No. 05-23-00497-CV

In The Court of Appeals
Fifth District of Texas
Dallas, Texas

COMMISSION FOR LAWYER DISCIPLINE,
APPELLANT

V.

SIDNEY POWELL,
APPELLEE

Appealed from the 116th Judicial District Court
of Dallas County, Texas
Honorable Andrea K. Bouressa, Sitting by Assignment

BRIEF OF APPELLANT
COMMISSION FOR LAWYER DISCIPLINE

SEANA WILLING
CHIEF DISCIPLINARY COUNSEL

ROYCE LEMOINE
DEPUTY COUNSEL FOR ADMINISTRATION

MICHAEL G. GRAHAM
APPELLATE COUNSEL

OFFICE OF THE CHIEF DISCIPLINARY COUNSEL

COMMISSION FOR LAWYER DISCIPLINE
STATE BAR OF TEXAS
Michael.Graham@texasbar.com
P.O. BOX 12487
AUSTIN, TEXAS 78711-2487
T: (512) 427-1350; (877) 953-5535
F: (512) 427-4253

IDENTITY OF PARTIES AND COUNSEL

APPELLANT

COMMISSION FOR LAWYER DISCIPLINE

COUNSEL FOR APPELLANT

SEANA WILLING
Chief Disciplinary Counsel

ROYCE LEMOINE
Deputy Counsel for Administration

MICHAEL G. GRAHAM
Appellate Counsel
TEXAS BAR NO. 24113581
Email: Michael.Graham@texasbar.com

State Bar of Texas
P.O. Box 12487
Austin, Texas 78711-2487
T: (512) 427-1350; (877) 953-5535
F: (512) 427-4253

APPELLEE

SIDNEY POWELL

COUNSEL FOR APPELLEE

ROBERT H. HOLMES
Holmes Lawyer, PLLC
Email: rhholmes@swbell.net
19 St. Laurent Place
Dallas, Texas 75225

S. MICHAEL MCCOLLOCH
S. Michael McColloch, PLLC
Email: smm@mccolloch-law.com

6060 N. Central Expressway, Suite 500
Dallas, Texas 75206

KAREN COOK
Karen Cook, PLLC
Email: karen@karencooklaw.com
6060 N. Central Expressway, Suite 500
Dallas, Texas 75206

Trial Judge

HON. ANDREA K. BOURESSA (SITTING BY ASSIGNMENT)
471st Judicial District Court, Collin County
Russell A. Steindam Courts Building
2100 Bloomdale Rd.
McKinney, Texas 75071

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BRIEF OF APPELLANT
COMMISSION FOR LAWYER DISCIPLINE

TO THE HONORABLE FIFTH COURT OF APPEALS:

Appellant, the Commission for Lawyer Discipline, submits this opening brief. For clarity, this brief refers to Appellant as the "Commission" and Appellee will be referred to as "Powell". This brief designates record references as CR Vol. _, ___ (clerk's record); and App. (appendix). References to rules are references to the

Texas Disciplinary Rules of Professional Conduct[1] ("TDRPC") or the Texas Rules of Disciplinary Procedure[2] ("TRDP" or the "Rules") unless otherwise noted.

[1] *Reprinted in* TEX. GOV'T CODE ANN., tit. 2, subtit. G. app. A (West 2022).
[2] *Reprinted in* TEX. GOV'T CODE ANN., tit. 2, subtit. G. app. A-1 (West 2022).

STATEMENT OF THE CASE

Type of Proceeding:	Attorney Discipline
Petitioner/Appellant:	The Commission for Lawyer Discipline
Respondent/Appellee:	Sidney Powell
Trial Judge:	Honorable Andrea K. Bouressa (sitting by assignment pursuant to Rule 3.02 of the Texas Rules of Disciplinary Procedure)
Judgment or Order Appealed:	Final Summary Judgment granting Respondent's Traditional and No-Evidence Motions for Summary Judgment as to the Commission's claims against Powell for violations of TDRPCs 3.03(a)(1), 3.03(a)(5) and 8.04(a)(3). [CR Vol. 2, 3905-3909] [App. 1]. Further, to the extent (if any) that it clarifies the trial court's above-referenced judgment, the court's Order Denying Motion for Reconsideration or New Trial. [CR Vol. 2, 5284-5286] [App. 2].

ISSUES PRESENTED

1. Texas lawyers are prohibited from knowingly making false statements of material fact or law to a tribunal, or offering or using evidence that they know to be false, pursuant to TDRPC 3.03(a)(1) and (a)(5), respectively. [App. 3]. Texas lawyers are also prohibited from engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation, pursuant to TDRPC 8.04(a)(3). [App. 4].

Did the trial court err in granting Powell's summary judgment motions based on the evidence presented, which demonstrated (at least) the existence of a genuine issue of material fact as to whether Respondent violated TDRPCs 3.03(a)(1), 3.03(a)(5), and/or 8.04(a)(3)?

2. Did the trial court err in failing to consider all of the Commission's summary judgment evidence?

3. Did the trial court err in sustaining, in part, Powell's objection to the Commission's summary judgment evidence consisting of the Complaint for Declaratory, Emergency, and Permanent Injunctive Relief, and the Certificate of Compliance and test report attached thereto as Exhibits 5 & 6, filed by Powell as an attorney of record for multiple plaintiffs in Case No. 20-cv-04809, in the U.S. District Court for the Northern District of Georgia, styled *Coreco Ja'Qan Person, et. al., v. Brian Kemp, in his official capacity as Governor of Georgia, et. al.* (the "Georgia Case")?

STATEMENT OF FACTS

I. Powell's alleged professional misconduct.

Between November 25, 2020 and December 5, 2020, after Arizona, Georgia, Michigan, and Wisconsin (the "Battleground States") had certified their election results of the November 3, 2020 presidential election, Powell filed multiple federal lawsuits on behalf of her clients against multiple agencies and/or officials in the Battleground States - whose election results ended up adverse to Donald J. Trump - in an attempt to decertify their election results and/or enjoin them from sending their results to the Electoral College. [App. 7; CR Vol. 1, 1300-1403] [App. 8; CR Vol. 1, 1251-67]. The lawsuits that Powell signed and filed on behalf of her client(s), alleged that election fraud had occurred in these Battleground States by way of a vast conspiracy involving U.S. Dominion Inc. (a company that manufactures voting machines), foreign actors, state officials, and county election workers to inflate (or cause to be "switched") the vote count in favor of presidential candidate Joseph R. Biden through the "unlawful use of the Dominion Democracy Suite software and devices". [App. 7; CR Vol. 1, 1375-77].

In the lawsuits filed in the Battleground States, Powell made representations that an outcome-determinative number of: individuals voted twice; votes were cast by out-of-state residents; illegal votes were counted; and absentee ballots were not scanned into the system. [App. 7; CR Vol. 1, 1300-1403] [App. 8; CR Vol. 1, 1251-

67]. She also made claims that "voting machines and the software were breached, and machines were connected to the internet in violation of professional standards and state and federal laws." [App. 7; CR Vol. 1, 1305-06].

More specifically, in the Complaint for Declaratory, Emergency, and Permanent Injunctive Relief filed in the Georgia Case (the "Georgia Complaint"), Powell represented that Defendants, Brian Kemp and Brad Raffensperger (the Georgia Governor and Secretary of State, respectively) had "rushed through the purchase of Dominion voting machines and software," for the 2020 Presidential Election, in support of their request for emergency injunctive relief. [App. 7; CR Vol. 1, 1306-07].

In support of her argument, Powell attached to the Georgia Complaint what she represented to be a true copy of the *Certificate of Compliance* that was executed by Raffensperger to memorialize his findings that the Dominion Voting System was in compliance with the Georgia Election Code and Rules. [App. 7; CR Vol. 1, 1306-07] [App. 5; CR Vol. 1, 1270-71]. Powell also attached to the Georgia Complaint what she represented to be a true copy of the *Test Report* of the Dominion Voting System that was signed by Michael Walker, VSTL Project Manager. [App. 7; CR Vol. 1, 1306-07] [App. 6; CR Vol. 1, 1272-99]. She further represented in the Georgia Complaint that the certificate and test report were "undated." [App. 7; CR Vol. 1, 1306-07].

II. Procedural history

The Commission filed this disciplinary action on March 1, 2022, pursuant to TRDP Rule 3.03, in accordance with Respondent's election. [CR Vol. 1, 17-22]. On July 20, 2022, Powell filed her initial Motion for Summary Judgment, Rules §§ 3.03(a)(1); 3.03(a)(5); and; 8.03(a)(3) (sic), and requested it be set on the court's submission docket (the "traditional motion"). [CR Vol. 1, 69-115]. On July 15, 2022, the court set this disciplinary action for a bench trial on October 17, 2022, and set a deadline for all pretrial motions to be set no later than October 3, 2022. [CR Vol. 1, 68].

On August 9, 2022, the Commission filed its initial response to Powell's traditional motion. [CR Vol. 1, 220-457]. That same day, the Commission filed its Motion to Compel. [CR Vol. 1, 121-219]. On August 17, 2022, the Commission filed its Motion for Continuance of Trial, which was set for a hearing on August 29, 2022. [CR Vol. 1, 458-475]. That same day, the parties agreed to a continuance of the trial date and to confer on a new scheduling order for the court's approval. [Id.]

On September 13, 2022, the Commission filed its Third Amended Disciplinary Petition, asserting that Powell had committed professional misconduct through her misrepresentations and/or dishonest conduct in litigation before several federal courts in suits related to the 2020 presidential election. [CR Vol.1 480-489]. In its pleadings the Commission specifically identified those suits as: (i) the Georgia

Case; (ii) *King, et. al., v. Whitmer, et. al.*, in the U.S. District Court for the Eastern District of Michigan, Case No. 2:20-cv-13134-LVP-RSW (the "Michigan Case"); (iii) *Feehan v. Wisc. Elections Comm'n*, in the U.S. District Court for the Eastern District of Wisconsin, Case No. 2:20-cv-01771-PP (the "Wisconsin Case"); and (iv) *Bowyer v. Ducey*, in the U.S. District Court for the District of Arizona, Case No. 1:20-cv-02321-DJH (the "Arizona Case"). [CR Vol. 1, 483-486].

On November 4, 2022, the court entered its Agreed Scheduling Order setting trial for April 24, 2023. [CR Vol. 1, 648-650]. On November 21, 2022, the Commission filed its Amended Response to Respondent's Motion for Summary Judgment, containing 8 exhibits labeled Exhibit A through Exhibit H (the "Nov. 21st Amended MSJ Response"). [CR Vol. 1, 678-920]. Additionally, the Commission filed its Second Motion for Continuance of MSJ Hearing Date arguing that Powell had failed to comply with the court's October 12, 2022 "letter ruling" granting, in part, the Commission's prior motion to compel. [CR Vol. 1, 921-923].

On December 28, 2022, Respondent filed her second summary judgment motion entitled, Sidney Powell's No-Evidence Motion for Summary Judgment (the "no-evidence motion") and set it to be heard the same day as her traditional motion, January 18, 2023. [CR Vol. 1, 978-996]. In her no-evidence motion, Powell acknowledged that she "and others" filed the Georgia Case as well as similar cases in Michigan, Wisconsin, and Arizona. [CR Vol. 1, 979-980].

On January 5, 2023, the Commission filed another amended summary judgment response (the "Jan. 5th Amended MSJ Response"). [CR Vol. 1, 1000-1203]. On January 9, 2023, Powell filed her Reply to Bar's Response to Sidney Powell's Motion for Partial Summary Judgment, Rules §§ 3.03(a)(1); 3.03(a)(5); and 8.03(a)(3) (sic). [CR Vol. 1, 1204-1220].

On January 11, 2023, the Commission filed its Second Amended Response to Respondent's Hybrid Motion for Summary Judgment and Respondent's No Evidence Motion (the Commission's "2nd Amended MSJ Response"). [CR Vol. 1, 1221-1464]. That response reiterated the Commission's request for a continuance as set forth in their pending Second Motion for Continuance of MSJ Hearing Date. [CR Vol. 1, 921-927].

On January 27, 2023, Powell filed her Motion for Continuance of Hearing on the Commission's Second Motion to Compel, referencing the Commission's Second Motion to Compel, which had been filed on January 12, 2023. [CR Vol. 1, 1498-2148]. On January 30, 2023, Powell filed her Opposition to the Commission's Second Motion to Compel, noting, amongst other things, discovery items she had not yet produced, but that she would subsequently produce (albeit, after the Commission's deadline to respond to her summary judgment motions). [CR Vol. 1, 2149-2828].

On February 17, 2023, Powell filed her Supplement to her Opposition to the Commission's Second Motion to Compel. [CR Vol. 2, 2892-2910]. In an attached declaration, Powell represented that she produced additional text messages to the Commission on February 17, 2023. [CR Vol. 2, 2892-2910]. On February 21, 2023, the Commission filed its reply and provided exhibits showing Powell had supplemented her discovery responses by identifying 102 new potential fact witnesses on January 20, 2023, and by producing a 599-page privilege log on February 8, 2023. [CR Vol. 2, 2911-3893].

Five days later, on February 22, 2023, the trial court granted both Powell's summary judgment motions. [App. 1]. On March 24, 2023, the Commission filed its Motion for Reconsideration and/or for New Trial. [CR Vol. 2, 3912-5216]. On May 4, 2023, the trial court entered its Order Denying Motion for Reconsideration or New Trial. [App. 2]. This appeal follows.

SUMMARY OF THE ARGUMENTS

This Court should reverse the trial court's granting of Powell's summary judgment motions and remand this disciplinary action to the trial court for further proceedings because the summary judgment evidence shows there exists a genuine issue of material fact as to whether Powell violated Rules 3.03(a)(1), 3.03(a)(5), and/or 8.04(a)(3).

ARGUMENTS

I. Standard of Review

A final judgment of a district court in an attorney disciplinary proceeding may be appealed as in civil cases generally. TEX. RULES DISCIPLINARY P.R. 3.15. Both traditional summary judgment motions and no-evidence summary judgment motions are reviewed *de novo*. *Lujan v. Navistar, Inc.*, 555 S.W.3d 79, 84 (Tex. 2018); *Merriman v. XTO Energy, Inc.*, 407 S.W.3d 244, 248 (Tex. 2013). Importantly, the underlying purpose of summary judgment in Texas is to "eliminate *patently unmeritorious* claims or untenable defenses…" *Lujan*, 555 S.W.3d at 87 (emphasis added) (quoting *Gulbenkian v. Penn*, 252 S.W.2d 929, 931 (Tex. 1952)); *see also*, *Casso v. Brand*, 776 S.W.2d 551, 556 (Tex. 1989); *City of Houston v. Clear Creek Basin Authority*, 589 S.W.2d 671, 678 n. 5 (Tex. 1979).

A. No-evidence summary judgment

"No-evidence summary judgments are reviewed under the same legal sufficiency standard as directed verdicts." *Merriman*, 407 S.W.3d at 248 (citing *King Ranch, Inc. v. Chapman*, 118 S.W.3d 742, 750 (Tex. 2003). The reviewing court reviews the evidence presented in the light most favorable to the nonmovant, "crediting evidence favorable to that party if reasonable jurors could, and disregarding contrary evidence unless reasonable jurors could not." *Mack Trucks,*

Inc. v. Tamez, 206 S.W.3d 572, 582 (Tex. 2006); *Merriman*, 407 S.W.3d at 248. A no-evidence summary judgment is appropriate only when:

> "(a) there is a complete absence of evidence of a vital fact, (b) the court is barred by rules of law or of evidence from giving weight to the only evidence offered to prove a vital fact, (c) the evidence offered to prove a vital fact is no more than a mere scintilla, or (d) the evidence conclusively establishes the opposite of the vital fact."
> --*King Ranch*, 118 S.W.3d at 751 (quoting *Merrell Dow Pharms., Inc. v. Havner*, 953 S.W.2d 706, 711 (Tex. 1997)); *Merriman*, 407 S.W.3d at 248.

More than a scintilla of evidence is found when the evidence would allow "reasonable and fair-minded people to differ in their conclusions." *Forbes Inc. v. Granada Biosciences, Inc.*, 124 S.W.3d 167, 172 (Tex. 2003). Summary judgment is improper when the nonmovant presents more than a scintilla of evidence in support of the challenged element(s) of its claim(s). *Id*.

B. Traditional summary judgment

The burden of proof is not shifted to the nonmovant in a traditional summary judgment proceeding, unless and until the movant conclusively establishes it is entitled to summary judgment as a matter of law. *Brand*, 776 S.W.2d at 556 (citing *Clear Creek Basin Authority*, 589 S.W.2d at 678).

In reviewing a traditional summary judgment motion, the reviewing court "examine[s] the entire record in the light most favorable to the nonmovant, indulging every reasonable inference and resolving any doubts against the motion." *City of Keller v. Wilson*, 168 S.W.3d 802, 824 (Tex. 2005); *Valence Operating Co. v.*

Dorsett, 164 S.W.3d 656, 661 (Tex. 2005). In deciding whether there is a genuine issue of material fact that precludes summary judgment, the court takes as true all evidence favorable to the nonmovant. *Limestone Prods. Distrib., Inc. v. McNamara*, 71 S.W.3d 308, 311 (Tex. 2002); *Rhône-Poulenc, Inc. v. Steel*, 997 S.W.2d 217, 223 (Tex. 1999); *Nixon v. Mr. Prop. Mgmt. Co.*, 690 S.W.2d 546, 548-49 (Tex. 1985).

II. The trial court erred in granting both of Powell's summary judgment motions as to the Commission's claims that she violated TDRPCs 3.03(a)(1), 3.03(a)(5) and/or 8.04(a)(3).

As is set forth more fully below, in response to Powell's no-evidence motion for summary judgment, the Commission presented more than a scintilla of evidence in support of the challenged elements of each of its claims against Powell under TDRPCs 3.03(a)(1), 3.03(a)(5), and/or 8.04(a)(3). Likewise, Powell failed to conclusively establish that she was entitled to traditional summary judgment on those same claims. In fact, the summary judgment evidence in the record (including Powell's ***own*** summary judgment evidence) demonstrates the existence of (at least) a genuine issue of material fact as to each of the Commission's claims against her for violations of TDRPCs 3.03(a)(1), 3.03(a)(5), and/or 8.04(a)(3). Thus, this Court should reverse the trial court's Final Summary Judgment granting Powell's motions in those respects and remand this case to the trial court for further proceedings.

A. The trial court erred in granting Powell's no-evidence motion.

1. Powell sought no-evidence summary judgment as to the Commission's claims she violated TDRPCs 3.03(a)(1), 3.03(a)(5), and 8.04(a)(3).

Powell's no-evidence motion for summary judgment sought judgment as to the Commission's claims she violated TDRPCs 3.03(a)(1), 3.03(a)(5), and 8.04(a)(3). [CR Vol. 1, 979-996]. Those ethical rules prohibit attorneys from, respectively: (1) knowingly making a false statement of material fact or law to a tribunal; (2) knowingly offering or using evidence that the lawyer knows to be false; and (3) engaging in conduct involving dishonesty, fraud, deceit or misrepresentation. [App. 3] [App. 4]. Powell's no-evidence motion contended that the Commission could not prove *any* element of *any* of the above-referenced violations. [CR Vol. 1, 987-990].

In the trial court, Powell asserted the Commission could not demonstrate she had: "knowingly" made a false statement that was "material"; "knowingly" offered or used evidence she knew to false; or "intentionally" engaged in conduct involving dishonesty, fraud, deceit or misrepresentation. As shown below, the Commission's summary judgment evidence presented more than a scintilla of evidence as to each element of its claims, as well as to the issue of whether Powell *intended* to engage in dishonesty, fraud, deceit or misrepresentation, in violation of TDRPC 8.04(a)(3).

2. The summary judgment evidence identified in, referenced in, and/or attached to the Commission's 2nd Amended MSJ Response, should be considered (and should have been considered by the trial court).

The Commission identified as exhibits to its 2nd Amended MSJ Response the following [CR Vol. 1, 1222]:

Exhibit A: Order on Petitioner's Motion to Compel signed November 18, 2022. This document was identified in, but not actually attached to the 2nd Amended MSJ Response. However, it *was* attached to the Commission's Jan. 5th Amended MSJ Response. [CR Vol. 1, 1011-12].

Exhibit B: A true and correct copy of the *Certificate of Compliance* attached to the Georgia Complaint, as Exhibit 5 thereto. This document was mis-identified as Exhibit B but was *actually attached and marked* as Exhibit D, and referenced on pages 2, 7 and 9. [CR Vol. 1, 1222, 1227, 1229 & 1270-71] [App. 5].

Exhibit C: A true and correct copy of the *Test Report* attached to the Georgia Complaint, as Exhibit 6 thereto. This document was mis-identified as Exhibit C but was *actually attached and marked* as Exhibit E, and referenced on pages 2, 7 and 9. [CR Vol. 1, 1222, 1227, 1229 & 1272-99] [App. 6].

Exhibit D: A true and correct copy of the Georgia Complaint that was signed and filed by Powell as counsel of record. This document was mis-identified as Exhibit D but was *actually attached and marked* as Exhibit F, and referenced on pages 2, 7 and 9. [CR Vol. 1, 1222, 1227, 1229 & 1300-1403] [App. 7].

Exhibit E: A true and correct copy of Defendants' Consolidated Brief in Support of their Motion to Dismiss and Response in Opposition to Plaintiffs' Motion for Injunctive Relief (without exhibits) filed in the Georgia Case. This document was mis-identified as Exhibit E but was *actually attached and marked* as Exhibit G, and referenced on pages 2 and 8. [CR Vol. 1, 1222, 1228 & 1404-56].

However, the Commission *actually* attached as *additional* exhibits to its 2nd Amended MSJ Response the following:

Exhibit A: A true and correct copy of Powell's Response to First Requests for Production of Documents and Rule 196.4 First Request of Production of Electronic Documents, filed of record and served by Powell on July 14, 2022. [CR Vol. 1, 1232-48]. This document was generally referenced on pages 8 and 9 of the 2nd Amended MSJ

Response. [CR Vol. 1, 1228-29]. It was also attached as Exhibit A to the Commission's Nov. 21st Amended MSJ Response, and generally referenced on pages 5, 7 and 9 thereof. [CR Vol. 1, 678-704].

Exhibit B: A true and correct copy of Powell's Response to Interrogatories, filed of record and served by Powell on July 14, 2022. [CR Vol. 1, 1249-67]. This document was generally referenced on pages 8 and 9 of the 2nd Amended MSJ Response. [CR Vol. 1, 1228-29]. It was also attached as Exhibit B to the Commission's Nov. 21st Amended MSJ Response, and generally referenced on pages 5, 7 and 9 thereof. [CR Vol. 1, 678-87 & 705-23] [App. 8].

Exhibit C: The trial court's letter ruling dated October 12, 2022. [CR Vol. 1, 1268-69]. This document was also attached as Exhibit C to the Commission's Nov. 21st Amended MSJ Response, and generally referenced on pages 4, 7 and 9 thereof. [CR Vol. 1, 678-87 & 724-25.]

Exhibit H: E-mail from Powell's counsel with Powell's Categorization of Documents Responsive to Requests, which was signed on November 16, 2022. [CR Vol. 1, 1457-63]. This document was also attached as Exhibit H to the Commission's Nov. 21st Amended MSJ Response, and generally referenced on pages 5, 7 and 9 thereof. [CR Vol. 1, 678-87 & 913-19].

The Commission also generally referenced in its 2nd Amended MSJ Response as summary judgment evidence the Declarations of Harry MacDougald and Sidney Powell, which were on file with the court as Exhibits 1 and 2, respectively, to Powell's traditional motion. [CR Vol. 1, 1228-29 (reference in the 2nd Amended MSJ Response)] [CR Vol. 1, 69-98] [App. 9] [App. 10]. In fact, the Commission also referenced those Declarations as summary judgment evidence in both its Nov. 21st

Amended MSJ Response and its Jan. 5th Amended MSJ Response. [CR Vol. 1, 678-87 & 1000-1010].

The Commission admittedly mislabeled and mis-referenced the exhibits attached to its 2nd Amended MSJ Response. And the trial court, in its Final Summary Judgment, stated the only "exhibits **considered**…as summary judgment evidence," were the exhibits marked "F" and "G" to the 2nd Amended MSJ Response. [App. 1] (emphasis added). Those exhibits consisted **only** of the Complaint for Declaratory, Emergency, and Permanent Injunctive Relief that was signed and filed by Powell as counsel of record in the Georgia Case, and the Defendants' Consolidated Brief in Support of their Motion to Dismiss and Response in Opposition to Plaintiffs' Motion for Injunctive Relief (without exhibits) filed in the Georgia Case. [CR Vol. 1, 1221-31 & 1300-1456]. Further, the trial court sustained in part Powell's objection to Exhibit F, and sustained Powell's objection to Exhibit G. [App. 1].

The Commission subsequently clarified its mislabeling of the exhibits in the 2nd Amended MSJ Response in its Motion for Reconsideration and/or for New Trial. [CR Vol. 2, 3912-32]. Notwithstanding this clarification, the trial court denied reconsideration, without expressly addressing the summary judgment evidence further. [App. 2].

The Commission's above-described documentary evidence qualified as proper summary judgment evidence, as all such evidence was on file with the court,

and the trial court should have considered all such evidence. *Lance v. Robinson*, 543 S.W.3d 723, 732-33 (Tex. 2018); *see also, R.I.O. Systems, Inc. v. Union Carbide Corp.*, 780 S.W.2d 489, 492 (Tex.App. – Corpus Christi 1989, writ denied) (holding evidence "on file prior to the summary judgment hearing," including documents attached to earlier summary-judgment motions, was "proper summary judgment evidence"); *Vaughn v. Burroughs Corp.*, 705 S.W.2d 246, 248 (Tex.App. – Houston [14th Dist.] 1986, no writ; *Dousson v. Disch*, 629 S.W.2d 111 (Tex.App. – Dallas 1981, writ dism'd.). Further, this Court has expressly held that while an amended response to a summary judgment motion supersedes a previous response, that "does not preclude the consideration of the summary judgment evidence attached to the original pleading." *Dixie Dock Enters. v. Overhead Door Corp.*, No. 05-01-00639-CV, 2002 WL 244324, *3 (Tex.App. – Dallas Feb. 21, 2002, no pet.).[3] "Moreover, the Texas Supreme Court has held that the only requirement for summary judgment proof was that it 'be on file, either independently or as part of the motion for summary judgment, the reply thereto, or some other properly filed instrument.'" *Evans*, 946 S.W.2d at 376, citing *Richards v. Allen*, 402 S.W.2d 158, 161 (Tex. 1966).

[3] Citing *Evans v. First Nat'l Bank of Bellville*, 946 S.W.2d 367, 376 (Tex.App. – Houston [14th Dist.] 1997, writ denied); *Whitaker v. Huffaker*, 790 S.W.2d 761, 763 (Tex.App. – El Paso 1990, writ denied); and *McCurry v. Aetna Cas. & Sur. Co.*, 742 S.W.2d 863, 867 (Tex.App. – Corpus Christi 1987, writ denied); See also, *Yarbrough v. ELC Energy, LLC*, No. 12-15-00303-CV, 2017 WL 2351357, *7 (Tex.App. – Tyler May 31, 2017, no pet.) (mem. op.).

Here, all of the above-described summary judgment evidence was either attached to the Commission's Nov. 21st Amended MSJ Response, its Jan. 5th Amended MSJ Response, and/or its 2nd Amended MSJ Response, **or**, in the case of Powell's Responses to Interrogatories and the Declarations of herself and MacDougald, were independently filed or filed with her traditional motion by Powell. Additionally, Powell made no objections to the use of either her Responses to Interrogatories, or the Declarations of herself or MacDougald, as summary judgment evidence. Indeed, Powell contended (mistakenly, in the Commission's view) that those items *supported* both her no-evidence and traditional summary judgment motions. [CR Vol. 1, 69-115; 978-96; 1204-20; 1465-79; and 1484-95].

3. The Commission's summary judgment evidence presented more than a scintilla of evidence as to each element of its claims.

The undisputed summary judgment evidence demonstrates (at least) the following:

(i) Powell filed a Complaint for Declaratory, Emergency, and Permanent Injunctive Relief in the Georgia Case, as lead counsel and/or counsel of record. [App. 7] [App. 8, Int. Nos. 12 & 18(v & vi)] [App. 9, ¶3] [App. 10, ¶s 4, 5, 11 & 13].

(ii) Powell represented in the Georgia Case that:

> "Defendants Kemp and Raffensperger rushed through the purchase of Dominion voting machines and software in 2019 for the 2020 Presidential Election. A certificate from the Secretary of State was awarded to Dominion Voting Systems but is undated. (*See* attached hereto Exh. 5, copy Certification for Dominion Voting Systems from Secretary of State). Similarly a test report is signed by Michael

Walker as Project Manager but is also undated. (See Exh. 6, Test Report for Dominion Voting Systems, Democracy Suite 5-4-A)." [App. 7, ¶12] [App. 5] [App. 6].

(iii) Powell "reviewed and made corrections to" the Georgia complaint, and "made a reasonable inquiry as to the exhibits attached." [App. 10, ¶s 11 & 13].

(iv) The *actual* certificate and test report identified in Powell's above-referenced representations in the Georgia Case were not undated, as Powell represented. In fact, both MacDougald and Powell confirmed in their Declarations that the dates of those events, were "undisputed" or "indisputable" facts. [App. 9, ¶s14 & 15] [App. 10, ¶6].

