

1 UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF GEORGIA
3 ATLANTA DIVISION

4 FAIR FIGHT, INC., JOHN DOE,)
AND JANE DOE) VOLUME 5 - A.M. SESSION
5 PLAINTIFFS,)
-VS-) DOCKET NO. 2:20-CV-0302-SCJ
6)
7 TRUE THE VOTE, INC., CATHERINE)
ENGELBRECHT, DEREK SOMERVILLE,)
8 MARK DAVIS, MARK WILLIAMS, RON)
JOHNSON, JAMES COOPER, AND)
9 JOHN DOES 1-10,)
DEFENDANTS.)

10 _____
11 TRANSCRIPT OF SUMMARY JUDGMENT PROCEEDINGS
12 BEFORE THE HONORABLE STEVE C. JONES
13 UNITED STATES DISTRICT JUDGE
14 THURSDAY, NOVEMBER 2, 2023

15 APPEARANCES:

16 ON BEHALF OF THE PLAINTIFFS:

17 ALLEGRA J. LAWRENCE-HARDY, ESQ.
18 CHRISTINA ASHLEY FORD, ESQ.
19 LESLIE J. BRYAN, ESQ.
20 MARCOS MOCINE-MC QUEEN, ESQ.
UZOMA NKWONTA, ESQ.
TINA MENG MORRISON, ESQ.
JACOB SHELLY, ESQ.
MICHELLE L. MC CLAFFERTY, ESQ.

21 ON BEHALF OF THE DEFENDANTS:

22 CAMERON POWELL, ESQ.
23 MICHAEL JOHN WYNNE, ESQ.
24 JAMES CULLEN EVANS, ESQ.
25

1 APPEARANCES (CONTINUED):

2
3 ON BEHALF OF INTERVENOR (USA):

4 DANA PAIKOWSKY, ESQ.
5 JENNIFER J. YUN, ESQ.
6 TIM MELLETT, ESQ.
7 AILEEN BELL HUGHES, ESQ.

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1 (HELD IN OPEN COURT AT 9 A.M.)

2 THE COURT: Good morning. You-all can be seated.

3 Anything I need -- we need to deal with before we
4 start with the next witness?

5 MS. LAWRENCE-HARDY: Yes. Good morning, Your Honor.

6 THE COURT: Good morning.

7 MS. LAWRENCE-HARDY: We have an issue that has come
8 to our attention that we think the Court might want to
9 address -- us to address in chambers, if that is permissible
10 to Your Honor and opposing counsel.

11 THE COURT: Okay. Yeah, yeah.

12 Ms. Conklin, take them to my conference room in my
13 office, the conference room.

14 MR. WYNNE: Could I say one thing, so I don't --

15 THE COURT: Yes.

16 MR. WYNNE: Ron Johnson, a defendant in this case, is
17 in New York City. He has a tight work schedule. And so I was
18 going to ask leave to allow him to appear by Zoom when we get
19 to him probably tomorrow.

20 MR. NKWONTA: No objection.

21 THE COURT: Okay.

22 MR. WYNNE: Thank you.

23 THE COURT: All right. Just whoever for the
24 plaintiffs you bring and whoever from the defendants,
25 Ms. Conklin will lead you-all in there and Ms. Wright will be

1 be in there with you-all.

2 MS. LAWRENCE-HARDY: Thank you, Your Honor.

3 THE COURT: Is this something for the record?

4 MS. LAWRENCE-HARDY: Your Honor, you may want to when
5 we return. We just want to get some direction from the Court.

6 THE COURT: All right.

7 (Recess from 9:05 a.m. to 11:00 a.m.)

8 THE COURT: Please be seated.

9 I need everyone that's not an attorney in this case
10 or a party to this case to step out in the hall briefly.

11 If you're with the Department of Justice and you're
12 on their staff, you can stay in. But if you're not an
13 attorney in this case, or a paralegal in this case, or a
14 party, you need to step out into the hall.

15 (Audience left the courtroom.)

16 THE COURT: Ms. Engelbrecht, I ask you please come to
17 the stand, please.

18 Ms. Engelbrecht, you can be seated. I remind you,
19 you're still under oath. You took an oath yesterday. I gave
20 you an oath.

21 THE WITNESS: Yes, sir.

22 THE COURT: You're still under oath.

23 I have a couple of questions to ask you, and before
24 you answer any of them, please think about what I'm asking
25 you.

1 THE WITNESS: Okay.

2 THE COURT: It's very important.

3 Were you -- was it explained to you by your
4 attorneys, or one of your attorneys, that you were not
5 supposed to talk to anyone about what's happening in this
6 courtroom or tell anybody what you testified about or what
7 anybody else testified about?

8 THE WITNESS: Yes, sir. My understanding was the
9 particulars of what was happening in this courtroom, yes.

10 THE COURT: Okay. And I'm not going to ask you,
11 because I don't know what attorney explained it to you, but
12 one of your attorneys did explain that to you?

