LOOK AHEAD AMERICA

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For Immediate Release

Braynard Responds to Dominion's SECOND Letter: Here We Go Again

Washington DC – On February 26, Dominion Voting Systems' lawyers sent a second letter harassing Look Ahead America Executive Director Matt Braynard.

Matt Braynard responded with the following statement:

> I would suggest that we are becoming pen pals, but I'm afraid that would result in another frivolous demand for retraction because these letters are not, in fact, written in pen.
>
> My lawyers at Dhillon Law Group submitted an appropriate response and I'll let that letter speak for itself.
>
> And I will continue to speak out about black box voting equipment and Look Ahead America will continue to lead the way in getting it banned in the United States.

MATT BRAYNARD is the former Director of Data and Strategy for President Trump's 2016 Campaign, was the director and founder of the Voter Integrity Project in the aftermath of the 2020 general election, and is the founder and executive director of Look Ahead America, a 501c3 organization dedicated to voter integrity, patriotic issues, and registering, educating, and turning out to vote disaffected, patriotic Americans.

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February 26, 2021

By Email
Harmeet K. Dhillon
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Re: False Statements About Dominion.

Ms. Dhillon:

Mr. Braynard posted a video on Twitter yesterday that he describes as his "direct response" to Dominion's letter.[1] In the video, your client makes two more false accusations about Dominion.

First, he falsely claims that Dominion has a monopoly on US elections. As Mr. Braynard is well aware, Dominion does not have a monopoly on US elections. It competes with multiple companies. Mr. Braynard's Twitter is replete with references to Dominion's competitors, removing any doubt that Mr. Braynard has actual knowledge of the falsity of his claim that Dominion is a monopoly.

Second, Mr. Braynard falsely claims that Dominion's equipment and software are "unavailable for examination by government officials." This is also demonstrably false. Dominion's software and equipment is audited by the U.S. Election Assistance Commission ("EAC")—an independent government agency tasked with "maintaining the reliability and security of the voting systems" used throughout the United States.[2] Moreover, Dominion's voting systems are subjected to "a series of tests that include logic and accuracy testing prior to the use of voting machines in

[1] Matt Braynard (@MattBraynard), Twitter, Feb. 24, 2021, 10:52 a.m., https://twitter.com/MattBraynard/status/1364604186084655104?s=20.

[2] Elections Assistance Commission, *Certified Voting Systems, About the Testing & Certification Program*, https://www.eac.gov/voting-equipment/certified-voting-systems.

polling places" to ensure accuracy.[3] And after the election, "there are numerous post-election related audits . . . to both verify the completeness and the accuracy of the vote."[4]

We ask that Mr. Braynard retract his false claims and we renew our request that he retain all materials relevant to his claims about Dominion.

Regards,

Thomas A. Clare, P.C.

Megan L. Meier

[3] Elections Assistance Commission, *How the U.S. Election Assistance Commission Facilitates Fair and Secure Elections*, Dec. 3, 2020, https://www.eac.gov/news/2020/12/03/how-us-election-assistance-commission-facilitates-fair-and-secure-elections.

[4] *Id.*

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March 4, 2021

VIA E-MAIL ONLY

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Re: Your Frivolous Dominion Demand Letter 2.0

Counsel:

We write in response to your letter dated February 26, 2021 regarding certain statements made by our client, Mr. Matthew Braynard, concerning your first frivolous demand letter to him, dated February 15, 2021. Your most recent missive on behalf of your Dominion clients is yet another exercise in pettifoggery.

First, you claim that your clients do not have any "monopoly" on U.S. elections. There are several commonly accepted meanings of the word "monopoly"[1] – and your clients meets at least two of them. Merriam-Webster provides one popular definition of the word: "exclusive ownership through legal privilege, command of supply, or concerted action."[2] Dominion fits the bill. First, note that "U.S. elections" are conducted in every state and locality in America. Many states and localities where U.S. elections occur, including Colorado, New York, Michigan, and Illinois,[3] have awarded your clients a literal monopoly on the U.S. elections conducted in those jurisdictions – that is, the *exclusive* license to provide voting machines and services to support their elections. Your nit-picking denial that your clients have a literal monopoly on U.S. elections in multiple jurisdictions, is specious.

