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VOLUME 2

OPINION, UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT (JUNE 23, 2023)

RECOMMENDED FOR PUBLICATION
Pursuant to Sixth Circuit I.O.P. 32.1(b)

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

TIMOTHY KING, ET AL.,

Plaintiffs,

L. LIN WOOD (21-1785); GREGORY J. ROHL, BRANDON JOHNSON, HOWARD KLEINHENDLER, SIDNEY POWELL, JULIA HALLER, and SCOTT HAGERSTROM (21-1786); EMILY NEWMAN (21-1787); STEFANIE LYNN JUNTTILA (22-1010),

Interested Parties-Appellants,

v.

GRETCHEN WHITMER; JOCELYN BENSON; CITY OF DETROIT, MICHIGAN,

Defendants-Appellees.

Nos. 21-1785/1786/1787/22-1010

Appeal from the United States District Court
for the Eastern District of Michigan at Detroit.
No. 2:20-cv-13134—Linda V. Parker, District Judge.

Before: BOGGS, KETHLEDGE, and WHITE,
Circuit Judges.

OPINION

KETHLEDGE, Circuit Judge. Three voters and three Republican nominees to the electoral college in Michigan brought this suit in a bid to overturn the results of the state's 2020 presidential election. The complaint plausibly alleged that Republican election challengers had been harassed and mistreated during vote counting at the TCF Center in Detroit, in violation of Michigan law. But the complaint also alleged that an international "collaboration"—with origins in Venezuela, extending to China and Iran, and including state actors in Michigan itself—had succeeded in generating hundreds of thousands of fraudulent votes in Michigan, thereby swinging the state's electoral votes to Joseph Biden. Many of those allegations—particularly the ones concerning Dominion voting machines—were refuted by the plaintiffs' own exhibits to their complaint. Other allegations arose from facially unreliable expert reports; still others were simply baseless. The district court found the entirety of the plaintiffs' complaint sanctionable, and ordered all of plaintiffs' attorneys, jointly and severally, to pay the defendants' and the City of Detroit's reasonable attorney's fees. We find only part of the complaint sanctionable, and thus reverse in part and affirm in part.

I.

A.

On November 3, 2020, Michigan voters cast their ballots in the presidential election. As soon as the polls closed, teams of state election officials began "canvassing" the results—a public process in which officials and observers verify that the number of votes cast in each precinct matches the number of voters listed on the poll lists. *See* M.C.L § 168.801. This canvass concluded on November 17. By the next day, every county in Michigan had reported its official election results to the Secretary of State and the Board of State Canvassers.

Michigan law allows any candidate with a "good-faith belief" that he lost the election due to "fraud or mistake" to request a recount within 48 hours of the canvass's conclusion. *See* M.C.L § 168.879(1)(b), (c). No candidate did so. As a result, on November 23, the bipartisan Board of State Canvassers unanimously certified results indicating that Joseph Biden had won the State of Michigan by 154,188 votes. That same day, Michigan's Governor transmitted those results to the United States Archivist. Michigan's electors for the Democratic Party were thereafter "considered elected." M.C.L. § 168.42. That ended the involvement of the Board and the Governor in the election.

B.

This case began two days later, on November 25, 2020. Plaintiffs sued Governor Gretchen Whitmer, Secretary of State Jocelyn Benson, and the Board of State Canvassers (together, the "state defendants"), asserting that they had "fraudulently manipulat[ed]

the vote" through "a wide-ranging interstate—and international—collaboration" to ensure that Biden would win the election. Compl. ¶ 1-3. Plaintiffs alleged that unspecified "foreign adversaries" and "hostile foreign governments" had accessed Dominion voting machines; that Detroit election officials had participated in countless violations of state election law, including an "illegal vote dump" of "tens of thousands" of votes; and that expert analysis showed that the election results were fraudulent. Compl. ¶ 84, 162, 224. As a result, plaintiffs argued, they were entitled to "the elimination of the mail ballots from counting in the 2020 election"—meaning all of them—and an order directing "the electors of the State of Michigan . . . to vote for President Donald Trump." Compl. ¶ 229-233. Sidney Powell, Scott Hagerstrom, and Gregory Rohl signed this complaint as the plaintiffs' attorneys, and five other lawyers—Emily Newman, Julia Haller, Brandon Johnson, Lin Wood, and Howard Kleinhendler—were listed as "Of Counsel."

On November 29, plaintiffs filed an emergency motion for injunctive relief, which repeated the arguments and requests of the complaint. The Democratic National Committee, the City of Detroit, and Robert Davis (an individual voter with no particular stake in the matter) each filed motions to intervene as defendants, which the court granted. On December 7, the court denied plaintiffs' motion for emergency relief. *King v. Whitmer*, 505 F. Supp. 3d 720 (E.D. Mich. 2020).

Plaintiffs thereafter hired a ninth attorney, Stephanie Junttila, to file an appeal with this court. Meanwhile, Michigan's electors were set to vote on December 14. Junttila and Powell filed a petition for certiorari with the Supreme Court, urging immediate

intervention—because, they said, the case would become moot after the December 14 electoral-college vote. But the Supreme Court did not intervene, and on December 14 Michigan's electors cast their votes for Joseph Biden.

C.

On December 15, the City served plaintiffs and their attorneys with a "safe-harbor" letter, warning that the City would seek sanctions under Civil Rule 11 if plaintiffs did not voluntarily dismiss their complaint. Plaintiffs' counsel did not respond. On December 22, the state defendants e-mailed plaintiffs' counsel to seek their concurrence in upcoming motions to dismiss; Junttila responded and declined. That same day, the City, the DNC, and the state defendants filed separate motions to dismiss, and intervenor Davis filed a motion to sanction plaintiffs' counsel under 28 U.S.C. § 1927 and the court's inherent authority.

On January 5, 2021—three weeks after sending the safe-harbor letter without any response—the City moved for Rule 11 sanctions against plaintiffs and their attorneys, asking the court to impose a fine, to require plaintiffs' counsel to pay defendants' attorney's fees, and to refer them to their respective state bar associations for disciplinary proceedings. The state defendants joined the City's motion in full. On January 11 and 12, plaintiffs filed motions to extend the time to respond to the pending motions to dismiss; the court extended that time until January 21. On January 14, however, plaintiffs filed a response announcing that they would voluntarily dismiss the complaint. The state defendants thereafter filed a sep-

arate motion for sanctions under 28 U.S.C. § 1927 against Powell, Junttila, Rohl, and Hagerstrom.

In July 2021, the district court held a lengthy hearing on the sanctions motions, during which it questioned plaintiffs' attorneys about the suit. Lin Wood said that, before he heard about the sanctions hearing, he had no idea his name had been on any filings in the suit. But he admitted he had offered to help Powell with the lawsuit, and Powell herself said she had "specifically ask[ed]" Wood for his permission before including his name on the filings. Emily Newman and Stephanie Junttila, for their parts, each said their involvement in the case was minimal. The remaining attorneys did not contest their roles in the case. The court also discussed 15 of the plaintiffs' affidavits, to determine whether the attorneys had conducted a prefiling investigation as to the plausibility of their allegations. In response, counsel repeatedly argued that they could rely on affidavits without conducting any inquiry.

The district court thereafter held that plaintiffs' counsel had violated Rule 11 by filing their suit for an improper purpose and by failing to conduct an adequate prefiling inquiry into the legal and factual merits of their claims. The court further found that counsel had needlessly prolonged the proceedings, in violation of 28 U.S.C. § 1927, and that counsel had acted in bad faith, warranting sanctions under the court's inherent authority. The court therefore ordered all nine of plaintiffs' attorneys, jointly and severally, to pay the reasonable legal fees of the City and the moving state defendants. The court also ordered those attorneys to attend 12 hours of non-partisan legal education on election law and federal pleading stan-

dards, and directed the clerk to send disciplinary referrals to counsel's respective bar associations—which the clerk did the next day. The court denied Davis's motion for sanctions and declined to impose sanctions on plaintiffs themselves.

In a separate order, the court considered objections to the amount of the City's request. (No attorney had objected to the moving state defendants' request of $21,964.75.) Of the $182,192 the City requested, the court awarded $153,285.62.

These four appeals followed. Lin Wood, Emily Newman, and Stephanie Junttila each appeal individually, arguing that their involvement in this case was too minimal to warrant sanctions. Gregory Rohl, Brandon Johnson, Howard Kleinhendler, Sidney Powell, Julia Haller, and Scott Hagerstrom appeal together, arguing primarily that none of their conduct was sanctionable.

II.

We review the district court's imposition of sanctions for an abuse of discretion and its factual findings for clear error. *Salkil v. Mount Sterling Twp. Police Dept.*, 458 F.3d 520, 527 (6th Cir. 2006); *Chambers v. NASCO, Inc.*, 501 U.S. 32, 55 (1991).

A.

We begin with Rule 11, which in the district court's view authorized almost all the sanctions awarded here. That rule provides, in relevant part, that attorneys who present a pleading or motion to the court thereby certify that:

> to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances:
>
> (1) [the pleading, written motion, or other paper] is not being presented for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation;
>
> (2) the claims, defenses, and other legal contentions are warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law; [and]
>
> (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery[.]

Fed. R. Civ. P. 11(b)(1)-(3).

1.

As an initial matter, the district court held that the attorneys filed their suit for an improper purpose, in violation of Rule 11(b)(1). Specifically, the court asserted that "what very clearly reflects bad faith is that Plaintiffs' attorneys are trying to use the judicial process to frame a public 'narrative.'" But another word for "framing a public narrative" is speech; and Rule 11 cannot proscribe conduct protected by the First Amendment. True, an attorney may not say whatever she likes inside a courtroom. *See Mezibov v. Allen*, 411 F.3d 712, 717 (6th Cir. 2005). But an attorney's political speech outside a courtroom—

including political speech about a lawsuit—is irrelevant to a Rule 11 inquiry about the suit itself. To the contrary, parties and their attorneys are free to use litigation "as a vehicle for effective political expression and association[.]" *In re Primus*, 436 U.S. 412, 431 (1978). That is as true in election cases as in any other case.

Speech outside the courtroom is what the district court apparently found objectionable here. But that speech did not show that counsel were "motivated by improper purposes such as harassment or delay," which means it was irrelevant to the district court's inquiry. *First Bank of Marietta v. Hartford Underwriters Ins. Co.*, 307 F.3d 501, 519 (6th Cir. 2002). And contesting election results is not itself an improper purpose for litigation. *See, e.g.*, *Bush v. Gore*, 531 U.S. 98 (2000); *Moss v. Bush*, 828 N.E.2d 994 (Ohio 2005); *Coleman v. Ritchie*, 762 N.W.2d 218 (Minn. 2009). Nor does the record show that counsel were otherwise motivated by improper purposes. *First Bank*, 307 F.3d at 519. Thus, the district court did not identify any improper purpose supporting the imposition of sanctions under Rule 11(b)(1).

2.

The district court also sanctioned plaintiffs' counsel under Rule 11(b)(3), which mandates that attorneys engage in a reasonable prefiling inquiry to ensure that a pleading or motion is "well grounded in fact[.]" *Merritt v. Int'l Ass'n of Machinists and Aerospace Workers*, 613 F.3d 609, 626 (6th Cir. 2010). Rule 11 also imposes an implied "duty of candor," which attorneys violate whenever they misrepresent the evidence supporting their claims. *Rentz v. Dynasty Apparel*

Indus., Inc., 556 F.3d 389, 395 (6th Cir. 2009). Thus, a court may sanction attorneys under Rule 11(b)(3) for factual assertions they know—or after reasonable investigation should have known—are false or wholly unsupported.

The first amended complaint contained 233 numbered paragraphs and over 800 pages of exhibits. Of the complaint's allegations, 60 are irrelevant for purposes of Rule 11 because they quoted legal standards or described undisputed facts. The remaining paragraphs fall into three categories, to wit: allegations about Dominion's voting systems; allegations about statistical anomalies in the election results; and allegations about misconduct by election workers in Detroit.

a.

According to plaintiffs, the election fraud began "with the election software and hardware from Dominion Voting Systems." Compl. ¶ 4. Counsel devoted 61 paragraphs of the complaint to allegations about Dominion. Those paragraphs make out the following theory: that "foreign oligarchs and dictators" founded Dominion in order to help Hugo Chavez manipulate Venezuelan elections; that Dominion accordingly designed its software to include hidden "ballot-stuffing" features; and that foreign states—along with Michigan's Governor and Secretary of State, apparently—then exploited those features during the 2020 Presidential elections. Compl. ¶ 4-12, 125-174.

i.

The complaint said the following about Dominion's origins:

> Smartmatic and Dominion were founded by foreign oligarchs and dictators to ensure computerized ballot-stuffing and vote manipulation to whatever level was needed to make certain Venezuelan dictator Hugo Chavez never lost another election. *See* Ex. 1 Redacted Declaration of Dominion Venezuela Whistleblower ("Dominion Whistleblower Report"). Notably, Chavez "won" every election thereafter.

Compl. ¶ 5. The plaintiffs' sole evidentiary support for these allegations was the so-called "Dominion Whistleblower Report"—allegedly authored by an unnamed "adult of sound mine [*sic*]" who purported to be a former member of Chavez's national guard. Yet the whistleblower report itself says nothing about Dominion's founding; instead, it describes a conspiracy "between a company known as Smartmatic" and "the Venezuelan government." Smartmatic is not Dominion, just as General Motors is not Ford. The report otherwise says that Dominion "relies upon software that is a descendant of the Smartmatic Election Management System." But the complaint's allegation that Dominion was founded as part of a Venezuelan conspiracy to commit election fraud was entirely baseless. The district court rightly concluded that this whole raft of allegations was sanctionable.

ii.

The complaint also alleged that Dominion's voting systems were easy to hack and impossible to audit. By way of background, according to a journal article that plaintiffs attached to the complaint, modern election-management systems come in three kinds. One is a hand-marked paper-ballot system, in which voters manually complete a blank ballot and then take it to a machine to be scanned and tabulated. Another is a ballot-marking system, in which voters make their selections on a touch screen and receive a printed, marked ballot to take to the scanner. And in an all-in-one system, a single machine marks, scans, and tabulates the ballots without further action by the voter.

The problem with the complaint's allegations regarding Michigan's voting system, simply enough, is that they concerned different kinds of systems than the one Michigan used. As any Michigan voter could have told counsel, Michigan used a hand-marked ballot system—which one of the plaintiff's own exhibits, an article by Dr. Andrew Appel, said is "the only practical technology for contestable, strongly defensible voting systems." That plaintiffs attached Appel's article in support of their criticisms of Michigan's voting system illustrates how little counsel understood about the system they were criticizing. Similarly, the complaint alleged (by way of the Chavista whistle-blower) that a "core requirement of the Smartmatic software design ultimately adopted by Dominion for Michigan's elections was the software's ability to hide its manipulation of votes from any audit." Compl. ¶ 7. But hand-marked ballots obviously can be recounted (and thus audited) by hand. The complaint likewise

alleged that "Michigan officials disregarded all the concerns that caused Dominion software to be rejected by the Texas Board of elections in 2020 because it was deemed vulnerable to undetected and non-auditable manipulation." Compl. ¶ 10. We set to one side that the "Texas decision" came after the relevant decision by "Michigan officials." For the Texas decision on its face concerned a ballot-marking system, not the hand-marked system that Michigan used. And Michigan's contract with Dominion, likewise an exhibit, was limited to the hand-marked ballot system.

Plaintiffs' own exhibits thus refuted rather than supported the complaint's allegations about the Dominion system used in Michigan. And an adequate prefiling inquiry under Rule 11 includes reading every document one plans to file. *See, e.g.*, *Garr v. U.S. Healthcare, Inc.*, 22 F.3d 1274, 1278, 1281 (3d Cir. 1994) (observing that "[w]e are at a total loss to understand how attorneys can urge that they have made a reasonable inquiry into the facts and law of a case when their complaint is predicated on allegedly false statements in documents which they have not bothered to read."). Plaintiffs' inquiry as to these allegations was patently inadequate.

iii.

Plaintiffs' counsel sought to bolster their theories about Dominion with two putative expert reports. Attorneys are rarely sanctioned for relying upon experts: expert testimony by definition rests on "specialized knowledge[,]" Fed. R. Evid. 702, and consulting an expert is itself a way to investigate a claim's factual plausibility. But there is no Rule 702 exception to Rule 11; an attorney's reliance upon a putative expert opinion

must itself meet the standard of reasonableness imposed by Rule 11. That means the expert's opinion must not be unreliable on its face—either because of the expert's lack of qualifications, or the substance of the opinion itself. And the attorney cannot misrepresent what the expert himself actually says.

Here, as to the alleged international conspiracy, the complaint alleged that "Dominion software was accessed by agents acting on behalf of China and Iran in order to monitor and manipulate elections." Compl. ¶ 17. The sole basis for that allegation was the report of what the complaint called a "former electronic intelligence analyst with 305th Military Intelligence with experience gathering SAM missile system electronic intelligence." Compl. ¶ 17. But that "intelligence analyst" turned out to be a Dallas IT consultant who dropped out of an entry-level intelligence course after seven months' training. And even a cursory review of his putative report shows that it concerned the integrity of Dominion's public website, not its voting machines. That distinction should not have been hard for counsel to keep straight. And the complaint further misrepresented the report when the complaint alleged that "Dominion allowed foreign adversaries to access data and *intentionally provided access* to their infrastructure" (emphasis added). Compl. ¶ 161-162. That allegation was utterly baseless.

The attorneys also presented an affidavit from Russell Ramsland to substantiate their suspicion that foreign powers had hacked into Dominion's machines. Ramsland said that his background included "advanced converged telecom, highly advanced semiconductor materials, hospitality, commercial real estate development & operation," as well as running "Europe's

highest grossing Tex-Mex restaurant." His specialized knowledge as to foreign election-interference was thus questionable on its face. More to the point, Ramsland claimed that Dominion machines had been "manipulated" in "four precincts/townships" in four Michigan counties (Wayne, Oakland, Macomb, and Kent), which he said resulted in "289,866 illegal votes." Ramsland's theory was that the Dominion machines used in those counties—which he said were "Model DRM16011"—lacked the "processing capacity" to count as many ballots as were counted in the relevant precincts on election night. But Ramsland likewise assumed that those counties used a ballot-marking system nowhere used in Michigan, which showed that he did not know which machines were used in Michigan—meaning that his assumptions about "processing capacity" were baseless. Moreover, a simple internet search would have shown that Macomb and Oakland counties did not use Dominion systems at all.

A reasonable prefiling investigation would have shown counsel that their allegations about Dominion were baseless. Those allegations were therefore sanctionable under Rule 11(b)(3).

b.

i.

In another part of the complaint—covering about 19 paragraphs—counsel relied upon several putative expert reports to allege that Michigan's election results were statistically anomalous or impossible. The complaint alleged that "evidence compiled by Matt Braynard using the National Change Address Database" showed that 13,248 voters who had moved

to another state had nonetheless illegally voted in Michigan. Compl. ¶ 119. But Braynard's opinion came in the form of four tweets, each 280 characters or less, which said nothing about his qualifications or the data he supposedly employed. That opinion was unreliable on its face; counsel violated Rule 11 by relying upon it.

Counsel also relied on a report by Dr. William Briggs, who—according to the complaint—opined that "Approximately 30,000 Michigan Mail-In Ballots Were Lost, and Approximately 30,000 More Were Fraudulently Recorded." *See* Compl. ¶ 108-112. But Briggs drew that conclusion by taking as true a second Braynard document, the so-called "Braynard Survey." That survey purported to describe Braynard's "multi-state phone survey data of 248 Michigan voters." Suffice it to say that Briggs's statistical extrapolations from that survey—30,000 lost absentee ballots, and 30,000 fraudulent ones—were facially unreliable as well.

The complaint likewise cited Dr. Stanley Young, who asserted that Biden's gains over Trump among new voters in nine large, metropolitan counties (*e.g.*, Oakland, Washtenaw, Wayne, Kent, Kalamazoo) were "unexpected." According to Young, Biden received 190,000 "excess" votes in those counties because Biden's margin of victory there was 190,000 votes greater than Clinton's margin had been in 2016. Every one of those counties has a large suburban population, which suggests a simpler explanation than an international conspiracy for that shift in votes. And by Young's logic, Trump received an "excess" of 29,000 votes in the rest of Michigan. Still, counsel could have reasonably relied on Young's opinion that this shift was unexpected. What the complaint actually said,

however, was that "Dr. Young's analysis indicates that, when the entire State of Michigan is concerned, there were likely over 190,000 'excess' and *likely fraudulent* votes, which once again is significantly larger than Biden's 154,188 margin in Michigan." Compl. ¶ 118 (emphasis added). An "unexpected" shift in suburban votes in Young's report thus became, in the complaint, 190,000 fraudulent votes that swung the election. That allegation misrepresented Young's report and was sanctionable. *See Rentz*, 556 F.3d at 395.

ii.

Plaintiffs' reliance on four other experts was not sanctionable. First, the complaint accurately stated Dr. Louis Bouchard's conclusion that several spikes in Biden's vote count in Michigan on election night were "statistically impossible." Compl. ¶ 122. Dr. Bouchard's reasoning was that "the election results" showed "a tight race" in both Florida and Michigan; that Biden's vote total in Florida had no corresponding spike; and thus the spikes in Michigan were "anomalous." The proposition that Michigan's reporting of vote totals should track Florida's is without support; but Bouchard's technical analysis was not facially unreasonable to a layperson.

Second, Thomas Davis asserted that the share of Democrats who voted by absentee ballot exceeded the share of Republicans who did so by a similar percentage throughout the state—which, in Davis's view, suggested that a computer algorithm had manipulated the vote count. Occam's Razor suggests that Democrats just voted absentee more than Republicans did, but Davis's opinion—that the consistency

of this difference across counties was suspicious—was not unreasonable on its face.

Third, Dr. Eric Quinnell and Dr. Young together opined that Michigan's election results were "mathematically anomalous," because, they said, the new voters in several Michigan townships mostly voted for Biden. Their report appears to assume that everyone who voted for Trump in 2016 voted for him again in 2020, that everyone who voted for Clinton in 2016 voted for Biden in 2020, and that Biden then took an outsized share of "new" voters. Although those assumptions might be implausible, we cannot say this opinion was facially unreasonable.

Finally, Robert Wilgus asserted that the number of absentee ballots that voters requested and returned on the same day warranted "further investigation." The Michigan Constitution enables voters to do both of those things on the same day, so Wilgus's assertion that doing so warrants investigation is dubious. *See* Mich. Const. Art II, § 4(h). But his conclusion was tepid enough not to be facially unreasonable.

c.

A third part of the complaint comprised 79 paragraphs of allegations about misconduct at the "TCF Center," which is where "Absentee Voter Counting Boards" counted all of Detroit's absentee ballots.

i.

The complaint's most provocative allegation as to these boards was that they "fraudulently added tens of thousands of new ballots and new voters in the early morning and evening of November 4." Compl. ¶ 82

(capitalization removed). "Perhaps the most probative evidence" in support of this allegation, according to the complaint, came from the affidavit of Dominion employee Melissa Carone. Compl. ¶ 84. She wrote:

> There was two vans that pulled into the garage of the counting room, one on day shift and one on night shift. These vans were apparently bringing food into the building because they only had enough food for not even 1/3 of the workers. I never saw any food coming out of these vans, coincidentally it was announced on the news that Michigan had discovered over 100,000 more ballots—not even two hours after the last van left.

On the basis of this affidavit, the complaint alleged that Carone had "witnessed" an "illegal vote dump, as well as several other violations." Compl. ¶ 84. That allegation illustrates the complaint's pattern of embellishment to the point of misrepresentation. The only thing that Carone said she witnessed was the arrival of "two vans"—period. Powell and her co-appellants now concede that "Carone made it clear she had seen no ballots." *Reply* at 24. That means it was sanctionable to allege that she did. *Rentz*, 556 F.3d at 395.

Counsel also used two affidavits copied from a state-court case—*Constantino v. Detroit*—to support the "illegal vote dump" theory. The attorneys used the first affidavit, from election challenger Robert Cushman, to allege that "several thousand" ballots had been "fraudulently" counted at TCF. Compl. ¶ 83. Cushman was apparently a layperson as to election law; and in *Constantino*, Christopher Thomas—who served as Michigan's Director of Elections for over

30 years—submitted a detailed affidavit explaining that none of Cushman's observations suggested any violation of Michigan election law. Plaintiffs' counsel were not required to treat Thomas's affidavit as sacrosanct. But a reasonable prefiling inquiry—before renewing Cushman's allegations of fraud—would have included review of Thomas's explanation and a reasoned assessment as to whether those allegations remained plausible. The record here reveals no such inquiry on counsel's part.

The second affidavit from *Constantino* came from election challenger Andrew Sitto, who wrote in relevant part:

> At approximately 4:30 a.m., tens of thousands of ballots were brought in and placed on eight long tables. Unlike the other ballots, these boxes were brought in from the rear of the room. The same procedure was performed on the ballots that arrived at approximately 4:30 a.m., but I specifically noticed that every ballot I observed was cast for Joe Biden. While counting these new ballots, I heard counters say at least five or six times that all five or six ballots were for Joe Biden. All ballots sampled that I heard and observed were for Joe Biden.

An attorney could legitimately use an affidavit like Sitto's to begin (rather than end) a line of inquiry regarding potential counting irregularities. But counsel here cited Sitto's affidavit as proof of "[t]he most egregious example of election workers' fraudulent and illegal behavior" at the TCF Center. That too was a gross exaggeration. Sitto did not say that the "tens of thousands of ballots" he saw were fraudulent.

Compl. at ¶ 82. Nor did he say that election workers treated those ballots any differently from any others—to the contrary, he said the counters followed the "same procedure" as before. And though Sitto said that "every ballot" he observed was for Biden, his affidavit implied that he heard only 30 or so of the votes that were counted.

The complaint also cited an affidavit from Articia Bomer, who said she "believe[d]" that some of the counters at TCF "were changing votes that had been cast for Donald Trump and other Republican candidates." The complaint called this "eyewitness testimony of election workers manually changing votes for Trump to votes for Biden[.]" Compl. at ¶ 91. That too was an embellishment, considering that Bomer offered no basis for her belief.

Considered both individually and collectively, the affidavits cited in the complaint did not afford counsel a credible basis to allege that "tens of thousands" of fraudulent votes were counted at TCF. Those allegations therefore lacked the requisite basis in evidence. Fed. R. Civ. P. 11(b)(3).

ii.

The complaint also alleged various lesser violations of Michigan election law. The problem with those allegations, simply stated, is that counsel apparently did not read the statute they said was violated. For instance, the complaint includes 11 paragraphs of allegations about problems with verification of signatures and birthdates on absentee ballots at the TCF Center. But Michigan law does not require birthdate verification for absentee voters. *See* M.C.L. § 168.765a. Nor do the counting boards verify any

signatures for the absentee ballots; instead, by the terms of the same statute, the city clerk's office would have already done that before the ballots reached the TCF Center. *See* M.C.L. § 168.765a(6) (absentee ballots delivered to absent-voter counting boards "must be" accompanied by "a statement by the clerk that the signatures of the absent voters on the envelopes have been checked and found to agree with the signatures of the voters on the registration cards"). The complaint did not allege otherwise; its allegations about improper verification at the TCF Center were therefore baseless.

Counsel similarly alleged that voters who had requested absentee ballots later illegally voted in person. But the same statute specifies that Michigan law "does not prohibit an absent voter from voting in person within the voter's precinct at an election, notwithstanding that the voter may have applied for an absent voter ballot and the ballot may have been mailed or otherwise delivered to the voter." M.C.L. § 168.765a(7). And where the complaint did specifically allege double voting—as in paragraph 93—it misrepresented the supporting affidavit, which said only that some people who voted in person "had already *applied* for an absentee ballot." (Emphasis added).

Of a piece was the complaint's allegation that election challengers had been improperly barred from observing the "ballot-duplication" process (meaning the process by which ballots that cannot be read by a machine are hand-copied onto ballots that can be scanned). *See* Compl. ¶ 13, 76-77, 189. For the same statute says that "at least 1 election *inspector* from each major political party" must witness the duplication. M.C.L. § 168.765a(10) (emphasis added). Under Mich-

igan law, "challenger" and "inspector" mean two different things: election challengers are party volunteers with no official training in election procedure, whereas election inspectors are officials appointed by the Board of Election Commissioners. M.C.L. § 168.765a(2). The complaint unwittingly used those terms interchangeably; and nowhere does it suggest that anyone barred an election inspector from observing the ballot-duplication process.

The statute at issue here ran three pages; a reasonable prefiling inquiry as to all these allegations would have included reading it.

iii.

The complaint's remaining allegations about election-related events at TCF Center were not sanctionable. One witness said she had seen an election worker manually correct ballots that the witness thought should have been discarded as "over-votes"; the complaint fairly repeated that allegation. The same was true as to allegations by two challengers who thought they had seen someone move "spoiled" ballots to a "to be counted" pile. And counsel reasonably relied on the affidavit of one woman who said she had seen a voting record for her late son, purportedly reflecting that, after his death, he had voted in the 2020 election.

The complaint's most credible allegations were that election workers at the TCF Center mistreated, intimidated, and discriminated against Republican election challengers. Indeed some three dozen detailed affidavits supported the complaint's allegations to that effect. Those affidavits were notably consistent in their description of partisan hostility at the TCF

Center. For instance, election challenger Abbie Helminen attested that, when the police removed a (presumably Republican) election challenger from the center, "the whole room erupted in claps & cheers, this included the poll workers." She also said that "Democrats outnumbered Republicans by at least 2:1." Similarly, Anna Pennala wrote that she "witnessed a pattern of chaos, intimidation, secrecy, and hostility by the poll workers," and that she saw workers "cheer, jeer, and clap when poll challengers were escorted out." And Emily Steffans wrote that she was "afraid . . . to challenge any ballots" because she "had watched two GOP people escorted out by the police," again to cheers from "democrat volunteers and poll workers at the table."

The intimidation and harassment alleged in these affidavits was potentially criminal. *See* M.C.L. § 168.734 ("Any officer or election board who shall prevent the presence of any such challenger as above provided, or shall refuse or fail to provide such challenger with conveniences for the performance of the duties expected of him, shall, upon conviction, be punished by a fine not exceeding $1,000.00, or by imprisonment in the state prison not exceeding two years"). And the rank partisanship among election workers described in these affidavits undermines public confidence in elections just as much as bogus allegations about voting machines do. The district court should not have dismissed these affiants' allegations out of hand.

3.

The district court next held that the entire complaint was independently sanctionable under Rule 11(b)(2). That rule requires attorneys to certify that

"the claims, defenses, and other legal contentions" in their filings "are warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law." Fed. R. Civ. P. 11(b)(2). Thus, in short, frivolous "legal contentions" are sanctionable under Rule 11(b)(2).

a.

Three of the complaint's legal claims—an equal-protection claim, a due-process claim, and a claim under the Michigan Constitution—relied exclusively on frivolous allegations of widespread voter fraud. That means those claims were already sanctionable in full under Rule 11(b)(3). Thus, we need not consider whether the legal contentions in support of the complaint's voter-fraud claims were sanctionable under Rule 11(b)(2) as well.

b.

The defendants argue that the plaintiffs' remaining claims rested on frivolous legal contentions. A legal contention is frivolous if it is "obviously without merit" under existing law and unsupported by a good-faith argument to change or extend the law. Fed. R. Civ. P. 11(b)(2); *Waldman v. Stone*, 854 F.3d 853, 855 (6th Cir. 2017) (discussing frivolous claims under Appellate Rule 38).

i.

As an initial matter, counsel never should have asserted any claims against the Board of Canvassers in this case. The Board is a state agency; and unless the state waives Eleventh Amendment immunity or Congress abrogates it, state agencies are immune

from federal suit. *Boler v. Earley*, 865 F.3d 391, 410 (6th Cir. 2017). Here, the state did not waive immunity and Congress did not abrogate it, and plaintiffs have never argued otherwise. Hence the Board was indisputably entitled to sovereign immunity. *Id.* Moreover, the Board had already certified the election results by the time of plaintiffs' suit, and thus lacked power to redress any of plaintiffs' alleged harms. Hence the plaintiffs also lacked standing to sue the Board. *See Parsons v. U.S. Dept. of Justice*, 801 F.3d 701, 715-16 (6th Cir. 2015). The legal contentions in support of these claims, therefore, were frivolous. *See Waldman*, 854 F.3d at 855.

ii.

That leaves two federal claims against Governor Whitmer and Secretary Benson and a handful of state claims. The first federal claim was one under 42 U.S.C. § 1983 for alleged violations of the Elections and Electors Clauses of the Constitution. The theory behind that claim, as set forth in the complaint, was that the Governor and the Secretary of State "unilaterally" chose to "deviate from the requirements of the Michigan Election Code." Compl. ¶ 23, 179. That this claim was one of "unilateral" action means it depended on actions specific to the Governor and Secretary themselves. Yet the complaint alleged no such actions, apart from a conclusory allegation in the complaint's introduction (¶ 3) about "multifaceted schemes and artifices implemented by Defendants and their collaborators[.]" And that allegation itself obviously could not support this claim. *See Ashcroft v. Iqbal*, 556 U.S. 662 (2009). This claim was therefore both legally and factually frivolous.

A second § 1983 claim against the Governor and Secretary was one for selective enforcement of election law, in violation of the Fourteenth Amendment's Equal Protection Clause. That claim presents a close question. As explained above, counsel had an evidentiary basis for pleading that Republican challengers were disproportionately excluded from and otherwise discriminated against in the TCF Center. To make out a selective-enforcement claim, counsel would have needed to plead that state actors "intended to accomplish some forbidden aim" through a "truly discriminatory application of a neutral law." *Stemler v. City of Florence*, 126 F.3d 856, 874 (6th Cir. 1996). Although counsel spent only a single paragraph of the complaint on this theory (¶ 189), that paragraph was a nonfrivolous attempt to state those elements. Counsel also requested injunctive relief targeting the alleged harms. Compl. ¶ 194. That is not to say the claim would have survived a motion to dismiss. For instance, the complaint did not explain what role, if any, the Governor and Secretary played in the law's discriminatory application. On balance, however, this claim was "meritless rather than frivolous." *See Waldman*, 854 F.3d at 855. Hence it was not sanctionable under Rule 11(b)(2).

The complaint also asserted several state-law claims against the Governor and Secretary. We have already explained that counsel's claims under the absentee-voting statute were sanctionable because the complaint failed to describe any violations of that statute. *See* M.C.L. § 168.765(a). Likewise frivolous was the complaint's attempt to state a claim under M.C.L. § 168.734, which merely sets forth certain criminal penalties for mistreatment of election

challengers. But the complaint's claim under a neighboring election-challenger provision, M.C.L. § 168.733, was not frivolous. That claim had a factual basis, as described above. Although that provision also does not expressly create a private cause of action, its terms—*e.g.*, "[a] person shall not threaten or intimidate a challenger while performing" some 13 different activities—leave room to argue in good faith that one should be implied under Michigan law. *See Pompey v. Gen. Motors Corp.*, 385 Mich. 537 (1971). This claim was not frivolous.

c.

The defendants argue that even the complaint's nonfrivolous claims were sanctionable because the complaint's requests for relief were frivolous. But parties can tailor those requests as the case proceeds, and the complaint here included a request for any "relief as is just and proper." Compl. ¶ 233. That means counsel could have filed this lawsuit without any of the requests for relief that defendants say were frivolous. Those requests alone therefore do not render the nonfrivolous legal claims sanctionable. Nor did the district court identify any other ground to support a determination that the entirety of this complaint was frivolous.

Plaintiffs, for their part, defend the inadequacy of their complaint by pointing to the time constraints inherent in election contests. But Rule 11 imposes a safe-harbor period to protect attorneys from sanctions for hasty mistakes. A party may seek sanctions only after providing notice of the alleged violations, which the opposing party then has 21 days to cure. Fed. R. Civ. P. 11(c); *see also* advisory committee's note to

1993 amendment ("[T]he timely withdrawal of a contention will protect a party against a motion for sanctions."). Here, the City sent plaintiffs a detailed letter specifying the allegedly sanctionable material. Plaintiffs could have avoided sanctions by abandoning frivolous claims and allegations and concentrating the attention of the court on what remained. They did not do so, and that is why we uphold much of their Rule 11 sanctions today.

4.

In sum, therefore, the complaint stated two claims that were nonfrivolous: a selective-enforcement claim under 42 U.S.C. § 1983, and a state-law claim under M.C.L. § 168.733. Neither claim was sanctionable under Rule 11. We agree with the district court, however, that plaintiffs' other claims were all sanctionable under that rule.

The same analysis for the most part applies to plaintiffs' motion for a temporary restraining order. But that motion focused exclusively on election fraud and contained only a single sentence on plaintiffs' nonfrivolous allegations about election challengers. With the exception of that sentence and counsel's discussion of their experts, then, the motion relied entirely on allegations that were factually frivolous, and was to that extent sanctionable under Rule 11.

B.

The defendants also argue, and the district court agreed, that counsel are liable for the entirety of the defendants' reasonable attorney's fees after December 14—because the plaintiffs failed to dismiss their case after it had concededly become moot. Under 28

U.S.C. § 1927, courts may award sanctions against an attorney who "multiplies the proceedings in any case unreasonably and vexatiously." Courts may award sanctions under this section "when an attorney knows or reasonably should know that a claim pursued is frivolous" and yet continues to litigate it. *Waeschle v. Dragovic*, 687 F.3d 292, 296 (6th Cir. 2012).

Here, plaintiffs themselves asserted in a petition to the Supreme Court that this case would become moot on December 14, 2020—the date Michigan's certified electors would cast their votes. Yet on December 15—when defendants sought plaintiffs' consent to a voluntary dismissal—counsel declined on the ground that the district court lacked jurisdiction to dismiss the case while it was on appeal. That excuse was make-weight: plaintiffs obviously could have voluntarily dismissed their appeal and complaint alike. Hence they unreasonably multiplied the proceedings by declining to dismiss their suit. *See Lemaster v. United States*, 891 F.2d 115, 118 (6th Cir. 1989).

The sanctioned attorneys now argue that the case gained "new life" when "an alternative slate of electors for Michigan was advanced in early January." That formulation is passive for a reason: what actually occurred in January is that the "alternative slate of electors" purported to elect themselves for the purpose of casting Michigan's electoral votes. And counsel do not explain why any competent attorney would take that self-election seriously for purposes of persisting in this lawsuit. Moreover, plaintiff's refusal to dismiss their suit had concrete consequences for defendants, who were forced to research and brief motions to dismiss that they should not have needed to file. The

district court was right to impose sanctions under § 1927.

Finally, as noted above, the district court also invoked its inherent authority as an alternative basis for sanctions. But we need not review the court's exercise of that authority here. Unlike Rule 11, inherent-authority sanctions require a showing of bad faith in addition to frivolousness. *See Big Yank Corp. v. Lib. Mut. Fire Ins. Co.*, 125 F.3d 308, 314 (6th Cir. 1997). The court's inherent authority therefore does not support sanctions for the matters we have found non-sanctionable; and as to the sanctionable ones, Rule 11 and § 1927 sufficed.

C.

1.

Some of the attorneys argue they were not responsible for the sanctionable filings in this case. Upon finding a violation of Rule 11, the court may sanction any attorney who "violated the rule or is responsible for the violation." Fed. R. Civ. P. 11(c). An attorney violates the rule directly by "presenting" an offending pleading to the court, such as "by signing, filing, submitting, or later advocating it." Fed. R. Civ. P. 11(b).

Separately, under 28 U.S.C. § 1927, the court may impose sanctions on attorneys whose conduct "falls short of the obligations owed by a member of the bar to the court." *Salkil*, 458 F.3d at 532. Here, the attorneys who appealed individually—Emily Newman, Stephanie Junttila, and Lin Wood, respectively—each argue they were not responsible for any frivolous filing under either standard.

a.

Although Emily Newman's name appeared on the complaint, she did not file or sign it. And at the sanctions hearing, Newman said she played only a minimal role in the litigation. Nobody at the hearing argued otherwise; in fact, Powell told the court that Newman "had no role whatseoever in the drafting and content of the[] complaints." And the district court made no factual findings to suggest that Newman was involved in drafting the complaint, the motion for preliminary injunction, or any other filing that defended plaintiffs' frivolous claims. Yet the court found that Newman was responsible for the complaint because it listed her as "Of Counsel." Fed. R. Civ. P. 11(c). The district court thus found Newman responsible more as a matter of form than as a matter of real responsibility. We therefore reverse the imposition of sanctions as to Newman.

b.

Stephanie Junttila did not appear in the case until December 8, 2020, by which time the other attorneys had already filed the complaint and the motion for a preliminary injunction. Yet the district court found that Junttila had "advocated" those filings—when she argued later that they were not sanctionable. But to seek relief on a claim is plainly different from arguing later that the claim was not frivolous. Junttila did only the latter; she never advocated the frivolous claims themselves. The district court's reasoning on this point was mistaken.

Junttila did personally decline defendants' request for a voluntary dismissal. But Junttila says she lacked the authority to agree to a voluntary dismissal, and

nobody argues otherwise. To the contrary, Powell (to her credit) candidly stated at oral argument that she was responsible for the decision to continue the case on December 14. We therefore reverse the imposition of sanctions as to Junttila as well.

c.

Lin Wood says that someone placed his name on the complaint without his consent and that he knew nothing about this case until he "saw something in the newspaper about being sanctioned." But two months before, Wood filed a brief in the Delaware Supreme Court, in which he said he "represented plaintiffs challenging the results of the 2020 Presidential election in Michigan and Wisconsin." Wood also tweeted about this case in December 2020, six months before the sanctions hearing, saying that "the enemy is running scared." Moreover, Powell said she "did specifically ask Mr. Wood for his permission" to put his name on the complaint; and Gregory Rohl submitted an affidavit stating that Wood "spearheaded" this suit. Suffice it to say that the district court did not clearly err when it found Wood not credible as to his involvement here. Nor, contrary to Wood's argument, was the district court required to undertake "an individual analysis" of his conduct before it could sanction him. *See NPF Franchising, LLC v. SY Dawgs, LLC*, 37 F.4th 369, 380-81 (6th Cir. 2022).

Wood also argues that the state defendants never sought any sanctions against him. The state defendants concede that point on appeal. Thus, as to Wood, we reverse only the court's award of attorney's fees to the state defendants.

2.

The remaining attorneys argue that the district court's sanctions were excessive. The district court awarded the City and the state defendants their full reasonable attorney's fees, required each attorney to take 12 hours of continuing legal education, and sent a referral for disciplinary proceedings to each attorney's respective bar association.

a.

Courts must limit any award of attorney's fees to only "those expenses directly caused" by the sanctionable conduct. *Cooter & Gell v. Hartmarx Corp*, 496 U.S. 384, 406-07 (1990). When a filing is entirely baseless, sanctionable conduct causes every expense reasonably incurred in responding to it. *Id.* But when, as here, a filing is partially non-sanctionable, courts may award only fees incurred in responding to the sanctionable parts. *Id.*; *see also* Fed. R. Civ. P. 11(c)(4); *Garner v. Cuyahoga Cnty. Juv. Ct.*, 554 F.3d 624, 635-47 (2009).

Here—given the district court's finding that the entire complaint was sanctionable—the court did not distinguish between fees generated in response to sanctionable and non-sanctionable parts of the complaint. But courts are loath to prolong satellite litigation about fees, and here the record allows us to sort out those fees for ourselves.

i.

The district court awarded the state defendants $21,964.75 for 57.8 hours of work by two attorneys. The state attorneys' billing records show they spent about 6 hours responding in various ways to non-

frivolous parts of the complaint, including review of the expert reports on which counsel reasonably relied. Given the hourly rates for the attorneys involved, that work amounted to $2,325 in fees. We therefore reduce the fee award to the state defendants to $19,639.75.

The district court awarded the City $153,285.62, about $30,000 less than it had requested. The City's billing records show that its attorneys spent approximately 26 hours responding to the nonfrivolous components of plaintiffs' complaint and preliminary-injunction motion. This work amounted to $8,450 in fees, which we will deduct from the City's award.

Wood argues that the City's fee award included too many hours related to the sanctions litigation. "The time, effort, and money a party must spend to get another party sanctioned realistically is part of the harm caused by that other party's wrongful conduct." *Norelus v. Denny's Inc.*, 628 F.3d 1270, 1298 (11th Cir. 2010). Thus, under Rule 11 a court may award fees incurred while pursuing sanctions. *Id.*; *see also Chambers*, 501 U.S. at 32.

The record here, however, shows that the district court awarded fees for a number of tasks that bore little connection to sanctionable conduct in this case. Those tasks included, for example, reviewing a Michigan State Senate report about the elections, and responding to filings by intervenor Davis, whose involvement in the case was no fault of plaintiffs' counsel. The billing records show that together these tasks consumed about 37.5 hours, which amounted to an additional $12,025 in attorney's fees. The district court abused its discretion when it included those fees in the City's award. *See Cooter & Gell*, 496 U.S. at 406.

With both of these deductions, then, we reduce the City's award to $132,810.62.

The sanctioned attorneys also argue that, as an intervenor, the City should not receive more in attorney's fees than the original defendants did. That argument is meritless: the City was all but compelled to intervene in this case, given (among other things) the plaintiffs' request that all the absentee ballots from the City's residents be "eliminat[ed]" from the vote count. Compl. ¶ 232.

ii.

The attorneys' remaining objections concern the court's non-monetary sanctions—namely the disciplinary referrals and the required legal education. As an initial matter, we reject the state defendants' argument that the attorneys' appeal of those sanctions is moot. Non-monetary sanctions cause continuing harm to counsel's reputation as attorneys, and thus present a live controversy even after an attorney complies with them. *See, e.g.*, *United States v. Talao*, 222 F.3d 1133, 1138 (9th Cir. 2000); *In re Goldstein*, 430 F.3d 106, 111 (2d Cir. 2005).

But we reject the attorneys' arguments on the merits. They assert that the district court violated the local rule governing disciplinary referrals; but that rule permits such referrals rather than proscribes them. *See* E.D.M.I. Local Rule 83.22(c). Nor do the nonmonetary sanctions violate the First Amendment. *See Mezibov*, 411 F.3d at 717.

* * *

We reverse the district court's imposition of sanctions against Emily Newman and Stephanie

Junttila, respectively; we reverse the state defendants' fee award as to Lin Wood; we reduce the City's award to $132,810.62; and we reduce the state defendants' fee award to $19,639.75. Otherwise, the district court's imposition of sanctions in its August 25, 2021 order is affirmed.

JUDGMENT, UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT (JUNE 23, 2023)

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

TIMOTHY KING, ET AL.,

Plaintiffs,

L. LIN WOOD (21-1785); GREGORY J. ROHL, BRANDON JOHNSON, HOWARD KLEINHENDLER, SIDNEY POWELL, JULIA HALLER, and SCOTT HAGERSTROM (21-1786); EMILY NEWMAN (21-1787); STEFANIE LYNN JUNTTILA (22-1010),

Interested Parties-Appellants,

v.

GRETCHEN WHITMER; JOCELYN BENSON; CITY OF DETROIT, MICHIGAN,

Defendants-Appellees.

Nos. 21-1785/1786/1787/22-1010

Appeal from the United States District Court for the Eastern District of Michigan at Detroit.

Before: BOGGS, KETHLEDGE, and WHITE, Circuit Judges.

JUDGMENT

THIS CAUSE was heard on the record from the district court and was argued by counsel.

IN CONSIDERATION THEREOF, it is ORDERED that the judgment of the district court is AFFIRMED IN PART and REVERSED IN PART.

ENTERED BY ORDER OF THE COURT

/s/ Deborah S. Hunt
Clerk

**OPINION AND ORDER,
UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF
MICHIGAN SOUTHERN DIVISION
(DECEMBER 2, 2021)**

UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

TIMOTHY KING, ET AL.,

Plaintiffs,

v.

GRETCHEN WHITMER, ET AL.,

Defendants.

and

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

Intervenor-Defendants.

Civil Case No. 20-13134

Before: Hon. Linda V. PARKER, U.S. District Judge.

OPINION AND ORDER

On August 25, 2021, this Court issued a decision granting motions for sanctions filed by Michigan Governor Gretchen Whitmer, Michigan Secretary of State Jocelyn Benson, and the City of Detroit. (ECF No. 172.) In that decision, the Court found sanctions warranted under Federal Rule of Civil Procedure 11(b)(1), (2), and (3), 28 U.S.C. § 1927, *and* the Court's own inherent authority. (*See, e.g., id.* at Pg ID 6893-94.) The sanctions imposed included an award of the attorneys' fees and costs Governor Whitmer, Secretary of State Benson, and the City of Detroit "incurred to defend this action."[1] (*See, e.g.*, ECF No. 172 at Pg ID 6996.) The Court ordered counsel for Governor Whitmer and Secretary of State Benson (hereafter "State Defendants") and counsel for the City of Detroit ("City") to submit time and expense records within fourteen days of the decision. (*Id.* at Pg ID 6998.) The Court permitted Plaintiffs' counsel to submit objections to the requested amounts within fourteen days of those filings. (*Id.*)

On September 8, 2021, the State Defendants filed documentation requesting a fee award of $21,964.75. (ECF No. 173 at Pg ID 7002.) This amount reflects the work of two attorneys: Heather Meingast and Erik Grill, both employed by the Michigan Attorney General's

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[1] Additionally, the Court referred counsel to the Michigan Attorney Grievance Commission and the appropriate disciplinary authority for the jurisdiction(s) where each attorney is admitted for investigation and possible suspension or disbarment and ordered Plaintiffs' counsel to complete at least twelve (12) hours of continuing legal education in the subjects of pleading standards (at least six hours total) and election law (at least six hours total) within six months of the decision.

Office. Ms. Meingast worked a total of 38.55 hours on this matter and seeks to be compensated at an hourly rate of $395. (ECF No. 173-2.) Mr. Grill worked a total of 19.25 hours on this matter and seeks to be compensated at an hourly rate of $350. (ECF No. 173-3.)

On the same date, the City filed documentation asking the Court to award it fees totaling $182,192. (ECF No. 174-1 at Pg ID 7025.) This amount is comprised of $39,999 for work "defending [this action] at the trial court level"; $26,077 in charges related to appellate work; and $116,116 for work related to the motions for sanctions. (*Id.*) The amount expended reflects work performed by three partners at the law firm of Fink Bressack (David Fink, the late Darryl G. Bressack, and Nathan Fink), three associate attorneys (Dave Bergh, John Mack, and Glenn Gayer), and a law clerk (Patrick J. Masterson). (*Id*. at Pg ID 7023.) Fink Bressack charged the City the following reduced blended hourly rates for these individuals: $325 for partners, $225 for associates, and $75 for law clerks and legal assistants. (*Id.*) According to David Fink, the firm agreed to discount its fees by an additional ten percent (10%) "because of the unexpectedly large volume of work involved in the election litigation[.]" (*Id.*)

Counsel for Plaintiffs filed objections on September 22, 2021, in which they indicate that they take no issue with the State Defendants' requested award but challenge the City's request on several grounds. (ECF

Nos. 175-177.) The Court will address each challenge below.[2]

Standards Applied

"The principal goal of Rule 11 sanctions is deterrence with compensation being a secondary goal." *Orlett v. Cincinnati Microwave, Inc.*, 954 F.2d 414, 419 (6th Cir. 1992) (citing omitted); *see also* Fed. R. Civ. P. 11(c)(4) (providing that a sanction "must be limited to what suffices to deter repetition of the conduct or comparable conduct by others similarly situated."). The Sixth Circuit has advised:

> [i]n determining an appropriate sanction under amended Rule 11, the court should consider the nature of the violation committed, the circumstances in which it was committed, the circumstances (including the financial state) of the individual to be sanctioned, and those sanctioning measures that would suffice to deter that individual from similar violations in the future. The court should also consider the circumstances of the party or parties who may have been adversely affected by the violation.

Id. at 420 (citation omitted). "Like the purpose of Rule 11, the goal of 28 U.S.C. § 1927 [is] not to make a party

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[2] Three separate Objections were filed, by: (i) Plaintiffs' attorneys Scott Hagerstrom, Julia Haller, Brandon Johnson, Howard Kleinhendler, Sidney Powell, and Gregory Rohl (ECF No. 175); (ii) Plaintiffs' attorney Emily Newman (ECF No. 176); and (iii) Plaintiffs' attorney L. Lin Wood (ECF No. 177). Many of counsel's arguments overlap, although not all. The Court finds it generally unnecessary to identify which arguments are asserted by which attorney(s) but will do so in limited circumstances.

whole, but to deter and punish." *Tildon-Jones v. Boladian*, 581 F. App'x 493, 498 (6th Cir. 2014) (citing *Red Carpet Studios Div. of Source Advantage, Ltd. v. Sater*, 465 F.3d 642, 647 (2006)).

In comparison, a sanction imposed under the court's inherent authority must be compensatory rather than punitive. *Goodyear Tire & Rubber Co. v. Haeger*, 137 S. Ct. 1178, 1186 (2017). Sanctions are "limited to the fees the innocent party incurred solely because of the misconduct . . . ." *Id.* at 1184. "In other words, 'the complaining party may recover only the portion of his fees that he would not have paid but for the misconduct.'" *In re Bavelis*, 743 F. App'x 670, 676 (6th Cir. 2018) (ellipsis, brackets, and additional quotation marks removed) (quoting *Haeger*, 137 S. Ct. at 1187).

The Court awarded the State Defendants and the City their *reasonable* attorneys' fees. (ECF No. 172 at Pg ID 6996.) The reasonableness of the fees requested is assessed using the "lodestar method," whereby the court multiplies "the number of hours reasonably expended on the case by a reasonable hourly rate." *See Barnes v. City of Cincinnati*, 401 F.3d 729, 745 (6th Cir. 2005); *see also Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983). The lodestar amount is presumed to be reasonable. *City of Riverside v. Rivera*, 477 U.S. 561, 568 (1986). The court may reduce the award "[w]here the documentation of hours is inadequate[.]" *Hensley*, 461 U.S. at 433. The Supreme Court has instructed district courts to also exclude fees not "reasonably expended," such as "hours that are excessive, redundant, or otherwise unnecessary." *Id.* at 434. A court also has the discretion to adjust that amount based on "relevant considerations peculiar to the sub-

ject litigation." *Adcock-Ladd v. Sec'y of Treasury*, 227 F.3d 343, 349 (6th Cir. 2000).

Fees Expended "Defending this Action"

As an initial matter, Plaintiffs' attorneys Emily Newman and L. Lin Wood assert that the City is not entitled to a fee award that includes any hours expended in connection with the motions for sanctions as those efforts were not made to "defend this action"—the language used in the Court's sanctions decision. Interestingly, the same attorneys do not take issue with the inclusion of the hours Ms. Meingast and Mr. Grill expended on sanctions issues, which the State Defendants included in their request. In any event, to the extent there is confusion as to the Court's intended meaning, it was to include fees incurred by the City and the State Defendants in relation to the motions for sanctions.

Work on Appeal

In comparison, the Court did not intend to include in its sanction award any fees connected to Plaintiffs' appeal. The Court made clear that it found sanctions warranted for the reasons discussed in its decision "*and not for any conduct that occurred on appeal*[.]" (ECF No. 172 at Pg ID 6992 (emphasis added).) Whether sanctions should be awarded based on Plaintiffs' pursuit of this action beyond the district court level is a decision for the Sixth Circuit Court of Appeals and/or the United States Supreme Court. *See Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384, 409 (1990) (concluding that "Rule 11 does not authorize a district court to award attorney's fees incurred on appeal"); *In re Cardizem CD Antitrust Litig.*, 481 F.3d

355, 362 (6th Cir. 2007) (holding that a district court may not award the cost of an appeal as part of its sanctions under 28 U.S.C. § 1927).

Therefore, the Court is reducing the City's requested award by the $26,077 in fees related to the appeal.

Disparity Between the State Defendants' and City's Fees

Plaintiffs' attorneys argue that any award to the City must be reduced because the City achieved the same result as the State Defendants, yet its attorneys billed five times that of the State Defendants' counsel. Absent a showing of unreasonableness as to any specific hours billed by the City's attorneys, however, the Court is unpersuaded that the City is not entitled to an award based on the actual hours its attorneys worked on this matter.

As an initial matter, Plaintiffs' attorneys do not point to any caselaw in which courts compared the fees charged by counsel on the same side when analyzing the reasonableness of one of their requests for attorney's fees. While the parties on one side of an action may have obtained the same result, that does not mean the issues focused upon were handled with the same manner or with the same depth. Further, there were issues raised by Plaintiffs' attorneys that specifically concerned only the City. Finally, with limited exceptions discussed *infra*, the Court finds the number of hours billed by the City's counsel unsurprising and not excessive given the complexity of the issues involved in this matter, the quality of the briefing and arguments presented, and the significance of this litigation to our democracy. The City's briefs were well

researched and its lead counsel, David Fink, was well prepared to address the varied and sometimes unexpected arguments raised at the sanctions hearing.

Block Billing

Plaintiffs' attorneys argue for a reduction in the City's award due to block billing. The Sixth Circuit has held that as long as the description of the work performed is adequate, block-billing is not contrary to the award of a reasonable attorney fee. *The Northeast Ohio Coal. for the Homeless v. Husted*, 831 F.3d 686, 705 n.7 (6th Cir. 2016) (citing *Smith v. Serv. Master Corp.*, 592 F. App'x 363, 371 (6th Cir. 2014); *Pittsburgh & Conneaut Dock Co. v. Dir., Office of Workers' Comp. Programs*, 473 F.3d 253, 273 (6th Cir. 2007) (Moore, J., concurring in part and dissenting in part)). Where counsel engaged in the use of vague block billing, however, courts have made across-the-board percentage cuts in the hours billed. *See, e.g., Gratz v. Bollinger*, 353 F. Supp. 2d 929, 939 (E.D. Mich. 2005) (citing cases finding a reduction of 10% or 20% in the number of hours billed by counsel appropriate due to block billing and imposing a 10% reduction).

Plaintiffs' attorneys identify six instances where the City's counsel engaged in block billing. (ECF No. 175 at Pg ID 7103-04.) Plaintiffs' attorneys assert, however, that "[t]he issue with these entries is not block billing; it's the City's choice to bill an *entire day's work* as one entry." (*Id.* at Pg ID 7104 (emphasis in original).) According to Plaintiffs' attorneys, this "makes it difficult to determine whether the time for discrete tasks was reasonable." (*Id.* (citing cases).)

Yet the City's attorneys' "block" entries are neither vague nor general. *But cf. Gratz*, 353 F. Supp. 2d at

939 (reducing the number of hours billed by counsel due to "vague and general entries such as, 'telephone conference,' 'office conference,' 'research,' and 'review article'"). Nor is the use of block billing pervasive in their billing records. *But cf. Bobrow Palumbo Sales, Inc. v. Broan-Nutone, LLC*, 549 F. Supp. 2d 274, 283 (E.D.N.Y. 2008) (finding a reduction warranted due to the "regular practice" of block billing by almost all of the defendant's attorneys and legal assistants with the "most egregious offenders" block billing on more than 61 occasions); Report & Recommendation, *Potter v. Blue Cross Blue Shield of Mich.*, No. 10-cv-14981 (E.D. Mich. Jan. 30, 2014), ECF No. 167 at Pg ID 15470 (finding "numerous instances of block billing, which also were vague), *adopted in* 10 F. Supp. 3d 737 (E.D. Mich. 2014). While it may have been preferable for counsel to have separately listed the tasks completed and the amount of time each task required, the City should be fully reimbursed for fees charged for the work its attorneys expended where the Court is able to assess whether the total time is reasonable given the number of tasks completed. As the Court is able to do so, it declines to reduce the requested award due to block billing.

