF Center at approximately 4:30 AM on November 4th. Mr. Sitto states that "tens of thousands of ballots" were brought in and placed on eight long tables and, unlike other ballots, they were brought in from the rear of the room. Sitto also indicated that every ballot that he saw after 4:30 AM was cast for former Vice President Biden.

Mr. Sitto's affidavit, while stating a few general facts, is rife with speculation and guess-work about sinister motives. Mr. Sitto knew little about the process of the absentee voter counting board activity. His sinister motives attributed to the City of Detroit were negated by Christopher Thomas' explanation that all ballots were delivered to the back of Hall E at the TCF Center. Thomas also indicated that the City utilized a rental truck to deliver ballots. There is no evidentiary basis to attribute any evil activity by virtue of the city using a rental truck with out-of-state license plates.

Mr. Sitto contends that tens of thousands of ballots were brought in to the TCF Center at approximately 4:30 AM on November 4, 2020. A number of ballots speculative on Mr. Sitto's part, as is his speculation that all of the ballots delivered were cast for Mr. Biden. It is not surprising that many of the votes being observed by Mr. Sitto were votes cast for Mr. Biden in light of the fact that former Vice President Biden received approximately 220,000 more votes than President Trump.

Daniel Gustafson, another affiant, offers little other than to indicate that he witnessed "large quantities of ballots" delivered to the TCF Center in containers that did not have lids were not sealed, or did not have marking indicating their source of origin. Mr. Gustafson's affidavit is another example of generalized speculation fueled by the belief that there was a Michigan legal requirement that all ballots had to be delivered in a sealed box. Plaintiffs have not supplied any statutory requirement supporting Mr. Gustafson's speculative suspicion of fraud.

Patrick Colbeck's affidavit centered around concern about whether any of the computers at the absent voter counting board were connected to the internet. The answer given by a David Nathan indicated the computers were not connected to the

internet. Mr. Colbeck implies that there was internet connectivity because of an icon that appeared on one of the computers. Christopher Thomas indicated computers were not connected for workers, only the essential tables had computer connectivity. Mr. Colbeck, in his affidavit, speculates that there was in fact Wi-Fi connection for workers use at the TCF Center. No evidence supports Mr. Colbeck's position.

This Court also reads Mr. Colbeck's affidavit in light of his pre-election day Facebook posts. In a post before the November 3, 2020 election, Mr. Colbeck stated on Facebook that the Democrats were using COVID as a cover for Election Day fraud. His predilection to believe fraud was occurring undermines his credibility as a witness.

Affiant Melissa Carone was contracted by Dominion Voting Services to do IT work at the TCF Center for the November 3, 2020 election. Ms. Carone, a Republican, indicated that she "witnessed nothing but fraudulent actions take place" during her time at the TCF Center. Offering generalized statements, Ms. Carone described illegal activity that included, untrained counter tabulating machines that would get jammed four to five times per hour, as well as alleged cover up of loss of vast amounts of data. Ms. Carone indicated she reported her observations to the FBI.

Ms. Carone's description of the events at the TCF Center does not square with any of the other affidavits. There are no other reports of lost data, or tabulating machines that jammed repeatedly every hour during the count. Neither Republican nor Democratic challengers nor city officials substantiate her version of events. The allegations simply are not credible.

Lastly, Plaintiffs rely heavily on the affidavit submitted by attorney Zachery Larsen. Mr. Larsen is a former Assistant Attorney General for the State of Michigan who alleged mistreatment by city workers at the TCF Center, as well as fraudulent activity by election workers. Mr. Larsen expressed concern that ballots were being processed without confirmation that the voter was eligible. Mr. Larsen also expressed concern that he was unable to observe the activities of election official because he was required to stand six feet away from the election workers. Additionally, he claimed as a Republican challenger, he was excluded from the TCF Center after leaving briefly to have something to eat on November 4th. He expressed his belief that he had been excluded because he was a Republican challenger.

Mr. Larsen's claim about the reason for being excluded from reentry into the absent voter counting board area is contradicted by two other individuals. Democratic challengers were also prohibited from reentering the room because the maximum occupancy of the room had taken place. Given the COVID-19 concerns, no additional individuals could be allowed into the counting area. Democratic party challenger David Jaffe and special consultant Christopher Thomas in their affidavits both attest to the fact that neither Republican nor Democratic challengers were allowed back in during the early afternoon of November 4th as efforts were made to avoid overcrowding.

Mr. Larsen's concern about verifying the eligibility of voters at the AVCB was incorrect. As stated earlier, voter eligibility was determined at the Detroit Election Headquarters by other Detroit city clerk personnel.

The claim that Mr. Larsen was prevented from viewing the work being processed at the tables is simply not correct. As seen in a City of Detroit exhibit, a large monitor was

at the table where individuals could maintain a safe distance from poll workers to see what exactly was being performed. Mr. Jaffe confirmed his experience and observation that efforts were made to ensure that all challengers could observe the process.

Despite Mr. Larsen's claimed expertise, his knowledge of the procedures at the AVCB paled in comparison to Christopher Thomas'. Mr. Thomas' detailed explanation of the procedures and processes at the TCF Center were more comprehensive than Mr. Larsen's. It is noteworthy, as well, that Mr. Larsen did not file any formal complaint as the challenger while at the AVCB. Given the concerns raised in Mr. Larsen's affidavit, one would expect an attorney would have done so. Mr. Larsen, however, only came forward to complain after the unofficial vote results indicated his candidate had lost.

In contrast to Plaintiffs' witnesses, Christopher Thomas served in the Secretary of State's Bureau of Elections for 40 years, from 1977 through 2017. In 1981, he was appointed Director of Elections and in that capacity implemented Secretary of State Election Administration Campaign Finance and Lobbyist disclosure programs. On September 3, 2020 he was appointed as Senior Advisor to Detroit City Clerk Janice Winfrey and provided advice to her and her management staff on election law procedures, implementation of recently enacted legislation, revamped absent voter counting boards, satellite offices and drop boxes. Mr. Thomas helped prepare the City of Detroit for the November 3, 2020 General Election.

As part of the City's preparation for the November 3rd election Mr. Thomas invited challenger organizations and political parties to the TCF Center on October 29, 2020 to have a walk-through of the entire absent voter counting facility and process. None of Plaintiff challenger affiants attended the session.

On November 2, 3, and 4, 2020, Mr. Thomas worked at the TCF Center absent voter counting boards primarily as a liaison with Challenger Organizations and Parties. Mr. Thomas indicated that he “provided answers to questions about processes at the counting board’s resolved dispute about process and directed leadership of each organization or party to adhere to Michigan Election Law and Secretary of State procedures concerning the rights and responsibilities of challengers.”

Additionally, Mr. Thomas resolved disputes about the processes and satisfactorily reduced the number of challenges raised at the TCF Center.

In determining whether injunctive relief is required, the Court must also determine whether the Plaintiffs sustained their burden of establishing they would suffer irreparable harm if an injunction were not granted. Irreparable harm does not exist if there is a legal remedy provided to Plaintiffs.

Plaintiffs contend they need injunctive relief to obtain a results audit under Michigan Constitution Article 2, § IV, Paragraph 1 (h) which states in part “the right to have the results of statewide elections audited, in such as manner as prescribed by law, to ensure the accuracy and integrity of the law of elections.” Article 2, § IV, was passed by the voters of the state of Michigan in November, 2018.

A question for the Court is whether the phrase “in such as manner as prescribed by law” requires the Court to fashion a remedy by independently appointing an auditor to examine the votes from the November 3, 2020 election before any County certification of votes or whether there is another manner “as prescribed by law”.

Following the adoption of the amended Article 2, § IV, the Michigan Legislature amended MCL 168.31a effective December 28, 2018. MCL 168.31a provides for the Secretary of State and appropriate county clerks to conduct a results audit of at least

one race in each audited precinct. Although Plaintiffs may not care for the wording of the current MCL 168.31a, a results audit has been approved by the Legislature. Any amendment to MCL 168.31a is a question for the voice of the people through the legislature rather than action by the Court.

It would be an unprecedented exercise of judicial activism for this Court to stop the certification process of the Wayne County Board of Canvassers. The Court cannot defy a legislatively crafted process, substitute its judgment for that of the Legislature, and appoint an independent auditor because of an unwieldy process. In addition to being an unwarranted intrusion on the authority of the Legislature, such an audit would require the rest of the County and State to wait on the results. Remedies are provided to the Plaintiffs. Any unhappiness with MCL 168.31a calls for legislative action rather than judicial intervention.

As stated above, Plaintiffs have multiple remedies at law. Plaintiffs are free to petition the Wayne County Board of Canvassers who are responsible for certifying the votes. (MCL 168.801 and 168.821 et seq.) Fraud claims can be brought to the Board of Canvassers, a panel that consists of two Republicans and two Democrats. If dissatisfied with the results, Plaintiffs also can avail themselves of the legal remedy of a recount and a Secretary of State audit pursuant to MCL 168.31a.

Plaintiff's petition for injunctive relief and for a protective order is not required at this time in light of the legal remedy found at 52 USC § 20701 and Michigan's General Schedule #23 – Election Records, Item Number 306, which imposes a statutory obligation to preserve all federal ballots for 22 months after the election.

In assessing the petition for injunctive relief, the Court must determine whether there will be harm to the Plaintiff if the injunction is not granted, as Plaintiffs' existing legal

remedies would remain in place unaltered. There would be harm, however, to the Defendants if the Court were to grant the requested injunction. This Court finds that there are legal remedies for Plaintiffs to pursue and there is no harm to Plaintiffs if the injunction is not granted. There would be harm, however, to the Defendants if the injunction is granted. Waiting for the Court to locate and appoint an independent, nonpartisan auditor to examine the votes, reach a conclusion and then finally report to the Court would involve untold delay. It would cause delay in establishing the Presidential vote tabulation, as well as all other County and State races. It would also undermine faith in the Electoral System.

Finally, the Court has to determine would there be harm to the public interest. This Court finds the answer is a resounding yes. Granting Plaintiffs' requested relief would interfere with the Michigan's selection of Presidential electors needed to vote on December 14, 2020. Delay past December 14, 2020 could disenfranchise Michigan voters from having their state electors participate in the Electoral College vote.

Conclusion

Plaintiffs rely on numerous affidavits from election challengers who paint a picture of sinister fraudulent activities occurring both openly in the TCF Center and under the cloak of darkness. The challengers' conclusions are decidedly contradicted by the highly-respected former State Elections Director Christopher Thomas who spent hours and hours at the TCF Center November 3rd and 4th explaining processes to challengers and resolving disputes. Mr. Thomas' account of the November 3rd and 4th events at the TCF Center is consistent with the affidavits of challengers David Jaffe, Donna MacKenzie and Jeffrey Zimmerman, as well as former Detroit City Election Official, now contractor, Daniel Baxter and City of Detroit Corporation Counsel Lawrence Garcia.

Perhaps if Plaintiffs' election challenger affiants had attended the October 29, 2020 walk-through of the TCF Center ballot counting location, questions and concerns could have been answered in advance of Election Day. Regrettably, they did not and, therefore, Plaintiffs' affiants did not have a full understanding of the TCF absent ballot tabulation process. No formal challenges were filed. However, sinister, fraudulent motives were ascribed to the process and the City of Detroit. Plaintiffs' interpretation of events is incorrect and not credible.

Plaintiffs are unable to meet their burden for the relief sought and for the above mentioned reasons, the Plaintiffs' petition for injunctive relief is DENIED. The Court further finds that no basis exists for the protective order for the reasons identified above. Therefore, that motion is DENIED. Finally, the Court finds that MCL 168.31a governs the audit process. The motion for an independent audit is DENIED.

It is so ordered.

This is not a final order and does not close the case.

November 13, 2020

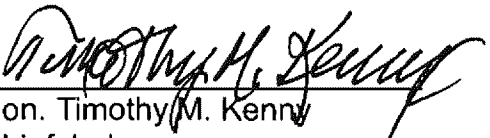

Hon. Timothy M. Kenny
Chief Judge
Third Judicial Circuit Court of Michigan

EXHIBIT 11

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

CHERYL A. COSTANTINO and,
EDWARD P. MCCALL, JR.,

Case No. 20-014780-AW

Plaintiffs,

Hon. Timothy M. Kenny

vs.

CITY OF DETROIT; DETROIT ELECTION
COMMISSION; JANICE WINFREY, in her official
capacity as the CLERK OF THE CITY and the
Chairperson of the DETROIT ELECTION COMMISSION;
CATHY M. GARRETT, in her official capacity as the
CLERK OF WAYNE COUNTY; and the WAYNE COUNTY
BOARD OF CANVASSERS,

Defendants.

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AFFIDAVIT OF CHRISTOPHER THOMAS

Being duly sworn, Christopher Thomas, deposes and states the following as true, under oath:

1. I am a Senior Advisor to Detroit City Clerk Janice Winfrey beginning on September 3, 2020 until December 12, 2020. In this capacity I advise the Clerk and management staff on election law procedures, implementation of recently enacted legislation, revamped absent voter counting board, satellite offices and drop boxes, Bureau of Election matters and general preparation for the November 3, 2020 General Election.

2. I served in the Secretary of State Bureau of Election for 40 years beginning in May 1977 and finishing in June 2017. In June 1981 I was appointed Director of Elections and in that capacity implemented four Secretaries of State election administration, campaign finance and lobbyist disclosure programs.

3. In 2013, I was appointed to President Barack Obama's Commission on Election Administration and served until a final report was submitted to the President and Vice-President in January 2014.

4. I am a founding member of the National Association of State Election Directors and served as its president in 1997 and 2013.

5. On November 2, 3 and 4, 2020, I worked at the TCF Center absent voter counting boards primarily as liaison with challenger parties and organizations. I provided answers to questions about processes at the counting board tables, resolved disputed about process and directed leadership of each organization or party to adhere to Michigan Election Law and Secretary of State procedures concerning the rights and responsibilities of challengers. I have reviewed the complaint and affidavits in this case.

6. It is clear from the affidavits attached to the Complaint that these challengers do not understand absent voter ballot processing and tabulating. It is clear also that they did not operate through the leadership of their challenger party, because the issues they bring forward were by and large discussed and resolved with the leadership of their challenger party. The leadership on numerous occasions would ask me to accompany them to a particular counting board table to resolve an issue. I would always discuss the issue with counting board inspectors and their supervisors and the challengers. The affiants appear to have failed to follow this protocol established in a meeting with challenger organizations and parties on Thursday, October 29, 2020 at the TCF Center where a walk-through of the entire process was provided. A few basics are in order: The Qualified Voter File (QVF) is a statewide vote registration file and was not available to counting boards. E-pollbook (EPB) is a computer program used in election day precincts to create the poll list of voters casting ballots. Supplemental poll lists contain names of voters who cast an absent voter ballot on Sunday, Monday and Tuesday. At the processing tables no ballots are scanned. A poll list is not used to confirm whether any specific voter's ballot is counted.

7. To increase the accuracy of the poll list, the Detroit Department of Elections employed the Secretary of State e-pollbook (EPB) to assist in creating the poll list. For each of the counting boards, the EPB held all the names of voters who requested and returned an absent voter ballot by mid-afternoon Sunday, November 1. The download on Sunday was necessary to prepare for the pre-processing granted by a recently enacted law that allows larger municipalities to process ballots, but not to tabulate them, for 10 hours on Monday. (To clarify some apparent confusion by Plaintiffs, Wayne County does not tabulate City of Detroit absent voter ballots.)

8. Absent voter ballots received Sunday after the download to EPB, all day Monday until 4 p.m. and Tuesday by 8 p.m. were not in the EPB. They would be added either by manually

entering the voter names into the EPB or on supplemental paper poll lists printed from the Qualified Voter File (QVF).

9. Zachery Larsen is raising an issue about return ballot envelopes where the barcode on the label would not scan and the voter's name was not on the supplemental list. He was observing the correction of clerical errors, not some type of fraud. In every election, clerical errors result in voters being left off the poll list, whether it is a paper poll list or the EPB. These errors are corrected so that voters are not disenfranchised. Michigan law ensures that voters are not disenfranchised by clerical errors.

10. On Wednesday, November 4 it was discovered that the envelopes for some ballots that had been received prior to November 3 at 8 p.m., had not been received in the QVF. They would not scan into the EPB and were not on the supplemental paper list. Upon reviewing the voters' files in the QVF, Department of Elections staff found that the final step of processing receipt of the ballots was not taken by the satellite office employees. The last step necessary to receive a ballot envelope requires the satellite employee to enter the date stamped on the envelope and select the "save" button. They failed to select "save".

11. A team of workers was directed to correct those clerical errors by entering the date the ballots were received in the satellite office and selecting "save". This action then placed the voter into the Absent Voter Poll List in the QVF so that the ballot could be processed and counted. None of these ballots were received after 8 p.m. on election day. Most were received on Monday, November 2nd – the busiest day for the satellite offices.

12. The return ballot envelopes for each of these voters are marked with the date received and initialed by satellite employees who verified the voter signatures. By entering the date on which the ballot was received, no QVF data was altered. The date field was empty because

the satellite workers did not select ‘save’, thus failing to complete the transaction. The “backdating” allegation is that on November 4 the staff entered the correct dates the ballots were received – all dates were November 3 or earlier. The date of receipt was not backdated.

13. These return ballot envelopes were discussed with several Republican challengers. Two challengers were provided a demonstration of the QVF process to show them how the error occurred, and they chose not to file a challenge to the individual ballots.

14. The inspectors at the counting boards were able to manually enter voters into the EPB. The return ballot envelope could easily be observed and every key stroke of the EPB laptop operator was clearly visible on the large screen at one corner of the table. The Department of Elections, at some expense, provided large monitors (see attached photo) to keep the inspectors safe and provide the challengers with a view of what was being entered, without crossing the 6-foot distancing barrier. Instead of creating problems for challengers, the monitors made observing the process very transparent.

15. The EPB has an “Unlisted Tab” that allows inspectors to add the names of voters not listed. The EPB is designed primarily for use in election day polling places and reserves the Unlisted Tab to enter voters casting provisional ballots. In polling places, voters are verified by providing their date of birth. Consequently, the EPB is designed with a birthdate field that must be completed to move to the next step. When using this software in an absent voter counting board, a birthdate is not necessary to verify voters, as these voters are verified by signature comparisons (a process which was completed before the ballots were delivered to the TCF Center). Inspectors at the TCF Center did not have access to voters’ birthdates. Therefore, due to the fact that the software (but not the law or the Secretary of State) requires the field be completed to move to the next step, 1/1/1900 was used as a placeholder. This is standard operating procedure and a standard date used

by the State Bureau of Elections and election officials across the state to flag records requiring attention. The date of 1/1/1900 is recommended by the Michigan Secretary of State for instances in which a placeholder date is needed.

16. When Republican challengers questioned the use of the 1/1/1900 date on several occasions, I explained the process to them. The challengers understood the explanation and, realizing that what they observed was actually a best practice, chose not to raise any challenges.

17. Ballots are delivered to the TCF Center after they are processed at the Department of Elections main office on West Grand Boulevard. On election day, ballots are received from the post office and the satellite offices. It takes several hours to properly process ballots received on election day. It appears that some of the affidavits submitted by Plaintiffs are repeating false hearsay about ballots being delivered, when actually television reporters were bringing in wagons of audio-video equipment. All ballots were delivered the same way— from the back of the TCF Hall E.

18. Early in the morning on Wednesday, November 4, approximately 16,000 ballots were delivered in a white van used by the city. There were 45 covered trays containing approximately 350 ballots each. The ballots were not visible as the trays had a sleeve that covered the ballots.

19. The ballots delivered to the TCF Center had been verified by the City Clerk's staff prior to delivery in a process prescribed by Michigan law. Thus, when Jessie Jacob complains that she "was instructed not to look at any of the signatures on the absentee ballots, and I was instructed not to compare the signature on the absentee ballot with the signature on file" it was because that part of the process had already been completed by the City Clerk's Office in compliance with the statutory scheme.

20. It would have been impossible for any election worker at the TCF Center to count or process a ballot for someone who was not an eligible voter or whose ballot was not received by the 8:00 p.m. deadline on November 3, 2020. No ballot could have been “backdated,” because no ballots received after 8:00 p.m. on November 3, 2020 were ever at the TCF Center. No voter not in the QVF or in the “Supplemental Sheets” could have been processed, or “assigned” to a “random name” because no ballot from a voter not in one of the two tracking systems, was brought to the TCF Center.

21. Mr. Larsen complains he was not given a full opportunity to stand immediately behind or next to an election inspector. As stated, monitors were set up for this purpose. Moreover, election inspection were instructed to follow the same procedure for all challengers. The Detroit Health Code and safety during a pandemic required maintaining at least 6-feet of separation. This was relaxed where necessary for a challenger to lean in to observe something and then lean back out to return to the 6-foot distancing. The inspectors could see and copy the names of each person being entered into the e-pollbook. If an inspector did not fully accommodate a challenger’s reasonable request and the issue was brought to the attention of a supervisor, it was remedied. Announcements were made over the public address system to inform all inspectors of the rules. If what Mr. Larsen says is accurate, any inconvenience to him was temporary, had no effect on the processing of ballots, and certainly was not a common experience for challengers.

22. Jessy Jacob alleges she was instructed by her supervisor to adjust the mailing date of absentee ballot packages being sent out to voters in September 2020. The mailing date recorded for absentee ballot packages would have no impact on the rights of the voters and no effect on the processing and counting of absentee votes.

23. Michigan Election Law requires clerks to safely maintain absent voter ballots and deliver them to the absent voter counting board. There is no requirement that such ballots be transported in sealed ballot boxes. To my knowledge, they are not sealed by any jurisdiction in Michigan in a ballot box prior to election day. Employees bring the ballot envelopes to the TCF Center, which is consistent with chain of custody. The only ballots brought to TCF that are not in envelopes are blank ballots used to duplicate ballots when necessary.

24. At no time after ballots were delivered to TCF on Sunday, November 1, did any ballot delivery consisted of “tens of thousands of ballots”.

25. Reference is made to a “second round of new ballots” around 9:00 p.m. on Wednesday, November 4. At or about 9:00 p.m. on November 4, 2020 the Department of Elections delivered additional blank ballots that would be necessary to complete the duplication of military and overseas ballots. No new voted ballots were received. The affidavits are likely referring to blank ballots that were being delivered in order to process AV and military ballots in compliance with the law.

26. In the reference to a “second round of new ballots” there are numerous misstatements indicative of these challengers’ lack of knowledge and their misunderstanding of how an absent voter counting board operates. These statements include “confirm that the name on the ballot matched the name on the electronic poll list” – there are no names on ballots.

27. No absentee ballots received after the deadline of 8:00 p.m. on November 3, 2020, were received by or processed at the TCF Center. Only ballots received by the deadline were processed.

28. Plaintiffs reference “Supplement Sheets with the names of all persons who have registered to vote on either November 2, 2020 or November 3, 2020.” Some of the names are

voters who registered to vote on those days, but the vast majority are voters who applied for and voted an absent voter ballot.

29. Plaintiffs use “QVF” in place of “EPB”. The QVF is a statewide voter registration file; an EPB for a counting board is a file of the voters who applied for and returned an absent voter ballot for that counting board.

30. There is no “election rule” requiring all absent voter ballots be recorded in the QVF by 9:00 p.m. on November 3, 2020.

31. Plaintiffs also misunderstand the process when they state ballots were “filled out by hand and duplicated on site.” Instead, ballots were duplicated according to Michigan law. Michigan election law does not call for partisan challengers to be present when a ballot is duplicated; instead, when a ballot is duplicated as a result of a “false read,” the duplication is overseen by one Republican and one Democratic inspector coordinating together. That process was followed.

32. Regarding access to TCF Hall E by challengers, there is also much misinformation contained in the statements of challengers. Under the procedure issued by the Secretary of State there may only be 1 challenger for each qualified challenger organization at a counting board. Detroit maintains 134 counting board, thus permitting a like number of challengers per organization.

33. In mid-afternoon on Wednesday, I observed that few challengers were stationed at the counting board tables. Rather, clusters of 5, 10 or 15 challengers were gathered in the main aisles at some tables. I conducted a conversation with leaders of the Republican Party and Democratic Party about the number of challengers in the room and their locations. It became clear that more than 134 challengers were present for these organizations. No one was ejected for this

reason, but access to Hall E was controlled to ensure that challenger organizations had their full complement and did not exceed the ceiling any further than they already had.

34. Challengers were instructed to sign out if they needed to leave Hall E. For a short period of time—a few hours—because there were too many challengers in Hall E for inspectors to safely do their jobs, new challengers were not allowed in until a challenger from their respective organization left the Hall. However, as stated above, each challenger organization, including Republican and Democrat, continued to have their complement of challengers inside of the Hall E.

35. As stated previously, challengers are expected to be at their stations next to a counting board. Unfortunately, this was not the behavior being displayed. Instead, challengers were congregating in large groups standing in the main aisles and blocking Election Inspectors' movement. In one instance, challengers exhibited disorderly behavior by chanting "Stop the Vote." I believed this to be inappropriate threatening of workers trying to do their jobs. Such action is specifically prohibited in Michigan election law. Nevertheless, challengers were permitted to remain.

36. The laptop computers at the counting boards were not connected to the Internet. Some of the computers were used to process absent voter ballot applications in mid-October and were connected to the QVF. On election day and the day after election day, those computers were not connected and no inspector at the tables had QVF credentials that would enable them to access the QVF.

37. The Qualified Voter File has a high level of security and limitation on access to the file. For example, it is not true that a person with QVF credentials in one city is able to access data in another city's file within the QVF. That is not possible.

38. A point of much confusion in these claims is centered on the law that permits a city clerk to verify the signatures on absent voter ballots before election day. Inspectors at absent voter counting boards do not verify the signatures on the return ballot envelopes. Department of Elections staff may use a voter's signature on an application to verify the voter's signature on return ballot envelope. Or the staff may use the voter's signature in the QVF to make the comparison. Often using the QVF is more efficient than the application signatures.

39. I am not aware of any valid challenge being refused or ignored or of any challengers being removed because they were challenging ballots. Ballot challengers are an important part of the democratic process and were fully able to participate in the process at the TCF Center.

40. In conclusion, upon reviewing Plaintiffs' Complaint, Affidavits, and Motion, I can conclude based upon my own knowledge and observation that Plaintiffs' claims are misplaced and that there was no fraud, or even unrectified procedural errors, associated with processing of the absentee ballots for the City of Detroit.

I affirm that the representations above are true.

Further, Affiant sayeth not.

Date: November 11, 2020


CHRISTOPHER THOMAS

Subscribed and sworn to before me
this 11th day of NOVEMBER, 2020.

