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CIVIL PROCEDURE

FALL TERM 2022

Published in the United States of America by
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Source code
https://github.com/EricMFink/CivProCasebook

Version 1.0, March 2022

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King v. Whitmer, No. 20-13134 (E.D. Mich. Aug. 25, 2021)

Opinion and Order

LINDA V. PARKER, District Judge.

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

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

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

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

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

The attorneys who filed the instant lawsuit abused the well-established rules applicable to the litigation process by proffering claims not backed by law; proffering claims not backed by evidence (but instead, speculation, conjecture, and unwarranted suspicion); proffering factual allegations and claims without engaging in the

required prefiling inquiry; and dragging out these proceedings even after they acknowledged that it was too late to attain the relief sought.

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

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

Indeed, attorneys take an oath to uphold and honor our legal system. The sanctity of both the courtroom and the litigation process are preserved only when attorneys adhere to this oath and follow the rules, and only when courts impose sanctions when attorneys do not. And despite the haze of confusion, commotion, and chaos counsel intentionally attempted to create by filing this lawsuit, one thing is perfectly clear: Plaintiffs' attorneys have scorned their oath, flouted the rules, and attempted to undermine the integrity of the judiciary along the way.[1] As such, the Court is duty-bound to grant the motions for sanctions filed by Defendants and Intervenor-Defendants and is imposing sanctions pursuant to Rule 11 of the Federal Rules of Civil Procedure […].

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

I. Procedural History

On November 3, 2020, a record 5.5 million Michigan residents voted in the presidential election, resulting in then-Former Vice-President Joseph R. Biden, Jr. securing over 150,000 more votes than then-President Donald J. Trump. By the following evening, President Biden had been declared the winner in the State. Even though Michigan law establishes an extensive procedure for challenging elections,Plaintiffs did not avail themselves of those procedures, as they conceded at the July 12, 2021 motion hearing before this Court

Instead, at 11:48 p.m. on November 25, 2020—the eve of the Thanksgiving holiday—Plaintiffs (registered Michigan voters and nominees of the Republican Party to be presidential electors on behalf of the State) filed the current lawsuit against Michigan Governor Gretchen Whitmer, Michigan Secretary of State Jocelyn Benson, and the Michigan Board of State Canvassers. The following lawyers electronically signed the pleading: Sidney Powell, Scott Hagerstrom, and Gregory J. Rohl. The Complaint listed the following attorneys as "Of Counsel": Emily P. Newman, Julia Z. Haller, L. Lin Wood, and Howard Klein-

hendler.

On November 29, a Sunday, Plaintiffs filed, *inter alia,* an Amended Complaint and an "Emergency Motion for Declaratory, Emergency, and Permanent Injunctive Relief and Memorandum in Support Thereof" ("Motion for Injunctive Relief")). The same attorneys who electronically signed or were listed as "Of Counsel" on the initial complaint signed or were listed on the amended pleading. The amended pleading also listed Brandon Johnson as additional "Of Counsel."

In their Amended Complaint, Plaintiffs alleged three claims pursuant to 42 U.S.C. § 1983: violations of (Count I) the Elections and Electors Clauses; (Count II) the Fourteenth Amendment Equal Protection Clause; and (Count III) the Fourteenth Amendment Due Process Clause. Under Count IV, Plaintiffs asserted violations of the Michigan Election Code. Underlying Plaintiffs' claims were their contentions that Defendants (i) "failed to administer the November 3, 2020 election in compliance with the manner prescribed by the Michigan Legislature in the Michigan Election Code, and (ii)"committed a scheme and artifice to fraudulently and illegally manipulate the vote count to make certain the election of Joe Biden as President of the United States." Plaintiffs asserted that their claims were supported by "the affidavits of dozens of eyewitnesses and the statistical anomalies and mathematical impossibilities detailed in the affidavits of expert witnesses." Plaintiffs attached hundreds of pages as exhibits to their pleadings, some of which included affidavits from individuals and reports from purported experts. Most of these affidavits had been submitted by different lawyers in prior Michigan lawsuits challenging the 2020 presidential election. […] Plaintiffs cited to these materials in support of the factual allegations in their Amended Complaint and Motion for Injunctive Relief.

Plaintiffs asked the Court to, *inter alia,* decertify the election results and order Defendants "to transmit certified election results that state that President Donald Trump is the winner of the election." Plaintiffs maintained that this Court had to issue this relief by December 8, 2020, because, on that date, the results of the election would be considered conclusive.

By December 1, motions to intervene had been filed by the City of Detroit ("City") Detroit resident and Michigan voter Robert Davis and the Democratic National Committee and Michigan Democratic Party ("DNC/MDP"). As of that date, however, Plaintiffs had not yet served Defendants with the pleadings or the Motion for Injunctive Relief. Thus, on December 1, the Court entered a text-only order to hasten Plaintiffs' actions to bring Defendants into the case and enable the Court to address Plaintiffs' pending motions. Plaintiffs served De-

fendants on December 1 and the Court thereafter granted the motions to intervene and entered an expedited briefing schedule with respect to Plaintiffs' Motion for Injunctive Relief.

On December 7, the Court issued an opinion and order denying Plaintiffs' motion and thereby declining to grant Plaintiffs the relief they wanted, which the Court noted was "stunning in its scope and breathtaking in its reach" as it sought to "disenfranchise the votes of the more than 5.5 million Michigan citizens who. participat[ed] in the 2020 General Election." The Court concluded that Plaintiffs' lawsuit was subject to dismissal based on any one of several legal theories […]. But the Court also concluded that Plaintiffs were not likely to succeed on the merits of their claims.

As to Plaintiffs' claim that Defendants violated the Elections and Electors Clauses by deviating from the requirements of the Michigan Election Code, the Court pointed out that Plaintiffs failed to "explain how or why such violations of state election procedures automatically amount to violations of the clauses"., and case law did not support Plaintiffs' attempt to expand the Constitution that far. Thus, the Court found, Plaintiffs' Elections and Electors Clauses claim was "in fact [a] state law claim[] disguised as [a] federal claim.". With respect to Plaintiffs' attempt to establish an equal protection claim based on the theory that Defendants engaged in tactics to, among other things, switch votes for Former President Trump to votes for President Biden, the Court found the allegations to be based on nothing more than belief, conjecture, and speculation rather than fact. As to the due process claim, the Court noted that Plaintiffs abandoned it.

The day after the Court issued its decision, attorney Stefanie Lynn Junttila entered her appearance in this matter and filed a Notice of Appeal to the "Federal Circuit" on behalf of Plaintiffs. The notice was updated on December 10 to reflect the proper appellate court (namely, the Sixth Circuit Court of Appeals). On December 11, 2020, Sidney Powell, Stefanie Lynn Junttila, and Howard Kleinhendler filed a petition for writ of certiorari in the United States Supreme Court. In the petition, when urging immediate Supreme Court review, Plaintiffs wrote: "Once the electoral votes are cast [on December 14, 2020] subsequent relief would be pointless."

