

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

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

V.

CIVIL ACTION  
NO. 20-cv-13134

GRETCHEN WHITMER, in her official capacity  
As Governor of the State of Michigan  
JOCELYN BENSON, in her official capacity  
As Michigan Secretary of State, the Michigan  
BOARD OF STATE CANVASSERS,  
Defendants,

And

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

And

SCOTT HAGERSTROM, JULIA HALLER,  
ROBERT JOHNSON, L. LIN WOOD, HOWARD  
KLEINHENDER, SIDNEY POWELL, and GREGORY ROHL,  
Interested Parties,

And

MICHIGAN STATE CONFERENCE NAACP,  
Amicus.

---

MOTION HEARING  
BEFORE THE HONORABLE LINDA V. PARKER  
United States District Judge  
Detroit, Michigan  
Monday, July 12, 2021

(All parties appearing via videoconference.)

APPEARANCES:

•GREGORY J. ROHL  
The Law Offices of Gregory J. Rohl, P.C.  
41850 W. 11 Mile Road  
Suite 110  
Novi, MI 48375  
248-380-9404  
Email: greg@rohllaw.com

On behalf of Plaintiffs King, Sheridan, Haggard,  
Ritchard, Hooper, and Rubingh.

•HEATHER MEINGAST  
Michigan Department of Attorney General  
Civil Litigation, Employment & Elections Division  
PO Box 30736  
Lansing, MI 48909  
517-335-7659  
Email: meingasth@michigan.gov

On behalf of Defendant, Jocelyn Benson.

•DAVID H. FINK, NATHAN J. FINK  
Fink Bressack PLLC  
38500 Woodward Ave.  
Suite 350  
Bloomfield Hills, MI 48304  
248-971-2500.  
Email: dfink@finkbressack.com, nfink@finkbressack.com

On behalf of Intervenor, City of Detroit.

•MARY ELLEN GUREWITZ  
Cummings & Cummings Law PLLC  
423 North Main Street  
Suite 200  
Royal Oak, MI 48067  
313-204-6979  
Email: megurewitz@gmail.com.

On behalf of the Defendant Intervenors, Democratic  
National Committee and the Michigan Democratic Party.

APPEARANCES, cont'd:

•SCOTT R. ELDRIDGE  
Miller, Canfield  
One Michigan Avenue  
Suite 900  
Lansing, MI 48933-1609  
517-483-4918  
Email: eldridge@millercanfield.com

On behalf of the Defendant Intervenors, Democratic National Committee and the Michigan Democratic Party.

•ANDREW A. PATERSON , JR.  
46350 Grand River Ave.  
Novi, MI 48374  
248 568-9712  
Email: aap43@hotmail.com

On behalf of Defendant Intervenor, Robert Davis.

•DONALD D. CAMPBELL, PATRICK K. McGLINN  
Collins, Einhorn  
4000 Town Center  
Suite 909  
Southfield, MI 48075-1473  
248-355-4141  
Email: donald.campbell@ceflawyers.com,  
patrick.mcglinn@ceflawyers.com

On behalf of Interested Parties, Rohl, Hagerstrom, Haller, Johnson, Wood, Kleinhendler, Powell.

•THOMAS M. BUCHANAN  
Winston & Strawn, LLP.  
1901 L. Street NW.  
Washington DC 20036  
(202)282-5787  
Email: Tbuchana@winston.com

On behalf of Interested Party, Emily Newman.

- - -

Andrea E. Wabeke  
Certified Realtime Reporter • Federal Official Court Reporter  
Email: federalcourtranscripts@gmail.com

**I N D E X**

<b>Proceeding</b>	<b>Page</b>
Discussion of drafting of the Complaint & Amended Complaint.....	20
Discussion of Court's authority to issue The relief sought.....	22
Discussion of timing of filing Of the Complaint.....	34
Discussion of Mootness.....	42
Discussion of the legal obligation to review Facts alleged in the Complaint.....	54
Discussion of Ramsland Affidavit.....	56
Discussion of Expert Merritt.....	70
Discussion of Expert Braynard.....	74
Discussion of Expert Briggs.....	75
Discussion of Expert Watkins.....	76
Discussion of Ramsland Affidavit.....	76
Discussion of Expert Merritt.....	77
Discussion of whether an attorney should be Sanctioned for his or her failure to correct Or withdraw allegations that an attorney comes To know or came to know are untrue.....	85
Discussion of Expert Briggs.....	88
Discussion of Sitto Affidavit.....	108
Discussion of Carone Affidavit.....	122
Discussion of Connarn Affidavit.....	135

**I N D E X (Cont'd)**

<b>Proceeding</b>	<b>Page.</b>
Discussion of Jacob Affidvit.....	138
Discussion of Bomer Affidavit.....	146
Discussion of Jacob Affidvit.....	150
Discussion of Helminen, Waskilewski Mandelbaum, Rose, Sitek, Posch Champagne & Bomer Affidvit.....	155
Discussion of Brunell, Spalding & Sherer Affidavit.....	163
Discussion of Larsen Affidavit.....	171
Discussion of Gustafson Affidavit.....	176
Discussion of Meyers Affidavit.....	184.
- - - - -	
Closing Remarks by Mr. Campbell.....	197
Closing Remarks by Mr. Buchanan.....	203
Closing Remarks by Mr. Wood.....	206
Closing Remarks by Ms. Gurewitz.....	216
Closing Remarks by Mr. Paterson.....	217
Closing Remarks by Mr. David Fink.....	217
Closing Remarks by Ms. Meingast.....	230
Closing Remarks by Ms. Powell.....	231

**E X H I B I T S**

<b>Exhibit No.</b>	<b>Offered</b>	<b>Received</b>
	(None Offered)	

Motion hrg.

7/12/2021

1 Detroit, Michigan

2 July 12, 2021

3 8:36 a.m.

4 - - - -

5 **THE CLERK:** The United States District Court for the  
6 Eastern District of Michigan is now in session, the Honorable  
7 Linda V. Parker presiding.

8 Your Honor, the Court calls civil matter 20-13134,  
9 Timothy King and others versus Governor Whitmer and others.  
10 Today is the date and time set for a motion hearing in this  
11 matter.

12 **THE COURT:** I'd like counsel please to place their  
13 names on the record, and I will start first with counsel for  
14 Plaintiffs' counsel.

15 **MR. ROHL:** Thank you, your Honor. Good morning. For  
16 the record, may it please the court, Greg Rohl on behalf of  
17 Plaintiffs.

18 **THE COURT:** All right. Mr. Rohl, thank you.

19 **MR. CAMPBELL:** Thank you, your Honor.  
20 Donald Campbell here on behalf of the following lawyers:  
21 Sidney Powell, Howard Kleinhendler, Greg Rohl, Scott  
22 Hagerstrom, Julia Haller, Brandon Johnson, and Lin Wood. All  
23 of them are here pursuant to your order.

24 **THE COURT:** All right. Thank you.

25 And what about Mr. McGlinn, is he here with us this

Motion hrg.

7/12/2021

1 morning?

2 **MR. CAMPBELL:** Yes, I'm sorry. Mr. McGlinn is here.  
3 He's co-counsel with me. He is in the same room. He does not  
4 have a separate video feed. He can hear things off of this  
5 computer. If necessary, he can even come and take the screen  
6 from me, but he was not going to have his own screen or his own  
7 sound to avoid any interference.

8 **THE COURT:** All right. Thank you.

9 And I understand that Mr. Buchanan is also  
10 representing Ms. Newman. Is he here?

11 **MR. BUCHANAN:** Yes, I am here, and so is Ms. Newman.

12 **THE COURT:** Thank you.

13 Now, I'm going to, in a sense take -- well, let me  
14 have Plaintiffs' counsel state their names for the record and  
15 let me -- let me start with Mr. Hagerstrom. Are you here, sir?

16 **MR. HAGERSTROM:** I am.

17 **THE COURT:** State your name.

18 **MR. HAGERSTROM:** Scott Hagerstrom.

19 **THE COURT:** Ms. Haller?

20 **MS. HALLER:** Yes, your Honor.

21 **THE COURT:** State your name, please, after I've  
22 called you.

23 **MS. HALLER:** Julia Haller.

24 **THE COURT:** All right. Mr. Brandon Johnson?

25 **MR. JOHNSON:** Yes, your Honor, Brandon Johnson.

Motion hrg.

7/12/2021

1           **THE COURT:** Thank you.

2           And Ms. Stefanie Lambert.

3           **MS. LAMBERT:** Good morning, your Honor.

4           Stefanie Lambert.

5           **THE COURT:** All right. Your name, please, for the  
6           record.

7           **MS. LAMBERT:** Stefanie Lambert Junttila, P-71303.

8           **THE COURT:** Mr. Kleinhendler.

9           **MR. KLEINHENDLER:** Howard Kleinhendler.

10          **THE COURT:** Thank, you sir.

11          And Ms. Newman.

12          **MS. NEWMAN:** Good morning. Emily Newman.

13          **THE COURT:** Thank you, Ms. Newman.

14          Ms. Powell.

15          **MS. POWELL:** Sidney Powell.

16          **THE COURT:** Thank you.

17          And, Mr. Rohl, you've already placed your name on the  
18          record.

19          Mr. Wood?

20          **MR. WOOD:** Yes. This is Lin Wood, your Honor. Good  
21          morning.

22          **THE COURT:** Good morning.

23          All right. Counsel, thank you very much. Have I  
24          missed anyone?

25          Mr. Fink, I don't recall calling your name.



Motion hrg.

7/12/2021

1           **MR. DAVID FINK:** No, your Honor. I am counsel for  
2 the City of Detroit, and also with me is my partner and son. I  
3 have to mute so I don't get feedback.

4           **THE COURT:** Thank you. All right.

5           **MR. NATHAN FINK:** Good morning, your Honor, Nathan  
6 Fink on behalf of the Intervenor Defendant, City of Detroit.

7           **THE COURT:** All right. Thank you.

8                   And do we have counsel on the line for the State  
9 defendants?

10           **MS. MEINGAST:** Yes, your Honor. Assistant Attorney  
11 General Heather Meingast on behalf of Governor Whitmer and  
12 Secretary Benson.

13           **THE COURT:** Thank you very much.

14                   And I see -- I'm sorry, Ms. Gurewitz.

15           **MS. GUREWITZ:** Yes. Mary Ellen Gurewitz, on behalf  
16 of the Michigan Democratic Party and the Democratic National  
17 Committee.

18           **MR. ELDRIDGE:** Good morning, your Honor.  
19 Scott Eldridge, also on behalf of the DNC and the MDP.

20           **THE COURT:** And, Mr. Davis, are you here with counsel  
21 today, sir?

22           **MR. DAVIS:** Yes, your Honor. Mr. Paterson is on the  
23 line, your Honor.

24           **THE COURT:** All right. Thank you. You can -- so  
25 Robert Davis is here, and your counsel is Mr. Paterson. Okay.

Motion hrg.

7/12/2021

1 He is not -- I see that his square appears, but I don't hear  
2 him. All right. Let me just make a note of that.

3 All right. I think I've covered everyone -- and  
4 Mr. Owen, Jason Owen.

5 **INTERNET TECHNICIAN:** Good morning, Judge. I'm IT  
6 support.

7 **THE COURT:** Thank you, Mr. Owen. Thank you very  
8 much. Probably one the most critical individuals on this call,  
9 would you say, counsel? All right. Thank you, Jason.

10 All right. Ladies and gentlemen, thank you so much  
11 for your appearance here -- your prompt appearance, and I want  
12 to just make some opening remarks and underscore that the  
13 purpose of today's hearing is to address three pending motions  
14 for sanctions. Those motions are as follows: Intervening  
15 Defendant Robert Davis' motion for sanctions against Plaintiffs  
16 and Plaintiffs' counsel in which Mr. Davis seeks sanctions  
17 pursuant to the Court's inherent authority and also under 28  
18 U.S.C. 1927.

19 The second motion for sanctions has been filed by  
20 intervening Defendant City of Detroit's motion for sanctions,  
21 for disciplinary act, for disbarment referral, and for referral  
22 to state bar disciplinary bodies, and, here, the City seeks  
23 sanctions under Rule 11 of the Federal Rules of Civil  
24 Procedure.

25 And, finally, the State Defendants, Secretary of

Motion hrg.

7/12/2021

1 State Jocelyn Benson and Governor Gretchen Whitmer, they have  
2 filed motions for sanctions under 28 U.S.C. Section 1927 in  
3 which Defendants alternatively seek sanctions under the Court's  
4 inherent authority.

5 All right. Now, the Court finds for this record that  
6 the referenced motions adequately put Plaintiffs and  
7 Plaintiffs' counsel on notice of the conduct alleged to be  
8 sanctionable. Plaintiffs and their counsel have had the  
9 opportunity to respond to these allegations in their briefs.  
10 However, I've called this hearing to provide them with an  
11 additional opportunity to respond to those claims and to answer  
12 questions that I deem relevant to deciding whether Rule 11 or  
13 Section 1927 have been violated, and/or, counsel, whether the  
14 Court's inherent powers to sanction should be utilized.

15 It bears mentioning that I recognize that there is  
16 disagreement about whether the City of Detroit followed the  
17 Safe Harbor provisions with exactitude. Nevertheless, I want  
18 to advise Plaintiffs and Plaintiffs' counsel that Rule 11  
19 allows a court, on its own initiative, to require a party to  
20 show cause why sanctions should not be imposed under the rule  
21 and to impose Rule 11 sanctions if, after notice and a  
22 reasonable opportunity to respond, which I am providing today,  
23 the Court determines that Rule 11(b) has been violated if after  
24 that notice.

25 I'll tell you, counsel, I do not need today to rehear

Motion hrg.

7/12/2021

1 the arguments that have been advanced in the parties' briefs at  
2 this hearing. I have thoroughly reviewed every filing. After  
3 I ask my questions, however, I will give the parties the  
4 opportunity to make a brief statement on their own to the Court  
5 concerning the matter at hand.

6 Now, I ordered the personal appearance at this  
7 hearing of all attorneys whose names appear on any of the  
8 Plaintiffs' pleadings and briefs because I have questions that  
9 I want to give you the opportunity to answer. I ask counsel to  
10 provide clear and direct answers to the Court's questions, and  
11 let me be clear, that these questions are not seeking the  
12 mental impressions, conclusions, opinions, or legal theories of  
13 counsel.

14 Each question that I ask is directed to all of the  
15 attorneys whose names appear on any of the Plaintiffs'  
16 pleadings or briefs. I will not call out any of your  
17 individual names unless the question is specifically crafted  
18 for a particular attorney, and there are a couple of those.  
19 After I ask a question, the attorney best equipped to answer  
20 the question may respond. When I've received a complete answer  
21 to a line of questioning, I will give all other attorneys the  
22 opportunity to comment or add to the answers on the record.  
23 Note that if no other attorneys speaks, the Court finds that --  
24 will find that all other attorneys agree with the answer that  
25 has been placed on the record.

Motion hrg.

7/12/2021

1           Now, that brings me, counsel, to a potential issue as  
2 we now have counsel representing counsel for Plaintiffs. The  
3 Michigan Rules of Professional Responsibility, as I'm certain  
4 everyone on this call should know, prohibit a lawyer from  
5 representing a client if the representation will be directly  
6 adverse to another client unless the lawyer reasonably believes  
7 the representation will not adversely affect the relationship  
8 of the other client, and, secondly, each client consents after  
9 consultation.

10           Now, at this time I would like to confirm on the  
11 record, through Mr. McGlinn and Mr. Campbell to determine -- I  
12 would like to confirm that they have addressed this potential  
13 conflict issue with their clients.

14           **MR. CAMPBELL:** I have, your Honor, and they have  
15 given me their consent to proceed. I do also wish to make an  
16 objection, so that you have it for the record, on one of the  
17 statements that you made about proceeding on the possibility of  
18 the Court's own power with regard to Rule 11 and the show  
19 cause.

20           **THE COURT:** Yes.

21           **MR. CAMPBELL:** May I, briefly?

22           **THE COURT:** Briefly, yes.

23           **MR. CAMPBELL:** Your Honor, I believe under Rule 11(c)  
24 that the court can seek a show cause on notice prior to a  
25 dismissal. I believe after the dismissal that is not part of

Motion hrg.

7/12/2021

1 the power that the Court retains. So I do object, on those  
2 grounds, for the Court's consideration of its own show cause.

3 **THE COURT:** Okay. I'll make a note of that, and at  
4 this moment let me ask counsel for the Defendants if they would  
5 like to respond to that, any of counsel? Let me start with  
6 Mr. Fink.

7 **MR. DAVID FINK:** Your Honor, the rule itself does not  
8 include that requirement. The rule simply says on its own the  
9 court may order an attorney, law firm, or party to show cause  
10 why conduct specifically described in the order has not  
11 violated Rule 11(b).

12 Notwithstanding that, I do want to be clear for the  
13 Court that -- and I believe the Court is aware of this -- a  
14 proper Rule 11 notice was sent to all of the parties, all of  
15 the attorneys. While they make general objections to it, the  
16 notice included a detailed motion, which was, with minor  
17 exceptions, the same motion that was filed, and we can provide  
18 that to the Court.

19 We have met all the prerequisites for a Rule 11  
20 proceeding, with or without a request on the part or an order  
21 to show cause from the Court. They have had several months to  
22 respond, and the issue is clearly before the Court properly  
23 today.

24 **THE COURT:** All right. Thank you, Mr. Fink.

25 Mr. Campbell, let me go back to you, sir. What's the

Motion hrg.

7/12/2021

1 authority for your position?

2 **MR. CAMPBELL:** Your Honor, I believe it's Rule 11(c).  
3 If you give me some time, I can probably pull it up, but I  
4 wasn't prepared to address the Court's inherent or, if you  
5 will, the Court's show cause powers because we hadn't gotten  
6 notice of that coming into this proceeding so I apologize for  
7 that so I'm going off memory.

8 **THE COURT:** All right. I'm going to make a note of  
9 that, and, if needed, we'll come back to that.

10 **MR. CAMPBELL:** Happy to address that for the Court if  
11 need be and in writing.

12 **THE COURT:** We'll see if I need that. Thank you.

13 Counsel, if there are not any other comments at this  
14 point, the way I intend to proceed, I'm going to go ahead and  
15 move forward.

16 Any other housekeeping that we need to take care of  
17 at this point?

18 **MR. BUCHANAN:** Thank you, your Honor. This is  
19 Mr. Buchanan on behalf of Ms. Newman.

20 **THE COURT:** Yes.

21 **MR. BUCHANAN:** I don't believe my client was ever  
22 served with the papers at the time in question. Ultimately,  
23 she became aware generally, but my client was a contract lawyer  
24 working from home, who spent maybe five hours on this matter so  
25 she really wasn't involved in, you know, when the motions were

Motion hrg.

7/12/2021

1 filed and lawyers were retained and pleadings were filed. So I  
2 just want to note that.

3 We're -- she's aware now. She just recently hired  
4 me, and I thank the Court for getting my admission process so  
5 quickly. Her role is de minimus; and so she was never, as I  
6 understand, sent the pleadings at the time in question. They  
7 were served on local counsel, but she was never part of a law  
8 firm. She is listed as "of counsel" on two of the pleadings,  
9 the first amended complaint and the complaint, but she was  
10 never an employee of that firm. That was something that  
11 someone put on the pleadings. She was a contract lawyer, 1099  
12 employee, who spent five hours on the matter. I just wanted to  
13 note that for the Court. Thank you.

14 **MR. CAMPBELL:** If I may, briefly, to add to that. I  
15 know Mr. Fink will have a response. It's my belief that he did  
16 serve local counsel if he used the ECF for service. There are  
17 a number of folks who would not have received it that way. I  
18 don't know what he says is service. There is also the factual  
19 issue of what was served under the Safe Harbor provision versus  
20 what was filed. That is addressed a little bit in the briefs  
21 also, your Honor, but those same circumstances and situations  
22 would apply.

23 So that when he says this was properly served and  
24 this is a proper Rule 11 motion on behalf of the City, we, of  
25 course, have the initial issue of whether the City, as an



Motion hrg.

7/12/2021

1 intervenor, is a proper party to bring a Rule 11, at least in  
2 this matter at all, and, secondly, I'm not sure what he means  
3 by service. So I don't want my silence to be a confirmation of  
4 that. So, with that, I've made my remarks. Thank you.

5 **THE COURT:** Mr. Fink.

6 **MR. DAVID FINK:** Your Honor, I have and can provide  
7 to the court -- I'm not sure how to do this, but we can -- I've  
8 got it -- I can provide it in a PDF. I have letter, which was  
9 sent by first class mail, and it identifies, among the  
10 addressees at Sidney Powell's office, Sidney Powell,  
11 Emily Newman, Julia Haller, and Brandon Johnson. They're all  
12 included on an e-mail that was sent -- and, I'm sorry, a letter  
13 that was sent by first class mail to Sidney Powell, P.C., at  
14 2911 Turtle Creek Boulevard, Suite 300, in Dallas, Texas.

15 The issue has never been raised before in this case.  
16 We have not heard from anybody claiming that somebody or that  
17 any one of these parties did not receive the Rule 11 notice.  
18 This is hardly the time to suddenly say they didn't receive it.  
19 We did -- and we also sent it by e-mail.

20 What I can't confirm for the Court right now, because  
21 I'm not set up, but we're trying to find it, is whether the  
22 e-mail was directly sent to Ms. Newman. It was definitely sent  
23 to the parties who we had e-mail addresses for, but I don't  
24 believe, at the time, we may not have had an e-mail address for  
25 Ms. Newman, but we definitely sent it to her first class mail.

Motion hrg.

7/12/2021

1           **THE COURT:** All right. That sounds like something  
2 we're obviously going to need to sort that out, and I will  
3 determine, before this proceeding is over, to what extent, if  
4 any, I'm going to need any briefs on it, all right, but it's a  
5 flagged issue.

6           Yes, Mr. Fink.

7           **MR. DAVID FINK:** Would the Court like us to provide a  
8 PDF to the Court right now of the -- and I'm not sure how to  
9 produce things on this record, but we can produce a PDF of the  
10 notice.

11           **THE COURT:** Mr. Flanigan, would that be a  
12 screen-sharing issue? Is that something -- I don't know if we  
13 can do that through Mr. Fink is my question.

14           **THE CLERK:** He should be able to screen share.

15           **THE COURT:** Okay. Do you know how to do that,  
16 Mr. Fink?

17           **MR. DAVID FINK:** Fortunately, the younger Mr. Fink  
18 probably does.

19           **THE COURT:** Okay.

20           **MR. DAVID FINK:** I'm going to mute for a second so he  
21 can talk to me about technology.

22           **THE COURT:** Yeah, just a few seconds, because I think  
23 I really want to move forward, and it's something -- but let's  
24 just -- I'll give you a couple minutes -- just 60 seconds. How  
25 about that? Yeah. Honestly, it is something that can be

Motion hrg.

7/12/2021

1 docketed, Mr. Fink -- let me let him -- Mr. Fink.

2 **MR. DAVID FINK:** Yes, your Honor.

3 **THE COURT:** I think the better way to do this is go  
4 ahead and docket what you have, and the Court will take a look  
5 at it, and others can do the same, and I'll advise whether or  
6 not there needs to be any briefing on that issue. Okay?

7 **MR. DAVID FINK:** Yes, your Honor, I understand. My  
8 son even knows how to docket.

9 **THE COURT:** Duly noted. All right.

10 **MR. BUCHANAN:** Your Honor, one quick point. I'm not  
11 disputing Mr. Fink's representations of, you know, sending it  
12 to Sidney Powell's office. My client was working from home in  
13 Washington, D.C., a fact Mr. Fink would not have been aware of.  
14 Again, she was a contract lawyer. She was listed on the  
15 pleading as being at the location or at least "of counsel" at  
16 Ms. Powell's office, but she really was not of counsel. It was  
17 just, you know, recorded, but so that's my point that she --

18 **THE COURT:** Okay. Fair enough.

19 **MR. BUCHANAN:** She did not receive it. Thank you.

20 **MR. DAVID FINK:** Your Honor, may I very briefly speak  
21 to that point, very briefly, because it's a theme that runs  
22 through the entire case for us, and that is counsel knew that  
23 she had been presented as being an attorney representing the  
24 Plaintiffs. She knew that her address was provided to the  
25 court in the manner it was provided. It was not our obligation

Motion hrg.

7/12/2021

1 or ability to do any kind of investigation. It was her  
2 responsibility to no longer use the privilege she had as an  
3 attorney to endorse this case without coming forward.

4 I know, your Honor, perhaps I'm getting carried away.  
5 I apologize. I just want to say it's a theme that's going to  
6 come up all through this.

7 **THE COURT:** Okay. It's -- I have been duly noted,  
8 counsel, and we will address that in due course. File what  
9 you -- docket what you need to docket and we'll pick it up from  
10 there, all right?

11 All right. Anything else before the Court proceeds?  
12 Good. Thank you.

13 All right. My first question to Plaintiffs' counsel  
14 is: Who wrote the complaint or the amended complaint in this  
15 matter?

16 **MR. CAMPBELL:** Your Honor, this is Don Campbell.  
17 You said "Plaintiffs' counsel." This is counsel for  
18 Plaintiffs' counsel. I think I am in the best position to give  
19 the initial answer to the Court on that, if I may?

20 **THE COURT:** You may.

21 **MR. CAMPBELL:** Thank you. If you're looking for the  
22 principal author, it would be Howard Kleinhendler. If you're  
23 looking for the lawyer who worked closest with him, it's  
24 Sidney Powell.

25 **THE COURT:** Okay.

Motion hrg.

7/12/2021

1           **MR. CAMPBELL:** Between them, it is their work product  
2 primarily, if you will. There are others who helped, some very  
3 briefly, as Mr. Buchanan mentioned, some only on the amended  
4 complaint. That's Brandon Johnson, again, only with some  
5 research, but in terms of the folks who helped to draft or,  
6 really, the final product that gets filed in Michigan is  
7 primarily a product of Sidney Powell and of  
8 Howard Kleinhendler.

9           **THE COURT:** All right. Does anybody else want to add  
10 to that?

11           All right. Thank you. Let's move --

12           **MR. WOOD:** Your Honor, may I? Your Honor, this is  
13 Lin Wood.

14           **THE COURT:** Yes, sir.

15           **MR. WOOD:** If I might answer. I played absolutely no  
16 role in the drafting of the complaint.

17           **THE COURT:** Okay.

18           **MR. WOOD:** Just to be clear.

19           **MR. CAMPBELL:** All my clients agree on that, your  
20 Honor.

21           **THE COURT:** Okay. Is there anybody else that feels  
22 that they played no role in the drafting of the complaint?

23           **MS. NEWMAN:** Your Honor --

24           **MR. BUCHANAN:** Yes, your Honor. My client,  
25 Emily Newman, as I said, spent a total of five hours.

Motion hrg.

7/12/2021

1           **THE COURT:** Okay. We're fine. I'm clear on that.  
2 I'm clear on that. I think -- you know what? I think I've got  
3 a straight -- a good enough, clear answer from Mr. Campbell. I  
4 understand that Mr. Wood has not played any role in that, but  
5 under -- the answer that I am taking is, is that  
6 Mr. Howard Kleinhendler, as well as Ms. Sidney Powell, were the  
7 principal drafters of the complaint. All right.

8           **MS. NEWMAN:** Your Honor, the Court should note -- I'm  
9 sorry, your Honor. The Court should know that I did not play a  
10 role in drafting the complaint.

11           **THE COURT:** I'm very -- yes, it's clear from the  
12 record. It's clear from the record that you have not. So the  
13 complaint or the amended complaint in this matter were drafted  
14 principally by Mr. Howard Kleinhendler and Ms. Sidney Powell.

15           The Court is moving on.

16           All right. Let's talk about -- I'd like to now talk  
17 about the relief that the complaint -- the amended complaint  
18 seeks, and I ask this question to counsel for Plaintiffs'  
19 counsel, or Plaintiffs' counsel, and you all can decide who you  
20 feel is best equipped to answer the question, and the first  
21 question is:

22           What authority enabled this Court to issue any of the  
23 relief sought in this case, such as decertifying the election  
24 results or declaring an outcome that is different than that  
25 which was declared by the State?

Motion hrg.

7/12/2021

1           **MR. CAMPBELL:** Well, your Honor, I guess, first, you  
2 start with the Constitution of the United States; secondly,  
3 *Bush v Gore* decided 20 years earlier. That was a case where  
4 the court ordered the State of Florida to stop a count and  
5 decided the 2000 presidential election.

6           Since that time, there have been other cases that  
7 have been developed under the *Bush v Gore* doctrine. This idea  
8 that, again, was not invented in *Bush v Gore* but has existed  
9 since the founding fathers put it into the Constitution, and  
10 that is that the court has a role to play in challenges and  
11 deciding those challenges on due process grounds, on the  
12 Eleventh Amendment, looking at the electors clause and the  
13 Twelfth Amendment. So those things which came up, and which  
14 there was another *Bush v The Board of Canvassers*. I believe  
15 that it was decided at the same time. I have that cite from  
16 one of the briefs that we have. So, again, another example of  
17 where the court did take into consideration. Of course,  
18 ultimately, *Bush v Gore* decided the election, and other suits  
19 were no longer necessary to be held.

20           There's also the *Carson* case from the Eighth Circuit,  
21 and I understand -- and I, of course, read your opinion, your  
22 Honor, that this Court has adopted the dissent from *Carson*,  
23 but, as you can rightly imagine, a lawyer bringing the majority  
24 opinion as part of the basis for the bringing of the action is  
25 not unusual, extraordinary, and certainly shouldn't expose

Motion hrg.

7/12/2021

1 anybody to sanctions simply because they were unable to  
2 determine ahead of time that this Court would choose to follow  
3 the dissent.

4 Judge, I can't, obviously, distill down into a few  
5 moments all of the authorities that were placed in the motion.  
6 I do want to point out to the Court, because the Court  
7 identified in its order, the relief that was requested, and it  
8 identified relief that was in the amended complaint, but in the  
9 request, the motion, actually, for the restraining order, there  
10 were, as I recall -- and I hope I have this accurately -- at  
11 Page 16 of what would have been, I believe, ECF 7, there were  
12 three requests, decertify or stay the delivery of the vote  
13 count and results, conserve the status quo, and, thirdly,  
14 impound the voting machines, and that was the -- those were the  
15 great relief requested within the motion.

16 I should also point out the names on the motion were  
17 Sidney Powell, Greg Rohl, Scott Hagerstrom, and  
18 Howard Kleinhendler. The other lawyers do not appear on that  
19 document when it was filed. So I hope that's a response --  
20 responsive to the Court's question.

21 **THE COURT:** What is the authority, specifically, that  
22 allows a court to decertify an election? I mean what specific  
23 case are you looking at?

24 **MR. CAMPBELL:** Well, again, if you're looking at  
25 cases, I would say it's *Bush v Gore*.



Motion hrg.

7/12/2021

1           Now, it is, in some respects, the obverse, right? In  
2 *Bush v Gore*, it was a direction to stop an election count. If  
3 you have the authority to stop an election count, I think it's  
4 a reasonable inference to believe that the Court has the  
5 authority to start a count. And, again, if that theory is  
6 wrong -- and in this case you ruled the Sixth Circuit didn't  
7 disturb that. The U.S. Supreme Court didn't disturb that. My  
8 clients are lawyers. They understand that, and they respect  
9 that. That's the ruling in this case, but until you gave that  
10 ruling, Judge, I don't think that result was as obvious as the  
11 Defense has made it out to be.

12           And I have more arguments about that, but I'll  
13 reserve that. You haven't asked me that question yet.

14           **THE COURT:** You feel that based upon basically an  
15 extrapolation of a court's ruling you can conclude the direct  
16 opposite? If it's A, then it could be B. I don't really  
17 understand that.

18           Let me get the Defenses' thoughts on that. Let me  
19 hear -- I'll hear from Mr. Fink, and then I'd like to hear from  
20 Ms. Meingast and Ms. Gurewitz. Go ahead.

21           No, I'm sorry. I'm sorry, Ms. Gurewitz. I'm just  
22 looking at those -- the State Defendants' counsel and the  
23 Intervening Defendants', including Mr. Fink.

24           Go ahead, Mr. Fink.

25           **MR. DAVID FINK:** Your Honor, in this case the

Motion hrg.

7/12/2021

1 Plaintiffs chose to ignore centuries of precedent. They chose  
2 to ignore the procedures that are in place. They did not  
3 seek -- the Trump campaign did not seek, nor did any of the  
4 Plaintiffs, a recount. Instead, they tried, somehow, to  
5 collaterally attack everything that had happened. There was no  
6 basis.

7 This Court's opinion and order of December 7th, 2020,  
8 extremely well and properly addressed the weakness of all of  
9 the claims. I'm happy to argue or respond to any specific one,  
10 but there was no basis for what was argued here. This was,  
11 from the beginning to the end, an attempt to get a message out  
12 that was extrajudicial. They were trying to use the court to  
13 get a message out. We could not find a basis in law for what  
14 they were trying to do.

15 **THE COURT:** Ms. Meingast.

16 **MS. MEINGAST:** Thank you, your Honor.

17 I would agree with Mr. Fink. You know, I think we've  
18 argued in the numerous briefs that were submitted here really  
19 *Bush v Gore* was not even applicable to this case on a  
20 substantive theory of dilution. That wasn't even really what  
21 was pled here, and to the extent *Bush v Gore* has any meaning  
22 for being able to stop, you know, a vote, stop ballots being  
23 counted, that's not what happened here. Here we went all the  
24 way through vote counting, all the way through canvassing, and  
25 all the way through certification, and all the way of sending

Motion hrg.

7/12/2021

1 the slate of electors to the U.S. archivist before this case  
2 was even filed.

3           So I don't believe that *Bush v Gore* has any support  
4 for disenfranchising millions of Michigan voters after the  
5 election has already been certified through our processes, and,  
6 as Mr. Fink pointed out, the proper recourse here, with respect  
7 to these claims of fraud and misconduct in the election --  
8 which of course we disagree with -- was to seek a recount.  
9 That's the ordinary process. You go and ask for a recount.  
10 That's the remedy for mistake or fraud in the results of an  
11 election. That's the process that should have been pursued  
12 here. It was not.

13           We even have processes for filing a challenge if you  
14 think that the voting equipment malfunctions, and neither of  
15 those processes occurred.

16           It's our position that *Bush v Gore* isn't applicable  
17 and that the relief requested here is essentially undoing an  
18 election and asking this Court to choose a new winner is  
19 unprecedented and unsupported by any case law extant. Thank  
20 you.

21           **THE COURT:** Thank you -- and hang on, Mr. Campbell.

22           Mr. Davis, do you want to be heard on this issue or  
23 your counsel, Mr. Paterson?

24           **MR. DAVIS:** I'm not sure if Mr. Paterson's audio is  
25 working properly. So, your Honor, if you can try and -- I

Motion hrg.

7/12/2021

1 defer to my counsel.

2 **THE COURT:** Well, I mean I'm here. Mr. Paterson, can  
3 you hear the Court? All right.

4 Mr. Campbell, what -- we don't have to -- I've asked  
5 the question. You've given me the answer. I've heard from  
6 defense counsel.

7 **MR. CAMPBELL:** Would the Court allow me to give two  
8 quick cites, one from the Eastern District of Michigan?

9 **THE COURT:** Okay.

10 **MR. CAMPBELL:** -- and one from Colorado.

11 So the first from the Eastern District of Michigan is  
12 *Stein versus Thomas*, 222 F.Supp.3d 539. This was cited in the  
13 briefing as well, and, there this Court said, "The fundamental  
14 right of vote by plaintiffs, the right to vote," and, "To have  
15 that vote conducted and counted accurately."

16 This Court began its order dismissing the request for  
17 the injunction by saying, "The right to vote is sacred, and  
18 it's uniquely American." In fact, it's this aspect of having  
19 the count conducted and challenged by petition to the judiciary  
20 that is uniquely American.

21 Everybody -- a lot of folks vote. Nazi Germany had  
22 plebiscites. The Soviets had regular voting. Even Hugo Chavez  
23 let you vote for him as many as times as you wanted. That's  
24 not uniquely American. What's uniquely American is the ability  
25 to challenge it, to address that and petition to this court.

Motion hrg.

7/12/2021

1 That's what *Bush v Gore* decided. It decided that the court can  
2 get involved, must get involved under the Constitution.

3 So the other -- the continuation of that quote is,  
4 "And to have the vote conducted and counted accurately is the  
5 bedrock of our nation. Without elections that are conducted  
6 fairly and perceived to be fairly conducted, public confidence  
7 in our political institutions will swiftly erode."

8 It is the executive that did the counting, and that  
9 was the issue here. They created the issues that disrupted  
10 elements of society that resulted, in this instance, in a case  
11 being brought to the court, as it should be in our democracy  
12 and in our republic.

13 The other case, by the way, is *Common Cause Georgia*  
14 *versus Kemp*. That's 347 F.Supp.3d 1270, from 2018. And I  
15 think I called it Georgia. It's obviously -- I think I called  
16 it Colorado. It's obviously Georgia. There, the court looked  
17 at a combination of statistical evidence and witness  
18 declarations enough to demonstrate that there -- it could take  
19 some action.

20 That's what you had here. You had the eyewitness  
21 reports, which are dismissed by the Defendants as being  
22 uneducated statements or statements by uneducated --

23 **THE COURT:** Yeah, I'm going to get into those  
24 statements in just a minute.

25 **MR. CAMPBELL:** So those things all combine to show

Motion hrg.

7/12/2021

1 that using what was available to determine a path, and then,  
2 remember, Judge -- this is very important -- three of the  
3 Plaintiffs -- and that would be King, Sheridan, and Haggard --  
4 they are not just voters. All six of the Plaintiffs are  
5 voters, and every vote is important under the Constitution and  
6 the case law, but these three are electors. And, in order to  
7 bring their claims, it was the consideration of counsel in this  
8 case that certain acts had to be completed by the State. The  
9 State finally completed those on November 23rd, and this is  
10 also explained and gone over in the Supreme Court filings. The  
11 last acts were done by November 23rd, and this case was filed  
12 on November 23rd.

13 **THE COURT:** Mr. Campbell, let me ask you something:  
14 Do you agree that the state law establishes an extensive  
15 procedure for challenging elections?

16 **MR. CAMPBELL:** Yes.

