

**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE**

US DOMINION, INC., DOMINION	)	
VOTING SYSTEMS, INC., and	)	
DOMINION VOTING SYSTEMS	)	
CORPORATION,	)	C.A. No. N21C-03-257 EMD
	)	
Plaintiffs,	)	<b>CONSOLIDATED</b>
	)	
v.	)	
	)	
FOX NEWS NETWORK, LLC and	)	
FOX CORPORATION,	)	
	)	
Defendants.	)	

**FOX DEFENDANTS’ APPLICATION FOR CONTINUED SEALING OF SUMMARY JUDGMENT MATERIALS**

The summary judgment record in this consolidated case consists of over 15,000 pages of cross-motion briefing, declarations, and documents. Over 12,000 of those—80%—were filed by Dominion.

Dominion’s approach was expansive, to say the least. Throughout three rounds of briefing, Dominion jammed the record with 700 exhibits, many of which were personal text messages between Fox employees with no connection to any of the challenged broadcast or statements. On top of this, Dominion attached other internal Fox communications—often inflammatory and headline-grabbing, but irrelevant to any issue in dispute. Some exhibits were so plainly irrelevant that Dominion forgot to cite or reference them in their papers. Although Dominion has

now agreed to withdraw those discrete uncited exhibits, filing slipsheets in their place, a large number of legally irrelevant exhibits remain filed on the docket.

From a media perspective, Dominion’s kitchen-sink approach worked. After a careful redaction process consistent with Court rules and Delaware law, almost all the materials potentially relevant to the merits of the motions were unsealed and made public. That has resulted in dozens and dozens of news articles commenting on a subset of Dominion’s splashy (but legally questionable) defamation “evidence.” As to the remaining materials, both Fox and Dominion made redactions. In a puzzling attempt at juxtaposition, Dominion stressed in its March 9 filing—and told the press one day earlier—that it redacted only “*six* documents” across “more than *nine hundred* exhibits.” D.I. 1168 at 2 (emphasis in original). Needless to say, those redaction numbers speak more to the judicious nature of Fox’s summary judgment papers than they do to Dominion’s appetite for public disclosure. It is no surprise that Dominion has less redactions when it selected and filed 80% of the papers, a good portion of which were irrelevant and internal Fox communications.

From a legal perspective, it remains to be seen whether Dominion’s record-jamming of irrelevant evidence will allow it to survive summary judgment. For now, the sole questions before this Court are whether the public has any right of access to these pending papers at all, particularly those that are *per se* irrelevant, and whether good cause exists for the continued sealing of certain materials. On Fox’s end, two

main buckets remain under seal: (1) limited redactions and related exhibits that reflect sensitive business, journalistic, or personnel information, and (2) certain uncited exhibits that are *per se* irrelevant.

First, Fox proposed redactions and withheld certain documents that fell within five narrow categories—confidential third-party sources; proprietary newsgathering processes; nonpublic financial information; sensitive business and personnel details; and personal identifying information. The harms associated with the public disclosure of such sensitive, propriety, and personal details far outweigh the public’s interest in these marginally-relevant (if not outright irrelevant) documents, so continued sealing is warranted.

Second, the irrelevant documents that were never cited or referenced in the papers remain under seal. There is no public right of access to irrelevant documents that never should have been filed. This is true regardless of confidentiality or sensitivity, but it is especially true for six internal Fox documents attached (uncited) by Dominion.

As a result, the Court should deny the pending notices of challenge brought by third-party news organizations and Dominion. D.I. 1009 (New York Times/National Public Radio); D.I. 1044 (Randall Chase/AP); D.I. 1056

(Dominion); D.I. 1170 (New York Times/NPR/AP, together, the “Media Parties”); D.I. 1168 (Dominion) (“Notices of Challenge”).<sup>1</sup>

At minimum, the Court should deny these challenges as premature. Only “judicial records”—documents that “play a role in the adjudicative process, or adjudicate substantive rights”—are subject to the presumption of public access. *In re Application of United States for an Order Pursuant to 18 U.S.C. § 2703(D)*, 707 F.3d 283, 290 (4th Cir. 2013). Here, the Court has not yet adjudicated the parties’ summary judgment motions, so no associated papers are yet “judicial records” subject to that presumption—most certainly not the internal, confidential Fox communications that were never cited and that are thus *per se* irrelevant to the Court’s determination. At a minimum, the Court should defer ruling on the Notices of Challenge until it decides the parties’ summary judgment motions.

## ARGUMENT

Courts have recognized a presumptive right of access to judicial records. *See, e.g., Gannett Co. v. State*, 571 A.2d 735, 742–43 (Del. 1989) (recognizing qualified First Amendment right); *C. v. C.*, 320 A.2d 717, 723 (Del. 1974) (recognizing qualified right under common law). This right, however, is neither “immutable” nor “absolute.” *Gannett*, 571 A.2d at 742 (citing *Richmond Newspapers, Inc. v.*

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<sup>1</sup> This application pertains only to the continued sealing of summary judgment materials. Fox will respond to the balance of Randall Chase’s notice of challenge in accordance with the schedule set by the Court’s February 17, 2023 Order. D.I. 1058.

*Virginia*, 448 U.S. 555 at 585–86 (1980) (Brennan, J., concurring), and *Press-Enter. Co. v. Superior Ct. of Cal.*, 478 U.S. 1, 8 (1986)). Public access to sealed summary judgment material is not warranted here because (i) the challenged materials are not judicial records presumptively subject to public right of access, and (ii) even if they were judicial records, there is good cause to keep them confidential.

**I. The pending summary judgment papers are not presumptively public judicial records.**

The Court can and should deny the Notices of Challenge for a simple reason: it has not yet resolved the summary judgment motions, so no presumption of public access has yet attached to any associated papers. This is particularly true for exhibits (whether full or partial) that were not cited in the briefing at all. Those materials are irrelevant to the pending summary judgment motions, and there is no public right to view irrelevant material.