(v) Because the dates of the certification and testing identified in Powell's above-referenced representations in the Georgia Case were "undisputed" or "indisputable" facts, the inclusion of those exhibits in that complaint was not necessary. [App. 9, ¶s14 & 15] [App. 10, ¶6].[4]

In (at least) those respects, the undisputed summary judgment evidence presented more than a scintilla of evidence as to each element of the Commission's claims that Powell violated TDRPCs 3.03(a)(1), 3.03(a)(2) and/or 8.04(a)(3). That is, the summary judgment evidence would allow reasonable and fair-minded people to differ in their conclusions, as to whether, in making the above-referenced representations in the Georgia Case, Powell had:

[4] A reasonable and fair-minded person could infer from the facts that; (i) the representations that the certificate and test report were "undated", as part of the named defendants' "rush[ing] through the purchase of Dominion voting machines and software"; and (ii) that Powell knew the dates of the certification and testing (as they were "indisputable" facts) and that the inclusion of the exhibits was not necessary, that Powell intentionally made the misrepresentation for the purpose of supporting her emergency request for injunctive relief.

(1) Knowingly made a false statement of material fact or law to a tribunal, in violation of TDRPC 3.03(a)(1);

(2) Knowingly offered or used evidence that she knew to be false, in violation of TDRPC 3.03(a)(5); and/or,

(3) Engaged in conduct involving dishonesty, fraud, deceit or misrepresentation, in violation of TDRPC 8.04(a)(3).

With respect to attorney disciplinary matters, "knowingly," "known," or "knows," "[d]enotes actual knowledge of the fact in question…A person's knowledge may be inferred from circumstances." TEX. DISCIPLINARY R. PROF'L CONDUCT, TERMINOLOGY; *Cohn v. Comm'n for Lawyer Discipline*, 979 S.W.2d 694, 699 (Tex.App. – Houston [14th Dist.] 1998, no pet.). Further, evidence that an attorney knew "what the true facts were" would support a jury's conclusion that misrepresentation regarding such facts were made "knowingly." *Weiss v. Comm'n for Lawyer Discipline*, 981 S.W.2d 8, 18 (Tex.App. – San Antonio 1998, pet. denied).

Regarding the materiality requirement of TDRPC 3.03(a)(1), "materiality encompasses matters represented to a tribunal that the judge would attach importance to and would be induced to act on in making a ruling." *Cohn*, 979 S.W.2d at 698. Indeed, "'Rule 3.03(a)(1) encompasses false statements by a lawyer that *might* corrupt the course of litigation.'" *Id.*, quoting *Diaz v. Comm'n for Lawyer Discipline*, 953 S.W.2d 435, 438 (Tex.App. – Austin 1997, no writ) (emphasis in original).

Additionally, as to the alleged violation of TDRPC 8.04(a)(3), Powell's no-evidence motion misapprehended the elements of such a claim in at least one important respect. Powell contended that a violation of TDRPC 8.04(a)(3) required proof of "intentional" conduct. [CR Vol. 1, 989-990]. But the language of Rule 8.04(a)(3) contains no such express intent requirement. In fact, this Court and others have repeatedly analyzed Rule 8.04(a)(3) outside the context of allegations of "fraud" with reference to the general meanings of "dishonesty," "deceit," and "misrepresentation".

That is, the disciplinary rules do not define the terms "dishonesty," "deceit," and "misrepresentation." However, courts have concluded that, consistent with their ordinary meanings, the terms "dishonesty," "deceit," or "misrepresentation" denote "a lack of honesty, probity, or integrity in principle" and a "lack of straightforwardness." *Olsen v. Comm'n for Lawyer Discipline*, 347 S.W.3d 876, 882-83 (Tex.App. – Dallas 2011, pet. denied); *Rosas v. Comm'n for Lawyer Discipline*, 335 S.W.3d 311, 319 (Tex.App. – San Antonio 2010, no pet.); *Brown v. Comm'n for Lawyer Discipline*, 980 S.W.2d 675, 680 (Tex.App. – San Antonio 1998, no pet.); see also, *Robins v. Comm'n for Lawyer Discipline*, No. 01-19-00011-CV, 2020 WL 101921 (Tex.App. – Houston [1st Dist.] Jan. 9, 2020, pet. denied) (mem. op.).

Further, Part 15 of the Texas Rules of Disciplinary Procedure provides guidelines for appropriate sanctions when professional misconduct is found to have occurred in this context, which contemplates distinct levels of sanction for (amongst other things) conduct that involves dishonesty, fraud, deceit, or misrepresentations to a court or another, depending on the attorney's level of *culpability*:

> In cases where a lawyer's conduct involves dishonesty, fraud, deceit or misrepresentation to a court or another, disbarment or suspension may be appropriate when an attorney *intentionally or knowingly* deceives the court or another and causes serious or potentially serious injury to a party, or adverse legal effect on a legal proceeding, whereas a public or private reprimand may be appropriate when an attorney *is negligent* in determining whether information provided to a court or another is false and causes injury, potential injury, or little or no potential injury to a party, or adverse, potentially adverse or little or no adverse or potentially adverse effect on a legal proceeding.
> -- TEX. RULES DISCIPLINARY P.R. 15.05(A)(1-4). (emphasis added)

When reviewing all appropriate summary judgment evidence in the light most favorable to the Commission, such evidence demonstrates more than a scintilla of evidence as to each element of the Commission's claims against Powell for violations of TDRPCs 3.03(a)(1), 3.03(a)(3) and/or 8.04(a)(3).

4. Powell's objections to the exhibits attached to the 2nd Amended MSJ Response are without merit.

As noted above, the trial court's Final Summary Judgment stated it only considered the documents actually marked and attached as "Exhibits F and G"[5] to

[5] Again, the Complaint filed by Powell in the Georgia Case [App. 7], and the Defendants' pleading filed in the Georgia Case, which were mis-identified as Exhibits D & E.

the 2nd Amended MSJ Response and did "not consider any document attached by the Commission that the Commission failed to cite or identify." [App. 1]. And in considering those exhibits, the trial court sustained in part Powell's objection to Exhibit F and sustained Powell's objection to Exhibit G. [Id.] Further, the trial court also sustained Powell's objections to the documents mis-identified as Exhibits B and C, but actually attached to the 2nd Amended MSJ Response as Exhibits D & E.[6]

However, Powell's objections to each of the above-referenced documents were predicated on the argument that a party "cannot rely on other pleadings attached as exhibits to its own motion or response as summary-judgment evidence, even if the pleadings are verified". [CR Vol. 1, 1480-83]. Powell's objection relied on the Texas Supreme Court's opinion in *Laidlaw Waste Sys. v. City of Wilmer*, 904 S.W2d 656, 660-61 (Tex. 1995). But the authority Powell relied on from *Laidlaw* is inapposite. *Laidlaw* did not concern a disciplinary action against a Texas licensed attorney based on allegations that she made misrepresentations in her pleadings to a court of law, or otherwise engaged in conduct involving dishonesty, deceit or misrepresentation.[7] And an attorney disciplinary action such as the instant case, where the alleged misrepresentations made by an attorney are *at the center* of

[6] Again, the Certificate and test report. [App. 5] [App. 6].

[7] *Laidlaw* involved a declaratory action against the City of Wilmer challenging the annexation of property it had purchased to construct and operate a solid waste landfill. Laidlaw attempted to use his verified pleadings to defeat the city's evidence showing that the metes and bounds description of the property in question was proper and that the City did not comply with the Opens Meeting Act related to the annexation.

allegations of professional misconduct, is not a typical civil lawsuit such as that concerned in *Laidlaw*.

Indeed, in disciplinary actions regarding the truth or falsity of representations made to a court by an attorney in pleadings or other writings, and the honesty (or lack thereof) of the attorney's conduct related thereto, courts *do* typically review the pleadings containing alleged misrepresentations filed by such attorneys (amongst other evidence) to determine whether such professional misconduct occurred, **as they must**. *See e.g., Olsen*, 347 S.W.3d at 882-84 (partial summary judgment granted finding attorney violated TDRPC 8.04(a)(3) by filing an incomplete and improperly notarized version of a purported will, based on, amongst other things, the will actually filed by the attorney, was proper); *McIntyre v. Commission for Lawyer Discipline,* 169 S.W.3d 803, 811-14 (Tex.App. – Dallas 2005, pet. denied) (judge's findings in bench trial that attorney violated TDRPCs 3.03(a)(3) and 8.04(a)(3) by filing a motion for injunctive relief in state court and filing related pleadings in bankruptcy court that misrepresented both that he represented a bankruptcy trustee and that he had authority to represent a creditor in the bankruptcy proceeding, were supported by legally and factually sufficient evidence, including, amongst other things, the pleadings containing the alleged misrepresentations); *Willie v. Comm'n for Lawyer Discipline*, No. 14-13-00872-CV, 2015 WL 1245965, at *12-14 (Tex.App. – Houston [14th Dist.] March 17, 2015, pet. denied) (mem. op.)

(jury's findings that attorney violated TDRPCs 3.01, 3.03(a)(1) and 8.04(a)(3) by filing a brief with an appellate court containing omissions and misrepresentations of fact were supported by legally and factually sufficient evidence, including, amongst other things, the brief containing the alleged omissions/misrepresentations).

In short, *Laidlaw* presents a situation where a corporation tried to use its own verified pleadings to support its summary judgment response and provides **no** guidance whatsoever on the type of evidence needed to support an attorney disciplinary action brought to enforce TDRPCs 3.03(a)(1), 3.03(a)(5), and/or 8.04(a)(3). Powell's objections to the Commission's summary judgment evidence in this respect were without merit and the trial court should have considered the pleadings from the Georgia Case in light of the actual allegations of professional misconduct against Powell.

B. The trial court erred in granting Powell's traditional motion.

1. Powell also sought traditional summary judgment as to the Commission's claims she violated TDRPCs 3.03(a)(1), 3.03(a)(5), and 8.04(a)(3).

Powell's traditional motion for summary judgment sought judgment as to the Commission's claims she violated TDRPCs 3.03(a)(1), 3.03(a)(5), and 8.04(a)(3). [CR Vol. 1, 69-115]. Powell's traditional motion contended she had "disproved, as a matter of law, at least one element of each of the [Commission's] claims." [CR Vol. 1, 80-81]. More specifically, Powell contended she had conclusively

disproven; (i) the "knowing," "falsity," and "materiality," elements of the TDRPC 3.03(a)(1) allegation; (ii) the "knowing," and "falsity," elements of the TDRPC 3.03(a)(5) allegation; and (iii) the "knowing," element of the TDRPC 8.04(a)(3) allegation, based **solely** on the Declarations of herself and MacDougald.[8] [Id.]

2. Powell's traditional motion failed to carry her burden.

As explained in I(B), *supra*, the burden does not shift from the movant to the nonmovant in a traditional summary judgment, unless and until the movant conclusively establishes she is entitled to judgment as a matter of law. *Brand*, 776 S.W.2d at 556 (citing *Clear Creek Basin Authority*, 589 S.W.2d at 678). Importantly, the affidavit of an interested witness may support a summary judgment **only** if it is uncontroverted, clear, positive and direct, otherwise credible, free from contradictions and inconsistencies, and could have been readily controverted. *Trico Technologies Corp. v. Montiel*, 949 S.W.2d 308, 311 (Tex. 1997) (citing *Republic Nat'l Leasing Corp. v. Schindler*, 717 S.W.2d 606, 607 (Tex. 1986); TEX. R. CIV. P. 166a(c).

[8] Powell's traditional motion also offered as evidence a portion of a transcript from a hearing in another election fraud case out of Michigan, and the Commission's Second Amended Disciplinary Petition. However, the motion does not identify any way in which those items support her argument vis-à-vis the Commission's specific allegations related to the Georgia Case. Rather, Powell seemed to view those items as dispositive towards only one particular factual allegation, regarding an affidavit from an individual identified as "Spyder," which was attached to (apparently) several of her election fraud suits, and which *may* have supported the Commission's broader allegation of violations of TDRPCs 3.03(a)(1), 3.03(a)(5) and 8.04(a)(3), but did not constitute **all** of the potential underlying facts in support of the broader misconduct allegations.

Here, neither Declaration on which Powell relied passes muster. As to MacDougald's Declaration, he acknowledged that Powell engaged him to be local counsel for the Georgia Case that she and others were going to file. [App. 9, ¶3]. Additionally, MacDougald's Declaration supports, rather than controverts, the "falsity" and "materiality" elements of the Commission's claims. That is, MacDougald states that the dates of the certification and testing of Georgia's Dominion system were "undisputed facts in the public record" and "were not in question," while also asserting they were not "material" for the same reason. [App. 9, ¶s 14 & 15]. But those **facts** stand in sharp contrast to the representations made by Powell in the Georgia complaint that the certification and testing of Georgia's Dominion system was "rushed through", which were ostensibly supported by the "undated" certificate and test report attached to the complaint. [App. 7, ¶12] [App. 5] [App. 6]. Further, the trial court abused its discretion in overruling the Commission's objection to MacDougald's statement, "To my knowledge, Ms. Powell had no knowledge of the exhibits I attached to the complaint until sometime after the complaint and exhibits were filed." [CR Vol. 1, 1222-23 (Commission's objection)] [App. 9, ¶ 12].

As to Powell's Declaration, she confirmed that she was "part of a team of lawyers that filed four lawsuits alleging massive election fraud," including in Georgia. [App. 10, ¶4]. Powell stated she "accept[ed] full responsibility," for the Georgia filing, but "played no role in compiling or filing and had no actual knowledge of the exhibits" attached to the Georgia complaint. [App. 10, ¶s 5 & 6]. Yet, simultaneously, Powell stated she "reviewed and made corrections to" the Georgia complaint, and "made a reasonable inquiry as to the exhibits attached." [App. 10, ¶s 11 & 13].[9] In those respects, Powell's affidavit did not factually disprove any of the elements of the Commission's claims, nor was it clear, positive and direct, otherwise credible, or free from contradictions and inconsistencies.

Far from conclusively disproving **any** of the elements of the Commission's claims against Powell, the MacDougald and Powell Declarations (again, the only meaningful summary judgment evidence Powell's traditional motion relied upon) - certainly when viewed in the light most favorable to the Commission and indulging every reasonable inference and resolving any doubts against the motion - actually *support* each element of the Commission's claims. Thus, Powell's traditional motion did not carry her burden, and the burden should never have shifted to the Commission at all.

[9] The trial court overruled all of the Commission's objections to Powell's affidavit. [App. 1].

*3. Even if Powell's traditional motion **had** carried her burden, the summary judgment evidence in the record created a genuine issue of material fact as to each element of the Commission's claims.*

The same summary judgment evidence set forth in II(A)(2) & (3), *supra*, incorporated herein by reference, also demonstrates (at least) a genuine issue of material fact as to each element of the Commission's claims against Powell. Moreover, while Powell's Declaration is rife with the internal contradictions and inconsistencies noted above, it (as well as MacDougald's Declaration) is also controverted by her own responses to the Commission's interrogatories. That is, Powell swore in her interrogatory responses that she "attached affidavits and exhibits to the complaints supporting the allegations in each of the Election Fraud Suits," including "29 to the Petition in the Georgia Case." [App. 8, Int. No. 18(v & vi)].[10] That representation is in direct contrast to the above-referenced representation in her Declaration that she "played no role in compiling or filing and had no actual knowledge of the exhibits" attached to the Georgia Complaint. [App. 10, ¶6].

Powell's shifting, inconsistent and contradictory statements in her Declaration and her responses to the Commission's interrogatories, at best, leave more questions as to her involvement and participation in, and knowledge of the misrepresentations made in the Georgia Case. And again, when viewed in the light most favorable to

[10] Of course, even Powell's responses to the Commission's interrogatories are themselves internally contradictory and inconsistent as she also swore that she "did not draft the complaints or attach the exhibits to the complaints." [App. 8, Int. No. 20(ii)].

the Commission and indulging every reasonable inference and resolving any doubts against Powell's motion – the summary judgment evidence in the record demonstrates a genuine issue of material fact as to each element of the Commission's claims against Powell.

CONCLUSION AND PRAYER

For the reasons set forth in this brief, Appellant, the Commission for Lawyer Discipline, respectfully prays that this Court reverse the trial court's Final Summary Judgment as to the Commission's claims against Powell for alleged violations of TDRPCs 3.03(a)(1), 3.03(a)(5), and 8.04(a)(3) and remand this case for further proceedings consistent with that end.

RESPECTFULLY SUBMITTED,

SEANA WILLING
CHIEF DISCIPLINARY COUNSEL

ROYCE LEMOINE
DEPUTY COUNSEL FOR ADMINISTRATION

MICHAEL G. GRAHAM
APPELLATE COUNSEL

OFFICE OF THE CHIEF DISCIPLINARY COUNSEL
STATE BAR OF TEXAS
P.O. BOX 12487
AUSTIN, TEXAS 78711
michael.graham@texasbar.com
TELEPHONE: (512) 427-1350;
(877) 953-5535

FAX: (512) 427-4253

MICHAEL G. GRAHAM
STATE BAR CARD NO. 24113581
ATTORNEY FOR APPELLANT

CERTIFICATE OF COMPLIANCE

Pursuant to the Texas Rules of Appellate Procedure, the foregoing brief on the merits contains approximately 6,478 words (total for all sections of brief that are required to be counted), which is less than the total words permitted by the TRAPs. Counsel relies on the word count of the computer program used to prepare this petition.

MICHAEL G. GRAHAM

CERTIFICATE OF SERVICE

This is to certify that the above and foregoing brief of Appellant, the Commission for Lawyer Discipline has been served on Appellee, Sidney Powell, by and through her attorneys of record: Mr. Robert H. Holmes, 19 St. Laurent Place, Dallas, Texas 75225; Mr. S. Michael McColloch, 6060 N. Central Expressway, Suite 500, Dallas, Texas 75206; and Ms. Karen Cook, 6060 N. Central Expressway, Suite 500, Dallas, Texas 75206, each by electronic service through this Court's electronic filing service provider on the 21st day of July 2023.

MICHAEL G. GRAHAM
APPELLATE COUNSEL
STATE BAR OF TEXAS

No. 05-23-00497-CV

In The Court of Appeals
Fifth District of Texas
Dallas, Texas

COMMISSION FOR LAWYER DISCIPLINE,
APPELLANT

V.

SIDNEY POWELL,
APPELLEE

Appealed from the 116th Judicial District Court
of Dallas County, Texas
Honorable Andrea K. Bouressa, Sitting by Assignment

APPENDIX TO BRIEF OF APPELLANT COMMISSION FOR LAWYER DISCIPLINE

App 1: Trial Court's Final Summary Judgment [CR 3905-09]

App 2: Trial Court's Order Denying Motion for Reconsideration or New Trial [CR 5284-5286]

App 3: TEX. DISCIPLINARY R. PROF'L CONDUCT 3.03

App 4: TEX. DISCIPLINARY R. PROF'L CONDUCT 8.04

App 5: Summary Judgment Evidence - Altered Certificate attached to the Georgia Case [CR 1270-71]

App 6: Summary Judgment Evidence - Altered Test Report attached to the Georgia Case [CR 1272-99]

App 7: Summary Judgment Evidence – Powell's Georgia Complaint for Declaratory, Emergency and Permanent Injunctive Relief [CR 1300-1403]

App 8: Summary Judgment Evidence – Powell's Responses to Interrogatories [CR 1249-1267]

App 9: Summary Judgment Evidence – Declaration of Harry MacDougald [CR 86-91]

App 10: Summary Judgment Evidence – Declaration of Sidney Powell [CR 92-98]

App 1

Cause No. DC-22-02562

COMMISSION FOR LAWYER DISCIPLINE,	§	IN THE DISTRICT COURT
Plaintiff,	§	
v.	§	DALLAS COUNTY, TEXAS
SIDNEY POWELL,	§	
Defendant.	§	116th JUDICIAL DISTRICT

FINAL SUMMARY JUDGMENT

With the parties having elected to forego oral argument, the Court considered on submission Powell's July 20, 2022 motion for summary judgment (partial) and Powell's December 28, 2022 motion for no-evidence summary judgment. The Court rules as follows:

I. COMMISSION'S MOTION FOR CONTINUANCE

On the Commission's express motion for continuance of Powell's partial motion for summary judgment, and to the extent, if any, the Commission intended to include Powell's no-evidence motion, the Court rules that the request, being unsupported by affidavit and wholly failing to comply with Texas Rules of Civil Procedure 251 and 252, is DENIED.

II. DEFECTS IN COMMISSION'S RESPONSE

Page two of the Commission's second amended response lists six documents purportedly included in its appendix, Exhibits A through F. The actual documents attached to the response were marked Exhibits A through H, and did not match the

documents described in the brief. The Court alerted the parties to difficulty locating materials cited in the Commission's brief, but the Commission responded that no corrective action was necessary.[1]

The Commission's second amended response contained only three citations to purported summary judgment evidence.[2] The first and second citations were to Exhibit F at page 7, paragraph 12, and to Exhibit F at page 8, paragraph 12. These citations appear to refer correctly to the document marked and attached as Exhibit F, though the exhibit appears to have been originally listed as Exhibit D on page two of the Commission's response. The third citation was to Exhibit E at page 8, footnote 8, which appears to have been intended to refer to the document marked and attached as Exhibit G.

For clarity of the summary judgment record, in light of the numerous defects in the Commission's exhibits, the Court did not consider any document identified by the Commission that the Commission failed to cite or attach. Similarly, the Court did not consider any document attached by the Commission that the Commission failed to cite or identify. In short, the only exhibits considered by the Court were the two documents cited as summary judgment evidence and attached by the Commission: the documents marked Exhibits F and G.

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[1] Specifically, the Commission cited to Exhibit E at page 8, footnote 8. No footnotes are visible on Exhibit E. Email communication was exchanged wherein the Court sought clarification regarding Exhibit E (copy filed separately). The Commission declined to correct its record.

[2] The Commission cited to other exhibits only in support of its request for a continuance, denied *supra*.

III. EVIDENTIARY OBJECTIONS

Powell's objections that the Commission's Exhibits B and C are not competent summary judgment evidence are well-taken and SUSTAINED.

Powell's objection that the Commission's Exhibit D—the document marked and attached as Exhibit F—is not competent summary judgment evidence is SUSTAINED IN PART. While pleadings are not evidence of the matters stated therein, the document marked and attached as Exhibit F is competent evidence of the fact that such pleading was filed by Powell and others, and was considered for that limited purpose.

Powell's objection that the Commission's Exhibit E—the document marked and attached as Exhibit G—is not competent summary judgment evidence is well-taken and SUSTAINED.

The Commission's hearsay objection to paragraph 10 of the MacDougald affidavit is well-taken and SUSTAINED.

The Commission's remaining objections to Powell's summary judgment evidence are OVERRULED.

IV. NO-EVIDENCE SUMMARY JUDGMENT

The Commission did not respond to Powell's no-evidence motion challenging elements of the Commission's claims under Rules 3.01, 3.02, or 3.04. Accordingly, the motion is granted as to those claims.

With the Commission's sole competent summary judgment evidence being Exhibit F, considered solely for its limited purpose—evidence of a pleading filed by

Powell and others—the Commission has failed to meet its burden on the challenged elements of the Commission's claims under Rules 3.03(a)(1), 3.03(a)(5), and 8.04(a)(3). Accordingly, the motion is granted as to those claims.

IT IS THEREFORE ORDERED that Powell's no-evidence motion for summary judgment is GRANTED in its entirety.

V. PARTIAL SUMMARY JUDGMENT

IT IS FURTHER ORDERED that Powell's partial motion for summary judgment on the Commission's claims under Rules 3.03(a)(1), 3.03(a)(5), and 8.04(a)(3) is GRANTED in its entirety.

This order resolves all claims between all parties and is final and appealable.

Signed on February 22, 2023.

Andrea K. Bourescu
PRESIDING JUDGE

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Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Kristin Brady	24082719	kristin.brady@texasbar.com	2/22/2023 1:48:25 PM	SENT
S. Michael McColloch	13431950	smm@mccolloch-law.com	2/22/2023 1:48:25 PM	SENT
Brittany Paynton		brittany.paynton@texasbar.com	2/22/2023 1:48:25 PM	SENT
Karen Cook	12696860	karen@karencooklaw.com	2/22/2023 1:48:25 PM	SENT
Robert H.Holmes		rhholmes@swbell.net	2/22/2023 1:48:25 PM	SENT
Rachel Craig		rachel.craig@texasbar.com	2/22/2023 1:48:25 PM	SENT
Todd Hill		thill@collincountytx.gov	2/22/2023 1:48:25 PM	SENT

App 2

Cause No. DC-22-02562

COMMISSION FOR LAWYER DISCIPLINE,	§	IN THE DISTRICT COURT
Plaintiff,	§	
v.	§	DALLAS COUNTY, TEXAS
SIDNEY POWELL,	§	
Defendant.	§	116th JUDICIAL DISTRICT

ORDER DENYING MOTION FOR RECONSIDERATION OR NEW TRIAL

Before the Court is "The Commission's Motion for Reconsideration and/or for New Trial." Following the hearing held on May 1, 2023, the Court rules as follows:

I. COMMISSION'S MOTION FOR RECONSIDERATION OF CONTINUANCE

The Commission seeks reconsideration of a motion for continuance filed November 21, 2022, which the Commission contends to have been denied. That motion pre-dated one dispositive motion and both of the dispositive settings that led to judgment, and in any event, was never presented to the Court, so no ruling was made on it. Rather, the Commission's response to Powell's dispositive motions contained, as alternative relief, a request for continuance. *That* motion was denied.

To the extent, if any, that the Commission's motion can be construed to request reconsideration of that ruling, the record reflects that: (a) the Commission had no motion for additional discovery pending before the Court until after the Commission's

summary judgment responses were due;[1] (b) the case had been pending far in excess of 180 days beyond the respondent's answer by which time it (by rule) should have proceeded to trial; and (c) when asked at the May 1st hearing about evidence absent from the summary judgment record, counsel for the Commission argued that such evidence was accessible to all parties online, and had no explanation for its omission from the record. For these and other reasons, including failure to satisfy TRCP 251 and 252, reconsideration of the denial of a continuance is DENIED.

II. SUMMARY JUDGMENT

With the Commission offering no explanation for its failure to respond to Powell's no-evidence motion challenging elements of the Commission's claims under Rules 3.01, 3.02, or 3.04, reconsideration of the no-evidence summary judgment as to those claims is DENIED.

As to summary judgment on the remaining claims on traditional and no-evidence grounds, reconsideration of summary judgment as to those claims is also DENIED.

IT IS THEREFORE ORDERED that the Commission's motion is DENIED in its entirety.

Signed on May 4, 2023.

Andrea K. Bourescia
PRESIDING JUDGE

[1] At the May 1st hearing, the Court clarified that the Commission's joint response was deemed timely, despite being 5 days late for Powell's traditional summary judgment motion. The Commission confirmed its intent that the response was to be considered for both motions.

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Associated Case Party: COMMISSION FOR LAWYER DSICIPLINE

Name	BarNumber	Email	TimestampSubmitted	Status
Kristin Brady	24082719	kristin.brady@texasbar.com	5/4/2023 4:19:36 PM	SENT
Brittany Paynton		brittany.paynton@texasbar.com	5/4/2023 4:19:36 PM	SENT
Robert H.Holmes		rhholmes@swbell.net	5/4/2023 4:19:36 PM	SENT
Rachel Craig		rachel.craig@texasbar.com	5/4/2023 4:19:36 PM	SENT
Todd Hill		thill@collincountytx.gov	5/4/2023 4:19:36 PM	SENT

Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
S. Michael McColloch	13431950	smm@mccolloch-law.com	5/4/2023 4:19:36 PM	SENT
Karen Cook	12696860	karen@karencooklaw.com	5/4/2023 4:19:36 PM	SENT

App 3

Vernon's Texas Statutes and Codes Annotated
Government Code (Refs & Annos)
Title 2. Judicial Branch (Refs & Annos)
Subtitle G. Attorneys
Title 2, Subtitle G--Appendices
Appendix a State Bar Rules (Refs & Annos)
Article X. Discipline and Suspension of Members
Section 9. Texas Disciplinary Rules of Professional Conduct (Refs & Annos)
III. Advocate

V.T.C.A., Govt. Code T. 2, Subt. G App. A, Art. 10, § 9, Rule 3.03

Rule 3.03. Candor Toward the Tribunal

Currentness

(a) A lawyer shall not knowingly:

(1) make a false statement of material fact or law to a tribunal;

(2) fail to disclose a fact to a tribunal when disclosure is necessary to avoid assisting a criminal or fraudulent act;

(3) in an ex parte proceeding, fail to disclose to the tribunal an unprivileged fact which the lawyer reasonably believes should be known by that entity for it to make an informed decision;

(4) fail to disclose to the tribunal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel; or

(5) offer or use evidence that the lawyer knows to be false.

(b) If a lawyer has offered material evidence and comes to know of its falsity, the lawyer shall make a good faith effort to persuade the client to authorize the lawyer to correct or withdraw the false evidence. If such efforts are unsuccessful, the lawyer shall take reasonable remedial measures, including disclosure of the true facts.

(c) The duties stated in paragraphs (a) and (b) continue until remedial legal measures are no longer reasonably possible.

Credits
Adopted by order of Oct. 17, 1989, eff. Jan. 1, 1990.

Editors' Notes

COMMENT:

2019 Main Volume

1. The advocate's task is to present the client's case with persuasive force. Performance of that duty while maintaining confidences of the client is qualified by the advocate's duty of candor to the tribunal.

Factual Representations by a Lawyer

2. An advocate is responsible for pleadings and other documents prepared for litigation, but is usually not required to have personal knowledge of matters asserted therein, for litigation documents ordinarily present assertions by the client, or by someone on the client's behalf, and not assertions by the lawyer. Compare Rule 3.01. However, an assertion purporting to be on the lawyer's own knowledge, as in an affidavit by the lawyer or a representation of fact in open court, may properly be made only when the lawyer knows the assertion is true or believes it to be true on the basis of a reasonably diligent inquiry. There are circumstances where failure to make a disclosure is the equivalent of an affirmative misrepresentation. The obligation prescribed in Rule 1.02(c) not to counsel a client to commit or assist the client in committing a fraud applies in litigation. See the Comments to Rules 1.02(c) and 8.04(a).