Vague or Duplicative Entries

An attorney's billing records must "describe the work performed *in sufficient detail* to establish that the work is reasonably related to the litigation." *Gratz*, 353 F. Supp. 2d at 939 (emphasis in original and brackets removed) (quoting *In re Samuel R. Pierce*, 190 F.3d 586, 593-94 (D.C. Cir. 1999)). Plaintiffs' attorneys assert that "a number of [the City's attorneys' billing] entries are too vague to determine how they relate to this case", although Plaintiffs' attorneys

identify only one entry for 1.25 hours on November 28, 2020. (ECF No. 175 at Pg ID 7105-06 (quoting ECF No. 174-1 at Pg ID 7029).) Having reviewed the City's attorneys' billing records, the Court does not find entries, including the one identified, to be so insufficiently detailed that they fail to reflect "that the work was reasonably related to the litigation."[3]

Plaintiffs' attorneys also seek a reduction because more than one attorney billed for the same activities. As the Sixth Circuit has stated, however, "[m]ultiple-lawyer litigation is common and not inherently unreasonable." *Northeast Ohio Coalition for the Homeless*, 831 F.3d at 704 (citations omitted). The Sixth Circuit also has stated, however, that while "multiple representation can be productive . . . there is also the danger of duplication, a waste of resources which is difficult to measure." *Id.* (quoting *Coulter v. State of Tenn.*, 805 F.2d 146, 152 (6th Cir. 1986)). Where duplicative efforts are not reasonable, the court may make across-the-board reductions of the hours billed. *Coulter*, 805 F.2d at 152.

Plaintiffs' attorneys identify only four instances where the billing records of the City's attorneys reflect duplicative efforts: (i) review of the Complaint by four attorneys (ECF No. 174-1 at Pg *Id* 7027-28); (ii) review of the Amended Complaint by three attorneys (*id.* at Pg ID 7030-31); (iii) reviewing and revising the City's

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[3] Two entries have short descriptions: (i) a 12/1/20 entry by David Fink for "review of filings in King v. Whitmer" (ECF No. 174-1 at Pg ID 7033) and (ii) a 12/4/20 entry by Darryl Bressack for "review of Order from Judge Parker" (*id.* at Pg ID 7038). Nevertheless, the work clearly was "related to the litigation" and a review of the docket reflects the "filings" and "order" to which the attorneys refer.

Supplemental Brief in Support of Sanctions by two attorneys (*id.* at Pg ID 7094); and (iv) reviewing and preparing the City's response to Plaintiffs' attorneys' supplemental briefs regarding sanctions (*id.* at Pg ID 7095). But this was a complex case which, by Plaintiffs' account, needed to be resolved rapidly. Plaintiffs' Complaint, along with attached exhibits, exceeded 800 pages. (*See* ECF No. 1.) Their Amended Complaint, with exhibits, exceeded 900 pages. (*See* ECF no. 6.) The length of the pleadings alone justifies the contribution of multiple attorneys to sort through Plaintiffs' allegations. Moreover, all attorneys defending a case need to be familiar with the pleadings to adequately assist in the litigation. It was not unreasonable, particularly given the complexity and significance of the litigation, for more than one attorney to prepare and draft briefs.

The number of attorneys billing for these discrete tasks does not warrant a reduction in the City's sanction award.

"Non-Compensable" Hours

Plaintiffs' attorneys maintain that the time counsel for the City spent on "public relations efforts" and reading the news should be deducted from the fee award. Plaintiffs' attorneys point to: (i) 6.25 hours billed by Darryl Bressack on November 26, 2020 (ECF No. 174-1 at Pg ID 7027); .75 hours billed by Nathan Fink on December 5 (*id.* at Pg ID 7039); and 2.75 hours billed by David Fink on January 3, 2021 (*id.* at Pg ID 7055). None of these hours reflect "public relations efforts." Instead, the first and second reflect time counsel spent reviewing media reports and news articles about the lawsuit. The last reflects time spent

reviewing a transcript from a telephone call related to the efforts by former President Trump to overturn the election results in Georgia on the basis of alleged fraud. Notably, none of the entries are only for these tasks.

There are other instances where the City's attorneys billed to review newspaper articles and social media posts related to this case or similar election fraud cases, including some filed by Plaintiffs' attorneys.

- 11/26/20: 3.75 hours billed by David Fink in part for "review of media reports regarding King lawsuit (*see, e.g., id.* at Pg ID 7027);
- 12/4/20: 4 hours billed by David Fink in part for "review of newspaper and magazine articles about Mr. Braynard" (*id.* at Pg ID 7037);
- 12/5/20: .75 hours billed by Nathan Fink in part for "review of news articles regarding pending cases in Michigan and in other states" (*id.* at Pg ID 7039);
- 1/7/21: 1 hour billed by David Fink in part for "review of media reports regarding incitement by opposing counsel (*id.* at Pg ID 7057);
- 1/28/21: 3.75 hours billed by David Fink and 5 hours billed by Darryl Bressack in part for "[r]eview of American lawyer article . . . ; review of tweets from Lin Wood; review of social media postings that connect attorneys in Detroit litigation to Capitol mob" (*id.* at Pg ID 7058-59);

- 1/21/21: 1.5 hours billed by Glen Gayer for "[r]eview of social media screenshots regarding [City]'s Reply in Support of Motion for Sanctions; emails to [Darryl Bressack] regarding same" (*id.* at Pg ID 7065);
- 1/27/21: 1.5 hours billed by Glen Gayer in part for "[r]esearch regarding plaintiff's social media posts; email to [David Fink and Nathan Fink] regarding same (*id.* at Pg ID 7068);
- 5/20/21: .75 hours billed by David Fink in part for "review of Washington Post article regarding Ms. Junttila's public statements" (*id.* at Pg ID 7080);
- 6/24/21: .25 hours billed by Nathan Fink in part for "review of media reports regarding [preparing for hearing regarding Motion for Sanctions] (*id.* at Pg ID 7084);
- 7/19/21: 2.25 hours billed by David Fink in part for "review of recent Telegram postings by Lin Wood referring to [David Fink]; review of media reports regarding sanctions (*id.* at Pg ID 7091);
- 7/23/21: 2.5 hours billed by David Bergh in part for "review of Plaintiffs' counsel's social media posts (*id.* at Pg ID 7092); and
- 8/5/21: 2 hours billed by David Fink for "[r]eview and response to media inquiries (*id.* at Pg ID 7096).

Time spent on media-related matters might be compensable if necessary for the defense or prosecution of the lawsuit. *See Potter*, 10 F. Supp. 3d at 750 (citing

cases). With the exception of one billing entry, however, the City's attorneys' media-related tasks were not for the purpose of dispensing information to the public about this lawsuit. Instead, the attorneys were gathering information relevant to their defense of Plaintiffs' claims and the motives of Plaintiffs and their attorneys in prosecuting this lawsuit, the latter being relevant to the City's request for sanctions. Reviewing newspaper articles and media posts, which were additional forums Plaintiffs' attorneys used to advance their agenda, was necessary to present counsel's improper motive and purpose in filing this lawsuit (*see* ECF No. 172 at Pg ID 6983-84). It also uncovered information useful to undermine Plaintiffs' asserted facts and to demonstrate some of the bad faith conduct found in the Court's August 25 decision (*e.g.*, information undermining Joshua Merritt's purported expertise and showing that such information was or should have been known by Plaintiffs' counsel) (ECF No. 172 at Pg ID 6986-88.)

The Court finds such efforts to be compensable.

The one exception is David Fink's August 5, 2021 billing for "[r]eview and response to media inquiries." (ECF No. 174-1 at Pg ID 7096.) By that date, the City had filed its motion for sanctions and related supplemental briefing, the motion hearing had been held, and there was nothing to do but await the Court's decision. This is the only entry where counsel was engaged in "public-relations efforts." The Court is excluding those two hours from the sanction award.[4]

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[4] Two hours at an hourly rate of $325, reduced by 10%, or $585.

Excessive Billing

Plaintiffs' attorneys maintain that certain hours billed by the City's attorneys are unreasonable, such as the half hour billed on December 1 to read a motion containing three substantive pages and a text-only order (ECF No. 174-1 at Pg ID 7034) and two and a half hours billed on December 23 to review the City's own brief the day after it was filed (*id*. at Pg ID 7052). However, an attorney's "review" of a motion and court order—even if only a text-only order—does not necessarily describe only reading it. The Court does not find the time billed on December 1 excessive. Counsel did not bill two and a half hours on December 23 to only review the City's motion to dismiss after it was filed. (*See* ECF No. 174-1 at Pg ID 7052.) The billing entry also reflects scheduling for the motion and research. Nevertheless, billing for a motion already filed appears unreasonable. As the Court is unable to discern the length of time spent on each task in this entry, it finds it necessary to remove the total hours from the City's award.[5]

Plaintiffs' attorney, Emily Newman, asserts that additional hours billed are excessive. First she points to the 83.25 hours billed between December 23 to January 5, which she argues was mostly for work on the City's January 5, 2021 motion for sanctions. Ms. Newman points out that the City already had sought sanctions in connection with its motion to dismiss and had the benefit of the research completed for that motion, its opposition to Plaintiffs' motion for preliminary injunction, and the Court's opinion on this latter

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[5] Two and a half hours at an hourly rate of $225, reduced 10%, or $506.25.

motion to assist in the preparation of its stand-alone sanctions motion.

The City's initial request for sanctions, however, relied only on 28 U.S.C. § 1927, did not raise most of the arguments subsequently asserted by the City to support a sanctions award, and extended over only two and a half pages of the City's brief. (*See* ECF No. 73 at Pg ID 3576-78.) Many of the issues raised in the City's January 5 motion for sanctions, including the merits of claims on which Plaintiffs had not based their request for injunctive relief, were not previously presented nor, presumably, researched. Further, the City's response to Plaintiffs' motion for an injunction focused on the lawsuit's legal defects (*e.g.*, standing, laches, mootness) rather than the hundreds of pages of "evidence" attached to Plaintiffs' pleadings, which required extensive hours to sort through and address to support the City's request for sanctions under Rule 11. For these reasons, the Court does not find the hours expended during this time frame excessive.

Ms. Newman also objects to the 40.5 hours billed by the City's attorneys between January 27 and February 4, 2021, mostly to prepare the City's reply brief in support of its motion to dismiss and for sanctions. Ms. Newman finds the time excessive where the City already filed its stand-alone motion for sanctions which, as the Court subsequently indicated, mooted or superseded its earlier request for sanctions. (*See* ECF No. 149 at Pg ID 5267.) Upon reflection, however, the Court was mistaken. As indicated, the City's initial request for sanctions was based on § 1927. Its subsequent motion sought sanctions only pursuant to Rule 11. As such, it was not unreasonable for the City to

continue preparing its reply brief in support of its initial motion.

Ms. Newman next contends that the 40.25 hours billed by the City's attorneys between February 5 and May 20, 2021 are excessive because "[a]s of February 5, all claims had been dismissed, and all motions involving the City had been fully briefed." (ECF No. 176 at Pg ID 7120.) The docket undermines Ms. Newman's contentions, however. There were 19 docket entries between those two dates, which included at least five motions, three response briefs, a supplemental brief, a reply brief, one notice of joinder/concurrence, and six orders.

Ms. Newman next takes issue with the 82.75 hours the City's attorneys billed between June 8, 2021—when the Court issued its notice of hearing for the motions for sanctions—and July 11, 2021—when the hearing was held. Ms. Newman points out that "[t]he only substantive activity [in the case during this period] consisted of preparing for the hearing." (*Id.*) She also points out that the attorneys for the State Defendants billed only 3.5 hours to prepare for the hearing.

The docket reflects, however, that there was more for the City's attorneys to do during this time period than prepare for the hearing. Specifically, two motions were filed and briefed to adjourn the hearing, several attorneys entered their appearances on behalf of Plaintiffs' counsel, the Michigan Senate Oversight Committee issued a 55-page report finding no evidence of widespread or systematic fraud in the election, a motion was filed and briefed regarding the Court taking judicial notice of that report, Plaintiffs' attorneys moved to not appear in person at the hearing, and the

Court issued an opinion and order addressing eight motions. Further, the amount of time the State Defendants' attorneys billed for their hearing preparation is not a useful measurement of how much time the City's attorneys reasonably spent. Counsel for the City presented most of the arguments on behalf of the movants during oral argument and responded to the numerous issues raised. The Court does not find this billing excessive.

Nor does the Court find the 114.25 hours billed by the City from the date of the hearing to August 4 excessive. Ms. Newman attributes all of these hours to the City's preparation of its supplemental briefs. Again, the docket reflects more activity after the hearing than that. For example, Plaintiffs' attorney L. Lin Wood had posted a video from the hearing on social media in violation of the Court's local rules, leading to the filing of an emergency motion (ECF No. 151) and a show cause order issued by the Court (ECF No. 156). Plaintiffs' attorneys filed an emergency motion asking the Court to publicly release the video. (ECF No. 152.) Moreover, Plaintiffs' attorneys raised many arguments for the first time at the July 12 hearing in response to the motions for sanctions, many of which related to the City's Rule 11 motion, not the State Defendants' motion. Additional new arguments were made (and even new facts asserted) in Plaintiffs' counsel's supplemental briefs. Counsel for the City reasonably had to expend time responding to these new arguments.

For these reasons, the Court finds the hours expended by the City's attorneys during this period to be reasonable.

Redactions and Written Revisions

Numerous entries are redacted from the City's attorneys' billing records and hand-written changes have been made to some of the hours billed. Plaintiffs' attorneys argue that such redactions and revisions inhibit a meaningful review of the time entries.

As an initial matter, the City's attorneys have not billed for any hours where the billing entry is completely redacted.[6] Therefore, it is insignificant that numerous pages are heavily redacted or that complete entries are concealed. The handwritten changes to the hours billed reflect adjustments where limited tasks within the entry have been redacted. Presumably counsel has adjusted the time originally billed to account for these redacted tasks. The redactions do not prevent the Court from assessing the work done or the City's attorneys' hand-written entry of how long the task took. Contrary to Plaintiffs' counsel's assertion, it is not difficult to interpret or understand what is claimed by the City's attorneys and to assess its reasonableness.

Billing in Quarter-Hour Increments

Plaintiffs' attorneys argue for an across-the-board reduction in the hours billed by the City's attorneys due to the latter's use of quarter-hour billing.

Courts have declined to find the practice of billing in quarter hour increments per se unreasonable. *See Bench Billboard Co. v. Toledo*, 759 F. Supp. 2d

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[6] Based on the Court's calculations, the billing entries total 752.50 hours. The City's attorneys actually have based their award on fewer (729) hours.

905, 914 (N.D. Ohio 2010), *aff'd in part, rev'd in part*, 499 F. App'x 538 (6th Cir. 2019) (citing *Diffenderfer v. Gomez-Colon*, 587 F.3d 445, 455 (1st Cir. 2009); *Fox v. Vice*, 737 F. Supp. 2d 607, 609 (W.D. La. 2010); *Winterstein v. Stryker Corp. Grp. Life Ins. Plan*, No. C 02-05746, 2006 WL 1071884, at *2 (N.D. Cal. Apr. 24, 2006)). Nevertheless, in some instances, district courts have imposed across-the-board reductions in the hours billed in this manner, reasoning that it is "suspect" and "fee enhancing." *See Bench Billboard Co.*, 759 F. Supp. 2d at 914 (citing cases and imposing a 7.5% reduction for billing in quarter-hour increments); *see also Yellow Book USA, Inc. v. Brandeberry*, No. 3:10-cv-025, 2013 WL 2319142, at *8 (S.D. Ohio May 28, 2013); *Kelmendi v. Detroit Bd. of Educ.*, No. 12-14949, 2017 WL 1502626, at *21 (E.D. Mich. Apr. 27, 2017) (imposing a 5% reduction where the vast majority of the attorneys' time entries were rounded to a half or full hour). In many of those cases, the courts found a reduction warranted because the billing records were replete with quarter-and half-hour charges for tasks that likely took a fraction of the time (*e.g.*, drafting letters and emails, telephone calls, and intra-office conferences). *Bench Billboard*, 759 F. Supp. 2d at 914; *Welch v. Metro. Life Ins. Co.*, 480 F.3d 942, 949 (9th Cir. 2007) (affirming the district court's across-the board reduction for quarter-hour billing where the court found the hours "inflated because counsel billed a minimum of 15 minutes for numerous phone calls and e-mails that likely took a fraction of the time"); *Diffenderfer v. Gomez-Colon*, 606 F. Supp. 2d 222, 229 (D.P.R.), *aff'd* 587 F.3d 445 (1st Cir. 2009) (imposing a reduction where counsel billed by the quarter hour for reading each docket entry and "at least fifty similarly menial items"). In comparison, dis-

trict courts have declined to reduce charges due to quarter-hour billing where the attorney's time sheets do not reflect entries equating to menial tasks that would require less than fifteen minutes to complete, *Brandenberg v. Watson*, No. 3:10-cv-346, 2011 WL 609796, at *3 (S.D. Ohio Feb. 10, 2011), or when the law firm's regular practice is to bill in this manner, *see, Does I, II, III v. District of Columbia*, 448 F. Supp. 2d 137, 142 (D.D.C. 2006) (collecting cases).

An across-the-board reduction is inappropriate in this case. When ignoring the billing entries for tasks connected to the appeal—which the Court already has omitted from the sanctions award—the City's attorneys' billing records reflect limited instances where a quarter-hour was billed for tasks that likely took a few minutes. However, there are 25 instances (notably across 69-pages of billing records), reflecting quarter-hour billing for telephone conferences or emails. (*See* ECF No. 174-1 at Pg ID 7038, 7048-49, 7053-54, 7059, 7073, 7074, 7077, 7078, 7082, 7085, 7088, 7091, 7092.) Four of the entries were billed by an associate, while the remaining entries were billed by partners. The Court therefore will reduce the City's award accordingly—that is, by $1,738.13.

Rates Charged

Plaintiffs' attorney L. Lin Wood argues that the $292.50 hourly rate charged for Nathan Fink is unreasonable. Mr. Fink was admitted to practice in Michigan in 2011. Mr. Wood points out that the state bar median rate for lawyers practicing six to ten years is only $250. While true, the mean is $285—not far off from the amount charged for Mr. Fink. Moreover, the rate charged is below the median hourly rate

for civil litigators ($305), attorneys practicing in downtown Detroit ($308), and attorneys practicing in Wayne County ($295). Lastly, this is a blended rate for all partners, with the remaining two having many more years of experience and for whom a higher hourly rate presumably would have been charged.

Fees Related to the Motions for Sanctions

Plaintiffs' attorneys (except Ms. Newman and Mr. Wood as indicated *supra*) do not contest the City's request for an award that includes the fees related to its motions for sanctions; however, they do challenge the amount requested as being disproportional to the fees incurred to defend Plaintiffs' claims. Plaintiffs' attorneys cite to decisions advising that sanctions "should primarily reflect fees incurred as a result of the offensive pleading" (ECF No. 175 at Pg ID 7108) (quoting *Kassab v. Aetna Indus., Inc.*, 265 F. Supp. 2d 819, 824 (E.D. Mich. 2003)), or "which directly resulted from the sanctionable conduct" (ECF No. 177 at Pg ID 7126 (quoting *Divane v. Krull Elec. Co.*, 319 F.3d 307, 314 (7th Cir. 2003)). This case is not that straightforward.

Here, sanctions were not imposed based solely on a single offensive filing. Nor were sanctions imposed only on the authority of Rule 11. The Court has found sanctions warranted pursuant to its inherent authority, as well as under § 1927 because Plaintiffs' counsel unreasonably and vexatiously multiplied the proceedings.

As this Court opened its sanctions decision, "[t]his lawsuit represents a historic and profound abuse of the judicial process" and an attempt to "deceiv[e] a federal court and the American people into believing

that rights were infringed, without regard to whether any laws or rights were in fact violated." (Op. & Order at 1, ECF No. 172 at Pg ID 6890). Plaintiffs' attorneys filed this lawsuit without conducting the required degree of diligence as to the truth of the allegations made or the merits of the legal claims asserted. Unlike the typical case where sanctions are awarded, more was at risk in this matter than one or even a few defendants having to defend a meritless, repetitive, and/or nuisance lawsuit. Plaintiffs' counsel "exploited their privilege and access to the judicial process" to file a lawsuit that threatened to undermine the results of a legitimately conducted national election and, more significantly, "the People's faith in our democracy." (*Id.* at 2-3, Pg ID 6891-92 (emphasis removed).)

In this litigation, "Plaintiffs' attorneys . . . scorned their oath, flouted the rules, and attempted to undermine the integrity of the judiciary along the way." (*Id.* at 4, Pg ID 6893.) And even after this Court issued its decision finding Plaintiffs' claims barred under multiple legal theories, their counsel "brazenly assert-[ed] that they 'would file the same complaints again.'" (ECF No. 172 at Pg ID 6989) (quoting ECF No. 157 at Pg ID 5534).) "[Plaintiffs' attorneys] ma[de] this assertion even after witnessing the events of January 6 and the dangers posed by narratives like the one counsel crafted here." (*Id.*) The Court found sanctions necessary to deter such dangerous behavior in the future. For these reasons, it was perhaps as important for the City's counsel to prepare and present their arguments for sanctions in response to such conduct as it was to present the City's defenses to Plaintiffs' claims.

To outline the appropriateness of sanctions in this case, counsel had to address facts and issues not previously briefed extensively or, in some instances, at all. And as the Court's 110-page opinion and order granting the sanctions motions suggests, demonstrating the frivolity of the facts asserted in Plaintiffs' pleadings, outlining the applicable law regarding the award of sanctions under Rule 11, § 1927, and the Court's inherent authority, and applying that law to the circumstances here required a significant amount of time. As did responding to Plaintiffs' attorneys' constantly shifting arguments and frivolous assertions made and even repeated after being shut down by the Court (*e.g.*, counsel's argument that the First Amendment precluded the imposition of sanctions for their conduct in this litigation). The number of hours expended by the City's attorneys to do so is not unreasonable.

The Court therefore rejects the objections asserted by Plaintiffs' counsel to the sanctions-related fees.

Conclusion

Plaintiffs' counsel does not identify, nor does the Court find, a reason to adjust the $21,964.75 fee award sought by the State Defendants. While the Court finds merit to some of Plaintiffs' attorneys' objections to the $182,192 award sought by the City's attorneys, it rejects most of them. For the reasons discussed above, the Court reduces the City's award by $28,906.38. An award to the City of $153,285.62 is an appropriate sanction for the conduct discussed in the Court's August 25 decision, and is an amount the Court finds needed to deter Plaintiffs' counsel and others from engaging in similar misconduct in the future. Plaintiffs' attorneys, many of whom seek donations

from the public to fund lawsuits like this one, *see* https://defendingtherepublic.org/, have the ability to pay this sanction.

Accordingly,

IT IS ORDERED that Plaintiffs' attorneys Sidney Powell, L. Lin Wood, Howard Kleinhendler, Gregory Rohl, Stefanie Lynn Junttila, Emily Newman, Julia Z. Haller, Brandon Johnson, and Scott Hagerstrom, jointly and severally, are to pay the following amounts as sanctions within 30 days of this Opinion and Order:

1) To Defendants Gretchen Whitmer and Jocelyn Benson, the sum of $21,964.75; and,

2) To the City of Detroit, the sum of $153,285. 62.

IT IS FURTHER ORDERED that if any party appeals this Opinion and Order or the Court's August 25, 2021 decision, the obligation to pay the above sanctions is STAYED pending resolution of all appeals.

IT IS SO ORDERED.

/s/ Linda V. Parker
U.S. District Judge

Dated: December 2, 2021

**OPINION AND ORDER,
UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF
MICHIGAN SOUTHERN DIVISION
(AUGUST 25, 2021)**

UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

TIMOTHY KING, ET AL.,

Plaintiffs,

v.

GRETCHEN WHITMER, ET AL.,

Defendants,

and

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

Intervenor-Defendants.

Civil Case No. 20-13134

Before: Hon. Linda V. PARKER, U.S. District Judge.

OPINION AND ORDER

This lawsuit represents a historic and profound abuse of the judicial process. It is one thing to take on the charge of vindicating rights associated with an allegedly fraudulent election. It is another to take on the charge of deceiving a federal court and the American people into believing that rights were infringed, without regard to whether any laws or rights were in fact violated. This is what happened here.

Individuals may have a right (within certain bounds) to disseminate allegations of fraud unsupported by law or fact in the public sphere. But attorneys cannot exploit their privilege and access to the judicial process to do the same. And when an attorney has done so, sanctions are in order.

Here's why. America's civil litigation system affords individuals the privilege to file a lawsuit to allege a violation of law. Individuals, however, must litigate within the established parameters for filing a claim. Such parameters are set forth in statutes, rules of civil procedure, local court rules, and professional rules of responsibility and ethics. Every attorney who files a claim on behalf of a client is charged with the obligation to know these statutes and rules, as well as the law allegedly violated.

Specifically, attorneys have an obligation to the judiciary, their profession, and the public (i) to conduct some degree of due diligence before presenting allegations as truth; (ii) to advance only tenable claims; and (iii) to proceed with a lawsuit in good faith and based on a proper purpose. Attorneys also have an obligation to dismiss a lawsuit when it becomes clear that the requested relief is unavailable.

This matter comes before the Court upon allegations that Plaintiffs' counsel did none of these things. To be clear, for the purpose of the pending sanctions motions, the Court is neither being asked to decide nor has it decided whether there was fraud in the 2020 presidential election in the State of Michigan.[1] Rather, the question before the Court is whether Plaintiffs' attorneys engaged in litigation practices that are abusive and, in turn, sanctionable. The short answer is yes.

The attorneys who filed the instant lawsuit abused the well-established rules applicable to the litigation process by proffering claims not backed by law; proffering claims not backed by evidence (but instead, speculation, conjecture, and unwarranted suspicion); proffering factual allegations and claims without engaging in the required prefiling inquiry; and dragging out these proceedings even after they acknowledged that it was too late to attain the relief sought.

And this case was never about fraud—it was about undermining the People's faith in our democracy and debasing the judicial process to do so.

While there are many arenas—including print, television, and social media—where protestations, conjecture, and speculation may be advanced, such expressions are neither permitted nor welcomed in a court of law. And while we as a country pride ourselves on the freedoms embodied within the First Amendment, it is well-established that an attorney's freedom

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[1] In fact, resolution of that issue was never appropriately before the Court for the reasons stated in the Court's December 7, 2020 ruling. (*See* ECF No. 62.)

of speech is circumscribed upon "entering" the courtroom.[2]

Indeed, attorneys take an oath to uphold and honor our legal system. The sanctity of both the courtroom and the litigation process are preserved only when attorneys adhere to this oath and follow the rules, and only when courts impose sanctions when attorneys do not. And despite the haze of confusion, commotion, and chaos counsel intentionally attempted to create by filing this lawsuit, one thing is perfectly clear: Plaintiffs' attorneys have scorned their oath, flouted the rules, and attempted to undermine the integrity of the judiciary along the way.[3] As such, the Court is duty-bound to grant the motions for

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[2] *See Mezibov v. Allen*, 411 F.3d 712, 717, 720-21 (6th Cir. 2005) (quoting *Gentile v. State Bar of Nev.*, 501 U.S. 1030, 1071 (1991)) ("[The Supreme Court] has noted . . . that '[i]t is unquestionable that in the courtroom itself . . . whatever right to 'free speech' an attorney has is extremely circumscribed . . . [I]n filing motions and advocating for his client in court, [an attorney is] not engaged in free expression; he [is] simply doing his job. In that narrow capacity, he voluntarily accept[s] almost unconditional restraints on his personal speech rights . . . For these reasons, . . . in the context of the courtroom proceedings, an attorney retains no personal First Amendment rights . . .").

[3] Plaintiffs' counsel and their counsel have suggested that this Court's handling of these proceedings and any resultant decision can be expected based on the President who appointed the undersigned. This is part of a continuing narrative fostered by Plaintiffs' counsel to undermine the institutions that uphold our democracy. It represents the same bad faith that is at the base of this litigation. To be clear, all federal judges, regardless of which President appoints them, take oaths affirming that they will "faithfully and impartially discharge" their duties, 28 U.S.C. § 453, and uphold and protect the Constitution of the United States, 5 U.S.C. § 3331.

sanctions filed by Defendants and Intervenor-Defendants and is imposing sanctions pursuant to Rule 11 of the Federal Rules of Civil Procedure, 28 U.S.C. § 1927, and its own inherent authority.

I. Procedural History

On November 3, 2020, a record 5.5 million Michigan residents voted in the presidential election, resulting in then-Former Vice-President Joseph R. Biden, Jr. securing over 150,000 more votes than then-President Donald J. Trump.[4] By the following evening, President Biden had been declared the winner in the State.[5] Even though Michigan law establishes an extensive procedure for challenging elections, *see* Mich. Comp. Laws §§ 168.831-.832, .879, Plaintiffs did not avail themselves of those procedures, as they conceded at the July 12, 2021 motion hearing before this Court (ECF No. 157 at Pg ID 5332-33).

Instead, at 11:48 p.m. on November 25, 2020—the eve of the Thanksgiving holiday—Plaintiffs (registered Michigan voters and nominees of the Republican Party to be presidential electors on behalf of the State) filed the current lawsuit against Michigan Governor Gretchen Whitmer, Michigan Secretary of State Jocelyn Benson, and the Michigan Board of State Canvassers.

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[4] Moving forward, the Court refers to the current and former presidents as President Biden and Former President Trump, respectively.

[5] *See* Sam Gringlas, *Biden Wins Michigan, Per The AP, Putting Him 6 Electoral Votes From Presidency*, NPR (Nov. 4, 2020, 6:00 PM), https://perma.cc/S5NL-F9UB; Todd Spangler, *Joe Biden Wins Michigan in Critical Battleground Election Victory*, Detroit Free Press (Nov. 4, 2020, 6:00 PM), https://perma.cc/3N9J-A5KL.

The following lawyers electronically signed the pleading: Sidney Powell, Scott Hagerstrom, and Gregory J. Rohl. (ECF No. 1 at Pg ID 75.) The Complaint listed the following attorneys as "Of Counsel": Emily P. Newman, Julia Z. Haller, L. Lin Wood, and Howard Kleinhendler. (*Id.*)

On November 29, a Sunday, Plaintiffs filed, *inter alia*, an Amended Complaint (ECF No. 6) and an "Emergency Motion for Declaratory, Emergency, and Permanent Injunctive Relief and Memorandum in Support Thereof" ("Motion for Injunctive Relief") (ECF No. 7). The same attorneys who electronically signed or were listed as "Of Counsel" on the initial complaint signed or were listed on the amended pleading. (ECF No. 6 at Pg ID 957.) The amended pleading also listed Brandon Johnson as additional "Of Counsel." (*Id.*)

In their Amended Complaint, Plaintiffs alleged three claims pursuant to 42 U.S.C. § 1983: violations of (Count I) the Elections and Electors Clauses; (Count II) the Fourteenth Amendment Equal Protection Clause; and (Count III) the Fourteenth Amendment Due Process Clause. (ECF No. 6.) Under Count IV, Plaintiffs asserted violations of the Michigan Election Code. (*Id.*) Underlying Plaintiffs' claims were their contentions that Defendants (i) "failed to administer the November 3, 2020 election in compliance with the manner prescribed by the Michigan Legislature in the Michigan Election Code, [Mich. Comp. Laws] §§ 168.730-738" and (ii) "committed a scheme and artifice to fraudulently and illegally manipulate the vote count to make certain the election of Joe Biden as President of the United States." (*See* ECF No. 7 at Pg ID 1840 (citing "Compl., Section 1").) Plaintiffs asserted

that their claims were supported by "the affidavits of dozens of eyewitnesses and the statistical anomalies and mathematical impossibilities detailed in the affidavits of expert witnesses." (ECF No. 6 at Pg ID 873.) Plaintiffs attached hundreds of pages as exhibits to their pleadings, some of which included affidavits from individuals and reports from purported experts. (*See* ECF Nos. 6-1 to 6-30.) Most of these affidavits had been submitted by different lawyers in prior Michigan lawsuits challenging the 2020 presidential election. These other lawsuits include *Costantino v. City of Detroit*, No. 20-014780-AW (Wayne Cnty. Cir. Ct. filed Nov. 8, 2020) and *Donald J. Trump for President, Inc. v. Benson*, No. 1:20-cv-01083 (W.D. Mich. filed Nov. 11, 2020). Plaintiffs cited to these materials in support of the factual allegations in their Amended Complaint and Motion for Injunctive Relief.

Plaintiffs asked the Court to, *inter alia*, decertify the election results and order Defendants "to transmit certified election results that state that President Donald Trump is the winner of the election. . . . " (ECF No. 6 at Pg ID 955; ECF No. 7 at Pg ID 1847.) Plaintiffs maintained that this Court had to issue this relief by December 8, 2020, because, on that date, the results of the election would be considered conclusive. (*See* ECF No. 6 at Pg ID 890; ECF No. 7 at Pg ID 1846-47.)

By December 1, motions to intervene had been filed by the City of Detroit ("City") (ECF No. 5), Detroit resident and Michigan voter Robert Davis (ECF No. 12), and the Democratic National Committee and Michigan Democratic Party ("DNC/MDP") (ECF No. 14). As of that date, however, Plaintiffs had not yet served Defendants with the pleadings or the Motion

for Injunctive Relief. Thus, on December 1, the Court entered a text-only order to hasten Plaintiffs' actions to bring Defendants into the case and enable the Court to address Plaintiffs' pending motions. Plaintiffs served Defendants on December 1 (ECF No. 21), and the Court thereafter granted the motions to intervene (ECF No. 28) and entered an expedited briefing schedule with respect to Plaintiffs' Motion for Injunctive Relief (ECF No. 24).

On December 7, the Court issued an opinion and order denying Plaintiffs' motion and thereby declining to grant Plaintiffs the relief they wanted, which the Court noted was "stunning in its scope and breathtaking in its reach" as it sought to "disenfranchise the votes of the more than 5.5 million Michigan citizens who . . . participat[ed] in the 2020 General Election." (ECF No. 62 at Pg ID 3296.) The Court concluded that Plaintiffs' lawsuit was subject to dismissal based on any one of several legal theories: (i) their claims were barred by Eleventh Amendment immunity; (ii) their claims were barred under the doctrine of laches; (iii) they lacked standing; (iv) their claims were moot; and (v) abstention was appropriate under the doctrine set forth in *Colorado River Water Conservation District v. United States*, 424 U.S. 800 (1976). (*Id.* at Pg ID 3301-24.) But the Court also concluded that Plaintiffs were not likely to succeed on the merits of their claims. (*Id.* at Pg ID 3324-28.)

As to Plaintiffs' claim that Defendants violated the Elections and Electors Clauses by deviating from the requirements of the Michigan Election Code, the Court pointed out that Plaintiffs failed to "explain how or why such violations of state election procedures automatically amount to violations of the clauses"

(*id*. at Pg ID 3324), and case law did not support Plaintiffs' attempt to expand the Constitution that far (*id.* at Pg ID 3325). Thus, the Court found, Plaintiffs' Elections and Electors Clauses claim was "in fact [a] state law claim[] disguised as [a] federal claim." (*Id.* at Pg. ID 3324.) With respect to Plaintiffs' attempt to establish an equal protection claim based on the theory that Defendants engaged in tactics to, among other things, switch votes for Former President Trump to votes for President Biden, the Court found the allegations to be based on nothing more than belief, conjecture, and speculation rather than fact. (*Id*. at Pg ID 3326-28.) As to the due process claim, the Court noted that Plaintiffs abandoned it. (*Id*. at Pg ID 3317 n.5.)

The day after the Court issued its decision, attorney Stefanie Lynn Junttila entered her appearance in this matter (ECF No. 63) and filed a Notice of Appeal to the "Federal Circuit" on behalf of Plaintiffs (ECF No. 64). The notice was updated on December 10 to reflect the proper appellate court (namely, the Sixth Circuit Court of Appeals). On December 11, 2020, Sidney Powell, Stefanie Lynn Junttila, and Howard Kleinhendler filed a petition for writ of certiorari in the United States Supreme Court. (*See* ECF No. 68.) In the petition, when urging immediate Supreme Court review, Plaintiffs wrote: "Once the electoral votes are cast [on December 14, 2020] subsequent relief would be pointless." (ECF No. 105-2 at Pg ID 4401.)

On December 15, 2020, the City served a letter ("Safe Harbor Letter") and motion ("Safe Harbor Motion") on Plaintiffs' attorneys, threatening sanctions pursuant to Rule 11 of the Federal Rules of Civil Pro-

cedure. (ECF No. 161-3; *see also* ECF No. 95 at Pg ID 4118-19 (acknowledging service of the motion).) Specifically, counsel for the City sent the Safe Harbor Letter and Safe Harbor Motion via electronic mail and first-class mail to Sidney Powell, Gregory Rohl, Stefanie Lynn Junttila, Scott Hagerstrom, L. Lin Wood, and Howard Kleinhendler. (ECF No. 161-3 at Pg ID 6058-67.)

In the meantime, the Supreme Court did not rule on Plaintiffs' petition for writ of certiorari by December 14.[6] On December 22, Davis filed a motion seeking sanctions against Plaintiffs and their counsel pursuant to the Court's inherent authority and 28 U.S.C. § 1927. (ECF No. 69.) On the same day, motions to dismiss were filed by Defendants (ECF No. 70), the DNC/MDP (ECF No. 72), and the City (ECF No. 73). The City's motion to dismiss included four paragraphs discussing why Plaintiffs and Plaintiffs' counsel should be sanctioned pursuant to § 1927.[7] (*Id.* at Pg ID 3576-78.) And all three motions to dismiss reflected that concurrence had been sought, but not obtained, from Plaintiffs' counsel. (*See* ECF No. 70 at Pg ID 69; ECF No. 72 at Pg ID 3434; ECF No. 73 at Pg ID 3545.)

Plaintiffs' response to Davis' sanctions motion was due on January 5, 2021, and their responses to the motions to dismiss were due on January 12. *See* E.D. Mich. LR 7.1(e).

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[6] The Supreme Court eventually denied the petition on February 22, 2021. (*See* ECF No. 114 and accompanying docket entry text.)

[7] The City further explained in this motion that it "intends to file a Motion for Rule 11 sanctions (after the safe harbor expires)." (ECF No. 73 at Pg ID 3558 n.17.)

On January 3, Plaintiffs filed a motion seeking an extension of time (until January 19) to respond to Davis' sanctions motion, citing counsel's current assignments and the need for more time to prepare a response. (ECF No. 74 at Pg ID 3598.) The Court granted Plaintiffs' request. (ECF No. 76.) On January 12, Plaintiffs sought an extension of time (also until January 19) to respond to the pending motions to dismiss, again citing the need for more time to research the claims advanced in the motions. (ECF No. 82.) The Court granted this request, as well.

On January 14, Plaintiffs filed what was docketed as a response to all three pending motions to dismiss, but the single response brief addressed only the § 1927 sanctions requested in the City's motion to dismiss. (ECF No. 85.) On the same day, Plaintiffs filed notices voluntarily dismissing this case as to Defendants (ECF Nos. 86, 88, 90), the City (ECF No. 87), and the DNC/MDP (ECF Nos. 89, 91). Plaintiffs moved to voluntarily dismiss Davis a few days later. (ECF No. 92.) On January 26, 2021, the parties stipulated to the dismissal of the matter on appeal. (*See* ECF No. 101.)

In the meantime, on January 5, the City filed a Rule 11 "Motion for Sanctions, for Disciplinary Action, for Disbarment Referral and for Referral to State Bar Disciplinary Bodies." (ECF No. 78.) On January 28, Governor Whitmer and Secretary of State Benson (hereafter "the State Defendants") filed a "Motion for Sanctions Under 28 U.S.C. § 1927." (ECF No. 105.) All sanctions motions—including Davis'—were fully briefed thereafter.

On June 8, the Court scheduled a motions hearing for July 6 and, on June 17 ordered "[e]ach attorney

whose name appears on any of Plaintiffs' pleadings or briefs" to "be present." (ECF No. 123.) On June 28, Plaintiffs sought to adjourn the hearing due to Junttila's planned vacation (ECF No. 126), a request the opposing parties (except Davis) did not contest (ECF No. 126 at Pg ID 5201). The Court granted the request and eventually the hearing was scheduled for July 12. (ECF No. 147.) Prior to the hearing, Plaintiffs' attorneys (except Junttila) retained counsel to represent them.[8] (ECF Nos. 127-140, 148.)

The Court conducted an almost six-hour virtual hearing on July 12. At the beginning of the hearing, the Court explained that each question was directed to all attorneys and, if no other attorney commented or added to the initial response to a question, the Court would find that all other attorneys agreed with the answer placed on the record. (ECF No. 157 at Pg ID 5314.) At the end of the hearing, the Court indicated that the attorneys could file supplemental briefs and supporting affidavits (*id.* at Pg ID 5424, 5506-07, 5513, 5515, 5517), and thereafter entered an order setting deadlines for those briefs (*see* ECF No. 150). Supplemental briefs were subsequently filed (ECF Nos. 161-62, 164-65), as were responses thereto (ECF Nos. 166-171). No attorney filed an affidavit.

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[8] During the July 12 hearing, Donald D. Campbell and Patrick McGlinn represented Hagerstrom, Haller, Johnson, Rohl, Wood, Kleinhendler, and Powell, while Thomas M. Buchanan represented Newman. By the time post-hearing supplemental briefs were filed, Wood and Newman had obtained new counsel. (*See* ECF No. 154, 158.)

II. Sanctions Motions

The State Defendants and Intervenor-Defendants rely on 28 U.S.C. § 1927, Federal Rule of Civil Procedure 11, and the Court's inherent authority as the sources for sanctioning Plaintiffs and/or their counsel. In this section, the Court summarizes the arguments made in each sanctions motion. In the next section, the Court discusses the law that applies to each source of authority.

A. Governor Whitmer & Secretary of State Benson

The State Defendants seek sanctions against Plaintiffs' counsel under § 1927 or, alternatively, the Court's inherent authority.

The State Defendants contend that sanctions are appropriate pursuant to § 1927 for two reasons. "First, Plaintiffs' counsel unreasonably and vexatiously multiplied the proceedings in this litigation by failing to dismiss the case when their claims became moot, which plainly occurred upon the vote of Michigan's electors on December 14, if not earlier." (ECF No. 105 at Pg ID 4337.) "[S]econd, Plaintiffs' counsel knew or should have known that their legal claims were frivolous, but counsel pursued them nonetheless, even after the Court's opinion concluding that Plaintiffs were unlikely to succeed on the merits of their claims for multiple reasons," which included "the weakness of their legal claims and the lack of factual support." (*Id.* at Pg ID 4367.) And, the State Defendants argue, sanctions pursuant to the Court's inherent authority are appropriate because "Plaintiffs' claims were meritless, their counsel should have known this, and their

real motive in filing suit was for an improper purpose." (*Id*. at Pg ID 4369-74.)

In a supplemental brief filed in support of their motion for sanctions on April 6, 2021, the State Defendants also identify three specific allegations that they contend were not well-grounded in fact:

1. "'[T]he absentee voting counts in some counties in Michigan have likely been manipulated by a computer algorithm,' and [] at some time after the 2016 election, software was installed that programmed tabulating machines to 'shift a percentage of absentee ballot votes from Trump to Biden.'"
2. "Smartmatic and Dominion were founded by foreign oligarchs and dictators to ensure computerized ballot-stuffing and vote manipulation to whatever level was needed to make certain Venezuelan dictator Hugo Chavez never lost another election."
3. "The several spikes cast solely for Biden could easily be produced in the Dominion system by preloading 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."

(ECF No. 118-2 at Pg ID 4804-05 (citing ECF No. 6 at Pg ID 874 ¶ 5, 916-17 ¶ 124, 922 ¶ 143).)

B. City of Detroit

The City seeks sanctions against Plaintiffs and Plaintiffs' counsel for violating Rule 11.

The City first argues that the Complaint was filed for an improper purpose, in contravention of Rule 11(b)(1). The City supports this assertion by pointing to (i) the hurdles that previously barred Plaintiffs' success, including Eleventh Amendment immunity, mootness, laches, standing, and the lack of merit as to the claims under the Constitution and state statutory law; (ii) the lack of seriousness and awareness of deficiency evinced by Plaintiffs' failure to serve Defendants before this Court hastened them via its December 1, 2020 text-only order; and (iii) Plaintiffs' counsel's attempt "to use this Court's process to validate their conspiracy theories," "undermin[e] our democracy," and "overturn[] the will of the people" as evinced by statements made by some of Plaintiffs' attorneys. (ECF No. 78 at Pg ID 3636-43.)

The City also contends that Plaintiffs' claims were not well-grounded in law, in contravention of Rule 11(b)(2). This is so, the City argues, not only because of Eleventh Amendment immunity, mootness, laches, and standing, but also because the factual allegations could not support Plaintiffs' claims or the relief they requested. (*Id.* at Pg ID 3658-62.)

The City further contends that Plaintiffs' allegations were not well-grounded in fact, in contravention of Rule 11(b)(3):

1. Plaintiffs alleged 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," knowing that the assertion lacked evidentiary support because it was rejected in *Costantino*, the state court case decided before Plaintiffs filed the Com-

plaint (*id.* at Pg ID 3644 (citing Am. Compl. at ¶¶ 13, 42, 47, 57, 59-61));

2. Plaintiffs alleged that "Republican challengers were exclusively barred from entering the TCF Center," knowing that the assertion was rejected in *Costantino* (*id.* at Pg ID 3645 (citing Am. Compl. At ¶¶ 62-63));

3. Plaintiffs alleged that some absentee ballots were "pre-dated," knowing that the assertion was rejected in *Costantino* (*id.* at Pg ID 3645-46 (citing Am. Compl. at ¶¶ 88, 90));

4. Plaintiffs alleged that ballots were "counted more than once," knowing that the assertion was both rejected in *Costantino* and "conclusively disproven by the Wayne County canvass" (*id.* at Pg ID 3646-47 (citing Am. Compl. at ¶ 94));

5. Plaintiffs alleged that a "software weakness" in Dominion machines "upended Michigan's election results," knowing that the "two instances of errors [to which Plaintiffs cite]—one in Antrim County and one in Oakland County (Rochester Hills)"—did not constitute evidentiary support for the allegation (*id.* at Pg ID 3647-49);

6. Plaintiffs "intentional[ly] lie[d]" by filing the partially redacted declaration of "Spider"—who Plaintiffs identified as "a former US Military Intelligence expert" and "former electronic intelligence analyst with the 305th Military Intelligence"—which was signed by Joshua Merritt, who never completed the entry-level training course at the 305th

Military Intelligence Battalion and is not an intelligence analyst (*id.* at Pg ID 3651-52 (citing Am. Compl. at ¶¶ 17, 161));

7. Plaintiffs "intentional[ly] lie[d]" by filing the declaration of Russell James Ramsland, Jr., who claimed (i) that there were "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*," when "there were no hand recounts in Michigan as of that date"; (ii) "statistically improbable" voter turnouts, including a turnout of 781.91% in North Muskegon, where the publicly-available official results were known, as of election night, to be approximately 78%, and a turnout of 460.51% (or, elsewhere on the same chart, 90.59%) in Zeeland Charter Township, where it was already known to be 80%"; and (iii) that "'ballots can be run through again effectively duplicating them,'" when there were "safeguards in place to prevent double counting of ballots in this way" (*id.* at Pg ID 3652-54 (emphasis in original)); and

9. Plaintiffs "intentional[ly] lie[d]" by filing the "analysis" of William M. Briggs, who relied on "survey" results posted in a tweet by Matt Braynard and the "survey" "misrepresents Michigan election laws"; "disregards standard analytical procedures"; contains "a baffling array of inconsistent numbers"; and includes "conclusions [that are] without merit" (*id.* at Pg ID 3654-58).

The City maintains that monetary sanctions sufficient to deter future misconduct by counsel must include the amount counsel collected in their fundraising campaign to challenge the 2020 election, as well as the attorneys' fees Defendants incurred to defend against Plaintiffs' claims. (*Id.* at Pg ID 3662-63.) The City also seeks an injunction barring Plaintiffs and their counsel from filing future actions in this District without obtaining approval from a judicial officer and asks the Court to refer counsel for discipline and disbarment.[9] (*Id.* at Pg ID 3664, 3666-69.)

C. Davis

Davis seeks sanctions against Plaintiffs and their counsel pursuant to the Court's inherent authority and § 1927, based on many of the same legal and factual deficiencies set forth by the State Defendants, the City, and this Court in its December 7 decision. (ECF No. 69.)

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[9] The City also argues that "this is the rare case where the Plaintiffs themselves deserve severe sanctions." (ECF No. 78 at Pg ID 3664.) "Rule 11 expressly provides the district court with discretion to impose sanctions on a party that is responsible for the rule's violation, provided that the violation is not one for unwarranted legal contentions under Rule 11(b)(2)." *Rentz v. Dynasty Apparel Indus., Inc.*, 556 F.3d 389, 398 (6th Cir. 2009) (citing Fed. R. Civ. P. 11(c)(1), (c)(5)(A)). Nevertheless, courts generally decline to do so, and the Sixth Circuit has reserved such sanctions for occasions where the party can be said to have caused the violation. *Id.* The Court is unable to reach that conclusion here, particularly given that it is Plaintiffs' counsel, not Plaintiffs, who have filed similar legally frivolous lawsuits in other battleground states.

III. Applicable Law

A. Sanctions Pursuant to 28 U.S.C. § 1927

"Section 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 of costs, expenses, and attorneys' fees reasonably incurred because of such conduct.'" *Ridder v. City of Springfield*, 109 F.3d 288, 298 (6th Cir. 1997) (quoting 28 U.S.C. § 1927). The purpose of a sanctions award under this provision is to "deter dilatory litigation practices and to punish aggressive tactics that far exceed zealous advocacy." *Red Carpet Studios Div. of Source Advantage, Ltd. v. Sater*, 465 F.3d 642, 646 (6th Cir. 2006).

Section 1927 imposes an objective standard of conduct on attorneys, and courts need not make a finding of subjective bad faith before assessing monetary sanctions. *Id.* (*citing Jones v. Cont'l Corp.*, 789 F.2d 1225, 1230 (6th Cir. 1986)). A court need only determine that "an attorney reasonably should know that a claim pursued is frivolous." *Id.* (quoting *Jones*, 789 F.2d at 1230). "Simple inadvertence or negligence, however, will not support sanctions under § 1927." *Salkil v. Mount Sterling Twp. Police Dep't*, 458 F.3d 520, 532 (6th Cir. 2006) (citing *Ridder*, 109 F.3d at 298); *see also Red Carpet Studios*, 465 F.3d at 646 (holding that "§ 1927 sanctions require a showing of something less than subjective bad faith, but something more than negligence or incompetence"). Ultimately, "[t]here must be some conduct on the part of the subject attorney that trial judges, applying collective wisdom of their experience on the bench, could agree falls short of the obligations owed by a

member of the bar to the court. . . . " *Ridder*, 109 F.3d at 298 (quoting *In re Ruben*, 825 F.2d 977, 984 (6th Cir. 1987)).

B. Sanctions Pursuant to Rule 11(b) and (c)[10]

Rule 11(b) reads, in part:

> By *presenting* to the court a pleading, written motion, or other paper—*whether by signing, filing, submitting, or later advocating it*—an attorney . . . certifies to the best of the person's knowledge, information, and belief *formed after an inquiry reasonable under the circumstances*:
>
> (1) it is not being presented for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation;
>
> (2) the claims, defenses, and other legal contentions are warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law; [and]
>
> (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a rea-

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[10] Although the Court mentioned the availability of imposing Rule 11 sanctions on its own initiative during the July 12 hearing, it recognizes such sanctions must be preceded by a show cause order, which was not issued here. *See* Fed. R. Civ. P. 11(c)(3). Moreover, for the reasons discussed *infra*, the Court need not rely on that authority to sanction Plaintiffs' counsel.

> sonable opportunity for further investigation or discovery . . . [11]

Fed. R. Civ. P. 11(b) (emphasis added). Much of the italicized language was added to Rule 11 in 1993. *See* Fed. R. Civ. P. 11 Advisory Committee Notes (1993 Amendment). Also added in 1993 was the provision in subsection (c) allowing for the sanctioning of attorneys other than presenters who are "responsible" for a violation of the rule. *Id.*; Fed. R. Civ. P. 11(c)(1). As the Advisory Committee Notes explain: "The revision permits the court to consider whether other attorneys in the firm, co-counsel, other law firms, or the party itself should be held accountable for their part in causing a violation." Fed. R. Civ. P. 11 Advisory Committee Notes (1993 Amendment).

Any sanction imposed pursuant to Rule 11 "must be limited to what suffices to deter repetition of the conduct or comparable conduct by others

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[11] None of the allegations in the Amended Complaint contain "specific[]" reference to the need for additional factual support from investigation or discovery. And Plaintiffs plead on "information and belief" in only three of the Amended Complaint's 233-paragraphs. One of those paragraphs does not contain a fact asserted upon information and belief but seems to be concluding that facts asserted elsewhere reflect, upon information and belief, Defendants' failure to follow proper election protocol; another of those paragraphs relate to when a co-inventor of certain Dominion-related patents joined Dominion's predecessor; and the other relates to Plaintiffs' allegation that Defendants failed to post certain absentee ballot information before certain times on Election Day. (See ECF No. 6 at Pg ID 934 ¶ 166, 952 ¶¶ 221, 224.) Plaintiffs have not availed themselves of Rule 11's allowance for claims that "will likely have evidentiary support after a reasonable opportunity for further investigation or discovery," except for arguably in the latter two instances.

similarly situated." Fed. R. Civ. P. 11(c)(4). This is because "the central purpose of Rule 11 is to deter baseless filings in district court." *Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384, 393 (1990). Thus, "[e]ven if the careless litigant quickly dismisses the action, the harm triggering Rule 11's concerns has already occurred[,]" and "the imposition of such sanctions on abusive litigants is useful to deter such misconduct." *Id.* at 399.

Rule 11 "de-emphasizes monetary sanctions and discourages direct payouts to the opposing party." *Rentz v. Dynasty Apparel Indus., Inc.*, 556 F.3d 389, 395 (6th Cir. 2009) (quoting *Ridder*, 109 F.3d at 294 (citing Fed. R. Civ. P. 11 Advisory Committee Notes (1993 Amendment))). "The amended rule recognizes, however, that 'under unusual circumstances deterrence may be ineffective unless the sanction not only requires the person violating the rule to make a monetary payment, but also directs that some or all of this payment be made to those injured by the violation.'" *Id.* (quoting Fed. R. Civ. P. 11 Advisory Committee Notes (1993 Amendment)). In addition, a variety of possible sanctions are available under Rule 11, including, but not limited to, "requiring participation in seminars or other education programs; ordering a fine payable to the court; [and] referring the matter to disciplinary authorities."[12] Fed. R. Civ. P. 11 Advisory Committee Notes (1993 Amendment).

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[12] Plaintiffs maintain that the City's Rule 11 motion is procedurally defective because it seeks "both Rule 11 sanctions and . . . disbarment of attorneys and their referral to state bar associations for disciplinary action." (ECF No. 95 at Pg ID 4114-45.) Plaintiffs note that Rule 11 motions "must be made separately from *any other motion*[.]" (*Id.* at Pg ID 4145 (citing Fed. R.

In the Sixth Circuit, the test for imposing Rule 11 sanctions is "whether the individual's conduct was objectively reasonable under the circumstances." *Nieves v. City of Cleveland*, 153 F. App'x 349, 352 (6th Cir. 2005) (citing *Jackson v. Law Firm of O'Hara, Ruberg, Osborne & Taylor*, 875 F.2d 1224, 1229 (6th Cir. 1989)). To determine objective reasonableness, the court must ask "whether the position advanced by a party was supported by a reasonable inquiry into the applicable law and relevant facts." *Advo Sys., Inc. v. Walters*, 110 F.R.D. 426, 430 (E.D. Mich. 1986) (citations omitted). Whether a "reasonable inquiry" was conducted "is judged by objective norms of what reasonable attorneys would have done." *In re Big Rapids Mall Assoc.*, 98 F.3d 926, 930 (6th Cir. 1996). "Courts must not 'use the wisdom of hindsight,' but must instead test what was reasonable to believe at the time the pleading, motion, or other paper was submitted." *Gibson v. Solideal USA, Inc.*, 489 F. App'x 24, 29-30 (6th Cir. 2012) (quoting *Merritt v. Int'l Ass'n of Machinists and Aerospace Workers*, 613 F.3d 609, 626 (6th Cir. 2020)).

This objective standard is "intended to eliminate any 'empty-head pure-heart' justification for patently frivolous arguments." Fed. R. Civ. P. 11 Advisory Committee Notes (1993 Amendment); *Tahfs v. Proctor*,

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Civ. P. 11(c)(2) (emphasis added by Plaintiffs)).) Plaintiffs' argument is frivolous. The separate-motion requirement is designed only "to prevent [the sanctions request] from being tacked onto or buried in motions on the merits, such as motions to dismiss or for summary judgment." *Ridder*, 109 F.3d at 294 n.7. The City's request for referral and disbarment are merely the sanctions sought for Plaintiffs' alleged Rule 11 violations. As indicated above, a "variety of possible sanctions" may be imposed for a Rule 11 violation, including those requested by the City.

316 F.3d 584, 594 (6th Cir. 2003) ("A good faith belief in the merits of a case is insufficient to avoid sanctions.").

1. Signatures

Plaintiffs' lawyers argue that no attorney can be sanctioned whose name appeared only in typewritten form; that no attorney besides Plaintiffs' local counsel has appeared or signed a document filed in this matter; and that the Court lacks jurisdiction to sanction any attorney who did not personally appear or sign a document filed in this matter. (ECF No. 95 at Pg ID 4116-18.) Yet, the local attorneys assert that, although they signed the filings, they did not prepare them and thus should not be responsible for them. (*See* ECF No. 157 at Pg ID 5322-24, 5359, 5523; ECF No. 111-1 at Pg ID 4597 ¶¶ 2, 4, 6, 7, 9, 15.) As such, no attorney wants to take responsibility now that sanctions are sought for filing this lawsuit.

In this age of electronic filing, it is frivolous to argue that an electronic signature on a pleading or motion is insufficient to subject the attorney to the court's jurisdiction if the attorney violates the jurisdiction's rules of professional conduct or a federal rule or statute establishing the standards of practice. As set forth earlier, Sidney Powell, Scott Hagerstrom, and Gregory Rohl electronically signed—at least—the Complaint, Amended Complaint, and Motion for Injunctive Relief. The remaining attorneys, except Junttila, were listed as "Of Counsel" on one or more of the pleadings.[13] The cases Plaintiffs cite to support

[13] Junttila, however, did sign and docket subsequently filed motions, briefs, or other papers in which she and Plaintiffs' remaining attorneys advocated the claims asserted in their

their argument that non-signing attorneys cannot be sanctioned were decided before the 1993 amendments to Rule 11. (*See* ECF No. 95 at Pg ID 4116-17.)

For purposes of Rule 11, an attorney who is knowingly listed as counsel on a pleading, written motion, or other paper "expressly authorize[d] the signing, filing, submitting or later advocating of the offending paper" and "shares responsibility with the signer, filer, submitter, or advocate."[14] *Morris v. Wachovia Sec., Inc.*, No. 3:02cv797, 2007 WL 2126344, at *9 (E.D. Va. 2007) (emphasis removed) (quoting Gregory P. Joseph, *Sanctions the Fed. Law of Litig. Abuse*, § 5(E)(1) at 110 (3d ed. 2000)). "The Court need not go through 'mental gymnastics,' as pre-1993 courts sometimes felt compelled to do, *see* Sanctions, § 5(E)(1) at 109, in order [to] hold [the attorney] to account under Rule 11." *Id.*

Notably, because Rule 11 only requires a signature by "at least one attorney," Fed. R. Civ. P. 11(a), documents are frequently presented to federal courts which list several attorneys as counsel but contain the signature of only one. Regardless, as amended in 1993, Rule 11 allows for sanctions "on any attorney . . . that violated the rule *or is responsible for* the violation." Fed. R. Civ. P. 11(c)(1) (emphasis added). Moreover, Michigan Rule of Professional Conduct 8.5(a) reads:

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pleadings. (*See, e.g.*, ECF No. 85 at Pg ID 3896-3906); *see also* Fed. R. Civ. P. 11(b) (indicating that counsel "present[s] to the court a pleading, written motion, or other paper" by, *inter alia*, "signing," "filing," or "*later advocating* it") (emphasis added).