13 THE WITNESS: Yes, sir.

14 THE COURT: Okay. And you have been here in the
15 courtroom since it started last Thursday; correct?

16 THE WITNESS: Yes.

17 THE COURT: One week ago from today.

18 At any point in time have you discussed with anybody,
19 anyone, about what the testimony was in this case? What
20 anyone did in this case? Or what's happening in this
21 courtroom?

22 THE WITNESS: Other than my attorneys, no, sir. I
23 mean, I was asked -- you know, a long day, you know, who's --
24 that kind of thing, but that was -- that was it.

25 THE COURT: You participated in a podcast I think

1 Monday night.

2 THE WITNESS: Yes, sir.

3 THE COURT: Before that podcast, did you discuss
4 anything in particular about this case with anyone?

5 THE WITNESS: No. Just that I had not testified that
6 day.

7 THE COURT: After the podcast, did you get into any
8 particulars about this case with anyone?

9 THE WITNESS: No, sir.

10 THE COURT: It's my understanding you're testifying
11 to me today here under oath that you have not -- you have
12 followed the rules, you have not discussed this case with
13 anyone other than your lawyers, you have not told anyone about
14 what's occurring in this case, what any witness testified to
15 in this case, or what even happened here in the courtroom?

16 THE WITNESS: No, sir. Other than to say like a long
17 day or going long or whatever.

18 THE COURT: Yeah, that's understandable.

19 Okay. Thank you.

20 THE WITNESS: Thank you.

21 THE COURT: You can step down.

22 THE WITNESS: Sir, I'm sorry for the
23 misunderstanding.

24 THE COURT: No. You don't owe me any apology.

25 THE WITNESS: I just -- I'm sorry for that.

1 THE COURT: No, no apology needed.

2 Ms. Lawrence-Hardy, Mr. Wynne, at this point in time
3 I'm going to just take this under advertisement until
4 Mr. Gregg Phillips testifies tomorrow. File your brief, it'll
5 be under seal. You will also file your brief as well.

6 Can both of you-all have your briefs filed by noon
7 tomorrow?

8 MS. LAWRENCE-HARDY: Yes, Your Honor.

9 MR. WYNNE: And just for clarification, Your Honor,
10 if we decide in consultation with our client that Mr. Phillips
11 for other reasons will not be called as a witness, we don't
12 have too much to brief. And so I'm asking if there's anything
13 else?

14 THE COURT: You don't have to file a brief at all.
15 You have the option.

16 MR. WYNNE: Okay.

17 THE COURT: Ms. Lawrence-Hardy asked me if I still
18 want her to file a brief and I told her yes. I give you the
19 same opportunity.

20 Now, one thing I will say, I prefer that you-all have
21 no further conversation with Gregg Phillips. When he gets
22 here tomorrow, just have him stay outside. As of right now, I
23 don't want you-all, neither side, to have any conversation
24 with Gregg Phillips. I understand if you know Mr. Phillips,
25 if he contacts you, just say, the judge says I can't talk to

1 you about even the weather just right now, okay?

2 MR. WYNNE: I may, Your Honor, have to talk to him
3 about a little logistics, make sure he has a suit and things
4 like that, so just logistics.

5 THE COURT: I thought you told me he already said
6 he's going to put his suit on to come.

7 MR. WYNNE: Well, that was a little unclear. I
8 actually offered to -- he could borrow mine, but he's a little
9 too muscular, so...

10 THE COURT: I don't need him in a suit and tie.

11 MR. WYNNE: Okay.

12 THE COURT: He can come here in a warmup suit as far
13 as I'm concerned. As long as he has clothes on, all right?

14 MR. WYNNE: Okay. I'll let my legal assistant handle
15 logistics.

16 THE COURT: Yeah, yeah.

17 MS. LAWRENCE-HARDY: Your Honor, if we might ask, if
18 they know Mr. Phillips is not going to testify, there's no
19 need for us to expend the resources of dealing with that
20 issue. It feels a little unfair that they are -- it seems
21 like they decided that sometime time ago and now we're back
22 and forth on that.

23 Is there a time today they can let us know?

24 MR. WYNNE: We can decide after lunch after I talk
25 with my client. I want to make sure the landscape has not

1 changed.

2 THE COURT: Can you tell them by 2 o'clock this
3 afternoon?

4 MR. WYNNE: Oh, yes, certainly, Your Honor.

5 MS. LAWRENCE-HARDY: Thank you Your Honor.

6 THE COURT: Okay. All right. Is there anything else
7 from the plaintiffs?

8 MR. NKWONTA: Your Honor, before the plaintiffs rest,
9 we have a decent amount of exhibit cleanup we need to do.

10 THE COURT: Well, I'm talking about logistics
11 matters.

12 MS. LAWRENCE-HARDY: This is all from us on this
13 particular issue, Your Honor. Thank you.

14 THE COURT: All right. Anything along these logistic
15 matters from the defendants?

16 MR. WYNNE: No. Just one thing I want to make sure
17 didn't get lost in the discussion is we need to have the Zoom
18 set up for Mr. Ron Johnson if we get to him, you know, today.

