

IN THE SUPREME COURT OF VIRGINIA

KANYE WEST and KANYE 2020, )  
 )  
 Petitioners, )  
 )  
 v. ) Record No. 201104  
 )  
 MATTHAN WILSON and BRYAN )  
 WRIGHT, )  
 )  
 and )  
 )  
 THE VIRGINIA STATE BOARD OF )  
 ELECTIONS, *et al.*, )  
 )  
 Respondents. )  
 )  
 \_\_\_\_\_ )

**COMMONWEALTH RESPONDENTS’ OPPOSITION TO MOTION  
FOR STAY PENDING APPEAL, ADMINISTRATIVE STAY, AND  
SUMMMARY VACATUR OR REVERSAL**

The Virginia State Board of Elections, Robert H. Brink, John O’Bannon, Jamilah D. LeCruise, and the Virginia Department of Elections (collectively, Commonwealth Respondents) oppose petitioners’ motion for stay pending appeal, administrative stay, and summary vacatur or reversal.

1. “[T]he purpose of a stay pending appeal is to preserve the *status quo* pending appellate determination.” *Thompson v. Fairfax County Dep’t of Fam. Servs.*, 62 Va. App. 350, 377 n.17 (2013)

(quotation marks and citation omitted). Here, the status quo has materially and irrevocably changed in the week since the circuit court entered its order in this matter.

On Thursday, September 3, the circuit court ordered that petitioner West’s name be removed from the list of eligible candidates for President of the United States. Consistent with that order—which petitioners did not appeal for five days and did not seek to stay for six days<sup>1</sup>—all of the ballots that have been finalized since the circuit court’s decision have omitted petitioner West’s name from the list of eligible candidates. That is no small matter: We are advised that, as of the morning of Thursday, September 10, 2020, all 133 of the Commonwealth’s localities have started the ballot-production process.

Nor is there any merit to petitioners’ suggestion that there is something suspicious about these rapidly moving developments. See Stay Mot. 15. Ballots are not—and cannot be—prepared overnight. Ballot finalization is a detail-heavy and time-consuming process that involves not simply printing, but also programming, proofing,

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<sup>1</sup> See Mot. for Stay Pending Appeal, Admin. Stay, and Summ. Vacatur or Reversal (Stay Mot.) 3, 7 (acknowledging that the notice of appeal was filed on September 8 and that no stay had been sought from either the circuit court or this Court until “today”).

assembling, addressing, and, ultimately, mailing. And here the task is further complicated by both the existence of an ongoing pandemic and an explosion in demand for absentee ballots for the November 2020 election.<sup>2</sup> For that reason, the Commonwealth Respondents have been clear throughout this litigation that “all . . . jurisdictions” needed to “finalize their ballots *no later than* . . . Friday, September 4, 2020.” Nichols Decl. ¶ 49 (emphasis added); accord Resp. to Compl. at 5 (“The date by which the ballot printing process must begin for some localities has already passed, . . . while any remaining localities will send their ballot proofs to the printer no later than September 4.”); Declaration of Gary Scott ¶ 8 (Scott Decl.) (attached as Exhibit A to Commonwealth Respondents’ Notice of Supp. Auth.) (“On or before September 4, 2020, Fairfax County needs to send final ballot proofs to the company that prints the ballots.”).

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<sup>2</sup> As of Wednesday, September 2, more than 656,000 Virginians had requested absentee ballots for the 2020 election—more than ten thousand more than the final total of requests in 2016, even though more than 50 days remained for Virginians to submit applications. Declaration of David Nichols ¶ 30 (Nichols Decl.) (attached as Exhibit B to Commonwealth Respondents’ Resp. to Compl.).

Given the radically increased demand for absentee ballots—and as the Commonwealth Respondents advised the circuit court—“any changes that are made to the form of the ballot now will mean that . . . localities will be unable to mail ballots to voters 45 days before the election, as required by state and federal law.” Nichols Decl. ¶ 48. The dangers inherent in delay are even greater today than they were a week ago because we are advised that, since the circuit court’s decision, more than 100,000 additional Virginians have requested absentee ballots, meaning that local officials across the Commonwealth must have more than 776,000 absentee ballots ready to mail by Friday, September 18. See 52 U.S.C. § 20302(a)(8) (“Each State shall . . . transmit a validly requested absentee ballot to an absent uniformed service voter or overseas voter . . . in the case in which the request is received at least 45 days before an election for a Federal office, not later than 45 days before the election[.]”); Va. Code Ann. § 24.2-612 (requiring that “[t]he general registrar *shall* make printed ballots available for absentee voting not later than 45 days prior to any election or within three business days of the receipt of a properly completed absentee ballot application, whichever is later” (emphasis added)).

By failing to seek a stay for nearly a week from either the circuit court or this Court, petitioners created a situation where a stay pending appeal could not serve its intended function of preserving the status quo that existed before a trial court's decision. For that reason, the motion for a stay should be denied.

2. The motion for a stay should also be denied because a stay pending appeal is an extraordinary equitable remedy, see generally *Thompson*, 62 Va. App. at 377 n.17; accord *Hilton v. Braunskill*, 481 U.S. 770, 776 (1987), and here the equities cut sharply against one.

a. Petitioners' delay in seeking a stay should "preclude[] the possibility of equitable relief" because "equity ministers to the vigilant, not to those who sleep upon their rights." *Perry v. Judd*, 471 Fed. Appx. 219, 224 (4th Cir. 2012) (quoting *Texaco Puerto Rico, Inc. v. Department of Consumer Affairs*, 60 F.3d 867, 879 (1st Cir. 1995)).

Throughout this case, the Commonwealth Respondents have emphasized that time is of the essence and that, to ensure compliance with state and federal law, "all . . . jurisdictions" needed to "finalize their ballots *no later than* . . . Friday, September 4, 2020." Nichols Decl. ¶ 49 (emphasis added); see also Scott Decl. ¶ 8.

Despite having clear notice of this critical deadline and multiple opportunities to seek a stay before it passed, petitioners failed to act in a timely manner. As petitioners acknowledge, the circuit court held a hearing during the afternoon on Thursday, September 3—the day before the deadline identified by the Commonwealth Respondents. See Stay Mot. 6. Although the court specifically indicated that it intended to issue an opinion “before close of business” that day, Hearing Transcript (Sept. 3, 2020) at 75, petitioners did not ask the court to stay any adverse ruling pending appeal. And when, as promised, the circuit court issued its ruling before 5 p.m. that same day, see Stay Mot. 6–7 (acknowledging that the “hearing concluded at 3:39 p.m.” and that the circuit court issued its decision “[a]pproximately one hour later”), petitioners neither filed an immediate notice of appeal nor asked the circuit court to stay its ruling. Petitioners likewise failed to file a notice of appeal or a motion during the entirety of the next business day (Friday, September 4), despite having been clearly advised that that day was the deadline for finalizing ballots. Instead, petitioners let that

entire critical date go by without seeking a stay from any court or even noticing an appeal from the circuit court's judgment.<sup>3</sup>

b. The balance of equities and public interest cut sharply against granting petitioners' belated request for a stay. See *Hilton*, 481 U.S. at 776 (factors for issuance of stay pending appeal include "whether issuance of the stay will substantially injure the other parties interested in the proceeding" and "where the public interest lies"). Local election officials are currently confronting the herculean task of administering safe and fair elections in the midst of an ongoing, once-in-a-century pandemic, and they are required by state and federal law to ensure that *all* absentee ballots requested before September 19 are printed, assembled, and mailed out on or before that date. See pp. 2–3,

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<sup>3</sup> It also appears that most of the assignments of error underlying petitioners' stay motion are not properly preserved for appellate review. Petitioners' first five merits arguments in support of a stay closely track assignments of error one through four in the petition for review. Compare Stay Mot. 9–12, with Pet. for Review (Pet.) 1. The only place that petitioners claim to have preserved those arguments is in the demurrer they filed on September 3. See Pet. 1. But the circuit court never ruled on the demurrer, see Order of Sept. 3, 2020, at 1–2 (addressing only "Plaintiffs' Motion for Temporary Injunction and Petition for Writ of Mandamus"), and petitioners do not assign error to the court's failure to do so. See Pet. 1. Petitioners' "failure to obtain a ruling by the circuit court on th[ese] matter[s] means that [they] ha[ve] waived the issue[s] on appeal." *Morva v. Commonwealth*, 278 Va. 329, 340 (2009) (citing Va. S. Ct. R. 5:25).

*supra*. For that reason, local officials could not afford simply to wait while petitioners decided whether to seek a stay of the circuit court’s decision, and they have expended considerable time and effort in finalizing ballots in compliance with statutorily mandated deadlines. And as the Commonwealth Respondents have made clear throughout this litigation, “any changes that are made to the form of the ballot [at this point] will mean that these localities will be unable to mail ballots to voters 45 days before the election, as required by state and federal law.” Nichols Decl. ¶ 48.

\* \* \*

The motion for a stay should be denied.



Respectfully submitted,

THE VIRGINIA STATE BOARD OF  
ELECTIONS; ROBERT H. BRINK, in his  
official capacity as the Chair of the Virginia  
State Board of Elections; JOHN  
O'BANNON, in his official capacity as Vice-  
Chair of the Virginia State Board of  
Elections; JAMILAH D. LeCRUISE, in her  
official capacity as Secretary of the Virginia  
State Board of Elections; and THE  
VIRGINIA DEPARTMENT OF  
ELECTIONS

*/s/ Toby J. Heytens*

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**CERTIFICATE OF SERVICE**

I certify that on this 10th day of September, 2020, a copy of the foregoing has been dispatched by email and first class, postage prepaid, U.S. Mail to counsel listed below:

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/s/ Toby J. Heytens  
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# Exhibit 1

**VIRGINIA:**

**IN THE CIRCUIT COURT FOR THE CITY OF RICHMOND**

<b>Matthan Wilson, et al.,</b>	)	
	)	
<b>Plaintiffs,</b>	)	
	)	
v.	)	<b>Case No. CL20004252-00</b>
	)	
<b>The Virginia State Board of Elections, et al.,</b>	)	
	)	
<b>Defendants.</b>	)	

**DECLARATION**

Pursuant to Va. Code § 8.01-4.3, I, David Nichols, declare as follows:

1. I am over the age of 18, competent to testify, and have personal knowledge of the facts in this Declaration.
2. I am the Election Services Director for the Virginia Department of Elections (the “Department”). I have served in that capacity since December 2017.
3. As Election Services Director, I oversee the Department’s Election Services team. This team is responsible for fulfilling and/or overseeing a number of functions assigned to the Department by the General Assembly, including the acceptance of, and certain processing related to, petition pages submitted by candidates for federal office.
4. Prior to my employment with the Department, I was employed by the West Virginia Secretary of State as Legislative Liaison. In that capacity, I was involved in the administration of elections and implementation of laws passed by the West Virginia legislature, including by providing direct, on-site assistance to local election officials.

### **Petition page and signature review generally**

5. Independent presidential candidates must file petition pages with the State Board of Elections on or before the seventy-fourth day prior to the general election or for 2020, August 21, 2020.

6. Immediately, upon receipt of petition pages submitted by independent presidential candidates, the Department sorts these petition pages based on the locality of residence for the petition signatories, and distributes the petition pages to the general registrar of the appropriate locality for review and validation.

7. Department staff and general registrars then review the validity of petition pages and petition signatures pursuant to the provisions of Va. Code § 24.2-543 and 1 VAC 20-50-20, which govern the review of petition pages and petition signatures.

8. During the review process, Department staff and general registrars use the Virginia Election Registration & Information System (“VERIS”).

9. Department staff and general registrars indicate in VERIS whether each petition page submitted by a candidate was valid or invalid. Where a petition page is invalidated, the individual signatures on that page are not reviewed for validity.

10. General registrars enter the information included on petition signature lines into VERIS. The information entered into VERIS includes a line-by-line description of the information included on each signature line on all petition pages submitted by a candidate, or, alternatively, whether a signature line was blank.

11. Accordingly, VERIS allows election officials to track the contents of each line of each petition page submitted by an independent candidate.

12. Once the Department determines that a candidate's validated signature total exceeds the statutory threshold for his or her office, the Department marks the candidate as qualified, and Department staff and general registrars cease their review of any remaining petition pages.

#### **Page and signature review for the Independent Presidential Candidates in 2020**

13. Upon receipt of petition pages submitted by independent presidential candidates for the 2020 election cycle, the Department sorted these petition pages based on the locality of residence for the petition signatories, and distributed the petition pages to internal staff and the general registrar of the appropriate locality for review and validation.

