

<p>DISTRICT COURT, DENVER COUNTY, COLORADO 1437 Bannock Street Denver, CO 80202</p>	<p>DATE FILED: September 17, 2021 8:12 PM FILING ID: E9E5DD591D201 CASE NUMBER: 2020CV34319</p>
<p>ERIC COOMER, Ph.D., Plaintiff</p> <p>vs.</p> <p>DONALD J. TRUMP FOR PRESIDENT, INC., et al., Defendants</p>	<p style="text-align: center;">▲ COURT USE ONLY ▲</p>
<p>Attorneys for Plaintiff Charles J. Cain, No. 51020 ccain@cstrial.com Steve Skarnulis, No. 21PHV6401 skarnulis@cstrial.com Bradley A. Kloewer, No. 50565 bkloewer@cstrial.com Zachary H. Bowman, No. 21PHV6676 zbowman@cstrial.com CAIN & SKARNULIS PLLC P. O. Box 1064 Salida, Colorado 81201 719-530-3011/512-477-5011 (Fax)</p> <p>Thomas M. Rogers III, No. 28809 trey@rklawpc.com Mark Grueskin, No. 14621 mark@rklawpc.com Andrew E. Ho, No. 40381 andrew@rklawpc.com RechtKornfeld PC 1600 Stout Street, Suite 1400 Denver, Colorado 80202 303-573-1900/303-446-9400 (Fax)</p>	<p>Case Number: 2020cv034319</p> <p>Division Courtroom: 409</p>
<p style="text-align: center;">EXHIBIT N DECLARATION OF FREDERICK W. BROWN, JR.</p>	

<p>DISTRICT COURT, DENVER COUNTY, COLORADO 1437 Bannock Street Denver, CO 80202</p>	<p style="text-align: center;">▲ COURT USE ONLY ▲</p>
<p>ERIC COOMER, Ph.D., Plaintiff</p> <p>vs.</p> <p>DONALD J. TRUMP FOR PRESIDENT, INC., et al., Defendants</p>	
<p>Attorneys for Plaintiff Charles J. Cain, No. 51020 ccain@cstrial.com Steve Skarnulis, No. 21PHV6401 skarnulis@cstrial.com Bradley A. Kloewer, No. 50565 bkloewer@cstrial.com Zachary H. Bowman, No. 21PHV6676 zbowman@cstrial.com CAIN & SKARNULIS PLLC P. O. Box 1064 Salida, Colorado 81201 719-530-3011/512-477-5011 (Fax)</p> <p>Thomas M. Rogers III, No. 28809 trey@rklawpc.com Mark Grueskin, No. 14621 mark@rklawpc.com Andrew E. Ho, No. 40381 andrew@rklawpc.com RechtKornfeld PC 1600 Stout Street, Suite 1400 Denver, Colorado 80202 303-573-1900/303-446-9400 (Fax)</p>	<p>Case Number: 2020cv034319</p> <p>Division Courtroom: 409</p>
<p>DECLARATION OF FREDERICK W. BROWN, JR.</p>	

I, Frederick W. Brown, Jr., declare and state as follows:

1. “My name is Fred Brown (Frederick W. Brown Jr.). I am over the age of twenty-one years, am of sound mind, and am fully competent to make this Declaration. I have personal knowledge of the matters stated in this Declaration, which are true and correct. A copy of my current resume is attached as **Exhibit N-1**.

2. “I am a retired journalist, educator and currently a consultant on journalism and, more specifically, its standards and practices. I have been retained by the law firm of Cain & Skarnulis PLLC, on behalf of their client, Dr. Eric Coomer, formerly of Dominion Voting Systems, Inc., to offer my analysis of the issues involved in Dr. Coomer’s lawsuit against the re-election campaign of former President Donald J. Trump and several news organizations and individuals who reported on the results of the November 3, 2020, presidential election and the former president’s repeated—and, to say the least, unproven—allegations of fraud that he believes are the reason he lost to Joe Biden.

3. “My report will focus on the standards of ethical communication that, in my opinion, have been disregarded by the defendants in their reporting of alleged irregularities in the 2020 presidential election—and, in particular, their unsupported allegations about the rigging of Dominion’s election equipment to favor Democrat Joe Biden over Republican Donald Trump.

4. “I will not attempt, nor am I qualified, to analyze any of the facts at issue from a legal perspective. My experience and expertise are in the field of journalism and news media ethics and standards. I recently retired after fifteen years teaching that

subject at the University of Denver. I am the principal editor and author of the two most recent editions of the ethics textbooks published by the Society of Professional Journalists (SPJ) in 2011 and 2020. I was a member of the committees that wrote the 1996 and 2014 revisions of SPJ's code of ethics, and I have been a member of its ethics committee for more than 20 years, including a couple of terms as chair of the committee. I was national president of the Society in 1997-98 and have won a number of awards from that group and in journalism competitions. I also was a citizen member of one of the Help America Vote committees formed after the 2000 presidential election to help improve election integrity. Journalism was my major in college, and I have a bachelor's degree from Colorado State University and a master's degree from Northwestern University's Medill School of Journalism.

5. "As a reporter and editor at The Denver Post for nearly 40 years—and as a columnist for another decade after I "retired" in 2002—my principal assignments have dealt with politics and government. For a cumulative total of more than a quarter-century, I was the newspaper's principal reporter at the Colorado State Capitol, and at the end of my career there, I served for about 10 years as the chief of The Post's statehouse bureau, consisting of up to five people. I also, between stints on the Capitol beat, spent 12 years on the newspaper's editorial page, including as assistant editorial page editor and, briefly, as acting editorial page editor.

6. "As a reporter, I have covered many statewide and legislative campaigns, as well as national political conventions and presidential campaigns. I covered the 1999 impeachment trial of President Bill Clinton. When I held the title of political

editor, I was in charge of political polling for The Post. As an expert witness—mostly after I “retired”—I have offered analysis of media standards and given testimony in court and in depositions in a number of cases. Most notable and recent among those is *Beef Products, Inc. v. ABC*, the “pink slime” case, in which I appeared as a witness for the plaintiffs, who ultimately prevailed.

7. “In the present case, the background element that stands out most prominently to me is that the rise of social media has had a toxic effect on the dissemination and exchange of ideas. This comparatively recent and extraordinarily powerful influence in our society has provided a far-reaching and mostly indiscriminate platform to people with no training in, or understanding of, the principles of professional journalism. Unlike other professions such as law or medicine, journalism has no process for certifying or disciplining its practitioners—nor would it, in its fierce embrace of independence, accept such restrictions. Anyone who practices journalism—defined by Webster as “the collection and editing of material of current interest for presentation through news media”—is justified in calling himself or herself a journalist. But there are serious, reliable journalists, and there are those who are not nearly as careful. The ease of posting on the internet has given the less-qualified and less-responsible an outlet for circulating information that is untrustworthy.

8. “It is my opinion that the defendants in this case, *Coomer v. Trump*, either were ignorant of, disdainful of, or paid almost no attention to, the basic moral standards upon which responsible journalism is based. They repeated falsehoods and failed to

verify information. They did not double-check what they purported to have heard, nor did they adequately pursue explanations from those they were accusing of misbehavior.

Journalism ethics and the law

9. “As countless media, communication and journalism professors have told their students over the years, law is what you **can** do; ethics is what you **should** do. Ethics allows for more nuance than the definitive answers sought by law; if someone engaged in communicating ideas to others can make a reasoned argument for what he or she intends to do, or already did, it can be defended as an ethical decision. But arriving at that decision requires thought and, where possible, discussion to test the reasonableness of one’s ideas. Ethics is gray; law is black-and-white.

10. “There is a difference, too, in the types of codes of ethics. Basically, they are of two sorts: the **aspirational** codes that associations of journalists—such as the Online News Association, Radio Television Digital News Association and Society of Professional Journalists—have developed as guidelines for practitioners of their diverse communication disciplines. Those codes are intended only to state broad principles; they are not rules and are not intended to be enforceable. The SPJ code, in fact, states so in a disclaimer at the end.

11. “Then there are the **enforceable** codes, the ones media companies have developed for their own employees. People can be disciplined internally, even fired, for violating those employers’ codes. While all codes of ethics have truth as their overriding principle, employers’ codes tend to be much more specific about work-related situations, especially potential conflicts of interest.

12. “My intent in this report is to concentrate on the defendants who assert that they were practicing journalism in their reporting—in other words, I will concentrate on journalism and journalists, not law and lawyers or any other profession involved in this case. I also will focus more on how Eric Coomer was targeted by this reporting, and not so much on reporting directed more generally at Dominion Voting Systems.

13. “As stated in the June 8, 2021, discovery order issued by Denver District Court Judge Marie Avery Moses, all Defendants in this case have moved to dismiss on the grounds that the plaintiff, Dr. Coomer, will be unable to establish the necessary element of actual malice. They have other arguments for dismissal, which I will address later, but as to the matter of actual malice, I hesitate to offer an opinion on what motivates anyone to do what they do. As a practicing journalist, especially as a reporter of news, one of my principles was to avoid the temptation to assume to know what a person was thinking when that person decided on a course of action. As an editorial writer and columnist, though, I had more freedom to opine and even assume. In this analysis, I will attempt to set aside my instincts toward impartiality and think more like an editorial writer.

14. “So I feel I can say definitively that one element of malice—”reckless disregard for the truth”—is apparent in the facts as I have reviewed them. Again, quoting from Judge Moses’s June 8 order, which was citing *Kuhn v. Tribune-Republican Publishing Co.*, a 1981 Colorado case:

“Reckless disregard for the truth can be established by evidence that a reporter failed to corroborate allegations or when his investigation of the

facts was grossly inadequate because he failed to pursue ‘obvious available sources of possible corroboration or refutation.’”

And, while I will avoid any attempt at mind-reading, I do feel qualified to opine on three of the four allegations made by the defendants, as spelled out in the June 8, 2021, order:

- a) The statements were not false.
- b) Defendants lacked knowledge of the falsity of the statements.
- c) Defendants had no reason to know the statements were false.

Their fourth argument, that the statements of certain defendants were absolutely privileged under different theories, is a strictly legal matter that I am not qualified to evaluate. The first three assertions are all matters of a fundamental journalistic principle—the absolute necessity to double-check one’s facts to be as sure as possible that they are accurate and truthful.

15. “It is worth emphasizing that, as stated in the June 8, 2021 court order: “As an initial matter, Plaintiff’s pleadings, and indeed **the pleadings of some of the Defendants**, have established a prima facie case that the statements at issue contain **‘provably false factual assertions.’**” (My emphasis added)

Defendants and others covered in this Declaration

16. “Those whose statements, reporting and editorial policies I will focus on in this report are:

- Herring Networks, Inc., including OANN journalists Christina Bobb and Chanel Rion and company executives Robert and Charles Herring;
- Joseph Oltmann, who allegedly overheard Eric Coomer’s alleged vote-rigging phone call;

- Michelle Malkin, columnist, author, Trump supporter;
- Jim Hoft, the Gateway Pundit;
- Eric Metaxas, former Trump critic turned Trump acolyte

Major points

17. “The following are the major points to be analyzed in connection with each of the parties immediately above and discussed as they relate to the language of various codes.