On December 15, 2020, the City served a letter ("Safe Harbor Letter") and motion ("Safe Harbor Motion") on Plaintiffs' attorneys, threatening sanctions pursuant to Rule 11 of the Federal Rules of Civil Procedure..) Specifically, counsel for the City sent the Safe Harbor Letter and Safe Harbor Motion via electronic mail and first-class mail to Sidney Powell, Gregory Rohl, Stefanie Lynn Junttila, Scott Hagerstrom,

L. Lin Wood, and Howard Kleinhendler.

[T]he Supreme Court did not rule on Plaintiffs' petition for writ of certiorari by December 14. […]

[O]n January 5, the City filed a Rule 11 "Motion for Sanctions, for Disciplinary Action, for Disbarment Referral and for Referral to State Bar Disciplinary Bodies." […]

On June 8, the Court scheduled a motions hearing for July 6 and, on June 17 ordered "[e]ach attorney whose name appears on any of Plaintiffs' pleadings or briefs" to "be present." On June 28, Plaintiffs sought to adjourn the hearing due to Junttila's planned vacation, a request the opposing parties (except Davis) did not contest. The Court granted the request and eventually the hearing was scheduled for July 12. Prior to the hearing, Plaintiffs' attorneys (except Junttila) retained counsel to represent them.

The Court conducted an almost six-hour virtual hearing on July 12. At the beginning of the hearing, the Court explained that each question was directed to all attorneys and, if no other attorney commented or added to the initial response to a question, the Court would find that all other attorneys agreed with the answer placed on the record. At the end of the hearing, the Court indicated that the attorneys could file supplemental briefs and supporting affidavits, and thereafter entered an order setting deadlines for those briefs. Supplemental briefs were subsequently filed as were responses thereto. No attorney filed an affidavit.

II. Sanctions Motions

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

[* * *]

B. City of Detroit

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

The City first argues that the Complaint was filed for an improper purpose, in contravention of Rule 11(b)(1). The City supports this assertion by pointing to (i) the hurdles that previously barred Plaintiffs' success, including Eleventh Amendment immunity, mootness, laches, standing, and the lack of merit as to the claims under the Constitution

and state statutory law; (ii) the lack of seriousness and awareness of deficiency evinced by Plaintiffs' failure to serve Defendants before this Court hastened them via its December 1, 2020 text-only order; and (iii) Plaintiffs' counsel's attempt "to use this Court's process to validate their conspiracy theories," "undermin[e] our democracy," and "overturn[] the will of the people" as evinced by statements made by some of Plaintiffs' attorneys.

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

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

> 1. Plaintiffs alleged that "Republican challengers were not given 'meaningful' access to the ballot processing and tabulation at the Absent Voter Counting Board located in Hall E of the TCF Center," knowing that the assertion lacked evidentiary support because it was rejected in *Costantino,* the state court case decided before Plaintiffs filed the Complaint;
>
> 2. Plaintiffs alleged that "Republican challengers were exclusively barred from entering the TCF Center," knowing that the assertion was rejected in *Costantino*;
>
> 3. Plaintiffs alleged that some absentee ballots were "pre-dated," knowing that the assertion was rejected in *Costantino*;
>
> 4. Plaintiffs alleged that ballots were "counted more than once," knowing that the assertion was both rejected in *Costantino* and "conclusively disproven by the Wayne County canvass";
>
> 5. Plaintiffs alleged that a "software weakness" in Dominion machines "upended Michigan's election results," knowing that the "two instances of errors [to which Plaintiffs cite]—one in Antrim County and one in Oakland County (Rochester Hills)"—did not constitute evidentiary support for the allegation;
>
> 6. Plaintiffs "intentional[ly] lie[d]" by filing the partially redacted declaration of "Spider"—who Plaintiffs identified as "a former US Military Intelligence expert" and "former electronic intelligence analyst with the 305th Military Intelligence"—which was signed by Joshua Merritt, who never completed the entry-level training course at the 305th Military Intelligence Battalion and is not an intelligence analyst;
>
> 7. Plaintiffs "intentional[ly] lie[d]" by filing the declaration of Russell James Ramsland, Jr., who claimed (i) that there were "reports of 6,000 votes in Antrim County that were switched from Donald Trump

> to Joe Biden *and were only discoverable through a hand counted manual recount,*" when "there were no hand recounts in Michigan as of that date"; (ii) "statistically improbable" voter turnouts, including a turnout of 781.91% in North Muskegon, where the publicly-available official results were known, as of election night, to be approximately 78%, and a turnout of 460.51% (or, elsewhere on the same chart, 90.59%) in Zeeland Charter Township, where it was already known to be 80%"; and (iii) that"'ballots can be run through again effectively duplicating them,'" when there were "safeguards in place to prevent double counting of ballots in this way"; and
>
> 9. Plaintiffs "intentional[ly] lie[d]" by filing the "analysis" of William M. Briggs, who relied on "survey" results posted in a tweet by Matt Braynard and the "survey" "misrepresents Michigan election laws"; "disregards standard analytical procedures"; contains "a baffling array of inconsistent numbers"; and includes "conclusions [that are] without merit".

The City maintains that monetary sanctions sufficient to deter future misconduct by counsel must include the amount counsel collected in their fundraising campaign to challenge the 2020 election, as well as the attorneys' fees Defendants incurred to defend against Plaintiffs' claims. The City also seeks an injunction barring Plaintiffs and their counsel from filing future actions in this District without obtaining approval from a judicial officer and asks the Court to refer counsel for discipline and disbarment.

[* * *]

III. Applicable Law

[* * *]

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

Rule 11(b) reads, in part:

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

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

Any sanction imposed pursuant to Rule 11 "must be limited to what suffices to deter repetition of the conduct or comparable conduct by others similarly situated." This is because "the central purpose of Rule 11 is to deter baseless filings in district court." Thus, "[e]ven if the careless litigant quickly dismisses the action, the harm triggering Rule 11's concerns has already occurred[,]" and "the imposition of such sanctions on abusive litigants is useful to deter such misconduct."

Rule 11 "de-emphasizes monetary sanctions and discourages direct payouts to the opposing party." "The amended rule recognizes, however, that 'under unusual circumstances deterrence may be ineffective unless the sanction not only requires the person violating the rule to make a monetary payment, but also directs that some or all of this payment be made to those injured by the violation.' " In addition, a variety of possible sanctions are available under Rule 11, including, but not limited to, "requiring participation in seminars or other education programs; ordering a fine payable to the court; [and] referring the matter to disciplinary authorities."

In the Sixth Circuit, the test for imposing Rule 11 sanctions is "whether the individual's conduct was objectively reasonable under the circumstances." To determine objective reasonableness, the court must ask "whether the position advanced by a party was supported by a reasonable inquiry into the applicable law and relevant facts." Whether a "reasonable inquiry" was conducted "is judged by objective norms of what reasonable attorneys would have done." "Courts must not 'use the wisdom of hindsight,' but must instead test what was reasonable to believe at the time the pleading, motion, or other paper was submitted."