14. During the 2020 election cycle, Department staff and general registrars reviewed petition pages submitted by Kanye West. While processing these petition pages, general registrars validated 6,486 petition signatures.

15. Per the Department's standard protocol, once West's validated signature total passed the statutory threshold applicable to presidential candidates under Va. Code § 24.2-543, the Department marked West as a qualified candidate and directed Department staff and general registrars to discontinue their review of her remaining petition pages.

16. At the time that the general registrars concluded their review due to the validation of over 5,000 voter signatures, there were a total of 1,778 signatures which the general registrars had not reviewed.

#### **Review of Petition pages by the Department of Elections**

17. On August 28, 2020, just a week after the filing deadline, the list of independent presidential candidates who qualified for the ballot was certified to the general registrars per the requirements of Va. Code § 24.2-614.

18. The final list of candidates for federal office was and posted on in VERIS and on the Department's website at approximately 6:10 p.m. on August 28, 2020. Department staff sent an Advisory to all general registrars notifying them that certification was complete.

19. Joseph R. Biden, Donald J. Trump, Jo Jorgensen, and Kanye West are the four individuals who appear on the list as qualified candidates for the office of President of the United States.

### **Elector Oath**

20. Independent presidential candidates, like all other presidential candidates, must select thirteen electors.

21. Each of these electors must complete and file a subscribed and notarized oath on a form called Oath of Electors for President and Vice-President; Independent and Third Party (Oath).

22. Internally the form is known as ELECT-543.

23. The electors' oaths are filed with the candidates' other qualification papers.

24. The Department reviews the Elector Oath forms to ensure that there are no material deficiencies on the Oath forms.

25. We make sure that that the elector completes form ELECT-543, by providing her name and contact information as directed on the form.

26. We check to ensure that the elector signed and dated the oath and that the signature was witnessed by a notary.

27. Next, we turn to the "Notary only" section of the form.

28. The notary must fully complete the “Notary only” section of the form, including stamping the form with her notary stamp and providing her signature, registration number and commission expiration date.

29. All thirteen Oath forms appeared facially valid as they contained all of the required information.

### **Ballots**

30. To date over 656,000 Virginia voters have requested absentee ballots for the 2020 General Election with fifty (50) days remaining to request an absentee ballot. By contrast, just over 645,000 voters requested an absentee ballot for the 2016 General Election.

31. Once the Department certifies the list of candidates to the general registrars, the registrars use certification reports from VERIS to provide and candidate, contest, and ballot question information to their vendors for production of ballots or begin creating their ballots in their offices.

32. Once ballot proofs are developed, general registrars, staff, and others review each ballot style to ensure each meets requirements of Va. Code and Ballot Standards adopted by the Virginia State Board of Elections.

33. For the 2020 General Election, each locality has at least three (3) ballot styles. If a locality is split by a Congressional district or by districts for local offices, each split creates an additional ballot style that needs produced, reviewed by the locality and the Department, and sent for printing.

34. After their review, general registrars submit the ballot proofs to the Department for review.



35. The Department reviews each by style submitted and either approves or asks for revisions if there is an error.

36. After receiving approval from the Department, registrars communicate with their vendors to order the necessary quantity of ballots for absentee voting and Election Day.

37. After receiving their printed ballots, general registrars begin to prepare for the first mailing of absentee ballots.

38. The general registrar will prepare the absentee ballot packet for each absentee voter which includes an envelope with the appropriate ballot style, an envelope for the voter to place the voted ballot in and seal, an envelope to mail the ballot back to the general registrar, and all required instructions.

39. This is all placed inside an envelope that is mailed to the voter.

40. The Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA), the Military and Overseas Voter Empowerment (MOVE) Act, and Virginia Code § 24.2-612 require “printed ballots [to be] available for absentee voting not later than 45 days prior to any election.”

41. Additionally, on or before Saturday September 19, 2020<sup>1</sup> General Registrars must mail ballots to any voters who requested an absentee ballot on or before the 45th day prior to the election.

42. Accordingly ballots must be printed in sufficient time prior to September 19 so that they may be proofed, stuffed into the absentee ballot envelopes with all of the materials that must be included in the absentee ballot packet, and then mailed.

43. This process is time-consuming, labor intensive, and highly detailed.

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<sup>1</sup> September 18, 2020 for those localities in which the General Registrar’s Office is not open on Saturdays.

44. Because of the massive increase in the amount of voters who requested to receive their ballots by mail for the November 3, 2020 election, the time required to print, proof, stuff and mail the absentee ballots is significantly longer than usual.

45. Instead of a week prior to 45-day deadline, as is typical, certain localities with a lot of absentee ballot requests to fill, needed to begin the ballot printing process as soon as the list of qualified candidates was certified.

46. Accordingly, the “drop dead” date to begin the ballot printing process and still get the ballots to localities in time to meet applicable deadlines under federal law, particularly the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) and the Military and Overseas Voter Empowerment (MOVE) Act, is much earlier in 2020 than in a typical election cycle.

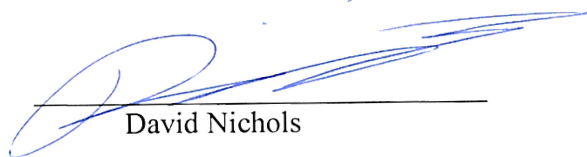
47. Some jurisdictions, including Virginia Beach, have already sent their ballot proofs to the printer for printing.

48. For these localities, any changes that are made to the form of the ballot now will mean that these localities will be unable to mail ballots to voters 45 days before the election, as required by state and federal law.

49. In any event, all other jurisdictions must finalize their ballots no later than this Friday, September 4, 2020.

50. I declare under penalty of perjury that the foregoing is true and correct.

Executed on: September 2, 2020

  
\_\_\_\_\_  
David Nichols

# Exhibit 2

**VIRGINIA:**

**IN THE CIRCUIT COURT FOR THE CITY OF RICHMOND**

<b>Matthan Wilson, et al.,</b>	)	
	)	
<b>Plaintiffs,</b>	)	
	)	
v.	)	<b>Case No. CL20004252-00</b>
	)	
<b>The Virginia State Board of Elections, et al.,</b>	)	
	)	
<b>Defendants.</b>	)	

**RESPONSE TO  
COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF  
AND PETITION OF WRIT OF MANDAMUS**

Defendants the Virginia State Board of Elections (SBE); Robert H. Brink, John O’Bannon, and Jamilah D. LeCruise, all in their official capacities as Chair, Vice-Chair, and Secretary, respectively, of SBE, and the Virginia Department of Elections (ELECT) (collectively the Commonwealth Defendants) respond as follows to the Motion for Declaratory and Injunctive Relief (Complaint) filed by Plaintiffs Matthan Wilson and Bryan Wright.

**INTRODUCTION**

The Commonwealth of Virginia, including the state elections officials and entities named as Defendants, *does not tolerate any type of election fraud*. Similarly, this Court has had little patience for keeping candidates on the ballot who have used underhanded and fraudulent tactics to “steal a spot on the ballot.” *See Democratic Party of Virginia v. Piper, et al.*, Case No. CL18-4061, Ltr. Op. at p. 11, (Richmond City Cir. Ct. September 6, 2018) (“The Court finds that the balance of equities tips overwhelmingly in favor of Plaintiff. [The Candidate] has lied to the Commonwealth, cheated the electorate, and attempted to steal a spot on the ballot. [The

Candidate's] sophomoric attempts to defraud the Commonwealths electoral system leave her with no equitable leg to stand on.") (attached as **Ex. A.**).

Since August 21, 2020 when West appeared to qualify for the Ballot, serious allegations have been made that the qualification papers of West's purported electors, including Plaintiffs, were obtained fraudulently and/or contained attestations in violation of Virginia law. At the same time that these allegations were coming to light, local election officials were actively moving forward with preparing for the state and federal absentee ballot mailing deadline. These local officials were already quite concerned that they lacked sufficient time to mail all necessary ballots out to voters on or before September 19, 2020 as required by the Uniformed and Overseas Citizens Absentee Voting Act, the Military and Overseas Voter Empowerment Act, and Virginia Code § 24.2-612.

Should this Court determine that any of the qualification papers of West's purported electors were obtained fraudulently, that any of the elector oaths were improperly attested and/or that other material errors exist in these papers, whether due to fraud or other reasons, and that such requires his disqualification, the Commonwealth Defendants will work with local election officials to effect West's disqualification from the ballot. The remedies to this situation are varied depending upon how quickly the Court is able to rule.

#### **STANDARD OF REVIEW**

Plaintiff asks the Court to apply the four-factor test that federal courts apply for such relief, under which a plaintiff must make a clear showing that (1) plaintiff is likely to succeed on the merits; (2) plaintiff will likely suffer irreparable harm absent preliminary relief; (3) the balance of hardships weighs in plaintiff's favor; and (4) the injunction is in the public interest. *League of Women Voters of N.C. v. North Carolina*, 769 F.3d 224, 236 (4th Cir. 2014) (citing *Winter v. Natural Resources Defense Council*, 555 U.S. 7, 20 (2008)).

Virginia law allows for “temporary injunctions,” and neither the General Assembly nor the Supreme Court of Virginia has adopted the federal test. Virginia Code § 8.01-628 provides that “No temporary injunction shall be awarded unless the court shall be satisfied of the plaintiff’s equity.” The Supreme Court, applying “well established principles,” has stated that “the granting of an injunction is an extraordinary remedy and rests on sound judicial discretion to be exercised upon consideration of the nature and circumstances of a particular case.” *Levisa Coal Co. v. Consolidation Coal Co.*, 276 Va. 44, 60, 662 S.E.2d 44, 53 (2008). When asked to adopt the federal test, the Supreme Court expressed no view. *Id.* at 60 n.6., 662 S.E.2d at 53 n.6.

With respect to mandamus, a petitioner for a writ of mandamus must demonstrate: (1) a clear right to the relief sought; (2) a legal duty of part of the respondent to act; and (3) the lack of an adequate remedy at law. *Bd. of Cty. Sup’rs, of Prince William Cty. v. Hylton Enters., Inc.*, 216 Va. 582, 584 (1976). Furthermore, the respondents’ legal duty to act must be ministerial, not discretionary. *Id.*

## **ARGUMENT**

The “nature and circumstances” of this case involves rapidly evolving facts. On the one hand, there are qualification papers – which, on their face, appeared to be appropriately attested to and notarized. On the other hand, the Plaintiffs have provided this Court with evidence in the nature of signed Oaths, appropriately attested to and notarized affidavits, and media reports that draw into question the legal sufficiency of West’s qualification as a presidential candidate. Under these circumstances, which are more fully explained below, Defendants urge the Court to quickly make any appropriate finding, as permitted under Virginia law, to resolve this legal and factual dilemma.

## **I. Background**

### **A. The ballot qualification process**

To qualify as an independent candidate for president in Virginia, the candidate must file petitions containing 5,000 signatures of registered voters, 200 from each congressional district. *See* Va. Code § 24.2-543. Listed on the petitions are the names of the thirteen electors who swear an oath that they “will, if elected, cast [their] ballot for the candidates for President and Vice President named in the petition[s] concurrently filed with the SBE[.]” Virginia law requires that the oath of the electors be “subscribed and notarized.” *See id.* An independent presidential candidate must file these documents with the SBE on or before the seventy fourth day prior to the election - which, in 2020, was Friday August 21. *See id.*

Along with the petition pages containing the requisite number of signatures, the candidate must also file a form entitled “Oath for Electors for President and Vice-president; Independent and Third Party.” This form is also known internally as ELECT-543. The Department ensures that the submitted Oath form contains all the necessary information: her name and contact information as directed on the form and the dated signature of the elector following the “oath” printed on the form. The notary must fully complete the “Notary only” section of the form, including stamping the form with her notary stamp and providing her signature, registration number and commission expiration date.

### **B. The qualification of West.**

In reviewing the electoral oath forms from the West campaign, the Department determined that all thirteen forms were facially valid. All of the information required of the electors had been filled in. The elector had signed and dated the oath. Finally, each oath included the notary’s signature, date, notary public registration number and a commission expiration date that was later than the date of the oath. *See* Compl. Ex. F-Q.

However, Plaintiffs present evidence of concerning deficiencies in all thirteen elector oaths, based on sworn statements of the electors and alleged violations of Virginia Code Title 47.1 which governs the practice of notaries in Virginia. *See* Compl. A determination of whether or not a crime was committed by a notary and whether or not a individual was guilty of misconduct in notarizing document is reserved solely to the courts. *See* Va. Code § 47.1-28 (classifying certain notary misconduct as crimes). Additionally, the General Assembly reserved to the Courts the determination of the validity of a document notarized by a notary with an alleged conflict of interest. *See id.* at § 47.1-30 (providing that a document notarized by notary who has a conflict of interest is not “automatically be void for such reason, but shall be voidable in the discretion of any court of competent jurisdiction”). Accordingly, the Commonwealth Defendants request that the Court expeditiously resolve the questions presented by the Plaintiffs as to the validity of the qualification documents and their impact on West’s qualification so that ballot printing may begin.