Misleading Legal Argument

3. Legal argument based on a knowingly false representation of law constitutes dishonesty toward the tribunal. A lawyer is not required to make a disinterested exposition of the law, but should recognize the existence of pertinent legal authorities. Furthermore, as stated in paragraph (a)(4), an advocate has a duty to disclose directly adverse authority in the controlling jurisdiction which has not been disclosed by the opposing party. The underlying concept is that legal argument is a discussion seeking to determine the legal premises properly applicable to the case.

Ex Parte Proceedings

4. Ordinarily, an advocate has the limited responsibility of presenting one side of the matters that a tribunal should consider in reaching a decision; the conflicting position is expected to be presented by the opposing party. However, in an ex parte proceeding, such as an application for a temporary restraining order, there is no balance of presentation by opposing advocates. The object of an ex parte proceeding is nevertheless to yield a substantially just result. The judge has an affirmative responsibility to accord the absent party just consideration. The lawyer for the represented party has the correlative duty to make disclosures of unprivileged material facts known to the lawyer if the lawyer reasonably believes the tribunal will not reach a just decision unless informed of those facts.

Anticipated False Evidence

5. On occasion a lawyer may be asked to place into evidence testimony or other material that the lawyer knows to be false. Initially in such situations, a lawyer should urge the client or other person involved to not offer false or fabricated evidence. However, whether such evidence is provided by the client or by another person, the lawyer must refuse to offer it, regardless of the client's wishes. As to a lawyer's right to refuse to offer testimony or other evidence that the lawyer believes is false, see paragraph 15 of this Comment.

6. If the request to place false testimony or other material into evidence came from the lawyer's client, the lawyer also would be justified in seeking to withdraw from the case. See Rules 1.15(a)(1) and (b)(2), (4). If withdrawal is allowed by the tribunal, the lawyer may be authorized under Rule 1.05(c)(7) to reveal the reasons for that withdrawal to any other lawyer subsequently retained by the client in the matter; but normally that rule would not allow the lawyer to reveal that information to another

person or to the tribunal. If the lawyer either chooses not to withdraw or is not allowed to do so by the tribunal, the lawyer should again urge the client not to offer false testimony or other evidence and advise the client of the steps the lawyer will take if such false evidence is offered. Even though the lawyer does not receive satisfactory assurances that the client or other witness will testify truthfully as to a particular matter, the lawyer may use that person as a witness as to other matters that the lawyer believes will not result in perjured testimony.

Past False Evidence

7. It is possible, however, that a lawyer will place testimony or other material into evidence and only later learn of its falsity. When such testimony or other evidence is offered by the client, problems arise between the lawyer's duty to keep the client's revelations confidential and the lawyer's duty of candor to the tribunal. Under this Rule, upon ascertaining that material testimony or other evidence is false, the lawyer must first seek to persuade the client to correct the false testimony or to withdraw the false evidence. If the persuasion is ineffective, the lawyer must take additional remedial measures.

8. When a lawyer learns that the lawyer's services have been improperly utilized in a civil case to place false testimony or other material into evidence, the rule generally recognized is that the lawyer must disclose the existence of the deception to the court or to the other party, if necessary rectify the deception. See paragraph (b) and Rule 1.05(h). See also Rule 1.05(g). Such a disclosure can result in grave consequences to the client, including not only a sense of betrayal by the lawyer but also loss of the case and perhaps a prosecution for perjury. But the alternative is that the lawyer would be aiding in the deception of the tribunal or jury, thereby subverting the truth-finding process which the adversary system is designed to implement. See Rule 1.02(c). Furthermore, unless it is clearly understood that the lawyer will act upon the duty to disclose the existence of false evidence, the client can simply reject the lawyer's advice to reveal the false evidence and insist that the lawyer keep silent. Thus the client could in effect coerce the lawyer into being a party to fraud on the court.

Perjury by a Criminal Defendant

9. Whether an advocate for a criminally accused has the same duty of disclosure has been intensely debated. While it is agreed that in such cases, as in others, the lawyer should seek to persuade the client to refrain from suborning or offering perjurious testimony or other false evidence, there has been dispute concerning the lawyer's duty when that persuasion fails. If the confrontation with the client occurs before trial, the lawyer ordinarily can withdraw. Withdrawal before trial may not be possible, however, either because trial is imminent, or because the confrontation with the client does not take place until the trial itself, or because no other counsel is available.

10. The proper resolution of the lawyer's dilemma in criminal cases is complicated by two considerations. The first is the substantial penalties that a criminal accused will face upon conviction, and the lawyer's resulting reluctance to impair any defenses the accused wishes to offer on his own behalf having any possible basis in fact. The second is the right of a defendant to take the stand should he so desire, even over the objections of the lawyer. Consequently, in any criminal case where the accused either insists on testifying when the lawyer knows that the testimony is perjurious or else surprises the lawyer with such testimony at trial, the lawyer's effort to rectify the situation can increase the likelihood of the client's being convicted as well as opening the possibility of a prosecution for perjury. On the other hand, if the lawyer does not exercise control over the proof, the lawyer participates, although in a merely passive way, in deception of the court.

11. Three resolutions of this dilemma have been proposed. One is to permit the accused to testify by a narrative without guidance through the lawyer's questioning. This compromises both contending principles; it exempts the lawyer from the duty to disclose false evidence but subjects the client to an implicit disclosure of information imparted to counsel. Another suggested resolution is that the advocate be entirely excused from the duty to reveal perjury if the perjury is that of the client. This solution, however, makes the advocate a knowing instrument of perjury.

12. The other resolution of the dilemma, and the one this Rule adopts, is that the lawyer must take reasonable remedial measure which may include revealing the client's perjury. A criminal accused has a right to the assistance of an advocate, a right to testify and a right of confidential communication with counsel. However, an accused should not have a right to assistance of counsel in committing perjury. Furthermore, an advocate has an obligation, not only in professional ethics but under the law as well, to avoid implication in the commission of perjury or other falsification of evidence.

False Evidence Not Introduced by the Lawyer

13. A lawyer may have introduced the testimony of a client or other witness who testified truthfully under direct examination but who offered false testimony or other evidence during examination by another party. Although the lawyer should urge that the false evidence be corrected or withdrawn, the full range of obligation imposed by paragraphs (a)(5) and (b) of this Rule do not apply to such situations. A subsequent use of that false testimony or other evidence by the lawyer in support of the client's case, however, would violate paragraph (a)(5).

Duration of Obligation

14. The time limit on the obligation to rectify the presentation of false testimony or other evidence varies from case to case but continues as long as there is a reasonable possibility of taking corrective legal actions before a tribunal.

Refusing to Offer Proof Believed to be False

15. A lawyer may refuse to offer evidence that the lawyer reasonably believes is untrustworthy, even if the lawyer does not know that the evidence is false. That discretion should be exercised cautiously, however, in order not to impair the legitimate interests of the client. Where a client wishes to have such suspect evidence introduced, generally the lawyer should do so and allow the finder of fact to assess its probative value. A lawyer's obligations under paragraphs (a)(2), (a)(5) and (b) of this Rule are not triggered by the introduction of testimony or other evidence that is believed by the lawyer to be false, but not known to be so.

Notes of Decisions (40)

V. T. C. A., Govt. Code T. 2, Subt. G App. A, Art. 10, § 9 Rule 3.03, TX ST RPC Rule 3.03
Current with amendments received through June 15, 2023. Some rules may be more current, see credits for details.

End of Document

App 4

Vernon's Texas Statutes and Codes Annotated
Government Code (Refs & Annos)
Title 2. Judicial Branch (Refs & Annos)
Subtitle G. Attorneys
Title 2, Subtitle G--Appendices
Appendix a State Bar Rules (Refs & Annos)
Article X. Discipline and Suspension of Members
Section 9. Texas Disciplinary Rules of Professional Conduct (Refs & Annos)
VIII. Maintaining the Integrity of the Profession

V.T.C.A., Govt. Code T. 2, Subt. G App. A, Art. 10, § 9, Rule 8.04

Rule 8.04. Misconduct

Currentness

(a) A lawyer shall not:

(1) violate these rules, knowingly assist or induce another to do so, or do so through the acts of another, whether or not such violation occurred in the course of a client-lawyer relationship;

(2) commit a serious crime or commit any other criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;

(3) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;

(4) engage in conduct constituting obstruction of justice;

(5) state or imply an ability to influence improperly a government agency or official;

(6) knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law;

(7) violate any disciplinary or disability order or judgment;

(8) fail to timely furnish to the Chief Disciplinary Counsel's office or a district grievance committee a response or other information as required by the Texas Rules of Disciplinary Procedure, unless he or she in good faith timely asserts a privilege or other legal ground for failure to do so;

(9) engage in conduct that constitutes barratry as defined by the law of this state;

(10) fail to comply with section 13.01 of the Texas Rules of Disciplinary Procedure relating to notification of an attorney's cessation of practice;

(11) engage in the practice of law when the lawyer is on inactive status, except as permitted by section 81.053 of the Government Code and Article XIII of the State Bar Rules, or when the lawyer's right to practice has been suspended or terminated including, but not limited to, situations where a lawyer's right to practice has been administratively suspended for failure to timely pay required fees or assessments or for failure to comply with Article XII of the State Bar Rules relating to Mandatory Continuing Legal Education; or

(12) violate any other laws of this state relating to the professional conduct of lawyers and to the practice of law.

(b) As used in subsection (a)(2) of this Rule, "serious crime" means barratry; any felony involving moral turpitude; any misdemeanor involving theft, embezzlement, or fraudulent or reckless misappropriation of money or other property; or any attempt, conspiracy, or solicitation of another to commit any of the foregoing crimes.

Credits

Adopted by order of Oct. 17, 1989, eff. Jan. 1, 1990. Amended by order of June 15, 1994, eff. Oct. 1, 1994; Dec. 12, 2017, and April 20, 2018, eff. May 1, 2018.

Editors' Notes

COMMENT

2019 Main Volume

1. There are four principal sources of professional obligations for lawyers in Texas: these rules, the State Bar Act, the State Bar Rules, and the Texas Rules of Disciplinary Procedure (TRDP). All lawyers are presumed to know the requirements of these sources. Rule 8.04(a)(1) provides a partial list of conduct that will subject a lawyer to discipline.

2. Many kinds of illegal conduct reflect adversely on fitness to practice law. However, some kinds of offenses carry no such implication. Traditionally in this state, the distinction has been drawn in terms of those crimes subjecting a lawyer to compulsory discipline, criminal acts relevant to a lawyer's fitness for the practice of law, and other offenses. Crimes subject to compulsory discipline are governed by TRDP, Part VIII. In addition, although a lawyer is personally answerable to the entire criminal law, a lawyer should be professionally answerable only for criminal acts that indicate a lack of those characteristics relevant to the lawyer's fitness for the practice of law. A pattern of repeated criminal acts, even ones of minor significance when considered separately, can indicate indifference to legal obligations that legitimately could call a lawyer's overall fitness to practice into question. See TRDP, Part VIII; Rule 8.04(a)(2).

3. A lawyer may refuse to comply with an obligation imposed by law upon a good faith belief, openly asserted, that no valid obligation exists. The provisions of Rule 1.02(c) concerning a good faith challenge to the validity, scope, meaning or application of the law apply to challenges to legal regulation of the practice of law.

4. Lawyers holding public office assume legal responsibilities going beyond those of other citizens. A lawyer's abuse of public office can suggest an inability to fulfill the professional role of attorney. The same is true of abuse of positions of private trust.

Notes of Decisions (75)

V. T. C. A., Govt. Code T. 2, Subt. G App. A, Art. 10, § 9 Rule 8.04, TX ST RPC Rule 8.04
Current with amendments received through June 15, 2023. Some rules may be more current, see credits for details.

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App 5

Exh. 5

OFFICE OF SECRETARY OF STATE

I, Brad Raffensperger, Secretary of State of the State of Georgia, do hereby certify that

the Dominion Voting System (EAC Certification Number DVS-DemSuite5.5-A), consisting of the Democracy Suite 5.5-A Election Management System Version 5.5.12.1, EMS Adjudication Version 5.5.8.1, ImageCast X Prime (ICX BMD) Ballot Marking Device Version 5.5.10.30, ImageCast Precinct (ICP) Precinct Scanning Device Version 5.5.3-0002, and ImageCast Central (ICC) Central Scanning Device Version 5.5.3-0002, manufactured by Dominion Voting Systems, Inc., 1201 18th Street, STE 210, Denver, Colorado 80202, has been thoroughly examined and tested and found to be in compliance with the applicable provisions of the Georgia Election Code and Rules of the Secretary of State, and as a result of this inspection, it is my opinion that this kind of voting system and its components can be safely used by the electors of this state in all primaries and elections as provided in Chapter 2 of Title 21 of the Official Code of Georgia; provided however, that I hereby reserve my opinion to reexamine this voting system and its components at anytime so as to ensure that it continues to be one that can be safely used by the voters of this state.

App 6

Exh. 6

Test Report

Dominion Voting Systems
D-Suite 5.5-A Voting System
Georgia State Certification Testing

Approved by: Michael L. Walker

Michael Walker, VSTL Project Manager

1 INTRODUCTION

The purpose of this Test Report is to document the procedures that Pro V&V, Inc. followed to perform certification testing of the Dominion Voting Systems D-Suite 5.5-A Voting System Voting System to the requirements set forth for voting systems in the State of Georgia Election Systems Certification Program.

1.1 Authority

The State of Georgia has a unified voting system whereby all federal, state, and county elections are to use the same voting equipment. Beginning in 2020, the unified voting system shall be an optical scanning voting system with ballot marking devices.

The Georgia Board of Elections, under the authority granted to it by the Georgia Election Code, has the duty to promulgate rules and regulations to obtain uniformity in the practices and procedures of local election officials as well as to ensure the fair, legal, and orderly conduct of primaries and elections. The Georgia Board of Elections is to investigate frauds and irregularities in primaries and elections and report violations for prosecution. It can issue orders, after the completion of appropriate proceedings, directing compliance with the Georgia Election Code.

The Georgia Secretary of State is designated as the Chief Election Official and is statutorily tasked with developing, programing, building, and reviewing ballots for use by counties and municipalities on the unified voting system in the state. The Georgia Election Code provides that the Secretary of State is to examine and approve an optical scanning voting system and ballot marking devices prior to their use in the state. County Boards of Elections (CBE) may only use an optical scanning voting system and ballot marking devices that have been approved and certified and that may be continuously reviewed for ongoing certification, by the Secretary of State. The Secretary of State has authority to decertify voting systems. The Secretary of State has promulgated rules and regulations that govern the voting system certification process.

1.2 References

The documents listed below were utilized in the development of this Test Report:

- Election Assistance Commission Testing and Certification Program Manual, Version 2.0
- Election Assistance Commission Voting System Test Laboratory Program Manual, Version 2.0

- National Voluntary Laboratory Accreditation Program NIST Handbook 150, 2016 Edition, "NVLAP Procedures and General Requirements (NIST HB 150-2016)", dated July 2016
- National Voluntary Laboratory Accreditation Program NIST Handbook 150-22, 2008 Edition, "Voting System Testing (NIST Handbook 150-22)", dated May 2008
- Pro V&V, Inc. Quality Assurance Manual, Revision 7.0
- United States 107th Congress Help America Vote Act (HAVA) of 2002 (Public Law 107-252), dated October 2002
- Dominion Voting Systems D-Suite 5.5-ATechnical Data Package

1.3 Terms and Abbreviations

The terms and abbreviations applicable to the development of this Test Plan are listed below:

"BMD" – Ballot Marking Device

"COTS" – Commercial Off-The-Shelf

"EAC" – Election Assistance Commission

"EMS" – Election Management System

"FCA" – Functional Configuration Audit

"PCA" – Physical Configuration Audit

"TDP" – Technical Data Package

"VSTL" – Voting System Test Laboratory

"2005 VVSG" – EAC 2005 Voluntary Voting Systems Guidelines

1.4 Background

The State of Georgia identified the Dominion Voting Systems D-Suite 5.5-A Voting System to be evaluated as part of this test campaign. This report documents the findings from that evaluation.

functions, which are essential to the conduct of an election in the State of Georgia, were evaluated.

The scope of this testing event incorporated a sufficient spectrum of physical and functional tests to verify that the D-Suite 5.5-A Voting System conformed to the State of Georgia requirements. Specifically, the testing event had the following goals:

- Ensure proposed voting systems provide support for all Georgia election management requirements (i.e. ballot design, results reporting, recounts, etc.).

- Simulate pre-election, Election Day, absentee, recounts, and post-election activities on the corresponding components of the proposed voting systems for the required election scenarios.

2 TEST CANDIDATE

The D-Suite 5.5-A Voting System is a paper-based optical scan voting system consisting of the following major components: The Election Management System (EMS), the ImageCast Central (ICC), the ImageCast Precinct (ICP), and the ImageCast X (ICX) BMD. The D-Suite 5.5-A Voting System configuration is a modification from the EAC approved D-Suite 5.0 system configuration. The D-Suite 5.5-A Voting System will be configured with the KNOWiNK Pollpad which utilizes the ePulse Epoll data management system, for voter registration purposes.

The following table provides the software and hardware components of the D-Suite 5.5-A Voting System that were tested, identified with versions and model numbers:

Table 2-1 D-Suite 5.5-A Voting System

D-Suite 5.5-A Voting System Component	Firmware/Software Version	Hardware Model
oftware pplications		
EMS Election Event Designer (EED)	5.5.12.1	---
EMS Results Tally and Reporting (RTR)	5.5.12.1	---
EMS Application Server	5.5.12.1	---
EMS File System Service (FSS)	5.5.12.1	---
EMS Audio Studio (AS)	5.5.12.1	---
EMS Data Center Manager (DCM)	5.5.12.1	---
EMS Election Data Translator (EDT)	5.5.12.1	---
ImageCast Voter Activation (ICVA)	5.5.12.1	---

Table 2-1 D-Suite 5.5-A Voting System *(continued)*

D-Suite 5.5-A Voting System Component	Firmware/Software Version	Hardware Model
Device Configuration File (DCF)	5.4.01_20170521	---
olling lace canner and eripherals		
ImageCast Precinct (ICP)	5.5.3-0002	PCOS-320C
ICP Ballot Box	---	BOX-330A
EMS Standard Configuration		
Dell Server R640	---	R640
Dell Precision 3430	---	3430
Dell Network Switch	---	X10206P
EMS Express Configuration		
Dell Precision 3420	---	3420
Dell Monitor	---	P2419H
Dell Network Switch	---	X1008
entral canning evice omponents		
ImageCast Central	5.5.3.0002	---
Canon DR-G1130 Scanner	---	DR-G1130
Canon DR-M160II Scanner	---	DR-M160II
Dell Optiplex 3050AIO Computer	Windows 10 Pro	3050AIO
ompliant allot Mar ing evice		
Avalue ImageCast X Prime 21" BMD	5.5.10.30	HID-21V
HP M402dne Printer	---	M402dne
e oll oo olution		
KNOWiNK Poll Pad	---	iPad Air Rev. 2
KNOWiNK ePulse Epoll Data Management System	---	---

2.1 Testing Configuration

The following is a breakdown of the D-Suite 5.5-A Voting System components and configurations for the test setup:

Standard Testing Platform (D-Suite 5.5-A):

The system will be configured in the EMS Standard configuration with an Adjudication

The precinct polling station setup will consist of ImageCast X Prime 21" BMD's and ImageCast Precinct tabulators with plastic ballot boxes. The ImageCast X Prime 21" BMD's will be set up as accessible voting stations.

The KNOWiNK Epollbook solution consisting of the Poll Pad and ePulse Epoll data management system, will be setup and interfaced as required with the EMS Standard configuration.

Dominion Voting Systems is expected to provide all previously identified software and equipment necessary for the test campaign along with the supporting materials listed in section 2.2. The State of Georgia is providing the election definitions and ballots.

Express Testing Platform (D-Suite 5.5-A):

The system will be configured in the EMS Express configuration. This platform will be used to test all scenarios as provided by the election definition.

The central office setup will be an EMS Express configuration accompanied by both Canon DR-G1130 and Canon DR-M160II Central Scan tabulators and their associated PC's.

The precinct polling station setup will consist of ImageCast X Prime 21" BMD's and ImageCast Precinct tabulators with plastic ballot boxes. The ImageCast X Prime 21" BMD's will be set up as accessible voting stations.

The KNOWiNK Epollbook solution consisting of the Poll Pad and ePulse Epoll data management system, will be setup and interfaced as required with the EMS Standard configuration.

Dominion Voting Systems provided all previously identified software and equipment necessary for the test campaign along with the supporting materials ,election definitions, and ballots

2.2 Test Support Equipment/Materials

The following materials, if required, were supplied by Dominion Voting Systems to facilitate testing:

- USB Flash Drives

- Ballot Paper
- Marking Devices
- Pressurized air cans
- Lint-free cloth
- Cleaning pad and isopropyl alcohol
- Labels
- Other materials and equipment as required

3 TEST PROCESS AND RESULTS

The following sections outline the test process that was followed to evaluate the D-Suite 5.5-A Voting System under the scope defined in Section 1.5.

3.1 General Information

All testing was conducted under the guidance of Pro V&V by personnel verified by Pro V&V to be qualified to perform the testing. The examination was performed at the Pro V&V, Inc. test facility located in Cummings Research Park, Huntsville, AL.

3.2 Testing Initialization

Prior to execution of the required test scenarios, the systems under test underwent testing initialization to establish the baseline for testing and ensure that the testing candidate matched the expected testing candidate and that all equipment and supplies were present.

The following were completed during the testing initialization:

- Ensure proper system of equipment. Check connections, power cords, keys, etc.
- Check version numbers of (system) software and firmware on all components.
- Verify the presence of only the documented COTS.
- Ensure removable media is clean
- Ensure batteries are fully charged.
- Inspect supplies and test decks

- Retain proof of version numbers.

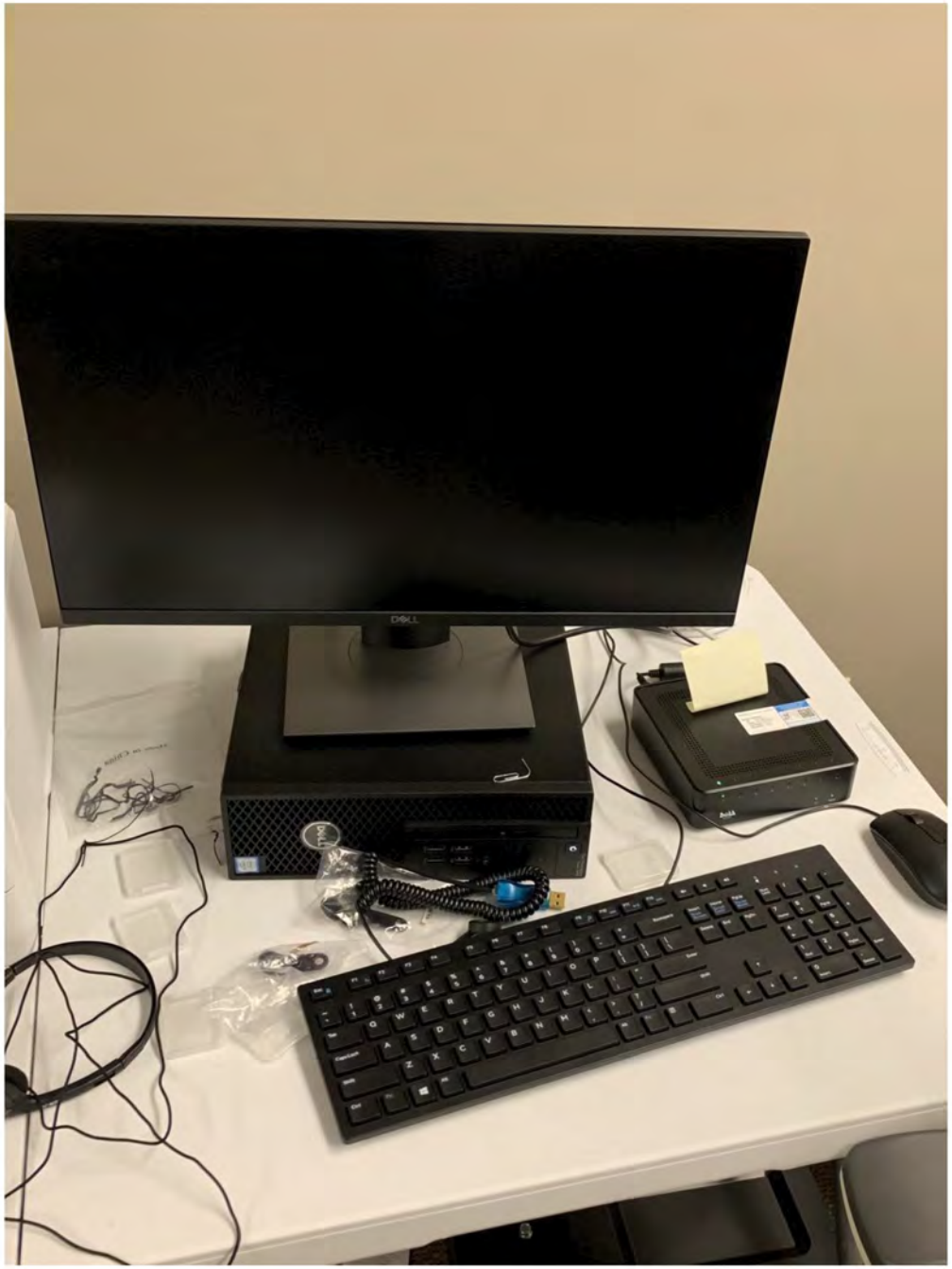
3.3 Summary Findings

The voting system was evaluated against the requirements set forth for voting systems by the State of Georgia. A Conditions of Satisfaction Checklist was developed based on each identified test requirements. Throughout the test campaign, Pro V&V executed tests, inspected resultant data and performed technical documentation reviews to ensure that each applicable requirement was met. The Conditions of Satisfaction Checklist is presented in Section 4 of this test report. The Summary Findings from each area of evaluation are presented in the following sections.

3.3.1 Physical Configuration Audit (PCA) and Setup

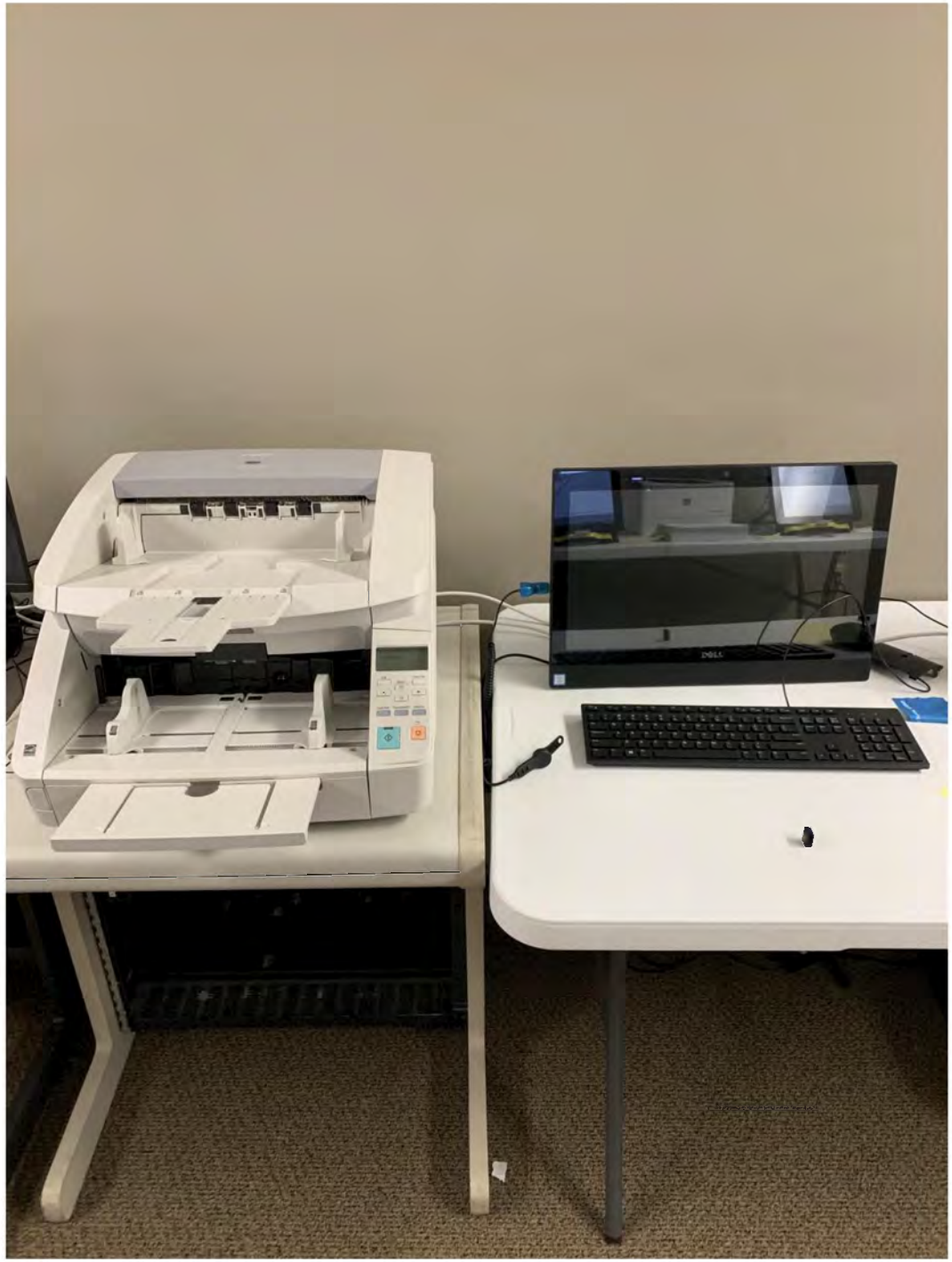
Prior to test initiation, the D-Suite 5.5-A Voting System was subjected to a Physical Configuration Audit (PCA) to baseline the system and ensure all items necessary for testing were present. This process included validating that the hardware and software components received for testing matched hardware and software components proposed and demonstrated to the State during the RFP process. This process also included validating that the submitted components matched the software and hardware components which have obtained EAC certification to the Voluntary Voting System Guidelines (VVSG) Standard 1.0, by comparing the submitted components to the published EAC Test Report. The system was then setup as designated by the manufacturer supplied Technical Documentation Package (TDP).