This objective standard is "intended to eliminate any 'empty-head pure-heart' justification for patently frivolous arguments."

1. Signatures

Plaintiffs' lawyers argue that no attorney can be sanctioned whose name appeared only in typewritten form; that no attorney besides Plaintiffs' local counsel has appeared or signed a document filed in this matter; and that the Court lacks jurisdiction to sanction any attorney who

did not personally appear or sign a document filed in this matter. Yet, the local attorneys assert that, although they signed the filings, they did not prepare them and thus should not be responsible for them. As such, no attorney wants to take responsibility now that sanctions are sought for filing this lawsuit.

In this age of electronic filing, it is frivolous to argue that an electronic signature on a pleading or motion is insufficient to subject the attorney to the court's jurisdiction if the attorney violates the jurisdiction's rules of professional conduct or a federal rule or statute establishing the standards of practice. As set forth earlier, Sidney Powell, Scott Hagerstrom, and Gregory Rohl electronically signed—at least—the Complaint, Amended Complaint, and Motion for Injunctive Relief. The remaining attorneys, except Junttila, were listed as "Of Counsel" on one or more of the pleadings. The cases Plaintiffs cite to support their argument that non-signing attorneys cannot be sanctioned were decided before the 1993 amendments to Rule 11.

For purposes of Rule 11, an attorney who is knowingly listed as counsel on a pleading, written motion, or other paper "expressly authorize[d] the signing, filing, submitting or later advocating of the offending paper" and "shares responsibility with the signer, filer, submitter, or advocate." "The Court need not go through 'mental gymnastics,' as pre-1993 courts sometimes felt compelled to do, in order [to] hold [the attorney] to account under Rule 11."

Notably, because Rule 11 only requires a signature by "at least one attorney," documents are frequently presented to federal courts which list several attorneys as counsel but contain the signature of only one. Regardless, as amended in 1993, Rule 11 allows for sanctions "on any attorney. that violated the rule *or is responsible for* the violation." Moreover, Michigan Rule of Professional Conduct 8.5(a) reads: "A lawyer not admitted in this jurisdiction *is also subject to the disciplinary authority of this jurisdiction* if the lawyer provides or offers to provide any legal services in this jurisdiction."

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

2. L. Lin Wood

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

on the pleadings or briefs, Wood answered:

> I do not specifically recall being asked about the Michigan complaint, but I had generally indicated to Sidney Powell that if she needed a, quote/unquote, trial lawyer that I would certainly be willing and available to help her.[]
>
> In this case obviously my name was included. My experience or my skills apparently were never needed so I didn't have any involvement with it.
>
> Would I have objected to be included by name? I don't believe so.

The Court then asked Wood if he gave Powell permission to include his name on the filings in this matter, to which he responded:

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

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

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

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

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

First, the City's motion for sanctions was filed on January 5, 2021. At no time between that date and the July 12 hearing did Wood ever notify the Court that he had been impermissibly included as counsel for Plaintiffs in this action. Almost a month before the motion hearing, the Court entered an order requiring "[e]ach attorney whose name appears on any of Plaintiffs' pleadings or briefs" to be present at the hearing. Wood still did not submit anything to the Court claiming that his name was placed on those filings without his permission. No reasonable

attorney would sit back silently if his or her name were listed as counsel in a case if permission to do so had not been given.

Second, Wood is not credible. He claims that he was never served with the City's motion for sanctions; however, counsel for the City represents that the motion was sent to Wood via e-mail and regular mail. Kimberly Hunt, the office manager for the City's attorneys, affirms in an affidavit that she mailed via First Class U.S. Mail a copy of the Safe Harbor Letter and the Safe Harbor Motion to Wood, among others, on December 15, 2020, and that no copies were returned as undeliverable. And despite being told that he had the opportunity to attach an affidavit to his supplemental brief in order to put his oath behind his factual assertions , Wood surprisingly chose not to do so.,

More importantly, Wood's social media postings undermine his current assertions, as do his statements in other court proceedings. As discussed during the July 12 hearing, on the day the City e-mailed copies of the Safe Harbor Letter and Safe Harbor Motion to Plaintiffs' counsel, Wood tweeted a link to an article containing a copy of the motion, stating "[w]hen you get falsely accused by the likes of David Fink and Mark Elias. in a propaganda rag like Law & Crime, you smile because you know you are over the target and the enemy is runningscared [*sic*]!" On January 5, 2021, the day the City filed the motion, Wood tweeted a link to an article with the motion, stating that it was "unfair" for the City to seek sanctions against him. In a federal courtroom in the Eastern District of New York on January 11, Wood acknowledged that the City was "trying to get [him] disbarred."

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

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

These statements are binding on Wood.

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

3. Emily Newman & Gregory Rohl

Newman contends that she had a limited role in this lawsuit, having "not play[ed] a role in drafting the complaint" and spending "maybe five hours on [the matter]" "from home." Therefore, Newman argues, she should not be subject to sanctions.

By placing her name on the initial and amended complaints, Newman presented pleadings to the Court asserting that Defendants committed constitutional and state law violations. Newman does not suggest that her name was included without her permission. In addition, Newman does not cite case law suggesting that an attorney may not be sanctioned under Rule 11 or any other source of sanctions authority if the time spent on the relevant lawsuit does not surpass an unidentified threshold. And Newman's responsibility for any Rule 11 violation is not diminished based on where those working hours were spent (particularly during a global pandemic when many individuals were working remotely from home). So long as the attorney bears some responsibility, the attorney may be sanctioned.

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

To the extent Rohl asserts he should not be sanctioned because he read the pleading only on the day of its filing, the argument does not fly. Rule 11(b) "obviously require[s] that a pleading, written motion, or other paper be read before it is filed or submitted to the court," and the Court finds it exceedingly difficult to believe that Rohl read an 830-page complaint in just "well over an hour" on the day he filed it. So, Rohl's argument in and of itself reveals sanctionable conduct. Rule 11(b) also explains that, by presenting a pleading to the court, an attorney certifies that "to the best of the person's knowledge, information, and belief, formed *after a reasonable inquiry* under the circumstances," the complaint is not being filed for an improper purpose and is well-grounded in law and fact. The Court finds it even more difficult to believe that any inquiry Rohl may have conducted between the time he finished reading the Complaint and 11:48 p.m. could be described as a "reasonable" one. But also, Rohl cannot hide behind his co-counsel. As a signer of the complaints, Rohl certified to the Court that the claims asserted were not frivolous. Moreover, because his co-counsel were not admitted to practice in the Eastern District of Michigan, the complaints

could not have been filed without Rohl's signature. Therefore, to the extent Rohl contends that he was only helping cocounsel, he still failed to fulfill his obligations as an officer of the court.

