

EXHIBIT 1

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

LISA POSTHUMUS LYONS,
KENT COUNTY CLERK,

Petitioner,

v.

File No. 1:22-mc-00107

MY PILLOW, INC., ET AL

Respondents.

Hearing

Before

THE HONORABLE PHILLIP J. GREEN
United States Magistrate Judge
November 29, 2022

APPEARANCES

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None	

1 Grand Rapids, Michigan

2 Tuesday, November 29, 2022 - 1:01 p.m.

3 THE COURT: Good afternoon. Please be seated.

4 MS. LANE: Good afternoon, your Honor.

5 MS. TAYLOR: Good afternoon.

6 THE COURT: We are here in the matter of In Re
7 Subpoena of Kent County Clerk, number 21-mc-445 -- I'm
8 sorry, 22-mc-107. This is the date and time set for a
9 hearing on Kent County Clerk's petition to quash a
10 subpoena.

11 Could I have appearance of counsel, please.

12 MS. LANE: Thank you, your Honor. Madelaine
13 Lane of Warner, Norcross and Judd on behalf of the Kent
14 County Clerk, Lisa Posthumus Lyons.

15 THE COURT: All right. Good afternoon,
16 Ms. Lane.

17 MS. TAYLOR: Good afternoon, your Honor.
18 Alexandria Taylor here on behalf of the defendant. I'm
19 also joined with my law clerk, Hannah Jenkins.

20 THE COURT: All right, good afternoon to both of
21 you.

22 MS. JENKINS: Good afternoon, Judge.

23 THE COURT: All right, Ms. Lane. You have the
24 floor. I have a question -- two questions to begin with,
25 and I'll ask them separately. Since we often criticize

1 attorneys for asking compound questions, I'll try to avoid
2 that.

3 Is the subpoena, has it been rendered moot as a
4 result of the election? As I -- if I read your brief
5 correctly, it seemed to me one of the points you were
6 making, look, once we do this election, the information's
7 going to be gone. It's not going to be retained. What is
8 left that the subpoena could acquire?

9 MS. LANE: Thank you, your Honor. I believe to
10 a large extent it's moot. However, there are additional
11 documents that are not housed on either the -- the election
12 server or the voting machines or ballot tabulators
13 themselves. That -- that can be -- that could be
14 collected. For example, request, I believe it's 4C,
15 requests copies of all documents, reports, or spreadsheets
16 that were created regarding the November 2020 election.

17 THE COURT: Uh-huh.

18 MS. LANE: That's the one that caught my
19 attention, because I think the breadth of that is quite
20 significant and would likely encompass anything from
21 campaign finance reports to the names of poll workers'
22 contact information. There are additionally some requests
23 asking for copies of any contracts or agreements we have
24 with vendors regarding cyber security. Any contracts or
25 agreements we have, for example, with Dominion for our

1 voting equipment. So I do believe that that information
2 would still be available if we were required to respond to
3 the subpoena. And in addition, I don't know standing here
4 what off of the server and network information they would
5 have saved prior to the election.

6 THE COURT: Okay. My second question. Is the
7 petition timely?

8 MS. LANE: Yes, your Honor. And this is the
9 reason that we believe so. We, when we received the
10 subpoena on September 6th, we wrote immediately to the
11 defendant's counsel and asked them to explain why they
12 believed we had relevant information, and additionally,
13 asked them to explain why -- what steps they had taken to
14 tailor this to Kent County so that it wasn't an undue
15 burden. We didn't get a response. So then on September
16 16th we wrote again. We articulated the fact that we
17 believed it was an undue burden and asked them to withdraw
18 the subpoena no later than September 19th. They did not do
19 so, but on September 21st, they wrote us, thanked us for
20 receiving a copy of our objections, and indicated that they
21 had sent similar subpoenas with a September 30th deadline
22 to other counties. I believe that's not only in Michigan,
23 but likely throughout the country. And that they would get
24 back to us after they had collected all of that information
25 to discuss with us the issues and objections. And that

1 they were not planning on filing a motion to compel.

2 So the way that we read that was that they
3 expected no further response from us. They had, you know,
4 even though we hadn't articulated objections to specific
5 requests, we had certainly objected to the subpoena
6 overall, and that they were not planning on enforcing the
7 subpoena by the September 30th deadline.

8 THE COURT: Okay. It is interesting, if not
9 ironic, that seems like you are relying upon Mr. Lindell's
10 statements to qualify your letters as objections. They are
11 required -- they are relying on your statements to
12 characterize them as not objections.

13 MS. LANE: I think, your Honor, we can -- yes.
14 I agree with you. But I think we can even look past that.
15 I think the second sentence or the last sentence of that
16 letter where they clearly are saying they're not -- they're
17 not moving to compel any additional response, whereas
18 before they discuss our issues and objections, it is really
19 the most important part of that sentence.

20 We tried our best to reach out and discuss these
21 issues with them, but it just looked -- it appeared to us
22 that they were unwilling to engage in that type of
23 discussion until they had received other responses. I
24 could speculate as to the reasons of that. Perhaps they
25 were hoping another county would give them information that

1 would render their request to Kent County moot. However, I
2 obviously don't know what was in their head at the time.

3 THE COURT: Well, the subpoena for the, I guess
4 the clerk in Miami County, is it Miami County? Miami Dade?

5 MS. LANE: It is in --

6 THE COURT: Motion --

7 MS. LANE: Yes.

8 THE COURT: -- to quash?

9 MS. LANE: Monroe County.

10 THE COURT: Okay.

11 MS. LANE: And that's still pending. I looked
12 it up as of yesterday on Pacer. That's still pending. As
13 well as Dominion's motion for a protective order, which
14 would cover some, but not all of this. The information
15 requested as of at least yesterday was still pending
16 without a hearing date on Pacer.

