

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

DONNA CURLING, ET AL.,)	
)	
Plaintiffs,)	
)	
v.)	Civil Action File No.
)	1:17-CV-02989-AT
)	
BRAD RAFFENSPERGER, ET AL.,)	
)	
Defendants.)	

MOTION TO INTERVENE FOR LIMITED PURPOSES

Pursuant to Federal Rule of Civil Procedure 24, Fox News Network, LLC (“FNN”) respectfully moves to intervene in this lawsuit for the limited purpose of obtaining access to an expert report written by cybersecurity expert Dr. J. Alex Halderman that remains sealed under order of the Court. Access to this report, which is based on Dr. Halderman’s thorough analysis of the Dominion voting system used in Georgia in the 2020 election, is appropriate and necessary, *inter alia*, because FNN is the defendant in a lawsuit brought by Dominion Voting Systems in which Dominion has relied upon Dr. Halderman’s expertise. Compl. ¶ 68, *U.S. Dominion, Inc. v. Fox News Network, LLC*, No. N21C-03-257 EMD (Del. Superior Court Mar. 26, 2021) (“*Dominion v. FNN*”). FNN will agree to abide by this Court’s protective order. Doc. 477.

Plaintiffs' expert, Dr. Halderman, submitted a report in this case that plaintiffs have filed under seal. *See* Doc. 1130-1 (filing of report under seal); Doc 1130-2 ¶ 7 (recognizing that contents of the report will remain under seal); Doc. 858 (order requiring that access to and testing of Dominion software and hardware is subject to the protective order in this case); Doc. 477 (protective order).

FNN has a particular interest in this report: Public filings in this case indicate that Dr. Halderman's analysis of the Dominion hardware and software contained in his confidential report bear specifically on the claims and/or defenses in litigation filed by Dominion against FNN. Specifically, Dominion has sued FNN alleging that FNN defamed Dominion, *inter alia*, by reporting on and repeating allegations that Dominion voting systems are not secure, are susceptible to manipulation and election fraud, and that such fraud occurred during the 2020 presidential election. *See generally* Compl., *Dominion v. FNN*. Dr. Halderman's expert analysis performed in this case bears directly on these issues.

In a publicly filed declaration, Dr. Halderman states that his "July 1, 2021 [sealed] expert report describes numerous security vulnerabilities" in the Dominion system utilized in Georgia elections, and he warns that these flaws "are not general weaknesses or theoretical problems, rather specific flaws in [Dominion's] ICX software . . . that can [be] exploit[ed] to steal votes on ICX devices." Decl. of J. Alex

Halderman, Doc. 1177-1 ¶ 1 (Sept. 21, 2021). Dr. Halderman further explains his analysis that “the ICX is very likely to contain other, equally critical flaws that are yet to be discovered.” *Id.*, ¶ 4. And Dr. Halderman notes the security problems are not limited to Georgia because the ICX systems are intended for use in parts of 16 states in the fast-approaching 2022 elections. *Id.*, ¶¶ 5, 8. Dr. Halderman’s rebuttal declaration expresses similar concerns regarding the “numerous, critical vulnerabilities” with the Dominion systems. Rebuttal Decl. of J. Alex Halderman ¶ 2 (Aug. 2, 2021) (“Halderman Rebuttal Decl.”).

These publicly available documents demonstrate that Dr. Halderman’s analysis bears directly on the *Dominion v. FNN* case, yet these documents only scratch the surface of Dr. Halderman’s analysis: the sealed expert report is “a 25,000 word document that is the product of twelve weeks of intensive testing of the Dominion equipment provided” to Dr. Halderman for his examination that concludes that the Dominion system in use in Georgia “contains multiple severe security flaws.” Halderman Rebuttal Decl. ¶ 4. Accordingly, FNN seeks to intervene in this suit for the limited purpose of gaining access to Dr. Halderman’s crucial analysis.¹

¹ The State of Louisiana’s Secretary of State also moved to intervene to access the sealed report. Doc. 1243. The Court denied that motion, but Louisiana could not articulate the particularized interest in this report that FNN demonstrates here.

Intervention for this purpose is appropriate and necessary for the additional reason that Dominion has explicitly injected Dr. Halderman’s expertise into its suit against FNN. Dominion’s Complaint alleges that “Professor J. Alex Halderman, the Director of the University of Michigan’s Center for Computer Security & Society, also told [FNN] explicitly, ‘There is absolutely no evidence, none, that Dominion Voting Machines changed any votes in this election.’” Compl. ¶ 68, *Dominion v. FNN*. FNN should be permitted to access Dr. Halderman’s work in this litigation to determine, *inter alia*, whether his analysis here undermines his purported statement to FNN.

As detailed in the accompanying memorandum in support of this motion, FNN requests that a limited list of 6 persons be provided access to Dr. Halderman’s sealed report of July 1, 2021, and FNN will agree that those individuals accessing the report will do so pursuant to the terms in the Court’s protective order (Doc. 477).

Moreover, the Court relied upon an alternative means for Louisiana to assess the security risks in its own election system—hire Dr. Halderman or another security expert to run similar analyses on Louisiana’s voting systems which are in Louisiana’s possession—that clearly does not exist for FNN. Doc. 1249.

CONCLUSION

For the foregoing reasons, and the reasons in the accompanying memorandum in support, FNN respectfully requests that the Court grant its motion to intervene.

Dated: January 12, 2022

/s/ Charles E. Peeler

Charles E. Peeler

Ga. Bar No. 570399

TROUTMAN PEPPER HAMILTON SANDERS LLP

Bank of America Plaza, Suite 3000

600 Peachtree Street N.E.

Atlanta, Georgia 30308-2216

Telephone: 404.885.3409

Email: charles.peeler@troutman.com

Charles L. Babcock

Application for Admission Pro Hac Vice pending

Joel Glover

Application for Admission Pro Hac Vice pending

JACKSON WALKER LLP

1401 McKinney Street, Suite 1900

Houston, TX 77010

Telephone: (713) 752-4210

Email: cbabcock@jw.com

Scott A. Keller

Application for Admission Pro Hac Vice pending

LEHOTSKY KELLER LLP

200 Massachusetts Avenue NW

Washington, DC 20001

Telephone: (512) 693-8350

Attorneys for Fox News Network, LLC

CERTIFICATE OF COMPLIANCE WITH LOCAL RULE 5.1

The undersigned hereby certifies that the foregoing document has been prepared in accordance with the font type and margin requirements of Local Rule 5.1 of the Northern District of Georgia, using a font type of Times New Roman and a point-size of 14.

/s/ Charles E. Peeler

Charles E. Peeler

Georgia Bar No. 570399

Troutman Pepper Hamilton Sanders LLP

Bank of America Plaza, Suite 3000

600 Peachtree Street N.E.

Atlanta, Georgia 30308-2216

Telephone: 404.885.3409

Email: Charles.peeler@troutman.com

Attorney for Fox News Network, LLC

CERTIFICATE OF SERVICE

I hereby certify that on January 12, 2021, I electronically filed the forgoing Motion to Intervene For Limited Purposes which will automatically send email notification of such filing to the attorneys of record.

/s/ Charles E. Peeler

Charles E. Peeler

Troutman Pepper Hamilton Sanders LLP

Bank of America Plaza, Suite 3000

600 Peachtree Street N.E.

Atlanta, Georgia 30308-2216

Telephone: 404.885.3409

Email: Charles.peeler@troutman.com

Georgia Bar No. 570399

Attorney for Fox News Network, LLC