

No. _____

**In the
Supreme Court of the United States**

**WAYNE JOHNSON FOR CONGRESS, INC.,
WAYNE JOHNSON,**
Petitioners,

v.

**JEREMY C. HUNT,
d.b.a. Jeremy for Georgia,
FOX NEWS NETWORK, LLC,
BRIAN M. KILMEADE,**
Respondents.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

PETITION FOR CERTIORARI

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I. Questions Presented

1. Did the Eleventh Circuit err in affirming the dismissal of Petitioners' suit due to the purported failure of Petitioners to comply with the heightened pleading requirements of Federal Rule of Civil Procedure 9(b) in alleging the predicate acts of mail fraud and wire fraud?

II. Parties to the Proceeding and Related Proceedings

Petitioners are Wayne Johnson for Congress, Inc. &
Wayne Johnson

Respondents are Jeremy C. Hunt, d.b.a. Jeremy for
Georgia, Fox News Network, LLC,
Brian M. Kilmeade

Michael Devlin Cooper,
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III. Corporate Disclosure Statement

In accordance with the United States Supreme Court Rule 29.6, Petitioner Wayne Johnson for Congress, Inc. makes the following disclosures:

Petitioner Wayne Johnson for Congress, Inc. does not have any parent companies nor do any publicly held companies own ten percent or more of Petitioner Wayne Johnson for Congress, Inc.'s stock.

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VI. Petition for Writ of Certiorari

Wayne Johnson for Congress, Inc., a Georgia Domestic Corporation, and Wayne Johnson, by and through Michael Devlin Cooper and Kenneth E. Barton III, Georgia licensed attorneys and members of the United States Supreme Court Bar, respectfully petition this Court for a Writ of Certiorari to review the judgment of the United States Court of Appeals for the Eleventh Circuit.

VII. Opinions Below

On February 3, 2023, the United States District Court for the Middle District of Georgia granted Respondents' Motions to Dismiss. (D. Ct. Dkt. # 30). App. 15A. On February 7, 2024, the United States Court of Appeals for the Eleventh Circuit affirmed the decision of the district court. The decision was unreported. No. 23-10460, 2024 WL 471938. App. 1A.

VIII. Jurisdiction

Petitioners appealed to the United States Court of Appeals for the Eleventh Circuit, and that Court affirmed the ruling of the United States District Court for the Middle District of Georgia. Petitioners Wayne Johnson for Congress, Inc. and Wayne Johnson invoke this Court's jurisdiction under 28 U.S.C. § 1254, having timely filed this Petition for a Writ of Certiorari within ninety days of the Court of Appeals' decision affirming the ruling of the District Court.

XI. Federal Laws Involved 18 U.S.C. § 1962(a)

It shall be unlawful for any person who has received any income derived, directly or indirectly, from a pattern of racketeering activity or through

collection of an unlawful debt in which such person has participated as a principal within the meaning of Section 2, Title 18, United States Code, to use or invest, directly or indirectly, any part of such income, or the proceeds of such income, in acquisition of any interest in, or the establishment or operation of, any enterprise which is engaged in, or the activities of which affect, interstate or foreign commerce. A purchase of securities on the open market for purposes of investment, and without the intention of controlling or participating in the control of the issuer, or of assisting another to do so, shall not be unlawful under this subsection if the securities of the issuer held by the purchaser, the members of his immediate family, and his or their accomplices in any pattern or racketeering activity or the collection of an unlawful debt after such purchase do not amount in the aggregate to one percent of the outstanding securities of any one class, and do not confer, either in law or in fact, the power to elect one or more directors of the issuer.

Federal Rule of Civil Procedure 9

(b) Fraud or Mistake; Conditions of Mind. In alleging fraud or mistake, a party must state with particularity the circumstances constituting fraud or mistake. Malice, intent, knowledge, and other conditions of a person's mind may be alleged generally.

X. Statement of the Case

Petitioner Wayne Johnson (herein, “Johnson”) is a successful businessman with extensive experience as an entrepreneur, senior executive, and Chief Executive Officer of multiple businesses, both domestic and international, in the consumer finance

and customer service support industries. From 2017 to 2019, Mr. Johnson served as the Chief Strategy and Transformation Officer and Chief Operating Officer for the Department of Education's Office of Federal Student Aid. Mr. Johnson was the first candidate to declare for the 2022 Republican Primary Election for Georgia's Second Congressional District. (D. Ct. Dkt. # 1-1, ¶ 11.) Petitioner Wayne Johnson for Congress, Inc. was formed in 2021 to serve as the corporate entity for Mr. Johnson's campaign, managing campaign fundraising, campaign activities, and other purposes allowed by law.