[14] At the July 12 hearing, Wood asserted for the first time that he was oblivious to his inclusion as counsel for Plaintiffs in this case. The Court will address this assertion separately.

"A lawyer not admitted in this jurisdiction *is also subject to the disciplinary authority of this jurisdiction* if the lawyer provides or offers to provide any legal services in this jurisdiction." (emphasis added).

By agreeing to place their names on pleadings and/or motions, counsel are responsible for those submissions and will be held accountable.[15]

2. L. Lin Wood

At the July 12 hearing, Wood maintained that the Court lacks jurisdiction to sanction him because he played no role in drafting the Complaint, did not read any of the documents with respect to the Complaint, was not aware of the affidavits attached to it, and did not give permission for his name to be specifically included in this action. When the Court asked Wood if he gave permission to have his name included on the pleadings or briefs, Wood answered:

> I do not specifically recall being asked about the Michigan complaint, but I had generally indicated to Sidney Powell that if she needed a, quote/unquote, trial lawyer that I would certainly be willing and available to help her.[16]

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[15] Although the issue of whether non-signing attorneys can be sanctioned is discussed in this Rule 11 section, the Court concludes for the same reasons that they can be sanctioned under § 1927 and the Court's inherent authority, as well. The same is true for Wood, Newman, and Rohl, who are discussed in the next subsections.

[16] Wood, therefore, admittedly "*offer[ed]* to provide . . . legal services in this jurisdiction." MRPC 8.5(a) (emphasis added).

> In this case obviously my name was included. My experience or my skills apparently were never needed so I didn't have any involvement with it.
>
> Would I have objected to be included by name? I don't believe so. . . .

(ECF No. 157 at Pg ID 5360.) The Court then asked Wood if he gave Powell permission to include his name on the filings in this matter, to which he responded:

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

(*Id.* at Pg ID 5360-61.)

Wood then denied being served with the motion for sanctions and stated that he was present only at the hearing because the Court required him to be there. (*Id.*) According to Wood, he only discovered that he had been included as counsel for Plaintiffs in this matter when he saw a newspaper article about the sanctions motion: "I didn't receive any notice about this until I saw something in the newspaper *about being sanctioned*." (*Id.* at Pg ID 5362, 5366 (emphasis added).)

When the Court turned to Powell and asked whether she told Wood his name was being placed on the pleading, Powell first answered:

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

(*Id*. at Pg ID 5371.) Powell then suggested that perhaps there was "a misunderstanding" between her and Wood.[17] (*Id*.) And Kleinhendler did not recall whether he spoke to Wood before Wood's name was included on the pleading. (*Id*.) The Court does not believe that Wood was unaware of his inclusion as counsel in this case until a newspaper article alerted him to the sanctions motion filed against him and this is why.

First, the City's motion for sanctions was filed on January 5, 2021. (ECF No. 78.) At no time between that date and the July 12 hearing did Wood ever notify the Court that he had been impermissibly included as counsel for Plaintiffs in this action. Almost a month before the motion hearing, the Court entered an order requiring "[e]ach attorney whose name appears on

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[17] The existence of a misunderstanding seems improbable given that several similar lawsuits seeking to overturn the presidential election results were filed in Georgia, Wisconsin, and Arizona, each bearing the same "Of Counsel" listing for Wood as appears here. *See* Compl., *Pearson v. Kemp*, No. 1:20-cv-04809 (N.D. Ga. filed Nov. 25, 2020), ECF No. 1 at Pg 103; Compl., *Feehand v. Wisconsin Elections Commission*, No. 2:20-cv-01771 (E.D. Wis. filed Dec. 1, 2020), ECF No. 1 at Pg 51; Compl., *Bowyer v. Ducey*, No. 2:20-cv-02321 (D. Ariz. filed Dec. 2, 2020), ECF No. 1 at Pg 53. Wood moved for pro hac vice admission in the Arizona proceedings. *See* Remark, *Bowyer*, No. 2:20-cv-02321 (D. Ariz. Dec. 4, 2020). He did not do so in Wisconsin but, like Michigan, the District Court for the Eastern District of Wisconsin does not permit pro hac vice motions. E.D. Wis. LR 83(c)(2)(E).

any of Plaintiffs' pleadings or briefs" to be present at the hearing. (ECF No. 123.) Wood still did not submit anything to the Court claiming that his name was placed on those filings without his permission. No reasonable attorney would sit back silently if his or her name were listed as counsel in a case if permission to do so had not been given.

Second, Wood is not credible.[18] He claims that he was never served with the City's motion for sanctions; however, counsel for the City represents that the motion was sent to Wood via e-mail and regular mail. (ECF No. 157 at Pg ID 5363-64.) Kimberly Hunt, the office manager for the City's attorneys, affirms in an affidavit that she mailed via First Class U.S. Mail a copy of the Safe Harbor Letter and the Safe Harbor Motion to Wood, among others, on December 15, 2020, and that no copies were returned as undeliverable. (ECF No. 164-3 at Pg ID 6393 ¶¶ 5, 8.) And despite being told that he had the opportunity to attach an affidavit to his supplemental brief in order to put his oath behind his factual assertions (*see* ECF No. 157 at

[18] Notably, while Wood stated at the July 12 hearing that he only learned about the motions seeking sanctions against him when he read about it in a newspaper article, Wood suggests in his supplemental brief that he in fact learned of his purported involvement in the lawsuit when he received a call from one of the attorneys in this matter in mid-to late-June 2021, alerting him to the Court's order requiring him to appear at the hearing on the sanctions motions. (ECF No. 162 at Pg ID 6102.)

Pg ID 5517), Wood surprisingly chose not to do so.[19, 20]

More importantly, Wood's social media postings undermine his current assertions, as do his statements in other court proceedings. As discussed during the July 12 hearing, on the day the City e-mailed copies of the Safe Harbor Letter and Safe Harbor Motion to Plaintiffs' counsel, Wood tweeted a link to an article containing a copy of the motion, stating "[w]hen you get falsely accused by the likes of David Fink and Mark Elias . . . in a propaganda rag like Law & Crime, you smile because you know you are over the target and the enemy is runningscared [*sic*]!" (ECF No. 164-

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[19] Wood asserts in his supplemental brief that he "and his legal assistant have performed a diligent search of all email correspondence as well as U.S. mail at Mr. Wood's Atlanta office and elsewhere. They have turned up no evidence to indicate they were provided with any Rule 11 notice prior to the filing of the motion." (ECF No. 162 at Pg ID 6122.) Yet no affidavit is offered from Wood or his legal assistant to attest to these assertions. And notably, the address listed for Wood on the filings in this matter (and thus where the City's attorneys mailed items to him) is a post office box, not his firm's address.

[20] Wood contends that he is entitled to a "full evidentiary hearing"—"should the Court determine that material factual questions do exist"—so that he "may present to the Court with the evidence of record, sufficient to establish the factual representations" made in his supplemental brief regarding why this Court does not have "jurisdiction" to sanction him. (ECF No. 162 at Pg ID 6124.) He is entitled to no such thing. *See In re Big Rapids Mall Assoc.*, 98 F.3d at 929 (recognizing that an evidentiary hearing is "not necessarily required where the court has full knowledge of the facts and is familiar with the conduct of the attorneys"). The July 12 hearing provided Wood the opportunity to present his evidence and, as noted *supra*, he had the further opportunity to attach an affidavit as evidence to his supplemental brief.

6 at Pg ID 6424; ECF No. 157 at Pg ID 5369-70.) On January 5, 2021, the day the City filed the motion, Wood tweeted a link to an article with the motion, stating that it was "unfair" for the City to seek sanctions against him. (ECF No. 164-7 at Pg ID 6426.) In a federal courtroom in the Eastern District of New York on January 11, Wood acknowledged that the City was "trying to get [him] disbarred." (ECF No. 164-12 at Pg ID 6506.)

Even more importantly, prior to the July 12 hearing, Wood took credit for filing this lawsuit.[21] In a brief submitted in the Delaware Supreme Court, Wood claimed, through his counsel:

> [Wood] represented plaintiffs challenging the results of the 2020 Presidential election in Michigan and Wisconsin In the days and weeks following the [General Election of 2020], Wood became involved in litigation contesting the election's results or the manner votes were taken or counted in critical "swing states." *Among those cases in which Wood became involved were lawsuits in* Wisconsin, *Michigan*, and Wood's own suit in the State of Georgia.

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[21] Notably, Rohl stated under oath that Wood, along with Powell, "spearheaded" this lawsuit. (ECF No. 111-1 at Pg ID 4597.) Though the Court hesitates to rely too much on the assertions of any of Plaintiffs' attorneys because their positions—as counsel for the City aptly describes—have been like "[s]hifting [s]ands[,]" the Court notes that Rohl's sworn affidavit was attached to a supplemental brief filed by Plaintiffs' counsel in response to the City's motion for sanctions. (*See* ECF No. 111 at Pg ID 4556, 4559, 4561-62.) No member of Plaintiffs' legal team objected to any part of Rohl's affidavit.

(ECF No. 164-13 at Pg ID 6525-26 (emphasis added) (internal citation omitted).) These statements are binding on Wood. *See K.V.G. Props., Inc. v. Westfield Ins. Co.*, 900 F.3d 818, 822 (6th Cir. 2018) (citing Fed. R. Evid. 801(d)(2)) (noting that pleadings, which are judicial admissions, "are binding legal documents that can be admitted as evidence against that party in subsequent proceedings").[22]

For these reasons, while Wood now seeks to distance himself from this litigation to avoid sanctions, the Court concludes that he was aware of this lawsuit when it was filed, was aware that he was identified as co-counsel for Plaintiffs, and as a result, shares the responsibility with the other lawyers for any sanctionable conduct.

3. Emily Newman & Gregory Rohl

Newman contends that she had a limited role in this lawsuit, having "not play[ed] a role in drafting the complaint" and spending "maybe five hours on [the matter]" "from home." (ECF No. 157 at Pg. ID 5317-18, 5324.) Therefore, Newman argues, she should not be subject to sanctions.

By placing her name on the initial and amended complaints, Newman presented pleadings to the Court asserting that Defendants committed constitutional and state law violations. Newman does not suggest

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[22] *See also United States v. Burns*, 109 F. App'x 52, 58 (6th Cir. 2004) (noting that courts have "discretion to consider statements made in a brief to be a judicial admission" and binding on the party who made them); *Beasley v. Wells Fargo Bank, N.A. for Certificate Holders of Park Place Sec., Inc.*, 744 F. App'x 906, 914 (6th Cir. 2018) (same).

that her name was included without her permission. In addition, Newman does not cite case law suggesting that an attorney may not be sanctioned under Rule 11 or any other source of sanctions authority if the time spent on the relevant lawsuit does not surpass an unidentified threshold. (*See generally* ECF No. 168.) And Newman's responsibility for any Rule 11 violation is not diminished based on where those working hours were spent (particularly during a global pandemic when many individuals were working remotely from home). *See* Fed. R. Civ. P. 11 Advisory Committee Notes (1993 Amendment) ("[S]anction[s] should be imposed on the persons—whether attorneys, law firms, or parties—who have violated the rule *or who may be determined to be responsible for* the violation The revision permits the court to consider whether other attorneys in [a] firm, co-counsel, other law firms, or the party itself should be held accountable *for their part* in causing a violation," even if they were not "the person actually making the presentation to the court."); *see Morris*, 2007 WL 2126344, at *9. So long as the attorney bears some responsibility, the attorney may be sanctioned. Fed. R. Civ. P. 11(c)(1).

In an affidavit filed in this case, Rohl stated that at "approximately 6:30 PM" on the day this lawsuit was filed, he "was contacted by an associate who asked Rohl if he would assist in litigation involving alleged election fraud in Michigan." (ECF No. 111-1 at Pg ID 4597.) He thereafter received a copy of "the already prepared" 830-page initial complaint and Rohl "took well over an hour" to review it. (*Id.*) "[M]aking no additions, deletions or corrections" to the Complaint (*id.* at Pg ID 4598), Rohl had his secretary file it at 11:48 p.m. (*Id.* at Pg ID 4597; ECF No. 1.)

To the extent Rohl asserts he should not be sanctioned because he read the pleading only on the day of its filing, the argument does not fly. Rule 11(b) "obviously require[s] that a pleading, written motion, or other paper be read before it is filed or submitted to the court," Fed. R. Civ. P. 11 Advisory Committee Notes (1993 Amendment), and the Court finds it exceedingly difficult to believe that Rohl read an 830-page complaint in just "well over an hour" on the day he filed it. So, Rohl's argument in and of itself reveals sanctionable conduct. Rule 11(b) also explains that, by presenting a pleading to the court, an attorney certifies that "to the best of the person's knowledge, information, and belief, formed *after a reasonable inquiry* under the circumstances," the complaint is not being filed for an improper purpose and is well-grounded in law and fact. Fed. R. Civ. P. 11(b) (emphasis added). The Court finds it even more difficult to believe that any inquiry Rohl may have conducted between the time he finished reading the Complaint and 11:48 p.m. could be described as a "reasonable" one. But also, Rohl cannot hide behind his co-counsel. As a signer of the complaints, Rohl certified to the Court that the claims asserted were not frivolous. Moreover, because his co-counsel were not admitted to practice in the Eastern District of Michigan, the complaints could not have been filed without Rohl's signature. *See* E.D. Mich. LR 83.20(f)(1), (i)(1)(D)(i). Therefore, to the extent Rohl contends that he was only helping co-counsel, he still failed to fulfill his obligations as an officer of the court.

4. Safe Harbor Requirement

At least 21 days before submitting a Rule 11 motion to a court, the movant must serve "[t]he

motion" on the party against whom sanctions are sought and the motion "must describe the specific conduct that allegedly violates Rule 11(b)." Fed. R. Civ. P. 11(c)(2). As indicated above, the City served a copy of its Rule 11 motion on Plaintiffs' counsel at least 21 days before it was filed.[23] Plaintiffs argue

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[23] With each new brief filed and opportunity to argue before the Court, Plaintiffs' attorneys raise a new argument for why they were not adequately served with the City's Safe Harbor Letter and Safe Harbor Motion. First, in their original response to the motion, Plaintiffs' counsel argued only that the notice served upon them was deficient because it was not accompanied by the City's more detailed brief. (*See* ECF No. 95 at Pg ID 4119.) Then, at the July 12 motion hearing, Wood and Newman suddenly claimed that they had not been served at all with the City's safe harbor materials. (ECF No. 157 at Pg ID 5317, 5362.) In the supplemental brief filed by Campbell on behalf of Plaintiffs' counsel Hagerstrom, Haller, Johnson, Kleinhendler, Powell, and Rohl, counsel insinuates that the Rule 11 motion was not properly served pursuant to Rule 5 of the Federal Rules of Civil Procedure, as required under Rule 11(c)(2). (*See* ECF No. 161 at Pg ID 5805 n.6.) No specific argument is made, however, as to how service did not comply with Rule 5. (*Id.*); *see McPherson v. Kelsey*, 125 F.3d 989, 995-96 (6th Cir. 1997) ("It is not sufficient for a party to mention a possible argument in the most skeletal way, leaving the court to . . . put flesh on its bones.") In his next filing on behalf of Hagerstrom, Haller, Johnson, Kleinhendler, Powell, and Rohl, Campbell raises two new arguments: (i) the City did not mail a copy of the safe harbor materials to the correct address for Johnson, and (ii) in a footnote of the safe harbor motion, concurrence was only sought from Powell. (ECF No. 167 at Pg ID 6679 n.1 (citing ECF No. 164-4 at Pg ID 6409 n.1).) Newman picked up the same refrain about her address in her supplemental brief. (*See* ECF No. 168 at Pg ID 7608-09.) Wood said nothing in his supplemental brief to challenge the address where he was served; however, in his response to the City's supplemental brief, he claimed for the first time that the zip code used by the City when mailing the safe harbor materials to him was incorrect. (*See* ECF No. 170 at Pg ID 6801.) However, the addresses used

that the City failed to comply with this "safe harbor" provision because the brief in support of the motion, which was filed later, was not included. (*See* ECF No. 95 at Pg ID 4118-19; ECF No. 161 at Pg ID 5805-06.) According to Plaintiffs, the City's motion "makes only conclusory statements and blanket assertions regarding the alleged violations of Rule 11 and fails altogether to 'describe the specific conduct that allegedly violates Rule 11(b).'" (ECF No. 95 at Pg ID 4119 (quoting Fed. R. Civ. P. 11(c)(2)).)

Rule 11, however, requires service of only "[t]he motion" to trigger the commencement of the 21-day safe harbor period. *See* Fed. R. Civ. P. 11(c)(2) ("The *motion* must be served "); *see also Star Mark Mgmt. v. Koon Chun Hing Kee Soy & Sauce Factory, Ltd.*, 682 F.3d 170, 176 (2d Cir. 2012) (citing *Ideal Instruments, Inc. v. Rivard Instruments, Inc.*, 243 F.R.D. 322, 339 (N.D. Iowa 2007)) (finding that the defendant's delivery of its sanctions motion met the procedural requirements of the safe harbor provision of Rule 11(c)(2) despite not serving at that time supporting affidavits or a memorandum of law); *Burbidge Mitchell & Gross v. Peters*, 622 F. App'x 749, 757 (10th Cir. 2015) (quoting *Star Mark*, 682 F.3d at 176 and "join[ing] the Second Circuit in declining 'to read into the rule a requirement that a motion served for purposes of the safe harbor period must include supporting papers such as

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by the City for each of these attorneys, including Wood's zip code (*see* ECF No. 161-3 at Pg ID 6058), were the exact addresses provided by Plaintiffs in their filings (*see, e.g.*, ECF No. 1 at Pg ID 75; ECF No. 6 at Pg ID 957). The belated argument regarding footnote 1 of the City's Safe Harbor Motion is frivolous as the Safe Harbor Letter was addressed to all counsel. (ECF No. 161-3 at Pg ID 6058.)

a memorandum of law and exhibits'"). As Plaintiffs' attorneys correctly point out (*see* ECF No. 161 at Pg ID 5805-06), the Local Rules for the Eastern District of Michigan require a motion to be accompanied by a brief, *see* E.D. Mich. LR 7.1(d)(1)(A), and judges in this District strike motions not complying with this requirement, *see, e.g., Williams Huron Gardens 397 Trust v. Waterford Twp.*, No. 18-12319, 2019 WL 659009, at *1 (E.D. Mich. Jan. 26, 2019). But this speaks to when a motion is *filed*. Moreover, the issue here is not whether the City complied with the District's local rules; rather, it is whether the City satisfied Rule 11's safe harbor requirements.

The Safe Harbor Motion the City served on Plaintiffs' counsel on December 15, 2020, "describe[s] the specific conduct that allegedly violates Rule 11(b)." Fed. R. Civ. P. 11(c)(2). Specifically, the City asserted violations of subdivisions (b)(1)-(3) of the rule:

1. "Initiat[ing] 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.' . . . [U]nderst[anding] 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." (ECF No. 161-3 at Pg ID 6060 (quoting ECF No. 62 at Pg ID 3329-30).)

2. Asserting "causes of action . . . 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) [that] 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." (ECF No. 161-3 at Pg ID 6061.) The City then went on to detail the legal deficiencies as to Plaintiffs' Elections and Electors Clauses, Equal Protection Clause, and Due Process Clause claims, and further argued that Plaintiffs lacked standing and their claims were moot and barred by laches. (*Id.* at Pg ID 6061-63.)

3. Raising "factual contentions . . . in the complaints and motions [which were] false." (*Id.* at 6063.) The City wrote further: "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." (*Id.* at Pg ID 6064.)

Plaintiffs' attorneys maintain that the City's motion was deficient because it "did not cite a single case or fact supporting [its] arguments" (ECF No. 161 at Pg ID 5806) and "fail[ed] to identify any specific factual allegation or witness that lacks evidentiary support" (ECF No. 95 at Pg ID 4119). Plaintiffs' attorneys do not identify any authority requiring case citations in a Rule 11 motion to satisfy the safe harbor

requirements.[24] Moreover, the failure to identify specific facts or witnesses has no bearing on the adequacy of the motion as to the claimed violations of Rule 11(b)(1) or (2).

And as to the claimed violations of Rule 11(b)(3), the motion was specific as to the violative conduct: All of the allegations discussed in the Rule 11(b)(3) analysis below (with the exception of one) concern supposed fraud in the processing and tabulation of absentee ballots by the City at the TCF Center (*see infra* 68-78)—just as the City specifically identified. And the one exception concerns a key factual allegation that was debunked in *Costantino*. (*See* ECF No. 31-15 at 2440-41.) Moreover, in the Safe Harbor Motion, the City expressly refers to its response to Plaintiffs' Motion for Injunctive Relief "for a detailed debunking of Plaintiffs' baseless factual contentions."[25] (ECF No. 161-3 at Pg ID 6064 (citing ECF No. 39 at Pg ID 2808-2[8]33).)

C. Sanctions Pursuant to the Court's Inherent Authority

"Even if there are sanctions available under statutes or specific federal rules of procedure, . . . the 'inherent authority' of the court is an independent

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[24] As discussed earlier, Rule 11(c)(2) does not require a memorandum of law or exhibits to satisfy the safe harbor requirements. *Star Mark Mgmt.*, 682 F.3d at 176; *Ideal Instruments, Inc.*, 243 F.R.D. at 339; *Burbidge Mitchell & Gross*, 622 F. App'x at 757.

[25] Even if the City did not specify every allegation in Plaintiffs' pleading lacking evidentiary support, the same conduct could be sanctioned (and, as found *infra*, is sanctionable) under the Court's inherent authority.

basis for sanctioning bad faith conduct in litigation." *Dell, Inc. v. Elles*, No. 07-2082, 2008 WL 4613978, at *2 (6th Cir. June 10, 2008) (citing *Chambers v. NASCO, Inc.*, 501 U.S. 32, 49-50 (1991)); *see also Runfola & Assocs. v. Spectrum Reporting II, Inc.*, 88 F.3d 368, 375 (6th Cir. 1996) ("In addition to Rule 11 and 28 U.S.C. § 1927, a district court may award sanctions pursuant to its inherent powers when bad faith occurs."). To award attorneys' fees under this "bad faith exception," a district court must find that (i) "the claims advanced were meritless"; (ii) "counsel knew or should have known this"; and (iii) "the motive for filing the suit was for an improper purpose such as harassment." *Big Yank Corp. v. Liberty Mut. Fire Ins. Co.*, 125 F.3d 308, 313 (6th Cir. 1997) (citation omitted) ("The district court has the inherent authority to award fees when a party litigates in bad faith, vexatiously, wantonly, or for oppressive reasons." (internal quotation marks omitted)).

The Sixth Circuit has further explained:

> For a court to impose sanctions under its inherent powers, it is not necessary that the court find that an action was meritless as of filing, or even shortly thereafter. It can become apparent part-way through a suit that an action that initially appeared to have merit is in fact meritless; parties and attorneys have a responsibility to halt litigation *whenever* they realize that they are pursuing a meritless suit . . . [M]oreover, a party or firm might enter an action long after the filing of the initial complaint, but may still be sanctionable under a court's inherent powers if it acts in bad faith. The "something

> more" that a court must find to meet the third prong of the *Big Yank* test may similarly occur at any stage of the proceedings. A court imposing sanctions under its inherent powers may consider the nature and timing of the actions that led to a finding of bad faith in determining whether to impose sanctions on conduct from that point forward, or instead to infer that the party's bad faith extended back in time, perhaps even prior to the filing of the action.

BDT Prod., Inc. v. Lexmark Int'l, Inc., 602 F.3d 742, 753 n.6 (6th Cir. 2010) (emphasis in original). The Supreme Court has held that "a federal court's inherent authority to sanction a litigant for bad-faith conduct by ordering it to pay the other side's legal fees . . . is limited to the fees the innocent party incurred solely because of the misconduct." *In re Bavelis*, 743 F. App'x 670, 675 (6th Cir. 2018) (quoting *Goodyear Tire & Rubber Co. v. Haeger*, 137 S. Ct. 1178, 1183-84 (2017)). In other words, "[t]he complaining party . . . may recover 'only the portion of his fees that he would not have paid but for' the misconduct" but courts have "considerable room" to "exercise discretion and judgment" when making this "but for" determination. *Id.* at 676 (quoting *Goodyear Tire*, 137 S. Ct. at 1187).

Plaintiffs' attorneys contend that the Court cannot rely on its inherent authority because "[t]he comments accompanying Rule 11 indicate that its procedures are controlling when the Court exercises its inherent authority." (ECF No. 161 at Pg ID 5804.) This argument is misleading. Plaintiffs' counsel first quote the Advisory Committee's 1993 comment to Rule 11: "The power of the court to act on its own initiative is

retained, but with the condition that this be done through a show cause order." (*Id*. (quoting Fed. R. Civ. P. 11 Advisory Committee Notes (1993 Amendment)).) But this comment simply explains that the amendment retained the authority for courts to issue *sua sponte* sanctions pursuant to *Rule 11* but with the added requirement of a show cause order.

To maintain that the show cause requirement applies to sanctions under a court's inherent authority, Plaintiffs' attorneys quote a second statement in the comments but strategically omit the following key italicized language: "[T]he procedures specified in Rule 11—*notice, opportunity to respond, and findings*—should ordinarily be employed when imposing a sanction under the court's inherent authority." (*Id.* (omitted language added).) Nothing in the comments suggests that the additional procedures in Rule 11 apply when a court sanctions pursuant to its inherent authority or that Rule 11 supplants this authority. In fact, the Advisory Committee's 1993 comment specifically states the opposite:

> Rule 11 is not the exclusive source for control of improper presentations of claims, defenses, or contentions. It does not supplant statutes permitting awards of attorney's fees *It does not inhibit the court* in punishing for contempt, *in exercising its inherent powers*, or in imposing sanctions, awarding expenses, or directing remedial action authorized under other rules or under 28 U.S.C. § 1927.

Fed. R. Civ. P. 11 Advisory Committee Notes (1993 Amendment) (emphasis added).

When invoking its inherent authority to sanction, "[a] court must, of course, . . . comply with the mandates of due process, both in determining that the requisite bad faith exists and in assessing fees." *Chambers*, 501 U.S. at 50 (citing *Roadway Express, Inc. v. Piper*, 447 U.S. 752, 767 (1980)). The Sixth Circuit has further explained:

> The district court must [] afford the parties concerned . . . at least minimal procedural protections, including notice and the opportunity to respond or to be heard. *Miranda*, 710 F.2d at 522. We do not, in so holding for due process purposes, indicate that there must be a formal 'complaint' lodged with specifications in the event of a proposed sanction, or that a 'full fledged' hearing is mandated, but notice and a reasonable opportunity to be heard is a minimum protection to be afforded.

Ray A. Scharer & Co. v. Plabell Rubber Prod., Inc., 858 F.2d 317, 321 (6th Cir. 1988) (additional internal citations omitted) (discussing due process in context of court's inherent authority); *see also Banner v. City of Flint*, 99 F. App'x 29, 37 (6th Cir. 2004) (explaining that, when exercising its inherent authority, a court must "give . . . minimal procedural protections, but no[] formal notice detailing the penalties or a full evidentiary hearing" is required "when the court has sufficient relevant information, including pleadings or materials filed in the record, to decide"); *In re Big Rapids Mall Assoc.*, 98 F.3d at 929 (recognizing that an evidentiary hearing is "not necessarily required where the court has full knowledge of the facts and is familiar with the conduct of the attorneys"). Ultimately,

when a court intends to invoke its inherent authority, "[a]t the very least, responsive briefing . . . [can] provide[] the procedural safeguards necessary." *KCI USA, Inc. v. Healthcare Essentials, Inc.*, 797 F. App'x 1002, 1007 (6th Cir. 2020); *see also Red Carpet Studios*, 465 F.3d at 647 (finding that the court provided due process when sanctioning via its inherent authority where sanctioned party "argued his case in writing and at a hearing, and [] makes no argument why the notice and the hearing he received were inadequate").

Plaintiffs' lawyers have been afforded due process here. Through the multiple motions for sanctions and related briefs and during the July 12 motion hearing, they received notice of: (i) who sanctions were being sought against; (ii) the reasons why; (iii) the authority pursuant to which sanctions were requested; and (iv) the types of sanctions requested. Counsel were provided the opportunity to answer the sanctions allegations in responsive briefs, orally at the six-hour hearing, and in supplemental briefing. To the extent the Court questioned Plaintiffs' counsel about materials attached to their pleadings which had not been specifically addressed in the movants' briefs, counsel had an opportunity to respond to those concerns in their supplemental briefs—and counsel took advantage of that opportunity. (*See, e.g.*, ECF No. 161 at Pg ID 5815-19; ECF No. 165 at Pg ID 6578-80; ECF No. 167 at Pg ID 6682-84, 6684 n.3).

IV. Discussion[26]

A. Whether Plaintiffs' Counsel Violated 28 U.S.C. § 1927

The Court first considers whether Plaintiffs' counsel unreasonably and vexatiously multiplied proceedings by failing to dismiss this case when even they acknowledged it became moot. *Ridder*, 109 F.3d at 298 (quoting 28 U.S.C. § 1927).

Plaintiffs expressly acknowledged in their petition for writ of certiorari to the Supreme Court that "[o]nce the electoral votes are cast, subsequent relief would be pointless," and "the petition would be moot." (ECF No. 105 at Pg ID 4362 (citing ECF No. 105-2 at Pg ID 4401, 4409).) Michigan's electors cast their votes on December 14. "Yet, that date came and went with no acknowledgement by Plaintiffs and their counsel to Defendants or this Court," the State Defendants argue, forcing the State Defendants and Intervenor-Defendants to file motions to dismiss on December 22. (*Id.* (citing ECF No. 70); *see also* ECF Nos. 72, 73.)

During the July 12 motion hearing, Campbell contended that—over the course of the litigation—"things change[d]." (ECF No. 157 at Pg ID 5345.) He explained, when this case was filed on November 25, counsel "thought honestly and truly that the drop-

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[26] At last, this opinion arrives at the issue of whether Plaintiffs' attorneys should be sanctioned. The Court is aware of how long it took to get here. But addressing Plaintiffs' counsel's arguments concerning the Court's ability to impose sanctions was first required, and—as noted previously—those arguments shifted and multiplied with each new brief they filed.

dead date was December 8th, and that's what [they] said to this Court." (*Id.* at Pg ID 5346.) Later, "a judge in Wisconsin said," according to Campbell, "Well, why are you guys all hurrying for December 8th. It should be December 14th." (Id.) Campbell continued, because "[s]omebody else came along and said, 'Why not December 14th?' . . . [counsel] didn't argue with that" and gave the United States Supreme Court that date as the one upon which the case becomes moot. (*Id.*) And on December 14, "three [] [] Plaintiffs were, in their opinion, properly elected as electors" and, Campbell further explained, "[t]hat changed things, and [then] the Supreme Court's determination did have life." (*Id.*)

In other words, Plaintiffs' attorneys maintain that this lawsuit was no longer moot after December 14 because three Plaintiffs subjectively believed that they had become electors. The attorneys cite no authority supporting the notion that an individual's "[personal] opinion" that he or she is an elector is sufficient to support the legal position that the individual is in fact an elector. Of course, such a belief is contrary to how electors are appointed in Michigan. *See* Mich. Comp. Laws § 168.42. In any event, Plaintiffs' attorneys fail to provide a rational explanation for why this event breathed life into this action. Moreover, prior to the July 12 hearing, Plaintiffs never told anyone about this newly-formed subjective belief. They did not tell this Court that the case would no longer be moot after December 8, despite telling this Court the exact opposite when filing this lawsuit on November 25. And they did not tell the Supreme Court that the case would no longer be moot after December 14, despite telling that Court the exact

opposite on December 11. The fact that it was never shared suggests that counsel's argument as to why the case had to be pursued after December 14 is contrived.

Plaintiffs' attorneys proffer several additional unpersuasive arguments. First, citing *Beverly v. Shermetta Legal Grp.*, No. 2:19-CV-11473, 2020 WL 2556674 (E.D. Mich. May 20, 2020), they argue that the act of filing the initial complaint is not enough to warrant sanctions under § 1927. (ECF No. 85 at Pg ID 3887, 3890, 3894; ECF No. 93 at Pg ID 4071; ECF No. 112 at Pg. ID 4609, 4625-26; ECF No. 161 at Pg ID 5808-09; ECF No. 165 at Pg ID 6572.) This argument misses the crux of opposing counsel's argument for § 1927 sanctions, which is that Plaintiffs' counsel multiplied proceedings by failing to dismiss the case when their claims became moot on December 14 (if not earlier) and by pursuing their legal claims even after the Court issued its opinion clearly informing Plaintiffs and their counsel that their legal claims were weak and lacked factual support.

Second, Plaintiffs' counsel contend that they "moved as expeditiously as possible from the outset through the termination of this proceeding" and "had not injected new legal claims or evidence after this Court's December 7, 2020[] Order denying the TRO Motion." (ECF No. 85 at Pg ID 3893-94; ECF No. 112 at Pg ID 4625.) Even if true, it misses the point as to why counsel unreasonably and vexatiously multiplied the proceedings. "[I]f events that occur subsequent to the filing of a lawsuit . . . deprive the court of the ability to give meaningful relief, then the case is moot and must be dismissed." *Sullivan v. Benningfield*, 920 F.3d 401, 410 (6th Cir. 2019) (quoting *Ailor v. City of*

*Maynardvill*e, 368 F.3d 587, 596 (6th Cir. 2004)). Here, Plaintiffs conceded that their claims were moot after December 14. Yet, in the month that followed, Plaintiffs refused to voluntarily dismiss their claims, forcing Defendants to file their motions to dismiss and the Court to decide Plaintiffs' motion for additional time to respond to the motions to dismiss, which Plaintiffs ultimately did not do.[27] In the end, Plaintiffs' attorneys prolonged the inevitable and "caused both [the State Defendants and Intervenor-Defendants] and the [C]ourt to waste resources" in the meantime. *Morris v. City of Detroit Water & Sewage Dep't*, 20 F. App'x 466, 468 (6th Cir. 2001); *see also Andretti v. Borla Performance Indus., Inc*., 426 F.3d 824, 835 (6th Cir. 2005) (affirming impositions of sanctions where attorney "refus[ed] to voluntarily dismiss the count and forc[ed] [opposing counsel] to pursue a dispositive

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[27] Notably when the State Defendants sought concurrence in their Motion to Dismiss on December 22 (ECF No. 105-3 at Pg ID 4432), Plaintiffs' counsel responded that they were "not in a position to respond to [the State Defendants'] request until [the] appeals [before the Sixth Circuit and United States Supreme Court] are decided," and noted that "[they] do not believe the district court has jurisdiction to consider [the State Defendants'] motion while the case is on appeal." (*Id.*) Of course, because neither this Court, the Sixth Circuit, nor the United States Supreme Court had entered a stay—and Plaintiff had not moved for one in any court—this Court retained its jurisdiction to consider the Motion to Dismiss. *See Zundel v. Holder*, 687 F.3d 271, 282 (6th Cir. 2012) ("[A]n appeal from an order granting or denying a preliminary injunction does not divest the district court of jurisdiction to proceed with the action on the merits.") And for some reason, Plaintiffs eventually voluntarily dismissed this lawsuit while it remained on appeal in the Sixth Circuit and Supreme Court, even though they previously refused to concur as to Defendants' motions to dismiss *because* it was on appeal in those courts.

motion in order to have the claim dismissed"); *Davis v. Detroit Downtown Dev. Auth.*, 782 F. App'x 455, 458 (6th Cir. 2019).

Finally, Plaintiffs' attorneys contend that the facts and outcome of several cases cited by the State Defendants in support of § 1927 sanctions are distinguishable. (ECF No. 112 at Pg ID 4627-32.) Plaintiffs' attorneys distinguish *Ridder* because there, unlike here, "an attorney pursued . . . a claim for five years without offering any evidence." (*Id.* at Pg ID 4629.) But this does not matter: Forcing Defendants and Intervenor-Defendants to file any pleading or brief at any point after Plaintiffs' claims became moot required them to file one pleading or brief too many. *Andretti*, 426 F.3d at 835. Plaintiffs' attorneys also take issue with the State Defendants' use of *Big Yank*, pointing out that the court stated—according to Plaintiffs' counsel—that "the bad faith exception requires that the district court make actual findings of fact that demonstrate that the claims were . . . pursued for an improper purpose." (ECF No. 112 at Pg ID 4630 (citing *Big Yank*, 125 F.3d at 314).) But the portion of the *Big Yank* opinion cited discusses a court's *inherent authority* to sanction, not sanctions under § 1927 as pursued by the State Defendants. Plaintiffs' counsel's contention as to the three remaining cases—*Salkil*, 458 F.3d 520, *Jones*, 789 F.2d 1225, and *In re Ruben*, 825 F.2d 1225—are plainly meritless and worthy of no further discussion. (*See* ECF No. 112 at Pg ID 4627-29.)

The Court finds that Plaintiffs' counsel unreasonably and vexatiously multiplied the proceedings in this case and their arguments to the contrary are unavailing.

B. Whether Plaintiffs' Counsel Violated Rule 11

1. Whether Plaintiffs' counsel submitted claims, defenses, or other legal contentions not warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law in violation of Rule 11(b)(2)

a) Counsel's presentment of claims not warranted by existing law or a nonfrivolous argument for extending, modifying, or reversing existing law

The Court said it before and will say it again: At the inception of this lawsuit, all of Plaintiffs' claims were barred by the doctrines of mootness, laches, and standing, as well as Eleventh Amendment immunity. (*See* ECF No. 62 at Pg ID 3302-24.) Further, Plaintiffs' attorneys did not provide a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law to render their claims ripe or timely, to grant them standing, or to avoid Eleventh Amendment immunity. The same can be said for Plaintiffs' claims under the Elections and Electors, Equal Protection, and Due Process Clauses, and the alleged violations of the Michigan Election Code.[28]

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[28] There is no reason to repeat what the Court already has stated regarding the legal merit of Plaintiffs' claims under the Elections, Electors, and Equal Protection Clauses. (*See* ECF No. 62 at Pg ID 3324-28.) The briefs filed by the State Defendants and Intervenor-Defendants provide further detail as to why those claims, as well as Plaintiffs' Due Process and Michigan

Finally, the attorneys have not identified any authority that would enable a federal court to grant the relief sought in this lawsuit.

Plaintiffs asked this Court to enjoin the State Defendants from sending Michigan's certified results to the Electoral College (ECF No. 6 at Pg ID 84-86); but as reported publicly, Governor Whitmer had already done so before Plaintiffs filed this lawsuit.[29] Plaintiffs sought the impoundment of all voting machines in Michigan (*id.* at Pg ID 86); however, those machines are owned and maintained by Michigan's local governments, which are not parties to this lawsuit. Mich. Comp. Laws §§ 168.37, .37a, .794a. Plaintiffs demanded the recount of absentee ballots (ECF No. 6 at Pg ID 85), but granting such relief would have been contrary to Michigan law as the deadline for requesting and completing a recount already had passed by the time Plaintiffs filed suit. Mich. Comp. Laws § 168.879. Further, a recount may be requested only by a candidate. *Id.* And while Plaintiffs requested the above relief, their ultimate goal was the decertification of Michigan's presidential election results and the certification of the losing candidate as the winner—relief not "warranted by existing law or a nonfrivolous argument for extending,

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Election Code claims, are legally flawed and why Plaintiffs and their counsel knew or should have known this to be the case.

[29] *See* Governor Gretchen E. Whitmer, State of Michigan: Office of the Governor, Certificate of Ascertainment of the Electors of the President and Vice President of the United States of America (Nov. 23, 2020, 5:30 PM), https://perma.cc/NWS4-9FAB; Governor Gretchen Whitmer (@GovWhitmer), Twitter (Nov. 24 2020, 12:04 PM), https://perma.cc/22DF-XJRY.

modifying, or reversing existing law or for establishing new law." Fed. R. Civ. P. 11(b)(2).

While courts do have the authority to grant injunctive relief affecting conduct related to elections, no case suggests that courts possess the authority to issue an injunction of the scope sought here. Plaintiffs' attorneys maintain that the strongest case is *Bush v. Gore*, 531 U.S. 98 (2000). There, however, the Supreme Court was asked neither to order a recount nor to decertify Florida's presidential election results. Instead, the Court was asked to *stop* a recount ordered by the Florida Supreme Court, which infringed the State's legislatively enacted scheme. *Bush*, 531 U.S. at 532-33. Ultimately, the Court halted the Florida recount of the presidential election *to allow the previously certified vote results to stand*, *id.*, which had declared President Bush the winner in the State.[30]

At the July 12 hearing, Plaintiffs' counsel pointed for the first time to the Supreme Court's decision in *United States v. Throckmorton*, 98 U.S. 61 (1878), as supporting this Court's authority to take—it seems the attorneys are suggesting—any equitable action in connection with the 2020 presidential election. (ECF No. 157 at Pg ID 5335.) Apparently *Throckmorton*'s quotation of the maxim "fraud vitiates everything" is a refrain that has been oft-repeated on social media by those who question the results of the 2020 presidential election and believe Former President Trump should be

[30] Notably, this was a recount sought by a candidate in accordance with Florida's contest provisions. *Bush*, 531 U.S. at 528.

declared the winner.[31, 32] (ECF No. 164-8.) The City is correct that Plaintiffs' counsel's citation to *Throckmorton* is puzzling, both because the case relates to a nineteenth-century land grant and has nothing to do with election law and because the Supreme Court held that the grant could *not* be collaterally attacked on the basis that the judgment was procured by fraud. 98 U.S. at 68. Simply put, the case does not support Plaintiffs' legal contentions directly or even by extension. Yet counsel's citation to *Throckmorton* is enlightening in that it reflects, as the City puts it, "that this suit has been driven by partisan political posturing, entirely disconnected from the law" and "is the dangerous product of an online feedback loop, with these attorneys citing 'legal precedent' derived not from a serious analysis of case law, but from the rantings of conspiracy theorists sharing amateur

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[31] (*See* ECF No. 164-8 at Pg ID 2 (listing Twitter posts that state, among other things, that (i) "[A]ny fraud located . . . constitutes nullification of the presidential contest. This means, Trump wins by default because of the vote switching by Dominion Machines. Look up Throckmorton 1878."; (ii) "[F]raud will DISQUALIFY Biden completely and mean that Trump will be the winner of all 50 states . . . There can be no other outcome. 'Fraud vitiates everything' *US v. Throckmorton* . . ."; (iii) "[F]raud vitiates everything. Meaning one state commits voter fraud they all go down! So DJTrump wins the 2020 election."; and (iv) "Fraud vitiates everything it touches. [THROCKMORTON] . . . Thus the Biden/ Harris 'swearing in' is negated, quashed annulled, invalidated, revoked and abrogated.").)

[32] Of course, the Supreme Court did not hold in *Throckmorton* that "fraud vitiates everything"; rather, it merely quoted this phrase from a treatise and then held that, in fact, fraud did not justify overturning a federal district court's 20-year-old decree. 98 U.S. at 65, 68.

analysis and legal fantasy in their social media echo chambers." (ECF No. 164 at Pg ID 6143.)

It is not lost upon the Court that the same claims and requested relief that Plaintiffs' attorneys presented here were disposed of, for many of the same reasons, in Michigan courts[33] and by judges in several other "battleground" jurisdictions where Plaintiffs' counsel sought to overturn the election results[34]. The fact that no federal district court considering the issues at bar has found them worthy of moving forward supports the conclusion that Plaintiffs' claims are frivolous.

b) Counsel's contention that acts or events violated Michigan election law (when the acts and events, even if they occurred, did not)

Plaintiffs alleged that certain acts or events violated the Michigan Election Code when, in fact, they did not.

To support the allegation that Defendants violated Michigan election laws by accepting "unsecured ballots

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[33] Op. & Order, *Costantino*, No. 20-014780-AW (Wayne Cnty. Cir. Ct. filed Nov. 13, 2020); *Donald J. Trump for President, Inc. v. Sec'y of State*, Nos. 355378, 355397, 2020 Mich. LEXIS 2131 (Mich. Ct. App. Dec. 11, 2020), *appeal denied* 951 N.W.2d 353 (Mich. 2020).

[34] *See* 12/7/20 Tr., *Pearson v. Kemp*, No. 1:20-cv-04809 (N.D. Ga. filed Dec. 8, 2020), ECF No. 79 at Pg 41-44; *Wood v. Raffensperger*, 501 F. Supp. 3d 1310 (N.D. Ga. 2020), *aff'd* 981 F.3d 1307 (11th Cir. 2020); *Feehan v. Wis. Elections Comm'n*, 506 F. Supp. 3d 596 (E.D. Wis. 2020); *Bowyer v. Ducey*, 506 F. Supp. 3d 699 (D. Ariz. 2020).

. . . without any chain of custody,"[35] the Amended Complaint states that Whitney Meyers "observed passengers in cars dropping off more ballots than there were people in the car."[36] But when the Court asked Plaintiffs' counsel whether individuals other than the voter can drop off a ballot in Michigan, Campbell answered in the affirmative. (ECF No. 157 at Pg ID 5486.) And of course, anyone easily could have learned this by consulting Michigan law. *See* Mich. Comp. Laws § 168.764a (explaining at Step 5(c) that a household member or family member (as defined by Michigan law) may return a voter's absentee ballot). It seems to the Court, then, that Plaintiffs' counsel knew or should have known that this conduct did not violate existing state law.

The Amended Complaint further claims that Michigan election laws were violated because ballots

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[35] (ECF No. 6 at Pg ID 879 ¶ 15(A), 943 ¶ 190(k) (citing IIC).)

[36] (*See* IIC-"Additional Violations of Michigan Election Code That Caused Ineligible, Illegal or Duplicate Ballots to Be Counted," Subsection 7-"Election Workers Accepted Unsecured Ballots, without Chain of Custody, after 8:00 PM Election Day Deadline," ECF No. 6 at Pg ID 906 ¶ 101 (referencing Meyers Aff., ECF No. 6-3 at PDF Pg 130-31).)

that lacked postmarks were counted.[37, 38] But when the Court asked Plaintiffs' attorneys whether Michigan absentee ballots must be received through U.S. mail—and therefore postmarked—to be counted, counsel went on about not being able to "rely on the Secretary of State's guidance." (ECF No. 157 at Pg ID 5468.) Noticeably absent from that response, however, was an answer to the Court's question. Tellingly, when the City's counsel stated that ballots are not required to be mailed or postmarked in Michigan—as they "are often handed in by hand"; "[via] boxes in front of clerk's offices by hand"; and sometimes "right across the desk in the clerk's office" (*id.* at Pg ID 5470)—Plaintiffs' counsel did not object to or refute this recitation of the law. *See* Mich. Comp. Laws § 168.764a (explaining that absentee ballots may be delivered "[p]ersonally to the office of the clerk, to the clerk, or to an authorized assistant of the clerk, or to a secure drop box").

To support the allegation that Defendants "count-[ed] ineligible ballots—and in many cases—multiple

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37 (ECF No. 6 at Pg. ID 879 ¶ 15(C), 942 ¶ 190(h) (citing IIC); *see* IIC-"Additional Violations of Michigan Election Code That Caused Ineligible, Illegal or Duplicate Ballots to Be Counted," Subsection 4-"Election Officials Counted Ineligible Ballots with No Signatures or No Dates or with No Postmark on Ballot Envelope," ECF No. 6 at Pg ID 904 ¶ 96 (referencing Brunell Aff., ECF No. 6-3 at PDF Pg 35-36; Spalding Aff., ECF No. 6-3 at PDF Pg 61-62; and Sherer Aff., ECF No. 6-3 at PDF Pg 126-28).)

38 When one searches through the unindexed affidavits attached as Exhibit 3 to Plaintiffs' pleading and eventually locates these affidavits, however, one finds that none of the affiants state that ballots without postmarks were counted. (*See* ECF No. 6-3 at PDF Pg 35-36, 61-62, 126-28.)

times," in violation of Michigan election law,[39] the Amended Complaint cites to several affidavits in which the affiants state that batches of ballots were repeatedly run through the vote tabulation machines[40]. When the Court asked whether Plaintiffs' counsel inquired as to why a stack of ballots might be run through tabulation machines more than once, Plaintiffs' counsel did not answer the Court's question and instead proclaimed that "ballots are not supposed to be put through more than once. Absolutely not. That would violate Michigan law." (ECF No. 157 at Pg ID 5462.) But bafflingly, Plaintiffs' counsel did not offer a cite to the law violated, and counsel did not identify such a law in the Amended Complaint either. However, the affidavit of Christopher Thomas, Senior Advisor to the Detroit City Clerk, filed in *Costantino* ("Thomas Affidavit"), explained that "ballots are often fed through the high-speed reader more than once" "as a routine part of the tabulation process." (ECF No. 78-14 at Pg ID 3772 ¶ 20.) And he detailed a myriad of reasons why this may be necessary, including "if there is a jam in the reader" or "if there is a problem ballot (*e.g.*, stains, tears, stray markings,. . . etc.) in a stack."[41] (*Id.*)

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[39] (ECF No. 6 at Pg. ID 879 ¶ 15(B), 942 ¶ 190(g) (citing IIC).)

[40] (*See* IIC-"Additional Violations of Michigan Election Code That Caused Ineligible, Illegal or Duplicate Ballots to Be Counted," Subsection 2–"Ineligible Ballots Were Counted—Some Multiple Times," ECF No. 6 at Pg ID 903 ¶ 94 (referencing Helminen Aff., Waskilewski Aff., Mandelbuam Aff., Rose Aff., Sitek Aff., Posch Aff., Champagne Aff., and Bomer Aff.).)

[41] Thomas goes on to explain: "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

At the July 12 hearing, Kleinhendler told the Court that it was "completely irrelevant" whether the conduct Plaintiffs claimed was violative of Michigan law was actually unlawful. This is because, counsel argued, the conduct "raise[d] a suspicion" and what was significant was the mere *chance* for misfeasance to occur.[42] (ECF No. 157 at Pg ID 5484.) But litigants and attorneys cannot come to federal court asserting that certain acts violate the law based only upon an *opportunity* for—or counsel and the litigant's suspicions of—a violation.

c) Counsel's failure to inquire into the requirements of Michigan election law

Plaintiffs alleged that certain acts or events constituted violations of the Michigan Election Code when, in fact, Plaintiffs' counsel failed to make any inquiry into whether such acts or events were in fact unlawful.

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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." (ECF No. 78-14 at Pg ID 3772 ¶ 20.)

[42] To make his point, Kleinhendler used the analogy of handing someone an open can of Coke and assuring the recipient that a drink had not been taken from it. (ECF No. 157 at Pg ID 5484.) But it is just as plausible that the can had been sipped before delivery, as it is plausible that it had not been. A "pleading must contain something more than a statement of facts that merely creates a suspicion of a legally cognizable right of action." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 556 (2007) (citation, internal quotation marks, brackets and ellipsis omitted).

In light of Plaintiffs' allegation that Defendants violated the Michigan Election Code by permitting ballots to arrive at the TCF Center "not in sealed ballot boxes," "without any chain of custody," and "without envelopes"[43] and because the Amended Complaint does not identify a provision in the Michigan Election Code prohibiting the actions about which Plaintiffs complain[44], the Court asked Plaintiffs' attorneys at the July 12 hearing about their understanding regarding Michigan's ballot-bin requirements. (*Id.* at Pg ID 5478-79.) Counsel's response: "[W]e do not purport to be experts in Michigan's process," (*id.* at Pg ID 5479-80), and, they argued, the affidavit that supported this allegation—that of Daniel Gustafson ("Gustafson Affidavit")—was copied and pasted from *Costantino* (*id.*). These evasive and non-responsive answers to the Court's direct questions amount to an admission that Plaintiffs' counsel did not bother to find out what the Michigan Election Code requires, and whether the acts alleged to constitute violations of the Michigan Election Code were actually prohibited.

In *Costantino*—which was decided approximately two weeks before Plaintiffs filed the instant lawsuit—

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[43] (ECF No. 6 at Pg. ID 879 ¶ 15(F), 943 ¶ 190(k) (citing IIC); *see* IIC–"Additional Violations of Michigan Election Code That Caused Ineligible, Illegal or Duplicate Ballots to Be Counted," Subsection 7-"Election Workers Accepted Unsecured Ballots, without Chain of Custody, after 8:00 PM Election Day Deadline," ECF No. 6 at Pg ID 905-06 ¶ 100 (quoting Gustafson Aff., ECF No. 6-4 at PDF Pg 48-49).)

[44] (*See* ECF No. 6 at Pg ID 878 ¶ 14(C) (advancing this specific allegation but citing no Michigan Election Code provision violated); *id.* at Pg ID 879 ¶ 15(F) (same); *id.* at Pg ID 905-06 ¶ 100 (same); *id.* at Pg ID 943 ¶ 190(k) (same).)

Wayne County Circuit Court Judge Timothy M. Kenny credited the Thomas Affidavit (ECF No. 78-11 at Pg ID 3738-39, 3742, 3745)—thereby informing Plaintiffs' counsel that what Gustafson observed did not in fact violate Michigan Election Code, or at a minimum putting counsel on notice that there was a duty to inquire further. And even if Plaintiffs' counsel lacked expertise as to the Michigan Election Code, they undoubtedly were required to be familiar enough with its provisions to confirm that the conduct they *asserted* violated that code in fact *did*.

The Court finds Plaintiffs' counsel's arguments to the contrary unavailing. First, the attorneys assert that neither opposing counsel nor the Thomas Affidavit took issue with the facts as outlined in the Gustafson Affidavit (ECF No. 157 at Pg ID 5481-82) and, therefore, the Gustafson Affidavit does not suggest that Plaintiffs' counsel engaged in any conduct worthy of sanctions. This misses the point. The sanctionable conduct is not based on whether the facts described in the Gustafson Affidavit are true or false. What is sanctionable is counsel's *allegation* that violations of the Michigan Election Code occurred based on those facts, without bothering to figure out if Michigan law actually prohibited the acts described.

Second, Plaintiffs' counsel argued that permitting ballots to be handled and transported in the manner described in the Gustafson Affidavit "raises a suspicion" and "[w]hether [such acts are] required under Michigan law or not[] [is] completely irrelevant." (*Id.* at Pg ID 5484.) But the Amended Complaint repeatedly asserts that Defendants violated the Michigan Election Code and Plaintiffs' state law, Equal Protection, Due Process, and Electors and Elections Clauses claims are based

on these alleged violations. (*See, e.g.*, ECF No. 6 at Pg ID 877, 879, 892, 903, 937-48, 953, 955.) And, again, a mere "suspicion" is not enough—this is especially so when neither the litigant nor his or her counsel has bothered to figure out exactly what the law is or what it permits.

For the reasons discussed in the three subsections above, the Court concludes that Plaintiffs' attorneys presented claims not warranted by existing law or a nonfrivolous argument for extending, modifying, or reversing existing law.

2. Whether Plaintiffs' counsel presented pleadings for which the factual contentions lacked evidentiary support or, if specifically so identified, would likely have evidentiary support in violation of Rule 11(b)(3)

Before analyzing whether Plaintiffs' counsel violated Rule 11(b)(3), the Court pauses to answer two questions.

The sanctionable conduct under Rule 11(b)(3)

Plaintiffs' attorneys argue that they genuinely believed the factual allegations in this lawsuit, and otherwise filed this suit and the accompanying documents in good faith. (*See* ECF No. 157 at Pg ID 5415, 5418, 5419, 5492-93, 5501.) They also argue that the affiants genuinely believed the same and submitted their affidavits also in good faith. (*Id.* at Pg ID 5403.) Because all of this was done in good faith, counsel contends, they should not be sanctioned.

Of course, an "empty-head" but "pure-heart" does not justify lodging patently unsupported factual assertions.[45] And the good or bad faith nature of actions or submissions is not what determines whether sanctions are warranted under Rule 11(b)(3). What the City claims and the Court agrees is sanctionable as a violation of the rule is the filing of pleadings claiming violations of the Michigan Election Code, Equal Protection Clause, Due Process Clause, and Electors and Elections Clauses where the factual contentions asserted to support those claims lack evidentiary support. The Court spent significant time during the July 12 hearing inquiring about the various reports and affidavits Plaintiffs attached to their pleadings not necessarily because Plaintiffs' counsel may have filed this lawsuit in bad faith, and not necessarily because the affiants may have submitted their affidavits in bad faith. Rather, the Court did so because—as discussed below—no reasonable attorney would accept the assertions in those reports and affidavits as fact or as support for factual allegations in a pleading when based on such speculation and conjecture. And no reasonable attorney would repeat them as fact or as support for a factual allegation without conducting the due diligence inquiry required under Rule 11(b).

To be clear, as to Rule 11(b)(3), the Court is not concerned with whether counsel's conduct was done in

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[45] *See* Fed. R. Civ. P. 11 Advisory Committee Notes (1993 Amendment) (noting that Rule 11's objective standard is "intended to eliminate any 'empty-head pure-heart' justification for patently frivolous arguments"); *Tahfs*, 316 F.3d at 594 ("A good faith belief in the merits of a case is insufficient to avoid sanctions.").

bad faith.[46] The Court is concerned only with what the reports and affidavits say and reveal on their face, and what Plaintiffs' counsel should (or should not) have done before presenting them in light of what is revealed on their face.[47]

No evidentiary hearing is needed

Plaintiffs' attorneys contend that "[t]he proper method for evaluating affidavits is an evidentiary hearing" during which a court tests the veracity of the affiants and, without one, the Court cannot sanction counsel. (*See, e.g.*, ECF No. 161 at Pg ID 5815, 5816 n.10; ECF No. 157 at Pg ID 5491-93.) However, the affiants' credibility and the truth or falsity of their affidavits have no bearing on what the Court finds sanctionable under Rule 11(b)(2) and (3).

Instead, what is sanctionable under Rule 11(b)(2) as discussed above is, among other things, (i) asserting that acts or events violated Michigan election law, when the acts and events (even if they occurred) did

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[46] This does not mean, however, that violating Rule 11(b)(3) by presenting pleadings for which the factual contentions lacked evidentiary support cannot be done in bad faith or for an improper purpose. If it is, this would of course constitute a violation of Rule 11(b)(1). *See infra*, Section IV, Subsection B, Part 3—"Whether Plaintiffs' counsel acted with an improper purpose in violation of Rule 11(b)(1)."

[47] Plaintiffs' attorneys further contend that they did more than was required by attaching this "evidence" to their pleadings. (ECF No. 157 at Pg ID 5534.) True, Plaintiffs were not required to attach evidence to support their factual allegations; but, they did. Therefore, they had an obligation to scrutinize the contents and doing so would have revealed that key factual assertions made in their pleading lacked evidentiary support.

not and (ii) failing to inquire into the requirements of Michigan election law. What is sanctionable under Rule 11(b)(3) as discussed below is (i) presenting factual assertions lacking evidentiary support; (ii) presenting facts taken from affidavits containing speculation and conjecture because, at no stage during the litigation process, would such "evidence" count as evidentiary support for a factual allegation; (iii) failing to ask questions of affiants who submitted affidavits that were central to the factual allegations that the affidavits supported; (iv) failing to inquire (sufficiently, if at all) into recycled affidavits first used by different attorneys in earlier election-challenge lawsuits; and (v) failing to inquire into information readily discernible as false.

