



“conspiracy”<sup>2</sup> with various private persons, including persons in the news media, social media, and technology industry, high net worth individuals, and others, to willfully deprive the American People of their “most precious” and fundamental right: the right to the “Republican Form of Government” guaranteed by Article IV, Section 4 (the “Guarantee Clause”) of the Constitution of the United States and other fundamental civil rights.

**a. Supreme Court explains the guarantee to the people of “Republican Form of Government” in the Constitution.**

2. In an 1891 opinion affirming this most honorable and storied Western District of Texas, the Supreme Court concluded: “By the constitution, a republican form of government is guaranteed<sup>3</sup> to every state in the Union, and *the distinguishing feature of that form is the right of the people to choose their own officers for governmental administration*, and pass their own laws in virtue of the legislative power reposed in representative bodies, *whose legitimate acts may be said to be those of the people themselves*; but while the people are thus the source of political power, their governments, national and state, have been limited by written constitutions, and they have themselves thereby set bounds to their own power, *as against the sudden impulses of mere majorities.*” *Duncan v. McCall*, 139 U.S. 449, 461 (1891) (emphasis added).

3. It is truly ironic that the *Duncan* case originated in the Western District of Texas. The Supreme Court’s most robust explanation, in *Duncan*, of the

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<sup>2</sup> *Id.*

<sup>3</sup> An alternate, more archaic spelling of the word.

Constitution's Guarantee Clause, which reads, "The United States shall guarantee to every State in this Union a Republican Form of Government,"<sup>4</sup> captures the very essence of Plaintiffs' action before this Court. At its core, Plaintiffs' cause of action is very simple: the acts of Defendants described herein have both the result *and* the aim of depriving Plaintiffs of their most fundamental right, the right to a republican form of government, which is government "deriving their just powers from the consent of the governed,"<sup>5</sup> a government "of the people, by the people, and for the people."<sup>6</sup> Plaintiffs' come before this Court because, as demonstrated herein, Defendants have stripped them of this most sacred of human rights and other fundamental rights.

4. Considering that one of the most renown opinions to come out of the Western District of Texas was a minority voting rights case striking down the Texas poll tax, it is almost as if the Western District of Texas were destined to enter the relief requested in this lawsuit. In *United States v. Texas*, the Court opined, "the right to vote" is "our most precious right . . . the essence of a democratic society." *United States v. State of Tex.*, 252 F. Supp. 234, 250–51 (W.D. Tex.), *aff'd sub nom. Texas v. United States*, 384 U.S. 155 (1966). By this complaint, Plaintiffs request that the Court preserve our "Republican Form of Government" and the "democratic society" on which it stands.

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<sup>4</sup> U.S. CONST. art. IV, § 4.

<sup>5</sup> The Declaration of Independence para. 2 (U.S. 1776).

<sup>6</sup> Abraham Lincoln, The Gettysburg Address para. 3 (Nov. 19, 1863).

**b. “Sudden impulses of mere majorities.”**

5. The terms “democracy” and republic,” are often used interchangeably. In fact, they are not interchangeable. Black’s Law Dictionary gives the following definition for *republic*:

A system of government in which the people hold sovereign power and elect representatives who exercise that power. • It contrasts on the one hand with a pure democracy, in which the people or community as an organized whole wield the sovereign power of government, and on the other with the rule of one person (such as a king or dictator) or of an elite group (such as an oligarchy, aristocracy, or junta).

REPUBLIC, Black's Law Dictionary (11th ed. 2019). The “pure democracy,” described in this definition, inevitably results in the tyranny of “mere majorities” described by the Supreme Court in *Duncan*. See 139 U.S. at 461 (“limited by written constitutions . . . as against the sudden impulses of mere majorities”). Under a “democracy,” even a razor thin 51% ideological majority can quickly descend into oppressive government persecution of the 49% minority. As we have seen throughout history, it is human nature to control and subjugate the “minority.” This is why the framers of the Constitution created a “republic” with checks and balances to avoid a situation in which a mere 51% majority runs roughshod over the rights of the minority based on their “sudden impulses.”

6. Democrats currently hold a literal 51% majority<sup>7</sup> in the House of Representatives, a “50 plus one”<sup>8</sup> advantage in the Senate, and, having “won” a presidential Electoral College vote in which the “popular vote,” as officially reported,

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<sup>7</sup> 222 out of 435 total seats is exactly 51%.

<sup>8</sup> With Kamala Harris, as “President of the Senate,” acting as the tie-breaking vote.

came to 51.3% for Joe Biden,<sup>9</sup> hold the Executive Branch with razor-thin popular support. Despite appearing to take both Congress and the Presidency with a mere 51% “majority,” the Democrats have already enacted dramatic and sweeping policy changes through “Executive Orders”<sup>10</sup> and stand ready to pass essentially *permanent* changes to the laws of the United States through legislation,<sup>11</sup> which they may likely force through via the “nuclear option” of elimination of the Senate “filibuster.”

7. Certainly, such a situation is itself cause for alarm as it gives the distinct appearance that our Nation has reached the exact situation warned of in *Duncan* where a “mere majority” is poised to cram down their “sudden impulses” on the 49% “minority.” However, the current situation is actually infinitely worse than it appears.

**c. Molly Ball of TIME lays out how Defendants deprived Plaintiffs of their right to a “Republican Form of Government.”**

8. A conspiracy to deprive Americans of the republican form of government, a form of government that has existed (albeit to an ever-diminishing extent) since the Constitution of the United States went into effect in March of 1789, would obviously need to be well-funded, with many moving parts and actors in powerful places, and would need to be *secret*, since an overwhelming majority of Americans, presumably, still strongly believe in government “of the people, by the people, and for the people.” Describing such a conspiracy to the Court is a

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<sup>9</sup> *2020 National Popular Vote Tracker*, THE COOK POLITICAL REPORT, available at <https://cookpolitical.com/2020-national-popular-vote-tracker>.

<sup>10</sup> See Temporary Restraining Order (Doc. 10-1 “Alternate Proposed TRO”), pp. 4–5.

<sup>11</sup> See Memorandum to Support Entry of Alternative Temporary Restraining Order (Doc. 10), ¶¶ 3–9 and footnotes.

monumentally difficult task in a time where any attempt to contravene the prevailing narrative in popular news media and on social media is immediately dismissed as a “conspiracy theory” and its progenitors labeled as “crackpots.”<sup>12</sup>

9. Fortunately, in what is nothing short of a godsend to Plaintiffs, Molly Ball of TIME and other TIME reporters credited in Secret History, essentially did most of Plaintiffs’ work for them. In an article dated February 4, 2021, Ms. Ball conveniently, and in detailed fashion, laid out *The Secret History of the Shadow Campaign That Saved the 2020 Election* (the “Secret History”). See **Exhibit 1**. In her Secret History, Ball describes the “conspiracy to save the 2020 election” as something its participants *want told*:

That’s why the participants want the secret history of the 2020 election told, even though it sounds like a paranoid fever dream—*a well-funded cabal of powerful people*, ranging across industries and ideologies, working together behind the scenes to influence perceptions, *change rules and laws*, steer media coverage and *control the flow of information*. They were not rigging the election; they were fortifying it. And they believe the public needs to understand the system’s fragility in order to ensure that democracy in America endures.

*Id.*, p. 6 (emphasis added). Of course, Ball inserts the last sentence as a thinly-veiled attempt to whitewash Defendants’ conspiracy as an effort “to ensure that democracy in America endures.” However, the apparent goal of the “conspiracy,” as described in the article’s opening paragraphs, was “Trump’s ouster.” *Id.* at p. 1.

10. Plaintiffs could likely state their entire claims upon which relief could be granted by merely cutting and pasting only the Secret History in its entirety into

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<sup>12</sup> Which is indeed part of the strategy.

the factual allegations section and omitting the “whitewashing” statements about “protecting democracy.” Indeed, this entire section of the First Amended Complaint is intended, not only as an introduction, but also as factual allegations and Plaintiffs’ hereby incorporate this entire section by reference into the Statement of Fact below as though fully set forth therein. Despite media coverage to the contrary,<sup>13</sup> as stated at the outset in the Original Complaint (Doc. 1), this Lawsuit is not about changing the “declared winner” of the “2020 Presential Election.”