17 **THE COURT:** Did the Plaintiffs avail themselves of  
18 any of these procedures?

19 **MR. CAMPBELL:** No.

20 **THE COURT:** And why is that?

21 **MR. CAMPBELL:** Well, with regard to those procedures,  
22 in part because before the claims on behalf of the electors  
23 could be fully ripe that those processes had taken place.  
24 Again, there are a number of different claims that were  
25 pending. You know, Judge, because it's been cited that the

Motion hrg.

7/12/2021

1 U.S. Attorneys, 18 U.S. -- I'm sorry, attorneys generals, 18  
2 attorneys generals had their own claim and their own approach  
3 to this. There are a number of other suits. People took  
4 different paths, all seeking to get what they thought the  
5 Constitution permitted these courts to undertake on behalf of a  
6 petition to address a grievance from a citizen. In this case,  
7 not just citizens, but at least, in the instance, of three  
8 electors and so --

9 **THE COURT:** But the procedures --

10 **MR. CAMPBELL:** (Indiscernible.)

11 **THE COURT:** The procedures --

12 **MR. CAMPBELL:** (Indiscernible.)

13 **THE COURT:** The procedures were there for them to  
14 avail themselves of, you would not -- you disagree with that?

15 **MR. CAMPBELL:** Oh, no --

16 **THE COURT:** They were --

17 **MR. CAMPBELL:** In terms of the procedures under the  
18 statutes were there, and, Judge, if this is a case that my  
19 clients, those are the lawyers, misjudged the timeline and got  
20 it wrong, then that's -- then that's what it is, but that is a  
21 long way from anything that could be sanctionable or has been  
22 argued by the Defendants, and in terms of issues --

23 **THE COURT:** Let me -- all right. Let me -- Mr. Fink,  
24 I'm going to give everybody -- I have one more question to ask  
25 about the relief that's been sought here and then I'll give you

Motion hrg.

7/12/2021

1 an opportunity to speak.

2 **MR. DAVID FINK:** Your Honor, I didn't want to speak  
3 to substance. It wasn't substance. It was a point of concern.  
4 That is, it appears that Sidney Powell has left the proceeding,  
5 and at least we don't see her, and I just -- I know we want all  
6 of the Plaintiffs to be present.

7 **THE CLERK:** It looks here as if she turned the camera  
8 off.

9 **THE COURT:** Okay. All right. There we go. Maintain  
10 the camera, Ms. Powell, please. I'd like to have everyone  
11 here.

12 All right. My question to Plaintiffs' counsel or  
13 counsel for --

14 **MR. KLEINHENDLER:** Your Honor, I apologize. Before  
15 you move to your next question, I just wanted to add something  
16 to what Mr. Campbell said, if I may.

17 **THE COURT:** Okay.

18 **MR. KLEINHENDLER:** You asked what is the authority  
19 for the relief requested.

20 **THE COURT:** Yes.

21 **MR. KLEINHENDLER:** This Court, in the face of a claim  
22 of fraud, has inherent equitable authority to do as it sees  
23 fit. Fraud vitiates everything, and that is another basis that  
24 this Court has.

25 I also want to make another point that I think is



Motion hrg.

7/12/2021

1 escaping, particularly what Ms. Meingast had mentioned. There  
2 was no way on this planet that the electors could have used the  
3 State of Michigan electoral processes, because that's not what  
4 they were trying to accomplish. What they were trying to  
5 accomplish was what are their rights under the Twelfth  
6 Amendment and what are their rights heading into the vote of an  
7 electoral college, which had not yet taken place, and that was  
8 the purpose of the TRO, not to have what is typically  
9 considered -- and that's what you're hearing from the Defense.  
10 A candidate who loses an election, what resources does that  
11 specific candidate have in order to unwind or preserve his or  
12 her position?

13 **THE COURT:** Mr. Kleinhendler, do you have any case  
14 authority for the proposition of inherent equitable authority  
15 to address fraud?

16 **MR. KLEINHENDLER:** Your Honor, I haven't. I don't  
17 have it with me. I did look it up, your Honor, just briefly  
18 while we were here. There is a -- there are many cases that --  
19 I would refer you to the United States Supreme Court case,  
20 *United States versus Throckmorton*. It's old. 98 U.S. 61 in  
21 1878. I believe that case states the general equitable  
22 jurisdiction that this Court has, fraud vitiates everything,  
23 and this Court has the equitable power.

24 And I also just want to point out one other thing  
25 that Mr. Campbell --

Motion hrg.

7/12/2021

1           **THE COURT:** I can't imagine it's been over 100 years  
2 since -- that this is --

3           **MR. KLEINHENDLER:** Sorry. It's just the quickest  
4 case I could pull up. There are more modern cases, and I'd be  
5 happy to present them to you, your Honor, but that's just one  
6 case that came up quickly while we are here. And --

7           **THE COURT:** That's fine. Okay. Let me stop you,  
8 Mr. Kleinhendler. I'm going to move on. I need to move on,  
9 and I want to ask, and it's relevant, too. It's really a segue  
10 to what you're saying.

11           So let me just ask -- this is a timing issue, and the  
12 question from the Court is, is that why did the Plaintiffs wait  
13 for almost three weeks after the election to assert challenges  
14 regarding voting machines and election procedures, some of  
15 which Plaintiffs themselves claim were well-known far before  
16 the November 3rd election and others which were known by the  
17 close of election day?

18           So, again, we're talking about State procedures that  
19 are there, that were there when you -- you know, had been in  
20 place for Plaintiffs, Plaintiffs' counsel to for -- counsel to  
21 access. Why -- what was -- what was the reason for the delay?

22           Let me direct that to Mr. Campbell, and then I'll  
23 hear from whomever else.

24           **MR. CAMPBELL:** Well, as we've already expressed, my  
25 clients have already expressed, in the written matters both

Motion hrg.

7/12/2021

1 before this Court and also through the United States Supreme  
2 Court filings, the reasons for the delay had to do with, one,  
3 the gathering of that information. The Court says, "Well, all  
4 this was well-known." It wasn't known that the election was  
5 going to go as the election did until the election; right? In  
6 fact, it's the day after the election because --

7 **THE COURT:** Okay.

8 **MR. CAMPBELL:** -- people went to bed. On election  
9 night there was one result anticipated, and another came out,  
10 at least in Michigan, the next day. So there is a reaction  
11 time to that.

12 **THE COURT:** Certainly, but three weeks?

13 **MR. CAMPBELL:** Judge, if anything, and it's said  
14 already in the briefing, it was filed too early. It shows  
15 you -- again, you've seen the number of lawyers who did  
16 contribute. It's not that there was a lack of effort to get it  
17 done. It's not that there was a lack of direction to get it  
18 done, although this is a novel proceeding, we candidly admit.

19 Now, it's not completely novel. It was pursued in  
20 other states, but this was really the first of those states  
21 that it was pursued in, but it was believed to be done in good  
22 faith by everybody. And, again, I haven't talked to  
23 Emily Newman, but I talked to her counsel. It was believed to  
24 be done in good faith by everybody, and they -- they worked  
25 diligently to get it done, and, as Mr. Kleinhendler has said

Motion hrg.

7/12/2021

1 and as I will reiterate, the fact is that part of the theory  
2 rested on certain processes being completed by the State so  
3 that the electors could raise their particular and specialized  
4 causes of action and claims. So there is a ripeness issue  
5 here, along with the clock that the Court said was running for  
6 three weeks.

7 **THE COURT:** Any response from Defense counsel?

8 You can start, Mr. Fink.

9 **MR. DAVID FINK:** Absolutely, your Honor. This is a  
10 case about the election of the President of the United States.  
11 There simply is no case that could be of greater magnitude,  
12 and, in considering the extent of diligence necessary in going  
13 forward, certainly, no case warranted more serious due  
14 diligence and hard work on the part of the attorneys. The  
15 suggestion that it would take three weeks to file a lawsuit to  
16 raise issues that became -- many of which were stale by the  
17 time they were brought. The possibility that they say they  
18 were pulling together the facts, when, in fact, all they did  
19 was append affidavits that were filed in other cases and, by  
20 the way, rejected in those other cases. This is a case in  
21 which the most diligence received the least.

22 This Court has said in its ruling that the --  
23 correctly, "That this case was stunning in its scope and  
24 breathtaking in its reach," very well-worded of course. And I  
25 have to -- excuse me, your Honor, but I have to say that the

Motion hrg.

7/12/2021

1 Court summed it up: It was "breathtaking in its reach." In a  
2 case like that, you do the hard work. The suggestion that  
3 people couldn't work long hours and put something out quickly  
4 is absolutely insulting to the Court and to all of the parties.

5 We all worked on the schedule that was created by  
6 this. We filed briefs in the Supreme Court on just a couple  
7 days' notice. We filed briefs in this Court on just a couple  
8 of days' notice, and our briefs were comprehensive. What they  
9 filed, in the first complaint in this case, was an  
10 embarrassment to the legal profession. It was sloppy. It was  
11 unreadable. It was mocked publicly until they then filed  
12 another version a couple of days later. The fact is this was a  
13 sloppy, careless effort, and it was long delayed. They had  
14 plenty of time, and they absolutely should have filed more  
15 quickly.

16 **THE COURT:** Thank you, Mr. Fink.

17 **MR. DAVID FINK:** Obviously, it should never have been  
18 filed.

19 **THE COURT:** Ms. Meingast, would you like to add  
20 anything to that? You don't have to.

21 **MS. MEINGAST:** I agree with what Mr. Fink just said,  
22 your Honor.

23 **THE COURT:** All right. Mr. Paterson, counsel for  
24 Mr. Davis, you're on a phone line. Did you want to add  
25 anything?

Motion hrg.

7/12/2021

1 Can you hear the Court, sir?

2 All right. We're going to move on.

3 **MR. KLEINHENDLER:** Your Honor, I'd --

4 **THE COURT:** Mr. Paterson?

5 **MR. PATERSON:** I would agree with Mr. Fink and  
6 Ms. Meingast, Mr. Davis, on behalf of the  
7 five-and-a-half-million voters in the state of Michigan, who  
8 were attempted to be misled by this complaint. It was an  
9 absolute effort on the part of the Plaintiffs not to challenge  
10 the results of the election but to throw shade on the election.  
11 I think it's entirely appropriate to have this proceeding and  
12 to proceed and make the Court's determination. So I would  
13 agree with Mr. Fink and Ms. Meingast and urge the Court to  
14 grant the relief that's being sought.

15 **THE COURT:** Thank you, Mr. Paterson.

16 Let me just say to counsel, at the close of this  
17 hearing I am going to give you -- everyone an opportunity to  
18 make a statement. Please do not feel that you need to comment  
19 every opportunity given to you. Please, if you want to add  
20 something that you feel that has not yet been stated, please  
21 feel free to do so. I'm not trying to chill your right at all.  
22 I want you to be able to make your record.

23 **MR. KLEINHENDLER:** Yes, your Honor.

24 **THE COURT:** All right. Thank you. All right.

25 **MR. KLEINHENDLER:** I wanted to say --

Motion hrg.

7/12/2021

1                   **THE COURT:** Let me move --

2                   **MR. KLEINHENDLER:** No, your Honor, I would like to  
3 make a record here, and this is not been said. Number one,  
4 we've been criticized that the attachments --

5                   **THE COURT:** Hang on, Mr. Kleinhendler. Let me ask  
6 you something, sir. What -- tell me -- now, you have already  
7 spoken, and I was asking -- that my specific last question was  
8 "Why did Plaintiffs wait three weeks after the election?" Are  
9 you going to address that? Without regard to what Mr. Fink or  
10 others have said, did you want to address that to --

11                   **MR. KLEINHENDLER:** Yes, your Honor.

12                   **THE COURT:** -- the Court?

13                   **MR. KLEINHENDLER:** Yes, that's exactly what I wanted  
14 to address.

15                   **THE COURT:** All right. Proceed, sir.

16                   **MR. KLEINHENDLER:** Your Honor, yes, there was  
17 suspicion about the voting machines prior to the election.  
18 Yes, there was a court decision in Georgia that had called into  
19 question the security of the Dominion machines, but it wasn't  
20 until the voting was counted, and that took multiple days, even  
21 in Michigan, until the scope of what many people perceived to  
22 be irregularities was understood. So we didn't even get a -- I  
23 don't even think the networks announced the winner of the  
24 election until November 7th or November 8th.

25                   One second.

Motion hrg.

7/12/2021

1           Okay. Now, it took us time to put together the  
2 Ramsland affidavit, the affidavit from Spider, the affidavit  
3 from many of the other people, and what Mr. Fink said is simply  
4 not accurate. To say that every single affidavit, declaration  
5 that was presented to you in this complaint was filed in other  
6 cases is absolutely false. Okay. Look at what we filed. Look  
7 at the record.

8           Second, it took time to put together those  
9 affidavits. We did not -- we chose not to simply file a  
10 speaking complaint. We chose to file the complaint supported  
11 by 960 pages, your Honor, of documents, affidavits, many of  
12 which were original to this proceeding.

13           Further, your Honor, I want to make the point very  
14 clear to you. It was not possible to bring this complaint  
15 before the election was certified because we are here on behalf  
16 of electors. This is a case that is heading towards the  
17 electoral college. This mantra that you're hearing over and  
18 over again that we're looking to disenfranchise millions of  
19 voters is not what we were trying to do. What we are trying to  
20 do is, hey, wait a second, let's take a look at these machines.  
21 Let's slow the locomotive train down so a court of law can take  
22 a look at the allegations raised in these 960 pages. It takes  
23 time to put that together.

24           Last point.

25           **THE COURT:** Hang on.



Motion hrg.

7/12/2021

1           **MR. KLEINHENDLER:** Last point and I'm done.

2           Mr. Fink criticized our initial complaint, says it  
3 was horrible, it's garbage. If that's the way he wants to  
4 talk, I'll will leave it to the Court if that's --

5           **THE COURT:** Please make your point.

6           **MR. KLEINHENDLER:** The point is we had an error in  
7 converting the Word document to the PDF document. I even told  
8 this to Mr. Fink. We spoke for -- I even sent him --

9           **THE COURT:** And what was the impact of the error as  
10 relates to time?

11           **MR. KLEINHENDLER:** The error was many paragraphs,  
12 many paragraphs, the words were slammed so close together you  
13 couldn't read them. Okay.

14           **THE COURT:** Okay. All right.

15           **MR. KLEINHENDLER:** So we -- one more second. So  
16 we --

17           **THE COURT:** No, Mr. Kleinhendler, that's enough.  
18 I've heard enough, and there's time reserved at the end. If  
19 you want to use your time in addressing that, you may do so.

20           The Court is prepared now to move on to the issue --

21           **MR. CAMPBELL:** If I can, your Honor. Very briefly,  
22 your Honor, only to put dates on this.

23           I've had a chance to look this up. The county boards  
24 finished on November 17th, according to my records. The Board  
25 of Canvassers finished on November 23rd. So this case was

Motion hrg.

7/12/2021

1 filed on November 25th. So with respect to the Court, although  
2 that's obviously three weeks from the election --

3 **THE COURT:** Yes.

4 **MR. CAMPBELL:** -- it's not three weeks from when the  
5 case could have been filed.

6 **THE COURT:** Yeah. Okay. Thank you.

7 Let's talk about mootness, counsel, a couple  
8 questions about that. This is directed, again, to Plaintiffs'  
9 counsel and counsel for Plaintiffs.

10 As you acknowledged before, the U.S. Supreme Court,  
11 in a filing before it, once electoral votes were cast on  
12 December 14th, subsequent -- these are the words that  
13 Plaintiffs' counsel inserted in a brief to the Supreme Court --  
14 "Subsequent relief would be pointless and the petition would be  
15 moot."

16 Is that right, Mr. Campbell? Was that the assertion?

17 **MR. CAMPBELL:** I believe that is accurate. There  
18 wasn't -- the first assertion, and I think this Court is aware  
19 in the filing before this --

20 **THE COURT:** No, no --

21 **MR. CAMPBELL:** -- your Honor --

22 **THE COURT:** I'm not asking whether that was the first  
23 assertion. I'm asking if that was the assertion that was made  
24 to the Supreme Court.

25 **MR. CAMPBELL:** At that time, and it was believed to

Motion hrg.

7/12/2021

1 be accurate at that time, as the first assertion was believed  
2 to be accurate when it was made, but things change. This Court  
3 I think is well aware of what changed actually on the 14th. If  
4 I'm correct, your Honor, that assertion was made on  
5 December 11th in good faith.

6 **THE COURT:** All right. Given that statement -- I  
7 don't know about that December 11th date. I'm talking about  
8 the statement that was made to the Supreme -- and it could have  
9 been made. I wasn't saying that it was made --

10 **MR. CAMPBELL:** I believe that's right, your Honor.

11 **THE COURT:** Right. Okay. I was just referencing the  
12 date. December 14th is the date upon which the electoral votes  
13 were cast.

14 **MR. CAMPBELL:** Correct.

15 **THE COURT:** My question is, given the statement to  
16 the Supreme Court that subsequent relief would be pointless and  
17 the petition would be moot after votes were cast on the 14th,  
18 why did the Plaintiffs not recognize this lawsuit as moot and  
19 dismiss it voluntarily on that date, on the 14th of December?

20 Mr. Campbell.

21 **MR. CAMPBELL:** Because my clients are lawyers, and  
22 lawyers have a duty to zealously advocate for their clients.

23 Your Honor, things change. This was a fluid  
24 situation, and, if I may, by historical reference, I believe  
25 when this case was filed originally before your Honor we

Motion hrg.

7/12/2021

1 thought -- my clients thought honestly and truly that the  
2 drop-dead date was December 8th, and that's what we've said to  
3 this Court. Turns out that another judge in Wisconsin did a  
4 different set of calculations and said, "Well, why are you guys  
5 all hurrying for December 8th. It should be December 14th."

6 I think Defendants agree that it's December 14th  
7 because that's what they said in their briefing. Again, we --  
8 my clients thought honestly and truly it was December 8th.  
9 Somebody else came along and said, "Why not December 14th?" and  
10 we didn't argue with that. That's the date that we gave to the  
11 Court on December 11th because by that time the analysis was  
12 made in Wisconsin, and it was adopted, basically, by all  
13 parties.

14 On December 14th, your Honor, something happened that  
15 nobody anticipated and nobody on my side instigated or  
16 commanded happen, but three of our Plaintiffs were, in their  
17 opinion, properly elected as electors. That's not something  
18 that anybody, in terms of the lawyers in this case, had  
19 anticipated, expected, or, necessarily, had even wanted.  
20 However, once they were in their -- you can call it, again, a  
21 Trump election by the Republicans -- once they were elected as  
22 electors in Lansing, they believe, according to the  
23 Constitution, to be the electors.

24 That changed things, and now the Supreme Court's  
25 determination did have life. It had life it did not have

Motion hrg.

7/12/2021

1 before, and so, in order to respect the desires, the goals that  
2 are set by the client, it was decided by -- again, not  
3 everybody. Obviously, Emily Newman didn't have any role.  
4 Brandon Johnson didn't have any. Lin Wood didn't have any role  
5 in this. But, Howard Kleinhendler, Sidney Powell, they  
6 decided -- and, again, I believe appropriately so given their  
7 responsibilities as lawyers to their clients -- that this case  
8 was not proper to be dismissed after December 14th because  
9 there were still issues that existed and remain. When those  
10 were cleared, and they were cleared in early January, shortly  
11 thereafter this case was dismissed.

12 **THE COURT:** All right. Let me hear from Ms. Meingast  
13 on that issue, please.

14 **MS. MEINGAST:** Thank you, your Honor. I'm not even  
15 sure I even know what to say. You know, as we put forth in our  
16 brief, your Honor, as you indicated, in their pleadings to the  
17 U.S. Supreme Court, the highest court in our land, Plaintiffs  
18 indicated this case would be moot by the time the electors  
19 voted. This whole idea or notion that this was somehow untrue  
20 or their case was revitalized because some of the Plaintiffs,  
21 who were purported Republican Party electors, took a vote  
22 outside the Capitol electing themselves electors is  
23 preposterous. There is no mechanism for having an alternative  
24 slate of electors sent anywhere, to the archivist or anything.

25 So I think the suggestion that somehow their case was

Motion hrg.

7/12/2021

1 reinvigorated or that they were wrong, by their own pleadings  
2 that December 14th was the date by which really this would be  
3 moot, as far as any relief this Court could enter, I mean,  
4 really at the point that December 14th, we've sent the  
5 electoral slate, the college votes, our electors vote, and it  
6 goes to the archivist.

7 At this point, if you want to bring a case, you want  
8 some relief, you're going to have to go sue Congress. You're  
9 going to have to go to, you know, a different -- a different  
10 playing field and not this Court. So I'm flabbergasted by this  
11 idea that somehow their case was newly invigorated on the 14th  
12 and that this was not something simply made up here to avoid  
13 the claims that we've put forth in our pleadings.

14 **THE COURT:** To that point -- thank you, Ms. Meingast.

15 To that point, Mr. Campbell, how -- explain to me how  
16 you think that electing themselves as electorates changed  
17 anything. I've never heard this as a reason, by the way, as to  
18 why your clients were not willing to dismiss after  
19 December 14th. In fact, what had been said, as I understand  
20 it, was that it was -- your clients believed that I didn't have  
21 any jurisdiction to consider a motion to dismiss while the  
22 decision on the injunction was still on appeal. That's what I  
23 heard. So I've never heard this explanation about there being  
24 some reinvigoration because of the electors having been  
25 elected, air quotes. I never have heard that.

Motion hrg.

7/12/2021

1           **MR. CAMPBELL:** I'm not sure I've heard air quotes --

2           **THE COURT:** I'm sorry, sir?

3           **MR. CAMPBELL:** I'm not sure I've heard air quotes in  
4 a case before, but I appreciate that.

5           **THE COURT:** All right. Well, you see them. Okay.

6           **MR. CAMPBELL:** Your Honor, again, my understanding is  
7 that argument is made by Defense from an e-mail exchange with  
8 Stefanie Lambert, who can tell you what she was thinking about.

9           It seems to me a reasonable consideration, if I'm  
10 appellate attorney, is to decide whether or not this Court has  
11 jurisdiction, but I don't think there was a flat statement  
12 there was no jurisdiction. I believe it was, if I recall the  
13 e-mail that was addressed in one of the pleadings, that it was  
14 that there was wondering whether or not there was jurisdiction.  
15 I don't think there's been any pleading ever filed in this  
16 court saying that it was without jurisdiction to do something  
17 or to not do something.

18           Again, the only pleadings that occur after this Court  
19 rules are, basically, the Defendants and the Intervenors who  
20 decided that they needed to go and file things, rather than  
21 asking for an extension of time, for example. They decided to  
22 file a motion to dismiss. That's their election.

23           I hope this Court understands why, in part, they  
24 wanted to do that rather than take the courtesy of an  
25 extension. They wanted to do something that they could later

Motion hrg.

7/12/2021

1 hang a hat on and say, "Hey, this is stuff we should be able to  
2 collect on either under 1927 or Rule 11," or whatever theory  
3 they were going to come up with.

4 So in terms of what our clients' clients and what my  
5 clients did in this case, they let a claim pend long enough so  
6 that there was a final resolution of the issues clearly and  
7 absolutely. And, again, your Honor practiced law long enough  
8 to know. You make the decision to dismiss that case, and it  
9 turns out that there is some relief for your client, there's no  
10 policy in the world that's going to cover the loss that  
11 occurred because of that.

12 This is, again, basic lawyering. It's done every day  
13 in this country --

14 **THE COURT:** Yeah, I haven't -- let me stop you,  
15 Mr. Campbell. Again, my question: Are you arguing this for  
16 the first time?

17 **MR. CAMPBELL:** I'm sorry, when you say arguing?

18 **THE COURT:** This issue that you're bringing up about,  
19 you know, the claims have been reinvigorated after  
20 December 14th. Is that a new argument that you're advancing?

21 **MR. CAMPBELL:** Well, I don't believe the issue of the  
22 date of dismissal in the Supreme Court, the filing that has  
23 come up in these proceedings, as a basis for anything, and,  
24 again, I know you might not love the arguments about  
25 jurisdiction, but I don't believe you have Rule 11



Motion hrg.

7/12/2021

1 jurisdiction. That's something that's said in the Supreme  
2 Court or the Sixth Circuit. I don't believe you have Section  
3 1927 jurisdiction over -- it hasn't been a part of any of the  
4 pleadings. If I'm the first person that happens to argue it,  
5 it's because it's not been raised by anybody until you asked  
6 the question, Judge.

7 **MR. DAVID FINK:** Your Honor --

8 **MR. KLEINHENDLER:** Your Honor, if I might point  
9 out --

10 **THE COURT:** Hang on a moment. One at a time.  
11 Let me hear from Mr. Fink.

12 **MR. DAVID FINK:** Your Honor --

13 **MR. CAMPBELL:** Your Honor, if can intervene, and I  
14 apologize --

15 **THE COURT:** No, Mr. Campbell. Mr. Campbell --

16 **MR. CAMPBELL:** Yes, I just want to suggest, it  
17 might --

18 **THE COURT:** No, no --

19 **MR. CAMPBELL:** -- be better to hear from Mister --

20 **THE COURT:** No --

21 **MR. CAMPBELL:** -- Kleinhendler --

22 **THE COURT:** I'm sorry, sir.

23 **MR. CAMPBELL:** -- before Mr. Fink.

24 **THE COURT:** Excuse me. Excuse me.

25 **MR. CAMPBELL:** Apologize. I'll mute. Thank you.

Motion hrg.

7/12/2021

1                   **THE COURT:** Thank you.

2                   Mr. Fink.

3                   **MR. DAVID FINK:** Your Honor, we've now heard for the  
4 very first time the theory from the Plaintiffs that the  
5 subjective belief of three of the Plaintiffs that they had  
6 somehow been elected as electors, because that was their  
7 subjective belief, the attorneys had to pursue that claim.

8                   Now, there's a couple of problems with it. One, of  
9 course, the attorneys have a duty to only go forward with  
10 something for which there is a valid, legitimate, legal theory  
11 to present to the Court and facts to support it, but, the more  
12 important issue, in terms of the question this Court poses,  
13 which was mootness, was not once, until this hearing today, not  
14 once did that distinction come up in this case, and on  
15 December 14th, the date when they said the case would be moot,  
16 on December 14th, if in fact they decided that due to a change  
17 in circumstances it was not moot, they could have and should  
18 have amended their complaint or otherwise filed something with  
19 this Court to notify us of the new proceeding that they were  
20 taking.

21                   Now, counsel said something that I have to take  
22 personally as outrageous, when he suggests that the reason that  
23 we filed our motion to dismiss in this case at the time that we  
24 did and the reason the State filed the motion at the time that  
25 they did, was because we had some venal interest in collecting

Motion hrg.

7/12/2021

1 funds in a Rule 11 sanction.

2           The fact is in this case the basis of the election of  
3 the President of the United States was under attack. These  
4 folks were putting in jeopardy the safety of our republic, and  
5 we chose to step up and to say, "No, this case must be and  
6 should be dismissed," and, ironically, their response at the  
7 time was, "Well, it's pending on appeal so it can't be  
8 dismissed yet." Of course, that was absurd that the other  
9 sanction was pend -- that the motion -- the temporary relief  
10 motion was pending on appeal didn't interfere with it.

11           We moved forward with our motion to dismiss. We're  
12 being asked today why we didn't adjourn it. We did everything  
13 we could to expedite it, as we should have.

14           Now, I will say this. After we filed that motion and  
15 they saw all the grounds, they still didn't dismiss. They also  
16 still didn't dismiss after January 7th when the United States  
17 Congress accepted the electors. Certainly, by then, the case  
18 would have been moot, if not on December 14th, and they still  
19 didn't dismiss. They still didn't dismiss, even though they  
20 had in one of their briefs on sanctions, they've said that the  
21 January 6th certification rendered their claims moot, but they  
22 didn't dismiss that day.

23           Instead, they kept moving forward, and then they  
24 waited until January 12th, which was the date that the response  
25 to our motion to dismiss was due, and on that date what did

Motion hrg.

7/12/2021

1 they do? They asked for an extension. We said, "No, we don't  
2 want an extension." We opposed it. The Court, understandably,  
3 under the circumstances granted them two days. During those  
4 two days we were compelled -- we didn't choose to do this. We  
5 were compelled to file responses to a writ of cert in the  
6 Supreme Court of the United States, hardly a minor matter,  
7 again, only because they wouldn't dismiss.

8           And then even when they did choose to so-call  
9 voluntarily dismiss on January 14th, even when they did that,  
10 they didn't dismiss the appeal. They didn't dismiss their  
11 petition for cert. We asked them if they would. On  
12 January 18th, we asked Stefanie Junttila if they were going to  
13 dismiss the appeal. She asked us if we would consent. Of  
14 course we said we'd consent to dismissal of the appeals, but,  
15 instead, after we did this, we reached out -- or my late  
16 partner reached out to Ms. Junttila and said, "What's happening  
17 with the dismissal of the appeals?" And the answer she got --  
18 he got was, "It's my understanding that Sidney Powell's team is  
19 preparing, it and I will submit it as I receive it."

20           And then, one last point, while the Supreme Court has  
21 the petition for writ pending -- and this case is clearly moot.  
22 Everybody agrees today that it's moot. They agree it was moot  
23 in the pleadings they're filing now.

24           On February 4th, Sidney Powell sends out a social  
25 media message on Telegram saying -- this February 4th -- "By

Motion hrg.

7/12/2021

1 the way, assertions that all cases were lost is false. Our  
2 Michigan case in the Supreme Court is scheduled for conference  
3 soon." Signed Sid. They never dismissed this case. It was  
4 moot from the beginning, as this Court found in its first  
5 ruling. At every stage they'd say, "It will be moot when this  
6 happens, it will be moot when that happens," but they kept it  
7 going.

8 **THE COURT:** Final response. Thank you.  
9 Mr. Campbell, I'll give you the last word on that.

10 **MR. KLEINHENDLER:** Ma'am, I just want to point out  
11 something I think is very important.

12 We've raised this precise argument in ECF 112, pages  
13 27-30. I'm just going to read you just to where you can start  
14 reading. "Opposing counsel and Defendants" -- this is page 27  
15 of ECF 112 that was in response to ECF 105.

16 "Opposing counsel and Defendants also allege the case  
17 was moot and vexatious over the pleadings in the case that this  
18 argument based on the event of the Michigan Republican slate of  
19 electors voting a dual slate of electors." We raised this  
20 issue square front and center before you. That's number one.

21 Number two, your Honor, it's not merely that three  
22 electors believed subjectively that they were still in the  
23 game. All 16 electors, Michigan electors, which we have  
24 nothing to do with, appeared before the capitol. They weren't  
25 allowed in, and they decided to hold a vote. That is based on

Motion hrg.

7/12/2021

1 their rights under the Twelfth Amendment, and it figures into  
2 what happens in Congress on January 6th when, under the Twelfth  
3 Amendment, and even under the ECA, the Electoral Count Act,  
4 objections to electors are permitted. That's what the  
5 Constitution says.

6 So, A, it's before you in the briefing; B, it renders  
7 this thing not moot.

8 To the last point -- and this is also in the brief  
9 before you, your Honor. Again, this is ECF 112.

10 **THE COURT:** I understand.

11 **MR. KLEINHENDLER:** Okay. Even after January 6th, I'm  
12 going to push this, and I'm going to read you the last  
13 sentence. "There is still a nonmootness issue, because the  
14 matters that were raised in this lawsuit are likely to be  
15 repeated and evading review." And we cited *Del Monte Fresh*  
16 *Produce versus U.S.* 570 F.3d 316, D.C. Circuit, 2009.

17 So, yes, the election was moot. Mr. Biden was  
18 elected. However, the issues raised in this lawsuit, because  
19 they were likely to be repeated and evaded review, could have  
20 still been decided by the Supreme Court.

21 Thank you, your Honor.

22 **THE COURT:** All right. I'm going to move on. Thank  
23 you. I'm going to move on to that section looking at legal  
24 authority. I'm going to move on now to the actual evidence  
25 that's been submitted in this case.

Motion hrg.

7/12/2021

1           The answers, counsel, to the following questions will  
2 be assessed to determine whether sanctions under Rule 11,  
3 Section 1927 and/or the Court's inherent sanctions authority  
4 should be imposed. Specifically, the questions are structured  
5 to determine whether Plaintiffs and/or counsel for Plaintiffs  
6 should be sanctioned under Rule 11 for failure to make a  
7 reasonable inquiry into fact or law, knowingly asserting a  
8 groundless position, or asserting a claim for an improper  
9 purpose; secondly, whether counsel for Plaintiffs should be  
10 sanctioned under Section 1927 for unreasonable and vexatious  
11 behavior that prolonged this litigation; and, three, whether  
12 Plaintiffs and/or Plaintiffs' counsel should be sanctioned  
13 under the Court's inherent authority for litigation practices  
14 undertaken in bad faith through the advancement of claims  
15 without merit for an improper purpose.

16           So that's noticed. Those are the various sources of  
17 sanctions, and now I will proceed.

18           And this first question here is for Plaintiffs or  
19 Plaintiffs' counsel -- I'm sorry, Plaintiffs' counsel or  
20 counsel for Plaintiffs' counsel.

21           Do you believe that a lawyer has a legal obligation  
22 to review the plausibility of the facts alleged in the pleading  
23 before signing and filing it?

24           Mr. Campbell.

25           **MR. CAMPBELL:** I believe the answer, on behalf of all

Motion hrg.

7/12/2021

1 my clients, would be yes.

2 **THE COURT:** All right. Let me then ask you as  
3 relates to Mr. Russell Ramsland's affidavit. Before -- I would  
4 like to know who read Russell Ramsland's declaration before  
5 attaching it to the pleadings in this case and submitting it in  
6 support of the motion for TRO? Who on the team read it?

7 **MR. CAMPBELL:** I don't have that information, your  
8 Honor. I --

9 **THE COURT:** Okay. Does anybody have --

10 **MR. CAMPBELL:** I know who didn't read it.

11 **MR. KLEINHENDLER:** I read it, your Honor.

12 **THE COURT:** Wait a minute. Hang on one second.

13 **MR. KLEINHENDLER:** Howard Kleinhendler. I read it.

14 **THE COURT:** Okay. All right. So all right. Are you  
15 the only person, Mr. Kleinhendler, that did? Anyone else?

16 **MR. KLEINHENDLER:** I don't know if others reviewed it  
17 as well.

18 **THE COURT:** Well, I need to know. That's what this  
19 hearing is for. I need to know. If you read it before it was  
20 attached, raise your hand or speak up.

21 Okay. Mr. Johnson read it. When did you read it,  
22 sir? You read it?

23 **MR. JOHNSON:** I don't recall when I read it. I read  
24 it before it was filed.

25 **THE COURT:** Okay. And, Mr. Kleinhendler, you read



Motion hrg.

7/12/2021

1 it?

2 **MR. KLEINHENDLER:** Yes.

3 **THE COURT:** And, Mr. Rohl, you read it, sir?

4 **MR. ROHL:** I read it prior to the -- the day of  
5 filing I read the entirety of what was sent to me, including  
6 that.

7 **THE COURT:** Okay.

8 **MR. WOOD:** Your Honor, this is Lin Wood.

9 **THE COURT:** So the question here is read before it  
10 was filed in support of -- before it was filed.

11 **MR. ROHL:** That's correct. That is correct, your  
12 Honor, the day of.

13 **THE COURT:** Okay. All right. Thank you.

14 **MR. HAGERSTROM:** Same here.

15 **MR. WOOD:** Your Honor --

16 **THE COURT:** I'm sorry, Mr. Wood?

17 **MR. HAGERSTROM:** Scott Hagerstrom. I read through --  
18 on the day it was filed, I read through --

19 **THE COURT:** No, no, no. I'm not asking if you looked  
20 at it after it was filed. The Court's question is --

21 **MR. HAGERSTROM:** No --

22 **THE COURT:** -- the Court's question is: Was it read  
23 before --

24 **MR. HAGERSTROM:** Yes, prior to the filing.

25 **THE COURT:** Okay. Mr. Wood, you had your hand up,

Motion hrg.

7/12/2021

1 sir?

2 **MR. WOOD:** Thank you, your Honor. I just want to  
3 make a point, which I think I made earlier. I did not review  
4 any of the documents with respect to the complaint.

5 **THE COURT:** Okay.

6 **MR. WOOD:** My name was placed on there, but I had no  
7 involvement. So I haven't read -- didn't read the complaint,  
8 wasn't aware of the affidavits. I just had no involvement  
9 whatsoever in it.

10 **THE COURT:** Did you give your permission to have your  
11 name included on the pleadings or the briefs, sir? Mr. Wood,  
12 this is directed to you.

13 **MR. WOOD:** Yes, your Honor. Let me answer that. I  
14 do not specifically recall being asked about the Michigan  
15 complaint, but I had generally indicated to Sidney Powell that  
16 if she needed a, quote/unquote, trial lawyer that I would  
17 certainly be willing and available to help her.

18 In this case obviously my name was included. My  
19 experience or my skills apparently were never needed so I  
20 didn't have any involvement with it.

21 Would I have objected to being included by name? I  
22 don't believe so, but I did not apply for pro hoc vice  
23 admission. I had no intentions. It's not indicated on the --  
24 if you look on the complaint and the amended complaint --

25 **THE COURT:** All right. You gave your permission.

Motion hrg.

7/12/2021

1           **MR. WOOD:** -- there's no indication. I'm sorry.

2           **THE COURT:** You didn't --

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

9           **THE COURT:** Did you read it before it was filed,  
10 Mr. Wood, or are you saying you had no knowledge?

11           **MR. WOOD:** I had no notice.

12           **THE COURT:** Right.

13           **MR. WOOD:** I didn't have any involvement in the  
14 filing so I did not read it before it was filed. It was only  
15 afterwards when I found out my name was even on there.

16           So I just -- you know, I haven't received a motion  
17 for sanctions. I didn't get served with anything. I'm just --  
18 I'm here because your Honor warned me to be here, but I'm here  
19 subject to my defense that I just don't think there's any  
20 personal jurisdiction over me because I didn't do anything in  
21 Michigan. I didn't do anything with respect to this lawsuit.

22           **THE COURT:** But you did --

23           **MR. WOOD:** I didn't put my name --

24           **THE COURT:** -- but you gave a general --

25           **MR. WOOD:** No, I didn't --

Motion hrg.