Nancy M. Black
Notary Public, NANCY M. BLACK
County of: VAN BUREN, STATE OF MICHIGAN
My Commission Expires: 09-05-2025
ACTING IN BERRIEN COUNTY, MICHIGAN

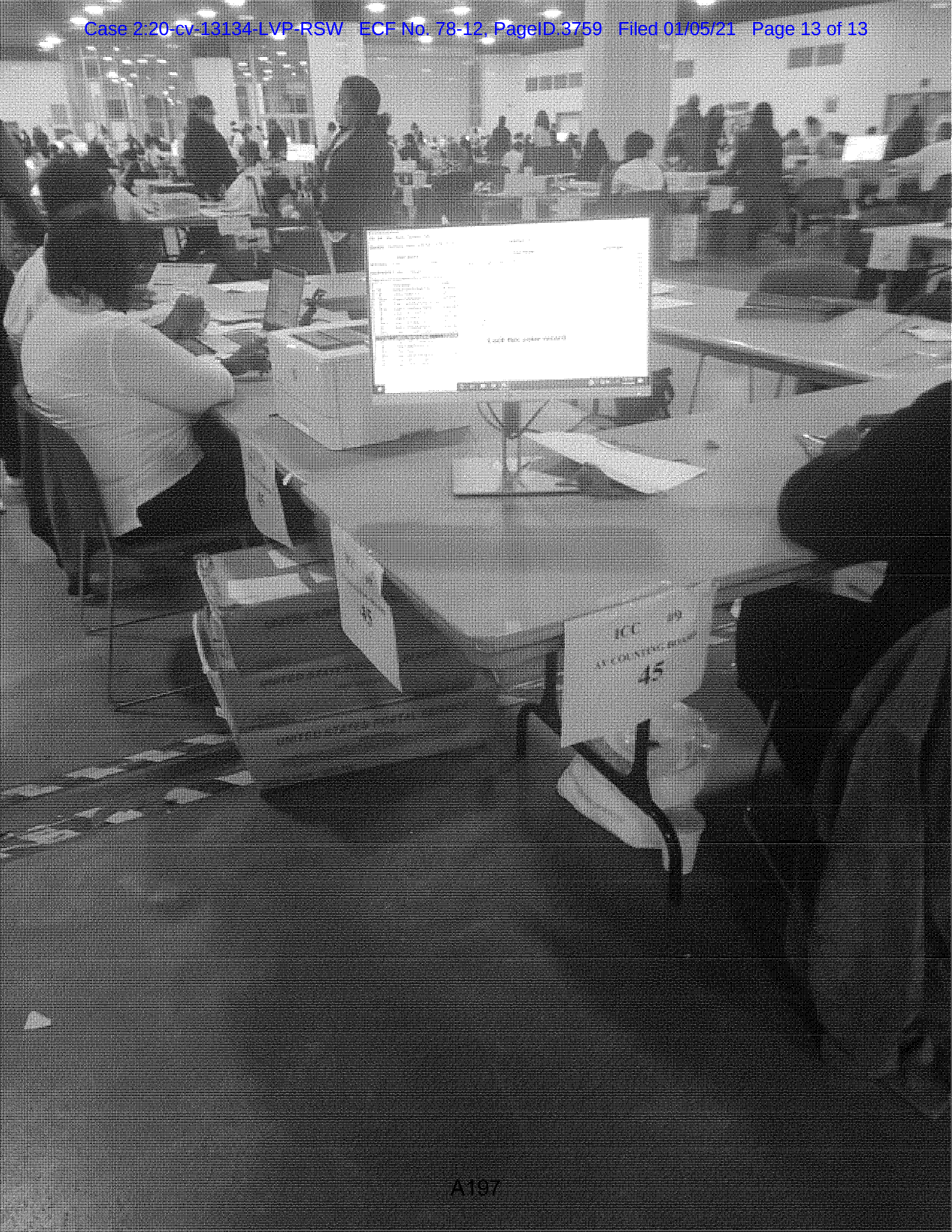


EXHIBIT 12

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

**CHERYL A. COSTANTINO and,
EDWARD P. McCALL, JR.,**

Case No. 20-014780-AW

Plaintiffs,

Hon. Timothy M. Kenny

vs.

**CITY OF DETROIT; DETROIT ELECTION
COMMISSION; JANICE WINFREY, in her official
capacity as the CLERK OF THE CITY and the
Chairperson of the DETROIT ELECTION COMMISSION;
CATHY M. GARRETT, in her official capacity as the
CLERK OF WAYNE COUNTY; and the WAYNE COUNTY
BOARD OF CANVASSERS,**

Defendants.

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AFFIDAVIT OF DANIEL BAXTER

Being duly sworn, Daniel Baxter, deposes and states the following as true, under oath:

1. From 1985 until 2019, I was employed by the Detroit Department of Elections, with a two year hiatus, from 2013 to 2015, when I served as the Director of Elections for Montgomery County, Alabama.
2. From 2005 until 2019, except during my tenure at Montgomery County, I served as Director of the Detroit Department of Elections.
3. Since September 1, 2020, I have served as Special Project Election Consultant for the Detroit Department of Elections, charged with administering all activities associated with the Central Counting Board for the November 3, 2020 General Election.
4. I was present at the Central Counting Board at the TCF Center, where absentee ballots were counted on Monday, November 2, 2020 from 5:30 AM until after midnight; on Tuesday, November 3, 2020 from 6:00 AM until midnight; and on Wednesday, November 4, 2020, from 7:00 AM until Thursday, November 5, 2020, at 6:00 AM.
5. The Detroit Department of Elections completed its final count at or around 10:00 PM on Wednesday, November 4, 2020.
6. The Detroit Department of Elections has submitted its final count to the Wayne County Board of Canvassers.
7. Jessy Jacob was a furloughed employee from another City department, assigned to the Department of Elections for limited, short-term, purposes, in September, 2020. Despite her long tenure with the City of Detroit, her tenure with the Department of Elections was brief, and her responsibilities were limited.
8. Ms. Jacob helped support work at two Absentee Voting Satellite Locations.

9. Ms. Jacob's affidavit, dated November 7, 2020, suggests that she did not understand many of the processes that she observed, and for which she was not responsible.
10. During training, all staff were instructed that their primary responsibility when voters came to the satellite locations was to facilitate the services requested by the voter.
11. If a voter was interested in voting by absentee ballot, staff were instructed to issue the voter an application, verify the voter's identity through a form of identification approved by the State of Michigan and issue a ballot based on Department of Elections procedures.
12. Staff was also instructed that if a voter did not have appropriate proof of identity, the voter should not be turned away; instead, the voter was to be offered an Affidavit of Voter Not in Possession of Photo ID.
13. Staff was instructed that the Department of Elections is strictly non-partisan, meaning the Department and its employees do not offer opinions on candidates or on proposals.
14. If a voter was issued an absent voter ballot and then applied for a second ballot at a satellite office, the voter would be required to request in writing that the first ballot be spoiled. If that does not occur, the Qualified Voter File alerts the satellite staff that there is an absent voter ballot already issued. In order to prevent double voting, until the first ballot is canceled, a second ballot cannot be issued. In the event the first ballot is returned, it is verified in the Qualified Voter File and rejected as a duplicate.
15. After her work on the election was completed, Ms. Jacob was again furloughed.
16. Prior to the filing of this lawsuit, Ms. Jacob did not report any of the issues addressed in her affidavit to any of her supervisors.

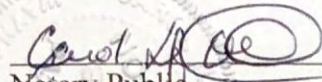
I affirm that the representations above are true.

Further, Affiant sayeth not.

Date: November 11, 2020


DANIEL BAXTER

Subscribed and sworn to before me
this 11th day of November, 2020.


Notary Public
County of: Wayne County
My Commission Expires: 11/24/2021

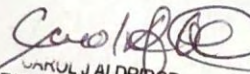

CAROL J ALDRIDGE
NOTARY PUBLIC, STATE OF MI
COUNTY OF WAYNE
MY COMMISSION EXPIRES Nov 24, 2021
ACTING IN COUNTY OF

EXHIBIT 13

AFFIDAVIT OF CHRISTOPHER THOMAS

Being duly sworn, Christopher Thomas, deposes and states the following as true, under oath:

1. I have served as a Senior Advisor to Detroit City Clerk Janice Winfrey since September 2020. In this capacity I advise the Clerk and management staff on election law procedures, implementation of recently enacted legislation, revamped absent voter counting board, satellite offices and drop boxes, Bureau of Elections matters and general preparation for the November 3, 2020 General Election. I was involved in nearly all aspects of the election in the City, including the processing and tabulation at the TCF Center.

2. I served in the Secretary of State Bureau of Election for 40 years beginning in May 1977 and finishing in June 2017. In June 1981, I was appointed Director of Elections and in that capacity implemented four Secretaries of State election administration, campaign finance and lobbyist disclosure programs.

3. In 2013, I was appointed to President Barack Obama's Commission on Election Administration and served until a final report was submitted to the President and Vice-President in January 2014.

4. I am a founding member of the National Association of State Election Directors and served as its president in 1997 and 2013.

5. I have reviewed the Motion for Leave to File Bill of Complaint ("Motion"), the proposed Bill of Complaint ("BOC") and attached Declarations. This Affidavit addresses some of the factual errors in those documents.

6. In November 2020, City of Detroit absentee ballots were counted at 134 absent voter counting boards in Hall E of the TCF Center, a large convention center in downtown Detroit.

Contrary to several statements made by the Plaintiff, the City of Detroit tabulates absentee ballots for Detroit voters, not the County of Wayne.

7. The City of Detroit is the only jurisdiction in the State of Michigan that is eligible to tabulate absent voter ballots by ballot style rather than by physical precinct. By law, jurisdictions with 250 or more precincts (Detroit is the only such jurisdiction in Michigan) may tabulate by ballot style. So, absent voter ballots in the City of Detroit are tabulated by absent voter counting boards, not by precincts.

8. A Detroit counting board is not the same as a precinct. A precinct has geographic dimensions that allow it to be shown on a map. A Detroit counting board by comparison is an aggregate of 1 or more precincts with the same ballot style. A ballot style is defined by its political geography, and encompasses ballots for which all offices, candidates, and proposals are the same. Detroit has 501 physical precincts that operate in various building locations across the city on election day. These 501 precincts do not count absent voter ballots on election day; they only counted ballots of voters who appeared at the precinct polling place marked a ballot and inserted it into a precinct tabulator. Absent voter ballots for voters who reside in the precincts are tabulated by absent voter counting boards, most of which include absent voter ballots of voters from several precincts. The absent voter ballots from Detroit's 501 precincts are distributed among 134 absent voter counting boards, depending on the ballot style.

9. According to Plaintiff, "the TCF was the only facility within Wayne County authorized to count ballots for the City of Detroit." (BOC ¶95). That is not correct. The TCF Center was the only facility within Wayne County authorized to count absentee ballots for the City of Detroit. Votes cast at polling places on election day were counted at those polling places, not at the TCF Center.

10. Plaintiff asserts, based upon the Cicchetti Declaration, that there were 174,384 absentee ballots in Wayne County “not tied to a registered voter.” (BOC at ¶97). Mr. Cicchetti clearly misunderstood whatever statistics he is referencing. His statement “174,384 absentee ballots out of 566,694 ballots tabulated (about 30.8%) were counted without a registration number for precincts in the City of Detroit” is apparently based upon his belief that absent voter ballots could only be reported as related to specific physical precincts. As noted above, however, the City of Detroit absent voter ballots are counted by ballot styles, meaning the counting boards do not correspond to a specific precinct as most have ballots from multiple precincts. The Wayne County Clerk reports the 134 absent voter counting boards separate from the precincts. No registration number is included because the percentage turnout of a counting board containing several different precincts has no meaning and is not directly related to the specific precincts. Thus, there is no requirement to report registration totals of the various precincts within each counting board. In fact, there is no legal requirement to report voter registration numbers for any precincts or counting boards. There were over 174,000 absentee ballots counted at the TCF Center, but they were not counted “without a registration number.” Every ballot counted had a corresponding application executed by a registered voter in the City of Detroit. They were counted with a rigorous process of verification and tabulation.

11. There is reference to Wayne County and Detroit precincts, being “unbalanced,” a situation which occurs when the number of votes does not match the number of ballots in the precincts. This is generally the result of human error and occurs in each election cycle, especially in more populated areas throughout the country. The minor imbalances in precincts and counting boards in Wayne County and Detroit for the November general election accounts for a vanishingly small number of votes. In the

August 2020 election, 53.6% of Wayne County precincts and counting boards were *balanced*, while in November 2020, 71.9% were *balanced*. The percentage of out-of-balance precincts, with an imbalance of 5 or more, was also lower in November 2020 than August 2020, with 8.1% being out of balance by more than 5 in August and 5.7% out of balance by 5 or more in November.

12. The City of Detroit had 501 precincts and 134 absent voter counting boards. Less than 36% of the total were out of balance. A counting board is out of balance if there are: (1) more ballots than voters or (2) more voters than ballots. In total 591 voters and ballots account for the imbalances. When voters and ballots are separated there are 148 more names than there are ballots, meaning that out of 174,384 votes there are 148 more names in the poll books than there are ballots. The imbalance is .0008 (eight ten-thousandths of a 1%). Of the 94 out of balance counting boards, there are 87 counting board with an imbalance of 11 or fewer voters/ballots; within the 87 counting boards, 48 are imbalanced by 3 or fewer voters/ballots. There are seven counting boards with higher imbalances that range from 13 more ballots to 71 fewer voters. Jurisdictions throughout the State, including jurisdictions with far fewer voters than Detroit, also had out of balance precincts. Indeed, the predominantly white jurisdiction of Livonia had a higher percentage of precincts out of balance than the predominantly African American City of Detroit. Nevertheless, in discussions at the Wayne County Canvassing Board one canvassing board member proposed the certification of all jurisdictions in Wayne County other than Detroit. None of the out of balance statistics suggest impropriety or provided a reason to not certify. This occurs everywhere in every election because elections are run by human beings who make mistakes.

13. On November 2, 3 and 4, 2020, I worked at the TCF Center absent voter counting boards primarily as liaison with challenger parties and organizations. I provided answers to questions about processes at the counting board tables, resolved disputes about process and directed leadership of each organization or party to adhere to Michigan Election Law and Secretary of State procedures concerning the rights and responsibilities of challengers. I have reviewed the claims in this case.

14. It is clear from the affidavits and the claims made by Plaintiff that the witnesses identified—Melissa Carone, Jessy Jacob and Zachary Larsen—do not understand absent voter ballot processing and tabulating. The affidavits of those witnesses were first submitted in *Costantino v. Detroit et al*, Wayne County Circuit Case No. 20-014780-AW. I submitted Affidavits to the Michigan courts in response to the affidavits of those witnesses.

15. A few basics about how the vote count is managed helps explain some of the misunderstandings of the witnesses. The Qualified Voter File (QVF) is a statewide vote registration file and was not available to counting boards. E-pollbook (EPB) is a computer program used in election day precincts to create the poll list of voters casting ballots. Supplemental poll lists contain names of voters who cast an absent voter ballot on Sunday, Monday and Tuesday. At the processing tables no ballots are scanned. A poll list is not used to confirm whether any specific voter's ballot is counted.

16. To increase the accuracy of the poll list, the Detroit Department of Elections employed the Michigan Secretary of State EPB to assist in creating the poll list. For each of the absent voter counting boards, the EPB held all the names of voters who requested an absent voter ballot by mid-afternoon Sunday, November 1. The download on Sunday was necessary to prepare

for the pre-processing granted by a recently enacted state law that allows larger municipalities to process ballots, but not to tabulate them, for 10 hours on Monday.

17. Absent voter ballots received Sunday after the download to EPB, all day Monday until 4 p.m. and Tuesday by 8:00 p.m. were not in the EPB. They would be added either by manually entering the voter names into the EPB or on supplemental paper poll lists printed from the QVF.

18. The affidavit of Mellissa Carone is particularly inaccurate and troubling. She was not an Election Inspector, nor was she a challenger. She was a contract worker, working for Dominion Voting Systems, to assist with occasional malfunctions of the tabulating machines. She has no known training in election law or procedures, and her affidavit and public statements have displayed a startling ignorance of how votes are counted.

19. Ms. Carone believes that she saw evidence that ballots were counted more than once at the TCF Center. Her main allegation—that hundreds or thousands of ballots were counted twice—cannot possibly be true. She says she saw on a computer that 50 of the same ballots had been counted 8 times, and that she saw numerous similar instances “countless times” throughout the day. She does not say she saw multiple scans; just that she saw the numbers on various scanners. If what she said were true, at the very least, 350 extra votes would show up for at least one absent voter counting board, resulting in that board being grossly out of balance. According to her affidavit, large numbers of extra votes would show up in “countless” precincts. However, a mistake like that would be caught very quickly on site. What Ms. Carone thinks she saw would also be caught by the Detroit Department of Elections and the Wayne County Canvassing Board during the canvassing which occurs after every election as a matter of law. A slight disparity between the number of voters and the number of ballots might occur, but nothing like the numbers

she describes could possibly occur and be missed by the Department of Elections, the Election Inspectors, the challengers and the Wayne County Board of Canvassers.

20. Ms. Carone's misunderstanding of what she observed may stem from the fact that as a routine part of the tabulation process, ballots are often fed through the high-speed reader more than once. For instance, if there is a jam in the reader, all ballots in the stack may need to be pulled out and run through again. Or, if there is a problem ballot (e.g., stains, tears, stray markings, ballot from a different counting board, etc.) in a stack, the problem ballot, and the several that were scanned by the high-speed machine after the problem was detected, will need to be re-scanned. At times, it will be most efficient to re-run several ballots, while at others, it will be more efficient to re-scan the entire batch. To an untrained observer it may appear that the ballot is being counted twice, however, the election worker will have cancelled the appropriate count on the computer screen. Any human error in the process would be identified during the canvass. If not, the number of voters at the absent voter counting board would be dramatically different than the number of counted votes.

21. Ms. Carone's speculation about 100,000 new ballots is also not possible. On Sunday, November 1, 2020, roughly 140,000 absent voter ballots were delivered to TCF for the Monday pre-processing; on Monday and Tuesday there were approximately 20,000 ballots delivered; and, on Wednesday at around 3-3:30 a.m., the final roughly 16,000 ballots were delivered. If 100,000 instead of 16,000 ballots had been delivered, Detroit's total turnout would be 84,000 ballots more than what was reported. Her reference to an announcement "on the news" of the discovery of 100,000 new ballots in Michigan appears to be based on a repeatedly debunked conspiracy theory in which a clerk in Shiawassee County accidentally typed in an extra 0 and quickly discovered and fixed the error, *See, e.g.,* <https://www.factcheck.org/2020/11/clerical->

error-prompts-unfoundedclaims-about-michigan-results/. Regardless of the source of her confusion, there is no way 100,000 new ballots could have been surreptitiously brought to the TCF Center as she describes.

22. Ballots are delivered to the TCF Center after they are processed at the Department of Elections main office on West Grand Boulevard. On election day, ballots are received from the post office and the satellite offices. It takes several hours to properly process ballots received on election day. Ms. Carone might have heard false rumors about ballots being delivered, when actually television reporters were bringing in wagons of audio-video equipment. All ballots were delivered the same way— from the back of the TCF Hall E.

23. Plaintiff is using the Affidavit of Jessy Jacob to assert that signatures on absentee ballots were not verified. The Affidavit, however, demonstrates nothing more than that Ms. Jacob did not understand the process. She states that “[w]hile I was at the TCF Center, I was instructed not to look at any of the signatures on the absentee ballots, and I was instructed not to compare the signature on the absentee ballot with the signature on file.” Ms. Jacob, who had no prior experience as an Election Inspector, did not understand that signature verification had occurred before any ballots were delivered to the TCF Center.

24. Michigan law permits a city clerk to verify the signatures on absent voter ballots before election day. Inspectors at absent voter counting boards do not verify the signatures on the return ballot envelopes. Before ballots were delivered to the TCF Center for counting, Department of Elections staff complete the verification process. Staff may use a voter’s signature on an application that was previously verified by the QVF to verify the voter’s signature on the ballot envelope, or the staff may use the voter’s signature in the QVF to make the comparison

25. The BOC asserts that "Wayne County made the policy decision to ignore Michigan's statutory signature-verification requirement for absentee ballots." (BOC at ¶93) There is no basis for this claim. Under Michigan law, the verification is done at the City, not the County level, and the City of Detroit followed strict procedures to verify signatures.

26. The ballots delivered to the TCF Center had been verified by the Detroit City Clerk's staff prior to delivery in a process prescribed by Michigan law. Thus, when Jessy Jacob states that she "was instructed not to look at any of the signatures on the absentee ballots, and I was instructed not to compare the signature on the absentee ballot with the signature on file" it was because that part of the process had already been completed by the City Clerk's satellite office staff in compliance with state law.

27. The Affidavit of Jessy Jacob is also used to support the allegations of ballots being "back-dated." It is once again clear that the allegations arise from the fact that Ms. Jacob did not understand what she was observing. On Wednesday, November 4 it was discovered that there had been an operator error at the satellite offices with respect to the verification of a relatively small number of ballots. While the ballot envelopes had been initialed as having been verified and stamped as having been received prior to November 3 at 8 p.m., the election worker[s] had not completed the final clerical step of selecting the "save" button in the computer system. Thus, those ballots would not scan into the EPB at the TCF Center and were not on the supplemental paper list.

28. A team of employees was directed to correct those clerical errors by entering the date the ballots were received in the satellite office and selecting "save." The date of receipt was not being backdated; it was being noted in the system. Completing this clerical step placed the voter into the Absent Voter Poll List in the QVF so that the ballot could be processed and counted.

Again, none of these ballots were received after 8:00 p.m. on election day. Most were received on Monday, November 2nd - the busiest day for the satellite offices. Two challengers were provided a demonstration of the QVF process to show them how the error occurred, and they chose not to file a challenge to the individual ballots.

29. It would have been impossible for any election worker at the TCF Center to count or process a ballot for someone who was not an eligible voter or whose ballot was not received by the 8:00 p.m. deadline on November 3, 2020. No ballot could have been "backdated," because no ballots received after 8:00 p.m. on November 3, 2020 were ever at the TCF Center. No voter not in the QVF or in the "Supplemental Sheets" could have been processed, or "assigned" to a "random name" because no ballot from a voter not in one of the two tracking systems, was brought to the TCF Center.

30. Jessy Jacob alleges she was instructed by her supervisor to adjust the mailing date of absentee ballot packages being sent out to voters in September 2020. The mailing date recorded for absentee ballot packages would have no impact on the rights of the voters and no effect on the processing and counting of absentee votes. Any adjustment to mailing date was done to more accurately reflect the date the ballot would be mailed, which in many cases was done on a date after the day the application was processed.

31. Michigan Election Law requires clerks to safely maintain absent voter ballots and deliver them to the absent voter counting board. There is no requirement that such ballots be transported in sealed ballot boxes. To my knowledge, they are not sealed by any jurisdiction in Michigan in a ballot box prior to election day. Employees bring the ballot envelopes to the TCF Center, which is consistent with chain of custody. The only ballots brought to TCF that are not in envelopes are blank ballots used to duplicate ballots when necessary.

32. At no time after ballots were delivered to TCF on Sunday, November 1, did any ballot delivery consisted of “tens of thousands of ballots”.

33. Contrary to the affidavit of Jessy Jacob, there is no legal requirement that all absent voter ballots be recorded in the QVF by 9:00 p.m. on November 3, 2020.

34. The QVF has a high level of security and limitation on access to the file. For example, it is not true (as claimed by Jessy Jacob) that a person with QVF credentials in one city is able to access data in another city’s file within the QVF. That is not possible.

35. In his affidavit, Zachery Larsen raises an issue about return ballot envelopes where the barcode on the label would not scan and the voter’s name was not on the supplemental list. He was observing the correction of clerical errors, not some type of fraud. In every election, clerical errors result in voters being left off the poll list, whether it is a paper poll list or the EPB. These errors are corrected so that voters are not disenfranchised. Michigan law ensures that voters are not disenfranchised by clerical errors.

36. Mr. Larsen also states that he saw an inspector at Counting Board 23 type into the computer system a name other than that of the voter appearing on the envelope because the voter was already in the EPB. But, if the voter were already checked in, the inspector would not have the envelope with a ballot in it. Mr. Larsen asserts he saw the name “Pope” typed into the EPB when there was already a person with that last name in the EPB. But, at Counting Board 23, there are three people with the last name Pope who voted in the election. One returned their ballot in October and therefore would have been in the EPB (since the information was downloaded from the QVF on Sunday November 1, 2020). The two other voters with the last name of Pope voted on Monday, November 1, so their names would not be in the EPB. Mr. Larsen apparently observed

one of those voters being hand entered into the system, as was necessary if they were not already in the EPB.

37. The City has conducted an internal inquiry with respect to Mr. Larsen's assertions regarding Counting Board 23. At that Counting Board, 2,855 ballots were tabulated with 2,856 associated envelopes. Each envelope is associated with validly registered voters and applications for absent voter ballots. The only voters whose names were typed into the system at that Counting Board were voters whose barcode did not bring up a ballot and whose name did not appear on the supplemental list. All such ballot envelopes were signed, verified and date/time-stamped as having been received before 8:00 p.m. on Tuesday, November 3, 2020.

38. Mr. Larsen also objects that he was not given a full opportunity to stand immediately behind or next to an election inspector operating the EPB laptop computer. In anticipation of viewing problems due to necessary social distancing to address COVID-19 concerns, large monitors were set up at each absent voter counting board. Moreover, election inspectors were instructed to follow the same procedure for all challengers. The Detroit Health Code and safety during a pandemic required maintaining at least 6-feet of separation. This was relaxed where necessary for a challenger to lean in to observe something and then lean back out to return to the 6-foot distancing. The challengers could see and copy the names of each person being entered into the EPB. If an inspector did not fully accommodate a challenger's reasonable request and the issue was brought to the attention of a supervisor, it was remedied. Announcements were made over the public address system to inform all inspectors of the rules. If what Mr. Larsen says is accurate, any inconvenience to him was temporary and had no effect on the processing of ballots.

39. It is clear also that Mr. Larsen did not operate through the leadership of his challenger party, because the issues he brings forward were by and large discussed and resolved

with the leadership of their challenger party. The leadership on numerous occasions would ask me to accompany them to a particular counting board table to resolve an issue. I would always discuss the issue with counting board inspectors and their supervisors and the challengers. Mr. Larsen appears to have failed to follow this protocol, which was established in a meeting with challenger organizations and parties on Thursday, October 29, 2020 at the TCF Center where a walk-through of the entire process was provided. Indeed, in the *Costantino* matter, counsel for plaintiffs acknowledged that Mr. Larsen had not attended that meeting.

40. Mr. Larsen makes some allegations relating to ballots without “secrecy sleeves,” but many ballots were returned without the secrecy sleeves. Michigan law does not invalidate ballots returned without a secrecy sleeve.

41. In mid-afternoon on Wednesday, November 4, 2020, I observed that few challengers were stationed at the counting board tables. Rather, clusters of 5, 10 or 15 challengers were gathered in the main aisles at some tables. I conducted a conversation with leaders of the Republican Party and Democratic Party about the number of challengers in the room and their locations. It became clear that more than 134 challengers were present for these organizations. No one was ejected for this reason, but access to Hall E was controlled to ensure that challenger organizations had their full complement and did not exceed the ceiling any further than they already had. Challengers were instructed to sign out if they needed to leave Hall E. For a short period of time—a few hours—because there were too many challengers in Hall E for inspectors to safely do their jobs, new challengers were not allowed in until a challenger from their respective organization left the Hall. However, each challenger organization, including Republican and Democrat, continued to have their challengers inside of Hall E.

42. I am not aware of any valid challenge being refused or ignored or of any challengers being removed because they were challenging ballots. Ballot challengers are part of the electoral process in Michigan and were fully able to participate in the process at the TCF Center.

43. The description of the Biden/Trump votes in Michigan is incorrect. (BOC at ¶77) Based upon the certified totals, Vice President Biden received 2,804,040 votes, and President Trump received 2,649,852 votes, for a margin of 154,188 votes.

44. The statement that “only 587,618 Michigan voters requested absentee ballots” in 2016 (BOC at ¶88) is not correct; Dr. Cicchetti acknowledges that the number is 1,277,405, in his Declaration (Declaration ¶17). *See also* https://www.eac.gov/sites/default/files/eac_assets/1/6/Michigan_-_EAVS_2016_Data_Brief_-_508.pdf.

45. During my employment with the Secretary of State, the Bureau of Elections compiled unofficial results from the 83 counties, adding county totals only after the ballots are tabulated in a county. The real “election night reporting” is done by the county clerks. The county clerks compile results from cities and townships in their respective counties. In Michigan, there are over 1,500 cities and townships. Typically, precinct results are the first returns to be publicly posted on county clerk websites. These returns begin appearing within an hour after the 8 p.m. closing of the polls and continue until nearly complete around midnight. Absent voter ballot results are slower to appear on county websites. Some jurisdictions will report partial mail ballot returns after 8 p.m.; however, most jurisdiction do not report mail ballot returns until all tabulation is completed. In election years before 2020, the bulk of mail ballots were reported between midnight and 5 a.m. The mail ballots for November 2020 continued to be reported well into Wednesday with some final results being reported on Thursday.

46. In conclusion, upon reviewing the various affidavits and statements made by Plaintiff, I can readily conclude based upon my own knowledge and observation that there was no fraud, or even unrectified procedural errors, associated with processing of the absentee ballots for the City of Detroit.

I affirm that the representations above are true.

Further, Affiant sayeth not.

Date: December 10, 2020


CHRISTOPHER THOMAS

Subscribed and sworn to before me
this 10th day of December, 2020.


KIMBERLY S. HUNT, Notary Public
County of Macomb

My Commission Expires: 08/08/24

Acting in the County of Macomb

Notarized using electronic/remote technology

Notary located in Macomb County, State of Michigan

Signatory located in BERRIEN County, State of MICHIGAN

KIMBERLY S. HUNT
NOTARY PUBLIC, STATE OF MI
COUNTY OF MACOMB
MY COMMISSION EXPIRES Aug 8, 2024
ACTING IN COUNTY OF MACOMB

EXHIBIT 14

SOS

Hand audit of all Presidential Election votes in Antrim County confirms previously certified results, voting machines were accurate

DECEMBER 17, 2020

A hand audit by bipartisan election officials of all the votes cast for president in Antrim County confirmed today that the result certified last month by the bipartisan Board of Antrim County canvassers was accurate. The audit proved again that the disinformation campaign surrounding Antrim's presidential election and its use of Dominion vote-tabulation machines was completely meritless.