- a) Journalists—including those whose primary work product is opinion—have a fundamental obligation to be truthful.
- b) Speculation is not the same as opinion. Examples: “In my opinion, the election was stolen,” is rank speculation, the least responsible attempt at reporting. “In my opinion, the election could have been stolen. We’re checking it out.” That’s definitely more of an ethical approach. The most responsible statements—provided you can show them to be true—would be: “We have evidence there was massive fraud, and here it is.” Or, on the other hand, “We’ve been unable to find enough fraud to conclude it could have changed the outcome of the election.”
- c) No election is free of mistakes. I can say that with a certain amount of assurance from more than 30 years of covering elections at all levels for The Denver Post. There also are numerous studies that have reached the same conclusion (which I will cite later in this report). But the volume of mistakes is quite small; an even tinier subset of those errors is intentional and thus constitute attempts to actually defraud rather than what can justifiably be called honest mistakes.
- d) Antifa does not appear to be an organization with any sort of formal structure. And how would it be possible, anyway, for an eavesdropper to determine from hearing just one side of a conversation to identify the person on the other end of the call?

- e) Numerous affidavits have been cited by various defendants as supportive of the former president’s claims of widespread fraud. An affidavit clearly should be examined with the seriousness that sworn testimony deserves, but the possibility that it contains misinformation should not be summarily rejected. A reporter should not accept an affidavit as determinative if there’s good reason to dispute it or doubt it. And one of the things that should be checked out is the reliability of the affiant.
- f) Any reporting that relies on a single source—Mr. Oltmann, in this case—should be considered unreliable. Reporters should constantly be looking for confirmation and for a range of points of view, especially the perspectives of experts and other informed observers.

Codes of ethics and transparency

18. “As Margaret Sullivan, The Washington Post’s media columnist, said in a November 29, 2018, op-ed article:

“Some news organizations publish their standards and ethics guidelines for all to see.... The Washington Post and the New York Times make their policies readily available to the public, as does NPR. The idea – the right one – is that transparency and clarity are crucially important when it comes to enforcing ethics.”

19. “I agree with that, and have long held that one of the surest ways to judge whether a news organization is responsible and reputable is to see if its code of ethics can be found online. Not all organizations promoting or practicing journalism have codes of ethics. And not all of those who have enunciated their principles make those principles available for the public to see. Very few broadcast companies, for instance, are transparent about their principles. You will not find a Fox News code of ethics in a Google search, for instance. A search for “ABC code of ethics” turns up mentions only for the Australian Broadcasting Corporation’s code. And while a Google search for OAN ethics produces a link to “Founding Principles”, what appears when the link is activated

is a One America News home page with the message: “It seems we can’t find what you’re looking for. Perhaps searching can help.” It did not help.

20. “In my opinion, the fact that none of the news-media sites that are defendants in this case have taken the time to identify, articulate a set of standards and principles is evidence of a lack of accountability and respect for the truth. What follows are some excerpts from codes of ethics, most of them print or print-and-broadcast media, that apply to what is at stake in this case:

Association codes of ethics (primarily aspirational):

Radio Television Digital News Association (RTDNA):

The facts *should* get in the way of a good story [their emphasis]. Journalism requires more than merely reporting remarks, claims or comments. Journalism verifies, provides relevant context, tells the rest of the story and acknowledges the absence of important additional information.

For every story of significance, there are always more than two sides¹

Society of Professional Journalists (SPJ):

Ethical journalism should be accurate and fair. Journalists should be honest and courageous in gathering, reporting and interpreting information.

Journalists should: Take responsibility for the accuracy of their work. **Verify information before releasing it Gather, update and correct information throughout the life of a news story Diligently seek subjects of news coverage to allow them to respond to criticisms or allegations of wrongdoing.**²

¹ Radio Television Digital News Association, *Code of Ethics*, https://www.rtdna.org/content/rtdna_code_of_ethics (last visited Sep. 1, 2021).

² Society of Professional Journalists, *SPJ Code of Ethics*, Revised Sep. 6, 2014, <https://www.spj.org/ethicscode.asp> (last visited Sep. 1, 2021).

(My emphasis added in **bold**).

National Conference of Editorial Writers (*from NCEW's Statement of Principles, adopted in 1995. NCEW became the Association of Opinion Journalists in 2012 and then merged with ASNE – formerly known as the Association of Newspaper Editors – in 2016.*):

The editorial writer should **present facts honestly and fully**. It is dishonest to base an editorial on half-truth. The writer should never knowingly mislead the reader, misrepresent a situation, or place any person in a false light. No consequential errors should go uncorrected.

The editorial writer should regularly review his or her conclusions; the writer should not hesitate to consider new information and to revise conclusions.³

(My emphasis).

American Society of News Editors (ASNE):

Good faith with the reader is the foundation of good journalism. Every effort must be made to assure that the news content is accurate, free from bias and in context, and that all sides are presented fairly. **Editorials, analytical articles and commentary should be held to the same standards of accuracy with respect to facts as news reports.** Significant errors of fact, as well as errors of omission, should be corrected promptly and prominently.

Fair Play. Journalists should respect the rights of people involved in the news, observe the common standards of decency and stand accountable to the public for the fairness and accuracy of their news reports. **Persons publicly accused should be given the earliest opportunity to respond.**

To be impartial does not require the press to be unquestioning or to refrain from editorial expression. Sound practice, however, demands a clear distinction for the reader between news reports and opinion.⁴

³ National Conference of Editorial Writers, *Basic Statement of Principles*, <http://www.columbia.edu/itc/journalism/j6075/edit/ethiccodes/NCEW.html> (last visited Sep. 1, 2021).

(My emphasis)

Employers' codes of ethics (transparent, enforceable and, in my opinion, a key component of institutional accountability):

Associated Press: [A]lways and in all media, we insist on the highest standards of integrity and ethical behavior when we gather and deliver the news.

That means we abhor inaccuracies, carelessness, bias or distortions. **It means we will not knowingly introduce false information into material intended for publication or broadcast;** nor will we alter photo or image content. Quotations must be accurate, and precise.

AP employees must avoid behavior or activities – **political**, social or financial – that create a conflict of interest or compromise our ability to report the news fairly and accurately, uninfluenced by any person or action.

Anyone who works for the AP must be mindful that opinions they express may damage the AP's reputation as an unbiased source of news. **They must refrain from declaring their views on contentious public issues in any forum**, whether in Web logs, chat rooms, letters to the editor, petitions, bumper stickers or lapel buttons, and must not take part in demonstrations in support of causes or movements.⁵

(My emphasis)

Associated Press Managing Editors (APME):

The organization should serve as a constructive critic of all segments of society. It should reflect, in staffing and coverage, its diverse constituencies. It should vigorously expose wrongdoing, duplicity or misuse of power, public or private. Editorially, it should advocate needed reform and innovation in the public interest⁶

⁴ News Leaders Association, *ASNE Statement of Principles*, <https://members.newsleaders.org/asne-principles> (last visited Sep. 1, 2021).

⁵ News Leaders Association, *Associated Press Statement of News Values and Principles*, <https://members.newsleaders.org/resources-ethics-ap> (last visited Sep. 1, 2021).

⁶ Associated Press Managing Editors, *Code of Ethics*, <http://www.columbia.edu/itc/journalism/j6075/edit/ethiccodes/APME.html> (last visited Sep. 1, 2021).

(Comment: Defendants plausibly could use this as an argument in support of their point of view about opinion and criticism. However, this same section of the ASNE code, titled “Responsibility,” stresses that “Truth is the guiding principle.” It also says prominently that an ethical news organization “avoids practices that would conflict with the ability to report and present news in a fair, accurate and unbiased manner.”)

CNN (Time Warner Inc.):

Much of popular journalism today comes with a political or ideological slant; it aims to win people to a point of view, not necessarily to an understanding of the facts. CNN does not try to appeal to a specific point of view or political constituency. To the contrary, the reporters, producers, editors and writers at CNN aim for comprehensive journalism. In their news coverage, they strive to present the whole story, fairly and completely, so that readers and viewers may come to their own conclusions. And in their presentation of opinion and analysis, they strive to represent a range of viewpoints.⁷

(Comment: No doubt many whose politics lean right would take issue with this statement of impartiality, but it’s also worth noting that CNN’s code of ethics is available online. Fox News’s, like OAN’s, is not. To me, such lack of transparency is an ethical shortcoming.)

Dow Jones & Company Code of Conduct *(Wall Street Journal owner before Murdoch):*

[I]t is an essential prerequisite for success in the news and information business that our customers believe us to be telling them the truth. If we are not telling them the truth – or even if they, for any valid reason, believe that we are not – then Dow Jones cannot prosper. Dow Jones will suffer, for example, if our customers cannot assume that:

- Our facts are accurate and fairly presented,
- **Our analyses represent our best independent judgments rather than our preferences**, or those of our sources, advertisers, or information providers.
- Our opinions represent only our own editorial philosophies,
or

⁷ Society of Professional Journalists, *What the Codes Say: Code provisions by subject*, <https://www.spj.org/ethicscode-provisions.asp> (last visited Sep. 1, 2021).

- There are no hidden agendas in any of our journalistic undertakings.

All companies profess business integrity. But the impact of our work on the work of others, and on their lives and fortunes, places special responsibilities upon all Dow Jones employees.⁸

(My emphasis)

Gannett Newspaper Division:

We will hold factual information in opinion columns and editorials to the **same standards of accuracy as news stories**. . . . We will strive to include all sides relevant to a story and not take sides in news coverage. . . . We will maintain an impartial, arm's length relationship with anyone seeking to influence the news.

Question continuously the premise of the stories and adjust accordingly.⁹

(My emphasis)

Hearst Newspapers:

The deliberate introduction of false information into our newspapers will not be tolerated. Legitimate mistakes do occur, and when they do, we have the responsibility to correct those errors in a timely and complete fashion.¹⁰

⁸ Dow Jones, Dow Jones Code of Conduct, <https://www.dowjones.com/code-conduct/> (last visited Sep. 1, 2021).

⁹ News Leaders Association, *Gannett Newspaper Division Principals Principles of Ethical Conduct*, <https://members.newsleaders.org/resources-ethics-gannett> (last visited Sep. 1, 2021).

¹⁰ News Leaders Association, *Hearst Newspapers: Statement of Professional Principles*, <https://members.newsleaders.org/resources-ethics-hearst> (last visited Sep. 1, 2021).

Los Angeles Times:

A fair-minded reader of Times news coverage **should not be able to discern the private opinions of those who contributed to that coverage, or to infer that the organization is promoting any agenda.** A crucial goal of our news and feature reporting – apart from editorials, columns, criticism, blog posts and any other content that is expressly opinionated – is to be nonideological. . . .

In covering contentious matters ... we seek out intelligent, articulate views from all perspectives. . . .

People who will be shown in an adverse light must be given a meaningful opportunity to defend themselves. This means making a good-faith effort to give the subject of allegations or criticism sufficient time and information to respond substantively. Whenever possible, the reporter should meet directly with the subject in a sincere effort to understand his or her best arguments.

. . . It is unacceptable to hedge an unverified or unverifiable assertion with words such as “arguably” or “perhaps.” Our job is to report what is true, not what might be.¹¹

(My emphasis)

Reuters:

Accuracy entails honesty in reporting. Our reputation for accuracy, and for freedom from bias, rests on the credibility of our sources.