This case originates from a racketeering scheme that included the Respondents Fox News Network, LLC (herein, "Fox News"); Brian M. Kilmeade (herein, "Mr. Kilmeade"); and Jeremy C. Hunt (herein, "Mr. Hunt"), as well as other "chosen" congressional candidates throughout America, several current Republican members of the United States Congress, and other Washington, D.C. Republican power elites. (D. Ct. Dkt. # 1-1, ¶¶ 1, 21-25, 29-33, 59, 62-64, 138.) In short, these individuals and Fox News conspired to choose one Republican candidate in each of the U.S. House of Representatives elections that they believed they could "flip" from a Democratic seat in the last Congress to a Republican in the current Congress. (D. Ct. Dkt. # 1-1, ¶¶ 21-30, 62-64.) They then assisted that candidate in securing the professional services of a media consulting business in Alexandria, Virginia to produce campaign videos and other materials for each of the campaigns.

The participants in the scheme, which also included all of the "chosen" candidates, walked the candidates through the halls of Congress to introduce

them to Republican members for purposes of future endorsements. (D. Ct. Dkt. # 1-1, ¶ 29.) The participants then made similar introductions to other members of the Republican power elite such as Karl Rove, Mike Pompeo, Nikki Haley, and Newt Gingrich, with the expectation of future endorsements for the candidates. (D. Ct. Dkt. # 1-1, ¶ 29.)

To further assist these chosen candidates, Fox News as well as other on-air talent appearing on Fox News, including Mr. Kilmeade, hosted these “chosen” candidates on a variety of Fox News programs, frequently FOX & Friends. (D. Ct. Dkt. # 1-1, ¶¶ 30-31.) During these appearances, Fox News and Mr. Kilmeade, as well as the other on-air talent, allowed the candidates to make a variety of deliberately false representations and material omissions. (D. Ct. Dkt. # 1-1, ¶¶ 28, 123-36.) These included statements by Mr. Hunt and several other candidates about material matters such as their background and even more critically about which election each of the candidates was actually running in at the time and who their opponents were. (D. Ct. Dkt. # 1-1, ¶¶ 28, 123-36.) That is, with many candidates, Fox News and Mr. Kilmeade, as well as other on-air talent, bypassed even a mere acknowledgement that these candidates were running in Republican primaries in these districts, as opposed to the general elections. For instance, with Mr. Hunt, Respondents repeatedly represented to viewers that Mr. Hunt was the Republican candidate facing off against Representative Sanford Bishop, the thirty-year incumbent Democratic Congressman, omitting any reference to the Republican primary that Mr. Hunt was actually in against five other Republican candidates. (D. Ct. Dkt. # 1-1, ¶¶ 59-61, 74, 77, 84-

88.) Only the winner of the Republican primary would ultimately face off against Representative Bishop in the general election, and it was not until Mr. Hunt faced a primary runoff election that Respondents ever mentioned such a primary to viewers, which was not until Mr. Hunt's eleventh or twelfth campaign appearance on Fox News. (D. Ct. Dkt. # 1-1, ¶ 104.)

The candidates appearing on Fox News' programs typically appeared for some novel purpose, then would quickly pivot their talking points to discussing national politics generally and their candidacies specifically, referring viewers to their websites, and even explicitly soliciting donations. (D. Ct. Dkt. # 1-1, ¶ 32.) In the case of Mr. Hunt, this led to significant out-of-district and out-of-state donations from viewers who had not been informed that there were other Republican candidates in the Republican primary election; such donations were made by checks sent via the U.S. mail and by credit card payments processed online and over the phone. (D. Ct. Dkt. # 1-1, ¶ 107.)

The segments featuring these candidates on Fox News were so misleading that they explicitly discouraged viewers from even researching other potential Republican challengers to the Democratic incumbents. These misstatements and omissions were made not only by the candidates, including Mr. Hunt, but also Fox News' on-air talent, including Mr. Kilmeade. (D. Ct. Dkt. # 1-1, ¶¶ 28, 62, 66, 70, 74-76, 81-88, 90-91, 97, 123-26, 128.) Such misrepresentations also substantively impacted the choices made by voters in these primary elections. All of these impacts on donations and voting were reasonably foreseeable and indeed were the intended

outcome of the participants in the racketeering scheme.