"Today's full audit in Antrim County confirmed the truth and affirmed the facts: Dominion's voting machines accurately tabulated the votes cast for president in Antrim County," said Secretary of State Jocelyn Benson. "It is time for the disinformation campaigns to stop, and for elected and other leaders on both sides of the aisle to unequivocally affirm that the election was secure and accurate."

In the hand-tallied total, when compared with the machine-tabulated and certified results the net difference was only 12 votes out of 15,718 total votes.

Previously Certified Results

Trump: 9,748

Biden: 5,960

Hand-Tallied Audit Results (preliminary)

Trump: 9,759

Biden: 5,959



The slight differences in counts were in line with what is typically seen in hand recounts, as human counters may not award a vote to a pen mark on a ballot oval, where the machine counted it as a vote, or vice-versa. Human counters might also identify invalid write-in votes that need to be awarded to a different candidate. But the fact that the totals are so close confirms that the reporting error prior to certification was not related to tabulation, as has been falsely claimed without evidence.

The audit of the Antrim County presidential votes was a zero-limit risk-limiting audit, meaning it confirmed to absolute certainty that the outcome of the presidential election in Antrim County was correct by tallying every vote cast for president. In January, the Bureau of Elections and local and county clerks will complete a statewide risk-limiting audit of the Presidential Election



in which a random sample of ballots will be drawn statewide. It is expected to affirm that ballot-counting machines were accurate across the state, as was demonstrated by a pilot statewide risk-limiting audit following Michigan's March 10 Presidential Primary Election.

#

For media questions, contact
Tracy Wimmer at 517-281-1876.

We welcome questions and comments at the **Contact the Secretary of State** page.

Customers may call the Department of State Information Center to
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DEPARTMENT OF STATE
LANSING

November 7, 2020

**Isolated User Error in Antrim County Does Not Affect Election Results,
Has no Impact on Other Counties or States**

The error in reporting unofficial results in Antrim County Michigan was the result of a user error that was quickly identified and corrected; did not affect the way ballots were actually tabulated; and would have been identified in the county canvass before official results were reported even if it had not been identified earlier. This further explanation of the issue is based on the Bureau of Elections' preliminary review of the issue. The County Clerk and County Board of Canvassers will be able to provide any further detail during the ongoing county canvass.

Antrim County uses the Dominion Voting Systems election management system and voting machines (tabulators), which count hand-marked paper ballots. Counties use election management systems to program tabulators and also to report unofficial election results.

After Antrim County initially programmed its election software for the November Election, the county identified in October two local races where the ballot content had to be updated. The county received updated programming from its election programming vendor, Election Source. The updated programming correctly updated the election software for the county.

When the software was reprogrammed, the County also had to update the software on all of the media drives that are placed in tabulators to ensure tabulators communicate properly with the election management system. The county did update the media drives that went into the tabulators with the corrected local races, but did not update the media drives on the tabulators for the rest of the county. Because the Clerk correctly updated the media drives for the tabulators with changes to races, and because the other tabulators did not have changes to races, all tabulators counted ballots correctly.

However, because the county did not update the media drives for the tabulators that did not have changes to races, those tabulators did not communicate properly with the County's central election management system software when the county combined and reported unofficial results. Every tabulator recorded ballots correctly but the unofficial reports were erroneous.

These errors can always be identified and corrected because every tabulator prints a paper totals tape showing how the ballots for each race were counted. After discovering the error in reporting the unofficial results, the clerk worked diligently to report correct unofficial results by reviewing the printed totals tape on each tabulator and hand-entering the results for each race, for each precinct in the county.

Again, all ballots were properly tabulated. The user error affected only how the results from the tabulators communicated with the election management system for unofficial reporting. Even if the error had not been noticed and quickly fixed, it would have been caught and identified

during the county canvass when printed totals tapes are reviewed. This was an isolated error, there is no evidence this user error occurred elsewhere in the state, and if it did it would be caught during county canvasses, which are conducted by bipartisan boards of county canvassers. The Antrim County Canvass is currently ongoing, and the Board of County Canvassers and County Clerk will be able to provide any further necessary details during the course of the county canvass.

As with other isolated user errors that have occurred in the reporting of unofficial results both in this and previous elections, this is not the result of any intentional misconduct by an election official or because of software or equipment malfunctioning or failing to work properly. Municipal and county clerks are dedicated public servants who work hard and with integrity. Sometimes they make honest mistakes, and when they do there are many checks and balances in the election system to ensure they can be identified and corrected so that the official results reflect the complete, accurate count of all votes.

Additional information

<https://www.dominionvoting.com>

<https://www.cisa.gov/rumorcontrol>

EXHIBIT 15

Michigan Government

GOP calls for Michigan election probe. Officials say their claims are weak.



The Republican National Committee says it is deploying lawyers to investigate possible voting irregularities in Michigan. Elections officials say each of their “irregularities” has a simple explanation. (BridgeDetroit photo by Ralph Jones)



BLOOMFIELD HILLS — The Republican National Committee is deploying legal teams to Michigan and three other battleground states to investigate what its calls “irregularities” and unsubstantiated claims of voter fraud amplified by President Donald Trump.

Michigan’s GOP-led Legislature, meanwhile, will convene oversight committees Saturday to begin an [“inquiry”](#) into the state election and counting procedures.

RNC Chair Ronna McDaniel, who lives in Michigan, announced the legal effort Friday in Oakland County, claiming the party is reviewing more than “100 incident reports” from Republican challengers who this week flooded Detroit’s absentee ballot counting board.

Related stories:

- [Trump, who now claims fraud, got more votes in Detroit than most Republicans](#)
- [Trump’s options narrow in Michigan. Lawsuit, recount seen as long shots.](#)
- [What happened when conservatives tried to halt Detroit’s election count](#)

Democrat Joe Biden won 94 percent of the vote in Detroit, a liberal stronghold, and won the state by nearly 150,000 votes, according to unofficial results. Trump, however, [falsely claimed](#) Thursday that he won Michigan, calling Detroit one of the most corrupt cities in the nation.

McDaniel made few new allegations and did not offer any evidence to back up claims made by Trump and other Republicans. Democrats and other critics have accused the president of attempting to undermine faith in the democratic process, but McDaniel urged the public and press to delay final judgement on the outcome of the election.

“We need to pursue these irregularities and we need people to be patient and give us the time to investigate,” she said. “These are serious allegations.”

The RNC has also sent legal teams to Arizona, Georgia and Pennsylvania, states where Biden is leading and could secure enough Electoral College votes to defeat Trump. Unlike Michigan, where the count is complete, workers in those states continue to tally a flood of absentee ballots that have generally favored Biden.

McDaniel did not say whether Republicans will petition for a Michigan recount, which a candidate can request after ongoing county and state canvasses.

“I’m not going to jump the gun, but these irregularities are so concerning that all of us should be worried,” she said.

Here’s a look at the GOP allegations about the Michigan election, and explanations from state and local officials who dispute the claims.

The claim: Poll workers ordered to “change the date” on ballots

McDaniel accused Detroit senior elections adviser Chris Thomas of ordering poll workers to “change the date” on “a bundle of ballots” at the city’s absentee counting board, which was located inside the downtown TCF Center.

Those ballots “should not have been immediately counted because there was no evidence the ballots were received by the state-mandated deadline of Nov. 3,” she said, telling reporters that Republicans have referred the matter to the U.S. Attorney’s Office for the Eastern District of Michigan.

The Trump campaign made similar claims in a lawsuit rejected Thursday by Michigan Court of Claims Judge Cynthia Stephens, who dismissed a poll challenger affidavit as “hearsay.”

In a Friday statement, Thomas said he was saddened by the “[unfounded allegations](#)” regarding the Detroit election. The back-dating accusations are “wrong and reveal the person making them doesn’t know Michigan’s election process,” he said.

Thomas, who worked 36 years as the state’s election director, told Bridge Michigan on Thursday that no late ballots were counted in Detroit.

There were roughly 200 ballots that had not been “fully logged” into the state’s Qualified Voter File when they were received at satellite clerk’s offices, he said. The ballot envelopes were physically stamped with a receipt date, however, so the city directed workers at the TCF Center to use that stamp date to enter them as received in the Qualified Voter File, he explained.

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“When they set up the satellite offices, they brought in furloughed [workers] who did a great job but they may not have dotted all the I’s and crossed all the T’s in some instances,” Thomas said. “It was not a huge number of ballots.”

He added Friday: “The scenario described actually shows a process designed to eliminate errors working to do just that.”

The claim: ‘Software glitch’ may have affected many counties

McDaniel cited what she called a “major software issue” in Antrim County, where local officials initially reported a lopsided advantage Biden in the Republican stronghold, and questioned whether the software “could have caused problems in other counties as well.”

There’s no evidence of an Antrim-like vote swing in any other Michigan county. There, a tally that showed Biden up by about 3,000 votes has been corrected to show Trump carried the county by about 2,500 votes.

Antrim County Clerk Sheryl Guy, a Republican, [told the Detroit Free Press](#) that officials sent the initial results to the state without checking them. They later discovered the mistake and fixed it.

Cox, the Michigan GOP Chair, suggested that other counties that use the same software “need to closely examine their results for similar discrepancies.”

Michigan has 83 counties; Antrim is one of 69 counties that use Dominion Voting Systems equipment, according to recent state data.

Unofficial results show Trump won 63 of those counties, while Biden won six: Wayne, Kent, Ingham, Saginaw, Marquette and Leelanau.

That aligns with historical trends. Wayne, Ingham, Saginaw and Marquette counties are typically Democratic counties, while Kent has been trending Democratic. Leelanau has favored Republican, but Trump won the county by less than 500 votes in 2016.

Kent County Clerk Lisa Posthumus Lyons, a Republican who was the party’s nominee for lieutenant governor in 2018, told Bridge she has “full faith” in the Dominion product that both Antrim and Kent counties use.

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"What happened in Antrim County appears to be a human error in dealing with the software, and errors occur," she said.

The claim: 2,000 ballots 'given to Democrats' in Oakland County

Suggesting a pattern of vote total irregularities, McDaniel told reporters that "just last night in [Rochester Hills], we found 2,000 ballots that had been given to Democrats, that were Republican ballots, due to a clerical error," McDaniel said.

Rochester Hills Clerk Tina Barton, a Republican, acknowledged there was a local input error when vote totals were sent to Oakland County, but the discrepancy was fixed as soon as it was discovered, she said, calling Romney's framing "unfortunate."

"Two thousand ballots weren't suddenly found," Barton told Bridge. "It was a glitch when the file was sent in. As soon as it was caught, it was corrected."

On election night, as the city sent results to the county, a file from one absentee ballot district did not appear to properly transmit, Barton said.

So workers sent it a second time, without realizing the first had actually gone through. They later discovered it had been added to an in-person voting precinct tally rather than absentee count, she said.

As a result, those absentee ballots were essentially counted twice in unofficial results initially posted on the Oakland County website. Democrats voted by absentee ballot more often across Michigan, so the error did inflate the Democratic vote tally, Barton said.

The correct tallies were posted on Oakland County's website Thursday. According to the updated numbers, Biden beat Trump by 108,066 votes in Oakland County, winning 56 percent of the vote.

Barton noted that Michigan has a "pretty robust" canvass process in which the county and state will review local votes before certifying the election.

"So there are measures in place. There are gatekeepers to the process, and obviously the process worked here. We did find that the file was sent twice."

In a Friday evening [statement](#), Barton added: “As a Republican, I am disturbed that this is intentionally being mischaracterized to undermine the election process.”

The claim: GOP challengers ‘locked out’ of Detroit absentee counting board

Michigan GOP Chair Laura Cox claimed that officials locked Republican challengers out of an absentee ballot counting board at the TCF Center and “knowingly created a system” that did not allow Republicans “to have the number of challengers we’re legally obligated to have.”

She and McDaniel also both said that at one point, workers at the TCF Center put cardboard over windows of the counting room.

They did that to “conceal the truth,” Cox alleged. “What else could they be hiding?”

City officials have called similar claims gross exaggerations.

It’s true that some poll watchers were temporarily barred from entering the Detroit counting board on Wednesday, but the city said that was because so many were already inside that there were concerns about the safety of workers given COVID-19.

The place was “packed” with poll challengers from both political parties when the health department and police decided to limit additional access as a safety measure, Thomas said. There were “way too many people. If we don’t all end up with COVID, it’d be a miracle.”

GOP poll challengers who were shut out began banging on the windows. Workers put cardboard over the windows because election workers felt intimidated by people banging on windows, city officials told The Detroit Free Press.

Some of the GOP challengers were “badly trained” and “very disruptive and kept trying to slow things down,” said Mark Brewer, an election attorney, and former chair of the state Democratic Party who served as a Democratic challenger at the TCF Center.

“When you’re challenging, you’re permitted to observe and make legitimate challenges, but I was there all day and didn’t see one legitimate challenge.”

About 100 supporters of President Trump filled the office of the Oakland County Republican Party headquarters for the press event on Friday, many holding signs and a few cheering as McDaniel.

Among the crowd was Jennifer Seidl of Farmington, who said she is concerned about the atmosphere and activities at TCF Center. She's described what she saw to party officials, from a relatively calm Wednesday morning to heightened tension later that day and Thursday.

By midday, far fewer Republican challengers were present and the mood had changed.

"They were talking at the tables about intimidation and 'don't let them near you' and 'don't let them talk to you,'" Seidl said. "They wouldn't let us in to see the ballots."

She's waiting for assurances that the election was fair, or that irregularities will be confirmed. The outcome of the races don't need to be changed as part of that, she added.

"Whoever wins wins," she said. "That's the process. That's what happens. But I want it to be done fairly."

While McDaniel mentioned taking complaints to the affidavit stage, it's unclear if the Michigan GOP has obtained any sworn statements about anything that happened in a polling place.

However, Rocky Raczkowski, chair of the Oakland County Republican Party, said after McDaniel's appearance that the complaints are being vetted and the party has rejected some as not worth pursuing.

"We tried to focus and walk them through what's legal and what's not legal," Raczkowski said. "Emotions are high. They shouldn't be. We should let the system play out."

McDaniel and Cox tried to appeal to all voters by saying getting the process right will improve future elections. They did so, though, by repeatedly criticizing Gov. Gretchen Whitmer and Secretary of State Jocelyn Benson, Thomas and Detroit officials.

"It shouldn't take us this long to count votes. Why is it that we always have issues in a specific area?" Raczkowski said. "Why is it always in Democratic areas?"

Raczkowski rejected the possibility that the party focusing on the majority-Black city of Detroit could be motivated by race.

“This is not color or race,” Raczkowski said. “It’s the propensity of the Democratic Party to not play by the rules.”

Raczkowski did not mention that Kent County took nearly as long to count ballots as Detroit. Nor did the GOP send hundreds of poll watchers to scrutinize the process there.

Protests in Detroit

While McDaniel was speaking in Bloomfield Hills, more than 200 Trump supporters, most of them white and middle-age, gathered in front of the TCF Center in Detroit, protesting the city’s already complete absentee ballot count.

Protesters held signs reading “Stop the steal” and “Voting closed on Nov. 3rd.” and chanted “No voter fraud! No voter fraud!”

Brett Waldrop, 45, of Monroe County, was one of the attendees. He was also one of several election challengers with the conservative Election Integrity Fund who were barred from entering the TCF Center in Detroit on Wednesday due to capacity issues related to COVID-19.

“They wouldn’t let us watch,” Waldrop told Bridge. “If they’re not doing anything wrong, why don’t they allow the actual laws to work?”

When asked to cite specific incidents of fraud that occurred at the TCF Center, Waldrop told Bridge, “I don’t have any specific examples.”

Ralph Gaines, 29, of Detroit, one of a dozen counter-protesters who remained on the other side of a fence separating the protesters, said he came because he believes every vote should be counted.

“Here in Michigan, everybody did what they were supposed to do,” Gaines said. “These protesters are just listening to Trump and his rhetoric, and now they want to voice their opinions in the wrong way.”

Bridge Michigan reporter Mike Wilkinson contributed to this report.

EXHIBIT 16

HAND COUNT CALCULATION SHEET**OFFICE: President of the United States****COUNTY: Antrim**

	Biden			Trump			Jorgenson			Hawkins			Blankenship			De La Fuente		
	Democratic Party			Republican Party			Libertarian Party			Green Party			U.S. Taxpayers Party			Natural Law Party		
Jurisdiction	Original	Hand Count	Net	Original	Hand Count	Net	Original	Hand Count	Net	Original	Hand Count	Net	Original	Hand Count	Net	Original	Hand Count	Net
TOTAL VOTES	5960	5959	-1	9748	9759	11	189	190	1	28	28	0	16	17	1	8	9	1
TOTAL CHANGE			-1			11			1			0			1			1

Banks Township, Precinct 1	349	349	0	756	758	2	11	11	0	2	2	0	1	1	0	1	1	0
Central Lake Township, Precinct 1	549	549	0	906	906	0	16	16	0	6	6	0	1	1	0	0	0	0
Chestonia Township, Precinct 1	93	93	0	197	197	0	3	3	0	0	0	0	0	0	0	0	0	0
Custer Township, Precinct 1	240	240	0	521	521	0	11	11	0	1	1	0	2	2	0	0	0	0
Echo Township, Precinct 1	198	198	0	392	392	0	8	8	0	2	2	0	1	1	0	0	0	0
Elk Rapids Township, Precinct 1	202	201	-1	414	415	1	12	12	0	4	4	0	2	2	0	0	0	0
Elk Rapids Township, Precinct 1 AVCB	784	783	-1	611	614	3	5	5	0	5	5	0	2	2	0	0	0	0
Forest Home Township, Precinct 1	610	610	0	753	753	0	19	19	0	0	0	0	1	1	0	1	1	0
Helena Township, Precinct 1	306	306	0	431	430	-1	4	4	0	1	1	0	0	0	0	1	1	0
Jordan Township, Precinct 1	183	182	-1	371	369	-2	13	14	1	1	1	0	1	1	0	0	0	0
Kearney Township, Precinct 1	471	470	-1	743	743	0	16	16	0	3	3	0	0	0	0	0	0	0
Mancelona Township, Precinct 1	276	277	1	835	835	0	20	20	0	0	0	0	0	0	0	1	1	0
Mancelona Township, Precinct 2	247	247	0	646	646	0	13	13	0	1	1	0	2	3	1	0	0	0
Milton Township, Precinct 1	143	143	0	478	478	0	12	12	0	0	0	0	0	0	0	1	2	1
Milton Township, Precinct 1 AVCB	626	624	-2	543	545	2	6	6	0	0	0	0	2	2	0	2	2	0
Star Township, Precinct 1	161	166	5	462	468	6	10	10	0	0	0	0	0	0	0	0	0	0
Torch Lake Township, Precinct 1	462	461	-1	526	526	0	7	7	0	2	2	0	1	1	0	1	1	0
Warner Township, Precinct 1	60	60	0	163	163	0	3	3	0	0	0	0	0	0	0	0	0	0

EXHIBIT 17

The Washington Post

Democracy Dies in Darkness

Sidney Powell's secret 'military intelligence expert,' key to fraud claims in election lawsuits, never worked in military intelligence

By **Emma Brown, Aaron C. Davis** and **Alice Crites**

Dec. 11, 2020 at 6:29 p.m. EST



The witness is code-named “Spyder.” Or sometimes “Spider.” His identity is so closely guarded that lawyer Sidney Powell has sought to keep it even from opposing counsel. And his account of vulnerability to international sabotage is a key part of Powell's failing multistate effort to invalidate President-elect Joe Biden's victory.

Powell describes Spyder in court filings as a former “Military Intelligence expert,” and his testimony is offered to support one of her central claims. In a declaration filed in four states, Spyder alleges that publicly available data about server traffic shows that voting systems in the United States were “certainly compromised by rogue actors, such as Iran and China.”

Spyder, it turns out, is Joshua Merritt, a 43-year-old information technology consultant in the Dallas area. Merritt confirmed his role as Powell's secret witness in phone interviews this week with The Washington Post.

Records show that Merritt is an Army veteran and that he enrolled in a training program at the 305th Military Intelligence Battalion, the unit he cites in his declaration. But he never completed the entry-level training course, according to Meredith Mingledorff, a spokeswoman for the U.S. Army Intelligence Center of Excellence, which includes the battalion.

“He kept washing out of courses,” said Mingledorff, citing his education records. “He's not an intelligence analyst.”

In an interview, Merritt maintained that he graduated from the intelligence training program. But even by his own account, he was only a trainee with the 305th, at Fort Huachuca in Arizona, and for just seven months more than 15 years ago.

His separation papers, which he provided to The Post, make no mention of intelligence training. They show that he spent the bulk of his decade in the Army as a wheeled vehicle mechanic. He deployed to the wars in Iraq and Afghanistan, where he said he worked in security and route clearance. He held the rank of specialist when he was honorably discharged in 2013, having received several commendations.

Case 2:20-cv-13134-LVP-RSW-ECF No. 78-18 PageID 3799 Filed 01/05/21 Page 3 of 5
Merritt acknowledged that the declaration's description of his work as an "electronic intelligence analyst under 305th Military Intelligence" is misleading. He said it should have made clear that his time in the 305th was as a student, not as a working intelligence expert.

He blamed "clerks" for Powell's legal team, who he said wrote the sentence. Merritt said he had not read it carefully before he signed his name swearing it was true.

"That was one thing I was trying to backtrack on," he said on Thursday. "My original paperwork that I sent in didn't say that."

On Friday afternoon, as his name increasingly circulated on social media, Merritt said he had decided to remove himself from the legal effort altogether. He said he plans to close his business and relocate with his family.

Asked about Merritt's limited experience in military intelligence, Powell said in a text to The Post: "I cannot confirm that Joshua Merritt is even Spider. Strongly encourage you not to print."

Of her description of him as a military intelligence expert, she said, "If we made a mistake, we will correct it."

Federal judges have in the past week rejected all four of the complaints Powell has filed seeking to overturn the presidential election — lawsuits popularly known as the "kraken" suits, after a mythical sea creature she has harnessed as a sort of mascot — ruling either that the challenges should have been filed in state courts or were meritless.

In Michigan, attorneys for the state argued that Powell's complaint was based on "fantastical conspiracy theories" that belong in the "fact-free outer reaches of the Internet." A federal judge ruled this week that the allegation that votes were changed for Biden relied on an "amalgamation of theories, conjecture, and speculation."

A federal judge in Arizona similarly tossed out a case Wednesday that relied in part on an affidavit from Merritt, writing that allegations "that find favor in the public sphere of gossip and innuendo cannot be a substitute for earnest pleadings and procedure in federal court" and "most certainly cannot be the basis for upending Arizona's 2020 General Election."

Powell is appealing all four of those losses.

Merritt told The Post that, because judges are dismissing the cases without giving the Powell team a chance to fully present evidence, "we're just going to supply the evidence through other directions," including to lawmakers and members of the intelligence community. He said Russell Ramsland, a former colleague and fellow witness for Powell, had asked him to brief Rep. Louie Gohmert (R-Tex.), a leading proponent of fanciful claims about the 2020 election.

Gohmert did not respond to a request for comment.

The 305th Military Intelligence Battalion at Fort Huachuca has taken on a special significance among supporters of Powell's lawsuits. Some popular conspiracy theories contend that the unit — rather than Merritt, a former member who was discharged years ago — has determined that China and Iran manipulated the U.S. vote. In late November, Thomas McInerney, a retired lieutenant general in the Air Force and a proponent of election fraud claims, said that President Trump and Powell have "got the 305th Military Intelligence Battalion working with them" and that "the Kraken is the 305th Military Intelligence Battalion."

The battalion is an entry-level training unit. It has not had an operational mission since World War II. Mingledorff said soldiers there "do not collect, analyze or provide intelligence in any way."

Case 2:20-cv-13134-LVP-RSW-ECF No. 78-18 PageID 3890 Filed 01/05/21 Page 4 of 5
Army records provided by Merritt show that he enlisted in 2003. He first aimed to be a medic, but did not graduate from a training program at Fort Sam Houston in Texas, according to records in the Army Training Requirements and Resource System, Mingledorff said. He was “recycled,” or allowed to repeat the training course — but again did not graduate, she said, citing the records.

In 2004, Merritt transferred to the 305th Military Intelligence Battalion, the records show. He had a spot reserved in an electronic intercept analyst course with the 305th, but records show he did not meet the prerequisites and was dropped from the program, Mingledorff said.

Merritt’s military separation papers show that he completed three education courses — two involving work on wheeled vehicles and one on leadership.

Merritt told The Post he completed the medic and intelligence trainings as well. He said that for both programs, the particular career path he was studying for changed by the time his training ended. He maintained that this pattern left him in a sort of military bureaucratic limbo, in the service but without a specific job until he became a wheeled vehicle mechanic in 2005.

He provided a document labeled “unofficial transcript” that he said showed that he completed the intelligence and medic courses. Mingledorff declined to comment on that document but said the records she examined were clear.

Army education records also show several distance-learning and in-person trainings over the course of his service, many of which were not completed, Mingledorff said.

He said he was unable to complete some online courses while serving overseas because of the demands of his job.

Merritt was honorably discharged from the Army in 2013, after a decade of service, including deployments to the wars in Iraq in 2005-2006 and Afghanistan in 2009-2010, according to his separation papers. His commendations included the Combat Action Badge, which is authorized for soldiers who are “present and actively engaging or being engaged by the enemy, and performing satisfactorily in accordance with prescribed rules of engagement.”

Merritt told The Post he left the military because he had reached a “retention control point” and was unlikely to be promoted. Under Army rules, soldiers are only permitted to serve a certain number of years at a particular rank.

Merritt said cybersecurity was a hobby when he was in the Army, and it became a profession once he was out. He said he is neither a Republican nor a Democrat but a “Constitutionalist” who is just trying to do his part to ensure fair elections in the United States. “Right now you’re looking at two political parties that all they care about is power, they don’t care about people,” he said. “I swore my life to my Constitution and that’s what I keep it at.”

He used his GI Bill funds to study network security administration at ITT Tech in Arlington, Tex. He said he earned an associate degree from the school, part of a nationwide chain of for-profit colleges that shut down in 2016.

He went on to intern and work in several positions related to cybersecurity, he said. In 2017, he joined a small Dallas-area firm called Allied Special Operations Group, where Ramsland says he is part of the management team.

Merritt said it was there that he began to work on election security and came to believe the system was rife with vulnerabilities. Soon, he said, he was a frequent guest in right-wing videos, appearing under the pseudonym “Jekyll,” in shadow and with his voice disguised as he warned that the U.S. election system was vulnerable to being corrupted on a massive scale.

In 2018, he said, he helped investigate what he described as suspected fraud in races affecting five candidates, including former Kentucky governor Matt Bevin (R) and former Texas congressman Pete Sessions (R). Merritt said he found many elections-related companies plagued by vulnerabilities.

Bevin did not respond to a request for comment.

In a phone interview, Sessions described Merritt as a “top, top computer forensic expert.”

After two decades in Congress, Sessions’s 2018 loss to Democrat Colin Allred, a former professional football player, was viewed by some on election-conspiracy sites as implausible. Merritt said he worked behind the scenes, conducting election-fraud analysis. Sessions would not disclose Merritt’s precise work or whether he was paid, but said of Merritt: “He may have been involved in certain elements of that. It is true there were people who were aware of those things.”

Sessions won a comeback victory in November and will return to Congress next year. He said he was unswayed by the Army’s disclosure that Merritt had never completed electronic intelligence training.

“Get the best computer expert you know, have him call and query Josh. Josh will run circles around that person,” Sessions said.

No charges were brought in connection with these allegations, Merritt said.

Merritt formed his own firm, Cyberoptyx, in 2019. He said the company — which consists of himself and a handful of contractors — specializes in building “cyberinfrastructure” such as making websites and setting up servers. It also does 3-D printing.

Merritt said he became involved in the Powell litigation through Ramsland. Ramsland has also submitted affidavits as part of Powell’s lawsuits, including one that drew attention for mistakenly using voting data from Minnesota to allege evidence of voter fraud in Michigan.

Merritt said he provides information to Powell’s legal team through intermediaries he knows only by username. He said he is not being paid for his work on the case.

Ramsland did not respond to messages left at his home or on a cellphone registered in his name.

Merritt said he had sought to stay anonymous because he feared for the safety of his family if his name became known. Someone came up with his pseudonym based on the spider-like shape of the diagrams in his declaration, he said.