As Reuters journalists, **we never identify with any side in an issue, a conflict or a dispute.** Our text and visual stories need to reflect all sides, not just one. . . .¹²

(My emphasis)

The Washington Post:

¹¹ Los Angeles Times, *Los Angeles Times Ethics Guidelines*, June 16, 2014, <https://www.latimes.com/la-times-ethics-guidelines-story.html> (last visited Sep. 1, 2021).

¹² Reuters, *Standards and Values*, <https://www.reutersagency.com/en/about/standards-values/> (last visited Sep. 1, 2021).

On this newspaper, the separation of news columns from the editorial and opposite-editorial pages is solemn and complete. This separation is intended to serve the reader, who is entitled to the facts in the news columns and to opinions on the editorial and “op-ed” pages. But nothing in this separation of functions is intended to eliminate from the news columns honest in-depth reporting, or analysis or commentary when plainly labeled.

The New York Times:

Journalists have no place on the playing fields of politics.¹³

A settlement and the April 30, 2021 statement from Newsmax: In response to Eric Coomer’s lawsuit, and after negotiations with Coomer’s attorneys, Newsmax settled for an undisclosed amount of damages and the case against the outlet was dropped. Newsmax also issued this statement:

“Since Election Day, various guests, attorneys, and hosts on Newsmax have offered opinions and claims about Dr. Eric Coomer, the Director of Product Strategy and Security at Dominion Voting Systems.

“Newsmax would like to clarify its coverage of Dr. Coomer and note that while Newsmax initially covered claims by President Trump’s lawyers, supporters and others that Dr. Coomer played a role in manipulating Dominion voting machines, Dominion voting software, and the final vote counts in the 2020 presidential election, Newsmax subsequently found no evidence that such allegations were true.

“Many of the states whose results were contested by the Trump campaign after the November 2020 election have conducted extensive recounts and audits, and each of these states certified the results as legal and final.

“There are several facts that our viewers should be aware of. Newsmax has found no evidence that Dr. Coomer interfered with Dominion voting machines or voting software in any way, nor that Dr. Coomer ever claimed to have done so.

¹³ The New York Times, *Ethical Journalism: A Handbook of Values and Practices for the News and Editorial Departments*, <https://www.nytimes.com/editorial-standards/ethical-journalism.html#> (last visited Sep. 1, 2021).

“Nor has Newsmax found any evidence that Dr. Coomer ever participated in any conversation with members of ‘Antifa,’ nor that he was directly involved with any partisan political organization.

“On behalf of Newsmax, we would like to apologize for any harm that our reporting of the allegations against Dr. Coomer may have caused to Dr. Coomer and his family. For more on this, please go to our website at Newsmax.com, and read ‘Facts About Dominion, Smartmatic You Should Know.’”

21. “This may be an appropriate place to begin a brief examination of what the other defendants have published and broadcast—and their statements and activities that, in my opinion, fail to live up to widely accepted journalistic principles of accuracy, verification and impartiality:

Chanel Rion and One America News: OAN issued a statement on May 3, 2021, after Newsmax’s apology and retraction, taking a defiant tone. Lindsay Oakley, OAN’s news director, proposed a statement for review by top network management, Richard and Charles Herring:

“Newsmax turns its back on President Trump and the 74 million Americans who stand beside him. . .

“The outlet [Newsmax] threw Trump and his supporters under the bus . . . stating ‘no evidence of fraud was found in any state contested by Trump’ . . . even as more than half of Republicans believe the election was rigged. . .

“But we here at O.A.N. will not cave. . . .”

It’s worth pointing out that belief is not evidence. Apparently a significant number of Republicans “believe” that Mr. Trump never lies, despite the evidence of thousands of examples of him saying things that are provably untrue. Debra Ell, a Republican precinct delegate in Michigan, was quoted in The Washington Post of May 2, 2021, as saying:

“I think I speak for many people in that Trump has never actually been wrong, and so we’ve learned to trust when he says something, that he’s not just going to spew something out there that’s wrong and not verified.”

22. “Ms. Rion’s November 24, 2020, video, in which she interviewed Joseph Oltmann about his suspicions concerning Dominion and Dr. Coomer, was viewed at least 1.5 million times, according to an April 18, 2021, article in The New York Times, and thus may be one of the major contributors to the animus against Dr. Coomer. Rion’s video was titled “Dominion-izing the Vote.” As an incorrigible punster myself, that appears to me to be a play on the word “demonizing.”

23. “In that interview, Rion focused on two interviews, the first with **Ron Watkins**, former administrator of the conspiracy-heavy website 8kun (he resigned on Election Day after the prophecies from a mysterious figure called “Q” about Trump winning and rounding up a ring of child-killing Democrats failed to pan out) and the second with Joe Oltmann, who said he had overheard Dr. Coomer on a phone call with “antifa” ensuring that Trump wouldn’t win.

24. “During the half-hour broadcast, Rion and Watkins discussed certain electoral procedures in Antrim County, Michigan, that resulted in “giving Biden a fraudulent win.”

25. “Rion noted that 6,000 Trump votes initially were counted for Biden—a mistake that was quickly corrected by election officials. She referred to “the fiasco and vote irregularities.” Dominion voting equipment was described as “fragile and error-prone” as well as “disastrously vulnerable.” Rion pointed out that “in the dead of night, that lead [in votes for Trump] disappeared.” A more objective reporter would have explained that that is what typically happens—because it takes time to count votes.

26. “Watkins, whose computer expertise Rion mentioned frequently, posited that the Dominion system “can be set up” to alter election results. “Any hacker could” do it, Watkins said. Dominion employees at election sites could use Sharpies to create “anomalies” that would need to be double-checked by hand and, in that process, altered. “It’s not even a bug. It’s a feature,” Watkins said.

27. “Did Rion know of Ron Watkins’ association with Qanon—possibly even to the extent of his being Q himself? And why did she use him as a source? Quoting her August 9, 2021, deposition: “To the extent that he commented in ‘Dominion-izing the Vote,’ I believe the analysis he provided to us was sound and stands to this day.”¹⁴ As to his credibility, “You can – if you watch the piece, you’ll see his analysis, and it matches – his analysis matches with what he is analyzing in the user guides and just – it – it all checks out.”¹⁵ But she does express doubts about the credibility of an official government source, Homeland Security’s Christopher Krebs, who called it a clean election. And he had been appointed by President Trump (who subsequently fired him).

28. “Ms. Rion mentions that she does not have formal journalistic training, but she did take one journalism-related course at Harvard University and she considers herself a journalist. She also acknowledges that OAN has no formal written standards or principles, but she did have “verbal training” in what was expected of her.¹⁶ Her

¹⁴ See Exhibit H-1, Rion Aug. 9, 2021 Depo Tr. 112:23-25, attached to Dr. Coomer’s Omnibus Response.

¹⁵ *Id.* at 113: 3-6.

¹⁶ *Id.* at 30:10-32:20.

reporting, she says includes bits of opinion – “a dash of tongue-in-cheek, sometimes, in my OAN Investigates specials.”¹⁷

29. “She testifies that, as part of her research (in addition to congressional hearings and documents from the offices of various secretaries of state) Voter Village’s DEF CON meeting and HBO’s Kill Chain documentary, which mentions that meeting. These are sources I have to admit I’m not at all familiar with. Ex. H-1 at 12:1-13:9.

30. “She concedes that OAN is “a pro-Trump network.” “Sure. I would agree with the characterization, too, that we – you know, as far as – if you’re asking about bias or what our leanings are, we don’t hide the fact, or I don’t hide the fact that I’m not a big fan of big tech or big government or extreme leftist activism. So if that’s the bias you’re asking about, then there is mine; and I’m quite open about that.”¹⁸

31. “In several places, Ms. Rion expresses incredulity that the public is expected to believe that the 2020 election was “perfect” when it’s widely accepted that there were flaws in the 2016 election. Of course, there are flaws and mistakes in every election—nothing is “perfect”—but it should have been acknowledged that numerous experts have said it was not enough to affect the outcome. And some of those people who acknowledge that are (or were) supporters of former president Trump.

32. “It is obvious from her testimony that she has done a lot of technical research, but not enough of that key journalistic principle that you should give the subject of a negative story a voice in the story, too, to defend himself or herself.

¹⁷ *Id.* at 41:22-42:5.

¹⁸ *Id.* at 127:19 128:2.

33. “But her boss, Charles Herring, the president of Herring Networks, Inc., appears to be satisfied with her efforts – in raising the issue of irregularities, in her use of sources, in her reliance on Joseph Oltmann’s account of the “antifa” phone call he allegedly overheard, and in Ms. Rion’s unsuccessful attempts to get Dr. Coomer’s side of the story. In his July 30, 2021, testimony he describes the research that she did, and that he reviewed (pp.12-13):

“Chanel Rion researched extensively, along with other staff members, liabilities in voting machines that were known as early as 2000 all the way up through the summer of 2020. There are a number of media organizations that reported issues through the years. The most recent one that comes to mind was the summer 2020 election in Georgia, where a number of things went wrong, causing names on the ballots not to show up and a number of other issues. That was one of the things that we investigated for that report. We also – we also looked at the videos of Joe Oltmann. I personally looked at the video of Joe Oltmann. I looked at the video of Michelle Malkin. I read a number of articles, as a matter of fact, basically anything and everything I can find during the weekend of – I think it was around the 14th and the 15th of November and following into the 16th. There are a number of articles.

“I believe there’s a trio of articles by Gateway Pundit. There were some articles from sources that, frankly, I don’t recall right now and had never heard of. And there was one by an outlet; I believe it was called the Clover Chronicle. So that was some of the initial reviews that I did.”¹⁹

¹⁹ See Exhibit I-1, Herring Jul. 30, 2021 Depo Tr. at 12:2-13:3, attached to Dr. Coomer’s Omnibus Response.

34. “About Rion’s efforts to contact Dr. Coomer, Herring said:

I instructed her [Rion] to reach out and try to get his [Coomer’s] side of the story. She had communicated to me that she believed he was in hiding at that time; that his Facebook had been scrubbed, social media was scrubbed; that names were being removed from the Dominion websites. And I’m not exactly sure what reach-out she made, but I encouraged her to try to get his side of the story.”²⁰

35. “Rion, in her April 30, 2021, declaration says she tried to contact Coomer, but “there was no contact information for Mr. Coomer anywhere readily available online.”²¹

36. “Herring added:

It appeared that they [Dominion] were on the run, did not want to speak with the media, and did not come out and disclaim either Michelle Malkin’s hour-long video or the, roughly, two-hour-long video or a number of the other reports that we came across from Gateway Pundit or some of these other sources that were reporting on Dr. Coomer.”²²

37. “Upon being shown a profane post on the social media site Parler by Joe Oltmann, Herring concedes that “I was aware that he had a bias, and that needed to be taken into consideration. And I think that’s the case with just about anyone.”²³ Oltmann’s post, as presented by plaintiff’s attorney Charles Cain: “He’s referring to Dr. Coomer, and he says

‘So it is up to you. Blow this shit up. Share, put his name everywhere. No rest for this shitbag. Eric Coomer, Eric Coomer, Eric Coomer. This shitbag and the corrupt asshats in Dominion Voting Systems must not steal our

²⁰ *Id.* at 18:17-24.

²¹ *See* OAN-Rion Mot., Apr. 30, 2021, Decl. of Chanel Rion at p. 4.

²² Ex. I-1 at 28:17-22.