Because ascertaining whether Plaintiffs' counsel committed any Rule 11(b) (2) or (3) infraction does not turn on the veracity of the affiants and the Court obtained the information it needed during the hearing and via the sanctions briefing, an evidentiary hearing is of no use.[48]

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[48] Plaintiffs' attorneys complain that the Court focused on only a limited number of affidavits at the July 12 motion hearing, when more were laced throughout their 960-page Amended Complaint. (ECF 157 at Pg ID 5450-51.) However, as the Court noted at the motion hearing, the affidavits focused on were often the only evidence cited to support key factual assertions in Plaintiffs' pleadings. (*Id.* at Pg ID 5358, 5410, 5420, 5428, 5435, 5448, 5452.) And, as discussed below, all of the affidavits the Court references in this Opinion & Order's Rule 11(b)(3) analysis were in fact the *only* pieces of evidence offered to support the relevant factual allegation.

a) Counsel's failure to present any evidentiary support for factual assertions

Plaintiffs' counsel failed to present any evidence to support their allegation of "illegal double voting." (*See* ECF No. 6 at Pg ID 903 ¶ 93.) To support this factual assertion, Plaintiffs pointed to a single piece of "evidence": the affidavit of Jessy Jacob ("Jacob Affidavit").[49] That affidavit states in part: "I observed a large number of people who came to the satellite location to vote in-person, but they had already applied for an absentee ballot."[50] (ECF No. 6-4 at PDF Pg 37 (emphasis added).)[51] Of course, *applying* for an absentee ballot is not evidence that someone *voted* via an absentee ballot, and when the Court highlighted this lack of evidence as to "double voting" during the hearing, Plaintiffs' counsel responded: "I think there's inferences that can be drawn, and it should not shock

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[49] (ECF No. 6 at Pg. ID 942 ¶ 190(f) (citing IIC); *see* IIC-"Additional Violations of Michigan Election Code That Caused Ineligible, Illegal or Duplicate Ballots to Be Counted," Subsection 1-"Illegal Double Voting," ECF No. 6 at Pg ID 903 ¶ 93 (referencing Jacob Aff., ECF No. 6-4 at PDF Pg 36-38).)

[50] Jacob does claim that people came to vote in person at the satellite location where she worked who had already applied for an absentee ballot, and that those individuals voted without returning the mailed absentee ballot or signing an affidavit that the ballot had been lost. (ECF No. 6-4 at PDF Pg 37 ¶ 10.) Michigan law makes it a felony to vote both in person and absentee. *See* Mich. Comp. Laws § 168.769(4). Of course, Jacob does not state that these individuals voted in person and absentee. As such, her affidavit in fact does not plausibly support "illegal double voting." (ECF No. 6 at Pg ID 903.)

[51] Some of the documents filed by the parties contain illegible docket headers. In such instances, the Court references the "PDF" page numbers instead of the "Page IDs."

this Court that somebody could show up, after having *asked* for an absentee ballot . . . and then show up and vote again." (ECF No. 157 at Pg ID 5454-55 (emphasis added).)

It does not shock the Court that a Michigan resident can request an absentee ballot and thereafter decide to vote in person. Indeed, Michigan law says that voters can. Mich. Comp. Laws § 168.769(1) ("An absent voter may vote in person within his or her precinct at an election, notwithstanding that he or she applies for an absent voter ballot and the ballot is mailed or otherwise delivered to the absent voter by the clerk" if, "[b]efore voting in person," "the absent voter [] return[s] the absent voter ballot."). But the Court is concerned that Plaintiffs' attorneys believe that a Michigan resident's choice to do so serves as circumstantial evidence that the Michigan resident "double voted." It does not. Inferences must be reasonable and come from facts proven, not speculation or conjecture. *United States v. Catching*, 786 F. App'x 535, 539 (6th Cir. 2019) (citations omitted) (explaining that "reasonable inferences from the evidence" are allowed but not "mere speculative inferences"); *see also id.* (quoting *Cold Metal Process Co. v. McLouth Steel Corp.*, 126 F.2d 185, 188 (6th Cir. 1942) ("An inference is but a reasonable deduction and conclusion from proven facts.")).

b) Counsel's presentment of conjecture and speculation as evidentiary support for factual assertions

Plaintiffs' counsel presented affidavits that were based on conjecture, speculation, and guesswork.

To support the allegation that "unsecured ballots arrived at the TCF Center loading garage, not in sealed ballot boxes, without any chain of custody, and without envelopes, after the 8:00 PM Election Day deadline," Plaintiffs quote the affidavit of Matt Ciantar ("Ciantar Affidavit"),[52, 53] which is a masterclass on making conjectural leaps and bounds:

> The afternoon following the election[,] as I was taking my normal dog walk (mid-afternoon), I witnessed a dark van pull into the small post office located in downtown Plymouth, MI. I witnessed a young couple. . . pull into the parking lot . . . and proceed to exit their van (no markings) . . . and open[] up the back hatch and proceed[] to take 3-4 very large clear plastic bags out. . . and walk them over to a running USPS Vehicle that *appeared as if* it was "waiting" for them. . . .
>
> There was no interaction between the couple and any USPS employee *which I felt was very odd* They did not walk inside the post office like a *normal* customer to drop of[f] mail. It was *as if* the postal worker was told to meet

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[52] (ECF No. 6 at Pg ID 943 ¶ 190(k) (citing IIC); *see* IIC-"Additional Violations of Michigan Election Code That Caused Ineligible, Illegal or Duplicate Ballots to Be Counted," Subsection 7-"Election Workers Accepted Unsecured Ballots, without Chain of Custody, after 8:00 PM Election Day Deadline," ECF No. 6 at Pg ID 906 ¶ 103 (quoting Ciantar Affidavit, ECF No. 6-7 at Pg ID 1312-14).)

[53] Plaintiffs also reference the Gustafson and Meyers Affidavits to support this allegation. (ECF No. 6 at Pg ID 905-06 ¶¶ 100-03.) For the reasons discussed above (*see supra* 58, 63-64), these two affidavits are of little to no evidentiary value.

> and standby until these large bags arrived. . . .
>
> [T]he bags were clear plastic with markings in black on the bag and on the inside of these clear bags was another plastic bag that was not clear (*could not see what was inside*) [There were] *what looked like* a black security zip tie on each back [*sic*] *as if* it were "tamper evident" type of device to secure the bag [B]y the time I realized I should take pictures of the bags once I noticed this looked "*odd*[,]" they had taken off.
>
> The other *oddity* was that [*sic*] the appearance of the couple. After the drop, they were smiling, laughing at one another.
>
> What I witnessed and considered that *what could be in those bags could be ballots* going to the TCF center or coming from the TCF center. . . .

(ECF No. 6-7 at Pg ID 1312-14 (emphasis added).)

When the Court asked Plaintiffs' attorneys how any of them, as officers of the court, could present this affidavit as factual support of anything alleged in their pleadings and Motion for Injunctive Relief, counsel emphatically argued that "[t]he witness is setting forth exactly what he observed and [the] information that he bases it on. . . . He saw these plastic bags. . . . It is a true affidavit." (ECF No. 157 at Pg ID 5488-89.) The Court accepts that the affidavit is true in that Ciantar memorialized what he saw at the time. But the Court cannot find it reasonable to assert, as Plaintiffs' attorneys do, that this "shows fraud." (*Id.* at Pg ID 5489.) Absolutely nothing about this affidavit

supports the allegation that ballots were delivered to the TCF Center after the Election Day deadline. And even if the Court entertained the assertion of Plaintiffs' counsel that this affidavit "is one piece of a pattern" reflecting fraud or Defendants' violations of Michigan election laws (*id.*), this would be a picture with many holes. This is because a document containing the lengthy musings of one dog-walker after encountering a "smiling, laughing" couple delivering bags of unidentified items in no way serves as evidence that state laws were violated or that fraud occurred.

During the hearing, Plaintiffs' counsel further asserted that "we don't typically rewrite what an affiant says." (*Id.* at Pg ID 5490.) That is good. But, pursuant to their duties as officers of the court, attorneys typically do not offer factual allegations that have no hope of passing as evidentiary support at any stage of the litigation.

To support the allegation that Defendants "fraudulently add[ed] tens of thousands of new ballots . . . to the [Qualified Voter File] . . . on November 4, 2020, all or nearly all of which were votes for Joe Biden,"[54] Plaintiffs quote the affidavit of Melissa Carone ("Carone Affidavit"),[55] which describes "facts" that demonstrate

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[54] (ECF No. 6 at Pg. ID 942 ¶ 190(a) (citing IIB).)

[55] Plaintiffs also reference the affidavit of Andrew Sitto ("Sitto Affidavit") and Robert Cushman ("Cushman Affidavit") to support this allegation. (ECF No. 6 at Pg ID 905-06 ¶¶ 100-03.) But as Judge Kenny concluded in *Costantino*, Sitto's affidavit is "rife with speculation and guess-work about sinister motives" and he "knew little about the process of the absentee voter counting board activity." (ECF No. 31-15 at Pg ID 2443.) Indeed, the evidentiary value of the Sitto Affidavit is questionable at best. And

no misconduct or malfeasance, and amount to no more than strained and disjointed innuendo of something sinister:

> There was [*sic*] two vans that pulled into the garage of the counting room, one on day shift and one on night shift. These vans were apparently bringing food into the building I never saw any food coming out of these vans, coincidently it was announced on the news that Michigan had discovered over 100,000 more ballots—not even two hours after the last van left.[56]

The Amended Complaint calls this an "illegal vote dump." (ECF No. 6 at Pg ID 900 ¶ 84.)

But nothing described by Carone connects the vans to any ballots; nothing connects the illusory ballots to President Biden; and nothing connects the illusory votes for President Biden to the 100,000 ballots "coincidently" announced on the news as "discovered" in Michigan.[57] Yet not a single member of Plaintiffs'

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while the Court does not discuss the Cushman Affidavit in this Opinion and Order, the Court notes that Plaintiffs describe the Carone Affidavit as "the most probative evidence" of the factual allegation at bar. (ECF No. 6 at Pg ID 899 ¶ 84.)

[56] (*See* IIB – "Election Workers Fraudulently Forged, Added, Removed or Otherwise Altered Information on Ballots, Qualified Voter List and Other Voting Records," Subsection 1 – "Election Workers Fraudulently Added 'Tens of Thousands' of New Ballots and New Voters in the Early Morning and Evening of November 4," ECF No. 6 at Pg ID 899-900 ¶ 84 (quoting Carone Affidavit, ECF No. 6-5 at Pg ID 1306 ¶ 8).)

[57] And nothing in the affidavit enlightens its reader as to what is meant by "discovered."

legal team spoke with Carone to fill in these speculation-filled gaps before using her affidavit to support the allegation that tens of thousands of votes for President Biden were fraudulently added.[58, 59] (*See* ECF No. 157 at Pg ID 5426-28.)

It is also notable that, when the Court asked Plaintiffs' counsel whether an affiant's observation of a self-described "coincidence" serves as evidentiary support for the allegation that an "illegal vote dump" occurred, Plaintiffs' counsel appeared to say that it was okay in this case because Ramsland "relied on [the Carone Affidavit] for . . . his statistical analysis" and "an expert can rely on hearsay." (*Id.* at Pg ID 5429.) But the problem with the Carone Affidavit does not concern hearsay—it concerns conjecture. And surely Plaintiffs' attorneys cannot fail to reasonably inquire into an affiant's speculative statements and thereafter escape their duty to "stop-and-think" before making factual allegations based on the statements, simply because their expert did the same. *See* Fed. R. Civ. P. 11 Advisory Committee Notes (1993 Amendment) ("The rule continues to require litigants to 'stop-and-think' before initially making legal or factual contentions.").

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[58] Without engaging in such an inquiry—much less a reasonable one—counsel's affirmative decision to label the 100,000 ballots discussed on the news—or the illusory ballots theoretically removed from two vans—an "illegal vote dump" serves as a quintessential example of guesswork laced with bad faith.

[59] Kleinhendler emphasized during the hearing that Carone "publicly testified . . . in Michigan about her findings." (ECF No. 157 at Pg ID 5427.) It is nonsensensical to suggest that supporting a key factual allegation with nothing more than speculation is justified because that speculation was repeated publicly.

Plaintiffs' counsel further emphasized that if Carone "[said] things that don't turn out to be entirely accurate, that can be discovered through the processes that this Court is very familiar with." (ECF No. 157 at Pg ID 5429.) The Court assumes the attorneys were referring to the discovery process. But here's the snag: Plaintiffs are not entitled to rely on the discovery process to mine for evidence that never existed in the first instance. *See Goldman v. Barrett*, 825 F. App'x 35, 38 (2d Cir. 2020) (explaining that a plaintiff "may not rely on discovery to manufacture a claim that lacks factual support in the first instance" but "may use discovery to *bolster* evidence").

And speculation, coincidence, and innuendo could never amount to evidence of an "illegal vote dump"—much less, anything else.[60]

c) Counsel's failure to inquire into the evidentiary support for factual assertions

Plaintiffs' counsel failed to ask questions of the individuals who submitted affidavits that were central to the factual allegations in the pleadings.

To support the allegation that Defendants permitted "election workers [to] change votes for Trump

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[60] The Supreme Court has made clear that where there are perfectly plausible alternative explanations for an event—here, for example, legally cast ballots simply being delivered and counted—a plaintiff's allegations are not to be accepted as true. *See Twombly*, 550 U.S. at 557 (explaining the "need at the pleading stage for allegations plausibly suggesting (not merely consistent with)" liability). And of course, the mere fact that the affiant and/or Plaintiffs' counsel opted to use seemingly sinister language to describe an event does not make that event sinister, wrongful, unlawful, or fraudulent.

and other Republican candidates,"[61] Plaintiffs point to one thing—namely, Articia Bomer's affidavit ("Bomer Affidavit"):

> I observed a station where election workers were working on scanned ballots that had issues that needed to be manually corrected. I *believe* some of these workers were changing votes that had been cast for Donald Trump and other Republican candidates.[62]

Per the Amended Complaint, this is the only evidence and only "eyewitness testimony of election workers manually changing votes for Trump to votes for Biden." (ECF No. 6 at Pg ID 902 ¶ 91.)

When the Court asked whether an affiant's *belief* that something occurred constitutes *evidentiary support* for that occurrence, Plaintiffs' counsel stated: "[I]f you see it, that would certainly help you to form a belief." (ECF No. 157 at Pg ID 5450.) The Court then asked: "[D]id anyone inquire as to whether or not [] Bomer actually saw someone change a vote?" (*Id.* at Pg ID 5452.) The Court was met with silence. (*Id.*)

As an initial matter, an affiant's subjective belief that an event occurred does not constitute evidence that the event in fact occurred. But more importantly, during the hearing, Plaintiffs' counsel conceded that

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[61] (ECF No. 6 at Pg. ID 942 ¶ 190(d) (citing IIB).)

[62] (*See* IIB – "Election Workers Fraudulently Forged, Added, Removed or Otherwise Altered Information on Ballots, Qualified Voter List and Other Voting Records," Subsection 4-"Election Workers Changed Votes for Trump and Other Republican Candidate," ECF No. 6 at Pg ID 902 ¶ 91 (quoting Bomer Aff., ECF No. 6-3 at Pg ID 1008-10) (emphasis added).)

the Bomer Affidavit had evidentiary value only if Bomer *saw* election workers manually changing votes for Former President Trump to votes for President Biden. Yet, without asking Bomer if she *saw* such manual changes, Plaintiffs' counsel submitted her affidavit as evidentiary support that such manual changes *in fact* occurred. This alone fell short of counsel's obligation to conduct a reasonable inquiry and is the very laxity that the sanctions schemes are designed to penalize.

And Plaintiffs' counsel's failure to ask this material question—when paired with their affirmative decision to label Bomer's testimony as "*eyewitness testimony* of election workers manually changing votes"—evinces bad faith. Plaintiffs' counsel may not bury their heads in the sand and thereafter make affirmative proclamations about what occurred above ground. In such cases, ignorance is not bliss—it is sanctionable.

d) Counsel's failure to inquire into evidentiary support taken from other lawsuits

As evidentiary support in this case, Plaintiffs' counsel attached affidavits to their pleadings that were submitted in two previously filed election-challenge lawsuits without engaging in a reasonable inquiry as to their contents.

For example, to support the allegation that Defendants "fraudulently add[ed] tens of thousands of new ballots and/or new voters to the [Qualified Voter File] . . . on November 4, 2020,"[63] Plaintiffs quote the

63 (ECF No. 6 at Pg. ID 942 ¶ 190(a) (citing IIB).)

Sitto Affidavit[64]. When the Court inquired about factual assertions in the Sitto Affidavit (*Id.* at Pg ID 5412), Kleinhendler responded that "[t]hese were affidavits that were submitted by counsel in [*Costantino*]" (*id.* at Pg ID 5414-15). Plaintiffs' attorneys admit to similarly lifting the Carone Affidavit from *Costantino* and filing it in this case as evidentiary support without engaging in an independent inquiry as to its merits.[65]

The attorneys admit the same as to the Bomer Affidavit. (*Id.* at Pg ID 5448-49.) And suggest the same as to the Jacob Affidavit. (*Id.* at Pg ID 5440-45.) In fact, almost every (if not every) non-expert affidavit attached to Plaintiffs' pleadings here (*see* ECF Nos. 6-3 to 6-6, 6-13, 6-14) was filed by other attorneys in prior lawsuits. *See* Complaint Exs. 1-4, *Donald J. Trump for President, Inc.*, No. 1:20-cv-01083 (W.D. Mich. filed Nov. 11, 2020), ECF Nos. 1-2 to 1-4; Com-

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[64] (*See* IIB – "Election Workers Fraudulently Forged, Added, Removed or Otherwise Altered Information on Ballots, Qualified Voter List and Other Voting Records," Subsection 1 – "Election Workers Fraudulently Added 'Tens of Thousands' of New Ballots and New Voters in the Early Morning and Evening of November 4," ECF No. 6 at Pg ID 899 ¶ 82 (quoting Sitto Aff., ECF No. 6-4 at PDF Pg 40-42).)

[65] (ECF No. 157 at Pg ID 5433 (Ms. Haller: "I would just point out that the [Carone Affidavit] . . . [is] documented as a document from the [*Costantino*] court. . . . It is not represented to be a document that was created by us. It is not represented to be anything other than what it was, which is a document from a different court . . . It is a document that is not hearsay. It is a simple document that is a sworn statement from another court that is cited to by our expert, and we rely upon it to the extent that it's cited in the complaint.").)

plaint Exs. A-F, *Costantino*, No. 20-014780 (Wayne Cnty. Cir. Ct. filed Nov. 8, 2020).

When the Court asked whether Plaintiffs' counsel inquired as to the affidavits copied and pasted from the other cases, Plaintiffs' counsel dipped and dodged the question and did not disclaim the City's counsel's assertions that they did not. (*See, e.g.*, ECF No. 157 at Pg ID 5440-47, 5452-55.) "[O]ther lawyers saw it" and "[t]hey believed it to be appropriate for submission to the Court in that circumstance," Plaintiffs' attorneys argued. (*Id.* at Pg ID 5445.) "[Y]ou've got to be able to trust when something has been submitted by counsel because of the oath that we take" knowing that "everybody else within the profession" therefore believes that the attorney's submission "should have tremendous value." (*Id.* at Pg ID 5419.) Clearly, Plaintiffs' counsel relied on the assessment of counsel for the plaintiffs in other cases as to the affidavits from those cases that Plaintiffs' counsel recycled here.

This is not okay. The Court remains baffled after trying to ascertain what convinced Plaintiffs' counsel otherwise. "Substituting another lawyer's judgment for one's own does not constitute reasonable inquiry." *Schottenstein v. Schottenstein*, 230 F.R.D. 355, 361-62 (S.D.N.Y. 2005); *see also Pravic v. U.S. Indus.-Clearing*, 109 F.R.D. 620, 622 (E.D. Mich. 1986) (holding that counsel's reliance on a memorandum prepared by a separate law firm was not reasonable because, among other things, counsel "did no independent research"). In short, Plaintiffs' counsel cannot hide behind the attorneys who filed *Costantino* or any other case to establish that Plaintiffs' counsel fulfilled their duty to ensure that the affidavits they pointed to

as evidentiary support for the pleadings *here*, in fact had any chance of ever amounting to evidence.[66]

In their supplemental brief in support of their motion for sanctions, the State Defendants contend that Plaintiffs' counsel failed to engage in the requisite pre-filing inquiry, pointing to several statements Powell made in an election-related defamation case, which is based in part on allegations made in the instant lawsuit. (*See* ECF No. 118-2 at Pg ID 4806.) In a motion to dismiss filed in that case, Powell argued that, even if the plaintiffs "attempt[] to impugn the various declarations as unreliable [] [or] attack the veracity or reliability of the various declarants," "[l]awyers involved in fast-moving litigation concerning matters of transcendent public importance, who rely on sworn declarations, are entitled to no less protection" than "[j]ournalists [who] usually repeat statements from sources (usually unsworn, often anonymous) on whom they rely for their stories, and sometimes those statements turn out not to be true." (*Id.* at PDF Pg 66-67.) "Journalists"—like attorneys, Powell argued—"must be free to rely on sources they deem to be credible, without being second-guessed by irate public figures who believe that the journalists should have been more skeptical." (*Id.* at PDF Pg 67.)

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[66] Plaintiffs' attorneys argue that "[t]he court never held an evidentiary hearing in *Costantino* and, as a result, did not properly assess the merits of the action" and "[t]his was one of the reasons why the[y] presented affidavits from that action in this case." (ECF No. 161 at Pg ID 5816 n.10.) The point, however, is that presenting those affidavits required counsel to first conduct a reasonable inquiry into the factual allegations contained therein.

In response to the State Defendants' supplemental brief, instead of explaining what efforts they undertook to investigate the veracity of the affidavits, Plaintiffs' attorneys argue that they "never stated that lawyers cannot be held to account." (ECF No. 120 at Pg ID 5004.) "Instead," they argue, the motion to dismiss "justifies lawyers being afforded the same type of Constitutional protections as journalists," "who . . . would lose the protection afforded to them by the Supreme Court . . . if they were 'drawn into long court battles designed to deconstruct the accuracy of sources on which they rely.'" (*Id.* at Pg 5004-05 (quoting ECF 118-2 at PDF Pg 66-67).)

Attorneys are not journalists. It therefore comes as no surprise that Plaintiffs' attorneys fail to cite a single case suggesting that the two professions share comparable duties and responsibilities. Perhaps this confused understanding as to the job of an attorney, and what the law says about the attendant duties and obligations, is what led Plaintiffs' counsel to simply copy and paste affidavits from prior lawsuits. Perhaps not. But what is certain is that Plaintiffs' counsel will not escape accountability for their failure to conduct due diligence before recycling affidavits from other cases to support their pleadings here.

e) Counsel's failure to inquire into Ramsland's outlandish and easily debunked numbers

Plaintiffs' counsel attached Ramsland's affidavit to their pleadings to support the assertion that hundreds of thousands of illegal votes were injected into Michigan's election for President. (*See* ECF No. 6-24.) In his affidavit, Ramsland refers to several statistical "red flag[s]," including: (i) reports of 6,000 votes

in Antrim County being switched from Former President Trump to President Biden and (ii) 643 precincts in Michigan with voter turn-out exceeding 80% (*e.g.*, 460.51% in Zeeland Charter Township, 215.21% in Grout Township, Gladwin County, and 139.29% in Detroit). (*Id.* at Pg ID 1573-74 ¶¶ 10, 11.)

However, the State issued a bulletin well before this lawsuit was filed explaining the user error that led to the miscount in Antrim County's unofficial results, which had been "quickly identified and corrected." (ECF No. 39-12.) And *official* election results for Michigan—reporting voter turnout rates vastly lower than the numbers in Ramsland's affidavit—were published and readily available shortly after the election and well-before his report was filed here.[67] A reasonable attorney, seeing Ramsland's striking original figures, would inquire into their accuracy or at least question their source.

Even the most basic internet inquiry would have alerted Plaintiffs' counsel to the wildly inaccurate assertions in Ramsland's affidavit. For example, in

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[67] Ramsland fails to identify the source of his figures in the initial affidavit presented in this case, indicating only that he and his colleagues "have studied the information that is publicly available concerning the November 3, 2020 election results." (*See* ECF No. 6-24 at Pg ID 1573 ¶ 9.) He astoundingly claims, however, that "[s]ome larger precincts in Wayne Co[unty] and others are no longer publicly reporting their data[.]" (*Id.* at Pg ID 1574 ¶ 11.) And after it was widely reported that Ramsland's figures were grossly inaccurate, Plaintiffs' counsel submitted new numbers from Ramsland in an "expert report" filed December 3, 2020, where Ramsland claims that "[t]he source of that original data was State level data that no longer exists [f]or some unexplained reason" and, for the first time, identifies those purported sources. (ECF No. 49-3 at Pg ID 3123 ¶ 6.)

comparison to the voter turnout of 139.29% in the City of Detroit claimed by Ramsland, the official turnout was recorded on or before November 19, 2020 as being 50.88%.[68] Ramsland reported that voter turnout in Zeeland Charter Township was a whopping 460.51%, when an official report ran on November 11 showed that the average turnout for the four precincts within the township was 80.11%.[69] And unlike Ramsland's assertion of an eye-popping 781.9% turnout in the City of North Muskegon, the two precincts in the city had a turnout of 73.53% and 82.21%, averaging 77.78%, as indicated as of November 13, 2020.[70]

And before Plaintiffs' counsel presented Ramsland's affidavit here, there was more to alert them as to the unreliability of Ramsland's figures and to put them on notice that further inquiry was warranted. Specifically, attorneys used an affidavit from Ramsland in Wood's challenge to the presidential election results in Georgia. *See* Aff., *Wood v. Raffensperger*, No. 20-04651 (N.D. Ga. Nov. 18, 2020), ECF No. 7-1. But there, Ramsland represented data as being from Michigan when, in fact, the townships listed were in Minnesota. *See id.* at Pgs. 3, 6. Moreover, it was widely publicized before Plaintiffs' counsel offered Ramsland's affidavit here that even for the Minnesota

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[68] Official Results for November 3, 2020 General Election, City of Detroit (Nov. 19, 2020, 2:11 PM), https://perma.cc/A8MY-FZEJ.

[69] Official Results for Ottawa County Precinct, Ottawa County (Nov. 11, 2020, 4:20 PM), at PDF Pg 918-54, https://perma.cc/3W57-D33G.

[70] Official Results for Muskegon County Precinct, Muskegon County (Nov. 13, 2020, 5:55 PM), at PDF Pg 466-67, https://perma.cc/9MAA-J6RU.

locations, Ramsland's conclusions about over-votes was not supported by official data from the State.[71]

It is true, as Plaintiffs' attorneys assert to defend their use of Ramsland's affidavit, that Ramsland adjusted his voter turnout figures in a subsequently filed report. (*See* ECF No. 157 at Pg ID 5396; ECF No. 49-3 at Pg ID 3124.) However, counsel never drew attention to this modification in the reply brief to which Ramsland's updated report was attached, or anywhere else. (*See* ECF No. 49.) But more importantly, this does not change the fact that a reasonable inquiry was not done before Ramsland's initial affidavit was presented.[72]

For the reasons discussed in subsections a-e above, the Court concludes that Plaintiffs' counsel presented pleadings for which the factual contentions lacked evidentiary support.

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[71] *See, e.g.*, Aaron Blake, *The Trump Campaign's Much-Hyped Affidavit Features a Big, Glaring Error*, Washington Post (Nov. 21, 2020, 7:39 AM), https://perma.cc/E6LY-AL44.

[72] It is unclear from counsel's answers to the Court's questions at the July 12 hearing whether Plaintiffs' attorneys questioned Ramsland about the startling numbers in his affidavit before it was filed or after. (*See* ECF No. 157 at Pg ID 5395-96 (Kleinhendler explaining that he asked Ramsland about "these numbers" and "[Ramsland] said, 'Yes, yes, I did question them. Yes, I did review, and yes, it was an error' that he corrected on his reply affidavit.").) However, even if Kleinhendler questioned Ramsland about the numbers before the affidavit was filed, such inquiry clearly was insufficient considering the readily available data contradicting them.

3. Whether Plaintiffs' counsel acted with an improper purpose in violation of Rule 11(b)(1)

The Court already concluded that Plaintiffs' counsel acted with an improper purpose when affirmatively labeling as an "illegal vote dump" the 100,000 ballots discussed on the news, despite failing to inquire as to the gaps that established the relevant affidavit as nothing more than conjecture. Evidence of improper purpose can also be found in their decision to label as "eyewitness testimony" an affidavit that *does not* state that the affiant saw election workers manually changing votes, especially when opting not to even ask the affiant if she saw such a thing. And still, evidence of bad faith abounds.

First, Campbell filed an emergency motion within hours of the July 12 hearing's conclusion, asking the Court to publicly release the recording of the proceeding. (ECF No. 152.) In that motion, some of the attorneys representing Plaintiffs argued:

> [O]n June 17, 2021, the Court issued an order that "[e]ach attorney whose name appears on any of Plaintiffs' pleadings or briefs shall be present at the motion hearing." [ECF No. 123.] Media around the country picked up this story, including large internet news sites such as Yahoo, The Hill, and MSN. . . .
>
> Indicative of the public's interest, the Sanctions Hearing, at its peak, "attracted more than 13,000 people watching the live video" on YouTube as broadcasted by the Court. The national media, from the Associated Press to CNN to the New York Times, ran

> stories on the hearing. *Most outlets presented a narrative that counsel for plaintiffs believe to be incorrect. Those characterizations may change if the Court republishes the video and allows others to view it* [T]he recording is no longer available on the Court's website. Consequently, *counsel is unable to refute what they believe to be public mischaracterizations*. . . .
>
> There was a lot of "spirit" in the hearing in this court, which the public should be able to experience in its entirety—*enabling citizens to draw their own inferences from the presentations instead of depending on media presentations*.

(*Id.* at Pg ID 5284-89 (emphasis added and footnotes omitted).)[73]

Notwithstanding the apparent belief of Plaintiffs' counsel, this case is being tried in a court of law, not the court of public opinion. As noted throughout this decision, statutes, rules, and standards of professional responsibility apply. Considering Plaintiffs' attorneys' obligation to act within these parameters, this Court is curious as to what narrative Plaintiffs' attorneys wished to present through the video's release. The Telegram message Wood posted within hours of the hearing's conclusion gives some insight,[74] as do the

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[73] Plaintiffs' attorneys also asserted that the video would assist them with the drafting of their supplemental briefs; however, this justification for releasing the video was not made until late in their brief and was addressed in only two paragraphs of the 15-paragraph submission. (ECF No. 152 at Pg ID 5289-90.)

[74] In the post, Wood expressed in part that he "thought [he] was attending a hearing in Venezuela or Communist China." (ECF

introductory remarks in Plaintiffs' counsel's supplemental brief[75]. What is most important, however, and what very clearly reflects bad faith is that Plaintiffs' attorneys are trying to use the judicial process to frame a public "narrative." Absent evidentiary or legal support for their claims, this seems to be one of the primary purposes of this lawsuit.

Second, there is a basis to conclude that Plaintiffs' legal team asserted the allegations in their pleadings as opinion rather than fact, with the purpose of furthering counsel's political positions rather than pursuing any attainable legal relief.

As an initial matter, several of the allegations asserted in this and similar lawsuits filed by Plaintiffs' attorneys are the subject of a lawsuit that the companies responsible for the Dominion election machines and software filed against Powell and her company, Defending the Republic, Inc.: *U.S. Dominion, Inc. v. Powell*, No. 1:21-cv-00040 (D.D.C. filed Jan. 8, 2021) ("*Dominion* Action").[76] The State Defendants assert this in their supplemental brief. (ECF No. 118-2 at Pg ID 4797, 4803-05.) And Powell admits this in

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No. 151-1 at Pg ID 5278.) He further expressed that "[t]he rule of law and due process does [*sic*] not exist at this time in our country except in a very, very few courtrooms." (*Id.*)

[75] (Supp. Br. Filed by Campbell, ECF No. 167 at Pg ID 6679 ("Bias is hard for attorneys to avoid and it is undoubtedly no less difficult for judges. The difference is that there can be no tolerance for the influence of [] bias on a judicial decision. The issue of sanctions cannot be a partisan political exercise." (internal citations omitted)).)

[76] Other statements by Powell are at issue in the *Dominion* Action but the Court's focus here is on those that are made in the instant lawsuit.

response to the State Defendants' brief (ECF No. 120 at Pg ID 4998, 5003), as well as in her motion to dismiss the *Dominion* Action (ECF No. 118-2 at PDF Pg 46 (conceding that "[t]he lawsuits containing the underlying allegations" in the *Dominion* Action, including "the exhibits and evidence on which the alleged defamatory statements are based," "were filed in . . . Michigan")).

In response to the *Dominion* plaintiffs' claim that Powell's assertions here were defamatory, Powell has maintained that the statements were "opinions" which "reasonable people would not accept . . . as fact." (*Id.* at PDF Pg 63.) Powell makes clear that at least some of the allegations in the current lawsuit were made to support her chosen political candidate. Specifically, Powell's brief in support of her motion to dismiss in the *Dominion* Action states: "Given the highly charged and political context of the statements, it is clear that Powell's statements were made as an attorney-advocate for her preferred candidate and in support of her legal and political positions." (*Id.* at PDF Pg 62.) "The highly charged and political nature of the statements," Powell continues in her brief, "underscores their political and hence partisan nature." (*Id.* at PDF Pg 61.) Powell characterizes her statements and allegations as "vituperative, abusive and inexact" "political speech," as well as "inherently prone to exaggeration and hyperbole." (*Id.* at PDF Pg 62-63.) Powell latched onto the *Dominion* plaintiffs' assertion that her allegations amounted to "wild accusations" and "outlandish claims" and therefore, she argued, "reasonable people would not accept" these alleged statements and allegations "as fact but view them only as claims that

await testing by courts through the adversary process." (*Id.* at PDF Pg 62.)

It is not acceptable to support a lawsuit with opinions, which counsel herself claims no reasonable person would accept as fact and which were "inexact," "exaggerate[ed]," and "hyperbole." Nor is it acceptable to use the federal judiciary as a political forum to satisfy one's political agenda. Such behavior by an attorney in a court of law has consequences. Although the First Amendment may allow Plaintiffs' counsel to say what they desire on social media, in press conferences, or on television, federal courts are reserved for hearing genuine legal disputes which are well-grounded in fact and law. *See Saltany v. Reagan*, 886 F.2d 438, 440 (D.C. Cir. 1989) (explaining that the circuit court does "not conceive it a proper function of a federal court to serve as a forum for 'protests,' to the detriment of parties with serious disputes waiting to be heard" and suggesting the same for use as a "political [] forum"); *see also Knipe v. Skinner*, 19 F.3d 72, 77 (2d Cir. 1994) (affirming the imposition of Rule 11 sanctions where, as the district court found, the filing of the action was "[a]nother creative avenue to beat a dead horse" and the "pursui[t of] a personal agenda against [a government entity]" without a good faith basis).

The Court pauses to briefly discuss Plaintiffs' attorneys' attempt to cloak their conduct in this litigation under First Amendment protection. The attorneys have argued:

> Setting a precedent to sanction an attorney whose case is denied at the district court level on procedural grounds is a grave abuse of the disciplinary process and potentially

> constitutes intimidation for filing a grievance against the government, which is a core protection of the First Amendment.

(ECF No. 112 at Pg ID 4615.) The attorneys have further argued that a sanctions order "would implicate Plaintiffs' and their counsel's First Amendment right of access to the courts." (ECF No. 93 at Pg ID 4078.) The attorneys are incorrect.

An attorney's right to free speech while litigating an action "is extremely circumscribed." *Mezibov v. Allen*, 411 F.3d 712, 717, 720-21 (6th Cir. 2005) (quoting *Gentile v. State Bar of Nev.*, 501 U.S. 1030, 1071 (1991)). As the Sixth Circuit explained in *Mezibov*:

> It is not surprising that courts have thus far been reluctant to allow the First Amendment to intrude into the courtroom. At first blush, the courtroom seems like the quintessential arena for public debate, but upon closer analysis, it is clear this is not, and never has been, an arena for *free* debate. An attorney's speech in court and in motion papers has always been tightly cabined by various procedural and evidentiary rules, along with the heavy hand of judicial discretion [and in] [t]he courtroom[,] the First Amendment rights of everyone (attorneys included) are at their constitutional nadir.

Id. at 717 (internal citations omitted) (emphasis in original). Attorneys "voluntarily agree[] to relinquish [their] rights to free expression in [] judicial proceeding[s]" and "voluntarily accept[] almost unconditional restraints on [their] personal speech rights" when before a court. *Id.* at 719-20. For that reason,

the Sixth Circuit has "see[n] no basis for concluding that free speech rights are violated by a restriction on that expression."[77] *Id.* at 719.

Third, the Court finds an improper purpose because Plaintiffs' counsel failed to conduct the pre-filing reasonable inquiry required of them as officers of the court, despite most of the attorneys acknowledging that "no one is immune to confirmation bias" and, therefore, "attorneys should look beyond their prejudices and political beliefs, and view evidence with a level of professional skepticism." (Supp. Br. Filed by Campbell, ECF No. 161 at Pg ID 5818.) Plaintiffs' attorneys attempt to excuse their failure to objectively evaluate their "evidence" because "[they] are not the only individuals who viewed the[] affidavits [attached to their pleadings] as evidence of serious fraud." (*Id.* at Pg ID 5817.) They say Former President Trump "susp[ected]" it too (*id.* at Pg ID 5817-18), and "millions of [] Americans . . . believed that their president would not intentionally mislead them" (*id.* at Pg ID 5817). As officers of the court, Plaintiffs' counsel had an obligation to do more than repeat opinions and beliefs, even if shared by millions. Something does not become

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[77] The Court drew Plaintiffs' counsel's attention to *Mezibov* at the motion hearing in response to their repeated refrain that the First Amendment protects them from any sanctions for their conduct in this litigation. Despite doing so and urging counsel to review the Sixth Circuit's decision (*see* ECF No. 157 at Pg ID 5497), Junttila continued to argue First Amendment protection in her supplemental brief—albeit in a more illogical and incoherent fashion. (ECF No. 165 at Pg ID 6563-64).

plausible simply because it is repeated many times by many people.[78]

Counsel's failure to "look beyond their prejudices and political beliefs" during this litigation and before filing this lawsuit strongly suggests improper motive. The evidence of bad faith and improper motive becomes undeniably clear when paired with the fact that Plaintiffs' counsel violated Rule 11 in a multitude of ways. *See supra*. In other words, by failing to take the basic pre-filing steps that any reasonable attorney would have taken and by flouting well-established pleading standards—all while knowing the risk associated with failing to remain professionally skeptical, Plaintiffs' counsel did everything in their power to ensure that their bias—that the election was fraudulent, as proclaimed by Former President Trump—was confirmed. Confirmation bias notwithstanding, Plaintiffs' counsel advanced this lawsuit for an improper purpose and will be held to account for their actions.

Fourth, circumstances suggest that this lawsuit was not about vindicating rights in the wake of alleged election fraud. Instead, it was about ensuring that a preferred political candidate remained in the presidential seat despite the decision of the nation's voters to unseat him.

Before the 2020 general election, Powell appears to have been certain that those who did not support Former President Trump already engaged in fraudulent illegal activity. On Election Day, Powell gave an

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[78] This is a lesson that some of the darkest periods of history have taught us.

interview during which she described "the many multifaceted efforts the democrats are making to steal the vote," including "develop[ing] a computer system to alter votes electronically," spreading the "COVID . . . apocalypse hoax," and ensuring that "people . . . have not gotten their absentee ballots" even though "they've . . . request[ed] them three different times[] and been told they were cancelled." (*See, e.g.,* Interview Tr., *U.S. Dominion, Inc. v. Powell*, No. 21-cv-00040 (D.D.C. filed Jan. 8, 2021), ECF No. 1-20 at Pg 2:13-24.) Why would someone, who believes that election fraud is already happening and will likely reach peak levels on Election Day, not raise the alarm with the entity the individual claims can fix things—specifically, the judiciary? It is because Plaintiffs' counsel was equally certain—even before the polls closed—that Former President Trump was going to win the 2020 election. (*Id.* at Pg 3:23-4:9 (claiming that the results of the 2020 election would be "the Trump victory," and stating that "[Democrats] [have] effectively conceded that Trump is going to win at the voting booth").)

Indeed, Plaintiffs' attorneys waited until after votes were tallied to file this lawsuit, even though the record suggests that—well in advance of Election Day—they knew or should have known about the things of which they complained. (*See, e.g.*, ECF No. 6 at Pg ID 927-933 (supporting allegation about "[D]ominion vulnerabilities to hacking" with an expert report dated August 24, 2020; a law review article dated December 27, 2019; letters dated October 6, 2006 and December 6, 2019; news articles dated May 4, 2010, August 10, 2017, and August 8, 2019; a public policy report published in 2016; and a cybersecurity advisory dated October 30, 2020).)

This game of wait-and-see shows that counsel planned to challenge the legitimacy of the election if and only if Former President Trump lost. And if that happened, they would help foster a predetermined narrative making election fraud the culprit. These things—separately, but especially collectively—evince bad faith and improper purpose in bringing this suit.

Fifth, Joshua Merritt is someone whose identity counsel redacted, referring to him only as "Spyder" or "Spider," and who counsel identified in their pleadings and briefs as "a former electronic intelligence analyst with 305th Military Intelligence" and a "US Military Intelligence expert." (*Id.* at Pg ID 880 ¶ 17, 932 ¶ 161; ECF No. 7 at Pg ID 1835.) Yet, even after learning that Merritt never completed any intelligence analyst training program with the 305th Military Intelligence Battalion, Plaintiffs' counsel remained silent as to this fact.

In its motion for sanctions, the City emphasizes Merritt's statement that the "original paperwork [he] sent in [to Plaintiffs' counsel] didn't say that" he was an electronic intelligence analyst under 305th Military Intelligence. (ECF No. 78 at Pg ID 3657.) According to the City, a spokeswoman for the U.S. Army Intelligence Center of Excellence, which includes the battalion, stated that "[Merritt] kept washing out of courses . . . [h]e's not an intelligence analyst." (*Id.*) Plaintiffs' counsel did not dispute these assertions in their response brief. (ECF No. 95 at Pg ID 4144.) Nor did Plaintiffs' counsel dispute these assertions during the hearing.

Instead, Kleinhendler argued during the hearing that Merritt's "expertise" is based on "his years and years of experience in cyber security as a confidential

informant working for the United States Government" (ECF No. 157 at Pg ID 5375)—not Merritt's purported military intelligence training. Clearly this is dishonest. This was not the experience on which Plaintiffs' attorneys premised Merritt's expertise in their pleadings and Motion for Injunctive Relief, and Merritt never claims in his declaration that he has "years and years of experience in cyber security as a confidential informant working for the United States Government."[79] (*See* ECF No. 6-25.) Instead, it was precisely Merritt's experience as "an electronic intelligence analyst under 305th Military Intelligence" that Plaintiffs' attorneys presented to convince the Court and the world that he is a reliable expert.

Kleinhendler argued during the hearing, however, that he first learned about this inconsistency after the case was dismissed on January 14. (ECF No. 157 at Pg ID 5375.) "I had no reason to doubt," Kleinhendler explained. (*Id.*) This also is dishonest.

First, the City attached an article from the Washington Post to its January 5 motion for sanctions,[80] which at least put Plaintiffs' counsel on notice that Merritt lacked the expertise they claimed. Yet

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[79] To the extent that Plaintiffs' attorneys claim that an "affidavit" attached to their reply to the motion to seal includes this assertion (*see* ECF No. 157 at Pg ID 5385 (citing ECF Nos. 50, 50-1)), it does not. That "affidavit" is not signed by or associated with anyone, much less someone named Spyder, Spider, or Joshua Merritt. (ECF No. 50-1.)

[80] (ECF No. 78-18); Emma Brown, Aaron C. Davis, and Alice Crites, Sidney Powell's Secret 'Military Intelligence Expert,' Key to Fraud Claims in Election Lawsuits, Never Worked in Military Intelligence, Washington Post (Dec. 11, 2020, 6:29 PM), https://perma.cc/2LR2-YTBG.

curiously, during the hearing, when the Court asked if "anyone ask[ed] [Plaintiffs' counsel] if, or suggest[ed] to [them] that, [Merritt] was not a military intelligence expert," Kleinhendler, Haller, and Powell said "no" and all other counsel agreed by remaining silent. (*Id.* at Pg ID 5386-87.)

Second, the Court finds it implausible (for several conspicuous reasons) that absolutely no member of Plaintiffs' legal team learned of the Washington Post article (and thus the questions it raised) shortly after it was published on December 11, 2020. This is especially so considering that, according to the Washington Post article, when "[a]sked about Merritt's limited experience in military intelligence," Powell stated "in a text to The [Washington] Post: 'I cannot confirm that Joshua Merritt is even Spider. Strongly encourage you not to print.'"[81]

Kleinhendler further argued that Plaintiffs' counsel's assertion that Merritt was a U.S. military intelligence expert was "not technically false" or "technically [] wrong" because "[h]e did spend, from [Kleinhendler's] understanding, seven months training with the 305th." (*Id.* at Pg ID 5375, 5384-85.) The Court is unconvinced by this effort to mischaracterize. Kleinhendler himself admitted that labeling Merritt as a U.S. military intelligence expert is "not [] the full story." (*Id.* at Pg ID 5384.) Surely, any reasonable attorney would find it prudent to be forthcoming after learning that one of his experts never actually *completed* the training upon which the expert's purported expertise is based.

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[81] (ECF No. 78-18 at Pg ID 3799.)

And Kleinhendler appears to concede that this argument is a poor one because he nonetheless admits that "[h]ad [he] known in advance [of the January 14 dismissal] that [Merritt] had transferred out, [he] would have made [it] clear." (*Id.* at Pg ID 5375, 5384-85, 5387.) But this is yet another misrepresentation. As detailed above, by January 5, Kleinhendler knew Merritt never completed the training that formed the basis of his purported expertise. Yet, Kleinhendler did not "make it clear." Co-counsel for Plaintiffs also had reason to question Merritt's expertise by no later than January 5. Yet, they remained silent too.

Ultimately, Plaintiffs' counsel's decision to not make clear "the full story" about Merritt not completing military intelligence training was for the improper purpose of bolstering their star witness' expertise and misleading the Court, opposing counsel, and the world into believing that Merritt was something that he was not.

Finally, despite what this Court said in its December 7, 2020 decision and what several other state and federal courts have ruled in similar election-challenge lawsuits, Plaintiffs' lawyers brazenly assert that they "would file the same complaints again." (*Id.* at Pg ID 5534.) They make this assertion even after witnessing the events of January 6 and the dangers posed by narratives like the one counsel crafted here. An attorney who willingly continues to assert claims doomed to fail, and which have incited violence before, must be deemed to be acting with an improper motive.

In sum, each of the six matters discussed above individually evince bad faith and improper purpose.

But when viewed collectively, they reveal an even more powerful truth: Once it appeared that their preferred political candidate's grasp on the presidency was slipping away, Plaintiffs' counsel helped mold the predetermined narrative about election fraud by lodging this federal lawsuit based on evidence that they actively refused to investigate or question with the requisite level of professional skepticism—and this refusal was to ensure that the evidence conformed with the predetermined narrative (a narrative that has had dangerous and violent consequences). Plaintiffs' counsel's politically motivated accusations, allegations, and gamesmanship may be protected by the First Amendment when posted on Twitter, shared on Telegram, or repeated on television. The nation's courts, however, are reserved for hearing legitimate causes of action.

C. Whether the Court May Sanction Plaintiffs' Counsel Pursuant to Its Inherent Authority

To award attorneys' fees pursuant to its inherent authority, a district court must find that (i) "the claims advanced were meritless," (ii) "counsel knew or should have known this," and (iii) "the motive for filing the suit was for an improper purpose such as harassment." *Big Yank*, 125 F.3d at 313.

As discussed in the preceding subsections, Plaintiffs' counsel advanced claims that were not well-grounded in the law, as demonstrated by their (i) presentment of claims not warranted by existing law or a nonfrivolous argument for extending, modifying, or reversing the law; (ii) assertion that acts or events violated Michigan election law, when the acts and events (even if they occurred) did not; and (iii) failure

to inquire into the requirements of Michigan election law. Plaintiffs' counsel advanced claims that were also not well-grounded in fact, as demonstrated by their (i) failure to present any evidentiary support for factual assertions; (ii) presentment of conjecture and speculation as evidentiary support for factual assertions; (iii) failure to inquire into the evidentiary support for factual assertions; (iv) failure to inquire into evidentiary support taken from other lawsuits; and (v) failure to inquire into Ramsland's outlandish and easily debunked numbers.

And, for the reasons discussed above, Plaintiffs' counsel knew or should have known that these claims and legal contentions were not well-grounded in law or fact. Moreover, for the reasons also discussed above, the Court finds that Plaintiffs and their counsel filed this lawsuit for improper purposes.

Accordingly, sanctions also are warranted pursuant to the Court's inherent authority.

V. Conclusion

In summary, the Court concludes that Plaintiffs' counsel filed this lawsuit in bad faith and for an improper purpose. Further, they presented pleadings that (i) were not "warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or establishing new law" and (ii) contained factual contentions lacking evidentiary support or likely to have evidentiary support.[82] Finally,

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[82] And for these reasons, this lawsuit is not akin to *Brown v. Board of Education*, 347 U.S. 483 (1954), as Plaintiffs' counsel, Powell, baselessly suggested during the July 12 hearing. (ECF No. 157 at Pg ID 5534.) Yes, attorneys may and should raise difficult and even unpopular issues to urge change in the law where

by failing to voluntarily dismiss this lawsuit on the date Plaintiffs' counsel acknowledged it would be moot and thereby necessitating the filing of motions to dismiss, Plaintiffs' attorneys unreasonably and vexatiously multiplied the proceedings.

For these reasons (and not for any conduct that occurred on appeal), the Court holds that sanctions against Plaintiffs' counsel are warranted under Rule 11, § 1927, and the Court's inherent authority. Sanctions are required to deter the filing of future frivolous lawsuits designed primarily to spread the narrative that our election processes are rigged and our democratic institutions cannot be trusted. Notably, many people have latched on to this narrative, citing as proof counsel's submissions in this case. The narrative may have originated or been repeated by Former President Trump and it may be one that "many Americans" share (*see* ECF No. 161 at Pg ID 5817); however, that neither renders it true nor justifies counsel's exploitation of the courts to further spread it.

A. Whether Sanctions Should be Awarded to Intervenor-Defendants

Plaintiffs do not challenge the Court's power to award sanctions to Intervenor-Defendants. However, Plaintiffs maintain that, under § 1927, "a party seeking

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change is needed. But unlike Plaintiffs' attorneys here, then-attorney Thurgood Marshall had the requisite legal footing on which his clients' claims were grounded in *Brown*, and the facts were not based on speculation and conjecture. *Brown* arose from an undeniable history during which Black Americans were treated as second-class citizens through legalized segregation in the schools of our country. In stark comparison, the present matter is built on fantastical claims and conspiracy theories.

sanctions . . . has a duty to mitigate their damage." (*Id.* at Pg ID 5809 (citing *Carter v. Hickory Healthcare, Inc.*, 905 F.3d 963, 970 (6th Cir. 2018)); *see also* ECF No. 165 at Pg ID 6573 (same).) According to Plaintiffs, the City and Davis did just the opposite by intervening in this lawsuit where they were not being sued and, Plaintiffs assert, had no necessary interest to protect.

The Court already concluded, however, that Davis and the City possess a substantial legal interest in this matter warranting their intervention either as a matter of right or permissibly. (*See* ECF No. 28.) Of course, every intervenor could mitigate its damage by staying out of a lawsuit; however, choosing to step in does not on its own mean parties cannot seek an award of sanctions when they prevail in protecting their interests.

Despite this, the Court declines to award sanctions to Davis because he did not substantially contribute to the resolution of the issues in this case. As the Court noted in its opinion denying Davis' request to intervene as of right, the State Defendants, the DNC/MDP, and the City aimed to protect the interests of all Wayne County voters, including Davis. (*Id.* at Pg ID 2143-44.) Although the Court granted Davis' request for permissive intervention, the Court noted that its decision was a "close call" and that it granted Davis' request only because "[his] intervention [would] not unduly delay or prejudice the adjudication of the original Defendants' rights." (*Id.* at Pg ID 2146, 2145 n.2 (citations omitted).)

In fact, Davis' involvement did more to interfere with than assist the advancement of this litigation.

Davis' briefs added little to the discussion,[83] and he often clogged the Court's docket with inconsequential requests and wasted the Court's limited time with the same[84]. Moreover, despite speaking only twice during

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[83] Davis' Response to Emergency Motion for Temporary Restraining Order contained two brief arguments and a note that "[he] hereby incorporates by reference all of the legal arguments asserted by Defendants and Intervening Defendants in their respective responses to Plaintiffs' motion for TRO" "[i]n order to alleviate redundancy." (ECF No. 37 at Pg ID 2749.) And Davis' Motion for Sanctions summarized and quoted—for nearly the entire length of the brief—a Detroit Free Press article, the Court's December 7, 2020 Opinion & Order Denying Plaintiffs' Motion for Injunctive Relief, and case law regarding § 1927 and a court's inherent authority, as well as proffered a disjointed argument about why the alleged falsity of Ramsland's affidavit resulted in the unreasonable and vexatious multiplication of proceedings in violation of § 1927. (ECF No. 69.)

[84] For example, (i) Davis' Emergency Motion to Strike Amended Complaint (ECF Nos. 41, 42), filed on December 3, 2020, was denied in a text-only order on the same day;

(ii) Davis' Emergency Motion to Strike Emergency Motion for Temporary Restraining Order (ECF No. 45), also filed on December 3, 2020, was withdrawn on December 4 (ECF No. 51);

(iii) the Emergency Motion to Expedite Briefing, Scheduling and Adjudication of Intervenor Defendant Robert Davis' Emergency Motions to Strike (ECF No. 46), also filed on December 3, 2020, was withdrawn on December 4 (ECF No. 51);

(iv) Davis' Emergency Motion for Court to Take Judicial Notice of Newspaper Articles Published in Detroit Free Press and Associated Press (ECF No. 59), filed on December 5, 2020, was denied on December 6 via a text-only order, which stated that "[t]he Court [found] the newspaper articles unnecessary to resolve the pending [Motion for Injunctive Relief]";

(v) Davis' Emergency Motion to Strike Motion for Extension of Time to File Response/Reply as to Motion for Sanctions (ECF No. 75), filed on January 4, 2021 because Plaintiffs' counsel "mistakenly selected and identified [] Davis as the 'filer'" of Plaintiffs' counsel's motion for extension of time (*id.* at Pg ID 3603), was denied as moot on January 5, after the Court ordered "the Clerk's Office [to] correct the docket entry text associated with Plaintiffs' motion [] so that the filing party is noted as 'All Plaintiffs'—not 'Robert Davis'" (ECF No. 76 at Pg ID 3611);

(vi) Davis' Motion for Court to Take Judicial Notice of Motion to Withdraw as Counsel Filed in the U.S. District Court for the Eastern District of Pennsylvania against Donald J. Trump for President, Inc. (ECF No. 79), filed on January 8, 2021, was denied on July 19, 2021 in an order, which stated that "the Court [did not] find it necessary to consider the motion to withdraw filed in another federal district court . . . to decide the pending sanctions motions" (ECF No. 149 at Pg ID 5267);

(vii) Davis' Emergency Motion to Strike Voluntary Dismissal (ECF No. 97), filed on January 20, 2021 after Plaintiffs' counsel misidentified a document on January 14 by selecting the wrong activity on the Court's electronic filing system, asked the Court to "sanction Plaintiffs' counsel for refusing to correct the error that was promptly brought to her attention by [] Davis' counsel" on January 18—the Court denied the motion via a 3-page order on January 25 (ECF No. 99); and

(viii) Davis' Emergency Motion for Court to Take Judicial Notice of Michigan Senate Oversight Committee's June 23, 2021 Report on November 2020 presidential election (ECF No. 124), filed on June 23, 2021, was denied on July 19, 2021 in an order, which stated that "the Court [did not] find it necessary to consider . . . the Michigan Senate Oversight Committee's June 21, 2021

the almost six-hour long sanctions hearing (ECF No. 157 at Pg ID 5340, 5519), Davis' counsel (unlike counsel to every other party to this case) opted not to file any supplemental briefing—presumably because, again, Davis had nothing to contribute.

Ultimately, the Court refuses to reward Davis for taking the Court's time and giving nothing back.

B. Sanctions Imposed

This lawsuit should never have been filed. The State Defendants and the Intervenor-Defendants should never have had to defend it. If Plaintiffs' attorneys are not ordered to reimburse the State Defendants and the City for the reasonable fees and costs incurred to defend this action, counsel will not be deterred from continuing to abuse the judicial system to publicize their narrative. Moreover, this Court has found that Plaintiffs' counsel initiated this litigation for an improper purpose, rendering this the "unusual circumstance" in which awarding attorneys' fees is warranted.

Further, given the deficiencies in the pleadings, which claim violations of Michigan election law without a thorough understanding of what the law requires, and the number of failed election-challenge lawsuits that Plaintiffs' attorneys have filed, the Court concludes that the sanctions imposed should include mandatory continuing legal education in the subjects of pleading standards and election law.

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report . . . to decide the pending sanctions motions" (ECF No. 149 at Pg ID 5267).

Lastly, the conduct of Plaintiffs' counsel, which also constituted violations of the Michigan Rules of Professional Conduct, *see, e.g.,* MRPC 3.1 and 3.3, calls into question their fitness to practice law. This warrants a referral for investigation and possible suspension or disbarment to the appropriate disciplinary authority for every state bar and federal court in which each attorney is admitted, *see* Fed. R. Civ. P. 11 Advisory Committee Notes (1993 Amendment) (explaining that such referrals are available as a sanction for violating the rule); E.D. Mich. LR 83.22 (c)(2).[85]

Accordingly,

IT IS ORDERED that the motions for sanctions filed by the State Defendants (ECF No. 105) and City of Detroit (ECF No. 78) are GRANTED. The Court is granting in part and denying in part Davis' motion for sanctions (ECF No. 69) in that the Court finds sanctions warranted but not an award of Davis' reasonable attorneys' fees or costs.

IT IS FURTHER ORDERED that Plaintiffs' attorneys shall jointly and severally pay the fees and

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[85] The Court is troubled that Powell is profiting from the filing of this and other frivolous election-challenge lawsuits. *See* https://defendingtherepublic.org (website of company run by Powell on which donations are solicited to support the "additional cases [being prepared] every day"). Other attorneys for Plaintiffs may be as well, given that their address (according to the filings here) is the same address listed on this website. What is concerning is that the sanctions imposed here will not deter counsel from pursuing future baseless lawsuits because those sanctions will be paid with donor funds rather than counsel's. In this Court's view, this should be considered by any disciplinary authority reviewing counsel's behavior.

costs incurred by the State Defendants and the City of Detroit to defend this action. *See* Fed. R. Civ. P. 11(c)(4).

IT IS FURTHER ORDERED that within fourteen (14) days of this Opinion and Order, the State Defendants and City of Detroit shall submit time and expense records, specifying for each attorney who performed work on the matter, the date, the hours expended, the nature of the work performed, and, where applicable, the attorney's hourly rate. Plaintiffs' counsel may submit objections to the requested amount within fourteen (14) days of each movants' filing.

IT IS FURTHER ORDERED that Plaintiffs' attorneys shall each complete at least twelve (12) hours of continuing legal education in the subjects of pleading standards (at least six hours total) and election law (at least six hours total) within six months of this decision. Any courses must be offered by a non-partisan organization and must be paid for at counsel's expense. Within six months of this decision, each attorney representing Plaintiffs shall file an affidavit in this case describing the content and length of the courses attended to satisfy this requirement.