17 THE COURT: So as far as you know, that's the
18 only other pending motion to quash?

19 MS. LANE: Yes, your Honor.

20 THE COURT: No other court has ruled on this
21 issue?

22 MS. LANE: I checked on Pacer, ran Mr. Lindell's
23 name, and I believe that this is the only one that I was
24 able to locate that is set for even a hearing.

25 THE COURT: And there's a pending motion for a

1 protective order filed by Dominion in the federal court in
2 Minnesota seeking a protective order?

3 MS. LANE: I think it's pending in the District
4 of Columbia.

5 THE COURT: Oh, that's right. I'm mixing up
6 with the search warrant case.

7 MS. LANE: Correct.

8 THE COURT: Yeah, thank you. Okay. Well, I'm
9 not sure and I will -- I'm going to say this for both
10 counsel's benefit, kind of where I'm coming from, so you
11 guys can adjust your arguments accordingly.

12 I'm not sure that objections are required and
13 here is why I say that. I'm looking at Rule 45. And
14 Rule 45 is what drives the train here today, okay? Not
15 Rule 26. Rule 26 is a rule that addresses discovery
16 obligations between parties in a lawsuit. Rule 45
17 addresses protections that are given to third parties,
18 people who are not party to a lawsuit. Under the federal
19 rules, we give greater protection to those who are not
20 parties to a lawsuit, all right? So I don't know that I'm
21 going to be moved at all by references to Rule 26, which as
22 I read, has to do with parties, okay? And if Kent County
23 Clerk was a party to the lawsuit, it would be a very
24 different situation. Kent County is not. The clerk, I
25 should say, of Kent County is not a party, so I have to --

1 I'm governed by Rule 45.

2 Rule 45(d)(1) puts a puts a burden on the party
3 serving the subpoena to take reasonable steps to avoid
4 imposing undue burden or expense on the person or party
5 receiving the subpoena, number one.

6 Where it talks about objections is in
7 45(d)(2)(B). And what that provision says, in essence, is
8 a party who is receiving a subpoena, subject to the
9 subpoena, may -- may serve objections, and if so, then
10 certain rules kick into play, okay? Under Rule 45(d)(2)(B)
11 subpart (i) and (ii). In other words, if objections are
12 timely served, then the party serving the subpoena can go
13 to court where compliance is required to move to compel or
14 go to court to seek some sort of other relief.
15 Rule 45(d)(3) addresses motions to quash. I see nothing in
16 45(d)(3) that requires a third party to first serve
17 objections before moving to quash.

18 That's where I'm coming from, okay? But I'm
19 happy, I'm assuming, Ms. Lane, you're not going to argue
20 with me, but you're welcome to tell me I'm wrong if you
21 think I am, but and I'll certainly give Ms. Taylor to tell
22 me if I'm wrong and why I'm wrong. But that's where I'm
23 coming from.

24 So now I understand at least some courts have,
25 in my humble view, somewhat muddled the water, okay?

1 Because on petitions or motions to quash, they sometimes
2 use language from Rule 26 and they talk about these things.
3 I'm -- my mind is simple, okay? I am simple minded. And
4 so I have to look at things in that way. And so I -- so
5 where I'm coming from, Rule 45 is driving the train.

6 So but Ms. Lane, what I'd like to hear from you
7 now is as of what's -- well, first, I guess my next
8 question for you, and then I'll ask Ms. Taylor the same
9 question, the time for responding to the subpoena is past.

10 MS. LANE: Correct.

11 THE COURT: That subpoena is now a nullity, is
12 it not?

13 MS. LANE: I --

14 THE COURT: Are subpoenas valid? How long do
15 they remain valid? I believe once the time for production
16 is past if there's been no motion to compel, I'm not sure
17 that that's a valid subpoena.

18 MS. LANE: I believe that you're correct, your
19 Honor. That's my understanding of the rules as well.

20 THE COURT: All right. Well, let's -- assuming
21 that it might be, explain to me what -- how -- what's left,
22 okay? In light of the election and what is left that could
23 be obtained from the subpoena as it was written. Explain
24 to me what is unduly burdensome about producing that.

25 MS. LANE: Okay. Thank you, your Honor. And I

1 want to start by -- by looking at the factors that courts
2 review when they look at undue burden. And in the New
3 Products Corp. versus Dickinson Wright matter from 2018 out
4 of the Sixth Circuit that we cited, there are a number of
5 different factors the court can look at. And that includes
6 relevance, the need for the party for the documents, the
7 breadth of the documents required, the particularity to
8 which the documents are described, and burden, amongst
9 others. And I think each of the relevant factors in this
10 case counsel towards quashing the subpoena.

11 And the reason I say that is this. First,
12 regarding relevance. We're here today because Mr. Lindell
13 refuses to accept that Donald Trump lost the 2020
14 presidential election. That was two years ago. And
15 despite every investigative agency that's looked into this,
16 including Trump's own Department of Justice, the
17 Republican, at the time Republican led Michigan Senate
18 Oversight Committee that concluded there was no election
19 fraud in Michigan's election -- widespread election fraud
20 in Michigan's election system in 2020, the canvassing from
21 Kent County that occurred that found no fraud, and then the
22 hand --

23 THE COURT: What is canvassing? I think I saw
24 that in your brief. I'm not sure I understand entirely
25 what that is.

1 MS. LANE: Your Honor, I'm not sure I could give
2 you the dictionary definition, but it is one of the sort of
3 checks and balances that is immediately gone through after
4 the election to make sure that all of the precincts are
5 accounted for that, you know, the numbers line up. And
6 then after that, under the supervision of the Michigan
7 Bureau of Elections, Kent County then actually does a
8 ballot count where they go back and make sure, hand count a
9 selection of ballots to make sure, again, that there's no
10 indication that there was any sort of fraud or the
11 tabulation machines had had any issues. Again, it's a
12 check and balance in the system so that we don't merely
13 have to rely on those initial reports out from the precinct
14 on the night of the election, if we're lucky, or days
15 later.