7/12/2021

1           **THE COURT:** Hold on. So that I can properly  
2 characterize your testimony. You gave general permission to  
3 Ms. Powell to use your name on any pleading that -- what?  
4 Finish that sentence or restate it if I'm wrong.

5           **MR. WOOD:** I didn't give permission for my name  
6 specifically to be on any pleading. I told Sidney, when she  
7 asked, if she needed my help, I would help her from a trial  
8 lawyer standpoint. That's it.

9           **THE COURT:** Okay. So you were not -- were you  
10 surprised to see that your name was included?

11           **MR. WOOD:** When I found out it was included, your  
12 Honor --

13           **THE COURT:** That was my next question --

14           **MR. WOOD:** I guess I was --

15           **THE COURT:** Yeah, when did you find out?

16           **MR. WOOD:** I don't -- it would have been sometime  
17 well after the filing. I didn't follow the litigation.

18           I think I first became aware that my name -- I know  
19 that I was away when I saw an article in the newspaper about  
20 this motion for sanctions being filed, and I was trying to  
21 figure out why I was named in it and I didn't receive a copy of  
22 the sanctions. I looked. I was on the pleadings, but only on  
23 the complaint and the amended complaint. On the subsequent  
24 filings that were made with respect to the injunction, my name  
25 doesn't even appear.

Motion hrg.

7/12/2021

1           So I'm only saying that I'm assuming that  
2 Sidney Powell knew that I would help her. For whatever reason,  
3 whoever was drafting the complaint put my name only there, but,  
4 your Honor, I just didn't have anything to do with this so I --  
5 I didn't read anything.

6           **THE COURT:** All right.

7           **MR. WOOD:** I wasn't asked to read anything and so I  
8 didn't specifically say, "Hey, put my name on there. I want to  
9 endorse this lawsuit." I just, in general, told Ms. Powell,  
10 and I think she'll affirm this, that I was there to help her  
11 from a trial lawyer standpoint. On that matter or any other  
12 matter, I don't -- I didn't have any specific involvement in  
13 it.

14           **THE COURT:** All right. Let me --

15           **MS. HALLER:** Your Honor --

16           **MR. DAVID FINK:** Your Honor --

17           **THE COURT:** Hang on. One moment. Hang on for one  
18 moment. Ms. Haller, can you hang on for one moment, please.

19           Mr. Fink, you may be heard.

20           **MR. DAVID FINK:** Yes, if I may, your Honor. Mr. Wood  
21 just indicated that he did not know about the sanctions motion.  
22 Mr. Wood was served with our December 15th notice and  
23 opportunity to withdraw the pleadings and through the Safe  
24 Harbor provision. He was served by e-mail and he was served by  
25 first class mail using the addresses provided in the pleadings,

Motion hrg.

7/12/2021

1 and the other representation by him is blatantly false.

2 I also would indicate that Mr. Wood in Delaware  
3 Circuit Court -- in Delaware court trying to defend against a  
4 claim brought there --

5 **MR. CAMPBELL:** Your Honor, I'm going to object --

6 **THE COURT:** Hang on. No, no, no. Excuse me.

7 Excuse me, Mr. Campbell. Please. Please. I will  
8 handle this. I am going to give everyone who I need to hear  
9 from an opportunity to speak.

10 You may proceed, Mr. Fink.

11 **MR. DAVID FINK:** Thank you. In Delaware, Mr. Wood,  
12 attempting to burnish his credentials in some way, explicitly  
13 made the representation to the superior court that he was, in  
14 fact, in the words of that case, "Among those cases in which  
15 Wood became involved were lawsuits in Wisconsin, Michigan, and  
16 Wood's own suit in the state of Georgia." This is the case in  
17 Michigan.

18 So he's ready to tell people when it helps him that  
19 he's involved in this case. He also broadcast on social media  
20 regularly his participation and his advancement and endorsement  
21 of this. That said, most importantly and most relevantly here,  
22 he could at any time have withdrawn the pleading or withdrawn  
23 his participation.

24 We didn't want -- we didn't choose to give them a  
25 chance to back out. We did it because the court rule required

Motion hrg.

7/12/2021

1 it. The court rule said we couldn't seek Rule 11 sanctions if  
2 we didn't give them notice and an opportunity to withdraw their  
3 allegations. We did it. He had the notice, and he didn't  
4 withdraw the allegations. Thank you.

5 **THE COURT:** All right. Thank you, Ms. Haller --

6 **MR. WOOD:** Your Honor --

7 **THE COURT:** Hang on, please.

8 **MR. WOOD:** Your Honor, may I be permitted --

9 **MS. HALLER:** (Indiscernible.)

10 **THE COURT:** Mr. Wood, hang on, sir. I'm going to let  
11 you speak momentarily, and I see that Ms. Wabeke, our court  
12 reporter, and we all know, is legitimately concerned. So one  
13 at a time, and I will come right back to you, but I want to go  
14 to Ms. Haller because I said that I would. So please go ahead.

15 **MS. HALLER:** Thank you, your Honor. I just wanted to  
16 clarify that I was one the reviewers of Russ -- Russ Ramsland's  
17 affidavit in the complaint that we filed. I couldn't remember  
18 if I had, but I do recall I did.

19 **THE COURT:** Okay. All right. And so you -- and you  
20 actually -- you reviewed it before it was filed, counselor?

21 **MS. HALLER:** Yes, your Honor.

22 **THE COURT:** All right. Very well. And let me do a  
23 housekeeping piece right here because I want to hear -- but I  
24 need everyone to raise your hand and I can see you, and we'll  
25 take it in that order.

Motion hrg.

7/12/2021

1 Mr. Wood, you may respond to what Mr. Fink has said.

2 **MR. WOOD:** Thank you, your Honor. I was not afforded  
3 any type of a hearing on the Delaware proceedings. I didn't  
4 take any position. I didn't have an opportunity to. That  
5 matter is on appeal now to the Supreme Court of Delaware based  
6 on the trial court's lack of authority to sua sponte issue a  
7 ruling (indiscernible) with respect to disciplinary matters and  
8 failure to have any type of a hearing. So I'm not sure what  
9 he's referring to there.

10 What I have said, I'm involved -- well, I'm involved.  
11 My name showed up so I can't say I'm not involved generally,  
12 but, again, I have to tell you, your Honor, I didn't receive  
13 any notice about this until I saw something in the newspaper  
14 about being sanctioned. So I disagree with Mr. Fink.

15 **THE COURT:** Okay. Well, that can be fleshed out.  
16 That can be fleshed out.

17 **MR. WOOD:** Sure.

18 **THE COURT:** I'm going to move on at this point.

19 **MR. WOOD:** Because --

20 **THE COURT:** Yes, sir.

21 **MR. WOOD:** Let me say, because if I had been, I would  
22 have obviously had a duty to consider whether or not to  
23 withdraw, but I can't withdraw from something I've never asked  
24 to be a part of. I never moved to be admitted to this court,  
25 to in any way be involved as counsel of record.



Motion hrg.

7/12/2021

1           **THE COURT:** Did you feel that you had a duty --

2           **MR. WOOD:** So I just don't think that --

3           **THE COURT:** Did you feel you had a duty --

4           **MR. WOOD:** (Indiscernible.)

5           **THE COURT:** Did you feel, Mr. Wood, you needed to  
6 notify this Court of that?

7           **MR. WOOD:** Notify --

8           **THE COURT:** I don't know, I mean, that, you know,  
9 that your name was used and you're not really sure, you know,  
10 you hadn't given full permission for that --

11           **MR. WOOD:** I --

12           **THE COURT:** -- any kind of notification to the Court  
13 and saying this seems to be a --

14           **MR. WOOD:** (Indiscernible.)

15           **THE COURT:** This appears to the Court to be an  
16 after-the-fact assessment.

17           **MR. WOOD:** Well, I just don't understand that at all.  
18 If the Court -- if the Court knew from the Court's record that  
19 I had never moved to be admitted pro hoc vice. So you knew,  
20 the Court knew that I was not of record in this case so why  
21 would I have a duty to tell the Court what you already knew?

22           Now --

23           **THE COURT:** We don't even --

24           **MR. WOOD:** Listen, I don't know anything --

25           **THE COURT:** -- have pro hoc vice status.

Motion hrg.

7/12/2021

1           **MR. WOOD:** So you have --

2           **THE COURT:** Excuse me. We do not even have pro hoc  
3 vice status here in Michigan. So everybody -- you know, I mean  
4 there's an assumption, certainly, that I am able to make, that  
5 when you come into the Eastern District of Michigan, you  
6 familiarize yourself with the local rules.

7           **MR. WOOD:** I didn't (indiscernible) --

8           **THE COURT:** So there's no responsibility --

9           **MR. WOOD:** I didn't --

10          **THE COURT:** -- that the Court has to do that.

11          **MR. WOOD:** I didn't come into the district. My name  
12 was placed on a pleading. You seem to assume that I said,  
13 "Hey, I want to be part of the Michigan case." I've made it  
14 clear that that's not what happened factually.

15          **THE COURT:** Okay.

16          **MR. WOOD:** And that factual presentation is  
17 undisputed.

18          **THE COURT:** Okay. Well, I don't believe it's  
19 undisputed, and, certainly when you put your name --

20          **MR. WOOD:** Who's disputing it, your Honor? Who's  
21 disputing it?

22          **THE COURT:** Mr. Fink has --

23          **MR. WOOD:** Who's disputing?

24          **THE COURT:** -- disputed it. Have you been tracking  
25 with Mr. Fink?

Motion hrg.

7/12/2021

1           **MR. WOOD:** He hasn't -- Mr. Fink only knows that my  
2 name appeared on the pleading. He doesn't know how it got  
3 there.

4           **THE COURT:** Okay.

5           **MR. WOOD:** So he has no basis to dispute what I'm  
6 saying about the conversation --

7           **COURT REPORTER:** Excuse me.

8           **MR. WOOD:** He understands --

9           **COURT REPORTER:** Excuse me.

10          **MR. WOOD:** -- that I have --

11          **COURT REPORTER:** Excuse me. I'm sorry, Judge, I'm  
12 going to have to say that please stop interrupting. It's hard  
13 enough on a Zoom hearing, let alone in open court when we are  
14 live, so please stop.

15          **THE COURT:** Thank you, Ms. Wabeke. Absolutely,  
16 absolutely. So, counsel, here are the rules again. One at a  
17 time. Let the court recognize you to speak after you've raised  
18 your hands.

19                 Mr. Fink, you may speak.

20          **MR. DAVID FINK:** Thank you, your Honor. To be clear,  
21 Mr. Wood indicates what I do and do not know. What I do know  
22 and what we put on this record is the following: One, we  
23 served him with a Rule 11 notice. Now, he should have known  
24 already before that because it was not only public, but I think  
25 we have social media comments from him, but that's irrelevant.

Motion hrg.

7/12/2021

1 That's not necessary today.

2           On December 15th we e-mailed him, and it did not come  
3 back to us. Then we sent first class mail to us [sic.] that  
4 did not come back to us in which we notified him of the  
5 potential Rule 11 filing. It also ended up in the  
6 Twitter-verse, if you will. It became public, and,  
7 interestingly, it became public not because of anything we did.  
8 But, rather, because another attorney, Mark Elias, who saw our  
9 notice, which was not filed with the court but only sent to the  
10 parties, Mr. Elias Tweeted that notice out, and, after he did  
11 that, Mr. Wood posted a Tweet saying something about he knew --  
12 "You know you're over the target when you're in the sights of  
13 David Fink," or something like that.

14           The point is, he knew. He even commented publicly.  
15 Equally importantly, today he's representing to this Court that  
16 he did not participate in -- I think that's what I heard him  
17 say -- that he had no chance to respond in Delaware. In fact,  
18 we offered, and, understandably, it wasn't at that point  
19 something the Court felt was pertinent or relevant, but we  
20 offered, as a potential supplemental brief with an attachment,  
21 the opening brief of Ronald Poliquin, an attorney purporting to  
22 represent Lin Wood in the Supreme Court of the State of  
23 Delaware and filed on May 5th, 2021, and that is the document  
24 in which his attorney said, "Among those cases in which Wood  
25 became involved were lawsuits in Wisconsin, Michigan, and

Motion hrg.

7/12/2021

1 Wood's own suit." I didn't make this stuff up.

2 **THE COURT:** Thank you, Mr. Fink, and I would -- I'm  
3 going to ask a question to Ms. Powell, and my question,  
4 Ms. Powell, to you is: Did you -- did you have an opportunity  
5 to speak to Mr. Wood? Let me -- let me restate this.

6 Did you ever at any point tell Mr. Wood you were  
7 going to place his name on the pleading?

8 **MS. POWELL:** My view, your Honor, is that I did  
9 specifically ask Mr. Wood for his permission. I can't imagine  
10 that I would have put his name on any pleading without  
11 understanding that he had given me permission to do that.  
12 Might there have been a misunderstanding? That's certainly  
13 possible.

14 **THE COURT:** All right. And, Mr. Kleinhendler, sir,  
15 one specific question to you, yes or no: Did you have an  
16 opportunity to speak to Mr. Wood before you placed his name on  
17 the pleading?

18 **MR. KLEINHENDLER:** Honestly, your Honor, I don't  
19 recall.

20 **THE COURT:** Okay.

21 **MR. KLEINHENDLER:** I don't recall. Sorry.

22 **THE COURT:** All right.

23 **MR. BUCHANAN:** Your Honor?

24 **THE COURT:** Yes, Mr. Buchanan.

25 **MR. BUCHANAN:** Thank you, your Honor. I just wanted

Motion hrg.

7/12/2021

1 to respond to your question about who had a role in the  
2 affidavit of a witness in question that you mentioned, and my  
3 client doesn't recall specifically when she looked at this  
4 affidavit. She said she saw it at some point, but, again, she  
5 was working at home doing basic editing, research, and so, you  
6 know, she didn't have any role in terms of investigating or  
7 doing due diligence on these particular affidavits. She's not  
8 saying they're accurate or inaccurate, but her role was more  
9 limited.

10 **THE COURT:** All right. Let me move on in terms of  
11 experts, those affidavits that have been submitted, and my  
12 questions are going to pertain to who spoke with these  
13 individuals for purposes of understanding the source of their  
14 facts that they were referenced in the affidavit and basis for  
15 their conclusions. Who spoke to these experts before  
16 submitting their reports as evidence? Dealing with expert  
17 reports.

18 So let me start with Joshua Merritt. Who spoke with  
19 him for purposes of determining the source of his facts and the  
20 basis for his conclusions before submitting?

21 And if there is counsel here who doesn't know the  
22 answer to that question because they had no involvement in it,  
23 because they didn't speak, please raise your hand. If you are  
24 not -- if you were not an individual who spoke in advance to  
25 Joshua Merritt about the source of his facts and the basis for

Motion hrg.

7/12/2021

1 his conclusion in the report that he provided, raise your hand  
2 if you weren't involved with it.

3 Okay. So I'm going -- okay. Let me name the  
4 individuals because I want to -- please keep your hand up.

5 **MR. WOOD:** Your Honor, could you restate the  
6 question, please?

7 **THE COURT:** The question -- yes, I will. The  
8 question -- as relates to the affidavit that was submitted by  
9 Joshua Merritt, my question is: Who spoke to him in advance  
10 before including his affidavit to the complaint? You know, did  
11 you speak to him for purposes of determining the source of his  
12 facts around the basis of his conclusions? Who on this call  
13 had that type of conversation with Mr. Merritt?

14 **MR. JOHNSON:** Your Honor, perhaps --

15 **THE COURT:** No, no. Go ahead, Mr. Johnson. Let me  
16 just do this: Raise your hand if you had the conversation with  
17 him, if anybody spoke with Joshua Merritt in advance of the  
18 submission of his affidavit.

19 So right now we have Mr. Kleinhendler.

20 Mr. Johnson, did you have your hand up for that?

21 **MR. JOHNSON:** I had my hand up that I did not speak  
22 with him or, for that matter, with any of the experts.

23 **THE COURT:** Okay. Okay. We'll make a note of that.

24 But, Mr. Kleinhendler, you spoke with him before the  
25 affidavit was submitted, Joshua Merritt; is that true?

Motion hrg.

7/12/2021

1                   **MR. KLEINHENDLER:** Yes.

2                   **THE COURT:** All right. And did you have an  
3 opportunity to speak to him about the source of his facts?

4                   **MR. KLEINHENDLER:** Your Honor, he was recommended to  
5 us. As there are certain things I cannot disclose,  
6 unfortunately, in public about his sources, about his  
7 qualifications, and the reason for that is he has worked as an  
8 undercover confidential informant for multiple federal law  
9 enforcement and intelligence services. It's beyond merely what  
10 is stated briefly in his declaration.

11                   He did -- he did tell me what those -- you know, what  
12 the basis is, what type of experience he had, and, based on  
13 that, looking at what he had presented, with the detail, with  
14 the URLs that he had cited, with the vulnerability to the  
15 Dominion pass codes that were available to be hacked on what  
16 they call the dark web, it was my honest belief that what he  
17 was saying was correct.

18                   I will take the opportunity, your Honor, to point out  
19 that the one area in his affidavit that has come into dispute  
20 was his role in the 305th military intelligence. At the time  
21 it was my understanding that he had spent a reasonable amount  
22 of time with that unit. Subsequently -- subsequently I did  
23 learn that he did train with them, your Honor. He trained with  
24 the unit. I think it's called Fort Huachuca. I can't remember  
25 the exact one. However, he subsequently was transferred out of



Motion hrg.

7/12/2021

1 there.

2           However, I point out to you that that -- that one  
3 point is minor and practically irrelevant because the basis of  
4 his expert opinion and his factual opinion are based on, and  
5 I'm happy to talk to you in camera and give you more detail of  
6 his years and years of experience in cyber security as a  
7 confidential informant working for the United States  
8 Government.

9           **THE COURT:** Did you feel that it was -- did you make  
10 that correction to the Court at any time? I'm not aware of it.

11           **MR. KLEINHENDLER:** I didn't have the time because  
12 when I first learned of it, your Honor, when I first learned of  
13 it, it was after all the cases had been decided and dismissed  
14 and then we withdraw. We never made a further representation  
15 to this Court, an argument to this Court about his  
16 qualification in that regard, and, technically, your Honor --  
17 technically, your Honor, the statement is not false. He  
18 trained with the 305th. Okay. It's not technically false.  
19 However, had I known in advance that he had transferred out, I  
20 would have made that clear, but I didn't. I had no reason to  
21 doubt.

22           **THE COURT:** Thank you, Mr. Kleinhendler.

23           Hang on a second.

24           Mr. Campbell, why do you have your hand up, sir?

25           **MR. CAMPBELL:** Because I wanted to let you know,

Motion hrg.

7/12/2021

1 Judge, if your questions tread into the area that you have  
2 acknowledged you're going to avoid, which is the area of work  
3 product or privilege, I will -- I'm asking the Court permission  
4 to be able to interrupt then with objections that are direct  
5 and express on that. Hopefully your questions don't get there,  
6 but I wanted to make sure that I was within your protocol to do  
7 so.

8 **THE COURT:** All right. You may raise your hand.  
9 Anyone who wants to address the Court, please raise your hand.

10 Mr. Fink.

11 **MR. DAVID FINK:** Yes. I just want to speak to the  
12 comments regarding Mr. Merritt, and as most people know --

13 **THE COURT:** Okay. Mr. Fink, let me do this, sir.  
14 I'm going to give you and Defense counsel an opportunity to --  
15 after I have asked a couple of more questions about a couple of  
16 additional purported experts, I'm going to give you a chance to  
17 follow up on that. If I could just understand -- get the lay  
18 of the land in terms of these experts.

19 So let me proceed.

20 And I'd like to ask about Mr. Matthew Braynard, and  
21 I'd like to know who reviewed his affidavit and who spoke to  
22 him in relation to what was attached, in relation to the  
23 statements in his affidavit.

24 Ms. Julia Haller, you have your hand up?

25 **MS. HALLER:** Yes. May I clarify, your Honor?

Motion hrg.

7/12/2021

1                   **THE COURT:** Yes.

2                   **MS. HALLER:** Matt Braynard had data that we cited to  
3 through our expert, William Briggs, who is also known as Matt.  
4 So William "Matt" Briggs cited to Matt Braynard. Matt Braynard  
5 had information, and we did communicate with Matt Braynard to  
6 the extent that we could. He had an agreement with a different  
7 attorney so our communications were more limited, and I do not  
8 feel comfortable discussing all the attorney work product  
9 that's involved in my communications, but I will say there were  
10 communications.

11                   **THE COURT:** Okay. Anyone else speak to Mr. Braynard?

12                   All right. How about Mr. Briggs, William Briggs?  
13 Who, as has been said, he did seem to be one who interpreted or  
14 provided analysis about the materials that Mr. Braynard  
15 submitted.

16                   Yes, Ms. Haller.

17                   **MS. HALLER:** Yes, your Honor.

18                   **THE COURT:** Did you speak with Mr. Briggs?

19                   **MS. HALLER:** Yes, your Honor. I communicated with  
20 William Briggs -- Dr. Briggs. Yes, I communicated with  
21 Dr. Briggs.

22                   **THE COURT:** All right. And you were able to speak to  
23 him about the source of his facts?

24                   **MS. HALLER:** Your Honor, everything's documented in  
25 his report, including his source and information, and we

Motion hrg.

7/12/2021

1 addressed this in 112, as well as in our other oppositions,  
2 that we thoroughly had vetted and gone over with the  
3 information that's cited in Dr. Briggs' report, yes.

4 **THE COURT:** All right. I don't know that that's  
5 clearly stated, but we'll revisit that.

6 **MS. HALLER:** Thank you, your Honor.

7 **THE COURT:** How about Mr. Watkins? Who reviewed the  
8 affidavit of Ronald Watkins and did anyone speak to him?  
9 Please raise your hand.

10 **MS. HALLER:** Your Honor, I can qualify that I have  
11 spoken to Mr. Watkins. I do not know at what point in time  
12 exactly, but I have communicated with Mr. Watkins about his  
13 reports.

14 **THE COURT:** All right. And you've spoken to him  
15 about his sources as well?

16 **MS. HALLER:** Yes, your Honor.

17 **THE COURT:** And the basis for his conclusions?

18 **MS. HALLER:** Yes, your Honor.

19 **THE COURT:** All right. And how about -- all right.  
20 So we did -- we talked about Mr. James Ramsland already, and,  
21 Ms. Haller, you said that you did in fact -- what did you say?  
22 You said that you reviewed it, his affidavit?

23 **MS. HALLER:** Yes, your Honor.

24 **THE COURT:** And you spoke with him?

25 **MS. HALLER:** No, your Honor, I did not.

Motion hrg.

7/12/2021

1           **THE COURT:** You did not speak with him?

2           **MS. HALLER:** I did review the filing -- I mean the  
3 report, but I have not communicated with him, no.

4           **THE COURT:** All right. Did anybody on the -- speak  
5 with Mr. Ramsland?

6           Mr. Kleinhendler, go ahead, sir.

7           **MR. KLEINHENDLER:** Yes, your Honor. Not only did I  
8 speak with him, about ten days or so before the complaint, I  
9 met with him.

10          **THE COURT:** Okay.

11          **MR. KLEINHENDLER:** I spoke with him often I reviewed  
12 drafts of his report. I asked him clearly, "Are you  
13 comfortable making these allegations? Are you comfortable with  
14 the language in the affidavit? What are your sources? Who  
15 else has assisted you?"

16                 Because he writes an affidavit that he lists ASOG  
17 (ph.) He spoke -- he briefly described some of the folks that  
18 were working with him, and he submitted, your Honor, two  
19 reports, an initial report and then a rebuttal -- the initial  
20 was an affidavit sworn, his sworn testimony, and the rebuttal  
21 was more of a 26(b) rebuttal report.

22                 I worked with him on a rebuttal report after  
23 analyzing and reviewing what the Defendants and the Intervenor  
24 Defendants had placed before the Court, and I was involved with  
25 that. And, yes, I spoke with him, and I was comfortable, your

Motion hrg.

7/12/2021

1 Honor, that what we were putting before the Court was true and  
2 correct.

3 **THE COURT:** All right. Thank you.

4 **MR. BUCHANAN:** Your Honor, this is Mr. Buchanan. I  
5 just wanted to clarify something. My client, Ms. Newman, did  
6 communicate with Mr. Ramsland on a limited basis.

7 **THE COURT:** For what purpose?

8 **MR. BUCHANAN:** I think, you know, she was talking to  
9 him about his affidavit in general, but, again, she was more of  
10 a -- someone that was doing editing and, you know, trying to  
11 gather the affidavits, including this particular one, but it  
12 wasn't a substantive conversation where she was doing due  
13 diligence on all the background. She asked some questions, but  
14 it was limited conversation.

15 **THE COURT:** All right. Thank you. All right. I  
16 have concluded --

17 **MR. CAMPBELL:** Your Honor, Ms. Powell has her hand  
18 raised.

19 **THE COURT:** Oh, thank you. Ms. Powell.

20 **MS. POWELL:** Yes, I just wanted to make clear that I  
21 have spoken with Mr. Ramsland a number of times.

22 **THE COURT:** Okay.

23 **MS. POWELL:** I cannot say whether it was before the  
24 filing or after, and I can't remember when I reviewed his  
25 affidavit, whether it was before or after.

Motion hrg.

7/12/2021

1           **THE COURT:** Okay. All right. Let me -- as relates  
2 to this section of presuit investigation and these particular  
3 experts, does counsel for the Defendants or the Defendant  
4 Intervenors or Plaintiffs' counsel wish to say anything related  
5 to the questions or the answers that I've received with that  
6 section?

7           **MR. DAVID FINK:** I would.

8           **THE COURT:** All right. Raise your hand if you'd like  
9 to be heard.

10           Okay. We're going to only hear from Mr. Fink.

11           Go ahead.

12           **MR. DAVID FINK:** Thank you, your Honor. I will not  
13 go into the detail, nor do I think I need to, of what our  
14 concerns were with all of these affidavits. That's laid out  
15 pretty clearly in our briefing. What I do want to first do is  
16 respond to something quite disturbing that Mr. Kleinhendler  
17 said.

18           He said that he couldn't have known while the case  
19 was pending, didn't learn until later, during the sanctions  
20 process, about the issues related to the Merritt affidavit.

21           And, by the way, we're calling it the Merritt  
22 affidavit, but of course this is the one that's identified as  
23 Spider, in what was attempted to be an anonymous presentation  
24 in redacted documents, which were so poorly redacted that we  
25 found out the name.

Motion hrg.

7/12/2021

1           But here's what's important for the Court to know.  
2 We attach as Exhibit 17 to our brief in support of sanctions a  
3 *Washington Post* article that details all of the issues  
4 regarding Mr. Merritt. Now, the reason that's so important is  
5 not the accuracy of that article, but, rather, that article put  
6 the world on notice on December 11th of 2020 -- *Washington Post*  
7 let the world know that this man was not a military  
8 intelligence expert. He washed out of training. That he,  
9 himself, disavowed participation in the case.

10           All of that was in that article, and if that did not  
11 put counsel on some kind of inquiry notice so they should have  
12 exercised some due diligence at that point and advised the  
13 Court that they had, apparently unintentionally they're saying,  
14 made a major misrepresentation to the Court, I don't know what  
15 could have put them on notice. They were on notice.

16           Now, the experts that we're talking about now, the  
17 Court correctly asks the question, "Did you talk to those  
18 experts?" I would simply add one more thing, which is very  
19 relevant, which is talking to those experts or not, just  
20 reading those reports, if they were properly vetted, would have  
21 immediately told any diligent attorney that the reports were  
22 desperately flawed, and I'll be very specific. For example, we  
23 heard about the concerns about -- that Mr. Ramsland raised  
24 about Antrim County and the Dominion machines. What's  
25 important --



Motion hrg.

7/12/2021

1           **THE COURT:** Okay. Mr. Fink, wait a minute. Hang on.  
2 I want to stop you because I am going to cover some of that,  
3 and we can -- and, you know, why don't we stop there because I  
4 have some additional questions. Of course, I'm going to let  
5 everyone be heard, okay?

6           **MR. KLEINHENDLER:** Your Honor, can I respond to  
7 Mr. Fink just on Mr. Merritt?

8           **THE COURT:** Yes.

9           **MR. KLEINHENDLER:** Okay. Your Honor, I learned of  
10 the issues when I saw the *Washington Post* article.

11           **THE COURT:** Okay.

12           **MR. KLEINHENDLER:** I can tell you that many of the  
13 allegations in the *Washington Post* article are false, and I  
14 want to make this very clear to the Court and all counsel. I  
15 spoke with Mr. Merritt Sunday. He is prepared to appear before  
16 your Honor and discuss his qualifications and discuss, in  
17 detail, his findings. That may require a closed session for  
18 part of it. We'll let you decide. But I want to make it clear  
19 to everyone that he is prepared to come here and testify and  
20 put his qualifications and his opinions to the test. We have  
21 asked in our pleadings for an evidentiary hearing.

22           Mr. Fink wants to wave around a *Washington Post*  
23 article. He can do that. Mr. Merritt is ready to come to  
24 court and put to bed any issues regarding his qualifications  
25 and regarding his testimony.

Motion hrg.

7/12/2021

1           **MR. DAVID FINK:** Your Honor, the only point I'm  
2 making is, not whether this man is or isn't qualified, that  
3 Mr. Kleinhendler has told us he learned that they made a  
4 misrepresentation, whether intentional or otherwise, regarding  
5 his qualifications, and he never advised the Court. Yes, there  
6 might be things in that article that aren't true. I don't  
7 know, but I know he was put on inquiry notice. He apparently  
8 did some investigation and did not notify the parties or the  
9 Court. That's --

10           **THE COURT:** Your response to that, Mr. Kleinhendler?

11           **MR. KLEINHENDLER:** My response to that, your Honor,  
12 is when I learned of it, number one, it took awhile to contact  
13 Mr. Merritt; number two, there was no further proceedings  
14 before the Court. Your Honor had already ruled on December 8th  
15 that it had no subject matter jurisdiction, no standing, a  
16 whole laundry list. There was never -- there was never a  
17 further opportunity, or, in my view, a reason to make a  
18 correction in a case that had already been decided, and,  
19 again --

20           **THE COURT:** And it was on appeal?

21           **MR. KLEINHENDLER:** Your Honor?

22           **THE COURT:** And that was on appeal?

23           **MR. KLEINHENDLER:** It was on appeal, but I want to  
24 make the point. What he said is technically not wrong. He did  
25 spend, from my understanding, seven months training with the

Motion hrg.

7/12/2021

1 305th. Now, it may not be the full story, but I disagree with  
2 the characterization that it's inaccurate, it's not true.

3 **THE COURT:** All right. Okay. All right. Thank you.

4 I have some follow-up questions about the affidavit  
5 of Mr. Merritt, and the first one is: Why was his affidavit  
6 filed using a pseudonym?

7 Are you the person that can answer that question,  
8 Mr. Kleinhendler?

9 **MR. KLEINHENDLER:** Yes. Your Honor, as we pointed  
10 out -- okay, your Honor, as we pointed out, and I have it  
11 here -- hold on.

12 This motion is a motion to seal. This is ECF 50 --  
13 okay, your Honor -- and this is his affidavit that he gave us  
14 explaining it. "He had worked in the areas that have made him  
15 a known target, has had death threats and a price put on his  
16 head by terrorist organizations. For the safety of myself and  
17 my family, I've requested to remain redacted. I found  
18 listening devices in my home and have had attempts on myself,"  
19 meaning he had been tried to be killed.

20 Next paragraph, "Because of work I have done as a  
21 confidential human source, confidential informant, as well as  
22 work investigating spies across the globe, my identity is  
23 redacted, not work which I have just done here in America, but  
24 work with foreign nations."

25 Final paragraph, "I request that these extreme cases

Motion hrg.

7/12/2021

1 be taken into consideration for my personal safety, my family's  
2 safety, the safety of sources I have worked with. I  
3 respectfully request my persona remain redacted."

4 Those are the reasons I submitted the redaction.

5 **THE COURT:** Thank you. Next question: Whose  
6 decision was it to identify this individual as a former U.S.  
7 military intelligence expert?

8 **MR. KLEINHENDLER:** Your Honor, he drafted his  
9 affidavit. No one corrected that sentence. That came directly  
10 from him.

11 **THE COURT:** Okay. All right. Anyone else have an  
12 answer to that?

13 All right. Let the record reflect that no one has  
14 said that they do.

15 At any point, next question, during the course of  
16 this litigation did anyone ask any of the attorneys or suggest  
17 that Merritt was not a military intelligence expert?

18 **MS. HALLER:** No.

19 **THE COURT:** And that's Ms. Powell is saying no? I'm  
20 sorry who said, "No"?

21 **MS. HALLER:** Excuse me, your Honor. Julia Haller,  
22 no.

23 **THE COURT:** All right. Mr. Kleinhendler, did anyone  
24 ask you?

25 **MR. KLEINHENDLER:** No, your Honor.

Motion hrg.

7/12/2021

1           **THE COURT:** Okay. Ms. Powell, I wanted to direct my  
2 next question to you, and did anyone ask you if, or suggest to  
3 you that, he was not a military intelligence expert?

4           **MS. POWELL:** No, your Honor.

5           **THE COURT:** Thank you. And my next question for  
6 Plaintiffs' counsel or counsel for Plaintiffs' counsel: Should  
7 an attorney be sanctioned for his or her failure to correct or  
8 withdraw allegations that the attorney comes to know or came to  
9 know are untrue? Is this sanctionable behavior?

10           Mr. Campbell, I'll hear from you.

11           **MR. CAMPBELL:** Again, it's going to depend on the  
12 circumstances. As the circumstances exist here, the answer  
13 would be no. One, because of the statements that you've just  
14 heard. There's an issue as to whether or not he correctly  
15 identified himself. Nobody knew that to be wrong.

16           Secondly, with the information, you've heard the  
17 explanation. It's not an inaccurate statement, although, as  
18 Mr. Kleinhendler had said, he would have expanded upon that.  
19 That's not the difference between being false, as Mr. Fink  
20 accuses, and not.

21           So on this circumstance, with an affidavit that this  
22 Court, again, did not reach the merits of, there was no *Daubert*  
23 motion, there was no consideration of any of his information,  
24 because this Court found that it was moot, found that there was  
25 lack of standing and all these other issues, never reached the

Motion hrg.

7/12/2021

1 affidavits.

2           Certainly, these lawyers, who, within I think it's  
3 four days of this Court's order in ECF number 7, I think, are  
4 in the United States Supreme Court, not just on this case but  
5 on three others, that somehow, some way this clarification or  
6 further explanation that Mr. Kleinhendler clearly says he would  
7 have provided if there was a means and a basis to do so or if  
8 he had noted originally, is that what would qualify for what  
9 the Court's asked? The answer I think is, resoundingly, no.

10           **THE COURT:** Did Mr. Merritt draft the affidavit on  
11 his own with no assistance from counsel?

12           **MR. KLEINHENDLER:** Yes, your Honor. I got the  
13 affidavit fully drafted.

14           **MS. HALLER:** Your Honor, we can bring him forward to  
15 testify. We know that this is a qualification question, which  
16 is appropriate on a *Daubert* motion. We do not believe it is  
17 grounds related to a sanctions motion when we have not had an  
18 evidentiary hearing. We've not had discovery. We've not had  
19 an opportunity to make this witness available.

20           So, again, as Mr. Kleinhendler pointed out, we would  
21 like an evidentiary hearing. We will bring forward our  
22 witnesses. We will have *Daubert* motions addressed because  
23 Plaintiffs are capable of making them. The same attorney made  
24 motions in other courts with *Daubert* motions. So we can  
25 address the questions of qualification at that time as your

Motion hrg.

7/12/2021

1 Honor would like.

2 **THE COURT:** Yeah. All right. We'll --

3 **MR. CAMPBELL:** So the court is aware the record is  
4 clear.

5 **THE COURT:** I will make those --

6 **MR. CAMPBELL:** If I may, briefly.

7 The request for an evidentiary hearing is not new,  
8 your Honor. It's been in the pleadings as well. I know it's  
9 in ECF 112, and it's in other places. We have offered that to  
10 the Court, my clients have, repeatedly. There's been no  
11 acceptance by the Defendants' at all.

12 **THE COURT:** All right. Let me ask what steps were  
13 taken to investigate the expertise of Matthew Braynard, and I  
14 specifically just need to know: Who reviewed his affidavit  
15 prior to submission and who spoke with him?

16 **MS. HALLER:** Your Honor, I have represented to this  
17 Court, and I repeat what I stated earlier --

18 **THE COURT:** Okay. You did speak to Braynard.

19 **MS. HALLER:** Indicated we communicated, including me,  
20 personally communicated with Mr. Braynard. I cannot give you  
21 the times and the dates specifically at this moment, but I can  
22 tell you that there were communications, more than one, with  
23 Mr. Braynard.

24 **THE COURT:** Okay. Anyone else? All right.

25 Now, let me move on. I want to talk of more about

Motion hrg.

7/12/2021

1 some of the -- the content, more about the content of the  
2 reports that have been submitted. I want to talk about,  
3 specifically, about the Briggs -- Mr. Briggs' survey, which was  
4 based on -- I'm sorry, looking at his analysis, which was based  
5 on data provided by Matthew Braynard.

6 My question is: What kind of survey did Mr. Braynard  
7 conduct? Who can answer that question?

8 **MS. HALLER:** Dr. Briggs, your Honor, his name is  
9 Dr. William Briggs, Ph.D., Cornell professor, made his report  
10 and all the work underlying it, available to this Court for  
11 free. He was not charging for what he provided, and he can  
12 also testify. He will also make --

13 **THE COURT:** I'm just asking. Hang on. Hang on.

14 I just want to know, after having reviewed the  
15 various documents related to Matthew Braynard's  
16 interpretation -- no, I'm sorry it's Dr. Briggs'  
17 interpretation.

18 **MS. HALLER:** Yes, your Honor.

19 **THE COURT:** Sorry. Of Matthew Braynard's survey. My  
20 question is -- it's not clear to me what type of survey  
21 Mr. Braynard conducted. What is it?

22 **MS. HALLER:** Dr. Briggs is a statistician who, to a  
23 reasonable degree of professional certainty, would be  
24 anticipated to testify in accordance with the survey provided  
25 as an exhibit to the complaint. As this case has not yet



Motion hrg.