19 THE COURT: And they've already agreed to that and we
20 will definitely have -- Ms. Wright's back today so we can get
21 that done.

22 MR. WYNNE: Thank you, Your Honor.

23 MS. LAWRENCE-HARDY: Your Honor, do you want me to
24 invite --

25 THE COURT: Yeah. Somebody has to tell everybody

1 they can come back in.

2 (The audience comes back to the courtroom.)

3 THE COURT: Okay. You can go ahead, sir.

4 MR. NKWONTA: Your Honor, we're finished with our
5 witnesses, but we have some exhibit cleanup and some exhibits
6 to move in. I think it would be best if we tabled that for
7 tomorrow, and -- and have defendants proceed with their
8 witnesses and do the cleanup when we have a break, when we
9 have a little bit more clarity as to the witness lineup.

10 THE COURT: Well, let me ask the defendants this,
11 because if you're resting, you just want to kind of get all
12 your exhibits in before you rest. Is there any argument,
13 objection about any particular exhibits?

14 MR. NKWONTA: There are. I believe there may be some
15 objections. We have not received any objections. We've just
16 been told that there are.

17 THE COURT: Which exhibits, sir, are you asking to
18 move in?

19 MR. NKWONTA: I can read them into the record if that
20 would be helpful.

21 THE COURT: Yeah.

22 MR. NKWONTA: Okay.

23 MR. WYNNE: Yeah, I can jot them down.

24 MR. NKWONTA: Exhibits 2, 3, 4, 5, 6, and 7, 17, 19,
25 20, 21, 23. My understanding is 22 and 45 are still under

1 advisement.

2 THE COURT: 22 is in. 45 is under advisement. 22 is
3 in over objection.

4 MR. NKWONTA: 29, 30, 31, 33, 34, 36, 38, 39, 40, 41,
5 42 -- sorry -- 42 is already in.

6 THE COURT: 42 is in.

7 MR. NKWONTA: 41, 43, 44, 46, 47, 51, 52, 53, 54, 55
8 through 70, all of those, 55 through 70. 71 and 72. 74, 75,
9 76, 77, 78, 79, 81 through 89. 93 is the full deposition
10 transcript of Mr. Joseph Martin. I believe that was admitted
11 by the Court but wanted to get clarity.

12 THE COURT: I think it was.

13 MR. NKWONTA: I think the Court requested that to be
14 admitted after --

15 THE COURT: Yeah, that's in. That's in.

16 MR. NKWONTA: 94, which are the specific Joseph
17 Martin deposition designations. 95 --

18 THE COURT: 94 should be in as well. I specifically
19 asked to put 94 -- the transcript. And in Texas, any e-mails
20 that went along with Joseph Martin's testimony be put into
21 evidence.

22 MR. NKWONTA: All right. And so that's -- and 95.
23 And 95 is a -- and we have the binders here. 95 are the
24 excerpts, the impeachment experts from the testimony of
25 Ms. Catherine Engelbrecht, the deposition transcript

1 impeachment excerpts.

2 96, deposition designations for James Copper.

3 97, deposition designations for Mark Davis.

4 98, also deposition designations for Mark Davis'

5 second deposition.

6 99, Engelbrecht deposition designations.

7 100, Halsworth deposition designations.

8 101, Johnson deposition designations.

9 And we are also going to file those final

10 designations on the docket, not the actual transcript but the

11 list, along with the full Martin transcript we'll add as an

12 attachment, per the Court's instructions yesterday.

13 THE COURT: Okay.

14 MR. NKWONTA: And then 101, Ron Johnson deposition

15 designations.

16 102, Phillips' deposition designations.

17 103, Derek Somerville first transcript designations.

18 104, Derek Somerville's second transcript

19 designations.

20 And 105, Mark Williams' deposition designation.

21 THE COURT: Okay. Mr. Wynne, it's a lot, but if you

22 can tell me your position on some of them or all of them.

23 MR. WYNNE: Your Honor, this -- going on with our

24 case today, allowing these in, painstaking as it would be,

25 would really handicap us, because rulings on these will have a

1 great bearing on the questions that we ask our witnesses,
2 Mr. Somerville, Mr. Davis. And, you know, if they're not in
3 evidence, we don't want to inadvertently create a foundation
4 to admit them, nor do we want to waste time, you know,
5 refuting things that aren't even going to come up.

6 And that's -- I would ask them to do it in their
7 case-in-chief. Moreover, we've got designations from Phillips
8 that complicates matters. That's on the side.