16 THE COURT: I live in a small rural county, all
17 right? We're not nearly as sophisticated as you folks here
18 in Kent County. So when we go to vote, there's a paper
19 ballot, heavy paper ballot, and we take a marking pen and
20 we fill in a circle. Hopefully we do it very neatly so
21 there are no problems. Is that -- is that how voting is
22 done in Kent County?

23 MS. LANE: That's how voting is done in my
24 precinct in Kent County, yes.

25 THE COURT: Do you know whether there's any

1 precinct in Kent County that uses touch screens for voting?

2 MS. LANE: I don't know off the top of my head,
3 your Honor. I can tell you I have never seen one in Kent
4 County. But -- but that doesn't mean that it doesn't
5 exist.

6 THE COURT: Okay. So are we talking -- are the
7 machines that Dominion -- I don't know, did Dominion
8 provide the machines or the software or both?

9 MS. LANE: I believe it's both.

10 THE COURT: Okay. So the machines we're talking
11 about, are these machines that in which the ballots are
12 submitted and it reads these ballots and registers the
13 votes?

14 MS. LANE: That's my understanding.

15 THE COURT: Okay.

16 MS. LANE: And that's part of what they want.
17 They want all of our network -- they want us essentially to
18 map our network for them so that they know every single
19 device that's connected in any way to the election system.
20 So, for example, if I had a USB, you know, thumb drive that
21 I was able to plug in, they want to know what that end --
22 that end device is. They want to know all the ballot
23 tabulation information. But what it comes back to is that
24 to-date, Mr. Lindell has failed to articulate any reason he
25 believes that in spite of all the evidence to the contrary,

1 Kent County -- any of the information he's requested from
2 Kent County will show that Dominion was involved in a
3 conspiracy to manipulate votes and help President Biden
4 somehow steal the 2020 general election. Indeed in his
5 response, he articulates that one of the reasons he's
6 sending subpoenas across the country to various counties
7 that use Dominion software is because he doesn't right now
8 have the evidence to support the public statements he made,
9 and that he is going on what I would say is a picture of an
10 arbitrary fishing expedition to try to find some scintilla
11 of evidence somewhere in this nation to support the public
12 statements that he made when faced with all evidence to the
13 contrary.

14 THE COURT: So I recognize, and I did read the
15 opinion in In Re Modern Plastics Corp. And again, it's
16 somewhat concerning because, again, it seems to me the
17 courts may be conflating Rule 26 and Rule 45. But given
18 that that's a superior court, I'm certainly not criticizing
19 the opinion, and I recognize -- so what I'm trying to
20 understand is how does relevance, when Rule 45 says that a
21 third party who is the subject of a subpoena can come to
22 court and ask the court to quash the subpoena, it can do so
23 on the basis that it constitutes an undue burden. So seems
24 to me Rule 45 is focused on what is the burden to the third
25 party, not so much on what's the relevance.

1 Now in Rule 26, again, very different situation.
2 Now we're talking about the court has to balance between
3 the relevance, how relevant is it, is it proportional,
4 what's the, you know, all these sorts of things.
5 Apparently, I have to consider relevance to some extent
6 because the Sixth Circuit tells me I have to and I obey the
7 Sixth Circuit. But how am I supposed to -- how am I
8 supposed to analyze this comparing relative -- and I
9 understand your argument is there's very little relevance
10 here. I think Ms. Taylor takes a different view, and I'm
11 going to hear her. But how do I figure that in? In other
12 words, is it the case that even though I find that there's
13 this tremendous burden, \$4.2 million it's going to cost
14 Kent County, that I still might say, well, Kent County,
15 you've got to expend the 4.2 million because this is really
16 relevant?

17 MS. LANE: I think it's, your Honor, one factor
18 to look at. And I think in this case it's important in
19 light of the other factors, right? So we think that there
20 is a significant chance that there is going to be no useful
21 information for -- for Mr. Lindell in Kent County. And
22 yet, they have sent us a subpoena that is asking for an
23 incredible breadth of information. I mean just looking
24 just at request 4.C. alone, which is asking for all the
25 documents, reports, and spreadsheets regarding that 2020

1 November election, essentially what they're doing is asking
2 for a blueprint for our election system. And they -- they
3 don't just want to know what the results were. They want
4 to know, you know, who counted those votes, what -- you
5 know, they want to know how were they counted. They want
6 to know, you know, that would suggest to me they want to
7 know information about particular voters. They want to
8 know who voted, how they voted. Did they have provisional
9 ballots, did they fill out a regular ballot?

10 THE COURT: Well, there'd be no way of finding
11 that out, would there? I mean in other words when I go and
12 vote in my little rural county in my little precinct where
13 everybody knows everybody, I fill out a ballot, it gets
14 inserted in that machine. How is anybody going to know how
15 I voted?

16 MS. LANE: Well, they're asking -- presumably
17 there are -- there are voter rolls and records regarding, I
18 mean, I'm reading 4.C. pretty broadly because I think I
19 have to. And if it's any spreadsheet, any report, any
20 document created regarding the November 2020 election, I
21 think you could read that -- I would object to it, but you
22 could read that to be the ballots themselves, which I think
23 in and of itself would be unconstitutional.

24 THE COURT: Well, I would hope nobody in the
25 government could know how I voted.

1 MS. LANE: I agree with you --

2 THE COURT: That would be disconcerting.

3 MS. LANE: -- your Honor. I agree with you and
4 we certainly wouldn't turn that information over. But
5 essentially, at the end of the day, what I think they are
6 asking for is every bit of information about how elections
7 in Kent County are conducted, how votes are counted, who is
8 involved with it, so they can call into question -- they
9 can use that information to try to call into question the
10 integrity of the 2020 election. And not only do we have
11 that sort of substantial concern from a voter perspective,
12 right? But we also have the actual hard costs that come
13 along with that.