## **II. Safeguarding the voters.**

Should this court determine that the notary oaths were false and fraudulently attested to and, therefore, should be invalidated and West removed as a qualified candidate, then the Commonwealth Defendants will work with their local counterparts to effect disqualification of West.

The date by which the ballot printing process must begin for some localities has already passed. *See* Declaration of Donna Patterson, General Registrar, Virginia Beach at ¶¶ 6-8 (Patterson Decl.), while any remaining localities will send their ballot proofs to the printer no later than September 4.



With the unique conditions that we are facing during this election, a pandemic, an unprecedented number of requests for absentee ballots, and a general unease regarding the election, it is safe to say that each day on which ballot printing is delayed risks disenfranchising voters who requested mail-in ballots, particularly military service members and overseas voters. *See Ex. B (Nichols Decl.)*.

Should this Court ultimately determine, *after* ballots have been printed, that West should not be qualified for the ballot, Virginia Code § 24.2-612.1 gives elections officials the authority to address the matter by creating a list noting the disqualification, which is then posted in each polling place, made available to the public, and posted on the relevant official election information website. *See Ex. B (Nichols Decl.)*.

The Commonwealth Defendants are committed to ensuring ballot integrity and will take swift action in the event any candidate on any ballot becomes disqualified. Here, Commonwealth Defendants would effectuate that disqualification forthwith.

### **CONCLUSION**

If this Court determines that West did not actually qualify for the ballot and orders relief, the Defendants stand ready to work with local election officials to ensure that the election moves forward in accordance with the court's order. Commonwealth Defendants are committed to ensuring the absolute integrity of the Commonwealth's election processes within the dictates of the law as expressly set forth by statute or as interpreted by this Court.

Respectfully submitted,

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hlockerman@oag.state.va.us

**CERTIFICATE OF SERVICE**

I hereby certify that on September 2, 2020, a true and accurate copy of this paper was sent via electronic mail to the following:

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By:           /s/ Heather Hays Lockerman            
Heather Hays Lockerman

# Exhibit 3

**VIRGINIA:**

**IN THE CIRCUIT COURT FOR THE CITY OF RICHMOND**

**Matthan Wilson, et al.,**

**Plaintiffs,**

**v.**

**The Virginia State Board of Elections, et al.,**

**Defendants.**

)  
)  
)  
)  
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)  
)  
)

**Case No.** \_\_\_\_\_

**DECLARATION OF GARY SCOTT**

Pursuant to Va. Code § 8.01-4.3, I, Gary Scott, declare as follows:

1. I am over the age of 18, competent to offer testimony, and have personal knowledge of the facts in this Declaration.
2. I am the General Registrar/Director of Elections for Fairfax County.
3. I have been employed in this position since 2018.
4. Prior to 2018, I was employed at the Fairfax County General Register's Office as the deputy registrar since 1997, with responsibilities including managing voter registration, absentee voting and outreach programs.
5. Prior to becoming deputy registrar, I was the office manager for the county's Office of the General Registrar.
6. More than 126,000 qualified Fairfax County voters have already requested mail-in ballots.
7. Because there are still more than two weeks before September 19, I anticipate that we will receive thousands more requests.

8. On or before September 4, 2020, Fairfax County needs to send final ballot proofs to the company that prints the ballots.

9. I believe that any further delay in sending ballot proofs to the printing company creates a risk that Fairfax County will not be able to send absentee ballots on or before September 19 to those who requested them.

10. Based on my more than two decades of experience at the Fairfax County General Registrar's Office, I believe that it is very likely that any delay resulting in a need to restart printing of ballots with a new ballot form will prevent Fairfax from mailing out ballots on or before September 19.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on Sept 2, 2020

  
Gary Scott

# Exhibit 4



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# Transcript of Hearing

**Date:** September 3, 2020

**Case:** Wilson, et al. -v- Virginia Board of Elections, et al.

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Transcript of Hearing  
Conducted on September 3, 2020

1	3								
1 VIRGINIA: 2 IN THE CIRCUIT COURT FOR THE CITY OF RICHMOND 3 -----x 4 MATTHAN WILSON and BRYAN WRIGHT, : 5 Plaintiffs, : 6 v. : Case No.: 7 THE VIRGINIA STATE BOARD OF : CL20004252-00 8 ELECTIONS, et al., : 9 Defendants. : 10 -----x 11 12 13 Motion for Temporary Injunction 14 Before the Honorable Judge Joi Taylor 15 Richmond, Virginia 16 Thursday, September 3, 2020 17 2:30 p.m. 18 19 20 Job No.: 319450 21 Pages: 1-76 22 Reported by: Ruth A. Levy, RPR	1 A P P E A R A N C E S 2 ON BEHALF OF THE PLAINTIFFS: 3 JUSTIN M. SHELDON, ESQUIRE 4 BREIT CANTOR GRANA BUCKNER, PLLC 5 600 22nd Street, Ste. 402 6 Virginia Beach, Virginia 23451 7 757.670.3888 8 9 ON BEHALF OF THE DEFENDANTS: 10 HEATHER HAYS LOCKERMAN, ESQUIRE 11 SENIOR ASSISTANT ATTORNEY GENERAL 12 OFFICE OF THE ATTORNEY GENERAL OF VIRGINIA 13 202 North 9th Street 14 Richmond, Virginia 23219 15 804.786.0067 16 17 ON BEHALF OF KANYE 2020: 18 CHRIS K. KOWALCZUK, ESQUIRE 19 ATTORNEY AT LAW 20 1018 2nd Street SW 21 Roanoke, Virginia 24016 22 540.345.0101								
2	4								
1 Hearing was held at: 2 3 4 RICHMOND CIRCUIT COURT 5 JOHN MARSHALL COURTS BUILDING 6 400 North Ninth Street 7 Richmond, Virginia 23219 8 804.646.6505 9 10 11 12 Pursuant to agreement, before Ruth A. Levy, RPR, 13 Notary Public in and for the Commonwealth of 14 Virginia. 15 16 17 18 19 20 21 22	1 C O N T E N T S 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 <table border="0" style="width: 100%;"><tr><td></td><td style="text-align: right;">PAGE</td></tr><tr><td>3 Matthan Wilson</td><td></td></tr><tr><td>4 Direct exam by Mr. Sheldon</td><td style="text-align: right;">21</td></tr><tr><td>5 Cross-exam by Mr. Kowalczuk</td><td style="text-align: right;">28</td></tr></table>		PAGE	3 Matthan Wilson		4 Direct exam by Mr. Sheldon	21	5 Cross-exam by Mr. Kowalczuk	28
	PAGE								
3 Matthan Wilson									
4 Direct exam by Mr. Sheldon	21								
5 Cross-exam by Mr. Kowalczuk	28								

<p>5</p> <p>1 PROCEEDINGS</p> <p>2 THE COURT: Good afternoon. This is</p> <p>3 the -- well, I'll just say the last names --</p> <p>4 Wilson and Wright versus the Virginia State</p> <p>5 Board of Elections, et al. All parties are</p> <p>6 ready to go forward?</p> <p>7 MR. SHELDON: Yes, Judge.</p> <p>8 THE COURT: All right. I notice</p> <p>9 that we do have a -- there was a late-filed</p> <p>10 motion to intervene.</p> <p>11 MR. KOWALCZUK: Good afternoon, Your</p> <p>12 Honor. Chris Kowalczuk coming out of Roanoke</p> <p>13 on behalf of the intervenor.</p> <p>14 THE COURT: Yes, sir. Good</p> <p>15 afternoon. Did you-all wish for the Court to</p> <p>16 take that matter up first? That would be my</p> <p>17 inclination.</p> <p>18 MR. SHELDON: That's fine, Judge.</p> <p>19 THE COURT: All right. Is there any</p> <p>20 objection to the motion to intervene -- or</p> <p>21 motion for leave to intervene?</p> <p>22 MS. LOCKERMAN: Not from the</p>	<p>7</p> <p>1 at the table. I guess you would take the</p> <p>2 seat furthest from him.</p> <p>3 MR. KOWALCZUK: Thank you, Your</p> <p>4 Honor.</p> <p>5 THE COURT: Or on this side,</p> <p>6 whichever way you want to --</p> <p>7 MR. KOWALCZUK: Whatever works for</p> <p>8 the Court.</p> <p>9 THE COURT: It's up to you.</p> <p>10 Probably better on this side.</p> <p>11 MR. KOWALCZUK: All right. Your</p> <p>12 Honor, before we begin -- and may it please</p> <p>13 the Court; good afternoon. As the Court</p> <p>14 knows, Plaintiffs filings were filed on</p> <p>15 September the 2nd, which was yesterday. And</p> <p>16 I think the Commonwealth received -- I think,</p> <p>17 in her motion, the Commonwealth noted that</p> <p>18 they received the papers at 6 p.m.</p> <p>19 And I understand why the</p> <p>20 Commonwealth filed for an emergency motion to</p> <p>21 expedite the hearing, because of the temporal</p> <p>22 requirements relating to creating and</p>
<p>6</p> <p>1 Commonwealth, Your Honor.</p> <p>2 MR. SHELDON: No, Your Honor.</p> <p>3 THE COURT: Thank you. The Court</p> <p>4 will grant your motion for leave to</p> <p>5 intervene. That's the first thing that we're</p> <p>6 doing.</p> <p>7 And so you filed some other motions</p> <p>8 that were brought to the attention of the</p> <p>9 Court as well.</p> <p>10 MR. KOWALCZUK: Yes, Your Honor.</p> <p>11 THE COURT: They have not been</p> <p>12 noticed for this afternoon. The only thing</p> <p>13 that I have that has been properly noticed is</p> <p>14 the motion -- well, it was brought by a</p> <p>15 motion by the Commonwealth -- for an</p> <p>16 expedited hearing today, but it's on the</p> <p>17 Plaintiffs' motion for a temporary injunction</p> <p>18 and the writ of mandamus. And if we get</p> <p>19 to -- I guess, so once the Court has resolved</p> <p>20 that and if there are any issues remaining,</p> <p>21 then, of course, we would hear the demurrer.</p> <p>22 But you're welcome to join Counsel</p>	<p>8</p> <p>1 printing the ballots and complying with</p> <p>2 Virginia law as to dissemination and</p> <p>3 promulgation of the ballots.</p> <p>4 That being said, likewise, this</p> <p>5 lawsuit was filed yesterday, and we would</p> <p>6 like the opportunity to -- we would ask the</p> <p>7 Court to delay this proceeding by a day or</p> <p>8 two. I know Monday's a holiday; I don't know</p> <p>9 what the legal requirements are for you to</p> <p>10 even have court on a holiday, but the West</p> <p>11 campaign certainly would not object to that,</p> <p>12 or Tuesday.</p> <p>13 The issues here are so important</p> <p>14 with regard to ballot access, with regard to</p> <p>15 giving the voters the choice to have</p> <p>16 different presidential candidates. And then</p> <p>17 there's the issue of the motion to recuse and</p> <p>18 certainly would give the other parties time</p> <p>19 to address that.</p> <p>20 But I think the primary point I'm</p> <p>21 trying to make, Your Honor, is that, given</p> <p>22 that this was just filed yesterday, to have a</p>