9 THE COURT: They're getting ready to rest. And
10 that's why they're bringing it up now.

11 My understanding, you're getting ready to rest.

12 MR. NKWONTA: Yes. That's why I --

13 THE COURT: That's why they're bringing it up now.
14 That's why I told them, let's address it now.

15 MR. WYNNE: Yeah.

16 THE COURT: Well, but my question is, what -- which
17 one if any of these you're objecting to, are you objecting to
18 all of them, some of them, none of them?

19 MR. WYNNE: I'm objecting now to all of them,
20 because, you know, we had to defer. I could not make
21 relevance or foundation until we started.

22 THE COURT: Okay. We'll go through them one by one
23 then. We'll go through them one by one.

24 Let's start with No. 2.

25 MR. NKWONTA: No. 2, Your Honor, that is the True the

1 Vote OpSec invoice, invoice prepared by Mr. Gregg Phillips for
2 the Georgia --

3 THE COURT: Hold on.

4 All right.

5 MR. WYNNE: No objection.

6 THE COURT: First off, it's probably going to take us
7 an hour to hour and a half or more to go through each one of
8 these. I'm prepared to do that. I have nowhere to be. I've
9 already told people I'm prepared to be here all week next
10 week.

11 Now, we can simplify this so you can start getting to
12 your case as quick as possible. If you would just sit with
13 your co-counsel and look at the ones that you really have
14 objections to and we deal with those.

15 Let me say this to all of you-all. None of you-all
16 are first-year people right out of law school. I know the
17 history on every one of you-all. You're experienced lawyers.
18 You've tried cases before.

19 But what we're doing now is something I would expect
20 of somebody that just graduated last year out of law school
21 trying their first case.

22 You don't have to get along. You don't have to love
23 each other. But as lawyers, you are professionals. Let me
24 say that again. As lawyers, you are professional. And
25 lawyers as professionals, above all other professions, know

1 how to deal with matters that's in the law. You don't have to
2 love each other. You don't have to be friends. But you're
3 professionals.

4 And if there is something here you know you're not
5 really going to object to or you're not really going to offer,
6 don't waste time and resources. Get it done. So we can get
7 to the meat of the matter.

8 I'm going to step out for 15 minutes. When I come
9 back in, all the ones you-all are not agreed on we're going to
10 do one by one.

11 Now, when I became district court judge, one of my
12 colleagues told me, Ms. Lawrence-Hardy and Mr. Wynne, you
13 know, I really like to let the lawyers go home before
14 6 o'clock. But when I was procedural court judge I had no
15 problem keeping lawyers in court until 10 or 11:00. I can put
16 that hat back on very quickly and be here tonight.

17 I'll be back in this room at 11:30.

18 Does anybody not hear what I'm saying?

19 Thank you-all.

20 (A break was taken from 11:17 a.m. to 11:32 a.m.)

21 THE COURT: You-all can be seated.

22 All right. Where are we at?

23 MR. NKWONTA: Your Honor, I think we've made
24 significant progress.

25 THE COURT: All right.

1 MR. NKWONTA: Right now as we sit where we left off,
2 the exhibits that defendants currently object to are 19, 20,
3 23, 54, 61 --

4 THE DEPUTY CLERK: Could you slow down, please?

5 MR. NKWONTA: Sure. Do you want me to start --

6 THE COURT: 19, 20, 23, 54, 61.

7 MR. NKWONTA: 66, 86, 88, 89, and 90.

8 THE COURT: Is that correct, Mr. Wynne, those are the
9 ones you have objections to?

10 MR. WYNNE: A couple of clarifications.

11 On 29, no objection if for optional completeness the
12 rest of the string in that post is included. I think we've
13 come to that understanding.

14 MR. NKWONTA: Yes, that's correct. So we'll have a
15 new version of 29 with the additional comments.

16 MR. WYNNE: And 83 and 87, subject to the
17 representation -- we're fine -- of counsel of what they are.
18 Our clients are not sure that they are what they purport to
19 be, but for now we're not going to object, since I think that
20 goes to the weight.

21 THE COURT: Okay. All right. So here's my
22 understanding of what is coming in without objection. Please
23 listen closely. I'm going to go through it slow.

24 No. 2 comes in without objection.

25 No. 3 comes in without objection.

1 4 comes in without objection.
2 5 without objection.
3 6 without objection.
4 No objections to No. 7.
5 No objections to No. 9.
6 11, 12, 13, 14, no objections.
7 17, 18, no objection.
8 There is an objection to 19 and 20.
9 22 I've already admitted in over objection.
10 23, there's an objection -- there is an objection to
11 23.
12 24, no objections.
13 29 and 30, no objections.
14 31, no objections.
15 33 and 34, no objections.
16 36, no objections.
17 38, 39, 40, 41, no objections.
18 And the Court owes you-all a ruling on 45.
19 43, 44, no objections.
20 46 and 47, no objections.
21 48, no objections.
22 51 and 52 and 53, no objections.
23 And 50, no objections.
24 There is --
25 MR. WYNNE: Your Honor, they did not offer -- they

1 did not list 50 as one of the ones that they were offering
2 earlier, and we certainly do have an objection to 50.