Photographs of the system components, as configured for testing, are presented below:

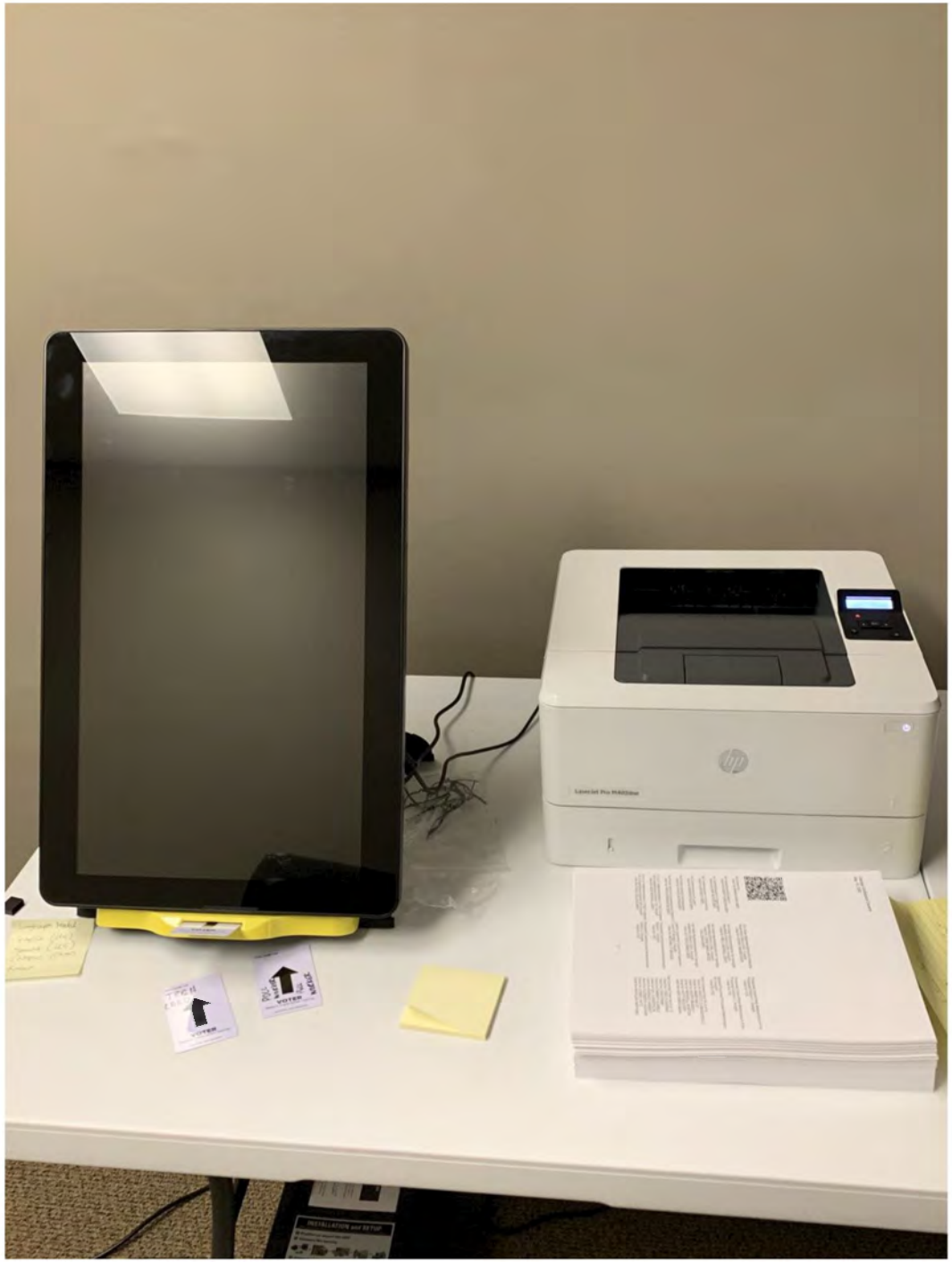


Photograph 1: EMS Express Configuration

Photograph 2: EMS Standard Configuration




DELL
Canon



Photograph 6: ePollbok

A pre-certification election was then loaded and an Operational Status Check was performed to verify satisfactory system operation. The Operational Status Check consisted of processing ballots and verifying the results obtained against known expected results from pre-determined

Summary Findings

During execution of the test procedure, the components of the D-Suite 5.5-A system were documented by component name, model, serial number, major component, and any other relevant information needed to identify the component. For COTS equipment, every effort was made to verify that the COTS equipment had not been modified for use. Additionally, the Operational Status Check was successfully completed with all actual results obtained during test execution matching the expected results.

3.3.2 System Level Testing

System Level Testing included the Functional Configuration Audit (FCA), the Accuracy Test, the Volume and Stress Test, and the System Integration Test. This testing included all proprietary components and COTS components (software, hardware, and peripherals).

During System Level Testing, the system was configured exactly as it would for normal field use per the manufacturer. This included connecting the supporting equipment and peripherals.

3.3.2.1 Functional Configuration Audit (FCA)

The Functional Configuration Audit (FCA) encompassed an examination of the system to the requirements set forth by the State of Georgia Election Systems Certification Program as designed in the Test Plan, and which are included in this report in the Conditions of Satisfaction Checklist.

Summary Findings

The D-Suite 5.5-A system successfully passed the FCA Tests without any noted issues. The individual testing requirements and their results can be seen in the included Conditions of Satisfaction Checklist.

3.3.2.2 Accuracy Testing

The Accuracy Test ensured that each component of the voting system could process at least 1,549,703 consecutive ballot positions correctly within the allowable target error rate. The Accuracy Test is designed to test the ability of the system to "capture, record, store, consolidate and report" specific selections and absences of a selection. The required accuracy is defined as

Summary Findings

The D-Suite 5.5-A system successfully passed the Accuracy Test. It was noted during test performance that the ICP under test experienced a memory lockup after scanning approximately 4500 ballots. The issue was presented to Dominion for resolution. Dominion provided the following analysis of the issue:

The ICP uClinux operating system does not have a memory management unit (MMU) and, as such, it can be susceptible to memory fragmentation. The memory allocation services within the ICP application are designed to minimize the effects of memory fragmentation. However, if the ICP scans a large number of ballots (over 4000), without any power cycle, it can experience a situation where the allocation of a large amount of memory can fail at the Operating System level due to memory fragmentation across the RAM. This situation produces an error message on the ICP which requires the Poll Worker to power cycle the unit, as documented. Once restarted, the ICP can continue processing ballots without issue. All ballots scanned and counted prior to the power cycle are still retained by the unit; there is no loss in data.

Pro V&V performed a power cycle, as instructed by Dominion, and verified that the issue was resolved and that the total ballot count was correct. Scanning then resumed with no additional issues noted.

A total of 1,569,640 voting positions were processed on the system with all actual results verified against the expected results. The individual testing requirements and their results can be seen in the included Conditions of Satisfaction Checklist.

3.3.2.3 Volume and Stress Testing

The Volume & Stress Tests consisted of tests designed to investigate the system's ability to meet the requirement limits and conditions set forth by the State of Georgia Election Systems Certification Program as designed in the Test Plan, and which are included in this report in the Conditions of Satisfaction Checklist.

Summary Findings

The D-Suite 5.5-A system successfully passed the Volume and Stress Tests without any noted issues. The individual testing requirements and their results can be seen in the included

3.3.2.4 System Integration Test

System Integration is a system level test that evaluates the integrated operation of both hardware and software. System Integration tests the compatibility of the voting system software components, or subsystems, with one another and with other components of the voting system environment. This functional test evaluates the integration of the voting system software with the remainder of the system.

During test performance, the system was configured as it would be for normal field use, with a new election created on the EMS and processed through the system components to final results.

Summary Findings

The D-Suite 5.5-A system successfully passed the System Integration Test without any noted issues. The individual testing requirements and their results can be seen in the included Conditions of Satisfaction Checklist.

3.3.3 e-Pollbook Testing

The ePolllbook Test evaluated the ability of the designated ePollbook to produced voter activation cards that could be successfully processed by the BMD.

Summary Findings

The D-Suite 5.5-A system successfully passed the ePollbook Test without any noted issues. The individual testing requirements and their results can be seen in the included Conditions of Satisfaction Checklist.

3.3.4 Ballot Copy Testing

The Ballot Copy Test evaluated the ability of a photocopy of a ballot produced by the system to be successfully processed by the system's tabulators.

Summary Findings

The D-Suite 5.5-A system successfully passed the Ballot Copy Test without any noted issues. The individual testing requirements and their results can be seen in the included Conditions of

3.3.5 Trusted Build and Software Hash Delivery

At test campaign conclusion, HASH signatures and software installation packets of the tested software were generated for delivery to the State of Georgia.

4 Conditions of Satisfaction

The voting system was evaluated against the requirements set forth for voting systems by the EAC 2005 VVSG and the State of Georgia. Throughout this test campaign, Pro V&V executed tests, inspected resultant data and performed technical documentation reviews to ensure that each applicable requirement was met. The Conditions of Satisfaction Checklist developed for this test campaign is presented in Table 4-1.

Table 4-1 Conditions of Satisfaction Checklist

DOMINION Conditions of Satisfaction Checklist		
Area	**Condition**	**Test Result**
FCA	Single FCA Test Election database(s) containing Republican and Democratic Primaries (Open Primary) and one Non-Partisan election	PASS
FCA	Database is being built for a single county jurisdiction	PASS
FCA	Republican Primary = 5 Races (1 statewide, 2 countywide, 3 county district level)	PASS
FCA	Democratic Primary = 5 Races (1 statewide, 1 countywide, 1 state district level, 2 county district level)	PASS
FCA	Non-Partisan Election = 1 Race (1 statewide)	PASS
FCA	Republican and Democratic races contain 1 to 8	PASS

Table 4-1 Conditions of Satisfaction Checklist *(continued)*

DOMINION Conditions of Satisfaction Checklist		
Area	**Condition**	**Test Result**
FCA	Non-Partisan race contains 4 candidates and 1 write-in	PASS
FCA	All races are Vote for One	PASS
FCA	County contains 5 Precincts, for results reporting purposes	PASS
FCA	Each precinct is split at both state district and county district level	PASS
FCA	Election Day Voting [4 total], 1 Vote Center containing 2 precincts	PASS
FCA	Election Day Voting [4 total], 3 Polling Locations containing 1 precinct each	PASS
FCA	Advance Voting [2 total], Each polling location houses all 5 Precincts	PASS
FCA	Prepare election media from EMS to program PPS's (Polling Place Scanners) and BMD's for Advance Voting Polling locations	PASS
FCA	Prepare election media from EMS to program PPS's and BMD's for Election Day Polling locations	PASS
FCA	Prepare election media from EMS to program CSD's (Central Scan Devices) system for processing of mail-out absentee ballots and provisional ballots	PASS

Table 4-1 Conditions of Satisfaction Checklist *(continued)*

DOMINION Conditions of Satisfaction Checklist		
Area	**Condition**	**Test Result**
FCA	Prepare election media from EMS to program CSD's for processing Advance Voting ballots generated by BMDs	PASS
FCA	Prepare election media from EMS to program CSD's for processing Election Day ballots generated by BMDs	PASS
FCA	Produce watermarked Sample ballots for public distribution	PASS
FCA	Prepare a test deck (Deck 1) of voted ballots with a known result using all available vote positions on all ballot styles generated by the test scenario, including write-ins, overvotes, undervotes, and blank ballots.	PASS
FCA	Prepare an Absentee test deck (Deck 2) of voted absentee ballots with a known result, to be used on the CSD, including write-ins, overvoted races, and blank ballots.	PASS
FCA	Vote test deck (Deck 1) on each BMD and print BMD ballots for each ballot in the test deck	PASS
FCA	Scan ballots created from the BMD's into the associated PPS's	PASS
FCA	Scan the Absentee test deck (Deck 2) on the CSD and confirm the CSD separates ballots by various conditions for physical review when scanning (i.e..	PASS

Table 4-1 Conditions of Satisfaction Checklist *(continued)*

DOMINION Conditions of Satisfaction Checklist		
Area	**Condition**	**Test Result**
FCA	Prepare printouts from PPS's documenting results tabulated and verify them against test deck	PASS
FCA	Prepare printouts from CSD documenting results tabulates and verify them against test deck	PASS
FCA	Scan ballots created from BMD's on the CSD	PASS
FCA	Prepare printouts from CSD documenting results tabulated and verify them against Absentee test deck (Deck 2)	PASS
FCA	Upload to EMS the election media used in PPS and CSD devices	PASS
FCA	Prepare printouts from EMS documenting the results tabulated and verify them against test deck contents	PASS
FCA	Prepare printouts documenting results at various reporting levels:	PASS
FCA	Prepare printouts documenting results at various reporting levels: Precinct	PASS
FCA	Prepare printouts documenting results at various reporting levels: Polling Place	PASS
FCA	Prepare printouts documenting results at various reporting levels: vote Type	PASS

Table 4-1 Conditions of Satisfaction Checklist *(continued)*

DOMINION Conditions of Satisfaction Checklist		
Area	**Condition**	**Test Result**
Accuracy	General election	PASS
Accuracy	21 Contests in election	PASS
Accuracy	2 Column Ballot	PASS
Accuracy	5 Precincts	PASS
Accuracy	Election is produced at County Level	PASS
Accuracy	No Counting Groups	PASS
Accuracy	Incumbency is supported	PASS
Accuracy	No Straight Party Voting	PASS
Accuracy	Non-Partisan contests only (Candidates are not directly linked to parties, but are labeled by party on the ballot)	PASS
	Parties (for labeling purposes): o Democratic	PASS

Table 4-1 Conditions of Satisfaction Checklist *(continued)*

DOMINION Conditions of Satisfaction Checklist		
Area	**Condition**	**Test Result**
Accuracy	Write-Ins present in all races	PASS
Accuracy	Proposed State Wide Referendums	PASS
Accuracy	Advance Voting (Early Voting)	PASS
Accuracy	Elections for Judges are Non-Partisan	PASS
Accuracy	N of M Voting o Test N of M – 6 of 8 o Test N of M – 8 of 10	PASS
Accuracy	1000 Ballots printed from BMD using 3 units as follows (Unit 1: 250 ballots, unit 2: 250 ballots, unit 3: 500 ballots)	PASS
Accuracy	Run the Accuracy Test Election on BMD & Verify results against known expected results	PASS
Accuracy	Run the Accuracy Test Election on PPS & Verify results against known expected results	PASS
Accuracy	Run the Accuracy Test Election on CSD & Verify results against known expected results	PASS
Accuracy	Reporting: Winners: Contest reports review	PASS

Table 4-1 Conditions of Satisfaction Checklist *(continued)*

DOMINION Conditions of Satisfaction Checklist		
Area	**Condition**	**Test Result**
Accuracy	Election Night Reporting: Export Election Night Results in the following formats: o Common Data Format (CDF)	PASS
Accuracy	Election Night Reporting: Export Election Night Results in the following formats: o Non-CDF	PASS
Accuracy	Accuracy in ballot counting and tabulation shall achieve 100% for all votes cast (1,549,703 ballot positions)	PASS
V&S	Volume & Stress Open Primary Election	PASS
V&S	400 Precincts	PASS
V&S	1 County	PASS
V&S	150 Ballot Styles	PASS
V&S	30 Ballot Styles in 1 Precinct	PASS
V&S	3 Languages (English, Spanish, Korean)	PASS
		PASS

Table 4-1 Conditions of Satisfaction Checklist *(continued)*

DOMINION Conditions of Satisfaction Checklist		
Area	**Condition**	**Test Result**
V&S	30 candidates in 1 contest	PASS
V&S	Referendum (Approximately 15000 words)	PASS
V&S	Referendum: Test using 10pt Arial Font (Currently used in State of Georgia)	PASS
V&S	Referendum: Test using 12pt Sans Serif font (To Accommodate future changes)	PASS
V&S	Referendum: Verify at Normal Size	PASS
V&S	Referendum: Verify when Zoomed-In (Text size increased)	PASS
V&S	Candidate Name Lengths – (Must support 25 characters) – Verify to make sure they display properly	PASS
V&S	Candidate Name Lengths – Check Translations	PASS
V&S	Candidate Name Lengths – Check appearance on BMD Printed Ballot	PASS
V&S	Candidate Name Lengths – Check appearance on Ballot Review Screen	PASS

Table 4-1 Conditions of Satisfaction Checklist *(continued)*

DOMINION Conditions of Satisfaction Checklist		
Area	**Condition**	**Test Result**
V&S	Tabulator Reports – Tabulators print 3 copies of Zero Proof Reports, and Results Reports	PASS
V&S	Run the V&S Test Election on BMD & Verify results against known expected results	PASS
V&S	Run the V&S Test Election on PPS & Verify results against known expected results	PASS
V&S	Run the V&S Test Election on CSD & Verify results against known expected results	PASS
V&S	Reporting: Winners: Contest reports review	PASS
V&S	Reporting: Results: Precinct summary reports, precinct-based reporting, reporting by Congressional District Level	PASS
Epollbook	Verify that the Pollbook can program voter activation cards for BMD	PASS
Epollbook	Verify that voter activation cards activate the correct ballot styles when used on the BMD's	PASS
Ballot Copy	Verify whether or not a ballot produced by the BMD, can be photocopied, and then have the photocopied ballot be successfully cast on:	PASS

Table 4-1 Conditions of Satisfaction Checklist *(continued)*

DOMINION Conditions of Satisfaction Checklist		
Area	**Condition**	**Test Result**
System Integration	Run the SI Test Election on BMD & Verify results against known expected results	PASS
System Integration	Run the SI Test Election on PPS & Verify results against known expected results	PASS
System Integration	Run the SI Test Election on CSD & Verify results against known expected results	PASS
System Integration	Reporting: Winners: Contest reports review	PASS
System Integration	Reporting: Results: Precinct summary reports, precinct-based reporting, reporting by Congressional District Level	PASS

App 7

IN THE UNITED STATES DISTRICCT COURT, NORTHERN DISTRCOICT OF GEORGIA, ATLANTA DIVISION

CORECO JA'QAN PEARSON, VIKKI TOWNSEND CONSIGLIO, GLORIA KAY GODWIN, JAMES KENNETH CARROLL, , CAROLYN HALL FISHER, CATHLEEN ALSTON LATHAM, and BRIAN JAY VAN GUNDY,

Plaintiffs.

v.

BRIAN KEMP, in his official capacity as Governor of Georgia, BRAD RAFFENSPERGER, in his official capacity as Secretary of State and Chair of the Georgia State Election Board, DAVID J. WORLEY, in his official capacity as a member of the Georgia State Election Board, REBECCA N.SULLIVAN, in her official capacity as a member of the Georgia State Election Board, MATTHEW MASHBURN, in his official capacity as a member of the Georgia State Election Board, and ANH LE, in her official capacity as a member of the Georgia State Election Board,

Defendants.

CASE NO.

COMPLAINT FOR DECLARATORY, EMERGENCY, AND PERMANENT INJUNCTIVE RELIEF

NATURE OF THE ACTION

This civil action brings to light a massive election fraud, multiple violations of Georgia laws, including O.C.G.A. §§ 21-2-30(d), 21-2-31, 21-2-33.1 and §21-2-522, and multiple Constitutional violations, as shown by fact witnesses to specific incidents, multiple expert witnesses and the sheer mathematical impossibilities found in the Georgia 2020 General Election.[1]

1.

As a civil action, the plaintiff's burden of proof is a "preponderance of the evidence" to show, as the Georgia Supreme Court has made clear that, *"[i]t was not incumbent upon [Plaintiff] to show how the [] voters would have voted if their [absentee] ballots had been regular. [Plaintiff] only had to show that there were enough irregular ballots to place in doubt the result."* *Mead v. Sheffield*, 278 Ga. 268, 272, 601 S.E.2d 99, 102 (2004) (*citing Howell v. Fears*, 275 Ga. 627, 571 S.E.2d 392 (2002).

[1] The same pattern of election fraud and voter fraud writ large occurred in all the swing states with only minor variations, see expert reports, regarding Michigan, Pennsylvania, Arizona and Wisconsin. (See William M. Briggs Decl., attached here to as Exh. 1, Report with Attachment). Indeed, we believe that in Arizona at least 35,000 votes were illegally added to Mr. Biden's vote count.

2.

The scheme and artifice to defraud was for the purpose of illegally and fraudulently manipulating the vote count to make certain the election of Joe Biden as President of the United States.

3.

The fraud was executed by many means,[2] but the most fundamentally troubling, insidious, and egregious is the systemic adaptation of old-fashioned "ballot-stuffing." It has now been amplified and rendered virtually invisible by computer software created and run by domestic and foreign actors for that very purpose. Mathematical and statistical anomalies rising to the level of impossibilities, as shown by affidavits of multiple witnesses, documentation, and expert testimony evince this scheme across the state of Georgia. Especially egregious conduct arose in Forsyth, Paulding, Cherokee, Hall, and Barrow County. This scheme and artifice to defraud affected tens of thousands of votes in Georgia alone and "rigged" the election in Georgia for Joe Biden.

[2] 50 USC § 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.

4.

The massive fraud begins with the election software and hardware from Dominion Voting Systems Corporation ("Dominion") only recently purchased and rushed into use by Defendants Governor Brian Kemp, Secretary of State Brad Raffensperger, and the Georgia Board of Elections. Sequoia voting machines were used in 16 states and the District of Colombia in 2006. Smartmatic, which has revenue of about $100 million, focuses on Venezuela and other markets outside the U.S. [3]

After selling Sequoia, Smartmatic's chief executive, Anthony Mugica. Mr. Mugica said, he hoped Smartmatic would work with Sequoia on projects in the U.S., though Smartmatic wouldn't take an equity stake." Id.

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* Redacted whistleblower affiant*, attached as Exh*. 2) Notably, Chavez "won" every election thereafter.

[3] *See WSJ.com, Smartmatic to Sell U.S. Unit, End Probe into Venezuelan Links, by Bob Davis, 12/22/2006,* h*ttps://www.wsj.com/articles/SB116674617078557263*

6.

As set forth in the accompanying whistleblower affidavit, the Smartmatic software was designed to manipulate Venezuelan elections in favor of dictator Hugo Chavez:

> 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.

7.

A *core requirement* of the Smartmatic software design 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 be 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. (See Id., see also Exh. 3, Aff. Cardozo, attached hereto)).

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* Hursti August 2019 Declaration, attached hereto as Exh. 4, at pars. 45-48; and attached hereto, as Exh. 4B, October 2019 Declaration in Document 959-4, at p. 18, par. 28).

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 and state and federal laws. (*See Id.)*

10.

Moreover, lies and conduct of Fulton County election workers about a delay in voting at State Farm Arena and the reasons for it evince the fraud.

11.

Specifically, video from the State Farm Arena in Fulton County shows that on November 3rd after the polls closed, election workers falsely claimed a water leak required the facility to close. All poll workers and challengers were evacuated for several hours at about 10:00 PM. However, several election workers remained unsupervised and unchallenged working at the computers for the voting tabulation machines until after 1:00 AM.

12.

Defendants Kemp and Raffensperger rushed through the purchase of Dominion voting machines and software in 2019 for the 2020 Presidential Election[4]. A certificate from the Secretary of State was awarded to Dominion

[4] Georgia Governor Inks Law to Replace Voting Machines, The Atlanta Journal-Constitution, AJC News Now, Credit: Copyright 2019 The Associated Press, June 2019. https://www.ajc.com/blog/politics/georgia-governor-inks-law-replace-voting-machines/xNXs0ByQAOvtXhd27kJdqO/

Voting Systems but is undated. (*See* attached hereto Exh. 5, copy Certification for Dominion Voting Systems from Secretary of State). Similarly a test report is signed by Michael Walker as Project Manager but is also undated. (See Exh. 6, Test Report for Dominion Voting Systems, Democracy Suite 5-4-A)

13.

Defendants Kemp and Raffensperger disregarded all the concerns that caused Dominion software to be rejected by the Texas Board of Elections in 2018, namely that it was 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." (Attached hereto Exh. 7, Study, Ballot-Marking Devices (BMDs) Cannot Assure the Will of the Voters by Andrew W. Appel Princeton University, Richard A. DeMillo, Georgia Tech Philip B. Stark, for the Univ. of California, Berkeley, December 27, 2019).[5]

[5] Full unredacted copies of all exhibits have been filed under seal with the Court and Plaintiffs have simultaneously moved for a protective order.

14.

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 hereto as Exh. 8, copy of redacted witness affidavit, 17 pages, November 23, 2020).

15.

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. (Exh. 26).

16.

Additionally, incontrovertible evidence Board of Elections records demonstrates that at least 96,600 absentee ballots were requested and counted but were never recorded as being returned to county election boards by the voter. *Thus, at a minimum, 96,600 votes must be disregarded.* (See Attached hereto, Exh. 9, R. Ramsland Aff.).

17.

The Dominion system used in Georgia erodes and undermines the reconciliation of the number of voters and the number of ballots cast, such that these figures are permitted to be unreconciled, opening the door to ballot stuffing and fraud. The collapse of reconciliation was seen in Georgia's primary and runoff elections this year, and in the November election, where it was discovered during the hand audit that 3,300 votes were found on memory sticks that were not uploaded on election night, plus in Floyd county, another 2,600 absentee ballots had not been scanned. These "found votes" reduced Biden's lead over Donald Trump[6].

[6] *Recount find thousands of Georgia votes*, Atlanta Journal-Constitution by Mark Niesse and David Wickert,11/19/20. https://www.ajc.com/politics/recount-finds-thousands-of-georgia-votes-missing-from-initial-counts/ERDRNXPH3REQTM4SOINPSEP72M/

18.

Georgia's election officials and poll workers exacerbated and helped, whether knowingly or unknowingly, the Dominion system carry out massive voter manipulation by refusing to observe statutory safeguards for absentee ballots. Election officials failed to verify signatures and check security envelopes. They barred challengers from observing the count, which also facilitated the fraud.

19.

Expert analysis of the actual vote set forth below demonstrates that at least 96,600 votes were illegally counted during the Georgia 2020 general election. All of the evidence and allegation herein is more than sufficient to place the result of the election in doubt. More evidence arrives by the day and discovery should be ordered immediately.

20.

Georgia law, (OCGA 21-5-552) provides for a contest of an election where:

> (1) Misconduct, fraud, or irregularity by any primary or election official or officials sufficient to change or place in doubt the result; . . . (3) When illegal votes have been received or legal votes rejected at the polls sufficient to change or place in doubt the result; (4) For any error in counting the votes or declaring the result of the primary or election, if such error would change the result; or (5) For any other cause which shows that another was the person legally nominated, elected, or eligible to compete in a run-off primary or election.

21.

As further set forth below, all of the above grounds have been satisfied and compel this Court to set aside the 2020 General Election results which fraudulently concluded that Mr. Biden defeated President Trump by 12,670 votes.

22.

Separately, and independently, there are sufficient Constitutional grounds to set aside the election results due to the Defendants' failure to observe statutory requirements for the processing and counting of absentee ballots which led to the tabulation of more than fifty thousand illegal ballots.

THE PARTIES

23.

Plaintiff Coreco Ja'Qan ("CJ") Pearson, is a registered voter who resides in Augusta, Georgia. He is a nominee of the Republican Party to be a Presidential Elector on behalf of the State of Georgia. He has standing to bring this action under *Carson v. Simon*, 2020 US App Lexis 34184 (8th Cir. Oct. 29, 2020). He 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 Georgia Secretary of State on November 20, 2020. The certified results showed a plurality of 12,670 votes in favor of former Vice-President Joe Biden over President Trump.

24.

Plaintiff Vikki Townsend Consiglio, is a registered voter who resides in Henry County, Georgia. She is a nominee of the Republican Party to be a Presidential Elector on behalf of the State of Georgia.

25.

Plaintiff Gloria Kay Godwin, is a registered voter who resides in Pierece County, Georgia. She is a nominee of the Republican Party to be a Presidential Elector on behalf of the State of Georgia.

26.

Plaintiff James Kenneth Carroll, is a registered voter who resides in Dodge County, Georgia. He is a nominee of the Republican Party to be a Presidential Elector on behalf of the State of Georgia.

27.

Plaintiff Carolyn Hall Fisher, is a registered voter who resides in Forsyth County, Georgia. She is a nominee of the Republican Party to be a Presidential Elector on behalf of the State of Georgia.

28.

Plaintiff Cathleen Alston Latham, is a registered voter who resides in Coffee County, Georgia. She is a nominee of the Republican Party to be a Presidential Elector on behalf of the State of Georgia.

29.

Plaintiff Jason M. Shepherd is the Chairman of the Cobb County Republican Party and brings this action in his official capacity on behalf of the Cobb County Republican Party.