**d. Secret History reveals how the 2020 Federal Election had little to do with the “will of the people.”**

11. Rather, this Lawsuit is about remedying Plaintiffs’ constitutional rights to “choose their own officers for governmental administration”<sup>14</sup>—to elect their representatives to government. Secret History gives a *shocking* detailed account about how the 2020 Federal Election had almost nothing to do with the “will of the people.”<sup>15</sup> Instead, it had everything to do with a power struggle between a “well-funded cabal of powerful people” (the “Cabal”)<sup>16</sup> and President Donald Trump, based apparently, on who had the best method of manipulating the election process in violation of the law and the constitutional rights of the American People.

12. Indeed, it is difficult to decide on the most appallingly horrific paragraph from Secret History that sums up Defendants’ nefarious conspiracy, but the following

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<sup>13</sup> See Memorandum to Support Entry of Alternative Temporary Restraining Order (Doc. 10), ¶ 1.

<sup>14</sup> *Duncan*, 139 U.S. at 461.

<sup>15</sup> Secret History at p. 26.

<sup>16</sup> The term Cabal is intended at all times to be used to include Defendants named herein as well, all of whom were participants in the conspiracy described in Secret History.

paragraph is about as good as any. In depicting a truly disturbing “battle”<sup>17</sup> between the Cabal and Trump, where the two camps try to outmaneuver each other to influence certification of the Michigan vote, Secret History states the following:

The pro-democracy forces were up against a Trumpified Michigan GOP controlled by allies of Ronna McDaniel, the Republican National Committee chair, and Betsy DeVos, the former Education Secretary and a member of a billionaire family of GOP donors. On a call with his team on Nov. 18, Bassin<sup>18</sup> vented that his side’s pressure was no match for what Trump could offer. “Of course he’s going to try to offer them something,” Bassin recalls thinking. “Head of the Space Force! Ambassador to wherever! We can’t compete with that by offering carrots. *We need a stick.*”

Secret History, p. 23.

13. The most nauseating aspect of Secret History is that Ms. Ball is actually bragging about the efforts of these shadowy characters, acting behind the scenes to manipulate the election outcome, as *heroic*. Ball, an obvious sycophant, if not an outright member of, the Cabal, casts the Cabal, which she further described as an “informal alliance between left-wing activists and business titans,” as the protagonists of her epic poem because, of course, they opposed the wicked villain, Donald Trump.

14. What is conspicuously missing from her account, however, is any apparent concern for the actual will of American voters. Ball gives lip service to it, of course. It would defeat the purpose of the Cabal to fully give it away. But the lack of concern (or possibly outright disdain) for the will of American voters is belied throughout the article. The “concern for democracy” is actually expressed as grave

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<sup>17</sup> *Id.* at 20 (“ But the battle wasn’t over.”).

<sup>18</sup> Ian Bassin, Co-founder of “Protect Democracy,” a group included in Secret History as part of the “Cabal.”

concern that voters would, in fact, do the *unthinkable* and cast a vote for Donald J. Trump.

**e. Secret History reveals that the “concern for democracy” was, in fact, a concern regarding for whom Americans would vote.**

15. Mike Podhorzer, whom Ball describes as “The Architect,” allegedly orchestrated the entire conspiracy out of a concern that support for Donald Trump had cut into the Democrat’s traditional grip on the voting bloc of “blue collar white voters” who comprise much of the membership in the well-known Democrat stronghold, the AFL-CIO. *Id.* at p. 7. So, “[h]e began circulating weekly number-crunching memos to a small circle of allies and hosting strategy sessions in D.C.” According to Ball, everything apparently grew from there. In other words, ***the entire original purpose*** of the Cabal was to make sure that traditional Democrat voters did not defect from the ranks to vote for a populist<sup>19</sup> candidate, Donald Trump.

16. Secret History is written in language to give the appearance that the Cabal acted out of some grave concern for “democracy,” when in fact it reveals the exact opposite. The Cabal carried out their conspiracy out of fear that *people would actually vote for Donald Trump*. This much is abundantly clear in several additional statements made throughout Secret History. On page 15, Ball reports that Podhorzer, in organizing the Cabal, “was warning everyone he knew that polls were underestimating Trump’s support.” On page 19, it describes the Democrat “despair” on election night that “Trump was running ahead of pre-election polling, winning

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<sup>19</sup> See, e.g., Noah Bierman, *Even if Trump loses, Trumpism may outlast him*, THE LOS ANGELES TIMES (Oct. 23, 2020) available at <https://www.latimes.com/politics/story/2020-10-23/even-if-trump-loses-trumpism-may-outlast-him>

Florida, Ohio, and Texas easily and keeping Michigan, Wisconsin and Pennsylvania too close to call.” However, Podhorzer, “was unperturbed” because the “surge” in Trump’s support was exactly what he had planned for. *Id.* at p. 19. Apparently, the Cabal had already made sure the *fix was in* to thwart the will of anyone who voted in a way that “business titans” (specifically including those in the “U.S. Chamber of Commerce”), the “AFL-CIO,” “left-wing activists,” their allies in the news media, social media, and technology industries, and federal, state, and local level officials (all included in Secret History as members of the “Cabal”) did not like.

**f. Secret History essentially states Plaintiffs’ causes of action for them.**

17. As stated at the outset in the Original Complaint, this Lawsuit does not address “election fraud.” Likely, evidence of election fraud may be brought forth in the course of the Lawsuit to show intent of the Defendants or bolster other elements, but such evidence is not necessary for Plaintiffs to prevail on their claims. Rather this lawsuit is about how, to carry out their conspiracy to deprive Plaintiffs of their constitutional rights, Defendants altered the rules and procedures of the 2020 Federal Elections in all 50 states, and including Guam, Puerto Rico, and the District of Columbia (collectively, with the 50 States, the “Voting Districts”) in a manner that severely and pervasively violated the election integrity safeguards enacted by Congress in the Help America Vote Act of 2002, as amended, 52 U.S.C. §§ 20901–21145 (“HAVA”) and Section 301–302 of the Civil Rights Act of 1966, 52 U.S.C. § 20701–02 (the “1960 CRA”) (collectively, HAVA and the 1960 CRA, the “Election Integrity Safeguards”).

18. Secret History discusses this conspiracy to violate these Election Integrity Safeguards, starting on page 10 under the subheading “Securing the Vote.” One particularly disturbing, yet telling paragraph in the article comes earlier where, after Ball discusses Podhorzer’s attempts to expand his Cabal by finding “liberals who saw Trump as a dangerous dictator,” she credits Podhorzer with concluding: “America’s decentralized election system couldn’t be rigged in one fell swoop. That presented an opportunity to shore it up.” The attempt to “shore it up,” however, was actually the scheme to violate the Election Integrity Safeguards, primarily through the expansion of mail-in or absentee voting (collectively, “Mail-In Voting”). Secret History, pp. 10–12.

19. Of course, the Cabal, composed in large part, of the Defendants in this lawsuit, needed funding to violate the Election Integrity Safeguards, \$400 million of which they received from Congress in the CARES Act, and \$300 million of which they received from Defendant Mark Zuckerberg’s Chan Zuckerberg Initiative. Amber McReynolds’s “National Vote at Home Institute, then provided the state and local level officials, including the Defendants who are Secretaries of State, all the “technical advice” they needed to apply the funds. The Cabal enabled state and local officials to “bolster” mail-in voting in “37 states and D.C.” Despite lawsuits “brought by the Trump campaign to sow doubt about mail voting,” the Cabal was able to achieve an incredible feat: “In the end, nearly half the electorate cast ballots by mail in 2020, practically a revolution of how people vote. About a quarter voted early in

person. Only a quarter of voters cast their ballots the traditional way: in person on Election Day.”

20. What is fascinating about the intense focus on Mail-In Voting by the Cabal/Defendants, composed of a “constellation of operatives across the left”, a “progressive movement” that apparently also contained many “bipartisan” actors from the Republican side,<sup>20</sup> is that, prior to 2020, Mail-In Voting had been almost universally condemned in America as an inherently unsecure method of voting.

21. In fact, former President Jimmy Carter and former Secretary of State, Jim Baker, released a bi-partisan report in 2005 entitled “Building Confidence in U.S. Elections,” which made the following conclusions:

Fraud occurs in several ways. Absentee ballots remain the largest source of potential voter fraud. A notorious recent case of absentee ballot fraud was Miami’s mayoral election of 1998, and in that case, the judge declared the election fraudulent and called for a new election. Absentee balloting is vulnerable to abuse in several ways: Blank ballots mailed to the wrong address or to large residential buildings might get intercepted. Citizens who vote at home, at nursing homes, at the workplace, or in church are more susceptible to pressure, overt and subtle, or to intimidation. Vote buying schemes are far more difficult to detect when citizens vote by mail. States therefore should reduce the risks of fraud and abuse in absentee voting by prohibiting “third-party” organizations, candidates, and political party activists from handling absentee ballots. States also should make sure that absentee ballots received by election officials before Election Day are kept secure until they are opened and counted.