3 THE COURT: All right. 50 is on the list.

4 Are you not offering 50?

5 MR. NKWONTA: No. And, Your Honor, maybe we can do
6 this after you go through the list, but --

7 THE COURT: No. Let's do it right now. Let's do it
8 right now.

9 A simple question: Are you offering 50 or not?

10 MR. NKWONTA: I am not. When I read off the list
11 initially, I left off a few exhibits.

12 THE COURT: Okay. 50 is off.

13 51, 52 and 53, no objections.

14 54 there is an objection.

15 55, 56, 57, 58, 59, and 60 are no objections.

16 60, there is no objection, but there is an objection
17 to 61.

18 62, 63, 64, and 65, no objections.

19 Of course they have objections to 66.

20 There are no objections from 67 through 85; is that
21 correct? Other than the ones I already have in over
22 objections, like 73 I admitted over objections. But the ones
23 that I have not ruled on, I have no objection from 67 --

24 MR. WYNNE: I have a statement. There were some of
25 those numbers that he did not offer, so we didn't scrutinize

1 here.

2 THE COURT: Okay. Let's deal with those, which ones
3 you did not offer? Let's just keep going.

4 67, I have no objections.

5 68, no objections.

6 69, no objections.

7 70, no objections.

8 If we get to one you're not offering, let me know.

9 71 and 72, no objections.

10 74, no objections.

11 75, no objections.

12 76, no objections.

13 77, no objections.

14 78, no objections.

15 79, no objections.

16 81, 82 and 83, no objections.

17 84 and 85, no objections.

18 There is an objection to 86.

19 No objections to 87.

20 But there is an objection to 88.

21 There is an objection to 89 and 90.

22 MR. WYNNE: Your Honor, I'm sorry, but there was an
23 objection to 87.

24 THE COURT: I have 87 down. So 87 there is an
25 objection.

1 MR. WYNNE: We've resolved 83 for the moment. Well,
2 I guess for entirety.

3 THE COURT: All right. Well, my understanding there
4 are no objections to 91, 92, 93, 94, 95, 96, 97, 98, 99, 100,
5 101, 102, 103, 104, and 105.

6 MR. WYNNE: Right. I want to make clear that there
7 is an objection to No. 90.

8 THE COURT: 90 -- I had 90 down. I have you down
9 objecting to 89 and 90.

10 MR. WYNNE: Okay.

11 THE COURT: Okay. So the ones that I have you down
12 for objections to: 19, 20, 23, 54, 61, 66, 86, 87, 88, 89,
13 and 90.

14 And that the plaintiffs are not offering No. 50.

15 MR. NKWONTA: We're also not offering No. 48, Your
16 Honor.

17 THE COURT: All right. 48 is not being offered.

18 MR. NKWONTA: And we are also not offering Nos. 11 to
19 14.

20 And we're not offering No. 9.

21 MR. POWELL: What about 8?

22 MR. NKWONTA: 8 is already admitted.

23 MR. POWELL: And 15 and 16?

24 MR. NKWONTA: 15 and 16 are already admitted.

25 THE COURT: So 9, 11, 12, 13, and 14 are not being

1 offered, along with No. 50.

2 MR. NKWONTA: No. 18 is not being offered either.

3 THE COURT: Anything else not being offered?

4 MR. NKWONTA: No. 24. And that's it.

5 THE COURT: Okay. Now I'm prepared to hear argument
6 starting with No. 19.

7 Why are you offering it? Why should I allow you to
8 put it in? And then the defendant can argue why it should not
9 be accepted.

10 MR. NKWONTA: No. 19 is an article about alleged
11 votes by non-citizens in 2016, an allegation made by Mr. Gregg
12 Phillips. We believe because of the article and because of
13 the public nature of it, the Court can take judicial notice
14 that that allegation was made and publicized.

15 THE COURT: I don't have a copy of 19 up here. Oh,
16 hold on. I can look up. I was looking at the white notebook.

17 I want to make sure I'm looking at the right 19. It
18 starts off: A silent fact-check: Did 3 million undocumented
19 immigrants vote in this year's election? Is that the one?

20 MR. NKWONTA: Correct. And we're not admitting it
21 for the purpose of the fact check. We're admitting it for --
22 and request the Court to take judicial notice that the
23 statement was made and that the -- and that it was publicized.
24 It was made public.

25 THE COURT: I don't see the value. If it's not

1 offered for the truthfulness of the matter that the statement
2 was made, isn't that saying I'm accepting that it was made?

3 MR. NKWONTA: So the truth of the matter would be to
4 accept it for -- to accept and agree that 3 million
5 non-citizens voted. We're not asking the Court to accept it
6 for the truth of the statement. We actually don't believe 3
7 million non-citizens voted.