IT IS FURTHER ORDERED that the Clerk of the Court shall send a copy of this decision to the Michigan Attorney Grievance Commission and the appropriate disciplinary authority for the jurisdiction(s) where each attorney is admitted, referring the matter for investigation and possible suspension or disbarment: (i) Sidney Powell-Texas; (ii) L. Lin Wood-Georgia; (iii) Emily Newman–Virginia; (iv) Julia Z. Haller–the District of Columbia, Maryland, New York and New Jersey; (v) Brandon Johnson-the District of Columbia, New York, and Nevada; (vi) Scott Hagerstrom-

Michigan; (vii) Howard Kleinhendler–New York and New Jersey; (viii) Gregory Rohl-Michigan; and (iv) Stefanie Lynn Junttila-Michigan.

IT IS SO ORDERED.

/s/ Linda V. Parker
U.S. District Judge

Dated: August 25, 2021

OPINION AND ORDER DENYING PLAINTIFFS' "EMERGENCY MOTION FOR DECLARATORY, EMERGENCY, AND PERMANENT INJUNCTIVE RELIEF" (DECEMBER 7, 2020)

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MICHIGAN SOUTHERN DIVISION

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

Plaintiffs,

v.

GRETCHEN WHITMER, in her official capacity as Governor of the State of Michigan, JOCELYN BENSON, in her official capacity as Michigan Secretary of State, and MICHIGAN BOARD OF STATE CANVASSERS,

Defendants,

and

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

Intervenor-Defendants.

Civil Case No. 20-13134

Before: Hon. Linda V. PARKER, U.S. District Judge.

OPINION AND ORDER DENYING PLAINTIFFS' "EMERGENCY MOTION FOR DECLARATORY, EMERGENCY, AND PERMANENT INJUNCTIVE RELIEF" (ECF NO. 7)

The right to vote is among the most sacred rights of our democracy and, in turn, uniquely defines us as Americans. 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.

These principles are the bedrock of American democracy and are widely revered as being woven into the fabric of this country. In Michigan, more than 5.5 million citizens exercised the franchise either in person or by absentee ballot during the 2020 General Election. Those votes were counted and, as of November 23, 2020, certified by the Michigan Board of State Canvassers (also "State Board"). The Governor has sent the slate of Presidential Electors to the Archivist of the United States to confirm the votes for the successful candidate.

Against this backdrop, Plaintiffs filed this lawsuit, bringing forth claims of widespread voter irregularities and fraud in the processing and tabulation of votes and absentee ballots. They seek relief that is stunning in its scope and breathtaking in its reach. If granted, the relief would 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. The Court declines to grant Plaintiffs this relief.

I. Background

In the weeks leading up to, and on, November 3, 2020, a record 5.5 million Michiganders voted in the presidential election ("2020 General Election"). (ECF No. 36-4 at Pg ID 2622.) Many of those votes were cast by absentee ballot. This was due in part to the coronavirus pandemic and a ballot measure the Michigan voters passed in 2018 allowing for no-reason absentee voting. When the polls closed and the votes were counted, Former Vice President Joseph R. Biden, Jr. had secured over 150,000 more votes than President Donald J. Trump in Michigan. (*Id.*)

Michigan law required the Michigan State Board of Canvassers to canvass results of the 2020 General Election by November 23, 2020. Mich. Comp. Laws § 168.842. The State Board did so by a 3-0 vote, certifying the results "for the Electors of President and Vice President," among other offices. (ECF No. 36-5 at Pg ID 2624.) That same day, Governor Gretchen Whitmer signed the Certificates of Ascertainment for the slate of electors for Vice President Biden and Senator Kamala D. Harris. (ECF No. 36-6 at Pg ID 2627-29.) Those certificates were transmitted to and received by the Archivist of the United States. (*Id.*)

Federal law provides that if election results are contested in any state, and if the state, prior to election day, has enacted procedures to decide controversies or contests over electors and electoral votes, and if these procedures have been applied, and the

decisions are made at least six days before the electors' meetings, then the decisions are considered conclusive and will apply in counting the electoral votes. 3 U.S.C. § 5. This date (the "Safe Harbor" deadline) falls on December 8, 2020. Under the federal statutory timetable for presidential elections, the Electoral College must meet on "the first Monday after the second Wednesday in December," 3 U.S.C. § 7, which is December 14 this year.

Alleging widespread fraud in the distribution, collection, and counting of ballots in Michigan, as well as violations of state law as to certain election challengers and the manipulation of ballots through corrupt election machines and software, Plaintiffs filed the current lawsuit against Defendants at 11:48 p.m. on November 25, 2020—the eve of the Thanksgiving holiday. (ECF No. 1.) Plaintiffs are registered Michigan voters and nominees of the Republican Party to be Presidential Electors on behalf of the State of Michigan. (ECF No. 6 at Pg ID 882.) They are suing Governor Whitmer and Secretary of State Jocelyn Benson in their official capacities, as well as the Michigan Board of State Canvassers.

On November 29, a Sunday, Plaintiffs filed a First Amended Complaint (ECF No. 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). In their First Amended Complaint, Plaintiffs allege three claims pursuant to 42 U.S.C. § 1983: (Count I) violation of the Elections and Electors Clauses; (Count II) violation of the Fourteenth Amendment Equal Protection Clause; and, (Count III) denial of the Fourteenth Amendment Due Process Clause. (ECF

No. 6.) Plaintiffs also assert one count alleging violations of the Michigan Election Code. (*Id.*)

By December 1, motions to intervene had been filed by the City of Detroit (ECF No. 15), Robert Davis (ECF No. 12), and the Democratic National Committee and Michigan Democratic Party ("DNC/MDP") (ECF No. 14). On that date, the Court entered a briefing schedule with respect to the motions. Plaintiffs had not yet served Defendants with their pleading or emergency motions as of December 1. Thus, on December 1, the Court also entered a text-only order to hasten Plaintiffs' actions to bring Defendants into the case and enable the Court to address Plaintiffs' pending motions. Later the same day, after Plaintiffs filed certificates of service reflecting service of the summons and Amended Complaint on Defendants (ECF Nos. 21), the Court entered a briefing schedule with respect to Plaintiffs' emergency motions, requiring response briefs by 8:00 p.m. on December 2, and reply briefs by 8:00 p.m. on December 3 (ECF No. 24).

On December 2, the Court granted the motions to intervene. (ECF No. 28.) Response and reply briefs with respect to Plaintiffs' emergency motions were thereafter filed. (ECF Nos. 29, 31, 32, 34, 35, 36, 37, 39, 49, 50.) Amicus curiae Michigan State Conference NAACP subsequently moved and was granted leave to file a brief in support of Defendants' position. (ECF Nos. 48, 55.) Supplemental briefs also were filed by the parties. (ECF Nos. 57, 58.)

In light of the limited time allotted for the Court to resolve Plaintiffs' emergency motion for injunctive relief—which Plaintiffs assert "must be granted in advance of December 8, 2020" (ECF No. 7 at Pg ID 1846)—the Court has disposed of oral argument with

respect to their motion pursuant to Eastern District of Michigan Local Rule 7.1(f).[1]

II. Standard of Review

A preliminary injunction is "an extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is entitled to such relief." *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 22 (2008) (citation omitted). The plaintiff bears the burden of demonstrating entitlement to preliminary injunctive relief. *Leary v. Daeschner*, 228 F.3d 729, 739 (6th Cir. 2000). Such relief will only be granted where "the movant carries his or her burden of proving that the circumstances clearly demand it." *Overstreet v. Lexington-Fayette Urban Cnty. Gov't*, 305 F.3d 566, 573 (6th Cir. 2002). "Evidence that goes beyond the unverified allegations of the pleadings and motion papers must be presented to support or oppose a motion for a preliminary injunction." 11A Mary Kay Kane, Fed. Prac. & Proc. § 2949 (3d ed.).

Four factors are relevant in deciding whether to grant preliminary injunctive relief: "'(1) whether the movant has a strong likelihood of success on the merits; (2) whether the movant would suffer irreparable injury absent the injunction; (3) whether the injunction would cause substantial harm to others; and (4) whether the public interest would be served by the

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[1] "'[W]here material facts are not in dispute, or where facts in dispute are not material to the preliminary injunction sought, district courts generally need not hold an evidentiary hearing.'" *Nexus Gas Transmission, LLC v. City of Green, Ohio*, 757 Fed. Appx. 489, 496-97 (6th Cir. 2018) (quoting *Certified Restoration Dry Cleaning Network, LLC v. Tenke Corp.*, 511 F.3d 535, 553 (6th Cir. 2007)) (citation omitted).

issuance of an injunction.'" *Daunt v. Benson*, 956 F.3d 396, 406 (6th Cir. 2020) (quoting *Bays v. City of Fairborn*, 668 F.3d 814, 818-19 (6th Cir. 2012)). "At the preliminary injunction stage, 'a plaintiff must show more than a mere possibility of success,' but need not 'prove his case in full.'" *Ne. Ohio Coal. for Homeless v. Husted*, 696 F.3d 580, 591 (6th Cir. 2012) (quoting *Certified Restoration Dry Cleaning Network, LLC v. Tenke Corp.*, 511 F.3d 535, 543 (6th Cir. 2007)). Yet, "the proof required for the plaintiff to obtain a preliminary injunction is much more stringent than the proof required to survive a summary judgment motion.. . ." *Leary*, 228 F.3d at 739.

III. Discussion

The Court begins by discussing those questions that go to matters of subject matter jurisdiction or which counsel against reaching the merits of Plaintiffs' claims. While the Court finds that any of these issues, alone, indicate that Plaintiffs' motion should be denied, it addresses each to be thorough.

A. Eleventh Amendment Immunity

The Eleventh Amendment to the United States Constitution provides:

> The judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State.

U.S. Const. amend. XI. This immunity extends to suits brought by citizens against their own states. *See,*

e.g., Ladd v. Marchbanks, 971 F.3d 574, 578 (6th Cir. 2020) (citing *Hans v. Louisiana*, 134 U.S. 1, 18-19 (1890)). It also extends to suits against state agencies or departments, *Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89, 100 (1984) (citations omitted), and "suit[s] against state officials when 'the state is the real, substantial party in interest[,]'" *id.* at 101 (quoting *Ford Motor Co. v. Dep't of Treasury*, 323 U.S. 459, 464 (1945)).

A suit against a State, a state agency or its department, or a state official is in fact a suit against the State and is barred "regardless of the nature of the relief sought." *Pennhurst State Sch. & Hosp.*, 465 U.S. at 100-02 (citations omitted). "'The general rule is that a suit is against the sovereign if the judgment sought would expend itself on the public treasury or domain, or interfere with the public administration, or if the effect of the judgment would be to restrain the Government from acting, or to compel it to act.'" *Id.* at 101 n.11 (quoting *Dugan v. Rank*, 372 U.S. 609, 620 (1963)) (internal quotation marks omitted).

Eleventh Amendment immunity is subject to three exceptions: (1) congressional abrogation; (2) waiver by the State; and (3) "a suit against a state official seeking prospective injunctive relief to end a continuing violation of federal law." *See Carten v. Kent State Univ.*, 282 F.3d 391, 398 (6th Cir. 2002) (citations omitted). Congress did not abrogate the States' sovereign immunity when it enacted 42 U.S.C. § 1983. *Will v. Mich. Dep't of State Police*, 491 U.S. 58, 66 (1989). "The State of Michigan has not consented to being sued in civil rights actions in the federal courts." *Johnson v. Unknown Dellatifa*, 357 F.3d 539, 545 (6th Cir. 2004) (citing *Abick v. Michigan*, 803 F.2d 874, 877

(6th Cir. 1986)). The Eleventh Amendment therefore bars Plaintiffs' claims against the Michigan Board of State Canvassers. *See McLeod v. Kelly*, 7 N.W.2d 240, 242 (Mich. 1942) ("The board of State canvassers is a State agency . . . "); *see also Deleeuw v. State Bd. of Canvassers*, 688 N.W.2d 847, 850 (Mich. Ct. App. 2004). Plaintiffs' claims are barred against Governor Whitmer and Secretary Benson unless the third exception applies.

The third exception arises from the Supreme Court's decision in *Ex parte Young*, 209 U.S. 123 (1908). But as the Supreme Court has advised:

> To interpret *Young* to permit a federal-court action to proceed in every case where prospective declaratory and injunctive relief is sought against an officer, named in his individual capacity, would be to adhere to an empty formalism and to undermine the principle . . . that Eleventh Amendment immunity represents a real limitation on a federal court's federal-question jurisdiction. The real interests served by the Eleventh Amendment are not to be sacrificed to elementary mechanics of captions and pleading. Application of the *Young* exception must reflect a proper understanding of its role in our federal system and respect for state courts instead of a reflexive reliance on an obvious fiction.

Idaho v. Coeur d'Alene Tribe of Idaho, 521 U.S. 261, 270 (1997). Further, "the theory of *Young* has not been provided an expansive interpretation." *Pennhurst State Sch. & Hosp.*, 465 U.S. at 102. "'In determining whether the doctrine of *Ex parte Young* avoids an Eleventh Amendment bar to suit, a court need only conduct a

straightforward inquiry into whether [the] complaint alleges an ongoing violation of federal law and seeks relief properly characterized as prospective.'" *Verizon Md., Inc. v. Pub. Serv. Comm'n*, 535 U.S. 635, 645 (2002) (quoting *Coeur d'Alene Tribe of Idaho*, 521 U.S. 296 (O'Connor, J., concurring)).

Ex parte Young does not apply, however, to *state law* claims against state officials, regardless of the relief sought. *Pennhurst State Sch. & Hosp.*, 465 U.S. at 106 ("A federal court's grant of relief against state officials on the basis of state law, whether prospective or retroactive, does not vindicate the supreme authority of federal law. On the contrary, it is difficult to think of a greater intrusion on state sovereignty than when a federal court instructs state officials on how to conform their conduct to state law."); *see also In re Ohio Execution Protocol Litig.*, 709 F. App'x 779, 787 (6th Cir. 2017) ("If the plaintiff sues a state official under state law in federal court for actions taken within the scope of his authority, sovereign immunity bars the lawsuit regardless of whether the action seeks monetary or injunctive relief."). Unquestionably, Plaintiffs' state law claims against Defendants are barred by Eleventh Amendment immunity.

The Court then turns its attention to Plaintiffs' § 1983 claims against Defendants. Defendants and Intervenor DNC/MDP contend that these claims are not in fact federal claims as they are premised entirely on alleged violations of *state* law. (ECF No. 31 at Pg ID 2185 ("Here, each count of Plaintiffs' complaint—even Counts I, II, and III, which claim to raise violations of federal law—is predicated on the election being conducted contrary to Michigan law."); ECF No. 36 at Pg ID 2494 ("While some of [Plaintiffs'] allega-

tions concern fantastical conspiracy theories that belong more appropriately in the fact-free outer reaches of the Internet[,] . . . what Plaintiffs assert at bottom are violations of the Michigan Election Code.") Defendants also argue that even if properly stated as federal causes of action, "it is far from clear whether Plaintiffs' requested injunction is actually prospective in nature, as opposed to retroactive." (ECF No. 31 at Pg ID 2186.)

The latter argument convinces this Court that *Ex parte Young* does not apply. As set forth earlier, "'[i]n order to fall with the *Ex parte Young* exception, a claim must seek prospective relief to end a continuing violation of federal law.'" *Russell v. Lundergan-Grimes*, 784 F.3d 1037, 1047 (6th Cir. 2015) (quoting *Diaz v. Mich. Dep't of Corr.*, 703 F.3d 956, 964 (6th Cir. 2013)). Unlike *Russell*, which Plaintiffs cite in their reply brief, this is not a case where a plaintiff is seeking to enjoin the continuing enforcement of a statute that is allegedly unconstitutional. *See id.* at 1044, 1047 (plaintiff claimed that Kentucky law creating a 300-foot no-political-speech buffer zone around polling location violated his free-speech rights). Instead, Plaintiffs are seeking to undo what has already occurred, as their requested relief reflects.[2] (*See* ECF No. 7 at Pg ID 1847; *see also* ECF No. 6 at Pg 955-56.)

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

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[2] To the extent Plaintiffs ask the Court to certify the results in favor of President Donald J. Trump, such relief is beyond its powers.

Archivist. (ECF Nos. 31-4, 31-5.) There is no continuing violation to enjoin. *See Rios v. Blackwell*, 433 F. Supp. 2d 848 (N.D. Ohio Feb. 7, 2006); *see also King Lincoln Bronzeville Neighborhood Ass'n v. Husted*, No. 2:06-cv-00745, 2012 WL 395030, at *4-5 (S.D. Ohio Feb. 7, 2012); *cf. League of Women Voters of Ohio v. Brunner*, 548 F.3d 463, 475 (6th Cir. 2008) (finding that the plaintiff's claims fell within the *Ex parte Young* doctrine where it alleged that the problems that plagued the election "are chronic and will continue absent injunctive relief").

For these reasons, the Court concludes that the Eleventh Amendment bars Plaintiffs' claims against Defendants.

B. Mootness

This case represents well the phrase: "this ship has sailed." The 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 those reasons, this matter is moot.

"'Under Article III of the Constitution, federal courts may adjudicate only actual, ongoing cases or controversies.'" *Kentucky v. U.S. ex rel. Hagel*, 759 F.3d 588, 595 (6th Cir. 2014) (quoting *Lewis v. Cont'l Bank Corp.*, 494 U.S. 472, 477 (1990)). A case may become moot "when the issues presented are no longer live or the parties lack a legally cognizable interest in the outcome." *U.S. Parole Comm'n v. Geraghty*, 445 U.S. 388, 396, 410 (1980) (internal quotation marks and citation omitted). Stated differently, a case is moot where the court lacks "the ability to give meaningful relief[.]" *Sullivan v. Benningfield*, 920 F.3d 401, 410

(6th Cir. 2019). This lawsuit was moot well before it was filed on November 25.

In their prayer for relief, Plaintiffs ask 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.[3] (ECF No. 6 at Pg ID 955-56, ¶ 233.) What relief the Court could grant Plaintiffs is no longer available.

Before this lawsuit was filed, all 83 counties in Michigan had finished canvassing their results for all elections and reported their results for state office races to the Secretary of State and the Michigan Board of State Canvassers in accordance with Michigan law. *See* Mich. Comp. Laws § 168.843. The State Board had

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[3] Plaintiffs also seek an order requiring the impoundment of all voting machines and software in Michigan for expert inspection and the production of security camera footage from the TCF Center for November 3 and 4. (ECF No. 6 at Pg ID 956, ¶ 233.) This requested relief is not meaningful, however, where the remaining requests are no longer available. In other words, the evidence Plaintiffs seek to gather by inspecting voting machines and software and security camera footage only would be useful if an avenue remained open for them to challenge the election results.

certified the results of the 2020 General Election and Governor Whitmer had submitted the slate of Presidential Electors to the Archivists. (ECF No. 31-4 at Pg ID 2257-58; ECF No. 31-5 at Pg ID 2260-63.) The time for requesting a special election based on mechanical errors or malfunctions in voting machines had expired. *See* Mich. Comp. Laws §§ 168.831, 168.832 (petitions for special election based on a defect or mechanical malfunction must be filed "no later than 10 days after the date of the election"). And so had the time for requesting a recount for the office of President. *See* Mich. Comp. Laws § 168.879.

The 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. The deadline for them to do so has passed. Any avenue for this Court to provide meaningful relief has been foreclosed. As the Eleventh Circuit Court of Appeals recently observed in one of the many other post-election lawsuits brought to specifically overturn the results of the 2020 presidential election:

> "We cannot turn back the clock and create a world in which" the 2020 election results are not certified. *Fleming v. Gutierrez*, 785 F.3d 442, 445 (10th Cir. 2015). And it is not possible for us to delay certification nor meaningful to order a new recount when the results are already final and certified.

Wood v. Raffensperger,-F.3d-, 2020 WL 7094866 (11th Cir. Dec. 5, 2020). And as one Justice of the Supreme Court of Pennsylvania advised in another 2020 post-election lawsuit: "there is no basis in law by which the courts may grant Petitioners' request to ignore the

results of an election and recommit the choice to the General Assembly to substitute its preferred slate of electors for the one chosen by a majority of Pennsylvania's voters." *Kelly v. Commonwealth*, No. 68 MAP 2020, 2020 WL 7018314, at *3 (Pa. Nov. 28, 2020) (Wecht, J., concurring); *see also Wood v. Raffensperger*, No. 1:20-cv-04651, 2020 WL 6817513, at *13 (N.D. Ga. Nov. 20, 2020) (concluding that "interfer[ing] with the result of an election that has already concluded would be unprecedented and harm the public in countless ways").

In short, Plaintiffs' requested relief concerning the 2020 General Election is moot.

C. Laches

Defendants argue that Plaintiffs are unlikely to succeed on the merits because they waited too long to knock on the Court's door. (ECF No. 31 at Pg ID 2175-79; ECF No. 39 at Pg ID 2844.) The Court agrees.

The doctrine of laches is rooted in the principle that "equity aids the vigilant, not those who slumber on their rights." *Lucking v. Schram*, 117 F.2d 160, 162 (6th Cir. 1941); *see also United States v. Clintwood Elkhorn Min. Co.*, 553 U.S. 1, 9 (2008) ("A constitutional claim can become time-barred just as any other claim can."). An action may be barred by the doctrine of laches if: (1) the plaintiff delayed unreasonably in asserting his rights and (2) the defendant is prejudiced by this delay. *Brown-Graves Co. v. Central States, Se. and Sw. Areas Pension Fund*, 206 F.3d 680, 684 (6th Cir. 2000); *Ottawa Tribe of Oklahoma v. Logan*, 577 F.3d 634, 639 n.6 (6th Cir. 2009) ("Laches arises from an extended failure to exercise a right to the detriment of another party."). Courts apply laches in election

cases. *Detroit Unity Fund v. Whitmer*, 819 F. App'x 421, 422 (6th Cir. 2020) (holding that the district court did not err in finding plaintiff's claims regarding deadline for local ballot initiatives "barred by laches, considering the unreasonable delay on the part of [p]laintiffs and the consequent prejudice to [d]efendants"). *Cf. Benisek v. Lamone*, 138 S. Ct. 1942, 1944 (2018) ("[A] party requesting a preliminary injunction must generally show reasonable diligence. That is as true in election law cases as elsewhere.").

First, Plaintiffs showed no diligence in asserting the claims at bar. They filed the instant action on November 25—more than 21 days after the 2020 General Election—and served it on Defendants some five days later on December 1. (ECF Nos. 1, 21.) If Plaintiffs had legitimate claims regarding whether the treatment of election challengers complied with state law, they could have brought their claims well in advance of or on Election Day—but they did not. Michigan's 83 Boards of County Canvassers finished canvassing by no later than November 17 and, on November 23, both the Michigan Board of State Canvassers and Governor Whitmer certified the election results. Mich. Comp. Laws §§ 168.822, 168.842.0. If Plaintiffs had legitimate claims regarding the manner by which ballots were processed and tabulated on or after Election Day, they could have brought the instant action on Election Day or during the weeks of canvassing that followed—yet they did not. Plaintiffs base the claims related to election machines and software on "expert and fact witness" reports discussing "glitches" and other alleged vulnerabilities that occurred as far back as 2010. (*See e.g.,* ECF No. 6 at Pg ID 927-933, ¶¶ 157(C)-(E), (G), 158, 160, 167.) If Plaintiffs had

legitimate concerns about the election machines and software, they could have filed this lawsuit well before the 2020 General Election—yet they sat back and did nothing.

Plaintiffs proffer no persuasive explanation as to why they waited so long to file this suit. Plaintiffs concede that they "would have preferred to file sooner, but [] needed some time to gather statements from dozens of fact witnesses, retain and engage expert witnesses, and gather other data supporting their Complaint." (ECF No. 49 at Pg ID 3081.) But according to Plaintiffs themselves, "[m]anipulation of votes was apparent *shortly after the polls closed on November 3, 2020*." (ECF No. 7 at Pg ID 1837 (emphasis added).) Indeed, where there is no reasonable explanation, there can be no true justification. *See Crookston v. Johnson*, 841 F.3d 396, 398 (6th Cir. 2016) (identifying the "first and most essential" reason to issue a stay of an election-related injunction is plaintiff offering "no reasonable explanation for waiting so long to file this action"). Defendants satisfy the first element of their laches defense.

Second, Plaintiffs' delay prejudices Defendants. *See Kay v. Austin*, 621 F.2d 809, 813 (6th Cir. 1980) ("As time passes, the state's interest in proceeding with the election increases in importance as resources are committed and irrevocable decisions are made, and the candidate's claim to be a serious candidate who has received a serious injury becomes less credible by his having slept on his rights.") This is especially so considering that Plaintiffs' claims for relief are not merely last-minute—they are after the fact. While Plaintiffs delayed, the ballots were cast; the votes were counted; and the results were certified. The

rationale for interposing the doctrine of laches is now at its peak. *See McDonald v. Cnty. of San Diego*, 124 F. App'x 588 (9th Cir. 2005) (citing *Soules v. Kauaians for Nukolii Campaign Comm.*, 849 F.2d 1176, 1180 (9th Cir. 1988)); *Soules*, 849 F.2d at 1180 (quoting *Hendon v. N.C. State Bd. Of Elections*, 710 F.2d 177, 182 (4th Cir. 1983)) (applying doctrine of laches in post-election lawsuit because doing otherwise would, "permit, if not encourage, parties who could raise a claim to lay by and gamble upon receiving a favorable decision of the electorate and then, upon losing, seek to undo the ballot results in a court action").

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. The Court concludes that Plaintiffs' delay results in their claims being barred by laches.

D. Abstention

As outlined in several filings, when the present lawsuit was filed on November 25, 2020, there already were multiple lawsuits pending in Michigan state courts raising the same or similar claims alleged in Plaintiffs' Amended Complaint. (*See, e.g.*, ECF No. 31 at Pg ID 2193-98 (summarizing five state court lawsuits challenging President Trump's defeat in Michigan's November 3, 2020 General Election).) Defendants and the City of Detroit urge the Court to abstain from deciding Plaintiffs' claims in deference to those proceedings under various abstention doctrines. (*Id.* at Pg ID 2191-2203; ECF No. 39 at Pg ID 2840-44.) Defendants rely on the abstention doctrine outlined by the Supreme Court in *Colorado River Water*

Conservation District v. United States, 424 U.S. 800 (1976). The City of Detroit relies on the abstention doctrines outlined in *Colorado River*, as well as those set forth in *Railroad Commission of Texas v. Pullman Co.*, 312 U.S. 496, 500-01 (1941), and *Burford v. Sun Oil Co.*, 319 U.S. 315 (1943). The City of Detroit maintains that abstention is particularly appropriate when resolving election disputes in light of the autonomy provided to state courts to initially settle such disputes.

The abstention doctrine identified in *Colorado River* permits a federal court to abstain from exercising jurisdiction over a matter in deference to parallel state-court proceedings. *Colorado River*, 424 U.S. at 813, 817. The exception is found warranted "by considerations of 'proper constitutional adjudication,' 'regard for federal-state relations,' or 'wise judicial administration.'" *Quackenbush v. Allstate Ins. Co.*, 517 U.S. 706, 716 (1996) (quoting *Colorado River*, 424 U.S. at 817). The Sixth Circuit has identified two pre-requisites for abstention under this doctrine. *Romine v. Compuserve Corp.*, 160 F.3d 337, 339-40 (6th Cir. 1998).

First, the court must determine that the concurrent state and federal actions are parallel. *Id.* at 339. Second, the court must consider the factors outlined by the Supreme Court in *Colorado River* and subsequent cases:

> (1) whether the state court has assumed jurisdiction over any res or property; (2) whether the federal forum is less convenient to the parties; (3) avoidance of piecemeal litigation; . . . (4) the order in which jurisdiction was obtained; . . . (5) whether the source

> of governing law is state or federal; (6) the adequacy of the state court action to protect the federal plaintiff's rights; (7) the relative progress of the state and federal proceedings; and (8) the presence or absence of concurrent jurisdiction.

Romine, 160 F.3d at 340-41 (internal citations omitted). "These factors, however, do not comprise a mechanical checklist. Rather, they require 'a careful balancing of the important factors as they apply in a give[n] case' depending on the particular facts at hand." *Id.* (quoting *Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 16 (1983)).

As summarized in Defendants' response brief and reflected in their exhibits (*see* ECF No. 31 at Pg ID 2193-97; *see also* ECF Nos. 31-7, 31-9, 31-11, 31-12, 31-14), the allegations and claims in the state court proceedings and the pending matter are, at the very least, substantially similar, *Romine*, 160 F.3d at 340 ("Exact parallelism is not required; it is enough if the two proceedings are substantially similar." (internal quotation marks and citation omitted)). A careful balancing of the factors set forth by the Supreme Court counsel in favor of deferring to the concurrent jurisdiction of the state courts.

The first and second factor weigh against abstention. *Id.* (indicating that the weight is against abstention where no property is at issue and neither forum is more or less convenient). While the Supreme Court has stated that "'the presence of federal law issues must always be a major consideration weighing against surrender of federal jurisdiction in deference to state proceedings[,]'" *id.* at 342 (quoting *Moses H. Cone*, 460 U.S. at 26), this "'factor has less significance

where the federal courts' jurisdiction to enforce the statutory rights in question is concurrent with that of the state courts.'"[4] *Id.* (quoting *Moses H. Cone*, 460 U.S. at 25). Moreover, the Michigan Election Code seems to dominate even Plaintiffs' federal claims. Further, the remaining factors favor abstention.

"Piecemeal litigation occurs when different courts adjudicate the identical issue, thereby duplicating judicial effort and potentially rendering conflicting results." *Id.* at 341. The parallel proceedings are premised on similar factual allegations and many of the same federal and state claims. The state court proceedings were filed well before the present matter and at least three of those matters are far more advanced than this case. Lastly, as Congress conferred concurrent jurisdiction on state courts to adjudicate § 1983 claims, *Felder v. Casey*, 487 U.S. 131, 139 (1988), "[t]here can be no legitimate contention that the [Michigan] state courts are incapable of safeguarding [the rights protected under this statute]," *Romine*, 160 F.3d at 342.

For these reasons, abstention is appropriate under the *Colorado River* doctrine. The Court finds it unnecessary to decide whether abstention is appropriate under other doctrines.

E. Standing

Under Article III of the United States Constitution, federal courts can resolve only "cases" and "controversies." U.S. Const. art. III § 2. The case-or-controversy requirement is satisfied only where a plaintiff has standing to bring suit. *See Spokeo, Inc. v. Robins*, 136

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[4] State courts have concurrent jurisdiction over § 1983 actions. *Felder v. Casey*, 487 U.S. 131, 139 (1988).

S. Ct. 1540, 1547 (2016), *as revised* (May 24, 2016). Each plaintiff must demonstrate standing for each claim he seeks to press.[5] *DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332, 352 (2006) (citation omitted) ("[A] plaintiff must demonstrate standing separately for each form of relief sought."). To establish standing, a plaintiff must show that: (1) he has suffered an injury in fact that is "concrete and particularized" and "actual or imminent"; (2) the injury is "fairly . . . trace[able] to the challenged action of the defendant"; and (3) it is "likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision." *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-62 (1992) (internal quotation marks and citations omitted).

1. Equal Protection Claim

Plaintiffs allege that Defendants engaged in "several schemes" to, among other things, "destroy," "discard," and "switch" votes for President Trump, thereby "devalu[ing] Republican votes" and "diluting" the influence of their individual votes. (ECF No. 49 at Pg ID 3079.) Plaintiffs contend that "the vote dilution resulting from this systemic and illegal conduct did not affect all Michigan voters equally; it had the intent and effect of inflating the number of votes for Democratic candidates and reducing the number of

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[5] Plaintiffs assert a due process claim in their Amended Complaint and twice state in their motion for injunctive relief that Defendants violated their due process rights. (*See* ECF No. 7 at Pg ID 1840, 1844.) Plaintiffs do not pair either statement with anything the Court could construe as a developed argument. (*Id.*) The Court finds it unnecessary, therefore, to further discuss the due process claim. *McPherson v. Kelsey*, 125 F.3d 989, 995 (6th Cir. 1997) ("Issues adverted to in a perfunctory manner, unaccompanied by some effort at developed argumentation, are deemed waived.").

votes for President Trump and Republican candidates." (ECF No. 49 at Pg ID 3079.) Even assuming that Plaintiffs establish injury-in-fact and causation under this theory,[6] their constitutional claim cannot stand because Plaintiffs fall flat when attempting to clear the hurdle of redressability.

Plaintiffs fail to establish that the alleged injury of vote-dilution can be redressed by a favorable decision from this Court. Plaintiffs ask this Court to de-certify the results of the 2020 General Election in Michigan. But an order de-certifying the votes of approximately 2.8 million people would not reverse the dilution of Plaintiffs' vote. To be sure, standing is not "dispensed in gross: A plaintiff's remedy must be tailored to redress the plaintiff's particular injury." *Gill*, 138 S. Ct. at 1934 (citing *Cuno*, 547 U.S. at 353); *Cuno*, 547 U.S. at 353 ("The remedy must of course be limited to the inadequacy that produced the injury in fact that the plaintiff has established." (quoting *Lewis v. Casey*, 518 U.S. 343, 357 (1996)). Plaintiffs' alleged injury does not entitle them to seek their requested remedy because the harm of having one's vote invalidated or diluted is not remedied by denying millions of others *their* right to vote. Accordingly, Plaintiffs have failed to show that their injury can be redressed by the relief they seek and thus possess no standing to pursue their equal protection claim.

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[6] To be clear, the Court does not find that Plaintiffs satisfy the first two elements of the standing inquiry.

2. Elections Clause & Electors Clause Claims

The provision of the United States Constitution known as the Elections Clause states in part: "The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof[.]" U.S. Const. art. I, § 4, cl. 1. "The Elections Clause effectively gives state governments the 'default' authority to regulate the mechanics of federal elections, *Foster v. Love*, 522 U.S. 67, 69, 118 S. Ct. 464, 139 L.Ed.2d 369 (1997), with Congress retaining 'exclusive control' to 'make or alter' any state's regulations, *Colegrove v. Green*, 328 U.S. 549, 554, 66 S. Ct. 1198, 90 L.Ed. 1432 (1946)." *Bognet*, 2020 WL 6686120, *1. The "Electors Clause" of the Constitution states: "Each State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors . . . ." U.S. Const. art. II, § 1, cl. 2.

Plaintiffs argue that, as "nominees of the Republican Party to be Presidential Electors on behalf of the State of Michigan, they have standing to allege violations of the Elections Clause and Electors Clause because "a vote for President Trump and Vice-President Pence in Michigan . . . is a vote for each Republican elector[], and . . . illegal conduct aimed at harming candidates for President similarly injures Presidential Electors." (ECF No. 7 at Pg ID 1837-38; ECF No. 49 at Pg ID 3076-78.)

But where, as here, the only injury Plaintiffs have alleged is that the Elections Clause has not been followed, the United States Supreme Court has made clear that "[the] injury is precisely the kind of undifferentiated, generalized grievance about the conduct of government that [courts] have refused to

countenance."[7] *Lance v. Coffman*, 549 U.S. 437, 442 (2007). Because Plaintiffs "assert no particularized stake in the litigation," Plaintiffs fail to establish injury-in-fact and thus standing to bring their Elections Clause and Electors Clause claims. *Id.*; *see also Johnson v. Bredesen*, 356 F. App'x 781, 784 (6th Cir. 2009) (citing *Lance*, 549 U.S. at 441-42) (affirming district court's conclusion that citizens did not allege injury-in-fact to support standing for claim that the state of Tennessee violated constitutional law).

This is so because the Elections Clause grants rights to "the Legislature" of "each State." U.S. Const. art. I, § 4, cl. 1. The Supreme Court interprets the words "the Legislature," as used in that clause, to mean the lawmaking bodies of a state. *Ariz. State Legislature*, 135 S.Ct. at 2673. The Elections Clause, therefore, grants rights to state legislatures and to other entities to which a State may delegate lawmaking authority. *See id.* at 2668. Plaintiffs' Elections Clause claims thus belong, if to anyone, Michigan's state legislature. *Bognet v. Secy. Commonwealth of Pa.*, ___

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[7] Although separate constitutional provisions, the Electors Clause and Elections Clause share "considerable similarity," *Ariz. State Leg. v. Ariz. Indep. Redistricting Comm'n*, 576 U.S. 787, 839, (2015) (Roberts, C.J., dissenting), and Plaintiffs do not at all distinguish the two clauses in their motion for injunctive relief or reply brief (ECF No. 7; ECF No. 49 at Pg ID 3076-78). *See also Bognet v. Sec'y Commonwealth of Pa.*, No. 20-3214, 2020 WL 6686120, at *7 (3d Cir. Nov. 13, 2020) (applying same test for standing under both Elections Clause and Electors Clause); *Wood*, 2020 WL 6817513, at *1 (same); *Foster*, 522 U.S. at 69 (characterizing Electors Clause as Elections Clauses' "counterpart for the Executive Branch"); *U.S. Term Limits, Inc. v. Thornton*, 514 U.S. 779, 804-05 (1995) (noting that state's "duty" under Elections Clause "parallels the duty" described by Electors Clause).

F.3d. ___, 2020 WL 6686120, *7 (3d Cir. Nov. 13, 2020). Plaintiffs here are six presidential elector nominees; they are not a part of Michigan's lawmaking bodies nor do they have a relationship to them.

To support their contention that they have standing, Plaintiffs point to *Carson v. Simon*, 78 F.3d 1051 (8th Cir. 2020), a decision finding that electors had standing to bring challenges under the Electors Clause. (ECF No. 7 at Pg ID 1839 (citing *Carson*, 978 F.3d at 1057).) In that case, which was based on the specific content and contours of Minnesota state law, the Eighth Circuit Court of Appeals concluded that because "the plain text of Minnesota law treats prospective electors as candidates," it too would treat presidential elector nominees as candidates. *Carson*, 78 F.3d at 1057. This Court, however, is as unconvinced about the majority's holding in *Carson* as the dissent:

> I am not convinced the Electors have Article III standing to assert claims under the Electors Clause. Although Minnesota law at times refers to them as "candidates," *see, e.g.*, Minn. Stat. § 204B.03 (2020), the Electors are not candidates for public office as that term is commonly understood. Whether they ultimately assume the office of elector depends entirely on the outcome of the state popular vote for president. *Id*. § 208.04 subdiv. 1 ("[A] vote cast for the party candidates for president and vice president shall be deemed a vote for that party's electors."). They are not presented to and chosen by the voting public for their office, but instead automatically assume that office based on the public's selection of entirely different individuals.

78 F.3d at 1063 (Kelly, J., dissenting).[8]

Plaintiffs contend that the Michigan Election Code and relevant Minnesota law are similar. (See ECF No. 49 at Pg ID 3076-78.) Even if the Court were to agree, it finds that Plaintiffs lack standing to sue under the Elections and Electors Clauses.

F. The Merits of the Request for Injunctive Relief

1. Likelihood of Success on the Merits

The Court may deny Plaintiffs' motion for injunctive relief for the reasons discussed above. Nevertheless, the Court will proceed to analyze the merits of their claims.

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[8] In addition, at least one Circuit Court, the Third Circuit Court of Appeals, has distinguished *Carson*'s holding, noting:

> Our conclusion departs from the recent decision of an Eighth Circuit panel which, over a dissent, concluded that candidates for the position of presidential elector had standing under *Bond* to challenge a Minnesota state-court consent decree that effectively extended the receipt deadline for mailed ballots. The *Carson* court appears to have cited language from *Bond* without considering the context—specifically, the Tenth Amendment and the reserved police powers—in which the U.S. Supreme Court employed that language. There is no precedent for expanding *Bond* beyond this context, and the *Carson* court cited none.

Bognet, 2020 WL 6686120, at *8 n.6.

a. Violation of the Elections & Electors Clauses

Plaintiffs allege that Defendants violated the Elections Clause and Electors Clause by deviating from the requirements of the Michigan Election Code. (*See, e.g.,* ECF No. 6 at Pg ID 884-85, ¶¶ 36-40, 177-81, 937-38.) Even assuming Defendants did not follow the Michigan Election Code, Plaintiffs do not explain how or why such violations of state election procedures automatically amount to violations of the clauses. In other words, it appears that Plaintiffs' claims are in fact state law claims disguised as federal claims.

A review of Supreme Court cases interpreting these clauses supports this conclusion. In *Cook v. Gralike*, the Supreme Court struck down a Missouri law that required election officials to print warnings on the ballot next to the name of any congressional candidate who refused to support term limits after concluding that such a statute constituted a "'regulation' of congressional elections," as used in the Elections Clause. 531 U.S. 510, 525-26 (2001) (quoting U.S. Const. art. I, § 4, cl. 1). In *Arizona State Legislature v. Arizona Independent Redistricting Commission*, the Supreme Court upheld an Arizona law that transferred redistricting power from the state legislature to an independent commission after concluding that "the Legislature," as used in the Elections Clause, includes any official body with authority to make laws for the state. 576 U.S. 787, 824 (2015). In each of these cases, federal courts measured enacted state election laws against the federal mandates established in the clauses —they did not measure *violations* of enacted state elections law against those federal mandates.

By asking the Court to find that they have made out claims under the clauses due to alleged violations of the Michigan Election Code, 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.

b. Violation of the Equal Protection Clause

Most election laws will "impose some burden upon individual voters." *Burdick v. Takushi*, 504 U.S. 428, 433 (1992). But "[o]ur Constitution leaves no room for classification of people in a way that unnecessarily abridges this right [to vote]." *Reynolds v. Sims*, 377 U.S. 533, 559 (1964) (quoting *Wesberry v. Sanders*, 376 U.S. 1, 17-18 (1964)). Voting rights can be impermissibly burdened "by a debasement or dilution of the weight of a citizen's vote just as effectively as by wholly prohibiting the free exercise of the franchise." *Id.* (quoting *Reynolds*, 377 U.S. at 555).

Plaintiffs attempt to establish an Equal Protection claim based on the theory that Defendants engaged in "several schemes" to, among other things, "destroy," "discard," and "switch" votes for President Trump, thereby "devalu[ing] Republican votes" and "diluting" the influence of their individual votes. (ECF No. 49 at Pg ID 3079.)

But, to be perfectly clear, Plaintiffs' 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. For example, the closest Plaintiffs get to

alleging that physical ballots were altered in such a way is the following statement in an election challenger's sworn affidavit: "I believe some of these workers were changing votes that had been cast for Donald Trump and other Republican candidates."[9] (ECF No. 6 at Pg ID 902 ¶ 91 (citing Aff. Articia Bomer, ECF No. 6-3 at Pg ID 1008-1010).) But of course, "[a] belief is not evidence" and falls far short of what is required to obtain any relief, much less the extraordinary relief Plaintiffs request. *United States v. O'Connor*, No. 96-2992, 1997 WL 413594, at *1 (7th Cir. 1997); *see Brown v. City of Franklin*, 430 F. App'x 382, 387 (6th Cir. 2011) ("Brown just submits his belief that Fox's 'protection' statement actually meant "protection from retaliation. An unsubstantiated belief is not evidence of pretext."); *Booker v. City of St. Louis*, 309 F.3d 464, 467 (8th Cir. 2002) ("Booker's "belief" that he was singled out for testing is not evidence that he was.").[10] The closest Plaintiffs get to alleging that

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[9] Plaintiffs allege in several portions of the Amended Complaint that election officials improperly tallied, counted, or marked ballots. But some of these allegations equivocate with words such as "believe" and "may" and none of these allegations identify which presidential candidate the ballots were allegedly altered to favor. (*See, e.g.,* ECF No. 6 at Pg ID 902, ¶ 91 (citing Aff. Articia Bomer, ECF No. 6-3 at Pg ID 1008-10 ("I *believe* some of these ballots *may* not have been properly counted." (emphasis added))); Pg ID 902-03, ¶ 92 (citing Tyson Aff. ¶ 17) ("At least one challenger observed poll workers adding marks to a ballot where there was no mark for any candidate.").

[10] As stated by the Circuit Court for the District of Columbia Circuit:

> The statement is that the complainant believes and expects to prove some things. Now his belief and expectation may be in good faith; but it has been repeatedly held that suspicion is not proof; and it is

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*. (*See e.g.,* ECF No. 6 at ¶¶ 7-11, 17, 125, 129, 138-43, 147-48, 155-58, 160-63, 167, 171.) And Plaintiffs do not at all explain how the question of whether the treatment of election challengers complied with state law bears on the validity of votes, or otherwise establishes an equal protection claim.

With 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.[11] *See Wood*, 2020 WL

> equally true that belief and expectation to prove cannot be accepted as a substitute for fact. The complainant carefully refrains from stating that he has any information upon which to found his belief or to justify his expectation; and evidently he has no such information. But belief, without an allegation of fact either upon personal knowledge or upon information reasonably sufficient upon which to base the belief, cannot justify the extraordinary remedy of injunction.

Magruder v. Schley, 18 App. D.C. 288, 292, 1901 WL 19131, at *2 (D.C. Cir. 1901).

11 "[T]he Voter Plaintiffs cannot analogize their Equal Protection claim to gerrymandering cases in which votes were weighted differently. Instead, Plaintiffs advance an Equal Protection Clause argument based solely on state officials' alleged violation of state law that does not cause unequal treatment. And if dilution of lawfully cast ballots by the 'unlawful' counting of invalidly cast ballots were a true equal-protection problem, then it would transform every violation of state election law (and, actually, every violation of every law) into a potential federal equal-protection claim requiring scrutiny of the government's 'interest'

7094866 (quoting *Bognet*, 2020 WL 6686120, at *12) ("'[N]o single voter is specifically disadvantaged' if a vote is counted improperly, even if the error might have a 'mathematical impact on the final tally and thus on the proportional effect of every vote.'").

2. Irreparable Harm & Harm to Others

Because "a finding that there is simply no likelihood of success on the merits is usually fatal[,]" *Gonzales v. Nat'l Bd. of Med. Examiners*, 225 F.3d 620, 625 (6th Cir. 2000) (citing *Mich. State AFL-CIO v. Miller*, 103 F.3d 1240, 1249 (6th Cir. 1997), the Court will not discuss the remaining preliminary injunction factors extensively.

As discussed, Plaintiffs fail to show that a favorable decision from the Court would redress their alleged injury. Moreover, granting Plaintiffs' injunctive relief would greatly harm the public interest. As Defendants aptly describe, Plaintiffs' requested injunction would "upend the statutory process for election certification and the selection of Presidential Electors. Moreover, it w[ould] disenfranchise millions of Michigan voters in favor [of] the preferences of a handful of people who [are] disappointed with the official results." (ECF No. 31 at Pg ID 2227.)

In short, none of the remaining factors weigh in favor of granting Plaintiffs' request for an injunction.

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in failing to do more to stop the illegal activity. That is not how the Equal Protection Clause works." *Bognet*, 2020 WL 6686120, at *11.

IV. Conclusion

For these reasons, the Court finds that Plaintiffs are far from likely to succeed in this matter. In fact, 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. 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.

The People have spoken.

The Court, therefore, DENIES Plaintiffs' "Emergency Motion for Declaratory, Emergency, and Permanent Injunctive Relief" (ECF No. 7.)

IT IS SO ORDERED.

/s/ Linda V. Parker
U.S. District Judge

Dated: December 7, 2020

ORDER DENYING PETITION FOR REHEARING, UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT (AUGUST 8, 2023)

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

TIMOTHY KING, ET AL.,

Plaintiffs,

L. LIN WOOD (21-1785); GREGORY J. ROHL, BRANDON JOHNSON, HOWARD KLEINHENDLER, SIDNEY POWELL, JULIA HALLER, and SCOTT HAGERSTROM (21-1786),

Interested Parties-Appellants,

v.

GRETCHEN WHITMER; JOCELYN BENSON; CITY OF DETROIT, MICHIGAN,

Defendants-Appellees.

Nos. 21-1785/1786

Before: BOGGS, KETHLEDGE, and WHITE, Circuit Judges.

ORDER

The court received two petitions for rehearing en banc. The original panel has reviewed the petitions for

rehearing and concludes that the issues raised in the petitions were fully considered upon the original submission and decision of the cases. The petitions then were circulated to the full court.* No judge has requested a vote on the suggestion for rehearing en banc.

Therefore, the petitions are denied.

ENTERED BY ORDER OF THE COURT

/s/ Deborah S. Hunt
Clerk

* Judge Davis recused herself from participation in this ruling.

ORDER STAYING THE MANDATE PENDING A PETITION FOR WRIT OF CERTIORARI, UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT (AUGUST 15, 2023)

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

TIMOTHY KING, ET AL.,

Plaintiffs,

L. LIN WOOD,

Interested Party-Appellant,

v.

GRETCHEN WHITMER; JOCELYN BENSON; CITY OF DETROIT, MICHIGAN,

Defendants-Appellees.

Nos. 21-1785

Before: BOGGS, KETHLEDGE, and WHITE, Circuit Judges.

Upon consideration of motion to stay mandate,

It is ORDERED that the mandate be stayed to allow the appellant time to file a petition for a writ of certiorari, and thereafter until the Supreme Court disposes of the case, but shall promptly issue if the

petition is not filed within ninety days from the date of final judgment by this court.

ENTERED BY ORDER OF THE COURT

/s/ Deborah S. Hunt
Clerk

Issued: August 15, 2023

FEDERAL RULES OF CIVIL PROCEDURE RULE 11 WITH ADVISORY NOTES

FRCP Rule 11.

Signing Pleadings, Motions, and Other Papers; Representations to the Court; Sanctions

(a) SIGNATURE. Every pleading, written motion, and other paper must be signed by at least one attorney of record in the attorney's name—or by a party personally if the party is unrepresented. The paper must state the signer's address, e-mail address, and telephone number. Unless a rule or statute specifically states otherwise, a pleading need not be verified or accompanied by an affidavit. The court must strike an unsigned paper unless the omission is promptly corrected after being called to the attorney's or party's attention.

(b) REPRESENTATIONS TO THE COURT. By presenting to the court a pleading, written motion, or other paper—whether by signing, filing, submitting, or later advocating it—an attorney or unrepresented party certifies that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances:

(1) it is not being presented for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation;

(2) the claims, defenses, and other legal contentions are warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law;

(3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and

(4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on belief or a lack of information.

(c) SANCTIONS.

(1) *In General.* If, after notice and a reasonable opportunity to respond, the court determines that Rule 11(b) has been violated, the court may impose an appropriate sanction on any attorney, law firm, or party that violated the rule or is responsible for the violation. Absent exceptional circumstances, a law firm must be held jointly responsible for a violation committed by its partner, associate, or employee.

(2) *Motion for Sanctions.* A motion for sanctions must be made separately from any other motion and must describe the specific conduct that allegedly violates Rule 11(b). The motion must be served under Rule 5, but it must not be filed or be presented to the court if the challenged paper, claim, defense, contention, or denial is withdrawn or appropriately corrected within 21 days after service or within another time the court sets. If warranted, the court may award to the prevailing party the reasonable expenses, including attorney's fees, incurred for the motion.

(3) *On the Court's Initiative.* On its own, the court may order an attorney, law firm, or party to show cause why conduct specifically described in the order has not violated Rule 11(b).

(4) *Nature of a Sanction.* A sanction imposed under this rule must be limited to what suffices to deter repetition of the conduct or comparable conduct by others similarly situated. The sanction may include nonmonetary directives; an order to pay a penalty into court; or, if imposed on motion and warranted for effective deterrence, an order directing payment to the movant of part or all of the reasonable attorney's fees and other expenses directly resulting from the violation.

(5) *Limitations on Monetary Sanctions.* The court must not impose a monetary sanction:

(A) against a represented party for violating Rule 11(b)(2); or

(B) on its own, unless it issued the show-cause order under Rule 11(c)(3) before voluntary dismissal or settlement of the claims made by or against the party that is, or whose attorneys are, to be sanctioned.

(6) *Requirements for an Order.* An order imposing a sanction must describe the sanctioned conduct and explain the basis for the sanction.

(d) INAPPLICABILITY TO DISCOVERY. This rule does not apply to disclosures and discovery requests,

responses, objections, and motions under Rules 26 through 37.

Notes

(As amended Apr. 28, 1983, eff. Aug. 1, 1983; Mar. 2, 1987, eff. Aug. 1, 1987; Apr. 22, 1993, eff. Dec. 1, 1993; Apr. 30, 2007, eff. Dec. 1, 2007.)

Notes of Advisory Committee on Rules—1937

This is substantially the content of [former] Equity Rules 24 (Signature of Counsel) and 21 (Scandal and Impertinence) consolidated and unified. Compare [former] Equity Rule 36 (Officers Before Whom Pleadings Verified). Compare to similar purposes, English Rules Under the Judicature Act (The Annual Practice, 1937) O. 19, r. 4, and *Great Australian Gold Mining Co. v. Martin*, L. R., 5 Ch.Div. 1, 10 (1877). Subscription of pleadings is required in many codes. 2 Minn.Stat. (Mason, 1927) § 9265; N.Y.R.C.P. (1937) Rule 91; 2 N.D.Comp.Laws Ann. (1913) § 7455.

This rule expressly continues any statute which requires a pleading to be verified or accompanied by an affidavit, such as:

U.S.C., Title 28:

§ 381 [former] (Preliminary injunctions and temporary restraining orders)

§ 762 [now 1402] (Suit against the United States).

U.S.C., Title 28, § 829 [now 1927] (Costs; attorney liable for, when) is unaffected by this rule.

For complaints which must be verified under these rules, see Rules 23(b) (Secondary Action by Shareholders) and 65 (Injunctions).

For abolition of the rule in equity that the averments of an answer under oath must be overcome by the testimony of two witnesses or of one witness sustained by corroborating circumstances, *see* Pa.Stat.Ann. (Purdon, 1931) *see* 12 P.S.Pa., § 1222; for the rule in equity itself, see *Greenfield v. Blumenthal*, 69 F.2d 294 (C.C.A. 3d, 1934).

Notes of Advisory Committee on Rules—1983 Amendment

Since its original promulgation, Rule 11 has provided for the striking of pleadings and the imposition of disciplinary sanctions to check abuses in the signing of pleadings. Its provisions have always applied to motions and other papers by virtue of incorporation by reference in Rule 7(b)(2). The amendment and the addition of Rule 7(b)(3) expressly confirms this applicability.

Experience shows that in practice Rule 11 has not been effective in deterring abuses. *See* 6 Wright & Miller, Federal Practice and Procedure: Civil § 1334 (1971). There has been considerable confusion as to (1) the circumstances that should trigger striking a pleading or motion or taking disciplinary action, (2) the standard of conduct expected of attorneys who sign pleadings and motions, and (3) the range of available and appropriate sanctions. See Rodes, Ripple & Mooney, Sanctions Imposable for Violations of the Federal Rules of Civil Procedure 64–65, Federal Judicial Center (1981). The new language is intended to reduce the reluctance of courts to impose sanctions, see Moore, Federal Practice 7.05, at 1547, by emphasizing the responsibilities of the attorney and reenforcing those obligations by the imposition of sanctions.

The amended rule attempts to deal with the problem by building upon and expanding the equitable doctrine permitting the court to award expenses, including attorney's fees, to a litigant whose opponent acts in bad faith in instituting or conducting litigation. *See*, *e.g.*, *Roadway Express, Inc. v. Piper*, 447 U.S. 752, (1980); *Hall v. Cole*, 412 U.S. 1, 5 (1973). Greater attention by the district courts to pleading and motion abuses and the imposition of sanctions when appropriate, should discourage dilatory or abusive tactics and help to streamline the litigation process by lessening frivolous claims or defenses.

The expanded nature of the lawyer's certification in the fifth sentence of amended Rule 11 recognizes that the litigation process may be abused for purposes other than delay. *See*, *e.g.*, *Browning Debenture Holders' Committee v. DASA Corp.*, 560 F.2d 1078 (2d Cir. 1977).

The words "good ground to support" the pleading in the original rule were interpreted to have both factual and legal elements. *See*, *e.g.*, *Heart Disease Research Foundation v. General Motors Corp.*, 15 Fed.R.Serv. 2d 1517, 1519 (S.D.N.Y. 1972). They have been replaced by a standard of conduct that is more focused.

The new language stresses the need for some prefiling inquiry into both the facts and the law to satisfy the affirmative duty imposed by the rule. The standard is one of reasonableness under the circumstances. See *Kinee v. Abraham Lincoln Fed. Sav. & Loan Ass'n*, 365 F.Supp. 975 (E.D.Pa. 1973). This standard is more stringent than the original good-faith formula and thus it is expected that a greater range of circumstances will trigger its violation. See *Nemeroff v. Abelson*, 620 F.2d 339 (2d Cir. 1980).

The rule is not intended to chill an attorney's enthusiasm or creativity in pursuing factual or legal theories. The court is expected to avoid using the wisdom of hindsight and should test the signer's conduct by inquiring what was reasonable to believe at the time the pleading, motion, or other paper was submitted. Thus, what constitutes a reasonable inquiry may depend on such factors as how much time for investigation was available to the signer; whether he had to rely on a client for information as to the facts underlying the pleading, motion, or other paper; whether the pleading, motion, or other paper was based on a plausible view of the law; or whether he depended on forwarding counsel or another member of the bar.

The rule does not require a party or an attorney to disclose privileged communications or work product in order to show that the signing of the pleading, motion, or other paper is substantially justified. The provisions of Rule 26(c), including appropriate orders after in camera inspection by the court, remain available to protect a party claiming privilege or work product protection.

Amended Rule 11 continues to apply to anyone who signs a pleading, motion, or other paper. Although the standard is the same for unrepresented parties, who are obliged themselves to sign the pleadings, the court has sufficient discretion to take account of the special circumstances that often arise in pro se situations. See *Haines v. Kerner* 404 U.S. 519 (1972).

The provision in the original rule for striking pleadings and motions as sham and false has been deleted. The passage has rarely been utilized, and decisions thereunder have tended to confuse the issue of attorney honesty with the merits of the action. *See*

generally Risinger, Honesty in Pleading and its Enforcement: Some "Striking" Problems with Fed. R. Civ. P. 11, 61 Minn.L.Rev. 1 (1976). Motions under this provision generally present issues better dealt with under Rules 8, 12, or 56. See *Murchison v. Kirby*, 27 F.R.D. 14 (S.D.N.Y. 1961); 5 Wright & Miller, Federal Practice and Procedure: Civil § 1334 (1969).

The former reference to the inclusion of scandalous or indecent matter, which is itself strong indication that an improper purpose underlies the pleading, motion, or other paper, also has been deleted as unnecessary. Such matter may be stricken under Rule 12(f) as well as dealt with under the more general language of amended Rule 11.

The text of the amended rule seeks to dispel apprehensions that efforts to obtain enforcement will be fruitless by insuring that the rule will be applied when properly invoked. The word "sanctions" in the caption, for example, stresses a deterrent orientation in dealing with improper pleadings, motions or other papers. This corresponds to the approach in imposing sanctions for discovery abuses. See *National Hockey League v. Metropolitan Hockey Club*, 427 U.S. 639 (1976) (per curiam). And the words "shall impose" in the last sentence focus the court's attention on the need to impose sanctions for pleading and motion abuses. The court, however, retains the necessary flexibility to deal appropriately with violations of the rule. It has discretion to tailor sanctions to the particular facts of the case, with which it should be well acquainted.

The reference in the former text to wilfullness as a prerequisite to disciplinary action has been deleted. However, in considering the nature and severity of the

sanctions to be imposed, the court should take account of the state of the attorney's or party's actual or presumed knowledge when the pleading or other paper was signed. Thus, for example, when a party is not represented by counsel, the absence of legal advice is an appropriate factor to be considered.