4. Safe Harbor Requirement

At least 21 days before submitting a Rule 11 motion to a court, the movant must serve "[t]he motion" on the party against whom sanctions are sought and the motion "must describe the specific conduct that allegedly violates Rule 11(b)." As indicated above, the City served a copy of its Rule 11 motion on Plaintiffs' counsel at least 21 days before it was filed. Plaintiffs argue that the City failed to comply with this "safe harbor" provision because the brief in support of the motion, which was filed later, was not included. According to Plaintiffs, the City's motion "makes only conclusory statements and blanket assertions regarding the alleged violations of Rule 11 and fails altogether to 'describe the specific conduct that allegedly violates Rule 11(b).

Rule 11, however, requires service of only "[t]he motion" to trigger the commencement of the 21-day safe harbor period. As Plaintiffs' attorneys correctly point out, the Local Rules for the Eastern District of Michigan require a motion to be accompanied by a brief, and judges in this District strike motions not complying with this requirement. But this speaks to when a motion is *filed*. Moreover, the issue here is not whether the City complied with the District's local rules; rather, it is whether the City satisfied Rule 11's safe harbor requirements.

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

> 1. "Initiat[ing] the instant suit for improper purposes, including harassing the City and frivolously undermining 'People's faith in the democratic process and their trust in our government.'. [U]nderst[anding] that the mere filing of a suit (no matter how frivolous) could, without any evidence, raise doubts in the minds of millions of Americans about the legitimacy of the 2020 presidential election."
>
> 2. Asserting "causes of action. in the Complaints Emergency Motion for Declaratory, Emergency, and Permanent Injunctive Relief and Memorandum in Support Thereof, and Emergency Motion to Seal [that] were frivolous and legally deficient under existing law and because Plaintiffs failed to present any non-frivolous arguments to extend, modify, or reverse existing law." The City then went on to detail the legal deficiencies as to Plaintiffs' Elections and Electors Clauses, Equal Protection Clause, and Due Process Clause claims, and further argued that Plaintiffs lacked standing and their claims were

moot and barred by laches.

3. Raising "factual contentions. in the complaints and motions [which were] false.". The City wrote further: "The key 'factual' allegations from the supposed fact witnesses, some of whom attempt to cloak their identities while attacking democracy, have been debunked. The allegations about supposed fraud in the processing and tabulation of absentee ballots by the City at the TCF Center have been rejected by every court which has considered them."

Plaintiffs' attorneys maintain that the City's motion was deficient because it "did not cite a single case or fact supporting [its] arguments" and "fail[ed] to identify any specific factual allegation or witness that lacks evidentiary support". Plaintiffs' attorneys do not identify any authority requiring case citations in a Rule 11 motion to satisfy the safe harbor requirements. Moreover, the failure to identify specific facts or witnesses has no bearing on the adequacy of the motion as to the claimed violations of Rule 11(b)(1) or (2).

And as to the claimed violations of Rule 11(b)(3), the motion was specific as to the violative conduct: All of the allegations discussed in the Rule 11(b)(3) analysis below (with the exception of one) concern supposed fraud in the processing and tabulation of absentee ballots by the City at the TCF Center—just as the City specifically identified. And the one exception concerns a key factual allegation that was debunked in *Costantino*. Moreover, in the Safe Harbor Motion, the City expressly refers to its response to Plaintiffs' Motion for Injunctive Relief "for a detailed debunking of Plaintiffs' baseless factual contentions."

[* * *]

IV. Discussion

B. Whether Plaintiffs' Counsel Violated Rule 11

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

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

The Court said it before and will say it again: At the inception of this lawsuit, all of Plaintiffs' claims were barred by the doctrines of mootness, laches, and standing, as well as Eleventh Amendment immunity. Further, Plaintiffs' attorneys did not provide a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law to render their claims ripe or timely, to grant them standing,

or to avoid Eleventh Amendment immunity. The same can be said for Plaintiffs' claims under the Elections and Electors, Equal Protection, and Due Process Clauses, and the alleged violations of the Michigan Election Code. Finally, the attorneys have not identified any authority that would enable a federal court to grant the relief sought in this lawsuit.

Plaintiffs asked this Court to enjoin the State Defendants from sending Michigan's certified results to the Electoral College; but as reported publicly, Governor Whitmer had already done so before Plaintiffs filed this lawsuit. Plaintiffs sought the impoundment of all voting machines in Michigan.; however, those machines are owned and maintained by Michigan's local governments, which are not parties to this lawsuit. Plaintiffs demanded the recount of absentee ballots, but granting such relief would have been contrary to Michigan law as the deadline for requesting and completing a recount already had passed by the time Plaintiffs filed suit. Further, a recount may be requested only by a candidate. And while Plaintiffs requested the above relief, their ultimate goal was the decertification of Michigan's presidential election results and the certification of the losing candidate as the winner—relief not "warranted by existing law or a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law."

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

At the July 12 hearing, Plaintiffs' counsel pointed for the first time to the Supreme Court's decision in *United States v. Throckmorton*, 98 U.S. 61 (1878), as supporting this Court's authority to take—it seems the attorneys are suggesting— any equitable action in connection with the 2020 presidential election. Apparently *Throckmorton*'s quotation of the maxim "fraud vitiates everything" is a refrain that has been oft-repeated on social media by those who question the results of the 2020 presidential election and believe Former President Trump should be declared the winner. The City is correct that Plaintiffs' counsel's citation to *Throckmorton* is puzzling, both because the case relates to

a nineteenth-century land grant and has nothing to do with election law and because the Supreme Court held that the grant could *not* be collaterally attacked on the basis that the judgment was procured by fraud. Simply put, the case does not support Plaintiffs' legal contentions directly or even by extension. Yet counsel's citation to *Throckmorton* is enlightening in that it reflects, as the City puts it, "that this suit has been driven by partisan political posturing, entirely disconnected from the law" and "is the dangerous product of an online feedback loop, with these attorneys citing 'legal precedent' derived not from a serious analysis of case law, but from the rantings of conspiracy theorists sharing amateur analysis and legal fantasy in their social media echo chambers."

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

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

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

To support the allegation that Defendants violated Michigan election laws by accepting "unsecured ballots. without any chain of custody," the Amended Complaint states that Whitney Meyers "observed passengers in cars dropping off more ballots than there were people in the car." But when the Court asked Plaintiffs' counsel whether individuals other than the voter can drop off a ballot in Michigan, Campbell answered in the affirmative. And of course, anyone easily could have learned this by consulting Michigan law. It seems to the Court, then, that Plaintiffs' counsel knew or should have known that this conduct did not violate existing state law.

The Amended Complaint further claims that Michigan election laws were violated because ballots that lacked postmarks were counted., But when the Court asked Plaintiffs' attorneys whether Michigan absentee ballots must be received through U.S. mail—and therefore postmarked—to be counted, counsel went on about not being able to "rely on the Secretary of State's guidance." Noticeably absent from that response, however, was an answer to the Court's question. Tellingly, when the City's counsel stated that ballots are not required to be mailed

or postmarked in Michigan—as they "are often handed in by hand"; "[via] boxes in front of clerk's offices by hand"; and sometimes "right across the desk in the clerk's office".— Plaintiffs' counsel did not object to or refute this recitation of the law.