30.

Plaintiff Brian Jay Van Gundy is registered voter in Gwinnett County, Georgia. He is the Assistant Secretary of the Georgia Republican Party.

31.

Defendant Governor Brian Kemp (Governor of Georgia) is named herein in his official capacity as Governor of the State of Georgia. On or about June 9, 2019, Governor Kemp bought the new Dominion Voting Systems for Georgia, budgeting 150 million dollars for the machines. Critics are quoted, "Led by Abrams, Democrats fought the legislation and pointed to cybersecurity experts who warned it would leave Georgia's elections susceptible to hacking and tampering." And "Just this week, the Fair Fight voting rights group started by [Stacy] Abrams launched a television ad critical of the bill. In a statement Thursday, the group called it "corruption at its worst" and a waste of money on "hackable voting machines."[7]

[7] *Georgia Governor Inks Law to Replace Voting Machines*, The Atlanta Journal-Constitution, AJC News Now, Credit: Copyright 2019 The Associated Press, June 2019

32.

Defendant Brad Raffensperger ("Secretary Raffensperger") is named herein in his official capacity as Secretary of State of the State of Georgia and the Chief Election Official for the State of Georgia pursuant to Georgia's Election Code and O.C.G.A. § 21-2-50. Secretary Raffensperger is a state official subject to suit in his official capacity because his office "imbues him with the responsibility to enforce the [election laws]." *Grizzle v. Kemp*, 634 F.3d 1314, 1319 (11th Cir. 2011). Secretary Raffensperger serves as the Chairperson of Georgia's State Election Board, which promulgates and enforces rules and regulations to (i) obtain uniformity in the practices and proceedings of election officials as well as legality and purity in all primaries and general elections, and (ii) be conducive to the fair, legal, and orderly conduct of primaries and general elections. *See* O.C.G.A. §§ 21-2-30(d), 21-2-31, 21-2-33.1. Secretary Raffensperger, as Georgia's chief elections officer, is further responsible for the administration of the state laws affecting voting, including the absentee voting system. *See* O.C.G.A. § 21-2-50(b).

33.

Defendants Rebecca N. Sullivan, David J. Worley, Matthew Mashburn, and Anh Le (hereinafter the "State Election Board") are members of the State Election Board in Georgia, responsible for "formulating, adopting, and promulgating such rules and regulations, consistent with law, as will be

conducive to the fair, legal, and orderly conduct of primaries and elections." O.C.G.A. § 21-2-31(2). Further, the State Election Board "promulgate[s] rules and regulations to define uniform and nondiscriminatory standards concerning what constitutes a vote and what will be counted as a vote for each category of voting system" in Georgia. O.C.G.A. § 21-2-31(7). The State Election Board, personally and through the conduct of the Board's employees, officers, agents, and servants, acted under color of state law at all times relevant to this action and are sued for emergency declaratory and injunctive relief in their official capacities.

JURISDICTION AND VENUE

34.

This Court has subject matter jurisdiction 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.

35.

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).

36.

The jurisdiction of the Court to grant declaratory relief is conferred by 28 U.S.C. 2201 and 2202 and by Rule 57 and 65, Fed. R. Civ. P. 7.

37.

This Court has jurisdiction over the related Georgia Constitutional claims and State law claims under 28 U.S.C. 1367.

38.

In Georgia, the "legislature" is the General Assembly. *See* Ga. Const. Art. III, § I, Para. I.

39.

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 Raffensperger, have no authority to exercise that power unilaterally, much less flout existing legislation or the Constitution itself.

STATEMENT OF FACTS

40.

Plaintiffs bring this action under 42 U.S.C. §§ 1983 and 1988, and under Georgia law, O.C.G.A. § 21-2-522 to remedy deprivations of rights,

privileges, or immunities secured by the Constitution and laws of the United States and to contest the election results.

41.

The United States Constitution sets forth the authority to regulate federal elections, the Constitution provides:

> 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").

42.

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").

43.

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).

44.

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.

45.

Plaintiffs also bring this action under Georgia law, O.C.G.A. § 21-2-522, Grounds for Contest:

> A result of a primary or election may be contested on one or more of the following grounds:
>
> (1) Misconduct, fraud, or irregularity by any primary or election official or officials sufficient to change or place in doubt the result;
>
> (2) When the defendant is ineligible for the nomination or office in dispute;
>
> (3) When illegal votes have been received or legal votes rejected at the polls sufficient to change or place in doubt the result;
>
> (4) For any error in counting the votes or declaring the result of the primary or election, if such error would change the result; or

> (5) For any other cause which shows that another was the person legally nominated, elected, or eligible to compete in a run-off primary or election.

O.C.G.A. § 21-2-522.

46.

Under O.C.G.A. § 21-2-10, Presidential Electors are elected.

47.

Under O.C.G.A. § 21-2-386(a)(l)(B), the Georgia Legislature instructed the county registrars and clerks (the "County Officials") to handle the absentee ballots as directed therein. The Georgia Legislature set forth the procedures to be used by each municipality for appointing the absentee ballot clerks to ensure that such clerks would "perform the duties set forth in this Article." *See* O.C.G.A. § 21-2-380.1.

48.

The Georgia Election Code instructs those who handle absentee ballots to follow a clear procedure:

> Upon receipt of each [absentee] ballot, a registrar or clerk ***shall*** write the day and hour of the receipt of the ballot on its envelope. The registrar or clerk ***shall*** then compare the identifying information on the oath with the information on file in his or her office, ***shall*** compare the signature or make on the oath with the signature or mark on the absentee elector's voter card or the most recent update to such absentee elector's voter registration card and application for absentee ballot or a facsimile of said signature or maker taken from said card or application, and ***shall,*** if the information and signature appear to be valid and other identifying information appears to be correct, so certify by signing or initialing his or her name below the

> voter's oath. Each elector's name so certified shall be listed by the registrar or clerk on the numbered list of absentee voters prepared for his or her precinct.

O.C.G.A. § 21-2-386(a)(l)(B) (emphasis added).

49.

Under O.C.G.A. § 21-2-386(a)(l)(C), the Georgia Legislature also established a clear and efficient process to be used by County Officials if they determine that an elector has failed to sign the oath on the outside envelope enclosing the ballot or that the signature does not conform with the signature on file in the registrar's or clerk's office (a "defective absentee ballot").

50.

The Georgia Legislature also provided for the steps to be followed by County Officials with respect to defective absentee ballots:

> ***If the elector has failed to sign the oath, or if the signature does not appear to be valid***, or if the elector has failed to furnish required information ***or information so furnished does not conform with that on file in the registrar's or clerk's office***, or if the elector is otherwise found disqualified to vote, the registrar or clerk shall write across the face of the envelope "Rejected," giving the reason therefor. The board of registrars or absentee ballot clerk *shall* promptly ***notify the elector of such rejection***, a copy of which notification ***shall*** be retained in the files of the board of registrars or absentee ballot clerk for at least one year.

O.C.G.A. § 21-2 -386(a) (l)(C) (emphasis added).

I. DEFENDANTS' UNAUTHORIZED ACTIONS VIOLATED THE GEORGIA ELECTION CODE AND CAUSED THE PROCESSING OF DEFECTIVE ABSENTEE BALLOTS.

51.

Notwithstanding the clarity of the applicable statutes and the constitutional authority for the Georgia Legislature's actions, on March 6, 2020, the Secretary of State of the State of Georgia, Secretary Raffensperger, and the State Election Board, who administer the state elections (the "Administrators") entered into a "Compromise and Settlement Agreement and Release" (the "Litigation Settlement") with the Democratic Party of Georgia, Inc., the Democrat Senatorial Campaign Committee, and the Democratic Congressional Campaign Committee (collectively, the "Democrat Party Agencies"), setting forth different standards to be followed by the clerks and registrars in processing absentee ballots in the State of Georgia8.

52.

Under the Settlement, however, the Administrators agreed to change the statutorily prescribed manner of handling absentee ballots in a manner that is not consistent with the laws promulgated by the Georgia Legislature for elections in this state.

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[8] *See Democratic Party of Georgia, Inc., et al. v. Raffensperger, et al.,* Civil Action File No. 1:1 9-cv-05028-WMR, United States District Court for the Northern District of Georgia, Atlanta Division, Doc. 56-1.

53.

The Settlement provides that the Secretary of State would issue an "Official Election Bulletin" to county Administrators overriding the statutory procedures prescribed for those officials. That power, however, does not belong to the Secretary of State under the United States Constitution.

54.

The Settlement also changed the signature requirement reducing it to a broad process with discretion, rather than enforcement of the signature requirement as statutorily required under O.C.G.A. 21-2-386(a)(l).

55.

The Georgia Legislature instructed county registers and clerks (the "County Officials") regarding the handling of absentee ballots in O.C.G.A. S 21-2-386(a)(1)(B), 21-2-380.1. The Georgia Election Code instructs those who handle absentee ballots to follow a clear procedure:

> Upon receipt of each absentee ballot, a registrar or clerk shall write the day and hour of the receipt of the ballot on its envelope. The registrar or clerk shall then compare the identifying information on the oath with the information on file in his or her office, shall compare the signature or make on the oath with the signature or mark on the absentee elector's voter card or the most recent update to such absent elector's voter registration card and application for absentee ballot or a facsimile of said signature or maker taken from said card or application, and shall, if the information and signature appear to be valid and other identifying information appears to be correct, so certify by signing or initialing his or her name below the voter's oath …

O.C.G.A. S 21-2-386(a)(1)(B).

56.

The Georgia Legislature prescribed procedures to ensure that any request for an absentee ballot must be accompanied by sufficient identification of the elector's identity. *See* O.C.G.A. *§* 21-2-38 l(b)(1) (providing, in pertinent part, "In order to be found eligible to vote an absentee ballot in person at the registrar's office or absentee ballot clerk's office, such person shall show one of the forms of identification listed in Code Section 21-2-417 ...").

57.

An Affiant testified, under oath, that "It was also of particular interest to me to see that signatures were not being verified and that there were no corresponding envelopes seen in site." (Attached hereto as Exh. 10, Mayra Romera, at par. 7).

58.

To reflect the very reason for process, it was documented that in the primary election, prior to the November 3, 2020 Presidential election, many ballots got to voters after the election. Further it was confirmed that "Untold thousands of absentee ballot requests went unfulfilled, and tens of thousands of mailed ballots were rejected for multiple reasons including arriving too late

to be counted. See the Associated Press, *Vote-by-Mail worries: A leaky pipeline in many states*, August 8, 2020.[9]

59.

Pursuant to the Settlement, the Administrators delegated their responsibilities for determining when there was a signature mismatch by considering in good faith only partisan-based training - "additional guidance and training materials" drafted by the Democrat Party Agencies' representatives contradicting O.C.G.A. § 21-2-31.

B. Unlawful Early Processing of Absentee Ballots

60.

In April 2020, the State Election Board adopted on a purportedly "Emergency Basis" Secretary of State Rule 183-1-14-0.9-.15, Processing Ballots Prior to Election Day. Under this rule, county election officials are authorized to begin processing absentee ballots up to three weeks befoe election day. Thus, the rule provides in part that "(1) Beginning at 8:00 AM on the third Monday prior to Election Day, the county election superintendent **shall be authorized to open the outer envelope of accepted absentee ballots** …" (Emphasis added).

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[9] *https://apnews.com/article/u-s-news-ap-top-news-election-2020-technology-politics-52e87011f4d04e41bfffccd64fc878e7*

61.

Rule 183-1-14-0.9-.15 is in direct and irreconcilable conflict with O.C.G.A. § 21-2-386(a)(2), which prohibits the opening of absentee ballots until election day:

> **After the opening of the polls** on the day of the primary, election, or runoff, the registrars or absentee ballot clerks **shall be authorized to open the outer envelope** on which is printed the oath of the elector in such a manner as not to destroy the oath printed thereon; provided, however, that the registrars or absentee ballot clerk shall not be authorized to remove the contents of such outer envelope or to open the inner envelope marked "Official Absentee Ballot," except as otherwise provided in this Code section.

(Emphasis added).

62.

In plain terms, the statute clearly prohibits opening absentee ballots prior to election day, while the rule authorizes doing so three weeks before election day. There is no reconciling this conflict. The State Election Board has authority under O.C.G.A. § 21-2-31 to adopt lawful and legal rules and regulations, but no authority to promulgate a regulation that is directly contrary to an unambiguous statute. Rule 183-1-14-0.9-.15 is therefore plainly and indisputably unlawful.

63.

The State Election Board re-adopted Rule 183-1-14-0.9-.15 on November 23, 2020 for the upcoming January 2021 runoff election.

C. Unlawful Audit Procedures

64.

According to Secretary Raffensperger, in the presidential general election, 2,457,880 votes were cast in Georgia for President Donald J. Trump, and 2,472,002 votes were cast for Joseph R. Biden, which narrowed in Donald Trump's favor after the most recent recount.

65.

Secretary Raffensperger declared that for the Hand Recount:

> Per the instructions given to counties as they conduct their audit triggered full hand recounts, designated monitors will be given complete access to observe the process from the beginning. While the audit triggered recount must be open to the public and media, designated monitors will be able to observe more closely. The general public and the press will be restricted to a public viewing area. Designated monitors will be able to watch the recount while standing close to the elections' workers conducting the recount.
>
> Political parties are allowed to designate a minimum of two monitors per county at a ratio of one monitor per party for every ten audit boards in a county... Beyond being able to watch to ensure the recount is conducted fairly and securely, the two-person audit boards conducting the hand recount call out the votes as they are recounted , providing monitors and the public an additional way to keep tabs on the process.[10]

[10] *Office of Brad Raffensperger, Monitors Closely Observing Audit-Triggered Full Hand Recount: Transparency is Built Into Process*, https://sos.ga.gov/index.php/elections/monitors_closely_observing_audit-triggered_full_hand_recount_transparency_is_built_into_process

66.

The audit was conducted O.C.G.A. § 21-2-498. This code section requires that audits be completed "in public view" and authorizes the State Board of Elections to promulgate regulations to administer an audit "to ensure that collection of validly cast ballots is complete, accurate and trustworthy throughout the audit."

67.

Plaintiffs can show that Democrat-majority counties provided political parties and candidates, including the Trump Campaign, no meaningful access or actual opportunity to review and assess the validity of mail-in ballots during the pre-canvassing meetings. While in the audit or recount, they witnessed Trump votes being put into Biden piles.

68.

Non-parties Amanda Coleman and Maria Diedrich are two individuals who volunteered to serve as designated monitors for the Donald J. Trump Presidential Campaign, Inc. (the "Trump Campaign") on behalf of the Georgia Republican Party (the "Republican Party") at the Hand Recount. (Attached hereto and incorporated herein as Exhibits 2 and 3), respectively, are true and correct copies of (1) the Affidavit of Amanda Coleman in Support of Plaintiffs' Motion for Temporary Restraining Order (the "Coleman Affidavit"), and (2) the Affidavit of Maria Diedrich in Support of Plaintiffs'

Motion for Temporary Restraining Order (the "Diedrich Affidavit"). (See Exh. 11, Coleman Aff.,2; Exh. 12, Diedrich Aff., 2.)

69.

The Affidavits set forth various conduct amounting to federal crimes, clear improprieties, insufficiencies, and improper handling of ballots by County Officials and their employees that Ms. Coleman and Ms. Diedrich personally observed while monitoring the Hand Recount. *(See* Exh. 11, Coleman Aff., 3-10; Exh. 12, Diedrich Aff., 4-14.)

70.

As a result of her observations of the Hand Recount as a Republican Party monitor, Ms. Diedrich declared, "There had been no meaningful way to review or audit any activity" at the Hand Recount. *(See* Exh. 12, Diedrich Aff.,14.)

71.

As a result of their observations of the Hand Recount as Republican Party monitors, Ms. Coleman likewise declared, "There was no way to tell if any counting was accurate or if the activity was proper." (See Exh. 12, Coleman Aff.,10).

72.

On Election Day, when the Republican poll watchers were, for a limited time, present and allowed to observe in various polling locations, they

observed and reported numerous instances of election workers failing to follow the statutory mandates relating to two critical requirements, among other issues:

(1) a voter's right to spoil their mail-in ballot at their polling place on election day and to then vote in-person, and

(2) the ability for voters to vote provisionally on election day when a mail-in ballot has already been received for them, but when they did not cast those mail-in ballots, who sought to vote in person during early voting but was told she already voted; she emphasized that she had not. The clerk told her he would add her manually with no explanation as to who or how someone voted using her name. (Attached hereto as Exh. 13, Aff. Ursula Wolf)

73.

Another observer for the ballot recount testified that "*at no time did I witness any Recounter or individual participate in the recount verifying signatures [on mail-in ballots].*" (Attached hereto as Exh. 14, Nicholas Zeher Aff).

74.

In some counties, there was no actual "hand" recounting of the ballots during the Hand Recount, but rather, County Officials and their employees

simply conducted another machine count of the *same* ballots. (See. Exh. 9, 10). That will not reveal the massive fraud of which plaintiffs complain.

75.

A large number of ballots were identical and likely fraudulent. An Affiant explains that she observed a batch of utterly pristine ballots:

> 14. Most of the ballots had already been handled; they had been written on by people, and the edges were worn. They showed obvious use. However, one batch stood out. It was pristine. There was a difference in the texture of the paper - it was if they were intended for absentee use but had not been used for that purposes. There was a difference in the feel.
>
> 15. These different ballots included a slight depressed pre-fold so they could be easily folded and unfolded for use in the scanning machines. There were no markings on the ballots to show where they had com~ from, or where they had been processed. These stood out.
>
> 16. In my 20 years of experience of handling ballots, I observed that the markings for the candidates on these ballots were unusually uniform, perhaps even with a ballot-marking device. By my estimate in observing these ballots, approximately 98% constituted votes for Joe Biden. I only observed two of these ballots as votes for President Donald J. Trump." (See Exh. 15 Attached hereto).

76.

The same Affiant further testified specifically to the breach of the chain of custody of the voting machines the night before the election stating:

> we typically receive the machines, the ballot marking devices – on the Friday before the election, with a chain of custody letter to be signed on Sunday, indicating that we had received the machines and the counts on the machines when received, and that the machines have been sealed. **In this case, we were asked to sign the chain of custody letter on Sunday, even though the machines were not delivered until 2:00 AM in the morning on Election Day.**

> The Milton precinct received its machines at 1:00 AM in the morning on Election Day. This is unacceptable and voting machines should [not] be out of custody prior to an Election Day. *Id.*

II. EVIDENCE OF FRAUD

A PATTERN SHOWING THE ABSENCE OF MISTAKE

77.

The stunning pattern of the nature and acts of fraud demonstrate an absence of mistake.

78.

The same Affiant further explained, in sworn testimony, that the breach included: "when we did receive the machines, they were not sealed or locked, the serial numbers were not what were reflected on the related documentation…" *See Id.*

79.

An affiant testified that "While in Henry County, I personally witnessed ballots cast for Donald Trump being placed in the pile for Joseph Biden, I witnessed this happen at table "A".' (See Exh. 14, par. 27).

80.

The Affiant further testified, that "when this was brought to Ms. Pitts attention, it was met with extreme hostility. At no time did I witness any ballot cast for Joseph Biden be placed in the pile for Donald Trump. (See Exh. 14, par. 28).

81.

Another Affiant in the mail-in ballot and absentee ballot recounting process, testified in her sworn affidavit, that "on November 16, 2020 … It was also of particular interest to me to see that signatures were not being verified and there were no corresponding envelopes seen in sight." (See Exh. 10, at Par. 7).

82.

Yet another Affiant, in the recount process, testified that he received push back and a lack of any cooperation and was even threatened as if he did something wrong, when he pointed out the failure to follow the rules with the observers while open mail-in ballot re-counting was occurring, stating:

> "However, as an observer, I observed that the precinct had twelve (12) counting tables, but only one (1) monitor from the Republican Party. I brought it up to Erica Johnston since the recount rules provided for one (1) monitor from each Party per ten (10) tables or part thereof…"

(See Attached hereto, Exh. 16, Ibrahim Reyes Aff.)

83.

Another Affiant explains a pattern of behavior that is alarming, in his position as an observer in the recount on absentee ballots with barcodes, he testified:

> ***I witnessed two poll workers placing already separated paper machine receipt ballots with barcodes in the Trump tray, placing them in to the Biden tray.*** I also witnessed the same two poll workers putting the already separated paper receipt b*a*llots in

> the "No Vote" and "Jorgensen" tray, and removing them and putting them inside the Biden tray, They then took out all of the ballots out of the Biden tray and stacked them on the table, writing on the count ballot sheet.

(See Attached hereto, Exh.17, pars. 4-5, Aff. of Consetta Johson).

84.

Another Affiant, a Democrat, testified in his sworn affidavit, that before he was forced to move back to where he could not see, he had in fact seen "absentee ballots for Trump inserted into Biden's stack, and counted as Biden votes. This occurred a few times". (See attached hereto, Exh. 18 at Par. 12, Aff. of Carlos Silva).

85.

Yet another Affiant testified about the lack of process and the hostility only towards the Republican party, which is a violation of the Equal Protection Clause. He testified:

> I also observed throughout my three days in Atlanta, not once did anyone verify these ballots. In fact, there was no authentication process in place and no envelopes were observed or allowed to be observed. I saw hostility towards Republican observers but never towards Democrat observers. Both were identified by badges.

(*See Id.*, at pars. 13-14).

86.

Another Affiant explained that his ballot was not only not processed in accordance with Election law, he witnessed people reviewing his ballot to decide where to place it, which violated the privacy of his ballot, and when he

tried to report it to a voter fraud line, he never received any contact or cooperation stating:

> "I voted early on October 12 at the precinct at Lynwood Park … Because of irregularities at the polling location, I called the voter fraud line to ask why persons were discussing my ballot and reviewing it to decide where to place it. When I called the state fraud line, I was directed to a worker in the office of the Secretary of State…"

(See Attached hereto, Exh. 19, Andrea ONeal Aff, at par. 3).

87.

He further testified that when he was an Observer at the Lithonia location, he saw many irregularities, and specifically "saw an auditor sort Biden votes that he collected and sorted into ten ballot stacks, which [the auditor] did not show anyone." Id. at p. 8.

88.

Another Affiant testified about the use of different paper for ballots, that would constitute fraud stating:

> I noticed that almost all of the ballots I reviewed were for Biden. Many batches went 100% for Biden. I also observed that the watermark on at least 3 ballots were solid gray instead of transparent, leading me to believe the ballot was counterfeit. I challenged this and the Elections Director said it was a legitimate ballot and was due to the use of different printers. Many ballots had markings for Biden only, and no markings on the rest of the ballot.

(See Attached hereto, Exh. 20, Aff of Debra J. Fisher, at pars. 4, 5, 6).

89.

An Affiant testified, that while at the Audit, **'While in Henry County, I personally witnessed ballots cast for Donald Trump being placed in the pile for Joseph Biden. I witnessed this happen at table "A"**". (*See* attached hereto as Exh. 22, Kevin Peterford, at par. 29). Another Affiant testified, that "I witnessed two poll workers placing already separated paper machine receipt ballots with barcodes in the Trump tray, placing them in to the Biden tray. I also witnessed the same two poll workers putting the already separated paper receipt abllots in the "No Vote" and "Jorgensen" tray, and removing them and putting them inside the Biden tray, They then took out all of the ballots out of the Biden tray and stacked them on the table, writing on the count ballot sheet. (See Exh. 17, Johnson, pars. 4-5).

90.

Another Affiant, a Democrat, testified in his sworn affidavit, before he was forced to move back to where he could not see, he had in fact seen**, "*I also saw absentee ballots for Trump inserted***

***into Biden's stack, and counted as Biden votes. This occurred a few times*".** (See Exh. 18, Par. 12).

91.

A Republican National Committee monitor in Georgia's election recount, Hale Soucie, told an undercover journalist there are individuals counting ballots who have made continuous errors," writes O'Keefe. Project Veritas, Watch: Latest Project Veritas Video reveals "Multiple Ballots Meant for Trump Went to Biden in Georgia.[11]

B. THE VOTING MACHINES, SECRECY SOFTWARE USED BY VOTING MACHINES THROUGHOUT GEORGIA IS CRUCIAL

92.

These violations of federal and state laws impacted the election of November 3, 2020 and set the predicate for the evidence of deliberate fraudulent conduct, manipulation, and lack of mistake that follows. The commonality and statewide nature of these legal violations renders certification of the legal vote untenable and warrants immediate

[11] https://hannity.com/media-room/watch-latest-project-veritas-video-reveals-multiple-ballots-meant-for-trump-went-to-biden-in-georgia/

impoundment of voting machines and software used throughout Georgia for expert inspection and retrieval of the software.

93.

An Affiant, who is a network & information cyber-security 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* attached hereto Exh 22, Declaration of Ronald Watkins, at par. 11).

94.

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 par. 8).

95.

Affiant further testifies that the Dominion/ Smartmatic user manual itself makes clear that the system allows for threshold settings to be set to mark all ballots as "problem ballots" for *discretionary determinations* on where the vote goes. It states:

> *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 "NotCastImages". 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 "NotCastImages" 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 pars. 9-10.

96.

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. 11-13 (emphasis supplied).

97.

It was announced on "Monday, [July 29, 2019], [that] Governor Kemp awarded a contract for 30,000 new voting machines to Dominion Voting Systems, scrapping the state's 17-year-old electronic voting equipment and replacing it with touchscreens that print out paper ballots."[12] Critics are quoted: "Led by Abrams, Democrats fought the legislation and pointed to cybersecurity experts who warned it would leave Georgia's elections susceptible to hacking and tampering." And "Just this week, the Fair Fight voting rights group started by [Stacy] Abrams launched a television ad

[12] *Georgia Buys New Voting Machines for 2020 Presidential Election, by Mark Niesse, the Atlanta Journal-Constitution, July 30, 2019, https://www.ajc.com/news/state--regional-govt--politics/georgia-awards-contract-for-new-election-system-dominion-voting/tHh3V8KZnZivJoVzZRLO4O/*

critical of the bill. In a statement Thursday, the group called it "corruption at its worst" and a waste of money on "hackable voting machines."[13]

98.

It was further reported in 2019 that the new Dominion Voting Machines in Georgia "[w]ith Georgia's current voting system, there's **no way to guarantee that electronic ballots accurately reflect the choices of voters because there's no paper backup to verify results**, with it being reported that:

> (a) Recounts are meaningless on the direct-recording electronic voting machines because they simply reproduce the same numbers they originally generated.
>
> (b) But paper ballots alone won't protect the sanctity of elections on the new touchscreens, called ballot-marking devices.
>
> (c) The new election system depends on voters to verify the printed text of their choices on their ballots, a step that many voters might not take. The State Election Board hasn't yet created regulations for how recounts and audits will be conducted. And paper ballots embed selections in bar codes that are only readable by scanning machines, leaving Georgians uncertain whether the bar codes match their votes.[14]

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[13] *Georgia Governor Inks Law to Replace Voting Machines, The Atlanta Journal-Constitution, AJC News Now, by Greg Bluestein and Mark Niesse, June 14, 2019; Credit: Copyright 2019 The Associated Press, June 2019*

i. *As part of the scheme and artifice to defraud the plaintiffs, the candidates and the voters of undiminished and unaltered voting results in a free and legal election, the Defendants and other persons known and unknown committed the following violations of law:*

50 U.S.C. § 20701 requires the retention and preservation of records and papers by officers of elections under penalty of fine and imprisonment:

> **§ 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.

50 U.S.C.§ 20701.

99.

In the primaries it was confirmed that, "The rapid introduction of new technologies and processes in state voting systems heightens the risk of

foreign interference and insider tampering. That's true even if simple human error or local maneuvering for political advantage are more likely threats[15].

100.

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."[16]

101.

As evidence of the defects or features 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.**[17]

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[15] *See Threats to Georgia Elections Loom Despite New Paper Ballot Voting, By Mark Niesse, The Atlanta Journal-Constitution and (The AP, Vote-by-Mail worries: A leaky pipeline in many states, August 8, 2020).*

[16] Penn Wharton Study by Matt Caufield, The Business of Voting, July 2018.

[17] Attached hereto, Exh. 23, copy of 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.

102.

Plaintiffs have since learned that the "glitches" in the Dominion system–that have the uniform effect of taking votes from Trump and shifting them to Biden—have been widely reported in the press and confirmed by the analysis of independent experts.

103.

Plaintiffs can show, through expert and fact witnesses that:

c. Dominion/ Smartmatic Systems Have Massive End User Vulnerabilities.

1. Users on the ground have full admin privileges to machines and software. Having been created to "rig" elections, 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 correct folder. Any anomaly, such as pen drips or bleeds, results in a ballot being rejected. It is then handed over to a poll worker to analyze and decide if it should count. This creates massive opportunity for purely discretionary and improper vote "adjudication."

2. Affiant witness (name redacted for security reasons[18]), 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 to insure Venezuelan dictator Hugo Chavez never lost an election and he saw it work. Id.

   "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. 2, pars. 6, 9, 10).

104.

Smartmatic's incorporators and inventors have backgrounds evidencing their foreign connections, including Venezuela and 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.[19]

105.

The presence of Smartmatic in the United States—owned by foreign nationals, and Dominion, a Canadian company with its offices such as the Office of General Counsel in Germany, would have to be approved by CFIUS. CFIUS was created in 1988 by the Exon-Florio Amendment to the Defense Production Act of 1950. CFIUS' authorizing statute was amended by the Foreign Investment and National Security Act of 2007 (FINSA).