7/12/2021

1 gotten to evidentiary proceedings or *Daubert* motions, we can  
2 address this and make him available. Dr. William M. Briggs,  
3 Ph.D., can be available --

4 **THE COURT:** I understand what his credentials are.

5 **MS. HALLER:** Well, your Honor, I'm just trying to  
6 make it clear that he would be anticipated to testify in  
7 accordance with the report that was attached to the complaint.

8 **THE COURT:** Okay. Counsel for the City, question for  
9 you, Mr. Fink: What would be the basis, in your view, of  
10 sanctioning counsel for the submission of this report? And  
11 this report I'm referring to would be the report that was  
12 provided by Dr. Briggs.

13 **MR. DAVID FINK:** The basis would be that the  
14 slightest bit of due diligence, by any attorney knowledgeable  
15 in the way the election proceeded, would have revealed that the  
16 report was founded on -- based on, not just bad statistical  
17 analysis, but bad legal analysis. For example, in the record  
18 there is a reference to the number of voters with indefinitely  
19 confined status. That's a status that doesn't exist in the  
20 state of Michigan. That's from another state.

21 There's a reference to the individuals who apply for  
22 an absentee ballot and the State mails it out to them. State  
23 of Michigan has never mailed out absentee ballots and didn't  
24 mail out absentee ballots in this case.

25 There's reference to early voters. We've never had

Motion hrg.

7/12/2021

1 what's called early voting in Michigan.

2           Apparently, apparently he believed that every time a  
3 voter's residence changed that automatically that voter is  
4 disenfranchised. So people who happen to travel to Florida for  
5 the winter but continue to vote absentee, he deemed them to be  
6 fraudulent voters.

7           Furthermore, the actual analysis really just took the  
8 simplest review to see that the numbers just didn't line up,  
9 and this -- I'm not a statistician, but I play one in Court,  
10 and -- but, seriously, I'm not a statistician, but I do know  
11 how to look at two numbers and see if they match, and, in this  
12 report, there are statistics that are just directly  
13 inconsistent and stated over and over in the same report.

14           So now they also claim, for example, that -- and this  
15 is fascinating because this comes up in multiple cases because  
16 people rely on others. A ballot is applied for -- an  
17 application is applied for and on the same day a ballot is  
18 cast, and they use that as evidence of fraud because they say  
19 that's impossible because you couldn't mail it and get it back  
20 that soon. Well, the fact is that's exactly how I vote and a  
21 lot of other people do. You go into the clerk's office. You  
22 fill out the application. The clerk gives you the ballot. You  
23 fill out your ballot. You hand it in. It all happens in one  
24 day. This is part of the fraud they claim. They claim --

25           **MS. HALLER:** Your Honor, may I respond?

Motion hrg.

7/12/2021

1           **THE COURT:** No, no, not yet, Ms. Haller.

2           Go ahead, Mr. Fink.

3           **MR. DAVID FINK:** There's also a discussion about  
4 ballots based on a survey. They did a survey, an unscien -- I  
5 think it's an unscientific survey. Maybe it was scientific,  
6 but there's no law that says you can do a survey and find out  
7 the percentage of people who don't remember that they applied  
8 for an absentee ballot or who applied for an absentee ballot  
9 and don't remember if they received it. Based on silly things  
10 like that, they came to their conclusions.

11           **THE COURT:** I understand, yes.

12           **MR. DAVID FINK:** So the short answer to your  
13 question -- I'm sorry.

14           **THE COURT:** No problem.

15           **MR. DAVID FINK:** The short answer -- I'm sorry, the  
16 shorter answer to the Court's question -- I guess there's no  
17 short answer. I apologize.

18           The shorter answer to the Court's question is we  
19 believe anybody who closely reviewed this study and looked at  
20 the way it was prepared, and I don't mean going behind what was  
21 written, the document as submitted to the Court itself on its  
22 face is a clearly and desperately flawed document, and they  
23 should have known that. They had that duty. Lawyers don't get  
24 to just throw things out and see what the Court will do with  
25 them. We have a duty.

Motion hrg.

7/12/2021

1           **THE COURT:** All right. Let me --

2           **MS. HALLER:** Your Honor, may I respond?

3           **THE COURT:** Ms. Haller, briefly.

4           **MS. HALLER:** Yes, your Honor. We can make Dr. Briggs  
5 available and to testify, and Mr. Fink can then cross-examine  
6 him as in accordance with the Rules of Evidence and Rules of  
7 Civil Procedure. At this time, there is no *Daubert* motion  
8 pending.

9           Mr. Fink is arguing as if he is both expert and  
10 attorney. He is not a statistician, but he is opining on the  
11 lack of statisticians basis for a report where he's never  
12 questioned the witness. Is that admissible in this court, in  
13 this federal court? Are we no longer applying the Rules of  
14 Civil Procedure?

15           We have witnesses, and we have them examined, and  
16 whether or not their testimony stands up under a motion is a  
17 question that has yet to be addressed by this Court, and to  
18 have it now as a basis -- suggested as a basis for sanctions,  
19 when we have not had the opportunity to bring Dr. Briggs to  
20 this court, when we have not had the opportunity to have an  
21 expert opine or the question of whether he's an expert to be  
22 qualified --

23           **THE COURT:** Ms. Haller.

24           **MS. HALLER:** Yes.

25           **THE COURT:** Ms. Haller, let me point out to you that

Motion hrg.

7/12/2021

1 I see a distinction between what you're saying and what  
2 Mr. Fink is saying, and the distinction is, is that Mr. Fink is  
3 pointing out areas which he thinks would have been obvious to  
4 Plaintiffs' counsel before the material by Dr. Briggs was  
5 submitted, and I have a series of questions that follow that  
6 along those same lines. I am not -- no one is, at this point,  
7 purporting to be an expert who can understand the underlying  
8 statistical analysis. That's not being questioned.

9 The question is, is that on the face of these  
10 submissions is there anything there that would give counsel  
11 pause to say, hold on, need to know a little bit more? I see  
12 that as being a distinction, and that is the Court's response.

13 I want to move on, and you'll see from my next line  
14 of questioning how that's borne out.

15 So I want to talk about Mr. Ramsland's affidavit, and  
16 I want to ask specifically can anyone question the improbable  
17 turnout numbers as shown in his declaration, which was attached  
18 to the original compliant, numbers such as 781 percent of the  
19 voting population in North Muskegon casted votes, 460 percent  
20 of individuals in Zeeland Charter Township showed up. Did  
21 anyone feel that that type of a representation should be  
22 questioned?

23 **MR. KLEINHENDLER:** Your Honor.

24 **THE COURT:** More importantly, did anybody question  
25 it?

Motion hrg.

7/12/2021

1           **MR. KLEINHENDLER:** I did.

2           **THE COURT:** Okay. Mr. Kleinhendler.

3           **MR. KLEINHENDLER:** And "Russ, Russ, are you sure  
4 about these numbers?" And he said, "Yes, yes, I did question  
5 them. Yes, I did review, and yes, it was an error" that he  
6 corrected on his reply affidavit.

7           **MR. CAMPBELL:** ECF 49, I believe.

8           **THE COURT:** He also goes on to talk about vote  
9 switching discovered through hand counts when there have been  
10 no hand recounts in Michigan as of the date that he made the  
11 statement, something of which Plaintiffs, who include  
12 Republican Party chairs, would have known. What about that  
13 kind of a statement, talking about the vote switching  
14 discovered through hand counts when there have been no hand  
15 recounts at that point? Was that also corrected,  
16 Mr. Kleinhendler?

17           **MR. KLEINHENDLER:** I'm trying to find where you're  
18 referring to.

19           **MR. CAMPBELL:** Which paragraph, your Honor?

20           **MR. KLEINHENDLER:** Do you have a -- because, offhand,  
21 I don't --

22           **THE COURT:** We might be able to pull that.

23           **MR. KLEINHENDLER:** I don't -- I don't know what hand  
24 counting looks like. What paragraph?

25           **MR. DAVID FINK:** Your Honor, that would be -- that

Motion hrg.

7/12/2021

1 would be Paragraph 10 of his affidavit when he claims that the  
2 Antrim County error, which was actually reported by the clerk  
3 the night of the election, that the Antrim County error was  
4 only discoverable through a hand counted manual recount.

5 **THE COURT:** That is the paragraph.

6 **MR. KLEINHENDLER:** I'm looking, your Honor. I'm  
7 getting into Paragraph 10.

8 **MR. DAVID FINK:** Your Honor, if I may, what's  
9 astounding to me is, after we have briefed this issue at least  
10 twice, probably more than twice but twice to these lawyers,  
11 explicitly addressing the fact that there were no hand recounts  
12 in the state of Michigan at that point, that everybody should  
13 have known, and that one of the Plaintiffs was the chair of the  
14 Republican Party of Antrim County, of all things, who clearly  
15 would have known there wouldn't have been a hand recount as of  
16 November 29th, despite that, Mr. Kleinhendler, even as of  
17 today, isn't even aware of where the claim is being made.

18 **MR. KLEINHENDLER:** I don't see it in Paragraph 10.  
19 Please read me the language --

20 **MR. CAMPBELL:** I'll read that --

21 **THE COURT:** Hang on.

22 **MR. CAMPBELL:** (Indiscernible.)

23 **THE COURT:** Hang on. Stop, please. Please stop.

24 Mr. Campbell, do you have the language in front of  
25 you?

Motion hrg.

7/12/2021

1           **MR. CAMPBELL:** I believe I do, your Honor.

2           **THE COURT:** Read it, please.

3           **MR. CAMPBELL:** "One red flag has been seen in Antrim  
4 County, Michigan. In Michigan, we have seen reports, 6 of  
5 6,000 votes in Antrim County that were switched from Donald  
6 Trump to Joe Biden. They were only discoverable through a hand  
7 counted manual recount. While the first reports have suggested  
8 that it was due to a, quote/unquote, glitch -- my air quotes.  
9 After an update, it was recanted and later attributed to a,  
10 quote, clerical error, unquote. This change is important  
11 because if it were not due to clerical error but due to a,  
12 quote, glitch, end quote, emanating from an update, the system  
13 would be required to be recertified, according to Dominion  
14 officials."

15           **THE COURT:** All right. Mr. Campbell, my question  
16 goes specifically to the reference of there having been -- this  
17 information having been discovered through a hand recount,  
18 where we know now that the statement was made, there was no  
19 such hand recount. That is my question.

20           **MS. HALLER:** Your Honor, if I may correct the record  
21 for that. It was the Michigan Secretary -- the county  
22 secretary who did that hand recount, and that's reported on at  
23 that time. So there was what they called a hand recount.  
24 Maybe it's not under the law that defines the definition, but  
25 that is heavily reported at that time.



Motion hrg.

7/12/2021

1                   **MR. DAVID FINK:** No, your Honor. It was not. I'm  
2 sorry.

3                   **MR. CAMPBELL:** It wasn't.

4                   **THE COURT:** Hang on.

5                   **MR. DAVID FINK:** I'm sorry. I'm sorry.

6                   **MR. CAMPBELL:** The Court is acting as if you've seen  
7 proof that the statement made by that -- no statement was made  
8 by the county person. That hasn't been attached to the  
9 pleadings here.

10                  **THE COURT:** Well, I mean all right.

11                  **MR. KLEINHENDLER:** Your Honor, you asked for my  
12 understanding. My understanding when I read this was that,  
13 specifically with regard to these 6,000 votes in that specific  
14 county, somebody did a hand recount. It wasn't a  
15 State-sanctioned full Board of Election recount. My  
16 understanding was that somebody recounted it by hand.

17                  **THE COURT:** All right.

18                  **MR. KLEINHENDLER:** And that's how they discovered.

19                  **THE COURT:** All right.

20                  **MR. KLEINHENDLER:** Again, what you're hearing -- I  
21 want to make this clear here. You're hearing a lot of factual  
22 representations by Mr. Fink, and I would please ask you to  
23 double check the record before you just take it because --

24                  **THE COURT:** I don't -- I don't need to be -- I don't  
25 need that cautionary instruction from you. Thank you.

Motion hrg.

7/12/2021

1 Mr. Fink, your response, please.

2 **MR. DAVID FINK:** Only to the specific statement by  
3 Ms. Haller and, apparently, Mr. Kleinhendler.

4 Nobody, nobody said there was a hand recount. A  
5 clerk said that there had been an error on the publicly  
6 reported but not official results the night of the election.  
7 Within a day it was clarified that there had been a  
8 transposition of numbers, not a recount of any kind. A hand  
9 recount is a term of art. It is possible to obtain a hand  
10 recount in this state.

11 It turns out that the Trump campaign never requested  
12 such a hand recount, but, eventually, there were audits. As of  
13 this November date, it is absolutely uncontroverted and  
14 uncontrovertible that no hand recount had occurred, and anyone  
15 knowing the facts in this case, anyone understanding how  
16 Michigan elections work, which could have been local counsel,  
17 should have flagged that and seen it in Ramsland's report.

18 **MS. HALLER:** Ramsland's report -- excuse me, your  
19 Honor -- actually said "hand counting." He does not say "hand  
20 count," which is the legal term.

21 **MR. DAVID FINK:** It says "hand counted manual  
22 recount."

23 "Hand counted manual recount" is the exact --

24 **MS. HALLER:** Hand counted --

25 **MR. DAVID FINK:** -- what it states --

Motion hrg.

7/12/2021

1           **MS. HALLER:** -- is a different term --

2           **THE COURT:** Hang on.

3           **MS. HALLER:** -- from hand count.

4           **MR. DAVID FINK:** And there was no hand counting.

5           **THE COURT:** All right. Mr. Campbell --

6           **MR. CAMPBELL:** But there's the lead, your Honor.

7 There was a report about it. He doesn't say that it happened.  
8 He doesn't swear that he was there to see it. He says he got  
9 that report, and, again, it's the point to say then they said  
10 there was a glitch. Well, if there's a glitch, this has to  
11 happen.

12           So, again, as lawyers, we all know there are  
13 conditions precedent and conditions subsequent. This is not a  
14 material statement, and if he happens -- if the report happens  
15 to be inaccurate, then Mr. Ramsdale [sic.] can tell you whether  
16 that impacts his opinion if he were here to testify at the  
17 evidentiary hearing that my clients have been asking for, but,  
18 otherwise, again, you are letting Mr. Fink act like he's the  
19 expert to tell us what hand recount means.

20           **MR. KLEINHENDLER:** Your Honor --

21           **THE COURT:** Excuse me.

22           **MR. KLEINHENDLER:** This is very important.

23           **THE COURT:** Excuse me. I have already asked that if  
24 anyone would like to speak that you raise your hand. Please  
25 honor that. Not right now, Mr. Kleinhendler. Just hold on a

Motion hrg.

7/12/2021

1 minute.

2 I just want to note for the record that Mr. Ramsland  
3 did in fact submit a subsequent filing on December 3rd, and he  
4 indicated that the original data that he provided, in terms of  
5 turnout, voter turnout, was based on unidentified state-level  
6 data that no longer exists. However, as indicated above, these  
7 results that I have shared with you, the results in the city of  
8 Detroit deemed to have been 139.29 percent. I said Zeeland was  
9 an astronomical number. I believe North Muskegon, 790 percent.  
10 He indicated that that information was obtained from the State  
11 and that it no longer exists.

12 However, he indicated -- however, this Court will  
13 take note of the fact that there were official results that  
14 were available to him even before his original claims were  
15 filed, and I understand that there could be some, you know,  
16 parsing of words here, but that is the point that I am getting  
17 at, and Mr. Ramsland did submit what one could argue was his  
18 effort and attempt to correct, but he really did not go far  
19 enough because he's simply saying that the data that he relied  
20 upon seems to be saying that it was inaccurate, but it's no  
21 longer available.

22 All right. So my question becomes: Should an  
23 attorney be sanctioned for his failure to correct or withdraw  
24 allegations that he comes to know were not true?

25 Let me hear from Mr. Campbell.

Motion hrg.

7/12/2021

1           **MR. CAMPBELL:** Well, if you're asking me is that what  
2 the rule says? Yeah, the rule says if you have knowledge.  
3 Now, knowledge is also defined, Judge. It's defined as actual  
4 knowledge of the fact in question. Under the MRPC, the  
5 Michigan Rules of Professional Conduct, that rule is defined.  
6 So whether there's actual knowledge, your question is really  
7 not a question; it's an answer.

8           Here, there is no evidence that any of the lawyers  
9 had the statistical background or understanding. I mean this  
10 is why they have reports. Nobody was confronted with proof,  
11 knowledge that information was in error, inaccurate, or untrue,  
12 for sure. So -- and, again, it would have to be knowledge that  
13 it was presented falsely and you don't have that here.

14           **THE COURT:** All right.

15           **MR. CAMPBELL:** And, again, I join the chorus. Let's  
16 have the evidentiary hearing if you have a question as to  
17 whether the people who made the reports did so in good faith or  
18 not.

19           **THE COURT:** And, again, as I've already indicated, I  
20 am simply inquiring as to counsel's review of affidavits that,  
21 on its face, raise questions. That is what my questioning is  
22 about.

23           Mr. Fink.

24           **MR. DAVID FINK:** If I may. I want to speak simply to  
25 the Detroit issue. Certainly, when we saw the Ramsland report,

Motion hrg.

7/12/2021

1 the very first time we saw it, we had the reaction that all  
2 counsel should have had, which was that it was astounding that  
3 139 percent could have voted in the city of Detroit. We  
4 immediately checked the records, and the record was clear that  
5 something like 50.88 percent had actually voted in the city of  
6 Detroit. It was easy to find, it was publicly available, and  
7 they had to be on notice that when they are making such an  
8 extremely powerful, potent, and dangerous allegation they have  
9 a duty of inquiry to at least look into it, and all it took was  
10 30 seconds on the Internet for me to find out the correct  
11 answer.

12 I also want to point out the danger that came from  
13 this because --

14 **THE COURT:** Mr. Fink, no.

15 **MS. HALLER:** (Indiscernible.)

16 **THE COURT:** Excuse me.

17 **MS. HALLER:** -- as to this Court --

18 **THE COURT:** Excuse me.

19 **MS. HALLER:** -- we have to object.

20 **THE COURT:** Ms. Haller, I will recognize you when you  
21 have raised your hand. Mr. Fink is allowed to finish, and I  
22 will give you an opportunity to speak thereafter.

23 Go ahead, Mr. Fink.

24 **MR. DAVID FINK:** Okay. The suggestion that this was  
25 some kind of harmless error because it was ultimately corrected

Motion hrg.

7/12/2021

1 flies in the face of the reality of what actually happened.  
2 These lies were put out into the world, and when they were put  
3 out in the world, they were adopted and believed by some of the  
4 most potent recipients of this information.

5 So that, in the infamous January 2nd, 2021 phone  
6 conversation when then President Trump attempted to extort  
7 Secretary of State Brad Raffensperger to try to help him win  
8 his election which he'd already lost, President Trump  
9 explicitly referenced the 139 percent voting statistic in  
10 Detroit as though it were fact. These are the consequences.  
11 It's the consequence of what they did and how they abused this  
12 system by not having made that correction, and they should  
13 have. They never should have filed this.

14 And, no, we don't want -- we're not looking for any  
15 kind of *Daubert* hearings on any of these so-called experts.  
16 No, we don't think they're experts. Our issue is the slightest  
17 bit of due diligence would have alerted the lawyers that they  
18 were in the position of making misrepresentations to the Court  
19 and to the world.

20 **THE COURT:** All right. Ms. Haller.

21 **MS. HALLER:** Yes. Thank you, your Honor. Mr. Fink  
22 just cited to an Internet source unnamed as the source to say  
23 that one of our experts, designated or anticipated to be an  
24 expert, in the time that discovery would allow or an  
25 evidentiary hearing would allow as a basis for a lie. Mr. Fink

Motion hrg.

7/12/2021

1 is citing to unnamed Internet sources, and I submit he is  
2 opining as an expert as well as arguing as an attorney without  
3 foundation. So he lacks foundation. He's citing to hearsay,  
4 and all his submissions are to claim that there are lies here.  
5 We submit that that is done without legal foundation and basis.  
6 Hearsay is not a basis. Thank you, your Honor.

7 **MR. DAVID FINK:** Your Honor, one second.

8 **THE COURT:** Mr. Fink.

9 **MR. DAVID FINK:** Just to be clear, I was not citing  
10 an Internet source. What I said was 30 seconds on the Internet  
11 got you to the public record, which is not hearsay. The public  
12 record of the number of voters, the percentage of the  
13 registered voters who voted, the public record is all I'm  
14 referring to. It was always available. It was available to  
15 all of these attorneys.

16 **THE COURT:** And I wanted to just point out, it was  
17 available on November 19th of 2020.

18 Let me go to Mr. Campbell, and then I'm going to move  
19 on.

20 **MR. CAMPBELL:** You know what, Judge, I think the  
21 points have now been made relative to this, but, again, as to  
22 what these numbers mean within the report and how they're to be  
23 interpreted, Mr. Fink can't be the source for that.

24 **THE COURT:** Yes, and that's -- I don't believe that's  
25 his point. It is just the matter of what an attorney, who had



Motion hrg.

7/12/2021

1 reviewed the information, what they would make of that data.

2 Go ahead.

3 **MR. CAMPBELL:** But, Judge, you just asked me can a  
4 lawyer say something that's false. So just because it's not  
5 his point, he shouldn't be able to spread the falsehoods.

6 **THE COURT:** All right. I'm going to move on.

7 **MR. KLEINHENDLER:** Your Honor, I have a very  
8 important point that I think would help you, your Honor, and  
9 that is Mr. Fink talked about the recount in Antrim County. I  
10 just want to refer you to Mr. Ramsland's rebuttal. It's ECF  
11 49, and at pages 8-9 he has a photograph, a photograph of the  
12 hand recount that was done in Antrim County and to which he  
13 referred to in the moving affidavit. That's my point, your  
14 Honor.

15 **THE COURT:** I'm going to move on to some specific --

16 **MR. CAMPBELL:** Your Honor, if I can, can we have  
17 Mr. Fink explain why there's a photograph of something that  
18 shows a hand recount when he's telling everybody there's been  
19 no hand recount?

20 **MR. DAVID FINK:** Absolutely, but, I'm sorry,  
21 Ms. Meingast is --

22 **THE COURT:** Go ahead, Mr. Fink, did you want to  
23 respond to that?

24 **MR. DAVID FINK:** I've got to pull up the document. I  
25 don't have it in front of me.

Motion hrg.

7/12/2021

1           **THE COURT:** Okay.

2           **MR. DAVID FINK:** Because there was no hand recount,  
3 as stated, but I think Attorney General Meingast has the  
4 answer.

5           **THE COURT:** Ms. Meingast, please.

6           **MS. MEINGAST:** Just briefly, your Honor. I'm the  
7 attorney in the Antrim County *Bailey* case.

8           **THE COURT:** Yes.

9           **MS. MEINGAST:** The questions about this case, I'm  
10 happy to shed some light. There was certainly not any kind of  
11 hand count recount that occurred before the Secretary of State  
12 and the County actually did one later in December. So what  
13 the, you know, the clerks -- the county clerk and the local  
14 clerks did during the canvass or during, you know, the election  
15 night and the days that followed was simply look at tabulary  
16 tapes and comparisons and look at those things. There wasn't a  
17 hand count of ballots or anything like that nature. You  
18 can't -- it's not even appropriate or allowed under election  
19 law to do something like that at that time.

20           **THE COURT:** All right.

21           **MR. CAMPBELL:** Again, your Honor, the story isn't  
22 what Mr. Fink said, that there's absolutely no hand recount.  
23 There is something going on there, and nobody is -- neither of  
24 the two counsel have said, "Hey, that's a false document."

25           So it turns out that they were aware of it, having

Motion hrg.

7/12/2021

1 seen ECF 49. It turns out they have no rebuttal to that  
2 document. It turns out that the expert, the person who made  
3 the report, had a basis for making the statement, and we have  
4 spent I don't know how long talking about a line from --

5 **THE COURT:** And that may well be the case, that may  
6 well be the case, but it is -- if that's how I choose to  
7 proceed, that's how I will proceed.

8 Mr. Fink, last word on this, and I'm moving on.

9 **MR. DAVID FINK:** I apologize, your Honor. I know I  
10 had my hand up. I'm with somebody who is going to bring me the  
11 document so I can look at it, and I can tell you and I can tell  
12 Mr. Campbell unequivocally there was no hand recount as of the  
13 date of this report. I'm guessing whatever the photo is is of  
14 something that was done later than that.

15 **THE COURT:** All right. I would like to move on now,  
16 and I'm going to give you all -- you can make a note, and I  
17 really don't even -- I don't know what the picture is that  
18 you're referring to, but when you can pull that together, and I  
19 will revisit that during the course of this hearing. We're  
20 going to move on right now.

21 All right. Now, the amended complaint states that  
22 Defendants violated the Equal Protection Clause by taking  
23 several specific actions. To be very clear, Plaintiffs' Equal  
24 Protection claim was based on the notion that the votes of  
25 those who voted for former President Trump were diluted.

Motion hrg.

7/12/2021

1 Plaintiff submitted many affidavits as evidence that specific  
2 things happened, thereby causing vote dilution.

3           Considering this, and the fact that counsel knows it  
4 could not submit affidavits to the Court with impunity, despite  
5 the fact that the affidavits are executed by others, the Court  
6 is concerned that these affidavits were submitted in bad faith.  
7 For this reason, I have questions about specific affidavits and  
8 the factual allegations they were alleged to support.

9           I would like to first look at -- Plaintiffs assert,  
10 first of all, that Defendants, "Fraudulently added tens of  
11 thousands of new ballots and/or new voters to the qualified  
12 voter file in two separate batches on November 4th, all or  
13 nearly all of which were votes for Joe Biden."

14           Now, the amended complaint cites three pieces of  
15 evidentiary support for that conclusion. One is the affidavit  
16 that's been submitted by Mr. Sitto. That's ECF number 6-4, PDF  
17 40-42 -- Pages 40-42. The amended complaint states, "Sitto  
18 observed tens of thousands of new ballots being brought into  
19 the counting room."

20           Did I understand that correctly, per the affidavit,  
21 that is what the affidavit states?

22           Here's my question for counsel. First of all -- and  
23 this is referenced in the amended complaint. As I read  
24 Mr. Sitto's affidavit, the affidavit does not state that he  
25 actually saw these ballots brought in. Counsel seems to be

Motion hrg.

7/12/2021

1 making an assumption that he had them brought in.

2 Who had anything to do with this affidavit? Let's  
3 start there. Who prepared that affidavit at ECF number 6-4,  
4 PDF? Anybody?

5 No one knows about that, huh?

6 **MS. HALLER:** Your Honor, can we have a moment to find  
7 the document? Because it's kind of hard to do when you have  
8 this on the computer, as I do.

9 **THE COURT:** Yes. He said he observed tens of  
10 thousands -- this is what the compliant says. "He observed  
11 tens of thousands of new ballots" -- here it is here on the  
12 screen, the shared screen, and this is actually -- let's see.

13 So the question becomes -- that is a statement that's  
14 made in the complaint, that Sitto observed tens of thousands of  
15 new ballots being brought into the counting room, but, in fact,  
16 the affidavit does not state that he actually saw it. All  
17 right.

18 All right. He says he "heard other challengers say  
19 that vehicles with out-of-state plates pulled up and unloaded  
20 boxes of ballots, and, approximately 4:30, tens of thousands of  
21 ballots were brought in and placed on eight long tables.  
22 Unlike the other ballots, these boxes were brought in from the  
23 rear of the room."

24 **MS. HALLER:** Your Honor, what ECF document is this?  
25 Because it doesn't show at the top of the screen showing.

Motion hrg.

7/12/2021

1                   **THE COURT:** 104.

2                   **MR. CAMPBELL:** If I may, your Honor, up above --  
3 you've highlighted Paragraph 10. Paragraph 5 describes a time  
4 frame in which he is standing in the room that he's describing  
5 the conduct in Paragraph 10. I think that puts him personally.

6                   **THE COURT:** Okay. So let me -- let me move on then,  
7 and that was Mr. Campbell. Please say your name before you  
8 speak. I think it will be helpful.

9                   All right. So even if the Court assumes -- even  
10 assuming Mr. Sitto saw the ballots brought in, what is the  
11 basis for concluding that there were tens of thousands, and  
12 what steps, if any, did counsel take to investigate his basis?  
13 And again --

14                   **MR. CAMPBELL:** This is Don Campbell.

15                   **THE COURT:** I'm not --

16                   **MR. CAMPBELL:** This is Don Campbell.

17                   **THE COURT:** Yes.

18                   **MR. CAMPBELL:** The basis for the tens of thousands is  
19 I think that's what he says in the affidavit there. I will  
20 note this, that the only contrary statement that was provided  
21 by the Defendants in any of its briefing up to this hearing was  
22 to say that it might look like to uneducated, untrained folks.

23                   **THE COURT:** Sorry. Hold on just one moment, please.  
24 I'm sorry, hang on one moment, please.

25                   Apologies, go ahead.

Motion hrg.

7/12/2021

1           **MR. CAMPBELL:** Thank you. I haven't read all of  
2 Mr. Sitto's affidavit here obviously at this moment, but I  
3 can't recall whether he had training or not, and I don't know  
4 whether he expressed his level of education, but, you know, the  
5 City seems to concede that, yeah, it could look like this  
6 stuff, it's just you don't know what's really going on.

7           Now, of course the Court has not had the opportunity  
8 to hear what these people actually saw or to put those people  
9 under examination in an evidentiary hearing, if that's what it  
10 required, and nor has it had an opportunity to really test the  
11 City's position, even though it looks like that, it didn't  
12 actually happen --

13           **THE COURT:** Mr. Campbell, let me be clear, that  
14 this -- I said at the outset of these particular affidavits  
15 that I'm going to be questioning counsel about is that I wanted  
16 to determine whether or not -- whether counsel had done its  
17 proper level of investigation before submitting an affidavit.  
18 It's quite similar to what the other areas that we discussed  
19 previously, in terms of was there anything in the content that  
20 would trigger your duty as counsel to determine whether or not  
21 these statements were based in facts.

22           And for someone to say tens of thousands, and if  
23 you're telling me that it is just an eyeball view of it and  
24 they pulled that out, I ask you: Is it acceptable to place  
25 into an affidavit? Do you think it is, Mr. Campbell?

Motion hrg.

7/12/2021

1           **MR. CAMPBELL:** I've got to tell you, Judge, if a jury  
2 believed it, it would be enough to convict somebody of a crime  
3 of election fraud in a moment, yes, absolutely.

4           **THE COURT:** Okay.

5           **MR. CAMPBELL:** If you saw that. I mean what other  
6 proof would you have, Judge, other than your own eyes? It's  
7 outrageous --

8           **THE COURT:** And --

9           **MR. CAMPBELL:** I've got to get three witnesses --

10          **THE COURT:** Excuse me. Excuse me. I'm asking you --  
11 my question really is: How would anyone know that that's tens  
12 of thousands?

13          **MR. CAMPBELL:** We can ask Mr. Sitto under  
14 examination, but I don't think that's something he needs to put  
15 into an affidavit.

16          **THE COURT:** Question: Did you -- that is really my  
17 question. Was that question asked? And I don't think I got an  
18 answer from any of the attorneys on this here today at the  
19 hearing as to whether or not -- you know, who, who actually put  
20 together this affidavit? Did anyone on the call have anything  
21 to do with it? Anyone?

22          **MR. KLEINHENDLER:** Your Honor, this is  
23 Howard Kleinhendler. I believe this affidavit and others were  
24 filed in a companion case. The companion case had nothing to  
25 do with us, and on behalf of -- I believe it might have been



Motion hrg.

7/12/2021

1 the Trump campaign in connection with a challenge, a different  
2 challenge that was made. These were affidavits that were  
3 submitted by counsel in that case.

4 **THE COURT:** So there was no effort on -- even though  
5 these affidavits -- this particular affidavit was submitted,  
6 and if I'm not mistaken, attached to the complaint, you didn't  
7 feel that you needed to review it before it was filed?

8 **MR. KLEINHENDLER:** We reviewed it. Of course we  
9 reviewed it, and, frankly, it was not that inconsistent with  
10 what our experts were saying. If you look at our expert  
11 reports, and -- your Honor, I don't know -- forgive me -- what  
12 standard are you using here for filing a complaint? We had a  
13 good faith basis, no reason not to believe --

14 **THE COURT:** I'm looking at the standards that are set  
15 forth in the variety of options I have to impose sanctions.  
16 That's what I'm looking at and --

17 **MR. KLEINHENDLER:** Well, I'm looking at the  
18 standard --

19 **THE COURT:** Okay. Thank you.

20 Mr. Fink, what is it you would like to say?

21 **MR. DAVID FINK:** First, to be clear, it's astounding  
22 that even today Mr. Kleinhendler isn't able to tell us what the  
23 source of this is, just saying he thought it was a Trump  
24 lawsuit. This is from the *Constantino* and *McCall* case that was  
25 filed in the Wayne County Circuit Court. The case was heard by

Motion hrg.

7/12/2021

1 Judge Kenney, and at the time that it was before Judge Kenney,  
2 Chris Thomas, the former elections director, the elections  
3 director of the State of Michigan for something like 38 years,  
4 under Democratic and Republican administrations, and was  
5 involved in this litigation, Chris Thomas filed a detailed  
6 affidavit addressing these very issues, explaining why  
7 Mr. Sitto misunderstood what he may have observed, very  
8 clearly.

9 Judge Kenney reviewed that and made conclusions, none  
10 of which are ever referred to by the Plaintiffs, but,  
11 certainly, again, I'm not saying this Court needs to or should  
12 make a finding of truth or falsity of these affidavits, but the  
13 Court is appropriately asking about the duty of inquiry during  
14 this three-week period. This was filed first in Wayne County  
15 the week of the election. That's when these affidavits were  
16 available to them. There clearly was an issue of fact as to  
17 whether this was true, as it was responded to so clearly by  
18 Chris Thomas and by Judge Kenney.

19 They had a duty at that point to investigate.  
20 Lawyers -- unfortunately this kind of case is going to make  
21 people around the world believe that lawyers can say or do  
22 whatever they want and it doesn't have to be true; they don't  
23 have to inquire. It isn't that way. You can't put something  
24 in a pleading that you know to be false, and I do want to say  
25 one thing.

Motion hrg.

7/12/2021

1           Earlier today the question came up about pro hoc  
2 vice, and I just want to say every lawyer in Detroit, including  
3 the three local counsel who signed on here, should know that in  
4 the Eastern District of Michigan it's been 40 years since we  
5 had pro hoc vice admission, but what we do have, what we do  
6 have is an admission process in which everybody who gets  
7 admitted fills out a form or takes an oath that they must swear  
8 or affirm that they will honor the civility principles of this  
9 court, and as Mr. Campbell well knows, one of those civility  
10 principles is we are not to make factual misrepresentations to  
11 the Court. We are not to misrepresent the law or the facts to  
12 the Court, and they seem to have chosen not to be sworn into  
13 our district.

14           So they didn't know -- and, by the way, if somebody  
15 on this call, if one of these lawyers says they didn't know  
16 because they're going -- everybody blames everybody else here,  
17 apparently. They're going to say, "Local counsel didn't tell  
18 us." Again, Google it. Google "admission to Eastern District  
19 of Michigan," and it pops up right away. There is no pro hoc  
20 vice, and there hasn't been since 1981.

21           They should tell the truth. They have a duty to tell  
22 the truth, and they have a duty to not submit an affidavit to  
23 this Court, whether it's attached to a complaint or not, not to  
24 submit an affidavit to this Court that they have reasonable  
25 cause to believe has false statements in it and to rely on it

Motion hrg.

7/12/2021

1 in the allegations they then make in the complaint.

2 Thank you. I'm sorry if I went too long.

3 **THE COURT:** All right. Let me stop --

4 **MS. HALLER:** Your Honor --

5 **THE COURT:** Hang on. I'm going to -- let me tell you  
6 what my plan is. I will hear from counsel, from Ms. Haller,  
7 from Mr. Campbell, and Mr. Davis appears he wants to say  
8 something. After I have done that, we're going to take a  
9 ten-minute break. All right. It is now 11:00. We've been on  
10 for the last two-and-a-half hours. I have more areas of  
11 questioning.

12 Ms. Haller, I'll hear from you.

13 **MS. HALLER:** Thank you, your Honor.

14 I would just briefly say that this was the complaint  
15 and we had good faith to attach exhibits, and we spoke to our  
16 anticipated experts and we reviewed the materials, and I simply  
17 am confused as to the standard that's being applied when it  
18 comes to filing a complaint because this was not a verified  
19 complaint so I'm a little confused at the standard.

20 We did not submit falsehoods, and we have not had an  
21 opportunity to have our witnesses examined, which I'm sure your  
22 Honor understands that we will make the witnesses available.  
23 They can be cross-examined by Mr. Fink, who doesn't need to  
24 opine on what constitutes the public record without citations.

25 **THE COURT:** All right.

Motion hrg.

7/12/2021

1           **MS. HALLER:** So citations are helpful, the standard  
2 would be helpful, and thank you for your time, your Honor.

3           **THE COURT:** All right. Mr. Campbell.

4           **MR. CAMPBELL:** Yeah, I just want to make sure the  
5 record Mr. Fink has highlighted is understood and appreciated  
6 by this Court. Other members of the State Bar of Michigan,  
7 other lawyers saw this and admitted it in a different  
8 proceeding, and I've got to tell you, Judge, you've got to be  
9 able to trust when something has been submitted by counsel  
10 because of the oath that we take, because of the reliability on  
11 everybody else within this profession that, yes, that should  
12 have tremendous value. In fact, I would say it's -- it ends  
13 the discussion on whether there's good faith to submit it.

14           The counter-argument, which they want to promote,  
15 they can do so at their time. Judge Kenney did not rule that  
16 that affidavit was in error. He did not rule to any of the  
17 merits in the *Constantino* case.

18           **THE COURT:** All right. Thank you.

19           **MR. CAMPBELL:** So with regard to that, that is  
20 further basis for the good faith to apply.