²³ *Id.* at 39:21-23.

election and our country. Eric, we are watching you.’ And there is a picture that purports to be of Eric’s home.”²⁴

38. “If Oltmann had a bias, so did OAN. It includes even the participation of one of OAN’s on-air reporters, **Christina Bobb**, as part of then-President Trump’s legal team, as acknowledged in the August 14, 2021, deposition of Trump lawyer Rudolph Giuliani. Addition testimony by Mr. Giuliani only confirms the extent of this arrangement, which is clearly antithetical to the journalistic standard of independence.

Quoting Giuliani:

She [Bobb] came over to the campaign and she offered to help us. She said that she had been – she had as a reporter gathered – by process of elimination, she had gathered a lot of information about Arizona, Michigan, I don’t know about Georgia. . . .

And my staff said she was terrific, she was very trustworthy and if we could work out an agreement with One America News, it would be very helpful. She was a very good investigator.”²⁵

So we addressed a conflict issue with her publication. I talked to Charles [Herring] myself and I said if she has to hold this confidential from you, that doesn’t mean there won’t be things that you can then if they are okay then the benefit to you is you’ll have like an extra, you’ll have an extra edge on everybody else that will benefit you, but you’re going to have to agree to something that I know our news networks won’t agree to, which is there may be things that you just can’t do and she’s got to separate her role as a lawyer and if she wants to share things with you, she will have to get my permission or one of my people.”²⁶

They said they would take her off general assignment. . . . [T]he rules that we made with Charles were that he would defer to us to whatever our needs were, that he couldn’t give it to us permanently but he could loosen up her assignments for the next couple of months, therefore she wouldn’t be working all that much for OAN, so the conflict thing wouldn’t come up

²⁴ *Id.* at 37:7-14.

²⁵ *See* Exhibit J-1, Giuliani, Aug. 14, 2021 Depo Tr. 89:1:19.

²⁶ *Id.* at 90:21-91:13.

all the time, that she would agree that any communication she had, OAN would be treated for that purpose the way any other news organization is, and then if she did develop a discrete, good story, she would have to run it past us so it didn't violate any of our rules or whatever. And I knew I was pretty comfortable they would live by it because they had before. And I knew she had tremendous enthusiasm for this and I always like to hire people with enthusiasm because they work harder. . . . That's how we got her. And she got very active in gathering evidence.”²⁷

39. “The agreement included that “She had to get permission”²⁸ to report on the election.

40. “This, it should be obvious, is a clear conflict of interest. No reporter, no news organization, should ever agree to such an arrangement with a source—especially not a source at the center of such an important story.

41. “Ms. Bobb also is seen in a photograph of a January 6, 2021, meeting at the Willard Hotel in Washington, DC, involving about a half-dozen prominent Trump supporters, including Trump's legal team. There is also a tweet from her a month earlier (December 6, 2020) in which she thanks Trump for his “Twitter love” and says “I love our President.” That is clearly not a display of proper and ethical journalistic detachment.

42. “Nor is Bobb's reporting from Arizona's controversial “audit” of its presidential vote, ordered by the president of the Republican-controlled state Senate, Karen Fann. Natalie Harp, the anchor of “The Real Story” newscast reporting on drawn-

²⁷ *Id.* at 91:3-93:16.

²⁸ *Id.* at 93:8.

out recount, tells the reporter, Bobb, that she finds it “mind-blowing” that Trump, who won Arizona by 91,000 in 2016 somehow lost in 2020 by 10,000 votes in 2020.²⁹

43. “Bobb notes that 168,000 votes were printed on the “wrong” kind of paper and could be illegal; that “bleed-through” Sharpies could have caused ballots to be set aside, and she refers to the “so-called victory” to which she also applies the descriptor “allegedly.” She concedes that the irregularities could be mistakes and not intentionally illegal, but she also says “many people” want to know, as she put it, “Hey, if our state was stolen, I want to take it back.” Harp closes the segment by observing “You couldn’t ask for a better case. . . . This case keeps exploding.”³⁰

44. “Bobb also is CEO of an organization called Voices and Votes, for which Rion is the marketing director, and which raised money for the Arizona audit. Its website says it is “a place where the majority can speak freely and not get canceled by the political class controlling the mainstream media.”³¹ It is also, in my opinion, a clear conflict of interest.

45. “OAN says it produced more than 700 pages of documents related to its reporting. But none of that included Oltmann’s notes of the alleged call, nor did anyone at OAN ask to see them, Herring testified. “[W]e were comfortable that what was being said was credible,”³² Herring said. No one tried to contact any of the other 15 to 19

²⁹ One America News Network, The Real Story – OAN Maricopa Audits Results with Christina Bobb, July 16, 2021, <https://rumble.com/vjxxff-the-real-story-oan-maricopa-audit-results-with-christina-bobb.html> (last visited Sep. 1, 2021).

³⁰ *Id.*

³¹ See <https://voicesandvotes.org/>

³² Ex. I-1 at 22:14-15.

people on the call; it's a clandestine organization; such efforts would have been "futile."³³ I have seen the notes. They are rather scrawled and disorganized, in my opinion, but they are still worth asking about, if for no other reason than seeing what other names appear there.

46. "In defending their reporting, OAN and Rion argue that they "reported on the statements of various sources, conducted independent research to corroborate the reporting and indeed, to this day, OAN/Rion have no proof that any of the statements about Coomer were not true."³⁴ That double-negative phrasing, however, does not mean that they did have proof. But it is their explanation why OAN never "expressed or demonstrated any doubt of the truth of its reporting."

47. "There is, in OAN's reporting, much speculation, a lot of "Well, it could happen"—a litany of things that could go wrong, and a lot of insinuation that if it could go wrong, it probably did. After all, if you were antipathetic toward Trump—a charge defendants repeatedly make against plaintiff Coomer—why would not you do it?

48. "The problem is, Rion and Watkins and others making similar statements offer no real evidence that these bad things actually did occur.

49. "**Marty Gologan:** OAN's obvious slanting of the news apparently was too much for some of its employees. Sixteen of 18 OAN staffers interviewed by reporter Rachel Adams for an article published by The New York Times on April 18, 2021, said

³³ *Id.* at 23:23-24:1.

³⁴ See OAN-Rion Mot., Apr. 30, 2021 at p. 19.

the network had aired information “that they considered misleading, inaccurate or untrue.”

50. “The Times article focused on one of them:

“Marty Golingan, who joined the channel as a producer in 2008, said OAN had changed in recent years. At the start of his employment, he said, it concentrated more on neutral coverage based on reports from The Associated Press or Reuters. He saw it as a scrappy upstart where he could produce cheeky feature stories, he said.

“During the Trump presidency, it moved right, Mr. Golingan said. And when he was watching coverage of the pro-Trump mob breaking into the Capitol, he said, he worried that his work might have helped inspire the attack.

“He added that he and others at OAN disagreed with much of the channel’s coverage. ‘The majority of people did not believe the voter fraud claims being run on the air,’ Mr. Golingan said in an interview, referring to his colleagues.

“He recalled seeing a photo of someone in the Capitol mob holding a flag emblazoned with the OAN logo. ‘I was like, OK, that’s not good,’ Mr. Golingan said. ‘That’s what happens when people listen to us.’ (Mr. Golingan said he was fired on Monday, the day after this article was published online.)

“Charles Herring [president of Herring Networks] defended OAN’s coverage. ‘A review process with multiple checks is in place to ensure that news reporting meets the company’s journalist standards,’ he said. ‘And, yes, we’ve had our fair share of mistakes, but we do our best to keep them to a minimum and learn from our missteps.’”

51. “Golingan is a 2015 graduate of Palomar College and began work at Herring Networks in September 2016. He was fired April 19, 2021, and refused to sign a non-disclosure agreement. In a May 20, 2021, declaration, he said:

OAN is controlled by the “Hs.” The “Hs” is a reference to Robert Herring and his sons, Charles Herring and Bobby Herring. Based on my experience at OAN, management’s news coverage decisions are based on a business model, not a journalistic model. The theory was that any news report that

increased OAN's visibility was acceptable and, therefore, broadcast whether or not it was factual.³⁵ (pp.2-3)

I distinctly remember seeing a person who I now know to be Ron Watkins in a cowboy hat being interviewed by Ms. Rion in an interview that aired about a week prior to the "Dominion-izing the Vote special report. This interview was replayed as part of the special report and is a good example of Ms. Rion failing to verify the credibility of her sources. Mr. Watkins is widely associated with QAnon. Further, as I stated, this piece was not fact checked by staff and given the lack of credibility of Ms. Rion's sources, it should never have aired. The segment was simply required to be run since it was already approved by the Hs.³⁶ (pp.5-6)

To be clear, many original stories from OAN were sourced and done by the book with standard journalistic practices. Many producers and writers in San Diego were ethical and knew how to fact check stories that were to run on air. These standards, however, did not apply to Kristian Rouz, Pearson Sharp, and Chanel Rion, among other "untouchables." As producers, we were forced to run their reports without any fact checking or vetting of sources. We were told that the Hs had approved the story and it was to run no matter what. We were not told who or what their sources were or where they got their information."³⁷

52. "Joe Oltmann, a Castle Pines, Colorado, resident and founder of a Colorado-based data services company, might reasonably be considered the principal instigator of right-wing antipathy toward Dominion and especially toward Eric Coomer. He is the one who claims to have heard Coomer, in a telephone conference call with "antifa" members, say he was going to make certain that Trump would not win the November election. At the time of this writing, he had not appeared at his court-scheduled deposition, and the plaintiff's attorneys had asked the court for sanctions

³⁵ See Exhibit Q, Decl. of Marty Gologan, May 20, 2021 at ¶ 5.

³⁶ *Id.* at ¶ 11.

³⁷ *Id.* at ¶ 15.

against the defendants, including an order to show cause why Oltmann and his companies should not be held in contempt.

53. “Mr. Oltmann is the sole source for all of the reporting about Dr. Coomer’s alleged nefarious activities that I have reviewed for this report. That includes the previously mentioned OAN reporting, which—except for chatter on social media—may be the most widely seen. Oltmann is featured in the final segment of Chanel Rion’s November 24, 2021, OAN broadcast, for a little more than seven minutes. She introduced him by saying that several years earlier, he “infiltrated antifa” to look for Colorado journalists who might be attacking his company. He later said he found 13 of them; more on that later.

54. “In the OAN interview, Oltmann says he was party to an antifa conference call in September 2020 in which he overheard some of the participants make reference to “Eric.” “Who’s Eric?” someone asks. Answer: “He’s the Dominion guy,” Oltmann said he remembered hearing.

“I’m paraphrasing this, by the way,” he said, recounting what he heard Coomer say: “Don’t worry about the election. Trump is not going to win. I made f---ing sure of that.”

Exhibit I-1, Herring, July 30, 2021, PX 32.

55. “He showed screen shots of Dr. Coomer’s social media activities, which he described as “unhinged” and evidence of a deep-seated bias. “He was not just antifa,” Oltmann said. “He was responsible for putting his finger on the scales of our election.”

56. “It is not clear to me how Oltmann got access to all of the incriminating evidence he claims to have heard and apparently did actually see. “Antifa” is seen by

most observers as not so much an organization as it is a point of view, a common belief system that sometimes leads to action. It's not the sort of activity that lends itself to identifiable conference calls.