14 And it's, look-it, I think the chances that we
15 have to replace the voting machines are probably slim
16 absent this information somehow getting out into the public
17 and -- and -- but at the same time, you know, our Kent
18 County Director of Elections submitted an affidavit
19 suggesting that it would take approximately 80 hour --
20 employee hours to just collect the information. We think
21 that the amount of electronic data would probably be 2.5
22 gigabytes. 250,000 e-mails is about the equivalent. It's
23 not e-mails, but that's the equivalent kind of to look at.
24 I did some quick math, and if you assume we need to do
25 linear review, so look at every document, and it's a

1 hundred documents an hour at \$250 an hour, that's over
2 \$600,000 of taxpayer money. And this is 600,000 --

3 THE COURT: Mr. Lindell going to pay that?

4 MS. LANE: Well, Mr. Lindell has not yet asked
5 us to pay that. But I think, again, we go back to the
6 larger issue of the integrity of the election. And I do
7 think that it is important to consider who is asking for
8 this information. And I understand that Mr. Lindell and My
9 Pillow are suggesting that a protective order would be
10 sufficient in this case. And I disagree. And the reasons
11 are, are not just because Mr. Lindell continues in the face
12 of every investigative agency and -- you know, everyone
13 that's looked into this repeating the same concern. I
14 believe I even saw him on election night recently with --
15 indicating that there was -- he had elections concerns in
16 2022 in Arizona. Again, ironically, a place where a
17 Democrat beat a Republican.

18 But more importantly, as your Honor alluded to
19 earlier, he has recently been the -- had his cell phone
20 taken, a search warrant executed against him because the
21 Department of Justice was able to prove to a federal
22 magistrate judge that they believed there was probable
23 cause to believe that there was evidence of a crime on that
24 phone. And when Mr. -- not to say that Mr. Lindell
25 committed a crime, but that there was at least potential

1 for evidence of a crime on that phone. And --

2 THE COURT: I don't think I can consider any of
3 that, can I? I don't know what's in that affidavit, I
4 don't know what criminal activity is alleged to have been
5 involved in that. I don't know what that has to do with --

6 MS. LANE: Well, I --

7 THE COURT: -- this.

8 MS. LANE: I agree with your Honor, no one
9 outside of the government and the court has seen that
10 affidavit. However, in the government's response, they did
11 articulate that the particular crimes they were looking at
12 were involved, identity theft, breaking into a protected
13 computer, and conspiracy to do the same, I think is the --

14 THE COURT: Is your point that you would have
15 concerns that Mr. Lindell wouldn't abide by a protective
16 order?

17 MS. LANE: Correct, your Honor.

18 THE COURT: Oh, I see.

19 MS. LANE: Because my under --

20 THE COURT: Who would issue -- who would have
21 the authority to issue a protective order? Can this Court
22 issue a protective order? I don't think --

23 MS. LANE: I don't -- this court -- I don't
24 believe this court can issue a protective order that would
25 in a -- in the District of D.C. --

1 THE COURT: You'd have to go to the --

2 MS. LANE: -- correct.

3 THE COURT: -- District of Minnesota. I'm
4 sorry, District of D.C. I don't know why I keep thinking
5 this was in Minnesota.

6 MS. LANE: Your Honor, just unless your Honor
7 has any other questions, at the end of the day, Mr. Lindell
8 is misusing the subpoena power that he's permitted to under
9 the federal rules. I understand that he is facing a \$1.3
10 billion case, but Kent County is not. And the taxpayers of
11 Kent County expect us to use their money wisely. And in
12 this case, what Mr. Lindell is asking you to do is to allow
13 him to continue on what is clearly an arbitrary fishing
14 expedition, hoping that if he sends enough subpoenas to
15 enough counties that use Dominion software where President
16 Biden won, that he'll find some evidence somewhere to get
17 out from under this defamation lawsuit. And I don't
18 believe, your Honor, that is -- that is a proper use of the
19 subpoena power, and certainly not a good use of taxpayer
20 dollars.

21 THE COURT: All right, thank you, Ms. Lane.

22 MS. LANE: Thank you, your Honor.

23 THE COURT: Ms. Taylor.

24 MS. TAYLOR: Yes, your Honor.

25 THE COURT: So let's start with the second

1 question I asked Ms. Lane. No, I'm sorry, it wasn't the
2 second, maybe it was the third question I asked Ms. Lane.
3 Is the subpoena still valid?

4 MS. TAYLOR: Yes, your Honor. I would argue
5 that the subpoena is still valid. When we communicated
6 with counsel, those can be akin to providing extensions on
7 it. And so there were communications between counsel
8 concerning the subpoena.

9 THE COURT: The Kent County Clerk agreed to an
10 extension on the subpoena?

11 MS. TAYLOR: I'm not sure if there was
12 necessarily an agreement, but there wasn't a disagreement
13 either. So there were communications back and forth
14 saying, okay, hold off. As counsel accurately stated,
15 there was no motion to compel filed. So it's, you know,
16 hold off, let's communicate further. And so I would say
17 that that communication renders the subpoena still valid.

18 THE COURT: How long is a subpoena valid under
19 those circumstances? Go on indefinitely?

20 MS. TAYLOR: You know, I think it could be
21 looked at as a reasonable period of time, and so the
22 communications, there were communications in September, I
23 believe at the end of September, and then obviously we had
24 this litigation. And so I would -- I would argue that we
25 are still within a reasonable period of time. I think

1 there would be a question if you were a year out or more,
2 you know, whether that subpoena's still --

3 THE COURT: Where is the dividing line? How do
4 I know where -- what's reasonable and what's not reasonable
5 period of time?