*Per se Irrelevant Materials.* As background, the parties filed hundreds of exhibits in connection with the three cross-motions for summary judgment, which resulted in some improper filing practices. For example, Dominion appended 15 exhibits to its papers that are nowhere quoted, cited, or even referenced. Fox inadvertently did the same for 3 exhibits. *See* Exhibit A at n.2. The parties have agreed that those exhibits have no bearing on the Court’s decision, and have thus agreed to withdraw them, filing slipsheets in place of public versions. Dominion also withdrew from consideration four duplicate exhibits (Exhibits 502, 504, 506,

and 533). Those withdrawn exhibits should remain under seal because they never should have been filed in the first place. This is especially true for the internal Fox communications that are nonpublic (*e.g.*, Exhibits 202, 203, 388, 389, 545, 549).

The parties have agreed on a similar approach for deposition transcripts and expert reports, many of which Dominion (unnecessarily) filed in their entirety—even though Dominion’s papers cited or referenced only a part of them. As to those, the parties agreed to excerpt just the pages cited in those exhibits, with one page on each side of the citation for context, and to file public versions of the excerpts.<sup>2</sup>

At the very least, the Court should continue to seal the withdrawn exhibits and the full transcripts/reports because they are *per se* irrelevant to the pending motions. Dominion concedes this, and the Court should reject any attempt by the Media Parties to argue otherwise. As this Court has recognized, “the public has a right to access judicial records, but do not have a right to access documents that do not qualify as such.” D.I. 901, 12/21/2022 Hr’g Tr. 9:20–10:8 (citing *FTC v. AbbVie Prods. LLC*, 713 F.3d 54 (11th Cir. 2013)). The mere act of filing something in connection with a summary judgment brief does not entitle the public to know the contents of every paper and line filed (among thousands of papers), regardless of

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<sup>2</sup> Per the parties’ agreement, each party excerpted the transcripts of its own witnesses. As a result, Fox excerpted the minuscrypt transcripts Dominion filed. Because the transcripts were in minuscrypt, some of the “redactions” that appear in the transcripts are not Fox’s substantive redactions but rather excerpted material per the parties’ agreement. Those excerpted sections are not listed in Exhibits A or B.

their nexus to the dispute; whether they are even cited or used; or whether they were filed inadvertently. *Contra* D.I. 1009 at 5 (New York Times and NPR suggesting as much). And this is a functional analysis, not a formal one. “[W]hether a document is a judicial record should turn on the use the court has made of it rather than on whether it has found its way into the clerk’s file.” *N. Jersey Media Grp. Inc v. United States*, 836 F.3d 421, 435–36 (3d Cir. 2016) (quotation omitted); *see also* *Newsday LLC v. County of Nassau*, 730 F.3d 156, 166–67 (2d Cir. 2013) (“judicial record” analysis examines “the degree of judicial reliance on the document in question and the relevance of the document’s specific contents to the nature of the proceeding”).

The Court has enforced these principles before. In December, the Court denied Dominion’s unsealing request when Dominion (again) attached irrelevant documents to a filing. The Court explained that it did not “believe that there was a public need to know [the documents’ contents] because it wasn’t relevant to the decision.” D.I. 901, 12/21/2022 Hr’g Tr. 167:16-18; *see also* D.I. 161, Order Denying Application at 3 n.16. The Court was rightly “concerned about placing documents that are not relevant to the situation into pleadings to then waive the flag and argue that the public has a right to have an interest in this, when this was a strictly narrow issue . . . that applied to a motion to dismiss, and instruments were included that were not used in my decision.” D.I. 901, 12/21/2022 Hr’g Tr. 164:13-20; *accord* *N. Jersey*, 836 F.3d at 435–36.

The same concerns apply here. Dominion has attached to its summary judgment filing documents that it does not cite or discuss in its corresponding briefs and that thus cannot be relied upon in deciding the motions. There is no public interest in viewing non-cited materials that are *per se* irrelevant to the Court’s adjudication of the parties’ summary judgment motions, so the Notices of Challenge should be denied to the extent they seek to access them.

***Cited-But-Not-Yet-Considered Materials.*** As to the balance of Fox’s redactions, the challenges are premature. As this Court has observed, the presumption of public access attaches to “[e]xhibits and evidence presented at trial” as well as “materials relied upon by the Court when rendering judicial decisions.” *Optical Air Data Sys., LLC v. L-3 Commc’ns Corp.*, 2020 WL 710264, at \*2 (Del. Super. Ct.). Here, there has been no “judicial decision” and no delineation of “materials relied upon” in reaching that decision. This Court has already noted its agreement with the “federal process, which distinguishes between those items which would be considered public or judicial records, and those that may not.” D.I. 901, 12/21/2022 Hr’g Tr. 9:22–10:1. The materials in this category do not yet qualify as “judicial records” within the meaning of federal public access principles. *See, e.g., FTC v. AbbVie Prods. LLC*, 713 F.3d 54, 62 (11th Cir. 2013) (access to judicial records ensures that the public can “understand a court’s decision”). Without a



decision, there is no “product of the court” for the public to “judge.” *Horres v. Chick-fil-A, Inc.*, 2013 WL 1223605, at \*1 (Del. Ch.).

Put another way, it is too early to tell whether the Court will consider or rely on any, some, or all of these still-sealed materials in resolving the parties’ summary judgment motions. Given the overlapping nature of the cross-motions, the volume of summary judgment papers already unsealed, and the limited relevance (if not complete irrelevance) of certain exhibits cited by Dominion, it is not unreasonable to think that this Court may ultimately decline to consider some of the evidence before it. These limited materials are not judicial records (at least not yet) and should not be subject to the presumption of public access. The Court should deny the Notices of Challenge as premature.