57. "OAN and Rion, however, defend their reliance on Oltmann, and on their use of the Facebook posts that Oltmann produced—somehow captured “legally” from Coomer’s account, as Oltmann explained—to establish that Coomer showed such deep animus toward Trump that he could have (there’s the assumption again) a motive to rig the election and could have been a party to that “antifa” phone call.

58. "Rion testified:

“It seemed he was very motivated to not – to ensure that Donald Trump was not elected, it seemed, through his Facebook posts. We were simply highlighting that fact. . . . Dr. Coomer had the means; he had the expertise; and I think we highlighted that fairly well in our piece.”³⁸

59. "Rion explains why she did not feel it necessary to have a recording (none existed, in any event) or Oltmann’s notes about what he overheard:

I did not ask for the notes. I did not need the notes. Dr. Coomer spoke to me, he spoke to you, he spoke to his friends and family through his Facebook postings that we were looking at, provided to us by Joe Oltmann –80 screenshots of Dr. Coomer’s own words.³⁹

60. "Herring at pp.98-99 of his deposition:

I think when your political belief gets radicalized to the point that is exhibited by Dr. Coomer’s Facebook posts, that that becomes highly problematic, especially when you’re working at a company such as Dominion Voting Systems, and at a such senior level. And I think the one piece of evidence that you just showed was this open-call email in 2016, where he is asking his family and friends to pledge their allegiance to

³⁸ Ex. H-1 at 49:3-12.

³⁹ *Id.* at 84:12-17.

voting against Trump. To me, that is a radical point of view. And the other piece of information that we have is Dr. Coomer is talking about dead presidents. He's using videos, images, to basically express his point of view. He indicates that -- there's a Facebook posting that says "ACAB," an acronym for "All cops are bastards." To put a group of people, police officers, and say that they're all bastards or bad people seems extreme to me. And so there's a difference, in my opinion, of a bias -- which, as I mentioned earlier, everyone has a bias, in my opinion -- and getting to a point where you're acting upon your bias to the point where you're literally telling friends that you will not associate with them. And I think he used the term "idiots" or "morons" to indicate anybody who was going to vote for Trump, and he wanted to disassociate with them. So I think he's at a different extreme level than just a bias.⁴⁰

61. "Oltmann also had, and displayed during the OAN interview, copies of documents detailing Coomer's efforts to distribute his company's equipment. "He made sure that Dominion Systems was in all the battleground states for the 2020 election," he said. Oltmann also alleged that Coomer's anti-Trump bias was widespread throughout Dominion. "This is a problem," Oltmann told Rion. "Especially if their antifa-drenched engineers are hellbent on deleting half of America's voice."

62. "Oltmann's concern about antifa is, in my opinion at least, excessive to the point of obsession. Oltmann had formed a political group, FEC United (for Faith, Education and Commerce), which he said was being attacked by antifa members embedded in Colorado's journalism community.

63. "Joey Bunch, a writer for the Colorado Politics website—and with whom I worked at The Denver Post and know to be a very reliable reporter—reached out to Oltmann for an October 16, 2020, Colorado Politics post and got a Twitter direct message in response:

⁴⁰ Ex. I-1 at 98:11-99:13.

“We uncovered 13 ‘journalists’ who are actually activist reporters working with Antifa,” Oltmann told Bunch. “I have pictures, video and enough information to bury them heftily and for some create a massive problem for the news organizations that employ them. Lawsuits to follow. It’s going to be season of lawsuits . . . get ready for it.”⁴¹

64. “Like so much else in this environment of supposition and conspiracy, the threatened lawsuits have not materialized—nor have the billboards that Oltmann also said he was going to buy to expose these antifa “journalists.” And I have to add, on a personal note, that I have never known a Colorado journalist who said he or she was “working with” antifa – which seems not to have a high degree of organization.

Michelle Malkin

65. “Formerly a widely syndicated columnist—in fact, we used to carry her regularly when I was the assistant editorial page editor of The Denver Post—she turned hard right sometime around 2019. She had been a regular on Fox News but in 2020 switched to Newsmax. She also does podcasts from her home in Colorado Springs.

66. “Her podcast on November 13, 2020, gave Joe Oltmann an early opportunity to say what he also said eight days later on OAN: Dr. Coomer’s alleged phone call with antifa; the journalists he “set out to uncover” in antifa; Coomer’s alleged promise to fix the election; and Coomer’s internet criticisms of the then-President.

67. “Malkin characterized those Coomer postings as “the unhinged rantings of this lunatic.” She said “It is a fight between good and evil, not just between right and

⁴¹ Joey Bunch, *Antifa among the press corps? New Colorado conservative says so*, COLORADO POLITICS, Oct. 16, 2020, https://www.coloradopolitics.com/2020-election/antifa-among-the-press-corps-new-colorado-conservative-says-so/article_e911fa6a-0fe4-11eb-9797-d797b34dd99d.html (last visited Aug. 31, 2021).

left” and that Oltmann’s “so vital” information was evidence of “systemic stealing.” She cited as sources communications from “independent citizen journalists” and Republican poll watchers who provided “eyewitness accounts of the fraud that’s going on.” Malkin praised Oltmann’s “foresight in capturing” Coomer’s online postings before he took them down. “You got the goods,” she said. “This reaches from conspiracy theory to conspiracy truth,” she said. “If we don’t have fair and free elections, that’s it. Game over.”⁴²

68. “In her July 27, 2021, deposition, Ms. Malkin said she did not find it odd that a tech-savvy Oltmann had not recorded the antifa phone call that Dr. Coomer allegedly was a part of. Nor did she ask to see his notes. Malkin testified that she did not have time for “independent research” about Dominion Voting Systems before putting Oltmann on livestream.⁴³ And why did she call it stealing the election? At p.39 she explains, “. . . it was a bigger picture, an – an entire umbrella of election integrity irregularities and concerns that spelled the stealing of an election, yes.”⁴⁴

69. “Oltmann dominated the show, but that’s not surprising; a good interviewer should not be the focus, the interviewee should be the star. Still, Malkin let Oltmann ramble on without challenging him on some of his more extreme claims. In fact, she reinforced some of them. “All of this stemmed from Joe trying to understand the journalists who are essentially antifa operatives,” she said. “You know you’re over

⁴² Exhibit F-3, #MalkinLive transcript, Nov. 13, 2020, at 21:2-5; 32:6-9; 2:2-7; 2:23-3:3; 18:9-20; 13:12-19; 32:16-24.

⁴³ See Exhibit F-1, Malkin, Jul. 27, 2021 Depo Tr. 34:16-18.

⁴⁴ *Id.* at 39:14-16.

the target . . . the collaboration between the fourth estate and the violent mob.”⁴⁵ “We’re compatriots” she told Oltmann; too many Republicans have sold out. “It’s such a blessing to have you enter this battle space. . . . It would be a sin to essentially turn our backs on this role that we were meant to play.”⁴⁶

70. “In her deposition, she explained how she sees her journalistic role, now that she is quite open about having a conservative political perspective:

I believe that I have an imperative to broadcast stories that are not being covered and to give a platform to people who are being censored for disseminating what is considered dangerous or dissident information but that is of high public interest. And election integrity certainly was at that particular time and now.⁴⁷

71. “Two weeks later, she did a second broadcast, this time on Newsmax, about Dominion, Coomer and allegations of a stolen election. She did not reach out to either Dominion or Dr. Coomer, but she did make a disclaimer at the beginning of the second program about a lack of evidence that Dr. Coomer rigged the election. “And that’s what I stated on Newsmax, and that is what I believe today.”⁴⁸

72. “Although she had conceded earlier she did not contact Coomer or anyone at Dominion directly, Malkin testified “You asked me that before, and as I said, I had seen news stories in which they defended themselves, and quotes from this website were included.”⁴⁹ And, like Rion, she was not “going to take at face value any statement that

⁴⁵ Exhibit F-3, #MalkinLive transcript, Nov. 13, 2020, at 29:12-17; 30:1-5.

⁴⁶ *Id.*, at 44:14-23; 42:11-20.

⁴⁷ Exhibit F-1, Malkin, Jul. 27, 2021 Depo Tr. at 44:14-19.

⁴⁸ *Id.* at 89:2-3.

⁴⁹ *Id.* at 108: 7-9.

was made by any government agency about the election at that time,”⁵⁰ including that there was no evidence of rigging, an apparent reference to Chris Krebs.

73. “Malkin ended her affiliation with Newsmax after Newsmax made its public statement of apology and retraction in April. The statement was a factor in her decision to end the contract, she said.⁵¹

74. “Plaintiff’s counsel asked her why she did not take the time to verify information before she did that second Oltmann interview. She replied:

If I were held to a standard of only live streaming facts that I could verify beforehand, I would be restrained from doing any live streams at all; and so, for that matter, would any outlet that covers breaking news or live streams.⁵²

75. “She agrees that it is a journalist’s “ethical duty” to correct erroneous information.⁵³ She also agrees that Coomer is entitled to have a political viewpoint,⁵⁴ even the anti-Trump viewpoint expressed in the screenshots that Oltmann displayed and the two of them discussed. Malkin testified:

Joe Oltmann explains why he believes it is relevant, and I agree with him; that it is concerning that the sheaf of Facebook posts that not merely express some de minimus level of discontent but are actually very extreme and profane in vitriol and even hatred for people who were concerned about how Election 2020 was conducted.⁵⁵

⁵⁰ *Id.* at 109:24-110:2.

⁵¹ *Id.* at 86:23-87:15.

⁵² *Id.* at 45:2-10.

⁵³ *Id.* at 46:18-47:3.

⁵⁴ *Id.* at 51:6-8.

⁵⁵ *Id.* at 52:11-18.

76. “Malkin concedes that she did not do similar reporting about the conduct of elections in states that Trump won.⁵⁶ She also says that, based on what she knew of Oltmann’s reputation, she had no reason to believe he was lying to her⁵⁷ including when he said he obtained Coomer’s Facebook posts legally.

77. “Again, in her deposition, Malkin uses the “could have” supposition that appears so often in these depositions. She says that, while Oltmann concluded Coomer committed election fraud, “That was his conclusion. Mine was the opposite, and both views were aired in this segment.”⁵⁸ She further indicated that “What was alarming was the possibility that he could have fulfilled that threat. And that’s why I was sharing this information, because I wanted people to know what Joe Oltmann had discovered about him. It is alarming.”⁵⁹

78. “Here, as elsewhere, we see an over-reliance on hunches and potential problems and not enough effort to get a range of realistic explanations. That is not in keeping with ethical journalistic practice.

James Hoft, The Gateway Pundit

79. “Hoft testified that he founded the website in 2004 because he “felt there was a need for a conservative voice online.”⁶⁰ It has about 2.5 million followers. He

⁵⁶ *Id.* at 54:2-24.

⁵⁷ *Id.* at 55:5-20.

⁵⁸ *Id.* at 98:15-19.

⁵⁹ *Id.* at

⁶⁰ *See* Exhibit E-1, Hoft, Aug. 10, 2021 Depo Tr. 9:9-17, attached to Dr. Coomer’s Omnibus Response

calls it “news with opinion.”⁶¹ His educational background is in science, not journalism, but he has attended several blogger conferences. And he says TGP has become a “member” of the Poynter Institute, a journalism think tank based in St. Petersburg, Florida, hoping to be certified by them as part of their International Fact-Checking Network, which was created in 2015.

80. “There is a great deal about this right-wing site to be found on the internet, and apparently it produces a lot of misinformation. A Google search for “Gateway Pundit Dominion” produced 6.5 million results.