To support the allegation that Defendants "count[ed] ineligible ballots—and in many cases—multiple times," in violation of Michigan election law, the Amended Complaint cites to several affidavits in which the affiants state that batches of ballots were repeatedly run through the vote tabulation machines. When the Court asked whether Plaintiffs' counsel inquired as to why a stack of ballots might be run through tabulation machines more than once, Plaintiffs' counsel did not answer the Court's question and instead proclaimed that "ballots are not supposed to be put through more than once. Absolutely not. That would violate Michigan law." But bafflingly, Plaintiffs' counsel did not offer a cite to the law violated, and counsel did not identify such a law in the Amended Complaint either. However, the affidavit of Christopher Thomas, Senior Advisor to the Detroit City Clerk, filed in *Costantino*, explained that "ballots are often fed through the high-speed reader more than once" "as a routine part of the tabulation process." And he detailed a myriad of reasons why this may be necessary, including "if there is a jam in the reader" or "if there is a problem ballot (e.g., stains, tears, stray markings,. etc.) in a stack."

At the July 12 hearing, Kleinhendler told the Court that it was "completely irrelevant" whether the conduct Plaintiffs claimed was violative of Michigan law was actually unlawful. This is because, counsel argued, the conduct "raise[d] a suspicion" and what was significant was the mere *chance* for misfeasance to occur. But litigants and attorneys cannot come to federal court asserting that certain acts violate the law based only upon an *opportunity* for—or counsel and the litigant's suspicions of—a violation.

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

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

In light of Plaintiffs' allegation that Defendants violated the Michigan Election Code by permitting ballots to arrive at the TCF Center "not in sealed ballot boxes," "without any chain of custody," and "without envelopes" and because the Amended Complaint does not identify a provision in the Michigan Election Code prohibiting the

actions about which Plaintiffs complain, the Court asked Plaintiffs' attorneys at the July 12 hearing about their understanding regarding Michigan's ballot-bin requirements. Counsel's response: "[W]e do not purport to be experts in Michigan's process,"., and, they argued, the affidavit that supported this allegation—that of Daniel Gustafson—was copied and pasted from *Costantino*. These evasive and non-responsive answers to the Court's direct questions amount to an admission that Plaintiffs' counsel did not bother to find out what the Michigan Election Code requires, and whether the acts alleged to constitute violations of the Michigan Election Code were actually prohibited.

In *Costantino*—which was decided approximately two weeks before Plaintiffs filed the instant lawsuit—Wayne County Circuit Court Judge Timothy M. Kenny credited the Thomas Affidavit —thereby informing Plaintiffs' counsel that what Gustafson observed did not in fact violate Michigan Election Code, or at a minimum putting counsel on notice that there was a duty to inquire further. And even if Plaintiffs' counsel lacked expertise as to the Michigan Election Code, they undoubtedly were required to be familiar enough with its provisions to confirm that the conduct they *asserted* violated that code in fact *did*.

The Court finds Plaintiffs' counsel's arguments to the contrary unavailing. First, the attorneys assert that neither opposing counsel nor the Thomas Affidavit took issue with the facts as outlined in the Gustafson Affidavit and, therefore, the Gustafson Affidavit does not suggest that Plaintiffs' counsel engaged in any conduct worthy of sanctions. This misses the point. The sanctionable conduct is not based on whether the facts described in the Gustafson Affidavit are true or false. What is sanctionable is counsel's *allegation* that violations of the Michigan Election Code occurred based on those facts, without bothering to figure out if Michigan law actually prohibited the acts described.

Second, Plaintiffs' counsel argued that permitting ballots to be handled and transported in the manner described in the Gustafson Affidavit "raises a suspicion" and "[w]hether [such acts are] required under Michigan law or not[] [is] completely irrelevant.". But the Amended Complaint repeatedly asserts that Defendants violated the Michigan Election Code and Plaintiffs' state law, Equal Protection, Due Process, and Electors and Elections Clauses claims are based on these alleged violations. And, again, a mere "suspicion" is not enough—this is especially so when neither the litigant nor his or her counsel has bothered to figure out exactly what the law is or what it permits.

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

reversing existing law.

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

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

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

Plaintiffs' attorneys argue that they genuinely believed the factual allegations in this lawsuit, and otherwise filed this suit and the accompanying documents in good faith. They also argue that the affiants genuinely believed the same and submitted their affidavits also in good faith. Because all of this was done in good faith, counsel contends, they should not be sanctioned.

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

To be clear, as to Rule 11(b)(3), the Court is not concerned with whether counsel's conduct was done in bad faith. The Court is concerned only with what the reports and affidavits say and reveal on their face, and what Plaintiffs' counsel should (or should not) have done before presenting them in light of what is revealed on their face.

No evidentiary hearing is needed

Plaintiffs' attorneys contend that "[t]he proper method for evaluating

affidavits is an evidentiary hearing" during which a court tests the veracity of the affiants and, without one, the Court cannot sanction counsel. However, the affiants' credibility and the truth or falsity of their affidavits have no bearing on what the Court finds sanctionable under Rule 11(b)(2) and (3).

Instead, what is sanctionable under Rule 11(b)(2) as discussed above is, among other things, (i) asserting that acts or events violated Michigan election law, when the acts and events (even if they occurred) did not and (ii) failing to inquire into the requirements of Michigan election law. What is sanctionable under Rule 11(b)(3) as discussed below is (i) presenting factual assertions lacking evidentiary support; (ii) presenting facts taken from affidavits containing speculation and conjecture because, at no stage during the litigation process, would such "evidence" count as evidentiary support for a factual allegation; (iii) failing to ask questions of affiants who submitted affidavits that were central to the factual allegations that the affidavits supported; (iv) failing to inquire (sufficiently, if at all) into recycled affidavits first used by different attorneys in earlier election-challenge lawsuits; and (v) failing to inquire into information readily discernible as false.

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

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

Plaintiffs' counsel failed to present any evidence to support their allegation of "illegal double voting." To support this factual assertion, Plaintiffs pointed to a single piece of "evidence": the affidavit of Jessy Jacob. That affidavit states in part: "I observed a large number of people who came to the satellite location to vote in-person, but they had already applied for an absentee ballot.".) Of course, *applying* for an absentee ballot is not evidence that someone *voted* via an absentee ballot, and when the Court highlighted this lack of evidence as to "double voting" during the hearing, Plaintiffs' counsel responded: "I think there's inferences that can be drawn, and it should not shock this Court that somebody could show up, after having *asked* for an absentee ballot. and then show up and vote again."

It does not shock the Court that a Michigan resident can request an absentee ballot and thereafter decide to vote in person. Indeed, Michigan law says that voters can. But the Court is concerned that Plaintiffs' attorneys believe that a Michigan resident's choice to do so serves as

circumstantial evidence that the Michigan resident "double voted." It does not. Inferences must be reasonable and come from facts proven, not speculation or conjecture.