The goal of this racketeering scheme was simply to permit a major news network and Republican members of Congress and power elites to hand-select their candidates for local elections from afar in Washington, D.C., to have these candidates move to the selected Congressional District in some instances including Mr. Hunt, (D. Ct. Dkt. # 1-1, ¶ 8) and to raise massive amounts of campaign contributions from Fox News' and Mr. Kilmeade's national audience. In addition to trying to seize control of the House of Representatives and Senate, the members of Congress who participated in this scheme also frequently received a portion of the campaign contributions made to the "chosen" candidates, as Senator Tom Cotton did from donations made to Mr. Hunt on the website cottonforvets.com. (D. Ct. Dkt. # 1-1, ¶ 23.) The participants were unconcerned and unwilling to abide by federal election laws, federal campaign finance laws, federal and Georgia mail fraud and wire fraud laws, Georgia's laws on perjury and false swearing, and Georgia's and federal Racketeer Influenced and Corrupt Organizations (herein, "RICO") Acts.

Respondents' pattern of racketeering targeted the Petitioners and the other Republican challengers to Mr. Hunt in the Republican primary election for Georgia's Second Congressional District. In so doing, Respondents defrauded the viewers of Fox News' programs, causing them to donate to Mr. Hunt's campaign based upon misinformation and lies, impacting the vote in the Second Congressional District's Republican primary as well. (D. Ct. Dkt. # 1-1, ¶ 148.) Moreover, Fox News was unwilling to offer

similar appearances on their programs to the other candidates in the Second Congressional District election, and the same was true of the other candidates who ran against “chosen” candidates in the other primaries throughout the country. (D. Ct. Dkt. # 1-1, ¶¶ 33, 116-18, 122, 130.)

This case was not filed in an attempt to “stop the steal” or deny the outcome of an election. Whether Mr. Johnson won or lost the primary election in Georgia’s Second Congressional Election would have had no impact on the viability of the claims in this suit. This is a RICO action aimed at an enterprise instigated by prominent Republican power players and Fox News to push its agreed-upon candidates onto voters at any and all costs to retake the United States Congress; Mr. Hunt and Mr. Kilmeade participated in that enterprise.

The Petitioners filed this action in the Superior Court of Muscogee County, Georgia on June 26, 2022, asserting RICO claims under 18 U.S.C. § 1962(c) and O.C.G.A. § 16-14-6, *et seq.* (D. Ct. Dkt. # 1-1.) Both the federal and Georgia RICO claims in the initial Complaint for Damages included mail fraud and wire fraud as their predicate acts. Critically, the assertion of mail fraud is based on the contributions made by Fox News’ viewers to Mr. Hunt’s campaign through the U.S. Mail, and the wire fraud is likewise based on the viewers’ contributions to Mr. Hunt’s campaign via credit card and online. Mr. Hunt filed his Answer on July 15, 2022. (D. Ct. Dkt. # 1-1.) Subsequently, Fox News and Mr. Kilmeade removed the suit to the United States District Court for the Middle District of Georgia, Columbus Division on July 28, 2022. (Doc 1.)

On August 4, 2022, Fox News and Mr. Kilmeade filed their Motion to Dismiss. (Doc 4.) In short, they contended in the Motion that the Petitioners failed to plead that (1) Fox News and Mr. Kilmeade engaged in racketeering activity, (2) the Petitioners suffered damages directly caused by reason of the alleged RICO violations, (3) Fox News' and Mr. Kilmeade's alleged conduct constitutes a RICO pattern, and, (4) Fox News and Mr. Kilmeade conducted the enterprise through such a pattern of racketeering activity. (*Id.* at 4.) Mr. Hunt filed a Motion to Dismiss on August 23, 2022, essentially joining in the Motion filed by Fox News and Mr. Kilmeade. (Doc 16.)