8 But we do want the Court to take judicial notice that
9 this was in the news in 2016 and that it was -- it was a
10 statement put in the news by Mr. Gregg Phillips in 2016,
11 regardless of its truth.

12 THE COURT: Well, I guess Gregg Phillips so far --
13 the only thing I know about Gregg Phillips I heard this
14 morning. So he hasn't testified, he's not a defendant in this
15 case. Why should I care what he says?

16 MR. NKWONTA: If Mr. Phillips -- if it turns out --
17 and I have to admit I still don't have full clarity as to what
18 Mr. Phillips' status is, but if he does not testify or offer
19 any evidence in this case, then we would withdraw.

20 THE COURT: Right now I'm not allowing it in. Gregg
21 Phillips takes this stand and I allow him to testify, then
22 I'll allow you to question him about it. And if he admits
23 that he said this, it comes in. But right now it's not coming
24 in.

25 MR. NKWONTA: Thank you, Your Honor.

1 MR. WYNNE: For the record, do I say foundation,
2 relevance, hearsay, it's incomplete and you've got a bunch of
3 links we don't know what they are.

4 THE COURT: All right. Let's talk about No. 20.

5 MR. NKWONTA: No. 20 is along the same lines. It is
6 a transcript of an interview that Mr. Gregg Phillips gave to
7 CNN.

8 THE COURT: Same ruling. If he takes the stand and
9 he tells me about it, I might change my ruling. But right now
10 that is not coming in.

11 23.

12 MR. NKWONTA: 23 is the IRS 990 form for Time For a
13 Hero. And that IRS 99 form, the public version, identifies
14 the officers of Time For a Hero. You may recall, that was the
15 organization behind Exhibit 22.

16 MR. WYNNE: Objection, relevance.

17 THE COURT: What's the relevancy of this document?

18 MR. NKWONTA: Well, it establishes and draws a link
19 definitively between Ms. Engelbrecht and Mr. Phillips and Time
20 For a Hero. It also does so with a particular time frame
21 because of the reporting required in the IRS 990 forms.

22 And the relevance of their connection to Time For a
23 Hero, you may recall, Your Honor, yesterday the questioning
24 about Exhibit 45, the tweet, and the similarities between the
25 slogans and the avatar image with what was posted on the Time

1 For a Hero Facebook page.

2 THE COURT: What do you have to say?

3 MR. WYNNE: Yeah, I think that --

4 THE COURT: Ms. Engelbrecht is an officer on here.
5 It's listed.

6 MR. WYNNE: And I think it's attenuated, including
7 how Time For a Hero ties in to the facts of this case. I'm
8 also concerned that, to address it, it complicates the Gregg
9 Phillips issue. So I'd ask this one, like the others, to be
10 tabled until that's resolved.

11 THE COURT: It's in over objection.

12 54.

13 MR. NKWONTA: 54 is a -- is a table prepared by
14 Mr. Phillips who created that challenge list. And it's a
15 table that sorts -- appears to sort voters by race and party.

16 MR. WYNNE: Objection, hearsay.

17 THE COURT: It's out unless Mr. Phillips testifies
18 tomorrow and I can see how it's relevant.

19 61.

20 MR. NKWONTA: 61 is a list of voters that were
21 challenged -- or not a list of individual voters, but a count.

22 THE COURT: A counting.

23 MR. NKWONTA: And this was produced by defendants, by
24 Mr. Mark Williams. So this is within his files.

25 MR. WYNNE: Objection, you know, relevance.

1 Mr. Williams I guess can testify about it, but right now it's
2 hearsay.

3 MR. NKWONTA: It's highly relevant. It's a party --

4 THE COURT: I need a foundation -- I need a
5 foundation for No. 61. All I have is a bunch of numbers and
6 names.

7 MR. NKWONTA: Well, it's a party admission because --

8 THE COURT: That may be so, but I need some kind of
9 foundation. I can't just put 61 in -- all I have in front of
10 us is a list of 159 counties or 65 counties and numbers. I
11 need somebody to identify, say that this is put together by
12 Mark Williams or Mark Williams, yeah, I put this together.
13 What you're asking me to do is put in 61 and it's just
14 numbers. And you can't testify.

15 MR. NKWONTA: I completely understand that.

16 I guess what I'm struggling with, Your Honor, just to
17 be candid, is that this document was produced and Bates
18 stamped with Mark Williams' Bates stamp. It was produced with
19 the understanding that it came from his possession, custody
20 and control. And, again, so that's what we put it on this
21 list and that's why we circuited this list in May and have
22 been trying to get agreement that at least the documents that
23 they've said are theirs, let us agree that they are theirs.

24 THE COURT: Why didn't you just call Mark Williams
25 for purposes of cross-examination and you could have got it

1 in?