<p style="text-align: right;">9</p> <p>1 hearing where the Court would decide even on 2 an injunctive basis, because the injunctive 3 basis, there's so little time here left, that 4 whatever evidentiary hearing we're going to 5 have is likely to sort of carry the day, I 6 would think. 7       And so the opportunity for us to 8 have witnesses, the opportunity for Mr. West 9 to be here, if he chooses, and then the 10 opportunity to, again, timely notice some of 11 these other hearings. 12       But it just seems that, you know, 13 for the idea that Plaintiffs would file 14 something on September 2nd and then expect 15 the relief on September the 3rd in a case of 16 this nature, which the result of which 17 deprives Mr. West of being on the ballot in 18 Virginia -- or removing him, technically -- 19 the Virginia Board of Elections has already 20 put him in a position where he would be on 21 the ballot, but the idea that the 22 Commonwealth would -- or the Plaintiffs,</p>	<p style="text-align: right;">11</p> <p>1 complaint and then the declarations are 2 egregious. 3       And the issue is that Mr. West's 4 campaign waited until the absolute last 5 minute to file to get himself on the ballot. 6 He secured the signatures on the ballot by 7 fraud. And if you are to delay this and 8 essentially allow him to be on the ballot by 9 fraud, it would create a blueprint for others 10 to use moving forward, waiting until the very 11 last minute, not giving objectors the ability 12 to address that issue, and keeping the Court 13 from being able to address it. And I think 14 that's just not the precedent that we want to 15 set here. Thank you. 16       THE COURT: Commonwealth? Or AG? 17       MS. LOCKERMAN: Thank you, Heather 18 Hays Lockerman for the Commonwealth. The 19 reason that I filed an emergency motion to 20 notice a hearing that wasn't even mine is 21 because we have run out of time to change the 22 ballot. And so we need to know today --</p>
<p style="text-align: right;">10</p> <p>1 rather, would shoot to do this so quickly, we 2 would ask the Court to slow this down just a 3 little bit so that we'd have time to really 4 fully respond to this. These are some pretty 5 serious allegations laid out in their 6 paperwork. 7       THE COURT: Well, I know that we're 8 inside of a window where it is imperative for 9 the registrars to get their ballots printed. 10 And so it's my understanding the 60 days -- 11 the recommended 60 days is tomorrow, the 4th. 12       Certainly, we've heard cases similar 13 to this on the same time frame, if you will. 14 So I don't know; I'll hear from the 15 Plaintiffs and then the Commonwealth as to 16 the motion to continue, is essentially what 17 it is. 18       MR. SHELDON: Thank you, Judge. 19 Justin Sheldon on behalf of Plaintiffs. We 20 would certainly request that we proceed 21 today. The allegations in the complaint and 22 that have been verified by -- verified</p>	<p style="text-align: right;">12</p> <p>1 tomorrow at the absolute latest -- because 2 there are really significant federal and 3 state deadlines that, if our general 4 registrars miss them, and the commissioner of 5 the Department of Elections, who is the state 6 election official and is responsible for all 7 of, you know, the issues that come up in 8 states during elections, the Department of 9 Justice would likely have a lot to say about 10 our missed deadlines. 11       Not to mention the fact that the 12 deadlines are needed to protect voters 13 overseas, military voters, and other voters. 14 And so if we have to wait to print the 15 deadlines [sic], then we are violating the 16 rights that have been afforded to them by the 17 federal code and also the state code. 18       THE COURT: All right. Thank you. 19 To the extent that that is a motion to 20 continue, the Court will deny that motion for 21 the reasons stated by the Commonwealth as 22 well as the Plaintiffs. And your objections</p>

<p>13</p> <p>1 are preserved and noted for the record. 2 MR. KOWALCZUK: Your Honor, thank 3 you for noting my exceptions. And Your 4 Honor, if it please, I neglected to say one 5 thing. And I know the Court has ruled, but 6 may I say one more thing? 7 THE COURT: Well, I don't know to 8 what extent -- I think we're on a short 9 timeline, but if there's something you want 10 to add to the record, you can do it at the 11 conclusion of our hearing today. 12 MR. KOWALCZUK: Yes, Your Honor. 13 THE COURT: All right. Plaintiffs, 14 are you ready to go forward? 15 MR. SHELDON: Yes, Your Honor, we 16 are. 17 THE COURT: Okay. Thank you, sir. 18 MR. SHELDON: For ease, I plan on 19 referring to the Defendants either as 20 Defendants or Board of Elections, moving 21 forward. 22 This is a case -- I know Your Honor</p>	<p>15</p> <p>1 back on. 2 THE COURT: Yes, ma'am, just to make 3 sure that everybody else is protected. 4 MR. SHELDON: Thank you, Judge. 5 THE COURT: Go ahead, sir. 6 MR. SHELDON: The situation is that 7 the Virginia Code requires an independent -- 8 a person who is seeking to be on the ballot 9 as an independent third-party -- let me -- 10 sorry, Your Honor. 11 An individual who is seeking to be 12 placed on the ballot for the presidency as an 13 independent person must have 13 -- 14 commitments from 13 electors, the electoral 15 oaths. Mr. West -- and that's the minimum. 16 Mr. West submitted 13 only. We have 17 established, through testimony, that at least 18 three of those were obtained by false 19 pretenses, where the individual is being told 20 they were signing documents for one purpose 21 and then those documents were used for 22 another purpose.</p>
<p>14</p> <p>1 has read the papers, but it's a situation 2 where my clients were lied to by campaign 3 staffers. And based on those lies, they 4 signed documents for one particular purpose 5 that they thought they were signing for, and 6 then they have since learned that, basically, 7 that is not the case. 8 I'll be putting on evidence today, 9 live testimony from Mr. Wilson, also 10 declarations from Mr. Wright and Ms. Durant, 11 Your Honor. 12 And our argument is very -- just to 13 kind of give a road map here: We're asking 14 for a temporary injunction and then also a 15 mandamus, essentially asking the Board of 16 Elections to take Mr. West off the ballot. 17 May I remove this while I'm standing here? 18 THE COURT: Yes, sir. As long as 19 everyone else in the courtroom keeps their 20 mask on -- I see Ms. Lockerman has hers off 21 while she's drinking water. 22 MS. LOCKERMAN: I'll put it right</p>	<p>16</p> <p>1 And then there are problems with 2 eight other of these electoral oaths. One of 3 the main problems, one of the electoral oaths 4 by Ms. Fitzgerald, Bria Fitzgerald, was 5 actually -- these electoral oaths are also 6 required to be notarized by a notary in 7 Virginia. One of the oaths by Ms. Bria 8 Fitzgerald was notarized by an individual who 9 is not a notary public. The Court can take 10 judicial notice here -- 11 THE COURT: I will do that at the 12 appropriate time; I thought this was your 13 opening. 14 MR. SHELDON: Oh, yes, Judge. 15 Someone who is not a notary, that if -- that 16 invalidates that electoral oath; that simple 17 act invalidates that electoral oath. That 18 reduces the number of electoral oaths that 19 Mr. West has to 12. That alone is sufficient 20 for this Court to order the mandamus to 21 remove Mr. West as a -- from the ballot as a 22 presidential candidate.</p>

Transcript of Hearing  
Conducted on September 3, 2020

<p>17</p> <p>1 Second, Ms. Bria Fitzgerald was the 2 notary -- and she is a valid notary -- for 3 eight different individuals, including both 4 of the Plaintiffs here. She has a financial 5 interest because she is also one of the 6 electoral -- she also has signed one of the 7 electoral oaths. And she's entitled to \$50 8 per day for her services as that role. 9 Under those circumstances, under the 10 Virginia Notary Act, she is not permitted to 11 notarize anything where she has a financial 12 interest. And so those eight should also be 13 invalidated for that reason. 14 I'll put on evidence now, Your 15 Honor. I'll go quickly through a couple of 16 the affidavits where we don't have witnesses 17 here after everyone else gives their opening 18 statements. 19 THE COURT: All right. 20 Commonwealth, did you care to make an 21 opening? 22 MS. LOCKERMAN: Yes. Very briefly,</p>	<p>19</p> <p>1 opening, Mr. West is on the presidential 2 ballot and the Plaintiffs are seeking to 3 remove him. That is an awesome step for a 4 Court to make. I know the Court takes the 5 responsibility to do that very seriously. 6 And I guess there's still a 7 troubling aspect of this Commonwealth, 8 through the Attorney General, who is 9 representing the Board of Elections in this 10 case. One could argue that they should 11 recuse themselves for the reasons stated in 12 our motion. 13 And Judge, I just would reiterate 14 Plaintiffs indicate that they're going to 15 present some live testimony and they have 16 witnesses. And to have us respond to this 17 within 24 hours, we very respectfully submit 18 it deprives Mr. West of the due process that 19 he is entitled to, as well as the voters in 20 Virginia, to have his name on the ballot. 21 Thank you. 22 THE COURT: All right. Thank you,</p>
<p>18</p> <p>1 Your Honor. 2 Your Honor, the state elections 3 officials who were named Defendants in this 4 case have a really awesome responsibility. 5 And that is to ensure that elections in 6 Virginia are conducted legally, uniformly, 7 and with purity. 8 Fraud, illegal, and underhanded 9 behavior have no place in Virginia elections. 10 And this Court, in fact, agreed in 2018 in 11 the Democratic Party of Virginia versus Piper 12 case. And in that case, the candidate at 13 issue was ordered to be removed from the 14 ballot. 15 So we are here to listen and to do 16 whatever we need to do to support whatever 17 finding the Court may make with respect to 18 this particular case. Thank you. 19 THE COURT: All right. Thank you. 20 Counsel for Mr. West? 21 MR. KOWALCZUK: Your Honor, may it 22 please the Court. Judge, I guess by way of</p>	<p>20</p> <p>1 sir. 2 Your first witness? 3 MR. SHELDON: Judge, I'm going to 4 call Matthan Wilson of Suffolk, Virginia. He 5 is going to be appearing via Zoom. I hope 6 that we'll be able to hear him. We'll have 7 audio through my cell phone. Mr. Wilson, can 8 you say hello? 9 THE COURT: Is there a way to put 10 him in a place where we can all see him? 11 MR. SHELDON: Yes, Judge. 12 THE COURT: All right. The first 13 thing I need to do is to swear him in. Can 14 you hear me, sir? 15 THE WITNESS: Yes, ma'am. 16 THE COURT: All right. If you would 17 raise your right hand. 18 19 20 21 22</p>

21

1 Whereupon,  
2 MATTHAN WILSON,  
3 being first duly sworn or affirmed to testify to  
4 the truth, the whole truth, and nothing but the  
5 truth, was examined and testified as follows:  
6 DIRECT EXAMINATION OF MATTHAN WILSON  
7 BY MR. SHELDON:  
8 Q Mr. Wilson, can you first tell us your  
9 full name, please.  
10 A **Matthan Cornelius Wilson.**  
11 Q And Mr. Wilson, where do you live?  
12 A **At 4417 Brent Street, Suffolk, Virginia.**  
13 Q Mr. Wilson, I would like to direct your  
14 attention to an Oath for Electors for President  
15 and Vice-President; Independent and Third Party as  
16 the document. Can you see this here (indicating)?  
17 A **Yes, sir.**  
18 Q All right. Did you, in fact, sign this  
19 document?  
20 A **Yes, sir.**  
21 Q Okay. What date did you sign that  
22 document?

22

1 A **It was Tuesday, August 11th.**  
2 Q And what were you doing that day?  
3 A **I was out riding my bike.**  
4 Q And how did you come to sign this  
5 document?  
6 A **I was flagged down by three individuals.**  
7 **And they were collecting names for registered**  
8 **voters to be placed into a pool so that they can**  
9 **be chosen to be electors for the State of**  
10 **Virginia.**  
11 Q And what did you understand that to mean  
12 when they said you would be placed into a pool to  
13 be chosen for electors in the State of Virginia?  
14 A **At that time, I believed that they were**  
15 **getting electors because Virginia is part of the**  
16 **electoral college vote. And they were collecting**  
17 **people who were registered voters to be placed**  
18 **into a pool that, upon the popular vote, each**  
19 **person would be sent to Richmond to vote for**  
20 **the -- place a vote for the president of the**  
21 **United States.**  
22 Q When you were approached, how much time

23

1 did you spend with these three individuals?  
2 A **Not more than seven or eight minutes.**  
3 **It wasn't very long. It was very quick.**  
4 Q How long had you been exercising at that  
5 point?  
6 A **I'm sorry?**  
7 Q How long had you been exercising at that  
8 point?  
9 A **Approximately three hours. I had been**  
10 **on my bicycle from downtown Norfolk to Virginia**  
11 **(inaudible), which is about 25 miles.**  
12 Q Okay. And when they approached you,  
13 were they wearing any campaign shirts?  
14 A **No, sir.**  
15 Q Were they wearing any buttons or  
16 anything that identified them as part of any  
17 specific presidential campaign?  
18 A **No, sir.**  
19 Q When they spoke with you, did they  
20 identify themselves as being part of any  
21 presidential campaign?  
22 A **No, sir.**

24

1 Q Have you seen this document that you  
2 have signed, the Oath for Electors for President  
3 and Vice-President; Independent and Third Party?  
4 A **Yes, sir.**  
5 Q That document itself, does it have the  
6 name of any presidential candidate on it?  
7 A **No, sir, it does not.**  
8 Q When you were asked to sign this  
9 document, did they show you any other papers, or  
10 is this the only paper they showed you?  
11 A **This is -- that was the only paper that**  
12 **I was shown.**  
13 Q Okay. And so when you signed this  
14 paper, did they identify themselves as being part  
15 of the Kanye West presidential campaign?  
16 A **No, sir, they did not.**  
17 Q If they had said that they were part of  
18 the Kanye West presidential campaign, would you  
19 have signed this document?  
20 A **No, sir, I would not.**  
21 Q Now, there's a part of this document  
22 that reads -- well, let me ask you this: While