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

Plaintiffs' counsel presented affidavits that were based on conjecture, speculation, and guess-work.

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

> The afternoon following the election[,] as I was taking my normal dog walk (mid-afternoon), I witnessed a dark van pull into the small post office located in downtown Plymouth, MI. I witnessed a young couple. pull into the parking lot. and proceed to exit their van (no markings). and open[] up the back hatch and proceed[] to take 3-4 very large clear plastic bags out. and walk them over to a running USPS Vehicle that *appeared as if* it was "waiting" for them.
>
> There was no interaction between the couple and any USPS employee *which I felt was very odd*.. They did not walk inside the post office like a *normal* customer to drop of[f] mail. It was *as if* the postal worker was told to meet and standby until these large bags arrived.
>
> [T]he bags were clear plastic with markings in black on the bag and on the inside of these clear bags was another plastic bag that was not clear (*could not see what was inside*). [There were] *what looked like* a black security zip tie on each back [*sic*] *as if* it were "tamper evident" type of device to secure the bag. [B]y the time I realized I should take pictures of the bags once I noticed this looked "*odd*[,]" they had taken off.
>
> The other *oddity* was that [*sic*] the appearance of the couple. After the drop, they were smiling, laughing at one another.
>
> What I witnessed and considered that *what could be in those bags could be ballots* going to the TCF center or coming from the TCF center.

When the Court asked Plaintiffs' attorneys how any of them, as officers of the court, could present this affidavit as factual support of anything alleged in their pleadings and Motion for Injunctive Relief, counsel emphatically argued that "[t]he witness is setting forth exactly what he observed and [the] information that he bases it on. … He saw these plastic bags … . It is a true affidavit." The Court accepts that the affidavit is true in that Ciantar memorialized what he saw at the time. But the Court cannot find it reasonable to assert, as Plaintiffs' attorneys do, that this "shows fraud." Absolutely nothing about this

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

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

To support the allegation that Defendants "fraudulently add[ed] tens of thousands of new ballots … to the [Qualified Voter File] … on November 4, 2020, all or nearly all of which were votes for Joe Biden," Plaintiffs quote the affidavit of Melissa Carone ("Carone Affidavit"), which describes "facts" that demonstrate no misconduct or malfeasance, and amount to no more than strained and disjointed innuendo of something sinister:

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

The Amended Complaint calls this an "illegal vote dump."

But nothing described by Carone connects the vans to any ballots; nothing connects the illusory ballots to President Biden; and nothing connects the illusory votes for President Biden to the 100,000 ballots "coincidently" announced on the news as "discovered" in Michigan. Yet not a single member of Plaintiffs' legal team spoke with Carone to fill in these speculation-filled gaps before using her affidavit to support the allegation that tens of thousands of votes for President Biden were fraudulently added.,

It is also notable that, when the Court asked Plaintiffs' counsel whether an affiant's observation of a self-described "coincidence" serves as evidentiary support for the allegation that an "illegal vote dump" occurred, Plaintiffs' counsel appeared to say that it was okay in this case because Ramsland "relied on [the Carone Affidavit] for … his statistical analysis" and "an expert can rely on hearsay." But the problem with

the Carone Affidavit does not concern hearsay—it concerns conjecture. And surely Plaintiffs' attorneys cannot fail to reasonably inquire into an affiant's speculative statements and thereafter escape their duty to "stop-and-think" before making factual allegations based on the statements, simply because their expert did the same.

Plaintiffs' counsel further emphasized that if Carone "[said] things that don't turn out to be entirely accurate, that can be discovered through the processes that this Court is very familiar with." The Court assumes the attorneys were referring to the discovery process. But here's the snag: Plaintiffs are not entitled to rely on the discovery process to mine for evidence that never existed in the first instance.

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

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

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

To support the allegation that Defendants permitted "election workers [to] change votes for Trump and other Republican candidates," Plaintiffs point to one thing—namely, Articia Bomer's affidavit ("Bomer Affidavit"):

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

Per the Amended Complaint, this is the only evidence and only "eye-witness testimony of election workers manually changing votes for Trump to votes for Biden."

When the Court asked whether an affiant's *belief* that something occurred constitutes *evidentiary support* for that occurrence, Plaintiffs' counsel stated: "[I]f you see it, that would certainly help you to form a belief." The Court then asked: "[D]id anyone inquire as to whether or not [] Bomer actually saw someone change a vote?". The Court was met with silence.

As an initial matter, an affiant's subjective belief that an event occurred does not constitute evidence that the event in fact occurred. But more importantly, during the hearing, Plaintiffs' counsel conceded that the Bomer Affidavit had evidentiary value only if Bomer *saw* election workers manually changing votes for Former President Trump to votes

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

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

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

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

For example, to support the allegation that Defendants "fraudulently add[ed] tens of thousands of new ballots and/or new voters to the [Qualified Voter File] … on November 4, 2020," Plaintiffs quote the Sitto Affidavit. When the Court inquired about factual assertions in the Sitto Affidavit., Kleinhendler responded that "[t]hese were affidavits that were submitted by counsel in [*Costantino*]". Plaintiffs' attorneys admit to similarly lifting the Carone Affidavit from *Costantino* and filing it in this case as evidentiary support without engaging in an independent inquiry as to its merits. The attorneys admit the same as to the Bomer Affidavit. And suggest the same as to the Jacob Affidavit. In fact, almost every (if not every) non-expert affidavit attached to Plaintiffs' pleadings here was filed by other attorneys in prior lawsuits.

When the Court asked whether Plaintiffs' counsel inquired as to the affidavits copied and pasted from the other cases, Plaintiffs' counsel dipped and dodged the question and did not disclaim the City's counsel's assertions that they did not. "[O]ther lawyers saw it" and "[t]hey believed it to be appropriate for submission to the Court in that circumstance," Plaintiffs' attorneys argued. "[Y]ou've got to be able to trust when something has been submitted by counsel because of the oath that we take" knowing that "everybody else within the profession" therefore believes that the attorney's submission "should have tremendous value." Clearly, Plaintiffs' counsel relied on the assessment of counsel for the plaintiffs in other cases as to the affidavits from those cases that

Plaintiffs' counsel recycled here.

This is not okay. The Court remains baffled after trying to ascertain what convinced Plaintiffs' counsel otherwise. "Substituting another lawyer's judgment for one's own does not constitute reasonable inquiry." In short, Plaintiffs' counsel cannot hide behind the attorneys who filed *Costantino* or any other case to establish that Plaintiffs' counsel fulfilled their duty to ensure that the affidavits they pointed to as evidentiary support for the pleadings *here,* in fact had any chance of ever amounting to evidence.

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

In response to the State Defendants' supplemental brief, instead of explaining what efforts they undertook to investigate the veracity of the affidavits, Plaintiffs' attorneys argue that they "never stated that lawyers cannot be held to account." "Instead," they argue, the motion to dismiss "justifies lawyers being afforded the same type of Constitutional protections as journalists," "who. would lose the protection afforded to them by the Supreme Court. if they were 'drawn into long court battles designed to deconstruct the accuracy of sources on which they rely.' "

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

affidavits from other cases to support their pleadings here.