**II. Even if there were a right of access, Fox has shown good cause to maintain confidentiality.**

“Even when a first amendment right of access exists, it is qualified, and not absolute.” *Gannett*, 571 A.2d at 742. The right of access can be overcome by a showing of “good cause.” Super. Ct. Civ. R. 5(g)(4). Good cause exists where “the public interest in access to Court proceedings is outweighed by the harm that public disclosure of sensitive, non-public information would cause.” *Tornetta v. Musk*, 2022 WL 130864, at \*3 (Del. Ch.) (quoting Ct. Ch. R. 5.1(b)(2)).

“Examples of categories of information” that may remain under seal include “sensitive proprietary information” and “sensitive financial, business, or personnel

information.” *Id.* Dominion concedes in its notice of challenge that “[g]ood cause exists pursuant to Rule 5(g) to seal documents containing (i) trade secrets; (ii) third-party confidential material; or (iii) nonpublic financial information.” D.I. 1056 at 3 (quotation omitted). As discussed below (and listed document-by-document in the attached charts),<sup>3</sup> disclosure of these and related categories of information would unnecessarily harm Fox’s business interests and invade its employees’ privacy, with no countervailing benefit to the public’s understanding of this defamation case. *See Al Jazeera Am., LLC v. AT&T Servs.*, 2013 WL 5614284, at \*5 (Del. Ch.) (weighing whether continued sealing “impinge[s] on the public’s understanding of the disputes before this Court”). The Court should thus deny the Notices of Challenge.<sup>4</sup>

***Confidential sources.*** First, Fox withheld or proposed redactions to a handful of exhibits to prevent the public disclosure of information protected by New York’s absolute privilege for confidential sources and information. *See* N.Y. Civ. Rights

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<sup>3</sup> For ease of reference, Exhibit A shows redactions to or withholding of exhibits, while Exhibit B shows redactions to briefing.

<sup>4</sup> The Court should also disregard Dominion’s unsupported accusation that “Fox is not applying an objective standard to its redaction decisions.” D.I. 1168 at 2 n.2 (identifying two examples of an apparent inconsistency between briefing and exhibit redactions). Fox strived for consistency during its review and redaction process. But this process involved—in Dominion’s own words and emphasis—“more than **nine hundred** exhibits to the parties’ collective summary judgment briefing,” 80% of which were filed by Dominion. *See id.* Given the number of exhibits and the compressed timeframe involved, it is no surprise that inadvertent mistakes happened, and Fox is willing to address the issue. But those isolated mistakes do not signify that Fox failed to apply an “objective standard.”

Law § 79-h(b) (“Absolute protection for confidential news.”). Exhibits 208, 435, 454, 504, and 531, for example, have been withheld from public disclosure because each consists of communications from third-party individuals who could be considered sources and from whom Fox does not have express permission to make their communications or identities public. In total, only 45 documents have been withheld or redacted on this basis—out of hundreds filed in connection with summary judgment briefing.

This Court has upheld assertions of the confidential source privilege twice. D.I. 798, 866 (orders denying exceptions regarding Pirro and Hannity testimony). The same principles apply with equal if not more force here, in the context of disclosure to the public. As the Media Parties concede, “plenty that goes on in newsrooms is indeed not only confidential but privileged[.]” D.I. 1170 at 5. Fox agrees.

But the Media Parties then take it a step further, suggesting that documents lose their privileged and confidential status, for all purposes, if they are not mechanically logged on a case-specific privilege log. *See id.* at 2-5. That suggestion lacks support. That these 45 documents were disclosed to Dominion during the discovery process—under the carefully-negotiated protections of the governing confidentiality order—does not vitiate their inherent confidentiality or waive their

privilege status for all purposes. This information is confidential, is protected by New York's source privilege, and must remain non-public.

***Proprietary newsgathering and reporting information.*** The second category of redacted or withheld material reflects confidential newsgathering and reporting information, which constitutes “sensitive proprietary information” and “sensitive... business information[.]” Ct. Ch. R. 5.1(b)(2).

For a media company like Fox, proprietary newsgathering processes are the kind of competitive business information that justifies maintaining the seal. This category includes documents that discuss concrete details of how editorial decisions are made, how reporters source their stories, and how Fox's “brainroom” conducts fact-checks. For example, Exhibits 425, 426, 207 reflect personal notes from interviewing guests before an upcoming show; Exhibits 159, 160, 318, 409 reflect specific brainroom research; and Exhibits 199, 216, 226, 292, 366, 382, 423, 428, 447, 452, 453, 463 discuss specific stories and guests for upcoming shows. These are not generalized documents discussing how Fox shows are run, or what occurred *after* a given show. And these are not—as the Media Parties suggest—documents reflecting the mere “fact” that “reporters interview sources” and “write, edit, check copy, and re-write.” D.I. 1170 at 5. Rather, these are specific notes or communications evidencing specific newsgathering activities and processes.

Such activities and processes are especially sensitive given the free-speech issues they implicate. *See, e.g., Branzburg v. Hayes*, 408 U.S. 665, 681 (1972) (“[W]ithout some protection for seeking out the news, freedom of the press could be eviscerated.”); *Baker v. Goldman Sachs & Co.*, 669 F.3d 105, 109 (2d Cir. 2012) (New York law protects “unpublished details of the newsgathering process”); *People v. Monroe*, 370 N.Y.S.2d 1007, 1013 (1975) (recognizing “inherent right of confidentiality which attaches to the gathering and reporting of the news”). Revealing such detailed and specific information publicly could risk a “chilling effect” on future newsgathering activity—a harm that extends to the viewing public as well as to Fox. *Cf. People v. Korkala*, 99 A.D.2d 161, 166–67 (N.Y. App. Div. 1984).

Acknowledging the public interest in the issues underlying this case, Fox has been judicious in narrowing the materials redacted or withheld under this newsgathering category. As the Court can see from the public filings, Fox’s redactions are limited to true examples of communications about newsgathering or the journalistic process, following the direction of the Special Master in his March 9, 2022 Ruling. *See* D.I. 218, Mar. 9, 2022 Order ¶¶ 8-9 (upholding confidentiality designation over documents that “reveal a proprietary journalistic process”). Consistent with that judicious narrowing process, the public has already learned much about Fox’s general editorial processes, decision-making, and outcomes

related to Dominion’s defamation claim; this and related topics have been the subject of dozens and dozens of news articles to date.