2 MR. NKWONTA: Well, honestly, I did not believe it
3 would come to this. I assumed Mark Williams would agree
4 that --

5 THE COURT: Let me ask you something. You're a very
6 intelligent attorney. You do a good job.

7 When you recognized that you were having problems in
8 discovery in this case, doesn't it kind of tip you off like,
9 well, I better be prepared for all aspects of this case?

10 MR. NKWONTA: We are prepared, Your Honor, so I --
11 just to caveat that, if there are documents here that
12 defendants will not agree come from their own, you know, their
13 own custody or control, then we just won't rest our case and
14 we'll just continue to call witnesses to lay a foundation,
15 kind of like what we had to do with Francis Watson, who waited
16 out through the whole afternoon on Friday and had to go home
17 because, you know -- because we found out at the last minute
18 there was no objection.

19 THE COURT: What I'm trying to say to you, I think
20 you should realize by now that -- and this is nothing
21 personal. They're doing what they think is best in the best
22 interest of their client. Whether you agree or disagree.
23 You're doing what you think is in the best interest of your
24 client.

25 To the best interest of your client, you may

1 sometimes have to inconvenience a witness, or make you have to
2 jump an extra jump that you have to jump, but that's what you
3 have to be prepared to do. I'm not allowing 61 in as is.

4 And if you do not want to rest and you want to call
5 Mark Williams, that's up to you. But right now all I have in
6 front of me is a list of 159 counties and numbers. And that
7 tells me nothing.

8 MR. NKWONTA: Understood, Your Honor.

9 May I make another request --

10 THE COURT: Well, we're going to go through this list
11 first.

12 66.

13 MR. WYNNE: Same objection, Your Honor, no
14 foundation. At this point, it's hearsay. And, you know, if
15 some -- if a witness or a party produces something, you know,
16 Mr. Cooper may have something that Mr. Williams produced and
17 it could be all messed up. I mean, who knows whose list is
18 whose? If we can get a foundation, I imagine we'll withdraw
19 the question (sic), but right now it's real confusing.

20 MR. NKWONTA: It's the same issue, Your Honor.

21 THE COURT: It is.

22 MR. NKWONTA: We can just sort of -- we can pull the
23 documents with their own Bates and we can, you know, lay the
24 foundation.

25 THE COURT: All right. Right now I'm not allowing 66

1 in.

2 86? I think we've got the same situation with 86
3 that we have with 61 and 66.

4 MR. WYNNE: It's a complication, too, Your Honor,
5 because some of the lines are cut off.

6 MR. NKWONTA: 86 has been admitted.

7 MR. WYNNE: I don't think that's so.

8 MR. NKWONTA: I'm sorry, I'm sorry, 86 has not been
9 admitted. I'm sorry.

10 MR. WYNNE: I don't think I let that one in.

11 MR. NKWONTA: 86, same --

12 MR. WYNNE: It is cut off.

13 MR. NKWONTA: -- same boat. We -- their witnesses
14 produced it.

15 THE COURT: I'm not allowing it in. And, again, I'm
16 not trying to be difficult but all I have in front of me,
17 again, is a list of counties.

18 MR. NKWONTA: I understand. I thought we could
19 streamline this trial. So what I will propose --

20 THE COURT: Well, all trials that I try a case like
21 this, this is -- I don't even get into this discussion because
22 lawyers work it out ahead of time, but, listen, I'm not
23 blaming anybody. One more time.

24 You're doing what you're supposed to do to represent
25 your client and they're doing what they're supposed to do to

1 represent their client. And you got to kind of -- I'm not
2 telling you to be hard ball or not try to work with folks, but
3 you've got to see where you're at, okay?

4 MR. NKWONTA: Understood. I think --

5 THE COURT: 88.

6 MR. NKWONTA: 88.

7 MR. WYNNE: I think we had 87 on the list, too.

8 THE COURT: I'm going to come back to 87, but let's
9 say 88 right now.

10 MR. WYNNE: Okay.

11 THE COURT: I think you've got the same problem with
12 88 that you've got with 61 and 66 and 86.

13 MR. NKWONTA: 88, same issue.

14 THE COURT: And 87. I think you've got the same
15 issue with 87 as well.

16 At this time, I'm not allowing 87 or 88 in, but if
17 you can lay a foundation for these, we'll revisit it.

18 89?

19 MR. NKWONTA: 89, same issue.

20 THE COURT: All right. I'm not allowing 89 in. Same
21 thing. If you can lay it, we'll come back to it.

22 And 90.

23 MR. NKWONTA: 90 is -- 90 I believe --

24 THE COURT: 90's a little bit different.

25 MR. NKWONTA: Yes. Now, I believe it was my

1 understanding 90 was admitted, but if it was not --

2 THE COURT: I didn't have it on my list. And you-all
3 told me that -- I think 90 is in.

4 MR. WYNNE: I'd have been --

5 THE COURT: No, no, 90 is not in. 91's in. 90 is
6 not in.

7 MR. NKWONTA: We move to admit 90. 90 consists of
8 the communications between Ms. Engelbrecht and Mr. Eshelman
9 specifically regarding Ms. Engelbrecht's validated data on
10 fraud and whistleblower information.