<p style="text-align: right;">25</p> <p>1 they were talking to you and when they handed 2 you -- did they actually hand this document to 3 you? 4 <b>A They handed it to me, but it was here in</b> 5 <b>conversation. It wasn't as if I had time to sit</b> 6 <b>down and read it very thoroughly. So I read the</b> 7 <b>document, but it wasn't as thoroughly as maybe I</b> 8 <b>should have.</b> 9 Q And as part of the pool that you thought 10 you were being put into, did you think that was 11 going to be just -- whoever won the popular vote 12 in Virginia, that's who you were going to be an 13 elector for? 14 <b>A Yes.</b> 15 Q If you were selected; is that correct? 16 <b>A Yes, sir.</b> 17 Q Now, here, there is a portion of this, 18 it says, "Pursuant to Virginia Code Subsection 19 24.2-543(A), I do hereby swear that, if elected, I 20 will cast my electoral ballot for the candidate 21 for president and vice president named in the 22 accompanying petition or as a party -- or as the</p>	<p style="text-align: right;">27</p> <p>1 <b>A About a week later I received a phone</b> 2 <b>call from a Richmond newspaper asking me did I --</b> 3 <b>was I really an elector for Kanye West. And I had</b> 4 <b>no idea what he was talking about at the time.</b> 5 <b>Never. But that was the first time I heard</b> 6 <b>anything about being an elector for Kanye West.</b> 7 Q Did you intend -- when you signed that, 8 did you intend to be an elector for Kanye West? 9 <b>A No, I did not.</b> 10 Q Do you feel that you were misled into 11 signing that document under false pretenses? 12 <b>A Yes, sir.</b> 13 Q If you had known the truth, would you 14 have signed that document? 15 <b>A No, sir.</b> 16 Q Do you intend, if Mr. West is on the 17 ballot, to vote for him? 18 <b>A On the ballot?</b> 19 Q Yes. 20 <b>A No, sir. No.</b> 21 MR. SHELDON: At this point, I have 22 no further questions for Mr. Wilson.</p>
<p style="text-align: right;">26</p> <p>1 party may direct in the event of death, 2 withdrawal, or disqualification of the party 3 nominee." 4 What did you think that that meant when 5 you signed this document? 6 <b>A That if one candidate won the greater</b> 7 <b>amount of popular vote, that candidate -- we would</b> 8 <b>go to Richmond, Virginia to vote for that</b> 9 <b>particular candidate in the electoral college.</b> 10 MR. SHELDON: At this point, Your 11 Honor, I would like to introduce as 12 Plaintiffs' Exhibit 1 the Oath of Electors 13 for President and Vice-President; Independent 14 and Third Party, signed by Mr. Wilson. 15 THE COURT: Any objection? 16 MR. KOWALCZUK: No, ma'am. 17 MS. LOCKERMAN: No. 18 THE COURT: Plaintiffs' 1. 19 Q Mr. Wilson, when did you first find out 20 that this document had been put forth to 21 purportedly say that you were supporting Kanye 22 West for president?</p>	<p style="text-align: right;">28</p> <p>1 THE COURT: Cross? 2 MS. LOCKERMAN: Your Honor, I have 3 no questions for Mr. Wilson. 4 MR. KOWALCZUK: Thank you, Your 5 Honor. 6 THE COURT: How do you pronounce 7 your last name, sir? 8 MR. KOWALCZUK: Kowalczuk. 9 THE COURT: Kowalczuk. Thank you. 10 MR. KOWALCZUK: Where would you like 11 me to stand? 12 MR. SHELDON: He should be able to 13 hear you. 14 THE WITNESS: I'm sorry; I cannot 15 hear you. 16 THE COURT: He's coming to the 17 podium. 18 CROSS-EXAMINATION OF MATTHAN WILSON 19 BY MR. KOWALCZUK: 20 Q I'm going to get a little closer, 21 Mr. Wilson. I don't mean to block the Court. 22 Mr. Wilson can you hear me now?</p>

29

1 **A Yes, sir.**  
2 Q And I don't know if you can see me, but  
3 I can see you.  
4 **A Yes, sir.**  
5 Q So on this particular day, on the 11th  
6 of August, how many people -- you said there were  
7 three people that approached you?  
8 **A Yes, sir.**  
9 Q All right. And do you remember what  
10 their names were, by any chance?  
11 **A No, sir.**  
12 Q Did they tell you their names?  
13 **A A few said their names. I do not**  
14 **remember.**  
15 Q And were they friendly with you?  
16 **A Yes, sir.**  
17 Q Okay. They weren't doing anything  
18 untoward or threatening or inappropriate or  
19 anything of that nature; is that right?  
20 **A Yes, sir.**  
21 Q Okay. And if one of those gentlemen,  
22 Mr. Durrell, said that he explained to you that

30

1 you were being asked to serve as a presidential  
2 elector for Mr. West, would that be inaccurate?  
3 **A Yes, that would be inaccurate.**  
4 Q And if Mr. Durrell said that he recalls  
5 you being particularly enthusiastic about  
6 supporting Mr. West and his campaign, would that  
7 be accurate or inaccurate?  
8 **A That would be inaccurate.**  
9 Q And are you a government teacher or were  
10 you a government teacher at some level?  
11 **A I'm still a government teacher.**  
12 Q And is that in high school or college?  
13 **A High school.**  
14 Q Okay. And did you tell these folks that  
15 you thought it was great to get independent  
16 candidates or great to involve independent  
17 candidates in presidential politics?  
18 **A I said it would be great to get everyone**  
19 **involved, yes, sir.**  
20 Q Did you mention independent candidates?  
21 **A Yes, sir.**  
22 Q And if Mr. Durrell said that he did not

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1 ask you to serve as an elector for the state in  
2 general, would that be accurate or inaccurate?  
3 **A That would be inaccurate. He asked me**  
4 **to serve as an elector for the State of Virginia.**  
5 Q And you're saying that he didn't mention  
6 anything about Kanye West?  
7 **A His name was not brought up in the**  
8 **entire conversation.**  
9 Q Okay. Now, turning to Plaintiffs'  
10 Exhibit --  
11 MR. KOWALCZUK: Is that 1, your Honor?  
12 THE COURT: If that's the oath --  
13 MR. KOWALCZUK: Yes, ma'am.  
14 THE COURT: Yes, sir, that's the  
15 form.  
16 MR. KOWALCZUK: Thank you, Your  
17 Honor.  
18 Q The form that you signed, Mr. Wilson,  
19 I'm going to refer to that as Plaintiffs' Exhibit  
20 No. 1. Do you have a copy of that in front of you  
21 by any chance?  
22 **A Not, no, sir, on my computer; there's a**

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1 **copy of it on my phone. I believe I may have a**  
2 **copy on my phone. I took a picture of it when I**  
3 **was there.**  
4 Q Okay. But you don't --  
5 **A Yes, sir, I do have it.**  
6 Q Okay. Oh, you do have it?  
7 **A Yes, sir.**  
8 Q Oh, good. Thank you. So at the top, in  
9 bold print, it says Oaths for Electors for  
10 President and Vice-President; Independent and  
11 Third Party, correct?  
12 **A Yes, sir.**  
13 Q Okay. So the very first word is oath,  
14 and you know what that means; you're a teacher,  
15 right?  
16 **A Yes, sir.**  
17 Q And it references the November 3rd  
18 general election in bold print, again, on a little  
19 bit smaller underneath the -- about the third  
20 line; is that right?  
21 **A Yes, sir.**  
22 Q And the next thing it says is, "Third



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1 party groups or independent candidates not  
2 affiliated with the Democratic Party or Republican  
3 Party." Is that correct?  
4 **A According to the document, it's there.**  
5 Q Right. And you signed and read this  
6 document, correct?  
7 **A I didn't read it as thoroughly as maybe**  
8 **I should because, you know, looking at the top, it**  
9 **said Oath for Electors for President,**  
10 **Vice-President; Independent and Third Party. I**  
11 **thought of it as a group; I didn't know they were**  
12 **singling an independent third party. I did not**  
13 **see that signing as being singled out just for an**  
14 **independent third party. The way that it read, I**  
15 **just read it as president, vice-president,**  
16 **independent, and third party, all four.**  
17 Q Okay. And as a teacher, I assume you  
18 have a college degree; is that correct?  
19 **A Yes, I do.**  
20 Q Okay. And so this form that says, in  
21 bold letters, Oath for Electors, Independent and  
22 Third Party, you signed that before a notary,

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1 correct?  
2 **A This document, yes, I signed this**  
3 **document.**  
4 Q And did you -- who printed last name and  
5 first name and so forth and your address in  
6 Suffolk there; who printed all of that? Did you  
7 print that?  
8 **A Yes, sir.**  
9 Q And you provided your e-mail and phone  
10 number; is that correct?  
11 **A Yes, sir.**  
12 Q And then there's your signature. And  
13 then someone named Bria Fitzgerald notarized it;  
14 is that correct?  
15 **A Yeah. She came from around the cars**  
16 **and -- when I asked for it to be notarized, she**  
17 **came around the cars and notarized it.**  
18 Q Okay. So this exhibit, which you swore  
19 under oath was true, you don't dispute that you  
20 signed it, right?  
21 **A No, sir, I do not dispute it; my**  
22 **signature's there.**

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1 Q Okay. Now, who, if I may ask -- you had  
2 said a reporter called you. Did you get -- how  
3 did you -- did you receive any contact from  
4 anybody other than a newspaper or television or  
5 press person before today about this?  
6 **A No, sir. Before today?**  
7 Q Yeah, before today. In between -- I  
8 didn't ask my question very well. Let me try it  
9 again. So this happened on August 11th, right?  
10 **A Yes, sir.**  
11 Q And then you said a short time later  
12 someone from the paper or the TV called you,  
13 correct?  
14 **A Newspaper.**  
15 Q Newspaper. After the newspaper, did  
16 anybody else not associated with the press contact  
17 you about this?  
18 **A I can't remember the name. Yes. It was**  
19 **one person. She had called and asked about the**  
20 **document.**  
21 Q And you said you couldn't think of her  
22 name, and that's fine. Was that person affiliated

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1 with one of the presidential campaigns?  
2 **A Not to my knowledge. She identified**  
3 **herself as a person dealing with campaigns but not**  
4 **one particular campaign.**  
5 Q Okay. And when you say -- can you  
6 elaborate a little bit more about what you mean by  
7 "dealing with campaigns?"  
8 **A She had -- we discussed the time -- I'm**  
9 **sorry; I'm trying to think of her name right**  
10 **now -- Jessica, I believe it was -- called and**  
11 **asked me about this document that I had signed.**  
12 **And when she had asked me about the document, she**  
13 **identified herself as working with an advocacy**  
14 **group with the -- an advocacy group for elections,**  
15 **and she asked about the document and asked me did**  
16 **I intend to sign for Kanye West, which I said, "Of**  
17 **course not." And that's who I spoke with.**  
18 Q And then where did you leave it with  
19 this person that you believe whose name was  
20 Jessica?  
21 **A I'm sorry?**  
22 Q Where did you leave it with her? In

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1 other words, did you just say "thank you" and that  
2 was the end of it? Or was there a follow-up  
3 communication with anyone?  
4 **A No. She called me back to discuss the**  
5 **issue, because I wanted my name to be removed from**  
6 **off the list of electors.**  
7 Q And did --  
8 **A She called back.**  
9 Q I'm sorry; I didn't mean to interrupt  
10 you.  
11 **A No. Go ahead.**  
12 Q And did she say how she could do that?  
13 **A No. She just wanted me to speak with an**  
14 **attorney, fill out an affidavit to have my name**  
15 **removed off of the list of electors.**  
16 Q Okay. And how was it that the attorney  
17 was able to communicate with you? Did she provide  
18 a number or did the attorneys call you?  
19 **A I had received a call from them, and I**  
20 **filled out the affidavit.**  
21 Q And how long after that did you receive  
22 that phone call?