Along those lines, the question before this Court is not whether Dominion can publish these exhibits at trial, subject to a showing of admissibility. Trial use is a question for a different day. The question before the Court today is whether the *public* (including Fox’s competitors) should have access to such specific and proprietary details now—beyond what has already been disclosed—before trial and in connection with a yet-unresolved summary judgment. Prematurely disclosing these other details on Fox’s internal and proprietary journalistic processes may allow competitors to appropriate these processes for their own competitive advantage, to Fox’s detriment, and may chill future newsgathering activity. This potential prejudice far outweighs any marginal public interest in such additional details at this time. *See, e.g., Kaleo, Inc. v. Adamis Pharms. Corp.*, 2019 WL 11680196, at \*1 (D. Del. July 16, 2019) (finding good cause to seal competitive business information). The limited portions redacted or withheld by Fox should remain non-public.<sup>5</sup>

***Financial information.*** The third category of redacted material qualifies as “sensitive financial” information. Ct. Ch. R. 5.1(b)(2). Courts routinely allow the

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<sup>5</sup> Again, contrary to the Media Parties’ suggestion (D.I. 1170 at 5), the fact that Fox did not log these sensitive communications as privileged says nothing about whether they merit continued confidential treatment; privilege and confidentiality are two separate inquiries.

continued sealing of confidential financial information. *See, e.g., Cantor Fitzgerald, Inc. v. Cantor*, 2001 WL 422633, at \*1–2 (Del. Ch.); *Quantum Tech. Partners IV, Ltd. P’ship v. Ploom, Inc.*, 2014 WL 2156622, at \*6 (Del. Ch.) (LeGrow, M.). The result should be the same here.

These redactions are limited. In total, there are only 3 Fox exhibits with redactions on this basis (and 16 related redactions in briefing), all of which reflect specific financial numbers and metrics related to MyPillow advertising spend. Fox has a legitimate business interest in maintaining the confidentiality of this information to preserve its competitive standing in the fiercely competitive advertising space, as well as to protect the value and utility of the information to its business. Even Dominion has redacted its confidential financial information (D.I. 1168 at 2 n.1 (acknowledging same)), openly telling the press in a spontaneous communication on March 8 that the public disclosure of such information could give Dominion’s competitors an advantage if they had access to it. The same holds true for Fox.

On the flip side, such non-public financial information has little to no bearing on the merits of this defamation dispute. The Court should allow the continued sealing of Fox’s targeted redactions for confidential financial information.

***Sensitive business and personnel information.*** The fourth category reflects “sensitive business[] or personnel information” under Ct. Ch. R. 5.1(b)(2).

On this category too, it bears repeating: Fox is not redacting high-level discussions about business issues, competition, or its financial performance. But *details* about specific competitive analyses (e.g., Exhibits 221, 515, 516); strategic advertising partnerships (e.g., Exhibits 523, 525); specific personnel and contract discussions (e.g., Exhibits 380, 417); and confidential ratings numbers (e.g., Exhibits 390, 397, 518)—those are a different story. Courts routinely recognize that business information about “strategic plans [or] potential advertising and marketing campaigns” constitutes “sensitive commercial information [that] is entitled to confidential protection.” *Joint Stock Soc’y. v. UDVN. Am., Inc.*, 104 F. Supp. 2d 390, 396 (D. Del. 2000); *Kaleo*, 2019 WL 11680196, at \*1 (“future competitors” could use the details of a party’s business strategies “as a roadmap for their own potential products that could undercut [they party’s] business interests”); *Micro-Coax, Inc. v. Krier*, 2006 WL 8459687 (E.D. Pa.) (finding good cause to keep marketing information sealed).

Here, too, the potential for misuse of Fox’s strategic business information and competitive analyses outweighs any insight those materials could offer into the issues in this defamation case. *See In re Lordstown Motors Corp. S’holders Litig.*, 2022 WL 601120, at \*1, \*7 (Del. Ch.) (approving continued sealing of discrete information “reflecting strategic recommendations, pre-order figures and pricing, and non-public customer identities” when the disclosure of such information was “of



modest importance to the public’s understanding of this dispute and has the potential to cause commercial harm”). The same is true for the disclosure of sensitive personnel or human resource-related details: that topic has nothing to do with this defamation case, which raises the question of why Dominion so gratuitously attached these exhibits to its papers in the first place. In any event, this information is protected under Delaware rules and should remain non-public.

*Personal identifying information.* Finally, the personal identifying information of Fox personnel—including contact information that could be used to harass the individuals identified—must remain sealed. For example, Exhibits 157, 165, 167, 173, 174, 176, 177, 192, 196, 205, 223, 225, 241, 248, 271, 290, and 294 contain a few redactions each, and only to personal email addresses and phone numbers (not names). Those minimal redactions—as reflected in Exhibit A—should stay in place.

Neither Dominion nor the Media Parties challenge these redactions; indeed, Dominion wants to seal its own employees’ contact information. D.I. 1168 at 2–3 (Dominion); D.I. 1170 at 5 n.2 (“The Media Interested Parties do not challenge any redactions to personal contact information such as email addresses, phone numbers, and addresses.”). Delaware rules contemplate good cause to keep “personally identifying information such as social security numbers, financial account numbers, and the names of minor children” out of the public eye. Ct. Ch. R. 5.1(b)(2). Courts

have protected such identity information from public disclosure. *See, e.g., Horres*, 2013 WL 1223605, at \*3 (sealing victim and witness names).

In a high-profile case like this, which involves well-known television personalities and some of the most hotly debated political issues of the day, extra protection is warranted—especially when threats have already been made against Fox employees for their protected news coverage. The limited information that remains under seal adds nothing that would aid the public’s understanding of this defamation case. As with the other redaction categories, this information should remain under seal.