His name slipped into the court record, though little noticed, on Nov. 25. The Powell team filed a carefully redacted declaration from its secret witness, but a bookmark in the file uploaded to the court’s computer system was visible: “Declaration of JOSHUA MERRITT.”

“One jackwagon forgot to clear out the data. I was really pissed,” Merritt said. “The guy was like, ‘I’m sorry,’ and I was like, ‘Well, you know, that and a bag of chips will still leave me hungry.’”

On Wednesday night, after a Reuters reporter tweeted about that flub and drew widespread attention to his name, Merritt was bracing for what might come.

“This is not the 15 minutes I wanted,” he said.

EXHIBIT 18

Detroit Free Press

ELECTIONS

Trump tweet wrongly suggests there were defects with Michigan voting machines

Paul Egan and Clara Hendrickson Detroit Free Press

Published 6:41 p.m. ET Dec. 15, 2020 | Updated 8:01 p.m. ET Dec. 15, 2020

The claim: “68% error rate in Michigan Voting Machines. Should be, by law, a tiny percentage of one percent.”

In a Tuesday tweet, Trump claimed there was a “68% error rate in Michigan Voting Machines. Should be, by law, a tiny percentage of one percent.”

He suggested Michigan Secretary of State Jocelyn Benson would face legal scrutiny for the alleged errors. “Did Michigan Secretary of State break the law? Stay tuned!” Trump wrote.

Trump was reacting to a consultant’s report that a judge made public Monday in connection with an election lawsuit in Antrim County, in northern Michigan, where a misapplied software update initially led to incorrect unofficial results being reported on election night. But Trump’s tweet misinterprets the findings of the report, which itself presents a misleading picture.

Michigan vote tabulators do not read ballots incorrectly 68% of the time. Nor is that statement true if applied only to the Antrim County tabulators in the Nov. 3 election. And the report Trump reacted to, while ambiguous and inaccurate on the subject of errors, does not make that claim.

The report is signed by cybersecurity analyst Russell James Ramsland Jr. of Allied Security Operations Group, a firm whose representatives have provided analyses and affidavits for lawsuits brought by Trump allies, falsely alleging voter fraud and election irregularities.

In one such analysis on voter turnout, Ramsland mistook voting jurisdictions in Minnesota for Michigan towns. In another, filed in support of a federal lawsuit in Michigan, he made

inaccurate claims about voter turnout in various municipalities, misstating them as much as tenfold.

The scrutiny of Antrim's ballots arises from an error in the reporting of unofficial results on election night, which initially showed voters in the heavily GOP county casting more votes for Democrat Joe Biden than for Trump. Trump allies have seized on that error, and other alleged irregularities, in their fruitless quest for evidence of election rigging through equipment made by Dominion Voting Systems.

More: Affidavit in Michigan lawsuit makes wildly inaccurate claims about voter turnout in state

More: Rudy Giuliani cites affidavit about Michigan that erroneously includes Minnesota locations

State and county officials say the reporting error, which was corrected soon after the election, was the result of human error by County Clerk Sheryl Guy, a Republican, before the election.

Guy said that after learning some candidates in local races were omitted from the ballot, she needed to update the ballot information stored on media drives attached to the tabulating machines. But she mistakenly made the changes only in some precincts, instead of all of them, leading to mismatched data when the unofficial countywide tallies were being compiled, and an inaccurate report of the unofficial results, Guy and Benson have said.

The investigation of Antrim's equipment arose from a different issue in the case. In granting a request for "forensic imaging" of the data and software inside the Dominion tabulators, Judge Kevin Elsenheimer of Michigan's 13th Circuit Court was responding to concerns about a closely decided proposal to allow a marijuana dispensary in the village of Central Lake. Ramsland's firm, Allied Security, conducted the investigation.

In his report, Ramsland claimed, "The allowable election error rate established by the Federal Election Commission guidelines is of 1 in 250,000 ballots (.0008%)." On the Antrim machines, he wrote, he "observed an error rate of 68.05%."

The FEC regulates campaign finance, not voting equipment, and has no such guideline. The federal agency that does deal with voting equipment is the Election Assistance Commission. Antrim County's Dominion tabulators are certified by the EAC. In Michigan, 65 out of the state's 83 counties use voting systems manufactured by Dominion.

Moreover, the error rate identified by Ramsland is not a measure of ballot counting errors. Ramsland did not have access to the paper ballots as part of his investigation, according to Jake Rollow, a spokesman for the Secretary of State's office. Ramsland acknowledged that he was not referring to ballot tabulation errors, even though the purported benchmark he compared it to is "1 in 250,000 ballots."

Rather, Ramsland wrote, the error rate applies to the 15,676 "total lines or events" in Antrim's tabulation logs. "Most of the errors were related to configuration errors that could result in overall tabulation error or adjudication," he wrote, without giving more details or saying that they did result in such errors.

The EAC certification requirements that Antrim's Dominion machines had to meet establish certain error thresholds for the computer code that runs the systems, but the tabulation logs track something else.

Tammy Patrick, a senior adviser to the elections program at the Washington, D.C.-based Democracy Fund, explained in an email to the Free Press that tabulation logs "aren't the lines of code that run the system. They're logs of activities occurring in the process of tabulation. The lines of code that are reviewed in certification are the actual software codes." She said Ramsland's report was "confusing many, many things."

The Free Press called Allied Security Operations Group and left a voice message requesting to speak with Ramsland. The call was not returned. The White House and Trump campaign did not respond to email inquiries regarding Trump's tweet. And the EAC also did not respond to requests for additional information regarding its certification process.

State officials say they are not sure what Ramsland is referencing when he reports a 68% error rate.

Guy, the Antrim County clerk, believes that the 68% error rate reported by Ramsland may be related to her original error updating the ballot information. The software generated scores of error reports when the county initially merged election results from various tabulators that did not contain the same ballot information, she said.

"The equipment is great — it's good equipment," Guy said. "It's just that we didn't know what we needed to do (to properly update ballot information). We needed to be trained on the equipment that we have."

Our ruling

Trump claimed that there was a 68% error rate in the tabulation machines used in Michigan, far more than the law allowed. The apparent source for his claim is a report from an investigation of tabulation equipment from one county that purportedly identified a 68.05% error rate.

The author of the report said the error rate applied not to the number of ballots counted, but rather to the lines or events listed in the tabulators' activity logs.

Trump's tweet refers to a "law" about benchmark error rates. There is no such law. The report he alluded to refers to FEC guidelines that don't exist either.

Election officials have explained that the error in unofficial election night reporting in Antrim County was the result of human error, not an error with the software or tabulation machines used in the county.

We rate this claim False.

Contact Paul Egan: 517-372-8660 or pegan@freepress.com. Follow him on Twitter @paulegan4. Read more on Michigan politics and sign up for our elections newsletter.

Clara Hendrickson fact-checks Michigan issues and politics as a corps member with Report for America, an initiative of The GroundTruth Project. Contact Clara at chendrickson@freepress.com or 313-296-5743 for comments or to suggest a fact-check.

Become a subscriber.

EXHIBIT 19

STATE OF MICHIGAN
IN THE SUPREME COURT

ANGELIC JOHNSON, et al.
Petitioners,

Supreme Court Case No. _____

v

JOCELYN BENSON, et al.,
Respondents.

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EXPERT REPORT OF MATTHEW BRAYNARD

I. INTRODUCTION

I have been retained as an expert witness on behalf of Petitioners in the above captioned proceeding. I expect to testify on the following subject matters: (i) analysis of the database for the November 3, 2020 election for the selection of Presidential Electors in the State of Wisconsin (“State”); (ii) render opinions regarding whether individuals identified in the State’s voter database actually voted; and (iii) render opinions regarding whether individuals identified in the State’s voter database were actually qualified to vote on election day.

This is a statement of my relevant opinions and an outline of the factual basis for these opinions. The opinions and facts contained herein are based on the information made available to me in this case prior to preparation of this report, as well as my professional experience as an election data analyst.

I reserve the right to supplement or amend this statement on the basis of further information obtained prior to the time of trial or in order to clarify or correct the information contained herein.

II. DOCUMENTS REVIEWED

I reviewed the following documents in arriving at my opinions.

1. The voter records and election returns as maintained on the State’s election database;

2. Records maintained by the National Change of Address Source which is maintained by the United States Postal Service and which is available for licensed users on the internet. I am a licensed member.
3. Records developed by the staff of my call centers and social media researchers; and
4. A national voter database maintained by L2 Political;

In addition, I discussed the facts of this matter with Petitioner's attorney Ian Northon and members of his legal team.

III. PROFESSIONAL QUALIFICATIONS

I have attached hereto as Exhibit 1 a true and correct copy of my resume. As detailed in the resume, I graduated from George Washington University in 2000 with a degree in business administration with a concentration in finance and management information systems. I have been working in the voter data and election administration field since 1996. I have worked building and deploying voter databases for the Republican National Committee, five Presidential campaigns, and no less than one-hundred different campaigns and election-related organizations in all fifty states and the U.S. Virgin Islands. I worked for eight years as a senior analyst at the nation's premier redistricting and election administration firm, Election Data Services, where I worked with states and municipalities on voter databases, delineation, and litigation support related to these matters. Also, while at Election Data Services, I worked under our contract with the US Census Bureau analyzing voting age population. Since 2004, I have worked for my own business, now known as External Affairs, Inc., providing

statistical and data analysis for local, state, and federal candidates and policy organizations in the areas of voter targeting, polling/research, fundraising, branding, and online development and strategy. My firm has worked for over two-hundred candidates from president to town council and over a dozen DC-based policy/advocacy organizations.

With respect to publications I have authored in the last 10 years, I have not authored any publications in the last ten years.

IV. COMPENSATION

I have been retained as an expert witness for Petitioners. I am being compensated for a flat fee of \$40,000.

V. PRIOR TESTIMONY

I have not provided testimony as an expert either at trial or in deposition in the last four years.

VI. STATEMENT OF OPINIONS

As set forth above, I have been engaged to provide expert opinions regarding analysis in the November 3, 2020 election of Presidential electors. Based on my review of the documents set forth above, my discussions with statisticians and analysts working with me and at my direction, my discussions with the attorneys representing the Petitioners, I have the following opinions:

1. From the State's database for the November 3, 2020 election and our call center results, it is my opinion to a reasonable degree of scientific certainty that out of the 3,507,410 individuals who the State's database identifies as applying for and the

State sending an absentee ballot, that in my sample of this universe, 12.23% of those absentee voters did not request an absentee ballot to the clerk's office.

2. From the State's database for the November 3, 2020 election and our call center results, it is my opinion to a reasonable degree of scientific certainty that out of the 139,190 individuals who the State's database identifies as having not returned an absentee ballot, that in my sample of this universe, 24.14% of these absentee voters in the State did not request an absentee ballot.
3. From the State's database for the November 3, 2020 election and our call center results, it is my opinion to a reasonable degree of scientific certainty that out of the 139,190 individuals who the State's database identifies as having not returned an absentee ballot, that in my sample of this universe, 22.95% of those absentee voters did in fact mail back an absentee ballot to the clerk's office.
4. From the State's database for the November 3, 2020 election, the NCOA database, and our call center results, it is my opinion to a reasonable degree of scientific certainty that out of the 51,302 individuals had changed their address before the election, that in my sample of this universe, 1.38% of those individuals denied casting a ballot.
5. From the State's database for the November 3, 2020 election and the NCOA database and other state's voter databases, it is my opinion to a reasonable degree of scientific certainty, that at least 13,248 absentee or early voters were not residents of the State when they voted.
6. From the State's database for the November 3, 2020 election and comparing that data to other states voting data and identifying individuals who cast early/absentee ballots in multiple states, it is my opinion to a reasonable degree of scientific certainty, that at least 317 individuals in the State voted in multiple states.

VII. BASIS AND REASONS SUPPORTING OPINIONS.

It is my opinion that due to the lax controls on absentee voting in the November 3, 2020 election that the current unofficial results of that election include tens of thousands of individuals who were not eligible to vote or failed to record ballots from individuals that were.

First, State maintains a database for the November 3, 2020 election which I obtained from L2 Political and which L2 Political obtained from the State's records on, among other things, voters who applied for an absentee or early voter status. I received this database from L2 Political in a table format with columns and rows which can be searched, sorted and filtered. Each row sets forth data on an individual voter. Each column contained information such as the name of the voter, the voter's address, whether the voter applied for an absentee ballot, whether the voter voted and whether the voter voted indefinitely confined status.

Second, we are able to obtain other data from other sources such as the National Change of Address Database maintained by the United States Postal Service and licensed by L2 Political. This database also in table format shows the name of an individual, the individual's new address, the individual's old address and the date that the change of address became effective.

Third, I conducted randomized surveys of data obtained from the State's database by having my staff or the call center's staff make phone calls to and ask questions of individuals identified on the State's database by certain categories such as absentee voters who did not return a ballot. Our staff, if they talked to any of these individuals, would then ask a series of questions beginning with a confirmation of the individual's name to ensure it matched the name of the voter identified in the State's database. The staff would then ask additional questions of the individuals and record the answers.

Fifth, attached as Exhibits 2 is my written analysis of the data obtained.

Below are the opinions I rendered and the basis of the reasons for those opinions.

1. From the State's database for the November 3, 2020 election and our call center results, it is my opinion to a reasonable degree of scientific certainty that out of the 3,507,410 individuals who the State's database identifies as applying for and the State sending an absentee ballot, that in my sample of this universe, 12.23% of those absentee voters did not request an absentee ballot to the clerk's office.

I obtained this data from the State via L2 Political after the November 3, 2020, Election Day. This data identified 3,507,410 individuals as having applied for an absentee ballot and the State sending an absentee ballot to these individuals.

I then had my staff make phone calls to a sample of this universe. When contacted, I had my staff confirm the individual's identity by name. Once the name was confirmed, I then had staff ask if the person requested an absentee ballot or not for the November General Election. Staff then recorded the number of persons who answered yes. Of the 834 persons who agreed to answer the question of whether the person requested an absentee ballot for the November general election, 732 individuals answered yes to the question whether they requested an absentee ballot and 102 individuals answered no to the question. Attached as Exhibit 2 is my written analysis containing information from the data above on absentee voters. Paragraph 2 of Exhibit 2 presents this information. Based on these results, 12.23% of our sample of these absentee voters in the State did not request an absentee ballot.

2. From the State's database for the November 3, 2020 election and our call center results, it is my opinion to a reasonable degree of scientific certainty that out of the 139,190 individuals who the State's database identifies as having not returned an absentee ballot, that in my sample of this universe, 24.19% of these absentee voters in the State did not request an absentee ballot.

I obtained this data from the State via L2 Political after the November 3, 2020, Election Day. This data identified 139,129 absentee voters who were sent a ballot but who failed to return the absentee ballot.

I then had my staff make phone calls to a sample of this universe. When contacted, I had my staff confirm the individual's identity by name. Once the name was confirmed, I then had staff ask if the person requested an absentee ballot or not. Staff then recorded the number of persons who answered yes. My staff then recorded that of the 1,050 individuals who answered the question, 796 individuals answered yes to the question whether they requested an absentee ballot. My staff recorded that 254 individuals answered no to the question whether they requested an absentee ballot. Attached as Exhibit 2 is my written analysis containing information from the data above on absentee voters. Paragraph 2 of Exhibit 2 presents this information.

Based on these results, 24.19% of our sample of these absentee voters in the State did not request an absentee ballot.

3. From the State's database for the November 3, 2020 election and our call center results, it is my opinion to a reasonable degree of scientific certainty that out of the 96,771 individuals who the State's database identifies as having not returned an absentee ballot, that in my sample of this universe, 15.37% of those absentee voters did in fact mail back an absentee ballot to the clerk's office.

Next, I then had staff ask the individuals who answered yes, they requested an absentee ballot, whether the individual mailed back the absentee ballot or did not mail back the absentee ballot. Staff then recorded that of the 740 individuals who answered the question, 241 individuals answered yes, they mailed back the absentee ballot. Staff

recorded 499 individuals answered no, they did not mail back the absentee ballot.

Paragraph 2 of Exhibit 2 presents this information.

Based on these results, 47.52% of our sample of these absentee voters in the State did not request an absentee ballot.

4. From the State's database for the November 3, 2020 election, the NCOA database, and our call center results, it is my opinion to a reasonable degree of scientific certainty that out of the 26,673 individuals had changed their address before the election, that in my sample of this universe, 1.11% of those individuals denied casting a ballot.

On Exhibit 2, in paragraph 4, I took the State's database of all absentee or early voters and matched those voters to the NCOA database for the day after election day. This data identified 51,302 individuals whose address on the State's database did not match the address on the NCOA database on election day. Next, I had my staff call the persons identified and ask these individuals whether they had voted. My call center staff identified 501 individuals who confirmed that they had casted a ballot. My call center staff identified 7 individuals who denied casting a ballot. Our analysis shows that 1.38% of our sample of these individuals who changed address did not vote despite the State's data recorded that the individuals did vote.

5. From the State's database for the November 3, 2020 election and the NCOA data and other state's voter data, it is my opinion to a reasonable degree of scientific certainty, that at least 6,924 absentee or early voters were not residents of the State when they voted.

On Exhibit 2, in paragraph 1, I took the State's database of all absentee or early voters and matched those voters to the NCOA database for the day after Election Day. This data identified 12,120 individuals who had moved of the State prior to Election Day.

Further, by comparing the other 49 states voter databases to the State's database, I identified 1,170 who registered to vote in a state other than the State subsequent to the date they registered to vote in the State. When merging these two lists and removing the duplicates, and accounting for moves that would not cause an individual to lose their residency and eligibility to vote under State law, these voters total 13,248.

6. From the State's database for the November 3, 2020 election and comparing that data to other states voting data and identifying individuals who cast early/absentee ballots in multiple states, it is my opinion to a reasonable degree of scientific certainty, that at least 234 individuals in the State voted in multiple states.

On Exhibit 2, in paragraph 2, I had my staff compare the State's early and absentee voters to other states voting data and identified individuals who cast early/absentee ballots in multiple states. My staff located 317 individuals who voted in the State and in other states for the November 3, 2020 general election.

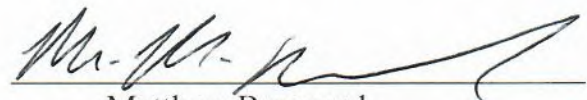
VIII. EXHIBITS TO BE USED AT TRIAL TO SUMMARIZE OR EXPLAIN OPINIONS

At the present time, I intend to rely on the documents produced set forth above as possible exhibits.

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SIGNATURE PAGE TO FOLLOW

Dated: 11/20/2020


Matthew Braynard

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EXHIBIT 20

STATE OF MICHIGAN
IN THE SUPREME COURT

ANGELIC JOHNSON and,
LINDA LEE TARVER,

MSC No. 162286

Petitioners,

vs.

JOCELYN BENSON, in her official
capacity as Michigan Secretary of State;
JEANNETTE BRADSHAW, in her
official capacity as Chair of the Board of
State Canvassers for Michigan; BOARD
OF STATE CANVASSERS FOR
MICHIGAN; and GRETCHEN
WHITMER, in her official capacity as
Governor of Michigan,

Respondents,

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Gregory G. Timmer (P39396)
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AFFIDAVIT OF CHARLES STEWART III

Being duly sworn, Charles Stewart III, deposes and states the following as true, under oath:

1. I am the Kenan Sahin Distinguished Professor of Political Science at the Massachusetts Institute of Technology, where I have been on the faculty since 1985. In that time, I have done research and taught classes at the graduate and undergraduate levels in the fields of American politics, research methodology, elections, and legislative politics.

2. Since November 2020 I have been a member of the Caltech/MIT Voting Technology Project (VTP). The VTP is the nation's oldest academic project devoted to the study of voting machines, voting technology, election administration, and election reform. I have been the MIT director of the project for 15 years.

3. I am the founding director of the MIT Election Data and Science Lab (MEDSL), which was founded in January 2016. MEDSL is devoted to the impartial, scientific analysis of elections and election administration (sometimes called election science) in the United States.

4. I have been the author or co-author of numerous peer-reviewed publications and books in political science, and in particular, the area of election administration and election science.

5. I have attached an abridged version of my curriculum vitae to this statement, as Appendix 1.

6. As a part of my academic research, I have regularly designed public opinion surveys to probe questions related to the conduct of elections in the United States. I have been the principal investigator of modules pertaining to election science that were part of the Cooperative Election Study in 2012, 2013, 2014, 2016, 2018, 2019, and 2020.

7. I was the principal investigator of the project that led to the creation and design of the Survey of the Performance of American Elections (SPAEE). The SPAEE is the only large-scale academic survey that focuses on the experience of voters in federal elections. I supervised the development of the survey instrument and the reporting of the results. This survey, which interviews over 10,000 voters following every presidential election, has been implemented following the 2008, 2012, 2016, and 2020 elections.

8. I have reviewed the reports written by Mr. Matthew Braynard and Professor Qianying (Jennie) Zhang and submitted in this case.

Mr. Braynard's Report

9. Mr. Braynard claims that he has evidence concerning whether individuals from the Michigan voter file actually voted and whether those individuals identified as having voted were actually qualified to vote on Election Day.

10. It is my opinion, based on my knowledge as an expert in the fields of political science, election administration, and survey research, that Mr. Braynard's conclusions are without merit.

11. Mr. Braynard states on page 6 that he received what he claims to be the Michigan voter registration database and a file of absentee ballot voters from the company L2 Political. It is important to note that Mr. Braynard did not receive a “raw” copy of the Qualified Voter File (QVF) directly from the state, but from an intermediary. L2 is known to augment information in state voter files, so that they can be of use to political campaigns. Mr. Braynard offers no discussion of whether L2 made any enhancements to the files he used and, if they did, whether those enhancements affected his analysis.

12. The central data-gathering method in this report is based on calling samples of individuals who were in either one of the files provided to Mr. Brainard by L2. Mr. Brainard does not discuss where he got those phone numbers. I know, because I purchased a copy of the QVF in May of this year, that the QVF does not have phone numbers. Therefore, the telephone numbers Mr. Braynard used had to be added by someone else. They may have been added by L2, but they may have been added through another process that is not specified in the report.

13. Mr. Braynard generally describes his approach on page 6. He claims that a full description of his analysis is attached in Exhibit 2, but it is not in fact attached. All we can gather from the description we do have is that he, or his call center staff, drew a random sample from the two L2-provided datasets and made some telephone calls. The very brief description of the research raises numerous questions that one would normally address in a report of this nature. Among these questions are

- How was the randomization implemented?
- What efforts were made to “convert” non-responses to responses?
- Who was the call center?
- Over what period of time were the calls made?

- What precisely was that the script that callers followed as they talked to people they reached?
- What quality assurance measures were taken by the call center staff to ensure that the callers followed the protocol and recorded results accurately?

14. On page 7, point 1, Mr. Braynard states that the callers spoke to 834 individuals. He gives no indication of how many people had to be called to reach these 834. With telephone surveys, it is common for response rates to be around 2% – 5%. With such low response rates, it is necessary to understand whether the respondents were at all representative of the universe they are intended to represent. Without serious attention to this question of representativeness, we have no assurance that the results of the survey are not tainted by a problem known in the profession as non-response bias. This issue of non-response bias attends all of the analyses Mr. Braynard presents.

15. In this section, Mr. Braynard also writes that 12.23% of his sample of individuals who were in the absentee-ballot request file did not, in fact, request an absentee ballot. He reaches this conclusion based on a naïve interpretation of the responses. The fact that 12.23% of this sample says they did not request an absentee ballot does not support a conclusion that 12.23% of people who are recorded as requesting an absentee ballot did not actually request one. Instead, the most likely conclusion is that the lion's share—if not all—of these responses were given by people who were called by mistake.

16. My criticism in the previous paragraph is based on what is known about the quality of database matching between voter files and commercial telephone lists. In 2018, the Pew Research Center issued a report that, among other things, addressed the problem of

matching telephone numbers to voter files.¹ That report found that firms who do this type of matching are successful between 55% and 91% of the time. In other words, for data sets of the type Mr. Braynard is using, between 45% and 9% of the telephone numbers will be incorrect. Therefore, if 12% of the sample stated they did not request an absentee ballot, it is likely that the callers were simply talking to the wrong people.

17. On page 7, point 2, Mr. Braynard claims that 24.19% of those who are recorded as not returning an absentee ballot did not request one. This analysis has essentially the same flaws as the analysis under point 1.

18. On page 8, point 3, Mr. Braynard claims that 15.37% of those who are recorded as having not returned an absentee ballot did, in fact, return one. These results were quite unremarkable and are entirely consistent with a well-known problem in the study of political participation called “social desirability bias.” Social desirability bias is the tendency of survey subjects to give socially desirable responses instead of answering with their true feelings or behaviors. This is especially problematic in studying sensitive topics, of which politics is one.

19. The problem of over-stating that one has participated in an election has led to a large literature on this topic. It is common practice among survey researchers to gauge the degree of over-reporting. For instance, in the 2016 Cooperative Election Study, follow-up research established that 29% of those who had originally stated to the researchers that they had voted by mail had, in fact, not voted at all. Therefore, it is reasonable to conclude that the results reported under point 3 are due to misreporting by respondents.

20. On page 9, point 4, Mr. Braynard reports the analysis of a sample of individuals who are reported as having voted absentee or early and who also match to the NCOA database.

¹ Pew Research Center, “Commercial Voter Files and the Study of U.S. Politics,” February 15, 2018, <https://www.pewresearch.org/methods/2018/02/15/commercial-voter-files-and-the-study-of-u-s-politics/>.

He reports that 1% of these individuals denied that they actually cast a ballot. There are two problems here. First, the numbers in this section are inconsistent. Is it 1.11%, as in the summary, or 1.38%, as in the body of the report? Second, it is my understanding that Michigan does not have early voting. My conclusion, therefore, is that this claim has all of the hallmarks of analysis intended for another state that got inadvertently cut and pasted into this report.

21. On page 9, point 5, Mr. Braynard claims that he identified a number of voters who were no longer residents of Michigan on Election Day. There are at least two problems with this analysis. First, there are legitimate reasons why a resident of Michigan would file an NCOA notice that they had moved outside of the state, and still would be residents of the state. I myself have done this in the couple of times in my lifetime, when I had opportunities to spend a year in another state as a part of my profession. Students, military members assigned to a post outside of Michigan, and others pursuing business opportunities on a short-term basis are likely to file an NCOA form so that critical mail, such as bills, is forwarded to them during the period of their temporary absence. In addition, without Exhibit 2, it is impossible to judge precisely what Mr. Braynard did to arrive at the numbers that are reported in the section.

22. Finally, on page 10, point 6, Mr. Braynard claims to have found at least 234 individuals in Michigan who voted in multiple states. First, there are two numbers in the section, 234 and 317. Again, this looks like a case of cut-and-paste report writing. More importantly, his conclusion is based on an assumption that the matching is 100% correct. It is my experience that matching that “finds” double voting often does so because of false matches. Therefore, if one were to further investigate these cases, it is likely that the number of multiple voters is significantly less than the numbers reflected here. And, even if there were a couple dozen multiple voters in Michigan, this hardly reflects widespread fraud in the conduct of the election.

23. In addition to these substantive problems, the report has numerous careless errors which reflect on the seriousness with which we should take his analysis. For instance, in the very first paragraph of his report, Mr. Braynard refers to the state of Wisconsin, rather than to Michigan. This raises the obvious question of whether Mr. Braynard is simply cutting and pasting from reports written about other states, using equally dubious methodologies to reach similarly baseless conclusions. If Mr. Braynard cannot keep track of which state he is analyzing, I worry about the quality of the analysis underlying the report.

24. On page 3, Mr. Braynard states that he has attached a copy of his resume as Exhibit 1. However, Exhibit 1 was not attached to the report. Therefore, there is no independent way to judge Mr. Braynard's training or actual experience in data analysis based on evidence in his report. What he describes however on page 3 does not give me confidence that he is qualified to design credible survey research in this area. He describes working for a small, if important, data analysis firm, Election Data Services, where he worked under the supervision of a PhD political scientist doing work appropriate to a recent graduate with a business degree. He owns a firm that reportedly engages in statistical analysis and consulting for political campaigns. However, owning a firm that provides statistical and data analysis is quite different from being able to design and implement that analysis.

Report of Qianying "Jennie" Zhang

25. Dr. Zhang's report adds nothing to Mr. Braynard's analysis. Dr. Zhang merely recapitulates the claims in Mr. Braynard's report and then calculates a series of confidence intervals around those estimates.