21           **THE COURT:** Let me answer Ms. Merritt -- thank you  
22 Mr. Campbell -- Ms. Merritt -- Ms. Haller's question as to  
23 determining what the standard is that I'm applying here, and  
24 I've said it before, but the standard is that Plaintiffs'  
25 counsel submitted affidavits that the Court may believe should

Motion hrg.

7/12/2021

1 have been obviously questionable, if not false, on their face.  
2 That is what I am getting to. There is a responsibility.  
3 There's a duty that counsel has to ensure that when you're  
4 submitting a sworn statement in support of your case, actually  
5 as -- presenting it as evidentiary support of your claims, that  
6 you have reviewed it, that you have done some minimal due  
7 diligence and that is what I am getting at. All right. All  
8 right.

9 **MS. HALLER:** Thank you, your Honor.

10 **THE COURT:** We're going to take a ten-minute break.

11 **MR. CAMPBELL:** May I ask for a slightly longer break?

12 **MR. WOOD:** Your Honor --

13 **THE COURT:** Hang on a second, Mr. Wood.

14 **MR. WOOD:** I just wanted to ask when we come back  
15 from the break if I could have a couple of minutes to respond  
16 to something that Mr. Fink had earlier said?

17 **THE COURT:** Yes, you can do that briefly -- all  
18 right -- when we come back from the break.

19 Mr. Campbell.

20 **MR. CAMPBELL:** Your Honor, I would ask for a  
21 20-minute break and we reconvene at 11:30, if that's not a  
22 problem.

23 **THE COURT:** That's fine.

24 **MR. CAMPBELL:** Thank you.

25 **THE COURT:** All right. So hang on.

Motion hrg.

7/12/2021

1           Mr. Flanigan, are we -- just how are we handling this  
2 from a technology standpoint, and Mr. Owen, does everyone sign  
3 off?

4           **THE CLERK:** I think Mr. Owen can stop the stream and  
5 everybody can stay signed into the room, and they can simply  
6 mute and turn their camera off.

7           **THE COURT:** All right. So those who are on this  
8 screen need to mute your mics and turn the camera off.

9           **THE CLERK:** Court is in recess until 11:30.

10                           (Recess taken 11:14 a.m.)

11                           (Back on the record at 11:45 a.m.)

12           **THE COURT:** All right. Thank you everyone. As  
13 promised, we will begin with Mr. Wood. What would you like to  
14 say on this record, sir?

15           **MR. WOOD:** Thank you, Judge. If you just give me  
16 just a short few minutes, I think I will be listening for the  
17 rest of the day because I don't have anything to really add to  
18 the questions your Honor is asking.

19                           What I wanted to make it clear is, as I said at the  
20 beginning, that I'm appearing subject to my Defense that I'm  
21 not subject to the jurisdiction of the Court personally or by  
22 having appeared in the case. My name appears on the complaint  
23 and the amended complaint. It does not contain my e-mail  
24 address, does not contain any reference to me filing for any  
25 type of admission, including under Local Rule 83.20. I did not

Motion hrg.

7/12/2021

1 sign this pleading. You'll see I do not have a slash-S  
2 signature line. I did not have anything to do with submitting  
3 the pleading. I haven't advocated for the pleadings.

4 So when you talk about, well, the content of the  
5 complaints or the content of these affidavits, I had nothing to  
6 do with it, and I feel like before I am in any way subject to  
7 sanctions that I ought to have the benefit of an evidentiary  
8 hearing that will establish, and we could probably do it today,  
9 any lawyer whose name appears on the pleadings for the  
10 Plaintiffs I believe will affirm to you that, regardless of  
11 whether there was some misunderstanding about why my name got  
12 put on there, each lawyer will affirm to you that I did not  
13 have any input into any one of these pleadings or affidavits  
14 and I was not asked to have any input into them.

15 So I feel like I've been kind of lumped as counsel  
16 for the Plaintiffs when I did not ever agree to appear,  
17 particularly as it would apply to Rule 11. I've practiced law  
18 for 44 years, and I think I've covered 27 different states  
19 outside of Georgia. I have never appeared in a case without  
20 having sought the local rules permission to do so, knowing that  
21 I might, in federal court, be subjected to Rule 11.

22 So I did not subject myself to Rule 11 sanctions.  
23 Section 1927 certainly does not apply to me in terms of  
24 multiplying any type of proceedings, and I feel like I'm  
25 entitled to due process or an evidentiary hearing that would



Motion hrg.

7/12/2021

1 show that I was not asked, nor was it ever intended, that I be  
2 represented as a signer or as a counsel of record to be held to  
3 the standards of Rule 11. I did not receive any e-mail notice  
4 from counsel about the Safe Harbor. I've had my office check,  
5 and we've received nothing by mail.

6 So I wanted to make that position clear so that the  
7 record is protected in terms of my request for the evidentiary  
8 hearing, and perfected as to the record where I am taking the  
9 position my appearance today is subject to my defense of lack  
10 of jurisdiction either under Rule 11 or Section 1927.

11 **THE COURT:** All right.

12 **MR. WOOD:** So, going forward, if your Honor has  
13 questions about who had involvement, I just want to go ahead  
14 and in one lump sum let you know I had no involvement in any of  
15 this in terms of the substantive input or with you.

16 Thank you very much, Judge.

17 **THE COURT:** Okay, right, and let me just say -- and,  
18 Mr. Fink, I'm not going to allow to you respond to that simply  
19 because I am going to table that issue until the end of this  
20 hearing where that is going to be the time in which I address  
21 the issue of supplemental briefing, and I'm going to tell you,  
22 Mr. Wood, right now, I'm going to allow you to submit a brief  
23 on this issue and then allow Mr. Fink, or whomever else would  
24 like to respond because I know that this issue factually is in  
25 dispute.

Motion hrg.

7/12/2021

1 All right. Now, having said that --

2 **MR. WOOD:** Thank you, your Honor.

3 **THE COURT:** You're welcome, sir.

4 All right. Let's move on now, counsel, to the issue  
5 of the Carone affidavit, which is ECF number 6-5. Ms. Carone  
6 indicates that there were -- just a moment, please, and --  
7 uh-oh. We have a little technical glitch on our end, and we  
8 will get that fixed.

9 Mr. Flanigan, are you aware of it? Okay. He may  
10 have gotten kicked off --

11 **THE CLERK:** Your Honor, I am having trouble with my  
12 audio that I'm trying to work out with Jason currently. I can  
13 hear, but it's very faint.

14 **THE COURT:** Okay. I think that we have -- Ellen has  
15 been kicked off as well. So we need to figure it out.

16 **THE CLERK:** Yes, she has.

17 **THE COURT:** See if you can bring her back in. All  
18 right.

19 So, counsel, I'm going to proceed, and we're, again,  
20 focusing on the Carone affidavit, wherein it stated, "There  
21 were two -- "there was two vans that pulled into the garage of  
22 the counting room, one on day shift and one on night shift.  
23 These vans were apparently bringing food into the building. I  
24 never saw any food coming out of these vans. Coincidentally,  
25 it was announced on the news that Michigan had discovered over

Motion hrg.

7/12/2021

1 100,000 more ballots not even two hours after the last van  
2 left." The amended complaint calls this an illegal dump.

3 Let me ask: Who -- did anyone have an opportunity --  
4 who had the opportunity to speak with Ms. Carone? Raise your  
5 hands if you did.

6 **MS. HALLER:** Your Honor, may I?

7 **MR. CAMPBELL:** Is there --

8 **THE COURT:** Hang on, Ms. Haller.

9 **MR. CAMPBELL:** Is there a particular paragraph you're  
10 referring to?

11 **THE COURT:** I just read it.

12 **MR. CAMPBELL:** I didn't get the number, your Honor.  
13 I apologize.

14 **THE COURT:** Okay. So this is going to be a bit of a  
15 challenge. I think I can pull it up.

16 **MR. CAMPBELL:** If you have the number, I have it in  
17 front of me.

18 **THE COURT:** It's 6-5.

19 **MR. CAMPBELL:** Thank you. That's the Carone  
20 affidavit. You said there's an allegation in the complaint.

21 **THE COURT:** I'm sorry?

22 **MR. CAMPBELL:** As to an illegal dump.

23 **THE COURT:** Okay. I don't know what paragraph that  
24 is in.

25 **MR. CAMPBELL:** Thank you. I don't mean to burden you

Motion hrg.

7/12/2021

1 with that, but I was going to look at it and understand the  
2 context. Thank you.

3 **THE COURT:** Okay. Now, let me just say that the  
4 questions that the Court has on this -- and I thought I saw  
5 another hand, but I'll just give you a moment. Oh, I asked the  
6 question as to who spoke with Ms. Carone, if anyone.

7 All right. Ms. Lambert. Thank you. Please unmute.

8 **MS. LAMBERT:** Thank you, your Honor. I have spoken  
9 with Ms. Carone but not regarding the complaint. As the Court  
10 knows, I filed the notice of appeal before this Court.

11 **THE COURT:** Right.

12 **MS. LAMBERT:** I have spoken with her regarding her  
13 information regarding election vendors and the role that she  
14 participated with an election vendor.

15 **THE COURT:** Okay. So you did not speak to her  
16 regarding her observations that she set forth in the affidavit;  
17 is that true?

18 **MS. LAMBERT:** That's true, your Honor. I just wanted  
19 to be accurate and let the Court know that I have spoken with  
20 her.

21 **THE COURT:** I appreciate that.

22 So, yes, Mr. Kleinhendler, sir.

23 **MR. KLEINHENDLER:** Thank you, ma'am. I refer you to  
24 the Ramsland moving affidavit, yes, which is ECF 6, Exhibit 24,  
25 page 4 of 8, and the bottom of paragraph 13. He refers to the

Motion hrg.

7/12/2021

1 Melissa Carone affidavit. It was my understanding that our  
2 expert had in fact spoken with her. I can't state the truth  
3 because my memory is a little foggy, but I believe I had a  
4 conversation with Mr. Ramsland about this Carone affidavit.  
5 He, in turn, told me -- and, again, this is my belief, it's  
6 awhile back -- that he in fact had spoken with her.

7 I do know, your Honor, that she had publicly  
8 testified, I believe, in Michigan about her findings, okay, and  
9 so while I don't have any recollection of directly speaking  
10 with her, I am referring you to my expert, who refers to her  
11 affidavit, vouches for her, and it should have been attached,  
12 your Honor. For some reason, I don't know, I guess when we  
13 filed it, it wasn't attached.

14 **THE COURT:** What wasn't attached, her vouching --  
15 your expert --

16 **MR. KLEINHENDLER:** No, no, the affidavit says, "See  
17 Melissa Carone affidavit."

18 **THE COURT:** Oh, okay.

19 **MR. KLEINHENDLER:** And I think we had it. I know we  
20 had it, but for some reason I don't -- I don't know if it was  
21 included.

22 **MS. HALLER:** It was included.

23 **THE COURT:** It was included. I know that there was a  
24 statement saying that it was not in one of the briefs, but it  
25 has in fact been included.

Motion hrg.

7/12/2021

1 All right. Anybody else have any contact with her?

2 All right. Thank you.

3 So my question then -- Mr. Fink, I'm sorry, sir. I  
4 didn't acknowledge you.

5 **MR. DAVID FINK:** Of course I'm not suggesting I had  
6 contact with her, but, rather, I wanted to respond briefly to  
7 that and also to something that I did not respond to yet  
8 from -- regarding Mr. Sitto because we took the break.

9 **THE COURT:** Okay. Let me -- before you do that,  
10 Mr. Fink, let me ask the question that I wanted to ask other  
11 than who had spoken with Ms. Carone.

12 I wanted to ask the question: She, again, she talks  
13 about her observations seeing vans pull up and then she  
14 connects what she considers to be the coincidental announcement  
15 from local media having stated that -- and no reference to  
16 which local media to which she's referring but stating that  
17 there had been a statement made that Michigan had discovered  
18 over 100,000 more ballots.

19 My question is: Is it counsel's position that  
20 coincidence -- that a coincidence can serve as an  
21 evidentiary -- as the basis for evidentiary support for an  
22 allegation? Because that's what this sentence is saying.

23 Mr. Campbell, you look like you want to respond.

24 **MR. CAMPBELL:** Yes, I -- here's what I think we can  
25 safely say, and maybe this is responsive. We have an expert

Motion hrg.

7/12/2021

1 who has relied on that affidavit for purposes related to his  
2 statistical analysis, and, again, going back to the Georgia  
3 case that says if you have affidavits of witnesses and you have  
4 statistical data, that's enough to, in that case it was, to  
5 have the court act.

6 Here we have attached the actual affidavit, but, as  
7 you know, your Honor, an expert can rely on hearsay. So in  
8 terms of, you know, the information that's there, I think it's  
9 properly presented, and I have to say, if a witness says things  
10 that don't turn out to be entirely accurate, that can be  
11 discovered through the processes that this Court is very  
12 familiar with, and that happens all the time.

13 But, you know, including what they have to say  
14 because they say it is not inappropriate in any way. In fact,  
15 it may turn out that we don't believe some things that they  
16 said, but to give only half the story isn't how we want to  
17 plead the case.

18 So, again, I'm not sure about the context in which  
19 the Court is asking this. This is a claim by the Plaintiffs  
20 drafted by the lawyers to bring their claim under the various  
21 federal laws that they believe apply, and we thought we were  
22 timely when we did it.

23 **THE COURT:** All right. Mr. Fink, this is your time  
24 to respond, sir.

25 Thank you, Mr. Campbell.

Motion hrg.

7/12/2021

1           **MR. DAVID FINK:** First, with respect to Ms. Carone,  
2 we have another classic situation where if in fact -- and, by  
3 the way, it's not just the expert. The complaint explicitly  
4 references, in Paragraph 94, explicitly references the Carone  
5 affidavit.

6           Now, Carone makes the allegation -- and, to be clear,  
7 she's not a trained election worker. She was -- and there's no  
8 dispute about this. She was a subcontractor doing some work on  
9 maintaining machines on the day of the election -- or the day  
10 of the count. She claimed that she witnessed batches of  
11 ballots being run through the scanner multiple times, 50 at a  
12 time, 8 or 10 times in a precinct.

13           Now, if any expert reviewing it -- and the expert  
14 relied on that. Any expert reviewing that affidavit with the  
15 slightest knowledge of election procedures would know that it  
16 was patently absurd because, if you ran 50 ballots through 8  
17 times, you would have 350 more votes in that precinct than  
18 there were voters, and there isn't a single precinct in the TCF  
19 Center that had more than an 11-vote disparity.

20           Nonetheless, because they did no due diligence, they  
21 didn't look at this. They didn't check it. They continue to  
22 rely upon these findings, which are just blatantly factually  
23 false.

24           Now, I want to briefly, if I may, say this. This was  
25 addressed and looked at very closely, as well as the other



Motion hrg.

7/12/2021

1 allegations that she made, by Judge Kenney. Earlier today,  
2 just before the break, Mr. Campbell made a representation to  
3 this Court that I assume comes, not out of intentional intent  
4 to misrepresent the facts, but out of ignorance that comes from  
5 his recent involvement in this case.

6 He said that Judge Kenney did not make findings.  
7 That could not be further from the truth. Judge Kenney made  
8 extensive findings in his Opinion and Order dated November 13th  
9 and very widely published and available at the time. Certainly  
10 counsel knew about this. November 13th in his Opinion and  
11 Order he explicitly discussed why it was that Ms. Carone was  
12 mistaken in the representations in what she saw.

13 Importantly, in response to something this Court  
14 raised earlier, he also very explicitly, directly contrary to  
15 what Mr. Campbell told us before the break, Judge Kenney very  
16 explicitly addressed Andrew Sitto's allegations. He had three  
17 paragraphs. He pointed out that Andrew Sitto was a Republican  
18 challenger who did not attend the walk-through meeting that  
19 trained the challengers.

20 He explained, and I'll quote from him, "Mr. Sitto's  
21 affidavit, while stating a few general facts, is rife with  
22 speculation and guesswork about sinister motives. Mr. Sitto  
23 knew little about the process of the absentee vote counting" --  
24 "voter county board activity. His sinister motives attributed  
25 to the city of Detroit were negated by Christopher Thomas'

Motion hrg.

7/12/2021

1 explanation that all ballots were delivered to the back of Hall  
2 E at TCF Center. Thomas," he goes on to say, "also indicated  
3 the City utilized a rental truck to deliver ballots. There's  
4 no evidentiary basis to attribute any evil activity by virtue  
5 of the City using a rental truck with out-of-state licenses  
6 plates."

7 He also directly addressed the tens of thousands  
8 ballots allegation, explaining that "That number was  
9 speculation on the part of Mr. Sitto," and, he said, "It's not  
10 surprising that many of the votes being observed by Sitto were  
11 cast for Mr. Biden."

12 Now, my main point here is not the facts. My  
13 point --

14 **MS. HALLER:** Your Honor.

15 **MR. DAVID FINK:** -- is a lack of due diligence, and  
16 Mr. Campbell tells us, in representing seven of these nine  
17 Plaintiffs' attorneys, including, incidentally, both Mr. Wood  
18 and Mr. Rohl, who seem to have diametrically opposed views of  
19 what happened, but Mr. Campbell told us that Judge Kenney had  
20 not ruled. Judge Kenney had ruled. These folks were on  
21 notice, and this was important. This was the election of the  
22 President of the United States. They should have been extra  
23 careful, not just diligent, but extra careful.

24 And I have to say, the statement by Mr. Campbell, as  
25 though it's a precept of law that we should all except as black

Motion hrg.

7/12/2021

1 letter law, that if something is in a pleading that someone  
2 else has filed then it's fair game for me to repeat it and say  
3 it's true with no due diligence on my part, I've never seen a  
4 case like that.

5 **MS. HALLER:** May I respond?

6 **THE COURT:** Yes, you may. You have your hand up.

7 **MS. HALLER:** Thank you, your Honor.

8 I would just point out that the affidavit that's  
9 attached as an exhibit, which is an exhibit to the complaint,  
10 which is what you're referencing as the Carone affidavit, 6-5,  
11 that's documented as a document from the court, in your state  
12 of Michigan circuit court. It is not represented to be a  
13 document that was created by us. It is not represented to be  
14 anything other than what it was, which is a document from a  
15 different court.

16 That court had its proceedings, as we all know, that  
17 later, you know, in rulings in *Constantino* and that line of  
18 cases, and we know that Justice Zahra spoke out about the  
19 meaningful assessment of allegations by an evidentiary hearing  
20 and that -- Plaintiffs' right to an evidentiary hearing as a  
21 general matter.

22 **THE COURT:** What was the purpose for which you  
23 attached it?

24 **MS. HALLER:** Because Russ Ramsland cited to it and  
25 it's a source for his exhibit, as well as an identification of

Motion hrg.

7/12/2021

1 a potential witness who may be anticipated to testify in  
2 accordance with the exhibit at the time of a trial or an  
3 evidentiary hearing or in a court process. We had the ability  
4 to cite to information making as much information as possibly  
5 available to identify anticipated witnesses who would testify  
6 in accordance with the statements or affidavits that were  
7 included, but this particular affidavit was cited to by  
8 Russ Ramsland.

9 **MR. CAMPBELL:** If I may, your Honor?

10 **THE COURT:** Go ahead, Mr. Fink.

11 **MR. DAVID FINK:** I just want to say Ms. Haller is  
12 simply wrong. The affidavit is connected to the previous  
13 lawsuit, but it is directly cited in their complaint, in their  
14 complaint in Paragraph 94. They directly quote from that --

15 **MS. HALLER:** (Indiscernible.)

16 **MR. DAVID FINK:** -- as though it is true, not just  
17 the expert.

18 **MS. HALLER:** That's right, Mr. Fink. As you well  
19 know, it's not hearsay. It's a sworn statement in a court of  
20 law, and, yet, we have citations to hearsay in other documents  
21 that are similarly attached, but we are not in a *Daubert*  
22 motion. We are not on a motion for discovery as being in  
23 contention.

24 The bottom line is it's a complaint where we attached  
25 information to include a witness from another court, and we

Motion hrg.

7/12/2021

1 cited to that in a complaint as sworn testimony, and, as such,  
2 it's available and relied upon by our expert.

3 **THE COURT:** Question for you, Counselor. So then  
4 you're saying that you did not attach the Carone affidavit in  
5 support of your factual assertions; is that what you're saying?

6 **MS. HALLER:** No, your Honor. Thank you. I am simply  
7 saying that it's information in support of the complaint. It's  
8 cited to in the complaint. It is a document that is not  
9 hearsay. It is a simple document that is a sworn statement  
10 from another court that is cited to by our expert, and we rely  
11 upon it to the extent that it's cited in the complaint.

12 **THE COURT:** Well, you cited it. You referenced it.  
13 You all are the ones that placed it in the complaint, and you  
14 didn't place it in there in support of your allegation?

15 **MR. CAMPBELL:** Judge, it's there because --

16 **MS. HALLER:** No, it is in support --

17 **THE COURT:** Excuse me, Mr. Campbell.

18 **MR. CAMPBELL:** -- it's believed --

19 **THE COURT:** Mr. Campbell, excuse me.

20 **MR. CAMPBELL:** Yes.

21 **THE COURT:** I'm directing my question to Ms. Haller.

22 **MS. HALLER:** It's there as it is cited. We stand by  
23 the citation, the citation Mr. Fink is referencing. I'm not  
24 sure I understand.

25 **THE COURT:** All right. What -- Mr. Kleinhendler,

Motion hrg.

7/12/2021

1 what do you have to say?

2 **MR. KLEINHENDLER:** I'd like to say something --

3 **THE COURT:** Briefly.

4 **MR. KLEINHENDLER:** -- that would help us here.

5 **THE COURT:** Okay.

6 **MR. KLEINHENDLER:** You're looking at a specific  
7 document at an isolated paragraph, but I think it's pretty  
8 clear you have to read a complaint through its four corners.  
9 We are writing a complaint with multiple inputs from various  
10 areas, experts, fact witnesses, other statisticians, and when  
11 we see that Carone affidavit, what we're seeing is this is  
12 consistent with what our experts -- with what we're hearing  
13 happened in Detroit. And, your Honor, to try to take one  
14 document in isolation and use that document to infer what the  
15 intent was or what the due diligence of the attorneys should be  
16 without looking at the entire complaint and the entire  
17 submission as to what we're getting, I believe is not correct.  
18 I think --

19 **THE COURT:** I reject your premise, that that's what  
20 I'm doing.

21 **MR. KLEINHENDLER:** No, no, sorry. Sorry. Your  
22 Honor, I apologize. That's what Mr. Fink --

23 **THE COURT:** All right.

24 **MR. KLEINHENDLER:** I apologize. Sorry. That is what  
25 Mr. Fink is asking of the Court, and that's the point I want to

Motion hrg.

7/12/2021

1 make.

2           The second point I want to make, your Honor, is just  
3 because in a preliminary election hearing a court found that  
4 one affidavit trumped another affidavit, your Honor, that does  
5 not render the allegations of Ms. Carone to be false. Okay.

6           Until she appears before you or before a jury, a fact  
7 finder, and you make a decision what she's saying is false, all  
8 you have is argument, and that's the point. Mr. Fink is  
9 arguing in the form of stating facts, and I have a problem with  
10 that. I'd like to make that clear for the record.

11           **THE COURT:** All right. Thank you. We're going to  
12 move on.

13           Mr. Campbell, what --

14           **MR. CAMPBELL:** Again, my name was raised earlier by  
15 Mr. Fink, if I may respond?

16           **THE COURT:** Briefly.

17           **MR. CAMPBELL:** Thank you. You can check the record.  
18 I'll tell you what I intended to say and what I thought I said,  
19 that Judge Kenney did not hold a hearing and did not make any  
20 determinations of credibility with regard to the weight of the  
21 affidavits based on having heard from affiants themselves. I  
22 didn't say anything as effusive as that, but that's what I  
23 thought I said, and that is -- I don't think he would contest  
24 that point.

25           **THE COURT:** All right. Okay. Moving on.

Motion hrg.

7/12/2021

1 I'd like to look on the Connarn affidavit set forth  
2 in ECF number 6-6, and I want to quote specifically from it.  
3 Let's see, we may need to do some screen sharing, but I will  
4 quote from it.

5 "I was working as the attorney acting as poll  
6 challenger with the Michigan Republican Party. When I was  
7 approached by -- where I was approached by a Republican Party  
8 poll challenger, who stated that a hired poll worker of the TCF  
9 Center in Wayne County was nearly in tears because she was  
10 being told by other hired poll workers" -- with an S -- "at her  
11 table to change the date the ballot was received when entering  
12 ballots into the computer."

13 Again, I want to emphasize the sequencing here. "The  
14 affiant is stating he was working as an attorney acting as a  
15 poll challenger with the Republican Party in Michigan. He was  
16 therefore -- or there he was approached by a Republican Party  
17 poll challenger, who stated that a hired poll worker at the TCF  
18 Center was nearly in tears because she was being told by other  
19 poll workers at her table to change the data" -- I'm sorry, "to  
20 change the date that the ballot was received when entering  
21 ballots into the computer."

22 So here it appears to the Court that Connarn is  
23 saying that she was told by an initial person that a second  
24 person, who was told by a third person and other additional  
25 persons, that the second person should back date ballots.



Motion hrg.

7/12/2021

1           Question for counsel: Does counsel believe it is  
2 appropriate to support allegations on such third-hand  
3 knowledge, triple hearsay testimony that counsel has no hope of  
4 ever introducing into evidence?

5           Who would like to answer that question for the  
6 Plaintiffs or counsel for the Plaintiffs' counsel?

7           Okay. Mr. Campbell, go ahead.

8           **MR. CAMPBELL:** Thank you. Judge, that's Paragraph 1,  
9 and then in Paragraph 2 there is evidence of an actual note  
10 being slipped. It gives context. It's not even hearsay.

11           **THE COURT:** Who is JJ? Are you talking about that  
12 note JJ?

13           **MR. CAMPBELL:** Yeah, I'm talking about -- again,  
14 that's the portion of the affidavit you put on the screen, but  
15 I've got to tell you, I have no encyclopedic knowledge of that  
16 particular affidavit, and I'm the latest person, other than  
17 maybe Mr. Buchanan, to this case, but I mean that seems pretty  
18 obvious. It's -- you're establishing a circumstance that  
19 explains the rest of the information relative to the -- what's  
20 going to follow. Again, I'm -- I'm -- I'm surprised, and a  
21 little troubled, that the Court would even have a problem with  
22 that.

23           **THE COURT:** Oh, really? Okay. Because that's just  
24 layers of hearsay. I don't know why that would be surprising  
25 to you. I'll give --

Motion hrg.

7/12/2021

1           **MR. CAMPBELL:** But it's not hearsay --

2           **THE COURT:** -- counsel an opportunity to --

3           **MR. CAMPBELL:** -- it's not offered for the truth of  
4 the matter asserted.

5           **THE COURT:** Excuse me.

6           **MR. CAMPBELL:** It's not offered for the truth of the  
7 matter asserted. Again, I've got to tell you, Judge, that...

8           **THE COURT:** Did anyone here take any steps to  
9 identify the Republican Party poll challenger, the hired poll  
10 worker, the other hired poll workers? Any inquiry made into  
11 that?

12                   I will move on.

13                   Let's go to Ms. Jessy Jacob's affidavit set forth at  
14 ECF number 6-4 at PDF pages 36-38 and the amended complaint  
15 states that "On November 4th, 2020, Jacob was instructed to  
16 predate the absentee ballots received" -- I'm sorry, "Jacob was  
17 instructed to predate the absentee ballots received date that  
18 were not in -- that were not in the qualified voter's file, as  
19 if they had been received on or before November 3rd."

20                   So this is the predating of absentee ballots, and Ms.  
21 Jacob estimates that this was done to "thousands of ballots."

22                   Question to counsel: Did anyone engage in any  
23 inquiry to determine if there was an explanation for why such  
24 predating would have taken place?

25           **MS. HALLER:** Your Honor, I'm sorry, which exhibit are

Motion hrg.

7/12/2021

1 we talking about?

2 **THE COURT:** We're looking at -- certainly. We're  
3 looking at ECF number 6-4, the Jessy Jacob's affidavit, and  
4 it's in PDF format pages 36 through 38. So the allegation here  
5 is that she was instructed to predate absentee ballots to the  
6 date of -- to before November 3rd.

7 And the Court's question is simply: Did counsel  
8 engage in any inquiry to determine if there was an explanation  
9 for why such predating may have occurred or would be happening?

10 **MS. HALLER:** I don't remember, your Honor. I just  
11 don't remember. I know that I may have, but I can't say.

12 **THE COURT:** All right. Was anyone, Ms. Haller,  
13 working on the Jacob affidavit with you? You were --  
14 correct -- working on it?

15 **MS. HALLER:** I mean I have a recollection of  
16 reviewing, but I don't have a specific recollection as to -- I  
17 need to refresh my recollection, to be honest.

18 **THE COURT:** All right. Mr. Fink.

19 **MR. DAVID FINK:** The Jacob affidavit was filed in the  
20 *Constantino* case. Importantly, Miss Jacob was a City employee  
21 who did not do work for the city clerk's office. She was on  
22 furlough from another department, and she was called in when  
23 they needed additional people to assist on the election and on  
24 the counting.

25 Chris Thomas provided an affidavit, which provided

Motion hrg.

7/12/2021

1 some detail and explanation of Ms. -- of Jessy -- Ms. Jacob's  
2 misunderstanding. Most notably, she did not understand that  
3 the ballots had already been checked and verified before they  
4 arrived at the TCF Center, and she did not understand that  
5 nobody was predating anything. They were, on occasion, told to  
6 put dates into the computer which had not yet gone into the  
7 computer, but the important issue here isn't the facts.

8 What's important is Mr. Thomas had a conflicting  
9 affidavit, and Judge Kenney ruled -- I won't read it. I won't  
10 bore the parties with the reading of it. I guess it's not  
11 boring, but I won't take the extra time.

12 On Page 4 of his opinion judge Kenney, in extreme  
13 detail, explained why Ms. Jacob was wrong, and, nonetheless,  
14 this complaint repeats what was said by Ms. Jacob as though it  
15 is the gospel.

16 **MS. HALLER:** Your Honor, what it does is not speak to  
17 the gospel, but what it does is -- we briefed in 112 -- ECF 112  
18 the holding of the *Constantino* court's ruling, and the three  
19 dissents by the Supreme Court judges -- the justices in  
20 Michigan, and how they made clear that there was in fact no  
21 evidentiary hearing in that case and that they said there that  
22 should be a need.

23 It was Justice Zahra who urged the circuit court to  
24 meaningfully address Plaintiff's allegations by an evidentiary  
25 hearing, particularly with respect to the credibility of the

Motion hrg.

7/12/2021

1 competing affidavits, and Justice Viviano says, "A court may,  
2 and given the exigencies of time, sometimes must act on a  
3 motion for preliminary injunctive relief based on the parties'  
4 bare affidavits."

5 So the courts may rely on, in Michigan, on bare  
6 affidavits, and, in doing so, that they point out the fact that  
7 there needed to be an evidentiary hearing, which did not  
8 actually occur, and so what happened when -- this hasn't  
9 actually been heard, and so if we do have the opportunity for  
10 an evidentiary hearing, we will seek to have this witness  
11 brought forward.

12 **THE COURT:** And so, again -- Mr. Fink, hold on -- the  
13 issue, again, that I have here is, is that we've got a few  
14 affidavits that were filed in the *Constantino* case, and the  
15 question, again, that I have for counsel on the *King versus*  
16 *Whitmer* matter is: To what extent did you review the contents  
17 of those affidavits before including them? I understand that  
18 they came from another -- I understand what the Supreme Court  
19 rulings were, but my question is so much more simpler in that  
20 I'm asking what did counsel do? Did you do anything for  
21 purposes of reviewing the content, and did you see anything  
22 that will make you say, "Wait a minute, let me understand what  
23 this is." That's my question.

24 Ms. Haller can you answer that for the Court?

25 **MS. HALLER:** Sorry, your Honor, I'm trying to unmute.

Motion hrg.

7/12/2021

1 I guess I'm confused by the standard. We submitted  
2 the information to the Court on a good-faith basis that this is  
3 a signed and sworn statement in another court of law so I'm a  
4 little confused by the questions because we didn't put forth  
5 false documents. We didn't act in bad faith, and that -- and  
6 my understanding is for sanctions, which is what I believe  
7 we're here -- we're supposed to be talking about bad faith, and  
8 I simply am at a loss because, yes, this information was  
9 included in our complaint as a source, which is what typically  
10 defendants want. They want your sources, and they want an  
11 opportunity to investigate those sources. That's why we have  
12 this process called discovery. So I am confused as to what  
13 we're actually talking about.

14 **THE COURT:** Oh, okay. Let me ask Mr. Campbell what  
15 he thinks about that because I just -- I don't understand --  
16 you don't think that there's -- it seems to me you're  
17 concluding that you don't have any obligation, as long as you  
18 have an affidavit that's been, you know, that's been sworn, a  
19 sworn affidavit, that relieves counsel of any obligation to go  
20 further? Is that how you feel about that Mr. Campbell? What  
21 is your --

22 **MR. CAMPBELL:** On the bare bones of your scenario,  
23 anything that is sworn, no. But this isn't anything that was  
24 sworn. This is somebody who was there. That's not in dispute,  
25 and now it's a question of what they saw. But, yeah, if

Motion hrg.

7/12/2021

1 they're willing to swear under oath as to what they saw, that  
2 makes them at least a res gestae witness --

3 **THE COURT:** But this is not even an issue.

4 **MR. CAMPBELL:** I'm sorry, Judge, can I finish,  
5 please?

6 So what we have here, and this is not just a  
7 statement from somebody who was there. This is somebody whose  
8 statement was, as noted, submitted in a different case, which  
9 means other lawyers saw it. They believed it to be appropriate  
10 for submission to the Court in that circumstance.

11 **THE COURT:** So that's enough?

12 **MR. CAMPBELL:** If I may?

13 On top of that, you have an expert with a report who  
14 expressly says he's relying in part on some of the information,  
15 and, oh, by the way, it supports the statistical analysis. So  
16 this is not just a statement that somebody happened to say  
17 under oath, and the Court is wrong to frame it in that manner.

18 **THE COURT:** All right. Mr. Fink.

19 **MR. CAMPBELL:** That question is not really indicative  
20 of anything in this case, with due respect.

21 **THE COURT:** Mr. Fink.

22 **MR. DAVID FINK:** Ms. Haller said it exactly right  
23 when she said she doesn't understand what the question is. I  
24 think that's true. The question is what responsibility did  
25 they have to vet the facts they were presenting to the Court?

Motion hrg.

7/12/2021

1           They keep saying "it's an affidavit" and, therefore,  
2 they can put it into evidence, but this is not an unquestioned  
3 affidavit. This is an affidavit that was already questioned in  
4 another proceeding, and in that proceeding, not only did the  
5 judge make a determination that the affidavit was not -- was  
6 based on ignorance and a misunderstanding of the facts, but  
7 also there were competing affidavits. In fact, the judge said  
8 that there were multiple affidavits that disagreed, but the  
9 point -- with what she said, but here's what matters. What  
10 matters is they didn't talk to her and create a new affidavit.  
11 They didn't --

12           **MS. HALLER:** Has Mr. Fink --

13           **MR. DAVID FINK:** -- work with her.

14           **THE COURT:** Hang on, Ms. Haller.

15           **MS. HALLER:** But Mr. Fink --

16           **THE COURT:** Ms. Haller.

17           **MS. HALLER:** -- is accusing us of --

18           **THE COURT:** Ms. Haller.

19           **MS. HALLER:** Yes, your Honor.

20           **THE COURT:** Let him finish.

21           Go ahead, Mr. Fink.

22           **MR. DAVID FINK:** I'm simply going to guess that  
23 Ms. Haller is going to say that they did talk to her, and  
24 perhaps they did. The point is that the allegations she made  
25 were very effectively refuted and then repeated here in the



Motion hrg.

7/12/2021

1 complaint, repeated in the compliant as though there was  
2 nothing, no issue, no issue of concern. I'm sorry.

3 **THE COURT:** Thank you. I understand. All right.

4 Ms. Haller, you want anything else to add?

5 **MS. HALLER:** Thank you, your Honor. I would just ask  
6 Mr. Fink if he has spoken to this witness because he is making  
7 allegations related to her testimony or anticipated testimony,  
8 but I'm not clear if Mr. Fink has spoken to the witness about  
9 his conclusions.

10 **THE COURT:** Okay. I don't even know that that is a  
11 relevant question.

12 **MS. HALLER:** Because --

13 **THE COURT:** What do you have to respond to that,  
14 Mr. Fink?

15 **MR. DAVID FINK:** I will respond, I guess.

16 **MS. HALLER:** May I respond?

17 **MR. DAVID FINK:** Because I don't think my due  
18 diligence is before the Court.

19 **MS. HALLER:** Well, in an evidentiary hearing you  
20 would have an opportunity to examine any of the witnesses that  
21 we would bring forward. So I -- I -- I simply do not  
22 understand how you can impugn the credibility of a witness who  
23 is not before this Court and go as far as to say that we've  
24 provided falsehoods or acted in bad faith in some manner, and  
25 that is simply all I'm saying.

Motion hrg.

7/12/2021

1           **THE COURT:** All right. Thank you.

2           Mr. Fink, you don't need to respond to that.

3           Mr. Kleinhendler, you don't need to respond to it.

4           The Court's moving on to the Bomer affidavit, and  
5 that's set forth at 6-3, ECF 6-3, page ID 1008-10.

6           Now, the Plaintiffs' pleadings allege that Defendants  
7 changed votes for Trump and other Republican candidates. The  
8 Bomer affidavit is provided in support of that claim, and,  
9 specifically, the affidavit states in part, "I observed a  
10 station where election workers were working on scanned ballots  
11 that had issues that needed to be manually corrected. I  
12 believe some of these workers had been changing votes that had  
13 been cast for Donald Trump and other Republican candidates."

14           There we go.

15           The amended complaint calls this eyewitness testimony  
16 of election workers manually changing votes for Trump to votes  
17 for the Biden, and, again, the amended complaint calls this,  
18 "eyewitness testimony of election workers merely changing votes  
19 for Trump for votes to Biden."

20           Question from this Court: Does an affiant belief  
21 that something occurred constitute evidence that the thing  
22 actually occurred?

23           Who would like to take that question on from counsel  
24 for -- Plaintiffs' counsel or Plaintiffs' counsel.