### **CONCLUSION**

The Court should continue to seal the redacted portions of the summary judgment briefs, exhibits, and attachments, as well as the withdrawn exhibits and full transcripts/reports. At a minimum, the Court should not decide the pending challenges until after it rules on the motions for summary judgment.

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Dated: March 10, 2023

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**CERTIFICATE OF SERVICE**

I, Katharine L. Mowery, hereby certify that on March 10, 2023, I caused a copy of the foregoing to be filed and served via File & Serve*Xpress* upon the following counsel of record:

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# **EXHIBIT A**

**Ex. A: Basis for Sealing or Redacting Summary Judgment Exhibits**

**Dominion’s Opening MSJ Brief Exhibits**

<b>Exhibit Number<sup>1</sup></b>	<b>Source</b>	<b>Proprietary newsgathering / reporting information</b>	<b>Financial Information</b>	<b>Sensitive Business / Personnel Information</b>	<b>PII<sup>2</sup></b>
150				Pg. 1	Pg. 1
152		Pg. 1			
153				X	
155				Pgs 1, 2, 5, 7	Pg. 1-7
158		X			
159		X			
160		X			
161		Pg. 1			Pg. 1
163				X	
164		X		X	
166	X				
168		X			
169		Pg. 4, 5		Pg. 3	Pg. 1-5
171		X			
172	X				
191		Pg. 1			Pg. 1
199		Pg. 1-2		Pg. 5	Pg. 1-5
200	X				
201		Pgs. 2-8, 10-12		Pg. 11	Pg. 1-12
207	X	X			
208	X	X			
213				X	
215				X	
216		Pg. 2			Pg. 1-2
219				X	
220				X	

<sup>1</sup> Fox asks that *per se* irrelevant documents attached to Dominion’s motion for summary judgment as exhibits, yet not cited in Dominion’s brief (or cited as duplicates), remain under seal: Exhibits 202, 203, 228, 280, 312, 313, 333, 377, 388, 389, 427, 430, 502, 504, 506, 533, 545, 549, and 553.

<sup>2</sup> Beyond the categories of confidentiality identified in this exhibit, Fox redacted some exhibits solely to remove **Personally Identifying Information (PII)** like mobile phone numbers and personal email addresses, which Dominion and the Interested Media Parties do not challenge. *See* Dominion Opening MSJ Exhibits 151, 154, 156, 157, 162, 165, 167, 173, 174, 176, 177, 192, 196, 205, 206, 214, 223, 225, 235, 236, 238, 241, 248, 271, 274, 290, 294, 295, 325, 332, 355, 356, 365, 370, 384, 387, 396, 398, 399, 401, 402, 403, 404, 406, 410, 424, 432, 437, 443, 444, 445, 446, 464, 485, 493, 494, 498, 500, 512, 513, 517, 527, 529, 535, 537, 540, 541, 542, 546, 547, 550, 551, 552, 554, and 555; *see* Dominion Responsive MSJ Exhibits 602, 603, 604, 608, 611, 615, 616, 617, 618, 619, 623, 627, 629, 630, 633, 634, 638, 639, 641, 643, 645, 646, 652, 660, 661, 662, 666, 677, 678, 680, 681, 683, 684, 688, 689, 691, 701, 709, 717, 724, 725, 734, 747, 749, 750, 752, and 753.

<b>Exhibit Number 1</b>	<b>Source</b>	<b>Proprietary newsgathering / reporting information</b>	<b>Financial Information</b>	<b>Sensitive Business / Personnel Information</b>	<b>PII<sup>2</sup></b>
221				X	
224				Pgs. 1-2	Pgs. 1-2
226		Pgs. 1-4		Pg. 1-4	Pgs. 1-5
229		Pg. 1			Pg. 1
230		Pg. 1		Pg. 2-5, 7	Pg. 1-7
240	X				
242	X	X			
243				X	
250				X	
252		X			
254		Pg. 1		Pg. 1	
255		X			
256				X	
257		X			
258		X			
260		X			
261		X			
262		X			
263	Pg. 1	Pg. 1			Pg. 1
264	X	X			
265	X	X			
266	X	X			
267		X			
268		X			
270		X		X	
272				X	
275		X		X	
276		Pg. 2		Pg. 1	Pg. 1-3
277				X	
278		X			
283				X	
292		Pg. 1-2, 4-6, 9		Pg. 7-8	Pgs. 1-9
293		Pg. 1		Pg. 1	Pg. 1
296				X	
297	X				
298				Pgs. 1-2	Pgs. 1-2
318		X			
319				X	

<b>Exhibit Number 1</b>	<b>Source</b>	<b>Proprietary newsgathering / reporting information</b>	<b>Financial Information</b>	<b>Sensitive Business / Personnel Information</b>	<b>PII<sup>2</sup></b>
330				X	
332					Pg. 1
351				X	
352				X	
366		X			
367		X			
368		X			
369		X			
371		Pg. 1			Pgs. 1-2
372				Pg. 1	Pgs. 1-2
374				X	
378		X			
379		X		X	
380		X		X	
381		Pg. 1			Pg. 1
382		X			
383				X	
385		X			
386		Pg. 2			Pgs. 1-3
390				X	
391				Pgs. 1-2	Pg. 8
392				X	
394				Pg. 2	Pg. 8
397				X	
409		X			
412		X			
413		X			
414		X			
415		X			
416		X			
417				Pgs. 2-4	Pgs. 1-4
418		X		X	
421		X			
422		X			
423		X			
425		X			
426		X			
428		X			
429		X			