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

Plaintiffs' counsel attached Ramsland's affidavit to their pleadings to support the assertion that hundreds of thousands of illegal votes were injected into Michigan's election for President. In his affidavit, Ramsland refers to several statistical "red flag[s]," including: (i) reports of 6,000 votes in Antrim County being switched from Former President Trump to President Biden and (ii) 643 precincts in Michigan with voter turn-out exceeding 80% (e.g., 460.51% in Zeeland Charter Township, 215.21% in Grout Township, Gladwin County, and 139.29% in Detroit).

However, the State issued a bulletin well before this lawsuit was filed explaining the user error that led to the miscount in Antrim County's unofficial results, which had been "quickly identified and corrected." And *official* election results for Michigan—reporting voter turnout rates vastly lower than the numbers in Ramsland's affidavit—were published and readily available shortly after the election and well-before his report was filed here. A reasonable attorney, seeing Ramsland's striking original figures, would inquire into their accuracy or at least question their source.

Even the most basic internet inquiry would have alerted Plaintiffs' counsel to the wildly inaccurate assertions in Ramsland's affidavit. For example, in comparison to the voter turnout of 139.29% in the City of Detroit claimed by Ramsland, the official turnout was recorded on or before November 19, 2020 as being 50.88%. Ramsland reported that voter turnout in Zeeland Charter Township was a whopping 460.51%, when an official report ran on November 11 showed that the average turnout for the four precincts within the township was 80.11%. And unlike Ramsland's assertion of an eye-popping 781.9% turnout in the City of North Muskegon, the two precincts in the city had a turnout of 73.53% and 82.21%, averaging 77.78%, as indicated as of November 13, 2020.

And before Plaintiffs' counsel presented Ramsland's affidavit here, there was more to alert them as to the unreliability of Ramsland's figures and to put them on notice that further inquiry was warranted. Specifically, attorneys used an affidavit from Ramsland in Wood's challenge to the presidential election results in Georgia. But there, Ramsland represented data as being from Michigan when, in fact, the townships listed were in Minnesota. Moreover, it was widely publicized before Plaintiffs' counsel offered Ramsland's affidavit here that even for

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

It is true, as Plaintiffs' attorneys assert to defend their use of Ramsland's affidavit, that Ramsland adjusted his voter turnout figures in a subsequently filed report. However, counsel never drew attention to this modification in the reply brief to which Ramsland's updated report was attached, or anywhere else. But more importantly, this does not change the fact that a reasonable inquiry was not done before Ramsland's initial affidavit was presented.

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

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

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

First, Campbell filed an emergency motion within hours of the July 12 hearing's conclusion, asking the Court to publicly release the recording of the proceeding. In that motion, some of the attorneys representing Plaintiffs argued:

> [O]n June 17, 2021, the Court issued an order that "[e]ach attorney whose name appears on any of Plaintiffs' pleadings or briefs shall be present at the motion hearing." Media around the country picked up this story, including large internet news sites such as Yahoo, The Hill, and MSN.
>
> Indicative of the public's interest, the Sanctions Hearing, at its peak, "attracted more than 13,000 people watching the live video" on YouTube as broadcasted by the Court. The national media, from the Associated Press to CNN to the New York Times, ran stories on the hearing. *Most outlets presented a narrative that counsel for plaintiffs believe to be incorrect. Those characterizations may change if the Court republishes the video and allows others to view it.* … [T]he recording is no longer available on the Court's website. Consequently, *counsel is unable to refute what they believe to be public mischaracterizations.* …
>
> There was a lot of "spirit" in the hearing in this court, which the public

> should be able to experience in its entirety—*enabling citizens to draw their own inferences from the presentations instead of depending on media presentations*.

Notwithstanding the apparent belief of Plaintiffs' counsel, this case is being tried in a court of law, not the court of public opinion. As noted throughout this decision, statutes, rules, and standards of professional responsibility apply. Considering Plaintiffs' attorneys' obligation to act within these parameters, this Court is curious as to what narrative Plaintiffs' attorneys wished to present through the video's release. The Telegram message Wood posted within hours of the hearing's conclusion gives some insight, as do the introductory remarks in Plaintiffs' counsel's supplemental brief. What is most important, however, and what very clearly reflects bad faith is that Plaintiffs' attorneys are trying to use the judicial process to frame a public "narrative." Absent evidentiary or legal support for their claims, this seems to be one of the primary purposes of this lawsuit.

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

As an initial matter, several of the allegations asserted in this and similar lawsuits filed by Plaintiffs' attorneys are the subject of a lawsuit that the companies responsible for the Dominion election machines and software filed against Powell and her company, Defending the Republic, Inc. The State Defendants assert this in their supplemental brief. And Powell admits this in response to the State Defendants' brief, as well as in her motion to dismiss the Dominion Action.

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

amounted to "wild accusations" and "outlandish claims" and therefore, she argued, "reasonable people would not accept" these alleged statements and allegations "as fact but view them only as claims that await testing by courts through the adversary process.".

It is not acceptable to support a lawsuit with opinions, which counsel herself claims no reasonable person would accept as fact and which were "inexact," "exaggerate[ed]," and "hyperbole." Nor is it acceptable to use the federal judiciary as a political forum to satisfy one's political agenda. Such behavior by an attorney in a court of law has consequences. Although the First Amendment may allow Plaintiffs' counsel to say what they desire on social media, in press conferences, or on television, federal courts are reserved for hearing genuine legal disputes which are well-grounded in fact and law.

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

> Setting a precedent to sanction an attorney whose case is denied at the district court level on procedural grounds is a grave abuse of the disciplinary process and potentially constitutes intimidation for filing a grievance against the government, which is a core protection of the First Amendment.

The attorneys have further argued that a sanctions order "would implicate Plaintiffs' and their counsel's First Amendment right of access to the courts." The attorneys are incorrect.

An attorney's right to free speech while litigating an action "is extremely circumscribed." As the Sixth Circuit explained in *Mezibov:*

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

Attorneys "voluntarily agree[] to relinquish [their] rights to free expression in [] judicial proceeding[s]" and "voluntarily accept[] almost unconditional restraints on [their] personal speech rights" when before a court. For that reason, the Sixth Circuit has "see[n] no basis for concluding that free speech rights are violated by a restriction on that expression."

Third, the Court finds an improper purpose because Plaintiffs' coun-

sel failed to conduct the pre-filing reasonable inquiry required of them as officers of the court, despite most of the attorneys acknowledging that "no one is immune to confirmation bias" and, therefore, "attorneys should look beyond their prejudices and political beliefs, and view evidence with a level of professional skepticism." Plaintiffs' attorneys attempt to excuse their failure to objectively evaluate their "evidence" because "[they] are not the only individuals who viewed the[] affidavits [attached to their pleadings] as evidence of serious fraud." They say Former President Trump "susp[ected]" it too, and "millions of [] Americans … believed that their president would not intentionally mislead them". As officers of the court, Plaintiffs' counsel had an obligation to do more than repeat opinions and beliefs, even if shared by millions. Something does not become plausible simply because it is repeated many times by many people.