25           **MR. CAMPBELL:** Again, if that belief is based on

Motion hrg.

7/12/2021

1 circumstantial or actual physical viewing of that evidence,  
2 yes.

3           **THE COURT:** And it doesn't appear to be because there  
4 isn't any -- this affiant, Miss Bomer, does not say -- he says,  
5 it's stated "I believe some of these workers," and I think the  
6 question becomes also does counsel know what formed the basis  
7 for the belief because it certainly is not apparent to this  
8 court. What's the basis of Mr. Bomer's belief that there was  
9 something as significant as votes being changed from one  
10 candidate to another? What's the basis of that belief? He  
11 didn't say that he saw it.

12           **MR. CAMPBELL:** I have to draw the line there, Judge.  
13 I'm not so sure that you can say in the world of language that  
14 that statement excludes seeing it. In other words, one can  
15 believe it because they saw it but not write it that way, and  
16 so I think you have to allow for where language might play a  
17 role here in how the thought is expressed. Now, I'm not saying  
18 that it says -- it says that she saw it, but I think this Court  
19 is wrong to conclude that it means she didn't see it because,  
20 if you see it, that would certainly help you to form a belief.

21           **THE COURT:** Well, I think it's wrong for an affidavit  
22 to be submitted in support -- as evidentiary support if there's  
23 been no kind of minimal vetting. I mean if you -- if you can't  
24 determine from the plain language of the affidavit, what am  
25 I -- how am I supposed to draw any kind of inference from it?

Motion hrg.

7/12/2021

1           **MR. CAMPBELL:** It's called an evidentiary hearing.

2           **THE COURT:** And it's also called -- it's also called  
3 you need to preliminarily -- every lawyer has that duty to do a  
4 minimal amount of investigation before filing evidence or  
5 what's purported to be evidence to this Court.

6           Mr. Kleinhendler, yes.

7           **MR. KLEINHENDLER:** Thank you, your Honor.

8           We reviewed each one of these affidavits. We read  
9 them. We realized they were filed in other proceedings, and,  
10 as I said earlier, they purported and were consistent with the  
11 findings of our experts and the other information placed before  
12 you, and that's -- you cannot -- I propose to you, your Honor,  
13 you cannot look at -- you can't nitpick one and one and one and  
14 say this, standing alone, has no evidentiary basis.

15           We have an affidavit from Russ Ramsland, in detail,  
16 saying that the machines themselves flipped votes, detailed  
17 analysis from an expert sworn before this court. It's,  
18 therefore, unremarkable and, frankly, consistent, and now we  
19 have an eyewitness who saw it or believes she saw it.

20           So the notion that we did no due diligence is  
21 incorrect. We did a ton of due diligence, and also keep in  
22 mind that we are -- we are -- we are proffering this to the  
23 Court, and the Court can give little or no weight to this  
24 evidence.

25           This is not the whole case, and if we came in with a

Motion hrg.

7/12/2021

1 complaint and we had one exhibit, this affidavit, I get it,  
2 okay, what are you doing, but we come into court with 960 pages  
3 basically the same theme of what we're doing, okay, and this,  
4 to us, appears consistent with the narrative, with the  
5 evidence, with the expert testimony that we're getting, and  
6 that's my response to your specific question on paragraph  
7 whatever it was of this affidavit.

8 **THE COURT:** Thank you. I'm moving on to another --  
9 Mr. Fink, quickly.

10 **MR. DAVID FINK:** Just very quickly. This support for  
11 no matter what they say goes back to, well, it's consistent  
12 with what the experts said, and now they say Mr. Ramsland said  
13 that there was evidence that these machines flipped votes. We  
14 haven't talked about that. I think it's worth talking about it  
15 for a moment.

16 Machines cannot possibly flip votes in the state of  
17 Michigan. It is legally impossible. Machines tabulate votes  
18 in Michigan. They don't have votes in them. Votes in Michigan  
19 are on paper ballots. They're scanned by machines, they're  
20 counted by machines, but the machines can't flip them, and the  
21 recount process is the way that you address it.

22 They can't just keep saying they didn't need to do  
23 due diligence on any of these affidavits just because they have  
24 some subjective belief that some of the tabulating machines  
25 could have made mistakes. If they made mistakes, they'd be

Motion hrg.

7/12/2021

1 rejected.

2 At a later time, at an appropriate time, I'll respond  
3 to the issue in Antrim County and why that wasn't a hand  
4 recount.

5 **MR. KLEINHENDLER:** Your Honor, if I may add --

6 **THE COURT:** No, no, no. Let me -- I am going to ask  
7 a follow-up question, sir.

8 Does anyone -- did anybody -- and, again, which has  
9 been my focus, did anyone inquire as to whether or not  
10 Mr. Bomer actually saw someone change a vote? Anyone?

11 Okay. Let the record reflect that nobody made that  
12 inquiry, which was central to his affidavit.

13 All right. I'd like to move on to -- this is going  
14 back to Ms. Jacob, the affidavit wherein she -- where  
15 Plaintiffs allege that Defendants permitted double voting by  
16 persons that had voted by absentee ballot and in person, and  
17 one piece of evidentiary support that is provided is the  
18 affidavit from Ms. Jessy Jacob, and she, in that, it's stated,  
19 "I observed a large number of people who came to the satellite  
20 location to vote in person, but they had already applied for an  
21 absentee ballot."

22 And the question that I'm asking was: Jacob, from my  
23 view of this affidavit, does not state that these people voted  
24 in person and through absentee ballot, correct, because I mean  
25 that -- there's a conclusion here that there was double voting?

Motion hrg.

7/12/2021

1           The Court is asking where in this affidavit does  
2 Ms. Jacob state that persons that she saw vote in person as  
3 well as through absentee ballots?

4           Can anyone answer that question?

5           **MS. HALLER:** Your Honor, I would respectfully submit  
6 that we can make these witnesses available for an evidentiary  
7 hearing.

8           **THE COURT:** No, no.

9           **MS. HALLER:** And the Court at that time can evaluate  
10 the witness' testimony.

11           **THE COURT:** Okay. Yeah. You know what, I understand  
12 that and I appreciate that, and, again, I will state that my  
13 question is going to the minimal duty that any attorney has in  
14 presenting a sworn affidavit to the Court for consideration in  
15 terms of anything.

16           What is the inquiry that was made in this scenario?  
17 And I'm not hearing that -- I've heard nothing.

18           **MR. CAMPBELL:** Well, Judge, your question there is  
19 about the affidavit? Because the affidavit is as you've read  
20 it. I thought your inquiry was as to the paragraph that was  
21 written and not the affidavit so I don't understand how the  
22 inquiry about the affidavit would have anything to do with it.

23           **THE COURT:** Well, you understand, sir, that I am  
24 referencing a quote from the affidavit?

25           **MR. CAMPBELL:** I understand you're referencing her

Motion hrg.

7/12/2021

1 quote. Now, I don't hear you to take issue with the fact -- I  
2 mean that's certainly not an astounding moment, right, that  
3 some people would show up and ask to vote on the same day even  
4 though they had previously asked for absentee?

5 **THE COURT:** No, it isn't. It is not an astounding  
6 moment, but the astounding moment here is, is that the affiant  
7 appears to conclude that this is double voting taking place.

8 **MR. CAMPBELL:** I didn't read that part of the -- I  
9 didn't hear you say that part of the affidavit.

10 **THE COURT:** Oh, I'm sorry. I did. Well, I stated  
11 that the Plaintiffs allege that --

12 **MR. CAMPBELL:** Right.

13 **THE COURT:** -- the Defendants permitted double voting  
14 by persons that had voted by absentee ballot and in person and  
15 cites, in evidentiary support of that claim, Ms. Jacob's  
16 affidavit, the Jacob affidavit.

17 **MR. CAMPBELL:** I get that, but, again, so -- but it's  
18 in a complaint that makes that allegation that, again, if it's  
19 not -- if that affidavit doesn't have to support that claim,  
20 that claim may not be good. There are other bases that is, as  
21 you've indicated, the one that they pick for the footnote, if  
22 you will, for where it's something to be done, and I think  
23 there's inferences that can be drawn, and it should not shock  
24 this Court that somebody could show up, after having asked for  
25 an absentee ballot, and then decided to show up on game day --



Motion hrg.

7/12/2021

1 election day and make the vote, but it shouldn't shock this  
2 Court to learn that there are some people who get an absentee  
3 ballot vote and then show up and vote again.

4 **THE COURT:** I don't see any evidence of that. I  
5 haven't -- yeah, it does shock me.

6 **MR. CAMPBELL:** Again --

7 **THE COURT:** It shocks me in the sense that --

8 **MR. CAMPBELL:** What's there evidence of --

9 **THE COURT:** I haven't seen.

10 **MR. CAMPBELL:** (Indiscernible.)

11 **THE COURT:** I don't see any evidence of that. I'm --  
12 again, you can stick with what I'm presenting here.

13 Mr. Fink, you may speak.

14 **MR. DAVID FINK:** Only very briefly.

15 When this issue was raised by Ms. Jacob, it was  
16 responded to. I don't have the affidavit in front of me. It  
17 was responded to by Chris Thomas, who explained the process in  
18 which voting works.

19 People could not vote twice. If an attempt was made  
20 to enter the second vote, the qualified voter file would have  
21 reported the problem that somebody had already voted, and  
22 there's a process. It happens. People forget. People make  
23 mistakes. But there's a process, and she was no expert. She  
24 was very new to the process. She came in. She didn't know  
25 what she was looking at, and I don't even know that she's still

Motion hrg.

7/12/2021

1 making these allegations, but what I do know is the allegations  
2 were refuted. The judge addressed them, and when the  
3 Plaintiffs came back, they did no due diligence to find out if  
4 they were true or even possible.

5 I just want to say real quickly that several of the  
6 things they claimed here, it isn't just somebody's observation.  
7 It's physical impossibility. They're claiming things that  
8 couldn't have happened either by law or fact, and they're not  
9 vetting anything in what they filed. Thank you.

10 **MR. KLEINHENDLER:** Your Honor, I'd like to respond to  
11 that, and this is what I wanted to say before.

12 **THE COURT:** Briefly.

13 **MR. KLEINHENDLER:** We're consistently hearing  
14 testimony from Mr. Fink as to what factually happened because  
15 it's against the law. Mr. Fink has not been sworn in as a  
16 witness here.

17 **THE COURT:** I'm aware of that.

18 **MR. KLEINHENDLER:** He's not qualified as an expert,  
19 your Honor. That's all you're getting.

20 Now, I just want to refer to these questions you're  
21 asking, and I come back to the same refrain.

22 **THE COURT:** Hang on for a second before you go any  
23 further. Do you have direct information on the questions that  
24 I'm asking? Because that's the only reason that I would allow  
25 you to speak at this point, sir. I mean did you talk to any of

Motion hrg.

7/12/2021

1 these affiants? Why are you -- why are you -- what information  
2 do you have?

3 **MR. KLEINHENDLER:** My point is we talked to experts.

4 **THE COURT:** Okay. I understand that.

5 **MR. KLEINHENDLER:** Okay. And what they were telling  
6 us confirmed what these affiants were telling us.

7 **THE COURT:** Okay. You know --

8 **MR. KLEINHENDLER:** So there's nothing surprising  
9 about what these affiants were saying.

10 **THE COURT:** Thank you, Mr. Kleinhendler. I've heard  
11 that answer before. I'm taking it under consideration. Thank  
12 you.

13 All right. I'm going now into affidavits -- we have  
14 multiple affidavits that have been submitted by parties  
15 pertaining to -- relating to the Plaintiffs' pleading which  
16 claims that Defendants counted ineligible ballots, and, in many  
17 cases, did so multiple times, and there's a group, if you will,  
18 of evidentiary support set forth at ECF Number 6, Page ID 903,  
19 Paragraph 94, and it indicates that these are the multiple  
20 affidavits from challengers stating that batches of ballots  
21 were repeatedly run through the vote tabulation machine.

22 These are affidavits referenced, and they are from  
23 Helminen -- this next name I'm not even going to try. Well, I  
24 can try. Waskilewski, Mandelbaum, the Rose affidavit, the  
25 Sitek affidavit, the Posch affidavit, and the Champagne

Motion hrg.

7/12/2021

1 affidavit, as well as the Bomer affidavit.

2 Where is our court reporter? Andrea -- Ms. Wabeke is  
3 okay. There you are. Thank you.

4 Okay. Question, counsel, as relates to this claim.

5 Hang on, Ms. Haller.

6 Did counsel inquire as to why a stack of ballots may  
7 be run through tabulation machines more than once? Not  
8 anything to do with experts. You know, simple question,  
9 counsel of record. Did you make that inquiry, yes or no?

10 Who did? Raise your hand if you made the inquiry  
11 after reviewing this reference in the complaint as to why a  
12 stack of ballots might be run through tabulation machines.  
13 These were obviously statements that were made or observations  
14 that were made, conclusions that were drawn in multiple  
15 affidavits.

16 Did anyone ask the simple question as to -- make an  
17 inquiry as to why would that happen? Anyone?

18 **MS. HALLER:** Yes, your Honor.

19 **THE COURT:** Thank you, Ms. Haller. Go ahead.

20 **MS. HALLER:** Can you, just for clarification, for the  
21 record --

22 **THE COURT:** Yes.

23 **MS. HALLER:** -- please give me the citations of what  
24 we're talking about.

25 **THE COURT:** Yes. So I'm talking about the

Motion hrg.

7/12/2021

1 Plaintiffs' pleading referenced at ECF Number 6 at Page ID 942,  
2 Paragraph 190g.

3 **MS. HALLER:** Okay. ECF 6, Page 942.

4 **THE COURT:** Right. Page ID 942, Paragraph 190g,  
5 which references Section 2b and 2c.

6 **MS. HALLER:** Okay. Your Honor, would it be a lot of  
7 trouble to put that up on the screen?

8 **THE COURT:** Let's see if I can do that.

9 **MS. HALLER:** Judge, we haven't downloaded the  
10 complaint --

11 **THE CLERK:** You want to see a copy of the complaint  
12 or you want to see these affidavits?

13 **MS. HALLER:** The Court is asking questions about  
14 certain exhibit numbers, which I can't track.

15 **THE COURT:** Ms. Mandel --

16 **THE CLERK:** You're citing to the pleadings that --  
17 your citation is to the pleading itself?

18 **MS. HALLER:** It is.

19 **THE CLERK:** The affidavits would take us several  
20 minutes to pull out since there's no indexing by Plaintiffs.

21 **MS. HALLER:** Is it easier to post it on the screen?

22 **THE CLERK:** It will take us a few minutes.

23 **THE COURT:** It will take some time.

24 **MS. HALLER:** Are you going by names? Can you give me  
25 the names again because they're not numbered --

Motion hrg.

7/12/2021

1           **THE COURT:** Let me do a quick check on -- it's  
2 referenced as a group of evidentiary support at ECF Number 6 at  
3 Page ID 903, Paragraph 94. Is that section the section wherein  
4 these multiple affidavits are referenced, correct?

5           All right. So those names, Ms. Haller, and that's  
6 the operative section I'm referring to is the ECF Number 6  
7 document at Page ID 903, Paragraph 94.

8           **MS. HALLER:** Okay. Earlier your Honor had said --

9           **THE COURT:** I did. I did, and I'm correcting myself.  
10 I actually am correcting myself in saying that in Paragraph 94,  
11 ECF Number 6 at Page ID 903. This is all part of the  
12 complaint.

13           **MS. HALLER:** No, I understand, your Honor. It's just  
14 not consistent with the documents as I -- at least as I have  
15 them on the ECF filing. So I'm just trying to get the numbers  
16 because I don't have them saved by page number, to be clear. I  
17 have them by ECF number like 06-18, 06-26. So I'm just trying  
18 to find where your Honor might be.

19           **THE COURT:** Well, if you wrote -- yeah, well, the ECF  
20 at Number 6 at Page ID 903. What is this here? Bring it down  
21 just a little more so I can see the top. Okay.

22           **THE CLERK:** This is the paragraph you were citing  
23 from, Judge, from the amended complaint.

24           **THE COURT:** Right. Yes, it's Paragraph 94, and it  
25 references there -- as you can see, Ms. Haller, we're

Motion hrg.

7/12/2021

1 highlighting it now -- these are affidavits that are  
2 referenced.

3 **MS. HALLER:** Okay.

4 **THE CLERK:** It would take us several minutes to pull  
5 them up if you need to see them on the screen.

6 **MS. HALLER:** No. Thank you for the citation. I was  
7 very confused. Now I see you're citing to the complaint  
8 itself.

9 **THE COURT:** Oh, yes, each time. Each time I was.

10 **MS. HALLER:** I see. Okay. Thank you.

11 **THE COURT:** Yep. And so my question is whether  
12 counsel queried as to why a stack of ballots might be run  
13 through tabulation machines more than once, as is claimed in  
14 those series of affidavits set forth in Paragraph 94 of the  
15 complaint.

16 **MS. HALLER:** Without disclosing too much attorney  
17 work product, as I think we may be, but we certainly had  
18 conversations on how the tabulation machines worked. We  
19 certainly did investigations in relation to the tabulation  
20 machines. We went through the Dominion handbook, their  
21 manufacturing book. We went through all of the information  
22 posted on the Michigan government website.

23 **THE COURT:** Okay. So you saw other explanations as  
24 to why this could -- is that true -- that it would not  
25 necessarily be a fraudulent reason why this could have

Motion hrg.

7/12/2021

1 occurred?

2 **MS. HALLER:** I'm not sure I'm clear on your Honor's  
3 question.

4 **THE COURT:** My question is: The documents that you  
5 reviewed that you just kind of referenced just a moment ago,  
6 did those documents provide an all -- a reason as to why  
7 ballots could be run through the tabulation machines more than  
8 once, an explanation --

9 **MS. HALLER:** Your Honor, the question depends on  
10 context. So if somebody's just testing a machine and they're  
11 going through the process of testing it, then you would want to  
12 do it multiple times possibly, but if you're talking about  
13 within the actual counting or tabulation process, those ballots  
14 are never supposed to leave the subject precinct. Those  
15 ballots are not supposed to be put through more than once.  
16 Absolutely not. That would violate Michigan law.

17 So it depends on the context of the question because,  
18 of course, outside of the actual election, if you're testing or  
19 if you're checking to see if the machine works, that's a  
20 different question.

21 **THE COURT:** All right. Mr. Fink, did you want to say  
22 something?

23 **MR. DAVID FINK:** Yes, your Honor. Thank you.

24 First of all, the issue of whether they're not  
25 supposed to leave the precinct had nothing to do with what was



Motion hrg.

7/12/2021

1 being asked. The question was is there, in the ordinary course  
2 in counting, a time which ballots would be fed more than once  
3 through a tabulating machine, and the answer is an unequivocal  
4 yes, absolutely, happens all the time, and there was an  
5 affidavit from Chris Thomas that explained the process. That  
6 was filed in -- early on in this matter.

7 Now, what we learned -- what we learned --

8 **MS. HALLER:** Can you cite for that, Chris Thomas'  
9 affidavit, just because --

10 **MR. DAVID FINK:** There were two. He filed one  
11 affidavit.

12 **THE COURT:** Can you give that cite? It was attached  
13 to the State Defendants' response. I think it's Exhibit 2 of  
14 the State Defendants' response.

15 Go ahead, Mr. Fink.

16 **MR. DAVID FINK:** Thank you. There were two  
17 affidavits by Mr. Thomas, and I'm not sure which one that is,  
18 but in Paragraph 20 of an affidavit that was filed in the -- I  
19 apologize, I don't know which case this was filed in, but  
20 Mr. Thomas explained that with these high-speed readers, after  
21 they go through, sometimes there's a jam and they have to rerun  
22 the ballots. Sometimes there's one bad ballot in the stack.  
23 Sometimes a problem ballot, pulls it out, they have to rescan  
24 the ballots. It happens all the time.

25 But what Ms. Carone didn't understand, and what the

Motion hrg.

7/12/2021

1 rest of these witnesses didn't understand, was when this occurs  
2 the election worker cancels the previous count so it doesn't  
3 get counted twice. But if there is a mistake, as I explained  
4 earlier, even if there's a mistake, it would mean that more  
5 votes were counted in a precinct than voters appeared, and, in  
6 the entire city of Detroit, at this TCF Center, there were only  
7 111 additional votes over the number of voters.

8 In any one precinct --

9 **MS. HALLER:** Your Honor, we object because he is  
10 testifying --

11 **MR. DAVID FINK:** I'm sorry, I can do this without it  
12 being testimony.

13 The point is that anyone knowledgeable in election  
14 procedures would know that a discrepancy of more than a dozen  
15 votes would jump out, would stick out like a sore thumb. The  
16 so-called experts absolutely should have known that, and there  
17 were no such discrepancies.

18 **THE COURT:** Anything else, Ms. Haller?

19 **MS. HALLER:** Yes. We object to what counsel just  
20 represented.

21 **THE COURT:** Yeah, I understand that. All right. Let  
22 me move on then.

23 The Plaintiffs have alleged in their pleading that  
24 Defendants authorized "counting ballots without signatures or  
25 without attempting to match signatures and ballots without post

Motion hrg.

7/12/2021

1 marks." There are three pieces of evidentiary support that has  
2 been provided in support of that allegation.

3 Now, there are three affidavits stating that the  
4 affiants witnessed no signature or postmark on the ballot  
5 envelopes of some counted ballots. These affidavits were from  
6 Brunell, Spalding -- all right, hang on, Mr. Johnson -- and  
7 Sherer.

8 Now, my question is very straightforward, and that  
9 is, simply, did any of the affiants indicate that the votes in  
10 question, you know, the ballots I guess in question, if they  
11 were -- if the vote ultimately was for President Biden such  
12 that these affidavits would constitute evidence sufficient to  
13 support Plaintiffs' vote dilution equal protection claim?

14 So that means that, as relates to Brunell, Spalding  
15 and Sherer, was there an inquiry made by counsel as to whether  
16 or not, at bottom, the votes in question were for President  
17 Biden such that this representation, if you will, these  
18 allegations would constitute evidence to support the vote  
19 dilution claim?

20 Who can respond to that?

21 And before Ms. Haller may perhaps have an answer to  
22 that, let me ask Mr. Johnson, did you want to respond -- did  
23 you -- what did you want to say, sir?

24 **MR. JOHNSON:** I was attempting to respond to  
25 Mr. Fink's prior statement.

Motion hrg.

7/12/2021

1           **THE COURT:** Okay. Let me hold you off on that, and  
2 I'll give you a moment later.

3           Ms. Haller, did you want to respond to this?

4           **MS. HALLER:** I'm sorry, your Honor, I had to unmute.

5           I would point to Dr. Briggs' expert report because in  
6 there he explains how the absentee ballots would -- that are  
7 identified as missing would actually lower the count -- the  
8 counted votes, and because those are -- his report does address  
9 disenfranchised voters. So I raise that as a point that  
10 relates to this, but as for additional information, maybe  
11 Brandon can answer.

12           **THE COURT:** Did you ever -- all right. That's fine.  
13 I'm sorry, Mr. Kleinhendler.

14           **MR. KLEINHENDLER:** Your Honor, I have to make a  
15 point here. It doesn't -- we don't have to show in this  
16 Paragraph 95, where I think you've only mentioned two or three  
17 of I think there might be a dozen affidavits highlighted there,  
18 we don't have to show that a vote flipped from Biden to Trump  
19 or Trump to Biden. It is enough under the law that the  
20 integrity of the voting was compromised. That is enough in  
21 itself to call --

22           **THE COURT:** Well, the reason I say -- the reason that  
23 I have asked that question is, is because it pertains directly  
24 to your equal protection claim.

25           **MR. KLEINHENDLER:** Exactly right, and that's the

Motion hrg.

7/12/2021

1 point I'm trying to make to you. For the equal protection  
2 claim, we don't have to show a flip. We can show fraud in the  
3 counting. It doesn't matter who got the vote. If we show  
4 that --

5 **THE COURT:** Ultimately, sir, the relief that you're  
6 requesting -- that you requested of the Court was -- it was not  
7 just to decertify the vote. It was to -- it was to attribute  
8 votes that Plaintiffs believe were mistakenly taken away from  
9 Trump and given to Biden, so that is why I am asking that  
10 question. I think it's a legitimate question, and let me just  
11 say this. It's fine. Your objection to the question and to  
12 the causation here is noted, but -- I don't have to have -- you  
13 don't have to argue that point with me.

14 I'll let you finish up your thoughts, sir.

15 **MR. KLEINHENDLER:** I'm not -- I'm not trying to argue  
16 with you.

17 **THE COURT:** No, no, no.

18 **MR. KLEINHENDLER:** Not the point I'm trying to make.

19 **THE COURT:** Okay.

20 **MR. KLEINHENDLER:** The point is we had multiple  
21 layers of requested relief, and the question you had,  
22 specifically, was where in these affidavits does it show that  
23 the malfeasance we've identified flipped the vote, and my point  
24 is that's not necessary. If there's malfeasance, then the vote  
25 becomes not countable, and, therefore, you can't certify one

Motion hrg.

7/12/2021

1 group of electors based on votes that have these type of  
2 problems with them. You don't have to reach the conclusion  
3 that you have posited, which is show that it flipped from one  
4 side to the other. That's my point.

5 **THE COURT:** Okay. All right. Thank you.

6 Let me go on and ask as a follow up to the allegation  
7 about absentee ballots and, you know, that they had been  
8 counted without a signature, without attempting to match  
9 signatures and without postmarks. In Michigan -- question: In  
10 Michigan, must absentee ballots be received through U.S. Mail  
11 and, therefore, be postmarked to be counted?

12 **MS. HALLER:** I think your Secretary of State was  
13 actually admonished by a court this year because of the  
14 guidance that she issued on the process related to absentee  
15 ballots, and in that decision by the Court of Claims it was  
16 made clear that the Secretary of State did not follow the  
17 process as actually required under law, which brings all the  
18 absentee ballots, I would submit, into question, as to how they  
19 were counted. You know, so, your Honor, in direct response to  
20 your question about the process, we cannot rely on the  
21 Secretary of State's guidance.

22 **THE COURT:** Mr. Fink.

23 **MR. DAVID FINK:** Your Honor, even now --

24 **THE COURT:** Mr. Fink, I'm sorry, let me go to  
25 Ms. Meingast, and then I'll come to you.

Motion hrg.

7/12/2021

1           **MR. DAVID FINK:** Absolutely.

2           **THE COURT:** Counselor.

3           **MS. MEINGAST:** Thank you, your Honor. I guess I'm  
4 not hearing it right, but there was a question. Absentee  
5 ballots this year in November were counted the same as they  
6 have been in every other year. In other words, they had to be  
7 received by 8:00 p.m. at the right precinct on election day.  
8 There was nothing different in the way we counted absentee  
9 ballots this year.

10                   There was an earlier case in which Plaintiffs moved  
11 for an extension of the 8:00 p.m. deadline in order to receive  
12 ballots after 8:00 p.m. and for several days thereafter. There  
13 was an injunction to that effect. It was undone by the Court  
14 of Appeals, and their reasoning was count it the same way we  
15 have done for every year on absent voter ballots. So there  
16 wasn't any change in the way absent voter ballots were handled  
17 or processed this year.

18           **MS. HALLER:** And we would just object to any  
19 testimony by counsel, especially without citation or evidence.

20           **MS. MEINGAST:** That would be the published opinion  
21 from the Court of Appeals that reversed the injunction.

22           **MS. HALLER:** Okay. And thank you. As far as the  
23 Court of Appeals decision, we also have a dissent in that case.

24           **THE COURT:** All right. Mr. Fink, quickly, please.

25           **MR. DAVID FINK:** Yeah, may I speak?

Motion hrg.

7/12/2021

1           First, the Court's direct question was: Is a  
2 postmark necessary? Does a ballot have to be mailed?

3           And of course the answer is no. Ballots are often  
4 handed in by hand. Some of them are handed-in boxes in front  
5 of clerk's offices by hand. Sometimes it's done right across  
6 the table, right across the desk in the clerk's office, as we  
7 talked earlier, but the most telling part about the answer to  
8 the Court's question was that not one of the nine lawyers  
9 representing the Plaintiffs interrupted or corrected Ms. Haller  
10 when she repeated the misunderstanding that the Secretary of  
11 State somehow handles absentee ballots. In the state of  
12 Michigan, the Secretary of State does not touch an absentee  
13 ballot.

14           The absentee ballots are sent out, received, and  
15 counted by local units of government, not the county, not the  
16 state, but local units of government. To the extent there  
17 could have been any misunderstanding, it was corrected early on  
18 in the Court of Claims by Judge Cynthia Stevens in the first  
19 Trump lawsuit, but after all these months, after all this time,  
20 that counsel doesn't understand -- that neither local counsel  
21 nor national counsel understands that in Michigan elections are  
22 run by local units of government tells the Court that there was  
23 zero due diligence performed in the most important --  
24 potentially important case ever filed in this state.

25           **THE COURT:** Thank you, Mr. Fink.



Motion hrg.

7/12/2021

1 Mr. Johnson.

2 **MR. JOHNSON:** Thank you, your Honor.

3 I just want to take this opportunity to make two  
4 points. I'll start with the most recent point. Obviously, the  
5 *Genetski V Benson* decision, which Ms. Haller referenced, it --  
6 you know, it found that the Secretary of State had issued a  
7 binding rule. So whether or not the Secretary of State  
8 actually physically handled ballots is irrelevant. She issues  
9 binding guidance. That was the holding in the case, and that  
10 is why it was ultimately found that she failed to apply the  
11 proper rule-making process.

12 Second point goes back to Mr. Fink's testimony  
13 regarding the Detroit count. We had affidavits from  
14 Commissioner Hartmann, and I forget the name of the other  
15 woman, but the two Republican members of the Wayne County Board  
16 of Canvassers who attempted to decertify the results of Wayne  
17 County. This goes to the fact of, you know, the discrepancies,  
18 the irregularities in Wayne County in general, and the absentee  
19 ballot counts in Detroit in particular, and that's where, I  
20 believe the number was something like 76 percent of the  
21 precincts were out of ballots. He also discussed earlier  
22 problems in the primary.

23 So we have public officials charged with  
24 certification of the election, two of which attempted to  
25 decertify. They claimed they faced threats of physical

Motion hrg.

7/12/2021

1 violence and harassment. That explained the initial  
2 certification despite their misgivings, but the public  
3 officials in charge of absentee ballot counting in Detroit went  
4 on record publicly, in testimony, not just with us, describing  
5 the tremendous irregularities in the counts in absentee ballots  
6 in Detroit. So that is the point I wanted to make. Thank you.

7 **THE COURT:** All right. Mr. Fink, last word on this,  
8 and then I'm going to move on.

9 **MR. DAVID FINK:** Very briefly. The percentage of  
10 precincts out of balance does not mean anywhere near what it's  
11 suggested. If it's 76 percent, we're talking about precincts  
12 that are out of balance by one, two, or three votes, not by a  
13 lot of votes. The total out of balance would be the issue, and  
14 President Trump lost the state by 154,000 votes. It was never  
15 at issue.

16 Now, regarding those commissioners. As everybody  
17 knows, they tried retroactivity to rescind the decision that  
18 they made. That's -- the courts have -- there's just no point  
19 to really get into that issue.

20 The real issue here is that the question is, and to  
21 get way back to where the Court was in the first place, the  
22 question is these allegations were made about the way votes  
23 were counted and is there a basis to say that the absence of a  
24 postmark or the failure to compare a signature proves fraud,  
25 and there isn't.

Motion hrg.

7/12/2021

1           **THE COURT:** Thank you. I'm ready to move on to the  
2 Larsen affidavit set forth at ECF 6-4, PDF Pages 25-34.

3           Plaintiffs state in their pleadings that Defendants  
4 authorized, "systematic violations of ballot secrecy." One  
5 piece of evidentiary support that they provide is the Larsen  
6 affidavit.

7           The amended complaint specifically states,  
8 "Mr. Larsen observed that some ballots arriving without any --  
9 observed some ballots arrive without any secrecy sleeve. These  
10 ballots were counted after visual inspection, whereas many  
11 ballots without a secrecy sleeve were placed in the problem  
12 ballot box. He found this, quote, perplexing and raised  
13 concerns that some ballots were being marked as, quote, problem  
14 ballots based on who the person had voted for."

15           I would like to know if counsel would agree that  
16 Larsen being perplexed and his stated concern do not serve as  
17 evidence that ballots were placed in the problem box because of  
18 who the vote was for. I mean can anyone agree to that,  
19 Mr. Campbell?

20           **MR. CAMPBELL:** I can't agree to what you have said,  
21 that somehow the word "perplexed," as describing his  
22 circumstances, undercuts any of the evidence that's there, and  
23 it should be perplexing that somebody is picking the troubled  
24 ballots or the questioned ballots based on who's being voted  
25 for.

Motion hrg.

7/12/2021

1           **THE COURT:** And you think being perplexed by an  
2 observation is sufficient enough to get into court? It's  
3 sufficient to support an affidavit? Do you feel that that  
4 constitutes evidentiary support, sir?

5           **MR. CAMPBELL:** Absolutely in this case without --

6           **THE COURT:** Wow, okay.

7           **MR. CAMPBELL:** Matters that are there -- I'm shocked  
8 to hear a suggestion to the contrary.

9           **THE COURT:** Yeah. Okay. And you're -- and this is  
10 based on your theory that all of these affidavits need to be  
11 viewed in context; right?

12           **MR. CAMPBELL:** All of them need to be viewed in  
13 context, of course, your Honor. How else would you do it?

14           **THE COURT:** I'm looking at the -- I'm looking at  
15 them, in fact, individually. I understand --

16           **MR. CAMPBELL:** Right, not in context. That's very  
17 clear, Judge.

18           **THE COURT:** Good, good, because I feel that every  
19 affidavit that is going to be submitted in support of any of  
20 these claims, there has to be a minimal belief on the part of  
21 counsel that these allegations are rooted in fact, and --

22           **MR. CAMPBELL:** And I think that's very clear.

23           **THE COURT:** Excuse me, excuse me.

24           If you have language in an affidavit that is vague,  
25 and it's clear that this language is -- this is based on his

Motion hrg.

7/12/2021

1 own belief. He sees something that looks a little different  
2 for him so he's perplexed by it. That's quite a low standard  
3 for submission of an affidavit, but I will move on.

4 **MR. CAMPBELL:** He's perplexed --

5 **THE COURT:** My plan --

6 **MR. CAMPBELL:** No, no, your Honor, he's perplexed  
7 because there appears to be a choice on which ballots get  
8 questions and which don't. That -- again, if this is the  
9 subjective nature in which this Court is going to view the  
10 sanctions questions, which usually are objective, what can I  
11 do? But objectively, seriously, the word "perplexed" is what  
12 you think is worth the time and effort of the -- all the  
13 lawyers, your staff on this proceeding to talk about sanctions?

14 **THE COURT:** And I asked you: Did you really think  
15 that it was worth it to file in support of your claims that  
16 have taken up the time, energy, and space over these last  
17 several months? So I would caution you to do not question my  
18 procedure. I'm here to question what you've done, sir. I'm  
19 here to evaluate. Hear me out --

20 **MR. CAMPBELL:** And I am not a potted plant.

21 **THE COURT:** I'm here to evaluate --

22 **MR. CAMPBELL:** I am not a potted plant. I will  
23 represent my client --

24 **THE COURT:** That is quite fine, but you -- don't  
25 worry about what I'm doing at this point. You are here to

Motion hrg.

7/12/2021

1 answer my questions.

2 Mr. Fink.

3 **MR. DAVID FINK:** Judge, it's probably not my place to  
4 say this, but I'm concerned by the disrespect for the Court  
5 that Mr. Campbell is showing, particularly in light of the  
6 history of this litigation and how patient the Court has been.  
7 I want to make a quick comment that the reason that "perplexed"  
8 is such a significant reference in this particular affidavit.  
9 This is the affidavit of an individual who claims to have  
10 served as an assistant attorney general, claims to have some  
11 expertise in this area, claims to understand election law. For  
12 him to then just say he's perplexed by something rather than  
13 actually explaining where he sees some violation of law or  
14 practice. We thought that was significant when we saw it a  
15 long time ago.

16 My concern goes back to the same issue all along, and  
17 I'll get out and I'll stop here, which is just some diligence  
18 should have been applied. What diligence is due might be a  
19 question for the Court, but not when there's no diligence at  
20 all, and, in this case, Mr. Larsen's affidavit had already been  
21 reviewed by Judge Kenney, and, in many respects, rejected and  
22 counsel should have been, I believe, to our case, I believe  
23 that counsel should have undertaken a serious inquiry to  
24 determine the facts before making all of these allegations.

25 **MS. HALLER:** Mr. Fink, we are available for an

Motion hrg.

7/12/2021

1 evidentiary hearing, as we stand by every affidavit and  
2 document in this complaint. We did not file false statements.  
3 We made the documents clearly identified as they were. We did  
4 not alter documents, and any allegations that we have done  
5 something that is improper really lacks foundation, and I would  
6 just generally say that going through each affidavit or each  
7 paragraph in the complaint, we'll do so as your Honor requests.  
8 I would, just for clarity, for efficiency sake, ask that we --  
9 if we can put it up side by side with the hearing so we can see  
10 where the paragraph is that we're talking about.

11 **THE COURT:** We'll try to do that. I have to admit  
12 that I'm a little surprised that counsel is coming to a  
13 sanctions hearing and does not have the documents that they  
14 themselves filed in fronts of them to be able to answer these  
15 questions, but, be that as it may, we will try to do what we  
16 can in terms of screen sharing.

17 Yes, Mr. Campbell.

18 **MR. CAMPBELL:** Judge, you're aware that you began  
19 this sanction hearing by saying it was your announcement of a  
20 show cause here today. These types of questions that you've  
21 asked were not raised by the Defendants in their proceedings,  
22 and, again, there's been a lot of opportunities for them to  
23 submit things. So I don't believe that statement about  
24 surprise or suggesting in any way that we've come here  
25 unprepared to look at the things that the Court wants us to be

Motion hrg.

7/12/2021

1 directed towards, and, again, you have had all sorts of  
2 opportunities to speak with the people who were responsible for  
3 putting together this complaint and all of the attorneys who  
4 stand behind its filing.

5 **THE COURT:** All right. Thank you.