Dominion also fits other commonly understood definitions of "monopoly." Monopoly power requires, at a minimum, a substantial degree of market power, which Dominion no doubt

[1] We will stipulate that by the word "monopoly," our client was not referring to the Parker Brothers/Hasbro board game classic by the same name – though your client, like Rich Uncle Pennybags, has certainly become adept at plying its lucrative franchise in desirable locations throughout the country.
[2] https://www.merriam-webster.com/dictionary/monopoly.
[3] *See* https://www.dominionvoting.com/about.

possesses. The Supreme Court of the United States has defined monopoly power as "the power to control prices or exclude competition." *United States v. E. I. du Pont de Nemours & Co. (Cellophane)*, 351 U.S. 377, 391 (1956). Dominion arguably has such power, given the acknowledgment by Dominion companies on their website that their products are employed in nine of the top twenty counties in America and are used by 40% of U.S. voters.[4] *See Hayden Publ'g Co., Inc. v. Cox Broad. Corp.*, 730 F.2d 64, 69 n.7 (2d Cir. 1984) ("[A] party may have monopoly power in a particular market, even though its market share is less than 50%.").

Indeed, Dominion shareholders would probably be shocked and alarmed to learn that their lawyers now claim that Dominion does *not* have substantial market power. After all, you have repeatedly claimed damages of $1.3 billion from multiple parties for alleged defamation of your clients – revenues that reflect a significant market share indeed.[5] Shareholder, board, and executive communications would be a fruitful avenue for discovery on this point, should your client initiate a lawsuit on this sham pretext. *Your* clients are now on notice that should they choose to pursue this frivolous, threatened claim, their internal communications concerning market share are at issue, and therefore must be preserved and not destroyed, altered, or otherwise made unavailable.

Even if your clients were not a literal monopoly, I am sure you are aware that rhetorical hyperbole is not defamatory. *See Beverly v. Trump*, 182 F.3d 183, 187–88 (3rd Cir. 1999). At a minimum, Mr. Braynard's statement falls into this category as a vigorous and hyperbolic rebuke, not a specific factual allegation of a "nationwide monopoly" in our country, which does not conduct nationwide elections.

Your letter also mischaracterizes Mr. Braynard as having stated that Dominion's equipment and software are "unavailable for examination by government officials." This formulation is a straw man. Mr. Braynard actually stated: "Black box voting equipment runs on software and hardware that is a corporate secret and unavailable for examination by government officials and the public."

Even if your letter had not misrepresented Mr. Braynard's statement, *and* the statement could reasonably be construed to be a reference to your client, truth is a valid defense in this

[4] *See* https://www.dominionvoting.com/about/.

[5] Rich Uncle Pennybags would be proud.

instance. While Dominion may allow a *certain* federal government agency to audit or test its equipment and software in a limited fashion from time to time, it is still the case that the actual government parties that contract with Dominion are unable to "examine" the equipment and software in detail. Dominion's software is known colloquially as "black box," not open source, and thus as a practical matter cannot be inspected or audited. This fact has been widely reported in the media – for example, one report on Dominion's contract with Michigan provides that the Dominion required that the state "agree not to reverse engineer or otherwise attempt to derive the [Dominion] source code."[6] Georgia state senator Elena Parent also recently testified[7] that state officials were not allowed to inspect Dominion's source code.

Mr. Braynard favors open-source software that may easily be reviewed and tested by end users, while Dominion sells exactly the opposite: software that its users are forbidden, by contract and intellectual property restrictions, from examining and testing. Here again, Mr. Braynard's statement is factually true, notwithstanding the sophistry in your letter. I could go on to discuss other defenses to your claims, but you already know them.

Your letter concludes by repeating an officious evidence preservation demand – yet again, the letter reveals *nothing* that an objective reader could reasonably interpret as identifying bona fide grounds for litigation against Mr. Braynard on your clients' behalf. Your evidence preservation demand is therefore specious,[8] and because it lacks any legal or factual basis, will continue to be disregarded.

In conclusion, it is possible that any number of the recipients of the dozens (if not more) demand letters and lawsuits you have flung into the public realm on behalf of Dominion, may have actually stated materially false, non-privileged, and damaging statements about your clients. However, Mr. Braynard is not one of them. And your repeated barrage of overhyped and underwhelming allegations leaves the unmistakable impression that your letters are designed not to assert colorable legal claims, but rather to bully and harass our client – a potential witness in upcoming litigation and legislative hearings concerning election law matters.

[6] https://www.politico.com/news/magazine/2020/11/03/2020-election-recount-ballot-machine-technology-law-433871.
[7] https://www.youtube.com/watch?v=6CnFhbNP_1c.
[8] *See, e.g., Chen v. District of Columbia*, 839 F. Supp. 2d 7, 12 (D.D.C. 2011) (explaining that a party only has a duty to preserve potentially relevant evidence once litigation is anticipated).

Your continued harassment of our client is improper and ethically dubious. Mr. Braynard will continue to exercise his constitutional rights to comment on matters of public importance, including election-related matters.

Regards,

Harmeet K. Dhillon