> As amended, section 721 of the DPA directs "the President, acting through [CFIUS]," to review a "**covered transaction to determine the effects of the transaction on the national security of the United States.**" 50 U.S.C. app. § 2170(b)(1)(A). Section 721 defines

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19 https://patents.justia.com/assignee/smartmatic-corp

> a covered transaction as "any merger, acquisition, or takeover …, by or with any foreign person which could result in foreign control of any person engaged in interstate commerce in the United States." Id. § 2170(a)(3). *Ralls Corp. v. Comm. on Foreign Inv.*, 758 F.3d 296, 302, 411 U.S. App. D.C. 105, 111, (2014). Review of covered transactions under section 721 begins with CFIUS. As noted, CFIUS is chaired by the Treasury Secretary and its members include the heads of various federal agencies and other high-ranking Government officials with foreign policy, national security and economic responsibilities.

106.

Then Congresswoman Carolyn Maloney wrote October 6, 2006 to the Secretary of Treasury, Henry M. Paulson, Jr., Objecting to approval of Dominion/Smartmatic by CFIUS because of its corrupt Venezuelan origination, ownership and control. (See attached hereto as Exh. 24, Carolyn Maloney Letter of October 6, 2006). Our own government has long known of this foreign interference on our most important right to vote, and it had either responded with incompetence, negligence, willful blindness, or abject corruption. In every CFIUS case, there are two TS/SCI reports generated. One by the ODNI on the threat and one by DHS on risk to critical infrastructure. Smartmatic was a known problem when it was nonetheless approved by CFIUS.

107.

The Wall Street Journal in 2006 did an investigative piece and found that, “Smartmatic came to prominence in 2004 when its machines were used

in an election to recall President Chávez, which Mr. Chávez won handily -- and which the Venezuelan opposition said was riddled with fraud. Smartmatic put together a consortium to conduct the recall elections, including a company called Bizta Corp., in which Smartmatic owners had a large stake. For a time, the Venezuelan government had a 28% stake in Bizta in exchange for a loan.'[20] …"Bizta paid off the loan in 2004, and Smartmatic bought the company the following year. But accusations of Chávez government control of Smartmatic never ended, especially since Smartmatic scrapped a simple corporate structure, in which it was based in the U.S. with a Venezuelan subsidiary, for a far more complex arrangement. The company said it made the change for tax reasons, but critics, including Rep. Carolyn Maloney (D., N.Y.) and TV journalist Lou Dobbs, pounded the company for alleged links to the Chávez regime. *Id*. Since its purchase by Smartmatic, Sequoia's sales have risen sharply to a projected $200 million in 2006, said Smartmatic's chief executive, Anthony Mugica." *Id.*

108.

Indeed, Mr. Cobucci testified, through his sworn affidavit, that he born in Venezuela, is cousins with Antonio ('Anthony') Mugica, and he has

[20] *See WSJ.com, Smartmatic to Sell U.S. Unit, End Probe into Venezuelan Links, by Bob Davis, 12/22/2006,* h*ttps://www.wsj.com/articles/SB116674617078557263*

personal knowledge of the fact that Anthony Mugica incorporated Smartmatic in the U.S. in 2000 with other family members in Venezuela listed as owners. He also has personal knowledge that Anthony Mugica manipulated Smartmatic to ensure the election for Chavez in the 2004 Referendum in Venezuela. He also testified, through his sworn affidavit, that Anthony Mugica received tens of millions of dollars from 2003- 2015 from the Venezuelan government to ensure Smartmatic technology would be implemented around the world, including in the U.S. (See attached hereto, Exh. 25, Juan Carlos Cobucci Aff.)

109.

Another Affiant witness testifies that in Venezuela, she was in an official position related to elections and witnessed manipulations of petitions to prevent a removal of President Chavez and because she protested, she was summarily dismissed. Corroborating the testimony of our secret witness, and our witness Mr. Cobucci, cousin of Anthony Mugica, who began Smartmatic, and this witness explains the vulnerabilities of the electronic voting system and Smartmatica to such manipulations. (See Exh. 3, Diaz Cardozo Aff).

110.

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-cast 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 Exh. 7). [21]

b. Voting machines were able to be connected to the internet by way of laptops that were obviously internet accessible. If one laptop 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. [22]

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[21] *Ballot Marking Devices (BMDs) Cannot Assure the Will of the Voters,* Andrew W. Appel, Richard T. DeMillo, University of California, Berkeley, 12/27/2019.

[22] *Exclusive: Critical U.S. Election Systems Have Been Left Exposed Online Despite Official Denials, Motherboard Tech by Vice, by Kim Zetter, August 8, 2019, https://www.vice.com/en/article/3kxzk9/exclusive-critical-us-election-systems-have-been-left-exposed-online-despite-official-denials*

d. October 6, 2006 – Congresswoman Carolyn Maloney called on Secretary of Treasury Henry Paulson to conduct an investigation into Smartmatic based on its foreign ownership and ties to Venezuela. (See Exh. 24)

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." *Id.*

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," according to a report published by UK-based AccessWire[23].

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

[23] *Voting Technology Companies in the U.S. – Their Histories and Present Contributions, Access Wire, August 10, 2017, https://www.accesswire.com/471912/Voting-Technology-Companies-in-the-US--Their-Histories.*

inventory provided by Smartmatic is inadequate, … which brings into question the software credibility…"[24]

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).[25].

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 international community hailed the automation of that first election in the Philippines.[26] 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

[24] *Smartmatic-TIM running out of time to fix glitches, ABS-CBN News, May 4, 2010 https://news.abs-cbn.com/nation/05/04/10/smartmatic-tim-running-out-time-fix-glitches*
[25] *The Business of Voting*, Penn Wharton, Caufield, p. 16.
[26] *Smartmatic-TIM running out of time to fix glitches, ABS-CBN News, May 4, 2010 https://news.abs-cbn.com/nation/05/04/10/smartmatic-tim-running-out-time-fix-glitches*

the voting machines prior to elections so that it could be independently verified.[27]

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 attached hereto as Exh. 26, copy of Senator Warren, Klobuchar, Wyden's December 6, 2019 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

[27] Presumably the machiens were not altered following submission of the code. 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."[28]

111.

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. 7).

112.

An expert witness in pending litigation in the United States District Court, Northern District Court of Georgia, Atlanta Div., 17-cv-02989 specifically testified to the acute security vulnerabilities, among other facts, by declaration filed on October 4, 2020, (See Exh. 4B, Document 959-4

[28] *Exclusive: Critical U.S. Election Systems Have Been Left Exposed Online Despite Official Denials, Motherboard Tech by Vice, by Kim Zetter, August 8, 2019, https://www.vice.com/en/article/3kxzk9/exclusive-critical-us-election-systems-have-been-left-exposed-online-despite-official-denials*

attached hereto, paragraph. 18 and 20 of p. 28, Exh. 4, Hursti Declaration). wherein he testified or found:

1) The failure of the Dominion software "*to meet the methods and processes for national standards for managing voting system problems and should not be accepted for use in a public election under any circumstances*."

2) In Hursti's declaration he explained that "There is evidence of remote access and remote troubleshooting which presents a grave security implication and certified identified vulnerabilities should be considered an "extreme security risk." *Id*. Hari Hursti also explained that USB drives with vote tally information were observed to be removed from the presence of poll watchers during a recent election. *Id*. The fact that there are no controls of the USB drives was seen recently seen the lack of physical security and compliance with professional standards, " in one Georgia County, where it is reported that 3,300 votes were found on memory sticks not loaded plus in Floyd county, another 2,600 were unscanned, and the "found votes" reduced Biden's lead over Donald Trump[29].

(a) In the prior case against Dominion, supra, further implicating the secrecy behind the software used in Dominion Systems,

[29] *Recount find thousands of Georgia votes*, Atlanta Journal-Constitution by Mark Niesse and David Wickert,11/19/20. https://www.ajc.com/politics/recount-finds-thousands-of-georgia-votes-missing-from-initial-counts/ERDRNXPH3REQTM4SOINPSEP72M/

Dr. Eric Coomer, a Vice President of Dominion Voting Systems, testified that even he was not sure of what testing solutions were available to test problems or how that was done, " *I have got to be honest, we might be a little bit out of my bounds of understanding the rules and regulations*… and in response to a question on testing for voting systems problems in relation to issues identified in 2 counties, he explained that "*Your Honor, I'm not sure of the complete test plan… Again Pro V&V themselves determine what test plan in necessary based on their analysis of the code itself*." (*Id*. at Document 959-4, pages 53, 62 L.25- p. 63 L3).

113.

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).

114.

Rather than engaging in an open and transparent process to give credibility to Georgia's brand-new voting system, the election processes were

hidden during the receipt, review, opening, and tabulation of those votes in direct contravention of Georgia's Election Code and federal law.

115.

The House of Representatives passed H.R. 2722 in an attempt to address these very risks identified by Hursti, on June 27, 2019:

> *This bill addresses election security through grant programs and requirements for voting systems and paper ballots.*
>
> *The bill establishes requirements for voting systems, including that systems (1) use individual, durable, voter-verified paper ballots; (2) make a voter's marked ballot available for inspection and verification by the voter before the vote is cast; (3) ensure that individuals with disabilities are given an equivalent opportunity to vote, including with privacy and independence, in a manner that produces a voter-verified paper ballot; (4) be manufactured in the United States; and (5) meet specified cybersecurity requirements, including the prohibition of the connection of a voting system to the internet.*

ADDITIONAL SPECIFIC FRAUD

116.

On November 4, 2020, the Georgia GOP Chairman issued the following statement:

> *"Let me repeat. Fulton County elections officials told the media and our observers that they were shutting down the tabulation center at State Farm Arena at 10:30 p.m. on election night to continue counting ballots in secret until 1:00 a.m.* [30]

117.

It was widely reported that "As of 7 p.m. on Wednesday Fulton County Elections officials said 30,000 absentee ballots were not processed due to a pipe burst."[31] Officials reassured voters that none of the ballots were damaged and the water was quickly cleaned up. But the emergency delayed officials from processing ballots between 5:30 a.m. and 9:30 a.m. Officials say they continued to count beginning at 8:30 a.m. Wednesday. The statement from Fulton County continues:

> "Tonight, Fulton County will report results for approximately 86,000 absentee ballots, as well as Election Day and Early Voting results. These represent the vast majority of ballots cast within Fulton County.
>
> "As planned, Fulton County will continue to tabulate the remainder of absentee ballots over the next two days. Absentee ballot processing requires that each ballot is opened, signatures verified, and ballots scanned. This is a labor-intensive process that takes longer to tabulate than other forms of voting. Fulton County did not anticipate having all absentee ballots processed on Election Day." Officials said they will work to ensure every vote is counted and all laws and regulations are followed.[32]

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[31] "4,000 remaining absentee ballots being counted in Fulton County", Fox 5 Atlanta, November 3, 2020, https://www.fox5atlanta.com/news/pipe-burst-at-state-farm-arena-delays-absentee-ballot-processing

[32] 4,000 remaining absentee ballots being counted in Fulton County, Fox 5 Atlanta, November 3, 2020, https://www.fox5atlanta.com/news/pipe-burst-at-state-farm-arena-delays-absentee-ballot-processing

118.

Plaintiffs have learned that the representation about "a water leak affecting the room where absentee ballots were counted" was not true. The only water leak that needed repairs at State Farm Arena from November 3 – November 5 was a toilet overflow that occurred earlier on November 3. It had nothing to do with a room with ballot counting, but the false water break representation led to "everyone being sent home." Nonetheless, first six (6) people, then three (3) people stayed until 1:05 a.m. working on the computers.

119.

An Affiant recounts how she was present at State Farm Arena on November 3, and saw election workers remaining behind after people were told to leave. (See Exh. 28, Affidavit of Mitchell Harrison; Exh. 29, Affid. of Michelle Branton)

120.

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. Dominion altered its website after

Colorado resident Joe Oltmann disclosed that as a reporter he infiltrated ANTIFA, a domestic terrorist organization where he recorded Eric Coomer representing: "Don't worry. Trump won't win the election, we fixed that." – as well as social media 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).[33]

121.

While the bedrock of American elections has been transparency, almost every crucial aspect of Georgia's November 3, 2020, General Election was shrouded in secrecy, rife with "errors," and permeated with anomalies so egregious as to render the results incapable of certification.

MULTIPLE EXPERT REPORTS AND STATISTICAL ANALYSES PROVE HUNDREDS OF THOUSANDS OF VOTES WERE LOST OR SHIFTED THAT COST PRESIDENT TRUMP AND THE REPUBLICAN CANDIDATES OF CONGRESSIONAL DISTRICTS 6 AND 7 THEIR RACES.

122.

As evidenced by numerous public reports, expert reports, and witness statements, Defendants egregious misconduct has included ignoring legislative mandates concerning mail-in and ordinary ballots and led to

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33 Malkin Live: Election Update, Interview of Joe Oltmann, by Michelle Malkin, November 13, 2020, *available at:* https://www.youtube.com/watch?v=dh1X4s9HuLo&fbclid=IwAR2EaJc1M9RT3DaUraAjsycM0uPKB3uM_-MhH6SMeGrwNyJ3vNmlcTsHxF4

disenfranchisement of an enormous number of Georgia voters. Plaintiffs experts can show that, consistent with the above specific misrepresentations, analysis of voting data reveals the following:

(a) Regarding uncounted mail ballots, based on evidence gathered by Matt Braynard in the form of recorded calls and declarations of voters, and analyzed by Plaintiff's expert, Williams M. Briggs, PhD, shows, based on a statistically significant sample, **that the total number of mail ballots that voters mailed in, but were never counted, have a 95% likelihood of falling between 31,559 and 38,886 total lost votes.** This range exceeds the margin of loss of President Trump of 12,670 votes by at least 18,889 lost votes and by as many as 26,196 lost votes. (See Exh. 1, Dr. Briggs' Report, with attachments).

(b) Plaintiff's expert also finds that **voters received tens of thousands of ballots that they never requested.** (See Exh. 1). Specifically, Dr. Briggs found that in the state of Georgia, based on a statistically significant sample, the expected amount of persons that received an absentee ballot that they did not request ranges from 16,938 to 22,771. **This range exceeds the margin of loss of**

President Trump by 12,670 votes by at least 4,268 unlawful requests and by as many as 10,101 unlawful requests. *Id.*

(c) This widespread pattern, as reflected within the population of unreturned ballots analyzed by Dr. Briggs, reveals the unavoidable reality that, in addition to the calculations herein, third parties voted an untold number of unlawfully acquired absentee or mail-in ballots, which would not be in the database of unreturned ballots analyzed here. See O.G.C.A. 21-2-522. **These unlawfully voted ballots prohibited properly registered persons from voting and reveal a pattern of widespread fraud down ballot as well.**

(d) **Further, as calculated by Matt Braynard, there exists clear evidence of 20,311 absentee or early voters in Georgia that voted while registered as having moved out of state.** (See Id., attachment to report). Specifically, these persons were showing on the National Change of Address Database (NCOA) as having moved, or as having filed subsequent voter registration in another state also as evidence that they moved and even potentially voted in another state. The 20,311 votes by persons documented as having moved exceeds the margin by which Donald Trump lost the election by 7,641 votes.

(e) Applying *pro-rata* the above calculations separately to Cobb County based on the number of unreturned ballots, a range of 1,255 and 1,687 ballots ordered by 3rd parties and a range of 2,338 and 2,897 lost mail ballots, plus 10,684 voters documented in the NCOA as having moved, **for a combined minimum of 14,276 missing and unlawful ballots, and maximum of 15,250 missing and unlawful ballots, which exceeds the statewide Presidential race total margin by a range of as few as 1,606 ballots and as many as 2,580 in the County of Cobb alone impacting the Cobb County Republican Party ("Cobb County Republicans").**

123.

As seen from the **expert analysis of Eric Quinnell**, mathematical anomalies further support these findings, when in various districts within Fulton County such as vote gains that exceed reasonable expectations when compared to 2016, and a failure of gains to be normally distributed but instead shifting substantially toward the tail of the distribution in what is known as a platykurtic distribution. Dr. Quinell identifies numerous anomalies such as votes to Biden in excess of 2016 exceed the registrations that are in excess of 2016. Ultimately, he identifies the counties in order of their excess performance over what would have fit in a

normal distribution of voting gains, revealing a list of the most anomalous counties down to the least. These various anomalies provide evidence of voting irregularities. (See Exh.27, Declaration of Eric Quinnell, with attachments).

124.

In sum, with the expert analysis of William M. Briggs PhD based on recorded calls and declarations, the extent of missing AND unlawfully requested ballots create substantial evidence that the mail ballot system has fundamentally failed to provide a fair voting mechanism. In short, tens of thousands of votes did not count while the pattern of fraud makes clear that tens of thousands were improperly counted. This margin of victory in the election for Mr. Biden was only 12,670 and cannot withstand most of these criticisms individually and certainly not in aggregate.

125.

Cobb county, based on lost votes, unlawfully requested votes and NCOA data on these facts alone would consume more than the entire margin of the statewide difference in the Presidential race. These election results must be reversed.

126.

Applying *pro-rata* the above calculations separately to Cobb County based on the number of unreturned ballots, a range of 1,255 and 1,687 ballots

ordered by 3rd parties and a range of 2,338 and 2,897 lost mail ballots, plus 10,684 voters documented in the NCOA as having moved, **for a combined minimum of 14,276 missing and unlawful ballots, and maximum of 15,250 missing and unlawful ballots, which exceeds the statewide Presidential race total margin by a range of as few as 1,606 ballots and as many as 2,580 in the County of Cobb alone impacting the Cobb County Republican Party ("Cobb County Republicans").** (See Exh. 1).

127.

Mr. Braynard also found a pattern in Georgia of voters registered at totally fraudulent residence addresses, including shopping centers, mail drop stores and other non-residential facilities[34].

128.

In sum, with the expert analysis of William M. Briggs PhD based on extensive investigation, recorded calls and declarations collected by Matt Braynard, (See attachments to Exh. 1, Briggs' report) the extent of missing and unlawfully requested ballots create substantial evidence that the mail ballot system has fundamentally failed to provide a fair voting mechanism. In

[34] Matt Braynard, https://twitter.com/MattBraynard/status/1331324173910761476; https://twitter.com/MattBraynard/status/1331299873556086787?s=20; (a) https://twitter.com/MattBraynard/status/1331299873556086787?s=20

short, tens of thousands of votes did not count while the pattern of fraud and mathematical anomalies that are impossible absent malign human agency makes clear that tens of thousands were improperly counted. This margin of victory in the election for Mr. Biden was only 12,670 and cannot withstand most of these criticisms individually and certainly not in aggregate.

129.

Cobb county, based on lost votes, unlawfully requested votes and NCOA data on these facts alone would consume more than the entire margin of the statewide difference in the Presidential race.

130.

Russell Ramsland confirms that data breaches in the Dominion software permitted rogue actors to penetrate and manipulate the software during the recent general election. He further concludes that at least 96,600 mail-in ballots were illegally counted as they were not cast by legal voters.

131.

In sum, as set forth above, for a host of independent reasons, the Georgia certified election results concluding that Joe Biden received 12,670 more votes that President Donald Trump must be set aside.

COUNT I

DEFENDANTS VIOLATED THE ELECTIONS CLAUSE AND 42 U.S.C. § 1983

132.

Plaintiffs reallege all preceding paragraphs as if fully set forth herein.

133.

The Electors Clause states that "[e]ach State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors" for President. 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." Art. I, § 4, cl. 1 (emphasis added).

134.

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).

135.

Defendants are not part of the General Assembly and cannot exercise legislative power. Rather, Defendants' power is limited to "tak[ing] care that the laws be faithfully executed." Pa. Const. Art. IV, § 2. Because the United States Constitution reserves for the General Assembly 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.

136.

Defendants are not the legislature, and their unilateral decision to create a "cure procedure" violates the Electors and Elections Clauses of the United States Constitution.

137.

The Secretary of State and the State Election Board are not the legislature, and their decision to permit early processing of absentee ballots in direct violation of the unambiguous requirements of O.C.G.A. § 21-2-386(a)(2) violates the Electors and Elections Clauses of the United States Constitution.

138.

Many Affiants testified to many legal infractions in the voting process, including specifically switching absentee ballots or mail-in ballots for Trump to Biden. Even a Democrat testified in his sworn affidavit that before he was forced to move back to where he could not see, he had in fact seen, "*I also saw absentee ballots for Trump inserted into Biden's stack, and counted as Biden votes. This occurred a few times*". (See Exh. 18, Par. 12).

139.

Plaintiff's expert also finds that voters received tens of thousands of ballots that they never requested. (See Exh. 1, Dr. Briggs' Report). Specifically, Dr. Briggs found that in the state of Georgia, based on a statistically significant sample, the expected amount of persons that received an absentee ballot that they did not request one ranges from 16,938 to 22,771. This range exceeds the margin of loss of President Trump by 12,670 votes by at least 4,268 unlawful requests and by as many as 10,101 unlawful requests.

140.

This widespread pattern, as reflected within the population of unreturned ballots analyzed by Dr. Briggs, reveals the unavoidable reality that, in addition to the calculations herein, third parties voted an untold number of unlawfully acquired absentee or mail-in ballots, which would not

be in the database of unreturned ballots analyzed here. *See* O.G.C.A. 21-2-522. These unlawfully voted ballots prohibited properly registered persons from voting and reveal a pattern of widespread fraud.

141.

Further, as shown by data collected by Matt Braynard, there exists clear evidence of 20,311 absentee or early voters in Georgia that voted while registered as having moved out of state. Specifically, these persons were showing on the National Change of Address Database (NCOA) as having moved, or as having filed subsequent voter registration in another state also as evidence that they moved and even potentially voted in another state. The 20,311 votes by persons documented as having moved exceeds the margin by which Donald Trump lost the election by 7,641 votes.

142.

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 Clauses of the Constitution. Accordingly, the results for President and Congress in the November 3, 2020 election must be set aside. The results are infected with Constitutional violations.

COUNT II

THE SECRETARY OF STATE AND GEORGIA COUNTIES 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

143.

Plaintiffs refer to and incorporate by reference each of the prior paragraphs of this Complaint as though the same were repeated at length herein.

144.

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.").

145.

The Court has held that to ensure equal protection, a "problem inheres in the absence of specific standards to ensure its equal application. The formulation of uniform rules to determine intent based on these recurring circumstances is practicable and, we conclude, necessary." *Bush v. Gore*, 531 U.S. 98, 106, 121 S. Ct. 525, 530, 148 L. Ed. 2d 388 (2000).

146.

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.

147.

In statewide and federal elections conducted in the State of Georgia, 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.

148.

Moreover, through its provisions involving watchers and representatives, the Georgia 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.* In plain terms, the statute clearly prohibits opening absentee ballots prior to election day, while the rule authorizes doing so three weeks before election day. There is no reconciling this conflict. The State Election Board has authority under O.C.G.A. § 21-2-31 to adopt lawful and legal rules and regulations, but no authority to promulgate a regulation that is directly contrary to an unambiguous statute. Rule 183-1-14-0.9-.15 is therefore plainly and indisputably unlawful.

Plaintiffs also bring this action under Georgia law, O.C.G.A. § 21-2-522, Grounds for Contest:

149.

A result of a primary or election may be contested on one or more of the following grounds:

150.

(1) Misconduct, fraud, or irregularity by any primary or election official or officials sufficient to change or place in doubt the result;

(2) When the defendant is ineligible for the nomination or office in dispute;

(3) When illegal votes have been received or legal votes rejected at the polls sufficient to change or place in doubt the result;

(4) For any error in counting the votes or declaring the result of the primary or election, if such error would change the result; or

(5) For any other cause which shows that another was the person legally nominated, elected, or eligible to compete in a run-off primary or election. O.C.G.A. § 21-2-522.

151.

Several affiants testified to the improper procedures with absentee ballots processing, with the lack of auditable procedures with the logs in the computer systems, which violates Georgia law, and federal election law. See

also, 50 U.S.C. § 20701 requires the retention and preservation of records and papers by officers of elections under penalty of fine and imprisonment.

152.

The State Election Board re-adopted Rule 183-1-14-0.9-.15 on November 23, 2020 for the upcoming January 2021 runoff election.

153.

A large number of ballots were identical and likely fraudulent. An Affiant explains that she observed a batch of utterly pristine ballots:

> 14. Most of the ballots had already been handled; they had been written on by people, and the edges were worn. They showed obvious use. However, one batch stood out. It was pristine. There was a difference in the texture of the paper - it was if they were intended for absentee use but had not been used for that purposes. There was a difference in the feel.
>
> 15. These different ballots included a slight depressed pre-fold so they could be easily folded and unfolded for use in the scanning machines. There were no markings on the ballots to show where they had com~ from, or where they had been processed. These stood out.
>
> 16. In my 20 years of experience of handling ballots, I observed that the markings for the candidates on these ballots were unusually uniform, perhaps even with a ballot-marking device. By my estimate in observing these ballots, approximately 98% constituted votes for Joe Biden. I only observed two of these ballots as votes for President Donald J. Trump." (See Exh. 15).

154.

The same Affiant further testified specifically to the breach of the chain of custody of the voting machines the night before the election stating:

> we typically receive the machines, the ballot marking devices – on the Friday before the election, with a chain of custody letter to be signed on Sunday, indicating that we had received the machines and the counts on the machines when received, and that the machines have been sealed. **In this case, we were asked to sign the chain of custody letter on Sunday, even though the machines were not delivered until 2:00 AM in the morning on Election Day.** The Milton precinct received its machines at 1:00 AM in the morning on Election Day. This is unacceptable and voting machines should [not] be out of custody prior to an Election Day. *Id.*

155.

Defendants have a duty to treat the voting citizens in each County in the same manner as the citizens in other counties in Georgia.

156.

As set forth in Count I above, Defendants failed to comply with the requirements of the Georgia Election Code and thereby diluted the lawful ballots of the Plaintiffs and of other Georgia voters and electors in violation of the United States Constitution guarantee of Equal Protection.

157.

Specifically, Defendants denied the plaintiffs equal protection of the law and their equal rights to meaningful access to observe and monitor the electoral process enjoyed by citizens in other Georgia Counties by:

> (a) mandating that representatives at the pre-canvass and canvass of all absentee and mail-ballots be either Georgia barred

attorneys or qualified registered electors of the county in which they sought to observe and monitor;

(b) not allowing watchers and representatives to visibly see and review all envelopes containing official absentee and mail-in ballots either at or before they were opened and/or when such ballots were counted and recorded; and

(c) allowing the use of Dominion Democracy Suite software and devices, which failed to meet the Dominion Certification Report's conditions for certification.

158.

Instead, Defendants refused to credential all of the Trump Republican's submitted watchers and representatives and/or kept Trump Campaign's watchers and representatives by security and metal barricades from the areas where the inspection, opening, and counting of absentee and mail-in ballots were taking place. Consequently, Defendants created a system whereby it was physically impossible for the candidates and political parties to view the ballots and verify that illegally cast ballots were not opened and counted

159.

Many Affiants testified to switching absentee ballots or mail-in ballots for Trump to Biden, including a Democrat. He testified in his sworn affidavit, that before he was forced to move back to where he could not see, he

had in fact seen, "absentee ballots for Trump inserted into Biden's stack, and counted as Biden votes. This occurred a few times". (See Exh. 18, Par. 12).

160.

Other Georgia county boards of elections provided watchers and representatives of candidates and political parties, including without limitation watchers and representatives of the Republicans and the Trump Campaign, with appropriate access to view the absentee and mail-in ballots being pre-canvassed and canvassed by those county election boards and without restricting representatives by any county residency or Georgia bar licensure requirements.

161.

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.

162.

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.

163.

Defendants further violated Georgia voters' rights to equal protection insofar as Defendants allowed the Georgia counties to process and count ballots in a manner that allowed ineligible ballots to be counted, and through the use of Dominion Democracy Suite, allowed eligible ballots for Trump and McCormick to be switched to Biden or lost altogether. Defendants thus failed to conduct the general election in a uniform manner as required by the Equal Protection Clause of the Fourteenth Amendment and the Georgia Election Code.

164.

Plaintiffs seek declaratory and injunctive relief holding that the election, under these circumstances, was improperly certified and that the Governor be enjoined from transmitting Georgia's certified Presidential election results to the Electoral College. Georgia law 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.

165.

Alternatively, Plaintiffs seek declaratory and injunctive relief holding that the election, under these circumstances, was improperly certified and that the Governor be required to recertify the results declaring that Donald

Trump has won the election and transmitting Georgia's certified Presidential election result in favor of President Trump.

166.

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. Georgia 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. O.C.G.A. § 21-2-520 et seq.

167.

In addition to the alternative requests for relief in the preceding paragraphs, hereby restated, Plaintiffs seek a permanent injunction requiring the County Election Boards to invalidate ballots cast by: 1) voters whose signatures on their registrations have not been matched with ballot, envelope and voter registration check; 2) all "dead votes"; and 4) all 900 military ballots in Fulton county that supposedly were 100% for Joe Biden.

COUNT III

FOURTEENTH AMENDMENT EQUAL PROTECTION CLAUSE U.S. CONST. AMEND. XIV, 42 U.S.C. § 1983

DENIAL OF DUE PROCESS

DISPARATE TREATMENT OF ABSENTEE/MAIL-IN VOTERS AMONG DIFFERENT COUNTIES

168.

Plaintiffs incorporate each of the prior allegations in this Complaint.

Voting is a fundamental right protected by the Fourteenth Amendment to the United States Constitution. The Fourteenth Amendment protects the right to vote from conduct by state officials which seriously undermines the fundamental fairness of the electoral process. *Marks v. Stinson*, 19 F.3d 873, 889 (3d Cir. 1994); *Griffin*, 570 F.2d at 1077-78. "[H]aving 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 that of another." *Bush*, 531 U.S. at 104-05.

169.