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1 **A After...**  
2 Q After the person from the advocacy  
3 group, Jessica, told you that she could give you  
4 the name of an attorney, how long did you speak to  
5 an attorney -- how long after that did you speak  
6 to an attorney?  
7 **A That would be about a week; I believe it**  
8 **was almost a week or maybe five days. I did not**  
9 **keep track of the time.**  
10 Q So then did an attorney reach out to you  
11 or did you reach out to the attorney?  
12 **A The attorney reached out to me. Once**  
13 **they realized what I had wanted to do, they**  
14 **reached out to me.**  
15 Q And how do you know what they realized  
16 what they wanted to do? Who told you that?  
17 **A I spoke with Jessica Delaney (ph); that**  
18 **was the name.**  
19 Q And do you know, is she related to a law  
20 firm or independent from the lawyers who are  
21 representing you now?  
22 **A I'm not exactly sure --**

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1 Q Okay.  
2 **A -- of her affiliation with the law firm.**  
3 Q Oh, so you believe she works for the law  
4 firm?  
5 **A No.**  
6 Q Okay. And you don't -- I may have asked  
7 you this before; and if I did, I apologize. But  
8 do you know the name of the advocacy group for  
9 whom Jessica works?  
10 **A It was in an e-mail, but I don't have**  
11 **that e-mail with me right now. I don't have that**  
12 **information in front of me.**  
13 Q At any time during your discussions with  
14 Jessica, or anybody else for that matter, after  
15 you signed this, did anybody pressure you or  
16 coerce you or suggest to you that you should take  
17 these steps to disavow your oath, your elector  
18 oath?  
19 **A No, sir. No pressure at all. I didn't**  
20 **want -- at the time, I asked that my name be**  
21 **removed and wondered how that could be done.**  
22 MR. KOWALCZUK: Thank you. Those

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1 are all the questions I have of Mr. Wilson.  
2 THE COURT: All right. Any  
3 redirect?  
4 MR. SHELDON: No redirect.  
5 THE COURT: I have a question for  
6 you, sir. According to the Oath for  
7 Electors, the copy that you have, it  
8 indicates that there was an accompanying  
9 petition that named the candidate. Did you  
10 receive that?  
11 THE WITNESS: No, ma'am.  
12 THE COURT: Did you see it when you  
13 were signing this?  
14 THE WITNESS: No, ma'am.  
15 THE COURT: All right, sir. Thank  
16 you.  
17 MR. SHELDON: Thank you, Judge.  
18 THE COURT: And anything else for  
19 him before we -- because once he's gone, he's  
20 gone.  
21 MR. SHELDON: No, Judge. I'm going  
22 to let him stay on. He is the Plaintiff and

<p>41</p> <p>1 has -- 2 THE COURT: Okay. That's fine. 3 Thank you. 4 (Witness steps down.) 5 THE COURT: Your second witness? 6 MR. SHELDON: The rest, Your Honor, 7 will be by affidavits. 8 MR. KOWALCZUK: Judge, I would 9 object on the grounds of hearsay. 10 MR. SHELDON: The statute is very 11 clear, Your Honor, for a temporary injunction 12 that affidavits are admissible for that 13 purpose. 14 THE COURT: As long as it's the 15 original. 16 MR. SHELDON: I do not have the 17 original, Judge. 18 MR. KOWALCZUK: Objection, hearsay, 19 Your Honor. 20 THE COURT: You just don't have them 21 available or... 22 MR. SHELDON: I don't have them</p>	<p>43</p> <p>1 evidence? 2 THE COURT: The petition is a part 3 of his claim today for the temporary 4 injunction, and so the attachments, by 5 reference, are part of the petition. And he 6 says it's a verified petition, so I am 7 receiving these, but I'm not receiving -- 8 MR. KOWALCZUK: Yes, ma'am. 9 THE COURT: -- the copies that he's 10 presenting today. 11 MR. KOWALCZUK: Yes, ma'am. Thank 12 you, Your Honor. 13 THE COURT: But if they're the same 14 document, essentially, I am receiving them. 15 MR. KOWALCZUK: Yes, ma'am. 16 MR. SHELDON: Looking at the 17 Verified Complaint, Exhibit D, Your Honor, 18 that is the Declaration of Plaintiff Bryan 19 Garrison Wright. 20 MR. KOWALCZUK: Is that D as in 21 delta? 22 MR. SHELDON: D as in delta, yes.</p>
<p>42</p> <p>1 available, Judge. Because this has been so 2 quick in the turnaround, I've not been able 3 to -- 4 THE COURT: Okay. Well, I can't 5 receive a copy of an affidavit. There are 6 originals attached to your petition or was 7 that by e-mail? 8 MR. SHELDON: That was an electronic 9 filing, Your Honor. But the electronic 10 filing is permitted by the Court; that is -- 11 and it is a verified complaint as well. So 12 I -- 13 THE COURT: So to the extent that 14 they're attached to the petition, I'll 15 receive them, but I cannot receive the copies 16 that you're presenting now. 17 MR. SHELDON: Sure. Looking at the 18 complaint, Your Honor, first, so Exhibit D -- 19 MR. KOWALCZUK: Judge, I apologize 20 for interrupting. Just for point of 21 clarification, is the Court admitting them as 22 evidence in this hearing for substantive</p>	<p>44</p> <p>1 THE COURT: All right. That's the 2 affidavit of Mr. Wright? 3 MR. SHELDON: Yes, Your Honor. And 4 it reads, in relevant part, that he was 5 approached on August 11. He was approached 6 by representatives of a campaign; he now 7 knows that it's for Kanye West for President. 8 The representative asked him to sign a 9 petition -- he knew then that they were for 10 Kanye West. The representative asked him to 11 sign a petition to get Kanye West on the 12 ballot as an independent and then presented a 13 document for him to sign that was the 14 petition. And he signed that document. 15 He says, in paragraph 5 of his 16 declaration, which is attached as Exhibit D 17 to the verified complaint, at the time he did 18 not know that he was signing up to act as an 19 elector for Kanye West and Michelle Tidball's 20 campaign for president and vice-president. 21 "None of the representatives even mentioned 22 the word elector, let alone describing the</p>

<p style="text-align: right;">45</p> <p>1 position and responsibilities of the role. I 2 now believe that the representative obtained 3 my signature under false pretenses." 4       Going to paragraph 7, he states, "I 5 do not intend to perform the duties of an 6 elector on behalf of Kanye West and Michelle 7 Tidball. I do believe that I was properly 8 identified as an elector." 9       Paragraph 8, "I seek to immediately 10 withdraw my oath as an elector for Kanye West 11 and Michelle Tidball's campaign, to the 12 extent that my appointment as elector was 13 ever valid. At no point have I had any 14 intention to serve as an elector for the 15 campaign and I do not intend on doing so 16 going forward." 17       Paragraph 9, "I am a committed 18 Republican, and I do not commit to support to 19 Kanye West or Michelle Tidball at this 20 moment." 21       That we would ask to be Plaintiffs' 22 Exhibit 2 to the hearing, Your Honor.</p>	<p style="text-align: right;">47</p> <p>1       At this point, Your Honor, I would 2 like to direct you to Exhibit M, as in Mary, 3 to the complaint. That is the Oath for 4 Elector for President and Vice-President; 5 Independent Third Party, with Samantha 6 Durant's signature. That matches the 7 signature of her declaration that is attached 8 as Exhibit E to the complaint. 9       You notice at the bottom of that 10 Exhibit M, Your Honor, that it is signed and 11 notarized by Bria Crystal Fitzgerald. 12       Going back to Exhibit E, paragraph 13 6, "At the time of my signature, I did not 14 know I was signing up to act as an elector 15 for Kanye West and Michelle Tidball's 16 campaign for president and vice-president 17 respectively. None of the representatives 18 even mentioned the word 'elector,' let alone 19 describing the position or responsibilities 20 of the role. I now believe that the 21 representatives obtained my signature under 22 false pretenses."</p>
<p style="text-align: right;">46</p> <p>1       THE COURT: It's coming in by way of 2 the complaint. 3       MR. SHELDON: Okay. Thank you, Your 4 Honor. The next piece of evidence that we 5 would look at would be Exhibit E to the 6 Verified Complaint, which is the Declaration 7 of Samantha Durant. 8       Samantha Durant's declaration 9 states, paragraph 1, that she's a registered 10 voter in Newport News. And then, paragraph 11 2, "On August 11th, 2020, I was approached by 12 representatives of an independent political 13 campaign in Colonial Williamsburg." 14 Paragraph 3, "The representatives asked me to 15 sign a, quote, 'petition' to, quote, 'get an 16 independent candidate on the ballot.'" 17       Paragraph 4, "Thereafter, the 18 representatives presented me with a document 19 to sign and I signed the document and 20 departed." Paragraph 5, "None of the 21 representatives notarized the document in my 22 presence."</p>	<p style="text-align: right;">48</p> <p>1       Looking at paragraph 7, "I first 2 learned on August 28th, 2020 that the form I 3 signed indicated an agreement to be an 4 elector." Paragraph 8, "I do not intend to 5 perform the duties of an elector on behalf of 6 Kanye West and Michelle Tidball. I do not 7 believe I was properly identified as an 8 elector." 9       Paragraph 9, she seeks immediate 10 withdrawal. And then paragraph 10, she does 11 not commit to supporting Kanye West. 12       Next, Your Honor, I would direct you 13 to Exhibit N of the complaint, which is the 14 Oath for Electors for President and 15 Vice-President; Independent and Third Party. 16 This, the elector is Bria Fitzgerald. Under 17 Virginia Code Section 24.2-205, it states 18 that any elector is entitled to \$50 19 compensation per day for their work as an 20 elector. 21       Bria Fitzgerald, as an elector and 22 also as the person that has signed eight --</p>

<p style="text-align: right;">49</p> <p>1 notarized eight of the oaths of electors is 2 entitled to that compensation; then 3 therefore, under the Virginia Notary Act, 4 violates the law by notarizing those 5 documents. 6 Additionally, Your Honor, we would 7 point you to the notary on her oath for 8 electors, which was done by Desiree Lorraine 9 Rios. And I would direct your attention to 10 Exhibit O of the verified complaint. 11 Here, the Court can also take 12 independent judicial notice that this is the 13 Secretary of the Commonwealth of Virginia 14 notary that identifies that Ms. Desiree Rios 15 is no longer a notary in the Commonwealth of 16 Virginia; that her date of service expired on 17 June 30th, 2018; therefore, this Oath for 18 Elector for President and Vice-President does 19 not meet the requirements of the statute, as 20 it was not notarized by a notary. 21 THE COURT: The Court will take 22 notice of the Secretary of the Commonwealth</p>	<p style="text-align: right;">51</p> <p>1 THE COURT: Okay. And can you just 2 summarize what those exhibits would have been 3 or are? 4 MR. SHELDON: Yes, Your Honor. So 5 his declaration states that he was -- he was 6 up in Fairfax County. He was approached by 7 two members of the -- two individuals asking 8 him to sign a petition to keep Kanye West off 9 of the presidential ballot. He engaged in 10 conversation with them; stated that he 11 thought that was odd, he'd never heard of a 12 petition to keep someone off of a ballot. 13 And he looked at the documents, 14 engaged them in conversation, and told the 15 individuals that he thought that that looked 16 like a petition to put him on the ballot. 17 And they took the document away from him, 18 told him to go google it. He did that when 19 he went home. And the document that they put 20 in front of him was, in fact, this document 21 here, Your Honor. 22 And he then sent e-mails -- and these</p>
<p style="text-align: right;">50</p> <p>1 indicating that the status of Desiree Rios 2 had expired on June 30, 2018. 3 MR. SHELDON: Your Honor, we also 4 submitted supplemental authority this 5 afternoon, filed with the Court. And that is 6 the declaration of a gentleman named 7 Mr. Pincus, along with e-mails that he sent 8 to -- they're attachments to that 9 declaration. 10 THE COURT: I don't think I have 11 that. When did you do that? 12 MR. SHELDON: That was filed this 13 afternoon, Your Honor. The exact time -- 14 THE COURT: All right. You said 15 that's Pincus? 16 MR. SHELDON: Yes, Your Honor. 17 THE COURT: P-i-n-k-u-s? 18 MR. SHELDON: C-u-s. 19 THE COURT: C-u-s. All right. And 20 that was a declaration? 21 MR. SHELDON: That's correct, Your 22 Honor. It was a declaration with exhibits.</p>	<p style="text-align: right;">52</p> <p>1 are the attachments -- one e-mail to the 2 Democratic Party of Fairfax and the other to the 3 Board of Elections, saying people are asking for 4 people to sign -- there are individuals in front 5 of the Giant aggressively asking people to sign a 6 petition, and they're representing it is to keep 7 Kanye West off the ballot, when in fact, the 8 document appears to put him on the ballot and 9 possibly be electors. 10 THE COURT: All right. But 11 Mr. Pincus never did execute the document? 12 MR. SHELDON: He did not sign the 13 document, Your Honor. 14 MR. KOWALCZUK: Counsel, can I see 15 that document, the one to which you just 16 referred? 17 MR. SHELDON: It was just a blank 18 document of -- this is the one I referred to. 19 I'm happy to send you the -- I don't have -- 20 I thought I had it; I must have left it in my 21 car. 22 MR. KOWALCZUK: That's fine. I</p>