6 MS. TAYLOR: I don't -- I don't think there's
7 anything articulated that I saw in the caselaw about what
8 would be unreasonable, but I would just say here on these
9 set of facts, based upon the communication and the recent
10 communication, this is not an unreasonable period of time
11 here.

12 THE COURT: Well, absent an explicit agreement
13 to extend the deadline for responding to a subpoena, do you
14 have any caselaw to support the proposition that somehow
15 there's this reasonable period of time that the subpoena
16 remains valid after the return date?

17 MS. TAYLOR: Not at this moment, your Honor. I
18 would just say --

19 THE COURT: I'm not aware of any.

20 MS. TAYLOR: Right.

21 THE COURT: And I certainly have had cases where
22 there were motions to compel filed after the return date.
23 I denied the motion as moot, finding that the subpoena was
24 no longer valid. There was nothing to compel.

25 MS. TAYLOR: I do believe it's a case specific

1 situation. And so here where you had communications
2 specifically saying, okay, hold off, and then no motions to
3 compel were filed, but then you had this motion to quash,
4 and so I would argue, you know, here the motion to quash
5 almost kind of like tolls, if the court did feel like there
6 was a period of time, would toll that because, again, now
7 we're -- we've shifted focus to focus on the motion to
8 quash the subpoena.

9 THE COURT: All right. Well, I'm not -- I'm not
10 sure I agree with you, but I don't want to belabor the
11 point.

12 MS. TAYLOR: Yeah.

13 THE COURT: What I'd like to ask you to begin,
14 and I'm happy to hear whatever you have to say, but one of
15 the things I would like you to address is what efforts did
16 you make or your client make to avoid undue burden or
17 expense on the Kent County Clerk in serving the subpoena,
18 as required by Rule 45(d)(1)?

19 MS. TAYLOR: So as we articulated, your Honor,
20 in our response, there is no other way to get the
21 information that my client is seeking. And so this isn't a
22 fishing expedition, and really it's not even about Donald
23 Trump because there were five subpoenas, your Honor, that
24 were issued here in Michigan, and some of those counties
25 were counties that President Trump prevailed in. And so --

1 THE COURT: What relevance is that? I don't --
2 I don't care who won the election in what county.

3 MS. TAYLOR: Right.

4 THE COURT: I'm not here to decide elections.
5 I'm not here to be concerned about the validity of
6 elections. I'm here to determine whether this subpoena
7 poses an undue burden on the clerk of Kent County. So and
8 Rule 45(d)(1) requires anyone serving a subpoena to take
9 reasonable steps, in other words affirmative steps to avoid
10 undue burden. It seems to me at the very least that would
11 require some contact with the clerk of Kent County to
12 initiate some discussion in terms of here's what we're
13 looking for, how can we -- how can we get this.

14 MS. TAYLOR: Absolutely. And I think one of the
15 major steps, Judge, is just the fact that, you know, our
16 client wasn't filing a motion to compel and saying, you
17 know, you need -- you need to get it by this date or we're
18 filing. We didn't do that. We said okay, let's hold off,
19 let's see -- so we were reasonable in our efforts with the
20 clerk saying, okay, not rushing the clerk to get this
21 information because, I mean, I think the Court will agree
22 if there's a rush to get the information in a short period
23 of time, that's going to cost more money because you're
24 going to have to put more people on it and, you know, her
25 sister counsel talked about the number of hours. So that

1 would be a heavy burden if my client came with a heavy hand
2 like, I need this information within this timeframe.
3 There's no wiggle room or anything. And that didn't
4 happen. And so I think that --

5 THE COURT: Well, don't that -- that burden or
6 that responsibility for taking reasonable steps, that's
7 there at the time of serving the subpoena. It's not, well,
8 we're just going to just issue these subpoenas and let
9 things kind of sort out later if there is some sort of a
10 motion and then figure it all out. As I read
11 Rule 45(d)(1), before that subpoena is served, the attorney
12 or party serving that subpoena has to take reasonable steps
13 to protect, to avoid, I'm going to use the language of the
14 Rule, to avoid imposing an undue burden or expense. So I'd
15 like to know, before serving the subpoena on the clerk of
16 Kent County, what reasonable steps were taken to avoid
17 undue burden or expense?

18 MS. TAYLOR: Your Honor, I'm not sure prior to
19 the subpoena being served, and I don't know even how the
20 caselaw would articulate that prior to something being
21 served. I can only attest to conversations that happened
22 afterwards and the reasonableness of those and, you know,
23 providing latitude, not threatening motions to compel, and
24 being reasonable in that respect, which I think, you know,
25 speaks to reason.

1 And I know in our response we did focus heavily
2 on 26 because as your Honor articulated, the caselaw kind
3 of interchanges those. And so we kind of read 26 when it
4 says party to mean party upon the, you know, whom the
5 subpoena was served. But I would say that those steps that
6 my client took afterwards, those should speak volumes of
7 saying, okay, let's try to sort this out. And as we stated
8 in our response, even if the court was included to do a
9 protective order which would put some parameters in, lessen
10 that burden upon the clerk.

11 THE COURT: I don't have the authority to issue
12 a protective order, do I?

13 MS. TAYLOR: Yes. Well, because that is still
14 pending in D.C., so yes.

15 THE COURT: Yeah, I mean the District of
16 Columbia would have to do that.

17 MS. TAYLOR: Which was we don't have a
18 hearing --

19 THE COURT: Well, let me back you up a minute.
20 So I want to make sure I understand. If I understand you
21 correctly, and when I say you, I'm talking about --

22 MS. TAYLOR: Yes.

23 THE COURT: -- your client and whoever is acting
24 on your client's behalf.

25 MS. TAYLOR: Absolutely, your Honor.

1 THE COURT: You served similar subpoenas around
2 the country to various county clerks.

3 MS. TAYLOR: That's correct.

4 THE COURT: And apparently you had no intention
5 of filing motions to compel in any of those subpoenas.

6 MS. TAYLOR: I don't want to say that, your
7 Honor. I can't speak to that. As you know, there are
8 other attorneys that are handling those, so I -- I don't
9 want to misstate something on the record.