REPORT OF THE COMMISSION ON FEDERAL ELECTION REFORM, BUILDING CONFIDENCE IN U.S. ELECTIONS (2005), p. 46 (the “Carter-Baker Report”). Not surprisingly, but eerily in keeping with the apparent vast reach of the Cabal to “control the flow of

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<sup>20</sup> Secret History, pp. 4, 7

information,”<sup>21</sup> this Report has mysteriously disappeared from the website of American University’s Center for Democracy (AUCD) and Election Management, which facilitated the Commission and was the internet home of the Report until, very recently, as indicated by various internet searches for the document, leading to the link that is now defunct.<sup>22</sup> For the utterly disingenuous Cabal, it seems that *actual* measures to enhance election integrity are part of the “disinformation” to be “controlled.” Notably, even the New York Times reported on the inherent insecurity risks of Mail-In Voting in 2012, and over 60% of European countries and many other developed countries around the world ban the practice, except for citizens living overseas.<sup>23</sup>

**g. The Court cannot dismiss the Lawsuit on the grounds articulated in the Show Cause Order.**

22. On January 27, 2021, the Court entered its Show Cause Order (Doc. 11) stating two grounds for dismissal of the Lawsuit. This section is a response to the Show Cause Order, although a separate Response brief will be filed later this evening.

23. Of particular importance to this Lawsuit, is a paragraph from Secret History that neatly wraps up the elements of Defendants’ conduct into the elements necessary for a 42 U.S.C. § 1983 claim against both federal and private individuals:

Their work [the Cabal, which includes Defendants] *touched every aspect of the election*. They got states [acting in concert with state

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<sup>21</sup> Secret History, p. 29.

<sup>22</sup> Plaintiffs have, nonetheless, obtained a copy of the Report available for viewing.

<sup>23</sup> Adam Liptak, Error and Fraud at Issue as Absentee Voting Rises, THE NEW YORK TIMES, (Oct. 6, 2012), *available at* <https://www.nytimes.com/2012/10/07/us/politics/as-more-vote-by-mail-faulty-ballots-could-impact-elections.html>; Paul Bedard, Developed countries ‘ban’ mail-in voting, US would be ‘laughing stock’:Report, WASHINGTON EXAMINER (Aug. 5, 2020) *available at* <https://www.washingtonexaminer.com/washington-secrets/developed-countries-ban-mail-in-voting-us-would-be-laughing-stock-report>.

officials] to change voting systems and laws [in violation of the Election Integrity Safeguards] and helped secure hundreds of millions in public [including funding from Congress] and private funding. They fended off voter-suppression lawsuits [many of which lawsuits were intended to prevent violations of the Election Integrity Safeguards], recruited armies of poll workers and got millions of people to vote by mail for the first time. They successfully pressured social media companies to take a harder line against disinformation and used data-driven strategies to fight viral smears [which constitutes interference with Plaintiffs' First Amendment rights to free speech]. They executed national public-awareness campaigns that helped Americans understand how the vote count would unfold over days or weeks, preventing Trump's conspiracy theories and false claims of victory from getting more traction [which was additional suppression of Plaintiffs' First Amendment rights]. After Election Day, they monitored every pressure point to ensure that Trump could not overturn the result. "The untold story of the election is the thousands of people of both parties who accomplished the triumph of American democracy at its very foundation," says Norm Eisen, a prominent lawyer and former Obama Administration official who recruited Republicans and Democrats to the board of the Voter Protection Program [thus demonstrating the concert of action between both Democrats and Republicans to carry out the conspiracy].

Secret History, pp. 3–4. This paragraph clearly and precisely states Plaintiffs' claim against Defendants under 42 U.S.C. § 1983 and other causes of action. It is truly remarkable how conveniently Ms. Ball's Secret History laid out a roadmap for Plaintiffs' allegations in support of their various causes of action in this Lawsuit and for Plaintiffs' response to the Show Cause Order (Doc. 10). Secret History also *prevents the media from attacking the Court* for any relief granted supporting Plaintiffs so-called "tin foil hat conspiracy theories," as the media would surely have attempted to do because Plaintiffs' allegations now come straight from one of the most well-respected and widely circulated publications, TIME. It seems the

Defendants/conspirators/Cabal were so pleased with themselves, that they could not help but announce their Secret History to the public, much like a terrorist organization would proudly claim responsibility for some heinous act.

24. In its Show Cause Order (Doc. 10) the Court called for dismissal of this Lawsuit on the grounds that § 1983 “does not apply to federal officers,” such as members of the 117<sup>th</sup> U.S. Congress, citing a non-binding, general proposition from the Tenth Circuit Court of Appeals. Contrary to the Court’s assertion, *binding* Supreme Court and Fifth Circuit precedent clearly hold that, for purposes of § 1983, acting “under color of law does *not* require that the accused be an officer of the state;” rather, “[i]t is enough that he is a willful participant in joint activity with the State or its agents.” *United States v. Price*, 383 U.S. 787, 795 (1966); *Gomez v. Fla. State Employment Serv.*, 417 F.2d 569, 578 (5th Cir. 1969); *see also Kletschka v. Driver*, 411 F.2d 436, 448–49 (2d Cir. 1969) (“We can see no reason why a joint conspiracy between federal and state officials should not carry the same consequences under § 1983 as does joint action by state officials and private persons.”); *accord Tongol v. Usery*, 575 F. Supp. 409, 415 (N.D. Cal. 1983), *rev'd sub nom. on other grounds Tongol v. Donovan*, 762 F.2d 727 (9th Cir. 1985).

25. As will be even more fully alleged in the Statement of Facts below, Secret History sets forth, in great detail, how private individuals solicited federal money from the 116<sup>th</sup> Congress, who then distributed the federal money to state and local officials, who used the money, in joint activity with private persons, to violate the Election Integrity Safeguards. The 117<sup>th</sup> Congress overwhelmingly includes

members of the 116<sup>th</sup> Congress, and also includes private individuals who were willful participants in the conspiracy when they ran for office and were elected with the help of the conspirator Defendants, including state and local officials who acted to unlawfully change state election procedures in violation of the Election Integrity Safeguards. Indeed, it is a difficult to imagine a scenario of a more willful joint conspiracy between federal and state officials who acted under the color of state law, namely the state elections laws, regulations, and procedures to deprive Plaintiffs of their constitutional civil rights.

26. Defendants' nefarious conspiracy to willfully deprive Plaintiffs of both their right to cast a lawful ballot in the 2020 Federal Elections and their right to not having their ballot diluted by fake or fraudulent ballots ("Ballot Box Stuffing")<sup>24</sup> is not only in violation of Plaintiffs' substantive due process voting rights and equal protection rights under the Fourteenth Amendment, but is a conspiracy to willfully deprive Plaintiffs and all Americans of the right to the republican form of government guaranteed in the Constitution.

27. Thus, the nature of Plaintiffs' causes of action under § 1983 are not, as the Court stated in the Show Cause Order, "a private right of action" or "declaratory relief" under HAVA, though this was likely unclear in the wording of the Original Complaint. Rather, Plaintiffs claims are for "deprivation of . . . rights, privileges, or immunities secured by the Constitution." 42 U.S.C. § 1983. The severe and pervasive

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<sup>24</sup> The practice of diluting the votes of American citizens through the submission of ballots that are not submitted from a Citizen of the United States who is eligible to vote is hereinafter referred to as "Ballot Box Stuffing."

violations of HAVA *and* the 1960 CRA<sup>25</sup> in all 53 Voting Districts is merely *evidence* that Plaintiffs constitutional rights have been violated to the fullest extent imaginable in addition to the other factual allegations contained herein. Accordingly, as will be more fully set forth the in Plaintiff's Response to the Show Cause Order, the HAVA cases cited in the Order are inapposite. The Election Integrity Safeguards clearly and obviously exist to protect Plaintiffs constitutional rights related to suffrage, but it is those constitutional rights themselves, not HAVA, under which Plaintiffs bring their § 1983 claims.