81. “A July 29, 2021, article by Abram Brown, a senior editor for Forbes, lists a number of claims made by the Gateway Pundit, including that election officials “lost or tampered with millions of Trump votes on election night”; that Joe Biden won Pennsylvania with “an impossible number of mail-in ballots” (that story’s headline: SHOCKING EXCLUSIVE: WE CAUGHT THEM!); and that former Attorney General William Barr failed to follow up on “legitimate claims” of election fraud. None of this is true, Brown (no relation) said.

82. “According to the Center for Countering Digital Hate, the Gateway Pundit published at least 127 articles containing false information about the election and another 155 about Dominion Voting Systems. Twitter banned Hoft from its platform last February, although the Gateway Pundit continues to raise advertising revenue through Google advertising revenue—more than \$1 million through June, according to Forbes.

⁶¹ *Id.* at 10:11-20.

83. “But Hoft, in his deposition, said The Gateway Pundit does have professional standards “We want to be truthful. We want to be honest. We want to be timely. And we want to be trusted.”⁶² And that people who write for the website (p.19) “must confirm that the story is authentic, that the source is legitimate, and that the they, of course, is something that is—our audience—that, you know, pertains to our audience.”⁶³ He acknowledges that the audience is conservative, and that their writers have opinions, too, like everyone on the internet.

84. “But he explains they did not insist on getting Eric Coomer’s side because the story was about Oltmann’s revelations. And Hoft seems to be very attached to the idea of doing investigations. He repeatedly says, “We’re doing an investigation” about various allegations or certification, or whatever.

85. “Dominion’s attorneys contacted The Gateway Pundit on March 8, 2021, asking that it retract an article it had posted on November 10, 2020, shortly after the election. Gateway disagreed and asked its readers to comment. What follows is most of the article, not including a long chart of votes by state that were allegedly switched from Donald Trump to Joe Biden, that The Gateway Pundit posted again on March 11, 2021:

We’ve reported on numerous events in the 2020 election which are being referred to as system ‘glitches’ in the media. . . .

Last night we reported on another so called system ‘glitch’, this time in a county in Wisconsin. Evidence was provided to us that showed that the vote totals for Rock County appeared to be switched between President Trump and Joe Biden. 9,516 votes were eliminated from President

⁶² *Id.* at 18:20-23.

⁶³ *Id.* at 19:7-13.

Trump and moved to Joe Biden. This 19,032 vote difference when corrected would eliminate Biden’s lead in Wisconsin.

In the post last night we also identified issues we’ve reported on in Michigan, Pennsylvania and Georgia where similar ‘glitches’ occurred. We next attempted to obtain more data on this issue so we could determine how widespread this issue may be and/or if there are reasonable explanations for what is occurring.⁶⁴

86. “The post, with a certain amount of caution, goes on to list figures for all 50 states reported by a web site called patriots.win, “where someone who had seen our posts decided to do an analysis himself. (The author claims that his work has been verified but we have not verified the results so we currently are labeling his results “unaudited.”)⁶⁵

87. “The Gateway Pundit concludes:

Based on this initial analysis over 500,000 votes were identified that were switched from President Trump to Joe Biden.

In addition to this another 2,865,757 votes were deleted.

Note that these numbers have not yet been audited by us.

We also have not performed this exercise by county in these states which could impact the countrywide vote totals even more. More needs to be done. But what is clear, there are some very questionable transactions occurring within the voting machines and applications which need to be reviewed further because of apparent material issues in reporting.

We know there was a tremendous amount of fraud in the 2020 election.

⁶⁴ Joe Hoft, *Dominion Contacted Gateway Pundit and Demanded We Take Down This Post – We Reviewed Our Post and Disagreed – What Do You Think?*, THE GATEWAY PUNDIT, Mar. 11, 2021, <https://www.thegatewaypundit.com/2021/03/dominion-contacted-gateway-pundit-demanded-take-post-reviewed-post-disagreed-think/> (last visited Aug. 31, 2021).

⁶⁵ *Id.*

Nobody was following Joe Biden and he had zero support, and yet his vote count surpassed the greatest campaign in US history led by President Trump.

We are supposed to believe Joe Biden defeated President Trump and at the same time lost seats in the US House and state legislatures. This is highly improbable.

It looks like the Democrats did everything imaginable in their attempt to steal this election.

The problem was they never expected President Trump to lead a record breaking campaign and they got caught.

More will be exposed.

* * * * *

Dominion's name was noted in the article three times and we removed that mention from this post.⁶⁶

88. “Note the assertion that “Nobody was following Joe Biden and he had zero support, and yet his vote count surpassed the greatest campaign in US history led by President Trump.”⁶⁷ There is no acknowledgment of the possibility that Joe Biden got more votes because he was preferred by more voters—regardless of the fact that then-President Trump had so many followers on Twitter and large crowds at his rallies.

89. “The Gateway Pundit’s negative coverage of Dominion has not abated. An internet search for “gateway pundit dominion” turned up dozens more posts with titles such as “Hero Michigan Sheriff is Digging into Dominion Machines”⁶⁸ and “INSANE:

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ Jim Hoft, *Michigan Hero Sheriff is Digging into Dominion Machines – Barry County Clerk Claims There Were No Issues but Lawyers Up*, THE GATEWAY PUNDIT, July 28, 2021, <https://www.thegatewaypundit.com/2021/07/michigan-hero-sheriff-digging-dominion-machines-barry-county-clerk-claims-no-issues-lawyers/> (last visited Aug. 31, 2021).

Louisiana Secretary of State About to Hand Over \$100 Million in Voting Machine Purchase – Dominion Is Reportedly In the Running”⁶⁹ as well as “BREAKING: Rudy Giuliani Confirms ‘Dominion’ Whistleblowers Are Coming Forward (VIDEO).”⁷⁰

90. “Here, from Hoft (deposition, p.60), is an explanation of why so many think the election was fraudulent. It boils down to the fact that it did not turn out the same way as previous elections, and—more specifically—that Trump lost after winning in 2016: “When you have historic revelations -- outcomes that have never happened before, and not just one or two but, maybe, ten, yes, it—it—you have a pattern. And it is—the pattern shows that this was not a credible, secure election as some people insist it was.”⁷¹

91. “Or maybe it’s just that more people decided they did not want another four years of Trump. Hoft’s cynical conclusion is based on mere supposition, not on fact, and in my opinion does not follow the basic journalistic principle of searching for, collecting and reporting all relevant information about a subject.

Eric Metaxas

92. “Metaxas, who was once a Trump critic, is a Christian author and radio talk-show host who has become an ardent supporter of the former president. Stephanie

⁶⁹ Joe Hoft, *INSANE: Louisiana Secretary or State About to Hand Over \$100 Million in Voting Machine Purchase – Dominion is Reportedly In the Running*, THE GATEWAY PUNDIT, Feb. 21, 2021, <https://www.thegatewaypundit.com/2021/02/insane-louisiana-secretary-state-hand-100-million-voting-machine-purchase-dominion-reportedly-running/> (last visited Aug. 31, 2021).

⁷⁰ Jim Hoft, *BREAKING: Rudy Giuliani Confirms “Dominion” Whistleblowers Are Coming Forward (VIDEO)*, THE GATEWAY PUNDIT, Nov. 11, 2020, <https://www.thegatewaypundit.com/2020/11/breaking-rudy-giuliani-confirms-dominion-whistleblowers-coming-forward-video/> (last visited Aug. 31, 2021).

⁷¹ Ex. E-1 at 58:24-59:13.

Martin reported on his negative coverage of Dominion Systems in an article she wrote for the February 12, 2021, issue of ChurchLeaders.⁷²

93. “Martin reported that on the November 24, 2020, episode of his radio show and podcast, Metaxas invited Joe Oltmann to share “inside information of how Eric Coomer, a security genius for Dominion Voting Systems, assured Antifa members that Trump would never win re-election.”⁷³ Oltmann, who said he founded the nonprofit FEC United in order to “restore liberty,” described listening to an Antifa conference call and hearing references to “Eric” and “the Dominion guy.”

94. “The following quotes from Metaxas are reported in Martin’s article about him:

*It reminds me of the Unabomber. There are some people that uh, their learning, or rather their brains will flirt with insanity and violence. It sounds like you’re dealing with somebody who at least begins to fall into that category. We know that Antifa is evil, that they are anti-American, that they are effectively Marxist shock troops at this point. But to have a man with this kind of power, the Director of Strategy and Security at Dominion, huge, powerful, international company. This is big news ... this is globalist stuff.*⁷⁴

95. “He said later, in his August 14, 2021:

I don’t think I equated him [Coomer] with the Unabomber. I think I was just making a comment about the level of intelligence you’re dealing with.”⁷⁵ (He suggests it was for “hyperbolic joke effect.”)

⁷² Stephanie Martin, *Eric Metaxas Is Being Sued for Spreading Dominion Voting Fraud Claims*, CHURCH LEADERS, Feb. 12, 2021, <https://churchleaders.com/news/390094-eric-metaxas-sued-voting-fraud-dominion.html> (last visited Aug. 31, 2021).

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ See Exhibit G-2, Metaxas, Aug. 13, 2021 Depo Tr, PX 96 at 63:19-25.

96. “More Metaxas quotes from Martin’s article:

This is everybody’s worst nightmare of deep state, George Soros. The idea that a man of this level, at a place like Dominion, which is operating all around the globe in elections, which got started in Venezuela, that somebody like that who despises America. You know, if you despise America, by definition, you become allied with these globalist forces, which are effectively fascist, Marxist, you know. That this guy has this kind of power, I mean, it’s scary. ... The idea that anyone would dare to try to mess with our elections, many patriots have died, suffered, and died, so that we can have what we have.⁷⁶

97. “Martin’s article continued:

In a January 11 [2021] Facebook post, Metaxas wrote: “OK, what’s the CRAZIEST conspiracy you’ve heard lately? I’ll start: The American voters elected Joe Biden to the presidency. Of course it’s embarrassing to admit, but I know people totally CONVINCED it happened, despite the obvious lunacy of it & all the evidence to the contrary.”

On January 7, the day after the U.S. Capitol was breached, Metaxas wrote on Facebook: “Along w/millions of my fellow Americans I am convinced this election was illegitimate, so yes we have a problem. As a Christian I’m obliged to love my enemies & to praise God in all circumstances. So we pray now to the Lord of glory that He do what man cannot & save our Republic.”⁷⁷

98. “This is another example of the fallacious reasoning that, if so many Americans are convinced the election is illegitimate, it must indeed have been illegitimate. But many millions more Americans have no doubt that the election was unusual only in that, according to numerous experts, including the Trump administration’s own authorities, the election was remarkably free of security problems. If one is purporting to report on an election, that person is ethically obliged to at least be aware of and consider all relevant arguments.

⁷⁶ Martin, *supra* n. 56.

⁷⁷ *Id.*

99. “Metaxas, in his deposition, says he is not a journalist, but agrees that his podcast and radio show are a mix of news and opinion. Mostly opinion, apparently, interviews in which “I just react . . . to the people.” “I wouldn’t use the word ‘news’ ever.”⁷⁸

100. “Metaxas comes across as very religious. And it does not seem he has followed events very closely: “to this day, I find it confusing,” he said.⁷⁹

101. “He knows the My Pillow Guy, Mike Lindell, a sponsor of his show. “I use his products, and I have been getting the most comfortable sleep of my life. Use the code ‘Eric’ when you go to mypillow.com,”⁸⁰ he says in an unsolicited endorsement.