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

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

Before the 2020 general election, Powell appears to have been certain that those who did not support Former President Trump already engaged in fraudulent illegal activity. On Election Day, Powell gave an interview during which she described "the many multifaceted efforts the democrats are making to steal the vote," including "develop[ing] a computer system to alter votes electronically," spreading the "COVID. apocalypse hoax," and ensuring that "people. have not gotten their absentee ballots" even though "they've. request[ed] them three different times[] and been told they were cancelled." Why would someone, who believes that election fraud is already happening and will likely reach peak levels on Election Day, not raise the alarm with the entity the in-

dividual claims can fix things—specifically, the judiciary? It is because Plaintiffs' counsel was equally certain—even before the polls closed—that Former President Trump was going to win the 2020 election.

Indeed, Plaintiffs' attorneys waited until after votes were tallied to file this lawsuit, even though the record suggests that—well in advance of Election Day— they knew or should have known about the things of which they complained.

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

Fifth, Joshua Merritt is someone whose identity counsel redacted, referring to him only as "Spyder" or "Spider," and who counsel identified in their pleadings and briefs as "a former electronic intelligence analyst with 305th Military Intelligence" and a "US Military Intelligence expert." Yet, even after learning that Merritt never completed any intelligence analyst training program with the 305th Military Intelligence Battalion, Plaintiffs' counsel remained silent as to this fact.

In its motion for sanctions, the City emphasizes Merritt's statement that the "original paperwork [he] sent in [to Plaintiffs' counsel] didn't say that" he was an electronic intelligence analyst under 305th Military Intelligence. According to the City, a spokeswoman for the U.S. Army Intelligence Center of Excellence, which includes the battalion, stated that "[Merritt] kept washing out of courses … [h]e's not an intelligence analyst." Plaintiffs' counsel did not dispute these assertions in their response brief. Nor did Plaintiffs' counsel dispute these assertions during the hearing.

Instead, Kleinhendler argued during the hearing that Merritt's "expertise" is based on "his years and years of experience in cyber security as a confidential informant working for the United States Government"—not Merritt's purported military intelligence training. Clearly this is dishonest. This was not the experience on which Plaintiffs' attorneys premised Merritt's expertise in their pleadings and Motion for Injunctive Relief, and Merritt never claims in his declaration that he has "years and years of experience in cyber security as a confidential informant working for the United States Government." Instead, it was precisely Merritt's experience as "an electronic intelligence analyst under 305th Military Intelligence" that Plaintiffs' attorneys presented to convince the Court and the world that he is a reliable expert.

Kleinhendler argued during the hearing, however, that he first learned about this inconsistency after the case was dismissed on January 14. "I had no reason to doubt," Kleinhendler explained. This also is dishonest.

First, the City attached an article from the Washington Post to its January 5 motion for sanctions, which at least put Plaintiffs' counsel on notice that Merritt lacked the expertise they claimed. Yet curiously, during the hearing, when the Court asked if "anyone ask[ed] [Plaintiffs' counsel] if, or suggest[ed] to [them] that, [Merritt] was not a military intelligence expert," Kleinhendler, Haller, and Powell said "no" and all other counsel agreed by remaining silent.

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

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

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

Ultimately, Plaintiffs' counsel's decision to not make clear "the full story" about Merritt not completing military intelligence training was for the improper purpose of bolstering their star witness' expertise and

misleading the Court, opposing counsel, and the world into believing that Merritt was something that he was not.

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

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

[* * *]

V. Conclusion

In summary, the Court concludes that Plaintiffs' counsel filed this lawsuit in bad faith and for an improper purpose. Further, they presented pleadings that (i) were not "warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or establishing new law" and (ii) contained factual contentions lacking evidentiary support or likely to have evidentiary support.[2] Finally, by failing to voluntarily dismiss this lawsuit on the date Plaintiffs' counsel acknowledged it would be moot and thereby necessitating the filing of motions to dismiss, Plaintiffs' attorneys unreasonably and vexatiously multiplied the proceedings.

For these reasons (and not for any conduct that occurred on appeal), the Court holds that sanctions against Plaintiffs' counsel are warranted under Rule 11 […]. Sanctions are required to deter the filing of future frivolous lawsuits designed primarily to spread the narrative that our

[2] (n.82 in opinion) And for these reasons, this lawsuit is not akin to *Brown v. Board of Education,* as Plaintiffs' counsel, Powell, baselessly suggested during the July 12 hearing. Yes, attorneys may and should raise difficult and even unpopular issues to urge change in the law where change is needed. But unlike Plaintiffs' attorneys here, then-attorney Thurgood Marshall had the requisite legal footing on which his clients' claims were grounded in *Brown,* and the facts were not based on speculation and conjecture. *Brown* arose from an undeniable history during which Black Americans were treated as second class citizens through legalized segregation in the schools of our country. In stark comparison, the present matter is built on fantastical claims and conspiracy theories.

election processes are rigged and our democratic institutions cannot be trusted. Notably, many people have latched on to this narrative, citing as proof counsel's submissions in this case. The narrative may have originated or been repeated by Former President Trump and it may be one that "many Americans" share ; however, that neither renders it true nor justifies counsel's exploitation of the courts to further spread it.

[* * *]

B. Sanctions Imposed

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

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

Lastly, the conduct of Plaintiffs' counsel, which also constituted violations of the Michigan Rules of Professional Conduct, calls into question their fitness to practice law. This warrants a referral for investigation and possible suspension or disbarment to the appropriate disciplinary authority for every state bar and federal court in which each attorney is admitted.[3]

Accordingly,

IT IS ORDERED that the motions for sanctions filed by the State Defendants and City of Detroit are GRANTED. The Court is granting in part and denying in part Davis' motion for sanctions in that the Court finds sanctions warranted but not an award of Davis' reasonable attorneys' fees or costs.

IT IS FURTHER ORDERED that Plaintiffs' attorneys shall jointly and severally pay the fees and costs incurred by the State Defendants and the City of Detroit to defend this action.

[3] (n.85 in opinion) The Court is troubled that Powell is profiting from the filing of this and other frivolous election-challenge lawsuits. [...] Other attorneys for Plaintiffs may be as well, given that their address (according to the filings here) is the same address listed on this website. What is concerning is that the sanctions imposed here will not deter counsel from pursuing future baseless lawsuits because those sanctions will be paid with donor funds rather than counsel's. In this Court's view, this should be considered by any disciplinary authority reviewing counsel's behavior.

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

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

IT IS FURTHER ORDERED that the Clerk of the Court shall send a copy of this decision to the Michigan Attorney Grievance Commission and the appropriate disciplinary authority for the jurisdiction(s) where each attorney is admitted, referring the matter for investigation and possible suspension or disbarment […]

IT IS SO ORDERED.