28. Moreover, Defendants' willful conspiracy included intentional and severe interference with Plaintiffs' First Amendment right to freedom of speech, right to peaceable assembly, and right to petition the government for a redress of grievances, as will be described further below, providing further grounds for relief under § 1983. Plaintiffs also have causes of action against the federal officials, state office, and private officials under 42 U.S.C. §§ 1981, 1985, and 1986, and directly against federal officials as a *Bivens* claim. Accordingly, as will be more fully briefed in the response, this case cannot be lawfully dismissed for all of the foregoing reasons and those included in the forthcoming Response to the Show Cause Order.

29. In sum, Defendants' vast conspiracy described in Secret History and further set forth in the Statement of facts, was a willful conspiracy to deprive Plaintiffs and all Americans of their fundamental constitutional rights, for which the Election Integrity Safeguard were specifically intended to protect. The egregious

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<sup>25</sup> Violations of the 1960 CRA were first asserted in the Memorandum to Support Entry of Alternative Temporary Restraining Order (Doc. 10).

result of the conspiracy is that the 117<sup>th</sup> Congress, the President, and Vice President were elected and sworn into federal office in clear and willful violation of Plaintiffs', the Putative Class, and all Americans' constitutional rights, most importantly the right to a republican form of government.

**h. Conclusion to Introduction.**

30. Accordingly, since the violations committed through Defendants' conspiracy against Plaintiffs' constitutional rights described herein were so severe and pervasive that they resulted in an election that cannot now be audited to determine the rightful winner, the only appropriate remedy is a new election conducted pursuant to the Election Integrity Safeguards, and additional security measures that should be imposed by the Court. The Court must ensure a new Federal Election and enter temporary injunctive relief restraining the illegitimate Congress and Executive Branch until a jury trial on the merits, so that all Americans can, once again, be assured that "*government of the people, by the people, and for the people, shall not perish from the earth.*"

**II.  
PARTIES**

**A. Plaintiffs**

31. Plaintiff, Joshua Macias is an individual residing in Virginia.

32. Plaintiffs, Latinos for Trumps, are an association-in-fact political organization whose members are Latino and located throughout the United States;

33. B.G.<sup>26</sup> is the founder of Latinos for Trump and resides in Texas.

34. Plaintiffs, Blacks for Trump, are an association-in-fact political organization whose members are Latino and located throughout the United States;

35. Plaintiff, M. S. founder of Latinos for Trump and resides in Florida.

36. Plaintiff, J.B. is a former Texas congressional candidate who was on the federal ballot for a Congressional seat in the 117<sup>th</sup> Congress and who resides in Texas.

37. Plaintiff J.J. is an individual who resides in Alabama.

38. Plaintiff P.P. is an individual who resides in New York.

39. Plaintiff R.C. is an individual who resides in Texas.

40. Plaintiff T.L. is an individual who resides in Texas.

41. Plaintiff A.B. is an individual who resides in Texas.

42. Plaintiff R.R. is an individual who resides in Texas.

43. Plaintiff R.D. is an individual who resides in Texas.

44. Plaintiff H.H. is an individual who resides in Texas.

45. Plaintiff A.P. is an individual who resides in Texas.

46. Plaintiff J.G. is an individual who resides in Texas.

47. Plaintiff M.B. is an individual who resides in Texas.

48. Plaintiff E.R. is an individual who resides in Texas.

49. Plaintiff E.R.(2) is an individual who resides in Texas.

50. Plaintiff C.H. is an individual who resides in Texas.

51. Plaintiff I.M. is an individual who resides in Texas.

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<sup>26</sup> Plaintiffs with initials are so named due to their reasonable fear of their personal safety if their identity is made public as a result of this lawsuit.

52. Plaintiff A.L. is an individual who resides in Texas.

53. Plaintiff C.S. is an individual who resides in Texas.

54. Plaintiff H.D. is an individual who resides in Texas.

55. Plaintiff M.T. is an individual who resides in Texas.

56. Plaintiff I.M. is an individual who resides in Texas.

57. Various other Plaintiffs will be added in a supplement to this Amended Complaint to be filed.<sup>27</sup>

### **B. Defendants**

58. Defendant, Nancy Pelosi is and acted as an individual and in her official capacity as the Speaker of the US House of Representatives who may be served with process at 1236 Longworth H.O.B. Washington, DC 20515 or wherever she may be found and is a resident of the State of California.

59. Defendant, Mitch McConnell is and acted as an individual and in his official capacity a as a US Senator and Senate Majority Leader who may be served with process at 317 Russell Senate Office Building Washington D.C or wherever he may be found and is a resident of the State of Kentucky.

60. Defendant, Mark Zuckerberg is and acted as an individual and in his capacity as founder of the Chan Zuckerberg Initiative located at 314 Lytton Ave Palo Alto, Ca. 94301, where he may be served with process or wherever else he may be found.

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<sup>27</sup> None of the new Plaintiffs listed here are intended to be added as new "Parties" to the case for purposes of compliance with ECF filing rules and/or the FRCP. These new Plaintiffs are merely intended at this stage to be proposed Plaintiffs to be added at a later time.

61. Defendant, Chuck Schumer, is and acted as an individual and in his official capacity as a US Senator who may be served with process at 322 Hart Senate Office Building Washington, D.C. 20510.

62. Defendant, Brad Raffensperger, is and acted as an individual and in his official capacity as Georgia Secretary of State, may be served with process at 214 State Capitol Atlanta, Georgia 30334.

63. Plaintiff name, individually as Defendants all current and so-called members of the 117<sup>th</sup> Congress of the United States (the “Congressional Defendants”), including all members of both the U.S. House of Representatives and the U.S. Senate who are individuals residing in the respective states they purport to represent and may be served with process at their respective Washington D.C. and/or local state offices at the addresses publicly provided via the following links or by virtue of other publicly available sources or wherever they may be found:

[https://ballotpedia.org/List of current members of the U.S. Congress](https://ballotpedia.org/List_of_current_members_of_the_U.S._Congress) and  
[https://ballotpedia.org/List of current members of the U.S. Congress#U.S. Senate](https://ballotpedia.org/List_of_current_members_of_the_U.S._Congress#U.S._Senate)

64. The Congressional Defendants should be served with process in accordance with Fed. R. Civ. P. 4(i) as Officers of the United States in their individual and official capacities. Since the District of Columbia is currently under lockdown with thousands of National Guardsmen surrounding the Capitol, Plaintiffs will file a motion shortly requesting service by special appointment pursuant to Rule 4(c)(3).

65. Plaintiffs additionally names as Defendants, all the state governors and secretaries of state listed in **Exhibit 2** attached hereto (the “State Defendants”). These individuals reside in the respective state listed above their names and may be served with process at the addresses provide in **Exhibit 2** or wherever they may be found and/or as provided under their various states’ procedures for service of process.

66. Defendant Roger Sollenberger is an individual believed to be a resident of Travis County, Texas and may have dual residence in Virginia. Mr. Sollenberger may be served with process at the Salon.com office in 1287 Berry Pl, McLean, VA 22102 or wherever he may be found.

### **III. JURISDICTION AND VENUE**

67. The Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331 because this case arises under the Constitution and laws of the United States. Furthermore, where, as here, deprivations of constitutional rights are alleged, including a conspiracy to deprive or failure to prevent or render aid regarding such deprivations, 28 U.S.C. § 1343 confers original subject matter jurisdiction on the federal district courts.

68. The Court has personal jurisdiction over the federal elected officials and private individuals named as Defendants because they acted as willful participants in conspiracy with state or local officials under color of law. In so doing, they violated the constitutional rights of Plaintiffs, many of whom live in Texas, and therefore purposely availed themselves of or can reasonably anticipate being hailed into federal court in the State of Texas.

69. Venue is proper in this district because one or more of the Defendants resides in this district and the district has a substantial connection to the claim, since one or more of the Plaintiffs also reside in this district.

70. All conditions precedent to this action have occurred.

#### IV. STATEMENT OF FACTS

71. Plaintiffs hereby incorporate all allegations in the foregoing paragraphs as though fully set forth herein, including but not limited to, all of the factual allegations referenced in Secret History and all other allegations contained in the Introduction paragraphs 1–30.

##### **a. Allegations Based on the Export Report by John S. Vanderbol.**

72. All factual allegations contained in the expert report by John S. Vanderbol entitled “Global Risk Analysis: Special Report” (the “Vanderbol Report”) attached hereto as **Exhibit 3**, are hereby incorporated by reference as though fully set forth herein. The following allegations are based on the Vanderbol Report and the research cited and conducted in preparation thereof.