In response, the Petitioners filed their Brief in Opposition to both Motions to Dismiss on September 8, 2022. (Doc 19.) In this response, the Petitioners argued that they had established the six necessary elements for a *prima facie* RICO case under both federal and Georgia law through the well pled factual allegations of their Complaint. Simultaneously, the Petitioners filed a Motion for Leave to Amend Complaint. (D. Ct. Dkt. # 20.) Their proposed First Amended Complaint included numerous, additional factual allegations, since the action originally filed in the Superior Courts of Georgia had not been subject to the heightened pleading standards applied in federal court, and it also added two additional predicate acts under O.C.G.A. § 16-10-70 and O.C.G.A. § 16-10-71 (i.e., perjury and false swearing). (D. Ct. Dkt. # 20-1).

Fox News and Mr. Kilmeade filed a Reply Brief in Support of their Motion to Dismiss on October 6, 2022. (D. Ct. Dkt. # 24). They then filed a brief opposing the Petitioners' Motion for Leave to Amend on October 13, 2022, arguing that the proposed amendment would be

futile. (D. Ct. Dkt. # 25). The Petitioners filed their Reply Brief in Support of the Motion for Leave to Amend on November 20, 2022. (D. Ct. Dkt. # 29).

The district court issued its Order granting the Respondents' Motions to Dismiss and denying Petitioners' Motion to amend on February 3, 2023. (D. Ct. Dkt. # 30.) In its Order, the district court included a variety of factual findings that were not included in the Complaint for Damages or the attached materials (including a YouTube video), determined that the Petitioners' factual allegations did not plausibly support the RICO predicate acts of wire and mail fraud or injury to the Petitioners, and concluded that the proposed amended pleading would be futile. (*Id.*). The Petitioners timely filed their Notice of Appeal on February 9, 2023 (D. Ct. Dkt. # 32).

The Eleventh Circuit affirmed the district court's dismissal of this action, but it did so for different reasons. *Wayne Johnson for Congress, Inc. v. Hunt*, No. 23-10460, 2024 WL 471938. App. 1A. In its decision, the Eleventh Circuit determined that Petitioners did not allege the predicate acts of mail fraud and wire fraud with sufficient particularity to comply with Federal Rule of Civil Procedure 9(b). *Id.* at 5. The court also determined that, while Petitioners may have valid additional predicate acts to allege under the Georgia RICO laws, Petitioners' proposed amended complaint still did not include sufficient factual allegations to satisfy Rule 9(b) to survive a motion to dismiss, and therefore, it was not error for the district court to deny Petitioners' motion to amend the complaint because the proposed amendment would be futile. *Id.* at 6.

XI.Reasons for Granting a Writ of Certiorari

A. The Application of federal and Georgia Racketeer Influence and Corrupt Organization Acts in this Election Context is of National Importance.

Undoubtedly, the RICO statutes originated in an effort to fight organized crime, but their application has evolved substantially over time. The question quickly arises in this case whether Petitioners' complaints should have been brought as simple grievances with the Federal Election Commission. Yet, the substantial, decade-long delays in the Commission's work renders it all but useless, and the Petitioners' substantive claims properly form the basis of RICO claims.

Petitioners' RICO violations were thoroughly pled, and the proposed Amended Complaint filed with a Motion for Leave to Amend in district court laid out the alleged enterprising activities in even greater detail. Petitioners' claims are quite plausible and are entirely consistent with the readily available evidence of Respondents' conduct cited in the Complaint and proposed Amended Complaint.

This matter is of great relevance generally, but it is of particular import now as the country drowns in the 2024 election cycle. While this case has stood dismissed, the candidates, parties, and media networks are gearing up and have begun their 2024 campaign efforts. A reversal of the dismissal in this matter would allow the parties to proceed promptly to discovery, and through discovery, Petitioners will find a treasure trove of materials in Fox News' possession, as well as that of other Respondents and of third

parties involved in the racketeering enterprise, that detail the efforts of key Republicans in Washington, D.C. and Fox News to intentionally mislead conservative voters and manipulate those voters for the ends of the scheme's participants.

The discovery produced in the Dominion Voting Systems litigation against Fox News in the wake of the 2020 Presidential election¹ and the suit filed by an employee who worked on Tucker Carlson's program² reveal direct involvement in the minutiae of daily news stories and programming by the upper echelons of the network's management and ownership. Moreover, it is clear that Fox News profits from appealing to prominent Republicans in Washington, D.C., both to gain access to those officials and their staffs and to appeal to their ideal viewer. The officials, similarly, profit from their involvement in this scheme (a) via screen time that amounts to free advertising time before and during campaigns, (b) by access to push their agendas on air, and (c) by the increased ease with which they too can reach their ideal voter, which they perceive to coincide with the ideal Fox News viewer.