Defendants are not part of the General Assembly and cannot exercise legislative power. Rather, Defendants' power is limited to executing the laws as passed by the legislature Although the Georgia General Assembly may enact laws governing the conduct of elections, "no legislative enactment may

contravene the requirements of the Georgia or United States Constitutions." *Shankey*, 257 A. 2d at 898.

170.

Federal courts "possess broad discretion to fashion an equitable remedy." *Black Warrior Riverkeeper, Inc. v. U.S. Army Corps of Engineers*, 781 F.3d 1271, 1290 (11th Cir. 2015); *Castle v. Sangamo Weston, Inc.*, 837 F.2d 1550, 1563 (11th Cir. 1988) ("The decision whether to grant equitable relief, and, if granted, what form it shall take, lies in the discretion of the district court.").

171.

Moreover, "[t]o the extent that a voter is at risk for having his or her ballot rejected due to minor errors made in contravention of those requirements, … the decision to provide a 'notice and opportunity to cure' procedure to alleviate that risk is one best suited for the Legislature[,] . . . particularly in light of the open policy questions attendant to that decision, including what the precise contours of the procedure would be, how the concomitant burdens would be addressed, and how the procedure would impact the confidentiality and counting of ballots, all of which are best left to the legislative branch of Georgia's government." *Id.*

172.

The disparate treatment of Georgia 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).

173.

Defendants are not the legislature, and their unilateral decision to create and implement a cure procedure for some but not all absentee and mail-in voters in this State violates the Due Process Clause of the United States Constitution. Plaintiffs have no adequate remedy at law and will suffer serious and irreparable harm unless the injunctive relief requested herein is granted.

COUNT IV

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

174.

Plaintiffs refer to and incorporate by reference each of the prior paragraphs of this Complaint as though the same were repeated at length herein.

175.

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 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).

176.

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).

177.

"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)).

178.

"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.

179.

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)).

180.

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.").

181.

In Georgia, the signature verification requirement is a dead letter. The signature rejection rate for the most recent election announced by the Secretary of State was 0.15%. The signature rejection rate for absentee ballot applications was .00167% - only 30 statewide. Hancock County, Georgia,

population 8,348, rejected nine absentee ballot applications for signature mismatch. Fulton County rejected eight. No other metropolitan county in Georgia rejected even a single absentee ballot application for signature mismatch. The state of Colorado, which has run voting by mail for a number of years, has a signature rejection rate of between .52% and .66%.[35] The State of Oregon had a rejection rate of 0.86% in 2016.[36] The State of Washington has a rejection rate of between 1% and 2%.[37]If Georgia rejected absentee ballots at a rate of .52% instead of the actual .15%, approximately 4,600 more absentee ballots would have been rejected.

COUNT V

THERE WAS WIDE-SPREAD BALLOT FRAUD.

OCGA 21-2-522

182.

Plaintiffs refer to and incorporate by reference each of the prior paragraphs of this Complaint as though the same were repeated at length herein.

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[35] *See* https://duckduckgo.com/?q=colorado+signature+rejection+rate&t=osx&ia=web last visited November 25,2020

[36] *See* https://www.vox.com/21401321/oregon-vote-by-mail-2020-presidential-election, last visited November 25,2020.

[37] *See* https://www.salon.com/2020/09/08/more-than-550000-mail-ballots-rejected-so-far-heres-how-to-make-sure-your-vote-gets-counted/ last visited November 25, 2020.

183.

Plaintiffs contest the results of Georgia's election, with Standing conferred under pursuant to O.G.C.A. 21-2-521.

184.

Therefore, pursuant to O.G.C.A. 21-2-522, for misconduct, fraud, or irregularity by any primary or election official or officials sufficient to change or place in doubt the result. The foundational principle that Georgia law "nonetheless 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." *Martin v. Fulton County Bd. of Registration & Elections*, 307 Ga. 193, 194, 835 S.E.2d 245, 248 (2019). The Georgia Supreme Court has made clear that Plaintiffs need not show how the [] voters would have voted if their [absentee] ballots had been regular. [] only had to show that there were enough irregular ballots to place in doubt the result." See OCGA § 21-2-520 et seq., *Mead v. Sheffield*, 278 Ga. 268, 272, 601 S.E.2d 99, 102 (1994) the Supreme Court invalidated an election, and ordered a new election because it found that,

> Thus, [i]t was not incumbent upon [the Plaintiff] to show how the [481] voters would have voted if their [absentee] ballots had been regular. He only had to show that there were enough irregular ballots to place in doubt the result. He succeeded in that task.

Id. at 271 (citing *Howell v. Fears*, 275 Ga. 627, 571 SE2d 392, (2002) (primary results invalid where ballot in one precinct omitted names of both qualified candidates).

185.

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.

186.

Prima facie evidence in multiple affidavits shows specific fraudulent acts, which directly resulted in the flipping of the race at issue:

a) votes being switched in Biden's favor away from Trump during the recount;
b) the lack of procedures in place to follow the election code, and the purchase and use, Dominion Voting System despite evidence of serious vulnerabilities;
c) a demonstration that misrepresentations were made about a pipe burst that sent everyone home, while first six, then three, unknown individuals were left alone until the morning hours working on the machines;

d) further a failure to demonstrate compliance with the Georgia's Election Codes, in maintaining logs on the Voting system for a genuine and sound audit, other than voluntary editable logs that prevent genuine audits. While the bedrock of this Democratic Republic rests on citizens' confidence in the validity of our elections and a transparent process, Georgia's November 3, 2020 General Election remains under a pall of corruption and irregularity that reflects a pattern of the absence of mistake. At best, the evidence so far shows ignorance of the truth; at worst, it proves a knowing intent to defraud.

187.

Plaintiff's expert also finds that voters received tens of thousands of ballots that they never requested. (See Exh. 1, Dr. Briggs' Report). Specifically, Dr. Briggs found that in the state of Georgia, based on a statistically significant sample, the expected amount of persons that received an **absentee ballot that they did not request ranges from 16,938 to 22,771.** This range exceeds the margin of loss of President Trump by 12,670 votes by at least 4,268 unlawful requests and by as many as 10,101 unlawful requests.

188.

This widespread pattern, as reflected within the population of unreturned ballots analyzed by Dr. Briggs, reveals the unavoidable reality that, in addition to the calculations herein, third parties voted an untold number of unlawfully acquired absentee or mail-in ballots, which would not be in the database of unreturned ballots analyzed here. See O.G.C.A. 21-2-522. These unlawfully voted ballots prohibited properly registered persons from voting and reveal a pattern of widespread fraud.

189.

Further, there exists clear evidence of 20,311 absentee or early voters in Georgia that voted while registered as having moved out of state. Specifically, these persons were showing on the National Change of Address Database (NCOA) as having moved, or as having filed subsequent voter registration in another state also as evidence that they moved and even potentially voted in another state. The 20,311 votes by persons documented as having moved exceeds the margin by which Donald Trump lost the election by 7,641 votes.

190.

Plaintiffs" expert Russell Ramsland concludes that at least 96,600 mail-in ballots were fraudulently cast. He further concludes that up to

136,098 ballots were illegally counted as a result of improper manipulation of the Dominion software. (Ramsland Aff).

191.

The very existence of absentee mail in ballots created a heightened opportunity for fraud. The population of unreturned ballots analyzed by William Briggs, PhD, reveals the probability that a far greater number of mail ballots were requested by 3rd parties or sent erroneously to persons and voted fraudulently, undetected by a failed system of signature verification. The recipients may have voted in the name of another person, may have not had the legal right to vote and voted anyway, or may have not received the ballot at the proper address and then found that they were unable to vote at the polls, except provisionally, due to a ballot outstanding in their name.

192.

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 Georgia 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 of votes between the presidential candidates in the

state. For these reasons, Georgia cannot reasonably rely on the results of the mail vote.

193.

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).

194.

Plaintiffs have no adequate remedy at law. As seen from the expert analysis of William Higgs, PhD, based on actual voter data, tens of thousands of votes did not count, and tens of thousands of votes were unlawfully requested.

195.

The Fourteenth Amendment Due Process Clause protects the right to vote from conduct by state officials which seriously undermines the fundamental fairness of the electoral process. *Marks v. Stinson*, 19 F.3d 873, 889 (3d Cir. 1994); *Griffin v. Burns*, 570 F.2d 1065, 1077-78 (1st Cir. 1978).

196.

Separate from the Equal Protection Clause, the Fourteenth Amendment's due process clause protects the fundamental right to vote against "the disenfranchisement of a state electorate." *Duncan v. Poythress*, 657 F.2d 691, 702 (5th Cir. 1981). "When an election process 'reaches the point of patent and fundamental unfairness,' there is a due process violation." *Florida State Conference of N.A.A.C.P. v. Browning*, 522 F.3d 1153, 1183-84 (11th Cir. 2008) (*quoting Roe v. Alabama*, 43 F.3d 574, 580 (11th Cir.1995) (*citing Curry v. Baker*, 802 F.2d 1302, 1315 (11th Cir.1986))). *See also Griffin*, 570 F.2d at 1077 ("If the election process itself reaches the point of patent and fundamental unfairness, a violation of the due process clause may be indicated and relief under § 1983 therefore in order."); *Marks v. Stinson*, 19 F.3d 873, 889 (3d Cir. 1994) (enjoining winning state senate candidate from exercising official authority where absentee ballots were obtained and cast illegally).

197.

Part of courts' justification for such a ruling is the Supreme Court's recognition that the right to vote and to free and fair elections is one that is preservative of other basic civil and political rights. *See Black*, 209 F.Supp.2d at 900 (quoting *Reynolds*, 377 U.S. at 561-62 ("since the right to exercise the franchise in a free and unimpaired manner is preservative of other basic civil and political rights, any alleged infringement of the right of citizens to vote must be carefully and meticulously scrutinized.")); see also *Yick Wo v. Hopkins*, 118 U.S. 356, 370 (1886) ("the political franchise of voting … is regarded as a fundamental political right, because [sic] preservative of all rights.").

198.

"[T]he right to vote, the right to have one's vote counted, and the right to have ones vote given equal weight are basic and fundamental constitutional rights incorporated in the due process clause of the Fourteenth Amendment to the Constitution of the United States." Black, 209 F. Supp. 2d at 900 (a state law that allows local election officials to impose different voting schemes upon some portions of the electorate and not others violates due process). "Just as the equal protection clause of the Fourteenth Amendment prohibits state officials from improperly diluting the right to vote, the due process clause of the Fourteenth amendment forbids state

officials from unlawfully eliminating that fundamental right." *Duncan*, 657 F.2d at 704. "Having once granted the right to vote on equal terms, [Defendants] may not, by later arbitrary and disparate treatment, value one person's vote over that of another." *Bush*, 531 U.S. at 104-05.

199.

In statewide and federal elections conducted in the State of Georgia, 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 to ensure that it is properly administered in every election district and otherwise free, fair, and transparent.

200.

Moreover, through its provisions involving watchers and representatives, the Georgia Election Code ensures that all candidates and political parties, including without limitation Plaintiff, Republicans, and the Trump Campaign, shall be "present" and 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.

201.

Defendants have a duty to guard against deprivation of the right to vote through the dilution of validly cast ballots by ballot fraud or election tampering. Rather than heeding these mandates and duties, Defendants arbitrarily and capriciously denied the Trump Campaign and Republicans meaningful access to observe and monitor the electoral process by: (a) mandating that representatives at the pre- canvass and canvass of all absentee and mail-ballots be either Georgia barred attorneys or qualified registered electors of the county in which they sought to observe and monitor; and (b) not allowing watchers and representatives to visibly see and review all envelopes containing official absentee and mail-in ballots either at the time or before they were opened and/or when such ballots were counted and recorded. Instead, Defendants refused to credential all of the Trump Campaign's submitted watchers and representatives and/or kept Trump Campaign's watchers and representatives by security and metal barricades from the areas where the inspection, opening, and counting of absentee and mail-in ballots were taking place. The lack of meaningful access with actual access to see the ballots invited further fraud and cast doubt of the validity of the proceedings.

202.

Consequently, Defendants created a system whereby it was physically impossible for the candidates and political parties to view the ballots and verify that illegally cast ballots were not opened and counted.

203.

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, and included the unlawfully not counting and including uncounted mail ballots, and that they failed to follow absentee ballot requirements when thousands of **voters received ballots that they never requested.** Defendants have acted and will continue to act under color of state law to violate the right to vote and due process as secured by the Fourteenth Amendment to the United States Constitution.

204.

Plaintiffs have no adequate remedy at law and will suffer serious and irreparable harm unless the injunctive relief requested herein is granted.

205.

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 Georgia 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, Georgia cannot reasonably rely on the results of the mail vote.

206.

Relief sought is the elimination of the mail ballots from counting in the 2020 election. Alternatively, the Presidential electors for the state of Georgia should be disqualified from counting toward the 2020 election.

207.

The United States Code (3 U.S.C. 5) provides that,

> "[i]f any State shall have provided, by laws enacted prior to the day fixed for the appointment of the electors, for its final determination of any controversy or contest concerning the appointment of all or any of the electors of such State, by judicial or other methods or procedures, and such determination shall have been made at least six days before the time fixed for the meeting of the electors, such determination made pursuant to such law so existing on said day, and made at least six days prior to said time of meeting of the electors, shall be conclusive, and shall govern in the counting of the electoral votes as provided in the Constitution, and as hereinafter regulated, so far as the ascertainment of the electors appointed by such State is concerned.

3 USCS § 5.

REQUEST FOR RELIEF

208.

Accordingly, Plaintiffs seek an emergency order instructing Defendants to de-certify the results of the General Election for the Office of President.

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 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, or (iii) are delivered in-person by third parties for non-disabled voters.

210.

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 Georgia 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, Georgia 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 Georgia should be disqualified from counting toward the 2020 election. Alternatively, the electors of the State of Georgia should be directed to vote for President Donald Trump.

211.

For these reasons, Plaintiff asks this Court to enter a judgment in their favor and provide the following emergency relief:

1. An order directing Governor Kemp, Secretary Raffensperger and the Georgia State Board of Elections to de-certify the election results;

2. An order enjoining Governor Kemp from transmitting the currently certified election results to the Electoral College;

3. An order requiring Governor Kemp 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 Georgia 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 Georgia Secretary of State Rule 183-1-14-0.9-.15 violates the Electors and Elections Clause, U.S. CONST. art. I, § 4;

7. A declaratory judgment declaring that Georgia's failed system of signature verification violates the Electors and Elections Clause by working a de facto abolition of the signature verification requirement;

8. A declaratory judgment declaring that current certified election results violates the Due Process Clause, U.S. CONST. Amend. XIV;

9. 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;

10. An emergency declaratory judgment that voting machines be Seized and Impounded immediately for a forensic audit—by plaintiffs' expects;

11. A declaratory judgment declaring absentee ballot fraud occurred in violation of Constitutional rights, Election laws and under state law;

12. 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;

13. Immediate production of 36 hours of security camera recording of all rooms used in the voting process at State Farm Arena in Fulton County, GA from 12:00am to 3:00am until 6:00pm on November 3.

14. 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.

CALDWELL, PROPST & DELOACH, LLP

/s/ Harry W. MacDougald
Harry W. MacDougald
Georgia Bar No. 463076

CALDWELL, PROPST & DELOACH, LLP
Two Ravinia Drive, Suite 1600
Atlanta, GA 30346
(404) 843-1956 – Telephone
(404) 843-2737 – Facsimile
hmacdougald@cpdlawyers.com
Counsel for Plaintiffs

/s Sidney Powell*
Sidney Powell PC
Texas Bar No. 16209700
Julia Z. Haller *
Emily P. Newman*
Virginia Bar License No. 84265
2911 Turtle Creek Blvd, Suite 300
Dallas, Texas 75219

*Application for admission pro hac vice
Forthcoming

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

Howard Kleinhendler*
NEW YORK BAR NO. 2657120Howard Kleinhendler Esquire
369 Lexington Avenue, 12th Floor
New York, New York 10017
Office (917) 793-1188
Mobile (347) 840-2188
howard@kleinhendler.com
www.kleinhendler.com

*Application for admission pro hac vice
Forthcoming

Attorneys for Plaintiffs

App 8

From: no-reply@efilingmail.tylertech.cloud
To: Brittany Paynton
Subject: Notification of Service for Case: DC-22-02562, COMMISSION FOR LAWYER DSICIPLINE vs. SIDNEY POWELL for filing Service Only, Envelope Number: 66325965
Date: Thursday, July 14, 2022 1:46:51 PM

Notification of Service

Case Number: DC-22-02562
Case Style: COMMISSION FOR LAWYER DSICIPLINE vs. SIDNEY POWELL
Envelope Number: 66325965

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Filing Details	
Case Number	DC-22-02562
Case Style	COMMISSION FOR LAWYER DSICIPLINE vs. SIDNEY POWELL
Date/Time Submitted	7/14/2022 1:45 PM CST
Filing Type	Service Only
Filing Description	Response to Interrogs
Filed By	Robert Holmes
Service Contacts	Other Service Contacts not associated with a party on the case: Kristin Brady (kristin.brady@texasbar.com) S. Michael McColloch (smm@mccolloch-law.com) Brittany Paynton (brittany.paynton@texasbar.com) Karen Cook (karen@karencooklaw.com) Robert Holmes (rhholmes@swbell.net) Rachel Craig (rachel.craig@texasbar.com)

EXHIBIT B

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CAUSE NO. DC-22-02562

COMMISSION FOR LAWYER DISCIPLINE,	§	IN THE DISTRICT COURT
	§	
Plaintiff,	§	
	§	
vs.	§	
	§	
SIDNEY POWELL (File Nos. 202006349, 202006347, 202006393, 202006599, 202100006, 202100652, 202101297, 202101300, 202101301, 202103520, 202106068, 202106284, 202106181)	§	DALLAS COUNTY, TEXAS
	§	
Defendant.	§	116th JUDICIAL DISTRICT

SIDNEY POWELL'S RESPONSE TO INTERROGATORIES

To: Commission for Lawyer Discipline by and through its counsel of record, Seana Willing, Kristin Brady & Rachel Craig, Office of the Chief Disciplinary Counsel State Bar of Texas, 14651 Dallas Parkway, Suite 925, Dallas, Texas 75254 via email and efileTex.gov.

SIDNEY POWELL'S RESPONSE TO INTERROGATORIES

Sidney Powell, pursuant to Tex.R.Civil P., Rule 197, serves her Response to Interrogatories.

GENERAL OBJECTIONS AND RESERVATION OF RIGHTS

1. GENERAL OBJECTIONS TO INTERROGATORIES. Ms. Powell objects to each interrogatory to the extent (i) it asks for information not requested with reasonable particularity, (ii) it seeks information that is not relevant to the subject matter of this action or not reasonably calculated to lead to the discovery of admissible evidence,

or (iii) it is overly broad and unduly burdensome. Most of the Interrogatories are so broadly worded that they are impermissible fishing expeditions.

2. PRIVILEGE AND WORK PRODUCT. Ms. Powell objects to each interrogatory to the extent it seeks information that is privileged or protected, including but not limited to information or documents that constitute attorney work product or trial preparation materials or that are covered by the attorney-client privilege or other applicable privileges. In response to each Interrogatory, Ms. Powell does not waive any such privilege or immunity.

3. CONFIDENTIAL OR PROPRIETARY INFORMATION. Ms. Powell objects to each Interrogatory to the extent it seeks information that contain sensitive or confidential information relating to Ms. Powell or third parties, or that contain proprietary business information or commercial trade secrets, and Ms. Powell will only provide such information subject to the terms of a customary protective order or confidentiality agreement.

4. PRESERVATION OF OBJECTIONS. Ms. Powell reserves all objections as to the competency, relevance, materiality, privilege and/or admissibility of evidence in any subsequent proceeding and/or trial of this or any other action for any purpose whatsoever of any information provided in this Response.

5. PRESENT BEST KNOWLEDGE/ SUBSEQUENT DISCOVERY. This response is made to the best of Ms. Powell's present knowledge, information and belief. This response is at all times subject to such additional or different information that discovery or further investigation may disclose. Ms. Powell reserves the right to modify or supplement any and all responses herein as additional facts are ascertained. Ms. Powell reserves the right to make any use of, or to introduce at any hearing and/or trial, information responsive to the Interrogatory but discovered by Ms. Powell subsequent to the date of this response.

6. INFORMATION NOT WITHIN CONTROL OR POSSESSION. Ms. Powell objects to all instructions, definitions and interrogatories to the extent they seek information not currently known to Ms. Powell, on the grounds that such instructions, definitions, or interrogatory (i) seek to require more of Ms. Powell than any obligation imposed by law, (ii) exceed the scope of legitimate discovery, (iii) would subject Ms. Powell to unreasonable and undue annoyance, oppression, burden and

expense and would seek to impose on Ms. Powell an obligation to investigate or discover information or materials from third parties or sources who are equally accessible to Third Party Plaintiff.

7. DEFINITIONS. Ms. Powell objects to Plaintiff's definitions to the extent they seek to impose obligations on Ms. Powell greater than those allowed by the Texas Rules of Civil Procedure. Ms. Powell will respond to each Interrogatory with the understanding that the aforementioned terms shall not include Ms. Powell's attorneys where such inclusion would require the production of information protected from discovery.

8. EQUALLY AVAILABLE FROM OTHER SOURCES: Ms. Powell objects to these interrogatory to the extent they seek information that is publicly available, or that may be obtained from another source that is more convenient, less burdensome, or less expensive, or that is solely in possession, custody or control of third parties.

9. RELEVANCY/MATERIALITY: Ms. Powell submits these answers without conceding the relevancy or materiality of the subject matter of any Interrogatory, and without prejudice to Ms. Powell's right to object to further discovery or to object to the admissibility of any answer at the time of hearing or trial.

10. MARSHALING EVIDENCE: Ms. Powell objects to these Interrogatories to the extent they seek to require Ms. Powell to marshal her evidence.

These "General Objections and Reservation of Rights" are incorporated into each of the Answers stated below as if set forth in full. Without waiver of her general objections Ms. Powell responds as follows:

RESPONSE

1. Please identify all persons whom you will call to testify at trial and detail the substance of his/her testimony.
SPECIFIC OBJECTION: This interrogatory seeks information in advance of completion of discovery; therefore, Ms. Powell cannot identify all persons whom she will call to testify at trial or detail the substance of his/her testimony.
RESPONSE: Without waiver of her objections, at this time, Ms. Powell responds as follows:

A. Legal Team
1. Sidney Powell
2911 Turtle Creek Blvd
Suite 300
Dallas, Texas 75219
sidney@federalappeals.com
Defendant, knowledge from apex position of election fraud suits, expected to testify about her role in the Election Fraud Suits, the factual and legal basis supporting the filing of the Election Fraud Suits.

2. Howard Kleinhendler
369 Lexington Avenue
12th Floor
New York, NY 10017
howard@kleinhendler.com
Member of election fraud suits legal team, expected to testify about his role in the Election Fraud Suits, the factual and legal basis supporting the filing of the Election Fraud Suits.

4. Julia Haller
1225 19th St NW #320
Washington, DC 20036
Member of election fraud suits legal team, expected to testify about her role in the Election Fraud Suits, the factual and legal basis supporting the filing of the Election Fraud Suits.

5. Brandon Johnson
Member of election fraud suits legal team, expected to testify about his role in the Election Fraud Suits, the factual and legal basis supporting the filing of the Election Fraud Suits.

6. Emily Newman
Member of election fraud suits legal team, expected to testify about her role in the Election Fraud Suits, the factual and legal basis supporting the filing of the Election Fraud Suits.

7. Lin Wood

P.O. Box 52584
Atlanta, GA 30305-0584
(404) 891-1402
Member of election fraud suits legal team, expected to testify about his role in the Election Fraud Suits, the factual and legal basis supporting the filing of the Election Fraud Suits.

8. Scott Hagerstrom
222 West Genesse
Lansing, MI 48933
(517) 763-7499
scotthagerstrom@yahoo.com
Local Counsel Member of election fraud suits legal team, expected to testify about her role in the Election Fraud Suits, the factual and legal basis supporting the filing of the Election Fraud Suits.

9. Gregory J. Rohl
411850 West 11 Mile Road
Suite 110
Novi, MI 48375
(248) 380-9404
gregoryrohl@yahoo.com
Local Counsel Member of election fraud suits legal team, expected to testify about his role in the Election Fraud Suits, the factual and legal basis supporting the filing of the Election Fraud Suits.

10. Harry W. MacDougald
Caldwell, Propst & Deloach, LLP
Two Ravinia Drive, Suite 1600
Atlanta, GA 30346
(404) 843-1956
hmacdougald@cpdlawyers.com
Local Counsel Member of election fraud suits legal team, expected to testify about his role in the Election Fraud Suits, the factual and legal basis supporting the filing of the Election Fraud Suits.

11. Alexander Kolodin

Kolodin Law Group, PLLC
3443 N. Central Ave. Ste 1009
Phoenix, AZ 85012
(602) 730-2985
Alexander.kolodin@kolodinlaw.com
Local Counsel Member of election fraud suits legal team, expected to testify about his role in the Election Fraud Suits, the factual and legal basis supporting the filing of the Election Fraud Suits.

12. Christopher Viskovic
Kolodin Law Group, PLLC
Central Ave. Ste 1009
Phoenix, AZ 85012
(602) 730-2985
Alexander.kolodin@kolodinlaw.com
Local Counsel Member of election fraud suits legal team, expected to testify about his role in the Election Fraud Suits, the factual and legal basis supporting the filing of the Election Fraud Suits.

B. Other Potential Witnesses:

1. Phil Waldron
contact information unknown
cyber-security expert

2. J. Alex Halderman
Campus mail: EECS/CSE
4717 Beyster Bldg
Ann Arbor MI 48109-2121
734-647-1806
E-Mail: jhalderm@umich.edu
cyber-security expert

3. Andrew Appel, Ph.D.
209 Computer Science
Princeton, NJ 08544
(609) 258-4627

E-Mail: appel@cs.princeton.edu
cyber-security expert

4. Merritt, Joshua
Allied Security Operations Group
817-899-6510
joshua.merritt210@gmail.com
affiant, cyber-security expert

2. Please describe the terms of any contract, whether oral or written, between you and/or your law firm and each Plaintiff in the Election Fraud Suits.
SPECIFIC OBJECTIONS: The interrogatory seeks the irrelevant and seeks to invade the work product privilege and the attorney-client privilege.
RESPONSE: Based on the objection Ms. Powell will not respond.

3. For all amounts of money you received on behalf of or concerning the Election Fraud Suits, please state the amount of money received date the money was received, entity or individual from which the money was received, name of the financial institution into which the money was deposited, the account number, and the date of the deposit.
SPECIFIC OBJECTIONS: The interrogatory seeks the irrelevant and seeks to invade the work product privilege and the attorney-client privilege.
RESPONSE: Subject to the objections, Ms. Powell responds she received no legal fees.

4. Please identify any and all communications you had with each Plaintiff, by explaining in detail: the name of the individual; date, time, location and substance of each communication; whether oral or written or via mobile device.
SPECIFIC OBJECTIONS: The interrogatory seeks the irrelevant and seeks to invade the work product privilege and the attorney-client privilege.
RESPONSE: Subject to the objections, Ms. Powell will not respond.

5. Please identify any and all communications you had with each co-counsel concerning the Election Fraud Suits, by explaining in detail: the name of the individual; date, time, location and substance of each communication; whether oral or written or via mobile device.
SPECIFIC OBJECTIONS: The interrogatory seeks the irrelevant and seeks to invade

the work product privilege and the attorney-client privilege.
RESPONSE: Subject to the objections, Ms. Powell will not respond.

6. Beginning in November 2020, please identify any and all communications you had with an election official: please list the name of the individual, date, time, location and substance of each communication, whether oral or written or via mobile device.
SPECIFIC OBJECTIONS: The interrogatory seeks the irrelevant and seeks to invade the work product privilege and the attorney-client privilege.
RESPONSE: Subject to the objections, Ms. Powell will not respond.

7. Please list the date, time, location and substance of each communication, whether oral or written or via mobile device, you had with Donald Trump concerning the Election Fraud Suits.
SPECIFIC OBJECTIONS: The interrogatory seeks the irrelevant and seeks to invade the work product privilege, the attorney-client privilege and the executive privilege.
RESPONSE: Subject to the objections, Ms. Powell will not respond.

8. Please list the date, time, location and substance of each communication, whether oral or written or via mobile device, you had with Rudy Guliani concerning the Election Fraud Suits.
SPECIFIC OBJECTIONS: The interrogatory seeks the irrelevant and seeks to invade the work product privilege.
RESPONSE: Subject to the objections, Ms. Powell will not respond.

9. Please list the date, time, location and substance of each communication, whether oral or written or via mobile device, you had with Eric Herschmann concerning the Election Fraud Suits.
SPECIFIC OBJECTIONS: The interrogatory seeks the irrelevant.
RESPONSE: Without waiving her objections, Ms. Powell responds she had communications with Eric Herschmann on the night of December 18, 2020 in the Oval Office of the White House concerning the proof Ms. Powell had to support the allegations in the Election Fraud Suits.

10. Beginning in August 2020, please identify all meetings or communications you had in The White House or with someone in The White House concerning any mention of election fraud, by explaining in detail: the method of communication of each communication, the date of the communications, the substance of the

communication, who was present when the communications occurred, and if the communications were in writing or were reduced to writing.
SPECIFIC OBJECTIONS: The interrogatory seeks the irrelevant and seeks to invade the work product privilege, the attorney-client privilege and the executive privilege.
RESPONSE: Subject to the objections, Ms. Powell will not respond.

11. Beginning in November 2020, please identify any and all communications you had with each Affiant, by explaining in detail: the name of the individual; date, time, location and substance of each communication; whether oral or written or via mobile device.
SPECIFIC OBJECTIONS: The interrogatory seeks the irrelevant and seeks to invade the work product privilege and the attorney-client privilege.
RESPONSE: Without waiving her objections, Ms. Powell responds other team members communicated directly with the Affiants upon which she relied.