73. In the spring of 2019, concerned citizens seeking to protect their civil rights brought forth evidence and information to Defendants acting in partisan enterprises<sup>28</sup> regarding issues with election integrity and cybersecurity as well as enforcement requirements in the HAVA.<sup>29</sup>

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<sup>28</sup> The Vanderbol Report elaborates on the meaning of the term “partisan enterprises,” a term of art.

<sup>29</sup> Referencing the SAFE ACT and congressional record and other supporting documentation attached to the SAFE ACT.

74. On June 27<sup>th</sup>, 2019, the 116<sup>th</sup> House of Representatives sent to the Senate, H.R. 2722 also known as the SAFE ACT, an act designed to protect the civil rights of three hundred and twenty-eight million Americans.

75. Shortly after June 27, 2019, Congressional Defendants acting in a partisan enterprise in abuse of their elected offices in the 116<sup>th</sup> Senate moved the SAFE ACT to the rules and administration committee with the intent to “kill” the act in committee in order to deprive three hundred and twenty-eight million Americans civil rights.

76. Defendants Schumer, McConnell, Durbin, Blunt, Cruz, among other Congressional Defendants, who were assigned to the Rules and Administration Committee, purposefully and under color of law took action to “kill” the SAFE ACT with the purpose to deny three hundred and twenty-eight million American people of their lawful civil rights, including their most important right: the guarantee of a republican form of government.<sup>30</sup>

77. On July 17<sup>th</sup> 2019, the 116<sup>th</sup> House of Representatives forwarded to the Senate a “tax bill” that had no election protections or any component to protect the civil rights of American citizens. Shortly thereafter, Congressional Defendants, participating in partisan enterprises, would corrupt this “tax” bill at the request of conspiring State Defendants, as well as co-conspirators within the social media and business communities, in order to deny the American citizens of a lawful and constitutionally correct 2020 Federal Election.

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<sup>30</sup> Denial of the right to a republican form of government in this section also includes deprivation of the substantive due process rights and equal protection rights that related to suffrage.

78. In early 2020, the conspiring defendants at the state level, including high net worth individuals, engaged in the media and social media industries, as well as regional operation of partisan enterprises, approached Defendants at the federal level with a scheme to deny three hundred twenty-eight million Americans of their civil rights through fraudulent usage of the covid-19 pandemic as a reason to alter procedures and conduct of the 2020 Federal election in willful violation of the Election Integrity Safeguards and state, local, and federal laws, policies, and procedures, such purpose being to deny American citizens of their right to vote and to deprive Americans their right to a republican form of government from that date and all election dates forward.

79. In early 2020, co-conspiring State Defendants and others at the state level, in concert with high net worth private individuals engaged in the media and social media industries as well as regional operation of partisan enterprises, approached Congressional Defendants at the federal level and sought from them 1.4 billion dollars in federal monies to execute their fraudulent schemes and deprive the three hundred and twenty-eight million Americans of their civil rights.

80. In response to these afore-mentioned conspiring Defendants' request for 1.4 billion dollars, the Congressional Defendants, acting willfully in concert with other individuals acting in partisan enterprises, unlawfully caused the issuance of 400 million dollars in federal monies, with knowledge the monies would be used to illegally deprive the American people of their constitutional rights.

81. In mid 2020, the Chan Zuckerberg Initiative, a foundation headed by Defendant Mark Zuckerberg, who had knowledge of the conspiring Defendants' fraudulent scheme, chose to become a willful participant in the conspiracy by causing Chan Zuckerberg to contribute 300 million dollars to the State Defendants and other officials at the state lever for the purpose of depriving the American people of their civil rights.

82. Plaintiff J.B. has provided evidence, statements, and testimony regarding Defendant Chuck Schumer's instruction to and conspiracy with Defendant M.J. Hager to commit fraud and to deprive Americans of their constitutionally protected rights.

83. Plaintiff J.B. provided evidence, statements, and testimony of Defendant Hager directing, informing, briefing, controlling and directly managing, on behalf of senior members of the partisan enterprises, including Defendant Schumer, the conduct of conspiring Defendants, who acted as members of staff of state election committees, staff of offices of secretaries of states, local partisan operatives, and state partisan operatives in abuse of the offices and state-level partisan election officials, who are responsible for administering the 2020 Federal Elections in the various states. Some of those persons received funds from Zuckerberg Chan, while others received fraudulently obtained federal monies, as disbursed by Congressional Defendants and other federal-level persons, who orchestrated, funded, directed and managed, by third party, the partisan enterprise schemes, to willfully deprive American citizens of their civil rights.

84. Evidence provided by Plaintiffs, obtained from public sources, including media and official records, as submitted into the evidentiary record, show the conduct of willfully conspiring Defendants, who acted as members of staff of state election committees, staff of offices of secretaries of states, local partisan operatives, state partisan operatives in abuse of the offices and state-level partisan-engaged election officials; some of those persons received funds from Zuckerberg Chan while others received fraudulently obtained federal monies as disbursed by federal-level Congressional Defendants, who orchestrated, funded, directed, and managed by third party, the partisan enterprise schemes, to willfully deprive American citizens of their constitutional rights by actively moving to unlawfully change state election rules, procedures, and policies in ways that violated the Help America Vote Act of 2002 and violated the records retention requirements of the 1960 CRA.

**b. Allegations Based on the Export Report by Nate Cain regarding violations of the 1960 CRA.**

85. All factual allegations contained in the expert report by Nate Cain the “Cain Report”) attached hereto as **Exhibit 4**, are hereby incorporated by reference as though fully set forth herein. The following allegations are based on the Cain Report and the research cited and conducted in preparation thereof.

86. All 53 Voting Districts destroyed “paper” and “records” that is required to be retained as various papers came into possession of election officials, pursuant 301 of the 1960 CRA.<sup>31</sup> The items destroyed were security envelopes which contained,

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<sup>31</sup> Direct documentary evidence of these allegations will be submitted in the supplement to be filed to this Amended Complaint.

marked on the face of the envelope a security barcode unique to each ballot inside. Defendants issued unlawful procedures, policies and special waivers, which denied Plaintiffs of their constitutional rights intended to be protected through an available audit of the papers and records relating to the 2020 Federal Election.

87. In addition to the foregoing violations of the 1960 CRA, postage marks are required to be retained as a record to match the security bar code on the envelope to the address of the ballot to ensure a proper audit trail.

88. State Defendants and others acting at the state and local level under color of state law and as part of their conspiracy with the other Defendants, caused the execution and application of these unlawful policies and procedures that violated the 1960 CRA and therefore, violated the integrity of the election process by eliminating the ability to conduct any meaningful audit of the 2020 Federal Election papers, records, and other original materials, all of which are necessary for such an audit.

89. In so, defeating the ability for an audit of these original materials, as prescribed by the 1960 CRA, these acts had the effect of depriving Plaintiffs of their right to a republican form of government and their other constitutional rights related to suffrage.

90. As will be demonstrated in the supplement to be filed to this Amended Complaint, in all 53 Voting Districts, the state and local officials responsible for retaining original papers, records, and materials received and in their possession related to the 2020 Federal Election, implemented records retention policies in clear

violation of section 301 of the 1960 CRA, and by thereby acted under color of state and local law in a manner that willfully deprived Plaintiffs of their right to a republican form of government and their other constitutional rights related to suffrage.

91. The effect of Defendants' willful participation in the conspiracy, perpetrated in concert with private persons and public officials at the state and federal levels, as well as with Defendants named and to be named, who are engaged in the industries of media and social media, was to deprive three hundred and twenty-eight million Americans of their civil rights and the guaranteed Constitutional Republican form of Government.

92. Since 2016, conspirators who willfully participated in the conspiracy at the state and federal levels, have acted in abuse of their official duties, changing policies and procedures to the sole benefit of the partisan enterprises with the willful intent and to deprive three hundred and twenty-eight million Americans of their civil rights and the guaranteed Constitutional Republican form of Government.

93. Defendants engaged in the partisan enterprise known Democratic National Services, a private corporation, knowingly filed false documents before Federal and State Courts falsely identifying the DCCC and the DSCC as committees in charge of day-to-day operations of the Democratic Party.

94. For all reasons listed above and yet to be stated, Plaintiffs allege the sole purpose of Defendants' conduct was to deprive three hundred and twenty-eight million Americans, under color of law in flagrant violation of their constitutionally

protected substantive due process and equal protection rights under the Fourteenth Amendment related to the right to suffrage and to deprive the People of the republican form of government guaranteed in the Constitution.

95. In addition, by conduct of their actions, Defendants acting under color of law denied three hundred twenty-eight million Americans of their due process rights in the conduct of the 2020 Federal Election as protected by the Fourteenth Amendment and the Fifth Amendment related to suffrage.