Courts currently appear to believe they may impose sanctions on their own motion. See *North American Trading Corp. v. Zale Corp*., 73 F.R.D. 293 (S.D.N.Y. 1979). Authority to do so has been made explicit in order to overcome the traditional reluctance of courts to intervene unless requested by one of the parties. The detection and punishment of a violation of the signing requirement, encouraged by the amended rule, is part of the court's responsibility for securing the system's effective operation.

If the duty imposed by the rule is violated, the court should have the discretion to impose sanctions on either the attorney, the party the signing attorney represents, or both, or on an unrepresented party who signed the pleading, and the new rule so provides. Although Rule 11 has been silent on the point, courts have claimed the power to impose sanctions on an attorney personally, either by imposing costs or employing the contempt technique. *See* 5 Wright & Miller, Federal Practice and Procedure: Civil § 1334 (1969); 2A Moore, Federal Practice 11.02, at 2104 n.8. This power has been used infrequently. The amended rule should eliminate any doubt as to the propriety of assessing sanctions against the attorney.

Even though it is the attorney whose signature violates the rule, it may be appropriate under the circumstances of the case to impose a sanction on the client. See *Browning Debenture Holders' Committee v.*

DASA Corp., *supra.* This modification brings Rule 11 in line with practice under Rule 37, which allows sanctions for abuses during discovery to be imposed upon the party, the attorney, or both.

A party seeking sanctions should give notice to the court and the offending party promptly upon discovering a basis for doing so. The time when sanctions are to be imposed rests in the discretion of the trial judge. However, it is anticipated that in the case of pleadings the sanctions issue under Rule 11 normally will be determined at the end of the litigation, and in the case of motions at the time when the motion is decided or shortly thereafter. The procedure obviously must comport with due process requirements. The particular format to be followed should depend on the circumstances of the situation and the severity of the sanction under consideration. In many situations the judge's participation in the proceedings provides him with full knowledge of the relevant facts and little further inquiry will be necessary.

To assure that the efficiencies achieved through more effective operation of the pleading regimen will not be offset by the cost of satellite litigation over the imposition of sanctions, the court must to the extent possible limit the scope of sanction proceedings to the record. Thus, discovery should be conducted only by leave of the court, and then only in extraordinary circumstances.

Although the encompassing reference to "other papers" in new Rule 11 literally includes discovery papers, the certification requirement in that context is governed by proposed new Rule 26(g). Discovery motions, however, fall within the ambit of Rule 11.

**Notes of Advisory Committee on Rules—
1987 Amendment**

The amendments are technical. No substantive change is intended.

**Notes of Advisory Committee on Rules—
1993 Amendment**

Purpose of revision. This revision is intended to remedy problems that have arisen in the interpretation and application of the 1983 revision of the rule. For empirical examination of experience under the 1983 rule, *see*, *e.g.*, New York State Bar Committee on Federal Courts, Sanctions and Attorneys' Fees (1987); T. Willging, The Rule 11 Sanctioning Process (1989); American Judicature Society, Report of the Third Circuit Task Force on Federal Rule of Civil Procedure 11 (S. Burbank ed., 1989); E. Wiggins, T. Willging, and D. Stienstra, Report on Rule 11 (Federal Judicial Center 1991). For book-length analyses of the case law, *see* G. Joseph, Sanctions: The Federal Law of Litigation Abuse (1989); J. Solovy, The Federal Law of Sanctions (1991); G. Vairo, Rule 11 Sanctions: Case Law Perspectives and Preventive Measures (1991).

The rule retains the principle that attorneys and pro se litigants have an obligation to the court to refrain from conduct that frustrates the aims of Rule 1. The revision broadens the scope of this obligation, but places greater constraints on the imposition of sanctions and should reduce the number of motions for sanctions presented to the court. New subdivision (d) removes from the ambit of this rule all discovery requests, responses, objections, and motions subject to the provisions of Rule 26 through 37.

Subdivision (a). Retained in this subdivision are the provisions requiring signatures on pleadings, written motions, and other papers. Unsigned papers are to be received by the Clerk, but then are to be stricken if the omission of the signature is not corrected promptly after being called to the attention of the attorney or pro se litigant. Correction can be made by signing the paper on file or by submitting a duplicate that contains the signature. A court may require by local rule that papers contain additional identifying information regarding the parties or attorneys, such as telephone numbers to facilitate facsimile transmissions, though, as for omission of a signature, the paper should not be rejected for failure to provide such information.

The sentence in the former rule relating to the effect of answers under oath is no longer needed and has been eliminated. The provision in the former rule that signing a paper constitutes a certificate that it has been read by the signer also has been eliminated as unnecessary. The obligations imposed under subdivision (b) obviously require that a pleading, written motion, or other paper be read before it is filed or submitted to the court.

Subdivisions (b) and (c). These subdivisions restate the provisions requiring attorneys and pro se litigants to conduct a reasonable inquiry into the law and facts before signing pleadings, written motions, and other documents, and prescribing sanctions for violation of these obligations. The revision in part expands the responsibilities of litigants to the court, while providing greater constraints and flexibility in dealing with infractions of the rule. The rule continues to require litigants to "stop-and-think" before initially making

legal or factual contentions. It also, however, emphasizes the duty of candor by subjecting litigants to potential sanctions for insisting upon a position after it is no longer tenable and by generally providing protection against sanctions if they withdraw or correct contentions after a potential violation is called to their attention.

The rule applies only to assertions contained in papers filed with or submitted to the court. It does not cover matters arising for the first time during oral presentations to the court, when counsel may make statements that would not have been made if there had been more time for study and reflection. However, a litigant's obligations with respect to the contents of these papers are not measured solely as of the time they are filed with or submitted to the court, but include reaffirming to the court and advocating positions contained in those pleadings and motions after learning that they cease to have any merit. For example, an attorney who during a pretrial conference insists on a claim or defense should be viewed as "presenting to the court" that contention and would be subject to the obligations of subdivision (b) measured as of that time. Similarly, if after a notice of removal is filed, a party urges in federal court the allegations of a pleading filed in state court (whether as claims, defenses, or in disputes regarding removal or remand), it would be viewed as "presenting"—and hence certifying to the district court under Rule 11—those allegations.

The certification with respect to allegations and other factual contentions is revised in recognition that sometimes a litigant may have good reason to believe that a fact is true or false but may need discovery, formal or informal, from opposing parties or third

persons to gather and confirm the evidentiary basis for the allegation. Tolerance of factual contentions in initial pleadings by plaintiffs or defendants when specifically identified as made on information and belief does not relieve litigants from the obligation to conduct an appropriate investigation into the facts that is reasonable under the circumstances; it is not a license to join parties, make claims, or present defenses without any factual basis or justification. Moreover, if evidentiary support is not obtained after a reasonable opportunity for further investigation or discovery, the party has a duty under the rule not to persist with that contention. Subdivision (b) does not require a formal amendment to pleadings for which evidentiary support is not obtained, but rather calls upon a litigant not thereafter to advocate such claims or defenses.

The certification is that there is (or likely will be) "evidentiary support" for the allegation, not that the party will prevail with respect to its contention regarding the fact. That summary judgment is rendered against a party does not necessarily mean, for purposes of this certification, that it had no evidentiary support for its position. On the other hand, if a party has evidence with respect to a contention that would suffice to defeat a motion for summary judgment based thereon, it would have sufficient "evidentiary support" for purposes of Rule 11.

Denials of factual contentions involve somewhat different considerations. Often, of course, a denial is premised upon the existence of evidence contradicting the alleged fact. At other times a denial is permissible because, after an appropriate investigation, a party has no information concerning the matter or, indeed, has a reasonable basis for doubting the credibility of

the only evidence relevant to the matter. A party should not deny an allegation it knows to be true; but it is not required, simply because it lacks contradictory evidence, to admit an allegation that it believes is not true.

The changes in subdivisions (b)(3) and (b)(4) will serve to equalize the burden of the rule upon plaintiffs and defendants, who under Rule 8(b) are in effect allowed to deny allegations by stating that from their initial investigation they lack sufficient information to form a belief as to the truth of the allegation. If, after further investigation or discovery, a denial is no longer warranted, the defendant should not continue to insist on that denial. While sometimes helpful, formal amendment of the pleadings to withdraw an allegation or denial is not required by subdivision (b).

Arguments for extensions, modifications, or reversals of existing law or for creation of new law do not violate subdivision (b)(2) provided they are "nonfrivolous." This establishes an objective standard, intended to eliminate any "empty-head pure-heart" justification for patently frivolous arguments. However, the extent to which a litigant has researched the issues and found some support for its theories even in minority opinions, in law review articles, or through consultation with other attorneys should certainly be taken into account in determining whether paragraph (2) has been violated. Although arguments for a change of law are not required to be specifically so identified, a contention that is so identified should be viewed with greater tolerance under the rule.

The court has available a variety of possible sanctions to impose for violations, such as striking the offending paper; issuing an admonition, reprimand, or

censure; requiring participation in seminars or other educational programs; ordering a fine payable to the court; referring the matter to disciplinary authorities (or, in the case of government attorneys, to the Attorney General, Inspector General, or agency head), etc. See Manual for Complex Litigation, Second, § 42.3. The rule does not attempt to enumerate the factors a court should consider in deciding whether to impose a sanction or what sanctions would be appropriate in the circumstances; but, for emphasis, it does specifically note that a sanction may be nonmonetary as well as monetary. Whether the improper conduct was willful, or negligent; whether it was part of a pattern of activity, or an isolated event; whether it infected the entire pleading, or only one particular count or defense; whether the person has engaged in similar conduct in other litigation; whether it was intended to injure; what effect it had on the litigation process in time or expense; whether the responsible person is trained in the law; what amount, given the financial resources of the responsible person, is needed to deter that person from repetition in the same case; what amount is needed to deter similar activity by other litigants: all of these may in a particular case be proper considerations. The court has significant discretion in determining what sanctions, if any, should be imposed for a violation, subject to the principle that the sanctions should not be more severe than reasonably necessary to deter repetition of the conduct by the offending person or comparable conduct by similarly situated persons.

Since the purpose of Rule 11 sanctions is to deter rather than to compensate, the rule provides that, if a monetary sanction is imposed, it should ordinarily be paid into court as a penalty. However, under unusual

circumstances, particularly for [subdivision] (b)(1) violations, deterrence may be ineffective unless the sanction not only requires the person violating the rule to make a monetary payment, but also directs that some or all of this payment be made to those injured by the violation. Accordingly, the rule authorizes the court, if requested in a motion and if so warranted, to award attorney's fees to another party. Any such award to another party, however, should not exceed the expenses and attorneys' fees for the services directly and unavoidably caused by the violation of the certification requirement. If, for example, a wholly unsupportable count were included in a multi-count complaint or counterclaim for the purpose of needlessly increasing the cost of litigation to an impecunious adversary, any award of expenses should be limited to those directly caused by inclusion of the improper count, and not those resulting from the filing of the complaint or answer itself. The award should not provide compensation for services that could have been avoided by an earlier disclosure of evidence or an earlier challenge to the groundless claims or defenses. Moreover, partial reimbursement of fees may constitute a sufficient deterrent with respect to violations by persons having modest financial resources. In cases brought under statutes providing for fees to be awarded to prevailing parties, the court should not employ cost-shifting under this rule in a manner that would be inconsistent with the standards that govern the statutory award of fees, such as stated in *Christiansburg Garment Co. v. EEOC*, 434 U.S. 412 (1978).

The sanction should be imposed on the persons—whether attorneys, law firms, or parties—who have violated the rule or who may be determined to be

responsible for the violation. The person signing, filing, submitting, or advocating a document has a nondelegable responsibility to the court, and in most situations is the person to be sanctioned for a violation. Absent exceptional circumstances, a law firm is to be held also responsible when, as a result of a motion under subdivision (c)(1)(A), one of its partners, associates, or employees is determined to have violated the rule. Since such a motion may be filed only if the offending paper is not withdrawn or corrected within 21 days after service of the motion, it is appropriate that the law firm ordinarily be viewed as jointly responsible under established principles of agency. This provision is designed to remove the restrictions of the former rule. *Cf. Pavelic & LeFlore v. Marvel Entertainment Group*, 493 U.S. 120 (1989) (1983 version of Rule 11 does not permit sanctions against law firm of attorney signing groundless complaint).

The revision permits the court to consider whether other attorneys in the firm, co-counsel, other law firms, or the party itself should be held accountable for their part in causing a violation. When appropriate, the court can make an additional inquiry in order to determine whether the sanction should be imposed on such persons, firms, or parties either in addition to or, in unusual circumstances, instead of the person actually making the presentation to the court. For example, such an inquiry may be appropriate in cases involving governmental agencies or other institutional parties that frequently impose substantial restrictions on the discretion of individual attorneys employed by it.

Sanctions that involve monetary awards (such as a fine or an award of attorney's fees) may not be imposed on a represented party for causing a violation

of subdivision (b)(2), involving frivolous contentions of law. Monetary responsibility for such violations is more properly placed solely on the party's attorneys. With this limitation, the rule should not be subject to attack under the Rules Enabling Act. See *Willy v. Coastal Corp.*, ____ U.S. ____ (1992); *Business Guides, Inc. v. Chromatic Communications Enter. Inc.*, ____ U.S. ____ (1991). This restriction does not limit the court's power to impose sanctions or remedial orders that may have collateral financial consequences upon a party, such as dismissal of a claim, preclusion of a defense, or preparation of amended pleadings.

Explicit provision is made for litigants to be provided notice of the alleged violation and an opportunity to respond before sanctions are imposed. Whether the matter should be decided solely on the basis of written submissions or should be scheduled for oral argument (or, indeed, for evidentiary presentation) will depend on the circumstances. If the court imposes a sanction, it must, unless waived, indicate its reasons in a written order or on the record; the court should not ordinarily have to explain its denial of a motion for sanctions. Whether a violation has occurred and what sanctions, if any, to impose for a violation are matters committed to the discretion of the trial court; accordingly, as under current law, the standard for appellate review of these decisions will be for abuse of discretion. See *Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384 (1990) (noting, however, that an abuse would be established if the court based its ruling on an erroneous view of the law or on a clearly erroneous assessment of the evidence).

The revision leaves for resolution on a case-by-case basis, considering the particular circumstances

involved, the question as to when a motion for violation of Rule 11 should be served and when, if filed, it should be decided. Ordinarily the motion should be served promptly after the inappropriate paper is filed, and, if delayed too long, may be viewed as untimely. In other circumstances, it should not be served until the other party has had a reasonable opportunity for discovery. Given the "safe harbor" provisions discussed below, a party cannot delay serving its Rule 11 motion until conclusion of the case (or judicial rejection of the offending contention).

Rule 11 motions should not be made or threatened for minor, inconsequential violations of the standards prescribed by subdivision (b). They should not be employed as a discovery device or to test the legal sufficiency or efficacy of allegations in the pleadings; other motions are available for those purposes. Nor should Rule 11 motions be prepared to emphasize the merits of a party's position, to exact an unjust settlement, to intimidate an adversary into withdrawing contentions that are fairly debatable, to increase the costs of litigation, to create a conflict of interest between attorney and client, or to seek disclosure of matters otherwise protected by the attorney-client privilege or the work-product doctrine. As under the prior rule, the court may defer its ruling (or its decision as to the identity of the persons to be sanctioned) until final resolution of the case in order to avoid immediate conflicts of interest and to reduce the disruption created if a disclosure of attorney-client communications is needed to determine whether a violation occurred or to identify the person responsible for the violation.

The rule provides that requests for sanctions must be made as a separate motion, *i.e.*, not simply

included as an additional prayer for relief contained in another motion. The motion for sanctions is not, however, to be filed until at least 21 days (or such other period as the court may set) after being served. If, during this period, the alleged violation is corrected, as by withdrawing (whether formally or informally) some allegation or contention, the motion should not be filed with the court. These provisions are intended to provide a type of "safe harbor" against motions under Rule 11 in that a party will not be subject to sanctions on the basis of another party's motion unless, after receiving the motion, it refuses to withdraw that position or to acknowledge candidly that it does not currently have evidence to support a specified allegation. Under the former rule, parties were sometimes reluctant to abandon a questionable contention lest that be viewed as evidence of a violation of Rule 11; under the revision, the timely withdrawal of a contention will protect a party against a motion for sanctions.

To stress the seriousness of a motion for sanctions and to define precisely the conduct claimed to violate the rule, the revision provides that the "safe harbor" period begins to run only upon service of the motion. In most cases, however, counsel should be expected to give informal notice to the other party, whether in person or by a telephone call or letter, of a potential violation before proceeding to prepare and serve a Rule 11 motion.

As under former Rule 11, the filing of a motion for sanctions is itself subject to the requirements of the rule and can lead to sanctions. However, service of a cross motion under Rule 11 should rarely be needed since under the revision the court may award to the person who prevails on a motion under Rule 11—

whether the movant or the target of the motion—reasonable expenses, including attorney's fees, incurred in presenting or opposing the motion.

The power of the court to act on its own initiative is retained, but with the condition that this be done through a show cause order. This procedure provides the person with notice and an opportunity to respond. The revision provides that a monetary sanction imposed after a court-initiated show cause order be limited to a penalty payable to the court and that it be imposed only if the show cause order is issued before any voluntary dismissal or an agreement of the parties to settle the claims made by or against the litigant. Parties settling a case should not be subsequently faced with an unexpected order from the court leading to monetary sanctions that might have affected their willingness to settle or voluntarily dismiss a case. Since show cause orders will ordinarily be issued only in situations that are akin to a contempt of court, the rule does not provide a "safe harbor" to a litigant for withdrawing a claim, defense, etc., after a show cause order has been issued on the court's own initiative. Such corrective action, however, should be taken into account in deciding what—if any—sanction to impose if, after consideration of the litigant's response, the court concludes that a violation has occurred.

Subdivision (d). Rules 26(g) and 37 establish certification standards and sanctions that apply to discovery disclosures, requests, responses, objections, and motions. It is appropriate that Rules 26 through 37, which are specially designed for the discovery process, govern such documents and conduct rather than the more general provisions of Rule 11. Subdivision (d) has been added to accomplish this result.

Rule 11 is not the exclusive source for control of improper presentations of claims, defenses, or contentions. It does not supplant statutes permitting awards of attorney's fees to prevailing parties or alter the principles governing such awards. It does not inhibit the court in punishing for contempt, in exercising its inherent powers, or in imposing sanctions, awarding expenses, or directing remedial action authorized under other rules or under 28 U.S.C. § 1927. See *Chambers v. NASCO*, ____ U.S. ____ (1991). Chambers cautions, however, against reliance upon inherent powers if appropriate sanctions can be imposed under provisions such as Rule 11, and the procedures specified in Rule 11—notice, opportunity to respond, and findings—should ordinarily be employed when imposing a sanction under the court's inherent powers. Finally, it should be noted that Rule 11 does not preclude a party from initiating an independent action for malicious prosecution or abuse of process.

Committee Notes on Rules—2007 Amendment

The language of Rule 11 has been amended as part of the general restyling of the Civil Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

RULE 11 NOTICE PROVIDED BY CITY OF DETROIT (DECEMBER 15, 2020)

VIA E-MAIL/FIRST-CLASS MAIL

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Re: Timothy Kink, et al v Gretchen Whitmer, et al U.S. District Court, Eastern District of Michigan Case No. 2:20-cv-13134

Dear Counsel:

Please find enclosed, and served, a copy *of* ***Intervenor-Defendant City of Detroit's Motion for Rule 11 Sanctions*** in the above-entitled matter.

Very truly yours,

FINK BRESSACK

/s/ Nathan J. Fink

NJF: ksh
Encl.
cc: All Counsel for Defendants and
Intervenor-Defendants (via e-mail only)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

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

Plaintiffs,

v.

GRETCHEN WHITMER, IN HER OFFICIAL CAPACITY AS GOVERNOR OF THE STATE OF MICHIGAN, ET AL.,

Defendants,

and

CITY OF DETROIT, ET AL.,

Intervenor-Defendants.

No. 2:20-cv-13134

Before: Hon. Linda V. PARKER, U.S. District Judge.

INTERVENOR-DEFENDANT CITY OF DETROIT'S MOTION FOR RULE 11 SANCTIONS

Intervenor-Defendant City of Detroit (the "City"), by and through counsel, respectfully moves for sanc-

tions against Plaintiffs and their counsel pursuant to Federal Rule of Civil Procedure 11.

The undersigned counsel certifies that counsel communicated in writing with opposing counsel, explaining the nature of the relief to be sought by way of this motion and seeking concurrence in the relief; opposing counsel thereafter denied concurrence.[1]

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

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

2. Sanctions pursuant to the sub-rule should be imposed against Plaintiffs and their counsel because they initiated the instant suit for improper purposes, including harassing the City and frivolously undermining "People's faith in the democratic process and their trust in our government." Opinion and Order Denying Plaintiffs' "Emergency Motion for Declaratory, Emergency, and Permanent Injunctive Relief," ECF No. 62, PageID.3329-3330.

3. Plaintiffs and their counsel understood that the mere filing of a suit (no matter how frivolous) could, without any evidence, raise doubts in the minds of millions of Americans about the legitimacy of the 2020 presidential election. As this Court noted, "Plaintiffs ask th[e] Court to ignore the orderly statu-

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[1] Ms. Powell, this paragraph is included in our proposed motion in anticipation that you will not concur. If you do concur, we will not be filing the Motion.

tory 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 to harass the City.

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

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

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

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

8. Plaintiffs' claims were also barred by laches because "they waited too long to knock on the Court's door." *Id.* at PageID.3310. Indeed, "Plaintiffs showed no diligence in asserting the claims at bar." *Id.* at PageID.3311. This delay prejudiced the City. *Id.* at PageID.3313.

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

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

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

12. For each of Plaintiffs' claims, Plaintiffs did not identify valid legal theories and the controlling law contradicted the claims. The claims were not warranted by existing law or by a non-frivolous

argument for extending, modifying, or reversing existing law or for establishing new law.

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

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

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

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

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

17. The key "factual" allegations from the supposed fact witnesses, some of whom attempt to cloak their identities while attacking democracy, have been debunked. The allegations about supposed fraud in the processing and tabulation of absentee ballots by the City at the TCF Center have been rejected by every court which has considered them. If any of the

claims in this lawsuit had merit, that would have been demonstrated in those cases. The City refers the Court to its Response to Plaintiffs' Emergency Motion for Declaratory, Emergency, and Permanent Injunctive Relief for a detailed debunking of Plaintiffs' baseless factual contentions. ECF No. 39, PageID. 2808-2933.

Relief Requested

WHEREFORE, for the reasons specified in this Motion and Brief in Support, the City respectfully request that this Court enter an order, among other things:

a) Imposing monetary sanctions against Plaintiffs and their counsel in an amount sufficient to deter future misconduct;

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

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

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

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

f) Requiring Plaintiffs and their counsel to obtain certification from a magistrate judge that the proposed claims are not frivolous or asserted for an improper purpose, before filing an action in the Eastern District of Michigan;

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

h) Barring Plaintiffs' counsel from practicing law in the Eastern District of Michigan;

i) Referring Plaintiffs' counsel to the State Bar of Michigan for grievance proceedings; and,

j) Granting any other relief for the City that the Court deems just or equitable.

December 15, 2020

Respectfully submitted,

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CITY OF DETROIT'S MOTION FOR SANCTIONS FILED IN THE U.S. DISTRICT COURT, EASTERN DISTRICT OF MICHIGAN (JANUARY 5, 2021)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

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

Plaintiffs,

v.

GRETCHEN WHITMER, IN HER OFFICIAL CAPACITY AS GOVERNOR OF THE STATE OF MICHIGAN, JOCELYN BENSON, IN HER OFFICIAL CAPACITY AS MICHIGAN SECRETARY OF STATE AND THE MICHIGAN BOARD OF STATE CANVASSERS,

Defendants,

and

CITY OF DETROIT, DEMOCRATIC NATIONAL COMMITTEE and MICHIGAN DEMOCRATIC PARTY,

Intervenor-Defendants.

No. 2:20-cv-13134

Before: Hon. Linda V. PARKER, U.S. District Judge.

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.

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[1] No lawyer for the Plaintiffs responded to the email message forwarding the Rule 11 motion. Instead, at least two of their

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.

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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.

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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BRIEF IN SUPPORT OF THE CITY OF DETROIT'S MOTION FOR SANCTIONS (JANUARY 5, 2021)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

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

Plaintiffs,

v.

GRETCHEN WHITMER, IN HER OFFICIAL CAPACITY AS GOVERNOR OF THE STATE OF MICHIGAN, JOCELYN BENSON, IN HER OFFICIAL CAPACITY AS MICHIGAN SECRETARY OF STATE AND THE MICHIGAN BOARD OF STATE CANVASSERS,

Defendants.

No. 2:20-cv-13134

Before: Hon. Linda V. PARKER, U.S. District Judge.

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

[TOC, IOA, Omitted]

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]

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, Page ID.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]

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[2] In addition to this case, Plaintiffs' attorneys filed three other remarkably similar, and similarly frivolous, "release the kraken" lawsuits. The requested relief 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

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]

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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 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

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 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]

Biden) to fundraise. As of early December 2020, Trump had reportedly raised $207.5 million in post-election fundraising. Ex. 6.

[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.

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 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

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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.

[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).

serve the Defendants before this Court issued its December 1, 2020, text-only order.[7]

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

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[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 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).

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 @real DonaldTrump will impose martial law in disputed states, seize voting machines for forensic examination, & appoint @Sidney Powell 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

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

> 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 to be shocked at what I

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[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.

> 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

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[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.

> 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).

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 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

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

> 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 19502 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]

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[14] Perhaps her motivation is less paranoid and more venal. The front page of her website, "defendingtherepublic.org," has a

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 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

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prominently placed "contribute here" form, soliciting donations for her "Legal Defense Fund for Defending the American Republic."

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 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

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

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]

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[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. [. . .]

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' 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

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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.*

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 "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

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[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.

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] 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]

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[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 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

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 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 disen-

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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.

[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).

franchised. 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 (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

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[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.

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 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]

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[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

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 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]

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as a basis to overturn a presidential election, much less support plausible fraud claims against these Defendants.").

[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'

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.

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*

Motion for Temporary Restraining Order. ECF Nos. 31, 36 and 39.

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 magis-

trate 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 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

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[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."

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

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[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

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 Newman, Virginia; Julia Halller, 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

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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.

and initiating disciplinary proceedings in the manner identified in the Motion.

January 5, 2021

Respectfully submitted,

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EXHIBIT 1
NEWS ARTICLE: *DETROIT IS TRYING TO GET SIDNEY POWELL FINED, BANNED FROM COURT, AND REFERRED TO THE BAR FOR FILING THE 'KRAKEN'*

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

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/

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, 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.

[King-Intervenor-Defendant-
City-of-Detroits-Rule-11-Motion]

Contributed by Adam Klasfeld (Law & Crime)

EXHIBIT 2
OFFICIAL TURNOUT RESULTS – DETROIT, NORTH MUSKEGON AND ZEELAND TWP

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%)

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
Unresolved Write-In		0	0	0

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Muskegon County, Michigan
General Election
11/3/2020
Page 460

Precinct Results
Election Night Results
Run Time 5:55 PM
Run Date 11/13/2020

Official Results
Registered Voters 96730 of 148377 = 65.19%
Precincts Reporting 75 of 75 = 100.00%

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%	448 100.00%	1156 100%
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%	1143 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. Haueisen	REP	206 31.31%	266 56.36%	472 41.77%
Cast Votes:		658 100.00%	472 100.00%	1130 100.00%
Overvotes:		0	0	0

Muskegon County, Michigan
General Election
11/3/2020
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Precinct Results
Election Night Results
Run Time 5:55 PM
Run Date 11/13/2020

Official Results
Registered Voters 96730 of 148377 = 65.19%
Precincts Reporting 75 of 75 = 100.00%

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 62.2%	86 35.54%	295 51.04%
Republican Party	REP	125 37.2%	153 63.22%	278 48.1%
Libertarian Party	LIB	2 0.6%	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

Ottawa County, Michigan
General Election
11/3/2020
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Precinct Report
Ottawa County Canvass of Votes
Run Time 4:20 PM
Run Date 11/11/2020

Official Results
Registered Voters 169960 of 221421 = 76.76%
Precincts Reporting 105 of 105 = 100.00

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

Ottawa County, Michigan
General Election
11/3/2020
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Precinct Report
Ottawa County Canvass of Votes
Run Time 4:20 PM
Run Date 11/11/2020

Official Results
Registered Voters 169960 of 221421 = 76.76%
Precincts Reporting 105 of 105 = 100.00

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%	1327 100.00%	2089 100.00 %
Undervotes:		9	12	21
Overvotes:		0	0	0

Ottawa County, Michigan
General Election
11/3/2020
Page 936

Precinct Report
Ottawa County Canvass of Votes
Run Time 4:20 PM
Run Date 11/11/2020

Official Results
Registered Voters 169960 of 221421 = 76.76%
Precincts Reporting 105 of 105 = 100.00

Zeeland Charter Township, Precinct 3
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	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

Ottawa County, Michigan
General Election
11/3/2020
Page 945

Precinct Report
Ottawa County Canvass of Votes
Run Time 4:20 PM
Run Date 11/11/2020

Official Results
Registered Voters 169960 of 221421 = 76.76%
Precincts Reporting 105 of 105 = 100.00

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%	1,237 100.00%
Undervotes:		4	4	8
Overvotes:		0	0	0

EXHIBIT 3
SLIP OPINION, *PEARSON v. KEMP*,
NO. 1:20-CV-4809 (N.D. GA. DEC. 7, 2020)

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 rep. Brad Raffensperger
Joshua Belinfante rep. Brian Kemp
Joshua Belinfante rep. David J. Worley
Joshua Belinfante rep. Matthew Mashburn
Joshua Belinfante rep. Rebecca N. Sullivan
Amanda Callais rep. DCCC
Amanda Callais rep. DSCC
Amanda Callais rep. Democratic Party of Georgia, Inc.
Julia Haller rep. Brian Jay Van Gundy
Julia Haller rep. Carolyn Hall Fisher

Julia Haller rep. Cathleen Alston Latham
Julia Haller rep. Coreco Jaqan Pearson
Julia Haller rep. Gloria Kay Godwin
Julia Haller rep. James Kenneth Carroll
Julia Haller rep. Vikki Townsend Consiglio
Harry MacDougald rep. Brian Jay Van Gundy
Harry MacDougald rep. Carolyn Hall Fisher
Harry MacDougald rep. Cathleen Alston Latham
Harry MacDougald rep. Coreco Jaqan Pearson
Harry MacDougald rep. Gloria Kay Godwin
Harry MacDougald rep. James Kenneth Carroll
Harry MacDougald rep. Vikki Townsend Consiglio
Charlene McGowan rep. Anh Le
Charlene McGowan rep. Brad Raffensperger
Charlene McGowan rep. Brian Kemp
Charlene McGowan rep. David J. Worley
Charlene McGowan rep. Matthew Mashburn
Charlene McGowan rep. Rebecca N. Sullivan
Carey Miller rep. Anh Le
Carey Miller rep. Brad Raffensperger
Carey Miller rep. Brian Kemp
Carey Miller rep. David J. Worley
Carey Miller rep. Matthew Mashburn
Carey Miller rep. Rebecca N. Sullivan
Sidney Powell rep. Brian Jay Van Gundy
Sidney Powell rep. Carolyn Hall Fisher
Sidney Powell rep. Cathleen Alston Latham
Sidney Powell rep. Coreco Jaqan Pearson
Sidney Powell rep. Gloria Kay Godwin
Sidney Powell rep. James Kenneth Carroll
Sidney Powell rep. 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 JAMES RAMSDALE,
FILED IN GEORGIA LAWSUIT

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 lead 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 perm-

anent 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:	michigan
timestamp:	2020-11-04T06:54:48Z
eevp:	64
trump:	0.534
biden:	0.448
TV:	1925865.66
BV:	1615707.52

state:	michigan
timestamp:	2020-11-04T06:56:47Z
eevp:	64
trump:	0.534
biden:	0.448
TV:	1930247.664
BV:	1619383.808

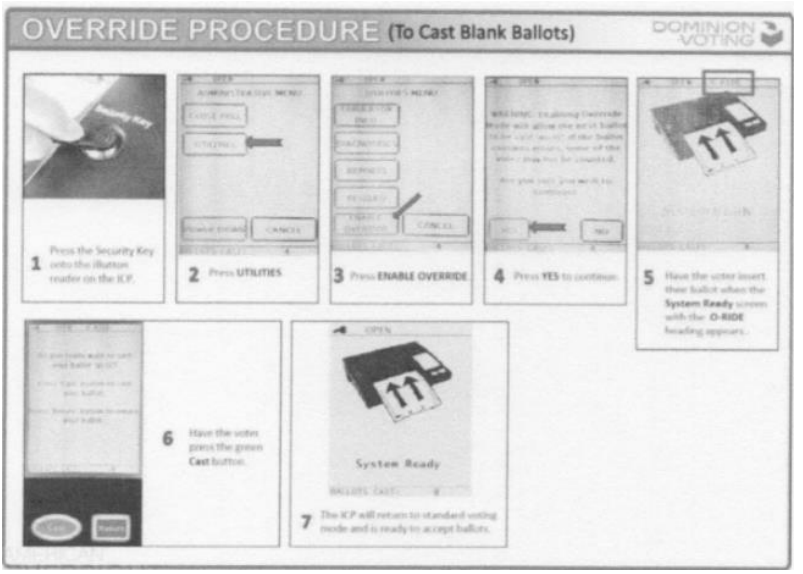
state:	michigan
timestamp:	2020-11-04T06:58:47Z
eevp:	64
trump:	0.534
biden:	0.448

TV:	1931413.386
BV:	1620361.792
state:	michigan
timestamp:	2020-11-04T07:00:37Z
eevp:	64
trump:	0.533
biden:	0.45
TV:	1941758.975
BV:	1639383.75
state:	michigan
timestamp:	2020-11-04T07:01:46Z
eevp:	64
trump:	0.533
biden:	0.45
TV:	1945297.562
BV:	1642371.3
state:	michigan
timestamp:	2020-11-04T07:03:17Z
eevp:	65
trump:	0.533
biden:	0.45
TV:	1948885.185
BV:	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

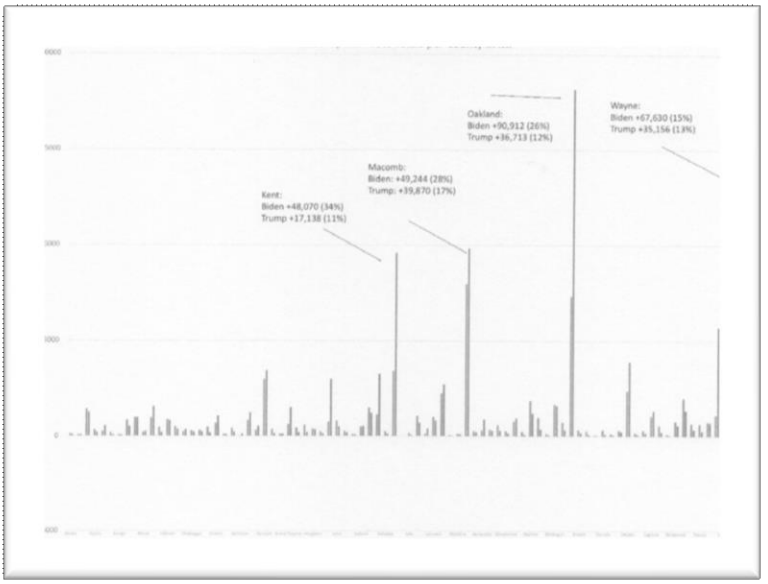
stopped. The several spikes cast solely for Biden could easily be produced in the Dominion system by pre-loading batches of blank ballots in files such as Write-Ins, then casting them all for Biden using the Override Procedure (to cast Write-In ballots) that is available to the operator of the system. 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 ballots allegedly processed in a combined interval of

only 2 hour and 38 minutes. This is physically impossible given the equipment available at the 4 reference locations (precincts/townships) we looked at for processing ballots, and cross referencing that with both the time it took at each location and the performance specifications we obtained using the serial numbers of the scanning devices used. (Model DRM16011-60/min. without accounting for paper jams, replacement cover sheets or loading time, so we assume 2,000 ballots/hr. in field conditions which is probably generous). This calculation yields a sum of 94,867 ballots as the maximum number of ballots that could be processed. And while it should be noted that in the event of a jam and the counter is not reset, the ballots can be run through again and effectively duplicated, this would not alleviate the impossibility of this event because duplicated ballots still require processing time. The existence of the spike is strongly indicative of a manual adjustment either by the operator of the system (see paragraph 12 above) or an attack by outside actors. In any event, there were 289,866 more ballots processed in the time available for processing in four precincts/townships, than there was capacity. A look at the graph below makes clear the This is not surprising because the system is highly vulnerable to a manual change in the ballot totals as observed here.



14. At ASOG, we believe that these statistical anomalies and impossibilities together create a wholly unacceptable level of doubt as to the validity of the vote count in Michigan, and in Wayne County, in particular.

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 (EEO) 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 for correspondence

  D.O.B.

  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, PCMIA 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.

/s/ Russell James Ramsland, Jr.

Date: 11/17/2020

EXHIBIT 5
TRANSCRIPT OF TELEPHONE CALL BETWEEN DONALD TRUMP AND BRAD RAFFENSPERGER

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 poll watchers, 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 poll watchers. 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 may 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 wont? — 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 suf-

ficient 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
NEWS ARTICLE: *TRUMP'S POST-ELECTION CASH GRAB FLOODS FUNDS TO NEW PAC*

POLITICO

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

https://www.politico.com/news/2020/12/03/trump-pac-fundraising-442775

The Trump operation raised $207.5 million since Election Day, including a hefty chunk to a new leadership PAC Trump formed in November.

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.

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."

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 2022, then it could "show momentum in the midterms, he could be exceedingly relevant in 2024."

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 runoffs 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.

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, and Trump has taken both money and oxygen away from that [by his] failure to concede and fundraising efforts," Eberhart 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 $804 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.

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.

EXHIBIT 7
MEMORANDUM OPINION, FILED IN *WISCONSIN VOTERS ALLIANCE v. PENCE*, USDC DISTRICT OF COLUMBIA, NO. 1:20-CV-03791 (JANUARY 4, 2021)

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)

Before: James E. BOASBERG, United States District Judge

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]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
United States District Judge

Date: January 4, 2021

EXHIBIT 8
NEWS ARTICLE:
ATTY LIN WOOD UNDER FIRE FROM DEL. JUDGE FOR ELECTION SUITS

Atty Lin Wood Under Fire From Del. Judge For Election Suits

By Dave Simpson

https://www.law360.com/articles/1339984/atty-lin-wood-under-fire-from-del-judge-for-election-suits

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
CYBERSECURITY AND INFRASTRUCTURE SECURITY AGENCY JOINT STATEMENT ON ELECTIONS INFRASTRUCTURE (NOVEMBER 12, 2020)

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."

EXHIBIT 10
OPINION AND ORDER AS FILED IN *CONSTANTINO ET AL. v. CITY OF DETROIT ET AL.*, THIRD JUDICIAL CIRCUIT OF MICHIGAN, WAYNE COUNTY

STATE OF MICHIGAN
IN THE THIRD JUDICIAL CIRCUIT COURT
FOR THE COUNTY OF WAYNE

CHERYL A. COSTANTINO AND
EDWARD P. MCCALL, JR.,

Plaintiffs,

v.

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.

Case No. 20-014780-AW

Before: Hon. Timothy M. KENNY, Chief Judge,
Third Judicial Circuit Court of Michigan.

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 Eat 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 Demo-

cratic 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.

/s/ Timothy M. Kenny
Chief Judge, Third Judicial
Circuit Court of Michigan

November 13, 2020

EXHIBIT 12
AFFIDAVIT OF CHRISTOPHER THOMAS
(NOVEMBER 11, 2020)

STATE OF MICHIGAN
IN THE THIRD JUDICIAL CIRCUIT COURT
FOR THE COUNTY OF WAYNE

CHERYL A. COSTANTINO AND
EDWARD P. MCCALL, JR.,

Plaintiffs,

v.

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.

Case No. 20-014780-AW

Before: Hon. Timothy M. KENNY, Chief Judge,
Third Judicial Circuit Court of Michigan.

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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 severed 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 comer 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 Jessy 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 "back-dated," 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 Eby 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.

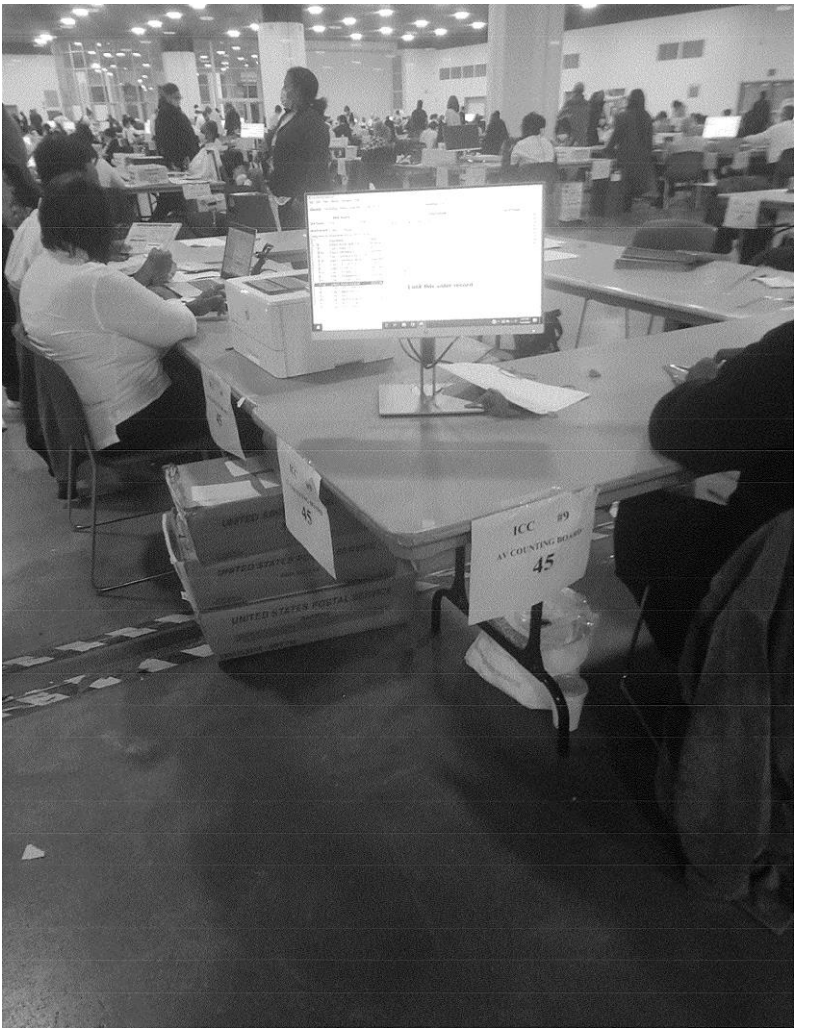
Further, Affiant sayeth not.

/s/ Christopher Thomas

Date: November 11, 2020

Subscribe and sworn to before me this 11th day of November, 2020.

/s/ 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


ICC #9
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UNITED STATES POSTAL SERVICE

EXHIBIT 13
AFFIDAVIT OF DANIEL BAXTER
(NOVEMBER 11, 2020)

STATE OF MICHIGAN
IN THE THIRD JUDICIAL CIRCUIT COURT
FOR THE COUNTY OF WAYNE

CHERYL A. COSTANTINO AND
EDWARD P. MCCALL, JR.,

Plaintiffs,

v.

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.

Case No. 20-014780-AW

Before: Hon. Timothy M. KENNY, Chief Judge,
Third Judicial Circuit Court of Michigan.

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Attorneys for City of Detroit, City of Detroit Election Commission and Janice Winfrey

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.

/s/ Daniel Baxter

Date: November 11, 2020

Subscribe and sworn to before me this 11th day of November, 2020.

/s/ Carol J. Aldridge
Notary Public
County of: Wayne County
My Commission Expires: 11/24/2021
[SEAL]

EXHIBIT 13
AFFIDAVIT OF CHRISTOPHER THOMAS
(DECEMBER 10, 2020)

[. . .]

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 Com-

plaint ("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 accounting 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 county. 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 Shia-

wassee County accidentally typed in an extra O and quickly discovered and fixed the error, *See, e.g.*, https://www.factcheck.org/2020/ll/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 understanding 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 "back-dated," 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 rejected 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/defaultJfiles/ 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.

/s/ Christopher Thomas

Date: December 10, 2020

Subscribe and sworn to before me this 10th day of December, 2020.

/s/ Kimberly S. Hunt
KIMBERLY S. HUNT, Notary Public
County of Macomb
My Commission Expires: 08/08/24
Acting in County of Macomb
Notarized using electronic/remote technology
Notary located in Macomb County,
State of Michigan
Signatory located in Berrien County,
State of Michigan
[SEAL]

EXHIBIT 14
MICHIGAN DEPARTMENT OF STATE
PRESS RELEASE REGARDING
ANTRIM COUNTY

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.

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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 speak to a customer-service representative at 888-SOS-MICH (767-6424).

STATE OF MICHIGAN
JOCELYN BENSON, SECRETARY OF STATE
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 manage-

ment 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
NEWS REPORT: *GOP CALLS FOR MICHIGAN ELECTION PROBE. OFFICIALS SAY THEIR CLAIMS ARE WEAK.*

Bridge MICHIGAN | Michigan's nonpartisan, nonprofit news source

GOP calls for Michigan election probe. Officials say their claims are weak.

(https://www.bridgemi.com/michigan-government/gop-callsmichigan-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)

November 6, 2020
Jonathan Oosting, Paula Gardner, Madeline Halpert
Michigan Government

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.

"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 Demo-

cratic 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.

"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."

Playing by the rules?

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.

He claimed that other cities such as Grand Rapids were able to complete the count without issues.

"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
ANTRIM COUNTY AUDIT RESULTS

HAND COUNT CALCULATION SHEET

OFFICE: President of the United States
COUNTY: Antrim

Biden			
Democratic Party			
TOTAL VOTES			TOTAL CHANGE
Original	Hand	Net	
5960	5959	-1	-1
Trump			
Republican Party			
TOTAL VOTES			TOTAL CHANGE
Original	Hand	Net	
9748	9759	11	11
Jorgenson			
Libertarian Party			
TOTAL VOTES			TOTAL CHANGE
Original	Hand	Net	
189	190	1	1
Hawkins			
Green Party			
Original	Hand	Net	
28	28	0	0

Blankenship			
U.S. Taxpayers Party			
TOTAL VOTES			TOTAL CHANGE
Original	Hand	Net	
16	17	1	1
De La Fuente			
Natural Law Party			
TOTAL VOTES			TOTAL CHANGE
Original	Hand	Net	
8	9	1	1

Biden			
Banks Twp., Prec. 1	349	349	0
Central Lake Twp., Prec. 1	549	549	0
Chestonia Twp., Prec. 1	93	93	0
Custer Twp., Prec. 1	240	240	0
Echo Twp., Prec. 1	198	198	0
Elk Rapids Twp., Prec. 1	202	201	-1
Elk Rapids Twp., Prec. 1	784	783	-1
Forest Home Twp., Prec. 1	610	610	0
Helena Twp., Prec. 1	306	306	0
Jordan Twp., Prec. 1	183	182	-1
Kearney Twp., Prec. 1	471	470	-1
Mancelona Twp., Prec. 1	276	277	1
Mancelona Twp., Prec. 2	247	247	0
Milton Twp., Prec. 1	143	143	0
Milton Twp., Prec. 1	626	624	-2
Star Twp., Prec. 1	161	166	5

Torch Lake Twp., Prec. 1	462	461	-1
Warner Twp., Prec. 1	60	60	0
Trump			
Banks Twp., Prec. 1	756	758	2
Central Lake Twp., Prec. 1	906	906	0
Chestonia Twp., Prec. 1	197	197	0
Custer Twp., Prec. 1	521	521	0
Echo Twp., Prec. 1	392	392	0
Elk Rapids Twp., Prec. 1	414	415	1
Elk Rapids Twp., Prec. 1	611	614	3
Forest Home Twp., Prec. 1	753	753	0
Helena Twp., Prec. 1	431	430	-1
Jordan Twp., Prec. 1	371	369	-2
Kearney Twp., Prec. 1	743	743	0
Mancelona Twp., Prec. 1	835	835	0
Mancelona Twp., Prec. 2	646	646	0
Milton Twp., Prec. 1	478	478	0
Milton Twp., Prec. 1	543	545	2
Star Twp., Prec. 1	462	468	6
Torch Lake Twp., Prec. 1	526	526	0
Warner Twp., Prec. 1	163	163	0

Jorgenson			
Banks Twp., Prec. 1	11	11	0
Central Lake Twp., Prec. 1	16	16	0
Chestonia Twp., Prec. 1	3	3	0
Custer Twp., Prec. 1	11	11	0
Echo Twp., Prec. 1	8	8	0
Elk Rapids Twp., Prec. 1	12	12	0
Elk Rapids Twp., Prec. 1	5	5	0
Forest Home Twp., Prec. 1	19	19	0
Helena Twp., Prec. 1	4	4	0
Jordan Twp., Prec. 1	13	14	1
Kearney Twp., Prec. 1	16	16	0
Mancelona Twp., Prec. 1	20	20	0
Mancelona Twp., Prec. 2	13	13	0
Milton Twp., Prec. 1	12	12	0
Milton Twp., Prec. 1	6	6	0
Star Twp., Prec. 1	10	10	0
Torch Lake Twp., Prec. 1	7	7	0
Warner Twp., Prec. 1	3	3	0
Hawkins			
Banks Twp., Prec. 1	2	2	0
Central Lake Twp., Prec. 1	6	6	0
Chestonia Twp., Prec. 1	0	0	0
Custer Twp., Prec. 1	1	1	0
Echo Twp., Prec. 1	2	2	0
Elk Rapids Twp., Prec. 1	4	4	0
Elk Rapids Twp., Prec. 1	5	5	0
Forest Home Twp., Prec. 1	0	0	0
Helena Twp., Prec. 1	1	1	0
Jordan Twp., Prec. 1	1	1	0
Kearney Twp., Prec. 1	3	3	0
Mancelona Twp., Prec. 1	0	0	0

Mancelona Twp., Prec. 2	1	1	0
Milton Twp., Prec. 1	0	0	0
Milton Twp., Prec. 1	0	0	0
Star Twp., Prec. 1	0	0	0
Torch Lake Twp., Prec. 1	2	2	0
Warner Twp., Prec. 1	0	0	0
Blankenship			
Banks Twp., Prec. 1	1	1	0
Central Lake Twp., Prec. 1	1	1	0
Chestonia Twp., Prec. 1	0	0	0
Custer Twp., Prec. 1	2	2	0
Echo Twp., Prec. 1	1	1	0
Elk Rapids Twp., Prec. 1	2	2	0
Elk Rapids Twp., Prec. 1	2	2	0
Forest Home Twp., Prec. 1	1	1	0
Helena Twp., Prec. 1	0	0	0
Jordan Twp., Prec. 1	1	1	0
Kearney Twp., Prec. 1	0	0	0
Mancelona Twp., Prec. 1	0	0	0
Mancelona Twp., Prec. 2	2	3	1
Milton Twp., Prec. 1	0	0	0
Milton Twp., Prec. 1	2	2	0
Star Twp., Prec. 1	0	0	0
Torch Lake Twp., Prec. 1	1	1	0
Warner Twp., Prec. 1	0	0	0
De La Fuente			
Banks Twp., Prec. 1	1	1	0
Central Lake Twp., Prec. 1	0	0	0
Chestonia Twp., Prec. 1	0	0	0
Custer Twp., Prec. 1	0	0	0
Echo Twp., Prec. 1	0	0	0
Elk Rapids Twp., Prec. 1	0	0	0
Elk Rapids Twp., Prec. 1	0	0	0

Forest Home Twp., Prec. 1	1	1	0
Helena Twp., Prec. 1	1	1	0
Jordan Twp., Prec. 1	0	0	0
Kearney Twp., Prec. 1	0	0	0
Mancelona Twp., Prec. 1	1	1	0
Mancelona Twp., Prec. 2	0	0	0
Milton Twp., Prec. 1	1	2	1
Milton Twp., Prec. 1	2	2	0
Star Twp., Prec. 1	0	0	0
Torch Lake Twp., Prec. 1	1	1	0
Warner Twp., Prec. 1	0	0	0

EXHIBIT 17
NEWS REPORT:
SIDNEY POWELL'S SECRET 'MILITARY INTELLIGENCE EXPERT,' KEY TO FRAUD CLAIMS IN ELECTION LAWSUITS, NEVER WORKED IN MILITARY INTELLIGENCE

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

December 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 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.

Aaron Schaffer, Aaron Blake, Dan Lamothe and Dalton Bennett contributed.

EXHIBIT 18
NEWS REPORT: *TRUMP TWEET WRONGLY SUGGESTS THERE WERE DEFECTS WITH MICHIGAN VOTING MACHINES*

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.

Michigan Lt. Gov. Garlin Gilchrist opens the state's Electoral College session at the state Capitol, Monday, Dec. 14, 2020 in Lansing, Mich.

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.

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.

EXHIBIT 19:
EXPERT REPORT OF MATTHEW BRAYNARD, SUBMITTED IN *ANJELIC JOHNSON ET AL. v. JOCELYN BENSON ET AL.*, SUP. CT. MICHIGAN

STATE OF MICHIGAN
IN THE SUPREME COURT

_____

ANGELIC JOHNSON, ET AL.,

Petitioners,

v.

JOCELYN BENSON, ET AL.,

Respondents.

_____

Supreme Court Case No. _____

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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.

/s/ Matthew Braynard

Date: 11/20/2020

EXHIBIT 20
AFFIDAVIT OF CHARLES STEWART,
SUBMITTED IN *ANJELIC JOHNSON ET AL. v. JOCELYN BENSON ET AL.*,
SUP. CT. MICHIGAN

STATE OF MICHIGAN
IN THE SUPREME COURT

ANGELIC JOHNSON and, LINDA LEE TARVER,

Petitioners,

v.

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.

MSC No. 162

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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 adminis-

tration (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 (SPAE). The SPAE 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.

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[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/.

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. 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 that 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.

/s/ Charles Stewart III

Date: December 4, 2020

Subscribe and sworn to before me this 4th day of December, 2020.

/s/ Kimberly S. Hunt
KIMBERLY S. HUNT, Notary Public
County of Macomb
State of Michigan
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
[SEAL]

CURRICULUM VITAE OF CHARLES HAINES STEWART III

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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 Ll. Carson, Routledge.

2008 "Function follows Form: Voting Technology and the Law," in *America Votes!,* ed. Benjamin E. Griffith American Bar Association.

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EXHIBIT 21
NOTICE OF SUSPENSION OF ATTORNEY GREGORY ROHL

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ATTORNEY DISCIPLINE BOARD

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Julie M. Loiselle
Receptionist / Secretary

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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.

/s/ Mark A. Armitage

COMPLAINT FOR DECLARATORY, EMERGENCY, AND PERMANENT INJUNCTIVE RELIEF (NOVEMBER 25, 2020)

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN

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

Plaintiffs.,

v.

GRETCHEN WHITMER, IN HER OFFICIAL CAPACITY AS GOVERNOR OF THE STATE OF MICHIGAN, JOCELYN BENSON, IN HER OFFICIAL CAPACITY AS MICHIGAN SECRETARY OF STATE AND THE MICHIGAN BOARD OF STATE CANVASSERS,

Defendants.

Case No. _____

COMPLAINT FOR DECLARATORY, EMERGENCY, AND PERMANENT INJUNCTIVE RELIEF

NATURE OF THE ACTION

1. This civil action brings to light a massive election fraud, multiple violations of the Michigan Election Code, *see, e.g.,* MCL §§ 168.730-738, in addition to the Election and Electors Clauses and Equal Protection Clause of the U.S. Constitution violations that occurred during the 2020 General Election throughout the State of Michigan,[1] as set forth in the affidavits of dozens of eye witnesses and the statistical anomalies and mathematical impossibilities detailed in the affidavits of expert witnesses.

2. The scheme and artifice to defraud was for the purpose of illegally and fraudulently manipulating the vote count to manufacture an election of Joe Biden as President of the United States. The fraud was executed by many means,[2] but the most fundamentally troubling, insidious, and egregious ploy was the systemic adaptation of old-fashioned "ballot-stuffing."

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[1] The same pattern of election fraud and voter fraud writ large occurred in all the swing states with only minor variations in Michigan, Pennsylvania, Arizona and Wisconsin. *See* Exh. 101, William M. Briggs, Ph.D. "An Analysis Regarding Absentee Ballots Across Several States" (Nov. 23, 2020) ("Dr. Briggs Report").

[2] 50 U.S.C. § 20701 requires Retention and preservation of records and papers by officers of elections; deposit with custodian; penalty for violation, but as will be shown wide-pattern of misconduct with ballots show preservation of election records have not been kept; and Dominion logs are only voluntary, with no system wide preservation system. Without an incorruptible audit log, there is no acceptable system.

It has now been amplified and rendered virtually invisible by computer software created and run by domestic and foreign actors for that very purpose. This Complaint details an especially egregious range of conduct in Wayne County and the City of Detroit, though this conduct occurred throughout the State at the direction of Michigan state election officials.

3. The multifaceted schemes and artifices implemented by Defendants and their collaborators to defraud resulted in the unlawful counting, or manufacturing, of hundreds of thousands of illegal, ineligible, duplicate or purely fictitious ballots in the State of Michigan, that constitute a multiple of Biden's purported lead in the State. While this Complaint, and the eyewitness and expert testimony incorporated herein, identify with specificity sufficient ballots required to overturn and reverse the election results, the entire process is so riddled with fraud, illegality, and statistical impossibility that this Court, and Michigan's voters, courts, and legislators, cannot rely on, or certify, any numbers resulting from this election.

Dominion Voting Systems Fraud and Manipulation

4. The fraud begins with the election software and hardware from Dominion Voting Systems Corporation ("Dominion") used by the Michigan Board of State Canvassers. The Dominion systems derive from the software designed by Smartmatic Corporation, which became Sequoia in the United States.

5. Smartmatic and Dominion were founded by foreign oligarchs and dictators to ensure computerized ballot-stuffing and vote manipulation to whatever level was needed to make certain Venezuelan dictator

Hugo Chavez never lost another election. *See* Exh. 1, Redacted Declaration of Dominion Venezuela Whistleblower ("Dominion Whistleblower Report"). Notably, Chavez "won" every election thereafter.

6. As set forth in the Dominion Whistleblower Report, the Smartmatic software was contrived through a criminal conspiracy to manipulate Venezuelan elections in favor of dictator Hugo Chavez:

> Importantly, I was a direct witness to the creation and operation of an electronic voting system in a conspiracy between a company known as Smartmatic and the leaders of conspiracy with the Venezuelan government. This conspiracy specifically involved President Hugo Chavez Frias, the person in charge of the National Electoral Council named Jorge Rodriguez, and principals, representatives, and personnel from Smartmatic. The purpose of this conspiracy was to create and operate a voting system that could change the votes in elections from votes against persons running the Venezuelan government to votes in their favor in order to maintain control of the government. In mid-February of 2009, there was a national referendum to change the Constitution of Venezuela to end term limits for elected officials, including the President of Venezuela. The referendum passed. This permitted Hugo Chavez to be re-elected an unlimited number of times. . . .
>
> Smartmatic's electoral technology was called "Sistema de Gestión Electoral" (the "Electoral Management System"). Smartmatic was a pioneer in this area of computing systems.

> Their system provided for transmission of voting data over the internet to a computerized central tabulating center. The voting machines themselves had a digital display, fingerprint recognition feature to identify the voter, and printed out the voter's ballot. The voter's thumbprint was linked to a computerized record of that voter's identity. Smartmatic created and operated the entire system. *Id.* ¶¶ 10 & 14.