6 I'm going to now go to the affidavit of  
7 Mr. Gustafson. That's set forth at ECF Number 6-4 at PDF Pages  
8 48-49.

9 Now, Plaintiffs allege that unsecured ballots arrived  
10 at the TCF Center loading garage, not in sealed ballot boxes,  
11 without any chain of custody and without envelopes, after the  
12 8:00 p.m. election day deadline. They provide three pieces of  
13 evidentiary support, and I want to look first at the Gustafson  
14 affidavit.

15 That affidavit states, "Large quantities of ballots  
16 were delivered to the TCF Center" -- here we go. Here we go.  
17 "Large quantities of ballots were delivered to the TCF Center  
18 in what appeared to be mail bins with open tops. These ballot  
19 bins and containers did not have lids, were not sealed and did  
20 not have the capability of having a metal seal. The ballot  
21 bins were not marked or identified any way to indicate their  
22 source of origin."

23 My question to counsel at this point is: What is  
24 counsel's understanding of Michigan's requirements as to the  
25 container ballots and how they are to be transported after



Motion hrg.

7/12/2021

1 they've been removed from the ballot drop boxes?

2 In other words, what do you understand about the  
3 requirements here for ballot bins?

4 **MS. HALLER:** Your Honor.

5 **THE COURT:** Yes.

6 **MS. HALLER:** I would just say we do not purport to be  
7 experts in Michigan's process, but I would point out that these  
8 exhibits are -- these Larsen and Gustafson are exhibits to a  
9 filing in the *Constantino* case, which is attached to the  
10 complaint. It's one of the exhibits that I believe your Honor  
11 is referencing. Note that these are exhibits for the Court and  
12 information that has been found in another court of law just --

13 **THE COURT:** As has been stated, Ms. Haller, a few  
14 times, and again --

15 **MS. HALLER:** We're going to a different document,  
16 your Honor.

17 **THE COURT:** Well, I mean yeah, but we're still  
18 dealing with the same kind of scenario with affidavits having  
19 been filed. Are you saying this particular affidavit was filed  
20 in the *Constantino* case?

21 **MS. HALLER:** Yes. I'm saying this is Exhibit 6-4B.  
22 I believe it's B, as opposed to Larsen, which is A, and then  
23 there's a C, in that these are exhibits to a filing by  
24 *Constantino*, which the whole thing was attached.

25 **THE COURT:** Okay. Again, I think, again, the Court

Motion hrg.

7/12/2021

1 and counsel have a different view, and that's clear throughout  
2 this hearing, as to what obligations, and, again, I really just  
3 want to clarify that the Court -- I know that none of us are  
4 experts in election. We're not necessarily experts in Michigan  
5 election process, but the bottom line is is that if you're  
6 going to file an affidavit, in this Court's view, there should  
7 be some general understanding of the process such that when you  
8 see a statement by an affiant that you're willing to submit as  
9 evidentiary support, is that not why an affidavit is being  
10 filed?

11 If you have not asked at least the minimal questions,  
12 you know, I find that problematic, and I'm just trying to  
13 determine the level of inquiry that has been made here, and I  
14 really do think that that's a misunderstanding that counsel has  
15 in terms of where the Court is going, and I -- and I won't  
16 entertain, at this point, any argument as to why you would  
17 think that that's an inappropriate inquiry, because I feel that  
18 it is an appropriate inquiry.

19 Mr. Fink?

20 **MR. DAVID FINK:** Yes, your Honor. This allegation by  
21 Mr. Gustafson -- as stated by Mr. Gustafson, occurred in the  
22 *Constantino* case, and so, in that case, on November 11th, Chris  
23 Thomas -- Christopher Thomas did file an affidavit explaining  
24 that there is no requirement that ballots be transported in  
25 sealed ballot boxes. He's not aware of any jurisdiction in

Motion hrg.

7/12/2021

1 Michigan sealing these ballots prior to election day and  
2 employees bringing the ballots would bring the ballots to the  
3 TCF Center, consistent with chain of custody. They weren't  
4 just left out someplace, but that's a factual statement. I  
5 could be wrong. I don't think I am, but I could be wrong, but  
6 what's important they certainly were on inquiry notice.

7           Once this affidavit was filed by Mr. Thomas, once  
8 they'd seen this other litigation, two weeks before they filed  
9 their case, all they had to do is ask and if they'd asked any  
10 election official in Michigan, any clerk in Michigan would have  
11 told them we don't even have sealed ballots for transferring  
12 ballots around. After the vote count, yes, you seal the  
13 ballots, but before the vote count, you can't seal the ballots,  
14 and they're not sealed and they're not transported that way.  
15 It's them saying "we are not experts" tells us all we need to  
16 know. They didn't get experts. They're not experts, and,  
17 nonetheless, they threw this information in front of the Court,  
18 hoping something would stick, in the most important litigation  
19 imaginable.

20           **THE COURT:** Thank you, Mr. Fink. Mr. Campbell?

21           **MR. CAMPBELL:** I hear Mr. Fink not taking any issue  
22 with the facts that are described in the affidavit. I'm not --

23           **MR. DAVID FINK:** Right, they don't mean anything.  
24 I'm sorry, I didn't mean to respond.

25           **MR. CAMPBELL:** They mean something. Somebody has to

Motion hrg.

7/12/2021

1 say it, right, and all you did is produce another affidavit  
2 that said, yeah, that's what was done, but until the first  
3 person said it, the second person didn't comment on it, and I  
4 think you can take some notice that things that are unsealed,  
5 that things are unprotected, the things that are not -- that  
6 are handled in the manner that even Chris Thomas says -- you  
7 know, I never met Chris Thomas. He's not here. We don't even  
8 have the chance of going over his affidavit in this kind of  
9 detail. Love to do that in an evidentiary hearing, but, again,  
10 all this is is a fact of what somebody saw, and, in fact, it  
11 appears that you're here to testify that it's true. So how is  
12 it -- what more diligence was needed to produce a truthful  
13 affidavit from you?

14 Apologize, I should not have asked him the question.

15 **THE COURT:** All right. Let me --

16 **MR. DAVID FINK:** I can speak to it, only if the Court  
17 wants to.

18 **THE COURT:** Yeah, let me say, again, I feel like I  
19 have to respond again that, you know, I need to point out here  
20 that my concern is is that counsel here has submitted  
21 affidavits to suggest and make the public believe that there  
22 was something wrong with the election. Isn't that what this is  
23 all about? That's what these affidavits are designed to  
24 do, to show that there was something wrong in Michigan. There  
25 was something wrong in Wayne County. These are the

Motion hrg.

7/12/2021

1 observations of what took place at the TCF Center.

2 I am simply taking those affidavits, which counsel  
3 submitted, in support of the general proposition that there was  
4 fraud in the Michigan election. I'm looking at that, looking  
5 at the language of the affidavit and saying is that what this  
6 even says? What level of inquiry have you made to even know --  
7 I mean, you know, what -- for a person who doesn't have a lot  
8 of experience, maybe they -- some of them, of course, I know  
9 the poll challengers went through a training, and so -- but the  
10 bottom line is is that if you see something and you're not that  
11 familiar with the process, it doesn't always mean that what  
12 you're seeing is what you think you're seeing. It doesn't  
13 matter that -- it doesn't always mean that what you see as  
14 being odd, that it is in fact odd if you don't know the  
15 process.

16 All I'm asking, counsel, is if you took the time to  
17 look at those affidavits and say, well, wait a minute, there  
18 might be something here in the sense of is that part of  
19 Michigan's process? I want -- that's my question: Were those  
20 -- that type of inquiry made? And it's a germane question,  
21 because the premise of this lawsuit is is that Michigan  
22 election was fraudulent.

23 All right. So, Mr. Kleinhendler, I'm sorry, sir,  
24 Mr. Kleinhendler.

25 **MR. KLEINHENDLER:** Yes, your Honor.

Motion hrg.

7/12/2021

1           **THE COURT:** You may comment briefly, sir, and then  
2 I'm going to move on.

3           **MR. KLEINHENDLER:** I can't say -- I reviewed some of  
4 these affidavits. I had people working with me reviewed every  
5 single one. I believe we did speak to some of them. I think  
6 we did speak to some of the attorneys, at least that was my  
7 understanding, and, with regard to your specific question, it's  
8 just basic knowledge when you're transporting a bunch of  
9 documents in an unsealed container that can be tampered with  
10 from a remote location, that raises a suspicion. Whether it's  
11 required under Michigan law or not, it's completely irrelevant.  
12 We're not saying here even that Michigan poll workers knew that  
13 they might be doing something wrong. We have alleged here that  
14 there was things going on that maybe even some of the workers  
15 themselves unknowingly let slide, and so I want to make that  
16 point clear. If you're bringing something from far away and  
17 it's open, that raises an issue. Your Honor, if I handed you a  
18 can of Coke that was open and I told you don't worry I didn't  
19 drink from it --

20           **THE COURT:** These are elections that have been run in  
21 the state of Michigan for years. The analogy is certainly not  
22 on point, sir; it is not.

23           **MR. KLEINHENDLER:** The second point -- well, the  
24 second point I'd like to raise is the notion that we filed this  
25 lawsuit as some kind of public relations. That is not correct.

Motion hrg.

7/12/2021

1 We filed this lawsuit on behalf of clients, who were electors,  
2 who asked us to file this lawsuit. What the public did with it  
3 or didn't do it with it is beyond our control, and I reject,  
4 categorically, the mantra you've heard in the papers and you're  
5 hearing again now that we did this as a publicity stunt. I  
6 reject that wholeheartedly, your Honor. We did not. We filed  
7 it on behalf of Plaintiffs who asked us to file it, and I'd  
8 like to make that point clear.

9 **THE COURT:** Okay. And, you know, again, the analysis  
10 will always be -- part of the analysis, in certain of the  
11 sanctions that are available to the Court, is was the purpose  
12 for which the lawsuit was filed, was it an improper purpose,  
13 and this is also -- you know, I think that things can also be  
14 drawn from the amount of effort that you put into a lawsuit in  
15 terms of what are you really trying to do, you know, and I've  
16 not drawn any conclusions at this point, but I am trying to,  
17 again, drill down --

18 **MR. KLEINHENDLER:** Your Honor, I just want to leave  
19 you --

20 **THE COURT:** Excuse me, Mr. Kleinhendler.

21 **MR. KLEINHENDLER:** -- with --

22 **THE COURT:** I have not finished.

23 I am trying to drill down as to the level of inquiry  
24 that was made by counsel in these multiple affidavits, all  
25 right, and there is no way that I could not do that and then

Motion hrg.

7/12/2021

1 put myself in a position where I could accurately assess  
2 whether behavior here has been sanctionable, and when I say  
3 here, I'm talking about through the course of the litigation.

4 All right. I am going to move on, counsel, to the  
5 Meyers' affidavit and Meyers -- part of the amended complaint,  
6 it is stated that Meyers -- I'm sorry, let me give you, it's  
7 ECF 6-3. This is the Meyers affidavit at PDF Pages 130-131.  
8 Per the amended complaint, Plaintiff states, "Meyers  
9 observed" -- Meyers "observed passengers in cars dropping off  
10 more ballots than there were people in the car."

11 In Michigan, may people other than the voter drop off  
12 a ballot? Is that allowable in Michigan, to have someone,  
13 other than the person who has voted, drop off a ballot for  
14 someone? That's my question.

15 **MR. CAMPBELL:** The answer is that you can deliver  
16 somebody else's ballot.

17 **THE COURT:** Right.

18 **MR. CAMPBELL:** If it's legally voted, it should be  
19 legally counted.

20 **THE COURT:** All right. I want to point everyone's  
21 attention to the next affidavit, which is the Ciantar --  
22 certainly, I'm certain I botched this person's name. I  
23 apologize. I will spell it. It is C-i-a-n-t-a-r, set forth at  
24 ECF Number 6-7 at Page ID 1312-14. There it is right there.

25 And the amended complaint states that Mr. Ciantar,



Motion hrg.

7/12/2021

1 independent -- "independently witnessed," while walking his  
2 dog, a young couple deliver three to four large plastic clear  
3 bags that appeared to be, "express bags," as reflected in  
4 photographs taken contemporaneously, to a U.S. postal vehicle  
5 waiting. The use of clear express bags is consistent with  
6 the -- there's a whistleblower complaint that's been referenced  
7 in the context of this lawsuit. I have not ever seen any  
8 underlying documents, but it's a whistleblower suit by a U.S.  
9 Postal Service worker, Jonathan Clark.

10           Putting aside the fact that Plaintiffs have not  
11 provided any evidence, as I just stated, regarding the postal  
12 service whistleblower claim, here are a few excerpts from the  
13 Cianciarone affidavit which are now on the screen.

14           "I witnessed a young couple pull into the parking lot  
15 of post office and proceed to exit their van, had no markings,  
16 and open up the back hatch and proceed to take three to four  
17 very large clear plastic bags out and walk them over to a  
18 running postal service vehicle that appeared as if it was  
19 'waiting' for them."

20           Let me go further. "There was no interaction between  
21 the couple and any postal service employee, which I felt was  
22 very odd. They did not walk inside the post office like a  
23 normal customer to drop off mail. It was as if the postal  
24 worker was told to meet and stand by until these large bags  
25 arrived."

Motion hrg.

7/12/2021

1 "As you can see in the pictures," the affidavit goes  
2 on to say, "the bags were clear plastic with markings in black  
3 on the bag, and on the inside of these clear bags was another  
4 plastic bag that was not clear, could not see what was inside.  
5 There were markings on the clear bag and what looked like a  
6 black security zip tie on each bag, as if it were tamper  
7 evident, as if it were a tamper type of device to secure the  
8 bag. This looked odd. What I witnessed and considered that  
9 what could be in those bags could be ballots going to the TCF  
10 Center or coming from the TCF Center."

11 Now, this is quite a -- I don't -- I don't think I've  
12 really ever seen an affidavit that has made so many leaps.  
13 This is really fantastical. So my question to counsel here is:  
14 How can you, as officers of the Court, present this type of an  
15 affidavit? This is pure -- is there anything in here that's  
16 not speculative, other than the fact that the individual saw  
17 individuals with plastic bags? They don't know what were in  
18 them, happened to be located at the post office, and then  
19 there's a leap made there. Someone answer that question for  
20 the Court.

21 Ms. Haller. Thank you.

22 **MS. HALLER:** Yes, your Honor. The witness is stating  
23 or setting forth exactly what he observed and his information  
24 that he bases it on and he includes pictures.

25 **THE COURT:** What --

Motion hrg.

7/12/2021

1           **MS. HALLER:** He does not say more. He does not say  
2 less than what he knows to be true. It is a true affidavit.  
3 It is a person with some information, and he is setting forth  
4 that information. When we put the case together, we put forth  
5 a pattern of evidence that shows fraud. So it's a pattern of  
6 evidence that comes together, and this is one piece of a  
7 pattern. He is testifying, in his sworn statement, as to what  
8 he knows to be true. He saw these plastic bags. He's  
9 explaining what he saw, and he takes pictures of them.

10           **THE COURT:** Okay.

11           **MS. HALLER:** I would submit, your Honor, that it's  
12 not fantastical. It's simply what he knew to be true.

13           **THE COURT:** You think that he is actually thinking --  
14 do you think, by the language in the affidavit, Ms. Haller,  
15 that he is actually stating that he believes his conclusions to  
16 be true when he says things like "could be, it appeared as if  
17 they might have been waiting for him." Where is the truth in  
18 that? I mean this is pure speculation.

19           All right. Let me move on.

20           **MS. HALLER:** It's in the --

21           **THE COURT:** Is there any -- Ms. Haller.

22           **MS. HALLER:** Your Honor --

23           **THE COURT:** Let me ask you this question: Was there  
24 any information -- what information did the affiant have to  
25 make any of these conclusions in his affidavit? I mean

Motion hrg.

7/12/2021

1 we're -- stay with me.

2 **MS. HALLER:** He was speaking in the present tense and  
3 he took photos. So he saw what he saw and he documented it as  
4 he did, and we don't typically rewrite what an affiant says.

5 **THE COURT:** But don't we also as -- doesn't counsel  
6 also have an obligation to evaluate that and say, "What is this  
7 actually going to prove?" He's -- he has made conclusions  
8 based upon what he's observed, but there is clearly, within  
9 this affidavit, nothing to support those conclusions. This is  
10 what he has -- what else is there? This is anybody driving  
11 down a street and seeing somebody with plastic bags. You  
12 automatically jump to the point, and, most importantly,  
13 Ms. Haller, counsel, what is your duty here? You said you  
14 don't rewrite the observations --

15 **MS. HALLER:** (Indiscernible.)

16 **THE COURT:** Absolutely not.

17 **MS. HALLER:** But your Honor --

18 **THE COURT:** Ms. Haller, let me ask this final  
19 question and then I'll let you speak.

20 My question to you is: At what point do you have  
21 that duty to say, you know what, there's really not enough  
22 here? You don't feel that -- I mean at what point do you say  
23 that?

24 **MS. HALLER:** May I respond, your Honor?

25 **THE COURT:** Yes, please do.

Motion hrg.

7/12/2021

1           **MS. HALLER:** I would simply submit that we identified  
2 a witness as a potential source in a complaint to support  
3 information that we would then hope to call that person as a  
4 witness who would testify, would be anticipated to be testify  
5 in accordance with what he or she had stated in a declaration  
6 or affidavit. This particular witness did not jump to any  
7 conclusions and made that clear in his affidavit, and he did  
8 believe -- I believe he believed that he saw ballots, but I  
9 think he was hesitant to actually express that, and his  
10 hesitancy comes through in his declaration, but there's nothing  
11 untruthful about what he says.

12           **THE COURT:** All right. I saw another hand up. All  
13 right.

14           **THE CLERK:** It was Ms. Powell, your Honor.

15           **THE COURT:** Ms. Powell, yes, and then I'll get to  
16 you.

17           Ms. Powell, yes, ma'am.

18           **MS. POWELL:** Yes, we filed a massive and detailed  
19 complaint in federal court that doesn't even require us to  
20 append affidavits to.

21           **THE COURT:** Right.

22           **MS. POWELL:** The very fact that we filed 960 pages of  
23 affidavits with the complaint shows extraordinary due diligence  
24 on our part. Virtually, every question the Court has raised  
25 about these affidavits calls into question the veracity of the

Motion hrg.

7/12/2021

1 affiants, and the only way to test that is in the crucible of a  
2 trial or an evidentiary hearing, which the Court has denied at  
3 every stage.

4 **THE COURT:** All right. Well, let me say volume,  
5 certainly for this Court, doesn't equate with legitimacy or  
6 veracity. So please understand that is certainly my position.

7 Mr. Kleinhendler.

8 **MR. KLEINHENDLER:** Yes, your Honor.

9 **THE COURT:** Very briefly, sir.

10 **MR. KLEINHENDLER:** Yes.

11 **THE COURT:** Very briefly.

12 **MR. KLEINHENDLER:** Yes, with regard to this specific  
13 affidavit.

14 **THE COURT:** Yes, sir.

15 **MR. KLEINHENDLER:** We have amassed evidence in  
16 Pennsylvania, and we've actually -- we can present it to the  
17 Court, I think we have, where there was proof positive evidence  
18 of United States Postal Service collusion and malfeasance in  
19 connection with the delivery of ballots.

20 **THE COURT:** Oh, so that's why you thought that was --

21 **MR. KLEINHENDLER:** I'm giving you my impression on  
22 this specific affidavit, where it seems to you to appear  
23 bizarre to, you know, why -- you know what's the big deal, and  
24 I'm telling you, your Honor, in good faith, that prior to  
25 filing this, we have evidence that these very clear reports

Motion hrg.

7/12/2021

1 that, in connection with Pennsylvania, there was malfeasance in  
2 connection with the United States Postal Service. So when I  
3 looked at this or when I heard about it, it did not appear  
4 unusual to me.

5 Now, we could have -- you know, we could have a  
6 discussion of what that evidence is. I don't want to get into  
7 it now, but I want to make the point for the record, we had  
8 clear, very credible evidence that the United States Postal  
9 Service, believe it or not, had mishandled, had done illegal  
10 acts in connection with the ballots that they delivered in the  
11 2020 presidential election.

12 **THE COURT:** Got it. Mr. Fink.

13 Let me just ask one last question of you. The  
14 reports are based on this kind of spec -- well, I just -- let  
15 me ask you this: Did you -- is there a reason that you did not  
16 submit that other evidence on the postal service, which is  
17 quite, quite an inflammatory claim? Is there a reason you did  
18 not submit any evidence on that?

19 **MR. KLEINHENDLER:** Your Honor.

20 **THE COURT:** Yes, sir.

21 **MR. KLEINHENDLER:** I believe at the time that we  
22 filed this complaint, we just had reports. We had one  
23 whistleblower, who I believe we had interviewed. It wasn't yet  
24 hard enough, your Honor, what I would call hard evidence.  
25 However, however, should there be an evidentiary hearing at

Motion hrg.

7/12/2021

1 this point, we have the who, what, and where of what happened  
2 in Pennsylvania.

3 **THE COURT:** All right.

4 **MR. KLEINHENDLER:** What and where.

5 **THE COURT:** Mr. Fink, quickly.

6 **MR. DAVID FINK:** Your Honor, if I may. We are in the  
7 state of Michigan; we are not in Pennsylvania, and in the state  
8 of Michigan, they made this allegation based on some paranoid  
9 delusions of some witness, who never even gets to a punchline.  
10 The fact is, if they've got evidence, and he says they've got  
11 evidence, it should have been in the complaint. If they don't  
12 have evidence or if they don't have direct allegations, then  
13 they shouldn't throw out these miscellaneous defamatory and,  
14 frankly, phony allegations.

15 Now, this might all be true. If you read it closely,  
16 what it says is absolutely nothing, but it does fuel the fires  
17 of the online conspirators and conspiracy theorists who want to  
18 reprocess and use this to support their efforts, and that's  
19 what happened here. We'll get back to that later, but this was  
20 not an accident. This was not a case -- I'm sorry, let me just  
21 finish this one thought. I apologize, your Honor.

22 If they don't make out a legal theory with the facts  
23 they're presenting, it's right for the Court to ask why they're  
24 presenting the facts, and we'll get to that at the end.

25 **THE COURT:** Let me -- I'm very close to counsel



Motion hrg.

7/12/2021

1 wrapping up, and what that will mean for you is is that you'll  
2 have an opportunity to, very briefly, address the Court on  
3 anything that you might want to clarify, just a closing  
4 statement. Please do not rehash, but based upon what has been  
5 discussed here today, but before I do that, I wanted to address  
6 Ms. Lambert Junttila. Are you still with us?

7 **MS. LAMBERT:** Yes, your Honor, I'm here.

8 **THE COURT:** Thank you so much. And so in your latest  
9 filing, you state that "Plaintiffs' counsel had a First  
10 Amendment right to bring this election challenge and,  
11 therefore, they could not be subjected to sanction." You  
12 further state, Counselor, that "The U.S. Supreme Court cases  
13 that support this argument are just too numerous to mention,  
14 and any attempt to string cite them here would be insulting to  
15 all involved."

16 I will not be insulted. I will not be insulted. If  
17 you can tell me whether the First Amendment prevents sanction  
18 -- well, let me just start here in terms of is there a point  
19 where a lawyers' conduct becomes sanctionable and is no longer  
20 protected by the First Amendment? Because you seem --

21 **MS. LAMBERT:** Your Honor --

22 **THE COURT:** -- to be quite --

23 **MS. LAMBERT:** Thank you, Judge, and I appreciate the  
24 opportunity. The purpose of this lawsuit, I heard the Court  
25 address it earlier, whether or not it was an improper purpose

Motion hrg.

7/12/2021

1 or to -- the premise of it was to show that the Michigan  
2 election was fraudulent. I think that these suits are critical  
3 to our country to show that every vote counts and ensure that  
4 every vote counts as it's intended to count. It's not a  
5 partisan issue to me. Everyone should be able to bring  
6 lawsuits to ensure election integrity, and the court system is  
7 the appropriate place to bring those suits.

8 With regards to this particular case, the Court  
9 didn't hear much about my role. I filed the notice of appeal  
10 before the Court. Sidney Powell was lead counsel on this case.  
11 I've spoken with her no more than two times for brief  
12 conversations. I've had a number of conversations with Howard  
13 Kleinhendler, and all pleadings and briefs were prepared by  
14 Howard and Sidney. Even e-mail responses to opposing counsel,  
15 I would check with them to see how they wanted me to respond  
16 and then I would respond.

17 I viewed my role as the local attorney. It was my  
18 understanding that they would apply to be admitted to the bar  
19 in the Eastern District of Michigan. I know this case was only  
20 alive for essentially seven days before this Court before it  
21 was appealed.

22 So does that answer the Court's question?

23 **THE COURT:** No, and thank you for letting me say that  
24 and give you -- let me restate. Again, pertaining to your  
25 position that Plaintiffs' counsel had a First Amendment right

Motion hrg.

7/12/2021

1 to bring this election challenge, my question to you, because I  
2 find that the brief itself is extremely broad as to what you  
3 consider to be an attorney's First Amendment right, in their  
4 capacity as an attorney, in a courtroom, and my question to you  
5 is: Is there a point where a lawyer's conduct becomes  
6 sanctionable and is no longer protected by the First Amendment,  
7 or are you speaking of a right that is completely unbridled?  
8 Help me.

9 **MS. LAMBERT:** Your Honor, I think that an attorney's  
10 obligation is to be an advocate for their client, and as long  
11 the attorney is putting forth accurate pleadings, accurate  
12 information before the Court, which I have done, that, no, it  
13 is protected by the First Amendment and it would be  
14 unconstitutional, and the Court is the appropriate place to  
15 redress grievances.

16 **THE COURT:** Let me just -- I want you to take some  
17 time and look at -- this is a case from the Sixth Circuit.  
18 It's the *Mezibob* case, which you, I'm certain are familiar  
19 with, *versus Allen* at 411 Fed 3rd 712.

20 And the Supreme Court has noted that "It is  
21 unquestionable that in the courtroom itself, whatever right to  
22 free speech an attorney has is extremely circumscribed.  
23 Furthermore, it appears that no circuit court has ever granted  
24 an attorney relief under the First Amendment for this narrow  
25 category of speech, because an attorney, by the very nature of

Motion hrg.

7/12/2021

1 his job, voluntarily agrees to relinquish his right to free  
2 expression in the judicial proceeding. Our Sixth Circuit sees  
3 no basis for concluding that free speech rights are violated by  
4 a restriction on that expression. In filing motions and  
5 advocating for clients in court, an attorney is not engaged in  
6 free expression. She is simply doing her job."

7 And I think that is -- I was concerned, and you have  
8 not done anything to put aside my concerns, Ms. Lambert, that  
9 there is in fact, that is a circumscribed right that an  
10 attorney has when they are acting in a capacity as a lawyer in  
11 a courtroom.

12 All right. So that is, counsel, where I'm going to  
13 leave my questions here at this point, and what I would like to  
14 do is to give counsel an opportunity, and I'll tell you the  
15 order in which this may proceed, an opportunity to just give  
16 some closing remarks and let the Court know if there's anything  
17 that you would want to clarify, and I also would like to ask  
18 each of you, if you feel that there is any basis upon which a  
19 supplemental briefing would be helpful to this Court, based  
20 upon what has been discussed today. Please think long and hard  
21 about that, because we've killed a lot of trees here, and so we  
22 just -- we really want to know, you know, if you think it is  
23 something that would be beneficial to the Court. All right.

24 So let me begin with hearing from Plaintiffs'  
25 counsel, and I'm going to start with Mr. Campbell.

Motion hrg.

7/12/2021

1           **MR. CAMPBELL:** So I understand, your Honor, this is  
2 the Defendants' motion but you're asking me to go first.

3           **THE COURT:** Yeah, I am.

4           **MR. CAMPBELL:** I'm prepared to do so.

5           **THE COURT:** I figured that you would.

6           **MR. CAMPBELL:** Thank you. The right to vote, quote,  
7 the right to vote is among the most sacred rights of our  
8 democracy, and, in turn, uniquely defines us as Americans.

9           Judge, I'm sure you like that, because you wrote  
10 that. That was the opening line of your 36-page opinion and  
11 order denying the motion for injunctive relief, and I  
12 appreciate the Court's point, but, respectfully, that statement  
13 stops short of capturing what actually uniquely defines us as  
14 Americans.

15           History shows us that the totalitarian regimes and  
16 authoritarian rulers gladly let their subjects vote. Nazi  
17 Germany had plebiscites. The Soviet Union held regular  
18 elections, and even Hugo Chavez was happy to let folks vote for  
19 him and touted himself as being popularly elected.

20           What separates our republic from the totalitarian and  
21 authoritarian regimes is our system of checks and balances  
22 created by the founders and preserved by generations. That  
23 guarantees each citizen a right to petition and redress  
24 grievances and to challenge to the judicial branch the  
25 executive's conduct of an election.

Motion hrg.

7/12/2021

1 To ensure that each of our votes count, every vote must be  
2 legally and properly counted. It is this system of voting,  
3 counting, and challenging that the public can draw confidence  
4 from, and they usually do.

5 This Court has recognized and articulated the importance  
6 of both capturing legal votes on a properly counting them.  
7 That's the *Stein V Thomas* case cited in our briefing, and I  
8 gave the cite earlier as well, where this Court said, "The  
9 fundamental right invoked by the Plaintiffs the right to vote  
10 and to have that vote conducted and counted accurately is the  
11 bedrock of our nation. Without elections that are conducted  
12 fairly and perceived to be fairly conducted, public confidence  
13 in our political institutions will swiftly erode."

14 This lawsuit was an opportunity to challenge whether it  
15 was fairly conducted and to have a decision from this Court on  
16 whether it was and then to move forward.

17 Twenty years ago in *Bush v Gore*, the United States Supreme  
18 court, for the first time in our nation's history, exercised  
19 its indispensable role in ensuring fair and accurate counts in  
20 the election of a president. The Court did not invent that  
21 power for itself. The power and authority to control the  
22 outcome is firmly rooted in the Constitution. It did, however  
23 for, the first time, use its power, and it did so all because  
24 one party petitioned for relief. The relief in 2000 in *Bush v*  
25 *Gore* was an order from the Court to the state of Florida to

Motion hrg.

7/12/2021

1 stop counting votes.

2 In its most straightforward terms, this lawsuit asks, and  
3 especially the injunctive relief asks that this Court order the  
4 State of Michigan, the Secretary of State, to start counting  
5 the votes and for the Governor to hold off announcing a winner  
6 until the court-ordered count was completed. Your order  
7 labeled the request to be "stunning in scope" or "breathtaking  
8 in its reach." That came earlier. I think Mr. Fink provided  
9 us that also.

10 Respectfully, securing the promise of the cherished right  
11 to vote by having your vote counted with only other legally  
12 cast votes should not be considered so extraordinary.  
13 Certainly, to my clients' clients, it was viewed as  
14 self-evident and fair. The suit and injunction were not  
15 designed to disenfranchise a single lawful vote, rather, they  
16 were filed to seek the relief promised in the Constitution,  
17 given in *Bush v Gore* and premised on the good faith desire of  
18 my clients and their clients.

19 This Court disagreed with the timing of the filing of this  
20 case. It was, however, filed as soon as it was capable of  
21 being filed.

22 There may be some additional briefing you'd like on that.

23 It was filed after the deadline in the state statutes, but  
24 it was largely filed as a federal claim and the due process  
25 grounds.

Motion hrg.

7/12/2021

1           This Court applied laches to the request for an  
2 injunction, but, as this Court knows, that is an affirmative  
3 defense and does not usually diminish the quality of the claim  
4 made. This Court found no standing, but, in doing so, adopted  
5 the dissent and not the majority from an Eighth Circuit Court  
6 of Appeals case in denying the injunctive relief. It cannot be  
7 that this Court would hold that lawyers and litigants will be  
8 sanctioned for essentially not knowing how another circuit's  
9 law would be interpreted before it.

10           The claims here failed to win the injunction. They failed  
11 before you, and neither the Sixth Circuit, nor the U.S. Supreme  
12 Court, disturbed your ruling. That is the law of this case,  
13 and my clients, the lawyers, all understand and respect that.  
14 This Court wrote eloquently, "The Plaintiffs' alleged injuries  
15 do not entitle them to seek their requested remedy, because the  
16 harm of having one's vote invalidated or diluted is not  
17 remedied by denying millions of others their right to vote."

18           That's Page 25 of your opinion.

19           This sentiment, and I think it's fair to describe it as  
20 that, because the Court doesn't rely on stare decisis. It  
21 doesn't cite a case for this point, can be read differently in  
22 the case law of the United States Supreme Court. Good lawyers,  
23 my lawyers, could easily read a different view in *Bush v Gore*,  
24 when the Court there said, "The right to vote is protected in  
25 more than the initial allocation of the franchise. Equal



Motion hrg.

7/12/2021

1 protection applies as well to the manner of its exercise.

2 Having once granted the right to vote on equal terms, the state  
3 may not later arbitrarily or disparagingly in treatment value  
4 one person's vote over that of another."

5 And that's 531 U.S. 98 at 104 and 105.

6 The Plaintiffs are electors and voters. Your ruling can  
7 be fairly read to say that diluting one vote might be okay or  
8 even some votes. This concept of one vote might cost others  
9 theirs. My clients and their clients read the precedent  
10 differently. That should not be sanctionable.

11 City of Detroit argues in their brief that the Plaintiffs  
12 bringing the action raised doubts in minds of millions of  
13 Americans about the legitimacy of the 2020 presidential  
14 election. So let's get this right, part of the executive is  
15 saying that court filing somehow create doubts. The fact is  
16 that folks doubted this election. It happened. Folks doubted  
17 the 2016 election. We saw in *Stein versus Thomas*. Folks  
18 doubted the 2000 election, *Bush v Gore*, and I grew up, as many  
19 ever us, did hearing the rumors, that were more than doubts,  
20 about the 1960 election.

21 Leaving aside that the doubts come from the way that the  
22 executive conducted its vote and gathered those votes for  
23 counting, Defendants simply have it wrong. This case was  
24 driven by doubts arising from the eyewitness accounts and the  
25 statistical evidence, and it was merely part of the necessary

Motion hrg.

7/12/2021

1 and proper process intended to settle such doubts.

2 They followed the precedent. They followed *Common Cause*  
3 *Georgia versus Kemp*, and they brought you statistical evidence  
4 and they brought you witness declarations, but, still, doubling  
5 down, the State says, in ECF 105, "The terrible byproduct of  
6 Plaintiffs and their counsel's efforts is reflected in January  
7 insurrection of our nation's capital." Civil complaints do  
8 not foment revolution. Bringing claims based on affidavits  
9 from those who were there and others who were able to study the  
10 available information does not provoke insurrection.

11 Dismissing eyewitnesses that the Defendants label, in  
12 their pleadings here, as uneducated and denying access to the  
13 courts to those same citizens who seek to have their petitions  
14 heard and grievances redressed is what is dangerous, and it is  
15 contrary to the promise and guarantees of our republic.

16 **THE COURT:** All right, Mr. Campbell. Thank you. Let  
17 me ask a question, sir: Is there anything that you think that  
18 you would like to submit? Do you think that there will be any  
19 benefit to a supplemental brief on behalf of Plaintiffs'  
20 counsel?

21 **MR. CAMPBELL:** Your Honor, yes is my answer to that.

22 **THE COURT:** What's the issue so I can see if I would  
23 agree with you, sir?

24 **MR. CAMPBELL:** Well, you have highlighted various  
25 portions of affidavits and asked them for context and for an

Motion hrg.

7/12/2021

1 understanding. You've essentially grabbed several, and, again  
2 I hope you don't find this as an unfair example, but it's my  
3 view, you've held us puzzle pieces, and you've asked us where  
4 does this fit? Where does this fit? I think we ought to have  
5 the opportunity to show you the cover of the box that shows  
6 where those pieces fit. I'm sure that would be helpful.

7 **THE COURT:** Okay. Let me say this. Let us continue.  
8 Mr. Buchanan is there anything, sir, you'd like to say on  
9 behalf your client, Ms. Newman? I understand, sir, your  
10 position that she did not have a lot of involvement in this  
11 matter.

12 **MR. BUCHANAN:** That's all I would have, your Honor.  
13 She didn't sign any pleadings. She never made an appearance.  
14 There was no intent for her. She was a contract lawyer, 1099  
15 employee basically, and her role was very limited, and although  
16 Mr. Fink pointed out he sent the motions for sanctions to  
17 Ms. Powell at that address, she never received those, and she  
18 was never given the opportunity, obviously, to make any  
19 decision of how to proceed or not proceed. I got into this  
20 case just recently because she just received notice of this  
21 hearing.

22 **THE COURT:** Let me ask you --

23 **MR. BUCHANAN:** So --

24 **THE COURT:** I'm sorry, go ahead.

25 **MR. BUCHANAN:** That's it. Her role was very limited.

Motion hrg.

7/12/2021

1           **THE COURT:** All right. Thank you, Mr. Buchanan.

2           Mr. Fink, let me ask you a quick question: Are you  
3 disputing notice requirements as relates to Mr. Buchanan's  
4 client?

5           **MR. DAVID FINK:** Absolutely, we sent the letter --

6           **THE COURT:** No, no, no, you don't have to. Thank you  
7 so much.

8           What I would like to do is give you, Mr. Fink, an  
9 opportunity to provide a supplemental brief on this whole issue  
10 of who knew -- you know, who received notice of your moving for  
11 sanctions, and I would give anyone who feels that they have not  
12 received the notice an opportunity to file a supplemental brief  
13 on that, all right, and we can talk about time frame. I don't  
14 want to be unfair.

15           **MR. CAMPBELL:** Your Honor, might I make a suggestion?

16           **MR. BUCHANAN:** I have one quick comment. I'm not  
17 disputing to Mr. Fink's assertion that he sent his motion to  
18 Sidney Powell's office. The thing is my client was working  
19 from home as a 1099 contract employee. So you know, as a legal  
20 matter, whether that constitutes notice, I don't know. I'm  
21 just saying that -- and I'm not questioning Mr. Fink's  
22 representation at all. I'm just saying that she never received  
23 them after that.

24           So she played -- had no role in like whether to go  
25 forward or not in this case, or, you know, the Safe Harbor

Motion hrg.

7/12/2021

1 thing, and, most importantly, your Honor, I'm emphasizing -- I  
2 don't know Mr. Fink's disputes this -- she worked five hours on  
3 the matter. She played a very limited role. So I don't think  
4 Rule 11 covers that level of involvement. Thank you.