**c. First Amendment Allegations**

96. “In November 2019, Mark Zuckerberg invited nine civil rights leaders to dinner at his home,” where they discussed and conspired about how to control the “flow of information” on social media to fit their purpose of the “ouster of [President] Trump” from office. In conspiracy with other social media CEOs, including Jack Dorsey, and various persons in the media, including, apparently, Fox News among others, this “Cabal” of news media, social media, and technology “titans of business” conspired to “control the flow of information” by suppressing the political views of Plaintiffs and, in particular their support of particular candidates for Congress and for President Donald J. Trump. *See* Secret History (in particular, section under subheading “The Disinformation Defense”).

97. The overt acts in furtherance of this conspiracy were to censor the free speech of Plaintiffs by placing various “warnings” about “false” content in their posts, which they had subjectively determined to be “disinformation” based on their

discriminatory animus against Plaintiffs for their political views and support of particular candidates.

98. Other overt acts taken or caused by Defendant Zuckerberg and his co-conspirators at Facebook, Instagram, Twitter, and other various social media platforms, included (1) “shadow banning” Plaintiffs’ posts, (2) placing Plaintiffs’ posts in an “echo chamber,” where the reach of their posts was limited as compared to other Americans on social media who shared the political views of the Defendants, (3) suspending Plaintiffs’ accounts, and (4) involuntarily deleting Plaintiffs accounts altogether.

99. In addition, Defendant Zuckerberg participated in the same concert of action with the “Cabal” to cast Plaintiffs who exercised their First Amendment right to peaceably protest at the U.S. Capitol on January 6, 2020 (the “Protest”). The method of this part of the conspiracy was to focus the attention of the media coverage and media postss on various bad actors who committed acts of violence at the Protest and attribute these bad acts to Plaintiffs who will merely peacefully exercising their protect First Amendment rights. It was a classic “guilt by association” scheme designed to paint the Plaintiffs in a false light and stir public outrage against them for the purpose of interfering with their right of free speech and freedom to peaceably assemble.

100. Furthermore, Defendant Roger Sollenberger, a staff writer at Salon.com who, as evidenced by his numerous Tweets in the aftermath of the Protest, zealously

participated in this effort to paint Plaintiffs in a false light to interfere with and retaliate against them for exercising their First Amendment rights.

101. Defendant Sollenberger took his part in the conspiracy even further when he took the extraordinary step of retaliating against Plaintiffs for exercising their First Amendment right to petition the government for redress of grievance by conducting a campaign to spread patent lies and false statements about the nature of Plaintiffs lawsuit, including claiming multiple times that it was a lawsuit designed to reinstall Donald Trump as President, which was clearly a tactic in keeping with the purpose of the Cabal described in Secret History.

102. Sollenberger also ran articles in which he slandered or belittled various filings and components of the lawsuit, including the expert report of Mr. Vanderbol, a U.S. combat veteran whom Sollenberge attempted to discredit by suggesting Mr. Vanderbol's brain injury interferes with his cognitive analytical abilities, which it does not.

103. Mr. Sollenberger's colleague at Salon.com, Justin Pelofsky, also sent counsel for Plaintiffs' multiple emails displaying his clear contempt for Plaintiffs, including one email in which he strongly suggested that Plaintiffs, who are Blacks and Latinos, lack the ability to think for themselves and are merely doing the bidding of the white man, which he suggested was Plaintiffs' counsel. These emails will be attached to a future filing in this case, and Mr. Pelofsky will likely be added as a Defendant.

104. Finally, Mr. Sollenberger teamed up with his lawyer, Anne Champion to send counsel for Plaintiffs a “cease and desist” letter that appears clearly intended for the purpose of intimidating counsel for Plaintiffs for asserting Plaintiffs’ rights in this Lawsuit. The letter contained patently absurd threats based on clearly incorrect legal theories, which is further evidence that the letter was merely intended as intimidation. Then, Ms. Champion took the outrageous step of publicly tweeting the letter, which her client, Mr. Sollenberger, then retweeted with comment.

**d. Specific Failures to Comply with HAVA**

105. HAVA is a statutory scheme enacted by the 107<sup>th</sup> Congress to “right those wrongs” of the 2002 Bush v. Gore and Congressional election debacle where “four to six million” Americans “never had their votes counted” due to “faulty machinery,” “wrongful and illegal purges from voter lists,” and “poorly designed ballots.” 148 Cong. Rec. S10412-02 (Oct. 15, 2002) (statement of Sen. Dodd regarding final Senate conference report).

106. In his speech before Congress regarding the final Senate conference report, Senator Dodd specifically praised Defendants Mitch McConnell and Chuck Schumer, for their “tremendous work” on HAVA, and went on to say HAVA was the “first civil rights legislation of the 21<sup>st</sup> century.” *Id.*

107. In doing so, Sen. Dodd acknowledged both the purpose of HAVA to protect our “most fundamental right as American citizens: the right to vote” in the United States, which he described as a “beacon light of self-government.” *Id.* Sen. Dodd’s comments also specifically shows the intent of Defendants Schumer and

McConnell to deprive Americans of this “most fundamental right” including the right to “self-government” in their willful participation in the conspiracy to violate Plaintiffs’ constitutional rights.

108. HAVA set forth specific “minimum requirements” with which the Defendants, as members of state or federal government, or governmental employees, or elected officials acting under color of law, failed to comply in the conduct of the 2020 Federal Election.

109. The minimum requirements in HAVA stipulated specific duties regarding “mail in ballots,” “registration of voters by mail,” and highly detailed voter identification processes, and other requirements with which Defendants, as members of state or federal government, or governmental employees, or elected officials acting under color of law purposefully or negligently failed to comply.

110. Defendants are members of state or federal government, or are governmental employees, or elected officials acting willfully alongside one another and/or in concert under color of law, who unlawfully used federal monies tied to HAVA to change state voting procedures in a manner which failed to meet lawful requirements defined as “minimum requirements” in HAVA and instead used federal monies for the purpose of causing all 53 federal Voting Districts to fail to comply with federal election law.

111. Defendants as members of state or federal government, or governmental employees, or elected officials acting willfully alongside one another and/or in concert under color of law, engaged in acts of selective enforcement to fraudulently certify

federal elections as valid, when in fact they were unlawful and failed to meet criteria set forth in federal law and state law.

112. Defendants as members of state or federal government, or governmental employees, or elected officials acting willfully alongside one another and/or in concert under color of law, had specific knowledge of administrative requirements due to HAVA, and willfully failed to implement these requirements.

113. Defendants as members of state or federal government, or governmental employees, or elected officials acting alongside one another and/or in concert under color of law, by oath have specific duties which they failed to perform, instead willfully supporting of acts of conspiracy to unlawfully influence a federal election.

114. Defendants as members of government, or governmental employees, or elected officials acting alongside one another and/or in concert under color of law, after Plaintiffs and other third parties raised concern regarding the possibility of an unlawful election engaged in acts to destroy evidence, inhibit discovery, and engaged in fraudulent statements to defend a conspiracy to engage in the conduct described herein.

115. Defendants who are members of U.S. Congress willfully passed the CARES Act to provide federal money used to modify state procedures for federal elections in violation of HAVA and then negligently failed to amend HAVA to accommodate these changes to state procedures for federal elections.

116. The foregoing actions of Defendants, many, if not all, willfully acting alongside one another and/or in concert, resulted in the failure of every election

conducted in the 53 Voting District to fail to comply with the Electoin Integrity Safeguards.

117. A list of many (but not all) of each State’s specific violations of HAVA is attached hereto as **Exhibit 5**.

118. There will also be a supplemental filing that will contain additional exhibits to support the allegations in this Amended Complaint and the same are incorporated herein by reference as those fully set forth.

## V. CAUSES OF ACTION

### **A. COUNT ONE – Conspiracy and conduct to deprive of constitutional rights related to suffrage and the right to a republican form of government under 42 U.S.C. § 1983.**

119. Plaintiffs hereby incorporate all allegations in the foregoing paragraphs as though fully set forth herein.

120. Defendants, which include the federal officials, state officials, and<sup>32</sup> private persons named herein, acted under color of state law—the various states’ elections, laws, regulations, procedures, and administration thereof—related to the 2020 Federal Election, as willful participants in a conspiracy consisting of joint activity with state and local officials, including the state Governors and Secretaries of State named herein, and acted with each state and voting district, to deprive

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<sup>32</sup> The terms “and” and the term “or” are intended throughout this Amended Complaint to be construed in their broadest use possible as “and/or” or similar, except where such interpretation would not make logical or grammatical sense or such interpretation would operate to prevent Plaintiffs from stating a claim upon which relief could be granted.