<b>Exhibit Number 1</b>	<b>Source</b>	<b>Proprietary newsgathering / reporting information</b>	<b>Financial Information</b>	<b>Sensitive Business / Personnel Information</b>	<b>PII<sup>2</sup></b>
435	X	X			
438		X			
440	X	X			
441	X	X			
442		X			
447		X			
450		X			
451		X			
452		X			
453		X			
454		X			
456		X		X	
457		Pg. 1		Pg. 1	
458		X			
459		X			
460		X			
461		X			
463		X			
484				X	
486		X		X	
488		Pg. 7			Pg 1-7
489		X			
490		X			
499		X		X	
501		Pg. 2			Pgs. 1-3
503	X				
505		X			
507		Pgs. 1, 3, 4, 7	Pg. 3	Pg. 3	Pgs. 1-8
508		Pg. 2, 3		Pg. 1	Pgs. 1-3
509		X			
510		X			
511				Pg. 1	Pgs. 1-3
514		Pgs. 2, 3, 7, 8			Pgs. 1-8
515				X	
516				X	
518				Pg. 1	Pg. 1
519		Pgs. 2-5, 8		Pg. 7	Pgs. 1-8
520				Pg. 2	Pgs. 1-5
521			X		
522			X		
523			Pgs. 1-2	Pgs. 1-2	Pg. 3

<b>Exhibit Number<sup>1</sup></b>	<b>Source</b>	<b>Proprietary newsgathering / reporting information</b>	<b>Financial Information</b>	<b>Sensitive Business / Personnel Information</b>	<b>PII<sup>2</sup></b>
525				X	
526				Pgs. 1-2	Pgs. 1-2
528		Pg. 1			Pg. 1
530		Pg. 4			Pgs. 1-4
531	X				
543				Pg. 1	Pgs. 1-3
544					X

**Dominion's Opposition MSJ Brief Exhibits**

<b>Exhibit Number</b>	<b>Source</b>	<b>Proprietary newsgathering / reporting information</b>	<b>Financial Information</b>	<b>Sensitive Business and Personnel Information</b>	<b>PII</b>
614				Pg. 1	Pg. 1
621				X	
625				X	
626				X	
628		Pgs. 1-3			Pgs. 1-3
635		Pgs. 1		Pgs. 2-4	Pgs. 1-4
642				X	
644		X			
649				X	
650				X	
654				X	
659		Pg. 2			Pgs. 1-2
664		X			
665				X	
669			Pg. 1	Pg. 1	
670			Pg. 1	Pg. 1	
676				X	
679				X	
692	Pg. 1				Pgs. 1-9
693		Pg. 1			Pg. 1
694		Pg. 1			Pg. 1
695				X	

696				X	
697				X	
698				X	
699				X	
704		X			
705				X	
706				X	
708				X	
719		Pgs. 1-3			Pg. 1
721				X	
728				X	
732				X	
743	X				
748				Pg. 4	Pgs. 1-5
754				X	
756				X	
757		X			
758				X	

**Dominion Opening MSJ Exs. 95-149: Deposition Excerpts**

<b>Exhibit Number</b>	<b>Source</b>	<b>Proprietary newsgathering and reporting information</b>	<b>Financial Information</b>	<b>Sensitive Business / Personnel Information</b>	<b>PII</b>
96		X			
98	Pgs. 295, 296 Pg. 343	Pgs. 33-34, 126-128, 133-136, 140-142, 148-149, 151-156, 189, 202, 219-224, 246-249, 259, 261, 262, 290, 291, 292-294, 295, 296, 319, 345		Pg. 33-34, 322, 323	Pg. 191
102				X	
104					X
105		X			
106		Pgs. 24, 25, 27, 28-30, 34-38, 39, 44-45, 46, 47, 48, 56, 58, 59, 121, 122, 132, 133, 134, 140, 141, 147, 151-162, 163, 166, 175, 176, 178, 179, 180, 181, 182, 184,	Pg. 20, 21	Pgs. 58, 59, 74, 75, 82, 84, 85-88, 101-104, 105, 106, 177, 265, 301	Pg. 13-14, 41, 42, 43

		185-188, 189, 200, 231-232, 238-239, 263, 264, 267, 268, 269, 271, 272, 273-282, 285, 286-288, 293, 306-307			
<b>107</b>				X	
<b>108</b>		Pgs. 81, 83, 84, 170, 190-195, 207-210, 212-213, 224-232		Pg. 56-59, 60, 61, 66-67, 68	Pg. 140, 141, 143, 144
<b>110</b>		X			
<b>111</b>		Pgs. 55, 56, 95, 98, 101, 122, 218-220, 221, 224, 225, 226, 283, 284, 285, 343, 344		Pg. 17	
<b>112</b>					X
<b>113</b>			X	X	
<b>115</b>		X			
<b>116</b>		Pg. 72, 133, 134		Pg. 136, 139, 140	Pg. 137, 138
<b>117</b>		X			
<b>121</b>		X			
<b>122</b>	Pg. 280, 290-292, 316	Pg. 62-63, 122-124, 193, 197, 201-203, 205-207, 256-259, 260-261, 265-266, 421-422		Pg. 375-6	
<b>123</b>		Pg 69-71, 114-115		Pg 141	
<b>124</b>		Pgs. 39, 55-56, Pg 85-86, 110-114, 117-119		Pg. 86	
<b>125</b>		Pg. 94-95, 99-100, 101, 146		Pg. 102	
<b>126</b>		Pgs. 26, 30, 232		Pgs. 124, 231	
<b>127</b>		X			
<b>128</b>		X			
<b>129</b>		Pg. 22, 23, 24, 25, 28, 29, 33, 34, 95, 97, 174, 175, 176, 177, 182, 227-238, 240, 244, 245, 261, 263, 264		Pg. 139, 159, 169, 170, 178, 179, 183, 184, 185, 227-238, 286	
<b>130</b>		Pgs. 47, 50, 51, 77, 78, 79, 96, 97, 98, 99, 100, 117, 118, 119, 120, 124, 125, 126, 127, 128, 129, 317, 328-331		Pgs. 49, 70, 71, 72, 114, 115, 121, 122, 123, 124, 129, 147, 148, 324	
<b>133</b>		X			
<b>134</b>		X			