5 **THE COURT:** Mr. Fink.

6 **MR. DAVID FINK:** Your Honor, we can file a brief --  
7 supplemental brief. It will just indicate what we did do. I  
8 believe that we used the address on the pleadings. We'll see.

9 **THE COURT:** Okay. So let me do this right. So, you,  
10 Mr. Fink, I am asking that you file a supplemental brief  
11 identifying those individuals who you believe have received  
12 notice of sanctions and then -- and the time frame in which  
13 those notices were -- that notice was provided, and then  
14 whoever is subject of that brief thing can also respond.

15 **MR. DAVID FINK:** Your Honor, it would be helpful, and  
16 I think probably save some paper and time for everybody, if we  
17 could just find out -- no argument is necessary, but which  
18 Plaintiffs' attorneys claim or believe they did not receive  
19 notice so we'll only address the ones that say they didn't get  
20 notice. Mr. Wood said something.

21 **THE COURT:** Right. Mr. Wood. So he's going to be  
22 able to -- and Mr. Campbell is representing Mr. Wood, correct?

23 **MR. WOOD:** Yes, your Honor.

24 **MR. CAMPBELL:** If anybody is capable of doing that,  
25 but, yes, Judge.

Motion hrg.

7/12/2021

1           **THE COURT:** Okay. All right.

2           **MR. WOOD:** Judge, what I would say is, based on the  
3 fact that I discern from today's hearing that my position may  
4 be somewhat unique to the others, I'd like to have an  
5 opportunity, and I will do this in conference with  
6 Mr. Campbell, and I may have to get an independent counsel to  
7 file formal documents and pleadings for me to seek a dismissal,  
8 based on lack of jurisdiction and lack of a factual basis upon  
9 which to bring a Rule 11 or a Section 1927 action against me.  
10 So I'd like to be able to address that.

11           I'd also like to be able to address this issue of  
12 notice. I've already indicated I did not receive it. So I'd  
13 like to have a couple of weeks, because if I have to get  
14 separate counsel, that will take sometime to get them up to  
15 speed. I would say this, that if you have all the Plaintiffs'  
16 lawyers here, and if you ask them whether I asked to provide  
17 substantive input into the pleadings, I think they'll tell you  
18 no; whether I actually provided, they'll tell you no; whether  
19 they asked me to, they'll tell you no; whether I had any  
20 involvement in preparing the affidavits --

21           **THE COURT:** I'm not going --

22           **MR. WOOD:** -- they'll say no.

23           **THE COURT:** Yeah, that's fine, Mr. Wood. I'm not  
24 going to do that. What I am going to do, sir --

25           **MR. WOOD:** If we don't have it here today, then I'm

Motion hrg.

7/12/2021

1 entitled to an evidentiary hearing and due process, because the  
2 evidence will show that there is no factual basis upon which  
3 this Court can sanction me --

4 **THE COURT:** I'm giving you an opportunity --

5 **MR. WOOD:** -- from an evidentiary standpoint. I  
6 haven't had an opportunity for an evidentiary hearing --

7 **THE COURT:** And the Court --

8 **MR. WOOD:** And I didn't have anything to do with the  
9 drafting of the pleading. I'm sorry.

10 **THE COURT:** Before I give you an opportunity for an  
11 evidentiary hearing, I don't know that I will be doing that, I  
12 would allow you an opportunity to file a brief stating your  
13 position, all right, and you know, because you're --

14 **MR. WOOD:** I'm just saying --

15 **THE COURT:** Because you are in a bit of unique  
16 position in that you might need to have separate counsel, I'm  
17 going to give you a little bit longer to submit, and I will  
18 give you -- I can't -- you know, I'll give you -- I'll give you  
19 two weeks to submit something to this Court setting forth your  
20 position, and we'll take it from there, all right?

21 **MR. WOOD:** Thank you, your Honor.

22 **THE COURT:** You're welcome, sir.

23 Let me go on to -- so, Mr. Fink, you're clear?  
24 You're going to go ahead -- yes, I would like for you to go  
25 ahead and -- you wanted me to just see who you needed to

Motion hrg.

7/12/2021

1 include in your supplemental briefing. So who, of the  
2 attorneys that are at this hearing, who, by hand show, who is  
3 contesting the receipt of notice?

4 And so we have Mr. Kleinhendler.

5 **MR. KLEINHENDLER:** Your Honor, I want to be clear,  
6 your Honor.

7 **THE COURT:** Yes, please.

8 **MR. KLEINHENDLER:** I am contesting receipt of notice,  
9 pursuant to Federal Rules of Civil Procedure 5, which is the  
10 service that is required for a Rule 11 notice. We did not  
11 receive, I don't believe, Rule 5 service, and none of us, at  
12 least I didn't, waive it. So I want to preserve that, your  
13 Honor, for the record.

14 **THE COURT:** All right. So you've heard that. Anyone  
15 else? Mr. Wood? Yes, Mr. Wood, we have you, sir.

16 Ms. Powell, you are also contesting notice?

17 Unmute, please.

18 **MS. POWELL:** Yes, your Honor, on the same basis as  
19 Mr. Kleinhendler.

20 **THE COURT:** Thank you.

21 **MR. DAVID FINK:** So --

22 **THE COURT:** And I'll let you ask a question. Let me  
23 just get the head count.

24 Mr. Johnson, you, too sir?

25 **MR. JOHNSON:** Yes, your Honor, and on the same



Motion hrg.

7/12/2021

1 grounds as Mr. Kleinhendler just asserted.

2 **THE COURT:** Go ahead, Mr. Fink.

3 **MR. DAVID FINK:** All I wanted to be clear about is  
4 are these attorneys saying they did not receive, by first class  
5 mail and/or e-mail, what we sent, or are they saying what they  
6 received was inadequate notice because they were entitled to  
7 some other type of service? That's important because that  
8 changes how we brief this. Apparently, Mr. Wood and Ms. Newman  
9 claim they had no idea because they didn't get actual notice,  
10 but I think Mr. Kleinhendler is saying that he didn't -- he  
11 wasn't satisfied with the form of the notice.

12 **THE COURT:** Mr. Kleinhendler?

13 **MR. KLEINHENDLER:** Yes, I received an e-mail, your  
14 Honor. I received the mailing, yes, of what they mailed, your  
15 Honor. In our opposition, we argue, and I don't want that to  
16 be waived by your questioning here, we argued that the Rule 11  
17 motion had other procedural defectiveness. For example, they  
18 bundled other arguments in the same motion. They served a  
19 notice without the brief that was ultimately filed --

20 **THE COURT:** We have Safe Harbor briefing already.

21 **MR. KLEINHENDLER:** Yes, yes. All I'm -- the point  
22 I'm trying to make here, your Honor, is I don't want to waive  
23 any of that Safe Harbor briefing by your questioning. I just  
24 want to raise the point that there was no, in my view, there  
25 was no Rule 5 service, which is required for a Rule 11 motion.

Motion hrg.

7/12/2021

1 That's it. But I did get the e-mail. I did get the first  
2 class mailing of what they mailed.

3 **THE COURT:** All right. There's no waiver here.  
4 You're not waiving anything.

5 All right. Ms. Powell?

6 **MS. POWELL:** Yes, your Honor. I simply can't verify  
7 actual notice today, but I will undertake the research and  
8 advise on that later.

9 **THE COURT:** All right. Would that involve a phone  
10 call to Mr. Fink or you would rather speak through your  
11 submission?

12 **MS. POWELL:** I'll speak through our submission.

13 **THE COURT:** Okay. All right. And, Mr. Johnson,  
14 you're taking the same position that Mr. Kleinhendler is  
15 taking; is that correct, sir?

16 **MR. JOHNSON:** Yes.

17 **THE COURT:** That you received it but it's -- it's not  
18 just the receipt of it that you're challenging, correct?

19 **MR. JOHNSON:** I received an e-mail. I can verify  
20 that. I don't know if I received the first class mail. So I  
21 guess I need to verify that as well but the -- you know, the  
22 service issue that he raised, yes, I'm making the same claim  
23 there.

24 **THE COURT:** Okay. All right. Clear, Mr. Fink?

25 **MR. DAVID FINK:** Yes, very. Thank you, your Honor.

Motion hrg.

7/12/2021

1           **THE COURT:** Thank you. All right. Before we go  
2 further to hear these kind of winding -- I'm sorry, closing  
3 remarks, Ms. Lambert, I'm going to allow you to submit two  
4 cases for me, if don't mind.

5           **MS. LAMBERT:** Sure.

6           **THE COURT:** That speak on the unbridled protection  
7 that the First Amendment offers to an attorney. So I'm looking  
8 for that.

9           **MS. LAMBERT:** Thank you, Judge. I'd also like the  
10 opportunity to prepare a supplemental brief regarding a number  
11 of issues that were addressed by the Court today. Today was  
12 not set for an evidentiary hearing of the witnesses, and I'd  
13 request one regarding these witnesses, as well as new witnesses  
14 with new evidence that support the pleadings, your Honor.

15           **THE COURT:** You can file that.

16           **MS. LAMBERT:** Thank you, Judge.

17           **MR. WOOD:** Judge, this is Lin Wood again. I hate to  
18 butt in again. I appreciate the two weeks. Could I indulge  
19 the Court to allow me to have two weeks from the receipt of  
20 transcript of the hearing today? Because if I do have to  
21 engage new counsel, I think, in fairness, they're going to have  
22 to review the transcript from today, as well as, obviously, the  
23 pleadings that have been filed --

24           **THE COURT:** I'm going to decline --

25           **MR. WOOD:** -- (indiscernible) from the date of the

Motion hrg.

7/12/2021

1 transcript --

2           **THE COURT:** Sure. Yeah, I'm going to decline that  
3 request. We need to kind -- we're going to take this step by  
4 step. I need to first see what it is that you're claiming, and  
5 I do not want to delay that aspect of it, because it's going to  
6 have implications for how quickly we can really just address  
7 the sanction motion. I would just ask, sir, that you work with  
8 what you have. I know -- you know, and reach out and try to  
9 obtain counsel, if in fact you feel that that's what is  
10 appropriate. Because I'm not going --

11           **MR. WOOD:** I --

12           **THE COURT:** Go ahead.

13           **MR. WOOD:** No, no. I'm just saying I would feel like  
14 if somebody came to me and said would you represent me in  
15 connection with this matter, they would first want to know what  
16 happened today, and so I'm just asking for the time to have the  
17 transcript to be available to someone that might be interested  
18 in looking at it, because, obviously, I don't want to jump in  
19 asking a lawyer to do something without knowing, you know,  
20 exactly what the status of the matter is, and, today, most of  
21 this would not address the issues that I believe were pertinent  
22 to my situation, but some parts of it would, and so that's the  
23 reason I ask for the request.

24           I don't know how long it takes to get the transcript.  
25 I certainly don't want an inordinate delay. That's why I was

Motion hrg.

7/12/2021

1 hoping we might just go through the lawyers today and verify I  
2 was not involved, but I'll do whatever your Honor wants to me  
3 to do. I'm just asking for a reasonable time.

4 **THE COURT:** Yeah, I'm going to give you the 14 days.  
5 Ms. Powell.

6 **MS. POWELL:** I believe all the lawyers need time to  
7 review the transcript and consult with our counsel before we  
8 know what supplemental briefing might be needed and  
9 appropriate.

10 **THE COURT:** I don't know if I really agrees with  
11 that. You're working through -- you all have retained counsel  
12 is that your position, Mr. Campbell? I think 14 days -- 14  
13 days for everybody, all right, and that would include -- we  
14 will try to do whatever we can to expedite the provision of the  
15 transcript, but I don't want that to be a delay. So everyone  
16 would have 14 days to submit supplemental briefing.

17 Now, I will tell you what I've done here is is that  
18 I'm still trying to limit what you will provide a supplemental  
19 briefing on. I don't need to be, you know, supplied with  
20 arguments that have already been made.

21 Ms. Powell, did you want to say something?

22 **MS. POWELL:** Yes, your Honor. We need to be able to  
23 consult with counsel after this hearing and the record of this  
24 hearing before we can properly provide supplemental briefing.

25 **THE COURT:** Fourteen days is out the gate. That's

Motion hrg.

7/12/2021

1 where I am right now, 14 days. If counsel feels that they need  
2 more time because of a delay -- not even a delay, but because  
3 of the amount of time it would take to prepare the transcript,  
4 I will consider it, but I urge you to do as much as you can  
5 without that transcript. So there we have it.

6 Who's next? Doesn't look like anybody.

7 All right. So we're going to go back to the order in  
8 which we were proceeding. So Mr. Buchanan has already spoken  
9 his concerns about his client. Is there anything else that you  
10 want to say?

11 **MR. BUCHANAN:** No, your Honor. Thank you very much.

12 **THE COURT:** All right. And Ms. Lambert Junttila, is  
13 there anything else you would like to say? I already asked for  
14 you to submit two cases, and, Madam, just, please, keep your  
15 remarks short. You all have had ample opportunity -- and I  
16 should say you have availed yourselves of the opportunities,  
17 you know, through briefing, and I really don't need a wrap up  
18 kind of closing remarks that rehashes your views.

19 Where is Miss Lambert Junttila? Where are you?

20 **MS. LAMBERT:** I'm here, your Honor.

21 **THE COURT:** There you are.

22 **MS. LAMBERT:** I didn't hear the Court's question.

23 **THE COURT:** My question is: Do you feel there's  
24 anything else that you need to provide to this Court in order  
25 to get me closer to making a decision, anything that you feel

Motion hrg.

7/12/2021

1 that there's a supplemental briefing --

2 **MS. LAMBERT:** I'm sorry, I thought the Court already  
3 ruled on that, and I apologize. I thought the Court ruled that  
4 I could file a supplemental brief regarding issues that were  
5 brought up today and the cases that the Court asked me about.

6 **THE COURT:** Okay. I'm going to limit -- I'm  
7 really -- I really feel it's in everyone's best interest, you  
8 know, to not go over the top, if you will, and that's really  
9 not a legal term, but I don't need -- can we agree on a limit?

10 **MS. LAMBERT:** Your Honor, would you like a page  
11 limit?

12 **THE COURT:** Yes.

13 **MS. LAMBERT:** Okay. What page limit would the Court  
14 like me to do?

15 **THE COURT:** Ten, no more than ten.

16 **MS. LAMBERT:** Thank you, Judge.

17 **THE COURT:** Okay. Good. For everyone. All right.

18 **MR. WOOD:** What if we have an affidavit, that would  
19 not be over the 10-page limit, would it?

20 **THE COURT:** You can attach an affidavit. That would  
21 not count. That would not go toward the page limit.

22 Yes, who is speaking? Mr. Campbell?

23 **MR. CAMPBELL:** Don Campbell, yes. On your proposed  
24 10-page limit, your Honor. You addressed more than 10 items  
25 and 10 affidavits that, respectfully, I'd ask to at least have

Motion hrg.

7/12/2021

1 a 25-page limit.

2 **THE COURT:** You know what, I'm going to give you the  
3 10-page limit. You start writing and then you come back and  
4 ask me if you think you need more, really. That's my decision,  
5 all right.

6 **MR. CAMPBELL:** Thank you, your Honor.

7 **THE COURT:** All right. Now, let me -- is  
8 Ms. Gurewitz still on the line?

9 **MS. GUREWITZ:** Yes, your Honor, I am.

10 **THE COURT:** Ms. Gurewitz, would you like to be heard?

11 **MS. GUREWITZ:** Yes, I would like to say on behalf of  
12 the MDP and the DNC, Democratic National Committee, that the  
13 briefs filed by Mr. Fink and the arguments made by him, as well  
14 as the briefs filed by the attorney general on behalf of  
15 Governor Whitmer, more than demonstrate that sanctions are  
16 warranted here, and we would request that you order sanctions  
17 against all of the attorneys who have failed to exercise their  
18 responsibility.

19 **THE COURT:** Thank you, Miss Gurewitz.

20 Mr. Paterson, are you still on the line, sir? It  
21 seems to be that you are. Would you like to say anything in  
22 closing?

23 **MR. PATERSON:** I am, your Honor.

24 **THE COURT:** Would you like to say anything in  
25 closing?



Motion hrg.

7/12/2021

1           **MR. PATERSON:** I would, just briefly. Mr. Campbell  
2 indicated that they did not intend to foment revolution or  
3 insurrection by this filing but merely foment partisan  
4 advantage I presume, and I think that has been achieved by the  
5 use of the 982 pages of affidavits from a federal court filing.

6           It's important, it's important that it was filed in a  
7 federal court and under the judicial process. That's how it  
8 will be cherry picked. The 982 pages will be interpreted  
9 throughout as a partisan advantage and cherry picking of each  
10 particular or any particular fact will be utilized for that  
11 partisan advantage. To me, that is the abuse that this filing  
12 has caused. It is the abuse of the judicial system, and it  
13 seems to me that the grant of a motion for sanctions is  
14 critical to reestablishing and minimizing the damage this  
15 filing has done and the use of the judicial system in  
16 attempting to support a partisan advantage. So I would ask  
17 that the Court grant this motion.

18           **THE COURT:** Thank you, Mr. Paterson.

19           Mr. Fink.

20           **MR. DAVID FINK:** Thank you, your Honor. Before I  
21 begin, I'd like to say, just broadly, a quick overview of what  
22 I would like to do. I would like to respond. I will respond  
23 to what Mr. Wood indicated, as the Court recall, we said we'll  
24 save that to the end. I will respond to what Mr. Wood  
25 indicated regarding his nonparticipation. I also do want to

Motion hrg.

7/12/2021

1 address Mr. Rohl's affidavit, because that's something that we  
2 have never briefed or discussed, and, then, finally I'll  
3 conclude, but before I do that --

4 **THE COURT:** Before you -- before you begin, I have a  
5 question for you regarding Mr. Wood's -- his position. Is it  
6 necessary, do you think, sir, to take care of that now, given  
7 you're going to be the supplemental briefing on this? Is this  
8 dealing with participation in the case?

9 **MR. DAVID FINK:** Yes, I can limit it to a very few  
10 words.

11 **THE COURT:** All right.

12 **MR. DAVID FINK:** I'll limit it to a very few words.  
13 I appreciate that, your Honor.

14 I'm not certain what our supplemental briefing will  
15 involve. Are we going to be -- will we be responding -- of  
16 course I'm going to brief on the notice issue. We'll do that  
17 up front. We'll do that quickly. Then the question is I'm  
18 assuming we respond to their supplemental briefing?

19 **THE COURT:** If you need to, yep, you can.

20 **MR. DAVID FINK:** Okay. What I'm suggesting, though,  
21 is maybe that's the time that I address in writing the issues  
22 regarding Mr. Wood. I'm trying to avoid creating confusion for  
23 the Court.

24 **THE COURT:** Good. I'm going to issue an order after  
25 this hearing is done, and it will be laid out in terms of time

Motion hrg.

7/12/2021

1 frames and exactly how I want you all to proceed, but go ahead.

2 **MR. DAVID FINK:** Thank you, your Honor. Your Honor,  
3 at the outset, before I speak on the substance that we talked  
4 about, there's one personal matter that I want to address.

5 **THE COURT:** Go ahead.

6 **MR. DAVID FINK:** And that is with the Court's  
7 indulgence -- well, this is important, your Honor, if I may.  
8 With the Court's indulgence, I want to take a moment to honor  
9 the memory of my late partner, our late partner, Darryl  
10 Bressack. As some parties here are aware and some are not,  
11 Darryl Bressack had pulled the laboring oar on most of the  
12 briefs filed in this case, and, tragically, Darryl died  
13 suddenly from a heart attack on the night of January 24th,  
14 right in the middle of these proceedings. In fact, we had a  
15 reply brief we filed on January 26.

16 Darryl was an attorney who took his oath very  
17 seriously. He was a brilliant, dedicated, passionate, and  
18 ethical lawyer, and he cared so deeply about the work that he  
19 did. I miss him for many reasons, but today he's in all of our  
20 hearts in this office and at the city, because we know how  
21 deeply he felt about this matter, and I only wish that he could  
22 be here today, and I appreciate the Court's indulgence so I  
23 could say that. It's been on my mind for days.

24 **THE COURT:** Certainly.

25 **MR. DAVID FINK:** Thank you, your Honor. Now, I will

Motion hrg.

7/12/2021

1 limit my response regarding Mr. Wood. The reason I need to  
2 talk about it a little bit is it ties into the Rohl affidavit,  
3 and that's this, Mr. Rohl filed an affidavit, and when I say he  
4 filed the affidavit, he prepared an affidavit. He signed the  
5 affidavit. It was filed in this case on behalf of all the  
6 Plaintiffs, and it was filed by Ms. Junttila.

7 Now, in that affidavit, he tells us, point blank,  
8 that the litigation was in, in his words, spearheaded by Sidney  
9 Powell and Lin Wood, and while those are his words -- I'm  
10 sorry.

11 **THE COURT:** I'm sorry, I was telling Mr. Campbell  
12 that I would not allow him to speak until you're done.

13 **MR. DAVID FINK:** Thank you. Now, while those are  
14 Mr. Rohl's words, his words were submitted to the Court by  
15 Ms. Lambert Junttila, and none of the lawyers, whose names  
16 appear on these pleadings, contested anything in his affidavit.  
17 Now, Mr. Rohl, as of now, is represented by the same lawyer who  
18 represents Lin Wood, who represents Sidney Powell, who  
19 represents all of the Plaintiffs' counsel. I think we have to  
20 assume that when something is filed, a representation is made  
21 by one of the attorneys in this case, we have a right to  
22 believe that we can rely on that.

23 What's happened here is -- and just to be clear, I  
24 understand Mr. Campbell is an expert in ethics. So he  
25 certainly would not represent Mr. Rohl and Ms. Powell and

Motion hrg.

7/12/2021

1 Mr. Wood if their positions and interests were adverse, and  
2 this didn't just -- representation didn't start during this  
3 hearing today. They filed their appearance a little while ago,  
4 and the responses on the motions were filed in February. We've  
5 been following this case for months. They've been following it  
6 for months, and nobody's corrected this.

7 Now, what's happened in this case is very  
8 frustrating, and that is the Plaintiffs have played a very  
9 strange game of passing the buck. Mr. Rohl and Mr. Junttila  
10 and Mr. Hagerstrom say they're not responsible because someone  
11 else prepared the documents for filing.

12 **THE COURT:** Now, Mr. Fink, let me stop you. I  
13 appreciate your advocacy here, but I mean you're going to have  
14 an opportunity -- I'm giving you that opportunity, sir, to  
15 bring it up in the brief, and the reason that I'm stopping you  
16 is because it's going to be difficult for your statements to be  
17 said and me not give the other attorneys an opportunity to  
18 respond, and I really want to be fair, and so I would just ask  
19 you to wrap that aspect of your remarks up, sir.

20 **MR. DAVID FINK:** Okay. We can -- regarding the Rohl  
21 affidavit, without advocating, I would just point out that in  
22 that affidavit, he does indicate that he was to hold the fort  
23 while -- until a pro hoc vice application was accepted, and of  
24 course was never filed because it doesn't apply.

25 I will move beyond that and we'll leave that for

Motion hrg.

7/12/2021

1 briefing later, and, instead, I'd like to conclude more  
2 broadly.

3 **THE COURT:** Thank you.

4 **MR. DAVID FINK:** And that is this: Today, your  
5 Honor, we are all grateful that the Court is holding this  
6 hearing, because today is a very important day. It's been six  
7 months -- a little over six months since our nation faced what  
8 threatened to be the greatest constitutional crisis since the  
9 Civil War. On January 6th, that insurrection, which occurred  
10 in the Capitol, which horrified most of us, maybe not everyone  
11 on this screen, but most of us when we watched it, and that  
12 insurrection can be directly, directly linked to the lies that  
13 were spread by the attorneys in this litigation. Shielded --

14 **MR. WOOD:** Your Honor, I object --

15 **MR. DAVID FINK:** Shielded by --

16 **MR. WOOD:** Your Honor, I object to that type of  
17 speculation.

18 **THE COURT:** Okay.

19 **MR. DAVID FINK:** I since suggested --

20 **THE COURT:** Hang on --

21 **MR. WOOD:** -- person who doesn't want to be accused  
22 unfairly.

23 **THE COURT:** Hang on.

24 **MR. DAVID FINK:** I haven't even stated your name yet,  
25 but I will.

Motion hrg.

7/12/2021

1 I'm sorry, your Honor.

2 (Indiscernible cross-talk.)

3 **THE COURT:** Mr. Wood.

4 (Indiscernible cross-talk.)

5 **THE COURT:** Mr. Wood, I ask --

6 (Indiscernible cross-talk.)

7 **THE COURT:** I ask for silence, Mr. Wood.

8 Mr. Fink, finish up, please.

9 **MR. WOOD:** I object (indiscernible) --

10 **THE COURT:** Duly noted.

11 **MR. DAVID FINK:** These attorneys, shielded by --

12 **THE CLERK:** Judge, I'm sorry to interrupt. The court  
13 reporter is trying to get your attention.

14 **THE COURT:** Okay. I'm sorry, Ms. Wabeke, where are  
15 you? There you are.

16 **COURT REPORTER:** So counsel, we've been going since  
17 8:30.

18 **THE COURT:** Oh, my goodness.

19 **COURT REPORTER:** With a 20-minute break, and you're  
20 all interrupting each other, and that's the kind of record you  
21 want for a case like this, with interruptions, dashes, and  
22 unintelligible? So, please, can we finish up, or I will have  
23 to get someone else to finish up this last little bit.

24 **THE COURT:** Oh, Ms. Wabeke, let me -- let me  
25 apologize and say that I certainly don't want to -- I know that

Motion hrg.

7/12/2021

1 you're under a great deal of stress, and, please, always know  
2 that you just need to tell me that you need to take a break.  
3 You know that.

4 **COURT REPORTER:** Yes, Judge.

5 **THE COURT:** Mr. Wood, and everybody else on this  
6 call, I am cautioning you, do not speak when another attorney  
7 is -- another co-counsel, another brother counsel, sister  
8 counsel is speaking -- you know, in the Eastern District of  
9 Michigan, we have civility principles -- no, no comment,  
10 Mr. Campbell.

11 Mr. Fink, you may proceed, and I'm looking for you,  
12 sir, to wrap it up.

13 **MR. DAVID FINK:** I'm sorry.

14 **THE COURT:** Do you have water there you can drink  
15 because you sound -- all right.

16 **MR. DAVID FINK:** That's okay, but thank you very  
17 much.

18 The reason we brought this proceeding, the reason  
19 that we brought this motion, is that these attorneys wielded  
20 the weapons afforded to them by the privilege of being admitted  
21 to the bar, and they wielded these weapons in this case to  
22 abuse the processes of this Court in a devastating way.

23 Earlier today, Mr. Campbell was saying -- talking  
24 about what this complaint did and didn't do, what it was and  
25 wasn't intended to do. To be clear, the complaint was clear.



Motion hrg.

7/12/2021

1 It explicitly said that it sought -- they sought in the  
2 complaint and order requiring Governor Whitmer to transmit  
3 certified election results that states that President Donald  
4 Trump is the winner of the election. That's what they were  
5 seeking.

6 Now, that said, when we filed our Rule 11 sanctions  
7 motion -- yes, we definitely talked about all the  
8 misrepresentations, the failures to do due diligence, the  
9 inadequacies of the expert reports, but what we focused on was  
10 we filed this motion on January 5th, one day before the civil  
11 insurrection in Washington.

12 In our motion, we explicitly reported to the Court,  
13 not just what we said were lies being spread in the pleadings  
14 in this case, but the vile and dangerous messages that were  
15 being broadcast by the attorneys in this case on social media.  
16 We raised the critical question. We said, "Why was this  
17 complaint not dismissed or amended by the Plaintiffs once this  
18 became moot?" And we said, "In light of the Court's decisive  
19 ruling on December 7th, what purpose could this lawsuit serve?"

20 We answered that question, and with the Court's  
21 indulgence, I'm going to mostly paraphrase, quickly read from  
22 one part of our complaint -- our motion, because this was filed  
23 on January 5th, and on January 5th we wrote, "Initially this  
24 was one of several lawsuits used to support calls for state  
25 legislatures to reject the will of the voters. When the

Motion hrg.

7/12/2021

1 Michigan legislature did not attempt to select a slate of  
2 electors inconsistent with the will of the voters, this lawsuit  
3 took on a different meaning." On January 5th, we wrote this.

4 It was then used to support arguments for the United  
5 States Congress to reject the Michigan electors on January 6th,  
6 2021. We then went on to say, "And most ominously, these  
7 claims are referenced and repeated by L. Lin Wood and others in  
8 support of a call for martial law." That was before the  
9 violence occurred.

10 Now, we went on to say, "The continued pendency of  
11 this lawsuit accomplishes exactly the harm addressed by this  
12 Court in its December 7th, 2021 opinion and order by  
13 undermining people's faith in the democratic process and the  
14 trust in our government. This lawsuit has been used to  
15 delegitimize the Presidency of Joe Biden." One day later that  
16 ominous prophecy became true.

17 To a great extent, because of the lies told in this  
18 lawsuit, even today, millions of Americans believe the big lie  
19 the big lie that Joe Biden didn't win this election, that  
20 somehow the election was stolen, and there's no evidence to  
21 support that, but they don't know that, because people think  
22 the judicial process has some fairness in it. People think if  
23 lawyers say it in court, it must be true. Even Mr. Campbell  
24 said, if somebody said it in court, we should be able to repeat  
25 it, again, because, after all, it was said in court. So we can

Motion hrg.

7/12/2021

1 repeat it or at least present it to a court. So we can repeat  
2 it.

3 Now, nobody can undo what happened that day, but  
4 because the lies spread in this courtroom, not only did people  
5 die on January 6th, but many people throughout the world, many  
6 governments and people throughout the world and the United  
7 States came to doubt the strength of our democratic  
8 institutions in this country about. Now, we can't undo what  
9 happened on January 6th, but this Court can do something to let  
10 the world know that attorneys in this country are not free to  
11 use our courts to tell lies.

12 So today we ask this Court to issue the strongest  
13 possible sanctions, and, to be specific, we seek the following  
14 meaningful relief:

15 One, the taxpayers should be reimbursed for the  
16 extraordinary expense that was paid to defend this litigation  
17 both by the State and by the City.

18 These lawyers should be punished for their behavior.  
19 I use that word advisedly. Their behavior was sanctionable,  
20 and they should be punished.

21 Three, whatever sanction this Court imposes should be  
22 strong enough and significant enough to deter future  
23 misconduct, assuming the Court comes to the conclusion that we  
24 believe it will, that there was misconduct;

25 And, four, these attorneys should never again be

Motion hrg.

7/12/2021

1 allowed to appear in a court in our jurisdiction or, frankly,  
2 anywhere else, and because of that, because of the way these  
3 lawyers have dishonored our profession, because of the way that  
4 these lawyers have taken advantage of this Court and this  
5 courtroom, we believe that the most important sanction is for  
6 this Court to refer all of these attorneys, first, to their own  
7 state bar associations, where investigations should be  
8 conducted and proper disciplinary proceedings should occur, but  
9 just as important, if not more important, we ask this Court  
10 refer to the Chief Judge of the Eastern District of Michigan a  
11 recommendation that these attorneys be barred from practicing  
12 in this district ever again, and that applies to all of the  
13 attorneys here.

14 Your Honor, I may have gone a little too long on the  
15 end, but I really appreciate it. It's been a very long day and  
16 we really appreciate it.

17 **THE COURT:** It has been. Thank you, Mr. Fink, and  
18 I'm going to now hear from Ms. Meingast.

19 **MR. WOOD:** Your Honor, may I?

20 **THE COURT:** No, no.

21 **MR. WOOD:** This is Mr. Wood. He mentioned my name  
22 several times. May I respond?

23 **THE COURT:** Excuse me, Mr. Wood. Let me stop you.  
24 Mr. Fink -- I'm not going to allow you an opportunity to  
25 respond to Mr. Fink's remarks. We're moving on to --

Motion hrg.

7/12/2021

1           **MR. WOOD:** Are you silencing me?

2           **THE COURT:** Excuse me?

3           **MR. WOOD:** I'm sorry. He referred specifically to  
4 me.

5           **THE COURT:** I do understand that.

6           **MR. WOOD:** I feel like I'm entitled to due process to  
7 respond.

8           **THE COURT:** No, you're not. I asked. I gave  
9 everyone an opportunity --

10           **MR. WOOD:** So I'm being denied a response? I think  
11 the record shows --

12           **THE COURT:** Mr. Wood.

13           **MR. WOOD:** I think the record shows --

14           **THE COURT:** Mr. Wood.

15           **MR. WOOD:** (Indiscernible.)

16           **THE COURT:** Mr. Wood.

17           **MR. WOOD:** (Indiscernible.)

18           **THE COURT:** Mr. Wood, this is not a debate.

19           **MR. WOOD:** I'm not debating you, I said --

20           **THE COURT:** Listen, let me warn you right now. I am  
21 not granting your request --

22           **MR. WOOD:** I'm not debating you --

23           **THE COURT:** Listen, let me warn you right now. I am  
24 not granting your request to respond to what Mr. Fink said. I  
25 am moving on, and I will now hear from Ms. Meingast.

Motion hrg.

7/12/2021

1 Madam, proceed.

2 **MS. MEINGAST:** Thank you, your Honor, Heather  
3 Meingast, on behalf of Governor Whitmer and Secretary Benson.

4 Just briefly, your Honor, because it's clear we've  
5 all had a long day. I appreciate the Court's time and  
6 attention to these motions. I echo many of the comments that  
7 Counsel Fink said. You know, as the Court knows we moved for  
8 sanctions against Ms. Powell, Mr. Rohl, Mr. Hagerstrom,  
9 Ms. Junttila Lambert, here Junttila Lambert so we've done a  
10 segment.

11 And, as the Court knows, our motion is brought under  
12 Section 1927 and the Court's inherent authority. You know, I  
13 think we've -- nothing today that we've heard today from  
14 Plaintiffs has changed the arguments that we've made in our  
15 brief that we've demonstrated that sanctions are warranted  
16 under Section 1927 here.

17 It's plain that Plaintiffs multiplied the case far  
18 beyond that when it was moot and should have been dismissed, as  
19 we've laid out in our briefing. They had really no response  
20 for that, this made-up idea that somehow their case was somehow  
21 reinvigorated on December 14th, and we've also asked,  
22 alternatively, for sanctions under this Court's inherent  
23 authority, and part of that is showing improper purpose for  
24 this litigation. I think that's been clearly demonstrated  
25 to -- our arguments, by Mr. Fink, and through our briefing,

Motion hrg.

7/12/2021

1 and, so with that, we would respectfully request that the Court  
2 grant our motion for sanctions as we've written it.

3 **THE COURT:** All right. Ms. Meingast, thank you.

4 Counsel, I want to thank you all for being here  
5 today. This was very long, but it was all very necessary.  
6 This Court will be issuing an opinion and order, but, in the  
7 interim, I will be issuing an order that captures the tasks, if  
8 you will, the opportunities, if you will, that the Court is  
9 giving counsel to address the issues that we've discussed here  
10 today. I will take -- Ms. Powell, what is your question?

11 Unmute.

12 **MS. POWELL:** Yes, your Honor. I would like to speak  
13 to all of these issues and reiterate the points of our  
14 briefing. We're not waiving anything. We object to virtually  
15 everything Mr. Fink has said. I have practiced law for 43  
16 years and never witnessed a proceeding like this, including  
17 representing attorneys in sanctions proceedings themselves. I  
18 take full responsibility myself for the pleadings in this case.  
19 Ms. Newman, Mr. Wood, Mr. Johnson, and local counsel had no  
20 role whatsoever in the drafting and content of these  
21 complaints. It was my responsibility and Mr. Kleinhendler's,  
22 not theirs.

23 The affidavits in support of the complaint are valid.  
24 Were we to have an evidentiary hearing, we would produce the  
25 witnesses to testify to those affidavits. This is not the kind

Motion hrg.

7/12/2021

1 of proceeding in which the affidavits can be challenged. They  
2 weren't even required to be attached to the complaint. The  
3 very fact that we attached 960 pages of affidavits reflect how  
4 seriously we took this matter, how concerned we were about the  
5 constitutional issues that we raised on behalf of electors, who  
6 are, themselves, mentioned in the Constitution.

7 We had a legal obligation to the country and to the  
8 electors to raise these issues. It is the duty of lawyers and  
9 the highest tradition of the practice of law to raise difficult  
10 and even unpopular issues. The fact that there may have been  
11 even adverse precedent against us does not change that fact.  
12 Were that true, there would not have been a decision called  
13 *Brown versus the Board of Education*.

14 We have practiced law with the highest standards. We  
15 would file the same complaints again. We welcome an  
16 opportunity to actually prove our case. No court has ever  
17 given us that opportunity. Instead, we are met with  
18 proceedings like this brought by Mr. Fink and others, who are  
19 themselves the ones who have abused the process for political  
20 gamesmanship and their political purposes, and this is one of  
21 the proceedings that leaves the American public with no  
22 confidence either in our election system or in our judicial  
23 system.

24 **THE COURT:** All right. Thank you for those remarks.

25 As the Court has indicated, I will be following up



Motion hrg.

7/12/2021

1 with an opinion and order a little bit later and, in the  
2 interim, as I said, I will issue an order referencing  
3 supplemental briefings and time frames.

4 I want to thank, once again, counsel for appearing  
5 today. It has been a long day. Again, it has been a necessary  
6 day.

7 Mr. Flanigan.

8 **THE CLERK:** Thank you all. Court is adjourned.

9 (Proceedings concluded 2:32 p.m.)

10 - - -

11 **C E R T I F I C A T I O N**

12 I, Andrea E. Wabeke, official court reporter for the  
13 United States District court, Eastern District of Michigan,  
14 Southern Division, appointed pursuant to the provisions of  
15 Title 28, United States Code, Section 753, do hereby certify  
16 that the foregoing is a correct transcript of the proceedings  
17 in the above-entitled cause on the date hereinbefore set forth.  
18 I do further certify that the foregoing transcript has been  
19 prepared by me or under my direction.

20

21 /s/Andrea E. Wabeke

July 14, 2021

22 Official court Reporter  
23 RMR, CRR, CSR

Date

24 - - -

25