Plaintiffs of their various rights, privileges, and/or immunities secured by the Constitution of the United States.

121. These various Constitutional rights include, (1) all substantive due process rights related to suffrage and casting a vote in a federal election, (2) all equal protection rights related to the right of suffrage being debased or dilution of the weight of Plaintiffs' votes, and (3) deprivation of Plaintiffs' rights to the republican form of government guaranteed by Article IV, section 4 of the Constitution.

122. At all relevant times, Plaintiffs were acting as private citizens related to their rights of suffrage and rights to a republican form of government.

123. Defendants' conspiracy and conduct against Plaintiffs would deter a person of ordinary firmness from continuing to engage in these protected constitutional rights.

124. Plaintiffs' protected constitutional rights were a substantial and motivating factor for Defendants' conspiracy and conduct to deprive them of these rights.

125. Defendants' decision to violate Plaintiffs' clearly established constitutional rights was not objectively reasonable in light of the circumstances.

126. Defendants' conspiracy described herein caused severe damages to Plaintiffs in depriving them of their Constitutional rights and subjecting them to suffer the dominion and control of an illegitimate Congress, President, and Vice President, which enacted Executive Orders, policies, and/or legislation in violation of

Plaintiffs' rights to a government whose legitimate acts must be by consent of the governed, a republican form of government.

127. Defendants' conspiracy and conduct described herein caused Plaintiffs to suffer other severe damages, including mental anguish and emotional suffering.

**B. COUNT TWO – Conspiracy and conduct to deprive of First Amendment rights and retaliate for the free exercise thereof under 42 U.S.C. § 1983.**

128. Plaintiffs hereby incorporate all allegations in the foregoing paragraphs as though fully set forth herein.

129. Defendants acts described herein, including but not limited to, interfering with and/or retaliating against Plaintiffs for the free exercise of their First Amendment rights to free speech by “controlling the flow of information” related to Plaintiffs' rights to speak about suspected fraud in the 2020 Federal Election and/or to voice support for a particular political candidate and/or to express a political view on social media; rights to petition the government for redress of grievances by the relief sought herein and through verbal acts in protest of the illegitimate Congress counting the Electoral College votes on January 6, 2021 whether at the Capitol in person or on social media, and their rights to peaceably assemble in protest.

130. Defendants conspiracy and conduct in violation of Plaintiffs' First Amendment rights also specifically includes the acts of Roger Sollenberger in concert with his various colleagues at Salon.com, including but not limited to Justin Pelofsky, in retaliation against Plaintiffs for exercising their rights to petition the government for redress of their grievances in this Lawsuit. Such conspiracy and conduct included

spreading objectively and patently false statements publicly about the Lawsuit and conducting an intimidation campaign against Plaintiffs' counsel in this matter for attempting to enforce Plaintiffs' constitutional rights before this Court.

131. At all relevant times, Plaintiffs were acting as private citizens related to matters of public concern.

132. Defendants' acts against Plaintiffs would deter a person of ordinary firmness from continuing to engage in their protected First Amendment rights.

133. Plaintiffs' protected First Amendment rights were a substantial and motivating factor for Defendants' conduct to deprive them of their rights.

134. Defendants' decision to violate Plaintiffs' clearly established constitutional rights was not objectively reasonable in light of the circumstances.

135. Defendants' conspiracy and conduct described herein caused Plaintiffs to suffer severe damages, including mental anguish and emotional suffering.

**C. COUNT THREE Conspiracy to interfere with constitutional rights under 42 U.S.C. § 1985.**

136. Plaintiffs hereby incorporate all allegations in the foregoing paragraphs as though fully set forth herein.

137. By the conduct described in the foregoing paragraphs, Defendants conspired together, whether directly or indirectly, for the purpose of depriving Plaintiffs of their constitutional rights related to their substantive due process rights to suffrage and related equal protection rights, their rights to a republican form of government, and their various rights under the First Amendment.

138. Defendants' conspiracy was also for the purpose of depriving Plaintiffs of their rights to give "support or advocacy in a legal manner toward or in favor of the election of one or more lawfully qualified persons a an elector for President or Vice President, or as a Member of Congress of the United States." § 1985(3).

139. Defendants' conspiracy was also for the purpose of retaliating against Plaintiffs from exercising all of the above constitutional rights.

140. Defendants' conspiracy was motivated by class-based invidious discriminatory animus based on Plaintiffs race, color, political group, political view, or support of one or more particular candidates for office.

141. Defendants' conspiracy and conduct described herein caused Plaintiffs to suffer severe damages, including mental anguish and emotional suffering.

**D. COUNT FOUR - Action for neglect to prevent under 42 U.S.C. § 1986.**

142. Plaintiffs hereby incorporate all allegations in the foregoing paragraphs as though fully set forth herein.

143. Defendants had knowledge of the conspiracy and conduct to be done, as set forth above, had the power to prevent or aid in preventing the commission of the same, and neglected or refused so to do, resulting in the deprivation of Plaintiffs' various constitutional rights set forth herein.

144. Plaintiffs suffered severe damages by Defendants' failure to prevent or aid in preventing the deprivation of their constitutional rights, including<sup>33</sup> mental anguish and emotional suffering.

**E. COUNT FIVE - *Bivens* claim for conspiracy and/or conduct to deprive of constitutional rights related to suffrage and the right to a republican form of government**

145. Plaintiffs hereby incorporate all allegations in the foregoing paragraphs as though fully set forth herein.

146. Defendants, which include the federal officials and private persons named herein, acted under color of state law—the various states' elections, laws, regulations, procedures, and administration thereof—related to the 2020 Federal Election, as willful participants in a conspiracy consisting of joint activity with state and local officials, including the state Governors and Secretaries of State named herein, and acted with each state and voting district, to deprive Plaintiffs of their various rights, privileges, and/or immunities secured by the Constitution of the United States.

147. These various Constitutional rights include, (1) all substantive due process rights related to suffrage and casting a vote in a federal election, (2) all equal protection rights related to the right of suffrage being debased or dilution of the weight of Plaintiffs' votes, and (3) deprivation of Plaintiffs' rights to the republican form of government guaranteed by Article IV, section 4 of the Constitution.

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<sup>33</sup> The term "including" shall always be read in this Amended Complaint to mean "Including but not limited to" unless such meaning does not make logical or grammatical sense in context or would result in a failure to state a claim upon which relief could be granted.

148. At all relevant times, Plaintiffs were acting as private citizens related to their rights of suffrage and rights to a republican form of government.

149. Defendants' conspiracy and conduct against Plaintiffs would deter a person of ordinary firmness from continuing to engage in these protected constitutional rights.

150. Plaintiffs' protected constitutional rights were a substantial and motivating factor for Defendants' conspiracy and conduct to deprive them of their rights.

151. Defendants' decision to violate Plaintiffs' clearly established constitutional rights was not objectively reasonable in light of the circumstances.

152. Defendants' conspiracy and conduct violated Plaintiffs' clearly established constitutional rights according to the standards set forth in relevant case law relating to *Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics*, 403 U.S. 388 (1971)

153. Defendants' conspiracy and conduct described herein caused severe damages to Plaintiffs by depriving them of their Constitutional rights and subjecting them to suffer the dominion and control of an illegitimate Congress, President, and Vice President, which enacted Executive Orders, policies, and/or legislation in violation of Plaintiffs' rights to a government whose legitimate acts must be by consent of the governed, a republican form of government.

154. Defendants' conspiracy and conduct described herein caused Plaintiffs to suffer severe damages, including mental anguish and emotional suffering.

**F. COUNT SIX - *Bivens* claim for conspiracy and/or conduct to deprive of First Amendment rights.**

155. Plaintiffs hereby incorporate all allegations in the foregoing paragraphs as though fully set forth herein.

156. Defendants acts described herein, including but not limited to, interfering with and/or retaliating against Plaintiffs for the free exercise of their First Amendment rights to free speech by “controlling the flow of information” related to Plaintiffs’ rights to speak about suspected fraud in the 2020 Federal Election and/or to voice support for a particular political candidate and/or to express a political view on social media; rights to petition the government for redress of grievances by the relief sought herein and through verbal acts in protest of the illegitimate Congress counting the Electoral College votes on January 6, 2021 whether at the Capitol in person or on social media, and their rights to peaceably assemble in protest.