Of course, Petitioners may have evidentiary problems proving the details of the racketeering activities at this time, but these can be overcome through discovery. The threshold issue at this point is not whether Petitioners can prove all of their allegations, but whether Petitioners sufficiently

¹ *U.S. Dominion, Inc., et al. v. Fox News Network, LLC*, Superior Court of Delaware, Civil Action Nos. N21C-03-257 EMD & N21C-11-082-EMD.

² *Grossberg v. Fox Corporation, et al.*, United States District Court for the Southern District of New York, Civil Action No. 1:23-cv-02368-JMF.

alleged the necessary elements of the alleged RICO violations and the necessary factual allegations to present plausible claims. Petitioners did so in their Complaint. Moreover, Petitioners' detailed allegations, especially in the proposed Amended Complaint, are thorough and rise to a level to demonstrate the Respondents' racketeering activities.

Fundamentally, the district court and the Eleventh Circuit erred in determining that the Petitioners' allegations are not plausible. Moreover, the entire disregard of Petitioners' Georgia racketeering claims in their proposed Amended Complaint is irreconcilable with the indictment of President Trump and others by the Fulton County District Attorney under some of the same laws based on election-related conduct. Neither that case nor this one presents a straightforward mafia style racketeering case, but again, the RICO laws are evolving, as noted by *The New York Times* a few years ago.³

When elected officials, their staffs, candidates, and media networks enter into these joint efforts that mislead viewers and voters, one must assume that each participant in the scheme rationally believes that they are profiting from their activities, and those participants must be held accountable. Historically, the Federal Election Commission may be an agency that could provide that relief, but the Commission has a backlog of cases spanning years. And whether the Petitioners could gain relief in that agency does not

³ Henning, Peter J. "RICO Lawsuits are Tempting, but Tread Lightly." *The New York Times*. January 16, 2018, <https://www.nytimes.com/2018/01/16/business/dealbook/harvey-weinstein-rico.html>.

excuse the Respondents' conduct here under the racketeering laws. Nor should it.

This is a matter of grave importance nationally. Petitioners may have proof issues further down the road, but Petitioners adequately pled valid racketeering claims under Georgia and Federal law. Their motion to amend should have been granted. The motion to dismiss should have been denied. Discovery should be permitted in this case, and the truth about Fox News's active involvement in the campaigns of certain, chosen Republicans should be revealed for all. At its core, this suit is about ending the manipulation of American voters by entertainment networks masquerading as news channels while in cahoots with the current ruling regime of any political party.

This Court should grant this Petition for Certiorari to take up the application of Federal RICO laws and Georgia's RICO laws in the context of these racketeering schemes where news networks conspire with candidates and political party elites to mislead and manipulate voters. This case involves one such scheme with Fox News in the 2022 Republican Primary in Georgia's Second Congressional District, but a review of the programming of Fox News' competitors quickly demonstrates that they too are likely engaged in such activities.

B. The Eleventh Circuit Affirmed the Dismissal of Petitioners' Claims Based on Erroneous Findings Under Federal Rule of Civil Procedure 9(b).

The Eleventh Circuit erred in its *de novo* review of the district court's dismissal of Petitioners' claims by misapplying the appropriate legal standard, causing

the Petitioners' allegations set forth in their Complaint not to receive the treatment to which they were otherwise entitled.

Of course, under the Federal Rules of Civil Procedure, a court may dismiss a pleading "for failure to state a claim upon which relief can be granted." Fed. R. Civ. P. 12(b)(6). A pleading fails to state a claim if it does not contain allegations that support recovery under any recognizable legal theory. 5 Charles Alan Wright & Arthur R. Miller, *Federal Practice & Procedure* § 1216 (3d ed. 2002); *see also Ashcroft v. Iqbal*, 556 U.S. 662, 677-78 (2009). Critically, upon consideration of Respondents' Motions to Dismiss, the Eleventh Circuit was required to construe the Complaint in the Petitioners' favor and to accept their allegations of fact therein as true. *See Duke v. Cleland*, 5 F.3d 1399, 1402 (11th Cir. 1993).