<b>135</b>		X			
<b>140</b>		Pg. 160, 161		Pg. 111	
<b>141</b>		Pgs. 108, 128, 139 140		Pg. 109	
<b>142</b>		Pgs. 17, 18, 19, 41, 55, 56, 57, 58, 76, 96, 97, 116, 117, 118, 121, 132, 133, 134, 135, 136, 183, 184, 196, 197, 198, 253-254, 255		Pgs. 251, 252	
<b>143</b>		Pgs. 105, 106, 127, 155, 277, 324, 374, 375 Pg. 324		Pgs. 11, 36, 37, 38, 39, 44, 82, 83, 95, 101, 102, 156, 166, 169, 184, 306	
<b>146</b>		Pgs. 29, 30, 150, 189, 190, 191, 198		Pg. 121, 136, 137	
<b>147</b>		Pgs. 216, 294		Pg. 54, 55, 112, 113, 123, 162, 198, 218, 219	
<b>148</b>		Pgs. 25, 119, 120, 121, 126, 127, 128, 129		Pgs. 11, 72, 73, 107, 142	
<b>149</b>		X			
<b>600</b>			Pg. 298	Pgs. 15, 58, 65- 66, 71-74, 89, 113, 136-137, 140, 169-170, 173, 184, 192, 198, 220, 228, 247-248, 258- 260, 271-273, 292-298, 301- 302, 318, 323, 330-331	
<b>601</b>			Pgs. 88-89	Pgs. 70-72, 94, 159, 186-187, 254	
<b>605</b>	Pg. 273	Pg. 310		Pgs. 46, 245, 366-367	
<b>620</b>		X			

**Fox News and Fox Corporation Opening MSJ Brief Exhibits<sup>3</sup>**

<b>Exhibit Number</b>	<b>Source</b>	<b>Proprietary newsgathering and reporting information</b>	<b>Financial Information</b>	<b>Sensitive Business and Personnel Information</b>	<b>Personal Identifying Information</b>	<b>Not Cited in Brief</b>
<b>E4</b>		X				
<b>E5</b>		X				
<b>E6</b>		X				
<b>E7</b>	Pgs. 72-76	Pgs. 50, 72-76		Pgs. 109-111		
<b>E8</b>		Pgs. 62-63, 290		Pg. 318		
<b>E16</b>						X
<b>E23</b>		Pgs. 238-240		Pgs. 238-240		
<b>E27</b>		X				
<b>E28</b>		X				
<b>E29</b>		Pgs. 95, 98		Pg. 98		
<b>E35</b>		X				
<b>E38</b>				X		
<b>E39</b>				X		
<b>I1</b>		Pg. 1			Pg. 1	
<b>I3</b>	X	X				
<b>I4</b>		X				
<b>I5</b>		X				
<b>I6</b>		X				
<b>I7</b>		X				
<b>I8</b>		X				
<b>I15</b>		X				

**Fox News and Fox Corporation Opposition MSJ Brief Exhibits [E41-51]**

<b>Exhibit Number</b>	<b>Source</b>	<b>Proprietary newsgathering and reporting information</b>	<b>Financial Information</b>	<b>Sensitive Business and Personnel Information</b>
<b>E41</b>				X
<b>E42</b>	X			

<sup>3</sup> Exhibits Redacted solely for Personally Identifying Information – Fox News and Fox Corp Opening MSJ Briefs: I2, I9, I11, I13, and I14.

<b>E51</b>				<b>X</b>
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**Fox News and Fox Corporation Reply MSJ Brief Exhibits**

<b>Exhibit Number</b>	<b>Source</b>	<b>Proprietary newsgathering and reporting information</b>	<b>Financial Information</b>	<b>Sensitive Business and Personnel Information</b>
<b>E52</b>				<b>X</b>
<b>E55</b>			<b>X</b>	
<b>E56</b>	Pg. 269-271			Pg. 269-271
<b>I17</b>		<b>X</b>		

# **EXHIBIT B**



**Ex. B: Basis for Redacting Summary Judgment Briefs**

**Dominion’s Opening MSJ Brief**

<b>Page/Redaction Number</b>	<b>Source</b>	<b>Proprietary newsgathering / reporting information</b>	<b>Financial Information</b>	<b>Sensitive Business Information</b>
Pg 1				X
Pg 2, R1 – R2		X		
Pg 3		X		X
Pg 9		X		
Pg 10	X			
Pg 12		X		
Pg 17		X		
Pg 18		X		
Pg 19		X		
Pg 20		X		
Pg 22		X		
Pg 23, R1		X		X
Pg 23, R2				X
Pg 23, R3	X			
Pg 24, R1 – R2	X	X		
Pg 27, R1		X		X
Pg 27, R2				X
Pg 29		X		X
Pg 30, R1 – R3		X		
Pg 33		X		
Pg 34, R1		X		
Pg 34, R2	X	X		
Pg 35	X	X		
Pg 37, R1		X		
Pg 37, R2		X		X
Pg 38		X		X
Pg 39, R1- R2		X		
Pg 39, R3	X	X		
Pg 40, R1	X	X		
Pg 40, R2		X		
Pg 41		X		X
Pg 42		X		X
Pg 43, R1		X		
Pg 43, R2 – R3	X			
Pg 90				X

Pg 92		X		
Pg 98, R1 – R2		X		
Pg 99, R1		X		
Pg 99, R2		X		X
Pg 99, R3		X		
Pg 103, R1 – R2		X		X
Pg 105, R1				X
Pg 105, R2		X		
Pg 106, R1 – R2		X		
Pg 106, R3		X		X
Pg 107, R1 – R3		X		X
Pg 108, R1 – R2		X		
Pg 110, R1		X		X
Pg 110, R2		X		
Pg 112		X		
Pg 113, R1 – R2		X		
Pg 116		X		
Pg 117		X		
Pg 118		X		
Pg 119		X		
Pg 120	X	X		
Pg 123	X	X		
Pg 128, R1	X	X		
Pg 128, R2		X		
Pg 129, R1 – R2		X		
Pg 133		X		
Pg 134		X		
Pg 135, R1-4		X		X
Pg 136, R1-R3		X		
Pg 137		X		X
Pg 138, R1 – R2		X		
Pg 140		X		
Pg 141		X		
Pg 143		X		
Pg 144, R1		X		
Pg 144, R2		X		X
Pg 145	X			
Pg 146, R1	X			
Pg 146, R2		X	X	X
Pg 147, R1		X	X	X
Pg 147, R2		X		