102. “Metaxas testified that he has “No idea” whether Coomer affected the outcome of the elections, but Dominion – “it’s possible, which is so horrifying to me, that it’s one of the reasons I think I was interested in talking to Joe Oltmann.”⁸¹

103. “As for verification, “unfortunately,” he says, his show does not do investigations. “I’m kind of a fly by the seat of my pants guy.”⁸² But he would correct something “if I felt the need.”⁸³ His employer, Salem Media Group, is “overtly Christian, so they would care about the truth.”⁸⁴

⁷⁸ Ex. G-1 at 12:20-13:24.

⁷⁹ *Id.* at 40:14-41:11.

⁸⁰ *Id.* at 48:18-23.

⁸¹ *Id.* at 31:4-19.

⁸² *Id.* at 15:22-16:1.

⁸³ *Id.* at 24:1-5.

⁸⁴ *Id.* at 15:3-7.

104. “Anyone who cares about the truth should care about being sure of his facts. In the case of Eric Metaxas, as is true of other defendants in this case, the reporting relies on rumor and innuendo, and disregards a huge preponderance of evidence to the contrary.

A History of Voter Fraud (or Allegations Thereof)

105. “It should not be difficult for anyone to find credible arguments against allegations of voting irregularities. Such allegations have a long history in American politics, dating to decades before the claims of Mr. Trump and his supporters. A simple Google search will turn up hundreds of examples of serious academic research that have found only negligible evidence of election irregularities.

106. “The Brennan Center for Justice at New York University’s law school is often cited as the most authoritative source of serious research into election irregularities. In a 33-page report written by Justin Levitt, counsel for the center’s Democracy, Levitt concluded that in a long history of allegations of voter fraud, the actual occurrence had been “grossly inflated.”

107. “As Levitt said in that 2007 report:

The Brennan Center for Justice at NYU School of Law carefully examines allegations of fraud to get at the truth behind the claims. The Brennan Center has analyzed purported fraud cited by state and federal courts; multipartisan and bipartisan federal commissions; political party entities; state and local election officials; and authors, journalists, and bloggers. Usually, only a tiny portion of the claimed illegality is substantiated — and most of the remainder is either nothing more than speculation or has been conclusively debunked.⁸⁵

⁸⁵ Justin Levitt, *The Truth About Voter Fraud*, BRENNAN CENTER FOR JUSTICE, Nov. 9, 2007, p. 3 https://www.brennancenter.org/sites/default/files/2019-08/Report_Truth-About-Voter-Fraud.pdf (last visited Aug. 31, 2021).

108. “Levitt concedes that:

*It is easy to find opinion pieces and legislative statements claiming that voter fraud is a substantial concern. But aside from a trickle of news stories of low-grade fraud in a few isolated elections, there are surprisingly few sources recounting specific incidents of alleged voter fraud.*⁸⁶

109. “He cites several examples of efforts to find fraud, including books, newspaper articles and the “controversial” American Center for Voting Rights (established in 2005 and “apparently defunct” at the time Levitt’s paper was written). But, Levitt adds:

*In two studies, both focusing more heavily on the political and legal context of voter fraud allegations, Professor Lorraine Minnite has reviewed several incidents. Professor Spencer Overton, a former commissioner on the 2005 Commission on Federal Election Reform, has also reviewed several incidents of alleged fraud in his book *Stealing Democracy*. After careful analysis, both authors find the claims largely overblown.*⁸⁷

110. “More recently, during the 2020 election campaign, a synopsis of recent academic papers done by Cornell University’s Bronfenbrenner Center for Translational Research looked at allegations of voter fraud in the United States dating back more than a century. From that synopsis:

“But what does scholarly research tell us about U.S. voter fraud? It turns out, there is quite a sizeable body of evidence on voter fraud over the past

⁸⁶ *Id.*, at p. 5.

⁸⁷ *Id.*

two decades. The vast majority of studies have concluded that voter fraud is too rare to influence national elections.”⁸⁸

111. “The Cornell researchers cite, among several other studies, a 2014 column Levitt wrote for The Washington Post in which:

“this same author lists every instance of alleged voter fraud that he is able to find across the country and follows up to find out if there were actual fraudulent votes cast. Between 2000 and 2014, he found 31 instances of voter fraud in total the U.S. in any election – general, primary, special or municipal elections. Over that same period, in general and primary elections alone, U.S. voters cast more than 1 billion votes – leading to a miniscule rate of voter fraud.”⁸⁹

112. “The Center’s “take-home message: While allegations of voter fraud are frequently bantered around in the news media and by candidates, a large body of research demonstrates very little evidence of voter fraud – and clearly not enough to influence the outcome of an election.”⁹⁰

113. “On November 16, 2020, a group described as “59 election experts” released a report which also is quoted in the deposition of Chanel Rion. They wrote:

Anyone asserting that a U.S. election was rigged is making an extraordinary claim, one that must be supported by persuasive and verifiable evidence. Merely citing to the existence of technical flaws does not establish that an attack occurred, much less that it altered an election outcome. It is simply speculation.⁹¹

114. “Could have,” the qualifying language used so often by the Defendants in this case, is mere speculation. Even Charles Herring, CEO of OAN, conceded, in

⁸⁸ Gary Drevitch, *What Research Tells Us About Voter Fraud*, THE BRONFENBRENNER CENTER FOR TRANSLATIONAL RESEARCH, Oct. 21, 2020, <https://www.psychologytoday.com/intl/blog/evidence-based-living/202010/what-research-tells-us-about-voter-fraud> (last visited Aug. 31, 2021).

⁸⁹ *Id.*

⁹⁰ *Id.*

⁹¹ Ex. H-1 at 36:17-23.

speaking of Dr. Coomer: “Whether he actually did it or not, I – we don’t know. We don’t have evidence of that.”⁹²

115. “Perhaps most damning is a conclusion from the previous administration’s own attempt to ensure election security. Christopher Krebs, director of the Cybersecurity and Infrastructure Security Agency in the Department of Homeland Security, said in a Twitter post on November 17, 2020, that “59 election security experts all agree, ‘in every case of which we are aware, these claims (of fraud) either have been unsubstantiated or are technically incoherent.’”⁹³

116. “Former President Trump fired Krebs via Twitter the same day, giving the rationale that the “recent statement by Chris Krebs on the security of the 2020 Election was highly inaccurate, in that there were massive improprieties and fraud.” Trump, though, provided no evidence to support his allegations of this fraud.

117. “Two weeks after his firing, in a December 1, 2020, column in The Washington Post, Krebs wrote:

This point cannot be emphasized enough: The secretaries of state in Georgia, Michigan, Arizona, Nevada and Pennsylvania, as well officials in Wisconsin, all worked overtime to ensure there was a paper trail that could be audited or recounted by hand, independent of any allegedly hacked software or hardware.

That’s why Americans’ confidence in the security of the 2020 election is entirely justified. Paper ballots and post-election checks ensured the accuracy of the count. Consider Georgia: The state conducted a full hand recount of the presidential election, a first of its kind, and the outcome of the manual count was consistent with the computer-based count. Clearly,

⁹² Ex. I-1 at 106:10-107:8.

⁹³ Chris Krebs, @CISAKrebs, TWITTER, Nov. 17, 2020, <https://twitter.com/CISAKrebs/status/1328741106624901120> (last visited Aug. 31, 2021).

the Georgia count was not manipulated, resoundingly debunking claims by the president and his allies about the involvement of CIA supercomputers, malicious software programs or corporate rigging aided by long-gone foreign dictators.

The 2020 election was the most secure in U.S. history. This success should be celebrated by all Americans, not undermined in the service of a profoundly un-American goal.⁹⁴

118. “As a journalist with more than a quarter-century of experience covering politics and elections in Colorado, I am compelled to say that I have the greatest degree of confidence in the way elections have been conducted in my home state. Secretaries of state, Republicans as well as Democrats, have instituted and carried out a mail-voting process that has been widely acknowledged as a national model.

119. “KOA Channel 4, the CBS television station in Denver, interviewed current Colorado Secretary of State Jena Griswold, a Democrat, in June 2020. From their report:

All of it comes amid tweetstorms and claims by President Donald Trump about vote-by-mail. He has worried about a decline in Republican votes, but Colorado Secretary of State Jena Griswold says that’s not been the case.

“If you look at Colorado in our last two out of three general elections, more registered Republicans have used mail ballots than Democrats,” the Democrat told CBS4.

The mail ballots were first sent to every registered voter starting in 2014 under her predecessor Wayne Williams, a Republican.

⁹⁴ Christopher Krebs, *Trump fired me for saying this, but I’ll say it again: The election wasn’t rigged*, WASHINGTON POST, Dec. 1, 2020, https://www.washingtonpost.com/opinions/christopher-krebs-trump-election-wasnt-hacked/2020/12/01/88da94a0-340f-11eb-8d38-6aea1adb3839_story.html (last visited Aug. 31, 2021).

“And he did a great job,” said Griswold.⁹⁵

120. “Although registered Democrats in Colorado now outnumber registered Republicans—a comparatively recent reversal of advantage—mail voting in 2014 saw essentially equal percentages of each party voting in the race for U.S. Senate, which was won by a Republican, Cory Gardner. More of CBS4’s report:

“Our referral rate for potential double voting and further investigation into in our 2018 general election was 0.0027 percent of all ballots cast,” said Griswold. That meant 62 ballots out of 1.5 million cast. Referral means sending them over to the attorney general for a further look.⁹⁶

121. “Republicans seem more nervous about election fraud than Democrats are. For years, they have raised concerns about voting irregularities, but their investigations have turned up nothing. Even after he won the 2016 election, President Trump claimed that millions of people had voted illegally. He created the “Presidential Advisory Commission on Election Integrity” with an executive order signed on May 11, 2017. It met twice over the next several months, amid controversy and legal challenges, without turning up anything substantive. The president issued another executive order on January 3, 2018, before the commission could issue a final report.

122. “After the 2020 election a county clerk in Mesa County, in a part of the state that is much more Republican-leaning than much of Colorado and which voted for

⁹⁵ Alan Gionet, *Fraud In Ballots By Mail In Colorado? Not Much*, CBS 4 DENVER, June 26, 2020, <https://denver.cbslocal.com/2020/06/26/fraud-ballots-mail-colorado-president-trump-claims/> (last visited Sep. 1, 2021).

⁹⁶ *Id.*

firebrand Lauren Boebert to represent it in Congress, claimed that voting-machine software could be manipulated, and that votes could be counted more than once.

123. “The county clerk did not provide evidence, but Republicans in the state legislature—a minority in both chambers—demanded, and received, a hearing to look into the possibility of election irregularities. The hearing lasted eight hours, but produced no evidence of widespread fraud. County clerks and even former Republican secretaries of state testified during the hearing that mistakes may happen, but not nearly enough to overturn an election.

124. “The former president, thousands of whose claims have been refuted by fact-checkers, nonetheless has convinced millions of his followers that he does not lie, and that he’s telling the truth about the election being “stolen” from them. This remarkable statement from Debra Ell, a Republican precinct delegate in Michigan, was quoted earlier, but it bears repeating:

“I think I speak for many people in that Trump has never actually been wrong, and so we’ve learned to trust when he says something, that he’s not just going to spew something out there that’s wrong and not verified.”⁹⁷

125. “She was speaking to a reporter about Trump’s repeated references to election fraud. In fact, the former president, like his defenders, often seems to leave a bit of ambiguity lingering in the air, with phrases like “people are saying” or “everybody knows” – which could bring it into the realm of opinion, not necessarily a hard, cold fact.