Like other plaintiffs, the Petitioners were not required to provide "detailed factual allegations" to survive dismissal, but the "obligation to provide the 'grounds' of [their] 'entitle[ment] to relief' requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007). If the Eleventh Circuit had accepted the Petitioners' factual allegations as true, their claims should have survived Respondents' Rule 12(b)(6) motions provided that their allegations stated a claim for relief that was plausible on its face. *McCullough v. Finley*, 907 F.3d 1324, 1333 (11th Cir. 2018) (citing *Iqbal*, 556 U.S. at 678-79). This treatment was not afforded to the Petitioners' Complaint, and the Eleventh Circuit improperly dismissed their federal and Georgia RICO claims as a result.

Under the federal and Georgia RICO Acts, “[a] private plaintiff suing under the civil provisions of RICO must plausibly allege six elements: that the Respondents (1) operated or managed (2) an enterprise (3) through a pattern (4) of racketeering activity that included at least two predicate acts of racketeering, which (5) caused (6) injury to the business or property of the plaintiff.” *Cisneros v. Petland, Inc.*, 972 F.2d 1204, 1211 (11th Cir. 2020). The predicate acts under the Complaint in this case are mail fraud and wire fraud. The elements for a Georgia RICO claim relying upon mail fraud and wire fraud as predicate acts are essentially the same as those for a federal claim. *Feldman v. Am. Dawn, Inc.*, 849 F.3d 1333, 1342 (11th Cir. 2017).

The Eleventh Circuit affirmed the dismissal of Petitioners’ due to a failure to satisfy the heightened pleading requirements of Federal Rule of Civil Procedure 9(b), which applies to mail fraud and wire fraud allegations. *Am. Dental Ass’n v. Cigna Corp.*, 605 F.3d 1283, 1290 (11th Cir. 2010). In the RICO context, Rule 9(b) requires that a plaintiff allege (1) the precise statements, documents, or misrepresentations made; (2) the time place, and person responsible for each such statement; (3) the content and manner in which these statements misled the plaintiff; and (4) what the Respondents gained by the alleged fraud. *Id.* at 1291. The Eleventh Circuit concluded that Petitioners did not satisfy the first of these steps in the allegations of their Complaint for Damages.

The Petitioners properly pled racketeering activities by mail fraud and wire fraud. The RICO enterprise alleged in this case was instigated by prominent Republican power players and Fox News

to push their agreed-upon candidates onto voters at any and all costs to retake the majority in the United States Congress. As part of that deal, the participants in this racketeering scheme agreed to craft whatever narrative they deemed necessary to win, and that included multiple, knowing misrepresentations to voters and financial contributors (many of whom are viewers of Fox News) that were intended to induce those individuals to contribute to the campaigns of these chosen candidates, like Mr. Hunt, and to vote for those individuals. The Petitioners' Complaint included sufficient factual allegations to establish a *prima facie* case under the federal and Georgia RICO statutes based upon the underlying predicate acts of mail fraud and wire fraud.

The elements of mail and wire fraud are essentially identical and occur when a person (1) intentionally participates in a scheme to defraud another of money or property and (2) uses the mail or wires in furtherance of that scheme. *Feldman v. Am. Dawn, Inc.*, 849 F.3d 1333, 1343 (11th Cir. 2017). Yet, first party reliance on the fraudulent statements is not necessary to establish mail fraud or wire fraud. *Bridge v. Phoenix Bond & Indem. Co.*, 553 U.S. 639, 657-58 (2008). That is, it is not necessary that the plaintiff in a RICO suit premised on mail fraud or wire fraud be the party who was defrauded; it is sufficient for such a party to plead that it was a foreseeable result that the party relied upon the fraudulent misrepresentations. *Id.* at 656. Indeed, as this Court notes in discussing the Restatement (Second) of Torts, "the Restatement specifically recognizes 'a cause of action' in favor of the injured party where the Respondent 'defrauds another for the purpose of

causing pecuniary harm to a third person.” *Id.* at 657. Citing this as proof that first-party reliance is not a requirement to establish liability for a common-law fraud claim, the Court goes on to state that a RICO plaintiff can sufficiently allege a cause of action with mail fraud and wire fraud as predicate acts when that plaintiff alleges that they suffered an injury that is a foreseeable and natural consequence of the Respondent’s racketeering scheme, there are no independent factors to account for the plaintiff’s injury, there is no risk of duplicative recoveries by the plaintiff removed at different levels of the injury from the violation, no more immediate victim is better situated to sue, and someone relied upon the Respondent’s misrepresentations. *Id.* at 657-658.