12. Please detail any and all work performed and tasks completed by you concerning the Election Fraud Suits.
SPECIFIC OBJECTIONS: The interrogatory seeks to require Ms. Powell to marshal her evidence and seeks to invade the work product privilege and the attorney-client privilege.
RESPONSE: Without waiving her objections, Ms. Powell responds she acted in the role of lead lawyer on a litigation team with other team members performing the research, drafting and filing duties. In addition local counsel was engaged in each state in which a suit was filed who handled the final duties of filing the complaints and attaching the exhibits to the complaints.

13. Please identify all attorneys, paralegals, assistants, and individuals who assisted you with the Election Fraud Suits.
RESPONSE: See response to Interrogatory # 1 §A.

14. Beginning in November 2020, please list the amount of money defendingtherepublic.org has raised.
SPECIFIC OBJECTIONS: The request seeks the irrelevant. Ms. Powell further objects to this Request as it is just a fishing expedition.
RESPONSE: Subject to the objections, Ms. Powell will not respond.

15. Please describe your relationship to or ownership status of

sidneypowell2024.com.
RESPONSE: Ms. Powell has none.

16. Please describe your compliance with the Sanctions Order and include in your response, what fees have been paid, the date the fees were paid, continuing legal education completed, date such continuing legal education was completed.
SPECIFIC OBJECTIONS: The request seeks the irrelevant. Ms. Powell further objects to this Request as it is just a fishing expedition.
RESPONSE: Without waiving her objections, Ms. Powell responds the sanctions order has been appealed to the Sixth Circuit Court of Appeals, *King et al. v. Whitmer, et al*, Case No. 21-1786, United States Court of Appeals, Sixth Circuit, which remains pending before that court. Ms. Powell timely completed the cle requirement as shown in Exhibit "A" attached hereto.

17. If you contend that any professional misconduct alleged in this matter resulted from or was exacerbated by any physical or mental condition, disease, defect, or illness, state the following:

a. the nature and extent of the physical or mental condition, disease, defect or illness;
b. when the physical or mental condition, disease, defect, or illness first manifested;
c. each and every physician, psychiatrist, psychologist, counselor or other practitioner of the healing arts, who has diagnosed the physical or mental condition, disease, defect or illness or from whom you have sought treatment for the physical or mental condition, disease, defect or illness;
d. whether or not the physical or mental condition, disease, defect, or illness is now cured, in remission or otherwise under control or the present status of the condition and treatment thereof.
RESPONSE: Not applicable, Ms. Powell does not content the professional misconduct alleged in this matter resulted from or was exacerbated by any physical or mental condition, disease, defect, or illness.

18. Please set forth the factual basis for your contention that you did not violate Rule 3.01 of the Texas Disciplinary Rules of Professional Conduct.
SPECIFIC OBJECTIONS: The interrogatory seeks to require Ms. Powell to marshal her evidence and seeks to invade the work product privilege and the attorney-client privilege.
RESPONSE: Without waiving her objections, Ms. Powell directs you to her Rule 91a

Motion and her Live Answer and responds generally as follows:
(i) Reliance on First Amendment "Petition Clause" – anyone who believes they have been aggrieved by another party may engage a lawyer to file suit on their behalf to seek redress. U.S. Const. amend. I. under *NAACP v. Button*, 371 U.S. 415, 429 (1963); *California Motor Transport Co. v. Trucking Unlimited*, 404 U.S. 508 (1972); and *Presidents Conference v. Noerr Motor Freight, Inc.*, 365 U.S. 127, 138 (1961).
(ii) Reliance on sworn statements under *Healey v. Chelsea Resources, Ltd.*, 947 F.2d 611, 625-26 (2nd Cir. 1991).
(iii) The non-frivolous basis for alleging serious election-law violations justifying relief under *Bush v. Gore*, 531 U.S. 98 (2000) and *McDonald v. Smith*, 472 U.S. 479, 482, 105 S.Ct. 2787, 86 L.Ed.2d 384 (1985).
(iv) The right to file a complaint seeking redress of grievances on behalf of public official clients or others without fear of judicial reprisal applies no matter the ultimate truth or falsity, good or bad faith, of a client's statements, at least so long as the attorney does not suborn the statements under *California Motor Transport*, 404 U.S. 508 and *Abrams v. United States*, 250 U.S. 616, 630 (1919) (Holmes, dissenting).
(v) The right to file a pleading if there is ". . . from the advocate's point of view . . . arguable grounds existed to support a reasonable belief that the case . . . [of the] possibility of obtaining a favorable result" from the advocates point of view. *Gray v. Turner*, 807 S.W.2d 818, 823 (Tex.App.–Amarillo 1991, no writ); *Ambrose v. Mack*, 800 S.W.2d 380, 383 (Tex.App.–Corpus Christi 1990, no writ).
(vi) Ms. Powell attached affidavits and exhibits to the complaints supporting the allegations in each of the Election Fraud Suits to wit: (i) 29 to the Petition in the Georgia Case; (ii) 30 to the Petition in the Michigan Case; (iii) 19 to the Petition in the Wisconsin Case; and (iv) 31 to the Petition in the Arizona Case. Ms. Powell had the undeniable right to rely on these exhibits. *Healey*, 947 F.2d at 625-26

19. Please set forth the factual basis for your contention that you did not violate Rule 3.02 of the Texas Disciplinary Rules of Professional Conduct.
SPECIFIC OBJECTIONS: The interrogatory seeks to require Ms. Powell to marshal her evidence and seeks to invade the work product privilege and the attorney-client privilege.
RESPONSE: Without waiving her objections, Ms. Powell directs you to her Rule 91a Motion and her Live Answer and responds generally as follows:
(i) All the Election Fraud Suits were dismissed within 11 days of filing except for the Michigan Case which remained pending by Judge parker for the sole purpose to allow the City of Detroit, a non-party, to intervene for the sole purpose of seeking sanctions.

(ii) There is a right to appeal the adverse rulings to the highest court available – without being subject to sanctions or grievances. Appeals from final judgments are a matter of right. *United States v. Horns*, 3 Cir. 147 F.2d 57. 28 U.S.C.A. § 1291 provides for the appeal of final decisions. *See Beneficial Industrial Loan Corp. v. Smith*, 170 F.2d 44, 49 (3rd Cir.1948) affirmed, *Cohen v. Beneficial Industrial Loan Corp.*, 337 U.S. 541, 69 S.Ct. 1221, 93 L.Ed. 1528 (1949).
(iii) A decision is final when all appeals have been exhausted or when the time available for an appeal has passed. *See Leahy v. Orion Twp.*, 711 N.W.2d 438, 441 (Mich. Ct. App. 2006). Petitions for writs of certiorari were pending in each case until the Supreme Court denied them on January 7, 2021.

20. Please set forth the factual basis for your contention that you did not violate Rule 3.03(a)(1) of the Texas Disciplinary Rules of Professional Conduct.
SPECIFIC OBJECTIONS: The interrogatory seeks to require Ms. Powell to marshal her evidence and seeks to invade the work product privilege and the attorney-client privilege.
RESPONSE: Without waiving her objections, Ms. Powell directs you to her Rule 91a Motion and her Live Answer and responds generally as follows:
(i) Ms. Powell was entitled to rely on the representations of the client, sworn statements of affiants, and expert reports without having to assess the credibility of the clients, affiants or experts. *See Healey v. Chelsea Res., Ltd.*, 947 F.2d 611, 625-626 (2d Cir.1991); *Royal v. Netherland*, 4 F. Supp. 2d 540, 556 (E.D. Va. 1998); *Xcentric Ventures, L.L.C. v. Borodkin*, 908 F. Supp. 2d 1040, 1048-49 (D. Ariz. 2012), *aff'd*, 798 F.3d 1201 (9th Cir. 2015).
(ii) Ms. Powell did not draft the complaints or attach the exhibits to the complaints. *Klein v. Powell*, 174 F. 640 (3rd Cir. 1909); *Rachmil v. United States*, 43 F.2d 878 (9th Cir. 1930) certiorari denied, 283 U.S. 819, 51 S.Ct. 344, 75 L.Ed. 1434.
(iii) Ms. Powell did not act intentionally, any errors in filings were simply mistakes. *See Klein*, 174 F. 640; and *Rachmil*, 43 F.2d 878.

21. Please set forth the factual basis for your contention that you did not violate Rule 3.03(a)(5) of the Texas Disciplinary Rules of Professional Conduct.
SPECIFIC OBJECTIONS: The interrogatory seeks to require Ms. Powell to marshal her evidence and seeks to invade the work product privilege and the attorney-client privilege.
RESPONSE: Without waiving her objections, Ms. Powell directs you to her Rule 91a Motion and her Live Answer and responds: See response to Interrogatory #20.

22. Please set forth the factual basis for your contention that you did not violate Rule 3.04(c)(1) of the Texas Disciplinary Rules of Professional Conduct.
SPECIFIC OBJECTIONS: The interrogatory seeks to require Ms. Powell to marshal her evidence and seeks to invade the work product privilege and the attorney-client privilege.
(i) The Elections Fraud Suits were all based on similar claims and similar evidence.
(ii) Using affidavits "recycled" from the other election cases raising similar issues in other jurisdictions is no violation of the law. There is no rule or practice that prevents counsel from using affidavits that have also been used in other cases – the practice is not uncommon. *See, e.g.*, *Eclipse Res.-Ohio, LLC v. Madzia*, No. 2:15-CV-00177, 2017 WL 274732, at *7 (S.D. Ohio Jan. 20, 2017), *aff'd*, 717 F. App'x 586 (6th Cir. 2017).

23. Please set forth the factual basis for your contention that you did not violate Rule 8.04(a)(3) of the Texas Disciplinary Rules of Professional Conduct.
SPECIFIC OBJECTIONS: The interrogatory seeks to require Ms. Powell to marshal her evidence and seeks to invade the work product privilege and the attorney-client privilege.
RESPONSE: Without waiving her objections, Ms. Powell directs you to her Rule 91a Motion and her Live Answer and responds:
(i) Even if Ms. Powell had clients or affiants with zero credibility, she had the right to file the suits so long as the testimony was not incredible as a matter of law at the time she accepted it as true. *Healey*, 947 F.2d at 625-26
(ii) Ms. Powell had an entirely reasonable ground for bringing suit even if the law or the facts appear questionable or unfavorable at the outset. *Christiansburg Garment Co. v. Equal Emp't Opportunity Comm'n*, 434 U.S. 412, 422 (1978).
(iii) The allegations in the complaints were filed against local state officials for violating federal elections law, there is an exception to the 11th Amendment that allows such suits.
(iv) Ms. Powell had the right to rely on the statements of affiants as a matter of law. *Royal*, 4 F. Supp. 2d at 556; *Xcentric*, 908 F. Supp. 2d at 1048-49.
(v) Ms. Powell was not required to assess the credibility of the affiants or clients. *Healey*, 947 F.2d at 626.
(vii) Ms. Powell was never given an evidentiary hearing in any of the four Election Fraud Cases; there was no discovery, no depositions and the cases never passed the pleadings stage. Since there were no hearings conduced in the cases, all facts alleged in the complaints filed in the Election Fraud Cases must be viewed as true. *CTC*

Imports and Exports v. Nigerian Petroleum Corp., 951 F.2d 573, 578 (3d Cir.1991). Sanctions should not awarded at any level. *Id.*

Respectfully submitted,
HOLMES LAWYER, PLLC

By: */s/ Robert H. Holmes*
Robert H. Holmes
State Bar No. 09908400
19 St. Laurent Place
Dallas, Texas 75225
Telephone: 214-384-3182
Email: rhholmes@swbell.net

S. MICHAEL MCCOLLOCH PLLC
S. Michael McColloch
State Bar No. 13431950

6060 N. Central Expressway
Suite 500
Dallas, Texas 75206
Tel: 214-643-6055
Fax: 214-295-9556
Email: smm@mccolloch-law.com

and

KAREN COOK, PLLC
Karen Cook
State Bar No. 12696860

6060 N. Central Expressway
Suite 500
Dallas, Texas 75206
Tel: 214-643-6054
Fax: 214-295-9556
Email: karen@karencooklaw.com

COUNSEL FOR POWELL

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing instrument has been delivered, by efileTexas.gov to all attorneys of record on July 14, 2022.

/s/ Robert H. Holmes
Robert H. Holmes

Respectfully submitted,
HOLMES LAWYER, PLLC

By: */s/ Robert H. Holmes*
Robert H. Holmes
State Bar No. 09908400
19 St. Laurent Place
Dallas, Texas 75225
Telephone: 214-384-3182
Email: rhholmes@swbell.net

S. MICHAEL MCCOLLOCH PLLC
S. Michael McColloch
State Bar No. 13431950

6060 N. Central Expressway
Suite 500
Dallas, Texas 75206
Tel: 214-643-6055
Fax: 214-295-9556
Email: smm@mccolloch-law.com

and

KAREN COOK, PLLC
Karen Cook

State Bar No. 12696860

6060 N. Central Expressway
Suite 500
Dallas, Texas 75206
Tel: 214-643-6054
Fax: 214-295-9556
Email: karen@karencooklaw.com

COUNSEL FOR POWELL

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing instrument has been delivered, by efileTexas.gov to all attorneys of record on July 14, 2022.

/s/ Robert H. Holmes
Robert H. Holmes

UNSWORN DECLARATION

My name is Sidney Powell, my birth date is May 1, 1955, and my address is Turtle Creek Blvd, Suite 300, Dallas, Dallas County, Texas 75081. I declare under the penalty of perjury that the statements of fact contained in the foregoing Response to Interrogatories are true and correct.

Executed in Dallas County, Texas on July 14, 2022.

/s/ Sidney Powell
Sidney Powell

Automated Certificate of eService

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Robert Holmes on behalf of Robert Holmes
Bar No. 9908400
rhholmes@swbell.net
Envelope ID: 66325965
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Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Kristin Brady	24082719	kristin.brady@texasbar.com	7/14/2022 1:45:53 PM	SENT
S. Michael McColloch	13431950	smm@mccolloch-law.com	7/14/2022 1:45:53 PM	SENT
Brittany Paynton		brittany.paynton@texasbar.com	7/14/2022 1:45:53 PM	SENT
Karen Cook	12696860	karen@karencooklaw.com	7/14/2022 1:45:53 PM	SENT
Robert H.Holmes		rhholmes@swbell.net	7/14/2022 1:45:53 PM	SENT
Rachel Craig		rachel.craig@texasbar.com	7/14/2022 1:45:53 PM	SENT

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EXHIBIT "1 "

UNSWORN DECLARATION OF HARRY MACDOUGALD

Pursuant to the provisions of the Texas Civil Practices and Remedies Code § 132.001, I Harry W. MacDougald make the following declarations:

1. My name is Harry W. MacDougald. I am over 18 years old and competent to make this affidavit. I have personal knowledge of all facts and statements contained herein and they are true and correct.

2. I am an attorney licensed to practice law in the State of Georgia. I have been licensed to practice law in Georgia for over 35 years. I am in good standing with the Georgia Bar. My Georgia Bar No. is 463076.

3. In late November 2020, I spoke with Sidney Powell when I was engaged by her to be local counsel in a case she and other attorneys anticipated filing in Georgia to question the outcome of the 2020 presidential election.

4. Ms. Powell connected me with Ms. Juli Haller and Mr. Harold Kleindhelder who I understood were the attorneys in charge of drafting the complaint to be filed in Federal District Court, Northern District of Georgia.

5. After becoming engaged, I communicated primarily with Mr. Kleindhelder and Ms. Haller about the substance of the complaint and the exhibits to be attached thereto until after the complaint had been filed. It was Mr. Kliendhelder that sent me

a draft of the complaint, and I thereafter exchanged multiple drafts with a varying roster of Mr. Kleinhendler, Ms. Haller, and others, but not including Ms. Powell, up through the filing of the complaint. Mr. Kleinhendler instructed me to file the complaint by mid-night on November 25, 2020, the day before Thanksgiving 2020. Time was of the essence; I had little to no time to determine the validity or accuracy of the exhibits before filing, and had to rely primarily on forwarding counsel who prepared and/or forwarded them to me.

6. On November 24, 2020 I received a draft of the complaint – the first I saw – from Mr. Kleindhelder at 8:13 PM. It was a 104-page complaint with what eventually became a total of 587 pages containing 29 exhibits. It took significant time to get the formatting squared away; then I spent several more hours editing the document in other respects. I worked continuously on the document from the moment I received it at 8:13 PM until I sent back a marked-up draft at 3:00 AM.

7. On November 25, 2020, in the early evening around 6:30 PM, I received from Ms. Haller a set of documents to be attached to the Complaint as exhibits. I worked with Ms. Haller and Mr. Kleinhendler in determining which of the documents provided by Ms. Haller would be attached to the complaint as exhibits. I did not confer in any manner with Ms. Powell about the exhibits to be attached or that were attached to the complaint before it was filed.

9. All communications regarding the complaint itself and the exhibits were predominantly with Mr. Kleinhendler and Ms. Haller.

10. Mr. Kleinhendler provided me with a draft of the so-called "Spyder Affidavit," which was later filed in redacted form as Exhibit 7. After reviewing the draft of the "Spyder Affidavit" I recall asking Mr. Kleinhendler by phone "Is this real?" He assured me that it was. I never had any direct communication with the affiant of the Spyder affidavit.

11. After a few revision cycles on the complaint, and substantial and tedious effort on my part to organize and number the exhibits I had been provided, and to harmonize their numbering with the extensive exhibit references in the lengthy complaint, albeit imperfectly in the final analysis, I filed the complaint and attached the exhibits, in the form they eventually took, shortly before mid-night on November 25, 2020, creating the eventually assigned Case No. 1:20-cv-04809-TCB, United States District Court, Northern District of Georgia. The elapsed time between my first laying eyes on the draft complaint and filing with the Clerk was approximately 27.5 hours, during which I recorded 19.7 hours of work.

12. To my knowledge, Ms. Powell had no knowledge of the exhibits I attached to the complaint until sometime after the complaint and exhibits were filed.

13. Sometime after the complaint was filed, I discovered that two of the

exhibits were improperly formatted, being Exhibits 5, and 6. In both exhibits, the page orientation was landscape instead of portrait, which caused the bottom of the pages to be cut off. This is the form in which these exhibits were delivered to me. I have no idea how they came to be in that form, and I do not recall noticing this problem in the intense period of work before filing. Filing these exhibits with this problem was inadvertent on my part.

14. Exhibit 5 was the Secretary of State's certification that the Dominion election system had been thoroughly examined and tested and was compliant with Georgia law. Exhibit 6 was a copy of the Pro V&V certification test report of Georgia's Dominion system that underlay the Secretary of State's certification in Exhibit 5. The facts that the Pro V&V testing had been done and that the Secretary of State had certified the Dominion system, and the dates of those events, were undisputed facts in the public record of the state government's acquisition and deployment of the Dominion system, and were certainly well known to the State defendants in the case. There is no reason for me to believe the formatting error in Exhibits 5 and 6 this was anything more than a downloading or copying error.

15. No one filed an objection to Exhibit 5 attached to the complaint in the Georgia Case. In my opinion the omission of the date on Exhibit 5 by the landscape orientation was not material because the fact and date the State of Georgia had

approved the Dominion Voting System were not in question. Similarly, the omission of portions of Exhibit 6 as a result of the landscape orientation was not material because the fact, date and result of the test report were not in question. Moreover, exhibits were not required to be attached to the complaint at all.

16. The Georgia Case was only pending in the trial court 12 days, the first four of which were Thanksgiving weekend (November 26-29), and five of which were legal holidays or weekends (November 26, 28, 29 and December 5 and 6). The Honorable Timothy C. Batten, Sr., dismissed the case on December 7, 2020. After January 6, 2021, we voluntarily dismissed all pending appellate proceedings arising from the case .

17. I am aware that the Commission for Lawyers Discipline of the State Bar of Texas has filed suit against Ms. Powell seeking sanctions against her for filing suits to question the outcome of the 2020 presidential election.

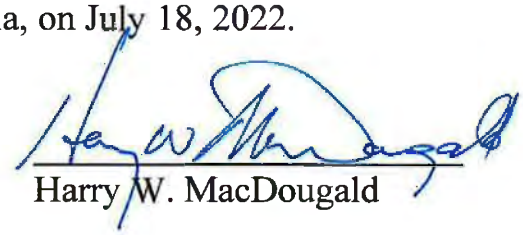
18. I have not been contacted in any manner by the Commission for Lawyer Discipline of the State Bar of Texas regarding any of the four Cases. If I had been contacted, I would have provided them the information in this declaration and told them there was no basis for them to accuse Ms. Powell of any knowledge of or dishonest conduct regarding the exhibits or the *Pearson v. Kemp* case mentioned above.

19. Moreover, I believe the allegations in the complaint filed in the Georgia were sufficiently supported by the affidavits filed therewith and had ample basis in law, and met all the requirements of Rule 11. In fact, Judge Batten gave us a temporary restraining order to secure machines in several counties in Georgia.

UNSWORN DECLARATION

My name is Harry MacDougald, my birth date is August 12, 1958, and my business address is Two Ravinia Drive, Suite 1600, Atlanta, Georgia, 30346. I declare under the penalty of perjury that the statements contained in the foregoing Declaration are true and correct.

Executed in DeKalb County, Georgia, on July 18, 2022.



Harry W. MacDougald

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EXHIBIT "2"

DECLARATION OF SIDNEY POWELL

Pursuant to the provisions of the Texas Civil Practices and Remedies Code § 132.001, I Sidney Powell make the following declarations:

1. "My name is Sidney Powell. I am over 18 years of age and am fully competent to make this declaration. I have personal knowledge of all facts and statements contained herein, and they are true and correct.

2. I have been licensed to practice law in Texas since 1978. I am a member in good standing of the State Bar of Texas, the United States Supreme Court, the bars of multiple federal circuit courts of appeals, and the bars of the federal district courts in Texas.

3. I served as President of the American Academy of Appellate Lawyers—of which I was an elected member—and of the Bar Association of the Fifth Federal Circuit. I taught civil, criminal, and appellate advocacy for the Department of Justice, the State Bar of Texas, and spoken widely for various bars and professional associations.

4. I was part of a team of lawyers that filed four lawsuits alleging massive election fraud involving, *inter alia*, voting machines in Georgia, Michigan, Wisconsin, and Arizona ("Election Fraud Cases"). Time was of the essence in our election suits,

we were inundated with information, and members of the team attempted to vet and sort all information before providing any affidavits or reports to the court. We were working 18 - 20+ hour days through much of November and December. As lead counsel I had to rely on forwarding counsel and other counsel in obtaining and determining the validity of the exhibits attached to the complaints.

5. While I accept full responsibility as the most senior federal practitioner on the team, and my name appears on the filings, I did not draft the complaints nor compile or attach the exhibits attached to any of them. I personally had little to no role in the detailed vetting and sorting of the information provided to us.

6. In particular, I played no role in compiling or filing and had no actual knowledge of the exhibits attached to the complaint downloaded from the Georgia Secretary of State's office that were filed in Case No. 1:20-cv-04809-TCB, United States District Court, Northern District of Georgia. Specifically the Commission has challenged two exhibits attached to the complaint filed in the Georgia Case, and the Bar alleges that Exhibits "5" and "6," violated Disciplinary Rules §§ 3.08(a)(1) & (5) and § 8.04(a)(1). I relied on other counsel to download the challenged exhibits before they were filed. They were not even necessary to the complaint. That Georgia "rushed" to bring in the Dominion machines was widely reported in the media and the two exhibits, Exhibits "5" and "6" were not material. The date or signature were not

an issue; they are indisputable facts.

7. Likewise, I did not compile the challenged exhibits to the complaints filed in the other three cases, being the Michigan Case, Case No. 2:20-cv-13134-LVP-RSW, United States District Court, Eastern District of Michigan; Wisconsin Case, being Case No. 2:20-cv-1771, V, United States District Court, Eastern District of Wisconsin; and the Arizona Case, being Case No. 2-20-cv-02321-DJH, United States District Court District of Arizona.

8. In addition, the Commission alleges that I sponsored an affidavit from an anonymous source who claimed to be a "military intelligence expert" who used the code-name "Spyder," who was later identified as Joshua Merritt; and that I had knowledge that Mr. Meritt never actually worked as a "military intelligence expert." I did not know that Mr. Meritt never worked in military intelligence and he may have.

9. Moreover, the Commission clearly contradicts itself in Footnote Number 2 of its Second Amended Petition, by stating that Mr. Merritt purportedly admitted to the Washington Post that his affidavit—to which he had sworn under penalty of perjury—was incorrect on December 11, 2020. If the Post's report is correct, this is an admission to perjury by Mr. Merrit—well after his affidavit was attached to the complaints. I understood that others on our team determined that the statements in the Spyder Affidavit were reliable, in fact Mr. Harold Kliendhelder admitted in open court

in Michigan that he verified the Spyder Affidavit was valid. Mr. Kleindhelder offered to produce "Spyder," Jousha Merritt to testify about the statements in the Spyder Affidavit but Judge Parker refused. *See Exhibit "A" attached hereto*, a true and correct copy of the a portion of the transcript in the Michigan case held on July 12, 2021, in the Michigan case, *King v. Whitmer*, Case No. 20-cv-13134. I relied on Mr. Kleindhelder and believed Mr. Merritt's affidavit was true and correct when it was attached to all our pleadings and none of us would have included it had we not believed it to be correct.

10. I was receiving constant reports of developments and potential evidence to support our allegations. Validation of this evidence was by the forwarding counsel and co-counsel to whom I handed it off.

11. The Georgia complaint—and the other three—were drafted primarily by other attorneys on our team, who were working in Virginia at the time, while I was working in South Carolina. I reviewed and made corrections to the complaints. I made a reasonable inquiry as to the exhibits attached to the complaints and relied on other counsel as to the validity of the exhibits attached to the complaints.

12. Harry MacDougald was our local counsel in Georgia, who accepted the difficult, high-pressured and time-pressured job of compiling and making the actual filing. Time was of the essence in our election suits.

13. Mr. MacDougald finalized and filed the complaint and selected and filed the exhibits on November 25, 2020. I reviewed and made corrections to the complaint. I made a reasonable inquiry as to the exhibits attached to the complaint and relied on other counsel as to the validity of the exhibits attached to the Michigan complaint.

14. Scott Hagerstrom and Gregory J. Rohl were our local counsel in Michigan. They too accepted the difficult, high-pressured and time-pressured job of compiling and making the actual filing.

15. Messrs. Hagerstrom and Rohl finalized and filed the complaint for the Michigan Case and selected and filed the exhibits provided by others on our team on November 25, 2020. I reviewed and made corrections to the complaint. I made a reasonable inquiry as to the exhibits attached to the complaint and relied on other counsel as to the validity of the exhibits attached to the Michigan complaint.

16. Prior to the complaint being filed in the Michigan Case, I did receive a copy of the complaint from Mr. Kleindhendler, reviewed the document and returned it to him 45 minutes later with some minor corrections.

17. Michael D. Dean and Daniel J. Eastman were our local counsel in Wisconsin, who also accepted the difficult, high-pressured and time-pressured job of compiling and making the actual filing.

18. Messrs. Dean and Eastman finalized and filed the complaint in the

Wisconsin Case on December 1, 2020 and selected and filed the exhibits provided by others on our team. I did not review the exhibits filed in the Wisconsin case before they were filed. I reviewed and made corrections to the complaint. I made a reasonable inquiry as to the exhibits attached to the complaint and relied on other counsel as to the validity of the exhibits attached to the Wisconsin complaint.

19. Alexander Kolodin and Christopher Viskovic were our local counsel in Arizona, who also accepted the difficult, high-pressured and time-pressured job of compiling and making the actual filing.

20. Messrs. Kolodin and Viskovic finalized and filed the complaint in the Arizona Case on December 3, 2020 and selected and filed the exhibits provided by others on our team. I reviewed and made corrections to the complaint. I made a reasonable inquiry as to the exhibits attached to the complaint and relied on other counsel as to the validity of the exhibits attached to the Arizona complaint.

21. There are no circumstances under which I would knowingly mislead any court—much less knowingly make a false, dishonest, or deceitful statement at any level. That is completely contrary to my personal integrity and the way I have practiced law for now 44 years.

Further Declarant sayeth not."

/s/ Sidney Powell

Sidney Powell

UNSWORN DECLARATION

My name is Sidney Powell, my birth date is May 1, 1955, and my address is 2911 Turtle Creek Blvd, Suite 300, Dallas, Texas 75219. I declare under the penalty of perjury that the statements contained in the foregoing Declaration are true and correct.

Executed in Dallas County, Texas on July 18, 2022.

/s/ Sidney Powell
Sidney Powell

Automated Certificate of eService

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Lauren Baisdon on behalf of Michael Graham
Bar No. 24113581
lbaisdon@texasbar.com
Envelope ID: 77780129
Filing Code Description: Brief Not Requesting Oral Argument
Filing Description: Brief Not Requesting Oral Argument
Status as of 7/21/2023 4:53 PM CST

Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Royce Lemoine	24026421	royce.lemoine@texasbar.com	7/21/2023 4:47:32 PM	SENT
Michael Graham	24113581	Michael.Graham@TEXASBAR.COM	7/21/2023 4:47:32 PM	SENT
Robert Holmes	9908400	rhholmes@swbell.net	7/21/2023 4:47:32 PM	SENT
S. Michael McColloch	13431950	smm@mccolloch-law.com	7/21/2023 4:47:32 PM	SENT
Karen Cook	12696860	karen@karencooklaw.com	7/21/2023 4:47:32 PM	SENT