⁹⁷ Ashley Parker and Marianna Sotomayor, , *For Republicans, fealty to Trump’s election falsehood becomes defining loyalty test* WASHINGTON POST, May 2, 2021, https://www.washingtonpost.com/politics/republicans-trump-election-falsehood/2021/05/01/7bd380a0-a921-11eb-8c1a-56f0cb4ff3b5_story.html (last visited Aug. 31, 2021).

Other evidence of lax standards

126. “Election deniers also make much of the fact that Trump was ahead in many places as election night ended, and yet, in the days to come, more votes “turned up” for Biden. Actually, that is the way elections always go. It takes time to count votes. As a political reporter and editor, I always fought the tendency to say “X is still ahead, but Y is pulling closer.” In fact, voting has ended; what is continuing is the inevitably drawn-out process of counting those votes. Until this election, that fact of life was much more widely accepted.

127. “Defendants also claim that of course they had to report on the allegations of fraud because so many people were talking about it. From the various pleadings: “Nationwide claims of election fraud dominated the news cycle. . . . Every news organization in America, big and small, and including Defendants, covered the story that the election had been stolen.”⁹⁸ But the nonstop coverage also overwhelmingly concluded there was no evidence to show widespread fraud. It came to be known as The Big Lie.

Unreliable Affiants

128. “Just because there were more than 60 lawsuits challenging the outcome of the election is not proof that there was, in fact, fraud. Nor are the numerous affidavits cited by various Defendants as supportive of the former president’s claims. Affidavits are indeed a serious matter, but the possibility that they contain misinformation needs to be checked out by an ethical reporter. Skepticism is an admirable trait in a reporter.

⁹⁸ OAN-Rion Mot., Apr. 30, 2021, at pp. 6-7.

129. “And to say one was only employing “rhetorical hyperbole,” a defense raised by several defendants, certainly is a thing, and may even be a legitimate legal defense, but it is not an ethical thing, and it is not good journalism.

Conclusion

130. “In my opinion, Defendants failed in the primary obligation of journalism—to seek truth and report it. Ethical journalists should stick to provable facts—and, where information is questionable, continue pursuing the story until proof can be found. If there is no proof, that needs to be said. It **must** be said. It is a journalist’s duty to say it. Ethical communication is based on verifiable information, not on what one might wish the facts to be. When I was a full-time reporter and editor, I called this phenomenon “log infatuation.” Editors and reporters describe the stories they are pursuing at the beginning of each day’s news meetings. Their descriptions are entered on a log of the day’s anticipated reports. But sometimes the facts, as the RTDNA says in its code of ethics, **should** get in the way of a good story. Sometimes, no matter how hard you dig, you just get a bigger hole.

131. “Reporters must check and double-check and seek information from those who might have a different perspective on the “truth.” Relying on a single source for stories that make serious allegations against a person and that person’s work is an unforgivable affront to journalistic standards. Serious, responsible journalists are expected to be aware of as much relevant information as possible, and to take it into account in preparing their reports. In my opinion, it is clear that the vast preponderance of reliable evidence and reporting surrounding voting procedures in the

presidential election leads to the inevitable conclusion that, as former Attorney General William Barr told The Associated Press in an interview published December 1, 2020: “To date, we have not seen fraud on a scale that could have effected a different outcome in the election.”⁹⁹

132. “As we have seen in numerous codes of ethics, responsible opinion should be based on fact, or, if it is entirely speculation, that should be made clear in communicating that opinion. And much of what has been alleged about the election and the various types of nefarious activity is that, because it could happen, it probably did. That is rank speculation. It appears not one of the Defendants in this case has hard evidence that there was, in fact, significant manipulation of voting results. The defendants have convinced themselves that the election was stolen and ignore or dismiss all evidence to the contrary.

133. “I have said—somewhat reluctantly, because I do not pretend to know what motivates people—that Defendants have displayed “reckless disregard for the truth,” an element of malice. In *Kuhn v. Tribune-Republican Publishing Co.*, a 1981 Colorado case previously cited, it was held that a reporter’s “grossly inadequate” failure to double-check allegations through “obvious sources of possible corroboration or refutation” can be evidence of “reckless disregard for the truth.”

134. “And, although I will not speculate on their motivation, I can see in their reporting a basic, unacceptable failure to even attempt to verify the facts through

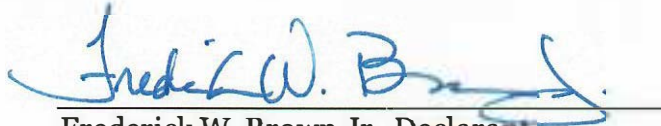
⁹⁹ Micahel Balsamo, *Disputing Trump, Barr says no widespread election fraud*, AP NEWS, Dec. 1, 2020, <https://apnews.com/article/barr-no-widespread-election-fraud-b1f1488796c9a98c4b1a9061a6c7f49d> (last visited Aug. 31, 2021).

“obvious sources.” That is clearly wrong and an affront to fundamental journalistic standards and practice. In my opinion, the defendants I have covered in this declaration—OAN and its employees and executives, individuals including Joseph Oltmann, Michelle Malkin, James Hoft and Eric Metaxas—whether they identify as journalists or not, have nonetheless engaged in acts of journalism. And, in my opinion, their failure to report on widely accepted, verifiable information that conflicts with their assumptions, may legitimately be characterized as a reckless disregard for the truth.

135. “Pursuant to C.R.S. § 13-27-101, et. seq., I declare under penalty of perjury under the law of Colorado that the foregoing is true and correct.”

Further Declarant sayeth naught.

Executed on the 20th day of September 2021 in Aurora, Colorado.


Frederick W. Brown Jr., Declarant

<p>DISTRICT COURT, DENVER COUNTY, COLORADO 1437 Bannock Street Denver, CO 80202</p>	
<p>ERIC COOMER, Ph.D., Plaintiff</p> <p>vs.</p> <p>DONALD J. TRUMP FOR PRESIDENT, INC., et al., Defendants</p>	<p style="text-align: center;">▲ COURT USE ONLY ▲</p>
<p>Attorneys for Plaintiff Charles J. Cain, No. 51020 ccain@cstrial.com Steve Skarnulis, No. 21PHV6401 skarnulis@cstrial.com Bradley A. Kloewer, No. 50565 bkloewer@cstrial.com Zachary H. Bowman, No. 21PHV6676 zbowman@cstrial.com CAIN & SKARNULIS PLLC P. O. Box 1064 Salida, Colorado 81201 719-530-3011/512-477-5011 (Fax)</p> <p>Thomas M. Rogers III, No. 28809 trey@rklawpc.com Mark Grueskin, No. 14621 mark@rklawpc.com Andrew E. Ho, No. 40381 andrew@rklawpc.com RechtKornfeld PC 1600 Stout Street, Suite 1400 Denver, Colorado 80202 303-573-1900/303-446-9400 (Fax)</p>	<p>Case Number: 2020cv034319</p> <p>Division Courtroom: 409</p>
<p style="text-align: center;">EXHIBIT N-1</p>	

Fred Brown
2862 South Oakland Court
Aurora, Colorado 80014-3109

Fred Brown is officially retired. He was chief of The Denver Post's state Capitol bureau when he left full-time employment in early 2002 after nearly 39 years at the newspaper. But he continues to make occasional television appearances and write occasional columns. He also teaches ethics at the University of Denver, consults on matters of journalism ethics, and has been working on a number of book projects.

A brief professional history:

2005 - present:

- Adjunct instructor at the University of Denver, teaching 20 or more students in a senior-level class in communication ethics.
- Adjunct instructor at The Women's College, University of Denver, teaching a similar ethics course.

2002-2005:

- Adjunct professor at Metropolitan State College of Denver, teaching five-week accelerated classes in intermediate reporting.
- Op-ed columnist and TV analyst

1988-2002: Political writer and editor for The Denver Post. Duties included:

- Capitol bureau chief, supervising two or three other reporters and a photographer, planning and coordinating coverage of the state legislature and writing daily stories as well as a weekly column.
- Political editor, working with newsroom managers to plan stories, polling and other coverage of political campaigns; included writing political stories and working with The Post's Washington Bureau.

1978-1988: Editorial page, The Denver Post

- Wrote several editorials every week expressing the newspaper's opinions.
- Supervised production of the Sunday Perspective section.
- Served as assistant editorial page editor, running the department in the absence of the editor; four months as acting editorial page editor.

1963-1978: Various assignments, The Denver Post

- Began as an intern, then worked as a general assignment reporter, police reporter and rewrite specialist.
- Covered the Capitol and politics, 1966-1978, with occasional assignments writing about science and other subjects.
- Served briefly in 1978 as an assistant city editor, supervising coverage by reporters and photographers.

1961-62: Worked at the Bent County Democrat, a weekly newspaper in Las Animas,

Colorado, then at the Boulder (Colo.) Daily Camera

Education:

Bachelor of Arts, technical journalism major, Colorado State University, 1961

Master of Science in Journalism, Northwestern University, 1963 (McCormick Scholarship recipient)

Several professional development courses, including one for editorial page editors and writers at the American Press Institute, Reston, Va.; journalism ethics at the Poynter Institute, St. Petersburg, Fla.; and a pre-election workshop in Los Angeles, Calif., for political reporters, sponsored by Harvard University.

Professional and civic activities:

- Former national president (1997-1998) of the Society of Professional Journalists, the nation's largest journalism membership organization
- Former chairman and current co-chairman of SPJ's ethics committee
- One of the authors and final editors of the SPJ Code of Ethics, 1996 and 2014.
- Wrote a monthly column about journalism ethics for SPJ's Quill magazine, 1999-2006.
- Board member, Colorado Public Radio and its Community Advisory Board, Colorado Freedom of Information Council, Community College of Aurora Foundation, and Sigma Delta Chi Foundation.
- Editor of *Journalism Ethics: A Casebook of Professional Conduct for News Media*, published in March 2011.
- Author of *Media Ethics: A Guide for Professional Conduct*, published July 2020.
- Author of *Persistence of Vision* (2011), an authorized history of the Denver Metro Chamber of Commerce and business involvement in major civic improvements.
- Other published works include regular Sunday columns for The Denver Post (weekly, 2003-2009; less frequently since)
- Frequent public speaker and moderator of panel discussions
- Has conducted journalism ethics workshops in several U.S. locations as well as abroad (specifically, Guatemala and Macedonia)

Awards and honors:

- Several writing awards, including a 1992 Sigma Delta Chi national Distinguished Service Award for editorial writing.
- Named to the Denver Press Club Hall of Fame, 2004
- Colorado Newspaperperson of the Year, 2001
- Honor alumnus of Colorado State University, 1992
- CSU Media Hall of Fame, inaugural class, 2011
- Lowell Thomas Journalist of the Year, 1992
- Wells Key, the Society of Professional Journalists' highest honor, 2006

Hobbies, etc.: Travel, reading, bicycling, swimming, skiing and occasional adventures such as skydiving and African safaris with wife, Mary, also retired.

Updated March 2021