7. A core requirement of the Smartmatic software design ultimately adopted by Dominion for the Michigan's elections was the software's ability to hide its manipulation of votes from any audit. As the whistleblower explains:

> Chavez was most insistent that Smartmatic design the system in a way that the system could change the vote of each voter without being detected. He wanted the software itself to function in such a manner that if the voter were to place their thumb print or fingerprint on a scanner, then the thumbprint would be tied to a record of the voter's name and identity as having voted, but that voter would not tracked to the changed vote. He made it clear that the system would have to be setup to not leave any evidence of the changed vote for a specific voter and that there would be no evidence to show and nothing to contradict that the name or the fingerprint or thumb print was going with a changed vote. Smartmatic agreed to create such a system and produced the software

and hardware that accomplished that result for President Chavez. *Id.* ¶ 15.

8. The design and features *of* the Dominion software do not permit a simple audit to reveal its misallocation, redistribution, or deletion of votes. First, the 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 unauthorized user the opportunity to arbitrarily add, modify, or remove log entries, causing the machine to log election events that do not reflect actual voting tabulations—or more specifically, do not reflect the actual votes of or the will of the people. *See* Exh. 107, August 24, 2020 Declaration of Harri Hursti, ¶¶ 45-48).

9. Indeed, under the professional standards within the industry in auditing and forensic analysis, when a log is unprotected, and can be altered, it can no longer serve the purpose of an audit log. There is incontrovertible physical evidence that the standards of physical security of the voting machines and the software were breached, and machines were connected to the internet in violation of professional standards, which violates federal election law on the preservation of evidence.

10. In deciding to award Dominion a $25 million, ten-year contract (to a Dominion project team led by Kelly Garrett, former Deputy Director of the Michigan Democratic Party), and then certifying Dominion software, Michigan officials disregarded all the concerns that caused Dominion software to be rejected by the Texas Board of elections in 2018 because it was deemed vulnerable to undetected and non-auditable

manipulation. An industry expert, Dr. Andrew Appel, Princeton Professor of Computer Science and Election Security Expert has recently 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."[3]

11. Plaintiff's expert witness, Russell James Ramsland, Jr. (Exh. 101, "Ramsland Affidavit"), has concluded that Dominion alone is responsible for the injection, or fabrication, of 289,866 illegal votes in Michigan, that must be disregarded. This is almost twice the number of Mr. Biden's purported lead in the Michigan vote (without consideration of the additional illegal, ineligible, duplicate or fictitious votes due to the unlawful conduct outlined below), and thus by itself is grounds to set aside the 2020 General Election and grant the declaratory and injunctive relief requested herein.

12. In addition to the Dominion computer fraud, this Complaint identifies several additional categories of "traditional" voting fraud and Michigan Election Code violations, supplemented by healthy doses of harassment, intimidation, discrimination, abuse and even physical removal of Republican poll challengers to eliminate any semblance of transparency, objectivity or fairness from the vote counting process. While this

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[3] Andrew W. Appel, *et al.*, "Ballot Marking Devices (BMDs) Cannot Assure the Will of the Voters" at (Dec. 27, 2019), attached hereto as Exhibit 2 ("Appel Study").

illegal conduct by election workers and state, county and city employees in concert with Dominion, even if considered in isolation, the following three categories of systematic violations of the Michigan Election Code cast significant doubt on the results of the election and mandate this Court to set aside the 2020 General Election and grant the declaratory and injunctive relief requested herein.

Fact Witness Testimony of Voting Fraud & Other Illegal Conduct

13. There were three broad categories of illegal conduct by election workers in collaboration with other employee state, county and/or city employees and Democratic poll watchers and activists. First, to facilitate and cover-up the voting fraud and counting of fraudulent, illegal or ineligible voters, election workers:

A. Denied Republican election challengers access to the TCF Center, where all Wayne County, Michigan ballots were processed and counted;

B. Denied Republic poll watchers at the TCF Center meaningful access to view ballot handling, processing, or counting and locked credentialed challengers out of the counting room so they could not observe the process, during which time tens of thousands of ballots were processed;

C. Engaged in a systematic pattern of harassment, intimidation and even physical removal of Republican election challengers or locking them out of the TCF Center;

D. Systematically discriminated against Republican poll watchers and favored Democratic poll watchers;

E. Ignored or refused to record Republican challenges to the violations outlined herein;

F. Refused to permit Republican poll challengers to observe ballot duplication and other instances where they allowed ballots to be duplicated by hand without allowing poll challengers to check if the duplication was accurate;

G. Unlawfully coached voters to vote for Joe Biden and to vote a straight Democrat ballot, including by going over to the voting booths with voters in order to watch them vote and coach them for whom to vote;

H. As a result of the above, Democratic election challengers outnumbered Republicans by 2:1 or 3:1 (or sometimes 2:0 at voting machines); and

I. Collaborated with Michigan State, Wayne County and/or City of Detroit employees (including police) in all of the above unlawful and discriminatory behavior.

14. Second, election workers illegally forged, added, removed or otherwise altered information on ballots, the Qualified Voter File (QVF) and Other Voting Records, including:

A. Fraudulently adding "tens of thousands" of new ballots and/or new voters to QVF in two separate batches on November 4, 2020, all or nearly all of which were votes for Joe Biden;

B. Forging voter information and fraudulently adding new voters to the QVF Voters, in particular, *e.g.*, when a voter's name could not be found, the election worker assigned the ballot to a random name already in the QVF to a person who had not voted and recorded these new voters a shaving a birth date of 1/1/1900;

C. Changing dates on absentee ballots received after 8:00 PM Election Day deadline to indicate that such ballots were received before the deadline;

D. Changing Votes for Trump and other Republican candidates; and

E. Added votes to "undervote" ballots and removing votes from "Over-Votes".

15. Third, election workers committed several additional categories of violations of the Michigan Election Code to enable them to accept and count other illegal, ineligible or duplicate ballots, or reject Trump or Republican ballots, including:

A. Permitting illegal double voting by persons that had voted by absentee ballot and in person;

B. Counting ineligible ballots – and in many cases – multiple times;

C. Counting ballots without signatures, or without attempting to match signatures, and ballots without postmarks, pursuant to direct instructions from Defendants;

D. Counting "spoiled" ballots;

E. Systematic violations of ballot secrecy requirements;

F. Unsecured ballots arrived at the TCF Center loading garage, not in sealed ballot boxes, without any chain of custody, and without envelopes, after the 8:00 PM Election Day deadline, in particular, the tens of thousands of ballots that arrived on November 4, 2020; and

G. Accepting and counting ballots from deceased voters.

Expert Witness Testimony Regarding Voting Fraud

16. In addition to the above fact witnesses, this Complaint presents expert witness testimony demonstrating that several hundred thousand illegal, ineligible, duplicate or purely fictitious votes must be thrown out, in particular: (1) a report from Russel Ramsland, Jr. showing the "physical impossibility" of nearly 385,000 votes injected by four precincts/township on November 4, 2020, that resulted in the counting of nearly 290,000 more ballots processed than available capacity (which is based on statistical analysis that is independent of his analysis of Dominion's flaws); (2) a report from Dr. William Briggs, showing that there were approximately 60,000 absentee ballots listed as "unreturned" by voters that either never requested them, or that requested and returned their ballots; and (3) a report from Dr. Eric Quinell analyzing the anomalous turnout figures in Wayne and Oakland Counties showing that Biden gained nearly 100% and frequently more than 100% of all "new" voters in certain townships/precincts over 2016, and thus

indicated that nearly 87,000 anomalous and likely fraudulent votes from these precincts.

17. As explained and demonstrated in the accompanying redacted declaration of a former electronic intelligence analyst under 305th Military Intelligence with experience gathering SAM missile system electronic intelligence, the Dominion software was accessed by agents acting on behalf of China and Iran in order to monitor and manipulate elections, including the most recent US general election in 2020. This Declaration further includes a copy of the patent records for Dominion Systems in which Eric Coomer is listed as the first of the inventors of Dominion Voting Systems. (*See* Attached here to as Ex. 105, copy of redacted witness affidavit, November 23, 2020).

18. Expert Navid Keshavarez-Nia explains that US intelligence services had developed tools to infiltrate foreign voting systems including Dominion. He states that Dominion's software is vulnerable to data manipulation by unauthorized means and permitted election data to be altered in all battleground states. He concludes that hundreds of thousands of votes that were cast for President Trump in the 2020 general election were transferred to former Vice-President Biden. (Ex. 109).

19. These and other "irregularities" provide this Court grounds to set aside the results of the 2020 General Election and provide the other declaratory and injunctive relief requested herein.

JURISDICTION AND VENUE

20. This Court has subject matter under 28 U.S.C. § 1331 which provides, "The district courts shall

have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States."

21. This Court also has subject matter jurisdiction under 28 U.S.C. § 1343 because this action involves a federal election for President of the United States. "A significant departure from the legislative scheme for appointing Presidential electors presents a federal constitutional question." *Bush v. Gore*, 531 U.S. 98, 113 (2000) (Rehnquist, C.J., concurring); *Smiley v. Holm*, 285 U.S. 355, 365 (1932).

22. The jurisdiction of the Court to grant declaratory relief is conferred by 28 U.S.C. §§ 2201 and 2202 and by Rule 57, Fed. R. Civ. P. This Court has jurisdiction over the related Michigan constitutional claims and state-law claims under 28 U.S.C.§ 1367. Venue is proper because a substantial part of the events or omissions giving rise to the claim occurred in the Eastern District. 28 U.S.C. § 1391(b) &(c).

24. Because the United States Constitution reserves for state legislatures the power to set the time, place, and manner of holding elections for Congress and the President, state executive officers, including but not limited to Secretary Benson, have no authority to unilaterally exercise that power, much less flout existing legislation.

THE PARTIES

25. Each of the following Plaintiffs are registered Michigan voters and nominees of the Republican Party to be a Presidential Elector on behalf of the State of Michigan: Timothy King, a resident of Washtenaw County, Michigan; Marian Ellen Sheridan,

a resident of Oakland County, Michigan; and, John Earl Haggard, a resident of Charlevoix, Michigan;

26. Each of these Plaintiffs has standing to bring this action as voters and as candidates for the office of Elector under MCL §§ 168.42 & 168.43 (election procedures for Michigan electors).As such, Presidential Electors "have a cognizable interest in ensuring that the final vote tally reflects the legally valid votes cast," as "[a]n inaccurate vote tally is a concrete and particularized injury to candidates such as the Electors." *Carson v. Simon*, 978 F.3d 1051, 1057 (8th Cir. 2020) (affirming that Presidential Electors have Article III and prudential standing to challenge actions of Secretary of State in implementing or modifying State election laws); *see also McPherson v. Blacker*, 146 U.S. 1, 27 (1892); *Bush v. Palm Beach Cty. Canvassing Bd.*, 531 U.S. 70, 76 (2000) (per curiam). Each brings this action to set aside and decertify the election results for the Office of President of the United States that was certified by the Michigan Secretary of State on November 23, 2020. The certified results showed a plurality of 154,188 votes in favor of former Vice-President Joe Biden over President Trump.

27. Plaintiff James Ritchard is a registered voter residing in Oceana County. He is the Republican Party Chairman of Oceana County.

28. Plaintiff James David Hooper is a registered voter residing in Wayne County. He is the Republican Party Chairman for the Wayne County Eleventh District.

29. Plaintiff Daren Wade Ribingh is a registered voter residing in Antrim County. He is the Republican Party Chairman of Antrim County. is

30. Defendant Gretchen Whitmer (Governor of Michigan) is named herein in her official capacity as Governor of the State of Michigan.

31. Defendant Jocelyn Benson ("Secretary Benson") is named as a defendant in her official capacity as Michigan's Secretary of State. Jocelyn Benson is the "chief elections officer" responsible for overseeing the conduct of Michigan elections. MCL § 168.21 ("The secretary of state shall be the chief election officer of the state and shall have supervisory control over local election officials in the performance of their duties under the provisions of this act."); MCL § 168.31(1)(a) (the "Secretary of State shall . . . issue instructions and promulgate rules . . . for the conduct of elections and registrations in accordance with the laws of this state"). Local election officials must follow Secretary Benson's instructions regarding the conduct of elections. Michigan law provides that Secretary Benson "[a]dvise and direct local election officials as to the proper methods of conducting elections." MCL § 168.31(1)(b). *See also Hare v. Berrien Co Bd. of Election*, 129 N.W.2d 864 (Mich. 1964); *Davis v. Secretary of State*, 2020 Mich. App. LEXIS 6128, at *9 (Mich. Ct. App. Sep. 16, 2020). Secretary Benson is responsible for assuring Michigan's local election officials conduct elections in a fair, just, and lawful manner. *See* MCL 168.21; 168.31; 168.32. *See also League of Women Voters of Michigan v. Secretary of State*, 2020 Mich. App. LEXIS 709, *3 (Mich. Ct. App. Jan. 27, 2020); *Citizens Protecting Michigan's Constitution v. Secretary of State*, 922 N.W.2d 404 (Mich.Ct.App.2018), aff'd 921 N.W.2d 247 (Mich.2018); *Fitzpatrickv. Secretary of State*, 440 N.W.2d 45 (Mich. Ct. App. 1989).

32. Defendant Michigan Board of State Canvassers is "responsible for approv[ing] voting equipment for use in the state, certify[ing] the result of elections held state wide. . . ." Michigan Election Officials' Manual, p. 4. *See also* MCL 168.841, *et seq*. On March 23, 2020, the Board of State Canvassers certified the results of the 2020 election finding that Joe Biden had received 154,188 more votes than President Donald Trump.

STATEMENT OF FACTS

33. Plaintiffs bring this action under 42 U.S.C. §§ 1983 and 1988, and under MCL 168.861, to remedy deprivations of rights, privileges, or immunities secured by the Constitution and laws of the United States and to contest the election results, and the corollary under the Michigan Constitution.

34. The United States Constitution sets forth the authority to regulate federal elections. With respect to congressional elections, the Constitution provides.

35. The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of choosing Senators. U.S. Const. art. I, § 4 ("Elections Clause").

36. With respect to the appointment of presidential electors, the Constitution provides: Each State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors, equal to the whole Number of Senators and Representatives to which the State may be entitled in the Congress: but

no Senator or Representative, or Person holding an Office of Trust or Profit under the United States, shall be appointed an Elector. U.S. CONST. art. II, § 1 ("Electors Clause"). Under the Michigan Election Code, the Electors of the President and Vice President for the State of Michigan are elected by each political party at their state convention in each Presidential election year. *See* MCL §§ 168.42 & 168.43.

37. Neither Defendant is a "Legislature" as required under the Elections Clause or Electors Clause. The Legislature is "'the representative body which ma[kes] the laws of the people.'" *Smiley*, 285 U.S. 365. Regulations of congressional and presidential elections, thus, "must be in accordance with the method which the state has prescribed for legislative enactments." *Id.* at 367; *see also Ariz. State Legislature v. Ariz. Indep. Redistricting Comm'n*, 576 U.S. 787, 135 S. Ct. 2652, 2668 (U.S. 2015).

38. While the Elections Clause "was not adopted to diminish a State's authority to determine its own lawmaking processes," *Ariz. State Legislature,* 135 S. Ct. at 2677, it does hold states accountable to their chosen processes when it comes to regulating federal elections, *id.* at 2668. "A significant departure from the legislative scheme for appointing Presidential electors presents a federal constitutional question." *Bush,* 531 U.S. at 113 (Rehnquist, C.J., concurring); *Smiley,* 285 U.S. at 365.

39. And Plaintiffs bring this action, to vindicate his constitutional right to a free and fair election ensuring the accuracy and integrity of the process pursuant to the Michigan Constitution, art. 2, sec. 4, par. 1(h), which states all Michigan citizens have:

> The right to have the results of statewide elections audited, in such a manner as prescribed by law, to ensure the accuracy and integrity of elections.

40. The Mich. Const., art.2, sec.4, further states, "All rights set forth in this subsection shall be self-executing. This subsection shall be liberally construed in favor of voters' rights in order to effectuate its purposes."

41. Based upon all the allegations of fraud, statutory violations, and other misconduct, as stated herein and in the attached affidavits, it is necessary to enjoin the certification of the election results pending a full investigation and court hearing, and to order an independent audit of the November 3, 2020 election to ensure the accuracy and integrity of the election

I. Legal Background: Relevant Provisions of the Michigan Election Code and Election Canvassing Procedures.

A. Michigan law requires Secretary Benson and local election officials to provide designated challengers a meaningful opportunity to observe the conduct of elections.

42. Challengers representing a political party, candidate, or organization interested in the outcome of the election provide a critical role in protecting the integrity of elections including the prevention of voter fraud and other conduct (whether maliciously undertaken or by incompetence) that could affect the conduct of the election. *See* MCL § 168.730-738.

43. Michigan requires Secretary of State Benson, local election authorities, and state and county canvassing boards to provide challengers the opportunity to meaningfully participate in, and oversee, the conduct of Michigan elections and the counting of ballots.

44. Michigan' selection code provides that challengers shall have the following rights and responsibilities:

a. An election challenger shall be provided a space within a polling place where they can observe the election procedure and each person applying to vote. MCL§ 168.733(1).

b. An election challenger must be allowed opportunity to inspect poll books as ballots are issued to electors and witness the electors' names being entered in the poll book. MCL § 168.733(1)(a).

c. An election Challenger must be allowed to observe the manner in which the duties of the election inspectors are being performed. MCL§ 168.733(1)(b).

d. An election challenger is authorized to challenge the voting rights of a person who the challenger has good reason to believe is not a registered elector. MCL § 168.733(1)(c).

e. An election challenger is authorized to challenge an election procedure that is not being properly performed. MCL § 168.733(1)(d).

f. An election challenger may bring to an election inspector's attention any of the following: (1) improper handling of a ballot

by an elector or election inspector; (2) a violation of a regulation made by the board of election inspectors with regard to the time in which an elector may remain in the polling place; (3) campaigning and fundraising being performed by an election inspector or other person covered by MCL § 168.744; and/or (4) any other violation of election law or other prescribed election procedure. MCL § 168.733(1)(e).

g. An election challenger may remain present during the canvass of votes and until the statement of returns is duly signed and made. MCL§ 168.733(1)(f).

h. An election challenger may examine each ballot as it is being counted. MCL § 168.733 (1)(g).

i. An election challenger may keep records of votes cast and other election procedures as the challenger desires. MCL § 168.733(1)(h).

j. An election challenger may observe the recording of absent voter ballots on voting machines. MCL § 168.733(1)(i).

45. The Michigan Legislature adopted these provisions to prevent and deter vote fraud, require the conduct of Michigan elections to be transparent, and to assure public confidence in the outcome of the election no matter how close the final ballot tally maybe.

46. Michigan values the important role challengers perform in assuring the transparency and integrity of elections. For example, Michigan law pro-

vides it is a felony punishable by up to two years in state prison for any person to threaten or intimidate a challenger who is performing any activity described in Michigan law. MCL § 168.734(4). It is a felony punishable by up to two years in state prison for any person to prevent the presence of a challenger exercising their rights or to fail to provide a challenger with "conveniences for the performance of the[ir] duties." MCL 168.734.

47. The responsibilities of challengers are established by Michigan statute. MCL § 168.730 states:

> (1) At an election, a political party or [an organization] interested in preserving the purity of elections and in guarding against the abuse of the elective franchise, may designate challengers as provided in this act. Except as otherwise provided in this act, a political party [or interested organization] may designate not more than 2 challengers to serve in a precinct at any 1 time. A political party [or interested organization] may designate not more than 1 challenger to serve at each counting board.
>
> (2) A challenger shall be a registered elector of this state A candidate for the office of delegate to a county convention may serve as a challenger in a precinct other than the 1 in which he or she is a candidate. . . .
>
> (3) A challenger may be designated to serve in more than 1 precinct. The political party [or interested organization] shall indicate which precincts the challenger will serve when designating challengers under subsection

> (1). If more than 1 challenger of a political party [or interested organization] is serving in a precinct at any 1 time, only 1 of the challengers has the authority to initiate a challenge at any given time. The challengers shall indicate to the board of election inspectors which of the 2 will have this authority. The challengers may change this authority and shall indicate the change to the board of election inspectors.

48. Secretary Benson and Wayne County violated these provisions of Michigan law and violated the constitutional rights of Michigan citizens and voters when they did not conduct this general election in conformity with Michigan law and the United States Constitution.

B. The canvassing process in Michigan.

49. Michigan has entrusted the conduct of elections to three categories of individuals, a "board of inspectors," a "board of county canvassers," and the "board of state canvassers."

50. The board of inspectors, among its other duties, canvasses the ballots and compares the ballots to the poll books. *See* MCL § 168.801. "Such canvass shall be public and the doors to the polling places and at least 1 door in the building housing the polling places and giving ready access to them shall not be locked during such canvas." *Id.* The members of the board of inspectors (one from each party) are required to seal the ballots and election equipment and certify the statement of returns and tally sheets and deliver the statement of returns and tally sheet to the township or city clerk, who shall deliver it to the

probate court judge, who will than deliver the statement of returns and tally sheet to the "board of county canvassers." MCL § 168.809. "All election returns, including poll lists, statements, tally sheets, *absent voters' return envelopes bearing the statement required [to cast an absentee ballot] . . . must be carefully preserved*." MCL § 810a and § 168.811 (emphasis added).

51. After the board of inspectors completes its duties, the board of county canvassers is to meet at the county clerk's office "no later than 9 a.m. on the Thursday after" the election. November 5, 2020 is the date for the meeting. MCL 168.821. The board of county canvassers has power to summon and open ballot boxes, correct errors, and summon election inspectors to appear. Among other duties and responsibilities, the board of county canvassers shall do the following provided in MCL 168.823(3).

52. The board of county canvassers shall correct obvious mathematical errors in the tallies and returns.

> *The board of county canvassers may, if necessary for a proper determination, summon the election inspectors before them*, and require them to count any ballots that the election inspectors failed to count, to make correct returns in case, in the judgment of the board of county canvassers after examining the returns, poll lists, or tally sheets, the returns already made are incorrect or incomplete, and the board of county canvassers shall canvass the votes from the corrected returns. In the alternative to summoning the election inspectors before them, the board of county canvassers may designate staff members from the county clerk's office to count any

> ballots that the election inspectors failed to count, to make correct returns in case, in the judgment of the board of county canvassers after examining the returns, poll lists, or tally sheets, the returns already made are incorrect or incomplete, and the board of county canvassers shall canvass the votes from the corrected returns. When the examination of the papers is completed, or the ballots have been counted, they shall be returned to the ballot boxes or delivered to the persons entitled by law to their custody, and the boxes shall be locked and sealed and delivered to the legal custodians. The county board of canvassers shall "conclude the canvass at the earliest possible time and in every case no later than the fourteenth day after the election," which is November 17. MCL 168.822(1). But,"[i]f the board of county canvassers fails to certify the results of any election for any officer or proposition by the fourteenth day after the election as provided, the board of county canvassers shall immediately deliver to the secretary of the board of state canvassers all records and other information pertaining to the election. The board of state canvassers shall meet immediately and make the necessary determinations and certify the results within the 10 days immediately following the receipt of the records from the board of county canvassers." MCL 168.822(2).

53. The Michigan board of state canvassers then meets at the Secretary of State's office the twentieth

day after the election and announce its determination of the canvass "not later than the fortieth day after the election." For this general election that is November 23 and December 3. MCL 168.842. There is provision for the Secretary of State to direct an expedited canvass of the returns for the election of electors for President and Vice President.

54. The county board of canvassers shall "conclude the canvass at the earliest possible time and in every case no later than the fourteenth day after the election," which is November 17. MCL 168.822(1). But, "[i]f the board of county canvassers fails to certify the results of any election for any officer or proposition by the fourteenth day after the election as provided, the board of county canvassers shall immediately deliver to the secretary of the board of state canvassers all records and other information pertaining to the election. The board of state canvassers shall meet immediately and make the necessary determinations and certify the results within the 10 days immediately following the receipt of the records from the board of county canvassers." MCL 168.822(2).

55. The Michigan board of state canvassers then meets at the Secretary of State's office the twentieth day after the election and announce its determination of the canvass "not later than the fortieth day after the election." For this general election that is November 23 and December 3. MCL 168.842. There is provision for the Secretary of State to direct an expedited canvass of the returns for the election of electors for President and Vice President.

56. The federal provisions governing the appointment of electors to the Electoral College, 3 U.S.C. §§ 1-18, require Michigan Governor Whitmer to prepare a

Certificate of Ascertainment by December 14, the date the Electoral College meets.

57. The United States Code (3 U.S.C. § 5) provides that if election results are contested in any state, and if the state, prior to election a, has enacted procedures to settle controversies or contests over electors and electoral votes, and if these procedures have been applied, and the results have been determined six days before the electors' meetings, then these results are considered to be conclusive and will apply in the counting of the electoral votes. This date (the "Safe Harbor" deadline) falls on December 8, 2020. The governor of any state where there was a contest, and in which the contest was decided according to established state procedures, is required (by 3 U.S.C. § 6) to send a certificate describing the form and manner by which the determination was made to the Archivist as soon as practicable.

58. The members of the board of state canvassers are Democrat Jeannette Bradshaw, Republican Aaron Van Langeveide, Republican Norman Shinkle, and Democrat Julie Matuzak. Jeanette Bradshaw is the Board Chairperson. The members of the Wayne County board of county canvassers are Republican Monica Palmer, Democrat Jonathan Kinloch, Republican William Hartmann, and Democrat Allen Wilson. Monica Palmer is the Board Chairperson.

59. More than one hundred credentialed election challengers provided sworn affidavits. These affidavits stated, among other matters, that these credentialed challengers were denied a meaningful opportunity to review election officials in Wayne County handling ballots, processing absent voter ballots, validating the legitimacy of absent voter ballots, and the general

conduct of the election and ballot counting. *See* Exhibit 1 (affidavits of election challengers).

II. Factual Allegations and Fact Witness Testimony Regarding Michigan Election Code Violations and Other Unlawful Conduct by Election Workers and Michigan State, Wayne County and/or City of Detroit Employees.

60. Wayne County used the TCF Center in downtown Detroit to consolidate, collect, and tabulate all of the ballots for the County. The TCF Center was the only facility within Wayne County authorized to count the ballots.

A. Republican Election Challengers Were Denied Opportunity to Meaningfully Observe the Processing and Counting of Ballots.

61. There is a difference between a ballot and a vote. A ballot is a piece of paper. A vote is a ballot that has been completed by a citizen registered to vote who has the right to cast a vote and has done so in compliance with Michigan election law by, among other things, verifying their identity and casting the ballot on or before Election Day. It is the task of Secretary Benson and Michigan election officials to assure that only ballots cast by individuals entitled to cast a vote in the election are counted and to make sure that all ballots cast by lawful voters are counted and the election is conducted in accord with Michigan's Election Code uniformly through out Michigan.

62. Challengers provide the transparency and accountability to assure ballots are lawfully cast and

counted as provided in Michigan's Election Code and voters can be confident the outcome of the election was honestly and fairly determined by eligible voters.

63. Wayne County excluded certified challengers from meaningfully observing the conduct of the election in violation of the Michigan Election Code. This allowed a substantial number of ineligible ballots to be counted, as outlined in Section B. below. These systematic Michigan Election Code violations, and the disparate treatment of Republican vs. Democratic poll challengers, also violated the Equal Protection Clause and other provisions of the U.S. Constitution as detailed herein. The following affidavits describe the specifics that were observed. This conduct was pervasive in Wayne County as attested to in the affidavits attached at EXHIBIT3.

1. Republican Observers Denied Access to TCF Center

64. Many individuals designated as challengers to observe the conduct of the election were denied meaningful opportunity to observe the conduct of the election. For example, challengers designated by the Republican Party or Republican candidates were denied access to the TCF Center (formerly called Cobo Hall) ballot counting location in Detroit while Democratic challengers were allowed access. Exhibit 3 (Deluca aff. ¶¶ 7-9, 16-18; Langer aff. ¶ 3; Papsdorf aff. ¶ 3; Frego aff. ¶ 9; Downing aff. ¶¶ 2-9, 11, 15, 22; Sankey aff. ¶¶ 5-8; Ostin aff. ¶¶ 5-7; Cavaliere aff. ¶ 3; Cassin aff. ¶ 4; Rose aff. ¶ 18; Zimmerman aff. ¶ 8; Langer aff. ¶ 3; Poplawski aff. ¶ 3; Henderson aff. ¶ 7; Fuqua-Frey aff.¶ 5; Ungar aff. ¶ 4; Eilf aff. ¶¶ 9, 17; Jeup aff. ¶¶ 6-7; Tietz aff. ¶¶ 9-18; McCall aff.

¶¶ 5-6; Arnoldy aff.¶¶ 5, 8-9 (unlimited members of the media were also allowed inside regardless of COVID restrictions while Republican challengers were excluded)).

65. Many challengers stated that Republican challengers who had been admitted to the TCF Center but who left were not allowed to return. *Id.* (Bomer aff.¶ 16; Paschke aff. ¶ 4; Schneider aff., p. 2; Arnoldy aff. ¶ 6; Boller aff. ¶¶ 13-15 (removed and not allowed to serve as challenger); Kilunen aff. ¶ 7; Gorman aff. ¶¶ 6-8; Wirsing aff. ,p. 1; Rose aff. ¶ 19; Krause aff. ¶¶ 9, 11; Roush aff. ¶ 16; M. Seely aff. ¶ 6; Fracassi aff. ¶ 6; Whitmore aff. ¶ 5). Furthermore, Republican challengers who left the TCF Center were not allowed to be replaced by other Republican challengers while Democratic challengers were replaced.

2. Disparate and Discriminatory Treatment of Republican vs. Democratic Challengers.

66. As a result of Republican challengers not being admitted or re-admitted, while Democratic challengers were freely admitted, there were many more Democratic challengers allowed to observe the processing and counting of absent voter ballots than Republican challengers. *Id.* (Helminen aff. ¶ 12 (Democratic challengers out-numbered Republican challengers by at least a two-to-one ratio); Daavettila aff., p. 2 (ten times as many Democratic challengers as Republican); A. Seely aff. ¶ 19; Schneider aff., p. 2; Wirsing aff., p. 1; Rauf aff. ¶ 21; Roush aff. ¶¶ 16-17; Topini aff.¶ 4).

67. Many challengers testified that election officials strictly and exactingly enforced a six-foot

distancing rule for Republican challengers but not for Democratic challengers. *Id.* (Paschke aff. ¶ 4; Wirsing aff., p. 1; Montie aff. ¶ 4; Harris aff. ¶ 3; Krause aff. ¶ 7; Vaupel aff. ¶ 5; Russel aff. ¶ 7; Duus aff. ¶ 9; Topini aff. ¶ 6). As a result, Republican challengers were not allowed to meaningfully observe the ballot counting process.

3. Republican Challengers Not Permitted to View Ballot Handling, Processing or Counting.

68. Many challengers testified that their ability to view the handling, processing, and counting of ballots was physically and intentionally blocked by election officials. *Id.* (A. Seely aff. ¶ 15; Miller aff. ¶¶ 13-14; Pennala aff. ¶ 4; Tyson aff. ¶¶ 12-13, 16; Ballew aff. ¶ 8; Schornak aff. ¶ 4; Williamson aff. ¶¶ 3, 6; Steffans aff. ¶¶ 15-16, 23-24; Zaplitny aff. ¶ 15; Sawyer aff. ¶ 5; Cassin aff. ¶ 9; Atkins aff. ¶ 3; Krause aff. ¶ 5; Sherer aff. ¶¶ 15, 24; Basler aff. ¶¶ 78; Early aff. ¶ 7; Posch aff. ¶ 7; Chopjan aff. ¶ 11; Shock aff.¶ 7; Schmidt aff. ¶¶ 7-8; M. Seely aff. ¶ 4; Topini aff. ¶ 8).

69. At least three challengers said they were physically pushed away from counting tables by election officials to a distance that was too far to observe the counting. *Id.* (Helminen aff. ¶ 4; Modlin aff. ¶¶ 4, 6; Sitek aff. ¶ 4). Challenger Glen Sitek reported that he was pushed twice by an election worker, the second time in the presence of police officers. *Id.* (Sitek aff. ¶ 4). Sitek filed a police complaint. *Id.*

70. Challenger Pauline Montie stated that she was prevented from viewing the computer monitor because election workers kept pushing it further away

and made her stand back away from the table. *Id.* (Montie aff. ¶¶ 4-7). When Pauline Montie told an election worker that she was not able to see the monitor because they pushed it farther away from her, the election worker responded, "too bad." *Id.*¶ 8.

71. Many challengers witnessed Wayne County election officials covering the windows of the TCF Center ballot counting center so that observers could not observe the ballot counting process. *Id.* (A. Seely aff. ¶¶ 9, 18; Helminen aff. ¶¶ 9, 12; Deluca aff. ¶ 13; Steffans aff. ¶ 22; Frego aff. ¶ 11; Downing aff. ¶ 21; Sankey aff. ¶ 14; Daavettila aff., p.4; Zimmerman aff. ¶ 10; Krause aff. ¶ 12; Sherer aff. ¶ 22; Johnson aff.¶ 7; Posch aff. ¶ 10; Rauf aff. ¶ 23; Luke aff., p.1; M. Seely aff.¶ 8; Zelasko aff.¶ 8; Ungar aff. ¶ 12; Storm aff. ¶ 7; Fracassi aff. ¶ 8; Eilf aff. ¶ 25; McCall aff. ¶ 9).

4. Harassment, Intimidation & Removal of Republican Challengers

72. Many challengers testified that they were intimidated, threatened, and harassed by election officials during the ballot processing and counting process. *Id.* (Ballew aff. ¶¶ 7, 9; Gaicobazzi aff. ¶¶ 12-14 (threatened repeatedly and removed); Schneider aff., p.1; Piontek aff. ¶ 11; Steffans aff. ¶ 26 (intimidation made her feel too afraid to make challenges); Cizmar aff. ¶ 8(G); Antonie aff. ¶ 3; Zaplitny aff. ¶ 20; Moss aff. ¶ 4; Daavettila aff., pp. 2-3; Tocco aff. ¶¶ 1-2; Cavaliere ¶ 3; Kerstein aff. ¶ 3; Rose aff. ¶ 16; Zimmerman aff. ¶ 5; Langer aff. ¶ 3; Krause aff. ¶ 4; Sherer aff. ¶ 24; Vaupel aff. ¶ 4; Basler aff. ¶ 8; Russell aff. ¶ 5; Burton aff. ¶ 5; Early aff. ¶ 7; Pannebecker aff. ¶ 10; Sitek aff. ¶ 4; Klamer aff. ¶ 4; Leonard aff. ¶¶ 6, 15; Posch aff. ¶¶ 7, 14; Rauf aff. ¶ 24; Chopjian

aff. ¶ 10; Cooper aff.¶ 12; Shock aff. ¶ 9; Schmidt aff. ¶¶ 9-10; Duus aff.¶ 10; M. Seely aff.¶ 4; Storm aff. ¶¶ 5, 7; DePerno aff. ¶¶ 5-6; McCall aff. ¶¶ 5, 13). Articia Bomer was called a "racist name" by an election worker and also harassed by other election workers. *Id.* (Bomer aff. ¶ 7). Zachary Vaupel reported that an election supervisor called him an "obscene name" and told him not to ask questions about ballot processing and counting. *Id.* (Vaupel aff. ¶ 4). Kim Tocco was personally intimidated and insulted by election workers. *Id.* (Tocco aff. ¶¶ 1-2). Qian Schmidt was the target of racist comments and asked, "what gives you the right to be here since you are not American?" *Id.* (Schmidt aff. ¶ 9).

73. Other challengers were threatened with removal from the counting area if they continued to ask questions about the ballot counting process. *Id.* (A. Seely aff. ¶¶ 6, 13, 15; Pennala aff. ¶ 5). Challenger Kathleen Daavettila observed that Democratic challengers distributed a packet of information among themselves entitled, "Tactics to Distract GOP Challengers." *Id.* (Daavettila aff., p. 2). An election official told challenger Ulrike Sherer that the election authority had a police SWAT team waiting outside if Republican challengers argued too much. *Id.* (Sherer aff. ¶ 24). An election worker told challenger Jazmine Early that since "English was not [her] first language . . . [she] should not be taking part in this process." *Id.* (Early aff. ¶ 11).

74. Election officials at the TCF Center in Detroit participated in the intimidation experienced by Republican challengers when election officials would applaud, cheer, and yell whenever a Republican chal-

lenger was ejected from the counting area. *Id.* (Helminen aff. ¶ 9;

75. Pennala aff. ¶ 5; Ballew aff. ¶ 9; Piontek aff. ¶ 11; Papsdorf aff. ¶ 3; Steffans aff. ¶ 25; Cizmar aff. ¶ 8 (D); Kilunen aff. ¶ 5; Daavettila aff., p.4; Cavaliere aff. ¶ 3; Cassin aff. ¶ 10; Langer aff. ¶ 3; Johnson aff. ¶ 5; Early aff. ¶ 13; Klamer aff. ¶ 8; Posch aff. ¶ 12; Rauf aff. ¶ 22; Chopjian aff. ¶ 13; Shock aff.¶ 10).

5. Poll Workers Ignored or Refused to Record Republican Challenges.

76. Unfortunately, this did not happen in Wayne County. Many challengers testified that their challenges to ballots were ignored and disregarded. *Id.* (A. Seely aff. ¶ 4; Helminen aff. ¶ 5; Miller aff. ¶¶ 10-11; Schornak aff. ¶¶ 9, 15; Piontek aff. ¶ 6; Daavettila aff., p.3; Valice aff. ¶ 2; Sawyer aff.¶ 7; Kerstein aff. ¶ 3; Modlin aff. ¶ 4; Cassin aff. ¶ 6; Brigmon aff. ¶ 5; Sherer aff. ¶ 11; Early aff. ¶ 18; Pannebecker aff. ¶ 9; Vanker aff. ¶ 5; M. Seely aff. ¶ 11; Ungar aff. ¶¶ 16-17; Fracassi aff. ¶ 4). As an example of challenges being disregarded and ignored, challenger Alexandra Seely stated that at least ten challenges she made were not recorded. *Id.* (A. Seely aff. ¶ 4). Articia Bomer observed that ballots with votes for Trump were separated from other ballots. *Id.* (Bomer aff.¶ 5). Articia Bomer stated, "I witnessed election workers open ballots with Donald Trump votes and respond by rolling their eyes and showing it to other poll workers. I believe some of these ballots may not have been properly counted." *Id.* ¶ 8. Braden Gaicobazzi challenged thirty-five ballots for whom the voter records did not exist in the poll book, but his challenge was ignored and disregarded. *Id.* (Giacobazzi aff. ¶ 10).

When Christopher Schornak attempted to challenge the counting of ballots, an election official told him, "We are not talking to you, you cannot challenge this." *Id.* (Schornak aff. ¶ 15). When Stephanie Krause attempted to challenge ballots, an election worker told her that challenges were no longer being accepted because the "rules' no longer applied.'" *Id.* (Krause aff.¶ 13).

6. Unlawful Ballot Duplication.

77. If a ballot is rejected by a ballot-tabulator machine and cannot be read by the machine, the ballot must be duplicated onto a new ballot. The Michigan Secretary of State has instructed, "If the rejection is due to a false read the ballot must be duplicated by *two election inspectors who have expressed a preference for different political parties*." Michigan Election Officials' Manual, ch. 8, p. 6 (emphasis added). Thus, the ballot-duplicating process must be performed by bipartisan teams of election officials. It must also be performed where it can be observed by challengers.

78. But Wayne County prevented many challengers from observing the ballot duplicating process. *Id.* (Miller aff. ¶¶ 6-8; Steffans aff. ¶¶ 15-16, 23-24; Mandelbaum aff. ¶ 6; Sherer aff. ¶¶ 16-17; Burton aff. ¶ 7; Drzewiecki aff. ¶ 7; Klamer aff. ¶ 9; Chopjian aff. ¶ 10; Schmidt aff.¶ 7; Champagne aff. ¶ 12; Shinkle aff., p.1). Challenger John Miller said he was not allowed to observe election workers duplicating a ballot because the "duplication process was personal like voting." *Id.* (Miller aff. ¶ 8). Challenger Mary Shinkle stated that she was told by an election worker that she was not allowed to observe a ballot duplication because "if we make a mistake then you would be all

over us." *Id.* (Shinkle aff., p. 1). Another challenger observed election officials making mistakes when duplicating ballots. *Id.* (Piontek aff. ¶ 9).

79. Many challengers testified that ballot duplication was performed only by Democratic election workers, not bipartisan teams. Exhibit 1 (Pettibone aff. ¶ 3; Kinney aff., p.1; Wasilewski aff., p.1; Schornak aff. ¶¶ 18-19; Dixon aff., p.1; Kolanagireddy aff., p. 1; Kordenbrock aff. ¶¶ 3-4; Seidl aff., p. 1; Kerstein aff. ¶ 4; Harris aff. ¶ 3; Sitek aff. ¶ 4).

7. Democratic Election Challengers Frequently Outnumbered Republican Poll Watchers 2:1 or Even 2:0.

80. Dominion contractor Melissa Carrone testified that there were significantly more Democrats than Republicans at the TCF Center, and that as a result there were "over 20 machines [that] had two democrats judging the ballots-resulting in an unfair process." Exh. 5 ¶ 5. Other affiants testified to the fact that Democrats outnumbered Republicans by 2:1 or more *Id.* (Helminon aff. ¶ 12). Democrats also impersonated Republican poll watchers. *Id.* (Seely aff. ¶ 19).

8. Collaboration Between Election Workers, City/County Employees, and Democratic Party Challengers and Activists.

81. Affiants testified to systematic and routine collaboration between election workers, Michigan public employees and Democratic election challengers and activists present, in particular to intimidate, harass, distract or remove Republic election watchers. *See,*

e.g., Exh. 1 (Ballow aff. ¶ 9; Gaicobazzi aff. ¶¶ 12, 14; Piontek aff. ¶ 11).

B. Election Workers Fraudulent Forged, Added, Removed or Otherwise Altered Information on Ballots, Qualified Voter List and Other Voting Records

82. A lawsuit recently filed by the Great Lakes Justice Center ("GLJC") raises similar allegations of vote fraud and irregularities that occurred in Wayne County. *See* Exhibit 4 (copy of complaint filed in the Circuit Court of Wayne County in *Costantino, et al. v. City of Detroit, et al.*) ("GLJC Complaint"). The allegations and affidavits included in the GLJC Complaint are incorporated by reference in the body of this Complaint.

1. Election Workers Fraudulently Added "Tens of Thousands" of New Ballots and New Voters in the Early Morning and Evening November 4.

83. The most egregious example of election workers fraudulent and illegal behavior concerns two batches of new ballots brought to the TCF Center after the 8:00 PM Election Day deadline. First, at approximately 4:30 AM on November 4, 2020, poll challenger Andrew Sitto observed "tens of thousands of new ballots" being brought into the counting room, and "[u]nlike the other ballots, these boxes were brought in from the rear of the room." Exh. 4, GLJC Complaint, Exh. C at ¶ 10. Mr. Sitto heard other Republican challengers state that "several vehicles with out-of-state license plates pulled up to the TCF Center a little before 4:30 a.m. and unloaded boxes of ballots."

Id. at ¶ 11. "All ballots sampled that I heard and observed were for Joe Biden." *Id.* at ¶ 12.

84. A second set of new boxes of ballots arrived at the TCF Center around 9:00 PM on November 4, 2020. According to poll watcher Robert Cushman, contained "several thousand new ballots." Exh. 4, GLJC Complaint, Exh. D at ¶ 5. Mr. Cushman noted that "none of the names on the new ballots were on the QVF or the Supplemental Sheets," *id.* at ¶ 7, and he observed "computer operators at several counting boards manually adding the names and addresses of these thousands of ballots to the QVF system." *Id.* at ¶ 8. Further, "[e]very ballot was being fraudulently and manually entered into the [QVF], as having been born on January 1, 1990." *Id.* at ¶ 15. When Mr. Cushman challenged the validity of the votes and the impossibility of each ballot having the same birthday, he "was told that this was the instruction that came down from the Wayne County Clerk's office." *Id.* at ¶ 16.

85. Perhaps the most probative evidence comes from Melissa Carone, who was "contracted to do IT work at the TCF Center for the November 3, 2020 election." Exh. 5, ¶ 1. On November 4, Ms. Carrone testified that there were "two vans that pulled into the garage of the counting room, one on day shift and one on night shift." *Id.* ¶ 8. She thought that the vans were bring food, however, she "never saw any food coming out of these vans," and noted the coincidence that "Michigan had discovered over 100,000 more ballots – not even two hours after the last van left." *Id.* Ms. Carrone witnessed this of this illegal vote dump, as well as several other violations outlined below.

2. Election Workers Forged and Fraudulently Added Voters to the Qualified Voter List.

86. Many challengers reported that when a voter was not in the poll book, the election officials would enter a new record for that voter with a birth date of January 1, 1900. Exhibit 1 (Gaicobazzi aff. ¶ 10; Piontek aff. ¶ 10; Cizmer aff. ¶ 8(F); Wirsing aff., p. 1; Cassin aff. ¶ 9; Langer aff. ¶ 3; Harris aff. ¶ 3; Brigmon aff. ¶ 5; Sherer aff. ¶¶ 10-11; Henderson aff. ¶ 9; Early ¶ 16; Klamer aff. ¶ 13; Shock aff. ¶ 8; M. Seely aff. ¶ 9). *See also id.* (Gorman aff. ¶¶ 23-26; Chopjian aff. ¶ 12; Ungar aff. ¶ 15; Valden aff. ¶ 17). Braden Gaicobazzi reported that a stack of thirty-five ballots was counted even though there was no voter record. *Id.* (Giacobazzi aff.¶ 10).

87. The GLJC Complaint alleges the Detroit Election Commission "systematically processed and counted ballots from voters whose name failed to appear in either the Qualified Voter File (QVF) or in the supplemental sheets." Exh. 3, GLJC Complaint at 3. The GLJC Complaint provides additional witness affidavits detailing the fraudulent conduct of election workers, in particular, that of Zachary Larsen, who served as a Michigan Assistant Attorney General from 2012 through 2020 and was a certified poll challenger at the TCF Center. "Mr. Larsen reviewed the running list of scanned in ballots in the computer system, where it appeared that the voter had already been counted as having voted. An official operating the computer then appeared to assign this ballot to a different voter as he observed a completely different name that was added to the list of voters at the bottom of a running tab of processed ballots on the right side

of the screen." *Id.* at ¶ 16. Mr. Larsen observed this "practice of assigning names and numbers" to non-eligible voters who did not appear in either the poll book or the supplement poll book. *Id.* at ¶ 17. Moreover, this appeared to be the case for the majority of the voters whose ballots he personally observed being scanned. *Id.*

3. Changing Dates on Absentee Ballots.

88. All absentee ballots that existed were required to be inputted into the QVF system by 9:00 p.m. on November 3, 2020. This was required to be done in order to have a final list of absentee voters who returned their ballots prior to 8:00 p.m. on November 3, 2020. In order to have enough time to process the absentee ballots, all polling locations were instructed to collect the absentee ballots from the drop-box once every hour on November 3, 2020.

89. Jessica Connarn is an attorney who was acting as a Republican challenger at the TCF Center in Wayne County. EXHIBIT 6. Jessica Connarn's affidavit describes how an election poll worker told Jessica Connarn that the poll worker "was being told to change the date on ballots to reflect that the ballots were received on an earlier date." *Id.* ¶ 1. Jessica Connarn also provided a photograph of a note handed to her by the poll worker in which the poll worker indicated she (the poll worker) was instructed to change the date ballots were received. *See id.* Jessica Connarn's affidavit demonstrates that poll workers in Wayne County were pre-dating absent voter ballots, so that absent voter ballots received after 8:00 p.m. on Election Day could be counted.

90. Plaintiffs have learned of a United States Postal Service ("USPS") worker Whistleblower, on November 4, 2020 told Project Veritas that a supervisor named Johnathan Clarke in Traverse City, Michigan potentially issued a directive to collect ballots and stamp them as received on November 3, 2020, even though there were not received timely, as required by law: "We were issued a directive this morning to collect any ballots we find in mailboxes, collection boxes, just outgoing mail in general, separate them at the end of the day so that they could hand stamp them with the previous day's date," the whistleblower stated. "Today is November 4th for clarification."[4] This is currently under IG Investigation at the U.S. Post Office. According to the Postal worker whistleblower, the ballots are in "express bags" so they could be sent to the USPS distribution center. *Id.*

91. As set forth in the GLJC Complaint and in the Affidavit of Jessy Jacob, an employee of the City of Detroit Elections Department, "on November 4, 2020, I was instructed to improperly pre-date the absentee ballots receive date that were not in the QVF as if they had been received on or before November 3, 2020. I was told to alter the information in the QVF to falsely show that the absentee ballots had been received in time to be valid. She estimates that this was done to thousands of ballots." Exh. 4, GLJC Complaint, Exh. B at ¶ 17.

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[4] https://townhall.com/tipsheet/bethbaumann/2020/11/04/usps-whistleblower-in-michigan-claims-higher-ups-were-engaging-in-voter-fraud-n2579501

4. Election Workers Changed Votes for Trump and Other Republican Candidates.

92. Challenger Articia Bomer stated, "I observed a station where election workers were working on scanned ballots that had issues that needed to be manually corrected. I believe some of these workers were changing votes that had been cast for Donald Trump and other Republican candidates." *Id.* (Bomer aff. ¶ 9). In addition to this eyewitness testimony of election workers manually changing votes for Trump to votes for Biden, there is evidence that Dominion Voting Systems did the same thing on a much larger scale with its Dominion Democracy Suite software. *See generally infra* Section IV.D, Paragraphs 123-131.

5. Election Officials Added Votes and Removed Votes from "Over-Votes".

93. Another challenger observed over-votes on ballots being "corrected" so that the ballots could be counted. Exh. 3 (Zaplitny aff. ¶ 13). At least one challenger observed poll workers adding marks to a ballot where there was no mark for any candidate. *Id.*(Tyson aff.¶ 17).

C. Additional Violations of Michigan Election Code That Caused Ineligible, Illegal or Duplicate Ballots to Be Counted.

1. Illegal Double Voting.

94. At least one election worker "observed a large number of people who came to the satellite location to vote in-person, but they had already applied for an absentee ballot. These people were allowed to vote in-

person and were not required to return the mailed absentee ballot or sign an affidavit that the voter lost the mailed absentee ballot." Exh. 4, GLJC Complaint (Exh. B) Jacob aff. at ¶ 10. This would permit a person to vote in person and also send in his/her absentee ballot, and thereby vote at least twice.

2. Ineligible Ballots Were Counted – Some Multiple Times.

95. Challengers reported that batches of ballots were repeatedly run through the vote tabulation machines. Exh. 3 (Helminen aff. ¶ 4; Waskilewski aff., p. 1; Mandelbaum aff. ¶ 5; Rose aff. ¶¶ 4-14; Sitek aff. ¶ 3; Posch aff. ¶ 8; Champagne aff. ¶ 8). Challenger Patricia Rose stated she observed a stack of about fifty ballots being fed multiple times into a ballot scanner counting machine. *Id.* (Rose aff. ¶¶ 4-14). Articia Bomer further stated that she witnessed the same group of ballots being rescanned into the counting machine "at least five times." *Id.* ¶ 12. Dominion contractor Melissa Carone observed that this was a routine practice at the TCF Center, where she "witnessed countless workers rescanning the batches without discarding them first" – as required under Michigan rules and Dominion's procedures – "which resulted in ballots being counted 4-5 times" by the "countless" number of election workers. Carone aff. ¶ 3. When she observed that a computer indicated that it had "a number of over 400 ballots scanned – which means one batch [of 50] was counted over 8 times," and complained to her Dominion supervisor, she was informed that "we are here to do assist with IT work, not to run their election." *Id.* at ¶ 4.

3. Ballots Counted with Ballot Numbers Not Matching Ballot Envelope.

96. Many challengers stated that the ballot number on the ballot did not match the number on the ballot envelope, but when they raised a challenge, those challenges were disregarded and ignored by election officials, not recorded, and the ballots were processed and counted. Exh. 3 (A. Seely aff. ¶ 15; Wasilewski aff., p.1; Schornak aff. ¶ 13; Brunell aff. ¶¶ 17, 19; Papsdorf aff. ¶ 3; Spalding aff. ¶¶ 8, 11; Antonie aff. ¶ 3; Daavettila aff., p. 3; Atkins aff. ¶ 3; Harris aff. ¶ 3; Sherer aff. ¶ 21; Drzewiecki aff. ¶¶ 5-6; Klamer aff. ¶ 4; Rauf aff. ¶¶ 9-14; Roush aff. ¶¶ 5-7; Kinney aff. ¶ 5). For example, when challenger Abbie Helminen raised a challenge that the name on the ballot envelope did not match the name on the voter list, she was told by an election official to "get away" and that the counting table she was observing had "a different process than other tables." *Id*. (Helminen aff.¶ 5).

4. Election Officials Counted Ineligible Ballots with No Signatures or with No Postmark on Ballot Envelope.

97. At least two challengers observed ballots being counted where there was no signature or postmark on the ballot envelope. *Id.* (Brunell aff. ¶¶ 17, 19; Spalding aff.¶ 13; Sherer aff. ¶ 13). Challenger Anne Vanker observed that "60% or more of [ballot] envelopes [in a batch] bore the same signature on the opened outer envelope." *Id.* (Vanker aff. ¶ 5).Challenger William Henderson observed that a counting table of election workers lost eight ballot envelopes. Exhibit 1 (Henderson aff.¶ 8).The GLJC Complaint further alleges the

Election Commission "instructed election workers to not verify signatures on absentee ballots, to backdate absentee ballots, and to process such ballots regardless of their validity."

5. Election Officials Counted "Spoiled" Ballots.

98. At least two challengers observed spoiled ballots being counted. *Id.* (Schornak aff. ¶¶ 6-8; Johnson aff. ¶ 4). At least one challenger observed a box of provisional ballots being placed in a tabulation box at the TCF Center. Exhibit 1 (Cizmar aff. ¶ 5).

6. Systematic Violations of Ballot Secrecy Requirements

99. Affiant Larsen identified a consistent practice whereby election officials would remove ballots from the "secrecy sleeve" or peek into the envelopes, visually inspect the ballots, and based on this visual inspection of the ballot (and thereby identify the votes cast), determine whether to "place the ballot back in its envelope and into a 'problem ballots' box that required additional attention to determine whether they would be processed and counted." Exh. 4, GLJC Complaint, Exh. A at ¶ 14. Mr. Larsen also observed that some ballots arriving without any secrecy sleeve at all were counted after visual inspection, whereas many ballots without a secrecy sleeve were placed in the "problem ballots" box. *Id.* at ¶¶ 21-22. "So the differentiation among these ballots despite both ballots arriving in secrecy sleeves was perplexing and again raised concerns that some ballots were being marked as 'problem ballots' based on who the person had voted for rather on any legitimate concern about the ability

to count and process the ballot appropriately." *Id.* at ¶ 24.

7. Election Workers Accepted Unsecured Ballots, without Chain of Custody, after 8:00 PM Election Day Deadline.

100. Poll challengers observed two batches of new ballots brought to the TCF Center after the 8:00 PM Election Day deadline, as detailed in the GLJC Complaint and Paragraphs 79-81 above. Affiant Daniel Gustafson further observed that these batches of ballots "were delivered to the TCF Center in what appeared to be mail bins with open tops." Exh. 4, GLJC Complaint, Exh. E at ¶ 4. Mr. Gustafson further observed that these bins and containers "did not have lids, were not sealed, and did not have the capability of having a metal seal," *id.* at ¶ 5, nor were they "marked or identified in any way to indicated their source of origin." *Id.* at ¶ 6.

101. An election challenger at the Detroit Department of Elections office observed passengers in cars dropping off more ballots than there were people in the car. Exh. 3 (Meyers aff. ¶ 3). This challenger also observed an election worker accepting a ballot after 8:00 p.m. on Election Day. *Id.*¶ 7.

102. An election challenger at the Detroit Department of Elections office observed ballots being deposited in a ballot drop box located at the Detroit Department of Elections after 8:00 p.m. on Election Day. *Id.* (Meyers aff. ¶ 6).

103. On November 4, 2020, Affiant Matt Ciantar came forward who, independently witnessed, while

walking his dog, a young couple delivered 3-4 large plastic clear bags, that appear to be "express bags", as reflected in photographs taken contemporaneously, to a U.S. Postal vehicle waiting. *See generally* Exh. 7 Matt Ciantar Declaration. The use of clear "express bags" is consistent with the USPS whistleblower Johnathan Clarke in Traverse City, Michigan. *See infra* Paragraph 78.

8. Ballots from Deceased Voters Were Counted.

104. One Michigan voter stated that her deceased son has been recorded as voting twice since he passed away, most recently in the 2020 general election. Exh. 3 (Chase aff.¶ 3).

III. Expert Witness Testimony Supporting Indicating Widespread Voting Fraud and Manipulation

A. Approximately 30,000 Michigan Mail-In Ballots Were Lost, and Approximately 30,000 More Were Fraudulently Recorded for Voters who Never Requested Mail-In Ballots.

105. The attached report of William M. Briggs, Ph.D. ("Dr. Briggs Report") summarizes the multi-state phone survey data of 248 Michigan Republican voters collected by Matt Braynard, which was conducted from November 15-17, 2020 and covered voters in Arizona, Georgia, Michigan, Pennsylvania, and Wisconsin. *See* Exh. 101, Dr. Briggs Report at 1, and Att. 1 ("Braynard Survey"). The Braynard Survey sought to identify two specific errors involving unreturned

mail-in ballots that are indicative of voter fraud, namely: "Error #1: those who were recorded as receiving absentee ballots without requesting them;" and "Error #2: those who returned absentee ballots but whose votes went missing (*i.e.*, marked as unreturned)." *Id.* Dr. Briggs then conducted a parameter-free predictive model to estimate, within 95% confidence or prediction intervals, the number of ballots affected by these errors out of a total of 139,190 unreturned mail-in ballots for the State of Michigan.

106. With respect to Error #1, Dr. Briggs analysis estimated 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. *Id.* With respect to Error #2, the numbers are similar with 27,928 to 34,710 ballots out of 139,190 unreturned ballots (20.06%-24.93%) recorded for voters who did return their ballots were recorded as being unreturned. *Id.* Taking the average of the two types of errors together, 62,517 ballots, or 45% of the total, are "troublesome."

107. These errors are not only conclusive evidence of widespread fraud by the State of Michigan,[5] but they are fully consistent with the fact witness statements above the evidence regarding Dominion

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[5] The only other possible explanations for the statements of 248 Michigan mail-in voters included in the Braynard Survey data is (a) that the 248 voters (who had no known pre-existing relationship apart from being listed as having unreturned absentee ballots) somehow contrived to collude together to submit false information or (b) that these 248 suffered from amnesia, dementia or some other condition that caused them to falsely claim that they had requested a mail-in ballot or returned a mail-in ballot.

presented below insofar as these purportedly unreturned absentee ballots provide a pool of 60,000-70,000 unassigned and blank ballots that could be filled in by Michigan election workers, Dominion or other third parties to shift the election to Joe Biden. With respect to Error #1, Dr. Briggs' analysis, combined with the statements of the Michigan voters in the Braynard Survey, demonstrates that approximately 30,000 absentee ballots were sent to someone besides the registered voter named in the request, and thus could have been filled out by anyone and then submitted in the name of another voter. With respect to Error #2, Dr. Briggs' analysis indicates that approximately 30,000 absentee ballots were either lost or destroyed (consistent with allegations of Trump ballot destruction) and/or were replaced with blank ballots filled out by election workers, Dominion or other third parties. Accordingly, Dr. Briggs' analysis showing that almost half of purportedly "unreturned ballots" suffers from one of the two errors above – which is consistent with his findings in the four other States analyzed (Arizona 58%, Georgia 39%, Pennsylvania 37%, and Wisconsin 31%) – provides further support that these widespread "irregularities" or anomalies was one part of much larger interstate fraudulent scheme to rig the 2020 General Election for Joe Biden.