The key in this case at this juncture in reviewing the ruling on Respondents’ Motions to Dismiss is that all of the elements from *Bridge* were properly alleged in the Complaint. Respondents’ actions constitute mail fraud and wire fraud due to the methods of payment made to Mr. Hunt’s campaign and to other candidates’ campaigns that Fox News and Mr. Kilmeade were promoting, allowing those candidates to routinely announce their campaigns and seek donations on air. Neither federal nor Georgia law require the misrepresentations made in furtherance of the fraud to have been made by mail or wire; these laws only require that such methods have been used as part of the overall scheme. Here, they were because it was reasonably foreseeable and even intended by the Respondents that viewers of Fox News would donate to Mr. Hunt’s campaign by mailing checks to the campaign (thereby the use of the mail) and by making credit card payments via a third-party provider (thereby using the wires). These facts are

thoroughly alleged in the Petitioners' Complaint. (D. Ct. Dkt. # 1-1, ¶¶ 28, 62, 66, 70, 74-76, 81-88, 90-91, 97, 123-26, 128.)

Indeed, even in instances where Mr. Hunt did not say specifically, "please donate to my campaign," the effect of the free national airtime was to encourage Fox News' and Mr. Kilmeade's viewers to donate, which is a reasonably foreseeable outcome of providing candidates with the airtime. After all, the three things that viewers can do to assist candidates to win elections is spread the word about a candidate's campaign, volunteer for a candidate's campaign, donate money to that candidate's campaign, and ultimately vote if they are in the district where the election is being conducted.

Nor is it as if the Respondents made false representations and omissions on one occasion and then viewers inadvertently donated. This pattern of behavior continued across the first eleven segments with Mr. Hunt in which the Respondents boasted repeatedly and falsely that he was running against Representative Sanford Bishop, not in the Republican primary election against five other candidates. (D. Ct. Dkt. # 1-1, ¶¶ 51-56, 60-106.) Respondents ultimately knew that Mr. Hunt was in a primary election because in the twelfth segment, Fox News and Mr. Hunt finally revealed that he had not made it out of the primary election unscathed and was then in a runoff. (D. Ct. Dkt. # 20-1 ¶ 107-09.) Indeed, during this twelfth segment, Fox News allowed Mr. Hunt to actually solicit viewers to contribute to his campaign. *Id.* This is the only segment in which Mr. Hunt was honest about the election he was then facing. *Id.*

The Eleventh Circuit determined that (1) Petitioners failed to allege that Fox News had an affirmative duty legally to provide complete and factual information about the candidates in the primary election in Georgia's Second Congressional District and (2) failed to point to any "precise . . . misrepresentations" amounting to fraudulent conduct committed by Respondents. *Wayne Johnson for Congress, Inc. v. Hunt*, 2024 WL 471938 at 5. The first of these conclusions is entirely illogical. While Fox News may not have an affirmative legal duty, per se, to be truthful with its viewers, its failure to do so runs the risk of amounting to fraud when the network intends to mislead its viewers in order to compel them to take some action based on the misrepresentations. This is precisely what Petitioners alleged in their lawsuit. (Doc. 1-1, ¶¶ 140-155.)

Moreover, the second finding by the Eleventh Circuit ignores the assumptions that the court must make when considering a Rule 12(b)(6) motion—that is, as discussed above, that the well pled factual allegations of a plaintiff's complaint are true. Correctly applying that standard, it is clear that Petitioners alleged numerous precise, false statements that were knowingly made or made with reckless indifference to their truth or falsity by Mr. Hunt and published on numerous occasions by Fox News, despite both parties' knowledge that the statements were in fact false. These statements are reviewed exhaustively in the Complaint for Damages and above.

Petitioners satisfied Rule 9(b)'s heightened pleading requirements in alleging the predicate acts of mail fraud and wire fraud, and this Court should grant this Petition for Writ of Certiorari to consider

this issue in greater detail and ultimately reverse the Eleventh Circuit Court of Appeals.

XII. Conclusion

For the foregoing reasons, Wayne Johnson for Congress, Inc. and Wayne Johnson respectfully request that this Court issue a Writ of Certiorari to review the judgment of the United States Court of Appeals for the Eleventh Circuit.

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