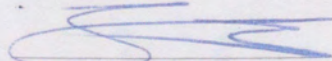
26. Dr. Zhang writes that she assumes the sampling was done correctly and that the answers reflect the true behavior of the respondents. In other words, she assumes the data are good but, as I have shown, they are not. Dr. Zhang is not, nor does she claim to be, an expert in survey research. I have no doubts about the calculations that she performed. However, there is also no reason for an expert in survey research to ask a professor of finance to calculate confidence intervals. The calculation of confidence intervals is a routine task undertaken by survey researchers in their normal capacity many times every day—usually automated using statistical software. The failure of Mr. Braynard to calculate confidence intervals himself underscores the fact that he is not an expert in the area of public opinion research.

27. I will note inconsistencies in some of the numbers between Mr. Braynard's and Dr. Zhang's reports. For instance, Mr. Braynard claims that there were 139,129 absentee voters who were sent a ballot but who failed to return the absentee ballot; Dr. Zhang puts this number at 139,190. This is a small discrepancy, but it does make me wonder what data Dr. Zhang was looking at.

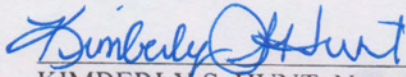
I affirm that the representations above are true.

Further, Affiant sayeth not.

Date: December 4, 2020


CHARLES STEWART III

Subscribed and sworn to before me
this 4th day of December, 2020.



KIMBERLY S. HUNT, Notary Public
County of Macomb

My Commission Expires: 08/08/24

Acting in the County of Macomb

Notarized using electronic/remote technology

Notary located in Macomb County, State of Michigan

Signatory located in MIDDLESEX County, State of MASSACHUSETTS

KIMBERLY S. HUNT
NOTARY PUBLIC, STATE OF MI
COUNTY OF MACOMB
MY COMMISSION EXPIRES Aug 8, 2024
ACTING IN COUNTY OF MACOMB

Curriculum Vitae**CHARLES HAINES STEWART III**

Kenan Sahin Distinguished Professor of Political Science
 The Massachusetts Institute of Technology
 Department of Political Science
 Cambridge, Massachusetts 02139
 617-253-3127
 CStewart@mit.edu

Education

1985	Ph.D., Stanford University.
1983	A.M., Stanford University
1979	B.A., Emory University

Professional experience*Teaching*

1985–1989	Assistant Professor of Political Science
1989–1999	Associate Professor of Political Science
1990–1993	Cecil and Ida Green Career Development Associate Professor of Political Science (3-yr. term)
1999–present	Professor of Political Science
2007–present	Kenan Sahin Distinguished Professor of Political Science
2016–present	Affiliate Faculty, Institute for Data, Systems, and Society

Administrative

2002–2005	Associate Dean of Humanities, Arts, and Social Sciences
2002–present	Co-director, Caltech/MIT Voting Technology Project
2005–2010	Head of the Department of Political Science
2015–present	Director, MIT Election Data and Science Lab

Awards (abbreviated)

1994	Mary Parker Follett Award, for Best Published Essay or Article, 1993-1994, Politics and History Section, American Political Science Association (with Barry Weingast).
1999	Franklin L. Burdette Pi Sigma Alpha Award, for Best Paper Presented at the 1998 Annual Meeting of the American Political Science Association. (“Architect or Tactician? Henry Clay and the Institutional Development of the U.S. House of Representatives”)

- 2002 Jewell-Loehenberg Award, for best article to have appeared in the *Legislative Studies Quarterly*, Legislative Studies Section, American Political Science Association (with Steven Ansolabehere and James M. Snyder, Jr.)
- 2002 Jack Walker Award, honoring an article or published paper of unusual significance and importance to the field, Political Organizations and Parties Section, American Political Science Association (with Steven Ansolabehere and James M. Snyder, Jr.)
- 2011 Elected Fellow, American Academy of Arts and Sciences
- 2013 Patrick J. Fett Award, honoring the best paper on the scientific study of Congress and the Presidency at the previous meeting of the Midwest Political Science Association ("The Value of Committee Assignments in Congress since 1994")

Grants (abbreviated)

-
- 1991–93 National Science Foundation, "The Development of the Committee System in the House, 1870-1946," SES-91-12345
 - 2003–06 John S. and James L. Knight Foundation, "Internet and Electronic Voting"
 - 2005–07 National Science Foundation, "Collaborative Research: U.S. Senate Elections Data Base, 1871–1913" (with Wendy Schiller).
 - 2007–10 Pew Charitable Trusts and JEHT Foundation, "The 2008 Survey of the Performance of American Elections"
 - 2008–10 Ewing Marion Kauffman Foundation, "Congressional and Executive Staff Seminar"
 - 2012–13 Pew Charitable Trusts, "Measuring Elections"
 - 2013–15 Pew Charitable Trusts, "Measuring Elections"
 - 2013–14 Democracy Fund, "Voting in America: Matching Problems to Solutions"
 - 2013–14 William and Flora Hewlett Foundation, "Voting in America: Matching Problems to Solutions"
 - 2014–17 Democracy Fund, "Polling Place of the Future"
 - 2016–17 Pew Charitable Trusts, "The 2016 Survey of the Performance of American Elections"
 - 2017–21 William and Flora Hewlett Foundation, "The MIT Election Data and Science Lab"
 - 2018–21 Democracy Fund, "The MIT Election Data and Science Lab"
 - 2017–18 Carnegie Foundation of New York, Andrew Carnegie Fellow
 - 2017–19 Joyce Foundation, "State Election Landscapes"

Publications (abbreviated)

Books

- 2015 *Electing the Senate*. Princeton. University Press (with Wendy Schiller)
- 2014 *Measuring American Elections*. Cambridge University Press (with Barry Burden)
- 2012 *Fighting for the Speakership: The House and the Rise of Party Government*. Princeton University Press (with Jeffery A. Jenkins).
- 2010 *Committees in the U.S. Congress, 1993–2010*. CQ Press (with Garrison Nelson).

- 2002 *Committees in the United States Congress, 1789–1946*, 4 vols. Congressional Quarterly Press (with David Canon and Garrison Nelson).
- 2001 *Analyzing Congress*. W. W. Norton. [2nd edition, 2012]
- 1989 *Budget Reform Politics: The Design of the Appropriations Process in the House, 1865-1921*. Cambridge University Press.

Chapters in edited collections

- 2020 “Polling Place Quality and Access” (with Robert Stein and Christopher Mann) in *The Future of Election Administration*, eds. Mitchell Brown, Bridgett A. King, and Kathleen Hale. Palgrave MacMillan.
- 2020 “The Elections Performance Index: Past, Present, and Future” in *The Future of Election Administration*, eds. Mitchell Brown, Bridgett A. King, and Kathleen Hale. Palgrave MacMillan.
- 2017 “Election Administration in 2016: A Tale of Two Cities” (with Terry Susan Fine) in *Conventional Wisdom, Parties, and Broken Barriers in the 2016 Election*, eds. Jennifer C. Lucas, Christopher J. Galdieri, and Tauna Starbuck Sisco.
- 2014 “Measuring American Elections” in *Measuring American Elections*, eds. Barry C. Burden and Charles Stewart III.
- 2014 “The Performance of Election Machines and the Decline of Residual Votes in the U.S.” in *Measuring American Elections*, eds. Barry C. Burden and Charles Stewart III.
- 2014 “Understanding Voter Attitudes toward Election Fraud Across the United States.” (With Thad E. Hall) in *Advancing Electoral Integrity*, eds. Pippa Norris, Richard W. Frank, and Ferran Martinez i Coma.
- 2014 “What Hath HAVA Wrought? Consequences, Intended and Unintended, of the Post-*Bush v. Gore* Reforms,” in *Bush v. Gore Ten Years Later*, eds. R. Michael Alvarez and Bernard Grofman.
- 2011 “Congressional Committees in a Partisan Era: The End of Institutionalization as We Know It?” in *New Directions in Congressional Politics*, ed. Jamie L.I. Carson, Routledge.
- 2008 “Function follows Form: Voting Technology and the Law,” in *America Votes!*, ed. Benjamin E. Griffith American Bar Association.
- 2008 “Improving the Measurement of Election System Performance in the United States” in *Mobilizing Democracy: A Comparative Perspective on Institutional Barriers and Political Obstacles*, eds. Margaret Levi, James Johnson, Jack Knight, and Susan Stokes, Russell Sage.
- 2006 “Architect or Tactician? Henry Clay and the Institutional Development of the U.S. House of Representatives” in *Process, Party, and Policy Making: New Advances in the Study of the History of Congress*, eds David W. Brady and Mathew D. McCubbins, Stanford University Press.
- 2005 “Congress in the Constitutional System,” in *Institutions of Democracy: The Legislative Branch*, ed. Sarah Binder and Paul Quirk, Oxford University Press.
- 2002 “The Evolution of the Committee System in the U.S. Senate” (with David Canon), in *Senate Exceptionalism*, ed., Bruce Oppenheimer, Ohio University Press.
- 2002 “Order from Chaos: The Transformation of the Committee System in the House, 1810–1822,” in *Party, Process, and Political Change in Congress: New Perspectives on the History of Congress*, eds. David Brady and Mathew McCubbins, Stanford University Press.
- 2001 “The Evolution of the Committee System in Congress,” in *Congress Reconsidered*, 7th edition, eds., Lawrence Dodd and Bruce I. Oppenheimer. Congressional Quarterly Press.
- 1992 “Committees from Randall to Clark,” in *The Atomistic Congress*, eds. Ron Peters and Allen Hertzke. M.E. Sharpe.
- 1992 “Responsiveness in the Upper Chamber: The Constitution and the Institutional Development of the U.S. Senate,” in *The Constitution and the American Political Process*, ed. Peter Nardulli. University of Illinois Press.
- 1991 “Lessons from the Post-Civil War Era,” in *Causes and Consequences of Divided Government*, eds. Gary Cox and Samuel Kernell. Westview Press.

- 1991 “Tax Reform in the 1980s,” in *Politics and Economics in the 1980s*, eds. Alberto Alesina and Geoffrey Carliner. University of Chicago Press, pp. 143-170.

Articles in refereed journals (Abbreviated)

- 2020 “Reconsidering Lost Votes by Mail” *Harvard Review of Data Science*.
- 2020 “Abstention, Protest, and Residual Votes in the 2016 Election,” (with R. Michael Alvarez, Stephen Pettigrew, and Cameron Wimpy) *Social Science Quarterly*. 101(2): 925–939.
<https://doi.org/10.1111/ssqu.12757>.
- 2020 “Protecting the Perilous Path of Election Returns: From the Precinct to the News,” (with Stephen Pettigrew) *Ohio State Technology Law Journal* 2020: 588–638.
- 2020 “Explaining the Blue Shift in Election Canvassing,” (with Edward B. Foley) *Journal of Political Institutions and Political Economy* 1(2): 239–265. <http://dx.doi.org/10.1561/113.00000010>.
- 2020 “The Relationship of Public Health with Continued Shifting of Party Voting in the United States,” (with Jason H. Wasfy, Emma W. Healy, and Jinghan Cui) *Social Science & Medicine* 252(May 2020): 112921. <https://doi.org/10.1016/j.socscimed.2020.112921>.
- 2019 “Causal Inference and American Political Development: The Case of the Gag Rule,” (with Jeffery A. Jenkins) *Public Choice*. <https://doi.org/10.1007/s11127-019-00754-9>.
- 2019 “Learning from Each Other: Causal Inference and American Political Development,” (with Jeffery A. Jenkins and Nolan McCarty) *Public Choice*. <https://doi.org/10.1007/s11127-019-00728-x>.
- 2019 “Waiting to Vote in the 2016 Presidential Election: Evidence from a Multi-county Study,” (with Robert M. Stein, et al) *Political Research Quarterly*.
<https://doi.org/10.1177%2F1065912919832374>.
- 2019 “Voter ID Laws: A View from the Public,” (with Paul Gronke, et al) *Social Science Quarterly* 100(1): 215–232.
- 2018 “The Deinstitutionalization (?) of the House of Representatives: Reflections on Nelson Polsby’s “The Institutionalization of the U.S. House of Representatives” at Fifty” (with Jeffery A. Jenkins) *Studies in American Political Development* 32(2): 166–187.
- 2018 “Pedagogical Value of Polling-Place Observation by Students” (with Christopher B. Mann, et al) *PS: Political Science & Politics* 51(4): 831–837.
- 2018 “Learning from Recounts,” (with Stephen Ansolabehere, Barry C. Burden, and Kenneth R. Mayer) *Election Law Journal* 17(2): 100–116.
- 2017 “County Community Health Associations of Net Voting Shift in the 2016 U.S. Presidential Election,” (with Jason Wasfy and Vijeta Bhambhani) *PLOS ONE*, Oct. 2, 2017,
<https://doi.org/10.1371/journal.pone.0185051>.
- 2017 “The 2016 U.S. Election: Fears and Facts about Electoral Integrity,” *Journal of Democracy* 28(2): 50–62.
- 2015 “Partisanship and Voter Confidence, 2000–2012,” (with Michael W. Sances). *Electoral Studies* 40: 176–188.
- 2015 “Waiting to Vote” (with Stephen Ansolabehere). *Election Law Journal*. 14(1): 47–53.
- 2013 “U.S. Senate Elections before the 17th Amendment: Party Cohesion and Conflict, 1871–1913” (with Wendy J. Schiller and). *Journal of Politics* 75(3): 835–847.
- 2013 “Voting Technology, Vote-by-Mail, and Residual Votes in California, 1990–2010” (with Dustin Beckett and R. Michael Alvarez). *Political Research Quarterly* 66(4): 658–70.
- 2011 “Adding up the Costs and Benefits of Voting by Mail.” *Election Law Journal* 10(3): 1–5.
- 2011 “Voter Opinions about Election Reform” (with R. Michael Alvarez, Thad E. Hall and Ines Levin) *Election Law Journal* 10(2): 73–87.
- 2006 “Residual Vote in the 2004 Election” *Election Law Journal* 5(2): 158–169.
- 2005 “Studying Elections: Data Quality and Pitfalls in Measuring the Effects of Voting Technologies” (with R. Michael Alvarez and Stephen Ansolabehere). *The Policy Studies Journal* 33(1): 15–24.

- 2005 “Residual Votes Attributable to Technology” (with Stephen Ansolabehere). *Journal of Politics* 67(2): 365–389.
- 2003 “Out in the Open: The Emergence of Viva Voce Voting in House Speakership Elections” (with Jeff Jenkins). *Legislative Studies Quarterly*, 28(4): 481–508.
- 2001 “The Effects of Party and Preferences on Congressional Roll Call Voting (with Stephen D. Ansolabehere and James M. Snyder, Jr.). *Legislative Studies Quarterly*, 26(4): 533–572.
- 2001 “Candidate Positioning in U.S. House Elections,” (with Stephen D. Ansolabehere and James M. Snyder, Jr.). *American Journal of Political Science*, 45(1): 136–159.
- 2000 “Old Voters, New Voters, and the Personal Vote: Using Redistricting to Measure the Incumbency Advantage” (with Stephen D. Ansolabehere and James M., Snyder, Jr.), *American Journal of Political Science*, 44(1): 17–34.
- 1999 “The Value of Committee Seats in the United States Senate, 1947–91,” (with Tim Groseclose), *American Journal of Political Science*. 43(3): 963–973.
- 1998 “The Value of Committee Seats in the House, 1947–1991,” (with Tim Groseclose) *American Journal of Political Science*, 42(2): 453–474.

Articles in law reviews (last ten years)

- 2020 “Protecting the Perilous Path of Election Returns: From the Precinct to the News,” (with Stephen Pettigrew) *Ohio State Technology Law Journal* 2020: 587–637.
- 2016 “Revisiting Public Opinion on Voter Identification,” (with Stephen Ansolabehere and Nathaniel Persily) *Stanford Law Review* 68(6): 1455–89.
- 2013 “Waiting to Vote,” *Journal of Law and Politics* 28(4): 439–463.
- 2013 “Voter ID: Who Has Them? Who Shows Them?” *Oklahoma Law Review* 66(4): 21–52.
- 2013 “Regional Differences in Racial Polarization in the 2012 Presidential Election: Implications for the Constitutionality of Section 5 of the Voting Rights Act,” *Harvard Law Review Forum* 126: 205–220.
- 2010 “Losing Votes by Mail,” in *Journal of Legislation and Public Policy* 13(3): 573–602.
- 2010 “Race, Region, and Vote Choice in the 2008 Election: Implications for the Future of the Voting Rights Act.” (with Stephen Ansolabehere and Nathaniel Persily) *Harvard Law Review* 123(6): 1385–1436.

EXHIBIT 21

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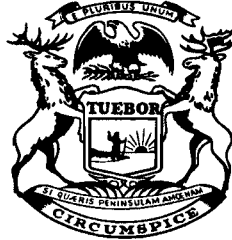
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NOTICE OF SUSPENSION

(By Consent)

Case Nos. 16-127-JC; 16-128-GA

Notice Issued: December 8, 2016

Gregory J. Rohl, P 39185, Novi, Michigan, by the Attorney Discipline Board Tri-County Hearing Panel #63.

Suspension - 30 Days, Effective December 1, 2016

The respondent and the Grievance Administrator filed a stipulation for a consent order of discipline, in accordance with MCR 9.115(F)(5), which was approved by the Attorney Grievance Commission and accepted by the hearing panel. The stipulation contained respondent's admissions that he was convicted of disorderly conduct, in violation of MCL 750.1671F, and telecommunications service - malicious use, in violation of MCL 750.540E, in *People of the State of Michigan v Gregory Joseph Rohl*, Wayne County Circuit Court Case No. 11-853-01-FH; and admissions to the allegations that he committed professional misconduct when he failed to make reasonable efforts to ensure that his firm had in effect measures giving reasonable assurance that his non-lawyer assistants' conduct was compatible with his professional obligations and failed to make reasonable efforts to ensure that his non-lawyer assistants' conduct was compatible with his professional obligations.

Based on the parties' stipulation, respondent's convictions, and his admissions in the stipulation, the panel found that respondent engaged in conduct that violated the criminal laws of the State of Michigan, in violation of MCR 9.104(5). Respondent was also found to have violated MRPC 5.3(a) and(b).

In accordance with the stipulation of the parties, the hearing panel ordered that respondent's license to practice law in Michigan be suspended for 30 days. Costs were assessed in the amount of \$1,588.52.


Mark A. Armitage

STATE OF MICHIGAN

IN THE THIRD JUDICIAL CIRCUIT COURT FOR THE COUNTY OF WAYNE

Cheryl A. Costantino and
Edward P. McCall, Jr.
Plaintiffs,

Hon. Timothy M. Kenny
Case No. 20-014780-AW

City of Detroit; Detroit Election
Commission; Janice M. Winfrey,
in her official capacity as the
Clerk of the City of Detroit and
the Chairperson and the Detroit
Election Commission; Cathy Garrett,
In her official capacity as the Clerk of
Wayne County; and the Wayne County
Board of Canvassers,
Defendants.

_____ /

OPINION & ORDER

At a session of this Court
Held on: November 13, 2020
In the Coleman A. Young Municipal Center
County of Wayne, Detroit, MI

PRESENT: Honorable Timothy M. Kenny
Chief Judge
Third Judicial Circuit Court of Michigan

This matter comes before the Court on Plaintiffs' motion for preliminary injunction, protective order, and a results audit of the November 3, 2020 election. The Court having read the parties' filing and heard oral arguments, finds:

With the exception of a portion of Jessy Jacob affidavit, all alleged fraudulent claims brought by the Plaintiffs related to activity at the TCF Center. Nothing was alleged to

have occurred at the Detroit Election Headquarters on West Grand Blvd. or at any polling place on November 3, 2020.

The Defendants all contend Plaintiffs cannot meet the requirements for injunctive relief and request the Court deny the motion.

When considering a petition for injunction relief, the Court must apply the following four-pronged test:

1. The likelihood the party seeking the injunction will prevail on the merits.
2. The danger the party seeking the injunction will suffer irreparable harm if the injunction is not granted.
3. The risk the party seeking the injunction would be harmed more by the absence an injunction than the opposing party would be by the granting of the injunction.
4. The harm to the public interest if the injunction is issued. *Davis v City of Detroit Financial Review Team*, 296 Mich. App. 568, 613; 821 NW2nd 896 (2012).

In the *Davis* opinion, the Court also stated that injunctive relief “represents an extraordinary and drastic use of judicial power that should be employed sparingly and only with full conviction of its urgent necessity.” *Id.* at 612 fn 135 quoting *Senior Accountants, Analysts and Appraisers Association v Detroit*, 218 Mich. App. 263, 269; 553 NW2nd 679 (1996).

When deciding whether injunctive relief is appropriate MCR 3.310 (A)(4) states that the Plaintiffs bear the burden of proving the preliminary injunction should be granted. In cases of alleged fraud, the Plaintiff must state with particularity the circumstances constituting the fraud. MCR 2.112 (B) (1)

Plaintiffs must establish they will likely prevail on the merits. Plaintiffs submitted seven affidavits in support of their petition for injunctive relief claiming widespread voter

fraud took place at the TCF Center. One of the affidavits also contended that there was blatant voter fraud at one of the satellite offices of the Detroit City Clerk. An additional affidavit supplied by current Republican State Senator and former Secretary of State Ruth Johnson, expressed concern about allegations of voter fraud and urged "Court intervention", as well as an audit of the votes.

In opposition to Plaintiffs' assertion that they will prevail, Defendants offered six affidavits from individuals who spent an extensive period of time at the TCF Center. In addition to disputing claims of voter fraud, six affidavits indicated there were numerous instances of disruptive and intimidating behavior by Republican challengers. Some behavior necessitated removing Republican challengers from the TCF Center by police.

After analyzing the affidavits and briefs submitted by the parties, this Court concludes the Defendants offered a more accurate and persuasive explanation of activity within the Absent Voter Counting Board (AVCB) at the TCF Center.

Affiant Jessy Jacob asserts Michigan election laws were violated prior to November 3, 2020, when City of Detroit election workers and employees allegedly coached voters to vote for Biden and the Democratic Party. Ms. Jacob, a furloughed City worker temporarily assigned to the Clerk's Office, indicated she witnessed workers and employees encouraging voters to vote a straight Democratic ticket and also witnessed election workers and employees going over to the voting booths with voters in order to encourage as well as watch them vote. Ms. Jacob additionally indicated while she was working at the satellite location, she was specifically instructed by superiors not to ask for driver's license or any photo ID when a person was trying to vote.

The allegations made by Ms. Jacob are serious. In the affidavit, however, Ms. Jacob does not name the location of the satellite office, the September or October date these

acts of fraud took place, nor does she state the number of occasions she witnessed the alleged misconduct. Ms. Jacob in her affidavit fails to name the city employees responsible for the voter fraud and never told a supervisor about the misconduct.

Ms. Jacob's information is generalized. It asserts behavior with no date, location, frequency, or names of employees. In addition, Ms. Jacob's offers no indication of whether she took steps to address the alleged misconduct or to alter any supervisor about the alleged voter fraud. Ms. Jacob only came forward after the unofficial results of the voting indicated former Vice President Biden was the winner in the state of Michigan.

Ms. Jacob also alleges misconduct and fraud when she worked at the TCF Center. She claims supervisors directed her not to compare signatures on the ballot envelopes she was processing to determine whether or not they were eligible voters. She also states that supervisors directed her to "pre-date" absentee ballots received at the TCF Center on November 4, 2020. Ms. Jacob ascribes a sinister motive for these directives. Evidence offered by long-time State Elections Director Christopher Thomas, however, reveals there was no need for comparison of signatures at the TCF Center because eligibility had been reviewed and determined at the Detroit Election Headquarters on West Grand Blvd. Ms. Jacob was directed not to search for or compare signatures because the task had already been performed by other Detroit city clerks at a previous location in compliance with MCL 168.765a. As to the allegation of "pre-dating" ballots, Mr. Thomas explains that this action completed a data field inadvertently left blank during the initial absentee ballot verification process. Thomas Affidavit, #12. The entries reflected the date the City received the absentee ballot. *Id.*

The affidavit of current State Senator and former Secretary of State Ruth Johnson essentially focuses on the affidavits of Ms. Jacob and Zachery Larsen. Senator Johnson believed the information was concerning to the point that judicial intervention was needed and an audit of the ballots was required. Senator Johnson bases her assessment entirely on the contents of the Plaintiffs' affidavits and Mr. Thomas' affidavit. Nothing in Senator Johnson's affidavit indicates she was at the TCF Center and witnessed the established protocols and how the AVCB activity was carried out. Similarly, she offers no explanation as to her apparent dismissal of Mr. Thomas' affidavit. Senator Johnson's conclusion stands in significant contrast to the affidavit of Christopher Thomas, who was present for many hours at TCF Center on November 2, 3 and 4. In this Court's view, Mr. Thomas provided compelling evidence regarding the activity at the TCF Center's AVCB workplace. This Court found Mr. Thomas' background, expertise, role at the TCF Center during the election, and history of bipartisan work persuasive.

Affiant Andrew Sitto was a Republican challenger who did not attend the October 29th walk- through meeting provided to all challengers and organizations that would be appearing at the TCF Center on November 3 and 4, 2020. Mr. Sitto offers an affidavit indicating that he heard other challengers state that several vehicles with out-of-state license plates pulled up to the TCF Center at approximately 4:30 AM on November 4th. Mr. Sitto states that "tens of thousands of ballots" were brought in and placed on eight long tables and, unlike other ballots, they were brought in from the rear of the room. Sitto also indicated that every ballot that he saw after 4:30 AM was cast for former Vice President Biden.

Mr. Sitto's affidavit, while stating a few general facts, is rife with speculation and guess-work about sinister motives. Mr. Sitto knew little about the process of the absentee voter counting board activity. His sinister motives attributed to the City of Detroit were negated by Christopher Thomas' explanation that all ballots were delivered to the back of Hall E at the TCF Center. Thomas also indicated that the City utilized a rental truck to deliver ballots. There is no evidentiary basis to attribute any evil activity by virtue of the city using a rental truck with out-of-state license plates.

Mr. Sitto contends that tens of thousands of ballots were brought in to the TCF Center at approximately 4:30 AM on November 4, 2020. A number of ballots speculative on Mr. Sitto's part, as is his speculation that all of the ballots delivered were cast for Mr. Biden. It is not surprising that many of the votes being observed by Mr. Sitto were votes cast for Mr. Biden in light of the fact that former Vice President Biden received approximately 220,000 more votes than President Trump.

Daniel Gustafson, another affiant, offers little other than to indicate that he witnessed "large quantities of ballots" delivered to the TCF Center in containers that did not have lids were not sealed, or did not have marking indicating their source of origin. Mr. Gustafson's affidavit is another example of generalized speculation fueled by the belief that there was a Michigan legal requirement that all ballots had to be delivered in a sealed box. Plaintiffs have not supplied any statutory requirement supporting Mr. Gustafson's speculative suspicion of fraud.

Patrick Colbeck's affidavit centered around concern about whether any of the computers at the absent voter counting board were connected to the internet. The answer given by a David Nathan indicated the computers were not connected to the

internet. Mr. Colbeck implies that there was internet connectivity because of an icon that appeared on one of the computers. Christopher Thomas indicated computers were not connected for workers, only the essential tables had computer connectivity. Mr. Colbeck, in his affidavit, speculates that there was in fact Wi-Fi connection for workers use at the TCF Center. No evidence supports Mr. Colbeck's position.

This Court also reads Mr. Colbeck's affidavit in light of his pre-election day Facebook posts. In a post before the November 3, 2020 election, Mr. Colbeck stated on Facebook that the Democrats were using COVID as a cover for Election Day fraud. His predilection to believe fraud was occurring undermines his credibility as a witness.

Affiant Melissa Carone was contracted by Dominion Voting Services to do IT work at the TCF Center for the November 3, 2020 election. Ms. Carone, a Republican, indicated that she "witnessed nothing but fraudulent actions take place" during her time at the TCF Center. Offering generalized statements, Ms. Carone described illegal activity that included, untrained counter tabulating machines that would get jammed four to five times per hour, as well as alleged cover up of loss of vast amounts of data. Ms. Carone indicated she reported her observations to the FBI.

Ms. Carone's description of the events at the TCF Center does not square with any of the other affidavits. There are no other reports of lost data, or tabulating machines that jammed repeatedly every hour during the count. Neither Republican nor Democratic challengers nor city officials substantiate her version of events. The allegations simply are not credible.