10 THE COURT: Okay, well, let's --

11 MS. TAYLOR: But I just speak to the --

12 THE COURT: Let's stick to this one.

13 MS. TAYLOR: Right.

14 THE COURT: Okay? So you served on the clerk of
15 Kent County a subpoena and you had -- you made it clear to
16 Ms. Lane, counsel for the Kent County Clerk, that your
17 client had no intention of filing a motion to compel,
18 right?

19 MS. TAYLOR: So what I'm saying is that my
20 client was willing to have discussions and not come in with
21 a heavy hand saying if you don't get this information to us
22 by this deadline we're going to file a motion to compel.
23 Just the reasonableness of knowing this is a lot of
24 information to gather, and being open to those discussions.
25 I can't say if this motion to quash was never filed and

1 those discussions broke down that they would have never
2 filed a motion to compel, but I'm just saying in that
3 moment.

4 THE COURT: How could you? I mean it seems to
5 me to the extent you can hang your hat on the proposition
6 that this subpoena has any validity left to it --

7 MS. TAYLOR: Yes.

8 THE COURT: -- it would be based upon the fact
9 that Kent County has come in and filed this motion to
10 quash. And I think your argument there is, well, that kind
11 of tolled the response date. Maybe that's true. I'm not
12 sure it is. But giving you the benefit of the doubt, okay.
13 But if they hadn't come in, because basically it seems to
14 me what you're arguing is Kent County shouldn't have come
15 in here and filed this motion to quash because we weren't
16 going to compel right away. And so you were going to, if
17 they hadn't filed this motion to quash, there still would
18 not have been a motion to compel, right?

19 MS. TAYLOR: So, no. That's not what I'm
20 saying. I'm saying at the outset there were these open
21 discussions back and forth. So that's what I'm saying.
22 But I can't say if there was never a motion to quash that
23 my client would not have filed a motion to compel. I mean
24 I'm sure --

25 THE COURT: But certainly wouldn't have filed it

1 by the response date.

2 MS. TAYLOR: I'm sure something would have been
3 filed. And so --

4 THE COURT: Response date?

5 MS. TAYLOR: No, I'm just saying if they -- if
6 discussions had broke down between the parties and, your
7 Honor, I'm sure something would have been filed.

8 THE COURT: For filing that motion to compel
9 today and you would have gotten nowhere, okay? I can
10 promise you you would have gotten -- that would have been
11 denied at the outset.

12 MS. TAYLOR: Right, because the --

13 THE COURT: The subpoena, the response, it's too
14 late, okay? I want to focus, let's -- I want to know
15 specifically after --

16 MS. TAYLOR: Yes.

17 THE COURT: -- after Ms. Lane contacted you, as
18 I understand it, you advised that they didn't have to
19 comply by the September 20th, was that the response date?

20 MS. TAYLOR: I believe it was around the 21st or
21 thereafter, yeah.

22 THE COURT: Okay, whatever it was. Other than
23 that, putting aside whether you took reasonable steps
24 before you served the subpoena, what, specifically, did you
25 do after being contacted by Ms. Lane to take reasonable

1 steps to avoid undue burden?

2 MS. TAYLOR: Well, your Honor, I think that is a
3 step, just providing, saying, okay, you know --

4 THE COURT: You don't have to respond by the
5 response --

6 MS. TAYLOR: You don't have to respond by this
7 date.

8 THE COURT: Okay. What else did you do?

9 MS. TAYLOR: That was the substance of it, your
10 Honor.

11 THE COURT: Okay.

12 MS. TAYLOR: Just providing that flexibility.

13 THE COURT: Did you respond to the initial
14 letter?

15 MS. TAYLOR: I am not sure, your Honor, because
16 it wasn't myself --

17 THE COURT: Did anybody respond?

18 MS. TAYLOR: -- that was dealing with Ms. Lane.
19 I mean I'm assuming so. There were correspondences that
20 were in the exhibits that were attached on both sides.

21 THE COURT: Okay, maybe I'm misremembering. I
22 thought Ms. Lane advised me that there was no response to
23 the initial letter that they sent.

24 MS. TAYLOR: Right. That's what she stated.

25 THE COURT: Okay. And do you have any evidence

1 that there was a response?

2 MS. TAYLOR: I don't have anything right here to
3 the contrary, other than what we attached in our reply.

4 THE COURT: Now, then, there was a second letter
5 sent?

6 MS. TAYLOR: Yes.

7 THE COURT: And what was the response to the
8 second letter?

9 MS. TAYLOR: I believe Ms. Lane argued about
10 that. There was a second letter and then there was a
11 response. So the second letter, your Honor, was September
12 16th, and then the response was September 21st.

13 THE COURT: All right, and that's when somebody
14 representing your client responded?

15 MS. TAYLOR: That's correct.

16 THE COURT: Okay. And let's see. Does the
17 September 16th letter, according to Ms. Lane, noted that
18 the subpoena was unduly burdensome, and that if it was not
19 withdrawn, they asked for a meet and confer. Did you
20 engage in a meet and confer with Ms. Lane?

21 MS. TAYLOR: Someone else in the office may
22 have. I did not personally, your Honor.

23 THE COURT: Okay, but you don't know?

24 MS. TAYLOR: I'm not sure.

25 THE COURT: All right. So I mean how can I not

1 grant the motion to quash on that basis alone? I mean
2 if -- if the rule says you have to take reasonable steps to
3 avoid undue burden, nothing was done before the subpoena
4 was served, and the only thing that you can tell me that
5 was done after the subpoena was served is that you or
6 somebody on your client's behalf advised Ms. Lane that her
7 client need not respond by the response date, that's it,
8 right?