B. Statistical Analysis of Anomalous and Unprecedented Turnout Increases in Specific Precincts Indicate that There Were at Least 40,000 "Excess Voters" in Wayne County and At Least 46,000 in Oakland County.

108. The attached affidavit of Eric Quinell, Ph.D. ("Dr. Quinell Report") analyzes the extraordinary

increase in turnout from 2016 to 2020 in a relatively small subset of townships and precincts outside of Detroit in Wayne County and Oakland County, and more importantly how nearly 100% or more of all "new" voters from 2016 to 2020 voted for Biden. *See* Exh. 102. Using publicly available information from Wayne County and Oakland County, Dr. Quinell first found that for the votes received up to the 2016 turnout levels, the 2020 vote Democrat vs. Republican two-ways distributions (*i.e.*, excluding third parties) tracked the 2016 Democrat vs. Republican distribution very closely, which was 55%-45% for Wayne County (outside Detroit) and 54%/46% for Oakland County. *Id.* at ¶¶ 18 & 20.

109. However, after the 2016 turnout levels were reached, the Democrat vs. Republican vote share shifts decisively towards Biden by approximately 15 points, resulting in a 72%/28% D/R split for Oakland County and 70%/30% D/R split for Wayne County (outside of Detroit). What is even more anomalous – and suspicious – is the fact that nearly all of these "new" votes in excess of 2016 come from a small number of townships/precincts where the increased Biden vote share is nearly 100% or over 100% for Biden. *Id.* For example, in the township of Livonia in Wayne County, Biden gained 3.2 voters for every 1 new Trump voter, and Biden receive 97% of all "new" votes over 2016 and 151% of all new voter registrations. *Id.* at ¶ 6. In the township of Troy in Oakland County, the vote share shifted from 51%/49% in 2016 to 80%/20% in 2020 due to Biden receiving 98% of new votes above 2016 and 109% of new voter registrations. *Id.* at ¶ 20. Looking county-wide, Biden gained 2.32 new voters over 2016 levels to every 1 new Trump

voter in Wayne County (outside Detroit) and 2.54 additional new voters per Trump voter for Oakland County. *Id.* ¶ 5.

110. Based on these statistically anomalous results that occurred in a handful of townships in these two counties, Dr. Quinell's model determined that there were 40,771 anomalous votes in Wayne County (outside Detroit) and 46,125 anomalous votes in Oakland County, for a total of nearly 87,000 anomalous votes or approximately 65% of Biden's purported lead in Michigan.

C. Over 13,000 Ineligible Voters Who Have Moved Out-of-State Illegally Voted in Michigan.

111. Evidence compiled by Matt Braynard using the National Change of Address ("NCOA") Database shows that 12,120 Michigan voters in the 2020 General Election moved out-of-state prior to voting, and therefore were ineligible. Mr. Braynerd identified 1,170 Michigan voters in the 2020 General Election who subsequently registered to vote in another state, and were therefore ineligible to vote in the 2020 General Election. When duplicates from the two databases are eliminated, the merged number is 13,248 ineligible voters whose votes must be removed from the total for the 2020 General Election.[6]

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[6] Mr. Braynard posted the results of his analysis on Twitter. *See* https://twitter.com/MattBraynard/status/1329700178891333634?s=20. This Complaint includes a copy of his posting as Exhibit 103.

D. There Were At Least 289,866 More Ballots Processed in Four Michigan Counties on November 4 Than There Was Processing Capacity.

112. The expert witness testimony of Russell James Ramsland, Jr. ("Ramsland Affidavit"), which is described in greater detail below, identifies an event that occurred in Michigan on November 4 that is "physically impossible" *See* Exh. 104 at ¶ 14. The "event" reflected in the data are "4 spikes totaling 384,733 ballots allegedly processed in a combined interval of 2 hour[s] and 38 minutes" for four precincts/townships in four Michigan counties (Wayne, Oakland, Macomb ne and Kent). *Id.* Based on Mr. Ramsland's analysis of the voting machines available at the referenced locations, he determined that the maximum processing capability during this period was only 94,867 ballots, so that "there were 289,866 more ballots processed in the time available for processing in the four precincts/townships, than there was processing capacity." *Id.* This amount is alone is nearly twice the number of ballots by which Biden purportedly leads President Trump (*i.e.,* approximately 154,180).

IV. Factual Allegations Re Dominion Voting Systems

A. Evidence of Specific Fraud Wayne County used ballot tabulators that were shown to miscount votes cast for President Trump and Vice President Pence and instead count them for the Biden-Harris ticket.

113. On the morning of November 4, unofficial results posted by the Antrim County Clerk showed that Joe Biden had over 7,700 votes — 3,000 more than Donald Trump. Antrim County voted 62% in favor of President Trump in 2016. The Dominion Voting Systems election management system and voting machines (tabulators), which were used in Antrim County, are also used in many other Michigan counties, including Wayne County, were at fault.

114. However, Malfunctioning voting equipment or defective ballots may have affected the outcome of a vote on an office appearing on the ballot. "Michigan Manual for Boards of County Canvassers. These vote tabulate or failures are a mechanical malfunction that, under MCL 168.831-168.839, requires a "special election" in the precincts affected.

115. Secretary of State Benson released a statement blaming the county clerk for not updating certain "media drives," but her statement failed to provide any coherent explanation of how the Dominion Voting Systems software and vote tabulators produced such a massive miscount.[7]

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[7] https://www.michigan.gov/documents/sos/Antrim_Fact_Check_707197_7.pdf (emphasis in original).

116. Secretary Benson continued: "*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*." *Id.* What Secretary Benson fails to address is what would have happened if no one "discover[ed] the error," for instance, in Wayne County, where the number of registered voters is much greater than Antrim County, and where the tabulators were not individually tested.

117. Wayne County used the same Dominion voting system tabulators as did Antrim County, and Wayne County tested only a single one of its vote tabulating machines before the election. The Trump campaign asked Wayne County to have an observer physically present to witness the process. *See* Exhibit 4. Wayne County denied the Trump campaign the opportunity to be physically present. Representatives of the Trump campaign did have opportunity to watch a portion of the test of a single machine by Zoom video.

B. The Pattern of Incidents Shows An Absence Of Mistake-Always In The Favor Of Biden.

118. Rules of Evidence, 404(b), applicable to civil matters makes clear that,

> (b) Evidence of other crimes, wrongs, or acts shall not be admissible to prove the character of a person in order to show action in conformity therewith. It may, however, be admissible for other purposes, including, but not limited to, proof of motive, opportunity, intent, preparation, plan, knowledge, identity,

or absence of mistake or accident.

119. Tabulator issues and election violations occurred elsewhere in Michigan reflecting a pattern, where multiple incidents occurred. In Oakland County, votes flipped a seat to an incumbent Republican, Adam Kochenderfer, from the Democrat challenger when

120. "A computer issue in Rochester Hills caused them to send us results for seven precincts as both precinct votes and absentee votes. They should only have been sent to us as absentee votes," Joe Rozell, Oakland County Director of Elections for the City of Huntington Woods, said.[8]

121. This Oakland County flip of votes is significant not only because it reflects a second systems error wherein both favored the Democrats, precinct votes were sent out to be counted, and they were counted twice as a result until the error was caught on a recount, but precinct votes should never be counted outside of the precinct, instead they are required to be sealed in the precinct.

C. Dominion Voting Machines and Forensic Evidence of Wide-Spread Fraud in Defendant Counties

122. The State of Michigan entered into a contract with Dominion Systems' Democracy Suite 4.14-D first, and then included Dominion Systems Democracy Suite 5.0-S on or about January 27, 2017, which added a

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[8] Detroit Free Press, https://www.freep.com/story/news/local/michigan/oakland/2020/11/06/oakland-county-election-2020-race-results/6184186002/

fundamental modification: "dial-up and wireless results transmission capabilities to the ImageCast Precinct and results transmission using the Democracy Suite EMS Results Transfer Manager module."

123. Whereas the same Dominion software in an updated contract with Pennsylvania, unlike in Michigan's contract, sets forth the standard as requiring physical security: *No components of the Democracy Suite 5.5A shall be connected to any modem or network interface, including the Internet, at any time, except when a standalone local area wired network configuration in which all connected devices are certified voting system components." Id. at 41 (Condition C).*

124. The Michigan Contract with Dominion Voting Systems Democracy packages include language that describes *Safety and Security*, which in part makes the risks of potential breach clear where keys can be lost despite the fact that they provide full access to the unit, and while it is clear that the electronic access provides control to the unit, and the ability to alter results, combined with the lack of observers, creates a lack of security that becomes part of a pattern of the absence of mistake, or fraud:

The ImageCast tabulators are unlocked by an iButton security key, which is used to:

- Authenticate the software version (ensuring it is a certified version that has not been tampered with)
- election files while processing ballots during the election
- Encrypt results files during the election
- Provide access control to the unit

> It is anticipated that the iButton security keys may get lost; therefore, any substitute key created for the same tabulator will allow the unit to work fully.[9]

125. In late December of 2019, three Senators, Warren, Klobuchar, Wyden and House Member Mark Pocan wrote about their '*particularized concerns that secretive & "trouble-plagued companies*'" "have long skimped on security in favor of convenience," in the context of how they described the voting machine systems that three large vendors – Election Systems & Software, Dominion Voting Systems, & Hart Inter Civic – collectively provide voting machines & software that facilitate voting for over 90% of all eligible voters in the U.S."

126. As evidence of the risks of the Dominion Democracy Suite, as described above, the same Dominion Democracy Suite was denied certification in Texas by the Secretary of State on January 24, 2020 specifically because of a lack of evidence of efficiency and accuracy and identified vulnerabilities to fraud and unauthorized manipulation.[10]

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[9] *See* Exh. 8, State of Michigan Enterprise Procurement, Notice of Contract, Contract No. 071B770017 between the State of Michigan and Dominion Voting Systems Inc. at ¶ 2.6.2 ("Dominion Michigan Contract").

[10] *See* Texas Analysis of February 15, 2019 from the Voting Systems Examiner to the Director of Elections (emphasis added).

D. "Red Flags" in Dominion's Michigan Results for 2020 General Election Demonstrate Dominion Manipulated Election Results, and that the Number of Illegal Votes Is Nearly Twice As Great as Biden's Purported Margin of Victory.

127. The expert witness testimony of Russell James Ramsland, Jr. ("Ramsland Affidavit")[11] analyzes several "red flags" in Dominion's Michigan results for the 2020 election, and flaws in the system architecture more generally, to conclude that Dominion manipulated election results. Dominion's manipulation of election results enabled Defendants to engage in further voting fraud violations above and beyond the litany of violations recited above in Section II.A through Section II.C.

1. Antrim County "Glitch" Was Not "Isolated Error" and May Have Affected Other Counties.

128. The first red flag is the Antrim County, Michigan "glitch" that switched 6,000 Trump ballots to Biden, and that was only discoverable through a manual hand recount. *See supra* Paragraph 94. The "glitch" was later attributed to "clerical error" by Dominion and Antrim Country, presumably because if it were correctly identified as a "glitch", "the system would be required to be 'recertified' according

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[11] As detailed in the Ramsland Affidavit and the CV attached thereto, Mr. Ramsland is a member of the management team Allied Security Operations Group, LLC ("ASOG"), a firm specializing in cybersecurity, OSINT and PEN testing of networks for election security and detecting election fraud through tampering with electronic voting systems.

to Dominion officials. This was not done." Exh. 104, Ramsland Aff. at ¶ 10. Mr. Ramsland is skeptical because "the problem most likely did occur due to a glitch where an update file did not properly synchronize the ballot barcode generation and reading portions of the system." *Id.* Further, such a glitch would not be an "isolated error," as it "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))." *Id.* Accordingly, Mr. Ramsland concludes that it is likely that other Michigan counties using Dominion may "have the same problem." *Id.*

2. Fractional Vote Counts in Raw Data Strongly Indicate Voting Manipulation through "Ranked Choice Voting Algorithm"

129. Mr. Ramsland's analysis of the raw data, which provides votes counts, rather than just vote shares, in decimal form provides highly probative evidence that, in his professional opinion, demonstrates that Dominion manipulated votes through the use of an "additive" or "Ranked Choice Voting" algorithm (or what Dominion's user guide refers to as the "RCV Method"). *See id.* at ¶ 12.[12] Mr. Ramsland presents the following example of this data – taken from

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[12] *See id.* (*quoting* Democracy Suite EMS Results Tally and Reporting User Guide, Chapter 11, Settings 11.2.2., which reads, in part, "RCV METHOD: This will select the specific method of tabulating RCV votes to elect a winner.").

"Dominion's direct feed to news outlets" – in the table below. *Id.*

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

trump:	0.533
biden:	0.45
TV:	1945297.562
BV:	1642371.3
state:	michigan
timestamp:	2020-11-04T07:03:17Z
eevp:	65
trump:	0.533
biden:	0.45
TV:	1948885.185
BV:	1645400.25

130. Mr. Ramsland describes how the RCV algorithm can be implemented, and the significance of the use of fractional vote counts, with decimal places, rather than whole numbers, in demonstrating that Dominion did just that to manipulate Michigan votes.

> 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. *Id.*

3. Strong Evidence That Dominion Shifted Votes from Trump to Biden.

131. A third red flag identified by Mr. Ramslund is the dramatic shift in votes between the two major party candidates as the tabulation of the turnout increased, and more importantly, the change in voting share before and after 2 AM on November 4, 2020, after Wayne County and other Michigan election officials had supposedly halted counting.

> 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. *Id.* at ¶ 13.

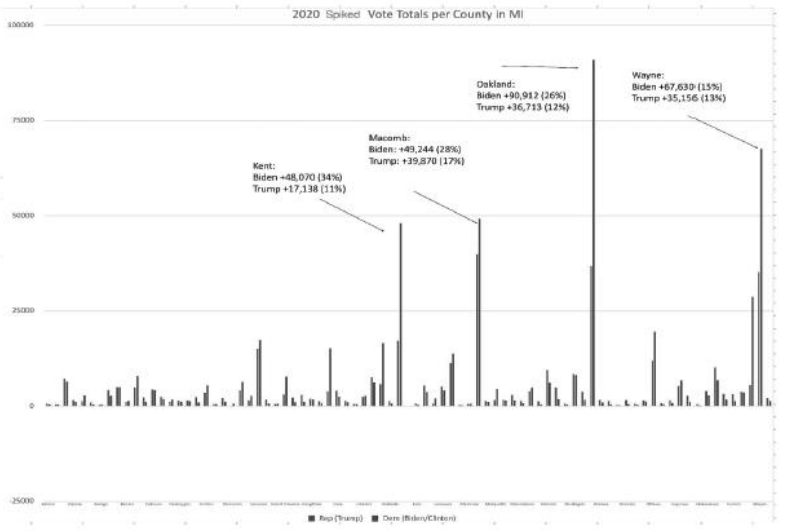
132. Once again the means through which Dominion appears to have implemented this scheme is through the use of blank ballots that were all, or nearly all, cast for Biden.

> 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. *Id.*

4. The November 4 Ballot Dumps Wayne County and Other Michigan Counties Was "Physically Impossible" Because There Were More Ballots Than Machines in Those Four Counties Could Have Counted Or Processed.

133. Mr. Ramsland and his team analyzed the sudden injection of totaling 384,733 ballots by four Michigan counties (Wayne, Oakland, Macomb, and Kent) in a 2 hour 38 minute period in the early morning of November 4 (which would have included the first ballot dump described above in Paragraph 72), and concluded that "[t]his is an impossibility, given the equipment available at the 4 reference locations (precincts/townships)." *Id.* at ¶ 14.

134. Specifically, Mr. Ramslund calculated that "94,867 ballots as the maximum number of ballots that could be processed" in that time period, and thus that "[t]here were 289,866 more ballots processed in the time available for processing in four precincts/ townships, than the capacity of the system allows." *Id.* Mr. Ramsland concludes that "[t]he documented existence of the spikes are strongly indicative of a manual adjustment either by the operator of the system (see paragraph 12 above) or an attack by outside actors." *Id.* The vote totals added for all Michigan counties, including Wayne, Oakland, Macomb and Kent counties, for the period analyzed by Mr. Ramsland are reproduced in the figure below.



5. The Number of Illegal Votes Attributable to Dominion Is Nearly Twice the Biden's Purported Margin in Michigan.

135. Based on his analysis of the red flags and statistical anomalies discussed below, Mr. Ramsland concludes that:

> [T]hese statistical anomalies and impossibilities compels the conclusion to a reasonable degree of professional certainty that the vote count in Michigan and in Wayne County, in particular for candidates for President contain at least 289,866 illegal votes that must be disregarded.

Given that Mr. Biden's currently purported margin of victory is approximately 154,000, the number of illegal votes attributable Dominion's fraudulent and illegal conduct is by itself (without considering the tens or hundreds of thousands of illegal votes due to

the unlawful conduct described in Section II), is nearly twice Mr. Biden's current purported lead in the State of Michigan. Thus Mr. Ramsland affidavit alone provides this Court more than sufficient basis to grant the relief requested herein.

E. Additional Independent Findings of Dominion Flaws.

136. Further supportive of this pattern of incidents, reflecting an absence of mistake, Plaintiffs have since learned that the "glitches" in the Dominion system-that have the uniform effect of hurting Trump and helping Biden-have been widely reported in the press and confirmed by the analysis of independent experts.

1. Central Operator Can Remove, Discard or Manipulate Votes.

137. Plaintiffs have also learned of the connection between Dominion Voting Systems, Smartmatic and the voting systems used in Venezuela and the Philippines.

a. Dominion Voting has also contradicted itself in a rush to denial a pattern of errors that lead to fraud. For example, Dominion Voting Systems machines can read all of these instruments, including Sharpies. https://www.dominionvoting.com/

b. but Dominion Voting's Democracy Suite contract with Michigan specifically requires: *Black Inc: Black ink (or toner) must be dense, opaques, light-fast and permanent, with a*

> *measured minimum 1.2 reflection density (log) above the paper base*.[13]

138. An Affiant, who is a network & Information cyber securities expert, under sworn testimony explains that after studying the user manual for Dominion Voting Systems Democracy software, he learned that the information about scanned ballots can be tracked inside the software system for Dominion:

> (a) When bulk ballot scanning and tabulation begins, the "ImageCast Central" workstation operator will load a batch of ballots into the scanner feed tray and then start the scanning procedure within the software menu. The scanner then begins to scan the ballots which were loaded into the feed tray while the "ImageCast Central" software application tabulates votes in real-time. Information about scanned ballots can be tracked inside the "ImageCast Central" software application.
>
> (*See* Exh.Aff. of Watkins __, at par.11).

139. The Affiant further explains that the central operator can remove or discard batches of votes. "After all of the ballots loaded into the scanner's feed tray have been through the scanner, the "ImageCast Central" operator will remove the ballots from the tray then have the option to either "Accept Batch" or "Discard Batch" on the scanning menu. . . . "Id. at ¶ 12.

140. Affiant further testifies that the user manual makes clear that the system allows for threshold settings to be set to find all ballots get marked as

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[13] *See* Exh. 8, par. 2.6.2 of contract # 071B770017.

"problem ballots" for discretionary determinations on where the vote goes stating:

> *"During the voting process, the voter will mark an oval on the ballot using a writing device. During the scanning process, the "ImageCast Central" software will detect how much of a percent coverage of the oval was filled in by the voter. The Dominion customer determines the thresholds of which the oval needs to be covered by a mark in order to qualify as a valid vote. If a ballot has a marginal mark which did not meet the specific thresholds set by the customer, then the ballot is considered a "problem ballot" and may be set aside into a folder named "Not CastImages". Through creatively tweaking the oval coverage threshold settings it should be possible to set thresholds in such a way that a non-trivial amount of ballots are marked "problem ballots" and sent to the "NotCastImages" folder. It is possible for an administrator of the ImageCast Central work station to view all images of scanned ballots which were deemed "problem ballots" by simply navigating via the standard "Windows File Explorer" to the folder named "NotCast-Images" which holds ballot scans of "problem ballots". It is possible for an administrator of the "ImageCast Central" workstation to view and delete any individual ballot scans from the "NotCastImages" folder by simply using the standard Windows delete and recycle bin functions provided by the Windows 10 Pro operating system.*

Id. at ¶¶ 13-14.

141. The Affiant further explains the vulnerabilities in the system when the copy of the selected ballots that are approved in the Results folder are made to a flash memory card – and that is connected to a Windows computer stating:

> *It is possible for an administrator of the "ImageCast Central" workstation to view and delete any individual ballot scans from the "NotCastImages" folder by simply using the standard Windows delete and recycle bin functions provided by the Windows 10 Pro operating system. . . . The upload process is just a simple copying of a "Results" folder containing vote tallies to a flash memory card connected to the "Windows 10 Pro" machine. The copy process uses the standard drag-n-drop or copy/paste mechanisms within the ubiquitous "Windows File Explorer". While a simple procedure, this process may be error prone and is very vulnerable to malicious administrators.*

Id. at par. 14 and 15.

2. Dominion – By Design – Violates Federal Election & Voting Record Retention Requirements.

142. The Dominion System put in place by its own design violates the intent of Federal law on the requirement to preserve and retain records – which was clearly requires preservation of all records requisite to voting in such an election.

F. § 20701. Retention and preservation of records and papers by officers of elections; deposit with custodian; penalty for violation

Every officer of election shall retain and preserve, for a period of twenty-two months from the date of any general, special, or primary election of which candidates for the office of President, Vice President, presidential elector, Member of the Senate, Member of the House of Representatives, or Resident Commissioner from the Commonwealth of Puerto Rico are voted for, all records and papers which come into his possession relating to any application, registration, payment of poll tax, or other act requisite to voting in such election, except that, when required by law, such records and papers may be delivered to another officer of election and except that, if a State or the Commonwealth of Puerto Rico designates a custodian to retain and preserve these records and papers at a specified place, then such records and papers may be deposited with such custodian, and the duty to retain and preserve any record or paper so deposited shall devolve upon such custodian. Any officer of election or custodian who willfully fails to comply with this section shall be fined not more than $1,000 or imprisoned not more than one year, or both.

143. A Penn Wharton Study from 2016 concluded that "Voters and their representatives in government, often prompted by news of high-profile voting problems,

also have raised concerns about the reliability and integrity of the voting process, and have increasingly called for the use of modern technology such as laptops and tablets to improve convenience.

144. As evidence of the risks of the Dominion Democracy Suite, as described above, the same Dominion Democracy Suite was denied certification in Texas by the Secretary of State on January 24, 2020 specifically because of a lack of evidence of efficiency and accuracy and to be safe from fraud or unauthorized manipulation.[14]

3. Dominion Vulnerabilities To Hacking.

145. Plaintiffs have since learned that the "glitches" in the Dominion system-that have the uniform effect of hurting Trump and helping Biden-have been widely reported in the press and confirmed by the analysis of independent experts.

146. Plaintiffs can show, through expert and fact witnesses that:

A. Massive End User Vulnerabilities.

(1) Users on the ground have full admin privileges to machines and software. The Dominion system is designed to facilitate vulnerability and allow a select few to determine which votes will be counted in any election. Workers were responsible for moving ballot data from polling place to the collector's office and inputting it into the cor-

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[14] *See* Exh. X, Report of Review of Dominion Voting Systems Democracy Suite 5.5-A Elections Division by the Secretary of State's office, Elections Division, January 24, 2020.

rect folder. Any anomaly, such as pen drips or bleeds, is not counted and is handed over to a poll worker to analyze and decide if it should count. This creates massive opportunity for improper vote adjudication. (*See* Exh.____ For Affiant Watkins).

(2) Affiant witness (name redacted for security reasons[15]), in his sworn testimony explains he was selected for the national security guard detail of the President of Venezuela, and that he witnessed the creation of Smartmatic for the purpose of election vote manipulation:

> "I was witness to the creation and operation of a sophisticated electronic voting system that permitted the leaders of the Venezuelan government to manipulate the tabulation of votes for national and local elections and select the winner of those elections in order to gain and maintain their power. Importantly, I was a direct witness to the creation and operation of an electronic voting system in a conspiracy between a company known as Smartmatic and the leaders of conspiracy with the Venezuelan government. This conspiracy specifically involved President Hugo Chavez Frias, the person in charge of the National Electoral Council named Jorge Rodriguez, and principals, repre-

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[15] The Affiant's name will be produced in camera to the court, with a motion for seal of the information.

> sentatives, and personnel from Smartmatic which included . . . The purpose of this conspiracy was to create and operate a voting system that could change the votes in elections from votes against persons running the Venezuelan government to votes in their favor in order to maintain control of the government."

(*See* Exh. 14, pars. 6, 9, 10).

147. Specific vulnerabilities of the systems in question that have been documented or reported include:

A. Barcodes can override the voters' vote: As one University of California, Berkeley study shows, "In all three of these machines [including Dominion Voting Systems] the ballot marking printer is in the same paper path as the mechanism to deposit marked ballots into an attached ballot box. This opens up a very serious security vulnerability: the voting machine can make the paper ballot (to add votes or spoil already-case votes) after the last time the voter sees the paper, and then deposit that marked ballot into the ballot box without the possibility of detection." (*See* Ex. __,)[16]

B. Voting machines were able to be connected to the internet by way of laptops that were obviously internet accessible. If one laptop

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16 Ballot Marking Devices (BMDs) Cannot Assure the Will of the Voters, Andrew W. Appel, Richard T. DeMello, University of California, Berkeley, 12/27/2019.

was connected to the internet, the entire precinct was compromised.

C. "We . . . discovered that at least some jurisdictions were not aware that their systems were online," said Kevin Skoglund, an independent security consultant who conducted the research with nine others, all of them long-time security professionals and academics with expertise in election security. Vice. August 2019.[17]

D. October 6, 2006 – Congresswoman Carolyn Maloney calls on Secretary of Treasury Henry Paulson to conduct an investigation into Smartmatic based on its foreign ownership and ties to Venezuela. (*See* Exh. __,).

E. Congresswoman Maloney wrote that "It is undisputed that Smartmatic is foreign owned and it has acquired Sequoia . . . Smartmatica now acknowledged that Antonio Mugica, a Venezuelan businessman has a controlling interest in Smartmatica, but the company has not revealed who all other Smartmatic owners are.

F. Dominion "got into trouble" with several subsidiaries it used over alleged cases of fraud. One subsidiary is Smartmatic, a company "that has played a significant role in the U.S. market over the last decade," accord-

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[17] https://www.vice.com/en/article/3kxzk9/exclusive-critical-us-election-systems have-been-left-exposed-online-despite-official-denials

ing to a report published by UK-based Access Wire.

G. Litigation over Smartmatic "glitches" alleges they impacted the 2010 and 2013 mid-term elections in the Philippines, raising questions of cheating and fraud. An independent review of the source codes used in the machines found multiple problems, which concluded, "The software inventory provided by Smartmatic is inadequate, . . . which brings into question the software credibility," ABS-CBN reported.

H. Dominion acquired Sequoia Voting Systems as well as Premier Election Solutions (formerly part of Diebold, which sold Premier to ES&S in 2009, until antitrust issues forced ES&S to sell Premier, which then was acquired by Dominion). This map illustrates 2016 voting machine data—meaning, these data do not reflect geographic aggregation at the time of acquisition, but rather the machines that retain the Sequoia or Premier/Diebold brand that now fall under Dominion's market share. (The Business of Voting, Penn Wharton, Caufield, p. 16).

I. Dominion entered into a 2009 contract with Smartmatic and provided Smartmatic with the PCOS machines (optical scanners) that were used in the 2010 Philippine election, the biggest automated election run by a private company. The automation of that first election in the Philippines was hailed by the international community and by the critics of the automation. The results transmission

reached 90% of votes four hours after polls closed and Filipinos knew for the first time who would be their new president on Election Day. In keeping with local Election law requirements, Smartmatic and Dominion were required to provide the source code of the voting machines prior to elections so that it could be independently verified.[18]

J. In late December of 2019, three Democrat Senators, Warren, Klobuchar, Wyden and House Member Mark Pocan wrote about their 'particularized concerns that secretive & "trouble-plagued companies"' "have long skimped on security in favor of convenience," in the context of how they described the voting machine systems that three large vendors – Election Systems & Software, Dominion Voting Systems, & Hart InterCivic – collectively provide voting machines & software that facilitate voting for over 90% of all eligible voters in the U.S." (*See* Exh. __, attached copy of Senators' letter).

K. Senator Ron Wyden (D-Oregon) said the findings [insecurity of voting systems] are "yet another damning indictment of the profiteering election vendors, who care more about the bottom line than protecting our democracy." It's also an indictment, he said, "of the notion that important cybersecurity decisions should be left entirely to county

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[18] LONDON, ENGLAND / ACCESSWIRE / August 10, 2017, *Voting Technology Companies in the U.S.-Their Histories and Present Contributions*

election offices, many of whom do not employ a single cybersecurity specialist." Vice. August 2019.[19]

148. The expert witness in pending litigation in the United States District Court of Georgia, Harri Hursti, specifically testified to the acute security vulnerabilities, among other facts, by declaration filed on August 24, 2020, (*See* Exhibit "___" attached hereto) wherein he testified or found:

A. "The scanner and tabulation software settings being employed to determine which votes to count on hand marked paper ballots are likely causing clearly intentioned votes to be counted" "The voting system is being operated in Fulton County in a manner that escalates the security risk to an extreme level" "Votes are not reviewing their BMD printed ballots, which causes BMD generated results to be un-auditable due to the untrustworthy audit trail." 50% or more of voter selections in some counties were visible to poll workers. Dominion employees maintain near exclusive control over the EMS servers. "In my professional opinion, the role played by Dominion personnel in Fulton County, and other counties with similar arrangements, should be considered an elevated risk factor when evaluating the security risks of Georgia's voting system." See Paragraph 26 of Hursti Declaration.

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[19] https://www.vice.com/en/article/3kxzk9/exclusive-critical-us-election-systems-have-been-left-exposed-online-despite-official-denials

B. A video game download was found on one Georgia Dominion system laptop, suggesting that multiple Windows updates have been made on that respective computer.

C. There is evidence of remote access and remote troubleshooting which presents a grave security implication.

D. Certified identified vulnerabilities should be considered an "extreme security risk."

E. There is evidence of transfer of control the systems out of the physical perimeters and place control with a third party off site.

F. USB drives with vote tally information were observed to be removed from the presence of poll watchers during a recent election.

1. Hursti stated within said Declaration:

> "The security risks outlined above – operating system risks, the failure to harden the computers, performing operations directly on the operating systems, lax control of memory cards, lack of procedures, and potential remote access are extreme and destroy the credibility of the tabulations and output of the reports coming from a voting system." (See Paragraph 49 of Hursti Declaration).

149. Rather than engaging in an open and transparent process to give credibility to Michigan's Dominion-Democracy Suite voting system, the processes were hidden during the receipt, review, opening, and tabulation of those votes in direct contravention of Michigan's Election Code and Federal law.

150. Finally, an analysis of the Dominion software system by a former US Military Intelligence expert concludes that the system and software have been accessible and were certainly compromised by rogue actors, such as Iran and China. By using servers and employees connected with rogue actors and hostile foreign influences combined with numerous easily discoverable leaked credentials, Dominion neglectfully allowed foreign adversaries to access data and intentionally provided access to their infrastructure in order to monitor and manipulate elections, including the most recent one in 2020. *See* Exh. 105, Spider Declaration.

4. Dominion Connections to Smartmatic and Hostile Foreign Governments and Domestic Groups Such as Antifa.

151. Plaintiffs can also show Smartmatic's incorporation and inventors who have backgrounds evidencing their foreign connections, including Serbia, specifically its identified inventors:

> Applicant: SMARTMATIC, CORP.
>
> Inventors: Lino Iglesias, Roger Pinate, Antonio Mugica, Paul Babic, Jeffrey Naveda, Dany Farina, Rodrigo Meneses, Salvador Ponticelli, Gisela Goncalves, Yrem Caruso[20]

152. Another Affiant witness testifies that in Venezuela, she was in official position related to elections and witnessed manipulations of petitions to prevent a removal of President Chavez and because

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[20] https://patents.justia.com/assignee/smartmatic-corp

she protested, she was summarily dismissed. She explains the vulnerabilities of the electronic voting system and Smartmatica to such manipulations. (*See* Exh. __, Anna Mercedes Diaz Cardozo).

153. Plaintiffs have also learned through several reports that in 2010 Eric Coomer joined Dominion as Vice President of U.S. Engineering. According to his bio, Coomer graduated from the University of California, Berkeley with a Ph.D. in Nuclear Physics. Eric Coomer was later promoted to Voting Systems Officer of Strategy and Security although Coomer has since been removed from the Dominion page of directors after Joe Oltmann disclosed that as a reporter he infiltrated ANTIFA – a domestic terrorist organization where he recorded Eric Coomer representing that "Don't worry Trump won't win the election, we fixed that." – as well as twitter posts with violence threatened against President Trump. (*See* Joe Oltmann interview with Michelle Malkin dated November 13, 2020 which contains copies of Eric Coomer's recording and tweets).[21]

154. In sum, as set forth above, for a host of independent reasons, the Michigan certified election results concluding that Joe Biden received 154,180 more votes that President Donald Trump must be set aside.

COUNT I

Defendants Violated the Elections and Electors Clauses and 42 U.S.C. § 1983.

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[21] https://www.youtube.com/watch?v=dh1X4s9HuLo&fbclid=IwAR2EaJc1M9RT3DaUraAjsycM 0uPKB3uM_-MhH6SMeGrwNyJ3vNmlcTsHxF4

155. Plaintiffs reallege all preceding paragraphs as if fully set forth herein.

156. The Electors Clause states that "[e]ach State shall appoint, in such Manner as the Legislature there of may direct, a Number of Electors" for President. U.S. Const. art. II, § 1, cl. 2 (emphasis added).Likewise, the Elections Clause of the U.S. Constitution states that "[t]he Times, Places, and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by *the Legislature* thereof." U.S. Const. art. I, § 4, cl. 1 (emphasis added).

157. The Legislature is "'the representative body which ma[kes] the laws of the people.'" *Smiley*, 285 U.S. at 193. Regulations of congressional and presidential elections, thus, "must be in accordance with the method which the state has prescribed for legislative enactments." *Id.* at 367; *see also Ariz. State Legislature v. Ariz. Indep. Redistricting Comm'n*, 135 S. Ct. 2652, 2668 (2015).

158. Defendants are not part of the Michigan Legislature and cannot exercise legislative power. Because the United States Constitution reserves for the Michigan Legislature the power to set the time, place, and manner of holding elections for the President and Congress, county boards of elections and state executive officers have no authority to unilaterally exercise that power, much less to hold them in ways that conflict with existing legislation. Defendants are not the legislature, and their unilateral decision to deviate from the requirements of the Michigan Election Code violates the Electors and Elections Clause of the United States Constitution.

159. Many affiants testified to Defendants' failure to follow the requirements of the Michigan Election Code, as enacted by the Michigan Legislature, MCL §§ 168.730-738, relating to the rights of partisan election challengers to provide transparency and accountability to ensure that all, and only, lawful ballots casts be counted, and that the outcome of the election was honestly and fairly determined by eligible voters casting legal ballots. As detailed in Section II, many of these requirements were either disregarded altogether or applied in a discriminatory manner to Republican poll watchers. Specifically, election officials violated Michigan's Election Code by: (a) disregarding or violating MCL § 168.730 and § 168.733 requiring election challengers to have meaningful access to observe the counting and processing of ballots, *see supra* Paragraphs 59-75; (b) wanton and widespread forgery and alteration, addition or removal of votes, voters, or other information from ballots, the QVF or other voting records, *see supra* Paragraphs 76-86; and (c) illegal double voting, counting ineligible ballots, failure to check signatures or postmarks, and several other practices in clear violation of the Michigan Election Code (and in some cases at the express direction of supervisors or Wayne County officials). *See supra* Paragraphs 87-98.

160. Plaintiffs have no adequate remedy at law and will suffer serious and irreparable harm unless the injunctive relief requested herein is granted. Defendants have acted and, unless enjoined, will act under color of state law to violate the Elections Clause.

161. Accordingly, the results for President in the November 3, 2020 election must be set aside.

COUNT II

Governor Whitmer, Secretary Benson and Other Defendants Violated The Fourteenth Amendment U.S. Const. Amend. XIV, 42 U.S.C. § 1983

Denial of Equal Protection

Invalid Enactment of Regulations Affecting Observation and Monitoring of the Election

162. Plaintiffs refer to and incorporate by reference each of the prior paragraphs of this Complaint as though the same were repeated at length herein.

163. The Fourteenth Amendment of the United States Constitution provides "nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws. *See also Bush v. Gore*, 531 U.S. 98, 104 (2000)(having once granted the right to vote on equal terms, the State may not, by later arbitrary and disparate treatment, value one person's vote over the value of another's). *Harper v. Virginia Board of Elections*, 383 U.S. 663, 665 (1966) ("Once the franchise is granted to the electorate, lines may not be drawn which are inconsistent with the Equal Protection Clause of the Fourteenth Amendment."). The Court has held that to ensure equal protection, a problem inheres in the absence of specific standards to ensure its equal application. *Bush*, 531 U.S. at 106 ("The formulation of uniform rules to determine intent based on these recurring circumstances is practicable and, we conclude, necessary.").

164. The equal enforcement of election laws is necessary to preserve our most basic and fundamental

rights. The requirement of equal protection is particularly stringently enforced as to laws that affect the exercise of fundamental rights, including the right to vote.

165. In statewide and federal elections conducted in the State of Michigan, including without limitation the November 3, 2020 General Election, all candidates, political parties, and voters, including without limitation Plaintiffs, have a vested interest in being present and having meaningful access to observe and monitor the electoral process in each County to ensure that it is properly administered in every election district and otherwise free, fair, and transparent.

166. Moreover, through its provisions involving watchers and representatives, the Michigan Election Code ensures that all candidates and political parties in each County, including the Trump Campaign, have meaningful access to observe and monitor the electoral process to ensure that it is properly administered in every election district and otherwise free, fair, and transparent. *See, e.g.,* MCL § 168.730 & § 168.733(1). Further, the Michigan Election Code provides it is a felony punishable by up to two years in state prison for any person to threaten or intimidate a challenger who is performing any activity described in Michigan law. MCL § 168.734(4). Defendants have a duty to treat the voting citizens in each County in the same manner as the citizens in other Counties in Michigan.

167. As set forth in Count I above, Defendants failed to comply with the requirements of the Michigan Election Code and thereby diluted the lawful ballots of the Plaintiffs and of other Michigan voters and

electors in violation of the United States Constitution guarantee of Equal Protection.

168. Specifically, Defendants denied the Trump Campaign equal protection of the law and their equal rights to meaningful access to observe and monitor the electoral process enjoyed by citizens in other Michigan Counties by: (a) denying Republican poll challengers access to the TCF Center or physically removing them or locking them out for pretextual reasons; (b) denied Republican poll watchers meaningful access to, or even physically blocking their view of, ballot handling, processing, or counting; (c) engaged in a systematic pattern of harassment, intimidation, verbal insult, and even physical removal of Republican poll challengers; (d) systematically discriminated against Republican poll watchers and in favor of Democratic poll watchers and activists in enforcing rules (in particular, through abuse of "social distancing" requirements); (e) ignored or refused to record Republican challenges to the violations set forth herein; (f) refusing to permit Republican poll watchers to observe ballot duplication or to check if duplication was accurate; (g) unlawfully coached voters to vote for Biden and other democratic candidates, including at voting stations; and (h) colluded with other Michigan State, Wayne County and City of Detroit employees (including police) and Democratic poll watchers and activists to engage in the foregoing violations. *See generally supra* Section II.A, Paragraphs 56-75.

169. Defendants further violated Michigan voters' rights to equal protection insofar as it allowed Wayne County and City of Detroit election workers to process and count ballots in a manner that allowed ineligible ballots to be counted, including: (a) fraudulently adding

tens of thousands of new ballots and/or new voters to the QVF in two separate batches on November 4, 2020, all or nearly all of which were votes for Joe Biden; (b) systematically forging voter information and fraudulently adding new voters to the QVF (in particular, where a voter's name could not be found, assigning the ballot to a random name already in the QVF to a person who had not voted and recorded these new voters as having a birthdate of 1/1/1900); (c) fraudulently changing dates on absentee ballots received after 8:00 PM Election Day deadline to indicate that such ballots were received before the deadline; (d) changing Votes for Trump and other Republican candidates; (e) adding votes to "undervote" ballots and removing votes from "Over-Votes"; (f) permitting illegal double voting by persons that had voted by absentee ballot and in person; (g) counting ineligible ballots – and in many cases – multiple times; (h) counting ballots without signatures, or without attempting to match signatures, and ballots without postmarks, pursuant to direct instructions from Defendants; (i) counting "spoiled" ballots; (j) systematic violations of ballot secrecy requirements; (k) accepting unsecured ballots arrived at the TCF Center loading garage, not in sealed ballot boxes, without any chain of custody, and without envelopes, after the 8:00 PM Election Day deadline; (l) accepting and counting ballots from deceased voters; and (m) accepting and counting ballots collected from unattended remote drop boxes. *See generally infra* Section II.B. and II.C, Paragraphs 76-98.

170. Plaintiffs have obtained direct eyewitness testimony confirming that certain of these unlawful practices were at the express direction of Wayne County

election officials. With respect to (a) and (b), Affiant Cushman testified that election supervisor Miller informed him that the Wayne County Clerk's office had expressly instructed them to manually to enter thousands of ballots arriving around 9 PM on November 4, 2020, from voters not in the QVF, and to manually enter these unregistered voters in the QVF with the birthdate of 1/1/1900. Exh. 3, GLJC Complaint, Exh. D at¶¶ 14-17. With respect to (c), fraudulently back-dating absentee ballots, City of Detroit election worker Affiant Jacob affirmed that she was instructed by supervisors to "improperly pre-date the absentee ballots receive date . . . to falsely show that absentee ballots had been received in time to be valid." *Id*. Exh. B at ¶ 17. With respect to (h) (accepting ballots without signatures or postmarks), affiants testified that election workers did so at the express direction of Wayne County election officials. *See id*. at ¶ 15.

171. Other Michigan county boards of elections provided watchers and representatives of candidates and political parties, including without limitation watchers and representatives of the Trump Campaign, with appropriate access to view the absentee and mail-in ballots being pre-canvassed and canvassed by those county election boards without the restrictions and discriminatory treatment outline above. Defendants intentionally and/or arbitrarily and capriciously denied Plaintiffs access to and/or obstructed actual observation and monitoring of the absentee and mail-in ballots being pre-canvassed and canvassed by Defendants, depriving them of the equal protection of those state laws enjoyed by citizens in other Counties.

172. Defendants have acted and will continue to act under color of state law to violate Plaintiffs' right to be present and have actual observation and access to the electoral process as secured by the Equal Protection Clause of the United States Constitution. Defendants thus failed to conduct the general election in a uniform manner as required by the Equal Protection Clause of the Fourteenth Amendment, the corollary provisions of the Michigan Constitution, and the Michigan Election Code.

173. Plaintiffs seek declaratory and injunctive relief requiring Secretary Benson to direct that the Michigan Counties allow a reasonable number of challengers to meaningfully observe the conduct of the Michigan Counties canvassers and board of state canvassers and that these canvassing boards exercise their duty and authority under Michigan law, which forbids certifying a tally that includes any ballots that were not legally cast, or that were switched from Trump to Biden through the unlawful use of Dominion Democracy Suite software and devices.

174. In addition, Plaintiffs ask this Court to order that no ballot processed by a counting board in the Michigan Counties can be included in the final vote tally unless a challenger was allowed to meaningfully observe the process and handling and counting of the ballot, or that were unlawfully switched from Trump to Biden.

175. Plaintiffs have no adequate remedy at law and will suffer serious and irreparable harm unless the declaratory and injunctive relief requested herein is granted. Indeed, the setting aside of an election in which the people have chosen their representative is a drastic remedy that should not be undertaken lightly,

but instead should be reserved for cases in which a person challenging an election has clearly established a violation of election procedures and has demonstrated that the violation has placed the result of the election in doubt. Michigan law allows elections to be contested through litigation, both as a check on the integrity of the election process and as a means of ensuring the fundamental right of citizens to vote and to have their votes counted accurately.

176. In addition to the alternative requests for relief in the preceding paragraphs, hereby restated, Plaintiffs seek a permanent injunction requiring the Wayne County and other Michigan Election Boards to invalidate ballots cast by: (1) any voter added to the QVF after the 8:00 PM Election Day deadline; (3) any absentee or mail-in ballot received without a signature or postmark; (4) any ballot cast by a voter who submitted a mail-in ballot and voted in person; (5) any ballot cast by a voter not in the QVF that was assigned the name of a voter in the QVF; (6) voters whose signatures on their registrations have not been matched with ballot, envelope and voter registration check; and (7) all "dead votes". *See generally supra* Section II.A-II.C.

COUNT III

Fourteenth Amendment, U.S. Const. Art. I § 4, cl. 1; Art. II, § 1, cl. 2;

Amend. XIV, 42 U.S.C. § 1983

Denial of Due Process On The Right to Vote

177. Plaintiffs refer to and incorporate by reference each of the prior paragraphs of this Complaint as though the same were repeated at length herein.

178. The right of qualified citizens to vote in a state election involving federal candidates is recognized as a fundamental right under the Fourteenth Amendment of the United States Constitution. *Harper,* 383 U.S. at 665. *See also Reynolds*, 377 U.S. at 554 (The Fourteenth Amendment protects the "the right of all qualified citizens to vote, in state as well as in federal elections."). Indeed, ever since the Slaughter-House Cases, 83 U.S. 36 (1873), the United States Supreme Court has held that the Privileges or Immunities Clause of the Fourteenth Amendment protects certain rights of federal citizenship from state interference, including the right of citizens to directly elect members of Congress. *See Twining v. New Jersey*, 211 U.S. 78, 97 (1908) (*citing Ex parte Yarbrough*, 110 U.S. 651, 663-64 (1884)). *See also Oregon v. Mitchell*, 400 U.S. 112, 148-49 (1970) (Douglas, J., concurring) (collecting cases).

179. The fundamental right to vote protected by the Fourteenth Amendment is cherished in our nation because it "is preservative of other basic civil and political rights." *Reynolds*, 377 U.S. at 562. Voters have a "right to cast a ballot in an election free from the taint of intimidation and fraud," *Burson v. Freeman*, 504 U.S. 191, 211 (1992), and "[c]onfidence in the integrity of our electoral processes is essential to the functioning of our participatory democracy." *Purcell v. Gonzalez*, 549 U.S. 1, 4 (2006) (per curiam).

180. "Obviously included within the right to [vote], secured by the Constitution, is the right of qualified voters within a state to cast their ballots and have them counted" if they are validly cast. *United States v. Classic*, 313 U.S. 299,315 (1941). "[T]he right to have the vote counted" means counted "at full value without dilution or discount." *Reynolds*, 377 U.S. at

555, n.29 (*quoting South v. Peters*, 339 U.S. 276, 279 (1950) (Douglas, J., dissenting)).

181. "Every voter in a federal . . . election, whether he votes for a candidate with little chance of winning or for one with little chance of losing, has a right under the Constitution to have his vote fairly counted, without its being distorted by fraudulently cast votes." *Anderson v. United States*, 417 U.S. 211, 227 (1974); *see also Baker v. Carr*, 369 U.S. 186, 208 (1962). Invalid or fraudulent votes "debase[]" and "dilute" the weight of each validly cast vote. *See Anderson*, 417 U.S. at 227.

182. The right to an honest [count] is a right possessed by each voting elector, and to the extent that the importance of his vote is nullified, wholly or in part, he has been injured in the free exercise of a right or privilege secured to him by the laws and Constitution of the United States." *Anderson*, 417 U.S. at 226 (*quoting Prichard v. United States*, 181 F.2d 326, 331 (6th Cir.), *aff'd due to absence of quorum*, 339 U.S. 974 (1950)).

183. Practices that promote the casting of illegal or unreliable ballots or fail to contain basic minimum guarantees against such conduct, can violate the Fourteenth Amendment by leading to the dilution of validly cast ballots. *See Reynolds*, 377 U.S. at 555 ("[T]he right of suffrage can be denied by a debasement or dilution of the weight of a citizen's vote just as effectively as by wholly prohibiting the free exercise of the franchise.").

184. Section II of this Complaint and the exhibits attached hereto describe widespread and systematic violations of the Michigan Election Code and/or the Equal Protection Clause described, namely: (A) Section

II.A, Republican poll challengers were denied the opportunity to meaningfully observe the processing and counting of ballots; (B) Section II.B, election workers forged, added, removed or otherwise altered information on ballots, the QFV and other voting records; and (C) Section II.C, several other Michigan Election Code violations that caused or facilitated the counting of tens of thousands of ineligible, illegal or duplicate ballots.

185. Plaintiffs seek declaratory and injunctive relief requiring Secretary Benson to direct that Secretary Benson and Wayne County are enjoined from certifying the results of the General Election, or in the alternative, conduct a recount or recanvas in which they allow a reasonable number of challengers to meaningfully observe the conduct of the Michigan Counties canvassers and board of state canvassers and that these canvassing boards exercise their duty and authority under Michigan law, which forbids certifying a tally that includes any ballots that were not legally cast, or that were switched from Trump to Biden through the unlawful use of Dominion Democracy Suite software and devices.

COUNT IV

Wide-Spread Ballot Fraud

186. Plaintiffs reallege all preceding paragraphs as if fully set forth herein.

187. The "glitches" in the Dominion system-that seem to have the uniform effect of hurting Trump and helping Biden-have been widely reported in the press and confirmed by the analysis of independent experts. *See generally supra* Section IV.

188. And as evidenced by numerous sworn statements, Defendants egregious misconduct has included ignoring legislative mandates concerning mail-in ballots– including the mandate that mail-in ballots be post-marked on or before Election Day, and critically, preventing Plaintiff's poll watchers from observing the receipt, review, opening, and tabulation of mail-in ballots. Those mail-in ballots are evaluated on an entirely parallel track to those ballots cast in person.

189. The right to vote includes not just the right to cast a ballot, but also the right to have it fairly counted if it is legally cast. The right to vote is infringed if a vote is cancelled or diluted by a fraudulent or illegal vote, including without limitation when a single person votes multiple times. The Supreme Court of the United States has made this clear in case after case. *See, e.g., Gray v. Sanders*, 372 U.S. 368, 380 (1963) (every vote must be "protected from the diluting effect of illegal ballots."); *Crawford v. Marion Cnty. Election Bd.*, 553 U.S. 181, 196 (2008) (plurality op. of Stevens, J.) ("There is no question about the legitimacy or importance of the State's interest in counting only the votes of eligible voters."); *accord Reynolds v. Sims*, 377 U.S. 533, 554-55 & n.29 (1964).

190. The disparate treatment of Michigan voters, in subjecting one class of voters to greater burdens or scrutiny than another, violates Equal Protection guarantees because "the right of suffrage can be denied by a debasement or dilution of the weight of a citizen's vote just as effectively as by wholly prohibiting the free exercise of the franchise." *Reynolds*, 377 U.S. at 555. Rice v. McAlister, 268 Ore. 125, 128, 519 P.2d 1263, 1265 (1975); *Heitman v. Brown Grp., Inc.,* 638 S.W.2d 316, 319, 1982 Mo. App. LEXIS 3159, at *4

(Mo. Ct. App. 1982); *Prince v. Bear River Mut. Ins. Co.*, 2002 UT 68, ¶ 41, 56 P.3d 524, 536-37 (Utah 2002).

COUNT V

MICHIGAN STATUTORY ELECTION LAW VIOLATIONS

191. Plaintiffs refer to and incorporate by reference each of the prior paragraphs of this Complaint as though the same were repeated at length herein

Violation of MCL 168.765a.

192. Absent voter ballots must only be counted when "at all times" there is "at least 1 election inspector from each major political party." MCL 168.765a.

193. Per eyewitness accounts described in this Complaint and its attached sworn affidavits, Defendants habitually and systematically disallowed election inspectors from the Republican party, including Plaintiff, to be present in the voter counting place and refused access to election inspectors from the Republican party, including Plaintiff, to be within a close enough distance from the absent voter ballots to be able to see for whom the ballots were cast. *See generally supra* Section II.A., Paragraphs 56-75.

194. Defendants refused entry to official election inspectors from the Republican party, including Plaintiff, into the counting place to observe the counting of absentee voter ballots. Defendants even physically blocked and obstructed election inspectors from the Republican party, including Plaintiff, by adhering large pieces of cardboard to the transparent glass

doors so the counting of absent voter ballots was not viewable.

Violation of MCL 168.733

195. MCL 168.733 requires sets forth the procedures for election challengers and the powers of election inspectors. *See generally supra* Paragraph 39.

196. Per eyewitness accounts described in this Complaint and its attached sworn affidavits, Defendants habitually and systematically failed to provide space for election inspectors from the Republican party, including Plaintiff, to observe election procedure, failed to allow the inspection of poll books, failed to share the names of the electors being entered in the poll books, failed to allow the examination of each ballot as it was being counted, and failed to keep records of obvious and observed fraud. *See generally supra* Section II.A., Paragraphs 56-75.

197. Poll challengers, including Plaintiff, observed election workers and supervisors writing on ballots themselves to alter them, apparently manipulating spoiled ballots by hand and then counting the ballots as valid, counting the same ballot more than once, adding information to incomplete affidavits accompanying absentee ballots, counting absentee ballots returned late, counting unvalidated and unreliable ballots, and counting the ballots of "voters" who had no recorded birth dates and were not registered in the State's Qualified Voter File or on any Supplemental voter lists.

Violation of MCL 168.765(5) and 168.764a

198. Michigan election law, MCL 168.765(5), requires Defendants to post the specific absentee

voting information anytime an election is conducted which involves a state or federal office, in particular, the number of absentee ballots distributed to absent voters.

199. Upon information and belief, Defendants failed to post by 8:00 a.m. on Election Day the number of absentee ballots distributed to absent voters and failed to post before 9:00 p.m. the number of absent voters returned before on Election Day.

200. Per Michigan Election law, all absentee voter ballots must be returned to the clerk before polls close at 8pm. MCL 168.764a. Any absentee voter ballots received by the clerk after the close of the polls on election day will not be counted.

201. Michigan allows for early counting of absentee votes prior to the closings of the polls for large jurisdictions, such as the City of Detroit and Wayne County.

202. Upon information and belief, receiving tens of thousands additional absentee ballots in the early morning hours after election day and after the counting of the absentee ballots had concluded, without proper oversight, with tens of thousands of ballots attributed to just one candidate, Joe Biden, indicates Defendants failed to follow proper election protocol. *See generally supra* Section II.B.1, Paragraphs 77-78.

Violation of MCL 168.730

203. MCL 168.730 sets forth the rights and requirements for election challengers. MCL 168.734 provides, among other things:

> Any officer or election board who shall prevent the presence of any such challenger as above provided, or shall refuse or fail to

> provide such challenger with conveniences for the performance of the duties expected of him, shall, upon conviction, be punished by a fine not exceeding $1,000.00, or by imprisonment in the state prison not exceeding 2 years, or by both such fine and imprisonment in the discretion of the court.

204. Wayne County's and Secretary Benson's denial of Republican challengers' right to participate and observe the processing of ballots violates Michigan's Election Code and resulting in the casting and counting of ballots that were ineligible to be counted and diluted or canceled out the lawfully cast ballots of other Michigan voters.

205. Further, Secretary of State Benson and the election officials in Wayne County violated MCL 168.730-168.734 by denying Republican challengers' rights to meaningfully observe and participate in the ballot processing and counting process.

206. Based upon the above allegations of fraud, statutory violations, and other misconduct, as stated herein and in the attached affidavits, it is necessary to order appropriate relief, including, but not limited to, enjoining the certification of the election result spending a full investigation and court hearing, ordering a recount of the election results, or voiding the election and ordering a new election, to remedy the fraud.

PRAYER FOR RELIEF

207. Accordingly, Plaintiffs seek an emergency order instructing Defendants to decertify the results of the General Election for the Office of President.

208. Alternatively, Plaintiffs seek an order instructing the Defendants to certify the results of the General Election for Office of the President in favor of President Donald Trump.

209. In the alternative, Plaintiffs seek an emergency order prohibiting Defendants from including in any certified results from the General Election the tabulation of absentee and mailing ballots which do not comply with the Michigan Election Code, including, without limitation, the tabulation of absentee and mail-in ballots Trump Campaign's watchers were prevented from observing or based on the tabulation of invalidly cast absentee and mail-in ballots which (i) lack a secrecy envelope, or contain on that envelope any text, mark, or symbol which reveals the elector's identity, political affiliation, or candidate preference, (ii) do not include on the outside envelope a completed declaration that is dated and signed by the elector, (iii) are delivered in-person by third parties for non-disabled voters, or (iv) any of the other Michigan Election Code violations set forth in Section II of this Complaint.

210. Order production of all registration data, ballots, envelopes, etc. required to be maintained by law. When we consider the harm of these uncounted votes, and ballots not ordered by the voters themselves, and the potential that many of these unordered ballots may in fact have been improperly voted and also prevented proper voting at the polls, the mail ballot system has clearly failed in the state of Michigan and did so on a large scale and widespread basis. The size of the voting failures, whether accidental or intentional, are multiples larger than the margin in the state. For these reasons, Michigan cannot reasonably rely on the results of the mail vote. Relief sought

is the elimination of the mail ballots from counting in the 2020 election. Alternatively, the electors for the State of Michigan should be disqualified from counting toward the 2020 election. Alternatively, the electors of the State of Michigan should be directed to vote for President Donald Trump.

211. For these reasons, Plaintiffs ask this Court to enter a judgment in their favor and provide the following emergency relief:

1. An order directing Secretary Benson, Governor Whitmer, the Board of State Canvassers and Wayne County to de-certify the election results;

2. An order enjoining Secretary Benson and Governor Whitmer from transmitting the currently certified election results to the Electoral College;

3. An order requiring Governor Whitmer to transmit certified election results that state that President Donald Trump is the winner of the election;

4. An immediate order to impound all the voting machines and software in Michigan for expert inspection by the Plaintiffs.

5. An order that no votes received or tabulated by machines that were not certified as required by federal and state law be counted.

6. A declaratory judgment declaring that Michigan's failed system of signature verification violates the Electors and Elections Clause by working a de facto abolition of the signature verification requirement;

7. A declaratory judgment declaring that current certified election results violates the Due Process Clause, U.S. Const. Amend. XIV;

8. A declaratory judgment declaring that mail-in and absentee ballot fraud must be remedied with a Full Manual Recount or statistically valid sampling that properly verifies the signatures on absentee ballot envelopes and that invalidates the certified results if the recount or sampling analysis shows a sufficient number of ineligible absentee ballots were counted;

9. An emergency declaratory judgment that voting machines be Seized and Impounded immediately for a forensic audit—by Plaintiffs' expects;

10. A declaratory judgment declaring absentee ballot fraud occurred in violation of Constitutional rights, Election laws and under state law;

11. A permanent injunction prohibiting the Governor and Secretary of State from transmitting the currently certified results to the Electoral College based on the overwhelming evidence of election tampering;

12. Immediate production of 48 hours of security camera recording of all rooms used in the voting process at the TCF Center for November 3 and November 4.

13. Plaintiffs further request the Court grant such other relief as is just and proper, including but not limited to, the costs of this action and

their reasonable attorney fees and expenses pursuant to 42 U.S.C. 1988.

Respectfully submitted, this 25th day of November, 2020.

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