11 THE COURT: All right. Let me say this to you: If
12 you put Ms. Engelbrecht back on the stand and she identifies
13 it, I'll probably let 90 in. Right now, it hasn't been
14 identified.

15 MR. NKWONTA: She did identify it.

16 THE COURT: Did she identify this?

17 MR. NKWONTA: She identified it yesterday. And we
18 talked about it at length.

19 MR. WYNNE: Your Honor, there's a number -- no. Wait
20 a minute.

21 There is a number of pages in here, including a
22 letter from the Venable law firm, which is clearly not her
23 statement. And, furthermore, we object based on -- based on
24 relevance and a lack of foundation. There are a lot of
25 e-mails in here, including I suspect ones that -- and texts

1 that have not been -- ones between D and TC, and neither of
2 those is her. And so as presented, you know, this is hearsay.

3 MR. NKWONTA: Well, Your Honor, the Court --

4 THE COURT: 90 is in over objection.

5 Okay.

6 MR. WYNNE: I'm sorry?

7 THE COURT: 90 is in over objection.

8 Okay. I need you to prepare an amended updated
9 plaintiffs' exhibit list, because from 91 to 105 is -- the
10 list you gave us, does not includes 91 to 105. So I need you
11 to give us an amended updated plaintiffs' exhibit list.

12 MR. NKWONTA: Yes. We will do that, Your Honor.

13 THE COURT: Okay. Now, do you want to rest your case
14 or do you want to call some other witnesses?

15 MR. NKWONTA: Can I propose, Your Honor, for the sake
16 of efficiency, that you hold the record open while they put on
17 some of their witnesses so that we can complete this process
18 of authenticating the documents that they produced and then
19 close out after we --

20 THE COURT: The problem is, is that I'm anticipating
21 a motion as soon as you rest your case. And in order for me
22 to rule on the motions, plaintiffs' case has to be done, in.
23 I'm willing to take a lunch break and let you come back and
24 tell me something, but either you're resting or you're not
25 resting.

1 MR. NKWONTA: Well, since we are close to noon, can
2 we take a lunch break and discuss it?

3 THE COURT: I have no problem with that.

4 We'll come back at 1:15. Now, here is what we need
5 to know. One more time.

6 You know why I'm so proud to be a lawyer? You all --
7 I'm so proud to be a lawyer, because lawyers, as I say, are
8 professionals. We get things done. We understand that the
9 law is bigger than we are. It's not about us. It's about the
10 whole aspect -- the foundation for America, Ms. Engelbrecht,
11 and you'll probably agree with me, is the law.

12 MS. ENGELBRECHT: Yes, sir.

13 THE COURT: And the first time the law cracks,
14 Ms. Lawrence-Hardy, we've got a problem.

15 Now, who are the builders? You, you, you. You guys
16 and ladies -- I don't want to get in trouble again -- and
17 ladies make sure that -- in this case you disagree strongly,
18 no problem. But let's make sure we just get the things to the
19 point where we're just not slowing down the process either way
20 and get it done.

21 So we can come back -- now, the reason why I'm giving
22 this little mini speech, you-all can probably settle most of
23 this in 15 minutes. If they're objecting, then you need to
24 have your witnesses.

25 But you also be able to say to defendants, well, this

1 is what I'm going to put up this afternoon so the defendants
2 will know, okay, I need to have my first witness to be ready
3 to go at such-and-such time. Lawyers do that all the time.
4 They do it all the time. They say, hey, plaintiffs presenting
5 their case, they say, when do you think you're going to rest
6 so I can have my first witness ready. That's all I'm asking
7 you-all to do. I'm not asking you to go out to a movie
8 together or have dinner together. Just talk so we can get
9 this done.

10 MR. WYNNE: I'll take him up on the dinner offer.

11 THE COURT: That's between the two of you-all. As
12 long as you don't ask me to pay. That's on you-all.

13 You talk to your people. And once you make a
14 decision whether you want to rest or not, let defense know so
15 they can be prepared and have their first witness. I don't
16 want to stay here past 6 o'clock. My wife is already upset.
17 So let's get it done, okay?

18 That's the last sermon I'm going to give you-all in
19 this trial, okay? Have a good lunch. See you at 1:15.

20 (Hearing concluded for lunch at 12 noon.)

21 (Change of reporters.)

22

23

24

25

C E R T I F I C A T E

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA

I do hereby certify that the foregoing pages are a true and correct transcript of the proceedings taken down by me in the case aforesaid.

This the 2nd day of November, 2023.

/s/Viola S. Zborowski
VIOLA S. ZBOROWSKI,
RDR, FAPR, CMR, CRR, RPR, CRC
OFFICIAL COURT REPORTER TO
THE HONORABLE STEVE C. JONES

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