Lastly, Plaintiffs rely heavily on the affidavit submitted by attorney Zachery Larsen. Mr. Larsen is a former Assistant Attorney General for the State of Michigan who alleged mistreatment by city workers at the TCF Center, as well as fraudulent activity by election workers. Mr. Larsen expressed concern that ballots were being processed without confirmation that the voter was eligible. Mr. Larsen also expressed concern that he was unable to observe the activities of election official because he was required to stand six feet away from the election workers. Additionally, he claimed as a Republican challenger, he was excluded from the TCF Center after leaving briefly to have something to eat on November 4th. He expressed his belief that he had been excluded because he was a Republican challenger.

Mr. Larsen's claim about the reason for being excluded from reentry into the absent voter counting board area is contradicted by two other individuals. Democratic challengers were also prohibited from reentering the room because the maximum occupancy of the room had taken place. Given the COVID-19 concerns, no additional individuals could be allowed into the counting area. Democratic party challenger David Jaffe and special consultant Christopher Thomas in their affidavits both attest to the fact that neither Republican nor Democratic challengers were allowed back in during the early afternoon of November 4th as efforts were made to avoid overcrowding.

Mr. Larsen's concern about verifying the eligibility of voters at the AVCB was incorrect. As stated earlier, voter eligibility was determined at the Detroit Election Headquarters by other Detroit city clerk personnel.

The claim that Mr. Larsen was prevented from viewing the work being processed at the tables is simply not correct. As seen in a City of Detroit exhibit, a large monitor was

at the table where individuals could maintain a safe distance from poll workers to see what exactly was being performed. Mr. Jaffe confirmed his experience and observation that efforts were made to ensure that all challengers could observe the process.

Despite Mr. Larsen's claimed expertise, his knowledge of the procedures at the AVCB paled in comparison to Christopher Thomas'. Mr. Thomas' detailed explanation of the procedures and processes at the TCF Center were more comprehensive than Mr. Larsen's. It is noteworthy, as well, that Mr. Larsen did not file any formal complaint as the challenger while at the AVCB. Given the concerns raised in Mr. Larsen's affidavit, one would expect an attorney would have done so. Mr. Larsen, however, only came forward to complain after the unofficial vote results indicated his candidate had lost.

In contrast to Plaintiffs' witnesses, Christopher Thomas served in the Secretary of State's Bureau of Elections for 40 years, from 1977 through 2017. In 1981, he was appointed Director of Elections and in that capacity implemented Secretary of State Election Administration Campaign Finance and Lobbyist disclosure programs. On September 3, 2020 he was appointed as Senior Advisor to Detroit City Clerk Janice Winfrey and provided advice to her and her management staff on election law procedures, implementation of recently enacted legislation, revamped absent voter counting boards, satellite offices and drop boxes. Mr. Thomas helped prepare the City of Detroit for the November 3, 2020 General Election.

As part of the City's preparation for the November 3rd election Mr. Thomas invited challenger organizations and political parties to the TCF Center on October 29, 2020 to have a walk-through of the entire absent voter counting facility and process. None of Plaintiff challenger affiants attended the session.

On November 2, 3, and 4, 2020, Mr. Thomas worked at the TCF Center absent voter counting boards primarily as a liaison with Challenger Organizations and Parties. Mr. Thomas indicated that he “provided answers to questions about processes at the counting board’s resolved dispute about process and directed leadership of each organization or party to adhere to Michigan Election Law and Secretary of State procedures concerning the rights and responsibilities of challengers.”

Additionally, Mr. Thomas resolved disputes about the processes and satisfactorily reduced the number of challenges raised at the TCF Center.

In determining whether injunctive relief is required, the Court must also determine whether the Plaintiffs sustained their burden of establishing they would suffer irreparable harm if an injunction were not granted. Irreparable harm does not exist if there is a legal remedy provided to Plaintiffs.

Plaintiffs contend they need injunctive relief to obtain a results audit under Michigan Constitution Article 2, § IV, Paragraph 1 (h) which states in part “the right to have the results of statewide elections audited, in such as manner as prescribed by law, to ensure the accuracy and integrity of the law of elections.” Article 2, § IV, was passed by the voters of the state of Michigan in November, 2018.

A question for the Court is whether the phrase “in such as manner as prescribed by law” requires the Court to fashion a remedy by independently appointing an auditor to examine the votes from the November 3, 2020 election before any County certification of votes or whether there is another manner “as prescribed by law”.

Following the adoption of the amended Article 2, § IV, the Michigan Legislature amended MCL 168.31a effective December 28, 2018. MCL 168.31a provides for the Secretary of State and appropriate county clerks to conduct a results audit of at least

one race in each audited precinct. Although Plaintiffs may not care for the wording of the current MCL 168.31a, a results audit has been approved by the Legislature. Any amendment to MCL 168.31a is a question for the voice of the people through the legislature rather than action by the Court.

It would be an unprecedented exercise of judicial activism for this Court to stop the certification process of the Wayne County Board of Canvassers. The Court cannot defy a legislatively crafted process, substitute its judgment for that of the Legislature, and appoint an independent auditor because of an unwieldy process. In addition to being an unwarranted intrusion on the authority of the Legislature, such an audit would require the rest of the County and State to wait on the results. Remedies are provided to the Plaintiffs. Any unhappiness with MCL 168.31a calls for legislative action rather than judicial intervention.

As stated above, Plaintiffs have multiple remedies at law. Plaintiffs are free to petition the Wayne County Board of Canvassers who are responsible for certifying the votes. (MCL 168.801 and 168.821 et seq.) Fraud claims can be brought to the Board of Canvassers, a panel that consists of two Republicans and two Democrats. If dissatisfied with the results, Plaintiffs also can avail themselves of the legal remedy of a recount and a Secretary of State audit pursuant to MCL 168.31a.

Plaintiff's petition for injunctive relief and for a protective order is not required at this time in light of the legal remedy found at 52 USC § 20701 and Michigan's General Schedule #23 – Election Records, Item Number 306, which imposes a statutory obligation to preserve all federal ballots for 22 months after the election.

In assessing the petition for injunctive relief, the Court must determine whether there will be harm to the Plaintiff if the injunction is not granted, as Plaintiffs' existing legal

remedies would remain in place unaltered. There would be harm, however, to the Defendants if the Court were to grant the requested injunction. This Court finds that there are legal remedies for Plaintiffs to pursue and there is no harm to Plaintiffs if the injunction is not granted. There would be harm, however, to the Defendants if the injunction is granted. Waiting for the Court to locate and appoint an independent, nonpartisan auditor to examine the votes, reach a conclusion and then finally report to the Court would involve untold delay. It would cause delay in establishing the Presidential vote tabulation, as well as all other County and State races. It would also undermine faith in the Electoral System.

Finally, the Court has to determine would there be harm to the public interest. This Court finds the answer is a resounding yes. Granting Plaintiffs' requested relief would interfere with the Michigan's selection of Presidential electors needed to vote on December 14, 2020. Delay past December 14, 2020 could disenfranchise Michigan voters from having their state electors participate in the Electoral College vote.

Conclusion

Plaintiffs rely on numerous affidavits from election challengers who paint a picture of sinister fraudulent activities occurring both openly in the TCF Center and under the cloak of darkness. The challengers' conclusions are decidedly contradicted by the highly-respected former State Elections Director Christopher Thomas who spent hours and hours at the TCF Center November 3rd and 4th explaining processes to challengers and resolving disputes. Mr. Thomas' account of the November 3rd and 4th events at the TCF Center is consistent with the affidavits of challengers David Jaffe, Donna MacKenzie and Jeffrey Zimmerman, as well as former Detroit City Election Official, now contractor, Daniel Baxter and City of Detroit Corporation Counsel Lawrence Garcia.

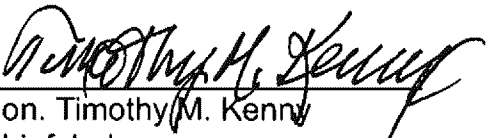
Perhaps if Plaintiffs' election challenger affiants had attended the October 29, 2020 walk-through of the TCF Center ballot counting location, questions and concerns could have been answered in advance of Election Day. Regrettably, they did not and, therefore, Plaintiffs' affiants did not have a full understanding of the TCF absent ballot tabulation process. No formal challenges were filed. However, sinister, fraudulent motives were ascribed to the process and the City of Detroit. Plaintiffs' interpretation of events is incorrect and not credible.

Plaintiffs are unable to meet their burden for the relief sought and for the above mentioned reasons, the Plaintiffs' petition for injunctive relief is DENIED. The Court further finds that no basis exists for the protective order for the reasons identified above. Therefore, that motion is DENIED. Finally, the Court finds that MCL 168.31a governs the audit process. The motion for an independent audit is DENIED.

It is so ordered.

This is not a final order and does not close the case.

November 13, 2020


Hon. Timothy M. Kenny
Chief Judge
Third Judicial Circuit Court of Michigan

AFFIDAVIT OF CHRISTOPHER THOMAS

Being duly sworn, Christopher Thomas, deposes and states the following as true, under oath:

1. I have served as a Senior Advisor to Detroit City Clerk Janice Winfrey since September 2020. In this capacity I advise the Clerk and management staff on election law procedures, implementation of recently enacted legislation, revamped absent voter counting board, satellite offices and drop boxes, Bureau of Elections matters and general preparation for the November 3, 2020 General Election. I was involved in nearly all aspects of the election in the City, including the processing and tabulation at the TCF Center.

2. I served in the Secretary of State Bureau of Election for 40 years beginning in May 1977 and finishing in June 2017. In June 1981, I was appointed Director of Elections and in that capacity implemented four Secretaries of State election administration, campaign finance and lobbyist disclosure programs.

3. In 2013, I was appointed to President Barack Obama's Commission on Election Administration and served until a final report was submitted to the President and Vice-President in January 2014.

4. I am a founding member of the National Association of State Election Directors and served as its president in 1997 and 2013.

5. I have reviewed the Motion for Leave to File Bill of Complaint ("Motion"), the proposed Bill of Complaint ("BOC") and attached Declarations. This Affidavit addresses some of the factual errors in those documents.

6. In November 2020, City of Detroit absentee ballots were counted at 134 absent voter counting boards in Hall E of the TCF Center, a large convention center in downtown Detroit.

Contrary to several statements made by the Plaintiff, the City of Detroit tabulates absentee ballots for Detroit voters, not the County of Wayne.

7. The City of Detroit is the only jurisdiction in the State of Michigan that is eligible to tabulate absent voter ballots by ballot style rather than by physical precinct. By law, jurisdictions with 250 or more precincts (Detroit is the only such jurisdiction in Michigan) may tabulate by ballot style. So, absent voter ballots in the City of Detroit are tabulated by absent voter counting boards, not by precincts.

8. A Detroit counting board is not the same as a precinct. A precinct has geographic dimensions that allow it to be shown on a map. A Detroit counting board by comparison is an aggregate of 1 or more precincts with the same ballot style. A ballot style is defined by its political geography, and encompasses ballots for which all offices, candidates, and proposals are the same. Detroit has 501 physical precincts that operate in various building locations across the city on election day. These 501 precincts do not count absent voter ballots on election day; they only counted ballots of voters who appeared at the precinct polling place marked a ballot and inserted it into a precinct tabulator. Absent voter ballots for voters who reside in the precincts are tabulated by absent voter counting boards, most of which include absent voter ballots of voters from several precincts. The absent voter ballots from Detroit's 501 precincts are distributed among 134 absent voter counting boards, depending on the ballot style.

9. According to Plaintiff, "the TCF was the only facility within Wayne County authorized to count ballots for the City of Detroit." (BOC ¶95). That is not correct. The TCF Center was the only facility within Wayne County authorized to count absentee ballots for the City of Detroit. Votes cast at polling places on election day were counted at those polling places, not at the TCF Center.

10. Plaintiff asserts, based upon the Cicchetti Declaration, that there were 174,384 absentee ballots in Wayne County "not tied to a registered voter." (BOC at ¶97). Mr. Cicchetti clearly misunderstood whatever statistics he is referencing. His statement "174,384 absentee ballots out of 566,694 ballots tabulated (about 30.8%) were counted without a registration number for precincts in the City of Detroit" is apparently based upon his belief that absent voter ballots could only be reported as related to specific physical precincts. As noted above, however, the City of Detroit absent voter ballots are counted by ballot styles, meaning the counting boards do not correspond to a specific precinct as most have ballots from multiple precincts. The Wayne County Clerk reports the 134 absent voter counting boards separate from the precincts. No registration number is included because the percentage turnout of a counting board containing several different precincts has no meaning and is not directly related to the specific precincts. Thus, there is no requirement to report registration totals of the various precincts within each counting board. In fact, there is no legal requirement to report voter registration numbers for any precincts or counting boards. There were over 174,000 absentee ballots counted at the TCF Center, but they were not counted "without a registration number." Every ballot counted had a corresponding application executed by a registered voter in the City of Detroit. They were counted with a rigorous process of verification and tabulation.

11. There is reference to Wayne County and Detroit precincts, being "unbalanced," a situation which occurs when the number of votes does not match the number of ballots in the precincts. This is generally the result of human error and occurs in each election cycle, especially in more populated areas throughout the country. The minor imbalances in precincts and counting boards in Wayne County and Detroit for the November general election accounts for a vanishingly small number of votes. In the

August 2020 election, 53.6% of Wayne County precincts and counting boards were *balanced*, while in November 2020, 71.9% were *balanced*. The percentage of out-of-balance precincts, with an imbalance of 5 or more, was also lower in November 2020 than August 2020, with 8.1% being out of balance by more than 5 in August and 5.7% out of balance by 5 or more in November.

12. The City of Detroit had 501 precincts and 134 absent voter counting boards. Less than 36% of the total were out of balance. A counting board is out of balance if there are: (1) more ballots than voters or (2) more voters than ballots. In total 591 voters and ballots account for the imbalances. When voters and ballots are separated there are 148 more names than there are ballots, meaning that out of 174,384 votes there are 148 more names in the poll books than there are ballots. The imbalance is .0008 (eight ten-thousandths of a 1%). Of the 94 out of balance counting boards, there are 87 counting board with an imbalance of 11 or fewer voters/ballots; within the 87 counting boards, 48 are imbalanced by 3 or fewer voters/ballots. There are seven counting boards with higher imbalances that range from 13 more ballots to 71 fewer voters. Jurisdictions throughout the State, including jurisdictions with far fewer voters than Detroit, also had out of balance precincts. Indeed, the predominantly white jurisdiction of Livonia had a higher percentage of precincts out of balance than the predominantly African American City of Detroit. Nevertheless, in discussions at the Wayne County Canvassing Board one canvassing board member proposed the certification of all jurisdictions in Wayne County other than Detroit. None of the out of balance statistics suggest impropriety or provided a reason to not certify. This occurs everywhere in every election because elections are run by human beings who make mistakes.

13. On November 2, 3 and 4, 2020, I worked at the TCF Center absent voter counting boards primarily as liaison with challenger parties and organizations. I provided answers to questions about processes at the counting board tables, resolved disputes about process and directed leadership of each organization or party to adhere to Michigan Election Law and Secretary of State procedures concerning the rights and responsibilities of challengers. I have reviewed the claims in this case.

14. It is clear from the affidavits and the claims made by Plaintiff that the witnesses identified—Melissa Carone, Jessy Jacob and Zachary Larsen—do not understand absent voter ballot processing and tabulating. The affidavits of those witnesses were first submitted in *Costantino v. Detroit et al*, Wayne County Circuit Case No. 20-014780-AW. I submitted Affidavits to the Michigan courts in response to the affidavits of those witnesses.

15. A few basics about how the vote count is managed helps explain some of the misunderstandings of the witnesses. The Qualified Voter File (QVF) is a statewide vote registration file and was not available to counting boards. E-pollbook (EPB) is a computer program used in election day precincts to create the poll list of voters casting ballots. Supplemental poll lists contain names of voters who cast an absent voter ballot on Sunday, Monday and Tuesday. At the processing tables no ballots are scanned. A poll list is not used to confirm whether any specific voter's ballot is counted.

16. To increase the accuracy of the poll list, the Detroit Department of Elections employed the Michigan Secretary of State EPB to assist in creating the poll list. For each of the absent voter counting boards, the EPB held all the names of voters who requested an absent voter ballot by mid-afternoon Sunday, November 1. The download on Sunday was necessary to prepare

for the pre-processing granted by a recently enacted state law that allows larger municipalities to process ballots, but not to tabulate them, for 10 hours on Monday.

17. Absent voter ballots received Sunday after the download to EPB, all day Monday until 4 p.m. and Tuesday by 8:00 p.m. were not in the EPB. They would be added either by manually entering the voter names into the EPB or on supplemental paper poll lists printed from the QVF.

18. The affidavit of Mellissa Carone is particularly inaccurate and troubling. She was not an Election Inspector, nor was she a challenger. She was a contract worker, working for Dominion Voting Systems, to assist with occasional malfunctions of the tabulating machines. She has no known training in election law or procedures, and her affidavit and public statements have displayed a startling ignorance of how votes are counted.

19. Ms. Carone believes that she saw evidence that ballots were counted more than once at the TCF Center. Her main allegation—that hundreds or thousands of ballots were counted twice—cannot possibly be true. She says she saw on a computer that 50 of the same ballots had been counted 8 times, and that she saw numerous similar instances “countless times” throughout the day. She does not say she saw multiple scans; just that she saw the numbers on various scanners. If what she said were true, at the very least, 350 extra votes would show up for at least one absent voter counting board, resulting in that board being grossly out of balance. According to her affidavit, large numbers of extra votes would show up in “countless” precincts. However, a mistake like that would be caught very quickly on site. What Ms. Carone thinks she saw would also be caught by the Detroit Department of Elections and the Wayne County Canvassing Board during the canvassing which occurs after every election as a matter of law. A slight disparity between the number of voters and the number of ballots might occur, but nothing like the numbers

she describes could possibly occur and be missed by the Department of Elections, the Election Inspectors, the challengers and the Wayne County Board of Canvassers.

20. Ms. Carone's misunderstanding of what she observed may stem from the fact that as a routine part of the tabulation process, ballots are often fed through the high-speed reader more than once. For instance, if there is a jam in the reader, all ballots in the stack may need to be pulled out and run through again. Or, if there is a problem ballot (e.g., stains, tears, stray markings, ballot from a different counting board, etc.) in a stack, the problem ballot, and the several that were scanned by the high-speed machine after the problem was detected, will need to be re-scanned. At times, it will be most efficient to re-run several ballots, while at others, it will be more efficient to re-scan the entire batch. To an untrained observer it may appear that the ballot is being counted twice, however, the election worker will have cancelled the appropriate count on the computer screen. Any human error in the process would be identified during the canvass. If not, the number of voters at the absent voter counting board would be dramatically different than the number of counted votes.

21. Ms. Carone's speculation about 100,000 new ballots is also not possible. On Sunday, November 1, 2020, roughly 140,000 absent voter ballots were delivered to TCF for the Monday pre-processing; on Monday and Tuesday there were approximately 20,000 ballots delivered; and, on Wednesday at around 3-3:30 a.m., the final roughly 16,000 ballots were delivered. If 100,000 instead of 16,000 ballots had been delivered, Detroit's total turnout would be 84,000 ballots more than what was reported. Her reference to an announcement "on the news" of the discovery of 100,000 new ballots in Michigan appears to be based on a repeatedly debunked conspiracy theory in which a clerk in Shiawassee County accidentally typed in an extra 0 and quickly discovered and fixed the error, *See, e.g.,* <https://www.factcheck.org/2020/11/clerical->

error-prompts-unfoundedclaims-about-michigan-results/. Regardless of the source of her confusion, there is no way 100,000 new ballots could have been surreptitiously brought to the TCF Center as she describes.

22. Ballots are delivered to the TCF Center after they are processed at the Department of Elections main office on West Grand Boulevard. On election day, ballots are received from the post office and the satellite offices. It takes several hours to properly process ballots received on election day. Ms. Carone might have heard false rumors about ballots being delivered, when actually television reporters were bringing in wagons of audio-video equipment. All ballots were delivered the same way— from the back of the TCF Hall E.

23. Plaintiff is using the Affidavit of Jessy Jacob to assert that signatures on absentee ballots were not verified. The Affidavit, however, demonstrates nothing more than that Ms. Jacob did not understand the process. She states that “[w]hile I was at the TCF Center, I was instructed not to look at any of the signatures on the absentee ballots, and I was instructed not to compare the signature on the absentee ballot with the signature on file.” Ms. Jacob, who had no prior experience as an Election Inspector, did not understand that signature verification had occurred before any ballots were delivered to the TCF Center.

24. Michigan law permits a city clerk to verify the signatures on absent voter ballots before election day. Inspectors at absent voter counting boards do not verify the signatures on the return ballot envelopes. Before ballots were delivered to the TCF Center for counting, Department of Elections staff complete the verification process. Staff may use a voter’s signature on an application that was previously verified by the QVF to verify the voter’s signature on the ballot envelope, or the staff may use the voter’s signature in the QVF to make the comparison

25. The BOC asserts that "Wayne County made the policy decision to ignore Michigan's statutory signature-verification requirement for absentee ballots." (BOC at ¶93) There is no basis for this claim. Under Michigan law, the verification is done at the City, not the County level, and the City of Detroit followed strict procedures to verify signatures.

26. The ballots delivered to the TCF Center had been verified by the Detroit City Clerk's staff prior to delivery in a process prescribed by Michigan law. Thus, when Jessy Jacob states that she "was instructed not to look at any of the signatures on the absentee ballots, and I was instructed not to compare the signature on the absentee ballot with the signature on file" it was because that part of the process had already been completed by the City Clerk's satellite office staff in compliance with state law.

27. The Affidavit of Jessy Jacob is also used to support the allegations of ballots being "back-dated." It is once again clear that the allegations arise from the fact that Ms. Jacob did not understand what she was observing. On Wednesday, November 4 it was discovered that there had been an operator error at the satellite offices with respect to the verification of a relatively small number of ballots. While the ballot envelopes had been initialed as having been verified and stamped as having been received prior to November 3 at 8 p.m., the election worker[s] had not completed the final clerical step of selecting the "save" button in the computer system. Thus, those ballots would not scan into the EPB at the TCF Center and were not on the supplemental paper list.

28. A team of employees was directed to correct those clerical errors by entering the date the ballots were received in the satellite office and selecting "save." The date of receipt was not being backdated; it was being noted in the system. Completing this clerical step placed the voter into the Absent Voter Poll List in the QVF so that the ballot could be processed and counted.

Again, none of these ballots were received after 8:00 p.m. on election day. Most were received on Monday, November 2nd - the busiest day for the satellite offices. Two challengers were provided a demonstration of the QVF process to show them how the error occurred, and they chose not to file a challenge to the individual ballots.

29. It would have been impossible for any election worker at the TCF Center to count or process a ballot for someone who was not an eligible voter or whose ballot was not received by the 8:00 p.m. deadline on November 3, 2020. No ballot could have been "backdated," because no ballots received after 8:00 p.m. on November 3, 2020 were ever at the TCF Center. No voter not in the QVF or in the "Supplemental Sheets" could have been processed, or "assigned" to a "random name" because no ballot from a voter not in one of the two tracking systems, was brought to the TCF Center.

30. Jessy Jacob alleges she was instructed by her supervisor to adjust the mailing date of absentee ballot packages being sent out to voters in September 2020. The mailing date recorded for absentee ballot packages would have no impact on the rights of the voters and no effect on the processing and counting of absentee votes. Any adjustment to mailing date was done to more accurately reflect the date the ballot would be mailed, which in many cases was done on a date after the day the application was processed.

31. Michigan Election Law requires clerks to safely maintain absent voter ballots and deliver them to the absent voter counting board. There is no requirement that such ballots be transported in sealed ballot boxes. To my knowledge, they are not sealed by any jurisdiction in Michigan in a ballot box prior to election day. Employees bring the ballot envelopes to the TCF Center, which is consistent with chain of custody. The only ballots brought to TCF that are not in envelopes are blank ballots used to duplicate ballots when necessary.

32. At no time after ballots were delivered to TCF on Sunday, November 1, did any ballot delivery consisted of "tens of thousands of ballots".

33. Contrary to the affidavit of Jessy Jacob, there is no legal requirement that all absent voter ballots be recorded in the QVF by 9:00 p.m. on November 3, 2020.

34. The QVF has a high level of security and limitation on access to the file. For example, it is not true (as claimed by Jessy Jacob) that a person with QVF credentials in one city is able to access data in another city's file within the QVF. That is not possible.

35. In his affidavit, Zachery Larsen raises an issue about return ballot envelopes where the barcode on the label would not scan and the voter's name was not on the supplemental list. He was observing the correction of clerical errors, not some type of fraud. In every election, clerical errors result in voters being left off the poll list, whether it is a paper poll list or the EPB. These errors are corrected so that voters are not disenfranchised. Michigan law ensures that voters are not disenfranchised by clerical errors.

36. Mr. Larsen also states that he saw an inspector at Counting Board 23 type into the computer system a name other than that of the voter appearing on the envelope because the voter was already in the EPB. But, if the voter were already checked in, the inspector would not have the envelope with a ballot in it. Mr. Larsen asserts he saw the name "Pope" typed into the EPB when there was already a person with that last name in the EPB. But, at Counting Board 23, there are three people with the last name Pope who voted in the election. One returned their ballot in October and therefore would have been in the EPB (since the information was downloaded from the QVF on Sunday November 1, 2020). The two other voters with the last name of Pope voted on Monday, November 1, so their names would not be in the EPB. Mr. Larsen apparently observed

one of those voters being hand entered into the system, as was necessary if they were not already in the EPB.

37. The City has conducted an internal inquiry with respect to Mr. Larsen's assertions regarding Counting Board 23. At that Counting Board, 2,855 ballots were tabulated with 2,856 associated envelopes. Each envelope is associated with validly registered voters and applications for absent voter ballots. The only voters whose names were typed into the system at that Counting Board were voters whose barcode did not bring up a ballot and whose name did not appear on the supplemental list. All such ballot envelopes were signed, verified and date/time-stamped as having been received before 8:00 p.m. on Tuesday, November 3, 2020.

38. Mr. Larsen also objects that he was not given a full opportunity to stand immediately behind or next to an election inspector operating the EPB laptop computer. In anticipation of viewing problems due to necessary social distancing to address COVID-19 concerns, large monitors were set up at each absent voter counting board. Moreover, election inspectors were instructed to follow the same procedure for all challengers. The Detroit Health Code and safety during a pandemic required maintaining at least 6-feet of separation. This was relaxed where necessary for a challenger to lean in to observe something and then lean back out to return to the 6-foot distancing. The challengers could see and copy the names of each person being entered into the EPB. If an inspector did not fully accommodate a challenger's reasonable request and the issue was brought to the attention of a supervisor, it was remedied. Announcements were made over the public address system to inform all inspectors of the rules. If what Mr. Larsen says is accurate, any inconvenience to him was temporary and had no effect on the processing of ballots.

39. It is clear also that Mr. Larsen did not operate through the leadership of his challenger party, because the issues he brings forward were by and large discussed and resolved

with the leadership of their challenger party. The leadership on numerous occasions would ask me to accompany them to a particular counting board table to resolve an issue. I would always discuss the issue with counting board inspectors and their supervisors and the challengers. Mr. Larsen appears to have failed to follow this protocol, which was established in a meeting with challenger organizations and parties on Thursday, October 29, 2020 at the TCF Center where a walk-through of the entire process was provided. Indeed, in the *Costantino* matter, counsel for plaintiffs acknowledged that Mr. Larsen had not attended that meeting.

40. Mr. Larsen makes some allegations relating to ballots without "secrecy sleeves," but many ballots were returned without the secrecy sleeves. Michigan law does not invalidate ballots returned without a secrecy sleeve.

41. In mid-afternoon on Wednesday, November 4, 2020, I observed that few challengers were stationed at the counting board tables. Rather, clusters of 5, 10 or 15 challengers were gathered in the main aisles at some tables. I conducted a conversation with leaders of the Republican Party and Democratic Party about the number of challengers in the room and their locations. It became clear that more than 134 challengers were present for these organizations. No one was ejected for this reason, but access to Hall E was controlled to ensure that challenger organizations had their full complement and did not exceed the ceiling any further than they already had. Challengers were instructed to sign out if they needed to leave Hall E. For a short period of time—a few hours—because there were too many challengers in Hall E for inspectors to safely do their jobs, new challengers were not allowed in until a challenger from their respective organization left the Hall. However, each challenger organization, including Republican and Democrat, continued to have their challengers inside of Hall E.

42. I am not aware of any valid challenge being refused or ignored or of any challengers being removed because they were challenging ballots. Ballot challengers are part of the electoral process in Michigan and were fully able to participate in the process at the TCF Center.