<p style="text-align: right;">53</p> <p>1 guess I'm -- I'm going to object to the 2 relevance of this, Judge. I'm not really 3 following this. 4 MR. SHELDON: Pattern and practices 5 is the relevance. 6 THE COURT: Well, they've been filed 7 with the clerk's office. And so the Court, 8 in looking at all of the documents, I will 9 take a look at it. 10 MR. SHELDON: Thank you, Judge. 11 THE COURT: All right. 12 MR. SHELDON: That is all the 13 evidence that we have to put on, Your Honor, 14 regarding the obtaining of signatures for the 15 oath of electors by false pretenses, 16 including having a notary that had a 17 financial interest notarize eight of 18 the oaths. And all of the oaths for electors 19 that contain the notary signature of 20 Ms. Fitzgerald are attached as exhibits to 21 the verified complaint. 22 Would you like me to identify each</p>	<p style="text-align: right;">55</p> <p>1 Ms. Fitzgerald on August 11th in Chesapeake, 2 Virginia. 3 Exhibit L, this is the Oath for 4 Electors that is now in Plaintiffs' 1 for 5 Mr. Wilson. That was executed by 6 Ms. Fitzgerald on August 11th. Exhibit M is 7 Ms. Durant that we've already discussed, Your 8 Honor. 9 Those are all of the ones that 10 were -- all of the oaths that were notarized 11 by Ms. Fitzgerald. 12 THE COURT: All right. Thank you. 13 And you rest? 14 MR. SHELDON: We rest, Your Honor. 15 THE COURT: All right. Thank you. 16 Anything from the Commonwealth? 17 MS. LOCKERMAN: So as Your Honor 18 likely knows, there are certain things that 19 every candidate has to file with the State 20 Board in order to qualify. In the case of an 21 independent presidential candidate, 24.2-543 22 requires them to file the correct number of</p>
<p style="text-align: right;">54</p> <p>1 of those individuals, Your Honor? 2 THE COURT: If you would, just for 3 purposes of the record, we could do that. 4 MR. SHELDON: Yes. Looking first at 5 Exhibit F, it's the Oath for Electors for 6 Ashia McCrary. That was signed by 7 Ms. Fitzgerald on August 11th. Exhibit G for 8 Bryan Wright, that we've already discussed, 9 Your Honor. Exhibit H, this is for Marie 10 Swider; it was signed -- notarized by 11 Ms. Fitzgerald on August 12th. 12 Looking at Exhibit I, this is the 13 Oath for Electors before -- it looks like it 14 could be Kelsey Cupp, Your Honor. That was 15 notarized by Ms. Fitzgerald on August 12th in 16 Staunton. 17 Looking at Exhibit J, Your Honor, 18 this is for the Oath of Electors for Courtney 19 Brown. It was notarized by Ms. Fitzgerald on 20 August 12th in Charlottesville. Looking at 21 Exhibit K, this is the Oath for Electors for 22 Sariah Cutler; that was executed by</p>	<p style="text-align: right;">56</p> <p>1 petition signatures, as well as the oaths of 2 office for 13 electors. And when the 3 Department would receive them, they review 4 them to make sure that everything that is 5 supposed to be there is present. 6 I will note that some serious 7 allegations have been raised about these 8 qualification documents that were filed with 9 the Board on August 21st. Again, when the 10 Department and the Board reviewed them, they 11 were -- facially, they had all of the 12 components that they were required to have. 13 But as we -- as I said earlier, it 14 is incredibly important to the state 15 officials that the elections are conducted 16 with fairness, purity, and legality. And so 17 to the extent that it is decided by Your 18 Honor that there needs to be some adjustment 19 in the individuals who qualify for the 20 ballot, we will do whatever we can do to work 21 with the localities to do that. We just need 22 to do it really quickly. Thank you.</p>

<p>57</p> <p>1 THE COURT: Thank you, ma'am. 2 Yes, sir, for Mr. West, Mr. 3 Kowalczuk? 4 MR. KOWALCZUK: Judge, as I said, we 5 don't have any evidence, so I guess this is 6 my opportunity to argue closing, if you will. 7 THE COURT: Well, we'll start then 8 with the Plaintiffs, if you have nothing to 9 present. 10 MR. KOWALCZUK: I have no 11 evidence. 12 THE COURT: Nothing to proffer or 13 anything like that? 14 MR. KOWALCZUK: I have no evidence, 15 Your Honor. I guess, by proffer -- well, no. 16 I'll save it for closing. Thank you. 17 THE COURT: All right. Thank you. 18 Closing then? 19 MR. SHELDON: Your Honor, the 20 Plaintiffs here are offended that they were 21 lied to and that their signatures were gained 22 for a process for which they did not intend</p>	<p>59</p> <p>1 would request that you issue an order 2 mandating that he is removed from the ballots 3 here in Virginia and enjoin him from 4 proceeding. Thank you. 5 THE COURT: Thank you. And 6 actually, I think I've heard from the 7 Commonwealth. Thank you, ma'am, 8 Ms. Lockerman. 9 And so Mr. Kowalczuk? 10 MR. KOWALCZUK: Your Honor, thank 11 you. And once again, may it please the 12 Court. This is my first time in Richmond 13 City Circuit Court, and you've been very 14 friendly, and I appreciate it. It's a 15 pleasure to be here. 16 Your Honor, I respectfully submit 17 there are two issues here. I could not agree 18 with the representative from the Attorney 19 General's Office more, that the integrity of 20 elections is so paramount; it's so critical. 21 Without the integrity of our electoral 22 system, there's chaos.</p>
<p>58</p> <p>1 them to be used. They have sought to be 2 removed as electors for Mr. West, who they 3 never intended to support in this manner. 4 We have presented evidence that 5 three of the 13 were obtained under false 6 pretenses. We presented evidence that one of 7 those three was signed without it being 8 notarized in front of her, which is, again, a 9 violation of the requirements for the package 10 that was submitted by Mr. West. 11 We also presented evidence that a 12 third electoral vote by Ms. Fitzgerald was 13 not notarized by someone that actually has a 14 notary for -- was a licensed notary for the 15 last two years. 16 Any single one of these, any single 17 of these elector oaths, the invalidations of 18 any single one of them requires that this 19 Court issue a mandamus removing Mr. West from 20 the ballot because he, again, only submitted 21 13. There is no room for error. So we 22 respectfully request that you -- today, we</p>	<p>60</p> <p>1 Everyone in this room remembers 2 hanging chads and the nightmare that ensued 3 in the following months where we didn't know 4 who the president was or who was going to be. 5 And so everyone knows the importance of that. 6 And I know the Court does. 7 I respectfully submit that that 8 question, however, the allegations raised by 9 Plaintiffs, are serious, and it should be 10 treated seriously. And the idea that, 11 essentially, what the Plaintiff is doing is 12 the Plaintiff presents to you affidavits, 13 statements under oath from various witnesses, 14 and they want you today -- without really a 15 trial, with just one witness -- to say we 16 want you to accept those affidavits, not the 17 original affidavits. It sort of puts the 18 Court in a position of having to decide the 19 credibility of paper. 20 And so I guess what I'm saying, 21 Judge, is you know, they say they have 22 evidence of three electoral oaths under false</p>

<p style="text-align: right;">61</p> <p>1 pretenses. Well, we would like to refute 2 that. We'd like to be given the opportunity 3 ore tenus. Cross-examination, you know, the 4 crucible of cross-examination, as the circuit 5 court judge, you preside over all manner of 6 trials, from divorces to capital murder and 7 everything in between. 8 And cross-examination of live 9 witnesses is the -- the adducement of that 10 evidence typically bears out the truth of 11 what's going on. And Kanye West, as a 12 presidential candidate, would ask you to not 13 grant Plaintiffs' motion here today but to 14 delay these proceedings; again, I ask the 15 Court. 16 I note that, I think, somewhere in 17 the documents -- it may have been in the 18 Attorney General's emergency filing. There 19 is a lot of documents here that I've had to 20 go over here in a short period of time, but 21 I'm pretty sure it's the Attorney General's 22 document.</p>	<p style="text-align: right;">63</p> <p>1 deadlines. 2 But there still just has to be 3 evidence that the sky is indeed falling. And 4 we really haven't heard that. There's really 5 been no evidence deduced that delaying this 6 until Tuesday so that Kanye West can have the 7 opportunity to present evidence, to refute 8 these paper planes, essentially. 9 We do have one live witness, 10 Mr. Wilson. But you know, Mr. Wilson says 11 today, "I didn't mean what I said under oath 12 on August the 11th." And for the Court to 13 remove an African-American from the ballot at 14 Plaintiffs' request, if anything this summer 15 has taught us is that we all need to 16 reexamine the way we look at how disparate 17 treatment of a whole segment of our society 18 for 250 years affects every aspect of our 19 lives, whether it's the police department, 20 whether it's schools, whether it's colleges, 21 whether it's sports. And today the subject 22 is elections.</p>
<p style="text-align: right;">62</p> <p>1 And that says, at paragraph 8, 2 "Though Election Day is not until November 3 the 3rd, voting begins in person and by mail 4 on September the 19th and localities are 5 required by both federal and state law to 6 mail ballots to all voters who submitted a 7 request for an absentee ballot prior to 8 September 19th." 9 Well, today is September the 3rd, 10 and I can do math just like everyone else. 11 We have a short window of time. But nobody 12 has presented evidence today that a 13 continuance of this matter until Monday or 14 Tuesday will deprive the Commonwealth or the 15 registrar or the publishing companies or 16 whoever does all of that in concert the 17 inability to still meet that deadline. I 18 believe Counsel mentioned -- it may have been 19 the Attorney General's Office; I 20 apologize for not recalling -- that likely 21 the Department of Justice would start to 22 weigh in. And I understand all those federal</p>	<p style="text-align: right;">64</p> <p>1 And these are very serious 2 allegations. And I agree with the attorney 3 for the Commonwealth, the Attorney General's 4 Office, the integrity of our elections, which 5 I think I spoke about earlier, is paramount. 6 But let's have a trial. Let's not 7 just have a hearing where very skilled 8 counsel presents a binder filled with paper 9 documents and says, Judge, we want you to 10 accept these signed affidavits as the truth 11 and we want you to ignore the signed 12 affidavits, the signed oaths of the electors, 13 which the Board of Elections received. I 14 don't know how the Court can do that. 15 That's why I think the better course 16 of action is to have it on Monday, or 17 Tuesday, if Monday's not possible -- I don't 18 claim to know how difficult or easy it would 19 be for the Circuit Court to sit on Labor Day; 20 I don't have any idea. My guess, though, is 21 if Your Honor ordered it, everybody would 22 show up. I know I would.</p>