157. At all relevant times, Plaintiffs were acting as private citizens related to matters of public concern.

158. Defendants acts against Plaintiffs would deter a person of ordinary firmness from continuing to engage in their protected First Amendment rights.

159. Plaintiffs’ protected First Amendment rights were a substantial and motivating factor for Defendants’ conduct to deprive them of their rights.

160. Defendants’ decision to violate Plaintiffs’ clearly established constitutional rights was not objectively reasonable in light of the circumstances.

161. Defendants’ conspiracy and conduct violated Plaintiffs’ clearly established constitutional rights according to the standards set forth in relevant case

law relating to *Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics*, 403 U.S. 388 (1971)

162. Defendants' conspiracy and conduct described herein caused Plaintiffs to suffer severe damages, including mental anguish and emotional suffering.

**G. COUNT SEVEN – Deprivation of equal rights under the law pursuant to 42 U.S.C. § 1981.**

163. Plaintiffs hereby incorporate all allegations in the foregoing paragraphs as though fully set forth herein.

164. Those Plaintiffs who are Blacks and Latinos allege that the conduct of Defendants described herein was motivated by racial discrimination against them and was for the purpose of depriving them of, interfering with, or retaliating against them for the exercise of their rights to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security and property as is enjoyed by white citizens, including Mike Podhorzer and all white persons who helped form and propagate his Cabal.

165. Those Plaintiffs who are white persons allege the same as against all white Defendants pursuant to the Supreme Court case of *McDonald v. Sante Fe Trail Transportation Co.*, 427 U.S. 274 (1976). *See also Saint Francis Coll. v. Al-Khazraji*, 481 U.S. 604, 609 (1987) (*McDonald* “held that white persons could maintain a § 1981 suit . . . by one Caucasian against another”).

166. Defendants' conspiracy and conduct described herein caused Plaintiffs to suffer severe damages, including mental anguish and emotional suffering.

**VI.  
CLASS ACTION**

167. Plaintiffs hereby incorporates the allegations in the foregoing paragraphs as though fully set forth herein.

168. Plaintiffs will soon file a motion for class action certification pursuant to Fed. R. Civ. P. 26 making the following allegations.

169. There are one or more a definable classes of persons injured by the conduct of Defendants. One such class would include all persons who voted in the 2020 Federal Elections. Another such class or classes may include all persons against whom Defendants conspired to deprive of various First Amendment rights or against whom they acted in retaliation for the exercise thereof.

170. The classes to be certified are so numerous that joinder of all members is impracticable. Indeed over 150 million Americans voted in the 2020 Federal Elections. The number of potential class members whose First Amendment rights were violated by Defendants' conspiracy and conduct is likely so numerous that it cannot reasonably be estimated. There are at least 75 million Americans who supported Donald Trump and were likely victims of Defendants conduct, as described herein and in Secret History.

171. The questions of law and fact are common to each putative class since the class members have suffered the same injuries by the same or similar conduct of the Defendants.

172. The putative classes have claims that are typical of all class members.

173. Plaintiffs, as members of the various proposed classes, are representatives with interests that are common to the classes and will fairly and adequately protect the interests of the putative classes. There is no conflict of interest between Plaintiffs and the members of the putative classes.

174. Despite the media spin and criticism, Plaintiffs' undersigned lead counsel has over 10 years of relevant and extensive experience in the issues concerning this Lawsuit. Such experience includes litigating multiple federal court class and collective actions in the areas of employment law, complex commercial, and complex chapter 11 bankruptcy litigation as an associate and later senior counsel for two large national law firms over an 8-year span. Lead counsel gained additional valuable first-chair courtroom and litigation experience as an associate in a boutique commercial litigation for roughly 18 months before returning to large-firm practice.

175. The practice of employment law is, in large part, the practice of civil rights and constitutional rights. Counsel's experience has included mostly outside counsel work but also includes, as is certainly well-known by now, in-house employment law counsel and human resource management for a workforce of over 1,000 employees.

176. Counsel's experience in researching and analyzing issues of constitutional law dates back to law school at The University of Texas at Austin, where he was associate and later senior editor for the Texas Review of the Law and Politics, which regularly publishes scholarly articles on such issues. Counsel also has been mentored extensively by various litigators and appellate lawyers in these fields

with many years of experience. Said counsel has been lead counsel or has effectively acted as lead counsel on multiple complex federal court lawsuits including class or collective actions.

177. Plaintiffs' co-counsel adds many years of valuable first-chair courtroom and trial experience as a long-time state court prosecutor, eventually opening her own practice where she continued such experience. Co-counsel brings extremely valuable evidentiary analysis, legal analysis, litigation management, courtroom skills, and various other valuable skills to Plaintiffs' legal team. Both attorneys have done extensive work gathering evidence, conducting legal research, and legal analysis in an extraordinarily small time of a few weeks, doing what would normally take a small army of attorneys to accomplish. Counsel is confident that they will be able to recruit more than enough other attorneys to assist them with this lawsuit going forward.

## **VII.**

### **APPLICATION FOR INJUNCTIVE RELIEF, INCLUDING A TEMPORARY RESTRAINING ORDER, PRELIMINARY INJUNCTION, AND PERMANENT INJUNCTION**

#### **A. Plaintiffs' Desperate Plea Calling on the Courage of This Court.**

178. Plaintiffs hereby incorporates the allegations in the foregoing paragraphs as though fully set forth herein.

179. Plaintiffs' Second Amended Motion for Temporary Restraining Order (the "Motion") shall be filed separately. The Motion is amended to accommodate a substantial amount of new supporting evidence, much of which is attach to this Amended Complaint.

**B. Grounds for Restraining Order and Preliminary Injunction.**

180. Plaintiffs will request issuance of summons and practicable methods of service for the Defendants, though service of each Defendant is likely not practicable prior to the time within which a Temporary Restraining Order should be granted, since the federal officials named in and affected by the relief requested in this lawsuit continue to take dramatic action to drastically change the policies and laws of this country in violation of Plaintiffs' and the putative class members<sup>34</sup> constitutional rights. Accordingly Plaintiffs request a temporary restraining order with notice or, alternatively, without notice to Defendants.

181. The factual allegations and legal and equitable grounds for relief and arguments contained in Plaintiffs' various versions of and supplemental filings related to their requests and application for a temporary restraining order and preliminary and permanent injunctive relief, (Docs. 1, 2, 5, 6, 7, 8, and 10), including the related proposed forms of orders, are hereby incorporated by reference into this Section VII, Plaintiffs' Application for Injunctive Relief and into Section IV, the Statement of Facts, as though fully set forth herein and therein, respectively as part of Plaintiff's application for injunctive relief.

**VIII.  
ATTORNEY FEES & COSTS**

182. Plaintiff are entitled to an award of attorney fees and costs under 42 U.S.C. § 1988(b) and hereby plead for the same.

**IX.**

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<sup>34</sup> Throughout this Amended Complaint, the term "Plaintiffs" shall include all putative and potential class members, which includes at least 150 million Americans.

## PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, upon jury trial of this matter, plead for judgment against Defendants for the following:

- a. Permanent injunctive relief in the form of a new federal election for both Congress and the President and Vice President.
- b. Permanent injunctive relief forever restraining Defendants from participating in any action relating to the process of electing public officials, other than casting their own lawful vote as a citizen of the United States, or at least restraining Defendants from such participation in the new federal election to be ordered after trial on the merits,
- c. Permanent injunctive relief forever restraining Defendants from violating Plaintiffs constitutional rights described herein,
- d. General Damages in an amount to be determined at the time of trial;
- e. Punitive Damages in an amount to be determined at the time of trial;
- f. Reasonable attorneys fees' and costs of suit;
- g. Prejudgment and postjudgment interest.

And all other general and special relief, whether at law or in equity as the Court may deem necessary or proper to which the Plaintiffs may be justly entitled.

Respectfully submitted to the Honorable Court this 10<sup>th</sup> day of February, 2021.

*/s/ Paul M. Davis*

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Paul M. Davis  
Texas Bar Number 24078401  
Admitted to West. Dist. TX  
[paul@davissorelle.com](mailto:paul@davissorelle.com)  
Kellye SoRelle  
Texas Bar Number 24053486  
Admitted *pro hac vice*  
DAVIS SORELLE, P.C.  
3245 Main St., Suite 235-329  
Frisco, TX 75034

Phone: 713-726-4020

Fax: 469-815-1178

ATTORNEYS FOR PLAINTIFFS