43. The description of the Biden/Trump votes in Michigan is incorrect. (BOC at ¶77) Based upon the certified totals, Vice President Biden received 2,804,040 votes, and President Trump received 2,649,852 votes, for a margin of 154,188 votes.

44. The statement that “only 587,618 Michigan voters requested absentee ballots” in 2016 (BOC at ¶88) is not correct; Dr. Cicchetti acknowledges that the number is 1,277,405, in his Declaration (Declaration ¶17). *See also* https://www.eac.gov/sites/default/files/eac_assets/1/6/Michigan_-_EAVS_2016_Data_Brief_-_508.pdf.

45. During my employment with the Secretary of State, the Bureau of Elections compiled unofficial results from the 83 counties, adding county totals only after the ballots are tabulated in a county. The real “election night reporting” is done by the county clerks. The county clerks compile results from cities and townships in their respective counties. In Michigan, there are over 1,500 cities and townships. Typically, precinct results are the first returns to be publicly posted on county clerk websites. These returns begin appearing within an hour after the 8 p.m. closing of the polls and continue until nearly complete around midnight. Absent voter ballot results are slower to appear on county websites. Some jurisdictions will report partial mail ballot returns after 8 p.m.; however, most jurisdiction do not report mail ballot returns until all tabulation is completed. In election years before 2020, the bulk of mail ballots were reported between midnight and 5 a.m. The mail ballots for November 2020 continued to be reported well into Wednesday with some final results being reported on Thursday.

46. In conclusion, upon reviewing the various affidavits and statements made by Plaintiff, I can readily conclude based upon my own knowledge and observation that there was no fraud, or even unrectified procedural errors, associated with processing of the absentee ballots for the City of Detroit.

I affirm that the representations above are true.

Further, Affiant sayeth not.

Date: December 10, 2020


CHRISTOPHER THOMAS

Subscribed and sworn to before me
this 10th day of December, 2020.


KIMBERLY S. HUNT, Notary Public
County of Macomb

My Commission Expires: 08/08/24

Acting in the County of Macomb

Notarized using electronic/remote technology

Notary located in Macomb County, State of Michigan

Signatory located in BERRIEN County, State of MICHIGAN

KIMBERLY S. HUNT
NOTARY PUBLIC, STATE OF MI
COUNTY OF MACOMB
MY COMMISSION EXPIRES Aug 8, 2024
ACTING IN COUNTY OF MACOMB

HAND COUNT CALCULATION SHEET

OFFICE: President of the United States

COUNTY: Antrim

	Biden			Trump			Jorgenson			Hawkins			Blankenship			De La Fuente		
	Democratic Party			Republican Party			Libertarian Party			Green Party			U.S. Taxpayers Party			Natural Law Party		
Jurisdiction	Original	Hand Count	Net	Original	Hand Count	Net	Original	Hand Count	Net	Original	Hand Count	Net	Original	Hand Count	Net	Original	Hand Count	Net
TOTAL VOTES	5960	5959	-1	9748	9759	11	189	190	1	28	28	0	16	17	1	8	9	1
TOTAL CHANGE			-1			11			1			0			1			1

Banks Township, Precinct 1	349	349	0	756	758	2	11	11	0	2	2	0	1	1	0	1	1	0
Central Lake Township, Precinct 1	549	549	0	906	906	0	16	16	0	6	6	0	1	1	0	0	0	0
Chestonia Township, Precinct 1	93	93	0	197	197	0	3	3	0	0	0	0	0	0	0	0	0	0
Custer Township, Precinct 1	240	240	0	521	521	0	11	11	0	1	1	0	2	2	0	0	0	0
Echo Township, Precinct 1	198	198	0	392	392	0	8	8	0	2	2	0	1	1	0	0	0	0
Elk Rapids Township, Precinct 1	202	201	-1	414	415	1	12	12	0	4	4	0	2	2	0	0	0	0
Elk Rapids Township, Precinct 1 AVCB	784	783	-1	611	614	3	5	5	0	5	5	0	2	2	0	0	0	0
Forest Home Township, Precinct 1	610	610	0	753	753	0	19	19	0	0	0	0	1	1	0	1	1	0
Helena Township, Precinct 1	306	306	0	431	430	-1	4	4	0	1	1	0	0	0	0	1	1	0
Jordan Township, Precinct 1	183	182	-1	371	369	-2	13	14	1	1	1	0	1	1	0	0	0	0
Kearney Township, Precinct 1	471	470	-1	743	743	0	16	16	0	3	3	0	0	0	0	0	0	0
Mancelona Township, Precinct 1	276	277	1	835	835	0	20	20	0	0	0	0	0	0	0	1	1	0
Mancelona Township, Precinct 2	247	247	0	646	646	0	13	13	0	1	1	0	2	3	1	0	0	0
Milton Township, Precinct 1	143	143	0	478	478	0	12	12	0	0	0	0	0	0	0	1	2	1
Milton Township, Precinct 1 AVCB	626	624	-2	543	545	2	6	6	0	0	0	0	2	2	0	2	2	0
Star Township, Precinct 1	161	166	5	462	468	6	10	10	0	0	0	0	0	0	0	0	0	0
Torch Lake Township, Precinct 1	462	461	-1	526	526	0	7	7	0	2	2	0	1	1	0	1	1	0
Warner Township, Precinct 1	60	60	0	163	163	0	3	3	0	0	0	0	0	0	0	0	0	0

Sidney Powell's secret 'military intelligence expert,' key to fraud claims in election lawsuits, never worked in military intelligence

By **Emma Brown, Aaron C. Davis** and **Alice Crites**

Dec. 11, 2020 at 6:29 p.m. EST



The witness is code-named “Spyder.” Or sometimes “Spider.” His identity is so closely guarded that lawyer Sidney Powell has sought to keep it even from opposing counsel. And his account of vulnerability to international sabotage is a key part of Powell's failing multistate effort to invalidate President-elect Joe Biden's victory.

Powell describes Spyder in court filings as a former “Military Intelligence expert,” and his testimony is offered to support one of her central claims. In a declaration filed in four states, Spyder alleges that publicly available data about server traffic shows that voting systems in the United States were “certainly compromised by rogue actors, such as Iran and China.”

Spyder, it turns out, is Joshua Merritt, a 43-year-old information technology consultant in the Dallas area. Merritt confirmed his role as Powell's secret witness in phone interviews this week with The Washington Post.

Records show that Merritt is an Army veteran and that he enrolled in a training program at the 305th Military Intelligence Battalion, the unit he cites in his declaration. But he never completed the entry-level training course, according to Meredith Mingledorff, a spokeswoman for the U.S. Army Intelligence Center of Excellence, which includes the battalion.

“He kept washing out of courses,” said Mingledorff, citing his education records. “He's not an intelligence analyst.”

In an interview, Merritt maintained that he graduated from the intelligence training program. But even by his own account, he was only a trainee with the 305th, at Fort Huachuca in Arizona, and for just seven months more than 15 years ago.

His separation papers, which he provided to The Post, make no mention of intelligence training. They show that he spent the bulk of his decade in the Army as a wheeled vehicle mechanic. He deployed to the wars in Iraq and Afghanistan, where he said he worked in security and route clearance. He held the rank of specialist when he was honorably discharged in 2013, having received several commendations.

Merritt acknowledged that the declaration's description of his work as an "electronic intelligence analyst under 305th Military Intelligence" is misleading. He said it should have made clear that his time in the 305th was as a student, not as a working intelligence expert.

He blamed "clerks" for Powell's legal team, who he said wrote the sentence. Merritt said he had not read it carefully before he signed his name swearing it was true.

"That was one thing I was trying to backtrack on," he said on Thursday. "My original paperwork that I sent in didn't say that."

On Friday afternoon, as his name increasingly circulated on social media, Merritt said he had decided to remove himself from the legal effort altogether. He said he plans to close his business and relocate with his family.

Asked about Merritt's limited experience in military intelligence, Powell said in a text to The Post: "I cannot confirm that Joshua Merritt is even Spider. Strongly encourage you not to print."

Of her description of him as a military intelligence expert, she said, "If we made a mistake, we will correct it."

Federal judges have in the past week rejected all four of the complaints Powell has filed seeking to overturn the presidential election — lawsuits popularly known as the "kraken" suits, after a mythical sea creature she has harnessed as a sort of mascot — ruling either that the challenges should have been filed in state courts or were meritless.

In Michigan, attorneys for the state argued that Powell's complaint was based on "fantastical conspiracy theories" that belong in the "fact-free outer reaches of the Internet." A federal judge ruled this week that the allegation that votes were changed for Biden relied on an "amalgamation of theories, conjecture, and speculation."

A federal judge in Arizona similarly tossed out a case Wednesday that relied in part on an affidavit from Merritt, writing that allegations "that find favor in the public sphere of gossip and innuendo cannot be a substitute for earnest pleadings and procedure in federal court" and "most certainly cannot be the basis for upending Arizona's 2020 General Election."

Powell is appealing all four of those losses.

Merritt told The Post that, because judges are dismissing the cases without giving the Powell team a chance to fully present evidence, "we're just going to supply the evidence through other directions," including to lawmakers and members of the intelligence community. He said Russell Ramsland, a former colleague and fellow witness for Powell, had asked him to brief Rep. Louie Gohmert (R-Tex.), a leading proponent of fanciful claims about the 2020 election.

Gohmert did not respond to a request for comment.

The 305th Military Intelligence Battalion at Fort Huachuca has taken on a special significance among supporters of Powell's lawsuits. Some popular conspiracy theories contend that the unit — rather than Merritt, a former member who was discharged years ago — has determined that China and Iran manipulated the U.S. vote. In late November, Thomas McInerney, a retired lieutenant general in the Air Force and a proponent of election fraud claims, said that President Trump and Powell have "got the 305th Military Intelligence Battalion working with them" and that "the Kraken is the 305th Military Intelligence Battalion."

The battalion is an entry-level training unit. It has not had an operational mission since World War II. Mingledorff said soldiers there "do not collect, analyze or provide intelligence in any way."

Army records provided by Merritt show that he enlisted in 2003. He first aimed to be a medic, but did not graduate from a training program at Fort Sam Houston in Texas, according to records in the Army Training Requirements and Resource System, Mingledorff said. He was “recycled,” or allowed to repeat the training course — but again did not graduate, she said, citing the records.

In 2004, Merritt transferred to the 305th Military Intelligence Battalion, the records show. He had a spot reserved in an electronic intercept analyst course with the 305th, but records show he did not meet the prerequisites and was dropped from the program, Mingledorff said.

Merritt’s military separation papers show that he completed three education courses — two involving work on wheeled vehicles and one on leadership.

Merritt told The Post he completed the medic and intelligence trainings as well. He said that for both programs, the particular career path he was studying for changed by the time his training ended. He maintained that this pattern left him in a sort of military bureaucratic limbo, in the service but without a specific job until he became a wheeled vehicle mechanic in 2005.

He provided a document labeled “unofficial transcript” that he said showed that he completed the intelligence and medic courses. Mingledorff declined to comment on that document but said the records she examined were clear.

Army education records also show several distance-learning and in-person trainings over the course of his service, many of which were not completed, Mingledorff said.

He said he was unable to complete some online courses while serving overseas because of the demands of his job.

Merritt was honorably discharged from the Army in 2013, after a decade of service, including deployments to the wars in Iraq in 2005-2006 and Afghanistan in 2009-2010, according to his separation papers. His commendations included the Combat Action Badge, which is authorized for soldiers who are “present and actively engaging or being engaged by the enemy, and performing satisfactorily in accordance with prescribed rules of engagement.”

Merritt told The Post he left the military because he had reached a “retention control point” and was unlikely to be promoted. Under Army rules, soldiers are only permitted to serve a certain number of years at a particular rank.

Merritt said cybersecurity was a hobby when he was in the Army, and it became a profession once he was out. He said he is neither a Republican nor a Democrat but a “Constitutionalist” who is just trying to do his part to ensure fair elections in the United States. “Right now you’re looking at two political parties that all they care about is power, they don’t care about people,” he said. “I swore my life to my Constitution and that’s what I keep it at.”

He used his GI Bill funds to study network security administration at ITT Tech in Arlington, Tex. He said he earned an associate degree from the school, part of a nationwide chain of for-profit colleges that shut down in 2016.

He went on to intern and work in several positions related to cybersecurity, he said. In 2017, he joined a small Dallas-area firm called Allied Special Operations Group, where Ramsland says he is part of the management team.

Merritt said it was there that he began to work on election security and came to believe the system was rife with vulnerabilities. Soon, he said, he was a frequent guest in right-wing videos, appearing under the pseudonym “Jekyll,” in shadow and with his voice disguised as he warned that the U.S. election system was vulnerable to being corrupted on a massive scale.

In 2018, he said, he helped investigate what he described as suspected fraud in races affecting five candidates, including former Kentucky governor Matt Bevin (R) and former Texas congressman Pete Sessions (R). Merritt said he found many elections-related companies plagued by vulnerabilities.

Bevin did not respond to a request for comment.

In a phone interview, Sessions described Merritt as a “top, top computer forensic expert.”

After two decades in Congress, Sessions’s 2018 loss to Democrat Colin Allred, a former professional football player, was viewed by some on election-conspiracy sites as implausible. Merritt said he worked behind the scenes, conducting election-fraud analysis. Sessions would not disclose Merritt’s precise work or whether he was paid, but said of Merritt: “He may have been involved in certain elements of that. It is true there were people who were aware of those things.”

Sessions won a comeback victory in November and will return to Congress next year. He said he was unswayed by the Army’s disclosure that Merritt had never completed electronic intelligence training.

“Get the best computer expert you know, have him call and query Josh. Josh will run circles around that person,” Sessions said.

No charges were brought in connection with these allegations, Merritt said.

Merritt formed his own firm, Cyberoptyx, in 2019. He said the company — which consists of himself and a handful of contractors — specializes in building “cyberinfrastructure” such as making websites and setting up servers. It also does 3-D printing.

Merritt said he became involved in the Powell litigation through Ramsland. Ramsland has also submitted affidavits as part of Powell’s lawsuits, including one that drew attention for mistakenly using voting data from Minnesota to allege evidence of voter fraud in Michigan.

Merritt said he provides information to Powell’s legal team through intermediaries he knows only by username. He said he is not being paid for his work on the case.

Ramsland did not respond to messages left at his home or on a cellphone registered in his name.

Merritt said he had sought to stay anonymous because he feared for the safety of his family if his name became known. Someone came up with his pseudonym based on the spider-like shape of the diagrams in his declaration, he said.

His name slipped into the court record, though little noticed, on Nov. 25. The Powell team filed a carefully redacted declaration from its secret witness, but a bookmark in the file uploaded to the court’s computer system was visible: “Declaration of JOSHUA MERRITT.”

“One jackwagon forgot to clear out the data. I was really pissed,” Merritt said. “The guy was like, ‘I’m sorry,’ and I was like, ‘Well, you know, that and a bag of chips will still leave me hungry.’”

On Wednesday night, after a Reuters reporter tweeted about that flub and drew widespread attention to his name, Merritt was bracing for what might come.

“This is not the 15 minutes I wanted,” he said.

STATE OF MICHIGAN
COURT OF CLAIMS

DONALD J. TRUMP FOR PRESIDENT, INC.
and ERIC OSTEGREN,

OPINION AND ORDER

Plaintiffs,

v

Case No. 20-000225-MZ

JOCELYN BENSON, in her official capacity as
Secretary of State,

Hon. Cynthia Diane Stephens

Defendants.

_____ /

Pending before the Court are two motions. The first is plaintiffs’ November 4, 2020 emergency motion for declaratory relief under MCR 2.605(D). For the reasons stated on the record and incorporated herein, the motion is DENIED. Also pending before the Court is the motion to intervene as a plaintiff filed by the Democratic National Committee. Because the relief requested by plaintiffs in this case will not issue, the Court DENIES as moot the motion to intervene.

According to the allegations in plaintiffs’ complaint, plaintiff Eric Ostegren is a credentialed election challenger under MCL 168.730. Paragraph 2 of the complaint alleges that plaintiff Ostegren was “excluded from the counting board during the absent voter ballot review process.” The complaint does not specify when, where, or by whom plaintiff was excluded. Nor does the complaint provide any details about why the alleged exclusion occurred.

The complaint contains allegations concerning absent voter ballot drop-boxes. Plaintiffs allege that state law requires that ballot containers must be monitored by video surveillance. Plaintiff contends that election challengers must be given an opportunity to observe video of ballot drop-boxes with referencing the provision(s) of the statute that purportedly grant such access, . See MCL 168.761d(4)(c).

Plaintiffs' emergency motion asks the Court to order all counting and processing of absentee ballots to cease until an "election inspector" from each political party is allowed to be present at every absent voter counting board, and asks that this court require the Secretary of State to order the immediate segregation of all ballots that are not being inspected and monitored as required by law. Plaintiffs argue that the Secretary of State's failure to act has undermined the rights of all Michigan voters. While the advocate at oral argument posited the prayer for relief as one to order "meaningful access" to the ballot tabulation process, plaintiffs have asked the Court to enter a preliminary injunction to enjoin the counting of ballots. A party requesting this "extraordinary and drastic use of judicial power" must convince the Court of the necessity of the relief based on the following factors:

(1) the likelihood that the party seeking the injunction will prevail on the merits, (2) the danger that the party seeking the injunction will suffer irreparable harm if the injunction is not issued, (3) the risk that the party seeking the injunction would be harmed more by the absence of an injunction than the opposing party would be by the granting of the relief, and (4) the harm to the public interest if the injunction is issued. [*Davis v Detroit Fin Review Team*, 296 Mich App 568, 613; 821 NW2d 896 (2012).]

As stated on the record at the November 5, 2020 hearing, plaintiffs are not entitled to the extraordinary form of emergency relief they have requested.

I. SUBSTANTIAL LIKELIHOOD OF SUCCESS ON THE MERITS

A. OSTEGRÉN CLAIM

Plaintiff Ostegren avers that he was removed from an absent voter counting board. It is true that the Secretary of State has general supervisory control over the conduct of elections. See MCL 168.21; MCL 168.31. However, the day-to-day operation of an absent voter counting board is controlled by the pertinent city or township clerk. See MCL 168.764d. The complaint does not allege that the Secretary of State was a party to or had knowledge of, the alleged exclusion of plaintiff Ostegren from the unnamed absent voter counting board. Moreover, the Court notes that recent guidance from the Secretary of State, as was detailed in matter before this Court in *Carra et al v Benson et al*, Docket No. 20-000211-MZ, expressly advised local election officials to admit credentialed election challengers, provided that the challengers adhered to face-covering and social-distancing requirements. Thus, allegations regarding the purported conduct of an unknown local election official do not lend themselves to the issuance of a remedy against the Secretary of State.

B. CONNARN AFFIDAVIT

Plaintiffs have submitted what they refer to as “supplemental evidence” in support of their request for relief. The evidence consists of: (1) an affidavit from Jessica Connarn, a designated poll watcher; and (2) a photograph of a handwritten yellow sticky note. In her affidavit, Connarn avers that, when she was working as a poll watcher, she was contacted by an unnamed poll worker who was allegedly “being told by other hired poll workers at her table to change the date the ballot was received when entering ballots into the computer.” She avers that this unnamed poll worker later handed her a sticky note that says “entered receive date as 11/2/20 on 11/4/20.” Plaintiffs contend that this documentary evidence confirms that some unnamed persons engaged in

fraudulent activity in order to count invalid absent voter ballots that were received after election day.

This “supplemental evidence” is inadmissible as hearsay. The assertion that Connarn was informed by an unknown individual what “other hired poll workers at her table” had been told is inadmissible hearsay within hearsay, and plaintiffs have provided no hearsay exception for either level of hearsay that would warrant consideration of the evidence. See MRE 801(c). The note—which is vague and equivocal—is likewise hearsay. And again, plaintiffs have not presented an argument as to why the Court could consider the same, given the general prohibitions against hearsay evidence. See *Ykimoff v Foote Mem Hosp*, 285 Mich App 80, 105; 776 NW2d 114 (2009). Moreover, even overlooking the evidentiary issues, the Court notes that there are still no allegations implicating the Secretary of State’s general supervisory control over the conduct of elections. Rather, any alleged action would have been taken by some unknown individual at a polling location.

C. BALLOT BOX VIDEOS

It should be noted at the outset that the statute providing for video surveillance of drop boxes only applies to those boxes that were installed after October 1, 2020. See MCL 168.761d(2). There is no evidence in the record whether there are any boxes subject to this requirement, how many there are, or where they are. The plaintiffs have not cited any statutory authority that requires any video to be subject to review by election challengers. They have not presented this Court with any statute making the Secretary of State responsible for maintaining a database of such boxes. The clear language of the statute directs that “[t]he city or township clerk must use video monitoring of that drop box to ensure effective monitoring of that drop box.” MCL 168.761d(4)(c). Additionally, plaintiffs have not directed the Court’s attention to any authority directing the

Secretary of State to segregate the ballots that come from such drop-boxes, thereby undermining plaintiffs' request to have such ballots segregated from other ballots, and rendering it impossible for the Court to grant the requested relief against this defendant. Not only can the relief requested not issue against the Secretary of State, who is the only named defendant in this action, but the factual record does not support the relief requested. As a result, plaintiffs are unable to show a likelihood of success on the merits.

II. MOOTNESS

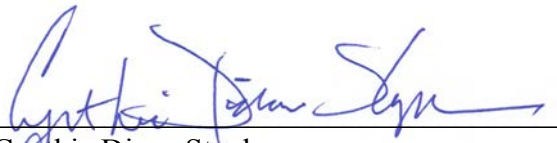
Moreover, even if the requested relief could issue against the Secretary of State, the Court notes that the complaint and emergency motion were not filed until approximately 4:00 p.m. on November 4, 2020—despite being announced to various media outlets much earlier in the day. By the time this action was filed, the votes had largely been counted, and the counting is now complete. Accordingly, and even assuming the requested relief were available against the Secretary of State—and overlooking the problems with the factual and evidentiary record noted above—the matter is now moot, as it is impossible to issue the requested relief. See *Gleason v Kincaid*, 323 Mich App 308, 314; 917 NW2d 685 (2018)

IT IS HEREBY ORDERED that plaintiff's November 4, 2020 emergency motion for declaratory judgment is DENIED.

IT IS HEREBY FURTHER ORDERED that proposed intervenor's motion to intervene is DENIED as MOOT.

This is not a final order and it does not resolve the last pending claim or close the case.

November 6, 2020



Cynthia Diane Stephens
Judge, Court of Claims

Court of Appeals, State of Michigan

ORDER

Donald J Trump for President Inc v Secretary of State

Stephen L. Borrello
Presiding Judge

Docket Nos. 355378; 355397

Patrick M. Meter

LC No. 2020-000225-MZ

Amy Ronayne Krause
Judges

The motions for immediate consideration are GRANTED.

The motion to intervene filed by the City of Detroit is DENIED, without prejudice to refile the motion in the proceedings below should the City of Detroit still deem intervention necessary.

The Democratic National Committee's motion for leave to file amicus brief in Docket No. 355378 is GRANTED, and the brief received on December 3, 2020 is accepted for filing.

The applications for leave to appeal are DENIED. However, the Democratic National Committee shall retain its status as amicus curiae in the Court of Claims.

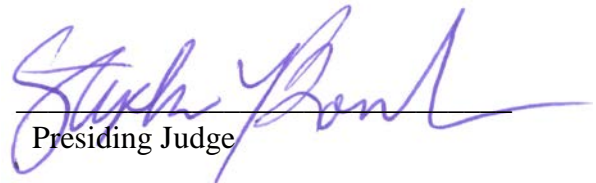
We respond to our dissenting colleague because his assertions are not supported by law or by fact. As the defendant correctly points out, Michigan's election results have been certified. Once the election results have been certified, "[a] candidate for office who believes he or she is aggrieved on account of fraud or mistake in the canvass or returns of the votes by the election inspectors may petition for a recount of the votes cast for that office in any precinct or precincts as provided by in this chapter." MCL 168.862; see also MCL 168.847, MCL 168.867; MCL 168.879. Recounts are remedial in nature. *Attorney General v Board of State Canvassers*, 318 Mich App 242, 252; 896 NW2d 485 (2016), lv den 500 Mich 917 (2016). "The purpose of a recount is to determine whether the results of the first count of the ballots should stand or should be changed because of fraud or mistake in the canvass of the votes" *Id.*, quoting *Michigan Education Ass'n Political Action Committee v Secretary of State*, 241 Mich App 432, 440; 616 NW2d 234 (2000), lv den 463 Mich 997 (2001).

Here, plaintiff filed its purportedly emergent application on November 6, 2020, but did not perfect the filing until 11:21 p.m. on November 30, 2020, when it filed its brief in support. The Wayne County Board of Canvassers certified the results of the November 3rd election on November 17, 2020, almost a full two weeks before plaintiff perfected the instant application. The Michigan Board of State Canvassers certified the presidential election results on November 23, 2020, a full week before plaintiff perfected its application.¹ Plaintiff does not address whether the certification of the election

¹ The Secretary of State represents that the Governor has sent Michigan's official slate of presidential electors to the United States Secretary of the Senate.

result by the Board of State Canvassers had any impact on the viability of its suit below or on the viability of the instant application.

Perhaps the reason for plaintiff failing to discuss the impact of the certification is because such action by the Michigan State Board of Canvassers clearly rendered plaintiff's claims for relief moot. The Michigan State Board of Canvassers' certification of the presidential election results and the legislative directive found in MCL 168.862, requires plaintiff to pursue its fraud allegations by way of a recount of the ballots cast in Wayne County. Because plaintiff failed to follow the clear law in Michigan relative to such matters, their action is moot. MCL 168.862.


Presiding Judge

Meter, J., would grant leave to appeal in each case, with the direction that the Clerk draw a random 3 judge panel to decide the cases within 3 days of filing of these orders, without oral argument.

The issue of mootness is more than the "elephant in the room". The issues are not moot because state electors have not yet been seated, the Electoral College has not yet been assembled, and Congress has not yet convened to consider whether to exercise its powers under Art.2, Sec. 1 and Am 20.

Further plaintiff's prayer for segregation of absentee ballots has, on information, not yet been ordered by defendant Secretary of State. Also, the right of plaintiff to election inspectors and to observe video of ballot drop boxes is self-evident under state law, thus entitling plaintiff to, at the least, declaratory relief.



A true copy entered and certified by Jerome W. Zimmer Jr., Chief Clerk, on

December 4, 2020
Date


Chief Clerk



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
OFFICE OF THE GOVERNOR
LANSING

GARLIN GILCHRIST II
LT. GOVERNOR

**AMENDED CERTIFICATE OF ASCERTAINMENT OF THE ELECTORS OF THE
PRESIDENT AND VICE PRESIDENT OF THE UNITED STATES OF AMERICA**

I, Gretchen E. Whitmer, Governor of the State of Michigan, certify that at the general election held in Michigan on Tuesday, November 3, 2020:

The following persons nominated by the **Democratic Party**, each having received **2,804,040 votes**, were duly elected as Electors of the President and Vice President of the United States of America:

Chris Cracchiolo	5140 Arrowhead Ct., Williamsburg, MI 49690
Timothy E. Smith	14883 Crescent St., 105, Grand Haven, MI 49417
Blake Mazurek	3458 Olderidge Dr. NE, Grand Rapids, MI 49525
Bonnie J. Lauria	3931 Mines Rd., West Branch, MI 48661
Bobbie Walton	8412 Mapleview Dr., Davison, MI 48423
Mark Edward Miller	122 Sydelle Ave., Kalamazoo, MI 49006
Conner Wood	319 N. Bowen St., Jackson, MI 49202
Robin Smith	3004 Andrea Dr., Lansing, MI 48906
Walter C. Herzig III	320 Stratford Rd., Ferndale, MI 48220
Carolyn Holley	727 White St., Port Huron, MI 48060
Susan Nichols	44099 Deep Hollow Circle, Northville, MI 48168
Steven Rzeppa	2985 Anna Ct., Trenton, MI 48183
Helen Moore	8335 Indiana St., Detroit, MI 48204
Michael Kerwin	17517 Birchcrest Dr., Detroit, MI 48221
Chuck Browning	20091 Herzog Dr., Rockwood, MI 48173
Marseille Allen	4442 Jena Ln., Flint, MI 48507

Votes received by other candidates for the office of Elector of the President and Vice President of the United States of America are as follows:

The following persons nominated by the **Republican Party** each received **2,649,852 votes**: John Haggard; Kent Vanderwood; Terri Lynn Land; Gerald Wall; Amy Facchinello; Rose Rook; Hank Choate; Mari-Ann Henry; Clifford Frost; Stanley Grot; Marian Sheridan; Timothy King; Michele Lundgren; Mayra Rodriguez; Meshawn Maddock; and Kathy Berden.