9 MS. TAYLOR: Yeah, there were other discussions.
10 But your Honor, just providing that flexibility in the time
11 and not such with heavy hand lessens the burden. Because
12 again --

13 THE COURT: Hearing that there were discussions
14 doesn't move the ball, Ms. Taylor. What I need to know
15 is --

16 MS. TAYLOR: But meet and confer.

17 THE COURT: -- in the discussions, what was
18 done, okay? What, specifically, was done on your part to
19 address the burden that would be imposed on Kent County
20 through the subpoena?

21 MS. TAYLOR: Addressing the parameters around
22 the subpoena. And so --

23 THE COURT: Did you specifically offer to limit
24 the parameters of the subpoena?

25 MS. TAYLOR: I believe there were discussions

1 about it, but no meeting of the mind on those discussions.

2 THE COURT: Ms. Taylor, it doesn't help your
3 cause for you to tell me what you believe. I need to know
4 what happened, not -- not what you believe may have
5 happened.

6 MS. TAYLOR: Yes.

7 THE COURT: Do you follow me?

8 MS. TAYLOR: I do. So they -- they had
9 discussions, your Honor, just like counsel will have
10 discussions on matters, but there was no meeting of the
11 minds because they wanted to --

12 THE COURT: It doesn't matter whether there was
13 a meeting of the mind.

14 MS. TAYLOR: Right.

15 THE COURT: What matters --

16 MS. TAYLOR: There were --

17 THE COURT: -- Ms. Taylor, is that efforts on
18 your part were made, reasonable efforts to minimize. So
19 that burden is on you, okay?

20 MS. TAYLOR: Yes.

21 THE COURT: So it may be that you or somebody
22 else representing your client were eminently reasonable in
23 your efforts to avoid undue burden --

24 MS. TAYLOR: Yes.

25 THE COURT: -- and Ms. Lane was just obstinate,

1 okay? She just wouldn't agree to anything.

2 MS. TAYLOR: Okay.

3 THE COURT: In that case I would find, well, you
4 met your burden. So whether the parties had a meeting of
5 the minds or an agreement is not relevant to this, it's not
6 determinative, at least. What matters is what specific
7 steps were taken by your client to minimize the undue
8 burden.

9 MS. TAYLOR: So, your Honor --

10 THE COURT: I don't want to beat a dead horse.

11 MS. TAYLOR: Yes.

12 THE COURT: I mean I think you said all that you
13 can say on that.

14 MS. TAYLOR: No, I will say this, and you know,
15 the last thing on that point, your Honor, is that there was
16 a specific discussion, and I believe Ms. Lane alluded to
17 this about seeing the responses from the various counties
18 and then coming together to reassess. And so I think that
19 that is telling, because again, if we have something else
20 in this county, and maybe we don't need as much as we
21 thought we did, let's reassess at that point. So that is a
22 specific discussion that was had, your Honor.

23 THE COURT: Okay. Why does Mr. Lindell need all
24 this information? I mean isn't -- it does look like a
25 fishing expedition. I love fishing, but not in litigation.

1 I mean it seems to me this is as broad based a subpoena as
2 possible. This is the type of subpoena somebody issues
3 when they have no idea really what they're looking for, but
4 they want to make sure they capture everything possible,
5 all right? So tell me why I shouldn't conclude this --
6 this is a fishing expedition, that a broad net has been
7 thrown out in various counties around the country. Again,
8 I have no idea what happened in the election, what happened
9 in any county office. That's not my job to be concerned
10 about that. But you've cast these huge nets over all these
11 various counties. They don't seem at all to be narrowed to
12 any particular issue.

13 MS. TAYLOR: So, your Honor, he's seeking
14 information related to the election. And I mean that in
15 itself is a broad term. And so there are only five
16 counties, as I've stated, that Mr. Lindell sought subpoenas
17 in and some were red, like I said, some were blue. But the
18 information that he seeks is in relation to the specific
19 election in 2020. And so how else can you get that
20 information other than this broad subpoena?

21 THE COURT: I believe I read in your response,
22 and correct me if I'm wrong --

23 MS. TAYLOR: Yes.

24 THE COURT: -- one of the alleged false
25 statements that's the subject of the suit in D.C. had to do

1 with a Michigan county. Am I remembering that correctly?

2 Let me see if I can find it real quick.

3 MS. TAYLOR: I have our response.

4 THE COURT: Let's see.

5 MS. TAYLOR: Yes.

6 THE COURT: And this would be page five of your
7 response, ECF number 8, page ID 189, the second bullet
8 point -- no, I'm sorry, the first bullet point, which would
9 be I think the second paragraph. An IT security
10 professional who -- now maybe this is not one of the
11 alleged false statements.

12 MS. TAYLOR: Okay.

13 THE COURT: But it says an IT security
14 professional who reviewed a Dominion system from a Michigan
15 county after the 2020 election found data indicating
16 Internet communications between that system and IP
17 addresses in Taiwan and Germany. What county is that?

18 MS. TAYLOR: Hold on a second. It doesn't say
19 which Michigan county.

20 THE COURT: No, I see that --

21 MS. TAYLOR: Yeah.

22 THE COURT: -- doesn't say. That's why I'm
23 asking you --

24 MS. TAYLOR: I'm not sure, your Honor.

25 THE COURT: -- what county that is.

1 MS. LANE: Your Honor, it references Exhibit E.

2 THE COURT: I'm looking for Exhibit E now.

3 MS. LANE: I believe it's Antrim County, which
4 is not one of the five Michigan counties that were
5 subpoenaed. I believe Kent, Berrien, Calhoun, Saginaw --

6 THE COURT: Okay.

7 MS. LANE: -- and Wayne.

8 THE COURT: All right, thank you. Why not serve
9 a subpoena there? Of any place, it seems to me that would
10 be the first place you'd subpoena.