Pg 153, R1-3		X		
Pg 155		X		X
Pg 157, R1		X		
Pg 157, R2			X	
Pg 160	X	X		
Pg 161	X			

**FNN's Opening MSJ Brief**

<b>Page/Redaction Number</b>	<b>Source</b>	<b>Proprietary newsgathering / reporting information</b>	<b>Financial Information</b>	<b>Proprietary Business Information</b>
Pg 130	X			
Pg 141	X			
Pg 145		X		

**Fox Corp's Opening MSJ Brief**

<b>Page/Redaction Number</b>	<b>Source</b>	<b>Proprietary newsgathering / reporting information</b>	<b>Financial Information</b>	<b>Proprietary Business Information</b>
Pg 24 R1- R2				X

**Dominion's Opposition MSJ Brief**

<b>Page/Redaction Number</b>	<b>Source</b>	<b>Proprietary newsgathering / reporting information</b>	<b>Financial Information</b>	<b>Proprietary Business Information</b>
Pg. 16 R1 – R4				X
Pg. 17 R1 – R 4				X
Pg. 33				X
Pg. 35			X	
Pg. 36 R1 – R2			X	
Pg. 43		X		
Pg. 88	X	X		
Pg. 101		X		
Pg. 114		X		
Pg. 115 R1 – R2		X		
Pg. 137		X		
Pg. 138				X
Pg. 144				X
Pg. 145				X
Pg. 168		X		

Pg. 169		X		
Pg. 170		X		
Pg. 174		X		
Pg. 179		X		

**FNN's Opposition MSJ Brief**

<b>Page/Redaction Number</b>	<b>Source</b>	<b>Proprietary newsgathering / reporting information</b>	<b>Financial Information</b>	<b>Proprietary Business Information</b>
Pg 96	X			
Pg 106		X		
Pg 107		X		
Pg 110 R 1- R2		X		
Pg 111 R 1- R2		X		
Pg 111 R 3	X			
Pg 112 R1 – R2		X		X
Pg 126		X		
Pg 142		X		
Pg 143 R1 – R 2		X		X
Pg 143 R 3	X			
Pg 148		X		
Pg 151 R 1			X	
Pg 151 R 2			X	X
Pg 152			X	X

**Fox Corp's Opposition MSJ Brief**

<b>Page/Redaction Number</b>	<b>Source</b>	<b>Proprietary newsgathering / reporting information</b>	<b>Financial Information</b>	<b>Proprietary Business Information</b>
Pg 31			X	X

**Dominion's Reply MSJ Brief**

<b>Page/Redaction Number</b>	<b>Source</b>	<b>Proprietary newsgathering / reporting information</b>	<b>Financial Information</b>	<b>Proprietary Business Information</b>
Pg 34				X
Pg 35				X
Pg 45				X
Pg 47		X		
Pg 49		X		

Pg 50		X		
Pg 51, R1-R3		X		
Pg 52, R1-R2		X		
Pg 54		X		
Pg 55, R1-R2		X		
Pg 56		X		
Pg 58		X		
Pg 59		X		
Pg 60, R1		X		
Pg 60, R2		X		X
Pg 61		X		X
Pg 62		X		
Pg 63		X		
Pg 65 R1	X			
Pg. 65 R2		X		
Pg 65 R3	X			
Pg 65 R4		X		
Pg 71		X		
Pg 73 R1-R2		X		
Pg 76		X		
Pg 81		X		

**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE**

US DOMINION, INC., DOMINION	)	
VOTING SYSTEMS, INC., and	)	
DOMINION VOTING SYSTEMS	)	
CORPORATION,	)	C.A. No. N21C-03-257 EMD
	)	
Plaintiffs,	)	<b>CONSOLIDATED</b>
	)	
v.	)	
	)	
FOX NEWS NETWORK, LLC and FOX	)	
CORPORATION,	)	
	)	
Defendants.	)	

**[PROPOSED] ORDER GRANTING FOX DEFENDANTS’ APPLICATION FOR CONTINUED SEALING OF SUMMARY JUDGMENT MATERIALS**

WHEREAS, Defendants Fox News Network, LLC and Fox Corporation (together, “Fox”) having applied to this Court for an order to seal the redacted portions of the summary judgment briefs, exhibits, and attachments, as well as the withdrawn exhibits and full transcripts/reports, and the Court having duly considered this motion;

IT IS HEREBY ORDERED, this \_\_\_ day of \_\_\_\_\_, 2023, that Defendants’ Application for Continued Sealing of Summary Judgment Materials is GRANTED.

---

The Honorable Eric M. Davis

**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE**

US DOMINION, INC., DOMINION )  
VOTING SYSTEMS, INC., and )  
DOMINION VOTING SYSTEMS )  
CORPORATION, ) C.A. No. N21C-03-257 EMD  
 )  
Plaintiffs, )  
 )  
v. )  
 )  
FOX NEWS NETWORK, LLC and FOX )  
CORPORATION, )  
 )  
Defendants. )

**CONSOLIDATED**

**NOTICE OF FOX DEFENDANTS' APPLICATION FOR  
CONTINUED SEALING OF SUMMARY JUDGMENT MATERIALS**

TO: ALL DELAWARE COUNSEL OF RECORD:

PLEASE TAKE NOTICE that Defendants Fox News Network, LLC and Fox Corporation (together, "Fox") will present their Application for Continued Sealing of Summary Judgment Materials at the convenience of the Court.

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Dated: March 10, 2023

/s/ Katharine L. Mowery

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