The following persons nominated by the **Libertarian Party** each received **60,381 votes**: David Holmer; Alexander Avery; Vicki Hall; Richard Hewer; Angela Thornton; Rafael Wolf; James Lewis Hudler; Jon Elgas; Greg Stempfle; Jim Fulner; Joseph LeBlanc; Claranna Gelineau; Andrew Chadderdon; Scott Avery Boman; Connor Nepomuceno; and Andy Evans.

The following persons nominated by the **Green Party** each received **13,718 votes**: Stephen Boyle; Destiny Clayton; Jean-Michel Creviere; Frank Foster, Jr.; Jennifer Kurland; Melissa Noelle Lambert; John Anthony La Pietra; Robin Laurain; Daniel Martin-Mills; Jessica McCallie-Arquette; Louis Novak; Jeffery Jon Rubley II; Rick Sauermilch; Amanda Slepr; N. J. Sparling; and Marcia Squier.

The following persons nominated by the **U.S. Taxpayers Party** each received **7,235 votes**: Mary Sears; Christine Schwartz; William Mohr II; Doug Levesque; Patrick Lambert; Aaron Nichols; Edward J. Sanger; Victoria Monroe; Lester Townsend; Christopher Rudy; William A. Kohn, Jr.; Paul Stahl; Marc Sosnowski; Cecile A. Harrity; Robert Gale; and Gerald Van Sickle.

The following persons nominated by the **Natural Law Party** each received **2,986 votes**: Connie Tewes; Mary Schutt; Dan Royer; Paul A. Natke; Shelly L. Reynolds; Donald Meyer; Gene Capatina; Ramzi Masri-Elyafaoui; Jacob Schlau; James Radatz; Daniel S. Smith; Mark Moylan; Guy Purdue; Nicholas Malzone; Robert Forreider; and Daniel B. Smith.

The following persons nominated by write-in candidate Brian T. Carroll each received **963 votes**: Michael Maturen; Robert Clark II; Jason Kennedy Duncan; Paul L. DuBois; Timothy Doubblestein; Jason Gatties; Lucy Ellen Moye; Lloyd A. Conway; Linnaea Joyce Licavoli; Tsai-Yi Watts; John Henry Svoboda; Benjamin Setterholm; Brandon Barry Mullins; Daniel Patrick Meloy; Elisa J. Kolk; and Matthew James Williams.

The following persons nominated by write-in candidate Jade Simmons each received **89 votes**: Cecilia Lester; Tyler Prough; James Ryans; Chelsea Slocum; Raymond Hall; Dana Morris; Janasia Johnson; Terrel Boyd; Constance Clay; Erika Couch; Tyrone Pickens; Karalyn Schubring; Michele Coleman; Grant Philson; Jherrard Hardeman; and Gertrude Taylor.

The following persons nominated by write-in candidate Tom Hoefling each received **32 votes**: Mark A. Aungst; Scott Suchecki; Richard Nagel; Mark Zimmerman; Justin Phillips; Kimberly Cleveland; Thomas Frederick; Kurt Richards; Georgia S. Halloran; Dawne Worden; Kim Millard; Alan G. Sides; DaWone Allison; Samuel Denson; Joshua Ohlman; and Suzanne M. Stuut.

The following persons nominated by write-in candidate Kasey Wells each received **5 votes**: Sandra Murrell; Ronald Klett; Andrew Colclasure; Charity Archer; Paul Atkins; Shiquita Reed; Mark Jeffrey; Brian W. Gibbs, Jr.; William W. Brown; Patricia Gorzelski; Anthony Jackson; Jeremy Mortensen; Justen Grieve; Shiesha Davis; Matthew Shepard; and Miranda Ames.

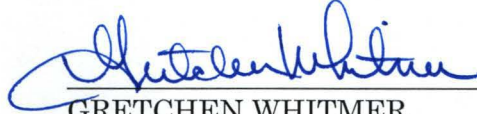
(cont.)

Given under my hand and the Great Seal of the State of Michigan.

Date: December 30, 2020

Time: 9:37am




GRETCHEN WHITMER
GOVERNOR

By the Governor:


Jocelyn Benson
SECRETARY OF STATE



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
OFFICE OF THE GOVERNOR
LANSING

GARLIN GILCHRIST II
LT. GOVERNOR

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The following persons nominated by write-in candidate Brian T. Carroll each received **947 votes**: Michael Maturen; Robert Clark II; Jason Kennedy Duncan; Paul L. DuBois; Timothy Doubblestein; Jason Gatties; Lucy Ellen Moye; Lloyd A. Conway; Linnaea Joyce Licavoli; Tsai-Yi Watts; John Henry Svoboda; Benjamin Setterholm; Brandon Barry Mullins; Daniel Patrick Meloy; Elisa J. Kolk; and Matthew James Williams.

The following persons nominated by write-in candidate Jade Simmons each received **88 votes**: Cecilia Lester; Tyler Prough; James Ryans; Chelsea Slocum; Raymond Hall; Dana Morris; Janasia Johnson; Terrel Boyd; Constance Clay; Erika Couch; Tyrone Pickens; Karalyn Schubring; Michele Coleman; Grant Philson; Jherrard Hardeman; and Gertrude Taylor.

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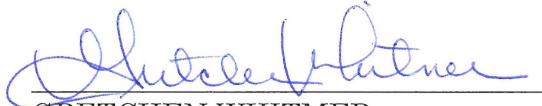
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Given under my hand and the Great Seal of the State of Michigan.

Date: November 23, 2020

Time: 5:30pm




GRETCHEN WHITMER
GOVERNOR

By the Governor:


SECRETARY OF STATE



2020 Electoral College Results

President	Joseph R. Biden Jr. [D]		
Main Opponent	Donald J. Trump [R]		
Electoral Vote	Winner: 306	Main Opponent: 232	Total/Majority: 538/270
Vice President	Kamala D. Harris [D]		
V.P. Opponent:	Michael R. Pence [R]		
Notes	<p>For the first time since adopting their respective systems, both Maine and Nebraska split their electoral votes:</p> <ul style="list-style-type: none"> • Maine distributes its electoral votes proportionally, with two at-large electors representing the statewide winning presidential and vice presidential candidates and one elector each representing the winners from its two Congressional districts. For only the second time since adopting this system, Maine's four electoral votes were split between the two major party tickets. • Nebraska distributes its electoral votes proportionally, with two at-large electors representing the statewide winning presidential and vice presidential candidates and one elector each representing the winners from its three Congressional districts. For only the second time since adopting this system, Nebraska's five electoral votes were split between the two major party tickets. <p>During the electoral vote count, objections were filed with respect to the Arizona and Pennsylvania electoral votes, but neither House sustained the objection, so all votes were counted.</p>		

Electoral College Certificates and Votes by State

- Click on the name of a State to see its Certificate of Ascertainment.
- Click on the number of electoral votes for each state to see its Certificate of Vote.

State	Number of Electoral Votes for Each State	For President		For Vice-President	
		Joseph R. Biden Jr., of Delaware	Donald J. Trump, of Florida	Kamala D. Harris, of California	Michael R. Pence, of Indiana
Alabama	9	-	9	-	9
Alaska	3	-	3	-	3
Arizona	11	11	-	11	-
Arkansas	6	-	6	-	6
California	55	55	-	55	-
Colorado	9	9	-	9	-
Connecticut	7	7	-	7	-
Delaware	3	3	-	3	-
District of Columbia	3	3	-	3	-
Florida	29	-	29	-	29
Georgia	16	16	-	16	-
Hawaii	4	4	-	4	-
Idaho	4	-	4	-	4
Illinois	20	20	-	20	-
Indiana	11	-	11	-	11
Iowa	6	-	6	-	6
Kansas	6	-	6	-	6

Kentucky	8	-	8	-	8
Louisiana	8	-	8	-	8
Maine *	4	3	1	3	1
Maryland	10	10	-	10	-
Massachusetts	11	11	-	11	-
Michigan	16	16	-	16	-
Minnesota	10	10	-	10	-
Mississippi	6	-	6	-	6
Missouri	10	-	10	-	10
Montana	3	-	3	-	3
Nebraska **	5	1	4	1	4
Nevada	6	6	-	6	-
New Hampshire	4	4	-	4	-
New Jersey	14	14	-	14	-
New Mexico	5	5	-	5	-
New York	29	29	-	29	-
North Carolina	15	-	15	-	15
North Dakota	3	-	3	-	3
Ohio	18	-	18	-	18
Oklahoma	7	-	7	-	7
Oregon	7	7	-	7	-
Pennsylvania	20	20	-	20	-

Rhode Island	4	4	-	4	-
South Carolina	9	-	9	-	9
South Dakota	3	-	3	-	3
Tennessee	11	-	11	-	11
Texas	38	-	38	-	38
Utah	6	-	6	-	6
Vermont	3	3	-	3	-
Virginia	13	13	-	13	-
Washington	12	12	-	12	-
West Virginia	5	-	5	-	5
Wisconsin	10	10	-	10	-
Wyoming	3	-	3	-	3
Total	538	306	232	306	232
Notes	<p>*Maine appoints its electors proportionally. Biden-Harris won in the First Congressional District and took the state; Trump-Pence won the Second Congressional District. Maine's electoral votes were proportionally awarded accordingly: for President, Biden 3 and Trump 1; for Vice President, Harris 3 and Pence 1.</p> <p>**Nebraska appoints its electors proportionally. Trump-Pence won in the First and Third Congressional Districts and took the state; Biden-Harris won the Second Congressional District. Nebraska's electoral votes were proportionally awarded accordingly: for President, Trump 4 and Biden 1; for Vice President, Pence 4 and Harris 1.</p>				

The U.S. National Archives and Records Administration

1-86-NARA-NARA or 1-866-272-6272



United States
of America

Congressional Record

PROCEEDINGS AND DEBATES OF THE 117th CONGRESS, FIRST SESSION

Vol. 167

WASHINGTON, WEDNESDAY, JANUARY 6, 2021

No. 4

House of Representatives

The House met at noon and was called to order by the Speaker pro tempore (Mr. SWALWELL).

DESIGNATION OF THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore laid before the House the following communication from the Speaker:

WASHINGTON, DC,
January 6, 2021.

I hereby appoint the Honorable ERIC SWALWELL to act as Speaker pro tempore on this day.

NANCY PELOSI,
Speaker of the House of Representatives.

PRAYER

The Chaplain, Reverend Margaret Grun Kibben, offered the following prayer:

O God, our refuge and our strength, a very present help in times of discord and trouble. Mountains crumble, waters rage, nations roar, and yet we need not be afraid, for even now You abide with us in these times of great discord, uncertainty, and unrest.

We, who have pledged to defend our Constitution against all enemies, we pray Your hedge of protection around this Nation. Defend us from those adversaries, both foreign and domestic, outside these walls and perhaps within these Chambers, who sow seeds of acrimony to divide colleagues and conspire to undermine trust in Your divine authority over all things.

The journey of this experiment in democracy is perilous and demanding, fraught with anger and discontent. But wise rulers still seek You.

So help us, God, to find You in the midst of us.

So help us, God, to see Your gracious plan even in the events of these days.

So help us, God, to serve You and this Nation with Godliness and dignity.

We lay before You the gifts of our hopes, our dreams, our deliberations,

and our debates, that You would be revealed and exalted among the people.

We pray these things in the strength of Your holy name.

Amen.

THE JOURNAL

The SPEAKER pro tempore. Pursuant to section 5(a)(1)(A) of House Resolution 8, the Journal of the last day's proceedings is approved.

PLEDGE OF ALLEGIANCE

The SPEAKER pro tempore. Will the gentleman from Kansas (Mr. MANN) come forward and lead the House in the Pledge of Allegiance.

Mr. MANN led the Pledge of Allegiance as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

APPOINTMENT OF TELLERS ON THE PART OF THE HOUSE TO COUNT ELECTORAL VOTES

The SPEAKER pro tempore. Pursuant to Senate Concurrent Resolution 1, and the order of the House of January 4, 2021, the Chair announces the Speaker's appointment of two Members as tellers on the part of the House to count the electoral votes:

The gentlewoman from California (Ms. LOFGREN); and

The gentleman from Illinois (Mr. RODNEY DAVIS).

COMMUNICATION FROM THE CLERK OF THE HOUSE

The SPEAKER pro tempore laid before the House the following communication from the Clerk of the House of Representatives:

OFFICE OF THE CLERK,
HOUSE OF REPRESENTATIVES,
Washington, DC, January 5, 2021.

Hon. NANCY PELOSI,
Speaker, House of Representatives,
Washington, DC.

DEAR MADAM SPEAKER: Pursuant to the permission granted in Clause 2(h) of Rule II of the Rules of the U.S. House of Representatives, I have the honor to transmit a sealed envelope received from the White House on January 5, 2021 at 5:05 p.m., said to contain a message from the President regarding additional steps addressing the threat posed by applications and other software developed or controlled by Chinese companies.

With best wishes, I am,

Sincerely,

CHERYL L. JOHNSON,
Clerk of the House.

ADDRESSING THE THREAT POSED BY APPLICATIONS AND OTHER SOFTWARE DEVELOPED OR CONTROLLED BY CHINESE COMPANIES—MESSAGE FROM THE PRESIDENT OF THE UNITED STATES (H. DOC. NO. 117-6)

The SPEAKER pro tempore laid before the House the following message from the President of the United States; which was read and, together with the accompanying papers, referred to the Committee on Foreign Affairs and ordered to be printed:

To the Congress of the United States:

Pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*) (IEEPA), the National Emergencies Act (50 U.S.C. 1601 *et seq.*), and section 301 of title 3, United States Code, I hereby report that I have issued an Executive Order declaring additional steps to be taken concerning the national emergency with respect to the information and communications technology and services supply chain declared in Executive Order 13873 of May 15, 2019 (Securing the Information and Communications Technology and Services Supply Chain) to deal with the threat posed by applications and other

□ This symbol represents the time of day during the House proceedings, e.g., □ 1407 is 2:07 p.m.

Matter set in this typeface indicates words inserted or appended, rather than spoken, by a Member of the House on the floor.



Printed on recycled paper.

H75

that the teller has verified to be regular in form and authentic?

There was no objection.

The VICE PRESIDENT. Hearing none, this certificate from Vermont, the Parliamentarian has advised me, is the only certificate of vote from the State that purports to be a return from the State and that has annexed to it a certificate of an authority from that State purporting to appoint or ascertain electors.

Senator BLUNT. Mr. President, the certificate of the electoral vote of the State of Vermont seems to be regular in form and authentic, and it appears therefrom that Joseph R. Biden, Jr., of the State of Delaware received 3 votes for President and KAMALA D. HARRIS of the State of California received 3 votes for Vice President.

The VICE PRESIDENT. Are there any objections to counting the certificate of the vote of the State of Vermont that the teller has verified as regular in form and authentic?

There was no objection.

The VICE PRESIDENT. Hearing none, this certificate from the Commonwealth of Virginia, the Parliamentarian has advised, is the only certificate of vote from that State that purports to be a return from the State and that has annexed to it a certificate of an authority from that same State purporting to appoint or ascertain electors.

Ms. LOFGREN. Mr. President, the certificate of the electoral vote of the Commonwealth of Virginia seems to be in regular in form and authentic, and it appears therefrom that Joseph R. Biden, Jr., of the State of Delaware received 13 votes for President and KAMALA D. HARRIS of the State of California received 13 votes for Vice President.

The VICE PRESIDENT. Are there any objections to counting the certificate of the vote of the Commonwealth of Virginia that the teller has verified as appearing regular in form and authentic?

There was no objection.

The VICE PRESIDENT. Hearing none, this certificate from Washington, the Parliamentarian has advised, is the only certificate of vote from that State that purports to be a return from the State and that has a certificate of an authority from the same State purporting to appoint or ascertain electors.

Senator KLOBUCHAR. Mr. President, the certificate of the electoral vote of the State of Washington seems to be regular in form and authentic, and it appears therefrom that Joseph R. Biden, Jr., of the State of Delaware received 12 votes for President and KAMALA D. HARRIS of the State of California received 12 votes for Vice President.

The VICE PRESIDENT. Are there any objections to counting the certificate of the vote of the State of Washington that the teller has verified and appears to be regular in form and authentic?

There was no objection.

The VICE PRESIDENT. Hearing none, this certificate from West Virginia, the Parliamentarian has advised, is the only certificate of vote from that State that purports to be a return from the State and that has annexed to it a certificate of an authority from the State purporting to appoint or ascertain electors.

Mr. RODNEY DAVIS of ILLINOIS. Mr. President, the certificate of the electoral vote of the State of West Virginia seems to be regular in form and authentic, and it appears therefrom that Donald J. Trump of the State of Florida received 5 votes for President and MICHAEL R. PENCE of the State of Indiana received 5 votes for Vice President.

The VICE PRESIDENT. Are there any objections to counting the certificate of the vote for the State of West Virginia that the teller has verified appears to be regular in form and authentic?

There was no objection.

The VICE PRESIDENT. Hearing none, this certificate from Wisconsin, the Parliamentarian has advised, is the only certificate from that State that purports to be a return from the State and that has annexed to it a certificate of an authority from the State purporting to appoint or ascertain electors.

Ms. LOFGREN. Mr. President, the certificate of the electoral vote of the State of Wisconsin seems to be regular in form and authentic, and it appears therefrom that Joseph R. Biden, Jr., of the State of Delaware received 10 votes for President and KAMALA D. HARRIS of the State of California received 10 votes for Vice President.

The VICE PRESIDENT. For what purpose does the gentleman from Texas rise?

Mr. GOHMERT. Mr. President, I object to the electoral votes of the State of Wisconsin because 71 House Members, all of who condemn violence as we witnessed today, are firmly committed to the resolution of disagreements in civil, lawful, peaceful institutions with full and fair debate, free of violence. And though not a single court has allowed an evidentiary hearing to listen to the significant body of evidence of fraud, and though some seize on the court's failure to misrepresent that no court would listen to the evidence as saying evidence did not exist; while Democrat leaders in Milwaukee illegally and unconstitutionally created more than 200 illegal polling places; tens of thousands of votes were changed by workers, despite election workers' objections, plus so many other illegalities to fraudulently create a 20,000-vote lead, we object, along with a Senator who now has withdrawn his objection.

The VICE PRESIDENT. Sections 15 and 17 of title 3 of the United States Code require that any objection be presented in writing, signed by a Member of the House of Representatives and a Senator.

Is the objection in writing and signed by a Member and a Senator?

Mr. GOHMERT. It is in writing. It is signed by a Member, but it is not signed and objected to by a Senator, Mr. President.

The VICE PRESIDENT. In that case, the objection cannot be entertained.

This certificate from Wyoming, the Parliamentarian has advised, is the only certificate of vote from that State and purports to be a return from the State and has annexed to it the certificate of an authority from the same State purporting to appoint or ascertain electors.

Senator BLUNT. Mr. President, the certificate of the electoral vote of the State of Wyoming seems to be regular in form and authentic, and it appears therefrom that Donald J. Trump of the State of Florida received 3 votes for President and MICHAEL R. PENCE of the State of Indiana received 3 votes for Vice President.

The VICE PRESIDENT. Are there any objections to counting a certificate of the vote of the State of Wyoming that the teller has verified appears to be regular in form and authentic?

There was no objection.

The VICE PRESIDENT. Hearing none, the Chair advises Members of Congress the certificates having been read, the tellers will ascertain and deliver the result to the President of the Senate.

Senator KLOBUCHAR. The undersigned, ROY BLUNT and AMY KLOBUCHAR, tellers on the part of the Senate; ZOE LOFGREN and RODNEY DAVIS, tellers on the part of the House of Representatives, report the following as the result of the ascertainment and counting of the electoral votes for President and Vice President of the United States for the term beginning on the 20th day of January, 2021. The report we make is that Joe Biden and KAMALA HARRIS will be the President and the Vice President, according to the ballots that have been given to us.

The tellers delivered to the President of the Senate the following statement of results:

JOINT SESSION OF CONGRESS FOR THE COUNTING OF THE ELECTORAL VOTES FOR PRESIDENT AND VICE PRESIDENT OF THE UNITED STATES—OFFICIAL TALLY

The undersigned, ROY BLUNT and AMY KLOBUCHAR tellers on the part of the Senate, ZOE LOFGREN and RODNEY DAVIS tellers on the part of the House of Representatives, report the following as the result of the ascertainment and counting of the electoral vote for President and Vice President of the United States for the term beginning on the twentieth day of January, two thousand and twenty one.

Electoral votes of each State	For President		For Vice President	
	Joseph R. Biden, Jr.	Donald J. Trump	Kamala D. Harris	Michael R. Pence
Alabama—9 .....	.....	9	.....	9
Alaska—3 .....	.....	3	.....	3
Arizona—11	11	.....	11	.....
Arkansas—6 .....	.....	6	.....	6

Electoral votes of each State	For President		For Vice President	
	Joseph R. Biden, Jr.	Donald J. Trump	Kamala D. Harris	Michael R. Pence
California—55	55		55	
Colorado—9	9		9	
Connecticut—7	7		7	
Delaware—3	3		3	
District of Columbia—3	3		3	
Florida—29		29		29
Georgia—16	16		16	
Hawaii—4	4		4	
Idaho—4		4		4
Illinois—20	20		20	
Indiana—11		11		11
Iowa—6		6		6
Kansas—6		6		6
Kentucky—8		8		8
Louisiana—8		8		8
Maine—4	3	1	3	1
Maryland—10			10	
Massachusetts—11	11		11	
Michigan—16	16		16	
Minnesota—10	10		10	
Mississippi—6		6		6
Missouri—10		10		10
Montana—3		3		3
Nebraska—5	1	4	1	4
Nevada—6		6		6
New Hampshire—4		4		4
New Jersey—14	14		14	
New Mexico—5	5		5	
New York—29	29		29	
North Carolina—15		15		15
North Dakota—3		3		3
Ohio—18		18		18
Oklahoma—7		7		7
Oregon—7	7		7	
Pennsylvania—20	20		20	
Rhode Island—4	4		4	
South Carolina—9		9		9
South Dakota—3		3		3
Tennessee—11		11		11
Texas—38		38		38
Utah—6		6		6
Vermont—3	3		3	
Virginia—13	13		13	
Washington—12	12		12	
West Virginia—5		5		5
Wisconsin—10	10		10	
Wyoming—3		3		3
Total—538	306	232	306	232

ROY BLUNT,
AMY KLOBUCHAR,
*Tellers on the part of
the Senate.*
ZOE LOFGREN,
RODNEY DAVIS,
*Tellers on the part of
the House of Rep-
resentatives.*

The VICE PRESIDENT. The state of the vote for President of the United States, as delivered to the President of the Senate, is as follows:

The whole number of the electors appointed to vote for President of the United States is 538, of which a majority is 270.

Joseph R. Biden, Jr., of the state of Delaware, has received for President of the United States 306 votes;

Donald J. Trump, of the state of Florida, has received 232 votes;

The state of the vote for Vice President of the United States, as delivered to the President of the Senate, is as follows:

The whole number of the electors appointed to vote for Vice President of the United States is 538, of which a majority is 270.

KAMALA D. HARRIS, of the state of California, has received for Vice President of the United States 306 votes;

MICHAEL R. PENCE, of the state of Indiana, has received 232 votes.

This announcement of the state of the vote by the President of the Senate shall be deemed a sufficient declaration of the persons elected President and Vice President of the United States, each for the term beginning on the twentieth day of January, two

thousand and twenty one, and shall be entered, together with the list of the votes, on the Journals of the Senate and House of Representatives.

□ 0340

The VICE PRESIDENT. The whole number of electors appointed to vote for President of the United States is 538. Within that whole number, a majority is 270.

The votes for President of the United States are as follows:

Joseph R. Biden, Jr., of the State of Delaware has received 306 votes.

Donald J. Trump of the State of Florida has received 232 votes.

The whole number of electors appointed to vote for Vice President of the United States is 538. Within that whole number, a majority is 270.

The votes for Vice President of the United States are as follows:

KAMALA D. HARRIS of the State of California has received 306 votes.

Michael R. Pence of the State of Indiana has received 232 votes.

This announcement of the state of the vote by the President of the Senate shall be deemed a sufficient declaration of the persons elected President and Vice President of the United States, each for the term beginning on the 20th day of January, 2021, and shall be entered, together with the list of the votes, on the Journals of the Senate and House of Representatives.

The Chair now recognizes for the purpose of a closing prayer the 62nd Chaplain of the United States Senate, Chaplain Barry C. Black.

Chaplain BLACK. Lord of our lives and sovereign of our beloved Nation, we deplore the desecration of the United States Capitol Building, the shedding of innocent blood, the loss of life, and the quagmire of dysfunction that threaten our democracy.

These tragedies have reminded us that words matter and that the power of life and death is in the tongue. We have been warned that eternal vigilance continues to be freedom's price.

Lord, You have helped us remember that we need to see in each other a common humanity that reflects Your image. You have strengthened our resolve to protect and defend the Constitution of the United States against all enemies domestic, as well as foreign.

Use us to bring healing and unity to a hurting and divided Nation and world. Thank You for what You have blessed our lawmakers to accomplish in spite of threats to liberty.

Bless and keep us. Drive far from us all wrong desires, incline our hearts to do Your will, and guide our feet on the path of peace. And God bless America. We pray in Your sovereign name.

Amen.

The VICE PRESIDENT. The purpose of the joint session having concluded, pursuant to Senate Concurrent Resolution 1, 117th Congress, the Chair declares the joint session dissolved.

(Thereupon, at 3 o'clock and 44 minutes a.m., the joint session of the two Houses of Congress was dissolved.)

The SPEAKER pro tempore (Ms. JACKSON LEE). Pursuant to Senate Concurrent Resolution 1, the electoral vote will be spread at large upon the Journal.

ADJOURNMENT

The SPEAKER pro tempore. Pursuant to section 5(a)(1)(B) of House Resolution 8, the House stands adjourned until 11 a.m. on Monday, January 11, 2021.

Thereupon (at 3 o'clock and 48 minutes a.m.), under its previous order, the House adjourned until Monday, January 11, 2021, at 11 a.m.

PUBLIC BILLS AND RESOLUTIONS

Under clause 2 of rule XII, public bills and resolutions of the following titles were introduced and severally referred, as follows:

By Mr. CLOUD (for himself, Mr. ALLEN, Mr. STEUBE, Mr. DAVIDSON, Mr. BERGMAN, Mr. PALMER, Mr. RUTHERFORD, and Mr. BAIRD):

H.R. 217. A bill to amend title 38, United States Code, to direct the Secretary of Veterans Affairs to enforce the licensure requirement for medical providers of the Department of Veterans Affairs; to the Committee on Veterans' Affairs.

By Mr. PFLUGER (for himself, Mr. TONY GONZALES of Texas, Mrs. BICE of Oklahoma, Mr. JACKSON, Ms. HERRELL, Mr. BABIN, Mr. ROY, Mr. CRENSHAW, Mr. FALLON, and Mr. ARRINGTON):

H.R. 218. A bill to prohibit the Secretary of the Interior and the Secretary of Agriculture from issuing moratoriums on issuing new oil and gas leases and drill permits on certain Federal lands; to the Committee on Natural Resources, and in addition to the Committee on Agriculture, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. DOGGETT:

H.R. 219. A bill to amend the Trade Act of 1974 to exclude from eligibility for the generalized system of preferences any country that fails to effectively enforce its environmental laws or meet its international environmental obligations, and for other purposes; to the Committee on Ways and Means.

By Mr. EMMER (for himself and Mr. RODNEY DAVIS of Illinois):

H.R. 220. A bill to make supplemental appropriations to carry out farm stress programs, provide for expedited additional support under the farm and ranch stress assistance network, and for other purposes; to the Committee on Agriculture.

By Ms. ESHOO:

H.R. 221. A bill to amend title 5, United States Code, to modify the oath of office taken by individuals in the civil service or uniformed services, and of other purposes; to the Committee on Oversight and Reform.

By Ms. ESHOO (for herself and Mr. MCEACHIN):

H.R. 222. A bill to treat the Tuesday next after the first Monday in November in the same manner as any legal public holiday for purposes of Federal employment, and for other purposes; to the Committee on Oversight and Reform.

By Mr. ESPAILLAT (for himself and Mr. SIRE):

H.R. 223. A bill to direct the Secretary of Health and Human Services to reimburse