11 MS. TAYLOR: I'm not sure why they didn't
12 subpoena that one.

13 THE COURT: Okay.

14 MS. TAYLOR: As I stated, it's the five, and
15 sister counsel just accurately stated, Kent, Berrien,
16 Wayne, Saginaw, and Calhoun. Again, your Honor, they were
17 not seeking to subpoena every county in each state because
18 that would be a bit of a fishing expedition, so.

19 THE COURT: I get it.

20 MS. TAYLOR: Yes.

21 THE COURT: But if one of the allegations in the
22 lawsuit is that Antrim County, that there was actually
23 evidence of a connection with Taiwan, my goodness --

24 MS. TAYLOR: And I don't --

25 THE COURT: -- that would be the first place I

1 would go to look. I wouldn't be looking at Kent County,
2 I'd be -- I would be serving a subpoena first on Antrim
3 County.

4 MS. TAYLOR: And I can't say there's nothing
5 being done there, I'm just not -- I am not made aware of
6 any litigation that is going on there.

7 THE COURT: Gotcha. Anything else you want me
8 to consider?

9 MS. TAYLOR: Nothing else.

10 THE COURT: All right, thank you.

11 MS. TAYLOR: Thank you.

12 THE COURT: Anything further, Ms. Lane?

13 MS. LANE: Extremely briefly, your Honor.
14 First, referring to the deadline for response to the
15 subpoena, I would just point out to the Court that I don't
16 believe defendants can have it both ways. Either we timely
17 filed this motion to quash because they had somehow
18 extended the subpoena past September 30th, or it's not
19 extended, and therefore, their motion to compel was not
20 timely -- which has not yet been filed is therefore not
21 timely filed and the subpoena is no longer valid.

22 The only other part I wanted to note, your
23 Honor, is in terms of other discussions, the other
24 discussion that defense counsel referenced was in fact that
25 September 21st letter that was in response to the letters

1 Matt Nelson from Warner Norcross sent on behalf of Kent
2 County. My understanding is the only other conversation,
3 other reach-out that we have had is a response when I --
4 when I asked whether they would object to my motion to file
5 a reply brief in this matter. So to the extent that your
6 Honor is inquiring about any follow-up from them or
7 conversation, there was none other than that September 21st
8 letter regarding the merits of the subpoena.

9 THE COURT: All right, thank you.

10 MS. LANE: Thank you, your Honor.

11 THE COURT: All right, this motion to quash the
12 subpoena has been brought under Rule 45(d)(3).
13 Rule 45(d)(3) states on a timely motion the court for the
14 district where compliance is required must quash or modify
15 a subpoena that subjects a person to undue burden. This
16 person, for the record, includes organizations and other
17 parties.

18 Rule 45(d)(1), as I've already indicated,
19 states, and I quote, "A party or attorney responsible for
20 issuing and serving a subpoena must take reasonable steps
21 to avoid imposing undue burden or expense on a person
22 subject to the subpoena. The court for the district where
23 compliance is required must enforce this duty and impose an
24 appropriate sanction, which may include lost earnings and
25 reasonable attorneys fees, on a party or attorney who fails

1 to comply."

2 I am granting the motion to quash. It is
3 eminently demonstrated that the breadth of the subpoena
4 could not be greater. The burden that this imposes on any
5 county would be unduly burdensome. No effort was made that
6 I can discern to narrow the scope of the subpoena to obtain
7 that which may be, and I emphasize may be, relevant to the
8 pending litigation between Mr. Lindell and My Pillows and
9 the Dominion Company.

10 I have no idea what happened in the election and
11 what happened in these machines and any software. I'm not
12 here to decide any of that. I'm here to decide one thing,
13 whether this subpoena imposed an undue burden on Kent
14 County Clerk. It does unequivocally.

15 Accordingly, it is quashed to the extent it has
16 any remaining validity.

17 Moreover, I find that Mr. Lindell and My Pillow,
18 Incorporated, failed to meet its responsibility for taking
19 reasonable steps to avoid imposing unnecessary undue burden
20 or expense. Nothing that I can discern was done before
21 serving the subpoena. Any reasonable person looking at
22 that subpoena had to know it was going to be unduly
23 burdensome. I can't imagine anything that that net would
24 not capture. And to have taken no steps to contact the
25 county to ascertain whether there's some way of reducing

1 that burden is a blatant violation of the duty under
2 Rule 45(d) (1) .

3 Accordingly, in addition to quashing the motion
4 and as required as Rule 46 -- 45(d) (1), I must enforce the
5 duty and impose an appropriate sanction. I find that that
6 appropriate sanction will be attorneys' fees.

7 Ms. Lane, you have 14 days in which to file a
8 petition for fees and costs relating to the motion to
9 quash. Ms. Taylor, your client will have 14 days
10 thereafter to respond.

11 Is there anything else we need to take up at
12 this time, Ms. Lane?

13 MS. LANE: No, your Honor.

14 THE COURT: All right. Ms. Taylor?

15 MS. TAYLOR: No, your Honor.

16 THE COURT: All right --

17 MS. TAYLOR: Thank you for your time.

18 THE COURT: -- thank you, both.

19 MS. LANE: Thank you, your Honor.

20 (At 1:50 p.m., proceedings concluded.)

21 -oo0oo-

CERTIFICATE OF REPORTER

STATE OF MICHIGAN)
) ss.
COUNTY OF KENT)

I, Bonnie L. Rozema, CER, do hereby certify that the foregoing transcript consisting of 42 pages, is a complete, true, and accurate transcript of the proceedings and testimony, to the best of my ability from the audio recording, held in this case held on November 29, 2022.

I do further certify that I prepared the foregoing transcript.

/s/ Bonnie L. Rozema

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Notary Public in and for
Kent County, Michigan
My commission expires:
March 26, 2025
Acting in the County of Kent