<p style="text-align: right;">65</p> <p>1 Some of the other arguments Counsel 2 made is that the notary -- I think her name 3 was Ms. Fitzgerald -- was, herself, an 4 elector, and therefore she had a financial 5 interest. Well, the jurors who are paid a 6 small fee for their jury duty, do they have a 7 financial interest in the outcome of the 8 case? No, of course not. I'm not sure that 9 argument is sufficient, but I think that's a 10 good analogy. 11 I don't know that one can say that 12 because you were an elector yourself and you 13 were a notary, because you would get \$50 a 14 day to perform your duties, that that equates 15 to or is axiomatically equivalent to a 16 financial interest in the outcome of the case 17 such that, under the Notary Act, your 18 notarization or your notarial signature would 19 be invalid. I submit, respectfully, that it 20 is not. 21 I'm still not sure of the relevance 22 or the importance -- and maybe I just don't</p>	<p style="text-align: right;">67</p> <p>1 Nothing could be worse -- you know, 2 we all, as Americans, we watch the news. I 3 remember growing up, watching the news about 4 these elections in the Soviet Union and 5 getting so angry, even as a child; like, how 6 can you just have one candidate and call that 7 fair? Or news of other places around the 8 world where we know that truckloads of 9 ballots are kind of brought in to make sure 10 that the dictator wins. 11 Nobody wants that. We pride 12 ourselves on our election law. And 13 Virginia's election laws are very, as I'm 14 learning quickly, are very elaborate and very 15 thorough. 16 But again, Judge, there's another 17 issue. Plaintiffs' action today, if 18 Plaintiffs' relief is granted the way 19 Plaintiff seeks, an African-American 20 presidential candidate will be removed from 21 the ballot in 2020. And that may be the 22 correct decision; it may not be.</p>
<p style="text-align: right;">66</p> <p>1 get the argument, Judge; it could be my 2 failing -- of the last affidavit of 3 Mr. Pincus. And Counsel, you did send it to 4 me; I found it in the last page of my book, 5 so thank you. 6 It appears to be a declaration -- 7 whether it's verified or not, I'll leave to 8 the Court; it was added today and there's no 9 verification of this -- I don't know if it 10 gets bootstrapped or not. I don't think it's 11 that important. But essentially, nothing was 12 signed. I'm not sure what that's all about. 13 But if we had a trial and Mr. Pincus was 14 here, then we could find out what they're 15 talking about. 16 So Judge, as I finish, there are two 17 issues here today. One is a very important, 18 serious allegations, all of which deal with 19 the integrity of our presidential election. 20 And everybody wants to have an election that 21 is fair, that follows the rules, where we can 22 be all confident in a result.</p>	<p style="text-align: right;">68</p> <p>1 My argument, respectfully, is that 2 that is a decision that ought to be made with 3 the adducement of evidence, with 4 cross-examination, with at least a little bit 5 of time for reflection, and a little bit of 6 time to sort of respond to these allegations 7 by the person who is most aggrieved by these, 8 and that, of course, is Kanye West. 9 So, Judge, for all those reasons, I 10 implore this Court in the strongest possible 11 terms to do nothing today but to grant a 12 delay in these proceedings to give Mr. West, 13 the intervenor, the opportunity to refute 14 these paper planes, many of them, most of 15 them. I don't want to be dismissive of 16 Mr. Wilson who did appear in person, and 17 given COVID, I'm going to consider him in 18 person, even though he's digital over 19 there. 20 But we should have the same 21 opportunity. They certainly had the 22 opportunity to bring in witnesses to this</p>

<p style="text-align: right;">69</p> <p>1 courtroom. The Court would have allowed them 2 to do that. And I would have had the 3 opportunity to cross-examine them other than 4 just one. 5 So, Judge, for all those reasons, I 6 implore the Court, to the extent that, if 7 it's in an up-or-down decision, to deny their 8 ruling -- to deny the relief they seek by way 9 of injunctive relief and mandamus. But more 10 to the point, to continue this until Monday 11 or Tuesday, unless somebody presents evidence 12 that the Commonwealth of Virginia can't print 13 ballots and still meet the deadline if we 14 were to have a hearing on Monday or Tuesday; 15 there hasn't been any evidence of that. 16 It doesn't seem unreasonable, given 17 the consequential decision that this has, 18 this particular relief has, by removing this 19 African-American from the ballot -- the 20 presidential ballot, no less -- in the year 21 2020. And I thank you for it. 22 THE COURT: Thank you.</p>	<p style="text-align: right;">71</p> <p>1 second. 2 And an independent reason, even if 3 it was just that one that was invalidated, 4 just that one vote for elector that was 5 invalidated, that is an independent reason to 6 proceed today, based on nothing that this 7 Court cannot take judicial notice of. 8 And lastly, Your Honor, the evidence 9 regarding Mr. Pincus is we have evidence 10 before this Court that the West campaign was 11 randomly misleading individuals into signing 12 petitions and signing the oath for electors 13 under false pretenses. That is one where he 14 was being specifically told this is to keep 15 Mr. West off the ballot. Many people would 16 have signed for that purpose alone. 17 He did not, but he has presented 18 evidence through his affidavit that was filed 19 with supplemental authority today that that 20 was happening. 21 Mr. Wilson was told that he would be 22 put into a pool to be an elector for whoever</p>
<p style="text-align: right;">70</p> <p>1 Mr. Sheldon? 2 MR. SHELDON: Very briefly, Your 3 Honor. I just want to hit three points. We 4 did have live testimony of Mr. Wilson. He 5 was cross-examined and he said, in no 6 uncertain terms, that he was misled and he 7 was told something very different than 8 what -- about what he signed. He was told 9 that he was going to be put into a pool for 10 whoever won the popular election. That's 11 what he was interested in, particularly as a 12 teacher of government. That alone is 13 sufficient to say that this -- that 14 Mr. West's appearance on the ballot is 15 improper. 16 Second, Your Honor, there has been 17 no argument made to contest that the Oath of 18 Electors for Ms. Fitzgerald that was not 19 notarized by an actual notary in the 20 Commonwealth of Virginia is also invalid, 21 facially, because it wasn't notarized, as 22 required by the statute. Therefore, that's a</p>	<p style="text-align: right;">72</p> <p>1 won the popular vote. 2 Mr. Wright was told -- Mr. Wright 3 and Ms. Durant were both told that they were 4 just signing a petition to include Mr. West 5 as an independent person but not that they 6 were going to be electors. 7 Those are three different -- that's 8 evidence of three different ways that the 9 West campaign was fraudulently attempting to 10 gain access to the ballot, and that evidence 11 is before the Court. And we would ask that, 12 for those reasons, today you'll order -- 13 grant our relief. Thank you, Your Honor. 14 THE COURT: Thank you very much. 15 Commonwealth, do you wish to be 16 heard again? 17 MS. LOCKERMAN: Yes. Just on the 18 issue of -- it appears that Mr. Kowalczyk was 19 bringing his motion for a continuance or a 20 delay again. And I wanted the opportunity to 21 respond to his assertions that we still have 22 time to print the ballots, that it's still --</p>

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1 we have until September 18th.  
2 And we have presented evidence.  
3 There are three declarations that the Court  
4 is in possession of, one from the General  
5 Registrar of Fairfax County, who says that,  
6 if not by tomorrow, then there's just no way  
7 that he can make it; one from the Virginia  
8 Beach General Registrar, who says that she  
9 has already sent her ballots to print.  
10 And then there was a lengthy  
11 declaration that we submitted from David  
12 Nichols, who works at the department of  
13 elections. And what makes this year so  
14 different than any other year is the  
15 unprecedented number of individuals who have  
16 requested absentee ballots. And this is in  
17 his declaration: That, as of yesterday, the  
18 Commonwealth had received requests from  
19 656,000 Virginians. And that's just through  
20 right now.  
21 In 2016, the last time we had a  
22 presidential election, there was a total,

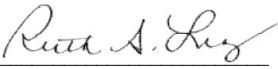
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1 from the beginning of the request period to  
2 the election, of 645. So our general  
3 registrars are under an enormous amount of  
4 pressure to do their job, and they want to do  
5 their job. But if we delay a decision about  
6 candidate qualification, they are not going  
7 to be able to do their job.  
8 And so -- and I mean, I could call  
9 someone up to the stand, if I need to. But  
10 that's why I'm trying to make the point  
11 that -- and I'm sorry to put you in this  
12 position, but the deadlines and the Code sort  
13 of all run up together at the end. There's  
14 no way to have done this any more thoughtful  
15 and in a longer way. It's just where we  
16 are.  
17 So I would urge the Court to not  
18 continue this matter and to make a decision  
19 so that the general registrars can move  
20 ahead.  
21 THE COURT: I have already ruled on  
22 the motion to continue, and the case went

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1 forward.  
2 And the Court is going to render an  
3 opinion. You'll have it this afternoon  
4 before close of business for the Court. I  
5 think that's 4:30, so I've got about 45  
6 minutes.  
7 I want to express to the gentleman  
8 that testified, thank you, Mr. Wilson, for  
9 being available to testify. And thank you  
10 for the arguments that you-all have put  
11 forward as well as your briefs.  
12 And as I indicated, I'll have  
13 something for you this afternoon. Thank you.  
14 Have a good afternoon.  
15 And I think, Mr. Kowalczuk, you had  
16 something you wanted to put on the record, so  
17 you can go ahead and do that.  
18 MR. KOWALCZUK: Your Honor, I think  
19 I got it in. Thank you; I appreciate your  
20 offer.  
21 THE COURT: All right. Thank you.  
22 (Hearing concluded at 3:39 p.m.)

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1 CERTIFICATE OF SHORTHAND REPORTER - NOTARY PUBLIC  
2 I, RUTH A. LEVY, RPR, Court Reporter and  
3 Notary Public, the officer before whom the  
4 foregoing proceeding was taken, do hereby certify  
5 that the foregoing transcript is a true and  
6 correct record of the testimony and arguments  
7 given; that said testimony and argument was taken  
8 by me stenographically and thereafter reduced to  
9 typewriting under my direction; and that I am  
10 neither counsel for, related to, nor employed by  
11 any of the parties to this case and have no  
12 interest, financial or otherwise, in its outcome.  
13 IN WITNESS WHEREOF, I have hereunto set  
14 my hand and affixed my notarial seal this 6th day  
15 of September, 2020.  
16   
17 \_\_\_\_\_  
18 RUTH A. LEVY, RPR,  
19 Notary Public in and for  
20 The Commonwealth of Virginia  
21 Registration No.: 224511  
22 My commission expires August 31, 2022

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Transcript of Hearing  
 Conducted on September 3, 2020

8:22, 73:17 <b>you-all</b> 5:15, 75:10 <b>yourself</b> 65:12 <hr/> <p style="text-align: center;"><b>z</b></p> <hr/> <b>zoom</b> 20:5 <hr/> <p style="text-align: center;"><b>\$</b></p> <hr/> <b>\$50</b> 17:7, 48:18, 65:13 <hr/> <p style="text-align: center;"><b>(</b></p> <hr/> <b>(a</b> 25:19 <hr/> <p style="text-align: center;"><b>.</b></p> <hr/> <b>.0067</b> 3:15 <b>.0101</b> 3:22 <b>.3888</b> 3:7 <b>.6505</b> 2:8 <hr/> <p style="text-align: center;"><b>0</b></p> <hr/> <b>00</b> 1:7 <hr/> <p style="text-align: center;"><b>1</b></p> <hr/> <b>1</b> 1:21 <b>10</b> 48:10 <b>1018</b> 3:20 <b>11</b> 22:1, 29:5, 35:9, 44:5, 46:11, 54:7, 55:1, 55:6, 63:12 <b>12</b> 16:19, 54:11,	54:15, 54:20 <b>13</b> 15:13, 15:14, 15:16, 56:2, 58:5, 58:21 <b>18</b> 73:1 <b>19</b> 62:4, 62:8 <hr/> <p style="text-align: center;"><b>2</b></p> <hr/> <b>2</b> 1:17 <b>20004252</b> 1:7 <b>2016</b> 73:21 <b>2018</b> 18:10, 49:17, 50:2 <b>202</b> 3:13 <b>2020</b> 1:16, 3:17, 46:11, 48:2, 67:21, 69:21, 76:15 <b>2022</b> 76:22 <b>205</b> 48:17 <b>21</b> 4:4, 56:9 <b>22</b> 3:5 <b>224511</b> 76:21 <b>23219</b> 2:7, 3:14 <b>23451</b> 3:6 <b>24</b> 19:17 <b>24.2</b> 25:19, 48:17, 55:21 <b>24016</b> 3:21	<b>25</b> 23:11 <b>250</b> 63:18 <b>28</b> 4:5, 48:2 <b>2nd</b> 3:20, 7:15, 9:14 <hr/> <p style="text-align: center;"><b>3</b></p> <hr/> <b>3</b> 75:22 <b>30</b> 1:17, 49:17, 50:2, 75:5 <b>31</b> 76:22 <b>319450</b> 1:20 <b>39</b> 75:22 <b>3rd</b> 9:15, 32:17, 62:3, 62:9 <hr/> <p style="text-align: center;"><b>4</b></p> <hr/> <b>4</b> 75:5 <b>400</b> 2:6 <b>402</b> 3:5 <b>4417</b> 21:12 <b>45</b> 75:5 <b>4th</b> 10:11 <hr/> <p style="text-align: center;"><b>5</b></p> <hr/> <b>540.345</b> 3:22 <b>543</b> 25:19, 55:21 <hr/> <p style="text-align: center;"><b>6</b></p> <hr/> <b>60</b> 10:10, 10:11	<b>600</b> 3:5 <b>645</b> 74:2 <b>656,000</b> 73:19 <b>6th</b> 76:14 <hr/> <p style="text-align: center;"><b>7</b></p> <hr/> <b>757.670</b> 3:7 <b>76</b> 1:21 <hr/> <p style="text-align: center;"><b>8</b></p> <hr/> <b>804.646</b> 2:8 <b>804.786</b> 3:15 <hr/> <p style="text-align: center;"><b>9</b></p> <hr/> <b>9th</b> 3:13
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